

THE ADORNED TREATISE

المحلّى

The Adorned Treatise

Abu Muhammed Ali Ibn Hazm Al-Andalusi · The Electric Collective for Rigorous Islamic Science

Machine-assisted translation, edited by Abdul Qahar

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Foreword by Abdul Qahar

The Nature of This Work

In the name of Allah The Exalted, Originator of Creation; He honors whomever He wills, and disgraces likewise.

While all translations are inaccurate and cannot fully encompass their original forms, I should emphasize that this work is purely a draft, and may contain severe inaccuracies in places, or areas that are liable to misinterpretation. The English text must always be validated against the Arabic beside it. It is no secret that The Revelation is not in English, so one must not reason deeply about any topic based purely on a translation, and this applies both to this book and other than it. This is especially the case when it comes to matters of religion, and applies doubly to statements attributed to Allah and the Prophet ﷺ. While the partial meaning of a term or grammatical device in Arabic and English may sufficiently intersect for the purposes of a rough translation, it can never convey the full depth of every possible meaning, which is critical in fiqh. As Ibn Hazm explains later, blind following is forbidden, and as with any book except the Book of Allah, no ruling is to be taken without interrogation. This work exists purely as a stepping stone for a community effort to produce a full, high quality translation, by reducing the work needed massively.

The original work is about 13 million words long, and without the assistance of such a draft, and the aid of volunteers contributing to it, its translation would cost on the order of tens of millions of dollars. Each line is labelled with a number in order to make correcting the work easier, with the English and corresponding Arabic text in parallel columns. I have used DeepSeek R1 to generate the base translations, along with a TEaR method with 2 passes to refine the translations, which should then go through machine-translation post-editing (MTPE) from myself and other readers of this draft to improve correctness and quality. We are still in major need of Arabic speakers and people knowledgable in fiqh to make these corrections and clarify the text. Lines for which the translation has been verified are marked with a <C:> followed by the initials of the people who have checked it, note that this only refers to the translation of that specific line. The initial 'AQ' is used to refer to myself, and as my Arabic is basic this primarily denotes that I have verified that the full text has been translated and is sensible within the context, I may miss deeper grammatical issues in the Arabic, however my English is very strong. The initial AH refers to Abu Hazim Al-Dhahiri who is an amateur faqih with satisfactory Arabic and English, his translations have been sourced from his public postings and matched with the appropriate lines using a search tool built for this project. In subsequent editions of this draft, as people contribute, they will similarly be listed alongside an assesment of their level of competency, and I will also increasingly incorporate previous partial translations of this work.

It is also important to clarify that our translation of this work is not necessarily an endorsement of all views within it. While we agree with some parts of it, especially in regards to more foundational matters in usul, we also disagree with some of the conclusions reached in ancillary matters. Nonetheless, I believe that the value of this work to the discourse of the Muslims is great, and that it will help to free us from the intellectual monopoly of ignoramuses, cowards and enemies. We will avoid expanding on our disagreements in this work to keep it straightforward and easy to navigate.

We offer this up as bargain for our souls on the day of judgement, and ask that you make dua for us. May Allah correct our affairs.

Guidelines for contributors

If you have feedback, corrections, have checked a line for correctness, are a software engineer, or are a competent typesetter please contact @abdulqahar9 on Telegram. When giving corrections please mention the line number in your message, and what you think the text should be. When included, the GPG Information section contains a signed message & public key under the section 'GPG Information' confirming the authenticity of my communication in case of future censorship, if you do not know how to use GPG yourself and you need to verify communication from me, you should ask a trustworthy Muslim to do so on your behalf. The work will over time inshallah, be edited to conform to the following rules:

- The Arabic word for God shall be rendered as "Allah". The name of the Prophet of Allah shall be rendered with the spelling "Muhammed", and salutations upon him shall be rendered as ﷺ
- Technical terms should be rendered in English first, before using transliterrations.
- Where possible, single words in Arabic should be translated to single words in English if there is any sufficiently precise translation of the word. Different words should also maintain their distinction in the translation where possible. This is to aid in the reader's language aquisition.

Copying

There is no such thing as "intellectual property" in Islam, least of all when it concerns the religion. Copying and sharing of this work is highly encouraged.

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The Book: Al-Muḥallā bil-Āthār (The Adorned with the Narrations)

Author: Abū Muḥammad ʿAlī ibn Aḥmad ibn Saʿīd ibn Ḥazm al-Andalusī (Ẓāhirī)

Verifier: ʿAbd al-Ghaffār Sulaymān al-Bundārī

Publisher: Dar al-Fikr, Beirut [??]

Edition: No edition and no date [??]

Number of parts: 12

[The pagination of the book corresponds to the printed version] Author's page: [Ibn Ḥazm]

The Adorned Compendium with Narrations

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المؤلف: أبو محمد علي بن أحمد بن سعيد بن حزم الأندلسي [الظاهري]

المحقق: عبدالغفار سليمان البنداري

الناشر: دار الفكر - بيروت [؟؟]

الطبعة: بدون طبعة وبدون تاريخ [؟؟]

عدد الأجزاء: ١٢

[ترقيم الكتاب موافق للمطبوع] صفحة المؤلف: [ابن حزم]

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مسألة صام في كفارة الفطر فقطع صومه عليه رمضان أو ما لا يحل صيامه 2021

مسألة من كان فرضه الإطعام في كفارة الفطر في رمضان 2023

مسألة كان قادرا حين وطئه في نهار رمضان على الرقبة 2024

مسألة لم يجد المكفر عن الفطر في رمضان إلا رقبة لا غنى به عنها 2025

مسألة لا ينقض الصوم حجامة ولا احتلام ولا استمناء 2026

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AL-MUHALLA

خِطْبَة المؤلف وَمَوْضُوع الْكتاب

The Author’s Introduction

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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The Author's Preface and the Subject of the Book

[خِطْبَة المؤلف وَمَوْضُوع الْكتاب]

In the name of Allah, the Most Gracious, the Most Merciful. May Allah send blessings upon Muhammad and his family. Ali ibn Ahmad ibn Sa'id ibn Hazm—may Allah be pleased with him—said: All praise is due to Allah, the Lord of the worlds. May Allah send blessings upon Muhammad, the Seal of the Prophets and the Messengers, and grant him peace in abundance. We ask Allah the Exalted to accompany us with protection from every error and misstep, and to guide us to rightness in every statement and action. Amen, Amen.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ. قَالَ عَلِيُّ بْنُ أَحْمَدَ بْنِ سَعِيدِ بْنِ حَزْمٍ - رَضِيَ اللَّهُ عَنْهُ -: الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ خَاتَمِ النَّبِيِّينَ وَالْمُرْسَلِينَ، وَسَلَّمَ تَسْلِيمًا وَنَسْأَلُ اللَّهَ تَعَالَى أَنْ يُصْحِبَنَا الْعِصْمَةَ مِنْ كُلِّ خَطَإٍ وَزَلَلٍ، وَيُوَفِّقَنَا لِلصَّوَابِ فِي كُلِّ قَوْلٍ وَعَمَلٍ. آمِينَ آمِينَ.

(Now then), may Allah grant us and you success in obeying Him. You have desired that we prepare a concise explanation for the summarized issues compiled in our book entitled *Al-Muḥallā*, succinctly limiting ourselves to the foundations of proofs without prolixity, so that its comprehension may be easy for the student and beginner, serving as a stepping stone for them toward mastery in argumentation, understanding differences, validating proofs leading to the knowledge of truth in matters disputed by people, comprehensively studying the rulings of the Quran, grasping the multitude of established Sunnahs from the Messenger of Allah (peace and blessings be upon him), distinguishing them from what is unsound, recognizing reliable narrators of reports and differentiating them from others, and exposing the invalidity of analogy, its contradictions, and the contradictions of its proponents. Thus, I performed istikhārah, seeking Allah's guidance (Exalted and Majestic) for undertaking this task, sought His aid (the Most High) in attaining guidance to uphold the truth, and implored Him for support in clarifying and simplifying it, that He may render it purely for His sake and untainted in essence. Amen, Amen, Lord of the worlds. Let the reader of this book know that we have relied solely on authentic reports narrated by trustworthy authorities with complete chains, and we have opposed only weak reports—demonstrating their weakness—or abrogated ones—elucidating their abrogation. Our success is solely by Allah, the Exalted.

(أَمَّا بَعْدُ) وَفَّقَنَا اللَّهُ وَإِيَّاكُمْ لِطَاعَتِهِ، فَإِنَّكُمْ رَغِبْتُمْ أَنْ نَعْمَلَ لِلْمَسَائِلِ الْمُخْتَصَرَةِ الَّتِي جَمَعْنَاهَا فِي كِتَابِنَا الْمَوْسُومِ " بِالْمُحَلَّى " شَرْحًا مُخْتَصَرًا أَيْضًا، نَقْتَصِرُ فِيهِ عَلَى قَوَاعِدِ الْبَرَاهِينِ بِغَيْرِ إِكْثَارٍ، لِيَكُونَ مَأْخَذُهُ سَهْلًا عَلَى الطَّالِبِ وَالْمُبْتَدِئِ، وَدَرَجًا لَهُ إِلَى التَّبَحُّرِ فِي الْحِجَاجِ وَمَعْرِفَةِ الِاخْتِلَافِ وَتَصْحِيحِ الدَّلَائِلِ الْمُؤَدِّيَةِ إِلَى مَعْرِفَةِ الْحَقِّ مِمَّا تَنَازَعَ النَّاسُ فِيهِ وَالْإِشْرَافِ عَلَى أَحْكَامِ الْقُرْآنِ وَالْوُقُوفِ عَلَى جُمْهَرَةِ السُّنَنِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَمْيِيزِهَا مِمَّا لَمْ يَصِحَّ، وَالْوُقُوفِ عَلَى الثِّقَاتِ مِنْ رُوَاةِ الْأَخْبَارِ وَتَمْيِيزِهِمْ مِنْ غَيْرِهِمْ وَالتَّنْبِيهِ عَلَى فَسَادِ الْقِيَاسِ وَتَنَاقُضِهِ وَتَنَاقُضِ الْقَائِلِينَ بِهِ، فَاسْتَخَرْتُ اللَّهَ عَزَّ وَجَلَّ عَلَى عَمَلِ ذَلِكَ، وَاسْتَعَنْته تَعَالَى عَلَى الْهِدَايَةِ إِلَى نَصْرِ الْحَقِّ، وَسَأَلْته التَّأْيِيدَ عَلَى بَيَانِ ذَلِكَ وَتَقْرِيبِهِ، وَأَنْ يَجْعَلَهُ لِوَجْهِهِ خَالِصًا وَفِيهِ مَحْضًا آمِينَ آمِينَ رَبَّ الْعَالَمِينَ. وَلْيَعْلَمْ مَنْ قَرَأَ كِتَابَنَا هَذَا أَنَّا لَمْ نَحْتَجَّ إِلَّا بِخَبَرٍ صَحِيحٍ مِنْ رِوَايَةِ الثِّقَاتِ مُسْنَدٍ وَلَا خَالَفْنَا إِلَّا خَبَرًا ضَعِيفًا فَبَيَّنَّا ضَعْفَهُ، أَوْ مَنْسُوخًا فَأَوْضَحْنَا نَسْخَهُ. وَمَا تَوْفِيقُنَا إِلَّا بِاَللَّهِ تَعَالَى.



AL-MUHALLA

كِتَابُ التَّوْحِيدِ

The Book of Divine Unity (Tawhid)

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ التَّوْحِيدِ] [مَسْأَلَةٌ بَيَان أَوَّل مَا يَلْزَم كُلّ أَحَد وَلَا يَصِحّ الْإِسْلَام إِلَّا بِهِ]

١ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: أَوَّلُ مَا يَلْزَمُ كُلَّ أَحَدٍ وَلَا يَصِحُّ الْإِسْلَامُ إِلَّا بِهِ أَنْ يَعْلَمَ الْمَرْءُ بِقَلْبِهِ عِلْمَ يَقِينٍ وَإِخْلَاصٍ لَا يَكُونُ لِشَيْءٍ مِنْ الشَّكِّ فِيهِ أَثَرٌ وَيَنْطِقَ بِلِسَانِهِ وَلَا بُدَّ بِأَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ. بُرْهَانُ ذَلِكَ: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا أُمَيَّةُ بْنُ بِسْطَامٍ نا يَزِيدُ بْنُ زُرَيْعٍ نا رَوْحٌ عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ يَعْقُوبَ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَيُؤْمِنُوا بِي وَبِمَا جِئْتُ بِهِ، فَإِذَا فَعَلُوا ذَلِكَ عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ إِلَّا بِحَقِّهَا وَحِسَابُهُمْ عَلَى اللَّهِ» .

وَقَدْ رَوَى مَعْنَى هَذَا مُسْنَدًا مُعَاذٌ وَابْنُ عَبَّاسٍ وَغَيْرُهُمْ.

قَالَ اللَّهُ تَعَالَى: {وَمَنْ يَبْتَغِ غَيْرَ الإِسْلامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ وَهُوَ فِي الآخِرَةِ مِنَ الْخَاسِرِينَ} [آل عمران: ٨٥] وَهُوَ قَوْلُ جَمِيعِ الصَّحَابَةِ وَجَمِيعِ أَهْلِ الْإِسْلَامِ. وَأَمَّا وُجُوبُ عَقْدِ ذَلِكَ بِالْقَلْبِ فَلِقَوْلِ اللَّهِ تَعَالَى: {وَمَا أُمِرُوا إِلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ} [البينة: ٥] . وَالْإِخْلَاصُ فِعْلُ النَّفْسِ. وَأَمَّا وُجُوبُ النُّطْقِ بِاللِّسَانِ، فَإِنَّ الشَّهَادَةَ بِذَلِكَ الْمُخْرِجَةُ لِلدَّمِ وَالْمَالِ مِنْ التَّحْلِيلِ إِلَى التَّحْرِيمِ كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا تَكُونُ إِلَّا بِاللِّسَانِ ضَرُورَةً.

L2223–2224 **[The Book of Tawheed] [The Issue of Clarifying the First Obligation Incumbent Upon Every Person, Without Which Islam Is Not Valid]**

L2225 1. Issue: Abū Muḥammad—may Allāh be pleased with him—said: The foremost obligation incumbent upon every individual, without which Islam cannot be valid, is that a person must know in his heart with knowledge of certainty and sincerity wherein no trace of doubt remains, and must declare with his tongue—and it is necessary—that there is no deity but Allāh and that Muḥammad is the Messenger of Allāh. The proof for this is what was narrated to us by ʻAbdullāh ibn Yūsuf: Aḥmad ibn Fatḥ narrated to us: ʻAbd al-Wahhāb ibn ʻĪsā narrated to us: Aḥmad ibn Muḥammad narrated to us: Aḥmad ibn ʻAlī narrated to us: Muslim ibn al-Ḥajjāj narrated to us: Umayyah ibn Bisṭām narrated to us: Yazīd ibn Zurīʿ narrated to us: Rawḥ narrated from al-ʻAlāʼ ibn ʻAbd al-Raḥmān ibn Yaʻqūb, from his father, from Abū Hurayrah, from the Messenger of Allāh—peace and blessings be upon him—who said: “I have been commanded to fight people until they testify that there is no deity but Allāh and believe in me and in what I have brought forth. When they do so, they have safeguarded from me their blood and wealth except by their rightful claim, and their account is upon Allāh.”[1]

L2226 And indeed Muʻadh, Ibn ʻAbbas, and others have narrated the meaning of this in a musnad format.

L2227 Allah the Exalted said: {Whoever seeks a religion other than Islam, it will never be accepted from him, and in the Hereafter he will be among the losers} [3:85]. This is the statement of all the Companions and all Muslims. As for the obligation of affirming this conviction in the heart, it is due to Allah’s saying: {They were commanded only to worship Allah, devoting religion sincerely to Him} [98:5]. Sincerity is an inward act of the soul. As for the obligation of utterance with the tongue, the testimony—which transfers blood and wealth from lawful to unlawful status, as the Messenger of Allah,

[1] **Hadith references (L2225):** Sahih Muslim 21b.

peace and blessings be upon him, stated—can only be established through verbal expression by necessity.[2]

L2228–2230 2 - Issue: Abū Muḥammad said: The interpretation of this statement is that Allah, the Exalted, is the deity of all things besides Him and the creator of all things besides Him. The proof of this is that the world, with all it contains, is a possessor of time—it has never been without it at all, nor can it be imagined, nor is it possible for the world to exist devoid of time. The meaning of time is the duration. The persistence of a body in motion or at rest, the duration of an accident's existence within a body, and since time—as noted—is a duration, it constitutes a countable number that increases through its passage and continuity. An increase can only occur in something possessing a beginning and an end, from its start to the point of increase within it. Number also inherently has a beginning. Time is undeniably composed of its parts, and every temporal segment is definitively bounded by a start and an endpoint. The whole is none other than its parts, and all these parts possess beginnings. Consequently, the whole must necessarily have a beginning. Since time inevitably requires a beginning, and the entire universe is inseparable from time—which itself has a beginning—whatever does not precede that which has a beginning (i.e., time) must inherently possess a beginning. Therefore, the entire universe, both its substance and accident, has a beginning. Since it has a beginning, it is created, and the created necessarily entails a Creator, for it is fundamentally inconceivable and impossible for a created entity to exist without a Creator. Thus, the entire universe is created and has an eternal Creator, the Sovereign of all He created. He is the God of all He originated and its Creator; there is no deity except Him.

L2231 A discussion affirming that Allah, the Exalted, is One; He has always existed and will always exist.

L2232 3. Issue: Abu Muhammad said: He is Allah; there is no deity except Him, and He, the Exalted, is One—Eternal without beginning or end. The proof of this is that since it is established by necessity that the entire universe is created

[2] **Qur'an references (L2227):** Qur'an 3:85 (Ali 'Imran); Qur'an 98:5 (Al-Bayyinah).

٢ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: وَتَفْسِيرُ هَذِهِ الْجُمْلَةِ: هُوَ أَنَّ اللَّهَ تَعَالَى إِلَهُ كُلِّ شَيْءٍ دُونَهُ، وَخَالِقُ كُلِّ شَيْءٍ دُونَهُ. بُرْهَانُ ذَلِكَ: أَنَّ الْعَالَمَ بِكُلِّ مَا فِيهِ ذُو زَمَانٍ لَمْ يَنْفَكَّ عَنْهُ قَطُّ، وَلَا يُتَوَهَّمُ وَلَا يُمْكِنُ أَنْ يَخْلُوَ الْعَالَمُ عَنْ زَمَانٍ. وَمَعْنَى الزَّمَانِ هُوَ مُدَّةُ بَقَاءِ الْجِسْمِ مُتَحَرِّكًا أَوْ سَاكِنًا وَمُدَّةُ وُجُودِ الْعَرَضِ فِي الْجِسْمِ، وَإِذْ الزَّمَانُ مُدَّةٌ كَمَا ذَكَرْنَا فَهُوَ عَدَدٌ مَعْدُودٌ، وَيَزِيدُ بِمُرُورِهِ وَدَوَامِهِ، وَالزِّيَادَةُ لَا تَكُونُ أَلْبَتَّةَ إِلَّا فِي ذِي مَبْدَأٍ وَنِهَايَةٍ مِنْ أَوَّلِهِ إِلَى مَا زَادَ فِيهِ. وَالْعَدَدُ أَيْضًا ذُو مَبْدَأٍ وَلَا بُدَّ، وَالزَّمَانُ مُرَكَّبٌ بِلَا شَكٍّ مِنْ أَجْزَائِهِ، وَكُلُّ جُزْءٍ مِنْ أَجْزَاءِ الزَّمَانِ فَهُوَ بِيَقِينٍ ذُو نِهَايَةٍ مِنْ أَوَّلِهِ وَمُنْتَهَاهُ وَالْكُلُّ لَيْسَ هُوَ شَيْئًا غَيْرَ أَجْزَائِهِ، وَأَجْزَاؤُهُ كُلُّهَا ذَاتُ مَبْدَأٍ، فَهُوَ كُلُّهُ ذُو مَبْدَأٍ ضَرُورَةً، فَلَمَّا كَانَ الزَّمَانُ لَا بُدَّ لَهُ مِنْ مَبْدَأٍ ضَرُورَةً، وَكَانَ الْعَالَمُ كُلُّهُ لَا يَنْفَكُّ عَنْ زَمَانٍ وَالزَّمَانُ ذُو مَبْدَأٍ، فَمَا لَمْ يَتَقَدَّمْ ذَا الْمَبْدَأِ فَهُوَ ذُو مَبْدَأٍ وَلَا بُدَّ، فَالْعَالَمُ كُلُّهُ جَوْهَرُهُ وَعَرَضُهُ ذُو مَبْدَأٍ وَإِذْ هُوَ ذُو مَبْدَأٍ فَهُوَ مُحْدَثٌ، وَالْمُحْدَثُ يَقْتَضِي مُحْدِثًا ضَرُورَةً إِذْ لَا يُتَوَهَّمُ أَصْلًا وَلَا يُمْكِنُ مُحْدَثٌ إِلَّا وَلَهُ مُحْدِثٌ، فَالْعَالَمُ كُلُّهُ مَخْلُوقٌ وَلَهُ خَالِقٌ لَمْ يَزَلْ، وَهُوَ مَلِكُ كُلِّ مَا خَلَقَ، فَهُوَ إِلَهُ كُلِّ مَا خَلَقَ وَمُخْتَرِعُهُ لَا إِلَهَ إِلَّا هُوَ.

[مَسْأَلَةٌ فِي بَيَانِ أَنَّ اللَّهَ تَعَالَى وَاحِدٌ لَمْ يَزَلْ وَلَا يَزَالُ]

٣ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: هُوَ اللَّهُ لَا إِلَهَ إِلَّا هُوَ، وَأَنَّهُ تَعَالَى وَاحِدٌ لَمْ يَزَلْ وَلَا يَزَالُ. بُرْهَانُ ذَلِكَ: أَنَّهُ لَمَّا صَحَّ ضَرُورَةً أَنَّ الْعَالَمَ كُلَّهُ مَخْلُوقٌ وَأَنَّ لَهُ خَالِقًا وَجَبَ أَنْ لَوْ كَانَ الْخَالِقُ أَكْثَرَ مِنْ وَاحِدٍ أَنْ يَكُونَ قَدْ حَصَرَهُمَا الْعَدَدُ، وَكُلُّ مَعْدُودٍ فَذُو نِهَايَةٍ كَمَا ذَكَرْنَا،

and must have a Creator, it necessarily follows that if there were more than one Creator, they would be limited by numeration. Every numbered entity has an end, as we have mentioned, and everything with an end is created. Furthermore, any two entities are distinct, and every two distinct entities must have—or one of them must have—a differentiating factor that renders it distinct from the other. Based on this, one of them would inevitably be composed of its essence and the attribute that differentiates it from the other. If it were composite, it would be a created and governed being. Thus, all such possibilities are invalidated, and the matter reverts to the necessity that He is One without doubt, and that He is distinct from His creation in all aspects. The creation is numerous and created, so it is confirmed that He, the Exalted, is unlike that, and that He is One, Eternal without beginning. For if He were not so, He would be included among the created world (Exalted is Allah above that). He, the Exalted, said: "There is nothing like unto Him" (42:11), and He, the Exalted, said: "Nor is there to Him any equivalent" (112:4).[3]

L2233 C:AQ

Issue: Clarifying that Allah created all things absent a cause, and the demonstration thereof

L2234–2236

Issue 4: And that He created all things without any necessitating cause that necessitated Him to create. The proof of this is that if He had performed any act for a necessitating cause, that cause would either have been eternally coexistent with Him or created and originated - no third category is possible. If it had been eternally coexistent, two impossible consequences would necessarily follow: First, another eternal entity would exist alongside Him, exalted, thereby invalidating tawḥīd whose proof we clarified earlier. Second, since the cause of creation would have been eternal, creation itself would necessarily be eternal, for the cause cannot be separated from its effect - were they separated, it would cease to be a cause. We have already elucidated the proof requiring the temporal origination of the entire universe. Moreover, if there were here a cause necessitating Him, exalted, to perform His acts, He would be compelled to act. Either imprinted, governed, or compelled by that cause – this constitutes a deviation from divine nature. If the cause

[3]**Qur'an references (L2232):** Qur'an 42:11 (Ash-Shuraa); Qur'an 112:4 (Al-Ikhlas).

وَكُلُّ ذِي نِهَايَةٍ فَمُحْدَثٌ. وَأَيْضًا فَكُلُّ اثْنَيْنِ فَهُمَا غَيْرَانِ، وَكُلُّ غَيْرَيْنِ فَفِيهِمَا أَوْ فِي أَحَدِهِمَا مَعْنًى مَا صَارَ بِهِ غَيْرَ الْآخَرِ، فَعَلَى هَذَا كَانَ يَكُونُ أَحَدُهُمَا وَلَا بُدَّ مُرَكَّبًا مِنْ ذَاتِهِ وَمِمَّا غَايَرَ بِهِ الْآخَرَ، وَإِذَا كَانَ مُرَكَّبًا فَهُوَ مَخْلُوقٌ مُدَبَّرٌ فَبَطَلَ كُلُّ ذَلِكَ وَعَادَ الْأَمْرُ إِلَى وُجُوبِ أَنَّهُ وَاحِدٌ وَلَا بُدَّ، وَأَنَّهُ بِخِلَافِ خَلْقِهِ مِنْ جَمِيعِ الْوُجُوهِ، وَالْخَلْقُ كَثِيرٌ مُحْدَثٌ، فَصَحَّ أَنَّهُ تَعَالَى بِخِلَافِ ذَلِكَ، وَأَنَّهُ وَاحِدٌ لَمْ يَزَلْ، إِذْ لَوْ لَمْ يَكُنْ كَذَلِكَ لَكَانَ مِنْ جُمْلَةِ الْعَالَمِ - تَعَالَى اللَّهُ عَنْ ذَلِكَ - قَالَ تَعَالَى: {لَيْسَ كَمِثْلِهِ شَيْءٌ} [الشورى: ١١] وَقَالَ تَعَالَى: {وَلَمْ يَكُنْ لَهُ كُفُوًا أَحَدٌ} [الإخلاص: ٤] .

[مَسْأَلَة فِي بَيَان أَنْ اللَّه خلق كُلّ شَيْء لِغَيْرِ عِلَّة وبرهان ذَلِكَ]

٤ - مَسْأَلَةٌ: وَأَنَّهُ خَلَقَ كُلَّ شَيْءٍ لِغَيْرِ عِلَّةٍ أَوْجَبَتْ عَلَيْهِ أَنْ يَخْلُقَ. بُرْهَانُ ذَلِكَ أَنَّهُ لَوْ فَعَلَ شَيْئًا مِمَّا فَعَلَ لِعِلَّةٍ لَكَانَتْ تِلْكَ الْعِلَّةُ إِمَّا لَمْ تَزَلْ مَعَهُ وَإِمَّا مَخْلُوقَةً مُحْدَثَةً وَلَا سَبِيلَ إِلَى قِسْمٍ ثَالِثٍ، فَلَوْ كَانَتْ لَمْ تَزَلْ مَعَهُ لَوَجَبَ مِنْ ذَلِكَ شَيْئَانِ مُمْتَنِعَانِ: أَحَدُهُمَا أَنَّ مَعَهُ تَعَالَى غَيْرَهُ لَمْ يَزَلْ، فَكَانَ يُبْطِلُ التَّوْحِيدَ الَّذِي قَدْ أَبَنَّا بُرْهَانَهُ آنِفًا، وَالثَّانِي أَنَّهُ كَانَ يَجِبُ إِذْ كَانَتْ عِلَّةُ الْخَلْقِ لَمْ تَزَلْ أَنْ يَكُونَ الْخَلْقُ لَمْ يَزَلْ، لِأَنَّ الْعِلَّةَ لَا تُفَارِقُ الْمَعْلُولَ، وَلَوْ فَارَقَتْهُ لَمْ تَكُنْ عِلَّةً لَهُ، وَقَدْ أَوْضَحْنَا آنِفًا بُرْهَانَ وُجُوبِ حُدُوثِ الْعَالَمِ كُلِّهِ. وَأَيْضًا فَلَوْ كَانَتْ هَهُنَا عِلَّةٌ مُوجِبَةٌ عَلَيْهِ تَعَالَى أَنْ يَفْعَلَ مَا فَعَلَ لَكَانَ مُضْطَرًّا مَطْبُوعًا أَوْ مُدَبَّرًا مَقْهُورًا لِتِلْكَ الْعِلَّةِ، وَهَذَا خُرُوجٌ عَنِ الْإِلَهِيَّةِ، وَلَوْ كَانَتِ الْعِلَّةُ مُحْدَثَةً لَكَانَتْ وَلَا بُدَّ إِمَّا مَخْلُوقَةً لَهُ تَعَالَى وَإِمَّا غَيْرَ مَخْلُوقَةٍ، فَإِنْ كَانَتْ غَيْرَ مَخْلُوقَةٍ فَقَدْ أَوْضَحْنَا آنِفًا

were originated, it would necessarily be either created by Him, the Exalted, or uncreated. If uncreated, we have already clarified the necessity that every originated entity must be created, thereby rendering this category void. If created, it must necessarily be created for another cause or without cause. If created for another cause, the same necessity would apply to the secondary cause, continuing ad infinitum. This would necessitate an infinite chain of originators – an impossibility due to our prior arguments and because every existent is inherently finite in number, bounded by spatial or temporal extent, for all that is numerically finite must terminate. Thus this category too is invalidated, thereby confirming our assertion. Praise belongs to God, the Exalted. Should they assert: "Rather, the cause was created without a cause," they must answer: From where arises the necessity that He should create things for a cause, yet create the cause itself without a cause? There exists no path to establish proof for this.

A Question on the Createdness of the Soul, the Spirit as the Soul of the Body, and Its Proof.

L2237

L2238

5 - Issue: That the soul is created. The proof of this is that we find the body in some states devoid of sensation, and that when a person reflects upon something, the more they detach from the body, the clearer their understanding and the sharper their perception become. Thus, we know the sentient, knowing, remembering entity is distinct from the body. We observe the body—when that entity departs—remaining intact in all its limbs yet devoid of sensation and understanding, whether through death, unconsciousness, or sleep. This confirms that the sentient, remembering entity is separate from the body, termed in language as "soul" and "spirit." God Almighty states: "Allah takes the souls at the time of their death, and those that do not die during their sleep. Then He retains those for which He has decreed death and releases the others until a specified term" (39:42). Thus, the souls are numerous, as He explicitly states. Similarly, we discern them as an evil soul, a good soul, a courageous soul, a cowardly soul, a knowledgeable soul, and an ignorant soul. It is therefore conclusively established that every living being possesses a soul distinct from others. Once this is certain, and since souls are numerous—composed of their essence and at-

وُجُوبَ كَوْنِ كُلِّ شَيْءٍ مُحْدَثٍ مَخْلُوقًا، فَبَطَلَ هَذَا الْقِسْمُ. وَإِنْ كَانَتْ مَخْلُوقَةً وَجَبَ وَلَا بُدَّ أَنْ تَكُونَ مَخْلُوقَةً لِعِلَّةٍ أُخْرَى أَوْ لِغَيْرِ عِلَّةٍ، فَإِنْ وَجَبَ أَنْ تَكُونَ مَخْلُوقَةً لِعِلَّةٍ أُخْرَى وَجَبَ مِثْلُ ذَلِكَ فِي الْعِلَّةِ الثَّانِيَةِ وَهَكَذَا أَبَدًا، وَهَذَا يُوجِبُ وُجُوبَ مُحْدَثِينَ لَا نِهَايَةَ لِعَدَدِهِمْ. وَهَذَا بَاطِلٌ لِمَا ذَكَرْنَا آنِفًا وَبِأَنَّ كُلَّ مَا خَرَجَ إِلَى الْفِعْلِ فَقَدْ حَصَرَهُ الْعَدَدُ ضَرُورَةً بِمَسَاحَتِهِ أَوْ بِزَمَانِهِ وَلَا بُدَّ، وَكُلُّ مَا حَصَرَهُ الْعَدَدُ فَهُوَ مُتَنَاهٍ. فَبَطَلَ هَذَا الْقِسْمُ أَيْضًا وَصَحَّ مَا قُلْنَاهُ وَلِلَّهِ تَعَالَى الْحَمْدُ. وَإِنْ قَالُوا: بَلْ خُلِقَتْ الْعِلَّةُ لَا لِعِلَّةٍ. سَأَلُوا: مِنْ أَيْنَ وَجَبَ أَنْ يَخْلُقَ الْأَشْيَاءَ لِعِلَّةٍ وَيَخْلُقَ الْعِلَّةَ لَا لِعِلَّةٍ؟ وَلَا سَبِيلَ إِلَى دَلِيلٍ.

[مَسْأَلَة فِي أَنْ النَّفْس مخلوقة وَأَن الرُّوح نَفْس الجسد وبرهان ذَلِكَ]

٥ - مَسْأَلَةٌ: وَأَنَّ النَّفْسَ مَخْلُوقَةٌ. بُرْهَانُ هَذَا: أَنَّا نَجِدُ الْجِسْمَ فِي بَعْضِ أَحْوَالِهِ لَا يَحُسُّ شَيْئًا وَأَنَّ الْمَرْءَ إذَا فَكَّرَ فِي شَيْءٍ مَا فَإِنَّهُ كُلَّمَا تَخَلَّى عَنْ الْجَسَدِ كَانَ أَصَحَّ لِفَهْمِهِ وَأَقْوَى لِإِدْرَاكِهِ، فَعَلِمْنَا أَنَّ الْحَسَّاسَ الْعَالِمَ الذَّاكِرَ هُوَ شَيْءٌ غَيْرُ الْجَسَدِ وَنَجِدُ الْجَسَدَ إذَا تَخَلَّى مِنْهُ ذَلِكَ الشَّيْءُ مَوْجُودًا بِكُلِّ أَعْضَائِهِ وَلَا حِسَّ لَهُ وَلَا فَهْمَ إمَّا بِمَوْتٍ وَإِمَّا بِإِغْمَاءٍ وَإِمَّا بِنَوْمٍ، فَصَحَّ أَنَّ الْحَسَّاسَ الذَّاكِرَ هُوَ غَيْرُ الْجَسَدِ، وَهُوَ الْمُسَمَّى فِي اللُّغَةِ نَفْسًا وَرُوحًا، وَقَالَ اللَّهُ تَعَالَى ذِكْرُهُ: {اللَّهُ يَتَوَفَّى الأَنْفُسَ حِينَ مَوْتِهَا وَالَّتِي لَمْ تَمُتْ فِي مَنَامِهَا فَيُمْسِكُ الَّتِي قَضَى عَلَيْهَا الْمَوْتَ وَيُرْسِلُ الأُخْرَى إِلَى أَجَلٍ مُسَمًّى} [الزمر: ٤٢] فَكَانَتْ النُّفُوسُ كَمَا نَصَّ تَعَالَى كَثِيرَةً، وَكَذَلِكَ وَجَدْنَاهَا نَفْسًا خَبِيثَةً وَأُخْرَى طَيِّبَةً، وَنَفْسًا ذَاتَ شَجَاعَةٍ وَأُخْرَى ذَاتَ جُبْنٍ، وَأُخْرَى عَالِمَةً وَأُخْرَى جَاهِلَةً، فَصَحَّ يَقِينًا أَنَّ

tributes—they belong to the category of the world. They have never existed outside of time and number, making them originated and composite. All originated composites are created. Whoever asserts that anything beneath God Almighty is uncreated has opposed God in His declaration: "He created all things" (6:101), contradicted what prophethood has conveyed, opposed the consensus of Muslims, and rejected what rational proof has established.[4]

لِكُلِّ حَيٍّ نَفْسًا غَيْرَ نَفْسِ غَيْرِهِ، فَإِذَا تَيَقَّنَ ذَلِكَ وَكَانَتْ النُّفُوسُ كَثِيرَةً مُرَكَّبَةً مِنْ جَوْهَرِهَا وَصِفَاتِهَا، فَهِيَ مِنْ جُمْلَةِ الْعَالَمِ، وَهِيَ مَا لَمْ يَنْفَكَّ قَطُّ مِنْ زَمَانٍ وَعَدَدٍ فَهِيَ مُحْدَثَةٌ مُرَكَّبَةٌ، وَكُلُّ مُحْدَثٍ مُرَكَّبٍ مَخْلُوقٌ. وَمَنْ جَعَلَ شَيْئًا مِمَّا دُونَ اللَّهِ تَعَالَى غَيْرَ مَخْلُوقٍ فَقَدْ خَالَفَ اللَّهَ تَعَالَى فِي قَوْلِهِ: {وَخَلَقَ كُلَّ شَيْءٍ} [الأنعام: ١٠١] وَخَالَفَ مَا جَاءَتْ بِهِ النُّبُوَّةُ وَمَا أَجْمَعَ عَلَيْهِ الْمُسْلِمُونَ وَمَا قَامَ بِهِ الْبُرْهَانُ الْعَقْلِيُّ.

L2239–2243

6. Issue: The spirit is the soul itself. The proof for this is that, as we mentioned, there exists here a governor of the body - the living, sensing, responsive entity itself. No proof has ever established their duality. Thus, whoever claims that the spirit is other than the soul has asserted two separate entities and proclaimed what lacks proof. Regarding its validity, this is invalid. Allah the Exalted said: {Say, "Produce your proof if you are truthful"} [Al-Baqarah: 111]. Thus, whoever lacks proof is not truthful. Therefore, it is established that "an-nafs" (the soul) and "ar-rūḥ" (the spirit) are two names for a single entity.

٦ - مَسْأَلَةٌ: وَهِيَ الرُّوحُ نَفْسُهُ، بُرْهَانُ ذَلِكَ: أَنَّهُ قَدْ قَامَ الْبُرْهَانُ كَمَا ذَكَرْنَا بِأَنَّ هَهُنَا شَيْئًا مُدَبِّرًا لِلْجَسَدِ هِيَ الْحَيُّ الْحَسَّاسُ الْمُخَاطَبُ، وَلَمْ يَقُمْ بُرْهَانٌ قَطُّ بِأَنَّهُمَا شَيْئَانِ، فَكَانَ مَنْ زَعَمَ بِأَنَّ الرُّوحَ غَيْرُ النَّفْسِ قَدْ زَعَمَ بِأَنَّهُمَا شَيْئَانِ وَقَالَ مَا لَا بُرْهَانَ لَهُ بِصِحَّتِهِ، وَهَذَا بَاطِلٌ. قَالَ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] فَمَنْ لَا بُرْهَانَ لَهُ فَلَيْسَ صَادِقًا، فَصَحَّ أَنَّ النَّفْسَ وَالرُّوحَ اسْمَانِ لِمُسَمًّى وَاحِدٍ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ نا أَبُو دَاوُد السِّجِسْتَانِيُّ نا أَحْمَدُ بْنُ صَالِحٍ نا عَبْدُ اللَّهِ بْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ هُوَ ابْنُ زَيْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ ابْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ - فِي حَدِيثٍ ذَكَرَهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِبِلَالٍ: اكْلَأْ لَنَا اللَّيْلَ فَغَلَبَتْ بِلَالًا عَيْنَاهُ فَلَمْ يَسْتَيْقِظْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا بِلَالٌ وَلَا أَحَدٌ مِنْ أَصْحَابِهِ حَتَّى ضَرَبَتْهُمْ الشَّمْسُ، فَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوَّلَهُمْ اسْتِيقَاظًا فَقَالَ: يَا بِلَالُ فَقَالَ: أَخَذَ بِنَفْسِي الَّذِي أَخَذَ بِنَفْسِك بِأَبِي أَنْتَ وَأُمِّي يَا رَسُولَ اللَّهِ» وَذَكَرَ الْحَدِيثَ. وَقَالَ اللَّهُ تَعَالَى: {اللَّهُ يَتَوَفَّى الأَنْفُسَ حِينَ مَوْتِهَا} [الزمر: ٤٢] إلَى قَوْلِهِ {أَجَلٍ مُسَمًّى} [الزمر: ٤٢] . وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ

Abdullāh ibn Rabīʿ narrated to us: ʿUmar ibn ʿAbd al-Malik narrated to us: Muḥammad ibn Bakr narrated to us: Abū Dāwūd al-Sijistānī narrated to us: Aḥmad ibn Ṣāliḥ narrated to us: ʿAbdullāh ibn Wahb informed us: Yūnus—who is Ibn Zayd—from Ibn Shihāb, from Ibn al-Musayyib, from Abū Hurayrah—in a ḥadīth he mentioned: "The Messenger of Allah—peace be upon him—said to Bilāl: 'Keep watch for us during the night.' But sleep overcame Bilāl's eyes, and neither the Prophet—peace be upon him—nor Bilāl nor any of his companions awoke until the sun struck them. The Messenger of Allah—peace be upon him—was the first to awaken. He said: 'O Bilāl!' Bilāl replied: 'He who took hold of my soul took hold of yours—may my father and mother be sacrificed for you, O Messenger of Allah!'" And he mentioned the ḥadīth.

[4]**Qur'an references (L2238):** Qur'an 39:42 (Az-Zumar); Qur'an 6:101 (Al-An'am); Qur'an 25:2 (Al-Furqan).

Allah the Exalted said: {Allah takes the souls at the time of their death} [Al-Zumar: 42] up to His saying: {a specified term} [Al-Zumar: 42].

Abdullāh ibn Rabīʿ narrated to us: ʿUmar ibn ʿAbd al-Malik narrated to us: Muḥammad ibn Bakr narrated to us: Abū Dāwūd narrated to us: ʿAlī ibn Naṣr—who is al-Jahḍamī—narrated to us: Wahb ibn Jarīr narrated to us: al-Aswad ibn Shaybān narrated to us: Khālid ibn Samīr narrated to us: ʿAbdullāh ibn Rabāḥ narrated to us: Abū Qatādah al-Anṣārī narrated to me in a ḥadīth where he mentioned the Prophet's—peace be upon him—oversleeping until sunrise. The Messenger of Allah—peace be upon him—said: "Indeed, we praise Allah that no worldly affair preoccupied us from our prayer. Rather, our spirits were in the hand of Allah Almighty, and He released them as He willed." Thus, the Messenger of Allah—peace be upon him—used "anfus" (souls) and "arwāḥ" (spirits) to denote one entity. Nothing is established from him—peace be upon him—. In this chapter, there is fundamental disagreement concerning this matter. Through Allah, the Exalted, we seek strength.[5]

An Issue Concerning the Proof That the Throne Is Created

Issue 7: The Throne is created. The proof of this is the statement of Allah, the Most High: "Lord of the Great Throne" [27:26]. And everything that is under Lordship is created.[6]

The issue of the evidence proving that there is nothing like His likeness.

8 – Issue: And that He, the Exalted, there is nothing like unto Him, nor does He assume the form of anything He created. This has already been discussed. If the Exalted were to assume the form of something, that form would be a

[5] **Qur'an references (L2239):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml); Qur'an 39:42 (Az-Zumar).

[6] **Qur'an references (L2245):** Qur'an 9:129 (At-Tawbah); Qur'an 27:26 (An-Naml).

الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ نا أَبُو دَاوُد نا عَلِيُّ بْنُ نَصْرٍ هُوَ الْجَهْضَمِيُّ ثنا وَهْبُ بْنُ جَرِيرٍ نا الْأَسْوَدُ بْنُ شَيْبَانَ نا خَالِدُ بْنُ سَمِيرٍ نا عَبْدُ اللَّهِ بْنُ رَبَاحٍ حَدَّثَنِي أَبُو قَتَادَةَ الْأَنْصَارِيُّ فِي حَدِيثٍ ذَكَرَ فِيهِ نَوْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى طَلَعَتْ الشَّمْسُ، أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَلَا إنَّا نَحْمَدُ اللَّهَ أَنَّا لَمْ نَكُنْ فِي شَيْءٍ مِنْ أَمْرِ الدُّنْيَا يَشْغَلُنَا عَنْ صَلَاتِنَا، وَلَكِنَّ أَرْوَاحَنَا كَانَتْ بِيَدِ اللَّهِ عَزَّ وَجَلَّ فَأَرْسَلَهَا أَنَّى شَاءَ» فَعَبَّرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْأَنْفُسِ وَبِالْأَرْوَاحِ عَنْ شَيْءٍ وَاحِدٍ، وَلَا يَثْبُتُ عَنْهُ - عَلَيْهِ السَّلَامُ - فِي هَذَا الْبَابِ خِلَافٌ لِهَذَا أَصْلًا. وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

[مَسْأَلَة فِي برهان أَنْ العرش مَخْلُوق]

٧ - مَسْأَلَةٌ: وَالْعَرْشُ مَخْلُوقٌ، بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {رَبُّ الْعَرْشِ الْعَظِيمِ} [النمل: ٢٦] وَكُلُّ مَا كَانَ مَرْبُوبًا فَهُوَ مَخْلُوقٌ.

[مَسْأَلَة الدليل عَلَى أَنْ اللَّه لَيْسَ كمثله شَيْء]

٨ - مَسْأَلَةٌ: وَأَنَّهُ تَعَالَى لَيْسَ كَمِثْلِهِ شَيْءٌ وَلَا يَتَمَثَّلُ فِي صُورَةِ شَيْءٍ مِمَّا خَلَقَ. قَدْ مَضَى الْكَلَامُ فِي هَذَا، وَلَوْ تَمَثَّلَ تَعَالَى فِي صُورَةِ شَيْءٍ لَكَانَتْ تِلْكَ الصُّورَةُ مِثْلًا لَهُ وَهُوَ تَعَالَى يَقُولُ: {لَيْسَ كَمِثْلِهِ شَيْءٌ} [الشورى: ١١] .

likeness of Him, and He, the Exalted, says: “There is nothing like unto Him” [42:11].[7]

L2248 **A Question on Demonstrating That Prophethood Is a Reality and the Proof of This Claim**

L2249 Issue 9: That prophethood is true. The proof lies in the fact that matters absent from our perception or preceding our existence can only be known through transmitted reports. A *mutawatir* report (mass-transmitted account) necessarily produces indispensable definitive knowledge. Were any extraneous element or doubt to infiltrate such transmissions, it would logically necessitate doubting whether creation existed before us—since our knowledge of pre-existing creation derives solely from transmitted reports. Whoever reaches this point of doubt has abandoned rationality. Through these *mutawatir* accounts, it is established that certain individuals approached the people of their time claiming that Allah the Exalted—Creator of all beings—had revealed to them commandments to warn their people, obligations which Allah imposed upon them. When challenged to prove their claims, they performed acts defying the natural order—deeds utterly inconceivable to human reason for any creature to perform, save their Originator who created them as He willed. These include transforming a staff into a moving serpent, cleaving the sea for an army to cross while drowning their pursuers, reviving a dead person whose death was confirmed, curing congenital blindness, a she-camel emerging from solid rock, a man unharmed when cast into fire, feeding dozens of people from one *sa‘* (a dry measure) of barley, and water gushing from a man’s fingertips until an entire army drank their fill. Thus it becomes necessarily established that Allah the Exalted testified to their truth through these miracles performed by their hands—thereby confirming what they conveyed from Him, and affirming His endorsement of their claims.

L2250 **Issue: Clarification that Muḥammad was sent to all jinn and humankind, and the proof thereof.**

[مَسْأَلَة فِي بَيَان أَنْ النُّبُوَّة حَقّ وبرهان ذَلِكَ]

٩ - مَسْأَلَةٌ: وَأَنَّ النُّبُوَّةَ حَقٌّ، بُرْهَانُ ذَلِكَ: أَنَّ مَا غَابَ عَنَّا أَوْ كَانَ قَبْلَنَا فَلَا يُعْرَفُ إِلَّا بِالْخَبَرِ عَنْهُ. وَخَبَرُ التَّوَاتُرِ يُوجِبُ الْعِلْمَ الضَّرُورِيَّ وَلَا بُدَّ، وَلَوْ دَخَلَتْ فِي نَقْلِ التَّوَاتُرِ دَاخِلَةٌ أَوْ شَكٌّ لَوَجَبَ أَنْ يَدْخُلَ الشَّكُّ هَلْ كَانَ قَبْلَنَا خَلْقٌ أَمْ لَا، إِذْ لَمْ نَعْرِفْ كَوْنَ الْخَلْقِ مَوْجُودًا قَبْلَنَا إِلَّا بِالْخَبَرِ، وَمَنْ بَلَغَ هَهُنَا فَقَدْ فَارَقَ الْمَعْقُولَ وَبِنَقْلِ التَّوَاتُرِ الْمَذْكُورِ صَحَّ أَنَّ قَوْمًا مِنْ النَّاسِ أَتَوْا أَهْلَ زَمَانِهِمْ يَذْكُرُونَ أَنَّ اللَّهَ تَعَالَى خَالِقُ الْخَلْقِ أَوْحَى إِلَيْهِمْ يَأْمُرُهُمْ بِإِنْذَارِ قَوْمِهِمْ بِأَوَامِرَ أَلْزَمَهُمْ اللَّهُ تَعَالَى إِيَّاهَا، فَسَأَلُوا بُرْهَانًا عَلَى صِحَّةِ مَا قَالُوا: فَأَتَوْا بِأَعْمَالٍ هِيَ خِلَافٌ لِطَبَائِعِ مَا فِي الْعَالَمِ لَا يُمْكِنُ أَلْبَتَّةَ فِي الْعَقْلِ أَنْ يَقْدِرَ عَلَيْهَا مَخْلُوقٌ، حَاشَا خَالِقَهَا الَّذِي ابْتَدَعَهَا كَمَا شَاءَ، كَقَلْبِ عَصًا حَيَّةً تَسْعَى، وَشَقِّ الْبَحْرِ لِعَسْكَرٍ جَازُوا فِيهِ وَغَرَقِ مَنْ اتَّبَعَهُمْ، وَكَإِحْيَاءِ مَيِّتٍ قَدْ صَحَّ مَوْتُهُ، وَكَإِبْرَاءِ أَكْمَهَ وُلِدَ أَعْمَى، وَكَنَاقَةٍ خَرَجَتْ مِنْ ‘ “ صَخْرَةٍ، وَكَإِنْسَانٍ رُمِيَ فِي النَّارِ فَلَمْ يَحْتَرِقْ، وَكَإِشْبَاعِ عَشَرَاتٍ مِنْ النَّاسِ مِنْ صَاعِ شَعِيرٍ، وَكَنَبَعَانِ الْمَاءِ مِنْ بَيْنِ أَصَابِعِ إِنْسَانٍ حَتَّى رُوِيَ الْعَسْكَرُ كُلُّهُ. فَصَحَّ ضَرُورَةً أَنَّ اللَّهَ تَعَالَى شَهِدَ لَهُمْ بِمَا أَظْهَرَ عَلَى أَيْدِيهِمْ فَصِحَّ مَا أَتَوْا بِهِ عَنْهُ وَأَنَّهُ تَعَالَى صَدَّقَهُمْ فِيمَا قَالُوهُ.

[مَسْأَلَة بَيَان أَنْ مُحَمَّدًا أَرْسَلَ إِلَى جَمِيع الْجِنّ والإنس والدليل عَلَى ذَلِكَ]

[7] **Qur’an references (L2247):** Qur’an 42:11 (Ash-Shuraa).

L2251–2253 10. Issue: That Muḥammad ibn ʿAbd Allāh ibn ʿAbd al-Muṭṭalib is the Messenger of Allah to all humans and jinn—their disbelievers and believers alike. The evidence for this is that he—peace be upon him—brought this Qur'an, transmitted to us through the most complete form of *tawātur*, and that he challenged those who opposed him to produce anything like it. They all proved incapable of that, and indeed the moon was split for him. Allah the Exalted said: "The Hour has drawn near, and the moon has been split" [54:1], "And if they see a sign, they turn away and say, 'This is persistent magic'" [54:2], "They denied and followed their own desires, and every matter is settled" [54:3], "There has already come to them of news that which contains a deterrent" [54:4], "Perfect wisdom—yet warnings do not avail" [54:5]. The palm trunk yearned for him when it missed him with a lament heard by all present, and they were large crowds. He challenged the Jews to wish for death if they were truthful, and informed them they would not wish for it, so they all proved incapable of wishing for it openly. He challenged the Christians to an invocation of mutual destruction, but they all refused. These two proofs are both mentioned in the Quranic text, just as it mentions his rendering all the Arabs unable—from first to last—to produce its like. Water gushed forth from between his fingers, he fed hundreds of people from a measure of barley and a goat, and the kings of Yemen, Bahrain, and Oman submitted to his command because of the signs confirmed among them concerning him. They all relinquished their kingdoms willingly, without any fear of his invading them and without any incentive offered to them, for he was an orphan and poor.[8]

L2254 And there are those who claim prophethood, such as the claimant of Sanaa and the claimant of Yamamah—both possessing mightier armies and vaster lands than him. Yet none turned to them except their own people. He was the weakest among them in military strength, the weakest in land, and the farthest from the seats of kings' domains. He summoned the kings and warriors who had dominated the Arabian Peninsula—a region spanning about

[8] **Qur'an references (L2251):** Qur'an 54:1 (Al-Qamar); Qur'an 54:2 (Al-Qamar); Qur'an 54:3 (Al-Qamar); Qur'an 54:4 (Al-Qamar); Qur'an 54:5 (Al-Qamar).

١٠ - مَسْأَلَةٌ: وَأَنَّ مُحَمَّدَ بْنَ عَبْدِ اللهِ بْنِ عَبْدِ الْمُطَّلِبِ رَسُولُ اللهِ إِلَى جَمِيعِ الْإِنْسِ وَالْجِنِّ، كَافِرِهِمْ وَمُؤْمِنِهِمْ، بُرْهَانُ ذَلِكَ: أَنَّهُ - عَلَيْهِ السَّلَامُ - أَتَى بِهَذَا الْقُرْآنِ الْمَنْقُولِ إِلَيْنَا بِأَتَمِّ مَا يَكُونُ مِنْ نَقْلِ التَّوَاتُرِ، وَأَنَّهُ دَعَا مَنْ خَالَفَهُ إِلَى أَنْ يَأْتُوا بِمِثْلِهِ فَعَجَزُوا كُلُّهُمْ عَنْ ذَلِكَ، وَأَنَّهُ شُقَّ لَهُ الْقَمَرُ. قَالَ اللهُ عَزَّ وَجَلَّ: {اقْتَرَبَتِ السَّاعَةُ وَانْشَقَّ الْقَمَرُ} [القمر: ١] {وَإِنْ يَرَوْا آيَةً يُعْرِضُوا وَيَقُولُوا سِحْرٌ مُسْتَمِرٌّ} [القمر: ٢] {وَكَذَّبُوا وَاتَّبَعُوا أَهْوَاءَهُمْ وَكُلُّ أَمْرٍ مُسْتَقِرٌّ} [القمر: ٣] {وَلَقَدْ جَاءَهُمْ مِنَ الْأَنْبَاءِ مَا فِيهِ مُزْدَجَرٌ} [القمر: ٤] {حِكْمَةٌ بَالِغَةٌ فَمَا تُغْنِ النُّذُرُ} [القمر: ٥] . وَحَنَّ الْجِذْعُ إِذْ فَقَدَهُ حَنِينًا سَمِعَهُ كُلُّ مَنْ حَضَرَهُ، وَهُمْ جُمُوعٌ كَثِيرَةٌ؛ وَدَعَا الْيَهُودَ إِلَى تَمَنِّي الْمَوْتِ إِنْ كَانُوا صَادِقِينَ؛ وَأَخْبَرَهُمْ أَنَّهُمْ لَا يَتَمَنَّوْنَهُ فَعَجَزُوا كُلُّهُمْ عَنْ تَمَنِّيهِ جِهَارًا. وَدَعَا النَّصَارَى إِلَى مُبَاهَلَتِهِ فَأَبَوْا كُلُّهُمْ. وَهَذَانِ الْبُرْهَانَانِ مَذْكُورَانِ جَمِيعًا فِي نَصِّ الْقُرْآنِ، كَمَا ذُكِرَ فِيهِ تَعْجِيزُهُ جَمِيعَ الْعَرَبِ عَنْ أَنْ يَأْتُوا بِمِثْلِهِ أَوَّلَهُمْ عَنْ آخِرِهِمْ؛ وَنَبَعَ لَهُمُ الْمَاءُ مِنْ بَيْنِ أَصَابِعِهِ، وَأَطْعَمَ مِئِينَ مِنَ النَّاسِ مِنْ صَاعِ شَعِيرٍ وَجَدْيٍ، وَأَذْعَنَ مُلُوكُ الْيَمَنِ وَالْبَحْرَيْنِ وَعُمَانَ لِأَمْرِهِ لِلْآيَاتِ الَّتِي صَحَّتْ عِنْدَهُمْ عَنْهُ، فَنَزَلُوا عَنْ مُلْكِهِمْ كُلِّهِمْ طَوْعًا دُونَ رَهْبَةٍ أَصْلًا، وَلَا خَوْفًا مِنْ أَنْ يَغْزُوَهُمْ وَلَا بِرَغْبَةٍ رَغَّبَهُمْ بِهَا، بَلْ كَانَ يَتِيمًا فَقِيرًا.

وَهُنَاكَ قَوْمٌ يَدَّعُونَ النُّبُوَّةَ كَصَاحِبِ صَنْعَاءَ وَكَصَاحِبِ الْيَمَامَةِ، كِلَاهُمَا أَقْوَى جَيْشًا وَأَوْسَعُ مِنْهُ بِلَادًا، فَمَا الْتَفَتَ لَهُمْ أَحَدٌ غَيْرُ قَوْمِهِمَا، وَكَانَ هُوَ أَضْعَفَهُمْ جُنْدًا وَأَضْعَفَهُمْ بَلَدًا وَأَبْعَدَهُمْ مِنْ بِلَادِ الْمُلُوكِ دَارًا، فَدَعَا الْمُلُوكَ وَالْفُرْسَانَ الَّذِينَ قَدْ مَلَئُوا جَزِيرَةَ الْعَرَبِ - وَهِيَ نَحْوُ شَهْرَيْنِ فِي نَحْوِ ذَلِكَ - إِلَى إِقَامَةِ الصَّلَاةِ وَأَدَاءِ الزَّكَاةِ وَإِسْقَاطِ الْفَخْرِ وَالتَّجَبُّرِ، وَالْتِزَامِ التَّوَاضُعِ وَالصَّبْرِ لِلْقِصَاصِ فِي النَّفْسِ فَمَا دُونَهَا مِنْ كُلِّ حَقِيرٍ

two months—to establish prayer, pay zakah, abandon vainglory and arrogance, commit to humility, and patiently accept retribution for murder and lesser injuries, whether from the lowly or the eminent—despite having neither wealth nor kinsmen to support him. All who followed him submitted in awe of the miraculous signs that astonished them. He never seized any town by force except Khaybar and Mecca alone. In the Noble Quran: "O humanity, I am truly Allah's Messenger to you all" (7:158). The Exalted also says: "O assembly of jinn and humans" (6:130), and "Say, 'It has been revealed to me that a group of jinn listened and said, "We have indeed heard a wondrous Quran, guiding to righteousness, so we have believed in it"'" (72:1-2), up to His words: "Among us are those who submit and those who are deviant. Those who submit have sought the right path. As for the deviant, they will be fuel for Hellfire" (72:14-15). The Exalted further states: "Whoever seeks a religion other than Islam, it will never be accepted from him, and in the Hereafter he will be among the losers" (3:85).[9]

L2255 **The Issue of the Evidence That the Creed of Islam Has Abrogated Every Preceding Creed.**

L2256–2258 11. Issue: He, the Almighty and Majestic, abrogated all other religions with His religion and obligated all inhabitants of the earth, jinn and humans alike, to follow His Shariah with which He sent His Prophet, and He accepts no other law from anyone besides it. And that he, peace be upon him, is the Seal of the Prophets; no... There is no prophet after him; the evidence for this lies in the words of Allah, the Exalted: {Muhammad is not the father of any man among you, but he is the Messenger of Allah and the Seal of the Prophets} [Al-Aḥzāb: 40].[10]

L2259 Ahmad ibn Muhammad ibn al-Jasur narrated to us: Wahb ibn Masarra narrated to us: Muhammad ibn Waddah narrated to us: Abu Bakr ibn Abi Shaybah narrated to us: Abdullah ibn Idris narrated from al-Mukhtar ibn

[9] **Qur'an references (L2254):** Qur'an 7:158 (Al-A'raf); Qur'an 6:130 (Al-An'am); Qur'an 55:33 (Ar-Rahman); Qur'an 72:1 (Al-Jinn); Qur'an 72:2 (Al-Jinn); Qur'an 72:14 (Al-Jinn); Qur'an 72:15 (Al-Jinn); Qur'an 3:85 (Ali 'Imran).

[10] **Qur'an references (L2256):** Qur'an 33:40 (Al-Ahzab).

أَوْ رَفِيعٍ دُونَ أَنْ يَكُونَ مَعَهُ مَالٌ وَلَا عَشِيرَةٌ تَنْصُرُهُ، بَلْ اتَّبَعَهُ كُلُّ مَنْ اتَّبَعَهُ مُذْعِنًا لِمَا بَهَرَهُمْ مِنْ آيَاتِهِ، وَلَمْ يَأْخُذْ قَطُّ بَلْدَةً عَنْوَةً وَغَلَبَةً إِلَّا خَيْبَرَ وَمَكَّةَ فَقَطْ وَفِي الْقُرْآنِ الْعَظِيمِ: {يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا} [الأعراف: ١٥٨] وَقَالَ تَعَالَى: {يَا مَعْشَرَ الْجِنِّ وَالإِنْسِ} [الأنعام: ١٣٠] وَقَالَ تَعَالَى: {قُلْ أُوحِيَ إِلَيَّ أَنَّهُ اسْتَمَعَ نَفَرٌ مِنَ الْجِنِّ فَقَالُوا إِنَّا سَمِعْنَا قُرْآنًا عَجَبًا} [الجن: ١] {يَهْدِي إِلَى الرُّشْدِ فَآمَنَّا بِهِ} [الجن: ٢] إِلَى قَوْلِهِ {وَأَنَّا مِنَّا الْمُسْلِمُونَ وَمِنَّا الْقَاسِطُونَ فَمَنْ أَسْلَمَ فَأُولَئِكَ تَحَرَّوْا رَشَدًا} [الجن: ١٤] {وَأَمَّا الْقَاسِطُونَ فَكَانُوا لِجَهَنَّمَ حَطَبًا} [الجن: ١٥] وَقَالَ تَعَالَى: {وَمَنْ يَبْتَغِ غَيْرَ الإِسْلامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ وَهُوَ فِي الآخِرَةِ مِنَ الْخَاسِرِينَ} [آل عمران: ٨٥] .

[مَسْأَلَة الدليل عَلَى أَنْ ملة الْإِسْلَام نسخت كُلّ ملة تقدمتها]

١١ - مَسْأَلَةٌ: نَسَخَ عَزَّ وَجَلَّ بِمِلَّتِهِ كُلَّ مِلَّةٍ وَأَلْزَمَ أَهْلَ الْأَرْضِ جِنَّهُمْ وَإِنْسَهُمْ اتِّبَاعَ شَرِيعَتِهِ الَّتِي بَعَثَهُ بِهَا وَلَا يَقْبَلُ مِنْ أَحَدٍ سِوَاهَا، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - خَاتَمُ النَّبِيِّينَ لَا نَبِيَّ بَعْدَهُ، بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {مَا كَانَ مُحَمَّدٌ أَبَا أَحَدٍ مِنْ رِجَالِكُمْ وَلَكِنْ رَسُولَ اللَّهِ وَخَاتَمَ النَّبِيِّينَ} [الأحزاب: ٤٠] .

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا وَهْبُ بْنُ مَسَرَّةَ ثنا مُحَمَّدُ بْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ عَنِ الْمُخْتَارِ بْنِ فُلْفُلٍ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ النُّبُوَّةَ وَالرِّسَالَةَ قَدِ انْقَطَعَتْ، فَجَزِعَ النَّاسُ فَقَالَ: قَدْ بَقِيَتْ مُبَشِّرَاتٌ وَهُنَّ جُزْءٌ مِنَ النُّبُوَّةِ» .

Fulful from Anas ibn Malik, who said: The Messenger of Allah, peace be upon him, said, “Prophethood and messengership have indeed ceased, so the people became distressed. He said: Righteous dreams remain, and they are a remnant of prophethood.”

[The jurisprudential question concerning the clarification that Jesus, son of Maryam, will descend at the end of time.]

12. Issue: However, Jesus son of Mary—peace be upon him—will descend, though there had been many prophets before him—peace be upon him—including those named by Allah the Exalted and others unnamed. Belief in all of them is obligatory. The proof is what Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, al-Walid ibn Shujaʿ, Harun ibn Abdullah, and Hajjaj ibn ash-Sha’ir narrated to us. They said: Hajjaj—meaning ibn Muhammad—narrated to us from Ibn Jurayj, who reported: Abu az-Zubayr informed us that he heard Jabir ibn Abdullah say: I heard the Prophet—peace and blessings be upon him—state: “A faction of my ummah will fight for the truth and manifest dominance until the Day of Resurrection.” Jabir said: Then Jesus son of Mary—peace be upon him—will descend, and their leader will say: “Come lead us in prayer.” He will respond: “No. Some of you are leaders over others—as an honor from Allah to this ummah.”[11]

Allah the Exalted has mentioned in the Quran Adam, Nuh, Idris, Ibrahim, Isma’il, Ishaq, Ya’qub, Yusuf, Musa, Harun, Dawud, Sulayman, Yunus, Alyasa’, Ilyas, Zakariyya, Yahya, Ayyub, Isa, Hud, Salih, Shu’ayb, and Lut. He the Exalted said: {And messengers We have told you of before and messengers We have not told you of} [An-Nisa: 164]. And He the Exalted said: {They wish to separate Allah from His messengers and say, ’We believe in some

[11] **Hadith references (L2261):** Sahih Muslim 156.

[مَسْأَلَة بَيَان أَنْ عِيسَى بْن مريم سينزل آخِر الزمان]

١٢ - مَسْأَلَةٌ: إِلَّا أَنَّ عِيسَى ابْنَ مَرْيَمَ - عَلَيْهِ السَّلَامُ - سَيَنْزِلُ وَقَدْ كَانَ قَبْلَهُ - عَلَيْهِ السَّلَامُ - أَنْبِيَاءُ كَثِيرَةٌ مِمَّنْ سَمَّى اللَّهُ تَعَالَى وَمِنْهُمْ لَمْ يُسَمِّ، وَالْإِيمَانُ بِجَمِيعِهِمْ فَرْضٌ. بُرْهَانُ ذَلِكَ مَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا الْوَلِيدُ بْنُ شُجَاعٍ وَهَارُونُ بْنُ عَبْدِ اللَّهِ وَحَجَّاجُ بْنُ الشَّاعِرِ، قَالُوا: حَدَّثَنَا حَجَّاجٌ وَهُوَ ابْنُ مُحَمَّدٍ - عَنِ ابْنِ جُرَيْجٍ قَالَ أَخْبَرَنَا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: سَمِعْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا تَزَالُ طَائِفَةٌ مِنْ أُمَّتِي يُقَاتِلُونَ عَلَى الْحَقِّ ظَاهِرِينَ إِلَى يَوْمِ الْقِيَامَةِ. قَالَ: فَيَنْزِلُ عِيسَى ابْنُ مَرْيَمَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيَقُولُ أَمِيرُهُمْ: تَعَالَ صَلِّ لَنَا. فَيَقُولُ: لَا، إِنَّ بَعْضَكُمْ عَلَى بَعْضٍ أُمَرَاءُ، تَكْرِمَةُ اللَّهِ هَذِهِ الْأُمَّةَ» .

وَذَكَرَ اللَّهُ تَعَالَى فِي الْقُرْآنِ آدَمَ وَنُوحًا وَإِدْرِيسَ وَإِبْرَاهِيمَ وَإِسْمَاعِيلَ وَإِسْحَاقَ وَيَعْقُوبَ وَيُوسُفَ وَمُوسَى وَهَارُونَ وَدَاوُد وَسُلَيْمَانَ وَيُونُسَ وَالْيَسَعَ وَإِلْيَاسَ وَزَكَرِيَّا وَيَحْيَى وَأَيُّوبَ وَعِيسَى وَهُودًا وَصَالِحًا وَشُعَيْبًا وَلُوطًا. وَقَالَ تَعَالَى: {وَرُسُلا قَدْ قَصَصْنَاهُمْ عَلَيْكَ مِنْ قَبْلُ وَرُسُلا لَمْ نَقْصُصْهُمْ عَلَيْكَ} [النساء: ١٦٤] وَقَالَ تَعَالَى: {وَيُرِيدُونَ

and disbelieve in others,' seeking to take a way between that} [An-Nisa: 150]. {These are the true disbelievers} [An-Nisa: 151].[12]

L2264 **The jurisprudential issue that all the prophets—and Jesus and Muhammad—are servants of Allah and created by Him, the Most High.**

L2265 Thirteenth Issue: All the prophets—including Jesus and Muhammad—peace be upon them—are servants of God Almighty, created; humans like other humans, born from a male and a female, except Adam and Jesus. For Adam was created by God Almighty from dust with His hands—not from a male or a female—and Jesus was created in his mother's womb without a male. God Almighty stated regarding the messengers—peace be upon them—that they said: "We are only humans like you, but God confers grace upon whom He wills of His servants" (14:11). He said: "We created you from a male and a female" (49:13), and "The likeness of Jesus before God is as that of Adam; He created him from dust" (3:59). He also said: "What prevented you from prostrating to that which I created with My hands?" (38:75). Concerning Gabriel—peace be upon him—God mentioned that he told Mary—peace be upon her: "I am merely a messenger of your Lord to bestow upon you a righteous boy" (19:19). She said: "How can I have a son when no man has touched me, nor have I been unchaste?" (19:20). He answered: "Thus your Lord has said: 'It is easy for Me'" (19:21). God further said: "And Mary, daughter of Imran, who guarded her chastity—so We breathed into her from Our Spirit" (66:12).[13]

[12]**Qur'an references (L2263):** Qur'an 4:164 (An-Nisa); Qur'an 4:150 (An-Nisa); Qur'an 4:151 (An-Nisa).

[13]**Qur'an references (L2265):** Qur'an 14:11 (Ibrahim); Qur'an 49:13 (Al-Hujurat); Qur'an 3:59 (Ali 'Imran); Qur'an 38:75 (Sad); Qur'an 19:19 (Maryam); Qur'an 19:20 (Maryam); Qur'an 19:9 (Maryam); Qur'an 19:21 (Maryam); Qur'an 66:12 (At-Tahrim).

أَنْ يُفَرِّقُوا بَيْنَ اللَّهِ وَرُسُلِهِ وَيَقُولُونَ نُؤْمِنُ بِبَعْضٍ وَنَكْفُرُ بِبَعْضٍ وَيُرِيدُونَ أَنْ يَتَّخِذُوا بَيْنَ ذَلِكَ سَبِيلا} [النساء: ١٥٠] {أُولَئِكَ هُمُ الْكَافِرُونَ حَقًّا} [النساء: ١٥١] .

[مَسْأَلَة أَنْ جَمِيع النبيين وعيسى وَمُحَمَّد عَبِيد لِلَّهِ ومخلوقون لِلَّهِ تَعَالَى]

١٣ - مَسْأَلَةٌ: وَأَنَّ جَمِيعَ النَّبِيِّينَ وَعِيسَى وَمُحَمَّدًا - عَلَيْهِمْ السَّلَامُ - عَبِيدًا لِلَّهِ تَعَالَى مَخْلُوقُونَ، نَاسٌ كَسَائِرِ النَّاسِ، مَوْلُودُونَ مِنْ ذَكَرٍ وَأُنْثَى، إلَّا آدَمَ وَعِيسَى، فَإِنَّ آدَمَ خَلَقَهُ اللَّهُ تَعَالَى مِنْ تُرَابٍ بِيَدِهِ، لَا مِنْ ذَكَرٍ وَلَا مِنْ أُنْثَى، وَعِيسَى خُلِقَ فِي بَطْنِ أُمِّهِ مِنْ غَيْرِ ذَكَرٍ. قَالَ اللَّهُ عَزَّ وَجَلَّ عَنْ الرُّسُلِ - عَلَيْهِمْ السَّلَامُ - أَنَّهُمْ قَالُوا: {إِنْ نَحْنُ إلا بَشَرٌ مِثْلُكُمْ وَلَكِنَّ اللَّهَ يَمُنُّ عَلَى مَنْ يَشَاءُ مِنْ عِبَادِهِ} [إبراهيم: ١١] . وَقَالَ تَعَالَى: {إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَى} [الحجرات: ١٣] وَقَالَ تَعَالَى: {إِنَّ مَثَلَ عِيسَى عِنْدَ اللَّهِ كَمَثَلِ آدَمَ خَلَقَهُ مِنْ تُرَابٍ} [آل عمران: ٥٩] وَقَالَ تَعَالَى: {مَا مَنَعَكَ أَنْ تَسْجُدَ لِمَا خَلَقْتُ بِيَدَيَّ} [ص: ٧٥] وَقَالَ تَعَالَى عَنْ جِبْرِيلَ - عَلَيْهِ السَّلَامُ - أَنَّهُ قَالَ لِمَرْيَمَ - عَلَيْهَا السَّلَامُ -: {إِنَّمَا أَنَا رَسُولُ رَبِّكِ لأَهَبَ لَكِ غُلامًا زَكِيًّا} [مريم: ١٩] {قَالَتْ أَنَّى يَكُونُ لِي غُلامٌ وَلَمْ يَمْسَسْنِي بَشَرٌ وَلَمْ أَكُ بَغِيًّا} [مريم: ٢٠] {قَالَ كَذَلِكِ قَالَ رَبُّكِ هُوَ عَلَيَّ هَيِّنٌ} [مريم: ٢١] وَقَالَ تَعَالَى: {وَمَرْيَمَ ابْنَتَ عِمْرَانَ الَّتِي أَحْصَنَتْ فَرْجَهَا فَنَفَخْنَا فِيهِ مِنْ رُوحِنَا} [التحريم: ١٢] .

L2266 **The doctrinal point is that Paradise, being a right for the believers, is created.**

L2267 14 - Issue: That Paradise is a true, created abode for the believers, and no unbeliever will ever enter it. Allah the Exalted said: “And a Paradise as vast as the heavens and the earth, prepared for the righteous” [Āl ʿImrān 3:133], and He said: “The companions of the Fire will call out to the companions of Paradise: ’Pour upon us some water, or some of what Allah has provided you.’ They will say: ’Allah has forbidden both to the unbelievers’” [Al-Aʿrāf 7:50].[14]

L2268 **The matter of the Fire is a truth; no believer will remain in it eternally.**

L2269–2271 15. Issue: The Fire is a true, created abode, wherein no believer will abide eternally. Allah, the Exalted, says: “None will burn in it except the most wretched” (92:15), “Who denied [the truth] and turned away” (92:16), “But the most God-conscious will be kept far away from it” (92:17).[15]

L2272 **A question regarding those among the Muslims who enter the Fire: those whose evil deeds have outweighed their good deeds.**

L2273 16. Issue: Those Muslims—by Allah the Exalted’s will—whose major sins and evil deeds outweigh their good deeds will enter the Fire. Then they shall exit it through intercession and enter Paradise. Allah the Almighty and Majestic said: *“If you avoid the major sins you are forbidden, We will expiate your minor sins and admit you to a noble entrance.”* [An-Nisa: 31] Allah the Exalted said: *“We will establish just scales on the Day of Resurrection, so no soul will be wronged in the least. Even if it be the weight of a mustard seed, We will bring it forth. Sufficient are We as reckoners.”* [Al-Anbiya: 47] Allah the Exalted said: *“As for him whose scales are heavy,* [Al-Qari’ah: 6]

[14]**Qur’an references (L2267):** Qur’an 3:133 (Ali ’Imran); Qur’an 7:50 (Al-A’raf).

[15]**Qur’an references (L2269):** Qur’an 92:15 (Al-Layl); Qur’an 92:16 (Al-Layl); Qur’an 92:17 (Al-Layl).

[مَسْأَلَة الْجَنَّة حَقّ مخلوقة للمؤمنين]

١٤ - مَسْأَلَةٌ: وَأَنَّ الْجَنَّةَ حَقٌّ دَارٌ مَخْلُوقَةٌ لِلْمُؤْمِنِينَ وَلَا يَدْخُلُهَا كَافِرٌ أَبَدًا، قَالَ تَعَالَى: {وَجَنَّةٍ عَرْضُهَا السَّمَاوَاتُ وَالأَرْضُ أُعِدَّتْ لِلْمُتَّقِينَ} [آل عمران: ١٣٣] وَقَالَ تَعَالَى: {وَنَادَى أَصْحَابُ النَّارِ أَصْحَابَ الْجَنَّةِ أَنْ أَفِيضُوا عَلَيْنَا مِنَ الْمَاءِ أَوْ مِمَّا رَزَقَكُمُ اللَّهُ قَالُوا إِنَّ اللَّهَ حَرَّمَهُمَا عَلَى الْكَافِرِينَ} [الأعراف: ٥٠] .

[مَسْأَلَة النَّار حَقّ لَا يخلد فِيهَا مؤمن]

١٥ - مَسْأَلَةٌ: وَأَنَّ النَّارَ حَقٌّ دَارٌ مَخْلُوقَةٌ لَا يَخْلُدُ فِيهَا مُؤْمِنٌ. قَالَ تَعَالَى: {لا يَصْلاهَا إِلا الأَشْقَى} [الليل: ١٥] {الَّذِي كَذَّبَ وَتَوَلَّى} [الليل: ١٦] {وَسَيُجَنَّبُهَا الأَتْقَى} [الليل: ١٧] .

[مَسْأَلَة يَدْخُل النَّار مِنْ الْمُسْلِمِينَ الَّذِينَ رجحت سيئاتهم عَلَى حَسَنَاتهمْ]

١٦ - مَسْأَلَةٌ: يَدْخُلُ النَّارَ مَنْ شَاءَ اللَّهُ تَعَالَى مِنْ الْمُسْلِمِينَ الَّذِينَ رَجَحَتْ كَبَائِرُهُمْ وَسَيِّئَاتُهُمْ عَلَى حَسَنَاتِهِمْ ثُمَّ يَخْرُجُونَ مِنْهَا بِالشَّفَاعَةِ وَيَدْخُلُونَ الْجَنَّةَ. قَالَ عَزَّ وَجَلَّ: {إِنْ تَجْتَنِبُوا كَبَائِرَ مَا تُنْهَوْنَ عَنْهُ نُكَفِّرْ عَنْكُمْ سَيِّئَاتِكُمْ وَنُدْخِلْكُمْ مُدْخَلا كَرِيمًا} [النساء: ٣١] وَقَالَ تَعَالَى: {وَنَضَعُ الْمَوَازِينَ الْقِسْطَ لِيَوْمِ الْقِيَامَةِ فَلا تُظْلَمُ نَفْسٌ شَيْئًا وَإِنْ كَانَ مِثْقَالَ حَبَّةٍ مِنْ خَرْدَلٍ أَتَيْنَا بِهَا وَكَفَى بِنَا حَاسِبِينَ} [الأنبياء: ٤٧] . وَقَالَ تَعَالَى: {فَأَمَّا مَنْ ثَقُلَتْ مَوَازِينُهُ} [القارعة: ٦] {فَهُوَ فِي عِيشَةٍ رَاضِيَةٍ} [القارعة: ٧] {وَأَمَّا

he will be in a contented life. [7] *But as for him whose scales are light,* [8] *his refuge is Hawiyah.* [9] *And what will make you comprehend what it is?* [10] *A blazing Fire."* [Al-Qari'ah: 11][16]

L2274 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us; Abdul Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to us. Abu Ghassan al-Misma'i and Muhammad ibn al-Muthanna said: Mu'adh—that is, Ibn Hisham al-Dastuwā'ī—narrated to us from his father, from Qatadah, from Anas ibn Malik, that the Prophet—peace and blessings of Allah be upon him—said: "Whoever says, 'There is no god but Allah,' and had in his heart the weight of a barley grain's goodness will emerge from the Fire. Then whoever says, 'There is no god but Allah,' and had in his heart the weight of a fine wheat grain's goodness will emerge from the Fire. Then whoever says, 'There is no god but Allah,' and had in his heart the weight of a speck's goodness will emerge from the Fire."[17]

L2275 **A jurisprudential issue stating that Paradise and Hellfire do not perish, nor do any of those within them perish.**

L2276 17. Issue: Neither Paradise nor Hell nor anyone within them will ever perish eternally. The proof of this is the statement of Allah, Exalted and Majestic, informing about each of these two abodes and those within them: "Abiding therein forever" (Al-Bayyinah: 8) and "Abiding therein as long as the heavens and the earth endure, except what your Lord should will—an uninterrupted provision" (Hud: 108).[18]

L2277–2279 Abdullah ibn Yusuf ibn Nami narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Muhammad ibn Isa ibn Amruwayh

[16]**Qur'an references (L2273):** Qur'an 4:31 (An-Nisa); Qur'an 21:47 (Al-Anbya); Qur'an 101:6 (Al-Qari'ah); Qur'an 69:21 (Al-Haqqah); Qur'an 101:7 (Al-Qari'ah); Qur'an 101:8 (Al-Qari'ah); Qur'an 101:9 (Al-Qari'ah); Qur'an 101:10 (Al-Qari'ah); Qur'an 101:11 (Al-Qari'ah).

[17]**Hadith references (L2274):** Sahih Muslim 193d.

[18]**Qur'an references (L2276):** Qur'an 11:108 (Hud); Qur'an 98:8 (Al-Bayyinah).

مَنْ خَفَّتْ مَوَازِينُهُ} [القارعة: ٨] {فَأُمُّهُ هَاوِيَةٌ} [القارعة: ٩] {وَمَا أَدْرَاكَ مَا هِيَهْ} [القارعة: ١٠] {نَارٌ حَامِيَةٌ} [القارعة: ١١] .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو غَسَّانَ الْمِسْمَعِيُّ وَمُحَمَّدُ بْنُ الْمُثَنَّى قَالَا ثنا مُعَاذٌ هُوَ ابْنُ هِشَامٍ الدَّسْتُوَائِيُّ - ثنا أَبِي عَنْ قَتَادَةَ ثنا أَنَسُ بْنُ مَالِكٍ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «يَخْرُجُ مِنَ النَّارِ مَنْ قَالَ لَا إِلَهَ إِلَّا اللَّهُ وَكَانَ فِي قَلْبِهِ مِنَ الْخَيْرِ مَا يَزِنُ شَعِيرَةً، ثُمَّ يَخْرُجُ مِنَ النَّارِ مَنْ قَالَ لَا إِلَهَ إِلَّا اللَّهُ وَكَانَ فِي قَلْبِهِ مِنَ الْخَيْرِ مَا يَزِنُ بُرَّةً، ثُمَّ يَخْرُجُ مِنَ النَّارِ مَنْ قَالَ لَا إِلَهَ إِلَّا اللَّهُ وَكَانَ فِي قَلْبِهِ مِنَ الْخَيْرِ مَا يَزِنُ ذَرَّةً» .

[مَسْأَلَة بَيَان أَنْ الْجَنَّة وَالنَّار لَا يفنيان وَلَا أَحَد ممن فِيهِمَا]

١٧ - مَسْأَلَةٌ: لَا تَفْنَى الْجَنَّةُ وَلَا النَّارُ وَلَا أَحَدٌ مِمَّنْ فِيهِمَا أَبَدًا. بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ مُخْبِرًا عَنْ كُلِّ وَاحِدَةٍ مِنْ هَاتَيْنِ الدَّارَيْنِ وَمَنْ فِيهِمَا: {خَالِدِينَ فِيهَا أَبَدًا} [البينة: ٨] وَ {خَالِدِينَ فِيهَا مَا دَامَتِ السَّمَاوَاتُ وَالأَرْضُ إِلا مَا شَاءَ رَبُّكَ عَطَاءً غَيْرَ مَجْذُوذٍ} [هود: ١٠٨] .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ بْنِ نَامِي ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى حَدَّثَنَا مُحَمَّدُ بْنُ عِيسَى بْنِ عَمْرَوَيْهِ الْجَلُودِيُّ ثنا إِبْرَاهِيمُ بْنُ سُفْيَانَ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَأَبُو كُرَيْبٍ قَالَا ثنا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يُجَاءُ بِالْمَوْتِ يَوْمَ الْقِيَامَةِ كَأَنَّهُ

al-Juludiyy narrated to us: Ibrahim ibn Sufyan narrated to us: Muslim ibn al-Hajjaj narrated to us: Abu Bakr ibn Abi Shaybah and Abu Kurayb both narrated to us, saying: Abu Muawiyah narrated to us from al-A'mash from Abu Salih from Abu Sa'id al-Khudri, who said: The Messenger of Allah—peace be upon him—said: "Death will be brought forth on the Day of Resurrection in the form of a speckled ram. It will be proclaimed: 'O people of Paradise, do you recognize this?' They will crane their necks to look and say, 'Yes, this is Death.' Then it will be proclaimed: 'O people of the Fire, do you recognize this?' They will crane their necks to look and say, 'Yes, this is Death.' A command will be given for it to be slaughtered, and it will be proclaimed: 'O people of Paradise: Immortality, no more death! O people of the Fire: Immortality, no more death!'" Then the Messenger of Allah—peace be upon him—recited: [...] "And warn them of the Day of Regret when the matter is decreed, while they are in heedlessness and do not believe" [Maryam: 39]. He gestured with his hand toward the people of the world. Abu Kurayb added in his narration after a white ram: "They will be made to stand between Paradise and the Fire." Allah the Almighty said regarding the people of Paradise: "They will not taste death therein except the first death" [Ad-Dukhan: 56]. He said regarding the people of the Fire: "Death will not be decreed upon them so that they die, nor will any of their punishment be lightened" [Fatir: 36]. And with Allah the Most High is success.[19]

An explanation of the matter that the inhabitants of Paradise eat and drink, and they will never experience misery at all.

Issue 18: The people of Paradise will eat, drink, have sexual relations, wear garments, and enjoy pleasures, and they will never see misery. All of this differs from what exists in this world, but what no eye has seen, no ear has heard, and no heart has ever conceived. The Ḥūr al-ʿĪn are true purified women whom Allah the Mighty and Majestic created for the believers. The Most High said: "Immortal youths will circulate among them" [Al-Wāqiʿah

[19] **Qur'an references (L2277):** Qur'an 19:39 (Maryam); Qur'an 44:56 (Ad-Dukhan); Qur'an 35:36 (Fatir).

كَبْشٌ أَمْلَحُ فَيُقَالُ: يَا أَهْلَ الْجَنَّةِ هَلْ تَعْرِفُونَ هَذَا؟ فَيَشْرَئِبُّونَ وَيَنْظُرُونَ وَيَقُولُونَ: نَعَمْ هَذَا الْمَوْتُ، وَيُقَالُ: يَا أَهْلَ النَّارِ هَلْ تَعْرِفُونَ هَذَا؟ فَيَشْرَئِبُّونَ وَيَنْظُرُونَ فَيَقُولُونَ: نَعَمْ هَذَا الْمَوْتُ، فَيُؤْمَرُ بِهِ فَيُذْبَحُ ثُمَّ يُقَالُ: يَا أَهْلَ الْجَنَّةِ خُلُودٌ فَلَا مَوْتَ، وَيَا أَهْلَ النَّارِ خُلُودٌ فَلَا مَوْتَ. ثُمَّ قَرَأَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: {وَأَنْذِرْهُمْ يَوْمَ الْحَسْرَةِ إِذْ قُضِيَ الأَمْرُ وَهُمْ فِي غَفْلَةٍ وَهُمْ لا يُؤْمِنُونَ} [مريم: ٣٩] وَأَشَارَ بِيَدِهِ إِلَى أَهْلِ الدُّنْيَا» زَادَ أَبُو كُرَيْبٍ فِي رِوَايَتِهِ بَعْدَ كَبْشٍ أَمْلَحَ «فَيُوقَفُ بَيْنَ الْجَنَّةِ وَالنَّارِ» . وَقَالَ عَزَّ وَجَلَّ فِي أَهْلِ الْجَنَّةِ: {لا يَذُوقُونَ فِيهَا الْمَوْتَ إِلا الْمَوْتَةَ الأُولَى} [الدخان: ٥٦] وَقَالَ فِي أَهْلِ النَّارِ {لا يُقْضَى عَلَيْهِمْ فَيَمُوتُوا وَلا يُخَفَّفُ عَنْهُمْ مِنْ عَذَابِهَا} [فاطر: ٣٦] وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَيَان أَنْ أَهْل الْجَنَّة يَأْكُلُونَ ويشربون وَلَا يرون بؤسا أبدا]

١٨ - مَسْأَلَةٌ: وَأَنَّ أَهْلَ الْجَنَّةِ يَأْكُلُونَ وَيَشْرَبُونَ وَيَطَئُونَ وَيَلْبَسُونَ وَيَتَلَذَّذُونَ وَلَا يَرَوْنَ بُؤْسًا أَبَدًا، وَكُلُّ ذَلِكَ بِخِلَافِ مَا فِي الدُّنْيَا، لَكِنْ مَا لَا عَيْنٌ رَأَتْ وَلَا أُذُنٌ سَمِعَتْ وَلَا خَطَرَ عَلَى قَلْبِ بَشَرٍ، وَحُورُ الْعِينِ حَقٌّ نِسَاءٌ مُطَهَّرَاتٌ خَلَقَهُنَّ اللَّهُ عَزَّ وَجَلَّ لِلْمُؤْمِنِينَ. قَالَ تَعَالَى: {يَطُوفُ عَلَيْهِمْ وِلْدَانٌ مُخَلَّدُونَ} [الواقعة: ١٧] {بِأَكْوَابٍ وَأَبَارِيقَ وَكَأْسٍ مِنْ مَعِينٍ} [الواقعة: ١٨] {لا يُصَدَّعُونَ عَنْهَا وَلا يُنْزِفُونَ} [الواقعة: ١٩] {وَفَاكِهَةٍ مِمَّا

56:17], “with goblets, pitchers, and a cup from a flowing spring” [56:18], “They will not be dulled by it nor intoxicated” [56:19], “and fruits they select” [56:20], “and flesh of birds they crave” [56:21], “and Ḥūr ʿĪn” [56:22], “like treasured pearls” [56:23], “as recompense for their deeds” [56:24]. The Most High said: “Their garments therein will be silk” [Al-Ḥajj 22:23]. And the Most High said: “They will be adorned with silver bracelets, and their Lord will provide them a purifying drink” [Al-Insān 76:21].[20]

L2282 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Muhammad ibn Isa narrated to us: Ibrahim ibn Muhammad narrated to us: Muslim ibn Al-Hajjaj narrated to us: Zuhayr ibn Harb narrated to us: Sufyan reported from Abu Az-Zinad from Al-Aʿraj from Abu Hurairah from the Prophet - peace and blessings of Allah be upon him - who said: “Allah the Exalted and Majestic said: ’I have prepared for My righteous servants what no eye has seen, no ear has heard, and no human heart has ever conceived.’ The confirmation of this is in Allah’s Book: {No soul knows what is hidden for them of coolness of the eyes as a reward for what they used to do} [Surah As-Sajdah (32:17].”[21][22]

L2283–2285 And with his chain to [Imam] Muslim: Al-Hasan al-Hulwani narrated to me, Abu Asim narrated to us from Ibn Jurayj, who informed me that Abu al-Zubayr heard Jabir ibn Abdullah say: The Messenger of Allah (peace and blessings be upon him) said: “The people of Paradise will eat and drink therein, yet they will not defecate, blow their noses, or urinate. Rather, their food is discharged as a belch like the fragrance of musk [...].” “In musk, they are instinctively compelled to [perform] the glorification and praise, just as they are instinctively compelled [to produce] breath.” This constitutes an explicit text indicating its divergence from what exists in the worldly life.

يَتَخَيَّرُونَ} [الواقعة: ٢٠] {وَلَحْمِ طَيْرٍ مِمَّا يَشْتَهُونَ} [الواقعة: ٢١] {وَحُورٌ عِينٌ} [الواقعة: ٢٢] {كَأَمْثَالِ اللُّؤْلُؤِ الْمَكْنُونِ} [الواقعة: ٢٣] {جَزَاءً بِمَا كَانُوا يَعْمَلُونَ} [الواقعة: ٢٤] وَقَالَ تَعَالَى: {وَلِبَاسُهُمْ فِيهَا حَرِيرٌ} [الحج: ٢٣] وَقَالَ تَعَالَى: {وَحُلُّوا أَسَاوِرَ مِنْ فِضَّةٍ وَسَقَاهُمْ رَبُّهُمْ شَرَابًا طَهُورًا} [الإنسان: ٢١] .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا مُحَمَّدُ بْنُ عِيسَى ثنا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا زُهَيْرُ بْنُ حَرْبٍ ثنا سُفْيَانُ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «قَالَ اللَّهُ عَزَّ وَجَلَّ: أَعْدَدْتُ لِعِبَادِي الصَّالِحِينَ مَا لَا عَيْنٌ رَأَتْ وَلَا أُذُنٌ سَمِعَتْ وَلَا خَطَرَ عَلَى قَلْبِ بَشَرٍ مِصْدَاقُ ذَلِكَ فِي كِتَابِ اللَّهِ تَعَالَى: {فَلا تَعْلَمُ نَفْسٌ مَا أُخْفِيَ لَهُمْ مِنْ قُرَّةِ أَعْيُنٍ جَزَاءً بِمَا كَانُوا يَعْمَلُونَ} [السجدة: ١٧] » .

وَبِهِ إِلَى مُسْلِمٍ حَدَّثَنِي الْحَسَنُ الْحُلْوَانِيُّ ثنا أَبُو عَاصِمٍ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «يَأْكُلُ أَهْلُ الْجَنَّةِ فِيهَا وَيَشْرَبُونَ وَلَا يَتَغَوَّطُونَ وَلَا يَتَمَخَّطُونَ وَلَا يَبُولُونَ، وَلَكِنَّ طَعَامَهُمْ ذَلِكَ جُشَاءٌ كَرَشْحِ الْمِسْكِ، يُلْهَمُونَ التَّسْبِيحَ وَالْحَمْدَ كَمَا يُلْهَمُونَ النَّفَسَ» وَهَذَا نَصٌّ عَلَى أَنَّهُ خِلَافُ مَا فِي الدُّنْيَا.

[مَسْأَلَة أَهْل النَّار يعذبون بالسلاسل والأغلال وأكلهم الزقوم وشربهم الحميم]

[20] **Qur’an references (L2281):** Qur’an 56:17 (Al-Waqi’ah); Qur’an 56:18 (Al-Waqi’ah); Qur’an 56:19 (Al-Waqi’ah); Qur’an 56:20 (Al-Waqi’ah); Qur’an 56:21 (Al-Waqi’ah); Qur’an 56:22 (Al-Waqi’ah); Qur’an 56:23 (Al-Waqi’ah); Qur’an 56:24 (Al-Waqi’ah); Qur’an 22:23 (Al-Hajj); Qur’an 35:33 (Fatir); Qur’an 76:21 (Al-Insan).

[21] **Hadith references (L2282):** Sahih Muslim 2824a; Sahih al-Bukhari 7498.

[22] **Qur’an references (L2282):** Qur’an 32:17 (As-Sajdah).

L2286 **[Issue: The inhabitants of the Fire are tormented with chains and shackles, their eating of the zaqqum, and their drinking of scalding fluid.]**

L2287 19. Issue: The inhabitants of the Fire are tormented with chains, shackles, tar, and layers of fire. Their food is the fruit of the Zaqqum tree, and their drink is water like molten metal and scalding water. We seek refuge in Allah from that. Allah the Exalted said: "Their garments of tar" [Ibrāhīm 14:50], and He said: "We have prepared for the disbelievers chains, shackles, and a blazing Fire" [Al-Insān 76:4], and He said: "They wish to escape from the Fire, but they will never escape from it" [Al-Mā'idah 5:37], and He said: "Indeed, the tree of Zaqqum—food for the sinful" [Ad-Dukhān 44:43-44], and He said: "In scorching wind and scalding water" [Al-Wāqiʿah 56:42], and He said: "If they plead for relief, they will be given water like molten dross that scorches faces" [Al-Kahf 18:29].[23]

L2288 **The issue of disbelief due to what has reached him and is established as authentic in his view from the Prophet, or what the believers have unanimously agreed upon.**

L2289 20. Issue: Anyone who disbelieves in what has reached him and is confirmed to him from the Prophet (peace be upon him), or in what the believers have unanimously agreed upon from what the Prophet (peace be upon him) brought, is then a disbeliever. As the Exalted said: *And whoever opposes the Messenger after guidance has become clear to him and follows a path other than that of the believers, We will turn him to what he has turned to and admit him to Hell* [An-Nisā': 115].[24]

L2290 **The issue is that the Qur'an is the speech of Allah, His rev-**

[23] **Qur'an references (L2287):** Qur'an 14:50 (Ibrahim); Qur'an 76:4 (Al-Insan); Qur'an 5:37 (Al-Ma'idah); Qur'an 44:43 (Ad-Dukhan); Qur'an 44:44 (Ad-Dukhan); Qur'an 56:42 (Al-Waqi'ah); Qur'an 18:29 (Al-Kahf).

[24] **Qur'an references (L2289):** Qur'an 4:115 (An-Nisa).

١٩ - مَسْأَلَةٌ: وَأَهْلُ النَّارِ يُعَذَّبُونَ بِالسَّلَاسِلِ وَالْأَغْلَالِ وَالْقَطِرَانِ وَأَطْبَاقِ النِّيرَانِ، أَكْلُهُمْ الزَّقُّومُ وَشُرْبُهُمْ مَاءٌ كَالْمُهْلِ وَالْحَمِيمِ، نَعُوذُ بِاَللَّهِ مِنْ ذَلِكَ. وَقَالَ تَعَالَى: {سَرَابِيلُهُمْ مِنْ قَطِرَانٍ} [إبراهيم: ٥٠] وَقَالَ تَعَالَى: {إِنَّا أَعْتَدْنَا لِلْكَافِرِينَ سَلَاسِلَ وَأَغْلَالا وَسَعِيرًا} [الإنسان: ٤] وَقَالَ تَعَالَى: {يُرِيدُونَ أَنْ يَخْرُجُوا مِنَ النَّارِ وَمَا هُمْ بِخَارِجِينَ مِنْهَا} [المائدة: ٣٧] وَقَالَ تَعَالَى: {إِنَّ شَجَرَتَ الزَّقُّومِ - طَعَامُ الأَثِيمِ} [الدخان: ٤٣ - ٤٤] وَقَالَ تَعَالَى: {فِي سَمُومٍ وَحَمِيمٍ} [الواقعة: ٤٢] وَقَالَ تَعَالَى: {وَإِنْ يَسْتَغِيثُوا يُغَاثُوا بِمَاءٍ كَالْمُهْلِ يَشْوِي الْوُجُوهَ} [الكهف: ٢٩] .

[مَسْأَلَة كُفْر بِمَا بلغه وصح عِنْده عَنْ النَّبِيِّ أَوْ أجمع عَلَيْهِ الْمُؤْمِنُونَ]

٢٠ - مَسْأَلَةٌ: وَكُلُّ مَنْ كَفَرَ بِمَا بَلَغَهُ وَصَحَّ عِنْدَهُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ أَجْمَعَ عَلَيْهِ الْمُؤْمِنُونَ مِمَّا جَاءَ بِهِ النَّبِيُّ - عَلَيْهِ السَّلَامُ - فَهُوَ كَافِرٌ، كَمَا قَالَ تَعَالَى: {وَمَنْ يُشَاقِقِ الرَّسُولَ مِنْ بَعْدِ مَا تَبَيَّنَ لَهُ الْهُدَى وَيَتَّبِعْ غَيْرَ سَبِيلِ الْمُؤْمِنِينَ نُوَلِّهِ مَا تَوَلَّى وَنُصْلِهِ جَهَنَّمَ} [النساء: ١١٥] .

[مَسْأَلَة الْقُرْآن كَلَام اللَّه ووحيه أنزله عَلَى قَلْب نبيه مُحَمَّد]

elation, sent down upon the heart of His Prophet Muhammad.

L2291 21. Issue: The Quran present in the codices in the hands of Muslims from East to West and all regions in between, from the beginning of Umm al-Quran to the end of the two Surahs of Refuge, is the speech of Allah the Mighty and Majestic and His revelation which He sent down upon the heart of His Prophet Muhammad (peace and blessings be upon him). Whoever disbelieves in a single letter of it is a disbeliever. Allah the Exalted said: "So grant him refuge until he hears the speech of Allah" [9:6], and He said: "The Trustworthy Spirit has brought it down upon your heart" [26:193–194], and He said: "Thus We have revealed to you an Arabic Quran" [42:7]. All that is narrated from Ibn Masʿud claiming the two Surahs of Refuge and Umm al-Quran were absent from his Mushaf is a fabricated lie, not authentic. What is authentically established is the Qiraʾah of ʿAsim transmitted through Zirr ibn Hubaysh from Ibn Masʿud – and it contains Umm al-Quran and the two Surahs of Refuge.[25]

L2292 **Everything it contains regarding reports about a prophet among the prophets, metamorphosis, punishment, or bliss.**

L2293 22 - Issue: Every account therein concerning a prophet among the prophets, physical transformation as punishment, torment, bliss, or other such matters, is true in its apparent meaning - there is no symbolism in any part of it. He, the Exalted, said: "An Arabic Quran" [Az-Zumar: 28], and said: "An exposition of all things" [An-Nahl: 89]. He denounced those who opposed this, stating: "They distort the words from their proper contexts" [An-Nisa: 46].[26]

L2294 **A matter in the religion has no secret exclusively held by anyone.**

٢١ - مَسْأَلَةٌ: وَأَنَّ الْقُرْآنَ الَّذِي فِي الْمَصَاحِفِ بِأَيْدِي الْمُسْلِمِينَ شَرْقًا وَغَرْبًا فَمَا بَيْنَ ذَلِكَ مِنْ أَوَّلِ أُمِّ الْقُرْآنِ إِلَى آخِرِ الْمُعَوِّذَتَيْنِ كَلَامُ اللَّهِ عَزَّ وَجَلَّ وَوَحْيُهُ أَنْزَلَهُ عَلَى قَلْبِ نَبِيِّهِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ كَفَرَ بِحَرْفٍ مِنْهُ فَهُوَ كَافِرٌ. قَالَ تَعَالَى: {فَأَجِرْهُ حَتَّى يَسْمَعَ كَلَامَ اللَّهِ} [التوبة: ٦] وَقَالَ تَعَالَى: {نَزَلَ بِهِ الرُّوحُ الأَمِينُ} [الشعراء: ١٩٣] {عَلَى قَلْبِكَ} [الشعراء: ١٩٤] وَقَالَ تَعَالَى: {وَكَذَلِكَ أَوْحَيْنَا إِلَيْكَ قُرْآنًا عَرَبِيًّا} [الشورى: ٧] . وَكُلُّ مَا رُوِيَ عَنْ ابْنِ مَسْعُودٍ مِنْ أَنَّ الْمُعَوِّذَتَيْنِ وَأُمَّ الْقُرْآنِ لَمْ تَكُنْ فِي مُصْحَفِهِ فَكَذِبٌ مَوْضُوعٌ لَا يَصِحُّ، وَإِنَّمَا صَحَّتْ عَنْهُ قِرَاءَةُ عَاصِمٍ عَنْ زِرِّ بْنِ حُبَيْشٍ عَنْ ابْنِ مَسْعُودٍ وَفِيهَا أُمُّ الْقُرْآنِ وَالْمُعَوِّذَتَيْنِ

[كل ما فيه من خبر عن نبي من الأنبياء أو مسخ أو عذاب أو نعيم]

٢٢ - مَسْأَلَةٌ: وَكُلُّ مَا فِيهِ مِنْ خَبَرٍ عَنْ نَبِيٍّ مِنْ الْأَنْبِيَاءِ أَوْ مَسْخٍ أَوْ عَذَابٍ أَوْ نَعِيمٍ أَوْ غَيْرِ ذَلِكَ فَهُوَ حَقٌّ عَلَى ظَاهِرِهِ لَا رَمْزَ فِي شَيْءٍ مِنْهُ، قَالَ تَعَالَى {قُرْآنًا عَرَبِيًّا} [الزمر: ٢٨] وَقَالَ تَعَالَى {تِبْيَانًا لِكُلِّ شَيْءٍ} [النحل: ٨٩] وَأَنْكَرَ تَعَالَى عَلَى قَوْمٍ خَالَفُوا هَذَا فَقَالَ تَعَالَى {يُحَرِّفُونَ الْكَلِمَ عَنْ مَوَاضِعِهِ} [النساء: ٤٦] .

[مَسْأَلَة لَا سِرَّ فِي الدِّين عِنْد أَحَد يخْتَص بِهِ]

[25] **Qur'an references (L2291):** Qur'an 9:6 (At-Tawbah); Qur'an 26:193 (Ash-Shu'ara); Qur'an 42:7 (Ash-Shuraa); Qur'an 26:194 (Ash-Shu'ara).

[26] **Qur'an references (L2293):** Qur'an 16:89 (An-Nahl); Qur'an 4:46 (An-Nisa); Qur'an 5:13 (Al-Ma'idah); Qur'an 39:28 (Az-Zumar).

L2295–2297 23. Question: There is no secrecy in the religion concerning anyone. Allah, the Exalted and Majestic, has said: "Indeed, those who conceal what We have sent down of clear proofs and guidance, after We have made it clear to the people in the Book—those are cursed by Allah and cursed by all who curse [them] [Quran 2:159], except those who repent, reform, and clarify [their stance] [Quran 2:160]. And Allah, the Exalted, said: 'You must proclaim it openly to the people and never conceal it' [Quran 3:187]."[27]

L2298 **The existence of the angels is a truth. They are created, noble beings who never disobey Allah in anything He commands them.**

L2299 24. Issue: And indeed, the angels are true; they are a creation among the creations of Allah, the Exalted and Majestic—honored, all of them being messengers of Allah. Allah the Most High said: "And the angels enter upon them from every gate" [13:23]. He the Most High said: "Rather, they are honored servants" [21:26]. He the Most High said: "Maker of the angels as messengers endowed with wings" [35:1].[28]

L2300 **The angels were created from light, Adam from water and dust, and the jinn from fire.**

L2301 25 - Issue: They were all created from light, Adam was created from water and clay, and the jinn were created from fire. ʿAbdullāh ibn Yūsuf narrated to us, Aḥmad ibn Fatḥ narrated to us, ʿAbd al-Wahhāb ibn ʿĪsā narrated to us, Muḥammad ibn ʿĪsā narrated to us, Ibrāhīm ibn Muḥammad narrated to us, Muslim ibn al-Ḥajjāj narrated to us, ʿAbd ibn Ḥumayd narrated to us, ʿAbd al-Razzāq narrated to us, Maʿmar narrated to us from al-Zuhrī from ʿUrwah from ʿĀ'ishah, who said: The Messenger of Allah - peace and blessings be upon him - said: "The angels were created from light, the jinn were created

[27] **Qur'an references (L2295):** Qur'an 2:159 (Al-Baqarah); Qur'an 2:160 (Al-Baqarah); Qur'an 3:187 (Ali 'Imran).

[28] **Qur'an references (L2299):** Qur'an 13:23 (Ar-Ra'd); Qur'an 21:26 (Al-Anbya); Qur'an 35:1 (Fatir).

٢٣ - مَسْأَلَةٌ: وَلَا سِرَّ فِي الدِّينِ عِنْدَ أَحَدٍ. قَالَ اللَّهُ عَزَّ وَجَلَّ: {إِنَّ الَّذِينَ يَكْتُمُونَ مَا أَنْزَلْنَا مِنَ الْبَيِّنَاتِ وَالْهُدَى مِنْ بَعْدِ مَا بَيَّنَّاهُ لِلنَّاسِ فِي الْكِتَابِ أُولَئِكَ يَلْعَنُهُمُ اللَّهُ وَيَلْعَنُهُمُ اللاعِنُونَ} [البقرة: ١٥٩] {إِلا الَّذِينَ تَابُوا وَأَصْلَحُوا وَبَيَّنُوا} [البقرة: ١٦٠] وَقَالَ تَعَالَى {لَتُبَيِّنُنَّهُ لِلنَّاسِ وَلا تَكْتُمُونَهُ} [آل عمران: ١٨٧] .

[مَسْأَلَةُ الْمَلَائِكَةُ حَقٌّ وهم مخلوقون مكرمون لَا يعصون اللَّهَ مَا أمرهم]

٢٤ - مَسْأَلَةٌ: وَإِنَّ الْمَلَائِكَةَ حَقٌّ، وَهُمْ خَلْقٌ مِنْ خَلْقِ اللَّهِ عَزَّ وَجَلَّ مُكْرَمُونَ كُلُّهُمْ رُسُلُ اللَّهِ. قَالَ اللَّهُ تَعَالَى: {وَالْمَلائِكَةُ يَدْخُلُونَ عَلَيْهِمْ مِنْ كُلِّ بَابٍ} [الرعد: ٢٣] وَقَالَ تَعَالَى: {بَلْ عِبَادٌ مُكْرَمُونَ} [الأنبياء: ٢٦] وَقَالَ تَعَالَى: {جَاعِلِ الْمَلائِكَةِ رُسُلا أُولِي أَجْنِحَةٍ} [فاطر: ١] .

[مَسْأَلَةُ الْمَلَائِكَةُ خلقوا مِنْ نور وآدَم مِنْ مَاء وتراب والجن مِنْ نار]

٢٥ - مَسْأَلَةٌ: خُلِقُوا كُلُّهُمْ مِنْ نُورٍ وَخُلِقَ آدَمَ مِنْ مَاءٍ وَتُرَابٍ وَخُلِقَ الْجِنُّ مِنْ نَارٍ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا مُحَمَّدُ بْنُ عِيسَى ثنا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا عَبْدُ بْنُ حُمَيْدٍ ثنا عَبْدُ الرَّزَّاقِ ثنا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «خُلِقَتِ الْمَلَائِكَةُ مِنْ نُورٍ وَخُلِقَ الْجَانُّ مِنْ مَارِجٍ مِنْ نَارٍ وَخُلِقَ آدَمُ مِمَّا وُصِفَ لَكُمْ» وَقَالَ تَعَالَى: {وَلَقَدْ خَلَقْنَا الإِنْسَانَ مِنْ سُلالَةٍ مِنْ طِينٍ} [المؤمنون: ١٢] .

from a smokeless flame of fire, and Adam was created from what has been described to you." And Allah the Exalted said: {And We have certainly created man from an extract of clay} [al-Mu'minūn: 12].[29][30]

L2302 **The issue of the angels being the best of Allah's creation and that they do not disobey Him.**

L2303 26. Issue: The angels are the best of Allah's exalted creation; none among them disobeys in small or large matters, and they are the inhabitants of the heavens. Allah the Exalted said: "They do not disobey Allah in what He commands them, and they do as they are commanded" (at-Taḥrīm 66:6). And He said: "The Messiah would never disdain to be a servant of Allah, nor would the angels brought near" (an-Nisā' 4:172). This establishes their superiority over the Messiah—peace be upon him. He also said: "We have certainly honored the children of Adam, carried them on land and sea, provided them with good things, and favored them above many of those We created" (al-Isrā' 17:70). He did not say "above all We created." There is no dispute that the children of Adam are superior to every creation except the angels, thus leaving none superior except the angels. Allah's command for the angels to prostrate to Adam—peace be upon them all—was a prostration of greeting. Had they not been superior to him, there would be no merit in his being honored by their greeting him. We have exhaustively examined this topic in the Book _al-Faṣl_ to the fullest extent, and praise be to Allah, Lord of the worlds. He the Exalted said: "And you will see the angels surrounding the Throne" (az-Zumar 39:75).[31]

L2304 **The matter of the jinn is a reality; they are created beings, among whom exist the disbeliever and the believer. They see us, but we do not see them.**

[29] **Hadith references (L2301):** Sahih Muslim 2996; Mishkat al-Masabih 5701; Riyad as-Salihin 1846.

[30] **Qur'an references (L2301):** Qur'an 55:15 (Ar-Rahman); Qur'an 23:12 (Al-Mu'minun).

[31] **Qur'an references (L2303):** Qur'an 66:6 (At-Tahrim); Qur'an 4:172 (An-Nisa); Qur'an 17:70 (Al-Isra); Qur'an 39:75 (Az-Zumar).

[مَسْأَلَة الْمَلَائِكَة أَفْضَل خلق الله وَلَا يعصون الله]

٢٦ - مَسْأَلَةٌ: وَالْمَلَائِكَةُ أَفْضَلُ خَلْقِ اللَّهِ تَعَالَى، لَا يَعْصِي أَحَدٌ مِنْهُمْ فِي صَغِيرَةٍ وَلَا كَبِيرَةٍ وَهُمْ سُكَّانُ السَّمَاوَاتِ. قَالَ اللَّهُ تَعَالَى: {لا يَعْصُونَ اللَّهَ مَا أَمَرَهُمْ وَيَفْعَلُونَ مَا يُؤْمَرُونَ} [التحريم: ٦] وَقَالَ تَعَالَى: {لَنْ يَسْتَنْكِفَ الْمَسِيحُ أَنْ يَكُونَ عَبْدًا لِلَّهِ وَلا الْمَلائِكَةُ الْمُقَرَّبُونَ} [النساء: ١٧٢] فَهَذَا تَفْضِيلٌ لَهُمْ عَلَى الْمَسِيحِ - عَلَيْهِ السَّلَامُ -. وَقَالَ تَعَالَى: {وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلا} [الإسراء: ٧٠] وَلَمْ يَقُلْ تَعَالَى عَلَى كُلِّ مَنْ خَلَقْنَا. وَلَا خِلَافَ فِي أَنَّ بَنِي آدَمَ أَفْضَلُ مِنْ كُلِّ خَلْقٍ سِوَى الْمَلَائِكَةِ فَلَمْ يَبْقَ إِلَّا الْمَلَائِكَةُ، وَإِسْجَادُهُ تَعَالَى الْمَلَائِكَةَ لِآدَمَ - عَلَى جَمِيعِهِمْ السَّلَامُ - سُجُودُ تَحِيَّةٍ؛ فَلَوْ لَمْ يَكُونُوا أَفْضَلَ مِنْهُ لَمْ يَكُنْ لَهُ فَضِيلَةٌ فِي أَنْ يُكَرَّمَ بِأَنْ يُحَيُّوهُ. وَقَدْ تَقَصَّيْنَا هَذَا الْبَابَ فِي كِتَابِ الْفِصَلِ غَايَةَ التَّقَصِّي وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ. وَقَالَ تَعَالَى: {وَتَرَى الْمَلائِكَةَ حَافِّينَ مِنْ حَوْلِ الْعَرْشِ} [الزمر: ٧٥] .

[مَسْأَلَة الْجِنّ حَقّ مخلوقون فِيهِمْ الْكَافِر والمؤمن يروننا وَلَا نراهم]

L2305–2307 27. Issue: That the Jinn are real, and they are a creation among the creations of Allah, the Almighty, the Majestic; among them are disbelievers. The believers—they see us, but we do not see them; they eat, procreate, and die. Allah the Exalted said: “O assembly of jinn and mankind” (Al-Anʿām 6:130). And He said: “As for the jinn, We created them earlier from scorching fire” (Al-Ḥijr 15:27). And He said, recounting their words: “Among us are those who have submitted, and among us are the deviant. Those who submitted sought the right path” (Al-Jinn 72:14). “But the deviant will be fuel for Hell” (Al-Jinn 72:15). And He said: “He sees you—he and his tribe—from where you cannot see them” (Al-Aʿrāf 7:27). And He said: “Will you take him and his descendants as allies instead of Me?” (Al-Kahf 18:50). And He said: “All who dwell on earth perish” (Al-Raḥmān 55:26). And He said: “Every soul shall taste death” (Āl ʿImrān 3:185). Aḥmad ibn Muḥammad ibn al-Jasūr and ʿAbdullāh ibn Rabīʿ reported to us. Aḥmad said: Wahb ibn Masarrah informed us from Muḥammad ibn Waḍḍāḥ from Abū Bakr ibn Abī Shaybah. ʿAbdullāh said: Muḥammad ibn Muʿāwiyah reported to us from Aḥmad ibn Shuʿayb from Hannād ibn al-Sarrī. The chains of Ibn Abī Shaybah and Hannād then converge, both stating: Ḥafṣ ibn Ghiyāth reported to us from Dāwūd al-Ṭāʾī from al-Shaʿbī from ʿAlqamah from ʿAbdullāh ibn Masʿūd, who said: The Messenger of Allah—peace and blessings be upon him—said: “Do not cleanse yourselves after relieving yourselves with bones or dung, for they are the provision of your brethren among the jinn.”[32]

٢٧ - مَسْأَلَةٌ: وَأَنَّ الْجِنَّ حَقٌّ وَهُمْ خَلْقٌ مِنْ خَلْقِ اللَّهِ عَزَّ وَجَلَّ، فِيهِمُ الْكَافِرُ وَالْمُؤْمِنُ، يَرَوْنَنَا وَلَا نَرَاهُمْ، يَأْكُلُونَ وَيَنْسِلُونَ وَيَمُوتُونَ. قَالَ اللَّهُ تَعَالَى: {يَا مَعْشَرَ الْجِنِّ وَالإِنْسِ} [الأنعام: ١٣٠] وَقَالَ تَعَالَى: {وَالْجَانَّ خَلَقْنَاهُ مِنْ قَبْلُ مِنْ نَارِ السَّمُومِ} [الحجر: ٢٧] وَقَالَ تَعَالَى حَاكِيًا عَنْهُمْ أَنَّهُمْ قَالُوا {وَأَنَّا مِنَّا الْمُسْلِمُونَ وَمِنَّا الْقَاسِطُونَ فَمَنْ أَسْلَمَ فَأُولَئِكَ تَحَرَّوْا رَشَدًا} [الجن: ١٤] {وَأَمَّا الْقَاسِطُونَ فَكَانُوا لِجَهَنَّمَ حَطَبًا} [الجن: ١٥] وَقَالَ تَعَالَى: {إِنَّهُ يَرَاكُمْ هُوَ وَقَبِيلُهُ مِنْ حَيْثُ لا تَرَوْنَهُمْ} [الأعراف: ٢٧] وَقَالَ تَعَالَى: {أَفَتَتَّخِذُونَهُ وَذُرِّيَّتَهُ أَوْلِيَاءَ مِنْ دُونِي} [الكهف: ٥٠] وَقَالَ تَعَالَى: {كُلُّ مَنْ عَلَيْهَا فَانٍ} [الرحمن: ٢٦] وَقَالَ تَعَالَى: {كُلُّ نَفْسٍ ذَائِقَةُ الْمَوْتِ} [آل عمران: ١٨٥] .

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ وَعَبْدُ اللَّهِ بْنُ رَبِيعٍ، قَالَ أَحْمَدُ أَخْبَرَنَا وَهْبُ بْنُ مَسَرَّةَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَقَالَ عَبْدُ اللَّهِ: نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا هَنَّادُ بْنُ السَّرِيِّ، ثُمَّ اتَّفَقَ ابْنُ أَبِي شَيْبَةَ وَهَنَّادٌ قَالَا: نا حَفْصُ بْنُ غِيَاثٍ عَنْ دَاوُدَ الطَّائِيِّ عَنِ الشَّعْبِيِّ عَنْ عَلْقَمَةَ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَسْتَنْجُوا بِالْعِظَامِ وَلَا بِالرَّوْثِ فَإِنَّهُمَا زَادُ إِخْوَانِكُمْ مِنَ الْجِنِّ» .

The matter of the Resurrection is a truth.

L2310 Article: And that the Resurrection is a reality—a time when the continued existence of creation in this worldly life terminates, causing all within it to die. Then Allah revives the dead, restoring their bones from the graves even

[مَسْأَلَة الْبَعْث حَقّ]

مَسْأَلَةٌ: وَأَنَّ الْبَعْثَ حَقٌّ، وَهُوَ وَقْتٌ يَنْقَضِي فِيهِ بَقَاءُ الْخَلْقِ فِي الدُّنْيَا فَيَمُوتُ كُلُّ مَنْ فِيهَا، ثُمَّ يُحْيِي الْمَوْتَى، يُحْيِي عِظَامَهُمُ الَّتِي فِي الْقُبُورِ وَهِيَ رَمِيمٌ وَيُعِيدُ الْأَجْسَامَ كَمَا كَانَتْ وَيَرُدُّ إِلَيْهَا الْأَرْوَاحَ كَمَا كَانَتْ، وَيَجْمَعُ الْأَوَّلِينَ وَالْآخِرِينَ فِي يَوْمٍ كَانَ مِقْدَارُهُ

[32] **Qur’an references (L2305):** Qur’an 6:130 (Al-An’am); Qur’an 55:33 (Ar-Rahman); Qur’an 15:27 (Al-Hijr); Qur’an 72:14 (Al-Jinn); Qur’an 72:15 (Al-Jinn); Qur’an 7:27 (Al-A’raf); Qur’an 18:50 (Al-Kahf); Qur’an 55:26 (Ar-Rahman); Qur’an 3:185 (Ali ’Imran); Qur’an 21:35 (Al-Anbya); Qur’an 29:57 (Al-’Ankabut).

when decayed, reinstating their bodies as they were, and returning their souls as they were. He assembles the earliest and the latest on a Day whose duration is fifty thousand years, on which jinn and humans are held accountable, and every person is given their due according to their deeds. Allah the Exalted says: “That is because Allah is the Truth, He gives life to the dead, and He is over all things competent” (22:6); “And that the Hour is coming—no doubt about it—and that Allah will resurrect those in the graves” (22:7); “He says, ’Who will revive bones when they have decayed?’” (36:78); “Say, ’He who originated them first will revive them, for He is Knower of all created beings’” (36:79); “On the Day when their tongues, hands, and feet will testify against them regarding what they did” (24:24); “Say, ’Indeed the earliest and the latest are surely gathered to the appointed time of an appointed Day’” (56:49); “They will be assembled for the meeting of a predetermined Day” (56:50); “In a Day whose measure is fifty thousand years” (70:4); “Today every soul is repaid for what it earned. No injustice today! Truly Allah is swift in reckoning” (40:17).[33]

The legal question concerning the wild beasts being gathered on the Day of Resurrection.

29. Legal Question: And indeed, the wild beasts will be gathered. Allah the Exalted said: “And when the wild beasts are gathered” (Surah At-Takwīr: 5). And He said: “There is no creature on earth nor a bird that flies with its wings except that they are communities like yourselves. We have neglected nothing in the Book. Then to their Lord they will be gathered” (Surah Al-Anʿām: 38). ʿAbdullāh ibn Yūsuf narrated to us: Aḥmad ibn Fatḥ narrated to us: ʿAbd al-Wahhāb ibn ʿĪsā narrated to us: Aḥmad ibn Muḥammad narrated to us: Aḥmad ibn ʿAlī narrated to us: Muslim ibn al-Ḥajjāj narrated to us: Quṭaybah ibn Saʿīd narrated to us: Ismāʿīl ibn Jaʿfar narrated from al-ʿAlāʾ ibn ʿAbd al-Raḥmān, from his father, from Abū Hurayrah, that the Messenger of Allah (peace be upon him) said: “You will surely fulfill the rights due to

[33] **Qur’an references (L2310):** Qur’an 22:6 (Al-Hajj); Qur’an 22:7 (Al-Hajj); Qur’an 36:78 (Ya-Sin); Qur’an 36:79 (Ya-Sin); Qur’an 24:24 (An-Nur); Qur’an 56:49 (Al-Waqi’ah); Qur’an 56:50 (Al-Waqi’ah); Qur’an 70:4 (Al-Ma’arij); Qur’an 40:17 (Ghafir).

خَمْسِينَ أَلْفَ سَنَةٍ يُحَاسَبُ فِيهِ الْجِنُّ وَالْإِنْسُ فَيُوَفَّى كُلُّ أَحَدٍ قَدْرَ عَمَلِهِ. قَالَ اللَّهُ تَعَالَى: {ذَلِكَ بِأَنَّ اللَّهَ هُوَ الْحَقُّ وَأَنَّهُ يُحْيِي الْمَوْتَى وَأَنَّهُ عَلَى كُلِّ شَيْءٍ قَدِيرٌ} [الحج: ٦] {وَأَنَّ السَّاعَةَ آتِيَةٌ لا رَيْبَ فِيهَا وَأَنَّ اللَّهَ يَبْعَثُ مَنْ فِي الْقُبُورِ} [الحج: ٧] وَقَالَ تَعَالَى: {قَالَ مَنْ يُحْيِي الْعِظَامَ وَهِيَ رَمِيمٌ} [يس: ٧٨] {قُلْ يُحْيِيهَا الَّذِي أَنْشَأَهَا أَوَّلَ مَرَّةٍ وَهُوَ بِكُلِّ خَلْقٍ عَلِيمٌ} [يس: ٧٩] وَقَالَ تَعَالَى: {يَوْمَ تَشْهَدُ عَلَيْهِمْ أَلْسِنَتُهُمْ وَأَيْدِيهِمْ وَأَرْجُلُهُمْ بِمَا كَانُوا يَعْمَلُونَ} [النور: ٢٤] وَقَالَ تَعَالَى: {قُلْ إِنَّ الأَوَّلِينَ وَالآخِرِينَ} [الواقعة: ٤٩] {لَمَجْمُوعُونَ إِلَى مِيقَاتِ يَوْمٍ مَعْلُومٍ} [الواقعة: ٥٠] وَقَالَ تَعَالَى: {فِي يَوْمٍ كَانَ مِقْدَارُهُ خَمْسِينَ أَلْفَ سَنَةٍ} [المعارج: ٤] وَقَالَ تَعَالَى: {الْيَوْمَ تُجْزَى كُلُّ نَفْسٍ بِمَا كَسَبَتْ لا ظُلْمَ الْيَوْمَ إِنَّ اللَّهَ سَرِيعُ الْحِسَابِ} [غافر: ١٧] .

[مَسْأَلَة الوحوش تحشر يَوْم الْقِيَامَة]

٢٩ - مَسْأَلَةٌ: وَإِنَّ الْوُحُوشَ تُحْشَرُ. قَالَ اللَّهُ تَعَالَى: {وَإِذَا الْوُحُوشُ حُشِرَتْ} [التكوير: ٥] وَقَالَ تَعَالَى: {وَمَا مِنْ دَابَّةٍ فِي الأَرْضِ وَلا طَائِرٍ يَطِيرُ بِجَنَاحَيْهِ إِلا أُمَمٌ أَمْثَالُكُمْ مَا فَرَّطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ ثُمَّ إِلَى رَبِّهِمْ يُحْشَرُونَ} [الأنعام: ٣٨] . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنِ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَتُؤَدُّنَّ الْحُقُوقَ إِلَى أَهْلِهَا يَوْمَ الْقِيَامَةِ حَتَّى يُقَادَ لِلشَّاةِ الْجَلْحَاءِ مِنَ الشَّاةِ الْقَرْنَاءِ» .

their owners on the Day of Resurrection, until retribution is exacted for the hornless sheep from the horned sheep."[34][35]

L2313–2314 **The Bridge is an established truth; it is a path spanning the heart of Hell, which all creation must traverse.**

L2315 Issue: And that the As-Sirat is a reality—a path laid over the expanse of Jahannam. Those whom Allah the Exalted wills shall be saved, while those whom He wills shall perish. Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul-Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Zuhayr ibn Harb narrated to us: Ya'qub ibn Ibrahim ibn Sa'd narrated to us: My father narrated from Ibn Shihab from 'Ata' ibn Yazid al-Laythi that Abu Hurayrah informed him: The Messenger of Allah—peace and blessings be upon him—said in a hadith: "The As-Sirat shall be placed over the expanse of Jahannam." He—peace be upon him—also said in this narration: "Within Jahannam are hooks resembling the thorns of the thorny Sa'dan plant. Have you seen the thorns of Sa'dan? They are like its thorns, though none comprehends their immense scale except Allah—the Almighty, the Majestic. These hooks snatch people because of their deeds: among them are those utterly destroyed by their deeds, and others merely scratched until delivered." He then mentioned the remainder of the hadith.

L2316 **The matter of the Scales is a truth in which the deeds of the servants are weighed; we believe in them, but we do not know how they are.**

L2317 31. Issue: And that the Scales are a reality wherein the deeds of the servants of Allah are weighed; we believe in them without knowing how they are. Allah the Almighty said: "We shall set up the Scales of Equity for the Day of Resurrection, so no soul shall be wronged in anything. Even if it be the weight of a mustard seed, We shall produce it, and sufficient are We as the Best of Reckoners" (21:47). He the Exalted said: "And the weighing that Day

[34] **Hadith references (L2312):** Sahih Muslim 2582; Riyad as-Salihin 204.

[35] **Qur'an references (L2312):** Qur'an 81:5 (At-Takwir); Qur'an 6:38 (Al-An'am).

[مَسْأَلَة الصراط حَقّ وَهُوَ طَرِيق بَيْن ظهراني جهنم يَمُرّ عَلَيْهِ الخلق]

مَسْأَلَةٌ: وَأَنَّ الصِّرَاطَ حَقٌّ وَهُوَ طَرِيقٌ يُوضَعُ بَيْنَ ظَهْرَانَيْ جَهَنَّمَ فَيَنْجُو مَنْ شَاءَ اللَّهُ تَعَالَى وَيَهْلِكُ مَنْ شَاءَ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا زُهَيْرُ بْنُ حَرْبٍ ثنا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ ثنا أَبِي عَنِ ابْنِ شِهَابٍ عَنْ عَطَاءِ بْنِ يَزِيدَ اللَّيْثِيِّ أَنَّ أَبَا هُرَيْرَةَ أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي حَدِيثٍ «وَيُضْرَبُ الصِّرَاطُ بَيْنَ ظَهْرَيْ جَهَنَّمَ» وَقَالَ - عَلَيْهِ السَّلَامُ - فِي هَذَا الْحَدِيثِ أَيْضًا: «وَفِي جَهَنَّمَ كَلَالِيبُ مِثْلُ شَوْكِ السَّعْدَانِ، هَلْ رَأَيْتُمْ شَوْكَ السَّعْدَانِ؟ فَإِنَّهَا مِثْلُ شَوْكِ السَّعْدَانِ غَيْرَ أَنَّهُ لَا يَعْلَمُ قَدْرَ عِظَمِهَا إِلَّا اللَّهُ - عَزَّ وَجَلَّ - تَخْطَفُ النَّاسَ بِأَعْمَالِهِمْ فَمِنْهُمْ، يَعْنِي الْمُوبَقَ بِعَمَلِهِ، وَمِنْهُمُ الْمُخَرْدَلُ حَتَّى يُنَجَّى» وَذَكَرَ بَاقِيَ الْخَبَرِ.

[مَسْأَلَة الموازين حَقّ تُوزَن فِيهَا أَعْمَال الْعِبَاد نؤمن بِهَا وَلَا نَدْرِي كيف هِيَ]

٣١ - مَسْأَلَةٌ: وَأَنَّ الْمَوَازِينَ حَقٌّ تُوزَنُ فِيهَا أَعْمَالُ الْعِبَادِ، نُؤْمِنُ بِهَا وَلَا نَدْرِي كَيْفَ هِيَ. قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَنَضَعُ الْمَوَازِينَ الْقِسْطَ لِيَوْمِ الْقِيَامَةِ فَلا تُظْلَمُ نَفْسٌ شَيْئًا وَإِنْ كَانَ مِثْقَالَ حَبَّةٍ مِنْ خَرْدَلٍ أَتَيْنَا بِهَا وَكَفَى بِنَا حَاسِبِينَ} [الأنبياء: ٤٧] وَقَالَ تَعَالَى: {وَالْوَزْنُ يَوْمَئِذٍ الْحَقُّ} [الأعراف: ٨] وَقَالَ تَعَالَى: {فَأَمَّا مَنْ ثَقُلَتْ مَوَازِينُهُ}

is the truth" (7:8), and He said: "As for one whose scales are heavy, he will be in a contented life. But as for one whose scales are light, his mother is Hawiya. And what will make you know what it is? A blazing Fire" (101:6–11).[36]

The Basin is a rightful claim: whoever drinks from it will never thirst.

32 - Issue: And that the Basin is a reality; whoever drinks from it will never thirst. Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn Al-Hajjaj narrated to us, Abu Bakr ibn Abi Shaybah narrated to us, Abdul-Aziz ibn Abdul-Samad Al-Ammi narrated from Abu Imran Al-Jawni, from Abdullah ibn Al-Samit, from Abu Dharr, who said: "I asked: 'O Messenger of Allah, what are the vessels of the Basin?' He said: 'By the One in Whose hand my soul resides, its vessels are more numerous than the stars and celestial bodies in a dark, serene night. These are the vessels of Paradise—whoever drinks from them will never thirst again. At its end, two channels from Paradise gush into it. Whoever drinks from it will never thirst. Its width equals its length, spanning the distance between ancient Amman and Aylah (modern Aqaba). Its water is whiter than milk and sweeter than honey.'"

The issue of the Messenger of Allah's intercession for the people of major sins among his community is an established truth.

Issue: The intercession of the Messenger of Allah (peace and blessings be upon him) for those among his nation who committed major sins is a reality, so they will exit the Fire and enter Paradise. Allah the Exalted said: *"Who is it that can intercede with Him except by His permission?"* [Al-Baqarah:

[36] **Qur'an references (L2317):** Qur'an 21:47 (Al-Anbya); Qur'an 7:8 (Al-A'raf); Qur'an 101:6 (Al-Qari'ah); Qur'an 69:21 (Al-Haqqah); Qur'an 101:7 (Al-Qari'ah); Qur'an 101:8 (Al-Qari'ah); Qur'an 101:9 (Al-Qari'ah); Qur'an 101:10 (Al-Qari'ah); Qur'an 101:11 (Al-Qari'ah).

[القارعة: ٦] {فَهُوَ فِي عِيشَةٍ رَاضِيَةٍ} [القارعة: ٧] {وَأَمَّا مَنْ خَفَّتْ مَوَازِينُهُ} [القارعة: ٨] {فَأُمُّهُ هَاوِيَةٌ} [القارعة: ٩] {وَمَا أَدْرَاكَ مَا هِيَهْ} [القارعة: ١٠] {نَارٌ حَامِيَةٌ} [القارعة: ١١] .

[مَسْأَلَة الحوض حَقّ مِنْ شَرب مِنْهُ لَمْ يظمأ أبدا]

٣٢ - مَسْأَلَةٌ: وَأَنَّ الْحَوْضَ حَقٌّ مَنْ شَرِبَ مِنْهُ لَمْ يَظْمَأْ أَبَدًا. ثنا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ الصَّمَدِ الْعَمِّيُّ عَنْ أَبِي عِمْرَانَ الْجَوْنِيِّ عَنْ عَبْدِ اللَّهِ بْنِ الصَّامِتِ عَنْ أَبِي ذَرٍّ قَالَ «قُلْت: يَا رَسُولَ اللَّهِ مَا آنِيَةُ الْحَوْضِ؟ قَالَ: وَالَّذِي نَفْسِي بِيَدِهِ لَآنِيَتُهُ أَكْثَرُ مِنْ عَدَدِ نُجُومِ السَّمَاءِ وَكَوَاكِبِهَا فِي اللَّيْلَةِ الْمُظْلِمَةِ الْمُصْحِيَةِ، آنِيَةُ الْجَنَّةِ مَنْ شَرِبَ مِنْهَا لَمْ يَظْمَأْ آخِرَ مَا عَلَيْهِ يَشْخَبُ فِيهِ مِيزَابَانِ مِنْ الْجَنَّةِ مَنْ شَرِبَ مِنْهُ لَمْ يَظْمَأْ، عَرْضُهُ مِثْلُ طُولِهِ مَا بَيْنَ عَمَّانَ إلَى أَيْلَةَ، مَاؤُهُ أَشَدُّ بَيَاضًا مِنْ اللَّبَنِ وَأَحْلَى مِنْ الْعَسَلِ» .

[مَسْأَلَة شَفَاعَة رَسُول اللَّه فِي أَهْل الْكَبَائِر مِنْ أمته حَقّ]

مَسْأَلَةٌ: وَأَنَّ شَفَاعَةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَهْلِ الْكَبَائِرِ مِنْ أُمَّتِهِ حَقٌّ فَيَخْرُجُونَ مِنْ النَّارِ وَيَدْخُلُونَ الْجَنَّةَ. قَالَ اللَّهُ عَزَّ وَجَلَّ: {مَنْ ذَا الَّذِي يَشْفَعُ عِنْدَهُ إلا بِإِذْنِهِ} [البقرة: ٢٥٥] . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو غَسَّانَ الْمِسْمَعِيُّ

255]. Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul-Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn Al-Hajjaj narrated to us: Abu Ghassan Al-Misma'i narrated to us: Muadh—meaning ibn Hisham Al-Dastawa'i—narrated to us: My father narrated from Qatadah, from Anas ibn Malik, that the Prophet of Allah (peace and blessings be upon him) said: *"Every prophet has a supplication he made for his nation, and I have reserved my supplication as intercession for my nation on the Day of Resurrection."* And through him [the previous narrator] to Muslim: Nasr ibn Ali narrated to us: Bishr—meaning ibn Al-Mufaddal—narrated from Abu Maslamah, who is Sa'id ibn Yazid, from Abu Nadrah, from Abu Sa'id Al-Khudri, who said: The Messenger of Allah (peace and blessings be upon him) said: *"As for the people of the Fire who are its permanent inhabitants, they will neither die therein nor live. But there are people whom the Fire afflicted due to their sins—or he may have said: their misdeeds—so Allah made them die a complete death until they became charcoal. Then permission for intercession was granted, and they were brought forth group after group, scattered over the rivers of Paradise. Then it was said: 'O people of Paradise, pour water over them!' So they sprout like a seed carried by floodwaters."*[37][38]

The issue of the pages in which the deeds of the servants and the angels are written is true.

Point 34: That the records in which the recording angels write the deeds of servants constitute a truth in which we believe, though we do not comprehend their nature. Allah Almighty said: "When the two recording angels receive [deeds] - one seated at the right and one at the left. No soul utters a word except that there is with him a watcher, ever-present" (Qaf 50:17-18). He Almighty said: "Indeed, We used to record whatever deeds you were doing" (Al-Jathiyah 45:29). The Exalted said: "We have fastened every human's

[37] **Hadith references (L2322):** Sahih Muslim 200a.
[38] **Qur'an references (L2322):** Qur'an 2:255 (Al-Baqarah).

ثنا مُعَاذٌ يَعْنِي ابْنَ هِشَامٍ الدَّسْتُوَائِيَّ - ثنا أَبِي عَنْ قَتَادَةَ ثنا أَنَسُ بْنُ مَالِكٍ أَنَّ نَبِيَّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لِكُلِّ نَبِيٍّ دَعْوَةٌ دَعَاهَا لِأُمَّتِهِ وَإِنِّي اخْتَبَأْتُ دَعْوَتِي شَفَاعَةً لِأُمَّتِي يَوْمَ الْقِيَامَةِ» . وَبِهِ إِلَى مُسْلِمٍ: ثنا نَصْرُ بْنُ عَلِيٍّ ثنا بِشْرٌ يَعْنِي ابْنَ الْمُفَضَّلِ - عَنْ أَبِي مَسْلَمَةَ هُوَ سَعِيدُ بْنُ يَزِيدَ - عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَمَّا أَهْلُ النَّارِ الَّذِينَ هُمْ أَهْلُهَا فَإِنَّهُمْ لَا يَمُوتُونَ فِيهَا وَلَا يَحْيَوْنَ، وَلَكِنْ نَاسٌ أَصَابَتْهُمُ النَّارُ بِذُنُوبِهِمْ، أَوْ قَالَ بِخَطَايَاهُمْ، فَأَمَاتَهُمْ اللَّهُ إِمَاتَةً حَتَّى إِذَا كَانُوا فَحْمًا أَذِنَ بِالشَّفَاعَةِ فَجِيءَ بِهِمْ ضَبَائِرَ ضَبَائِرَ فَبُثُّوا عَلَى أَنْهَارِ الْجَنَّةِ، ثُمَّ قِيلَ: يَا أَهْلَ الْجَنَّةِ أَفِيضُوا عَلَيْهِمْ فَيَنْبُتُونَ نَبَاتَ الْحِبَّةِ تَكُونُ فِي حَمِيلِ السَّيْلِ» .

[مَسْأَلَة الصحف الَّتِي تكتب فِيهَا أَعْمَال الْعِبَاد والملائكة حَقّ]

٣٤ - مَسْأَلَةٌ: وَأَنَّ الصُّحُفَ تَكْتُبُ فِيهَا أَعْمَالَ الْعِبَادِ الْمَلَائِكَةُ حَقٌّ نُؤْمِنُ بِهَا وَلَا نَدْرِي كَيْفَ هِيَ. قَالَ اللَّهُ عَزَّ وَجَلَّ: {إِذْ يَتَلَقَّى الْمُتَلَقِّيَانِ عَنِ الْيَمِينِ وَعَنِ الشِّمَالِ قَعِيدٌ} [ق: ١٧] {مَا يَلْفِظُ مِنْ قَوْلٍ إِلا لَدَيْهِ رَقِيبٌ عَتِيدٌ} [ق: ١٨] وَقَالَ عَزَّ وَجَلَّ: {إِنَّا كُنَّا نَسْتَنْسِخُ مَا كُنْتُمْ تَعْمَلُونَ} [الجاثية: ٢٩] وَقَالَ تَعَالَى: {وَكُلَّ إِنْسَانٍ أَلْزَمْنَاهُ طَائِرَهُ فِي عُنُقِهِ وَنُخْرِجُ لَهُ يَوْمَ الْقِيَامَةِ كِتَابًا يَلْقَاهُ مَنْشُورًا} [الإسراء: ١٣] {اقْرَأْ كِتَابَكَ} [الإسراء: ١٤] .

fate to his neck, and We will produce for him on the Day of Resurrection a book he will find unfolded. 'Read your record'" (Al-Isra 17:13-14).[39]

L2325 **Issue: On the Day of Resurrection, the believers will be given their books in their right hands, while the disbelievers will be given theirs in their left hands.**

L2326–2328 Issue 35: And that people will be given their books on the Day of Resurrection. The successful believers who are not punished will receive them in their right hands, while the disbelievers will receive them in their left hands, and the believers who are people of major sins behind their backs. Allah the Exalted said: "As for the one who is given his book in his right hand, he will be judged with an easy reckoning and will return to his people rejoicing. But as for the one who is given his book behind his back, he will cry out for perdition and burn in the Blazing Fire. Indeed, he was once joyful among his people. He certainly thought he would never return [to Allah]." (Surah Al-Inshiqaq 84:7–14) And He, the Exalted, said: "As for him who is given his record in his left hand, he will cry, 'Oh, would that I had never been given my record! [69:25] And I knew not what my reckoning was at all! [69:26] Oh, would that it had been the final end! [69:27] My wealth has not availed me. [69:28] My power has perished from me!' [69:29] 'Seize him and shackle him, [69:30] then cast him into the Hellfire to burn. [69:31] Then bind him with a chain seventy cubits long and thread him through it. [69:32] For he did not have faith in Allah, the Most-Great, [69:33] nor did he urge others to feed the destitute.'" [69:34][40]

[مَسْأَلَة الْمُؤْمِنُونَ يعطون كتبهم يَوْم الْقِيَامَة بأيمانهم والكفار بشمائلهم]

٣٥ - مَسْأَلَة: وَأَنَّ النَّاس يُعْطَوْنَ كُتُبَهُمْ يَوْمَ الْقِيَامَة، فَالْمُؤْمِنُونَ الْفَائِزُونَ الَّذِينَ لَا يُعَذَّبُونَ يُعْطَوْنَهَا بِأَيْمَانِهِمْ، وَالْكُفَّارُ بِأَشْمَلِهِمْ وَالْمُؤْمِنُونَ أَهْلُ الْكَبَائِرِ وَرَاءَ ظُهُورِهِمْ. قَالَ اللَّهُ عَزَّ وَجَلَّ: {فَأَمَّا مَنْ أُوتِيَ كِتَابَهُ بِيَمِينِهِ} [الانشقاق: ٧] {فَسَوْفَ يُحَاسَبُ حِسَابًا يَسِيرًا} [الانشقاق: ٨] {وَيَنْقَلِبُ إِلَى أَهْلِهِ مَسْرُورًا} [الانشقاق: ٩] {وَأَمَّا مَنْ أُوتِيَ كِتَابَهُ وَرَاءَ ظَهْرِهِ} [الانشقاق: ١٠] {فَسَوْفَ يَدْعُو ثُبُورًا} [الانشقاق: ١١] {وَيَصْلَى سَعِيرًا} [الانشقاق: ١٢] {إِنَّهُ كَانَ فِي أَهْلِهِ مَسْرُورًا} [الانشقاق: ١٣] {إِنَّهُ ظَنَّ أَنْ لَنْ يَحُورَ} [الانشقاق: ١٤] وَقَالَ تَعَالَى: {وَأَمَّا مَنْ أُوتِيَ كِتَابَهُ بِشِمَالِهِ فَيَقُولُ يَا لَيْتَنِي لَمْ أُوتَ كِتَابِيَهْ} [الحاقة: ٢٥] {وَلَمْ أَدْرِ مَا حِسَابِيَهْ} [الحاقة: ٢٦] {يَا لَيْتَهَا كَانَتِ الْقَاضِيَةَ} [الحاقة: ٢٧] {مَا أَغْنَى عَنِّي مَالِيَهْ} [الحاقة: ٢٨] {هَلَكَ عَنِّي سُلْطَانِيَهْ} [الحاقة: ٢٩] {خُذُوهُ فَغُلُّوهُ} [الحاقة: ٣٠] {ثُمَّ الْجَحِيمَ صَلُّوهُ} [الحاقة: ٣١] {ثُمَّ فِي سِلْسِلَةٍ ذَرْعُهَا سَبْعُونَ ذِرَاعًا فَاسْلُكُوهُ} [الحاقة: ٣٢] {إِنَّهُ كَانَ لا يُؤْمِنُ بِاللَّهِ الْعَظِيمِ} [الحاقة: ٣٣] {وَلا يَحُضُّ عَلَى طَعَامِ الْمِسْكِينِ} [الحاقة: ٣٤] .

[39] **Qur'an references (L2324):** Qur'an 50:17 (Qaf); Qur'an 50:18 (Qaf); Qur'an 45:29 (Al-Jathiyah); Qur'an 17:13 (Al-Isra); Qur'an 17:14 (Al-Isra).

[40] **Qur'an references (L2326):** Qur'an 69:19 (Al-Haqqah); Qur'an 84:7 (Al-Inshiqaq); Qur'an 84:8 (Al-Inshiqaq); Qur'an 84:9 (Al-Inshiqaq); Qur'an 84:10 (Al-Inshiqaq); Qur'an 84:11 (Al-Inshiqaq); Qur'an 84:12 (Al-Inshiqaq); Qur'an 84:13 (Al-Inshiqaq); Qur'an 84:14 (Al-Inshiqaq); Qur'an 69:25 (Al-Haqqah); Qur'an 69:26 (Al-Haqqah); Qur'an 69:27 (Al-Haqqah); Qur'an 69:28 (Al-Haqqah); Qur'an 69:29 (Al-Haqqah); Qur'an 69:30 (Al-Haqqah); Qur'an 69:31 (Al-Haqqah); Qur'an 69:32 (Al-Haqqah); Qur'an 69:33 (Al-Haqqah); Qur'an 69:34 (Al-Haqqah); Qur'an 107:3 (Al-Ma'un).

[مَسْأَلَة عَلَى كُلّ إنْسَان حافظان مِنْ الْمَلَائِكَة يحصيان أقواله وأعماله]

٣٦ - مَسْأَلَةٌ: وَإِنَّ عَلَى كُلِّ إنْسَانٍ حَافِظَيْنِ مِنْ الْمَلَائِكَةِ يُحْصِيَانِ أَقْوَالَهُ وَأَعْمَالَهُ قَالَ عَزَّ وَجَلَّ: {إِذْ يَتَلَقَّى الْمُتَلَقِّيَانِ عَنِ الْيَمِينِ وَعَنِ الشِّمَالِ قَعِيدٌ} [ق: ١٧] {مَا يَلْفِظُ مِنْ قَوْلٍ إِلا لَدَيْهِ رَقِيبٌ عَتِيدٌ} [ق: ١٨] .

[مَسْأَلَة هُمْ بِحَسَنَة فَلَمْ يعملها]

٣٧ - مَسْأَلَةٌ: وَمَنْ هَمَّ بِحَسَنَةٍ فَلَمْ يَعْمَلْهَا كُتِبَتْ لَهُ حَسَنَةً، فَإِنْ عَمِلَهَا كُتِبَتْ لَهُ عَشْرًا. وَمَنْ هَمَّ بِسَيِّئَةٍ فَإِنْ تَرَكَهَا لِلَّهِ تَعَالَى كُتِبَتْ لَهُ حَسَنَةً، فَإِنْ تَرَكَهَا بِغَلَبَةٍ أَوْ نَحْوِ ذَلِكَ لَمْ تُكْتَبْ عَلَيْهِ، فَإِنْ عَمِلَهَا كُتِبَتْ لَهُ سَيِّئَةً وَاحِدَةً. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ رَافِعٍ ثنا عَبْدُ الرَّزَّاقِ أَخْبَرَنَا مَعْمَرٌ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ هَذَا مَا حَدَّثَنَا أَبُو هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ أَحَادِيثَ مِنْهَا قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «قَالَ اللَّهُ - عَزَّ وَجَلَّ -: إذَا تَحَدَّثَ عَبْدِي بِأَنْ يَعْمَلَ حَسَنَةً فَأَنَا أَكْتُبُهَا لَهُ حَسَنَةً مَا لَمْ يَعْمَلْ، فَإِذَا عَمِلَهَا فَأَنَا أَكْتُبُهَا بِعَشْرِ أَمْثَالِهَا، وَإِذَا تَحَدَّثَ بِأَنْ يَعْمَلَ سَيِّئَةً فَأَنَا أَغْفِرُهَا لَهُ مَا لَمْ يَعْمَلْهَا، فَإِذَا عَمِلَهَا فَأَنَا أَكْتُبُهَا لَهُ بِمِثْلِهَا» . وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «قَالَتْ الْمَلَائِكَةُ: رَبِّ ذَاكَ عَبْدُكَ يُرِيدُ أَنْ يَعْمَلَ سَيِّئَةً - وَهُوَ أَبْصَرُ بِهِ - فَقَالَ ارْقُبُوهُ فَإِنْ عَمِلَهَا فَاكْتُبُوهَا لَهُ بِمِثْلِهَا وَإِنْ تَرَكَهَا فَاكْتُبُوهَا لَهُ حَسَنَةً إنَّمَا تَرَكَهَا مِنْ جَرَّايَ» وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَحْسَنَ

L2329 **There are two guardian angels from the angels assigned to every human who record his words and deeds.**

L2330 36. Issue: Indeed, upon every human are two guardian angels who record his statements and deeds. Allah, the Almighty, said: {When the two recording angels, stationed on the right and the left, observe [his deeds].} [50:17] {No word does he utter but there is with him a watchful scribe, ever-ready.} [50:18].[41]

L2331 **A jurisprudential issue: They were in a position to do a good deed but did not do it.**

L2332 37. Issue: Whoever intends to perform a good deed but does not act upon it, one good deed is recorded for him. If he performs it, ten good deeds are recorded. Whoever intends to commit an evil deed but abandons it for Allah's sake, one good deed is recorded for him. If he abandons it due to compulsion or similar reasons, nothing is recorded against him. If he commits it, one evil deed is recorded.

Abdullah ibn Yusuf narrated to us from Ahmad ibn Fath from Abdul Wahhab ibn Isa from Ahmad ibn Muhammad from Ahmad ibn Ali from Muslim ibn al-Hajjaj from Muhammad ibn Rafi' from Abdul Razzaq from Ma'mar from Hammam ibn Munabbih: This is what Abu Hurairah narrated to us from Allah's Messenger (peace and blessings be upon him), mentioning several hadiths including:

The Messenger of Allah (peace and blessings be upon him) said: "Allah the Almighty declared: 'When My servant speaks of performing a good deed, I record it as one good deed for him so long as he does not act upon it. If he performs it, I record it as tenfold. When he speaks of committing an evil deed, I forgive it so long as he does not act upon it. If he commits it, I record it as a single evil deed.'"

The Messenger of Allah (peace and blessings be upon him) said: "The angels said: 'Lord, this servant of Yours intends to commit an evil deed'—though

[41] **Qur'an references (L2330):** Qur'an 50:17 (Qaf); Qur'an 50:18 (Qaf).

You are all-seeing regarding him. He replied: 'Observe him. If he commits it, record it as one evil deed. If he abandons it, record it as one good deed—for he abandoned it only for My sake.'"

The Messenger of Allah (peace and blessings be upon him) said: "When one perfects his Islam, every good deed he performs is recorded as tenfold up to seven hundredfold, while every evil deed is recorded as one—until he meets Allah the Almighty."[42]

L2333–2334 **A legal issue pertaining to the act of committing an evil deed while in a state of disbelief and subsequently accepting Islam.**

L2335 Legal ruling: If someone commits an evil deed during their disbelief and then embraces Islam, if they persist in that wrongdoing, they will be held accountable and recompensed in the Hereafter for what they did during both their disbelief and after embracing Islam. If they repent from it, what they did during their disbelief is removed from them. If someone performs righteous deeds during their disbelief and then embraces Islam, they will be rewarded in Paradise for what they did during both their disbelief and after embracing Islam. If they do not embrace Islam, they will be recompensed for that in this world and will derive no benefit from it in the Hereafter.

L2336 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Muhammad ibn Hatim ibn Maymun and Ibrahim ibn Dinar—and the wording is his—both said: Hajjaj (who is ibn Muhammad) narrated to us from Ibn Jurayj, who said: Ya'la ibn Muslim informed me that he heard Sa'id ibn Jubayr narrate from Ibn Abbas: "Some people among the polytheists committed numerous killings and frequent adultery. Then they came to Muhammad (peace and blessings of Allah be upon him) and said, 'What you proclaim and call people to is indeed excellent. If only you could inform us whether there is expiation for our deeds.' Thereupon the verses were revealed: *And those who

[42] **Hadith references (L2332):** Sahih Muslim 129.

أَحَدُكُمْ إِسْلَامَهُ فَكُلُّ حَسَنَةٍ يَعْمَلُهَا تُكْتَبُ بِعَشْرِ أَمْثَالِهَا إِلَى سَبْعِمِائَةِ ضِعْفٍ، وَكُلُّ سَيِّئَةٍ تُكْتَبُ لَهُ بِمِثْلِهَا حَتَّى يَلْقَى اللَّهَ - عَزَّ وَجَلَّ -» .

[مَسْأَلَة مِنْ عَمَل فِي كفره عملا سيئا ثُمَّ أسلم]

مَسْأَلَةٌ: وَمَنْ عَمِلَ فِي كُفْرِهِ عَمَلًا سَيِّئًا ثُمَّ أَسْلَمَ، فَإِنْ تَمَادَى عَلَى تِلْكَ الْإِسَاءَةِ حُوسِبَ وَجُوزِيَ فِي الْآخِرَةِ بِمَا عَمِلَ مِنْ ذَلِكَ فِي شِرْكِهِ وَإِسْلَامِهِ، وَإِنْ تَابَ عَنْ ذَلِكَ سَقَطَ عَنْهُ مَا عَمِلَ فِي شِرْكِهِ. وَمَنْ عَمِلَ فِي كُفْرِهِ أَعْمَالًا صَالِحَةً ثُمَّ أَسْلَمَ جُوزِيَ فِي الْجَنَّةِ بِمَا عَمِلَ مِنْ ذَلِكَ فِي شِرْكِهِ وَإِسْلَامِهِ، فَإِنْ لَمْ يُسْلِمْ جُوزِيَ بِذَلِكَ فِي الدُّنْيَا وَلَمْ يَنْتَفِعْ بِذَلِكَ فِي الْآخِرَةِ.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ حَاتِمِ بْنِ مَيْمُونٍ وَإِبْرَاهِيمُ بْنُ دِينَارٍ وَاللَّفْظُ لَهُ قَالَا ثنا حَجَّاجٌ وَهُوَ ابْنُ مُحَمَّدٍ - عَنِ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي يَعْلَى بْنُ مُسْلِمٍ أَنَّهُ سَمِعَ سَعِيدَ بْنَ جُبَيْرٍ يُحَدِّثُ عَنِ ابْنِ عَبَّاسٍ «أَنَّ نَاسًا مِنْ أَهْلِ الشِّرْكِ قَتَلُوا فَأَكْثَرُوا وَزَنَوْا فَأَكْثَرُوا، ثُمَّ أَتَوْا مُحَمَّدًا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: إِنَّ الَّذِي تَقُولُ وَتَدْعُو إِلَيْهِ لَحَسَنٌ، وَلَوْ تُخْبِرُنَا أَنَّ لِمَا عَمِلْنَا كَفَّارَةً فَنَزَلَتْ: {وَالَّذِينَ لا يَدْعُونَ مَعَ اللَّهِ إِلَهًا آخَرَ وَلا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلا بِالْحَقِّ وَلا يَزْنُونَ وَمَنْ يَفْعَلْ ذَلِكَ يَلْقَ أَثَامًا} [الفرقان:

do not invoke any deity alongside Allah, nor kill the soul which Allah has forbidden except by right, nor commit adultery. Whoever does this will face punishment* [25:68] *His torment will be multiplied on the Day of Resurrection, and he will remain therein in eternal disgrace* [25:69] *Except those who repent, believe, and perform righteous deeds* [25:70]." Thus, Allah—Exalted and Majestic—does not erase those evil deeds except through faith accompanied by repentance and righteous works.

Via the same chain, Muslim reported: Uthman ibn Abi Shaybah narrated to us: Jarir narrated to us from Mansur from Abi Wa'il from Ibn Mas'ud, who said: "People asked the Messenger of Allah (peace and blessings of Allah be upon him), 'O Messenger of Allah, will we be held accountable for what we did during the pre-Islamic era?' He replied, 'Whoever does good in Islam will not be punished for those deeds, but whoever does evil will be punished for his deeds in both the pre-Islamic era and in Islam.'"

Via the same chain, Muslim reported: Abu Bakr ibn Abi Shaybah narrated to us: Waki' narrated to us from al-A'mash from Abi Wa'il from Ibn Mas'ud, who said: "We asked, 'O Messenger of Allah, will we be held accountable for what we did during the pre-Islamic era?' He replied, 'Whoever does good in Islam will not be punished for his pre-Islamic deeds, but whoever does evil in Islam will be punished for both the earlier and later deeds.'"[43][44]

L2337–2340 And through him to Muslim: Ḥasan al-Ḥulwānī narrated to us: Ya'qūb ibn Ibrāhīm ibn Sa'd narrated to us from Ṣāliḥ ibn Kaysān, from Ibn Shihāb: 'Urwah ibn al-Zubayr informed us that Ḥakīm ibn Ḥizām informed him that he said to the Messenger of Allah—peace be upon him: "O Messenger of Allah, what is your view regarding devotional acts I used to practice in the pre-Islamic era: charity, emancipating slaves, or upholding kinship ties? Is there any reward for them?" The Messenger of Allah—peace be upon him—replied: "You have embraced Islam upon the good you had previously done." If they cite the words of Allah—Exalted and Majestic: *{Say to those who

٦٨] {يُضَاعَفْ لَهُ الْعَذَابُ يَوْمَ الْقِيَامَةِ وَيَخْلُدْ فِيهِ مُهَانًا} [الفرقان: ٦٩] {إِلا مَنْ تَابَ وَآمَنَ وَعَمِلَ عَمَلا صَالِحًا} [الفرقان: ٧٠] » فَلَمْ يُسْقِطِ اللَّهُ - عَزَّ وَجَلَّ - تِلْكَ الأَعْمَالَ السَّيِّئَةَ إِلَّا بِالإِيمَانِ مَعَ التَّوْبَةِ مَعَ الْعَمَلِ الصَّالِحِ. وَبِهِ إِلَى مُسْلِمٍ حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ ثنا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ أَبِي وَائِلٍ عَنِ ابْنِ مَسْعُودٍ قَالَ: «قَالَ أُنَاسٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: يَا رَسُولَ اللَّهِ أَنُؤَاخَذُ بِمَا عَمِلْنَا فِي الْجَاهِلِيَّةِ؟ قَالَ - أَمَّا مَنْ أَحْسَنَ مِنْكُمْ فِي الإِسْلامِ فَلا يُؤَاخَذُ بِهَا وَمَنْ أَسَاءَ أُخِذَ بِعَمَلِهِ فِي الْجَاهِلِيَّةِ وَالإِسْلامِ» . وَبِهِ إِلَى مُسْلِمٍ حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا وَكِيعٌ عَنِ الأَعْمَشِ عَنْ أَبِي وَائِلٍ عَنِ ابْنِ مَسْعُودٍ قَالَ: «قُلْنَا يَا رَسُولَ اللَّهِ أَنُؤَاخَذُ بِمَا عَمِلْنَا فِي الْجَاهِلِيَّةِ؟ فَقَالَ مَنْ أَحْسَنَ فِي الإِسْلامِ لَمْ يُؤَاخَذْ بِمَا عَمِلَ فِي الْجَاهِلِيَّةِ، وَمَنْ أَسَاءَ فِي الإِسْلامِ أُخِذَ بِالأَوَّلِ وَالآخِرِ» .

وَبِهِ إِلَى مُسْلِمٍ حَدَّثَنَا حَسَنٌ الْحُلْوَانِيُّ ثنا يَعْقُوبُ هُوَ ابْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ ثنا عَنْ صَالِحٍ هُوَ ابْنُ كَيْسَانَ - عَنِ ابْنِ شِهَابٍ أَخْبَرَنَا عُرْوَةُ بْنُ الزُّبَيْرِ أَنَّ حَكِيمَ بْنَ حِزَامٍ أَخْبَرَهُ أَنَّهُ قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَيْ رَسُولَ اللَّهِ أَرَأَيْتَ أُمُورًا كُنْتُ أَتَحَنَّثُ بِهَا فِي الْجَاهِلِيَّةِ مِنْ صَدَقَةٍ أَوْ عَتَاقَةٍ أَوْ صِلَةِ رَحِمٍ أَفِيهَا أَجْرٌ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَسْلَمْتَ عَلَى مَا أَسْلَفْتَ مِنْ خَيْرٍ» . فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {قُلْ لِلَّذِينَ كَفَرُوا إِنْ يَنْتَهُوا يُغْفَرْ لَهُمْ مَا قَدْ سَلَفَ} [الأنفال: ٣٨] . وَقَوْلَهُ - عَلَيْهِ السَّلَامُ - لِعَمْرِو بْنِ الْعَاصِ «إِنَّ الإِسْلَامَ يَهْدِمُ مَا كَانَ قَبْلَهُ، وَإِنَّ الْهِجْرَةَ تَهْدِمُ مَا

[43] **Hadith references (L2336):** Sahih Muslim 120a; Sahih al-Bukhari 6921; Sahih Muslim 120b.

[44] **Qur'an references (L2336):** Qur'an 25:68 (Al-Furqan); Qur'an 25:69 (Al-Furqan); Qur'an 25:70 (Al-Furqan).

disbelieve: If they desist, what has passed will be forgiven them}* [8:38], and His saying—peace be upon him—to ʻAmr ibn al-ʻĀṣ: "Indeed, Islam annuls what preceded it, Hijrah annuls what preceded it, and Ḥajj annuls what preceded it," we say: The Prophet's speech—peace be upon him—does not contradict his own words nor the words of his Lord. If that were so—and Allah forbid such a thing—none would take precedence over another, and every argument based on selective interpretation would be invalid. Similarly, the Quran does not contradict the Quran or the Sunnah. Allah—Exalted and Majestic—said: *{Had it been from other than Allah, they would have found much discrepancy therein}* [4:82]. As for His saying—Exalted: *{If they desist, what has passed will be forgiven them}* [8:38], this indeed aligns with our position: whoever desists is forgiven. But for those who do not desist, Allah did not state He forgives them, thus their reliance on this verse is invalid. As for his saying—peace be upon him: "Islam annuls what preceded it," this is true and consistent with our stance, for "Islam" encompasses all acts of obedience, and repentance from evil deeds is among the acts of obedience. Similarly, his saying—peace be upon him—regarding Hijrah refers to repentance from every sin, as authentically reported from him: "The Muhājir is one who abandons what Allah has forbidden." ʻAbd al-Raḥmān ibn ʻAbd Allāh ibn Khālid narrated to us: Ibrāhīm ibn Aḥmad narrated to us: Muḥammad ibn Yūsuf al-Farabrī narrated to us: al-Bukhārī narrated to us: Ādam ibn Abī Iyās narrated to us: Shuʻbah narrated from ʻAbd Allāh ibn Abī al-Safar. Ismail ibn Abi Khalid reported from Ash-Shaʻbi from ʻAbdullah ibn ʻAmr ibn Al-ʻAs that the Prophet, peace and blessings of Allah be upon him, said: "A Muslim is one from whose tongue and hand the Muslims are safe, and the Muhājir is one who abandons what Allah has prohibited."

ʻAbdullah ibn Yusuf → Ahmad ibn Fath → ʻAbdul-Wahhab ibn ʻIsa → Ahmad ibn Muhammad → Ahmad ibn ʻAli → Muslim ibn al-Hajjaj → Abu Bakr ibn Abi Shaybah → Hafs ibn Ghiyath → Dawud → Ash-Shaʻbi → Masruq → ʻAishah, Mother of the Believers, who said: "I asked, 'O Messenger of Allah, Ibn Judʿan used to uphold kinship ties and feed the poor in pre-Islamic times. Will that benefit him?' He replied: 'It will not benefit him, for he never once said: _My Lord, forgive me my sin on the Day of Reckoning._'"

كَانَ قَبْلَهَا وَإِنَّ الْحَجَّ يَهْدِمُ مَا كَانَ قَبْلَهُ» . قُلْنَا: إِنَّ كَلَامَهُ - عَلَيْهِ السَّلَامُ - لَا يُعَارِضُ كَلَامَهُ وَلَا كَلَامَ رَبِّهِ، وَلَوْ كَانَ ذَلِكَ - وَقَدْ أَعَاذَ اللَّهُ مِنْ هَذَا - لَمَا كَانَ بَعْضُهُ أَوْلَى مِنْ بَعْضٍ وَلَبَطَلَتْ حُجَّةُ كُلِّ أَحَدٍ بِمَا يَتَعَلَّقُ بِهِ مِنْهُ. وَكَذَلِكَ الْقُرْآنُ لَا يُعَارِضُ الْقُرْآنَ وَلَا السُّنَّةَ. قَالَ عَزَّ وَجَلَّ: {وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ اخْتِلافًا كَثِيرًا} [النساء: ٨٢] فَأَمَّا قَوْله تَعَالَى: {إِنْ يَنْتَهُوا يُغْفَرْ لَهُمْ مَا قَدْ سَلَفَ} [الأنفال: ٣٨] فَنَعَمْ هَذَا هُوَ نَفْسُ قَوْلِنَا: إِنَّ مَنْ انْتَهَى غُفِرَ لَهُ. وَأَمَّا مَنْ لَمْ يَنْتَهِ عَنْهُ فَلَمْ يَقُلْ اللَّهُ تَعَالَى أَنَّهُ يَغْفِرُهُ لَهُ، فَبَطَلَ تَعَلُّقُهُمْ بِالْآيَةِ. وَأَمَّا قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «إِنَّ الْإِسْلَامَ يَهْدِمُ مَا كَانَ قَبْلَهُ» فَحَقٌّ وَهُوَ قَوْلُنَا؛ لِأَنَّ الْإِسْلَامَ اسْمٌ وَاقِعٌ عَلَى جَمِيعِ الطَّاعَاتِ، وَالتَّوْبَةُ مِنْ عَمَلِ السُّوءِ مِنْ الطَّاعَاتِ. وَكَذَلِكَ قَوْلُهُ - عَلَيْهِ السَّلَامُ - فِي الْهِجْرَةِ إنَّمَا هِيَ التَّوْبَةُ مِنْ كُلِّ ذَنْبٍ، كَمَا صَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - «الْمُهَاجِرُ مَنْ هَجَرَ مَا نَهَى اللَّهُ عَنْهُ» . حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا مُحَمَّدُ بْنُ يُوسُفَ الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا آدَم بْنُ أَبِي إيَاسٍ ثنا شُعْبَةُ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ وَإِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْمُسْلِمُ مَنْ سَلِمَ الْمُسْلِمُونَ مِنْ لِسَانِهِ وَيَدِهِ وَالْمُهَاجِرُ مَنْ هَجَرَ مَا نَهَى اللَّهُ عَنْهُ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا حَفْصُ بْنُ غِيَاثٍ عَنْ دَاوُد عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «قُلْتُ يَا رَسُولَ اللَّهِ إنَّ ابْنَ جُدْعَانَ كَانَ فِي الْجَاهِلِيَّةِ يَصِلُ الرَّحِمَ وَيُطْعِمُ الْمِسْكِينَ، فَهَلْ ذَلِكَ نَافِعُهُ؟ قَالَ: لَا يَنْفَعُهُ إنَّهُ لَمْ يَقُلْ يَوْمًا رَبِّ اغْفِرْ لِي خَطِيئَتِي يَوْمَ الدِّينِ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ

ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا مُحَمَّدُ بْنُ عِيسَى ثنا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ ثنا مُسْلِمٌ ثنا زُهَيْرُ بْنُ حَرْبٍ ثنا يَزِيدُ بْنُ هَارُونَ ثنا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ أَنَسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ اللَّهَ لَا يَظْلِمُ مُؤْمِنًا حَسَنَةً يُعْطَى بِهَا فِي الدُّنْيَا وَيُجْزَى بِهَا فِي الْآخِرَةِ، وَأَمَّا الْكَافِرُ فَيُعْطَى بِحَسَابِ مَا عَمِلَ بِهَا لِلَّهِ فِي الدُّنْيَا حَتَّى إِذَا أَفْضَى إِلَى الْآخِرَةِ لَمْ تَكُنْ لَهُ حَسَنَةٌ يُجْزَى بِهَا» .

[مَسْأَلَة عَذَاب الْقَبْر ومساءلة الأرواح بَعْد الْمَوْت حَقّ]

٣٩ - مَسْأَلَةٌ: وَأَنَّ عَذَابَ الْقَبْرِ حَقٌّ وَمُسَاءَلَةَ الْأَرْوَاحِ بَعْدَ الْمَوْتِ حَقٌّ وَلَا يَحْيَا أَحَدٌ بَعْدَ مَوْتِهِ إِلَى يَوْمِ الْقِيَامَةِ.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا مُحَمَّدُ بْنُ عِيسَى ثنا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ بَشَّارِ بْنِ عُثْمَانَ الْعَبْدِيُّ ثنا مُحَمَّدُ بْنُ جَعْفَرٍ هُوَ غُنْدَرٌ - ثنا شُعْبَةُ عَنْ عَلْقَمَةَ بْنِ مَرْثَدٍ عَنْ سَعْدِ بْنِ عُبَيْدَةَ عَنْ الْبَرَاءِ بْنِ عَازِبٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: « {يُثَبِّتُ اللَّهُ الَّذِينَ آمَنُوا بِالْقَوْلِ الثَّابِتِ} [إبراهيم: ٢٧] . قَالَ: نَزَلَتْ فِي عَذَابِ الْقَبْرِ، يُقَالُ لَهُ: مَنْ رَبُّكَ؟ فَيَقُولُ رَبِّيَ اللَّهُ وَنَبِيِّي مُحَمَّدٌ» . وَبِهِ إِلَى مُسْلِمٍ ثنا عُبَيْدُ اللَّهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ ثنا حَمَّادُ بْنُ زَيْدٍ ثنا بُدَيْلٌ عَنْ عَبْدِ اللَّهِ بْنِ شَقِيقٍ عَنْ أَبِي هُرَيْرَةَ قَالَ «إِذَا خَرَجَتْ رُوحُ الْمُؤْمِنِ تَلَقَّاهَا مَلَكَانِ يُصْعِدَانِهَا، وَيَقُولُ أَهْلُ السَّمَاءِ: رُوحٌ طَيِّبَةٌ جَاءَتْ مِنْ قِبَلِ الْأَرْضِ، صَلَّى اللَّهُ عَلَيْكِ وَعَلَى جَسَدٍ كُنْتِ تَعْمُرِينَهُ، فَيَنْطَلِقُوا بِهِ إِلَى رَبِّهِ ثُمَّ يَقُولُ: انْطَلِقُوا بِهِ إِلَى آخِرِ الْأَجَلِ. قَالَ: وَإِنَّ الْكَافِرَ إِذَا خَرَجَتْ رُوحُهُ يَقُولُ أَهْلُ السَّمَاءِ: رُوحٌ خَبِيثَةٌ جَاءَتْ

‘Abdullah ibn Yusuf → Ahmad ibn Fath → ‘Abdul-Wahhab ibn ‘Isa → Muhammad ibn ‘Isa → Ibrahim ibn Muhammad → Muslim ibn al-Hajjaj → Zuhayr ibn Harb → Yazid ibn Harun → Hammam ibn Yahya → Qatadah → Anas, who reported that the Messenger of Allah, peace and blessings of Allah be upon him, said: “Allah does not wrong a believer regarding any good deed: he is given reward for it in this world and recompense for it in the Hereafter. As for the disbeliever, he is granted according to the account of what he did for Allah in this world, until when he enters the Hereafter, no good deed remains for which he may be recompensed.”[45][46]

The reality of the punishment in the grave and the questioning of souls after death is a truth.

39 - Issue: That the torment of the grave is true, the questioning of the spirits after death is true, and no one is brought back to life after death until the Day of Resurrection.

Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul-Wahhab ibn Isa narrated to us: Muhammad ibn Isa narrated to us: Ibrahim ibn Muhammad narrated to us: Muslim ibn al-Hajjaj narrated to us: Muhammad ibn Bashar ibn Uthman al-Abdi narrated to us: Muhammad ibn Jafar—he is Ghundar—narrated to us: Shu’bah from Alqamah ibn Marthad from Sa’d ibn Ubaydah. From Al-Barā’ ibn ‘Āzib, from the Prophet—peace and blessings of Allah be upon him—who said: *“Allah keeps firm those who believe with the firm word”* (Ibrāhīm 14:27). He said: “This was revealed concerning the punishment of the grave. It will be said to him: ‘Who is your Lord?’ He will say: ‘My Lord is Allah, and my Prophet is Muḥammad.’” Via the chain leading to Muslim: ‘Ubayd Allāh ibn ‘Umar al-Qawārīrī narrated to us, Ḥammād ibn Zayd narrated to us, Budayl narrated from ‘Abd Allāh ibn Shaqīq from Abū Hurayrah, who said: “When the soul of a believer departs, two angels receive it and ascend with it. The dwellers of the heavens say:

[45] **Hadith references (L2338):** Sahih Muslim 123b; Sahih Muslim 121; Mishkat al-Masabih 28; Riyad as-Salihin 710; Sahih al-Bukhari 10; Sahih al-Bukhari 6484; Sunan an-Nasai 4996; Sahih Muslim 214.

[46] **Qur’an references (L2338):** Qur’an 8:38 (Al-Anfal); Qur’an 4:82 (An-Nisa).

مِنْ قِبَلِ الْأَرْضِ فَيُقَالُ انْطَلِقُوا بِهِ إِلَى آخِرِ الْأَجَلِ. قَالَ أَبُو هُرَيْرَةَ: فَرَدَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَيْطَةً كَانَتْ عَلَيْهِ عَلَى أَنْفِهِ» وَقَالَ اللَّهُ تَعَالَى: {وَكُنْتُمْ أَمْوَاتًا فَأَحْيَاكُمْ ثُمَّ يُمِيتُكُمْ ثُمَّ يُحْيِيكُمْ} [البقرة: ٢٨] فَصَحَّ أَنَّهُمَا حَيَاتَانِ وَمَوْتَانِ فَقَطْ، وَلَا تُرَدُّ الرُّوحُ إِلَّا لِمَنْ كَانَ ذَلِكَ آيَةً، كَمَنْ أَحْيَاهُ عِيسَى - عَلَيْهِ السَّلَامُ -، وَكُلُّ مَنْ جَاءَ فِيهِ بِذَلِكَ نَصٌّ، وَهُوَ قَوْلُ مَنْ رُوِيَ عَنْهُ فِي ذَلِكَ قَوْلٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -. حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا إِسْمَاعِيلُ بْنُ إِسْحَاقَ ثنا عِيسَى بْنُ حَبِيبٍ ثنا عَبْدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِئُ ثنا جَدِّي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ مَنْصُورِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أُمِّهِ صَفِيَّةَ بِنْتِ شَيْبَةَ قَالَتْ " دَخَلَ ابْنُ عُمَرَ الْمَسْجِدَ فَأَبْصَرَ ابْنَ الزُّبَيْرِ مَطْرُوحًا قَبْلَ أَنْ يُصْلَبَ، فَقِيلَ لَهُ هَذِهِ أَسْمَاءُ، فَمَالَ إِلَيْهَا وَعَزَّاهَا وَقَالَ: إِنَّ هَذِهِ الْجُثَثَ لَيْسَتْ بِشَيْءٍ وَإِنَّ الْأَرْوَاحَ عِنْدَ اللَّهِ عَزَّ وَجَلَّ، فَقَالَتْ لَهُ أَسْمَاءُ: وَمَا يَمْنَعُنِي وَقَدْ أُهْدِيَ رَأْسُ يَحْيَى بْنِ زَكَرِيَّا إِلَى بَغِيٍّ مِنْ بَغَايَا بَنِي إِسْرَائِيلَ وَلَمْ يَرْوِ أَحَدٌ أَنَّ فِي عَذَابِ الْقَبْرِ رَدَّ الرُّوحِ إِلَى الْجَسَدِ إِلَّا الْمِنْهَالُ بْنُ عَمْرٍو، وَلَيْسَ بِالْقَوِيِّ.

'A pure soul has come from the earth. May Allah bless you and the body you inhabited.' They take it to his Lord, then He says: 'Take it to the end of its appointed term.'" He said: "When the soul of an unbeliever departs, the dwellers of the heavens say: 'A wicked soul has come from the earth.' It is said: 'Take it to the end of its appointed term.'" Abū Hurayrah said: "The Messenger of Allah—peace and blessings of Allah be upon him—repositioned the cloth covering his nose." Allah the Exalted said: *"You were dead, then He gave you life, then He will cause you to die, then He will give you life again"* (al-Baqarah 2:28). Thus, it is confirmed that there are two lives and two deaths only. The soul is not returned except to those for whom it is a sign, such as those revived by Jesus—peace be upon him—and those explicitly mentioned in a scriptural text. This is the opinion reported from some Companions—may Allah be pleased with them. Muḥammad ibn Sa'īd ibn Nabāt related to us: Ismā'īl ibn Isḥāq related to us: 'Īsā ibn Ḥabīb related to us: 'Abd Allāh ibn 'Abd al-Raḥmān ibn Muḥammad ibn 'Abd Allāh ibn Yazīd al-Muqri' related to us: My grandfather Muḥammad ibn 'Abd Allāh related to us: Sufyān ibn 'Uyaynah narrated from Manṣūr ibn 'Abd al-Raḥmān from his mother Ṣafiyyah bint Shaybah, who said: "Ibn 'Umar entered the mosque and saw Ibn al-Zubayr's body thrown down before being crucified. It was said to him: 'This is Asmā'.' He went to her, offered condolences, and said: 'These corpses are nothing; the souls are with Allah, the Mighty and Majestic.' Asmā' said to him: 'What prevents me when the head of Yaḥyā ibn Zakariyyā was presented to a prostitute among the prostitutes of the Children of Israel?' No one narrated that the soul is returned to the body during the punishment of the grave except al-Minhāl ibn 'Amr, and he is not reliable."[47]

[مَسْأَلَة الْحَسَنَات تذهب السيئات والتوبة تسقطها]

The issue of good deeds eliminating sins and repentance nullifying them.

٤٠ - مَسْأَلَةٌ: وَالْحَسَنَاتُ تُذْهِبُ السَّيِّئَاتِ بِالْمُوَازَنَةِ، وَالتَّوْبَةُ تُسْقِطُ السَّيِّئَاتِ وَالْقِصَاصُ مِنْ الْحَسَنَاتِ. قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَإِنِّي لَغَفَّارٌ لِمَنْ تَابَ} [طه: ٨٢] وَقَالَ تَعَالَى: {إِنَّ الْحَسَنَاتِ يُذْهِبْنَ السَّيِّئَاتِ} [هود: ١١٤] . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ

Legal Question 40: Good deeds erase evil deeds by balance, and repentance nullifies evil deeds. Retribution is from good deeds. Allah the Almighty said: {And indeed, I am Forgiving to those who repent} [20:82]. And He the Exalted said: {Indeed, good deeds remove evil deeds} [11:114]. Abdullah ibn Yusuf

[47] **Qur'an references (L2343):** Qur'an 14:27 (Ibrahim); Qur'an 2:28 (Al-Baqarah).

narrated from Ahmad ibn Fath from Abd al-Wahhab ibn Isa from Ahmad ibn Muhammad from Ahmad ibn Ali from Muslim ibn al-Hajjaj from Qutaybah ibn Sa'id from Ismail from al-Ala ibn Abd al-Rahman from his father from Abu Hurairah that the Messenger of Allah, peace and blessings be upon him, said: "Do you know who the bankrupt is?" They said: "The bankrupt among us is one who has no dirham nor possessions." He said: "The bankrupt of my nation is the one who comes on the Day of Resurrection with prayer, fasting, and zakat, but comes having insulted this one, falsely accused that one of unchastity, consumed the wealth of this one, shed the blood of that one, and struck this one. Each will then be given from his good deeds. If his good deeds are exhausted before settling what is owed, their sins will be taken and loaded upon him, then he will be cast into the Fire." And the Almighty said: {Today every soul will be recompensed for what it earned} [40:17].[48]

The issue regarding the Prophet of God, Jesus—that he was neither killed nor crucified.

41 - Issue: And that Jesus, peace be upon him, was neither killed nor crucified, but Allah the Exalted caused him to die and then raised him to Himself. Allah the Exalted said: *"But they did not kill him, nor did they crucify him"* [An-Nisa: 157]. And He the Most High said: *"Indeed, I will cause you to die and raise you to Myself"* [Al Imran: 55]. And He the Most High said concerning him that he declared: *"And I was a witness over them as long as I remained among them; but when You caused me to die, You became the Watcher over them, and You are Witness over all things"* [Al-Ma'idah: 117]. And He the Most High said: *"Allah takes the souls at the time of its death, and the one [soul] that does not die during her sleep"* [Az-Zumar: 42]. Thus, the taking of the soul is of two types: sleep and death only. Jesus, peace be upon him, did not intend by his statement *"when You caused me to die"* [Al-Ma'idah: 117] the taking of the soul in sleep; therefore, it is established that he meant only the taking of the soul in death. Whoever claims he, peace be upon him, was killed or crucified

[48] **Qur'an references (L2347):** Qur'an 20:82 (Taha); Qur'an 11:114 (Hud); Qur'an 40:17 (Ghafir).

بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا قُتَيْبَةُ بْنُ سَعِيدٍ ثنا إِسْمَاعِيلُ عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَتَدْرُونَ مَا الْمُفْلِسُ؟ قَالُوا الْمُفْلِسُ فِينَا مَنْ لَا دِرْهَمَ لَهُ وَلَا مَتَاعَ، فَقَالَ: إِنَّ الْمُفْلِسَ مِنْ أُمَّتِي مَنْ يَأْتِي يَوْمَ الْقِيَامَةِ بِصَلَاةٍ وَصِيَامٍ وَزَكَاةٍ وَيَأْتِي قَدْ شَتَمَ هَذَا وَقَذَفَ هَذَا وَأَكَلَ مَالَ هَذَا وَسَفَكَ دَمَ هَذَا وَضَرَبَ هَذَا، فَيُعْطَى هَذَا مِنْ حَسَنَاتِهِ وَهَذَا مِنْ حَسَنَاتِهِ، فَإِنْ فَنِيَتْ حَسَنَاتُهُ قَبْلَ أَنْ يُقْضَى مَا عَلَيْهِ أُخِذَ مِنْ خَطَايَاهُمْ فَطُرِحَتْ عَلَيْهِ ثُمَّ طُرِحَ فِي النَّارِ» وَقَالَ عَزَّ وَجَلَّ: {الْيَوْمَ تُجْزَى كُلُّ نَفْسٍ بِمَا كَسَبَتْ} [غافر: ١٧] .

[مَسْأَلَة نبي الله عِيسَى لَمْ يقتل وَلَمْ يصلب]

٤١ - مَسْأَلَةٌ: وَأَنَّ عِيسَى - عَلَيْهِ السَّلَامُ - لَمْ يُقْتَلْ وَلَمْ يُصْلَبْ وَلَكِنْ تَوَفَّاهُ اللَّهُ عَزَّ وَجَلَّ ثُمَّ رَفَعَهُ إِلَيْهِ. وَقَالَ عَزَّ وَجَلَّ {وَمَا قَتَلُوهُ وَمَا صَلَبُوهُ} [النساء: ١٥٧] وَقَالَ تَعَالَى: {إِنِّي مُتَوَفِّيكَ وَرَافِعُكَ إِلَيَّ} [آل عمران: ٥٥] وَقَالَ تَعَالَى عَنْهُ أَنَّهُ قَالَ {وَكُنْتُ عَلَيْهِمْ شَهِيدًا مَا دُمْتُ فِيهِمْ فَلَمَّا تَوَفَّيْتَنِي كُنْتَ أَنْتَ الرَّقِيبَ عَلَيْهِمْ وَأَنْتَ عَلَى كُلِّ شَيْءٍ شَهِيدٌ} [المائدة: ١١٧] وَقَالَ تَعَالَى: {اللَّهُ يَتَوَفَّى الأَنْفُسَ حِينَ مَوْتِهَا وَالَّتِي لَمْ تَمُتْ فِي مَنَامِهَا} [الزمر: ٤٢] فَالْوَفَاةُ قِسْمَانِ: نَوْمٌ وَمَوْتٌ فَقَطْ وَلَمْ يُرِدْ عِيسَى - عَلَيْهِ السَّلَامُ - بِقَوْلِهِ {فَلَمَّا تَوَفَّيْتَنِي} [المائدة: ١١٧] وَفَاةَ النَّوْمِ، فَصَحَّ أَنَّهُ إِنَّمَا عَنَى وَفَاةَ الْمَوْتِ، وَمَنْ قَالَ إِنَّهُ - عَلَيْهِ السَّلَامُ - قُتِلَ أَوْ صُلِبَ فَهُوَ كَافِرٌ مُرْتَدٌّ حَلَالٌ دَمُهُ وَمَالُهُ لِتَكْذِيبِهِ الْقُرْآنَ وَخِلَافِهِ الْإِجْمَاعَ.

is a disbelieving apostate—his blood and wealth are lawful for denying the Quran and contradicting the consensus.[49]

L2352 **Issue: Neither the Prophet Muhammad nor any of his Companions will return except on the Day of Resurrection.**

L2353–2355 42. Issue: That neither Muḥammad, the Messenger of Allah—peace and blessings of Allah be upon him—nor any of his companions—may Allah be pleased with them—will return except on the Day of Resurrection, when Allah brings back the believers and disbelievers for reckoning and recompense. This is the consensus of all God-fearing people of Islam before the emergence of the Rāfiḍah—those who oppose the consensus of the people of Islam, alter the Quran, deny the authentic traditions of the Messenger of Allah—peace and blessings of Allah be upon him—openly fabricate falsehoods, and contradict themselves in their lies. Allah, the Exalted and Majestic, said: "You were dead, then He gave you life, then He will cause you to die, then He will give you life again" [Baqarah 2:28]. And He, the Exalted, said: {Then indeed you, on the Day of Resurrection, before your Lord, will dispute} [Az-Zumar: 31]. They made claims about the return of Ali—may Allah be pleased with him—which anyone could equally assert about Umar, Uthman, Muawiyah—may Allah be pleased with them—or others, provided one does not care about lying and advancing claims without evidence: neither from the Quran, nor the Sunnah, nor scholarly consensus, nor rational proof. And with Allah lies success.[50]

L2356 **The Issue of the Souls That the Messenger of Allah Saw on the Night of Isra.**

L2357 43 - Issue: And that the souls which the Messenger of Allah - peace and blessings be upon him - saw on the night of his Night Journey were the spirits of the people of bliss to the right of Adam - peace be upon him - and the

[49] **Qur'an references (L2351):** Qur'an 4:157 (An-Nisa); Qur'an 3:55 (Ali 'Imran); Qur'an 5:117 (Al-Ma'idah); Qur'an 39:42 (Az-Zumar).

[50] **Qur'an references (L2353):** Qur'an 2:28 (Al-Baqarah); Qur'an 39:31 (Az-Zumar).

[مَسْأَلَة لَا يرجع مُحَمَّد وَلَا أَحَد مِنْ أصحابه إِلَّا يَوْم الْقِيَامَة]

٤٢ - مَسْأَلَةٌ: وَأَنَّهُ لَا يَرْجِعُ مُحَمَّدٌ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا أَحَدٌ مِنْ أَصْحَابِهِ - رَضِيَ اللَّهُ عَنْهُمْ - إِلَّا يَوْمَ الْقِيَامَةِ إِذَا رَجَّعَ (اللَّهُ) الْمُؤْمِنِينَ وَالْكَافِرِينَ لِلْحِسَابِ وَالْجَزَاءِ. هَذَا إِجْمَاعُ جَمِيعِ أَهْلِ الْإِسْلَامِ الْمُتَّقِينَ قَبْلَ حُدُوثِ الرَّوَافِضِ الْمُخَالِفِينَ لِإِجْمَاعِ أَهْلِ الْإِسْلَامِ الْمُبَدِّلِينَ لِلْقُرْآنِ الْمُكَذِّبِينَ بِصَحِيحِ سُنَنِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُجَاهِرِينَ بِتَوْلِيدِ الْكَذِبِ الْمُتَنَاقِضِينَ فِي كَذِبِهِمْ أَيْضًا، وَقَالَ عَزَّ وَجَلَّ: {وَكُنْتُمْ أَمْوَاتًا فَأَحْيَاكُمْ ثُمَّ يُمِيتُكُمْ ثُمَّ يُحْيِيكُمْ} [البقرة: ٢٨] وَقَالَ تَعَالَى: {ثُمَّ إِنَّكُمْ يَوْمَ الْقِيَامَةِ عِنْدَ رَبِّكُمْ تَخْتَصِمُونَ} [الزمر: ٣١] فَادَّعَوْا مِنْ رُجُوعِ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - مَا لَا يَعْجِزُ أَحَدٌ عَنْ أَنْ يَدَّعِيَ مِثْلَهُ لِعُمَرَ أَوْ لِعُثْمَانَ أَوْ لِمُعَاوِيَةَ - رَضِيَ اللَّهُ عَنْهُمْ - أَوْ لِغَيْرِ هَؤُلَاءِ: إِذَا لَمْ يُبَالِ بِالْكَذِبِ وَالدَّعْوَى بِلَا بُرْهَانٍ لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ وَلَا مِنْ إِجْمَاعٍ وَلَا مِنْ مَعْقُولٍ وَبِاللَّهِ التَّوْفِيقُ.

[مَسْأَلَة الأنفس الَّتِي رَآهَا رَسُول الله لَيْلَة الإسراء]

٤٣ - مَسْأَلَةٌ: وَأَنَّ الْأَنْفُسَ حَيْثُ رَآهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَيْلَةَ أُسْرِيَ بِهِ أَرْوَاحُ أَهْلِ السَّعَادَةِ عَنْ يَمِينِ آدَمَ - عَلَيْهِ السَّلَامُ -، وَأَرْوَاحُ أَهْلِ الشَّقَاءِ عَنْ شِمَالِهِ عِنْدَ سَمَاءِ الدُّنْيَا، لَا تَفْنَى وَلَا تَنْتَقِلُ إِلَى أَجْسَامٍ أُخَرَ، لَكِنَّهَا بَاقِيَةٌ حَيَّةٌ حَسَّاسَةٌ عَاقِلَةٌ

spirits of the people of wretchedness to his left at the lowest heaven. They neither perish nor transfer to other bodies, but remain alive, sentient, and rational in bliss or tribulation until the Day of Resurrection, when they will be returned to their bodies for reckoning and recompense in Paradise or Hellfire - except the spirits of the prophets - peace be upon them - and the spirits of the martyrs, for they are presently granted provision and bliss. Whoever claims that souls transfer to other bodies after departing these bodies has committed disbelief. The proof for this is what Abdullah ibn Yusuf narrated to us; Ahmad ibn Fath narrated to us; Abdul Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to us; Harmala ibn Yahya narrated to us: Ibn Wahb narrated to us from Yunus - that is, Ibn Yazid - from Ibn Shihab from Anas ibn Malik, who said: Abu Dharr would relate that the Messenger of Allah - peace and blessings be upon him - said: "The roof of my house was cleft open while I was in Mecca. Jibril - peace be upon him - descended, split my chest, washed it with Zamzam water, then brought a golden vessel filled with wisdom and faith, poured it into my chest, and sealed it. He took my hand and ascended with me to the lowest heaven. When we reached it, Jibril - peace be upon him - said to the keeper of the lowest heaven: 'Open!' He asked: 'Who is this?' Jibril replied: 'Jibril.' He asked: 'Is anyone with you?' Jibril said: 'Yes, Muhammad - peace and blessings be upon him - is with me.' He asked: 'Has permission been sent for him?' Jibril said: 'Yes.' So he opened. When we ascended to the lowest heaven, behold, a man with multitudes to his right and multitudes to his left. When he gazed toward his right, he laughed, and when he gazed toward his left, he wept. He said: 'Welcome to the righteous prophet and the righteous son.' I asked: 'O Jibril, who is this?' He said: 'This is Adam - peace be upon him - and these multitudes to his right and left are the souls of his descendants. Those to his right are the people of Paradise, and those to his left are the people of Hellfire. When he looks toward his right, he laughs, and when he looks toward his left, he weeps.' Then Jibril - peace be upon him - ascended with me until we reached the second heaven."

L2358–2359 Anas said: He mentioned that he found in the heavens Adam, Idris, Je-

فِي نَعِيمٍ أَوْ نَكَدٍ إِلَى يَوْمِ الْقِيَامَةِ فَتُرَدُّ إِلَى أَجْسَادِهَا لِلْحِسَابِ وَلِلْجَزَاءِ بِالْجَنَّةِ أَوْ النَّارِ، حَاشَا أَرْوَاحَ الْأَنْبِيَاءِ - عَلَيْهِمْ السَّلَامُ - وَأَرْوَاحَ الشُّهَدَاءِ فَإِنَّهَا الْآنَ تُرْزَقُ وَتُنَعَّمُ. وَمَنْ قَالَ بِانْتِقَالِ الْأَنْفُسِ إِلَى أَجْسَامٍ أُخَرَ بَعْدَ مُفَارَقَتِهَا هَذِهِ الْأَجْسَادَ فَقَدْ كَفَرَ. بُرْهَانُ هَذَا مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا حَرْمَلَةُ بْنُ يَحْيَى ثنا ابْنُ وَهْبٍ أَنَا يُونُسُ هُوَ ابْنُ يَزِيدَ - عَنْ ابْنِ شِهَابٍ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: كَانَ أَبُو ذَرٍّ يُحَدِّثُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «فُرِجَ سَقْفُ بَيْتِي وَأَنَا بِمَكَّةَ فَنَزَلَ جِبْرِيلُ - عَلَيْهِ السَّلَامُ - فَفَرَجَ صَدْرِي ثُمَّ غَسَلَهُ مِنْ مَاءِ زَمْزَمَ ثُمَّ جَاءَ بِطَسْتٍ مِنْ ذَهَبٍ مُمْتَلِئٍ حِكْمَةً وَإِيمَانًا فَأَفْرَغَهَا فِي صَدْرِي ثُمَّ أَطْبَقَهُ ثُمَّ أَخَذَ بِيَدِي فَعَرَجَ بِي إِلَى السَّمَاءِ الدُّنْيَا، فَلَمَّا جِئْنَا السَّمَاءَ الدُّنْيَا. قَالَ جِبْرِيلُ - عَلَيْهِ السَّلَامُ - لِخَازِنِ السَّمَاءِ الدُّنْيَا افْتَحْ، قَالَ مَنْ هَذَا؟ قَالَ جِبْرِيلُ، قَالَ هَلْ مَعَكَ أَحَدٌ؟ قَالَ: نَعَمْ مَعِي مُحَمَّدٌ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فَأُرْسِلَ إِلَيْهِ؟ قَالَ نَعَمْ فَفَتَحَ فَلَمَّا عَلَوْنَا السَّمَاءَ الدُّنْيَا فَإِذَا رَجُلٌ عَنْ يَمِينِهِ أَسْوِدَةٌ وَعَنْ يَسَارِهِ أَسْوِدَةٌ، فَإِذَا نَظَرَ قِبَلَ يَمِينِهِ ضَحِكَ، وَإِذَا نَظَرَ قِبَلَ شِمَالِهِ بَكَى، قَالَ: فَقَالَ مَرْحَبًا بِالنَّبِيِّ الصَّالِحِ وَالِابْنِ الصَّالِحِ، فَقُلْتُ يَا جِبْرِيلُ مَنْ هَذَا؟ قَالَ هَذَا آدَمَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذِهِ الْأَسْوِدَةُ الَّتِي عَنْ يَمِينِهِ وَعَنْ شِمَالِهِ نَسَمُ بَنِيهِ، فَأَهْلُ الْيَمِينِ أَهْلُ الْجَنَّةِ وَالْأَسْوِدَةُ الَّتِي عَنْ شِمَالِهِ أَهْلُ النَّارِ، فَإِذَا نَظَرَ قِبَلَ يَمِينِهِ ضَحِكَ وَإِذَا نَظَرَ قِبَلَ شِمَالِهِ بَكَى، قَالَ ثُمَّ عَرَجَ بِي جِبْرِيلُ - عَلَيْهِ السَّلَامُ - حَتَّى أَتَى السَّمَاءَ الثَّانِيَةَ.

sus, Moses, and Abraham—may Allah's prayers be upon them—but the exact manner of their positions was not confirmed except that he mentioned he found Adam in the lowest heaven and Abraham in the sixth heaven. He mentioned the ḥadīth.

قَالَ أَنَسٌ: فَذَكَرَ أَنَّهُ وَجَدَ فِي السَّمَاوَاتِ آدَمَ وَإِدْرِيسَ وَعِيسَى وَمُوسَى وَإِبْرَاهِيمَ - صَلَوَاتُ اللَّهِ عَلَيْهِمْ - وَلَمْ يُثْبِتْ كَيْفَ مَنَازِلُهُمْ غَيْرَ أَنَّهُ ذَكَرَ أَنَّهُ قَدْ وَجَدَ آدَمَ فِي السَّمَاءِ الدُّنْيَا وَإِبْرَاهِيمَ فِي السَّمَاءِ السَّادِسَةِ.» وَذَكَرَ الْحَدِيثَ.

L2360 This narration addresses the abode of souls, affirming that the souls of the prophets are in Paradise. As for the martyrs, Allah Almighty and Majestic says: "And do not say of those who are killed in Allah's cause, 'They are dead.' Rather, they are alive, but you perceive it not" [Al-Baqarah: 154]. He, the Exalted, also says: "Never consider those slain in Allah's cause as dead. Rather, they are alive with their Lord, receiving sustenance" [Al Imran: 169], "rejoicing in what Allah has granted them from His bounty" [Al Imran: 170]. There is no disagreement between any two Muslims that the prophets—peace be upon them—possess higher status, loftier rank, more perfect virtue, and higher honor before Allah Almighty and Majestic than all those beneath them. Whoever opposes this is not a Muslim.[51]

فَفِي هَذَا الْخَبَرِ مَكَانُ الْأَرْوَاحِ، وَأَنَّ أَرْوَاحَ الْأَنْبِيَاءِ فِي الْجَنَّةِ. وَأَمَّا الشُّهَدَاءُ فَإِنَّ اللَّهَ عَزَّ وَجَلَّ يَقُولُ: {وَلا تَقُولُوا لِمَنْ يُقْتَلُ فِي سَبِيلِ اللَّهِ أَمْوَاتٌ بَلْ أَحْيَاءٌ وَلَكِنْ لا تَشْعُرُونَ} [البقرة: ١٥٤] وَقَالَ تَعَالَى: {وَلا تَحْسَبَنَّ الَّذِينَ قُتِلُوا فِي سَبِيلِ اللَّهِ أَمْوَاتًا بَلْ أَحْيَاءٌ عِنْدَ رَبِّهِمْ يُرْزَقُونَ} [آل عمران: ١٦٩] {فَرِحِينَ بِمَا آتَاهُمُ اللَّهُ مِنْ فَضْلِهِ} [آل عمران: ١٧٠] وَلَا خِلَافَ بَيْنَ مُسْلِمَيْنِ فِي أَنَّ الْأَنْبِيَاءَ - عَلَيْهِمُ السَّلَامُ - أَرْفَعُ قَدْرًا وَدَرَجَةً وَأَتَمُّ فَضِيلَةً عِنْدَ اللَّهِ عَزَّ وَجَلَّ وَأَعْلَى كَرَامَةً مِنْ كُلِّ مَنْ دُونَهُمْ، وَمَنْ خَالَفَ فِي هَذَا فَلَيْسَ مُسْلِمًا.

L2361 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Muhammad ibn Isa narrated to us: Ibrahim ibn Muhammad narrated to us: Muslim ibn al-Hajjaj narrated to us: Abdullah ibn Humaid informed us: Abd al-Razzaq narrated to us: Ma'mar narrated from al-Zuhri from Salim from Ibn Umar, who said: The Prophet—peace and blessings of Allah be upon him—said: "When a man dies, his seat is shown to him in the morning and evening. If he is among the people of Paradise, then it is Paradise; and if he is among the people of the Fire, then it is the Fire. Then it is said to him: 'This is your seat to which you will be sent on the Day of Resurrection.'"[52]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا مُحَمَّدُ بْنُ عِيسَى ثنا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا عَبْدُ بْنُ حُمَيْدٍ أَخْبَرَنَا عَبْدُ الرَّزَّاقِ ثنا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ سَالِمٍ عَنِ ابْنِ عُمَرَ قَالَ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا مَاتَ الرَّجُلُ عُرِضَ عَلَيْهِ مَقْعَدُهُ بِالْغَدَاةِ وَالْعَشِيِّ، إِنْ كَانَ مِنْ أَهْلِ الْجَنَّةِ فَالْجَنَّةُ، وَإِنْ كَانَ مِنْ أَهْلِ النَّارِ فَالنَّارُ، ثُمَّ يُقَالُ لَهُ: هَذَا مَقْعَدُكَ الَّذِي تُبْعَثُ إِلَيْهِ يَوْمَ الْقِيَامَةِ» .

L2362 This hadith indicates that souls are sensitive, knowledgeable, and discerning after separating from their bodies. As for those who claim that souls are

فَفِي هَذَا الْحَدِيثِ أَنَّ الْأَرْوَاحَ حَسَّاسَةٌ عَالِمَةٌ مُمَيِّزَةٌ بَعْدَ فِرَاقِهَا الْأَجْسَادَ. وَأَمَّا مَنْ زَعَمَ أَنَّ الْأَرْوَاحَ تُنْقَلُ إِلَى أَجْسَادٍ أُخَرَ فَهُوَ قَوْلُ أَصْحَابِ التَّنَاسُخِ، وَهُوَ كُفْرٌ عِنْدَ جَمِيعِ أَهْلِ الْإِسْلَامِ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[51] **Qur'an references (L2360):** Qur'an 2:154 (Al-Baqarah); Qur'an 3:169 (Ali 'Imran); Qur'an 3:170 (Ali 'Imran).

[52] **Hadith references (L2361):** Sahih Muslim 2866b.

transferred to other bodies, this is the doctrine of the proponents of tanāsukh (transmigration), which is considered disbelief by all people of Islam. And success is by Allah, the Most High.

The issue of the cessation of revelation upon the death of the Prophet.

L2363–2364

L2365 Issue: That revelation has ceased since the death of the Prophet (peace and blessings of Allah be upon him). The proof of this is that revelation is only sent to a prophet, and the Almighty has said: *"Muhammad is not the father of any man among you, but he is the Messenger of Allah and the Seal of the Prophets"* [al-Ahzab 33:40].[53]

The matter of the religion has been completed; thus, nothing is to be added to it, subtracted from it, or altered.

L2366

L2367 45 - Issue: The religion has been perfected; nothing is to be added to it, diminished from it, or altered. Allah the Exalted said: "This day I have perfected for you your religion" [Al-Mā'idah 5:3], and He the Exalted said: "There is no alteration of the words of Allah" [Yūnus 10:64]. Diminishment and addition constitute alteration.[54]

Issue: The Messenger of Allah conveyed the religion in full, just as Allah commanded him.

L2368

L2369 46. Issue: The Messenger of Allah—peace and blessings of Allah be upon him—has conveyed the religion in its entirety and clarified all of it comprehensively, just as Allah the Exalted commanded him. The Exalted said: {And indeed, you guide to a straight path} [al-Shūrā 42:52], {the path of Allah} [al-Shūrā 42:53], and He the Exalted said: {to clarify to people what has been revealed to them} [al-Naḥl 16:44].[55]

The proof of Allah has been established for everyone

L2370

[مَسْأَلَة انْقِطَاع الوحي بموت النَّبِيّ]

مَسْأَلَةٌ: وَأَنَّ الْوَحْيَ قَدْ انْقَطَعَ مُذْ مَاتَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: بُرْهَانُ ذَلِكَ أَنَّ الْوَحْيَ لَا يَكُونُ إِلَّا إِلَى نَبِيٍّ، وَقَدْ قَالَ عَزَّ وَجَلَّ: {مَا كَانَ مُحَمَّدٌ أَبَا أَحَدٍ مِنْ رِجَالِكُمْ وَلَكِنْ رَسُولَ اللَّهِ وَخَاتَمَ النَّبِيِّينَ} [الأحزاب: ٤٠] .

[مَسْأَلَة الدِّين تَمَّ فَلَا يزاد فِيهِ وَلَا ينْقُص مِنْهُ وَلَا يبدل]

٤٥ - مَسْأَلَةٌ: وَالدِّينُ قَدْ تَمَّ فَلَا يُزَادُ فِيهِ وَلَا يُنْقَصُ مِنْهُ وَلَا يُبَدَّلُ. قَالَ تَعَالَى: {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] وَقَالَ تَعَالَى: {لا تَبْدِيلَ لِكَلِمَاتِ اللَّهِ} [يونس: ٦٤] وَالنَّقْصُ وَالزِّيَادَةُ تَبْدِيلٌ.

[مَسْأَلَة بلغ رَسُول اللَّه الدِّين كله كَمَا أمره اللَّه]

٤٦ - مَسْأَلَةٌ: قَدْ بَلَّغَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الدِّينَ كُلَّهُ وَبَيَّنَ جَمِيعَهُ كَمَا أَمَرَهُ اللَّهُ تَعَالَى: قَالَ تَعَالَى {وَإِنَّكَ لَتَهْدِي إِلَى صِرَاطٍ مُسْتَقِيمٍ} [الشورى: ٥٢] {صِرَاطِ اللَّهِ} [الشورى: ٥٣] وَقَالَ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] .

[مَسْأَلَة حَجَّة اللَّه قَدْ قامت لِكُلِّ مِنْ بلغته النذارة]

[53] **Qur'an references (L2365):** Qur'an 33:40 (Al-Ahzab).

[54] **Qur'an references (L2367):** Qur'an 5:3 (Al-Ma'idah); Qur'an 10:64 (Yunus).

[55] **Qur'an references (L2369):** Qur'an 42:52 (Ash-Shuraa); Qur'an 16:44 (An-Nahl); Qur'an 42:53 (Ash-Shuraa).

whom the warning has reached.

L2371 47. Issue: The proof of Allah, the Exalted, has indeed been established and become clear to every person reached by the warning—whether believer or disbeliever, righteous or wicked. Allah, the Exalted, said: "There is no compulsion in religion. The right course has become distinctly clear from error" (Surah Al-Baqarah 2:256). And He, the Exalted, said: "So that whoever perishes does so by clear proof, and whoever lives does so by clear proof" (Surah Al-Anfal 8:42).[56]

٤٧ - مَسْأَلَةٌ: وَحُجَّةُ اللهِ تَعَالَى قَدْ قَامَتْ وَاسْتَبَانَتْ لِكُلِّ مَنْ بَلَغَتْهُ النِّذَارَةُ مِنْ مُؤْمِنٍ وَكَافِرٍ وَبَرٍّ وَفَاجِرٍ. قَالَ اللَّهُ عَزَّ وَجَلَّ: {لا إِكْرَاهَ فِي الدِّينِ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ} [البقرة: ٢٥٦] وَقَالَ تَعَالَى: {لِيَهْلِكَ مَنْ هَلَكَ عَنْ بَيِّنَةٍ وَيَحْيَا مَنْ حَيَّ عَنْ بَيِّنَةٍ} [الأنفال: ٤٢] .

[مَسْأَلَة الْأَمْر بِالْمَعْرُوفِ وَالنَّهْي عَنْ الْمُنْكَر فرضان كُلّ عَلَى حسب الطاقة]

L2372 **Enjoining good and forbidding evil are two obligations, each applied according to capability.**

L2373–2375 48 - Issue: Enjoining good and forbidding evil are two obligatory duties incumbent upon everyone according to their capability: by hand. Whoever is unable, then with their tongue. Whoever is unable, then with their heart, and that is the weakest level of faith. There is nothing of faith beyond that. Allah Almighty said: "Let there be among you a community calling to good, enjoining what is right and forbidding what is wrong, and those are the successful." [Āl ʿImrān: 104] And He said: "If two factions of believers fight each other, then reconcile between them; but if one of them transgresses against the other, then fight the transgressing faction until it returns to the command of Allah." [Al-Ḥujurāt: 9]

Abdullāh ibn Yūsuf narrated to us: Aḥmad ibn Fatḥ narrated to us: ʿAbd al-Wahhāb ibn ʿĪsā narrated to us: Aḥmad ibn Muḥammad narrated to us: Aḥmad ibn ʿAlī narrated to us: Muslim ibn al-Ḥajjāj narrated to us: Abū Bakr ibn Abī Shaybah and Muḥammad ibn al-Muthannā. Ibn Abī Shaybah said: Wakīʿ narrated from Sufyān al-Thawrī. Ibn al-Muthannā said: Muḥammad ibn Jaʿfar narrated to us: Shuʿbah narrated to us. Then Sufyān and Shuʿbah agreed upon the narration, both narrating from Qays ibn Muslim from Ṭāriq ibn Shihāb, who said: Abū Saʿīd al-Khudrī said: I heard the Messenger of Allah—peace and blessings be upon him—say: "Whoever among you sees..." If he encounters an evil, let him change it with his hand; if he is unable, then

٤٨ - مَسْأَلَةٌ: وَالْأَمْرُ بِالْمَعْرُوفِ وَالنَّهْيُ عَنْ الْمُنْكَرِ فَرْضَانِ عَلَى كُلِّ أَحَدٍ - عَلَى قَدْرِ طَاقَتِهِ - بِالْيَدِ، فَمَنْ لَمْ يَقْدِرْ فَبِلِسَانِهِ، فَمَنْ لَمْ يَقْدِرْ فَبِقَلْبِهِ، وَذَلِكَ أَضْعَفُ الْإِيمَانِ لَيْسَ وَرَاءَ ذَلِكَ مِنْ الْإِيمَانِ شَيْءٌ. قَالَ عَزَّ وَجَلَّ: {وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَأُولَئِكَ هُمُ الْمُفْلِحُونَ} [آل عمران: ١٠٤] وَقَالَ تَعَالَى: {وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَى فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ} [الحجرات: ٩] . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَمُحَمَّدُ بْنُ الْمُثَنَّى قَالَ ابْنُ أَبِي شَيْبَةَ ثنا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَقَالَ ابْنُ الْمُثَنَّى ثنا مُحَمَّدُ بْنُ جَعْفَرٍ ثنا شُعْبَةُ، ثُمَّ اتَّفَقَ سُفْيَانُ وَشُعْبَةُ، كِلَاهُمَا عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ قَالَ: قَالَ أَبُو سَعِيدٍ الْخُدْرِيِّ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ، فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ، فَإِنْ لَمْ يَسْتَطِعْ فَبِقَلْبِهِ، وَذَلِكَ أَضْعَفُ الْإِيمَانِ» . وَبِهِ إِلَى مُسْلِمٍ

[56] **Qur'an references (L2371):** Qur'an 2:256 (Al-Baqarah); Qur'an 8:42 (Al-Anfal).

with his tongue; if he is unable, then with his heart - and that is the weakest degree of faith. And by this chain to Muslim: Abd ibn Humaid narrated to us, Ya'qub ibn Ibrahim ibn Sa'd narrated to us, my father narrated from Salih ibn Kaysan from al-Harith - who is Ibn al-Fudayl al-Khitmi - from Ja'far ibn Abd Allah ibn Abd al-Hakam from Abd al-Rahman ibn al-Miswar ibn Makhramah from Abu Rafi' - the freed slave of Allah's Messenger (peace and blessings be upon him) - from Abdullah ibn Mas'ud that Allah's Messenger (peace and blessings be upon him) said: "There is no prophet whom Allah sent to a nation before me except that he had among his people devoted apostles and companions who upheld his Sunnah and followed his command. Then after them came degenerate successors who said what they did not practice and practiced what they were not commanded. Whoever struggles against them with his hand is a believer; whoever struggles against them with his tongue is a believer; whoever struggles against them with his heart is a believer - and beyond that there is not a mustard seed's weight of faith." Ali said: "No Muslim has disputed that the two mentioned verses are definitive and not abrogated. Thus, it is confirmed that whatever contradicts them or contradicts the hadiths sharing their meaning is undoubtedly what has been abrogated."[57][58]

A case of legal incapacity due to culpable ignorance to comprehend matters of religion.

49 - Issue: Whoever is unable due to ignorance or lack of understanding to comprehend all this must believe in his heart and declare with his tongue (according to his capability after it has been explained to him): "There is no deity but Allah, Muhammad is the Messenger of Allah. All he brought is truth, and every religion besides it is false." Narrated to us by 'Abdullāh ibn Yūsuf via Aḥmad ibn Fatḥ, via 'Abd al-Wahhāb ibn 'Īsā, via Aḥmad ibn Muḥammad, via Aḥmad ibn 'Alī, via Muslim ibn al-Ḥajjāj, via Umayyah ibn Bisṭām, via Yazīd ibn Zurai', via Rawḥ, via al-'Alā' ibn 'Abd al-Raḥmān ibn Ya'qūb, via his father, via Abū Hurayrah, that the Messenger of Allah—peace

[57] **Hadith references (L2373):** Sahih Muslim 49a; Riyad as-Salihin 184; Sahih Muslim 50a; Mishkat al-Masabih 157.

[58] **Qur'an references (L2373):** Qur'an 3:104 (Ali 'Imran); Qur'an 49:9 (Al-Hujurat).

حَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ ثنا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ ثنا أَبِي عَنْ صَالِحِ بْنِ كَيْسَانَ عَنْ الْحَارِثِ هُوَ ابْنُ الْفُضَيْلِ الْخِطْمِيُّ - عَنْ جَعْفَرِ بْنِ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْمِسْوَرِ بْنِ مَخْرَمَةَ عَنْ أَبِي رَافِعٍ هُوَ مَوْلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَا مِنْ نَبِيٍّ بَعَثَهُ اللَّهُ فِي أُمَّةٍ قَبْلِي إِلَّا كَانَ لَهُ مِنْ أُمَّتِهِ حَوَارِيُّونَ وَأَصْحَابٌ يَأْخُذُونَ بِسُنَّتِهِ وَيَقْتَدُونَ بِأَمْرِهِ، ثُمَّ إِنَّهَا تَخَلَّفَ مِنْ بَعْدِهِمْ خُلُوفٌ يَقُولُونَ مَا لَا يَفْعَلُونَ، وَيَفْعَلُونَ مَا لَا يُؤْمَرُونَ، فَمَنْ جَاهَدَهُمْ بِيَدِهِ فَهُوَ مُؤْمِنٌ، وَمَنْ جَاهَدَهُمْ بِلِسَانِهِ فَهُوَ مُؤْمِنٌ، وَمَنْ جَاهَدَهُمْ بِقَلْبِهِ، فَهُوَ مُؤْمِنٌ، وَلَيْسَ وَرَاءَ ذَلِكَ مِنْ الْإِيمَانِ حَبَّةُ خَرْدَلٍ» . قَالَ عَلِيٌّ: لَمْ يَخْتَلِفْ أَحَدٌ مِنْ الْمُسْلِمِينَ فِي أَنَّ الْآيَتَيْنِ الْمَذْكُورَتَيْنِ مُحْكَمَتَانِ غَيْرُ مَنْسُوخَتَيْنِ، فَصَحَّ أَنَّ مَا عَارَضَهُمَا أَوْ عَارَضَ الْأَحَادِيثَ الَّتِي فِي مَعْنَاهُمَا هُوَ الْمَنْسُوخُ بِلَا شَكٍّ.

[مَسْأَلَة عجز لجهله عَنْ معرفة أُمُور دِينه]

٤٩ - مَسْأَلَةٌ: فَمَنْ عَجَزَ لِجَهْلِهِ أَوْ عَتَمَتِهِ عَنْ مَعْرِفَةِ كُلِّ هَذَا فَلَا بُدَّ لَهُ أَنْ يَعْتَقِدَ بِقَلْبِهِ وَيَقُولَ بِلِسَانِهِ - حَسَبَ طَاقَتِهِ بَعْدَ أَنْ يُفَسَّرَ لَهُ - لَا إِلَهَ إِلَّا اللَّهُ مُحَمَّدٌ رَسُولُ اللَّهِ كُلُّ مَا جَاءَ بِهِ حَقٌّ وَكُلُّ دِينٍ سِوَاهُ بَاطِلٌ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أُمَيَّةُ بْنُ بِسْطَامٍ ثنا يَزِيدُ بْنُ زُرَيْعٍ ثنا رَوْحٌ عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ يَعْقُوبَ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ

and blessings be upon him—said: “I have been commanded to fight people until they testify there is no deity but Allah, believe in me and what I brought. When they do this, they have secured protection from me for their blood and wealth except by its legitimate right, and their reckoning rests with Allah.”[59]

L2378–2379 And the Exalted and Majestic said: *“Whoever seeks a religion other than Islam, it will never be accepted from him, and he will be among those who have lost in the Hereafter”* [Al Imran: 85].[60]

L2380 **The hierarchy of superiority among jinn and humans: the Messengers, then the Prophets, then the Companions, then the righteous.**

L2381–2383 50 - Question: After this, the best of humankind and jinn are the messengers, then the prophets—may the best of prayers and peace be upon them from Allah the Exalted, then from us—then the Companions of the Messenger of Allah (peace and blessings of Allah be upon him), then the righteous. Allah the Exalted said: “He makes the angels messengers” [35:1], and He said: “Allah chooses messengers from the angels and from humankind” [22:75]. There is no disagreement among anyone regarding this. The Almighty said: “Not equal among you are those who spent before the conquest and fought. Those are greater in rank than those who spent afterward and fought. And to all Allah has promised the ultimate reward” [57:10].

Abdullah ibn Rabi‘ narrated to us via Muhammad ibn Ishaq ibn al-Sulaym via Ibn al-A‘rabi via Abu Dawud al-Sijistani via Musaddad via Abu Mu‘awiyah—Muhammad ibn Khazim al-Darir—via al-A‘mash from Abu Salih from Abu Sa‘id al-Khudri, who said: The Messenger of Allah (peace and blessings of Allah be upon him) said: “Do not insult my Companions. By the One in Whose Hand is my soul, if any of you were to spend gold equal to the size of Mount Uhud, it would not equal a mudd spent by one of them, nor even half of it.”

[59] **Hadith references (L2377):** Sahih Muslim 21b.
[60] **Qur’an references (L2379):** Qur’an 3:85 (Ali ’Imran).

حَتَّى يَشْهَدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَيُؤْمِنُوا بِي وَبِمَا جِئْتُ بِهِ، فَإِذَا فَعَلُوا ذَلِكَ عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ إِلَّا بِحَقِّهَا وَحِسَابُهُمْ عَلَى اللَّهِ» .

وَقَالَ عَزَّ وَجَلَّ: {وَمَنْ يَبْتَغِ غَيْرَ الإِسْلامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ وَهُوَ فِي الآخِرَةِ مِنَ الْخَاسِرِينَ} [آل عمران: ٨٥] .

[مَسْأَلَة أَفْضَل الْجِنّ والإنس الرُّسُل ثُمَّ الْأَنْبِيَاء ثُمَّ الصَّحَابَة ثُمَّ الصالحون]

٥٠ - مَسْأَلَةٌ: وَبَعْدَ هَذَا فَإِنَّ أَفْضَلَ الْإِنْسِ وَالْجِنِّ الرُّسُلُ ثُمَّ الْأَنْبِيَاءُ - عَلَى جَمِيعِهِمْ مِنَ اللَّهِ تَعَالَى ثُمَّ مِنَّا أَفْضَلُ الصَّلَاةِ وَالسَّلَامِ - ثُمَّ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ الصَّالِحُونَ. قَالَ تَعَالَى: {جَاعِلِ الْمَلائِكَةِ رُسُلا} [فاطر: ١] وَقَالَ تَعَالَى: {اللَّهُ يَصْطَفِي مِنَ الْمَلائِكَةِ رُسُلا وَمِنَ النَّاسِ} [الحج: ٧٥] وَهَذَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ، وَقَالَ عَزَّ وَجَلَّ: {لا يَسْتَوِي مِنْكُمْ مَنْ أَنْفَقَ مِنْ قَبْلِ الْفَتْحِ وَقَاتَلَ أُولَئِكَ أَعْظَمُ دَرَجَةً مِنَ الَّذِينَ أَنْفَقُوا مِنْ بَعْدُ وَقَاتَلُوا وَكُلا وَعَدَ اللَّهُ الْحُسْنَى} [الحديد: ١٠] حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد السِّجِسْتَانِيُّ ثنا مُسَدَّدٌ ثنا أَبُو مُعَاوِيَةَ هُوَ مُحَمَّدُ بْنُ خَازِمٍ الضَّرِيرُ - ثنا الْأَعْمَشُ عَنْ أَبِي صَالِحٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَسُبُّوا أَصْحَابِي فَوَالَّذِي نَفْسِي بِيَدِهِ لَوْ أَنْفَقَ أَحَدُكُمْ مِثْلَ أُحُدٍ ذَهَبًا مَا بَلَغَ مُدَّ أَحَدِهِمْ وَلَا نَصِيفَهُ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد السِّجِسْتَانِيُّ ثنا عَمْرُو بْنُ عَوْنٍ وَمُسَدَّدٌ قَالَا: ثنا أَبُو عَوَانَةَ عَنْ قَتَادَةَ عَنْ زُرَارَةَ بْنِ أَوْفَى عَنْ عِمْرَانَ بْنِ

الْحُصَيْنِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «خَيْرُ أُمَّتِي الْقَرْنُ الَّذِينَ بُعِثْتُ فِيهِمْ ثُمَّ الَّذِينَ يَلُونَهُمْ ثُمَّ الَّذِينَ يَلُونَهُمْ، ثُمَّ يَظْهَرُ قَوْمٌ يَشْهَدُونَ وَلَا يُسْتَشْهَدُونَ، وَيَنْذِرُونَ وَلَا يُوفُونَ، وَيَخُونُونَ وَلَا يُؤْتَمَنُونَ وَيَفْشُو فِيهِمُ السِّمَنُ» هَكَذَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ " يَخْرُبُونَ " بِحَاءٍ غَيْرِ مَنْقُوطَةٍ وَرَاءٍ مَرْفُوعَةٍ وَبَاءٍ مَنْقُوطَةٍ وَاحِدَةٌ مِنْ أَسْفَلُ وَرُوِّينَاهُ مِنْ طُرُقٍ كَثِيرَةٍ " يَخُونُونَ " بِالْخَاءِ الْمَنْقُوطَةِ مِنْ فَوْقُ وَوَاوٍ بَعْدَهَا نُونٌ، وَمَنْ خَانَ فَقَدْ حَرَبَ.

Abdullah ibn Rabi‘ narrated to us via Umar ibn Abd al-Malik via Muhammad ibn Bakr via Abu Dawud al-Sijistani via Amr ibn Awn and Musaddad, both of whom said: Abu Awanah narrated from Qatadah from Zurarah ibn Awfa from Imran ibn al-Husayn, who said: The Messenger of Allah (peace and blessings of Allah be upon him) said: “The best of my nation are the generation among whom I was sent, then those who follow them, then those who follow them. Thereafter, people will emerge who testify without being asked to testify, vow without fulfilling their oaths, wage war but are not trusted, and obesity will become widespread among them.”

Abdullah ibn Rabi‘ narrated this to us with “يَخْرُبُونَ” written as an undotted ḥā’, a raised rā’, and a dotted bā’ beneath, and we have likewise narrated it. From many ways, “they betray” (يَخُونُونَ) is written with a *khā’* (خ) bearing a dot above it, followed by a *wāw* (و) and a *nūn* (ن). Whoever betrays has indeed made himself unlawful.[61][62]

[مَسْأَلَة الله خالق كُلّ شَيْء لَا خالق سواه]

The issue is that Allah is the Creator of all things; there is no creator besides Him.

٥١ - مَسْأَلَةٌ: وَأَنَّ اللَّهَ تَعَالَى خَالِقُ كُلِّ شَيْءٍ سِوَاهُ لَا خَالِقَ سِوَاهُ. قَالَ اللَّهُ عَزَّ وَجَلَّ {خَالِقُ كُلِّ شَيْءٍ} [الأنعام: ١٠٢] وَقَالَ تَعَالَى: {هَذَا خَلْقُ اللَّهِ فَأَرُونِي مَاذَا خَلَقَ الَّذِينَ مِنْ دُونِهِ} [لقمان: ١١] وَقَالَ تَعَالَى: {خَلَقَ السَّمَاوَاتِ وَالأَرْضَ وَمَا بَيْنَهُمَا} [الفرقان: ٥٩] .

51 - Legal Tenet: And that Allah, the Exalted, is the Creator of everything besides Him. There is no creator besides Him. Allah, the Exalted and Majestic, said: {Creator of all things} [al-Anʿām 6:102]. And He, the Exalted, said: {This is Allah’s creation. So show me what those besides Him have created} [Luqmān 31:11]. And He, the Exalted, said: {He created the heavens and the earth and what is between them} [al-Furqān 25:59].[63]

[مَسْأَلَة لَا يُشْبِه الله عَزَّ وَجَلَّ مِنْ خَلْقه شَيْء]

Jurisprudential Issue: Allah, the Mighty and Majestic, does not resemble anything from His creation.

٥٢ - مَسْأَلَةٌ: وَلَا يُشْبِهُ عَزَّ وَجَلَّ شَيْءٌ مِنْ خَلْقِهِ فِي شَيْءٍ مِنَ الْأَشْيَاءِ. قَالَ عَزَّ وَجَلَّ: {لَيْسَ كَمِثْلِهِ شَيْءٌ وَهُوَ السَّمِيعُ الْبَصِيرُ} [الشورى: ١١] وَقَالَ تَعَالَى: {وَلَمْ يَكُنْ لَهُ كُفُوًا أَحَدٌ} [الإخلاص: ٤] .

Issue 52: Nothing among His creation resembles Him—Exalted and Majestic is He—in any aspect whatsoever. He—Exalted and Majestic is He—said:

[61] **Hadith references (L2381):** Sunan Abi Dawud 4658; Sunan Abi Dawud 4657.

[62] **Qur’an references (L2381):** Qur’an 35:1 (Fatir); Qur’an 22:75 (Al-Hajj); Qur’an 57:10 (Al-Hadid).

[63] **Qur’an references (L2385):** Qur’an 31:11 (Luqman); Qur’an 25:59 (Al-Furqan); Qur’an 32:4 (As-Sajdah); Qur’an 6:102 (Al-An’am).

"There is nothing like unto Him, and He is the All-Hearing, the All-Seeing" [Ash-Shura 42:11]. And He—the Most High—said: "Nor has He any equal" [Al-Ikhlas 112:4].[64]

[مَسْأَلَة اعتقاد أَنْ اللَّه لَا فِي مَكَان وَلَا فِي زمان بَلْ هُوَ خالقهما]

The issue concerning the belief that Allah is neither in a place nor in time; rather, He is their Creator.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ مَسْأَلَةٌ: وَأَنَّهُ تَعَالَى لَا فِي مَكَان وَلَا فِي زَمَانٍ، بَلْ هُوَ تَعَالَى خَالِقُ الْأَزْمِنَةِ وَالْأَمْكِنَةِ. قَالَ تَعَالَى: {وَخَلَقَ كُلَّ شَيْءٍ فَقَدَّرَهُ تَقْدِيرًا} [الفرقان: ٢] وَقَالَ تَعَالَى {خَلَقَ السَّمَاوَاتِ وَالأَرْضَ وَمَا بَيْنَهُمَا} [الفرقان: ٥٩] وَالزَّمَانُ وَالْمَكَانُ فَهُمَا مَخْلُوقَانِ، قَدْ كَانَ تَعَالَى دُونَهُمَا، وَالْمَكَانُ إِنَّمَا هُوَ لِلأَجْسَامِ، وَالزَّمَانُ إِنَّمَا هُوَ مُدَّةُ كُلِّ سَاكِنٍ أَوْ مُتَحَرِّكٍ أَوْ مَحْمُولٍ فِي سَاكِنٍ أَوْ مُتَحَرِّكٍ، وَكُلُّ هَذَا مُبْعَدٌ عَنْ اللَّهِ عَزَّ وَجَلَّ.

In the name of Allah, the All-Merciful, the Especially Merciful. A doctrinal point: Verily, He, the Exalted, is neither in place nor in time, rather He, the Exalted, is the Creator of times and places. He, the Exalted, said: "And He created all things and ordained them with precise ordainment" [25:2]. And He, the Exalted, said: "He created the heavens and the earth and what is between them" [25:59]. Time and place are both created, for He, the Exalted, transcends them. Place pertains specifically to physical bodies, and time is the measure of every stationary entity, moving object, or that which is borne within a stationary or moving entity. All of this is far removed from Allah, the Mighty and Majestic.[65]

[مَسْأَلَة لَا يَحِلّ لِأَحَدٍ أَنْ يسمي اللَّه بِغَيْرِ مَا سَمَّى بِهِ نَفْسه]

Legal Question: It is impermissible for anyone to name Allah with names other than those He has named Himself with.

٥٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يُسَمِّيَ اللَّهَ عَزَّ وَجَلَّ بِغَيْرِ مَا سَمَّى بِهِ نَفْسَهُ وَلَا أَنْ يَصِفَهُ بِغَيْرِ مَا أَخْبَرَ بِهِ تَعَالَى عَنْ نَفْسِهِ. قَالَ عَزَّ وَجَلَّ: {وَلِلَّهِ الأَسْمَاءُ الْحُسْنَى فَادْعُوهُ بِهَا وَذَرُوا الَّذِينَ يُلْحِدُونَ فِي أَسْمَائِهِ} [الأعراف: ١٨٠] فَمَنَعَ تَعَالَى أَنْ يُسَمَّى إِلَّا بِأَسْمَائِهِ الْحُسْنَى وَأَخْبَرَ أَنَّ مَنْ سَمَّاهُ بِغَيْرِهَا فَقَدْ أَلْحَدَ.

Issue 54: It is impermissible for anyone to name Allah, the Mighty and Majestic, with other than what He has named Himself, nor to describe Him with other than what the Exalted has informed about Himself. He, the Mighty and Majestic, said: "To Allah belong the most beautiful names, so call upon Him by them; shun those who distort His names." [Al-Aʿrāf 7:180] Exalted is He; He has forbidden that He be named except by His Most Beautiful Names, and He has declared that whoever names Him with other than them has indeed deviated.[66]

وَالْأَسْمَاءُ الْحُسْنَى بِالْأَلِفِ وَاللَّامِ لَا تَكُونُ إِلَّا مَعْهُودَةً وَلَا مَعْرُوفٌ فِي ذَلِكَ إِلَّا مَا نَصَّ اللَّهُ تَعَالَى عَلَيْهِ، وَمَنْ ادَّعَى زِيَادَةً عَلَى ذَلِكَ كُلِّفَ الْبُرْهَانَ عَلَى مَا ادَّعَى وَلَا

The Most Beautiful Names prefixed with the definite article *al-* are only

[64] **Qur'an references (L2387):** Qur'an 42:11 (Ash-Shuraa); Qur'an 112:4 (Al-Ikhlas).

[65] **Qur'an references (L2389):** Qur'an 25:2 (Al-Furqan); Qur'an 25:59 (Al-Furqan); Qur'an 32:4 (As-Sajdah).

[66] **Qur'an references (L2391):** Qur'an 7:180 (Al-A'raf).

definite by context. Nothing is acknowledged in that matter except what Allah, the Exalted, has explicitly specified. Whoever claims additions beyond this is obligated to produce evidence for their assertion, but they have no means to do so. Those without evidence are liars in their statements and claims. Allah, the Mighty and Majestic, said: {Say, "Produce your proof if you are truthful"} [Al-Baqarah: 111].[67]

It is a doctrinal principle that Allah has ninety-nine names; whoever adds to them has indeed deviated.

55. Issue: And that He, the Almighty, has ninety-nine names—a hundred minus one—and these are His Most Beautiful Names. Whoever adds anything of their own invention has deviated in His names. These are the names mentioned in the Quran and the Sunnah. Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath reported to us; Abd al-Wahhab ibn Isa reported to us; Ahmad ibn Muhammad reported to us; Ahmad ibn Ali reported to us; Muslim ibn al-Hajjaj reported to us; Muhammad ibn Rafi' reported to us; Abd al-Razzaq reported to us, from Ma'mar, from Ayyub and Hammam ibn Munabbih. Ayyub reported from Ibn Sirin, from Abu Hurairah, while Hammam reported directly from Abu Hurairah—then their narrations concur—from the Messenger of Allah, peace and blessings be upon him, who said: "Allah has ninety-nine names—a hundred minus one. Whoever enumerates them will enter Paradise." Hammam added in his narration: "He is Odd (in number) and loves the odd." It has been established as sound that there are precisely ninety-nine names, and it is not permissible for anyone to claim that He has an additional name, for the Prophet, peace and blessings be upon him, said: "A hundred minus one." If it were permissible for there to be an additional name for Him, the Exalted... If that were the case, it would be one hundred names. If this were true, his statement - peace be upon him - "one hundred except one" would be falsehood, and whoever permits this is a disbeliever. Allah says: "He is Allah, besides whom there is no deity, the Sovereign, the Holy, the Source of Peace, the Guardian of Faith, the Guardian, the Almighty, the Irresistible, the Supreme. Glory be to Allah above what they associate"

[67] **Qur'an references (L2394):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

سَبِيلَ لَهُ إِلَيْهِ، وَمَنْ لَا بُرْهَانَ لَهُ فَهُوَ كَاذِبٌ فِي قَوْلِهِ وَدَعْوَاهُ. قَالَ عَزَّ وَجَلَّ: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] .

[مَسْأَلَة لِلَّهِ تِسْعًا وتسعين اسما مِنْ زَادَ عَلَيْهَا فَقَدْ أَلحد]

٥٥ - مَسْأَلَةٌ: وَأَنَّ لَهُ عَزَّ وَجَلَّ تِسْعَةً وَتِسْعِينَ اسْمًا مِائَةً غَيْرَ وَاحِدٍ، وَهِيَ أَسْمَاؤُهُ الْحُسْنَى، مَنْ زَادَ شَيْئًا مِنْ عِنْدِ نَفْسِهِ فَقَدْ أَلْحَدَ فِي أَسْمَائِهِ، وَهِيَ الْأَسْمَاءُ الْمَذْكُورَةُ فِي الْقُرْآنِ وَالسُّنَّةِ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ رَافِعٍ ثنا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ أَيُّوبَ وَهَمَّامِ بْنِ مُنَبِّهٍ، قَالَ أَيُّوبُ عَنِ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ، وَقَالَ هَمَّامٌ عَنْ أَبِي هُرَيْرَةَ - ثُمَّ اتَّفَقَا - عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إِنَّ لِلَّهِ تِسْعَةً وَتِسْعِينَ اسْمًا، مِائَةً إِلَّا وَاحِدًا، مَنْ أَحْصَاهَا دَخَلَ الْجَنَّةَ زَادَ هَمَّامٌ فِي حَدِيثِهِ إِنَّهُ وِتْرٌ يُحِبُّ الْوِتْرَ» . وَقَدْ صَحَّ أَنَّهَا تِسْعَةٌ وَتِسْعُونَ اسْمًا فَقَطْ، وَلَا يَحِلُّ لِأَحَدٍ أَنْ يُجِيزَ أَنْ يَكُونَ لَهُ اسْمٌ زَائِدٌ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: «مِائَةً غَيْرَ وَاحِدٍ» فَلَوْ جَازَ أَنْ يَكُونَ لَهُ تَعَالَى اسْمٌ زَائِدٌ لَكَانَتْ مِائَةَ اسْمٍ، وَلَوْ كَانَ هَذَا لَكَانَ قَوْلُهُ - عَلَيْهِ السَّلَامُ - «مِائَةً غَيْرَ وَاحِدٍ» كَذِبًا وَمَنْ أَجَازَ هَذَا فَهُوَ كَافِرٌ وَقَالَ تَعَالَى: {هُوَ اللَّهُ الَّذِي لا إِلَهَ إِلا هُوَ الْمَلِكُ الْقُدُّوسُ السَّلامُ الْمُؤْمِنُ الْمُهَيْمِنُ الْعَزِيزُ الْجَبَّارُ الْمُتَكَبِّرُ سُبْحَانَ اللَّهِ عَمَّا يُشْرِكُونَ} [الحشر: ٢٣] {هُوَ اللَّهُ الْخَالِقُ الْبَارِئُ الْمُصَوِّرُ لَهُ الأَسْمَاءُ الْحُسْنَى} [الحشر: ٢٤] وَقَدْ تَقَصَّيْنَا كَثِيرًا مِنْهَا بِالْأَسَانِيدِ الصِّحَاحِ فِي كِتَابِ " الْإِيصَالِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

(59:23). “He is Allah, the Creator, the Originator, the Fashioner. To Him belong the Most Beautiful Names” (59:24). We have thoroughly detailed many of these names with authentic chains of transmission in the book *Al-Iṣāl*. And praise be to Allah, Lord of the Worlds.[68][69]

L2399 **It is an issue of jurisprudence that no one may derive a name for Allah, the Exalted, which He has not ascribed to Himself.**

L2400 56. Issue: It is not permissible for anyone to derive a name for Allah, the Exalted, which He has not named Himself. The proof of this is that He, the Exalted, said: “By the sky and He who built it” [Ash-Shams 91:5], and “I am devising a plan” [At-Tariq 86:16], and He, the Exalted, said: “The best of plotters” [Al-Imran 3:54], “They plotted, and Allah plotted” [Al-Imran 3:54]. It is not permissible for anyone to name Him “the Builder,” “the Determined Schemer,” “the Plotter,” “the Tyrant,” or “the Arrogant,” neither on the premise that He requites such acts nor in any manner at all. Whoever claims otherwise has deviated in the names of Allah, the Exalted, contradicted himself, and uttered falsehood against Allah, the Exalted, without proof. And success is by Allah, the Exalted.[70]

L2401 **The issue that Allah descends every night to the lowest heaven.**

L2402–2404 57 - Issue: That Allah the Exalted descends every night to the lowest heaven, and this is an act He performs without movement or displacement. The proof is what Abdullah ibn Yusuf narrated to us—Ahmad ibn Fath narrated to us—Abdul Wahhab ibn Isa narrated to us—Ahmad ibn Muhammad narrated to us—Ahmad ibn Ali narrated to us—Muslim ibn al-Hajjaj narrated to us—Yahya ibn Yahya, who stated: I recited to Malik ibn Anas, from Ibn Shihab,

[68] **Hadith references (L2396):** Sahih al-Bukhari 2736; Sahih al-Bukhari 7392; Sunan Ibn Majah 3860.

[69] **Qur’an references (L2396):** Qur’an 59:23 (Al-Hashr); Qur’an 59:24 (Al-Hashr); Qur’an 37:182 (As-Saffat).

[70] **Qur’an references (L2400):** Qur’an 91:5 (Ash-Shams); Qur’an 86:16 (At-Tariq); Qur’an 3:54 (Ali ’Imran).

[مَسْأَلَةٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يَشْتَقَّ لِلَّهِ تَعَالَى اسْمًا لَمْ يُسَمِّ بِهِ نَفْسَهُ]

٥٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَشْتَقَّ لِلَّهِ تَعَالَى اسْمًا لَمْ يُسَمِّ بِهِ نَفْسَهُ. بُرْهَانُ ذَلِكَ أَنَّهُ تَعَالَى قَالَ: {وَالسَّمَاءِ وَمَا بَنَاهَا} [الشمس: ٥] وَقَالَ: {وَأَكِيدُ كَيْدًا} [الطارق: ١٦] وَقَالَ تَعَالَى: {خَيْرُ الْمَاكِرِينَ} [آل عمران: ٥٤] {وَمَكَرُوا وَمَكَرَ اللَّهُ} [آل عمران: ٥٤] وَلَا يَحِلُّ لِأَحَدٍ أَنْ يُسَمِّيَهُ الْبَنَّاءَ وَلَا الْكَيَّادَ وَلَا الْمَاكِرَ وَلَا الْمُتَجَبِّرَ وَلَا الْمُسْتَكْبِرَ، لَا عَلَى أَنَّهُ الْمُجَازِي بِذَلِكَ وَلَا عَلَى وَجْهٍ أَصْلًا، وَمَنْ ادَّعَى غَيْرَ هَذَا فَقَدْ أَلْحَدَ فِي أَسْمَائِهِ تَعَالَى وَتَنَاقَضَ وَقَالَ عَلَى اللَّهِ تَعَالَى الْكَذِبَ وَمَا لَا بُرْهَانَ لَهُ بِهِ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ اللَّهِ يَتَنَزَّلُ كُلَّ لَيْلَةٍ إِلَى سَمَاءِ الدُّنْيَا]

٥٧ - مَسْأَلَةٌ: وَأَنَّ اللَّهَ تَعَالَى يَتَنَزَّلُ كُلَّ لَيْلَةٍ إِلَى سَمَاءِ الدُّنْيَا، وَهُوَ فِعْلٌ يَفْعَلُهُ عَزَّ وَجَلَّ لَيْسَ حَرَكَةً وَلَا نَقْلَةً. بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى قَرَأْت عَلَى مَالِكِ بْنِ أَنَسٍ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي عَبْدِ اللَّهِ الْأَغَرِّ وَعَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يَتَنَزَّلُ اللَّهُ كُلَّ لَيْلَةٍ إِلَى سَمَاءِ الدُّنْيَا حِينَ يَبْقَى ثُلُثُ اللَّيْلِ الْآخِرِ فَيَقُولُ: مَنْ يَدْعُونِي

فَأَسْتَجِيبَ لَهُ وَمَنْ يَسْأَلُنِي فَأُعْطِيَهُ وَمَنْ يَسْتَغْفِرُنِي فَأَغْفِرَ لَهُ» قَالَ مُسْلِمٌ وَحَدَّثَنَاهُ قُتَيْبَةُ بْنُ سَعِيدٍ ثنا يَعْقُوبُ - هُوَ ابْنُ عَبْدِ الرَّحْمَنِ الْقَارِيّ - عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «يَنْزِلُ اللَّهُ إِلَى سَمَاءِ الدُّنْيَا كُلَّ لَيْلَةٍ حِينَ يَمْضِي ثُلُثُ اللَّيْلِ الْأَوَّلِ: فَيَقُولُ أَنَا الْمَلِكُ أَنَا الْمَلِكُ مَنْ ذَا الَّذِي يَدْعُونِي فَأَسْتَجِيبَ لَهُ، مَنْ ذَا الَّذِي يَسْأَلُنِي فَأُعْطِيَهُ، مَنْ ذَا الَّذِي يَسْتَغْفِرُنِي فَأَغْفِرَ لَهُ، فَلَا يَزَالُ كَذَلِكَ حَتَّى يُضِيءَ الْفَجْرُ» قَالَ مُسْلِمٌ وَحَدَّثَنَاهُ إِسْحَاقُ بْنُ مَنْصُورٍ ثنا أَبُو الْمُغِيرَةِ ثنا الْأَوْزَاعِيُّ ثنا يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - ثنا أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ ثنا أَبُو هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا مَضَى شَطْرُ اللَّيْلِ أَوْ ثُلُثَاهُ يَنْزِلُ اللَّهُ تَبَارَكَ وَتَعَالَى إِلَى السَّمَاءِ الدُّنْيَا فَيَقُولُ: هَلْ مِنْ سَائِلٍ يُعْطَى، هَلْ مِنْ دَاعٍ يُسْتَجَابُ لَهُ، هَلْ مِنْ مُسْتَغْفِرٍ يُغْفَرُ لَهُ، حَتَّى يَنْفَجِرَ الصُّبْحُ» . قَالَ عَلِيٌّ: فَالرِّوَايَةُ عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ مِنْ طَرِيقِ الزُّهْرِيِّ " إِذَا بَقِيَ ثُلُثُ اللَّيْلِ الْآخِرُ " وَمِنْ طَرِيقِ يَحْيَى بْنِ أَبِي كَثِيرٍ " إِذَا مَضَى شَطْرُ اللَّيْلِ أَوْ ثُلُثَاهُ " وَمِنْ طَرِيقِ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ " إِذَا مَضَى ثُلُثُ اللَّيْلِ الْأَوَّلُ إِلَى أَنْ يُضِيءَ الْفَجْرُ " وَهَكَذَا رَوَاهُ ابْنَا أَبِي شَيْبَةَ وَابْنُ رَاهْوَيْهِ عَنْ جَرِيرٍ عَنْ مَنْصُورٍ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ الْأَغَرِّ عَنْ أَبِي هُرَيْرَةَ وَأَبِي سَعِيدٍ الْخُدْرِيِّ، وَأَوْقَاتُ اللَّيْلِ مُخْتَلِفَةٌ بِاخْتِلَافِ تَقَدُّمِ غُرُوبِ الشَّمْسِ عَنْ أَهْلِ الْمَشْرِقِ وَأَهْلِ الْمَغْرِبِ، فَصَحَّ أَنَّهُ فِعْلٌ يَفْعَلُهُ الْبَارِي عَزَّ وَجَلَّ مِنْ قَبُولِ الدُّعَاءِ فِي هَذِهِ الْأَوْقَاتِ، لَا حَرَكَةَ، وَالْحَرَكَةُ وَالنَّقْلَةُ مِنْ صِفَاتِ الْمَخْلُوقِينَ، حَاشَا اللَّهِ تَعَالَى مِنْهَا.

from Abu Abdullah al-Agharr and Abu Salamah ibn Abdur-Rahman, from Abu Hurairah, that the Messenger of Allah—peace and blessings be upon him—said: “Allah descends every night to the lowest heaven when the final third of the night remains, saying: ’Who supplicates to Me that I may answer him? Who asks of Me that I may give him? Who seeks My forgiveness that I may forgive him?”’ Muslim added: Qutaybah ibn Sa’id narrated to us—Ya’qub (Ibn Abdur-Rahman al-Qari)—from Suhayl ibn Abi Salih—from his father—from Abu Hurairah—that the Messenger of Allah—peace and blessings be upon him—said: “Allah descends to the lowest heaven every night when the first third of the night passes, saying: ’I am the Sovereign, I am the Sovereign. Who is the one who supplicates to Me that I may answer him? Who is the one who asks of Me that I may give him? Who is the one who seeks My forgiveness...”’ He said: “I will grant him. Then who is there that seeks My forgiveness so I may forgive him?” This continues thus until dawn breaks.“ Muslim said: Ishaq ibn Mansur reported to us, Abu Al-Mughirah reported to us, Al-Awza’i reported to us, Yahya—who is Ibn Abi Kathir—reported to us, Abu Salamah ibn Abd Al-Rahman reported to us, Abu Hurairah said: The Messenger of Allah—peace and blessings be upon him—said: ”When half the night or two-thirds of it has passed, Allah, the Blessed and Exalted, descends to the lowest heaven and says: ’Is there anyone asking, that I may grant him? Is there anyone supplicating, that I may answer him? Is there anyone seeking forgiveness, that I may forgive him?’ This continues until dawn breaks.“ Ali said: The narration from Abu Salamah from Abu Hurairah through Al-Zuhri’s chain states ”when the last third of the night remains,“ and through Yahya ibn Abi Kathir’s chain ”when half the night or two-thirds of it has passed,“ and through Abu Salih’s chain from Abu Hurairah ”when the first third of the night has passed until dawn breaks.“ Similarly, the two sons of Abu Shaybah and Ibn Rāhawayh reported it from Jarir from Mansur from Abu Ishaq Al-Sabi’i from Al-Aghar from Abu Hurairah and Abu Sa’id Al-Khudri. The timings of the night vary according to differences in the advancement of the sun’s setting relative to eastern and western inhabitants. Thus, it is established that this is an act performed by the Creator, Mighty and Majestic—accepting supplications during these

times. There is no movement, for movement and displacement are attributes of created beings. Allah, Exalted is He, is utterly transcendent above such.[71]

The issue of the Quran: the uncreated speech of Allah.

L2405

L2406–2408

58. Issue: The Quran is the speech of Allah, and His knowledge is uncreated. The Almighty said: “Had it not been for a word that preceded from your Lord, judgment would have been passed between them” (Yūnus 10:19). Thus, He—the Almighty—made known that His speech is His knowledge, and His exalted knowledge has always been uncreated. 59. Issue: It is what is inscribed in the Masahif, heard from the reciter, preserved in the hearts, and what Gabriel brought down upon the heart of Muḥammad (peace and blessings of Allah be upon him). All of this is the Book of Allah the Exalted and His speech—the Quran—in reality, not metaphor. Whoever asserts that anything of this is neither the Quran nor the speech of Allah the Exalted has disbelieved, for opposing Allah the Exalted, His Messenger (peace and blessings of Allah be upon him), and the consensus of the Muslim community. The Almighty said: “Grant him refuge until he hears the speech of Allah” (Al-Tawbah 9:6). He said: “A faction among them would listen to the speech of Allah, then distort it after comprehending it, knowingly” (Al-Baqarah 2:75). He said: “Rather, it is a glorious Quran. In a Preserved Tablet” (Al-Burūj 85:21-22). He said: “In a concealed Book. None touch it except the purified. A revelation from the Lord of all worlds” (Al-Wāqiʿah 56:78-80). And He said... Exalted is He: “Rather, it is clear verses in the breasts of those endowed with knowledge” [al-‘Ankabut 29:49]. And He said: “The Trustworthy Spirit brought it down with it” [al-Shuʿara’ 26:193] “upon your heart, that you may be among those who warn” [al-Shuʿara’ 26:194]. Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Ishaq narrated to us from Ibn al-Aʿrabi from Abu Dawud from al-Qaʿnabi from Malik from Nafiʿ from Abdullah ibn Umar, who said: “The Messenger of Allah (peace and blessings of Allah be upon him) prohibited traveling with the Quran to enemy territory.” It is impermissible for anyone to divert the speech of Allah, the Exalted, and the speech of His Messenger (peace and blessings of Allah be upon him) from its

[71] **Hadith references (L2402):** Sahih Muslim 758c.

[مَسْأَلَة الْقُرْآن كَلَام اللَّه غَيْر مَخْلُوق]

٥٨ - مَسْأَلَةٌ: وَالْقُرْآنُ كَلَامُ اللَّهِ وَعِلْمُهُ غَيْرُ مَخْلُوقٍ. قَالَ عَزَّ وَجَلَّ: {وَلَوْلا كَلِمَةٌ سَبَقَتْ مِنْ رَبِّكَ لَقُضِيَ بَيْنَهُمْ} [يونس: ١٩] فَأَخْبَرَ عَزَّ وَجَلَّ أَنَّ كَلَامَهُ هُوَ عِلْمُهُ، وَعِلْمُهُ تَعَالَى لَمْ يَزَلْ غَيْرَ مَخْلُوقٍ. ٥٩ - مَسْأَلَةٌ: وَهُوَ الْمَكْتُوبُ فِي الْمَصَاحِفِ وَالْمَسْمُوعُ مِنْ الْقَارِئِ وَالْمَحْفُوظُ فِي الصُّدُورِ، وَالَّذِي نَزَلَ بِهِ جِبْرِيلُ عَلَى قَلْبِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: كُلُّ ذَلِكَ كِتَابُ اللَّهِ تَعَالَى وَكَلَامُهُ الْقُرْآنُ حَقِيقَةً لَا مَجَازًا، مَنْ قَالَ فِي شَيْءٍ مِنْ هَذَا أَنَّهُ لَيْسَ هُوَ الْقُرْآنَ وَلَا هُوَ كَلَامُ اللَّهِ تَعَالَى فَقَدْ كَفَرَ، لِخِلَافِهِ اللَّهَ تَعَالَى وَرَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِجْمَاعَ أَهْلِ الْإِسْلَامِ. قَالَ عَزَّ وَجَلَّ: {فَأَجِرْهُ حَتَّى يَسْمَعَ كَلامَ اللَّهِ} [التوبة: ٦] وَقَالَ تَعَالَى: {وَقَدْ كَانَ فَرِيقٌ مِنْهُمْ يَسْمَعُونَ كَلامَ اللَّهِ ثُمَّ يُحَرِّفُونَهُ مِنْ بَعْدِ مَا عَقَلُوهُ وَهُمْ يَعْلَمُونَ} [البقرة: ٧٥] وَقَالَ تَعَالَى {بَلْ هُوَ قُرْآنٌ مَجِيدٌ} [البروج: ٢١] {فِي لَوْحٍ مَحْفُوظٍ} [البروج: ٢٢] وَقَالَ تَعَالَى: {فِي كِتَابٍ مَكْنُونٍ} [الواقعة: ٧٨] {لا يَمَسُّهُ إِلا الْمُطَهَّرُونَ} [الواقعة: ٧٩] {تَنْزِيلٌ مِنْ رَبِّ الْعَالَمِينَ} [الواقعة: ٨٠] وَقَالَ تَعَالَى: {بَلْ هُوَ آيَاتٌ بَيِّنَاتٌ فِي صُدُورِ الَّذِينَ أُوتُوا الْعِلْمَ} [العنكبوت: ٤٩] وَقَالَ تَعَالَى: {نَزَلَ بِهِ الرُّوحُ الأَمِينُ} [الشعراء: ١٩٣] {عَلَى قَلْبِكَ لِتَكُونَ مِنَ الْمُنْذِرِينَ} [الشعراء: ١٩٤] حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا الْقَعْنَبِيُّ عَنْ مَالِكٍ عَنْ نَافِعٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُسَافَرَ بِالْقُرْآنِ إِلَى أَرْضِ الْعَدُوِّ» وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَصْرِفَ

literal meaning to the metaphorical based on his false claim. And with Allah, the Exalted, is success.[7273]

L2409 **The issue is that God's knowledge is truly with all that has been or will be, including what is minute or hidden.**

L2410 60. Issue: The knowledge of Allah the Exalted is true. He, the Mighty and Majestic, has always been All-Knowing of everything that has been or will be, whether minute or significant. Nothing is hidden from Him. He, the Mighty and Majestic, said: "And He is All-Knowing of everything" [Al-Baqarah: 29]. This is a general statement from which nothing may be excluded. He, the Exalted, said: "He knows the secret and what is more hidden than the secret" [Ta-Ha: 7]. What is more hidden than the secret is that which has not yet occurred.[74]

L2411 **The doctrine that Allah's capability—the Almighty, the Majestic—and His strength are a reality. Nothing is beyond His capability.**

L2412–2416 61 - Issue: The capability and power of Allah—may He be exalted—are true. He is incapable of nothing, nor of anything the questioner asks about—be it impossibilities or other matters that will never exist at all. Allah said: _"Have they not seen that Allah, Who created them, is greater than them in strength?"_ (Surah Fussilat 41:15). Abd al-Rahman ibn Abd Allah ibn Khalid reported to us: Ibrahim ibn Ahmad al-Balkhī transmitted from al-Farbarī, from al-Bukhārī, from Ibrahim ibn al-Mundhir al-Hizāmī, from Maʿn ibn

[72]**Hadith references (L2406):** Sahih Muslim 1869a; Sunan Abi Dawud 2610; Riyad as-Salihin 1794.

[73]**Qur'an references (L2406):** Qur'an 10:19 (Yunus); Qur'an 11:110 (Hud); Qur'an 41:45 (Fussilat); Qur'an 9:6 (At-Tawbah); Qur'an 2:75 (Al-Baqarah); Qur'an 85:21 (Al-Buruj); Qur'an 85:22 (Al-Buruj); Qur'an 56:78 (Al-Waqi'ah); Qur'an 56:79 (Al-Waqi'ah); Qur'an 56:80 (Al-Waqi'ah); Qur'an 69:43 (Al-Haqqah); Qur'an 29:49 (Al-'Ankabut); Qur'an 26:193 (Ash-Shu'ara); Qur'an 26:194 (Ash-Shu'ara).

[74]**Qur'an references (L2410):** Qur'an 2:29 (Al-Baqarah); Qur'an 6:101 (Al-An'am); Qur'an 57:3 (Al-Hadid); Qur'an 20:7 (Taha).

كَلَامَ اللَّهِ تَعَالَى وَكَلَامَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى الْمَجَازِ عَنْ الْحَقِيقَةِ بِدَعْوَاهُ الْكَاذِبَةِ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة عِلْم اللَّه حَقّ بِكُلِّ مَا كَانَ أَوْ يَكُون مِمَّا دق أَوْ خفي]

٦٠ - مَسْأَلَةٌ: وَعِلْمُ اللَّهِ تَعَالَى حَقٌّ لَمْ يَزَلْ عَزَّ وَجَلَّ عَلِيمًا بِكُلِّ مَا كَانَ أَوْ يَكُونُ مِمَّا دَقَّ أَوْ جَلَّ لَا يَخْفَى عَلَيْهِ شَيْءٌ. قَالَ عَزَّ وَجَلَّ: {وَهُوَ بِكُلِّ شَيْءٍ عَلِيمٌ} [البقرة: ٢٩] وَهَذَا عُمُومٌ لَا يَجُوزُ أَنْ يُخَصَّ مِنْهُ شَيْءٌ، وَقَالَ تَعَالَى: {يَعْلَمُ السِّرَّ وَأَخْفَى} [طه: ٧] وَالْأَخْفَى مِنْ السِّرِّ هُوَ مِمَّا لَمْ يَكُنْ بَعْدُ.

[مَسْأَلَة قدرة اللَّه عَزَّ وَجَلَّ وَقُوَّتُهُ حَقٌّ لَا يَعْجِزُ عَنْ شَيْءٍ]

٦١ - مَسْأَلَةٌ: وَقُدْرَتُهُ عَزَّ وَجَلَّ وَقُوَّتُهُ حَقٌّ لَا يَعْجِزُ عَنْ شَيْءٍ، وَلَا عَنْ كُلِّ مَا يَسْأَلُ عَنْهُ السَّائِلُ مِنْ مُحَالٍ أَوْ غَيْرِهِ مِمَّا لَا يَكُونُ أَبَدًا. قَالَ عَزَّ وَجَلَّ: {أَوَلَمْ يَرَوْا أَنَّ اللَّهَ الَّذِي خَلَقَهُمْ هُوَ أَشَدُّ مِنْهُمْ قُوَّةً} [فصلت: ١٥] حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيُّ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا إِبْرَاهِيمُ بْنُ الْمُنْذِرِ الْحِزَامِيُّ ثنا مَعْنُ بْنُ عِيسَى ثنا عَبْدُ الرَّحْمَنِ بْنُ أَبِي الْمَوَالِ سَمِعْت مُحَمَّدَ بْنَ الْمُنْكَدِرِ يُحَدِّثُ عَبْدَ اللَّهِ بْنَ الْحَسَنِ قَالَ: حَدَّثَنِي جَابِرُ بْنُ عَبْدِ اللَّهِ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُعَلِّمُ أَصْحَابَهُ الِاسْتِخَارَةَ - فَذَكَرَ الْحَدِيثَ وَفِيهِ - اللَّهُمَّ إِنِّي أَسْتَخِيرُكَ بِعِلْمِكَ، وَأَسْتَقْدِرُكَ بِقُدْرَتِكَ، وَأَسْأَلُكَ مِنْ فَضْلِكَ» وَقَالَ عَزَّ وَجَلَّ: {لَوْ أَرَدْنَا أَنْ نَتَّخِذَ لَهْوًا لَاتَّخَذْنَاهُ مِنْ لَدُنَّا إِنْ كُنَّا فَاعِلِينَ} [الأنبياء: ١٧] وَقَالَ تَعَالَى: {لَوْ أَرَادَ اللَّهُ أَنْ يَتَّخِذَ وَلَدًا

ʿĪsā, from Abd al-Rahman ibn Abī al-Mawāl, who said: I heard Muhammad ibn al-Munkadir narrating to Abd Allah ibn al-Hasan, who said: Jābir ibn Abd Allah reported: "The Messenger of Allah (peace be upon him) taught his companions the ritual prayer for divine guidance (Istikhara)." He mentioned the hadith containing: _"O Allah, I seek Your counsel through Your knowledge, I seek strength through Your power, and I ask from Your boundless grace."_ Allah said: "If We had intended to take amusement, We would have taken it from Our presence—if We were ever to do such a thing." [Al-Anbiyā': 17] And He—Exalted and Majestic—said: "If Allah had intended to take a son, He would have chosen from what He creates whatever He wills." [Az-Zumar: 4] He—Mighty and Majestic—has declared that He is capable of what will never come to pass. He—Exalted is He—said: "Perhaps his Lord, if he divorces you, will give him in exchange wives better than you." [At-Taḥrīm: 5] And He—Exalted is He—said: "Allah is Capable of all things." [Al-Baqarah: 284] And He—Exalted is He—said: "His command, when He wills a thing, is only to say to it, 'Be,' and it is." [Yā-Sīn: 82] Had He not been thus, He would have been limited in power, and if He were limited in power, He would have been a created being. Exalted is Allah above such! He is the Organizer of all He created, and He is the One Who ordained it as necessary. He established the obligatory as obligatory, enabled the possible as possible, and rendered the impossible as impossible. Had He willed to do all of that contrary to what He did, it would not have incapacitated Him, and He would have been capable of it. Had it not been as such, He would have been compelled, not a free agent. This constitutes disbelief from whoever asserts it. Exalted and Majestic is He, Who says: *And your Lord creates what He wills and chooses* [Al-Qasas 28:68].[75]

L2417 **The belief that Allah possesses Might, Grandeur, a Hand, and a Face—and all these are affirmed as true.**

لاصْطَفَى مِمَّا يَخْلُقُ مَا يَشَاءُ} [الزمر: ٤] وَقَدْ أَخْبَرَ عَزَّ وَجَلَّ أَنَّهُ قَادِرٌ عَلَى مَا لَا يَكُونُ أَبَدًا. قَالَ عَزَّ وَجَلَّ: {عَسَى رَبُّهُ إِنْ طَلَّقَكُنَّ أَنْ يُبْدِلَهُ أَزْوَاجًا خَيْرًا مِنْكُنَّ} [التحريم: ٥] وَقَالَ تَعَالَى: {وَاللَّهُ عَلَى كُلِّ شَيْءٍ قَدِيرٌ} [البقرة: ٢٨٤] وَقَالَ تَعَالَى: {إِنَّمَا أَمْرُهُ إِذَا أَرَادَ شَيْئًا أَنْ يَقُولَ لَهُ كُنْ فَيَكُونُ} [يس: ٨٢] وَلَوْ لَمْ يَكُنْ تَعَالَى كَذَلِكَ لَكَانَ مُتَنَاهِيَ الْقُدْرَةِ، وَلَوْ كَانَ مُتَنَاهِيَ الْقُدْرَةِ لَكَانَ مُحْدَثًا، تَعَالَى اللَّهُ عَنْ ذَلِكَ، وَهُوَ تَعَالَى مُرَتِّبُ كُلِّ مَا خَلَقَ، وَهُوَ الَّذِي أَوْجَبَ الْوَاجِبَ وَأَمْكَنَ الْمُمْكِنَ وَأَحَالَ الْمُحَالَ، وَلَوْ شَاءَ أَنْ يَفْعَلَ كُلَّ ذَلِكَ عَلَى خِلَافِ مَا فَعَلَهُ، لَمَا أَعْجَزَهُ ذَلِكَ، وَلَكَانَ قَادِرًا عَلَيْهِ، وَلَوْ لَمْ يَكُنْ كَذَلِكَ لَكَانَ مُضْطَرًّا لَا مُخْتَارًا. وَهَذَا كُفْرٌ مِمَّنْ قَالَهُ. قَالَ عَزَّ وَجَلَّ: {وَرَبُّكَ يَخْلُقُ مَا يَشَاءُ وَيَخْتَارُ} [القصص: ٦٨] .

[مَسْأَلَة اعتقاد أَنَّ لِلَّهِ عِزًّا وَجَلَالًا وَيَدًا وَوَجْهًا وَكُلُّ ذَلِكَ حَقٌّ]

[75] **Qur'an references (L2412):** Qur'an 41:15 (Fussilat); Qur'an 21:17 (Al-Anbya); Qur'an 39:4 (Az-Zumar); Qur'an 66:5 (At-Tahrim); Qur'an 2:284 (Al-Baqarah); Qur'an 3:29 (Ali 'Imran); Qur'an 3:189 (Ali 'Imran); Qur'an 5:17 (Al-Ma'idah); Qur'an 5:19 (Al-Ma'idah); Qur'an 5:40 (Al-Ma'idah); Qur'an 8:41 (Al-Anfal); Qur'an 9:39 (At-Tawbah); Qur'an 59:6 (Al-Hashr); Qur'an 36:82 (Ya-Sin); Qur'an 28:68 (Al-Qasas).

L2418 Issue 62: Indeed, to Allah the Almighty belongs might and honor, grandeur and bestowal of honor, a hand, two hands, hands, a face, an eye, eyes, and supremacy – all of this being unequivocally real. None of these, nor His knowledge, decree, power, or might, may be attributed to anything besides Allah the Almighty at all. This is affirmed by what is established in the Qur'an and authentic reports from Allah's Messenger (peace be upon him). It is impermissible to add to these attributes anything unsupported by textual evidence from the Qur'an or authentic Sunnah. Allah the Almighty says: "Possessor of Majesty and Bestower of Honor" (55:27), "Allah's hand is over their hands" (48:10), "for what I created with My two hands" (38:75), "and livestock – from what Our hands have produced" (36:71), "We feed you only for the sake of Allah's face" (76:9), "to be fashioned under My eye" (20:39), and "you are within Our sight" (52:48). It is impermissible to say "two eyes" as no text specifies this, nor to say "hearing," "sight," nor "life" as these lack textual basis. Rather, He is the All-Hearing, All-Seeing, Ever-Living, Self-Subsisting.[76]

٦٢ - مَسْأَلَةٌ: وَأَنَّ لِلَّهِ عَزَّ وَجَلَّ عِزًّا وَعِزَّةً، وَجَلَالًا وَإِكْرَامًا، وَيَدًا وَيَدَيْنِ وَأَيْدٍ، وَوَجْهًا وَعَيْنًا وَأَعْيُنًا وَكِبْرِيَاءَ، وَكُلُّ ذَلِكَ حَقٌّ لَا يُرْجَعُ مِنْهُ وَلَا مِنْ عِلْمِهِ تَعَالَى وَقَدْرِهِ وَقُوَّتِهِ إِلَّا إِلَى اللَّهِ تَعَالَى، لَا إِلَى شَيْءٍ غَيْرِ اللَّهِ عَزَّ وَجَلَّ أَصْلًا، مُقِرٌّ مِنْ ذَلِكَ مِمَّا فِي الْقُرْآنِ، وَمَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَلَا يَحِلُّ أَنْ يُزَادَ فِي ذَلِكَ مَا لَمْ يَأْتِ بِهِ نَصٌّ مِنْ قُرْآنٍ أَوْ سُنَّةٍ صَحِيحَةٍ. قَالَ عَزَّ وَجَلَّ: {ذُو الْجَلَالِ وَالإِكْرَامِ} [الرحمن: ٢٧] وَقَالَ تَعَالَى: {يَدُ اللَّهِ فَوْقَ أَيْدِيهِمْ} [الفتح: ١٠] وَ {لِمَا خَلَقْتُ بِيَدَيَّ} [ص: ٧٥] وَ {مِمَّا عَمِلَتْ أَيْدِينَا أَنْعَامًا} [يس: ٧١] {إِنَّمَا نُطْعِمُكُمْ لِوَجْهِ اللَّهِ} [الإنسان: ٩] {وَلِتُصْنَعَ عَلَى عَيْنِي} [طه: ٣٩] {فَإِنَّكَ بِأَعْيُنِنَا} [الطور: ٤٨] . وَلَا يَحِلُّ أَنْ يُقَالَ (عَيْنَيْنِ) لِأَنَّهُ لَمْ يَأْتِ بِذَلِكَ نَصٌّ، وَلَا أَنْ يُقَالَ " سَمْعٌ وَبَصَرٌ وَلَا حَيَاةٌ " لِأَنَّهُ لَمْ يَأْتِ بِذَلِكَ نَصٌّ، لَكِنَّهُ تَعَالَى سَمِيعٌ بَصِيرٌ حَيٌّ قَيُّومٌ.

L2419–2421 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to me: Ahmad ibn Yusuf al-Azdi narrated to me: Umar ibn Hafs ibn Ghiyath narrated to us: My father narrated to us: Al-A'mash narrated to us: Abu Ishaq, who is al-Sabi'i, narrated from Abu Muslim al-Agharr that he narrated to him from Abu Sa'id al-Khudri and Abu Hurairah, who said: The Messenger of Allah (peace be upon him) said, "Might is His lower garment and Majesty is His cloak," meaning Allah the Exalted. Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: I, Ishaq ibn Ibrahim, narrated to us: Al-Fadl ibn Musa narrated to us: Muhammad ibn Amr narrated to us: Abu Salamah, who is the son of Abd

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ، حَدَّثَنِي أَحْمَدُ بْنُ يُوسُفَ الْأَزْدِيُّ ثنا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ ثنا أَبِي ثنا الْأَعْمَشُ ثنا أَبُو إِسْحَاقَ هُوَ السَّبِيعِيُّ - عَنْ أَبِي مُسْلِمٍ الْأَغَرِّ أَنَّهُ حَدَّثَهُ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ وَأَبِي هُرَيْرَةَ قَالَا: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْعِزُّ إِزَارُهُ وَالْكِبْرِيَاءُ رِدَاؤُهُ» يَعْنِي اللَّهَ تَعَالَى. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ أَنَا الْفَضْلُ بْنُ مُوسَى ثنا مُحَمَّدُ بْنُ عَمْرٍو ثنا أَبُو سَلَمَةَ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثٍ: خَلَقَ اللَّهُ تَعَالَى الْجَنَّةَ وَالنَّارَ «أَنَّ جِبْرِيلَ قَالَ

[76] **Qur'an references (L2418):** Qur'an 55:27 (Ar-Rahman); Qur'an 48:10 (Al-Fath); Qur'an 38:75 (Sad); Qur'an 36:71 (Ya-Sin); Qur'an 76:9 (Al-Insan); Qur'an 20:39 (Taha); Qur'an 52:48 (At-Tur).

al-Rahman ibn Awf, narrated from Abu Hurairah from the Messenger of Allah (peace be upon him) in a hadith: "Allah the Exalted created Paradise and Hell. Jibril said to Allah the Exalted: By Your Might, I truly feared that no one would enter it even if it were." If there were anything other than Allah the Exalted, it would either be eternal or created. If it were eternal, entities other than Him would have coexisted eternally with Allah the Exalted, and this is pure polytheism. If it were created, the Exalted would have existed without knowledge, power, ability, honor, or majesty before creating all that, and this is disbelief. The Exalted said: "My Lord has forbidden only immoralities—what is apparent of them and what is concealed—and sin, unjust oppression, associating with Allah what He never authorized, and attributing to Allah what you do not know" (7:33).[77]

L2422 And Allah, the Exalted, said: {And Allah brought you forth from the wombs of your mothers knowing nothing} [An-Naḥl 16:78]. And He, the Exalted, said: {And He teaches you what you did not know} [Al-Baqarah 2:151]. And He, the Exalted, said: {And abandon those who deviate in His names} [Al-Aʿrāf 7:180]. Thus, it is established that it is impermissible to ascribe anything to Him, the Exalted, nor to assert anything about Him, nor to name Him with anything except what is conveyed by the textual proof. We say: Indeed, Allah, the Exalted, has decree and design. And He, the Exalted, said: {Do they feel secure from Allah's decree?} [Al-Aʿrāf 7:99]. And He, the Exalted, said: {And I devise a design} [Aṭ-Ṭāriq 86:16]. All of this is His creation, the Exalted. And success comes from Allah, the Exalted.[78]

L2423 The Question of Muslims Seeing Allah the Exalted on the Day of Resurrection

L2424 63. Issue: And that Allah the Exalted will be seen by the Muslims on the Day of Resurrection through a power other than this power. He, the Almighty, said: {Faces that Day will be radiant} [Al-Qiyāmah: 22] {Looking at their Lord} [Al-Qiyāmah: 23]. It was narrated to us by ʿAbdullāh ibn Rabīʿ, from

[77] **Qur'an references (L2419):** Qur'an 7:33 (Al-A'raf).

[78] **Qur'an references (L2422):** Qur'an 16:78 (An-Nahl); Qur'an 2:151 (Al-Baqarah); Qur'an 7:180 (Al-A'raf); Qur'an 7:99 (Al-A'raf); Qur'an 86:16 (At-Tariq).

لِلَّهِ تَعَالَى: وَعِزَّتِكَ لَقَدْ خَشِيتُ أَنْ لَا يَدْخُلَهَا أَحَدٌ» وَلَوْ كَانَ شَيْءٌ مِنْ ذَلِكَ غَيْرُ اللَّهِ تَعَالَى لَكَانَ إِمَّا لَمْ يَزَلْ وَإِمَّا مُحْدَثًا، فَلَوْ كَانَ لَمْ يَزَلْ لَكَانَ مَعَ اللَّهِ تَعَالَى أَشْيَاءُ غَيْرُهُ لَمْ تَزَلْ، وَهَذَا شِرْكٌ مُجَرَّدٌ، وَلَوْ كَانَ مُحْدَثًا لَكَانَ تَعَالَى بِلَا عِلْمٍ وَلَا قُوَّةٍ، وَلَا قُدْرَةٍ وَلَا عِزٍّ وَلَا كِبْرِيَاءَ قَبْلَ أَنْ يَخْلُقَ كُلَّ ذَلِكَ وَهَذَا كُفْرٌ، وَقَالَ تَعَالَى: {إِنَّمَا حَرَّمَ رَبِّيَ الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَنَ وَالإِثْمَ وَالْبَغْيَ بِغَيْرِ الْحَقِّ وَأَنْ تُشْرِكُوا بِاللَّهِ مَا لَمْ يُنَزِّلْ بِهِ سُلْطَانًا وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لا تَعْلَمُونَ} [الأعراف: ٣٣] .

وَقَالَ تَعَالَى: {وَاللَّهُ أَخْرَجَكُمْ مِنْ بُطُونِ أُمَّهَاتِكُمْ لا تَعْلَمُونَ شَيْئًا} [النحل: ٧٨] وَقَالَ تَعَالَى: {وَيُعَلِّمُكُمْ مَا لَمْ تَكُونُوا تَعْلَمُونَ} [البقرة: ١٥١] وَقَالَ تَعَالَى: {وَذَرُوا الَّذِينَ يُلْحِدُونَ فِي أَسْمَائِهِ} [الأعراف: ١٨٠] فَصَحَّ أَنَّهُ لَا يَحِلُّ أَنْ يُضَافَ إِلَيْهِ تَعَالَى شَيْءٌ، وَلَا أَنْ يُخْبَرَ عَنْهُ بِشَيْءٍ، وَلَا أَنْ يُسَمَّى بِشَيْءٍ إِلَّا مَا جَاءَ بِهِ النَّصُّ. وَنَقُولُ: إِنَّ لِلَّهِ تَعَالَى مَكْرًا وَكَيْدًا. وَقَالَ تَعَالَى: {أَفَأَمِنُوا مَكْرَ اللَّهِ} [الأعراف: ٩٩] وَقَالَ تَعَالَى: {وَأَكِيدُ كَيْدًا} [الطارق: ١٦] وَكُلُّ ذَلِكَ خَلْقٌ لَهُ تَعَالَى. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة اللَّه تَعَالَى يَرَاهُ الْمُسْلِمُونَ يَوْمَ الْقِيَامَةِ]

٦٣ - مَسْأَلَةٌ: وَأَنَّ اللَّهَ تَعَالَى يَرَاهُ الْمُسْلِمُونَ يَوْمَ الْقِيَامَةِ بِقُوَّةٍ غَيْرِ هَذِهِ الْقُوَّةِ. قَالَ عَزَّ وَجَلَّ: {وُجُوهٌ يَوْمَئِذٍ نَاضِرَةٌ} [القيامة: ٢٢] {إِلَى رَبِّهَا نَاظِرَةٌ} [القيامة: ٢٣] . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ السَّلِيمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا ابْنُ أَبِي شَيْبَةَ هُوَ أَبُو بَكْرٍ - ثنا جَرِيرٌ وَوَكِيعٌ وَأَبُو أُسَامَةَ كُلُّهُمْ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي

Ibn al-Sulaym, from Ibn al-Aʿrabī, from Abū Dāwūd, from Ibn Abī Shaybah - he is Abū Bakr - from Jarīr, Wakīʿ, and Abū Usāmah, all of whom narrated from Ismāʿīl ibn Abī Khālid from Qays ibn Abī Ḥāzim from Jarīr ibn ʿAbdillāh that he heard the Messenger of Allah—peace and blessings be upon him—say—as he looked at the moon—"You will see your Lord as you see this moon, and you will suffer no harm in seeing Him." Had this power been [the means], it would only perceive colors. Exalted is Allah above that.[79]

L2425 As for the disbelievers, Allah, the Mighty and Majestic, has said: "Indeed, they will be veiled from their Lord on that Day." (Al-Mutaffifin 83:15).[80]

L2426 **The doctrinal position that Allah, the Exalted, spoke to Moses and whichever of His messengers He willed.**

L2427 64. Issue: And that Allah, the Exalted, spoke to Moses—peace be upon him—and to whom He willed among His messengers. Allah, the Exalted, said: "And Allah spoke to Moses with His speech" (Quran 4:164); "Indeed, I have chosen you over mankind by My messages and speech" (Quran 7:144); "Those messengers—We have favored some of them above others; among them are those to whom Allah spoke" (Quran 2:253).[81]

L2428 **The issue of the belief that God took Ibrāhīm and Muḥammad as His two close friends.**

L2429 Issue 65: And that Allah, the Exalted, chose Ibrahim and Muhammad - peace be upon him - as two close friends *khalīlayn*.

L2430–2432 He, the Almighty and Majestic, said: "And Allah took Abraham as an intimate confidant" [An-Nisa: 125]. Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abd al-Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us. Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us: Muhammad ibn Bashshar al-Abdi narrated to us,

[79] **Qur'an references (L2424):** Qur'an 75:22 (Al-Qiyamah); Qur'an 75:23 (Al-Qiyamah).
[80] **Qur'an references (L2425):** Qur'an 83:15 (Al-Mutaffifin).
[81] **Qur'an references (L2427):** Qur'an 4:164 (An-Nisa); Qur'an 7:144 (Al-A'raf); Qur'an 2:253 (Al-Baqarah).

حَازِمٍ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ أَنَّهُ «سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ - وَنَظَرَ إِلَى الْقَمَرِ - إِنَّكُمْ سَتَرَوْنَ رَبَّكُمْ كَمَا تَرَوْنَ هَذَا لَا تُضَامُونَ فِي رُؤْيَتِهِ» وَلَوْ كَانَتْ هَذِهِ الْقُوَّةُ لَكَانَتْ لَا تَقَعُ إِلَّا عَلَى الْأَلْوَانِ، تَعَالَى اللَّهُ عَنْ ذَلِكَ.

وَأَمَّا الْكُفَّارُ فَإِنَّ اللَّهَ عَزَّ وَجَلَّ قَالَ: {إِنَّهُمْ عَنْ رَبِّهِمْ يَوْمَئِذٍ لَمَحْجُوبُونَ} [المطففين: ١٥] .

[مَسْأَلَة اعتقاد أَنْ اللَّه تَعَالَى كلم مُوسَى وَمن شَاءَ مِنْ رسله]

٦٤ - مَسْأَلَةٌ: وَأَنَّ اللَّهَ تَعَالَى كَلَّمَ مُوسَى - عَلَيْهِ السَّلَامُ - وَمَنْ شَاءَ مِنْ رُسُلِهِ. قَالَ تَعَالَى: {وَكَلَّمَ اللَّهُ مُوسَى تَكْلِيمًا} [النساء: ١٦٤] {إِنِّي اصْطَفَيْتُكَ عَلَى النَّاسِ بِرِسَالاتِي وَبِكَلامِي} [الأعراف: ١٤٤] {تِلْكَ الرُّسُلُ فَضَّلْنَا بَعْضَهُمْ عَلَى بَعْضٍ مِنْهُمْ مَنْ كَلَّمَ اللَّهُ} [البقرة: ٢٥٣] .

[مَسْأَلَة اعتقاد أَنْ اللَّه اتخذ إِبْرَاهِيم وَمُحَمَّدًا خليلين]

٦٥ - مَسْأَلَةٌ: وَأَنَّ اللَّهَ تَعَالَى اتَّخَذَ إِبْرَاهِيمَ وَمُحَمَّدًا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَلِيلَيْنِ.

قَالَ عَزَّ وَجَلَّ: {وَاتَّخَذَ اللَّهُ إِبْرَاهِيمَ خَلِيلا} [النساء: ١٢٥] . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ، حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارَ الْعَبْدِيُّ ثنا مُحَمَّدُ بْنُ جَعْفَرٍ ثنا شُعْبَةُ عَنْ إِسْمَاعِيلَ بْنِ رَجَاءٍ قَالَ سَمِعْتُ عَبْدَ اللَّهِ بْنَ أَبِي الْهُذَيْلِ يُحَدِّثُ عَنْ أَبِي الْأَحْوَصِ قَالَ: سَمِعْتُ عَبْدَ اللَّهِ بْنَ مَسْعُودٍ يُحَدِّثُ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «لَوْ كُنْتُ مُتَّخِذًا

Muhammad ibn Ja'far narrated to us, Shu'bah narrated to us from Isma'il ibn Raja', who said: I heard Abdullah ibn Abi al-Hudhayl narrating from Abi al-Ahwas, who said: I heard Abdullah ibn Mas'ud narrating from the Prophet—peace and blessings be upon him—that he said: "If I were to take a close friend, it would have been Abu Bakr, but he is my brother and companion. Yet Allah has taken your companion as a close friend."[82]

The issue of the belief that Muḥammad was taken on the Night Journey (Isrāʾ) with his soul and body.

Issue 66: And that Muhammad—may God's blessings and peace be upon him—was taken by night by his Lord with his body and soul. He journeyed through the heavens, each heaven one after another, and saw the spirits of the prophets—peace be upon them—therein. The Almighty said: *"Exalted is He who took His Servant by night from the Sacred Mosque to al-Masjid al-Aqsa"* [Quran 17:1]. Had this been a dream vision, none would have rejected him for it, just as we do not deny a disbeliever regarding a dream vision he recounts.[83]

We have previously mentioned his (peace be upon him) encounter with the prophets (peace be upon them), which renders its repetition unnecessary.

The issue of the belief that miracles can only be brought forth by prophets.

67. Issue: That miracles cannot be brought forth by anyone except the prophets—peace be upon them. Allah the Almighty said: {No messenger may produce a sign except by Allah's permission} [Ar-Ra'd: 38]. He the Exalted said: {If they see a sign, they turn away and say, "This is continuous magic"} [Al-Qamar: 2]. He the Exalted also narrated from Moses—peace be upon him—that he said: {He said, "Even if I brought you something manifest?"—He said, "Produce it, if you are truthful"—So he cast his staff} [Ash-Shu'ara': 30-32]. And He the Exalted said: {These are two proofs from your Lord

[82] **Qur'an references (L2430):** Qur'an 4:125 (An-Nisa).
[83] **Qur'an references (L2434):** Qur'an 17:1 (Al-Isra).

خَلِيلًا لَاتَّخَذْتُ أَبَا بَكْرٍ خَلِيلًا، وَلَكِنَّهُ أَخِي وَصَاحِبِي، وَقَدْ اتَّخَذَ اللَّهُ صَاحِبَكُمْ خَلِيلًا»

[مَسْأَلَة اعتقاد أَنْ مُحَمَّدًا أسري بِهِ بروحه وجسده]

٦٦ - مَسْأَلَةٌ: وَأَنَّ مُحَمَّدًا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَسْرَى بِهِ رَبُّهُ بِجَسَدِهِ وَرُوحِهِ، وَطَافَ فِي السَّمَاوَاتِ سَمَاءٍ سَمَاءٍ، وَرَأَى أَرْوَاحَ الْأَنْبِيَاءِ - عَلَيْهِمْ السَّلَامُ - هُنَالِكَ. قَالَ عَزَّ وَجَلَّ: {سُبْحَانَ الَّذِي أَسْرَى بِعَبْدِهِ لَيْلا مِنَ الْمَسْجِدِ الْحَرَامِ إِلَى الْمَسْجِدِ الأَقْصَى} [الإسراء: ١] وَلَوْ كَانَ ذَلِكَ رُؤْيَا مَنَامٍ مَا كَذَّبَهُ فِي ذَلِكَ أَحَدٌ، كَمَا لَا نُكَذِّبُ نَحْنُ كَافِرًا فِي رُؤْيَا يَذْكُرُهَا.

وَقَدْ ذَكَرْنَا رُؤْيَتَهُ - عَلَيْهِ السَّلَامُ - لِلْأَنْبِيَاءِ - عَلَيْهِمْ السَّلَامُ - قَبْلُ فَأَغْنَى عَنْ إعَادَتِهِ.

[مَسْأَلَة اعتقاد أَنْ المعجزات لَا يَأْتِي بِهَا إِلَّا الْأَنْبِيَاء]

٦٧ - مَسْأَلَةٌ: وَأَنَّ الْمُعْجِزَاتِ لَا يَأْتِي بِهَا أَحَدٌ إِلَّا الْأَنْبِيَاءُ - عَلَيْهِمْ السَّلَامُ -. قَالَ عَزَّ وَجَلَّ: {وَمَا كَانَ لِرَسُولٍ أَنْ يَأْتِيَ بِآيَةٍ إِلا بِإِذْنِ اللَّهِ} [الرعد: ٣٨] وَقَالَ تَعَالَى: {وَإِنْ يَرَوْا آيَةً يُعْرِضُوا وَيَقُولُوا سِحْرٌ مُسْتَمِرٌّ} [القمر: ٢] وَقَالَ تَعَالَى حَاكِيًا عَنْ مُوسَى - عَلَيْهِ السَّلَامُ - أَنَّهُ قَالَ: {قَالَ أَوَلَوْ جِئْتُكَ بِشَيْءٍ مُبِينٍ - قَالَ فَأْتِ بِهِ إِنْ كُنْتَ مِنَ الصَّادِقِينَ - فَأَلْقَى عَصَاهُ} [الشعراء: ٣٠ - ٣٢] وَقَالَ تَعَالَى: {فَذَانِكَ بُرْهَانَانِ مِنْ رَبِّكَ إِلَى فِرْعَوْنَ وَمَلَئِهِ} [القصص: ٣٢] فَصَحَّ أَنَّهُ لَوْ أَمْكَنَ أَنْ يَأْتِيَ أَحَدٌ - سَاحِرٌ

to Pharaoh and his chiefs} [Al-Qaṣaṣ: 32]. Thus, it is established that if it were possible for anyone—a sorcerer or another—to bring what disrupts nature's course or alters the nature of a kind, Allah the Exalted would not have designated what the prophets—peace be upon them—bring as a proof for them or a sign for them. Nor would He have denounced those who labeled it as magic, nor would it constitute a sign for them—peace be upon them. Whoever claims that the transformation of nature cannot be a sign unless the Prophet—peace and blessings be upon him—issues a challenge in it... As for the people, he has indeed lied and made claims without any evidence whatsoever—neither from reason, nor Quranic text, nor Sunnah. Such baseless claims are null and void. It is therefore obligatory that the moaning of the palm trunk and the feeding of a large group—numbering hundreds—with a small amount of food, specifically a *sa'* of barley, until they were satiated.[84]

أَوْ غَيْرُهُ - بِمَا يُحِيلُ طَبِيعَةً أَوْ يَقْلِبُ نَوْعًا، لَمَا سَمَّى اللَّهُ تَعَالَى مَا يَأْتِي بِهِ الْأَنْبِيَاءُ - عَلَيْهِمْ السَّلَامُ - بُرْهَانًا لَهُمْ وَلَا آيَةً لَهُمْ، وَلَا أَنْكَرَ عَلَى مَنْ سَمَّى ذَلِكَ سِحْرًا وَلَا يَكُونُ ذَلِكَ آيَةً لَهُمْ - عَلَيْهِمْ السَّلَامُ -. وَمَنْ ادَّعَى أَنَّ إحَالَةَ الطَّبِيعَةِ لَا تَكُونُ آيَةً إلَّا حَتَّى يَتَحَدَّى فِيهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النَّاسَ فَقَدْ كَذَبَ وَادَّعَى مَا لَا دَلِيلَ عَلَيْهِ أَصْلًا، لَا مِنْ عَقْلٍ وَلَا مِنْ نَصِّ قُرْآنٍ وَلَا سُنَّةٍ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ، وَيَجِبُ مِنْ هَذَا أَنَّ حُنَيْنَ الْجِذْعِ وَإِطْعَامَ النَّفَرِ الْكَثِيرِ مِنْ الطَّعَامِ الْيَسِيرِ حَتَّى شَبِعُوا وَهُمْ مِئُونَ مِنْ صَاعٍ شَعِيرٍ.

L2440 The two outpourings of water from between the fingers of the Messenger of Allah—peace and blessings be upon him—and the quenching of one thousand four hundred from a small cup with a capacity less than a span—none of these are miracles for him—peace be upon him—because he did not share any of those acts with anyone else.

وَنَبَعَانَ الْمَاءِ مِنْ بَيْنِ أَصَابِعِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِرْوَاءَ أَلْفٍ وَأَرْبَعِمِائَةٍ مِنْ قَدَحٍ صَغِيرٍ تَضِيقُ سِعَتُهُ عَنْ شِبْرٍ - لَيْسَ شَيْءٌ مِنْ ذَلِكَ آيَةً لَهُ - عَلَيْهِ السَّلَامُ - لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَتَّحِدْ بِشَيْءٍ مِنْ ذَلِكَ أَحَدًا.

The issue of magic is that it involves tricks and deception.

[مَسْأَلَةُ السِّحْرُ حِيَلٌ وَتَخْيِيلٌ]

L2441

L2442 68. Issue: Magic comprises tricks and illusions that do not alter nature in any way. The Almighty said: _"It was made to appear to him from their magic that they (the ropes and staffs) were slithering"_ (20:66). This confirms that they are illusions with no reality. If a magician were to alter nature, there would be no distinction between him and the Prophet—peace be upon him—and this is disbelief by whoever affirms it.[85]

٦٨ - مَسْأَلَةٌ: وَالسِّحْرُ حِيَلٌ وَتَخْيِيلٌ لَا يُحِيلُ طَبِيعَةً أَصْلًا. قَالَ عَزَّ وَجَلَّ: {يُخَيَّلُ إلَيْهِ مِنْ سِحْرِهِمْ أَنَّهَا تَسْعَى} [طه: ٦٦] فَصَحَّ أَنَّهَا تَخْيِيلَاتٌ لَا حَقِيقَةَ لَهَا، وَلَوْ أَحَالَ السَّاحِرُ طَبِيعَةً لَكَانَ لَا فَرْقَ بَيْنَهُ وَبَيْنَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا كُفْرٌ مِمَّنْ أَجَازَهُ.

[مَسْأَلَةُ الْقَدَرُ حَقٌّ]

[84] **Qur'an references (L2437):** Qur'an 13:38 (Ar-Ra'd); Qur'an 40:78 (Ghafir); Qur'an 54:2 (Al-Qamar); Qur'an 26:30 (Ash-Shu'ara); Qur'an 26:31 (Ash-Shu'ara); Qur'an 28:32 (Al-Qasas); Qur'an 26:32 (Ash-Shu'ara).

[85] **Qur'an references (L2442):** Qur'an 20:66 (Taha).

The issue of divine decree is true.

69 - Issue: And that divine decree is true—what befalls us could not have missed us, and what does not befall us could not have occurred. Allah, the Almighty, the Majestic, said: “No calamity strikes the earth or yourselves except that it is decreed in a Book before We bring it into being” [Al-Hadid 57:22].[86]

The issue of the belief that no one dies before his appointed term.

70 - Issue: No one dies before their appointed term, whether killed or otherwise. Allah, the Exalted, said: “No soul can die except by Allah’s permission—a decree written at an appointed term” [Āl ʿImrān 3:145]. He said: “When their term comes, they cannot delay it for an hour nor advance it” [al-Aʿrāf 7:34]. He said: “Say, ’Even if you had remained in your homes, those destined for death would have gone forth to their resting places’” [Āl ʿImrān 3:154].[87]

A juristic principle: No one dies until he has fully received his sustenance and performed what has been facilitated for him.

71 - Issue: Until he fully receives his provision and acts according to what is made easy for him. The fortunate is he who is fortunate in the knowledge of Allah the Exalted, and the wretched is he who is wretched in His knowledge. It was narrated to us by Abdullah ibn Yusuf from Ahmad ibn Fath from Abd al-Wahhab ibn Isa from Ahmad ibn Muhammad from Ahmad ibn Ali from Muslim ibn al-Hajjaj from Muhammad ibn Abdullah ibn Numayr from his father, Abu Muawiyah, and Waki’, who said: We were narrated by al-A’mash from Zayd ibn Wahb from Abdullah ibn Mas’ud, who said: Allah’s Messenger (peace and blessings be upon him), the Truthful, the One confirmed as

[86] **Qur’an references (L2444):** Qur’an 57:22 (Al-Hadid).

[87] **Qur’an references (L2446):** Qur’an 3:145 (Ali ’Imran); Qur’an 7:34 (Al-A’raf); Qur’an 16:61 (An-Nahl); Qur’an 3:154 (Ali ’Imran).

٦٩ - مَسْأَلَةٌ: وَأَنَّ الْقَدَرَ حَقٌّ، مَا أَصَابَنَا لَمْ يَكُنْ لِيُخْطِئَنَا، وَمَا أَخْطَأَنَا لَمْ يَكُنْ لِيُصِيبَنَا. قَالَ اللَّهُ عَزَّ وَجَلَّ: {مَا أَصَابَ مِنْ مُصِيبَةٍ فِي الأَرْضِ وَلا فِي أَنْفُسِكُمْ إِلا فِي كِتَابٍ مِنْ قَبْلِ أَنْ نَبْرَأَهَا} [الحديد: ٢٢] .

[مَسْأَلَة اعتقاد أَنْ أحدا لَا يموت قَبْل أجله]

٧٠ - مَسْأَلَةٌ: وَلَا يَمُوتُ أَحَدٌ قَبْلَ أَجَلِهِ، مَقْتُولًا أَوْ غَيْرَ مَقْتُولٍ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَمَا كَانَ لِنَفْسٍ أَنْ تَمُوتَ إِلا بِإِذْنِ اللَّهِ كِتَابًا مُؤَجَّلا} [آل عمران: ١٤٥] وَقَالَ تَعَالَى: {فَإِذَا جَاءَ أَجَلُهُمْ لا يَسْتَأْخِرُونَ سَاعَةً وَلا يَسْتَقْدِمُونَ} [الأعراف: ٣٤] وَقَالَ تَعَالَى: {قُلْ لَوْ كُنْتُمْ فِي بُيُوتِكُمْ لَبَرَزَ الَّذِينَ كُتِبَ عَلَيْهِمُ الْقَتْلُ إِلَى مَضَاجِعِهِمْ} [آل عمران: ١٥٤] .

[مَسْأَلَة لَا يموت أَحَد حَتَّى يستوفي رزقه ويعمل مَا يسر لَهُ]

٧١ - مَسْأَلَةٌ: وَحَتَّى يَسْتَوْفِيَ رِزْقَهُ وَيَعْمَلَ بِمَا يُسِّرَ لَهُ، السَّعِيدُ مَنْ سَعِدَ فِي عِلْمِ اللَّهِ تَعَالَى، وَالشَّقِيُّ مَنْ شَقِيَ فِي عِلْمِهِ تَعَالَى. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ ثنا أَبِي وَأَبُو مُعَاوِيَةَ وَوَكِيعٌ قَالُوا: ثنا الْأَعْمَشُ عَنْ زَيْدِ بْنِ وَهْبٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: حَدَّثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ الصَّادِقُ الْمَصْدُوقُ «إِنَّ أَحَدَكُمْ يُجْمَعُ خَلْقُهُ فِي بَطْنِ أُمِّهِ أَرْبَعِينَ يَوْمًا، ثُمَّ يَكُونُ فِي ذَلِكَ عَلَقَةً مِثْلَ ذَلِكَ، ثُمَّ يَكُونُ فِي ذَلِكَ مُضْغَةً مِثْلَ ذَلِكَ، ثُمَّ يُرْسِلُ اللَّهُ تَعَالَى الْمَلَكَ فَيَنْفُخُ فِيهِ

truthful, narrated to us: "Verily, the formation of each one of you is gathered in his mother's womb." For forty days, then it becomes a clinging clot for a similar period, then it becomes a morsel of flesh for a similar period. Then Allah the Exalted sends the angel, who breathes the soul into it and is commanded to write four matters: its provision, its lifespan, its deeds, and whether it will be doomed or blessed. By the One besides whom there is no god, verily one of you may perform the deeds of the people of Paradise until only a cubit remains between him and it, yet the Book overtakes him, so he performs the deeds of the people of Hell and enters it. And verily one of you may perform the deeds of the people of Hell until only a cubit remains between him and it, yet the Book overtakes him, so he performs the deeds of the people of Paradise and enters it.«

L2451 **Issue: The deeds of God's servants—whether good or evil—all of that is created.**

L2452 72. Issue: All the deeds of the servants—their good and evil—all of that is created; Allah, the Mighty and Majestic, created it. He, the Exalted, is the Creator of choice, will, and knowledge within the souls of His servants. He, the Mighty and Majestic, said: "He created you and what you do" (37:96). He, the Exalted, said: "Indeed, We have created all things according to a precise measure" (54:49). And He, the Exalted, said: "He created the heavens and the earth and what is between them" (32:4).[88]

L2453 **This is an issue [in jurisprudence]: There is no argument that can be held against Allah the Exalted, and to Allah alone belongs the irrefutable proof that is firmly established over everyone.**

L2454 73 - Issue: There is no argument against Allah the Exalted, and to Allah belongs the established argument over everyone. He said: {He is not questioned about what He does, but they are questioned} [Al-Anbiyā' 21:23]. And

[88] **Qur'an references (L2452):** Qur'an 37:96 (As-Saffat); Qur'an 54:49 (Al-Qamar); Qur'an 25:59 (Al-Furqan); Qur'an 32:4 (As-Sajdah).

الرُّوحَ وَيُؤْمَرُ بِأَرْبَعِ كَلِمَاتٍ: بِكَتْبِ رِزْقِهِ، وَأَجَلِهِ، وَعَمَلِهِ، وَشَقِيٌّ أَوْ سَعِيدٌ، فَوَالَّذِي لَا إِلَهَ غَيْرُهُ إِنَّ أَحَدَكُمْ لَيَعْمَلُ بِعَمَلِ أَهْلِ الْجَنَّةِ حَتَّى مَا يَكُونُ بَيْنَهُ وَبَيْنَهَا إِلَّا ذِرَاعٌ فَيَسْبِقُ عَلَيْهِ الْكِتَابُ فَيَعْمَلُ بِعَمَلِ أَهْلِ النَّارِ فَيَدْخُلُهَا، وَإِنَّ أَحَدَكُمْ لَيَعْمَلُ بِعَمَلِ أَهْلِ النَّارِ حَتَّى مَا يَكُونُ بَيْنَهُ وَبَيْنَهَا إِلَّا ذِرَاعٌ فَيَسْبِقُ عَلَيْهِ الْكِتَابُ فَيَعْمَلُ بِعَمَلِ أَهْلِ الْجَنَّةِ فَيَدْخُلُهَا» .

[مَسْأَلَة أَعْمَال الْعِبَادِ خَيْرهَا وَشَرّهَا كُلُّ ذَلِكَ مَخْلُوقٌ]

٧٢ - مَسْأَلَةٌ: وَجَمِيعُ أَعْمَالِ الْعِبَادِ - خَيْرِهَا وَشَرِّهَا - كُلُّ ذَلِكَ مَخْلُوقٌ خَلَقَهُ اللَّهُ عَزَّ وَجَلَّ، وَهُوَ تَعَالَى خَالِقُ الِاخْتِيَارِ وَالْإِرَادَةِ وَالْمَعْرِفَةِ فِي نُفُوسِ عِبَادِهِ قَالَ عَزَّ وَجَلَّ: {خَلَقَكُمْ وَمَا تَعْمَلُونَ} [الصافات: ٩٦] وَقَالَ تَعَالَى: {إِنَّا كُلَّ شَيْءٍ خَلَقْنَاهُ بِقَدَرٍ} [القمر: ٤٩] وَقَالَ تَعَالَى: {خَلَقَ السَّمَاوَاتِ وَالأَرْضَ وَمَا بَيْنَهُمَا} [السجدة: ٤] .

[مَسْأَلَة لَا حُجَّةَ عَلَى اللَّهِ تَعَالَى وَلِلَّهِ الْحُجَّةُ الْقَائِمَةُ عَلَى كُلِّ أَحَدٍ]

٧٣ - مَسْأَلَةٌ: لَا حُجَّةَ عَلَى اللَّهِ تَعَالَى، وَلِلَّهِ الْحُجَّةُ الْقَائِمَةُ عَلَى كُلِّ أَحَدٍ. قَالَ تَعَالَى: {لا يُسْأَلُ عَمَّا يَفْعَلُ وَهُمْ يُسْأَلُونَ} [الأنبياء: ٢٣] وَقَالَ تَعَالَى: {قُلْ فَلِلَّهِ الْحُجَّةُ الْبَالِغَةُ فَلَوْ شَاءَ لَهَدَاكُمْ أَجْمَعِينَ} [الأنعام: ١٤٩] .

He said: {Say, "To Allah belongs the conclusive argument. Had He willed, He would have guided you all"} [Al-Anʿām 6:149].[89]

L2455 74. Issue: No one has an excuse concerning what Allah, the Exalted, has decreed of that, neither in this world nor in the Hereafter. All His Exalted actions are justice and wisdom. For Allah, the Exalted, places every existent in its place, and He is the Judge whom there is no judge over Him, nor can any overturn His judgment. He, the Exalted, says: *He is the Doer of what He wills* (Hud 11:107).[90]

L2456 **Issue: Faith and Islam are one and the same, and all of that is a binding commitment in the heart.**

L2457 75 – Issue: Faith *īmān* and Islam are one and the same. Allah, the Almighty, said: {"So We brought forth whoever was in it of the believers"} (51:35), {"But We found not within it except a single household from among the Muslims"} (51:36). And He, the Exalted, said: {"They claim credit to you for having accepted Islam. Say, 'Do not claim credit for your Islam. Rather, Allah has favored you by guiding you to faith, if you are truthful'"} (49:17).[91]

L2458–2460 76 - Issue: All of this consists of conviction in the heart, declaration with the tongue, and deeds by the limbs—faith grows through obedience and wanes through disobedience. The Almighty has said: *"As for those who believe, it increases them in faith"* [At-Tawbah 9:124]. Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abd al-Wahhab ibn Isa narrated to us... Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Ubaydullah ibn Muʿadh al-Anbari narrated to us: My father narrated to us: Kahmas al-Tamimi narrated to us from Abdullah ibn Buraidah from Yahya ibn Yaʿmur, who said: Abdullah ibn Umar said to me: My father, Umar ibn al-Khattab, narrated to me,

[89] **Qur'an references (L2454):** Qur'an 21:23 (Al-Anbya); Qur'an 6:149 (Al-An'am).
[90] **Qur'an references (L2455):** Qur'an 11:107 (Hud); Qur'an 85:16 (Al-Buruj).
[91] **Qur'an references (L2457):** Qur'an 51:35 (Adh-Dhariyat); Qur'an 51:36 (Adh-Dhariyat); Qur'an 49:17 (Al-Hujurat).

٧٤ - مَسْأَلَةٌ: وَلَا عُذْرَ لِأَحَدٍ بِمَا قَدَّرَهُ اللَّهُ عَزَّ وَجَلَّ مِنْ ذَلِكَ، لَا فِي الدُّنْيَا وَلَا فِي الْآخِرَةِ، وَكُلُّ أَفْعَالِهِ تَعَالَى عَدْلٌ وَحِكْمَةٌ. لِأَنَّ اللَّهَ تَعَالَى وَاضِعُ كُلِّ مَوْجُودٍ فِي مَوْضِعِهِ، وَهُوَ الْحَاكِمُ الَّذِي لَا حَاكِمَ عَلَيْهِ وَلَا مُعَقِّبَ لِحُكْمِهِ. قَالَ تَعَالَى: {فَعَّالٌ لِمَا يُرِيدُ} [هود: ١٠٧] .

[مَسْأَلَةٌ الْإِيمَانُ وَالْإِسْلَامُ شَيْءٌ وَاحِدٌ وكل ذَلِكَ عَقْدٌ بِالْقَلْبِ]

٧٥ - مَسْأَلَةٌ: الْإِيمَانُ وَالْإِسْلَامُ شَيْءٌ وَاحِدٌ. قَالَ عَزَّ وَجَلَّ: {فَأَخْرَجْنَا مَنْ كَانَ فِيهَا مِنَ الْمُؤْمِنِينَ} [الذاريات: ٣٥] {فَمَا وَجَدْنَا فِيهَا غَيْرَ بَيْتٍ مِنَ الْمُسْلِمِينَ} [الذاريات: ٣٦] وَقَالَ تَعَالَى: {يَمُنُّونَ عَلَيْكَ أَنْ أَسْلَمُوا قُلْ لا تَمُنُّوا عَلَيَّ إِسْلامَكُمْ بَلِ اللَّهُ يَمُنُّ عَلَيْكُمْ أَنْ هَدَاكُمْ لِلإِيمَانِ إِنْ كُنْتُمْ صَادِقِينَ} [الحجرات: ١٧] .

٧٦ - مَسْأَلَةٌ: كُلُّ ذَلِكَ عَقْدٌ بِالْقَلْبِ وَقَوْلٌ بِاللِّسَانِ وَعَمَلٌ بِالْجَوَارِحِ، يَزِيدُ بِالطَّاعَةِ وَيَنْقُصُ بِالْمَعْصِيَةِ. وَقَالَ عَزَّ وَجَلَّ: {فَأَمَّا الَّذِينَ آمَنُوا فَزَادَتْهُمْ إِيمَانًا} [التوبة: ١٢٤] حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا عُبَيْدُ اللَّهِ بْنُ مُعَاذٍ الْعَنْبَرِيُّ ثنا أَبِي ثنا كَهْمَسٌ التَّمِيمِيُّ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ عَنْ يَحْيَى بْنِ يَعْمُرَ قَالَ: قَالَ لِي عَبْدُ اللَّهِ بْنُ عُمَرَ: حَدَّثَنِي أَبِي عُمَرُ بْنُ الْخَطَّابِ قَالَ «بَيْنَمَا نَحْنُ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَاتَ يَوْمٍ إِذْ طَلَعَ عَلَيْنَا رَجُلٌ شَدِيدُ بَيَاضِ الثِّيَابِ شَدِيدُ سَوَادِ الشَّعْرِ لَا يُرَى عَلَيْهِ أَثَرُ السَّفَرِ وَلَا يَعْرِفُهُ مِنَّا أَحَدٌ حَتَّى جَلَسَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ: يَا مُحَمَّدُ

saying: “While we were with the Messenger of Allah (peace and blessings be upon him) on a particular day, a man appeared before us with extremely white garments and jet-black hair, bearing no traces of travel, whom none of us recognized. He seated himself before the Messenger of Allah (peace and blessings be upon him) and said: ’O Muhammad, inform me about Islam.’ The Messenger of Allah (peace and blessings be upon him) replied: ’Islam is to testify that there is no deity but Allah and that Muhammad is His Messenger, to establish prayer, to give zakah, to fast Ramadan, and to perform pilgrimage to the Sacred House if you have the means to do so.’ The man said: ’You have spoken truthfully.’ Then he asked: ’Inform me about faith.’ He said: ’It is to believe in Allah, His angels, His scriptures, His messengers, the Last Day, and to believe in divine decree—its goodness and its adversity.’” Yahya ibn Ya‘mur mentioned the rest of the hadith, in which the Messenger of Allah (peace and blessings be upon him) said: “O Umar, do you know who the questioner was?” I replied: “Allah and His Messenger know best.” He said: “It was Jibrīl (peace be upon him), who came to teach you your religion.”[9293]

أَخْبِرْنِي عَنْ الْإِسْلَامِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: الْإِسْلَامُ أَنْ تَشْهَدَ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، وَتُقِيمَ الصَّلَاةَ، وَتُؤْتِيَ الزَّكَاةَ، وَتَصُومَ رَمَضَانَ، وَتَحُجَّ الْبَيْتَ إِنْ اسْتَطَعْتَ إِلَيْهِ سَبِيلًا. قَالَ: صَدَقْتَ، فَأَخْبِرْنِي عَنْ الْإِيمَانِ، قَالَ: أَنْ تُؤْمِنَ بِاللَّهِ وَمَلَائِكَتِهِ وَكُتُبِهِ وَرُسُلِهِ وَالْيَوْمِ الْآخِرِ، وَتُؤْمِنَ بِالْقَدَرِ، خَيْرِهِ وَشَرِّهِ، وَذَكَرَ بَاقِيَ الْحَدِيثِ - وَفِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: يَا عُمَرُ أَتَدْرِي مَنْ السَّائِلُ؟ قُلْت: اللَّهُ وَرَسُولُهُ أَعْلَمُ، قَالَ: فَإِنَّهُ جِبْرِيلُ - عَلَيْهِ السَّلَامُ - أَتَاكُمْ يُعَلِّمُكُمْ دِينَكُمْ» .

L2461–2463

Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us; Ibrahim ibn Ahmad narrated to us; al-Farbari narrated to us; al-Bukhari narrated to us; Abd Allah ibn Muhammad narrated to us; Abu Amir al-Aqadi narrated to us; Sulayman ibn Bilal narrated to us from Abd Allah ibn Dinar from Abu Salih from Abu Hurayrah from the Prophet (peace and blessings of Allah be upon him) who said: “Faith has between sixty and seventy branches, and modesty is a branch of faith.” And via the same chain up to al-Bukhari: Qutaybah narrated to us; al-Layth narrated to us from Yazid ibn Abi Habib from Abu al-Khayr from Abdullah ibn Amr “that a man asked the Messenger of Allah (peace and blessings of Allah be upon him): ’Which aspect of Islam is best?’ He said: ’To feed others and to offer the greeting of peace to those you know and those you do not know.’” Abd Allah ibn Yusuf narrated to us; Ahmad ibn Fath narrated to us; Abd al-Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ ثنا أَبُو عَامِرٍ الْعَقَدِيُّ ثنا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْإِيمَانُ بِضْعٌ وَسِتُّونَ شُعْبَةً، وَالْحَيَاءُ شُعْبَةٌ مِنْ الْإِيمَانِ» . وَبِهِ إلَى الْبُخَارِيِّ: ثنا قُتَيْبَةُ ثنا اللَّيْثُ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ أَبِي الْخَيْرِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو «أَنَّ رَجُلًا سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَيُّ الْإِسْلَامِ خَيْرٌ؟ قَالَ: تُطْعِمُ الطَّعَامَ، وَتَقْرَأُ السَّلَامَ عَلَى مَنْ عَرَفْتَ وَمَنْ لَمْ تَعْرِفْ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ رُمْحٍ ثنا اللَّيْثُ عَنْ ابْنِ الْهَادِ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «قَالَ لِلنِّسَاءِ مَا رَأَيْتُ مِنْ نَاقِصَاتِ دِينٍ وَعَقْلٍ أَغْلَبَ لِذِي لُبٍّ مِنْكُنَّ،

[92] **Hadith references (L2458):** Sunan Abi Dawud 4695; Sunan an-Nasai 4990; Mishkat al-Masabih 2.

[93] **Qur’an references (L2458):** Qur’an 9:124 (At-Tawbah).

Hajjaj narrated to us; Muhammad ibn Rumh narrated to us; al-Layth narrated to us from Ibn al-Hadi. From Abdullah ibn Dinar, from Abdullah ibn Umar, from the Messenger of Allah—peace and blessings be upon him—who said to women: "I have not seen among those with shortcomings in faith and intellect anyone more challenging to a man of understanding than you." A woman asked: "O Messenger of Allah, what is the shortcoming in intellect and religion?" He replied: "As for the shortcoming in intellect, the testimony of two women equals that of one man—this is the shortcoming in intellect. And a woman may stay nights without praying and break the fast during Ramadan [due to menstruation]—this is the shortcoming in religion."[94]

قَالَتْ امْرَأَةٌ: يَا رَسُولَ اللَّهِ وَمَا نُقْصَانُ الْعَقْلِ وَالدِّينِ؟ قَالَ: أَمَّا نُقْصَانُ الْعَقْلِ فَشَهَادَةُ امْرَأَتَيْنِ تَعْدِلُ شَهَادَةَ رَجُلٍ فَهَذَا نُقْصَانُ الْعَقْلِ. وَتَمْكُثُ اللَّيَالِيَ مَا تُصَلِّي وَتُفْطِرُ فِي رَمَضَانَ، فَهَذَا نُقْصَانُ الدِّينِ» .

L2464 Ali said: Allah, the Mighty and Sublime, said: {Indeed, the religion with Allah is Islam} [Āl ʿImrān: 19]. Thus, it is confirmed that the religion is Islam, and it has been established that Islam is faith. Therefore, the religion is faith, and the religion diminishes with the decrease of faith and increases with its increase. And success is from Allah, the Most High.[95]

قَالَ عَلِيٌّ: قَالَ اللَّهُ عَزَّ وَجَلَّ: {إِنَّ الدِّينَ عِنْدَ اللَّهِ الإِسْلامُ} [آل عمران: ١٩] فَصَحَّ أَنَّ الدِّينَ هُوَ الْإِسْلَامُ، وَقَدْ صَحَّ أَنَّ الْإِسْلَامَ هُوَ الْإِيمَانُ، فَالدِّينُ هُوَ الْإِيمَانُ، وَالدِّينُ يَنْقُصُ بِنَقْصِ الْإِيمَانِ وَيَزِيدُ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L2465 **A legal issue: He believed in faith with his heart but did not declare it with his tongue, not out of dissimulation (taqiyyah).**

[مَسْأَلَةٌ اعْتَقَدَ الْإِيمَانَ بِقَلْبِهِ وَلَمْ يَنْطِقْ بِهِ بِلِسَانِهِ دُونَ تَقِيَّةٍ]

L2466 77. Issue: Whoever believes in faith with their heart but does not utter it with their tongue except due to dissimulation is a disbeliever in the sight of Allah the Exalted and in the view of Muslims. And whoever utters it with their tongue without believing in it with their heart is likewise a disbeliever in the sight of Allah and in the view of Muslims. Allah the Exalted said concerning the Jews and Christians: "They know the Messenger of Allah (peace be upon him) as they know their own sons." He the Exalted also said: "They rejected it unjustly and arrogantly, though their souls were certain of it" [27:14]. And He the Exalted said: "When the hypocrites come to you, they say: 'We bear witness that you are certainly Allah's Messenger.' Allah knows

٧٧ - مَسْأَلَةٌ: مَنْ اعْتَقَدَ الْإِيمَانَ بِقَلْبِهِ وَلَمْ يَنْطِقْ بِهِ بِلِسَانِهِ دُونَ تَقِيَّةٍ فَهُوَ كَافِرٌ عِنْدَ اللَّهِ تَعَالَى وَعِنْدَ الْمُسْلِمِينَ، وَمَنْ نَطَقَ بِهِ دُونَ أَنْ يَعْتَقِدَهُ بِقَلْبِهِ فَهُوَ كَافِرٌ عِنْدَ اللَّهِ وَعِنْدَ الْمُسْلِمِينَ. قَالَ اللَّهُ تَعَالَى عَنْ الْيَهُودِ وَالنَّصَارَى: إِنَّهُمْ يَعْلَمُونَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا يَعْلَمُونَ أَبْنَاءَهُمْ. وَقَالَ تَعَالَى: {وَجَحَدُوا بِهَا وَاسْتَيْقَنَتْهَا أَنْفُسُهُمْ ظُلْمًا وَعُلُوًّا} [النمل: ١٤] وَقَالَ تَعَالَى: {إِذَا جَاءَكَ الْمُنَافِقُونَ قَالُوا نَشْهَدُ إِنَّكَ لَرَسُولُ اللَّهِ وَاللَّهُ يَعْلَمُ إِنَّكَ لَرَسُولُهُ وَاللَّهُ يَشْهَدُ إِنَّ الْمُنَافِقِينَ لَكَاذِبُونَ} [المنافقون: ١]

[94] **Hadith references (L2461):** Sahih al-Bukhari 9; Sunan an-Nasai 5000; Sunan Abi Dawud 5194; Al-Adab al-Mufrad 1050; Sahih Muslim 79a.

[95] **Qur'an references (L2464):** Qur'an 3:19 (Ali 'Imran).

that you are His Messenger, and Allah bears witness that the hypocrites are indeed liars" [63:1].[96]

L2467 **A legal question: He believed in the faith with his heart and declared it with his tongue.**

L2468–2470 78. Issue: Whoever believes with his heart and utters it with his tongue has attained success, whether he reasoned or not. He is a believer in the sight of Allah the Exalted and in the sight of Muslims. Allah the Exalted said: "So fight the polytheists wherever you find them, seize them, besiege them, and lie in wait for them at every ambush. But if they repent, establish prayer, and give zakah, then release them" [9:5]. The Almighty did not stipulate evidentiary reasoning as a condition for this. From the moment Allah the Exalted sent His Messenger—peace and blessings of Allah be upon him—until He took him back, he continually fought people until they affirmed Islam and adhered to it. He never required them to engage in reasoning, nor did he inquire whether they had reasoned or not. All of Islam has proceeded upon this to this day. And success is from Allah, the Exalted.[97]

L2471 **Issue: One who neglects all religious acts entirely.**

L2472 79. Issue: Whoever abandons all deeds is a believing sinner deficient in faith, not a disbeliever. Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, from Abdul-Wahhab ibn Isa, from Ahmad ibn Muhammad, from Ahmad ibn Ali, from Muslim ibn al-Hajjaj, from Zuhayr ibn Harb, from Ya'qub ibn Ibrahim ibn Sa'd: My father narrated from Ibn Shihab, from 'Ata' ibn Yazid al-Laythi, that Abu Hurayrah informed him the Messenger of Allah (peace and blessings be upon him) said in a lengthy hadith: "When Allah concludes His judgment between the servants and desires to bring out through His mercy whom He wills from the Fire's inhabitants, He commands the angels to extract from the Fire those who associated nothing with Allah

[96] **Qur'an references (L2466):** Qur'an 27:14 (An-Naml); Qur'an 63:1 (Al-Munafiqun).
[97] **Qur'an references (L2468):** Qur'an 9:5 (At-Tawbah).

[مَسْأَلَةٌ اعْتَقَدَ الْإِيمَانَ بِقَلْبِهِ وَنَطَقَ بِهِ بِلِسَانِهِ]

٧٨ - مَسْأَلَةٌ: وَمَنْ اعْتَقَدَ الْإِيمَانَ بِقَلْبِهِ وَنَطَقَ بِهِ بِلِسَانِهِ فَقَدْ وُفِّقَ، سَوَاءٌ اسْتَدَلَّ أَوْ لَمْ يَسْتَدِلَّ، فَهُوَ مُؤْمِنٌ عِنْدَ اللَّهِ تَعَالَى وَعِنْدَ الْمُسْلِمِينَ. قَالَ اللَّهُ تَعَالَى: {فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصَدٍ فَإِنْ تَابُوا وَأَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ} [التوبة: ٥] وَلَمْ يَشْتَرِطْ عَزَّ وَجَلَّ فِي ذَلِكَ اسْتِدْلَالًا وَلَمْ يَزَلْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُذْ بَعَثَهُ اللَّهُ عَزَّ وَجَلَّ إِلَى أَنْ قَبَضَهُ يُقَاتِلُ النَّاسَ حَتَّى يُقِرُّوا بِالْإِسْلَامِ وَيَلْتَزِمُوهُ، وَلَمْ يُكَلِّفْهُمْ قَطُّ اسْتِدْلَالًا، وَلَا سَأَلَهُمْ هَلْ اسْتَدَلُّوا أَمْ لَا، وَعَلَى هَذَا جَرَى جَمِيعُ الْإِسْلَامِ إِلَى الْيَوْمِ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَنْ ضَيَّعَ الْأَعْمَالَ كُلَّهَا]

٧٩ - مَسْأَلَةٌ: وَمَنْ ضَيَّعَ الْأَعْمَالَ كُلَّهَا فَهُوَ مُؤْمِنٌ عَاصٍ نَاقِصُ الْإِيمَانِ لَا يَكْفُرُ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا زُهَيْرُ بْنُ حَرْبٍ ثنا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ ثنا أَبِي عَنِ ابْنِ شِهَابٍ عَنْ عَطَاءِ بْنِ يَزِيدَ اللَّيْثِيِّ أَنَّ أَبَا هُرَيْرَةَ أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي حَدِيثٍ طَوِيلٍ «حَتَّى إِذَا فَرَغَ اللَّهُ مِنْ قَضَائِهِ بَيْنَ الْعِبَادِ وَأَرَادَ أَنْ يُخْرِجَ بِرَحْمَتِهِ مَنْ أَرَادَ مِنْ أَهْلِ النَّارِ أَمَرَ الْمَلَائِكَةَ أَنْ يُخْرِجُوا مِنَ النَّارِ مَنْ كَانَ لَا يُشْرِكُ بِاللَّهِ شَيْئًا، مِمَّنْ أَرَادَ اللَّهُ - عَزَّ وَجَلَّ - أَنْ يَرْحَمَهُ، مِمَّنْ يَقُولُ لَا إِلَهَ إِلَّا اللَّهُ»

- those whom Allah (the Almighty and Majestic) willed to show mercy, from among those who said: 'There is no god but Allah.'"

A principle: Certainty does not vary in degrees.

L2473

L2474 80 - Issue: Certainty does not admit of degrees. However, if any trace of doubt or denial enters it, the entire certainty becomes nullified. The proof of this is that certainty is the affirmation of a thing, and one affirmation cannot be greater than another. If the affirmation is not fully realized, it becomes doubt.

An issue [in jurisprudence]: Sins are categorized as major sins (grave enormities), minor misdeeds, and minor faults (lamam).

L2475

L2476–2478 81. Issue: Sins are categorized as major sins (kaba'ir), shameful deeds (fawahish), minor sins (sayyi'at sagha'ir), and minor faults (lamam). The minor faults are collectively forgiven. The major sins and shameful deeds are those for which Allah the Exalted has threatened Hellfire in the Quran or through His Messenger—peace and blessings be upon him. Whoever avoids them will have all his minor sins forgiven. The proof for this is Allah's statement: "Those who avoid the major sins and shameful deeds, except for minor faults—indeed your Lord is vast in forgiveness" (an-Najm 53:32). The lamam refers to the thought of something. We previously mentioned the narration that whoever intends to commit a sin but does not act upon it will not be held accountable. Abdullah ibn Yusuf, Ahmad ibn Fath, Abdul-Wahhab ibn Isa, Ahmad ibn Muhammad, Ahmad ibn Ali, Muslim ibn al-Hajjaj, Sa'id ibn Mansur, Abu Awanah, Qatadah, Zurarah ibn Awfa, Abu Hurairah reported: The Messenger of Allah—peace and blessings be upon him—said, "Allah has pardoned my Ummah for what their souls whisper to them, so long as they do not speak or act upon it." Allah the Exalted also said: "If you avoid the major sins you are forbidden, We will absolve you of your minor sins" (an-Nisa 4:31). By necessity, we understand that a sin is only termed 'major' relative to what is smaller than it—there is absolutely no alternative to this.

[مَسْأَلَةُ الْيَقِينُ لَا يَتَفَاضَلُ]

٨٠ - مَسْأَلَةٌ: وَالْيَقِينُ لَا يَتَفَاضَلُ، لَكِنْ إِنْ دَخَلَ فِيهِ شَيْءٌ مِنْ شَكٍّ أَوْ جَحْدٍ بَطَلَ كُلُّهُ. بُرْهَانُ ذَلِكَ أَنَّ الْيَقِينَ هُوَ إِثْبَاتُ الشَّيْءِ، وَلَا يُمْكِنُ أَنْ يَكُونَ إِثْبَاتٌ أَكْثَرَ مِنْ إِثْبَاتٍ، فَإِنْ لَمْ يُحَقِّقْ الْإِثْبَاتَ صَارَ شَكًّا.

[مَسْأَلَةُ الْمَعَاصِي كَبَائِرُ فَوَاحِشُ وَسَيِّئَاتٌ صَغَائِرُ وَلَمَمٌ]

٨١ - مَسْأَلَةٌ: وَالْمَعَاصِي كَبَائِرُ فَوَاحِشُ، وَسَيِّئَاتٌ صَغَائِرُ وَلَمَمٌ، وَاللَّمَمُ مَغْفُورٌ جُمْلَةً، فَالْكَبَائِرُ الْفَوَاحِشُ هِيَ مَا تَوَعَّدَ اللَّهُ تَعَالَى عَلَيْهِ بِالنَّارِ فِي الْقُرْآنِ أَوْ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَنْ اجْتَنَبَهَا غُفِرَتْ لَهُ جَمِيعُ سَيِّئَاتِهِ الصَّغَائِرِ. بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {الَّذِينَ يَجْتَنِبُونَ كَبَائِرَ الْإِثْمِ وَالْفَوَاحِشَ إِلا اللَّمَمَ إِنَّ رَبَّكَ وَاسِعُ الْمَغْفِرَةِ} [النجم: ٣٢] وَاللَّمَمُ هُوَ الْهَمُّ بِالشَّيْءِ، وَقَدْ تَقَدَّمَ ذِكْرُنَا الْأَثَرَ فِي أَنَّ مَنْ هَمَّ بِسَيِّئَةٍ فَلَمْ يَعْمَلْهَا لَمْ يُكْتَبْ عَلَيْهِ شَيْءٌ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا سَعِيدُ بْنُ مَنْصُورٍ ثنا أَبُو عَوَانَةَ عَنْ قَتَادَةَ عَنْ زُرَارَةَ بْنِ أَوْفَى عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ اللَّهَ تَجَاوَزَ لِأُمَّتِي عَمَّا حَدَّثَتْ بِهِ أَنْفُسَهَا مَا لَمْ يَتَكَلَّمُوا أَوْ يَعْمَلُوا بِهِ» وَقَالَ اللَّهُ - عَزَّ وَجَلَّ -: {إِنْ تَجْتَنِبُوا كَبَائِرَ مَا تُنْهَوْنَ عَنْهُ نُكَفِّرْ عَنْكُمْ سَيِّئَاتِكُمْ} [النساء: ٣١] وَبِالضَّرُورَةِ نَعْرِفُ أَنَّهُ لَا يَكُونُ كَبِيرًا إِلَّا بِالْإِضَافَةِ إِلَى مَا هُوَ

When [text incomplete]. When the punishment is the most severe of what is feared, the act necessitating it is undoubtedly major. That in which there is no threat of the Fire does not attain the magnitude of that which is threatened with the Fire; it is undoubtedly the minor one, as there is no possibility of a third category.[98]

أَصْغَرُ مِنْهُ، لَا يُمْكِنُ غَيْرُ هَذَا أَصْلًا، فَإِذَا كَانَ الْعِقَابُ بَالِغًا أَشَدَّ مَا يُتَخَوَّفُ فَالْمُوجِبُ لَهُ هُوَ كَبِيرٌ بِلَا شَكٍّ، وَمَا لَا تَوَعُّدَ فِيهِ بِالنَّارِ فَلَا يَلْحَقُ فِي الْعِظَمِ مَا تُوُعِّدَ فِيهِ بِالنَّارِ، فَهُوَ الصَّغِيرُ بِلَا شَكٍّ، إِذْ لَا سَبِيلَ إِلَى قِسْمٍ ثَالِثٍ.

Issue: One who does not avoid the major sins.

L2479

[مَسْأَلَةٌ مَنْ لَمْ يَجْتَنِبِ الْكَبَائِرَ]

L2480 82. Issue: Whoever does not abstain from major sins will be held accountable for every deed he committed. Allah, the Mighty and Majestic, will weigh his good deeds against all his sins from which he did not repent and for which no *hadd* punishment was enforced. Whoever's good deeds outweighed his evil deeds will be in Paradise, as will whoever's good deeds equaled his evil deeds. Allah, the Mighty and Majestic, said: *"We will set up the scales of justice on the Day of Resurrection, so no soul will be wronged in the least. Even if it were the weight of a mustard seed, We will bring it forth. Sufficient are We as reckoners"* (21:47). He also said: *"As for him whose scales are heavy… he will be in a blissful life"* (101:6-7). Those whose good and evil deeds were equal are the people of *al-Aʿrāf*. He said: *"Indeed, good deeds remove evil deeds"* (11:114). There is no dispute that repentance nullifies sins.[99]

٨٢ - مَسْأَلَةٌ: وَمَنْ لَمْ يَجْتَنِبِ الْكَبَائِرَ حُوسِبَ عَلَى كُلِّ مَا عَمِلَ، وَوَازَنَ اللَّهُ عَزَّ وَجَلَّ بَيْنَ أَعْمَالِهِ مِنَ الْحَسَنَاتِ وَبَيْنَ جَمِيعِ مَعَاصِيهِ الَّتِي لَمْ يَتُبْ مِنْهَا وَلَا أُقِيمَ عَلَيْهِ حَدُّهَا، فَمَنْ رَجَحَتْ حَسَنَاتُهُ فَهُوَ فِي الْجَنَّةِ، وَكَذَلِكَ مَنْ سَاوَتْ حَسَنَاتُهُ سَيِّئَاتِهِ. قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَنَضَعُ الْمَوَازِينَ الْقِسْطَ لِيَوْمِ الْقِيَامَةِ فَلا تُظْلَمُ نَفْسٌ شَيْئًا وَإِنْ كَانَ مِثْقَالَ حَبَّةٍ مِنْ خَرْدَلٍ أَتَيْنَا بِهَا وَكَفَى بِنَا حَاسِبِينَ} [الأنبياء: ٤٧] وَقَالَ تَعَالَى: {فَأَمَّا مَنْ ثَقُلَتْ مَوَازِينُهُ} [القارعة: ٦] {فَهُوَ فِي عِيشَةٍ رَاضِيَةٍ} [القارعة: ٧] وَمَنْ تَسَاوَتْ فَهُمْ أَهْلُ الْأَعْرَافِ. قَالَ اللَّهُ عَزَّ وَجَلَّ: {إِنَّ الْحَسَنَاتِ يُذْهِبْنَ السَّيِّئَاتِ} [هود: ١١٤] وَلَا خِلَافَ فِي أَنَّ التَّوْبَةَ تُسْقِطُ الذُّنُوبَ.

L2481 Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us. Muslim ibn al-Hajjaj narrated to me: Ismail ibn Salim reported to me, Hushaym informed me: Khalid narrated to us from Abu Qilabah from Abu al-Ashʿath al-Sanʿani from Ubadah ibn al-Samit, who said: "The Messenger of Allah, peace and blessings be upon him, imposed upon us a covenant, just as he imposed upon the women: that we associate nothing with Allah, nor steal, nor commit adultery, nor kill our children,

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ، حَدَّثَنِي إِسْمَاعِيلُ بْنُ سَالِمٍ، أَخْبَرَنِي هُشَيْمٌ ثنا خَالِدٌ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْأَشْعَثِ الصَّنْعَانِيِّ عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ «أَخَذَ عَلَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا أَخَذَ عَلَى النِّسَاءِ: أَنْ لَا نُشْرِكَ بِاللَّهِ شَيْئًا وَلَا نَسْرِقَ وَلَا نَزْنِيَ وَلَا نَقْتُلَ أَوْلَادَنَا وَلَا يَعْضَهَ بَعْضُنَا بَعْضًا، فَمَنْ وَفَى مِنْكُمْ فَأَجْرُهُ

[98] **Qur'an references (L2476):** Qur'an 53:32 (An-Najm); Qur'an 4:31 (An-Nisa).

[99] **Qur'an references (L2480):** Qur'an 21:47 (Al-Anbya); Qur'an 101:6 (Al-Qari'ah); Qur'an 69:21 (Al-Haqqah); Qur'an 101:7 (Al-Qari'ah); Qur'an 11:114 (Hud).

nor slander one another. Whoever among you fulfills this, his reward lies with Allah. Whoever commits a sin requiring a prescribed punishment and it is executed upon him, that shall be his expiation. Whomever Allah shields from exposure, his affair rests with Allah: if He wills, He punishes him; if He wills, He forgives him."

L2482 **An issue concerning the one whose evil deeds outweigh his good deeds.**

L2483–2485 83. Issue: As for the one whose evil deeds outweigh his good deeds, they are those who will be rescued from the Fire through intercession according to the measure of their deeds. Allah Almighty said: "But as for him whose scales are light" (Al-Qāriʿah 101: 8), "his refuge is Hāwiyah" (Al-Qāriʿah 101: 9), "And what will make you grasp what it is?" (Al-Qāriʿah 101: 10), "A blazing Fire" (Al-Qāriʿah 101: 11). And He Almighty said: "So whoever does an atom's weight of good will see it" (Az-Zalzalah 99: 7), "And whoever does an atom's weight of evil will see it" (Az-Zalzalah 99: 8). And He the Exalted said: "Today every soul will be recompensed for what it earned" (Ghāfir 40: 17). ʿAbdullāh ibn Yūsuf narrated to us; Aḥmad ibn Fatḥ narrated to us; ʿAbd al-Wahhāb ibn ʿĪsā narrated to us; Aḥmad ibn Muḥammad narrated to us; Aḥmad ibn ʿAlī narrated to us; Muslim ibn al-Ḥajjāj narrated to us; Zuhayr ibn Ḥarb narrated to us; Yaʿqūb ibn… Ibrahim ibn Sa'd narrated to us from his father, from Ibn Shihab, from 'Ata' ibn Yazid al-Laythi that Abu Hurayrah informed him that the Messenger of Allah—peace and blessings be upon him—said in a lengthy hadith: "The Sirat will be placed across the midst of Hell, and I and my Ummah will be the first to cross it. None will speak on that day except the messengers, and the supplication of the messengers on that day will be: 'O Allah, grant safety, grant safety!' In Hell are hooks like the thorns of Sa'dan—none knows the extent of their magnitude except Allah, the Almighty, the Majestic—that seize people because of their deeds. Among them—meaning the one doomed—by his deeds, and among them the one lightly injured until he is saved."[100]

[100]**Qur'an references (L2483):** Qur'an 101:8 (Al-Qari'ah); Qur'an 101:9 (Al-Qari'ah); Qur'an 101:10 (Al-Qari'ah); Qur'an 101:11 (Al-Qari'ah); Qur'an 99:7 (Az-Zalzalah); Qur'an 99:8 (Az-Zalzalah); Qur'an 40:17 (Ghafir).

عَلَى اللَّهِ وَمَنْ أَتَى مِنْكُمْ حَدًّا فَأُقِيمَ عَلَيْهِ فَهُوَ كَفَّارَةٌ لَهُ، وَمَنْ سَتَرَهُ اللَّهُ عَلَيْهِ فَأَمْرُهُ إِلَى اللَّهِ إِنْ شَاءَ عَذَّبَهُ وَإِنْ شَاءَ غَفَرَ لَهُ» .

[مَسْأَلَةٌ مَنْ رَجَحَتْ سَيِّئَاتُهُ بِحَسَنَاتِهِ]

٨٣ - مَسْأَلَةٌ: وَمَنْ رَجَحَتْ سَيِّئَاتُهُ بِحَسَنَاتِهِ فَهُمُ الْخَارِجُونَ مِنَ النَّارِ بِالشَّفَاعَةِ عَلَى قَدْرِ أَعْمَالِهِمْ. قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَأَمَّا مَنْ خَفَّتْ مَوَازِينُهُ} [القارعة: ٨] {فَأُمُّهُ هَاوِيَةٌ} [القارعة: ٩] {وَمَا أَدْرَاكَ مَا هِيَهْ} [القارعة: ١٠] {نَارٌ حَامِيَةٌ} [القارعة: ١١] وَقَالَ عَزَّ وَجَلَّ: {فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ} [الزلزلة: ٧] {وَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ} [الزلزلة: ٨] وَقَالَ تَعَالَى: {الْيَوْمَ تُجْزَى كُلُّ نَفْسٍ بِمَا كَسَبَتْ} [غافر: ١٧] . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا زُهَيْرُ بْنُ حَرْبٍ ثنا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ ثنا أَبِي عَنِ ابْنِ شِهَابٍ عَنْ عَطَاءِ بْنِ يَزِيدَ اللَّيْثِيِّ أَنَّ أَبَا هُرَيْرَةَ أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي حَدِيثٍ طَوِيلٍ: «وَيُضْرَبُ الصِّرَاطُ بَيْنَ ظَهْرَيْ جَهَنَّمَ، فَأَكُونُ أَنَا وَأُمَّتِي أَوَّلَ مَنْ يُجِيزُ، وَلَا يَتَكَلَّمُ يَوْمَئِذٍ إِلَّا الرُّسُلُ، وَدَعْوَى الرُّسُلِ يَوْمَئِذٍ اللَّهُمَّ سَلِّمْ سَلِّمْ. وَفِي جَهَنَّمَ كَلَالِيبُ مِثْلُ شَوْكِ السَّعْدَانِ، غَيْرَ أَنَّهُ لَا يَعْلَمُ مَا قَدْرُ عِظَمِهَا إِلَّا اللَّهُ - عَزَّ وَجَلَّ - تَخْطَفُ النَّاسَ بِأَعْمَالِهِمْ فَمِنْهُمْ يَعْنِي الْمُوبَقَ بِعَمَلِهِ وَمِنْهُمُ الْمُخَرْدَلُ حَتَّى يُنَجَّى» .

L2486 And through him to Muslim: Abu Ghassan al-Misma'ī and Muhammad ibn al-Muthanna narrated to us, both saying: Mu'adh ibn Hisham al-Dastuwa'i narrated to us, who informed us from his father from Qatadah. Anas ibn Malik narrated to us that the Prophet—peace and blessings of Allah be upon him—said: "Whoever said, 'There is no god but Allah,' and had in his heart goodness equal to a barley grain will come out of the Fire. Then whoever said, 'There is no god but Allah,' and had in his heart goodness equal to a wheat grain will come out of the Fire. Then whoever said, 'There is no god but Allah,' and had in his heart goodness equal to an atom will come out of the Fire." Ali said: The statement of Allah—the Almighty and Majestic—"Indeed, Allah does not forgive association with Him, but He forgives what is less than that for whom He wills" (4:48), and the Prophet's statement—peace and blessings of Allah be upon him—in the hadith of Ubadah we previously mentioned, "If He wills, He will forgive him, and if He wills, He will punish him," is not contradictory to what we have stated. For these two texts merely indicate that He—Exalted—forgives sins lesser than polytheism for whom He wills, and this is undoubtedly correct. Similarly, His statement—Exalted—"Indeed, Allah forgives all sins" (39:53), and His statement regarding the Christians, narrating from Jesus—peace be upon him—"If You punish them, they are Your servants, and if You forgive them, indeed You are the Almighty, the Wise" (5:118), to which Allah responds, "This is the Day when the truthful will benefit from their truthfulness" (5:119), are not contradictory to these two texts. None of this implies that He might forgive and refrain from punishing one whose evil deeds outweigh his good deeds. The decisive clarification of rulings concerning such individuals, as we have mentioned, serves as the governing principle for all other generalized texts.[101][102]

L2487 Likewise, these texts supersede every text containing statements such as: "Whoever commits such an act, Allah forbids Paradise upon him," and "Whoever sincerely declares 'There is no god but Allah,' Allah forbids Hell upon him," along with His Exalted statement: *"And whoever kills a believer inten-

وَبِهِ إِلَى مُسْلِمٍ ثنا أَبُو غَسَّانَ الْمِسْمَعِيُّ وَمُحَمَّدُ بْنُ الْمُثَنَّى قَالَا ثنا مُعَاذٌ وَهُوَ ابْنُ هِشَامٍ الدَّسْتُوَائِيُّ - أَخْبَرَنَا أَبِي عَنْ قَتَادَةَ ثنا أَنَسُ بْنُ مَالِكٍ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «يَخْرُجُ مِنَ النَّارِ مَنْ قَالَ لَا إِلَهَ إِلَّا اللَّهُ وَكَانَ فِي قَلْبِهِ مِنَ الْخَيْرِ مَا يَزِنُ شَعِيرَةً، ثُمَّ يَخْرُجُ مِنَ النَّارِ مَنْ قَالَ لَا إِلَهَ إِلَّا اللَّهُ وَكَانَ فِي قَلْبِهِ مِنَ الْخَيْرِ مَا يَزِنُ بُرَّةً، ثُمَّ يَخْرُجُ مِنَ النَّارِ مَنْ قَالَ لَا إِلَهَ إِلَّا اللَّهُ وَكَانَ فِي قَلْبِهِ مِنَ الْخَيْرِ مَا يَزِنُ ذَرَّةً» . قَالَ عَلِيٌّ: وَلَيْسَ قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {إِنَّ اللَّهَ لا يَغْفِرُ أَنْ يُشْرَكَ بِهِ وَيَغْفِرُ مَا دُونَ ذَلِكَ لِمَنْ يَشَاءُ} [النساء: ٤٨] وَقَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثِ عُبَادَةَ الَّذِي ذَكَرْنَاهُ آنِفًا «إِنْ شَاءَ غَفَرَ لَهُ وَإِنْ شَاءَ عَذَّبَهُ» بِمُعَارِضٍ لِمَا ذَكَرْنَا، لِأَنَّهُ لَيْسَ فِي هَذَيْنِ النَّصَّيْنِ إِلَّا أَنَّهُ تَعَالَى يَغْفِرُ مَا دُونَ الشِّرْكِ لِمَنْ يَشَاءُ، وَهَذَا صَحِيحٌ لَا شَكَّ فِيهِ، كَمَا أَنَّ قَوْلَهُ تَعَالَى: {إِنَّ اللَّهَ يَغْفِرُ الذُّنُوبَ جَمِيعًا} [الزمر: ٥٣] وَقَوْلَهُ تَعَالَى فِي النَّصَارَى حَاكِيًا عَنْ عِيسَى - عَلَيْهِ السَّلَامُ - أَنَّهُ قَالَ: {إِنْ تُعَذِّبْهُمْ فَإِنَّهُمْ عِبَادُكَ وَإِنْ تَغْفِرْ لَهُمْ فَإِنَّكَ أَنْتَ الْعَزِيزُ الْحَكِيمُ} [المائدة: ١١٨] قَالَ اللَّهُ: {هَذَا يَوْمُ يَنْفَعُ الصَّادِقِينَ صِدْقُهُمْ} [المائدة: ١١٩] لَيْسَ بِمُعَارِضٍ لِهَذَيْنِ النَّصَّيْنِ، وَلَيْسَ فِي شَيْءٍ مِنْ هَذَا أَنَّهُ قَدْ يَغْفِرُ وَلَا يُعَذِّبُ مَنْ رَجَحَتْ سَيِّئَاتُهُ عَلَى حَسَنَاتِهِ، وَالْمُبَيِّنُ لِأَحْكَامِ هَؤُلَاءِ مِمَّا ذَكَرْنَا هُوَ الْحَاكِمُ عَلَى سَائِرِ النُّصُوصِ الْمُجْمَلَةِ.

وَكَذَلِكَ تَقْضِي هَذِهِ النُّصُوصُ عَلَى كُلِّ نَصٍّ فِيهِ: مَنْ فَعَلَ كَذَا حَرَّمَ اللَّهُ عَلَيْهِ الْجَنَّةَ، وَمَنْ قَالَ لَا إِلَهَ إِلَّا اللَّهُ مُخْلِصًا حَرَّمَ اللَّهُ عَلَيْهِ النَّارَ، وَعَلَى قَوْلِهِ تَعَالَى: {وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا} [النساء: ٩٣] وَمَعْنَى كُلِّ هَذَا أَنَّ اللَّهَ يُحَرِّمُ الْجَنَّةَ عَلَيْهِ

[101] **Hadith references (L2486):** Sahih Muslim 193d.

[102] **Qur'an references (L2486):** Qur'an 4:48 (An-Nisa); Qur'an 4:116 (An-Nisa); Qur'an 39:53 (Az-Zumar); Qur'an 5:118 (Al-Ma'idah); Qur'an 5:119 (Al-Ma'idah).

tionally, his recompense is Hell—abiding therein forever”* [An-Nisa 4:93]. The meaning of all this is that Allah forbids Paradise upon him until retribution is exacted from him, and forbids Hell upon him that he should abide therein eternally—though he will abide therein for a time until intercession rescues him, as it is essential to reconcile all texts. And Allah alone grants success.[103]

L2488 **Question: People in Paradise will be ranked according to the measure of their excellence in Allah’s estimation.**

L2489–2491 84. Issue: People in Paradise are according to the measure of their virtue in the sight of Allah, the Exalted, so the most virtuous of them... The highest of them in Paradise in rank—the proof is the statement of the Exalted: *“And the foremost are the foremost”* [Quran 56:10], *“Those are the ones brought near”* [Quran 56:11], *“In the Gardens of Bliss”* [Quran 56:12]. If it were permissible for the superior to be of a lesser rank, superiority would be nullified, devoid of meaning, and no one would desire it. Superiority has no meaning except Allah’s command to honor the elevated in this world and raise their station in Paradise.[104]

L2492 Issue 85: They are the prophets, then their wives, then the rest of the companions of the Messenger of Allah—peace and blessings be upon him—and all of them are in Paradise. We have mentioned the statement of the Messenger of Allah—peace and blessings be upon him—that “If any of us possessed gold equivalent to Mount Uhud and spent it, it would not equal a mudd or even half a mudd of theirs.” We have also mentioned that the best of people are those with the highest ranks in Paradise, and there is no rank higher than that of the prophets—peace be upon them. Thus, whoever shares their rank is superior to those below them, and this applies exclusively to their wives. Allah the Exalted said: “Those of you who spent and fought before the conquest are not equal. They are higher in rank than those who spent and fought afterward. But to both Allah has promised the ultimate good.” [Al-Hadid: 10] And He—glory be to Him—said: “As for those for whom the

[103]**Qur’an references (L2487):** Qur’an 4:93 (An-Nisa).

[104]**Qur’an references (L2489):** Qur’an 56:10 (Al-Waqi’ah); Qur’an 56:11 (Al-Waqi’ah); Qur’an 37:43 (As-Saffat); Qur’an 56:12 (Al-Waqi’ah).

حَتَّى يُقْتَصَّ مِنْهُ، وَيُحَرِّمُ النَّارَ عَلَيْهِ أَنْ يَخْلُدَ فِيهَا أَبَدًا، وَخَالِدًا فِيهَا مُدَّةً حَتَّى تُخْرِجَهُ الشَّفَاعَةُ، إِذْ لَا بُدَّ مِنْ جَمْعِ النُّصُوصِ كُلِّهَا. وَبِاللَّهِ التَّوْفِيقُ.

[مَسْأَلَةُ النَّاسُ فِي الْجَنَّةِ عَلَى قَدْرِ فَضْلِهِمْ عِنْدَ اللَّهِ]

٨٤ - مَسْأَلَةٌ: وَالنَّاسُ فِي الْجَنَّةِ عَلَى قَدْرِ فَضْلِهِمْ عِنْدَ اللَّهِ تَعَالَى، فَأَفْضَلُ النَّاسِ أَعْلَاهُمْ فِي الْجَنَّةِ دَرَجَةً، بُرْهَانُ ذَلِكَ قَوْله تَعَالَى: {وَالسَّابِقُونَ السَّابِقُونَ} [الواقعة: ١٠] {أُولَئِكَ الْمُقَرَّبُونَ} [الواقعة: ١١] {فِي جَنَّاتِ النَّعِيمِ} [الواقعة: ١٢] وَلَوْ جَازَ أَنْ يَكُونَ الْأَفْضَلُ أَنْقَصَ دَرَجَةً لَبَطَلَ الْفَضْلُ وَلَمْ يَكُنْ لَهُ مَعْنًى وَلَا رَغِبَ فِيهِ رَاغِبٌ، وَلَيْسَ لِلْفَضْلِ مَعْنًى إلَّا أَمْرُ اللَّهِ تَعَالَى بِتَعْظِيمِ الْأَرْفَعِ فِي الدُّنْيَا وَتَرْفِيعِ مَنْزِلَتِهِ فِي الْجَنَّةِ.

٨٥ - مَسْأَلَةٌ: وَهُمْ الْأَنْبِيَاءُ ثُمَّ أَزْوَاجُهُمْ ثُمَّ سَائِرُ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَجَمِيعُهُمْ فِي الْجَنَّةِ. وَقَدْ ذَكَرْنَا قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ «لَوْ كَانَ لِأَحَدِنَا مِثْلُ أُحُدٍ ذَهَبًا فَأَنْفَقَهُ مَا بَلَغَ مُدَّ أَحَدِهِمْ وَلَا نَصِيفَهُ» . وَقَدْ ذَكَرْنَا أَنَّ أَفْضَلَ النَّاسِ أَعْلَاهُمْ دَرَجَةً فِي الْجَنَّةِ، وَلَا مَنْزِلَةَ أَعْلَى مِنْ دَرَجَةِ الْأَنْبِيَاءِ - عَلَيْهِمْ السَّلَامُ -، فَمَنْ كَانَ مَعَهُمْ فِي دَرَجَتِهِمْ فَهُوَ أَفْضَلُ مِمَّنْ دُونَهُمْ، وَلَيْسَ ذَلِكَ إلَّا لِنِسَائِهِمْ فَقَطْ. وَقَالَ تَعَالَى: {لا يَسْتَوِي مِنْكُمْ مَنْ أَنْفَقَ مِنْ قَبْلِ الْفَتْحِ وَقَاتَلَ أُولَئِكَ أَعْظَمُ دَرَجَةً مِنَ الَّذِينَ أَنْفَقُوا مِنْ بَعْدُ وَقَاتَلُوا وَكُلا وَعَدَ اللَّهُ الْحُسْنَى} [الحديد: ١٠] وَقَالَ عَزَّ وَجَلَّ: {إِنَّ الَّذِينَ سَبَقَتْ لَهُمْ مِنَّا الْحُسْنَى أُولَئِكَ عَنْهَا مُبْعَدُونَ - لا يَسْمَعُونَ حَسِيسَهَا وَهُمْ فِي مَا اشْتَهَتْ أَنْفُسُهُمْ خَالِدُونَ - لا يَحْزُنُهُمُ الْفَزَعُ الأَكْبَرُ} [الأنبياء: ١٠١ -

ultimate good has already been decreed by Us, they will be kept far away from it. They will not hear its hissing sound, and they will remain forever in what their souls desire. The Great Terror will not grieve them." [Al-Anbiya: 101–103] The text explicitly states that whoever accompanied the Prophet—peace and blessings be upon him—has been promised the ultimate good by Allah the Exalted. Allah the Exalted has explicitly stated: "Allah does not break His promise." [Al-Imran: 9] It is established by the text that everyone for whom the ultimate good has been decreed by Allah the Exalted will be kept far from the Fire, will not hear its hissing sound, and will abide eternally in what their souls desire, unafflicted by the Great Terror. This is the explicit textual proof of our claim. Neither the hypocrites nor the rest of the disbelievers are counted among his companions—peace be upon him—nor among those associated with him—peace be upon him.[105]

An Issue of the Caliphate in Quraysh

L2493

L2494 86 - Issue: The caliphate is valid only for Quraysh—who are the descendants of Fihr ibn Mālik ibn al-Naḍr ibn Kinānah, those whose paternal lineage traces back to him. Abdullāh ibn Yūsuf narrated to us via Aḥmad ibn Fatḥ, ʿAbd al-Wahhāb ibn ʿĪsā, Aḥmad ibn Muḥammad, Aḥmad ibn ʿAlī, Muslim ibn al-Ḥajjāj, Aḥmad ibn ʿAbdillāh ibn Yūnus, ʿĀṣim ibn Muḥammad ibn Zayd ibn ʿAbdillāh ibn ʿUmar ibn al-Khaṭṭāb, from his father, who said: ʿAbdullāh ibn ʿUmar reported: The Messenger of Allah (peace and blessings be upon him) said: "This leadership will remain in Quraysh so long as two people remain in existence."[106]

L2495–2496 Ali said: This wording is that of an informative statement. If its meaning is a command, then it is permanently forbidden for the command to belong to anyone other than them. If its meaning aligns with the meaning of an

[105] **Qur'an references (L2492):** Qur'an 57:10 (Al-Hadid); Qur'an 21:101 (Al-Anbya); Qur'an 21:102 (Al-Anbya); Qur'an 3:9 (Ali 'Imran); Qur'an 13:31 (Ar-Ra'd); Qur'an 21:103 (Al-Anbya).

[106] **Hadith references (L2494):** Sahih Muslim 1820.

١٠٣] فَجَاءَ النَّصُّ أَنَّ مَنْ صَحِبَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ وَعَدَهُ اللَّهُ تَعَالَى الْحُسْنَى. وَقَدْ نَصَّ اللَّهُ تَعَالَى: {إِنَّ اللَّهَ لا يُخْلِفُ الْمِيعَادَ} [آل عمران: ٩] وَصَحَّ بِالنَّصِّ كُلُّ مَنْ سَبَقَتْ لَهُ مِنَ اللَّهِ تَعَالَى الْحُسْنَى، فَإِنَّهُ مُبْعَدٌ عَنِ النَّارِ لَا يَسْمَعُ حَسِيسَهَا، وَهُوَ فِيمَا اشْتَهَى خَالِدٌ لَا يَحْزُنُهُ الْفَزَعُ الْأَكْبَرُ. وَهَذَا نَصُّ مَا قُلْنَا، وَلَيْسَ الْمُنَافِقُونَ وَلَا سَائِرُ الْكُفَّارِ، مِنْ أَصْحَابِهِ - عَلَيْهِ السَّلَامُ -، وَلَا مِنَ الْمُضَافِينَ إِلَيْهِ - عَلَيْهِ السَّلَامُ -.

[مَسْأَلَةُ الْخِلَافَةُ فِي قُرَيْشٍ]

٨٦ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْخِلَافَةُ إِلَّا فِي قُرَيْشٍ، وَهُمْ وَلَدُ فِهْرِ بْنِ مَالِكِ بْنِ النَّضْرِ بْنِ كِنَانَةَ، الَّذِينَ يَرْجِعُونَ بِأَنْسَابِ آبَائِهِمْ إِلَيْهِ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ يُونُسَ ثنا عَاصِمُ بْنُ مُحَمَّدِ بْنِ زَيْدِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ عَنْ أَبِيهِ قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ عُمَرَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَزَالُ هَذَا الْأَمْرُ فِي قُرَيْشٍ مَا بَقِيَ مِنَ النَّاسِ اثْنَانِ» .

قَالَ عَلِيٌّ: هَذِهِ اللَّفْظَةُ لَفْظَةُ الْخَبَرِ، فَإِنْ كَانَ مَعْنَاهُ الْأَمْرَ فَحَرَامٌ أَنْ يَكُونَ الْأَمْرُ فِي غَيْرِهِمْ أَبَدًا، وَإِنْ كَانَ مَعْنَاهُ مَعْنَى الْخَبَرِ كَلَفْظِهِ، فَلَا شَكَّ فِي أَنَّ مَنْ لَمْ يَكُنْ مِنْ قُرَيْشٍ فَلَا أَمْرَ لَهُ وَإِنِ ادَّعَاهُ، فَعَلَى كُلِّ حَالٍ فَهَذَا خَبَرٌ يُوجِبُ مَنْعَ الْأَمْرِ عَمَّنْ سِوَاهُمْ.

informative statement, consistent with its wording, there is no doubt that whoever is not from Quraysh has no right to command – even if they claim it. Therefore, in all scenarios, this statement necessitates preventing the command from being granted to anyone besides them.

L2497 **[An issue: It is not permissible to entrust authority to a non-adult, nor to a mad person, nor to a woman.]**

L2498 87. Issue: It is not permissible to entrust authority to a non-adult, a mentally incompetent person, or a woman. There must be only one Imam in the world. Whoever spends a night without a pledge of allegiance upon him dies the death of ignorance. There is no obedience to any created being in disobedience to the Creator. It is not permissible to delay in appointing the Imam for more than three days after his death. The proof for this is what ʻAbdullāh ibn Rabīʻ reported on the authority of Ibn al-Sulaym, on the authority of Ibn al-Aʻrābī, on the authority of Abū Dāwūd, on the authority of ʻUthmān ibn Abī Shaybah, on the authority of Jarīr, from ʻAṭāʼ ibn al-Sāʼib, from Abī Ẓabyān, from ʻAlī ibn Abī Ṭālib, that the Messenger of Allah—peace and blessings be upon him—said: "The pen is lifted from the sleeper until he awakens, from the child until he reaches puberty, and from the mentally incapacitated until he regains reason."

L2499–2500 Ali said: The Imam is appointed solely so that the people establish prayer, to collect their alms, to enforce their prescribed penalties, to implement their judgments, and to combat their enemies. All of these are covenants, and those who have not reached puberty or lack discernment are not held accountable for these obligations.

[مَسْأَلَةٌ لَا يَجُوزُ الْأَمْرُ لِغَيْرِ بَالِــغٍ وَلَا لِمَجْنُونٍ وَلَا امْرَأَةٍ]

٨٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ الْأَمْرُ لِغَيْرِ بَالِــغٍ وَلَا لِمَجْنُونٍ وَلَا امْرَأَةٍ، وَلَا يَجُوزُ أَنْ يَكُونَ فِي الدُّنْيَا إِلَّا إِمَامٌ وَاحِدٌ فَقَطْ، وَمَنْ بَاتَ لَيْلَةً وَلَيْسَ فِي عُنُقِهِ بَيْعَةٌ مَاتَ مِيتَةً جَاهِلِيَّةً، وَلَا طَاعَةَ لِمَخْلُوقٍ فِي مَعْصِيَةِ الْخَالِقِ، وَلَا يَجُوزُ التَّرَدُّدُ بَعْدَ مَوْتِ الْإِمَامِ فِي اخْتِيَارِ الْإِمَامِ أَكْثَرَ مِنْ ثَلَاثٍ. بُرْهَانُ ذَلِكَ مَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا عُثْمَانُ بْنُ أَبِي شَيْبَةَ ثنا جَرِيرٌ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي ظَبْيَانَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «رُفِعَ الْقَلَمُ عَنْ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنْ الصَّبِيِّ حَتَّى يَبْلُغَ، وَعَنْ الْمُبْتَلَى حَتَّى يَعْقِلَ» .

قَالَ عَلِيٌّ: الْإِمَامُ إنَّمَا جُعِلَ لِيُقِيمَ النَّاسُ الصَّلَاةَ وَيَأْخُذَ صَدَقَاتِهِمْ وَيُقِيمَ حُدُودَهُمْ وَيُمْضِيَ أَحْكَامَهُمْ وَيُجَاهِدَ عَدُوَّهُمْ، وَهَذِهِ كُلُّهَا عُقُودٌ، وَلَا يُخَاطَبُ بِهَا مَنْ لَمْ يَبْلُغْ أَوْ مَنْ لَا يَعْقِلُ.

L2501 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath informed us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Qutaybah narrated to us: al-Layth ibn Sa'd narrated to us, from Ubaydullah ibn Umar, from Nafi', from Ibn Umar, from the Prophet—peace be upon him—who said: "A Muslim is obligated to hear and obey in matters he likes or dislikes, except when commanded to disobey Allah. If commanded to sin, there shall be no hearing nor obedience."

Through the same chain to Muslim ibn al-Hajjaj: Wahb ibn Baqiyyah al-Wasiti narrated to us: Khalid ibn Abdullah al-Wasiti narrated to us, from al-Jurayri, from Abu Nadrah, from Abu Sa'id al-Khudri, from the Messenger of Allah—peace be upon him—who said: "When two caliphs are pledged allegiance, kill the latter of them."

Through the same chain to Muslim ibn al-Hajjaj: Ubaydullah ibn Mu'adh al-'Anbari narrated to us: His father narrated to us: 'Asim ibn Muhammad ibn Zayd ibn Abdullah ibn Umar narrated to us, from Zayd ibn Muhammad, from Nafi', from Abdullah ibn Umar, who said: The Messenger of Allah—peace be upon him—said: "Whoever severs a hand of obedience will meet Allah on the Day of Resurrection without any valid plea. Whoever dies without an oath of allegiance upon his neck dies a death of pre-Islamic ignorance."[1]

L2502–2503 Aḥmad ibn Muḥammad al-Jasūrī narrated to us: Wahb ibn Masārah narrated to us: Muḥammad ibn Waḍḍāḥ narrated to us: Abū Bakr ibn Abī Shaybah narrated to us: from Abū Dāwūd al-Ṭayālisī: from ʿUyaynah ibn ʿAbd al-Raḥmān: from his father: from Abū Bakrah that the Messenger of Allāh—peace and blessings of Allāh be upon him—said: "Never will a people prosper who entrust their affairs to a woman." ʿAbd Allāh ibn Yūsuf narrated to us: Aḥmad ibn Fatḥ narrated to us: ʿAbd al-Wahhāb ibn ʿĪsā narrated to us: Aḥmad ibn Muḥammad narrated to us: Aḥmad ibn ʿAlī narrated to us: Muslim ibn al-Ḥajjāj narrated to us: Qutaybah narrated to us: Ḥammād ibn Zayd narrated to us: from Ayyūb: from Abū Qilābah: from Abū Asmāʾ al-Raḥabī: from Thawbān that the Prophet—peace and blessings of Allāh

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ أَخْبَرَنَا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا قُتَيْبَةُ ثنا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «عَلَى الْمَرْءِ الْمُسْلِمِ السَّمْعُ وَالطَّاعَةُ فِيمَا أَحَبَّ وَكَرِهَ إِلَّا أَنْ يُؤْمَرَ بِمَعْصِيَةٍ، فَإِنْ أُمِرَ بِمَعْصِيَةٍ فَلَا سَمْعَ وَلَا طَاعَةَ» . وَبِهِ إِلَى مُسْلِمٍ ثنا وَهْبُ بْنُ بَقِيَّةَ الْوَاسِطِيُّ ثنا خَالِدُ بْنُ عَبْدِ اللَّهِ الْوَاسِطِيُّ عَنِ الْجُرَيْرِيِّ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «إِذَا بُوِيعَ لِخَلِيفَتَيْنِ فَاقْتُلُوا الْآخِرَ مِنْهُمَا» . وَبِهِ إِلَى مُسْلِمٍ ثنا عُبَيْدُ اللَّهِ بْنُ مُعَاذٍ الْعَنْبَرِيُّ ثنا أَبِي ثنا عَاصِمٌ هُوَ ابْنُ مُحَمَّدِ بْنِ زَيْدِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ - عَنْ زَيْدِ بْنِ مُحَمَّدٍ عَنْ نَافِعٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ خَلَعَ يَدًا مِنْ طَاعَةٍ لَقِيَ اللَّهَ يَوْمَ الْقِيَامَةِ لَا حُجَّةَ لَهُ، وَمَنْ مَاتَ وَلَيْسَ فِي عُنُقِهِ بَيْعَةٌ مَاتَ مِيتَةً جَاهِلِيَّةً» .

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الْجَسُورِيُّ ثنا وَهْبُ بْنُ مَسَرَّةَ ثنا مُحَمَّدُ بْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ أَبِي دَاوُد الطَّيَالِسِيِّ عَنْ عُيَيْنَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي بَكْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَنْ يُفْلِحَ قَوْمٌ أَسْنَدُوا أَمْرَهُمْ إِلَى امْرَأَةٍ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا قُتَيْبَةُ ثنا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي أَسْمَاءَ الرَّحَبِيِّ عَنْ ثَوْبَانَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَزَالُ طَائِفَةٌ مِنْ أُمَّتِي ظَاهِرِينَ عَلَى الْحَقِّ لَا يَضُرُّهُمْ مَنْ خَذَلَهُمْ حَتَّى يَأْتِيَ أَمْرُ اللَّهِ وَهُمْ كَذَلِكَ»

[1] **Hadith references (L2501):** Sahih Muslim 1839a; Sahih Muslim 1851a.

be upon him—said: "A group from my community will remain manifest upon the truth, unharmed by those who oppose them, until Allāh's command comes while they remain thus." Thus, it is established that the people of every era cannot be devoid of those who proclaim the truth. Therefore, if their consensus on a matter is confirmed, it is an indisputable truth—provided it is certain that no dissent exists and decisively established. It has been conclusively verified that all Muslims consented to retaining the authority of the six designated successors when ʿUmar died—may Allāh be pleased with him and with them all—for three days while deliberating on selecting a leader. This is confirmed, and whatever exceeds it is invalid, as neither the Sunnah nor consensus permits it. Success is from Allāh the Exalted. Then, reflecting on this incident, we found ʿUmar—may Allāh be pleased with him—had entrusted leadership to whichever one of the six specified they chose for themselves. Thus, it is conclusively established that ʿUthmān was the Imam at ʿUmar's moment of death in Allāh's knowledge, through ʿUmar's delegation under the condition manifested in their choice of him. Hence, the ambiguity was lifted, confirming they did not remain without an Imam for even an hour, let alone a night. Rather, they had a specified Imam—defined, described, and explicitly entrusted to him—even if people did not know his precise identity during those three days.[2]

L2504 **Issue: Repentance from disbelief, illicit sexual relations, the act of the people of Lot, and wine.**

L2505–2507 88. Issue: Repentance from disbelief, adultery, sodomy (the act of the people of Lot), intoxicants, and consumption of things. Repentance for prohibited matters such as pork, blood, carrion, and the like requires remorse, cessation, and a firm resolve never to return to them, along with seeking forgiveness from Allah the Exalted. This is a consensus with no disagreement over it. Repentance for wronging people in their honor, bodies, or wealth is only valid by restoring their wealth to them and returning all proceeds derived from it—or their equivalent if the original is unavailable. If the wronged parties are unknown, it is given to the poor and charitable causes alongside

[2]**Hadith references (L2503):** Sahih Muslim 1920.

. فَصَحَّ أَنَّ أَهْلَ كُلِّ عَصْرٍ لَا يَجُوزُ أَنْ يَخْلُوا مِنْ أَنْ يَكُونَ فِيهِمْ قَائِلٌ بِالْحَقِّ، فَإِذَا صَحَّ إِجْمَاعُهُمْ عَلَى شَيْءٍ فَهُوَ حَقٌّ مَقْطُوعٌ بِذَلِكَ، إِذَا تُيُقِّنَ أَنَّهُ لَا مُخَالِفَ فِي ذَلِكَ وَقُطِعَ بِهِ وَقَدْ صَحَّ يَقِينًا أَنَّ جَمِيعَ أَهْلِ الْإِسْلَامِ رَضُوا بَقَاءَ السِّتَّةِ - إِذْ مَاتَ عُمَرُ رَضِيَ اللَّهُ عَنْ جَمِيعِهِمْ - ثَلَاثَةَ أَيَّامٍ يَرْتَئُونَ فِي إِمَامٍ، فَصَحَّ هَذَا وَبَطَلَ مَا زَادَ عَلَيْهِ، إِذْ لَمْ تُبِحْهُ سُنَّةٌ وَلَا إِجْمَاعٌ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. ثُمَّ تَدَبَّرْنَا هَذِهِ الْقِصَّةَ فَوَجَدْنَا عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - قَدْ وَلَّى الْأَمْرَ أَحَدَ السِّتَّةِ الْمُعَيَّنِينَ أَيَّهُمْ اخْتَارُوا لِأَنْفُسِهِمْ، فَصَحَّ يَقِينًا أَنَّ عُثْمَانَ كَانَ الْإِمَامَ سَاعَةَ مَوْتِ عُمَرَ فِي عِلْمِ اللَّهِ تَعَالَى، بِإِسْنَادِ عُمَرَ الْأَمْرَ إِلَيْهِ بِالصِّفَةِ الَّتِي ظَهَرَتْ فِيهِ مِنْ اخْتِيَارِهِمْ إِيَّاهُ، فَارْتَفَعَ الْإِشْكَالُ وَصَحَّ أَنَّهُمْ لَمْ يَبْقَوْا سَاعَةً، فَكَيْفَ لَيْلَةً دُونَ إِمَامٍ؟ بَلْ كَانَ لَهُمْ إِمَامٌ مُعَيَّنٌ مَحْدُودٌ مَوْصُوفٌ مَعْهُودٌ إِلَيْهِ بِعَيْنِهِ، وَإِنْ لَمْ تَعْرِفْهُ النَّاسُ بِعَيْنِهِ مُدَّةَ ثَلَاثَةِ أَيَّامٍ.

[مَسْأَلَةُ التَّوْبَةُ مِنْ الْكُفْرِ وَالزِّنَى وَفِعْلِ قَوْمِ لُوطٍ وَالْخَمْرِ]

٨٨ - مَسْأَلَةٌ: وَالتَّوْبَةُ مِنْ الْكُفْرِ وَالزِّنَى وَفِعْلِ قَوْمِ لُوطٍ وَالْخَمْرِ وَأَكْلِ الْأَشْيَاءِ الْمُحَرَّمَةِ كَالْخِنْزِيرِ وَالدَّمِ وَالْمَيْتَةِ وَغَيْرِ ذَلِكَ: تَكُونُ بِالنَّدَمِ وَالْإِقْلَاعِ وَالْعَزِيمَةِ، عَلَى أَنْ لَا عَوْدَةَ أَبَدًا، وَاسْتِغْفَارِ اللَّهِ تَعَالَى. هَذَا إِجْمَاعٌ لَا خِلَافَ فِيهِ. وَالتَّوْبَةُ مِنْ ظُلْمِ النَّاسِ فِي أَعْرَاضِهِمْ وَأَبْشَارِهِمْ وَأَمْوَالِهِمْ لَا تَكُونُ إِلَّا بِرَدِّ أَمْوَالِهِمْ إِلَيْهِمْ، وَرَدِّ كُلِّ مَا تَوَلَّدَ مِنْهَا مَعَهَا أَوْ مِثْلِ ذَلِكَ إِنْ فَاتَ، فَإِنْ جَهِلُوا ففِي الْمَسَاكِينِ وَوُجُوهِ الْبِرِّ مَعَ النَّدَمِ وَالْإِقْلَاعِ وَالِاسْتِغْفَارِ، وَتَحَلُّلِهِمْ مِنْ أَعْرَاضِهِمْ وَأَبْشَارِهِمْ، فَإِنْ لَمْ يَكُنْ ذَلِكَ فَالْأَمْرُ إِلَى اللَّهِ

remorse, cessation, seeking forgiveness, and absolution from them for violations against their honor and bodies. If this is unattainable, the matter rests with Allah the Exalted. The wronged will inevitably attain redress on the Day of Resurrection—the day when retribution will be exacted for the hornless sheep against the horned one. Repentance for murder is graver than all this and is only valid through legal retribution. If this is impossible, let him perform abundant righteous deeds to outweigh the scale of good deeds.

تَعَالَى، وَلَا بُدَّ لِلْمَظْلُومِ مِنَ الِانْتِصَافِ يَوْمَ الْقِيَامَةِ، يَوْمَ يُقْتَصُّ لِلشَّاةِ الْجَمَّاءِ مِنَ الْقَرْنَاءِ. وَالتَّوْبَةُ مِنَ الْقَتْلِ أَعْظَمُ مِنْ هَذَا كُلِّهِ، وَلَا تَكُونُ إِلَّا بِالْقِصَاصِ فَإِنْ لَمْ يُمْكِنْ فَلْيُكْثِرْ مِنْ فِعْلِ الْخَيْرِ لِيُرَجِّحَ مِيزَانَ الْحَسَنَاتِ.

L2508–2510 Abdullah ibn Yusuf narrated to us from Ahmad ibn Fath from Abdul Wahhab ibn Isa from Ahmad ibn Muhammad from Ahmad ibn Ali from Muslim ibn al-Hajjaj from Abdullah ibn Abd al-Rahman ibn Bahram al-Darimi from Marwan—meaning ibn Muhammad al-Dimashqi—from Sa'id ibn Abdul Aziz from Rabi'ah ibn Yazid from Abu Idris al-Khawlani from Abu Dharr from the Prophet—peace be upon him—in what he narrated from Allah the Exalted, that He said: "O My servants, these are only your deeds that I count for you, then I will recompense you for them in full. Whoever finds good should praise Allah, and whoever finds otherwise should blame none but himself." With this chain, Muslim narrates from Qutaybah ibn Sa'id from Isma'il ibn Ja'far from al-ʿAlāʾ ibn ʿAbd al-Raḥmān from his father from Abu Hurayrah that the Messenger of Allah—peace be upon him—said: "Do you know who the insolvent is?" They replied: "The insolvent among us is one who has no dirham nor possessions." He—peace be upon him—said: "The insolvent of my nation is one who comes on the Day of Resurrection with prayers, fasting, and zakah, yet arrives having insulted this one, falsely accused that one, and misappropriated the wealth of another." He shed the blood of this one and struck this one, so this one is given from his good deeds and this one from his good deeds. If his good deeds are exhausted before settling what is owed, their sins are taken and cast upon him, then he is thrown into the Fire. "You shall assuredly deliver rights to their owners on the Day of Resurrection, until retribution is exacted from the horned sheep for the hornless sheep." Ali said: "All of this constitutes an explicitly explained and

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا عَبْدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ بَهْرَامَ الدَّارِمِيُّ ثنا مَرْوَانُ يَعْنِي بْنَ مُحَمَّدٍ الدِّمَشْقِيَّ - ثنا سَعِيدُ بْنُ عَبْدِ الْعَزِيزِ عَنْ رَبِيعَةَ بْنِ يَزِيدَ عَنْ أَبِي إِدْرِيسَ الْخَوْلَانِيِّ عَنْ أَبِي ذَرٍّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَا رَوَى عَنِ اللَّهِ تَعَالَى أَنَّهُ قَالَ «يَا عِبَادِي إِنَّمَا هِيَ أَعْمَالُكُمْ أُحْصِيهَا لَكُمْ ثُمَّ أُوَفِّيكُمْ إِيَّاهَا، فَمَنْ وَجَدَ خَيْرًا فَلْيَحْمَدِ اللَّهَ، وَمَنْ وَجَدَ غَيْرَ ذَلِكَ فَلَا يَلُومَنَّ إِلَّا نَفْسَهُ» ، وَبِهِ إِلَى مُسْلِمٍ ثنا قُتَيْبَةُ بْنُ سَعِيدٍ ثنا إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنِ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَتَدْرُونَ مَنِ الْمُفْلِسُ؟ قَالُوا الْمُفْلِسُ فِينَا مَنْ لَا دِرْهَمَ لَهُ وَلَا مَتَاعَ، فَقَالَ - عَلَيْهِ السَّلَامُ -: إِنَّ الْمُفْلِسَ مِنْ أُمَّتِي مَنْ يَأْتِي يَوْمَ الْقِيَامَةِ بِصَلَاةٍ وَصِيَامٍ وَزَكَاةٍ، وَيَأْتِي قَدْ شَتَمَ هَذَا وَقَذَفَ هَذَا وَأَكَلَ مَالَ هَذَا وَسَفَكَ دَمَ هَذَا وَضَرَبَ هَذَا، فَيُعْطَى هَذَا مِنْ حَسَنَاتِهِ وَهَذَا مِنْ حَسَنَاتِهِ، فَإِنْ فَنِيَتْ حَسَنَاتُهُ قَبْلَ أَنْ يُقْضَى مَا عَلَيْهِ أُخِذَ مِنْ خَطَايَاهُمْ فَطُرِحَتْ عَلَيْهِ ثُمَّ طُرِحَ فِي النَّارِ، لَتُؤَدُّنَّ الْحُقُوقَ إِلَى أَهْلِهَا يَوْمَ الْقِيَامَةِ حَتَّى يُقَادَ لِلشَّاةِ الْجَلْحَاءِ مِنَ الشَّاةِ الْقَرْنَاءِ» . قَالَ عَلِيٌّ: هَذَا كُلُّهُ خَبَرٌ مُفَسَّرٌ مُخَصَّصٌ لَا يَجُوزُ نَسْخُهُ وَلَا تَخْصِيصُهُ بِعُمُومِ خَبَرٍ آخَرَ.

specified narration; it is impermissible to abrogate it nor to specify it by the generality of another narration."[3]

L2511 **Issue: The belief that the Dajjal will come as a disbeliever, one-eyed.**

L2512 89. Issue: That the Dajjāl will come as a disbelieving, one-eyed, deceptive individual endowed with cunning schemes. ʿAbdullāh ibn Yūsuf narrated to us, Aḥmad ibn Fatḥ narrated to us, ʿAbd al-Wahhāb ibn ʿĪsā narrated to us, Muḥammad ibn ʿĪsā narrated to us, Ibrāhīm ibn Muḥammad narrated to us, Muslim ibn al-Ḥajjāj narrated to us, Muḥammad ibn al-Muthannā narrated to us, Muḥammad ibn Jaʿfar narrated to us, Shuʿbah narrated from Qatādah, who said: I heard Anas ibn Mālik say: The Prophet (peace be upon him) said: "There is no prophet except that he warned his nation about the one-eyed liar. Know that he is one-eyed, while your Lord is not one-eyed. 'Disbelief' is inscribed between his eyes." With the same chain to Muslim: Suraij ibn Yūnus narrated to us, Hushaym narrated from Ismāʿīl ibn Abī Khālid from Qays ibn Abī Ḥāzim from al-Mughīrah ibn Shuʿbah, who said: "No one questioned the Prophet (peace be upon him) about the Dajjāl more extensively than I did. He asked: What is your concern regarding him? I replied: They claim he has mountains of bread and meat and a river of water. He said: He is more trivial to Allah than that." ʿAbdullāh ibn Rabīʿ narrated to us, Ibn al-Sulaym narrated to us, Ibn al-Aʿrābī narrated to us, Abū Dāwūd al-Sijistānī narrated to us, Mūsā ibn Ismāʿīl narrated to us, Jarīr narrated to us, Ḥumayd ibn Hilāl narrated from Abū al-Dahmāʾ, who said: I heard ʿImrān ibn Ḥuṣayn narrate, saying: The Messenger of Allāh (peace be upon him) said: "Whoever hears of the Dajjāl must flee from him. By Allah, a man may approach him presuming himself a believer, yet follow him due to the doubts he spreads—or the uncertainties he incites." He gestured thus, and affirmed: "Yes."[4]

[مَسْأَلَةٌ اعتقاد أَنْ الدجال سيأتي وَهُوَ كَافِر اعَوَرَّ]

٨٩ - مَسْأَلَةٌ: وَأَنَّ الدَّجَّالَ سَيَأْتِي وَهُوَ كَافِرٌ أَعْوَرُ مُمَخْرَقٌ ذُو حِيَلٍ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا مُحَمَّدُ بْنُ عِيسَى ثنا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا مُحَمَّدُ بْنُ جَعْفَرٍ ثنا شُعْبَةُ عَنْ قَتَادَةَ قَالَ سَمِعْت أَنَسَ بْنَ مَالِكٍ يَقُولُ إِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَا مِنْ نَبِيٍّ إِلَّا وَقَدْ أَنْذَرَ أُمَّتَهُ الْأَعْوَرَ الْكَذَّابَ، أَلَا إِنَّهُ أَعْوَرُ. وَإِنَّ رَبَّكُمْ لَيْسَ بِأَعْوَرَ، مَكْتُوبٌ بَيْنَ عَيْنَيْهِ كُفْرٌ» . وَبِهِ إِلَى مُسْلِمٍ ثنا سُرَيْجُ بْنُ يُونُسَ ثنا هُشَيْمٌ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ الْمُغِيرَةِ بْنِ شُعْبَةَ قَالَ «مَا سَأَلَ أَحَدٌ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الدَّجَّالِ أَكْثَرَ مِمَّا سَأَلْته عَنْهُ، قَالَ وَمَا سُؤَالُكَ عَنْهُ؟ قَالَ: قُلْت: إِنَّهُمْ يَقُولُونَ مَعَهُ جِبَالٌ مِنْ خُبْزٍ وَلَحْمٍ وَنَهَرٌ مِنْ مَاءٍ قَالَ: هُوَ أَهْوَنُ عَلَى اللَّهِ مِنْ ذَلِكَ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد السِّجِسْتَانِيُّ ثنا مُوسَى بْنُ إِسْمَاعِيلَ نا جَرِيرٌ نا حُمَيْدُ بْنُ هِلَالٍ عَنْ أَبِي الدَّهْمَاءِ قَالَ: سَمِعْت عِمْرَانَ بْنَ حُصَيْنٍ يُحَدِّثُ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ سَمِعَ بِالدَّجَّالِ فَلْيَنْأَ عَنْهُ، فَوَاَللَّهِ إِنَّ الرَّجُلَ لَيَأْتِيهِ وَهُوَ يَحْسِبُ أَنَّهُ مُؤْمِنٌ فَيَتَّبِعُهُ مِمَّا يَبْعَثُ بِهِ مِنْ الشُّبُهَاتِ أَوْ لِمَا يَبْعَثُ بِهِ مِنْ الشُّبُهَاتِ، قَالَ هَكَذَا، قَالَ نَعَمْ»

[3] **Hadith references (L2508):** Sahih Muslim 2577a; Riyad as-Salihin 111; Sahih Muslim 2582; Riyad as-Salihin 204.

[4] **Hadith references (L2512):** Sunan Abi Dawud 4319.

[مَسْأَلَةٌ النُّبُوَّةُ هِيَ الْوَحْيُ مِنْ اللَّهِ تَعَالَى]

مَسْأَلَةٌ: وَالنُّبُوَّةُ هِيَ الْوَحْيُ مِنْ اللَّهِ تَعَالَى بِأَنْ يَعْلَمَ الْمُوحَى إلَيْهِ بِأَمْرٍ مَا يَعْلَمُهُ لَمْ يَكُنْ يَعْلَمُهُ قَبْلُ. وَالرِّسَالَةُ هِيَ النُّبُوَّةُ وَزِيَادَةٌ، وَهِيَ بَعْثُهُ إلَى خَلْقٍ مَا بِأَمْرٍ مَا - هَذَا مَا لَا خِلَافَ فِيهِ - وَالْخَضِرُ - عَلَيْهِ السَّلَامُ - نَبِيٌّ قَدْ مَاتَ، وَمُحَمَّدٌ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا نَبِيَّ بَعْدَهُ، قَالَ اللَّهُ عَزَّ وَجَلَّ حَاكِيًا عَنْ الْخَضِرِ {وَمَا فَعَلْتُهُ عَنْ أَمْرِي} [الكهف: ٨٢] فَصَحَّتْ نُبُوَّتُهُ، وَقَالَ تَعَالَى: {وَلَكِنْ رَسُولَ اللَّهِ وَخَاتَمَ النَّبِيِّينَ} [الأحزاب: ٤٠] .

[اعتقاد أَنْ إبْلِيس بَاقٍ حي قَدْ خاطب اللَّه عَزَّ وَجَلّ معترفا بذنبه مصرا عَلَيْهِ]

٩١ - مَسْأَلَةٌ: وَأَنَّ إبْلِيسَ بَاقٍ حَيٌّ قَدْ خَاطَبَ اللَّهَ عَزَّ وَجَلَّ مُعْتَرِفًا بِذَنْبِهِ مُصِرًّا عَلَيْهِ مُوقِنًا بِأَنَّ اللَّهَ عَزَّ وَجَلَّ خَلَقَهُ مِنْ نَارٍ، وَأَنَّهُ تَعَالَى خَلَقَ آدَمَ مِنْ تُرَابٍ، وَأَنَّهُ تَعَالَى أَمَرَهُ بِالسُّجُودِ لِآدَمَ فَامْتَنَعَ وَاسْتَخَفَّ بِآدَمَ فَكَفَرَ. قَالَ اللَّهُ تَعَالَى حَاكِيًا عَنْهُ أَنَّهُ قَالَ: {أَنَا خَيْرٌ مِنْهُ خَلَقْتَنِي مِنْ نَارٍ وَخَلَقْتَهُ مِنْ طِينٍ} [الأعراف: ١٢] وَأَنَّهُ قَالَ: {أَنْظِرْنِي إِلَى يَوْمِ يُبْعَثُونَ} [الأعراف: ١٤] وَأَنَّهُ قَالَ: {فَبِمَا أَغْوَيْتَنِي لَأَقْعُدَنَّ لَهُمْ صِرَاطَكَ الْمُسْتَقِيمَ} [الأعراف: ١٦] وَقَالَ تَعَالَى: {وَكَانَ مِنَ الْكَافِرِينَ} [البقرة: ٣٤] .

[مَسَائِلُ مِنْ الْأُصُولِ]

L2513–2514 **An issue: Prophethood is the revelation from Allah, the Most High.**

L2515 A legal issue: Prophethood is the revelation from Allah, the Exalted, by which the recipient of revelation comes to know a matter he did not know before. Messengership is Prophethood and an addition, which is his being sent to some creation with a command—this is what there is no disagreement about—and Al-Khidr—peace be upon him—is a prophet who has died, while Muhammad—may Allah's blessings and peace be upon him—has no prophet after him. Allah, the Exalted and Majestic, said, relating the words of Al-Khidr: "I did not do it of my own accord" [Al-Kahf: 82]. Thus, his prophethood is established. He, the Exalted, said: "But he is the Messenger of Allah and the Seal of the Prophets" [Al-Ahzab: 40].[5]

L2516 **The belief that Iblīs continues to live and has addressed Allah, the Mighty and Majestic, confessing his sin and persisting in it.**

L2517 91. Issue: And that Iblis remains alive, having addressed Allah—the Exalted and Glorious—while acknowledging his sin yet persisting in it, certain that Allah—the Exalted and Glorious—created him from fire, that He—the Exalted and Glorious—created Adam from clay, and that He—the Exalted and Glorious—commanded him to prostrate to Adam, but he refused, belittled Adam, and thereby disbelieved. Allah—the Exalted and Glorious—said, narrating his words: "I am better than him; You created me from fire and created him from clay" [Al-A'rāf 7:12]. And that he said: "Grant me respite until the Day they are resurrected" [Al-A'rāf 7:14]. And that he said: "Because You have led me astray, I will surely lie in wait for them on Your straight path" [Al-A'rāf 7:16]. And Allah—the Exalted and Glorious—said: "And he was among the disbelievers" [Al-Baqarah 2:34].[6]

L2518 **Issues Pertaining to the Foundational Principles**

[5] **Qur'an references (L2515):** Qur'an 18:82 (Al-Kahf); Qur'an 33:40 (Al-Ahzab).

[6] **Qur'an references (L2517):** Qur'an 7:12 (Al-A'raf); Qur'an 38:76 (Sad); Qur'an 7:14 (Al-A'raf); Qur'an 7:16 (Al-A'raf); Qur'an 2:34 (Al-Baqarah); Qur'an 38:74 (Sad).

L2519 A legal ruling: The religion of Islam is derived from the Quran or the Sunnah.

L2520–2521 The binding religion of Islam incumbent upon every individual is derived exclusively from the Quran or what is authentically established from the Messenger of Allah (peace and blessings be upon him)—whether through the consensus of the community's scholars transmitted from him (peace and blessings be upon him), constituting ijma'; or through mass transmission from him (peace and blessings be upon him), termed naql al-kaffah; or via narrations of trustworthy transmitters in successive chains until reaching him (peace and blessings be upon him), with no addition whatsoever. Allah the Exalted said: *"He does not speak from desire—it is nothing but revelation revealed"* (53:3-4). He also said: *"Follow what has been sent down to you from your Lord, and do not follow allies besides Him"* (7:3). And He said: *"This day I have perfected for you your religion"* (5:3). If a person perceives a contradiction between two verses, two authentic hadiths, or an authentic hadith and a verse, it becomes obligatory to apply both, for obedience to them is equally binding. It is impermissible to abandon one for the other as long as reconciliation is possible. This is achieved by prioritizing the text with more meanings over the one with fewer. If reconciliation proves impossible, adopting the ruling with greater certainty becomes obligatory, as its obligation is indisputably established, and abandoning certainty for conjecture is impermissible. There is no ambiguity in the religion, for Allah the Exalted has fully clarified His religion. He said: *"This day I have perfected for you your religion"* (5:3). And He said: *"As a detailed explanation of all things"* (al-Nahl 16:89).[7]

L2522 **Issue: The stopped ḥadīth (al-mawqūf) and the disconnected ḥadīth (al-mursal) do not constitute proof.**

L2523–2525 Issue 93: The Mawqūf (narration attributed to a companion) and Mursal (narration missing a link between the Successor and the Prophet) do not constitute valid evidence. Likewise, any narration reported exclusively by

[7] **Qur'an references (L2521):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 7:3 (Al-A'raf); Qur'an 5:3 (Al-Ma'idah); Qur'an 16:89 (An-Nahl).

[مَسْأَلَةٌ دِينُ الْإِسْلَامِ يُؤْخَذُ مِنْ الْقُرْآنِ أَوْ مِنْ السُّنَّةِ] .

مَسْأَلَةٌ: دِينُ الْإِسْلَامِ اللَّازِمُ لِكُلِّ أَحَدٍ لَا يُؤْخَذُ إلَّا مِنْ الْقُرْآنِ أَوْ مِمَّا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إمَّا بِرِوَايَةِ جَمِيعِ عُلَمَاءِ الْأُمَّةِ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَهُوَ الْإِجْمَاعُ، وَإِمَّا بِنَقْلِ جَمَاعَةٍ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَهُوَ نَقْلُ الْكَافَّةِ. وَإِمَّا بِرِوَايَةِ الثِّقَاتِ وَاحِدًا عَنْ وَاحِدٍ حَتَّى يَبْلُغَ إلَيْهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَلَا مَزِيدَ. قَالَ تَعَالَى: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] وَقَالَ تَعَالَى: {اتَّبِعُوا مَا أُنْزِلَ إِلَيْكُمْ مِنْ رَبِّكُمْ وَلا تَتَّبِعُوا مِنْ دُونِهِ أَوْلِيَاءَ} [الأعراف: ٣] وَقَالَ تَعَالَى: {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] فَإِنْ تَعَارَضَ فِيمَا يَرَى الْمَرْءُ آيَتَانِ أَوْ حَدِيثَانِ صَحِيحَانِ، أَوْ حَدِيثٌ صَحِيحٌ وَآيَةٌ، فَالْوَاجِبُ اسْتِعْمَالُهُمَا جَمِيعًا، لِأَنَّ طَاعَتَهُمَا سَوَاءٌ فِي الْوُجُوبِ، فَلَا يَحِلُّ تَرْكُ أَحَدِهِمَا لِلْآخَرِ مَا دُمْنَا نَقْدِرُ عَلَى ذَلِكَ، وَلَيْسَ هَذَا إلَّا بِأَنْ يَسْتَثْنِيَ الْأَقَلُّ مَعَانِيَ مِنْ الْأَكْثَرِ، فَإِنْ لَمْ نَقْدِرْ عَلَى ذَلِكَ وَجَبَ الْأَخْذُ بِالزَّائِدِ حُكْمًا لِأَنَّهُ مُتَيَقَّنٌ وُجُوبُهُ، وَلَا يَحِلُّ تَرْكُ الْيَقِينِ بِالظُّنُونِ، وَلَا إشْكَالَ فِي الدِّينِ قَدْ بَيَّنَ اللَّهُ تَعَالَى دِينَهُ. قَالَ تَعَالَى: {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] وَقَالَ تَعَالَى: {تِبْيَانًا لِكُلِّ شَيْءٍ} [النحل: ٨٩] .

[مَسْأَلَةُ الْحَدِيثِ الْمَوْقُوفُ وَالْمُرْسَلُ لَا تَقُومُ بِهِمَا حُجَّةٌ]

٩٣ - مَسْأَلَةٌ: الْمَوْقُوفُ وَالْمُرْسَلُ لَا تَقُومُ بِهِمَا حُجَّةٌ، وَكَذَلِكَ مَا لَمْ يَرْوِهِ إلَّا مَنْ لَا يُوثَقُ بِدِينِهِ وَبِحِفْظِهِ، وَلَا يَحِلُّ تَرْكُ مَا جَاءَ فِي الْقُرْآنِ أَوْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِقَوْلِ صَاحِبٍ أَوْ غَيْرِهِ، سَوَاءٌ كَانَ هُوَ رَاوِي الْحَدِيثِ أَوْ لَمْ يَكُنْ، وَالْمُرْسَلُ

those deemed untrustworthy in religious integrity or memorization is inadmissible. It is impermissible to abandon what is established in the Quran or authentically transmitted from the Messenger of Allah - peace and blessings be upon him - in favor of the opinion of a companion or others, whether that companion is the hadith's narrator or not. The Mursal refers to a narration missing a link between... The *Mawquf* (narration terminated at a Companion) is that which does not reach the Prophet - peace and blessings of Allah be upon him. The proof for the invalidity of the *Mawquf* is Allah's statement - the Almighty and Majestic: *"So that mankind would have no plea against Allah after the Messengers"* (Quran 4:165). Thus, there is no valid proof from anyone below the rank of Allah's Messenger - peace and blessings of Allah be upon him - and it is impermissible for anyone to attribute such to Allah's Messenger - peace and blessings of Allah be upon him - for that would be conjecture. The Exalted said: *"Indeed, conjecture avails nothing against the truth"* (Quran 53:28), and He said: *"Do not pursue that of which you have no knowledge"* (Quran 17:36).

As for the *Mursal* (narration where a successor omits a Companion in the chain) and narrations containing untrustworthy transmitters in religious integrity or memorization, this is addressed by Allah's statement: *"Why does a group from every faction not set out to deepen their understanding of religion and convey knowledge to their people when they return to them?"* (Quran 9:122). Here the Almighty obligated acceptance of the conveyance of knowledge from those who dedicated themselves to religious understanding. He also said: *"O you who believe! If an openly sinful person comes to you with a report, verify it"* (Quran 49:6). A narrator is either just or openly sinful. Since the Exalted prohibited us from accepting reports of the openly sinful, only the just remain - confirming that we are commanded to accept their conveyance.

Regarding the unknown narrator: we cannot be certain he fulfills the condition Allah mandated for accepting his conveyance - namely profound understanding of religion. Thus, it is impermissible to accept his report until we verify his religious comprehension, accuracy in transmitting knowledge,

هُوَ مَا كَانَ بَيْنَ أَحَدِ رُوَاتِهِ أَوْ بَيْنَ الرَّاوِي وَبَيْنَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ لَا يُعْرَفُ، وَالْمَوْقُوفُ هُوَ مَا لَمْ يَبْلُغْ بِهِ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. بُرْهَانُ بُطْلَانِ الْمَوْقُوفِ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {لِئَلا يَكُونَ لِلنَّاسِ عَلَى اللَّهِ حُجَّةٌ بَعْدَ الرُّسُلِ} [النساء: ١٦٥] فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، وَلَا يَحِلُّ لِأَحَدٍ أَنْ يُضِيفَ ذَلِكَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّهُ ظَنٌّ، وَقَدْ قَالَ تَعَالَى: {وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨] وَقَالَ تَعَالَى: {وَلا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ} [الإسراء: ٣٦] وَأَمَّا الْمُرْسَلُ وَمَنْ فِي رُوَاتِهِ مَنْ لَا يُوثَقُ بِدِينِهِ وَحِفْظِهِ فَلِقَوْلِ اللَّهِ تَعَالَى: {فَلَوْلا نَفَرَ مِنْ كُلِّ فِرْقَةٍ مِنْهُمْ طَائِفَةٌ لِيَتَفَقَّهُوا فِي الدِّينِ وَلِيُنْذِرُوا قَوْمَهُمْ إِذَا رَجَعُوا إِلَيْهِمْ} [التوبة: ١٢٢] فَأَوْجَبَ عَزَّ وَجَلَّ قَبُولَ نِذَارَةِ النَّافِرِ لِلتَّفَقُّهِ فِي الدِّينِ، وَقَالَ: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَإٍ فَتَبَيَّنُوا أَنْ تُصِيبُوا قَوْمًا بِجَهَالَةٍ فَتُصْبِحُوا عَلَى مَا فَعَلْتُمْ نَادِمِينَ} [الحجرات: ٦] وَلَيْسَ فِي الْعَالَمِ إلَّا عَدْلٌ أَوْ فَاسِقٌ، فَحَرَّمَ تَعَالَى عَلَيْنَا قَبُولَ خَبَرِ الْفَاسِقِ فَلَمْ يَبْقَ إلَّا الْعَدْلُ، وَصَحَّ أَنَّهُ هُوَ الْمَأْمُورُ بِقَبُولِ نِذَارَتِهِ. وَأَمَّا الْمَجْهُولُ فَلَسْنَا عَلَى ثِقَةٍ مِنْ أَنَّهُ عَلَى الصِّفَةِ الَّتِي أَمَرَ اللَّهُ تَعَالَى مَعَهَا بِقَبُولِ نِذَارَتِهِ، وَهِيَ التَّفَقُّهُ فِي الدِّينِ، فَلَا يَحِلُّ لَنَا قَبُولُ نِذَارَتِهِ حَتَّى يَصِحَّ عِنْدَنَا فِقْهُهُ فِي الدِّينِ وَحِفْظُهُ لِمَا ضَبَطَ عَنْ ذَلِكَ وَبَرَاءَتُهُ مِنْ الْفِسْقِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

and innocence from sinful conduct. And success is attained through Allah, the Most High.[8]

L2526–2527 No nation has differed regarding the fact that Allah's Messenger (peace and blessings be upon him) sent a messenger—one messenger—to every kingdom, calling them to Islam individually: to every city and every tribe such as Ṣanʿāʾ, Al-Jund, Ḥaḍramawt, Taymāʾ, Najrān, Al-Baḥrayn, ʿUmān, and others. He taught them all religious rulings and obligated every community to accept the narration of their leader and teacher. Thus, the validity of accepting a single trustworthy transmitter's report—conveyed through similar transmitters up to Allah's Messenger (peace and blessings be upon him)—was established. Whoever abandons the Qur'ān or what is authentically transmitted from Allah's Messenger (peace and blessings be upon him) for the opinion of a Companion or others—whether the narrator of that report or another—has abandoned what Allah commanded them to follow, preferring the words of those whom Allah never commanded to obey or follow. This constitutes opposition to Allah's command. A Companion's merit before Allah does not necessitate blindly following his opinion or interpretation, for Allah never commanded this. Rather, it necessitates honoring him, loving him, and solely accepting his narrations—for this is what Allah has obligated.

L2528 **An issue: The Quran abrogates the Quran, and the Sunnah abrogates the Sunnah.**

L2529 Issue 94: The Quran abrogates the Quran; the Sunnah abrogates the Sunnah and the Quran. Allah, the Exalted, said: *"Whatever verse We abrogate or cause to be forgotten, We bring better than it or similar to it"* [Al-Baqarah: 106]. He, the Exalted, said: *"To clarify to people what was revealed to them"* [An-Nahl: 44]. The Almighty states: *"Nor does he speak from [his own] desire"* [An-Najm: 3], *"It is nothing but revelation revealed"* [An-Najm: 4]. He commanded him to say: *"I follow only what is revealed to

[8] **Qur'an references (L2523):** Qur'an 4:165 (An-Nisa); Qur'an 53:28 (An-Najm); Qur'an 17:36 (Al-Isra); Qur'an 9:122 (At-Tawbah); Qur'an 49:6 (Al-Hujurat).

وَلَمْ يَخْتَلِفْ أَحَدٌ مِنَ الْأُمَمِ فِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ إِلَى الْمُلُوكِ رَسُولًا - رَسُولًا وَاحِدًا - إِلَى كُلِّ مَمْلَكَةٍ يَدْعُوهُمْ إِلَى الْإِسْلَامِ وَاحِدًا وَاحِدًا، إِلَى كُلِّ مَدِينَةٍ وَإِلَى كُلِّ قَبِيلَةٍ كَصَنْعَاءَ وَالْجُنْدِ وَحَضْرَمَوْتَ وَتَيْمَاءَ وَنَجْرَانَ وَالْبَحْرَيْنِ وَعُمَانَ وَغَيْرِهَا، يُعَلِّمُهُمْ أَحْكَامَ الدِّينِ كُلَّهَا، وَافْتَرَضَ عَلَى كُلِّ جِهَةٍ قَبُولَ رِوَايَةِ أَمِيرِهِمْ وَمُعَلِّمِهِمْ، فَصَحَّ قَبُولُ خَبَرِ الْوَاحِدِ الثِّقَةِ عَنْ مِثْلِهِ مُبَلِّغًا إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَمَنْ تَرَكَ الْقُرْآنَ أَوْ مَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِقَوْلِ صَاحِبٍ أَوْ غَيْرِهِ، سَوَاءٌ كَانَ رَاوِيَ ذَلِكَ الْخَبَرِ أَوْ غَيْرَهُ، فَقَدْ تَرَكَ مَا أَمَرَهُ اللَّهُ تَعَالَى بِاتِّبَاعِهِ لِقَوْلِ مَنْ لَمْ يَأْمُرْهُ اللَّهُ تَعَالَى قَطُّ بِطَاعَتِهِ وَلَا بِاتِّبَاعِهِ. وَهَذَا خِلَافٌ لِأَمْرِ اللَّهِ تَعَالَى. وَلَيْسَ فَضْلُ الصَّاحِبِ عِنْدَ اللَّهِ بِمُوجِبِ تَقْلِيدِ قَوْلِهِ وَتَأْوِيلِهِ؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يَأْمُرْ بِذَلِكَ، لَكِنْ مُوجِبُ تَعْظِيمِهِ وَمَحَبَّتِهِ وَقَبُولِ رِوَايَتِهِ فَقَطْ، لِأَنَّ هَذَا هُوَ الَّذِي أَوْجَبَ اللَّهُ تَعَالَى.

[مَسْأَلَةُ الْقُرْآنُ يَنْسَخُ الْقُرْآنَ وَالسُّنَّةُ تَنْسَخُ السُّنَّةَ]

- ٩٤ مَسْأَلَةٌ: وَالْقُرْآنُ يَنْسَخُ الْقُرْآنَ، وَالسُّنَّةُ تَنْسَخُ السُّنَّةَ وَالْقُرْآنَ قَالَ عَزَّ وَجَلَّ: {مَا نَنْسَخْ مِنْ آيَةٍ أَوْ نُنْسِهَا نَأْتِ بِخَيْرٍ مِنْهَا أَوْ مِثْلِهَا} [البقرة: ١٠٦] قَالَ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] وَقَالَ تَعَالَى: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] وَأَمَرَهُ تَعَالَى أَنْ يَقُولَ: {إِنْ أَتَّبِعُ إِلا مَا يُوحَى إِلَيَّ} [الأنعام: ٥٠] وَقَالَ تَعَالَى: {وَلَوْ تَقَوَّلَ عَلَيْنَا بَعْضَ الأَقَاوِيلِ} [الحاقة: ٤٤] {لأَخَذْنَا

me”* [Al-An‘am: 50]. Allah, the Exalted, said: *“And if he had attributed to Us some sayings”* [Al-Haqqah: 44]; *“We would have seized him by the right hand”* [Al-Haqqah: 45]; *“Then We would have severed from him the aorta”* [Al-Haqqah: 46]; *“And none of you could have shielded him”* [Al-Haqqah: 47]. It is established that everything the Messenger of Allah—peace be upon him—said was from Allah, the Exalted. Abrogation is one of the parts of clarification, and all of that originates from Allah, the Exalted.[9]

[The Issue of Abrogation and Specification in the Qur’an and Sunnah]

95. Issue: It is not permissible for anyone to assert regarding a verse or a report from the Messenger of Allah—peace and blessings be upon him—that is established: “This is abrogated” or “This is restricted in some of what its apparent wording necessitates,” nor to claim that this text has an interpretation that does not conform to its apparent wording, nor to state that this ruling is not obligatory upon us from the time it was conveyed except by another textual source specifying that the original ruling is as stated, or by a definitively established consensus affirming that it is as stated, or by an indisputable sensory observation necessitating that it is as stated. Otherwise, he is a liar.

The proof of this is the statement of Allah, the Mighty and Sublime: **“We sent no messenger except to be obeyed by Allah’s permission”** (4:64). He also said: **“We sent no messenger except in the language of his people to clarify to them”** (14:4), and: **“In a clear Arabic tongue”** (26:195), and: **“A group of them hear the words of Allah and then distort them after comprehending them”** (2:75), and: **“Let those who oppose his command beware, lest a trial strike them or a painful punishment befall them”** (24:63). Thus, Allah’s statement—the Exalted—**“We sent no messenger except to be obeyed”** (4:64) necessitates obedience to the Messenger of Allah (peace

[9] **Qur’an references (L2529):** Qur’an 2:106 (Al-Baqarah); Qur’an 16:44 (An-Nahl); Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm); Qur’an 6:50 (Al-An’am); Qur’an 10:15 (Yunus); Qur’an 46:9 (Al-Ahqaf); Qur’an 69:44 (Al-Haqqah); Qur’an 69:45 (Al-Haqqah); Qur’an 69:46 (Al-Haqqah); Qur’an 69:47 (Al-Haqqah).

مِنْهُ بِالْيَمِينِ} [الحاقة: ٤٥] {ثُمَّ لَقَطَعْنَا مِنْهُ الْوَتِينَ} [الحاقة: ٤٦] {فَمَا مِنْكُمْ مِنْ أَحَدٍ عَنْهُ حَاجِزِينَ} [الحاقة: ٤٧] وَصَحَّ أَنَّ كُلَّ مَا قَالَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَعَنْ اللَّهِ تَعَالَى قَالَهُ، وَالنَّسْخُ بَعْضُ مِنْ أَبْعَاضِ الْبَيَانِ، وَكُلُّ ذَلِكَ مِنْ عِنْدِ اللَّهِ تَعَالَى.

[مَسْأَلَةُ النَّسْخ والتخصيص فِي الْقُرْآن وَالسَّنَة]

٩٥ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَقُولَ فِي آيَةٍ أَوْ فِي خَبَرٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَابِتٍ: هَذَا مَنْسُوخٌ وَهَذَا مَخْصُوصٌ فِي بَعْضِ مَا يَقْتَضِيهِ ظَاهِرُ لَفْظِهِ، وَلَا أَنَّ لِهَذَا النَّصِّ تَأْوِيلًا غَيْرَ مُقْتَضَى ظَاهِرِ لَفْظِهِ، وَلَا أَنَّ هَذَا الْحُكْمَ غَيْرُ وَاجِبٍ عَلَيْنَا مِنْ حِينِ وُرُودِهِ إلَّا بِنَصٍّ آخَرَ وَارِدٍ بِأَنَّ هَذَا النَّصَّ كَمَا ذُكِرَ، أَوْ بِإِجْمَاعٍ مُتَيَقَّنٍ بِأَنَّهُ كَمَا ذُكِرَ، أَوْ بِضَرُورَةِ حِسٍّ مُوجِبَةٍ أَنَّهُ كَمَا ذُكِرَ وَإِلَّا فَهُوَ كَاذِبٌ.

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَمَا أَرْسَلْنَا مِنْ رَسُولٍ إلا لِيُطَاعَ بِإِذْنِ اللَّهِ} [النساء: ٦٤] وَقَالَ تَعَالَى: {وَمَا أَرْسَلْنَا مِنْ رَسُولٍ إلا بِلِسَانِ قَوْمِهِ لِيُبَيِّنَ لَهُمْ} [إبراهيم: ٤] وَقَالَ تَعَالَى: {بِلِسَانٍ عَرَبِيٍّ مُبِينٍ} [الشعراء: ١٩٥] وَقَالَ تَعَالَى: {وَقَدْ كَانَ فَرِيقٌ مِنْهُمْ يَسْمَعُونَ كَلَامَ اللَّهِ ثُمَّ يُحَرِّفُونَهُ مِنْ بَعْدِ مَا عَقَلُوهُ} [البقرة: ٧٥] وَقَالَ تَعَالَى: {فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ} [النور: ٦٣] فَقَوْلُهُ تَعَالَى: {وَمَا أَرْسَلْنَا مِنْ رَسُولٍ إلا لِيُطَاعَ} [النساء: ٦٤] مُوجِبٌ طَاعَةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي كُلِّ مَا أَمَرَ بِهِ، وقَوْله تَعَالَى: {أَطِيعُوا اللَّهَ} [آل عمران: ٣٢]

and blessings be upon him) in all he commanded. His statement **“Obey Allah”** (3:32) necessitates obedience to the Qur’an. Whoever claims abrogation in a verse or report has nullified the obligation to obey them both, thereby opposing Allah’s command in that matter.

Allah’s statement—the Exalted—**“We sent no messenger except in the language of his people to clarify to them”** (14:4) necessitates taking every text in the Qur’an and reports according to their apparent meaning and linguistic requirements. Whoever interprets a text contrary to its linguistic requirements in the Arabic language has opposed Allah’s statement and ruling, attributed falsehood to Him—the Exalted—and contradicted His words. Whoever claims that the text intends only part of what it linguistically entails, not all of it, has nullified the text’s clarity and the obligation to obey it through their false claim. This is a baseless assertion against Allah—the Exalted—for restricting the text to part of its implications holds no greater validity than restricting it to others.

Allah’s statement—the Exalted—**“Let those who oppose his command beware”** (24:63) necessitates a warning of punishment for those who say, “I am not bound to comply with His command,” and confirms that all texts denote obligation. Whoever claims the obligation is delayed for any period has nullified the duty to obey Allah and His Messenger (peace and blessings be upon him) during that time, thereby opposing Allah’s command.

If a Qur’anic verse or established Sunnah—through consensus or authentic transmission—supports a claimant’s assertion regarding any of the above, their claim is valid, and obedience to Allah in that matter becomes obligatory. Similarly, if self-evident certainty supports it—as it stems from Allah’s action within souls—it is valid. Otherwise, such claims lead to invalidating Islam, all sciences, and all languages entirely—and this alone is sufficient corruption. And success comes from Allah, the Exalted.[10]

L2534 **Consensus refers to what is confirmed that all the Com-**

[10] **Qur’an references (L2533):** Qur’an 4:64 (An-Nisa); Qur’an 14:4 (Ibrahim); Qur’an 26:195 (Ash-Shu’ara); Qur’an 2:75 (Al-Baqarah); Qur’an 24:63 (An-Nur); Qur’an 3:32 (Ali ’Imran).

مُوجِبٌ طَاعَةَ الْقُرْآنِ، وَمَنْ ادَّعَى فِي آيَةٍ أَوْ خَبَرٍ نَسْخًا فَقَدْ أَسْقَطَ وُجُوبَ طَاعَتِهِمَا، فَهُوَ مُخَالِفٌ لِأَمْرِ اللَّهِ فِي ذَلِكَ. قَوْله تَعَالَى: {وَمَا أَرْسَلْنَا مِنْ رَسُولٍ إلا بِلِسَانِ قَوْمِهِ لِيُبَيِّنَ لَهُمْ} [إبراهيم: ٤] مُوجِبٌ أَخْذَ كُلِّ نَصٍّ فِي الْقُرْآنِ وَالْأَخْبَارِ عَلَى ظَاهِرِهِ وَمُقْتَضَاهُ. وَمَنْ حَمَلَهُ عَلَى غَيْرِ مُقْتَضَاهُ فِي اللُّغَةِ الْعَرَبِيَّةِ فَقَدْ خَالَفَ قَوْلَ اللَّهِ تَعَالَى وَحُكْمَهُ، وَقَالَ عَلَيْهِ عَزَّ وَجَلَّ الْبَاطِلَ وَخِلَافَ قَوْلِهِ عَزَّ وَجَلَّ، وَمَنْ ادَّعَى أَنَّ الْمُرَادَ بِالنَّصِّ بَعْضُ مَا يَقْتَضِيهِ فِي اللُّغَةِ الْعَرَبِيَّةِ لَا كُلُّ مَا يَقْتَضِيهِ فَقَدْ أَسْقَطَ بَيَانَ النَّصِّ وَأَسْقَطَ وُجُوبَ الطَّاعَةِ لَهُ بِدَعْوَاهُ الْكَاذِبَةِ. وَهَذَا قَوْلٌ عَلَى اللَّهِ تَعَالَى بِالْبَاطِلِ، وَلَيْسَ بَعْضُ مَا يَقْتَضِيهِ النَّصُّ بِأَوْلَى بِالِاقْتِصَارِ عَلَيْهِ مِنْ سَائِرِ مَا يَقْتَضِيهِ. قَوْله تَعَالَى: {فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ} [النور: ٦٣] مُوجِبٌ لِلْوَعِيدِ عَلَى مَنْ قَالَ: لَا تَجِبُ عَلَيَّ مُوَافَقَةُ أَمْرِهِ، وَمُوجِبٌ أَنَّ جَمِيعَ النُّصُوصِ عَلَى الْوُجُوبِ، وَمَنْ ادَّعَى تَأْخِيرَ الْوُجُوبِ مُدَّةً مَا فَقَدْ أَسْقَطَ وُجُوبَ طَاعَةِ اللَّهِ وَوُجُوبَ مَا أَوْجَبَ عَزَّ وَجَلَّ مِنْ طَاعَةِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي تِلْكَ الْمُدَّةِ. وَهَذَا خِلَافٌ لِأَمْرِ اللَّهِ عَزَّ وَجَلَّ. فَإِذَا شَهِدَ لِدَعْوَى مَنْ ادَّعَى بَعْضَ مَا ذَكَرْنَا قُرْآنٌ أَوْ سُنَّةٌ ثَابِتَةٌ، إمَّا بِإِجْمَاعٍ أَوْ نَقْلٍ صَحِيحٍ، فَقَدْ صَحَّ قَوْلُهُ وَوَجَبَ طَاعَةُ اللَّهِ تَعَالَى فِي ذَلِكَ. وَكَذَلِكَ مَنْ شَهِدَتْ لَهُ ضَرُورَةُ الْحِسِّ؛ لِأَنَّهَا فِعْلُ اللَّهِ تَعَالَى فِي النُّفُوسِ، وَإِلَّا فَهِيَ أَقْوَالٌ مُؤَدِّيَةٌ إلَى إبْطَالِ الْإِسْلَامِ وَإِبْطَالِ جَمِيعِ الْعُلُومِ وَإِبْطَالِ جَمِيعِ اللُّغَاتِ كُلِّهَا، وَكَفَى بِهَذَا فَسَادًا. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْإِجْمَاعُ هُوَ مَا تُيُقِّنَ أَنَّ جَمِيعَ أَصْحَابِ رَسُولِ اللَّهِ عَرَفُوهُ]

panions of the Messenger of Allah recognized it.

L2535–2537 - Issue 96: Consensus is that which was ascertained that all the Companions of the Messenger of Allah (peace be upon him) acknowledged it. They affirmed it without any dissent among them, just as we are certain that all of them—may Allah be pleased with them—performed the five prayers with him, peace be upon him, in their prescribed number of bowings and prostrations, or knew that he prayed them with the people in this manner, and that they all fasted with him, or knew that he observed the fast of Ramadan with the people in settled life. Similarly, all other divinely ordained statutes established with such certainty—those which whoever does not acknowledge cannot be among the believers. This is a matter of consensus (ijmāʿ), for they constituted all believers at that time—no believer existed on earth besides them. Whoever claims a consensus contrary to this must provide evidence for his assertion, and there is no means to establish it.

L2538 97. Issue: If disagreement is established from even a single one of them, or if it is not certain that every one of them—may Allah be pleased with them—recognized it and professed it, then it is not consensus. For whoever claims consensus here has lied and pursued what he has no knowledge of. Allah the Exalted says: "And do not pursue that of which you have no knowledge" (Quran 17:36).[11]

L2539 **It is a principle that it is impermissible for the people of an era to unite on an error, even momentarily.**

L2540 98. Issue: The consensus of the people of a later era—from its first to its last—regarding a textual ruling that cannot be decisively established through the consensus of the Companions (may Allah be pleased with them). If it were permissible to ascertain the consensus of the people of a later era—from its first to its last—on a textual ruling not decisively established through the consensus of the Companions (may Allah be pleased with them), it would

[11] **Qur'an references (L2538):** Qur'an 17:36 (Al-Isra).

٩٦ - مَسْأَلَةٌ: وَالْإِجْمَاعُ هُوَ مَا تُيُقِّنَ أَنَّ جَمِيعَ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَرَفُوهُ وَقَالُوا بِهِ وَلَمْ يَخْتَلِفْ مِنْهُمْ أَحَدٌ، كَتَيَقُّنِنَا أَنَّهُمْ كُلُّهُمْ - رَضِيَ اللَّهُ عَنْهُمْ - صَلَّوْا مَعَهُ - عَلَيْهِ السَّلَامُ - الصَّلَوَاتِ الْخَمْسَ كَمَا هِيَ فِي عَدَدِ رُكُوعِهَا وَسُجُودِهَا، أَوْ عَلِمُوا أَنَّهُ صَلَّاهَا مَعَ النَّاسِ كَذَلِكَ، وَأَنَّهُمْ كُلُّهُمْ صَامُوا مَعَهُ، أَوْ عَلِمُوا أَنَّهُ صَامَ مَعَ النَّاسِ رَمَضَانَ فِي الْحَضَرِ. وَكَذَلِكَ سَائِرُ الشَّرَائِعِ الَّتِي تَيَقَّنَتْ مِثْلَ هَذَا الْيَقِينِ. وَالَّتِي مَنْ لَمْ يُقِرَّ بِهَا لَمْ يَكُنْ مِنَ الْمُؤْمِنِينَ وَهَذَا مَا لَا يَخْتَلِفُ أَحَدٌ فِي أَنَّهُ إِجْمَاعٌ. وَهُمْ كَانُوا حِينَئِذٍ جَمِيعَ الْمُؤْمِنِينَ لَا مُؤْمِنَ فِي الْأَرْضِ غَيْرُهُمْ. وَمَنِ ادَّعَى أَنَّ غَيْرَ هَذَا هُوَ إِجْمَاعٌ كُلِّفَ الْبُرْهَانَ عَلَى مَا يَدَّعِي وَلَا سَبِيلَ إِلَيْهِ.

٩٧ - مَسْأَلَةٌ: وَمَا صَحَّ فِيهِ خِلَافٌ مِنْ وَاحِدٍ مِنْهُمْ أَوْ لَمْ يُتَيَقَّنْ أَنَّ كُلَّ وَاحِدٍ مِنْهُمْ - رَضِيَ اللَّهُ عَنْهُمْ - عَرَفَهُ وَدَانَ بِهِ فَلَيْسَ إِجْمَاعًا، لِأَنَّ مَنِ ادَّعَى الْإِجْمَاعَ هَهُنَا فَقَدْ كَذَبَ وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ. وَاللَّهُ تَعَالَى يَقُولُ: {وَلا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ} [الإسراء: ٣٦] .

[مَسْأَلَةٌ لَا يَجُوزُ أَنْ يَجْمَعَ أَهْلَ عَصْرٍ وَلَوْ طَرْفَةَ عَيْنٍ عَلَى خَطَإٍ]

٩٨ - مَسْأَلَةٌ إِجْمَاعُ أَهْلِ عَصْرٍ بَعْدَهُمْ أَوَّلِهِمْ عَنْ آخِرِهِمْ عَلَى حُكْمِ نَصٍّ لَا يُقْطَعُ فِيهِ بِإِجْمَاعِ الصَّحَابَةِ وَلَوْ جَازَ أَنْ يُتَيَقَّنَ إِجْمَاعُ أَهْلِ عَصْرٍ بَعْدَهُمْ أَوَّلِهِمْ عَنْ آخِرِهِمْ عَلَى حُكْمِ نَصٍّ لَا يُقْطَعُ فِيهِ بِإِجْمَاعِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَوَجَبَ الْقَطْعُ بِأَنَّهُ حَقٌّ وَحُجَّةٌ وَلَيْسَ كَانَ يَكُونُ إِجْمَاعًا.

necessitate decisively establishing that it is true and authoritative. Yet such a consensus would not be a consensus.

L2541–2542 As for the definitive certainty that it is truth and proof, this is due to what we previously mentioned with its chain from the statement of Allah's Messenger—peace and blessings be upon him: "A group from my community will remain manifest upon the truth, unharmed by those who oppose them, until Allah's decree arrives." Thus, it is established from this that it is absolutely impermissible for the people of any era—even for an instant—to collectively agree upon error, and there must necessarily be someone among them asserting the truth. As for it not being consensus, this is because the people of every era after the Companions' time—may Allah be pleased with them—are not all believers but only some believers. Consensus is solely the agreement of all believers, not some of them. Were it permissible to term as consensus that from which a single person dissents—without knowing whether they concur or oppose—it would then be permissible to term as consensus that from which two, three, or four dissent, and so endlessly until the matter reduces to calling a single person's opinion consensus. This is invalid. However, there is no means to conclusively ascertain consensus among people of any era after the Companions—may Allah be pleased with them—in this manner. Rather, they were a limited number whose statements on issues could be exhaustively compiled and verified. And Allah alone grants success. Some have claimed this is known through the approval of Mālik's disciples, Abū Ḥanīfah's disciples, and Al-Shāfiʿī's disciples regarding these scholars' opinions. ʿAlī said: This is erroneous, for there is no scenario where a jurist among these scholars holds an opinion without the potential existence of dissenters among their own disciples—even if they agree with him in other matters.

L2543 **An issue in which people have differed, or a single individual has disputed regarding a certain matter.**

L2544–2546 Issue 99: When people differ or a single individual disputes any matter, it is obligatory to refer back to the Quran and the Sunnah of the Messenger of Allah—peace and blessings of Allah be upon him—and not to anything besides them. It is not permissible to refer to the practice of the people of

أَمَّا الْقَطْعُ بِأَنَّهُ حَقٌّ وَحُجَّةٌ فَلِمَا ذَكَرْنَاهُ قَبْلُ بِإِسْنَادِهِ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَنْ تَزَالَ طَائِفَةٌ مِنْ أُمَّتِي ظَاهِرَةً عَلَى الْحَقِّ لَا يَضُرُّهُمْ مَنْ خَذَلَهُمْ حَتَّى يَأْتِيَ أَمْرُ اللَّهِ» فَصَحَّ مِنْ هَذَا أَنَّهُ لَا يَجُوزُ أَلْبَتَّةَ أَنْ يَجْمَعَ أَهْلَ عَصْرٍ وَلَوْ طَرْفَةَ عَيْنٍ عَلَى خَطَإٍ، وَلَا بُدَّ مِنْ قَائِلٍ بِالْحَقِّ فِيهِمْ. وَأَمَّا أَنَّهُ لَيْسَ إجْمَاعًا، فَلِأَنَّ أَهْلَ كُلِّ عَصْرٍ بَعْدَ عَصْرِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَيْسَ جَمِيعَ الْمُؤْمِنِينَ وَإِنَّمَا هُمْ بَعْضُ الْمُؤْمِنِينَ وَالْإِجْمَاعُ إنَّمَا هُوَ إجْمَاعُ جَمِيعِ الْمُؤْمِنِينَ لَا إجْمَاعُ بَعْضِهِمْ. وَلَوْ جَازَ أَنْ يُسَمَّى إجْمَاعًا مَا خَرَجَ عَنْ الْجُمْلَةِ وَاحِدٌ لَا يُعْرَفُ أَيُوَافِقُ سَائِرَهُمْ أَمْ يُخَالِفُهُمْ لَجَازَ أَنْ يُسَمَّى إجْمَاعًا مَا خَرَجَ عَنْهُمْ فِيهِ اثْنَانِ وَثَلَاثَةٌ وَأَرْبَعَةٌ. وَهَكَذَا أَبَدًا إلَى أَنْ يَرْجِعَ الْأَمْرُ إلَى أَنْ يُسَمَّى إجْمَاعًا مَا قَالَهُ وَاحِدٌ. وَهَذَا بَاطِلٌ. وَلَكِنْ لَا سَبِيلَ إلَى تَيَقُّنِ إجْمَاعِ أَهْلِ عَصْرٍ بَعْدَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - كَذَلِكَ. بَلْ كَانُوا عَدَدًا مُمْكِنًا حَصْرُهُ وَضَبْطُهُ وَضَبْطُ أَقْوَالِهِمْ فِي الْمَسْأَلَةِ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَقَالَ بَعْضُ النَّاسِ: يُعْلَمُ ذَلِكَ مِنْ حَيْثُ يُعْلَمُ رِضَا أَصْحَابِ مَالِكٍ وَأَصْحَابِ أَبِي حَنِيفَةَ وَأَصْحَابِ الشَّافِعِيِّ بِأَقْوَالِ هَؤُلَاءِ. قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ لِأَنَّهُ لَا سَبِيلَ أَنْ يَكُونَ مَسْأَلَةً قَالَ بِهَا أَحَدٌ مِنْ هَؤُلَاءِ الْفُقَهَاءِ إلَّا وَفِي أَصْحَابِهِ مَنْ يُمْكِنُ أَنْ يُخَالِفَهُ فِيهَا وَإِنْ وَافَقَهُ فِي سَائِرِ أَقْوَالِهِ.

[مَسْأَلَةٌ اخْتَلَفَ النَّاسُ أَوْ نَازَعَ وَاحِدٌ فِي مَسْأَلَةٍ مَا]

- ٩٩ مَسْأَلَةٌ: وَالْوَاجِبُ إذَا اخْتَلَفَ النَّاسُ أَوْ نَازَعَ وَاحِدٌ فِي مَسْأَلَةٍ مَا أَنْ يَرْجِعَ إلَى الْقُرْآنِ وَسُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا إلَى شَيْءٍ غَيْرِهِمَا. وَلَا يَجُوزُ

الرُّجُوعُ إِلَى عَمَلِ أَهْلِ الْمَدِينَةِ وَلَا غَيْرِهِمْ. بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ عَزَّ وَجَلَّ {يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [النساء: ٥٩] فَصَحَّ أَنَّهُ لَا يَحِلُّ الرَّدُّ عِنْدَ التَّنَازُعِ إِلَى شَيْءٍ غَيْرِ كَلَامِ اللَّهِ تَعَالَى وَسُنَّةِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي هَذَا تَحْرِيمُ الرُّجُوعِ إِلَى قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، لِأَنَّ مَنْ رَجَعَ إِلَى قَوْلِ إِنْسَانٍ دُونَهُ - عَلَيْهِ السَّلَامُ - فَقَدْ خَالَفَ أَمْرَ اللَّهِ تَعَالَى بِالرَّدِّ إِلَيْهِ وَإِلَى رَسُولِهِ، لَا سِيَّمَا مَعَ تَعْلِيقِهِ تَعَالَى ذَلِكَ بِقَوْلِهِ: {إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [النساء: ٥٩] وَلَمْ يَأْمُرْ اللَّهُ تَعَالَى بِالرُّجُوعِ إِلَى قَوْلِ بَعْضِ الْمُؤْمِنِينَ دُونَ جَمِيعِهِمْ. وَقَدْ كَانَ الْخُلَفَاءُ - رَضِيَ اللَّهُ عَنْهُمْ - كَأَبِي بَكْرٍ وَعُمَرَ وَعُثْمَانَ بِالْمَدِينَةِ وَعُمَّالُهُمْ بِالْيَمَنِ وَمَكَّةَ وَسَائِرِ الْبِلَادِ وَعُمَّالُ عُمَرَ بِالْبَصْرَةِ وَالْكُوفَةِ وَمِصْرَ وَالشَّامِ. وَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ الْمُمْتَنِعِ الَّذِي لَا يُمْكِنُ أَنْ يَكُونُوا - رَضِيَ اللَّهُ عَنْهُمْ - طَوَوْا عِلْمَ الْوَاجِبِ وَالْحَلَالِ وَالْحَرَامِ عَنْ سَائِرِ الْأَمْصَارِ وَاخْتَصُّوا بِهِ أَهْلَ الْمَدِينَةِ، فَهَذِهِ صِفَةُ سُوءٍ قَدْ أَعَاذَهُمْ اللَّهُ تَعَالَى مِنْهَا، وَقَدْ عَمِلَ مُلُوكُ بَنِي أُمَيَّةَ بِإِسْقَاطِ بَعْضِ التَّكْبِيرِ مِنْ الصَّلَاةِ وَبِتَقْدِيمِ الْخُطْبَةِ عَلَى الصَّلَاةِ فِي الْعِيدَيْنِ، حَتَّى فَشَا ذَلِكَ فِي الْأَرْضِ، فَصَحَّ أَنَّهُ لَا حُجَّةَ فِي عَمَلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

Medina or others. The proof for this is the statement of Allah, the Mighty and Majestic: "O you who believe, obey Allah and obey the Messenger and those in authority among you. If you disagree over anything, refer it to Allah and the Messenger, if you truly believe in Allah and the Last Day." [An-Nisa: 59] Thus, it is confirmed that it is not permissible during disputes to refer to anything other than the speech of Allah, the Exalted, and the Sunnah of His Messenger—peace and blessings of Allah be upon him. In this lies the prohibition of reverting to the opinion of anyone besides the Messenger of Allah—peace and blessings of Allah be upon him—for whoever resorts to the view of a human other than him—peace and blessings of Allah be upon him—has opposed Allah's command to refer matters back to Him and to His Messenger, especially with Allah's conditioning of this obligation upon His words: "if you truly believe in Allah and the Last Day." [An-Nisa: 59] Allah, the Exalted, has not commanded recourse to the opinion of some believers to the exclusion of others. The caliphs—may Allah be pleased with them—such as Abu Bakr, Umar, and Uthman were in Medina. Their governors in Yemen, Mecca, and all other regions, and Umar's governors in Basra, Kufa, Egypt, and Syria. Among the definitively impossible falsehood is that they (may Allah be pleased with them) withheld knowledge of obligatory rulings, the permissible, and the prohibited from the rest of the regions and restricted it exclusively to the people of Medina. This is a reprehensible trait from which Allah the Exalted has protected them. The Umayyad kings omitted some of the *takbīr* in prayer and advanced the sermon before the prayer during the two Eids, until this became widespread across the land. Thus, it is established that there is no valid proof in the practice of anyone other than the Messenger of Allah (peace and blessings be upon him).[12]

[مَسْأَلَة الْقَوْلُ بِالْقِيَاسِ]

L2547

The Issue of Asserting Qiyas

١٠٠ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْقَوْلُ بِالْقِيَاسِ فِي الدِّينِ وَلَا بِالرَّأْيِ لِأَنَّ أَمْرَ اللَّهِ تَعَالَى عِنْدَ التَّنَازُعِ بِالرَّدِّ إِلَى كِتَابِهِ وَإِلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ صَحَّ، فَمَنْ رَدَّ إِلَى قِيَاسٍ

L2548–2552

100 - Issue: It is not permissible to assert rulings through analogy (qiyas) in religion nor through personal opinion (ra'y), for Allah's command—when disputes arise—to refer back to His Book and to His Messenger (peace be

[12] **Qur'an references (L2544):** Qur'an 4:59 (An-Nisa); Qur'an 24:2 (An-Nur).

upon him) has been authentically established. Whoever resorts to analogy, to causal reasoning he alleges, or to personal opinion has opposed Allah's command—which is tied to faith—and has turned to other than what Allah commanded to refer to. This matter contains its own implications. 'Ali said: Allah's statement, *"We have neglected nothing in the Book"* (6:38), His statement, *"as an exposition of all things"* (16:89), His statement, *"that you may make clear to mankind what has been sent down to them"* (16:44), and His statement, *"This day I have perfected for you your religion"* (5:3) constitute an invalidation of analogy and personal opinion. Proponents of analogy and opinion do not dispute that their use is impermissible as long as a textual ruling exists. Yet Allah has testified that the text neglected nothing, that His Messenger (peace be upon him) clarified to people all that was sent down to them, and that the religion has been perfected. Thus, it is confirmed that the text has comprehensively encompassed the entire religion. If this is so, then no one requires analogy, their own opinion, or others' opinions. We ask those who endorse analogy: Is every analogy posited by an analogist valid, or does it contain both truth and falsehood? If someone claims that all analogies are valid, this leads to contradiction, for analogies conflict with one another and some nullify others. It is impossible for something and its opposite—such as prohibition and permissibility—to both be valid simultaneously, and this is not a case of abrogation or specification, unlike conflicting narrations where some abrogate or specify others. If they claim that some analogies are valid and others invalid, we say: Then inform us how you distinguish the sound analogy from the invalid one. They have no means to ever establish this. If there is no evidence to validate sound analogies over invalid ones, then all of it becomes void and mere baseless claims. If they allege that God Almighty commanded the use of analogy, we ask them: Where did you find this? If they cite God's words: "So take heed, O people of insight" [Al-Hashr 59:2], we reply: In the Arabic language of the Quran, "taking heed" refers only to wonder, not analogy. God says: "And indeed, for you in grazing livestock is a wonder" [An-Nahl 16:66]. And He says: "There was certainly in their stories a wonder" [Yusuf 12:111]. It is strange to claim "taking heed" means analogy while God tells us to analogize without clarifying what to analogize, how to analogize, or upon what

وَإِلَى تَعْلِيلٍ يَدَّعِيه أَوْ إِلَى رَأْيٍ فَقَدْ خَالَفَ أَمْرَ اللهِ تَعَالَى الْمُعَلَّقَ بِالْإِيمَانِ وَرَدَّ إِلَى غَيْرِ مَنْ أَمَرَ اللهُ تَعَالَى بِالرَّدِّ إِلَيْهِ، وَفِي هَذَا مَا فِيهِ. قَالَ عَلِيٌّ: وَقَوْلُ اللهِ تَعَالَى: {مَا فَرَّطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ} [الأنعام: ٣٨] وقَوْله تَعَالَى: {تِبْيَانًا لِكُلِّ شَيْءٍ} [النحل: ٨٩] وقَوْله تَعَالَى {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] قَوْله تَعَالَى: {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] إبْطَالٌ لِلْقِيَاسِ وَلِلرَّأْيِ، لِأَنَّهُ لَا يَخْتَلِفُ أَهْلُ الْقِيَاسِ وَالرَّأْيِ أَنَّهُ لَا يَجُوزُ اسْتِعْمَالُهُمَا مَا دَامَ يُوجَدُ نَصٌّ، وَقَدْ شَهِدَ اللهُ تَعَالَى بِأَنَّ النَّصَّ لَمْ يُفَرِّطْ فِيهِ شَيْئًا، وَأَنَّ رَسُولَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَدْ بَيَّنَ لِلنَّاسِ كُلَّ مَا نُزِّلَ إِلَيْهِمْ، وَأَنَّ الدِّينَ قَدْ كَمُلَ فَصَحَّ أَنَّ النَّصَّ قَدْ اسْتَوْفَى جَمِيعَ الدِّينِ، فَإِذَا كَانَ ذَلِكَ كَذَلِكَ فَلَا حَاجَةَ بِأَحَدٍ إِلَى قِيَاسٍ وَلَا إِلَى رَأْيِهِ وَلَا إِلَى رَأْيِ غَيْرِهِ. وَنَسْأَلُ مَنْ قَالَ بِالْقِيَاسِ: هَلْ كُلُّ قِيَاسٍ قَاسَهُ قَائِسٌ حَقٌّ، أَمْ مِنْهُ حَقٌّ وَمِنْهُ بَاطِلٌ فَإِنْ قَالَ كُلُّ قِيَاسٍ حَقٌّ أَحَالَ، لِأَنَّ الْمَقَايِيسَ تَتَعَارَضُ وَيُبْطِلُ بَعْضُهَا بَعْضًا، وَمِنْ الْمُحَالِ أَنْ يَكُونَ الشَّيْءُ وَضِدُّهُ مِنْ التَّحْرِيمِ وَالتَّحْلِيلِ حَقًّا مَعًا، وَلَيْسَ هَذَا مَكَانَ نَسْخٍ وَلَا تَخْصِيصٍ، كَالْأَخْبَارِ الْمُتَعَارِضَةِ الَّتِي يَنْسَخُ بَعْضُهَا بَعْضًا، وَيُخَصِّصُ بَعْضُهَا بَعْضًا. وَإِنْ قَالَ مِنْهَا حَقٌّ وَمِنْهَا بَاطِلٌ، قِيلَ لَهُ فَعَرِّفْنَا بِمَاذَا تَعْرِفُ الْقِيَاسَ الصَّحِيحَ مِنْ الْفَاسِدِ، وَلَا سَبِيلَ لَهُمْ إلَى وُجُودِ ذَلِكَ أَبَدًا، وَإِذَا لَمْ يُوجَدْ دَلِيلٌ عَلَى تَصْحِيحِ الصَّحِيحِ مِنْ الْقِيَاسِ مِنْ الْبَاطِلِ مِنْهُ، فَقَدْ بَطَلَ كُلُّهُ وَصَارَ دَعْوَى بِلَا بُرْهَانٍ، فَإِنْ ادَّعَوْا أَنَّ الْقِيَاسَ قَدْ أَمَرَ اللهُ تَعَالَى بِهِ سَأَلُوا أَيْنَ وَجَدُوا ذَلِكَ، فَإِنْ قَالُوا: قَالَ اللهُ عَزَّ وَجَلَّ: {فَاعْتَبِرُوا يَا أُولِي الأَبْصَارِ} [الحشر: ٢] قِيلَ لَهُمْ: إنَّ الِاعْتِبَارَ لَيْسَ هُوَ فِي كَلَامِ الْعَرَبِ الَّذِي نَزَلَ بِهِ الْقُرْآنُ إلَّا التَّعَجُّبَ، قَالَ اللهُ عَزَّ وَجَلَّ: {وَإِنَّ لَكُمْ فِي الأَنْعَامِ لَعِبْرَةً} [النحل: ٦٦] أَيْ

to analogize. This is impossible, for no one can know anything of religion except through God's teaching via His Messenger—peace be upon him. God says: "Allah does not burden a soul beyond its capacity" [Al-Baqarah 2:286]. If they cite verses or hadiths comparing one thing to another or stating God judged a matter due to a cause, we respond: All such explicit statements from God and His Messenger—peace be upon him—are true and binding, and it is a text by which we say: Any analogy or causation you invent in religion without divine or prophetic text is invalid, a legislation God never authorized. This refutes their overblown rhetoric in citing verses like the recompense for hunting, "What if you rinsed your mouth?" and "Because of that, We decreed upon the Children of Israel" [Al-Ma'idah 5:32]. Every verse and hadith they cite as evidence actually argues against them, as explained in *The Precision in the Fundamentals of Rulings*, *The Subtleties*, *The Pearl*, and *The Concise Work*. Ali said: We countered every analogy they devised with a stronger analogy based on their own principles to demonstrate the inherent corruption of analogy entirely. Some sophists among them objected: "You habitually invalidate analogy using analogy, thereby using it as evidence yourselves—like employing rational proofs to negate reason or intellectual arguments to negrate intellect." Ali replied: This is baseless clamor, easily dismantled. Praise be to God, we never invoked analogy as proof. In refuting analogy—and Allah forbid such a thing—we have shown you that the very foundation you established to validate analogy testifies to the corruption of all your analogies. No statement is more evidently false than one that contradicts itself. The Almighty has explicitly affirmed this, stating: *{And the Jews and Christians say, "We are Allah's children and His beloved." Say, "Then why does He punish you for your sins?"}* [Al-Mā'idah: 18]. This is not a validation of their claim to being Allah's children and beloved; rather, it compels them to acknowledge what invalidates their assertion. We are not like those you mentioned who argue against rational proofs using rational proofs. However, one who does so validates their own rational premise—the very premise they cite as proof—thereby exposing their immediate contradiction. With no other proof to rely on, the falsity of their claim becomes evident. As for us, we have never invoked analogy to refute analogy by using one that we validate. Instead, we invalidate analogy through

لَعَجَبًا. وَقَالَ عَزَّ وَجَلَّ: {لَقَدْ كَانَ فِي قَصَصِهِمْ عِبْرَةٌ} [يوسف: ١١١] أَيْ عَجَبٌ، وَمِنْ الْعَجِيبِ أَنْ يَكُونَ مَعْنَى الِاعْتِبَارِ الْقِيَاسَ، وَيَقُولُ اللَّهُ تَعَالَى لَنَا قِيسُوا، ثُمَّ لَا يُبَيِّنُ لَنَا مَاذَا نَقِيسُ وَلَا كَيْفَ نَقِيسُ وَلَا عَلَى مَاذَا نَقِيسُ. هَذَا مَا لَا سَبِيلَ إلَيْهِ لِأَنَّهُ لَيْسَ فِي وُسْعِ أَحَدٍ أَنْ يَعْلَمَ شَيْئًا مِنْ الدِّينِ إلَّا بِتَعْلِيمِ اللَّهِ تَعَالَى لَهُ إيَّاهُ عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، وَقَدْ قَالَ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إلا وُسْعَهَا} [البقرة: ٢٨٦] فَإِنْ ذَكَرُوا أَحَادِيثَ وَآيَاتٍ فِيهَا تَشْبِيهُ شَيْءٍ بِشَيْءٍ، وَأَنَّ اللَّهَ قَضَى وَحَكَمَ بِأَمْرِ كَذَا مِنْ أَجْلِ أَمْرِ كَذَا، قُلْنَا لَهُمْ: كُلُّ مَا قَالَهُ اللَّهُ عَزَّ وَجَلَّ وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ ذَلِكَ فَهُوَ حَقٌّ لَا يَحِلُّ لِأَحَدٍ خِلَافُهُ، وَهُوَ نَصٌّ بِهِ نَقُولُ: وَكُلُّ مَا تُرِيدُونَ أَنْ تُشَبِّهُوهُ فِي الدِّينِ وَأَنْ تُعَلِّلُوهُ مِمَّا لَمْ يَنُصَّ عَلَيْهِ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَهُوَ بَاطِلٌ وَلَا بُدَّ وَشَرْعٌ لَمْ يَأْذَنْ اللَّهُ تَعَالَى بِهِ، وَهَذَا يُبْطِلُ عَلَيْهِمْ تَمْوِيهَهُمْ بِذِكْرِ آيَةِ جَزَاءِ الصَّيْدِ وَ «أَرَأَيْتَ لَوْ مَضْمَضْتَ» وَ {مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَائِيلَ} [المائدة: ٣٢] . وَكُلُّ آيَةٍ وَحَدِيثٍ مَوَّهُوا بِإِيرَادِهِ هُوَ مَعَ ذَلِكَ حُجَّةٌ عَلَيْهِمْ عَلَى مَا قَدْ بَيَّنَّاهُ فِي كِتَابِ (الْإِحْكَامِ لِأُصُولِ الْأَحْكَامِ) وَفِي كِتَابِ النُّكَتِ وَفِي كِتَابِ الدُّرَّةِ وَفِي كِتَابِ النُّبْذَةِ قَالَ عَلِيٌّ: وَقَدْ عَارَضْنَاهُمْ فِي كُلِّ قِيَاسٍ قَاسُوهُ بِقِيَاسٍ مِثْلِهِ وَأَوْضَحَ مِنْهُ عَلَى أُصُولِهِمْ لِنُرِيَهُمْ فَسَادَ الْقِيَاسِ جُمْلَةً، فَمِنْهُمْ مُمَوِّهُونَ بِأَنْ قَالُوا: أَنْتُمْ دَأَبًا تُبْطِلُونَ الْقِيَاسَ بِالْقِيَاسِ، وَهَذَا مِنْكُمْ رُجُوعٌ إلَى الْقِيَاسِ وَاحْتِجَاجٌ بِهِ، وَأَنْتُمْ فِي ذَلِكَ بِمَنْزِلَةِ الْمُحْتَجِّ عَلَى غَيْرِهِ بِحُجَّةِ الْعَقْلِ لِيُبْطِلَ حُجَّةَ الْعَقْلِ وَبِدَلِيلٍ مِنْ النَّظَرِ لِيُبْطِلَ بِهِ النَّظَرَ قَالَ عَلِيٌّ: فَقُلْنَا هَذَا شَغَبٌ سَهْلٌ إفْسَادُهُ وَلِلَّهِ الْحَمْدُ، وَنَحْنُ لَمْ نَحْتَجَّ بِالْقِيَاسِ فِي إبْطَالِ الْقِيَاسِ، وَمَعَاذَ اللَّهِ مِنْ هَذَا، لَكِنْ أَرَيْنَاكُمْ أَنَّ أَصْلَكُمْ الَّذِي

textual proofs and rational demonstrations, further clarifying its corruption by demonstrating its contradictions in their entirety. The analogy we use to oppose yours is one we acknowledge as corrupt, just as your analogy—which is similar to it or weaker—is corrupt. This mirrors how we argue against every sect: Muʿtazilites, Rāfiḍah (Rejectors), Murjiʾah, Khawārij, Jews, Christians, and Dahrites—using their own affirmed claims to expose their inconsistencies and contradictions. You yourselves join us in arguing against them thus. Neither we nor you accept those claims we use against them; rather, we deem them utterly false and corrupt. Similarly, our argument against Jews and Christians draws from their own scriptures—which we do not validate, as we assert they are distorted and altered—to expose contradictions in their foundational and derivative principles. Especially since all proponents of analogy disagree in their analogies. Hardly any issue exists without each faction advancing an analogy they claim valid to counter another's. Yet they unanimously concede that not every analogy or opinion is valid. Thus, we demanded: "Define the valid analogy and sound opinion that distinguish them from corrupt analogy and opinion. Define the valid legal cause (ʿillah) you restrict yourselves to in analogy, as opposed to an invalid cause." They faltered. ʿAlī said: "This is a point where, if pressed, the wholesale corruption of their doctrine is laid bare, leaving them perpetually unable to offer a coherent reply." And success is by Allah, the Exalted.[13]

أَثْبَتُّمُوهُ مِنْ تَصْحِيحِ الْقِيَاسِ يَشْهَدُ بِفَسَادِ جَمِيعِ قِيَاسَاتِكُمْ. وَلَا قَوْلَ أَظْهَرُ بَاطِلًا مِنْ قَوْلِ أَكْذَبَ نَفْسَهُ. وَقَدْ نَصَّ تَعَالَى عَلَى هَذَا. فَقَالَ تَعَالَى: {وَقَالَتِ الْيَهُودُ وَالنَّصَارَى نَحْنُ أَبْنَاءُ اللَّهِ وَأَحِبَّاؤُهُ قُلْ فَلِمَ يُعَذِّبُكُمْ بِذُنُوبِكُمْ} [المائدة: ١٨] فَلَيْسَ هَذَا تَصْحِيحًا لِقَوْلِهِمْ إِنَّهُمْ أَبْنَاءُ اللَّهِ وَأَحِبَّاؤُهُ. وَلَكِنْ إِلْزَامٌ لَهُمْ مَا يَفْسُدُ بِهِ قَوْلُهُمْ وَلَسْنَا فِي ذَلِكَ كَمَنْ ذَكَرْتُمْ مِمَّنْ يَحْتَجُّ فِي إِبْطَالِ حُجَّةِ الْعَقْلِ بِحُجَّةِ الْعَقْلِ. لَكِنَّ فَاعِلَ ذَلِكَ مُصَحِّحٌ لِقَضِيَّتِهِ الْعَقْلِيَّةِ الَّتِي يَحْتَجُّ بِهَا فَظَهَرَ تَنَاقُضُهُ مِنْ قَرِيبٍ. وَلَا حُجَّةَ لَهُ غَيْرُهَا فَقَدْ ظَهَرَ بُطْلَانُ قَوْلِهِ. وَأَمَّا نَحْنُ فَلَمْ نَحْتَجَّ قَطُّ فِي إِبْطَالِ الْقِيَاسِ بِقِيَاسٍ نُصَحِّحُهُ. لَكِنْ نُبْطِلُ الْقِيَاسَ بِالنُّصُوصِ وَبِبَرَاهِينِ الْعَقْلِ. ثُمَّ نَزِيدُ بَيَانًا فِي فَسَادِهِ مِنْهُ نَفْسِهِ بِأَنْ نُرِيَ تَنَاقُضَهُ جُمْلَةً فَقَطْ وَالْقِيَاسَ الَّذِي نُعَارِضُ بِهِ قِيَاسَكُمْ. نَحْنُ نُقِرُّ بِفَسَادِهِ وَفَسَادِ قِيَاسِكُمُ الَّذِي هُوَ مِثْلُهُ أَوْ أَضْعَفُ مِنْهُ. كَمَا نَحْتَجُّ عَلَى أَهْلِ كُلِّ مَقَالَةٍ مِنْ مُعْتَزِلَةٍ وَرَافِضَةٍ وَمُرْجِئَةٍ وَخَوَارِجَ وَيَهُودٍ وَنَصَارَى وَدَهْرِيَّةٍ مِنْ أَقْوَالِهِمُ الَّتِي يَشْهَدُونَ بِصِحَّتِهَا. فَنُرِيهِمْ تَفَاسُدَهَا وَتَنَاقُضَهَا. وَأَنْتُمْ تَحْتَجُّونَ عَلَيْهِمْ مَعَنَا بِذَلِكَ. وَلَسْنَا نَحْنُ وَلَا أَنْتُمْ مِمَّنْ يُقِرُّ بِتِلْكَ الْأَقْوَالِ الَّتِي نَحْتَجُّ عَلَيْهِمْ بِهَا، بَلْ هِيَ عِنْدَنَا فِي غَايَةِ الْبُطْلَانِ وَالْفَسَادِ. وَكَاحْتِجَاجِنَا عَلَى الْيَهُودِ وَالنَّصَارَى مِنْ كُتُبِهِمُ الَّتِي بِأَيْدِيهِمْ. وَنَحْنُ لَا نُصَحِّحُهَا. بَلْ نَقُولُ إِنَّهَا لَمُحَرَّفَةٌ مُبَدَّلَةٌ. لَكِنْ لِنُرِيَهُمْ تَنَاقُضَ أُصُولِهِمْ وَفُرُوعِهِمْ. لَا سِيَّمَا وَجَمِيعُ أَصْحَابِ الْقِيَاسِ مُخْتَلِفُونَ فِي قِيَاسَاتِهِمْ. لَا تَكَادُ تُوجَدُ مَسْأَلَةٌ إِلَّا وَكُلُّ طَائِفَةٍ مِنْهُمْ تَأْتِي بِقِيَاسٍ تَدَّعِي صِحَّتَهُ تُعَارِضُ بِهِ قِيَاسَ الْأُخْرَى. وَهُمْ كُلُّهُمْ مُقِرُّونَ مُجْمِعُونَ عَلَى أَنَّهُ لَيْسَ كُلُّ قِيَاسٍ صَحِيحًا وَلَا كُلُّ رَأْيٍ حَقًّا. فَقُلْنَا لَهُمْ: فَهَاتُوا حَدَّ الْقِيَاسِ الصَّحِيحِ وَالرَّأْيَ الصَّحِيحَ الَّذِي يَتَمَيَّزَانِ

[13] **Qur'an references (L2548):** Qur'an 6:38 (Al-An'am); Qur'an 16:89 (An-Nahl); Qur'an 16:44 (An-Nahl); Qur'an 5:3 (Al-Ma'idah); Qur'an 59:2 (Al-Hashr); Qur'an 16:66 (An-Nahl); Qur'an 23:21 (Al-Mu'minun); Qur'an 12:111 (Yusuf); Qur'an 2:286 (Al-Baqarah); Qur'an 5:32 (Al-Ma'idah); Qur'an 5:18 (Al-Ma'idah).

بِهِ مِنْ الْقِيَاسِ الْفَاسِدِ وَالرَّأْيِ الْفَاسِدِ. وَهَاتُوا حَدَّ الْعِلَّةِ الصَّحِيحَةِ الَّتِي لَا تَقِيسُونَ إلَّا عَلَيْهَا مِنْ الْعِلَّةِ الْفَاسِدَةِ فَلَجْلَجُوا. قَالَ عَلِيٌّ: وَهَذَا مَكَانٌ إنْ زُمَّ عَلَيْهِمْ فِيهِ ظَهَرَ فَسَادُ قَوْلِهِمْ جُمْلَةً. وَلَمْ يَكُنْ لَهُمْ إلَى جَوَابٍ يُفْهَمُ سَبِيلٌ أَبَدًا. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L2553 If they present a textual proof in this matter, we say: The text is true, and what you seek to add to the text through your opinions is null and void. In this, you have been contradicted. Thus it shall always be. If they claim that the Companions—may Allah be pleased with them—unanimously agreed to uphold the opinion of qiyas, they are told: You have lied! Rather, the truth is that they all unanimously agreed to invalidate it.

فَإِنْ أَتَوْا فِي ذَلِكَ بِنَصٍّ قُلْنَا النَّصُّ حَقٌّ وَالَّذِي تُرِيدُونَ أَنْتُمْ إضَافَتَهُ إلَى النَّصِّ بِآرَائِكُمْ بَاطِلٌ وَفِي هَذَا خُولِفْتُمْ. وَهَكَذَا أَبَدًا. فَإِنْ ادَّعَوْا أَنَّ الصَّحَابَةَ - رَضِيَ اللَّهُ عَنْهُمْ - أَجْمَعُوا عَلَى الْقَوْلِ بِالْقِيَاسِ قِيلَ لَهُمْ: كَذَبْتُمْ بَلْ الْحَقُّ أَنَّهُمْ كُلُّهُمْ أَجْمَعُوا عَلَى إبْطَالِهِ.

L2554–2557 The proof of their falsehood is that they have no means to establish the existence of any ḥadīth from any of the Companions—may Allah be pleased with them—asserting an unrestricted command to adopt qiyās (analogical reasoning) at any time, except in the forged and fabricated letter falsely ascribed to ʿUmar—may Allah be pleased with him. For it states: "Recognize similarities and parallels, and judge matters by analogy." This letter is narrated only by ʿAbd al-Malik ibn al-Walīd ibn Maʿdān from his father, who is unanimously deemed unreliable without dispute, and his father is even more discredited than him or equally so. How then can this be accepted when the letter itself contains matters wherein they contradict ʿUmar—may Allah be pleased with him—such as his statement therein: "All Muslims are trustworthy in their dealings with one another except one subjected to a ḥadd punishment, or suspected of false patronage or lineage." Yet none of the proponents of qiyās—Ḥanafīs, Shāfiʿīs, or Mālikīs—uphold this view. If ʿUmar's statement in that letter—assuming its hypothetical authenticity—were a valid proof for qiyās, then his assertion that all Muslims are trustworthy except those punished by ḥadd would equally constitute proof. If his statement on that matter is not authoritative, then neither is his alleged endorsement of qiyās—even if presumed authentic, let alone when it is unverified.

As for the proof validating our stance—the consensus of the Companions (may Allah be pleased with them) rejecting qiyās—it is undeniable that all

بُرْهَانُ كَذِبِهِمْ أَنَّهُ لَا سَبِيلَ لَهُمْ إلَى وُجُودِ حَدِيثٍ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّهُ أَطْلَقَ الْأَمْرَ بِالْقَوْلِ بِالْقِيَاسِ أَبَدًا إلَّا فِي الرِّسَالَةِ الْمَكْذُوبَةِ الْمَوْضُوعَةِ عَلَى عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فَإِنَّ فِيهَا: وَاعْرِفْ الْأَشْبَاهَ وَالْأَمْثَالَ وَقِسْ الْأُمُورَ وَهَذِهِ رِسَالَةٌ لَمْ يَرْوِهَا إلَّا عَبْدُ الْمَلِكِ بْنُ الْوَلِيدِ بْنِ مَعْدَانَ عَنْ أَبِيهِ وَهُوَ سَاقِطٌ بِلَا خِلَافٍ وَأَبُوهُ أَسْقَطُ مِنْهُ أَوْ هُوَ مِثْلُهُ فِي السُّقُوطِ، فَكَيْفَ وَفِي هَذِهِ الرِّسَالَةِ نَفْسِهَا أَشْيَاءُ خَالَفُوا فِيهَا عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَمِنْهَا قَوْلُهُ فِيهَا: وَالْمُسْلِمُونَ عُدُولٌ بَعْضُهُمْ عَلَى بَعْضٍ إلَّا مَجْلُودًا فِي حَدٍّ أَوْ ظَنِينًا فِي وَلَاءٍ أَوْ نَسَبٍ. وَهُمْ لَا يَقُولُونَ بِهَذَا - يَعْنِي جَمِيعَ الْحَاضِرِينَ مِنْ أَصْحَابِ الْقِيَاسِ - حَنَفِيَّهُمْ وَشَافِعِيَّهُمْ وَمَالِكِيَّهُمْ، وَإِنْ كَانَ قَوْلُ عُمَرَ - لَوْ صَحَّ فِي تِلْكَ الرِّسَالَةِ - فِي الْقِيَاسِ حُجَّةً، فَقَوْلُهُ فِي أَنَّ الْمُسْلِمِينَ عُدُولٌ كُلُّهُمْ إلَّا مَجْلُودًا فِي حَدٍّ حُجَّةٌ، وَإِنْ لَمْ يَكُنْ قَوْلُهُ فِي ذَلِكَ حُجَّةً، فَلَيْسَ قَوْلُهُ فِي الْقِيَاسِ حُجَّةً، لَوْ صَحَّ فَكَيْفَ وَلَمْ يَصِحَّ. وَأَمَّا بُرْهَانُ صِحَّةِ قَوْلِنَا فِي إجْمَاعِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - عَلَى إبْطَالِ الْقِيَاسِ فَإِنَّهُ لَا يَخْتَلِفُ اثْنَانِ فِي أَنَّ جَمِيعَ الصَّحَابَةِ مُصَدِّقُونَ بِالْقُرْآنِ وَفِيهِ {الْيَوْمَ أَكْمَلْتُ لَكُمْ

Companions affirmed the Qur'ān, which states: {This day I have perfected for you your religion and completed My favor upon you} [al-Mā'idah: 3], and: {If you dispute over anything, refer it to Allah and the Messenger, if you truly believe in Allah and the Last Day} [al-Nisā': 59]. It is an absolute falsehood to claim the Companions—may Allah be pleased with them—acknowledged this yet resorted to qiyās or opinion in disputes. No person of sound mind could suspect this of them.

Furthermore, it is established that al-Ṣiddīq—may Allah be pleased with him—said: "What land would bear me, or what sky shelter me, were I to speak about a verse of Allah's Book based on opinion or ignorance?" It is authentically reported that al-Fārūq—may Allah be pleased with him—declared: "Question opinion in religious matters, for our opinion is mere conjecture and presumption." Regarding a legal verdict he issued, ʿUthmān—may Allah be pleased with him—stated: "It was only..." This is an opinion I formed—so whoever wishes may accept it, and whoever wishes may abandon it. From Ali, may Allah be pleased with him: "Were religion based on opinion, the underside of the leather sock would be more worthy of wiping than its upper part." From Sahl ibn Hunayf, may Allah be pleased with him: "O people, hold your opinions suspect in matters of your religion." From Ibn Abbas, may Allah be pleased with them both: "Whoever interprets the Quran according to his own opinion, let him take his seat in the Fire." From Ibn Masud, may Allah be pleased with him: "I will exert my utmost effort in forming my opinion on this matter. If it is correct, it is from Allah; if erroneous, it is from me and Satan, while Allah and His Messenger are absolved of it." From Muadh ibn Jabal in a narration: "When speech is innovated that is neither from the Book of Allah Almighty and Majestic nor the Sunnah of His Messenger, peace and blessings be upon him—beware of it, for it is bidʿah and misguidance." All opinions narrated from certain Companions, may Allah be pleased with them, follow this manner—not as an obligation nor as definitive truth, but merely as a suggestion for pardon, reconciliation, or precaution, not as a binding obligation. As for Muadh's hadith stating, "I exercise ijtihad with my opinion and spare no effort," it is unsound, for none narrated it except Harith ibn Amr—an unknown figure—from unnamed

دِينَكُمْ وَأَتْمَمْتُ عَلَيْكُمْ نِعْمَتِي} [المائدة: ٣] وَفِيهِ: {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [النساء: ٥٩] فَمِنْ الْبَاطِلِ الْمُحَالِ أَنْ يَكُونَ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - يَعْلَمُونَ هَذَا وَيُؤْمِنُونَ بِهِ، ثُمَّ يَرُدُّونَ عِنْدَ التَّنَازُعِ إلَى قِيَاسٍ أَوْ رَأْيٍ. هَذَا مَا لَا يَظُنُّهُ بِهِمْ ذُو عَقْلٍ، فَكَيْفَ وَقَدْ ثَبَتَ عَنْ الصِّدِّيقِ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ قَالَ: أَيُّ أَرْضٍ تُقِلُّنِي أَوْ أَيُّ سَمَاءٍ تُظِلُّنِي إنْ قُلْتَ فِي آيَةٍ مِنْ كِتَابِ اللَّهِ بِرَأْيِي أَوْ بِمَا لَا أَعْلَمُ، وَصَحَّ عَنْ الْفَارُوقِ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ قَالَ: اتَّهِمُوا الرَّأْيَ عَلَى الدِّينِ وَإِنَّ الرَّأْيَ مِنَّا هُوَ الظَّنُّ وَالتَّكَلُّفُ، وَعَنْ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - فِي فُتْيَا أَفْتَى بِهَا إنَّمَا كَانَ رَأْيًا رَأَيْته فَمَنْ شَاءَ أَخَذَ وَمَنْ شَاءَ تَرَكَهُ. وَعَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ -: لَوْ كَانَ الدِّينُ بِالرَّأْيِ لَكَانَ أَسْفَلُ الْخُفِّ أَوْلَى بِالْمَسْحِ مِنْ أَعْلَاهُ. وَعَنْ سَهْلِ بْنِ حُنَيْفٍ - رَضِيَ اللَّهُ عَنْهُ -: أَيُّهَا النَّاسُ اتَّهِمُوا رَأْيَكُمْ عَلَى دِينِكُمْ. وَعَنْ ابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا -: مَنْ قَالَ فِي الْقُرْآنِ بِرَأْيِهِ فَلْيَتَبَوَّأْ مَقْعَدَهُ مِنْ النَّارِ وَعَنْ ابْنِ مَسْعُودٍ - رَضِيَ اللَّهُ عَنْهُ -: سَأَقُولُ فِيهَا بِجَهْدِ رَأْيِي، فَإِنْ كَانَ صَوَابًا فَمِنْ اللَّهِ وَإِنْ كَانَ خَطَأً فَمِنِّي وَمِنْ الشَّيْطَانِ، وَاَللَّهُ وَرَسُولُهُ بَرِيءٌ. وَعَنْ مُعَاذِ بْنِ جَبَلٍ فِي حَدِيثٍ: يُبْتَدَعُ كَلَامًا لَيْسَ مِنْ كِتَابِ اللَّهِ عَزَّ وَجَلَّ وَلَا مِنْ سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِيَّاكُمْ وَإِيَّاهُ فَإِنَّهُ بِدْعَةٌ وَضَلَالَةٌ. وَعَلَى هَذَا النَّحْوِ كُلُّ رَأْيٍ رُوِيَ عَنْ بَعْضِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا عَلَى أَنَّهُ إلْزَامٌ وَلَا أَنَّهُ حَقٌّ، لَكِنَّهُ إشَارَةٌ بِعَفْوٍ أَوْ صُلْحٍ أَوْ تَوَرُّعٍ فَقَطْ لَا عَلَى سَبِيلِ الْإِيجَابِ. وَحَدِيثُ مُعَاذٍ الَّذِي فِيهِ أَجْتَهِدُ رَأْيِي وَلَا آلُو، لَا يَصِحُّ لِأَنَّهُ لَمْ يَرْوِهِ أَحَدٌ إلَّا الْحَارِثُ بْنُ عَمْرٍو وَهُوَ مَجْهُولٌ لَا نَدْرِي مَنْ هُوَ عَنْ رِجَالٍ مِنْ

men of Hims via Muadh. We have meticulously examined all chains of these narrations in our aforementioned work, and all praise belongs to Allah the Exalted. Ahmad ibn Qasim narrated to us: Abu Qasim ibn Muhammad narrated to us: My grandfather Qasim ibn Asbagh informed us: Muhammad ibn Ismail al-Tirmidhi narrated to us: Nu'aym ibn Hammad informed us: Abdullah ibn al-Mubarak informed us: Isa ibn Yunus ibn Abi Ishaq al-Sabi'i narrated from Huraiz ibn Uthman from Abd al-Rahman ibn Jubayr ibn Nufayr from his father from Awf ibn Malik al-Ashja'i, who said: The Messenger of Allah, peace and blessings be upon him, declared, "My nation will divide into seventy-three sects. The most calamitous among them to my nation are those who analogize matters based on their opinions, thereby legalizing the forbidden and prohibiting the lawful."[14]

أَهْلِ حِمْصٍ لَمْ يُسَمِّهِمْ عَنْ مُعَاذٍ. وَقَدْ تَقَصَّيْنَا أَسَانِيدَ هَذِهِ الْأَحَادِيثِ كُلَّهَا فِي كِتَابِنَا الْمَذْكُورِ وَلِلَّهِ تَعَالَى الْحَمْدُ. حَدَّثَنَا أَحْمَدُ بْنُ قَاسِمٍ حَدَّثَنَا أَبُو قَاسِمِ بْنُ مُحَمَّدٍ حَدَّثَنَا جَدِّي قَاسِمُ بْنُ أَصْبَغَ أَخْبَرَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ حَدَّثَنَا نُعَيْمُ بْنُ حَمَّادٍ أَخْبَرَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ أَخْبَرَنَا عِيسَى بْنُ يُونُسَ بْنِ أَبِي إِسْحَاقَ السَّبِيعِيُّ عَنْ حُرَيْزِ بْنِ عُثْمَانَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ جُبَيْرِ بْنِ نُفَيْرٍ عَنْ أَبِيهِ عَنْ عَوْفِ بْنِ مَالِكٍ الْأَشْجَعِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «تَفْتَرِقُ أُمَّتِي عَلَى بِضْعٍ وَسَبْعِينَ فِرْقَةً أَعْظَمُهُمْ فِتْنَةً عَلَى أُمَّتِي قَوْمٌ يَقِيسُونَ الْأُمُورَ بِآرَائِهِمْ فَيُحِلُّونَ الْحَرَامَ وَيُحَرِّمُونَ الْحَلَالَ» .

L2558–2560 Ali said: The entirety of the Sharīʿa consists either of obligatory acts – where one who neglects them sins – or prohibited acts – where one who commits them sins – or permissible acts, where neither performing nor abstaining from them incurs sin. This permissible category divides into three subdivisions: recommended acts – their doer is rewarded and their abstainer does not sin; disliked acts – their abstainer is rewarded and their doer does not sin; or neutral acts – where neither doer nor abstainer is rewarded or sinful. An action may either be categorized as neutral: neither is the one who performs it rewarded nor the one who abstains, nor does the one who performs it commit sin nor the one who abstains.

قَالَ عَلِيٌّ: وَالشَّرِيعَةُ كُلُّهَا إمَّا فَرْضٌ يَعْصِي مَنْ تَرَكَهُ. وَإِمَّا حَرَامٌ يَعْصِي مَنْ فَعَلَهُ وَإِمَّا مُبَاحٌ لَا يَعْصِي مَنْ فَعَلَهُ وَلَا مَنْ تَرَكَهُ. وَهَذَا الْمُبَاحُ يَنْقَسِمُ ثَلَاثَةَ أَقْسَامٍ: إمَّا مَنْدُوبٌ إلَيْهِ يُؤْجَرُ مَنْ فَعَلَهُ وَلَا يَعْصِي مَنْ تَرَكَهُ. وَإِمَّا مَكْرُوهٌ يُؤْجَرُ مَنْ تَرَكَهُ وَلَا يَعْصِي مَنْ فَعَلَهُ. وَإِمَّا مُطْلَقٌ لَا يُؤْجَرُ مَنْ فَعَلَهُ وَلَا مَنْ تَرَكَهُ وَلَا يَعْصِي مَنْ فَعَلَهُ وَلَا مَنْ تَرَكَهُ.

L2561 The Almighty has said: "He created for you all that is on the earth" [Al-Baqarah: 29], and He, the Exalted, has said: "And He has already detailed to you what He has forbidden upon you" [Al-An'am: 119]. Thus, it is established that all things are permissible except what He has explicitly prohibited in the Quran or the Sunnah.[15]

وَقَالَ عَزَّ وَجَلَّ: {خَلَقَ لَكُمْ مَا فِي الْأَرْضِ جَمِيعًا} [البقرة: ٢٩] وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] فَصَحَّ أَنَّ كُلَّ شَيْءٍ حَلَالٌ إلَّا مَا فَصَّلَ تَحْرِيمَهُ فِي الْقُرْآنِ أَوْ السُّنَّةِ.

L2562 Abdullah ibn Yusuf reported to us, Ahmad ibn Fath reported to us, Abdul Wahhab ibn Isa reported to us, Ahmad ibn Muhammad reported to us, Ahmad ibn Ali reported to us, Muslim ibn Al-Hajjaj reported to me, Zuhayr ibn

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ حَدَّثَنَا أَحْمَدُ بْنُ فَتْحٍ حَدَّثَنَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ حَدَّثَنَا أَحْمَدُ بْنُ عَلِيٍّ حَدَّثَنَا مُسْلِمُ بْنُ الْحَجَّاجِ أَخْبَرَنِي زُهَيْرُ بْنُ حَرْبٍ حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ حَدَّثَنَا الرَّبِيعُ بْنُ مُسْلِمٍ الْقُرَشِيُّ عَنْ مُحَمَّدِ بْنِ زِيَادٍ عَنْ أَبِي هُرَيْرَةَ

[14] **Qur'an references (L2555):** Qur'an 5:3 (Al-Ma'idah); Qur'an 4:59 (An-Nisa).
[15] **Qur'an references (L2561):** Qur'an 2:29 (Al-Baqarah); Qur'an 6:119 (Al-An'am).

Harb reported to us, Yazid ibn Harun reported to us, Ar-Rabee ibn Muslim Al-Qurashi reported to us from Muhammad ibn Ziyad from Abu Hurairah that the Messenger of Allah—peace be upon him—delivered a sermon and said: "O people, Allah has ordained Hajj as an obligation upon you, so perform Hajj." A man asked, "Every year, O Messenger of Allah?" He remained silent until the man repeated the question three times. Then the Messenger of Allah—peace be upon him—said: "If I said yes, it would become binding, and you would fail to fulfill it. Leave me as I have left matters for you. Those before you were destroyed only due to their excessive questioning and contentious disagreements with their prophets. When I command you to do something, do as much of it as you can. When I forbid you from something, abandon it entirely." Ali said: "This hadith comprehensively encompasses all religious rulings from beginning to end. It clarifies that whatever the Prophet—peace be upon him—remained silent about, neither commanding nor forbidding, is permissible—neither prohibited nor obligatory. What he commanded is obligatory, and what he forbade is prohibited. What he enjoined upon us requires only what lies within our capability, and performing it once suffices to discharge the obligation without necessitating repetition. What need remains for analogy or personal opinion amid such lucid clarification? We praise Allah for the abundance of His blessings."[16]

أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَطَبَ فَقَالَ «أَيُّهَا النَّاسُ إِنَّ اللَّهَ قَدْ فَرَضَ عَلَيْكُمْ الْحَجَّ فَحُجُّوا، فَقَالَ رَجُلٌ أَكُلَّ عَامٍ يَا رَسُولَ اللَّهِ؟ فَسَكَتَ حَتَّى أَعَادَهَا ثَلَاثًا، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَوْ قُلْتُ نَعَمْ لَوَجَبَتْ وَلَمَا اسْتَطَعْتُمْ، ذَرُونِي مَا تَرَكْتُكُمْ، فَإِنَّمَا هَلَكَ مَنْ كَانَ قَبْلَكُمْ بِكَثْرَةِ سُؤَالِهِمْ وَاخْتِلَافِهِمْ عَلَى أَنْبِيَائِهِمْ فَإِذَا أَمَرْتُكُمْ بِشَيْءٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ، وَإِذَا نَهَيْتُكُمْ عَنْ شَيْءٍ فَدَعُوهُ» قَالَ عَلِيٌّ: فَجَمَعَ هَذَا الْحَدِيثُ جَمِيعَ أَحْكَامِ الدِّينِ، أَوَّلِهَا عَنْ آخِرِهَا، فَفِيهِ أَنَّ مَا سَكَتَ عَنْهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمْ يَأْمُرْ بِهِ وَلَا نَهَى عَنْهُ فَهُوَ مُبَاحٌ وَلَيْسَ حَرَامًا وَلَا فَرْضًا، وَأَنَّ مَا أَمَرَ بِهِ فَهُوَ فَرْضٌ، وَمَا نَهَى عَنْهُ فَهُوَ حَرَامٌ، وَأَنَّ مَا أَمَرَنَا بِهِ فَإِنَّمَا يَلْزَمُنَا مِنْهُ مَا نَسْتَطِيعُ فَقَطْ، وَأَنْ نَفْعَلَ مَرَّةً وَاحِدَةً تُؤَدِّي مَا أَلْزَمَنَا، وَلَا يَلْزَمُنَا تَكْرَارُهُ، فَأَيُّ حَاجَةٍ بِأَحَدٍ إِلَى قِيَاسٍ أَوْ رَأْيٍ مَعَ هَذَا الْبَيَانِ الْوَاضِحِ، وَنَحْمَدُ اللَّهَ عَلَى عِظَمِ نِعَمِهِ.

L2563–2565 If someone were to say: It is not permissible to invalidate legal opinions through analogy unless you present us with an explicit textual prohibition of its use in the Quran. We reply to them: We have indeed furnished you with conclusive proof through textual evidence of this, and that disputes must only be referred to the Quran and Sunnah. Allah the Exalted said: *"Follow what has been revealed to you from your Lord, and do not follow allies besides Him"* (7:3), and He said: *"Do not invent similitudes for Allah. Indeed, Allah knows while you know not"* (16:74). Analogy involves proposing similitudes in religious matters pertaining to Allah the Exalted. Then it is said to them: If, The Rafidah (Rejecters) countered you with a similar argument, stating: "It is not permissible to assert the invalidation of divine inspiration or the invalidation of emulating the Imam unless you produce for us an

فَإِنْ قَالَ قَائِلٌ: لَا يَجُوزُ إِبْطَالُ الْقَوْلِ بِالْقِيَاسِ إِلَّا حَتَّى تُوجِدُونَا تَحْرِيمَ الْقَوْلِ بِهِ نَصًّا فِي الْقُرْآنِ. قُلْنَا لَهُمْ: قَدْ أَوْجَدْنَا لَكُمْ الْبُرْهَانَ نَصًّا بِذَلِكَ وَبِأَنْ لَا يَرِدَ التَّنَازُعُ إِلَّا إِلَى الْقُرْآنِ وَالسُّنَّةِ فَقَطْ، وَقَالَ تَعَالَى: {اتَّبِعُوا مَا أُنْزِلَ إِلَيْكُمْ مِنْ رَبِّكُمْ وَلا تَتَّبِعُوا مِنْ دُونِهِ أَوْلِيَاءَ} [الأعراف: ٣] وَقَالَ تَعَالَى: {فَلا تَضْرِبُوا لِلَّهِ الأَمْثَالَ إِنَّ اللَّهَ يَعْلَمُ وَأَنْتُمْ لا تَعْلَمُونَ} [النحل: ٧٤] وَالْقِيَاسُ ضَرْبُ أَمْثَالٍ فِي الدِّينِ لِلَّهِ تَعَالَى. ثُمَّ يُقَالُ لَهُمْ: إِنْ عَارَضَكُمْ الرَّوَافِضُ بِمِثْلِ هَذَا فَقَالُوا لَكُمْ: لَا يَجُوزُ الْقَوْلُ بِإِبْطَالِ الْإِلْهَامِ وَلَا بِإِبْطَالِ اتِّبَاعِ الْإِمَامِ إِلَّا حَتَّى تُوجِدُوا لَنَا تَحْرِيمَ ذَلِكَ نَصًّا، أَوْ قَالَ لَكُمْ ذَلِكَ أَهْلُ كُلِّ مَقَالَةٍ

[16] **Hadith references (L2562):** Riyad as-Salihin 1272.

explicit text prohibiting this," or as the adherents of every sect have said to you regarding emulating any specifically named individual: "By what means do you justify your distinction?" Rather, the truth is that it is impermissible to attribute to Allah, the Exalted, that He has prohibited, permitted, or obligated anything except through explicit text alone. And Allah alone grants success.[17]

An issue: The Prophet's actions are not obligatory except those that were a clarification of a command.

101. Issue: The actions of the Prophet—may Allah bless him and grant him peace—are not obligatory except those that serve as clarification of a command, in which case they constitute a command. However, emulating him—peace be upon him—in such actions is commendable. The proof of this is the report we previously mentioned: that nothing is binding upon us except what he commanded us to do or prohibited us from, and whatever he remained silent about is pardoned [by Allah] and not incumbent upon us. Allah the Almighty and Glorified said: "There has certainly been for you in the Messenger of Allah an excellent example" [Al-Aḥzāb: 21].[18]

A juristic point: It is impermissible for us to follow the revealed Law of a prophet preceding our Prophet.

102. Issue: It is not permissible for us to follow the legislation of a prophet before our Prophet—peace and blessings of Allah be upon him. Allah, the Exalted, said: *"For each [community] among you, We have appointed a divine law and a distinct way"* [5:48]. It has been narrated to us by Aḥmad ibn Muḥammad ibn al-Jasūr, from Wahb ibn Masarrat, from Muḥammad ibn Waḍḍāḥ, from Abū Bakr ibn Abī Shaybah, from Hushaym, from Sayyār, from Yazīd al-Faqīr, from Jābir ibn ʿAbdullāh that the Prophet—peace and blessings of Allah be upon him—said: *"I have been granted five things not granted to anyone before me: I am aided by [instilling] terror [in enemies] up to a month's journey; the earth has been made a place of prostration and purification for me, so wherever a man of my Ummah is overtaken by prayer

[17] **Qur'an references (L2563):** Qur'an 7:3 (Al-A'raf); Qur'an 16:74 (An-Nahl).
[18] **Qur'an references (L2567):** Qur'an 33:21 (Al-Ahzab).

فِي تَقْلِيدِ كُلِّ إِنْسَانٍ بِعَيْنِهِ. بِمَاذَا تَنْفَصِلُونَ؟ بَلْ الْحَقُّ أَنَّهُ لَا يَحِلُّ أَنْ يُقَالَ عَلَى اللَّهِ تَعَالَى أَنَّهُ حَرَّمَ أَوْ حَلَّلَ أَوْ أَوْجَبَ إلَّا بِنَصٍّ فَقَطْ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ أَفْعَالُ النَّبِيِّ لَيْسَتْ فَرْضًا إلَّا مَا كَانَ مِنْهَا بَيَانًا لِأَمْرٍ]

١٠١ - مَسْأَلَةٌ: وَأَفْعَالُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَيْسَتْ فَرْضًا إلَّا مَا كَانَ مِنْهَا بَيَانًا لِأَمْرٍ فَهُوَ حِينَئِذٍ أَمْرٌ، لَكِنَّ الِائْتِسَاءَ بِهِ - عَلَيْهِ السَّلَامُ - فِيهَا حَسَنٌ. وَبُرْهَانُ ذَلِكَ هَذَا الْخَبَرُ الَّذِي ذَكَرْنَا آنِفًا مِنْ أَنَّهُ لَا يَلْزَمُنَا شَيْءٌ إلَّا مَا أَمَرَنَا بِهِ أَوْ نَهَانَا عَنْهُ، وَأَنَّ مَا سَكَتَ عَنْهُ فَعَفْوٌ سَاقِطٌ عَنَّا، وَقَالَ عَزَّ وَجَلَّ: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] .

[مَسْأَلَةٌ لَا يَحِلُّ لَنَا اتِّبَاعُ شَرِيعَةِ نَبِيٍّ قَبْلَ نَبِيِّنَا]

١٠٢ - مَسْأَلَةٌ: وَلَا يَحِلُّ لَنَا اتِّبَاعُ شَرِيعَةِ نَبِيٍّ قَبْلَ نَبِيِّنَا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ عَزَّ وَجَلَّ: {لِكُلٍّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا} [المائدة: ٤٨] حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ حَدَّثَنَا وَهْبُ بْنُ مَسَرَّةَ حَدَّثَنَا مُحَمَّدُ بْنُ وَضَّاحٍ حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ حَدَّثَنَا هُشَيْمٌ أَخْبَرَنَا سَيَّارٌ عَنْ يَزِيدَ الْفَقِيرِ أَخْبَرَنَا جَابِرُ بْنُ عَبْدِ اللَّهِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «أُعْطِيتُ خَمْسًا لَمْ يُعْطَهُنَّ أَحَدٌ قَبْلِي: نُصِرْتُ بِالرُّعْبِ مَسِيرَةَ شَهْرٍ، وَجُعِلَتْ لِي الْأَرْضُ مَسْجِدًا وَطَهُورًا، فَأَيُّمَا رَجُلٍ مِنْ أُمَّتِي أَدْرَكَتْهُ الصَّلَاةُ فَلْيُصَلِّ، وَأُحِلَّتْ لِي الْغَنَائِمُ وَلَمْ تَحِلَّ لِأَحَدٍ قَبْلِي، وَأُعْطِيتُ الشَّفَاعَةَ، وَكَانَ النَّبِيُّ يُبْعَثُ إِلَى

time, let him pray; spoils of war have been made lawful for me, though they were not lawful for anyone before me; I have been granted intercession; and every prophet was sent exclusively to his own people, whereas I have been sent to all mankind."* If it is established that the prophets—peace be upon them—were sent only to their respective people, then it follows that their legislations were binding solely upon those to whom they were sent. Since they were not sent to us, they never addressed us with any command, prohibition, or directive. Had they done so, our Prophet—peace and blessings of Allah be upon him—would possess no distinction over them in this regard. Whoever claims otherwise has rejected this hadith and nullified the unique merit Allah, the Exalted, bestowed upon him. Therefore, since it is conclusively established that they—peace be upon them—never addressed us, their legislations hold no obligation over us whatsoever. Success is from Allah, the Exalted.[19]

L2570–2571 **A juristic issue: It is impermissible for anyone to blindly imitate another person, whether they are living or deceased.**

L2572 Issue: It is not permissible for anyone to imitate another—whether living or deceased. Every individual must exercise independent juristic reasoning according to their capacity. When one inquires about their religion, they seek to know what Allah, the Mighty and Majestic, has made obligatory upon them in this religion. If they are the most ignorant of creation, they are obligated to ask the most knowledgeable person in their locality concerning the religion brought by the Messenger of Allah, peace and blessings be upon him. Once directed to such a person, they must question him. If he issues a ruling, the questioner must ask: "Is this what Allah, the Mighty and Majestic, and His Messenger said?" If he affirms it, the questioner must accept it and act upon it perpetually. But if he responds, "This is my opinion," "This is *qiyas*," "This is the view of so-and-so"—mentioning a Companion, a Follower, an early or later jurist—or if he remains silent, reprimands him, or says, "I do not know," it becomes impermissible for the questioner to accept his ruling.

[19] **Qur'an references (L2569):** Qur'an 5:48 (Al-Ma'idah).

قَوْمِهِ خَاصَّةً وَبُعِثْتُ إِلَى النَّاسِ عَامَّةً» فَإِذَا صَحَّ أَنَّ الْأَنْبِيَاءَ - عَلَيْهِمْ السَّلَامُ - لَمْ يُبْعَثْ أَحَدٌ مِنْهُمْ إلَّا إلَى قَوْمِهِ خَاصَّةً، فَقَدْ صَحَّ أَنَّ شَرَائِعَهُمْ لَمْ تَلْزَمْ إلَّا مَنْ بُعِثُوا إلَيْهِ فَقَطْ، وَإِذَا لَمْ يُبْعَثُوا إلَيْنَا فَلَمْ يُخَاطِبُونَا قَطُّ بِشَيْءٍ وَلَا أَمَرُونَا وَلَا نَهَوْنَا وَلَوْ أَمَرُونَا وَنَهَوْنَا وَخَاطَبُونَا لَمَا كَانَ لِنَبِيِّنَا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَضِيلَةٌ عَلَيْهِمْ فِي هَذَا الْبَابِ. وَمَنْ قَالَ بِهَذَا فَقَدْ كَذَّبَ هَذَا الْحَدِيثَ وَأَبْطَلَ هَذِهِ الْفَضِيلَةَ الَّتِي خَصَّهُ اللَّهُ تَعَالَى بِهَا، فَإِذَا قَدْ صَحَّ أَنَّهُمْ - عَلَيْهِمْ السَّلَامُ - لَمْ يُخَاطِبُونَا بِشَيْءٍ، فَقَدْ صَحَّ يَقِينًا أَنَّ شَرَائِعَهُمْ لَا تَلْزَمُنَا أَصْلًا، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يُقَلِّدَ أَحَدًا لَا حَيًّا وَلَا مَيِّتًا]

مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يُقَلِّدَ أَحَدًا، لَا حَيًّا وَلَا مَيِّتًا، وَعَلَى كُلِّ أَحَدٍ مِنْ الِاجْتِهَادِ حَسَبَ طَاقَتِهِ، فَمَنْ سَأَلَ عَنْ دِينِهِ فَإِنَّمَا يُرِيدُ مَعْرِفَةَ مَا أَلْزَمَهُ اللَّهُ عَزَّ وَجَلَّ فِي هَذَا الدِّينِ، فَفُرِضَ عَلَيْهِ إنْ كَانَ أَجْهَلَ الْبَرِيَّةِ أَنْ يَسْأَلَ عَنْ أَعْلَمِ أَهْلِ مَوْضِعِهِ بِالدِّينِ الَّذِي جَاءَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، فَإِذَا دُلَّ عَلَيْهِ سَأَلَهُ، فَإِذَا أَفْتَاهُ قَالَ لَهُ هَكَذَا قَالَ اللَّهُ عَزَّ وَجَلَّ وَرَسُولُهُ؟ فَإِنْ قَالَ لَهُ نَعَمْ أَخَذَ بِذَلِكَ وَعَمِلَ بِهِ أَبَدًا، وَإِنْ قَالَ لَهُ هَذَا رَأْيِي، أَوْ هَذَا قِيَاسٌ، أَوْ هَذَا قَوْلُ فُلَانٍ، وَذَكَرَ لَهُ صَاحِبًا أَوْ تَابِعًا أَوْ فَقِيهًا قَدِيمًا أَوْ حَدِيثًا، أَوْ سَكَتَ أَوْ انْتَهَرَهُ أَوْ قَالَ لَهُ لَا أَدْرِي، فَلَا يَحِلُّ لَهُ أَنْ يَأْخُذَ بِقَوْلِهِ، وَلَكِنَّهُ يَسْأَلُ غَيْرَهُ. بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ} [النساء: ٥٩] فَلَمْ يَأْمُرْنَا عَزَّ وَجَلَّ قَطُّ بِطَاعَةِ بَعْضِ أُولِي الْأَمْرِ، فَمَنْ قَلَّدَ

Instead, he must consult another. The proof for this is Allah's statement: "Obey Allah, obey the Messenger, and those entrusted with authority among you" (4:59). The Mighty and Majestic never commanded us to obey some of those in authority. Thus, whoever imitates a scholar or a group of scholars has not obeyed Allah, the Exalted, His Messenger, peace and blessings be upon him, or those entrusted with authority. Failing to refer back to those we have mentioned constitutes a violation of Allah's command, for He never ordered obedience to some of those in authority.[20]

عَالِمًا أَوْ جَمَاعَةَ عُلَمَاءَ فَلَمْ يُطِعْ اللَّهَ تَعَالَى وَلَا رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا أُولِي الْأَمْرِ، وَإِذَا لَمْ يَرُدَّ إلَى مَنْ ذَكَرْنَا فَقَدْ خَالَفَ أَمْرَ اللَّهِ عَزَّ وَجَلَّ وَلَمْ يَأْمُرْ اللَّهُ عَزَّ وَجَلَّ قَطُّ بِطَاعَةِ بَعْضِ أُولِي الْأَمْرِ دُونَ بَعْضٍ.

L2573–2575 If it is said: Indeed, Allah the Almighty has said: {So ask the people of the Remembrance if you do not know} [16:43], and He the Exalted said: {To deeply study the religion and to warn their people} [9:122], we respond: Yes, but Allah the Almighty did not command that the opinion of those who set out to acquire jurisprudential knowledge be accepted, nor to obey the people of the Remembrance in their opinions or in religious laws they institute without Allah's permission. Rather, He the Exalted commanded asking the people of the Remembrance only about what they know from the Remembrance revealed by Allah, not about what is said by those who are neither to be heeded nor obeyed. Allah the Exalted only commanded accepting the warning of those who set out to study the religion regarding what they have understood of Allah's religion brought by His Messenger—peace and blessings be upon him—not regarding religious laws Allah has not legislated. Whoever claims that it is obligatory for a layperson to blindly follow a mufti (a jurist qualified to issue religious rulings) has asserted falsehood and adopted a position unsupported by any Quranic text, Sunnah, consensus, or analogy. Such a claim is invalid, being baseless, while evidence refutes it. Allah the Exalted condemned those who said: {We obeyed our chiefs and elders, and they led us astray} [33:67]. As for ijtihad, its meaning is exerting utmost effort in seeking the religion of Allah the Almighty. That which He has made obligatory upon His servants. By necessity, every possessor of sound mind knows that a Muslim cannot be Muslim unless he testifies that Allah the Exalted is his deity—there is no deity but Him—and that Muhammad is the Messenger of Allah (peace and blessings be upon him) with this religion to him and to

فَإِنْ قِيلَ: فَإِنَّ اللَّهَ عَزَّ وَجَلَّ قَالَ: {فَاسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لا تَعْلَمُونَ} [النحل: ٤٣] وَقَالَ تَعَالَى: {لِيَتَفَقَّهُوا فِي الدِّينِ وَلِيُنْذِرُوا قَوْمَهُمْ} [التوبة: ١٢٢] قُلْنَا: نَعَمْ، وَلَمْ يَأْمُرْ اللَّهُ عَزَّ وَجَلَّ أَنْ يُقْبَلَ مِنْ النَّافِرِ لِلتَّفَقُّهِ فِي الدِّينِ رَأْيُهُ، وَلَا أَنْ يُطَاعَ أَهْلُ الذِّكْرِ فِي رَأْيِهِمْ وَلَا فِي دِينٍ يَشْرَعُونَهُ لَمْ يَأْذَنْ بِهِ اللَّهُ عَزَّ وَجَلَّ، وَإِنَّمَا أَمَرَ تَعَالَى بِأَنْ يَسْأَلَ أَهْلَ الذِّكْرِ عَمَّا يَعْلَمُونَهُ فِي الذِّكْرِ الْوَارِدِ مِنْ عِنْدِ اللَّهِ تَعَالَى فَقَطْ، لَا عَمَّنْ قَالَهُ مَنْ لَا سَمْعَ لَهُ وَلَا طَاعَةَ، وَإِنَّمَا أَمَرَ اللَّهُ تَعَالَى بِقَبُولِ نِذَارَةِ النَّافِرِ لِلتَّفَقُّهِ فِي الدِّينِ فِيمَا تَفَقَّهَ فِيهِ مِنْ دِينِ اللَّهِ تَعَالَى الَّذِي أَتَى بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا فِي دِينٍ لَمْ يَشْرَعْهُ اللَّهُ عَزَّ وَجَلَّ. وَمَنْ ادَّعَى وُجُوبَ تَقْلِيدِ الْعَامِّيِّ لِلْمُفْتِي فَقَدْ ادَّعَى الْبَاطِلَ وَقَالَ قَوْلًا لَمْ يَأْتِ بِهِ قَطُّ نَصُّ قُرْآنٍ وَلَا سُنَّةٍ وَلَا إجْمَاعٌ وَلَا قِيَاسٌ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ لِأَنَّهُ قَوْلٌ بِلَا دَلِيلٍ، بَلْ الْبُرْهَانُ قَدْ جَاءَ بِإِبْطَالِهِ، قَالَ تَعَالَى ذَامًّا لِقَوْمٍ قَالُوا: {إِنَّا أَطَعْنَا سَادَتَنَا وَكُبَرَاءَنَا فَأَضَلُّونَا السَّبِيلا} [الأحزاب: ٦٧] وَالِاجْتِهَادُ إنَّمَا مَعْنَاهُ بُلُوغُ الْجَهْدِ فِي طَلَبِ دِينِ اللَّهِ عَزَّ وَجَلَّ الَّذِي أَوْجَبَهُ عَلَى عِبَادِهِ، وَبِالضَّرُورَةِ يَدْرِي كُلُّ ذِي حِسٍّ سَلِيمٍ أَنَّ الْمُسْلِمَ لَا يَكُونُ مُسْلِمًا إلَّا حَتَّى يُقِرَّ بِأَنَّ اللَّهَ تَعَالَى إلَهُهُ لَا إلَهَ غَيْرُهُ، وَأَنَّ مُحَمَّدًا هُوَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهَذَا الدِّينِ إلَيْهِ وَإِلَى غَيْرِهِ، فَإِذْ

[20] **Qur'an references (L2572):** Qur'an 4:59 (An-Nisa).

others. Since there is no doubt in this, every questioner on earth regarding a novel circumstance in his religion is merely inquiring about what Allah the Exalted has decreed concerning it. Hence, this being certain, it is therefore obligatory upon him to ask when hearing a fatwa: "Is this the ruling of Allah and His Messenger (peace and blessings be upon him)?" This is not beyond the capability of anyone who understands Islam, even one like those brought from the Caucasus. And with Allah lies all success.[21]

L2576 **Question: He asked about the most knowledgeable person in his town regarding the Religion.**

L2577–2579 104. Issue: If one inquires about the most knowledgeable person regarding religion among the people of his city and is told: "This is a narrator of hadith from the Prophet (peace be upon him), and this is a proponent of opinion and analogy," he must ask the narrator of hadith. It is fundamentally impermissible for one to ask the proponent of opinion. The proof for this is Allah's statement – Mighty and Majestic: *This day I have perfected for you your religion* (5:3), and His statement – Exalted is He: *To make clear to people what was sent down to them* (16:44). This constitutes the religion; there is no religion besides it. Opinion and analogy are conjecture, and conjecture is falsehood.

Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Aḥmad ibn Saʿīd narrated to us: Ibn Waḍḍāḥ narrated to us: Yaḥyā ibn Yaḥyā narrated to us: Mālik narrated from Abū al-Zinād from al-Aʿraj from Abū Hurayrah that the Messenger of Allah (peace be upon him) said: *Avoid conjecture, for conjecture is the most deceitful speech.*

Yūnus ibn ʿAbd Allāh narrated to us: Yaḥyā ibn Mālik ibn ʿĀʾidh informed us: Abū ʿAbd Allāh ibn Abī Ḥanīfah informed us: Abū Jaʿfar Aḥmad ibn Muḥammad ibn Salāmah al-Ṭaḥāwī narrated to us: Yūsuf ibn Yazīd al-Qarāṭīsī informed us: Saʿīd ibn Manṣūr informed us: Jarīr ibn ʿAbd al-Majīd narrated from al-Mughīrah ibn Miqsam from al-Shaʿbī, who said: *The Sunnah was not based upon analogies.*

[21] **Qur'an references (L2573):** Qur'an 16:43 (An-Nahl); Qur'an 21:7 (Al-Anbya); Qur'an 9:122 (At-Tawbah); Qur'an 33:67 (Al-Ahzab).

لَا شَكَّ فِي هَذَا فَكُلُّ سَائِلٍ فِي الْأَرْضِ عَنْ نَازِلَةٍ فِي دِينِهِ، فَإِنَّمَا يَسْأَلُ عَمَّا حَكَمَ اللَّهُ تَعَالَى بِهِ فِي هَذِهِ النَّازِلَةِ، فَإِذًا لَا شَكَّ فِي هَذَا فَفُرِضَ عَلَيْهِ أَنْ يَسْأَلَ إِذَا سَمِعَ فُتْيَا: أَهَذَا حُكْمُ اللَّهِ وَحُكْمُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ وَهَذَا لَا يَعْجِزُ عَنْهُ مَنْ يَدْرِي مَا الْإِسْلَامُ، وَلَوْ أَنَّهُ كَمَا جُلِبَ مِنْ قوقوا وَبِاَللَّهِ التَّوْفِيقُ. .

[مَسْأَلَةٌ سَأَلَ عَنْ أَعْلَمِ أَهْلِ بَلَدِهِ بِالدِّينِ]

١٠٤ - مَسْأَلَةٌ: وَإِذَا قِيلَ لَهُ - إِذَا سَأَلَ عَنْ أَعْلَمِ أَهْلِ بَلَدِهِ بِالدِّينِ: هَذَا صَاحِبُ حَدِيثٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: وَهَذَا صَاحِبُ رَأْيٍ وَقِيَاسٍ: فَلْيَسْأَلْ صَاحِبَ الْحَدِيثِ، وَلَا يَحِلُّ لَهُ أَنْ يَسْأَلَ صَاحِبَ الرَّأْيِ أَصْلًا. بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] وقَوْله تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] فَهَذَا هُوَ الدِّينُ، لَا دِينَ سِوَى ذَلِكَ، وَالرَّأْيُ وَالْقِيَاسُ ظَنٌّ وَالظَّنُّ بَاطِلٌ. حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ حَدَّثَنَا أَحْمَدُ بْنُ سَعِيدٍ حَدَّثَنَا ابْنُ وَضَّاحٍ حَدَّثَنَا يَحْيَى بْنُ يَحْيَى حَدَّثَنَا مَالِكٌ عَنْ أَبِي الزِّنَادِ عَنِ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ حَدَّثَنَا يَحْيَى بْنُ مَالِكِ بْنِ عَائِذٍ أَخْبَرَنَا أَبُو عَبْدِ اللَّهِ بْنُ أَبِي حَنِيفَةَ أَخْبَرَنَا أَبُو جَعْفَرٍ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ سَلَامَةَ الطَّحَاوِيُّ حَدَّثَنَا يُوسُفُ بْنُ يَزِيدَ الْقَرَاطِيسِيُّ أَخْبَرَنَا سَعِيدُ بْنُ مَنْصُورٍ أَخْبَرَنَا جَرِيرُ بْنُ عَبْدِ الْمَجِيدِ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنِ الشَّعْبِيِّ قَالَ: السُّنَّةُ لَمْ تُوضَعْ بِالْمَقَايِيسِ. حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَخْبَرَنَا إِسْمَاعِيلُ بْنُ إِسْحَاقَ الْبَصْرِيُّ أَخْبَرَنَا أَحْمَدُ بْنُ سَعِيدِ بْنِ حَزْمٍ أَخْبَرَنَا مُحَمَّدُ بْنُ إِبْرَاهِيمَ بْنِ حَيْوَنٍ الْحِجَازِيُّ أَخْبَرَنَا

Muḥammad ibn Saʿīd ibn Nabāt informed us: Ismāʿīl ibn Isḥāq al-Baṣrī reported to us: Aḥmad ibn Saʿīd ibn Ḥazm reported to us: Muḥammad ibn Ibrāhīm ibn Ḥaywān al-Ḥijāzī reported to us: ʿAbdullāh ibn Aḥmad ibn Ḥanbal said: I heard my father state: "A weak Ḥadīth is preferable to us than juristic opinion." Ḥammām ibn Aḥmad reported to us: ʿAbbās ibn Aṣbagh reported to us: Muḥammad ibn ʿAbd al-Malik ibn Ayman reported to us: ʿAbdullāh ibn Aḥmad ibn Ḥanbal said: I asked my father about a man residing in a land where he finds only a Ḥadīth transmitter who cannot distinguish between its authentic and defective narrations, and proponents of juristic opinion. If he encounters a legal dilemma, whom should he consult? My father responded: "He should consult the Ḥadīth transmitter and not the proponent of juristic opinion, for a weak Ḥadīth carries more weight than the juristic opinion of Abū Ḥanīfah."[22]

L2580 **An issue: There is no sin or legal accountability for acts committed in error or forgetfulness.**

L2581 Issue 105: There is no legal accountability for mistake nor forgetfulness except where the Quran or the Sunnah provides a ruling for them. Allah, the Exalted, said: "There is no blame upon you for what you err in, but only for what your hearts intend" (Al-Aḥzāb 33:5). And Allah, the Almighty and Majestic, said: "Our Lord, do not hold us accountable if we forget or err" (Al-Baqarah 2:286).[23]

L2582 **Issue: Every obligation that Allah, the Exalted, has imposed upon human beings.**

L2583 Issue 106: Every obligation that Allah, the Exalted, has imposed on a person, if he is able to perform it, it becomes binding upon him. If he is incapable of all of it, it is waived. If he is able to perform some of it and incapable of some, what he cannot perform is waived while what he can perform remains obligatory, whether lesser or greater. The proof for this is the statement of Allah, the Mighty and Majestic: "Allah does not burden a soul beyond its

[22]**Qur'an references (L2577):** Qur'an 5:3 (Al-Ma'idah); Qur'an 16:44 (An-Nahl).

[23]**Qur'an references (L2581):** Qur'an 33:5 (Al-Ahzab); Qur'an 2:286 (Al-Baqarah).

عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ قَالَ: سَمِعْتُ أَبِي يَقُولُ: الْحَدِيثُ الضَّعِيفُ أَحَبُّ إِلَيْنَا مِنْ الرَّأْيِ. حَدَّثَنَا حَمَّامُ بْنُ أَحْمَدَ أَخْبَرَنَا عَبَّاسُ بْنُ أَصْبَغَ حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ قَالَ: سَأَلْتُ أَبِي عَنْ الرَّجُلِ يَكُونُ بِبَلَدٍ لَا يَجِدُ فِيهِ إِلَّا صَاحِبَ حَدِيثٍ لَا يَعْرِفُ صَحِيحَهُ مِنْ سَقِيمِهِ وَأَصْحَابَ رَأْيٍ، فَتَنْزِلُ بِهِ النَّازِلَةُ مَنْ يَسْأَلُ؟ فَقَالَ أَبِي: يَسْأَلُ صَاحِبَ الْحَدِيثِ وَلَا يَسْأَلُ صَاحِبَ الرَّأْيِ، ضَعِيفُ الْحَدِيثِ أَقْوَى مِنْ رَأْيِ أَبِي حَنِيفَةَ. .

[مَسْأَلَةٌ لَا حُكْمَ لِلْخَطَإِ وَلَا النِّسْيَانِ]

١٠٥ - مَسْأَلَةٌ: وَلَا حُكْمَ لِلْخَطَإِ وَلَا النِّسْيَانِ إِلَّا حَيْثُ جَاءَ فِي الْقُرْآنِ أَوْ السُّنَّةِ لَهُمَا حُكْمٌ قَالَ اللَّهُ تَعَالَى {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] وَقَالَ عَزَّ وَجَلَّ: {رَبَّنَا لا تُؤَاخِذْنَا إِنْ نَسِينَا أَوْ أَخْطَأْنَا} [البقرة: ٢٨٦] .

[مَسْأَلَةٌ كُلُّ فَرْضٍ كَلَّفَهُ اللَّهُ تَعَالَى الْإِنْسَانَ]

١٠٦ - مَسْأَلَةٌ: وَكُلُّ فَرْضٍ كَلَّفَهُ اللَّهُ تَعَالَى الْإِنْسَانَ، فَإِنْ قَدَرَ عَلَيْهِ لَزِمَهُ، وَإِنْ عَجَزَ عَنْ جَمِيعِهِ سَقَطَ عَنْهُ، وَإِنْ قَوِيَ عَلَى بَعْضِهِ وَعَجَزَ عَنْ بَعْضِهِ سَقَطَ عَنْهُ مَا عَجَزَ عَنْهُ وَلَزِمَهُ مَا قَدَرَ عَلَيْهِ مِنْهُ، سَوَاءٌ أَقَلَّهُ أَوْ أَكْثَرَهُ. بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ عَزَّ وَجَلَّ {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» وَقَدْ ذَكَرْنَاهُ قَبْلُ بِإِسْنَادِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

capacity" [Al-Baqarah: 286], and the statement of Allah's Messenger, peace and blessings be upon him: "When I command you to do something, do as much of it as you are able." We have previously mentioned this with its chain of transmission, and with Allah, the Exalted, is the success.[24]

L2584 **A legal ruling: It is impermissible for anyone to perform any religious act prescribed for a specific time before its designated period.**

L2585–2587 107. Issue: It is not permissible for anyone to perform any act of worship at a time preceding its designated period. Even if the first part falls within its prescribed time and the last part falls within its prescribed time, it remains impermissible to perform it before its time or after its time. This is based on Allah's statement: "Whoever transgresses the boundaries set by Allah has wronged himself" [65:1], and His words: "These are the boundaries set by Allah—do not transgress them" [2:229]. The prescribed times are boundaries; thus, whoever performs an act beyond the timeframe Allah has ordained for it has transgressed His boundaries.

Abdullāh ibn Yūsuf narrated to us; Aḥmad ibn Fatḥ narrated to us; ʿAbd al-Wahhāb ibn ʿĪsā narrated to us; Aḥmad ibn Muḥammad narrated to us; Aḥmad ibn ʿAlī informed us; Muslim ibn al-Ḥajjāj informed us; Isḥāq ibn Ibrāhīm—that is, Ibn Rāhwayh—narrated from Abū ʿĀmir al-ʿAqadī: ʿAbdullāh ibn Jaʿfar al-Zuhrī narrated to us from Saʿd ibn Ibrāhīm ibn ʿAbd al-Raḥmān, who said: "I asked al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq..." He said: "'Ā'ishah informed me that the Messenger of Allah—peace and blessings of Allah be upon him—said: 'Whoever performs an act not in accordance with our command, it is rejected.'" ʿAlī said: "Whoever is commanded by Allah the Most High to perform an act at a time He specified for it, then performs it outside that time—whether before it or after it—has indeed performed an act not in accordance with the command of Allah the Most High nor the command of His Messenger—peace and blessings of Allah be upon him. Thus, it is rejected, invalid, and unacceptable, and it is not the act he was commanded to perform. If there exists an explicit textual

[مَسْأَلَةٌ لَا يَجُوزُ أَنْ يَعْمَلَ أَحَدٌ شَيْئًا مِنَ الدِّينِ مُؤَقَّتًا بِوَقْتٍ قَبْلَ وَقْتِهِ]

١٠٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يَعْمَلَ أَحَدٌ شَيْئًا مِنَ الدِّينِ مُؤَقَّتًا بِوَقْتٍ قَبْلَ وَقْتِهِ فَإِنْ كَانَ الْأَوَّلُ مِنْ وَقْتِهِ وَالْآخَرُ مِنْ وَقْتِهِ لَمْ يَجُزْ أَنْ يَعْمَلَ قَبْلَ وَقْتِهِ وَلَا بَعْدَ وَقْتِهِ. لِقَوْلِ اللَّهِ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] وَقَالَ تَعَالَى: {تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا} [البقرة: ٢٢٩] وَالْأَوْقَاتُ حُدُودٌ، فَمَنْ تَعَدَّى بِالْعَمَلِ وَقْتَهُ الَّذِي حَدَّهُ اللَّهُ تَعَالَى لَهُ، فَقَدْ تَعَدَّى حُدُودَ اللَّهِ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ حَدَّثَنَا أَحْمَدُ بْنُ فَتْحٍ حَدَّثَنَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ أَخْبَرَنَا أَحْمَدُ بْنُ عَلِيٍّ أَخْبَرَنَا مُسْلِمُ بْنُ الْحَجَّاجِ أَخْبَرَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - عَنْ أَبِي عَامِرٍ الْعَقَدِيِّ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ جَعْفَرٍ الزُّهْرِيُّ عَنْ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: سَأَلْتُ الْقَاسِمَ بْنَ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ فَقَالَ: أَخْبَرَتْنِي عَائِشَةُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» قَالَ عَلِيٌّ: وَمَنْ أَمَرَهُ اللَّهُ تَعَالَى أَنْ يَعْمَلَ عَمَلًا فِي وَقْتٍ سَمَّاهُ لَهُ فَعَمِلَهُ فِي غَيْرِ ذَلِكَ الْوَقْتِ - إِمَّا قَبْلَ الْوَقْتِ وَإِمَّا بَعْدَ الْوَقْتِ - فَقَدْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُ اللَّهِ تَعَالَى وَلَا أَمْرُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ مَرْدُودٌ بَاطِلٌ غَيْرُ مَقْبُولٍ، وَهُوَ غَيْرُ الْعَمَلِ الَّذِي أُمِرَ بِهِ، فَإِنْ جَاءَ

[24] **Qur'an references (L2583):** Qur'an 2:286 (Al-Baqarah).

ruling stating that it suffices in another time, then that time also becomes its specified time. However, a time not designated for the act is one without a textual ruling. And success is attained through Allah, the Most High."[25][26]

L2588 **Issue: A mujtahid who errs is more virtuous in the sight of Allah, the Exalted, than a muqallid who is correct.**

L2589 108. Issue: The erring mujtahid (scholar exercising independent reasoning) is superior in the sight of Allah the Exalted to the imitator who happens to be correct. This applies specifically to the people of Islam. As for those outside Islam, neither the evidence-reliant mujtahid nor the imitator has any excuse - both are doomed. The proof for this is what we previously mentioned through its isnad from the statement of Allah's Messenger (peace be upon him): "If a judge exerts effort in judgment and errs, he receives one reward." Allah has condemned blind following (taqlīd) in totality, thus the imitator is disobedient while the mujtahid is rewarded. Whoever follows Allah's Messenger (peace be upon him) is not an imitator, for he acts upon what Allah the Exalted has commanded. The imitator is rather one who follows someone inferior to Allah's Messenger (peace be upon him), thereby doing what Allah the Exalted never commanded. As for those outside Islam, Allah the Exalted says: {Whoever seeks a religion other than Islam, it will never be accepted from him, and in the Hereafter he will be among the losers} [Āl ʿImrān: 85].[27]

L2590 **An issue: The correct among the opinions is one of them.**

L2591–2593 Issue 109: The truth among the opinions lies in one of them, while the rest are erroneous. And with Allah alone, the Most High, is the attainment of success. Allah the Most High said: "What is there after the truth except misguidance?" (Yūnus 10:32). He also said: "Had it been from other than Allah, they would have found in it much contradiction" (An-Nisāʾ 4:82).

[25] **Hadith references (L2585):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[26] **Qur'an references (L2585):** Qur'an 65:1 (At-Talaq); Qur'an 2:229 (Al-Baqarah).

[27] **Qur'an references (L2589):** Qur'an 3:85 (Ali 'Imran).

نَصٌّ بِأَنَّهُ يُجْزِئُ فِي وَقْتٍ آخَرَ فَهُوَ وَقْتُهُ أَيْضًا حِينَئِذٍ، وَإِنَّمَا الَّذِي لَا يَكُونُ وَقْتًا لِلْعَمَلِ فَهُوَ مَا لَا نَصَّ فِيهِ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْمُجْتَهِدُ الْمُخْطِئُ أَفْضَلُ عِنْدَ اللَّهِ تَعَالَى مِنْ الْمُقَلِّدِ الْمُصِيبِ]

١٠٨ - مَسْأَلَةٌ: وَالْمُجْتَهِدُ الْمُخْطِئُ أَفْضَلُ عِنْدَ اللَّهِ تَعَالَى مِنْ الْمُقَلِّدِ الْمُصِيبِ. هَذَا فِي أَهْلِ الْإِسْلَامِ خَاصَّةً، وَأَمَّا غَيْرُ أَهْلِ الْإِسْلَامِ فَلَا عُذْرَ لِلْمُجْتَهِدِ الْمُسْتَدِلِّ وَلَا لِلْمُقَلِّدِ، وَكِلَاهُمَا هَالِكٌ. بُرْهَانُ هَذَا مَا ذَكَرْنَاهُ آنِفًا بِإِسْنَادِهِ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا اجْتَهَدَ الْحَاكِمُ فَأَخْطَأَ فَلَهُ أَجْرٌ» وَذَمَّ اللَّهُ التَّقْلِيدَ جُمْلَةً، فَالْمُقَلِّدُ عَاصٍ وَالْمُجْتَهِدُ مَأْجُورٌ، وَلَيْسَ مَنْ اتَّبَعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُقَلِّدًا لِأَنَّهُ فَعَلَ مَا أَمَرَهُ اللَّهُ تَعَالَى بِهِ. وَإِنَّمَا الْمُقَلِّدُ مَنْ اتَّبَعَ مَنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّهُ فَعَلَ مَا لَمْ يَأْمُرْهُ اللَّهُ تَعَالَى بِهِ وَأَمَّا غَيْرُ أَهْلِ الْإِسْلَامِ فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَمَنْ يَبْتَغِ غَيْرَ الإِسْلامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ وَهُوَ فِي الآخِرَةِ مِنَ الْخَاسِرِينَ} [آل عمران: ٨٥] .

[مَسْأَلَةٌ الْحَقُّ مِنْ الْأَقْوَالِ فِي وَاحِدٍ مِنْهَا]

١٠٩ - مَسْأَلَةٌ: وَالْحَقُّ مِنْ الْأَقْوَالِ فِي وَاحِدٍ مِنْهَا وَسَائِرُهَا خَطَأٌ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. قَالَ اللَّهُ تَعَالَى: {فَمَاذَا بَعْدَ الْحَقِّ إِلا الضَّلالُ} [يونس: ٣٢] وَقَالَ تَعَالَى: {وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ اخْتِلافًا كَثِيرًا} [النساء: ٨٢] وَذَمَّ اللَّهُ الِاخْتِلَافَ فَقَالَ {وَلا تَكُونُوا كَالَّذِينَ تَفَرَّقُوا وَاخْتَلَفُوا} [آل عمران: ١٠٥] وَقَالَ: {وَلا تَنَازَعُوا فَتَفْشَلُوا} [الأنفال: ٤٦] وَقَالَ: {تِبْيَانًا لِكُلِّ شَيْءٍ} [النحل: ٨٩] فَصَحَّ أَنَّ الْحَقَّ فِي الْأَقْوَالِ

Allah condemned disagreement, stating: “Do not be like those who split into sects and differed” (Āl ʿImrān 3:105). He said: “Do not dispute, lest you lose courage” (Al-Anfāl 8:46). And He said: “[The Quran is] an explanation of all things” (An-Naḥl 16:89). Thus, it is established that the truth regarding the opinions is what Allah the Most High has ruled concerning it - being one and not differing - and that... Error is what does not originate from Allah, the Mighty and Majestic. Whoever claims that all legal opinions are true and that every jurist is correct has asserted a claim unsupported by the Qur’an, the Sunnah, consensus, or sound reasoning. Such a claim is invalid. This is also invalidated by the statement of Allah’s Messenger—peace and blessings be upon him—who said, “If a judge strives and errs, he receives a reward.” Thus, he—peace and blessings be upon him—explicitly affirmed that a jurist may err. Whoever claims that people are only obligated to their ijtihād (juridical reasoning) has erred. Rather, they are obligated solely to attain the correct ruling that Allah has commanded. Allah, the Mighty and Majestic, says: “Follow what has been revealed to you from your Lord, and do not follow guardians besides Him” (Quran 7:3). He—the Mighty and Majestic—has thus mandated adherence to what has been revealed to us, prohibited following anything else, and forbidden transgressing His boundaries. The erring jurist is granted one reward solely for his intention to seek the truth, and he incurs no sin if he fails to attain correctness. If he does attain the truth, he is granted another reward, as the Prophet—peace and blessings be upon him—said, “If he is correct, he receives a second reward.”[28]

مَا حَكَمَ اللَّهُ تَعَالَى بِهِ فِيهِ، وَهُوَ وَاحِدٌ لَا يَخْتَلِفُ، وَأَنَّ الْخَطَأَ مَا لَمْ يَكُنْ مِنْ عِنْدِ اللَّهِ عَزَّ وَجَلَّ. وَمَنْ ادَّعَى أَنَّ الْأَقْوَالَ كُلَّهَا حَقٌّ وَأَنَّ كُلَّ مُجْتَهِدٍ مُصِيبٌ، فَقَدْ قَالَ قَوْلًا لَمْ يَأْتِ بِهِ قُرْآنٌ وَلَا سُنَّةٌ وَلَا إِجْمَاعٌ وَلَا مَعْقُولٌ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ، وَيُبْطِلُهُ أَيْضًا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا اجْتَهَدَ الْحَاكِمُ فَأَخْطَأَ فَلَهُ أَجْرٌ» فَنَصَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّ الْمُجْتَهِدَ قَدْ يُخْطِئُ. وَمَنْ قَالَ: إِنَّ النَّاسَ لَمْ يُكَلَّفُوا إِلَّا اجْتِهَادَهُمْ فَقَدْ أَخْطَأَ، بَلْ مَا كُلِّفُوا إِلَّا إِصَابَةَ مَا أَمَرَ اللَّهُ بِهِ قَالَ اللَّهُ عَزَّ وَجَلَّ: {اتَّبِعُوا مَا أُنْزِلَ إِلَيْكُمْ مِنْ رَبِّكُمْ وَلا تَتَّبِعُوا مِنْ دُونِهِ أَوْلِيَاءَ} [الأعراف: ٣] فَافْتَرَضَ عَزَّ وَجَلَّ اتِّبَاعَ مَا أُنْزِلَ إِلَيْنَا وَأَنْ لَا نَتَّبِعَ غَيْرَهُ وَأَنْ لَا نَتَعَدَّى حُدُودَهُ، وَإِنَّمَا أُجِرَ الْمُجْتَهِدُ الْمُخْطِئُ أَجْرًا وَاحِدًا عَلَى نِيَّتِهِ فِي طَلَبِ الْحَقِّ فَقَطْ، وَلَمْ يَأْثَمْ إِذَا حُرِمَ الْإِصَابَةَ، فَلَوْ أَصَابَ الْحَقَّ أُجِرَ أَجْرًا آخَرَ كَمَا قَالَ - عَلَيْهِ السَّلَامُ - «أَنَّهُ إِذَا أَصَابَ أُجِرَ أَجْرًا ثَانِيًا» .

L2594 Abd al-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad al-Farabri narrated to us: Al-Bukhari narrated to us: Abdullah ibn Yazid al-Muqri narrated to us: Haywah ibn Shurayh narrated to us: Yazid ibn Abdullah ibn al-Hadi narrated to us: Muhammad ibn Ibrahim ibn al-Harith narrated to us: Busr ibn Sa’id narrated to us: Abu Qays, the freed slave of Amr ibn al-As, narrated to us: Amr ibn al-As heard the Messenger of Allah - peace and blessings of Allah be upon him - say: “When a judge issues a ruling after exerting independent reasoning and is correct, he receives two

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ، أَخْبَرَنَا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْفَرَبْرِيُّ حَدَّثَنَا الْبُخَارِيُّ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يَزِيدَ الْمُقْرِي حَدَّثَنَا حَيْوَةُ بْنُ شُرَيْحٍ حَدَّثَنَا يَزِيدُ بْنُ عَبْدِ اللَّهِ بْنِ الْهَادِ عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ بْنِ الْحَارِثِ عَنْ بُسْرِ بْنِ سَعِيدٍ عَنْ أَبِي قَيْسٍ مَوْلَى عَمْرِو بْنِ الْعَاصِ عَنْ عَمْرِو بْنِ الْعَاصِ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «إِذَا حَكَمَ الْحَاكِمُ فَاجْتَهَدَ ثُمَّ أَصَابَ فَلَهُ أَجْرَانِ، وَإِذَا حَكَمَ فَاجْتَهَدَ ثُمَّ أَخْطَأَ فَلَهُ أَجْرٌ» . وَلَا يَحِلُّ الْحُكْمُ بِالظَّنِّ أَصْلًا لِقَوْلِ اللَّهِ تَعَالَى: {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَإِنَّ

[28] **Qur’an references (L2591):** Qur’an 10:32 (Yunus); Qur’an 4:82 (An-Nisa); Qur’an 3:105 (Ali ’Imran); Qur’an 8:46 (Al-Anfal); Qur’an 16:89 (An-Nahl); Qur’an 7:3 (Al-A’raf).

rewards. When he issues a ruling after exerting independent reasoning and errs, he receives one reward." It is fundamentally impermissible to judge based on conjecture, due to the statement of Allah the Exalted: "They follow nothing but conjecture, and indeed conjecture avails nothing against the truth" [Al-Najm 53:28], and the statement of the Messenger of Allah - peace and blessings of Allah be upon him - "Beware of conjecture, for conjecture is the falsest speech." And with Allah alone is success.[29][30]

الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨] وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[29] **Hadith references (L2594):** Sahih al-Bukhari 7352; Sahih Muslim 1716a; Bulugh al-Maram 1400.

[30] **Qur'an references (L2594):** Qur'an 53:28 (An-Najm).



AL-MUHALLA

كِتَابُ الطَّهَارَةِ

The Book of Purification

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[Book of Purification] [Chapter: Wuḍūʾ for the Prayer]

In the name of Allah, the Most Gracious, the Most Merciful, and may Allah send blessings upon our Master Muhammad and his family and grant them peace. The Book of Purification 110 - Issue: Wudu for prayer is obligatory, and the prayer is not valid except with it for whoever has access to water. This is a consensus with no disagreement from anyone, and its basis is the statement of Allah, the Exalted: "O you who believe, when you rise to prayer, wash your faces and your arms up to the elbows, and wipe over your heads and your feet to the ankles." [al-Māʾidah 5:6].[1]

A legal issue: Ablution is not valid except with the intention of purification for prayer.

111 - Issue: Wuḍūʾ is only valid with the intention of purification for prayer – whether obligatory or supererogatory – as neither prayer type suffices without the other, nor can one prayer substitute for another. The proof for this is the aforementioned verse, for Allah the Exalted only commanded wuḍūʾ therein for prayer in its general sense without specifying any particular prayer. Thus, it is impermissible to restrict it, and it is not valid for anything beyond what Allah the Exalted ordained. Abū Ḥanīfa said: Wuḍūʾ and ghusl are valid without intention, even with the intention of cooling oneself or cleanliness. Their argument was that they said: He was only commanded to wash his body or these limbs, and he has fulfilled what he was commanded. They analogized this to removing impurities, which is valid without intention. Among their statements is that tayammum is only valid with intention. Al-Ḥasan ibn Ḥayy said: Wuḍūʾ, ghusl, and tayammum are all valid without intention. Abū Yūsuf said: If a person in major impurity immerses himself in a well to draw a bucket from it, this does not count toward his ghusl for major impurity. Muḥammad ibn al-Ḥasan said: It counts toward his ghusl for major impurity. ʿAlī said: As for their argument that he was only commanded to wash his body or these limbs and has thereby fulfilled the command – this is false; rather, he was only commanded to wash

[1] **Qur'an references (L2597):** Qur'an 5:6 (Al-Ma'idah).

[كِتَابُ الطَّهَارَةِ] [مَسْأَلَةٌ الْوُضُوءُ لِلصَّلَاةِ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى سَيِّدِنَا مُحَمَّدٍ وَعَلَى آلِهِ وَسَلَّمَ كِتَابُ الطَّهَارَةِ ١١٠ - مَسْأَلَةٌ: الْوُضُوءُ لِلصَّلَاةِ فَرْضٌ لَا تُجْزِئُ الصَّلَاةُ إِلَّا بِهِ لِمَنْ وَجَدَ الْمَاءَ. هَذَا إِجْمَاعٌ لَا خِلَافَ فِيهِ مِنْ أَحَدٍ، وَأَصْلُهُ قَوْلُ اللَّهِ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قُمْتُمْ إِلَى الصَّلَاةِ فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ وَامْسَحُوا بِرُءُوسِكُمْ وَأَرْجُلَكُمْ إِلَى الْكَعْبَيْنِ} [المائدة: ٦] .

[مَسْأَلَةٌ لَا يُجْزِئُ الْوُضُوءُ إِلَّا بِنِيَّةِ الطَّهَارَةِ لِلصَّلَاةِ]

١١١ - مَسْأَلَةٌ: وَلَا يُجْزِئُ الْوُضُوءُ إِلَّا بِنِيَّةِ الطَّهَارَةِ لِلصَّلَاةِ فَرْضًا وَتَطَوُّعًا لَا يُجْزِئُ أَحَدُهُمَا دُونَ الْآخَرِ وَلَا صَلَاةٌ دُونَ صَلَاةٍ. بُرْهَانُ ذَلِكَ الْآيَةُ الْمَذْكُورَةُ. لِأَنَّ اللَّهَ تَعَالَى لَمْ يَأْمُرْ فِيهَا بِالْوُضُوءِ إِلَّا لِلصَّلَاةِ عَلَى عُمُومِهَا، لَمْ يَخُصَّ تَعَالَى صَلَاةً مِنْ صَلَاةٍ فَلَا يَجُوزُ تَخْصِيصُهَا، وَلَا يُجْزِئُ لِغَيْرِ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ. وَقَالَ أَبُو حَنِيفَةَ: يُجْزِئُ الْوُضُوءُ وَالْغُسْلُ بِلَا نِيَّةٍ وَبِنِيَّةِ التَّبَرُّدِ وَالتَّنَظُّفِ. كَانَ حُجَّتُهُمْ أَنْ قَالُوا: إِنَّمَا أُمِرَ بِغَسْلِ جِسْمِهِ أَوْ هَذِهِ الْأَعْضَاءِ فَقَدْ فَعَلَ مَا أُمِرَ بِهِ، وَقَالُوا: قِسْنَا ذَلِكَ عَلَى إِزَالَةِ النَّجَاسَةِ فَإِنَّهَا تُجْزِئُ بِلَا نِيَّةٍ، وَمِنْ قَوْلِهِمْ: إِنَّ التَّيَمُّمَ لَا يُجْزِئُ إِلَّا بِنِيَّةٍ. وَقَالَ الْحَسَنُ بْنُ حَيٍّ: الْوُضُوءُ وَالْغُسْلُ وَالتَّيَمُّمُ يُجْزِئُ كُلُّ ذَلِكَ بِلَا نِيَّةٍ، وَقَالَ أَبُو يُوسُفَ: إِنْ انْغَمَسَ جُنُبٌ فِي بِئْرٍ لِيُخْرِجَ دَلْوًا مِنْهَا لَمْ يَجْزِهِ ذَلِكَ مِنْ غُسْلِ الْجَنَابَةِ، وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: يَجْزِيهِ مِنْ غُسْلِ الْجَنَابَةِ. قَالَ عَلِيٌّ: أَمَّا احْتِجَاجُهُمْ بِأَنَّهُ إِنَّمَا أُمِرَ بِغَسْلِ جِسْمِهِ أَوْ هَذِهِ الْأَعْضَاءِ وَقَدْ فَعَلَ مَا أُمِرَ بِهِ، فَكَذَّبَ بَلْ مَا أُمِرَ إِلَّا بِغَسْلِهَا بِنِيَّةِ الْقَصْدِ إِلَى الْعَمَلِ الَّذِي أَمَرَهُ اللَّهُ

them with the intention of directing himself toward the act Allah the Exalted ordained him to perform in that context. Allah the Exalted said: "They were commanded only to worship Allah, devoting religion sincerely to Him" (Surah al-Bayyinah 5:5). He, the Almighty, negated that He commanded us with anything except to worship Him alone, devoting our intentions solely to Him in His religion which He has enjoined upon us. This encompasses all acts of the Sharia in their entirety. Hammam ibn Ahmad narrated to us: Abdullah ibn Ibrahim narrated to us: Abu Zayd al-Marwazi narrated to us: al-Farbari narrated to us: al-Bukhari narrated to us: al-Humaydi narrated to us: Sufyan ibn Uyaynah narrated to us: Yahya ibn Sa'id al-Ansari informed me: Muhammad ibn Ibrahim al-Taymi reported to me that he heard Alqamah ibn Waqqas al-Laythi say: I heard Umar ibn al-Khattab declare upon the pulpit: I heard Allah's Messenger - peace and blessings be upon him - say: "Deeds are but by intentions, and every person shall have only what they intended." This constitutes a general principle applying to every action, and it is impermissible to restrict it to certain deeds while excluding others through unsubstantiated claim. As for their qiyas equating this with the removal of impurity, it is invalid because qiyas is entirely invalid. Even if qiyas were valid, this particular instance would remain fundamentally flawed for several reasons: Among these is that one may argue against them - your qiyas equating ablution and ritual bath to impurity removal holds no greater validity than equating it to tayammum, which constitutes ablution under specific circumstances. Just as you applied qiyas to tayammum and ablution regarding certain rulings - such as extending the wiping to the elbows - why did you not apply qiyas to ablution and tayammum concerning the necessity of intention for validity, given that both constitute purification for prayer? Should they respond: "Allah the Exalted stated {So seek clean earth} [4:43] without specifying this for ablution," we reply: Indeed - what does that demonstrate? Similarly, Allah the Exalted declared {When you rise

تَعَالَى بِهِ فِي ذَلِكَ الْوَجْهِ، قَالَ اللَّهُ تَعَالَى: {وَمَا أُمِرُوا إِلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ} [البينة: ٥] فَنَفَى عَزَّ وَجَلَّ أَنْ يَكُونَ أَمَرَنَا بِشَيْءٍ إِلَّا بِعِبَادَتِهِ مُفْرِدِينَ لَهُ نِيَّاتِنَا بِدِينِهِ الَّذِي أَمَرَنَا بِهِ فَعَمَّ بِهَذَا جَمِيعَ أَعْمَالِ الشَّرِيعَةِ كُلِّهَا. حَدَّثَنَا حَمَامُ بْنُ أَحْمَدَ ثنا عَبْدُ اللَّهِ بْنُ إِبْرَاهِيمَ ثنا أَبُو زَيْدٍ الْمَرْوِيُّ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا الْحُمَيْدِيُّ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ ثنا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ أَخْبَرَنِي مُحَمَّدُ بْنُ إِبْرَاهِيمَ التَّيْمِيُّ أَنَّهُ سَمِعَ عَلْقَمَةَ بْنَ وَقَّاصٍ اللَّيْثِيَّ يَقُولُ، سَمِعْت عُمَرَ بْنَ الْخَطَّابِ يَقُولُ عَلَى الْمِنْبَرِ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى» فَهَذَا أَيْضًا عُمُومٌ لِكُلِّ عَمَلٍ، وَلَا يَجُوزُ أَنْ يُخَصَّ بِهِ بَعْضُ الْأَعْمَالِ دُونَ بَعْضٍ بِالدَّعْوَى. وَأَمَّا قِيَاسُهُمْ ذَلِكَ عَلَى إزَالَةِ النَّجَاسَةِ فَبَاطِلٌ لِأَنَّهُ قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِوُجُوهٍ: مِنْهَا أَنْ يُقَالَ لَهُمْ: لَيْسَ قِيَاسُكُمْ الْوُضُوءَ وَالْغُسْلَ عَلَى إزَالَةِ النَّجَاسَةِ بِأَوْلَى مِنْ قِيَاسِكُمْ ذَلِكَ عَلَى التَّيَمُّمِ الَّذِي هُوَ وُضُوءٌ فِي بَعْضِ الْأَحْوَالِ أَيْضًا، وَكَمَا قِسْتُمْ التَّيَمُّمَ عَلَى الْوُضُوءِ فِي بَعْضِ الْأَحْوَالِ وَهُوَ بُلُوغُ الْمَسْحِ إلَى الْمِرْفَقَيْنِ، فَهَلَّا قِسْتُمْ الْوُضُوءَ عَلَى التَّيَمُّمِ فِي أَنَّهُ لَا يُجْزِئُ كُلَّ وَاحِدٍ مِنْهُمَا إلَّا بِنِيَّةٍ، لِأَنَّ كِلَيْهِمَا طُهْرٌ لِلصَّلَاةِ. فَإِنْ قَالُوا: إنَّ اللَّهَ تَعَالَى قَالَ: {فَتَيَمَّمُوا صَعِيدًا طَيِّبًا} [النساء: ٤٣] وَلَمْ يَقُلْ ذَلِكَ فِي الْوُضُوءِ قُلْنَا نَعَمْ فَكَانَ مَاذَا؟ وَكَذَلِكَ قَالَ اللَّهُ تَعَالَى: {إِذَا قُمْتُمْ إِلَى الصَّلاةِ فَاغْسِلُوا} [المائدة: ٦] فَصَحَّ أَنَّهُ لَا يُجْزِئُ ذَلِكَ الْغُسْلُ إلَّا لِلصَّلَاةِ بِنَصِّ الْآيَةِ.

to pray, wash} [5:6], thereby establishing through the verse's explicit text that such washing only suffices for prayer.[2][3]

L2602–2604 The second point is that their claim—that washing impurities suffices without intention—is invalid and not as they claimed. Rather, every purification from impurities that Allah the Exalted has commanded in a specific manner is only valid with intention and performed in that manner, based on the statement of the Messenger of Allah (peace be upon him): "Whoever does a deed not in accordance with our way, it is rejected." We have previously mentioned this with its chain of transmission. As for every impurity for which there is no command stipulating a specific manner, people are required to pray without impurities on their bodies, clothes, or in their place of prayer. If they pray in such a state, They have done what they were commanded, thus making apparent the invalidity of their argument and the enormity of their contradiction in distinguishing between ablution and ritual bath, and between tayammum and prayer along with other acts without proof, as well as their disagreement concerning a person in major impurity submerging in the well - as we mentioned - without evidence. Some of them said: "If ablution required intention, then intention would require another intention ad infinitum." We replied to them: "This reasoning necessarily applies to your position regarding the obligation of intention for tayammum and prayer, which is impossible, for the commanded intention is required for itself, being the resolve to comply solely with what is ordained." As for Al-Hasan ibn Ḥayy, his claim is refuted by the verse and hadith we cited. Our position in this matter aligns with Mālik, Al-Shāfiʿī, Aḥmad ibn Ḥanbal, Isḥāq, Dāwūd, and others. And with Allah, the Exalted, is success.[4]

L2605 **An Issue Regarding Ablution Before and After Its Pre-**

وَالْوَجْهُ الثَّانِي أَنَّ دَعْوَاهُمْ أَنَّ غَسْلَ النَّجَاسَةِ يُجْزِئُ بِلَا نِيَّةٍ بَاطِلٌ لَيْسَ كَمَا قَالُوا، بَلْ كُلُّ تَطْهِيرٍ لِنَجَاسَةٍ أَمَرَ اللَّهُ تَعَالَى بِهِ عَلَى صِفَةٍ مَا فَإِنَّهُ لَا يُجْزِئُ إلَّا بِنِيَّةٍ وَعَلَى تِلْكَ الصِّفَةِ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ قَبْلُ، وَكُلُّ نَجَاسَةٍ لَيْسَ فِيهَا أَمْرٌ بِصِفَةٍ مَا فَإِنَّمَا عَلَى النَّاسِ أَنْ يُصَلُّوا بِغَيْرِ نَجَاسَةٍ فِي أَجْسَامِهِمْ وَلَا فِي ثِيَابِهِمْ وَلَا فِي مَوْضِعِ صَلَاتِهِمْ، فَإِذَا صَلَّوْا كَذَلِكَ فَقَدْ فَعَلُوا مَا أُمِرُوا بِهِ، فَظَهَرَ فَسَادُ احْتِجَاجِهِمْ وَعِظَمُ تَنَاقُضِهِمْ فِي الْفَرْقِ بَيْنَ الْوُضُوءِ وَالْغُسْلِ وَبَيْنَ التَّيَمُّمِ وَالصَّلَاةِ وَغَيْرِ ذَلِكَ مِنْ الْأَعْمَالِ بِلَا بُرْهَانٍ، وَاخْتِلَافُهُمْ فِي الْجُنُبِ يَنْغَمِسُ فِي الْبِئْرِ كَمَا ذَكَرْنَا بِلَا دَلِيلٍ. وَقَالَ بَعْضُهُمْ: لَوْ احْتَاجَ الْوُضُوءُ إلَى نِيَّةٍ لَاحْتَاجَتْ النِّيَّةُ إلَى نِيَّةٍ وَهَكَذَا أَبَدًا، قُلْنَا لَهُمْ: هَذَا لَازِمٌ لَكُمْ فِيمَا أَوْجَبْتُمْ مِنْ النِّيَّةِ لِلتَّيَمُّمِ وَلِلصَّلَاةِ وَهَذَا مُحَالٌ، لِأَنَّ النِّيَّةَ الْمَأْمُورَ بِهَا هِيَ مَأْمُورٌ بِهَا لِنَفْسِهَا، لِأَنَّهَا الْقَصْدُ إلَى مَا أُمِرَ بِهِ فَقَطْ، وَأَمَّا الْحَسَنُ بْنُ حَيٍّ فَإِنَّهُ يَنْقُضُ قَوْلَهُ بِالْآيَةِ الَّتِي ذَكَرْنَا وَالْحَدِيثِ الَّذِي أَوْرَدْنَاهُ، وَقَوْلُنَا فِي هَذَا قَوْلُ مَالِكٍ وَالشَّافِعِيِّ وَأَحْمَدَ بْنِ حَنْبَلٍ وَإِسْحَاقَ وَدَاوُد وَغَيْرِهِمْ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. .

[مَسْأَلَةٌ الْوُضُوءُ قَبْلَ الْوَقْتِ وَبَعْدَهُ]

[2] **Hadith references (L2599):** Sahih al-Bukhari 1; Sunan Abi Dawud 2201; Mishkat al-Masabih 1.

[3] **Qur'an references (L2599):** Qur'an 98:5 (Al-Bayyinah); Qur'an 4:43 (An-Nisa); Qur'an 5:6 (Al-Ma'idah).

[4] **Hadith references (L2602):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

scribed Time

L2606 112 - Issue: Ablution is valid before the time and after it. Some people said: Neither ablution nor tayammum are valid unless after the entry of the time. Others said: Ablution is valid before the time, but tayammum is only valid after the time. Others said: Both ablution and tayammum are valid before the time.

١١٢ - مَسْأَلَةٌ: وَيُجْزِئُ الْوُضُوءُ قَبْلَ الْوَقْتِ وَبَعْدَهُ، وَقَالَ بَعْضُ النَّاسِ، لَا يُجْزِئُ الْوُضُوءُ وَلَا التَّيَمُّمُ إِلَّا بَعْدَ دُخُولِ وَقْتِ الصَّلَاةِ، وَقَالَ آخَرُونَ: يُجْزِئُ الْوُضُوءُ قَبْلَ الْوَقْتِ وَلَا يُجْزِئُ التَّيَمُّمُ إِلَّا بَعْدَ الْوَقْتِ، وَقَالَ آخَرُونَ: الْوُضُوءُ وَالتَّيَمُّمُ يَجْزِيَانِ قَبْلَ الْوَقْتِ.

L2607 Those who held the view that none of that suffices except after the entry of the prayer time argued by citing the statement of Allah, exalted is He: {When you stand up for prayer, wash your faces and your arms up to the elbows, and wipe your heads and your feet up to the ankle bones. If you are in a state of major impurity, perform a full ablution (ghusl). But if you are ill, on a journey, have relieved yourselves, or touched women and find no water, then perform *tayammum* with clean earth, wiping your faces and hands from it.} [Al-Ma'idah: 6][5]

وَاحْتَجَّ مَنْ رَأَى كُلَّ ذَلِكَ لَا يُجْزِئُ إِلَّا بَعْدَ دُخُولِ الْوَقْتِ بِقَوْلِ اللَّهِ تَعَالَى: {إِذَا قُمْتُمْ إِلَى الصَّلَاةِ فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ وَامْسَحُوا بِرُءُوسِكُمْ وَأَرْجُلَكُمْ إِلَى الْكَعْبَيْنِ وَإِنْ كُنْتُمْ جُنُبًا فَاطَّهَّرُوا وَإِنْ كُنْتُمْ مَرْضَى أَوْ عَلَى سَفَرٍ أَوْ جَاءَ أَحَدٌ مِنْكُمْ مِنَ الْغَائِطِ أَوْ لَامَسْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا فَامْسَحُوا بِوُجُوهِكُمْ وَأَيْدِيكُمْ مِنْهُ} [المائدة: ٦]

L2608 Ali said: This is no proof for them; rather, it is a sufficient proof against them. For Allah the Exalted did not say, "When you rise for an obligatory prayer," nor "When the time of an obligatory prayer begins and you rise for it." Rather, He Almighty said, *When you rise for prayer* [5:6], thus making it general without specifying. Prayer can be obligatory or voluntary without dispute. All Muslims throughout the earth have unanimously agreed that voluntary prayer is not valid except with purification through ablution, tayammum, or ghusl necessarily. Therefore, the explicit text of the verse necessitates that when a person intends to perform an obligatory or voluntary prayer and rises for it, they must perform ablution, take a ritual bath if in a state of major impurity, or perform tayammum if they are eligible for it, then pray. This is the unequivocal text of the verse. When a person completes their ghusl, ablution, or tayammum, they are undoubtedly purified. Since their purification is valid, it is permissible for them to allow an interval between

قَالَ عَلِيٌّ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، بَلْ هُوَ حُجَّةٌ عَلَيْهِمْ كَافِيَةٌ؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يَقُلْ: إِذَا قُمْتُمْ إِلَى صَلَاةِ فَرْضٍ، وَلَا إِذَا دَخَلَ وَقْتُ صَلَاةِ فَرْضٍ فَقُمْتُمْ إِلَيْهَا، بَلْ قَالَ عَزَّ وَجَلَّ: {إِذَا قُمْتُمْ إِلَى الصَّلَاةِ} [المائدة: ٦] فَعَمَّ تَعَالَى وَلَمْ يَخُصَّ، وَالصَّلَاةُ تَكُونُ فَرْضًا وَتَكُونُ تَطَوُّعًا بِلَا خِلَافٍ، وَقَدْ أَجْمَعَ أَهْلُ الْأَرْضِ قَاطِبَةً مِنَ الْمُسْلِمِينَ عَلَى أَنَّ صَلَاةَ التَّطَوُّعِ لَا تُجْزِئُ إِلَّا بِطَهَارَةٍ مِنْ وُضُوءٍ أَوْ تَيَمُّمٍ أَوْ غُسْلٍ وَلَا بُدَّ، فَوَجَبَ بِنَصِّ الْآيَةِ ضَرُورَةُ أَنَّ الْمَرْءَ إِذَا أَرَادَ صَلَاةَ فَرْضٍ أَوْ تَطَوُّعٍ وَقَامَ إِلَيْهَا أَنْ يَتَوَضَّأَ أَوْ يَغْتَسِلَ إِنْ كَانَ جُنُبًا أَوْ يَتَيَمَّمَ إِنْ كَانَ مِنْ أَهْلِ التَّيَمُّمِ ثُمَّ لِيُصَلِّ، فَإِنَّ ذَلِكَ نَصُّ الْآيَةِ بِيَقِينٍ فَإِذَا أَتَمَّ الْمَرْءُ غُسْلَهُ أَوْ وُضُوءَهُ أَوْ تَيَمُّمَهُ فَقَدْ طَهُرَ بِلَا شَكٍّ. وَإِذْ قَدْ صَحَّتْ طَهَارَتُهُ فَجَائِزٌ لَهُ أَنْ يَجْعَلَ بَيْنَ طَهَارَتِهِ وَبَيْنَ الصَّلَاةِ الَّتِي قَامَ إِلَيْهَا مُهْلَةً مِنْ مَشْيٍ أَوْ حَدِيثٍ أَوْ عَمَلٍ.

[5] **Qur'an references (L2607):** Qur'an 5:6 (Al-Ma'idah).

their purification and the prayer they rose for, such as walking, conversation, or work.[6]

L2609–2610 Because the verse did not mandate the connection of prayer with purification, neither through its explicit text nor by any indication within it. If it is permissible for an interval to exist between one's purification and prayer, then it is permissible for this interval to extend as long as no Quran or Sunnah prevents its continuation. This extension persists until the end of the obligatory prayers' designated times. As for voluntary prayers, one may act as one wishes. Thus, the permissibility of purifying oneself through ritual bathing, ablution, or dry ablution before the time of the obligatory prayer is established by the verse's explicit text. The verse obligates that none of these acts should be performed except with the sole intention of purification for prayer, and nothing beyond that.

L2611 Another proof is that prayer is undoubtedly permissible at the beginning of its time. If this is so, it cannot be valid at all unless proper purification for it had been attained before that. This necessarily leads to the permissibility of attaining purification through all such means prior to the commencement of the time.

L2612 Another proof is what was narrated to us by Abdullah ibn Rabee'ah, who narrated to us from Muhammad ibn Mu'awiyah, who narrated to us from Ahmad ibn Shu'ayb, who narrated to us from Qutaybah ibn Sa'eed, from Malik, from Sumayy, from Abu Salih, from Abu Hurayrah that the Messenger of Allah—peace and blessings be upon him—said: "Whoever performs the major ablution (ghusl) on Friday like the ablution for sexual impurity and goes to attend [the prayer], it is as if he offered a sacrificial camel. Whoever goes in the second hour, it is as if he offered a cow. Whoever goes in the third hour, it is as if he offered a ram. Whoever goes in the fourth hour, it is as if he offered a chicken. Whoever goes in the fifth hour, it is as if he offered an egg. When the Imam emerges, the angels attend to listen to the sermon." This is an explicit text affirming the permissibility of performing ablution (wudu) for prayer and dry ablution (tayammum) before its prescribed time commences,

[6] **Qur'an references (L2608):** Qur'an 5:6 (Al-Ma'idah).

لِأَنَّ الْآيَةَ لَمْ تُوجِبْ اتِّصَالَ الصَّلَاةِ بِالطَّهَارَةِ لَا بِنَصِّهَا وَلَا بِدَلِيلٍ فِيهَا. وَإِذَا جَازَ أَنْ يَكُونَ بَيْنَ طَهَارَتِهِ وَبَيْنَ صَلَاتِهِ مُهْلَةٌ فَجَائِزٌ أَنْ تَمْتَدَّ الْمُهْلَةُ مَا لَمْ يَمْنَعْ مِنْ تَمَادِيهَا قُرْآنٌ أَوْ سُنَّةٌ. وَذَلِكَ يَمْتَدُّ إِلَى آخِرِ أَوْقَاتِ الْفَرْضِ. وَأَمَّا فِي التَّطَوُّعِ فَمَا شَاءَ. فَصَحَّ بِنَصِّ الْآيَةِ جَوَازُ التَّطَهُّرِ بِالْغُسْلِ وَبِالْوُضُوءِ وَبِالتَّيَمُّمِ قَبْلَ وَقْتِ صَلَاةِ الْفَرْضِ، وَإِنَّمَا وَجَبَ بِنَصِّ الْآيَةِ أَنْ لَا يَكُونَ شَيْءٌ مِنْ ذَلِكَ إِلَّا بِنِيَّةِ التَّطَهُّرِ لِلصَّلَاةِ فَقَطْ وَلَا مَزِيدَ.

وَدَلِيلٌ آخَرُ: وَهُوَ أَنَّ الصَّلَاةَ جَائِزَةٌ بِلَا خِلَافٍ فِي أَوَّلِ وَقْتِهَا، فَإِذَا ذَلِكَ كَذَلِكَ فَلَا يَكُونُ ذَلِكَ أَلْبَتَّةَ إِلَّا وَقَدْ صَحَّتْ الطَّهَارَةُ لَهَا قَبْلَ ذَلِكَ، وَهَذَا يُنْتِجُ وَلَا بُدَّ جَوَازَ التَّطَهُّرِ بِكُلِّ ذَلِكَ قَبْلَ أَوَّلِ الْوَقْتِ.

بُرْهَانٌ آخَرُ، وَهُوَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا قُتَيْبَةُ بْنُ سَعِيدٍ عَنْ مَالِكٍ عَنْ سُمَيٍّ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ اغْتَسَلَ يَوْمَ الْجُمُعَةِ غُسْلَ الْجَنَابَةِ وَرَاحَ فَكَأَنَّمَا قَدَّمَ بَدَنَةً. وَمَنْ رَاحَ فِي السَّاعَةِ الثَّانِيَةِ فَكَأَنَّمَا قَرَّبَ بَقَرَةً، وَمَنْ رَاحَ فِي السَّاعَةِ الثَّالِثَةِ فَكَأَنَّمَا قَرَّبَ كَبْشًا، وَمَنْ رَاحَ فِي السَّاعَةِ الرَّابِعَةِ فَكَأَنَّمَا قَرَّبَ دَجَاجَةً وَمَنْ رَاحَ فِي السَّاعَةِ الْخَامِسَةِ فَكَأَنَّمَا قَرَّبَ بَيْضَةً، فَإِذَا خَرَجَ الْإِمَامُ حَضَرَتْ الْمَلَائِكَةُ يَسْتَمِعُونَ الذِّكْرَ» . فَهَذَا نَصٌّ جَلِيٌّ عَلَى جَوَازِ الْوُضُوءِ لِلصَّلَاةِ وَالتَّيَمُّمِ لَهَا قَبْلَ دُخُولِ وَقْتِهَا، لِأَنَّ الْإِمَامَ يَوْمَ الْجُمُعَةِ لَا بُدَّ ضَرُورَةً مِنْ أَنْ يَخْرُجَ قَبْلَ الْوَقْتِ أَوْ بَعْدَ دُخُولِ الْوَقْتِ، وَأَيُّ الْأَمْرَيْنِ كَانَ فَتَطَهُّرُ

because the Friday Imam inevitably must emerge either before the prayer time begins or after it has begun. In either case, the purification performed by this attendee from the beginning of the day undoubtedly occurred before the time of Friday prayer. The Messenger of Allah—peace and blessings be upon him—knew that among those going to attend Friday prayer were travelers performing dry ablution and others performing ablution. As for those who differentiate between permitting ablution before the time and prohibiting dry ablution before the time, they claim the verse's ruling necessitates all such acts to occur after the time. They further allege that ablution is exempted due to the Prophet's—peace and blessings be upon him—prayer on the Day of the Conquest of Mecca, performing all prayers with a single ablution. This holds no proof, for the narration does not state that the Messenger of Allah—peace and blessings be upon him—performed ablution before the prayer time began. It is plausible he performed ablution after the time had begun and continued praying while his purification remained intact. Since this is possible, this narration contains no evidence for permitting ablution before the time begins. And success is from Allah, the Most High.

L2613–2614 **The ruling on mixing the intention for ritual purification with the intention of cooling.**

L2615 Issue: If one mixes the intention of purification for prayer with an intention for cooling down or any other purpose, the prayer is not rendered valid through that ablution. The proof for this is Allah's statement: {They were not commanded except to worship Allah, sincere to Him in religion as devoutly monotheistic} [Al-Bayyinah: 5]. Whoever mixes, with the intention they were commanded, an intention they were not commanded has not sincerely devoted that act of worship to Allah in that devotion. If they are not sincere, they have not performed the ablution Allah commanded them to perform. If one intends, while performing ablution for prayer, to teach ablution to those present, the prayer is rendered valid through it, because teaching people the religion is commanded. And success is from Allah, the Exalted.[7]

L2616 **The intention is not valid unless formed before beginning**

[7] **Qur'an references (L2615):** Qur'an 98:5 (Al-Bayyinah).

هَذَا الرَّائِحِ مِنْ أَوَّلِ النَّهَارِ كَانَ قَبْلَ وَقْتِ الْجُمُعَةِ بِلَا شَكٍّ، وَقَدْ عَلِمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ فِي الرَّائِحِينَ إِلَى الْجُمُعَةِ الْمُتَيَمِّمَ فِي السَّفَرِ وَالْمُتَوَضِّئَ. وَأَمَّا مَنْ فَرَّقَ بَيْنَ جَوَازِ الْوُضُوءِ قَبْلَ الْوَقْتِ وَجَوَازِ التَّيَمُّمِ قَبْلَ الْوَقْتِ فَمَنَعَ مِنْهُ، فَإِنَّهُمْ ادَّعَوْا أَنَّ حُكْمَ الْآيَةِ يُوجِبُ أَنْ يَكُونَ كُلُّ ذَلِكَ بَعْدَ الْوَقْتِ، وَادَّعَوْا أَنَّ الْوُضُوءَ خَرَجَ بِصَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ الْفَتْحِ الصَّلَوَاتِ كُلَّهَا بِوُضُوءٍ وَاحِدٍ، وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَوَضَّأَ قَبْلَ دُخُولِ وَقْتِ الصَّلَاةِ، وَلَعَلَّهُ تَوَضَّأَ بَعْدَ دُخُولِ الْوَقْتِ ثُمَّ بَقِيَ يُصَلِّي بِطَهَارَتِهِ مَا لَمْ تُنْتَقَضْ، فَإِذَا هَذَا مُمْكِنٌ فَلَا دَلِيلَ فِي هَذَا الْخَبَرِ عَلَى جَوَازِ الْوُضُوءِ قَبْلَ دُخُولِ الْوَقْتِ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[حُكْم خلط نِيَّة الطَّهَارَة بِنْيَة التبرد]

مَسْأَلَةٌ: فَإِنْ خَلَطَ بِنِيَّةِ الطَّهَارَةِ لِلصَّلَاةِ نِيَّةً لِتَبَرُّدٍ أَوْ لِغَيْرِ ذَلِكَ لَمْ تُجْزِهِ الصَّلَاةُ بِذَلِكَ الْوُضُوءِ. بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {وَمَا أُمِرُوا إِلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ حُنَفَاءَ} [البينة: ٥] فَمَنْ مَزَجَ بِالنِّيَّةِ الَّتِي أُمِرَ بِهَا نِيَّةً لَمْ يُؤْمَرْ بِهَا، فَلَمْ يُخْلِصْ لِلَّهِ تَعَالَى الْعِبَادَةَ بِدِينِهِ ذَلِكَ، وَإِذَا لَمْ يُخْلِصْ فَلَمْ يَأْتِ بِالْوُضُوءِ الَّذِي أَمَرَهُ اللَّهُ تَعَالَى بِهِ، فَلَوْ نَوَى مَعَ وُضُوئِهِ لِلصَّلَاةِ أَنْ يُعَلِّمَ الْوُضُوءَ مَنْ بِحَضْرَتِهِ أَجْزَأَتْهُ الصَّلَاةُ بِهِ، لِأَنَّ تَعْلِيمَ النَّاسِ الدِّينَ مَأْمُورٌ بِهِ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[لَا تُجْزِئُ النِّيَّة إِلَّا قَبْل الابتداء بالوضوء أَوْ غَيْره]

wudu or other acts.

L2617 Issue 114: The intention for wudu or any other act of worship is not valid unless formed before commencing the act, connected to its initiation without any interval (however brief or prolonged). The proof lies in the established obligation of intention for acts of worship, requiring that no part of the act lacks it. If the intention fails this condition, it must entail one of two scenarios: either an interval separates it from the act - rendering the entire act devoid of intention - or the intention coincides with the act, leaving its initial portion devoid of the intention that should initiate it. This is because intention constitutes the deliberate intent and volition to perform the act in fulfillment of what Allah has ordained for it. Such intention must be firmly established before commencing the act and maintained throughout it, as we have explained. Moreover, if permitting a minute's interval between intention and act were valid, this would logically extend to two minutes, three, four, and incrementally to tens of years. Success comes solely from Allah, the Exalted.

L2618 **A legal issue regarding one who immersed the limbs of ablution in water and intended.**

L2619 Issue 115: If someone immerses the limbs of ablution in water while intending ablution (wudu) for prayer, or stands under a water spout until the water covers them completely while intending ablution for prayer, or pours water over the limbs of ablution for prayer, or has another person pour water over them while he himself intends ablution for prayer, this suffices him. The proof lies in the fact that the term "washing (ghusl)" in the language of the Quran's revelation encompasses all these acts. Whoever claims this term applies exclusively to scrubbing with the hands asserts without evidence. This opinion of ours aligns with the positions of Abu Hanifah, Al-Shafi'i, and Dawud. And success is from Allah, the Exalted.

L2620 **Issue: Recitation of the Quran, Prostration in Recitation, and Touching the Mus'haf**

١١٤ - مَسْأَلَةٌ: وَلَا تُجْزِئُ النِّيَّةُ فِي ذَلِكَ وَلَا فِي غَيْرِهِ مِنْ الْأَعْمَالِ إلَّا قَبْلَ الِابْتِدَاءِ بِالْوُضُوءِ أَوْ بِأَيِّ عَمَلٍ كَانَ مُتَّصِلَةً بِالِابْتِدَاءِ بِهِ لَا يَحُولُ بَيْنَهُمَا وَقْتٌ قَلَّ أَمْ كَثُرَ. بُرْهَانُ ذَلِكَ أَنَّ النِّيَّةَ لَمَّا صَحَّ أَنَّهَا فَرْضٌ فِي الْعَمَلِ وَجَبَ أَنْ تَكُونَ لَا يَخْلُو مِنْهَا شَيْءٌ مِنْ الْعَمَلِ، وَإِذَا لَمْ تَكُنْ كَمَا ذَكَرْنَا فَهِيَ إمَّا أَنْ يَحُولَ بَيْنَهَا وَبَيْنَ الْعَمَلِ زَمَانٌ فَيَصِيرُ الْعَمَلُ بِلَا نِيَّةٍ، وَأَيْضًا فَإِنَّهُ لَوْ جَازَ أَنْ يَحُولَ بَيْنَ النِّيَّةِ وَبَيْنَ الْعَمَلِ دَقِيقَةٌ لَجَازَ أَنْ يَحُولَ بَيْنَهُمَا دَقِيقَتَانِ وَثَلَاثٌ وَأَرْبَعٌ، وَمَا زَادَ إلَى أَنْ يَبْلُغَ الْأَمْرُ إلَى عَشَرَاتِ أَعْوَامٍ، وَإِمَّا أَنْ يَكُونَ مُقَارِنًا لِلنِّيَّةِ فَيَكُونُ أَوَّلُ الْعَمَلِ خَالِيًا مِنْ نِيَّةٍ دَخَلَ فِيهِ بِهَا، لِأَنَّ النِّيَّةَ هِيَ الْقَصْدُ بِالْعَمَلِ وَالْإِرَادَةُ بِهِ مَا افْتَرَضَ اللَّهُ تَعَالَى فِي ذَلِكَ الْعَمَلِ، وَهَذَا لَا يَكُونُ إلَّا مُعْتَقَدًا قَبْلَ الْعَمَلِ وَمَعَهُ كَمَا ذَكَرْنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مِنْ غَمَسَ أَعْضَاءَ الْوُضُوءِ فِي الْمَاءِ وَنَوَى]

١١٥ - مَسْأَلَةٌ: وَمَنْ غَمَسَ أَعْضَاءَ الْوُضُوءِ فِي الْمَاءِ وَنَوَى بِهِ الْوُضُوءَ لِلصَّلَاةِ، أَوْ وَقَفَ تَحْتَ مِيزَابٍ حَتَّى عَمَّهَا الْمَاءُ وَنَوَى بِذَلِكَ الْوُضُوءَ لِلصَّلَاةِ، أَوْ صَبَّ الْمَاءَ عَلَى أَعْضَاءِ الْوُضُوءِ لِلصَّلَاةِ، أَوْ صَبَّ الْمَاءَ عَلَى أَعْضَاءِ الْوُضُوءِ لِلصَّلَاةِ، أَوْ صَبَّ الْمَاءَ عَلَى أَعْضَاءِ الْوُضُوءِ غَيْرُهُ وَنَوَى هُوَ بِذَلِكَ الْوُضُوءَ لِلصَّلَاةِ أَجْزَأَهُ. بُرْهَانُ ذَلِكَ أَنَّ اسْمَ " غُسْلٌ " يَقَعُ عَلَى ذَلِكَ كُلِّهِ فِي اللُّغَةِ الَّتِي بِهَا نَزَلَ الْقُرْآنُ، وَمَنْ ادَّعَى أَنَّ اسْمَ الْغُسْلِ لَا يَقَعُ إلَّا عَلَى التَّدَلُّكِ بِالْيَدِ فَقَدْ ادَّعَى مَا لَا بُرْهَانَ لَهُ بِهِ وَقَوْلُنَا هَذَا قَوْلُ أَبِي حَنِيفَةَ وَالشَّافِعِيِّ وَدَاوُد. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. .

[مَسْأَلَةٌ قِرَاءَةُ الْقُرْآنِ وَالسُّجُودُ فِيهِ وَمَسُّ الْمُصْحَفِ]

L2621–2623 Issue 116: Reciting the Quran, performing prostration in it, touching the Quranic codex, and remembering Allah the Exalted are permissible—all of these acts are allowed both with ablution and without ablution, and for the one in major impurity and the menstruating woman. The evidence for this is that reciting the Quran, performing prostration in it, touching the Quranic codex, and remembering Allah the Exalted... Acts of goodness are exhorted to perform them, and their doer is rewarded. Whoever claims their prohibition in certain circumstances must furnish proof. As for reciting the Qur'an, contemporary opposing scholars concur with us regarding one not in a state of ablution, but they differ concerning the one in a state of major impurity (junub) and the menstruating woman. One group asserts that neither the menstruating woman nor the junub may recite any part of the Qur'an—a view transmitted from ʻUmar ibn al-Khaṭṭāb and ʻAlī ibn Abī Ṭālib (may Allah be pleased with both of them), as well as others such as al-Ḥasan al-Baṣrī, Qatādah, al-Nakhaʿī, and more. Another group maintains that the menstruating woman may recite whatever she wishes of the Qur'an, while the junub may recite two verses or the like: this is the opinion of Mālik. Some held that the junub should not recite a full verse, which is the view of Abū Ḥanīfah. Those who prohibit the junub from reciting any Qur'an cite the narration from ʻAbdullāh ibn Salamah, from ʻAlī ibn Abī Ṭālib (may Allah be pleased with him): "Nothing prevented the Messenger of Allah (peace be upon him) from reciting the Qur'an except major impurity." This offers no valid proof, for it contains no explicit prohibition against the junub reciting the Qur'an. It merely denotes an action of the Prophet (peace be upon him), which is not binding, nor did he clarify that his abstention was specifically due to major impurity.

L2624 It is acknowledged for him—peace be upon him—that his abstention from recitation in that state was not due to major impurity. He—peace be upon him—never fasted an entire month apart from Ramadan, never exceeded thirteen units in his nightly prayers, never ate upon a dining spread, and never ate while reclining. Would it then be prohibited to fast an entire month outside Ramadan, to perform voluntary night prayers exceeding thirteen units, to eat upon a dining spread, or to eat while reclining? This is something

١١٦ - مَسْأَلَةٌ: وَقِرَاءَةُ الْقُرْآنِ وَالسُّجُودُ فِيهِ وَمَسُّ الْمُصْحَفِ وَذِكْرُ اللَّهِ تَعَالَى جَائِزٌ، كُلُّ ذَلِكَ بِوُضُوءٍ وَبِغَيْرِ وُضُوءٍ وَلِلْجُنُبِ وَالْحَائِضِ. بُرْهَانُ ذَلِكَ أَنَّ قِرَاءَةَ الْقُرْآنِ وَالسُّجُودَ فِيهِ وَمَسَّ الْمُصْحَفِ وَذِكْرَ اللَّهِ تَعَالَى أَفْعَالُ خَيْرٍ مَنْدُوبٌ إلَيْهَا مَأْجُورٌ فَاعِلُهَا، فَمَنْ ادَّعَى الْمَنْعَ فِيهَا فِي بَعْضِ الْأَحْوَالِ كُلِّفَ أَنْ يَأْتِيَ بِالْبُرْهَانِ. فَأَمَّا قِرَاءَةُ الْقُرْآنِ فَإِنَّ الْحَاضِرِينَ مِنْ الْمُخَالِفِينَ مُوَافِقُونَ لَنَا فِي هَذَا لِمَنْ كَانَ عَلَى غَيْرِ وُضُوءٍ، وَاخْتَلَفُوا فِي الْجُنُبِ وَالْحَائِضِ. فَقَالَتْ طَائِفَةٌ: لَا تَقْرَأُ الْحَائِضُ وَلَا الْجُنُبُ شَيْئًا مِنْ الْقُرْآنِ، وَهُوَ قَوْلٌ رُوِيَ عَنْ عُمَرَ بْنِ الْخَطَّابِ وَعَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُمَا - وَعَنْ غَيْرِهِمَا رُوِيَ أَيْضًا كَالْحَسَنِ الْبَصْرِيِّ وَقَتَادَةَ وَالنَّخَعِيِّ وَغَيْرِهِمْ وَقَالَتْ طَائِفَةٌ: أَمَّا الْحَائِضُ فَتَقْرَأُ مَا شَاءَتْ مِنْ الْقُرْآنِ. وَأَمَّا الْجُنُبُ فَيَقْرَأُ الْآيَتَيْنِ وَنَحْوَهُمَا، وَهُوَ قَوْلُ مَالِكٍ، وَقَالَ بَعْضُهُمْ: لَا يُتِمُّ الْآيَةَ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ. فَأَمَّا مَنْ مَنَعَ الْجُنُبَ مِنْ قِرَاءَةِ شَيْءٍ مِنْ الْقُرْآنِ، فَاحْتَجُّوا بِمَا رَوَاهُ عَبْدُ اللَّهِ بْنُ سَلَمَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَكُنْ يَحْجُزُهُ عَنْ الْقُرْآنِ شَيْءٌ لَيْسَ الْجَنَابَةُ» وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّهُ لَيْسَ فِيهِ نَهْيٌ عَنْ أَنْ يَقْرَأَ الْجُنُبُ الْقُرْآنَ، وَإِنَّمَا هُوَ فِعْلٌ مِنْهُ - عَلَيْهِ السَّلَامُ - لَا يُلْزِمُ، وَلَا بَيَّنَ - عَلَيْهِ السَّلَامُ - أَنَّهُ إنَّمَا يَمْتَنِعُ مِنْ قِرَاءَةِ الْقُرْآنِ مِنْ أَجْلِ الْجَنَابَةِ.

وَقَدْ يُتَّفَقُ لَهُ - عَلَيْهِ السَّلَامُ - تَرْكُ الْقِرَاءَةِ فِي تِلْكَ الْحَالِ لَيْسَ مِنْ أَجْلِ الْجَنَابَةِ، وَهُوَ - عَلَيْهِ السَّلَامُ - لَمْ يَصُمْ قَطُّ شَهْرًا كَامِلًا غَيْرَ رَمَضَانَ، وَلَمْ يَزِدْ قَطُّ فِي قِيَامِهِ عَلَى ثَلَاثَ عَشْرَةَ رَكْعَةً، وَلَا أَكَلَ قَطُّ عَلَى خِوَانٍ، وَلَا أَكَلَ مُتَّكِئًا. أَفَيَحْرُمُ أَنْ يُصَامَ شَهْرٌ كَامِلٌ غَيْرُ رَمَضَانَ أَوْ أَنْ يَتَهَجَّدَ الْمَرْءُ بِأَكْثَرَ مِنْ ثَلَاثَ عَشْرَةَ رَكْعَةً، أَوْ أَنْ يَأْكُلَ

they would never assert, and such examples are exceedingly numerous. Narrations have been transmitted prohibiting those in a state of major impurity and those not ritually pure from reciting any portion of the Quran, yet none of them are authentic. We have demonstrated the weakness of their chains of transmission in other works. Even if they were authentic, they would serve as evidence against those who permit the recitation of a complete verse or part of a verse by one in major impurity, for all these narrations categorically forbid such individuals from reciting the Quran in any form. As for those who claim that one in major impurity may recite a verse or similar, or prohibit completing a verse, or permit menstruating women while forbidding those in major impurity—these are corrupt opinions, being mere assertions unsupported by evidence from the Quran, authentic Sunnah, or even weak traditions.

عَلَى خِوَانٍ، أَوْ أَنْ يَأْكُلَ مُتَّكِئًا؟ هَذَا لَا يَقُولُونَهُ، وَمِثْلُ هَذَا كَثِيرٌ جِدًّا. وَقَدْ جَاءَتْ آثَارٌ فِي نَهْيِ الْجُنُبِ وَمَنْ لَيْسَ عَلَى طُهْرٍ عَنْ أَنْ يَقْرَأَ شَيْئًا مِنَ الْقُرْآنِ، وَلَا يَصِحُّ مِنْهَا شَيْءٌ، وَقَدْ بَيَّنَّا ضَعْفَ أَسَانِيدِهَا فِي غَيْرِ مَوْضِعٍ، وَلَوْ صَحَّتْ لَكَانَتْ حُجَّةً عَلَى مَنْ يُبِيحُ لَهُ قِرَاءَةَ الْآيَةِ التَّامَّةِ أَوْ بَعْضِ الْآيَةِ؛ لِأَنَّهَا كُلَّهَا نَهْيٌ عَنْ قِرَاءَةِ الْقُرْآنِ لِلْجُنُبِ جُمْلَةً. وَأَمَّا مَنْ قَالَ يَقْرَأُ الْجُنُبُ الْآيَةَ أَوْ نَحْوَهَا، أَوْ قَالَ لَا يُتِمُّ الْآيَةَ، أَوْ أَبَاحَ لِلْحَائِضِ وَمَنَعَ الْجُنُبَ فَأَقْوَالٌ فَاسِدَةٌ؛ لِأَنَّهَا دَعَاوَى لَا يُعَضِّدُهَا دَلِيلٌ لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ.

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nor from consensus, nor from the statement of a Companion, nor from analogy, nor from sound opinion, because part of the verse and the verse are the Quran, without a doubt, and there is no difference between a verse being permitted to him or another, or between being prohibited from a verse or another. The proponents of these opinions They condemn opposing the Companion for whom no opponent is known, yet here they themselves opposed ʻUmar ibn al-Khaṭṭāb, ʻAlī ibn Abī Ṭālib, and Salmān al-Fārisī—though no opponent from the Companions is known for them, may Allah be pleased with them. Furthermore, some Quranic verses consist of a single word, such as {By the morning brightness} [Al-Ḍuḥā: 1], {dark green} [Al-Raḥmān: 64], {By time} [Al-ʻAṣr: 1], and {By the dawn} [Al-Fajr: 1], while others have many words, like the Verse of Debt. This is beyond dispute. How astonishing it is that they declare it permissible for him to recite the Verse of Debt and the verse following it, or the Verse of the Throne or part of it without completing it, yet forbid him from reciting {By the dawn} [Al-Fajr: 1], {And [by] ten nights} [Al-Fajr: 2], {And [by] the even and the odd} [Al-Fajr: 3], or prevent him from completing the verse containing {dark green} [Al-Raḥmān: 64]. Similarly, their distinction between a menstruating woman and a junub (one in major ritual impurity) by claiming her period is prolonged is invalid. If reciting the Quran is forbidden for her, its prolonged duration

وَلَا مِنْ إِجْمَاعٍ وَلَا مِنْ قَوْلِ صَاحِبٍ وَلَا مِنْ قِيَاسٍ وَلَا مِنْ رَأْيٍ سَدِيدٍ، لِأَنَّ بَعْضَ الْآيَةِ وَالْآيَةَ قُرْآنٌ بِلَا شَكٍّ، وَلَا فَرْقَ بَيْنَ أَنْ يُبَاحَ لَهُ آيَةٌ أَوْ أَنْ يُبَاحَ لَهُ أُخْرَى، أَوْ بَيْنَ أَنْ يُمْنَعَ مِنْ آيَةٍ أَوْ يُمْنَعَ مِنْ أُخْرَى، وَأَهْلُ هَذِهِ الْأَقْوَالِ يُشَنِّعُونَ مُخَالَفَةَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ، وَهُمْ قَدْ خَالَفُوا هَهُنَا عُمَرَ بْنَ الْخَطَّابِ وَعَلِيَّ بْنَ أَبِي طَالِبٍ وَسَلْمَانَ الْفَارِسِيَّ، وَلَا يُعْرَفُ لَهُمْ مُخَالِفٌ مِنَ الصَّحَابَةِ. - رَضِيَ اللَّهُ عَنْهُمْ - وَأَيْضًا فَإِنَّ مِنَ الْآيَاتِ مَا هُوَ كَلِمَةٌ وَاحِدَةٌ مِثْلُ {وَالضُّحَى} [الضحى: ١] وَ {مُدْهَامَّتَانِ} [الرحمن: ٦٤] وَ {وَالْعَصْرِ} [العصر: ١] وَ {وَالْفَجْرِ} [الفجر: ١] وَمِنْهَا كَلِمَاتٌ كَثِيرَةٌ كَآيَةِ الدَّيْنِ، فَإِذْ لَا شَكَّ فِي هَذَا. فَإِنَّ فِي إِبَاحَتِهِمْ لَهُ قِرَاءَةَ آيَةِ الدَّيْنِ وَالَّتِي بَعْدَهَا أَوْ آيَةَ الْكُرْسِيِّ أَوْ بَعْضَهَا وَلَا يُتِمُّهَا، وَمَنْعِهِمْ إِيَّاهُ مِنْ قِرَاءَةِ {وَالْفَجْرِ} [الفجر: ١] {وَلَيَالٍ عَشْرٍ} [الفجر: ٢] {وَالشَّفْعِ وَالْوَتْرِ} [الفجر: ٣] أَوْ مَنْعِهِمْ لَهُ مِنْ إِتْمَامِ (مُدْهَامَّتَانِ) لَعَجَبًا. وَكَذَلِكَ تَفْرِيقُهُمْ بَيْنَ الْحَائِضِ وَالْجُنُبِ بِأَنَّ أَمَدَ الْحَائِضِ يَطُولُ، فَهُوَ مُحَالٌ،

does not make it permissible; and if it is permissible, citing the prolonged duration is meaningless. Muḥammad ibn Saʿīd ibn Nabāt narrated to us: ʿAbdullāh ibn Naṣr narrated to us via Qāsim ibn Aṣbagh via Muḥammad ibn Waḍḍāḥ via Mūsā ibn Muʿāwiyah. Ibn Wahb narrated to us via Yūnus ibn Yazīd via Rabīʿah, who said, "There is no harm in a junub reciting the Quran." And via him to Mūsā ibn Muʿāwiyah: Yūsuf ibn Khālid al-Samtī narrated to us via Idrīs via Ḥammād, who said, "I asked Saʿīd ibn al-Musayyib about a junub: Can he recite the Quran?" He replied, "How could he not recite it when it resides within him?" And via Yūsuf al-Samtī via Naṣr al-Bāhilī.[8]

لِأَنَّهُ إِنْ كَانَتْ قِرَاءَتُهَا لِلْقُرْآنِ حَرَامًا فَلَا يُبِيحُهُ لَهَا طُولُ أَمَدِهَا، وَإِنْ كَانَ ذَلِكَ لَهَا حَلَالًا فَلَا مَعْنَى لِلِاحْتِجَاجِ بِطُولِ أَمَدِهَا. حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا عَبْدُ اللَّهِ بْنُ نَصْرٍ عَنْ قَاسِمِ بْنِ أَصْبَغَ عَنْ مُحَمَّدِ بْنِ وَضَّاحٍ عَنْ مُوسَى بْنِ مُعَاوِيَةَ ثنا ابْنُ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ رَبِيعَةَ قَالَ: لَا بَأْسَ أَنْ يَقْرَأَ الْجُنُبُ الْقُرْآنَ وَبِهِ إِلَى مُوسَى بْنِ مُعَاوِيَةَ ثنا يُوسُفُ بْنُ خَالِدٍ السَّمْتِيُّ ثنا إِدْرِيسُ عَنْ حَمَّادٍ قَالَ سَأَلْتُ سَعِيدَ بْنَ الْمُسَيِّبِ عَنْ الْجُنُبِ هَلْ يَقْرَأُ الْقُرْآنَ؟ فَقَالَ: وَكَيْفَ لَا يَقْرَؤُهُ وَهُوَ فِي جَوْفِهِ وَبِهِ إِلَى يُوسُفَ السَّمْتِيِّ عَنْ نَصْرٍ الْبَاهِلِيِّ.

L2628 He said: Ibn Abbas would recite Al-Baqarah while junub. Muhammad ibn Saʿid ibn Nabat informed us: Ahmad ibn ʿAwn Allah narrated to us: Qasim ibn Asbagh narrated to us: Muhammad ibn ʿAbd al-Salam al-Khushaniyy narrated to us: Muhammad ibn Bashshar narrated to us: Ghundar narrated to us: Shuʿbah reported from Hammad ibn Abi Sulayman, who said: I asked Saʿid ibn Jubayr about a junub reciting, and he saw no harm in it. He said: "Is not the Quran within him?" This is the view of Dawud and all our associates.

قَالَ: كَانَ ابْنُ عَبَّاسٍ يَقْرَأُ الْبَقَرَةَ وَهُوَ جُنُبٌ. أَخْبَرَنِي مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا أَحْمَدُ بْنُ عَوْنِ اللَّهِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا غُنْدَرٌ ثنا شُعْبَةُ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ قَالَ: سَأَلْت سَعِيدَ بْنَ جُبَيْرٍ عَنْ الْجُنُبِ يَقْرَأُ فَلَمْ يَرَ بِهِ بَأْسًا وَقَالَ: أَلَيْسَ فِي جَوْفِهِ الْقُرْآنُ؟ وَهُوَ قَوْلُ دَاوُد وَجَمِيعِ أَصْحَابِنَا.

L2629–2631 As for the prostration during Quranic recitation, it is not a prayer at all. This is based on the narration transmitted by Abdullah ibn Rabiʿ from Muḥammad ibn Muʿāwiyah, from Aḥmad ibn Shuʿayb, from Muḥammad ibn Bishār, from ʿAbd al-Raḥmān ibn Mahdī and Muḥammad ibn Jaʿfar, who both stated: Shuʿbah narrated to us from Yaʿlā ibn ʿAṭāʾ, who heard ʿAlī al-Azdī (ʿAlī ibn ʿAbd Allāh al-Bāriqī, a trustworthy narrator) report that he heard Ibn ʿUmar relate from Allah's Messenger (peace be upon him): "Night and daytime prayers are performed in pairs of two." It has been authentically established from the Prophet (peace be upon him) that he said: "Witr consists of one *rakʿah* performed at the night's end." It is validly concluded that what is not a full Rak'ah, two Rak'ahs, or more cannot be considered prayer.

وَأَمَّا سُجُودُ الْقُرْآنِ فَإِنَّهُ لَيْسَ صَلَاةً أَصْلًا، لِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ وَمُحَمَّدُ بْنُ جَعْفَرٍ قَالَا ثنا شُعْبَةُ عَنْ يَعْلَى بْنِ عَطَاءٍ أَنَّهُ سَمِعَ عَلِيًّا الْأَزْدِيَّ - وَهُوَ عَلِيُّ بْنُ عَبْدِ اللَّهِ الْبَارِقِيُّ ثِقَةٌ - أَنَّهُ سَمِعَ ابْنَ عُمَرَ يَقُولُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «صَلَاةُ اللَّيْلِ وَالنَّهَارِ مَثْنَى مَثْنَى» وَقَدْ صَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - أَنَّهُ قَالَ «الْوِتْرُ رَكْعَةٌ مِنْ آخِرِ اللَّيْلِ» فَصَحَّ أَنَّ مَا لَمْ يَكُنْ رَكْعَةً تَامَّةً أَوْ رَكْعَتَيْنِ فَصَاعِدًا فَلَيْسَ صَلَاةً.

[8] **Qur'an references (L2625):** Qur'an 89:2 (Al-Fajr); Qur'an 89:3 (Al-Fajr); Qur'an 93:1 (Ad-Duhaa); Qur'an 55:64 (Ar-Rahman); Qur'an 103:1 (Al-'Asr); Qur'an 89:1 (Al-Fajr).

L2632 Prostration during Quranic recitation is neither one prayer unit nor two units, hence it does not qualify as prayer. Since it is not prayer, it remains permissible without ablution – whether for one in major impurity, a menstruating woman, or facing a direction other than the qiblah – like all other forms of remembrance, with no distinction. This is because ablution is only obligatory for prayer specifically, as neither the Qur'an, prophetic tradition, scholarly consensus, nor analogical reasoning mandates it for non-prayer acts. If one argues that prostration is part of prayer and that any prayer component constitutes prayer itself, we respond – and with Allah, the Exalted, is success – this is invalid. A prayer component only becomes prayer when the entire prayer is completed as commanded. If a person utters the opening takbīr, bows, then intentionally abandons the prayer, no Muslim scholar would say they performed any prayer. All would agree they did not pray. However, if one completes a single unit in Witr or two units in Friday prayer (Jumuʿah), dawn prayer (Fajr), travel prayers, or voluntary prayers, they have undoubtedly prayed without dispute. We further counter: Standing is part of prayer, the takbīr is part of prayer, reciting the Opening, Sūrah al-Fātiḥah, is part of prayer, sitting is part of prayer, and the salutations are part of prayer. By this logic, you must prohibit saying the takbīr, reciting the Opening, sitting, or giving salutations except with ablution – a position none of you holds. Thus your argument is void, and with Allah, the Exalted, is success. If they claim consensus supports their view, we reply: You have already affirmed the validity of consensus in refuting your argument and invalidating your rationale – and with Allah, the Exalted, is success.

وَالسُّجُودُ فِي قِرَاءَةِ الْقُرْآنِ لَيْسَ رَكْعَةً وَلَا رَكْعَتَيْنِ فَلَيْسَ صَلَاةً، وَإِذْ لَيْسَ هُوَ صَلَاةً فَهُوَ جَائِزٌ بِلَا وُضُوءٍ، وَلِلْجُنُبِ وَلِلْحَائِضِ وَإِلَى غَيْرِ الْقِبْلَةِ كَسَائِرِ الذِّكْرِ وَلَا فَرْقَ، إِذْ لَا يَلْزَمُ الْوُضُوءُ إِلَّا لِلصَّلَاةِ فَقَطْ، إِذْ لَمْ يَأْتِ بِإِيجَابِهِ لِغَيْرِ الصَّلَاةِ قُرْآنٌ وَلَا سُنَّةٌ وَلَا إِجْمَاعٌ وَلَا قِيَاسٌ. فَإِنْ قِيلَ: إِنَّ السُّجُودَ مِنَ الصَّلَاةِ، وَبَعْضَ الصَّلَاةِ صَلَاةٌ. قُلْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: هَذَا بَاطِلٌ، لِأَنَّهُ لَا يَكُونُ بَعْضُ الصَّلَاةِ صَلَاةً إِلَّا إِذَا تَمَّتْ كَمَا أُمِرَ بِهَا الْمُصَلِّي، وَلَوْ أَنَّ امْرَأً كَبَّرَ وَرَكَعَ ثُمَّ قَطَعَ عَمْدًا لَمَا قَالَ أَحَدٌ مِنْ أَهْلِ الْإِسْلَامِ إِنَّهُ صَلَّى شَيْئًا، بَلْ يَقُولُونَ كُلُّهُمْ إِنَّهُ لَمْ يُصَلِّ، فَلَوْ أَتَمَّهَا رَكْعَةً فِي الْوِتْرِ أَوْ رَكْعَتَيْنِ فِي الْجُمُعَةِ وَالصُّبْحِ وَالسَّفَرِ وَالتَّطَوُّعِ لَكَانَ قَدْ صَلَّى بِلَا خِلَافٍ. ثُمَّ نَقُولُ لَهُمْ: إِنَّ الْقِيَامَ بَعْضُ الصَّلَاةِ وَالتَّكْبِيرَ بَعْضُ الصَّلَاةِ وَقِرَاءَةَ أُمِّ الْقُرْآنِ بَعْضُ الصَّلَاةِ وَالْجُلُوسَ بَعْضُ الصَّلَاةِ، وَالسَّلَامَ بَعْضُ الصَّلَاةِ، فَيَلْزَمُكُمْ عَلَى هَذَا أَنْ لَا تُجِيزُوا لِأَحَدٍ أَنْ يَقُولَ وَلَا أَنْ يُكَبِّرَ وَلَا أَنْ يَقْرَأَ أُمَّ الْقُرْآنِ وَلَا يَجْلِسَ وَلَا يُسَلِّمَ إِلَّا عَلَى وُضُوءٍ، فَهَذَا مَا لَا يَقُولُونَهُ، فَبَطَلَ احْتِجَاجُهُمْ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. فَإِنْ قَالُوا هَذَا إِجْمَاعٌ، قُلْنَا لَهُمْ: قَدْ أَقْرَرْتُمْ بِصِحَّةِ الْإِجْمَاعِ عَلَى بُطْلَانِ حُجَّتِكُمْ وَإِفْسَادِ عِلَّتِكُمْ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L2633 As for touching the Mus'haf, the narrations cited by those who prohibit a person in major impurity from touching it are invalid, as none of them are sound. They are either disconnected transmissions, written records without chains of narration, narrations from unknown individuals, or narrations from weak transmitters. We have scrutinized them in detail elsewhere in our works.

وَأَمَّا مَسُّ الْمُصْحَفِ فَإِنَّ الْآثَارَ الَّتِي احْتَجَّ بِهَا مَنْ لَمْ يُجِزْ لِلْجُنُبِ مَسَّهُ فَإِنَّهُ لَا يَصِحُّ مِنْهَا شَيْءٌ، لِأَنَّهَا إِمَّا مُرْسَلَةٌ وَإِمَّا صَحِيفَةٌ لَا تُسْنَدُ وَإِمَّا عَنْ مَجْهُولٍ وَإِمَّا عَنْ ضَعِيفٍ، وَقَدْ تَقَصَّيْنَاهَا فِي غَيْرِ هَذَا الْمَكَانِ.

L2634–2636 The authentic narration is that which ʿAbdullāh ibn Rabīʿ informed us, saying: Muḥammad ibn Aḥmad ibn Mufarrij narrated to us, Saʿīd ibn al-Sakan narrated to us, al-Firabrī narrated to us, al-Bukhārī narrated to us, al-Ḥakam

وَإِنَّمَا الصَّحِيحُ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ قَالَ ثنا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ مُفَرِّجٍ نا سَعِيدُ بْنُ السَّكَنِ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا الْحَكَمُ بْنُ نَافِعٍ ثنا شُعَيْبٌ عَنِ الزُّهْرِيِّ أَخْبَرَنِي

ibn Nāfiʿ narrated to us, Shuʿayb narrated from al-Zuhrī: ʿUbaydullāh ibn ʿAbdillāh ibn ʿUtbah informed me that Ibn ʿAbbās informed him that Abū Sufyān informed him that he was with Heraclius when Heraclius called for the letter of the Messenger of Allah—may the peace and blessings of Allah be upon him—which he had sent with Diḥyah to the ruler of Buṣrā. He delivered it to Heraclius, who read it. In it was: "In the name of Allah, the Most Gracious, the Most Merciful. From Muḥammad, the servant of Allah and His Messenger, to Heraclius, emperor of the Romans: Peace be upon whoever follows guidance. To proceed: I invite you to the call of Islam. Accept Islam, and you will be safe. Allah will grant you your reward twice over. But if you turn away, then upon you is the sin of the tillers, and" "O People of the Scripture, come to a word equitable between us and you: that we worship none but Allah and associate nothing with Him, and that none of us take others as lords besides Allah. Then if they (the People of the Scripture) turn away, say, 'Bear witness that we are Muslims.'" [Āl ʿImrān: 64]. Thus, the Messenger of Allah, peace be upon him, sent a letter containing this verse to the Nazarenes, and he was certain that they would handle that letter.[9]

عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ أَنَّ ابْنَ عَبَّاسٍ أَخْبَرَهُ أَنَّ أَبَا سُفْيَانَ أَخْبَرَهُ أَنَّهُ كَانَ عِنْدَ هِرَقْلَ فَدَعَا هِرَقْلُ بِكِتَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي بَعَثَ بِهِ دِحْيَةَ إِلَى عَظِيمِ بُصْرَى، فَدَفَعَهُ إِلَى هِرَقْلَ فَقَرَأَهُ، فَإِذَا فِيهِ " بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ، مِنْ مُحَمَّدٍ عَبْدِ اللَّهِ وَرَسُولِهِ إِلَى هِرَقْلَ عَظِيمِ الرُّومِ سَلَامٌ عَلَى مَنْ اتَّبَعَ الْهُدَى (أَمَّا بَعْدُ) فَإِنِّي أَدْعُوكَ بِدِعَايَةِ الْإِسْلَامِ، أَسْلِمْ تَسْلَمْ يُؤْتِكَ اللَّهُ أَجْرَكَ مَرَّتَيْنِ فَإِنْ تَوَلَّيْتَ فَإِنَّ عَلَيْكَ إِثْمَ الْأَرِيسِيِّينَ وَ {يَا أَهْلَ الْكِتَابِ تَعَالَوْا إِلَى كَلِمَةٍ سَوَاءٍ بَيْنَنَا وَبَيْنَكُمْ أَلا نَعْبُدَ إِلا اللَّهَ وَلا نُشْرِكَ بِهِ شَيْئًا وَلا يَتَّخِذَ بَعْضُنَا بَعْضًا أَرْبَابًا مِنْ دُونِ اللَّهِ فَإِنْ تَوَلَّوْا فَقُولُوا اشْهَدُوا بِأَنَّا مُسْلِمُونَ} [آل عمران: ٦٤] . فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ بَعَثَ كِتَابًا وَفِيهِ هَذِهِ الْآيَةُ إِلَى النَّصَارَى وَقَدْ أَيْقَنَ أَنَّهُمْ يَمَسُّونَ ذَلِكَ الْكِتَابَ.

L2637–2639 If they mention what ʿAbdullāh ibn Rabīʿ narrated to us—Muḥammad ibn Muʿāwiyah narrated to us—Aḥmad ibn Shuʿayb narrated to us—Quṭaybah ibn Saʿīd narrated to us—al-Layth narrated to us—from Nāfiʿ—from Ibn ʿUmar—who said: "The Prophet (peace be upon him) prohibited traveling with the Quran to enemy lands, fearing the enemy might seize it." This is an established truth necessitating compliance, but it does not entail that a person in major impurity or a disbeliever may not touch the Quran. It solely prohibits the people of hostile territories from acquiring the Quran. If they argue: "The Messenger of Allah (peace be upon him) sent only a single verse to Heraclius," respond: He (peace be upon him) did not prohibit sending other verses, and you are proponents of analogy. If you do not apply analogy to matters more extensive than this verse, then do not analogize other rulings to it. If they cite Allah's words: {In a guarded Book} [56:78] {which none touch except the purified} [56:79], this offers no proof, for it is a factual statement, not a command. Allah—the Mighty and Majestic—speaks only truth, and a factual

فَإِنْ ذَكَرُوا مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا قُتَيْبَةُ بْنُ سَعِيدٍ ثنا اللَّيْثُ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ «كَانَ يَنْهَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُسَافَرَ بِالْقُرْآنِ إِلَى أَرْضِ الْعَدُوِّ يَخَافُ أَنْ يَنَالَهُ الْعَدُوُّ» فَهَذَا حَقٌّ يَلْزَمُ اتِّبَاعُهُ وَلَيْسَ فِيهِ أَنْ لَا يَمَسَّ الْمُصْحَفَ جُنُبٌ وَلَا كَافِرٌ. وَإِنَّمَا فِيهِ أَنْ لَا يَنَالَ أَهْلُ أَرْضِ الْحَرْبِ الْقُرْآنَ فَقَطْ. فَإِنْ قَالُوا: إِنَّمَا بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى هِرَقْلَ آيَةً وَاحِدَةً. قِيلَ لَهُمْ: وَلَمْ يَمْنَعْ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ غَيْرِهَا وَأَنْتُمْ أَهْلُ قِيَاسٍ فَإِنْ لَمْ تَقِيسُوا عَلَى الْآيَةِ مَا هُوَ أَكْثَرُ مِنْهَا فَلَا تَقِيسُوا عَلَى هَذِهِ الْآيَةِ غَيْرَهَا. فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {فِي كِتَابٍ مَكْنُونٍ} [الواقعة: ٧٨] {لا يَمَسُّهُ إِلا الْمُطَهَّرُونَ} [الواقعة: ٧٩] فَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّهُ لَيْسَ أَمْرًا وَإِنَّمَا هُوَ خَبَرٌ. وَاَللَّهُ تَعَالَى لَا يَقُولُ إِلَّا حَقًّا.

[9] **Qur'an references (L2634):** Qur'an 3:64 (Ali 'Imran).

statement cannot be interpreted as a command absent explicit textual evidence or indubitable consensus. Since we observe both the pure and the impure touching the Quran, we know He—the Mighty and Majestic—referred not to the physical Quran but to another Book. As Muḥammad ibn Saʿīd ibn Nabāt narrated to us—Aḥmad ibn ʿAbd al-Baṣīr narrated to us—Qāsim ibn Aṣbagh narrated to us—Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us—Muḥammad ibn al-Muthannā narrated to us—ʿAbd al-Raḥmān ibn Mahdī narrated to us—Sufyān al-Thawrī narrated to us—from Jāmiʿ ibn Abī Rāshid—from Saʿīd ibn Jubayr—who said regarding {None touch it except the purified}: "It refers to the angels in heaven." Ḥammām ibn Aḥmad narrated to us—Ibn Mufarrij narrated to us—Ibn al-Aʿrābī narrated to us—al-Dabarī narrated to us—ʿAbd al-Razzāq narrated to us—Yaḥyā ibn al-ʿAlāʾ narrated to us—from al-Aʿmash—from Ibrāhīm al-Nakhaʿī—from ʿAlqamah—who said: We came to Salman al-Farisi, and he came out to us from his latrine. We said to him: "Would you perform ablution, O Abu 'Abd Allah, and then recite to us a specific surah?" Salman responded: "Allah the Almighty said, 'In a well-protected Book' [Al-Waqi'ah: 78], 'None touch it except the purified' [Al-Waqi'ah: 79]. That is the Reminder which is in heaven; none touch it except the angels."[10]

L2640 Muhammad ibn Sa'id ibn Nabat narrated to us, from Ahmad ibn Abd al-Basir, from Qasim ibn Asbagh, from Muhammad ibn Abd al-Salam al-Khushani, from Muhammad ibn Bashshar, from Muhammad ibn Ja'far, from Shu'bah, from Mansur ibn al-Mu'tamir, from Ibrahim al-Nakha'i, from Alqamah ibn Qays: When he wished to commission a codex, he would order a Christian to transcribe it for him. Abu Hanifah said: There is no objection to a person in major ritual impurity carrying the codex by its strap, but he must not carry it without a strap. The ruling for one without ablution, according to their school, is the same. Malik said: Neither a person in major impurity nor one without ablution may carry the codex—whether by a strap, upon a cushion, or otherwise. However, if it is placed within a saddlebag or a chest, there is no objection to a Jew, Christian, person in major impurity, or

[10]**Qur'an references (L2637):** Qur'an 56:78 (Al-Waqi'ah); Qur'an 56:79 (Al-Waqi'ah).

وَلَا يَجُوزُ أَنْ يُصْرَفَ لَفْظُ الْخَبَرِ إِلَى مَعْنَى الْأَمْرِ إِلَّا بِنَصٍّ جَلِيٍّ أَوْ إِجْمَاعٍ مُتَيَقَّنٍ. فَلَمَّا رَأَيْنَا الْمُصْحَفَ يَمَسُّهُ الطَّاهِرُ وَغَيْرُ الطَّاهِرِ عَلِمْنَا أَنَّهُ عَزَّ وَجَلَّ لَمْ يَعْنِ الْمُصْحَفَ وَإِنَّمَا عَنَى كِتَابًا آخَرَ. كَمَا أَخْبَرَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيِّ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ جَامِعِ بْنِ أَبِي رَاشِدٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ فِي قَوْلِ اللَّهِ تَعَالَى: {لا يَمَسُّهُ إِلا الْمُطَهَّرُونَ} [الواقعة: ٧٩] قَالَ: الْمَلَائِكَةُ الَّذِينَ فِي السَّمَاءِ حَدَّثَنَا حَمَامُ بْنُ أَحْمَدَ حَدَّثَنَا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ حَدَّثَنَا عَبْدُ الرَّزَّاقِ ثنا يَحْيَى بْنُ الْعَلَاءِ عَنْ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ قَالَ: أَتَيْنَا سَلْمَانَ الْفَارِسِيَّ فَخَرَجَ عَلَيْنَا مِنْ كَنِيفٍ لَهُ فَقُلْنَا لَهُ: لَوْ تَوَضَّأْتَ يَا أَبَا عَبْدِ اللَّهِ ثُمَّ قَرَأْتَ عَلَيْنَا سُورَةً كَذَا؟ فَقَالَ سَلْمَانُ: إِنَّمَا قَالَ اللَّهُ عَزَّ وَجَلَّ: {فِي كِتَابٍ مَكْنُونٍ} [الواقعة: ٧٨] {لا يَمَسُّهُ إِلا الْمُطَهَّرُونَ} [الواقعة: ٧٩] وَهُوَ الذِّكْرُ الَّذِي فِي السَّمَاءِ لَا يَمَسُّهُ إِلَّا الْمَلَائِكَةُ.

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا مُحَمَّدُ بْنُ جَعْفَرٍ ثنا شُعْبَةُ ثنا مَنْصُورُ بْنُ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ بْنِ قَيْسٍ: إِنَّهُ كَانَ إِذَا أَرَادَ أَنْ يَتَّخِذَ مُصْحَفًا أَمَرَ نَصْرَانِيًّا فَنَسَخَهُ لَهُ. وَقَالَ أَبُو حَنِيفَةَ: لَا بَأْسَ أَنْ يَحْمِلَ الْجُنُبُ الْمُصْحَفَ بِعِلَاقَتِهِ وَلَا يَحْمِلُهُ بِغَيْرِ عِلَاقَةٍ. وَغَيْرُ الْمُتَوَضِّئِ عِنْدَهُمْ كَذَلِكَ. وَقَالَ مَالِكٌ: لَا يَحْمِلُ الْجُنُبُ وَلَا غَيْرُ الْمُتَوَضِّئِ الْمُصْحَفَ لَا بِعِلَاقَةٍ وَلَا عَلَى وِسَادَةٍ. فَإِنْ كَانَ فِي خُرْجٍ أَوْ تَابُوتٍ فَلَا بَأْسَ أَنْ يَحْمِلَهُ الْيَهُودِيُّ وَالنَّصْرَانِيُّ وَالْجُنُبُ وَغَيْرُ الطَّاهِرِ. قَالَ عَلِيٌّ: هَذِهِ تَفَارِيقُ لَا دَلِيلَ عَلَى صِحَّتِهَا لَا

ritually impure individual carrying it. Ali remarked: These distinctions lack any substantiating evidence—neither from the Quran nor the Sunnah (be it sound or weak), nor from consensus, analogy, or a Companion's opinion. If the saddlebag constitutes a barrier between the carrier and the codex, then the writing board and the page's reverse likewise form a barrier between the one making direct contact and the codex—there being no distinction between these cases. And success is from Allah, the Exalted.

L2641 **Issue: The validity of the adhan (call to prayer) and iqamah without [minor] ritual purification and during a state of major impurity (janabah).**

L2642 117. Issue: Similarly, the adhān and iqāmah are also valid without ablution and in the state of major impurity (janābah). This is the opinion of Abū Ḥanīfah and his companions, and the view of Abū Sulaymān and our companions. Al-Shāfiʿī said: This is disliked but valid if done. ʿAṭāʾ said: The muʾadhdhin may not call the adhān except in a state of ablution. Mālik said: One may call the adhān without ablution but may not perform the iqāmah unless in a state of ablution. ʿAlī said: This distinction lacks any evidence for its validity—neither from the Quran, the Sunnah, consensus, a Companion's opinion, nor analogy. If they argue that the iqāmah is connected to the prayer, it is countered: It may not be connected, as there could be an interval between them during which bathing or ablution is possible, such as when the imam begins conversing with someone. Moreover, the adhān may be connected to the iqāmah and the prayer, as in Maghrib and other prayers, with no distinction. Since no text obligates that the adhān and iqāmah be performed only with purification from janābah or otherwise, the opinion of those who mandate this is erroneous, for it constitutes introducing a ruling into the Sharīʿah without basis in the Quran, Sunnah, or consensus—and this is null and void.

L2643–2644 If it is said: It has been authentically reported from the Prophet—peace and blessings of Allah be upon him—that he stated, "I disliked mentioning Allah except in a state of purity," the response to them is: This denotes dislike, not

مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ - لَا صَحِيحَةٍ وَلَا سَقِيمَةٍ - وَلَا مِنْ إجْمَاعٍ وَلَا مِنْ قِيَاسٍ وَلَا مِنْ قَوْلِ صَاحِبٍ. وَلَئِنْ كَانَ الْخُرْجُ حَاجِزًا بَيْنَ الْحَامِلِ وَبَيْنَ الْقُرْآنِ فَإِنَّ اللَّوْحَ وَظَهْرَ الْوَرَقَةِ حَاجِزٌ أَيْضًا بَيْنَ الْمَاسِّ وَبَيْنَ الْقُرْآنِ وَلَا فَرْقَ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة يُجْزِئ الآذان وَالْإِقَامَة بِلَا طَهَارَة وَفِي حَال الْجَنَابَة]

١١٧ - مَسْأَلَةٌ: وَكَذَلِكَ الْآذَانُ وَالْإِقَامَةُ يُجْزِئَانِ أَيْضًا بِلَا طَهَارَةٍ وَفِي حَالِ الْجَنَابَةِ. وَهَذَا قَوْلُ أَبِي حَنِيفَةَ وَأَصْحَابِهِ وَقَوْلُ أَبِي سُلَيْمَانَ وَأَصْحَابِنَا. وَقَالَ الشَّافِعِيُّ: يُكْرَهُ ذَلِكَ وَيُجْزِئُ إنْ وَقَعَ. وَقَالَ عَطَاءٌ: لَا يُؤَذِّنُ الْمُؤَذِّنُ إلَّا مُتَوَضِّئًا. وَقَالَ مَالِكٌ: يُؤَذِّنُ مَنْ لَيْسَ عَلَى وُضُوءٍ وَلَا يُقِيمُ إلَّا مُتَوَضِّئٌ. قَالَ عَلِيٌّ: هَذَا فَرْقٌ لَا دَلِيلَ عَلَى صِحَّتِهِ لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ وَلَا إجْمَاعٍ وَلَا قَوْلِ صَاحِبٍ وَلَا قِيَاسٍ، فَإِنْ قَالُوا إنَّ الْإِقَامَةَ مُتَّصِلَةٌ بِالصَّلَاةِ، قِيلَ لَهُمْ: وَقَدْ لَا تَتَّصِلُ وَيَكُونُ بَيْنَهُمَا مُهْلَةٌ مِنْ حَدِيثٍ بَدَأَ فِيهِ الْإِمَامُ مَعَ إنْسَانٍ يُمْكِنُ فِيهِ الْغُسْلُ وَالْوُضُوءُ، وَقَدْ يَكُونُ الْآذَانُ مُتَّصِلًا بِالْإِقَامَةِ وَالصَّلَاةِ، كَصَلَاةِ الْمَغْرِبِ وَغَيْرِهَا وَلَا فَرْقَ وَإِذَا لَمْ يَأْتِ نَصٌّ بِإِيجَابِ أَنْ لَا يَكُونَ الْآذَانُ وَالْإِقَامَةُ إلَّا بِطَهَارَةٍ مِنْ الْجَنَابَةِ وَغَيْرِهَا، فَقَوْلُ مَنْ أَوْجَبَ ذَلِكَ خَطَأٌ، لِأَنَّهُ إحْدَاثُ شَرْعٍ مِنْ غَيْرِ قُرْآنٍ وَلَا سُنَّةٍ وَلَا إجْمَاعٍ وَهَذَا بَاطِلٌ.

فَإِنْ قِيلَ: قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «كَرِهْتُ أَنْ أَذْكُرَ اللَّهَ إلَّا عَلَى طُهْرٍ» قِيلَ لَهُمْ: هَذِهِ كَرَاهَةٌ لَا مَنْعٌ، وَهُوَ عَلَيْكُمْ لَا لَكُمْ لِأَنَّكُمْ تُجِيزُونَ الْآذَانَ

prohibition, and it is against you, not for you. For you permit the *adhan*, recitation of the Qur'an, and remembrance of Allah the Exalted without ritual purity. This is precisely what the ḥadīth explicitly declares as disliked, yet you do not deem it disliked at all. Thus, this ḥadīth constitutes the greatest proof against you. As for us, it aligns with our position. All that we have mentioned is better with purity according to our view, yet we do not deem it disliked without ritual purity, for this dislike has been abrogated—as we shall clarify hereafter, if Allah the Exalted wills.

L2645 **Issue: It is recommended for one in a state of *janabah* (major ritual impurity) to perform minor ablution (wudu) if they intend to eat and sleep.**

L2646 Issue 118: It is recommended for a junub person to perform ablution when intending to eat, sleep, return the Salām greeting, or engage in remembrance of Allah the Exalted, though this is not obligatory. If it is asked: "Why have you not made all of this obligatory, considering the Messenger of Allah's (peace be upon him) statement: 'I dislike mentioning Allah except in a state of purity,' his instruction to Umar ibn al-Khaṭṭāb (may Allah be pleased with him) when he mentioned that he had been afflicted by janābah during the night—'Perform ablution and wash your genital organ, then sleep'—and what ʿĀ'ishah (may Allah be pleased with him) reported: 'The Messenger of Allah (peace be upon him) would perform ablution as for prayer when he wished to eat or sleep while junub'"?

L2647–2649 We said, and success is by Allah the Exalted: As for the ḥadīth concerning the reprehensibility of mentioning Allah the Exalted except in a state of purity, it is abrogated by what was transmitted to us through ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid, from Ibrāhīm ibn Aḥmad, from al-Farbarī, from al-Bukhārī, from Ṣadaqah, from al-Walīd ibn Muslim, from al-Awzāʿī, from ʿUmayr ibn Hāniʾ, from Junādah ibn Abī Umayyah, from ʿUbādah ibn al-Ṣāmit, who reported from the Prophet (peace and blessings of Allah be upon him): "Whoever is awakened during the night" He said: "There is no god but Allah alone, with no partner to Him. To Him belongs the dominion and

وَقِرَاءَةَ الْقُرْآنِ وَذِكْرَ اللَّهِ تَعَالَى عَلَى غَيْرِ طُهْرٍ. وَهَذَا هُوَ الَّذِي نَصَّ عَلَى كَرَاهَتِهِ فِي الْخَبَرِ وَأَنْتُمْ لَا تَكْرَهُونَهُ أَصْلًا، فَهَذَا الْخَبَرُ أَعْظَمُ حُجَّةً عَلَيْكُمْ، وَأَمَّا نَحْنُ فَهُوَ قَوْلُنَا، وَكُلُّ مَا ذَكَرْنَا فَهُوَ عِنْدَنَا عَلَى طَهَارَةٍ أَفْضَلُ وَلَا نَكْرَهُهُ عَلَى غَيْرِ طَهَارَةٍ، لِأَنَّ هَذِهِ الْكَرَاهَةَ مَنْسُوخَةٌ عَلَى مَا نَذْكُرُهُ بَعْدُ إِنْ شَاءَ اللَّهُ تَعَالَى.

[مَسْأَلَة يُسْتَحَبّ الْوُضُوء لِلْجُنُبِ إِذَا أَرَادَ الْأَكْل والنوم]

١١٨ - مَسْأَلَةٌ: وَيُسْتَحَبُّ الْوُضُوءُ لِلْجُنُبِ إِذَا أَرَادَ الْأَكْلَ أَوْ النَّوْمَ وَلِرَدِّ السَّلَامِ وَلِذِكْرِ اللَّهِ تَعَالَى، وَلَيْسَ ذَلِكَ بِوَاجِبٍ. فَإِنْ قِيلَ: فَهَلَّا أَوْجَبْتُمْ ذَلِكَ كُلَّهُ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنِّي كَرِهْتُ أَنْ أَذْكُرَ اللَّهَ إلَّا عَلَى طُهْرٍ» وَلِقَوْلِهِ «- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِعُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - إذْ ذَكَرَ لَهُ أَنَّهُ تُصِيبُهُ الْجَنَابَةُ مِنْ اللَّيْلِ - فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: تَوَضَّأْ وَاغْسِلْ ذَكَرَكَ ثُمَّ نَمْ» وَلِمَا رَوَتْهُ عَائِشَةُ - رَضِيَ اللَّهُ عَنْهُ - «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ إذَا أَرَادَ أَنْ يَأْكُلَ أَوْ يَنَامَ وَهُوَ جُنُبٌ تَوَضَّأَ وُضُوءَهُ لِلصَّلَاةِ» .

قُلْنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: أَمَّا الْحَدِيثُ فِي كَرَاهَةِ ذِكْرِ اللَّهِ تَعَالَى إلَّا عَلَى طُهْرٍ فَإِنَّهُ مَنْسُوخٌ بِمَا حَدَّثَنَاهُ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا صَدَقَةُ ثنا الْوَلِيدُ بْنُ مُسْلِمٍ ثنا الْأَوْزَاعِيُّ حَدَّثَنِي عُمَيْرُ بْنُ هَانِئٍ حَدَّثَنِي جُنَادَةُ بْنُ أَبِي أُمَيَّةَ ثنا عُبَادَةُ بْنُ الصَّامِتِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ تَعَارَّ مِنْ اللَّيْلِ فَقَالَ: لَا إلَهَ إلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ، لَهُ الْمُلْكُ وَلَهُ الْحَمْدُ وَهُوَ عَلَى كُلِّ شَيْءٍ

قَدِيرٌ، الْحَمْدُ لِلَّهِ وَسُبْحَانَ اللَّهِ وَلَا إِلَهَ إِلَّا اللَّهُ وَاللَّهُ أَكْبَرُ وَلَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ، ثُمَّ قَالَ: اللَّهُمَّ اغْفِرْ لِي، أَوْ دَعَا اُسْتُجِيبَ لَهُ، فَإِنْ تَوَضَّأَ وَصَلَّى قُبِلَتْ صَلَاتُهُ» قَالَ عَلِيٌّ: فَهَذِهِ إِبَاحَةٌ لِذِكْرِ اللَّهِ تَعَالَى بَعْدَ الِانْتِبَاهِ مِنْ النَّوْمِ فِي اللَّيْلِ وَقَبْلَ الْوُضُوءِ نَصًّا، وَهِيَ فَضِيلَةٌ، وَالْفَضَائِلُ لَا تُنْسَخُ لِأَنَّهَا مِنْ نِعَمِ اللَّهِ عَلَيْنَا، قَالَ اللَّهُ تَعَالَى: {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتْمَمْتُ عَلَيْكُمْ نِعْمَتِي} [المائدة: ٣] وَهَذَا أَمْرٌ بَاقٍ غَيْرُ مَنْسُوخٍ بِلَا خِلَافٍ مِنْ أَحَدٍ. وَقَالَ تَعَالَى: {إِنَّ اللَّهَ لا يُغَيِّرُ مَا بِقَوْمٍ حَتَّى يُغَيِّرُوا مَا بِأَنْفُسِهِمْ} [الرعد: ١١] فَهَذَا عُمُومُ ضَمَانٍ لَا يَخِيسُ قَالَ اللَّهُ تَعَالَى: {إِنَّ اللَّهَ لا يُخْلِفُ الْمِيعَادَ} [آل عمران: ٩] وَقَدْ أَيْقَنَّا بِمَا ذَكَرْنَا قَبْلُ مِنْ إخْبَارِهِ - عَلَيْهِ السَّلَامُ - أَنَّهُ قَالَ: «لَا تَزَالُ طَائِفَةٌ مِنْ أُمَّتِي عَلَى الْحَقِّ» أَنَّ جَمِيعَ الْأُمَّةِ لَا تُغَيِّرُ أَصْلًا. وَإِذَا صَحَّ أَنَّ الْأُمَّةَ كُلَّهَا لَا تُغَيِّرُ أَبَدًا، فَقَدْ أَيْقَنَّا أَنَّ اللَّهَ تَعَالَى لَا يُغَيِّرُ نِعَمَهُ عِنْدَ الْأُمَّةِ أَبَدًا. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

to Him belongs all praise, and He is All-Powerful over all things. Praise be to Allah, glory be to Allah, there is no god but Allah, Allah is the Greatest, and there is no power nor strength except by Allah." Then he said: "O Allah, forgive me," or if he supplicates, it will be answered. If he performs ablution and prays, his prayer will be accepted." Ali said: "This constitutes textually explicit permissibility for the remembrance of Allah the Exalted after awakening from sleep at night and before ablution, and it is a virtue. Virtues are not subject to abrogation, as they are part of Allah's blessings upon us. Allah the Exalted said: 'This day I have perfected for you your religion and completed My favor upon you' (al-Ma'idah 5:3). This is an enduring matter, not abrogated without any disagreement from anyone. He the Exalted said: 'Indeed, Allah does not change the condition of a people until they change what is in themselves' (al-Ra'd 13:11). This is a universal guarantee that does not diminish. Allah the Exalted said: 'Indeed, Allah does not fail in His promise' (Aal Imran 3:9). We are certain, based on the aforementioned report from him (peace be upon him) – that he said: 'A group from my Ummah will steadfastly uphold the truth' – that the entire Ummah does not alter its foundation. If it is confirmed that the whole Ummah will never change, we are certain that Allah the Exalted will never change His blessings bestowed upon the Ummah. And success is attained through Allah, the Most High."[1][1][1][2]

وَأَمَّا أَمْرُهُ - عَلَيْهِ السَّلَامُ - بِالْوُضُوءِ فَهُوَ نَدْبٌ، لِمَا حَدَّثَنَاهُ حَمَامٌ قَالَ: ثنا عُمَرُ بْنُ مُفَرِّجٍ قَالَ ثنا ابْنُ الْأَعْرَابِيِّ قَالَ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ عَنْ الْأَسْوَدِ بْنِ يَزِيدَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنَامُ جُنُبًا وَلَا يَمَسُّ مَاءً» وَهَذَا لَفْظٌ يَدُلُّ عَلَى مُدَاوَمَتِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِذَلِكَ وَهِيَ - رَضِيَ اللَّهُ عَنْهَا - أَحْدَثُ النَّاسِ عَهْدًا بِمَبِيتِهِ وَنَوْمِهِ جُنُبًا وَطَاهِرًا. فَإِنْ قِيلَ: إنَّ هَذَا الْحَدِيثَ أَخْطَأَ فِيهِ سُفْيَانُ، لِأَنَّ زُهَيْرَ بْنَ مُعَاوِيَةَ خَالَفَهُ فِيهِ قُلْنَا: بَلْ

L2650 As for his instruction—peace be upon him—regarding ablution, it is a recommended act. This is based on what Hammām narrated to us, stating: 'Umar ibn Mufarrij narrated to us, stating: Ibn al-A'rabī narrated to us, stating: al-Dabarī narrated to us, stating: 'Abd al-Razzāq narrated to us from Sufyān al-Thawrī from Abū Isḥāq from al-Aswad ibn Yazīd from 'Ā'ishah, the Mother of the Believers, who said: "The Messenger of Allah (peace be upon him) would sleep in a state of major impurity without touching water." This wording indicates his consistent practice (peace be upon him) of this, and she (may Allah be pleased with her) was the closest among people to

[1][1] **Hadith references (L2647):** Sahih Muslim 2723c; Sunan an-Nasai 1343; Sunan an-Nasai 2961.

[1][2] **Qur'an references (L2647):** Qur'an 64:1 (At-Taghabun); Qur'an 5:3 (Al-Ma'idah); Qur'an 13:11 (Ar-Ra'd); Qur'an 3:9 (Ali 'Imran); Qur'an 13:31 (Ar-Ra'd).

witness his bedtime and sleeping while in states of major impurity and ritual purity. If it is said: "Sufyān erred in this ḥadīth, for Zuhayr ibn Muʿāwiyah contradicted him in it," we respond: Rather, the error is undoubtedly in the claim of Sufyān's mistake—without evidence—and Sufyān is unquestionably more reliable in memorization than Zuhayr. And success comes solely from Allah, the Exalted.

أَخْطَأَ بِلَا شَكٍّ مِنْ خَطَأِ سُفْيَانَ بِالدَّعْوَى بِلَا دَلِيلٍ، وَسُفْيَانُ أَحْفَظُ مِنْ زُهَيْرٍ بِلَا شَكٍّ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L2651–2653 Ali said: It was incumbent upon the proponents of qiyas to say, "Since prayer was, and it is Dhikr..." It is not valid except with ablution, that the rest of the remembrance must likewise be performed while purified. However, this is among the matters they contradicted each other about, and they cannot claim consensus here due to what was narrated to us via the chain of ʿAbd Allāh ibn Rabīʿ → ʿAbd Allāh ibn Muḥammad ibn ʿUthmān → Aḥmad ibn Khālid → ʿAlī ibn ʿAbd al-ʿAzīz → al-Ḥajjāj ibn al-Minhāl → Ḥammād ibn Salamah → Ayyūb → Nāfiʿ → Ibn ʿUmar: "He would not recite the Quran, nor respond to the greeting of peace, nor mention Allah except while in a state of purity." Except in the case of a sexually impure person repeating intercourse—here ablution becomes obligatory between the two acts, based on the narration we transmitted through Ḥafṣ ibn Ghiyāth and Ibn ʿUyaynah, both from ʿĀṣim al-Aḥwal → Abū al-Mutawakkil → Abū Saʿīd al-Khudrī → the Prophet (peace and blessings of Allah be upon him). Ḥafṣ's wording states: "When one of you approaches his wife then wishes to repeat, let him perform ablution between the two acts." Ibn ʿUyaynah's wording states: "If he wishes to repeat, he must not do so until he performs ablution." We found nothing specifying this ruling or downgrading it to a recommended act except a weak narration from Yaḥyā ibn Ayyūb. ʿUmar ibn al-Khaṭṭāb, ʿAṭāʾ, ʿIkrimah, Ibrāhīm, al-Ḥasan, and Ibn Sīrīn affirmed the obligation of ablution in this matter.

قَالَ عَلِيٌّ: وَكَانَ اللَّازِمُ لِلْقَائِلِينَ بِالْقِيَاسِ أَنْ يَقُولُوا: لَمَّا كَانَتْ الصَّلَاةُ وَهِيَ ذِكْرٌ لَا تُجْزِئُ إلَّا بِوُضُوءٍ، أَنْ يَكُونَ سَائِرُ الذِّكْرِ كَذَلِكَ، وَلَكِنَّ هَذَا مِمَّا تَنَاقَضُوا فِيهِ، وَلَا يُمْكِنُهُمْ هَهُنَا دَعْوَى الْإِجْمَاعِ، لِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنْ «ابْنِ عُمَرَ: أَنَّهُ كَانَ لَا يَقْرَأُ الْقُرْآنَ وَلَا يَرُدُّ السَّلَامَ وَلَا يَذْكُرُ اللَّهَ إلَّا وَهُوَ طَاهِرٌ.» إلَّا مُعَاوَدَةَ الْجُنُبِ لِلْجِمَاعِ فَالْوُضُوءُ عَلَيْهِ فَرْضٌ بَيْنَهُمَا. لِلْخَبَرِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ حَفْصِ بْنِ غِيَاثٍ وَابْنِ عُيَيْنَةَ كِلَاهُمَا عَنْ عَاصِمٍ الْأَحْوَلِ عَنْ أَبِي الْمُتَوَكِّلِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَتَى أَحَدُكُمْ أَهْلَهُ ثُمَّ أَرَادَ أَنْ يُعَاوِدَ فَلْيَتَوَضَّأْ بَيْنَهُمَا وُضُوءًا» هَذَا لَفْظُ حَفْصِ بْنِ غِيَاثٍ وَلَفْظُ ابْنِ عُيَيْنَةَ «إذَا أَرَادَ أَنْ يَعُودَ فَلَا يَعُودُ حَتَّى يَتَوَضَّأَ» وَلَمْ نَجِدْ لِهَذَا الْخَبَرِ مَا يُخَصِّصُهُ وَلَا مَا يُخْرِجُهُ إلَى النَّدْبِ إلَّا خَبَرًا ضَعِيفًا مِنْ رِوَايَةِ يَحْيَى بْنِ أَيُّوبَ، وَبِإِيجَابِ الْوُضُوءِ فِي ذَلِكَ يَقُولُ عُمَرُ بْنُ الْخَطَّابِ وَعَطَاءٌ وَعِكْرِمَةُ وَإِبْرَاهِيمُ وَالْحَسَنُ وَابْنُ سِيرِينَ.

[مَسْأَلَة الشرائع لَا تلزم إلَّا بالاحتلام أَوْ بالإنبات لِلرِّجَالِ وَالْمَرْأَةِ]

L2654 **Religious obligations only become binding after nocturnal emission for males or the growth of pubic hair for both men and women.**

L2655–2657 119. Issue: Sharia rulings only become incumbent upon an individual by one of the following: experiencing a wet dream, the growth of pubic hair

for both men and women, the emission of semen from which a child is conceived even without a wet dream, completing nineteen years of age, or menstruation for women. All these conditions apply to both men and women. The definitive evidence for this is what ʻAbdullāh ibn Rabīʻ narrated to us: Muḥammad ibn Muʻāwiyah narrated to us, Aḥmad ibn Shuʻayb narrated to us, Aḥmad ibn ʻAmr ibn al-Sarḥ narrated from Ibn Wahb, who informed me that Jarīr ibn Ḥāzim narrated from Sulaymān—known as al-Aʻmash—from Abū Zabyān, from ʻAbdullāh ibn ʻAbbās, that ʻAlī ibn Abī Ṭālib said to ʻUmar ibn al-Khaṭṭāb: "Do you not recall that the Messenger of Allāh—peace and blessings of Allāh be upon him—said: ʻAccountability is lifted for three: the insane person whose mind is overwhelmed until they regain sanity, the sleeper until they awaken, and the child until they experience a wet dream'?" The term "child" in the Arabic language with which we are addressed comprehensively includes both male and female. Ḥammām ibn Aḥmad narrated to us: ʻAbbās ibn Aṣbagh narrated to us, Muḥammad ibn ʻAbd al-Malik ibn Ayman narrated to us, ʻAbdullāh ibn Rawḥ narrated. Yazid ibn Harun narrated to us that Hammād ibn Salamah narrated from Abd al-Malik ibn Umayr from Atiyyah al-Quraẓī, who said: "On the day of Qurayẓah, the Messenger of Allah (peace be upon him) decreed that whoever had grown pubic hair be executed by striking the neck. I was among those who had not grown pubic hair, so I was brought before the Messenger of Allah (peace be upon him), and he spared me."

١١٩ - مَسْأَلَةٌ: وَالشَّرَائِعُ لَا تَلْزَمُ إِلَّا بِالِاحْتِلَامِ أَوْ بِالْإِنْبَاتِ لِلرَّجُلِ وَالْمَرْأَةِ أَوْ بِإِنْزَالِ الْمَاءِ الَّذِي يَكُونُ مِنْهُ الْوَلَدُ، وَإِنْ لَمْ يَكُنْ احْتِلَامٌ، أَوْ بِتَمَامِ تِسْعَةَ عَشَرَ عَامًا، كُلُّ ذَلِكَ لِلرَّجُلِ وَالْمَرْأَةِ أَوْ بِالْحَيْضِ لِلْمَرْأَةِ. بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ عَنْ ابْنِ وَهْبٍ أَخْبَرَنِي جَرِيرُ بْنُ حَازِمٍ عَنْ سُلَيْمَانَ - هُوَ الْأَعْمَشُ - عَنْ أَبِي ظَبْيَانَ عَنْ عَبْدِ اللَّهِ بْنِ عَبَّاسٍ، أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ لِعُمَرَ بْنِ الْخَطَّابِ: أَوَمَا تَذْكُرُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ، عَنْ الْمَجْنُونِ الْمَغْلُوبِ عَلَى عَقْلِهِ، وَعَنْ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنْ الصَّبِيِّ حَتَّى يَحْتَلِمَ» وَالصَّبِيُّ لَفْظٌ يَعُمُّ الصِّنْفَ كُلَّهُ الذَّكَرَ وَالْأُنْثَى فِي اللُّغَةِ الَّتِي بِهَا خُوطِبْنَا. حَدَّثَنَا حَمَامُ بْنُ أَحْمَدَ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا عَبْدُ اللَّهِ بْنُ رَوْحٍ ثنا يَزِيدُ بْنُ هَارُونَ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ عَنْ عَطِيَّةَ الْقُرَظِيِّ قَالَ «لَمَّا كَانَ يَوْمُ قُرَيْظَةَ جَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ أَنْبَتَ ضُرِبَ عُنُقُهُ، فَكُنْتُ فِيمَنْ لَمْ يُنْبِتْ فَعُرِضْتُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَخَلَّى عَنِّي» .

Ali said: There is no meaning to the position of one who differentiates between the rulings of growth, permitting bloodshed through it specifically for captives—considering it attainment of maturity in that instance while not considering it maturity otherwise. For it is impossible that the Messenger of Allah (peace be upon him) would deem lawful the blood of those who have not reached the stage of manhood, excluding children whom the Prophet (peace be upon him) explicitly prohibited killing. It is absolutely impossible for a single human being to simultaneously be a mature man and neither a man nor mature in one moment.

L2658

قَالَ عَلِيٌّ: لَا مَعْنَى لِمَنْ فَرَّقَ بَيْنَ أَحْكَامِ الْإِنْبَاتِ، فَأَبَاحَ سَفْكَ الدَّمِ بِهِ فِي الْأُسَارَى خَاصَّةً، جَعَلَهُ هُنَالِكَ بُلُوغًا، وَلَمْ يَجْعَلْهُ بُلُوغًا فِي غَيْرِ ذَلِكَ، لِأَنَّ مِنْ الْمُحَالِ أَنْ يَكُونَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَسْتَحِلُّ دَمَ مَنْ لَمْ يَبْلُغْ مَبْلَغَ الرِّجَالِ، وَيَخْرُجُ عَنْ الصِّبْيَانِ الَّذِينَ قَدْ صَحَّ نَهْيُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ قَتْلِهِمْ. وَمِنْ الْمُمْتَنِعِ الْمُحَالِ أَنْ يَكُونَ إنْسَانٌ وَاحِدٌ رَجُلًا بَالِغًا غَيْرَ رَجُلٍ وَلَا بَالِغٍ مَعًا فِي وَقْتٍ وَاحِدٍ.

As for the emission of water during wakefulness resulting in pregnancy—

L2659–2663

through which the male becomes a father and the female a mother—this constitutes definitive puberty without disagreement from any scholar. Regarding the completion of nineteen years, this rests upon indisputable consensus. Its basis lies in the Messenger of Allah—peace and blessings be upon him—entering Medina where children, youths, and elders resided. He imposed legal responsibilities on those who had left childhood and attained manhood, while exempting children. He did not physically examine any man among those around him by asking: "Have you experienced nocturnal emission, O so-and-so? Have you developed pubic hair? Have you ejaculated? Have you menstruated, O so-and-so?" This matter is decisively certain beyond doubt. Thus it is firmly established that there exists an age—when reached by a man or woman—where they become capable of seminal emission, hair growth, or menstruation, unless possessing a defect preventing these signs, like a defect preventing beard growth in a smooth-faced man; without such defect, he would unquestionably belong to bearded men. This reality is recognized through the cessation of childhood we mentioned and the prevailing natural disposition governing all earthly beings. Undoubtedly, whoever completes nineteen years and enters the twentieth year has departed childhood and joined manhood—no two adherents of any religion or inhabitants of any land dispute this—even if he has an impediment preventing seminal emission during sleep or wakefulness, hair growth, or menstruation. Concerning menstruation: Abdullah ibn Rabi‘ narrated to us, Muhammad ibn Ishaq ibn As-Sulaym narrated to us, Abu Sa‘id ibn Al-A‘rabi narrated to us, Muhammad ibn Al-Jarud Al-Qattan narrated to us, Affan ibn Muslim narrated to us, Hammad ibn Zayd narrated to us. Qatadah narrated from Muḥammad ibn Sīrīn from Ṣafiyyah bint al-Ḥārith from ‘Ā’ishah, the Mother of the Believers, that the Messenger of Allāh (peace be upon him) said: "Allāh does not accept the prayer of a menstruating woman except with a head covering." He (peace be upon him) informed that the menstruating woman is bound by the rulings and that her prayer is accepted only in a specific form, not otherwise. Al-Shāfi‘ī said: Whoever completes fifteen years attains puberty. He argued by noting that the Messenger of Allāh (peace be upon him) was presented with Ibn ‘Umar during the Battle of Uḥud when he was fourteen years old and did not approve him, but during the Battle of the Trench, he and Rāfi‘ ibn Khadīj

وَأَمَّا ظُهُورُ الْمَاءِ فِي الْيَقَظَةِ الَّذِي يَكُونُ مِنْهُ الْحَمْلُ فَيَصِيرُ بِهِ الذَّكَرُ أَبًا وَالْأُنْثَى أُمًّا فَبُلُوغٌ لَا خِلَافَ فِيهِ مِنْ أَحَدٍ. وَأَمَّا اسْتِكْمَالُ التِّسْعَةَ عَشَرَ عَامًا فَإِجْمَاعٌ مُتَيَقَّنٌ، وَأَصْلُهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرَدَ الْمَدِينَةَ وَفِيهَا صِبْيَانٌ وَشُبَّانٌ وَكُهُولٌ، فَأَلْزَمَ الْأَحْكَامَ مَنْ خَرَجَ عَنْ الصِّبَا إلَى الرُّجُولَةِ، وَلَمْ يُلْزِمْهَا الصِّبْيَانَ، وَلَمْ يَكْشِفْ أَحَدًا مِنْ كُلِّ مَنْ حَوَالَيْهِ مِنْ الرِّجَالِ: هَلْ احْتَلَمْتَ يَا فُلَانُ؟ وَهَلْ أَشْعَرْتَ؟ وَهَلْ أَنْزَلْتَ؟ وَهَلْ حِضْتِ يَا فُلَانَةُ؟ هَذَا أَمْرٌ مُتَيَقَّنٌ لَا شَكَّ فِيهِ، فَصَحَّ يَقِينًا أَنَّ هَهُنَا سِنًّا إذَا بَلَغَهَا الرَّجُلُ أَوْ الْمَرْأَةُ فَهُمَا مِمَّنْ يُنْزِلُ أَوْ يُنْبِتُ أَوْ يَحِيضُ، إلَّا أَنْ يَكُونَ فِيهِمَا آفَةٌ تَمْنَعُ مِنْ ذَلِكَ، كَمَا بِالْأَطْلَسِ آفَةٌ مَنَعَتْهُ مِنْ اللِّحْيَةِ، لَوْلَاهَا لَكَانَ مِنْ أَهْلِ اللِّحَى بِلَا شَكٍّ، هَذَا أَمْرٌ يُعْرَفُ بِمَا ذَكَرْنَا مِنْ التَّوَقُّفِ وَبِضَرُورَةِ الطَّبِيعَةِ الْجَارِيَةِ فِي جَمِيعِ أَهْلِ الْأَرْضِ، وَلَا شَكَّ فِي أَنَّ مَنْ أَكْمَلَ تِسْعَ عَشْرَةَ سَنَةً وَدَخَلَ فِي عِشْرِينَ سَنَةً فَقَدْ فَارَقَ الصِّبَا وَلَحِقَ بِالرِّجَالِ - لَا يَخْتَلِفُ اثْنَانِ مِنْ أَهْلِ كُلِّ مِلَّةٍ وَبَلْدَةٍ فِي ذَلِكَ - وَإِنْ كَانَتْ بِهِ آفَةٌ مَنَعَتْهُ مِنْ إنْزَالِ الْمَنِيِّ فِي نَوْمٍ أَوْ يَقَظَةٍ، وَمِنْ إنْبَاتِ الشَّعْرِ وَمِنْ الْحَيْضِ. وَأَمَّا الْحَيْضُ فَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السُّلَيْمِ ثنا أَبُو سَعِيدِ بْنُ الْأَعْرَابِيِّ حَدَّثَنَا مُحَمَّدُ بْنُ الْجَارُودِ الْقَطَّانُ ثنا عَفَّانُ بْنُ مُسْلِمٍ ثنا حَمَّادُ بْنُ زَيْدٍ ثنا قَتَادَةُ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ صَفِيَّةَ بِنْتِ الْحَارِثِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَقْبَلُ اللَّهُ صَلَاةَ حَائِضٍ إلَّا بِخِمَارٍ» فَأَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّ الْحَائِضَ تَلْزَمُهَا الْأَحْكَامُ وَأَنَّ صَلَاتَهَا تُقْبَلُ عَلَى صِفَةٍ مَا وَلَا تُقْبَلُ عَلَى غَيْرِهَا. وَقَالَ الشَّافِعِيُّ: مَنْ اسْتَكْمَلَ خَمْسَ عَشْرَةَ سَنَةً فَهُوَ بَالِغٌ، وَاحْتَجَّ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عُرِضَ عَلَيْهِ ابْنُ عُمَرَ يَوْمَ أُحُدٍ وَهُوَ ابْنُ أَرْبَعَ عَشْرَةَ سَنَةً فَلَمْ يُجِزْهُ

were presented when they were fifteen years old, and he approved them. ʻAlī said: This does not... The argument in his favor on this matter is based on two aspects. The first is that the Messenger of Allah—peace and blessings be upon him—did not say, "I permitted them because they were two sons of fifteen years." Since this is so, it is impermissible for anyone to attribute to him—peace and blessings be upon him—what he did not state about himself. It is plausible that he permitted them on the day of the Trench because it was a day of siege within Medina itself, where they could benefit from the boys in throwing stones and similar tasks, whereas he did not permit it on the day of Uhud because it involved combat far from Medina, where none attended except those possessing strength and endurance. The second aspect is that this report contains no explicit text or evidence indicating they both completed fifteen years together at that specific time, as Al-Shāfiʻī stated. There is no disagreement that linguistically, he who lacks a month or two to complete sixteen years is called "a son of fifteen years." Thus, reliance on this report is entirely invalid. And with Allah, the Exalted, is the divine guidance.

وَعُرِضَ عَلَيْهِ يَوْمَ الْخَنْدَقِ هُوَ وَرَافِعُ بْنُ خَدِيجٍ وَهُمَا ابْنَا خَمْسَ عَشْرَةَ سَنَةً فَأَجَازَهُمَا قَالَ عَلِيٌّ: وَهَذَا لَا حُجَّةَ لَهُ فِيهِ لِوَجْهَيْنِ: أَحَدُهُمَا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقُلْ إنِّي أَجَزْتهمَا مِنْ أَجْلِ أَنَّهُمَا ابْنَا خَمْسَ عَشْرَةَ سَنَةً، فَإِذْ ذَلِكَ كَذَلِكَ فَلَا يَجُوزُ لِأَحَدٍ أَنْ يُضِيفَ إلَيْهِ - عَلَيْهِ السَّلَامُ - مَا لَمْ يُخْبِرْ بِهِ عَنْ نَفْسِهِ، وَقَدْ يُمْكِنُ أَنْ يُجِيزَهُمَا يَوْمَ الْخَنْدَقِ، لِأَنَّهُ كَانَ يَوْمَ حِصَارٍ فِي الْمَدِينَةِ نَفْسِهَا، يَنْتَفِعُ فِيهِ بِالصِّبْيَانِ فِي رَمْيِ الْحِجَارَةِ وَغَيْرِ ذَلِكَ، وَلَمْ يُجِزْهُ يَوْمَ أُحُدٍ لِأَنَّهُ كَانَ يَوْمَ قِتَالٍ بَعُدُوا فِيهِ عَنْ الْمَدِينَةِ فَلَا يَحْضُرُهُ إلَّا أَهْلُ الْقُوَّةِ وَالْجَلَدِ. وَالْوَجْهُ الثَّانِي أَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ أَنَّهُمَا فِي تِلْكَ السَّاعَةِ أَكْمَلَا مَعًا خَمْسَةَ عَشَرَ عَامًا لَا بِنَصٍّ وَلَا بِدَلِيلٍ كَمَا قَالَ الشَّافِعِيُّ، وَلَا خِلَافَ فِي أَنَّهُ يُقَالُ فِي اللُّغَةِ لِمَنْ بَقِيَ عَلَيْهِ مِنْ سِتَّةَ عَشَرَ عَامًا الشَّهْرُ وَالشَّهْرَانِ: هَذَا ابْنُ خَمْسَةَ عَشَرَ عَامًا، فَبَطَلَ التَّعَلُّقُ بِهَذَا الْخَبَرِ جُمْلَةً. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The removal of impurity and everything Allah, the Exalted, has commanded to remove are obligations.

[مَسْأَلَة إزَالَة النَّجَاسَة وكل مَا أَمَرَ الله تَعَالَى بإزالته فرض]

L2664

120 - Issue: The removal of ritual impurities and everything Allah the Exalted has commanded to be removed is obligatory. This issue divides into numerous categories, summarized by the principle that anything Allah the Exalted has commanded through His Messenger (peace and blessings of Allah be upon him) to avoid, or for which a textual prohibition exists, or which He has similarly commanded to wash or wipe—all such matters are obligatory. Whoever contravenes them is guilty of disobedience, due to what we previously mentioned: that obedience to Him, the Exalted, and obedience to His Messenger (peace and blessings of Allah be upon him) is obligatory. And success is granted by Allah, the Exalted.

١٢٠ - مَسْأَلَةٌ: وَإِزَالَةُ النَّجَاسَةِ وَكُلِّ مَا أَمَرَ اللَّهُ تَعَالَى بِإِزَالَتِهِ فَهُوَ فَرْضٌ. هَذِهِ الْمَسْأَلَةُ تَنْقَسِمُ أَقْسَامًا كَثِيرَةً، يَجْمَعُهَا أَنَّ كُلَّ شَيْءٍ أَمَرَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِاجْتِنَابِهِ أَوْ جَاءَ نَصٌّ بِتَحْرِيمِهِ، أَوْ أَمَرَ كَذَلِكَ بِغَسْلِهِ أَوْ مَسْحِهِ، فَكُلُّ ذَلِكَ فَرْضٌ يَعْصِي مَنْ خَالَفَهُ، لِمَا ذَكَرْنَا قَبْلُ مِنْ أَنَّ طَاعَتَهُ تَعَالَى وَطَاعَةَ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرْضٌ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Question on the method of purifying an impurity present in the khuff (leather sock) or sandal.

[مَسْأَلَة كَيْفِيَّة تَطْهِير النَّجَاسَة الَّتِي فِي الْخُفّ أَوْ النَّعْل]

L2666

L2667–2669

121 - Issue: If there is blood, wine, impurities, urine, or any other filth on khuffs or shoes, their purification is achieved by wiping them with soil until the trace is removed, then one may pray in them. If one washes them, it suffices as long as he first applies soil to them. The evidence for this is that all the mentioned substances—blood, wine, impurities, and urine—are forbidden, and avoiding the forbidden is obligatory, with no disagreement on this. Narrated by Hammam from Abbas ibn Asbagh from Muhammad ibn Abd al-Malik ibn Ayman from Muhammad ibn Ismail al-Sa'igh from Sulayman ibn Harb al-Wāshiḥī from Hammad ibn Salama from Abu Na'ama from Abu Nadhra from Abu Sa'id al-Khudri, who said: "The Prophet—peace and blessings be upon him—prayed with his companions and removed his shoes, placing them to his left. The people then removed their shoes. When he concluded the prayer, he asked: 'Why did you remove your shoes?' They replied: 'We saw you remove yours, so we did the same.' He said: 'Gabriel came to me and informed me there was impurity in them.'" He—peace be upon him—said: "When one of you comes to pray, let him examine his shoes. If there is impurity in them or..." If there is harm, let him wipe it and pray in them both. Abu Na'amah is 'Abd Rabbihi al-Sa'di, and Abu Nadrah is al-Mundhir ibn Malik al-'Abdi. Both of them are trustworthy.

١٢١ - مَسْأَلَةٌ: فَمَا كَانَ فِي الْخُفِّ أَوْ النَّعْلِ مِنْ دَمٍ أَوْ خَمْرٍ أَوْ عَذِرَةٍ أَوْ بَوْلٍ أَوْ غَيْرِ ذَلِكَ، فَتَطْهِيرُهُمَا بِأَنْ يُمْسَحَا بِالتُّرَابِ حَتَّى يَزُولَ الْأَثَرُ ثُمَّ يُصَلَّى فِيهِمَا، فَإِنْ غَسَلَهُمَا أَجْزَأَهُ إذَا مَسَّهُمَا بِالتُّرَابِ قَبْلَ ذَلِكَ. بُرْهَانُ ذَلِكَ أَنَّ كُلَّ مَا ذَكَرْنَا مِنْ الدَّمِ وَالْخَمْرِ وَالْعَذِرَةِ وَالْبَوْلِ حَرَامٌ، وَالْحَرَامُ فَرْضٌ اجْتِنَابُهُ لَا خِلَافَ فِي ذَلِكَ. حَدَّثَنَا حَمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا مُحَمَّدُ بْنُ إِسْمَاعِيلَ الصَّائِغُ ثنا سُلَيْمَانُ بْنُ حَرْبٍ الْوَاشِحِيُّ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَبِي نَعَامَةَ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي بِأَصْحَابِهِ فَخَلَعَ نَعْلَيْهِ فَوَضَعَهُمَا عَنْ يَسَارِهِ، فَخَلَعَ الْقَوْمُ نِعَالَهُمْ، فَلَمَّا سَلَّمَ قَالَ: لِمَ خَلَعْتُمْ نِعَالَكُمْ؟ قَالُوا: رَأَيْنَاكَ خَلَعْتَ فَخَلَعْنَا، فَقَالَ: إنَّ جِبْرِيلَ أَتَانِي فَأَخْبَرَنِي أَنَّ فِيهِمَا قَذَرًا» قَالَ - عَلَيْهِ السَّلَامُ -: «إذَا جَاءَ أَحَدُكُمْ إلَى الصَّلَاةِ فَلْيَنْظُرْ إلَى نَعْلَيْهِ، فَإِنْ كَانَ فِيهِمَا قَذَرٌ أَوْ أَذًى فَلْيَمْسَحْهُ وَلْيُصَلِّ فِيهِمَا» أَبُو نَعَامَةَ هُوَ عَبْدُ رَبِّهِ السَّعْدِيُّ، وَأَبُو نَضْرَةَ هُوَ الْمُنْذِرُ بْنُ مَالِكٍ الْعَبْدِيُّ، كِلَاهُمَا ثِقَةٌ.

L2670–2672

Abdullah ibn al-Rabi narrated to us: Muhammad ibn Ishaq ibn al-Sulaym narrated to us: Ibn al-A'rabi narrated to us: Abu Dawud narrated to us: Ahmad ibn Ibrahim narrated to us: Muhammad ibn Kathir narrated to me from al-Awza'i from Muhammad ibn Ajlan from Sa'id ibn Abi Sa'id al-Maqburi from his father from Abu Hurayrah from the Prophet - peace and blessings of Allah be upon him - who said: "Whoever treads upon impurity with his khuffs, their purification is soil."

Ali said: It was transmitted to us from Urwah ibn al-Zubayr regarding one whose sandals contact dung - he said: "He should wipe them and pray in them." From al-Hasan al-Basri: he would wipe his sandals vigorously and pray in them. This is the view of al-Awza'i, Abu Thawr, Abu Sulayman, and our companions.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ الرَّبِيعِ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا أَحْمَدُ بْنُ إِبْرَاهِيمَ حَدَّثَنِي مُحَمَّدُ بْنُ كَثِيرٍ عَنْ الْأَوْزَاعِيِّ عَنْ مُحَمَّدِ بْنِ عَجْلَانَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «فَمَنْ وَطِئَ الْأَذَى بِخُفَّيْهِ فَطَهُورُهُمَا التُّرَابُ» قَالَ عَلِيٌّ: وَرُوِّينَا عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ فِيمَنْ أَصَابَ نَعْلَيْهِ الرَّوْثُ، قَالَ يَمْسَحُهُمَا وَلْيُصَلِّ فِيهِمَا وَعَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ كَانَ يَمْسَحُ نَعْلَيْهِ مَسْحًا شَدِيدًا وَيُصَلِّي فِيهِمَا وَهُوَ قَوْلُ الْأَوْزَاعِيِّ وَأَبِي ثَوْرٍ وَأَبِي

سُلَيْمَانَ وَأَصْحَابِنَا. قَالَ عَلِيٌّ: الْغَسْلُ بِالْمَاءِ وَغَيْرِهِ يَقَعُ عَلَيْهِ اسْمُ مَسْحٍ، تَقُولُ: مَسَحْتُ الشَّيْءَ بِالْمَاءِ وَبِالدُّهْنِ، فَكُلُّ غُسْلٍ مَسْحٌ وَلَيْسَ كُلُّ مَسْحٍ غُسْلًا، وَلَكِنَّ الْخَبَرَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد ثنا أَحْمَدُ بْنُ إبْرَاهِيمَ ثنا مُحَمَّدُ بْنُ كَثِيرٍ عَنْ الْأَوْزَاعِيِّ عَنْ ابْنِ عَجْلَانَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا وَطِئَ أَحَدُكُمْ الْأَذَى بِخُفِّهِ أَوْ نَعْلِهِ فَلْيُمِسَّهُمَا التُّرَابَ» وَهَذَا زَائِدٌ عَلَى حَدِيثِ أَبِي سَعِيدٍ الْخُدْرِيِّ فِي الْمَسْحِ بَيَانًا وَحُكْمًا، فَوَاجِبٌ أَنْ يُضَافَ الزَّائِدُ إلَى الْأَنْقَصِ حُكْمًا، فَيَكُونُ ذَلِكَ اسْتِعْمَالًا لِجَمِيعِ الْآثَارِ؛ لِأَنَّ مَنْ اسْتَعْمَلَ حَدِيثَ أَبِي هُرَيْرَةَ لَمْ يُخَالِفْ خَبَرَ أَبِي سَعِيدٍ، وَمَنْ اسْتَعْمَلَ خَبَرَ أَبِي سَعِيدٍ خَالَفَ خَبَرَ أَبِي هُرَيْرَةَ. وَقَالَ مَالِكٌ وَالشَّافِعِيُّ: لَا تُجْزِئُ إزَالَةُ النَّجَاسَةِ حَيْثُ كَانَتْ إلَّا بِالْمَاءِ حَاشَا الْعَذِرَةِ فِي الْمَقْعَدَةِ خَاصَّةً، وَالْبَوْلِ فِي الْإِحْلِيلِ خَاصَّةً فَيُزَالَانِ بِغَيْرِ الْمَاءِ. وَهَذَا مَكَانٌ تَرَكُوا فِي أَكْثَرِهِ النُّصُوصَ، كَمَا ذَكَرْنَا فِي هَذَا الْبَابِ وَغَيْرِهِ، وَلَمْ يَقِيسُوا سَائِرَ النَّجَاسَاتِ عَلَى النَّجَاسَةِ فِي الْمَقْعَدَةِ وَالْإِحْلِيلِ وَهُمَا أَصْلُ النَّجَاسَاتِ. قَالَ عَلِيٌّ: وَهَذَا خِلَافٌ لِهَذِهِ النُّصُوصِ الْمَذْكُورَةِ وَلِلْقِيَاسِ.

Ali said: Washing with water or other substances falls under the term 'wiping'. You say: "I wiped a thing with water or oil." Thus every washing is a wiping, but not every wiping is a washing. However, the report we transmitted through Abu Dawud: Ahmad ibn Ibrahim narrated to us: Muhammad ibn Kathir narrated to us from al-Awza'i from Ibn Ajlan from Sa'id ibn Abi Sa'id al-Maqburi from his father from Abu Hurayrah from the Prophet - peace and blessings of Allah be upon him - "If any of you treads upon impurity with his khuff or sandal, let him rub them with soil." This constitutes an addition to the hadith of Abu Sa'id al-Khudri. In the act of wiping, there is explanation and legal ruling. It is obligatory to append the additional ruling to the deficient one, thereby applying all narrations, for whoever applies the ḥadīth of Abū Hurayrah does not contradict the report of Abū Sa'īd, whereas whoever applies the report of Abū Sa'īd contradicts the report of Abū Hurayrah. Mālik and al-Shāfi'ī said: "The removal of impurity – wherever it is located – does not suffice except with water, except for fecal residue on the anus specifically and urine on the urethra specifically, which may be removed without water." This is a case in which they largely abandoned the textual rulings, as we have mentioned in this chapter and others, and they did not analogize other impurities to the impurity of the anus and urethra, even though these two are the origin of impurities. 'Alī said: "This contradicts these mentioned textual rulings and the principles of analogy."

وَقَالَ أَبُو حَنِيفَةَ: إذَا أَصَابَ الْخُفَّ أَوْ النَّعْلَ رَوْثُ فَرَسٍ أَوْ حِمَارٍ أَوْ أَيُّ رَوْثٍ كَانَ، فَإِنْ كَانَ أَكْثَرَ مِنْ قَدْرِ الدِّرْهَمِ الْبَغْلِيِّ لَمْ يَجُزْ أَنْ يُصَلَّى بِهِ، وَكَذَلِكَ إنْ أَصَابَهُمَا عَذِرَةُ إنْسَانٍ أَوْ دَمٌ أَوْ مَنِيٌّ، فَإِنْ كَانَ قَدْرَ الدِّرْهَمِ الْبَغْلِيِّ فَأَقَلَّ أَجْزَأَتْ الصَّلَاةُ بِهِ، فَإِنْ كَانَ كُلُّ مَا ذَكَرْنَا يَابِسًا أَجْزَأَهُ أَنْ يَحُكَّهُ فَقَطْ ثُمَّ يُصَلِّيَ بِهِ، وَإِنْ كَانَ شَيْءٌ مِنْ ذَلِكَ رَطْبًا لَمْ تُجْزِهِ الصَّلَاةُ بِهِ إلَّا أَنْ يَغْسِلَهُ بِالْمَاءِ، فَإِنْ أَصَابَ الْخُفَّ بَوْلُ إنْسَانٍ أَوْ حِمَارٍ

L2673–2675 Abu Hanifah said: If a leather sock or shoe is soiled with horse dung, donkey dung, or any dung, and the amount exceeds the measure of a Baghdadi dirham, it is not permissible to pray while wearing them. Similarly, if they are soiled with human excrement, blood, or semen - then if the amount is equal to or less than the measure of a Baghdadi dirham, the prayer is valid. If all that we have mentioned is dry, it suffices him to merely scrub it and then pray with it. If any of that is moist, prayer is not valid with it unless he washes it with water. If the leather sock is soiled with the urine of a human, a donkey, or an animal whose meat is not eaten, and if it exceeds the amount of a Baghlī dirham, prayer is not valid with it, and wiping is not

permissible at all; washing with water is necessary whether it is dry or moist. If it is the amount of a Baghlī dirham or less, it is permissible to pray with it without washing or wiping. He said: As for the urine of a horse, prayer with it is permissible as long as it is not excessively abundant. Similarly, the urine of animals whose meat is eaten is treated the same way, and no specific limit is set for what constitutes excessive abundance in that. If there is excrement from birds whose meat is not eaten, or from those whose meat is eaten among them, and it exceeds the amount of a dirham, prayer with it is permissible as long as it is not excessively abundant. If all of that is on the body, it is not permissible to remove it except with water. As for what is on the garment, removing it with water or all other liquids suffices. These are rulings for which praise is due to Allah, the Exalted, for soundness upon their transmission. And success is from Allah, the Exalted.

أَوْ مَا لَا يُؤْكَلُ لَحْمُهُ، فَإِنْ كَانَ أَكْثَرَ مِنْ قَدْرِ الدِّرْهَمِ الْبَغْلِيِّ لَمْ تُجْزِهِ الصَّلَاةُ بِهِ وَلَمْ يُجْزِهِ فِيهِ مَسْحٌ أَصْلًا، وَلَا بُدَّ مِنْ الْغَسْلِ بِالْمَاءِ كَانَ يَابِسًا أَوْ رَطْبًا، فَإِنْ كَانَ قَدْرَ الدِّرْهَمِ الْبَغْلِيِّ فَأَقَلَّ جَازَ أَنْ يُصَلِّيَ بِهِ وَإِنْ لَمْ يَغْسِلْهُ وَلَا مَسَحَهُ. قَالَ: وَأَمَّا بَوْلُ الْفَرَسِ فَالصَّلَاةُ بِهِ جَائِزَةٌ مَا لَمْ يَكُنْ كَثِيرًا فَاحِشًا. وَكَذَلِكَ بَوْلُ مَا يُؤْكَلُ لَحْمُهُ، وَلَمْ يَحُدَّ فِي الْكَثِيرِ الْفَاحِشِ مِنْ ذَلِكَ حَدًّا، فَإِنْ كَانَ فِيهِمَا خُرْءُ مَا لَا يُؤْكَلُ لَحْمُهُ مِنْ الطَّيْرِ، أَوْ مَا يُؤْكَلُ لَحْمُهُ مِنْهَا وَكَانَ أَكْثَرَ مِنْ قَدْرِ الدِّرْهَمِ، فَالصَّلَاةُ بِهِ جَائِزَةٌ مَا لَمْ يَكُنْ كَثِيرًا فَاحِشًا، فَإِنْ كَانَ كُلُّ ذَلِكَ فِي الْجَسَدِ لَمْ تَجُزْ إزَالَتُهُ إلَّا بِالْمَاءِ، وَأَمَّا مَا كَانَ مِنْ ذَلِكَ فِي الثَّوْبِ فَتُجْزِئُ إزَالَتُهُ بِالْمَاءِ وَغَيْرِهِ مِنْ الْمَائِعَاتِ كُلِّهَا وَهَذِهِ أَقْوَالٌ يَنْبَغِي حَمْدُ اللَّهِ تَعَالَى عَلَى السَّلَامَةِ عِنْدَ سَمَاعِهَا. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L2676 What is even more astonishing is that they did not base themselves on the texts pertaining to this matter at all, nor did they analogize anything from the textual rulings concerning it. They neither compared impurity on the body—being fecal matter at the exit point or urine in the urethra—to impurity on the body, nor did they analogize impurity on garments to impurity on the body. They did not ground their statements in this matter on any opinion from the predecessors of this community. They are to be asked before everything else: Where did they find the intensification regarding some impurities and the leniency toward others? Is this in the Quran, the Sunnah, or analogical reasoning? Except that they contradicted what has been established regarding the intensification prescribed for removing impurities—such as the vessel licked by a dog, and fecal matter specifically in what is used for istinjāʾ.

وَأَعْجَبُ مِنْ ذَلِكَ أَنَّهُمْ لَمْ يَتَعَلَّقُوا بِالنُّصُوصِ الْوَارِدَةِ فِي ذَلِكَ أَلْبَتَّةَ، وَلَا قَاسُوا عَلَى شَيْءٍ مِنْ النُّصُوصِ فِي ذَلِكَ، وَلَا قَاسُوا النَّجَاسَةَ فِي الْجَسَدِ عَلَى النَّجَاسَةِ فِي الْجَسَدِ وَهِيَ الْعَذِرَةُ فِي الْمَخْرَجِ وَالْبَوْلُ فِي الْإِحْلِيلِ، وَلَا قَاسُوا النَّجَاسَةَ فِي الثِّيَابِ عَلَى الْجَسَدِ وَلَا تَعَلَّقُوا فِي أَقْوَالِهِمْ فِي ذَلِكَ بِقَوْلِ أَحَدٍ مِنْ الْأُمَّةِ قَبْلَهُمْ وَيُسْأَلُونَ قَبْلَ كُلِّ شَيْءٍ أَيْنَ وَجَدُوا تَغْلِيظَ بَعْضِ النَّجَاسَاتِ وَتَخْفِيفَ بَعْضِهَا؟ أَفِي قُرْآنٍ أَوْ سُنَّةٍ أَوْ قِيَاسٍ؟ اللَّهُمَّ إلَّا إنَّ الَّذِي قَدْ جَاءَ فِي إزَالَتِهِ التَّغْلِيظُ قَدْ خَالَفُوهُ، كَالْإِنَاءِ يَلَغُ فِيهِ الْكَلْبُ، وَكَالْعَذِرَةِ فِيمَا يُسْتَنْجَى فِيهِ فَقَطْ. .

The ruling on cleansing the genital and anal area from urine, stool, and blood.

[مَسْأَلَة تَطْهِير القبل والدبر مِنْ الْبَوْل والغائط وَالدَّم]

L2677

L2678 122. Issue: Purification of the front and back private parts from urine, feces, and blood - for both men and women - is valid only with water until all traces are removed, or with three distinct stones. If purification is not achieved,

one must use an odd number indefinitely, continuing to add odd numbers (three, five, seven, etc.) until purification is attained. None of the stones may bear any trace of feces. Purification may also be performed with earth or sand without a fixed count, provided it removes all traces while strictly using an odd number. It is invalid for anyone to cleanse with the right hand or while facing the Qiblah. If one begins with the urine exit, those very stones suffice for the feces exit. But if one begins with the feces exit, those stones are invalid for the urine exit unless they have no fecal residue at all.

١٢٢ - مَسْأَلَةٌ: وَتَطْهِيرُ الْقُبُلِ وَالدُّبُرِ مِنْ الْبَوْلِ وَالْغَائِطِ وَالدَّمِ مِنْ الرَّجُلِ وَالْمَرْأَةِ لَا يَكُونُ إِلَّا بِالْمَاءِ حَتَّى يَزُولَ الْأَثَرُ أَوْ بِثَلَاثَةِ أَحْجَارٍ مُتَغَايِرَةٍ - فَإِنْ لَمْ يُنَقَّ فَعَلَى الْوِتْرِ أَبَدًا يَزِيدُ كَذَلِكَ حَتَّى يُنَقَّى، لَا أَقَلَّ مِنْ ذَلِكَ، وَلَا يَكُونُ فِي شَيْءٍ مِنْهَا غَائِطٌ - أَوْ بِالتُّرَابِ أَوْ الرَّمْلِ بِلَا عَدَدٍ، وَلَكِنْ مَا أَزَالَ الْأَثَرَ فَقَطْ عَلَى الْوِتْرِ وَلَا بُدَّ وَلَا يُجْزِئُ أَحَدًا أَنْ يَسْتَنْجِيَ بِيَمِينِهِ وَلَا وَهُوَ مُسْتَقْبِلُ الْقِبْلَةَ، فَإِنْ بَدَأَ بِمَخْرَجِ الْبَوْلِ أَجْزَأَتْ تِلْكَ الْأَحْجَارُ بِأَعْيَانِهَا لِمَخْرَجِ الْغَائِطِ، وَإِنْ بَدَأَ بِمَخْرَجِ الْغَائِطِ لَمْ يُجْزِهِ مِنْ تِلْكَ الْأَحْجَارِ لِمَخْرَجِ الْبَوْلِ إِلَّا مَا كَانَ لَا رَجِيعَ عَلَيْهِ فَقَطْ.

L2679–2683 Abdullah ibn Yusuf narrated to us; Ahmad ibn Fath narrated to us; Abd al-Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us. Aḥmad ibn ʿAlī narrated to us: Muslim ibn al-Ḥajjāj narrated to us: Muḥammad ibn al-Muthannā narrated to us: ʿAbd al-Raḥmān ibn Mahdī narrated to us: Sufyān al-Thawrī narrated from al-Aʿmash and Manṣūr ibn al-Muʿtamir – both of whom narrated from Ibrāhīm al-Nakhaʿī from ʿAbd al-Raḥmān ibn Yazīd from Salmān al-Fārisī, who said: "The polytheists said to us: 'I see your companion teaches you everything, even excretion.' Salmān replied: 'Yes, he forbade us to cleanse ourselves with our right hand or face the Qiblah, forbade us from using dung or bones, and said: "Let none of you perform istinjā without three stones."'"

Muḥammad ibn Saʿīd ibn Nabāt narrated to us: ʿAbdullāh ibn Naṣr narrated to us: Qāsim ibn Aṣbagh narrated to us: Muḥammad ibn Waḍḍāḥ narrated to us: Mūsā ibn Muʿāwiyah narrated to us: Wakīʿ ibn al-Jarrāḥ narrated from al-Aʿmash from Ibrāhīm al-Nakhaʿī from ʿAbd al-Raḥmān ibn Yazīd from Salmān al-Fārisī: "A polytheist said to him: 'I see your companion teaches you even excretion.' He replied: 'Yes, we were commanded not to face the Qiblah, not to cleanse ourselves with our right hands, and not to suffice with fewer than three stones – neither dung nor bones.'"

ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: Isḥāq ibn Ibrāhīm – that is, Ibn Rāh-

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ الْأَعْمَشِ وَمَنْصُورِ بْنِ الْمُعْتَمِرِ، كِلَاهُمَا عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ عَنْ سَلْمَانَ الْفَارِسِيِّ قَالَ «قَالَ لَنَا الْمُشْرِكُونَ: إِنِّي أَرَى صَاحِبَكُمْ يُعَلِّمُكُمْ كُلَّ شَيْءٍ حَتَّى يُعَلِّمَكُمْ الْخِرَاءَةَ، فَقَالَ سَلْمَانُ: أَجَلْ، إِنَّهُ نَهَانَا أَنْ يَسْتَنْجِيَ أَحَدُنَا بِيَمِينِهِ أَوْ يَسْتَقْبِلَ الْقِبْلَةَ، وَنَهَانَا عَنْ الرَّوْثِ وَالْعِظَامِ، وَقَالَ: لَا يَسْتَنْجِي أَحَدُكُمْ بِدُونِ ثَلَاثَةِ أَحْجَارٍ» حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ وَضَّاحٍ ثنا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعُ بْنُ الْجَرَّاحِ عَنْ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ عَنْ سَلْمَانَ الْفَارِسِيِّ «أَنَّ بَعْضَ الْمُشْرِكِينَ قَالَ لَهُ: إِنِّي لَأَرَى صَاحِبَكُمْ يُعَلِّمُكُمْ حَتَّى الْخِرَاءَةَ قَالَ: أَجَلْ، أُمِرْنَا أَنْ لَا نَسْتَقْبِلَ الْقِبْلَةَ وَلَا نَسْتَنْجِيَ بِأَيْمَانِنَا، وَلَا نَكْتَفِي بِدُونِ ثَلَاثَةِ أَحْجَارٍ لَيْسَ فِيهِنَّ رَجِيعٌ وَلَا عَظْمٌ» حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ

awayh – narrated to us: Abū Muʿāwiyah narrated to us: al-Aʿmash narrated from Ibrāhīm from ʿAbd al-Raḥmān ibn Yazīd from Salmān al-Fārisī, who said: "The Messenger of Allāh – peace and blessings of Allāh be upon him – forbade us from facing the Qiblah during defecation or urination, from cleansing ourselves with our right hands, or from using fewer than three stones."

Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Aḥmad ibn Saʿīd narrated to us: ʿUbaydullāh ibn Yaḥyā ibn Yaḥyā narrated to us: My father narrated to us: Mālik narrated from Ibn Shihāb from Abū Idrīs al-Khawlānī from Abū Hurayrah that the Messenger of Allāh – peace and blessings of Allāh be upon him – said: "When using stones for istinjā, use an odd number." Abd al-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: al-Farbari narrated to us: al-Bukhari narrated to us: Muhammad ibn Bashshar narrated to us: Muhammad ibn Ja'far narrated to us: Shu'bah narrated from 'Ata' ibn Abi Maymunah, who heard Anas ibn Malik say: "Allah's Messenger — peace and blessings be upon him — would enter the lavatory, so I and a servant boy would carry a water vessel and a staff for him to perform istinjā' (ritual cleansing)." Ahmad ibn Fath narrated to us: 'Abd al-Wahhab ibn 'Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn 'Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Qutaybah ibn Sa'id narrated to us: Isma'il — meaning Ibn Ja'far — narrated from al-'Ala' ibn 'Abd al-Rahman, from his father, from Abu Hurayrah that Allah's Messenger — peace and blessings be upon him — said: "The earth has been made for me a purifying agent and a place of prostration." We also narrated it through Jabir's chain as a connected report.

Abu Hanifah and Malik said: "Whatever one uses for istinjā' without a specified number [of items], if it achieves thorough purification, suffices him." This contradicts what Allah's Messenger — peace and blessings be upon him — commanded, for he prohibited anyone from relying on fewer than three stones and instructed to use an odd number in istijmār (dry cleansing). We find no basis for their position except their citation of a report stating that 'Umar — may Allah be pleased with him — used a bone or stone for istinjā', then performed ablution and prayed. This cannot serve as evidence due to its

ابْنُ رَاهْوَيْهِ - ثنا أَبُو مُعَاوِيَةَ ثنا الْأَعْمَشُ عَنْ إِبْرَاهِيمَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ عَنْ سَلْمَانَ الْفَارِسِيِّ قَالَ «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَانَا أَنْ نَسْتَقْبِلَ الْقِبْلَةَ لِغَائِطٍ أَوْ بَوْلٍ أَوْ نَسْتَنْجِيَ بِأَيْمَانِنَا أَوْ نَكْتَفِيَ بِأَقَلَّ مِنْ ثَلَاثَةِ أَحْجَارٍ» حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا أَحْمَدُ بْنُ سَعِيدٍ ثنا عُبَيْدُ اللَّهِ بْنُ يَحْيَى بْنِ يَحْيَى ثنا أَبِي ثنا مَالِكٌ عَنِ ابْنِ شِهَابٍ عَنْ أَبِي إِدْرِيسَ الْخَوْلَانِيِّ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «وَإِذَا اسْتَجْمَرْتَ فَأَوْتِرْ» حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا مُحَمَّدُ بْنُ جَعْفَرٍ ثنا شُعْبَةُ عَنْ عَطَاءِ بْنِ أَبِي مَيْمُونَةَ سَمِعَ أَنَسَ بْنَ مَالِكٍ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَدْخُلُ الْخَلَاءَ فَأَحْمِلُ أَنَا وَغُلَامٌ إِدَاوَةً مِنْ مَاءٍ وَعَنَزَةً يَسْتَنْجِي» ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا قُتَيْبَةُ بْنُ سَعِيدٍ ثنا إِسْمَاعِيلُ - هُوَ ابْنُ جَعْفَرٍ - عَنِ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «وَجُعِلَتْ لِي الْأَرْضُ طَهُورًا وَمَسْجِدًا» وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ جَابِرٍ مُسْنَدًا. وَقَالَ أَبُو حَنِيفَةَ وَمَالِكٌ: بِأَيِّ شَيْءٍ اسْتَنْجَى دُونَ عَدَدٍ فَأَنْقَى أَجْزَأَهُ، وَهَذَا خِلَافُ مَا أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّهُ نَهَى أَنْ يَكْتَفِيَ أَحَدٌ بِدُونِ ثَلَاثَةِ أَحْجَارٍ وَأَمَرَ بِالْوِتْرِ فِي الِاسْتِجْمَارِ وَمَا نَعْلَمُ لَهُمْ مُتَعَلَّقًا إِلَّا أَنَّهُمْ ذَكَرُوا أَثَرًا فِيهِ: أَنَّ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - كَانَ لَهُ عَظْمٌ أَوْ حَجَرٌ يَسْتَنْجِي بِهِ ثُمَّ يَتَوَضَّأُ وَيُصَلِّي، وَهَذَا لَا حُجَّةَ فِيهِ؛ لِأَنَّهُ شَكٌّ. إِمَّا حَجَرٌ وَإِمَّا عَظْمٌ، وَقَدْ خَالَفُوا عُمَرَ فِي الْمَسْحِ عَلَى الْعِمَامَةِ وَغَيْرِ ذَلِكَ، وَلَوْ صَحَّ لَكَانَ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا سِيَّمَا وَقَدْ خَالَفَهُ سَلْمَانُ وَغَيْرُهُ مِنَ الصَّحَابَةِ -

uncertainty — whether it was a stone or bone — particularly as they opposed ‘Umar’s practice regarding wiping over turbans and other matters. Even if authentic, no one’s practice holds authority over Allah’s Messenger — peace and blessings be upon him — especially when Salman and other Companions — may Allah be pleased with them — opposed it, affirming that the ruling of istinjā’ is what the Prophet taught them: not to suffice with fewer than three stones.

Should someone argue: “His command — peace be upon him — for three stones applies to combined defecation and urination, thus each individually would require fewer than three,” we respond: This is invalid, for the textual ruling explicitly prohibits istinjā’ with fewer than three stones. Moreover, merely wiping urine is not termed istinjā’. Thus, the text establishes that fewer than three stones do not suffice for istinjā’ after defecation, while generally prohibiting fewer than three for urine itself. Hence our position stands confirmed.

Wiping urine with the right hand is permissible, as is facing the qiblah during urination, for the prohibition applies solely to istinjā’ (ritual cleansing after defecation), not urination itself.[13]

L2684–2685 Al-Shafi‘i said: Three wipes with a single stone. He permitted ritual cleansing after defecation with anything except bones, animal droppings, soot, reeds, and untanned skins. This also contradicts the command of the Messenger of Allah—peace and blessings be upon him—not to suffice with fewer than three stones. If they say: “We analogize to stones,” we say to them: “Then apply the same analogy to dust in dry ablution (tayammum), for there is no difference.” If they cite a hadith narrated by Ibn Akhi al-Zuhri (the nephew of al-Zuhri) with a chain that the Messenger of Allah—peace and blessings be upon him—said: “When one of you defecates, let him wipe three times,” it is said: Ibn Akhi al-Zuhri is weak, and the one who narrated it from him, Muhammad ibn Yahya al-Kinani, is unknown. Even if it were authentic, it would not constitute evidence, for it does not specify that those wipes are with a single stone. This addition is impermissible. As

[13] **Hadith references (L2679):** Mishkat al-Masabih 342.

رَضِيَ اللَّهُ عَنْهُمْ -، فَأَخْبَرُوا أَنَّ حُكْمَ الِاسْتِنْجَاءِ هُوَ مَا عَلَّمَهُمْ إيَّاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَلَّا يُكْتَفَى بِدُونِ ثَلَاثَةِ أَحْجَارٍ " فَإِنْ قِيلَ: أَمْرُهُ - عَلَيْهِ السَّلَامُ - بِثَلَاثَةِ أَحْجَارٍ هُوَ لِلْغَائِطِ وَالْبَوْلِ مَعًا، فَوَقَعَ لِكُلِّ وَاحِدٍ مِنْهُمَا أَقَلُّ مِنْ ثَلَاثَةِ أَحْجَارٍ. قُلْنَا: هَذَا بَاطِلٌ لِأَنَّ النَّصَّ قَدْ وَرَدَ بِأَنْ لَا نَسْتَنْجِيَ بِأَقَلَّ مِنْ ثَلَاثَةِ أَحْجَارٍ، وَمَسْحُ الْبَوْلِ لَا يُسَمَّى اسْتِنْجَاءً، فَحَصَلَ النَّصُّ فِي الِاسْتِنْجَاءِ وَالْخِرَاءَةِ أَنْ لَا يُجْزِئَ أَقَلُّ مِنْ ثَلَاثَةِ أَحْجَارٍ، وَحَصَلَ النَّصُّ مُجْمَلًا فِي أَنْ لَا يُجْزِئَ أَقَلُّ مِنْ ثَلَاثَةِ أَحْجَارٍ عَلَى الْبَوْلِ نَفْسِهِ وَعَلَى النَّجْوِ فَصَحَّ مَا قُلْنَاهُ. وَمَسْحُ الْبَوْلِ بِالْيَمِينِ جَائِزٌ، وَكَذَلِكَ مُسْتَقْبِلُ الْقِبْلَةِ؛ لِأَنَّهُ لَمْ يَنْهَ عَنْ ذَلِكَ فِي الْبَوْلِ وَإِنَّمَا نَهَى فِي الِاسْتِنْجَاءِ فَقَطْ.

وَقَالَ الشَّافِعِيُّ: ثَلَاثُ مَسَحَاتٍ بِحَجَرٍ وَاحِدٍ، وَأَجَازَ الِاسْتِنْجَاءَ بِكُلِّ شَيْءٍ حَاشَا الْعَظْمِ وَالرَّوْثِ وَالْحُمَمَةِ وَالْقَصَبِ وَالْجُلُودِ الَّتِي لَمْ تُدْبَغْ، وَهَذَا أَيْضًا خِلَافٌ لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَلَّا يُكْتَفَى بِأَقَلَّ مِنْ ثَلَاثَةِ أَحْجَارٍ. فَإِنْ قَالُوا: قِسْنَا عَلَى الْأَحْجَارِ، قُلْنَا لَهُمْ: فَقِيسُوا عَلَى التُّرَابِ فِي التَّيَمُّمِ وَلَا فَرْقَ فَإِنْ ذَكَرُوا حَدِيثًا رَوَاهُ ابْنُ أَخِي الزُّهْرِيِّ مُسْنَدًا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا تَغَوَّطَ أَحَدُكُمْ فَلْيَتَمَسَّحْ ثَلَاثَ مَرَّاتٍ» قِيلَ: ابْنُ أَخِي الزُّهْرِيِّ ضَعِيفٌ، وَالَّذِي رَوَاهُ عَنْهُ مُحَمَّدُ بْنُ يَحْيَى الْكِنَانِيُّ وَهُوَ مَجْهُولٌ، وَلَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَيْسَ فِيهَا أَنَّ تِلْكَ الْمَسَحَاتِ تَكُونُ بِحَجَرٍ وَاحِدٍ، فَزِيَادَةُ هَذَا لَا تَحِلُّ. وَأَمَّا مَنْ قَالَ إنَّ حَدِيثَ «مَنْ اسْتَجْمَرَ فَلْيُوتِرْ» مُعَارِضٌ

for those who claim that the hadith “Whoever uses stones to clean should use an odd number” contradicts the hadith of three stones, we say this is a mistake. Rather, each hadith stands independently. Thus, three stones that are free of feces are required. An odd number suffices with dust, and nothing not termed ‘earth’ suffices except water. If a stone has impurity other than feces, it suffices unless there is a prohibition against it. Among those who stated that nothing suffices except three stones are Sa‘id ibn al-Musayyab, al-Hasan, and others. If someone mentions a hadith we narrated through Ibn al-Husayn al-Hubrani from Abu Sa‘id or Abu Sa‘d al-Khayr (the Good) from Abu Hurayra with a chain: “Whoever uses stones to clean should use an odd number; whoever does so has done well, and there is no blame on one who does not,” then Ibn al-Husayn is unknown, and Abu Sa‘id or Abu Sa‘d al-Khayr is likewise unknown.

L2686–2689 If they cite the ḥadīth of Ibn Mas‘ūd that the Prophet—peace and blessings of Allah be upon him—said to him: “Bring me stones,” whereupon he brought him two stones and a dung pellet. The Prophet took the two stones and discarded the dung pellet, saying: “It is impure.” This does not constitute valid evidence. In this matter, because the hadith does not state that he (peace be upon him) sufficed with two stones, while his command (peace be upon him) to bring stones has been authenticated. Thus, the command persists as a binding obligation that must be preserved. Regarding this hadith, it has been said that Abū Isḥāq practiced narrational concealment (tadlis) in its transmission, though we have transmitted it through Abū Isḥāq’s chain from ʿAlqamah, containing the phrase “get me a third one.” If one argues: “He only prohibited bones and dung because they are the provisions of our jinn brethren,” we respond: Yes, what then? Rather, this necessitates that one who cleans himself with either commits sin twice: first by contradicting the explicit textual injunction, and second by defiling the provisions of those whose provisions we were forbidden to soil. Disobedience cannot substitute for obedience. Among those who ruled that neither bones nor the right hand suffice are al-Shāfi‘ī, Abū Sulaymān, and others.

L2690 **The issue of purifying the urine of a male infant by sprinkling water upon it.**

لِحَدِيثِ الثَّلَاثَةِ الْأَحْجَارِ قُلْنَا هَذَا خَطَأٌ، بَلْ كُلُّ حَدِيثٍ مِنْهَا قَائِمٌ بِنَفْسِهِ، فَلَا يُجْزِئُ مِنْ الْأَحْجَارِ إلَّا ثَلَاثَةٌ لَا رَجِيعَ فِيهَا، وَيُجْزِئُ مِنْ التُّرَابِ الْوِتْرُ، وَلَا يُجْزِئُ غَيْرُ ذَلِكَ مِنْ كُلِّ مَا لَا يُسَمَّى أَرْضًا إلَّا الْمَاءُ. فَإِنْ كَانَ عَلَى حَجَرٍ نَجَاسَةٌ غَيْرُ الرَّجِيعِ أَجْزَأَ مَا لَمْ يَأْتِ عَنْهُ نَهْيٌ. وَمِمَّنْ جَاءَ عَنْهُ أَلَّا يُجْزِئَ إلَّا ثَلَاثَةُ أَحْجَارٍ سَعِيدُ بْنُ الْمُسَيِّبِ وَالْحَسَنُ وَغَيْرُهُمَا. فَإِنْ ذَكَرَ ذَاكِرٌ حَدِيثًا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ الْحُصَيْنِ الْحُبْرَانِيِّ عَنْ أَبِي سَعِيدٍ أَوْ أَبِي سَعْدٍ عَنْ أَبِي هُرَيْرَةَ مُسْنَدًا «مَنْ اسْتَجْمَرَ فَلْيُوتِرْ مَنْ فَعَلَ فَقَدْ أَحْسَنَ وَمَنْ لَا فَلَا حَرَجَ» فَإِنَّ ابْنَ الْحُصَيْنِ مَجْهُولٌ وَأَبُو سَعِيدٍ أَوْ أَبُو سَعْدٍ الْخَيْرُ كَذَلِكَ.

فَإِنْ ذَكَرُوا حَدِيثَ ابْنِ مَسْعُودٍ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: «ابْغِنِي أَحْجَارًا، فَأَتَيْته بِحَجَرَيْنِ وَرَوْثَةٍ، فَأَخَذَ الْحَجَرَيْنِ وَأَلْقَى الرَّوْثَةَ وَقَالَ: إنَّهَا رِكْسٌ» فَهَذَا لَا حُجَّةَ فِيهِ، لِأَنَّهُ لَيْسَ فِي الْحَدِيثِ أَنَّهُ - عَلَيْهِ السَّلَامُ - اكْتَفَى بِالْحَجَرَيْنِ، وَقَدْ صَحَّ أَمْرُهُ - عَلَيْهِ السَّلَامُ - لَهُ بِأَنْ يَأْتِيَهُ بِأَحْجَارٍ، فَالْأَمْرُ بَاقٍ لَازِمٌ لَا بُدَّ مِنْ إبْقَائِهِ، وَعَلَى أَنَّ هَذَا الْحَدِيثَ قَدْ قِيلَ فِيهِ: إنَّ أَبَا إسْحَاقَ دَلَّسَهُ، وَقَدْ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي إسْحَاقَ عَنْ عَلْقَمَةَ وَفِيهِ " أَبْغِنِي ثَالِثًا " فَإِنْ قِيلَ: إنَّمَا نَهَى عَنْ الْعَظْمِ وَالرَّوْثِ لِأَنَّهُمَا زَادُ إخْوَانِنَا مِنْ الْجِنِّ. قُلْنَا: نَعَمْ فَكَانَ مَاذَا؟ بَلْ هَذَا مُوجِبٌ أَنَّ الْمُسْتَنْجِيَ بِأَحَدِهِمَا عَاصٍ مَرَّتَيْنِ: إحْدَاهُمَا خِلَافُهُ نَصَّ الْخَبَرِ، وَالثَّانِي تَقْذِيرُهُ زَادَ مَنْ نُهِيَ عَنْ تَقْذِيرِ زَادِهِ، وَالْمَعْصِيَةُ لَا تُجْزِئُ بَدَلَ الطَّاعَةِ، وَمِمَّنْ قَالَ لَا يُجْزِئُ بِالْعَظْمِ وَلَا بِالْيَمِينِ الشَّافِعِيُّ وَأَبُو سُلَيْمَانَ وَغَيْرُهُمَا.

[مَسْأَلَة تَطْهِير بَوْل الذَّكَر برش الْمَاء عَلَيْهِ رشا]

L2691 123. Issue: The purification of male urine—from any male in any thing—is purified by sprinkling water over it to remove its traces. Female urine requires washing. If the urine is on the ground—regardless of its type—it is purified by pouring water over it to eliminate its traces only.

١٢٣ - مَسْأَلَةٌ: وَتَطْهِيرُ بَوْلِ الذَّكَرِ - أَيِّ ذَكَرٍ كَانَ فِي أَيِّ شَيْءٍ كَانَ - فَبِأَنْ يَرُشَّ الْمَاءَ عَلَيْهِ رَشًّا يُزِيلُ أَثَرَهُ، وَبَوْلُ الْأُنْثَى يُغْسَلُ، فَإِنْ كَانَ الْبَوْلُ فِي الْأَرْضِ - أَيُّ بَوْلٍ كَانَ - فَبِأَنْ يَصُبَّ الْمَاءَ عَلَيْهِ صَبًّا يُزِيلُ أَثَرَهُ فَقَطْ.

L2692–2696 Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Aḥmad ibn al-Faḍl al-Dīnawarī narrated to us: Muḥammad ibn Jarīr narrated to us: ʿAmr ibn ʿAlī narrated to us: ʿAbd al-Raḥmān ibn Mahdī narrated to us: Yaḥyā ibn al-Walīd narrated to us from Muḥallī ibn Khalīfah al-Ṭāʾī: Abū al-Samḥ said, “I used to serve the Messenger of Allāh (peace and blessings be upon him) when Ḥasan or Ḥusayn was brought to him, and he urinated.” Upon his chest, so he called for water and sprinkled it upon it, then he said—peace and blessings be upon him—: “This is how it is done: sprinkle [water] from the male and wash from the female.” Narrated to us by Abdur-Rahman ibn Abdullah ibn Khalid, who narrated from Ibrahim ibn Ahmad, who narrated from Al-Farbari, who narrated from Al-Bukhari, who narrated from Abdullah ibn Yusuf, who narrated from Malik, from Ibn Shihab, from Ubaydullah ibn Abdullah ibn Utbah, from Umm Qays bint Mihsan: “She came with her young son who had not yet eaten food, and the Messenger of Allah—peace and blessings be upon him—seated him on his lap. The child urinated on the garment of the Messenger of Allah—peace and blessings be upon him—so he called for water and sprinkled water on it but did not wash it.” Narrated to us by Abdur-Rahman ibn Abdullah ibn Khalid, who narrated from Ibrahim ibn Ahmad, who narrated from Al-Farbari, who narrated from Al-Bukhari, who narrated from Musa ibn Ismail, who narrated from Hammam—the son of Yahya—who narrated from Ishaq—the son of Abdullah ibn Abi Talhah—from Anas ibn Malik: “The Messenger of Allah—peace and blessings be upon him—saw a Bedouin urinating in the mosque, so he called for water and poured it over the urine.” Ali said: “The specification regarding the child’s eating food is not from the words of the Messenger of Allah—peace and blessings be upon him.” Among those who distinguished between the urine of a boy and that of a girl are Umm Salamah, the Mother of the Believers, and Ali ibn Abi Talib, with no opposition to them from the Companions—

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا أَحْمَدُ بْنُ الْفَضْلِ الدِّينَوَرِيُّ ثنا مُحَمَّدُ بْنُ جَرِيرٍ ثنا عَمْرُو بْنُ عَلِيٍّ ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ ثنا يَحْيَى بْنُ الْوَلِيدِ عَنْ مُحِلِّ بْنِ خَلِيفَةَ الطَّائِيِّ ثنا أَبُو السَّمْحِ قَالَ «كُنْتُ أَخْدُمُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأُتِيَ بِحَسَنٍ أَوْ حُسَيْنٍ فَبَالَ عَلَى صَدْرِهِ فَدَعَا بِمَاءٍ فَرَشَّهُ عَلَيْهِ ثُمَّ قَالَ - عَلَيْهِ السَّلَامُ -: هَكَذَا يُصْنَعُ، يُرَشُّ مِنْ الذَّكَرِ وَيُغْسَلُ مِنْ الْأُنْثَى» . حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا مَالِكٌ عَنْ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ أُمِّ قَيْسٍ بِنْتِ مِحْصَنٍ «أَنَّهَا أَتَتْ بِابْنٍ لَهَا صَغِيرٍ لَمْ يَأْكُلْ الطَّعَامَ فَأَجْلَسَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى حِجْرِهِ، فَبَالَ عَلَى ثَوْبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَدَعَا - عَلَيْهِ السَّلَامُ - بِمَاءٍ فَنَضَحَهُ وَلَمْ يَغْسِلْهُ» حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُوسَى بْنُ إِسْمَاعِيلَ ثنا هَمَّامٌ - هُوَ ابْنُ يَحْيَى - ثنا إِسْحَاقُ - هُوَ ابْنُ عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ - عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَأَى أَعْرَابِيًّا يَبُولُ فِي الْمَسْجِدِ، فَدَعَا بِمَاءٍ فَصَبَّهُ عَلَيْهِ» قَالَ عَلِيٌّ: لَيْسَ تَحْدِيدُ ذَلِكَ بِأَكْلِ الصَّبِيِّ الطَّعَامَ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَمِمَّنْ فَرَّقَ بَيْنَ بَوْلِ الْغُلَامِ وَبَوْلِ الْجَارِيَةِ أُمُّ سَلَمَةَ أُمُّ الْمُؤْمِنِينَ وَعَلِيُّ بْنُ أَبِي طَالِبٍ، وَلَا مُخَالِفَ لَهُمَا مِنْ الصَّحَابَةِ

- رَضِيَ اللَّهُ عَنْهُمْ -، وَبِهِ يَقُولُ قَتَادَةُ وَالزُّهْرِيُّ وَقَالَ: مَضَتْ السُّنَّةُ بِذَلِكَ، وَعَطَاءُ بْنُ أَبِي رَبَاحٍ وَالْحَسَنُ الْبَصْرِيُّ وَإِبْرَاهِيمُ النَّخَعِيُّ وَسُفْيَانُ الثَّوْرِيُّ وَالْأَوْزَاعِيُّ وَالشَّافِعِيُّ وَأَحْمَدُ بْنُ حَنْبَلٍ وَإِسْحَاقُ بْنُ رَاهْوَيْهِ وَأَبُو ثَوْرٍ وَدَاوُد بْنُ عَلِيٍّ وَابْنُ وَهْبٍ وَغَيْرُهُمْ، إلَّا أَنَّهُ قَدْ رُوِيَ عَنْ الْحَسَنِ وَسُفْيَانَ التَّسْوِيَةُ بَيْنَ بَوْلِ الْغُلَامِ وَالْجَارِيَةِ فِي الرَّشِّ عَلَيْهِمَا جَمِيعًا.

may Allah be pleased with them. This is also the view of Qatadah, Al-Zuhri—who said, "The Sunnah has established this"—Atā ibn Abi Rabāh, Al-Hasan Al-Basri, Ibrahim Al-Nakhaʿi, Sufyan Al-Thawri, Al-Awzaʿi, Al-Shafiʿi, Ahmad ibn Hanbal, Ishaq ibn Rāhwayh, Abu Thawr, Dawud ibn Ali, and Ibn Wahb. And others, except that it has been reported from al-Ḥasan and Sufyān that the urine of a boy and a girl are to be treated equally by sprinkling water on both of them.

وَقَالَ أَبُو حَنِيفَةَ وَمَالِكٌ وَالْحَسَنُ بْنُ حَيٍّ: يُغْسَلُ بَوْلُ الصَّبِيِّ كَبَوْلِ الصَّبِيَّةِ، وَمَا نَعْلَمُ لَهُمْ مُتَعَلَّقًا لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ وَلَا مِنْ قَوْلِ صَاحِبٍ. نَعَمْ - وَلَا عَنْ أَحَدٍ مِنْ التَّابِعِينَ، إلَّا أَنَّ بَعْضَ الْمُتَأَخِّرِينَ ذَكَرَ ذَلِكَ عَنْ النَّخَعِيِّ، وَالْمَشْهُورُ عَنْهُ خِلَافُ ذَلِكَ. وَقَوْلُهُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: الرَّشُّ مِنْ الرَّشِّ وَالصَّبُّ مِنْ الصَّبِّ مِنْ الْأَبْوَالِ كُلِّهَا، وَهَذَا نَصٌّ خِلَافُ قَوْلِهِمْ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L2697 Abu Hanifah, Malik, and al-Ḥasan ibn Ḥayyin said: The urine of a male child is washed like the urine of a female child, and we find no supporting evidence for their position—neither from the Quran, nor the Sunnah, nor any statement of a Companion. Yes—nor from any Successor, except that some later jurists attributed this view to al-Nakhaʿī, though the well-established opinion from him contradicts it. As for Saʿīd ibn al-Musayyab's statement: "Light washing suffices for light impurities, and thorough washing for heavy impurities among all types of urine"—this constitutes explicit textual proof opposing their view. And success comes only from Allah, the Exalted.

[مَسْأَلَةٌ تَطْهِيرُ دَمِ الْحَيْضِ أَوْ أَيِّ دَمٍ كَانَ]

An issue concerning ritual purification from menstrual blood or any blood whatsoever.

١٢٤ - مَسْأَلَةٌ: وَتَطْهِيرُ دَمِ الْحَيْضِ أَوْ أَيِّ دَمٍ كَانَ، سَوَاءٌ دَمَ سَمَكٍ كَانَ أَوْ غَيْرَهُ إذَا كَانَ فِي الثَّوْبِ أَوْ الْجَسَدِ فَلَا يَكُونُ إلَّا بِالْمَاءِ، حَاشَا دَمَ الْبَرَاغِيثِ وَدَمَ الْجَسَدِ فَلَا يَلْزَمُ تَطْهِيرُهُمَا إلَّا مَا لَا حَرَجَ فِي غَسْلِهِ عَلَى الْإِنْسَانِ، فَيُطَهِّرُ الْمَرْءُ ذَلِكَ حَسَبَ مَا لَا مَشَقَّةَ عَلَيْهِ فِيهِ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَأَبُو كُرَيْبٍ قَالَا جَمِيعًا: ثنا وَكِيعٌ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ: «جَاءَتْ فَاطِمَةُ بِنْتُ أَبِي حُبَيْشٍ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: يَا رَسُولَ اللَّهِ إنِّي امْرَأَةٌ

124. Issue: Purifying menstrual blood or any blood—whether from a fish or other sources—on a garment or body requires water. Excepted are flea blood and bodily blood, which need not be purified except when there is no harm in washing it. One should purify such blood in whichever way is easiest for them. Abdullah ibn Yusuf narrated to us, from Ahmad ibn Fath, from Abdul Wahhab ibn Isa, from Ahmad ibn Muhammad, from Ahmad ibn Ali, from Muslim ibn Al-Hajjaj, from Abu Bakr ibn Abi Shaybah and Abu Kurayb, who both said: Waki' narrated to us from Hisham ibn Urwah, from his father, from Aishah, who said: "Fatimah bint Abi Hubaysh came to the Prophet (peace be upon him) and asked, 'O Messenger of Allah, I am a woman with irregular bleeding and never attain purity. Should I stop praying?' He replied, 'No, that is merely a vein and not menstruation. When menstruation begins, cease prayer. When it ends, wash off the blood and pray.'" This constitutes a

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L2699

general ruling from him (ﷺ) regarding types of blood. We do not concern ourselves with the [specific] question asked, as his answer is self-sufficient and not linked back to the question via pronouns.

أُسْتَحَاضُ فَلَا أَطْهُرُ أَفَأَدَعُ الصَّلَاةَ؟ قَالَ لَا، إِنَّمَا ذَلِكِ عِرْقٌ وَلَيْسَتْ بِالْحَيْضَةِ، فَإِذَا أَقْبَلَتْ الْحَيْضَةُ فَدَعِي الصَّلَاةَ، فَإِذَا أَدْبَرَتْ فَاغْسِلِي عَنْكِ الدَّمَ وَصَلِّي» وَهَذَا عُمُومٌ مِنْهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِنَوْعِ الدَّمِ وَلَا نُبَالِي بِالسُّؤَالِ إِذَا كَانَ جَوَابُهُ - عَلَيْهِ السَّلَامُ - قَائِمًا بِنَفْسِهِ غَيْرَ مَرْدُودٍ بِضَمِيرٍ إِلَى السُّؤَالِ.

L2700–2702 Abd al-Rahman ibn Abd Allah ibn Khalid reported to us: Ibrahim ibn Ahmad reported: al-Farbari reported: al-Bukhari reported: Muhammad ibn al-Muthanna reported: Yahya ibn Sa'id al-Qattan reported from Hisham ibn Urwah: Fatimah bint al-Mundhir ibn al-Zubayr reported to me from Asma' bint Abi Bakr al-Siddiq, who said: "A woman came to the Prophet (peace be upon him) and asked: 'What should one of us do if she menstruates in a garment?' He replied: 'She should scrape it, then scrub it with water, pour water over it, and pray in it.'" It is recommended to use musk in the menstrual purification bath. It was narrated to us by ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid from Ibrāhīm ibn Aḥmad from al-Farbariyy from al-Bukhārī from Yaḥyā from Ibn ʿUyaynah from Manṣūr ibn Ṣafiyyah from his mother from ʿĀ'ishah: "A woman asked the Prophet—peace and blessings of Allah be upon him—about her purification bath after menstruation. He instructed her how to wash, saying, 'Take a portion of musk and purify yourself with it.' She asked, 'How should I purify myself with it?' He replied, 'Glory be to Allah! Purify yourself!' I drew her toward me and said, 'Trace with it over the remnants of blood.'"

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ هِشَامِ بْنِ عُرْوَةَ حَدَّثَتْنِي فَاطِمَةُ - هِيَ بِنْتُ الْمُنْذِرِ بْنِ الزُّبَيْرِ - عَنْ أَسْمَاءَ - هِيَ ابْنَةُ أَبِي بَكْرٍ الصِّدِّيقِ - قَالَتْ «أَتَتْ امْرَأَةُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: أَرَأَيْت إِحْدَانَا تَحِيضُ فِي الثَّوْبِ كَيْفَ تَصْنَعُ؟ قَالَ: تَحُتُّهُ ثُمَّ تَقْرُصُهُ بِالْمَاءِ وَتَنْضَحُهُ وَتُصَلِّي فِيهِ» وَيُسْتَحَبُّ أَنْ تَسْتَعْمِلَ فِي غُسْلِ الْمَحِيضِ شَيْئًا مِنْ مِسْكٍ، حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا يَحْيَى ثنا بْنُ عُيَيْنَةَ عَنْ مَنْصُورِ بْنِ صَفِيَّةَ عَنْ أُمِّهِ عَنْ عَائِشَةَ «أَنَّ امْرَأَةً سَأَلَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ غُسْلِهَا مِنْ الْمَحِيضِ فَأَمَرَهَا كَيْفَ تَغْتَسِلُ. قَالَ: خُذِي فِرْصَةً مِنْ مِسْكٍ فَتَطَهَّرِي بِهَا، قَالَتْ: كَيْفَ أَتَطَهَّرُ بِهَا؟ قَالَ: سُبْحَانَ اللَّهِ، تَطَهَّرِي فَاجْتَبَذْتُهَا إِلَيَّ فَقُلْتُ: تَتَّبِعِي بِهَا أَثَرَ الدَّمِ» .

L2703–2707 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn Al-Hajjaj narrated to us: Ahmad ibn Sa'id Al-Darimi narrated to us: Hibban — who is Ibn Hilal — narrated to us: Wuhaib narrated to us: Mansur — who is Ibn Safiyyah — from his mother, from Aishah: "A woman asked the Prophet — peace and blessings be upon him — how she should perform the ritual bath after menstruation. He said: 'Take a musk-perfumed piece of cloth and perform ablution with

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَحْمَدُ بْنُ سَعِيدٍ الدَّارِمِيُّ ثنا حِبَّانُ - هُوَ ابْنُ هِلَالٍ - ثنا وُهَيْبٌ ثنا مَنْصُورٌ - هُوَ ابْنُ صَفِيَّةَ - عَنْ أُمِّهِ عَنْ عَائِشَةَ «أَنَّ امْرَأَةً سَأَلَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَيْفَ أَغْتَسِلُ عِنْدَ الطُّهْرِ؟ فَقَالَ: خُذِي فِرْصَةً مُمَسَّكَةً فَتَوَضَّئِي

it.'" Then he mentioned a narration similar to that of Sufyan. Ali said: "The Messenger of Allah — peace and blessings be upon him — commanded her to purify herself with the mentioned piece of cloth — which is a fragment — and to perform ablution with it. Allah the Exalted sent him as a clarifier and teacher, so if that were obligatory, he — peace be upon him — would have taught her how to perform ablution with it or how to purify herself. Since he did not do so, it was not obligatory, despite the sound consensus generation after generation that this is not obligatory. Women in every household since his time — peace and blessings be upon him — until today have purified themselves from menstruation, yet no one has ever said this is obligatory. Moreover, this wording is only narrated through Ibrahim ibn Muhajir, who is weak, and through Mansur ibn Safiyyah, who was weakened and is not considered a reliable narrator. Thus, this ruling collapses entirely, and praise be to Allah, Lord of the worlds. All that Allah the Exalted or His Messenger — peace and blessings be upon him — command regarding purification or ritual bath must be done with water, or with dust if water is unavailable, unless a text explicitly states otherwise, in which case we adhere to it, as narrated to us." Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Abu Bakr ibn Abi Shaybah and Abu Kurayb narrated to us. Abu Bakr said: Muhammad ibn Fudayl narrated to us from Abu Malik al-Ashja'i, and Abu Kurayb said: Ibn Abi Za'idah—who is Yahya ibn Zakariyya—narrated to us from Abu Malik—who is Sa'd ibn Tarik—from Rib'i ibn Hiraash from Hudhayfah, who said: The Messenger of Allah—peace and blessings be upon him—said, "We have been favored over people with three things," and among them he mentioned, "The entire earth has been made a place of prostration for us, and its dust has been made a purification for us when we do not find water." There is no doubt that every ghusl commanded in the religion constitutes purification, but not every purification is ghusl. Thus, it is established that purity is attained only with water or with dust in the absence of water.

Abu Hanifah said: The blood of fish, whether abundant or scant, does not defile clothing, the body, or water. The same ruling applies to the blood of fleas

بِهَا» ثُمَّ ذَكَرَ نَحْوَ حَدِيثِ سُفْيَانَ. قَالَ عَلِيٌّ: أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ تَتَطَهَّرَ بِالْفِرْصَةِ الْمَذْكُورَةِ - وَهِيَ الْقِطْعَةُ - وَأَنْ تَتَوَضَّأَ بِهَا، وَإِنَّمَا بَعَثَهُ اللَّهُ تَعَالَى مُبَيِّنًا وَمُعَلِّمًا، فَلَوْ كَانَ ذَلِكَ فَرْضًا لَعَلَّمَهَا - عَلَيْهِ السَّلَامُ - كَيْفَ تَتَوَضَّأُ بِهَا أَوْ كَيْفَ تَتَطَهَّرُ، فَلَمَّا لَمْ يَفْعَلْ كَانَ ذَلِكَ غَيْرَ وَاجِبٍ مَعَ صِحَّةِ الْإِجْمَاعِ جِيلًا بَعْدَ جِيلٍ، عَلَى أَنَّ ذَلِكَ لَيْسَ وَاجِبًا، فَلَمْ تَزَلْ النِّسَاءُ فِي كُلِّ بَيْتٍ وَدَارٍ عَلَى عَهْدِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى يَوْمِنَا هَذَا يَتَطَهَّرْنَ مِنْ الْحَيْضِ، فَمَا قَالَ أَحَدٌ إنَّ هَذَا فَرْضٌ، وَيَكْفِي مِنْ هَذَا كُلِّهِ أَنَّهُ لَمْ تُسْنَدْ هَذِهِ اللَّفْظَةُ إلَّا مِنْ طَرِيقِ إبْرَاهِيمَ بْنِ مُهَاجِرٍ وَهُوَ ضَعِيفٌ، وَمِنْ طَرِيقِ مَنْصُورِ بْنِ صَفِيَّةَ وَقَدْ ضُعِّفَ، وَلَيْسَ مِمَّنْ يُحْتَجُّ بِرِوَايَتِهِ، فَسَقَطَ هَذَا الْحُكْمُ جُمْلَةً، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ. وَكُلُّ مَا أَمَرَنَا اللَّهُ تَعَالَى أَوْ رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيهِ بِالتَّطْهِيرِ أَوْ الْغُسْلِ فَلَا يَكُونُ إلَّا بِالْمَاءِ، أَوْ بِالتُّرَابِ إنْ عُدِمَ الْمَاءُ، إلَّا أَنْ يَأْتِيَ نَصٌّ بِأَنَّهُ بِغَيْرِ الْمَاءِ فَنَقِفُ عِنْدَهُ، لِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَأَبُو كُرَيْبٍ قَالَ أَبُو بَكْرٍ ثنا مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ أَبِي مَالِكٍ الْأَشْجَعِيِّ، وَقَالَ أَبُو كُرَيْبٍ ثنا ابْنُ أَبِي زَائِدَةَ - هُوَ يَحْيَى بْنُ زَكَرِيَّا - عَنْ أَبِي مَالِكٍ - هُوَ سَعْدُ بْنُ طَارِقٍ - عَنْ رِبْعِيِّ بْنِ حِرَاشٍ عَنْ حُذَيْفَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فُضِّلْنَا عَلَى النَّاسِ بِثَلَاثٍ» فَذَكَرَ فِيهَا - «وَجُعِلَتْ لَنَا الْأَرْضُ كُلُّهَا مَسْجِدًا، وَجُعِلَتْ تُرْبَتُهَا لَنَا طَهُورًا إذَا لَمْ نَجِدْ الْمَاءَ» وَلَا شَكَّ فِي أَنَّ كُلَّ غُسْلٍ مَأْمُورٍ بِهِ فِي الدِّينِ فَهُوَ تَطَهُّرٌ وَلَيْسَ كُلُّ تَطَهُّرٍ غُسْلًا، فَصَحَّ أَنَّهُ لَا طُهْرَ إلَّا بِالْمَاءِ أَوْ بِالتُّرَابِ عِنْدَ عَدَمِ الْمَاءِ. وَقَالَ أَبُو حَنِيفَةَ: دَمُ السَّمَكِ كَثُرَ أَوْ قَلَّ لَا يُنَجِّسُ الثَّوْبَ وَلَا الْجَسَدَ وَلَا الْمَاءَ وَدَمُ

and lice. As for all other blood, whether scant or abundant, it contaminates water. Regarding clothing and the body: If the amount present on either is less than a Baghdadi dirham (a specific coin), it does not defile, and prayer is valid with it. If it exceeds the amount of a Baghdadi dirham, it defiles and invalidates the prayer. If on the body, it is removed only with water. If on clothing, it is removed with water or by any means that removes it, even without water. If on a sock or shoe: When dry, scraping alone suffices; when moist, only washing with whatever removes it is valid.

Malik said: Removing all such blood is not obligatory, and it is removed only with water. Al-Shafi'i said: Its removal is obligatory and is done only with water.

Ali said: Allah the Exalted said, "He has not placed upon you in the religion any hardship" [al-Hajj 22:78], and He said, "Allah does not burden a soul beyond its capacity" [al-Baqarah 2:286], and He said, "Allah intends ease for you and does not intend hardship for you" [al-Baqarah 2:185]. We necessarily know that avoiding the blood of fleas or bodily blood is impossible. Therefore, washing is only required for what is feasible without hardship or difficulty.

Some differentiated between the blood of creatures with flowing blood (vertebrates) and those without, but this is erroneous, as it is a view unsupported by the Quran, Sunnah, consensus, a companion's opinion, or analogy. Others distinguished between flowing blood and non-flowing blood, citing His saying, "or flowing blood" [al-An'am 6:145], while He also said, "Forbidden to you are carrion, blood, and the flesh of swine" [al-Ma'idah 5:3]. The Almighty has prohibited all blood and all carrion, and this constitutes a supplementary ruling to the other verse. And the Almighty did not exempt from the prohibition of carrion those with circulating blood as opposed to those without circulating blood.[14][15]

الْبَرَاغِيثِ وَالْبَقِّ كَذَلِكَ، وَأَمَّا سَائِرُ الدِّمَاءِ كُلِّهَا فَإِنَّ قَلِيلَهَا وَكَثِيرَهَا يُفْسِدُ الْمَاءَ، وَأَمَّا فِي الثَّوْبِ وَالْجَسَدِ: فَإِنْ كَانَ فِي أَحَدِهِمَا مِنْهُ مِقْدَارُ الدِّرْهَمِ الْبَغْلِيِّ فَأَقَلُّ فَلَا يُنَجِّسُ وَيُصَلَّى بِهِ، وَمَا كَانَ مِنْهُ أَكْثَرُ مِنْ قَدْرِ الدِّرْهَمِ الْبَغْلِيِّ فَإِنَّهُ يُنَجِّسُ وَتَبْطُلُ بِهِ الصَّلَاةُ، فَإِنْ كَانَ فِي الْجَسَدِ فَلَا يُزَالُ إِلَّا بِالْمَاءِ، وَإِذَا كَانَ فِي الثَّوْبِ فَإِنَّهُ يُزَالُ بِالْمَاءِ وَبِأَيِّ شَيْءٍ أَزَالَهُ مِنْ غَيْرِ الْمَاءِ، فَإِنْ كَانَ فِي خُفٍّ أَوْ نَعْلٍ، فَإِنْ كَانَ يَابِسًا أَجْزَأَ فِيهِ الْحَكُّ فَقَطْ، وَإِنْ كَانَ رَطْبًا لَمْ يُجْزِئْ إِلَّا الْغَسْلُ بِأَيِّ شَيْءٍ غُسِلَ. وَقَالَ مَالِكٌ: إِزَالَةُ ذَلِكَ كُلِّهِ لَيْسَ فَرْضًا، وَلَا يُزَالُ إِلَّا بِالْمَاءِ. وَقَالَ الشَّافِعِيُّ إِزَالَتُهُ فَرْضٌ وَلَا يُزَالُ إِلَّا بِالْمَاءِ.

قَالَ عَلِيٌّ: قَالَ اللَّهُ تَعَالَى: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] وَقَالَ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَقَالَ تَعَالَى: {يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلا يُرِيدُ بِكُمُ الْعُسْرَ} [البقرة: ١٨٥] وَبِالضَّرُورَةِ نَدْرِي أَنَّهُ لَا يُمْكِنُ الانْفِكَاكُ مِنْ دَمِ الْبَرَاغِيثِ وَلَا مِنْ دَمِ الْجَسَدِ، فَإِذْ ذَلِكَ كَذَلِكَ فَلَا يَلْزَمُ مِنْ غُسْلِهِ إِلَّا مَا لَا حَرَجَ فِيهِ وَلَا عُسْرَ مِمَّا هُوَ فِي الْوُسْعِ. وَفَرَّقَ بَعْضُهُمْ بَيْنَ دَمٍ مَا لَهُ نَفْسٌ سَائِلَةٌ وَدَمٍ مَا لَيْسَ لَهُ نَفْسٌ سَائِلَةٌ، وَهَذَا خَطَأٌ لِأَنَّهُ قَوْلٌ لَمْ يَأْتِ بِهِ قُرْآنٌ وَلَا سُنَّةٌ وَلَا إِجْمَاعٌ وَلَا قَوْلُ صَاحِبٍ وَلَا قِيَاسٌ. وَفَرَّقَ بَعْضُهُمْ بَيْنَ الدَّمِ الْمَسْفُوحِ وَغَيْرِ الْمَسْفُوحِ، وَتَعَلَّقُوا بِقَوْلِهِ تَعَالَى: {أَوْ دَمًا مَسْفُوحًا} [الأنعام: ١٤٥] وَقَدْ قَالَ تَعَالَى: {حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ وَالدَّمُ وَلَحْمُ الْخِنْزِيرِ} [المائدة: ٣] فَعَمَّ تَعَالَى كُلَّ دَمٍ وَكُلَّ مَيْتَةٍ، فَكَانَ هَذَا شَرْعًا زَائِدًا عَلَى الْآيَةِ الْأُخْرَى، وَلَمْ يَخُصَّ تَعَالَى مِنْ تَحْرِيمِ الْمَيْتَةِ مَا لَهَا نَفْسٌ سَائِلَةٌ مِمَّا لَا نَفْسَ لَهَا.

[14] **Hadith references (L2703):** Sahih Muslim 332b; Sahih Muslim 522a; Mishkat al-Masabih 526.

[15] **Qur'an references (L2703):** Qur'an 22:78 (Al-Hajj); Qur'an 2:286 (Al-Baqarah); Qur'an 2:185 (Al-Baqarah); Qur'an 6:145 (Al-An'am); Qur'an 5:3 (Al-Ma'idah).

وَتَعَلَّقَ بَعْضُهُمْ فِي الدِّرْهَمِ الْبَغْلِيِّ بِحَدِيثٍ سَاقِطٍ، ثُمَّ لَوْ صَحَّ لَكَانَ عَلَيْهِمْ؛ لِأَنَّ فِيهِ الْإِعَادَةَ مِنْ قَدْرِ الدِّرْهَمِ، بِخِلَافِ قَوْلِهِمْ، وَقَالَ بَعْضُهُمْ: قِيسَ عَلَى الدُّبُرِ، فَقِيلَ لَهُمْ فَهَلَّا قِسْتُمُوهُ عَلَى حَرْفِ الْإِحْلِيلِ وَمَخْرَجِ الْبَوْلِ، وَحُكْمُهُمَا فِي الِاسْتِنْجَاءِ سَوَاءٌ، وَقَدْ تَرَكُوا قِيَاسَهُمْ هَذَا إِذْ لَمْ يَرَوْا إِزَالَةَ ذَلِكَ مِنْ الْجَسَدِ بِمَا يُزَالُ بِهِ مِنْ الدُّبُرِ. وَأَمَّا مَنْ لَمْ يَرَ غُسْلَ ذَلِكَ فَرْضًا، فَالسُّنَنُ الَّتِي أَوْرَدْنَاهَا مُخَالِفَةٌ لِقَوْلِهِ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Some of them relied on a rejected *ḥadīth* regarding the Baghlī dirham. Even if it were authentic, it would have contradicted their position, for it stipulates repetition equivalent to the dirham's measure—contrary to their doctrine. Others said: "It was analogized to the anus." It was said to them: "Why did you not analogize it to the tip of the urethra and the urinary outlet, given their identical ruling in *istinjā'*?" They abandoned this analogy when they saw no obligation to remove that from the body using the same means as for the anus. As for those who did not consider *ghusl* for that obligatory, the *Sunnah* texts we have cited contradict their view. Success is through Allāh, the Exalted.

[مَسْأَلَةُ تَطْهِيرُ الْمَذْيِ بِالْمَاءِ]

The Issue Regarding the Purification of Madhy (Pre-Ejaculate Fluid) with Water.

١٢٥ - مَسْأَلَةٌ: وَالْمَذْيُ تَطْهِيرُهُ بِالْمَاءِ، يُغْسَلُ مَخْرَجُهُ مِنْ الذَّكَرِ وَيُنْضَحُ بِالْمَاءِ مَا مَسَّ مِنْهُ الثَّوْبَ. قَالَ مَالِكٌ يُغْسَلُ الذَّكَرُ كُلُّهُ.

Issue 125: The purification of the madhy is with water. The exit point from the penis is washed, and the part of the madhy that has touched the garment is sprinkled with water. Mālik said: "The entire penis is washed."

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي دُلَيْمٍ ثنا ابْنُ وَضَّاحٍ ثنا يَحْيَى بْنُ يَحْيَى ثنا مَالِكٌ عَنْ أَبِي النَّضْرِ مَوْلَى عُمَرَ بْنِ عُبَيْدِ اللَّهِ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ الْمِقْدَادِ بْنِ الْأَسْوَدِ " أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أَمَرَهُ أَنْ يَسْأَلَ لَهُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الرَّجُلِ إِذَا دَنَا مِنْ امْرَأَتِهِ فَخَرَجَ مِنْهُ الْمَذْيُ، قَالَ فَسَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ فَقَالَ «إِذَا وَجَدَ أَحَدُكُمْ ذَلِكَ فَلْيَنْضَحْ فَرْجَهُ بِالْمَاءِ وَلْيَتَوَضَّأْ وُضُوءَهُ لِلصَّلَاةِ» حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ السَّكَنِ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَبُو الْوَلِيدِ هُوَ الطَّيَالِسِيُّ - ثنا زَائِدَةُ عَنْ أَبِي حُصَيْنٍ عَنْ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ «كُنْتُ رَجُلًا مَذَّاءً فَأَمَرْتُ رَجُلًا يَسْأَلُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِمَكَانِ ابْنَتِهِ، فَسَأَلَ فَقَالَ: تَوَضَّأْ وَاغْسِلْ ذَكَرَكَ»

Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Muḥammad ibn ʿAbd Allāh ibn Abī Dulaym narrated to us: Ibn Waḍḍāḥ narrated to us: Yaḥyā ibn Yaḥyā narrated to us: Mālik narrated from Abī al-Naḍr, the freed slave of ʿUmar ibn ʿUbayd Allāh, from Sulaymān ibn Yasār, from al-Miqdād ibn al-Aswad: "'Alī ibn Abī Ṭālib instructed him to ask the Messenger of Allāh (peace and blessings be upon him) on his behalf about a man who emits madhy when approaching his wife. He said: 'I asked the Messenger of Allāh (peace and blessings be upon him) about that, and he replied: "If any of you experiences this, let him sprinkle water on his private parts and perform ablution as for prayer."'"

ʿAbd Allāh ibn Rabīʿ narrated to us: Ibn Mufarrij narrated to us: Ibn al-Sakan narrated to us: al-Farbarī narrated to us: al-Bukhārī narrated to us: Abū al-Walīd—who is al-Ṭayālisī—narrated to us: Zā'idah narrated from Abī Ḥuṣayn from Abī ʿAbd al-Raḥmān al-Sulamī from ʿAlī ibn Abī Ṭālib, who said: "I was a man who frequently emitted madhy, so I instructed a man to ask the Prophet (peace and blessings be upon him) because of my daughter's

status. He asked, and the Prophet said: 'Perform ablution and wash your private parts.'"

L2712–2714 Ḥammām ibn Aḥmad narrated to us: ʿAbbās ibn Aṣbagh narrated to us: Muḥammad ibn ʿAbd al-Malik ibn Ayman narrated to us: Bakr ibn Ḥammād and Muḥammad ibn Waḍḍāḥ narrated to us. Bakr said, "Musaddad narrated to us: Ḥammād ibn Zayd narrated to us," and Ibn Waḍḍāḥ said. Narrated by Abu Bakr ibn Abi Shaybah: He said—Isma'il ibn Ulayyah and Yazid ibn Harun narrated, then they concurred. Hammad, Isma'il, and Yazid—all of them—narrated from Muhammad ibn Ishaq, who narrated from Sa'id ibn Ubayd ibn al-Sabbaq, from his father, from Sahl ibn Hunayf. Hammad said in his narration: "I experienced severe hardship from [mady], so I would frequently wash because of it." Then they all concurred: "I asked Allah's Messenger (peace be upon him) about [mady]. He said: 'Ablution suffices you for it.' I said: 'What if it touches my garment?' He replied: 'Take a handful of water and sprinkle the part of your garment where you see that it has touched.'" Ali said: "Washing the exit of [mady] from the penis is termed 'washing the penis,' just as one might say after washing it: 'I washed my penis from urine.' Therefore, imposing the obligation of complete washing is a legal ruling without evidence. Some argued for reducing this obligation, so it was said to them: 'If you treated that with astringent substances from medicines, it would be more effective.'" This report refutes Abu Hanifah's statement: "Impurities cannot be removed from the body except with water, but can be removed from garments without water." If they cite Aisha's (may Allah be pleased with her) approval of removing menstrual blood from garments with saliva, respond: "Ibn Umar permitted wiping cupping blood with a pebble without washing. No valid proof exists except in what the Prophet (peace be upon him) brought."

حَدَّثَنَا حَمَامُ بْنُ أَحْمَدَ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ حَدَّثَنَا بَكْرُ بْنُ حَمَّادٍ وَمُحَمَّدُ بْنُ وَضَّاحٍ قَالَ بَكْرٌ ثنا مُسَدَّدٌ ثنا حَمَّادُ بْنُ زَيْدٍ، وَقَالَ ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ قَالَ ثنا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ وَيَزِيدُ بْنُ هَارُونَ، ثُمَّ اتَّفَقَ حَمَّادٌ وَإِسْمَاعِيلُ وَيَزِيدُ كُلُّهُمْ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ ثنا سَعِيدُ بْنُ عُبَيْدِ بْنِ السَّبَّاقِ عَنْ أَبِيهِ عَنْ سَهْلِ بْنِ حُنَيْفٍ قَالَ حَمَّادٌ فِي حَدِيثِهِ «كُنْتُ أَلْقَى مِنْ الْمَذْيِ شِدَّةً فَكُنْتُ أُكْثِرُ الْغُسْلَ مِنْهُ ثُمَّ اتَّفَقُوا كُلُّهُمْ قَالَ سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْمَذْيِ فَقَالَ: يَكْفِيكَ مِنْهُ الْوُضُوءُ، قُلْتُ: أَرَأَيْتَ مَا يُصِيبُ ثَوْبِي مِنْهُ؟ قَالَ: تَأْخُذُ كَفًّا مِنْ مَاءٍ فَتَنْضَحُ ثَوْبَكَ حَيْثُ تَرَى أَنَّهُ أَصَابَهُ» قَالَ عَلِيٌّ: غَسْلُ مَخْرَجِ الْمَذْيِ مِنْ الذَّكَرِ يَقَعُ عَلَيْهِ اسْمُ غُسْلِ الذَّكَرِ، كَمَا يَقُولُ الْقَائِلُ إذَا غَسَلَهُ: غَسَلْتُ ذَكَرِي مِنْ الْبَوْلِ، فَزِيَادَةُ إيجَابِ غُسْلٍ كُلُّهُ شَرْعٌ لَا دَلِيلَ عَلَيْهِ، وَقَالَ بَعْضُهُمْ فِي ذَلِكَ تَقْلِيصٌ فَيُقَالُ لَهُ: فَعَانُوا ذَلِكَ بِالْقَوَابِضِ مِنْ الْعَقَاقِيرِ إذَنْ فَهُوَ أَبْلَغُ. وَهَذَا الْخَبَرُ يَرُدُّ عَلَى أَبِي حَنِيفَةَ قَوْلَهُ: إنَّ النَّجَاسَاتِ لَا تُزَالُ مِنْ الْجَسَدِ إلَّا بِالْمَاءِ وَتُزَالُ مِنْ الثِّيَابِ بِغَيْرِ الْمَاءِ. فَإِنْ تَعَلَّقُوا بِأَنَّ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - كَانَتْ تُجِيزُ إزَالَةَ دَمِ الْحَيْضِ مِنْ الثَّوْبِ بِالرِّيقِ، قِيلَ لَهُمْ فَإِنَّ ابْنَ عُمَرَ كَانَ يُجِيزُ مَسْحَ الدَّمِ مِنْ الْمَحَاجِمِ بِالْحَصَاةِ دُونَ غُسْلٍ، وَلَا حُجَّةَ إلَّا فِيمَا جَاءَ بِهِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَةٌ تَطْهِيرُ الْإِنَاءِ إذَا كَانَ لِكِتَابِيٍّ]

An Issue Regarding the Purification of a Vessel Belonging to a Person of the Book.

L2715

L2716 126. Issue: Purifying a vessel belonging to a People of the Book from all that necessitates purification must be done with water under all circumstances if

no alternative exists—regardless of whether impurity is known or unknown. If it is a Muslim's vessel, it is pure. If one becomes certain of the presence of something requiring avoidance, it may be removed with any pure substance except the meat of a domestic donkey, its tallow, fat, or any part thereof—these may only be purified with water, and it is necessary. Yunus ibn 'Abdullah ibn Mughith narrated to us: Abu 'Isa ibn Abi 'Isa narrated to us: Ahmad ibn Khalid narrated to us: Ibn Waddah narrated to us: Abu Bakr ibn Abi Shaybah narrated to us from Muhammad ibn Bishr from Sa'id ibn Abi 'Arubah from Ayyub al-Sakhtiyani from Abu Qilabah from Abu Tha'labah al-Khushani that he said: "O Prophet of Allah, we dwell in a land whose people are People of the Book, and we need their pots and vessels." The Prophet—peace and blessings be upon him—said: "Do not go near them as long as you can avoid it. When you cannot avoid it, wash them with water, then cook in them and drink from them."

١٢٦ - مَسْأَلَةٌ: وَتَطْهِيرُ الْإِنَاءِ إِذَا كَانَ لِكِتَابِيٍّ مِنْ كُلِّ مَا يَجِبُ تَطْهِيرُهُ مِنْهُ بِالْمَاءِ وَعَلَى كُلِّ حَالٍ إِذَا لَمْ يَجِدْ غَيْرَهَا - سَوَاءٌ عَلِمْنَا فِيهِ نَجَاسَةً أَوْ لَمْ نَعْلَمْ - بِالْمَاءِ، فَإِنْ كَانَ إِنَاءَ مُسْلِمٍ فَهُوَ طَاهِرٌ، فَإِنْ تَيَقَّنَ فِيهِ مَا يَلْزَمُ اجْتِنَابُهُ فَبِأَيِّ شَيْءٍ أَزَالَهُ كَائِنًا مَا كَانَ مِنْ الطَّاهِرَاتِ إِلَّا أَنْ يَكُونَ لَحْمَ حِمَارٍ أَهْلِيٍّ أَوْ وَدَكَهُ أَوْ شَحْمَهُ أَوْ شَيْئًا مِنْهُ فَلَا يَجُوزُ أَنْ يُطَهَّرَ إِلَّا بِالْمَاءِ وَلَا بُدَّ. حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ بْنِ مُغِيثٍ ثنا أَبُو عِيسَى بْنُ أَبِي عِيسَى ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ مُحَمَّدِ بْنِ بِشْرٍ ثنا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ أَيُّوبَ السَّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي ثَعْلَبَةَ الْخُشَنِيِّ أَنَّهُ قَالَ «يَا نَبِيَّ اللَّهِ إِنَّا بِأَرْضٍ أَهْلُهَا أَهْلُ كِتَابٍ نَحْتَاجُ فِيهَا إِلَى قُدُورِهِمْ وَآنِيَتِهِمْ، فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: لَا تَقْرَبُوهَا مَا وَجَدْتُمْ بُدًّا، فَإِذَا لَمْ تَجِدُوا بُدًّا فَاغْسِلُوهَا بِالْمَاءِ وَاطْبُخُوا وَاشْرَبُوا» .

L2717–2718

Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Muhammad ibn Abbad and Qutaybah both said: Hatim—who is ibn Isma'il—narrated to us from Yazid ibn Abi Ubayd from Salamah ibn al-Akwa' who said: "We marched with the Messenger of Allah—peace be upon him—toward Khaybar. Then Allah the Exalted granted them victory over it. When evening fell on the day of its conquest, people kindled numerous fires. The Messenger of Allah—peace be upon him—asked: 'What are these fires? For what purpose are you lighting them?' They replied: 'Meat.' He inquired: 'What meat?' They said: 'The meat of domesticated donkeys.' The Messenger of Allah—peace be upon him—commanded: 'Spill them and break the pots!' A man suggested: 'O Messenger of Allah, shall we spill them and wash the pots?' He responded: 'That is acceptable.'" Ali remarked: "We have previously established that every act of washing ordained in the religion constitutes purification, and all

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ عَبَّادٍ وَقُتَيْبَةُ قَالَا ثنا حَاتِمٌ - هُوَ ابْنُ إِسْمَاعِيلَ - عَنْ يَزِيدَ بْنِ أَبِي عُبَيْدٍ عَنْ سَلَمَةَ بْنِ الْأَكْوَعِ قَالَ «خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى خَيْبَرَ، ثُمَّ إِنَّ اللَّهَ تَعَالَى فَتَحَهَا عَلَيْهِمْ، فَلَمَّا أَمْسَى النَّاسُ مَسَاءَ الْيَوْمِ الَّذِي فُتِحَتْ عَلَيْهِمْ أَوْقَدُوا نِيرَانًا كَثِيرَةً، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: مَا هَذِهِ النِّيرَانُ، عَلَى أَيِّ شَيْءٍ تُوقِدُونَ؟ قَالُوا: عَلَى لَحْمٍ، قَالَ: عَلَى أَيِّ لَحْمٍ؟ قَالُوا: عَلَى لَحْمِ الْحُمُرِ الْإِنْسِيَّةِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَهْرِيقُوهَا وَاكْسِرُوهَا، فَقَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ أَوْ نُهَرِيقُهَا وَنَغْسِلُهَا؟ قَالَ: أَوْ ذَاكَ» قَالَ عَلِيٌّ:

purification is achieved solely through water. Success comes from Allah, the Exalted."

قَدْ قَدَّمْنَا أَنَّ كُلَّ غُسْلٍ أُمِرَ بِهِ فِي الدِّينِ فَهُوَ تَطْهِيرٌ، وَكُلُّ تَطْهِيرٍ فَلَا يَكُونُ إلَّا بِالْمَاءِ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L2719 It is not permissible to analogize the purification of a vessel from substances other than what we mentioned among domestic donkeys to its purification from donkey meat, for the scriptural texts differ regarding purifying vessels from dogs and from donkey meat. Thus, analogizing to some texts is no more valid than analogizing to others—even if analogy were legitimate. Nor is it permissible to append to what the Messenger of Allah—peace and blessings be upon him—ruled upon what he did not rule upon, as this would constitute attributing to him statements he did not make or prescribing in the religion what Allah the Exalted has not permitted. Adhering to his commandments—peace be upon him—takes precedence over adhering to the mule-related dirham dispute and those corrupt distinctions. Success is with Allah the Exalted.

وَلَا يَجُوزُ أَنْ يُقَاسَ تَطْهِيرُ الْإِنَاءِ مِنْ غَيْرِ مَا ذَكَرْنَا مِنْ الْحُمُرِ الْأَهْلِيَّةِ عَلَى تَطْهِيرِهِ مِنْ لُحُومِ الْحُمُرِ، لِأَنَّ النُّصُوصَ اخْتَلَفَتْ فِي تَطْهِيرِ الْآنِيَةِ مِنْ الْكَلْبِ وَمِنْ لَحْمِ الْحِمَارِ فَلَيْسَ الْقِيَاسُ عَلَى بَعْضِهَا أَوْلَى مِنْ الْقِيَاسِ عَلَى بَعْضٍ، لَوْ كَانَ الْقِيَاسُ حَقًّا، وَلَا يَجُوزُ أَنْ يُضَافَ إلَى مَا حَكَمَ فِيهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَحْكُمْ، لِأَنَّهُ يَكُونُ قَوْلًا عَلَيْهِ مَا لَمْ يَقُلْ، أَوْ شَرْعًا فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى. وَالْوُقُوفُ عِنْدَ أَوَامِرِهِ - عَلَيْهِ السَّلَامُ - أَوْلَى مِنْ الْوُقُوفِ عِنْدَ الدِّرْهَمِ الْبَغْلِيِّ، وَتِلْكَ الْفُرُوقِ الْفَاسِدَةِ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A legal issue regarding a dog lapping in a vessel.

[مَسْأَلَةُ وُلُوغِ الْكَلْبِ فِي الْإِنَاءِ]

L2720

L2721 127 - Issue: If a dog licks a vessel—regardless of the vessel's type or the dog's category (whether a hunting dog or other, small or large)—it is obligatory to pour out the vessel's contents, whatever they may be, then wash it with water seven times. The first washing must necessarily—necessarily—be with soil and water. The water used to purify the vessel is ritually pure and lawful. If the dog eats from the vessel without licking it, puts its paw or tail into it, or falls completely into it, neither washing the vessel nor pouring out its contents is required at all—it remains entirely lawful and ritually pure as before. Similarly, if the dog licks a spot on the ground, a human's hand, or something not deemed a vessel, washing any of these or pouring out whatever is present is not required.

١٢٧ - مَسْأَلَةٌ: فَإِنْ وَلَغَ فِي الْإِنَاءِ كَلْبٌ، أَيَّ إنَاءٍ كَانَ وَأَيَّ كَلْبٍ كَانَ - كَلْبَ صَيْدٍ أَوْ غَيْرَهُ، صَغِيرًا أَوْ كَبِيرًا - فَالْفَرْضُ إهْرَاقُ مَا فِي ذَلِكَ الْإِنَاءِ كَائِنًا مَا كَانَ ثُمَّ يُغْسَلُ بِالْمَاءِ سَبْعَ مَرَّاتٍ، وَلَا بُدَّ أُولَاهُنَّ بِالتُّرَابِ مَعَ الْمَاءِ وَلَا بُدَّ، وَذَلِكَ الْمَاءُ الَّذِي يُطَهَّرُ بِهِ الْإِنَاءُ طَاهِرٌ حَلَالٌ، فَإِنْ أَكَلَ الْكَلْبُ فِي الْإِنَاءِ وَلَمْ يَلَغْ فِيهِ أَوْ أَدْخَلَ رِجْلَهُ أَوْ ذَنَبَهُ أَوْ وَقَعَ بِكُلِّهِ فِيهِ لَمْ يَلْزَمْ غَسْلُ الْإِنَاءِ وَلَا هَرْقُ مَا فِيهِ أَلْبَتَّةَ وَهُوَ حَلَالٌ طَاهِرٌ كُلُّهُ كَمَا كَانَ، وَكَذَلِكَ لَوْ وَلَغَ الْكَلْبُ فِي بُقْعَةٍ فِي الْأَرْضِ أَوْ فِي يَدِ إنْسَانٍ أَوْ فِي مَا لَا يُسَمَّى إنَاءً فَلَا يَلْزَمُ غَسْلُ شَيْءٍ مِنْ ذَلِكَ وَلَا هَرْقُ مَا فِيهِ.

L2722–2724 Wulūgh refers specifically to the act of a dog drinking: if its saliva or sweat touches the body, garment, vessel, any possession, or hunted animal, it be-

comes obligatory to remove. That is because of what was removed, whether by water or otherwise. All that we have mentioned must be addressed, except for the garment, whose impurity cannot be removed except with water.

وَالْوُلُوغُ هُوَ الشُّرْبُ فَقَطْ، فَلَوْ مَسَّ لُعَابُ الْكَلْبِ أَوْ عَرَقُهُ الْجَسَدَ أَوْ الثَّوْبَ أَوْ الْإِنَاءَ أَوْ مَتَاعًا مَا أَوْ الصَّيْدَ، فَفَرْضٌ إزَالَةُ ذَلِكَ بِمَا أَزَالَهُ مَاءً كَانَ أَوْ غَيْرَهُ، وَلَا بُدَّ مِنْ كُلِّ مَا ذَكَرْنَا إلَّا مِنْ الثَّوْبِ فَلَا يُزَالُ إلَّا بِالْمَاءِ.

L2725 Abdullah ibn Yusuf narrated to us on the authority of Ahmad ibn Fath, on the authority of Abdul Wahhab ibn Isa, on the authority of Ahmad ibn Muhammad, on the authority of Ahmad ibn Ali, on the authority of Muslim ibn al-Hajjaj, on the authority of Ali ibn Hajar al-Sa'di, on the authority of Ali ibn Mushir, who reported: I heard from al-A'mash, from Abu Razeen and Abu Salih, from Abu Hurairah, who said: The Messenger of Allah (peace be upon him) said, "If a dog laps from the vessel of one of you, let him pour it out and then wash it seven times".[16]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا عَلِيُّ بْنُ حَجَرٍ السَّعْدِيُّ ثنا عَلِيُّ بْنُ مُسْهِرٍ أَنَا الْأَعْمَشُ عَنْ أَبِي رَزِينٍ وَأَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا وَلَغَ الْكَلْبُ فِي إنَاءِ أَحَدِكُمْ فَلْيُرِقْهُ ثُمَّ لِيَغْسِلْهُ سَبْعَ مَرَّاتٍ» .

L2726 And through his chain to [Imam] Muslim: Zuhayr ibn Harb narrated to us, from Isma'il ibn Ibrahim, from Hisham ibn Hassan, from Muhammad ibn Sirin, from Abu Hurairah, who said: The Messenger of Allah (peace be upon him) said, "If a dog laps from one of your vessels, purify it by washing seven times, the first of which should be with dust."[17]

وَبِهِ إلَى مُسْلِمٍ ثنا زُهَيْرُ بْنُ حَرْبٍ ثنا إسْمَاعِيلُ بْنُ إبْرَاهِيمَ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «طَهُورُ إنَاءِ أَحَدِكُمْ إذَا وَلَغَ فِيهِ الْكَلْبُ أَنْ يَغْسِلَهُ سَبْعَ مَرَّاتٍ أُولَاهُنَّ بِالتُّرَابِ» .

L2727 Abdullah ibn Rabee' narrated to us, Muhammad ibn Ishaq ibn Al-Salim narrated to us, Ibn Al-A'rabi narrated to us, Abu Dawud narrated to us, Ahmad ibn Hanbal narrated to us, Yahya ibn Sa'eed Al-Qattan narrated to us, Shu'bah narrated to us, Abu Al-Tayyah narrated from Mutarrif ibn Abdullah ibn Al-Shikhkhir from Ibn Mughaffal, who said: "The Messenger of Allah (peace be upon him) ordered the killing of dogs, then said: 'What is the matter with them and the dogs?' He then permitted the hunting dog and the sheepdog." He (peace be upon him) also said: "If a dog laps in a vessel, wash it seven times, and the eighth time, scrub it with soil." Ali said: "He (peace be upon him) ordered the pouring out of what is in the vessel if a dog laps in it, without specifying any particular case, nor did he (peace be upon him) command avoiding what a dog lapped from in non-vessels; rather, he prohibited wasting wealth."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إسْحَاقَ بْنِ السَّلِيمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا أَحْمَدُ بْنُ حَنْبَلٍ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ ثنا شُعْبَةُ ثنا أَبُو التَّيَّاحِ عَنْ مُطَرِّفِ بْنِ عَبْدِ اللَّهِ بْنِ الشِّخِّيرِ عَنْ ابْنِ مُغَفَّلٍ قَالَ «أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَتْلِ الْكِلَابِ ثُمَّ قَالَ: مَا لَهُمْ وَلَهَا؟ فَرَخَّصَ فِي كَلْبِ الصَّيْدِ وَفِي كَلْبِ الْغَنَمِ» . وَقَالَ - عَلَيْهِ السَّلَامُ -: «إذَا وَلَغَ الْكَلْبُ فِي الْإِنَاءِ فَاغْسِلُوهُ سَبْعَ مَرَّاتٍ وَالثَّامِنَةُ عَفِّرُوهُ بِالتُّرَابِ» . قَالَ عَلِيٌّ: فَأَمَرَ - عَلَيْهِ السَّلَامُ - بِهَرْقِ مَا فِي الْإِنَاءِ إذَا وَلَغَ فِيهِ الْكَلْبُ، وَلَمْ يَخُصَّ شَيْئًا مِنْ شَيْءٍ، وَلَمْ يَأْمُرْ - عَلَيْهِ السَّلَامُ - بِاجْتِنَابِ مَا وَلَغَ فِيهِ فِي غَيْرِ الْإِنَاءِ، بَلْ نَهَى عَنْ إضَاعَةِ الْمَالِ.

[16] **Hadith references (L2725):** Sunan an-Nasai 335; Sunan an-Nasai 66.
[17] **Hadith references (L2726):** Sahih Muslim 279d; Mishkat al-Masabih 490.

وَقَدْ جَاءَ هَذَا الْخَبَرُ بِرِوَايَاتٍ شَتَّى، فِي بَعْضِهَا «وَالسَّابِعَةُ بِالتُّرَابِ» وَفِي بَعْضِهَا «إِحْدَاهُنَّ بِالتُّرَابِ» وَكُلُّ ذَلِكَ لَا يَخْتَلِفُ مَعْنَاهُ، لِأَنَّ الْأُولَى هِيَ بِلَا شَكٍّ إِحْدَى الْغَسَلَاتِ. وَفِي لَفْظَةِ " الْأُولَى " بَيَانُ أَيَّتِهِنَّ هِيَ، فَمَنْ جَعَلَ التُّرَابَ فِي أُولَاهُنَّ فَقَدْ جَعَلَهُ فِي إِحْدَاهُنَّ بِلَا شَكٍّ وَاسْتَعْمَلَ اللَّفْظَتَيْنِ مَعًا، وَمَنْ جَعَلَهُ فِي غَيْرِ أُولَاهُنَّ فَقَدْ خَالَفَ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَنْ يَكُونَ ذَلِكَ فِي أُولَاهُنَّ، وَهَذَا لَا يَحِلُّ، وَلَا شَكَّ نَدْرِي أَنَّ تَعْفِيرَهُ بِالتُّرَابِ فِي أُولَاهُنَّ تَطْهِيرٌ ثَامِنٌ إِلَى السَّبْعِ غَسَلَاتٍ، وَأَنَّ تِلْكَ الْغَسْلَةَ سَابِقَةٌ لِسَائِرِهِنَّ إِذَا جُمِعْنَ، وَبِهَذَا تَصِحُّ الطَّاعَةُ لِجَمِيعِ أَلْفَاظِهِ - عَلَيْهِ السَّلَامُ - الْمَأْثُورَةِ فِي هَذَا الْخَبَرِ، وَلَا يُجْزِئُ بَدَلَ التُّرَابِ غَيْرُهُ، لِأَنَّهُ تَعَدٍّ لِحَدِّ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L2728–2730 This report has been transmitted through various narrations. In some versions it states “the seventh is with dust,” while in others it states “one of them is with dust.” All these versions are not contradictory in meaning, as the first washing is undoubtedly one of the ritual washings. The term “the first” specifies which of these it is. Thus, whoever considers the dust to be in the first of them has... He placed it in one of them without doubt and used both expressions together. Whoever places it in other than the first of them has opposed the command of Allah’s Messenger - peace be upon him - that this should be in the first of them, and this is impermissible. We undoubtedly know that applying dust to oneself in the first of them constitutes an eighth purification in addition to the seven washings, and that this washing precedes all others when combined. Through this, obedience to all his transmitted wordings - peace be upon him - in this report becomes valid. Nothing else suffices as a substitute for dust, for it transgresses the boundary set by Allah’s Messenger - peace be upon him.

وَالْمَاءُ الَّذِي يُغْسَلُ بِهِ الْإِنَاءُ طَاهِرٌ، لِأَنَّهُ لَمْ يَأْتِ نَصٌّ بِاجْتِنَابِهِ، وَلَا شَرِيعَةَ إِلَّا مَا أَخْبَرَنَا بِهَا - عَلَيْهِ السَّلَامُ -، وَمَا عَدَا ذَلِكَ فَهُوَ مِمَّا لَمْ يَأْذَنْ اللَّهُ تَعَالَى بِهِ، وَالْمَاءُ حَلَالٌ شُرْبُهُ طَاهِرٌ، فَلَا يَحْرُمُ إِلَّا بِأَمْرٍ مِنْهُ - عَلَيْهِ السَّلَامُ -.

L2731 The water used to wash a vessel is pure, for there exists no definitive text requiring its avoidance, nor any divine law except what he (peace be upon him) has informed us of. Whatever lies beyond this is from what Allah the Exalted has not permitted. The water is permissible, and its drinking is pure; thus it does not become unlawful except by his command (peace be upon him).

وَأَمَّا مَا أَكَلَ فِيهِ الْكَلْبُ أَوْ وَقَعَ فِيهِ أَوْ دَخَلَ فِيهِ بَعْضُ أَعْضَائِهِ فَلَا غَسْلَ فِي ذَلِكَ وَلَا هَرْقَ، لِأَنَّهُ حَلَالٌ طَاهِرٌ قَبْلَ ذَلِكَ بِيَقِينٍ - إِنْ كَانَ مِمَّا أَبَاحَهُ اللَّهُ تَعَالَى مِنْ الْمَطَاعِمِ وَالْمَشَارِبِ وَسَائِرِ الْمُبَاحَاتِ - فَلَا يَنْتَقِلُ إِلَى التَّحْرِيمِ وَالتَّنْجِيسِ إِلَّا بِنَصٍّ لَا بِدَعْوَى.

L2732 As for that which a dog has eaten from, fallen into, or had any part of its body enter into it, there is no obligation for ritual washing nor discarding it, because it was certainly lawful and pure before that [interaction]—if it belongs to what Allah the Exalted has permitted among foods, drinks, and all other permissible things—for it does not transition to being prohibited or impure except by explicit textual proof, not by mere assertion.

وَأَمَّا وُجُوبُ إِزَالَةِ لُعَابِ الْكَلْبِ وَعَرَقِهِ فِي أَيِّ شَيْءٍ كَانَ فَلِأَنَّ اللَّهَ تَعَالَى حَرَّمَ كُلَّ ذِي نَابٍ مِنْ السِّبَاعِ، وَالْكَلْبُ ذُو نَابٍ مِنْ السِّبَاعِ، فَهُوَ حَرَامٌ، وَبَعْضُ الْحَرَامِ حَرَامٌ

L2733 As for the obligation to remove a dog’s saliva and bodily fluids from any item it contacts, this is because Allah the Exalted has prohibited every predatory animal possessing fangs. The dog is a predatory animal with fangs, and thus it is prohibited. Some of what is prohibited is prohibited without doubt, and

its saliva and bodily fluids constitute part of it, hence they are prohibited. The prohibited must be removed and avoided. It is not permissible to remove it from clothing except with water, in accordance with Allah the Exalted's command: *And purify your garments* [74:4]. We have stated that purification is only valid with water, or with dust when water is unavailable.[18]

بِلَا شَكٍّ، وَلُعَابُهُ وَعَرَقُهُ بَعْضُهُ فَهُمَا حَرَامٌ، وَالْحَرَامُ فُرِضَ إِزَالَتُهُ وَاجْتِنَابُهُ، وَلَمْ يُجْزِ أَنْ يُزَالَ مِنْ الثَّوْبِ إِلَّا بِالْمَاءِ لِقَوْلِ اللَّهِ تَعَالَى: {وَثِيَابَكَ فَطَهِّرْ} [المدثر: ٤] وَقَدْ قُلْنَا إِنَّ التَّطْهِيرَ لَا يَكُونُ إِلَّا بِالْمَاءِ، وَبِالتُّرَابِ عِنْدَ عَدَمِ الْمَاءِ.

L2734 Among those who held our opinion regarding washing a vessel in which a dog has lapped seven times is Abū Hurayrah, as narrated by Yūnus ibn ʿAbd Allāh: Abū Bakr ibn Aḥmad ibn Khālid narrated to us via his father via ʿAlī ibn ʿAbd al-ʿAzīz via Abū ʿUbayd al-Qāsim ibn Sallām via Ismāʿīl—that is, Ibn ʿUlayyah—via Ayyūb al-Sakhtiyānī via Muḥammad ibn Sīrīn via Abū Hurayrah, who said: "If a dog laps in the vessel, it is to be washed seven times, the first of them, or one of them, with earth, and the cat once."

وَمِمَّنْ قَالَ بِقَوْلِنَا فِي غَسْلِ مَا وَلَغَ فِيهِ الْكَلْبُ سَبْعًا أَبُو هُرَيْرَةَ، كَمَا حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ ثنا أَبُو بَكْرِ بْنُ أَحْمَدَ بْنِ خَالِدٍ ثنا أَبِي ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا أَبُو عُبَيْدٍ الْقَاسِمُ بْنُ سَلَّامٍ ثنا إِسْمَاعِيلُ هُوَ ابْنُ عُلَيَّةَ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ قَالَ " إِذَا وَلَغَ الْكَلْبُ فِي الْإِنَاءِ غُسِلَ سَبْعَ مَرَّاتٍ، أُولَاهُنَّ أَوْ إِحْدَاهُنَّ بِالتُّرَابِ، وَالْهِرُّ مَرَّةً.

L2735 It has been narrated to us from Al-Ḥasan al-Baṣrī: "If a dog laps in a vessel, pour out its contents and wash it seven times." This is also the opinion of Ibn ʿAbbās, ʿUrwah ibn al-Zubayr, Ṭāwus, and ʿAmr ibn Dīnār. Al-Awzāʿī said: "If a dog laps in a vessel containing ten equal portions of milk, all of it must be poured out, and the vessel washed seven times - one of them with soil. If it laps in a small quantity of water equivalent to what a person uses for ablution, the water remains pure. Ablution is permissible with that water, and the dog's saliva is to be washed from clothing and hunted game."

وَرُوِّينَا عَنْ الْحَسَنِ الْبَصْرِيِّ " إِذَا وَلَغَ الْكَلْبُ فِي الْإِنَاءِ أَهْرِقْهُ وَاغْسِلْهُ سَبْعَ مَرَّاتٍ، وَبِهِ يَقُولُ ابْنُ عَبَّاسٍ وَعُرْوَةُ بْنُ الزُّبَيْرِ وَطَاوُسٌ وَعَمْرُو بْنُ دِينَارٍ. وَقَالَ الْأَوْزَاعِيُّ " إِنْ وَلَغَ الْكَلْبُ فِي إِنَاءٍ فِيهِ عَشَرَةُ أَقْسَاطٍ لَبَنٍ يُهْرَقُ كُلُّهُ وَيُغْسَلُ الْإِنَاءُ سَبْعَ مَرَّاتٍ إِحْدَاهُنَّ بِالتُّرَابِ، فَإِنْ وَلَغَ فِي مَاءٍ فِي بُقْعَةٍ صَغِيرَةٍ مِقْدَارِ مَا يَتَوَضَّأُ بِهِ إِنْسَانٌ فَهُوَ طَاهِرٌ، وَيُتَوَضَّأُ بِذَلِكَ الْمَاءِ وَيُغْسَلُ لُعَابُ الْكَلْبِ مِنْ الثَّوْبِ وَمِنْ الصَّيْدِ.

L2736–2737 Ali said: The opinion of al-Awzāʿī is the same as ours. This is the view (referring to washing the vessel seven times, one of which with soil, after a dog has licked it) held by Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhawayhi, Abū ʿUbayd, Abū Thawr, Dāwūd al-Ẓāhirī, and the proponents of ḥadīth.

قَالَ عَلِيٌّ: قَوْلُ الْأَوْزَاعِيِّ هُوَ نَفْسُ قَوْلِنَا، وَبِهَذَا يَقُولُ - يَعْنِي غَسْلَ الْإِنَاءِ مِنْ وُلُوغِ الْكَلْبِ سَبْعًا إِحْدَاهُنَّ بِالتُّرَابِ - أَحْمَدُ بْنُ حَنْبَلٍ وَإِسْحَاقُ بْنُ رَاهْوَيْهِ وَأَبُو عُبَيْدٍ وَأَبُو ثَوْرٍ وَدَاوُد وَجُمْلَةُ أَصْحَابِ الْحَدِيثِ.

L2738 Al-Shafi'i similarly held this view, except he stated: "If the water in the vessel reaches five hundred ratls, it should not be poured out due to a dog lapping

وَقَالَ الشَّافِعِيُّ كَذَلِكَ إِلَّا أَنَّهُ قَالَ " إِنْ كَانَ الْمَاءُ فِي الْإِنَاءِ خَمْسَمِائَةِ رَطْلٍ لَمْ يُهْرَقْ لِوُلُوغِ الْكَلْبِ فِيهِ، وَرَأَى هَرْقَ مَا عَدَا الْمَاءَ وَإِنْ كَثُرَ، وَرَأَى أَنْ يُغْسَلَ مِنْ وُلُوغِ

[18] **Qur'an references (L2733):** Qur'an 74:4 (Al-Muddaththir).

in it." He held that other liquids besides water must be poured out even if abundant, and he mandated washing the vessel seven times if a pig laps from it, just as washing is required for a dog. He did not apply this ruling at all to the lapping of any predatory animal or anything other than the pig.

L2739 Ali said: This is an error, because the general directive of Allah's Messenger - peace and blessings be upon him - commanding the pouring out of such liquid is more worthy of adherence. As for analogizing the pig to the dog, this constitutes an evident error (even if analogy were valid), since the dog belongs to the category of predators whose prohibition stems solely from the general prohibition against consuming predator meat. Thus, analogizing predators and what they lap from to the dog - which is a subset of predators whose hunted prey becomes permissible when known - is more valid than analogizing the pig to the dog. Just as it is impermissible to analogize the pig to the dog regarding the permissibility of domesticating it or consuming its hunted prey, so too is it invalid to analogize them concerning the prescribed number of vessel washings after its lapping. How much more so when analogy itself is entirely invalid!

L2740 Malik stated in some of his statements: One may perform ablution with that water, and he vacillated regarding washing the vessel seven times—at one time not deeming it necessary and at another deeming it necessary. In another of his statements, he said: The water is to be poured out and the vessel washed seven times. If it is milk, it is not to be poured out; rather, the vessel is washed seven times and what is in it is consumed. In another instance, he stated: All of that is to be poured out and the vessel washed seven times.

L2741 Ali said: These are discrepancies that are clearly erroneous; neither was the text followed in some of them, nor did analogy apply consistently in them, nor was the opinion of any of the Companions or the Followers (may Allah be pleased with them) followed in them.

L2742 It has been reported from him that he said: "I consider it gravely wrong that sustenance from Allah's provisions is deliberately taken, only to be poured out because a dog lapped in it."

الْخِنْزِيرِ فِي الْإِنَاءِ سَبْعًا كَمَا يُغْسَلُ مِنْ الْكَلْبِ، وَلَمْ يَرَ ذَلِكَ فِي وُلُوغِ شَيْءٍ مِنْ السِّبَاعِ وَلَا غَيْرِ الْخِنْزِيرِ أَصْلًا.

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِأَنَّ عُمُومَ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْأَمْرِ بِهَرْقِهِ أَوْلَى أَنْ يُتَّبَعَ وَأَمَّا قِيَاسُ الْخِنْزِيرِ عَلَى الْكَلْبِ فَخَطَأٌ ظَاهِرٌ - لَوْ كَانَ الْقِيَاسُ حَقًّا - لِأَنَّ الْكَلْبَ بَعْضَ السِّبَاعِ لَمْ يُحَرَّمْ إلَّا بِعُمُومِ تَحْرِيمِ لُحُومِ السِّبَاعِ فَقَطْ، فَكَانَ قِيَاسُ السِّبَاعِ وَمَا وَلَغَتْ فِيهِ عَلَى الْكَلْبِ الَّذِي هُوَ بَعْضُهَا وَالَّتِي يَجُوزُ أَكْلُ صَيْدِهَا إذَا عُلِمَتْ أَوْلَى مِنْ قِيَاسِ الْخِنْزِيرِ عَلَى الْكَلْبِ، وَكَمَا لَمْ يَجُزْ أَنْ يُقَاسَ الْخِنْزِيرُ عَلَى الْكَلْبِ فِي جَوَازِ اتِّخَاذِهِ وَأَكْلِ صَيْدِهِ فَكَذَلِكَ لَا يَجُوزُ أَنْ يُقَاسَ الْخِنْزِيرُ عَلَى الْكَلْبِ فِي عَدَدِ غَسْلِ الْإِنَاءِ مِنْ وُلُوغِهِ، فَكَيْفَ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

وَقَالَ مَالِكٌ فِي بَعْضِ أَقْوَالِهِ: يُتَوَضَّأُ بِذَلِكَ الْمَاءِ وَتَرَدَّدَ فِي غَسْلِ الْإِنَاءِ سَبْعَ مَرَّاتٍ فَمَرَّةً لَمْ يَرَهُ وَمَرَّةً رَآهُ، وَقَالَ فِي قَوْلٍ لَهُ آخَرَ: يُهْرَقُ الْمَاءُ وَيُغْسَلُ الْإِنَاءُ سَبْعَ مَرَّاتٍ فَإِنْ كَانَ لَبَنًا لَمْ يُهْرَقْ وَلَكِنْ يُغْسَلُ الْإِنَاءُ سَبْعَ مَرَّاتٍ وَيُؤْكَلُ مَا فِيهِ، وَمَرَّةً قَالَ: يُهْرَقُ كُلُّ ذَلِكَ وَيُغْسَلُ الْإِنَاءُ سَبْعَ مَرَّاتٍ.

قَالَ عَلِيٌّ: هَذِهِ تَفَارِيقُ ظَاهِرَةُ الْخَطَإِ، لَا النَّصُّ اُتُّبِعَ فِي بَعْضِهَا، وَلَا الْقِيَاسُ اطَّرَدَ فِيهَا، وَلَا قَوْلُ أَحَدٍ مِنْ الصَّحَابَةِ أَوْ التَّابِعِينَ - رَضِيَ اللَّهُ عَنْهُمْ - قُلِّدَ فِيهَا.

وَرُوِيَ عَنْهُ أَنَّهُ قَالَ: إنِّي لَأَرَاهُ عَظِيمًا أَنْ يُعْمَدَ إلَى رِزْقٍ مِنْ رِزْقِ اللَّهِ فَيُهْرَقَ مِنْ أَجْلِ كَلْبٍ وَلَغَ فِيهِ.

قَالَ عَلِيٌّ: فَيُقَالُ لِمَنْ احْتَجَّ بِهَذَا الْقَوْلِ: أَعْظَمُ مِنْ ذَلِكَ أَنْ تُخَالِفَ أَمْرَ اللَّهِ عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهَرْقِهِ. وَأَعْظَمُ مِمَّا اسْتَعْظَمْتُمُوهُ أَنْ يُعْمَدَ إلَى رِزْقٍ مِنْ رِزْقِ اللَّهِ فَيُهْرَقَ مِنْ أَجْلِ عُصْفُورٍ مَاتَ فِيهِ بِغَيْرِ أَمْرٍ مِنْ اللَّهِ بِهَرْقِهِ. فَإِنْ قَالُوا: الْعُصْفُورُ الْمَيِّتُ حَرَامٌ، قُلْنَا: نَعَمْ لَمْ نُخَالِفْكُمْ فِي هَذَا، وَلَكِنَّ الْمَائِعَ الَّذِي مَاتَ فِيهِ حَلَالٌ، فَتَحْرِيمُكُمْ الْحَلَالَ مِنْ أَجْلِ مُمَاسَّتِهِ الْحَرَامَ هُوَ الْبَاطِلُ، إلَّا أَنْ يَأْمُرَ بِذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيُطَاعُ أَمْرُهُ، وَلَا يُتَعَدَّى حَدُّهُ، وَلَا يُضَافُ إلَيْهِ مَا لَمْ يَقُلْ.

L2743–2745 Ali said: It will be said to those who cite this statement as proof: Greater than that is your contradiction of Allah's command as conveyed by His Prophet—peace and blessings be upon him—by spilling it. And greater than what you deem grave is that one would deliberately take a provision from Allah's provision and it is spilled for the sake of a sparrow that died in it, without any command from Allah to spill it. If they say: "The dead sparrow is unlawful," We said: Yes, we did not differ with you in this matter. However, the liquid in which death occurred is lawful. Thus, your prohibition of what is lawful merely because it came into contact with what is unlawful is invalid—unless the Messenger of Allah (peace be upon him) commands it, in which case his command must be obeyed. The boundaries he set must not be overstepped, nor must anything he did not declare be added to his rulings.

وَقَالَ أَبُو حَنِيفَةَ: يُهْرَقُ كُلُّ مَا وَلَغَ فِيهِ الْكَلْبُ أَيَّ شَيْءٍ كَانَ كَثُرَ أَمْ قَلَّ، وَمَنْ تَوَضَّأَ بِذَلِكَ الْمَاءِ أَعَادَ الْوُضُوءَ وَالصَّلَوَاتِ أَبَدًا، وَلَا يَغْسِلُ الْإِنَاءَ مِنْهُ إلَّا مَرَّةً.

L2746 Abu Hanifah said: Any liquid a dog has lapped must be entirely poured out, whether the quantity is great or small. Whoever performs ablution with such water must repeat the ablution and all prayers [performed with it]. The vessel need only be washed once [to purify it] after the dog's lapping.

قَالَ عَلِيٌّ: وَهَذَا قَوْلٌ لَا يُحْفَظُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ وَلَا مِنْ التَّابِعِينَ - إلَّا أَنَّنَا رُوِّينَا عَنْ إبْرَاهِيمَ أَنَّهُ قَالَ فِيمَا وَلَغَ فِيهِ الْكَلْبُ " اغْسِلْهُ " وَقَالَ مَرَّةً " اغْسِلْهُ حَتَّى تُنْقِيَهُ " وَلَمْ يَذْكُرْ تَحْدِيدًا. وَهُوَ قَوْلٌ مُخَالِفٌ لِسُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّتِي أَوْرَدْنَا. وَكَفَى بِهَذَا خَطَأً.

L2747 Ali said: "This is an opinion not attributed to any of the Companions nor the Successors, except that we have narrated from Ibrāhīm al-Nakhaʿī that he said regarding what a dog has lapped in: 'Wash it,' and he once said: 'Wash it until you purify it,' without specifying a number. This is a view contradicting the Sunnah of the Messenger of Allah—peace and blessings of Allah be upon him—which we have mentioned. This alone is sufficient to deem it erroneous."

وَاحْتَجَّ لَهُ بَعْضُ مُقَلِّدِيهِ بِأَنْ قَالَ " إنَّ أَبَا هُرَيْرَةَ - وَهُوَ أَحَدُ مَنْ رَوَى هَذَا الْخَبَرَ - قَدْ رُوِيَ عَنْهُ أَنَّهُ خَالَفَهُ.

L2748 Some of his followers argued as evidence by stating that Abu Hurairah - one of those who narrated this report - had reports transmitted from him indicating he opposed it.

قَالَ عَلِيٌّ: فَيُقَالُ لَهُ هَذَا بَاطِلٌ مِنْ وُجُوهٍ:

L2749 Ali said: Then it is said to him, "This is invalid on several grounds."

أَحَدُهَا أَنَّهُ إنَّمَا رَوَى ذَلِكَ الْخَبَرَ السَّاقِطَ عَبْدُ السَّلَامِ بْنُ حَرْبٍ وَهُوَ ضَعِيفٌ، وَلَا مُجَاهَرَةَ أَقْبَحُ مِنْ الِاعْتِرَاضِ عَلَى مَا رَوَاهُ عَنْ أَبِي هُرَيْرَةَ ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ عَنْ ابْنِ

L2750 The first is that only ʻAbd al-Salām ibn Ḥarb - who is weak - narrated this rejected report. There is no uglier brazenness than objecting to what Ibn ʻUlayyah narrated from Ayyūb, from Ibn Sīrīn, from Abū Hurayrah in *al-Nujūm al-Thawāqib* with a narration resembling that of ʻAbd al-Salām

ibn Ḥarb. The second is that even if ‘Abd al-Salām’s narration is graded as ḥasan, it merely states the vessel is washed three times. Thus, they achieved nothing but opposition to the Sunnah and contradiction of the very report they cited from Abū Hurayrah. They neither followed the Prophet - peace and blessings of Allah be upon him - nor properly emulated Abū Hurayrah, whom they invoked as evidence. The third is that even if such a narration were authentic from Abū Hurayrah, it would be impermissible to use it to challenge what is narrated from the Prophet - peace and blessings of Allah be upon him - for decisive proof lies solely in the statements of Allah’s Messenger - peace and blessings of Allah be upon him - not in anyone else’s words. A companion might forget his narration or interpret it differently. In such cases, it is obligatory to weaken what is narrated from the companion’s own statements and give precedence to what is narrated from the Prophet - peace and blessings of Allah be upon him - rather than weakening the Prophet’s narrations and favoring the companion’s. This is the falsehood that is religiously invalid. The fourth is that even if Abū Hurayrah’s narration - God forbid - contradicted his report, other companions besides Abū Hurayrah narrated it, such as the companion Ibn Mughaffal, who did not contradict what he narrated.

سِيرِينَ - النُّجُوم الثَّوَاقِب - بِمِثْلِ رِوَايَةِ عَبْدِ السَّلَامِ بْنِ حَرْبٍ. وَثَانِيهَا أَنَّ رِوَايَةَ عَبْدِ السَّلَامِ - عَلَى تَحْسِينِهَا إِنَّمَا فِيهَا أَنَّهُ يُغْسَلُ الْإِنَاءُ ثَلَاثَ مَرَّاتٍ، فَلَمْ يَحْصُلُوا إِلَّا عَلَى خِلَافِ السُّنَّةِ وَخِلَافِ مَا اعْتَرَضُوا بِهِ عَنْ أَبِي هُرَيْرَةَ، فَلَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اتَّبَعُوا وَلَا أَبَا هُرَيْرَةَ الَّذِي احْتَجُّوا بِهِ قَلَّدُوا. وَثَالِثُهَا أَنَّهُ لَوْ صَحَّ ذَلِكَ عَنْ أَبِي هُرَيْرَةَ لَمَا حَلَّ أَنْ يُعْتَرَضَ بِذَلِكَ عَلَى مَا رَوَاهُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؛ لِأَنَّ الْحُجَّةَ إِنَّمَا هِيَ فِي قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا فِي قَوْلِ أَحَدٍ سِوَاهُ، لِأَنَّ الصَّاحِبَ قَدْ يَنْسَى مَا رَوَى وَقَدْ يَتَأَوَّلُ فِيهِ، وَالْوَاجِبُ إذَا وُجِدَ مِثْلُ هَذَا أَنْ يُضَعَّفَ مَا رُوِيَ عَنْ الصَّاحِبِ مِنْ قَوْلِهِ، وَأَنْ يُغَلَّبَ عَلَيْهِ مَا رُوِيَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا أَنْ نُضَعِّفَ مَا رُوِيَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنُغَلِّبَ عَلَيْهِ مَا رُوِيَ عَنْ الصَّاحِبِ، فَهَذَا هُوَ الْبَاطِلُ الَّذِي لَا يَحِلُّ. وَرَابِعُهَا أَنَّهُ حَتَّى لَوْ صَحَّ عَنْ أَبِي هُرَيْرَةَ خِلَافُ مَا رَوَى - وَمَعَاذَ اللَّهِ مِنْ ذَلِكَ - فَقَدْ رَوَاهُ مِنْ الصَّحَابَةِ غَيْرُ أَبِي هُرَيْرَةَ وَهُوَ ابْنُ مُغَفَّلٍ، وَلَمْ يُخَالِفْ مَا رَوَى.

L2751 And some of them said: This was only [valid] when he commanded the killing of dogs, but when he prohibited their killing, that was abrogated.

وَقَالَ بَعْضُهُمْ: إنَّمَا كَانَ هَذَا إذْ أَمَرَ بِقَتْلِ الْكِلَابِ، فَلَمَّا نَهَى عَنْ قَتْلِهَا نُسِخَ ذَلِكَ.

L2752 Ali said, “This is a sheer lie for two reasons.”

قَالَ عَلِيٌّ: وَهَذَا كَذِبٌ بَحْتٌ لِوَجْهَيْنِ.

L2753–2755 One of them; because it is a manifestly false legal claim without evidence, Adopting matters about which the speaker has no knowledge—this is ḥarām.

أَحَدُهُمَا، لِأَنَّهُ دَعْوَى فَاضِحَةٌ بِلَا دَلِيلٍ، وَقَفْو مَا لَا عِلْمَ لِقَائِلِهِ بِهِ، هَذَا حَرَامٌ.

L2756 The second is that Ibn Mughaffal transmitted the prohibition against killing dogs and the injunction to wash the vessel seven times from them within a single ḥadīth—as we previously mentioned. Furthermore, the command to kill dogs was prescribed during the early Hijri period, whereas the report mandating washing the vessel seven times due to them was narrated by Abū Hurayra and Ibn Mughaffal, whose conversion to Islam occurred later.

وَالثَّانِي أَنَّ ابْنَ مُغَفَّلٍ رَوَى النَّهْيَ عَنْ قَتْلِ الْكِلَابِ وَالْأَمْرَ بِغَسْلِ الْإِنَاءِ مِنْهَا سَبْعًا فِي خَبَرٍ وَاحِدٍ مَعًا، وَقَدْ ذَكَرْنَاهُ قَبْلُ. وَأَيْضًا فَإِنَّ الْأَمْرَ بِقَتْلِ الْكِلَابِ كَانَ فِي أَوَّلِ الْهِجْرَةِ، وَإِنَّمَا رَوَى غَسْلَ الْإِنَاءِ مِنْهَا سَبْعًا أَبُو هُرَيْرَةَ وَابْنُ مُغَفَّلٍ، وَإِسْلَامُهُمَا مُتَأَخِّرٌ.

L2757 And some of them said: The command to wash the vessel seven times was intended as a form of stringency.

وَقَالَ بَعْضُهُمْ: كَانَ الْأَمْرُ بِغَسْلِ الْإِنَاءِ سَبْعًا عَلَى وَجْهِ التَّغْلِيظِ.

L2758 Ali said: They are asked, "Was the Prophet's command—peace and blessings be upon him—in that matter based on truth, thereby making obedience to him obligatory in it? Or did he command falsehood, such that disobeying him in it entails no hardship?" If they respond that he commanded truth, thereby making obedience to him obligatory in it, then they have nullified their own argument by citing the severity [of his ruling].

قَالَ عَلِيٌّ: يُقَالُ لَهُمْ أَبِحَقٍّ أَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ وَبِمَا تَلْزَمُ طَاعَتُهُ فِيهِ؟ أَمْ أَمَرَ بِبَاطِلٍ وَبِمَا لَا مَئُونَةَ فِي مَعْصِيَتِهِ فِي ذَلِكَ؟ فَإِنْ قَالُوا بِحَقٍّ وَبِمَا تَلْزَمُ طَاعَتُهُ فِيهِ، فَقَدْ أَسْقَطُوا شَغَبَهُمْ بِذِكْرِ التَّغْلِيظِ.

L2759 As for the other statement, holding it is pure disbelief; no Muslim would profess it.

وَأَمَّا الْقَوْلُ الْآخَرُ فَالْقَوْلُ بِهِ كُفْرٌ مُجَرَّدٌ لَا يَقُولُهُ مُسْلِمٌ.

L2760 Some of them said: A narration has been transmitted that he commanded that she be killed only because she used to frighten the believers.

وَقَالَ بَعْضُهُمْ: قَدْ جَاءَ أَثَرٌ بِأَنَّهُ إِنَّمَا أَمَرَ بِقَتْلِهَا، لِأَنَّهَا كَانَتْ تُرَوِّعُ الْمُؤْمِنِينَ

L2761 He was told: "We are not addressing her killing but the washing of the vessel from her lapping, even though that report mentions nothing except her killing alone. Furthermore, it is fabricated, as it is from the narration of al-Ḥusayn ibn ʿUbayd Allāh al-ʿIjlī, who is a discredited narrator."

قِيلَ لَهُ: لَسْنَا فِي قَتْلِهَا، إِنَّمَا نَحْنُ فِي غَسْلِ الْإِنَاءِ مِنْ وُلُوغِهَا، مَعَ أَنَّ ذَلِكَ الْأَثَرَ لَيْسَ فِيهِ إِلَّا ذِكْرُ قَتْلِهَا فَقَطْ، وَهُوَ أَيْضًا مَوْضُوعٌ، لِأَنَّهُ مِنْ رِوَايَةِ الْحُسَيْنِ بْنِ عُبَيْدِ اللَّهِ الْعِجْلِيِّ وَهُوَ سَاقِطٌ.

L2762 Some of them protested and cited the hadith containing the forgiveness granted to the transgressor who gave water to a dog using her leather shoe. Ali remarked: "This is highly astonishing, for that report concerns others besides us, and the Sharia of those before us does not bind us. Moreover, who can confirm that anything was subsequently drunk from that shoe, that it remained unwashed, and that this transgressor was even aware of the established practice of washing vessels after a dog's lapping? She was not a prophet whose actions could be cited as proof. All of this amounts to dismissive rejection and haphazard argumentation that merits being disavowed."

وَشَغَبَ بَعْضُهُمْ فَذَكَرَ الْحَدِيثَ الَّذِي فِيهِ الْمَغْفِرَةُ لِلْبَغِيِّ الَّتِي سَقَتْ الْكَلْبَ بِخُفِّهَا. قَالَ عَلِيٌّ: وَهَذَا عَجَبٌ جِدًّا، لِأَنَّ ذَلِكَ الْخَبَرَ كَانَ فِي غَيْرِنَا، وَلَا تَلْزَمُنَا شَرِيعَةُ مَنْ قَبْلَنَا. وَأَيْضًا فَمَنْ لَهُمْ أَنَّ ذَلِكَ الْخُفَّ شُرِبَ فِيهِ مَا بَعْدَ ذَلِكَ، وَأَنَّهُ لَمْ يُغْسَلْ، وَأَنَّ تِلْكَ الْبَغِيَّ عَرَفَتْ سُنَّةَ غَسْلِ الْإِنَاءِ مِنْ وُلُوغِ الْكَلْبِ؟ وَلَمْ تَكُنْ تِلْكَ الْبَغِيُّ نَبِيَّةً فَيُحْتَجَّ بِفِعْلِهَا، وَهَذَا كُلُّهُ دَفْعٌ بِالرَّاحِ وَخَبْطٌ يَجِبُ أَنْ يُسْتَحَى مِنْهُ.

L2763 The washing done by whoever washes him is sufficient, even if the washer is not his companion, based on the Prophet's (peace be upon him) statement "Wash him," for it constitutes a general command.

وَيُجْزِئُ غَسْلُ مَنْ غَسَلَهُ وَإِنْ كَانَ غَيْرَ صَاحِبِهِ، لِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «فَاغْسِلُوهُ» فَهُوَ أَمْرٌ عَامٌّ.

L2764 Ali said: If they reject our distinction between what a dog has lapped in,

what it has eaten from, what it has fallen into, or what it has inserted a body part other than its tongue into.

قَالَ عَلِيٌّ: فَإِنْ أَنْكَرُوا عَلَيْنَا التَّفْرِيقَ بَيْنَ مَا وَلَغَ الْكَلْبُ فِيهِ وَبَيْنَ مَا أَكَلَ فِيهِ أَوْ وَقَعَ فِيهِ أَوْ أَدْخَلَ فِيهِ عُضْوًا مِنْ أَعْضَائِهِ غَيْرَ لِسَانِهِ.

L2765–2767 We said to them: There is no blame upon one who states what the Messenger of Allah (PBUH) stated, refrains from attributing to him what he did not say, does not oppose his commands, nor legislates in religion what he did not legislate. Rather, blame lies upon one who invalidates prayer due to chicken blood on garments that exceeds the measure of the Baghlī dirham (a standardized silver coin), thereby invalidating the prayer with it, and did not... The prayer is invalidated by a garment soaked in fish blood. Invalidating the prayer applies to chicken droppings or horse dung on the garment equivalent to a Baghli dirham in quantity. However, the prayer is not invalidated if less than a quarter of the garment is affected by horse urine or crow droppings.

قُلْنَا لَهُمْ: لَا نَكَرَةَ عَلَى مَنْ قَالَ مَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَقُلْ مَا لَمْ يَقُلْ - عَلَيْهِ السَّلَامُ -، وَلَمْ يُخَالِفْ مَا أَمَرَهُ بِهِ نَبِيُّهُ - عَلَيْهِ السَّلَامُ -، وَلَا شَرَعَ مَا لَمْ يُشَرِّعْهُ - عَلَيْهِ السَّلَامُ - فِي الدِّينِ، وَإِنَّمَا النَّكَرَةُ عَلَى مَنْ أَبْطَلَ الصَّلَاةَ بِمَا زَادَ عَلَى الدِّرْهَمِ الْبَغْلِيِّ فِي الثَّوْبِ مِنْ دَمِ الدَّجَاجِ فَأَبْطَلَ بِهِ الصَّلَاةَ، وَلَمْ يُبْطِلْ الصَّلَاةَ بِثَوْبٍ غُمِسَ فِي دَمِ السَّمَكِ، وَمَنْ أَبْطَلَ الصَّلَاةَ بِقَدْرِ الدِّرْهَمِ الْبَغْلِيِّ فِي الثَّوْبِ مِنْ خُرْءِ الدَّجَاجِ وَرَوْثِ الْخَيْلِ، وَلَمْ يُبْطِلْهَا بِأَقَلَّ مِنْ رُبُعِ الثَّوْبِ مِنْ بَوْلِ الْخَيْلِ وَخُرْءِ الْغُرَابِ.

L2768 Upon the one who discarded water lapped by a dog, but did not discard milk lapped by a dog. And upon the one ordered to pour out five hundred *ratls* excluding one *awqiyyah* of water into which a *dirham* of dog's saliva has fallen. If it is five hundred *ratls* and a *ratl* of dog's saliva falls into it, it remains pure - nothing needs to be poured out from it. These are the true impurities, not what we previously stated. And in Allah alone do we place our trust.

وَعَلَى مَنْ أَرَاقَ الْمَاءَ يَلَغُ فِيهِ الْكَلْبُ، وَلَمْ يُرِقْ اللَّبَنَ إذَا وَلَغَ فِيهِ الْكَلْبُ، وَعَلَى مَنْ أَمَرَ بِهَرْقِ خَمْسِمِائَةِ رَطْلٍ غَيْرَ أُوقِيَّةٍ مِنْ مَاءٍ وَقَعَ فِيهِ دِرْهَمٌ مِنْ لُعَابِ كَلْبٍ، فَإِنْ كَانَ خَمْسِمِائَةِ رَطْلٍ وَوَقَعَ فِيهِ رَطْلٌ مِنْ لُعَابِ الْكَلْبِ كَانَ طَاهِرًا لَا يُرَاقُ مِنْهُ شَيْءٌ، فَهَذِهِ هِيَ النَّكَرَاتُ حَقًّا لَا مَا قُلْنَا. وَبِاَللَّهِ نَتَأَيَّدُ.

L2769 **The issue of the ruling pertaining to the container when a cat laps into it.**

[مَسْأَلَة حُكْم الْإِنَاء إذَا وَلَغَ فِيهِ الْهِرّ]

L2770 Issue 128: If a cat drinks from a vessel, its contents need not be discarded. They may be eaten, drunk, or used. The vessel must then be washed with water once only. There is no obligation to remove the cat's saliva from items other than vessels and the garment by using water - any effective means suffices. However, from the garment, saliva must be removed with water alone.

١٢٨ - مَسْأَلَةٌ: فَإِنْ وَلَغَ فِي الْإِنَاءِ الْهِرُّ لَمْ يُهْرَقْ مَا فِيهِ، لَكِنْ يُؤْكَلُ أَوْ يُشْرَبُ أَوْ يُسْتَعْمَلُ، ثُمَّ يُغْسَلُ الْإِنَاءُ بِالْمَاءِ مَرَّةً وَاحِدَةً فَقَطْ، وَلَا يَلْزَمُ إزَالَةُ لُعَابِهِ مِمَّا عَدَا الْإِنَاءَ وَالثَّوْبَ بِالْمَاءِ لَكِنْ بِمَا أَزَالَهُ وَمِنْ الثَّوْبِ بِالْمَاءِ فَقَطْ.

L2771 Aḥmad ibn Muḥammad ibn ʿAbd Allāh al-Ṭalamankī narrated to us: Ibn

Mufarrij narrated to us: Muḥammad ibn Ayyūb al-Ṣamūt narrated to us: Aḥmad ibn ʿAmr al-Bazzār narrated to us: ʿAmr ibn ʿAlī al-Ṣayrafī narrated to us: Abū ʿĀṣim al-Ḍaḥḥāk ibn Makhlad narrated to us: Qurrah ibn Khālid narrated to us from Muḥammad ibn Sīrīn from Abū Hurayrah from the Prophet (peace be upon him) who said: "If a dog laps into a vessel, wash it seven times, and once for the cat."

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الطَّلْمَنْكِيُّ ثنا ابْنُ مُفَرِّجٍ ثنا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ ثنا أَحْمَدُ بْنُ عَمْرٍو الْبَزَّارُ ثنا عَمْرُو بْنُ عَلِيٍّ الصَّيْرَفِيُّ ثنا أَبُو عَاصِمٍ الضَّحَّاكُ بْنُ مَخْلَدٍ ثنا قُرَّةُ بْنُ خَالِدٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا وَلَغَ الْكَلْبُ فِي الْإِنَاءِ فَاغْسِلْهُ سَبْعَ مَرَّاتٍ وَالْهِرُّ مَرَّةً» .

L2772–2773 Ahmad ibn Muhammad ibn al-Jasur narrated to us: Wahb ibn Masarrat narrated to us: Ibn Waddah narrated to us: Abu Bakr ibn Abi Shaybah narrated to us: Zayd ibn al-Hubab narrated to us: Malik ibn Anas informed me: Ishaq ibn Abdullah ibn Abi Talhah al-Ansari informed me from Humaydah bint Ubayd ibn Rafi, from Kabshah bint Ka'b ibn Malik—who was married to the son of Abu Qatadah—that she poured water for Abu Qatadah to perform ablution. A female cat came to drink, so he tilted the vessel for it. I began to watch, and he said: "Are you surprised, O my niece? The Messenger of Allah (peace and blessings be upon him) said: 'It is not impure. Indeed, she is one of those [creatures] that frequent your surroundings—whether males or females.'"

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا وَهْبُ بْنُ مَسَرَّةَ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا زَيْدُ بْنُ الْحُبَابِ ثنا مَالِكُ بْنُ أَنَسٍ أَخْبَرَنِي إِسْحَاقُ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ الْأَنْصَارِيُّ عَنْ حُمَيْدَةَ بِنْتِ عُبَيْدِ بْنِ رَافِعٍ «عَنْ كَبْشَةَ بِنْتِ كَعْبِ بْنِ مَالِكٍ وَكَانَتْ تَحْتَ وَلَدِ أَبِي قَتَادَةَ أَنَّهَا صَبَّتْ لِأَبِي قَتَادَةَ مَاءً يَتَوَضَّأُ بِهِ، فَجَاءَتْ هِرَّةٌ تَشْرَبُ فَأَصْغَى لَهَا الْإِنَاءَ فَجَعَلْتُ أَنْظُرُ، فَقَالَ: أَتَعْجَبِينَ يَا ابْنَةَ أَخِي قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّهَا لَيْسَتْ بِنَجَسٍ، إِنَّمَا هِيَ مِنَ الطَّوَّافِينَ عَلَيْكُمْ أَوِ الطَّوَّافَاتِ» .

L2774 Ali said: Washing the vessel is obligatory, but spilling its contents is not required because it has not been contaminated. Washing the cat's saliva from the garment is obligatory, for the cat is a predator with fangs and is thus unlawful. Some unlawful things are categorically unlawful, though not every unlawful thing is impure. Nothing is impure except what Allah the Exalted or His Messenger has named impure. Silk and gold are unlawful for men, yet they are not impure.

قَالَ عَلِيٌّ: فَوَجَبَ غَسْلُ الْإِنَاءِ وَلَمْ يَجِبْ إِهْرَاقُ مَا فِيهِ، لِأَنَّهُ لَمْ يُنَجَّسْ، وَوَجَبَ غَسْلُ لُعَابِهِ مِنَ الثَّوْبِ، لِأَنَّ الْهِرَّ ذُو نَابٍ مِنَ السِّبَاعِ فَهُوَ حَرَامٌ، وَبَعْضُ الْحَرَامِ حَرَامٌ، وَلَيْسَ كُلُّ حَرَامٍ نَجِسًا، وَلَا نَجِسَ إِلَّا مَا سَمَّاهُ اللَّهُ تَعَالَى أَوْ رَسُولُهُ نَجِسًا، وَالْحَرِيرُ وَالذَّهَبُ حَرَامٌ عَلَى الرِّجَالِ وَلَيْسَا بِنَجِسَيْنِ.

L2775 And Allah, the Exalted, said: {And keep your garments pure} [Al-Muddaththir: 4].[19]

وَقَالَ اللَّهُ تَعَالَى: {وَثِيَابَكَ فَطَهِّرْ} [المدثر: ٤] .

L2776 Abu Ḥanīfah said: What the cat has lapped should be poured out, it does not suffice for wuḍū', and the vessel should be washed once. This contradicts the statement of the Messenger of Allah—peace and blessings be upon him—as narrated by Abū Qatādah.

وَقَالَ أَبُو حَنِيفَةَ: يُهْرَقُ مَا وَلَغَ فِيهِ الْهِرُّ وَلَا يُجْزِئُ الْوُضُوءُ بِهِ، وَيُغْسَلُ الْإِنَاءُ مَرَّةً. وَهَذَا خِلَافُ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ رِوَايَةِ أَبِي قَتَادَةَ.

[19] **Qur'an references (L2775):** Qur'an 74:4 (Al-Muddaththir).

L2777–2779 Malik and al-Shāfiʿī said: One may perform wuḍūʾ with [water] from which a cat has lapped, and there is no obligation to wash the vessel because of it. This contradicts the instruction of the Messenger of Allah (peace be upon him) as narrated by... Abū Hurayrah.

وَقَالَ مَالِكٌ وَالشَّافِعِيُّ: يَتَوَضَّأُ بِمَا وَلَغَ فِيهِ الْهِرُّ وَلَا يَغْسِلُ مِنْهُ الْإِنَاءَ، وَهَذَا خِلَافُ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ رِوَايَةِ أَبِي هُرَيْرَةَ.

L2780 Among those who commanded that vessels be washed after a cat's lapping (drinking) are Abū Hurayrah, Saʿīd ibn al-Musayyib, al-Ḥasan al-Baṣrī, Tāwus, and ʿAṭā.

وَمِمَّنْ أَمَرَ بِغَسْلِ الْإِنَاءِ مِنْ وُلُوغِ الْهِرِّ أَبُو هُرَيْرَةَ وَسَعِيدُ بْنُ الْمُسَيِّبِ وَالْحَسَنُ الْبَصْرِيُّ وَطَاوُسٌ وَعَطَاءٌ.

L2781 However, Tāwus and 'Aṭā' considered it equivalent in status to the vessel in which a dog has lapped.

إِلَّا أَنَّ طَاوُسًا وَعَطَاءً جَعَلَاهُ بِمَنْزِلَةِ مَا وَلَغَ فِيهِ الْكَلْبُ.

L2782 Among those who permitted using what a cat has lapped from are Abū Qatādah, Ibn ʿAbbās, Abū Hurayrah, Umm Salamah, ʿAlī, and Ibn ʿUmar—though a differing opinion is attributed to him. The validity of Abū Hurayrah's ruling aligns with the explicit textual position of our school. All praise is due to Allah, Lord of the worlds.

وَمِمَّنْ أَبَاحَ أَنْ يُسْتَعْمَلَ مَا وَلَغَ فِيهِ الْهِرُّ أَبُو قَتَادَةَ وَابْنُ عَبَّاسٍ وَأَبُو هُرَيْرَةَ وَأُمُّ سَلَمَةَ وَعَلِيٌّ وَابْنُ عُمَرَ - بِاخْتِلَافٍ عَنْهُ - فَصَحَّ قَوْلُ أَبِي هُرَيْرَةَ كَقَوْلِنَا نَصًّا. وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[مَسْأَلَةُ تَطْهِيرُ جِلْدِ الْمَيْتَةِ]

L2783 The issue of the ritual purification of the hide of a maytah, an animal carcass not slaughtered according to Islamic law.

L2784 Issue 129: The purification of the skin of any dead animal - even if it is the skin of a pig, dog, predator, or other - is achieved through tanning with any substance. Once tanned, it becomes pure; its sale and prayer upon it are permitted. It becomes equivalent to the skin of a ritually slaughtered animal from those whose meat is lawful to eat. However, the skin of such a dead animal remains impermissible to consume under any circumstance. Excluding human skin: it is impermissible to tan or flay it, and burial is obligatory even if the deceased was a disbeliever.

١٢٩ - مَسْأَلَةٌ: وَتَطْهِيرُ جِلْدِ الْمَيْتَةِ، أَيِّ مَيْتَةٍ كَانَتْ - وَلَوْ أَنَّهَا جِلْدُ خِنْزِيرٍ أَوْ كَلْبٍ أَوْ سَبُعٍ أَوْ غَيْرِ ذَلِكَ - فَإِنَّهُ بِالدِّبَاغِ - بِأَيِّ شَيْءٍ دُبِغَ - طَاهِرٌ، فَإِذَا دُبِغَ حَلَّ بَيْعُهُ وَالصَّلَاةُ عَلَيْهِ، وَكَانَ كَجِلْدِ مَا ذُكِّيَ مِمَّا يَحِلُّ أَكْلُهُ، إِلَّا أَنَّ جِلْدَ الْمَيْتَةِ الْمَذْكُورَ لَا يَحِلُّ أَكْلُهُ بِحَالٍ، حَاشَا جِلْدَ الْإِنْسَانِ، فَإِنَّهُ لَا يَحِلُّ أَنْ يُدْبَغَ وَلَا أَنْ يُسْلَخَ، وَلَا بُدَّ مِنْ دَفْنِهِ وَإِنْ كَانَ كَافِرًا.

L2785 The wool, hair, feathers, and fur of a dead animal are prohibited before tanning and permissible afterward. Its bones and horns are entirely permissible; consuming them is not permissible. It is not permissible to sell the dead animal or to benefit from its sinews or fat.

وَصُوفُ الْمَيْتَةِ وَشَعْرُهَا وَرِيشُهَا وَوَبَرُهَا حَرَامٌ قَبْلَ الدِّبَاغِ حَلَالٌ بَعْدَهُ، وَعَظْمُهَا وَقَرْنُهَا مُبَاحٌ كُلُّهُ لَا يَحِلُّ أَكْلُهُ وَلَا يَحِلُّ بَيْعُ الْمَيْتَةِ وَلَا الِانْتِفَاعُ بِعَصَبِهَا وَلَا شَحْمِهَا.

L2786 Ahmad ibn Qasim narrated to me: My father Qasim ibn Muhammad ibn Qasim narrated to us: My grandfather Qasim ibn Aṣbagh narrated to us:

Muhammad ibn Ismaʿil al-Tirmidhī narrated to us: al-Ḥumaydī narrated to us: Sufyan (that is, Ibn ʿUyaynah) narrated to us: Zayd ibn Aslam narrated that he heard ʿAbd al-Raḥmān ibn Waʿlah al-Miṣrī say: I heard Ibn ʿAbbās say: I heard the Messenger of Allah—peace and blessings be upon him—say: "Any hide that is tanned becomes pure."

حَدَّثَنِي أَحْمَدُ بْنُ قَاسِمٍ ثنا أَبِي قَاسِمِ بْنِ مُحَمَّدِ بْنِ قَاسِمٍ ثنا جَدِّي قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ ثنا الْحُمَيْدِيُّ ثنا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - ثنا زَيْدُ بْنُ أَسْلَمَ أَنَّهُ سَمِعَ عَبْدَ الرَّحْمَنِ بْنَ وَعْلَةَ الْمِصْرِيَّ يَقُولُ: سَمِعْتُ ابْنَ عَبَّاسٍ يَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «أَيُّمَا إِهَابٍ دُبِغَ فَقَدْ طَهُرَ» .

L2787 Hammam narrated to us: Ibn Mufarrij narrated to us: Ibn al-A'rabi narrated to us: ad-Dabari narrated to us: Abd al-Razzaq narrated to us from Ma'mar from al-Zuhri from Ubayd Allah ibn Abd Allah ibn Utbah ibn Mas'ud from Ibn Abbas, who said: "The Messenger of Allah - peace and blessings be upon him - passed by a dead sheep belonging to a freed slave of Maimunah and said: 'Why did you not benefit from its hide?' They said: 'How could we, when it is dead, O Messenger of Allah?' He replied: 'Only its flesh is forbidden.'"

حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ ابْنِ عَبَّاسٍ قَالَ «مَرَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى شَاةٍ لِمَوْلَاةٍ لِمَيْمُونَةَ مَيْتَةٍ فَقَالَ: أَفَلَا انْتَفَعْتُمْ بِإِهَابِهَا قَالُوا: وَكَيْفَ وَهِيَ مَيْتَةٌ يَا رَسُولَ اللَّهِ؟ قَالَ: إِنَّمَا حُرِّمَ لَحْمُهَا» .

L2788 Abdullah ibn Rabeeʿ narrated to us: Muhammad ibn Muʿawiyah narrated to us: Ahmad ibn Shuʿayb narrated to us: Qutaybah ibn Saʿeed narrated to us: Sufyan ibn ʿUyaynah narrated to us: Al-Zuhri narrated to us: ʿUbaydullah ibn ʿAbdullah narrated to us: Ibn ʿAbbas narrated to us: Maymunah reported that the Messenger of Allah (peace be upon him) passed by a discarded sheep and said, "Whose is this?" They replied, "It belongs to Maymunah." He said, "Why did she not benefit from its hide?" They said, "It is carrion." He said, "Allah has only forbidden eating it."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا قُتَيْبَةُ بْنُ سَعِيدٍ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ عَنْ ابْنِ عَبَّاسٍ عَنْ مَيْمُونَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَرَّ عَلَى شَاةٍ مُلْقَاةٍ، فَقَالَ لِمَنْ هَذِهِ، قَالُوا لِمَيْمُونَةَ، قَالَ: مَا عَلَيْهَا لَوْ انْتَفَعَتْ بِإِهَابِهَا قَالُوا إِنَّهَا مَيْتَةٌ. قَالَ: إِنَّمَا حَرَّمَ اللَّهُ أَكْلَهَا» .

L2789–2790 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us; Abdul Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to us: Yahya ibn Yahya, Abu Bakr ibn Abi Shaybah, Amr an-Naqid, and Ibn Abi Umar—all of them narrated from Sufyan ibn Uyaynah from al-Zuhri from Ubaydullah ibn Abdullah from Ibn Abbas, who said: "Charity was given in the form of a sheep to a freed slave woman of Maymunah, then the sheep died. The Messenger of Allah—peace and blessings be upon him—passed by it and

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَعَمْرٌو النَّاقِدُ وَابْنُ أَبِي عُمَرَ، كُلُّهُمْ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ عَنْ ابْنِ عَبَّاسٍ قَالَ «تُصُدِّقَ عَلَى مَوْلَاةٍ لِمَيْمُونَةَ بِشَاةٍ فَمَاتَتْ: فَمَرَّ بِهَا رَسُولُ اللَّهِ -

said: 'Why did you not take its hide, tan it, and then benefit from it?' They replied: 'It is maytah.' He responded: 'Only consuming it is forbidden.'"[20]

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: هَلَّا أَخَذْتُمْ إِهَابَهَا فَدَبَغْتُمُوهُ فَانْتَفَعْتُمْ بِهِ؟ فَقَالُوا: إِنَّهَا مَيْتَةٌ فَقَالَ: إِنَّمَا حُرِّمَ أَكْلُهَا» .

L2791 Ḥammām reported to us, [who] reported from Ibn Mufarrij, [who] reported from Ibn al-Aʿrabī, [who] reported from al-Dabarī, [who] reported from ʿAbd al-Razzāq: Ibn Jurayj reported to me, from ʿAṭāʾ, from Ibn ʿAbbās: "Maymūnah informed me that a sheep died, and the Messenger of Allah (peace and blessings be upon him) said: 'Why did you not tan its hide?'"

حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيِّ ثنا عَبْدُ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ عَنِ ابْنِ عَبَّاسٍ «أَخْبَرَتْنِي مَيْمُونَةُ أَنَّ شَاةً مَاتَتْ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَلَا دَبَغْتُمْ إِهَابَهَا» .

L2792 Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Muʿawiyah narrated to us: Ahmad ibn Shuʿayb narrated to us: 'Ubaydullah ibn Saʿid narrated to us: Muʿadh ibn Hisham al-Dastuwa'i narrated to me from his father from Qatadah from al-Hasan from al-Jawn ibn Qatadah from Salamah ibn al-Muḥabbaqi: "During the expedition of Tabuk, the Messenger of Allah (peace and blessings be upon him) requested water from a woman. She said, 'I have none except in a waterskin made from the hide of a maytah (unslaughtered carcass).' He asked, 'Did you not tan it?' She replied, 'Yes.' He said, 'Indeed, tanning it suffices as its purification [for use].'"

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا عُبَيْدُ اللَّهِ بْنُ سَعِيدٍ ثنا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ حَدَّثَنِي أَبِي عَنْ قَتَادَةَ عَنِ الْحَسَنِ عَنِ الْجَوْنِ بْنِ قَتَادَةَ عَنْ سَلَمَةَ بْنِ الْمُحَبَّقِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي غَزْوَةِ تَبُوكَ دَعَا بِمَاءٍ مِنْ عِنْدِ امْرَأَةٍ فَقَالَتْ: مَا عِنْدِي إِلَّا فِي قِرْبَةٍ لِي مَيْتَةٍ. قَالَ: أَلَيْسَ قَدْ دَبَغْتِهَا؟ قَالَتْ: بَلَى. قَالَ: فَإِنَّ دِبَاغَهَا ذَكَاتُهَا» .

L2793–2795 Aḥmad ibn Muḥammad al-Jasūrī narrated to us via Aḥmad ibn al-Faḍl al-Dīnawarī via Muḥammad ibn Jarīr al-Ṭabarī via Muḥammad ibn Ḥātim via Hushaym, from Manṣūr ibn Zādhān, from al-Ḥasan, from Jawn ibn Qatādah al-Tamīmī, who said: "We were with the Messenger of Allah (peace and blessings be upon him) when he stated in a ḥadīth he mentioned: 'Verily, the tanning of...'" "The purification [using] a dead animal..." 'Alī said: "Jawn and Salama are recognized as Companions [of the Prophet]."

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الْجَسُورِيُّ ثنا أَحْمَدُ بْنُ الْفَضْلِ الدِّينَوَرِيُّ ثنا مُحَمَّدُ بْنُ جَرِيرٍ الطَّبَرِيُّ ثنا مُحَمَّدُ بْنُ حَاتِمٍ ثنا هُشَيْمٌ عَنْ مَنْصُورِ بْنِ زَاذَانَ عَنِ الْحَسَنِ ثنا جَوْنُ بْنُ قَتَادَةَ التَّمِيمِيُّ قَالَ " كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ فِي حَدِيثٍ ذَكَرَهُ - فَإِنَّ «دِبَاغَ الْمَيْتَةِ طَهُورُهَا» قَالَ عَلِيٌّ: جَوْنٌ وَسَلَمَةُ لَهُمَا صُحْبَةٌ.

L2796 Abdullah ibn Rabiʿ narrated to us, Muhammad ibn Muʿawiyah narrated to us, Ahmad ibn Shuʿayb narrated to us, Qutaybah ibn Saʿeed narrated to us, Layth ibn Saʿd narrated from Yazid ibn Abi Habib, from ʿAta ibn Abi Rabah, from Jabir ibn Abdullah that he heard the Messenger of Allah (peace and blessings of Allah be upon him) say during the year of the conquest while he was in Mecca: "Allah and His Messenger have prohibited the sale of wine,

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا قُتَيْبَةُ بْنُ سَعِيدٍ ثنا اللَّيْثُ بْنُ سَعْدٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ «عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ عَامَ الْفَتْحِ وَهُوَ بِمَكَّةَ إِنَّ اللَّهَ وَرَسُولَهُ حَرَّمَ بَيْعَ الْخَمْرِ وَالْمَيْتَةِ وَالْخِنْزِيرِ وَالْأَصْنَامِ، فَقِيلَ يَا رَسُولَ اللَّهِ: أَرَأَيْتَ شُحُومَ

[20]**Hadith references (L2790):** Sahih Muslim 363a; Mishkat al-Masabih 499.

carrion, pork, and idols." It was said: "O Messenger of Allah, what do you think about the fat of carrion? It is used to coat ships, grease leather, and provide lighting." He said: "No, it is prohibited." Then the Messenger of Allah (peace and blessings of Allah be upon him) said at that time: "May Allah fight the Jews. When Allah prohibited them from consuming fat, they rendered it, then sold it and consumed its proceeds.""

الْمَيْتَةِ فَإِنَّهُ يُطْلَى بِهَا السُّفُنُ وَتُدْهَنُ بِهَا الْجُلُودُ وَيَسْتَصْبِحُ بِهَا النَّاسُ؟ قَالَ لَا. هُوَ حَرَامٌ. فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِنْدَ ذَلِكَ: قَاتَلَ اللَّهُ الْيَهُودَ، إِنَّ اللَّهَ لَمَّا حَرَّمَ عَلَيْهِمْ الشُّحُومَ جَمَلُوهُ ثُمَّ بَاعُوهُ فَأَكَلُوا ثَمَنَهُ» .

L2797 Ali said: Ahmad ibn Hanbal held the view that it is impermissible to utilize the skin of a dead animal even if tanned. He cited the narration reported by Abdullah ibn Rabi' from Muhammad ibn Mu'awiyah, from Ahmad ibn Shu'ayb, from Muhammad ibn Qudamah, from Jarir, from Mansur, from al-Hakam ibn Utaybah, from Abd al-Rahman ibn Abi Layla, from Abdullah ibn Ukaym, who said: "The Messenger of Allah—peace and blessings be upon him—wrote to us: 'Do not derive benefit from a dead animal through its untanned hide, sinews, tendons, or ligaments.'" Ali said: This is an authentic report, and it does not contradict what precedes it.

قَالَ عَلِيٌّ: ذَهَبَ أَحْمَدُ بْنُ حَنْبَلٍ إِلَى أَنَّهُ لَا يَحِلُّ اسْتِعْمَالُ جِلْدِ الْمَيْتَةِ وَإِنْ دُبِغَ، وَذَكَرَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا مُحَمَّدُ بْنُ قُدَامَةَ ثنا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ عَبْدِ اللَّهِ بْنِ عُكَيْمٍ قَالَ «كَتَبَ إلَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَلَّا تَسْتَنْفِعُوا مِنْ الْمَيْتَةِ بِإِهَابٍ وَلَا عَصَبٍ» . قَالَ عَلِيٌّ: هَذَا خَبَرٌ صَحِيحٌ وَلَا يُخَالِفُ مَا قَبْلَهُ.

L2798 Rather, it is an established ruling. It is impermissible to derive benefit from the hide of a dead animal unless it is tanned, as stated in the other hadiths. Since reconciling his statements (peace be upon him) with one another is obligatory, and it is impermissible to contradict some of them with others, because they are all valid rulings from Allah, Azza wa Jall (the Mighty and Majestic).

بَلْ هُوَ حَقٌّ، لَا يَحِلُّ أَنْ يُنْتَفَعَ مِنْ الْمَيْتَةِ بِإِهَابٍ إلَّا حَتَّى يُدْبَغَ، كَمَا جَاءَ فِي الْأَحَادِيثِ الْأُخَرِ، إذْ ضَمُّ أَقْوَالِهِ - عَلَيْهِ السَّلَامُ - بَعْضِهَا لِبَعْضٍ فَرْضٌ، وَلَا يَحِلُّ ضَرْبُ بَعْضِهَا بِبَعْضٍ، لِأَنَّهَا كُلَّهَا حَقٌّ مِنْ عِنْدِ اللَّهِ عَزَّ وَجَلَّ.

L2799 Allah the Exalted said: "Nor does he speak from [his] own desire; it is nothing but a revelation that is revealed" [An-Najm:3-4]. And He the Exalted said: "If it had been from other than Allah, they would have found in it many contradictions" [An-Nisā:82].[21]

قَالَ اللَّهُ تَعَالَى: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] وَقَالَ تَعَالَى: {وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ اخْتِلافًا كَثِيرًا} [النساء: ٨٢]

L2800 It has been narrated from Aisha, the Mother of the Believers, via a rigorously authenticated chain: "The tanning of the hide is its ritual slaughter," and this constitutes a general ruling applicable to all hides.

وَرُوِيَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ بِإِسْنَادٍ فِي غَايَةِ الصِّحَّةِ «دِبَاغُ الْأَدِيمِ ذَكَاتُهُ» وَهَذَا عُمُومٌ لِكُلِّ أَدِيمٍ.

L2801–2803 From Ibn Abbas, from the Mother of the Believers Maymunah: that she

وَعَنْ ابْنِ عَبَّاسٍ عَنْ أُمِّ الْمُؤْمِنِينَ مَيْمُونَةَ: أَنَّهَا دَبَغَتْ جِلْدَ شَاةٍ مَيِّتَةٍ فَلَمْ تَزَلْ تَنْبِذُ فِيهِ حَتَّى بَلِيَ، وَعَنْ عُمَرَ بْنِ الْخَطَّابِ: دِبَاغُ الْأَدِيمِ ذَكَاتُهُ.

[21] **Qur'an references (L2799):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 4:82 (An-Nisa).

tanned. The skin of a dead sheep [carrion] was continuously processed until it deteriorated. From Umar ibn al-Khattab: Tanning the hide is its purification.

وَقَالَ إِبْرَاهِيمُ النَّخَعِيُّ - فِي جُلُودِ الْبَقَرِ وَالْغَنَمِ تَمُوتُ فَتُدْبَغُ: إِنَّهَا تُبَاعُ وَتُلْبَسُ. وَعَنْ الْأَوْزَاعِيِّ إِبَاحَةُ بَيْعِهَا. وَعَنْ سُفْيَانَ الثَّوْرِيِّ إِبَاحَةُ الصَّلَاةِ فِيهَا. وَعَنْ اللَّيْثِ بْنِ سَعْدٍ إِبَاحَةُ بَيْعِهَا. وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ فِي الْمَيْتَةِ: دِبَاغُهَا ذَكَاتُهَا، وَأَبَاحَ الزُّهْرِيُّ جُلُودَ النُّمُورِ، وَاحْتَجَّ بِمَا جَاءَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي جِلْدِ الْمَيْتَةِ، وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَعُرْوَةَ بْنِ الزُّبَيْرِ وَابْنِ سِيرِينَ مِثْلُ ذَلِكَ. وَقَالَ أَبُو حَنِيفَةَ: جِلْدُ الْمَيْتَةِ إذَا دُبِغَ وَعِظَامُهَا وَعَصَبُهَا وَعَقِبُهَا وَصُوفُهَا وَشَعْرُهَا وَوَبَرُهَا وَقَرْنُهَا لَا بَأْسَ بِالِانْتِفَاعِ بِكُلِّ ذَلِكَ، وَبَيْعُهُ جَائِزٌ، وَالصَّلَاةُ فِي جِلْدِهَا إذَا دُبِغَ جَائِزٌ، أَيَّ جِلْدٍ كَانَ حَاشَا جِلْدَ الْخِنْزِيرِ.

L2804 Ibrahim al-Nakha'ī said regarding the hides of cows and sheep that die and are then tanned: "They may be sold and worn." It is reported from al-Awzā'ī that he permitted their sale. Sufyān al-Thawrī permitted prayer in such hides. Al-Layth ibn Sa'd permitted their sale. Sa'īd ibn Jubayr stated concerning dead animals: "Tanning is its purification [substitute for slaughter]." Al-Zuhrī permitted leopard hides, citing as evidence the narration from the Prophet (peace and blessings be upon him) regarding dead animal hides. 'Umar ibn 'Abd al-'Azīz, 'Urwah ibn al-Zubayr, and Ibn Sīrīn held similar views. Abū Hanīfah said: "There is no harm in using the hide of a dead animal after tanning, nor in using its bones, sinews, hooves, wool, hair, camel hair, horns, or any such parts. Their sale is permissible, and prayer in tanned hides is permitted, whatever the hide may be, except pigskin."

وَقَالَ مَالِكٌ: لَا خَيْرَ فِي عِظَامِ الْمَيْتَةِ وَهِيَ مَيْتَةٌ، وَلَا يُصَلَّى فِي شَيْءٍ مِنْ جُلُودِ الْمَيْتَةِ وَإِنْ دُبِغَتْ، وَلَا يَحِلُّ بَيْعُهَا، أَيَّ جِلْدٍ كَانَ، وَلَا يُسْتَقَى فِيهَا، لَكِنَّ جُلُودَ مَا يُؤْكَلُ لَحْمُهُ إذَا دُبِغَتْ جَازَ الْقُعُودُ عَلَيْهَا وَأَنْ يُغَرْبَلَ عَلَيْهَا، وَكَرِهَ الِاسْتِقَاءَ فِيهَا بِآخِرَةٍ لِنَفْسِهِ، وَلَمْ يَمْنَعْ عَنْ ذَلِكَ غَيْرَهُ. وَرَأَى جُلُودَ السِّبَاعِ إذَا دُبِغَتْ مُبَاحَةً لِلْجُلُوسِ وَالْغَرْبَلَةِ. وَلَمْ يَرَ جِلْدَ الْحِمَارِ وَإِنْ دُبِغَ يَجُوزُ اسْتِعْمَالُهُ، وَلَمْ يَرَ اسْتِعْمَالَ قَرْنِ الْمَيْتَةِ وَلَا سِنِّهَا وَلَا ظِلْفِهَا وَلَا رِيشِهَا. وَأَبَاحَ صُوفَ الْمَيْتَةِ وَشَعْرَهَا وَوَبَرَهَا. وَكَذَلِكَ إنْ أُخِذَتْ مِنْ حَيٍّ.

L2805 Malik said: There is no good in the bones of a dead animal, for it is a dead animal. One must not pray in anything made from the hides of dead animals, even if tanned. Selling them is impermissible, regardless of the type of hide. Do not draw water with them. However, the hides of animals whose meat is lawful to eat, once tanned, may be used for sitting upon or sifting on them. He later disliked using them to draw water for himself but did not prohibit others from doing so. He deemed the hides of predatory animals permissible for sitting and sifting when tanned. He did not permit the use of a donkey's hide even if tanned. He did not permit using the horn, tooth, hoof, or feathers of a dead animal. He permitted the wool, hair, and coarse hair of a dead animal, as well as those taken from a living one.

وَقَالَ الشَّافِعِيُّ: يُتَوَضَّأُ فِي جُلُودِ الْمَيْتَةِ إذَا دُبِغَتْ أَيَّ جِلْدٍ كَانَ. إلَّا جِلْدَ كَلْبٍ أَوْ خِنْزِيرٍ.

L2806 Al-Shafi'i said: Ablution is permissible with the skins of dead animals if they are tanned—any skin at all—except for the skin of a dog or a pig.

وَلَا يَطْهُرُ بِالدِّبَاغِ لَا صُوفٌ وَلَا شَعْرٌ وَلَا وَبَرٌ وَلَا عَظْمٌ وَلَا قَرْنٌ وَلَا - سِنٌّ وَلَا رِيشٌ. إلَّا الْجِلْدَ وَحْدَهُ فَقَطْ.

L2807 Neither wool, hair, fur, bone, horn, tooth, nor feather is purified by tanning. Only the skin alone is purified.

L2808 Ali said: As for Abu Hanifah's permissibility of bones and the sinew of the heel from carcasses, this is erroneous, for it contradicts the authentic narration we cited: "that we should not benefit from the carcass through its untanned hide or sinew." The narration came permitting the hide when tanned, leaving the sinew prohibited. The sinew in the heel is undoubtedly prohibited. Similarly, his distinction between the skins of predators, carcasses, and pigskin is incorrect, for all these constitute prohibited carcasses. We know of neither these distinctions nor this opinion from anyone before him.

قَالَ عَلِيٌّ: أَمَّا إبَاحَةُ أَبِي حَنِيفَةَ الْعَظْمَ وَالْعَقِبَ مِنْ الْمَيْتَةِ فَخَطَأٌ، لِأَنَّهُ خِلَافُ الْأَثَرِ الصَّحِيحِ الَّذِي أَوْرَدْنَا «أَلَّا نَنْتَفِعَ مِنْ الْمَيْتَةِ بِإِهَابٍ وَلَا عَصَبٍ» وَجَاءَ الْخَبَرُ بِإِبَاحَةِ الْإِهَابِ إذَا دُبِغَ، فَبَقِيَ الْعَصَبُ عَلَى التَّحْرِيمِ، وَالْعَقِبُ عَصَبٌ بِلَا شَكٍّ، وَكَذَلِكَ تَفْرِيقُهُ بَيْنَ جُلُودِ السِّبَاعِ وَالْمَيْتَاتِ وَجِلْدِ الْخِنْزِيرِ خَطَأٌ، لِأَنَّ كُلَّ ذَلِكَ مَيْتَةٌ مُحَرَّمٌ، وَلَا نَعْلَمُ هَذِهِ التَّفَارِيقَ وَلَا هَذَا الْقَوْلَ عَنْ أَحَدٍ قَبْلَهُ.

L2809–2811 As for Mālik's differentiation between the skin of animals whose meat is edible and those whose meat is not, it is mistaken, because Allah the Exalted prohibited carrion just as He prohibited swine, and there is no distinction. Allah the Exalted said: "Forbidden to you are carrion, blood, and the flesh of swine" [Al-Mā'idah: 3]. There is no distinction between a dead ram and a dead pig in his view, nor in our view, nor in the view of any Muslim concerning the prohibition. Similarly, his differentiation between the skin of a donkey and the skin of predatory animals is erroneous, for the prohibition applies to predatory animals just as it does to donkeys, with no distinction. What is astonishing is that his followers do not permit the use of a horse's skin if it is tanned, even though its meat is lawful by explicit text when ritually slaughtered, yet they permit the use of a predatory animal's skin if it is tanned, even though it is inherently unlawful, as ritual slaughter is not applied to it by explicit text. Likewise, his prohibition of using them for prayer if they are tanned is erroneous, for it arbitrarily distinguishes between different forms of use without any textual basis from the Quran, the Sunnah, the statements of the Companions, the Successors, or analogical reasoning. We know of no one before him who made such a distinction.[22]

وَأَمَّا تَفْرِيقُ مَالِكٍ بَيْنَ جِلْدِ مَا يُؤْكَلُ لَحْمُهُ وَبَيْنَ جِلْدِ مَا لَا يُؤْكَلُ لَحْمُهُ خَطَأٌ، لِأَنَّ اللَّهَ تَعَالَى حَرَّمَ الْمَيْتَةَ كَمَا حَرَّمَ الْخِنْزِيرَ وَلَا فَرْقَ. قَالَ اللَّهُ تَعَالَى: {حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ وَالدَّمُ وَلَحْمُ الْخِنْزِيرِ} [المائدة: ٣] وَلَا فَرْقَ بَيْنَ كَبْشٍ مَيِّتٍ وَبَيْنَ خِنْزِيرٍ مَيِّتٍ عِنْدَهُ وَلَا عِنْدَنَا وَلَا عِنْدَ مُسْلِمٍ فِي التَّحْرِيمِ. وَكَذَلِكَ فَرْقُهُ بَيْنَ جِلْدِ الْحِمَارِ وَجِلْدِ السَّبَاعِ خَطَأٌ، لِأَنَّ التَّحْرِيمَ جَاءَ فِي السِّبَاعِ كَمَا جَاءَ فِي الْحُمُرِ وَلَا فَرْقَ، وَالْعَجَبُ أَنَّ أَصْحَابَهُ لَا يُجِيزُونَ الِانْتِفَاعَ بِجِلْدِ الْفَرَسِ إذَا دُبِغَ، وَلَحْمُهُ إذَا ذُكِّيَ حَلَالٌ بِالنَّصِّ، وَيُجِيزُونَ الِانْتِفَاعَ بِجِلْدِ السَّبُعِ إذَا دُبِغَ، وَهُوَ حَرَامٌ لَا تُعْمَلُ فِيهِ الذَّكَاةُ بِالنَّصِّ، وَكَذَلِكَ مَنْعُهُ مِنْ الصَّلَاةِ عَلَيْهَا إذَا دُبِغَتْ خَطَأٌ، لِأَنَّهُ تَفْرِيقٌ بَيْنَ وُجُوهِ الِانْتِفَاعِ بِلَا نَصِّ قُرْآنٍ وَلَا سُنَّةٍ وَلَا قَوْلِ صَاحِبٍ وَلَا تَابِعٍ وَلَا قِيَاسٍ، وَلَا نَعْلَمُ هَذَا التَّفْرِيقَ عَنْ أَحَدٍ قَبْلَهُ.

L2812 As for Al-Shafi'i's distinction between the hides of predatory animals and the hide of the dog and pig, this is erroneous, for all such are carrion - equally unlawful. His claim that the meaning of the Prophet's statement - peace be upon him - "When the hide is tanned, it has become purified" implies

وَأَمَّا تَفْرِيقُ الشَّافِعِيِّ بَيْنَ جُلُودِ السِّبَاعِ وَجِلْدِ الْكَلْبِ وَالْخِنْزِيرِ فَخَطَأٌ، لِأَنَّ كُلَّ ذَلِكَ مَيْتَةٌ حَرَامٌ سَوَاءٌ، وَدَعْوَاهُ أَنَّ مَعْنَى قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إذَا دُبِغَ الْإِهَابُ فَقَدْ

[22] **Qur'an references (L2809):** Qur'an 5:3 (Al-Ma'idah).

it returned to its purity is mistaken - an assertion without proof. Rather, the statement is understood according to its apparent meaning: that at that point it has become purified. We know of no precedent for this distinction from any scholar before him.

طَهُرَ» أَنَّ مَعْنَاهُ عَادَ إِلَى طَهَارَتِهِ خَطَأٌ، وَقَوْلٌ بِلَا بُرْهَانٍ، بَلْ هُوَ عَلَى ظَاهِرِهِ أَنَّهُ حِينَئِذٍ طَهُرَ، وَلَا نَعْلَمُ هَذَا التَّفْرِيقَ عَنْ أَحَدٍ قَبْلَهُ.

L2813 Ali said: As for everything on the skin—whether wool, hair, or fur—all of it is pure after tanning, not before. This is because the Prophet—peace and blessings of Allah be upon him—knew that the skins of dead animals bear hair, feathers, fur, and wool, yet he neither commanded the removal of these nor permitted the use of anything from them before tanning. All such elements before tanning are part of the dead animal and are forbidden. After tanning, all becomes pure and ceases to be a dead animal, rendering it lawful—excluding its consumption. Since it is lawful, wearing it in prayer or otherwise and selling such items fall within the permissible benefit enjoined by the Messenger of Allah—peace and blessings of Allah be upon him. If removed before tanning, none of it may be used; it remains forbidden, as tanning does not affect it. If removed after tanning, it has been purified and becomes lawful after that, like the rest of permissible things—excluding consumption.

قَالَ عَلِيٌّ: أَمَّا كُلُّ مَا كَانَ عَلَى الْجِلْدِ مِنْ صُوفٍ أَوْ شَعْرٍ أَوْ وَبَرٍ فَهُوَ بَعْدَ الدِّبَاغِ طَاهِرٌ كُلُّهُ لَا قَبْلَ الدِّبَاغِ؛ لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ عَلِمَ أَنَّ عَلَى جُلُودِ الْمَيْتَةِ الشَّعْرَ وَالرِّيشَ وَالْوَبَرَ وَالصُّوفَ، فَلَمْ يَأْمُرْ بِإِزَالَةِ ذَلِكَ وَلَا أَبَاحَ اسْتِعْمَالَ شَيْءٍ مِنْ ذَلِكَ قَبْلَ الدِّبَاغِ، وَكُلُّ ذَلِكَ قَبْلَ الدِّبَاغِ بَعْضُ الْمَيْتَةِ حَرَامٌ، وَكُلُّ ذَلِكَ بَعْدَ الدِّبَاغِ طَاهِرٌ لَيْسَ مَيْتَةً، فَهُوَ حَلَالٌ حَاشَا أَكْلَهُ، وَإِذْ هُوَ حَلَالٌ فَلِبَاسُهُ فِي الصَّلَاةِ وَغَيْرِهَا وَبَيْعُ كُلِّ ذَلِكَ دَاخِلٌ فِي الِانْتِفَاعِ الَّذِي أَمَرَ بِهِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنْ أُزِيلَ ذَلِكَ عَنْ الْجِلْدِ قَبْلَ الدِّبَاغِ لَمْ يَجُزْ الِانْتِفَاعُ بِشَيْءٍ مِنْهُ، وَهُوَ حَرَامٌ، إذْ لَا يَدْخُلُ الدِّبَاغُ فِيهِ، وَإِنْ أُزِيلَ بَعْدَ الدِّبَاغِ فَقَدْ طَهُرَ، فَهُوَ حَلَالٌ بَعْدُ كَسَائِرِ الْمُبَاحَاتِ حَاشَا أَكْلَهُ فَقَطْ.

L2814 As for bones, feathers, and horns—all these are parts of a living animal. The ownership and sale of a living animal are permissible unless restricted by an explicit text. All such parts from a dead animal are considered dead, and the Prophet (peace be upon him) authentically prohibited the sale of dead animals. Any part of a dead animal is subject to the same rulings as the dead animal itself; thus, selling any of these parts is impermissible. Yet benefiting from all such parts is permissible, based on his statement—peace be upon him—"Only its consumption has been forbidden," thus permitting all other uses except what is explicitly named as prohibited, such as selling them, using their fats for greasing, and using their tendons and meat.

وَأَمَّا الْعَظْمُ وَالرِّيشُ وَالْقَرْنُ فَكُلُّ ذَلِكَ مِنْ الْحَيِّ بَعْضُ الْحَيِّ، وَالْحَيُّ مُبَاحٌ مِلْكُهُ وَبَيْعُهُ إلَّا مَا مَنَعَ مِنْ ذَلِكَ نَصٌّ، وَكُلُّ ذَلِكَ مِنْ الْمَيْتَةِ مَيْتَةٌ، وَقَدْ صَحَّ تَحْرِيمُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْعَ الْمَيْتَةِ، وَبَعْضُ الْمَيْتَةِ مَيْتَةٌ، فَلَا يَحِلُّ بَيْعُ شَيْءٍ مِنْ ذَلِكَ، وَالِانْتِفَاعُ بِكُلِّ ذَلِكَ جَائِزٌ، لِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إنَّمَا حُرِّمَ أَكْلُهَا» فَأَبَاحَ مَا عَدَا ذَلِكَ إلَّا مَا حُرِّمَ بِاسْمِهِ مِنْ بَيْعِهَا وَالِادِّهَانِ بِشُحُومِهَا، وَمِنْ عَصَبِهَا وَلَحْمِهَا.

L2815–2817 As for the hair and bones of swine, all of it is unlawful. It is unlawful to possess or derive benefit from any part of it, because Allah the Exalted said: "or the flesh of swine, for indeed, it is unclean" [Al-An'am 6:145]. The

pronoun refers back. As for the nearest mentioned [ruling], the entire pig is an abomination, and the abomination must be avoided, by the statement of the Most High: "An abomination from the work of Satan, so avoid it" [Al-Mā'idah: 90]. Excepted is the skin, for it becomes pure through tanning based on the universal applicability of his statement – peace be upon him – "Any hide that is tanned has been purified." Ali said: As for human skin, the prohibition of the Messenger of Allah – peace and blessings be upon him – against mutilation has been established, and skinning is the gravest form of mutilation. Thus, it is impermissible to mutilate a disbeliever or a believer. His command – peace be upon him – to cast the slain disbelievers of Badr into the well has been established, thus it is obligatory to bury every deceased person, disbeliever or believer. And success is from Allah, the Exalted.[23]

وَأَمَّا شَعْرُ الْخِنْزِيرِ وَعَظْمُهُ فَحَرَامٌ كُلُّهُ، لَا يَحِلُّ أَنْ يُتَمَلَّكَ وَلَا أَنْ يُنْتَفَعَ بِشَيْءٍ مِنْهُ، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {أَوْ لَحْمَ خِنْزِيرٍ فَإِنَّهُ رِجْسٌ} [الأنعام: ١٤٥] وَالضَّمِيرُ رَاجِعٌ إِلَى أَقْرَبِ مَذْكُورٍ، فَالْخِنْزِيرُ كُلُّهُ رِجْسٌ، وَالرِّجْسُ وَاجِبٌ اجْتِنَابُهُ، بِقَوْلِهِ تَعَالَى: {رِجْسٌ مِنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ} [المائدة: ٩٠] حَاشَا الْجِلْدَ فَإِنَّهُ بِالدِّبَاغِ طَاهِرٌ بِعُمُومِ قَوْلِهِ - عَلَيْهِ السَّلَامُ - «وَأَيُّمَا إِهَابٍ دُبِغَ فَقَدْ طَهُرَ» قَالَ عَلِيٌّ: وَأَمَّا جِلْدُ الْإِنْسَانِ فَقَدْ صَحَّ «نَهْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْمُثْلَةِ» ، وَالسَّلْخُ أَعْظَمُ الْمُثْلَةِ، فَلَا يَحِلُّ التَّمْثِيلُ بِكَافِرٍ وَلَا مُؤْمِنٍ، وَصَحَّ أَمْرُهُ - عَلَيْهِ السَّلَامُ - بِإِلْقَاءِ قَتْلَى كُفَّارِ بَدْرٍ فِي الْقَلِيبِ، فَوَجَبَ دَفْنُ كُلِّ مَيِّتٍ كَافِرٍ وَمُؤْمِنٍ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: A vessel [used for] wine if the wine in it has turned into vinegar.

[مَسْأَلَةٌ إنَاءُ الْخَمْرِ إنْ تَخَلَّلَتْ الْخَمْرُ فِيهِ]

130 – Issue: If wine in a vessel turns into vinegar, the vessel becomes ritually pure. It is permissible to perform ablution with it and drink from it without washing. If the wine is spilled, the trace of wine must necessarily be removed with any pure substance, whereupon the vessel becomes pure – whether it is earthenware, a wooden utensil, plain wood, copper, stone, or any other material.

١٣٠ - مَسْأَلَةٌ: وَإِنَاءُ الْخَمْرِ إنْ تَخَلَّلَتْ الْخَمْرُ فِيهِ فَقَدْ صَارَ طَاهِرًا يُتَوَضَّأُ فِيهِ وَيُشْرَبُ وَإِنْ لَمْ يُغْسَلْ، فَإِنْ أُهْرِقَتْ أُزِيلَ أَثَرُ الْخَمْرِ - وَلَا بُدَّ - بِأَيِّ شَيْءٍ مِنْ الطَّاهِرَاتِ أُزِيلَ، وَيَطْهُرُ الْإِنَاءُ حِينَئِذٍ سَوَاءٌ كَانَ فَخَّارًا أَوْ عُودًا أَوْ خَشَبًا أَوْ نُحَاسًا أَوْ حَجَرًا أَوْ غَيْرَ ذَلِكَ.

As for wine, it is prohibited by the explicit text and certain consensus; thus, avoiding it is obligatory. Allah the Exalted said: _"Indeed, wine, gambling, idols, and divining arrows are an abomination of Satan's handiwork—so avoid it"_ [Al-Mā'idah 5:90]. If wine naturally turns into vinegar or is deliberately converted to vinegar, then vinegar is lawful by explicit text and ritually pure. Abdullah ibn Rabee', Muhammad ibn Ishaq, Ibn Al-A'rabi, Abu Dawud, Uthman ibn Abi Shaybah, Mu'awiyah ibn Hisham, Sufyan—that is, Al-Thawri—from Muharib ibn Dithar from Jabir ibn Abdullah, who said:

أَمَّا الْخَمْرُ فَمُحَرَّمَةٌ بِالنَّصِّ وَالْإِجْمَاعِ الْمُتَيَقَّنِ، فَوَاجِبٌ اجْتِنَابُهَا. قَالَ تَعَالَى: {إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالأَنْصَابُ وَالأَزْلامُ رِجْسٌ مِنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ} [المائدة: ٩٠] فَإِذَا تَخَلَّلَتْ الْخَمْرُ أَوْ خُلِّلَتْ فَالْخَلُّ حَلَالٌ بِالنَّصِّ طَاهِرٌ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا عُثْمَانُ بْنُ أَبِي شَيْبَةَ ثنا مُعَاوِيَةُ بْنُ هِشَامٍ ثنا سُفْيَانُ هُوَ الثَّوْرِيُّ - عَنْ مُحَارِبِ بْنِ دِثَارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ

L2818 L2819 L2820–2822

[23] **Qur'an references (L2815):** Qur'an 6:145 (Al-An'am); Qur'an 5:90 (Al-Ma'idah).

The Messenger of Allah—peace be upon him—said, _"Vinegar is an excellent condiment."_ He generalized—peace be upon him—and did not specify. Vinegar is not wine, for the lawful ritually pure is distinct from the unlawful impure without doubt. Therefore, there is no... If the wine had been originally present, and no trace of it remains in the vessel, then there is nothing present that must be avoided and removed. However, if the trace of wine becomes apparent in the vessel, then it is undoubtedly present. Removing it and avoiding it are obligations. There is no explicit text or consensus specifying any particular means by which it must be removed. Thus, it is valid that any means by which it is removed fulfills our obligation regarding its removal. Praise be to Allah, Lord of the Worlds. When it is removed, the vessel becomes pure, because there is nothing present that must be avoided on its account.[24]

L2823 **Issue: Semen is ritually pure.**

L2824 Issue 131: Semen is pure whether found in water, on the body, or on garments, and its removal is not obligatory. Saliva shares the same ruling, with no legal distinction between them.

L2825 Hammam narrated to us: Ibn Mufarrij narrated to us: Ibn al-A'rabi narrated to us: al-Dabari narrated to us: Abd al-Razzaq narrated to us from Sufyan al-Thawri and Sufyan ibn Uyaynah—both of them—from Mansur ibn al-Mu'tamir from Ibrahim al-Nakha'i from Hammam ibn al-Harith, who said: "Aisha, the Mother of the Believers, sent to a guest of hers to invite him. They said: 'He is performing ghusl for major ritual impurity in his garment.' She said: 'Why is he washing [the semen]? I used to scrub it from the garment of the Messenger of Allah (peace be upon him).'" Thus, she (may Allah be pleased with her) disapproved of washing semen.

L2826 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abd al-Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Ahmad ibn Jawwas al-Hanafi, Abu Asim, narrated to us: Abu al-Ahwash narrated

[24] **Qur'an references (L2820):** Qur'an 5:90 (Al-Ma'idah).

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «نِعْمَ الْإِدَامُ الْخَلُّ» فَعَمَّ - عَلَيْهِ السَّلَامُ - وَلَمْ يَخُصَّ، وَالْخَلُّ لَيْسَ خَمْرًا، لِأَنَّ الْحَلَالَ الطَّاهِرَ غَيْرُ الْحَرَامِ الرِّجْسِ بِلَا شَكٍّ، فَإِذَنْ لَا خَمْرَ هُنَالِكَ أَصْلًا، وَلَا أَثَرَ لَهَا فِي الْإِنَاءِ، فَلَيْسَ هُنَالِكَ شَيْءٌ يَجِبُ اجْتِنَابُهُ وَإِزَالَتُهُ. وَأَمَّا إِذَا ظَهَرَ أَثَرُ الْخَمْرِ فِي الْإِنَاءِ فَهِيَ هُنَالِكَ بِلَا شَكٍّ. وَإِزَالَتُهَا وَاجْتِنَابُهَا فَرْضٌ. وَلَا نَصَّ وَلَا إِجْمَاعَ فِي شَيْءٍ مَا بِعَيْنِهِ تُزَالُ بِهِ. فَصَحَّ أَنَّ كُلَّ شَيْءٍ أُزِيلَتْ بِهِ فَقَدْ أَدَّيْنَا مَا عَلَيْنَا مِنْ وَاجِبِ إِزَالَتِهَا. وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ. وَإِذَا أُزِيلَتْ فَالْإِنَاءُ طَاهِرٌ، لِأَنَّهُ لَيْسَ هُنَالِكَ شَيْءٌ يَجِبُ اجْتِنَابُهُ مِنْ أَجْلِهِ.

[مَسْأَلَةٌ الْمَنِيُّ طَاهِرٌ]

١٣١ - مَسْأَلَةٌ: وَالْمَنِيُّ طَاهِرٌ فِي الْمَاءِ كَانَ أَوْ فِي الْجَسَدِ أَوْ فِي الثَّوْبِ وَلَا تَجِبُ إِزَالَتُهُ، وَالْبُصَاقُ مِثْلُهُ وَلَا فَرْقَ.

حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ وَسُفْيَانَ بْنِ عُيَيْنَةَ كِلَاهُمَا عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ هَمَّامِ بْنِ الْحَارِثِ قَالَ «أَرْسَلَتْ عَائِشَةُ أُمُّ الْمُؤْمِنِينَ إِلَى ضَيْفٍ لَهَا تَدْعُوهُ فَقَالُوا: هُوَ يَغْسِلُ جَنَابَةً فِي ثَوْبِهِ، قَالَتْ وَلِمَ يَغْسِلُهُ؟ لَقَدْ كُنْتُ أَفْرُكُهُ مِنْ ثَوْبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» فَأَنْكَرَتْ - رَضِيَ اللَّهُ عَنْهَا - غَسْلَ الْمَنِيِّ.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَحْمَدُ بْنُ جَوَّاسٍ الْحَنَفِيُّ أَبُو عَاصِمٍ ثنا أَبُو الْأَحْوَصِ عَنْ شَبِيبِ بْنِ غَرْقَدَةَ عَنْ عَبْدِ اللَّهِ بْنِ شِهَابٍ الْخَوْلَانِيِّ قَالَ «كُنْتُ

نَازِلًا عَلَى عَائِشَةَ فَاحْتَلَمْتُ فِي ثَوْبَيَّ فَغَمَسْتُهُمَا فِي الْمَاءِ، فَرَأَتْنِي جَارِيَةٌ لِعَائِشَةَ فَأَخْبَرَتْهَا، فَبَعَثَتْ إِلَيَّ عَائِشَةُ: مَا حَمَلَكَ عَلَى مَا صَنَعْتَ بِثَوْبَيْكَ؟ قُلْتُ: رَأَيْتُ مَا يَرَى النَّائِمُ فِي مَنَامِهِ: قَالَتْ: هَلْ رَأَيْتَ فِيهِمَا شَيْئًا؟ قُلْتُ لَا، قَالَتْ: فَلَوْ رَأَيْتَ شَيْئًا غَسَلْتَهُ لَقَدْ رَأَيْتُنِي وَإِنِّي لَأَحُكُّهُ مِنْ ثَوْبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَابِسًا بِظُفُرِي» فَهَذِهِ الرِّوَايَةُ تُبَيِّنُ كَذِبَ مَنْ تَخَرَّصَ بِلَا عِلْمٍ وَقَالَ: كَانَتْ تَفْرُكُهُ بِالْمَاءِ.

from Shabib ibn Gharqadah from Abdullah ibn Shihab al-Khawlani, who said: “I was staying with Aisha, and I had a nocturnal emission in my two garments, so I immersed them in water. A servant of Aisha saw me and informed her. Aisha then sent me a message: ’What prompted you to treat your garments thus?’ I replied: ’I saw what a sleeper sees in his sleep.’ She asked: ’Did you perceive anything in them?’ I said: ’No.’ She said: ’Had you perceived anything, you would have washed the garment. I indeed saw myself scraping it off the garment of the Messenger of Allah—peace and blessings be upon him—while it was dry, using my fingernail.’” This narration clarifies the falsehood of those who falsely assert without knowledge and say: “She would scrub it with water.”

L2827–2829

حَدَّثَنَا حُمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ ثنا مُوسَى بْنُ إِسْمَاعِيلَ ثنا حَمَّادُ بْنُ سَلَمَةَ ثنا حَمَّادُ بْنُ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ عَنِ الْأَسْوَدِ بْنِ يَزِيدَ «أَنَّ عَائِشَةَ قَالَتْ كُنْتُ أَفْرُكُ الْمَنِيَّ مِنْ ثَوْبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيُصَلِّي فِيهِ» وَقَدْ رَوَاهُ أَيْضًا عَلْقَمَةُ بْنُ قَيْسٍ وَالْحَارِثُ بْنُ نَوْفَلٍ عَنْ عَائِشَةَ مُسْنَدًا، وَهَذَا تَوَاتُرٌ، وَصَحَّ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ أَنَّهُ كَانَ يَفْرُكُ الْمَنِيَّ مِنْ ثَوْبِهِ، وَصَحَّ عَنِ ابْنِ عَبَّاسٍ فِي الْمَنِيِّ يُصِيبُ الثَّوْبَ، هُوَ بِمَنْزِلَةِ النُّخَامِ وَالْبُزَاقِ امْسَحْهُ بِإِذْخِرَةٍ أَوْ بِخِرْقَةٍ، وَلَا تَغْسِلْهُ إِنْ شِئْتَ إِلَّا أَنْ تُقَذِّرَهُ أَوْ تَكْرَهَ أَنْ يُرَى فِي ثَوْبِكَ، وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَالشَّافِعِيِّ وَأَبِي ثَوْرٍ وَأَحْمَدَ بْنِ حَنْبَلٍ وَأَبِي سُلَيْمَانَ وَجَمِيعِ أَصْحَابِهِمْ. وَقَالَ مَالِكٌ: هُوَ نَجِسٌ وَلَا يُجْزِئُ إِلَّا غَسْلُهُ بِالْمَاءِ. وَرُوِّينَا غَسْلَهُ عَنْ عُمَرَ بْنِ الْخَطَّابِ وَأَبِي هُرَيْرَةَ وَأَنَسٍ وَسَعِيدِ بْنِ الْمُسَيِّبِ. وَقَالَ أَبُو حَنِيفَةَ: هُوَ نَجِسٌ، فَإِنْ كَانَ فِي الْجَسَدِ مِنْهُ أَكْثَرُ مِنْ قَدْرِ الدِّرْهَمِ الْبَغْلِيِّ لَمْ يُجْزِئْ فِي إِزَالَتِهِ غَيْرُ الْمَاءِ، فَإِنْ كَانَ قَدْرَ الدِّرْهَمِ الْبَغْلِيِّ فَأَقَلَّ أَجْزَأَتْ إِزَالَتُهُ بِغَيْرِ الْمَاءِ، فَإِنْ كَانَ فِي الثَّوْبِ أَوِ النَّعْلِ أَوِ الْخُفِّ مِنْهُ أَكْثَرُ مِنْ قَدْرِ الدِّرْهَمِ الْبَغْلِيِّ، فَإِنْ كَانَ رَطْبًا لَمْ يَجُزْ إِلَّا غَسْلُهُ بِأَيِّ مَائِعٍ كَانَ، فَإِنْ كَانَ

Hammam narrated to us → Abbas ibn Asbagh → Muhammad ibn Abd al-Malik ibn Ayman → Ahmad ibn Zuhayr ibn Harb → Musa ibn Ismail → Hammad ibn Salamah → Hammad ibn Abi Sulayman → Ibrahim → Al-Aswad ibn Yazid, that Aisha said: “I used to scrub semen from the garment of Allah’s Messenger (peace be upon him), and he would pray in it.” This was also narrated by Alqamah ibn Qays and Al-Harith ibn Nawfal via connected chains from Aisha, and this constitutes a mass-transmitted (mutawatir) narration. It is authentically established from Sa’d ibn Abi Waqqas that he would scrub semen from his garment. Regarding semen touching a garment, Ibn Abbas authentically ruled: “It is treated like nasal mucus and saliva; wipe it with idhkhir, an aromatic grass, or a piece of cloth.” And do not wash it if you wish unless you deem it impure or dislike its visibility on your garment. This is the position of Sufyan al-Thawri, al-Shafi’i, Abu Thawr, Ahmad ibn Hanbal, Abu Sulayman, and all their companions. Malik said: “It is impure, and nothing suffices except washing it with water.” We have narrated the washing of it from Umar ibn al-Khattab, Abu Hurayrah, Anas, and Sa’id ibn al-Musayyib. Abu Hanifa said: “It is impure. If the amount on the body exceeds the weight of a mule dirham, only water suffices for its removal. If it equals or is less than a mule dirham, removal with other than water suffices. If the amount on a garment, sandal, or khuff exceeds a mule dirham and is wet, only washing with any liquid suffices. If dry, or if equal to or less than a mule dirham even when wet, mere wiping suffices.” We have

narrated from Ibn Umar that he said: “If wet, wash it; if dry, scrape it.” Ali said: “Those who deem semen impure cited as evidence a hadith we narrated through Sulayman ibn Yasar from Aisha: ’Allah’s Messenger (peace be upon him) used to wash semen, and I would wash it from the garment of Allah’s Messenger (peace be upon him).”’ They argued: “It exits through the urinary passage, thus becoming impure,” citing a hadith we narrated through Abu Hudhayfa from Sufyan al-Thawri – once via al-A’mash and once via Mansur – then through Ibrahim from Hammam ibn al-Harith from Aisha regarding semen: “Allah’s Messenger (peace be upon him) would order scraping it.” Ali responded: “This contains no proof for them. As for the Companions (may Allah be pleased with them), we have narrations from Aisha, Sa’d, and Ibn Abbas aligning with our view. When Companions (may Allah be pleased with them) disagree, none holds precedence; rather, referral to the Quran and Sunnah becomes obligatory.”

يَابِسًا أَوْ كَانَ قَدْرَ الدِّرْهَمِ الْبَغْلِيِّ فَأَقَلَّ وَإِنْ كَانَ رَطْبًا أَجْزَأَ مَسْحُهُ فَقَطْ، وَرُوِّينَا عَنْ ابْنِ عُمَرَ أَنَّهُ قَالَ: إنْ كَانَ رَطْبًا فَاغْسِلْهُ وَإِنْ كَانَ يَابِسًا فَحُتَّهُ. قَالَ عَلِيٌّ: وَاحْتَجَّ مَنْ رَأَى نَجَاسَةَ الْمَنِيِّ بِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عَائِشَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَغْسِلُ الْمَنِيَّ وَكُنْتُ أَغْسِلُهُ مِنْ ثَوْبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» . وَقَالُوا: هُوَ خَارِجٌ مِنْ مَخْرَجِ الْبَوْلِ فَيَنْجَسُ لِذَلِكَ وَذَكَرُوا حَدِيثًا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي حُذَيْفَةَ عَنْ سُفْيَانَ الثَّوْرِيِّ مَرَّةً قَالَ: عَنْ الْأَعْمَشِ، وَمَرَّةً قَالَ: عَنْ مَنْصُورٍ، ثُمَّ اسْتَمَرَّ، عَنْ إبْرَاهِيمَ عَنْ هَمَّامِ بْنِ الْحَارِثِ عَنْ عَائِشَةَ فِي الْمَنِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَأْمُرُ بِحَتِّهِ» . قَالَ عَلِيٌّ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ. أَمَّا الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - فَقَدْ رُوِّينَا عَنْ عَائِشَةَ وَسَعْدٍ وَابْنِ عَبَّاسٍ مِثْلَ قَوْلِنَا، وَإِذَا تَنَازَعَ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَيْسَ بَعْضُهُمْ أَوْلَى مِنْ بَعْضٍ، بَلْ الرَّدُّ حِينَئِذٍ وَاجِبٌ إلَى الْقُرْآنِ وَالسُّنَّةِ.

L2830–2832 As for the narration of Sulayman ibn Yasar, it contains no command from the Messenger of Allah—peace and blessings be upon him—to wash it, eradicate it, or declare it impure. It merely states that he—peace and blessings be upon him—would wash it, and that Aisha would wash it. The Prophet’s actions—peace and blessings be upon him—are not binding obligations. Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: al-Farbari narrated to us: Imam al-Bukhari narrated to us: Malik ibn Ismail narrated to us: Zuhayr—meaning ibn Muawiyah—narrated to us: Humaid narrated from Anas ibn Malik: “The Messenger of Allah—peace and blessings be upon him—saw phlegm in the prayer direction and scraped it off with his hand, and his dislike for it was observed.” Yet this does not constitute evidence for our opponents regarding the impurity of phlegm, for one may wash their garment of something that is not impure. As for Sufyan’s narration, it was solely transmitted by Abu Hudhayfah Musa

وَأَمَّا حَدِيثُ سُلَيْمَانَ بْنِ يَسَارٍ فَلَيْسَ فِيهِ أَمْرٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِغَسْلِهِ وَلَا بِإِزَالَتِهِ وَلَا بِأَنَّهُ نَجِسٌ. وَإِنَّمَا فِيهِ أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَغْسِلُهُ. وَأَنَّ عَائِشَةَ تَغْسِلُهُ، وَأَفْعَالُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَيْسَتْ عَلَى الْوُجُوبِ، وَقَدْ حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مَالِكُ بْنُ إسْمَاعِيلَ ثنا زُهَيْرٌ هُوَ ابْنُ مُعَاوِيَةَ - ثنا حُمَيْدٌ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَأَى نُخَامَةً فِي الْقِبْلَةِ فَحَكَّهَا بِيَدِهِ وَرُئِيَ كَرَاهِيَتُهُ لِذَلِكَ» فَلَمْ يَكُنْ هَذَا دَلِيلًا عِنْدَ خُصُومِنَا عَلَى نَجَاسَةِ النُّخَامَةِ، وَقَدْ يَغْسِلُ الْمَرْءُ ثَوْبَهُ مِمَّا لَيْسَ نَجِسًا. وَأَمَّا حَدِيثُ سُفْيَانَ فَإِنَّمَا انْفَرَدَ بِهِ أَبُو حُذَيْفَةَ مُوسَى بْنُ مَسْعُودٍ النَّهْدِيُّ، بَصْرِيٌّ

ضَعِيفٌ مُصَحِّفٌ كَثِيرُ الْخَطَإِ، رَوَى عَنْ سُفْيَانَ الْبَوَاطِلَ، قَالَ أَحْمَدُ بْنُ حَنْبَلٍ فِيهِ: هُوَ شِبْهُ لَا شَيْءَ، كَأَنَّ سُفْيَانَ الَّذِي يُحَدِّثُ عَنْهُ أَبُو حُذَيْفَةَ لَيْسَ سُفْيَانَ الَّذِي يُحَدِّثُ عَنْهُ النَّاسَ.

ibn Masud al-Nahdi, a Basran narrator who is weak and prone to scribal errors. He is prone to many errors and narrated falsehoods from Sufyan. Ahmad ibn Hanbal said about him: "He is akin to nothing. It is as though the Sufyan from whom Abu Hudhayfah narrates is not the same Sufyan from whom others narrate."

وَأَمَّا قَوْلُهُمْ: إِنَّهُ يَخْرُجُ مِنْ مَخْرَجِ الْبَوْلِ، فَلَا حُجَّةَ فِي هَذَا، لِأَنَّهُ لَا حُكْمَ لِلْبَوْلِ مَا لَمْ يَظْهَرْ، وَقَدْ قَالَ اللَّهُ تَعَالَى: {مِنْ بَيْنِ فَرْثٍ وَدَمٍ لَبَنًا خَالِصًا} [النحل: ٦٦] فَلَمْ يَكُنْ خُرُوجُ اللَّبَنِ مِنْ بَيْنِ الْفَرْثِ وَالدَّمِ مُنَجِّسًا لَهُ، فَسَقَطَ كُلُّ مَا تَعَلَّقُوا بِهِ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L2833 As for their statement that it exits through the urinary passage, there is no proof in this, for urine has no legal ruling until it is discharged. Allah the Exalted said: "From between excrement and blood, pure milk" [16:66]. Thus, the emergence of milk from between excrement and blood does not render the milk impure. Therefore, all that they based their argument on collapses. And success is from Allah, the Exalted.[25]

وَقَالَ بَعْضُهُمْ: يَغْسِلُهُ رَطْبًا عَلَى حَدِيثِ سُلَيْمَانَ بْنِ يَسَارٍ، وَيَحُكُّهُ يَابِسًا عَلَى سَائِرِ الْأَحَادِيثِ. قَالَ عَلِيٌّ: وَهَذَا بَاطِلٌ، لِأَنَّهُ لَيْسَ فِي حَدِيثِ سُلَيْمَانَ أَنَّهُ كَانَ رَطْبًا، وَلَا فِي سَائِرِ الْأَحَادِيثِ أَنَّهُ كَانَ يَابِسًا، إِلَّا فِي حَدِيثِ الْخَوْلَانِيِّ وَحْدَهُ، فَفَصَلَ هَذَا الْقَائِلُ عَلَى الْكَذِبِ وَالتَّحَكُّمِ، إِذْ زَادَ فِي الْأَخْبَارِ مَا لَيْسَ فِيهَا. قَالَ عَلِيٌّ: وَقَدْ قَالَ بَعْضُهُمْ: مَعْنَى «كُنْتُ أَفْرُكُهُ» أَيْ بِالْمَاءِ. قَالَ عَلِيٌّ: وَهَذَا كَذِبٌ آخَرُ وَزِيَادَةٌ فِي الْخَبَرِ، فَكَيْفَ وَفِي بَعْضِ الْأَخْبَارِ - كَمَا أَوْرَدْنَا - «يَابِسًا بِظُفُرِي.» قَالَ عَلِيٌّ: وَلَوْ كَانَ نَجِسًا لَمَا تَرَكَ اللَّهُ تَعَالَى رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي بِهِ، وَلَأَخْبَرَهُ كَمَا أَخْبَرَهُ إِذْ صَلَّى بِنَعْلَيْهِ وَفِيهِمَا قَذَرٌ فَخَلَعَهُمَا، وَقَدْ ذَكَرْنَاهُ قَبْلَ هَذَا بِإِسْنَادِهِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L2834 Some of them said: He washes it when moist according to the hadith of Sulayman ibn Yasar, and scrubs it dry according to the other hadiths. Ali said: This is invalid, for neither does Sulayman's hadith mention it being moist, nor do the other hadiths specify dryness except in Al-Khawlani's hadith alone. Thus, this individual has engaged in falsehood and presumption by adding to the reports what they do not contain. Ali said: Some of them also said the phrase "I used to scrub it" means "with water." Ali said: This is another lie and an addition to the report. How can this be, when some reports—as we have cited—state "dry with my nail"? Ali said: Had it been impure, Allah the Exalted would not have left His Messenger, peace and blessings of Allah be upon him, to pray with it, and would have informed him just as He informed him when he prayed wearing sandals containing filth, so he removed them. We have previously mentioned this with its chain of transmission. And success is from Allah, the Exalted.

[مَسْأَلَةٌ إِذَا أُحْرِقَتْ الْعَذِرَةُ أَوْ الْمَيْتَةُ أَوْ تَغَيَّرَتْ فَصَارَتْ رَمَادًا أَوْ تُرَابًا]

Issue: If excrement or a dead animal is burned, or if it is transformed into ashes or dust.

١٣٢ - مَسْأَلَةٌ: وَإِذَا أُحْرِقَتْ الْعَذِرَةُ أَوْ الْمَيْتَةُ أَوْ تَغَيَّرَتْ فَصَارَتْ رَمَادًا أَوْ تُرَابًا، فَكُلُّ ذَلِكَ طَاهِرٌ، وَيُتَيَمَّمُ بِذَلِكَ التُّرَابِ، بُرْهَانُ ذَلِكَ أَنَّ الْأَحْكَامَ إِنَّمَا هِيَ عَلَى مَا حَكَمَ اللَّهُ

132. Issue: If excrement or carrion is burned or transformed into ashes or dust, all of that becomes ritually pure, and tayammum may be performed

[25] **Qur'an references (L2833):** Qur'an 16:66 (An-Nahl).

with the dust. The proof lies in the fact that rulings apply only to what Allah, the Exalted, has decreed regarding matters to which that name applies—the name by which He has addressed us. When that name ceases to apply, the ruling ceases, for it is no longer the subject upon which Allah has ruled. Excrement is distinct from dust and ashes, just as wine differs from vinegar, a human differs from the blood from which he was created, and carrion differs from dust.

L2837 **A jurisprudential issue concerning the saliva of believers among men and women.**

L2838 133 – Issue: The saliva of believing men and women—including those in a state of major ritual impurity (junub), menstruating women, and others besides these two—the saliva of horses and any animal whose meat is lawful to eat, the sweat and tears of all the aforementioned, and the leftover of any animal whose meat is lawful to eat are pure and valid for prayer.

L2839–2841 Narrated to us ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid, who narrated to us Ibrāhīm ibn Aḥmad, who narrated to us al-Farbarī, who narrated to us al-Bukhārī, who narrated to us ʿAlī ibn ʿAbd Allāh, who narrated to us Yaḥyā ibn Saʿīd al-Qaṭṭān, who narrated to us Ḥumayd, who narrated to us Bakr, from Abī Rāfiʿ. From Abu Hurairah that the Prophet - peace and blessings of Allah be upon him - met him on one of the roads of Medina while Abu Hurairah was in a state of major impurity. He said: "I withdrew from him, went to perform ritual bathing, then returned. He said: 'Where were you, O Abu Hurairah?' I said: 'I was in a state of major impurity and disliked sitting with you without purification.' He said: 'Glory be to Allah! The believer is not impure.'" Ali said: "Every animal whose flesh is eaten is indisputably pure, for Allah the Exalted said: {He makes lawful for them the pure things and prohibits for them the impure things} [Al-A'raf: 157]. Thus, everything lawful is pure, and the pure cannot be impure; rather, it remains pure. Some of the pure is undoubtedly pure, for the whole is nothing but its parts until a textual proof comes prohibiting a portion of the pure, at which point it is adhered to, such as blood, urine, and excrement. These become

تَعَالَى بِهَا فِيهِ مِمَّا يَقَعُ عَلَيْهِ ذَلِكَ الِاسْمُ الَّذِي بِهِ خَاطَبَنَا اللَّهُ عَزَّ وَجَلَّ، فَإِذَا سَقَطَ ذَلِكَ الِاسْمُ فَقَدْ سَقَطَ ذَلِكَ الْحُكْمُ، وَأَنَّهُ غَيْرُ الَّذِي حَكَمَ اللَّهُ تَعَالَى فِيهِ. وَالْعَذِرَةُ غَيْرُ التُّرَابِ وَغَيْرُ الرَّمَادِ، وَكَذَلِكَ الْخَمْرُ غَيْرُ الْخَلِّ، وَالْإِنْسَانُ غَيْرُ الدَّمِ الَّذِي مِنْهُ خُلِقَ، وَالْمَيْتَةُ غَيْرُ التُّرَابِ.

[مَسْأَلَةٌ لُعَابُ الْمُؤْمِنِينَ مِنْ الرِّجَالِ وَالنِّسَاءِ]

١٣٣ - مَسْأَلَةٌ: وَلُعَابُ الْمُؤْمِنِينَ مِنْ الرِّجَالِ وَالنِّسَاءِ - الْجُنُبِ مِنْهُمْ وَالْحَائِضِ وَغَيْرِهِمَا - وَلُعَابُ الْخَيْلِ وَكُلِّ مَا يُؤْكَلُ لَحْمُهُ، وَعَرَقُ كُلِّ ذَلِكَ وَدَمْعُهُ، وَسُؤْرُ كُلِّ مَا يُؤْكَلُ لَحْمُهُ - طَاهِرٌ مُبَاحٌ الصَّلَاةُ بِهِ.

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَلِيُّ بْنُ عَبْدِ اللَّهِ ثنا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - ثنا حُمَيْدٌ ثنا بَكْرٌ عَنْ أَبِي رَافِعٍ «عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَقِيَهُ فِي بَعْضِ طُرُقِ الْمَدِينَةِ وَأَبُو هُرَيْرَةَ جُنُبٌ، قَالَ: فَانْخَنَسْتُ مِنْهُ فَذَهَبْتُ فَاغْتَسَلْتُ ثُمَّ جِئْتُ، فَقَالَ: أَيْنَ كُنْت يَا أَبَا هُرَيْرَةَ؟ قَالَ: كُنْت جُنُبًا فَكَرِهْتُ أَنْ أُجَالِسَكَ وَأَنَا عَلَى غَيْرِ طَهَارَةٍ قَالَ: سُبْحَانَ اللَّهِ إنَّ الْمُؤْمِنَ لَا يَنْجُسُ» . قَالَ عَلِيٌّ: وَكُلُّ مَا يُؤْكَلُ لَحْمُهُ فَلَا خِلَافَ فِي أَنَّهُ طَاهِرٌ، قَالَ اللَّهُ تَعَالَى: {وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ} [الأعراف: ١٥٧] فَكُلُّ حَلَالٍ هُوَ طَيِّبٌ، وَالطَّيِّبُ لَا يَكُونُ نَجِسًا بَلْ هُوَ طَاهِرٌ، وَبَعْضُ الطَّاهِرِ طَاهِرٌ بِلَا شَكٍّ، لِأَنَّ الْكُلَّ لَيْسَ هُوَ شَيْئًا غَيْرَ أَبْعَاضِهِ إلَى أَنْ يَأْتِيَ نَصٌّ بِتَحْرِيمِ بَعْضِ الطَّاهِرِ فَيُوقَفُ عِنْدَهُ،

exceptions from the category of pure things, while the remainder retains its purity. Success is attained through Allah the Exalted."[26]

L2842 **A legal issue regarding the saliva of disbelievers from among men and women—the People of the Book and others besides them.**

L2843–2845 134. Issue: The saliva of disbelievers—both men and women, including the People of the Book and others—is entirely impure. Similarly, their sweat, tears, and everything that originates from them is impure. The saliva of every animal whose flesh is impermissible to eat, whether birds or others such as pigs, dogs, cats, predators, or mice, is also impure, except for the hyena alone. The sweat and tears of all these mentioned animals are forbidden and must be avoided. The proof for this is Allah's statement, Exalted is He: "Indeed, the polytheists are impure" (Quran 9:28). It is certain that a part of an impure whole is impure, since the whole is nothing but its constituent parts. If it is argued that the meaning here refers to impurity in religious status, we respond: Suppose we grant this interpretation for argument's sake. Would it then necessitate that polytheists are ritually pure? Allah is far above such a claim! Never has it been understood from Allah's words "Indeed, the polytheists are impure" (Quran 9:28), combined with His Prophet's (peace be upon him) statement, "The believer does not become impure," that polytheists are pure. There is no greater wonder in this world than those who declare as pure those whom Allah explicitly states are impure, yet claim semen—for which no textual evidence establishes impurity—to be impure. Merely hearing such claims suffices to refute them, and we praise Allah for preservation from error. If it is argued: "We are permitted to marry and have intercourse with the women of the People of the Book," we respond: Yes, but what evidence does this provide that their saliva, sweat, or tears are pure? If it is said: "One cannot avoid such contact," we reply: This is incorrect. Rather, one must treat contact with their saliva or sweat as one would treat contact with their urine, blood, or vaginal fluid—there is no

[26] **Qur'an references (L2839):** Qur'an 7:157 (Al-A'raf).

كَالدَّمِ وَالْبَوْلِ وَالرَّجِيعِ، وَيَكُونُ مُسْتَثْنًى مِنْ جُمْلَةِ الطَّاهِرِ، وَيَبْقَى سَائِرُهَا عَلَى الطَّهَارَةِ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لُعَابُ الْكُفَّارِ مِنْ الرِّجَالِ وَالنِّسَاءِ الْكِتَابِيِّينَ وَغَيْرِهِمْ]

١٣٤ - مَسْأَلَةٌ: وَلُعَابُ الْكُفَّارِ مِنْ الرِّجَالِ وَالنِّسَاءِ - الْكِتَابِيِّينَ وَغَيْرِهِمْ - نَجِسٌ كُلُّهُ، وَكَذَلِكَ الْعَرَقُ مِنْهُمْ وَالدَّمْعُ، وَكُلُّ مَا كَانَ مِنْهُمْ، وَلُعَابُ كُلِّ مَا لَا يَحِلُّ أَكْلُ لَحْمِهِ مِنْ طَائِرٍ أَوْ غَيْرِهِ، مِنْ خِنْزِيرٍ أَوْ كَلْبٍ أَوْ هِرٍّ أَوْ سَبُعٍ أَوْ فَأْرٍ، حَاشَا الضَّبُعَ فَقَطْ، وَعَرَقُ كُلِّ مَا ذَكَرْنَا وَدَمْعُهُ - حَرَامٌ وَاجِبٌ اجْتِنَابُهُ. بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {إِنَّمَا الْمُشْرِكُونَ نَجَسٌ} [التوبة: ٢٨] وَبِيَقِينٍ يَجِبُ أَنَّ بَعْضَ النَّجَسِ نَجَسٌ؛ لِأَنَّ الْكُلَّ لَيْسَ هُوَ شَيْئًا غَيْرَ أَبْعَاضِهِ، فَإِنْ قِيلَ: إنَّ مَعْنَاهُ نَجَسُ الدِّينِ، قِيلَ: هَبْكُمْ أَنَّ ذَلِكَ كَذَلِكَ. أَيَجِبُ مِنْ ذَلِكَ أَنَّ الْمُشْرِكِينَ طَاهِرُونَ؟ حَاشَا لِلَّهِ مِنْ هَذَا وَمَا فُهِمَ قَطُّ مِنْ قَوْلِ اللَّهِ تَعَالَى: {إِنَّمَا الْمُشْرِكُونَ نَجَسٌ} [التوبة: ٢٨] مَعَ قَوْلِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ الْمُؤْمِنَ لَا يَنْجُسُ» أَنَّ الْمُشْرِكِينَ طَاهِرُونَ، وَلَا عَجَبَ فِي الدُّنْيَا أَعْجَبُ مِمَّنْ يَقُولُ فِيمَنْ نَصَّ اللَّهُ تَعَالَى أَنَّهُمْ نَجَسٌ إنَّهُمْ طَاهِرُونَ، ثُمَّ يَقُولُ فِي الْمَنِيِّ الَّذِي لَمْ يَأْتِ قَطُّ بِنَجَاسَتِهِ نَصٌّ إنَّهُ نَجِسٌ، وَيَكْفِي مِنْ هَذَا الْقَوْلِ سَمَاعُهُ. وَنَحْمَدُ اللَّهَ عَلَى السَّلَامَةِ. فَإِنْ قِيلَ: قَدْ أُبِيحَ لَنَا نِكَاحُ الْكِتَابِيَّاتِ وَوَطْؤُهُنَّ، قُلْنَا نَعَمْ، فَأَيُّ دَلِيلٍ فِي هَذَا عَلَى أَنَّ لُعَابَهَا وَعَرَقَهَا وَدَمْعَهَا طَاهِرٌ؟ فَإِنْ قِيلَ: إنَّهُ لَا يَقْدِرُ عَلَى التَّحَفُّظِ مِنْ ذَلِكَ. قُلْنَا: هَذَا خَطَأٌ، بَلْ يَفْعَلُ فِيمَا مَسَّهُ مِنْ لُعَابِهَا وَعَرَقِهَا مِثْلَ الَّذِي يَفْعَلُ إذَا مَسَّهُ بَوْلُهَا أَوْ دَمُهَا أَوْ مَائِيَّةُ فَرْجِهَا وَلَا فَرْقَ، وَلَا حَرَجَ فِي ذَلِكَ، ثُمَّ هَبْكَ أَنَّهُ لَوْ صَحَّ لَهُمْ ذَلِكَ فِي

distinction, and no sin in taking due precautions. Then, even if we were to hypothetically accept their claim in... Regarding the women of the People of the Book: What is the basis for their assertion about the ritual purity of their men, or the ritual purity of non-Ahl al-Kitab women and men? If they reply: "We established this through analogy to the People of the Book," we respond: "All analogical reasoning is entirely invalid. Furthermore, even if analogy were valid, this specific case would constitute the very essence of invalidity. The primary flaw lies in their legal cause for deeming the women of the Book ritually pure - the permissibility of marrying them - while this same legal cause is nonexistent according to their own acknowledgment regarding non-Ahl al-Kitab women. By their principles, analogy is only permissible when based on a unifying legal cause connecting both rulings, whereas here the cause serves differentiation rather than unification." And success comes only from Allah, the Exalted.[27]

نِسَاءِ أَهْلِ الْكِتَابِ، مِنْ أَيْنَ لَهُمْ طَهَارَةُ رِجَالِهِمْ أَوْ طَهَارَةُ النِّسَاءِ وَالرِّجَالِ مِنْ غَيْرِ أَهْلِ الْكِتَابِ؟ فَإِنْ قَالُوا: قُلْنَا ذَلِكَ قِيَاسًا عَلَى أَهْلِ الْكِتَابِ. قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ أَوَّلَ بُطْلَانِهِ أَنَّ عِلَّتَهُمْ فِي طَهَارَةِ الْكِتَابِيَّاتِ جَوَازُ نِكَاحِهِنَّ، وَهَذِهِ الْعِلَّةُ مَعْدُومَةٌ بِإِقْرَارِهِمْ فِي غَيْرِ الْكِتَابِيَّاتِ. وَالْقِيَاسُ عِنْدَهُمْ لَا يَجُوزُ إِلَّا بِعِلَّةٍ جَامِعَةٍ بَيْنَ الْحُكْمَيْنِ، وَهَذِهِ عِلَّةٌ مُفَرِّقَةٌ لَا جَامِعَةٌ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L2846 As for all that is not permissible to eat, it is prohibited by explicit text, and the prohibited must be avoided. Some prohibited matters are inherently prohibited, and some obligations to avoid are binding obligations. We were narrated through Shu'bah's chain from Qatādah from Abū al-Ṭufayl, who said: I heard Ḥudhayfah ibn Usayd state regarding the False Messiah: "No riding animals are subdued for him except the donkey, for it is impurity upon impurity." Aḥmad ibn Ḥanbal said: A donkey's sweat is ritually impure. As for the exception of the hyena, it is due to what was narrated to us by 'Abdullāh ibn Rabī': Muḥammad ibn Isḥāq narrated to us: Ibn al-A'rābī narrated to us: Abū Dāwūd narrated to us: Musaddad narrated to us: Abū 'Awānah narrated to us from Abī Bishr from Maymūn ibn Mihrān from Ibn 'Abbās, who said: "Allah's Messenger—peace and blessings be upon him—forbade every predatory beast with fangs and every bird with talons." Via the same chain up to Abū Dāwūd: Muḥammad ibn 'Abdillāh al-Khuzā'ī narrated to us: Jarīr ibn Ḥāzim narrated to us from 'Abdullāh ibn 'Ubayd ibn 'Umayr from 'Abd al-Raḥmān ibn Abī 'Ammār from Jābir ibn 'Abdillāh, who said: "I asked Allah's Messenger—peace and blessings be upon him—about the hyena,

وَأَمَّا كُلُّ مَا لَا يَحِلُّ أَكْلُهُ فَهُوَ حَرَامٌ بِالنَّصِّ، وَالْحَرَامُ وَاجِبٌ اجْتِنَابُهُ، وَبَعْضُ الْحَرَامِ حَرَامٌ. وَبَعْضُ الْوَاجِبِ اجْتِنَابُهُ وَاجِبٌ اجْتِنَابُهُ، وَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ قَتَادَةَ عَنْ أَبِي الطُّفَيْلِ قَالَ سَمِعْت حُذَيْفَةَ بْنَ أُسَيْدٍ يَقُولُ عَنْ الدَّجَّالِ " وَلَا يُسَخَّرُ لَهُ مِنْ الْمَطَايَا إِلَّا الْحِمَارُ فَهُوَ رِجْسٌ عَلَى رِجْسٍ " وَقَدْ قَالَ أَحْمَدُ بْنُ حَنْبَلٍ: عَرَقُ الْحِمَارِ نَجِسٌ. وَأَمَّا اسْتِثْنَاءُ الضَّبُعِ فَلِمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُسَدَّدٌ ثنا أَبُو عَوَانَةَ عَنْ أَبِي بِشْرٍ عَنْ مَيْمُونِ بْنِ مِهْرَانَ عَنْ ابْنِ عَبَّاسٍ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ كُلِّ ذِي نَابٍ مِنْ السِّبَاعِ وَعَنْ كُلِّ ذِي مِخْلَبٍ مِنْ الطَّيْرِ» . وَبِهِ إلَى أَبِي دَاوُد ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْخُزَاعِيُّ ثنا جَرِيرُ بْنُ حَازِمٍ عَنْ عَبْدِ اللَّهِ بْنِ عُبَيْدِ بْنِ عُمَيْرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي عَمَّارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ «سَأَلْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الضَّبُعِ، فَقَالَ: هُوَ صَيْدٌ وَيُجْعَلُ فِيهِ كَبْشٌ إذَا صَادَهُ الْمُحْرِمُ» .

[27] **Qur'an references (L2843):** Qur'an 9:28 (At-Tawbah).

and he replied: 'It is lawful game, and a ram is required if a consecrated pilgrim hunts it.'"[28]

L2847 **A question regarding the residual liquid of every disbeliever - male or female - and the residual liquid of every creature whose flesh is consumed or not consumed.**

L2848–2850 135. Issue: The leftover of every non-Muslim man or woman, and the leftover of all animals—whether their meat is eaten or not, including pigs, predatory beasts, domestic donkeys, or chickens (fattened or otherwise)—provided no visible trace of saliva from an animal whose meat is not eaten appears therein—is pure and lawful, except that which a dog has lapped. There is no obligation to wash the vessel from any of these, except only that which a dog or cat has lapped. The proof for this is that Allah the Exalted has decreed the purity of what is pure, the impurity of what is impure, the prohibition of what is forbidden, and the lawfulness of what is lawful. He forbids overstepping His limits. Thus, whatever Allah the Exalted has decreed to be pure is pure. It is not valid for a pure thing to become impure through contact with an impure thing touching it, for neither Allah the Exalted nor His Messenger (peace be upon him) has prescribed this. Whatever Allah the Exalted has ruled to be impure does not become pure through contact with a pure thing touching it, for neither Allah the Exalted nor His Messenger (peace be upon him) has prescribed this. Whatever Allah the Exalted has made permissible does not become prohibited through contact with a prohibited thing touching it, for neither Allah the Exalted nor His Messenger (peace be upon him) has prescribed this. Whatever Allah the Exalted has prohibited does not become permissible through contact with a permissible thing touching it, for neither Allah the Exalted nor His Messenger (peace be upon him) has prescribed this. There is no difference between one who claims that the pure becomes impure through contact with the impure, or that the permissible becomes prohibited through contact with the prohibited, and one who reverses the matter by saying: "Rather, the impure becomes pure through contact with the pure, and the prohibited becomes

[28] **Hadith references (L2846):** Sahih Muslim 1934a; Sunan Abi Dawud 3801.

[مَسْأَلَةٌ سُؤْرُ كُلِّ كَافِرٍ أَوْ كَافِرَةٍ وَسُؤْرُ كُلِّ مَا يُؤْكَلُ لَحْمُهُ أَوْ لَا يُؤْكَلُ لَحْمُهُ]

١٣٥ - مَسْأَلَةٌ: وَسُؤْرُ كُلِّ كَافِرٍ أَوْ كَافِرَةٍ وَسُؤْرُ كُلِّ مَا يُؤْكَلُ لَحْمُهُ أَوْ لَا يُؤْكَلُ لَحْمُهُ مِنْ خِنْزِيرٍ أَوْ سَبُعٍ أَوْ حِمَارٍ أَهْلِيٍّ أَوْ دَجَاجٍ مُخَلًّى أَوْ غَيْرِ مُخَلًّى - إذَا لَمْ يَظْهَرْ هُنَالِكَ لِلُّعَابِ مَا لَا يُؤْكَلُ لَحْمُهُ أَثَرٌ - فَهُوَ طَاهِرٌ حَلَالٌ، حَاشَا مَا وَلَغَ فِيهِ الْكَلْبُ فَقَطْ، وَلَا يَجِبُ غَسْلُ الْإِنَاءِ مِنْ شَيْءٍ مِنْهُ، حَاشَا مَا وَلَغَ فِيهِ الْكَلْبُ وَالْهِرُّ فَقَطْ. بُرْهَانُ ذَلِكَ: أَنَّ اللَّهَ تَعَالَى حَكَمَ بِطَهَارَةِ الطَّاهِرِ وَتَنَجُّسِ النَّجِسِ وَتَحْرِيمِ الْحَرَامِ وَتَحْلِيلِ الْحَلَالِ، وَذَمَّ أَنْ تُتَعَدَّى حُدُودُهُ، فَكُلُّ مَا حَكَمَ اللَّهُ تَعَالَى أَنَّهُ طَاهِرٌ فَهُوَ طَاهِرٌ، وَلَا يَجُوزُ أَنْ يَتَنَجَّسَ بِمُلَاقَاةِ النَّجِسِ لَهُ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ ذَلِكَ وَلَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكُلُّ مَا حَكَمَ اللَّهُ تَعَالَى أَنَّهُ نَجِسٌ فَإِنَّهُ لَا يَطْهُرُ بِمُلَاقَاةِ الطَّاهِرِ لَهُ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ ذَلِكَ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَكُلُّ مَا أَحَلَّهُ اللَّهُ تَعَالَى فَإِنَّهُ لَا يَحْرُمُ بِمُلَاقَاةِ الْحَرَامِ لَهُ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ ذَلِكَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَكُلُّ مَا حَرَّمَهُ اللَّهُ تَعَالَى فَإِنَّهُ لَا يَحِلُّ بِمُلَاقَاةِ الْحَلَالِ لَهُ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ ذَلِكَ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَلَا فَرْقَ بَيْنَ مَنْ ادَّعَى أَنَّ الطَّاهِرَ يَتَنَجَّسُ بِمُلَاقَاةِ النَّجِسِ. وَأَنَّ الْحَلَالَ يَحْرُمُ بِمُلَاقَاةِ الْحَرَامِ، وَبَيْنَ مَنْ عَكَسَ الْأَمْرَ فَقَالَ: بَلْ النَّجِسُ يَطْهُرُ بِمُلَاقَاةِ الطَّاهِرِ، وَالْحَرَامُ يَحِلُّ بِمُلَاقَاةِ الْحَلَالِ، كِلَا الْقَوْلَيْنِ بَاطِلٌ، بَلْ كُلُّ ذَلِكَ بَاقٍ عَلَى حُكْمِ اللَّهِ عَزَّ وَجَلَّ فِيهِ، إلَّا أَنْ يَأْتِيَ نَصٌّ بِخِلَافِ هَذَا فِي شَيْءٍ

permissible through contact with the permissible." Both statements are false. Rather, all such matters remain subject to Allah's ruling concerning them unless a textual proof arises contradicting this in any specific case, in which case one must adhere to it without extending it to other matters. If any of what we have mentioned drinks from a vessel, eats from it, inserts a body part into it, or falls into it, its leftover remains permissible and pure. It does not become impure through anything unlawful or impure that touches it, unless some unlawful substance manifests within it - for some prohibited things are prohibited as we previously established. Excepted are the dog and cat, regarding which we have mentioned the ruling of Allah's Messenger (peace be upon him). All praise belongs to Allah, Lord of the worlds.

مَا فَيُوقَفُ عِنْدَهُ وَلَا يَتَعَدَّى إِلَى غَيْرِهِ. فَإِذَا شَرِبَ كُلُّ مَا ذَكَرْنَا فِي إِنَاءٍ أَوْ أَكَلَ أَوْ أَدْخَلَ فِيهِ عُضْوًا مِنْهُ أَوْ وَقَعَ فِيهِ فَسُؤْرُهُ حَلَالٌ طَاهِرٌ وَلَا يَتَنَجَّسُ بِشَيْءٍ مِمَّا مَاسَّهُ مِنْ الْحَرَامِ أَوْ النَّجَسِ، إِلَّا أَنْ يَظْهَرَ بَعْضُ الْحَرَامِ فِي ذَلِكَ الشَّيْءِ، وَبَعْضُ الْحَرَامِ حَرَامٌ كَمَا قَدَّمْنَا. حَاشَا الْكَلْبَ وَالْهِرَّ، فَقَدْ ذَكَرْنَا حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L2851 Abū Ḥanīfah said: If an animal whose meat is eaten drank from a vessel, the water remains pure, and ablution with that water is valid. This applies equally to horses, cattle, sheep, and others. Similarly, the leftovers of all birds—whether their meat is eaten or not among them, including free-roaming chickens and others—permit ablution, though I dislike it. Consuming their leftovers is permissible. He said: If an animal whose meat is not eaten—such as a mule, donkey, dog, cat, predatory animal, or pig—drank from a vessel, the water becomes impure. Ablution with it is invalid, and whoever performs ablution with it must repeat it forever. The same applies if any of their saliva falls into water or elsewhere. He said: This ruling and that of birds whose meat is not eaten are equivalent by analogy, but I abandon analogy and apply juristic preference.

وَقَالَ أَبُو حَنِيفَةَ: إِنْ شَرِبَ فِي الْإِنَاءِ شَيْءٌ مِنْ الْحَيَوَانِ الَّذِي يُؤْكَلُ لَحْمُهُ فَهُوَ طَاهِرٌ، وَالْوُضُوءُ بِذَلِكَ الْمَاءِ جَائِزٌ: الْفَرَسُ وَالْبَقَرُ وَالضَّأْنُ وَغَيْرُ ذَلِكَ سَوَاءٌ، وَكَذَلِكَ أَسْآرُ جَمِيعِ الطَّيْرِ، وَمَا أُكِلَ لَحْمُهُ وَمَا لَمْ يُؤْكَلْ لَحْمُهُ مِنْهَا، وَالدَّجَاجِ الْمُخَلَّى وَغَيْرِهِ، فَإِنَّ الْوُضُوءَ بِذَلِكَ الْمَاءِ جَائِزٌ وَأَكْرَهُهُ، وَأَكْلُ أَسْآرِهَا حَلَالٌ، قَالَ فَإِنْ شَرِبَ فِي الْإِنَاءِ مَا لَا يُؤْكَلُ لَحْمُهُ مِنْ بَغْلٍ أَوْ حِمَارٍ أَوْ كَلْبٍ أَوْ هِرٍّ أَوْ سَبُعٍ أَوْ خِنْزِيرٍ فَهُوَ نَجِسٌ: وَلَا يُجْزِئُ الْوُضُوءُ بِهِ، وَمَنْ تَوَضَّأَ بِهِ أَعَادَ أَبَدًا. وَكَذَلِكَ إِنْ وَقَعَ شَيْءٌ مِنْ لُعَابِهَا فِي مَاءٍ أَوْ غَيْرِهِ، قَالَ: وَهَذَا وَمَا لَا يُؤْكَلُ لَحْمُهُ مِنْ الطَّيْرِ سَوَاءٌ فِي الْقِيَاسِ، وَلَكِنِّي أَدَعُ الْقِيَاسَ وَأَسْتَحْسِنُ.

L2852 Ali said: This is a corrupt distinction. We know of none before him who made this distinction. If analogy is valid, he has indeed erred in abandoning the truth and in deeming good, through juristic preference (istihsān), what contradicts it. If analogy is invalid, he has erred in employing what is invalid where he applied it and in adhering to it. Some proponents said: The legal status of the liquid is the same as that of the meat it comes into contact with.

قَالَ عَلِيٌّ: هَذَا فَرْقٌ فَاسِدٌ. وَلَا نَعْلَمُ أَحَدًا قَبْلَهُ فَرَّقَ هَذَا الْفَرْقَ: وَلَئِنْ كَانَ الْقِيَاسُ حَقًّا فَلَقَدْ أَخْطَأَ فِي تَرْكِهِ الْحَقَّ، وَفِي اسْتِحْسَانِ خِلَافِ الْحَقِّ، وَلَئِنْ كَانَ الْقِيَاسُ بَاطِلًا، فَلَقَدْ أَخْطَأَ فِي اسْتِعْمَالِ الْبَاطِلِ حَيْثُ اسْتَعْمَلَهُ وَدَانَ بِهِ. وَقَالَ بَعْضُ الْقَائِلِينَ: حُكْمُ الْمَائِعِ حُكْمُ اللَّحْمِ الْمُمَاسِّ لَهُ.

L2853–2855 Ali said: This is a claim without evidence, and whatever is thus constituted is invalid. Moreover, if he intended that... If someone claims the prohibition applies equally to both, he has lied, for human flesh is forbidden, yet they

do not prohibit what is drunk from vessels into which one has inserted his tongue. If he intended [to equate them] regarding impurity and purity, who determines the impurity of an animal whose flesh is not eaten while alive? There is no evidence for this, and nothing becomes impure except what is explicitly declared impure by scriptural text. Otherwise, if every forbidden thing were impure, humans would be impure. Mālik said: The drinking remnants of donkeys, mules, and any animal whose flesh is not eaten are pure like the remnants of others, with no distinction. He said: As for carrion-eating birds and predators—if they drink water, one does not perform ablution with it. Similarly, chickens that consume putrid matter: if one performs ablution with such water, they need not repeat it except within the prayer time. If such an animal drinks milk and filth becomes apparent in its beak, it is not consumed. If no filth is seen in its beak, there is no harm. His companion Ibn al-Qāsim said: One performs ablution with it if no other water is found and performs tayammum when aware that the animal eats putrid matter. Mālik said: There is no harm in a dog's saliva. ʿAlī said: Requiring prayer repetition within its time contradicts his own principles, for the person either fulfilled purification and prayer as commanded or failed to do so. If he fulfilled them as commanded, it is impermissible to pray two noon prayers in one day within the same period—and likewise for other prayers. If he failed to fulfill them as commanded, the prayer remains an ongoing obligation for him and must be performed after its time according to his view. When some biased adherents of his were asked this question, they replied: "He prayed and did not pray." When challenged, he cited Allah's verse: "You did not throw when you threw, but Allah threw" [8:17]. Abū Muḥammad ʿAlī said: Using this verse as proof here is more objectionable than the ambiguous claim it supports, for Allah affirmed that His Messenger—peace be upon him—did not throw when he threw, but Allah threw. As for this confused individual who "prayed and did not pray," who executed the prayer on his behalf? If the prayer exists from him, it must have a performer, just as the thrown act had a thrower—the Creator, exalted is He. For an act to exist without an actor is impossible and deviant, alien to monotheistic

قَالَ عَلِيٌّ: هَذِهِ دَعْوَى بِلَا دَلِيلٍ وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ، وَأَيْضًا فَإِنْ كَانَ أَرَادَ أَنَّ الْحُكْمَ لَهُمَا وَاحِدٌ فِي التَّحْرِيمِ فَقَدْ كَذَبَ، لِأَنَّ لَحْمَ ابْنِ آدَمَ حَرَامٌ، وَهُمْ لَا يُحَرِّمُونَ مَا شَرِبَ فِيهِ أَوْ أَدْخَلَ فِيهِ لِسَانَهُ، وَإِنْ كَانَ أَرَادَ فِي النَّجَاسَةِ وَالطَّهَارَةِ، فَمَنْ لَهُ بِنَجَاسَةِ الْحَيَوَانِ الَّذِي لَا يُؤْكَلُ لَحْمُهُ مَا دَامَ حَيًّا؟ وَلَا دَلِيلَ لَهُ عَلَى ذَلِكَ، وَلَا يَكُونُ نَجِسًا إِلَّا مَا جَاءَ النَّصُّ بِأَنَّهُ نَجِسٌ، وَإِلَّا فَلَوْ كَانَ كُلُّ حَرَامٍ نَجِسًا لَكَانَ ابْنُ آدَمَ نَجِسًا. وَقَالَ مَالِكٌ: سُؤْرُ الْحِمَارِ وَالْبَغْلِ وَكُلِّ مَا لَا يُؤْكَلُ لَحْمُهُ طَاهِرٌ كَسُؤْرِ غَيْرِهِ وَلَا فَرْقَ. قَالَ: وَأَمَّا مَا أَكَلَ الْجِيَفَ - مِنْ الطَّيْرِ وَالسِّبَاعِ - فَإِنْ شَرِبَ مِنْ مَاءٍ لَمْ يُتَوَضَّأْ بِهِ وَكَذَلِكَ الدَّجَاجُ الَّتِي تَأْكُلُ النَّتَنَ، فَإِنْ تَوَضَّأَ بِهِ لَمْ يُعِدْ إِلَّا فِي الْوَقْتِ، فَإِنْ شَرِبَ شَيْءٌ مِنْ ذَلِكَ فِي لَبَنٍ، فَإِنْ تَبَيَّنَ فِي مِنْقَارِهِ قَذَرٌ لَمْ يُؤْكَلْ، وَأَمَّا مَا لَمْ يُرَ فِي مِنْقَارِهِ فَلَا بَأْسَ قَالَ ابْنُ الْقَاسِمِ صَاحِبُهُ: يَتَوَضَّأُ بِهِ إِنْ لَمْ يَجِدْ غَيْرَهُ وَيَتَيَمَّمُ، إِذَا عَلِمَ أَنَّهَا تَأْكُلُ النَّتَنَ. وَقَالَ مَالِكٌ: لَا بَأْسَ بِلُعَابِ الْكَلْبِ. قَالَ عَلِيٌّ: إِيجَابُهُ الْإِعَادَةَ فِي الْوَقْتِ خَطَأٌ عَلَى أَصْلِهِ، لِأَنَّهُ لَا يَخْلُو مِنْ أَنْ يَكُونَ أَدَّى الطَّهَارَةَ وَالصَّلَاةَ كَمَا أُمِرَ، أَوْ لَمْ يُؤَدِّهِمَا كَمَا أُمِرَ، فَإِنْ كَانَ أَدَّى الصَّلَاةَ وَالطَّهَارَةَ كَمَا أُمِرَ فَلَا يَحِلُّ لَهُ أَنْ يُصَلِّيَ ظُهْرَيْنِ لِيَوْمٍ وَاحِدٍ فِي وَقْتٍ وَاحِدٍ، وَكَذَلِكَ سَائِرُ الصَّلَوَاتِ، وَإِنْ كَانَ لَمْ يُؤَدِّهِمَا كَمَا أُمِرَ فَالصَّلَاةُ عَلَيْهِ أَبَدًا، وَهِيَ تُؤَدَّى عِنْدَهُ بَعْدَ الْوَقْتِ. وَقَدْ قَالَ بَعْضُ الْمُتَعَصِّبِينَ لَهُ - إِذْ سُئِلَ بِهَذَا السُّؤَالِ - فَقَالَ: صَلَّى وَلَمْ يُصَلِّ، فَلَمَّا أُنْكِرَ عَلَيْهِ هَذَا ذَكَرَ قَوْلَ اللَّهِ تَعَالَى: {وَمَا رَمَيْتَ إِذْ رَمَيْتَ وَلَكِنَّ اللَّهَ رَمَى} [الأنفال: ١٧] قَالَ أَبُو مُحَمَّدٍ عَلِيٌّ: وَهَذَا الِاحْتِجَاجُ بِالْآيَةِ فِي غَيْرِ مَوْضِعِهَا أَقْبَحُ مِنْ الْقَوْلِ الْمُمَوَّهِ لَهُ بِذَلِكَ؛ لِأَنَّ اللَّهَ أَخْبَرَ أَنَّ رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ

doctrine. If the prayer he was commanded to perform did not exist from him, then by their principles he must pray it perpetually.[29]

يَرْمِ إِذْ رَمَى، وَلَكِنَّهُ تَعَالَى هُوَ رَمَاهَا. فَهَذَا الْبَائِسُ الَّذِي صَلَّى وَلَمْ يُصَلِّ، مَنْ صَلَّاهَا عَنْهُ؟ فَلَا بُدَّ لِلصَّلَاةِ - إِنْ كَانَتْ مَوْجُودَةً مِنْهُ - مِنْ أَنْ يَكُونَ لَهَا فَاعِلٌ، كَمَا كَانَ لِلرَّمْيَةِ رَامٍ، وَهُوَ الْخَلَّاقُ عَزَّ وَجَلَّ إِذْ وُجُودُ فِعْلٍ لَا فَاعِلَ لَهُ مُحَالٌ وَضَلَالٌ، وَلَيْسَ مِنْ أَقْوَالِ أَهْلِ التَّوْحِيدِ، وَإِنْ كَانَتْ الصَّلَاةُ الَّتِي أُمِرَ بِهَا غَيْرَ مَوْجُودَةٍ مِنْهُ فَلْيُصَلِّهَا عَلَى أَصْلِهِمْ أَبَدًا.

L2856–2858 As for the statement of Ibn al-Qasim: If one finds no other water, he performs ablution with it and resorts to dry ablution when knowing it is contaminated with filth—this is contradictory. For it must either be water or not water. If it is water, then if ablution with it suffices when no other is found, it must suffice even when other water exists—because it is water. But if it does not suffice when... If he finds something else, it does not suffice if what he finds is not water, for nothing substitutes for water except earth. Including dry ablution (tayammum) in such a case is a manifest error, as tayammum is not permissible while there exists water sufficient for performing ritual purification (wudhu).

وَأَمَّا قَوْلُ ابْنِ الْقَاسِمِ: إنَّهُ إنْ لَمْ يَجِدْ غَيْرَهُ يَتَوَضَّأُ بِهِ وَيَتَيَمَّمُ إذَا عَلِمَ أَنَّهَا تَأْكُلُ النَّتِنَ فَمُتَنَاقِضٌ، لِأَنَّهُ إمَّا مَاءٌ وَإِمَّا لَيْسَ مَاءً، فَإِنْ كَانَ مَاءً فَإِنَّهُ لَئِنْ كَانَ يُجْزِئُ الْوُضُوءُ بِهِ إذَا لَمْ يَجِدْ غَيْرَهُ، فَإِنَّهُ يُجْزِئُ وَإِنْ وَجَدَ غَيْرَهُ، لِأَنَّهُ مَاءٌ، وَإِنْ كَانَ لَا يُجْزِئُ إذَا وَجَدَ غَيْرَهُ، فَإِنَّهُ لَا يُجْزِئُ إذَا لَمْ يَجِدْ غَيْرَهُ إنْ كَانَ لَيْسَ مَاءً، لِأَنَّهُ لَا يُعَوَّضُ مِنْ الْمَاءِ إلَّا التُّرَابُ، وَإِدْخَالُ التَّيَمُّمِ فِي ذَلِكَ خَطَأٌ ظَاهِرٌ، لِأَنَّ التَّيَمُّمَ لَا يَحِلُّ مَا دَامَ يُوجَدُ مَاءٌ يُجْزِئُ بِهِ الْوُضُوءُ.

L2859 Al-Shāfiʿī said: The leftover of any animal—whether permissible or forbidden to eat—is pure, as is its saliva, except for the dog and the pig. He supported this opinion by citing some of his evidences, arguing that he analogized this to the leftovers of the children of Adam and their saliva, for though their flesh is forbidden, their saliva and leftovers are entirely pure. ʿAlī said: All analogy is invalid. Even if analogy were valid, this instance would epitomize its invalidity, because analogizing other predators to the dog—which was prohibited only by virtue of being part of the general category of predators under Allah's universal prohibition, conveyed through His Messenger (peace and blessings be upon him), against consuming the flesh of every predatory animal with fangs exclusively—thereby including the dog in this category through this explicit text, for without it the dog would have been

وَقَالَ الشَّافِعِيُّ: سُؤْرُ كُلِّ شَيْءٍ مِنْ الْحَيَوَانِ - الْحَلَالِ أَكْلُهُ وَالْحَرَامِ أَكْلُهُ - طَاهِرٌ، وَكَذَلِكَ لُعَابُهُ حَاشَا الْكَلْبَ وَالْخِنْزِيرَ، وَاحْتَجَّ لِقَوْلِهِ هَذَا بَعْضُ أَحْكَامِهِ بِأَنَّهُ قَاسَ ذَلِكَ عَلَى أَسْآرِ بَنِي آدَمَ وَلُعَابِهِمْ، فَإِنَّ لُحُومَهُمْ حَرَامٌ، وَلُعَابَهُمْ وَأَسْآرَهُمْ كُلَّ ذَلِكَ طَاهِرٌ. قَالَ عَلِيٌّ: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ قِيَاسَ سَائِرِ السِّبَاعِ عَلَى الْكَلْبِ - الَّذِي لَمْ يُحَرَّمْ إلَّا أَنَّهُ مِنْ جُمْلَتِهَا، وَبِعُمُومِ تَحْرِيمِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَحْمَ كُلِّ ذِي نَابٍ مِنْ السِّبَاعِ فَقَطْ، فَدَخَلَ الْكَلْبُ فِي جُمْلَتِهَا بِهَذَا النَّصِّ، وَلَوْلَاهُ لَكَانَ حَلَالًا - أَوْلَى مِنْ قِيَاسِهَا عَلَى ابْنِ آدَمَ الَّذِي لَا عِلَّةَ تَجْمَعُ بَيْنَهُ وَبَيْنَهَا، لِأَنَّ بَنِي آدَمَ مُتَعَبَّدُونَ، وَالسِّبَاعُ وَسَائِرُ الْحَيَوَانِ غَيْرُ

[29] **Qur'an references (L2853):** Qur'an 8:17 (Al-Anfal).

permissible—is more appropriate than analogizing them to the children of Adam, with whom they share no common legal cause. The children of Adam are bound by religious obligations, whereas predators and other animals are not. The females of the children of Adam are lawful to their males through permissible marriage or lawful ownership enabling intercourse, unlike the females of other animals. The milk of human women is permissible, unlike the milk of female predators and donkeys. Thus, the error of this analogy is conclusively evident.

L2860 If they say, "We applied qiyās based on the cat," it is said to them: "What obligates you to apply qiyās based on the cat rather than the dog? Especially when you applied qiyās to the pig based on the dog and did not apply it to the cat, just as you applied qiyās to carnivorous animals based on the cat. This would hold if we conceded to you the matter of the cat. How then, when the established text—more authoritative than the ḥadīth of Ḥumaydah from Kabsha—explicitly clarifies the obligation to wash a vessel from a cat's lapping?" These are the analogies of the practitioners of qiyās, as you see. Praise be to Allah, Lord of the worlds, for His immense blessings.

L2861 **The legal ruling concerning the liquid when an impurity falls into it.**

L2862–2864 136. Issue: Every liquid—whether water, oil, ghee, milk, rose water, honey, broth, aromatic substance, or any other—if an impurity, a forbidden thing requiring avoidance, or carrion falls into it, then if this alters the liquid's color, taste, or odor, the entire liquid is spoiled. It is forbidden to consume it, and neither its use nor its sale is permitted. If no alteration occurs to its color, taste, or odor, the liquid remains lawful for consumption, drinking, and use, provided it was permissible prior to [the impurity's contact]. Ablution (wudu) with such water is lawful, and purification through the ritual bath (ghusl) with it is likewise permitted. The sale of what was... [text ends abruptly in the original]. Its sale before that is permissible and lawful, with no need to ascertain its condition. It holds the same status as water containing mucus or spit. However, it is forbidden for one who urinates in stagnant water to perform ablution or ritual bathing with that water – whether for

مُتَعَبِّدَةٍ، وَإِنَاثُ بَنِي آدَمَ حَلَالٌ لِذُكُورِهِمْ بِالتَّزْوِيجِ الْمُبَاحِ وَبِمِلْكِ الْيَمِينِ الْمُبِيحِ لِلْوَطْءِ، وَلَيْسَ كَذَلِكَ إِنَاثُ سَائِرِ الْحَيَوَانِ، وَأَلْبَانُ نِسَاءِ بَنِي آدَمَ حَلَالٌ، وَلَيْسَ كَذَلِكَ أَلْبَانُ إِنَاثِ السِّبَاعِ وَالْأُتُنِ، فَظَهَرَ خَطَأُ هَذَا الْقِيَاسِ بِيَقِينٍ.

فَإِنْ قَالُوا: قِسْنَاهَا عَلَى الْهِرِّ، قِيلَ لَهُمْ: وَمَا الَّذِي أَوْجَبَ أَنْ تَقِيسُوهَا عَلَى الْهِرِّ دُونَ أَنْ تَقِيسُوهَا عَلَى الْكَلْبِ؟ لَا سِيَّمَا وَقَدْ قِسْتُمُ الْخِنْزِيرَ عَلَى الْكَلْبِ وَلَمْ تَقِيسُوهُ عَلَى الْهِرِّ، كَمَا قِسْتُمُ السِّبَاعَ عَلَى الْهِرِّ، هَذَا لَوْ سُلِّمَ لَكُمْ أَمْرُ الْهِرِّ، فَكَيْفَ وَالنَّصُّ الثَّابِتُ - الَّذِي هُوَ أَثْبَتُ مِنْ حَدِيثِ حُمَيْدَةَ عَنْ كَبْشَةَ - وَقَدْ وَرَدَ مُبَيِّنًا لِوُجُوبِ غَسْلِ الْإِنَاءِ مِنْ وُلُوغِ الْهِرِّ، فَهَذِهِ مَقَايِيسُ أَصْحَابِ الْقِيَاسِ كَمَا تَرَى. وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ عَلَى عَظِيمِ نِعَمِهِ.

[مَسْأَلَة حُكْم الْمَائِع إِذَا وقعت فِيهِ نَجَاسَة]

١٣٦ - مَسْأَلَةٌ: وَكُلُّ شَيْءٍ مَائِعٍ - مِنْ مَاءٍ أَوْ زَيْتٍ أَوْ سَمْنٍ أَوْ لَبَنٍ أَوْ مَاءِ وَرْدٍ أَوْ عَسَلٍ أَوْ مَرَقٍ أَوْ طِيبٍ أَوْ غَيْرِ ذَلِكَ، أَيِّ شَيْءٍ كَانَ، إِذَا وَقَعَتْ فِيهِ نَجَاسَةٌ أَوْ شَيْءٌ حَرَامٌ يَجِبُ اجْتِنَابُهُ أَوْ مَيْتَةٌ، فَإِنْ غَيَّرَ ذَلِكَ لَوْنَ مَا وَقَعَ فِيهِ أَوْ طَعْمَهُ أَوْ رِيحَهُ فَقَدْ فَسَدَ كُلُّهُ وَحُرِّمَ أَكْلُهُ، وَلَمْ يَجُزْ اسْتِعْمَالُهُ وَلَا بَيْعُهُ، فَإِنْ لَمْ يُغَيِّرْ شَيْئًا مِنْ لَوْنِ مَا وَقَعَ فِيهِ وَلَا مِنْ طَعْمِهِ وَلَا مِنْ رِيحِهِ، فَذَلِكَ الْمَائِعُ حَلَالٌ أَكْلُهُ وَشُرْبُهُ وَاسْتِعْمَالُهُ - إِنْ كَانَ قَبْلَ ذَلِكَ كَذَلِكَ - وَالْوُضُوءُ حَلَالٌ بِذَلِكَ الْمَاءِ، وَالتَّطَهُّرُ بِهِ فِي الْغُسْلِ أَيْضًا كَذَلِكَ، وَبَيْعُ مَا كَانَ جَائِزًا بَيْعُهُ قَبْلَ ذَلِكَ حَلَالٌ، وَلَا مَعْنَى لِتَبَيُّنِ أَمْرِهِ، وَهُوَ بِمَنْزِلَةِ مَا وَقَعَ

obligatory or non-obligatory acts – and the ruling in such a case is dry ablution (tayammum) if no other water is found. This water remains pure and lawful for him and others to drink, provided the urine does not alter any of its inherent properties. Others may lawfully use it for ablution and bathing. If one passes wind in the water or urinates outside it, after which the urine flows into it, the water remains pure and permissible for ablution and bathing by him and others – unless the urine or ritual impurity alters any of the water's properties, in which case its use becomes entirely invalid for him or anyone else.

Excepted is water lapped by a dog, which must necessarily be discarded as we previously stated in its chapter. Also excepted is clarified butter into which a mouse falls dead, dies, or emerges alive – whether the mouse is male or female, small or large. If the clarified butter was liquid when the mouse died in it, fell dead into it, or emerged alive from it, all of it must be discarded – even if it amounts to a million qintars or more – and its use remains prohibited whether it solidifies afterward or not. But if it was solid when the mouse died in it or fell dead into it, and its solid state remained continuous, only the mouse and its surrounding portion are discarded. The remainder is lawful for consumption, sale, or use as ointment – whether small or large in quantity.

Water is another exception, as its sale is unlawful due to the Prophet's prohibition (peace be upon him), as we shall elaborate in the chapter on commercial transactions, God Almighty willing.

L2865 The proof of this is what we mentioned earlier: that whatever Allah the Exalted has permitted and ruled to be pure remains so forever unless another text comes prohibiting it or declaring it impure. And whatever Allah the Exalted has prohibited or declared impure remains so forever unless another text comes permitting it or purifying it. Whatever exceeds this constitutes transgression against the boundaries set by Allah the Exalted, for He said: "These are the boundaries of Allah, so do not transgress them" [Al-Baqarah: 229]. He also said: "Do not falsely assert with your tongues, 'This is lawful and that is forbidden'" [An-Nahl: 116]. And He said: "Say, 'Have you con-

فِيهِ مُخَاطٌ أَوْ بُصَاقٌ إِلَّا أَنَّ الْبَائِلَ فِي الْمَاءِ الرَّاكِدِ الَّذِي لَا يَجْرِي حَرَامٌ عَلَيْهِ الْوُضُوءُ بِذَلِكَ الْمَاءِ وَالِاغْتِسَالُ بِهِ لِفَرْضٍ أَوْ لِغَيْرِهِ، وَحُكْمُهُ التَّيَمُّمُ إِنْ لَمْ يَجِدْ غَيْرَهُ. وَذَلِكَ الْمَاءُ طَاهِرٌ حَلَالٌ شُرْبُهُ لَهُ وَلِغَيْرِهِ، إِنْ لَمْ يُغَيِّرِ الْبَوْلُ شَيْئًا مِنْ أَوْصَافِهِ. وَحَلَالٌ الْوُضُوءُ بِهِ وَالْغُسْلُ بِهِ لِغَيْرِهِ. فَلَوْ أَحْدَثَ فِي الْمَاءِ أَوْ بَالَ خَارِجًا مِنْهُ ثُمَّ جَرَى الْبَوْلُ فِيهِ فَهُوَ طَاهِرٌ، يَجُوزُ الْوُضُوءُ مِنْهُ وَالْغُسْلُ لَهُ وَلِغَيْرِهِ، إِلَّا أَنْ يُغَيِّرَ ذَلِكَ الْبَوْلُ أَوِ الْحَدَثُ شَيْئًا مِنْ أَوْصَافِ الْمَاءِ، فَلَا يُجْزِئُ حِينَئِذٍ اسْتِعْمَالُهُ أَصْلًا لَهُ وَلَا لِغَيْرِهِ. وَحَاشَا مَا وَلَغَ فِيهِ الْكَلْبُ فَإِنَّهُ يُهْرَقُ وَلَا بُدَّ كَمَا قَدَّمْنَا فِي بَابِهِ، وَحَاشَا السَّمْنَ يَقَعُ فِيهِ الْفَأْرُ مَيِّتًا أَوْ يَمُوتُ فِيهِ أَوْ يَخْرُجُ مِنْهُ حَيًّا ذَكَرًا كَانَ الْفَأْرُ أَوْ أُنْثَى صَغِيرًا أَوْ كَبِيرًا - فَإِنَّهُ إِنْ كَانَ ذَائِبًا حِينَ مَوْتِ الْفَأْرِ فِيهِ، أَوْ حِينَ وُقُوعِهِ فِيهِ مَيِّتًا أَوْ خَرَجَ مِنْهُ حَيًّا أُهْرِقَ كُلُّهُ - وَلَوْ أَنَّهُ أَلْفُ أَلْفِ قِنْطَارٍ أَوْ أَقَلُّ أَوْ أَكْثَرُ - وَلَمْ يَحِلَّ الِانْتِفَاعُ بِهِ جَمَدَ بَعْدَ ذَلِكَ أَوْ لَمْ يَجْمُدْ وَإِنْ كَانَ حِينَ مَوْتِ الْفَأْرِ فِيهِ أَوْ وُقُوعِهِ فِيهِ مَيِّتًا جَامِدًا وَاتَّصَلَ جُمُودُهُ، فَإِنَّ الْفَأْرَ يُؤْخَذُ مِنْهُ وَمَا حَوْلَهُ وَيُرْمَى، وَالْبَاقِي حَلَالٌ أَكْلُهُ وَبَيْعُهُ وَالِادِّهَانُ بِهِ قَلَّ أَوْ كَثُرَ، وَحَاشَا الْمَاءَ فَلَا يَحِلُّ بَيْعُهُ لِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ عَلَى مَا نَذْكُرُ فِي الْبُيُوعِ إِنْ شَاءَ اللَّهُ تَعَالَى.

بُرْهَانُ ذَلِكَ: مَا ذَكَرْنَا قَبْلُ مِنْ أَنَّ كُلَّ مَا أَحَلَّ اللَّهُ تَعَالَى وَحَكَمَ فِيهِ بِأَنَّهُ طَاهِرٌ فَهُوَ كَذَلِكَ أَبَدًا مَا لَمْ يَأْتِ نَصٌّ آخَرُ بِتَحْرِيمِهِ أَوْ نَجَاسَتِهِ. وَكُلُّ مَا حَرَّمَ اللَّهُ تَعَالَى أَوْ نَجَّسَهُ فَهُوَ كَذَلِكَ أَبَدًا مَا لَمْ يَأْتِ نَصٌّ آخَرُ بِإِبَاحَتِهِ أَوْ تَطْهِيرِهِ، وَمَا عَدَا هَذَا فَهُوَ تَعَدٍّ لِحُدُودِ اللَّهِ تَعَالَى، وَقَالَ تَعَالَى: {تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا} [البقرة: ٢٢٩] وَقَالَ تَعَالَى: {وَلَا تَقُولُوا لِمَا تَصِفُ أَلْسِنَتُكُمُ الْكَذِبَ هَذَا حَلَالٌ وَهَذَا حَرَامٌ} [النحل: ١١٦] وَقَالَ

sidered what Allah has sent down to you of provision, of which you have made some lawful and some forbidden?' Say, 'Has Allah permitted you, or do you fabricate lies against Allah?'" [Yunus: 59]. Through this, it is conclusively established that the pure does not become impure through contact with the impure, nor does the impure become pure through contact with the pure. Similarly, the lawful does not become prohibited through contact with the unlawful, nor does the unlawful become lawful through contact with the lawful. Rather, the lawful remains lawful as it was, the unlawful remains unlawful as it was, the pure remains pure as it was, and the impure remains impure as it was—unless a text comes altering any of these rulings. Then we hear and obey. Otherwise, it remains as it was.[30]

تَعَالَى: {قُلْ أَرَأَيْتُمْ مَا أَنْزَلَ اللَّهُ لَكُمْ مِنْ رِزْقٍ فَجَعَلْتُمْ مِنْهُ حَرَامًا وَحَلالا قُلْ آللَّهُ أَذِنَ لَكُمْ أَمْ عَلَى اللَّهِ تَفْتَرُونَ} [يونس: ٥٩] وَصَحَّ بِهَذَا يَقِينًا أَنَّ الطَّاهِرَ لَا يَنْجَسُ بِمُلَاقَاةِ النَّجِسِ، وَأَنَّ النَّجِسَ لَا يَطْهُرُ بِمُلَاقَاةِ الطَّاهِرِ. وَأَنَّ الْحَلَالَ لَا يُحَرَّمُ بِمُلَاقَاةِ الْحَرَامِ وَالْحَرَامَ لَا يَحِلُّ بِمُلَاقَاةِ الْحَلَالِ بَلْ الْحَلَالُ حَلَالٌ كَمَا كَانَ وَالْحَرَامُ حَرَامٌ كَمَا كَانَ، وَالطَّاهِرُ طَاهِرٌ كَمَا كَانَ وَالنَّجِسُ نَجِسٌ كَمَا كَانَ، إلَّا أَنْ يَرِدَ نَصٌّ بِإِحَالَةِ حُكْمٍ مِنْ ذَلِكَ فَسَمْعًا وَطَاعَةً. وَإِلَّا فَلَا.

L2866–2868 If the water were to become impure through contact with impurities, nothing would ever be purified, because according to their statement, whenever it is poured over an impurity to wash it away, it necessarily becomes impure. When it becomes impure, its purification becomes obligatory, and thus it would continue. If that were the case perpetually, the sea and all flowing rivers would become impure, for when water mixed with impurity becomes contaminated, it necessarily follows that the adjacent water also becomes impure. This would then require whatever touches it to likewise become impure endlessly, leaving no escape from this chain. Should they claim any part of this process does not cause impurity, they would abandon their own argument, contradict themselves, and tacitly affirm the truth. Their consensus with us regarding the invalidity of such reasoning - and their agreement on the purification of bodily discharges, blood from the mouth, clothing, and the body - confirms that impurity exists only where the visible trace of contamination is present, and prohibition applies solely to substances explicitly forbidden by textual evidence. The remainder of their position is invalid.

وَلَوْ تَنَجَّسَ الْمَاءُ بِمَا يُلَاقِيهِ مِنْ النَّجَاسَاتِ مَا طَهُرَ شَيْءٌ أَبَدًا، لِأَنَّهُ كَانَ إذَا صُبَّ عَلَى النَّجَاسَةِ لِغَسْلِهَا يَنْجَسُ عَلَى قَوْلِهِمْ وَلَا بُدَّ، وَإِذَا تَنَجَّسَ وَجَبَ تَطْهِيرُهُ، وَهَكَذَا أَبَدًا، وَلَوْ كَانَ كَذَلِكَ لَتَنَجَّسَ الْبَحْرُ وَالْأَنْهَارُ الْجَارِيَةُ كُلُّهَا، لِأَنَّهُ إذَا تَنَجَّسَ الْمَاءُ الَّذِي خَالَطَتْهُ النَّجَاسَةُ وَجَبَ أَنْ يَتَنَجَّسَ الْمَاءُ الَّذِي يُمَاسُّهُ أَيْضًا، ثُمَّ يَجِبُ أَنْ يَتَنَجَّسَ مَا مَسَّهُ أَيْضًا كَذَلِكَ أَبَدًا، وَهَذَا لَا مَخْلَصَ مِنْهُ. فَإِنْ قَالُوا فِي شَيْءٍ مِنْ ذَلِكَ: لَا يَتَنَجَّسُ. تَرَكُوا قَوْلَهُمْ وَرَجَعُوا إلَى الْحَقِّ وَتَنَاقَضُوا، وَفِي إجْمَاعِهِمْ مَعَنَا عَلَى بُطْلَانِ ذَلِكَ وَعَلَى تَطْهِيرِ الْمَخْرَجِ وَالدَّمِ فِي الْفَمِ وَالثَّوْبِ وَالْجِسْمِ إقْرَارٌ بِأَنَّهُ لَا نَجَاسَةَ إلَّا مَا ظَهَرَتْ فِيهِ عَيْنُ النَّجَاسَةِ، وَلَا يُحَرَّمُ إلَّا مَا ظَهَرَ فِيهِ عَيْنُ الْمَنْصُوصِ عَلَى تَحْرِيمِهِ فَقَطْ، وَسَائِرُ قَوْلِهِمْ فَاسِدٌ.

L2869 If they arbitrarily differentiate between flowing water and water contaminated by impurity, they have introduced confusion without valid textual proof.

فَإِنْ فَرَّقُوا بَيْنَ الْمَاءِ الْوَارِدِ وَبَيْنَ الَّذِي تَرِدُهُ النَّجَاسَةُ. زَادُوا فِي التَّخْلِيطِ بِلَا دَلِيلٍ.

L2870 As for when the color of the permissible pure substance changes due to

[30] **Qur'an references (L2865):** Qur'an 2:229 (Al-Baqarah); Qur'an 16:116 (An-Nahl); Qur'an 10:59 (Yunus).

mixing with impure or prohibited substances, or its taste or smell changes due to that, we are then unable to use the permissible except by using the prohibited. The use of the prohibited in eating, drinking, and prayer is prohibited as we stated. Therefore, it becomes obligatory to abstain from it—not because the permissible pure has been prohibited or its essence has become impure. If we could separate the permissible pure from the prohibited and impure substances, it would inherently remain permissible.

وَأَمَّا إِذَا تَغَيَّرَ لَوْنُ الْحَلَالِ الطَّاهِرِ - بِمَا مَازَجَهُ مِنْ نَجِسٍ أَوْ حَرَامٍ - أَوْ تَغَيَّرَ طَعْمُهُ بِذَلِكَ، أَوْ تَغَيَّرَ - رِيحُهُ بِذَلِكَ، فَإِنَّنَا حِينَئِذٍ لَا نَقْدِرُ عَلَى اسْتِعْمَالِ الْحَلَالِ إِلَّا بِاسْتِعْمَالِ الْحَرَامِ، وَاسْتِعْمَالُ الْحَرَامِ فِي الْأَكْلِ وَالشُّرْبِ وَفِي الصَّلَاةِ حَرَامٌ كَمَا قُلْنَا، وَلِذَلِكَ وَجَبَ الِامْتِنَاعُ مِنْهُ، لَا لِأَنَّ الْحَلَالَ الطَّاهِرَ حُرِّمَ وَلَا تَنَجَّسَتْ عَيْنُهُ، وَلَوْ قَدَرْنَا عَلَى تَخْلِيصِ الْحَلَالِ الطَّاهِرِ مِنْ الْحَرَامِ وَالنَّجَسِ، لَكَانَ حَلَالًا بِحَسَبِهِ.

L2871 Similarly, if impurity or the prohibited exists on a pure object and we remove them, the impure has not become pure nor has the prohibited become lawful. Rather, the impurity or prohibited has separated from the lawful pure object, enabling us to use it at that time as lawful and pure as it was.

وَكَذَلِكَ إِذَا كَانَتْ النَّجَاسَةُ أَوْ الْحَرَامُ عَلَى جِرْمٍ طَاهِرٍ فَأَزَلْنَاهَا، فَإِنَّ النَّجِسَ لَمْ يَطْهُرْ وَالْحَرَامُ لَمْ يَحِلَّ، لَكِنَّهُ زَايَلَ الْحَلَالَ الطَّاهِرَ، فَقَدَرْنَا عَلَى أَنْ نَسْتَعْمِلَهُ حِينَئِذٍ حَلَالًا طَاهِرًا كَمَا كَانَ.

L2872 Similarly, if the intrinsic properties of an impure or unlawful entity undergo a complete transformation—such that the name warranting its original ruling no longer applies—and it assumes a name recognized for pure and lawful things, it ceases to be that impure or unlawful entity. Rather, it becomes a different entity subject to a new legal ruling.

وَكَذَلِكَ إِذَا اسْتَحَالَتْ صِفَاتُ عَيْنِ النَّجِسِ أَوْ الْحَرَامِ، فَبَطَلَ عَنْهُ الِاسْمُ الَّذِي بِهِ وَرَدَ ذَلِكَ الْحُكْمُ فِيهِ، وَانْتَقَلَ إلَى اسْمٍ آخَرَ وَارِدٍ عَلَى حَلَالٍ طَاهِرٍ، فَلَيْسَ هُوَ ذَلِكَ النَّجِسَ وَلَا الْحَرَامَ، بَلْ قَدْ صَارَ شَيْئًا آخَرَ ذَا حُكْمٍ آخَرَ.

L2873–2875 Similarly, if the attributes of the substance of a pure, permissible item are transformed—nullifying the name by which its ruling was established and shifting to another designation associated with what is unlawful or impure—it ceases to be that pure, permissible item. Rather, it becomes a distinct substance with a different ruling. Examples include grape juice turning into wine, wine turning into vinegar, pork meat consumed by a chicken and transformed into lawful chicken meat within it, water turning into urine, food turning into excrement, or excrement and urine being used to fertilize the land, thereby producing lawful fruit. Such cases are numerous. Likewise, if a drop of water falls into wine or a drop of wine falls into water, and no trace of either becomes apparent. Among these is a trace, and similarly for all things. Rulings are based on names, and names are subordinate to attributes, which define what they pertain to and differentiate between their categories.

وَكَذَلِكَ إِذَا اسْتَحَالَتْ صِفَاتُ عَيْنِ الْحَلَالِ الطَّاهِرِ، فَبَطَلَ عَنْهُ الِاسْمُ الَّذِي بِهِ وَرَدَ ذَلِكَ الْحُكْمُ فِيهِ، وَانْتَقَلَ إلَى اسْمٍ آخَرَ وَارِدٍ عَلَى حَرَامٍ أَوْ نَجِسٍ، فَلَيْسَ هُوَ ذَلِكَ الْحَلَالَ الطَّاهِرَ، بَلْ قَدْ صَارَ شَيْئًا آخَرَ ذَا حُكْمٍ آخَرَ كَالْعَصِيرِ يَصِيرُ خَمْرًا، أَوْ الْخَمْرِ يَصِيرُ خَلًّا، أَوْ لَحْمِ الْخِنْزِيرِ تَأْكُلُهُ دَجَاجَةٌ يَسْتَحِيلُ فِيهَا لَحْمَ دَجَاجٍ حَلَالًا وَكَالْمَاءِ يَصِيرُ بَوْلًا، وَالطَّعَامِ يَصِيرُ عَذِرَةً، وَالْعَذِرَةُ وَالْبَوْلُ تُدْهَنُ بِهِمَا الْأَرْضُ فَيَعُودَانِ ثَمَرَةً حَلَالًا، وَمِثْلُ هَذَا كَثِيرٌ، وَكَنُقْطَةِ مَاءٍ تَقَعُ فِي خَمْرٍ أَوْ نُقْطَةِ خَمْرٍ تَقَعُ فِي مَاءٍ، فَلَا يَظْهَرُ لِشَيْءٍ مِنْ ذَلِكَ أَثَرٌ، وَهَكَذَا كُلُّ شَيْءٍ، وَالْأَحْكَامُ لِلْأَسْمَاءِ وَالْأَسْمَاءُ تَابِعَةٌ لِلصِّفَاتِ الَّتِي هِيَ حَدُّ مَا هِيَ فِيهِ الْمُفَرِّقُ بَيْنَ أَنْوَاعِهِ.

وَأَمَّا إِبَاحَةُ بَيْعِهِ وَالِاسْتِصْبَاحِ بِهِ، فَإِنَّمَا بَيْعُ الْجِرْمِ الْحَلَالِ لَا مَا مَازَجَهُ مِنْ الْحَرَامِ، وَبَيْعُ الْحَلَالِ حَلَالٌ كَمَا كَانَ قَبْلُ. وَمَنْ ادَّعَى خِلَافَ ذَلِكَ فَعَلَيْهِ الدَّلِيلُ. وَمِمَّنْ أَجَازَ بَيْعَ الْمَائِعَاتِ تَقَعُ فِيهَا النَّجَاسَةُ وَالِانْتِفَاعَ بِهَا: عَلِيٌّ وَابْنُ مَسْعُودٍ وَابْنُ عَبَّاسٍ وَابْنُ عُمَرَ وَأَبُو مُوسَى الْأَشْعَرِيُّ وَأَبُو سَعِيدٍ الْخُدْرِيُّ وَالْقَاسِمُ وَسَالِمٌ وَعَطَاءٌ وَاللَّيْثُ وَأَبُو حَنِيفَةَ وَسُفْيَانُ وَإِسْحَاقُ وَغَيْرُهُمْ.

L2876 As for the permissibility of selling it and using it as fuel for lighting, the sale pertains to the lawful substance, not the unlawful [substance] mixed with it. The sale of lawful items remains permissible as it was previously. Whoever claims otherwise must provide evidence. Among those who permitted both the sale of liquids into which impurities have fallen and their beneficial use are Ali, Ibn Masʿud, Ibn Abbas, Ibn Umar, Abu Musa al-Ashʿari, Abu Saʿid al-Khudri, al-Qasim, Salim, ʿAta', al-Laith, Abu Hanifah, Sufyan, Ishaq, and others.

فَإِنْ قِيلَ: فَإِنَّ فِي النَّاسِ مَنْ يُحَرِّمُ ذَلِكَ وَلَا يَسْتَجِيزُ أَنْ يَأْخُذَهُ وَلَوْ أُعْطِيَهُ بِلَا ثَمَنٍ، فَكِتْمَانُهُ ذَلِكَ غِشٌّ، وَالْغِشُّ حَرَامٌ، وَالدِّينُ النَّصِيحَةُ. قُلْنَا نَعَمْ، كَمَا أَنَّ أَكْثَرَ النَّاسِ لَا يَسْتَسْهِلُ أَنْ يَأْخُذَ مَائِعًا وَقَعَتْ فِيهِ مَخْطَةُ مَجْذُومٍ، أَوْ أَدْخَلَ فِيهِ يَدَهُ، وَلَوْ أُعْطِيَهُ بِلَا ثَمَنٍ، وَهَذَا عِنْدَ الْجَامِدِينَ مِنْ خُصُومِنَا لَا مَعْنَى لَهُ، وَلَيْسَ شَيْءٌ مِنْ هَذَا غِشًّا، إِنَّمَا الْغِشُّ مَا كَانَ فِي الدِّينِ، وَالنَّصِيحَةُ كَذَلِكَ، لَا فِي الظُّنُونِ الْكَاذِبَةِ الْمُخَالِفَةِ لِأَمْرِ اللَّهِ تَعَالَى.

L2877 If it is said: "Indeed, among people are those who forbid this and do not permit taking it even if offered without payment, thus concealing it constitutes deceit. Deceit is forbidden, and religion is sincerity." We reply: Certainly, just as most people do not consider it easy to accept a liquid touched by a trace of a leper's hand or into which he dipped his hand, even if offered without payment. Yet according to the rigid adherents among our opponents, this holds no significance. None of this constitutes deceit, for deceit pertains solely to matters of religion, and sincerity is likewise—not to false suspicions contradicting God Almighty's command.

عَلَى أَنَّ فِي الْقَائِلِينَ مَنْ يَقُولُ بِأَنَّ الْبُصَاقَ نَجِسٌ مِمَّنْ هُوَ أَفْضَلُ مِنْ الْأَرْضِ مَمْلُوءَةً مِنْ مِثْلِ مَنْ قَلَّدَهُ هَؤُلَاءِ الْمُتَأَخِّرُونَ، كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نَا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا أَبُو عَامِرٍ الْعَقَدِيُّ ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ رِبْعِيِّ بْنِ حِرَاشٍ عَنْ سَلْمَانَ هُوَ الْفَارِسِيُّ صَاحِبُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: " إِذَا بَصَقْتَ عَلَى جِلْدِكَ وَأَنْتَ مُتَوَضِّئٌ فَإِنَّ الْبُصَاقَ لَيْسَ بِطَاهِرٍ فَلَا تُصَلِّ حَتَّى تَغْسِلَهُ ". قَالَ ابْنُ الْمُثَنَّى: وَحَدَّثَنَا مَخْلَدُ بْنُ يَزِيدَ الْحَرَّانِيُّ عَنْ التَّيْمِيِّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ

L2878–2880 Among those who hold that spittle is impure are individuals superior to the earth—which is filled with people resembling those whom these later generations emulate. As narrated to us by Muḥammad ibn Saʿīd ibn Nabāt: Aḥmad ibn ʿAbd al-Baṣīr narrated to us, from Qāsim ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from Abū ʿĀmir al-ʿAqadī, from Sufyān al-Thawrī, from Ḥammād ibn Abī Sulaymān, from Ribʿī ibn Ḥirāsh, from Salmān al-Fārisī—the Companion of the Messenger of Allah, peace and blessings be upon him—who said: "If you spit on your skin during ablution, the spittle is not pure. Do not pray until you wash it." Ibn al-Muthannā said: Makhlad ibn Yazīd al-Ḥarrānī narrated to us, from al-Taymī, from al-Mughīrah ibn Miqsam, from Ibrāhīm al-Nakhaʿī, who said: "Spittle is equivalent to excrement, but no one's opinion holds as proof alongside the Messenger of Allah, peace and blessings be upon him."

As for the ruling on urine, it is based on what Aḥmad ibn al-Qāsim narrated to us: My father narrated to me, Qāsim ibn Muḥammad ibn Qāsim, from my grandfather Qāsim ibn Aṣbagh, from Muḥammad ibn Waḍḍāḥ, from Ḥāmid ibn Yaḥyā al-Balkhī, from Sufyān ibn ʿUyaynah, from Ayyūb al-Sakhtiyānī, from Muḥammad ibn Sīrīn, from Abū Hurayrah. The Messenger of Allah—peace and blessings be upon him—said: "Do not urinate in stagnant water that does not flow and then perform ghusl from it."[31]

L2881 Yahya ibn Abd al-Rahman ibn Mas'ud narrated to us, Ahmad ibn Sa'id ibn Hazm narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, Abdullah ibn Ahmad ibn Hanbal narrated to us, my father narrated to us, Abd al-Razzaq narrated to us, Ma'mar narrated from Ayyub from Muhammad ibn Sirin from Abu Hurairah, who said: The Messenger of Allah - peace and blessings be upon him - said: "Let none of you urinate in stagnant water that does not flow, then bathe in it." Yahya ibn Abd al-Rahman ibn Mas'ud narrated to us, Ahmad ibn Sa'id ibn Hazm narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, Abdullah ibn Ahmad ibn Hanbal narrated to us, my father narrated to us, Abd al-Razzaq narrated to us, Ma'mar narrated from Ayyub from Muhammad ibn Sirin from Abu Hurairah, who said: The Messenger of Allah - peace and blessings be upon him - said: "Let none of you urinate in stagnant water, then perform ablution with it." If he - peace and blessings be upon him - had intended to prohibit others besides the one urinating, he would not have remained silent about that out of inability, forgetfulness, or to burden us by obliging us to know what he did not disclose to us from the unseen. As for the matter of the dog, this topic has been previously discussed.[32]

L2882–2884 As for clarified butter (samn), Ḥumām ibn Aḥmad said: Ibn Mufarrij narrated to us; Ibn al-Aʿrābī narrated to us; al-Dabarī narrated to us; ʿAbd al-Razzāq

النَّخَعِيِّ قَالَ: الْبُصَاقُ بِمَنْزِلَةِ الْعَذِرَةِ، وَلَكِنْ لَا حُجَّةَ فِي أَحَدٍ مِنَ النَّاسِ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. فَأَمَّا حُكْمُ الْبَائِلِ فَلِمَا حَدَّثَنَا أَحْمَدُ بْنُ الْقَاسِمِ حَدَّثَنِي أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ ثنا جَدِّي قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ وَضَّاحٍ ثنا حَامِدُ بْنُ يَحْيَى الْبَلْخِيُّ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أَيُّوبَ هُوَ السِّخْتِيَانِيُّ - عَنْ مُحَمَّدٍ هُوَ ابْنُ سِيرِينَ - عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَبُولَنَّ أَحَدُكُمْ فِي الْمَاءِ الدَّائِمِ الَّذِي لَا يَجْرِي ثُمَّ يَغْتَسِلُ مِنْهُ» .

حَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ ثنا أَحْمَدُ بْنُ سَعِيدِ بْنِ حَزْمٍ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ ثنا أَبِي ثنا عَبْدُ الرَّزَّاقِ ثنا مَعْمَرٌ عَنْ أَيُّوبَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَبُولَنَّ أَحَدُكُمْ فِي الْمَاءِ الدَّائِمِ الَّذِي لَا يَجْرِي ثُمَّ يَغْتَسِلُ مِنْهُ» . حَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ ثنا أَحْمَدُ بْنُ سَعِيدِ بْنِ حَزْمٍ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ ثنا أَبِي ثنا عَبْدُ الرَّزَّاقِ ثنا مَعْمَرٌ عَنْ أَيُّوبَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَبُولَنَّ أَحَدُكُمْ فِي الْمَاءِ الدَّائِمِ ثُمَّ يَتَوَضَّأُ مِنْهُ» . فَلَوْ أَرَادَ - عَلَيْهِ السَّلَامُ - أَنْ يَنْهَى عَنْ ذَلِكَ غَيْرَ الْبَائِلِ لَمَا سَكَتَ عَنْ ذَلِكَ عَجْزًا وَلَا نِسْيَانًا وَلَا تَعْنِيتًا لَنَا بِأَنْ يُكَلِّفَنَا عِلْمَ مَا لَمْ يُبْدِهِ لَنَا مِنَ الْغَيْبِ، فَأَمَّا أَمْرُ الْكَلْبِ فَقَدْ مَضَى الْكَلَامُ فِيهِ.

وَأَمَّا السَّمْنُ فَإِنَّ حُمَامَ بْنَ أَحْمَدَ قَالَ: ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ «سُئِلَ

[31] **Hadith references (L2878):** Sunan an-Nasai 400.

[32] **Hadith references (L2881):** Sunan an-Nasai 400; Jami at-Tirmidhi 68; Sunan an-Nasai 57.

narrated to us from Maʿmar from al-Zuhrī from Saʿīd ibn al-Musayyib from Abū Hurayrah, who said: “The Messenger of Allah—peace and blessings be upon him—was asked about a mouse that falls into clarified butter. He said: ’If it is solid, throw it away and what surrounds it. But if it is melted, do not go near it.”’ ʿAbd al-Razzāq said: “Maʿmar also used to mention it from al-Zuhrī from... [the chain ends here].” Ubaid Allah ibn Abdullah ibn Utbah narrated from Ibn Abbas, who narrated from Maimunah. Ubaid Allah said: Similarly, Ibn Uyaynah narrated it to us. Ali said: The mouse, the snake, the hen, the dove, and the ermine are terms in Arabic that apply to males just as they apply to females. In the Prophet’s statement—peace and blessings of Allah be upon him—“Discard it and what surrounds it,” there is proof that impurity occurs only if it is dead, for this ruling cannot pertain to a living snake.

L2885 If it is said: Indeed, Abd al-Wahid ibn Ziyad narrated this report from Ma’mar, from al-Zuhri, from Ibn al-Musayyib, from Abu Hurayrah, stating: “And if it was melted or liquid, then use it for lighting,” or he said: “Benefit from it”—we say, and with Allah, the Exalted, is success: It became evident that Abd al-Wahid doubted the wording of the hadith, thus he did not preserve it accurately. There is no doubt that Abd al-Razzaq is more precise in memorizing Ma’mar’s narrations. Moreover, the chain from Ma’mar through al-Zuhri, Ubayd Allah, Ibn Abbas, to Maymunah has no conflicting narrations. A narrator whose reports are consistent is more deserving of being considered precise than one whose narrations are disputed.

L2886 As for what we rely upon in this matter, it is that both narrations are valid. As for the narration of Abd al-Wahid, it aligns with the position we would have maintained had no part of this narration been transmitted, because the foundational principle is the permissibility of benefiting from ghee and other substances, based on the words of Allah the Exalted: *“He created for you all that is on the earth”* [Al-Baqarah: 29].[33]

L2887 As for the narration of ʿAbd al-Razzāq, it represents an established divine law and an additional ruling that abrogates the prior ruling of permissibility

[33] **Qur’an references (L2886):** Qur’an 2:29 (Al-Baqarah).

رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْفَأْرَةِ تَقَعُ فِي السَّمْنِ قَالَ: إذَا كَانَ جَامِدًا فَأَلْقُوهَا وَمَا حَوْلَهَا وَإِنْ كَانَ مَائِعًا فَلَا تَقْرَبُوهُ» قَالَ عَبْدُ الرَّزَّاقِ: وَقَدْ كَانَ مَعْمَرٌ يَذْكُرُهُ أَيْضًا عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ مَيْمُونَةَ قَالَ: وَكَذَلِكَ حَدَّثَنَاهُ ابْنُ عُيَيْنَةَ. قَالَ عَلِيٌّ: الْفَأْرَةُ وَالْحَيَّةُ وَالدَّجَاجَةُ وَالْحَمَامَةُ وَالْعِرْسُ أَسْمَاءٌ كُلُّ وَاحِدٍ مِنْهَا يَقَعُ عَلَى الذَّكَرِ فِي لُغَةِ الْعَرَبِ وُقُوعَهُ عَلَى الْأُنْثَى، وَفِي قَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَلْقُوهَا وَمَا حَوْلَهَا» . بُرْهَانٌ بِأَنَّهَا لَا تَكُونُ إلَّا مَيِّتَةً، إذْ لَا يُمْكِنُ ذَلِكَ مِنْ الْحَيَّةِ.

فَإِنْ قِيلَ: فَإِنَّ عَبْدَ الْوَاحِدِ بْنَ زِيَادٍ رَوَى عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ ابْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ هَذَا الْخَبَرَ فَقَالَ: «وَإِنْ كَانَ ذَائِبًا أَوْ مَائِعًا فَاسْتَصْبِحُوا بِهِ أَوْ قَالَ: انْتَفِعُوا بِهِ» قُلْنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: عَبْدُ الْوَاحِدِ قَدْ شَكَّ فِي لَفْظَةِ الْحَدِيثِ فَصَحَّ أَنَّهُ لَمْ يَضْبِطْهُ وَلَا شَكَّ فِي أَنَّ عَبْدَ الرَّزَّاقِ أَحْفَظُ لِحَدِيثِ مَعْمَرٍ. وَأَيْضًا فَلَمْ يُخْتَلَفْ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ عَنْ ابْنِ عَبَّاسٍ عَنْ مَيْمُونَةَ. وَمَنْ لَمْ يُخْتَلَفْ عَلَيْهِ أَحَقُّ بِالضَّبْطِ مِمَّنْ اُخْتُلِفَ عَلَيْهِ.

وَأَمَّا الَّذِي نَعْتَمِدُ عَلَيْهِ فِي هَذَا فَهُوَ أَنَّ كِلَا الرِّوَايَتَيْنِ حَقٌّ، فَأَمَّا رِوَايَةُ عَبْدِ الْوَاحِدِ فَمُوَافِقَةٌ لِمَا كُنَّا نَكُونُ عَلَيْهِ لَوْ لَمْ يَرِدْ شَيْءٌ مِنْ هَذِهِ الرِّوَايَةِ، لِأَنَّ الْأَصْلَ إبَاحَةُ الِانْتِفَاعِ بِالسَّمْنِ وَغَيْرِهِ، لِقَوْلِ اللَّهِ تَعَالَى: {خَلَقَ لَكُمْ مَا فِي الأَرْضِ جَمِيعًا} [البقرة: ٢٩] .

وَأَمَّا رِوَايَةُ عَبْدِ الرَّزَّاقِ فَشَرْعٌ وَارِدٌ وَحُكْمٌ زَائِدٌ نَاسِخٌ لِلْإِبَاحَةِ الْمُتَقَدِّمَةِ بِيَقِينٍ لَا شَكَّ فِيهِ، وَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ اللَّهَ تَعَالَى لَوْ أَعَادَ حُكْمَ الْمَنْسُوخِ وَأَبْطَلَ حُكْمَ النَّاسِخِ لَبَيَّنَ

with absolute certainty without any doubt. We are certain that if Allah the Exalted were to reinstate the abrogated ruling and nullify the abrogating ruling, He would have clarified it in a manner that removes the difficulty. Allah the Exalted said: "To clarify for people what has been sent down to them" [16:44]. Thus, the ruling of ʿAbd al-Wāḥid's narration is invalidated with absolute certainty without any doubt, and success comes only from Allah, the Exalted.[34]

ذَلِكَ بَيَانًا يَرْفَعُ بِهِ الْإِشْكَالَ، قَالَ اللَّهُ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] فَبَطَلَ حُكْمُ رِوَايَةِ عَبْدِ الْوَاحِدِ بِيَقِينٍ لَا شَكَّ فِيهِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L2888 Muhammad ibn Sa'id ibn Nabat narrated to us: Ahmad ibn Abd al-Basir narrated to us: Qasim ibn Asbagh narrated to us: Muhammad ibn Abd al-Salam al-Khushani narrated to us: Muhammad ibn al-Muthanna narrated to us: Muhammad ibn Fudayl narrated to us: Ata ibn al-Sa'ib narrated from Maysarah al-Nahdi from Ali ibn Abi Talib - may Allah be pleased with him - concerning a mouse that falls into clarified butter (ghee) and dies in it. He said: "If the ghee is solid, remove the mouse and the surrounding area, then consume the remainder. If it is melted, pour it out." Ali added: "The portion to be taken from around it is the smallest possible amount and the thinnest in thickness, for this is what the term 'surrounding it' signifies. As for what exceeds that quantity, it is part of what is commanded to be consumed and prohibited from being wasted."

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا مُحَمَّدُ بْنُ فُضَيْلٍ ثنا عَطَاءُ بْنُ السَّائِبِ عَنْ مَيْسَرَةَ النَّهْدِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - فِي الْفَأْرَةِ إِذَا وَقَعَتْ فِي السَّمْنِ فَمَاتَتْ فِيهِ - قَالَ: إِنْ كَانَ جَامِدًا فَاطْرَحْهَا وَمَا حَوْلَهَا وَكُلْ بَقِيَّتَهُ، وَإِنْ كَانَ ذَائِبًا فَأَهْرِقْهُ. قَالَ عَلِيٌّ: وَالْمَأْخُوذُ مِمَّا حَوْلَهَا هُوَ أَقَلُّ مَا يُمْكِنُ أَنْ يُؤْخَذَ وَأَرَقُّهُ غِلَظًا، لِأَنَّ هَذَا هُوَ الَّذِي يَقَعُ عَلَيْهِ اسْمُ مَا حَوْلَهَا، وَأَمَّا مَا زَادَ عَلَى ذَلِكَ فَمِنْ الْمَأْمُورِ بِأَكْلِهِ وَالْمَنْهِيِّ عَنْ تَضْيِيعِهِ.

L2889–2890 If it is said: It has been narrated, "Take an amount equivalent to a handful from around it," it is answered: This only came as a *mursal* report through the narration of Abū Jābir al-Bayāḍī - who is a fabricator - exclusively from Ibn al-Musayyab, and through the narration of Sharīk ibn Abī Namir - who is weak - from ʿAṭāʾ ibn Yasār. Sharīk is weak, and there is no valid proof in a *mursal* report even if transmitted by trustworthy narrators - how then could it be acceptable when transmitted by weak narrators?

فَإِنْ قِيلَ: فَقَدْ رُوِيَ: «خُذُوا مِمَّا حَوْلَهَا قَدْرَ الْكَفِّ.» قِيلَ: هَذَا إِنَّمَا جَاءَ مُرْسَلًا مِنْ رِوَايَةِ أَبِي جَابِرٍ الْبَيَاضِيِّ - وَهُوَ كَذَّابٌ - عَنْ ابْنِ الْمُسَيِّبِ فَقَطْ، وَمِنْ رِوَايَةِ شَرِيكِ بْنِ أَبِي نَمِرٍ - وَهُوَ ضَعِيفٌ - عَنْ عَطَاءِ بْنِ يَسَارٍ، وَشَرِيكٌ ضَعِيفٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ وَلَوْ رَوَاهُ الثِّقَاتُ، فَكَيْفَ مِنْ رِوَايَةِ الضُّعَفَاءِ.

L2891 It is not permissible to apply the ruling established for the mouse in clarified butter to other creatures in substances other than clarified butter, nor to a mouse in substances other than clarified butter, nor to creatures other than the female mouse in clarified butter. This is because no explicit textual evidence exists regarding cases beyond the mouse in clarified butter. It is utterly

وَلَا يَجُوزُ أَنْ يُحْكَمَ لِغَيْرِ الْفَأْرِ فِي غَيْرِ السَّمْنِ، وَلَا لِلْفَأْرِ فِي غَيْرِ السَّمْنِ وَلَا لِغَيْرِ الْفَأْرَةِ فِي السَّمْنِ بِحُكْمِ الْفَأْرِ فِي السَّمْنِ، لِأَنَّهُ لَا نَصَّ فِي غَيْرِ الْفَأْرِ فِي السَّمْنِ، وَمِنْ الْمُحَالِ أَنْ يُرِيدَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُكْمًا فِي غَيْرِ الْفَأْرِ فِي غَيْرِ السَّمْنِ ثُمَّ يَسْكُتَ

[34] **Qur'an references (L2887):** Qur'an 16:44 (An-Nahl).

عَنْهُ وَلَا يُخْبِرَنَا بِهِ، وَيَكِلَنَا إِلَى عِلْمِ الْغَيْبِ وَالْقَوْلِ بِمَا لَا نَعْلَمُ عَلَى اللَّهِ تَعَالَى، وَمَا يَعْجَزُ - عَلَيْهِ السَّلَامُ - قَطُّ عَنْ أَنْ يَقُولَ لَوْ أَرَادَ: إِذَا وَقَعَ النَّجِسُ أَوْ الْحَرَامُ فِي الْمَائِعِ فَافْعَلُوا كَذَا، حَاشَا لِلَّهِ مِنْ أَنْ يَدَعَ - عَلَيْهِ السَّلَامُ - بَيَانَ مَا أَمَرَهُ رَبُّهُ تَعَالَى بِتَبْلِيغِهِ. هَذَا هُوَ الْبَاطِلُ الْمَقْطُوعُ عَلَى بُطْلَانِهِ بِلَا شَكٍّ.

inconceivable that Allah's Messenger—peace be upon him—would intend a ruling for other creatures in substances besides clarified butter, then remain silent about it without informing us, leaving us dependent on knowledge of the unseen or requiring us to assert about Allah the Exalted what we do not know. The Prophet—peace be upon him—could never lack the ability to state clearly, had he intended: "If an impure or prohibited substance falls into a liquid, then follow such a procedure." Far be it from Allah! It is unthinkable that he—peace be upon him—would neglect to clarify what his Lord, the Exalted, commanded him to convey. This is falsehood decisively judged to be invalid, beyond any doubt.

L2892–2894

فَإِنْ قِيلَ: فَإِنَّهُ قَدْ رُوِيَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ عَنْ فَأْرَةٍ وَقَعَتْ فِي وَدَكٍ فَقَالَ - عَلَيْهِ السَّلَامُ -: اطْرَحُوهَا وَمَا حَوْلَهَا إِنْ كَانَ جَامِدًا، قِيلَ: وَإِنْ كَانَ مَائِعًا؟ قَالَ: فَانْتَفِعُوا بِهِ وَلَا تَأْكُلُوهُ» . قُلْنَا: هَذَا لَمْ يَرْوِهِ أَحَدٌ إلَّا عَبْدُ الْجَبَّارِ بْنُ عُمَرَ، وَهُوَ لَا شَيْءَ، ضَعَّفَهُ ابْنُ مَعِينٍ وَالْبُخَارِيُّ وَأَبُو دَاوُد وَالنَّسَائِيُّ وَغَيْرُهُمْ، وَأَيْضًا فَلَيْسَ فِيهِ إلَّا الْفَأْرُ فِي الْوَدَكِ فَقَطْ، وَقَدْ قِيلَ: إنَّ الْوَدَكَ فِي اللُّغَةِ لِلسَّمْنِ وَالْمَرَقِ خَاصَّةً وَالدَّسَمَ لِلشَّحْمِ. وَقَالَ أَبُو حَنِيفَةَ: إنْ وَقَعَتْ خَمْرٌ أَوْ مَيْتَةٌ أَوْ بَوْلٌ أَوْ عَذِرَةٌ أَوْ نَجَاسَةٌ فِي مَاءٍ رَاكِدٍ نُجِّسَ كُلُّهُ قَلَّتْ النَّجَاسَةُ أَوْ كَثُرَتْ، وَوَجَبَ هَرْقُهُ كُلِّهِ وَلَمْ تَجُزْ صَلَاةُ مَنْ تَوَضَّأَ مِنْهُ أَوْ اغْتَسَلَ مِنْهُ، وَلَمْ يَحِلَّ شُرْبُهُ كَثُرَ ذَلِكَ الْمَاءُ أَوْ قَلَّ، إلَّا أَنْ يَكُونَ إذَا حَرَّكَ أَحَدُ طَرَفَيْهِ لَمْ يَتَحَرَّكْ الْآخَرُ، فَإِنَّهُ طَاهِرٌ حِينَئِذٍ، وَجَائِزٌ التَّطَهُّرُ بِهِ وَشُرْبُهُ، فَإِنْ وَقَعَتْ كَذَلِكَ فِي مَائِعٍ غَيْرِ الْمَاءِ حُرِّمَ أَكْلُهُ وَشُرْبُهُ وَجَازَ الِاسْتِصْبَاحُ بِهِ وَالِانْتِفَاعُ بِهِ وَبَيْعُهُ، فَإِنْ وَقَعَتْ النَّجَاسَةُ أَوْ الْحَرَامُ فِي بِئْرٍ، فَإِنْ كَانَ ذَلِكَ عُصْفُورًا فَمَاتَ، أَوْ فَأْرَةً فَمَاتَتْ، فَأُخْرِجَا، فَإِنَّ الْبِئْرَ قَدْ تَنَجَّسَتْ، وَطَهُورُهَا أَنْ يُسْتَقَى مِنْهَا عِشْرُونَ دَلْوًا وَالْبَاقِي طَاهِرٌ. فَإِنْ كَانَتْ دَجَاجَةً أَوْ سِنَّوْرًا فَأُخْرِجَا حِينَ مَاتَا فَطَهُورُهَا أَرْبَعُونَ دَلْوًا وَالْبَاقِي

If it is said: It has been narrated that the Messenger of Allah—peace and blessings be upon him—was asked about a mouse that fell into ghee or broth, and he—peace be upon him—said: "Discard it and what surrounds it if it is solid." It was asked: "What if it is liquid?" He replied: "Make use of it but do not eat it." We respond: This was narrated only by Abd al-Jabbar ibn Umar—and he is deemed unreliable. Ibn Ma'in, al-Bukhari, Abu Dawud, al-Nasa'i, and others weakened him. Furthermore, this narration pertains solely to a mouse in ghee or broth. It has been stated that "al-wadak" linguistically denotes ghee and broth specifically, while "al-dasam" refers to solid animal fat. Abu Hanifa said: If wine, carrion, urine, feces, or impurity falls into stagnant water, all of it becomes impure—whether the impurity is little or abundant—and the entire quantity must be poured out. It is invalid for one who performs ablution or bathes with it to pray, and drinking it is unlawful regardless of the water's volume, unless stirring one part does not cause movement in the other, in which case it remains pure, and purification with it or drinking it becomes permissible. If such impurity or unlawful substance falls into a liquid other than water, consuming or drinking it is forbidden, but using it for illumination, benefit, or sale is permitted. If impurity or unlawful matter falls into a well—such as a sparrow that dies, or a mouse that dies and is removed—the well becomes impure. Its purification is achieved by drawing twenty buckets [of water], after which the remainder is pure. If it is a chicken or cat removed after death, its purification requires forty buckets, with the remainder pure. If it is a sheep removed after death—

whether following bloating or putrefaction—or if the mouse or sparrow is not removed... The chicken or the cat does not pollute the well except after bloating or putrefaction. The purification of the well is achieved by draining it. The extent of drainage according to Abū Ḥanīfa and Abū Yūsuf is when the water overpowers them [the contaminants], while according to Muḥammad ibn al-Ḥasan it is two hundred buckets. If a cat, mouse, or snake falls into the well and is extracted while alive, the water remains pure for ablution, though it is recommended to drain twenty buckets. If a dog or donkey falls into it and both are removed alive, it is obligatory to drain the well until the water overpowers them. If a sheep urinates in the well, it becomes obligatory to drain it until the water overpowers it [the urine], whether the urine is little or abundant. Similarly, if a camel urinates in it according to the Hanafi school. If two dung pellets from camels or sheep fall into the well, this does not harm its purity.

طَاهِرٌ، فَإِنْ كَانَتْ شَاةً فَأُخْرِجَتْ حِينَ مَاتَتْ أَوْ بَعْدَمَا انْتَفَخَتْ أَوْ تَفَسَّخَتْ، أَوْ لَمْ تُخْرَجْ الْفَأْرَةُ وَلَا الْعُصْفُورُ وَلَا الدَّجَاجَةُ أَوْ السِّنَّوْرُ إلَّا بَعْدَ الِانْتِفَاخِ أَوْ الِانْفِسَاخِ، فَطَهُورُ الْبِئْرِ أَنْ تُنْزَحَ، وَحَدُّ النَّزْحِ عِنْدَ أَبِي حَنِيفَةَ وَأَبِي يُوسُفَ أَنْ يَغْلِبَهُ الْمَاءُ، وَعِنْدَ مُحَمَّدِ بْنِ الْحَسَنِ مِائَتَا دَلْوٍ، فَلَوْ وَقَعَ فِي الْبِئْرِ سِنَّوْرٌ أَوْ فَأْرٌ أَوْ حَنَشٌ فَأُخْرِجَ ذَلِكَ وَهِيَ أَحْيَاءٌ، فَالْمَاءُ طَاهِرٌ يُتَوَضَّأُ بِهِ، وَيُسْتَحَبُّ أَنْ يُنْزَحَ مِنْهَا عِشْرُونَ دَلْوًا، فَلَوْ وَقَعَ فِيهَا كَلْبٌ أَوْ حِمَارٌ فَأُخْرِجَا حَيَّيْنِ فَلَا بُدَّ مِنْ نَزْحِ الْبِئْرِ حَتَّى يَغْلِبَهُمْ الْمَاءُ، فَلَوْ بَالَتْ شَاةٌ فِي الْبِئْرِ وَجَبَ نَزْحُهَا حَتَّى يَغْلِبَهُمْ، قَلَّ الْبَوْلُ أَوْ كَثُرَ. وَكَذَلِكَ لَوْ بَالَ فِيهَا بَعِيرٌ عِنْدَهُمْ، فَلَوْ وَقَعَ فِيهَا بَعْرَتَانِ مِنْ بَعْرِ الْإِبِلِ أَوْ بَعْرِ الْغَنَمِ لَمْ يَضُرَّهَا ذَلِكَ.

L2895 Similarly, if pigeon droppings or sparrow droppings fall into water, it does not render the water impure. Abū Ḥanīfah said: If one performs ablution from a well and then removes a dead animal from it - such as a mouse, chicken, or similar - if it had not decomposed, one must repeat the prayers performed during a day and night. If it had decomposed, one must repeat the prayers performed during three days with their nights. If it was a bird observed falling into the well, and it is removed undecomposed, one need not repeat anything. But if it is removed decomposed, one must repeat the prayers performed during three days with their nights.

وَكَذَلِكَ لَوْ وَقَعَ فِي الْمَاءِ خُرْءُ حَمَامٍ أَوْ خُرْءُ عُصْفُورٍ لَمْ يَضُرَّهُ. قَالَ أَبُو حَنِيفَةَ: مَنْ تَوَضَّأَ مِنْ بِئْرٍ ثُمَّ أَخْرَجَ مِنْهَا مَيْتَةً: فَأْرَةً أَوْ دَجَاجَةً أَوْ نَحْوَ ذَلِكَ فَإِنْ كَانَتْ لَمْ تَنْفَسِخْ أَعَادَ صَلَاةَ يَوْمٍ وَلَيْلَةٍ، وَإِنْ كَانَتْ قَدْ انْفَسَخَتْ أَعَادَ صَلَاةَ ثَلَاثَةِ أَيَّامٍ بِلَيَالِيهَا، فَإِنْ كَانَ طَائِرًا رَأَوْهُ وَقَعَ فِي الْبِئْرِ، فَإِنْ أُخْرِجَ وَلَمْ يَتَفَسَّخْ لَمْ يُعِيدُوا شَيْئًا وَإِنْ أُخْرِجَ مُتَفَسِّخًا أَعَادُوا صَلَاةَ ثَلَاثَةِ أَيَّامٍ بِلَيَالِيهَا.

L2896 If any amount of wine or blood is thrown into a well that had been fully drained, [the ruling applies]. If a bone of carrion is thrown into a well: should there be flesh or blood upon it, the entire well becomes impure and it becomes obligatory to drain it. If there is no blood or flesh upon it, the well does not become impure - except if it is a pig's bone or a single pig's hair, for then the entire well becomes impure and it becomes obligatory to drain it, irrespective of whether there was flesh or fat upon either of them.

فَإِنْ رُمِيَ شَيْءٌ مِنْ خَمْرٍ أَوْ دَمٍ فِي بِئْرٍ نُزِحَتْ كُلُّهَا، فَلَوْ رُمِيَ فِي بِئْرٍ عَظْمُ مَيْتَةٍ، فَإِنْ كَانَ عَلَيْهِ لَحْمٌ أَوْ دَمٌ تَنَجَّسَتْ الْبِئْرُ كُلُّهَا وَوَجَبَ نَزْحُهَا، فَإِنْ لَمْ يَكُنْ عَلَيْهِ دَمٌ أَوْ لَحْمٌ لَمْ تَتَنَجَّسْ الْبِئْرُ، إلَّا أَنْ يَكُونَ عَظْمُ خِنْزِيرٍ أَوْ شَعْرَةٌ وَاحِدَةٌ مِنْ خِنْزِيرٍ، فَإِنَّ الْبِئْرَ كُلَّهَا تَتَنَجَّسُ وَيَجِبُ نَزْحُهَا، كَانَ عَلَيْهِمَا لَحْمٌ أَوْ دَسَمٌ أَوْ لَمْ يَكُنْ.

L2897 Abū Yūsuf and Muḥammad said: If a mouse dies in water within a basin and that water is poured into a well, only twenty buckets must be drawn out from

it. If a Muslim man in a state of ritual purity performed ablution in a pure basin with pure water and poured that water into the well, Abū Yūsuf said: The well becomes impure and all its water must be drained. Muḥammad ibn al-Ḥasan said: Twenty buckets must be drawn out from it, just as would be done for a dead mouse. If a mouse falls into a clay cistern of water and dies, then that water is poured into a well, Abū Yūsuf said: Only an amount equal to the water poured into it must be drawn out from the well. Muḥammad ibn al-Ḥasan said: The greater amount—either the quantity of that water or twenty buckets—must be drawn out. Abū Yūsuf said: If a mouse dies in a cistern and the mouse is thrown into one well while the water is thrown into another well, the mouse must be removed along with exactly twenty buckets from the first well, and from the second well, only an amount equal to the water thrown into it plus twenty additional buckets must be removed. If a mouse falls into a well, is removed with twenty buckets, and then the mouse along with those twenty buckets is thrown into another well, only the mouse and twenty buckets must be removed from the second well.

وَقَالَ أَبُو يُوسُفَ وَمُحَمَّدٌ: لَوْ مَاتَتْ فَأْرَةٌ فِي مَاءٍ فِي طَسْتٍ وَصُبَّ ذَلِكَ الْمَاءُ فِي بِئْرٍ فَإِنَّهُ يُنْزَحُ مِنْهَا عِشْرُونَ دَلْوًا فَقَطْ، فَلَوْ تَوَضَّأَ رَجُلٌ مُسْلِمٌ طَاهِرٌ فِي طَسْتٍ طَاهِرٍ بِمَاءٍ طَاهِرٍ وَصَبَّ ذَلِكَ الْمَاءَ فِي الْبِئْرِ، قَالَ أَبُو يُوسُفَ: قَدْ تَنَجَّسَتْ الْبِئْرُ وَتُنْزَحُ كُلُّهَا، وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: يُنْزَحُ مِنْهَا عِشْرُونَ دَلْوًا كَمَا يُنْزَحُ مِنْ الْفَأْرَةِ الْمَيِّتَةِ، فَلَوْ وَقَعَتْ فَأْرَةٌ فِي خَابِيَةِ مَاءٍ فَمَاتَتْ، فَصُبَّ ذَلِكَ الْمَاءُ فِي بِئْرٍ، فَإِنَّ أَبَا يُوسُفَ قَالَ: يُنْزَحُ مِنْهَا مِثْلُ الْمَاءِ الَّذِي رُمِيَ فِيهَا فَقَطْ. وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: يُنْزَحُ الْأَكْثَرُ مِنْ ذَلِكَ الْمَاءِ أَوْ مِنْ عِشْرِينَ دَلْوًا، وَقَالَ أَبُو يُوسُفَ: لَوْ مَاتَتْ فَأْرَةٌ فِي خَابِيَةٍ فَرُمِيَتْ الْفَأْرَةُ فِي بِئْرٍ وَرُمِيَ الْمَاءُ فِي بِئْرٍ أُخْرَى، فَإِنَّ الْفَأْرَةَ تُخْرَجُ وَيُخْرَجُ مَعَهَا عِشْرُونَ دَلْوًا فَقَطْ وَيُخْرَجُ مِنْ الْمَاءِ مِنْ الْبِئْرِ الْأُخْرَى مِثْلُ الْمَاءِ الَّذِي رُمِيَ فِيهَا وَعِشْرُونَ دَلْوًا زِيَادَةً فَقَطْ، فَلَوْ أَنَّ فَأْرَةً وَقَعَتْ فِي بِئْرٍ فَأُخْرِجَتْ وَأُخْرِجَ مَعَهَا عِشْرُونَ دَلْوًا، ثُمَّ رُمِيَتْ الْفَأْرَةُ وَتِلْكَ الْعِشْرُونَ دَلْوًا مَعَهَا فِي بِئْرٍ أُخْرَى فَإِنَّهُ يُخْرَجُ الْفَأْرَةُ وَعِشْرُونَ دَلْوًا فَقَطْ.

L2898–2900 They said: Then if a frog, a fly, a wasp, or [another creature] died in the water... A scorpion, beetle, locust, ant, cricket, a fish that has floated, or any creature without blood [falling into water] – the water remains pure and permissible for ablution and bathing. As for the floating fish, according to their school of thought, its consumption is unlawful.

قَالُوا: فَلَوْ مَاتَ فِي الْمَاءِ ضُفْدَعٌ أَوْ ذُبَابٌ أَوْ زُنْبُورٌ أَوْ عَقْرَبٌ أَوْ خُنْفُسَاءُ أَوْ جَرَادٌ أَوْ نَمْلٌ أَوْ صَرَّارٌ أَوْ سَمَكٌ فَطَفَا أَوْ كُلُّ مَا لَا دَمَ لَهُ، فَإِنَّ الْمَاءَ طَاهِرٌ جَائِزٌ الْوُضُوءُ بِهِ وَالْغُسْلُ، وَالسَّمَكُ الطَّافِي عِنْدَهُمْ لَا يَحِلُّ أَكْلُهُ.

L2901 Similarly, if all those animals die in a liquid other than water, the liquid is pure and its consumption is lawful. They said: If a snake dies in water or in another liquid, that water or liquid becomes impure because the snake has blood. If a dog, donkey, or wild beast is slaughtered and then all those carcasses are thrown into still water, the water does not become impure, though that meat is unlawful to eat. This ruling applies to all things except the pig and the human being, for even if slaughtered, they render the water impure.

وَكَذَلِكَ إِنْ مَاتَ كُلُّ ذَلِكَ فِي مَائِعٍ غَيْرِ الْمَاءِ فَهُوَ طَاهِرٌ حَلَالٌ أَكْلُهُ، قَالُوا: فَإِنْ مَاتَتْ فِي الْمَاءِ أَوْ فِي مَائِعٍ غَيْرِهِ حَيَّةٌ فَقَدْ تَنَجَّسَ ذَلِكَ الْمَاءُ وَذَلِكَ الْمَائِعُ، لِأَنَّ لَهَا دَمًا، فَإِنْ ذُبِحَ كَلْبٌ أَوْ حِمَارٌ أَوْ سَبُعٌ ثُمَّ رُمِيَ كُلُّ ذَلِكَ فِي رَاكِدٍ لَمْ يَتَنَجَّسْ ذَلِكَ

الْمَاءُ، وَإِنَّ ذَلِكَ اللَّحْمَ حَرَامٌ لَا يَحِلُّ أَكْلُهُ، وَهَكَذَا كُلُّ شَيْءٍ إِلَّا الْخِنْزِيرَ وَابْنَ آدَمَ، فَإِنَّهُمَا وَإِنْ ذُبِحَا يُنَجِّسَانِ الْمَاءَ.

L2902 Ali said: Whoever utters these statements—for much of what the rigid literalists bring forth resembles them more—should he not feel ashamed to censure those who follow the commands of Allah's Messenger (peace and blessings be upon him) and the obligations dictated by sound intellects in comprehending what Allah the Exalted has ordained through His Prophet's tongue (peace and blessings be upon him), without transgressing the boundaries set by Allah the Exalted? Yet we have not witnessed an exaggerated Sunnah except that it is accompanied by a widely spread innovation. These statements, were their inherent confusion to be thoroughly examined, would necessitate a voluminous book to elucidate them, for every section contains a calamity of arbitrary rulings, corruption, and contradiction. These are statements no one before them ever uttered, having no share in the Quran, nor any authentic or weak Sunnah, nor any rationally valid analogy, nor any sound opinion, nor any consistently applied falsehood. Rather, they stem from mutually contradictory falsehood steeped in the utmost triviality.

قَالَ عَلِيٌّ: فَمَنْ يَقُولُ هَذِهِ الْأَقْوَالَ - الَّتِي كَثِيرٌ مِمَّا يَأْتِي بِهِ الْمُبَرْسَمُ أَشْبَهُ مِنْهَا - أَلَا يَسْتَحِي مِنْ أَنْ يُنْكِرَ عَلَى مَنْ اتَّبَعَ أَوَامِرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمُوجِبَاتِ الْعُقُولِ فِي فَهْمِ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَتَعَدَّ حُدُودَ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ وَلَكِنْ مَا رَأَيْنَا سُنَّةً مُضَاعَةً، إِلَّا وَمَعَهَا بِدْعَةٌ مُذَاعَةٌ. وَهَذِهِ أَقْوَالٌ لَوْ تُتُبِّعَ مَا فِيهَا مِنْ التَّخْلِيطِ لَقَامَ فِي بَيَانِ ذَلِكَ سِفْرٌ ضَخْمٌ، إِذْ كُلُّ فَصْلٍ مِنْهَا مُصِيبَةٌ فِي التَّحَكُّمِ وَالْفَسَادِ وَالتَّنَاقُضِ، وَإِنَّهَا أَقْوَالٌ لَمْ يَقُلْهَا قَطُّ أَحَدٌ قَبْلَهُمْ، وَلَا لَهَا حَظٌّ مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا مِنْ قِيَاسٍ يُعْقَلُ، وَلَا مِنْ رَأْيٍ سَدِيدٍ، وَلَا مِنْ بَاطِلٍ مُطَّرِدٍ، وَلَكِنْ مِنْ بَاطِلٍ مُتَخَاذِلٍ فِي غَايَةِ السَّخَافَةِ.

L2903 It is astonishing that they justified their claim with a narration attributed to Ibn Abbas and Ibn al-Zubayr: that they drew large amounts of water from Zamzam because a Zinji (an East African man) had died in it, along with narrations from Ali ibn Abi Talib—may Allah be pleased with him—and from Ibrahim al-Nakha'i, 'Ata', al-Sha'bi, al-Hasan, Hammad ibn Abi Sulayman, and Salama ibn Kuhayl.

وَالْعَجَبُ أَنَّهُمْ مَوَّهُوا بِرِوَايَةٍ عَنْ ابْنِ عَبَّاسٍ وَابْنِ الزُّبَيْرِ: أَنَّهُمَا نَزَحَا زَمْزَمَ مِنْ زِنْجِيٍّ مَاتَ فِيهَا، وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ وَعَطَاءٍ وَالشَّعْبِيِّ وَالْحَسَنِ وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ وَسَلَمَةَ بْنِ كُهَيْلٍ.

L2904 And all that has been narrated from the Companions and the Followers—may Allah be pleased with them—is contrary to the opinions of Abu Hanifah and his followers.

قَالَ عَلِيُّ بْنُ أَحْمَدَ: وَكُلُّ مَا رُوِيَ عَنْ هَؤُلَاءِ الصَّحَابَةِ وَهَؤُلَاءِ التَّابِعِينَ - رَضِيَ اللَّهُ عَنْهُمْ - فَمُخَالِفٌ لِأَقْوَالِ أَبِي حَنِيفَةَ وَأَصْحَابِهِ.

L2905 As for Ali, we have narrated from him that he said regarding a mouse that fell into a well and died: "Its water is to be drawn out." And he said regarding a mouse that fell into a well and was cut into pieces: "Seven buckets are to be bailed from it. If the mouse was in its original state, not having been cut into pieces, one or two buckets are to be bailed from the well. If it was

أَمَّا عَلِيٌّ فَإِنَّنَا رُوِّينَا عَنْهُ أَنَّهُ قَالَ فِي فَأْرَةٍ وَقَعَتْ فِي بِئْرٍ فَمَاتَتْ: إنَّهُ يُنْزَحُ مَاؤُهَا، وَأَنَّهُ قَالَ فِي فَأْرَةٍ وَقَعَتْ فِي بِئْرٍ فَقُطِّعَتْ: يُخْرَجُ مِنْهَا سَبْعُ دِلَاءٍ، فَإِنْ كَانَتْ الْفَأْرَةُ كَهَيْئَتِهَا

rotten, enough water is to be bailed from the well to remove the foul odor." These two narrations are not representative of Abu Hanifah's opinion in any respect.

L2906–2908 As for the narration from Ibn Abbas and Ibn al-Zubayr—may Allah be pleased with them—if that had been authentically established from the Prophet—peace and blessings of Allah be upon him—it would not have made draining the well obligatory from the impurities that fall into it. How then could it apply to those below him—peace be upon him—since it does not state that they deemed its draining obligatory or commanded it? Rather, it is merely an action they performed, which they may have done out of their own volition, not on the basis of it being obligatory. Thus, their reliance on Ibn Abbas's action is invalidated. And Ibn al-Zubayr—furthermore, the narration itself indicates that Ibn Abbas was told: "A spring near the Stone overwhelmed us," so he gave them a silk cloth which they stuffed into it until they drained it. This contradicts the position of Abū Ḥanīfah and his disciples, for the threshold of draining according to Abū Ḥanīfah is solely when the water overpowers them, whereas Muḥammad stipulates merely two hundred buckets, and Abū Yūsuf aligns with Abū Ḥanīfah's view. Who is more misguided than one who cites a narration—deeming it proof against those who reject it—yet becomes the first to contravene the very evidence he cited? Even if it were authentically established that they both—may Allah be pleased with both of them—ordered its drainage, the Ḥanafīs would have no valid argument here, for it is impermissible to speculate such a notion about them except that Zamzam's water became altered due to the death of the Zanjī. This is our school's position. This is corroborated by the sound narration from Ibn Abbas—which we transmitted through Wakīʿ, from Zakariyyā ibn Abī Zāʾidah, from al-Shaʿbī, from Ibn Abbas: "Four things are not defiled: water, garment, humans, and the earth." We have also transmitted from ʿUmar ibn al-Khaṭṭāb that Allah made water a purifier.

L2909 As for the Successors mentioned, Ibrāhīm al-Nakhaʿī stated: Forty buckets for a mouse and forty buckets for a cat. Al-Shaʿbī said: Seventy buckets for a chicken. Ḥammād ibn Abī Sulaymān ruled: Thirty buckets for a cat and thirty buckets for a chicken. Salamah ibn Kuhayl declared: Forty buckets

لَمْ تَتَقَطَّعْ يُنْزَحُ مِنْهَا دَلْوٌ أَوْ دَلْوَانِ، فَإِنْ كَانَتْ مُنْتِنَةً يُنْزَحُ مِنَ الْبِئْرِ مَا يُذْهِبُ الرِّيحَ، وَهَاتَانِ الرِّوَايَتَانِ لَيْسَتْ وَاحِدَةٌ مِنْهُمَا قَوْلَ أَبِي حَنِيفَةَ أَصْلًا.

وَأَمَّا الرِّوَايَةُ عَنِ ابْنِ عَبَّاسٍ وَابْنِ الزُّبَيْرِ - رَضِيَ اللَّهُ عَنْهُمَا -، فَلَوْ صَحَّ ذَلِكَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَجِبْ بِذَلِكَ فَرْضُ نَزْحِ الْبِئْرِ مِمَّا يَقَعُ فِيهَا مِنَ النَّجَاسَاتِ، فَكَيْفَ عَمَّنْ دُونَهُ - عَلَيْهِ السَّلَامُ -، لِأَنَّهُ لَيْسَ فِيهِ أَنَّهُمَا أَوْجَبَا نَزْحَهَا وَلَا أَمَرَا بِهِ، وَإِنَّمَا هُوَ فِعْلٌ مِنْهُمَا قَدْ يَفْعَلَانِهِ عَنْ طِيبِ النَّفْسِ، لَا عَلَى أَنَّ ذَلِكَ وَاجِبٌ، فَبَطَلَ تَعَلُّقُهُمْ بِفِعْلِ ابْنِ عَبَّاسٍ وَابْنِ الزُّبَيْرِ، وَأَيْضًا فَإِنَّ فِي الْخَبَرِ نَفْسِهِ أَنَّهُ قِيلَ لِابْنِ عَبَّاسٍ: قَدْ غَلَبَتْنَا عَيْنٌ مِنْ جِهَةِ الْحَجَرِ، فَأَعْطَاهُمْ كِسَاءَ خَزٍّ فَحَشَوْهُ فِيهَا حَتَّى نَزَحُوهَا، وَلَيْسَ هَذَا قَوْلَ أَبِي حَنِيفَةَ وَأَصْحَابِهِ، لِأَنَّ حَدَّ النَّزْحِ عِنْدَ أَبِي حَنِيفَةَ أَنْ يَغْلِبَهُمُ الْمَاءُ فَقَطْ، وَعِنْدَ مُحَمَّدٍ مِائَتَا دَلْوٍ فَقَطْ، وَعِنْدَ أَبِي يُوسُفَ كَقَوْلِ أَبِي حَنِيفَةَ، فَمَنْ أَضَلُّ مِمَّنْ يَحْتَجُّ بِخَبَرٍ - يَقْضِي بِأَنَّهُ حُجَّةٌ عَلَى مَنْ لَا يَرَاهُ حُجَّةً - ثُمَّ يَكُونُ الْمُحْتَجُّ بِهِ أَوَّلَ مُخَالِفٍ لِمَا احْتَجَّ فَكَيْفَ وَلَوْ صَحَّ أَنَّهُمَا - رَضِيَ اللَّهُ عَنْهُمَا - أَمَرَا بِنَزْحِهَا لَمَا كَانَ لِلْحَنَفِيِّينَ فِي ذَلِكَ حُجَّةٌ، لِأَنَّهُ لَا يَجُوزُ أَنْ يُظَنَّ بِهِمْ، إِلَّا أَنَّ زَمْزَمَ تَغَيَّرَتْ بِمَوْتِ الزِّنْجِيِّ. وَهَذَا قَوْلُنَا، وَيُؤَيِّدُ هَذَا صِحَّةُ الْخَبَرِ عَنِ ابْنِ عَبَّاسٍ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ زَكَرِيَّاءَ بْنِ أَبِي زَائِدَةَ عَنِ الشَّعْبِيِّ عَنِ ابْنِ عَبَّاسٍ: أَرْبَعٌ لَا تُنَجَّسُ، الْمَاءُ وَالثَّوْبُ وَالْإِنْسَانُ وَالْأَرْضُ. وَقَدْ رُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّ اللَّهَ جَعَلَ الْمَاءَ طَهُورًا.

وَأَمَّا التَّابِعُونَ الْمَذْكُورُونَ، فَإِنَّ إِبْرَاهِيمَ النَّخَعِيَّ قَالَ: فِي الْفَأْرَةِ أَرْبَعُونَ دَلْوًا وَفِي السِّنَّوْرِ أَرْبَعُونَ دَلْوًا، وَقَالَ الشَّعْبِيُّ فِي الدَّجَاجَةِ سَبْعُونَ دَلْوًا، وَقَالَ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ فِي

for a chicken. Al-Ḥasan judged: Forty buckets for a mouse. ʿAṭāʾ opined: Twenty buckets for a mouse, and forty buckets for a ewe that dies in the well. If it disintegrates, one hundred buckets must be drawn or the water entirely drained. Regarding a dog falling into the well: if extracted alive, twenty buckets; if removed dead, sixty buckets; and if decomposed, one hundred buckets or complete drainage. Is there any opinion among these that aligns with the positions of Abū Ḥanīfah and his companions except ʿAṭāʾ's ruling on the mouse – without applying Abū Ḥanīfah's detailed classification – and Ibrāhīm's verdict on the cat – likewise without adopting his categorical framework? Thus they achieved nothing but contradiction with all the Companions and Successors, having no basis in any aspect of the Sunnah or legal standards. Among the remarkable assertions we have cited from them is their claim in some rulings: "The water used for ablution by a pure, clean Muslim is more ritually impure than a dead mouse." Had we rightfully condemned them, we would oblige them to apply this to the ablution of Allah's Messenger – peace and blessings of Allah be upon him – compelling them to either abandon their view or depart from Islam, or [similarly] concerning the ablution of Abū Bakr, ʿUmar, ʿUthmān, and ʿAlī – may Allah be pleased with them all.

السِّنَّوْرِ ثَلَاثُونَ دَلْوًا، وَفِي الدَّجَاجَةِ ثَلَاثُونَ دَلْوًا. وَقَالَ سَلَمَةُ بْنُ كُهَيْلٍ فِي الدَّجَاجَةِ أَرْبَعُونَ دَلْوًا، وَقَالَ الْحَسَنُ فِي الْفَأْرَةِ أَرْبَعُونَ دَلْوًا، وَقَالَ عَطَاءٌ فِي الْفَأْرَةِ عِشْرُونَ دَلْوًا، وَفِي الشَّاةِ تَمُوتُ فِي الْبِئْرِ أَرْبَعُونَ دَلْوًا، فَإِنْ تَفَسَّخَتْ فَمِائَةُ دَلْوٍ أَوْ تُنْزَحُ، وَفِي الْكَلْبِ يَقَعُ فِي الْبِئْرِ، إِنْ أُخْرِجَ مِنْهَا حَيًّا عِشْرُونَ دَلْوًا، فَإِنْ مَاتَ فَأُخْرِجَ حِينَ مَوْتِهِ فَسِتُّونَ دَلْوًا، فَإِنْ تَفَسَّخَ فَمِائَةُ دَلْوٍ أَوْ تُنْزَحُ، فَهَلْ مِنْ هَذِهِ الْأَقْوَالِ قَوْلٌ يُوَافِقُ أَقْوَالَ أَبِي حَنِيفَةَ وَأَصْحَابِهِ إِلَّا قَوْلَ عَطَاءٍ فِي الْفَأْرَةِ دُونَ أَنْ يُقَسِّمَ تَقْسِيمَ أَبِي حَنِيفَةَ، وَقَوْلَ إِبْرَاهِيمَ فِي السِّنَّوْرِ دُونَ أَنْ يُقَسِّمَ أَيْضًا تَقْسِيمَ أَبِي حَنِيفَةَ، فَلَمْ يَحْصُلُوا إِلَّا عَلَى خِلَافِ الصَّحَابَةِ وَالتَّابِعِينَ كُلِّهِمْ فَلَا تَعَلُّقَ بِشَيْءٍ مِنَ السُّنَنِ أَوِ الْمَقَايِيسِ. وَمِنْ عَجِيبِ مَا أَوْرَدْنَا عَنْهُمْ قَوْلُهُمْ فِي بَعْضِ أَقْوَالِهِمْ: إِنَّ مَاءَ وُضُوءِ الْمُسْلِمِ الطَّاهِرِ النَّظِيفِ أَنْجَسُ مِنَ الْفَأْرَةِ الْمَيِّتَةِ وَلَوْ أَوْرَدْنَا التَّشْنِيعَ عَلَيْهِمْ بِالْحَقِّ لَأَلْزَمْنَاهُمْ ذَلِكَ فِي وُضُوءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِمَّا أَنْ يَتْرُكُوا قَوْلَهُمْ، وَإِمَّا أَنْ يَخْرُجُوا عَنِ الْإِسْلَامِ أَوْ فِي وُضُوءِ أَبِي بَكْرٍ وَعُمَرَ وَعُثْمَانَ وَعَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمْ -.

L2910–2912 And their claim: "If one end is moved, the other end does not move." If only I knew! By what would this movement occur - by a child's finger, a straw, a spindle's rod, the swimming of a swimmer, an elephant's fall, a small pebble, a catapult stone, or the collapse of a riverbank? We praise Allah for safety from these incoherencies, particularly their differentiation between... Regarding water and all other liquids: If they claim consensus on this matter, we say to them: You have lied. This Ibn al-Mājishūn states: Any water affected by impurity has indeed become impure, unless it is a stagnant pool such that if its middle is stirred, its edges have not moved.

وَقَوْلُهُمْ: إِنْ حُرِّكَ طَرَفُهُ لَمْ يَتَحَرَّكْ الطَّرَفُ الْآخَرُ، فَلَيْتَ شِعْرِي هَذِهِ الْحَرَكَةُ بِمَاذَا تَكُونُ أَبِإِصْبَعِ طِفْلٍ، أَمْ بِتِبْنَةٍ، أَوْ بِعُودِ مِغْزَلٍ، أَوْ بِعَوْمِ عَائِمٍ، أَوْ بِوُقُوعِ فِيلٍ، أَوْ بِحَصَاةٍ صَغِيرَةٍ أَوْ بِحَجَرِ مَنْجَنِيقٍ، أَوْ بِانْهِدَامِ جُرُفٍ؟ نَحْمَدُ اللَّهَ عَلَى السَّلَامَةِ مِنْ هَذِهِ التَّخَالِيطِ، لَا سِيَّمَا فَرْقُهُمْ فِي ذَلِكَ بَيْنَ الْمَاءِ وَسَائِرِ الْمَائِعَاتِ، فَإِنْ ادَّعَوْا فِيهِ إِجْمَاعًا، قُلْنَا لَهُمْ: كَذَبْتُمْ، هَذَا ابْنُ الْمَاجِشُونِ يَقُولُ: إِنَّ كُلَّ مَاءٍ أَصَابَتْهُ نَجَاسَةٌ فَقَدْ تَنَجَّسَ، إِلَّا أَنْ يَكُونَ غَدِيرًا إِذَا حُرِّكَ وَسَطُهُ لَمْ تَتَحَرَّكْ أَطْرَافُهُ.

L2913 Malik said regarding a well into which a chicken falls and dies: the water

must be drained unless its abundance nullifies the impurity. Food kneaded with such water must not be eaten, garments washed with it must be rewashed, and whoever performed ablution or ritual bath with that water must repeat every prayer performed within its prescribed time. He stated that if a gecko or mouse falls into the well and dies, water must be drawn from it until purified by draining as much as possible. Should wine fall into water, those who perform ablution with it must repeat prayers only within their designated time. If any such impurity falls into a liquid other than water, consuming it becomes impermissible regardless of alteration. If bread is moistened with such water, ablution with it becomes invalid, and those who used it for ablution must always repeat their prayers. If water becomes altered by the aforementioned impurity or by a pure substance, those who performed ablution and prayed with it must always repeat their prayers. When any small land vermin—such as wasps, scorpions, crickets, beetles, crabs, frogs, or similar creatures—dies in water, food, drink, or other substances, it causes no harm; such items remain permissible for consumption. Ibn al-Qāsim, his companion, said: a small quantity of impurity contaminates a small quantity of water. Those who find no alternative must perform dry ablution (tayammum). If one prays after ablution with such water, repetition is required only within the prayer's prescribed time.

وَقَالَ مَالِكٌ فِي الْبِئْرِ تَقَعُ فِيهَا الدَّجَاجَةُ فَتَمُوتُ فِيهَا: إِنَّهُ يُنْزَفُ إِلَّا أَنْ تَغْلِبَهُمْ كَثْرَةُ الْمَاءِ، وَلَا يُؤْكَلُ طَعَامٌ عُجِنَ بِهِ، وَيُغْسَلُ مِنْ الثِّيَابِ مَا غُسِلَ بِهِ، وَيُعِيدُ كُلُّ مَنْ تَوَضَّأَ بِذَلِكَ الْمَاءِ أَوْ اغْتَسَلَ بِهِ صَلَاةً صَلَّاهَا مَا كَانَ فِي الْوَقْتِ. قَالَ فَإِنْ وَقَعَتْ فِي الْبِئْرِ الْوَزَغَةُ أَوْ الْفَأْرَةُ فَمَاتَتَا إِنَّهُ يُسْتَقَى مِنْهَا حَتَّى تَطِيبَ، يَنْزِفُونَ مِنْهَا مَا اسْتَطَاعُوا، فَلَوْ وَقَعَ خَمْرٌ فِي مَاءٍ فَإِنَّ مَنْ يَتَوَضَّأُ مِنْهُ يُعِيدُ فِي الْوَقْتِ فَقَطْ، فَلَوْ وَقَعَ شَيْءٌ مِنْ ذَلِكَ فِي مَائِعٍ غَيْرِ الْمَاءِ لَمْ يَحِلَّ أَكْلُهُ، تَغَيَّرَ أَوْ لَمْ يَتَغَيَّرْ، فَإِنْ بُلَّ فِي الْمَاءِ خُبْزٌ لَمْ يَجُزْ الْوُضُوءُ مِنْهُ، وَأَعَادَ مَنْ تَوَضَّأَ بِهِ أَبَدًا، فَلَوْ تَغَيَّرَ الْمَاءُ مِنْ النَّجَاسَةِ الْمَذْكُورَةِ أَوْ مِنْ شَيْءٍ طَاهِرٍ، أَعَادَ مَنْ تَوَضَّأَ بِهِ وَصَلَّى أَبَدًا، فَلَوْ مَاتَ شَيْءٌ مِنْ خَشَاشِ الْأَرْضِ فِي مَاءٍ أَوْ فِي طَعَامٍ أَوْ شَرَابٍ أَوْ غَيْرِ ذَلِكَ لَمْ يَضُرَّهُ، وَيُؤْكَلُ كُلُّ ذَلِكَ وَيُشْرَبُ، وَذَلِكَ نَحْوُ الزُّنْبُورِ وَالْعَقْرَبِ وَالصَّرَارِ وَالْخُنْفُسَاءِ وَالسَّرَطَانِ وَالضُّفْدَعِ وَمَا أَشْبَهَ ذَلِكَ. وَقَالَ ابْنُ الْقَاسِمِ صَاحِبُهُ: قَلِيلُ الْمَاءِ يُفْسِدُهُ قَلِيلُ النَّجَاسَةِ، وَيَتَيَمَّمُ مَنْ لَمْ يَجِدْ سِوَاهُ، فَإِنْ تَوَضَّأَ وَصَلَّى بِهِ لَمْ يُعِدْ إِلَّا فِي الْوَقْتِ.

L2914 Ali said: If he differentiates through this statement between the container in which the gecko and mouse died and the container in which the chicken died, he is mistaken, for this constitutes an assertion without proof. If he equates all these cases, his statement becomes self-contradictory - since he prohibits eating food prepared with such water and orders the washing of garments touched by it, yet only instructs repeating prayers within their original timeframe as a recommended act rather than an obligation. If the prayer he commands to perform within the timeframe is considered voluntary according to his view, what purpose does voluntary prayer serve in rectifying an invalidated obligatory prayer? Should he claim there is a purpose, one must ask: What nullifies this purpose when the timeframe ends? What rationale leads you to encourage voluntary prayer during the timeframe but not after it? If the prayer he commands within the timeframe is deemed

قَالَ عَلِيٌّ: إِنْ كَانَ فَرَّقَ بِهَذَا الْقَوْلِ بَيْنَ مَا مَاتَتْ فِيهِ الْوَزَغَةُ وَالْفَأْرَةُ وَبَيْنَ مَا مَاتَتْ فِيهِ الدَّجَاجَةُ فَهُوَ خَطَأٌ، لِأَنَّهُ قَوْلٌ بِلَا بُرْهَانٍ، وَإِنْ كَانَ سَاوَى بَيْنَ كُلِّ ذَلِكَ فَقَدْ تَنَاقَضَ قَوْلُهُ، إِذْ مَنَعَ مِنْ أَكْلِ الطَّعَامِ الْمَعْمُولِ بِذَلِكَ الْمَاءِ، وَإِذْ أَمَرَ بِغَسْلِ مَا مَسَّهُ مِنْ الثِّيَابِ، ثُمَّ لَمْ يَأْمُرْ بِإِعَادَةِ الصَّلَاةِ إِلَّا فِي الْوَقْتِ، وَهَذَا عِنْدَهُ اخْتِيَارٌ لَا إِيجَابٌ، فَإِنْ كَانَتْ الصَّلَاةُ الَّتِي يَأْمُرُهُ بِأَنْ يَأْتِيَ بِهَا فِي الْوَقْتِ تَطَوُّعًا عِنْدَهُ، فَأَيُّ مَعْنًى لِلتَّطَوُّعِ فِي إِصْلَاحِ مَا فَسَدَ مِنْ صَلَاةِ الْفَرِيضَةِ؟ فَإِنْ قَالَ إِنَّ لِذَلِكَ مَعْنًى، قِيلَ لَهُ: فَمَا الَّذِي يُفْسِدُ ذَلِكَ الْمَعْنَى إِذَا خَرَجَ الْوَقْتُ؟ وَمَا الْوَجْهُ الَّذِي رَغَّبْتُمُوهُ مِنْ أَجْلِهِ فِي أَنْ يَتَطَوَّعَ

obligatory, how is it permissible to pray two noon prayers on the same day within the same timeframe? What absolves one from this obligation when the timeframe ends, given his position that obligatory prayers must necessarily be performed by those who omitted them - even after the timeframe's expiration?

فِي الْوَقْتِ، وَلَمْ تُرَغِّبُوهُ فِي التَّطَوُّعِ بَعْدَ الْوَقْتِ؟ وَإِنْ كَانَتْ الصَّلَاةُ الَّتِي يَأْمُرُهُ أَنْ يَأْتِيَ بِهَا فِي الْوَقْتِ فَرْضًا، فَكَيْفَ يَجُوزُ أَنْ يُصَلِّيَ ظُهْرَيْنِ لِيَوْمٍ وَاحِدٍ فِي وَقْتٍ وَاحِدٍ؟ وَمَا الَّذِي أَسْقَطَهَا عَنْهُ إذَا خَرَجَ الْوَقْتُ؟ وَهُوَ يَرَى أَنَّ الصَّلَاةَ الْفَرْضَ يُؤَدِّيهَا التَّارِكُ لَهَا فَرْضًا وَلَا بُدَّ وَإِنْ خَرَجَ الْوَقْتُ.

L2915–2918 Then the astonishment is at Abū Ḥanīfah and Mālik's differentiation between creatures without blood that die in water and in liquids, and those with blood that die therein. This is a distinction never brought by the Qur'ān, any authentic or weak Sunnah, a Companion's statement, analogy, or reasoned opinion. The astonishment lies in their restriction to creatures with blood, while we visibly know that fleas have blood and flies have blood. If they say, "We meant creatures with flowing blood," it is replied: This adds to the astonishment. From where did you derive this division between blood in dead creatures? You unanimously agree with us and all Muslims that every dead creature is prohibited, as the Qur'ān states. The dead flea, fly, scorpion, and beetle are prohibited without any disagreement. So from where did this differentiation between categories of prohibited dead creatures arise? Some argued: "Muslims have unanimously agreed to eat cooked broad beans containing dead weevils, honey containing dead bees, vinegar containing dead worms, and cheese and figs likewise. The Messenger of Allah—peace and blessings be upon him—instructed to dip the fly in food." It is said to them, with Allah's aid: If the consensus is valid as you claim, and the cited ḥadīth indicates the permissibility of eating food in which a fly dies as you assert, then the valid method is one of two: either restrict yourselves to what the consensus and specific report confirm—treating other cases contrary to this, since your principle deems impurities contacting pure substances defiling, and you hold analogy beyond the original case impermissible—or analogize all winged creatures to the fly, all legged animals to the weevil, and all crawling creatures to the worm. From where did you derive applying analogy to creatures without blood? You erred twice: first, the fly has blood; second, you confined analogy to bloodless creatures instead of analogizing all winged beings or all ensouled creatures to the fly. If they say: "We analogized other

ثُمَّ الْعَجَبُ مِنْ تَفْرِيقِ أَبِي حَنِيفَةَ وَمَالِكٍ بَيْنَ مَا لَا دَمَ لَهُ يَمُوتُ فِي الْمَاءِ وَفِي. الْمَائِعَاتِ وَبَيْنَ مَا لَهُ دَمٌ يَمُوتُ فِيهَا وَهَذَا فَرْقٌ لَمْ يَأْتِ بِهِ قَطُّ قُرْآنٌ وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ وَلَا قِيَاسٌ وَلَا مَعْقُولٌ، وَالْعَجَبُ مِنْ تَحْدِيدِهِمْ ذَلِكَ بِمَا لَهُ دَمٌ وَبِالْعِيَانِ نَدْرِي أَنَّ الْبُرْغُوثَ لَهُ دَمٌ وَالذُّبَابَ لَهُ دَمٌ. فَإِنْ قَالُوا: أَرَدْنَا مَا لَهُ دَمٌ سَائِلٌ، قِيلَ: وَهَذَا زَائِدٌ فِي الْعَجَبِ وَمِنْ أَيْنَ لَكُمْ هَذَا التَّقْسِيمُ بَيْنَ الدِّمَاءِ فِي الْمَيْتَاتِ؟ وَأَنْتُمْ مُجْمِعُونَ مَعَنَا وَمَعَ جَمِيعِ أَهْلِ الْإِسْلَامِ عَلَى أَنَّ كُلَّ مَيْتَةٍ فَهِيَ حَرَامٌ، وَبِذَلِكَ جَاءَ الْقُرْآنُ، وَالْبُرْغُوثُ الْمَيِّتُ وَالذُّبَابُ الْمَيِّتُ وَالْعَقْرَبُ الْمَيِّتُ وَالْخُنْفُسَاءُ الْمَيِّتُ حَرَامٌ بِلَا خِلَافٍ مِنْ أَحَدٍ، فَمِنْ أَيْنَ وَقَعَ لَكُمْ هَذَا التَّفْرِيقُ بَيْنَ أَصْنَافِ الْمَيْتَاتِ الْمُحَرَّمَاتِ؟ فَقَالَ بَعْضُهُمْ: قَدْ أَجْمَعَ الْمُسْلِمُونَ عَلَى أَكْلِ الْبَاقِلَاءِ الْمَطْبُوخِ وَفِيهِ الدَّقْشُ الْمَيِّتُ، وَعَلَى أَكْلِ الْعَسَلِ وَفِيهِ النَّحْلُ الْمَيِّتُ وَعَلَى أَكْلِ الْخَلِّ وَفِيهِ الدُّودُ الْمَيِّتُ، وَعَلَى أَكْلِ الْجُبْنِ وَالتِّينِ كَذَلِكَ، وَقَدْ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَقْلِ الذُّبَابِ فِي الطَّعَامِ. قِيلَ لَهُمْ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: إنْ كَانَ الْإِجْمَاعُ صَحَّ بِذَلِكَ كَمَا ادَّعَيْتُمْ، وَكَانَ فِي الْحَدِيثِ الْمَذْكُورِ دَلِيلٌ عَلَى جَوَازِ أَكْلِ الطَّعَامِ يَمُوتُ فِيهِ الذُّبَابُ كَمَا زَعَمْتُمْ، فَإِنَّ وَجْهَ الْعَمَلِ فِي ذَلِكَ أَحَدُ وَجْهَيْنِ: إمَّا أَنْ تَقْتَصِرُوا عَلَى مَا صَحَّ بِهِ الْإِجْمَاعُ مِنْ ذَلِكَ وَجَاءَ بِهِ الْخَبَرُ خَاصَّةً. وَيَكُونُ مَا عَدَا ذَلِكَ بِخِلَافِهِ، إذْ أَصْلُكُمْ أَنَّ مَا لَاقَى الطَّاهِرَاتِ مِنْ

cases to the ḥadīth of the mouse in ghee," it is replied: From where do you generalize analogy based on that report? Why did you not analogize every long-tailed creature to the mouse, or every... An insect not among predatory animals—something from which they cannot be separated at all. The most astonishing aspect of their ruling is their claim that whatever has flowing blood is ritually impure. Thus it is said to them: What distinction exists between Allah the Exalted's prohibition of carrion and His prohibition of blood? On what basis then have you ascribed impurity to blood but not to carrion? Stranger still is that carrion has no blood after death, thus exposing the flaw in their argument in every aspect.

الْأَنْجَاسِ فَإِنَّهُ يُنَجِّسُهَا، وَمَا خَرَجَ عَنْ أَصْلِهِ عِنْدَكُمْ فَإِنَّكُمْ لَا تَرَوْنَ الْقِيَاسَ عَلَيْهِ سَائِغًا أَوْ تَقِيسُوا عَلَى الذُّبَابِ كُلَّ طَائِرٍ، وَعَلَى الدَّقْشِ كُلَّ حَيَوَانٍ ذِي أَرْجُلٍ، وَعَلَى الدُّودِ كُلَّ مُنْسَابٍ. وَمِنْ أَيْنَ وَقَعَ لَكُمْ أَنْ تَقِيسُوا عَلَى ذَلِكَ مَا لَا دَمَ لَهُ؟ فَأَخْطَأْتُمْ مَرَّتَيْنِ: إِحْدَاهُمَا أَنَّ الذُّبَابَ لَهُ دَمٌ، وَالثَّانِيَةُ اقْتِصَارُكُمْ بِالْقِيَاسِ عَلَى مَا لَا دَمَ لَهُ، دُونَ أَنْ تَقِيسُوا عَلَى الذُّبَابِ كُلَّ ذِي جَنَاحَيْنِ أَوْ كُلَّ ذِي رُوحٍ. فَإِنْ قَالُوا: قِسْنَا مَا عَدَا ذَلِكَ عَلَى حَدِيثِ الْفَأْرِ فِي السَّمْنِ. قِيلَ لَهُمْ: وَمِنْ أَيْنَ لَكُمْ عُمُومُ الْقِيَاسِ عَلَى ذَلِكَ الْخَبَرِ؟ فَهَلَّا قِسْتُمْ عَلَى الْفَأْرِ كُلَّ ذِي ذَنَبٍ طَوِيلٍ، أَوْ كُلَّ حَشَرَةٍ مِنْ غَيْرِ السِّبَاعِ وَهَذَا مَا لَا انْفِصَالَ لَهُمْ مِنْهُ أَصْلًا وَالْعَجَبُ كُلُّهُ مِنْ حُكْمِهِمْ أَنَّ مَا كَانَ لَهُ دَمٌ سَائِلٌ فَهُوَ النَّجَسُ، فَيُقَالُ لَهُمْ: فَأَيُّ فَرْقٍ بَيْنَ تَحْرِيمِ اللَّهِ تَعَالَى الْمَيْتَةَ وَبَيْنَ تَحْرِيمِ اللَّهِ تَعَالَى الدَّمَ؟ فَمِنْ أَيْنَ جَعَلْتُمُ النَّجَاسَةَ لِلدَّمِ دُونَ الْمَيْتَةِ؟ وَأَغْرَبُ ذَلِكَ أَنَّ الْمَيْتَةَ لَا دَمَ لَهَا بَعْدَ الْمَوْتِ فَظَهَرَ فَسَادُ قَوْلِهِمْ بِكُلِّ وَجْهٍ.

L2919 As for Ibn al-Qāsim's statement, its apparent error stems from his view that dry ablution (tayammum) is preferable to using impure water. This necessitates that the user is not in a state of ablution, yet he did not require prayer repetition for one who prayed in such a condition except within the prayer timeframe – though according to his principles, this constitutes praying without valid ablution. Al-Shāfiʿī stated: When water is non-flowing – whether in a well, vessel, pond, or other container – if its quantity is less than five hundred Baghdadi ratls (regardless of amount), any impurity or carrion falling into it renders the water impure. This applies to animals with flowing blood and those without, for all carrion is impure and impurifies whatever it contacts. If the water reaches five hundred ratls, nothing impurifies it except what alters its color, taste, or odor. If such alteration occurs in a non-aqueous liquid, the entire liquid becomes impure and prohibited for use, regardless of quantity. His companion Abū Thawr said: All

وَأَمَّا قَوْلُ ابْنِ الْقَاسِمِ فَظَاهِرُ الْخَطَأِ، لِأَنَّهُ رَأَى التَّيَمُّمَ أَوْلَى مِنَ الْمَاءِ النَّجِسِ. فَوَجَبَ أَنَّ الْمُسْتَعْمِلَ لَهُ لَيْسَ مُتَوَضِّئًا، ثُمَّ لَمْ يَرَ الْإِعَادَةَ عَلَى مَنْ صَلَّى كَذَلِكَ إِلَّا فِي الْوَقْتِ، وَهُوَ عِنْدَهُ مُصَلٍّ بِغَيْرِ وُضُوءٍ. وَقَالَ الشَّافِعِيُّ: إِذَا كَانَ الْمَاءُ غَيْرَ جَارٍ، فَسَوَاءٌ الْبِئْرُ وَالْإِنَاءُ وَالْبُقْعَةُ وَغَيْرُ ذَلِكَ إِذَا كَانَ أَقَلَّ مِنْ خَمْسِمِائَةِ رَطْلٍ بِالْبَغْدَادِيِّ، بِمَا قَلَّ أَوْ كَثُرَ، فَإِنَّهُ يُنَجِّسُهُ كُلُّ نَجَسٍ وَقَعَ فِيهِ وَكُلُّ مَيْتَةٍ، سَوَاءٌ مَا لَهُ دَمٌ سَائِلٌ وَمَا لَيْسَ لَهُ دَمٌ سَائِلٌ، كُلُّ ذَلِكَ مَيْتَةٌ نَجِسٌ يُفْسِدُ مَا وَقَعَ فِيهِ، فَإِنْ كَانَ خَمْسِمِائَةِ رَطْلٍ لَمْ يُنَجِّسْهُ شَيْءٌ مِمَّا وَقَعَ فِيهِ إِلَّا مَا غَيَّرَ لَوْنَهُ أَوْ طَعْمَهُ أَوْ رِيحَهُ فَإِنْ كَانَ ذَلِكَ فِي مَائِعٍ غَيْرِ الْمَاءِ

liquids are equivalent to water. If a liquid measures five hundred ratls, nothing impurifies it except what changes its properties, while lesser quantities become impure. Al-Shāfiʿī's adherents, affirming the necessary conclusion from his principles, unanimously ruled that a vessel containing five hundred ratls of water (excluding an ūqiyyah) into which a drop of urine, wine, or any impurity falls becomes entirely impure and unlawful, invalidating ablution performed with it even if no alteration is visible. However, if a ratl of urine, wine, or any impurity falls into it without detectable change, the water remains pure, valid for ablution, and permissible to drink.

نُجِّسَ كُلُّهُ وَحُرِّمَ اسْتِعْمَالُهُ، كَثِيرًا كَانَ أَوْ قَلِيلًا. وَقَالَ أَبُو ثَوْرٍ صَاحِبُهُ: جَمِيعُ الْمَائِعَاتِ بِمَنْزِلَةِ الْمَاءِ، إِذَا كَانَ الْمَائِعُ خَمْسَمِائَةِ رَطْلٍ لَمْ يُنَجِّسْهُ شَيْءٌ مِمَّا وَقَعَ فِيهِ، إِلَّا أَنْ يُغَيِّرَ لَوْنَهُ أَوْ طَعْمَهُ أَوْ رِيحَهُ، فَإِنْ كَانَ أَقَلَّ مِنْ خَمْسِمِائَةِ رَطْلٍ يُنَجَّسُ. وَلَمْ يَخْتَلِفْ أَصْحَابُ الشَّافِعِيِّ - وَهُوَ الْوَاجِبُ وَلَا بُدَّ عَلَى أَصْلِهِ - فِي أَنَّ إِنَاءً فِيهِ خَمْسُمِائَةِ رَطْلٍ مِنْ مَاءٍ غَيْرَ أُوقِيَّةٍ فَوَقَعَ فِيهِ نُقْطَةُ بَوْلٍ أَوْ خَمْرٍ أَوْ نَجَاسَةٍ مَا فَإِنَّهُ كُلَّهُ نَجِسٌ حَرَامٌ وَلَا يَجُوزُ الْوُضُوءُ فِيهِ، وَإِنْ لَمْ يَظْهَرْ لِذَلِكَ فِيهِ أَثَرٌ، فَلَوْ وَقَعَ فِيهِ رَطْلُ بَوْلٍ أَوْ خَمْرٍ أَوْ نَجَاسَةٍ مَا فَلَمْ يَظْهَرْ لَهَا فِيهِ أَثَرٌ، فَالْمَاءُ طَاهِرٌ يُجْزِئُ الْوُضُوءُ بِهِ وَيَجُوزُ شُرْبُهُ.

L2920 The followers of Al-Shafi'i cited as evidence for this position the narrated hadith from the Messenger of Allah—peace and blessings be upon him—regarding "washing a vessel licked by a dog and discarding its contents," his instruction that "whoever wakes from sleep should wash his hand three times before immersing it in the water for ablution, for he does not know where his hand rested during the night," his command to "the one who urinates in water not to perform ablution from it nor bathe with it," and his statement: "When water reaches two qullahs, nothing pollutes it, nor does it retain impurities."

وَاحْتَجَّ أَصْحَابُ الشَّافِعِيِّ لِقَوْلِهِمْ هَذَا بِالْحَدِيثِ الْمَأْثُورِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي «غَسْلِ الْإِنَاءِ مِنْ وُلُوغِ الْكَلْبِ وَهَرْقِهِ» ، «وَبِأَمْرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ اسْتَيْقَظَ مِنْ نَوْمِهِ بِغَسْلِ يَدِهِ ثَلَاثًا قَبْلَ أَنْ يُدْخِلَهَا فِي وَضُوئِهِ فَإِنَّهُ لَا يَدْرِي أَيْنَ بَاتَتْ يَدُهُ» ، «وَبِأَمْرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْبَائِلَ فِي الْمَاءِ أَلَّا يَتَوَضَّأَ مِنْهُ وَلَا يَغْتَسِلَ» ، وَبِقَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا بَلَغَ الْمَاءُ قُلَّتَيْنِ لَمْ يُنَجِّسْهُ شَيْءٌ وَلَمْ يَقْبَلْ الْخَبَثَ» .

L2921–2922 They said: These hadiths indicate that water accepts impurity unless it reaches a certain measure. They said the two qullahs constituted a textually specified limit for water that does not accept impurity from contaminants, and the followers of Abu Hanifah also cited this as proof for their position. They then differed in determining the measure of two qullahs. Some followers of Abu Hanifah said: A qullah refers to the uppermost part of a vessel, thus the meaning of two qullahs here is two vertical measures. Al-Shafi'i said—as he narrated from Ibn Jurayj—that the two qullahs correspond to the jars of Hajar, with a single jar of Hajar equaling two water-skins or two water-skins plus a small addition. Al-Shafi'i stated: A water-skin is one hundred ratls. Ahmad ibn Hanbal upheld this view but did not fix a precise

قَالُوا: فَدَلَّتْ هَذِهِ الْأَحَادِيثُ عَلَى أَنَّ الْمَاءَ يَقْبَلُ النَّجَاسَةَ مَا لَمْ يَبْلُغْ حَدًّا مَا. قَالُوا فَكَانَتْ الْقُلَّتَانِ حَدًّا مَنْصُوصًا عَلَيْهِ فِيمَا لَا يَقْبَلُ النَّجَاسَةَ مِنْهُ، وَاحْتَجَّ بِهَذَا أَيْضًا أَصْحَابُ أَبِي حَنِيفَةَ فِي قَوْلِهِمْ. ثُمَّ اخْتَلَفُوا فِي تَحْدِيدِ الْقُلَّتَيْنِ، فَقَالَ بَعْضُ أَصْحَابِ أَبِي حَنِيفَةَ: الْقُلَّةُ أَعْلَى الشَّيْءِ فَمَعْنَى الْقُلَّتَيْنِ هَهُنَا الْقَامَتَانِ، وَقَالَ الشَّافِعِيُّ - بِمَا رَوَى عَنْ ابْنِ جُرَيْجٍ: إِنَّ الْقُلَّتَيْنِ مِنْ قِلَالِ هَجَرَ، وَإِنَّ قِلَالَ هَجَرَ الْقُلَّةُ الْوَاحِدَةُ قِرْبَتَانِ أَوْ قِرْبَتَانِ وَشَيْءٌ، قَالَ الشَّافِعِيُّ: الْقِرْبَةُ مِائَةُ رَطْلٍ، وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ بِذَلِكَ، وَلَمْ يَحُدَّ فِي الْقُلَّتَيْنِ حَدًّا أَكْثَرَ

مِنْ أَنَّهُ قَالَ مَرَّةً: الْقُلَّتَانِ أَرْبَعُ قِرَبٍ، وَمَرَّةً قَالَ: خَمْسُ قِرَبٍ، وَلَمْ يَحُدَّهَا بِأَرْطَالٍ. وَقَالَ إِسْحَاقُ: الْقُلَّتَانِ سِتُّ قِرَبٍ، وَقَالَ وَكِيعٌ وَيَحْيَى بْنُ آدَمَ: الْقُلَّةُ الْجَرَّةُ وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، أَيَّ جَرَّةٍ كَانَتْ فَهِيَ قُلَّةٌ، وَهُوَ قَوْلُ مُجَاهِدٍ وَأَبِي عُبَيْدٍ، قَالَ مُجَاهِدٌ الْقُلَّةُ الْجَرَّةُ، وَلَمْ يَحُدَّ أَبُو عُبَيْدٍ فِي الْقُلَّةِ حَدًّا.

measure for the two qullahs beyond stating on one occasion that they are four water-skins and on another five water-skins, without defining them in terms of ratls. Ishaq said: The two qullahs are six water-skins. Waki‘ and Yahya ibn Adam said: A qullah is a jar, which was the opinion of al-Hasan al-Basri—meaning whatever jar it may be, it is a qullah. This is also the view of Mujahid and Abu Ubayd. Mujahid said: A qullah is a jar. Abu Ubayd did not define a specific measure for the qullah.

وَأَظْرَفُ شَيْءٍ تَفْرِيقُهُمْ بَيْنَ الْمَاءِ الْجَارِي وَغَيْرِ الْجَارِي فَإِنْ احْتَجُّوا فِي ذَلِكَ بِأَنَّ الْمَاءَ الْجَارِيَ إِذَا خَالَطَتْهُ النَّجَاسَةُ مَضَى وَخَلْفَهُ طَاهِرٌ: فَقَدْ عَلِمُوا يَقِينًا أَنَّ الَّذِي خَالَطَتْهُ النَّجَاسَةُ إِذَا انْحَدَرَ فَإِنَّمَا يَنْحَدِرُ كَمَا هُوَ، وَهُمْ يُبِيحُونَ لِمَنْ تَنَاوَلَهُ فِي انْحِدَارِهِ فَتَطَهَّرَ بِهِ أَنْ يَتَوَضَّأَ مِنْهُ وَيَغْتَسِلَ وَيَشْرَبَ، وَالنَّجَاسَةُ قَدْ خَالَطَتْهُ بِلَا شَكٍّ، فَوَقَعُوا فِي نَفْسِ مَا شَنَّعُوا وَأَنْكَرُوا. فَإِنْ قَالُوا: لَمْ نَحْتَجَّ فِي الْفَرْقِ بَيْنَ الْمَاءِ الْجَارِي وَغَيْرِ الْجَارِي إِلَّا بِأَنَّ النَّهْيَ إِنَّمَا وَرَدَ عَنْ الْمَاءِ الرَّاكِدِ الَّذِي يُبَالُ فِيهِ. قُلْنَا: صَدَقْتُمْ، وَهَذَا هُوَ الْحَقُّ وَبِذَلِكَ الْأَمْرِ نَفْسِهِ فِي ذَلِكَ الْخَبَرِ نَفْسِهِ فَرَّقْنَا نَحْنُ بَيْنَ مَنْ وَرَدَ عَلَيْهِ النَّهْيُ وَهُوَ الْبَائِلُ وَبَيْنَ مَنْ لَمْ يَرِدْ عَلَيْهِ النَّهْيُ وَهُوَ غَيْرُ الْبَائِلِ، وَلَا سَبِيلَ إِلَى دَلِيلٍ يُفَرِّقُ بَيْنَ مَا أَخَذُوا بِهِ مِنْ ذَلِكَ الْخَبَرِ وَبَيْنَ مَا تَرَكُوا مِنْهُ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L2923 The most absurd thing is their differentiation between flowing water and stagnant water. If they argue in this regard that when flowing water becomes mixed with impurity, it passes onward while leaving pure water behind: they certainly know that the water which was mixed with impurity flows downward exactly as it is, yet they permit one who collects it during its flow and purifies himself with it to perform ablution, bathe, and drink from it, despite its undoubted impurity. Thus they have fallen into the very practice they condemned and rejected. If they say: “We only distinguished between flowing water and stagnant water based on the prohibition being specifically directed at stagnant water in which one urinates,” we respond: “You are correct—this is the truth. By that same principle in the same narration, we ourselves distinguish between the one addressed by the prohibition—the one who urinates—and the one not addressed—the non-urinator. There is no valid basis for distinguishing between the portion of this narration they adopt and the portion they abandon.” And with Allah alone is success.

وَاحْتَجُّوا بِحَدِيثِ الْفَأْرَةِ فِي السَّمْنِ فِيمَا ادَّعَوْهُ مِنْ قَبُولِ مَا عَدَا الْمَاءَ لِلنَّجَاسَةِ قَالَ عَلِيٌّ: هَذَا كُلُّ مَا احْتَجُّوا بِهِ، مَا لَهُمْ حُجَّةٌ أَصْلًا غَيْرُ مَا ذَكَرْنَا، وَكُلُّ هَذِهِ الْأَحَادِيثِ صِحَاحٌ ثَابِتَةٌ لَا مَغْمَزَ فِيهَا. وَكُلُّهَا لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهَا. وَكُلُّهَا حُجَّةٌ عَلَيْهِمْ لَنَا، عَلَى مَا نُبَيِّنُ إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ وَبِهِ تَعَالَى نَسْتَعِينُ.

L2924–2926 They cited as evidence the hadith about the mouse in ghee regarding their assertion that substances other than water can contract impurity. Ali said: “This is all they have adduced as proof; they have no argument at all beyond what we have mentioned. All these ḥadīths are authentic and firmly established, with no flaw in them. None of them contains any proof for them whatsoever. All of them constitute proof against them for us, as we will clarify – by the will of Allah, the Almighty and Exalted – and in Him, the Exalted, we seek assistance.”

L2927 The first of that is that all of them—their statements contradict what is in these reports, and we affirm them all, and praise be to Allah for that.

فَأَوَّلُ ذَلِكَ أَنَّهُمْ كُلَّهُمْ أَقْوَالُهُمْ مُخَالِفَةٌ لِمَا فِي هَذِهِ الْأَخْبَارِ، وَنَحْنُ نَقُولُ بِهَا كُلِّهَا وَالْحَمْدُ لِلَّهِ عَلَى ذَلِكَ.

L2928 As for the ḥadīth regarding a dog lapping in a vessel, Abū Ḥanīfah and his companions openly defied it. The Messenger of Allah—peace and blessings be upon him—commanded washing it seven times, the first of which with soil, yet they said: "No, rather only once is sufficient." Thus, their attachment to a saying was invalidated, for they were the first to disobey and oppose the Prophet. They abandoned what it contained, claimed about it what was not in it, and they erred twice.

أَمَّا حَدِيثُ وُلُوغِ الْكَلْبِ فِي الْإِنَاءِ فَإِنَّ أَبَا حَنِيفَةَ وَأَصْحَابَهُ خَالَفُوهُ جِهَارًا، فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِغَسْلِهِ سَبْعَ مَرَّاتٍ أُولَاهُنَّ بِالتُّرَابِ، فَقَالُوا هُمْ: لَا بَلْ مَرَّةً وَاحِدَةً فَقَطْ. فَسَقَطَ تَعَلُّقُهُمْ بِقَوْلٍ هُمْ أَوَّلُ مَنْ عَصَاهُ وَخَالَفَهُ فَتَرَكُوا مَا فِيهِ وَادَّعَوْا فِيهِ مَا لَيْسَ فِيهِ وَأَخْطَئُوا مَرَّتَيْنِ.

L2929 As for Mālik, he said: "It should not be discarded unless it is water"—thus openly contradicting the ḥadīth—while he and his followers agree with us that this report cannot be extended to other cases and that no other impurities can be analogized to a dog's licking. They are correct in this, for whoever claims otherwise has added to the words of Allah's Messenger (peace and blessings be upon him) what he (peace be upon him) never said at all.

أَمَّا مَالِكٌ فَقَالَ: لَا يُهْرَقُ إِلَّا أَنْ يَكُونَ مَاءً - فَخَالَفَ الْحَدِيثَ أَيْضًا عَلَانِيَةً - وَهُوَ وَأَصْحَابُهُ مُوَافِقُونَ لَنَا عَلَى أَنَّ هَذَا الْخَبَرَ لَا يُتَعَدَّى بِهِ إِلَى سِوَاهُ وَأَنَّهُ لَا يُقَاسُ شَيْءٌ مِنْ النَّجَاسَاتِ بِوُلُوغِ الْكَلْبِ، وَصَدَقُوا فِي ذَلِكَ إِذْ مَنْ ادَّعَى خِلَافَ هَذَا فَقَدْ زَادَ فِي كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْهُ - عَلَيْهِ السَّلَامُ - قَطُّ.

L2930 As for al-Shāfiʿī, he said: If the water in the vessel amounts to five hundred *ratls*, it is not discarded nor is the vessel washed. But if it contains anything other than water, it is discarded regardless of quantity. This has no basis in the ḥadīth whatsoever—neither by explicit text nor indication—for he contradicted this report and added to it what is absent, such as claiming that if a dog inserts its paw, foot, or tail into the vessel, the water must be discarded and the vessel washed seven times, one of which is with soil. This addition has no origin in his speech (peace be upon him). He said: If a pig laps from the vessel, it is treated like a dog lapping from it—the vessel must be washed seven times, one with soil. He said: If a wild beast laps from it, the vessel is not washed at all nor is the water discarded. Thus, he analogized the pig to the dog but did not analogize wild beasts to the dog—and it is part of them. The dog was prohibited due to the general prohibition against consuming any predatory animal with fangs. Indeed, the contradiction of their statements with this report is evident, while our position aligns with its content. Thus, it is a proof against them, and abundant praise is due

وَأَمَّا الشَّافِعِيُّ فَإِنَّهُ قَالَ: إِنْ كَانَ مَا فِي الْإِنَاءِ مِنْ الْمَاءِ خَمْسَمِائَةِ رَطْلٍ فَلَا يُهْرَقُ وَلَا يُغْسَلُ الْإِنَاءُ. وَإِنْ كَانَ فِيهِ غَيْرَ الْمَاءِ أُهْرِقَ بَالِغًا مَا بَلَغَ. هَذَا لَيْسَ فِي الْحَدِيثِ أَصْلًا لَا بِنَصٍّ وَلَا بِدَلِيلٍ، فَقَدْ خَالَفَ هَذَا الْخَبَرَ وَزَادَ فِيهِ مَا لَيْسَ فِيهِ مِنْ أَنَّهُ إِنْ أَدْخَلَ فِيهِ يَدَهُ أَوْ رِجْلَهُ أَوْ ذَنَبَهُ أُهْرِقَ وَغُسِلَ سَبْعَ مَرَّاتٍ إِحْدَاهُنَّ بِالتُّرَابِ، وَهَذِهِ زِيَادَةٌ لَيْسَتْ فِي كَلَامِهِ - عَلَيْهِ السَّلَامُ - أَصْلًا، وَقَالَ: إِنْ وَلَغَ فِي الْإِنَاءِ خِنْزِيرٌ كَانَ فِي حُكْمِهِ حُكْمَ مَا وَلَغَ فِيهِ الْكَلْبُ: يُغْسَلُ سَبْعًا إِحْدَاهُنَّ بِالتُّرَابِ. قَالَ فَإِنْ وَلَغَ فِيهِ سَبُعٌ لَمْ يُغْسَلْ أَصْلًا وَلَا أُهْرِقَ. فَقَاسَ الْخِنْزِيرَ عَلَى الْكَلْبِ، وَلَمْ يَقِسْ السِّبَاعَ عَلَى الْكَلْبِ - وَهُوَ بَعْضُهَا - وَإِنَّمَا حُرِّمَ الْكَلْبُ بِعُمُومِ النَّهْيِ عَنْ أَكْلِ كُلِّ ذِي نَابٍ مِنْ السِّبَاعِ.

to Allah, Lord of the worlds. The invalidity and falsity of their analogy is manifest, for these are mere claims without any evidence.

فَقَدْ ظَهَرَ خِلَافُ أَقْوَالِهِمْ لِهَذَا الْخَبَرِ وَمُوَافَقَتُنَا نَحْنُ لِمَا فِيهِ، فَهُوَ حُجَّةٌ لَنَا عَلَيْهِمْ، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ كَثِيرًا، وَظَهَرَ فَسَادُ قِيَاسِهِمْ وَبُطْلَانُهُ، وَأَنَّهُ دَعَاوَى لَا دَلِيلَ عَلَى شَيْءٍ مِنْهَا.

L2931–2933 As for the narration concerning one who "wakes from his sleep and washes his hand three times before inserting it into his ablution water, for indeed one of you does not know where his hand spent the night," all of them oppose this narration and say this is not obligatory upon one who wakes from sleep. But we hold that it is, rather, obligatory upon him. All of them said that impurities... Those who cited these reports as evidence for the water's capacity to neutralize impurities used them to differentiate between impurities coming into contact with water and water coming into contact with impurities, claiming the latter is removed with one washing. This openly contradicts what is stated in these two reports, for one of them prescribes purifying vessels through seven washings - the first of them [the washings] with soil - while the other specifies purifying the hand through three washings. Yet they do not apply this to impurities. Had these two reports been evidence for water's capacity to neutralize impurities, their rulings would necessarily be applied in the removal of impurities. Thus their entire argument based on these two reports collapses completely, and all praise belongs to Allah.

وَأَمَّا الْخَبَرُ فِيمَنْ «اسْتَيْقَظَ مِنْ نَوْمِهِ فَيَغْسِلُ يَدَهُ ثَلَاثًا قَبْلَ أَنْ يُدْخِلَهَا فِي وَضُوئِهِ فَإِنَّ أَحَدَكُمْ لَا يَدْرِي أَيْنَ بَاتَتْ» ، فَإِنَّهُمْ كُلَّهُمْ مُخَالِفُونَ لَهُ، وَقَائِلُونَ إِنَّ هَذَا لَا يَجِبُ عَلَى الْمُسْتَيْقِظِ مِنْ نَوْمِهِ. وَقُلْنَا نَحْنُ بَلْ هُوَ وَاجِبٌ عَلَيْهِ. وَقَالُوا كُلُّهُمْ إِنَّ النَّجَاسَاتِ الَّتِي احْتَجُّوا بِهَذِهِ الْأَخْبَارِ فِي قَبُولِ الْمَاءِ لَهَا وَفَرَّقُوا بِهَا بَيْنَ وُرُودِ النَّجَاسَةِ عَلَى الْمَاءِ وَبَيْنَ وُرُودِ الْمَاءِ عَلَى النَّجَاسَةِ فَإِنَّهَا تُزَالُ بِغَسْلَةٍ وَاحِدَةٍ. وَهَذَا خِلَافُ مَا فِي هَذَيْنِ الْخَبَرَيْنِ جِهَارًا، لِأَنَّ فِي أَحَدِهِمَا تَطْهِيرَ الْإِنَاءِ بِسَبْعِ غَسَلَاتٍ أُولَاهُنَّ بِالتُّرَابِ وَفِي الْآخَرِ تَطْهِيرَ الْيَدِ بِثَلَاثِ غَسَلَاتٍ، وَهُمْ لَا يَقُولُونَ بِهَذَا فِي النَّجَاسَاتِ، وَلَوْ كَانَ هَذَانِ الْخَبَرَانِ دَلِيلَيْنِ عَلَى قَبُولِ الْمَاءِ لِلنَّجَاسَةِ لَوَجَبَ أَنْ يَكُونَ حُكْمُهُمَا مُسْتَعْمَلًا فِي إِزَالَةِ النَّجَاسَاتِ، فَبَطَلَ احْتِجَاجُهُمْ بِهَذَيْنِ الْخَبَرَيْنِ جُمْلَةً، وَالْحَمْدُ لِلَّهِ.

L2934 Among the certain falsehoods is the notion that what is suspected of impurity on the hand cannot be purified except by three washings, yet when impurity is confirmed therein, a single washing suffices for its removal. This is their statement—there is no abomination more abhorrent than this. They claim to apply the dictates of reason in their analogies, yet no ruling is more contrary to reason than this. Had the Messenger of Allah—peace be upon him—uttered it, we would have listened, obeyed, and declared: "It is the truth." But since the Messenger of Allah—peace be upon him—did not say it, it must be rejected and shunned, and we must affirm it as falsehood. It is likewise impossible that the command for the cautious person to wash his hand three times arises from fear of coming into contact with impurity, for if this were so, his foot would be treated like his hand in that regard, and

وَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يَكُونَ مَا ظُنَّتْ بِهِ النَّجَاسَةُ مِنْ الْيَدِ لَا يَطْهُرُ إِلَّا بِثَلَاثِ غَسَلَاتٍ، وَإِذَا تُيُقِّنَتْ النَّجَاسَةُ فِيهَا اُكْتُفِيَ فِي إِزَالَتِهَا بِغَسْلَةٍ وَاحِدَةٍ، فَهَذَا قَوْلُهُمْ الَّذِي لَا شُنْعَةَ أَشْنَعُ مِنْهُ، وَهُمْ يَدَّعُونَ إنْفَاذَ حُكْمِ الْعُقُولِ فِي قِيَاسَاتِهِمْ، وَلَا حُكْمَ أَشَدُّ مُنَافَرَةً لِلْعَقْلِ مِنْ هَذَا الْحُكْمِ، وَلَوْ قَالَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَسَمِعْنَا وَأَطَعْنَا وَقُلْنَا: هُوَ الْحَقُّ، لَكِنْ لَمَّا لَمْ يَقُلْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَجَبَ إطْرَاحُهُ وَالرَّغْبَةُ عَنْهُ، وَأَنْ نُوقِنَ بِأَنَّهُ الْبَاطِلُ وَمِنْ الْمُحَالِ أَيْضًا أَنْ يَكُونَ الْأَمْرُ لِلْمُتَنَبِّهِ بِغَسْلِ

the inner parts of his thighs and buttocks would be more entitled to such treatment than his hand.

L2935–2937 As for Mālik, he concurs with us regarding the report that it does not constitute evidence for water accepting impurity. Thus, their entire reliance on this report is invalidated, and it is confirmed to be a proof for us against them. Praise be to Allah, Lord of the worlds. It is therefore established that all scholars unanimously agree these two reports cannot serve as foundational principles for other impurities, nor can other impurities be analogically judged by their rulings—thereby nullifying their dependence on them.

Concerning the ḥadīth prohibiting one who urinates in stagnant water from performing ablution or ghusl with it: all these scholars contradict it. As for Abū Ḥanīfah, he stated: "If the water constitutes a pond—where stirring one end does not disturb the other—even if one urinates in it as much as he wishes, it remains permissible for him to perform ablution and ghusl with it. If less than this quantity, neither he nor others may use it for ablution or bathing." Here, he introduced into the ḥadīth an unsupported prohibition for others besides the urinator, while contradicting the ḥadīth's explicit permission—in some cases of water's abundance or scarcity—for the urinator himself to use it.

Similarly, al-Shāfiʿī's ruling regarding water measuring five hundred raṭls or less contradicts the ḥadīth, paralleling Abū Ḥanīfah's contradiction, while adding unsupported stipulations as Abū Ḥanīfah did. As for Mālik, he contradicted the ḥadīth. All of it. He said: If the water is not altered by his urine, he may perform ablution from it and bathe. He mentioned in some of his statements: if it is abundant. Thus their reliance on this narration is entirely invalidated due to their contradiction of it. As for us, we have adhered to it as transmitted. And much praise is due to Allah abundantly.

L2938 As for the hadith concerning the mouse in the ghee, all of them opposed it. For Abū Ḥanīfah, Mālik, and Al-Shāfiʿī permitted using it for lighting, while the hadith states, "Do not approach it," and Abū Ḥanīfah permitted selling it. Thus, their reliance on all these narrations is invalidated, their opposition

الْيَدِ ثَلَاثًا خَوْفَ أَنْ تَقَعَ عَلَى نَجَاسَةٍ، إِذْ لَوْ كَانَ كَذَلِكَ لَكَانَتْ رِجْلُهُ فِي ذَلِكَ كَيَدِهِ وَلَكَانَ بَاطِنُ فَخْذَيْهِ وَبَاطِنُ أَلْيَتَيْهِ أَحَقَّ بِذَلِكَ مِنْ يَدِهِ.

وَأَمَّا مَالِكٌ فَمُوَافِقٌ لَنَا فِي الْخَبَرِ أَنَّهُ لَيْسَ دَلِيلًا عَلَى قَبُولِ الْمَاءِ لِلنَّجَاسَةِ، فَبَطَلَ تَعَلُّقُهُمْ أَيْضًا بِهَذَا الْخَبَرِ جُمْلَةً، وَصَحَّ أَنَّهُ حُجَّةٌ لَنَا عَلَيْهِمْ، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، فَصَحَّ اتِّفَاقُ جَمِيعِهِمْ عَلَى أَنَّ هَذَيْنِ الْخَبَرَيْنِ لَا يُجْعَلَانِ أَصْلًا لِسَائِرِ النَّجَاسَاتِ، وَأَلَّا يُقَاسَ سَائِرُ النَّجَاسَاتِ عَلَى حُكْمِهِمَا، فَبَطَلَ تَعَلُّقُهُمْ بِهِمَا. وَأَمَّا حَدِيثُ نَهْيِ الْبَائِلِ فِي الْمَاءِ الرَّاكِدِ عَنْ أَنْ يَتَوَضَّأَ مِنْهُ أَوْ يَغْتَسِلَ، فَإِنَّهُمْ كُلَّهُمْ مُخَالِفُونَ لَهُ أَيْضًا. أَمَّا أَبُو حَنِيفَةَ فَإِنَّهُ قَالَ: إِنْ كَانَ الْمَاءُ بِرْكَةً إِذَا حُرِّكَ طَرَفُهَا الْوَاحِدُ لَمْ يَتَحَرَّكْ طَرَفُهَا الْآخَرُ. فَإِنَّهُ لَوْ بَالَ فِيهَا مَا شَاءَ أَنْ يَبُولَ فَلَهُ أَنْ يَتَوَضَّأَ مِنْهَا وَيَغْتَسِلَ، فَإِنْ كَانَتْ أَقَلَّ مِنْ ذَلِكَ لَمْ يَكُنْ لَهُ وَلَا لِغَيْرِهِ أَنْ يَتَوَضَّأَ مِنْهَا وَلَا أَنْ يَغْتَسِلَ فَزَادَ فِي الْحَدِيثِ مَا لَيْسَ فِيهِ مِنْ تَحْرِيمِ ذَلِكَ عَلَى غَيْرِ الْبَائِلِ، وَخَالَفَ الْحَدِيثَ فِيمَا فِيهِ بِإِبَاحَتِهِ - فِي بَعْضِ أَحْوَالِ كَثْرَةِ الْمَاءِ وَقِلَّتِهِ - لِلْبَائِلِ فِيهِ أَنْ يَتَوَضَّأَ مِنْهُ وَيَغْتَسِلَ وَكَذَلِكَ قَوْلُ الشَّافِعِيِّ فِي الْمَاءِ إِذَا كَانَ خَمْسَمِائَةِ رَطْلٍ أَوْ أَقَلَّ مِنْ خَمْسِمِائَةِ رَطْلٍ فَخَالَفَ الْحَدِيثَ كَمَا خَالَفَهُ أَبُو حَنِيفَةَ، وَزَادَ فِيهِ كَمَا زَادَ أَبُو حَنِيفَةَ، وَأَمَّا مَالِكٌ فَخَالَفَهُ كُلَّهُ. قَالَ: إِذَا لَمْ يَتَغَيَّرِ الْمَاءُ بِبَوْلِهِ فَلَهُ أَنْ يَتَوَضَّأَ مِنْهُ وَيَغْتَسِلَ، وَقَالَ فِي بَعْضِ أَقْوَالِهِ إِذَا كَانَ كَثِيرًا. فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ جُمْلَةً لِمُخَالَفَتِهِمْ لَهُ. وَأَمَّا نَحْنُ فَأَخَذْنَا بِهِ كَمَا وَرَدَ، وَلِلَّهِ الْحَمْدُ كَثِيرًا.

to them is confirmed, and these narrations are proof for us against their arguments.

وَأَمَّا حَدِيثُ الْفَأْرِ فِي السَّمْنِ فَإِنَّهُمْ كُلَّهُمْ خَالَفُوهُ، لِأَنَّ أَبَا حَنِيفَةَ وَمَالِكًا وَالشَّافِعِيَّ أَبَاحُوا الِاسْتِصْبَاحَ بِهِ، وَفِي الْحَدِيثِ «لَا تَقْرَبُوهُ» وَأَبَاحَ أَبُو حَنِيفَةَ بَيْعَهُ، فَبَطَلَ تَعَلُّقُهُمْ بِجَمِيعِ هَذِهِ الْآثَارِ وَصَحَّ خِلَافُهُمْ لَهَا، وَأَنَّهَا حُجَّةٌ لَنَا عَلَيْهِمْ.

L2939 If it is said: What is the meaning of these narrations if they do not indicate the water's acceptance of impurity, and what is their purpose? We respond: Their meaning is what their wording inherently entails. It is impermissible for anyone to attribute to a person words that their speech does not imply—how then the Messenger of Allah (peace and blessings be upon him), when severe warning has been issued against those who attribute to him what he did not say. As for their purpose, it is the greatest purpose: entry into Paradise through adherence to them, and so that it may distinguish who follows the Messenger from those who turn back.[35]

فَإِنْ قِيلَ: فَمَا مَعْنَى هَذِهِ الْآثَارِ إِنْ كَانَتْ لَا تَدُلُّ عَلَى قَبُولِ الْمَاءِ النَّجَاسَةَ وَمَا فَائِدَتُهَا؟ قُلْنَا: مَعْنَاهَا مَا اقْتَضَاهُ لَفْظُهَا، لَا يَحِلُّ لِأَحَدٍ أَنْ يُقَوِّلَ إِنْسَانًا مِنَ النَّاسِ مَا لَا يَقْتَضِيهِ كَلَامُهُ، فَكَيْفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي جَاءَ الْوَعِيدُ الشَّدِيدُ عَلَى مَنْ قَوَّلَهُ مَا لَمْ يَقُلْ. وَأَمَّا فَائِدَتُهَا فَهِيَ أَعْظَمُ فَائِدَةٍ، وَهِيَ دُخُولُ الْجَنَّةِ بِالطَّاعَةِ لَهَا، وَلِيَعْلَمَ مَنْ يَتَّبِعُ الرَّسُولَ مِمَّنْ يَنْقَلِبُ عَلَى عَقِبَيْهِ.

L2940–2942 As for the ḥadīth concerning the two qullahs, they have no basis for their argument in it whatsoever. This is interpreted to mean that the Messenger of Allāh—peace and blessings be upon him—did not define the measure of the two qullahs. There is no doubt that if he—peace be upon him—had intended them to serve as a criterion distinguishing between water that retains impurity and that which does not, he would have defined them for us with a clear, unchanging measure. This is not a matter imposed upon a person nor left to their discretion, for if it were, any two qullahs—whether small or large—would constitute such a criterion. As for Abū Ḥanīfah and his followers, they claimed: "A qullah is a container's height." Yet even if we concede their invalid interpretation, they contradict this report, since according to them, a well containing two or three measures in height would still be declared ritually impure. As for al-Shāfiʿī, his definition of the two qullahs holds no greater validity than the definitions of others who interpreted "two qullahs" contrary to his explanation. Any opinion lacking proof is invalid. As for us, we affirm the truth of this report and assert: When water reaches two qullahs, it neither becomes impure nor retains filth. The two qullahs are whatever the linguistic convention designates as "two qullahs," whether small

وَأَمَّا حَدِيثُ الْقُلَّتَيْنِ فَلَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا. أُوِّلَ ذَلِكَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَحُدَّ مِقْدَارَ الْقُلَّتَيْنِ، وَلَا شَكَّ فِي أَنَّهُ - عَلَيْهِ السَّلَامُ - لَوْ أَرَادَ أَنْ يَجْعَلَهُمَا - حَدًّا بَيْنَ مَا يَقْبَلُ النَّجَاسَةَ وَبَيْنَ مَا لَا يَقْبَلُهَا لَمَا أَهْمَلَ أَنْ يَحُدَّهَا لَنَا بِحَدٍّ ظَاهِرٍ لَا يُحِيلُ، وَلَيْسَ هَذَا مِمَّا يُوجِبُ عَلَى الْمَرْءِ وَيُوَكَّلُ فِيهِ إِلَى اخْتِيَارِهِ، وَلَوْ كَانَ ذَلِكَ لَكَانَتْ كُلُّ قُلَّتَيْنِ - صَغُرَتَا أَوْ كَبِرَتَا - حَدًّا فِي ذَلِكَ. فَأَمَّا أَبُو حَنِيفَةَ وَأَصْحَابُهُ فَقَالُوا: الْقُلَّةُ الْقَامَةُ، وَمَعَ ذَلِكَ فَقَدْ خَالَفُوا هَذَا الْخَبَرَ - عَلَى أَنْ نُسَلِّمَ لَهُمْ تَأْوِيلَهُمُ الْفَاسِدَ - لِأَنَّ الْبِئْرَ وَإِنْ كَانَ فِيهَا قَامَتَانِ أَوْ ثَلَاثٌ فَإِنَّهَا عِنْدَهُمْ تُنَجَّسُ. وَأَمَّا الشَّافِعِيُّ فَلَيْسَ حَدُّهُ فِي الْقُلَّتَيْنِ بِأَوْلَى مِنْ حَدِّ غَيْرِهِ مِمَّنْ فَسَّرَ الْقُلَّتَيْنِ بِغَيْرِ تَفْسِيرِهِ وَكُلُّ قَوْلٍ لَا بُرْهَانَ لَهُ فَهُوَ بَاطِلٌ. وَأَمَّا نَحْنُ فَنَقُولُ بِهَذَا الْخَبَرِ حَقًّا وَنَقُولُ: إِنَّ الْمَاءَ إِذَا بَلَغَ قُلَّتَيْنِ لَمْ يُنَجَّسْ وَلَمْ يَقْبَلِ الْخَبَثَ وَالْقُلَّتَانِ مَا وَقَعَ عَلَيْهِ فِي اللُّغَةِ اسْمُ قُلَّتَيْنِ، صَغُرَتَا أَوْ كَبِرَتَا، وَلَا خِلَافَ

[35] **Qur'an references (L2939):** Qur'an 2:143 (Al-Baqarah).

or large. There is no dispute that a qullah containing nineteen ratls of water is termed a qullah in Arabic. This report makes no mention whatsoever of the jars from Hajar, though Hajar undoubtedly has small and large jars. If it is argued that the Prophet—peace and blessings be upon him—mentioned the jars of Hajar in the ḥadīth of the Night Journey, we respond: True, but this does not necessitate that whenever he—peace and blessings be upon him—mentioned a qullah, he exclusively referred to those from Hajar. As for Ibn Jurayj's interpretation... The interpretation regarding the two *qullahs* holds greater priority than Mujāhid's explanation, who stated: "They are two jars," and Al-Ḥasan's similar interpretation: "It refers to any jar." There is no indication or explicit text in the statement of the Prophet (peace be upon him) proving that water less than two *qullahs* becomes impure or retains filth. Whoever adds this to the ḥadīth has falsely attributed to the Prophet (peace be upon him) what he did not say. Therefore, it is obligatory to seek the ruling for water less than two *qullahs* from sources other than this ḥadīth. Upon examination, we found the narration relayed by Ḥammām, who said: ʿAbbās ibn Aṣbagh narrated to us, from Muḥammad ibn ʿAbd al-Malik ibn Ayman, from Muḥammad ibn Waḍḍāḥ, from Abū ʿAlī ʿAbd al-Ṣamad ibn Abī Sukaynah—a trustworthy narrator—from ʿAbd al-ʿAzīz ibn Abī Ḥāzim Abū Tamām, from his father, from Sahl ibn Saʿd al-Sāʿidī, who said: "They asked, 'O Messenger of Allah, we perform ablution from the Well of Buḍāʿah, which contains what people discard, menstrual cloths, and carcasses.' The Messenger of Allah (peace be upon him) replied: 'Nothing impurifies water.'"

L2943–2945 Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Wahab ibn Masara informed us; Ibn Waḍḍāḥ narrated to us; Abū Bakr ibn Abī Shaybah narrated to us; Muḥammad ibn Fuḍayl narrated from Abū Mālik al-Ashjaʿī from Ḥudhayfah, who said: The Messenger of Allah (peace be upon him) said: "We have been favored over people with three things"—and he (peace be upon him) mentioned among them—"the entire earth has been made a mosque for us, and its soil has been made a means of purification for us when we do not find water." Thus, he (peace be upon him) generalized all water without specifying any particular type. They objected: "Yet you claim that water becomes impure if filth appears in it, altering its color, taste, or smell—thus contra-

فِي أَنَّ الْقُلَّةَ الَّتِي تَسَعُ عَشَرَةَ أَرْطَالِ مَاءٍ تُسَمَّى عِنْدَ الْعَرَبِ قُلَّةً. وَلَيْسَ فِي هَذَا الْخَبَرِ ذِكْرٌ لِقِلَالِ هَجَرَ أَصْلًا، وَلَا شَكَّ فِي أَنَّ بِهَجَرَ قِلَالًا صِغَارًا وَكِبَارًا. فَإِنْ قِيلَ إِنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ ذَكَرَ قِلَالَ هَجَرَ فِي حَدِيثِ الْإِسْرَاءِ. قُلْنَا: نَعَمْ، وَلَيْسَ ذَلِكَ يُوجِبُ أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَتَى مَا ذَكَرَ قُلَّةً فَإِنَّمَا أَرَادَ مِنْ قِلَالِ هَجَرَ، وَلَيْسَ تَفْسِيرُ ابْنِ جُرَيْجٍ لِلْقُلَّتَيْنِ بِأَوْلَى مِنْ تَفْسِيرِ مُجَاهِدٍ الَّذِي قَالَ: هُمَا جَرَّتَانِ، وَتَفْسِيرُ الْحَسَنِ كَذَلِكَ: إنَّهَا أَيُّ جَرَّةٍ كَانَتْ. وَلَيْسَ فِي قَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَذَا دَلِيلٌ وَلَا نَصٌّ عَلَى أَنَّ مَا دُونَ الْقُلَّتَيْنِ يُنَجَّسُ وَيَحْمِلُ الْخُبْثَ وَمَنْ زَادَ هَذَا فِي الْخَبَرِ فَقَدْ قَوَّلَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْ فَوَجَبَ طَلَبُ حُكْمِ مَا دُونَ الْقُلَّتَيْنِ مِنْ غَيْرِ هَذَا الْخَبَرِ، فَنَظَرْنَا فَوَجَدْنَا مَا حَدَّثَنَا حُمَامٌ قَالَ: ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا مُحَمَّدُ بْنُ وَضَّاحٍ ثنا أَبُو عَلِيٍّ عَبْدُ الصَّمَدِ بْنُ أَبِي سُكَيْنَةَ - وَهُوَ ثِقَةٌ - ثنا عَبْدُ الْعَزِيزِ بْنُ أَبِي حَازِمٍ أَبُو تَمَّامٍ عَنْ أَبِيهِ عَنْ سَهْلِ بْنِ سَعْدٍ السَّاعِدِيِّ قَالَ «قَالُوا يَا رَسُولَ اللَّهِ إنَّا نَتَوَضَّأُ مِنْ بِئْرِ بُضَاعَةَ وَفِيهَا مَا يُنْجِي النَّاسُ وَالْحَائِضُ وَالْجِيَفُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: الْمَاءُ لَا يُنَجِّسُهُ شَيْءٌ» .

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ أَخْبَرَنَا وَهْبُ بْنُ مَسَرَّةَ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ أَبِي مَالِكٍ الْأَشْجَعِيِّ عَنْ حُذَيْفَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فُضِّلْنَا عَلَى النَّاسِ بِثَلَاثٍ - وَذَكَرَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيهَا - وَجُعِلَتْ لَنَا الْأَرْضُ كُلُّهَا مَسْجِدًا وَجُعِلَتْ تُرْبَتُهَا لَنَا طَهُورًا إذَا لَمْ نَجِدْ الْمَاءَ» فَعَمَّ - عَلَيْهِ السَّلَامُ - كُلَّ مَاءٍ وَلَمْ يَخُصَّ مَاءً مِنْ مَاءٍ. فَقَالُوا: فَإِنَّكُمْ تَقُولُونَ إنَّ الْمَاءَ إذَا ظَهَرَتْ فِيهِ النَّجَاسَةُ فَغَيَّرَتْ لَوْنَهُ وَطَعْمَهُ وَرِيحَهُ فَإِنَّهُ يُنَجَّسُ، فَقَدْ خَالَفْتُمْ هَذَيْنِ

dicting these two reports." We replied: "Allah forbid that we say such a thing! Rather, water is fundamentally pure in its state. If we could completely remove prohibited impurities from it, we would use it. However, since we are unable to use it as we were commanded to, its ruling is lifted from us. Similarly, if a pure garment is splashed with wine, blood, or urine, the garment remains pure as it was. If we can remove the impurity from it, we pray in it. If praying in it is only possible by using the prohibited impurity, its ruling is lifted from us, and the prayer is not invalidated by wearing that garment itself, but by the use of the impurity within it. Likewise, bread greased with pig fat, and so on for all things—except what has been mentioned." The text specifies the prohibition of these exact matters, and obedience to it is obligatory: such as liquid in a vessel lapped by a dog, stagnant water contaminated by urine, melted clarified butter (ghee) into which a dead mouse falls—with nothing further. We have received a narration through Qatādah that Ibn Mas'ūd said: "If water were to mix with blood, the water would be purifying." And success is from Allah, the Most High.

الْخَبَرَيْنِ. قُلْنَا: مَعَاذَ اللَّهِ مِنْ هَذَا أَنْ نَقُولَهُ، بَلْ الْمَاءُ لَا يُنَجَّسُ أَصْلًا، وَلَكِنَّهُ طَاهِرٌ بِحَسَبِهِ، لَوْ أَمْكَنَنَا تَخْلِيصُهُ مِنْ جُمْلَةِ الْمُحَرَّمِ عَلَيْنَا لَاسْتَعْمَلْنَاهُ، وَلَكِنَّا لَمَّا لَمْ نَقْدِرْ عَلَى الْوُصُولِ إلَى اسْتِعْمَالِهِ كَمَا أُمِرْنَا سَقَطَ عَنَّا حُكْمُهُ، وَهَكَذَا كُلُّ شَيْءٍ كَثَوْبٍ طَاهِرٍ صُبَّ عَلَيْهِ خَمْرٌ أَوْ دَمٌ أَوْ بَوْلٌ، فَالثَّوْبُ طَاهِرٌ كَمَا كَانَ، إنْ أَمْكَنَنَا إزَالَةُ النَّجَسِ عَنْهُ صَلَّيْنَا فِيهِ، وَإِنْ لَمْ يُمْكِنَّا الصَّلَاةُ فِيهِ إلَّا بِاسْتِعْمَالِ النَّجَسِ الْمُحَرَّمِ سَقَطَ عَنَّا حُكْمُهُ، وَلَمْ تَبْطُلْ الصَّلَاةُ لِلِبَاسِ ذَلِكَ الثَّوْبِ، لَكِنْ لِاسْتِعْمَالِ النَّجَاسَةِ الَّتِي فِيهِ، وَكَذَلِكَ خُبْزٌ دُهِنَ بِوَدَكِ خِنْزِيرٍ، وَهَكَذَا كُلُّ شَيْءٍ حَاشَا مَا جَاءَ النَّصُّ بِتَحْرِيمِهِ بِعَيْنِهِ فَتَجِبُ الطَّاعَةُ لَهُ، كَالْمَائِعِ يَلَغُ فِيهِ الْكَلْبُ فِي الْإِنَاءِ، وَكَالْمَاءِ الرَّاكِدِ لِلْبَائِلِ، وَكَالسَّمْنِ الذَّائِبِ يَقَعُ فِيهِ الْفَأْرُ الْمَيِّتُ، وَلَا مَزِيدَ. وَقَدْ رُوِّينَا مِنْ طَرِيقِ قَتَادَةَ أَنَّ ابْنَ مَسْعُودٍ قَالَ: لَوْ اخْتَلَطَ الْمَاءُ بِالدَّمِ لَكَانَ الْمَاءُ طَهُورًا، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L2946 If water were to become impure by mere contact with impurities, it would necessarily follow that if a person urinated in a water channel, it would not become permissible for anyone to perform ablution with the water downstream from the urination site. This is because the water containing his urine or excrement would undoubtedly be used for ablution, and no one's mouth would ever have been purified of blood or vomit present in it, since water entering an impure mouth would become impure, and this would continue indefinitely. Those who distinguish between water and other liquids in this matter are invalidators acting arbitrarily, making unsubstantiated claims. This is untenable.

وَلَوْ كَانَ الْمَاءُ يَنْجَسُ بِمُلَاقَاةِ النَّجَاسَةِ لَلَزِمَ إذَا بَالَ إنْسَانٌ فِي سَاقِيَةٍ مَا أَلَّا يَحِلَّ لِأَحَدٍ أَنْ يَتَوَضَّأَ بِمَا هُوَ أَسْفَلُ مِنْ مَوْضِعِ الْبَائِلِ، لِأَنَّ ذَلِكَ الْمَاءَ الَّذِي فِيهِ الْبَوْلُ أَوْ الْعَذِرَةُ مِنْهُ يَتَوَضَّأُ بِلَا شَكٍّ، وَلَمَا تَطَهَّرَ فَمُ أَحَدٍ مِنْ دَمٍ أَوْ قَيْءٍ فِيهِ، لِأَنَّ الْمَاءَ إذَا دَخَلَ فِي الْفَمِ النَّجِسِ تَنَجَّسَ وَهَكَذَا أَبَدًا، وَالْمُفَرِّقُ بَيْنَ الْمَاءِ وَسَائِرِ الْمَائِعَاتِ فِي ذَلِكَ مُبْطِلٌ مُتَحَكِّمٌ قَائِلٌ بِلَا بُرْهَانٍ. وَهَذَا بَاطِلٌ.

L2947 Abu Muhammad Ali said: As for their censure against us regarding the distinction between the urinator explicitly mentioned in the hadith and the non-urinator not mentioned therein, and between a mouse falling into the clarified butter specified in the hadith versus its falling into oil or the falling of something unlawful into the clarified butter—since none of these scenarios are mentioned in the hadith—this is invalid criticism that recoils upon

قَالَ أَبُو مُحَمَّدٍ عَلِيٌّ: وَأَمَّا تَشْنِيعُهُمْ عَلَيْنَا بِالْفَرْقِ بَيْنَ الْبَائِلِ الْمَذْكُورِ فِي الْحَدِيثِ وَغَيْرِ الْبَائِلِ الَّذِي لَمْ يُذْكَرْ فِيهِ، وَبَيْنَ الْفَأْرِ يَقَعُ فِي السَّمْنِ الْمَذْكُورِ فِي الْحَدِيثِ وَبَيْنَ وُقُوعِهِ فِي الزَّيْتِ أَوْ وُقُوعِ حَرَامٍ مَا فِي السَّمْنِ إذْ لَمْ يُذْكَرْ شَيْءٌ مِنْ ذَلِكَ فِي الْحَدِيثِ فَتَشَنُّعٌ فَاسِدٌ

them. Had they contemplated their own arguments, they would have recognized their error in equating the urinator about whom textual evidence exists with those about whom no such evidence exists. Is our distinction between the urinator and non-urinator not akin to their distinction with us between stagnant water cited in the hadith and non-stagnant water not cited therein? If not, let them explain to us: What necessitates differentiating between stagnant and non-stagnant water, yet does not necessitate differentiating between the urinator and non-urinator? For rulings pertaining to what is explicitly mentioned in the hadith cannot be extended to unmentioned cases without explicit text—just as their own distinction between one who unlawfully withholds water (making its consumption and use forbidden for him) and others for whom it remains lawful is valid. Are the urinator and non-urinator not analogous to the adulterer and non-adulterer, the thief and non-thief, the worshiper and non-worshiper? Each named category carries its distinct ruling. Is the scandalous criticism and manifest error not in applying a textual ruling specific to the urinator to other cases? Is this not equivalent to applying the thief's ruling to non-thieves, the adulterer's ruling to non-adulterers, the worshiper's ruling to non-worshipers—and so forth across the entire Sharia? We seek refuge in Allah from this.

L2948–2950

If they were fair to themselves, the Malikis and Shafiis should reject their own distinction between touching the penis with the palm (which invalidates ablution) and touching it with the back of the hand (which does not invalidate ablution). Likewise, the Malikis should reject their own distinction between the rulings concerning a noble woman and a lowly woman in marriage. Allah the Exalted did not differentiate between their private parts regarding permissibility, prohibition, dowry, or prescribed penalties. The Malikis and Shafi'is rejected their distinction between the ruling on ripe dates and unripe dates in 'araya transactions. Yet these Malikis differentiate with us between what a dog licks with its tongue and what it inserts its wet tail from the water into. They differentiate between cow urine and horse urine without any foundational text—but even more egregiously—they differentiate between the droppings of a free-roaming chicken and those of a confined chicken, and between the urine of a sheep that drank impure water and that of one

عَائِدٌ عَلَيْهِمْ، وَلَوْ تَدَبَّرُوا كَلَامَهُمْ لَعَلِمُوا أَنَّهُمْ مُخْطِئُونَ فِي التَّسْوِيَةِ بَيْنَ الْبَائِلِ الَّذِي وَرَدَ فِيهِ النَّصُّ وَغَيْرِ الْبَائِلِ الَّذِي لَا نَصَّ فِيهِ، وَهَلْ فَرْقُنَا بَيْنَ الْبَائِلِ وَغَيْرِ الْبَائِلِ إِلَّا كَفَرْقِهِمْ مَعْنَا بَيْنَ الْمَاءِ الرَّاكِدِ الْمَذْكُورِ فِي الْحَدِيثِ وَغَيْرِ الرَّاكِدِ الَّذِي لَمْ يُذْكَرْ فِيهِ؟ وَإِلَّا فَلْيَقُولُوا لَنَا مَا الَّذِي أَوْجَبَ الْفَرْقَ بَيْنَ الْمَاءِ الرَّاكِدِ وَغَيْرِ الرَّاكِدِ وَلَمْ يُوجِبْ الْفَرْقَ بَيْنَ الْبَائِلِ وَغَيْرِ الْبَائِلِ؟ إِلَّا أَنَّ مَا ذُكِرَ فِي الْحَدِيثِ لَا يَتَعَدَّى بِحُكْمِهِ إِلَى مَا لَمْ يُذْكَرْ فِيهِ بِغَيْرِ نَصٍّ، وَكَفَرْقِهِمْ بَيْنَ الْغَاصِبِ لِلْمَاءِ فَيَحْرُمُ عَلَيْهِ شُرْبُهُ وَاسْتِعْمَالُهُ، وَهُوَ حَلَالٌ لِغَيْرِ الْغَاصِبِ لَهُ، وَهَلْ الْبَائِلُ وَغَيْرُ الْبَائِلِ إِلَّا كَالزَّانِي وَغَيْرِ الزَّانِي وَالسَّارِقِ وَغَيْرِ السَّارِقِ وَالْمُصَلِّي وَغَيْرِ الْمُصَلِّي؟ لِكُلِّ ذِي اسْمٍ مِنْهَا حُكْمُهُ، وَهَلْ الشُّنْعَةُ وَالْخَطَأُ الظَّاهِرُ إِلَّا أَنْ يَرِدَ نَصٌّ فِي الْبَائِلِ فَيُحْمَلُ ذَلِكَ الْحُكْمُ عَلَى غَيْرِ الْبَائِلِ وَهَلْ هَذَا إِلَّا كَمَنْ حَمَلَ حُكْمَ السَّارِقِ عَلَى غَيْرِ السَّارِقِ، وَحُكْمَ الزَّانِي عَلَى غَيْرِ الزَّانِي، وَحُكْمَ الْمُصَلِّي عَلَى غَيْرِ الْمُصَلِّي، وَهَكَذَا فِي جَمِيعِ الشَّرِيعَةِ وَنَعُوذُ بِاَللَّهِ مِنْ هَذَا.

وَلَوْ أَنْصَفُوا أَنْفُسَهُمْ لَأَنْكَرَ الْمَالِكِيُّونَ وَالشَّافِعِيُّونَ عَلَى أَنْفُسِهِمْ تَفْرِيقَهُمْ بَيْنَ مَسِّ الذَّكَرِ بِبَاطِنِ الْكَفِّ فَيَنْقُضُ الْوُضُوءَ، وَبَيْنَ مَسٍّ بِظَاهِرِ الْكَفِّ فَلَا يَنْقُضُ الْوُضُوءَ، وَلَأَنْكَرَ الْمَالِكِيُّونَ عَلَى أَنْفُسِهِمْ تَفْرِيقَهُمْ بَيْنَ حُكْمِ الشَّرِيفَةِ وَحُكْمِ الدَّنِيَّةِ فِي النِّكَاحِ، وَمَا فَرَّقَ اللَّهُ تَعَالَى بَيْنَ فَرْجَيْهِمَا فِي التَّحْلِيلِ وَالتَّحْرِيمِ وَالصَّدَاقِ وَالْحَدِّ، وَلَأَنْكَرَ الْمَالِكِيُّونَ وَالشَّافِعِيُّونَ تَفْرِيقَهُمْ بَيْنَ حُكْمِ التَّمْرِ وَحُكْمِ الْبُسْرِ فِي الْعَرَايَا. وَهَؤُلَاءِ الْمَالِكِيُّونَ يُفَرِّقُونَ مَعَنَا بَيْنَ مَا أَدْخَلَ فِيهِ الْكَلْبُ لِسَانَهُ وَبَيْنَ مَا أَدْخَلَ فِيهِ ذَنَبَهُ الْمَبْلُولَ مِنْ الْمَاءِ، وَيُفَرِّقُونَ بَيْنَ بَوْلِ الْبَقَرَةِ وَبَوْلِ الْفَرَسِ، وَلَا نَصَّ فِي ذَلِكَ، بَلْ أَشْنَعُ مِنْ ذَلِكَ تَفْرِيقُهُمْ بَيْنَ خُرْءِ الدَّجَاجَةِ الْمُخَلَّاةِ وَخُرْئِهَا إِذَا كَانَتْ مَقْصُورَةً وَبَيْنَ بَوْلِ الشَّاةِ إِذَا شَرِبَتْ مَاءً نَجِسًا

which drank pure water. They distinguish between fava beans and their own kind, treating them in zakāh alongside lupins as a single category while classifying them as two distinct types in sales. Every rational person knows the distinction between one who urinates and one who defecates—based on a text addressing one but not the other—is clearer than distinguishing between today's fava beans and yesterday's, or between fava beans and their own kind, without any textual basis or evidence whatsoever.

L2951 The Shafiʿis distinguished between urine exiting from the urethra—deeming it purifiable with stones—and that same urine from the same person if it reaches the upper part of the glans penis, which they ruled unpurifiable except with water. They differentiated between an infant's urine and feces concerning pouring and washing. This is exactly what they criticized us for here. The Hanafis distinguished between a sheep's urine in a well—which invalidates the water—and the same quantity of its urine on a garment, which does not invalidate it. They differentiated between a camel's urine in a well, which contaminates it even if a single drop, whereas if two camel dung pellets from that same camel fall into the well's water, the water remains pure—this is the very distinction they condemned in us. They differentiated between horse dung on a garment exceeding the size of a mule dirham—invalidating prayer—and the urine of that same horse on the garment, which does not invalidate prayer unless it covers a quarter of the garment according to Abū Ḥanīfa or a span by a span according to Abū Yūsuf, in which case it does. Ẓufar among them said: "The urine of any animal whose meat is permissible is entirely pure, but its excrement is impure"—this is precisely what they criticized us for. They differentiated between vomit that fills the mouth and vomit that does not fill it, and between urine on the body—removable only with water—and urine on a garment—removable without water. Were we to compile their inconsistencies, it would fill a book.

L2952–2954 If they say, "Whoever adheres to this statement of yours regarding the distinction between the one who urinates and the one who defecates in standing water..." Before you? We said: The Messenger of Allah (peace be upon him)

وَبَيْنَ بَوْلِهَا إِذَا شَرِبَتْ مَاءً طَاهِرًا، وَفَرَّقُوا بَيْنَ الْفُولِ وَبَيْنَ نَفْسِهِ، فَجَعَلُوهُ فِي الزَّكَاةِ مَعَ الْجُلُّبَانِ صِنْفًا وَاحِدًا، وَجَعَلُوهُمَا فِي الْبُيُوعِ صِنْفَيْنِ، وَكُلُّ ذِي عَقْلٍ يَدْرِي أَنَّ الْفَرْقَ بَيْنَ الْبَائِلِ وَالْمُتَغَوِّطِ بِنَصٍّ جَاءَ فِي أَحَدِهِمَا دُونَ الْآخَرِ أَوْضَحُ مِنْ الْفَرْقِ بَيْنَ الْفُولِ أَمْسِ وَالْفُولِ الْيَوْمَ، وَبَيْنَ الْفُولِ وَنَفْسِهِ بِغَيْرِ نَصٍّ وَلَا دَلِيلٍ أَصْلًا.

وَهَؤُلَاءِ الشَّافِعِيُّونَ فَرَّقُوا بَيْنَ الْبَوْلِ فِي مَخْرَجِهِ مِنْ الْإِحْلِيلِ، فَجَعَلُوهُ يَطْهُرُ بِالْحِجَارَةِ، وَبَيْنَ ذَلِكَ الْبَوْلِ نَفْسِهِ مِنْ ذَلِكَ الْإِنْسَانِ نَفْسِهِ إذَا بَلَغَ أَعْلَى الْحَشَفَةِ - فَجَعَلُوهُ لَا يَطْهُرُ إلَّا بِالْمَاءِ، وَفَرَّقُوا بَيْنَ بَوْلِ الرَّضِيعِ وَبَيْنَ غَائِطِهِ فِي الصَّبِّ وَالْغَسْلِ وَهَذَا هُوَ الَّذِي أَنْكَرُوا عَلَيْنَا هَهُنَا بِعَيْنِهِ. وَهَؤُلَاءِ الْحَنَفِيُّونَ فَرَّقُوا بَيْنَ بَوْلِ الشَّاةِ فِي الْبِئْرِ فَيُفْسِدُهَا، وَبَيْنَ ذَلِكَ الْمِقْدَارِ نَفْسِهِ مِنْ بَوْلِهَا بِعَيْنِهَا فِي الثَّوْبِ فَلَا يُفْسِدُهُ، وَفَرَّقُوا بَيْنَ بَوْلِ الْبَعِيرِ فِي الْبِئْرِ فَيُفْسِدُهُ وَلَوْ أَنَّهُ نُقْطَةٌ، فَإِنْ وَقَعَتْ بَعْرَتَانِ مِنْ بَعْرِ ذَلِكَ الْجَمَلِ فِي مَاءِ الْبِئْرِ لَمْ يُفْسِدْ الْمَاءُ، وَهَذَا نَفْسُ مَا أَنْكَرُوهُ عَلَيْنَا، وَفَرَّقُوا بَيْنَ رَوْثِ الْفَرَسِ يَكُونُ فِي الثَّوْبِ مِنْهُ أَكْثَرُ مِنْ قَدْرِ الدِّرْهَمِ الْبَغْلِيِّ فَيُفْسِدُ الصَّلَاةَ، وَبَيْنَ بَوْلِ ذَلِكَ الْفَرَسِ نَفْسِهِ يَكُونُ فِي الثَّوْبِ فَلَا يُفْسِدُ الصَّلَاةَ، إلَّا أَنْ يَكُونَ رُبُعَ الثَّوْبِ عِنْدَ أَبِي حَنِيفَةَ، وَشِبْرًا فِي شِبْرٍ عِنْدَ أَبِي يُوسُفَ فَيُفْسِدُهَا حِينَئِذٍ، وَزُفَرُ مِنْهُمْ يَقُولُ: بَوْلُ مَا يُؤْكَلُ لَحْمُهُ طَاهِرٌ كُلُّهُ وَرَجِيعُهُ نَجِسٌ، وَهَذَا هُوَ الَّذِي أَنْكَرُوا عَلَيْنَا. وَفَرَّقُوا بَيْنَ مَا يَمْلَأُ الْفَمَ مِنْ الْقَلْسِ وَبَيْنَ مَا لَا يَمْلَأُ الْفَمَ مِنْهُ، وَفَرَّقُوا بَيْنَ الْبَوْلِ فِي الْجَسَدِ فَلَا يُزِيلُهُ إلَّا الْمَاءُ، وَبَيْنَ الْبَوْلِ فِي الثَّوْبِ فَيُزِيلُهُ غَيْرُ الْمَاءِ. وَلَوْ تَتَبَّعْنَا سَقَطَاتِهِمْ لَقَامَ مِنْهَا دِيوَانٌ.

فَإِنْ قَالُوا: مَنْ قَالَ بِقَوْلِكُمْ هَذَا فِي الْفَرْقِ بَيْنَ الْبَائِلِ وَالْمُتَغَوِّطِ فِي الْمَاءِ الرَّاكِدِ قَبْلَكُمْ؟ قُلْنَا: قَالَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي لَا يَأْتِيهِ الْبَاطِلُ مِنْ بَيْنِ يَدَيْهِ وَلَا

– to whom falsehood cannot approach from before or behind – stated it, for he clarified to us the ruling regarding one who urinates but remained silent about one who defecates, sniffs mucus, or blows their nose. But tell us: Who among Adam's descendants ever spoke of these distinctions before you? Such as differentiating between a sheep's urine in a well and its urine on a garment; between its urine on the body and its urine on clothing; between the urine of a sheep that drinks impure water and its urine when drinking pure water; and between urine at the tip of the glans versus urine above it? This is what no one ever articulated before them. If only they had expressed it initially in an intelligible or rational manner. Similarly, all their other mentioned distinctions follow this pattern. All praise belongs to Allah, Lord of the worlds.[36]

مِنْ خَلْفِهِ - إِذْ بَيَّنَ لَنَا حُكْمَ الْبَائِلِ وَسَكَتَ عَنْ الْمُتَغَوِّطِ وَالْمُتَنَخِّمِ وَالْمُتَمَخِّطِ، وَلَكِنْ أَخْبِرُونَا: مَنْ قَالَ مِنْ وَلَدِ آدَمَ بِفُرُوقِكُمْ هَذِهِ قَبْلَكُمْ؟ مِنْ الْفَرْقِ بَيْنَ بَوْلِ الشَّاةِ فِي الْبِئْرِ وَبَوْلِهَا فِي الثَّوْبِ، وَبَيْنَ بَوْلِهَا فِي الْجَسَدِ وَبَوْلِهَا فِي الثَّوْبِ؟ وَبَيْنَ بَوْلِ الشَّاةِ تَشْرَبُ مَاءً نَجِسًا وَبَوْلِهَا إِذَا شَرِبَتْ مَاءً طَاهِرًا؟ وَبَيْنَ الْبَوْلِ فِي رَأْسِ الْحَشَفَةِ وَبَيْنَهُ فَوْقَ ذَلِكَ؟ فَهَذَا هُوَ الَّذِي لَمْ يَقُلْهُ أَحَدٌ قَطُّ قَبْلَهُمْ وَلَيْتَهُمْ إِذْ قَالُوهُ مُبْتَدِئِينَ قَالُوهُ بِوَجْهٍ يُفْهَمُ أَوْ يُعْقَلُ، وَكَذَلِكَ سَائِرُ فُرُوقِهِمْ الْمَذْكُورَةِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L2955 We do not reject statements conveyed by the Quran and Sunnah—even if we have not identified a specifically named speaker—while they deny these yet act accordingly. Thus, reproaches necessarily bind them, not us. What we utterly reject is speaking about Allah's religion and attributing to Him—Exalted is He—what neither He nor His Messenger (peace and blessings be upon him) has ever uttered. By Allah, this is the true wrong, even if all people on earth were to assert it.

وَنَحْنُ لَا نُنْكِرُ الْقَوْلَ بِمَا جَاءَ بِهِ الْقُرْآنُ وَالسُّنَّةُ، وَإِنْ لَمْ نَعْرِفْ قَائِلًا مُسَمًّى بِهِ وَهُمْ يُنْكِرُونَ ذَلِكَ وَيَفْعَلُونَهُ، فَاللَّوَائِمُ لَهُمْ لَازِمَةٌ لَا لَنَا، وَإِنَّمَا نُنْكِرُ غَايَةَ الْإِنْكَارِ الْقَوْلَ فِي دِينِ اللَّهِ تَعَالَى وَعَلَى اللَّهِ مَا لَمْ يَقُلْهُ تَعَالَى قَطُّ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَذَا وَاَللَّهِ هُوَ الْمُنْكَرُ حَقًّا، وَلَوْ قَالَ أَهْلُ الْأَرْضِ.

L2956 Similarly, if they ask us: "Who among those before you distinguished between clarified butter in which a mouse has fallen and non-clarified butter?" Our answer is precisely what we have already mentioned. Moreover, we have been transmitted the distinction between them from Ibn Umar, as narrated to us by Ahmad ibn Muhammad ibn al-Jasur: narrated to us Muhammad ibn Isa ibn Rifa'ah, narrated to us Ali ibn Abdul Aziz, narrated to us Abu Ubayd al-Qasim ibn Sallam, narrated to us Hushaym from Ma'mar from Aban from Rashid, the freedman of Quraysh, from Ibn Umar - when he was asked about a mouse that fell into clarified butter, he said: "If it was liquid, discard all of it. If it was solid, discard the mouse and what surrounds it, and consume what remains."

وَكَذَلِكَ إِنْ قَالُوا لَنَا: مَنْ فَرَّقَ قَبْلَكُمْ بَيْنَ السَّمْنِ يَقَعُ فِيهِ الْفَأْرُ وَبَيْنَ غَيْرِ السَّمْنِ فَجَوَابُنَا هُوَ الَّذِي ذَكَرْنَا بِعَيْنِهِ، فَكَيْفَ وَقَدْ رُوِّينَا الْفَرْقَ بَيْنَهُمَا عَنْ ابْنِ عُمَرَ، كَمَا حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا مُحَمَّدُ بْنُ عِيسَى بْنِ رِفَاعَةَ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا أَبُو عُبَيْدٍ الْقَاسِمُ بْنُ سَلَّامٍ ثنا هُشَيْمٌ عَنْ مَعْمَرٍ عَنْ أَبَانَ عَنْ رَاشِدٍ مَوْلَى قُرَيْشٍ عَنْ ابْنِ عُمَرَ أَنَّهُ سُئِلَ عَنْ فَأْرَةٍ وَقَعَتْ فِي سَمْنٍ فَقَالَ: إِنْ كَانَ مَائِعًا فَأَلْقِهِ كُلَّهُ، وَإِنْ كَانَ جَامِدًا فَأَلْقِ الْفَأْرَةَ وَمَا حَوْلَهَا وَكُلَّ مَا بَقِيَ.

L2957 Hummam narrated to us, Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabarī narrated to us, Abd al-Razzaq narrated to us from Ma'mar

حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ وَسُفْيَانَ الثَّوْرِيِّ كِلَاهُمَا عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ عَنْ ابْنِ عُمَرَ

[36] **Qur'an references (L2952):** Qur'an 41:42 (Fussilat).

and Sufyan al-Thawri, both of whom narrated from Ayyub al-Sikhtiyani from Nafi', the client of Ibn Umar, from Ibn Umar that he was asked about a mouse that fell into twenty farqs of oil. Ibn Umar said: "Use the oil for lamps and anoint the leather with it." Through the same chain to Abd al-Razzaq from Ibn Jurayj, who said: I asked Ata': "A mouse falls into melted butter or oil and dies in it. It is taken out having decomposed or it dies while intact without decomposing?" He replied: "It is the same if it dies in it. As for the oil, strain it and use it for anointing if it has not become putrid." I asked: "What about the butter? Is it strained and then eaten?" He said: "No, it is not to be eaten. It is like the state of something used to anoint the head."

أَنَّهُ سُئِلَ عَنْ فَأْرَةٍ وَقَعَتْ فِي عِشْرِينَ فَرْقًا مِنْ زَيْتٍ، فَقَالَ ابْنُ عُمَرَ: اسْتَسْرِجُوا بِهِ وَادْهُنُوا بِهِ الْأُدْمَ. وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: الْفَأْرَةُ تَقَعُ فِي السَّمْنِ الذَّائِبِ فَتَمُوتُ فِيهِ أَوْ فِي الدُّهْنِ، فَتُؤْخَذُ قَدْ تَسَلَّخَتْ أَوْ قَدْ مَاتَتْ وَهِيَ شَدِيدَةٌ لَمْ تَتَسَلَّخْ؟ فَقَالَ سَوَاءٌ إذَا مَاتَتْ فِيهِ، فَأَمَّا الدُّهْنُ فَيُنَشُّ فَيُدْهَنُ بِهِ إنْ لَمْ تُقَذِّرْهُ، قُلْت: فَالسَّمْنُ أَيُنَشُّ فَيُؤْكَلُ؟ قَالَ لَا، لَيْسَ مَا يُؤْكَلُ، كَهَيْئَةِ شَيْءٍ فِي الرَّأْسِ يُدْهَنُ بِهِ.

L2958–2959 Abu Muhammad said: Olive oil is oil by the explicit text of the Quran. Allah the Exalted said: "And a tree that springs forth from Mount Sinai, producing oil and seasoning for those who eat." [Al-Mu'minun: 20] Malik maintained washing olive oil when impurity falls into it, then it is eaten. Ibn al-Qasim narrated from Malik concerning a drop of wine that falls into water or food: that none of it is invalidated, and that such water may be drunk and such food may be eaten.[37]

قَالَ أَبُو مُحَمَّدٍ: وَالزَّيْتُ دُهْنٌ بِنَصِّ الْقُرْآنِ: قَالَ تَعَالَى: {وَشَجَرَةً تَخْرُجُ مِنْ طُورِ سَيْنَاءَ تَنْبُتُ بِالدُّهْنِ وَصِبْغٍ لِلْآكِلِينَ} [المؤمنون: ٢٠] وَقَدْ رَأَى مَالِكٌ غَسْلَ الزَّيْتِ تَقَعُ فِيهِ النَّجَاسَةُ، ثُمَّ يُؤْكَلُ. وَقَدْ رَوَى ابْنُ الْقَاسِمِ عَنْ مَالِكٍ فِي النُّقْطَةِ مِنْ الْخَمْرِ تَقَعُ فِي الْمَاءِ وَالطَّعَامِ: أَنَّهُ لَا يَفْسُدُ شَيْءٌ مِنْ ذَلِكَ، وَأَنَّ ذَلِكَ الْمَاءَ يُشْرَبُ وَذَلِكَ الطَّعَامَ يُؤْكَلُ.

L2960 Ali said: It is said to the Ḥanafīs: You inconsistently differentiate between rulings on impurities in terms of severity and leniency through your opinions without any textual basis from Allah the Exalted, nor from His Messenger—may Allah's peace and blessings be upon him—nor from consensus or analogy. Some impurities, according to you, do not defile the garment, body, leather sock, or sandal unless the amount from it exceeds the Baghlī dirham—and perhaps even less. Others do not defile these things unless they cover a quarter of the garment, yet we do not know your ruling regarding the body, sandal, leather sock, or the ground. You distinguish between the ruling of the same impurity when on garments or bodies and its ruling in wells, asserting that a drop of wine or urine defiles a well but does not defile a garment or body unless it exceeds the Baghlī dirham. Inform us about a pond: if one end is stirred while the other remains still, and a drop of dog's urine, a drop of sheep's urine, a dead nipple, or a putrefying dead ele-

قَالَ عَلِيٌّ: وَيُقَالُ لِلْحَنَفِيِّينَ: أَنْتُمْ تُخَالِفُونَ بَيْنَ أَحْكَامِ النَّجَاسَاتِ فِي الشِّدَّةِ وَالْخِفَّةِ بِآرَائِكُمْ بِغَيْرِ نَصٍّ مِنْ اللَّهِ تَعَالَى وَلَا مِنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا مِنْ إجْمَاعٍ وَلَا قِيَاسٍ، فَبَعْضُهَا عِنْدَكُمْ لَا يُنَجِّسُ الثَّوْبَ وَالْبَدَنَ وَالْخُفَّ وَالنَّعْلَ مِنْهُ إلَّا مِقْدَارٌ أَكْبَرُ مِنْ الدِّرْهَمِ الْبَغْلِيِّ وَرُبَّمَا قَلَّ، وَبَعْضُهَا لَا يُنَجِّسُ هَذِهِ الْأَشْيَاءَ إلَّا مَا كَانَ رُبُعَ الثَّوْبِ، وَلَا نَدْرِي مَا قَوْلُكُمْ فِي الْجَسَدِ وَالنَّعْلِ وَالْخُفِّ وَالْأَرْضِ، وَبَعْضُهَا تُفَرِّقُونَ بَيْنَ حُكْمِهَا فِي نَفْسِهَا فِي الثَّوْبِ وَالْجَسَدِ وَبَيْنَ حُكْمِهَا فِي نَفْسِهَا فِي الْبِئْرِ، فَتَقُولُونَ: إنَّ قَطْرَةَ خَمْرٍ أَوْ بَوْلٍ تُنَجِّسُ الْبِئْرَ وَلَا تُنَجِّسُ الثَّوْبَ وَلَا الْجَسَدَ حَتَّى يَكُونَ ذَلِكَ أَكْثَرَ مِنْ الدِّرْهَمِ الْبَغْلِيِّ، فَأَخْبِرُونَا عَنْ غَدِيرٍ إذَا حُرِّكَ طَرَفُهُ الْوَاحِدُ لَمْ يَتَحَرَّكْ الْآخَرُ وَقَعَتْ فِيهِ نُقْطَةُ بَوْلٍ

[37] **Qur'an references (L2959):** Qur'an 23:20 (Al-Mu'minun).

phant falls into it—are all these equal? If they equate them, they invalidate their principle of intensifying rulings for certain impurities over others and abandon their claim that two camel dung pellets or two sheep dung pellets do not defile a well. If they differentiate between all these cases, we will demand their detailed explanation, which would only increase mockery and confusion.

كَلْبٍ أَوْ نُقْطَةُ بَوْلِ شَاةٍ أَوْ حَلَمَةٌ مَيِّتَةٌ أَوْ فِيلٌ مَيِّتٌ مُتَفَسِّخٌ، هَلْ كُلُّ هَذَا سَوَاءٌ أَمْ لَا؟ فَإِنْ سَاوَوْا بَيْنَ ذَلِكَ كُلِّهِ نَقَضُوا أَصْلَهُمْ فِي تَغْلِيظِ بَعْضِ النَّجَاسَاتِ دُونَ بَعْضٍ، وَتَرَكُوا قَوْلَهُمْ إِنَّ بَعْرَتَيْنِ مِنْ بَعْرِ الْإِبِلِ أَوْ بَعْرَتَيْنِ مِنْ بَعْرِ الْغَنَمِ لَا تُنَجِّسُ الْبِئْرَ، وَإِنْ فَرَّقُوا بَيْنَ كُلِّ ذَلِكَ سَأَلْنَاهُمْ تَفْصِيلَ ذَلِكَ لِيَكُونَ ذَلِكَ زِيَادَةً فِي السُّخْرِيَةِ وَالتَّخْلِيطِ.

L2961 Ali said: They asked us, "What is your ruling regarding wine, urine, or blood that falls into water such that none of those substances manifests any taste, color, or odor in the water? Does the wine, urine, and blood turn into water, or does each substance remain in its inherent state? If all of them have become water, how is this possible? But if each remains in its inherent state, then you have permitted wine, urine, and blood—a grave matter contrary to Islam?"

قَالَ عَلِيٌّ: وَقَالُوا لَنَا: مَا قَوْلُكُمْ فِي خَمْرٍ أَوْ دَمٍ أَوْ بَوْلٍ وَقَعَ ذَلِكَ فِي الْمَاءِ فَلَمْ يَظْهَرْ لِشَيْءٍ مِنْ ذَلِكَ فِي الْمَاءِ طَعْمٌ وَلَا لَوْنٌ وَلَا رِيحٌ، هَلْ صَارَ الْخَمْرُ وَالْبَوْلُ وَالدَّمُ مَاءً؟ أَمْ بَقِيَ كُلُّ ذَلِكَ بِحَسَبِهِ؟ فَإِنْ كَانَ صَارَ كُلُّ ذَلِكَ مَاءً فَكَيْفَ هَذَا؟ وَإِنْ كَانَ بَقِيَ كُلُّ ذَلِكَ بِحَسَبِهِ فَقَدْ أَبَحْتُمُ الْخَمْرَ وَالْبَوْلَ وَالدَّمَ، وَهَذَا عَظِيمٌ وَخِلَافٌ لِلْإِسْلَامِ؟

L2962–2963 Abū Muḥammad said: Our answer—and with Allah, the Exalted, is success—is that the entire world constitutes a single substance whose parts differ solely in their accidents and attributes. According to how each part of the world differs in attributes, the names of those parts—upon which Allah Almighty's rulings in Islamic law are applied—also differ. These names form the basis for communication and mutual understanding among all people in all languages. Thus, grapes are grapes, not raisins; raisins are not grapes; grape juice is neither fresh grape nor wine; wine is not grape juice; vinegar is not wine. The religious rulings for each differ, though the underlying essence remains one. Each possesses attributes that establish its definition. As long as those attributes remain present in that essence, it is water and retains water's ruling.

قَالَ أَبُو مُحَمَّدٍ: جَوَابُنَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: إِنَّ الْعَالَمَ كُلَّهُ جَوْهَرَةٌ وَاحِدَةٌ تَخْتَلِفُ أَبْعَاضُهَا بِأَعْرَاضِهَا وَبِصِفَاتِهَا فَقَطْ. وَبِحَسَبِ اخْتِلَافِ صِفَاتِ كُلِّ جُزْءٍ مِنْ الْعَالَمِ تَخْتَلِفُ أَسْمَاءُ تِلْكَ الْأَجْزَاءِ الَّتِي عَلَيْهَا تَقَعُ أَحْكَامُ اللَّهِ عَزَّ وَجَلَّ فِي الدِّيَانَةِ. وَعَلَيْهَا يَقَعُ التَّخَاطُبُ وَالتَّفَاهُمُ مِنْ جَمِيعِ النَّاسِ بِجَمِيعِ اللُّغَاتِ، فَالْعِنَبُ عِنَبٌ وَلَيْسَ زَبِيبًا، وَالزَّبِيبُ لَيْسَ عِنَبًا، وَعَصِيرُ الْعِنَبِ لَيْسَ عِنَبًا وَلَا خَمْرًا، وَالْخَمْرُ لَيْسَ عَصِيرًا، وَالْخَلُّ لَيْسَ خَمْرًا، وَأَحْكَامُ كُلِّ ذَلِكَ فِي الدِّيَانَةِ تَخْتَلِفُ وَالْعَيْنُ الْحَامِلَةُ وَاحِدَةٌ، وَكُلُّ ذَلِكَ لَهُ صِفَاتٌ، مِنْهَا يَقُومُ حَدُّهُ، فَمَا دَامَتْ تِلْكَ الصِّفَاتُ فِي تِلْكَ الْعَيْنِ فَهِيَ مَاءٌ وَلَهُ حُكْمُ الْمَاءِ.

L2964 When those attributes cease to exist in that substance, it is no longer water and does not retain the ruling of water. Similarly, blood, wine, urine, and all things in the world—each category possesses defining attributes as long as they remain inherent to it. Thus, it is wine subject to the ruling of wine, blood subject to the ruling of blood, urine subject to the ruling of urine, or other such matters. When these attributes are removed, the substance ceases

فَإِذَا زَالَتْ تِلْكَ الصِّفَاتُ عَنْ تِلْكَ الْعَيْنِ لَمْ تَكُنْ مَاءً وَلَمْ يَكُنْ لَهَا حُكْمُ الْمَاءِ وَكَذَلِكَ الدَّمُ وَالْخَمْرُ وَالْبَوْلُ وَكُلُّ مَا فِي الْعَالَمِ لِكُلِّ نَوْعٍ مِنْهُ صِفَاتٌ مَا دَامَتْ فِيهِ فَهُوَ خَمْرٌ لَهُ حُكْمُ الْخَمْرِ، أَوْ دَمٌ لَهُ حُكْمُ الدَّمِ، أَوْ بَوْلٌ لَهُ حُكْمُ الْبَوْلِ أَوْ غَيْرُ ذَلِكَ، فَإِذَا زَالَتْ عَنْهُ

to be wine, water, blood, urine, or the thing previously named due to those attributes. If the wine, urine, or blood you mentioned is introduced into water, vinegar, milk, or another substance, and the attributes that define blood as blood, wine as wine, or urine as urine are nullified—while the attributes of the receiving substance remain according to their inherent nature—then that intruding matter is not classified as wine, blood, or urine. Rather, it becomes water in essence, milk in essence, and so forth. If the intruding substance (e.g., blood, wine, or urine) prevails, retaining its defining attributes and overriding those of the water, milk, or vinegar, it is no longer water, vinegar, or milk. Instead, it becomes urine in essence, wine in essence, or blood in essence. If the attributes of the intruding substance persist without nullifying those of the receiving substance, it becomes a combination of water and wine, water and urine, water and blood, milk and urine, blood and vinegar, and so on for all things. We are not forbidden from using the permissible portion of such mixtures if we can isolate it from the impermissible. However, we are unable to utilize it except by using the impermissible portion, and our inability arises only because doing so would require this. Otherwise, it remains ritually pure, a purifying agent, and lawful according to its inherent state. This principle applies universally. Blood undergoes chemical transformation (istihalah) to become flesh—thus being flesh, not blood, even though the physical substance remains unchanged. Flesh undergoes chemical transformation (istihalah) to become fat—ceasing to be flesh and becoming fat, even though the physical substance remains one.

لَمْ تَكُنْ تِلْكَ الْعَيْنُ خَمْرًا وَلَا مَاءً وَلَا دَمًا وَلَا بَوْلًا وَلَا الشَّيْءَ الَّذِي كَانَ ذَلِكَ الِاسْمُ وَاقِعًا مِنْ أَجْلِ تِلْكَ الصِّفَاتِ عَلَيْهِ، فَإِذَا سَقَطَ مَا ذَكَرْتُمْ مِنْ الْخَمْرِ أَوْ الْبَوْلِ أَوْ الدَّمِ فِي الْمَاءِ أَوْ فِي الْخَلِّ أَوْ فِي اللَّبَنِ أَوْ فِي غَيْرِ ذَلِكَ، فَإِنْ بَطَلَتْ الصِّفَاتُ الَّتِي مِنْ أَجْلِهَا سُمِّيَ الدَّمُ دَمًا وَالْخَمْرُ خَمْرًا وَالْبَوْلُ بَوْلًا، وَبَقِيَتْ صِفَاتُ الشَّيْءِ الَّذِي وَقَعَ فِيهِ مَا ذَكَرْنَا بِحَسَبِهَا، فَلَيْسَ ذَلِكَ الْجِرْمُ الْوَاقِعُ يُعَدُّ خَمْرًا وَلَا دَمًا وَلَا بَوْلًا، بَلْ هُوَ مَاءٌ عَلَى الْحَقِيقَةِ أَوْ لَبَنٌ عَلَى الْحَقِيقَةِ، وَهَكَذَا فِي كُلِّ شَيْءٍ. فَإِنْ غَلَبَ الْوَاقِعُ مِمَّا ذَكَرْنَا وَبَقِيَتْ صِفَاتُهُ بِحَسَبِهَا وَبَطَلَتْ صِفَاتُ الْمَاءِ أَوْ اللَّبَنِ أَوْ الْخَلِّ، فَلَيْسَ هُوَ مَاءً بَعْدُ وَلَا خَلًّا وَلَا لَبَنًا، بَلْ هُوَ بَوْلٌ عَلَى الْحَقِيقَةِ أَوْ خَمْرٌ عَلَى الْحَقِيقَةِ أَوْ دَمٌ عَلَى الْحَقِيقَةِ، فَإِنْ بَقِيَتْ صِفَاتُ الْوَاقِعِ وَلَمْ تَبْطُلْ صِفَاتُ مَا وَقَعَ فَهُوَ فِيهِ مَاءٌ وَخَمْرٌ، أَوْ مَاءٌ وَبَوْلٌ، أَوْ مَاءٌ وَدَمٌ، أَوْ لَبَنٌ وَبَوْلٌ، أَوْ دَمٌ وَخَلٌّ، وَهَكَذَا فِي كُلِّ شَيْءٍ. وَلَمْ يُحَرَّمْ عَلَيْنَا اسْتِعْمَالُ الْحَلَالِ مِنْ ذَلِكَ لَوْ أَمْكَنَنَا تَخْلِيصُهُ مِنْ الْحَرَامِ، لَكِنَّا لَا نَقْدِرُ عَلَى اسْتِعْمَالِهِ إلَّا بِاسْتِعْمَالِ الْحَرَامِ فَعَجَزْنَا عَنْهُ فَقَطْ، وَإِلَّا فَهُوَ طَاهِرٌ مُطَهِّرٌ حَلَالٌ بِحَسَبِهِ كَمَا كَانَ. وَهَكَذَا كُلُّ شَيْءٍ فِي الْعَالَمِ فَالدَّمُ يَسْتَحِيلُ لَحْمًا، فَهُوَ حِينَئِذٍ لَحْمٌ وَلَيْسَ دَمًا، وَالْعَيْنُ وَاحِدَةٌ، وَاللَّحْمُ يَسْتَحِيلُ شَحْمًا فَلَيْسَ لَحْمًا بَعْدُ بَلْ هُوَ شَحْمٌ وَالْعَيْنُ وَاحِدَةٌ.

L2965–2967 Dung, feces, urine, water, and soil - all these substances are transformed by the date palm into leaves and fresh dates. At that stage, none of these substances remain as dung, soil, or water; rather, they become lawful, wholesome fresh dates. The substance remains one, and likewise for all vegetation. Water transforms into ascending air and solidified salt, so it is no longer water—nor is ablution valid with it—while the substance remains one. Then that air and salt revert to water. At that point, it is neither air nor salt but permissible water with which ablution and ritual bathing are valid. If you reject this and argue: “Even if its attributes vanish, it remains the same substance,” you

وَالزِّبْلُ وَالْبِرَازُ وَالْبَوْلُ وَالْمَاءُ وَالتُّرَابُ يَسْتَحِيلُ كُلُّ ذَلِكَ فِي النَّخْلَةِ وَرَقًا وَرُطَبًا، فَلَيْسَ شَيْءٌ مِنْ ذَلِكَ حِينَئِذٍ زِبْلًا وَلَا تُرَابًا وَلَا مَاءً، بَلْ هُوَ رُطَبٌ حَلَالٌ طَيِّبٌ، وَالْعَيْنُ وَاحِدَةٌ، وَهَكَذَا فِي سَائِرِ النَّبَاتِ كُلِّهِ، وَالْمَاءُ يَسْتَحِيلُ هَوَاءً مُتَصَعِّدًا وَمِلْحًا جَامِدًا، فَلَيْسَ هُوَ مَاءً بَلْ وَلَا يَجُوزُ الْوُضُوءُ بِهِ وَالْعَيْنُ وَاحِدَةٌ، ثُمَّ يَعُودُ ذَلِكَ الْهَوَاءُ وَذَلِكَ الْمِلْحُ مَاءً. فَلَيْسَ حِينَئِذٍ هَوَاءً وَلَا مِلْحًا، بَلْ هُوَ مَاءٌ حَلَالٌ يَجُوزُ الْوُضُوءُ بِهِ وَالْغُسْلُ

must inevitably permit ablution with urine—since it is transformed water without doubt—and with sweat, as it too is transformed water. You would also be obliged to prohibit fruits nourished with dung or excrement, and to forbid chicken meat because they are transformed from unlawful substances. Should they object: "We observe blood, wine, or urine cast into water without altering its color, smell, or taste, but when repeatedly added, their attributes manifest. Why does the second instance not become water like the first?" We respond: This question is not ours to answer. You persist in your detestable habit of challenging Allah the Exalted and seeking to amend His rulings and actions. Direct this question to Him—not us—for He permitted the first and not the second by His will, not ours. His answer to this query will confront you on the Day of Resurrection with which the questioner's remorse will be prolonged. Allah has forbidden such questioning, as He declares: *He is not questioned about what He does, but they will be questioned* [21:23]. Yet we answer you in compliance with Allah's command: *Stand firm in justice for Allah* [5:8]. We affirm: This is Allah's creation. He fashioned all things as He willed—none revises His decree, nor is He questioned about His acts. We observe air elevating water through desiccation until it becomes ascending vapor, ceasing entirely to be water.[38]

فَإِنْ أَنْكَرْتُمْ هَذَا وَقُلْتُمْ: إِنَّهُ وَإِنْ ذَهَبَتْ صِفَاتُهُ فَهُوَ الَّذِي كَانَ نَفْسَهُ لَزِمَكُمْ وَلَا بُدَّ إِبَاحَةُ الْوُضُوءِ بِالْبَوْلِ، لِأَنَّهُ مَاءٌ مُسْتَحِيلٌ، بِلَا شَكٍّ، وَبِالْعَرَقِ، لِأَنَّهُ مَاءٌ مُسْتَحِيلٌ. وَلَزِمَكُمْ تَحْرِيمُ الثِّمَارِ الْمُغَذَّاةِ بِالزِّبْلِ وَبِالْعَذِرَةِ، وَتَحْرِيمُ لُحُومِ الدَّجَاجِ، لِأَنَّهَا مُسْتَحِيلَةٌ عَنِ الْمُحَرَّمَاتِ. فَإِنْ قَالُوا: فَنَحْنُ نَجِدُ الدَّمَ يُلْقَى فِي الْمَاءِ أَوِ الْخَمْرِ أَوِ الْبَوْلِ فَلَا يَظْهَرُ لَهُ لَوْنٌ وَلَا رِيحٌ وَلَا طَعْمٌ فَيُوَاتِرُ طَرْحُهُ فَتَظْهَرُ صِفَاتُهُ فِيهِ. فَهَلَّا صَارَ الثَّانِي مَاءً كَمَا صَارَ الْأَوَّلُ؟ قُلْنَا لَهُمْ: هَذَا السُّؤَالُ لَسْنَا نَحْنُ الْمَسْئُولِينَ بِهِ لَكِنْ جَرِيتُمْ فِيهِ عَلَى عَادَتِكُمُ الذَّمِيمَةِ فِي التَّعَقُّبِ عَلَى اللَّهِ تَعَالَى وَالِاسْتِدْرَاكِ عَلَيْهِ فِي أَحْكَامِهِ تَعَالَى وَأَفْعَالِهِ، وَإِيَّاهُ تَعَالَى تَسْأَلُونَ عَنْ هَذَا لَا نَحْنُ، لِأَنَّهُ هُوَ الَّذِي أَحَلَّ الْأَوَّلَ وَلَمْ يُحِلَّ الثَّانِيَ كَمَا شَاءَ لَا نَحْنُ وَجَوَابُهُ عَزَّ وَجَلَّ لَكُمْ عَلَى هَذَا السُّؤَالِ يَأْتِيكُمْ يَوْمَ الْقِيَامَةِ بِمَا تَطُولُ عَلَيْهِ نَدَامَةُ السَّائِلِ، لِأَنَّ اللَّهَ تَعَالَى حَرَّمَ هَذَا السُّؤَالَ إِذْ يَقُولُ تَعَالَى: {لا يُسْأَلُ عَمَّا يَفْعَلُ وَهُمْ يُسْأَلُونَ} [الأنبياء: ٢٣] ثُمَّ نَحْنُ نُجِيبُكُمْ قَائِمِينَ لِلَّهِ تَعَالَى كَمَا افْتَرَضَ عَزَّ وَجَلَّ عَلَيْنَا إِذْ يَقُولُ: {كُونُوا قَوَّامِينَ لِلَّهِ} [المائدة: ٨] فَنَقُولُ لَكُمْ: هَذَا خَلْقُ اللَّهِ تَعَالَى مَا خَلَقَ كُلَّهُ مِنْ ذَلِكَ كُلِّهِ كَمَا شَاءَ لَا مُعَقِّبَ لِحُكْمِهِ وَلَا يُسْأَلُ عَمَّا يَفْعَلُ. وَنَحْنُ نَجِدُ الْمَاءَ يُصَعِّدُهُ الْهَوَاءُ بِالتَّجْفِيفِ فَيَصِيرُ الْمَاءُ هَوَاءً مُصَعَّدًا وَلَيْسَ مَاءً أَصْلًا.

L2968 When the water transformed into vapor becomes abundant in the atmosphere, it returns to its original state as water, and Allah the Exalted sends it down from the clouds as rain. This is the very argument you cited against us: that blood is concealed in water and silver is dissolved in copper. When they are traced, they become evident.

حَتَّى إِذَا كَثُرَ الْمَاءُ الْمُسْتَحِيلُ هَوَاءً فِي الْجَوِّ عَادَ مَاءً كَمَا كَانَ وَأَنْزَلَهُ اللَّهُ تَعَالَى مِنَ السَّحَابِ مَاءً. وَهَذَا نَفْسُ مَا احْتَجَجْتُمْ بِهِ عَلَيْنَا مِنْ أَنَّ الدَّمَ يَخْفَى فِي الْمَاءِ وَالْفِضَّةَ تَخْفَى فِي النُّحَاسِ. فَإِذَا تُوبِعَ بِهِمَا ظَهَرَا.

L2969–2971 There is no difference between this foolish question and that of someone who asks: Why did Allah create water used for ablution and not make rose

وَلَا فَرْقَ بَيْنَ هَذَا السُّؤَالِ الْأَحْمَقِ وَبَيْنَ مَنْ سَأَلَ: لِمَ خَلَقَ اللَّهُ الْمَاءَ يُتَوَضَّأُ بِهِ وَلَمْ يَجْعَلْ مَاءَ الْوَرْدِ يُتَوَضَّأُ بِهِ؟ وَلِمَ جَعَلَ الصَّلَاةَ إِلَى الْكَعْبَةِ وَالْحَجَّ وَلَمْ يَجْعَلْهُمَا إِلَى

[38] **Qur'an references (L2965):** Qur'an 21:23 (Al-Anbya); Qur'an 5:8 (Al-Ma'idah).

water used for it? And why did He ordain prayer toward the Kaaba and Hajj, and not ordain them toward... Why [are rulings applied to] Kaskar, Farama, or al-Ṭūr? Why did He establish Maghrib as three rak'ahs, Fajr as two rak'ahs under all circumstances, and Dhuhr as four rak'ahs in a settled state? Why did He create the donkey with long ears, the camel with small ones, the mouse with a long tail, the fox likewise with a long tail, the goat with a short tail, and the rabbit similarly? Why does a person pass wind from below, obligating them to wash their face and arms, wipe their head, and wash their feet, yet not wash the orifice of that wind? None of these questions belong to rational Muslims nor resemble the objections of faithful scholars. Rather, they are the queries of foolish atheists and confused, ignorant materialists. If We place you and all our opponents before observable evidence and sensory perception regarding the transference of names through shifting attributes that define legal boundaries, then show you the invalidity of attributes that do not necessitate those names—according to your view, ours, and all people on earth, past and present—except through their existence, and then present you with rationally necessary proofs that Allah the Exalted created all things as He willed, then your entire objection becomes an obsession and falsehood leading to atheism.

كَسْكَرَ أَوْ إِلَى الْفَرَمَا أَوْ الطُّورِ؟ وَلِمَ جَعَلَ الْمَغْرِبَ ثَلَاثًا وَالصُّبْحَ رَكْعَتَيْنِ بِكُلِّ حَالٍ. وَالظُّهْرَ فِي الْحَضَرِ أَرْبَعًا؟ وَلِمَ جَعَلَ الْحِمَارَ طَوِيلَ الْأُذُنَيْنِ وَالْجَمَلَ صَغِيرَهُمَا وَالْفَأْرَ طَوِيلَ الذَّنَبِ وَالثَّعْلَبَ كَذَلِكَ وَالْمَعْزَى قَصِيرَةَ الذَّنَبِ وَالْأَرْنَبَ كَذَلِكَ؟ وَلِمَ صَارَ الْإِنْسَانُ يُحْدِثُ مِنْ أَسْفَلُ رِيحًا فَيَلْزَمُهُ غَسْلُ وَجْهِهِ وَذِرَاعَيْهِ وَمَسْحُ رَأْسِهِ وَغَسْلُ رِجْلَيْهِ، وَلَا يَغْسِلُ مَخْرَجَ تِلْكَ الرِّيحِ؟ وَهَذَا كُلُّهُ لَيْسَ مِنْ سُؤَالِ الْعُقَلَاءِ الْمُسْلِمِينَ، وَلَا يُشْبِهُ اعْتِرَاضَاتِ الْعُلَمَاءِ الْمُؤْمِنِينَ، بَلْ هُوَ سُؤَالُ نَوْكَى الْمُلْحِدِينَ وَحَمْقَى الدَّهْرِيِّينَ الْمُتَحَيِّرِينَ الْجُهَّالِ. وَإِذَا أَحْلَنَاكُمْ وَسَائِرَ خُصُومِنَا عَلَى الْعِيَانِ وَمُشَاهَدَةِ الْحَوَاسِّ فِي انْتِقَالِ الْأَسْمَاءِ بِانْتِقَالِ الصِّفَاتِ الَّتِي فِيهَا تَقُومُ الْحُدُودُ، ثُمَّ أَرَيْنَاكُمْ بُطْلَانَ الصِّفَاتِ الَّتِي لَا تَجِبُ تِلْكَ الْأَسْمَاءُ - عِنْدَكُمْ وَعِنْدَنَا وَعِنْدَ كُلِّ مَنْ عَلَى أَدِيمِ الْأَرْضِ قَدِيمًا وَحَدِيثًا - عَلَى تِلْكَ الْأَعْيَانِ إِلَّا بِوُجُودِهَا، ثُمَّ أَحْلَنَاكُمْ عَلَى الْبَرَاهِينِ الضَّرُورِيَّةِ الْعَقْلِيَّةِ عَلَى أَنَّ اللَّهَ تَعَالَى خَالِقُ كُلِّ ذَلِكَ عَلَى مَا هُوَ عَلَيْهِ كَمَا شَاءَ، فَاعْتِرَاضُكُمْ كُلُّهُ هَوَسٌ وَبَاطِلٌ يُؤَدِّي إِلَى الْإِلْحَادِ.

L2972–2974

They said: "What do you say regarding silver mixed with copper where no trace of the copper or anything else is apparent? Should it be subject to zakah according to its weight and sold as pure silver by weight, or not?" We replied—and success is by Allah, the Exalted—the ruling here parallels that of water, identical in ruling, with no distinction. If the inherent properties of silver remain in accordance with their nature and no trace of copper becomes apparent, then it is subject to zakah by its weight and sold by weight as pure silver—neither less nor more—and not on credit. If the properties of copper dominate until no trace of silver remains, then it becomes wholly pure copper with no zakah due at all, regardless of whether the transmuted silver within it was abundant or scarce. It is permissible to exchange it for pure silver through immediate or deferred payment—whether for less than, equal to, or more than the quantity of silver originally mixed with it. If the properties of

فَقَالُوا: فَمَا تَقُولُونَ فِي فِضَّةٍ خَالَطَهَا نُحَاسٌ فَلَمْ يَظْهَرْ لَهُ فِيهَا أَثَرٌ وَلَا غَيْرِهَا، أَتُزَكَّى بِوَزْنِهَا وَتُبَاعُ بِوَزْنِهَا فِضَّةً مَحْضَةً أَمْ لَا؟ قُلْنَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: الْقَوْلُ فِي هَذَا كَالْقَوْلِ فِي الْمَاءِ سَوَاءٌ وَلَا فَرْقَ، إِنْ بَقِيَتْ صِفَاتُ الْفِضَّةِ بِحَسَبِهَا وَلَمْ يَظْهَرْ لِلنُّحَاسِ فِيهَا أَثَرٌ، فَإِنَّهَا تُزَكَّى بِوَزْنِهَا وَتُبَاعُ بِوَزْنِهَا مِنْ الْفِضَّةِ، لَا بِأَقَلَّ وَلَا بِأَكْثَرَ وَلَا نَسِيئَةً، وَإِنْ غَلَبَتْ صِفَاتُ النُّحَاسِ حَتَّى لَا يَبْقَى لِلْفِضَّةِ أَثَرٌ، فَهُوَ كُلُّهُ نُحَاسٌ مَحْضٌ لَا زَكَاةَ فِيهِ أَصْلًا سَوَاءٌ كَثُرَتْ تِلْكَ الْفِضَّةُ الَّتِي اسْتَحَالَتْ فِيهِ أَوْ لَمْ تَكْثُرْ، وَجَائِزٌ بَيْعُهُ بِالْفِضَّةِ نَقْدًا وَنَسِيئَةً بِأَقَلَّ مِمَّا خَالَطَهُ مِنْ الْفِضَّةِ وَبِمِثْلِ ذَلِكَ وَبِأَكْثَرَ، وَإِنْ ظَهَرَتْ صِفَاتُ النُّحَاسِ

both copper and silver remain apparent, it constitutes a blend of copper and silver. Zakah becomes obligatory solely on the silver portion if it reaches five awāq (plural of ūqiyyah, a weight measure); otherwise not—as if the silver portion were isolated. It is impermissible to sell this combined alloy as pure silver. As a principle, it is not valued by the quantity of silver it contains, nor less nor more, and it is not permissible to trade it in cash or credit, because we cannot achieve equivalence by weight in such cases. That total amount is sold in exchange for gold, payable in cash, not on credit.

وَصِفَاتُ الْفِضَّةِ مَعًا فَهُوَ نُحَاسٌ وَفِضَّةٌ، تَجِبُ الزَّكَاةُ فِيمَا فِيهِ مِنْ الْفِضَّةِ، خَاصَّةً إِنْ بَلَغَتْ خَمْسَ أَوَاقٍ وَإِلَّا فَلَا، كَمَا لَوْ انْفَرَدَتْ، وَلَا يَحِلُّ بَيْعُ تِلْكَ الْجُمْلَةِ بِفِضَّةٍ مَحْضَةٍ أَصْلًا لَا بِمِقْدَارِ مَا فِيهَا مِنْ الْفِضَّةِ وَلَا بِأَقَلَّ وَلَا بِأَكْثَرَ، لَا نَقْدًا وَلَا نَسِيئَةً، لِأَنَّنَا لَا نَقْدِرُ فِيهَا عَلَى الْمُمَاثَلَةِ بِالْوَزْنِ، وَتُبَاعُ تِلْكَ الْجُمْلَةُ بِالذَّهَبِ نَقْدًا لَا نَسِيئَةً.

L2975 They asked about a pot cooked with wine or into which urine, blood, or excrement was thrown—with none of that leaving any trace there whatsoever. We responded: Whoever intentionally throws any such substance into the pot is a transgressor and disobedient to Allah, the Mighty and Majestic, for he has used what is forbidden, the avoidance of which is obligatory. As for when all such impurities are nullified, the contents of the pot become lawful to consume, as they contain nothing forbidden whatsoever. Allah the Exalted has nullified those prohibitions and transformed them into what is lawful. We then reversed the question to them regarding a vinegar vat into which wine was thrown without leaving any trace. Their claim that everything in the vat is lawful makes this a contradiction on their part—a stance they condemned others for, thereby binding themselves to the same condemnation. For they regarded it as significant and accepted it as proof—a position that does not bind us, since we neither regarded it as significant nor accepted it as proof. And to Allah belongs all praise.

فَسَأَلُوا عَنْ قِدْرٍ طُبِخَتْ بِالْخَمْرِ أَوْ طُرِحَ فِيهَا بَوْلٌ أَوْ دَمٌ أَوْ عَذِرَةٌ وَلَمْ يَظْهَرْ مِنْ ذَلِكَ كُلِّهِ هُنَالِكَ أَثَرٌ أَصْلًا، فَقُلْنَا: مَنْ طَرَحَ فِي الْقِدْرِ شَيْئًا مِنْ ذَلِكَ عَمْدًا فَهُوَ فَاسِقٌ عَاصٍ لِلَّهِ عَزَّ وَجَلَّ، لِأَنَّهُ اسْتَعْمَلَ الْحَرَامَ الْمُفْتَرَضَ اجْتِنَابُهُ، وَأَمَّا إِذَا بَطَلَ كُلُّ ذَلِكَ فَمَا فِي الْقِدْرِ حَلَالٌ أَكْلُهُ، لِأَنَّهُ لَيْسَ فِيهِ شَيْءٌ مِنْ الْمُحَرَّمَاتِ أَصْلًا، وَقَدْ أَبْطَلَ اللَّهُ تَعَالَى تِلْكَ الْمُحَرَّمَاتِ وَأَحَالَهَا إِلَى الْحَلَالِ. ثُمَّ نَقْلِبُ عَلَيْهِمْ هَذَا السُّؤَالَ فِي دَنِّ خَلٍّ رُمِيَ فِيهِ خَمْرٌ فَلَمْ يَظْهَرْ لِلْخَمْرِ أَثَرٌ، فَقَوْلُهُمْ إِنَّ ذَلِكَ الَّذِي فِي الدَّنِّ كُلَّهُ حَلَالٌ فَهَذَا تَنَاقُضٌ مِنْهُمْ وَقَوْلٌ مِنْهُمْ بِالَّذِي شَنَّعُوا بِهِ فَلَزِمَهُمْ التَّشْنِيعُ، لِأَنَّهُمْ عَظَّمُوهُ وَرَأَوْهُ حُجَّةً، وَلَمْ يَلْزَمْنَا، لِأَنَّنَا لَمْ نُعَظِّمْهُ وَلَا رَأَيْنَاهُ حُجَّةً. وَلِلَّهِ الْحَمْدُ.

L2976 Ali said: As for their later adherents, when they realized they were incapable of upholding this school due to its corruption and absurdity, they resorted to declaring: "We do not differentiate between a large pond, the sea, or anything else. Rather, the ruling is based on the preponderance of presumption and juristic opinion concerning water used for ablution and bathing. If we attain certainty, or if the presumption prevails in our judgments that impurity has mixed with it, its use becomes prohibited—even if it were seawater. But if we neither attain certainty nor find a prevailing presumption in our judgments that impurity has mixed with it, we perform ablution with it."

قَالَ عَلِيٌّ: وَأَمَّا مُتَأَخِّرُوهُمْ فَإِنَّهُمْ لَمَّا رَأَوْا أَنَّهُمْ لَا يَقْدِرُونَ عَلَى ضَبْطِ هَذَا الْمَذْهَبِ لِفَسَادِهِ وَسَخَافَتِهِ فَرُّوا إِلَى أَنْ قَالُوا: إِنَّنَا لَا نُفَرِّقُ بَيْنَ غَدِيرٍ كَبِيرٍ وَلَا بَحْرٍ وَلَا غَيْرِ ذَلِكَ، لَكِنَّ الْحُكْمَ لِغَلَبَةِ الظَّنِّ وَالرَّأْيِ فِي الْمَاءِ الَّذِي يُتَوَضَّأُ مِنْهُ وَيُغْتَسَلُ مِنْهُ، فَإِنْ تَيَقَّنَّا أَوْ غَلَبَ فِي ظُنُونِنَا أَنَّ النَّجَاسَةَ خَالَطَتْهُ حُرِّمَ اسْتِعْمَالُهُ وَلَوْ أَنَّهُ مَاءُ الْبَحْرِ، وَإِنْ لَمْ نَتَيَقَّنْ وَلَا غَلَبَ فِي ظُنُونِنَا أَنْ خَالَطَتْهُ نَجَاسَةٌ تَوَضَّأْنَا بِهِ.

L2977 Ali said: This doctrine is more corrupt than the one they rejected, for

قَالَ عَلِيٌّ: وَهَذَا الْمَذْهَبُ أَشَدُّ فَسَادًا مِنَ الَّذِي رَغِبُوا عَنْهُ لِوُجُوهٍ أَوَّلُهَا: أَنَّهُمْ مُقِرُّونَ بِأَنَّهُ حُكْمٌ بِالظَّنِّ، وَهَذَا لَا يَحِلُّ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨] وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» . وَلَا أَسْوَأُ حَالًا مِمَّنْ يَحْكُمُ فِي دِينِ اللَّهِ تَعَالَى الَّذِي هُوَ الْحَقُّ الْمَحْضُ بِالظَّنِّ الَّذِي هُوَ مُقِرٌّ بِأَنَّهُ لَا يُحَقِّقُهُ.

وَالثَّانِي: أَنْ يُقَالَ لَهُمْ: كَمَا تَظُنُّونَ أَنَّ النَّجَاسَةَ لَمْ تُخَالِطْهُ فَظُنُّوا أَنَّهَا خَالَطَتْهُ فَاجْتَنِبُوهُ، لِأَنَّ الْحُكْمَ بِالظَّنِّ أَصْلٌ مِنْ أُصُولِكُمْ، فَمَا الَّذِي جَعَلَ إِحْدَى جَنْبَتَيِ الظَّنِّ أَوْلَى مِنَ الْأُخْرَى؟

وَالثَّالِثُ: أَنَّ قَوْلَكُمْ هَذَا تَحَكُّمٌ مِنْكُمْ بِلَا دَلِيلٍ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ.

وَالرَّابِعُ: أَنْ نَقُولَ لَهُمْ: عَرِّفُونَا مَا مَعْنَى هَذِهِ الْمُخَالَطَةِ مِنَ النَّجَاسَةِ لِلْمَاءِ؟ فَلَسْنَا نَفْهَمُهَا وَلَا أَنْتُمْ وَلَا أَحَدٌ فِي الْعَالَمِ وَلِلَّهِ الْحَمْدُ، فَإِنْ كُنْتُمْ تُرِيدُونَ أَنَّ كُلَّ جُزْءٍ مِنْ أَجْزَاءِ الْمَاءِ قَدْ جَاوَرَ جُزْءًا مِنْ أَجْزَاءِ النَّجَاسَةِ فَهَذِهِ مُجَاوَرَةٌ لَا مُخَالَطَةٌ، وَهَذَا لَا يُمْكِنُ أَلْبَتَّةَ إِلَّا بِأَنْ يَكُونَ مِقْدَارُ النَّجَاسَةِ كَمِقْدَارِ الْمَاءِ سَوَاءً سَوَاءً وَإِلَّا فَقَدْ فُضِّلَتْ أَجْزَاءٌ مِنَ الْمَاءِ لَمْ يُجَاوِرْهَا شَيْءٌ مِنَ النَّجَاسَةِ. فَإِنْ قَالُوا: فَقَدْ تَنَجَّسَ كُلُّ ذَلِكَ وَإِنْ كَانَ لَمْ يُجَاوِرْهُ مِنَ النَّجَاسَةِ شَيْءٌ، قُلْنَا لَهُمْ: هَذَا لَازِمٌ لَكُمْ فِي الْبَحْرِ بِنُقْطَةِ بَوْلٍ تَقَعُ فِيهِ وَلَا فَرْقَ، فَإِنْ أَبَوْا مِنْ هَذَا قُلْنَا لَهُمْ: فَعَرِّفُونَا بِالْمِقْدَارِ مِنَ النَّجَاسَةِ الَّذِي إِذَا جَاوَزَ مِقْدَارًا مَحْدُودًا أَيْضًا مِنَ الْمَاءِ وَلَا بُدَّ نَجَّسَهُ، فَإِنْ أَقْدَمُوا عَلَى تَحْدِيدِ ذَلِكَ زَادُوا فِي الضَّلَالِ وَالْهَوَسِ،

several reasons. The first is that they acknowledge it is a ruling based on conjecture, and this is impermissible, because Allah the Exalted says: "They follow nothing but conjecture, and indeed conjecture avails nothing against the truth" [An-Najm: 28]. The Messenger of Allah - peace and blessings of Allah be upon him - said: "Beware of conjecture, for conjecture is the most false of speech." No one is in a worse state than he who judges in the religion of Allah the Exalted, which is pure truth, based on conjecture, which he himself acknowledges does not attain the truth.[39]

L2978 The second [argument] is to say to them: Just as you presume that impurity has not mixed with it, you should equally presume that it has mixed with it and thus avoid it. For ruling based on presumption is one of your foundational principles. What makes one side of presumption more valid than the other?

L2979 Third: Your statement is an unfounded imposition without evidence, and anything of this nature is null and void.

L2980–2982 The fourth is that we say to them: Clarify for us the meaning of this contact of impurity with water. We do not understand it—nor do you, nor anyone in the world—and all praise belongs to Allah. If you mean that every part of the water has neighbored a part of... Regarding impurity, this is adjacency rather than mixing, and this is utterly impossible unless the impurity's quantity becomes exactly equal to the water's quantity. Otherwise, portions of water set apart that were not adjacent to any impurity would remain. If they argue: "All of that becomes impure even though no impurity was adjacent to it," we reply to them: This would necessarily follow for you in the case of the sea if a drop of urine fell into it, with no distinction. If they reject this, we say: Then define for us the quantity of impurity that – when exceeding a limited quantity of water (which must be specified) – inevitably renders it impure. If they presume to define this, they only increase their error and delusion. If they refrain, they abandon their claim – corrupt and obscure like carrion (maytah) – which it is religiously impermissible to assert.

[39] **Qur'an references (L2977):** Qur'an 53:28 (An-Najm).

وَإِنْ لَمْ يُقْدِمُوا عَلَى ذَلِكَ تَرَكُوا قَوْلَهُمْ، كَالْمَيْتَةِ فَسَادًا وَمَجْهُولًا لَا يَحِلُّ الْقَوْلُ بِهِ فِي الدِّينِ.

L2983–2985

Moreover, if your ruling is based on predominant presumption, then you must affirm that if a cup containing two ounces of water has a droplet of dog urine fall into it, only the amount of water that could be mixed with that impurity becomes impure, and this is limited strictly to the quantity of the impurity itself. The remainder of the water in the cup remains pure, lawful to drink, and valid for ablution. Similarly, in a well containing a karr of water into which an ounce of urine falls, your principle dictates that only the amount mixed with that ounce is impure, while the rest remains pure, valid for purification, and lawful. We are certain, as are you, that the impurity did not mingle with a tenth of the karr nor a tenth of its tenth. If you adhere to this, you have diverged from all your ancient and modern doctrines—corrupt ideas that harm the intellect. If you revert to claiming that proximity to impurity causes contamination, this would obligate you—as we compelled regarding the Nile, Jayhun (the Amu Darya), and all running water—because its interconnected parts render all water impure due to the tainted portion. The same applies to the sea if a drop of urine enters it. Choose your stance. If they say, "We are not certain that a great river or the sea becomes impure, nor that one performing ablution with it uses water mixed with impurity," we reply: This very uncertainty exists in deep wells, standard wells, water vessels, a cup with ten ratls of water, and in a small amount of water—if no trace of impurity appears in any of That, and there is no distinction, nor certainty that all water we have mentioned has become impure, nor that one who performs ablution with it or drinks from it has performed ablution with impure water or consumed impure water. Furthermore, even if it were as they stated, it would not necessitate that pure, permissible water or liquid becomes impure due to proximity to the impure or the prohibited for it, provided it does not acquire the attributes of the prohibited or the impure. And success is from Allah, the Most High.

وَأَيْضًا فَإِنْ كَانَ الْحُكْمُ عِنْدَكُمْ لِغَالِبِ الظَّنِّ فَإِنَّهُ يَلْزَمُكُمْ أَنْ تَقُولُوا فِي قَدَحٍ فِيهِ أُوقِيَّتَانِ مِنْ مَاءٍ فَوَقَعَتْ فِيهِ مِقْدَارُ الصُّآبَةِ مِنْ بَوْلِ كَلْبٍ، إِنَّهُ لَمْ يَنْجَسْ مِنَ الْمَاءِ إِلَّا مِقْدَارُ مَا يُمْكِنُ أَنْ تُخَالِطَهُ تِلْكَ النَّجَاسَةُ، وَلَيْسَ ذَلِكَ إِلَّا لِمِقْدَارِهَا مِنَ الْمَاءِ فَقَطْ وَيَبْقَى سَائِرُ مَاءِ الْقَدَحِ طَاهِرًا حَلَالًا شُرْبُهُ وَالْوُضُوءُ بِهِ. وَهَكَذَا فِي جُبٍّ فِيهِ كَرٌّ مَاءٍ وَقَعَتْ فِيهِ أُوقِيَّةُ بَوْلٍ، فَإِنَّهُ عَلَى أَصْلِكُمْ لَا يَنْجَسُ إِلَّا مِقْدَارُ مَا مَازَجَتْهُ تِلْكَ الْأُوقِيَّةُ، وَبَقِيَ سَائِرُ ذَلِكَ طَاهِرًا مُطَهِّرًا حَلَالًا، نَحْنُ مُوقِنُونَ وَأَنْتُمْ أَنَّهَا لَمْ تُمَازِجْ عُشْرَ الْكَرِّ وَلَا عُشْرَ عُشْرِهِ، فَإِنْ الْتَزَمْتُمْ هَذَا فَارَقْتُمْ جَمِيعَ مَذَاهِبِكُمْ الْقَدِيمَةِ وَالْحَدِيثَةِ الَّتِي هِيَ أَفْكَارُ سُوءٍ مُفْسِدَةٌ لِلدِّمَاغِ، فَإِنْ رَجَعْتُمْ إِلَى أَنَّ مَا قَرُبَ مِنَ النَّجَاسَةِ يَنْجَسُ، لَزِمَكُمْ ذَلِكَ كَمَا قَدْ أَلْزَمْنَاكُمْ فِي النِّيلِ وَالْجَيْحُونِ، وَفِي كُلِّ مَاءٍ جَارٍ، لِأَنَّهُ يَتَّصِلُ بَعْضُهُ بِبَعْضٍ فَيَنْجَسُ جَمِيعُهُ لِمُلَاقَاتِهِ الَّذِي قَدْ تَنَجَّسَ وَلَا بُدَّ - نَعَمْ - وَفِي الْبَحْرِ مِنْ نُقْطَةِ بَوْلٍ تَقَعُ فِي كُلِّ ذَلِكَ، فَاخْتَارُوا مَا شِئْتُمْ فَإِنْ قَالُوا: لَسْنَا عَلَى يَقِينٍ مِنْ أَنَّ النَّهْرَ الْكَبِيرَ أَوْ الْبَحْرَ تَنَجَّسَ، وَلَا مِنْ أَنَّ الْمُتَوَضِّئَ بِهِ تَوَضَّأَ بِمَاءٍ خَالَطَتْهُ النَّجَاسَةُ مِنْهُ. قُلْنَا لَهُمْ: هَذَا نَفْسُهُ مَوْجُودٌ فِي الْجُبِّ وَالْبِئْرِ وَفِي الْقُلَّةِ وَفِي قَدَحٍ فِيهِ عَشَرَةُ أَرْطَالِ مَاءٍ إِذَا لَمْ يَظْهَرْ أَثَرُ النَّجَاسَةِ فِي شَيْءٍ مِنْ ذَلِكَ وَلَا فَرْقَ، وَلَا يَقِينَ فِي أَنَّ كُلَّ مَاءٍ فِيمَا ذَكَرْنَا تَنَجَّسَ، وَلَا فِي أَنَّ الْمُتَوَضِّئَ مِنْ ذَلِكَ وَالشَّارِبَ تَوَضَّأَ بِنَجِسٍ أَوْ شَرِبَ نَجِسًا، ثُمَّ حَتَّى لَوْ كَانَ كَمَا ذَكَرُوا لَمَا وَجَبَ أَنْ يَتَنَجَّسَ الْمَاءُ الطَّاهِرُ الْحَلَالُ أَوْ الْمَائِعُ لِذَلِكَ لِمُجَاوَرَةِ النَّجِسِ أَوْ الْحَرَامِ لَهُ، مَا لَمْ يَحْمِلْ صِفَاتِ الْحَرَامِ أَوْ النَّجِسِ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L2986 Ali said: I observed some of those who discourse on jurisprudence and lean toward analytical reasoning state: Any water into which an impurity falls without showing any visible trace - whether small or large in quantity - has a single ruling. Specifically, whoever performs ablution with all that water or drinks it - excluding the amount of impurity that fell into it - their ablution is valid, their prayer complete, their drinking lawful, and likewise their ritual bath with it. This is because they lack certainty of having used impurity or consumed unlawful matter. If they use up all of that water entirely, their ablution becomes invalid, there is no purification, and they sin by drinking it, for we are certain they used impurity and consumed unlawful matter. He said: This ruling applies equally to the sea and smaller quantities of water without distinction. He added: If two or more people perform ablution with that water and use it up entirely through bathing, ablution, or drinking, then apparently each one's ablution remains valid, as does their bathing or drinking. However, among them is someone whose ablution or bathing is invalid, though I cannot specifically identify who. Therefore, I do not obligate any of them to repeat ablution or prayers based on conjecture.

قَالَ عَلِيٌّ: رَأَيْت بَعْض مَنْ تَكَلَّمَ فِي الْفِقْهِ وَيَمِيلُ إلَى النَّظَرِ يَقُولُ: إنَّ كُلَّ مَاءٍ وَقَعَتْ فِيهِ نَجَاسَةٌ فَلَمْ يَظْهَرْ لَهَا فِيهِ أَثَرٌ فَسَوَاءٌ كَانَ قَلِيلًا أَوْ كَثِيرًا، الْحُكْمُ وَاحِدٌ، وَهُوَ أَنَّ مَنْ تَوَضَّأَ بِذَلِكَ الْمَاءِ كُلِّهِ أَوْ شَرِبَهُ حَاشَا مِقْدَارَ مَا وَقَعَ فِيهِ مِنْ النَّجَاسَةِ، فَوُضُوءُهُ جَائِزٌ وَصَلَاتُهُ تَامَّةٌ وَشُرْبُهُ حَلَالٌ، وَكَذَلِكَ غُسْلُهُ مِنْهُ، إذْ لَيْسَ عَلَى يَقِينٍ مِنْ أَنَّهُ اسْتَعْمَلَ نَجَاسَةً وَلَا أَنَّهُ شَرِبَ حَرَامًا، فَإِنْ اسْتَوْعَبَ ذَلِكَ الْمَاءَ كُلَّهُ فَلَا وُضُوءَ لَهُ وَلَا طُهْرَ وَهُوَ عَاصٍ فِي شُرْبِهِ؛ لِأَنَّنَا عَلَى يَقِينٍ مِنْ أَنَّهُ اسْتَعْمَلَ نَجَاسَةً وَشَرِبَ حَرَامًا قَالَ: وَهَكَذَا الْقَوْلُ فِي الْبَحْرِ فَمَا دُونَهُ وَلَا فَرْقَ، قَالَ: فَإِنْ تَوَضَّأَ بِذَلِكَ الْمَاءِ اثْنَانِ فَصَاعِدًا فَاسْتَوْعَبَاهُ أَوْ اسْتَوْعَبُوهُ كُلَّهُ بِالْغُسْلِ أَوْ الْوُضُوءِ أَوْ الشُّرْبِ فَكُلُّ وَاحِدٍ مِنْهُمَا أَوْ مِنْهُمْ وُضُوءُهُ جَائِزٌ فِي الظَّاهِرِ، وَكَذَلِكَ غُسْلُهُ أَوْ شُرْبُهُ، إلَّا أَنَّ فِيهِمَا أَوْ فِيهِمْ مَنْ لَا وُضُوءَ لَهُ وَلَا غُسْلَ، وَلَا أَعْرِفُ بِعَيْنِهِ، فَلَا أُلْزِمُ أَحَدًا مِنْهُمْ إعَادَةَ وُضُوءٍ وَلَا إعَادَةَ صَلَاةٍ بِالظَّنِّ.

L2987 Ali said: I debated the proponent of this view—may Allah have mercy on him—regarding this issue and compelled him based on another principle he himself upheld: that he must require all of them to redo ablution and prayer, since each of them lacks certainty about purity and doubts impurity. Rather, according to our principle and the principle of every Muslim, each of them is certain of impurity and doubts purity. Thus, he is obligated to act upon certainty of purity. I also demonstrated to him the invalidity of the first opinion through our prior argument about the logical impossibility of rulings due to the incoherence of names, and how the incoherence of names stems from the incoherence of attributes upon which legal boundaries are established. I said to him: Distinguish between what you permitted here and the case of two vessels—one containing water and the other sap from a tree; between two cuts of meat—one from a pig and the other from a ram; and between two sheep—one properly slaughtered and the other torn by a beast, making it carrion. Yet he remains utterly incapable of differentiating between any of these.

قَالَ عَلِيٌّ: وَقَدْ نَاظَرْت صَاحِبَ هَذَا الْقَوْلِ - رَحِمَهُ اللَّهُ - فِي هَذِهِ الْمَسْأَلَةِ، وَأَلْزَمْته عَلَى أَصْلٍ آخَرَ لَهُ كَانَ يَذْهَبُ إلَيْهِ، أَنْ يَكُونَ يَأْمُرُ جَمِيعَهُمْ بِإِعَادَةِ الْوُضُوءِ وَالصَّلَاةِ، لِأَنَّ كُلَّ وَاحِدٍ مِنْهُمْ لَيْسَ عَلَى يَقِينٍ مِنْ الطَّهَارَةِ وَشَكَّ فِي الْحَدَثِ، بَلْ عَلَى أَصْلِنَا وَأَصْلِ كُلِّ مُسْلِمٍ مِنْ أَنَّ كُلَّ وَاحِدٍ مِنْهُمْ عَلَى يَقِينٍ مِنْ الْحَدَثِ وَعَلَى شَكٍّ مِنْ الطَّهَارَةِ، فَالْوَاجِبُ عَلَيْهِ أَنْ يَأْتِيَ بِيَقِينِ الطَّهَارَةِ، وَأَرَيْته أَيْضًا بُطْلَانَ الْقَوْلِ الْأَوَّلِ بِمَا قَدَّمْنَا مِنْ اسْتِحَالَةِ الْأَحْكَامِ بِاسْتِحَالَةِ الْأَسْمَاءِ، وَأَنَّ اسْتِحَالَةَ الْأَسْمَاءِ بِاسْتِحَالَةِ الصِّفَاتِ الَّتِي مِنْهَا تَقُومُ الْحُدُودُ، وَقُلْت لَهُ: فَرِّقْ بَيْنَ مَا أَجَزْت مِنْ هَذَا وَبَيْنَ إنَاءَيْنِ فِي أَحَدِهِمَا مَاءٌ وَفِي الْآخَرِ عَصِيرُ بَعْضِ الشَّجَرِ، وَبَيْنَ بِضْعَتَيْ لَحْمٍ إحْدَاهُمَا مِنْ خِنْزِيرٍ وَالثَّانِيَةُ مِنْ كَبْشٍ،

وَبَيْنَ شَاتَيْنِ إِحْدَاهُمَا مُذَكَّاةٌ وَالْأُخْرَى عَقِيرَةُ سَبُعٍ مَيْتَةٌ، وَلَا يَقْدِرُ عَلَى الْفَرْقِ بَيْنَ شَيْءٍ مِنْ ذَلِكَ أَصْلًا.

L2988–2990 قَالَ عَلِيٌّ: وَمِمَّنْ رَوَى عَنْهُ هَذَا الْقَوْلَ بِمِثْلِ قَوْلِنَا - إِنَّ الْمَاءَ لَا يُنَجِّسُهُ شَيْءٌ - عَائِشَةُ أُمُّ الْمُؤْمِنِينَ وَعُمَرُ بْنُ الْخَطَّابِ وَعَبْدُ اللَّهِ بْنُ مَسْعُودٍ وَعَبْدُ اللَّهِ بْنُ عَبَّاسٍ وَالْحُسَيْنُ بْنُ عَلِيِّ بْنِ أَبِي طَالِبٍ وَمَيْمُونَةُ أُمُّ الْمُؤْمِنِينَ وَأَبُو هُرَيْرَةَ وَحُذَيْفَةُ بْنُ الْيَمَانِ رَضِيَ اللَّهُ عَنْ جَمِيعِهِمْ، وَالْأَسْوَدُ بْنُ يَزِيدَ وَعَبْدُ الرَّحْمَنِ أَخُوهُ، وَعَبْدُ الرَّحْمَنِ بْنُ أَبِي لَيْلَى وَسَعِيدُ بْنُ جُبَيْرٍ وَمُجَاهِدٌ وَسَعِيدُ بْنُ الْمُسَيِّبِ وَالْقَاسِمُ بْنُ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ، وَالْحَسَنُ الْبَصْرِيُّ وَعِكْرِمَةُ وَجَابِرُ بْنُ زَيْدٍ وَعُثْمَانُ الْبَتِّيُّ وَغَيْرُهُمْ، فَإِنْ كَانَ التَّقْلِيدُ جَائِزًا، فَتَقْلِيدُ مَنْ ذَكَرْنَا مِنْ الصَّحَابَةِ وَالتَّابِعِينَ - رَضِيَ اللَّهُ عَنْهُمْ - أَوْلَى مِنْ تَقْلِيدِ أَبِي حَنِيفَةَ وَمَالِكٍ وَالشَّافِعِيِّ.

[مَسْأَلَة الْبَوْل كله مِنْ كُلّ حَيَوَان حرام أَكْله]

L2991 **The ruling is that all urine from every animal whose consumption is unlawful is prohibited.**

١٣٧ - مَسْأَلَةٌ: وَالْبَوْلُ كُلُّهُ مِنْ كُلِّ حَيَوَانٍ - إِنْسَانٍ أَوْ غَيْرِ إِنْسَانٍ، مِمَّا يُؤْكَلُ لَحْمُهُ أَوْ لَا يُؤْكَلُ لَحْمُهُ نَحْوُ مَا ذَكَرْنَا كَذَلِكَ، أَوْ مِنْ طَائِرٍ يُؤْكَلُ لَحْمُهُ أَوْ لَا يُؤْكَلُ لَحْمُهُ، فَكُلُّ ذَلِكَ حَرَامٌ أَكْلُهُ وَشُرْبُهُ إِلَّا لِضَرُورَةِ تَدَاوٍ أَوْ إِكْرَاهٍ أَوْ جُوعٍ أَوْ عَطَشٍ فَقَطْ وَفُرِضَ اجْتِنَابُهُ فِي الطَّهَارَةِ وَالصَّلَاةِ إِلَّا مَا لَا يُمْكِنُ التَّحَفُّظُ مِنْهُ إِلَّا بِحَرَجٍ فَهُوَ مَعْفُوٌّ عَنْهُ كَنَوَى الذُّبَابِ وَنَحْوِ الْبَرَاغِيثِ. وَقَالَ أَبُو حَنِيفَةَ: أَمَّا الْبَوْلُ فَكُلُّهُ نَجِسٌ، سَوَاءٌ كَانَ مِمَّا يُؤْكَلُ لَحْمُهُ أَوْ مِمَّا لَا يُؤْكَلُ لَحْمُهُ، إِلَّا أَنَّ بَعْضَهُ أَغْلَظُ نَجَاسَةً مِنْ بَعْضٍ، فَبَوْلُ كُلِّ مَا يُؤْكَلُ لَحْمُهُ - مِنْ فَرَسٍ أَوْ شَاةٍ أَوْ بَعِيرٍ أَوْ بَقَرَةٍ أَوْ غَيْرِ ذَلِكَ - لَا يُنَجِّسُ الثَّوْبَ وَلَا تُعَادُ

L2992 137 - Issue: All urine from every living being—whether human or non-human, from animals whose meat is religiously permissible to eat or not (as we previously mentioned), or from birds whose meat is permissible or impermissible—is forbidden to consume or drink except only in cases of therapeutic necessity, coercion, hunger, or thirst. One must avoid contact with it in matters of ritual purity and prayer, except for what cannot be guarded against without undue hardship, such as fly larvae and flea droppings. Abu Hanifah said: As for urine, all of it is impure regardless of whether it comes from an animal whose meat is permissible to eat or not, though some types are more severely impure than others. The urine of any animal whose meat is religiously permissible to eat—such as horses, sheep, camels, cows, or similar—does not render garments impure, nor does it necessitate repeating

prayers, unless it occurs in an excessive and offensive quantity. In such cases, it becomes impure and prayers must always be repeated. However, Abu Hanifah—in his well-known opinion—did not define a specific quantitative limit for what constitutes "excessive."

L2993–2995

Abū Yūsuf defined its limit as a span by span area. He said: If a sheep urinates in a well, it becomes impure and all its water must be drained. They stated: As for human urine and urine from animals whose flesh is not eaten, this does not invalidate prayers nor pollute garments unless exceeding the measure of a mule dirham. If it exceeds this measure, it pollutes the garment and perpetually necessitates repeating the prayer. If it measures a mule dirham or less, it neither pollutes the garment nor necessitates repeating the prayer. All rulings we have mentioned—earlier and later—apply equally to intentional acts and forgetfulness in all such matters according to their school. He said: Regarding dung—whether from animals whose flesh is eaten like cattle or not eaten like horses, donkeys, or others—if found on garments, shoes, socks, or bodies exceeding a mule dirham's measure, the prayer becomes invalid and must always be repeated. If measuring a mule dirham or less, it causes no harm. If two dung pellets—or fewer than camel dung pellets—fall into a well... If there is dung of sheep or goats, it does not invalidate the prayer. If the amount of the aforementioned dung inside the khuff or sandal exceeds the size of a dirham, then if it is dry, scraping suffices, but if it is moist, only washing is valid. If there is urine instead of dung, washing is required regardless of whether it is dry or moist. He said: If one prays with bird excrement on their garment—whether from a bird whose meat is eaten or not—exceeding the size of a dirham, it does not affect the prayer, and the prayer need not be repeated, except if it is excessively abundant, in which case the prayer must be repeated—except if it is chicken excrement. For whoever prays with more than a dirham's size of chicken excrement on their garment must always repeat the prayer. If pigeon or sparrow excrement falls into water, it does not invalidate it at all. Zufar said: The urine of any animal whose meat is eaten is pure, whether much or little. As for the urine of animals whose meat is not eaten, their

مِنْهُ الصَّلَاةُ، إِلَّا أَنْ يَكُونَ كَثِيرًا فَاحِشًا فَيُنَجِّسُ حِينَئِذٍ وَتُعَادُ مِنْهُ الصَّلَاةُ أَبَدًا. وَلَمْ يَحُدَّ أَبُو حَنِيفَةَ فِي الْمَشْهُورِ عَنْهُ فِي الْكَثِيرِ حَدًّا.

وَحَدَّهُ أَبُو يُوسُفَ بِأَنْ يَكُونَ شِبْرًا فِي شِبْرٍ. قَالَ: فَلَوْ بَالَتْ شَاةٌ فِي بِئْرٍ فَقَدْ تَنَجَّسَتْ وَتُنْزَحُ كُلُّهَا. قَالُوا: وَأَمَّا بَوْلُ الْإِنْسَانِ وَمَا لَا يُؤْكَلُ لَحْمُهُ فَلَا تُعَادُ مِنْهُ الصَّلَاةُ وَلَا يُنَجِّسُ الثَّوْبَ، إِلَّا أَنْ يَكُونَ أَكْثَرَ مِنْ قَدْرِ الدِّرْهَمِ الْبَغْلِيِّ، فَإِنْ كَانَ كَذَلِكَ نَجَّسَ الثَّوْبَ وَأُعِيدَتْ مِنْهُ الصَّلَاةُ أَبَدًا - فَإِنْ كَانَ قَدْرَ الدِّرْهَمِ الْبَغْلِيِّ فَأَقَلَّ لَمْ يُنَجِّسْ الثَّوْبَ وَلَمْ تُعَدْ مِنْهُ الصَّلَاةُ، وَكُلُّ مَا ذَكَرْنَا - قَبْلُ وَبَعْدُ - فَالْعَمْدُ عِنْدَهُمْ وَالنِّسْيَانُ سَوَاءٌ فِي كُلِّ ذَلِكَ. قَالَ: وَأَمَّا الرَّوْثُ فَإِنَّهُ سَوَاءٌ كُلُّهُ كَانَ مِمَّا يُؤْكَلُ لَحْمُهُ أَوْ مِمَّا لَا يُؤْكَلُ لَحْمُهُ مِنْ بَقَرٍ كَانَ أَوْ مِنْ فَرَسٍ أَوْ مِنْ حِمَارٍ أَوْ غَيْرِ ذَلِكَ، إِنْ كَانَ فِي الثَّوْبِ مِنْهُ أَوْ النَّعْلِ أَوْ الْخُفِّ أَوْ الْجَسَدِ أَكْثَرُ مِنْ قَدْرِ الدِّرْهَمِ الْبَغْلِيِّ: بَطَلَتْ الصَّلَاةُ وَأَعَادَهَا أَبَدًا. وَإِنْ كَانَ قَدْرَ الدِّرْهَمِ الْبَغْلِيِّ فَأَقَلَّ لَمْ يَضُرَّ شَيْئًا، فَإِنْ وَقَعَ فِي الْبِئْرِ بَعْرَتَانِ فَأَقَلُّ مِنْ أَبْعَارِ الْإِبِلِ أَوْ الْغَنَمِ لَمْ يَضُرَّ شَيْئًا، فَإِنْ كَانَ مِنْ الرَّوْثِ الْمَذْكُورِ فِي الْخُفِّ وَالنَّعْلِ أَكْثَرُ مِنْ قَدْرِ الدِّرْهَمِ، فَإِنْ كَانَ يَابِسًا أَجْزَأَ فِيهِ الْحَكُّ، وَإِنْ كَانَ رَطْبًا لَمْ يُجْزِ فِيهِ إِلَّا الْغَسْلُ، فَإِنْ كَانَ مَكَانَ الرَّوْثِ بَوْلٌ لَمْ يُجْزِ فِيهِ إِلَّا الْغَسْلُ يَبِسَ أَوْ لَمْ يَيْبَسْ. قَالَ فَإِنْ صَلَّى وَفِي ثَوْبِهِ مِنْ خُرْءِ الطَّيْرِ الَّذِي يُؤْكَلُ لَحْمُهُ أَوْ لَا يُؤْكَلُ لَحْمُهُ أَكْثَرُ مِنْ قَدْرِ الدِّرْهَمِ لَمْ يَضُرَّ شَيْئًا وَلَا أُعِيدَتْ مِنْهُ الصَّلَاةُ، إِلَّا أَنْ يَكُونَ كَثِيرًا فَاحِشًا فَتُعَادُ مِنْهُ الصَّلَاةُ إِلَّا أَنْ يَكُونَ خُرْءَ دَجَاجٍ، فَإِنَّهُ مَنْ صَلَّى وَفِي ثَوْبِهِ أَكْثَرُ مِنْ قَدْرِ الدِّرْهَمِ أَعَادَ الصَّلَاةَ أَبَدًا، فَلَوْ وَقَعَ فِي الْمَاءِ خُرْءُ حَمَامٍ أَوْ عُصْفُورٍ لَمْ يَضُرَّهُ شَيْئًا. وَقَالَ زُفَرُ: بَوْلُ كُلِّ مَا يُؤْكَلُ

excrement, and the excrement of animals whose meat is eaten, all of that is impure.

لَحْمُهُ طَاهِرٌ كَثُرَ أَمْ قَلَّ. وَأَمَّا بَوْلُ مَا لَا يُؤْكَلُ لَحْمُهُ وَنَجْوُهُ وَنَجْوُ مَا يُؤْكَلُ لَحْمُهُ فَكُلُّ ذَلِكَ نَجَسٌ.

L2996 Malik said: The urine and excrement of animals whose meat is not eaten are impure, while the urine and excrement of animals whose meat is eaten are both pure—unless it drinks impure water, in which case its urine becomes impure. Similarly, if chickens consume impurities, their excrement is impure. Dawud said: The urine and excrement of every animal—whether its meat is eaten or not—are both pure, except for human urine and excrement alone, for they are both impure. Al-Shāfiʿī held the same view as the position we presented earlier.

وَقَالَ مَالِكٌ: بَوْلُ مَا لَا يُؤْكَلُ لَحْمُهُ وَنَجْوُهُ نَجِسٌ، وَبَوْلُ مَا يُؤْكَلُ لَحْمُهُ وَنَجْوُهُ طَاهِرَانِ إِلَّا أَنْ يَشْرَبَ مَاءً نَجِسًا فَبَوْلُهُ حِينَئِذٍ نَجِسٌ، وَكَذَلِكَ مَا يَأْكُلُ الدَّجَاجُ مِنْ نَجَاسَاتٍ فَخُرْؤُهَا نَجِسٌ. وَقَالَ دَاوُد: بَوْلُ كُلِّ حَيَوَانٍ وَنَجْوُهُ - أُكِلَ لَحْمُهُ أَوْ لَمْ يُؤْكَلْ - فَهُوَ طَاهِرٌ، حَاشَا بَوْلَ الْإِنْسَانِ وَنَجْوَهُ فَقَطْ فَهُمَا نَجَسَانِ. وَقَالَ الشَّافِعِيُّ مِثْلَ قَوْلِنَا الَّذِي صَدَّرْنَا بِهِ.

L2997 Ali said: As for the statement of Abū Ḥanīfa, it stands at the peak of confusion, contradiction, and corruption. It has no connection to any Sunnah—neither sound nor weak—nor to the Quran, analogy, evidence of consensus, the opinion of a Companion, or valid reasoning. We know of no one who categorized impurities with this specific classification before Abū Ḥanīfa; rather, we categorically assert that none before him adopted this sequential arrangement regarding them. Thus, this view must be categorically rejected.

As for the position of our companions, they stated: All substances are presumed pure until a scriptural text emerges prohibiting something or declaring it impure, at which point one must adhere strictly to it. They said: There exists no text or consensus concerning the impurity of urine or feces from any animal except humans. Therefore, it is obligatory not to deem any such substances impure. They cited what we have narrated through Anas: "A group from Ukl and Uraynah came to the Messenger of Allah—peace and blessings be upon him—professed Islam, and said: O Messenger of Allah, we were people of livestock, not cultivation, and they found Medina's climate harsh. The Messenger of Allah—peace and blessings be upon him—ordered that they be given a herd of camels and a herdsman, instructing them to go out with them and drink from their milk and urine." He mentioned the hadith.

قَالَ عَلِيٌّ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفِي غَايَةِ التَّخْلِيطِ وَالتَّنَاقُضِ وَالْفَسَادِ، لَا تَعَلُّقَ لَهُ بِسُنَّةٍ لَا صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا بِقُرْآنٍ وَلَا بِقِيَاسٍ وَلَا بِدَلِيلِ إجْمَاعٍ وَلَا بِقَوْلِ صَاحِبٍ وَلَا بِرَأْيٍ سَدِيدٍ، وَمَا نَعْلَمُ أَحَدًا قَسَّمَ النَّجَاسَاتِ قَبْلَ أَبِي حَنِيفَةَ هَذَا التَّقْسِيمَ بَلْ نَقْطَعُ عَلَى أَنَّهُ لَمْ يَقُلْ بِهَذَا التَّرْتِيبِ فِيهَا أَحَدٌ قَبْلَهُ، فَوَجَبَ إطْرَاحُ هَذَا الْقَوْلِ بِيَقِينٍ. وَأَمَّا قَوْلُ أَصْحَابِنَا فَإِنَّهُمْ قَالُوا: الْأَشْيَاءُ عَلَى الطَّهَارَةِ حَتَّى يَأْتِيَ نَصٌّ بِتَحْرِيمِ شَيْءٍ أَوْ تَنْجِيسِهِ فَيُوقَفُ عِنْدَهُ. قَالُوا: وَلَا نَصَّ وَلَا إجْمَاعَ فِي تَنْجِيسِ بَوْلِ شَيْءٍ مِنْ الْحَيَوَانِ وَنَجْوِهِ، حَاشَا بَوْلَ الْإِنْسَانِ وَنَجْوَهُ، فَوَجَبَ أَنْ لَا يُقَالَ بِتَنْجِيسِ شَيْءٍ مِنْ ذَلِكَ، وَذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ أَنَسٍ «أَنَّ قَوْمًا مِنْ عُكْلٍ وَعُرَيْنَةَ قَدِمُوا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَكَلَّمُوا بِالْإِسْلَامِ فَقَالُوا: يَا رَسُولَ اللَّهِ إنَّا كُنَّا أَهْلَ ضَرْعٍ وَلَمْ نَكُنْ أَهْلَ رِيفٍ، وَاسْتَوْخَمُوا الْمَدِينَةَ، فَأَمَرَ لَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَوْدٍ وَرَاعٍ، وَأَمَرَهُمْ أَنْ يَخْرُجُوا فِيهَا فَيَشْرَبُوا مِنْ أَلْبَانِهَا وَأَبْوَالِهَا» وَذَكَرَ الْحَدِيثَ.

L2998–3000 A hadith has also been narrated to us through the chain of transmission from Anas that the Messenger of Allah - peace and blessings be upon him - used to pray in Medina. Wherever prayer overtook him and in sheep pens," and with a hadith we narrated through Ibn Mas'ud's chain: "Allah's Messenger—peace be upon him—was praying near the Kaaba while chieftains of Quraysh sat nearby after slaughtering a camel. Some said: 'Which of you will take these entrails with their blood and wait until he places his face in prostration, then put them on his back?' Abdullah said: The most wretched among them rose, took the entrails, and waited. When the Prophet prostrated, the man placed them on his back. Fatimah, daughter of the Messenger of Allah—who was a young girl—was informed. She came running and removed them from his back. When he concluded his prayer, he said: 'O Allah, judge Quraysh!'" And he mentioned the hadith.

وَبِحَدِيثٍ رُوِّينَا أَيْضًا مِنْ طَرِيقِ أَنَسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُصَلِّي فِي الْمَدِينَةِ حَيْثُ أَدْرَكَتْهُ الصَّلَاةُ وَفِي مَرَابِضِ الْغَنَمِ» وَبِحَدِيثٍ رُوِّيَنَاهُ مِنْ طَرِيقِ ابْنِ مَسْعُودٍ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي عِنْدَ الْبَيْتِ وَمَلَأٌ مِنْ قُرَيْشٍ جُلُوسٌ وَقَدْ نَحَرُوا جَزُورًا لَهُمْ، فَقَالَ بَعْضُهُمْ: أَيُّكُمْ يَأْخُذُ هَذَا الْفَرْثَ بِدَمِهِ ثُمَّ يُمْهِلُهُ حَتَّى يَضَعَ وَجْهَهُ سَاجِدًا فَيَضَعُهُ عَلَى ظَهْرِهِ، قَالَ عَبْدُ اللَّهِ: فَانْبَعَثَ أَشْقَاهَا فَأَخَذَ الْفَرْثَ، فَأَمْهَلَهُ، فَلَمَّا خَرَّ سَاجِدًا وَضَعَهُ عَلَى ظَهْرِهِ، فَأُخْبِرَتْ فَاطِمَةُ بِنْتُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهِيَ جَارِيَةٌ فَجَاءَتْ تَسْعَى فَأَخَذَتْهُ مِنْ ظَهْرِهِ، فَلَمَّا فَرَغَ مِنْ صَلَاتِهِ قَالَ: اللَّهُمَّ عَلَيْكَ بِقُرَيْشٍ» وَذَكَرَ الْحَدِيثَ.

L3001 And with a narration we have reported through the chain of Ibn Umar: “I used to spend the night in the mosque during the time of the Messenger of Allah—peace and blessings be upon him—while I was an unmarried youth. Dogs would urinate and move about freely in the mosque, yet they did not sprinkle water on any of that.” They cited regarding this matter from the Companions—may Allah be pleased with them—and subsequent generations what we have reported through the chains of Shu‘bah and Sufyan, both narrating from Al-A‘mash, from Malik ibn Al-Harith, from his father, who said: “Abu Musa Al-Ash‘ari led us in prayer on ground containing dung”—this being Sufyan’s wording, whereas Shu‘bah said: “livestock dung.” We have also reported through other narrators: “The desert lay before him,” and he stated: “Here and there are the same.” From Anas: “There is no harm in the urine of any cud-chewing animal.” From Ibrahim An-Nakha‘i: Mansur said, “I asked him about dung touching a person’s leather socks, sandals, or bare foot.” He replied: “There is no harm.” From Ibrahim: He observed a man stepping aside from a urinating mule and said to him: “What’s the issue if it gets on you?” It is authentically established that he prohibited eating mule meat. From Al-Hasan Al-Basri: “There is no harm in sheep’s urine.” From Muhammad ibn Ali ibn Al-Husayn and Nafi‘, client of Ibn Umar, concerning one whose turban is soiled by camel urine: Both said: “He does not wash it.” From Abdullah ibn Mughaffal: He prayed with traces of dung on his feet. From Ubaid ibn Umayr: “I have a young she-camel that passes dung in my mosque.”

وَبِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ «ابْنِ عُمَرَ كُنْتُ أَبِيتُ فِي الْمَسْجِدِ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكُنْتُ شَابًّا عَزَبًا، وَكَانَتْ الْكِلَابُ تَبُولُ وَتُقْبِلُ وَتُدْبِرُ فِي الْمَسْجِدِ فَلَمْ يَكُونُوا يَرُشُّونَ شَيْئًا مِنْ ذَلِكَ» . ذَكَرُوا فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَمَنْ بَعْدَهُمْ مَا رُوِّينَاهُ مِنْ طَرِيقِ شُعْبَةَ وَسُفْيَانَ، كِلَاهُمَا عَنْ الْأَعْمَشِ عَنْ مَالِكِ بْنِ الْحَارِثِ عَنْ أَبِيهِ قَالَ " صَلَّى بِنَا أَبُو مُوسَى الْأَشْعَرِيُّ عَلَى مَكَانٍ فِيهِ سِرْقِينٌ هَذَا لَفْظُ سُفْيَانَ، وَقَالَ شُعْبَةُ " رَوْثُ الدَّوَابِّ " وَرُوِّينَا مِنْ طَرِيقِ غَيْرِهِمَا " وَالصَّحْرَاءُ أَمَامَهُ، وَقَالَ: هُنَا وَهُنَاكَ سَوَاءٌ " وَعَنْ أَنَسٍ " لَا بَأْسَ بِبَوْلِ كُلِّ ذَاتِ كِرْشٍ " وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ. قَالَ مَنْصُورٌ: سَأَلْته عَنْ السِّرْقِينِ يُصِيبُ خُفَّ الْإِنْسَانِ أَوْ نَعْلَهُ أَوْ قَدَمَهُ؟ قَالَ لَا بَأْسَ. وَعَنْ إبْرَاهِيمَ أَنَّهُ رَأَى رَجُلًا قَدْ تَنَحَّى عَنْ بَغْلٍ يَبُولُ، فَقَالَ لَهُ إبْرَاهِيمُ: مَا عَلَيْك لَوْ أَصَابَك. وَقَدْ صَحَّ عَنْهُ أَنَّهُ كَانَ لَا يُجِيزُ أَكْلَ الْبَغْلِ. وَعَنْ الْحَسَنِ الْبَصْرِيِّ: لَا بَأْسَ بِأَبْوَالِ الْغَنَمِ. وَعَنْ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ وَنَافِعٍ مَوْلَى ابْنِ عُمَرَ فِيمَنْ أَصَابَ عِمَامَتَهُ بَوْلُ بَعِيرٍ قَالَا جَمِيعًا: لَا يَغْسِلُهُ. وَعَنْ عَبْدِ اللَّهِ بْنِ مُغَفَّلٍ أَنَّهُ كَانَ يُصَلِّي وَعَلَى رِجْلَيْهِ أَثَرُ السِّرْقِينِ. وَعَنْ عُبَيْدِ بْنِ عُمَيْرٍ قَالَ: إنَّ لِي عُنَيْقًا تَبْعَرُ فِي مَسْجِدِي.

L3002–3004 Abu Muhammad said: As for the reports we have mentioned, all are authentic. Nevertheless, they provide no valid proof for their position on any of these points. As for the narration of Ibn ‘Umar, it is not supported by a chain of transmission because it does not state that the Messenger of Allah—peace and blessings be upon him—became aware of the dog’s urination in the mosque and approved it. Since this is not mentioned in the report, there is no evidence in it, as evidence is only valid in his—peace be upon him—statements, his actions, or in what is authentically established that he acknowledged and approved. Thus, the use of this report as evidence is

قَالَ أَبُو مُحَمَّد: أَمَّا الْآثَارُ الَّتِي ذَكَرْنَا فَكُلُّهَا صَحِيحٌ، إلَّا أَنَّهَا لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهَا: أَمَّا حَدِيثُ ابْنِ عُمَرَ فَغَيْرُ مُسْنَدٍ، لِأَنَّهُ لَيْسَ فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَرَفَ بِبَوْلِ الْكِلَابِ فِي الْمَسْجِدِ فَأَقَرَّهُ، وَإِذْ لَيْسَ هَذَا فِي الْخَبَرِ فَلَا حُجَّةَ فِيهِ، إذْ لَا حُجَّةَ إلَّا فِي قَوْلِهِ - عَلَيْهِ السَّلَامُ - أَوْ فِي عَمَلِهِ أَوْ فِيمَا صَحَّ أَنَّهُ عَرَفَهُ فَأَقَرَّهُ، فَسَقَطَ هَذَا الِاحْتِجَاجُ بِهَذَا الْخَبَرِ، لَكِنْ يَلْزَمُ مَنْ احْتَجَّ بِحَدِيثِ أَبِي سَعِيدٍ «كُنَّا نُخْرِجُ عَلَى

invalidated with this report. However, those who cite the ḥadīth of Abū Sa‘īd—“We used to give Sadaqat al-Fiṭr as a Ṣā‘ of food during the time of the Messenger of Allah—peace and blessings be upon him”—are obliged to cite this report, as it is more likely that the Messenger of Allah—peace and blessings be upon him—would have been aware of it than of the practice of Banī Khudrah in one part of Madīnah. Likewise, those who criticize the practice of the Companions—may Allah be pleased with them—are obliged to adopt this narration of Ibn ‘Umar, thereby not considering the urine of dogs or other animals impure. Yet, this is among the matters in which they contradict themselves. As for the narration of Ibn Mas‘ūd, there is no evidence for them in it, because it mentions that the chyme was accompanied by blood, and this is not proof according to them for the purity of blood. It is invalid to claim it as evidence for the purity of chyme without the purity of blood, as both are mentioned together. Moreover, Shu‘bah, Sufyān, and Zakariyyā ibn Abī Zā’idah all narrated this report from the one from whom ‘Alī ibn Ṣāliḥ narrated—namely Abū Isḥāq, from ‘Amr ibn Maymūn, from Ibn Mas‘ūd—and they mentioned that this was the afterbirth of a camel. They are more reliable and precise in memorization than ‘Alī ibn Ṣāliḥ, and their narration includes additional details not found in his. Since the chyme and blood were in the afterbirth, both are impure, and thus they hold no legal relevance. The decisive factor here is that this report pertains to Makkah before the ruling prohibiting excrement and blood was established, so it is abrogated without doubt, and citing it as evidence is invalid in any case.

L3005 As for the ḥadīth of Anas concerning prayer in sheep enclosures, they argued that sheep enclosures are not free from their urine nor their dung. We responded to them: As for your claim that they are not free from their urine nor their dung, the shepherd also urinates among the sheep, and this does not serve as valid proof for the purification of human urine.

L3006 Additionally, ‘Abdullah ibn Rabi‘ narrated to us, saying: ‘Umar ibn ‘Abd al-Malik narrated to us, Muhammad ibn Bakr narrated to us, Abu Dawud al-Sijistani narrated to us, Muhammad ibn Kurayb narrated to us, al-Husayn ibn ‘Ali al-Ju‘fi narrated to us, from Za’idah, from Hisham ibn ‘Urwah, from his father, from ‘Aishah, who said: “The Messenger of Allah, peace and blessings

عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَدَقَةَ الْفِطْرِ صَاعًا مِنْ طَعَامٍ» أَنْ يَحْتَجَّ بِهَذَا الْخَبَرِ، لِأَنَّهُ أَقْرَبُ إِلَى أَنْ يَعْرِفَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْهُ إِلَى أَنْ يَعْرِفَ عَمَلَ بَنِي خُدْرَةَ فِي جِهَةٍ مِنْ جِهَاتِ الْمَدِينَةِ، وَيَلْزَمُ مَنْ شَنَّعَ لِعَمَلِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنْ يَأْخُذَ بِحَدِيثِ ابْنِ عُمَرَ هَذَا، فَلَا يَرَى أَبْوَالَ الْكِلَابِ وَلَا غَيْرَهَا نَجَسًا، وَلَكِنَّ هَذَا مِمَّا تَنَاقَضُوا فِيهِ. وَأَمَّا حَدِيثُ ابْنِ مَسْعُودٍ فَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ فِيهِ أَنَّ الْفَرْثَ كَانَ مَعَهُ دَمٌ، وَلَيْسَ هَذَا دَلِيلًا عِنْدَهُمْ، عَلَى طَهَارَةِ الدَّمِ، فَمِنَ الْبَاطِلِ أَنْ يَكُونَ دَلِيلًا عَلَى طَهَارَةِ الْفَرْثِ دُونَ طَهَارَةِ الدَّمِ، وَكِلَاهُمَا مَذْكُورَانِ مَعًا. وَأَيْضًا فَإِنَّ شُعْبَةَ وَسُفْيَانَ وَزَكَرِيَّا بْنَ أَبِي زَائِدَةَ رَوَوْا كُلُّهُمْ هَذَا الْخَبَرَ عَنِ الَّذِي رَوَاهُ عَنْهُ عَلِيُّ بْنُ صَالِحٍ وَهُوَ أَبُو إِسْحَاقَ عَنْ عَمْرِو بْنِ مَيْمُونٍ عَنِ ابْنِ مَسْعُودٍ، فَذَكَرُوا أَنَّ ذَلِكَ كَانَ سَلَى جَزُورٍ، وَهُمْ أَوْثَقُ وَأَحْفَظُ مِنْ عَلِيِّ بْنِ صَالِحٍ، وَرِوَايَتُهُمْ زَائِدَةٌ عَلَى رِوَايَتِهِ، فَإِذَا كَانَ الْفَرْثُ وَالدَّمُ فِي السَّلَى فَهُمَا غَيْرُ طَاهِرَيْنِ، فَلَا حُكْمَ لَهُمَا، وَالْقَاطِعُ هَهُنَا أَنَّ هَذَا الْخَبَرَ كَانَ بِمَكَّةَ قَبْلَ وُرُودِ الْحُكْمِ بِتَحْرِيمِ النَّجْوِ وَالدَّمِ، فَصَارَ مَنْسُوخًا بِلَا شَكٍّ وَبَطَلَ الِاحْتِجَاجُ بِهِ بِكُلِّ حَالٍ.

وَأَمَّا حَدِيثُ أَنَسٍ فِي الصَّلَاةِ فِي مَرَابِضِ الْغَنَمِ، فَإِنَّهُمْ قَالُوا: إِنَّ مَرَابِضَ الْغَنَمِ لَا تَخْلُو مِنْ أَبْوَالِهَا وَلَا مِنْ أَبْعَارِهَا. فَقُلْنَا لَهُمْ: أَمَّا قَوْلُكُمْ إِنَّهَا لَا تَخْلُو مِنْ أَبْوَالِهَا وَلَا مِنْ أَبْعَارِهَا فَقَدْ يَبُولُ الرَّاعِي أَيْضًا بَيْنَهَا، وَلَيْسَ ذَلِكَ دَلِيلًا عَلَى طَهَارَةِ بَوْلِ الْإِنْسَانِ.

وَأَيْضًا فَإِنَّ عَبْدَ اللَّهِ بْنَ رَبِيعٍ حَدَّثَنَا قَالَ: ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد السِّجِسْتَانِيُّ ثنا مُحَمَّدُ بْنُ كُرَيْبٍ ثنا الْحُسَيْنُ بْنُ عَلِيٍّ الْجُعْفِيُّ عَنْ زَائِدَةَ عَنْ هِشَامٍ

be upon him, commanded the building of mosques in residential areas, their perfuming, and their upkeep."

L3007–3008 Ali said: "The dwellings are the houses of residence, and they also refer to the districts. You say: 'Dar Banu Sāʿidah,' 'Dar Banu al-Najjār,' 'Dar Banu ʿAbd al-Ashhal.' This is how the Messenger of Allah—peace and blessings be upon him—spoke, and this is also the usage in the Arabic language. Indeed, his command—peace be upon him—to clean the mosques and perfume them has been firmly established, and this necessitates sweeping them to remove all urine, dung, and other things."

L3009 Abdullah ibn Yusuf narrated to us; Ahmad ibn Fath narrated to us; Abdul Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to us: Shayban ibn Farrukh and Abu al-Rabiʿ al-Zahrani both narrated to us from Abdul Warith from Abu al-Tayyah from Anas ibn Malik, who said: "The Messenger of Allah—peace and blessings of Allah be upon him—was the most virtuous of people in character. Sometimes I would see him when prayer time arrived, and he would order the rug beneath him to be swept and sprinkled with water. Then the Messenger of Allah—peace and blessings of Allah be upon him—would lead us in prayer, and we would stand behind him as he prayed with us." This indicates his instruction—peace and blessings of Allah be upon him—to sweep and sprinkle with water the place where prayer is performed.

Ahmad ibn Muhammad ibn al-Jasur narrated to us; Wahb ibn Masarrah narrated to us; Ibn Waddah narrated to us; Abu Bakr ibn Abi Shaybah narrated to us; Isma'il ibn Ulayyah narrated to us from Ibn Awn—who is Abdullah—from Anas ibn Sirin from Abdul Hamid ibn al-Mundhir ibn al-Jarud from Anas ibn Malik, who said: "One of my uncles prepared a meal for the Prophet—peace and blessings of Allah be upon him—and said: 'I would love for you to eat in my house and pray in it.' He came to him, and in the house was a strong mat (ḥaṣīr) referred to as *faḥl*. The Prophet—peace be upon him—ordered a part of it to be swept and sprinkled with water. He prayed, and we prayed with him." This indicates his instruction—peace and

بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ «أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِبِنَاءِ الْمَسَاجِدِ فِي الدُّورِ وَأَنْ تُطَيَّبَ وَتُنَظَّفَ» .

قَالَ عَلِيٌّ: الدُّورُ هِيَ دُورُ السُّكْنَى وَهِيَ أَيْضًا الْمَحَلَّاتِ. تَقُولُ: دَارُ بَنِي سَاعِدَةَ، وَدَارُ بَنِي النَّجَّارِ، دَارُ بَنِي عَبْدِ الْأَشْهَلِ. هَكَذَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ كَذَلِكَ فِي لُغَةِ الْعَرَبِ، فَقَدْ صَحَّ أَمْرُهُ - عَلَيْهِ السَّلَامُ - بِتَنْظِيفِ الْمَسَاجِدِ وَتَطْيِيبِهَا، وَهَذَا يُوجِبُ الْكَنْسَ لَهَا مِنْ كُلِّ بَوْلٍ وَبَعْرٍ وَغَيْرِهِ.

وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ حَدَّثَنَا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا شَيْبَانُ بْنُ فَرُّوخَ وَأَبُو الرَّبِيعِ الزَّهْرَانِيُّ، كِلَاهُمَا عَنْ عَبْدِ الْوَارِثِ عَنْ أَبِي التَّيَّاحِ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَحْسَنَ النَّاسِ خُلُقًا، فَرُبَّمَا رَأَيْته تَحْضُرُ الصَّلَاةُ فَيَأْمُرُ بِالْبِسَاطِ الَّذِي تَحْتَهُ فَيُكْنَسُ وَيُنْضَحُ ثُمَّ يَؤُمُّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنَقُومُ خَلْفَهُ فَيُصَلِّي بِنَا» فَهَذَا أَمْرٌ مِنْهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِكَنْسِ مَا يُصَلَّى عَلَيْهِ وَنَضْحِهِ. حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا وَهْبُ بْنُ مَسَرَّةَ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا إسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ ابْنِ عَوْنٍ هُوَ عَبْدُ اللَّهِ - عَنْ أَنَسِ بْنِ سِيرِينَ عَنْ عَبْدِ الْحَمِيدِ بْنِ الْمُنْذِرِ بْنِ الْجَارُودِ عَنْ «أَنَسِ بْنِ مَالِكٍ قَالَ صَنَعَ بَعْضُ عُمُومَتِي لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَعَامًا وَقَالَ: إنِّي أُحِبُّ أَنْ تَأْكُلَ فِي بَيْتِي وَتُصَلِّيَ فِيهِ فَأَتَاهُ وَفِي الْبَيْتِ خَفْلٌ مِنْ تِلْكَ الْفُحُولِ - يَعْنِي حَصِيرًا - فَأَمَرَ - عَلَيْهِ السَّلَامُ - بِجَانِبٍ مِنْهُ فَكُنِسَ وَرُشَّ فَصَلَّى وَصَلَّيْنَا مَعَهُ» فَهَذَا أَمْرٌ مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِكَنْسِ مَا يُصَلَّى عَلَيْهِ وَرَشِّهِ بِالْمَاءِ، فَدَخَلَ فِي ذَلِكَ مَرَابِضُ الْغَنَمِ وَغَيْرُهَا. وَأَيْضًا فَإِنَّ هَذَا الْحَدِيثَ نَفْسَهُ

blessings of Allah be upon him—to sweep and sprinkle with water the place where prayer is performed, including sheep pens and similar areas.

Furthermore, this very Hadith was narrated to us through the chain of Abdul Warith from Abu al-Tayyah from Anas. We also narrated it through the chain of al-Bukhari from Sulayman ibn Harb from Shu'bah from Abu al-Tayyah from Anas: "The Messenger of Allah—peace and blessings of Allah be upon him—used to pray in sheep pens before the mosque was built." This confirms that this occurred early after the Hijrah, before the arrival of the narrations requiring avoidance of all animal dung and urine.

L3010–3011 Also, Yunus ibn ʿAbdullāh said: Abū ʿĪsā ibn Abī ʿĪsā narrated to us, Aḥmad ibn Khālid narrated to us, Ibn Waḍḍāḥ narrated to us, Abū Bakr ibn Abī Shaybah narrated to us, from Yazīd ibn Hārūn, from Hishām ibn Ḥassān, from Muḥammad ibn Sīrīn, from Abū Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him) said: "If you have no option but sheep pens and camel kneeling grounds, then pray in the sheep pens, and do not pray in camel resting grounds."

L3012 Narrated to us Hammam, who narrated to us Ibn Mufarrij, who narrated to us Ibn al-A'rabi, who narrated to us al-Dabari, who narrated to us 'Abd al-Razzaq from Sufyan al-Thawri from al-A'mash from 'Abdullah from 'Abd al-Rahman ibn Abi Layla from al-Bara' ibn 'Azib: "The Messenger of Allah—may Allah bless him and grant him peace—was asked: 'Shall we pray in the resting places of camels?' He said: 'No.' He said: 'Shall we pray in the sheep pens?' He said: 'Yes.'" Ali Abdullah said: "This 'Abdullah is 'Abdullah ibn 'Abdullah, a trustworthy Kufan narrator who served as a judge in al-Rayy."

L3013 Hammam narrated to us, Abbas ibn Asbagh narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, Ahmad ibn Muhammad al-Birti narrated to us, Abu Ma'mar narrated to us, Abd al-Warith ibn Sa'id narrated to us, Yunus narrated from al-Hasan from Abdullah ibn Mughaffal, who said: "The Messenger of Allah (peace and blessings be upon him) said: 'When you come upon sheep pens, pray in them, and when you come upon camel resting places, do not pray in them, for they were created from the devils.'"

إِنَّمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الْوَارِثِ عَنْ أَبِي التَّيَّاحِ عَنْ أَنَسٍ، وَقَدْ رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ سُلَيْمَانَ بْنِ حَرْبٍ عَنْ شُعْبَةَ عَنْ أَبِي التَّيَّاحِ عَنْ أَنَسٍ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي فِي مَرَابِضِ الْغَنَمِ قَبْلَ أَنْ يُبْنَى الْمَسْجِدُ» فَصَحَّ أَنَّ هَذَا كَانَ فِي أَوَّلِ الْهِجْرَةِ قَبْلَ وُرُودِ الْأَخْبَارِ بِاجْتِنَابِ كُلِّ نَجْوٍ وَبَوْلٍ.

وَأَيْضًا فَإِنَّ يُونُسَ بْنَ عَبْدِ اللَّهِ قَالَ: ثنا أَبُو عِيسَى بْنُ أَبِي عِيسَى ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ يَزِيدَ بْنِ هَارُونَ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا لَمْ تَجِدُوا إِلَّا مَرَابِضَ الْغَنَمِ وَأَعْطَانَ الْإِبِلِ، فَصَلُّوا فِي مَرَابِضِ الْغَنَمِ، وَلَا تُصَلُّوا فِي مَعَاطِنِ الْإِبِلِ» .

حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ عَبْدِ اللَّهِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ الْبَرَاءِ بْنِ عَازِبٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ: أَنُصَلِّي فِي أَعْطَانِ الْإِبِلِ؟ فَقَالَ لَا، قَالَ: أَنُصَلِّي فِي مَرَابِضِ الْغَنَمِ؟ قَالَ نَعَمْ» . قَالَ عَلِيٌّ عَبْدُ اللَّهِ هَذَا هُوَ عَبْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ ثِقَةٌ كُوفِيٌّ وَلِيَ قَضَاءَ الرَّيِّ.

حَدَّثَنَا حُمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَحْمَدُ بْنُ مُحَمَّدٍ الْبِرْتِيُّ ثنا أَبُو مَعْمَرٍ ثنا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ ثنا يُونُسُ عَنْ الْحَسَنِ عَنْ عَبْدِ اللَّهِ بْنِ مُغَفَّلٍ قَالَ: «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِذَا أَتَيْتُمْ عَلَى مَرَابِضِ الْغَنَمِ فَصَلُّوا فِيهَا، وَإِذَا أَتَيْتُمْ عَلَى مَبَارِكِ الْإِبِلِ فَلَا تُصَلُّوا فِيهَا، فَإِنَّهَا خُلِقَتْ مِنْ الشَّيَاطِينِ» .

قَالَ أَبُو مُحَمَّد: فَلَوْ كَانَ أَمْرُهُ - عَلَيْهِ السَّلَامُ - بِالصَّلَاةِ فِي مَرَابِضِ الْغَنَمِ دَلِيلًا عَلَى طَهَارَةِ أَبْوَالِهَا وَأَبْعَارِهَا، كَانَ نَهْيُهُ - عَلَيْهِ السَّلَامُ - عَنْ الصَّلَاةِ فِي أَعْطَانِ الْإِبِلِ دَلِيلًا عَلَى نَجَاسَةِ أَبْوَالِهَا وَأَبْعَارِهَا، وَإِنْ كَانَ نَهْيُهُ - عَلَيْهِ السَّلَامُ - عَنْ الصَّلَاةِ فِي أَعْطَانِ الْإِبِلِ لَيْسَ دَلِيلًا عَلَى نَجَاسَةِ أَبْوَالِهَا، فَلَيْسَ أَمْرُهُ - عَلَيْهِ السَّلَامُ - بِالصَّلَاةِ فِي مَرَابِضِ الْغَنَمِ دَلِيلًا عَلَى طَهَارَةِ أَبْوَالِهَا وَأَبْعَارِهَا، وَالْمُفَرِّقُ بَيْنَ ذَلِكَ مُتَحَكِّمٌ بِالْبَاطِلِ، لَا يَعْجَزُ مَنْ لَا وَرَعَ لَهُ عَنْ أَنْ يَأْخُذَ بِالطَّرَفِ الثَّانِي بِدَعْوَى كَدَعْوَاهُ. فَإِنْ قَالَ: إنَّمَا نَهَى عَنْ الصَّلَاةِ فِي أَعْطَانِ الْإِبِلِ، لِأَنَّهَا خُلِقَتْ مِنْ الشَّيَاطِينِ كَمَا فِي الْحَدِيثِ قِيلَ لَهُ: وَإِنَّمَا أَمَرَ بِالصَّلَاةِ فِي مَرَابِضِ الْغَنَمِ لِأَنَّهَا مِنْ دَوَابِّ الْجَنَّةِ كَمَا قَدْ صَحَّ ذَلِكَ أَيْضًا فِي الْحَدِيثِ، فَخَرَجَتْ الطَّهَارَةُ وَالنَّجَاسَةُ مِنْ كِلَا الْخَبَرَيْنِ، فَسَقَطَ التَّعَلُّقُ بِهَذَا الْخَبَرِ جُمْلَةً. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L3014 Abū Muḥammad said: If the command of the Prophet—peace be upon him—to pray in sheep enclosures were proof of the purity of their urine and dung, then his prohibition—peace be upon him—against praying in camel pens would likewise be proof of the impurity of their urine and dung. Yet if his prohibition—peace be upon him—against praying in camel pens is not proof of the impurity of their urine and dung, then his command—peace be upon him—to pray in sheep enclosures is not proof of the purity of their urine and dung. Whoever differentiates between the two is arbitrarily asserting falsehood, for one without scruples is not incapable of adopting the opposing argument with a claim akin to his own. If someone argues, "He prohibited prayer in camel pens solely because they were created from devils, as mentioned in the ḥadīth," it is replied: "He commanded prayer in sheep enclosures solely because they are among the creatures of Paradise, as likewise authentically established in the ḥadīth." Thus, the rulings on purity and impurity emerge from both narrations, rendering reliance on this ḥadīth entirely invalid. And by Allah's facilitation, the Most High, is success attained.

وَأَمَّا حَدِيثُ أَنَسٍ فِي أَبْوَالِ الْإِبِلِ وَأَلْبَانِهَا فَلَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا أَبَاحَ لِلْعُرَنِيِّينَ شُرْبَ أَبْوَالِ الْإِبِلِ وَأَلْبَانِ الْإِبِلِ عَلَى سَبِيلِ التَّدَاوِي مِنْ الْمَرَضِ، كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ: ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا ابْنُ عُلَيَّةَ عَنْ حَجَّاجِ بْنِ أَبِي عُثْمَانَ حَدَّثَنِي أَبُو رَجَاءٍ مَوْلَى أَبِي قِلَابَةَ عَنْ أَبِي قِلَابَةَ حَدَّثَنِي أَنَسُ بْنُ مَالِكٍ «أَنَّ نَفَرًا مِنْ عُكْلٍ ثَمَانِيَةً قَدِمُوا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَايَعُوهُ عَلَى الْإِسْلَامِ، فَاسْتَوْخَمُوا الْأَرْضَ وَسَقِمَتْ أَجْسَامُهُمْ، فَشَكَوْا ذَلِكَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: أَلَا تَخْرُجُونَ مَعَ رَاعِينَا فِي إبِلِهِ فَتُصِيبُونَ مِنْ أَبْوَالِهَا وَأَلْبَانِهَا فَصَحُّوا، فَقَتَلُوا الرَّاعِيَ وَطَرَدُوا الْإِبِلَ» وَذَكَرَ الْحَدِيثَ فَصَحَّ يَقِينًا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَهُمْ بِذَلِكَ عَلَى سَبِيلِ الدَّوَاءِ مِنْ السَّقَمِ الَّذِي كَانَ أَصَابَهُمْ، وَأَنَّهُمْ

L3015–3018 As for the ḥadīth of Anas regarding camels' urine and their milk, it holds no proof for their position, because the Messenger of Allah—peace and blessings of Allah be upon him—only permitted the 'Uraynīyīn to drink camels' urine and milk as a therapeutic measure for their illness. As narrated through Muslim's chain: Abū Bakr ibn Abī Shaybah narrated to us, Ibn 'Ulayyah narrated to us from Ḥajjāj ibn Abī 'Uthmān, who said: Abū Rajā', the freed slave of Abī Qilābah, narrated to me from Abū Qilābah, who narrated to me from Anas ibn Mālik: "A group of eight from 'Ukl came to the Messenger of Allah—peace and blessings of Allah be upon him—pledging allegiance to him upon embracing Islam. The climate made them ill, and their bodies became diseased. They complained to the Messenger of Allah—peace and blessings of Allah be upon him—who said: 'Why not accompany our shepherd with his camels and partake of their urine and milk?' They did so and recovered, then killed the shepherd and drove away the camels"—and he related the ḥadīth. This confirms decisively that the Messenger of Allah—peace and blessings of Allah be upon him—instructed them to do so as a remedy for

the illness that afflicted them, and their bodies were restored through it. Medical treatment holds the status of necessity, as Allah the Exalted stated: {He has detailed for you what He forbade, except what necessity compels you to consume} [6:119]. Thus, what one is compelled by necessity to consume—whether food or drink—is not forbidden. If it is argued: The Messenger of Allah—peace and blessings of Allah be upon him—said, as reported through Shu'bah's chain from Simāk from 'Alqamah ibn Wā'il from his father: "Ṭāriq ibn Suwayd or Suwayd ibn Ṭāriq mentioned that he asked the Messenger of Allah—peace and blessings of Allah be upon him—about intoxicants, and he forbade him. When he asked again, he forbade him. He said: 'O Prophet of Allah, it is a medicine.' The Prophet—peace and blessings of Allah be upon him—responded: 'No, it is a disease.'" Similarly, the ḥadīth of Yūnus ibn Abī Isḥāq from Mujāhid from Abū Hurayrah states: "The Messenger of Allah—peace and blessings of Allah be upon him—prohibited evil medicine." And the narration through Jarīr from Sulaymān al-Shaybānī from Ḥassān ibn al-Mukhāriq from Umm Salamah from the Prophet—peace and blessings of Allah be upon him—: "Allah has not placed your cure in what He forbade you." None of this constitutes proof. The ḥadīth of 'Alqamah ibn Wā'il is transmitted through Simāk ibn Ḥarb, who is known to accept prompting, as attested by Shu'bah and others. Even if authentic, it offers no proof, as it merely states that intoxicants are not medicine. Since they are not medicine, we all agree that consuming forbidden non-medicinal substances is impermissible. Our disagreement concerns only medicinal use. All present scholars do not... They say this, but rather, our companions and the Mālikīs permit a person with a throat obstruction to drink wine if he finds nothing else to enable him to swallow his food besides it, while the Ḥanafīs and Shāfi'īs permit wine in cases of severe thirst. As for the *ḥadīth* about the vile medicine, indeed, what Allah the Exalted has permitted out of necessity is not vile in that state; rather, it is lawful and good, for what is lawful cannot be vile. Thus, it is established that the "vile medicine" refers to the lethal

صَحَّتْ أَجْسَامُهُمْ بِذَلِكَ، وَالتَّدَاوِي بِمَنْزِلَةِ ضَرُورَةٍ، وَقَدْ قَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] فَمَا اُضْطُرَّ الْمَرْءُ إِلَيْهِ فَهُوَ غَيْرُ مُحَرَّمٍ عَلَيْهِ مِنَ الْمَأْكَلِ وَالْمَشْرَبِ، فَإِنْ قِيلَ: قَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا رَوَيْتُمُوهُ مِنْ طَرِيقِ شُعْبَةَ عَنْ سِمَاكٍ عَنْ عَلْقَمَةَ بْنِ وَائِلٍ عَنْ أَبِيهِ قَالَ: «ذَكَرَ طَارِقُ بْنُ سُوَيْدٍ أَوْ سُوَيْدُ بْنُ طَارِقٍ أَنَّهُ سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنِ الْخَمْرِ فَنَهَاهُ ثُمَّ سَأَلَهُ فَنَهَاهُ، فَقَالَ: يَا نَبِيَّ اللَّهِ إِنَّهَا دَوَاءٌ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَا، وَلَكِنَّهَا دَاءٌ» وَحَدِيثُ يُونُسَ بْنِ أَبِي إِسْحَاقَ عَنْ مُجَاهِدٍ عَنْ أَبِي هُرَيْرَةَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنِ الدَّوَاءِ الْخَبِيثِ» . وَمَا رُوِيَ مِنْ طَرِيقِ جَرِيرٍ عَنْ سُلَيْمَانَ الشَّيْبَانِيِّ عَنْ حَسَّانَ بْنِ الْمُخَارِقِ عَنْ أُمِّ سَلَمَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ اللَّهَ لَمْ يَجْعَلْ شِفَاءَكُمْ فِيمَا حَرَّمَ عَلَيْكُمْ» . فَهَذَا كُلُّهُ لَا حُجَّةَ فِيهِ؛ لِأَنَّ حَدِيثَ عَلْقَمَةَ بْنِ وَائِلٍ إِنَّمَا جَاءَ مِنْ طَرِيقِ سِمَاكِ بْنِ حَرْبٍ وَهُوَ يَقْبَلُ التَّلْقِينَ، شَهِدَ عَلَيْهِ بِذَلِكَ شُعْبَةُ وَغَيْرُهُ، ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ فِيهِ حُجَّةٌ؛ لِأَنَّ فِيهِ أَنَّ الْخَمْرَ لَيْسَتْ دَوَاءً، وَإِذْ لَيْسَتْ دَوَاءً فَلَا خِلَافَ بَيْنَنَا فِي أَنَّ مَا لَيْسَ دَوَاءً فَلَا يَحِلُّ تَنَاوُلُهُ إِذَا كَانَ حَرَامًا، وَإِنَّمَا خَالَفْنَاهُمْ فِي الدَّوَاءِ، وَجَمِيعُ الْحَاضِرِينَ لَا يَقُولُونَ بِهَذَا، بَلْ أَصْحَابُنَا وَالْمَالِكِيُّونَ يُبِيحُونَ لِلْمُخْتَنِقِ شُرْبَ الْخَمْرِ إِذَا لَمْ يَجِدْ مَا يُسِيغُ أَكْلَهُ بِهِ غَيْرَهَا، وَالْحَنَفِيُّونَ وَالشَّافِعِيُّونَ يُبِيحُونَهَا عِنْدَ شِدَّةِ الْعَطَشِ. وَأَمَّا حَدِيثُ الدَّوَاءِ الْخَبِيثِ فَنَعَمْ وَمَا أَبَاحَهُ اللَّهُ تَعَالَى عِنْدَ الضَّرُورَةِ فَلَيْسَ فِي تِلْكَ الْحَالِ خَبِيثًا، بَلْ هُوَ حَلَالٌ طَيِّبٌ؛ لِأَنَّ الْحَلَالَ لَيْسَ خَبِيثًا، فَصَحَّ أَنَّ الدَّوَاءَ الْخَبِيثَ هُوَ الْقَتَّالُ الْمَخُوفُ، عَلَى أَنَّ يُونُسَ بْنَ أَبِي إِسْحَاقَ الَّذِي انْفَرَدَ بِهِ لَيْسَ بِالْقَوِيِّ.

and feared killer, although Yūnus ibn Abī Isḥāq, the sole narrator of this, is not considered reliable.[1][2]

L3019 As for the ḥadīth, "Allah has not placed your cure in what He forbade you," it is invalid because its narrator, Sulaymān al-Shaybānī, is unknown.

L3020 Certainty has been established regarding the permissibility of consuming carrion and pork when facing mortal danger from starvation, for the Almighty has made our cure from life-threatening hunger in what He prohibited us under normal circumstances. We affirm: As long as something remains forbidden to us, there is no cure for us in it. But when compelled by necessity, it ceases to be forbidden at that moment - rather it becomes permissible, thus serving as our cure. This is the apparent meaning of the report. Allah the Exalted states regarding His prohibitions: "But whoever is driven by necessity, neither craving nor transgressing, incurs no sin" [Al-Baqarah 2:173]. He further declares: "He has detailed what He forbade you, except what you are compelled to" [Al-An'ām 6:119]. It is authentically established that Allah's Messenger (peace be upon him) said: "Silk and gold are forbidden for the males of my community but permissible for their females," and stated: "Only those with no portion in the Hereafter wear silk in this world" - through reliable chains of transmission that constitute established evidence necessitating certain knowledge. The prohibition of silk was narrated by 'Umar, his son, Ibn al-Zubayr, Abū Mūsā, and others. Subsequently, it was conclusively established that the Prophet (peace be upon him) permitted 'Abd al-Raḥmān ibn 'Awf and al-Zubayr ibn al-'Awwām to wear silk garments for medical treatment of skin irritation, lice infestation, and physical pain, thus invalidating all arguments they relied upon.[3][4]

L3021–3023 As for their statement that all things are permissible by default based on

وَأَمَّا حَدِيثُ «لَمْ يَجْعَلْ اللَّهُ شِفَاءَكُمْ فِيمَا حَرَّمَ عَلَيْكُمْ» فَبَاطِلٌ لِأَنَّ رَاوِيَهُ سُلَيْمَانُ الشَّيْبَانِيُّ وَهُوَ مَجْهُولٌ.

وَقَدْ جَاءَ الْيَقِينُ بِإِبَاحَةِ الْمَيْتَةِ وَالْخِنْزِيرِ عِنْدَ خَوْفِ الْهَلَاكِ مِنْ الْجُوعِ فَقَدْ جَعَلَ تَعَالَى شِفَاءَنَا مِنْ الْجُوعِ الْمُهْلِكِ فِيمَا حَرَّمَ عَلَيْنَا فِي غَيْرِ تِلْكَ الْحَالِ وَنَقُولُ: نَعَمْ إنَّ الشَّيْءَ مَا دَامَ حَرَامًا عَلَيْنَا فَلَا شِفَاءَ لَنَا فِيهِ، فَإِذَا اُضْطُرِرْنَا إلَيْهِ فَلَمْ يُحَرَّمْ عَلَيْنَا حِينَئِذٍ بَلْ هُوَ حَلَالٌ، فَهُوَ لَنَا حِينَئِذٍ شِفَاءٌ، وَهَذَا ظَاهِرُ الْخَبَرِ. وَقَدْ قَالَ اللَّهُ تَعَالَى فِيمَا حَرَّمَ عَلَيْنَا: {فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ} [البقرة: ١٧٣] وَقَدْ قَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] وَصَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْحَرِيرُ وَالذَّهَبُ حَرَامٌ عَلَى ذُكُورِ أُمَّتِي حَلَالٌ لِإِنَاثِهَا» وَقَالَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا يَلْبَسُ الْحَرِيرَ فِي الدُّنْيَا مَنْ لَا خَلَاقَ لَهُ فِي الْآخِرَةِ» مِنْ الطُّرُقِ الثَّابِتَةِ الْمُوجِبَةِ لِلْعِلْمِ. رَوَى تَحْرِيمَ الْحَرِيرِ عُمَرُ وَابْنُهُ وَابْنُ الزُّبَيْرِ وَأَبُو مُوسَى وَغَيْرُهُمْ، ثُمَّ صَحَّ يَقِينًا «أَنَّهُ - عَلَيْهِ السَّلَامُ - أَبَاحَ لِعَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ وَالزُّبَيْرِ بْنِ الْعَوَّامِ لِبَاسَ الْحَرِيرِ عَلَى سَبِيلِ التَّدَاوِي مِنْ الْحَكَّةِ وَالْقَمْلِ وَالْوَجَعِ» ، فَسَقَطَ كُلُّ مَا تَعَلَّقُوا بِهِ.

وَأَمَّا قَوْلُهُمْ: إنَّ الْأَشْيَاءَ عَلَى الْإِبَاحَةِ بِقَوْلِهِ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] وَبِقَوْلِهِ تَعَالَى: {خَلَقَ لَكُمْ مَا فِي الأَرْضِ جَمِيعًا} [البقرة: ٢٩] فَصَحِيحٌ، وَهَكَذَا نَقُولُ: إنَّنَا إنْ لَمْ نَجِدْ نَصًّا عَلَى تَحْرِيمِ الْأَبْوَالِ جُمْلَةً

[1] **Hadith references (L3016):** Sunan Abi Dawud 3870; Sunan Ibn Majah 3459; Jami at-Tirmidhi 2045.

[2] **Qur'an references (L3016):** Qur'an 6:119 (Al-An'am).

[3] **Hadith references (L3020):** Sahih al-Bukhari 5835; Sahih Muslim 2068c; Mishkat al-Masabih 4320.

[4] **Qur'an references (L3020):** Qur'an 2:173 (Al-Baqarah); Qur'an 6:119 (Al-An'am).

His saying, Exalted is He: “He has detailed for you what He prohibited to you except what you are compelled to” [Al-An‘am 6:119] and His saying: “He created for you all that is on the earth” [Al-Baqarah 2:29], this is correct. Thus we say: If we find no text comprehensively prohibiting all types of urine and feces, then nothing among them is forbidden except what is unanimously agreed upon concerning the urine of the son of Adam and his feces—as they stated. For if we find a text prohibiting all such matters and requiring its avoidance, asserting that becomes obligatory. We therefore examined this matter and found what ‘Abd al-Rahmān ibn ‘Abd Allāh ibn Khālid narrated to us: Ibrāhīm ibn Aḥmad al-Balkhī narrated to us; al-Farbarī narrated to us; al-Bukhārī narrated to us; Ibn Sallām narrated to us. ‘Ubaydah ibn Humaid Abu ‘Abd al-Rahman narrated to us from Mansur, from Mujahid, from Ibn ‘Abbas that the Messenger of Allah (peace be upon him) heard the voice of two men being punished in their graves. He (peace be upon him) said: “They are being punished, though not for a major sin, yet it is indeed major. One of them did not shield himself from urine, and the other would go about spreading slander.” And he related the hadith.[5]

وَالْأَنْجَاءِ جُمْلَةً، وَإِلَّا فَلَا يَحْرُمُ مِنْ ذَلِكَ شَيْءٌ إِلَّا مَا أُجْمِعَ عَلَيْهِ مِنْ بَوْلِ ابْنِ آدَمَ وَنَجْوِهِ. كَمَا قَالُوا: فَإِنْ وَجَدْنَا نَصًّا فِي تَحْرِيمِ كُلِّ ذَلِكَ وَوُجُوبِ اجْتِنَابِهِ، فَالْقَوْلُ بِذَلِكَ وَاجِبٌ، فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا مَا حَدَّثَنَاهُ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيُّ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا ابْنُ سَلَّامٍ أَخْبَرَنَا عُبَيْدَةُ بْنُ حُمَيْدٍ أَبُو عَبْدِ الرَّحْمَنِ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ عَنِ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَمِعَ صَوْتَ إِنْسَانَيْنِ يُعَذَّبَانِ فِي قُبُورِهِمَا فَقَالَ - عَلَيْهِ السَّلَامُ -: يُعَذَّبَانِ وَمَا يُعَذَّبَانِ فِي كَبِيرٍ وَإِنَّهُ لَكَبِيرٌ، كَانَ أَحَدُهُمَا لَا يَسْتَتِرُ مِنَ الْبَوْلِ، وَكَانَ الْآخَرُ يَمْشِي بِالنَّمِيمَةِ» وَذَكَرَ الْحَدِيثَ.

L3024 Abu Muhammad said: Every major sin is minor in relation to what is greater than it among polytheism or murder. Through the chain of al-Bukhārī: Muḥammad ibn al-Muthannā narrated to us, on the authority of Abū Muʿāwiyah al-Ḍarīr—who is Muḥammad ibn Khāzim—who narrated to us, on the authority of al-Aʿmash, from Mujāhid, from Ṭāwūs, from Ibn ʿAbbās, who said: “The Messenger of Allah—peace and blessings be upon him—passed by two graves and said: ’They are indeed being punished, though not for a major sin. As for one of them, he did not cleanse himself properly from urine. As for the other, he used to spread slander.’” The remainder of the narration was mentioned. We also narrated it through the chain of Aḥmad ibn Ḥanbal, from Muḥammad ibn Jaʿfar, from Shuʿbah, from al-Aʿmash; through the chain of Wakīʿ, from al-Aʿmash; and through the chain of Jarīr and Shuʿbah, from Manṣūr ibn al-Muʿtamir, from Mujāhid.

قَالَ أَبُو مُحَمَّدٍ: كُلُّ كَبِيرٍ فَهُوَ صَغِيرٌ بِالْإِضَافَةِ إِلَى مَا هُوَ أَكْبَرُ مِنْهُ مِنَ الشِّرْكِ أَوِ الْقَتْلِ. وَمِنْ طَرِيقِ الْبُخَارِيِّ: حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا أَبُو مُعَاوِيَةَ الضَّرِيرُ هُوَ مُحَمَّدُ بْنُ خَازِمٍ ثنا الْأَعْمَشُ عَنْ مُجَاهِدٍ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ قَالَ «مَرَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَبْرَيْنِ فَقَالَ: إِنَّهُمَا لَيُعَذَّبَانِ وَمَا يُعَذَّبَانِ فِي كَبِيرٍ، أَمَّا أَحَدُهُمَا فَكَانَ لَا يَسْتَتِرُ مِنَ الْبَوْلِ، وَأَمَّا الْآخَرُ فَكَانَ يَمْشِي بِالنَّمِيمَةِ» وَذَكَرَ بَاقِيَ الْخَبَرِ. وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ عَنْ مُحَمَّدِ بْنِ جَعْفَرٍ عَنْ شُعْبَةَ عَنِ الْأَعْمَشِ، وَمِنْ طَرِيقِ وَكِيعٍ عَنِ الْأَعْمَشِ، وَمِنْ طَرِيقِ جَرِيرٍ وَشُعْبَةَ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ مُجَاهِدٍ.

L3025 Yunus Abdullah ibn Mughith narrated to us; Abu Isa ibn Abi Isa narrated to us; Ahmad ibn Khalid narrated to us; Ibn Waddah narrated to us; Abu

حَدَّثَنَا يُونُسُ عَبْدُ اللَّهِ بْنُ مُغِيثٍ ثنا أَبُو عِيسَى بْنُ أَبِي عِيسَى ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ عَفَّانَ بْنِ مُسْلِمٍ ثنا أَبُو عَوَانَةَ عَنِ الْأَعْمَشِ عَنْ أَبِي

[5] **Qur’an references (L3021):** Qur’an 6:119 (Al-An’am); Qur’an 2:29 (Al-Baqarah).

Bakr ibn Abi Shaybah from Affan ibn Muslim; Abu Awanah from Al-A'mash; from Abu Salih; from Abu Hurairah; from the Prophet, peace and blessings be upon him, who said: "Most of the grave's punishment pertains to urine." We also transmitted it via the narration of Abu Mu'awiyah from Al-A'mash with its isnād.

صَالِحٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَكْثَرُ عَذَابِ الْقَبْرِ فِي الْبَوْلِ» وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ أَبِي مُعَاوِيَةَ عَنْ الْأَعْمَشِ بِإِسْنَادِهِ.

L3026–3028 Abdullah ibn Rabīʿ narrated to us: ʿUmar ibn ʿAbd al-Malik al-Khawlānī narrated to us: Muḥammad ibn Bakr narrated to us: Abū Dāwūd narrated to us: Aḥmad ibn Ḥanbal narrated to us: Yaḥyā ibn Saʿīd—he is al-Qaṭṭān—narrated from Abū Ḥazrah—he is Yaʿqūb ibn Mujāhid al-Qāṣṣ, the preacher—narrated to us: ʿAbdullāh ibn Muḥammad ibn Abī Bakr al-Ṣiddīq, the brother of al-Qāsim ibn Muḥammad, said: We were with ʿĀ'ishah, the Mother of the Believers, when she said: I heard the Messenger of Allah—peace and blessings be upon him—say: "No prayer is to be offered while food is present, nor while one is resisting the urge to relieve oneself of the two impurities"—that is, urine and feces. We also narrated it from. The chain of Musaddad from Yaḥyā ibn Saʿīd through his chain (isnād), and via the chain of Muslim: Muḥammad ibn ʿAbbād → Ḥātim ibn Ismāʿīl → Abū Ḥazrah.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ الْخَوْلَانِيُّ ثنا مُحَمَّدُ بْنُ بَكْرٍ حَدَّثَنَا أَبُو دَاوُد ثنا أَحْمَدُ بْنُ حَنْبَلٍ ثنا يَحْيَى بْنُ سَعِيدٍ هُوَ الْقَطَّانُ - عَنْ أَبِي حَزْرَةَ هُوَ يَعْقُوبُ بْنُ مُجَاهِدٍ الْقَاصُّ، ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ أَخُو الْقَاسِمِ بْنِ مُحَمَّدٍ قَالَ: كُنَّا عِنْدَ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَقَالَتْ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا يُصَلَّى بِحَضْرَةِ طَعَامٍ وَلَا وَهُوَ يُدَافِعُهُ الْأَخْبَثَانِ يَعْنِي الْبَوْلَ وَالنَّجْوَ» . وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مُسَدَّدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ بِإِسْنَادِهِ. وَمِنْ طَرِيقِ مُسْلِمٍ عَنْ مُحَمَّدِ بْنِ عَبَّادٍ عَنْ حَاتِمِ بْنِ إسْمَاعِيلَ عَنْ أَبِي حَزْرَةَ.

L3029 Abu Muhammad said: The Messenger of Allah—peace and blessings of Allah be upon him—imposed upon people the complete avoidance of urine and threatened punishment for it. This is a universal ruling from which no type of urine may be exempted except through a clear, established textual proof. To do otherwise would entail falsely ascribing claims to Allah the Exalted and His Messenger—peace and blessings of Allah be upon him—without knowledge. We find that the Prophet—peace and blessings of Allah be upon him—designated urine in its entirety and dung in its entirety as "the two impure things," and the impure is forbidden. Allah the Exalted said: "He makes lawful for them the good things and prohibits them from the impure" (7:157). Thus, it is confirmed that every most impure and impure thing is forbidden.[6]

قَالَ أَبُو مُحَمَّد: فَافْتَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى النَّاسِ اجْتِنَابَ الْبَوْلِ جُمْلَةً، وَتَوَعَّدَ عَلَى ذَلِكَ بِالْعَذَابِ، وَهَذَا عُمُومٌ لَا يَجُوزُ أَنْ يُخَصَّ مِنْهُ بَوْلٌ دُونَ بَوْلٍ، فَيَكُونُ فَاعِلُ ذَلِكَ مُدَّعِيًا عَلَى اللَّهِ تَعَالَى وَعَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَا عِلْمَ لَهُ بِهِ بِالْبَاطِلِ إلَّا بِنَصٍّ ثَابِتٍ جَلِيٍّ، وَوَجَدْنَاهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ سَمَّى الْبَوْلَ جُمْلَةً وَالنَّجْوَ جُمْلَةً " الْأَخْبَثَيْنِ " وَالْخَبِيثُ مُحَرَّمٌ، قَالَ اللَّهُ تَعَالَى: {وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ} [الأعراف: ١٥٧] فَصَحَّ أَنَّ كُلَّ أَخْبَثَ وَخَبِيثٍ فَهُوَ حَرَامٌ.

L3030 If it is said: He (peace be upon him) only addressed the people, intending specifically their private conversations and urine. We reply: Indeed, he

فَإِنْ قِيلَ: إنَّمَا خَاطَبَ - عَلَيْهِ السَّلَامُ - النَّاسَ فَإِنَّمَا أَرَادَ نَجْوَهُمْ وَبَوْلَهُمْ فَقَطْ. قُلْنَا: نَعَمْ إنَّمَا خَاطَبَ - عَلَيْهِ السَّلَامُ - النَّاسَ وَلَكِنْ أَتَى بِالِاسْمِ الْأَعَمِّ الَّذِي يَدْخُلُ تَحْتَهُ جِنْسُ

[6] **Qur'an references (L3029):** Qur'an 7:157 (Al-A'raf).

الْبَوْلِ وَالنَّجْوِ. وَلَا فَرْقَ بَيْنَ مَنْ قَالَ: إِنَّمَا أَرَادَ - عَلَيْهِ السَّلَامُ - نَجْوَ النَّاسِ خَاصَّةً وَبَوْلَهُمْ وَبَيْنَ مَنْ قَالَ: بَلْ إِنَّمَا أَرَادَ - عَلَيْهِ السَّلَامُ - بَوْلَ كُلِّ إِنْسَانٍ عَلَيْهِ خَاصَّةً لَا بَوْلَ غَيْرِهِ مِنَ النَّاسِ، وَكَذَلِكَ فِي النَّجْوِ فَصَحَّ أَنَّ الْوَاجِبَ حَمْلُ ذَلِكَ عَلَى مَا تَحْتَ الِاسْمِ الْجَامِعِ لِلْجِنْسِ كُلِّهِ. فَإِنْ قِيلَ: إِنَّ هَذَا الْخَبَرَ الَّذِي فِيهِ الْعَذَابُ فِي الْبَوْلِ إِنَّمَا هُوَ مِنْ رِوَايَةِ الْأَعْمَشِ عَنْ مُجَاهِدٍ، وَقَدْ تَكَلَّمَ فِيهَا، وَأَيْضًا فَإِنَّهُ مَرَّةً رَوَاهُ عَنْ مُجَاهِدٍ عَنِ ابْنِ عَبَّاسٍ، وَمَرَّةً عَنْ مُجَاهِدٍ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ، وَأَيْضًا فَإِنَّ ابْنَ رَاهْوَيْهِ وَمُحَمَّدَ بْنَ الْعَلَاءِ وَيَحْيَى وَأَبَا سَعِيدٍ الْأَشَجَّ رَوَوْهُ عَنْ وَكِيعٍ عَنِ الْأَعْمَشِ فَقَالُوا فِيهِ «كَانَ لَا يَسْتَتِرُ مِنْ بَوْلِهِ» وَهَكَذَا رَوَاهُ عُثْمَانُ بْنُ أَبِي شَيْبَةَ عَنْ جَرِيرٍ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ.

(peace be upon him) addressed the people, but he employed the broader term encompassing the category of urine and private conversations. There is no difference between one who says: He (peace be upon him) specifically intended the people's private conversations and their urine, and one who says: Rather, he (peace be upon him) intended the urine of every individual specifically, not the urine of others among the people, and likewise regarding private conversations. Thus, it is established that the necessary approach is to interpret this according to what falls under the comprehensive term covering the entire category. If it is said: This report mentioning punishment for urine is only from the narration of Al-Aʿmash from Mujāhid, and it has been subject to criticism. Moreover, he sometimes narrated it from Mujāhid from Ibn ʿAbbās, and sometimes from Mujāhid from Ṭāwūs from Ibn ʿAbbās. Additionally, Ibn Rāhawayh, Muḥammad bin Al-ʿAlāʾ, Yaḥyā, and Abū Saʿīd Al-Ashajj narrated it from Wakīʿ from Al-Aʿmash, stating: "He did not cover himself while urinating." Similarly, ʿUthmān bin Abī Shaybah narrated it from Jarīr from Manṣūr from Mujāhid.

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّهُ لَا شَيْءَ. أَمَّا رِوَايَةُ الْأَعْمَشِ عَنْ مُجَاهِدٍ فَإِنَّ الْإِمَامَيْنِ شُعْبَةَ وَوَكِيعًا ذَكَرَا فِي هَذَا الْحَدِيثِ سَمَاعَ الْأَعْمَشِ لَهُ مِنْ مُجَاهِدٍ فَسَقَطَ هَذَا الِاعْتِرَاضُ، وَأَيْضًا فَقَدْ رُوِّينَاهُ آنِفًا مِنْ غَيْرِ طَرِيقِ الْأَعْمَشِ لَكِنْ مِنْ طَرِيقِ مَنْصُورٍ عَنْ مُجَاهِدٍ عَنِ ابْنِ عَبَّاسٍ، فَسَقَطَ التَّعَلُّلُ جُمْلَةً. وَأَمَّا رِوَايَةُ هَذَا الْخَبَرِ مَرَّةً عَنْ مُجَاهِدٍ عَنِ ابْنِ عَبَّاسٍ وَمَرَّةً عَنْ مُجَاهِدٍ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ فَهَذَا قُوَّةٌ لِلْحَدِيثِ، وَلَا يَتَعَلَّلُ بِهَذَا إِلَّا جَاهِلٌ مُكَابِرٌ لِلْحَقَائِقِ، لِأَنَّ كِلَيْهِمَا إِمَامٌ، وَكِلَاهُمَا صَحِبَ ابْنَ عَبَّاسٍ الصُّحْبَةَ الطَّوِيلَةَ، فَسَمِعَهُ مُجَاهِدٌ مِنِ ابْنِ عَبَّاسٍ.

Abu Muhammad said: All of this is baseless. As for the narration of al-Aʿmash from Mujāhid, the two eminent scholars Shuʿbah and Wakīʿ mentioned in this ḥadīth that al-Aʿmash heard it from Mujāhid. Thus, this [claim] is dismissed. The objection. Moreover, we have already narrated it earlier through a chain not involving Al-Aʿmash, but through Mansur's chain from Mujahid from Ibn Abbas, causing the pretext to collapse entirely. As for the narration of this report once through Mujahid from Ibn Abbas and another time through Mujahid from Tawus from Ibn Abbas, this strengthens the hadith. None would cling to objections here except an obstinate ignoramus denying facts, for both were imams who accompanied Ibn Abbas extensively. Thus, Mujahid heard it from Ibn Abbas.

L3031–3033

وَسَمِعَهُ أَيْضًا مِنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ فَرَوَاهُ كَذَلِكَ، وَإِلَّا فَأَيُّ شَيْءٍ فِي هَذَا مِمَّا يَقْدَحُ فِي الرِّوَايَةِ؟ وَوَدِدْنَا أَنْ تُبَيِّنُوا لَنَا ذَلِكَ وَلَا سَبِيلَ إِلَيْهِ إِلَّا بِدَعْوَى فَاسِدَةٍ لَهِجَ

He also heard it from Tāwūs via Ibn 'Abbās and narrated it in the same wording. Were it otherwise, what element in this could possibly impugn the narration? We would love for you to elucidate this for us, but there is no avenue to that except through a baseless assertion obsessively adhered to by

L3034

a faction among the traditionists - they being manifestly erroneous in the very essence of error, while those who imitate them are in a worse condition than them. As for the narration of those who reported “from his urine,” they were contradicted by narrators of superior standing. Hannād ibn al-Sarī, Zuhayr ibn Harb, Muḥammad ibn al-Muthannā, and Muḥammad ibn Bashshār - all narrated from Wakī’ using “from the urine.” Ibn ’Awn and Ibn Jarīr narrated it from his father via Manṣūr via Mujāhid, both stating: “from the urine.” Shu’bah and ’Ubaydah ibn Ḥumayd, both narrating from Manṣūr via Mujāhid, said: “from the urine.” Shu’bah, Abū Mu’āwiyah al-Ḍarīr, and ’Abd al-Wāḥid ibn Ziyād - all narrated from al-A’mash using “from the urine.” Thus both transmissions are valid, though the narration of these scholars supersedes others’ through the addition of an upright narrator - an addition that must necessarily be accepted. Thus all their pretexts are invalidated, and the categorical obligation to avoid all urine and excrement stands established. This position was upheld by numerous predecessors, as Ḥammām narrated to us: ’Abbās ibn Aṣbagh narrated to us: Muḥammad ibn ’Abd al-Malik ibn Ayman narrated to us: Aḥmad ibn Muḥammad al-Birtī the judge narrated to us: Abū Ma’mar narrated to us: ’Abd al-Wārith ibn Sa’īd narrated to us: ’Umārah ibn Abī Ḥafṣah reported to me: Abū Mijlaz said: “I asked Ibn ’Umar about my she-camel’s urine.” He replied: “Wash whatever part of you it touches.”

بِهَا قَوْمٌ مِنْ أَصْحَابِ الْحَدِيثِ، وَهُمْ فِيهَا مُخْطِئُونَ عَيْنَ الْخَطَأِ، وَمَنْ قَلَّدَهُمْ أَسْوَأُ حَالًا مِنْهُمْ. وَأَمَّا رِوَايَةُ مَنْ رَوَى " مِنْ بَوْلِهِ " فَقَدْ عَارَضَهُمْ مَنْ هُوَ فَوْقَهُمْ، فَرَوَى هَنَّادُ بْنُ السَّرِيِّ وَزُهَيْرُ بْنُ حَرْبٍ وَمُحَمَّدُ بْنُ الْمُثَنَّى وَمُحَمَّدُ بْنُ بَشَّارٍ كُلُّهُمْ عَنْ وَكِيعٍ فَقَالُوا " مِنْ الْبَوْلِ " وَرَوَاهُ ابْنُ عَوْنٍ وَابْنُ جَرِيرٍ عَنْ أَبِيهِ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ فَقَالَا: " مِنْ الْبَوْلِ " وَرَوَاهُ شُعْبَةُ وَعُبَيْدَةُ بْنُ حُمَيْدٍ، كِلَاهُمَا عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ فَقَالَا: " مِنْ الْبَوْلِ " وَرَوَاهُ شُعْبَةُ وَأَبُو مُعَاوِيَةَ الضَّرِيرُ وَعَبْدُ الْوَاحِدِ بْنُ زِيَادٍ كُلُّهُمْ عَنْ الْأَعْمَشِ فَقَالُوا " مِنْ الْبَوْلِ " فَكِلَا الرِّوَايَتَيْنِ حَقٌّ، وَرِوَايَةُ هَؤُلَاءِ تَزِيدُ عَلَى رِوَايَةِ الْآخَرِينَ وَزِيَادَةُ الْعَدْلِ وَاجِبٌ قَبُولُهَا، فَسَقَطَ كُلُّ مَا تَعَلَّلُوا بِهِ، وَصَحَّ فَرْضًا وُجُوبُ اجْتِنَابِ كُلِّ بَوْلٍ وَنَجْوٍ. وَمِمَّنْ قَالَ بِهَذَا جُمْلَةٌ مِنْ السَّلَفِ، كَمَا حَدَّثَنَا حُمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَحْمَدُ بْنُ مُحَمَّدٍ الْبِرْتِيُّ الْقَاضِي ثنا أَبُو مَعْمَرٍ ثنا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ ثنا عُمَارَةُ بْنُ أَبِي حَفْصَةَ حَدَّثَنِي أَبُو مِجْلَزٍ قَالَ: - سَأَلْت ابْنَ عُمَرَ عَنْ بَوْلِ نَاقَتِي قَالَ اغْسِلْ مَا أَصَابَك مِنْهُ.

L3035 From Ahmad ibn Hanbal, from al-Muʿtamir ibn Sulaymān al-Taymī, from Salm ibn Abī al-Dhayyāl, from Ṣāliḥ al-Dahhān, from Jābir ibn Zayd, who said: “All urine is impure.” From Ḥammād ibn Salamah, from Yūnus ibn ʿUbayd, from al-Ḥasan, who said: “All urine must be washed.” From Qatādah, from Saʿīd ibn al-Musayyab, who said: “Sprinkling with sprinkling and pouring with pouring from all urine.” From Maʿmar, from al-Zuhrī regarding what befalls the herder from camel urine: “It should be sprinkled.” From Sufyān ibn ʿUyaynah, from Abū Mūsā Isrāʾīl, who said: “I was with Muḥammad ibn Sīrīn when bat urine fell on him. He sprinkled it and said: ’I did not consider sprinkling valid until it reached me from seven companions of the Messenger of Allah—peace and blessings be upon him.’” From Wakīʿ, from Shuʿbah, who said: “I asked Ḥammād ibn Abī Sulaymān about sheep urine.

وَعَنْ أَحْمَدَ بْنِ حَنْبَلٍ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ سَلْمِ بْنِ أَبِي الذَّيَّالِ عَنْ صَالِحٍ الدَّهَّانِ عَنْ جَابِرِ بْنِ زَيْدٍ قَالَ: الْأَبْوَالُ كُلُّهَا أَنْجَاسٌ. وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ قَالَ " الْبَوْلُ كُلُّهُ يُغْسَلُ " وَعَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ " الرَّشُّ بِالرَّشِّ وَالصَّبُّ بِالصَّبِّ مِنْ الْأَبْوَالِ كُلِّهَا " وَعَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِيمَا يُصِيبُ الرَّاعِي مِنْ أَبْوَالِ الْإِبِلِ قَالَ " يُنْضَحُ " وَعَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ أَبِي مُوسَى إسْرَائِيلَ قَالَ " كُنْت مَعَ مُحَمَّدِ بْنِ سِيرِينَ فَسَقَطَ عَلَيْهِ بَوْلُ خُفَّاشٍ فَنَضَحَهُ، وَقَالَ مَا

He replied: 'Wash it.'" From Ḥammād ibn Abī Sulaymān also, regarding camel urine: the same ruling applies.

كُنْت أَرَى النَّضْحَ شَيْئًا حَتَّى بَلَغَنِي عَنْ سَبْعَةٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَعَنْ وَكِيعٍ عَنْ شُعْبَةَ قَالَ " سَأَلْت حَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَنْ بَوْلِ الشَّاةِ، فَقَالَ اغْسِلْهُ. وَعَنْ حَمَّادٍ أَيْضًا فِي بَوْلِ الْبَعِيرِ مِثْلُ ذَلِكَ.

L3036–3037 Abu Muhammad said: "As for the statement of Zufar, it has no connection to any of these reports due to what we will mention in invalidating the opinion of Malik, if Allah the Exalted wills—however, those who follow his opinion base their stance on a hadith narrated by Isa ibn Musa ibn Abi Harb al-Saffar from Yahya ibn Bukayr from Sawwar ibn Mus'ab from Mutarrif from Abu al-Jahm from al-Bara' ibn Azib from the Messenger of Allah (peace and blessings be upon him), who said: 'There is no harm in the urine of that which is eaten its meat.'"

قَالَ أَبُو مُحَمَّدٍ " وَأَمَّا قَوْلُ زُفَرَ فَلَا مُتَعَلَّقَ لَهُ بِشَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ، لِمَا نَذْكُرُهُ فِي إفْسَادِ قَوْلِ مَالِكٍ إنْ شَاءَ اللَّهُ تَعَالَى - لَكِنَّ تَعَلُّقَ مَنْ ذَهَبَ مَذْهَبَهُ بِحَدِيثٍ رَوَاهُ عِيسَى بْنُ مُوسَى بْنِ أَبِي حَرْبٍ الصَّفَّارُ عَنْ يَحْيَى بْنِ بُكَيْرٍ عَنْ سَوَّارِ بْنِ مُصْعَبٍ عَنْ مُطَرِّفٍ عَنْ أَبِي الْجَهْمِ عَنْ الْبَرَاءِ بْنِ عَازِبٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَا أُكِلَ لَحْمُهُ فَلَا بَأْسَ بِبَوْلِهِ» .

L3038 Ali said: This is a false and fabricated report, for Sawwār ibn Muṣʿab is unanimously rejected by all transmitters of tradition. There is consensus to abandon narrations from him, as he reports fabricated matters. If this is dismissed, then Zufar analogized some urines to others but did not extend analogy to camel dung in relation to urine. This is precisely why his companions criticized our distinction between the ruling of one urinating in stagnant water and one defecating in it. However, we articulated this position in adherence to the Messenger of Allah - peace and blessings be upon him - while Zufar spoke through his corrupt reasoning. As for Mālik's opinion, it is manifestly erroneous, for his evidence addresses only camel urine and inferred rulings regarding sheep urine and their dung exclusively. Yet he extended the ruling of purity to cow urine, cow excrement, camel dung, and the excrement and urine of every animal whose flesh is eaten.

قَالَ عَلِيٌّ: هَذَا خَبَرٌ بَاطِلٌ مَوْضُوعٌ، لِأَنَّ سَوَّارَ بْنَ مُصْعَبٍ مَتْرُوكٌ عِنْدَ جَمِيعِ أَهْلِ النَّقْلِ، مُتَّفَقٌ عَلَى تَرْكِ الرِّوَايَةِ عَنْهُ، يَرْوِي الْمَوْضُوعَاتِ. فَإِذَا سَقَطَ هَذَا فَإِنَّ زُفَرَ قَاسَ بَعْضَ الْأَبْوَالِ عَلَى بَعْضٍ، وَلَمْ يَقِسْ النَّجْوَ عَلَى الْبَوْلِ، وَهَذَا هُوَ الَّذِي أَنْكَرَهُ أَصْحَابُهُ عَلَيْنَا فِي تَفْرِيقِنَا بَيْنَ حُكْمِ الْبَائِلِ فِي الْمَاءِ الرَّاكِدِ وَبَيْنَ الْمُتَغَوِّطِ فِيهِ، إلَّا أَنَّا نَحْنُ قُلْنَاهُ اتِّبَاعًا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ زُفَرُ بِرَأْيِهِ الْفَاسِدِ. وَأَمَّا قَوْلُ مَالِكٍ فَظَاهِرُ الْخَطَإِ، لِأَنَّهُ لَيْسَ فِيمَا احْتَجَّ بِهِ إلَّا أَبْوَالُ الْإِبِلِ فَقَطْ، وَاسْتِدْلَالٌ عَلَى بَوْلِ الْغَنَمِ وَبَعْرِهَا فَقَطْ، فَأَدْخَلَ هُوَ فِي حُكْمِ الطَّهَارَةِ أَبْوَالَ الْبَقَرِ وَأَخْثَاءَهَا وَأَبْعَارَ الْإِبِلِ وَبَعْرَ كُلِّ مَا يُؤْكَلُ لَحْمُهُ وَبَوْلُهُ.

L3039–3041 If they say, "We did that by analogy, comparing what is eaten to what is not eaten," we respond: Then why did you not analogize all four-legged creatures to camels and sheep, since they being four-legged and four-legged? Or all animals, since they being animal and animal? Or why did you not

فَإِنْ قَالُوا فَعَلْنَا ذَلِكَ قِيَاسًا لِمَا يُؤْكَلُ لَحْمُهُ عَلَى مَا لَا يُؤْكَلُ لَحْمُهُ، قُلْنَا لَهُمْ فَهَلَّا قِسْتُمْ عَلَى الْإِبِلِ وَالْغَنَمِ كُلَّ ذِي أَرْبَعٍ، لِأَنَّهَا ذَوَاتُ أَرْبَعٍ وَذَوَاتُ أَرْبَعٍ؟ أَوْ كُلَّ حَيَوَانٍ،

analogize everything beyond the camels and sheep mentioned in the report to human urine and excrement - both being prohibited? This constitutes a more general legal cause than yours, if you claim to follow generality in legal causes. If you resort here to specificity in legal causes, we counter: Then why did you not analogize the unspecified livestock to camels and sheep - such as cows valid solely as sacrificial offerings (as camels and sheep are), cows subject to zakat (as with camels and sheep), or cows specifically lawful for pilgrims to slaughter (like camels and sheep) - rather than analogizing to camels, sheep, game, and birds? This would be more specific than your legal cause, thus decisively exposing the corruption of their entire analogy.

If they argue, "We analogized the urine and excrement of all eaten animals to their milk," we reply: Then why did you not analogize their urine to their blood, thereby deeming all such impure? Moreover, males among them and birds yield no milk - their urine and excrement cannot be analogized to it. Furthermore, the Quran, Sunnah, and indubitable consensus explicitly invalidate this legal cause and nullify your analogy, as it is established that women's urine and excrement are not analogized to their milk regarding purity and permissibility. There is no escape from this conclusion. None of it whatsoever. Why did they not analogize every two-legged bird's excrement to human excrement, for he is two-legged? All these analogies are like your analogy or even clearer than yours. This is the view of one who sincerely seeks to invalidate analogy entirely, and it is confirmed that the opinion of Abū Ḥanīfa, Mālik, and the companions of Abū Ḥanīfa on this matter is undoubtedly void, for they followed none of the textual proofs, regulated none of the analogies, and adhered to no opinion of any predecessors—especially Mālik's distinction between the urine of that which drank impure water, which he deemed impure, and the urine of that which drank pure water, which he deemed pure, while he regards chicken meat as lawful and wholesome. This, while he considers it generated from dead animals and filth—a contradiction that is unmistakable. And success is from Allah, the Exalted.

لِأَنَّهُ حَيَوَانٌ وَحَيَوَانٌ؟ أَوْ هَلَّا قِسْتُمْ كُلَّ مَا عَدَا الْإِبِلَ وَالْغَنَمَ الْمَذْكُورَيْنِ فِي الْخَبَرِ عَلَى بَوْلِ الْإِنْسَانِ وَنَجْوِهِ الْمُحَرَّمَيْنِ؟ فَهَذِهِ عِلَّةٌ أَعَمُّ مِنْ عِلَّتِكُمْ إِنْ كُنْتُمْ تَقُولُونَ بِالْأَعَمِّ فِي الْعِلَلِ، فَإِنْ لَجَأْتُمْ هَهُنَا إِلَى الْقَوْلِ بِالْأَخَصِّ فِي الْعِلَلِ قُلْنَا لَكُمْ، فَهَلَّا قِسْتُمْ مِنَ الْأَنْعَامِ الْمَسْكُوتِ عَنْهَا عَلَى الْإِبِلِ وَالْغَنَمِ، وَهِيَ مَا تَكُونُ أُضْحِيَّةً مِنَ الْبَقَرِ فَقَطْ، كَمَا الْإِبِلُ وَالْغَنَمُ تَكُونُ أُضْحِيَّةً، أَوْ مَا يَكُونُ فِيهِ الزَّكَاةُ مِنَ الْبَقَرِ فَقَطْ، كَمَا يَكُونُ فِي الْإِبِلِ وَالْغَنَمِ، أَوْ مَا يَجُوزُ ذَبْحُهُ لِلْمُحْرِمِ مِنَ الْبَقَرِ خَاصَّةً، كَمَا يَجُوزُ ذَلِكَ فِي الْإِبِلِ وَالْغَنَمِ، دُونَ أَنْ تَقِيسُوا عَلَى الْإِبِلِ وَالْغَنَمِ وَالصَّيْدِ وَالطَّيْرِ فَهَذَا أَخَصُّ مِنْ عِلَّتِكُمْ، فَظَهَرَ فَسَادُ قِيَاسِهِمْ جُمْلَةً يَقِينًا. فَإِنْ قَالُوا: قِسْنَا أَبْوَالَ كُلِّ مَا يُؤْكَلُ لَحْمُهُ وَأَنْجَاءَهَا عَلَى أَلْبَانِهَا. قُلْنَا لَهُمْ: فَهَلَّا قِسْتُمْ أَبْوَالَهَا عَلَى دِمَائِهَا فَأَوْجَبْتُمْ نَجَاسَةَ كُلِّ ذَلِكَ؟ وَأَيْضًا فَلَيْسَ لِلذُّكُورِ مِنْهَا وَلَا لِلطَّيْرِ أَلْبَانٌ فَتُقَاسُ أَبْوَالُهَا وَأَنْجَاؤُهَا عَلَيْهَا. وَأَيْضًا فَقَدْ جَاءَ الْقُرْآنُ وَالسُّنَّةُ وَالْإِجْمَاعُ الْمُتَيَقَّنُ بِإِفْسَادِ عِلَّتِكُمْ هَذِهِ وَإِبْطَالِ قِيَاسِكُمْ هَذَا، لِصِحَّةِ كُلِّ ذَلِكَ بِأَنْ لَا تُقَاسَ أَبْوَالُ النِّسَاءِ وَنَجْوُهُنَّ عَلَى أَلْبَانِهِنَّ فِي الطَّهَارَةِ وَالِاسْتِحْلَالِ. وَهَذَا لَا مَخْلَصَ مِنْهُ أَلْبَتَّةَ. وَهَلَّا قَاسُوا كُلَّ ذِي رِجْلَيْنِ مِنَ الطَّيْرِ فِي نَجْوِهِ عَلَى نَجْوِ الْإِنْسَانِ فَهُوَ ذُو رِجْلَيْنِ؟ فَكُلُّ هَذِهِ قِيَاسَاتٌ كَقِيَاسِكُمْ أَوْ أَظْهَرُ، وَهَذَا يَرَى مَنْ نَصَحَ نَفْسَهُ إِبْطَالَ الْقِيَاسِ جُمْلَةً، وَصَحَّ أَنَّ قَوْلَ أَبِي حَنِيفَةَ وَمَالِكٍ وَأَصْحَابِ أَبِي حَنِيفَةَ فِي هَذِهِ الْمَسْأَلَةِ بَاطِلٌ بِيَقِينٍ، لِأَنَّهُمْ لَا شَيْئًا مِنَ النُّصُوصِ اتَّبَعُوا وَلَا شَيْئًا مِنَ الْقِيَاسِ ضَبَطُوا، وَلَا بِقَوْلِ أَحَدٍ مِنَ الْمُتَقَدِّمِينَ تَعَلَّقُوا، لَا سِيَّمَا تَفْرِيقُ مَالِكٍ بَيْنَ بَوْلِ مَا شَرِبَ مَاءً نَجِسًا فَقَالَ بِنَجَاسَةِ بَوْلِهِ، وَبَيْنَ بَوْلِ مَا شَرِبَ مَاءً طَاهِرًا فَقَالَ بِطَهَارَةِ بَوْلِهِ، وَهُوَ يَرَى لَحْمَ الدَّجَاجِ حَلَالًا طَيِّبًا، هَذَا وَهُوَ يَرَاهُ مُتَوَلِّدًا عَنِ الْمَيْتَاتِ وَالْعَذِرَةِ، وَهَذَا تَنَاقُضٌ لَا خَفَاءَ بِهِ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ

Issue: The ruling concerning wool, undercoat, horns, and teeth taken from a living animal.

[مَسْأَلَةٌ حُكْمُ الصُّوفُ وَالْوَبَرُ وَالْقَرْنُ وَالسِّنُّ يُؤْخَذُ مِنْ حَيٍّ]

Issue 138: Wool, fur, horns, and teeth taken from a living being are ritually pure, but eating them is not permissible.

١٣٨ - مَسْأَلَةٌ: وَالصُّوفُ وَالْوَبَرُ وَالْقَرْنُ وَالسِّنُّ يُؤْخَذُ مِنْ حَيٍّ فَهُوَ طَاهِرٌ وَلَا يَحِلُّ أَكْلُهُ.

The proof of this is that a living being is pure, and a part of the pure is pure; yet it is impermissible to eat the living being, and a part of what is impermissible to eat is impermissible.

بُرْهَانُ ذَلِكَ أَنَّ الْحَيَّ طَاهِرٌ وَبَعْضُ الطَّاهِرِ طَاهِرٌ، وَالْحَيُّ لَا يَحِلُّ أَكْلُهُ، وَبَعْضُ مَا لَا يَحِلُّ أَكْلُهُ لَا يَحِلُّ أَكْلُهُ.

Issue 139: All such substances from a disbeliever are impure, while from a believer they are pure. The pus of a Muslim, their vomit, a strand of white hair, any body part severed from them - whether alive or dead - and the milk of a believing woman: all of these are pure. All such substances from male and female disbelievers are impure.

١٣٩ - مَسْأَلَةٌ: وَكُلُّ ذَلِكَ مِنْ الْكَافِرِ نَجِسٌ وَمِنْ الْمُؤْمِنِ طَاهِرٌ، وَالْقَيْحُ مِنْ الْمُسْلِمِ وَالْقَلْسُ وَالْقَصَّةُ الْبَيْضَاءُ وَكُلُّ مَا قُطِعَ مِنْهُ حَيًّا أَوْ مَيِّتًا وَلَبَنُ الْمُؤْمِنَةِ، كُلُّ ذَلِكَ طَاهِرٌ، وَكُلُّ ذَلِكَ مِنْ الْكَافِرِ وَالْكَافِرَةِ نَجِسٌ.

The proof of that is what we have mentioned from the statement of Allah, the Almighty: {Indeed, the polytheists are impure} [At-Tawbah: 28] and the statement of the Messenger of Allah (peace and blessings of Allah be upon him): “The believer does not become impure”—and we have previously cited this with its chain of transmission. Some impure substances are impure, and some pure substances are pure, because the whole is nothing but its parts. And all divine facilitation comes from Allah, the Most High.[7]

بُرْهَانُ ذَلِكَ مَا قَدْ ذَكَرْنَا مِنْ قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {إِنَّمَا الْمُشْرِكُونَ نَجَسٌ} [التوبة: ٢٨] وَقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْمُؤْمِنُ لَا يَنْجُسُ» وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ قَبْلُ، وَبَعْضُ النَّجَسِ نَجَسٌ، وَبَعْضُ الطُّهْرِ طَاهِرٌ، لِأَنَّ الْكُلَّ لَيْسَ هُوَ شَيْئًا غَيْرَ أَبْعَاضِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: Ruling on the Milks of al-Jallalah.

[مَسْأَلَةٌ حُكْمُ أَلْبَانُ الْجَلَّالَةِ]

Issue 140: The milk of jallālah animals is unlawful. These are camels that consume jullah—meaning human feces—and likewise cows and sheep. If they are prevented from eating it until the designation of jallālah ceases to apply to them, then their milk becomes lawful and pure.

١٤٠ - مَسْأَلَةٌ: وَأَلْبَانُ الْجَلَّالَةِ حَرَامٌ، وَهِيَ الْإِبِلُ الَّتِي تَأْكُلُ الْجُلَّةَ - وَهِيَ الْعَذِرَةُ - وَالْبَقَرُ وَالْغَنَمُ كَذَلِكَ، فَإِنْ مُنِعَتْ مِنْ أَكْلِهَا حَتَّى سَقَطَ عَنْهَا اسْمُ جَلَّالَةٍ، فَأَلْبَانُهَا حَلَالٌ طَاهِرَةٌ.

Abdullah ibn Rabīʿ narrated to us: ʿUmar ibn ʿAbd al-Malik al-Khawlānī narrated to us; Muḥammad ibn Bakr narrated to us; Abū Dāwūd narrated

[7] **Qur’an references (L3046):** Qur’an 9:28 (At-Tawbah).

to us; Muḥammad ibn al-Muthannā and ʿUthmān ibn Abī Shaybah [conveyed]. Ibn al-Muthannā said: Abū ʿĀmir al-ʿAqadī narrated to us: Hishām al-Dastawā'ī narrated to us from Qatādah from ʿIkrimah from Ibn ʿAbbās that the Messenger of Allah (peace be upon him) prohibited the milk of... Regarding the jallālah,' 'Uthmān ibn Abī Shaybah said: Abdah narrated to us from Muḥammad ibn Isḥāq from Ibn Abī Najīḥ from Mujāhid from Ibn 'Umar, who said: "The Messenger of Allāh—peace and blessings of Allah be upon him—prohibited consuming the jallālah and its milk."[8]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ الْخَوْلَانِيُّ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا مُحَمَّدُ بْنُ الْمُثَنَّى وَعُثْمَانُ بْنُ أَبِي شَيْبَةَ، قَالَ ابْنُ الْمُثَنَّى ثنا أَبُو عَامِرٍ الْعَقَدِيُّ ثنا هِشَامٌ الدَّسْتُوَائِيُّ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ لَبَنِ الْجَلَّالَةِ» وَقَالَ عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدَةُ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنِ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ عَنِ ابْنِ عُمَرَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَكْلِ الْجَلَّالَةِ وَأَلْبَانِهَا» .

Issue: Ablution with Used Water

[مَسْأَلَةُ الْوُضُوءُ بِالْمَاءِ الْمُسْتَعْمَلِ]

141 - Issue: Performing ablution (wudu) with used water is permissible, and so is using it for the ritual bath (ghusl) for janabah, whether other water is found or not. This refers to the very same water used for ablution - whether for an obligatory or voluntary act - or the very same water used for bathing for janabah or other than it. It applies equally whether the one performing ablution with it is male or female.

١٤١ - مَسْأَلَةٌ: وَالْوُضُوءُ بِالْمَاءِ الْمُسْتَعْمَلِ جَائِزٌ، وَكَذَلِكَ الْغُسْلُ بِهِ لِلْجَنَابَةِ، وَسَوَاءٌ وُجِدَ مَاءٌ آخَرُ غَيْرُهُ أَوْ لَمْ يُوجَدْ، وَهُوَ الْمَاءُ الَّذِي تَوَضَّأَ بِهِ بِعَيْنِهِ لِفَرِيضَةٍ أَوْ نَافِلَةٍ أَوْ اغْتَسَلَ بِهِ بِعَيْنِهِ لِجَنَابَةٍ أَوْ غَيْرِهَا، وَسَوَاءٌ كَانَ الْمُتَوَضِّئُ بِهِ رَجُلًا أَوْ امْرَأَةً.

The proof of this is the statement of Allah, the Exalted: {If you are sick or on a journey, or one of you has answered the call of nature, or you have had contact with women, and you find no water, then perform tayammum} [An-Nisa: 43]. Thus, He, the Exalted, encompassed all water without specifying exceptions. Therefore, it is impermissible for anyone to abandon water in their ablution or obligatory bath when it is available, unless prohibited by an established text or a definitively established consensus whose authenticity is certain. The Messenger of Allah (peace be upon him) said: "The entire earth has been made a place of prostration for us, and its soil has been made a purifier for us if we do not find water." Here, he (peace be upon him) also applied the ruling universally without specifying exceptions. Hence, it

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى {وَإِنْ كُنْتُمْ مَرْضَى أَوْ عَلَى سَفَرٍ أَوْ جَاءَ أَحَدٌ مِنْكُمْ مِنَ الْغَائِطِ أَوْ لامَسْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا} [النساء: ٤٣] فَعَمَّ تَعَالَى كُلَّ مَاءٍ وَلَمْ يَخُصَّهُ، فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَتْرُكَ الْمَاءَ فِي وُضُوئِهِ وَغُسْلِهِ الْوَاجِبِ وَهُوَ يَجِدُهُ إِلَّا مَا مَنَعَهُ مِنْهُ نَصٌّ ثَابِتٌ أَوْ إِجْمَاعٌ مُتَيَقَّنٌ مَقْطُوعٌ بِصِحَّتِهِ. وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَجُعِلَتْ لَنَا الْأَرْضُ كُلُّهَا مَسْجِدًا وَجُعِلَتْ تُرْبَتُهَا لَنَا طَهُورًا إِذَا لَمْ نَجِدِ الْمَاءَ» فَعَمَّ أَيْضًا - عَلَيْهِ السَّلَامُ - وَلَمْ يَخُصَّ، فَلَا يَحِلُّ تَخْصِيصُ مَاءٍ بِالْمَنْعِ لَمْ يَخُصَّهُ نَصٌّ آخَرُ أَوْ إِجْمَاعٌ مُتَيَقَّنٌ.

[8] **Hadith references (L3049):** Sunan Abi Dawud 3785; Jami at-Tirmidhi 1824; Mishkat al-Masabih 4126.

is unlawful to restrict any water from being used unless another established text or a definitively established consensus specifies it.[9][10]

L3055 Abdullah ibn Rabīʿ narrated to us, Ibn al-Sulaym narrated to us, Ibn al-Aʿrābī narrated to us, Abū Dāwūd narrated to us, Musaddad narrated to us, ʿAbdullāh ibn Dāwūd—who is al-Khuraibī—narrated from Sufyān al-Thawrī, from ʿAbdullāh ibn Muḥammad ibn ʿAqīl, from al-Rubayyiʿ bint Muʿawwidh, who said: "The Messenger of Allah (peace and blessings be upon him) wiped his head with the excess water that was in his hand."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُسَدَّدٌ ثنا عَبْدُ اللَّهِ بْنُ دَاوُد وَهُوَ الْخُرَيْبِيُّ - عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ عَنْ الرُّبَيِّعِ بِنْتِ مُعَوِّذٍ قَالَتْ «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَسَحَ بِرَأْسِهِ مِنْ فَضْلِ مَاءٍ كَانَ بِيَدِهِ» .

L3056 As for consensus, no two scholars among Muslims disagree that every person performing ablution takes water and washes his arms with it from the fingertips to the elbows—and similarly every limb in ablution and the major ritual bath. By necessary reasoning and sensory perception, every observer knows this water has been used such that the hand has been purified through ablution, then the first part of the arm is washed with it, followed by its end. This is undeniably used water. He returns his hand—still dripping with the water that purified the limb—to the vessel, then takes new water for the next limb. By necessity, anyone with sound perception knows the second limb is purified only by new water mixed with other used water from purifying another limb, and this is an inescapable reality.

وَأَمَّا مِنْ الْإِجْمَاعِ فَلَا يَخْتَلِفُ اثْنَانِ مِنْ أَهْلِ الْإِسْلَامِ فِي أَنَّ كُلَّ مُتَوَضِّئٍ فَإِنَّهُ يَأْخُذُ الْمَاءَ فَيَغْسِلُ بِهِ ذِرَاعَيْهِ مِنْ أَطْرَافِ أَصَابِعِهِ إلَى مِرْفَقِهِ، وَهَكَذَا كُلُّ عُضْوٍ فِي الْوُضُوءِ وَفِي غُسْلِ الْجَنَابَةِ، وَبِالضَّرُورَةِ وَالْحِسِّ يَدْرِي كُلُّ مُشَاهِدٍ لِذَلِكَ أَنَّ ذَلِكَ الْمَاءَ قَدْ وُضِّئَتْ بِهِ الْكَفُّ وَغُسِلَتْ، ثُمَّ غُسِلَ بِهِ أَوَّلُ الذِّرَاعِ ثُمَّ آخِرُهُ، وَهَذَا مَاءٌ مُسْتَعْمَلٌ بِيَقِينٍ، ثُمَّ إنَّهُ يَرُدُّ يَدَهُ إلَى الْإِنَاءِ وَهِيَ تَقْطُرُ مِنْ الْمَاءِ الَّذِي طَهَّرَ بِهِ الْعُضْوَ، فَيَأْخُذُ مَاءً آخَرَ لِلْعُضْوِ الْآخَرِ، فَبِالضَّرُورَةِ يَدْرِي كُلُّ ذِي حِسٍّ سَلِيمٍ أَنَّهُ لَمْ يُطَهِّرْ الْعُضْوَ الثَّانِي إلَّا بِمَاءٍ جَدِيدٍ قَدْ مَازَجَهُ مَاءٌ آخَرُ مُسْتَعْمَلٌ فِي تَطْهِيرِ عُضْوٍ آخَرَ وَهَذَا مَا لَا مَخْلَصَ مِنْهُ.

L3057 And this is the opinion of al-Ḥasan al-Baṣrī, Ibrāhīm an-Nakhaʿī, and ʿAṭāʾ ibn Abī Rabāḥ, and it is also the opinion of Sufyān ath-Thawrī, Abū Thawr, Dāwūd, and all our companions.

وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ وَإِبْرَاهِيمَ النَّخَعِيِّ وَعَطَاءِ بْنِ أَبِي رَبَاحٍ، وَهُوَ أَيْضًا قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَأَبِي ثَوْرٍ وَدَاوُد وَجَمِيعِ أَصْحَابِنَا.

L3058–3059 Malik said: He must perform *wudu* with that water if he cannot find other water, and he must not perform *tayammum*.

وَقَالَ مَالِكٌ: يَتَوَضَّأُ بِهِ إنْ لَمْ يَجِدْ غَيْرَهُ وَلَا يَتَيَمَّمُ.

L3060 Abu Hanifa said: It is not permissible to perform ghusl or wudu with water

[9] **Hadith references (L3054):** Sahih Muslim 522a; Mishkat al-Masabih 526.
[10] **Qur'an references (L3054):** Qur'an 4:43 (An-Nisa); Qur'an 5:6 (Al-Ma'idah).

used for wudu or ghusl, and drinking it is reprehensible. It is narrated from him that such water is pure, but the preponderant opinion from him is that it is impure, and this is what was explicitly narrated from him. It is also narrated from him that a garment does not become impure if touched by used water unless the water is excessively copious.

L3061 Abu Yusuf said: If the affected area of impurity on the garment measures a span by a span, it has rendered it impure, but if it is less, it does not render it impure. Abu Hanifah and Abu Yusuf stated: If a ritually pure man - whether he had performed ablution for prayer or not - performs ablution in a well, all its water becomes ritually impure and must be entirely drained. That ablution does not suffice him if he did not require ablution. If he bathes in it for purification, he has rendered all of it impure. Similarly, even if a ritually pure person (not in major impurity) were to bathe in seven wells, he would render all of them impure.

L3062 Abū Yūsuf said: It would render all of it impure even if there were twenty wells. Abū Yūsuf and Muḥammad ibn al-Ḥasan both stated: That ritual bath would not be valid for him. If he purifies his hand or foot in it, all of it becomes impure. If there were medical bandages on his forearms or toes and he dipped them in the well intending to wipe over the bandages, it would not be valid for him, and all its water would become impure. If there were medical bandages on the fingers of his hand and he dipped them in the well intending to wipe over them, it would suffice him and its water would not become impure - the hand being treated unlike the rest of the limbs. If he immersed [a limb] in it without intending ritual bath or ablution and did not rub himself in it, he would not render the water impure until he intended ritual bath or ablution. Abū Yūsuf said: He would not attain purity through that immersion. Muḥammad ibn al-Ḥasan said: He would attain purity through it. Abū Yūsuf said: If he dipped his head intending to wipe over the bandage, he would not render the water impure. Only the intention to purify a limb requiring ritual bath renders it impure. He said: If he washed part of his hand intending ablution or ritual bath, he would not render the water impure until he washes the limb completely. If he dipped his head or leather sock intending to wipe over the bandage, it would suffice

وَقَالَ أَبُو حَنِيفَةَ: لَا يَجُوزُ الْغُسْلُ وَلَا الْوُضُوءُ بِمَاءٍ قَدْ تَوَضَّأَ بِهِ أَوْ اغْتَسَلَ بِهِ، وَيُكْرَهُ شُرْبُهُ، وَرُوِيَ عَنْهُ أَنَّهُ طَاهِرٌ، وَالْأَظْهَرُ عَنْهُ أَنَّهُ نَجِسٌ، وَهُوَ الَّذِي رُوِيَ عَنْهُ نَصًّا، وَأَنَّهُ لَا يَنْجَسُ الثَّوْبُ إِذَا أَصَابَهُ الْمَاءُ الْمُسْتَعْمَلُ إِلَّا أَنْ يَكُونَ كَثِيرًا فَاحِشًا.

وَقَالَ أَبُو يُوسُفَ: إِنْ كَانَ الَّذِي أَصَابَ الثَّوْبَ مِنْهُ شِبْرٌ فِي شِبْرٍ فَقَدْ نَجَّسَهُ، وَإِنْ كَانَ أَقَلَّ لَمْ يُنَجِّسْهُ. وَقَالَ أَبُو حَنِيفَةَ وَأَبُو يُوسُفَ إِنْ كَانَ رَجُلٌ طَاهِرٌ قَدْ تَوَضَّأَ لِلصَّلَاةِ أَوْ لَمْ يَتَوَضَّأْ لَهَا فَتَوَضَّأَ فِي بِئْرٍ فَقَدْ تَنَجَّسَ مَاؤُهَا كُلُّهُ وَتُنْزَحُ كُلُّهَا، وَلَا يَجْزِيه ذَلِكَ الْوُضُوءُ إِنْ كَانَ غَيْرَ مُتَوَضِّئٍ، فَإِنْ اغْتَسَلَ فِيهَا أَرْضًا أَنْجَسَهَا كُلَّهَا. وَكَذَلِكَ لَوْ اغْتَسَلَ وَهُوَ طَاهِرٌ غَيْرُ جُنُبٍ فِي سَبْعَةِ آبَارٍ نَجَّسَهَا كُلَّهَا.

وَقَالَ أَبُو يُوسُفَ: يُنَجِّسُهَا كُلَّهَا وَلَوْ أَنَّهَا عِشْرُونَ بِئْرًا، وَقَالَا جَمِيعًا: لَا يَجْزِيه ذَلِكَ الْغُسْلُ، فَإِنْ طَهَّرَ فِيهَا يَدَهُ أَوْ رِجْلَهُ فَقَدْ تَنَجَّسَتْ كُلُّهَا، فَإِنْ كَانَ عَلَى ذِرَاعَيْهِ جَبَائِرُ أَوْ عَلَى أَصَابِعِ رِجْلَيْهِ جَبَائِرُ فَغَمَسَهَا فِي الْبِئْرِ يَنْوِي بِذَلِكَ الْمَسْحَ عَلَيْهَا لَمْ يُجْزِهُ وَتَنَجَّسَ مَاؤُهَا كُلُّهُ، فَلَوْ كَانَ عَلَى أَصَابِعِ يَدِهِ جَبَائِرُ فَغَمَسَهَا فِي الْبِئْرِ يَنْوِي بِذَلِكَ الْمَسْحَ عَلَيْهَا أَجْزَأَهُ وَلَمْ يُنَجِّسْ مَاؤُهَا الْيَدَ بِخِلَافِ سَائِرِ الْأَعْضَاءِ، فَلَوْ انْغَمَسَ فِيهَا وَلَمْ يَنْوِ غُسْلًا وَلَا وُضُوءًا وَلَا تَدَلَّكَ فِيهَا لَمْ يُنَجِّسْ الْمَاءَ حَتَّى يَنْوِيَ الْغُسْلَ أَوْ الْوُضُوءَ وَقَالَ أَبُو يُوسُفَ: لَا يَطْهُرُ بِذَلِكَ الِانْغِمَاسُ، وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: يَطْهُرُ بِهِ. قَالَ أَبُو يُوسُفَ: فَإِنْ غَمَسَ رَأْسَه يَنْوِي الْمَسْحَ عَلَيْهِ لَمْ يُنَجِّسْ الْمَاءَ، وَإِنَّمَا يُنَجِّسُه نِيَّةُ تَطْهِيرِ عُضْوٍ يَلْزَمُ فِيهِ الْغُسْلُ، قَالَ فَلَوْ غَسَلَ بَعْضَ يَدِهِ بِنِيَّةِ الْوُضُوءِ أَوْ الْغُسْلِ لَمْ يُنَجِّسْ الْمَاءَ حَتَّى يَغْسِلَ الْعُضْوَ بِكَمَالِه، فَلَوْ غَمَسَ رَأْسَهُ أَوْ خُفَّهُ يَنْوِي بِذَلِكَ الْمَسْحَ أَجْزَأَهُ وَلَمْ يُفْسِدْ الْمَاءَ، وَإِنَّمَا يُفْسِدُهُ نِيَّةُ الْغُسْلِ لَا نِيَّةُ الْمَسْحِ. وَهَذِهِ أَقُولُ هِيَ إلَى الْهَوَسِ أَقْرَبُ مِنْهَا إلَى مَا يُعْقَلُ.

him and would not render the water impure. Only the intention of ritual bath renders it impure, not the intention of wiping. These rulings are closer to delusion than to what is rationally comprehensible.

L3063–3065 Al-Shafiʿi said: Neither ablution nor major ablution is valid with water that a person has used for bathing or ablution while it remained wholly ritually pure. His companions unanimously agreed that if someone dipped his hand into the vessel to perform ablution and scooped the water... He rinsed his mouth, inhaled water into his nostrils, and washed his face. Then, when he inserts his hand into the vessel, ablution with that water becomes prohibited, because it has become used water (mustaʿmal). Instead, it is obligatory to pour some of it onto his hand. After performing ablution on his hand, he may then insert it into the vessel.

L3066 Abu Muhammad said: Those who prohibited that cited as evidence the authentic hadith from the Messenger of Allah (peace be upon him) in which he forbade the *junub* from bathing in stagnant water.

L3067 Abu Muhammad said: They said: The Messenger of Allah - peace and blessings of Allah be upon him - only prohibited that because the water becomes used (in purification). Some of those who disagreed with them said: Rather, he (peace be upon him) only prohibited that out of precaution that something which might defile the water could exit from the urethra.

L3068 Abu Muhammad said: Both statements are false—we seek refuge in Allah from the like of such conduct—and from ascribing to the Messenger of Allah (peace be upon him) what he did not say, or reporting about him what he neither declared concerning himself nor performed. This is lying against the Messenger of Allah (peace be upon him), and it is among the greatest of major sins for whoever asserts it definitively. If one does not assert it definitively, it is mere conjecture. Allah Almighty said: “Indeed, conjecture avails nothing against the truth” [Yūnus 10:36], and the Messenger of Allah (peace be upon him) said: “Beware of conjecture, for conjecture is the most deceitful speech.” Whoever adopts either of these two interpretations must

وَقَالَ الشَّافِعِيُّ: لَا يُجْزِئُ الْوُضُوءُ وَلَا الْغُسْلُ بِمَاءٍ قَدْ اغْتَسَلَ بِهِ أَوْ تَوَضَّأَ بِهِ وَهُوَ طَاهِرٌ كُلُّهُ، وَأَصْفَقَ أَصْحَابُهُ عَلَى أَنَّ مَنْ أَدْخَلَ يَدَهُ فِي الْإِنَاءِ لِيَتَوَضَّأَ فَأَخَذَ الْمَاءَ فَتَمَضْمَضَ وَاسْتَنْشَقَ وَغَسَلَ وَجْهَهُ ثُمَّ أَدْخَلَ يَدَهُ فِي الْإِنَاءِ فَقَدْ حَرُمَ الْوُضُوءُ بِذَلِكَ الْمَاءِ، لِأَنَّهُ قَدْ صَارَ مَاء مُسْتَعْمَلًا، وَإِنَّمَا يَجِبُ أَنْ يَصُبَّ مِنْهُ عَلَى يَدِهِ، فَإِذَا وَضَّأَهَا أَدْخَلَهَا حِينَئِذٍ فِي الْإِنَاءِ.

قَالَ أَبُو مُحَمَّد: وَاحْتَجَّ مَنْ مَنَعَ ذَلِكَ بِالْحَدِيثِ الثَّابِتِ عَنْ «رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ نَهْيِهِ الْجُنُبَ أَنْ يَغْتَسِلَ فِي الْمَاءِ الدَّائِمِ» .

قَالَ أَبُو مُحَمَّد: وَقَالُوا: إنَّمَا نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ، لِأَنَّ الْمَاءَ يَصِيرُ مُسْتَعْمَلًا، وَقَالَ بَعْضُ مَنْ خَالَفَهُمْ: بَلْ مَا نَهَى عَنْ ذَلِكَ - عَلَيْهِ السَّلَامُ - إلَّا خَوْفَ أَنْ يَخْرُجَ مِنْ إحْلِيلِهِ شَيْءٌ يُنَجِّسُ الْمَاءَ.

قَالَ أَبُو مُحَمَّد: وَكِلَا الْقَوْلَيْنِ بَاطِلٌ نَعُوذُ بِاَللَّهِ مِنْ مِثْلِهِ، وَمِنْ أَنْ نَقُوّلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْ، وَأَنْ نُخْبِرَ عَنْهُ مَا لَمْ يُخْبِرْ بِهِ عَنْ نَفْسِهِ وَلَا فَعَلَهُ، فَهَذَا هُوَ الْكَذِبُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ مِنْ أَكْبَرِ الْكَبَائِرِ مِمَّنْ قَطَعَ بِهِ، فَإِنْ لَمْ يَقْطَعْ بِهِ فَإِنَّمَا هُوَ ظَنٌّ، وَقَدْ قَالَ عَزَّ وَجَلَّ: {إِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [يونس: ٣٦] وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» وَلَا بُدَّ لِمَنْ قَالَ بِأَحَدِ هَذَيْنِ التَّأْوِيلَيْنِ مِنْ إحْدَى هَاتَيْنِ الْمَنْزِلَتَيْنِ، فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ جُمْلَةً.

inevitably occupy one of these two positions. Thus, their reliance on this report is wholly invalidated.[11]

وَاحْتَجَّ بَعْضُهُمْ فَقَالَ: لَمْ يَقُلْ أَحَدٌ لِلْمُتَوَضِّئِ وَلَا لِلْمُغْتَسِلِ أَنْ يُرَدِّدَ ذَلِكَ الْمَاءَ عَلَى أَعْضَائِهِ، بَلْ أَوْجَبُوا عَلَيْهِ أَخْذُ مَاءٍ جَدِيدٍ، وَبِذَلِكَ جَاءَ عَمَلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْوُضُوءِ وَالْغُسْلِ فَوَجَبَ أَنْ لَا يُجْزِئَ.

L3069 Some of them argued, stating: No one has instructed the person performing ablution or the one performing ghusl to reuse that water on their limbs. Rather, they have obligated such a person to take new water. And this is how the Prophet's practice—peace and blessings of Allah be upon him—in ablution and ghusl was established. It is therefore obligatory that it not suffice.

قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ، لِأَنَّهُ لَمْ يَنْهَ أَحَدٌ مِنْ السَّلَفِ عَنْ تَرْدِيدِ الْمَاءِ عَلَى الْأَعْضَاءِ فِي الْوُضُوءِ وَالْغُسْلِ، وَلَا نَهَى عَنْهُ - عَلَيْهِ السَّلَامُ - قَطُّ.

L3070 Abu Muhammad said: This is invalid, because none of the Salaf (pious predecessors) prohibited repeatedly pouring water over the limbs during ablution and ritual bathing, nor did the Prophet, peace be upon him, ever forbid it at all.

وَيُقَالُ لِلْحَنَفِيِّينَ: قَدْ أَجَزْتُمْ تَنْكِيسَ الْوُضُوءِ، وَلَمْ يَأْتِ قَطُّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ نَكَّسَ وُضُوءَهُ، وَلَا أَنَّ أَحَدًا مِنْ الْمُسْلِمِينَ فَعَلَ ذَلِكَ، فَأَخْذُهُ - عَلَيْهِ السَّلَامُ - مَاءً جَدِيدًا لِكُلِّ عُضْوٍ إنَّمَا هُوَ فِعْلٌ مِنْهُ - عَلَيْهِ السَّلَامُ -، وَأَفْعَالُهُ - عَلَيْهِ السَّلَامُ - لَا تُلْزَمُ. وَقَدْ صَحَّ عَنْهُ مَسْحُ رَأْسِهِ الْمُقَدَّسِ بِفَضْلِ مَاءٍ مُسْتَعْمَلٍ.

L3071 It is said to the Hanafis: You have permitted reversing the order of ablution, though it has never been reported from the Prophet (peace be upon him) that he inverted his ablution sequence, nor that any Muslim did so. His taking fresh water for each limb was merely an action from him, and his actions are not obligatory to follow. It has been authentically reported that he wiped his blessed head with water leftover from his ablution.

فَإِنْ قِيلَ: قَدْ رُوِيَ يُؤْخَذُ لِلرَّأْسِ مَاءٌ جَدِيدٌ. قُلْنَا: إنَّمَا رَوَاهُ دَهْثَمُ بْنُ قِرَانٍ - وَهُوَ سَاقِطٌ لَا يُحْتَجُّ بِهِ - عَنْ نِمْرَانَ بْنِ جَارِيَةَ وَهُوَ غَيْرُ مَعْرُوفٍ فَكَيْفَ وَقَدْ أَبَاحَ - عَلَيْهِ السَّلَامُ - غُسْلَ الْجَنَابَةِ بِغَيْرِ تَجْدِيدِ مَاءٍ. كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا إسْحَاقُ بْنُ إبْرَاهِيمَ وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَعَمْرٌو النَّاقِدُ وَابْنُ أَبِي عُمَرَ كُلُّهُمْ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ رَافِعٍ مَوْلَى أُمِّ سَلَمَةَ عَنْ أُمِّ سَلَمَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهَا فِي غُسْلِ الْجَنَابَةِ

L3072–3073 If it is said: "It has been narrated that fresh water must be taken for the head," we respond: This was only narrated by Dahtham ibn Qirān—a discarded narrator whose narrations are inadmissible as evidence—from Nimrān ibn Jāriyah, who is unknown. How could this be valid, given that the Prophet—peace be upon him—permitted the ritual bath for major impurity without requiring new water? As transmitted by ʿAbdullāh ibn Yūsuf, narrated by Aḥmad ibn Fatḥ, narrated by ʿAbd al-Wahhāb ibn ʿĪsā, narrated by Aḥmad ibn Muḥammad, narrated by Aḥmad ibn ʿAlī, narrated by Muslim ibn al-Ḥajjāj, narrated by Isḥāq ibn Ibrāhīm, Abū Bakr ibn Abī Shaybah, ʿAmr al-Nāqid, and Ibn Abī ʿUmar—all of whom narrated from Sufyān ibn ʿUyaynah, from Ayyūb ibn Mūsā, from Saʿīd ibn Abī Saʿīd al-Maqburī, from ʿAbdullāh ibn Rāfiʿ, client of Umm Salamah, from Umm Salamah: "Allah's Messenger—

[11] **Qur'an references (L3068):** Qur'an 10:36 (Yunus).

peace and blessings be upon him—said to her regarding the ritual bath for major impurity: 'It suffices you to scoop three handfuls over your head, then you pour water over yourself, thus attaining purity.'"

إِنَّمَا يَكْفِيكِ أَنْ تَحْثِيَ عَلَى رَأْسِكِ ثَلَاثَ حَثَيَاتٍ ثُمَّ تُفِيضِينَ عَلَيْكِ الْمَاءَ فَتَطْهُرِينَ» .

Through another chain: ʿAbd al-Raḥmān ibn ʿAbdullāh ibn Khālid narrated from Ibrāhīm ibn Aḥmad, narrated by al-Farbarī, narrated by al-Bukhārī, narrated by Abū Nuʿaym (al-Faḍl ibn Dukayn), narrated by Maʿmar ibn Yaḥyā ibn Sām, narrated by Abū Jaʿfar Muḥammad ibn ʿAlī ibn al-Ḥusayn: "Jābir told me: 'Your cousin asked: "How does one perform the ritual bath for major impurity¿' I answered: "Allah's Messenger—peace and blessings be upon him—would take three handfuls, pour them over his head, then drench the rest of his body."'"

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَبُو نُعَيْمٍ هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - ثنا مَعْمَرُ بْنُ يَحْيَى بْنِ سَامٍ حَدَّثَنِي أَبُو جَعْفَرٍ مُحَمَّدُ بْنُ عَلِيِّ بْنِ الْحُسَيْنِ «قَالَ لِي جَابِرٌ سَأَلَنِي ابْنُ عَمِّكَ فَقَالَ: كَيْفَ الْغُسْلُ مِنْ الْجَنَابَةِ؟ فَقُلْت: كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْخُذُ ثَلَاثَةَ أَكُفٍّ وَيُفِيضُهَا عَلَى رَأْسِهِ ثُمَّ يُفِيضُ عَلَى سَائِرِ جَسَدِهِ» .

L3074 Abū Muḥammad said: If the opinion held by the followers of Abū Ḥanīfah concerning the impurity of ritually used water (mustaʿmal) were valid, no one's ritual purity, ablution, or prayer would ever be acceptable. This is because the water poured by one performing ghusl over their body cleanses their shoulders and chest, then flows down to their back and stomach. Consequently, everyone would be bathing with impure water—God forbid such a thing! I seek refuge in Allah from this. Similarly, in ablution, when washing their forearm, face, and foot: one cannot wash the forearm except with the water that washed the palm, nor wash the lower part of the face except with the water that already washed the upper part, and likewise for [both] feet.

قَالَ أَبُو مُحَمَّدٍ وَلَوْ كَانَ مَا قَالَهُ أَصْحَابُ أَبِي حَنِيفَةَ مِنْ تَنَجُّسِ الْمَاءِ الْمُسْتَعْمَلِ لَمَا صَحَّ طُهْرٌ وَلَا وُضُوءٌ وَلَا صَلَاةٌ لِأَحَدٍ أَبَدًا، لِأَنَّ الْمَاءَ الَّذِي يُفِيضُهُ الْمُغْتَسِلُ عَلَى جَسَدِهِ يُطَهِّرُ مَنْكِبَيْهِ وَصَدْرَهُ، ثُمَّ يَنْحَدِرُ إلَى ظَهْرِهِ وَبَطْنِهِ، فَكَانَ يَكُونُ كُلُّ أَحَدٍ مُغْتَسِلًا بِمَاءٍ نَجِسٍ، وَمَعَاذَ اللَّهِ مِنْ هَذَا، وَهَكَذَا فِي غَسْلِهِ ذِرَاعَهُ وَوَجْهَهُ وَرِجْلَهُ فِي الْوُضُوءِ، لِأَنَّهُ لَا يَغْسِلُ ذِرَاعَهُ إلَّا بِالْمَاءِ الَّذِي غَسَلَ بِهِ كَفَّهُ، وَلَا يَغْسِلُ أَسْفَلَ وَجْهِهِ إلَّا بِالْمَاءِ الَّذِي قَدْ غَسَلَ بِهِ أَعْلَاهُ وَكَذَلِكَ رِجْلُهُ.

L3075 Some of them said: Used water necessarily contains traces of bodily sweat during ablution and full-body washing, thereby classifying it as mixed water.

وَقَالَ بَعْضُهُمْ: الْمَاءُ الْمُسْتَعْمَلُ لَا بُدَّ مِنْ أَنْ يَصْحَبَهُ مِنْ عَرَقِ الْجِسْمِ فِي الْغُسْلِ وَالْوُضُوءِ شَيْءٌ فَهُوَ مَاءٌ مُضَافٌ.

L3076–3077 Abu Muhammad said: This is extremely weak. Even if it were as they claim, what would that prove? Since when are wudu and ghusl prohibited with water containing a pure substance that leaves no visible trace? How then do they permit ablution with water that cooled after being heated - though this is more likely to contain sweat than used water? Some of them said: A tradition states that sins are washed away through cleansing the ablution limbs. We replied: Yes - praise be to Allah - but what does that demonstrate?

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا غَثٌّ جِدًّا، وَحَتَّى لَوْ كَانَ كَمَا قَالُوا فَكَانَ مَاذَا؟ وَمَتَى حَرُمَ الْوُضُوءُ وَالْغُسْلُ بِمَاءٍ فِيهِ شَيْءٌ طَاهِرٌ لَا يَظْهَرُ لَهُ فِي الْمَاءِ رَسْمٌ فَكَيْفَ وَهُمْ يُجِيزُونَ الْوُضُوءَ بِمَاءٍ قَدْ تَبَرَّدَ فِيهِ مِنْ الْحَرِّ وَهَذَا أَكْثَرُ فِي أَنْ يَكُونَ فِيهِ الْعَرَقُ مِنْ الْمَاءِ الْمُسْتَعْمَلِ. وَقَالَ بَعْضُهُمْ: قَدْ جَاءَ أَثَرٌ بِأَنَّ الْخَطَايَا تَخْرُجُ مَعَ غَسْلِ أَعْضَاءِ الْوُضُوءِ. قُلْنَا: نَعَمْ - وَلِلَّهِ الْحَمْدُ

- فَكَانَ مَاذَا؟ وَإِنَّ هَذَا لَمِمَّا يَغِيظُ بِاسْتِعْمَالِهِ مِرَارًا إِنْ أَمْكَنَ لِفَضْلِهِ، وَمَا عَلِمْنَا لِلْخَطَايَا أَجْرَامًا تَحِلُّ فِي الْمَاءِ.

Indeed, this is among matters that cause frustration through repeated use if possible due to its leftover status, for we know not of sins having corporeal bodies that dissolve in water.

L3078 وَقَالَ بَعْضُهُمْ: الْمَاءُ الْمُسْتَعْمَلُ كَحَصَى الْجِمَارِ الَّذِي رَمَى بِهِ لَا يَجُوزُ أَنْ يَرْمِيَ بِهِ ثَانِيَةً.

Some of them said: Used water is like the pebbles thrown during the Jamarat stoning ritual; it is not permissible to reuse it, just as one may not throw them again.

L3079 قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ، بَلْ حَصَى الْجِمَارِ إِذَا رَمَى بِهَا فَجَائِزٌ أَخْذُهَا وَالرَّمْيُ بِهَا ثَانِيَةً، وَمَا نَدْرِي شَيْئًا يَمْنَعُ مِنْ ذَلِكَ، وَكَذَلِكَ التُّرَابُ الَّذِي تَيَمَّمَ بِهِ فَالتَّيَمُّمُ بِهِ جَائِزٌ وَالثَّوْبُ الَّذِي سُتِرَتْ بِهِ الْعَوْرَةُ فِي الصَّلَاةِ جَائِزٌ أَنْ تُسْتَرَ بِهِ أَيْضًا الْعَوْرَةُ فِي صَلَاةٍ أُخْرَى، فَإِنْ كَانُوا أَهْلَ قِيَاسٍ فَهَذَا كُلُّهُ بَابٌ وَاحِدٌ.

Abu Muhammad said: This is invalid. Rather, pebbles used for stoning the Jamarat pillars may be taken and thrown a second time. We know nothing that prohibits this. Similarly, the dust with which dry ablution was performed is permissible to use for dry ablution again. The garment that has been used to cover private parts in prayer is permissible to cover them again in another prayer. If they adhere to qiyas (legal analogy), all these matters fall under one legal principle.

L3080 وَقَالَ بَعْضُهُمْ: الْمَاءُ الْمُسْتَعْمَلُ بِمَنْزِلَةِ الْمَاءِ الَّذِي طُبِخَ فِيهِ فُولٌ أَوْ حِمَّصٌ.

Used water is equivalent to water in which broad beans or chickpeas have been cooked.

L3081 قَالَ عَلِيٌّ: وَهَذَا هَوَسٌ مَرْدُودٌ عَلَى قَائِلِهِ، وَمَا نَدْرِي شَيْئًا يَمْنَعُ مِنْ جَوَازِ الْوُضُوءِ وَالْغُسْلِ بِمَاءٍ طُبِخَ فِيهِ فُولٌ أَوْ حِمَّصٌ أَوْ تُرْمُسٌ أَوْ لُوبِيَا، مَا دَامَ يَقَعُ عَلَيْهِ اسْمُ مَاءٍ.

Ali said: This is a baseless claim rebutted against its proponent. We know of no factor whatsoever that would invalidate the permissibility of performing *wuḍū'* or *ghusl* with water in which beans, chickpeas, lupins, or cowpeas have been cooked, provided it retains the essential classification of water.

L3082 وَقَالَ بَعْضُهُمْ: لَمَّا لَمْ يُطْلَقْ عَلَى الْمَاءِ الْمُسْتَعْمَلِ اسْمُ الْمَاءِ مُفْرَدًا دُونَ أَنْ يُتْبَعَ بِاسْمٍ آخَرَ وَجَبَ أَنْ لَا يَكُونَ فِي حُكْمِ الْمَاءِ الْمُطْلَقِ.

Some scholars said: Since the designation "water" is not applied to used water independently without qualification, it is necessary that it not fall under the ruling of absolute water.

L3083 قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ حَمَاقَةٌ، بَلْ يُطْلَقُ عَلَيْهِ اسْمُ مَاءٍ فَقَطْ، ثُمَّ لَا فَرْقَ بَيْنَ قَوْلِنَا مَاءٌ مُسْتَعْمَلٌ فَيُوصَفُ بِذَلِكَ، وَبَيْنَ قَوْلِنَا مَاءٌ مُطْلَقٌ فَيُوصَفُ بِذَلِكَ، وَقَوْلِنَا مَاءٌ مِلْحٌ أَوْ مَاءٌ عَذْبٌ، أَوْ مَاءٌ مُرٌّ، أَوْ مَاءٌ سُخْنٌ أَوْ مَاءُ مَطَرٍ، وَكُلُّ ذَلِكَ لَا يَمْنَعُ مِنْ جَوَازِ الْوُضُوءِ بِهِ وَالْغُسْلِ.

Abū Muḥammad said: This is foolishness. Rather, it is merely referred to as *water*. There is no difference between our saying *used water* (i.e., previously utilized for ablution) and describing it as such, or our saying *pure water* and describing it as such—just as we say *saltwater*, *freshwater*, *bitter water*, *hot water*, or *rainwater*. None of these descriptions negate the permissibility of performing ablution or the ritual bath (ghusl) with it.

L3084 If the opinion of Abū Ḥanīfa regarding the impurity of water used for ablution and bathing were valid, most of the religion would be invalidated. For

it would entail that whenever a person bathes or performs ablution and then puts on his garment, he could only pray while wearing an entirely impure garment. Moreover, he would have to cleanse his limbs from it (i.e., the impure water) with other water.

وَلَوْ صَحَّ قَوْلُ أَبِي حَنِيفَةَ فِي نَجَاسَةِ الْمَاءِ الْمُتَوَضَّأِ بِهِ وَالْمُغْتَسَلِ بِهِ لَبَطَلَ أَكْثَرُ الدِّينِ؛ لِأَنَّهُ كَانَ الْإِنْسَانُ إذَا اغْتَسَلَ أَوْ تَوَضَّأَ ثُمَّ لَبِسَ ثَوْبَهُ لَا يُصَلِّي إلَّا بِثَوْبٍ نَجِسٍ كُلِّهِ، وَلَلَزِمَهُ أَنْ يُطَهِّرَ أَعْضَاءَهُ مِنْهُ بِمَاءٍ آخَرَ.

L3085 Some of them said: It is not impure unless it exits the body parts.

وَقَالَ بَعْضُهُمْ: لَا يَنْجَسُ إلَّا إذَا فَارَقَ الْأَعْضَاءَ.

L3086–3087 Abu Muhammad said: This is an audacity in proclaiming falsehood in religion through mere claims. It should be said to them: Did it become impure according to you except through use? They must inevitably answer yes. Thus, it is impossible for it not to be impure in the state that causes impurity, only to become impure afterward. There is no greater audacity than declaring: This is pure water with which obligatory acts of worship are performed, yet when one seeks closeness to Allah through it in the most excellent deeds like ablution and ritual bathing, it either becomes impure or is prohibited from being used to draw near to Allah the Exalted. We do not know from what source this confusion has occurred to them.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ جُرْأَةٌ عَلَى الْقَوْلِ بِالْبَاطِلِ فِي الدِّينِ بِالدَّعْوَى، وَيُقَالُ لَهُمْ: هَلْ تَنَجَّسَ عِنْدَكُمْ إلَّا بِالِاسْتِعْمَالِ؟ فَلَا بُدَّ مِنْ نَعَمْ، فَمِنْ الْمُحَالِ أَنْ لَا يَنْجَسَ فِي الْحَالِ الْمُنَجَّسَةِ لَهُ ثُمَّ يَنْجَسَ بَعْدَ ذَلِكَ، وَلَا جُرْأَةَ أَعْظَمُ مِنْ أَنْ يُقَالَ: هَذَا مَاءٌ طَاهِرٌ تُؤَدَّى بِهِ الْفَرَائِضُ، فَإِذَا تَقَرَّبَ بِهِ إلَى اللَّهِ فِي أَفْضَلِ الْأَعْمَالِ مِنْ الْوُضُوءِ وَالْغُسْلِ تَنَجَّسَ أَوْ حَرُمَ أَنْ يَتَقَرَّبَ إلَى اللَّهِ تَعَالَى بِهِ، وَمَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ هَذَا التَّخْلِيطُ.

L3088 Some of them said: It has been narrated from Ibn Abbas that if a sexually impure person bathes in a reservoir, he corrupts its water. This is not authentic; in fact, it is outright fabricated. The early Ḥanafī jurists merely cited it through Ḥammād ibn Abī Sulaymān from Ibrāhīm [al-Nakhaʿī] from Ibn Abbas, but we have no knowledge of who [the transmitters] were before Ḥammād, nor do we find evidence that Ibrāhīm directly heard [this] from Ibn Abbas. The authentic narration from Ibn Abbas contradicts this.

وَقَالَ بَعْضُهُمْ: قَدْ جَاءَ عَنْ ابْنِ عَبَّاسٍ أَنَّ الْجُنُبَ إذَا اغْتَسَلَ فِي الْحَوْضِ أَفْسَدَ مَاءَهُ، وَهَذَا لَا يَصِحُّ، بَلْ هُوَ مَوْضُوعٌ، وَإِنَّمَا ذَكَرَهُ الْحَنَفِيُّونَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ عَنْ ابْنِ عَبَّاسٍ، وَلَا نَعْلَمُ مَنْ هُوَ قَبْلَ حَمَّادٍ، وَلَا نَعْرِفُ لِإِبْرَاهِيمَ سَمَاعًا مِنْ ابْنِ عَبَّاسٍ وَالصَّحِيحُ عَنْ ابْنِ عَبَّاسٍ خِلَافُ هَذَا.

L3089 Abu Muhammad said: We had previously cited from Ibn Abbas a disagreement with this very statement of his: “Four things do not become impure: water, earth, humans”—and he mentioned a fourth.

قَالَ أَبُو مُحَمَّد: وَقَدْ ذَكَرْنَا عَنْ ابْنِ عَبَّاسٍ قَبْلُ خِلَافَ هَذَا مِنْ قَوْلِهِ: أَرْبَعٌ لَا تَنْجَسُ الْمَاءُ وَالْأَرْضُ وَالْإِنْسَانُ، وَذَكَرَ رَابِعًا.

L3090 They narrated from the Messenger of Allah—may Allah bless him and grant him peace—regarding his prohibition against giving *sadaqah* to the family of Muḥammad: “It is but what is washed off people’s hands.” And from ʿUmar, a similar report.

وَذَكَرُوا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي تَحْرِيمِهِ الصَّدَقَةَ عَلَى آلِ مُحَمَّدٍ «إنَّمَا هِيَ غُسَالَةُ أَيْدِي النَّاسِ» . وَعَنْ عُمَرَ مِثْلُ ذَلِكَ.

L3091 Abu Muhammad said: There is no proof in this at all, because the necessary

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ فِيهِ أَصْلًا، لِأَنَّ اللَّازِمَ لَهُمْ فِي احْتِجَاجِهِمْ بِهَذَا الْخَبَرِ أَنْ لَا يُحَرَّمَ ذَلِكَ إِلَّا عَلَى آلِ مُحَمَّدٍ خَاصَّةً، فَإِنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَكْرَهْ ذَلِكَ وَلَا مَنَعَهُ أَحَدًا غَيْرَهُمْ، بَلْ أَبَاحَهُ لِسَائِرِ النَّاسِ.

implication of their reliance on this narration in their argument is that such a thing is prohibited solely for the family of Muhammad. For the Prophet (peace be upon him) did not disapprove of it nor prohibit it for anyone other than them; rather, he permitted it for all others.

وَأَمَّا احْتِجَاجُهُمْ بِقَوْلِ عُمَرَ فَإِنَّهُمْ مُخَالِفُونَ لَهُ لِأَنَّهُمْ يُجِيزُونَ فِي أَصْلِ أَقْوَالِهِمْ شُرْبَ ذَلِكَ الْمَاءِ. وَأَيْضًا فَإِنَّ غُسَالَةَ أَيْدِي النَّاسِ غَيْرُ وُضُوئِهِمْ الَّذِي يَتَقَرَّبُونَ بِهِ إِلَى اللَّهِ تَعَالَى، وَلَا عَجَبَ أَكْثَرُ مِنْ إبَاحَتِهِمْ غُسَالَةَ أَيْدِي النَّاسِ وَفِيهَا جَاءَ مَا احْتَجُّوا بِهِ.

L3092 As for their argument based on ʿUmar's statement, they contradict him because they permit drinking that water on the basis of their rulings. Moreover, the wash water from people's hands differs from their ablution through which they seek closeness to Allah the Exalted. There is nothing more surprising than their permitting the use of people's hand wash water, whereas the evidence they cited pertains to it.

وَقَوْلُهُمْ إنَّهَا طَاهِرَةٌ، وَتَحْرِيمُهُمْ الْمَاءَ الَّذِي قَدْ تَوَضَّأَ بِهِ قُرْبَةٌ إلَى اللَّهِ تَعَالَى وَلَيْسَ فِي شَيْءٍ مِنْ هَذَيْنِ الْأَثَرَيْنِ نَهْيٌ عَنْهُ، وَنَعُوذُ بِاَللَّهِ مِنْ الضَّلَالِ وَتَحْرِيفِ الْكَلِمِ عَنْ مَوَاضِعِهِ.

L3093 Their assertion that it is pure, and their prohibition of the water used for ablution as an act of drawing near to Allah, the Exalted—there is no prohibition in either of these two narrations regarding it. We seek refuge in Allah from misguidance and distorting words from their rightful meanings.

وَنَسْأَلُ أَصْحَابَ الشَّافِعِيِّ عَمَّنْ وَضَّأَ عُضْوًا مِنْ أَعْضَاءِ وُضُوئِهِ فَقَطْ يَنْوِي بِهِ الْوُضُوءَ فِي مَاءٍ دَائِمٍ أَوْ غَسَلَهُ كَذَلِكَ وَهُوَ جُنُبٌ، أَوْ بَعْضَ عُضْوٍ أَوْ بَعْضَ أُصْبُعٍ أَوْ شَعْرَةً وَاحِدَةً أَوْ مَسَحَ شَعْرَةً مِنْ رَأْسِهِ أَوْ خُفِّهِ أَوْ بَعْضَ خُفِّهِ -: حَتَّى نَعْرِفَ أَقْوَالَهُمْ فِي ذَلِكَ.

L3094–3096 And we ask the followers of Al-Shāfiʿī about one who performed ablution on only a single limb of his ablution, intending it [for the ritual]. Performing ablution in still water, performing *ghusl* (major ritual washing) in such water while in a state of major impurity, washing part of a limb, part of a finger, a single hair, wiping a single hair from his head, wiping over his leather sock or part of his leather sock—so that we may ascertain the scholars' positions regarding these matters.

وَقَدْ صَحَّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَوَضَّأَ وَسَقَى إنْسَانًا ذَلِكَ الْوَضُوءَ» ، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - «تَوَضَّأَ وَصَبَّ وَضُوءَهُ عَلَى جَابِرِ بْنِ عَبْدِ اللَّهِ» ، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - «كَانَ إذَا تَوَضَّأَ تَمَسَّحَ النَّاسُ بِوَضُوئِهِ» ، فَقَالُوا بِآرَائِهِمْ الْمَلْعُونَةِ: إنَّ الْمُسْلِمَ الطَّاهِرَ النَّظِيفَ إذَا تَوَضَّأَ بِمَاءٍ طَاهِرٍ ثُمَّ صَبَّ ذَلِكَ الْمَاءَ فِي بِئْرٍ فَهِيَ بِمَنْزِلَةِ لَوْ صُبَّ فِيهَا فَأْرٌ مَيِّتٌ أَوْ نَجِسٌ، وَنَسْأَلُ اللَّهَ الْعَافِيَةَ مِنْ هَذَا الْقَوْلِ.

L3097 It has been authentically reported that "the Messenger of Allah—peace be upon him—performed ablution and gave someone his ablution water to drink," that he—peace be upon him—"performed ablution and poured his ablution water over Jābir ibn ʿAbdullāh," and that he—peace be upon him—"when he performed ablution, people would wipe themselves with his ablution water." Yet they asserted with their cursed opinions: "If a pure, clean Muslim performs ablution with pure water and then pours that ablution water into a well, it is equivalent to pouring a dead mouse or something impure into it." We ask Allah for protection from this statement.

L3098 **Issue: The ruling concerning the falling of flies, fleas, and**

bees, and the urine of bats.

L3099 142 – Issue: If it is impossible to avoid the vomit of flies, fleas, bees, or the urine of bats, and washing [the affected area] would cause hardship or difficulty, one is only required to wash [it] to the extent that it does not involve hardship or difficulty.

L3100 Abū Muḥammad said: We have previously cited the words of Allah, the Exalted: {He has not imposed any constraint upon you in religion} [Al-Ḥajj: 78] and His saying: {Allah desires ease for you, not hardship} [Al-Baqarah: 185]. Thus, constraint and hardship have been removed from us. Whatever can be washed without constraint or hardship must be washed, because it is urine and excrement.[12]

L3101 **Issue: The ruling on the vomit from every Muslim or disbeliever.**

L3102 143. Issue: Vomit from any Muslim or disbeliever is forbidden, and it is obligatory to avoid it, due to the statement of the Messenger of Allah (peace be upon him): "The one who retracts his gift is like the one who returns to his vomit." The Prophet (peace be upon him) said that to emphasize the prohibition of retracting gifts.

L3103 **Issue: The ruling on the purity of wine, gambling, idols, and divining arrows.**

L3104–3106 Issue 144: Intoxicants, gambling, idols, and divining arrows are impure and forbidden; it is obligatory to avoid them. Whoever prays while carrying any of them invalidates his prayer. Allah the Exalted said: "Indeed, intoxicants, gambling, idols, and divining arrows are an abomination from the work of Satan, so avoid them" [Al-Mā'idah: 90]. Thus, whoever does not... He should

[12] **Qur'an references (L3100):** Qur'an 22:78 (Al-Hajj); Qur'an 2:185 (Al-Baqarah).

[مَسْأَلَةٌ حُكْمُ وَنِيمِ الذُّبَابِ وَالْبَرَاغِيثِ وَالنَّحْلِ وَبَوْلُ الْخُفَّاشِ]

١٤٢ - مَسْأَلَةٌ: وَوَنِيمُ الذُّبَابِ وَالْبَرَاغِيثِ وَالنَّحْلِ وَبَوْلُ الْخُفَّاشِ إِنْ كَانَ لَا يُمْكِنُ التَّحَفُّظُ مِنْهُ وَكَانَ فِي غَسْلِهِ حَرَجٌ أَوْ عُسْرٌ لَمْ يَلْزَمْ مِنْ غَسْلِهِ إِلَّا مَا لَا حَرَجَ فِيهِ وَلَا عُسْرَ.

قَالَ أَبُو مُحَمَّد: قَدْ قَدَّمْنَا قَوْلَ اللَّهِ تَعَالَى: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] وَقَوْلَهُ: {يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ} [البقرة: ١٨٥] فَالْحَرَجُ وَالْعُسْرُ مَرْفُوعَانِ عَنَّا، وَمَا كَانَ لَا حَرَجَ فِي غَسْلِهِ وَلَا عُسْرَ فَهُوَ لَازِمٌ غَسْلُهُ، لِأَنَّهُ بَوْلٌ وَرَجِيعٌ.

[مَسْأَلَةٌ حُكْمُ الْقَيْءِ مِنْ كُلِّ مُسْلِمٍ أَوْ كَافِرٍ]

١٤٣ - مَسْأَلَةٌ: وَالْقَيْءُ مِنْ كُلِّ مُسْلِمٍ أَوْ كَافِرٍ حَرَامٌ يَجِبُ اجْتِنَابُهُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْعَائِدُ فِي هِبَتِهِ كَالْعَائِدِ فِي قَيْئِهِ» وَإِنَّمَا قَالَ - عَلَيْهِ السَّلَامُ - ذَلِكَ عَلَى مَنْعِ الْعَوْدَةِ فِي الْهِبَةِ.

[مَسْأَلَةٌ حُكْمُ طَهَارَةِ الْخَمْرِ وَالْمَيْسِرِ وَالْأَنْصَابِ وَالْأَزْلَامِ]

١٤٤ - مَسْأَلَةٌ: وَالْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ حَرَامٌ وَاجِبٌ اجْتِنَابُهُ، فَمَنْ صَلَّى حَامِلًا شَيْئًا مِنْهَا بَطَلَتْ صَلَاتُهُ. قَالَ اللَّهُ تَعَالَى: {إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ} [المائدة: ٩٠] فَمَنْ لَمْ يَجْتَنِبْ ذَلِكَ فِي صَلَاتِهِ فَلَمْ يُصَلِّ كَمَا أُمِرَ، وَمَنْ لَمْ يُصَلِّ كَمَا أُمِرَ فَلَمْ يُصَلِّ.

avoid that in his prayer; therefore, he did not pray as he was commanded. And whoever does not pray as he was commanded has not prayed.[13]

L3107 **[Issue: The nabīḍ of unripe dates, dried dates, half-ripe dates, soft ripe dates, and raisins when one batch of nabīḍ made from any of these ingredients is mixed with another batch made from a different ingredient.]**

L3108 Issue 145: If the nabīdh (fermented drink) of one of these - unripe dates, dried dates, fully ripe dates, fresh dates, or raisins - is mixed with the nabīdh of another type among them, it is forbidden and must be avoided.

L3109 Abdullah ibn Rabi' narrated to us: Muhammad ibn Ishaq narrated to us: Ibn al-A'rabi narrated to us: Abu Dawood narrated to us: Musa ibn Isma'il narrated to us: Aban—who is Ibn Yazid al-'Attar—narrated to us: Yahya—who is Ibn Abi Kathir—narrated from Abdullah ibn Abi Qatadah, from his father, that the Messenger of Allah (peace and blessings be upon him) said: "He prohibited mixing raisins with dates, unripe dates with dates, and half-dried dates with fresh dates. He said: 'Prepare each as nabidh separately.'" Mixtures not involving these five items are not prohibited; rather, it remains pure and lawful provided they do not cause intoxication, for he forbade only what we have listed.[14]

L3110 **An issue concerning the absolute prohibition against facing the *qiblah* while relieving oneself (of excrement or urine).**

L3111 Issue 146: It is impermissible to face or turn one's back to the qibla while defecating or urinating, whether in a built structure or an open area. Similarly, it is impermissible to merely face the qibla during istinjāʾ.

L3112 Abdullah ibn Yusuf narrated to us; Ahmad ibn Fath narrated to us; Abdul Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad

[13] **Qur'an references (L3104):** Qur'an 5:90 (Al-Ma'idah).

[14] **Hadith references (L3109):** Sunan Abi Dawud 3704.

[مَسْأَلَة نَبِيذُ الْبُسْرِ وَالتَّمْرِ وَالزَّهْوِ وَالرُّطَبِ وَالزَّبِيبِ إِذَا جُمِعَ نَبِيذُ وَاحِدٍ مِنْ هَذِهِ إِلَى نَبِيذِ غَيْرِهِ]

١٤٥ - مَسْأَلَةٌ: وَنَبِيذُ الْبُسْرِ وَالتَّمْرِ وَالزَّهْوِ وَالرُّطَبِ وَالزَّبِيبِ إِذَا جُمِعَ نَبِيذُ وَاحِدٍ مِنْ هَذِهِ إِلَى نَبِيذِ غَيْرِهِ فَهُوَ حَرَامٌ وَاجِبٌ اجْتِنَابُهُ.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُوسَى بْنُ إِسْمَاعِيلَ ثنا أَبَانُ هُوَ ابْنُ يَزِيدَ الْعَطَّارُ - ثنا يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ عَنْ أَبِيهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَّهُ نَهَى عَنْ خَلِيطِ الزَّبِيبِ وَالتَّمْرِ، وَعَنْ خَلِيطِ الْبُسْرِ وَالتَّمْرِ، وَعَنْ خَلِيطِ الزَّهْوِ وَالرُّطَبِ، وَقَالَ: انْتَبِذُوا كُلَّ وَاحِدٍ عَلَى حِدَةٍ» وَلَيْسَ كَذَلِكَ الْخَلِيطَانِ مِنْ غَيْرِ هَذِهِ الْخَمْسَةِ بَلْ هُوَ طَاهِرٌ حَلَالٌ مَا لَمْ يُسْكِرْ، لِأَنَّهُ لَمْ يَنْهَ إِلَّا عَمَّا ذَكَرْنَا.

[مَسْأَلَةٌ تَحْرِيم اسْتِقْبَالِ الْقِبْلَةِ بالغائط والبول مُطْلَقًا]

١٤٦ - مَسْأَلَةٌ: وَلَا يَجُوزُ اسْتِقْبَالُ الْقِبْلَةِ وَاسْتِدْبَارُهَا لِلْغَائِطِ وَالْبَوْلِ، لَا فِي بُنْيَانٍ وَلَا فِي صَحْرَاءَ، وَلَا يَجُوزُ اسْتِقْبَالُ الْقِبْلَةِ فَقَطْ كَذَلِكَ فِي حَالِ الِاسْتِنْجَاءِ.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى قَالَ قُلْت لِسُفْيَانَ بْنِ عُيَيْنَةَ:

ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to us; Yahya ibn Yahya narrated to us, who said: I asked Sufyan ibn Uyaynah: "Did you hear al-Zuhri narrate from Ata ibn Yazid al-Laythī from Abu Ayyub that the Messenger of Allah—peace and blessings be upon him—said: 'When you relieve yourselves, do not face the Qiblah nor turn your back toward it with urine or feces, but face east or west'?" Sufyan replied: "Yes."[15]

سَمِعْت الزُّهْرِيَّ يَذْكُرُ عَنْ عَطَاءِ بْنِ يَزِيدَ اللَّيْثِيِّ عَنْ أَبِي أَيُّوبَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا أَتَيْتُمْ الْغَائِطَ فَلَا تَسْتَقْبِلُوا الْقِبْلَةَ وَلَا تَسْتَدْبِرُوهَا بِبَوْلٍ وَلَا غَائِطٍ وَلَكِنْ شَرِّقُوا أَوْ غَرِّبُوا» ؟ قَالَ سُفْيَانُ نَعَمْ.

L3113 Abu Hurairah and others also narrated the prohibition against this. We mentioned earlier the ḥadīth of Salman al-Farsi from the Prophet (may Allah's peace and blessings be upon him): "Let no one perform istinjāʾ while facing the Qiblah," in the chapter on istinjāʾ.

وَقَدْ رَوَى أَيْضًا النَّهْيَ عَنْ ذَلِكَ أَبُو هُرَيْرَةَ وَغَيْرُهُ، وَقَدْ ذَكَرْنَا قَبْلُ حَدِيثَ سَلْمَانَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَلَّا يَسْتَنْجِيَ أَحَدٌ مُسْتَقْبِلَ الْقِبْلَةِ» ، فِي بَابِ الِاسْتِنْجَاءِ.

L3114–3116 And among those who denied that is Abu Ayyub al-Ansari—as we mentioned—in the houses, citing an explicit text from him, and likewise... Also, Abu Hurairah and Ibn Mas'ud, and from Suraqah ibn Malik that one should not face the Qiblah during such acts, and from the Salaf among the Companions and Followers collectively—may Allah be pleased with them—and from ʿAṭāʾ and Ibrahim al-Nakha'i. Sufyan al-Thawri, al-Awza'i, and Abu Thawr also affirm our opinion on this matter. Abu Hanifah prohibited facing the Qiblah for urination or defecation. None of these scholars distinguished between open deserts and built-up areas regarding this ruling. It has been narrated to us through the chain of Hammad ibn Salamah from Ayyub al-Sakhtiyani from Nafi' from Ibn Umar: that he disapproved of facing the two directions of prayer while exposing private parts, and this is the opinion of Mujahid.

وَمِمَّنْ أَنْكَرَ ذَلِكَ أَبُو أَيُّوبَ الْأَنْصَارِيُّ - كَمَا ذَكَرْنَا - فِي الْبُيُوتِ نَصًّا عَنْهُ، وَكَذَلِكَ أَيْضًا أَبُو هُرَيْرَةَ وَابْنُ مَسْعُودٍ، وَعَنْ سُرَاقَةَ بْنِ مَالِكٍ أَلَّا تَسْتَقْبِلَ الْقِبْلَةَ بِذَلِكَ، وَعَنْ السَّلَفِ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ - رَضِيَ اللَّهُ عَنْهُمْ - جُمْلَةً، وَعَنْ عَطَاءٍ وَإِبْرَاهِيمَ النَّخَعِيِّ، وَبِقَوْلِنَا فِي ذَلِكَ يَقُولُ سُفْيَانُ الثَّوْرِيُّ وَالْأَوْزَاعِيُّ وَأَبُو ثَوْرٍ وَمَنَعَ أَبُو حَنِيفَةَ مِنْ اسْتِقْبَالِهَا لِبَوْلٍ أَوْ غَائِطٍ، وَكُلُّ هَؤُلَاءِ لَمْ يُفَرِّقْ بَيْنَ الصَّحَارِي وَالْبِنَاءِ فِي ذَلِكَ، وَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ يَكْرَهُ أَنْ تُسْتَقْبَلَ الْقِبْلَتَانِ بِالْفُرُوجِ، وَهُوَ قَوْلُ مُجَاهِدٍ.

L3117 Abū Muḥammad said: We do not consider this valid in Bayt al-Maqdis (the Holy Sanctuary), because the prohibition against it has not been established as sound.

قَالَ أَبُو مُحَمَّدٍ: لَا نَرَى ذَلِكَ فِي بَيْتِ الْمَقْدِسِ، لِأَنَّ النَّهْيَ عَنْ ذَلِكَ لَمْ يَصِحَّ.

L3118 Urwah ibn al-Zubayr and Dawud ibn Ali said: It is permissible to face the Kaaba or turn one's back to it while urinating or defecating. That ruling was narrated to us from Ibn Umar via Shu'bah from Abd al-Rahman ibn al-Qasim ibn Muhammad from Nafi' from Ibn Umar. It was also narrated to us from Ibn Umar via Abu Dawud from Muhammad ibn Yahya ibn Faris

وَقَالَ عُرْوَةُ بْنُ الزُّبَيْرِ وَدَاوُد بْنُ عَلِيٍّ: يَجُوزُ اسْتِقْبَالُ الْكَعْبَةِ وَاسْتِدْبَارُهَا بِالْبَوْلِ وَالْغَائِطِ، وَرُوِّينَا ذَلِكَ عَنْ ابْنِ عُمَرَ مِنْ طَرِيقِ شُعْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ، وَرُوِّينَا عَنْ ابْنِ عُمَرَ مِنْ طَرِيقِ أَبِي دَاوُد عَنْ مُحَمَّدِ بْنِ يَحْيَى بْنِ فَارِسٍ عَنْ صَفْوَانَ بْنِ عِيسَى عَنْ الْحَسَنِ بْنِ ذَكْوَانَ عَنْ مَرْوَانَ الْأَصْفَرِ عَنْ ابْنِ عُمَرَ

[15] **Hadith references (L3112):** Sahih Muslim 264.

from Safwan ibn Isa from al-Hasan ibn Dhakwan from Marwan al-Asfar from Ibn Umar, who said: “This prohibition applies only in open spaces. If there is something screening you from the qiblah, there is no blame.” This was likewise narrated to us from al-Sha‘bi, and it is the view of Malik and al-Shafi‘i.

أَنَّهُ قَالَ: إِنَّمَا نُهِيَ عَنْ ذَلِكَ فِي الْفَضَاءِ، وَأَمَّا إِذَا كَانَ بَيْنَك وَبَيْنَ الْقِبْلَةِ شَيْءٌ يَسْتُرُك فَلَا بَأْسَ، وَرُوِّينَا أَيْضًا هَذَا عَنْ الشَّعْبِيِّ، وَهُوَ قَوْلُ مَالِكٍ وَالشَّافِعِيِّ.

L3119 As for those who permitted that entirely, they cited as evidence a hadith that we narrated from Ibn Umar, in one of its wordings: “I went up to the roof of my sister Hafsa’s house and saw the Messenger of Allah—may Allah bless him and grant him peace—sitting to relieve himself while facing the Qiblah.” In another wording: “I saw the Messenger of Allah—may Allah bless him and grant him peace—urinating facing the Qiblah.” And in another: “One day, I peered over and saw the Messenger of Allah—may Allah bless him and grant him peace—on the rooftop of a house relieving himself in a space partitioned off around him with bricks, and noticed he was facing the Qiblah.”

فَأَمَّا مَنْ أَبَاحَ ذَلِكَ جُمْلَةً فَاحْتَجُّوا بِحَدِيثٍ رُوِّينَاهُ عَنْ ابْنِ عُمَرَ فِي بَعْضِ أَلْفَاظِهِ «رَقِيْتُ عَلَى بَيْتِ أُخْتِي حَفْصَةَ فَرَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَاعِدًا لِحَاجَتِهِ مُسْتَقْبِلَ الْقِبْلَةِ» وَفِي بَعْضِهَا «رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَبُولُ حِيَالَ الْقِبْلَةِ» وَفِي بَعْضِهَا: «اطَّلَعْتُ يَوْمًا وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى ظَهْرِ بَيْتٍ يَقْضِي حَاجَتَهُ مَحْجُورًا عَلَيْهِ بِلَبِنٍ فَرَأَيْتُهُ مُسْتَقْبِلَ الْقِبْلَةِ» .

L3120–3122 And with a ḥadīth narrated by Jābir: “The Messenger of Allah (peace and blessings be upon him) forbade us to face the qiblah while urinating. Then, a year before his passing, I saw him facing it.” And with a ḥadīth narrated by ʿĀ’ishah: “It was mentioned in the presence of the Messenger of Allah (peace and blessings be upon him) that...” People who disliked facing the Qiblah with their genitals—the Messenger of Allah (peace be upon him) said: “Have they actually done that [disliked act]? Face the Qiblah with your posteriors as they do!”[16]

وَبِحَدِيثٍ مِنْ طَرِيقِ جَابِرٍ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَسْتَقْبِلَ الْقِبْلَةَ بِبَوْلٍ فَرَأَيْتُهُ قَبْلَ أَنْ يُقْبَضَ بِعَامٍ يَسْتَقْبِلُهَا» وَبِحَدِيثٍ مِنْ طَرِيقِ عَائِشَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذُكِرَ عِنْدَهُ أَنَّ نَاسًا يَكْرَهُونَ اسْتِقْبَالَ الْقِبْلَةِ بِفُرُوجِهِمْ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: قَدْ فَعَلُوهَا؟ اسْتَقْبِلُوا بِمَقْعَدَتِي الْقِبْلَةَ» .

L3123 Ali said: They have no argument except what we have mentioned, nor do they have any argument in anything of it.

قَالَ عَلِيٌّ: لَا حُجَّةَ لَهُمْ غَيْرَ مَا ذَكَرْنَا، وَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ.

L3124 As for the narration of Ibn Umar, it does not mention that this occurred after the prohibition. Since this is not stated within it, we are certain that what is in Ibn Umar’s narration aligns with what people practiced before the Prophet (peace and blessings of Allah be upon him) prohibited it. This is beyond doubt. Therefore, it is unquestionable that the ruling in Ibn Umar’s narration is definitively abrogated by the Prophet’s prohibition (peace and blessings of Allah be upon him). This is necessarily known, and it is false

أَمَّا حَدِيثُ ابْنِ عُمَرَ، فَلَيْسَ فِيهِ أَنَّ ذَلِكَ كَانَ بَعْدَ النَّهْيِ، وَإِذَا لَمْ يَكُنْ ذَلِكَ فِيهِ فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ مَا فِي حَدِيثِ ابْنِ عُمَرَ مُوَافِقٌ لِمَا كَانَ النَّاسُ عَلَيْهِ قَبْلَ أَنْ يَنْهَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ، هَذَا مَا لَا شَكَّ فِيهِ، فَإِذًا لَا شَكَّ فِي ذَلِكَ فَحُكْمُ حَدِيثِ ابْنِ عُمَرَ مَنْسُوخٌ قَطْعًا بِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ، هَذَا يُعْلَمُ

[16] **Hadith references (L3120):** Sunan Ibn Majah 325.

and forbidden to abandon certainty in favor of conjectures—adopting what is certain to be abrogated while abandoning what is certain to be the abrogating text.

L3125–3127 We have clarified elsewhere that whenever a ruling is confirmed as abrogating another abrogated ruling, it is utterly impossible and false for Allah the Exalted to make the abrogating ruling abrogated and the abrogated ruling abrogating without clarifying this in a manner entirely free from ambiguity. For if this were so, the religion would become perplexing rather than clear, deficient rather than complete—and this is false. Allah the Exalted said: "This day I have perfected for you your religion" (Quran 5:3), and He said: "To make clear to mankind what has been sent down to them" (Quran 16:44). Moreover, the narration of Ibn ʻUmar only mentions facing the qiblah. Even if it were established that the narration abrogates a previous ruling, it would not entail the abrogation of the prohibition of facing away from it. Anyone who wrongfully inserts into this ruling the permissibility of facing away from it would be lying and nullifying an established Sharīʻah ruling, and this is forbidden. Thus, their reliance on the narration of Ibn ʻUmar is invalidated.[17]

L3128 As for the ḥadīth of ʿĀʾishah, it is rejected because it is a narration by Khālid al-Ḥadhdhāʾ—who is reliable—from Khālid ibn Abī al-Ṣalt, who is unknown (majhūl) and whose identity is undetermined. ʿAbd al-Razzāq erred in this by attributing it to Khālid al-Ḥadhdhāʾ from Kathīr ibn al-Ṣalt, which is more void and even more void, for Khālid al-Ḥadhdhāʾ never met Kathīr ibn al-Ṣalt. Even if it were authentic, it would not constitute proof for them, because its text clarifies that it was before the prohibition. It is an impossible absurdity that the Messenger of Allāh—peace and blessings of Allāh be upon him—would forbid them from facing the qiblah while urinating or defecating, then reprimand them for obeying him in that matter. This is inconceivable to any Muslim or rational being, and this report contains reprimanding them for that. Thus, even if it were authentic, it would undoubtedly be abrogated (mansūkh). Furthermore, even if authentic, it would only indicate the per-

ضَرُورَةً وَمِنْ الْبَاطِلِ الْمُحَرَّمِ تَرْكُ الْيَقِينِ بِالظُّنُونِ، وَأَخْذُ الْمُتَيَقَّنِ نَسْخُهُ وَتَرْكُ الْمُتَيَقَّنِ أَنَّهُ نَاسِخٌ.

وَقَدْ أَوْضَحْنَا فِي غَيْرِ هَذَا الْمَكَانِ أَنَّ كُلَّ مَا صَحَّ أَنَّهُ نَاسِخٌ لِحُكْمٍ مَنْسُوخٍ فَمِنْ الْمُحَالِ الْبَاطِلِ أَنْ يَكُونَ اللَّهُ تَعَالَى يُعِيدُ النَّاسِخَ مَنْسُوخًا وَالْمَنْسُوخَ نَاسِخًا وَلَا يُبَيِّنُ ذَلِكَ تِبْيَانًا لَا إشْكَالَ فِيهِ، إذْ لَوْ كَانَ هَذَا لَكَانَ الدِّينُ مُشْكِلًا غَيْرَ بَيِّنٍ، نَاقِصًا غَيْرَ كَامِلٍ، وَهَذَا بَاطِلٌ، قَالَ اللَّهُ تَعَالَى: {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] وَقَالَ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إلَيْهِمْ} [النحل: ٤٤] وَأَيْضًا فَإِنَّمَا فِي حَدِيثِ ابْنِ عُمَرَ ذِكْرُ اسْتِقْبَالِ الْقِبْلَةِ فَقَطْ، فَلَوْ صَحَّ أَنَّهُ نَاسِخٌ لَمَا كَانَ فِيهِ نَسْخُ تَحْرِيمِ اسْتِدْبَارِهَا، وَلَكَانَ مَنْ أَقْحَمَ فِي ذَلِكَ إبَاحَةَ اسْتِدْبَارِهَا كَاذِبًا مُبْطِلًا لِشَرِيعَةٍ ثَابِتَةٍ، وَهَذَا حَرَامٌ، فَبَطَلَ تَعَلُّقُهُمْ بِحَدِيثِ ابْنِ عُمَرَ.

وَأَمَّا حَدِيثُ عَائِشَةَ فَهُوَ سَاقِطٌ؛ لِأَنَّهُ رِوَايَةُ خَالِدٍ الْحَذَّاءِ - وَهُوَ ثِقَةٌ - عَنْ خَالِدِ بْنِ أَبِي الصَّلْتِ وَهُوَ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ، وَأَخْطَأَ فِيهِ عَبْدُ الرَّزَّاقِ فَرَوَاهُ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ كَثِيرِ بْنِ الصَّلْتِ، وَهَذَا أَبْطَلُ وَأَبْطَلُ؛ لِأَنَّ خَالِدًا الْحَذَّاءَ لَمْ يُدْرِكْ كَثِيرَ بْنَ الصَّلْتِ، ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّ نَصَّهُ يُبَيِّنُ أَنَّهُ إنَّمَا كَانَ قَبْلَ النَّهْيِ؛ لِأَنَّ مِنْ الْبَاطِلِ الْمُحَالِ أَنْ يَكُونَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْهَاهُمْ عَنْ اسْتِقْبَالِ الْقِبْلَةِ بِالْبَوْلِ وَالْغَائِطِ ثُمَّ يُنْكِرُ عَلَيْهِمْ طَاعَتَهُ فِي ذَلِكَ، هَذَا مَا لَا يَظُنُّهُ مُسْلِمٌ وَلَا ذُو عَقْلٍ، وَفِي هَذَا الْخَبَرِ إنْكَارُ ذَلِكَ عَلَيْهِمْ، فَلَوْ صَحَّ لَكَانَ مَنْسُوخًا بِلَا شَكٍّ، ثُمَّ لَوْ

[17] **Qur'an references (L3125):** Qur'an 5:3 (Al-Ma'idah); Qur'an 16:44 (An-Nahl).

missibility of facing it, not the permissibility of turning one's back to it in any respect. Therefore, their reliance on the ḥadīth of ʿĀ'ishah is entirely invalid.

L3129 As for the ḥadīth of Jābir, it is the narration of Abān ibn Ṣāliḥ and is not well-known. Additionally, it does not clarify that facing the Qiblah by the Prophet—peace be upon him—occurred after the Prophet's own prohibition. If that were the case, Jābir would have stated, "Then I saw the Prophet." Moreover, even if it were authentic, it would only indicate the abrogation of facing [the Qiblah] specifically, while turning away [from it] has no basis whatsoever. It is impermissible to add to the transmitted reports what is not contained within them, for doing so would make the one who does so a liar. Furthermore, if two matters are prohibited and one is abrogated, this does not necessitate the abrogation of the other. Thus, all their contentious arguments are nullified—and success comes solely from Allah, the Most High. Their claim is invalidated due to its complete lack of evidence.

L3130 As for those who differentiate between deserts and buildings in this matter, their position is entirely unsupported by evidence, since none of these narrations distinguish between desert and buildings. Such an assertion is mere conjecture, and conjecture is the most deceitful of statements, availing nothing against the truth. There is no difference between one who limits the prohibition to deserts rather than buildings, another who claims it applies specifically to Medina or Mecca, and another who restricts it to the days of Hajj. All such claims are baseless confusion.

L3131 "Some of them said, 'This ruling applied exclusively to deserts because there were people there who would pray and were harmed as a result of their prayers.'"

L3132–3134 Abū Muḥammad said: This is invalid because defecation, however it occurs in open land, so its place... It must necessarily be a qiblah for one direction and not for another. Thus, Mālik's opinion was entirely disconnected from any Sunnah or scriptural proof. This view contradicts all statements of the Companions – may Allah be pleased with them – except for a narration from

صَحَّ لَمَا كَانَ فِيهِ إِلَّا إِبَاحَةُ الِاسْتِقْبَالِ فَقَطْ، لَا إِبَاحَةُ الِاسْتِدْبَارِ أَصْلًا، فَبَطَلَ تَعَلُّقُهُمْ بِحَدِيثِ عَائِشَةَ جُمْلَةً.

وَأَمَّا حَدِيثُ جَابِرٍ فَإِنَّهُ رِوَايَةُ أَبَانَ بْنِ صَالِحٍ وَلَيْسَ بِالْمَشْهُورِ، وَأَيْضًا فَلَيْسَ فِيهِ بَيَانٌ أَنَّ اسْتِقْبَالَهُ الْقِبْلَةَ - عَلَيْهِ السَّلَامُ - كَانَ بَعْدَ نَهْيِهِ، وَلَوْ كَانَ ذَلِكَ لَقَالَ جَابِرٌ، ثُمَّ رَأَيْته، وَأَيْضًا فَلَوْ صَحَّ لَمَا كَانَ فِيهِ إِلَّا النَّسْخُ لِلِاسْتِقْبَالِ فَقَطْ، وَأَمَّا الِاسْتِدْبَارُ فَلَا أَصْلًا، وَلَا يَحِلُّ أَنْ يُزَادَ فِي الْأَخْبَارِ مَا لَيْسَ فِيهَا، فَيَكُونُ مَنْ فَعَلَ ذَلِكَ كَاذِبًا، وَلَيْسَ إذَا نَهَى عَنْ شَيْئَيْنِ ثُمَّ نُسِخَ أَحَدُهُمَا وَجَبَ نَسْخُ الْآخَرِ، فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ، وَسَقَطَ قَوْلُهُمْ لِتَعَرِّيهِ عَنْ الْبُرْهَانِ.

وَأَمَّا مَنْ فَرَّقَ بَيْنَ الصَّحَارِي وَالْبِنَاءِ فِي ذَلِكَ فَقَوْلٌ لَا يَقُومُ عَلَيْهِ دَلِيلٌ أَصْلًا، إذْ لَيْسَ فِي شَيْءٍ مِنْ هَذِهِ الْآثَارِ فَرْقٌ بَيْنَ صَحْرَاءَ وَبُنْيَانٍ، فَالْقَوْلُ بِذَلِكَ ظَنٌّ، وَالظَّنُّ أَكْذَبُ الْحَدِيثِ، وَلَا يُغْنِي عَنْ الْحَقِّ شَيْئًا، وَلَا فَرْقَ بَيْنَ مَنْ حَمَلَ النَّهْيَ عَلَى الصَّحَارِي دُونَ الْبُنْيَانِ، وَبَيْنَ آخَرَ قَالَ بَلْ النَّهْيُ عَنْ ذَلِكَ فِي الْمَدِينَةِ أَوْ مَكَّةَ خَاصَّةً، وَبَيْنَ آخَرَ قَالَ فِي أَيَّامِ الْحَجِّ خَاصَّةً، وَكُلُّ هَذَا تَخْلِيطٌ لَا وَجْهَ لَهُ.

وَقَالَ بَعْضُهُمْ: إنَّمَا كَانَ فِي الصَّحَارِي، لِأَنَّ هُنَالِكَ قَوْمًا يُصَلُّونَ فَيُؤْذَوْنَ بِذَلِكَ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا بَاطِلٌ؛ لِأَنَّ وُقُوعَ الْغَائِطِ كَيْفَمَا وَقَعَ فِي الصَّحْرَاءِ فَمَوْضِعُهُ لَا بُدَّ أَنْ يَكُونَ قِبْلَةً لِجِهَةٍ مَا، وَغَيْرَ قِبْلَةٍ لِجِهَةٍ أُخْرَى، فَخَرَجَ قَوْلُ مَالِكٍ عَنْ أَنْ يَكُونَ لَهُ مُتَعَلِّقٌ

Ibn ʿUmar, though contradictory narrations have also been transmitted from him. Success lies with Allah, the Exalted.

The issue of the permissibility of ablution and the ritual bath for janabah (major ritual impurity) using water mixed with a ritually pure substance.

Issue 147: Any water that mixes with a pure, permissible substance such that its color, smell, and taste become apparent—provided it is still called water—is valid for ablution and for bathing due to major ritual impurity.

The proof of that is His statement, the Most High: "then you could not find water" [An-Nisā': 43], and this remains water regardless of whether musk, honey, saffron, or other such substances have been mixed into it.[18]

Humam narrated to us from Ibn Mufarrij from Ibn al-A'rabi from al-Dabari from Abd al-Razzaq from Ibn Jurayj, who informed me from Ata ibn Abi Rabah from Umm Hani' bint Abi Talib that she said: "I entered upon the Prophet (peace and blessings of Allah be upon him) on the Day of the Conquest while he was in his tent. I found that he had bathed with water that was in a shallow vessel, and I indeed saw traces of dough in it. Then I found him praying the Duha prayer."

And through him to Abd al-Razzaq, from Ma'mar, from Ibn Tawus, from al-Muttalib ibn Abdullah ibn Hantab, from Umm Hani, who said: "On the day of the Conquest, the Messenger of Allah (peace be upon him) camped in the upper part of Mecca. I brought him water in a kneading tray—I could see traces of dough in it. Abu Dharr screened him, and the Messenger of Allah (peace be upon him) performed a ritual bath. Then the Messenger (peace be upon him) screened Abu Dharr for him to perform a ritual bath. Then he prayed eight rak'ahs, and that was during the forenoon."

[18] **Qur'an references (L3137):** Qur'an 4:43 (An-Nisa); Qur'an 5:6 (Al-Ma'idah).

بِسُنَّةٍ أَوْ بِدَلِيلٍ أَصْلًا، وَهُوَ قَوْلٌ خَالَفَ جَمِيعَ أَقْوَالِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إِلَّا رِوَايَةً عَنْ ابْنِ عُمَرَ قَدْ رُوِيَ عَنْهُ خِلَافُهَا، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة جَوَازِ الْوُضُوء وَالْغُسْل للجنابة بِالْمَاءِ الَّذِي اخْتَلَطَ بطاهر]

١٤٧ - مَسْأَلَةٌ: وَكُلُّ مَاءٍ خَالَطَهُ شَيْءٌ طَاهِرٌ مُبَاحٌ فَظَهَرَ فِيهِ لَوْنُهُ وَرِيحُهُ وَطَعْمُهُ إِلَّا أَنَّهُ لَمْ يَزُلْ عَنْهُ اسْمُ الْمَاءِ، فَالْوُضُوءُ بِهِ جَائِزٌ وَالْغُسْلُ بِهِ لِلْجَنَابَةِ جَائِزٌ.

بُرْهَانُ ذَلِكَ قَوْله تَعَالَى: {فَلَمْ تَجِدُوا مَاءً} [النساء: ٤٣] وَهَذَا مَاءٌ، سَوَاءٌ كَانَ الْوَاقِعُ فِيهِ مِسْكًا أَوْ عَسَلًا أَوْ زَعْفَرَانًا أَوْ غَيْرَ ذَلِكَ.

حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ ثنا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَطَاءُ بْنُ أَبِي رَبَاحٍ عَنْ أُمِّ هَانِئٍ بِنْتِ أَبِي طَالِبٍ أَنَّهَا قَالَتْ: «دَخَلْتُ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ الْفَتْحِ وَهُوَ فِي قُبَّةٍ لَهُ، فَوَجَدْتُهُ قَدْ اغْتَسَلَ بِمَاءٍ كَانَ فِي صَحْفَةٍ، إِنِّي لَأَرَى فِيهَا أَثَرَ الْعَجِينِ، فَوَجَدْتُهُ يُصَلِّي الضُّحَى» .

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ الْمُطَّلِبِ بْنِ عَبْدِ اللَّهِ بْنِ حَنْطَبٍ عَنْ أُمِّ هَانِئٍ قَالَتْ «نَزَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ الْفَتْحِ بِأَعْلَى مَكَّةَ فَأَتَيْتُهُ بِمَاءٍ فِي جَفْنَةٍ إِنِّي لَأَرَى أَثَرَ الْعَجِينِ فِيهَا، فَسَتَرَهُ أَبُو ذَرٍّ فَاغْتَسَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ سَتَرَ - عَلَيْهِ السَّلَامُ - أَبَا ذَرٍّ فَاغْتَسَلَ، ثُمَّ صَلَّى ثَمَانِيَ رَكَعَاتٍ وَذَلِكَ فِي الضُّحَى» .

L3140 Yunus ibn Abdullah narrated to us: Abu Isa ibn Abi Isa reported to us: Ahmad ibn Khalid reported to us: Ibn Waddah reported to us: Abu Bakr ibn Abi Shaybah reported from Zayd ibn al-Hubab al-Ukli from Ibrahim ibn Nafi' from Ibn Abi Najih from Mujahid from Umm Hani' that Maymunah, the Mother of the Believers, and the Messenger of Allah (peace and blessings be upon him) performed ritual bathing from a bowl containing remnants of dough.

حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ ثنا أَبُو عِيسَى بْنُ أَبِي عِيسَى ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ زَيْدِ بْنِ الْحُبَابِ الْعُكْلِيِّ عَنْ إِبْرَاهِيمَ بْنِ نَافِعٍ عَنِ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ عَنْ أُمِّ هَانِئٍ «أَنَّ مَيْمُونَةَ أُمَّ الْمُؤْمِنِينَ وَرَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اغْتَسَلَا مِنْ قَصْعَةٍ فِيهَا أَثَرُ الْعَجِينِ» .

L3141 Ali stated: This is Thabit's narration from Ibn Mas'ud, who said: If a person in a state of major impurity washes his head with *khiṭmī*, it suffices him. Likewise, an explicit statement is similarly reported from Ibn Abbas.

قَالَ عَلِيٌّ: وَهَذَا قَوْلُ ثَابِتٍ عَنِ ابْنِ مَسْعُودٍ قَالَ: إِذَا غَسَلَ الْجُنُبُ رَأْسَهُ بِالْخِطْمِيِّ أَجْزَأَهُ، وَكَذَلِكَ نَصًّا عَنِ ابْنِ عَبَّاسٍ.

L3142–3144 This has also been narrated from Ali ibn Abi Talib and authenticated from Sa'id ibn al-Musayyib and Ibn Jurayj, as well as from the female Companions of the Prophet (peace be upon him) among the women of the Ansar and the female successors (Tābiʿāt) from them: that the woman in a state of major ritual impurity... As for the menstruating woman, if she combs her hair with thin henna, that suffices as a substitute for washing her head for menstruation and janabah (major ritual impurity), and she need not wash it again. It is established from Ibrahim al-Nakha'i, 'Ata' ibn Abi Rabah, Abu Salamah ibn 'Abd al-Rahman ibn 'Awf, and Sa'id ibn Jubayr that they said regarding the person in a state of janabah: He washes his head with lote tree and khitmī (marshmallow plant) - this suffices as a substitute for washing his head due to janabah.

وَرُوِيَ أَيْضًا هَذَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَثَبَتَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ وَابْنِ جُرَيْجٍ وَعَنْ صَوَاحِبِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ نِسَاءِ الْأَنْصَارِ وَالتَّابِعَاتِ مِنْهُنَّ: أَنَّ الْمَرْأَةَ الْجُنُبَ وَالْحَائِضَ إِذَا امْتَشَطَتْ بِحِنَّاءٍ رَقِيقٍ أَنَّ ذَلِكَ يُجْزِئُهَا مِنْ غَسْلِ رَأْسِهَا لِلْحَيْضَةِ وَالْجَنَابَةِ وَلَا تُعِيدُ غَسْلَهُ، وَثَبَتَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ وَعَطَاءِ بْنِ أَبِي رَبَاحٍ وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ وَسَعِيدِ بْنِ جُبَيْرٍ أَنَّهُمْ قَالُوا فِي الْجُنُبِ: يَغْسِلُ رَأْسَهُ بِالسِّدْرِ وَالْخِطْمِيِّ: إِنَّهُ يُجْزِئُهُ ذَلِكَ مِنْ غَسْلِ رَأْسِهِ لِلْجَنَابَةِ.

L3145 Our opinion in this matter is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and Dāwūd.

وَقَوْلُنَا فِي هَذَا هُوَ قَوْلُ أَبِي حَنِيفَةَ وَالشَّافِعِيِّ وَدَاوُد.

L3146 A similar account was also narrated from Mālik. Saḥnūn reported from Ibn al-Qāsim that he asked Mālik about a pond frequented by livestock that urinate in it and camels defecate in it, until the water's color and smell change: "May one perform ablution with it for prayer?" Mālik replied: "I dislike it but do not prohibit it. Ibn ʿUmar used to say: 'I love to place a barrier of lawful acts between myself and the forbidden.'"

وَرُوِيَ عَنْ مَالِكٍ نَحْوُ هَذَا أَيْضًا. وَرَوَى سَحْنُونٌ عَنِ ابْنِ الْقَاسِمِ أَنَّهُ سَأَلَ مَالِكًا عَنِ الْغَدِيرِ تَرِدُهُ الْمَوَاشِي فَتَبُولُ فِيهِ وَتَبْعِرُ حَتَّى يَتَغَيَّرَ لَوْنُ الْمَاءِ وَرِيحُهُ: أَيُتَوَضَّأُ مِنْهُ لِلصَّلَاةِ؟ قَالَ مَالِكٌ: أَكْرَهُهُ وَلَا أُحَرِّمُهُ، كَانَ ابْنُ عُمَرَ يَقُولُ: إِنِّي لَأُحِبُّ أَنْ أَجْعَلَ بَيْنِي وَبَيْنَ الْحَرَامِ سُتْرَةً مِنَ الْحَلَالِ.

وَالَّذِي عَلَيْهِ أَصْحَابُهُ بِخِلَافِ هَذَا، وَهُوَ أَنَّهُ رُوِيَ عَنْهُ فِي الْمَاءِ يُبَلُّ فِيهِ الْخُبْزُ أَوْ يَقَعُ فِيهِ الدُّهْنُ: أَنَّهُ لَا يَجُوزُ الْوُضُوءُ بِهِ وَكَذَلِكَ الْمَاءُ يُنْقَعُ فِيهِ الْجِلْدُ، وَهَذَا خَطَأٌ مِنَ الْقَوْلِ، لِأَنَّهُ لَا دَلِيلَ عَلَيْهِ مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ وَلَا إِجْمَاعٍ وَلَا قَوْلِ صَاحِبٍ وَلَا قِيَاسٍ، بَلْ خَالَفُوا فِيهِ ثَلَاثَةً مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، وَخَالَفُوا فِيهِ فُقَهَاءَ الْمَدِينَةِ كَمَا ذَكَرْنَا، وَمَا نَعْلَمُهُمْ احْتَجُّوا بِأَكْثَرَ مِنْ أَنْ قَالُوا: لَيْسَ هُوَ مَاءً مُطْلَقًا.

L3147 The position upheld by his school's adherents contradicts this, as it is reported from him concerning water in which bread is soaked or oils have fallen: that ablution is not permissible with it, and similarly water used for soaking hides. This is an erroneous view, for there is no evidence supporting it from the Qur'an, Sunnah, consensus, a Companion's ruling, or analogical reasoning. Rather, they opposed three Companions—may Allah be pleased with them—against whom no dissent is recorded from their contemporaries, and they contradicted the jurists of Medina as we mentioned. We are unaware of them advancing any evidence beyond their assertion: "It is not absolute water at all."

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ، بَلْ هُوَ مَاءٌ مُطْلَقٌ وَإِنْ كَانَ فِيهِ شَيْءٌ آخَرُ، وَلَا فَرْقَ بَيْنَ ذَلِكَ الَّذِي فِيهِ وَبَيْنَ حَجَرٍ يَكُونُ فِيهِ، وَهُمْ يُجِيزُونَ الْوُضُوءَ بِالْمَاءِ الَّذِي تَغَيَّرَ مِنْ طِينِ مَوْضِعِهِ، وَهَذَا تَنَاقُضٌ.

L3148 Abu Muhammad said: This is erroneous. Rather, it is unrestricted water even if something else is present. There is no distinction between that which is in it and a stone that may be within it. Yet they permit ablution with water altered by the mud of its location—and this is a contradiction.

وَمِنَ الْعَجَبِ أَنَّهُمْ لَمْ يَجْعَلُوا حُكْمَ الْمَاءِ لِلْمَاءِ الَّذِي مَازَجَهُ شَيْءٌ طَاهِرٌ لَمْ يُزِلْ عَنْهُ اسْمَ الْمَاءِ، وَجَعَلُوا لِلْفِضَّةِ الْمَخْلُوطَةِ بِالنُّحَاسِ - خَلْطًا يُغَيِّرُهَا - حُكْمَ الْفِضَّةِ الْمُحْضَةِ، وَكَذَلِكَ فِي الذَّهَبِ الْمَمْزُوجِ فَجَعَلُوهُ كَالذَّهَبِ الصِّرْفِ فِي الزَّكَاةِ وَالصَّرْفِ، وَهَذَا هُوَ الْخَطَأُ وَعَكْسُ الْحَقَائِقِ، لِأَنَّهُمْ أَوْجَبُوا الزَّكَاةَ فِي الصُّفْرِ الْمُمَازِجِ لِلْفِضَّةِ، وَهَذَا بَاطِلٌ وَأَبَاحُوا صَرْفَ فِضَّةٍ وَصُفْرٍ بِمِثْلِ وَزْنِ الْجَمِيعِ مِنْ فِضَّةٍ مَحْضَةٍ، وَهَذَا هُوَ الرِّبَا بِعَيْنِهِ وَأَمَّا الْوُضُوءُ بِمَاءٍ قَدْ مَازَجَهُ شَيْءٌ طَاهِرٌ فَإِنَّمَا يَتَوَضَّأُ وَيَغْتَسِلُ بِالْمَاءِ، وَلَا يَضُرُّهُ مُرُورُ شَيْءٍ طَاهِرٍ عَلَى أَعْضَائِهِ مَعَ الْمَاءِ.

L3149 It is astonishing that they did not assign the legal ruling of water to water mixed with a pure substance that does not negate its classification as water, yet they applied the ruling of pure silver to silver blended with copper - through mixing that alters its qualities - and similarly treated mixed gold as pure gold in matters of zakāh and currency exchange. This is erroneous and contrary to established principles, for they obligated zakāh on copper mixed with silver - which is invalid - and permitted exchanging mixed silver and copper for an equivalent weight of pure silver, which constitutes ribā itself. As for performing ablution with water mixed with a pure substance, one performs wuḍūʾ and ghusl using the water, and the presence of a pure substance on the limbs during ablution does not invalidate it.

وَقَالَ بَعْضُهُمْ: هُوَ كَمَاءِ الْوَرْدِ. قَالَ أَبُو مُحَمَّدٍ وَهَذَا بَاطِلٌ، لِأَنَّ مَاءَ الْوَرْدِ لَيْسَ مَاءً أَصْلًا، وَهَذَا مَاءٌ وَشَيْءٌ آخَرُ مَعَهُ فَقَطْ.

L3150–3151 Some of them said: It is like rose water. Abu Muhammad said: And this is incorrect, because rose water is not fundamentally water; rather, it is only water and another thing combined.

[مَسْأَلَة حُكْم الْوُضُوء وَالْغُسْل إِذَا لَمْ يُوجَد شَرْط الْجَوَاز وَهُوَ زَوَال اسْم الْمَاء عَنْهُ]

١٤٨ - مَسْأَلَةٌ: فَإِنْ سَقَطَ عَنْهُ اسْمُ الْمَاءِ جُمْلَةً، كَالنَّبِيذِ وَغَيْرِهِ، لَمْ يَجُزْ الْوُضُوءُ بِهِ وَلَا الْغُسْلُ، وَالْحُكْمُ حِينَئِذٍ التَّيَمُّمُ، وَسَوَاءٌ فِي هَذِهِ الْمَسْأَلَةِ وَالَّتِي قَبْلَهَا، وُجِدَ مَاءٌ آخَرُ أَمْ لَمْ يُوجَدْ.

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا} [النساء: ٤٣] وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَجُعِلَتْ تُرْبَتُهَا لَنَا طَهُورًا إِذَا لَمْ نَجِدِ الْمَاءَ» .

وَلَمَّا كَانَ اسْمُ الْمَاءِ لَا يَقَعُ عَلَى مَا غَلَبَ عَلَيْهِ غَيْرُ الْمَاءِ حَتَّى تَزُولَ عَنْهُ جَمِيعُ صِفَاتِ الْمَاءِ الَّتِي مِنْهَا يُؤْخَذُ حَدُّهُ، صَحَّ أَنَّهُ لَيْسَ مَاءً، وَلَا يَجُوزُ الْوُضُوءُ بِغَيْرِ الْمَاءِ، وَهَذَا قَوْلُ مَالِكٍ وَالشَّافِعِيِّ وَأَحْمَدَ وَدَاوُد وَغَيْرِهِمْ، وَقَالَ بِهِ الْحَسَنُ وَعَطَاءُ بْنُ أَبِي رَبَاحٍ وَسُفْيَانُ الثَّوْرِيُّ وَأَبُو يُوسُفَ وَإِسْحَاقُ وَأَبُو ثَوْرٍ وَغَيْرُهُمْ.

وَرُوِيَ عَنْ عِكْرِمَةَ أَنَّ النَّبِيذَ وَضُوءٌ إِذَا لَمْ يُوجَدْ الْمَاءُ وَلَا يَتَيَمَّمُ مَعَ وُجُودِهِ.

وَقَالَ الْأَوْزَاعِيُّ: لَا يَتَيَمَّمُ إِذَا عَدِمَ الْمَاءَ مَا دَامَ يُوجَدُ نَبِيذٌ غَيْرُ مُسْكِرٍ، فَإِنْ كَانَ مُسْكِرًا فَلَا يَتَوَضَّأُ بِهِ.

وَقَالَ حُمَيْدٌ صَاحِبُ الْحَسَنِ بْنِ حَيٍّ: نَبِيذُ التَّمْرِ خَاصَّةً يَجُوزُ الْوُضُوءُ بِهِ وَالْغُسْلُ الْمُفْتَرَضُ فِي الْحَضَرِ وَالسَّفَرِ، وُجِدَ الْمَاءُ أَوْ لَمْ يُوجَدْ، وَلَا يَجُوزُ ذَلِكَ بِغَيْرِ نَبِيذِ التَّمْرِ، وُجِدَ الْمَاءُ أَوْ لَمْ يُوجَدْ.

The ruling on ablution (wudu) and major ablution (ghusl) when the condition for their permissibility—namely, the removal of water's classification from it (i.e., when it ceases to retain its inherent properties)—is absent.

148. Issue: If the name of water ceases to apply to a liquid entirely—such as nabīdh or other [liquids]—it is not permissible to perform wuḍū' or ghusl with it. The ruling at that time is tayammum. It makes no difference in this issue and the preceding one whether other water exists or not.

The evidence for this is the statement of Allah, the Most High: {If you did not find water, then perform tayammum with clean earth} [An-Nisa: 43], and the statement of the Messenger of Allah (peace be upon him): "Its dust has been made a purifier for us when we did not find water."[19][20]

Since the name "water" does not apply to that which is dominated by non-water until all attributes of water—from which its technical definition is derived—cease to exist within it, it is established that such a substance is not considered water, and ablution with anything other than water is impermissible. This is the position of Mālik, al-Shāfiʿī, Aḥmad, Dāwūd, and others. It was also held by al-Ḥasan, ʿAṭāʾ ibn Abī Rabāḥ, Sufyān al-Thawrī, Abū Yūsuf, Isḥāq, Abū Thawr, and other scholars.

It is narrated from Ikrimah that nabidh constitutes ablution when water is unavailable, and one must not resort to dry ablution if it is available.

Al-Awzaʿī said: One must not perform tayammum when water is unavailable as long as non-intoxicating nabīdh is available. If the nabīdh is intoxicating, one must not perform wudu with it.

Humaid, the companion of al-Ḥasan ibn Ḥayy, said: Date *nabīdh* specifically is permissible for ablution and the obligatory ghusl, whether in resi-

[19] **Hadith references (L3154):** Sahih Muslim 522a; Bulugh al-Maram 127; Mishkat al-Masabih 526.

[20] **Qur'an references (L3154):** Qur'an 4:43 (An-Nisa); Qur'an 5:6 (Al-Ma'idah).

dence or during travel, whether water is found or not. This is not permissible with anything other than date *nabīdh*, whether water is found or not.

وَقَالَ أَبُو حَنِيفَةَ فِي أَشْهَرِ قَوْلَيْهِ: إِنَّ نَبِيذَ التَّمْرِ خَاصَّةً إِذَا لَمْ يُسْكِرْ فَإِنَّهُ يُتَوَضَّأُ بِهِ وَيُغْتَسَلُ - فِيمَا كَانَ خَارِجَ الْأَمْصَارِ وَالْقُرَى خَاصَّةً - عِنْدَ عَدَمِ الْمَاءِ، فَإِنْ أَسْكَرَ، فَإِنْ كَانَ مَطْبُوخًا جَازَ الْوُضُوءُ بِهِ وَالْغُسْلُ كَذَلِكَ، فَإِنْ كَانَ نِيئًا لَمْ يَجُزْ اسْتِعْمَالُهُ أَصْلًا فِي ذَلِكَ، وَلَا يَجُوزُ الْوُضُوءُ بِشَيْءٍ مِنْ ذَلِكَ، لَا عِنْدَ عَدَمِ الْمَاءِ وَلَا فِي الْأَمْصَارِ وَلَا فِي الْقُرَى أَصْلًا - وَإِنْ عَدِمَ الْمَاءَ - وَلَا بِشَيْءٍ مِنَ الْأَنْبِذَةِ غَيْرَ نَبِيذِ التَّمْرِ لَا فِي الْقُرَى وَلَا فِي غَيْرِ الْقُرَى، وَلَا عِنْدَ عَدَمِ الْمَاءِ، وَالرِّوَايَةُ الْأُخْرَى عَنْهُ أَنَّ جَمِيعَ الْأَنْبِذَةِ يُتَوَضَّأُ بِهَا وَيُغْتَسَلُ، كَمَا قَالَ فِي نَبِيذِ التَّمْرِ سَوَاءً سَوَاءً.

L3159 In the more well-known of his two opinions, Abū Ḥanīfah stated that date *nabīdh* specifically—if it does not cause intoxication—may be used for *wuḍūʾ* and *ghusl* when water is unavailable, specifically in areas outside cities and villages. If it causes intoxication, then if it is cooked, ablution and bathing with it are permissible in the same manner. But if it is raw, its use for such purposes is entirely impermissible. Ablution with any of these substances is not permissible at all—neither in cities nor villages under any circumstance, nor with any type of *nabīdh* other than date *nabīdh*, neither in villages nor elsewhere, nor during water scarcity—even if water is unavailable. The other report from him states that all types of *nabīdh* may be used for *wuḍūʾ* and *ghusl* without any distinction, just as he ruled regarding date *nabīdh*.

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: يُتَوَضَّأُ بِنَبِيذِ التَّمْرِ عِنْدَ عَدَمِ الْمَاءِ وَيُتَيَمَّمُ مَعًا.

L3160–3161 And Muhammad ibn al-Hasan said: When water is unavailable, one may perform wudu with date nabidh and tayammum together.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ عِكْرِمَةَ وَالْأَوْزَاعِيِّ وَالْحَسَنِ بْنِ حَيٍّ، فَإِنَّهُمُ احْتَجُّوا بِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ مَسْعُودٍ مِنْ طُرُقٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ لَيْلَةَ الْجِنِّ: مَعَكَ مَاءٌ؟ قَالَ لَيْسَ مَعِي مَاءٌ، وَلَكِنْ مَعِي إِدَاوَةٌ فِيهَا نَبِيذٌ، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: تَمْرَةٌ طَيِّبَةٌ وَمَاءٌ طَهُورٌ، فَتَوَضَّأَ ثُمَّ صَلَّى الصُّبْحَ» وَفِي بَعْضِ أَلْفَاظِهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَوَضَّأَ بِنَبِيذٍ وَقَالَ: تَمْرَةٌ طَيِّبَةٌ وَمَاءٌ طَهُورٌ» .

L3162 Abū Muḥammad said: As for the statement of ʿIkrimah, al-Awzāʿī, and al-Ḥasan ibn Ḥayy, they cited as evidence a ḥadīth we narrated through various chains from Ibn Masʿūd's narration: "That during the Night of the Jinn, the Messenger of Allāh—may Allah's peace and blessings be upon him—asked him: 'Do you have water?' He replied: 'I have no water, but I have a waterskin with nabīḍ.' The Prophet—may Allah's peace and blessings be upon him—said: 'A wholesome date and purifying water,' then performed ablution and prayed the dawn prayer." In some wordings of it: "The Messenger of Allāh—may Allah's peace and blessings be upon him—performed ablution with nabīḍ and said: 'A wholesome date and purifying water.'"

وَقَالَ بَعْضُهُمْ: إِنَّ جَمَاعَةً مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - رَكِبُوا الْبَحْرَ فَلَمْ يَجِدُوا إِلَّا مَاءَ الْبَحْرِ وَنَبِيذًا، فَتَوَضَّئُوا بِالنَّبِيذِ وَلَمْ يَتَوَضَّئُوا بِمَاءِ الْبَحْرِ. وَذَكَرُوا مَا حَدَّثَنَاهُ مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ قَالَ: ثنا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ

L3163–3164 Some of them said: A group of the Companions—may Allah be pleased with them—traveled by sea and found nothing but seawater and *nabīdh*. They performed ablution with the *nabīdh* and did not perform ablution with seawater. They mentioned what Muḥammad ibn Saʿīd ibn Nabāt narrated to us, saying: Aḥmad ibn ʿAbd al-Baṣīr narrated to us, Qāsim ibn Aṣbagh narrated to us, Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us, Muḥammad ibn al-Muthannā narrated to us, Yazīd ibn Hārūn narrated to

us, ʿAbdullāh ibn Maysarah narrated to us from Mazīdah ibn Jābir from ʿAlī ibn Abī Ṭālib—may Allah be pleased with him—who said: "If you do not find water, perform ablution with *nabīdh*."

L3165–3167 Muhammad ibn al-Muthanna said: And Abu Muʿawiyah Muhammad ibn Khazim al-Ḍarīr (the Blind) narrated to us; he narrated to us: Al-Hajjāj ibn Arṭāh reported from Abū Isḥāq al-Sabīʿī from al-Ḥārith from ʿAlī ibn Abī Ṭālib—may Allah be pleased with him—who said: "There is no harm in performing ablution with *nabīdh*." It was noted: "No dissenting opinion is known from the Companions we have mentioned—may Allah be pleased with them—thus, this constitutes a consensus, even though some who disagree with us hold contrary views."

L3168 They said: Nabidh is undoubtedly water mixed with another substance. Since it is as such, ablution with it is permissible.

L3169 Abu Muhammad said: This is all they can raise objections to, and they have no valid proof for any of it. And all praise is due to Allah.

L3170 As for the mentioned report, it is not authentic because all its chains include unknown individuals or those of no merit. We have exhaustively discussed it in a book other than this one. Even if it were established by *tawātur*, it would not constitute evidence for their position, since the Night of the Jinn occurred in Mecca before the Hijrah, while the verse on ablution was only revealed in Medina in Sūrat al-Nisā' and in Sūrat al-Mā'idah. No report ever established that ablution was obligatory in Mecca. Given this, ablution with *nabīdh* is equivalent to no ablution. Thus, dependency on it as evidence becomes invalid even if it were authentic.

L3171 As for what they narrated concerning the practice of the Companions—may Allah be pleased with them—it stands against them, not in their favor. For al-Awzāʿī, al-Ḥasan ibn Ḥayyī, Abū Ḥanīfa, and his companions all oppose what was transmitted from the Companions in this matter—permitting ablution with seawater while prohibiting ablution with *nabīdh* as long as seawater exists. All of them—with the exclusion of Ḥumayd, the companion of al-Ḥasan ibn Ḥayyī—do not permit ablution with *nabīdh* at all when seawater is available. Ḥumayd, al-Ḥasan's companion, permits ablution with seawater

الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا يَزِيدُ بْنُ هَارُونَ ثنا عَبْدُ اللَّهِ بْنُ مَيْسَرَةَ عَنْ مَزِيدَةَ بْنِ جَابِرٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: إذَا لَمْ تَجِدْ الْمَاءَ فَلْتَتَوَضَّأْ بِالنَّبِيذِ.

قَالَ مُحَمَّدُ بْنُ الْمُثَنَّى: وَحَدَّثَنَا أَبُو مُعَاوِيَةَ مُحَمَّدُ بْنِ خَازِمٍ الضَّرِيرُ ثنا الْحَجَّاجُ بْنُ أَرْطَاةَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ الْحَارِثِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: لَا بَأْسَ بِالْوُضُوءِ بِالنَّبِيذِ. قَالُوا: وَلَا مُخَالِفَ لِمَنْ ذَكَرْنَا يُعْرَفُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَهُوَ إجْمَاعٌ عَلَى قَوْلِ بَعْضِ مُخَالِفِينَا.

وَقَالُوا: النَّبِيذُ مَاءٌ بِلَا شَكٍّ خَالَطَهُ غَيْرُهُ، فَإِذْ هُوَ كَذَلِكَ فَالْوُضُوءُ بِهِ جَائِزٌ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا يُمْكِنُ أَنْ يَشْغَبُوا بِهِ، وَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ، وَلِلَّهِ الْحَمْدُ.

أَمَّا الْخَبَرُ الْمَذْكُورُ فَلَمْ يَصِحَّ؛ لِأَنَّ فِي جَمِيعِ طُرُقِهِ مَنْ لَا يُعْرَفُ أَوْ مَنْ لَا خَيْرَ فِيهِ، وَقَدْ تَكَلَّمْنَا عَلَيْهِ كَلَامًا مُسْتَقْصًى فِي غَيْرِ هَذَا الْكِتَابِ، ثُمَّ لَوْ صَحَّ بِنَقْلِ التَّوَاتُرِ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّ لَيْلَةَ الْجِنِّ كَانَتْ بِمَكَّةَ قَبْلَ الْهِجْرَةِ وَلَمْ تَنْزِلْ آيَةُ الْوُضُوءِ إلَّا بِالْمَدِينَةِ فِي سُورَةِ النِّسَاءِ وَفِي سُورَةِ الْمَائِدَةِ، وَلَمْ يَأْتِ قَطُّ أَثَرٌ بِأَنَّ الْوُضُوءَ كَانَ فَرْضًا بِمَكَّةَ، فَإِذْ ذَلِكَ كَذَلِكَ فَالْوُضُوءُ بِالنَّبِيذِ كَلَا وُضُوءٍ، فَسَقَطَ التَّعَلُّقُ بِهِ لَوْ صَحَّ.

وَأَمَّا الَّذِي رَوَوْهُ مِنْ فِعْلِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَهُوَ عَلَيْهِمْ لَا لَهُمْ؛ لِأَنَّ الْأَوْزَاعِيَّ وَالْحَسَنَ بْنَ حَيٍّ وَأَبَا حَنِيفَةَ وَأَصْحَابَهُ كُلَّهُمْ مُخَالِفُونَ لِمَا رُوِيَ عَنْ الصَّحَابَةِ فِي ذَلِكَ، مُجِيزُونَ لِلْوُضُوءِ بِمَاءِ الْبَحْرِ، وَلَا يُجِيزُونَ الْوُضُوءَ بِالنَّبِيذِ، مَا دَامَ يُوجَدُ مَاءُ الْبَحْرِ، وَكُلُّهُمْ - حَاشَا حُمَيْدًا صَاحِبَ الْحَسَنِ بْنِ حَيٍّ - لَا يُجِيزُ الْوُضُوءَ أَلْبَتَّةَ بِالنَّبِيذِ

even when *nabīdh* is present. Thus, they all contradict the alleged practice of the Companions—may Allah be pleased with them—in this regard. It is sheer falsehood for a person to claim as proof against his opponent what he would not accept as proof against himself.

L3172 As for the report from Ali—may Allah be pleased with him—there is no proof in anyone other than the Messenger of Allah—peace and blessings be upon him. Moreover, Humaid, the companion of Al-Hasan ibn Ḥayy, contradicts the narration from Ali in that, for he holds ablution with date nabīdh to be permissible even when water is available, and this opposes Ali's view. He also maintains that all other nabīdh beverages are entirely impermissible for ablution, and this contradicts the narration from Ali.

L3173–3175 As for their claim that in *nabīdh* there is water that has something else mixed into it, this same reasoning applies to their position concerning milk that has been mixed with water. And concerning ink, because it is water mixed with gallnut and alum; and concerning liquid blends, because they are water combined with oil and vinegar, or water with oil, fish sauce, and similar substances—yet they do not accept any of this. Thus, their contradiction in every argument they advance has become apparent. All praise belongs to Allah.

L3176 As for the statement of Abū Ḥanīfah, he is the farthest removed among them from having any valid argument regarding what we have mentioned. As for the cited ḥadīth, it does not state that the Prophet—peace and blessings of Allāh be upon him—was outside Mecca when performing ablution with nabīdh. From where, then, does he derive his specification permitting ablution with nabīdh outside cities and villages? This contradicts the content of that report—especially since he does not permit dry ablution (tayammum) near the village, nor does he permit shortening prayers unless one stays for three days, and he requires a distance of at least twenty-one farsakhs. He has no valid proof for any of these positions, since his reasoning in that matter would apply to all these issues.

L3177 As for his second statement, in which he analogized all fermented beverages

مَا دَامَ يُوجَدُ مَاءُ الْبَحْرِ، وَحُمَيْدٌ صَاحِبُ الْحَسَنِ يُجِيزُ الْوُضُوءَ بِمَاءِ الْبَحْرِ مَعَ وُجُودِ النَّبِيذِ، فَكُلُّهُمْ مُخَالِفٌ لِمَا ادَّعَوْهُ مِنْ فِعْلِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ، وَمِنْ الْبَاطِلِ أَنْ يَرَى الْمَرْءُ حُجَّةً عَلَى خَصْمِهِ مَا لَا يَرَاهُ حُجَّةً عَلَيْهِ.

وَأَمَّا الْأَثَرُ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - فَلَا حُجَّةَ فِي أَحَدٍ غَيْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَأَيْضًا فَإِنَّ حُمَيْدًا صَاحِبَ الْحَسَنِ بْنِ حَيٍّ يُخَالِفُ الرِّوَايَةَ عَنْ عَلِيٍّ فِي ذَلِكَ، لِأَنَّهُ يَرَى الْوُضُوءَ بِنَبِيذِ التَّمْرِ مَعَ وُجُودِ الْمَاءِ، وَهَذَا خِلَافُ قَوْلِ عَلِيٍّ، وَيَرَى أَنَّ سَائِرَ الْأَنْبِذَةِ لَا يَحِلُّ بِهَا الْوُضُوءُ أَصْلًا، وَهَذَا خِلَافُ الرِّوَايَةِ عَنْ عَلِيٍّ.

وَأَمَّا قَوْلُهُمْ: إنَّ فِي النَّبِيذِ مَاءً خَالَطَهُ غَيْرُهُ، فَهُوَ لَازِمٌ لَهُمْ فِي لَبَنٍ مُزِجَ بِمَاءٍ، وَفِي الْحِبْرِ؛ لِأَنَّهُ مَاءٌ مَعَ عَفْصٍ وَزَاجٍ، وَفِي الْأَمْرَاقِ؛ لِأَنَّهَا مَاءٌ وَزَيْتٌ وَخَلٌّ، أَوْ مَاءٌ وَزَيْتٌ وَمَرِيٌّ وَنَحْوُ ذَلِكَ، وَهُمْ لَا يَقُولُونَ بِشَيْءٍ مِنْ هَذَا، فَظَهَرَ تَنَاقُضُهُمْ فِي كُلِّ مَا احْتَجُّوا بِهِ. وَلِلَّهِ الْحَمْدُ.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَهُوَ أَبْعَدُهُمْ مِنْ أَنْ يَكُونَ لَهُ فِي شَيْءٍ مِمَّا ذَكَرْنَا حُجَّةٌ. أَمَّا الْحَدِيثُ الْمَذْكُورُ فَلَيْسَ فِيهِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ حِينَ الْوُضُوءِ بِالنَّبِيذِ خَارِجَ مَكَّةَ، فَمِنْ أَيْنَ لَهُ بِتَخْصِيصِ جَوَازِ الْوُضُوءِ بِالنَّبِيذِ خَارِجَ الْأَمْصَارِ وَالْقُرَى؟ وَهَذَا خِلَافٌ لِمَا فِي ذَلِكَ الْخَبَرِ، لَا سِيَّمَا وَهُوَ لَا يَرَى التَّيَمُّمَ فِيمَا يَقْرُبُ مِنْ الْقَرْيَةِ، وَلَا قَصْرَ الصَّلَاةِ إلَّا فِي ثَلَاثَةِ أَيَّامٍ، أَحَدَ وَعِشْرِينَ فَرْسَخًا فَصَاعِدًا، وَلَا سَبِيلَ لَهُ إلَى دَلِيلٍ فِي شَيْءٍ مِنْ ذَلِكَ إلَّا وَدَلِيلُهُ فِي ذَلِكَ جَارٍ فِي جَمِيعِ هَذِهِ الْمَسَائِلِ.

to date wine, why did he not also analogize the interior of the village to its exterior? What justifies his application of one of the two analogies while barring him from the other? This is especially pertinent given the textual report mentioning his words: "a wholesome date and pure water." Since it is pure water, what prevents its use when other water exists, given that both are pure water? This conclusion is inescapable. If he does not permit it when water is available, then let him permit it for the sick in settled areas when water is unavailable.

L3178 As for the practice of the Companions—may Allah be pleased with them—and the statement of ʿAlī, it contradicts him, because he does not permit ablution with *nabīdh* when seawater is available, nor does he permit ablution with *nabīdh* even if water is unavailable in villages. This is not found in ʿAlī's statement, nor did ʿAlī specify date *nabīdh* over other types, whereas Abū Ḥanīfah specifies it in one of his two opinions. I do not hate, in this world or the Hereafter, those who criticize their opponents for abandoning an opinion they themselves were the first to abandon—especially since their opponent does not consider what he abandoned as a proof. Allah the Exalted said: "Why do you say what you do not do?" (61:2) "It is most detestable to Allah that you say what you do not do." (61:3)[21]

L3179 As for their assertion that nabidh is water and dates, this would obligate them to the same ruling we stated concerning liquids and other anbida—a position contrary to his statement. Thus, the invalidity of Abu Hanifah's two positions has become manifest. All praise belongs to Allah, Lord of the worlds.[22]

L3180–3182 As for the statement of Muḥammad ibn al-Ḥasan, it is invalid, because the matter must necessarily entail one of two scenarios: either ablution with nabīdh is permissible - thereby making dry ablution alongside it superfluous - or ablution with it is not permissible, rendering its use futile. This is especially evident when considering his own statement: If there is more than the measure of a Baghlī dirham of intoxicating nabīdh on a person's gar-

وَأَمَّا قَوْلُهُ الثَّانِي الَّذِي قَاسَ فِيهِ جَمِيعَ الْأَنْبِذَةِ عَلَى نَبِيذِ التَّمْرِ، فَهَلَّا قَاسَ أَيْضًا دَاخِلَ الْقَرْيَةِ عَلَى خَارِجِهَا وَمَا الْمُجِيزُ لَهُ أَحَدُ الْقِيَاسَيْنِ وَالْمَانِعُ لَهُ مِنَ الْآخَرِ؟ لَا سِيَّمَا مَعَ مَا فِي الْخَبَرِ مِنْ قَوْلِهِ «تَمْرَةٌ طَيِّبَةٌ وَمَاءٌ طَهُورٌ» فَإِذْ هُوَ مَاءٌ طَهُورٌ فَمَا الْمَانِعُ مِنْ اسْتِعْمَالِهِ مَعَ وُجُودِ مَاءٍ غَيْرِهِ، وَكِلَاهُمَا مَاءٌ طَهُورٌ؟ وَهَذَا مَا لَا انْفِكَاكَ مِنْهُ. وَإِنْ كَانَ لَا يُجِيزُهُ مَعَ وُجُودِ الْمَاءِ فَلْيُجِزْهُ لِلْمَرِيضِ فِي الْحَضَرِ مَعَ عَدَمِ الْمَاءِ.

وَأَمَّا فِعْلُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَقَوْلُ عَلِيٍّ فَهُوَ مُخَالِفٌ لَهُ، لِأَنَّهُ لَا يُجِيزُ الْوُضُوءَ بِالنَّبِيذِ مَعَ وُجُودِ مَاءِ الْبَحْرِ، وَلَا يُجِيزُ الْوُضُوءَ بِالنَّبِيذِ وَإِنْ عَدِمَ الْمَاءَ فِي الْقُرَى، وَلَيْسَ هَذَا فِي قَوْلِ عَلِيٍّ، وَلَمْ يَخُصَّ عَلِيٌّ نَبِيذَ تَمْرٍ مِنْ غَيْرِهِ، وَأَبُو حَنِيفَةَ يَخُصُّهُ فِي أَحَدِ قَوْلَيْهِ، وَلَا أَمْقُتُ فِي الدُّنْيَا وَالْآخِرَةِ مِمَّنْ يُنْكِرُ عَلَى مُخَالِفِهِ تَرْكَ قَوْلٍ هُوَ أَوَّلُ تَارِكٍ لَهُ وَلَا سِيَّمَا وَمُخَالِفُهُ لَا يَرَى ذَلِكَ الَّذِي تَرَكَ حُجَّةً. قَالَ اللَّهُ تَعَالَى: {لِمَ تَقُولُونَ مَا لا تَفْعَلُونَ} [الصف: ٢] {كَبُرَ مَقْتًا عِنْدَ اللَّهِ أَنْ تَقُولُوا مَا لا تَفْعَلُونَ} [الصف: ٣] .

وَأَمَّا قَوْلُهُمْ: إِنَّ النَّبِيذَ مَاءٌ وَتَمْرٌ فَيَلْزَمُهُمْ هَذَا كَمَا قُلْنَا فِي الْأَمْرَاقِ وَغَيْرِهَا مِنَ الْأَنْبِذَةِ وَهُوَ خِلَافُ قَوْلِهِ. فَظَهَرَ فَسَادُ قَوْلَيْ أَبِي حَنِيفَةَ مَعًا. الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَأَمَّا قَوْلُ مُحَمَّدِ بْنِ الْحَسَنِ فَفَاسِدٌ، لِأَنَّهُ لَا يَخْلُو أَنْ يَكُونَ الْوُضُوءُ بِالنَّبِيذِ جَائِزًا فَالتَّيَمُّمُ مَعَهُ فُضُولٌ. أَوْ لَا يَكُونَ الْوُضُوءُ بِهِ جَائِزًا فَاسْتِعْمَالُهُ فُضُولٌ. لَا سِيَّمَا مَعَ قَوْلِهِ: إِنَّهُ إِذَا كَانَ فِي ثَوْبِ الْمَرْءِ أَكْثَرُ مِنْ قَدْرِ الدِّرْهَمِ الْبَغْلِيِّ مِنْ نَبِيذٍ مُسْكِرٍ بَطَلَتْ صَلَاتُهُ. وَلَا شَكَّ أَنَّ الْمُجْتَمِعَ عَلَى جَسَدِ الْمُتَوَضِّئِ بِالنَّبِيذِ أَوِ الْمُغْتَسِلِ بِهِ وَفِي ثَوْبِهِ أَكْثَرُ مِنْ دَرَاهِمَ بَغْلِيَّةٍ كَثِيرَةٍ. فَإِنْ قَالَ مَنْ يَنْتَصِرُ لَهُ: إِنَّا لَا نَدْرِي أَيَلْزَمُ الْوُضُوءُ بِهِ فَلَا يُجْزِئُ تَرْكُهُ أَوْ

[21] **Qur'an references (L3178):** Qur'an 61:2 (As-Saf); Qur'an 61:3 (As-Saf).
[22] **Qur'an references (L3179):** Qur'an 1:2 (Al-Fatihah).

ment, their prayer becomes invalid. There is no doubt that when nabīdh is accumulated on the body of one performing ablution or bathing with it, and their garment contains an amount exceeding many Baghlī dirhams, the same ruling applies. If a defender argues: "We do not know whether ablution with it is obligatory—so omitting it does not suffice—or whether ablution with it is impermissible—so performing it does not suffice," thus we have combined both scenarios, it is said to them: Ablution with water is a definitively established obligation when available; thus, it is impermissible to omit it. Ablution via tayammum in the absence of what suffices for ablution is a definitively established obligation. Ablution with nabīdh, according to your position, is not definitively established. What is not definitively established cannot be obligatory, and what is not obligatory has no justification for being performed. If you were to act on every matter about which you doubt the obligation, the situation would become too grave for you—especially since you are certain that its presence on the garment is impure and invalidates prayer, and you acknowledge that ablution with what is definitively established as impure is impermissible.

لَا يَحِلُّ الْوُضُوءُ بِهِ فَلَا يُجْزِئُ فِعْلُهُ. فَجَمَعْنَا الْأَمْرَيْنِ. قِيلَ لَهُمْ: الْوُضُوءُ بِالْمَاءِ فَرْضٌ مُتَيَقَّنٌ عِنْدَ وُجُودِهِ، فَلَا يَجُوزُ تَرْكُهُ، وَالْوُضُوءُ بِالتَّيَمُّمِ عِنْدَ عَدَمِ مَا يُجْزِئُ الْوُضُوءُ بِهِ فَرْضٌ مُتَيَقَّنٌ، وَالْوُضُوءُ بِالنَّبِيذِ عِنْدَكُمْ غَيْرُ مُتَيَقَّنٍ، وَمَا لَمْ يَكُنْ مُتَيَقَّنًا فَاسْتِعْمَالُهُ لَا يَلْزَمُ، وَمَا لَا يَلْزَمُ فَلَا مَعْنَى لِفِعْلِهِ، وَلَوْ جِئْتُمْ إِلَى اسْتِعْمَالِ كُلِّ مَا تَشُكُّونَ فِي وُجُوبِهِ لَعَظُمَ الْأَمْرُ عَلَيْكُمْ، لَا سِيَّمَا وَأَنْتُمْ عَلَى يَقِينٍ مِنْ أَنَّهُ نَجِسٌ يُفْسِدُ الصَّلَاةَ كَوْنُهُ فِي الثَّوْبِ، وَأَنْتُمْ مُقِرُّونَ أَنَّ الْوُضُوءَ بِالنَّجِسِ الْمُتَيَقَّنِ لَا يَحِلُّ.

L3183 As for the Mālikīs and Shāfiʿīs, they frequently state in their foundational principles and branches of jurisprudence: "The disagreement of a Companion for which no opposing individual is known among them is impermissible." Yet this is a case where they contradicted this very principle. And Allāh knows best.

وَأَمَّا الْمَالِكِيُّونَ وَالشَّافِعِيُّونَ فَإِنَّهُمْ كَثِيرًا مَا يَقُولُونَ فِي أُصُولِهِمْ وَفُرُوعِهِمْ: إِنَّ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْهُمْ لَا يَحِلُّ. وَهَذَا مَكَانٌ نَقَضُوا فِيهِ هَذَا الْأَصْلَ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L3184 Abu Hanifah advocates the use of analogy (qiyas), yet he contradicted his own foundational principle in his application of it here, for he did not extend analogy to fermented beverages or other drinks by comparing them to date wine. He also opposed the statements of a group of the Companions—may Allah be pleased with them—as we mentioned, without any known opponent among them regarding that matter. This too undermines his foundational principle. Let those who wish to observe the contradictions in their statements and the subversion of their derived rulings in relation to their foundational principles take note of this. Success is from Allah, the Most High.

وَأَبُو حَنِيفَةَ يَقُولُ بِالْقِيَاسِ، وَقَدْ نَقَضَ هَهُنَا أَصْلَهُ فِي الْقَوْلِ بِهِ، فَلَمْ يَقِسْ الْأَمْرَاقَ وَلَا سَائِرَ الْأَنْبِذَةِ عَلَى نَبِيذِ التَّمْرِ، وَخَالَفَ أَيْضًا أَقْوَالَ طَائِفَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - كَمَا ذَكَرْنَا دُونَ مُخَالِفٍ يُعْرَفُ لَهُمْ فِي ذَلِكَ، وَهَذَا أَيْضًا هَادِمٌ لِأَصْلِهِ، فَلْيَقِفْ عَلَى ذَلِكَ مَنْ أَرَادَ الْوُقُوفَ عَلَى تَنَاقُضِ أَقْوَالِهِمْ، وَهَدْمِ فُرُوعِهِمْ لِأُصُولِهِمْ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة عدم جَوَازِ غمس المستيقظ يديه فِي وُضُوئِهِ]

١٤٩ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى كُلِّ مُسْتَيْقِظٍ مِنْ نَوْمٍ - قَلَّ النَّوْمُ أَوْ كَثُرَ، نَهَارًا كَانَ أَوْ لَيْلًا، قَاعِدًا أَوْ مُضْطَجِعًا أَوْ قَائِمًا. فِي صَلَاةٍ أَوْ فِي غَيْرِ صَلَاةٍ، كَيْفَمَا نَامَ - أَلَا يُدْخِلَ يَدَهُ فِي وُضُوئِهِ - فِي إنَاءٍ كَانَ وُضُوءَهُ أَوْ مِنْ نَهْرٍ أَوْ غَيْرِ ذَلِكَ - حَتَّى يَغْسِلَهَا ثَلَاثَ مَرَّاتٍ وَيَسْتَنْشِقَ وَيَسْتَنْثِرَ ثَلَاثَ مَرَّاتٍ. فَإِنْ لَمْ يَفْعَلْ لَمْ يُجْزِهُ الْوُضُوءُ وَلَا تِلْكَ الصَّلَاةُ. نَاسِيًا تَرَكَ ذَلِكَ أَوْ عَامِدًا. وَعَلَيْهِ أَنْ يَغْسِلَهَا ثَلَاثَ مَرَّاتٍ وَيَسْتَنْشِقَ كَذَلِكَ ثُمَّ يَبْتَدِيَ الْوُضُوءَ وَالصَّلَاةَ، وَالْمَاءُ طَاهِرٌ بِحَسَبِهِ. فَإِنْ صَبَّ عَلَى يَدَيْهِ وَتَوَضَّأَ دُونَ أَنْ يَغْمِسَ يَدَيْهِ فَوُضُوءُهُ غَيْرُ تَامٍّ وَصَلَاتُهُ غَيْرُ تَامَّةٍ.

بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ يُونُسُ بْنُ عَبْدِ اللَّهِ ثنا أَبُو عِيسَى بْنُ أَبِي عِيسَى ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا اسْتَيْقَظَ أَحَدُكُمْ مِنْ نَوْمِ فَلَا يَغْمِسُ - يَعْنِي يَدَهُ - حَتَّى يَغْسِلَهَا ثَلَاثًا، فَإِنَّهُ لَا يَدْرِي أَيْنَ بَاتَتْ يَدُهُ» . قَالَ أَبُو مُحَمَّدٍ: زَعَمَ قَوْمٌ أَنَّ هَذَا الْغُسْلَ خَوْفُ نَجَاسَةٍ تَكُونُ فِي الْيَدِ، وَهَذَا بَاطِلٌ لَا شَكَّ فِيهِ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَوْ أَرَادَ ذَلِكَ لَمَا عَجَزَ عَنْ أَنْ يُبَيِّنَهُ، وَلَمَا كَتَمَهُ عَنْ أُمَّتِهِ، وَأَيْضًا فَلَوْ كَانَ ذَلِكَ خَوْفَ نَجَاسَةٍ لَكَانَتْ الرِّجْلُ كَالْيَدِ فِي ذَلِكَ، وَلَكَانَ بَاطِنُ الْفَخِذَيْنِ وَمَا بَيْنَ الْأَلْيَتَيْنِ أَوْلَى بِذَلِكَ.

وَمِنْ الْعَجَبِ عَلَى أُصُولِهِمْ أَنْ يَكُونَ ظَنُّ كَوْنِ النَّجَاسَةِ فِي الْيَدِ يُوجِبُ غَسْلَهَا ثَلَاثًا، فَإِذَا تَيَقَّنَ كَوْنَ النَّجَاسَةِ فِيهَا أَجْزَأَهُ إزَالَتُهَا بِغَسْلَةٍ وَاحِدَةٍ، وَإِنَّمَا السَّبَبُ الَّذِي مِنْ أَجْلِهِ

The issue of the prohibition against someone who has awakened submerging their hands during ablution.

149 - Question: It is obligatory upon every person who awakens from sleep—whether the sleep was brief or prolonged, during the day or night, whether they were sitting, reclining, standing, in prayer or otherwise, however they slept—to refrain from putting their hands into the water used for ablution (whether drawn from a vessel, a river, or other source) until they wash them three times, sniff water into the nose (istinshāq) and expel it (istinthār) three times. If they fail to do this, their ablution is invalid and that prayer is invalid—whether omitted forgetfully or intentionally. They must wash their hands three times, perform istinshāq and istinthār three times, then restart the ablution and prayer, while the water remains pure as per its original condition. If they pour water over their hands and perform ablution without submerging them, their ablution and prayer are both incomplete.

The evidence for this is what Yunus ibn Abdullah narrated to us: Abu Isa ibn Abi Isa narrated to us, Ahmad ibn Khalid narrated to us, Ibn Waddah narrated to us, Abu Bakr ibn Abi Shaybah narrated to us from Sufyan ibn Uyaynah from Al-Zuhri from Abu Salama ibn Abd al-Rahman ibn Awf from Abu Hurairah from the Prophet—peace and blessings of Allah be upon him—who said: “When one of you wakes from sleep, let him not immerse—meaning his hand—until he washes it three times, for he does not know where his hand has rested during the night.” Abu Muhammad said: Some people alleged that this washing is due to fear of impurity that might be on the hand, but this is undeniably false. For if the Prophet—peace and blessings of Allah be upon him—had intended that, he would not have been unable to clarify it, nor would he have concealed it from his community. Furthermore, if this were due to fear of impurity, the foot would have been like the hand in this ruling, and the inner thighs and the area between the buttocks would be more entitled to such washing.

It is perplexing according to their principles that mere suspicion of impurity on the hand necessitates washing it thrice, yet when certainty of its presence occurs, its removal through a single washing suffices. The sole reason man-

dating hand-washing stems from the Prophet's explicit ruling (peace be upon him) regarding the sleeper's unawareness of where their hand rested during sleep. Allah the Exalted establishes whatever He wills as a cause for whatever He wills, just as He made passing wind from below a cause requiring ablution: washing the face, wiping the head, washing the forearms, and washing the feet up to the ankles. Some claimed this applies exclusively to nocturnal sleep due to the phrase "where his hand spent the night," asserting that "spending the night" only occurs after dark. Abū Muḥammad refuted this, stating: This is erroneous, for people say "they stayed overnight deliberating such matters" even in daytime. ʿAbd al-Raḥmān ibn Khālid al-Hamadānī reported to us: Ibrāhīm ibn Aḥmad reported to us: al-Farbarī reported to us: al-Bukhārī reported from Ibrāhīm ibn Ḥamzah al-Zubayrī, from Ibn Abī Ḥāzim ʿAbd al-ʿAzīz, from Yazīd ibn ʿAbd Allāh ibn Usāmah ibn al-Hād, from Muḥammad ibn Ibrāhīm, who narrated it from ʿĪsā ibn Ṭalḥah. Narrated by Abu Hurairah that the Messenger of Allah (peace be upon him) said: "When one of you wakes from sleep and performs wuḍūʾ, let him sniff water into his nostrils and expel it three times, for Satan spends the night in his nostrils."[23]

وَجَبَ غَسْلُ الْيَدِ هُوَ مَا نَصَّ - عَلَيْهِ السَّلَامُ - مِنْ مَغِيبِ النَّائِمِ عَنْ دِرَايَتِهِ أَيْنَ بَاتَتْ يَدُهُ فَقَطْ، وَيَجْعَلُ اللَّهُ تَعَالَى مَا شَاءَ سَبَبًا لِمَا شَاءَ، كَمَا جَعَلَ تَعَالَى الرِّيحَ الْخَارِجَ مِنْ أَسْفَلَ سَبَبًا يُوجِبُ الْوُضُوءَ وَغَسْلَ الْوَجْهِ وَمَسْحَ الرَّأْسِ وَغَسْلَ الذِّرَاعَيْنِ وَالرِّجْلَيْنِ. وَادَّعَى قَوْمٌ أَنَّ هَذَا فِي نَوْمِ اللَّيْلِ خَاصَّةً لِقَوْلِهِ «أَيْنَ بَاتَتْ يَدُهُ» وَادَّعَوْا أَنَّ الْمَبِيتَ لَا يَكُونُ إِلَّا بِاللَّيْلِ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ، بَلْ يُقَالُ: بَاتَ الْقَوْمُ يُدَبِّرُونَ أَمْرَ كَذَا، وَإِنْ كَانَ نَهَارًا. وَحَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ خَالِدٍ الْهَمْدَانِيُّ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ عَنْ إِبْرَاهِيمَ بْنِ حَمْزَةَ هُوَ الزُّبَيْرِيُّ - عَنِ ابْنِ أَبِي حَازِمٍ هُوَ عَبْدُ الْعَزِيزِ - عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ هُوَ ابْنُ أُسَامَةَ بْنِ الْهَادِ - عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ حَدَّثَهُ عَنْ عِيسَى بْنِ طَلْحَةَ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا اسْتَيْقَظَ أَحَدُكُمْ مِنْ مَنَامِهِ فَتَوَضَّأَ فَلْيَسْتَنْثِرْ ثَلَاثَ مَرَّاتٍ فَإِنَّ الشَّيْطَانَ يَبِيتُ عَلَى خَيْشُومِهِ» .

L3192 Salim ibn Ahmad ibn Fath wrote to me: Abdullah ibn Sa'id al-Shantajali narrated to us: Umar ibn Muhammad ibn Dawud al-Sijistani narrated to us: Muhammad ibn Isa ibn Amruwayhi al-Juludi narrated to us: Ibrahim ibn Muhammad narrated to us: Muslim ibn al-Hajjaj narrated to us: Bishr ibn al-Hakam narrated to me: Abdul Aziz ibn Muhammad al-Darawardi narrated to us from Ibn al-Hadi from Muhammad ibn Ibrahim from Isa ibn Talhah from Abu Hurairah that the Messenger of Allah (peace be upon him) said: "When one of you awakens from sleep, let him cleanse his nose three times, for Satan spends the night upon his nostrils."

كَتَبَ إِلَيَّ سَالِمُ بْنُ أَحْمَدَ بْنِ فَتْحٍ قَالَ: ثنا عَبْدُ اللَّهِ بْنُ سَعِيدٍ الشَّنْتَجَالِيُّ قَالَ: ثنا عُمَرُ بْنُ مُحَمَّدِ بْنِ دَاوُد السِّجِسْتَانِيّ ثنا مُحَمَّدُ بْنُ عِيسَى بْنِ عَمْرَوَيْهِ الْجَلُودِيُّ ثنا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ حَدَّثَنَا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي بِشْرُ بْنُ الْحَكَمِ ثنا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنِ ابْنِ الْهَادِ عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ عَنْ عِيسَى بْنِ طَلْحَةَ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا اسْتَيْقَظَ أَحَدُكُمْ مِنْ مَنَامِهِ فَلْيَسْتَنْثِرْ ثَلَاثَ مَرَّاتٍ فَإِنَّ الشَّيْطَانَ يَبِيتُ عَلَى خَيْشُومِهِ» .

L3193 Abdullah ibn Rabee' narrated to us: Muhammad ibn Mu'awiyah narrated to us, Abu Yahya Zakariyya ibn Yahya al-Saji narrated to us, Muhammad ibn Zunbur al-Makki narrated to us, Abdul-Aziz ibn Abi Hazim narrated to

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَبُو يَحْيَى زَكَرِيَّا بْنُ يَحْيَى السَّاجِيُّ ثنا مُحَمَّدُ بْنُ زُنْبُورٍ الْمَكِّيُّ ثنا عَبْدُ الْعَزِيزِ بْنُ أَبِي حَازِمٍ ثنا يَزِيدُ بْنُ الْهَادِ أَنَّ مُحَمَّدَ بْنَ إِبْرَاهِيمَ حَدَّثَهُ

[23] **Hadith references (L3189):** Sunan an-Nasai 90.

us, Yazid ibn al-Had narrated that Muhammad ibn Ibrahim narrated to him from Isa ibn Talhah from Abu Hurairah, who said: The Messenger of Allah (peace and blessings of Allah be upon him) said: "When one of you wakes from sleep and performs wudu, let him inhale water into his nostrils three times, for Satan spends the night in his nasal passages." Abu Muhammad said: The command of the Messenger of Allah (peace and blessings of Allah be upon him) is obligatory. Allah the Exalted said: {Let those who oppose his command beware, lest a trial strike them or a painful punishment befall them} [24:63]. Whoever performs wudu without fulfilling what the Messenger of Allah (peace and blessings of Allah be upon him) commanded has not performed the wudu ordained by Allah the Exalted. Whoever does not perform wudu in this manner has no prayer—particularly given the expulsion of Satan from one's nasal passages. We know of no Muslim who would trivialize being comfortable with Satan's presence there.[24]

L3194–3196 The Malikis have made observing ablution obligatory, without which neither the ablution nor the prayer is valid. Al-Shafiʿi has made invoking blessings upon the Messenger of Allah (peace and blessings of Allah be upon him) during prayer obligatory, without which the prayer is not valid. Abu Hanifah has made ritual nasal inhalation and mouth rinsing in the major impurity bath obligatory, without which neither the bath nor the prayer is valid. None of this was commanded by Allah the Exalted nor His Messenger (peace be upon him). Therefore, this is what must be rejected—not the practice of those who obligate what the Messenger of Allah (peace and blessings of Allah be upon him) commanded. Nor did the Prophet (peace be upon him) ever say to him regarding what he conveyed: "Do such and such," whereupon he responded... He says, "I act only as I will," and a claim of consensus without certainty is a lie upon the entire Ummah. We seek refuge with Allah from that.

L3197 Ḥumām narrated to us: Ibn Mufarrij narrated to us, Ibn al-Aʿrābī narrated to us, al-Dabarī narrated to us, ʿAbd al-Razzāq narrated to us, from Ibn Jurayj, who said: I asked ʿAṭāʾ: "Is it obligatory for me to perform istinshāq?" He replied: "Yes." I asked: "How many times?" He said: "Three times [each instance]." I asked: "Who transmitted this?" He said: "From ʿUthmān."

عَنْ عِيسَى بْنِ طَلْحَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا اسْتَيْقَظَ أَحَدُكُمْ مِنْ مَنَامِهِ فَتَوَضَّأَ فَلْيَسْتَنْشِقْ ثَلَاثَ مَرَّاتٍ فَإِنَّ الشَّيْطَانَ يَبِيتُ عَلَى خَيْشُومِهِ» . قَالَ أَبُو مُحَمَّد: أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْفَرْضِ. قَالَ اللَّهُ تَعَالَى: {فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ} [النور: ٦٣] وَمَنْ تَوَضَّأَ بِغَيْرِ أَنْ يَفْعَلَ مَا أَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَفْعَلَهُ فَلَمْ يَتَوَضَّأْ الْوُضُوءَ الَّذِي أَمَرَهُ اللَّهُ تَعَالَى بِهِ، وَمَنْ لَمْ يَتَوَضَّأْ كَذَلِكَ فَلَا صَلَاةَ لَهُ، لَا سِيَّمَا طَرْدُ الشَّيْطَانِ عَنْ خَيْشُومِ الْمَرْءِ، فَمَا نَعْلَمُ مُسْلِمًا يَسْتَسْهِلُ الْأُنْسَ بِكَوْنِ الشَّيْطَانِ هُنَاكَ.

وَقَدْ أَوْجَبَ الْمَالِكِيُّونَ مُتَابَعَةَ الْوُضُوءِ فَرْضًا لَا يَتِمُّ الْوُضُوءُ وَالصَّلَاةُ إلَّا بِهِ، وَأَوْجَبَ الشَّافِعِيُّ الصَّلَاةَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرْضًا لَا تَتِمُّ الصَّلَاةُ إلَّا بِهِ، وَأَوْجَبَ أَبُو حَنِيفَةَ الِاسْتِنْشَاقَ وَالْمَضْمَضَةَ فِي غُسْلِ الْجَنَابَةِ فَرْضًا لَا يَتِمُّ الْغُسْلُ وَالصَّلَاةُ إلَّا بِهِ. وَكُلُّ هَذَا لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِهِ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. فَهَذَا الَّذِي يَجِبُ أَنْ يُنْكَرَ لَا فِعْلَ مَنْ أَوْجَبَ مَا أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَلَمْ يَقُلْ فِيمَا قَالَ لَهُ نَبِيُّهُ - عَلَيْهِ السَّلَامُ -: افْعَلْ كَذَا، فَقَالَ هُوَ: لَا أَفْعَلُ إلَّا أَنْ أَشَاءَ، وَدَعْوَى الْإِجْمَاعِ بِغَيْرِ يَقِينٍ كَذِبٌ عَلَى الْأُمَّةِ كُلِّهَا. نَعُوذُ بِاَللَّهِ مِنْ ذَلِكَ.

حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: أَحَقٌّ عَلَيَّ أَنْ أَسْتَنْشِقَ؟ قَالَ نَعَمْ، قُلْت كَمْ؟ قَالَ ثَلَاثًا، قُلْت عَمَّنْ؟ قَالَ عَنْ عُثْمَانَ.

[24] **Qur'an references (L3193):** Qur'an 24:63 (An-Nur).

L3198 Abd al-Razzaq said: Ma'mar narrated to us from Qatādah from Ma'bad al-Juhanī, who said regarding rinsing the mouth and sniffing water into the nose: If one is in a state of major ritual impurity (janabah), then three times; if after defecating, then twice; and if after urinating, then once. It is reported from al-Hasan that the repetition of ablution and prayer is required for one who did not wash his hands three times before inserting them into ablution. This is also the opinion of Dāwūd and our companions.

قَالَ عَبْدُ الرَّزَّاقِ: ثنا مَعْمَرٌ عَنْ قَتَادَةَ عَنْ مَعْبَدٍ الْجُهَنِيِّ قَالَ فِي الْمَضْمَضَةِ وَالِاسْتِنْشَاقِ: إِنْ كَانَ جُنُبًا فَثَلَاثًا، وَإِنْ كَانَ جَاءَ مِنَ الْغَائِطِ فَاثْنَتَيْنِ، وَإِنْ كَانَ جَاءَ مِنَ الْبَوْلِ فَوَاحِدَةً. وَرُوِيَ عَنِ الْحَسَنِ إِعَادَةُ الْوُضُوءِ وَالصَّلَاةِ عَلَى مَنْ لَمْ يَغْسِلْ يَدَهُ ثَلَاثًا قَبْلَ أَنْ يُدْخِلَهَا فِي الْوَضُوءِ، وَبِهِ يَقُولُ دَاوُد وَأَصْحَابُنَا.

[مَسْأَلَة عدم جَوَازِ الْغُسْل مِنْ الْمَاء الراكد لِلْجَنْبِ]

The issue of the impermissibility of using water from stagnant sources to perform *ghusl* for someone in a state of *janabah*.

L3199

L3200 150 - Issue: The ritual bath for major impurity (ghusl al-janabah) in stagnant water is not valid. If someone bathes in it, they have not performed the bath - though the water remains inherently pure - and they may repeat the bath from it. Similarly, a person in major impurity (junub) cannot validly perform any obligatory ritual bath, whether for janabah or other obligations, in stagnant water. If one is not junub, bathing in stagnant water suffices. Ablution is permissible in stagnant water. Therefore, if a junub bathes in a stagnant pool of a river while the river itself is stagnant, their bath remains invalid. As for the sea, it is perpetually flowing and turbulent, never stagnant - as this is empirically evident. Likewise, if someone urinates in stagnant water then releases it to flow, neither ablution nor bathing from it or in it becomes lawful for them, because the explicit textual ruling prohibits ablution and bathing using that specific water. If one urinates in flowing water which later becomes stagnant by stopping its flow, ablution from it and bathing in it become permissible, since they did not urinate in stagnant water. Performing the ritual bath for janabah or other obligations in flowing water is permissible. Even if one urinates therein, it does not prohibit ablution from it or in it, nor bathing from it or in it.

١٥٠ - مَسْأَلَةٌ: وَلَا يُجْزِئُ غُسْلُ الْجَنَابَةِ فِي مَاءٍ رَاكِدٍ، فَإِنْ اغْتَسَلَ فِيهِ فَلَمْ يَغْتَسِلْ، وَالْمَاءُ طَاهِرٌ بِحَسَبِهِ، وَلَهُ أَنْ يُعِيدَ الْغُسْلَ مِنْهُ، وَكَذَلِكَ لَا يُجْزِئُ الْجُنُبُ أَنْ يَغْتَسِلَ لِفَرْضٍ غَيْرِ الْجَنَابَةِ فِي مَاءٍ رَكَادٍ، فَإِنْ كَانَ غَيْرَ جُنُبٍ أَجْزَأَهُ الِاغْتِسَالُ فِي الْمَاءِ الرَّاكِدِ، وَالْوُضُوءُ جَائِزٌ فِي الْمَاءِ الرَّاكِدِ، فَمَنْ اغْتَسَلَ وَهُوَ جُنُبٌ فِي جَوْنٍ مِنْ أَجْوَانِ النَّهْرِ وَالنَّهْرُ رَاكِدٌ لَمْ يُجْزِهِ، وَأَمَّا الْبَحْرُ فَهُوَ جَارٍ أَبَدًا مُضْطَرِبٌ مُتَحَرِّكٌ غَيْرُ رَاكِدٍ، هَذَا أَمْرٌ مُشَاهَدٌ عِيَانًا، وَكَذَلِكَ مَنْ بَالَ فِي مَاءٍ رَاكِدٍ ثُمَّ سَرَحَ لِذَلِكَ الْمَاءِ فَجَرَى فَلَا يَحِلُّ لَهُ الْوُضُوءُ مِنْهُ وَلَا الِاغْتِسَالُ، لِأَنَّهُ قَدْ حُرِّمَ عَلَيْهِ الِاغْتِسَالُ وَالْوُضُوءُ مِنْ عَيْنِ ذَلِكَ الْمَاءِ بِالنَّصِّ، وَلَوْ بَالَ فِي مَاءٍ جَارٍ ثُمَّ أُغْلِقَ صَبَبُهُ فَرَكَدَ جَازَ لَهُ الْوُضُوءُ مِنْهُ وَالِاغْتِسَالُ مِنْهُ، لِأَنَّهُ لَمْ يَبُلْ فِي مَاءٍ رَاكِدٍ، وَالِاغْتِسَالُ لِلْجَنَابَةِ وَغَيْرِهَا فِي الْمَاءِ الْجَارِي مُبَاحٌ، وَإِنْ بَالَ فِيهِ لَمْ يَحْرُمْ عَلَيْهِ بِذَلِكَ الْوُضُوءُ مِنْهُ وَفِيهِ وَالْغُسْلُ مِنْهُ وَفِيهِ.

L3201 Abdullah ibn Yusuf narrated to us; Ahmad ibn Fath narrated to us; Abdul-Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj (compiler of Sahih Muslim) narrated to us; Abu't-Tahir and Harun ibn Sa'id al-Ayli narrated via Ibn

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو الطَّاهِرِ وَهَارُونُ بْنُ سَعِيدٍ الْأَيْلِيُّ عَنْ

Wahb; Amr ibn al-Harith informed us from Bukayr ibn al-Ashajj that Abu as-Sa'ib, the freed slave of Hisham ibn Zuhrah, narrated that he heard Abu Hurayrah say: The Messenger of Allah (peace be upon him) said: "None of you should bathe in stagnant water while in a state of major impurity." He asked: "What should one do, O Abu Hurayrah?" He replied: "He should scoop it out incrementally."[25]

L3202–3203 This is Abū Hurayrah's position that a person in a state of major impurity should not bathe in stagnant water, which is also the opinion of Abū Ḥanīfah and Al-Shāfiʿī. However, Abū Ḥanīfah stated that if one does so, the water becomes impure, though we have previously clarified the invalidity of this opinion. Mālik disapproved of it but permitted his bathing in such water, yet this is mistaken as it contradicts the command of the Messenger of Allah—peace and blessings be upon him. It makes no difference whether the still water is small or vast in quantity; even if it spans vast distances, it does not suffice for a person in major impurity to bathe in it. This is because the Messenger of Allah—peace and blessings be upon him—did not specify any particular type of water nor prohibit ablution or bathing in it for those not in a state of major impurity; thus, it remains permissible. "And whoever transgresses the limits set by Allah has certainly wronged himself" (65:1).[26]

L3204 The ruling on the invalidity of a man's ablution and ritual bath if performed using leftover water from a menstruating woman.

L3205–3207 151. Issue: Any water from which a woman—whether menstruating or not—performed ablution or ritual bathing, leaving leftover water from it, it is not lawful for a man to use that leftover water for ablution or ritual bathing, whether they find other water or not. Their obligation in such a case is to perform dry ablution (tayammum). Drinking this leftover water is lawful for both men and women, and women may use it for ablution and

[25] **Hadith references (L3201):** Sunan an-Nasai 331; Sunan an-Nasai 396; Sunan an-Nasai 220.

[26] **Qur'an references (L3203):** Qur'an 65:1 (At-Talaq).

ابْنِ وَهْبٍ أَخْبَرَنَا عَمْرُو بْنُ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ أَنَّ أَبَا السَّائِبِ مَوْلَى هِشَامِ بْنِ زُهْرَةَ حَدَّثَهُ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَغْتَسِلُ أَحَدُكُمْ فِي الْمَاءِ الدَّائِمِ وَهُوَ جُنُبٌ» ، فَقَالَ: كَيْفَ يَفْعَلُ يَا أَبَا هُرَيْرَةَ؟ قَالَ: يَتَنَاوَلُهُ تَنَاوُلًا ".

فَهَذَا أَبُو هُرَيْرَةَ لَا يَرَى أَنْ يَغْتَسِلَ الْجُنُبُ فِي الْمَاءِ الدَّائِمِ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَالشَّافِعِيِّ، إِلَّا أَنَّ أَبَا حَنِيفَةَ قَالَ: إِنْ فَعَلَ تَنَجَّسَ الْمَاءُ، وَقَدْ بَيَّنَّا فَسَادَ هَذَا الْقَوْلِ قَبْلُ، وَكَرِهَهُ مَالِكٌ، وَأَجَازَ غُسْلَهُ إِنْ اغْتَسَلَ كَذَلِكَ، وَهَذَا خَطَأٌ، لِخِلَافِهِ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَسَوَاءٌ كَانَ الْمَاءُ الرَّاكِدُ قَلِيلًا أَوْ كَثِيرًا، وَلَوْ أَنَّهُ فَرَاسِخُ فِي فَرَاسِخَ، لَا يُجْزِئُ الْجُنُبَ أَنْ يَغْتَسِلَ فِيهِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَخُصَّ مَاءً مِنْ مَاءٍ، وَلَمْ يَنْهَ عَنْ الْوُضُوءِ فِيهِ وَلَا عَنْ الْغُسْلِ لِغَيْرِ الْجُنُبِ فِيهِ، فَهُوَ مُبَاحٌ {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

[مسالة عدم صِحَّة وضوء الرَّجُل وَغَسَلَهُ مِنْ فَضْل الْمَرْأَة الْحَائِض]

١٥١ - مَسْأَلَةٌ: وَكُلُّ مَاء تَوَضَّأَتْ مِنْهُ امْرَأَةٌ - حَائِضٌ أَوْ غَيْرُ حَائِضٍ - أَوْ اغْتَسَلَتْ مِنْهُ فَأَفْضَلَتْ مِنْهُ فَضْلًا، لَمْ يَحِلَّ لِرَجُلٍ الْوُضُوءُ مِنْ ذَلِكَ الْفَضْلِ وَلَا الْغُسْلُ مِنْهُ، سَوَاءٌ وَجَدُوا مَاءً آخَرَ أَوْ لَمْ يَجِدُوا غَيْرَهُ، وَفَرْضُهُمْ التَّيَمُّمُ حِينَئِذٍ، وَحَلَالٌ شُرْبُهُ لِلرِّجَالِ وَالنِّسَاءِ، وَجَائِزٌ الْوُضُوءُ بِهِ وَالْغُسْلُ لِلنِّسَاءِ عَلَى كُلِّ حَالٍ. وَلَا يَكُونُ فَضْلًا إِلَّا أَنْ يَكُونَ أَقَلَّ مِمَّا اسْتَعْمَلَتْهُ مِنْهُ، فَإِنْ كَانَ مِثْلَهُ أَوْ أَكْثَرَ فَلَيْسَ فَضْلًا، وَالْوُضُوءُ وَالْغُسْلُ

ritual bathing under all circumstances. Water is not considered "leftover" unless it is less than the amount she used. If it equals or exceeds what she used, it is not considered leftover, and ablution and ritual bathing with it are permissible for both men and women. As for men's leftover water, ablution and ritual bathing with it are permissible for both men and women, unless an authentic report prohibiting women from it emerges—in which case we would adhere to it—but we have not found such a report authentic. If a man and woman perform ablution or ritual bathing from a single vessel, scooping water simultaneously, this is permissible regardless of who initiated or completed first. The evidence for this is what ʿAbdullāh ibn Rabīʿ narrated to us, stating: Muḥammad ibn Isḥāq narrated to us, stating: Ibn al-Aʿrābī narrated to us, stating: Abū Dāwūd al-Sijistānī narrated to us, stating: Muḥammad ibn Bashshār narrated to us, stating: Abū Dāwūd al-Ṭayālisī narrated to us, stating: Shuʿbah narrated to us from ʿĀṣim ibn Sulaymān al-Aḥwal from Abū Ḥājib (Sawādah ibn ʿĀṣim) from al-Ḥakam ibn ʿAmr al-Ghifārī that Allah's Messenger—peace and blessings upon him—"forbade a man from performing ablution with leftover water from a woman's ablution." Asbagh informed me, saying: Ishaq ibn Ahmad narrated to us, on the authority of Muhammad ibn Umar al-ʿUqaylī, on the authority of Ali ibn Abd al-Aziz, on the authority of Maʿli ibn Asad, on the authority of Abd al-Aziz ibn al-Mukhtar, from Asim al-Ahwal, from Abdullah ibn Sarjis: "The Prophet—may Allah bless him and grant him peace—forbade a man from performing ghusl with the leftover water of a woman's *wudu*."

بِهِ جَائِزٌ لِلرِّجَالِ وَالنِّسَاءِ. وَأَمَّا فَضْلُ الرِّجَالِ فَالْوُضُوءُ بِهِ وَالْغُسْلُ جَائِزٌ لِلرَّجُلِ وَالْمَرْأَةِ، إِلَّا أَنْ يَصِحَّ خَبَرٌ فِي نَهْيِ الْمَرْأَةِ عَنْهُ فَنَقِفَ عِنْدَهُ، وَلَمْ نَجِدْهُ صَحِيحًا فَإِنْ تَوَضَّأَ الرَّجُلُ وَالْمَرْأَةُ مِنْ إِنَاءٍ وَاحِدٍ أَوْ اغْتَسَلَا مِنْ إِنَاءٍ وَاحِدٍ يَغْتَرِفَانِ مَعًا فَذَلِكَ جَائِزٌ، وَلَا نُبَالِي أَيُّهُمَا بَدَأَ قَبْلُ، أَوْ أَيُّهُمَا أَتَمَّ قَبْلُ. بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ قَالَ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد هُوَ السِّجِسْتَانِيُّ - ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا أَبُو دَاوُد هُوَ الطَّيَالِسِيُّ - ثنا شُعْبَةُ عَنْ عَاصِمِ بْنِ سُلَيْمَانَ الْأَحْوَلِ عَنْ أَبِي حَاجِبٍ هُوَ سَوَادَةُ بْنُ عَاصِمٍ - عَنْ الْحَكَمِ بْنِ عَمْرٍو الْغِفَارِيِّ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «نَهَى أَنْ يَتَوَضَّأَ الرَّجُلُ بِفَضْلِ طَهُورِ الْمَرْأَةِ» أَخْبَرَنِي أَصْبَغُ قَالَ ثنا إِسْحَاقُ بْنُ أَحْمَدَ ثنا مُحَمَّدُ بْنُ عُمَرَ الْعُقَيْلِيِّ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا مَعْلِيُّ بْنُ أَسَدٍ ثنا عَبْدُ الْعَزِيزِ بْنُ الْمُخْتَارِ عَنْ عَاصِمٍ الْأَحْوَلِ عَنْ عَبْدِ اللَّهِ بْنِ سَرْجِسَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى أَنْ يَغْتَسِلَ الرَّجُلُ بِفَضْلِ وَضُوءِ الْمَرْأَةِ» .

L3208 He (peace be upon him) did not report the water's impurity nor command others besides men to avoid it. This is the position of Abdullah ibn Sarjis and al-Hakam ibn Amr - both being Companions of Allah's Messenger (peace and blessings be upon him). This view is also held by Juwayriyyah, the Mother of the Believers; Umm Salama, the Mother of the Believers; and Umar ibn al-Khattab. It has been narrated that Umar struck with a whip those who opposed this opinion. Qatadah said: "I asked Sa'id ibn al-Musayyib and al-Hasan al-Basri about performing ablution with a woman's leftover water, and both prohibited me from it." Malik narrated from Nafi' from Ibn Umar that there is no issue with using a woman's leftover water unless she is

وَلَمْ يُخْبِرْ - عَلَيْهِ السَّلَامُ - بِنَجَاسَةِ الْمَاءِ، وَلَا أَمَرَ غَيْرَ الرِّجَالِ بِاجْتِنَابِهِ، وَبِهَذَا يَقُولُ عَبْدُ اللَّهِ بْنُ سَرْجِسَ وَالْحَكَمُ بْنُ عَمْرٍو، وَهُمَا صَاحِبَانِ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِهِ تَقُولُ جُوَيْرِيَةُ أُمُّ الْمُؤْمِنِينَ وَأُمُّ سَلَمَةَ أُمُّ الْمُؤْمِنِينَ وَعُمَرُ بْنُ الْخَطَّابِ، وَقَدْ رُوِيَ عَنْ عُمَرَ أَنَّهُ ضَرَبَ بِالدِّرَّةِ مَنْ خَالَفَ هَذَا الْقَوْلَ. وَقَالَ قَتَادَةُ: سَأَلْت سَعِيدَ بْنَ الْمُسَيِّبِ وَالْحَسَنَ الْبَصْرِيَّ عَنْ الْوُضُوءِ بِفَضْلِ الْمَرْأَةِ، فَكِلَاهُمَا نَهَانِي عَنْهُ. وَرَوَى مَالِكٌ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ لَا بَأْسَ بِفَضْلِ الْمَرْأَةِ مَا لَمْ تَكُنْ حَائِضًا أَوْ جُنُبًا.

menstruating or in major impurity. It has been authentically established that “the Prophet (peace and blessings be upon him) would bathe with Aisha (may Allah be pleased with her) from the same vessel, to the point he would say ’Save some for me’ and she would tell him ’Save some for me.’” This is correct, as none of this constitutes actual leftover water requiring abandonment. This ruling follows linguistic principles without dispute.

L3209–3211 Those who opposed this cited a narration that was narrated by us via the chain of ʿAbd al-Razzāq, from al-Thawrī, from Simāk ibn Ḥarb, from ʿIkrimah, from Ibn ʿAbbās: that one of the Prophet’s wives (peace be upon him) performed *ghusl* due to *janabah*. The Prophet (peace and blessings of Allah be upon him) came and performed ablution using her leftover water. She said to him: “I have performed the ritual bath.” He responded: “Nothing contaminates water.” Another hadith we narrated through the chain of al-Tahrani from Abd al-Razzaq: Ibn Jurayj informed me; Amr ibn Dinar informed me from Abu al-Sha’tha’ from Ibn Abbas: “The Messenger of Allah (peace and blessings of Allah be upon him) used to bathe with Maymunah’s leftover water - abridged.” Abu Muhammad said: “This is how it appears in the hadith itself - abridged.” Abu Muhammad said: These two hadiths are inauthentic. As for the first hadith, it is the narration of Simak ibn Harb who accepted prompting, as testified by Shu’bah and others - a manifest weakness. The second hadith contains a definite error by al-Tahrani, for this was narrated to us via Abdullah ibn Yusuf → Ahmad ibn Fath → Abdul Wahhab ibn Isa → Ahmad ibn Muhammad → Ahmad ibn Ali → Muslim ibn al-Hajjaj → Ishaq ibn Ibrahim (Ibn Rahawayh) and Muhammad ibn Hatim. Ishaq said: Muhammad ibn Bakr informed us. Ibn Hatim said: Muhammad ibn Bakr al-Bursani narrated to us → Ibn Jurayj → Amr ibn Dinar, who said: “The extent of my knowledge and what occurs to my mind is that Abu al-Sha’tha’ informed me from Ibn Abbas that he reported: ’The Messenger of Allah (peace and blessings of Allah be upon him) used to bathe with Maymunah’s leftover water.’” Abu Muhammad said: This confirms that Amr ibn Dinar expressed uncertainty about it and did not decisively establish its chain of transmission. These transmitters are undoubtedly more reliable and more precise in memorization than al-Tahrani. Even if these two reports were

وَقَدْ صَحَّ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ كَانَ يَغْتَسِلُ مَعَ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - مِنْ إنَاءٍ وَاحِدٍ مَعًا حَتَّى يَقُولَ أَبْقِي لِي وَتَقُولَ لَهُ أَبْقِ لِي» وَهَذَا حَقٌّ وَلَيْسَ شَيْءٌ مِنْ ذَلِكَ فَضْلًا حَتَّى يَتْرُكَهُ. هَذَا حُكْمُ اللُّغَةِ بِلَا خِلَافٍ.

وَاحْتَجَّ مَنْ خَالَفَ هَذَا بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الثَّوْرِيِّ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ امْرَأَةً مِنْ نِسَاءِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَحَمَّتْ مِنْ جَنَابَةٍ فَجَاءَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَتَوَضَّأَ مِنْ فَضْلِهَا فَقَالَتْ لَهُ: إنِّي اغْتَسَلْت فَقَالَ: إنَّ الْمَاءَ لَا يُنَجِّسُهُ شَيْءٌ» وَبِحَدِيثٍ آخَرَ رُوِّينَاهُ مِنْ طَرِيقِ الطَّهْرَانِيِّ عَنْ عَبْدِ الرَّزَّاقِ: أَخْبَرَنِي ابْنُ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ عَنْ أَبِي الشَّعْثَاءِ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَغْتَسِلُ بِفَضْلِ مَيْمُونَةَ، مُخْتَصَرٌ» قَالَ أَبُو مُحَمَّد: هَكَذَا فِي نَفْسِ الْحَدِيثِ مُخْتَصَرٌ. قَالَ أَبُو مُحَمَّد: وَهَذَانِ حَدِيثَانِ لَا يَصِحَّانِ، فَأَمَّا الْحَدِيثُ الْأَوَّلُ فَرِوَايَةُ سِمَاكِ بْنِ حَرْبٍ، وَهُوَ يَقْبَلُ التَّلْقِينَ، شَهِدَ عَلَيْهِ بِذَلِكَ شُعْبَةُ وَغَيْرُهُ، وَهَذِهِ جُرْحَةٌ ظَاهِرَةٌ (وَالثَّانِي) أَخْطَأَ فِيهِ الطَّهْرَانِيُّ بِيَقِينٍ، لِأَنَّ هَذَا أَخْبَرَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا إِسْحَاقُ بْنُ إبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - وَمُحَمَّدُ بْنُ حَاتِمٍ قَالَ إِسْحَاقُ أَخْبَرَنَا مُحَمَّدُ بْنُ بَكْرٍ وَقَالَ ابْنُ حَاتِمٍ حَدَّثَنَا مُحَمَّدُ بْنُ بَكْرٍ وَهُوَ الْبُرْسَانِيُّ ثنا ابْنُ جُرَيْجٍ ثنا عَمْرُو بْنُ دِينَارٍ قَالَ: أَكْبَرُ عِلْمِي وَالَّذِي يَخْطُرُ عَلَى بَالِي أَنَّ أَبَا الشَّعْثَاءِ أَخْبَرَنِي عَنْ ابْنِ عَبَّاسٍ أَنَّهُ أَخْبَرَهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَغْتَسِلُ بِفَضْلِ مَيْمُونَةَ» . قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ أَنَّ عَمْرَو بْنَ دِينَارٍ شَكَّ فِيهِ وَلَمْ يَقْطَعْ بِإِسْنَادِهِ، وَهَؤُلَاءِ

authentic and flawless, they would not constitute evidence, for their ruling precedes the Prophet's prohibition (peace and blessings of Allah be upon him) against men using women's leftover purification water for ablution or bathing. We are certain that the rulings in these two hadiths are definitively abrogated by his explicit prohibition (peace be upon him). There is no doubt in this matter. Therefore, it is impermissible to adhere to the abrogated ruling while disregarding the abrogating text. Whoever claims that the abrogated ruling has been revived and the abrogating text nullified has spoken falsely and made an invalid claim. It is absolutely inconceivable that such a matter could occur without the Messenger of Allah (peace and blessings of Allah be upon him) clarifying it, given his obligation to provide explicit clarification. Success is attained only by the help of Allah, the Exalted.[27]

أَوْثَقُ مِنْ الطَّهْرَانِيِّ وَأَحْفَظُ بِلَا شَكٍّ. ثُمَّ لَوْ صَحَّ هَذَانِ الْخَبَرَانِ وَلَمْ يَكُنْ فِيهِمَا مَغْمَزٌ لَمَا كَانَتْ فِيهِمَا حُجَّةٌ، لِأَنَّ حُكْمَهُمَا هُوَ الَّذِي كَانَ قَبْلَ نَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَنْ يَتَوَضَّأَ الرَّجُلُ أَوْ أَنْ يَغْتَسِلَ بِفَضْلِ طَهُورِ الْمَرْأَةِ، بِلَا شَكٍّ فِي هَذَا، فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ حُكْمَ هَذَيْنِ الْخَبَرَيْنِ مَنْسُوخٌ قَطْعًا، حِينَ نَطَقَ - عَلَيْهِ السَّلَامُ - بِالنَّهْيِ عَمَّا فِيهِمَا، لَا مِرْيَةَ فِي هَذَا، فَإِذْ ذَلِكَ كَذَلِكَ فَلَا يَحِلُّ الْأَخْذُ بِالْمَنْسُوخِ وَتَرْكُ النَّاسِخِ، وَمَنْ ادَّعَى أَنَّ الْمَنْسُوخَ قَدْ عَادَ حُكْمُهُ، وَالنَّاسِخُ قَدْ بَطَلَ رَسْمُهُ، فَقَدْ أَبْطَلَ وَادَّعَى غَيْرَ الْحَقِّ، وَمِنْ الْمُحَالِ الْمُمْتَنِعِ أَنْ يَكُونَ ذَلِكَ وَلَا يُبَيِّنُهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ الْمُفْتَرَضُ عَلَيْهِ الْبَيَانُ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L3212 However, Abu Hanifa and Al-Shafi'i—who cite these two narrations as evidence—contradict what is in one of them, namely the Prophet's statement—peace be upon him—"Water does not become impure." It is reprehensible for a group to cite as evidence what they themselves acknowledge to be evidence, then contradict it while denying their contradiction to those who do not consider it evidence. And with Allah, the Exalted, is success.

عَلَى أَنَّ أَبَا حَنِيفَةَ وَالشَّافِعِيَّ - الْمُحْتَجَّيْنِ بِهَذَيْنِ الْخَبَرَيْنِ - مُخَالِفَانِ لِمَا فِي أَحَدِهِمَا مِنْ قَوْلِهِ - عَلَيْهِ السَّلَامُ - «الْمَاءُ لَا يَنْجُسُ» وَمِنْ الْقَبِيحِ احْتِجَاجُ قَوْمٍ بِمَا يُقِرُّونَ أَنَّهُ حُجَّةٌ ثُمَّ يُخَالِفُونَهُ وَيُنْكِرُونَ خِلَافَهُ عَلَى مَنْ لَا يَرَاهُ حُجَّةً. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L3213–3214 It has been reported to us concerning the permissibility of a man performing ablution with the leftover water of a woman, through chains transmitted from 'Ā'ishah and 'Alī—except that it [the permissibility] is not authentic. As for the chain through 'Ā'ishah, it includes Al-'Arzamī, who is weak, and from Umm Kulthūm, who is an unknown [narrator], as her identity is undetermined. As for the chain through 'Alī, it is transmitted via Ibn Ḍumayrah from his father from his grandfather, and this is a fabricated, forged scroll—none but an ignorant person would rely on it as proof. What remains are the narrations reported from Ibn Sarjis and other Companions—may Allah be pleased with them—with none opposing him. These are fundamentally authentic, and with Allah alone is success.

وَرُوِّينَا إبَاحَةَ وُضُوءِ الرَّجُلِ مِنْ فَضْلِ الْمَرْأَةِ عَنْ عَائِشَةَ وَعَلِيٍّ، إلَّا أَنَّهُ لَا يَصِحُّ فَأَمَّا الطَّرِيقُ عَنْ عَائِشَةَ فَفِيهَا الْعَرْزَمِيُّ وَهُوَ ضَعِيفٌ، عَنْ أُمِّ كُلْثُومٍ وَهِيَ مَجْهُولَةٌ لَا يُدْرَى مَنْ هِيَ. وَأَمَّا الطَّرِيقُ عَنْ عَلِيٍّ فَمِنْ طَرِيقِ ابْنِ ضُمَيْرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ، وَهِيَ صَحِيفَةٌ مَوْضُوعَةٌ مَكْذُوبَةٌ لَا يَحْتَجُّ بِهَا إلَّا جَاهِلٌ، فَبَقِيَ مَا رُوِيَ فِي ذَلِكَ عَنْ ابْنِ سَرْجِسَ وَغَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا مُخَالِفَ لَهُ مِنْهُمْ، يَصِحُّ ذَلِكَ عَنْهُ أَصْلًا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة عدم صِحَّة وضوء وَصَلَاة مِنْ تَوَضَّأَ بِمَاء لاحق لَهُ فِيهِ]

[27] **Hadith references (L3209):** Sahih Muslim 323.

A legal case on the invalidity of the ritual purification (wudu) and prayer of one who performs wudu with water they have no rightful claim to.

Issue 152: It is not permissible to perform ablution with wrongfully taken water, nor from a stolen vessel or one unlawfully seized. Nor is ghusl permitted - except by its owner or with the owner's explicit permission. Whoever does this invalidates their prayer and must repeat both the ablution and ghusl.

Abd al-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: Al-Farbari narrated to us: Al-Bukhari narrated to us: Musaddad narrated to us: Bishr, who is Ibn Umar, narrated to us: Abdullah ibn Awn narrated from Muhammad ibn Sirin from Abd al-Rahman ibn Abi Bakrah from his father: "The Prophet—peace and blessings of Allah be upon him—sat upon a camel and said," and he mentioned the hadith containing: "Your blood, your wealth, and your honor are inviolable among you, like the sanctity of this day of yours in this month of yours in this land of yours. Let those present convey to those absent, for the one present may convey it to one who is more attentive to it than him." We have also narrated it through the chains of Jabir ibn Abdullah and Ibn Umar as an authenticated connected narration, and through the chain of Abu Hurairah from the Prophet—peace and blessings of Allah be upon him—: "Every Muslim's blood, honor, and wealth are inviolable to another Muslim." Thus, whoever performs ablution with usurped water, [water] taken without right, bathes with it, or uses a vessel acquired unlawfully—there is no disagreement among any Muslims that employing such water or vessel for bathing or ablution is forbidden. Necessarily, every person of sound intellect knows that what is forbidden and prohibited differs from what is obligatory and divinely ordained. Since there is no doubt in this, such a person has not performed the ablution Allah the Exalted commanded him to perform—the ablution without which prayer is invalid. Rather, it is a forbidden ablution through which he is thereby disobeying Allah the Exalted. Similarly, bathing [with such water or vessels]

١٥٢ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْوُضُوءُ بِمَاءٍ أُخِذَ بِغَيْرِ حَقٍّ، وَلَا مِنْ إنَاءٍ مَغْصُوبٍ أَوْ مَأْخُوذٍ بِغَيْرِ حَقٍّ، وَلَا الْغُسْلُ، إلَّا لِصَاحِبِهِ أَوْ بِإِذْنِ صَاحِبِهِ، فَمَنْ فَعَلَ ذَلِكَ فَلَا صَلَاةَ لَهُ، وَعَلَيْهِ إعَادَةُ الْوُضُوءِ وَالْغُسْلِ.

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ حَدَّثَنَا إبْرَاهِيمُ بْنُ أَحْمَدُ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُسَدَّدٌ ثنا بِشْرٌ هُوَ ابْنُ عُمَرَ - ثنا عَبْدُ اللَّهِ بْنُ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرَةَ عَنْ أَبِيهِ «قَعَدَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى بَعِيرٍ فَقَالَ - وَذَكَرَ الْحَدِيثَ وَفِيهِ -: إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ بَيْنَكُمْ حَرَامٌ، كَحُرْمَةِ يَوْمِكُمْ هَذَا، فِي شَهْرِكُمْ هَذَا، فِي بَلَدِكُمْ هَذَا، لِيُبَلِّغَ الشَّاهِدُ الْغَائِبَ، فَإِنَّ الشَّاهِدَ عَسَى أَنْ يُبَلِّغَ مَنْ هُوَ أَوْعَى لَهُ مِنْهُ» . وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ جَابِرِ بْنِ عَبْدِ اللَّهِ وَابْنِ عُمَرَ مُسْنَدًا صَحِيحًا. وَمِنْ طَرِيقِ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ الْمُسْلِمِ عَلَى الْمُسْلِمِ حَرَامٌ: دَمُهُ وَعِرْضُهُ وَمَالُهُ» . فَكَانَ مَنْ تَوَضَّأَ بِمَاءٍ مَغْصُوبٍ أَوْ أُخِذَ بِغَيْرِ حَقٍّ أَوْ اغْتَسَلَ بِهِ أَوْ مِنْ إنَاءٍ كَذَلِكَ فَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ أَنَّ اسْتِعْمَالَهُ ذَلِكَ الْمَاءَ وَذَلِكَ الْإِنَاءَ فِي غُسْلِهِ وَوُضُوئِهِ حَرَامٌ، وَبِضَرُورَةِ يَدْرِي كُلُّ ذِي حِسٍّ سَلِيمٍ أَنَّ الْحَرَامَ الْمَنْهِيَّ عَنْهُ هُوَ غَيْرُ الْوَاجِبِ الْمُفْتَرَضِ عَمَلُهُ، فَإِذْ لَا شَكَّ فِي هَذَا فَلَمْ يَتَوَضَّأْ الْوُضُوءَ الَّذِي أَمَرَهُ اللَّهُ تَعَالَى بِهِ، وَالَّذِي لَا تُجْزِئُ الصَّلَاةُ إلَّا بِهِ، بَلْ هُوَ وُضُوءٌ

and prayer performed without the ablution or bath Allah the Exalted has ordained are invalid. This matter is beyond dispute.[28]

L3218–3220 We ask those who differ with us regarding one obligated to fulfill the expiation of feeding the poor - if he feeds them with another's property; or one obligated to fast specific days - if he fasts during the days of al-Fitr, al-Adha, and al-Tashreeq; or one obligated to free a slave - if he frees another's female slave: does this suffice him for what Allah has ordained? When they answer "no," it is said to them: "Then from where [could fulfillment come]?" You have prohibited this yet permitted ablution and bathing with usurped water and a usurped vessel? All these individuals are obligated to perform a specified action with their own property, while it is forbidden for them to do so with others' property by your own admission—alike, alike. They have no means of escaping this obligation. This is not analogy but a single ruling falling under the prohibition of usurped property and acting contrary to Allah's command. The Messenger of Allah (peace be upon him) said, "Whoever performs a deed not in accordance with our instruction, it is rejected." All these individuals have performed deeds opposing the command of Allah the Exalted and His Messenger (peace be upon him), rendering their acts invalidated per the Prophet's ruling. This applies equally to those who claim only wheat and dates are forbidden [as usurped property], while barley and raisins are not—a corrupt and arbitrary ruling. It is astonishing that Ḥanafīs invalidate ritual purity using used water, as do Shāfiʿīs, while Mālikīs nullify ritual purity with water used to soak bread—despite lacking any explicit textual prohibition or valid evidence, relying solely on specious reasoning they allege as a prophetic prohibition. Yet they permit ritual purity with water and vessels they unanimously acknowledge as definitively forbidden, with established prohibition against their use in ablution and bathing—a contradiction scarcely paralleled. Here they oppose both the explicit text and the definitively established consensus (they themselves being among those who originally prohibited it), while also contradicting legal analogy. They possess

مُحَرَّمٌ، هُوَ فِيهِ عَاصٍ لِلَّهِ تَعَالَى، وَكَذَلِكَ الْغُسْلُ، وَالصَّلَاةُ بِغَيْرِ الْوُضُوءِ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ وَبِغَيْرِ الْغُسْلِ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ لَا تُجْزِئُ، وَهَذَا أَمْرٌ لَا إشْكَالَ فِيهِ.

وَنَسْأَلُ الْمُخَالِفِينَ لَنَا عَمَّنْ عَلَيْهِ كَفَّارَةُ إطْعَامِ مَسَاكِينَ، فَأَطْعَمَهُمْ مَالَ غَيْرِهِ، أَوْ مَنْ عَلَيْهِ صِيَامُ أَيَّامٍ، فَصَامَ أَيَّامَ الْفِطْرِ وَالنَّحْرِ وَالتَّشْرِيقِ، وَمَنْ عَلَيْهِ عِتْقُ رَقَبَةٍ فَأَعْتَقَ أَمَةَ غَيْرِهِ: أَيُجْزِيهِ ذَلِكَ مِمَّا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ؟ فَمَنْ قَوْلُهُمْ: لَا، فَيُقَالُ لَهُمْ: فَمِنْ أَيْنَ مَنَعْتُمْ هَذَا وَأَجَزْتُمْ الْوُضُوءَ وَالْغُسْلَ بِمَاءٍ مَغْصُوبٍ وَإِنَاءٍ مَغْصُوبٍ؟ وَكُلُّ هَؤُلَاءِ مُفْتَرَضٌ عَلَيْهِ عَمَلٌ مَوْصُوفٌ فِي مَالِ نَفْسِهِ، مُحَرَّمٌ عَلَيْهِ ذَلِكَ مِنْ مَالِ غَيْرِهِ بِإِقْرَارِكُمْ سَوَاءً سَوَاءً. وَهَذَا لَا سَبِيلَ لَهُمْ إلَى الِانْفِكَاكِ مِنْهُ. وَلَيْسَ هَذَا قِيَاسًا بَلْ هُوَ حُكْمٌ وَاحِدٌ دَاخِلٌ تَحْتَ تَحْرِيمِ الْأَمْوَالِ، وَتَحْتَ الْعَمَلِ بِخِلَافِ أَمْرِ اللَّهِ تَعَالَى وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَكُلُّ هَؤُلَاءِ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُ اللَّهِ تَعَالَى وَأَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ مَرْدُودٌ بِحُكْمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُمْ فِي هَذَا وَمَنْ قَالَ إنَّمَا يَحْرُمُ مِنْ الْأَمْوَالِ الْبُرُّ وَالتَّمْرُ، وَأَمَّا الشَّعِيرُ وَالزَّبِيبُ فَلَا، وَهَذَا تَحَكُّمٌ فَاسِدٌ. وَالْعَجَبُ أَنَّ الْحَنَفِيِّينَ يُبْطِلُونَ طَهَارَةَ مَنْ تَطَهَّرَ بِمَاءٍ مُسْتَعْمَلٍ، وَكَذَلِكَ الشَّافِعِيُّونَ وَأَنَّ الْمَالِكِيِّينَ يُبْطِلُونَ طَهَارَةَ مَنْ تَطَهَّرَ بِمَاءٍ بُلَّ فِيهِ خُبْزٌ، دُونَ نَصٍّ فِي تَحْرِيمِ ذَلِكَ، وَلَا حُجَّةَ بِأَيْدِيهِمْ إلَّا تَشْغِيبٌ يَدَّعُونَ أَنَّهُ نَهَى عَنْ هَذَيْنِ الْمَاءَيْنِ ثُمَّ يُجِيزُونَ الطَّهَارَةَ بِمَاءٍ وَإِنَاءٍ، يُقِرُّونَ كُلُّهُمْ بِأَنَّهُ قَدْ صَحَّ النَّهْيُ عَنْهُ، وَثَبَتَ تَحْرِيمُهُ وَتَحْرِيمُ اسْتِعْمَالِهِ فِي الْوُضُوءِ وَالْغُسْلِ عَلَيْهِ، وَهَذَا عَجَبٌ لَا يَكَادُ يُوجَدُ مِثْلُهُ وَهَذَا مِمَّا خَالَفُوا فِيهِ النَّصَّ وَالْإِجْمَاعَ الْمُتَيَقَّنَ الَّذِينَ هُمْ مِنْ جُمْلَةِ الْمَانِعِينَ

[28] **Hadith references (L3217):** Riyad as-Salihin 1527; Riyad as-Salihin 1570.

no valid basis whatsoever for this permission. Success comes solely from Allah, the Most High.[29]

The ruling on the invalidity of performing ablution (wudu) and ghusl [ritual bath] using gold and silver vessels, applicable to both men and women.

Issue 153: It is impermissible to perform ablution or ritual bathing using a vessel of gold or silver, whether for a man or a woman.

Muhammad ibn Sa'id ibn Nabaat narrated to us: 'Abdullah ibn Nasr narrated to us: Qasim ibn Asbagh narrated to us: Ibn Waddah narrated to us: Musa ibn Mu'awiyah narrated to us: Waki' narrated to us: Shu'bah narrated from al-Hakam ibn 'Utaybah from 'Abd al-Rahman ibn Abi Layla from Hudhayfah, who said: "The Messenger of Allah (peace be upon him) forbade us from silk, brocade, and vessels of gold and silver, stating: 'These are permissible for them [non-believers] in this worldly life but forbidden for you in the Hereafter.'" We have also received a narration from al-Bara' ibn 'Azib that "the Messenger of Allah (peace be upon him) prohibited the use of silver vessels." Should someone argue: "He only prohibited eating and drinking from them," we respond: "These two narrations constitute a comprehensive prohibition covering all uses of such vessels, thereby introducing supplementary rulings in legal and Sharia terms beyond those reports that mention restrictions limited to drinking or eating and drinking alone. It is impermissible to oppose these augmented rulings."

If it is said: It has been established that gold and silk are "forbidden for the males of my community and permissible for their females," we respond: Yes. However, the hadith prohibiting gold and silver vessels is an exception to the permissibility of gold for women. All narrations must be applied, and this is the only coherent method. Scholars have implemented this princi-

[29] **Hadith references (L3218):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

مِنْهُ فِي الْأَصْلِ، وَخَالَفُوا أَيْضًا الْقِيَاسَ وَمَا تَعَلَّقُوا فِي جَوَازِهِ بِشَيْءٍ أَصْلًا. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة عدم صِحَّة الْوُضُوء وَالْغسْل مِنْ آنِيَة الذَّهَب وَالْفِضَّة لِلرِّجَالِ وَالنِّسَاء]

١٥٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ الْوُضُوءُ وَلَا الْغُسْلُ مِنْ إنَاءِ ذَهَبٍ وَلَا مِنْ إنَاءِ فِضَّةٍ لَا لِرَجُلٍ وَلَا لِامْرَأَةٍ.

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ ثنا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعٌ ثنا شُعْبَةُ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ حُذَيْفَةَ قَالَ «نَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْحَرِيرِ وَالدِّيبَاجِ وَآنِيَةِ الذَّهَبِ وَالْفِضَّةِ، وَقَالَ: هُوَ لَهُمْ فِي الدُّنْيَا وَهُوَ لَكُمْ فِي الْآخِرَةِ» وَقَدْ رُوِّينَا أَيْضًا عَنْ الْبَرَاءِ بْنِ عَازِبٍ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النَّهْيَ عَنْ آنِيَةِ الْفِضَّةِ» . فَإِنْ قِيلَ: إنَّمَا نَهَى عَنْ الْأَكْلِ فِيهَا وَالشُّرْبِ. قُلْنَا: هَذَانِ الْخَبَرَانِ نَهْيٌ عَامٌّ عَنْهُمَا جُمْلَةً، فَهُمَا زَائِدَانِ حُكْمًا وَشَرْعًا عَلَى الْأَخْبَارِ الَّتِي فِيهَا النَّهْيُ عَنْ الشُّرْبِ فَقَطْ أَوْ الْأَكْلِ وَالشُّرْبِ فَقَطْ، وَالزِّيَادَةُ فِي الْحُكْمِ لَا يَحِلُّ خِلَافُهَا.

فَإِنْ قِيلَ: فَقَدْ جَاءَ أَنَّ الذَّهَبَ وَالْحَرِيرَ «حَرَامٌ عَلَى ذُكُورِ أُمَّتِي حِلٌّ لِإِنَاثِهَا» قُلْنَا: نَعَمْ، وَحَدِيثُ النَّهْيِ عَنْ آنِيَةِ الذَّهَبِ وَالْفِضَّةِ مُسْتَثْنًى مِنْ إبَاحَةِ الذَّهَبِ لِلنِّسَاءِ، لِأَنَّهُ أَقَلُّ مِنْهُ، وَلَا بُدَّ مِنْ اسْتِعْمَالِ جَمِيعِ الْأَخْبَارِ، وَلَا يُوصَلُ إلَى اسْتِعْمَالِهَا إلَّا هَكَذَا، وَهُمْ قَدْ فَعَلُوا هَذَا فِي الشُّرْبِ فِي إنَاءِ الذَّهَبِ وَالْفِضَّةِ، فَإِنَّهُمْ مَنَعُوا النِّسَاءَ مِنْ ذَلِكَ وَاسْتَثْنَوْهُ

ple regarding drinking from gold and silver vessels by prohibiting women from their use, thereby making an exception to the general permissibility. If it is objected: The Prophet—peace and blessings of Allah be upon him—authentically stated that "a vessel does not render anything lawful or unlawful," we affirm this truth and uphold it. The water in gold and silver vessels is indeed lawful to drink and use for purification. What is forbidden is the act of using such vessels. Nevertheless, since drinking from them or purifying with them necessarily entails disobedience—by employing prohibited vessels—the one who does this is explicitly described as drawing into his belly the fire of Hell. Moreover, during ablution or ritual bath, he disobeys Allah Almighty through this very act of purification. It is false to claim that disobedience can substitute for obedience, or that an unlawful purification fulfills an obligatory one. We further challenge them: It is astonishing that you cite this hadith against us while we uphold it and you contradict it! Abū Ḥanīfa and Al-Shāfiʿī prohibit ablution and ritual bath with water from a vessel that once held wine—even absent any trace in the water—thus deeming the vessel to render the water unlawful, contrary to the authenticated hadith. As for Mālik, he prohibits date wine stored in gourds or pitch-coated vessels, thereby invalidating this report in which the hadith is mentioned. It is authentically transmitted from ʿĀ'isha—may Allah be pleased with her—that jewelry is permissible for women, while silver vessels or silver-plated ones are forbidden to them. This is our doctrine, and with Allah Almighty lies all success.

مِنْ إبَاحَةِ الذَّهَبِ لَهُنَّ. فَإِنْ قِيلَ: فَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّ ظَرْفًا لَا يَحِلُّ شَيْئًا وَلَا يُحَرِّمُ شَيْئًا» قُلْنَا نَعَمْ، هَذَا حَقٌّ وَبِهِ نَقُولُ، وَالْمَاءُ الَّذِي فِي إنَاءِ الذَّهَبِ وَالْفِضَّةِ شُرْبُهُ حَلَالٌ، وَالتَّطَهُّرُ بِهِ حَلَالٌ، وَإِنَّمَا حَرُمَ اسْتِعْمَالُ الْإِنَاءِ، فَلَمَّا لَمْ يَكُنْ بُدٌّ فِي الشُّرْبِ مِنْهُ وَفِي التَّطَهُّرِ مِنْهُ مِنْ مَعْصِيَةِ اللَّهِ تَعَالَى - الَّتِي هِيَ اسْتِعْمَالُ الْإِنَاءِ الْمُحَرَّمِ - صَارَ فَاعِلُ ذَلِكَ مُجْرِجًا فِي بَطْنِهِ نَارَ جَهَنَّمَ بِالنَّصِّ، وَكَانَ فِي حَالِ وُضُوئِهِ وَغُسْلِهِ عَاصِيًا لِلَّهِ تَعَالَى بِذَلِكَ التَّطَهُّرِ نَفْسِهِ، وَمِنْ الْبَاطِلِ أَنْ تَنُوبَ الْمَعْصِيَةُ عَنْ الطَّاعَةِ، وَأَنْ يُجْزِئَ تَطْهِيرٌ مُحَرَّمٌ عَنْ تَطْهِيرٍ مُفْتَرَضٍ. ثُمَّ نَقُولُ لَهُمْ: إنَّ مِنْ الْعَجَبِ احْتِجَاجُكُمْ بِهَذَا الْخَبَرِ عَلَيْنَا، وَنَحْنُ نَقُولُ بِهِ وَأَنْتُمْ تُخَالِفُونَهُ، فَأَبُو حَنِيفَةَ وَالشَّافِعِيُّ يُحَرِّمُونَ الْوُضُوءَ وَالْغُسْلَ بِمَاءٍ فِي إنَاءٍ كَانَ فِيهِ خَمْرٌ لَمْ يَظْهَرْ مِنْهَا فِي الْمَاءِ أَثَرٌ، فَقَدْ جَعَلُوا هَذَا الْإِنَاءَ يُحَرِّمُ هَذَا الْمَاءَ، خِلَافًا لِلْخَبَرِ الثَّابِتِ وَأَمَّا مَالِكٌ فَإِنَّهُ يُحَرِّمُ النَّبِيذَ الَّذِي فِي الدُّبَّاءِ وَالْمُزَفَّتِ، وَهُوَ الَّذِي أَبْطَلَ هَذَا الْخَبَرَ وَفِيهِ وَرَدَ، وَقَدْ صَحَّ عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - إبَاحَةُ الْحُلِيِّ لِلنِّسَاءِ، وَتَحْرِيمُ الْإِنَاءِ مِنْ الْفِضَّةِ أَوْ الْإِنَاءِ الْمُفَضَّضِ عَلَيْهِنَّ. وَهُوَ قَوْلُنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The issue of the invalidity of performing wuḍūʾ and consuming the water in the land of Thamud.

[مَسْأَلَة عدم صِحَّة الْوُضُوء وَالشُّرْب مِنْ الْمَاء الَّذِي بِأَرْضِ ثَمُود]

154 - Issue: It is not permissible to perform ablution with water from the wells of Hegra - the land of Thamūd - nor to drink from them, except for the well of the she-camel, for all such uses are permissible from it.

١٥٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْوُضُوءُ مِنْ مَاءِ بِئَارِ الْحِجْرِ - وَهِيَ أَرْضُ ثَمُودَ - وَلَا الشُّرْبُ، حَاشَا بِئْرَ النَّاقَةِ فَكُلُّ ذَلِكَ جَائِزٌ مِنْهَا.

Abdurrahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: Al-Farbari narrated to us: Al-Bukhari narrated to us: Muhammad ibn Miskin narrated to us: Yahya ibn Hassan ibn Hayyan narrated to us: Sulaiman narrated from Abdullah ibn Dinar from Ibn Umar,

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ حَدَّثَنَا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُحَمَّدُ بْنُ مِسْكِينٍ ثنا يَحْيَى بْنُ حَسَّانَ بْنِ حَيَّانَ ثنا سُلَيْمَانُ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ

who said: “When the Messenger of Allah (peace be upon him) camped at Al-Hijr during the Expedition of Tabuk, he commanded them not to drink from its well nor draw water from it. They said: ’We have already kneaded dough from it and drawn water.’ The Prophet (peace be upon him) then commanded them to discard that dough and pour out that water.” And through another chain to Al-Bukhari: Ibrahim ibn Al-Mundhir Al-Hizami narrated to us: Anas ibn Iyad narrated to us from... ‘Ubayd Allāh ibn ‘Umar reported from Nāfi‘ from Ibn ‘Umar that he reported: “The people camped with the Messenger of Allah—peace be upon him—in the land of Thamūd at Al-Ḥijr, and they drew water from its well and kneaded dough. The Messenger of Allah—peace be upon him—commanded them to pour out what they had drawn from its wells, to feed the dough to the camels, and ordered them to draw water from the well that the she-camel frequented.” Abū Muḥammad said: It is well-known in Tabuk.

L3231 **The juridical ruling is that ablution (wuḍū’) and ritual bathing (ghusl) performed with juice are categorically invalid.**

L3232 155 - Issue: Any water extracted from a tree, such as rose water or others, is not permissible for performing ablution for prayer, nor for ritual bathing to fulfill any prescribed obligations. This is because it is not considered valid water, and purification is only achieved with water and soil - or pure earth when water is unavailable.

L3233 **Issue: Clarification of the waters permissible for purification therewith.**

L3234 Issue 156: Ablution for prayer and obligatory ritual baths are permissible with seawater, heated water, sun-warmed water, water melted from snow or hail or ice, or salt that originated as water and whose origin is not mineral. The proof lies in all that we mentioned being classified as “water,” for Allah the Exalted said: *“If you find no water, then use clean earth”* (4:43). Salt was originally water that solidified as snow solidifies. When the term “water” ceases to apply to any such substance, ablution for prayer and obligatory ritual baths become prohibited with it. But when it becomes water again,

عَنْ ابْنِ عُمَرَ قَالَ «لَمَّا نَزَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْحِجْرَ فِي غَزْوَةِ تَبُوكَ أَمَرَهُمْ أَنْ لَا يَشْرَبُوا مِنْ بِئْرِهَا وَلَا يَسْتَقُوا مِنْهَا، قَالُوا: قَدْ عَجَنَّا مِنْهَا وَاسْتَقَيْنَا فَأَمَرَهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَطْرَحُوا ذَلِكَ الْعَجِينَ وَيُهَرِيقُوا ذَلِكَ الْمَاءَ» . وَبِهِ إلَى الْبُخَارِيِّ: حَدَّثَنَا إبْرَاهِيمُ بْنُ الْمُنْذِرِ الْحِزَامِيُّ ثنا أَنَسُ بْنُ عِيَاضٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ أَخْبَرَهُ «أَنَّ النَّاسَ نَزَلُوا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرْضَ ثَمُودَ الْحِجْرَ وَاسْتَقَوْا مِنْ بِئْرِهَا وَاعْتَجَنُوا، فَأَمَرَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُهَرِيقُوا مَا اسْتَقَوْا مِنْ بِئَارِهَا، وَأَنْ يَعْلِفُوا الْإِبِلَ الْعَجِينَ، وَأَمَرَهُمْ أَنْ يَسْتَقُوا مِنْ الْبِئْرِ الَّتِي كَانَتْ تَرِدُهَا النَّاقَةُ» قَالَ أَبُو مُحَمَّدٍ: هِيَ مَعْرُوفَةٌ بِتَبُوكَ.

[مَسْأَلَة عدم صِحَّة الْوُضُوء وَالْغُسْل بِمَاء الْعَصِير مُطْلَقًا]

١٥٥ - مَسْأَلَةٌ: وَكُلُّ مَاءٍ اُعْتُصِرَ مِنْ شَجَرٍ، كَمَاءِ الْوَرْدِ وَغَيْرِهِ، فَلَا يَحِلُّ الْوُضُوءُ بِهِ لِلصَّلَاةِ، وَلَا الْغُسْلُ بِهِ لِشَيْءٍ مِنْ الْفَرَائِضِ، لِأَنَّهُ لَيْسَ مَاءً، وَلَا طَهَارَةَ إلَّا بِالْمَاءِ وَالتُّرَابِ أَوْ الصَّعِيدِ عِنْدَ عَدَمِهِ.

[مَسْأَلَة بَيَان الْمِيَاه الْجَائِز التَّطْهِير بِهَا]

١٥٦ - مَسْأَلَةٌ: وَالْوُضُوءُ لِلصَّلَاةِ وَالْغُسْلُ لِلْفُرُوضِ جَائِزٌ بِمَاءِ الْبَحْرِ وَبِالْمَاءِ الْمُسَخَّنِ وَالْمُشَمَّسِ وَبِمَاءٍ أُذِيبَ مِنْ الثَّلْجِ أَوْ الْبَرَدِ أَوْ الْجَلِيدِ أَوْ مِنْ الْمِلْحِ الَّذِي كَانَ أَصْلُهُ مَاءً وَلَمْ يَكُنْ أَصْلُهُ مَعْدِنًا. بُرْهَانُ ذَلِكَ أَنَّ كُلَّ مَا ذَكَرْنَا يَقَعُ عَلَيْهِ اسْمُ مَاءٍ، وَقَالَ تَعَالَى: {فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا} [النساء: ٤٣] وَالْمِلْحُ كَانَ مَاءً ثُمَّ جَمَدَ كَمَا يَجْمُدُ

the term “water” reapplies, thereby reinstating the rulings of ablution and ritual bathing as they were. This differs from mineral salt, which never at any time was water. And success is from Allah, the Exalted.[30]

L3235 There is some longstanding disagreement in part of this matter: We have been narrated from ʿAbdullāh ibn ʿUmar, ʿAbdullāh ibn ʿAmr, and Abū Hurayrah that ablution for prayer and bathing with seawater is neither permissible nor valid. Indeed, it would logically bind those who adhere to following the legal opinions of the Companions and say regarding any statement that aligns with a Companion’s view, “Such matters cannot be based on personal opinion,” to adopt their position here. Likewise, those who do not affirm the generality [of rulings], since the report stating “Its water is purifying; its dead [creatures] are lawful” is inauthentic. For this reason, we have not cited it as evidence. It has also been narrated from Mujāhid that there is juristic dislike for heated water, and from Al-Shāfiʿī that there is juristic dislike for sun-warmed water. All of this is baseless, with no evidence from the Qur’an, established Sunnah, or definitive consensus. Success is from Allah, the Exalted.

An issue among the factors necessitating ablution is the loss of consciousness or sanity.

L3236–3237

L3238 Issue: The things that necessitate ablution, with nothing else requiring ablution. A group stated: The loss of mental faculties through any cause - whether insanity, fainting, or intoxication from whatever cause it may be. They declared this to be a definitive consensus. The proof lies in the fact that whoever loses their mental faculties ceases to bear religious obligations. When this occurs, their previous state of ritual purity becomes invalid. Were it not for the validity of the consensus that the ruling of major impurity does not reapply to him, it would necessarily do so. And success comes from Allah alone, the Exalted.

[30] **Qur’an references (L3234):** Qur’an 4:43 (An-Nisa); Qur’an 5:6 (Al-Ma’idah).

الثَّلْجُ، فَسَقَطَ عَنْ كُلِّ ذَلِكَ اسْمُ الْمَاءِ، فَحَرُمَ الْوُضُوءُ لِلصَّلَاةِ بِهِ وَالْغُسْلُ لِلْفُرُوضِ، فَإِذَا صَارَ مَاءً عَادَ عَلَيْهِ اسْمُ الْمَاءِ، فَعَادَ حُكْمُ الْوُضُوءِ وَالْغُسْلِ بِهِ كَمَا كَانَ، وَلَيْسَ كَذَلِكَ الْمِلْحُ الْمَعْدِنِيُّ، لِأَنَّهُ لَمْ يَكُنْ قَطُّ مَاءً. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَفِي بَعْضِ هَذَا خِلَافٌ قَدِيمٌ: رُوِّينَا عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ وَعَبْدِ اللَّهِ بْنِ عَمْرٍو وَأَبِي هُرَيْرَةَ أَنَّ الْوُضُوءَ لِلصَّلَاةِ وَالْغُسْلَ مِنْ مَاءِ الْبَحْرِ لَا يَجُوزُ وَلَا يُجْزِئُ، وَلَقَدْ كَانَ يَلْزَمُ مَنْ يَقُولُ بِتَقْلِيدِ الصَّاحِبِ وَيَقُولُ إذَا وَافَقَهُ قَوْلُهُ: " مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ " أَنْ يَقُولَ بِقَوْلِهِمْ هَهُنَا. وَكَذَلِكَ مَنْ لَمْ يَقُلْ بِالْعُمُومِ، لِأَنَّ الْخَبَرَ «هُوَ الطَّهُورُ مَاؤُهُ الْحِلُّ مَيْتَتُهُ» لَا يَصِحُّ. وَلِذَلِكَ لَمْ نَحْتَجَّ بِهِ. وَرُوِيَ عَنْ مُجَاهِدٍ الْكَرَاهَةُ لِلْمَاءِ الْمُسَخَّنِ وَعَنْ الشَّافِعِيِّ الْكَرَاهَةُ لِلْمَاءِ الْمُشَمَّسِ، وَكُلُّ هَذَا لَا مَعْنَى لَهُ، وَلَا حُجَّةَ لَا فِي قُرْآنٍ أَوْ سُنَّةٍ ثَابِتَةٍ أَوْ إجْمَاعٍ مُتَيَقَّنٍ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مِنْ مُوجِبَاتِ الْوُضُوءِ ذَهَابُ الْعَقْلِ]

مَسْأَلَةٌ: الْأَشْيَاءُ الْمُوجِبَةُ لِلْوُضُوءِ وَلَا يُوجِبُ الْوُضُوءَ غَيْرُهَا. قَالَ قَوْمٌ: ذَهَابُ الْعَقْلِ بِأَيِّ شَيْءٍ ذَهَبَ، مِنْ جُنُونٍ أَوْ إغْمَاءٍ أَوْ سُكْرٍ مِنْ أَيِّ شَيْءٍ سَكِرَ. وَقَالُوا هَذَا إجْمَاعٌ مُتَيَقَّنٌ. وَبُرْهَانُ ذَلِكَ أَنَّ مَنْ ذَهَبَ عَقْلُهُ سَقَطَ عَنْهُ الْخِطَابُ، وَإِذَا كَانَ كَذَلِكَ فَقَدْ بَطَلَتْ حَالُ طَهَارَتِهِ الَّتِي كَانَ فِيهَا، وَلَوْلَا صِحَّةُ الْإِجْمَاعِ أَنَّ حُكْمَ جَنَابَتِهِ لَا يَرْجِعُ عَلَيْهِ لَوَجَبَ أَنْ يَرْجِعَ عَلَيْهِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L3239 Abū Muḥammad said: It is not as they claimed. As for the assertion of consensus, it is invalid. We have not found any statement from any of the Companions or any of the Successors on this matter, except from three individuals only: Ibrāhīm al-Nakhaʿī—though the chain of transmission to him is weak—Ḥammād, and al-Ḥasan. From two of them, ablution is reported, and from the third, the obligation of the full bath. It has been narrated to us from Saʿīd ibn Manṣūr, from Suwayd ibn Saʿīd al-Ḥadathānī and Hushaym. Suwayd said: Mughīrah informed us from Ibrāhīm regarding one afflicted by insanity who regains sanity: he performs ablution. Hushaym reported the same from some of his companions, from Ibrāhīm. From the chain of ʿAbd al-Razzāq, from Maʿmar, from Ḥammād ibn Abī Sulaymān, who said: When the insane person regains sanity, he performs ablution as for prayer. From the chain of ʿAbd al-Razzāq, from Hishām ibn Ḥassān, from al-Ḥasan al-Baṣrī, who said: When the insane person regains sanity, he bathes. So where is the consensus? Would that I knew! If they say: We analogized it to sleep, we say: The analogy is invalid. However, you have agreed with us that it does not necessitate one of the two purifications, which is the full bath, so analogize the omission of the other—ablution—to its omission. This is an analogy that contradicts your analogy. Sleep does not resemble fainting, insanity, or intoxication, so it cannot be analogized to them. They have agreed that his state of consecration, fasting, or any of his contracts are not invalidated. From where then do they derive the invalidation of his ablution without a textual proof for that? The well-established report from the Messenger of Allah—peace and blessings be upon him—through the chain of ʿĀ'ishah, the Mother of the Believers, states: "During his illness in which he passed away, he—peace be upon him—intended to go out for prayer but fainted. When he regained consciousness, he bathed. She did not mention ablution; his bathing was merely to regain strength for going out."

قَالَ أَبُو مُحَمَّد: وَلَيْسَ كَمَا قَالُوا، أَمَّا دَعْوَى الْإِجْمَاعِ فَبَاطِلٌ، وَمَا وَجَدْنَا فِي هَذَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ كَلِمَةً وَلَا عَنْ أَحَدٍ التَّابِعِينَ، إلَّا عَنْ ثَلَاثَةِ نَفَرٍ: إبْرَاهِيمُ النَّخَعِيُّ - عَلَى أَنَّ الطَّرِيقَ إلَيْهِ وَاهِيَةٌ وَحَمَّادٌ وَالْحَسَنُ فَقَطْ، عَنْ اثْنَيْنِ مِنْهُمْ الْوُضُوءُ وَعَنْ الثَّالِثِ إيجَابُ الْغُسْلِ، رُوِّينَا عَنْ سَعِيدِ بْنِ مَنْصُورٍ عَنْ سُوَيْدِ بْنِ سَعِيدٍ الْحَدَثَانِيِّ وَهُشَيْمٍ، قَالَ سُوَيْد أَخْبَرَنَا مُغِيرَةُ عَنْ إبْرَاهِيمَ فِي الْمَجْنُونِ إذَا أَفَاقَ: يَتَوَضَّأُ، وَقَالَ هُشَيْمٌ عَنْ بَعْضِ أَصْحَابِهِ عَنْ إبْرَاهِيمَ مِثْلَهُ، وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ قَالَ: إذَا أَفَاقَ الْمَجْنُونُ تَوَضَّأَ وُضُوءَهُ لِلصَّلَاةِ، وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: إذْ أَفَاقَ الْمَجْنُونُ اغْتَسَلَ. فَأَيْنَ الْإِجْمَاعُ؟ لَيْتَ شِعْرِي؟ فَإِنْ قَالُوا: قِسْنَاهُ عَلَى النَّوْمِ، قُلْنَا: الْقِيَاسُ بَاطِلٌ، لَكِنْ قَدْ وَافَقْتُمُونَا عَلَى أَنَّهُ لَا يُوجِبُ إحْدَى الطَّهَارَتَيْنِ وَهِيَ الْغُسْلُ، فَقِيسُوا عَلَى سُقُوطِهَا سُقُوطَ الْأُخْرَى وَهِيَ الْوُضُوءُ، فَهَذَا قِيَاسٌ، يُعَارِضُ قِيَاسَكُمْ، وَالنَّوْمُ لَا يُشْبِهُ الْإِغْمَاءَ وَلَا الْجُنُونَ وَلَا السُّكْرَ فَيُقَاسُ عَلَيْهِ، وَقَدْ اتَّفَقُوا عَلَى أَنَّهُ لَا يُبْطِلُ إحْرَامُهُ وَلَا صِيَامُهُ وَلَا شَيْءَ مِنْ عُقُودِهِ، فَمِنْ أَيْنَ لَهُمْ إبْطَالُ وُضُوئِهِ بِغَيْرِ نَصٍّ فِي ذَلِكَ؟ وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْخَبَرُ الْمَشْهُورُ الثَّابِتُ مِنْ طَرِيقِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، «أَنَّهُ - عَلَيْهِ السَّلَامُ - فِي عِلَّتِهِ الَّتِي مَاتَ فِيهَا أَرَادَ الْخُرُوجَ لِلصَّلَاةِ فَأُغْمِيَ عَلَيْهِ، فَلَمَّا أَفَاقَ اغْتَسَلَ، وَلَمْ تَذْكُرْ وُضُوءًا وَإِنَّمَا كَانَ غُسْلُهُ لِيَقْوَى عَلَى الْخُرُوجِ فَقَطْ» .

A matter among the nullifiers of ablution is sleep absolutely.

[مَسْأَلَة مِنْ مُوجِبَات الْوُضُوء النوم مُطْلَقًا]

L3240–3241

L3242 Issue: Sleep in itself is a ritual impurity that invalidates wudu, whether little or much, while sitting, standing, in prayer or otherwise, while bowing,

مَسْأَلَةٌ: وَالنَّوْمُ فِي ذَاتِهِ حَدَثٌ يَنْقُضُ الْوُضُوءَ سَوَاءٌ قَلَّ أَوْ كَثُرَ، قَاعِدًا أَوْ قَائِمًا، فِي صَلَاةٍ أَوْ غَيْرِهَا، أَوْ رَاكِعًا كَذَلِكَ أَوْ سَاجِدًا كَذَلِكَ أَوْ مُتَّكِئًا أَوْ مُضْطَجِعًا، أَيْقَنَ مَنْ حَوَالَيْهِ أَنَّهُ لَمْ يُحْدِثْ أَوْ لَمْ يُوقِنُوا. بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ يُونُسُ بْنُ عَبْدِ اللَّهِ وَعَبْدُ اللَّهِ بْنُ رَبِيعٍ قَالَا: ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى وَيَحْيَى بْنُ آدَمَ وَقُتَيْبَةُ بْنُ سَعِيدٍ قَالَ مُحَمَّدٌ ثنا شُعْبَةُ وَقَالَ قُتَيْبَةُ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ وَقَالَ يَحْيَى ثنا سُفْيَانُ الثَّوْرِيُّ وَزُهَيْرٌ هُوَ ابْنُ مُعَاوِيَةَ - وَمَالِكُ بْنُ مِغْوَلٍ وَسُفْيَانُ بْنُ عُيَيْنَةَ وَاللَّفْظُ لِيَحْيَى، ثُمَّ اتَّفَقَ شُعْبَةُ وَسُفْيَانُ وَزُهَيْرٌ وَابْنُ مِغْوَلٍ عَنْ عَاصِمِ بْنِ أَبِي النَّجُودِ عَنْ «زِرِّ بْنِ حُبَيْشٍ قَالَ: سَأَلْت صَفْوَانَ بْنَ عَسَّالٍ عَنْ الْمَسْحِ عَلَى الْخُفَّيْنِ فَقَالَ كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُنَا إذَا كُنَّا مُسَافِرِينَ أَنْ نَمْسَحَ عَلَى خِفَافِنَا وَلَا نَنْزِعَهَا ثَلَاثَةَ أَيَّامٍ مِنْ غَائِطٍ وَبَوْلٍ وَنَوْمٍ إلَّا مِنْ جَنَابَةٍ» . وَلَفْظُ شُعْبَةَ فِي رِوَايَتِهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَأْمُرُنَا إذَا كُنَّا مُسَافِرِينَ أَلَا نَنْزِعَهُ ثَلَاثًا إلَّا مِنْ جَنَابَةٍ، لَكِنْ مِنْ غَائِطٍ وَبَوْلٍ وَنَوْمٍ» فَعَمَّ - عَلَيْهِ السَّلَامُ - كُلَّ نَوْمٍ، وَلَمْ يَخُصَّ قَلِيلَهُ مِنْ كَثِيرِهِ، وَلَا حَالًا مِنْ حَالٍ، وَسَوَّى بَيْنَهُ وَبَيْنَ الْغَائِطِ وَالْبَوْلِ، وَهَذَا قَوْلُ أَبِي هُرَيْرَةَ وَأَبِي رَافِعٍ وَعُرْوَةَ بْنِ الزُّبَيْرِ وَعَطَاءٍ وَالْحَسَنِ الْبَصْرِيِّ وَسَعِيدِ بْنِ الْمُسَيِّبِ وَعِكْرِمَةَ وَالزُّهْرِيِّ وَالْمُزَنِيِّ وَغَيْرِهِمْ كَثِيرٌ.

prostrating, reclining, or lying down—even if those around him are certain he did not incur impurity or did not attain certainty. The evidence for this is what Yunus ibn ʻAbdullāh and ʻAbdullāh ibn Rabīʻ narrated to us, stating: Muḥammad ibn Muʻāwiyah narrated to us; Aḥmad ibn Shuʻayb narrated to us; Muḥammad ibn ʻAbd al-Aʻlā, Yaḥyā ibn Ādam, and Quṭaybah ibn Saʻīd narrated to us. Muḥammad said: Shuʻbah narrated to us; Quṭaybah said: Sufyān ibn ʻUyaynah narrated to us; Yaḥyā said: Sufyān al-Thawrī and Zuhayr ibn Muʻāwiyah, Mālik ibn Mighwal, Sufyān ibn ʻUyaynah (the wording is Yaḥyā's)—then Shuʻbah, Sufyān, Zuhayr, and Ibn Mighwal concurred, narrating from ʻĀṣim ibn Abī al-Najūd from Zirr ibn Ḥubaysh, who said: "I asked Ṣafwān ibn ʻAssāl about wiping over leather socks. He replied: 'Allah's Messenger—peace and blessings be upon him—commanded us during travel to wipe over our leather socks for three days without removing them, for defecation, urination, and sleep, except in cases of major impurity.'" Shuʻbah's narration states: "Allah's Messenger—peace and blessings be upon him—commanded us during travel not to remove them for three days except due to major impurity, but for defecation, urination, and sleep." Thus, the Prophet—peace be upon him—generalized all sleep without distinguishing its small or large amount, nor any specific posture, equating it with defecation and urination. This is the view of Abū Hurayrah, Abū Rāfiʻ, ʻUrwah ibn al-Zubayr, ʻAṭāʼ, al-Ḥasan al-Baṣrī, Saʻīd ibn al-Musayyib, ʻIkrimah, al-Zuhrī, al-Muzanī, and many others.

وَذَهَبَ الْأَوْزَاعِيُّ إلَى أَنَّ النَّوْمَ لَا يَنْقُضُ الْوُضُوءَ كَيْف كَانَ. وَهُوَ قَوْلٌ صَحِيحٌ عَنْ جَمَاعَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَعَنْ ابْنِ عُمَرَ وَعَنْ مَكْحُولٍ وَعَبِيدَةَ السَّلْمَانِيِّ نَذْكُرُ بَعْضَ ذَلِكَ بِإِسْنَادِهِ؛ لِأَنَّ الْحَاضِرِينَ مِنْ خُصُومِنَا لَا يَعْرِفُونَهُ، وَلَقَدْ ادَّعَى بَعْضُهُمْ الْإِجْمَاعَ عَلَى خِلَافِهِ جَهْلًا وَجُرْأَةً.

L3243 Al-Awzāʻī maintained that sleep does not nullify ablution regardless of its manner. This is a sound position reported from a group of the Companions—may Allah be pleased with them—as well as from Ibn ʻUmar, Makhūl, and ʻUbaydah al-Salmānī. We shall mention some of this with its chain of transmission, for our contemporary adversaries remain unaware of it, though some of them have ignorantly and presumptuously claimed consensus opposing it.

L3244–3245 Muhammad ibn Sa’id ibn Nabaat narrated to us, Ahmad ibn ’Awnillāh narrated to us, Qasim ibn Asbagh narrated to us, Muhammad ibn Abd al-Salam al-Khushani narrated to us, Muhammad ibn Bashshar narrated to us, Yahya ibn Sa’id al-Qattan narrated to us, Shu’bah narrated from Qatadah from Anas ibn Malik, who said: “The Companions of the Messenger of Allah (peace be upon him) would wait for the prayer and lie down on their sides. Some of them would sleep, then they would stand for the prayer.”

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا أَحْمَدُ بْنُ عَوْنِ اللَّهِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ ثنا شُعْبَةُ عَنْ قَتَادَةَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ “ كَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْتَظِرُونَ الصَّلَاةَ فَيَضَعُونَ جُنُوبَهُمْ فَمِنْهُمْ مَنْ يَنَامُ ثُمَّ يَقُومُونَ إِلَى الصَّلَاةِ ”.

L3246 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us; Abdul Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to us; Yahya ibn Habib al-Harithi narrated to us; Khalid—that is, Ibn al-Harith—narrated to us; Shu‘bah narrated from Qatadah, who said: I heard Anas saying, “The Companions of Allah’s Messenger—peace and blessings be upon him—would sleep, then pray without renewing ablution.” I asked Qatadah: Did you hear this from Anas? He replied: Yes, by Allah. Abu Muhammad remarked: If it were permissible to definitively assert consensus on matters where universal agreement cannot be ascertained, this case would necessitate such an assertion—unlike those false claims where those without religious commitment indiscriminately allege consensus. Dawud ibn Ali held that sleep invalidates ablution only when lying down—a view attributed to ‘Umar ibn al-Khattab (may Allah be pleased with him) and Ibn Abbas, though unauthenticated. It is reliably transmitted from Ibn ‘Umar, Ibrahim al-Nakha‘i, ‘Ata’, al-Layth, Sufyan al-Thawri, and al-Hasan ibn Hayy. Abu Hanifah maintained that sleep invalidates ablution only when reclining, lying flat, or leaning on one buttock or thigh—not when prostrating, standing, sitting upright, or bowing, regardless of duration. Abu Yusuf stated: If one sleeps unintentionally while prostrating, ablution remains valid, but if done intentionally, it invalidates the ablution. This is despite his general position of not distinguishing between intentional and involuntary acts in matters that nullify ablution or prayer otherwise. This opinion has no known precedent among earlier scholars except some reports attributed to Hammad ibn Abi Sulayman and al-Hakam, though we do not know how they articulated it.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ حَبِيبٍ الْحَارِثِيُّ ثنا خَالِدٌ هُوَ ابْنُ الْحَارِثِ - ثنا شُعْبَةُ عَنْ قَتَادَةَ قَالَ سَمِعْتُ أَنَسًا يَقُولُ “ كَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنَامُونَ ثُمَّ يُصَلُّونَ وَلَا يَتَوَضَّئُونَ ” فَقُلْتُ لِقَتَادَةَ: سَمِعْتَه مِنْ أَنَسٍ؟ قَالَ إِي وَاَللَّهِ. قَالَ أَبُو مُحَمَّد: لَوْ جَازَ الْقَطْعُ بِالْإِجْمَاعِ فِيمَا لَا يُتَيَقَّنُ أَنَّهُ لَمْ يَشِذَّ عَنْهُ أَحَدٌ لَكَانَ هَذَا يَجِبُ أَنْ يُقْطَعَ فِيهِ بِأَنَّهُ إجْمَاعٌ، لَا لِتِلْكَ الْأَكَاذِيبِ الَّتِي لَا يُبَالِي مَنْ لَا دِينَ لَهُ بِإِطْلَاقِ دَعْوَى الْإِجْمَاعِ فِيهَا. وَذَهَبَ دَاوُد بْنُ عَلِيٍّ إلَى أَنَّ النَّوْمَ لَا يَنْقُضُ الْوُضُوءَ إلَّا نَوْمَ الْمُضْطَجِعِ فَقَطْ، وَهُوَ قَوْلٌ رُوِيَ عَنْ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - وَعَنْ ابْنِ عَبَّاسٍ، وَلَمْ يَصِحَّ عَنْهُمَا، وَعَنْ ابْنِ عُمَرَ صَحَّ عَنْهُ، وَصَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ وَعَنْ عَطَاءٍ وَاللَّيْثِ وَسُفْيَانَ الثَّوْرِيِّ وَالْحَسَنِ بْنِ حَيٍّ. وَذَهَبَ أَبُو حَنِيفَةَ إلَى أَنَّهُ لَا يَنْقُضُ النَّوْمُ الْوُضُوءَ إلَّا أَنْ يَضْطَجِعَ أَوْ يَتَّكِئَ أَوْ مُتَوَرِّكًا عَلَى إحْدَى أَلْيَتَيْهِ أَوْ إحْدَى وَرِكَيْهِ فَقَطْ، وَلَا يَنْقُضُهُ سَاجِدًا أَوْ قَائِمًا أَوْ قَاعِدًا أَوْ رَاكِعًا، طَالَ ذَلِكَ أَوْ قَصُرَ. وَقَالَ أَبُو يُوسُفَ: إنْ نَامَ سَاجِدًا غَيْرَ مُتَعَمِّدٍ فَوُضُوءُهُ بَاقٍ، وَإِنْ تَعَمَّدَ ذَلِكَ بَطَلَ وُضُوءُهُ، وَهُوَ لَا يُفَرِّقُ بَيْنَ الْعَمْدِ وَالْغَلَبَةِ فِيمَا يَنْقُضُ الْوُضُوءَ وَالصَّلَاةَ مِنْ غَيْرِ هَذَا،

وَهُوَ قَوْلٌ لَا نَعْلَمُهُ عَنْ أَحَدٍ مِنْ الْمُتَقَدِّمِينَ إلَّا أَنَّ بَعْضَهُمْ ذَكَرَ ذَلِكَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ وَالْحَكَمِ، وَلَا نَعْلَمُ كَيْفَ قَالَا.

L3247–3249 وَقَالَ مَالِكٌ وَأَحْمَدُ بْنُ حَنْبَلٍ: مَنْ نَامَ نَوْمًا يَسِيرًا وَهُوَ قَاعِدٌ لَمْ يَنْتَقِضْ وُضُوءُهُ وَكَذَلِكَ النَّوْمُ الْقَلِيلُ لِلرَّاكِبِ، وَقَدْ رُوِيَ عَنْهُ نَحْوَ ذَلِكَ فِي السُّجُودِ أَيْضًا، وَرَأْيٍ أَيْضًا فِيمَا عَدَا هَذِهِ الْأَحْوَالِ أَنَّ قَلِيلَ النَّوْمِ وَكَثِيرَهُ يَنْقُضُ الْوُضُوءَ، وَهُوَ قَوْلُ الزُّهْرِيِّ وَرَبِيعَةَ، وَذُكِرَ عَنْ ابْنِ عَبَّاسٍ وَلَمْ يَصِحَّ. وَقَالَ الشَّافِعِيُّ: جَمِيعُ النَّوْمِ يَنْقُضُ الْوُضُوءَ، قَلِيلُهُ وَكَثِيرُهُ إلَّا مِنْ نَامَ جَالِسًا غَيْرَ زَائِلٍ عَنْ مُسْتَوَى الْجُلُوسِ، فَهَذَا لَا يَنْتَقِضُ وُضُوءُهُ، طَالَ نَوْمُهُ أَوْ قَصُرَ، وَمَا نَعْلَمُ هَذَا التَّقْسِيمَ يَصِحُّ عَنْ أَحَدٍ مِنْ الْمُتَقَدِّمِينَ، إلَّا أَنَّ بَعْضَ النَّاسِ ذَكَرَ ذَلِكَ عَنْ طَاوُسٍ وَابْنِ سِيرِينَ وَلَا نُحَقِّقُهُ.

L3250 قَالَ أَبُو مُحَمَّد: احْتَجَّ مَنْ لَمْ يَرَ النَّوْمَ حَدَثًا بِالثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ «أَنَّهُ كَانَ يَنَامُ وَلَا يُعِيدُ وُضُوءًا ثُمَّ يُصَلِّي» . قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ، لِأَنَّ «عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - ذَكَرَتْ أَنَّهَا قَالَتْ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَتَنَامُ قَبْلَ أَنْ تُوتِرَ؟ قَالَ: إنَّ عَيْنَيَّ تَنَامَانِ وَلَا يَنَامُ قَلْبِي» فَصَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - بِخِلَافِ النَّاسِ فِي ذَلِكَ، وَصَحَّ أَنَّ نَوْمَ الْقَلْبِ الْمَوْجُودِ مِنْ كُلِّ مَنْ دُونَهُ هُوَ النَّوْمُ الْمُوجِبُ لِلْوُضُوءِ، فَسَقَطَ هَذَا الْقَوْلُ. وَلِلَّهِ الْحَمْدُ.

L3251 وَوَجَدْنَا مِنْ حُجَّةِ مَنْ لَا يَرَى الْوُضُوءَ مِنْ النَّوْمِ إلَّا مِنْ الِاضْطِجَاعِ حَدِيثًا رُوِيَ فِيهِ «إنَّمَا الْوُضُوءُ عَلَى مَنْ نَامَ مُضْطَجِعًا فَإِنَّهُ إذَا اضْطَجَعَ اسْتَرْخَتْ مَفَاصِلُهُ» وَحَدِيثًا آخَرَ فِيهِ «أَعَلَيَّ فِي هَذَا وُضُوءٌ يَا رَسُولَ اللَّهِ؟ قَالَ: لَا إلَّا أَنْ تَضَعَ جَنْبَك» وَحَدِيثًا آخَرَ

Malik and Ahmad ibn Hanbal said: Whoever sleeps a slight sleep while sitting does not invalidate his ablution, and similarly the slight sleep of a rider. A similar report is attributed to him regarding prostration as well. There is also an opinion concerning other circumstances besides these situations that both slight sleep and abundant sleep invalidate ablution. This is the statement of al-Zuhri and Rabiʿah, and it is mentioned from Ibn Abbas though it is not authenticated. Al-Shafiʿi said: All sleep invalidates ablution, whether little or much, except for one who sleeps while sitting... If one temporarily moves away from the sitting posture, his ablution is not invalidated, even if he sleeps, whether briefly or at length. We are unaware of this distinction being reliably transmitted from any of the early scholars, though certain narrators have attributed it to Ṭāwūs and Ibn Sīrīn, and we do not authenticate it.

Abu Muhammad said: Those who do not regard sleep as a ritual impurity cited as evidence what is established from the Messenger of Allah—peace and blessings be upon him—that "he would sleep and not repeat his wudu, then pray." Abu Muhammad said: This provides no proof for them, because Aisha—may Allah be pleased with her—narrated that she asked the Messenger of Allah—peace and blessings be upon him—"Do you sleep before praying Witr?" He replied: "My eyes sleep but my heart does not sleep." Thus, it is confirmed that he—peace and blessings be upon him—differed from other people in this matter, and it is confirmed that the sleep of the heart—which occurs in everyone besides him—is the sleep that obligates wudu. Therefore, this opinion is invalidated. All praise belongs to Allah.

We found among the arguments of those who deem ablution obligatory only after sleeping in a reclining position several narrations: one stating "Ablution is only incumbent upon those who sleep lying down, for when one reclines, his joints loosen;" another where a companion asked "Does this require ablution, O Messenger of God?" to which he replied "No, unless you lie on your side;" and a third stating "Whoever lies on his side must per-

فِيهِ «مَنْ وَضَعَ جَنْبَهُ فَلْيَتَوَضَّأْ» . قَالَ أَبُو مُحَمَّد: وَهَذَا كُلُّهُ لَا حُجَّةَ فِيهِ. أَمَّا الْحَدِيثُ الْأَوَّلُ فَإِنَّهُ مِنْ رِوَايَةِ عَبْدِ السَّلَامِ بْنِ حَرْبٍ عَنْ أَبِي خَالِدٍ الدَّالَانِيِّ عَنْ قَتَادَةَ عَنْ أَبِي الْعَالِيَةِ عَنْ ابْنِ عَبَّاسٍ، وَعَبْدُ السَّلَامِ ضَعِيفٌ لَا يُحْتَجُّ بِهِ، ضَعَّفَهُ ابْنُ الْمُبَارَكِ وَغَيْرُهُ، وَالدَّالَانِيُّ لَيْسَ بِالْقَوِيِّ، رُوِّينَا عَنْ شُعْبَةَ أَنَّهُ قَالَ: لَمْ يَسْمَعْ قَتَادَةُ مِنْ أَبِي الْعَالِيَةِ إِلَّا أَرْبَعَةَ أَحَادِيثَ، لَيْسَ هَذَا مِنْهَا، فَسَقَطَ جُمْلَةً وَلِلَّهِ الْحَمْدُ. وَالثَّانِي لَا تَحِلُّ رِوَايَتُهُ إِلَّا عَلَى بَيَانِ سُقُوطِهِ؛ لِأَنَّهُ رِوَايَةُ بَحْرِ بْنِ كُنَيْزٍ السَّقَّاءِ، وَهُوَ لَا خَيْرَ فِيهِ مُتَّفَقٌ عَلَى إِطْرَاحِهِ، فَسَقَطَ جُمْلَةً.

form ablution." Abu Muhammad responded: None of this constitutes valid evidence. Regarding the first narration, its chain includes Abd al-Salam ibn Harb from Abu Khalid al-Dalani from Qatada from Abu al-Aliya from Ibn Abbas. Abd al-Salam is weak and inadmissible as evidence - Ibn al-Mubarak and others weakened him. Al-Dalani lacks strength in transmission. It has been narrated to us from Shu'bah that he said: "Qatada only heard four narrations from Abu al-Aliya, and this is not among them." Thus the entire narration collapses, and all praise is due to Allah. The second narration cannot be transmitted except to demonstrate its invalidity, as its chain includes Bahr ibn Kunayz al-Saqqa - an unanimously rejected narrator of no merit - thereby rendering the entire narration invalid.

وَالثَّالِثُ رَوَاهُ مُعَاوِيَةُ بْنُ يَحْيَى وَهُوَ ضَعِيفٌ يُحَدِّثُ بِالْمَنَاكِيرِ فَسَقَطَ هَذَا الْبَابُ كُلُّهُ وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

L3252–3253 The third [narration] was reported by Mu'āwiyah ibn Yaḥyā, who is a weak narrator; he transmits objectionable narrations. Consequently, this entire chapter has been discarded, and by Allah, the Exalted, we are strengthened.

وَذَكَرُوا أَيْضًا حَدِيثًا فِيهِ «إذَا نَامَ الْعَبْدُ سَاجِدًا بَاهَى اللَّهُ بِهِ الْمَلَائِكَةَ» وَهَذَا لَا شَيْءَ؛ لِأَنَّهُ مُرْسَلٌ لَمْ يُخْبِرْ الْحَسَنَ مِمَّنْ سَمِعَهُ، ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ فِيهِ إسْقَاطُ الْوُضُوءِ عَنْهُ. وَذَكَرُوا أَيْضًا حَدِيثَيْنِ صَحِيحَيْنِ أَحَدُهُمَا عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ، وَالْآخَرُ مِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ فِيهِمَا: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخَّرَ الصَّلَاةَ حَتَّى نَامَ النَّاسُ ثُمَّ اسْتَيْقَظُوا ثُمَّ نَامُوا، ثُمَّ اسْتَيْقَظُوا، فَجَاءَ عُمَرُ فَقَالَ: الصَّلَاةُ يَا رَسُولَ اللَّهِ فَصَلَّوْا، وَلَمْ يَذْكُرْ أَنَّهُمْ تَوَضَّئُوا» . قَالَ أَبُو مُحَمَّد: وَالثَّانِي مِنْ طَرِيقِ شُعْبَةَ عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ عَنْ أَنَسٍ: «أُقِيمَتْ الصَّلَاةُ وَالنَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُنَاجِي رَجُلًا، فَلَمْ يَزَلْ يُنَاجِيه حَتَّى نَامَ أَصْحَابُهُ، ثُمَّ جَاءَ فَصَلَّى بِهِمْ» وَحَدِيثًا ثَابِتًا مِنْ طَرِيقِ عُرْوَةَ عَنْ عَائِشَةَ قَالَتْ: «أَعْتَمَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْعِشَاءِ، حَتَّى نَادَاهُ عُمَرُ: نَامَ النِّسَاءُ وَالصِّبْيَانُ، فَخَرَجَ - عَلَيْهِ السَّلَامُ -» .

L3254 They also mentioned a hadith containing: "When a servant sleeps while prostrating, Allah boasts of him to the angels." This is baseless, as it is a mursal narration since al-Ḥasan did not report from whom he heard it. Even if authentic, it would not indicate the invalidation of ablution. They also cited two authentic hadiths: one from 'Aṭā' on the authority of Ibn 'Abbās, and another through the chain of Ibn Jurayj from Nāfi' from Ibn 'Umar – both stating: "The Prophet (peace and blessings be upon him) delayed the prayer until people slept, then awoke, then slept again, then awoke. 'Umar came saying: 'The prayer, O Messenger of Allah!' So they prayed, without the narrator mentioning that they performed ablution."

Abū Muḥammad noted: The second hadith is transmitted through Shu'bah from 'Abd al-'Azīz ibn Ṣuhayb from Anas: "The iqāmah was proclaimed while the Prophet (peace and blessings be upon him) was whispering to a man. He continued whispering until his Companions fell asleep, then he came and led them in prayer." Additionally, there is an authentic hadith through 'Urwah from 'Ā'ishah, who said: "The Prophet (peace and blessings be upon him)

delayed the ‘Ishā’ prayer until ‘Umar called out to him: ‘The women and children have slept!’ So he emerged—peace and blessings be upon him—.”[31]

قَالَ أَبُو مُحَمَّد: وَكُلُّ هَذَا لَا حُجَّةَ فِيهِ أَلْبَتَّةَ لِمَنْ فَرَّقَ بَيْنَ أَحْوَالِ النَّائِمِ وَلَا بَيْنَ أَحْوَالِ النَّوْمِ، لِأَنَّهَا لَيْسَ فِي شَيْءٍ مِنْهَا ذِكْرُ حَالِ مَنْ نَامَ كَيْف نَامَ، مِنْ جُلُوسٍ أَوْ اضْطِجَاعٍ أَوْ اتِّكَاءٍ أَوْ تَوَرُّكٍ أَوْ اسْتِنَادٍ، وَإِنَّمَا يُمْكِنُ أَنْ يَحْتَجَّ بِهَا مَنْ لَا يَرَى الْوُضُوءَ مِنْ النَّوْمِ أَصْلًا، وَمَعَ ذَلِكَ فَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ؛ لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْهَا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلِمَ بِنَوْمِ مَنْ نَامَ، وَلَمْ يَأْمُرْهُ بِالْوُضُوءِ، وَلَا حُجَّةَ لَهُمْ إلَّا فِيمَا عَلِمَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَقَرَّهُ، أَوْ فِيمَا أَمَرَ بِهِ، أَوْ فِيمَا فَعَلَهُ، فَكَيْفَ وَفِي حَدِيثِ ابْنِ عُمَرَ وَعَائِشَةَ «أَنَّهُ لَمْ يَكُنْ إسْلَامٌ يَوْمَئِذٍ إلَّا بِالْمَدِينَةِ» ، فَلَوْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - عَلِمَ ذَلِكَ مِنْهُمْ لَكَانَ حَدِيثُ صَفْوَانَ نَاسِخًا لَهُ؛ لِأَنَّ إسْلَامَ صَفْوَانَ مُتَأَخِّرٌ فَسَقَطَ التَّعَلُّقُ بِهَذِهِ الْأَخْبَارِ جُمْلَةً، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L3255 Abu Muhammad said: All of this contains no evidence whatsoever for those who differentiate between the states of the sleeper or between the states of sleep, for none of these narrations mention the condition of one who slept—how he slept, whether sitting, lying down, reclining, sitting cross-legged, or leaning. These narrations could only be cited as evidence by those who reject the obligation of ritual washing after sleep entirely. Even so, they have no evidence in any of it, because none of these narrations state that the Messenger of Allah—peace be upon him—knew that someone had slept and did not order him to perform ablution. Their evidence is valid only in what the Prophet—peace be upon him—knew and approved, or in what he commanded, or in what he himself did. How could this be, when the hadith of Ibn Umar and Aisha states, “There were no conversions to Islam at that time except in Medina”? If it were established that the Prophet—peace be upon him—knew of their sleep, Safwan’s narration would abrogate the prior ruling, because Safwan’s conversion to Islam occurred later. Thus, reliance on these narrations is wholly invalidated. And success comes only from Allah, the Exalted.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ وَالشَّافِعِيِّ وَمَالِكٍ وَأَحْمَدَ فَلَا مُتَعَلَّقَ لِمَنْ ذَهَبَ إلَى شَيْءٍ مِنْهَا لَا بِقُرْآنٍ وَلَا بِسُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا بِعَمَلِ صَحَابَةٍ وَلَا بِقَوْلٍ صَحَّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا بِقِيَاسٍ وَلَا بِاحْتِيَاطٍ، وَهِيَ أَقْوَالٌ مُخْتَلِفَةٌ كَمَا تَرَى لَيْسَ لِأَحَدٍ مِنْ مُقَلِّدِيهِمْ أَنْ يَدَّعِيَ عَمَلًا إلَّا كَانَ لِخُصُومِهِ أَنْ يَدَّعِيَ لِنَفْسِهِ مِثْلَ ذَلِكَ وَقَدْ لَاحَ أَنَّ كُلَّ مَا شَغَبُوا بِهِ مِنْ أَفْعَالِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَإِنَّمَا هُوَ إيهَامٌ مُفْتَضَحٌ، لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْ الرِّوَايَاتِ أَنَّهُمْ نَامُوا عَلَى الْحَالِ الَّتِي يُسْقِطُونَ الْوُضُوءَ عَمَّنْ نَامَ كَذَلِكَ، فَسَقَطَتْ الْأَقْوَالُ كُلُّهَا مِنْ طَرِيقِ السُّنَنِ إلَّا قَوْلَنَا. وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L3256–3257 As for the statements of Abū Ḥanīfah, al-Shāfiʿī, Mālik, and Aḥmad, there is no basis for those who adhere to any of them—neither in the Qur’ān, nor in a sound or unsound Sunnah, nor in the practice of the Companions (may Allah be pleased with them), nor any authentically transmitted statement from a single Companion (may Allah be pleased with them), nor in analogical reasoning, nor precaution. These are conflicting opinions, as you observe, and no follower of theirs can claim a practice without their opponents making the same claim for themselves. It has become evident that whatever actions of the Companions (may Allah be pleased with them) they objected with are nothing but an exposed illusion, for none of the narrations indicate that the Companions slept in the state for which these scholars invalidate ablution for one who sleeps thus. Consequently, all these opinions are invalidated

[31] **Hadith references (L3254):** Sahih Muslim 376b.

through the Sunnah's sources except our own. All praise is due to Allah, Lord of the worlds.

L3258–3260

Abū Muḥammad said: As for the perspective of rational analysis, sleep cannot depart from one of two aspects with no third alternative existing for them: either sleep constitutes a ritual impurity state or it does not. If it is not a ritual impurity state, then whether minimal or extensive, in any condition, it does not invalidate ablution—and this opposes the opponents' position. If it constitutes a ritual impurity state, then whether minimal or extensive, in any condition, it invalidates ablution—and this is our doctrine. Thus, it is established that ruling to differentiate between sleep's various states is erroneous, an unfounded presumption without evidence, and a claim lacking proof. Should someone argue: "Sleep itself is not a ritual impurity state, but rather we fear one might experience a ritual impurity state during it," we respond: This has no basis in any aspect of the matter, for the occurrence of a ritual impurity state is possible during the slightest sleep, just as it is possible during heavy sleep. It may occur while sitting as readily as while reclining. Indeed, a ritual impurity state may even occur while awake. The ritual impurity state is not an act of duration, but occurs in the blink of an eye. It is conceivable that extensive sleep while reclining involves no ritual impurity state, while a ritual impurity state occurs during the slightest sleep of one sitting. Thus, this argument is entirely devoid of benefit. Moreover, the mere fear of a ritual impurity state does not constitute an actual ritual impurity state, nor does it invalidate ablution. Ablution is only invalidated by certainty of the ritual impurity state's occurrence. Success comes through Allah, the Exalted. Since the matter stands as we have clarified, there remains only one of two scenarios: either the fear of the occurrence of the ritual impurity state itself constitutes a ritual impurity state, thereby making both minimal and extensive sleep necessitate ablution's invalidation because the fear of impurity is ongoing within it; or... The fear of impurity that is not actual impurity—thus sleep, whether a little or a lot, does not invalidate ablution. The assertions of these individuals are invalidated in all circumstances with certain knowledge, free from doubt. Certain groups have mentioned hadiths—some authentic and others inauthentic—which we must clarify with

قَالَ أَبُو مُحَمَّد: وَأَمَّا مِنْ طَرِيقِ النَّظَرِ فَإِنَّهُ لَا يَخْلُو النَّوْمُ مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا: إِمَّا أَنْ يَكُونَ النَّوْمُ حَدَثًا وَإِمَّا أَنْ لَا يَكُونَ حَدَثًا، فَإِنْ كَانَ لَيْسَ حَدَثًا فَقَلِيلُهُ وَكَثِيرُهُ، كَيْفَ كَانَ لَا يَنْقُضُ الْوُضُوءَ، وَهَذَا خِلَافُ قَوْلِهِمْ، وَإِنْ كَانَ حَدَثًا فَقَلِيلُهُ وَكَثِيرُهُ - كَيْفَ كَانَ - يَنْقُضُ الْوُضُوءَ، وَهَذَا قَوْلُنَا فَصَحَّ أَنَّ الْحُكْمَ بِالتَّفْرِيقِ بَيْنَ أَحْوَالِ النَّوْمِ خَطَأٌ وَتَحَكُّمٌ بِلَا دَلِيلٍ، وَدَعْوَى لَا بُرْهَانَ عَلَيْهَا. فَإِنْ قَالَ قَائِلٌ: إِنَّ النَّوْمَ لَيْسَ حَدَثًا، وَإِنَّمَا يُخَافُ أَنْ يُحْدِثَ فِيهِ الْمَرْءُ، قُلْنَا لَهُمْ: هَذَا لَا مُتَعَلَّقَ لَكُمْ بِشَيْءٍ مِنْهُ، لِأَنَّ الْحَدَثَ مُمْكِنٌ كَوْنُهُ مِنَ الْمَرْءِ فِي أَخَفِّ مَا يَكُونُ مِنَ النَّوْمِ، كَمَا هُوَ مُمْكِنٌ أَنْ يَكُونَ مِنْهُ فِي النَّوْمِ الثَّقِيلِ وَمُمْكِنٌ أَنْ يَكُونَ مِنَ الْجَالِسِ كَمَا هُوَ مُمْكِنٌ أَنْ يَكُونَ مِنَ الْمُضْطَجِعِ، وَقَدْ يَكُونُ الْحَدَثُ مِنَ الْيَقْظَانِ، وَلَيْسَ الْحَدَثُ عَمَلًا يَطُولُ، بَلْ هُوَ كَلَمْحِ الْبَصَرِ، وَقَدْ يُمْكِنُ أَنْ يَكُونَ النَّوْمُ الْكَثِيرُ مِنَ الْمُضْطَجِعِ لَا حَدَثَ فِيهِ، وَيَكُونُ الْحَدَثُ فِي أَقَلِّ مَا يَكُونُ مِنْ نَوْمِ الْجَالِسِ، فَهَذَا لَا فَائِدَةَ لَهُمْ فِيهِ أَصْلًا، وَأَيْضًا فَإِنَّ خَوْفَ الْحَدَثِ لَيْسَ حَدَثًا وَلَا يَنْتَقِضُ بِهِ الْوُضُوءُ، وَإِنَّمَا يَنْقُضُ الْوُضُوءَ يَقِينُ الْحَدَثِ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. وَإِذِ الْأَمْرُ كَمَا ذَكَرْنَا فَلَيْسَ إِلَّا أَحَدُ أَمْرَيْنِ: إِمَّا أَنْ يَكُونَ خَوْفُ كَوْنِ الْحَدَثِ حَدَثًا، فَقَلِيلُ النَّوْمِ وَكَثِيرُهُ يُوجِبُ نَقْضَ الْوُضُوءِ، لِأَنَّ خَوْفَ الْحَدَثِ جَارٍ فِيهِ، وَإِمَّا أَنْ يَكُونَ خَوْفَ الْحَدَثِ لَيْسَ حَدَثًا، فَالنَّوْمُ قَلِيلُهُ وَكَثِيرُهُ لَا يَنْقُضُ الْوُضُوءَ وَبَطَلَتْ أَقْوَالُ هَؤُلَاءِ عَلَى كُلِّ حَالٍ بِيَقِينٍ لَا شَكَّ فِيهِ. وَقَدْ ذَكَرَ قَوْمٌ أَحَادِيثَ مِنْهَا مَا يَصِحُّ وَمِنْهَا مَا لَا يَصِحُّ، يَجِبُ أَنْ نُنَبِّهَ عَلَيْهَا بِعَوْنِ اللَّهِ تَعَالَى. مِنْهَا حَدِيثُ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا نَعَسَ أَحَدُكُمْ وَهُوَ يُصَلِّي

the help of Allah the Exalted. Among them is the hadith of ʻĀ'ishah (may Allah be pleased with her) from the Messenger of Allah (peace and blessings of Allah be upon him): "If one of you becomes drowsy during prayer, let him lie down until sleep leaves him, for when one of you prays while drowsy, he may seek forgiveness and end up cursing himself without realizing." In some versions: "He might curse himself unknowingly." Another hadith from Anas, from the Prophet (peace and blessings of Allah be upon him): "If one of you becomes drowsy during prayer, let him sleep until he becomes aware of what he recites." Abū Muḥammad said: These two are authentic and constitute evidence for our position, as they demonstrate that a drowsy person does not comprehend his recitation or speech. The prohibition against praying in such a state is absolute. Since the drowsy person is unaware of his speech, he is undeniably in a state of lost rationality. There is unanimous agreement that whoever loses rationality invalidates his ritual purity. Thus, they must logically concede that sleep similarly invalidates it. The other hadith is transmitted via Muʻāwiyah from the Prophet (peace and blessings of Allah be upon him): "The eyes are the ligature of the bowels. When the eyes sleep, the ligature is loosened." The second hadith, through ʻAlī from the Prophet (peace and blessings of Allah be upon him), states: "The eyes are the ligature of the bowels. Whoever sleeps must perform ablution."[32]

فَلْيَرْقُدْ حَتَّى يَذْهَبَ عَنْهُ النَّوْمُ، لِأَنَّ أَحَدَكُمْ إِذَا صَلَّى وَهُوَ نَاعِسٌ لَا يَدْرِي لَعَلَّهُ يَسْتَغْفِرُ فَيَسُبَّ نَفْسَهُ» ، وَفِي بَعْضِ أَلْفَاظِهِ «لَعَلَّهُ يَدْعُو عَلَى نَفْسِهِ وَهُوَ لَا يَدْرِي» وَحَدِيثُ أَنَسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا نَعَسَ أَحَدُكُمْ فِي الصَّلَاةِ فَلْيَنَمْ حَتَّى يَدْرِيَ مَا يَقْرَأُ» . قَالَ أَبُو مُحَمَّد: هَذَانِ صَحِيحَانِ، وَهُمَا حُجَّةٌ لَنَا، لِأَنَّ فِيهِمَا أَنَّ النَّاعِسَ لَا يَدْرِي مَا يَقْرَأُ وَلَا مَا يَقُولُ، وَالنَّهْيُ عَنْ الصَّلَاةِ عَلَى تِلْكَ الْحَالِ جُمْلَةً، فَإِذْ النَّاعِسُ لَا يَدْرِي مَا يَقُولُ فَهُوَ فِي حَالِ ذَهَابِ الْعَقْلِ بِلَا شَكّ، وَلَا يَخْتَلِفُونَ أَنَّ مَنْ ذَهَبَ عَقْلُهُ بَطَلَتْ طَهَارَتُهُ، فَيَلْزَمُهُمْ أَنْ يَكُونَ النَّوْمُ كَذَلِكَ. وَالْآخَرُ مِنْ طَرِيقِ مُعَاوِيَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْعَيْنَانِ وِكَاءُ السَّهِ فَإِذَا نَامَتْ الْعَيْنُ اسْتَطْلَقَ الْوِكَاءُ» وَالثَّانِي مِنْ طَرِيقِ عَلِيٍّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْعَيْنَانِ وِكَاءُ السَّهِ فَمَنْ نَامَ فَلْيَتَوَضَّأْ» .

L3261–3263 Ali ibn Ahmad said: Had both [narrations] been sound, they would have constituted the strongest evidence for our position, because they establish an obligation. Ablution is required generally due to sleep, without specifying any particular condition, nor distinguishing much sleep from little of it—but rather, by textual proof for all sleep. However, we are not among those who cite impermissible evidence to defend his opinion, and we seek refuge in Allah from that.

قَالَ عَلِيُّ بْنُ أَحْمَدَ: لَوْ صَحَّا لَكَانَا أَعْظَمَ حُجَّةً لِقَوْلِنَا، لِأَنَّ فِيهِمَا إِيجَابَ الْوُضُوءِ مِنْ النَّوْمِ جُمْلَةً، دُونَ تَخْصِيصِ حَالٍ مِنْ حَالٍ، وَلَا كَثِيرَ نَوْمٍ مِنْ قَلِيلِهِ، بَلْ مِنْ كُلِّ نَوْمٍ نَصًّا، وَلَكِنَّا لَسْنَا مِمَّنْ يَحْتَجُّ بِمَا لَا يَحِلُّ الِاحْتِجَاجُ بِهِ نَصْرًا لِقَوْلِهِ، وَمَعَاذَ اللَّهِ مِنْ ذَلِكَ.

L3264 These two narrations are discarded and it is not permissible to cite them as evidence. As for the ḥadīth of Muʿāwiyah, it is transmitted through Baqiyyah (who is weak) from Abū Bakr ibn Abī Maryam (who is noted for lying) from ʿAṭiyyah ibn Qays (who is an unknown narrator). As for the ḥadīth of ʿAlī, its

وَهَذَانِ أَثَرَانِ سَاقِطَانِ لَا يَحِلُّ الِاحْتِجَاجُ بِهِمَا. أَمَّا حَدِيثُ مُعَاوِيَةَ فَمِنْ طَرِيقِ بَقِيَّةَ وَهُوَ ضَعِيفٌ، عَنْ أَبِي بَكْرِ بْنِ أَبِي مَرْيَمَ وَهُوَ مَذْكُورٌ بِالْكَذِبِ عَنْ عَطِيَّةَ بْنِ قَيْسٍ وَهُوَ

[32] **Hadith references (L3258):** Mishkat al-Masabih 315.

transmitter is also Baqiyyah from al-Waḍīn ibn ʿAṭāʾ, and both transmitters are weak. And with Allāh, the Exalted, is success.

The question regarding pre-ejaculate, urine, and feces: from which place do they exit - the urethral opening or the anus?

159. Issue: Madhy, urine, and feces - from whichever place they exit, whether from the anus, urethra, a wound in the bladder or abdomen, other parts of the body, or the mouth.

As for pre-seminal fluid (madhy), we have mentioned in the chapter on purifying madhy in this book of ours the statement of the Messenger of Allah—peace and blessings be upon him—regarding one who experiences it: "Let him perform the ablution required for prayer." As for urine and feces, there is a certain consensus. Our statement "from whichever place they exit" is due to the generality of his command—peace be upon him—to perform ablution from both, without specifying their exit solely from the two natural outlets. These two terms [urine and feces] linguistically denote them in the language with which he—peace be upon him—addressed us, regardless of their origin. Among those who uphold our opinion here are Abu Hanifah and his disciples. There is no valid proof for those who neglect ablution from both of them if they exit from other than the natural outlets—neither from the Quran, nor an authentic nor inauthentic Sunnah, nor consensus, nor a companion's view, nor legal analogy. Rather, the Quran affirms what we have asserted. Allah the Exalted states: {Or one of you comes from defecation, or you have touched women, and you find no water...} (4:43). Feces and urine may exit from places other than the two natural outlets, yet the Exalted did not specify ablution or dry ablution for one circumstance over another, nor exempt the two natural outlets [from the ruling] in favor of others. And with Allah lies all success.[33]

[33] **Qur'an references (L3267):** Qur'an 4:43 (An-Nisa); Qur'an 5:6 (Al-Ma'idah).

مَجْهُولٌ. وَأَمَّا حَدِيثُ عَلِيٍّ فَرَاوِيهِ أَيْضًا بَقِيَّةُ عَنْ الْوَضِينِ بْنِ عَطَاءٍ، وَكِلَاهُمَا ضَعِيفٌ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الْمَذْي والبول والغائط مِنْ أَيْ مَوْضِع خرجا مِنْ الدبر والأحليل]

١٥٩ - مَسْأَلَةٌ: وَالْمَذْيُ وَالْبَوْلُ وَالْغَائِطُ مِنْ أَيِّ مَوْضِعٍ خَرَجَ مِنْ الدُّبُرِ وَالْإِحْلِيلِ أَوْ مِنْ جُرْحٍ فِي الْمَثَانَةِ أَوْ الْبَطْنِ أَوْ غَيْرِ ذَلِكَ مِنْ الْجَسَدِ أَوْ مِنْ الْفَمِ.

فَأَمَّا الْمَذْيُ فَقَدْ ذَكَرْنَا فِي بَابِ تَطْهِيرِ الْمَذْيِ مِنْ كِتَابِنَا هَذَا قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَنْ وَجَدَهُ «وَلْيَتَوَضَّأْ وُضُوءَهُ لِلصَّلَاةِ» وَأَمَّا الْبَوْلُ وَالْغَائِطُ فَإِجْمَاعٌ مُتَيَقَّنٌ، وَأَمَّا قَوْلُنَا مِنْ أَيِّ مَوْضِعٍ خَرَجَ فَلِعُمُومِ أَمْرِهِ - عَلَيْهِ السَّلَامُ - بِالْوُضُوءِ مِنْهُمَا، وَلَمْ يَخُصَّ خُرُوجَهُمَا مِنْ الْمَخْرَجَيْنِ دُونَ غَيْرِهِمَا، وَهَذَانِ الِاسْمَانِ وَاقِعَانِ عَلَيْهِمَا فِي اللُّغَةِ الَّتِي بِهَا خَاطَبَنَا - عَلَيْهِ السَّلَامُ - مِنْ حَيْثُ مَا خَرَجَا، وَمِمَّنْ قَالَ بِقَوْلِنَا هَهُنَا أَبُو حَنِيفَةَ وَأَصْحَابُهُ، وَلَا حُجَّةَ لِمَنْ أَسْقَطَ الْوُضُوءَ مِنْهُمَا إذَا خَرَجَا مِنْ غَيْرِ الْمَخْرَجَيْنِ لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا إجْمَاعٍ وَلَا قَوْلِ صَاحِبٍ وَلَا قِيَاسٍ، بَلْ الْقُرْآنُ جَاءَ بِمَا قُلْنَاهُ، قَالَ اللَّهُ تَعَالَى {أَوْ جَاءَ أَحَدٌ مِنْكُمْ مِنَ الْغَائِطِ أَوْ لامَسْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا مَاءً} [النساء: ٤٣] وَقَدْ يَكُونُ خُرُوجُ الْغَائِطِ وَالْبَوْلِ مِنْ غَيْرِ الْمَخْرَجَيْنِ، فَلَمْ يَخُصَّ تَعَالَى بِالْأَمْرِ بِالْوُضُوءِ وَالتَّيَمُّمِ مِنْ ذَلِكَ حَالًا دُونَ حَالٍ، وَلَا الْمَخْرَجَيْنِ مِنْ غَيْرِهِمَا، وَبِاَللَّهِ التَّوْفِيقُ.

[مَسْأَلَة الرِّيح الخارجة مِنْ الدبر تَنْقَضِ الْوُضُوء]

The issue of wind exiting from the anus invalidating wudu.

160 - Issue: Wind that exits exclusively from the anus (not elsewhere), whether with sound or without. This is likewise definitively certain consensus, and there is no disagreement that ablution becomes required due to silent anal wind and audible anal wind. These two terms apply solely to wind when exiting from the anus. If it exits from elsewhere, it is only called belching or sneezing. And success comes from Allah, the Most High.

١٦٠ - مَسْأَلَةٌ: وَالرِّيحُ الْخَارِجَةُ مِنْ الدُّبُرِ - خَاصَّةً لَا مِنْ غَيْرِهِ - بِصَوْتٍ خَرَجَتْ أَمْ بِغَيْرِ صَوْتٍ. وَهَذَا أَيْضًا إجْمَاعٌ مُتَيَقَّنٌ، وَلَا خِلَافَ فِي أَنَّ الْوُضُوءَ مِنْ الْفَسْوِ وَالضُّرَاطِ، وَهَذَانِ الِاسْمَانِ لَا يَقَعَانِ عَلَى الرِّيحِ أَلْبَتَّةَ إلَّا إنْ خَرَجَتْ مِنْ الدُّبُرِ، وَإِلَّا فَإِنَّمَا يُسَمَّى جُشَاءً أَوْ عُطَاسًا فَقَطْ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A ruling: Ablution is obligatory upon one who has engaged in any conjugal act for each prayer - whether obligatory or voluntary.

[مَسْأَلَة يَجِب الْوُضُوء عَلَى المستنكح بِشَيْءٍ لِكُلِّ صَلَاة فرضا أَوْ نافله]

Issue 161: Whoever has conjugal relations through any of the aforementioned means must perform ablution—without exception—for every ritual prayer, whether obligatory or supererogatory. Thereafter, no obligation rests upon him regarding anything resulting from that act which exits him during the prayer or during the period between his ablution and the prayer. His prayer is not valid unless ablution is performed at the closest possible time before performing it. One who has engaged in sexual intercourse must also wash what has exited from him of urine, feces, or pre-seminal fluid to the best of his ability, in a manner that does not entail hardship. He is exempt from whatever would cause him hardship in this regard.

١٦١ - مَسْأَلَةٌ: فَمَنْ كَانَ مُسْتَنْكِحًا بِشَيْءٍ مِمَّا ذَكَرْنَا تَوَضَّأَ - وَلَا بُدَّ - لِكُلِّ صَلَاةٍ فَرْضًا أَوْ نَافِلَةً، ثُمَّ لَا شَيْءَ عَلَيْهِ فِيمَا خَرَجَ مِنْهُ مِنْ ذَلِكَ فِي الصَّلَاةِ أَوْ فِيمَا بَيْنَ وُضُوئِهِ وَصَلَاتِهِ، وَلَا يُجْزِيهِ الْوُضُوءُ إلَّا فِي أَقْرَبِ مَا يُمْكِنُ أَنْ يَكُونَ وُضُوءُهُ مِنْ صَلَاتِهِ، وَلَا بُدَّ لِلْمُسْتَنْكِحِ أَيْضًا أَنْ يَغْسِلَ مَا خَرَجَ مِنْهُ مِنْ الْبَوْلِ وَالْغَائِطِ وَالْمَذْيِ حَسْبَ طَاقَتِهِ، مِمَّا لَا حَرَجَ عَلَيْهِ فِيهِ، وَيَسْقُطُ عَنْهُ مِنْ ذَلِكَ مَا فِيهِ عَلَيْهِ الْحَرَجُ مِنْهُ.

The proof of this is the statement of the Messenger of Allah (peace and blessings be upon him) which we previously mentioned in our discussion invalidating analogical reasoning at the beginning of this book: "When I command you with something, do from it what you are able," and the words of Allah the Exalted: "He has not placed upon you in religion any hardship" [al-Hajj:78], and His saying the Exalted: "Allah intends ease for you and does not intend hardship for you" [al-Baqarah:185]. Thus, it is confirmed that one is commanded to pray and perform ablution from minor ritual impurity, as all of this constitutes impurity. The obligation therefore requires performing what one is capable of from this - that which involves no hardship or difficulty. Since he is capable of praying and performing ablution for it

بُرْهَانُ ذَلِكَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَا قَدْ ذَكَرْنَاهُ فِي مَسْأَلَةِ إبْطَالِ الْقِيَاسِ مِنْ صَدْرِ كِتَابِنَا هَذَا، مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» وَقَوْلُ اللَّهِ تَعَالَى {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] وَقَوْله تَعَالَى {يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلا يُرِيدُ بِكُمُ الْعُسْرَ} [البقرة: ١٨٥] فَصَحَّ أَنَّهُ مَأْمُورٌ بِالصَّلَاةِ وَالْوُضُوءِ مِنْ الْحَدَثِ، وَهَذَا كُلُّهُ حَدَثٌ، فَالْوَاجِبُ أَنْ يَأْتِيَ مِنْ ذَلِكَ مَا يَسْتَطِيعُ، وَمَا لَا حَرَجَ عَلَيْهِ فِيهِ وَلَا عُسْرَ، وَهُوَ مُسْتَطِيعٌ عَلَى الصَّلَاةِ

without hardship, he must perform both. However, he cannot prevent what exits him of such discharge during prayer or between his ablution and his prayer - thus this is waived for him. The same ruling applies to washing what exits him of such discharge. Abu Muhammad said: This is the opinion of Sufyan al-Thawri and the adherents of the literalist school.[34]

وَعَلَى الْوُضُوءِ لَهَا، وَلَا حَرَجَ عَلَيْهِ فِي ذَلِكَ، فَعَلَيْهِ أَنْ يَأْتِيَ بِهِمَا، وَهُوَ غَيْرُ مُسْتَطِيعٍ لِلامْتِنَاعِ مِمَّا يَخْرُجُ عَنْهُ مِنْ ذَلِكَ فِي الصَّلَاةِ، وَفِيمَا بَيْنَ وُضُوئِهِ وَصَلَاتِهِ، فَسَقَطَ عَنْهُ، وَكَذَلِكَ الْقَوْلُ فِي غَسْلِ مَا خَرَجَ مِنْهُ مِنْ ذَلِكَ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَأَصْحَابِ الظَّاهِرِ.

L3275 Abū Ḥanīfah said: These people perform ablution for every prayer time, maintain their ablution until the beginning of the next prayer time, then perform ablution again. Mālik said: No ablution is required for that. Al-Shāfiʿī said: He performs ablution for every prescribed prayer and may pray with that ablution whatever voluntary prayers he wishes, specifically.

وَقَالَ أَبُو حَنِيفَةَ: يَتَوَضَّأُ هَؤُلَاءِ لِكُلِّ وَقْتِ صَلَاةٍ، وَيُبْقُونَ عَلَى وُضُوئِهِمْ إِلَى دُخُولِ وَقْتِ صَلَاةٍ آخَرَ فَيَتَوَضَّئُونَ. وَقَالَ مَالِكٌ: لَا وُضُوءَ عَلَيْهِ مِنْ ذَلِكَ. وَقَالَ الشَّافِعِيُّ: يَتَوَضَّأُ لِكُلِّ صَلَاةِ فَرْضٍ فَيُصَلِّي بِذَلِكَ الْوُضُوءِ مَا شَاءَ مِنَ النَّوَافِلِ خَاصَّةً.

L3276 Ali said: They only said all of this by analogy to the woman with chronic bleeding (mustahada) in accordance with each of their individual rulings regarding her, but the analogy is invalid. Even if it were valid, this [ruling] derived from it would be invalid, for what is established concerning the mustahada contradicts their claim. Rather—as we shall mention, God willing, in the chapter on the mustahada—the obligation is to perform ghusl for every obligatory prayer, or to combine Dhuhr with Asr, then Maghrib with ʻatama (Isha), and then [perform it] for Fajr. The onset of prayer time is undoubtedly not an invalidator (ḥadath). Since it is not an invalidator, it cannot nullify an established state of purity without explicit textual evidence. Malik's abandonment of the wudu that God Almighty obligated by Him and His Messenger (peace be upon him) through consensus and established texts is an impermissible error. Some have raised contentious objections by citing reports from Umar (may God be pleased with him) and Saʻid ibn al-Musayyab regarding pre-seminal fluid. Umar said: "I feel it trickling down my thigh while on the pulpit, but I do not mind it." Saʻid made a similar statement about himself during prayer. They implied that the two (may God be pleased with them) were thereby in a state of lawful wedlock.

قَالَ عَلِيٌّ: إِنَّمَا قَالُوا كُلَّ هَذَا قِيَاسًا عَلَى الْمُسْتَحَاضَةِ، عَلَى حَسْبِ قَوْلِ كُلِّ وَاحِدٍ مِنْهُمْ فِيهَا، وَالْقِيَاسُ بَاطِلٌ. ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّ الثَّابِتَ فِي الْمُسْتَحَاضَةِ هُوَ غَيْرُ مَا قَالُوهُ لَكِنَّ مَا سَنَذْكُرُهُ إِنْ شَاءَ اللَّهُ فِي بَابِ الْمُسْتَحَاضَةِ، وَهُوَ وُجُوبُ الْغُسْلِ لِكُلِّ صَلَاةِ فَرْضٍ، أَوْ لِلْجَمْعِ بَيْنَ الظُّهْرِ وَالْعَصْرِ ثُمَّ بَيْنَ الْمَغْرِبِ وَالْعَتَمَةِ. ثُمَّ لِلصُّبْحِ. وَدُخُولُ وَقْتِ صَلَاةٍ مَا لَيْسَ حَدَثًا بِلَا شَكٍّ، وَإِذَا لَمْ يَكُنْ حَدَثًا فَلَا يَنْقُضُ طَهَارَةً قَدْ صَحَّتْ بِلَا نَصٍّ وَارِدٍ فِي ذَلِكَ، وَإِسْقَاطُ مَالِكٍ الْوُضُوءَ مِمَّا قَدْ أَوْجَبَهُ اللَّهُ تَعَالَى مِنْهُ وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْهُ بِالْإِجْمَاعِ وَبِالنُّصُوصِ الثَّابِتَةِ خَطَأٌ لَا يَحِلُّ. وَقَدْ شَغَبَ بَعْضُهُمْ فِي هَذَا بِمَا رُوِّينَا عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي الْمَذْيِ. قَالَ عُمَرُ: إِنِّي لَأَجِدُهُ يَنْحَدِرُ عَلَى فَخِذِي عَلَى الْمِنْبَرِ فَمَا أُبَالِيهِ وَقَالَ سَعِيدٌ مِثْلَ ذَلِكَ عَنْ نَفْسِهِ فِي الصَّلَاةِ: فَأَوْهَمُوا أَنَّهُمَا - رَضِيَ اللَّهُ عَنْهُمَا - كَانَا مُسْتَنْكِحَيْنِ بِذَلِكَ.

L3277–3278 Abu Muhammad said: This is pure falsehood; we do not know how one

[34] **Qur'an references (L3274):** Qur'an 22:78 (Al-Hajj); Qur'an 2:185 (Al-Baqarah).

who so freely asserted it deemed it permissible, for no textual proof or evidence for this exists in any of these narrations or others. We seek refuge in Allah from boldly proceeding with such a claim. The truth in this matter is that ʻUmar did not consider ablution obligatory due to it, and similarly Ibn al-Musayyab, because the prophetic practice on this matter had not reached ʻUmar. Later, when it did reach him, he reverted to deeming ablution obligatory due to it.

L3279 Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Muḥammad ibn Abī Dulaym narrated to us: Ibn Waḍḍāḥ narrated to us: Abū Bakr ibn Abī Shaybah narrated to us: Muḥammad ibn Bishr al-ʿAbdī narrated to us: Misʿar ibn Kidām narrated to us from Muṣʿab ibn Shaybah from Abū Ḥabīb ibn Yaʿlā ibn Munyah from Ibn ʿAbbās that he, along with ʿUmar ibn al-Khaṭṭāb, came to Ubayy ibn Kaʿb. Ubayy came out to meet them and said: "I found madhy, so I washed my genital organ and performed wuḍūʾ." ʿUmar said to him: "Does that suffice?" He replied: "Yes." ʿUmar said: "Did you hear this from the Messenger of Allāh?" He replied: "Yes."

L3280 Hammam narrated to us: Ibn Mufarriḥ narrated to us, Ibn al-Aʿrabī narrated to us, al-Dabarī narrated to us, ʿAbd al-Razzāq narrated from Maʿmar, and Sufyān ibn ʿUyaynah from Zayd ibn Aslam from his father, who said: I heard ʿUmar ibn al-Khaṭṭāb say, "Indeed, something like a small pebble (referring to pre-seminal fluid) may emerge from one of us. If any of you experiences this, let him wash his penis and perform ablution." And through him to ʿAbd al-Razzāq from Sufyān al-Thawrī from Zayd ibn Aslam from his father from ʿUmar ibn al-Khaṭṭāb that he said regarding madhy: "He should wash his penis and perform the ablution required for prayer." This is the firmly established report from ʿUmar. Similarly, al-Shāfiʿī's opinion is manifestly erroneous, for it is evidently impossible that a person could be in a state of ablution and purity for a voluntary prayer they intend to perform, yet not in ablution or purity for an obligatory prayer they intend to perform. This is a position unsupported by any Quranic text, Sunnah, consensus, opinion of a Companion, or analogy. They have found no parallel for it in foundational principles, despite claiming to uphold critical analysis and analogy—yet this exemplifies the extent of their analysis. The positions of Abū Ḥanīfah, Mālik,

قَالَ أَبُو مُحَمَّد: وَهَذَا كَذِبٌ مُجَرَّدٌ، لَا نَدْرِي كَيْفَ اسْتَحَلَّهُ مَنْ أَطْلَقَ بِهِ لِسَانَهُ، لِأَنَّهُ لَمْ يَأْتِ فِي شَيْءٍ مِنْ هَذَا الْأَثَرِ وَلَا مِنْ غَيْرِهِ نَصٌّ وَلَا دَلِيلٌ بِذَلِكَ، وَنَعُوذُ بِاللَّهِ مِنْ الْإِقْدَامِ عَلَى مِثْلِ هَذَا، وَإِنَّمَا الْحَقُّ مِنْ ذَلِكَ أَنَّ عُمَرَ كَانَ لَا يَرَى الْوُضُوءَ مِنْهُ وَكَذَلِكَ ابْنُ الْمُسَيِّبِ، لِأَنَّ السُّنَّةَ فِي ذَلِكَ لَمْ تَبْلُغْ عُمَرَ ثُمَّ بَلَغَتْهُ فَرَجَعَ إلَى إيجَابِ الْوُضُوءِ مِنْهُ.

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا مُحَمَّدُ بْنُ أَبِي دُلَيْمٍ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا مُحَمَّدُ بْنُ بِشْرٍ الْعَبْدِيُّ ثنا مِسْعَرُ بْنُ كِدَامٍ عَنْ مُصْعَبِ بْنِ شَيْبَةَ عَنْ أَبِي حَبِيبِ بْنِ يَعْلَى بْنِ مُنْيَةَ عَنْ «ابْنِ عَبَّاسٍ أَنَّهُ وَعُمَرَ بْنَ الْخَطَّابِ أَتَيَا إلَى أُبَيِّ بْنِ كَعْبٍ فَخَرَجَ إلَيْهِمَا أُبَيٌّ وَقَالَ: إنِّي وَجَدْت مَذْيًا فَغَسَلْت ذَكَرِي وَتَوَضَّأْت، فَقَالَ لَهُ عُمَرُ: أَوَ يُجْزِئُ ذَلِكَ؟ قَالَ نَعَمْ. قَالَ عُمَرُ: أَسَمِعْتَهُ مِنْ رَسُولِ اللَّهِ؟ قَالَ نَعَمْ» .

حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ وَسُفْيَانُ بْنُ عُيَيْنَةَ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ أَبِيهِ قَالَ: سَمِعْت عُمَرَ بْنَ الْخَطَّابِ يَقُولُ: إنَّهُ لَيَخْرُجُ مِنْ أَحَدِنَا مِثْلُ الْجُمَانَةِ فَإِذَا وَجَدَ أَحَدُكُمْ ذَلِكَ فَلْيَغْسِلْ ذَكَرَهُ وَلْيَتَوَضَّأْ، وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ فِي الْمَذْيِ: يَغْسِلُ ذَكَرَهُ وَيَتَوَضَّأُ وُضُوءَهُ لِلصَّلَاةِ، فَهَذَا هُوَ الثَّابِتُ عَنْ عُمَرَ. وَكَذَلِكَ قَوْلُ الشَّافِعِيِّ أَيْضًا خَطَأٌ ظَاهِرٌ، لِأَنَّ مِنْ الْمُحَالِ الظَّاهِرِ أَنْ يَكُونَ إنْسَانٌ مُتَوَضِّئًا طَاهِرًا لِنَافِلَةٍ إنْ أَرَادَ أَنْ يُصَلِّيَهَا غَيْرَ مُتَوَضِّئٍ وَلَا طَاهِرٍ لِفَرِيضَةٍ إنْ أَرَادَ أَنْ يُصَلِّيَهَا، فَهَذَا قَوْلٌ لَمْ يَأْتِ بِهِ قَطُّ نَصُّ قُرْآنٍ وَلَا سُنَّةٍ وَلَا إجْمَاعٍ وَلَا قَوْلِ صَاحِبٍ وَلَا قِيَاسٍ، وَلَا وَجَدُوا لَهُ فِي الْأُصُولِ نَظِيرًا، وَهُمْ يَدَّعُونَ أَنَّهُمْ أَصْحَابُ نَظَرٍ وَقِيَاسٍ،

and al-Shāfiʿī remain entirely stripped of any evidence from the Quran, sound or weak Sunnah, consensus, opinion of a Companion, or analogy.

Issue: These cases invalidate ablution whether done intentionally, forgetfully, or under compulsion. This is the consensus except for the disputed points we mentioned, and the proof for this is established as we outlined. And success is by Allah alone, the Exalted.

Issue: A man intentionally touching specifically his own penis.

Issue 163: When a man intentionally and specifically touches his own penis with any part - whether using the inner side of his hand, the back of his hand, or his forearm - excluding his touching it with his own thigh, shin, or foot, this does not necessitate. Ablution: If a woman intentionally touches her own private part, the ruling applies equally without exception. None of these actions invalidate ablution when done forgetfully. A man intentionally touching another's penis—whether of a minor or adult, dead or alive—with any part of his body, from a mahram by blood relation or otherwise; or a woman intentionally touching another's private part—the same ruling applies equally without exception. Pleasure holds no relevance in any such instances. If such contact occurs over a thin or thick garment, whether for pleasure or otherwise, using the hand or other than the hand, intentionally or unintentionally, it does not invalidate ablution. Likewise, if touching occurs under compulsion or forgetfulness, it does not invalidate ablution.

The proof of that is what Hammam ibn Ahmad narrated to us, saying: Ibn Mufarrij narrated to us; Ibn al-Aʿrabī narrated to us; al-Dabarī narrated to us; ʿAbd al-Razzāq narrated to us, from Maʿmar, from al-Zuhrī, from ʿUrwah ibn al-Zubayr, who said: "Urwah ibn al-Zubayr and Marwan discussed the ruling on ablution. Marwan said: Busrā bint Ṣafwān related to me that she heard the Messenger of Allah—may Allah bless him and grant him peace—command the performance of ablution due to touching the genitalia."

وَهَذَا مِقْدَارُ نَظَرِهِمْ وَقِيَاسِهِمْ، وَبَقِيَ قَوْلُ أَبِي حَنِيفَةَ وَمَالِكٍ وَالشَّافِعِيِّ عَارِيًا مِنْ أَنْ تَكُونَ لَهُ حُجَّةٌ مِنْ قُرْآنٍ أَوْ سُنَّةٍ صَحِيحَةٍ أَوْ سَقِيمَةٍ أَوْ مِنْ إجْمَاعٍ أَوْ مِنْ قَوْلِ صَاحِبٍ أَوْ مِنْ قِيَاسٍ أَصْلًا ١٦٢ - مَسْأَلَةٌ: فَهَذِهِ الْوُجُوهُ تَنْقُضُ الْوُضُوءَ عَمْدًا كَانَ أَوْ نِسْيَانًا أَوْ بِغَلَبَةٍ، وَهَذَا إجْمَاعٌ إلَّا مَا ذَكَرْنَا مِمَّا فِيهِ الْخِلَافُ، وَقَامَ الْبُرْهَانُ مِنْ ذَلِكَ عَلَى مَا ذَكَرْنَا. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَسُّ الرَّجُلِ ذَكَرَ نَفْسِهِ خَاصَّةً عَمْدًا]

١٦٣ - مَسْأَلَةٌ: وَمَسُّ الرَّجُلِ ذَكَرَ نَفْسِهِ خَاصَّةً عَمْدًا بِأَيِّ شَيْءٍ مَسَّهُ مِنْ بَاطِنِ يَدِهِ أَوْ مِنْ ظَاهِرِهَا أَوْ بِذِرَاعِهِ - حَاشَا مَسِّهِ بِالْفَخِذِ أَوْ السَّاقِ أَوْ الرِّجْلِ مِنْ نَفْسِهِ فَلَا يُوجِبُ وُضُوءًا - وَمَسُّ الْمَرْأَةِ فَرْجَهَا عَمْدًا كَذَلِكَ أَيْضًا سَوَاءً سَوَاءً، وَلَا يَنْقُضُ الْوُضُوءَ شَيْءٌ مِنْ ذَلِكَ بِالنِّسْيَانِ، وَمَسِّ الرَّجُلِ ذَكَرَ غَيْرِهِ مِنْ صَغِيرٍ أَوْ كَبِيرٍ مَيِّتٍ أَوْ حَيٍّ بِأَيِّ عُضْوٍ مَسَّهُ عَمْدًا مِنْ جَمِيعِ جَسَدِهِ مِنْ ذِي رَحِمٍ مَحْرَمَةٍ أَوْ مِنْ غَيْرِهِ، وَمَسُّ الْمَرْأَةِ فَرْجَ غَيْرِهَا عَمْدًا أَيْضًا كَذَلِكَ سَوَاءً سَوَاءً، لَا مَعْنَى لِلَّذَّةِ فِي شَيْءٍ مِنْ ذَلِكَ، فَإِنْ كَانَ كُلُّ ذَلِكَ عَلَى ثَوْبٍ رَقِيقٍ أَوْ كَثِيفٍ، لِلَذَّةٍ أَوْ لِغَيْرِ لَذَّةٍ، بِالْيَدِ أَوْ بِغَيْرِ الْيَدِ، عَمْدًا أَوْ غَيْرَ عَمْدٍ، لَمْ يَنْقُضْ الْوُضُوءَ، وَكَذَلِكَ إنْ مَسَّهُ بِغَلَبَةٍ أَوْ نِسْيَانٍ فَلَا يَنْقُضُ الْوُضُوءُ.

بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ حَمَامُ بْنُ أَحْمَدَ قَالَ: ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ «تَذَاكَرَ هُوَ وَمَرْوَانُ الْوُضُوءَ، فَقَالَ مَرْوَانُ حَدَّثَتْنِي بُسْرَةُ بِنْتُ صَفْوَانَ أَنَّهَا سَمِعَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُ بِالْوُضُوءِ مِنْ مَسِّ الْفَرْجِ» .

L3286 Abu Muḥammad said: If it is said, “This is a report transmitted by al-Zuhrī from ʿAbdullāh ibn Abī Bakr ibn ʿAmr ibn Ḥazm from ʿUrwah,” we respond: This is commendable! ʿAbdullāh is reliable, and there is no disagreement that al-Zuhrī heard from ʿUrwah and kept company with him, thus transmitting it from ʿUrwah. He also transmitted it via ʿAbdullāh ibn Abī Bakr from ʿUrwah. This strengthens the report, and all praise is to Allah, Lord of the Worlds. ʿAlī said: As for Marwān, we know of no criticism against him prior to his rebellion against the Commander of the Faithful ʿAbdullāh ibn al-Zubayr (may Allah be pleased with them both). ʿUrwah never met him except before his rebellion against the latter’s brother, not after his revolt—this is beyond doubt. Busrah is renowned among the female Companions of the Messenger of Allah (peace and blessings be upon him)—those who pledged allegiance and emigrated. She is Busrah bint Ṣafwān ibn Nawfal ibn Asad ibn ʿAbd al-ʿUzzā, daughter of the brother of Waraqah ibn Nawfal. Her father was the paternal cousin of Khadījah, the Mother of the Believers, by lineage.

قَالَ أَبُو مُحَمَّدٍ: فَإِنْ قِيلَ: إنَّ هَذَا خَبَرٌ رَوَاهُ الزُّهْرِيُّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عُرْوَةَ، قُلْنَا: مَرْحَبًا بِهَذَا، وَعَبْدُ اللَّهِ ثِقَةٌ، وَالزُّهْرِيُّ لَا خِلَافَ فِي أَنَّهُ سَمِعَ مِنْ عُرْوَةَ وَجَالَسَهُ، فَرَوَاهُ عَنْ عُرْوَةَ وَرَوَاهُ أَيْضًا عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ عَنْ عُرْوَةَ، فَهَذَا قُوَّةٌ لِلْخَبَرِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ. قَالَ عَلِيٌّ: مَرْوَانُ مَا نَعْلَمُ لَهُ جُرْحَةً قَبْلَ خُرُوجِهِ عَلَى أَمِيرِ الْمُؤْمِنِينَ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ - رَضِيَ اللَّهُ عَنْهُمَا -، وَلَمْ يَلْقَهُ عُرْوَةُ قَطُّ إلَّا قَبْلَ خُرُوجِهِ عَلَى أَخِيهِ لَا بَعْدَ خُرُوجِهِ هَذَا مَا لَا شَكَّ فِيهِ، وَبُسْرَةُ مَشْهُورَةٌ مِنْ صَوَاحِبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُبَايِعَاتِ الْمُهَاجِرَاتِ - هِيَ بُسْرَةُ بِنْتُ صَفْوَانَ بْنِ نَوْفَلِ بْنِ أَسَدِ بْنِ عَبْدِ الْعُزَّى بِنْتُ أَخِي وَرَقَةَ بْنِ نَوْفَلٍ وَأَبُوهَا ابْنُ عَمِّ خَدِيجَةَ أُمِّ الْمُؤْمِنِينَ لَحًّا.

L3287 The wording of this hadith is general, encompassing all that we have mentioned. As for a man touching his private part with his shin, leg, or thigh, there is no disagreement that one is commanded to pray in a thick shirt and in a waist-wrapper and shirt. It is unavoidably necessary during prayer that his private part comes into contact with his shin, leg, or thigh. This [ruling] is exempted by the textually established consensus, thereby restricting the general applicability of this report.

وَلَفْظُ هَذَا الْحَدِيثِ عَامٌّ يَقْتَضِي كُلَّ مَا ذَكَرْنَاهُ، وَأَمَّا مَسُّ الرَّجُلِ فَرْجَ نَفْسِهِ بِسَاقِهِ وَرِجْلِهِ وَنَخِذِهِ فَلَا خِلَافَ فِي أَنَّ الْمَرْءَ مَأْمُورٌ بِالصَّلَاةِ فِي قَمِيصٍ كَثِيفٍ وَفِي مِئْزَرٍ وَقَمِيصٍ، وَلَا بُدَّ لَهُ ضَرُورَةً فِي صَلَاتِهِ كَذَلِكَ مِنْ وُقُوعِ فَرْجِهِ عَلَى سَاقِهِ وَرِجْلِهِ وَنَخِذِهِ، فَخَرَجَ هَذَا بِهَذَا الْإِجْمَاعُ الْمَنْصُوصُ عَلَيْهِ عَنْ جُمْلَةِ هَذَا الْخَبَرِ.

L3288–3289 Among those who held the view that ablution is required upon touching the private parts are Sa‘d ibn Abi Waqqas, Ibn ‘Umar—may Allah be pleased with both of them—‘Ata, ‘Urwah, Sa‘id ibn al-Musayyib, Jabir ibn Zayd, Aban ibn ‘Uthman, Ibn Jurayj, al-Awza‘i, al-Layth, al-Shafi‘i, Dawud, Ahmad ibn Hanbal, Ishaq ibn Rahwayh, and others. However, al-Awza‘i and al-Shafi‘i did not consider ablution invalidated by this except when touching with the inner palm only, not the back of the hand. ‘Ata ibn Abi Rabah said: Touching the private part with the thigh or shin does not invalidate ablution, but touching it with the forearm does. Malik said: A man’s touching his own private part (specifically the penis) with the inner palm (not the back of the

وَمِمَّنْ قَالَ بِالْوُضُوءِ مِنْ مَسِّ الْفَرْجِ سَعْدُ بْنُ أَبِي وَقَّاصٍ وَابْنُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - وَعَطَاءٌ وَعُرْوَةُ وَسَعِيدُ بْنُ الْمُسَيِّبِ وَجَابِرُ بْنُ زَيْدٍ وَأَبَانُ بْنُ عُثْمَانَ وَابْنُ جُرَيْجٍ وَالْأَوْزَاعِيُّ وَاللَّيْثُ وَالشَّافِعِيُّ وَدَاوُد وَأَحْمَدُ بْنُ حَنْبَلٍ وَإِسْحَاقُ بْنُ رَاهْوَيْهِ وَغَيْرُهُمْ، إلَّا أَنَّ الْأَوْزَاعِيَّ وَالشَّافِعِيَّ لَمْ يَرَيَا الْوُضُوءَ يَنْقُضُ ذَلِكَ إلَّا بِمَسِّهِ بِبَاطِنِ الْكَفِّ فَقَطْ لَا بِظَاهِرِهَا. وَقَالَ عَطَاءُ بْنُ أَبِي رَبَاحٍ: لَا يَنْقُضُ الْوُضُوءَ مَسُّ الْفَرْجِ بِالْفَخِذِ وَالسَّاقِ

hand or the forearm) necessitates ablution. If he prays without performing ablution, he need not repeat the prayer except within its prescribed time. Abu Hanifah said: Touching the penis does not invalidate ablution in any case. Al-Shafi'i said: Touching the anus or a woman touching her own private part invalidates ablution. Malik said: Touching the anus or a woman touching her private part does not invalidate ablution unless she grasps and softens it—that is, inserts her finger between her two labia. Some of Malik's followers held that ablution is invalidated by touching the penis in a manner that induces pleasure.

وَيَنْقُضُ مَسُّهُ بِالذِّرَاعِ. وَقَالَ مَالِكٌ: مَسُّ الْفَرْجِ مِنْ الرَّجُلِ فَرْجَ نَفْسِهِ الذَّكَرِ فَقَطْ بِبَاطِنِ الْكَفِّ لَا بِظَاهِرِهَا وَلَا بِالذِّرَاعِ يُوجِبُ الْوُضُوءَ، فَإِنْ صَلَّى وَلَمْ يَتَوَضَّأْ لَمْ يُعِدْ الصَّلَاةَ إلَّا فِي الْوَقْتِ. وَقَالَ أَبُو حَنِيفَةَ: لَا يَنْقُضُ الْوُضُوءَ مَسُّ الذَّكَرِ كَيْفَ كَانَ وَقَالَ الشَّافِعِيُّ يَنْقُضُ الْوُضُوءَ مَسُّ الدُّبُرِ وَمَسُّ الْمَرْأَةِ فَرْجَهَا، وَقَالَ مَالِكٌ لَا يَنْقُضُ الْوُضُوءَ مَسُّ الدُّبُرِ وَلَا مَسُّ الْمَرْأَةِ فَرْجَهَا إلَّا أَنْ تَقْبِضَ وَتُلَطِّفَ، أَيْ تُدْخِلَ أُصْبُعَهَا بَيْنَ شَفْرَيْهَا، وَنَحَا بَعْضُ أَصْحَابِهِ بِنَقْضِ الْوُضُوءِ مِنْ مَسِّ الذَّكَرِ نَحْوَ اللَّذَّةِ.

L3290 As for the opinion of Al-Awza'i, Al-Shafi'i, and Malik regarding considering the inner surface of the palm while disregarding its outer surface, this is a view unsupported by any evidence—neither from the Quran, the Sunnah, consensus, a Companion's statement, analogy, nor sound reasoning. Some of them objected by citing narrations stating, "Whoever brings his hand in contact with his private part must perform ablution." Abu Muhammad said: This is entirely baseless, and even if authentic, it would not substantiate their claim, for contact with the hand occurs through its outer surface as much as its inner surface. Even if contact were specifically with the inner surface, this would not invalidate ablution beyond the act of contact itself, if a narration were to add to the wording of "contact." How could this be, when "contact" applies to the entire body? Allah the Exalted said: {And you have had intimate relations with one another} [4:21]. As for Malik's opinion that ablution becomes obligatory from such contact yet prayer repetition is only required within its original timeframe, this is a contradictory view. It necessitates either that the ablution was invalidated—in which case his principles would require perpetual repetition—or that it remained valid, making it impermissible to pray the same obligatory prayer twice in one day. Similarly, Malik's distinction between a man touching his private part and a woman touching hers is an opinion devoid of evidence, thus invalid.[35]

فَأَمَّا قَوْلُ الْأَوْزَاعِيِّ وَالشَّافِعِيِّ وَمَالِكٍ فِي مُرَاعَاةِ بَاطِنِ الْكَفِّ دُونَ ظَاهِرِهَا فَقَوْلٌ لَا دَلِيلَ عَلَيْهِ لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ وَلَا مِنْ إجْمَاعٍ وَلَا مِنْ قَوْلِ صَاحِبٍ وَلَا مِنْ قِيَاسٍ وَلَا مِنْ رَأْيٍ صَحِيحٍ. وَشَغَبَ بَعْضُهُمْ بِأَنْ قَالَ: فِي بَعْضِ الْآثَارِ «مَنْ أَفْضَى بِيَدِهِ إلَى فَرْجِهِ فَلْيَتَوَضَّأْ» قَالَ أَبُو مُحَمَّد: وَهَذَا لَا يَصِحُّ أَصْلًا، وَلَوْ صَحَّ لَمَا كَانَ فِيهِ دَلِيلٌ عَلَى مَا يَقُولُونَ؛ لِأَنَّ الْإِفْضَاءَ بِالْيَدِ يَكُونُ بِظَاهِرِ الْيَدِ كَمَا يَكُونُ بِبَاطِنِهَا، وَحَتَّى لَوْ كَانَ الْإِفْضَاءُ بِبَاطِنِ الْيَدِ لَمَا كَانَ فِي ذَلِكَ مَا يُسْقِطُ الْوُضُوءَ عَنْ غَيْرِ الْإِفْضَاءِ، إذَا جَاءَ أَثَرٌ بِزِيَادَةٍ عَلَى لَفْظِ الْإِفْضَاءِ، فَكَيْفَ وَالْإِفْضَاءُ يَكُونُ بِجَمِيعِ الْجَسَدِ، قَالَ اللَّهُ تَعَالَى {وَقَدْ أَفْضَى بَعْضُكُمْ إلَى بَعْضٍ} [النساء: ٢١] . وَأَمَّا قَوْلُ مَالِكٍ فِي إيجَابِ الْوُضُوءِ مِنْهُ ثُمَّ لَمْ يَرَ الْإِعَادَةَ إلَّا فِي الْوَقْتِ، فَقَوْلٌ مُتَنَاقِضٌ؛ لِأَنَّهُ لَا يَخْلُو أَنْ يَكُونَ انْتَقَضَ وُضُوءُهُ أَوْ لَمْ يَنْتَقِضْ، فَإِنْ كَانَ انْتَقَضَ فَعَلَى أَصْلِهِ يَلْزَمُهُ أَنْ يُعِيدَ أَبَدًا، وَإِنْ كَانَ لَمْ يَنْتَقِضْ فَلَا يَجُوزُ لَهُ أَنْ يُصَلِّيَ صَلَاةَ فَرْضٍ وَاحِدَةٍ فِي يَوْمٍ مَرَّتَيْنِ، وَكَذَلِكَ فَرَّقَ مَالِكٌ بَيْنَ مَسِّ الرَّجُلِ فَرْجَهُ وَبَيْنَ مَسِّ الْمَرْأَةِ فَرْجَهَا فَهُوَ قَوْلٌ لَا دَلِيلَ عَلَيْهِ فَهُوَ سَاقِطٌ.

[35] **Qur'an references (L3290):** Qur'an 4:21 (An-Nisa).

وَأَمَّا إِيجَابُ الشَّافِعِيِّ الْوُضُوءَ مِنْ مَسِّ الدُّبُرِ فَهُوَ خَطَأٌ لِأَنَّ الدُّبُرَ لَا يُسَمَّى فَرْجًا، فَإِنْ قَالَ: قِسْته عَلَى الذَّكَرِ قِيلَ لَهُ: الْقِيَاسُ عِنْدَ الْقَائِلِينَ بِهِ لَا يَكُونُ إلَّا عَلَى عِلَّةٍ جَامِعَةٍ بَيْنَ الْحُكْمَيْنِ، وَلَا عِلَّةَ جَامِعَةَ بَيْنَ مَسِّ الذَّكَرِ وَمَسِّ الدُّبُرِ، فَإِنْ قَالَ: كِلَاهُمَا مَخْرَجٌ لِلنَّجَاسَةِ، قِيلَ لَهُ: لَيْسَ كَوْنُ الذَّكَرِ مَخْرَجًا لِلنَّجَاسَةِ هُوَ عِلَّةُ انْتِقَاضِ الْوُضُوءِ مِنْ مَسِّهِ، وَمِنْ قَوْلِهِ إنَّ مَسَّ النَّجَاسَةِ لَا يَنْقُضُ الْوُضُوءَ، فَكَيْفَ مَسُّ مَخْرَجِهَا. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L3291–3292 As for Al-Shafi'i's ruling that ablution is invalidated by touching the anus, this is erroneous because the anus is not termed a private part. If it is argued: "It was analogized to the penis," the response is: Analogy according to its proponents only applies when there exists a unifying rationale connecting both rulings, and there is no unifying rationale between touching the penis and touching the anus. If one contends: "Both are exits for ritual impurity," the reply is: The penis being an exit for ritual impurity is not the rationale for invalidating ablution through its touch, particularly given his own statement that touching ritual impurity does not nullify ablution - how then could touching its exit? And with Allah the Exalted lies success.

وَأَمَّا أَصْحَابُ أَبِي حَنِيفَةَ فَاحْتَجُّوا بِحَدِيثِ طَلْقِ بْنِ عَلِيٍّ «أَنَّ رَجُلًا سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الرَّجُلِ يَمَسُّ ذَكَرَهُ بَعْدَ أَنْ يَتَوَضَّأَ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: هَلْ هُوَ إلَّا بِضْعَةٌ مِنْك» . قَالَ عَلِيٌّ: وَهَذَا خَبَرٌ صَحِيحٌ، إلَّا أَنَّهُمْ لَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ: أَحَدُهَا أَنَّ هَذَا الْخَبَرَ مُوَافِقٌ لِمَا كَانَ النَّاسُ عَلَيْهِ قَبْلَ وُرُودِ الْأَمْرِ بِالْوُضُوءِ مِنْ مَسِّ الْفَرْجِ، هَذَا لَا شَكَّ فِيهِ، فَإِذْ هُوَ كَذَلِكَ فَحُكْمُهُ مَنْسُوخٌ يَقِينًا حِينَ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْوُضُوءِ مِنْ مَسِّ الْفَرْجِ، وَلَا يَحِلُّ تَرْكُ مَا تُيُقِّنَ أَنَّهُ نَاسِخٌ وَالْأَخْذُ بِمَا تُيُقِّنَ أَنَّهُ مَنْسُوخٌ، وَثَانِيهَا أَنَّ كَلَامَهُ - عَلَيْهِ السَّلَامُ - «هَلْ هُوَ إلَّا بِضْعَةٌ مِنْك» دَلِيلٌ بَيِّنٌ عَلَى أَنَّهُ كَانَ قَبْلَ الْأَمْرِ بِالْوُضُوءِ مِنْهُ لِأَنَّهُ لَوْ كَانَ بَعْدَهُ لَمْ يَقُلْ - عَلَيْهِ السَّلَامُ - هَذَا الْكَلَامَ بَلْ كَانَ يُبَيِّنُ أَنَّ الْأَمْرَ بِذَلِكَ قَدْ نُسِخَ، وَقَوْلُهُ هَذَا يَدُلُّ عَلَى أَنَّهُ لَمْ يَكُنْ سَلَفَ فِيهِ حُكْمٌ أَصْلًا وَأَنَّهُ كَسَائِرِ الْأَعْضَاءِ. قَالَ أَبُو مُحَمَّدٍ: وَقَالَ بَعْضُهُمْ: يَكُونُ الْوُضُوءُ مِنْ ذَلِكَ غُسْلُ الْيَدِ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ، لَمْ يَقُلْ أَحَدٌ إنَّ غُسْلَ الْيَدِ وَاجِبٌ أَوْ مُسْتَحَبٌّ مِنْ مَسِّ الْفَرْجِ، لَا الْمُتَأَوِّلُونَ لِهَذَا التَّأْوِيلِ الْفَاسِدِ وَلَا غَيْرُهُمْ، وَيُقَالُ لَهُمْ: إنْ كَانَ كَمَا تَقُولُونَ فَأَنْتُمْ مِنْ أَوَّلِ مَنْ خَالَفَ أَمْرَ

L3293–3295 As for the adherents of Abū Ḥanīfah, they argued using the ḥadīth of Ṭalq ibn ʿAlī: "A man asked the Messenger of Allāh (peace be upon him) about a man who touches his penis after performing ablution. The Messenger of Allāh (peace be upon him) said: 'Is it not but a piece of flesh from you?'" ʿAlī said: "This is an authentic report, but they have no valid evidence in it due to several aspects: The first is that this report conforms to what people practiced before the arrival of the command to perform ablution for touching the private parts—this is indisputable. Since this is the case, its ruling is certainly abrogated when the Messenger of Allāh (peace be upon him) commanded ablution for touching the private parts. It is invalid to abandon what is confirmed as the abrogating ruling and adhere to what is confirmed as abrogated. The second is that his statement (peace be upon him)—'Is it not but a piece of flesh from you?'—is clear evidence that this occurred before the command to perform ablution for it. Had it been after, he (peace be upon him) would not have said this; rather, he would have clarified that the previous command had been abrogated. His statement indicates there was originally no ruling for it and that it was equivalent to other limbs." Abū Muḥammad said: "Some of them claimed: 'The ablution required for that is the ritual washing of the hand.' Abū Muḥammad said: 'This is false. No one—neither those who advance this invalid interpretation nor others—has asserted that ritual washing of the hand is obligatory or recommended for touching the private parts.' It is said to them: 'If your claim were true, you would be among the first to oppose the command of the Messenger of Al-

lāh (peace be upon him) through your interpretation of his injunction. This constitutes clear contempt. Moreover, the term "ablution" in the Sharīʿah applies only to ablution for prayer. The Messenger of Allāh (peace be upon him) rejected applying this term to anything other than ablution for prayer, as narrated through Sufyān ibn ʿUyaynah from ʿAmr ibn Dīnār from Saʿīd ibn al-Ḥuwayrith from Ibn ʿAbbās, who said: 'We were with the Messenger of Allāh (peace be upon him) when he returned from relieving himself. Food was brought, and someone asked: "Will you not perform ablution¿' He (peace be upon him) replied..."' "I pray, then I perform ablution."»

رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَا تَأَوَّلْتُمُوهُ فِي أَمْرِهِ، وَهَذَا اسْتِخْفَافٌ ظَاهِرٌ، وَأَيْضًا فَإِنَّهُ لَا يُطْلَقُ الْوُضُوءُ فِي الشَّرِيعَةِ إِلَّا لِوُضُوءِ الصَّلَاةِ فَقَطْ، وَقَدْ أَنْكَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِيقَاعَ هَذِهِ اللَّفْظَةِ عَلَى غَيْرِ الْوُضُوءِ لِلصَّلَاةِ، كَمَا رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ سَعِيدِ بْنِ الْحُوَيْرِثِ عَنْ ابْنِ عَبَّاسٍ قَالَ «كُنَّا عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَاءَ مِنَ الْغَائِطِ وَأُتِيَ بِطَعَامٍ فَقِيلَ: أَلَا تَتَوَضَّأُ فَقَالَ - عَلَيْهِ السَّلَامُ -: لَمْ أُصَلِّ فَأَتَوَضَّأَ»

L3296 How could it be otherwise when it has been narrated to us through Malik from Abdullah ibn Abi Bakr ibn Muhammad ibn Amr ibn Hazm that he heard Urwah ibn al-Zubayr say: Marwan said to him, "Busrah bint Safwan informed me that she heard the Messenger of Allah—peace and blessings be upon him—say: 'If any of you touches his penis, he must perform his ablution for prayer.'" Others besides Malik have also narrated it from trustworthy narrators. Similarly, Yahya ibn Abd al-Rahman ibn Mas'ud narrated to us, Ahmad ibn Sa'id ibn Hazm narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, Abdullah ibn Ahmad ibn Hanbal narrated to us, Abu Salih al-Hakam ibn Musa narrated to us, Shu'ayb ibn Ishaq narrated to us, Hisham ibn Urwah informed me from his father that Marwan ibn al-Hakam narrated to him from Busrah bint Safwan—who had accompanied the Messenger of Allah, peace and blessings be upon him—that the Messenger of Allah, peace and blessings be upon him, said: "If any of you touches his penis, he should not pray until he performs ablution." Urwah denied that, but when he asked Busrah, she confirmed what Marwan had said.

فَكَيْفَ وَقَدْ رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ أَنَّهُ سَمِعَ عُرْوَةَ بْنَ الزُّبَيْرِ يَقُولُ: إِنَّ مَرْوَانَ قَالَ لَهُ: أَخْبَرَتْنِي بُسْرَةُ بِنْتُ صَفْوَانَ أَنَّهَا سَمِعَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إِذَا مَسَّ أَحَدُكُمْ ذَكَرَهُ فَلْيَتَوَضَّأْ وُضُوءَهُ لِلصَّلَاةِ» وَرَوَاهُ أَيْضًا غَيْرُ مَالِكٍ عَنِ الثِّقَاتِ كَذَلِكَ. كَمَا حَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ ثنا أَحْمَدُ بْنُ سَعِيدِ بْنِ حَزْمٍ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنُ أَيْمَنَ ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ ثنا أَبُو صَالِحٍ الْحَكَمُ بْنُ مُوسَى ثنا شُعَيْبُ بْنُ إِسْحَاقَ أَخْبَرَنِي هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ أَنَّ مَرْوَانَ بْنَ الْحَكَمِ حَدَّثَهُ عَنْ بُسْرَةَ بِنْتِ صَفْوَانَ - وَكَانَتْ قَدْ صَحِبَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إِذَا مَسَّ أَحَدُكُمْ ذَكَرَهُ فَلَا يُصَلِّ حَتَّى يَتَوَضَّأَ» فَأَنْكَرَ ذَلِكَ عُرْوَةُ، وَسَأَلَ بُسْرَةَ فَصَدَّقَتْهُ بِمَا قَالَ.

L3297 Ali said: Abu Salih and Shu'ayb are two renowned trustworthy authorities, thus Marwan's pretext is invalidated, and it is established that Busrah is a well-known female Companion. They ought to have rejected for themselves the legitimization of debt and the annulment of the Sunnah through the narrations of Abu Nasr ibn Malik, 'Umayr, al-'Aliyah—the wife of Abu Ishaq—

قَالَ عَلِيٌّ: أَبُو صَالِحٍ وَشُعَيْبٌ ثِقَتَانِ مَشْهُورَانِ، فَبَطَلَ التَّعَلُّلُ بِمَرْوَانَ، وَصَحَّ أَنَّ بُسْرَةَ مَشْهُورَةٌ صَاحِبَةٌ، وَلَقَدْ كَانَ يَنْبَغِي لَهُمْ أَنْ يُنْكِرُوا عَلَى أَنْفُسِهِمْ شَرْعَ الدَّيْنِ وَإِبْطَالَ

السُّنَنِ بِرِوَايَةِ أَبِي نَصْرِ بْنِ مَالِكٍ وَعُمَيْرٍ وَالْعَالِيَةِ زَوْجَةِ أَبِي إِسْحَاقَ وَشَيْخٍ مِنْ بَنِي كِنَانَةَ، وَكُلُّ هَؤُلَاءِ لَا يَدْرِي أَحَدٌ مِنَ النَّاسِ مَنْ هُمْ؟

and a shaykh from Banu Kinanah. And all these individuals—does anyone know who they are?

وَقَالَ بَعْضُهُمْ: هَذَا مِمَّا تَعْظُمُ بِهِ الْبَلْوَى، فَلَوْ كَانَ لَمَا جَهِلَهُ ابْنُ مَسْعُودٍ وَلَا غَيْرُهُ مِنَ الْعُلَمَاءِ.

L3298–3299 And some of them said: This is among the matters that exacerbate the trial, for if it were [so], neither Ibn Mas'ūd nor other scholars would have been ignorant of it.

قَالَ أَبُو مُحَمَّدٍ وَهَذَا حَمَاقَةٌ، وَقَدْ غَابَ عَنْ جُمْهُورِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - الْغُسْلُ مِنَ الْإِيلَاجِ الَّذِي لَا إِنْزَالَ مَعَهُ، وَهُوَ مِمَّا تَكْثُرُ بِهِ الْبَلْوَى، وَرَأَى أَبُو حَنِيفَةَ الْوُضُوءَ مِنَ الرُّعَافِ وَهُوَ مِمَّا تَكْثُرُ بِهِ الْبَلْوَى وَلَمْ يَعْرِفْ ذَلِكَ جُمْهُورُ الْعُلَمَاءِ وَرَأَى الْوُضُوءَ مِنْ مِلْءِ الْفَمِ مِنَ الْقَلْسِ وَلَمْ يَرَهُ مِنْ أَقَلَّ مِنْ ذَلِكَ، وَهَذَا تَعْظُمُ بِهِ الْبَلْوَى، وَلَمْ يَعْرِفْ ذَلِكَ أَحَدٌ مِنْ وَلَدِ آدَمَ قَبْلَهُ، وَمِثْلُ هَذَا لَهُمْ كَثِيرٌ جِدًّا، وَمِثْلُ هَذَا مِنَ التَّخْلِيطِ لَا يُعَارِضُ بِهِ سُنَنَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا مَخْذُولٌ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L3300 Abū Muḥammad said: This is folly, for the majority of the Companions — may Allah be pleased with them — overlooked the obligation of ghusl (ritual bath) due to penetration without ejaculation, though this is a matter of significant common occurrence. Abū Ḥanīfah held that ablution is required after nosebleeds — another frequent matter — yet the majority of scholars did not recognize this. He also deemed ablution obligatory after vomiting a mouthful's worth but not for less than that, this being a matter of great common occurrence. No one among the children of Adam before him had ever known such rulings. Similar rulings from him are exceedingly numerous. Such confused mixing does not oppose the Sunnah of the Messenger of Allah — peace and blessings be upon him — except by one deprived [of divine help]. And success is from Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ: وَالْمَاسُّ عَلَى الثَّوْبِ لَيْسَ مَاسًّا، وَلَا مَعْنَى لِلَّذَّةِ؛ لِأَنَّهُ لَمْ يَأْتِ بِهَا نَصٌّ وَلَا إِجْمَاعٌ، وَإِنَّمَا هِيَ دَعْوَى بِظَنٍّ كَاذِبٍ، وَأَمَّا النِّسْيَانُ فِي هَذَا فَقَدْ قَالَ اللَّهُ تَعَالَى {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] وَهَذَا قَوْلُ ابْنِ عَبَّاسٍ، وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ خُصَيْفٍ عَنْ عِكْرِمَةَ عَنْهُ أَنَّهُ قَالَ: مَسُّ الذَّكَرِ عَمْدًا يَنْقُضُ الْوُضُوءَ وَلَا يَنْقُضُهُ بِالنِّسْيَانِ.

L3301 Abū Muḥammad said: Touching [the private part] over the garment does not invalidate ablution, nor does intentional pleasure hold any legal weight, as there is no textual evidence or consensus to support this. Rather, it is an assertion based on false conjecture. As for forgetfulness in this matter, Allah the Exalted has said: *"There is no blame on you for what you do by mistake, but only for what your hearts intend"* [Al-Aḥzāb: 5]. This is the opinion of Ibn ʿAbbās. It has been narrated to us through Wakīʿ, from Khuṣayf, from ʿIkrimah, from Ibn ʿAbbās, that he said: Deliberately touching the penis invalidates ablution, but doing so forgetfully does not.[36]

[مَسْأَلَة مِنْ نَوَاقِض الْوُضُوء أَكْل لحوم الأبل نيئه ومطبوخه]

A question regarding the nullifiers of ablution: Does eating camel meat—whether raw or cooked—invalidate it?

L3302

L3303 Issue 164: Consuming camel meat—whether raw, cooked, or roasted—

[36] **Qur'an references (L3301):** Qur'an 33:5 (Al-Ahzab).

intentionally while knowing it is the flesh of a male camel or she-camel invalidates ablution. Eating their pure fat or any part other than their meat does not invalidate ablution. If the term “meat” applies to their bellies, heads, or legs according to Arab linguistic convention, consuming these parts invalidates ablution; otherwise, it does not. Ablution is not invalidated by eating anything touched by fire other than camel meat. This is the position of Abū Mūsā al-Ashʿarī, Jābir ibn Samurah, and the jurists Abū Khaythamah Zuḥayr ibn Ḥarb, Yaḥyā ibn Yaḥyā, Aḥmad ibn Ḥanbal, and Isḥāq ibn Rāhwayh.

ʿAbdullāh ibn Yūsuf narrated to us; Aḥmad ibn Fatḥ narrated to us; ʿAbd al-Wahhāb ibn ʿĪsā narrated to us; Aḥmad ibn Muḥammad narrated to us; Aḥmad ibn ʿAlī narrated to us; Muslim ibn al-Ḥajjāj narrated to us; Abū Kāmil al-Fuḍayl ibn Ḥusayn al-Jaḥdarī and al-Qāsim ibn Zakariyyā narrated to us. Al-Fuḍayl said: Abū ʿAwānah narrated to us from ʿUthmān ibn ʿAbdillāh ibn Mawhab. Al-Qāsim said: ʿUbaydullāh ibn Mūsā narrated to us from Shaybān from both ʿUthmān ibn ʿAbdillāh ibn Mawhab and Ashʿath ibn Abī al-Shaʿthāʾ, each narrating from Jaʿfar ibn Abī Thawr from Jābir ibn Samurah, who said: “A man asked the Messenger of Allāh—peace and blessings be upon him—‘Should I perform ablution after eating the meat of sheep or goats?’ He replied: ‘If you wish, perform ablution; if you wish, do not.’ The man asked: ‘Should I perform ablution after eating camel meat?’ He answered: ‘Yes, perform ablution after eating camel meat.’”

L3304–3305 And it was narrated to us by Yaḥyā ibn ʿAbd al-Raḥmān, who narrated to us from Aḥmad ibn Saʿīd ibn Ḥazm, who narrated to us from Muḥammad ibn ʿAbd al-Malik ibn Ayman, who narrated to us from ʿAbdullāh ibn Aḥmad ibn Ḥanbal, who narrated to us from his father, who narrated to us from ʿAbd al-Razzāq, who informed us from Sufyān al-Thawrī, from al-Aʿmash, from ʿAbdullāh ibn ʿAbdullāh al-Rāzī, from ʿAbd al-Raḥmān ibn Abī Laylā, from al-Barāʾ ibn ʿĀzib, who said: “The Messenger of Allah - may Allah’s peace and blessings be upon him - was asked: ’Should one perform ablution due to camel meat?’ He said: ’Yes.’” Abū Muḥammad said: ʿAbdullāh ibn ʿAbdullāh al-Rāzī, Abū Jaʿfar, the judge of Rayy, is trustworthy.

١٦٤ - مَسْأَلَةٌ: وَأَكْلُ لُحُومِ الْإِبِلِ نِيئَةً وَمَطْبُوخَةً أَوْ مَشْوِيَّةً عَمْدًا وَهُوَ يَدْرِي أَنَّهُ لَحْمُ جَمَلٍ أَوْ نَاقَةٍ فَإِنَّهُ يَنْقُضُ الْوُضُوءَ، وَلَا يَنْقُضُ الْوُضُوءَ أَكْلُ شُحُومِهَا مَحْضَةً وَلَا أَكْلُ شَيْءٍ مِنْهَا غَيْرَ لَحْمِهَا، فَإِنْ كَانَ يَقَعُ عَلَى بُطُونِهَا أَوْ رُءُوسِهَا أَوْ أَرْجُلِهَا اسْمُ لَحْمٍ عِنْدَ الْعَرَبِ نَقَضَ أَكْلُهَا الْوُضُوءَ وَإِلَّا فَلَا، وَلَا يَنْقُضُ الْوُضُوءَ كُلُّ شَيْءٍ مَسَّتْهُ النَّارُ غَيْرَ ذَلِكَ، وَبِهَذَا يَقُولُ أَبُو مُوسَى الْأَشْعَرِيُّ وَجَابِرُ بْنُ سَمُرَةَ، وَمِنْ الْفُقَهَاءِ أَبُو خَيْثَمَةَ زُهَيْرُ بْنُ حَرْبٍ وَيَحْيَى بْنُ يَحْيَى وَأَحْمَدُ بْنُ حَنْبَلٍ وَإِسْحَاقُ بْنُ رَاهَوَيْهِ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو كَامِلٍ الْفُضَيْلُ بْنُ حُسَيْنٍ الْجَحْدَرِيُّ وَالْقَاسِمُ بْنُ زَكَرِيَّا، قَالَ الْفُضَيْلُ ثنا أَبُو عَوَانَةَ عَنْ عُثْمَانَ بْنِ عَبْدِ اللَّهِ بْنِ مَوْهَبٍ وَقَالَ الْقَاسِمُ حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ مُوسَى عَنْ شَيْبَانَ عَنْ عُثْمَانَ بْنِ عَبْدِ اللَّهِ بْنِ مَوْهَبٍ وَأَشْعَثُ بْنُ أَبِي الشَّعْثَاءِ كِلَاهُمَا عَنْ جَعْفَرِ بْنِ أَبِي ثَوْرٍ عَنْ جَابِرِ بْنِ سَمُرَةَ قَالَ «سَأَلَ رَجُلٌ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَأَتَوَضَّأُ مِنْ لُحُومِ الْغَنَمِ؟ قَالَ: إنْ شِئْت فَتَوَضَّأْ، وَإِنْ شِئْت فَلَا تَتَوَضَّأْ، قَالَ: أَتَوَضَّأُ مِنْ لُحُومِ الْإِبِلِ؟ قَالَ: نَعَمْ فَتَوَضَّأْ مِنْ لُحُومِ الْإِبِلِ» .

وَحَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ ثنا أَحْمَدُ بْنُ سَعِيدِ بْنِ حَزْمٍ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنُ أَيْمَنَ ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ ثنا أَبِي ثنا عَبْدُ الرَّزَّاقِ أَخْبَرَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ الْأَعْمَشِ عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ الرَّازِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ الْبَرَاءِ بْنِ عَازِبٍ قَالَ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَتَوَضَّأُ مِنْ لُحُومِ الْإِبِلِ، قَالَ: نَعَمْ» . قَالَ أَبُو مُحَمَّدٍ: عَبْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ الرَّازِيِّ أَبُو جَعْفَرٍ قَاضِي الرَّيِّ ثِقَةٌ.

L3306 Abū Muḥammad said: The discussion has already preceded in the previous section regarding invalidating the claims of those who made pretexts for rejecting the Sunnah by alleging this leads to increased trials, and refuting those who said: "Perhaps this ablution merely means washing the hands"—making it unnecessary to repeat it. If the objector using this argument were to deny for himself the ruling requiring ablution for audible laughter during prayer while not mandating it outside prayer, that would be more consistent for him. As for ablution from what fire has touched, authentic narrations have been established through ʻĀ'ishah, Umm Ḥabībah (the two Mothers of the Believers), Abū Ayyūb, Abū Ṭalḥah, Abū Hurayrah, and Zayd ibn Thābit (may Allah be pleased with them). This ruling was upheld by all those we mentioned, along with Ibn ʻUmar, Abū Mūsā al-Ashʻarī, Anas ibn Mālik, Abū Masʻūd, a group of Successors including the scholars of Medina as a whole, Saʻīd ibn al-Musayyab, Abū Maysarah, Abū Mijlaz, Yaḥyā ibn Yaʻmur, al-Zuhrī, six sons of the Nuqabā' from the Anṣār, al-Ḥasan al-Baṣrī, ʻUrwah ibn al-Zubayr, ʻUmar ibn ʻAbd al-ʻAzīz, Maʻmar, Abū Qilābah, and others. Had it not been abrogated, it would have been obligatory to uphold this opinion. As narrated to us by ʻAbdullāh ibn Rabīʻ, who narrated from Muḥammad ibn Muʻāwiyah, who narrated from Aḥmad ibn Shuʻayb, who narrated from ʻAmr ibn Manṣūr, who narrated from ʻAlī ibn ʻAyyāsh, who narrated from Shuʻayb ibn Abī Ḥamzah, who narrated from Muḥammad ibn al-Munkadir, who said: I heard Jābir ibn ʻAbdullāh state, "The final ruling from the Messenger of Allah (peace and blessings be upon him) was to abandon ablution from what fire had touched." Thus, the abrogation of those narrations is confirmed, and all praise is due to Allah.[37]

L3307–3309 Ali said: And indeed some people have claimed that this hadith is an abbreviated version of the hadith narrated to us by Abdullah ibn Rabīʻ, who narrated to us Muhammad ibn Isḥāq, who narrated to us Ibn al-Aʻrābī, who narrated to us Abū Dāwūd, who narrated to us Ibrāhīm ibn al-Ḥasan al-Khathʻamī, who narrated to us Ḥajjāj, who said: Ibn Jurayj stated: Muhammad ibn al-Munkadir reported to me: "I heard Jābir ibn ʿAbdullāh say: 'Bread and meat were brought to the Messenger of Allah (peace and blessings be upon him),

قَالَ أَبُو مُحَمَّد: وَقَدْ مَضَى الْكَلَامُ فِي الْفَصْلِ الَّذِي قَبْلَ هَذَا فِي إبْطَالِ قَوْلِ مَنْ تَعَلَّلَ فِي رَدِّ السُّنَنِ بِأَنَّ هَذَا مِمَّا تَعْظُمُ بِهِ الْبَلْوَى، وَإِبْطَالِ قَوْلِ مَنْ قَالَ: لَعَلَّ هَذَا الْوُضُوءَ غَسْلُ الْيَدِ، فَأَغْنَى عَنْ إعَادَتِهِ، وَلَوْ أَنَّ الْمُعْتَرِضَ بِهَذَا يُنْكِرُ عَلَى نَفْسِهِ الْقَوْلَ بِالْوُضُوءِ مِنْ الْقَهْقَهَةِ فِي الصَّلَاةِ وَلَا يَرَى فِيهَا الْوُضُوءَ فِي غَيْرِ الصَّلَاةِ -: لَكَانَ أَوْلَى بِهِ. وَأَمَّا الْوُضُوءُ مِمَّا مَسَّتْ النَّارُ، فَإِنَّهُ قَدْ صَحَّتْ فِي إيجَابِ الْوُضُوءِ مِنْهُ أَحَادِيثُ ثَابِتَةٌ مِنْ طَرِيقِ عَائِشَةَ وَأُمِّ حَبِيبَةَ أُمَّيْ الْمُؤْمِنِينَ وَأَبِي أَيُّوبَ وَأَبِي طَلْحَةَ وَأَبِي هُرَيْرَةَ وَزَيْدِ بْنِ ثَابِتٍ - رَضِيَ اللَّهُ عَنْهُمْ -، وَقَالَ بِهِ كُلُّ مَنْ ذَكَرْنَا وَابْنُ عُمَرَ وَأَبُو مُوسَى الْأَشْعَرِيُّ وَأَنَسُ بْنُ مَالِكٍ وَأَبُو مَسْعُودٍ، وَجَمَاعَةٌ مِنْ التَّابِعِينَ مِنْهُمْ أَهْلُ الْمَدِينَةِ جُمْلَةً وَسَعِيدُ بْنُ الْمُسَيِّبِ وَأَبُو مَيْسَرَةَ وَأَبُو مِجْلَزٍ وَيَحْيَى بْنُ يَعْمَرَ وَالزُّهْرِيُّ وَسِتَّةٌ مِنْ أَبْنَاءِ النُّقَبَاءِ مِنْ الْأَنْصَارِ وَالْحَسَنِ الْبَصْرِيِّ وَعُرْوَةُ بْنُ الزُّبَيْرِ وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ وَمَعْمَرٌ وَأَبُو قِلَابَةَ وَغَيْرُهُمْ، وَلَوْلَا أَنَّهُ مَنْسُوخٌ لَوَجَبَ الْقَوْلُ بِهِ. كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا عَمْرُو بْنُ مَنْصُورٍ ثنا عَلِيُّ بْنُ عَيَّاشٍ ثنا شُعَيْبُ بْنُ أَبِي حَمْزَةَ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ قَالَ سَمِعْت جَابِرَ بْنَ عَبْدِ اللَّهِ قَالَ: «كَانَ آخِرُ الْأَمْرَيْنِ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَرْكَ الْوُضُوءِ مِمَّا مَسَّتْ النَّارُ» فَصَحَّ نَسْخُ تِلْكَ الْأَحَادِيثِ وَلِلَّهِ الْحَمْدُ.

قَالَ عَلِيٌّ: وَقَدْ ادَّعَى قَوْمٌ أَنَّ هَذَا الْحَدِيثَ مُخْتَصَرٌ مِنْ الْحَدِيثِ الَّذِي حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا إبْرَاهِيمُ بْنُ الْحَسَنِ الْخَثْعَمِيُّ ثنا حَجَّاجٌ قَالَ: قَالَ ابْنُ جُرَيْجٍ أَخْبَرَنِي مُحَمَّدُ بْنُ الْمُنْكَدِرِ سَمِعْت جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ «قُرِّبَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خُبْزٌ وَلَحْمٌ فَأَكَلَ ثُمَّ دَعَا بِوَضُوءٍ فَتَوَضَّأَ بِهِ

[37] **Hadith references (L3306):** Sunan an-Nasai 185.

so he ate, then he called for water for ablution and performed wudu.”’ Then he prayed the noon prayer, then requested the remainder of his food and ate, then rose to pray without performing ablution.“ Abu Muhammad said: To definitively claim this hadith is abbreviated from the other is a statement based on conjecture, and conjecture is the falsest of hadith. Rather, they are two hadiths as they were transmitted.

ثُمَّ صَلَّى الظُّهْرَ ثُمَّ دَعَا بِفَضْلِ طَعَامِهِ فَأَكَلَ ثُمَّ قَامَ إلَى الصَّلَاةِ وَلَمْ يَتَوَضَّأْ» قَالَ أَبُو مُحَمَّد: الْقَطْعُ بِأَنَّ ذَلِكَ الْحَدِيثَ مُخْتَصَرٌ مِنْ هَذَا قَوْلٌ بِالظَّنِّ، وَالظَّنُّ أَكْذَبُ الْحَدِيثِ بَلْ هُمَا حَدِيثَانِ كَمَا وَرَدَا.

L3310 Ali said: As for every ḥadīth cited by those who do not require ablution for what fire has touched—such as “The Messenger of Allah (peace be upon him) ate a sheep’s shoulder and did not perform ablution” and similar reports—they have no valid argument. This is because the ḥadīths obligating ablution are those conveying supplementary rulings that extend beyond these reports, which merely align with what people practiced before the command to perform ablution for what fire has touched was revealed. Were it not for the ḥadīth of Shuʿayb ibn Abī Ḥamzah that we mentioned, it would not have been permissible for anyone to omit ablution after consuming what fire has touched.

قَالَ عَلِيٌّ: وَأَمَّا كُلُّ حَدِيثٍ احْتَجَّ بِهِ مَنْ لَا يَرَى الْوُضُوءَ مِمَّا مَسَّتْ النَّارُ مِنْ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَكَلَ كَتِفَ شَاةٍ وَلَمْ يَتَوَضَّأْ» وَنَحْوُ ذَلِكَ -: فَلَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّ أَحَادِيثَ إيجَابِ الْوُضُوءِ هِيَ الْوَارِدَةُ بِالْحُكْمِ الزَّائِدَةِ عَلَى هَذِهِ الَّتِي هِيَ مُوَافِقَةٌ لِمَا كَانَ النَّاسُ عَلَيْهِ قَبْلَ وُرُودِ الْأَمْرِ بِالْوُضُوءِ مِمَّا مَسَّتْ النَّارُ، وَلَوْلَا حَدِيثُ شُعَيْبِ بْنِ أَبِي حَمْزَةَ الَّذِي ذَكَرْنَا لَمَا حَلَّ لِأَحَدٍ تَرْكُ الْوُضُوءِ مِمَّا مَسَّتْ النَّارُ. قَالَ أَبُو مُحَمَّد: فَإِنْ قِيلَ: لِمَ خَصَّصْتُمْ لُحُومَ الْإِبِلِ خَاصَّةً مِنْ جُمْلَةِ مَا نُسِخَ مِنْ الْوُضُوءِ مِمَّا مَسَّتْ النَّارُ؟ قُلْنَا: لِأَنَّ الْأَمْرَ الْوَارِدَ بِالْوُضُوءِ مِنْ لُحُومِ الْإِبِلِ إنَّمَا هُوَ حُكْمٌ فِيهَا خَاصَّةً، سَوَاءٌ مَسَّتْهَا النَّارُ أَوْ لَمْ تَمَسَّهَا النَّارُ، فَلَيْسَ مَسُّ النَّارِ إيَّاهَا - إنْ طُبِخَتْ - يُوجِبُ الْوُضُوءَ مِنْهَا، بَلْ الْوُضُوءُ وَاجِبٌ مِنْهَا كَمَا هِيَ، فَحُكْمُهَا خَارِجٌ عَنْ الْأَخْبَارِ الْوَارِدَةِ بِالْوُضُوءِ مِمَّا مَسَّتْ النَّارُ، وَبِنَسْخِ الْوُضُوءِ مِنْهُ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Abū Muḥammad said: If it is asked, “Why have you singled out camel meat from the total abrogation of ablution for what fire has touched?” We reply: Because the command requiring ablution after eating camel meat applies exclusively to it, regardless of whether fire touched it or not. Thus, if camel meat is cooked, the fire’s contact with it does not necessitate ablution; rather, ablution remains obligatory from it as it is. Therefore, its ruling is excluded from the scope of the ḥadīths mandating ablution for what fire has touched and from the abrogation of ablution for it. Success comes solely from Allah, the Exalted.

L3311 As for consuming it out of forgetfulness or without awareness that it is camel meat, we have mentioned Allah’s statement: {There is no blame upon you for what you do mistakenly} [Al-Ahzab: 5]. Therefore, whoever performs an act unintentionally, it is equivalent to not having performed it, unless there exists a textual injunction obligating consequences for forgetfulness, in which case

وَأَمَّا أَكْلُهَا بِنِسْيَانٍ أَوْ بِغَيْرِ عِلْمٍ أَنَّهُ مِنْ لُحُومِ الْإِبِلِ فَقَدْ ذَكَرْنَا قَوْلَ اللَّهِ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ} [الأحزاب: ٥] فَمَنْ فَعَلَ شَيْئًا عَنْ غَيْرِ قَصْدٍ فَسَوَاءٌ ذَلِكَ وَتَرْكُهُ إلَّا أَنْ يَأْتِيَ نَصٌّ فِي إيجَابِ حُكْمِ النِّسْيَانِ فَيُوقَفُ عِنْدَهُ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

adherence becomes binding. Divine enablement comes solely from Allah, the Most High.[38]

L3312 **One of the nullifiers of wuḍūʾ is the act of a man touching a woman or a woman touching a man, regardless of which limb is involved.**

L3313 Issue 165: If a man touches a woman or a woman touches a man with any limb - provided it is done intentionally without any garment or barrier between them - whether the woman is his mother or daughter, or she touches her son or father, with young and old being alike in ruling, pleasure has no bearing in any of these cases. Similarly, if he touches her on a garment for pleasure, his ablution remains intact. This is the position of Al-Shāfiʿī and the Ẓāhirī school adherents.

L3314–3316 The proof for this is the statement of Allah, Blessed and Exalted: {Or one of you comes from defecation, or you have touched women, and you find no water, then make tayammum with clean earth} [An-Nisa: 43]. Abu Muhammad said: Sexual contact is a mutual act between two parties, and we know with certainty that both men and women are addressed by this verse. There is no disagreement within the Ummah regarding this, for the beginning and end of the verse apply universally to all believers. Thus, it is confirmed that this ruling is binding upon men when they have sexual contact with women. Regarding women who touch men—since Allah the Exalted did not specify one woman over another, nor one pleasure over another—specifying such exceptions is impermissible. This is the position of Ibn Masʿūd and others. Some claimed that the touch mentioned in this verse refers specifically to sexual intercourse.[39]

L3317 Abu Muhammad said: This is a particularization with no proof for it, and it is false and inconceivable that Allah, the Mighty and Majestic, would intend a reason among reasons and not clarify it. We seek refuge in Allah from this.

L3318 Ali said: Those who held the opinion that the touching mentioned in this

[38] **Qur'an references (L3311):** Qur'an 33:5 (Al-Ahzab).

[39] **Qur'an references (L3314):** Qur'an 4:43 (An-Nisa); Qur'an 5:6 (Al-Ma'idah).

[مَسْأَلَة مِنْ نَوَاقِض الْوُضُوء مس الرَّجُل الْمَرْأَة وَالْمَرْأَة الرَّجُل لأي عُضْو]

١٦٥ - مَسْأَلَةٌ: وَمَسُّ الرَّجُلِ الْمَرْأَةَ وَالْمَرْأَةِ الرَّجُلَ بِأَيِّ عُضْوٍ مَسَّ أَحَدُهُمَا الْآخَرَ، إِذَا كَانَ عَمْدًا، دُونَ أَنْ يَحُولَ بَيْنَهُمَا ثَوْبٌ أَوْ غَيْرُهُ، سَوَاءٌ أُمُّهُ كَانَتْ أَوْ ابْنَتُهُ، أَوْ مَسَّتْ ابْنَهَا أَوْ أَبَاهَا، الصَّغِيرَ وَالْكَبِيرَ سَوَاءٌ، لَا مَعْنَى لِلَّذَّةِ فِي شَيْءٍ مِنْ ذَلِكَ وَكَذَلِكَ لَوْ مَسَّهَا عَلَى ثَوْبٍ لِلَّذَّةِ لَمْ يَنْتَقِضْ وُضُوءُهُ، وَبِهَذَا يَقُولُ الشَّافِعِيُّ وَأَصْحَابُ الظَّاهِرِ.

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَبَارَكَ وَتَعَالَى {أَوْ جَاءَ أَحَدٌ مِنْكُمْ مِنَ الْغَائِطِ أَوْ لامَسْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا} [النساء: ٤٣] . قَالَ أَبُو مُحَمَّد: وَالْمُلَامَسَةُ فِعْلٌ مِنْ فَاعِلَيْنِ، وَبِيَقِينٍ نَدْرِي أَنَّ الرِّجَالَ وَالنِّسَاءَ مُخَاطَبُونَ بِهَذِهِ الْآيَةِ، لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي هَذَا لِأَنَّ أَوَّلَ الْآيَةِ وَآخِرَهَا عُمُومٌ لِلْجَمِيعِ مِنْ الَّذِينَ آمَنُوا، فَصَحَّ أَنَّ هَذَا الْحُكْمَ لَازِمٌ لِلرِّجَالِ إِذَا لَامَسُوا النِّسَاءَ، وَالنِّسَاءِ إِذَا لَامَسْنَ الرِّجَالَ، وَلَمْ يَخُصَّ اللَّهُ تَعَالَى امْرَأَةً مِنْ امْرَأَةٍ، وَلَا لَذَّةً مِنْ غَيْرِ لَذَّةٍ، فَتَخْصِيصُ ذَلِكَ لَا يَجُوزُ، وَهُوَ قَوْلُ ابْنِ مَسْعُودٍ وَغَيْرِهِ. وَادَّعَى قَوْمٌ أَنَّ اللَّمْسَ الْمَذْكُورَ فِي هَذِهِ الْآيَةِ هُوَ الْجِمَاعُ.

قَالَ أَبُو مُحَمَّد: وَهَذَا تَخْصِيصٌ لَا بُرْهَانَ عَلَيْهِ، وَمِنْ الْبَاطِلِ الْمُمْتَنِعِ أَنْ يُرِيدَ اللَّهُ عَزَّ وَجَلَّ لِمَاسًّا مِنْ لِمَاسٍ فَلَا يُبَيِّنُهُ. نَعُوذُ بِاللَّهِ مِنْ هَذَا.

verse refers to sexual intercourse argued using a hadith stating, “The Messenger of Allah (PBUH) used to kiss without performing ablution.” However, this hadith is unsound because its narrator, Abū Rawq, is weak, and it is transmitted through a man named ʿUrwah al-Muzanī, an unknown narrator. We narrated it via al-Aʿmash from unnamed companions of his, from ʿUrwah al-Muzanī - who is unidentified. Even if authentic, it would not constitute proof for them, for the meaning of this report is definitively abrogated. It corresponds to what people practiced before the verse’s revelation, while the verse instituted an additional ruling that cannot be disregarded nor restricted in application.

قَالَ عَلِيٌّ: وَاحْتَجَّ مَنْ رَأَى اللِّمَاسَ الْمَذْكُورَ فِي هَذِهِ الْآيَةِ هُوَ الْجِمَاعُ بِحَدِيثٍ فِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُقَبِّلُ وَلَا يَتَوَضَّأُ» وَهَذَا حَدِيثٌ لَا يَصِحُّ؛ لِأَنَّ رَاوِيَهُ أَبُو رَوْقٍ وَهُوَ ضَعِيفٌ، وَمِنْ طَرِيقِ رَجُلٍ اسْمُهُ عُرْوَةُ الْمُزَنِيّ، وَهُوَ مَجْهُولٌ، رُوِّينَاهُ مِنْ طَرِيقِ الْأَعْمَشِ عَنْ أَصْحَابٍ لَهُ لَمْ يُسَمِّهِمْ عَنْ عُرْوَةَ الْمُزَنِيِّ، وَهُوَ مَجْهُولٌ وَلَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ لِأَنَّ مَعْنَى هَذَا الْخَبَرِ مَنْسُوخٌ بِيَقِينٍ لِأَنَّهُ مُوَافِقٌ لِمَا كَانَ النَّاسُ عَلَيْهِ قَبْلَ نُزُولِ الْآيَةِ، وَوَرَدَتْ الْآيَةُ بِشَرْعٍ زَائِدٍ لَا يَجُوزُ تَرْكُهُ وَلَا تَخْصِيصُهُ.

L3319 They also mentioned two authentic hadiths: one of them is transmitted through Aisha, the Mother of the Believers, who said: “I sought the Messenger of Allah (peace be upon him) at night but did not find him. My two hands fell upon the sole of his foot while he was prostrating.”

وَذَكَرُوا أَيْضًا حَدِيثَيْنِ صَحِيحَيْنِ: أَحَدُهُمَا مِنْ طَرِيقِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «الْتَمَسْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي اللَّيْلِ فَلَمْ أَجِدْهُ، فَوَقَعَتْ يَدَيْ عَلَى بَاطِنِ قَدَمِهِ وَهُوَ سَاجِدٌ» .

L3320–3322 Abu Muhammad said: There is no proof in this for them, because ablution is only required for the one intending to touch, not for the passively touched individual who did not himself intend to initiate contact—since no actual touching occurred. Another proof is that this report does not state he (peace be upon him) was in prayer, and he may have prostrated. A Muslim [performing prostration] outside prayer, since prostration is an act of virtue. Even if it were authentically established for them that he—peace be upon him—was in prayer—though this is itself unsubstantiated—the narration contains no evidence that his ablution remained intact, nor that he prayed a new prayer without renewing ablution. Since the narration includes none of these details, they have no legitimate basis for relying on it. Furthermore, even if it were soundly established that he—peace be upon him—was in prayer, and that he continued it or prayed another prayer without renewing ablution—all of which is entirely baseless—this narration would then align with the situation people were in prior to the verse’s revelation, a state undoubtedly abrogated by the verse’s revelation, which nullified its ruling. It is invalid to adhere to what is conclusively abrogated while disregarding the abrogating

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّ الْوُضُوءَ إنَّمَا هُوَ عَلَى الْقَاصِدِ إلَى اللَّمْسِ، لَا عَلَى الْمَلْمُوسِ دُونَ أَنْ يَقْصِدَ هُوَ إلَى فِعْلِ الْمُلَامَسَةِ؛ لِأَنَّهُ لَمْ يُلَامِسْ، وَدَلِيلٌ آخَرُ، وَهُوَ أَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ فِي صَلَاةٍ، وَقَدْ يَسْجُدُ الْمُسْلِمُ فِي غَيْرِ صَلَاةٍ، لِأَنَّ السُّجُودَ فِعْلُ خَيْرٍ، وَحَتَّى لَوْ صَحَّ لَهُمْ أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ فِي صَلَاةٍ - وَهَذَا مَا لَا يَصِحُّ - فَلَيْسَ فِي الْخَبَرِ أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَنْتَقِضْ وُضُوءُهُ، وَلَا أَنَّهُ صَلَّى صَلَاةً مُسْتَأْنَفَةً دُونَ تَجْدِيدِ وُضُوءٍ، فَإِذًا لَيْسَ فِي الْخَبَرِ شَيْءٌ مِنْ هَذَا فَلَا مُتَعَلَّقَ لَهُمْ بِهِ أَصْلًا. ثُمَّ لَوْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ فِي صَلَاةٍ، وَصَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - تَمَادَى عَلَيْهَا أَوْ صَلَّى غَيْرَهَا دُونَ تَجْدِيدِ وُضُوءٍ - وَهَذَا كُلُّهُ لَا يَصِحُّ أَبَدًا - فَإِنَّهُ كَانَ يَكُونُ هَذَا الْخَبَرُ مُوَافِقًا لِلْحَالِ الَّتِي كَانَ النَّاسُ عَلَيْهَا قَبْلَ نُزُولِ الْآيَةِ بِلَا شَكٍّ، وَهِيَ

verse. Thus, their reliance on this narration is entirely void. Praise be to Allah, Lord of the Worlds.

حَالٌ لَا مِرْيَةَ فِي نَسْخِهَا وَارْتِفَاعِ حُكْمِهِ بِنُزُولِ الْآيَةِ، وَمِنْ الْبَاطِلِ الْأَخْذُ بِمَا قَدْ تُيُقِّنَ نَسْخُهُ وَتَرْكُ النَّاسِخِ، فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ بِهَذَا الْخَبَرِ. وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L3323 The second narration through Abu Qatadah states: "The Messenger of Allah—peace and blessings be upon him—carried Umamah bint Abi al-'As—her mother being Zaynab bint Rasul Allah, peace and blessings be upon him—on his shoulder, placing her down when he prostrated and lifting her when he stood." Abu Muhammad said: This provides no evidence for them whatsoever, as there is no explicit text stating that her hands and feet touched any part of his skin—peace be upon him. For she might have been draped in a garment, wearing gloves and socks, or her garment could have been long enough to cover her hands and feet. It is more appropriate to assume this about someone like her in the presence of men. If what we mentioned is not specified in the hadith, it is impermissible for anyone to add to it what is not therein, thus becoming a liar. Since their assumption is absent from the narration and what we propose is possible—and there is no other possibility—their reliance on it becomes invalid. It is impermissible to abandon the verse whose ruling is definitively obligatory based on a false assumption. Allah the Exalted said: "Indeed, conjecture avails nothing against the truth" [Quran 10:36].[40]

وَالْخَبَرُ الثَّانِي مِنْ طَرِيقِ أَبِي قَتَادَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَمَلَ أُمَامَةَ بِنْتَ أَبِي الْعَاصِ - وَأُمُّهَا زَيْنَبُ بِنْتُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى عَاتِقِهِ يَضَعُهَا، إذَا سَجَدَ، وَيَرْفَعُهَا إذَا قَامَ» قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا لِأَنَّهُ لَيْسَ فِيهِ نَصٌّ أَنَّ يَدَيْهَا وَرِجْلَيْهَا لَمَسَتْ شَيْئًا مِنْ بَشَرَتِهِ - عَلَيْهِ السَّلَامُ -، إذْ قَدْ تَكُونُ مُوَشَّحَةً بِرِدَاءٍ أَوْ بِقُفَّازَيْنِ وَجَوْرَبَيْنِ، أَوْ يَكُونُ ثَوْبُهَا سَابِغًا يُوَارِي يَدَيْهَا وَرِجْلَيْهَا، وَهَذَا الْأَوْلَى أَنْ يُظَنَّ بِمِثْلِهَا بِحَضْرَةِ الرِّجَالِ، وَإِذَا لَمْ يَكُنْ مَا ذَكَرْنَا فِي الْحَدِيثِ فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَزِيدَ فِيهِ مَا لَيْسَ فِيهِ، فَيَكُونَ كَاذِبًا، وَإِذَا كَانَ مَا ظَنُّوا لَيْسَ فِي الْخَبَرِ وَمَا قُلْنَا مُمْكِنًا، وَالَّذِي لَا يُمْكِنُ غَيْرُهُ، فَقَدْ بَطَلَ تَعَلُّقُهُمْ بِهِ، وَلَمْ يَحِلَّ تَرْكُ الْآيَةِ الْمُتَيَقَّنِ وُجُوبُ حُكْمِهَا لِظَنٍّ كَاذِبٍ، وَقَالَ تَعَالَى: {إِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [يونس: ٣٦].

L3324 Furthermore, this report and the one preceding it do not indicate which of them occurred after the revelation of the verse, and the verse was revealed later. Even if it were established that the Prophet—peace be upon him—touched her hands and feet during prayer, it would align with the practice people followed before the verse was revealed. In any case, we are certain that the meaning of this report—if it were valid as they claim—is undoubtedly abrogated, and it is impermissible to revert to what is confirmed to be abrogated and abandon the abrogating text. Thus, it is clear that they are deluded by reports that have no connection to anything in them, seeking thereby to abandon the certainty of the Quran and the Sunnah.

وَأَيْضًا فَإِنَّ هَذَا الْخَبَرَ وَالَّذِي قَبْلَهُ لَيْسَ فِيهِمَا أَيُّهُمَا كَانَ بَعْدَ نُزُولِ الْآيَةِ، وَالْآيَةُ مُتَأَخِّرَةُ النُّزُولِ، فَلَوْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - مَسَّ يَدَيْهَا وَرِجْلَيْهَا فِي الصَّلَاةِ لَكَانَ مُوَافِقًا لِلْحَالِ الَّتِي كَانَ النَّاسُ عَلَيْهَا قَبْلَ نُزُولِ الْآيَةِ، وَعَلَى كُلِّ حَالٍ فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ مَعْنَى هَذَا الْخَبَرِ - لَوْ صَحَّ لَهُمْ كَمَا يُرِيدُونَ - فَإِنَّهُ مَنْسُوخٌ بِلَا شَكٍّ وَلَا يَحِلُّ الرُّجُوعُ إلَى الْمُتَيَقَّنِ أَنَّهُ مَنْسُوخٌ وَتَرْكُ النَّاسِخِ. فَصَحَّ أَنَّهُمْ يُوهِمُونَ بِأَخْبَارٍ لَا مُتَعَلَّقَ لَهُمْ بِشَيْءٍ مِنْهَا، يَرُومُونَ بِهَا تَرْكَ الْيَقِينِ مِنْ الْقُرْآنِ وَالسُّنَنِ.

[40] **Qur'an references (L3323):** Qur'an 10:36 (Yunus).

وَقَالَ أَبُو حَنِيفَةَ: لَا يَنْقُضُ الْوُضُوءَ قُبْلَةٌ وَلَا مُلَامَسَةٌ لِلَذَّةٍ كَانَتْ أَوْ لِغَيْرِ لَذَّةٍ، وَلَا أَنْ يَقْبِضَ بِيَدِهِ عَلَى فَرْجِهَا كَذَلِكَ، إِلَّا أَنْ يُبَاشِرَهَا بِجَسَدِهِ دُونَ حَائِلٍ وَيَنْعَظُ فَهَذَا وَحْدَهُ يَنْقُضُ الْوُضُوءَ. وَقَالَ مَالِكٌ: لَا وُضُوءَ مِنْ مُلَامَسَةِ الْمَرْأَةِ الرَّجُلَ، وَلَا الرَّجُلِ الْمَرْأَةَ، إِذَا كَانَتْ لِغَيْرِ شَهْوَةٍ، تَحْتَ الثِّيَابِ أَوْ فَوْقَهَا، فَإِنْ كَانَتْ الْمُلَامَسَةُ لِلَّذَّةِ فَعَلَى الْمُلْتَذِّ مِنْهُمَا الْوُضُوءُ سَوَاءٌ كَانَ فَوْقَ الثِّيَابِ أَوْ تَحْتَهَا، أَنْعَظَ أَوْ لَمْ يُنْعِظْ، وَالْقُبْلَةُ كَالْمُلَامَسَةِ فِي كُلِّ ذَلِكَ، وَهُوَ قَوْلُ أَحْمَدَ بْنِ حَنْبَلٍ. وَقَالَ الشَّافِعِيُّ كَقَوْلِنَا، إِلَّا أَنَّهُ رُوِيَ عَنْهُ أَنَّ مَسَّ شَعْرِ الْمَرْأَةِ خَاصَّةً لَا يَنْقُضُ الْوُضُوءَ.

L3325–3327 Abu Hanifah said: Ablution is not invalidated by kissing or intimate touching, whether for pleasure or not for pleasure, nor... That he grasps with his hand her private part similarly, except if he makes direct bodily contact with her without any barrier and experiences an erection—this combination alone invalidates ablution. Mālik said: Ablution is not invalidated by a woman's contact with a man or a man's contact with a woman when done without lust, whether beneath garments or over them. If the contact is for pleasure, whichever of them derives pleasure must perform ablution—regardless of whether it occurs over garments or beneath them, and whether erection occurs or not. Kissing is equivalent to contact in all these rulings. This is the opinion of Aḥmad ibn Ḥanbal. Al-Shāfiʿī held the same view as ours, though it is narrated from him that merely touching a woman's hair specifically does not invalidate ablution.

قَالَ أَبُو مُحَمَّدٍ أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَظَاهِرُ التَّنَاقُضِ، وَلَا يُمْكِنُهُ التَّعَلُّقُ بِالتَّأْوِيلِ الَّذِي تَأَوَّلَهُ قَوْمٌ فِي الْآيَةِ: إنَّ الْمُلَامَسَةَ الْمَذْكُورَةَ فِيهَا هُوَ الْجِمَاعُ فَقَطْ لِأَنَّهُ أَوْجَبَ الْوُضُوءَ مِنْ الْمُبَاشَرَةِ إذَا كَانَ مَعَهَا إنْعَاظٌ، وَأَمَّا مُنَاقَضَتُهُ فَتَفْرِيقُهُ بَيْنَ الْقُبْلَةِ يَكُونُ مَعَهَا إنْعَاظٌ فَلَا يَنْقُضُ الْوُضُوءَ. وَبَيْنَ الْمُبَاشَرَةِ يَكُونُ مَعَهَا إنْعَاظٌ فَتَنْقُضُ الْوُضُوءَ، وَهَذَا فَرْقٌ لَمْ يُؤَيِّدْهُ قُرْآنٌ وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا سَقِيمَةٌ، وَلَا إجْمَاعٌ وَلَا قَوْلُ صَاحِبٍ وَلَا قِيَاسٌ، بَلْ هُوَ مُخَالِفٌ لِكُلِّ ذَلِكَ، وَمِنْ مُنَاقَضَاتِهِ أَيْضًا أَنَّهُ جَعَلَ الْقُبْلَةَ لِشَهْوَةٍ وَاللَّمْسَ لِشَهْوَةٍ بِمَنْزِلَةِ الْقُبْلَةِ لِغَيْرِ الشَّهْوَةِ، وَاللَّمْسِ لِغَيْرِ الشَّهْوَةِ لَا يَنْقُضُ الْوُضُوءَ شَيْءٌ مِنْ ذَلِكَ، ثُمَّ رَأَى أَنَّ الْقُبْلَةَ لِشَهْوَةٍ وَاللَّمْسَ لِشَهْوَةٍ رَجْعَةٌ فِي الطَّلَاقِ، بِخِلَافِ الْقُبْلَةِ لِغَيْرِ شَهْوَةٍ وَاللَّمْسِ لِغَيْرِ شَهْوَةٍ، وَهَذَا كَمَا تَرَى لَا اتِّبَاعَ الْقُرْآنِ، وَلَا التَّعَلُّقَ بِالسُّنَّةِ وَلَا طَرْدَ قِيَاسٍ وَلَا سَدَادَ رَأْيٍ وَلَا تَقْلِيدَ صَاحِبٍ، وَنَسْأَلُ اللَّهَ التَّوْفِيقَ.

L3328 Abu Muhammad said: As for Abu Hanifa's statement, its contradiction is manifest. He cannot rely on the interpretation proposed by some regarding the verse—that the "mulāmasah" mentioned therein refers solely to intercourse—because he obligated ablution for skin-to-skin contact (mubāsharah) when accompanied by arousal. His contradiction lies in distinguishing between a kiss accompanied by arousal, which he ruled does not invalidate ablution, and skin-to-skin contact accompanied by arousal, which he ruled does invalidate ablution. This distinction lacks support from the Quran, neither sound nor weak Sunnah, nor consensus, nor a Companion's opinion, nor analogy. Rather, it contradicts all these. Another contradiction is his equating a kiss for desire and touch for desire with a kiss or touch without desire—none of which invalidate ablution—while simultaneously ruling that a kiss or touch with desire constitutes a revocation right during the waiting period of divorce, unlike those without desire. This, as you observe, neither follows the Quran, nor connects to the Sunnah, nor applies analogy consistently, nor reflects sound judgment, nor blindly imitates a Companion's view. We ask Allah for divine facilitation.

L3329 As for Mālik's statement regarding the consideration of desire and pleasure, it is an assertion unsupported by evidence—neither from the Quran, nor from

any Sunnah (whether sound or weak), nor from a Companion's opinion, nor regulated analogy, nor precaution. Similarly, Al-Shāfiʿī's distinction between hair and other matters is a view unsupported by the Quran, the Sunnah, consensus, a Companion's opinion, or analogy. Rather, it contradicts all these foundations. These three opinions, as we have presented them, are not known to have been held by anyone before them. And success comes only through Allah, the Exalted.

وَأَمَّا قَوْلُ مَالِكٍ فِي مُرَاعَاةِ الشَّهْوَةِ وَاللَّذَّةِ، فَقَوْلٌ لَا دَلِيلَ عَلَيْهِ لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ وَلَا ضَبْطِ قِيَاسٍ وَلَا احْتِيَاطٍ، وَكَذَلِكَ تَفْرِيقُ الشَّافِعِيِّ بَيْنَ الشَّعْرِ وَغَيْرِهِ، فَقَوْلٌ لَا يُعَضِّدُهُ أَيْضًا قُرْآنٌ وَلَا سُنَّةٌ وَلَا إجْمَاعٌ وَلَا قَوْلُ صَاحِبٍ وَلَا قِيَاسٌ، بَلْ هُوَ خِلَافُ ذَلِكَ كُلِّهِ، وَهَذِهِ الْأَقْوَالُ الثَّلَاثَةُ كَمَا أَوْرَدْنَاهَا لَمْ نَعْرِفْ أَنَّهُ قَالَ بِهَا أَحَدٌ قَبْلَهُمْ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L3330–3332 If it is said: You have narrated from Al-Nakhaʿī and Al-Shaʿbī that if one kisses or touches with desire, ablution is obligatory upon him. And from Ḥammād: If one spouse kisses the other while the latter does not desire that, ablution is not obligatory upon the one who does not desire it unless he feels pleasure, while ablution is obligatory upon the one who intended it. We respond: It has been authentically established from Al-Shaʿbī, Al-Nakhaʿī, and Ḥammād that the obligation of ablution due to kissing is incumbent upon the initiator under all circumstances, given that this is the case. Pleasure is encompassed within this opinion, and this is our position, but it is not the view of Mālik. It is astonishing that Mālik does not deem ablution necessary due to mere physical contact unless desire accompanies it, yet he does not consider ablution obligatory from desire alone without contact. Therefore, each of these two factors individually does not necessitate ablution—so from where does he derive the obligation of ablution when both are present?

فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ عَنْ النَّخَعِيِّ وَالشَّعْبِيِّ: إذَا قَبَّلَ أَوْ لَمَسَ لِشَهْوَةٍ فَعَلَيْهِ الْوُضُوءُ وَعَنْ حَمَّادٍ: أَيُّ الزَّوْجَيْنِ قَبَّلَ صَاحِبَهُ وَالْآخَرُ لَا يُرِيدُ ذَلِكَ، فَلَا وُضُوءَ عَلَى الَّذِي لَا يُرِيدُ ذَلِكَ، إلَّا أَنْ يَجِدَ لَذَّةً، وَعَلَى الْقَاصِدِ لِذَلِكَ الْوُضُوءُ. قُلْنَا: قَدْ صَحَّ عَنْ الشَّعْبِيِّ وَالنَّخَعِيِّ وَحَمَّادٍ إيجَابُ الْوُضُوءِ مِنْ الْقُبْلَةِ عَلَى الْقَاصِدِ بِكُلِّ حَالٍ، وَإِذْ ذَلِكَ كَذَلِكَ فَاللَّذَّةُ دَاخِلَةٌ فِي هَذَا الْقَوْلِ، وَبِهِ نَقُولُ، وَلَيْسَ ذَلِكَ قَوْلَ مَالِكٍ. وَالْعَجَبُ أَنَّ مَالِكًا لَا يَرَى الْوُضُوءَ مِنْ الْمُلَامَسَةِ إلَّا حَتَّى يَكُونَ مَعَهَا شَهْوَةٌ، ثُمَّ لَا يَرَى الْوُضُوءَ يَجِبُ مِنْ الشَّهْوَةِ دُونَ مُلَامَسَةٍ فَكُلُّ وَاحِدٍ مِنْ الْمَعْنَيَيْنِ لَا يُوجِبُ الْوُضُوءَ عَلَى انْفِرَادِهِ فَمِنْ أَيْنَ لَهُ إيجَابُ الْوُضُوءِ عِنْدَ اجْتِمَاعِهِمَا؟

L3333 **The juristic issue is that penetration of the penis into the vagina, whether ejaculation occurs or not, necessitates wuḍū'.**

[مَسْأَلَةُ إيلَاجُ الذَّكَرِ فِي الْفَرْجِ أَنْزَلَ أَوْ لَمْ يُنْزِلْ يُوجِبُ الْوُضُوءَ]

L3334 Ruling 166: The insertion of the penis into the vagina necessitates the ablution (wuḍūʾ), whether ejaculation occurs or not.

١٦٦٠ - مَسْأَلَةٌ: وَإِيلَاجُ الذَّكَرِ فِي الْفَرْجِ يُوجِبُ الْوُضُوءَ، كَانَ مَعَهُ إنْزَالٌ أَوْ لَمْ يَكُنْ.

L3335 The proof of that is what was narrated to us by Abdullah ibn Yusuf: Ahmad ibn Fath narrated to us, Abd al-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Abu Kuraib Muhammad ibn al-ʿAlāʾ narrated to us, Abu

بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ ثنا أَبُو

Muawiyah Muhammad ibn Khazim narrated to us, Hisham, who is Ibn Urwah, from his father, from Abu Ayyub al-Ansari, from Ubayy ibn Kaʿb, who said: “I asked Allah’s Messenger—peace and blessings of Allah be upon him—about a man who has sexual contact with a woman but does not ejaculate. He said: ’He should wash the part that touched the woman, then perform ablution and pray.”’ We also narrated it through Shuʿbah, from al-Hakam, from Abu Salih, from Dhakwan, from Abu Saʿid al-Khudri, from the Prophet—peace and blessings of Allah be upon him. Thus, ablution is obligatory along with the ritual bath according to what we will mention after this, Allah, the Most High, willing.

The issue of carrying the deceased in a bier or in other than it.

L3336

L3337–3339

Issue: Carrying the deceased in a bier or otherwise. Abdullah ibn Rabiʿ narrated to us: Abdullah ibn Muhammad ibn Uthman al-Asadi narrated to us: Ahmad ibn Khalid narrated to us: Ali ibn Abdulaziz narrated to us: Al-Hajjaj ibn al-Minhāl narrated to us: Hammad ibn Salamah narrated from Muhammad ibn Amr from Abu Salamah ibn Abdulrahman ibn Awf from Abu Hurayrah from the Prophet—peace and blessings be upon him—who said: “Whoever washes a deceased person must perform ghusl (ritual bathing), and whoever carries the bier must perform ablution.” Abu Muhammad said: meaning the funeral bier. We have also narrated it via the route of Sufyan ibn Uyaynah from Suhayl ibn Abi Salih from his father from Ishaq, the freed slave of Zā’idah, from Abu Hurayrah from the Prophet—peace and blessings be upon him. Ishaq, the freed slave of Zā’idah, is a trustworthy Medinan follower, declared trustworthy by Ahmad ibn Salih al-Kufi and others. He narrated from Saʿd ibn Abi Waqqas and Abu Hurayrah. We have also narrated it. With the mentioned chain of transmission to Hammad ibn Salamah, from Ayyub al-Sikhtiyānī, from Muhammad ibn Sirin, who said: I was with Abdullah ibn Utbah ibn Mas’ud at a funeral. When we arrived, he entered the mosque. Abdullah entered his house to perform ablution, then came out to the mosque and said to me: “Have you not performed ablution?” I said: “No.” He said: “Umar ibn al-Khattab and those who succeeded him among

مُعَاوِيَةَ مُحَمَّدُ بْنُ خَازِمٍ ثنا هِشَامٌ هُوَ ابْنُ عُرْوَةَ - عَنْ أَبِيهِ عَنْ أَبِي أَيُّوبَ الْأَنْصَارِيِّ عَنْ أُبَيِّ بْنِ كَعْبٍ قَالَ: «سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الرَّجُلِ يُصِيبُ مِنْ الْمَرْأَةِ ثُمَّ يَكْسَلُ، قَالَ: يَغْسِلُ مَا أَصَابَهُ مِنْ الْمَرْأَةِ ثُمَّ يَتَوَضَّأُ وَيُصَلِّي» . وَرُوِّينَاهُ أَيْضًا عَنْ شُعْبَةَ عَنْ الْحَكَمِ عَنْ أَبِي صَالِحٍ عَنْ ذَكْوَانَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَالْوُضُوءُ لَا بُدَّ مِنْهُ مَعَ الْغُسْلِ عَلَى مَا نَذْكُرُهُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

[مَسْأَلَة حمل الْمَيِّت فِي نعش أَوْ فِي غَيْره]

١٦٧٠ - مَسْأَلَةٌ: وَحَمْلُ الْمَيِّتِ فِي نَعْشٍ أَوْ فِي غَيْرِهِ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ الْأَسَدِيُّ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ غَسَّلَ مَيِّتًا فَلْيَغْتَسِلْ وَمَنْ حَمَلَهَا فَلْيَتَوَضَّأْ» قَالَ أَبُو مُحَمَّدٍ: يَعْنِي الْجِنَازَةَ. وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ إسْحَاقَ مَوْلَى زَائِدَةَ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِسْحَاقُ مَوْلَى زَائِدَةَ ثِقَةٌ مَدَنِيٌّ وَتَابِعِيٌّ، وَثَّقَهُ أَحْمَدُ بْنُ صَالِحٍ الْكُوفِيُّ وَغَيْرُهُ، وَرَوَى عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ وَأَبِي هُرَيْرَةَ. وَرُوِّينَاهُ بِالسَّنَدِ الْمَذْكُورِ إلَى حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: كُنْت مَعَ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ فِي جِنَازَةٍ، فَلَمَّا جِئْنَا دَخَلَ الْمَسْجِدَ، فَدَخَلَ عَبْدُ اللَّهِ بَيْتَهُ يَتَوَضَّأُ ثُمَّ خَرَجَ إلَى الْمَسْجِدِ فَقَالَ لِي: أَمَا تَوَضَّأْتَ؟ قُلْت: لَا، فَقَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ

the caliphs—whenever one of them prayed over a funeral and then intended to pray the obligatory prayer—would perform ablution. To the extent that one of them would be in the mosque and request a basin to perform ablution in it."

L3340 Abū Muḥammad said: It is not permissible for their ablution—may Allah be pleased with them—to be valid, because the funeral prayer involves a state of ritual impurity (ḥadath), and it is not permissible to presume anything about them except adherence to the Sunnah we mentioned, and the Sunnah suffices. We have cited many of the opinions from Abū Ḥanīfah, Mālik, and Al-Shāfiʿī—which no one before them had asserted—such as the chapters two sections preceding this one, and rulings like invalidating ablution due to a mouthful of vomit but not less than that, along with all other statements we attributed to them. They did not base these opinions on the Quran, the Sunnah, analogy, or anyone's statement. And success is from Allah, the Most High.

L3341 **An Issue on the Appearance of *Istihadah* Blood or Flowing Blood from the Vaginal Vein.**

L3342 Issue 168: The emergence of chronic irregular bleeding (istihadah) or blood from a flowing vein in the genital area after menstruation ceases necessitates ablution (wudu) without exception for every prayer following the appearance of such discharge, regardless of whether the blood is distinguishable [as menstrual] or not, and whether she is aware of her [menstrual] cycle days or not.

L3343 The proof for that is what Yunus ibn Abdullah narrated to us: Muhammad ibn Muʿawiyah narrated to us: Ahmad ibn Shuʿayb narrated to us: Yahya ibn Habib ibn ʿArabi informed us from Hammad ibn Zayd from Hisham ibn ʿUrwah from his father from ʿA'ishah, who said: Fatimah bint Abi Hubaysh was experiencing irregular bleeding and asked the Prophet, peace and blessings of Allah be upon him, saying, "O Messenger of Allah, I am experiencing irregular bleeding and do not attain purity. Should I abandon prayer?" The Messenger of Allah, peace and blessings of Allah be upon him, replied, "That is merely a vein and not menstruation. When menstruation arrives, refrain

وَمَنْ دُونَهُ مِنْ الْخُلَفَاءِ إذَا صَلَّى أَحَدُهُمْ عَلَى الْجِنَازَةِ ثُمَّ أَرَادَ أَنْ يُصَلِّيَ الْمَكْتُوبَةَ تَوَضَّأَ، حَتَّى إنَّ أَحَدَهُمْ كَانَ يَكُونُ فِي الْمَسْجِدِ فَيَدْعُو بِالطَّشْتِ فَيَتَوَضَّأُ فِيهَا.

قَالَ أَبُو مُحَمَّد: لَا يَجُوزُ أَنْ يَكُونَ وُضُوءُهُمْ - رَضِيَ اللَّهُ عَنْهُمْ -، لِأَنَّ الصَّلَاةَ عَلَى الْجِنَازَةِ حَدَثٌ، وَلَا يَجُوزُ أَنْ يُظَنَّ بِهِمْ إلَّا إتْبَاعُ السُّنَّةِ الَّتِي ذَكَرْنَا، وَالسُّنَّةُ تَكْفِي. وَقَدْ ذَكَرْنَا مِنْ أَقْوَالِ أَبِي حَنِيفَةَ وَمَالِك وَالشَّافِعِيِّ الَّتِي لَمْ يَقُلْهَا أَحَدٌ قَبْلَهُمْ كَثِيرًا، كَالْأَبْوَابِ الَّتِي قَبْلَ هَذَا الْبَابِ بِبَابَيْنِ، وَكَنَقْضِ الْوُضُوءِ بِمِلْءِ الْفَمِ مِنْ الْقَلْسِ دُونَ مَا لَا يَمْلَؤُهُ مِنْهُ، وَسَائِرُ الْأَقْوَالِ الَّتِي ذَكَرْنَا عَنْهُمْ، لَمْ يَتَعَلَّقُوا فِيهَا بِقُرْآنٍ وَلَا سُنَّةٍ وَلَا بِقِيَاسٍ وَلَا بِقَوْلِ قَائِلٍ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ ظُهُورُ دَمِ الِاسْتِحَاضَةِ أَوْ الْعِرْقِ السَّائِلِ مِنْ الْفَرْجِ]

١٦٨ - مَسْأَلَةٌ: وَظُهُورُ دَمِ الِاسْتِحَاضَةِ أَوْ الْعِرْقِ السَّائِلِ مِنْ الْفَرْجِ إذَا كَانَ بَعْدَ انْقِطَاعِ الْحَيْضِ فَإِنَّهُ يُوجِبُ الْوُضُوءَ وَلَا بُدَّ لِكُلِّ صَلَاةٍ تَلِي ظُهُورَ ذَلِكَ الدَّمِ سَوَاءٌ تَمَيَّزَ دَمُهَا أَوْ لَمْ يَتَمَيَّزْ، عَرَفَتْ أَيَّامَهَا أَوْ لَمْ تَعْرِفْ.

بُرْهَانُ ذَلِكَ مَا حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنَا يَحْيَى بْنُ حَبِيبِ بْنِ عَرَبِيٍّ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ: «اُسْتُحِيضَتْ فَاطِمَةُ بِنْتُ أَبِي حُبَيْشٍ فَسَأَلَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: قَالَتْ يَا رَسُولَ اللَّهِ: إنِّي أُسْتَحَاضُ فَلَا أَطْهُرُ، فَأَدَعُ الصَّلَاةَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إنَّمَا ذَلِكَ عِرْقٌ وَلَيْسَتْ بِالْحَيْضَةِ، فَإِذَا أَقْبَلَتْ الْحَيْضَةُ فَدَعِي الصَّلَاةَ

from prayer. When it recedes, wash away the traces of blood from yourself, perform ablution, and pray, for it is only a vein."

Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Muhammad ibn al-Muthanna informed us: Muhammad ibn Abi 'Adiyy, citing his written work, narrated from Muhammad (the son of 'Amr ibn 'Alqamah ibn Waqqas) via Ibn Shihab from 'Urwah ibn al-Zubayr from Fatimah bint Abi Hubaysh that she was experiencing irregular bleeding. The Messenger of Allah, peace and blessings of Allah be upon him, said to her, "When menstrual blood comes, it is black blood that is recognized. Refrain from prayer during it. When it is the other type, perform ablution, for it is a vein."

L3344–3345 Ali, peace be upon him, ruled that all blood emerging from the vagina after menstrual blood—without specifying exceptions—necessitates ablution because it is venous blood.

L3346 Among those who held the obligation of ablution for every prayer for the woman experiencing prolonged bleeding from her private parts continuous with menstrual blood are 'Ā'ishah, the Mother of the Believers; 'Alī ibn Abī Ṭālib; Ibn 'Abbās; the jurists of Medina: 'Urwah ibn al-Zubayr, Sa'īd ibn al-Musayyib, al-Qāsim ibn Muḥammad, Sālim ibn 'Abdullāh, Muḥammad ibn 'Alī ibn al-Ḥusayn; 'Aṭā' ibn Abī Rabāḥ; al-Ḥasan al-Baṣrī; and this is the view of Sufyān al-Thawrī, Abū Ḥanīfah, al-Shāfi'ī, Aḥmad ibn Ḥanbal, Abū 'Ubayd, and others. 'Ā'ishah—may Allah have been pleased with her—said: "She performs the ritual bath and performs ablution for every prayer." It was narrated through the chain of Wakī' from Ismā'īl from Abū Khālid from al-Sha'bī from Masrūq's wife from 'Ā'ishah, and through the chain of 'Adī ibn Thābit from his father from 'Alī ibn Abī Ṭālib: "The woman with *istihāḍah* performs ablution for every prayer." From Shu'bah from 'Ammār ibn Abī 'Ammār from Ibn 'Abbās: "The woman with *istihāḍah* performs ablution for every prayer." From Qatādah from al-Ḥasan and Sa'īd ibn al-Musayyib: "The woman with *istihāḍah* performs ablution for every prayer." From 'Abd al-Razzāq from Ibn Jurayj from Hishām ibn 'Urwah regarding the woman with continuous bleeding: "She performs ablution for every prayer."

فَإِذَا أَدْبَرَتْ فَاغْسِلِي عَنْك أَثَرَ الدَّمِ وَتَوَضَّئِي وَصَلِّي فَإِنَّمَا ذَلِكَ عِرْقٌ وَلَيْسَتْ بِالْحَيْضَةِ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنَا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ مِنْ كِتَابِهِ عَنْ مُحَمَّدٍ هُوَ ابْنُ عَمْرِو بْنِ عَلْقَمَةَ بْنِ وَقَّاصٍ - عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ «عَنْ فَاطِمَةَ بِنْتِ أَبِي حُبَيْشٍ أَنَّهَا كَانَتْ تُسْتَحَاضُ فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إذَا كَانَ الْحَيْضُ فَإِنَّهُ دَمٌ أَسْوَدُ يُعْرَفُ، فَأَمْسِكِي عَنْ الصَّلَاةِ، وَإِذَا كَانَ الْآخَرُ فَتَوَضَّئِي فَإِنَّهُ عِرْقٌ» .

قَالَ عَلِيٌّ: فَعَمَّ - عَلَيْهِ السَّلَامُ - كُلَّ دَمٍ خَرَجَ مِنْ الْفَرْجِ بَعْدَ دَمِ الْحَيْضَةِ وَلَمْ يَخُصَّ وَأَوْجَبَ الْوُضُوءَ مِنْهُ، لِأَنَّهُ عِرْقٌ.

وَمِمَّنْ قَالَ بِإِيجَابِ الْوُضُوءِ لِكُلِّ صَلَاةٍ عَلَى الَّتِي يَتَمَادَى بِهَا الدَّمُ مِنْ فَرْجِهَا مُتَّصِلًا بِدَمِ الْمَحِيضِ: عَائِشَةُ أُمُّ الْمُؤْمِنِينَ وَعَلِيُّ بْنُ أَبِي طَالِبٍ وَابْنُ عَبَّاسٍ وَفُقَهَاءُ الْمَدِينَةِ عُرْوَةُ بْنُ الزُّبَيْرِ وَسَعِيدُ بْنُ الْمُسَيِّبِ وَالْقَاسِمُ بْنُ مُحَمَّدٍ وَسَالِمُ بْنُ عَبْدِ اللَّهِ وَمُحَمَّدُ بْنُ عَلِيِّ بْنِ الْحُسَيْنِ وَعَطَاءُ بْنُ أَبِي رَبَاحٍ وَالْحَسَنُ الْبَصْرِيُّ، وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَأَبِي حَنِيفَةَ وَالشَّافِعِيِّ وَأَحْمَدَ بْنِ حَنْبَلٍ وَأَبِي عُبَيْدٍ وَغَيْرِهِمْ. قَالَتْ عَائِشَةُ - رَضِيَ اللَّهُ عَنْهَا -: تَغْتَسِلُ وَتَتَوَضَّأُ لِكُلِّ صَلَاةٍ رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ إسْمَاعِيلَ عَنْ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ امْرَأَةِ مَسْرُوقٍ عَنْ عَائِشَةَ، وَمِنْ طَرِيقِ عَدِيِّ بْنِ ثَابِتٍ عَنْ أَبِيهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: الْمُسْتَحَاضَةُ تَتَوَضَّأُ لِكُلِّ صَلَاةٍ، وَعَنْ شُعْبَةَ عَنْ عَمَّارِ بْنِ أَبِي عَمَّارٍ عَنْ ابْنِ عَبَّاسٍ: الْمُسْتَحَاضَةُ تَتَوَضَّأُ لِكُلِّ صَلَاةٍ، وَعَنْ قَتَادَةَ عَنْ الْحَسَنِ وَسَعِيدِ بْنِ الْمُسَيِّبِ: الْمُسْتَحَاضَةُ تَتَوَضَّأُ لِكُلِّ صَلَاةٍ. وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ هِشَامِ بْنِ عُرْوَةَ

From Shuʿbah from al-Ḥakam ibn ʿUtaybah from Muḥammad ibn ʿAlī ibn al-Ḥusayn: “The woman with *istihāḍah* performs ablution for every prayer.”

فِي الَّتِي يَتَمَادَى بِهَا الدَّمُ إِنَّهَا تَتَوَضَّأُ لِكُلِّ صَلَاةٍ، وَعَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ: الْمُسْتَحَاضَةُ تَتَوَضَّأُ لِكُلِّ صَلَاةٍ.

L3347 Abu Muhammad said: Abu Hanifah stated regarding the woman experiencing prolonged vaginal bleeding (istihadah), as we mentioned, that she must perform ritual ablution at the commencement of each prayer time. She remains ritually pure with that ablution until the next prayer time begins, at which point her ablution becomes invalidated, obligating her to perform ablution anew. It is narrated from Muhammad ibn al-Hasan, from Abu Yusuf, from Abu Hanifah concerning this matter: If she performs ablution immediately after sunrise for the prayer, she remains ritually pure until Dhuhr time ends. However, Abu Yusuf denied this attribution to him, reporting that he had not transmitted anything from Abu Hanifah except that she remains ritually pure until Dhuhr time begins. Some of Abu Hanifah’s companions gave precedence to Muhammad’s narration. Abu Muhammad said: This is not as he stated. Rather, Abu Yusuf’s position aligns more closely with Abu Hanifah’s established views. Malik said: She is not obligated to perform ablution due to this blood except as a recommended act, not a compulsory one. She remains ritually pure unless another ritual impurity occurs. Al-Shafi’i and Ahmad said: She is obligated to perform ritual ablution for every obligatory prayer. She may pray voluntary prayers as she wishes between those [obligatory prayers]—before the obligatory prayer and after it—using the same ablution.

قَالَ أَبُو مُحَمَّدٍ: وَقَالَ أَبُو حَنِيفَةَ فِي الْمُتَّصِلَةِ الدَّمِ كَمَا ذَكَرْنَا: إنَّهَا تَتَوَضَّأُ لِدُخُولِ كُلِّ وَقْتِ صَلَاةٍ، فَتَكُونُ طَاهِرًا بِذَلِكَ الْوُضُوءِ، حَتَّى يَدْخُلَ وَقْتُ صَلَاةٍ أُخْرَى فَيَنْتَقِضُ وُضُوءُهَا وَيَلْزَمُهَا أَنْ تَتَوَضَّأَ لَهَا. وَرَوَى عَنْ مُحَمَّدِ بْنِ الْحَسَنِ عَنْ أَبِي يُوسُفَ عَنْ أَبِي حَنِيفَةَ فِي هَذِهِ: إذَا تَوَضَّأَتْ إثْرَ طُلُوعِ الشَّمْسِ لِلصَّلَاةِ أَنَّهَا تَكُونُ طَاهِرًا إلَى خُرُوجِ وَقْتِ الظُّهْرِ، وَأَنْكَرَ ذَلِكَ عَلَيْهِ أَبُو يُوسُفَ، وَحَكَى أَنَّهُ لَمْ يَرْوِ عَنْ أَبِي حَنِيفَةَ إلَّا أَنَّهَا تَكُونُ طَاهِرًا إلَى دُخُولِ وَقْتِ الظُّهْرِ. وَغَلَّبَ بَعْضُ أَصْحَابِهِ رِوَايَةَ مُحَمَّدٍ. قَالَ أَبُو مُحَمَّدٍ: وَلَيْسَ كَمَا قَالَ. بَلْ قَوْلُ أَبِي يُوسُفَ أَشْبَهُ بِأَقْوَالِ أَبِي حَنِيفَةَ. وَقَالَ مَالِكٌ: لَا وُضُوءَ عَلَيْهَا مِنْ هَذَا الدَّمِ إلَّا اسْتِحْبَابًا لَا إيجَابًا، وَهِيَ طَاهِرٌ مَا لَمْ تُحْدِثْ حَدَثًا آخَرَ. وَقَالَ الشَّافِعِيُّ وَأَحْمَدُ: عَلَيْهَا فَرْضًا أَنْ تَتَوَضَّأَ لِكُلِّ صَلَاةِ فَرْضٍ وَتُصَلِّي بَيْنَ ذَلِكَ مِنْ النَّوَافِلِ مَا أَحَبَّتْ، قَبْلَ الْفَرْضِ وَبَعْدَهُ بِذَلِكَ الْوُضُوءِ.

L3348–3349 Abu Muhammad said: As for Mālik’s statement, it is incorrect because it contradicts the hadith transmitted regarding this matter. It is remarkable that they accept interrupted-chain reports when these align with their views, yet here is an interrupted-chain narration better than all those they have relied upon. This is what we have narrated through the chain of Ibn Abī Shaybah and Mūsā ibn Muʿāwiyah from Wakīʿ from al-Aʿmash from Ḥabīb ibn Abī Thābit from ʿUrwah from ʿĀ’ishah, who said: Fāṭimah bint Abī Ḥubaysh came to the Messenger of Allah (peace be upon him) and said, “I experience irregular bleeding and do not attain ritual purity. Should I abandon prayer?”

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مَالِكٍ فَخَطَأٌ، لِأَنَّهُ خِلَافٌ لِلْحَدِيثِ الْوَارِدِ فِي ذَلِكَ، وَالْعَجَبُ أَنَّهُمْ يَقُولُونَ بِالْمُنْقَطِعِ مِنْ الْخَبَرِ إذَا وَافَقَهُمْ، وَهَهُنَا مُنْقَطِعٌ أَحْسَنُ مِنْ كُلِّ مَا أَخَذُوا بِهِ، وَهُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ وَمُوسَى بْنُ مُعَاوِيَةَ عَنْ وَكِيعٍ عَنْ الْأَعْمَشِ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ قَالَتْ «جَاءَتْ فَاطِمَةُ بِنْتُ أَبِي حُبَيْشٍ إلَى رَسُولِ اللَّهِ - عَلَيْهِ السَّلَامُ - فَقَالَتْ: إنِّي أُسْتَحَاضُ فَلَا أَطْهُرُ أَفَأَدَعُ الصَّلَاةَ؟ قَالَ

He replied, “No, that is merely a vein and not [a valid] menstrual period. Refrain from prayer during your menstrual days, then perform ghusl, perform wudūʾ for each prayer, and pray. Even if blood drips onto the mat.”

L3350–3352 He said: They stated this is a recommendation. It was said to them: Then everything you have obligated upon us for purification and other matters could perhaps be recommendations, with no distinction. This position leads to invalidating all religious injunctions while contradicting Allah’s command in His words: *“Let those who oppose His command beware lest a trial strike them or a painful punishment afflict them”* (24:63). We find no basis for their claim in this matter—neither in the Qur’an, the Sunnah, textual proof, a companion’s opinion, nor analogy. As for Abū Ḥanīfah’s opinion, it is also invalid because it contradicts the report he relies upon, opposes reason and analogy, and we have never found any purification invalidated by the expiration of its timeframe while remaining valid when the timeframe is current. Some of them obscured this by arguing: We observe that those performing *masḥ* (wiping over footwear) during travel or residence have their purification nullified when their specified period ends, so we analogize the *mustaḥāḍah* (woman with chronic bleeding) to them. Abū Muḥammad said: All analogy is invalid. Even if analogy were valid, this instance would epitomize falsehood, being a flawed analogy built on error. The purification of those performing *masḥ* is never nullified by the expiration of the stipulated period; rather, they remain pure as before and may pray unless their ablution is invalidated by an act nullifying it. The Sunnah only prohibits initiating *masḥ* after the timeframe expires, not invalidating their purification. Even if their claim about those performing *masḥ* were correct—which it is not—their analogy would still be invalid, for they equate the expiration of each prayer’s timeframe during travel or residence to the lapse of a day and night in residence or three days with their nights during travel. This is utterly absurd. Their analogy would only hold if they ruled that the *mustaḥāḍah* retains her ablution for a day and night in residence or three days during travel. Had they done so, they might have found precedent in the views of Saʿīd ibn al-Musayyib, Sālim ibn ʿAbdullāh, and al-Qāsim ibn Muḥammad—for it is authentically reported from them that she performs

لَا، إِنَّمَا ذَلِكَ عِرْقٌ وَلَيْسَ بِالْحَيْضَةِ، فَاجْتَنِبِي الصَّلَاةَ أَيَّامَ مَحِيضِكِ ثُمَّ اغْتَسِلِي وَتَوَضَّئِي لِكُلِّ صَلَاةٍ وَصَلِّي، وَإِنْ قَطَرَ الدَّمُ عَلَى الْحَصِيرِ» .

قَالَ: قَالُوا هَذَا عَلَى النَّدْبِ، قِيلَ لَهُمْ: وَكُلُّ مَا أَوْجَبْتُمُوهُ مِنَّا لِاسْتِطْهَارٍ وَغَيْرِ ذَلِكَ لَعَلَّهُ نَدْبٌ، وَلَا فَرْقَ، وَهَذَا قَوْلٌ يُؤَدِّي إِلَى إِبْطَالِ الشَّرَائِعِ كُلِّهَا مَعَ خِلَافِهِ لِأَمْرِ اللَّهِ تَعَالَى فِي قَوْلِهِ: {فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ} [النور: ٦٣] وَمَا نَعْلَمُ لَهُمْ مُتَعَلَّقًا فِي قَوْلِهِمْ هَذَا، لَا بِقُرْآنٍ وَلَا بِسُنَّةٍ وَلَا بِدَلِيلٍ وَلَا بِقَوْلِ صَاحِبٍ وَلَا بِقِيَاسٍ. وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفَاسِدٌ أَيْضًا لِأَنَّهُ مُخَالِفٌ لِلْخَبَرِ الَّذِي تَعَلَّقَ بِهِ، وَمُخَالِفٌ لِلْمَعْقُولِ وَلِلْقِيَاسِ، وَمَا وَجَدْنَا قَطُّ طَهَارَةً تَنْتَقِضُ بِخُرُوجِ وَقْتٍ وَتَصِحُّ بِكَوْنِ الْوَقْتِ قَائِمًا، وَمَوَّهَ بَعْضُهُمْ فِي هَذَا بِأَنْ قَالُوا: قَدْ وَجَدْنَا الْمَاسِحَ فِي السَّفَرِ وَالْحَضَرِ تَنْتَقِضُ طَهَارَتُهُمَا بِخُرُوجِ الْوَقْتِ الْمَحْدُودِ لَهُمَا فَنَقِيسُ عَلَيْهِمَا الْمُسْتَحَاضَةَ. قَالَ أَبُو مُحَمَّدٍ: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّهُ قِيَاسٌ خَطَأً وَعَلَى خَطَإٍ، وَمَا انْتَقَضَتْ قَطُّ طَهَارَةُ الْمَاسِحِ بِانْقِضَاءِ الْأَمَدِ الْمَذْكُورِ بَلْ هُوَ طَاهِرٌ كَمَا كَانَ، وَيُصَلِّي مَا لَمْ يَنْتَقِضْ وُضُوءُهُ بِحَدَثٍ مِنَ الْأَحْدَاثِ، وَإِنَّمَا جَاءَتِ السُّنَّةُ بِمَنْعِهِ مِنَ الِابْتِدَاءِ لِلْمَسْحِ فَقَطْ، لَا بِانْتِقَاضِ طَهَارَتِهِ، ثُمَّ لَوْ صَحَّ لَهُمْ مَا ذَكَرُوا فِي الْمَاسِحِ - وَهُوَ لَا يَصِحُّ - لَكَانَ قِيَاسُهُمْ هَذَا بَاطِلًا لِأَنَّهُمْ قَاسُوا خُرُوجَ وَقْتِ كُلِّ صَلَاةٍ فِي السَّفَرِ وَالْحَضَرِ عَلَى انْقِضَاءِ يَوْمٍ وَلَيْلَةٍ فِي الْحَضَرِ، وَعَلَى انْقِضَاءِ ثَلَاثَةِ أَيَّامٍ بِلَيَالِيهِنَّ فِي السَّفَرِ. وَهَذَا قِيَاسٌ سَخِيفٌ جِدًّا، وَإِنَّمَا كَانُوا يَكُونُونَ قَائِسِينَ عَلَى مَا ذَكَرُوا لَوْ جَعَلُوا الْمُسْتَحَاضَةَ تَبْقَى بِوُضُوئِهَا يَوْمًا وَلَيْلَةً فِي الْحَضَرِ، وَثَلَاثَةً فِي السَّفَرِ، وَلَوْ فَعَلُوا

هَذَا لَوَجَدُوا فِيمَا يُشْبِهُ بَعْضَ ذَلِكَ سَلَفًا، وَهُوَ سَعِيدُ بْنُ الْمُسَيِّبِ وَسَالِمُ بْنُ عَبْدِ اللَّهِ وَالْقَاسِمُ بْنُ مُحَمَّدٍ، فَقَدْ صَحَّ عَنْهُمْ أَنَّهَا تَغْتَسِلُ مِنَ الظُّهْرِ إِلَى الظُّهْرِ، وَأَمَّا قَوْلُهُمْ هَذَا فَعَارٍ مِنْ أَنْ يَكُونَ لَهُمْ فِيهِ سَلَفٌ، وَمَا نَعْلَمُ لِقَوْلِهِمْ حُجَّةً، لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ وَلَا مِنْ قَوْلِ صَاحِبٍ وَلَا مِنْ قِيَاسٍ وَلَا مِنْ مَعْقُولٍ.

a ritual bath from noon prayer to the next. As for their current assertion... Thus, it is devoid of any precedent in it from earlier scholars, and we know of no evidence for their claim—neither from the Quran, nor the Sunnah, nor the statement of a Companion, nor analogical reasoning, nor rational basis.[41]

L3353 وَأَمَّا الْمَسْأَلَةُ الَّتِي اُخْتُلِفَ فِيهَا عَنْ أَبِي حَنِيفَةَ فَإِنَّ قَوْلَ أَبِي يُوسُفَ أَشْبَهُ بِأُصُولِهِمْ؛ لِأَنَّ أَثَرَ طُلُوعِ الشَّمْسِ لَيْسَ هُوَ وَقْتُ صَلَاةِ فَرْضٍ مَارًّا إِلَى وَقْتِ الظُّهْرِ، وَهُوَ وَقْتُ تَطَوُّعٍ، فَالْمُتَوَضِّئَةُ فِيهِ لِلصَّلَاةِ كَالْمُتَوَضِّئَةِ لِصَلَاةِ الْعَصْرِ فِي وَقْتِ الظُّهْرِ، وَلَا يُجْزِيهَا ذَلِكَ عِنْدَهُمْ.

L3353 As for the issue concerning Abū Ḥanīfah's position where disagreement exists, Abū Yūsuf's statement aligns more closely with their principles. This is because the period after sunrise does not constitute a time for obligatory prayer extending into Ẓuhr, but rather a time for voluntary prayer. Thus, a woman performing ablution during this time for prayer resembles one performing ablution for ʿAṣr prayer during Ẓuhr's timeframe, and this does not suffice for her according to them.

L3354 وَأَمَّا قَوْلُ الشَّافِعِيِّ وَأَحْمَدَ فَخَطَأٌ وَمِنَ الْمُحَالِ الْمُمْتَنِعِ فِي الدِّينِ الَّذِي لَمْ يَأْتِ بِهِ قَطُّ نَصٌّ وَلَا دَلِيلٌ أَنْ يَكُونَ إِنْسَانٌ طَاهِرًا إِنْ أَرَادَ أَنْ يُصَلِّيَ تَطَوُّعًا وَمُحْدِثًا غَيْرَ طَاهِرٍ فِي ذَلِكَ الْوَقْتِ بِعَيْنِهِ إِنْ أَرَادَ أَنْ يُصَلِّيَ فَرِيضَةً، هَذَا مَا لَا خَفَاءَ بِهِ وَلَيْسَ إِلَّا طَاهِرًا أَوْ مُحْدِثًا، فَإِنْ كَانَتْ طَاهِرًا فَإِنَّهَا تُصَلِّي مَا شَاءَتْ مِنَ الْفَرَائِضِ وَالنَّوَافِلِ، وَإِنْ كَانَتْ مُحْدِثَةً فَمَا يَحِلُّ لَهَا أَنْ تُصَلِّيَ لَا فَرْضًا وَلَا نَافِلَةً.

L3354 As for the statement of Al-Shafi'i and Ahmad, it is erroneous, for it constitutes an absolutely inconceivable claim in the religion—one never supported by any text or evidence—that a person could be pure when intending voluntary prayer yet simultaneously in a state of minor impurity when intending obligatory prayer at that very same moment. This matter leaves no room for doubt: one must either be pure or in a state of minor impurity. If she is pure, she may pray whatever she wishes of obligatory and supererogatory prayers. But if she is in a state of minor impurity, she is not permitted to pray at all—neither obligatory nor supererogatory prayers.

L3355 وَأَقْبَحُ مِنْ هَذَا يَدْخُلُ عَلَى الْمَالِكِيِّينَ فِي قَوْلِهِمْ: مَنْ تَيَمَّمَ لِفَرِيضَةٍ فَلَهُ أَنْ يُصَلِّيَ بِذَلِكَ التَّيَمُّمِ بَعْدَ أَنْ يُصَلِّيَ الْفَرِيضَةَ مَا شَاءَ مِنَ النَّوَافِلِ، وَلَيْسَ لَهُ أَنْ يُصَلِّيَ نَافِلَةً قَبْلَ تِلْكَ الْفَرِيضَةِ بِذَلِكَ التَّيَمُّمِ، وَلَا أَنْ يُصَلِّيَ بِهِ صَلَاتَيْ فَرْضٍ، فَهَذَا هُوَ نَظَرُهُمْ وَقِيَاسُهُمْ وَأَمَّا تَعَلُّقٌ بِأَثَرٍ، فَالْآثَارُ حَاضِرَةٌ وَأَقْوَالُهُ حَاضِرَةٌ.

L3355 More reprehensible than this applies to the Malikīs regarding their statement: "Whoever performs tayammum for an obligatory prayer may pray as many voluntary prayers as he wishes with that tayammum after performing the obligatory prayer, but he may not pray a voluntary prayer before that obligatory prayer with that tayammum, nor may he pray two obligatory prayers with it." This is their legal reasoning and analogy. As for reliance on textual reports, the narrations are present and his statements are present.

[41] **Qur'an references (L3350):** Qur'an 24:63 (An-Nur).

قَالَ أَبُو مُحَمَّدٍ، وَهُمْ كُلُّهُمْ يَشْغَبُونَ بِخِلَافِ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْهُمْ وَجَمِيعُ الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ وَالشَّافِعِيِّينَ قَدْ خَالَفُوا فِي هَذِهِ الْمَسْأَلَةِ عَائِشَةَ وَعَلِيًّا وَابْنَ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا مُخَالِفَ لَهُمْ يُعْرَفُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ وَخَالَفَ الْمَالِكِيُّونَ فِي ذَلِكَ فُقَهَاءُ الْمَدِينَةِ كَمَا أَوْرَدْنَا، فَصَارَتْ أَقْوَالُهُمْ مُبْتَدَأَةً مِمَّنْ قَالَهَا بِلَا بُرْهَانٍ أَصْلًا. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Abu Muhammad said: All of them argue contentiously based on the disagreement of the Companion for whom no opponent is recognized among them. The Hanafis, Malikis, and Shafi'is have opposed, in this matter, Aisha, Ali, and Ibn Abbas (may Allah be pleased with them), and no opponent to them is known among the Companions (may Allah be pleased with them). Moreover, the Malikis opposed the jurists of Medina in this matter, as we have mentioned. Thus, their statements became baseless innovations introduced by those who asserted them without any proof at all. And success comes from Allah, the Most High.

[مَسْأَلَةُ الْوُضُوء لَا يُنْتَقَض بالرعاف وَلَا بَالدَّم السائل مِنْ الجسد]

The issue of ablution is not invalidated by nosebleed nor by blood flowing from the body.

١٦٩ - مَسْأَلَةٌ: قَالَ عَلِيٌّ: لَا يَنْقُضُ الْوُضُوءَ شَيْءٌ غَيْرَ مَا ذَكَرْنَا، لَا رُعَافٌ وَلَا دَمٌ سَائِلٌ مِنْ شَيْءٍ مِنْ الْجَسَدِ أَوْ مِنْ الْحَلْقِ أَوْ مِنْ الْأَسْنَانِ أَوْ مِنْ الْإِحْلِيلِ أَوْ مِنْ الدُّبُرِ، وَلَا حِجَامَةٌ وَلَا فَصْدٌ، وَلَا قَيْءٌ كَثُرَ أَوْ قَلَّ، وَلَا قَلْسٌ وَلَا قَيْحٌ وَلَا مَاءٌ وَلَا دَمٌ تَرَاهُ الْحَامِلُ مِنْ فَرْجِهَا، وَلَا أَذَى الْمُسْلِمِ وَلَا ظُلْمُهُ، وَلَا مَسُّ الصَّلِيبِ وَالْوَثَنِ وَلَا الرِّدَّةُ وَلَا الْإِنْعَاظُ لِلَذَّةٍ أَوْ لِغَيْرِ لَذَّةٍ، وَلَا الْمَعَاصِي مِنْ غَيْرِ مَا ذَكَرْنَا، وَلَا شَيْءَ يَخْرُجُ مِنْ الدُّبُرِ لَا عُذْرَةَ عَلَيْهِ، سَوَاءٌ فِي ذَلِكَ الدُّودُ وَالْحَجَرُ وَالْحَيَّاتُ، وَلَا حُقْنَةٌ وَلَا تَقْطِيرُ دَوَاءٍ فِي الْمَخْرَجَيْنِ وَلَا مَسُّ حَيَا بَهِيمَةٍ وَلَا قُبُلُهَا، وَلَا حَلْقُ الشَّعْرِ بَعْدَ الْوُضُوءِ، وَلَا قَصُّ الظُّفْرِ وَلَا شَيْءٌ يَخْرُجُ مِنْ فَرْجِ الْمَرْأَةِ مِنْ قَصَّةٍ بَيْضَاءَ أَوْ صُفْرَةٍ أَوْ كُدْرَةٍ أَوْ كَغُسَالَةِ اللَّحْمِ أَوْ دَمٍ أَحْمَرَ لَمْ يَتَقَدَّمْهُ حَيْضٌ، وَلَا الضَّحِكُ فِي الصَّلَاةِ، وَلَا شَيْءٌ غَيْرُ ذَلِكَ.

Issue 169: Ali said: Nothing invalidates ablution other than what we have mentioned: neither nosebleed nor flowing blood from any part of the body, throat, teeth, urethra, or anus; nor cupping nor bloodletting; nor vomiting whether copious or slight, nor regurgitation, pus, urine, nor blood observed by a pregnant woman from her genitals; nor causing harm to a Muslim (through speech or deed) nor oppressing them; nor touching a cross or idol; nor apostasy nor seminal discharge whether for pleasure or otherwise; nor sins other than those we have specified [as invalidators]; nor anything exiting the anus involuntarily, such as worms, stones, or snakes; nor enema nor medicinal drops administered to the two excretory orifices (anus and urethra). Nor touching a living animal or its genitalia, nor shaving hair that invalidates ablution, nor trimming nails that nullify it, nor anything exiting a woman's private part such as a white strand-like discharge, yellow discharge, turbid discharge, fluid resembling meat-washing water, or red blood not preceded by menstruation, nor laughing during prayer, nor anything else beyond these.

قَالَ أَبُو مُحَمَّدٍ: بُرْهَانُ إسْقَاطِنَا الْوُضُوءَ مِنْ كُلِّ مَا ذَكَرْنَا، هُوَ أَنَّهُ لَمْ يَأْتِ قُرْآنٌ وَلَا سُنَّةٌ وَلَا إجْمَاعٌ بِإِيجَابِ وُضُوءٍ فِي شَيْءٍ مِنْ ذَلِكَ، وَلَا شَرَّعَ اللَّهُ تَعَالَى عَلَى أَحَدٍ مِنْ الْإِنْسِ وَالْجِنِّ إلَّا مِنْ أَحَدِ هَذِهِ الْوُجُوهِ، وَمَا عَدَاهَا فَبَاطِلٌ، وَلَا شَرْعَ إلَّا مَا أَوْجَبَهُ

Abū Muḥammad said: The proof for our nullification of ablution from all that we have mentioned is that neither Quranic text, Prophetic tradition, nor scholarly consensus has established the obligation of ablution regarding any of these matters. Allah the Exalted has not legislated for any human or jinn except through one of these avenues. Whatever lies beyond them is invalid,

for there is no divine legislation except what Allah—Blessed and Exalted—has ordained and His Messenger (peace be upon him) has conveyed to us. Regarding everything we have mentioned, there is disagreement. We shall mention from it only what is currently debated by opposing scholars, and disregard views that have faded from practice except for a brief mention. And success comes only from Allah, the Most High.

اللَّهُ تَبَارَكَ وَتَعَالَى وَأَتَانَا بِهِ رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي كُلِّ مَا ذَكَرْنَا خِلَافٌ نَذْكُرُ مِنْهُ مَا كَانَ الْمُخَالِفُونَ فِيهِ حَاضِرِينَ، وَنَضْرِبُ عَمَّا قَدْ دَرَسَ الْقَوْلَ بِهِ إِلَّا ذِكْرًا خَفِيفًا. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L3362 Ali reported that Abu Hanifah said: Every flowing blood, flowing pus, or flowing watery fluid that flows from any part of the body invalidates the ritual ablution. If it does not flow, it does not invalidate the ablution. However, if blood or pus exits from the nose or ear and reaches the area of the nose reached during istinshaq (sniffing water) or the part of the inner ear washed during ghusl (ritual bath), the ablution becomes invalid. If it does not reach these specified areas, the ablution remains valid. If mucus or watery fluid exits from the nose, it does not invalidate the ablution. Similarly, if watery fluid exits from the ear, it does not invalidate the ablution.

قَالَ عَلِيٌّ: قَالَ أَبُو حَنِيفَةَ: كُلُّ دَمٍ سَائِلٍ أَوْ قَيْحٍ سَائِلٍ أَوْ مَاءٍ سَائِلٍ مِنْ أَيِّ مَوْضِعٍ سَالَ مِنْ الْجَسَدِ فَإِنَّهُ يَنْقُضُ الْوُضُوءَ، فَإِنْ لَمْ يَسِلْ لَمْ يَنْقُضْ الْوُضُوءُ مِنْهُ، إِلَّا أَنْ يَكُونَ خَرَجَ ذَلِكَ مِنْ الْأَنْفِ أَوْ الْأُذُنِ، فَإِنْ خَرَجَ مِنْ الْأَنْفِ أَوْ الْأُذُنِ فَإِنْ كَانَ ذَلِكَ دَمًا أَوْ قَيْحًا فَبَلَغَ إلَى مَوْضِعِ الِاسْتِنْشَاقِ مِنْ الْأَنْفِ أَوْ إلَى مَا يَلْحَقُهُ الْغُسْلُ مِنْ دَاخِلِ الْأُذُنِ فَالْوُضُوءُ مُنْتَقِضٌ، وَإِنْ لَمْ يَبْلُغْ إلَى مَا ذَكَرْنَا لَمْ يَنْتَقِضْ الْوُضُوءُ، فَإِنْ خَرَجَ مِنْ الْأَنْفِ مُخَاطٌ أَوْ مَاءٌ فَلَا يَنْتَقِضُ الْوُضُوءُ، وَكَذَلِكَ إنْ خَرَجَ مِنْ الْأُذُنِ مَاءٌ فَلَا يَنْتَقِضُ الْوُضُوءُ.

L3363 He said: If blood exits from the stomach to the mouth or from the gums, and if it predominates over the saliva, ritual ablution (wudu) is required even if it does not fill the mouth. If it does not predominate over the saliva, ritual ablution is not required. If they are equal, it is recommended to perform ablution. If blood exits from a wound and becomes visible but does not flow, ablution is not required. If it flows, ablution is required. If worms or flesh exit from a wound, ablution is not required. If worms exit from the anus, ablution is required. If a wound is bound, consider: if the blood would flow when left unbound, ablution is required; if it would not flow when left unbound, ablution is not required. He said: As for vomiting, regurgitation, and anything that exits from the stomach to the mouth—if it fills the mouth, it invalidates the ablution; if it does not fill the mouth, it does not invalidate it. Some scholars quantified "filling the mouth" as equivalent to a morsel (though morsels vary), while others quantified it as what one cannot retain in the mouth. Abū Ḥanīfa said: Except phlegm—ablution is not required for

قَالَ: فَإِنْ خَرَجَ مِنْ الْجَوْفِ إلَى الْفَمِ أَوْ مِنْ اللِّثَاتِ دَمٌ فَإِنْ كَانَ غَالِبًا عَلَى الْبُزَاقِ فَفِيهِ الْوُضُوءُ وَإِنْ لَمْ يَمْلَأْ الْفَمَ، وَإِنْ لَمْ يَغْلِبْ عَلَى الْبُزَاقِ فَلَا وُضُوءَ فِيهِ، فَإِنْ تَسَاوَيَا فَيُسْتَحْسَنُ فَيَأْمُرُ فِيهِ بِالْوُضُوءِ، فَإِنْ خَرَجَ مِنْ الْجُرْحِ دَمٌ فَظَهَرَ وَلَمْ يَسِلْ فَلَا وُضُوءَ فِيهِ، فَإِنْ سَالَ فَفِيهِ الْوُضُوءُ، فَلَوْ خَرَجَ مِنْ الْجُرْحِ دُودٌ أَوْ لَحْمٌ فَلَا وُضُوءَ فِيهِ، فَإِنْ خَرَجَ الدُّودُ مِنْ الدُّبُرِ فَفِيهِ الْوُضُوءُ، فَإِنْ عَصَبَ الْجُرْحَ نَظَرَ، فَإِنْ كَانَ لَوْ تُرِكَ سَالَ فَفِيهِ الْوُضُوءُ، وَإِنْ كَانَ لَوْ تُرِكَ لَمْ يَسِلْ فَلَا وُضُوءَ. قَالَ وَأَمَّا الْقَيْءُ وَالْقَلْسُ وَكُلُّ شَيْءٍ خَرَجَ مِنْ الْجَوْفِ إلَى الْفَمِ، فَإِنْ مَلَأَ الْفَمَ نَقَضَ الْوُضُوءَ وَإِنْ لَمْ يَمْلَأْ الْفَمَ لَمْ يَنْقُضْ الْوُضُوءَ، وَحَدَّ بَعْضُهُمْ مَا يَمْلَأُ الْفَمَ بِمِقْدَارِ اللُّقْمَةِ - عَلَى أَنَّ اللُّقْمَةَ تَخْتَلِفُ -

it even if it fills the mouth abundantly. Abū Yūsuf said: Rather, ablution is required for it if it fills the mouth.

وَحَدَّ بَعْضُهُمْ مَا لَا يَقْدِرُ عَلَى إِمْسَاكِهِ فِي الْفَمِ قَالَ أَبُو حَنِيفَةَ حَاشَا الْبُلْغَمَ فَلَا وُضُوءَ فِيهِ وَإِنْ مَلَأَ الْفَمَ وَكَثُرَ جِدًّا، قَالَ أَبُو يُوسُفَ: بَلْ فِيهِ الْوُضُوءُ إِذَا مَلَأَ الْفَمَ.

L3364–3366 Muḥammad ibn al-Ḥasan stated, in accordance with Abū Ḥanīfah's opinion, [that the rulings apply] to all those matters except [those involving] bloodshed. As for his statement regarding this: "If it exits from the gums, originates within the body, or exits from the mouth," it aligns with Abū Ḥanīfah's opinion. If it exits from the internal cavity (e.g., stomach), it does not invalidate ablution unless it fills the mouth - in that case, it invalidates ablution. Zufar held the same position as Abū Ḥanīfah in all matters except in the case of vomiting, for he ruled that ablution is invalidated by vomiting whether the amount is small or large.

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ كَقَوْلِ أَبِي حَنِيفَةَ فِي كُلِّ ذَلِكَ إِلَّا الدَّمَ، فَإِنَّ قَوْلَهُ فِيهِ: إِنْ خَرَجَ مِنْ اللِّثَةِ أَوْ فِي الْجَسَدِ أَوْ مِنْ الْفَمِ كَقَوْلِ أَبِي حَنِيفَةَ، فَإِنْ خَرَجَ مِنْ الْجَوْفِ لَمْ يَنْقُضْ الْوُضُوءَ إِلَّا أَنْ يَمْلَأَ الْفَمَ فَيَنْقُضُ الْوُضُوءَ حِينَئِذٍ، وَقَالَ زُفَرُ كَقَوْلِ أَبِي حَنِيفَةَ فِي كُلِّ شَيْءٍ إِلَّا الْقَلْسَ، فَإِنَّهُ قَالَ يَنْقُضُ الْوُضُوءَ قَلِيلُهُ وَكَثِيرُهُ.

L3367 Ali said: Such a thing is not acceptable—nor is there honor—except from the Messenger of Allah (peace and blessings be upon him), the conveyor of our Creator and Sustainer's directives, Exalted are His commands and prohibitions. As for anyone besides him, it constitutes delirium and incoherence, like the confusion of one afflicted with barsām, and statements definitively known that no one had asserted them before Abū Ḥanīfah—utterances unsupported by rational proof, textual evidence, or analogical reasoning. How can one who propagates these whisperings [of falsehood] presume to condemn those who adhere to the Messenger of Allah's injunction (peace and blessings be upon him) concerning urination in stagnant water or a mouse dying in clarified butter? Verily, this is truly wondrous—a wonder, the like of which is itself wondrous.

قَالَ عَلِيٌّ: مِثْلُ هَذَا لَا يُقْبَلُ - وَلَا كَرَامَةَ - إِلَّا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُبَلِّغِ عَنْ خَالِقِنَا وَرَازِقِنَا تَعَالَى أَمْرَهُ وَنَهْيَهُ، وَأَمَّا مِنْ أَحَدٍ دُونَهُ فَهُوَ هَذَيَانٌ وَتَخْلِيطٌ كَتَخْلِيطِ الْمُبَرْسَمِ وَأَقْوَالٍ مَقْطُوعٍ عَلَى أَنَّهُ لَمْ يَقُلْهَا أَحَدٌ قَبْلَ أَبِي حَنِيفَةَ، وَلَمْ يُؤَيِّدْهَا مَعْقُولٌ وَلَا نَصٌّ وَلَا قِيَاسٌ، أَفَيَسُوغُ لِمَنْ يَأْتِي بِهَذِهِ الْوَسَاوِسِ أَنْ يُنْكِرَ عَلَى مَنْ اتَّبَعَ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْبَائِلِ فِي الْمَاءِ الرَّاكِدِ وَفِي الْفَأْرَةِ تَمُوتُ فِي السَّمْنِ؟ إِنَّ هَذَا لَعَجَبٌ مَا مِثْلُهُ عَجَبٌ.

L3368 Abu Muhammad said: Some have cited a hadith we reported from 'Abd al-Razzāq, from Ibn Jurayj, from his father, elevating it to the Messenger of Allah—peace be upon him—who said: "Ablution is required due to vomiting, even if it is mere regurgitation. If someone suffers a nosebleed during prayer, is overcome by vomiting—and if it is regurgitation he regurgitates—or emits prostatic fluid, they should withdraw, perform ablution, then return to resume and complete their prayer without restarting it." Another hadith we reported through the chain of Ismā'īl ibn 'Ayyāsh, from Ibn Jurayj, from his father, and from Ibn Abī Mulaykah, from 'Ā'ishah—from the Messenger

قَالَ أَبُو مُحَمَّدٍ: وَمَوَّهَ بَعْضُهُمْ بِخَبَرٍ رُوِّينَاهُ عَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ أَبِيهِ يَرْفَعُهُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الْوُضُوءُ مِنْ الْقَيْءِ وَإِنْ كَانَ قَلْسًا يَقْلِسُهُ فَلْيَتَوَضَّأْ إِذَا رَعَفَ أَحَدٌ فِي الصَّلَاةِ أَوْ ذَرَعَهُ الْقَيْءُ، وَإِنْ كَانَ قَلْسًا يَقْلِسُهُ، أَوْ وَجَدَ مَذْيًا فَلْيَنْصَرِفْ وَلْيَتَوَضَّأْ ثُمَّ يَرْجِعْ فَيُتِمَّ مَا بَقِيَ مِنْ صَلَاتِهِ وَلَا يَسْتَقْبِلُهَا جَدِيدًا» وَخَبَرٌ آخَرُ رُوِّينَاهُ مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ ابْنِ جُرَيْجٍ عَنْ أَبِيهِ وَعَنْ ابْنِ أَبِي مُلَيْكَةَ

of Allah, peace be upon him—states: “If any of you vomits or regurgitates, they must perform ablution and resume their prayer from where they left off, provided they have not spoken.”

L3369–3371 Abū Muḥammad said: These two narrations are rejected, for Ibn Jurayj’s father had no companionship [with the Prophet], rendering the chain interrupted. The other is from the narration of Ismāʿīl ibn ʿAyyāsh—who is discarded, particularly so in what he transmitted from the Hijazis. Even if they were authentic, they would serve as proof against the Ḥanafīs, since neither of these two reports distinguishes between a mouthful of vomit or regurgitation and less than a mouthful of vomit or regurgitation; nor between what emerges from a blister—invalidating ablution—and what flows from the nose—which does not invalidate ablution. They contain no mention of blood exiting the internal cavity, the body, the gums, or wounds. They refer only to vomiting, regurgitation, and nosebleeds. Thus, the Ḥanafīs should not have relied exclusively on these two reports, as they have done. By their claim in the report concerning ablution due to loud laughter and ablution with nabīdh, and since they did not analogize based on these two cases—thus rejecting their analogy—they instead mixed matters in a manner that led them to sheer frenzy alone. This constitutes a proof against them—if it were valid—yet they contradicted it. They also cited as evidence a ḥadīth we narrated through the chain of Al-Awzāʿī from Yaʿīsh ibn Al-Walīd from his father from Maʿdān ibn Abī Ṭalḥah from Abū Al-Dardāʾ, who said: “Allah’s Messenger—peace be upon him—vomited and performed ablution. I met Thawbān and mentioned this to him, whereupon he said: ’You have spoken truthfully. I was the one who poured his ablution water,’ meaning the Prophet—peace be upon him.” We also narrated it through the chain of ʿAbd Al-Razzāq from Maʿmar from Yaḥyā ibn Abī Kathīr from Yaʿīsh ibn Al-Walīd from Khālid ibn Maʿdān ibn Abī Ṭalḥah from Abū Al-Dardāʾ, who said: “Allah’s Messenger—peace be upon him—intentionally vomited, thereby breaking his fast. He then called for water and performed ablution.”

L3372 Abū Muḥammad said: In this first ḥadīth, Yaʿīsh ibn al-Walīd narrates from his father, and **these two** are not well-known. The second ḥadīth involves a narrator guilty of *tadlīs* (concealing a flaw in the chain), as Yaḥyā did not

عَنْ عَائِشَةَ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ إِذَا قَاءَ أَحَدُكُمْ أَوْ قَلَسَ فَلْيَتَوَضَّأْ ثُمَّ لِيَبْنِ عَلَى مَا مَضَى مَا لَمْ يَتَكَلَّمْ» .

قَالَ أَبُو مُحَمَّد: وَهَذَانِ الْأَثَرَانِ سَاقِطَانِ، لِأَنَّ وَالِدَ ابْنِ جُرَيْجٍ لَا صُحْبَةَ لَهُ فَهُوَ مُنْقَطِعٌ، وَالْآخَرُ مِنْ رِوَايَةِ إِسْمَاعِيلَ بْنِ عَيَّاشٍ وَهُوَ سَاقِطٌ، لَا سِيَّمَا فِيمَا رُوِيَ عَنْ الْحِجَازِيِّينَ، ثُمَّ لَوْ صَحَّا لَكَانَا حُجَّةً عَلَى الْحَنَفِيِّينَ لِأَنَّهُ لَيْسَ شَيْءٌ مِنْ هَذَيْنِ الْخَبَرَيْنِ يُفَرِّقُ بَيْنَ مِلْءِ الْفَمِ مِنْ الْقَيْءِ وَالْقَلْسِ وَمَا دُونَ مِلْءِ الْفَمِ مِنْ الْقَيْءِ وَالْقَلْسِ، وَلَا بَيْنَ مَا يَخْرُجُ مِنْ نَفَّاطَةٍ فَيَنْقُضُ الْوُضُوءَ وَمَا يَسِيلُ مِنْ الْأَنْفِ فَلَا يَنْقُضُ الْوُضُوءَ وَلَا فِيهِ ذِكْرُ دَمٍ خَارِجٍ مِنْ الْجَوْفِ وَلَا مِنْ الْجَسَدِ وَلَا مِنْ اللِّثَةِ وَلَا مِنْ الْجُرْحِ، وَإِنَّمَا فِيهِمَا الْقَيْءُ وَالْقَلْسُ وَالرُّعَافُ فَقَطْ فَلَا عَلَى الْخَبَرَيْنِ اقْتَصَرُوا، كَمَا فَعَلُوا بِزَعْمِهِمْ فِي خَبَرِ الْوُضُوءِ مِنْ الْقَهْقَهَةِ وَالْوُضُوءِ بِالنَّبِيذِ، وَلَا قَاسُوا عَلَيْهِمَا فَطَرَدُوا قِيَاسَهُمْ، لَكِنْ خَلَّطُوا تَخْلِيطًا خَرَجُوا بِهِ إلَى الْهَوَسِ الْمَحْضِ فَقَطْ، فَهُوَ حُجَّةٌ عَلَيْهِمْ - لَوْ صَحَّ - وَقَدْ خَالَفُوهُ. وَاحْتَجُّوا أَيْضًا بِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ الْأَوْزَاعِيِّ عَنْ يَعِيشَ بْنِ الْوَلِيدِ عَنْ أَبِيهِ عَنْ مَعْدَانَ بْنِ أَبِي طَلْحَةَ «عَنْ أَبِي الدَّرْدَاءِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَاءَ فَتَوَضَّأَ، فَلَقِيتُ ثَوْبَانَ فَذَكَرْتُ ذَلِكَ لَهُ فَقَالَ: صَدَقْتَ، أَنَا صَبَبْتُ لَهُ وَضُوءَهُ يَعْنِي النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» وَرُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ يَعِيشَ بْنِ الْوَلِيدِ عَنْ خَالِدِ بْنِ مَعْدَانَ بْنِ أَبِي طَلْحَةَ عَنْ أَبِي الدَّرْدَاءِ قَالَ «اسْتَقَاءَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَفْطَرَ وَدَعَا بِمَاءٍ فَتَوَضَّأَ» .

قَالَ أَبُو مُحَمَّد: هَذَا الْحَدِيثُ الْأَوَّلُ فِيهِ يَعِيشُ بْنُ الْوَلِيدِ عَنْ أَبِيهِ وَلَيْسَا مَشْهُورَيْنِ وَالثَّانِي مُدَلِّسٌ لَمْ يَسْمَعْهُ يَحْيَى مِنْ يَعِيشَ، ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ مُتَعَلَّقٌ، لِأَنَّهُ لَيْسَ فِيهِ

hear it from Yaʿīsh. Even if these ḥadīths were authentic, they would not constitute evidence for their stance, for there is no indication in them that the Messenger of Allah—peace and blessings be upon him—said, "Whoever vomits must perform ablution," nor that his ablution—peace be upon him—was due to vomiting. It is authentically established that he—peace be upon him—performed *tayammum* **at the time of remembering Allah** (during prayer), yet they do not uphold that ruling. The two ḥadīths also make no distinction between vomit that fills the mouth and vomit that does not fill it, nor is there anything in **the two ḥadīths** besides the matter of vomiting. Thus, they did not restrict themselves to the content of the two ḥadīths, nor did they apply a universally applicable analogy to them. They also cited the **authentic** ḥadīth from the Messenger of Allah—peace and blessings be upon him—regarding Fāṭimah bint Abī Ḥubaysh (as cited previously in this work), where he—peace be upon him—said, "That is merely a vein and not menstruation," and he—peace be upon him—obligated ablution **for the bleeding**. They argued that this ruling applies to **every case of issuing blood**.

أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ مَنْ تَقَيَّأَ فَلْيَتَوَضَّأْ، وَلَا أَنَّ وُضُوءَهُ - عَلَيْهِ السَّلَامُ - كَانَ مِنْ أَجْلِ الْقَيْءِ، وَقَدْ صَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - التَّيَمُّمُ لِذِكْرِ اللَّهِ تَعَالَى، وَهُمْ لَا يَقُولُونَ بِذَلِكَ، وَلَيْسَ فِيهِ أَيْضًا فَرْقٌ بَيْنَ مَا يَمْلَأُ الْفَمَ مِنْ الْقَيْءِ وَبَيْنَ مَا لَا يَمْلَؤُهُ، وَلَا فِيهِمَا شَيْءٌ غَيْرَ الْقَيْءِ، فَلَا عَلَى مَا فِيهِمَا اقْتَصَرُوا، وَلَا قَاسُوا عَلَيْهِمَا قِيَاسًا مُطَّرِدًا. وَذَكَرُوا أَيْضًا الْحَدِيثَ الثَّابِتَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي فَاطِمَةَ بِنْتِ أَبِي حُبَيْشٍ - وَقَدْ ذَكَرْنَاهُ قَبْلُ - وَهُوَ قَوْلُهُ - عَلَيْهِ السَّلَامُ - «إنَّمَا ذَلِكَ عِرْقٌ وَلَيْسَ بِالْحَيْضَةِ» وَأَوْجَبَ - عَلَيْهِ السَّلَامُ - فِيهِ الْوُضُوءَ، قَالُوا: فَوَجَبَ ذَلِكَ فِي كُلِّ عِرْقٍ سَائِلٍ.

L3373–3375 Ali said: This is analogy, and analogy is invalid. Furthermore, even if it were valid, this would constitute pure invalidity, because if it is impermissible to analogize the blood from a vein exiting the vagina to menstrual blood exiting the vagina—and both of them are blood exiting the vagina—while Allah the Exalted has differentiated their rulings, then it is invalid to analogize blood exiting from outside the vagina to blood exiting the vagina. More invalid than that is analogizing pus to blood, and they cannot assert consensus in this matter, for the distinction between blood and pus is authentically established from al-Ḥasan and Abu Mijlaz. Even more invalid than that is analogizing the fluid exiting a blister to blood and pus. Nor is the fluid exiting the nose or ear analogized to the fluid exiting a blister. More invalid than all this is that the blood from a vein exiting the vagina would be... Ablution is necessitated by urine and feces, whether in small or large quantities. The vomit subject to legal analogy does not invalidate ablution unless it fills the mouth. Yet they did not analogize worms emerging from a wound to worms exiting the anus, and this constitutes extreme confusion. If

قَالَ عَلِيٌّ: وَهَذَا قِيَاسٌ، وَالْقِيَاسُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ لِأَنَّهُ إذَا لَمْ يُجِزْ أَنْ يَقِيسُوا دَمَ الْعِرْقِ الْخَارِجِ مِنْ الْفَرْجِ عَلَى دَمِ الْحَيْضِ الْخَارِجِ مِنْ الْفَرْجِ، وَكِلَاهُمَا دَمٌ خَارِجٌ مِنْ الْفَرْجِ، وَكَانَ اللَّهُ تَعَالَى قَدْ فَرَّقَ بَيْنَ حُكْمَيْهِمَا فَمِنْ الْبَاطِلِ أَنْ يُقَاسَ دَمٌ خَارِجٌ مِنْ غَيْرِ الْفَرْجِ عَلَى دَمٍ خَارِجٍ مِنْ الْفَرْجِ، وَأَبْطَلُ مِنْ ذَلِكَ أَنْ يُقَاسَ الْقَيْحُ عَلَى الدَّمِ، وَلَا يَقْدِرُونَ عَلَى ادِّعَاءِ إجْمَاعٍ فِي ذَلِكَ، فَقَدْ صَحَّ عَنْ الْحَسَنِ وَأَبِي مِجْلَزٍ الْفَرْقُ بَيْنَ الدَّمِ وَالْقَيْحِ، وَأَبْطَلُ مِنْ ذَلِكَ أَنْ يُقَاسَ الْمَاءُ الْخَارِجُ مِنْ النَّفَّاطَةِ عَلَى الدَّمِ وَالْقَيْحِ، وَلَا يُقَاسُ الْمَاءُ الْخَارِجُ مِنْ الْأَنْفِ وَالْأُذُنِ عَلَى الْمَاءِ الْخَارِجِ مِنْ النَّفَّاطَةِ، وَأَبْطَلُ مِنْ ذَلِكَ أَنْ يَكُونَ دَمُ الْعِرْقِ الْخَارِجُ مِنْ الْفَرْجِ يُوجِبُ الْوُضُوءَ، قَلِيلُهُ وَكَثِيرُهُ، وَيَكُونَ الْقَيْءُ الْمَقِيسُ عَلَيْهِ لَا يَنْقُضُ الْوُضُوءَ إلَّا حَتَّى يَمْلَأَ

they argue: “We analogize all such matters to feces because they are impurities,” we respond: “We observe that flatulence invalidates ablution despite not being impure. Why then do you not analogize belching and sneezing to it, as they too are wind emerging from the cavity without distinction?” You have invalidated your analogy by nullifying ablution for minor and major instances of urine and feces, yet you refrain from nullifying ablution for pus, vomit, blood, or water unless it fills the mouth, flows freely, or predominates. This is arbitrary confusion and abandonment of analogy. If they contend: “Ablution after nosebleeds and flowing blood is narrated from ʿAṭā, Ibrāhīm, Mujāhid, Qatādah, Ibn Sīrīn, ʿUrwah ibn al-Zubayr, Saʿīd ibn al-Musayyib, al-Ḥasan al-Baṣrī, and specifically regarding nosebleeds from al-Zuhrī,” we affirm this. Likewise, ablution after regurgitation, vomiting, and pus is reported from ʿAlī, Ibn ʿUmar (may Allah be pleased with them), ʿAṭā (regarding regurgitation and vomiting), Qatādah (regarding pus), al-Ḥakam ibn ʿUtaybah (regarding regurgitation), and Ibn ʿUmar (regarding vomiting). We respond: True, yet none among them stipulated any measure such as “mouthful” for these matters. Even if they had, no one’s opinion can override the authority of the Messenger of Allah (peace be upon him). Moreover, their equivalents in scholarly rank opposed them: Abū Hurayrah inserted his finger into his nose, drew blood, dabbed it off with his finger, then prayed without renewing ablution. Ibn ʿUmar squeezed a pustule on his face, released blood, smeared it between his fingers, and prayed. Ṭāwūs held no ablution is required for nosebleeds. ʿAṭā deemed ablution unnecessary after nosebleeds, al-Ḥasan after regurgitation, and Mujāhid regarding regurgitation.

الْفَمَ، ثُمَّ لَمْ يَقِيسُوا الدُّودَ الْخَارِجَ مِنْ الْجُرْحِ عَلَى الدُّودِ الْخَارِجِ مِنْ الدُّبُرِ، وَهَذَا مِنْ التَّخْلِيطِ فِي الْغَايَةِ الْقُصْوَى. فَإِنْ قَالُوا: قِسْنَا كُلَّ ذَلِكَ عَلَى الْغَائِطِ لِأَنَّ كُلَّ ذَلِكَ نَجَاسَةٌ قُلْنَا لَهُمْ: قَدْ وَجَدْنَا الرِّيحَ تَخْرُجُ مِنْ الدُّبُرِ فَتَنْقُضُ الْوُضُوءَ وَلَيْسَتْ نَجَاسَةً، فَهَلَّا قِسْتُمْ عَلَيْهَا الْجُشْوَةَ وَالْعُطْسَةَ، لِأَنَّهَا رِيحٌ خَارِجَةٌ مِنْ الْجَوْفِ كَذَلِكَ وَلَا فَرْقَ؟ وَأَنْتُمْ قَدْ أَبْطَلْتُمْ قِيَاسَكُمْ هَذَا فَنَقَضْتُمْ الْوُضُوءَ بِقَلِيلِ الْبَوْلِ وَالْغَائِطِ وَكَثِيرِهِ، وَلَمْ تَنْقُضُوا الْوُضُوءَ مِنْ الْقَيْحِ وَالْقَيْءِ وَالدَّمِ وَالْمَاءِ إلَّا بِمِقْدَارِ مِلْءِ الْفَمِ أَوْ بِمَا سَالَ أَوْ بِمَا غَلَبَ، وَهَذَا تَخْلِيطٌ وَتَرْكٌ لِلْقِيَاسِ. فَإِنْ قَالُوا: قَدْ رُوِيَ الْوُضُوءُ مِنْ الرُّعَافِ وَمِنْ كُلِّ دَمٍ سَائِلٍ عَنْ عَطَاءٍ وَإِبْرَاهِيمَ وَمُجَاهِدٍ وَقَتَادَةَ وَابْنِ سِيرِينَ وَعُرْوَةَ بْنِ الزُّبَيْرِ وَسَعِيدِ بْنِ الْمُسَيِّبِ وَالْحَسَنِ الْبَصْرِيِّ وَفِي الرُّعَافِ عَنْ الزُّهْرِيِّ، نَعَمْ. وَعَنْ عَلِيٍّ وَابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمْ - وَعَنْ عَطَاءٍ الْوُضُوءُ مِنْ الْقَلْسِ وَالْقَيْءِ وَالْقَيْحِ، وَعَنْ قَتَادَةَ فِي الْقَيْحِ، وَعَنْ الْحَكَمِ بْنِ عُتَيْبَةَ فِي الْقَلْسِ، وَعَنْ ابْنِ عُمَرَ فِي الْقَيْءِ، قُلْنَا: نَعَمْ إلَّا أَنَّهُ لَيْسَ مِنْهُمْ أَحَدٌ حَدَّ شَيْئًا مِنْ ذَلِكَ بِمِلْءِ الْفَمِ، وَلَوْ كَانَ فَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ خَالَفَ هَؤُلَاءِ نُظَرَاؤُهُمْ، فَصَحَّ عَنْ أَبِي هُرَيْرَةَ: أَنَّهُ أَدْخَلَ إصْبَعَهُ فِي أَنْفِهِ فَخَرَجَ فِيهَا دَمٌ فَفَتَّهُ بِأُصْبُعِهِ ثُمَّ صَلَّى وَلَمْ يَتَوَضَّأْ، وَعَنْ ابْنِ عُمَرَ: أَنَّهُ عَصَرَ بَثْرَةً بِوَجْهِهِ فَخَرَجَ مِنْهَا دَمٌ فَفَتَّهُ بَيْنَ إصْبَعَيْهِ وَقَامَ فَصَلَّى، وَعَنْ طَاوُسٍ أَنَّهُ كَانَ لَا يَرَى فِي الرُّعَافِ وُضُوءًا وَعَنْ عَطَاءٍ أَنَّهُ كَانَ لَا يَرَى فِي الرُّعَافِ وُضُوءًا، وَعَنْ الْحَسَنِ أَنَّهُ كَانَ لَا يَرَى فِي الْقَلْسِ وُضُوءًا، وَعَنْ مُجَاهِدٍ أَنَّهُ كَانَ لَا يَرَى فِي الْقَلْسِ وُضُوءًا.

L3376 What is utterly astonishing is that Abū Ḥanīfah and his followers do not consider the ritual bath obligatory for semen emitted from the male organ without sexual pleasure—though it is the very semen for which Allah

the Exalted and His Messenger, peace be upon him, mandated the bath—yet they require ablution for pus emerging from the face, analogizing it to blood exiting the private parts. What is utterly astonishing is that they heard the Prophet's statement, peace be upon him, prohibiting slaughtering with a bone: "For it is a bone," so they ruled that slaughtering is invalid with any bone. Yet they came to his statement, peace be upon him, regarding the ablution of the woman with chronic bleeding—"For it is a vein"—and analogized it to blood from nosebleeds, gum bleeding, and pus. Such is the extent of their knowledge in analogical reasoning, their adherence to transmitted narrations, and their emulation of past scholars.

وَالْعَجَبُ كُلُّهُ أَنَّ أَبَا حَنِيفَةَ وَأَصْحَابَهُ لَا يَرَوْنَ الْغُسْلَ مِنْ الْمَنِيِّ إذَا خَرَجَ مِنْ الذَّكَرِ لِغَيْرِ لَذَّةٍ، وَهُوَ الْمَنِيُّ نَفْسُهُ الَّذِي أَوْجَبَ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ السَّلَامُ - فِيهِ الْغُسْلَ ثُمَّ يُوجِبُونَ الْوُضُوءَ مِنْ الْقَيْحِ يَخْرُجُ مِنْ الْوَجْهِ قِيَاسًا عَلَى الدَّمِ يَخْرُجُ مِنْ الْفَرْجِ وَالْعَجَبُ كُلُّهُ أَنَّهُمْ سَمِعُوا قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي نَهْيِهِ عَنْ الذَّكِيَّةِ بِالسِّنِّ فَإِنَّهُ عَظْمٌ، فَرَأَوْا الذَّكَاةَ غَيْرَ جَائِزَةٍ بِكُلِّ عَظْمٍ، ثُمَّ أَتَوْا إلَى قَوْلِهِ - عَلَيْهِ السَّلَامُ - فِي وُضُوءِ الْمُسْتَحَاضَةِ «فَإِنَّهُ عِرْقٌ» فَقَاسُوا عَلَى دَمِ الرُّعَافِ وَاللَّثَاةِ وَالْقَيْحِ فَهَذَا مِقْدَارُ عِلْمِهِمْ بِالْقِيَاسِ، وَمِقْدَارُ اتِّبَاعِهِمْ لِلْآثَارِ، وَمِقْدَارُ تَقْلِيدِهِمْ مَنْ سَلَفَ.

L3377–3378 As for al-Shāfiʿī, he attributed the nullification of ablution to the exit point, while Abū Ḥanīfah ascribed it to the exiting substance. His contradiction in this matter became grave as we mentioned, for each man's determination of the legal cause directly opposes and contradicts the other's - both being erroneous, as they constitute assertions without proof and claims without evidence. Allah the Exalted said: "Say, 'Produce your proof if you are truthful'" (Al-Baqarah 2:111).[42]

وَأَمَّا الشَّافِعِيُّ فَإِنَّهُ جَعَلَ الْعِلَّةَ فِي نَقْضِ الْوُضُوءِ لِلْمَخْرَجِ وَجَعَلَهُ أَبُو حَنِيفَةَ لِلْخَارِجِ وَعَظُمَ تَنَاقُضُهُ فِي ذَلِكَ كَمَا ذَكَرْنَا، وَتَعْلِيلُ كِلَا الرَّجُلَيْنِ مُضَادٌّ لِتَعْلِيلِ الْآخَرِ وَمُعَارِضٌ لَهُ، وَكِلَاهُمَا خَطَأٌ، لِأَنَّهُ قَوْلٌ بِلَا بُرْهَانٍ، وَدَعْوَى لَا دَلِيلَ عَلَيْهَا، قَالَ اللَّهُ تَعَالَى {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] .

L3379 Abu Muhammad said: It is said to both the Shafiʿīs and Hanafīs collectively: We observe that what exits from the two bodily orifices differs in rulings. Among these discharges are those requiring ghusl (ritual bath), such as menstruation, semen, and postpartum bleeding; those requiring only wuḍūʾ (ablution), such as urine, feces, flatulence, and madhy (pre-ejaculate fluid); and those necessitating no ritual act, such as the white non-menstrual vaginal discharge. What justification permits you to arbitrarily analogize what suits your whims—imposing ablution by equating it to what requires ablution among these discharges—while neither imposing ghusl by equating it to what requires ghusl, nor exempting it entirely by equating it to what entails no obligation? Is this not ruling by desires—which Allah Almighty forbade as a basis for judgment—and by conjecture, which He declared utterly inad-

قَالَ أَبُو مُحَمَّد: وَيُقَالُ لِلشَّافِعِيِّينَ وَالْحَنَفِيِّينَ مَعًا: قَدْ وَجَدْنَا الْخَارِجَ مِنْ الْمَخْرَجَيْنِ مُخْتَلِفَ الْحُكْمِ، فَمِنْهُ مَا يُوجِبُ الْغُسْلَ كَالْحَيْضِ وَالْمَنِيِّ وَدَمِ النِّفَاسِ، وَمِنْهُ مَا يُوجِبُ الْوُضُوءَ فَقَطْ كَالْبَوْلِ وَالْغَائِطِ وَالرِّيحِ وَالْمَذْيِ، وَمِنْهُ مَا لَا يُوجِبُ شَيْئًا كَالْقَصَّةِ الْبَيْضَاءِ، فَمِنْ أَيْنَ لَكُمْ أَنْ تَقِيسُوا مَا اشْتَهَيْتُمْ فَأَوْجَبْتُمْ فِيهِ الْوُضُوءَ قِيَاسًا عَلَى مَا يُوجِبُ الْوُضُوءَ مِنْ ذَلِكَ، دُونَ أَنْ تُوجِبُوا فِيهِ الْغُسْلَ قِيَاسًا عَلَى مَا يُوجِبُ الْغُسْلَ مِنْ ذَلِكَ، أَوْ دُونَ أَنْ لَا تُوجِبُوا فِيهِ شَيْئًا قِيَاسًا عَلَى مَا لَا يَجِبُ فِيهِ شَيْءٌ مِنْ ذَلِكَ؟ وَهَلْ هَذَا إلَّا التَّحَكُّمُ

[42] **Qur'an references (L3378):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

equate for attaining truth? This occurs alongside the inherent invalidity of analogy and its internal contradictions.

بِالْهَوَى الَّذِي حَرَّمَ اللَّهُ تَعَالَى الْحُكْمَ بِهِ وَبِالظَّنِّ الَّذِي أَخْبَرَ تَعَالَى أَنَّهُ لَا يُغْنِي مِنْ الْحَقِّ شَيْئًا، وَمَعَ فَسَادِ الْقِيَاسِ وَمُعَارَضَةِ بَعْضِهِ بَعْضًا.

L3380 As for the Mālikīs, they did not apply analogy here and thus were correct. They did not base their reasoning here on external factors, extraneous factors, or impurity—and thus were correct. Had they done so in their legal reasoning for equating touch with desire, their rationale for prohibiting urination in stagnant water, and their ruling on a mouse dying in clarified butter, they would have been correct. However, they failed to apply their positions consistently. Praise be to God for the magnitude of His blessings upon us. They claim to adhere to mursal narrations, yet we have presented in this chapter mursal reports they did not adopt—this, too, is a contradiction.

وَأَمَّا الْمَالِكِيُّونَ فَلَمْ يَقِيسُوا هَهُنَا فَوُفِّقُوا، وَلَا عَلَّلُوا هَهُنَا بِخَارِجٍ وَلَا بِمَخْرَجٍ وَلَا بِنَجَاسَةٍ فَأَصَابُوا، وَلَوْ فَعَلُوا ذَلِكَ فِي تَعْلِيلِهِمْ الْمُلَامَسَةَ بِالشَّهْوَةِ، وَفِي تَعْلِيلِهِمْ النَّهْيَ عَنْ الْبَوْلِ فِي الْمَاءِ الرَّاكِدِ، وَالْفَأْرَةُ تَمُوتُ فِي السَّمْنِ، لَوُفِّقُوا وَلَكِنْ لَمْ يُطَرِّدُوا أَقْوَالَهُمْ. فَالْحَمْدُ لِلَّهِ عَلَى عِظَمِ نِعَمِهِ عَلَيْنَا. وَهُمْ يَدَّعُونَ أَنَّهُمْ يَقُولُونَ بِالْمُرْسَلِ، وَقَدْ أَوْرَدْنَا فِي هَذَا الْبَابِ مُرْسَلَاتٍ لَمْ يَأْخُذُوا بِهَا، وَهَذَا أَيْضًا تَنَاقُضٌ.

L3381 As for ablution from harming a Muslim, it has been narrated to us from ʻĀ'ishah—may Allah be pleased with her—who said: "One of you performs ablution from wholesome food, yet does not perform ablution from an improper word he utters to his brother." From Ibn Masʻūd—may Allah be pleased with him—: "To perform ablution from an evil word is more beloved to me than performing ablution from wholesome food." From Ibn ʻAbbās: "Ritual impurity is of two types: the impurity of the private parts and the impurity caused by the tongue, and the more severe of the two is the moral impurity from speech." From Ibrāhīm al-Nakhaʻī: "I pray Dhuhr, ʻAṣr, and Maghrib with one ablution unless I incur ritual impurity or utter something reprehensible. Ablution is required for ritual impurity and harming a Muslim." From ʻUbaydah al-Salmānī: "Ablution is obligatory for ritual impurity and harming a Muslim." It has been narrated to us through the chain of Dāwūd ibn al-Muḥabbar, from Shuʻbah, from Qatādah, from Anas: "The Prophet—peace and blessings be upon him—performed ablution from ritual impurity and harming a Muslim."

وَأَمَّا الْوُضُوءُ مِنْ أَذَى الْمُسْلِمِ فَقَدْ رُوِّينَا عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - قَالَتْ: يَتَوَضَّأُ أَحَدُكُمْ مِنْ الطَّعَامِ الطَّيِّبِ، وَلَا يَتَوَضَّأُ مِنْ الْكَلِمَةِ الْعَوْرَاءِ يَقُولُهَا لِأَخِيهِ وَعَنْ ابْنِ مَسْعُودٍ - رَضِيَ اللَّهُ عَنْهُ -: لَأَنْ أَتَوَضَّأَ مِنْ الْكَلِمَةِ الْخَبِيثَةِ أَحَبُّ إلَيَّ مِنْ أَنْ أَتَوَضَّأَ مِنْ الطَّعَامِ الطَّيِّبِ. وَعَنْ ابْنِ عَبَّاسٍ: الْحَدَثُ حَدَثَانِ، حَدَثُ الْفَرْجِ وَحَدَثُ اللِّسَانِ وَأَشَدُّهُمَا حَدَثُ اللِّسَانِ. وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ: إنِّي لَأُصَلِّي الظُّهْرَ وَالْعَصْرَ وَالْمَغْرِبَ بِوُضُوءٍ وَاحِدٍ، إلَّا أَنْ أُحْدِثَ أَوْ أَقُولَ مُنْكَرًا، الْوُضُوءُ مِنْ الْحَدَثِ وَأَذَى الْمُسْلِمِ. وَعَنْ عَبِيدَةَ السَّلْمَانِيِّ: الْوُضُوءُ يَجِبُ مِنْ الْحَدَثِ وَأَذَى الْمُسْلِمِ. وَرُوِّينَا مِنْ طَرِيقِ دَاوُد بْنِ الْمُحَبَّرِ عَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ أَنَسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَتَوَضَّأُ مِنْ الْحَدَثِ وَأَذَى الْمُسْلِمِ» .

L3382–3383 Ali said: Dawud ibn al-Muhabbar is a liar, notorious for fabricating hadith. However, there is no difference between following those we previously mentioned regarding ablution due to nosebleeds, vomiting, and vomiting while relying on that rejected narration, and following those we mention here re-

قَالَ عَلِيٌّ: دَاوُد بْنُ الْمُحَبَّرِ كَذَّابٌ، مَشْهُورٌ بِوَضْعِ الْحَدِيثِ، وَلَكِنْ لَا فَرْقَ بَيْنَ تَقْلِيدِ مَنْ ذَكَرْنَا قَبْلُ فِي الْوُضُوءِ مِنْ الرُّعَافِ وَالْقَيْءِ وَالْقَلْسِ، وَالْأَخْذِ بِذَلِكَ الْأَثَرِ السَّاقِطِ،

garding ablution due to harming a Muslim while relying on this rejected narration. Rather, according to their own principles, this [latter position] is even more firmly established, because disagreement existed among the Companions - may Allah be pleased with them - in that previous matter, whereas no known opposition exists here to the positions of Aisha, Ibn Mas'ud, and Ibn Abbas - may Allah be pleased with them. Yet they vehemently condemn such practices when it suits their positions.

وَبَيْنَ تَقْلِيدِ مَنْ ذَكَرْنَا هَهُنَا فِي الْوُضُوءِ مِنْ أَذَى الْمُسْلِمِ، وَالْأَخْذِ بِهَذَا الْأَثَرِ السَّاقِطِ، بَلْ هَذَا عَلَى أُصُولِهِمْ أَوْكَدُ لِأَنَّ الْخِلَافَ هُنَالِكَ بَيْنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مَوْجُودٌ، وَلَا مُخَالِفَ يُعْرَفُ هَهُنَا لِعَائِشَةَ وَابْنِ مَسْعُودٍ وَابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهُمْ يُشَنِّعُونَ مِثْلَ هَذَا إِذَا وَافَقَهُمْ.

L3384 As for us, we accept no proof except what is authentically established from the Messenger of Allah (peace be upon him), whether it be the Quran or an authentic report.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا إِلَّا فِيمَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قُرْآنٍ أَوْ خَبَرٍ.

L3385 As for touching the cross and idol, we have narrated from ʿAbd al-Razzāq from Sufyān ibn ʿUyaynah from ʿAmmār al-Duhnī from Abī ʿAmr al-Shaybānī that ʿAlī ibn Abī Ṭālib—may Allah be pleased with him—called al-Mustawrid al-ʿIjlī to repentance. ʿAlī touched with his hand a cross that hung on al-Mustawrid's neck. When ʿAlī began the prayer, he delegated leadership to another man and stepped back. Later, he informed the people he had not done this due to any new impurity, but because he had touched these impurities and wished to renew his ablution. We have also narrated an account through Yaʿlā ibn ʿUbayd from Ṣāliḥ ibn Ḥayyān from Ibn Buraidah from his father: "The Messenger of Allah—peace and blessings be upon him—commanded Buraidah, after he had touched an idol, to perform ablution." ʿAlī remarked: "Ṣāliḥ ibn Ḥayyān is weak; his narration is not admissible as evidence. Yet this [position] obligates those who magnify disagreement with the Companions' views while adopting weak narrations like the one we cited earlier to logically adopt this account, for it is superior to many they rely on. We have mentioned it, and no opposition from the Companions—may Allah be pleased with them—is recorded against ʿAlī's action here. This is among the matters in which they contradicted themselves."

وَأَمَّا مَسُّ الصَّلِيبِ وَالْوَثَنِ فَإِنَّنَا رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمَّارٍ الدُّهْنِيِّ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ " أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - اسْتَتَابَ الْمُسْتَوْرِدَ الْعِجْلِيَّ، وَأَنَّ عَلِيًّا مَسَّ بِيَدِهِ صَلِيبًا كَانَتْ فِي عُنُقِ الْمُسْتَوْرِدِ فَلَمَّا دَخَلَ عَلِيٌّ فِي الصَّلَاةِ قَدَّمَ رَجُلًا وَذَهَبَ، ثُمَّ أَخْبَرَ النَّاسَ أَنَّهُ لَمْ يَفْعَلْ ذَلِكَ لِحَدَثٍ أَحْدَثَهُ، وَلَكِنَّهُ مَسَّ هَذِهِ الْأَنْجَاسَ فَأَحَبَّ أَنْ يُحْدِثَ مِنْهَا وُضُوءًا " وَرُوِّينَا أَثَرًا مِنْ طَرِيقِ يَعْلَى بْنِ عُبَيْدٍ عَنْ صَالِحِ بْنِ حَيَّانَ عَنِ ابْنِ بُرَيْدَةَ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بُرَيْدَةَ وَقَدْ مَسَّ صَنَمًا فَتَوَضَّأَ» . قَالَ عَلِيٌّ: صَالِحُ بْنُ حَيَّانَ ضَعِيفٌ لَا يُحْتَجُّ بِهِ، وَلَقَدْ كَانَ يَلْزَمُ مَنْ يُعَظِّمُ خِلَافَ الصَّاحِبِ وَيَرَى الْأَخْذَ بِالْآثَارِ الْوَاهِيَةِ مِثْلَ الَّذِي قَدَّمْنَا أَنْ يَأْخُذَ بِهَذَا الْأَثَرِ، فَهُوَ أَحْسَنُ مِنْ كَثِيرٍ مِمَّا يَأْخُذُونَ بِهِ قَدْ ذَكَرْنَاهُ، وَلَا يُعْرَفُ لِعَلِيٍّ هَهُنَا مُخَالِفٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهَذَا مِمَّا تَنَاقَضُوا فِيهِ.

L3386 As for us, we recognize no authoritative evidence except a firmly established report from the Messenger of Allah—peace and blessings be upon him—or the Qur'an. All praise is due to Allah, Lord of the worlds—this is especially evident given that ʿAlī, may Allah be pleased with him, interrupted the oblig-

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا إِلَّا فِي خَبَرٍ ثَابِتٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ الْقُرْآنِ. وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ. لَا سِيَّمَا وَعَلِيٌّ - رَضِيَ اللَّهُ عَنْهُ - قَدْ قَطَعَ صَلَاةَ الْفَرْضِ

atory congregational prayer on account of this matter, and he, may Allah be pleased with him, would never have interrupted it for something he did not consider obligatory. If they argue: "Perhaps this is merely recommended," we counter: "Then by the same logic, all rulings you deem obligatory—like ablution after nosebleeds and other instances, based on blind imitation of predecessors—might also be considered merely recommended, including rulings on pre-seminal fluid. All these assertions are meaningless, being baseless claims that contradict established realities. Success lies only with Allah, the Exalted."

بِالنَّاسِ مِنْ أَجْلِ ذَلِكَ، وَمَا كَانَ - رَضِيَ اللَّهُ عَنْهُ - لِيَقْطَعَهَا فِيمَا لَا يَرَاهُ وَاجِبًا. فَإِنْ قَالُوا: لَعَلَّ هَذَا اسْتِحْبَابٌ قُلْنَا: وَلَعَلَّ كُلَّ مَا أَوْجَبْتُمْ فِيهِ الْوُضُوءَ مِنْ الرُّعَافِ وَغَيْرِهِ تَقْلِيدًا لِمَنْ سَلَفَ إنَّمَا هُوَ اسْتِحْبَابٌ وَكَذَلِكَ الْمَذْيُ، وَهَذَا كُلُّهُ لَا مَعْنَى لَهُ وَإِنَّمَا هِيَ دَعَاوٍ مُخَالِفَةٌ لِلْحَقَائِقِ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L3387–3389

As for apostasy: If a Muslim performed ablution (wuḍūʾ) or ghusl for major ritual impurity (janābah), or if a woman performed ghusl after menstruation, then each of them apostatized and subsequently reverted to Islam without any new ritual impurity (ḥadath) arising from either of them, there is no Qur'anic verse or Sunnah that addresses whether they must renew their ablution or ritual bath. There is no sound evidence, unsound evidence, consensus, or analogy indicating that apostasy constitutes an occurrence that nullifies ritual purity. They unanimously agree with us that apostasy does not invalidate the major ablution for sexual impurity, the major ablution for menstruation, prior religious endowments, prior manumissions, or marital inviolability. Since they are proponents of analogy, how did it occur to them that apostasy invalidates the minor ablution? Why did they not analogize the minor ablution to the major ablutions in this matter? That would have been the most valid analogy—if any analogy were sound. If they cite Allah's statement, *"If you associate others with Allah, your deeds will surely be nullified, and you will be among the losers"* (39:65), we respond that this applies to one who dies in disbelief, not to one who returns to Islam. Allah's statement clarifies this: *"Whoever among you renounces their faith and dies in disbelief—their deeds are nullified"* (2:217). His words *"You will surely be among the losers"* (39:65) constitute sound and conclusive evidence for our position. There is no disagreement among the Ummah that one who apostatizes, then returns to Islam and dies as a Muslim, is not among the losers but rather among the successful and prosperous. The loser

وَأَمَّا الرِّدَّةُ فَإِنَّ الْمُسْلِمَ لَوْ تَوَضَّأَ وَاغْتَسَلَ لِلْجَنَابَةِ أَوْ كَانَتْ امْرَأَةً فَاغْتَسَلَتْ مِنْ الْحَيْضِ ثُمَّ ارْتَدَّا ثُمَّ رَاجَعَا - الْإِسْلَامَ دُونَ حَدَثٍ يَكُونُ مِنْهُمَا، فَإِنَّهُ لَمْ يَأْتِ قُرْآنٌ وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا سَقِيمَةٌ وَلَا إجْمَاعٌ وَلَا قِيَاسٌ بِأَنَّ الرِّدَّةَ حَدَثٌ يَنْقُضُ الطَّهَارَةَ، وَهُمْ يُجْمِعُونَ مَعَنَا عَلَى أَنَّ الرِّدَّةَ لَا تَنْقُضُ غُسْلَ الْجَنَابَةِ وَلَا غُسْلَ الْحَيْضِ وَلَا أَحْبَاسَهُ السَّالِفَةَ وَلَا عِتْقَهُ السَّالِفَ وَلَا حُرْمَةَ الرَّجُلِ، فَمِنْ أَيْنَ وَقَعَ لَهُمْ أَنَّهَا تَنْقُضُ الْوُضُوءَ وَهُمْ أَصْحَابُ قِيَاسٍ، فَهَلَّا قَاسُوا الْوُضُوءَ عَلَى الْغُسْلِ فِي ذَلِكَ، فَكَانَ يَكُونُ أَصَحَّ قِيَاسٍ لَوْ كَانَ شَيْءٌ مِنْ الْقِيَاسِ صَحِيحًا، فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى {لَئِنْ أَشْرَكْتَ لَيَحْبَطَنَّ عَمَلُكَ وَلَتَكُونَنَّ مِنَ الْخَاسِرِينَ} [الزمر: ٦٥] قُلْنَا هَذَا عَلَى مَنْ مَاتَ كَافِرًا لَا عَلَى مَنْ رَاجَعَ الْإِسْلَامَ. يُبَيِّنُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى {وَمَنْ يَرْتَدِدْ مِنْكُمْ عَنْ دِينِهِ فَيَمُتْ وَهُوَ كَافِرٌ فَأُولَئِكَ حَبِطَتْ أَعْمَالُهُمْ} [البقرة: ٢١٧] وَقَوْله تَعَالَى {وَلَتَكُونَنَّ مِنَ الْخَاسِرِينَ} [الزمر: ٦٥] شَهَادَةٌ صَحِيحَةٌ قَاطِعَةٌ لِقَوْلِنَا، لِأَنَّهُ لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ مَنْ ارْتَدَّ ثُمَّ رَاجَعَ الْإِسْلَامَ وَمَاتَ مُسْلِمًا فَإِنَّهُ لَيْسَ مِنْ الْخَاسِرِينَ، بَلْ مِنْ الرَّابِحِينَ الْمُفْلِحِينَ، وَإِنَّمَا الْخَاسِرُ مَنْ مَاتَ كَافِرًا، وَهَذَا بَيِّنٌ وَالْحَمْدُ لِلَّهِ.

is none but the one who dies in disbelief. This is clear, and all praise is due to Allah.[43]

L3390–3392

Regarding the visible blood from the vagina of a pregnant woman, scholars have differed concerning it. It has been narrated to us through the chain of Umm ʻAlqamah from ʻAishah, the Mother of the Believers, that a pregnant woman menstruates. This is one of the two opinions of al-Zuhri and the view of ʻIkrimah, Qatādah, Bakr ibn ʻAbdullāh al-Muzanī, Rabīʻah, Mālik, al-Layth, and al-Shāfiʻī. It has been narrated to us from Saʻīd ibn al-Musayyib, al-Hasan, and Hammād ibn Abī Sulaymān that she is a mustahādah (one experiencing irregular bleeding), not a menstruating woman. It was narrated from Mālik that he said regarding a pregnant woman who sees blood: "She does not pray unless the bleeding becomes prolonged for her, at which point she performs ghusl and prays," though he did not define a specific duration for what constitutes prolongation. He also stated: "The early stage of pregnancy is not like its later stage, and he exercises juristic judgment for her in this matter without any defined limit." It has been narrated to us through the chain of 'Aṭā' from ʻAishah, the Mother of the Believers: "Even if a pregnant woman sees blood, she performs wuḍū' and prays." This is the opinion of 'Aṭā', al-Ḥakam ibn ʻUtaybah, al-Nakhaʻī, al-Shaʻbī, Sulaymān ibn Yasār, Nāfiʻ the freed slave of Ibn ʻUmar, one of the two opinions of al-Zuhri, and the view of Sufyān al-Thawrī, al-Awzāʻī, Abū Ḥanīfah, Aḥmad ibn Ḥanbal, Abū Thawr, Abū ʻUbayd, Dāwūd, and their companions. Abū Muḥammad said: "It is authentically established that the Messenger of Allah—peace and blessings be upon him—prohibited divorcing a menstruating woman and commanded divorce during pregnancy." Since she is a non-pregnant woman, it is established that the legal status of a menstruating woman and a non-pregnant woman differs from that of a pregnant woman. Opposing scholars have agreed that the appearance of menstruation serves as a means of confirming freedom from pregnancy. If it were permissible for a pregnant woman to menstruate, menstruation would not indicate freedom from pregnancy—and this is very clear. Praise be to Allah. Since the blood is neither menstruation nor a cause of istiḥāḍah (irregular bleeding), it does

وَأَمَّا الدَّمُ الظَّاهِرُ مِنْ فَرْجِ الْمَرْأَةِ الْحَامِلِ فَقَدْ اخْتَلَفَ النَّاسُ فِيهِ، فَرُوِّينَا مِنْ طَرِيقِ أُمِّ عَلْقَمَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ الْحَامِلَ تَحِيضُ، وَهُوَ أَحَدُ قَوْلَيْ الزُّهْرِيِّ وَهُوَ قَوْلُ عِكْرِمَةَ وَقَتَادَةَ وَبَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيِّ وَرَبِيعَةَ وَمَالِك وَاللَّيْثِ وَالشَّافِعِيِّ، وَرُوِّينَا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ وَالْحَسَنِ وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ أَنَّهَا مُسْتَحَاضَةٌ لَا حَائِضٌ وَرُوِيَ عَنْ مَالِكٍ أَنَّهُ قَالَ فِي الْحَامِلِ تَرَى الدَّمَ أَنَّهَا لَا تُصَلِّي إلَّا أَنْ يَطُولَ ذَلِكَ بِهَا فَحِينَئِذٍ تَغْتَسِلُ وَتُصَلِّي، وَلَمْ يَحُدَّ فِي الطُّولِ حَدًّا، وَقَالَ أَيْضًا لَيْسَ أَوَّلُ الْحَمْلِ كَآخِرِهِ، وَيَجْتَهِدُ لَهَا وَلَا حَدَّ فِي ذَلِكَ. وَرُوِّينَا مِنْ طَرِيقِ عَطَاءٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّ الْحَامِلَ وَإِنْ رَأَتْ الدَّمَ فَإِنَّهَا تَتَوَضَّأُ وَتُصَلِّي، وَهُوَ قَوْلُ عَطَاءٍ وَالْحَكَمِ بْنِ عُتَيْبَةَ وَالنَّخَعِيِّ وَالشَّعْبِيِّ وَسُلَيْمَانَ بْنِ يَسَارٍ وَنَافِعٍ مَوْلَى ابْنِ عُمَرَ، وَأَحَدُ قَوْلَيْ الزُّهْرِيِّ، وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَالْأَوْزَاعِيِّ وَأَبِي حَنِيفَةَ وَأَحْمَدَ بْنِ حَنْبَلٍ وَأَبِي ثَوْرٍ وَأَبِي عُبَيْدٍ وَدَاوُد وَأَصْحَابِهِمْ: قَالَ أَبُو مُحَمَّدٍ: صَحَّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ طَلَاقِ الْحَائِضِ وَأَمَرَ بِالطَّلَاقِ فِي حَالِ الْحَمْلِ» ، وَإِذَا كَانَتْ حَائِلًا فَصَحَّ أَنَّ حَالَ الْحَائِضِ وَالْحَائِلِ غَيْرُ حَالِ الْحَامِلِ وَقَدْ اتَّفَقَ الْمُخَالِفُونَ لَنَا عَلَى أَنَّ ظُهُورَ الْحَيْضِ اسْتِبْرَاءٌ وَبَرَاءَةٌ مِنْ الْحَمْلِ، فَلَوْ جَازَ أَنْ تَحِيضَ - الْحَامِلُ لَمَا كَانَ الْحَيْضُ بَرَاءَةً مِنْ الْحَمْلِ، وَهَذَا بَيِّنٌ جِدًّا وَالْحَمْدُ لِلَّهِ، وَإِذَا كَانَ لَيْسَ - حَيْضًا وَلَا عِرْقَ اسْتِحَاضَةٍ فَهُوَ غَيْرُ مُوجِبٍ لِلْغُسْلِ وَلَا لِلْوُضُوءِ إذْ لَمْ يُوجِبْ ذَلِكَ نَصٌّ وَلَا إجْمَاعٌ وَكَذَلِكَ دَمُ النِّفَاسِ فَإِنَّمَا يُوجِبُ الْغُسْلَ، لِأَنَّهُ دَمُ حَيْضٍ عَلَى مَا بَيَّنَّا بَعْدَ هَذَا وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[43] **Qur'an references (L3387):** Qur'an 39:65 (Az-Zumar); Qur'an 2:217 (Al-Baqarah).

not necessitate ghusl or wuḍū’, as no textual evidence or consensus mandates this. Similarly, the blood of postpartum bleeding (*nifās*) obligates *ghusl* (major ritual ablution), because it is menstrual blood in ruling, as we have clarified after this—and all praise is due to Allah, the Lord of all worlds.

L3393 The same ruling applies to slaughtering and killing, even if sinful, as none of these actions invalidate ritual purity, since neither Qur’anic text nor Sunnah prescribes such invalidation. Similarly, if a man touches a woman over her garment, he has only touched the garment, not the woman herself. Likewise, a man touching another man without touching the private parts, or a woman touching another woman without touching the private parts, as well as experiencing an erection, sexual arousal, stomach rumbling during prayer, touching or plucking armpit hair, touching the genitalia or groin, cutting hair, or trimming nails: none of these necessitate ablution, as no textual evidence or consensus mandates it for any of these acts. However, certain juridical schools have prescribed ablution for some—indeed most, indeed even all—of these actions. For instance, Ibrahim al-Nakha‘i required ablution for stomach rumbling during prayer. Some later scholars mandated ablution for erection, sexual arousal, or touching over a garment with desire. It is transmitted that ‘Umar ibn al-Khattab and Mujahid required ablution for touching the armpit, while ‘Ali ibn Abi Talib and ‘Abdullah ibn ‘Amr prescribed ghusl (ritual bath) for plucking armpit hair. Mujahid also required ablution for cleaning the nose. From ‘Ali ibn Abi Talib, Mujahid, Dharr, father of ‘Umar ibn Dharr, we have reports mandating ablution after cutting nails or hair. As for worms or fecal stones exiting the anus, al-Shafi‘i deemed ablution obligatory for this, whereas Malik and our companions did not. A narration attributed to the Prophet (peace be upon him) states, “Whoever touches their genitalia or groin must perform ablution,” but it is a mursal (disconnected) narration lacking a reliable chain. Regarding yellow, dark, or red discharge, their ruling—that they are neither menstrual nor vascular blood—will be discussed in the section on menstruation, God willing. Since they are neither, ablution is not required, as no Qur’an, Sunnah, or consensus obligates it. As for laughing during prayer, weakly attested reports exist that prescribe ablution, but they are unreliable. These are either

وَكَذَلِكَ الْقَوْلُ فِي الذَّبْحِ وَالْقَتْلِ وَإِنْ كَانَ مَعْصِيَةً، فَإِنَّ كُلَّ ذَلِكَ لَا يَنْقُضُ الطَّهَارَةَ، لِأَنَّهُ لَمْ يَأْتِ بِذَلِكَ قُرْآنٌ وَلَا سُنَّةٌ، وَكَذَلِكَ مَنْ مَسَّ الْمَرْأَةَ عَلَى ثَوْبٍ، لِأَنَّهُ إِنَّمَا لَامَسَ الثَّوْبَ لَا الْمَرْأَةَ، وَكَذَلِكَ مَسُّ الرَّجُلِ الرَّجُلَ بِغَيْرِ الْفَرْجِ وَمَسُّ الْمَرْأَةِ الْمَرْأَةَ وَبِغَيْرِ الْفَرْجِ وَالْإِنْعَاظُ وَالتَّذَكُّرُ وَقَرْقَرَةُ الْبَطْنِ فِي الصَّلَاةِ وَمَسُّ الْإِبْطِ وَنَتْفُهُ وَمَسُّ الْأُنْثَيَيْنِ وَالرُّفْغَيْنِ وَقَصُّ الشَّعْرِ وَالْأَظْفَارِ لِأَنَّ كُلَّ مَا ذَكَرْنَا لَمْ يَأْتِ نَصٌّ وَلَا إِجْمَاعٌ بِإِيجَابِ الْوُضُوءِ فِي شَيْءٍ مِنْهُ. وَقَدْ أَوْجَبَ الْوُضُوءَ فِي بَعْضِ مَا ذَكَرْنَا بَلْ فِي أَكْثَرِهِ بَلْ فِي كُلِّهِ، طَوَائِفُ مِنْ النَّاسِ، فَأَوْجَبَ الْوُضُوءَ مِنْ قَرْقَرَةِ الْبَطْنِ فِي الصَّلَاةِ إبْرَاهِيمُ النَّخَعِيُّ، وَأَوْجَبَ الْوُضُوءَ فِي الْإِنْعَاظِ وَالتَّذَكُّرِ وَالْمَسِّ عَلَى الثَّوْبِ لِشَهْوَةٍ بَعْضُ الْمُتَأَخِّرِينَ، وَرُوِّينَا إيجَابَ الْوُضُوءِ فِي مَسِّ الْإِبْطِ عَنْ عُمَرَ بْنِ الْخَطَّابِ وَمُجَاهِدٍ، وَإِيجَابَ الْغُسْلِ مِنْ نَتْفِهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ وَعَبْدِ اللَّهِ بْنِ عَمْرٍو. وَعَنْ مُجَاهِدٍ الْوُضُوءُ مِنْ تَنْقِيَةِ الْأَنْفِ. وَرُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ وَمُجَاهِدٍ وَذَرٍّ وَالِدِ عُمَرَ بْنِ ذَرٍّ إيجَابَ الْوُضُوءِ مِنْ قَصِّ الْأَظْفَارِ وَقَصِّ الشَّعْرِ، وَأَمَّا الدُّودُ وَالْحَجَرُ يَخْرُجَانِ مِنْ الدُّبُرِ فَإِنَّ الشَّافِعِيَّ أَوْجَبَ الْوُضُوءَ مِنْ ذَلِكَ وَلَمْ يُوجِبْهُ مَالِكٌ وَلَا أَصْحَابُنَا، وَقَدْ رُوِّينَا «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ مَسَّ أُنْثَيَيْهِ أَوْ رُفْغَيْهِ فَلْيَتَوَضَّأْ» وَلَكِنَّهُ مُرْسَلٌ لَا يُسْنَدُ. وَأَمَّا الصُّفْرَةُ وَالْكُدْرَةُ وَالدَّمُ الْأَحْمَرُ فَسَيُذْكَرُ فِي الْكَلَامِ فِي الْحَيْضِ - إنْ شَاءَ اللَّهُ - حُكْمُهُ وَإِنَّهُ لَيْسَ - حَيْضًا وَلَا عِرْقًا، فَإِذَا لَيْسَ حَيْضًا وَلَا عِرْقًا فَلَا وُضُوءَ فِيهِ. إذْ

لَمْ يُوجِبْ فِي ذَلِكَ قُرْآنٌ وَلَا سُنَّةٌ وَلَا إِجْمَاعٌ. وَأَمَّا الضَّحِكُ فِي الصَّلَاةِ فَإِنَّا رُوِّينَا فِي إِيجَابِ الْوُضُوءِ مِنْهُ أَثَرًا وَاهِيًا لَا يَصِحُّ لِأَنَّهُ إِمَّا مُرْسَلٌ مِنْ طَرِيقِ أَبِي الْعَالِيَةِ وَإِبْرَاهِيمَ النَّخَعِيِّ وَابْنِ سِيرِينَ وَالزُّهْرِيِّ وَعَنْ الْحَسَنِ عَنْ مَعْبَدِ بْنِ صُبَيْحٍ وَمَعْبَدِ الْجُهَنِيِّ، وَإِمَّا مُسْنَدٌ مِنْ طَرِيقِ أَنَسٍ وَأَبِي مُوسَى وَأَبِي هُرَيْرَةَ وَعِمْرَانَ بْنِ حُصَيْنٍ وَجَابِرٍ وَأَبِي الْمَلِيحِ، وَرُوِّينَا إِيجَابَ الْوُضُوءِ مِنْهُ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ وَإِبْرَاهِيمَ النَّخَعِيِّ وَالشَّعْبِيِّ وَسُفْيَانَ الثَّوْرِيِّ وَالْأَوْزَاعِيِّ وَالْحَسَنِ بْنِ حَيٍّ وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ وَأَبِي حَنِيفَةَ وَأَصْحَابِهِ.

فَأَمَّا حَدِيثُ أَنَسٍ فَإِنَّهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ عَبْدِ اللَّهِ بْنِ زِيَادَةَ التَّتَرِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عُمَرَ وَأَبِي حَيْلَةَ وَهُوَ مَجْهُولٌ، وَأَمَّا حَدِيثُ أَبِي مُوسَى فَفِيهِ مُحَمَّدُ بْنُ نُعَيْمٍ وَهُوَ مَجْهُولٌ، وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ فَفِيهِ عَبْدُ الْكَرِيمِ بْنُ أَبِي الْمُخَارِقِ وَهُوَ غَيْرُ ثِقَةٍ وَأَمَّا حَدِيثُ عِمْرَانَ بْنِ حُصَيْنٍ فَفِيهِ إِسْمَاعِيلُ بْنُ عَيَّاشٍ وَعَبْدُ الْوَهَّابِ بْنُ نَجْدَةَ وَهُمَا ضَعِيفَانِ، وَأَمَّا حَدِيثُ جَابِرٍ فَفِيهِ أَبُو سُفْيَانَ وَهُوَ ضَعِيفٌ، وَأَمَّا حَدِيثُ أَبِي الْمَلِيحِ فَفِيهِ الْحَسَنُ بْنُ دِينَارٍ وَهُوَ مَذْكُورٌ بِالْكَذِبِ. وَلَا حُجَّةَ إِلَّا فِي الْقُرْآنِ أَوْ - أَثَرٍ صَحِيحٍ مُسْنَدٍ. وَقَدْ كَانَ يَلْزَمُ الْمَالِكِيِّينَ وَالشَّافِعِيِّينَ الْقَائِلِينَ بِالْمُتَوَاتِرِ مِنْ الْأَخْبَارِ حَتَّى ادَّعَوْا التَّوَاتُرَ لِحَدِيثِ مُعَاذٍ «أَجْتَهِدُ رَأْيِي» وَالْقَائِلِينَ بِمُرْسَلِ سَعِيدٍ وَطَاوُسٍ أَنْ يَقُولُوا بِهَذِهِ الْآثَارِ، فَإِنَّهَا أَشَدُّ تَوَاتُرًا مِمَّا ادَّعَوْا لَهُ التَّوَاتُرَ، وَأَكْثَرُ ظُهُورًا فِي عَدَدِ مَنْ أَرْسَلَهُ مِنْ النَّهْيِ عَنْ بَيْعِ اللَّحْمِ وَالْحَيَوَانِ بِالْحَيَوَانِ، وَسَائِرُ مَا قَالُوا بِهِ مِنْ الْمَرَاسِيلِ.

وَكَذَلِكَ كَانَ يَلْزَمُ أَبَا حَنِيفَةَ وَأَصْحَابَهُ الْمُخَالِفِينَ الْخَبَرُ الصَّحِيحَ - فِي الْمُصَرَّاةِ وَفِي حَجِّ الْمَرْأَةِ عَنْ الْهَرِمِ الْحَيِّ وَفِي سَائِرِ مَا تَرَكُوا فِيهِ السُّنَنَ الثَّابِتَةَ لِلْقِيَاسِ - أَنْ يَرْفُضُوا

mursal via Abu al-ʻAliyah, Ibrahim al-Nakhaʻi, Ibn Sirin, al-Zuhri, al-Hasan from Maʻbad ibn Subayh and Maʻbad al-Juhani, or attributed through chains involving Anas, Abu Musa, Abu Hurayrah, ʻImran ibn Husayn, Jabir, and Abu al-Malih. The obligation of ablution for laughter is reported from Abu Musa al-Ashʻari, Ibrahim al-Nakhaʻi, al-Shaʻbi, Sufyan al-Thawri, al-Awzaʻi, al-Hasan ibn Hayy, ʻUbaydullah ibn al-Hasan, Abu Hanifah, and his followers.

L3394–3395 As for the ḥadīth of Anas, it is transmitted through Aḥmad ibn ʿAbd Allāh ibn Ziyādah al-Tatarī from ʿAbd al-Raḥmān ibn ʿUmar and Abū Ḥaylah—who is unknown (majhūl). As for the ḥadīth of Abū Mūsā, it contains Muḥammad ibn Nuʿaym—who is unknown (majhūl). As for the ḥadīth of Abū Hurayrah, it contains ʿAbd al-Karīm ibn Abī al-Mukhāriq—who is untrustworthy. As for the ḥadīth of ʿImrān ibn Ḥuṣayn, it contains Ismāʿīl ibn ʿAyyāsh and ʿAbd al-Wahhāb ibn Najdah—both of whom are weak (ḍaʿīf). As for the ḥadīth of Jābir, it contains Abū Sufyān—who is weak (ḍaʿīf). As for the ḥadīth of Abū al-Malīḥ, it contains al-Ḥasan ibn Dīnār—who is noted for falsehood. There is no valid proof except in the Qur'ān or a sound, well-attributed report (athar ṣaḥīḥ musnad). It would have been incumbent upon the Mālikīs and Shāfiʿīs, who affirm mass-transmitted (mutawātir) reports—even claiming mass-transmission (tawātur) for Muʿādh's ḥadīth "I exercise my personal judgment"—and who rely on the mursal reports of Saʿīd and Ṭawūs, to uphold these narrations. For these rulings prohibiting the sale of meat and live animals for live animals are more strongly mass-transmitted and more evident in the number of transmitters than what they claimed to be mass-transmitted. Likewise, this applies to all that they have asserted from the mursal reports.

L3396 Similarly, it was incumbent upon Abū Ḥanīfah and his dissenting companions—regarding the authentic report on the milking animal with a tied udder, the woman's Ḥajj on behalf of an elderly living person, and all other matters where they abandoned established Sunnah in favor of analogy—to reject this

invalid report by analogy to what is unanimously agreed upon: that laughter does not invalidate ablution outside prayer, so likewise, it should not invalidate it during prayer. However, they neither apply analogy consistently, nor follow the Sunnah, nor adhere to what they deemed permissible regarding the acceptance of the *mursal* and *mutawātir* reports, unless it aligns with their opinions or their practice of *taqlīd*. Then they are the first to reject it when it contradicts their *taqlīd* and opinions. Allah is sufficient for us, and what an excellent Trustee He is.

L3397 They are asked: In which Quran, Sunnah, or analogy have you found the strict ruling that some ḥadaths invalidate ablution—whether minor or major—while for others, ablution is invalidated only when exceeding a specific measure you have stipulated? The textual evidence for all these matters is uniform, as the Messenger of Allah—peace and blessings be upon him—said: "The prayer of one who experiences ḥadath is not accepted until he performs ablution." No rational person is unaware that even a minor ḥadath constitutes ḥadath. If this is so, then its minor or major occurrence invalidates ritual purity, whereas what is not ḥadath—whether minor or major—does not invalidate purity. And success is from Allah, the Most High.

L3398 The matters that necessitate ghusl (washing the entire body).

L3399 An issue concerning the insertion of the glans penis or its measure into the woman's vagina.

L3400–3401 In the name of Allah, the Most Gracious, the Most Merciful. Things requiring the washing of the entire body.

L3402 Issue 170: The full insertion of the glans or an equivalent measure from a penis missing the glans or a portion exceeding the glans into the woman's vagina - which serves as the birth canal - through lawful or unlawful means, when performed intentionally, necessitates the major ritual bath regardless of ejaculation. If the woman also intentionally participates in this act, the same ruling applies to her whether she ejaculates or not. If either party is insane, intoxicated, asleep, unconscious, or coerced, only ablution is required

هَذَا الْخَبَرَ الْفَاسِدَ قِيَاسًا عَلَى مَا أُجْمِعَ عَلَيْهِ مِنْ أَنَّ الضَّحِكَ لَا يَنْقُضُ الْوُضُوءَ فِي غَيْرِ الصَّلَاةِ، فَكَذَلِكَ لَا يَجِبُ أَنْ يَنْقُضَهُ فِي الصَّلَاةِ، وَلَكِنَّهُمْ لَا يَطَّرِدُونَ الْقِيَاسَ وَلَا يَتَّبِعُونَ السُّنَنَ وَلَا يَلْتَزِمُونَ مَا أَحَلُّوا مِنْ قَبُولِ الْمُرْسَلِ وَالْمُتَوَاتِرِ، إِلَّا رَيْثَمَا يَأْتِي مُوَافِقًا لِآرَائِهِمْ أَوْ تَقْلِيدِهِمْ، ثُمَّ هُمْ أَوَّلُ رَافِضِينَ لَهُ إِذَا خَالَفَ تَقْلِيدَهُمْ وَآرَاءَهُمْ. وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

وَيُقَالُ لَهُمْ: فِي أَيِّ قُرْآنٍ أَوْ فِي أَيِّ سُنَّةٍ أَوْ فِي أَيِّ قِيَاسٍ وَجَدْتُمْ تَغْلِيظَ بَعْضِ الْأَحْدَاثِ فَيَنْقُضُ الْوُضُوءَ قَلِيلُهَا وَكَثِيرُهَا، وَتَخْفِيفُ بَعْضِهَا قَدْ يَنْقُضُ الْوُضُوءَ إِلَّا مِقْدَارًا حَدَّدْتُمُوهُ مِنْهَا؟ وَالنَّصُّ فِيهَا كُلِّهَا جَاءَ مَجِيئًا وَاحِدًا، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تُقْبَلُ صَلَاةُ مَنْ أَحْدَثَ حَتَّى يَتَوَضَّأَ» وَلَا يَخْفَى عَلَى ذِي عَقْلٍ أَنَّ بَعْضَ الْحَدَثِ حَدَثٌ، فَإِذَا هُوَ كَذَلِكَ فَقَلِيلُهُ وَكَثِيرُهُ يَنْقُضُ الطَّهَارَةَ، وَمَا لَمْ يَكُنْ حَدَثًا فَكَثِيرُهُ وَقَلِيلُهُ لَا يَنْقُضُ الطَّهَارَةَ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[الْأَشْيَاءُ الْمُوجِبَةُ غَسْلَ الْجَسَدِ كُلِّهِ]

[مَسْأَلَةٌ إِيلَاجُ الْحَشَفَةِ أَوْ مِقْدَارِهَا فِي فَرْجِ الْمَرْأَةِ] .

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ الْأَشْيَاءُ الْمُوجِبَةُ غَسْلَ الْجَسَدِ كُلِّهِ

١٧٠ - مَسْأَلَةٌ: إِيلَاجُ الْحَشَفَةِ أَوْ إِيلَاجُ مِقْدَارِهَا مِنْ الذَّكَرِ الذَّاهِبِ الْحَشَفَةِ وَالذَّاهِبِ أَكْثَرَ مِنْ الْحَشَفَةِ - فِي فَرْجِ الْمَرْأَةِ الَّذِي هُوَ مَخْرَجُ الْوَلَدِ مِنْهَا بِحَرَامٍ أَوْ حَلَالٍ، إِذَا كَانَ بِعَمْدٍ أَنْزَلَ أَوْ لَمْ يُنْزِلْ، فَإِنْ عَمَدَتْ هِيَ أَيْضًا لِذَلِكَ، فَكَذَلِكَ أَنْزَلَتْ أَوْ لَمْ تُنْزِلْ، فَإِنْ كَانَ أَحَدُهُمَا مَجْنُونًا أَوْ سَكْرَانًا أَوْ نَائِمًا أَوْ مُغْمًى عَلَيْهِ أَوْ مُكْرَهًا، فَلَيْسَ عَلَى مَنْ هَذِهِ

for the affected individual upon regaining consciousness or awakening, unless ejaculation occurs. If either party has not reached puberty, neither ritual bath nor ablution is obligatory. Upon reaching puberty, the major ritual bath and ablution become obligatory for subsequent acts, not for past occurrences.

L3403 The evidence for this is what was narrated to us by Aḥmad al-Ṭalmanakī, who narrated to us Muḥammad ibn Aḥmad ibn Mufarrij, who narrated to us Muḥammad ibn Ayyūb al-Ṣamūt, who narrated to us Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār, who narrated to us Muḥammad ibn al-Muthannā, who narrated to us Muḥammad ibn ʿAbd Allāh al-Anṣārī, who narrated to us Hishām ibn Ḥassān, from Ḥumayd ibn Hilāl, from Abū Burdah ibn Abī Mūsā al-Ashʿarī, from his father, from ʿĀ'ishah, from the Prophet, who said: "When the two circumcised parts meet, ghusl is obligatory." And it was narrated to us by Ḥammām, who narrated to us ʿAbbās ibn Aṣbagh, who narrated to us Muḥammad ibn ʿAbd al-Malik ibn Ayman, who narrated to us Aḥmad ibn Zuhayr ibn Ḥarb, who narrated to us Muslim ibn Ibrāhīm, who narrated to us Shuʿbah and Hishām al-Dastuwā'ī, both from Qatādah, from al-Ḥasan al-Baṣrī, from Abū Rāfiʿ, from Abū Hurayrah, from the Prophet (peace and blessings be upon him), who said: "When he settles between her four limbs and presses the circumcised part against the circumcised part, ghusl is obligatory."[44]

L3404–3405 Ahmad ibn Zuhayr said: Affan ibn Muslim narrated to us: Hammam ibn Yahya and Aban ibn Yazid al-Attar narrated to us, and they both said together: Qatadah narrated to us from al-Hasan from Abu Rafi' from Abu Hurayrah from the Prophet - peace and blessings of Allah be upon him - who said: "When he positions himself between her four limbs and strives vigorously, the ritual bath has become obligatory upon him, whether he ejaculates or not."

L3406–3408 Abū Muḥammad said: This contains an established addition regarding the ḥadīths that omit the ritual bath, and the addition constitutes a legislated ruling that must not be abandoned. We specified this ruling in the context of childbirth because circumcision applies only there. Thus, it is equivalent

[44]**Hadith references (L3403):** Sunan Abi Dawud 216.

صِفَتُهُ مِنْهُمَا إِلَّا الْوُضُوءُ فَقَطْ إِذَا أَفَاقَ أَوْ اسْتَيْقَظَ إِلَّا أَنْ يُنْزِلَ، فَإِنْ كَانَ أَحَدُهُمَا غَيْرَ بَالِـغٍ فَلَا غُسْلَ عَلَيْهِ وَلَا وُضُوءَ، فَإِذَا بَلَغَ لَزِمَهُ الْغُسْلُ فِيمَا يَحْدُثُ لَا فِيمَا سَلَفَ لَهُ مِنْ ذَلِكَ وَالْوُضُوءُ.

بُرْهَانُ ذَلِكَ مَا حَدَّثَنَا أَحْمَدُ الطَّلْمَنْكِيُّ ثنا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ مُفَرِّجٍ ثنا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ ثنا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْأَنْصَارِيُّ ثنا هِشَامُ بْنُ حَسَّانَ عَنْ حُمَيْدِ بْنِ هِلَالٍ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ عَنْ عَائِشَةَ عَنِ النَّبِيِّ قَالَ: «إِذَا الْتَقَى الْخِتَانَانِ وَجَبَ الْغُسْلُ» . وَحَدَّثَنَا حَمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ ثنا مُسْلِمُ بْنُ إِبْرَاهِيمَ ثنا شُعْبَةُ وَهِشَامٌ الدَّسْتُوَائِيُّ كِلَاهُمَا عَنْ قَتَادَةَ عَنِ الْحَسَنِ الْبَصْرِيِّ عَنْ أَبِي رَافِعٍ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا قَعَدَ بَيْنَ شُعَبِهَا الْأَرْبَعِ وَأَلْزَقَ الْخِتَانَ بِالْخِتَانِ فَقَدْ وَجَبَ الْغُسْلُ» .

قَالَ أَحْمَدُ بْنُ زُهَيْرٍ: وَحَدَّثَنَا عَفَّانُ بْنُ مُسْلِمٍ ثنا هَمَّامُ بْنُ يَحْيَى وَأَبَانُ بْنُ يَزِيدَ الْعَطَّارُ قَالَا جَمِيعًا ثنا قَتَادَةُ عَنِ الْحَسَنِ عَنْ أَبِي رَافِعٍ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا قَعَدَ بَيْنَ شُعَبِهَا الْأَرْبَعِ وَأَجْهَدَ نَفْسَهُ فَقَدْ وَجَبَ عَلَيْهِ الْغُسْلُ أَنْزَلَ أَوْ لَمْ يُنْزِلْ» .

قَالَ أَبُو مُحَمَّد: هَذَا فِيهِ زِيَادَةٌ ثَابِتَةٌ عَنِ الْأَحَادِيثِ الَّتِي فِيهَا إِسْقَاطُ الْغُسْلِ، وَالزِّيَادَةُ شَرِيعَةٌ وَارِدَةٌ لَا يَجُوزُ تَرْكُهَا. وَإِنَّمَا قُلْنَا فِي مَخْرَجِ الْوَلَدِ، لِأَنَّهُ لَا خِتَانَ إِلَّا هُنَالِكَ، فَسَوَاءٌ كَانَ مَخْتُونًا أَوْ غَيْرَ مَخْتُونٍ لِأَنَّ لَفْظَةَ «أَجْهَدَ نَفْسَهُ» تَقْتَضِي ذَلِكَ، وَلَمْ يَخُصَّ

- عَلَيْهِ السَّلَامُ - حَرَامًا مِنْ حَلَالٍ. وَإِنَّمَا قُلْنَا بِذَلِكَ فِي الْعَمْدِ دُونَ الْأَحْوَالِ الَّتِي ذَكَرْنَا لِأَنَّ قَوْلَهُ - عَلَيْهِ السَّلَامُ - «إذَا قَعَدَ ثُمَّ أَجْهَدَ» وَهَذَا الْإِطْلَاقُ لَيْسَ إلَّا لِلْمُخْتَارِ الْقَاصِدِ، وَلَا يُسَمَّى الْمَغْلُوبُ أَنَّهُ قَعَدَ وَلَا النَّائِمُ وَلَا الْمُغْمَى عَلَيْهِ. وَأَمَّا الْمَجْنُونُ فَقَدْ ذَكَرْنَا قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ» فَذَكَرَ - عَلَيْهِ السَّلَامُ - «الْمَجْنُونِ حَتَّى يُفِيقَ وَالصَّبِيِّ حَتَّى يَبْلُغَ» فَإِذَا زَالَتْ هَذِهِ الْأَحْوَالُ كُلُّهَا مِنْ الْجُنُونِ وَالْإِغْمَاءِ وَالنَّوْمِ وَالصِّبَا فَالْوُضُوءُ لَازِمٌ لَهُمْ فَقَطْ لِأَنَّهُمْ يَصِيرُونَ مُخَاطَبِينَ بِالصَّلَاةِ وَبِالْوُضُوءِ لَهَا جُمْلَةً، وَبِالْغُسْلِ إنْ كَانُوا مُجْنِبِينَ، وَهَؤُلَاءِ لَيْسُوا بِمُجْنِبِينَ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

whether he is circumcised or uncircumcised, as the phrase “exerted himself” necessitates this, and the Prophet (peace be upon him) did not differentiate between unlawful and lawful. We stated this regarding intentional acts, excluding the situations we mentioned, because his statement (peace be upon him) “when he assumes a position and then exerts himself”—this unrestricted wording applies only to a deliberate and intentional agent. One who is overpowered, asleep, or unconscious cannot be described as having “assumed a position.” As for the insane, we cited the statement of Allah’s Messenger (peace and blessings of Allah be upon him): “The pen is lifted from three”—and he mentioned—peace be upon him— “The insane person until he regains sanity and the child until he reaches puberty.” When all these states—insanity, unconsciousness, sleep, and childhood—cease, ablution becomes obligatory for them only, as they are now obligated to prayer, ablution in its entirety, and ghusl (ritual bath) if they had been in a state of major impurity. These individuals are not in a state requiring ghusl. And success is from Allah, the Most High.

فَإِنْ قِيلَ: فَهَلَّا أَوْجَبْتُمْ الْغُسْلَ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إذَا الْتَقَى الْخِتَانَانِ وَجَبَ الْغُسْلُ» ؟ قُلْنَا: هَذَا الْخَبَرُ أَعَمُّ مِنْ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إذَا أَحْقَطْتَ أَوْ أَكْسَلْتَ فَلَا غُسْلَ عَلَيْكَ» . فَوَجَبَ أَنْ يُسْتَثْنَى الْأَقَلُّ مِنْ الْأَعَمِّ وَلَا بُدَّ، لِيُؤْخَذَ بِهِمَا مَعًا، ثُمَّ حَدِيثُ أَبِي هُرَيْرَةَ زَائِدٌ حُكْمًا عَلَى حَدِيثِ الْإِكْسَالِ فَوَجَبَ إعْمَالُهُ أَيْضًا.

L3409 If it is said: Why do you not obligate the ritual bath based on his statement—peace be upon him—“When the two circumcised parts meet, the ritual bath becomes obligatory”? We respond: This report is more general than his statement—peace be upon him—“If you ejaculate or refrain from ejaculating, there is no ritual bath required of you.” Thus, the specific ruling must necessarily be excepted from the general ruling to consider both together. Moreover, the narration of Abu Hurairah provides an additional legal ruling to the narration regarding refraining from ejaculation, so it must also be applied.

وَأَمَّا كُلُّ مَوْضِعٍ لَا خِتَانَ فِيهِ وَلَا يُمْكِنُ فِيهِ الْخِتَانُ فَلَمْ يَأْتِ نَصٌّ وَلَا سُنَّةٌ بِإِيجَابِ الْغُسْلِ مِنْ الْإِيلَاجِ فِيهِ، وَمِمَّنْ رَأَى أَنْ لَا غُسْلَ مِنْ الْإِيلَاجِ فِي الْفَرْجِ إنْ لَمْ يَكُنْ أَنْزَلَ: عُثْمَانُ بْنُ عَفَّانَ وَعَلِيُّ بْنُ أَبِي طَالِبٍ وَالزُّبَيْرُ بْنُ الْعَوَّامِ وَطَلْحَةُ بْنُ عُبَيْدِ اللَّهِ وَسَعْدُ بْنُ أَبِي وَقَّاصٍ وَابْنُ مَسْعُودٍ وَرَافِعُ بْنُ خَدِيجٍ وَأَبُو سَعِيدٍ الْخُدْرِيُّ وَأُبَيُّ بْنُ كَعْبٍ وَأَبُو

L3410 As for any body part where circumcision is not applicable or where circumcision cannot occur, neither textual evidence nor Sunnah has established the obligation of ritual bath due to penetration therein. Among those who maintained that no ritual bath is required for penetration into the private parts without ejaculation are: ʿUthmān ibn ʿAffān, ʿAlī ibn Abī Ṭālib, al-Zubayr ibn al-ʿAwwām, Ṭalḥah ibn ʿUbayd Allāh, Saʿd ibn Abī Waqqāṣ, Ibn Masʿūd, Rāfiʿ ibn Khadīj, Abū Saʿīd al-Khudrī, Ubayy ibn Kaʿb, Abū Ayyūb al-Anṣārī, Ibn ʿAbbās, al-Nuʿmān ibn Bashīr, Zayd ibn Thābit, the majority of the Anṣār

(may Allah be pleased with them all), as well as ʿAṭāʾ ibn Abī Rabāḥ, Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, Hishām ibn ʿUrwah, al-Aʿmash, and some followers of the Ẓāhirī school. The practice of ritual bath in such cases has been narrated from ʿĀʾishah, Mother of the Believers, Abū Bakr al-Ṣiddīq, ʿUmar ibn al-Khaṭṭāb, ʿUthmān, ʿAlī, Ibn Masʿūd, Ibn ʿAbbās, Ibn ʿUmar, and the Muhājirūn (may Allah be pleased with them all), and this is held by Abū Ḥanīfah, Mālik, al-Shāfiʿī, and some adherents of the Ẓāhirī school.

أَيُّوبَ الْأَنْصَارِيُّ وَابْنُ عَبَّاسٍ وَالنُّعْمَانُ بْنُ بَشِيرٍ وَزَيْدُ بْنُ ثَابِتٍ وَجُمْهُورُ الْأَنْصَارِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَعَطَاءُ بْنُ أَبِي رَبَاحٍ وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ وَهِشَامُ بْنُ عُرْوَةَ وَالْأَعْمَشُ وَبَعْضُ أَهْلِ الظَّاهِرِ. وَرُوِيَ الْغُسْلُ فِي ذَلِكَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ وَأَبِي بَكْرٍ الصِّدِّيقِ وَعُمَرَ بْنِ الْخَطَّابِ وَعُثْمَانَ وَعَلِيٍّ وَابْنِ مَسْعُودٍ وَابْنِ عَبَّاسٍ وَابْنِ عُمَرَ وَالْمُهَاجِرِينَ - رَضِيَ اللَّهُ عَنْهُمْ -، وَبِهِ يَقُولُ أَبُو حَنِيفَةَ وَمَالِكٌ وَالشَّافِعِيُّ وَبَعْضُ أَصْحَابِ الظَّاهِرِ.

[مَسْأَلَةٌ يَجِبُ عَلَى الْجُنُبِ غُسْلُ الرَّأْسِ وَجَمِيعِ الْجَسَدِ]

L3411 **Issue: One in a state of major ritual impurity must perform the ritual bath of the head and the entire body.**

١٧١ - مَسْأَلَةٌ: فَلَوْ أَجْنَبَ كُلُّ مَنْ ذَكَرْنَا وَجَبَ عَلَيْهِ غُسْلُ الرَّأْسِ وَجَمِيعِ الْجَسَدِ إِذَا أَفَاقَ الْمُغْمَى عَلَيْهِ وَالْمَجْنُونُ وَانْتَبَهَ النَّائِمُ وَصَحَا السَّكْرَانُ وَأَسْلَمَ الْكَافِرُ، وَبِالْإِجْنَابِ يَجِبُ الْغُسْلُ.

L3412–3414 Issue 171: If all those we have mentioned were to enter a state of Janabah, it would become obligatory upon them to ritually wash the head and the entire body. Ghusl becomes obligatory on the body when a person who fainted regains consciousness, when an insane person regains sanity, when a sleeper awakens, when an intoxicated person sobers up, and when a disbeliever embraces Islam. It is also obligatory due to sexual intercourse.

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {وَإِنْ كُنْتُمْ جُنُبًا فَاطَّهَّرُوا} [المائدة: ٦] فَلَوْ اغْتَسَلَ الْكَافِرُ قَبْلَ أَنْ يُسْلِمَ وَالْمَجْنُونُ قَبْلَ أَنْ يُفِيقَ أَوْ غَسَلَ الْمُغْمَى عَلَيْهِ قَبْلَ أَنْ يُفِيقَ وَالسَّكْرَانُ لَمْ يُجْزِهِمْ ذَلِكَ مِنْ غُسْلِ الْجَنَابَةِ وَعَلَيْهِمْ إِعَادَةُ الْغُسْلِ، لِأَنَّهُمْ بِخُرُوجِ الْجَنَابَةِ مِنْهُمْ صَارُوا جُنُبًا وَوَجَبَ الْغُسْلُ بِهِ، وَلَا يَجْزِي الْفَرْضَ الْمَأْمُورَ بِهِ إِلَّا بِنِيَّةِ أَدَائِهِ قَصْدًا إِلَى تَأْدِيَةِ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ. قَالَ اللَّهُ تَعَالَى: {وَمَا أُمِرُوا إِلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ} [البينة: ٥] وَكَذَلِكَ لَوْ تَوَضَّئُوا فِي هَذِهِ الْأَحْوَالِ لِلْحَدَثِ لَمْ يُجْزِهِمْ وَلَا بُدَّ مِنْ إِعَادَتِهِ بَعْدَ زَوَالِهَا لِمَا ذَكَرْنَا.

L3415 The proof of this is the statement of Allah the Exalted: {And if you are in a state of major impurity (junub), then purify yourselves} [Al-Ma'idah: 6]. If a disbeliever performed ritual bathing before embracing Islam, a mentally incapacitated person before regaining sanity, if someone washed an unconscious person before regaining consciousness, or a drunkard bathed, this would not be valid for them regarding the ritual bath for major impurity. They must reperform the bath, because they entered the state of major impurity due to its occurrence from them, thus obligating the bath. The obligatory act commanded [by Allah] is only fulfilled with the intention to perform it, intending to fulfill what Allah the Exalted has ordained. Allah the Exalted said: {And they were not commanded except to worship Allah, devoting religion sincerely to Him} [Al-Bayyinah: 5]. Similarly, if they performed ablution in these states to remove minor ritual impurity, it would not suffice them, and

they must renew it after recovering from those states, for the reason we have mentioned.[45]

[مَسْأَلَة الْجَنَابَة هِيَ الْمَاء الَّذِي يَكُون مِنْ نَوْعه الْوَلَد]

L3416 **The issue of *janabah* (major ritual impurity) concerns the water [seminal fluid] that is of the type from which the child originates.**

١٧٢ - مَسْأَلَةٌ: وَالْجَنَابَةُ هِيَ الْمَاءُ الَّذِي يَكُونُ مِنْ نَوْعِهِ الْوَلَدُ، وَهُوَ مِنَ الرَّجُلِ أَبْيَضُ غَلِيظٌ رَائِحَتُهُ رَائِحَةُ الطَّلْعِ، وَهُوَ مِنَ الْمَرْأَةِ رَقِيقٌ أَصْفَرُ، وَمَاءُ الْعَقِيمِ وَالْعَاقِرِ يُوجِبُ الْغُسْلَ، وَمَاءُ الْخَصِيِّ لَا يُوجِبُ الْغُسْلَ، وَأَمَّا الْمَجْبُوبُ الذَّكَرِ السَّالِمُ الْأُنْثَيَيْنِ أَوْ إِحْدَاهُمَا فَمَاؤُهُ يُوجِبُ الْغُسْلَ.

L3417 Issue 172: Janabah refers to the fluid from which the child is produced. This fluid is emitted by the man as a white, thick substance with the scent of palm pollen, and by the woman as a thin, yellowish substance. The emission of a sterile man, al-'aqīm, or a barren woman, al-'āqir, necessitates ghusl, while the emission of a eunuch, al-khaṣī, does not necessitate ghusl. As for a male who has undergone penectomy while retaining healthy testicles - whether both or one of them - his emission does necessitate ghusl.

L3418 The evidence for this is what 'Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: 'Abd al-Wahhab ibn 'Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn 'Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: 'Abbas ibn al-Walid narrated to us: Yazid ibn Rabi' narrated to us: Sa'id ibn Abi 'Arubah—from Qatadah—that Anas ibn Malik reported to them that Umm Sulaym narrated: "She asked the Prophet of Allah (peace be upon him) about a woman who sees in her sleep what a man sees. The Messenger of Allah (peace be upon him) said: 'When a woman experiences that, she must perform ghusl.' It was said: 'Does this occur?' The Messenger of Allah (peace be upon him) replied: 'Yes. From where does the resemblance come? Verily, the man's fluid is thick and white, while the woman's fluid is thin and yellow. Whichever of them prevails or comes first determines the resemblance.'"[46]

بُرْهَانُ ذَلِكَ مَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا عَبَّاسُ بْنُ الْوَلِيدِ ثنا يَزِيدُ بْنُ رَبِيعٍ ثنا سَعِيدٌ هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ أَنَّ أَنَسَ بْنَ مَالِكٍ حَدَّثَهُمْ أَنَّ أُمَّ سُلَيْمٍ حَدَّثَتْ «أَنَّهَا سَأَلَتْ نَبِيَّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنِ الْمَرْأَةِ تَرَى فِي مَنَامِهَا مَا يَرَى الرَّجُلُ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِذَا رَأَتْ الْمَرْأَةُ ذَلِكَ فَلْتَغْتَسِلْ، قِيلَ: وَهَلْ يَكُونُ هَذَا؟ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: نَعَمْ، فَمِنْ أَيْنَ يَكُونُ الشَّبَهُ إِنَّ مَاءَ الرَّجُلِ غَلِيظٌ أَبْيَضُ وَمَاءَ الْمَرْأَةِ رَقِيقٌ أَصْفَرُ، فَمِنْ أَيِّهِمَا عَلَا أَوْ سَبَقَ يَكُونُ مِنْهُ الشَّبَهُ» .

L3419–3422 Abu Muhammad said: This is the fluid that necessitates the ritual bath—the fluid of the infertile man, the sterile man, and the man with intact testicles, even if he is castrated. This is its description, and offspring may be born to such a man. As for the fluid of the eunuch, it is yellow and does not con-

قَالَ أَبُو مُحَمَّد: فَهَذَا هُوَ الْمَاءُ الَّذِي يُوجِبُ الْغُسْلَ وَمَاءُ الْعَقِيمِ وَالْعَاقِرِ وَالسَّالِمِ الْخُصْيَةِ، وَإِنْ كَانَ مَجْبُوبًا، فَهَذِهِ صِفَتُهُ وَقَدْ يُولَدُ لِهَذَا، وَأَمَّا مَاءُ الْخَصِيِّ فَإِنَّمَا هُوَ أَصْفَرُ، فَلَيْسَ هُوَ الْمَاءُ الَّذِي جَاءَ النَّصُّ بِإِيجَابِ الْغُسْلِ فِيهِ فَلَا غُسْلَ فِيهِ، وَلَوْ أَنَّ امْرَأَةً شُفِرَتْ

[45] **Qur'an references (L3415):** Qur'an 5:6 (Al-Ma'idah); Qur'an 98:5 (Al-Bayyinah).

[46] **Hadith references (L3418):** Sahih Muslim 311.

stitute the fluid specified in the textual ruling that obligates the ritual bath. Therefore, no ritual bath is required for it, even if a woman... If she had intercourse, whether she was pubescent or non-pubescent, and semen entered her vagina and she became pregnant, then the ritual bath is necessarily obligatory upon her, because semen has undoubtedly been emitted into her.

Case: When janabah occurs, ghusl is required.

L3423

L3424 *Issue:* However the aforementioned major impurity occurs—whether due to a blow, a medical condition, without experiencing pleasure, without being aware of it until afterward, or through lawful intercourse—*ghusl* is obligatory in all such cases.

L3425 The proof for this is the statement of Allah, the Exalted: {If you are in a state of major impurity, then purify yourselves} [5:6], and the Prophet's command—peace be upon him—to perform ghusl when semen is emitted. This applies generally to all who incur the state of major impurity, as neither Allah, the Exalted, nor His Messenger—peace be upon him—exempted any circumstance. Thus, it is impermissible for anyone to restrict the text's generality through personal opinion without another explicit text. This is the view of Al-Shāfiʿī and Dāwūd. Abū Ḥanīfah and Mālik said: If semen exits someone due to a cause (Abū Ḥanīfah added: or if one is struck on the posterior, causing semen to exit), only wuḍūʾ is required, not ghusl. This opinion contradicts the Quran, the established Sunnah, analogical reasoning, and we know of none among the Salaf who attributed it except Saʿīd ibn Jubayr alone, who reportedly stated there is no requirement for ghusl except due to sexual desire.[47]

L3426–3428 Abū Muḥammad said: As for their divergence from analogy, indeed feces, urine, and wind require ablution, and they do not differ that ablution is obligatory however these exit. Similarly, menstruation requires the ritual bath, and however it exits, the ritual bath is obligatory. Thus, the necessary ruling would have been to treat semen likewise. Yet they took neither from the Quran nor acted upon the Sunnah, nor did they apply analogy consis-

[47] **Qur'an references (L3425):** Qur'an 5:6 (Al-Ma'idah).

وَهِيَ بَالِـغٌ أَوْ غَيْرُ بَالِـغٍ، فَدَخَلَ الْمَنِيُّ فَرْجَهَا فَحَمَلَتْ فَالْغُسْلُ عَلَيْهَا وَلَا بُدَّ لِأَنَّهَا قَدْ أَنْزَلَتْ الْمَاءَ يَقِينًا.

[مَسْأَلَة إذَا خَرَجَتْ الْجَنَابَة وَجَبَ الْغُسْل]

١٧٣ . - مَسْأَلَةٌ: وَكَيْفَمَا خَرَجَتْ الْجَنَابَةُ الْمَذْكُورَةُ بِضَرْبَةٍ أَوْ عِلَّةٍ أَوْ لِغَيْرِ لَذَّةٍ أَوْ لَمْ يَشْعُرْ بِهِ حَتَّى وَجَدَهُ أَوْ بِاسْتِنْكَاحٍ فَالْغُسْلُ وَاجِبٌ فِي ذَلِكَ.

بُرْهَانُ ذَلِكَ قَوْله تَعَالَى: {وَإِنْ كُنْتُمْ جُنُبًا فَاطَّهَّرُوا} [المائدة: ٦] وَأَمْرُهُ - عَلَيْهِ السَّلَامُ - إذَا فَضَخَ الْمَاءَ أَنْ يَغْتَسِلَ، وَهَذَا عُمُومٌ لِكُلِّ مَنْ خَرَجَتْ مِنْهُ الْجَنَابَةُ، وَلَمْ يَسْتَثْنِ عَزَّ وَجَلَّ وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - حَالًا مِنْ حَالٍ، فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَخُصَّ النَّصَّ بِرَأْيِهِ بِغَيْرِ نَصٍّ، وَهَذَا هُوَ قَوْلُ الشَّافِعِيِّ وَدَاوُد. وَقَالَ أَبُو حَنِيفَةَ وَمَالِكٌ: مَنْ خَرَجَ مِنْهُ الْمَنِيُّ - لِعِلَّةٍ، قَالَ أَبُو حَنِيفَةَ: أَوْ ضُرِبَ عَلَى اسْتِهِ فَخَرَجَ مِنْهُ الْمَنِيُّ فَعَلَيْهِ الْوُضُوءُ وَلَا غُسْلَ عَلَيْهِ، وَهَذَا قَوْلٌ خِلَافٌ لِلْقُرْآنِ وَلِلسُّنَنِ الثَّابِتَةِ وَلِلْقِيَاسِ، وَمَا نَعْلَمُهُ عَنْ أَحَدٍ مِنْ السَّلَفِ إلَّا عَنْ سَعِيدِ بْنِ جُبَيْرٍ وَحْدَهُ فَإِنَّهُ ذَكَرَ عَنْهُ لَا غُسْلَ إلَّا مِنْ شَهْوَةٍ.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا خِلَافُهُمْ لِلْقِيَاسِ فَإِنَّ الْغَائِطَ وَالْبَوْلَ وَالرِّيحَ مُوجِبَةٌ لِلْوُضُوءِ وَلَا يَخْتَلِفُونَ أَنَّ كَيْفَمَا خَرَجَ ذَلِكَ فَالْوُضُوءُ فِيهِ، وَكَذَلِكَ الْحَيْضُ مُوجِبٌ لِلْغُسْلِ، وَكَيْفَمَا خَرَجَ فَالْغُسْلُ فِيهِ، فَكَانَ الْوَاجِبُ أَنْ يَكُونَ الْمَنِيُّ كَذَلِكَ، فَلَا بِالْقُرْآنِ أَخَذُوا وَلَا بِالسُّنَّةِ عَمِلُوا وَلَا الْقِيَاسُ طَرَدُوا. وَالْعَجَبُ أَنَّ بَعْضَهُمْ احْتَجَّ فِي ذَلِكَ بِأَنَّ الْغَائِطَ وَالْبَوْلَ لَيْسَ

tently. The wonder is that some of them argued in this matter by asserting there is no circumstantial factor in the expulsion of feces and urine. It alters the body's state. He said, "Semen emitted through desire eliminates the desire and produces an effect in the body. Therefore, it must be contrary to both of them."

فِي خُرُوجِهِمَا حَالٌ تُحِيلُ الْجَسَدَ. قَالَ: وَالْمَنِيُّ إذَا خَرَجَ لِشَهْوَةٍ أَذْهَبَ الشَّهْوَةَ وَأَحْدَثَ فِي الْجَسَدِ أَثَرًا فَوَجَبَ أَنْ يَكُونَ بِخِلَافِهِمَا.

L3429 Ali said: This is conflation. Rather, the pleasure in the expulsion of urine, feces, and wind when needing their expulsion is greater than the pleasure in the expulsion of semen. The harm from the pain of suppressing their expulsion also exceeds the harm of suppressing semen. Therefore, the ruling is equal in this matter, and with Allah, the Exalted, is success. If one who has had intercourse is harmed by performing ghusl, let him perform tayammum, for he lacks what he can perform ghusl with. His ruling is tayammum by the Quranic text. And with Allah, the Exalted, is success.

قَالَ عَلِيٌّ: وَهَذَا تَخْلِيطٌ، بَلْ اللَّذَّةُ فِي خُرُوجِ الْبَوْلِ وَالْغَائِطِ وَالرِّيحِ أَشَدُّ عِنْدَ الْحَاجَةِ إلَى خُرُوجِهَا مِنْهَا فِي خُرُوجِ الْمَنِيِّ، وَضَرَرُ أَلَمِ امْتِنَاعِ خُرُوجِهَا أَشَدُّ مِنْ ضَرَرِ امْتِنَاعِ خُرُوجِ الْمَنِيِّ فَقَدْ اسْتَوَى الْحُكْمُ فِي ذَلِكَ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ، فَإِنْ تَأَذَّى الْمُسْتَنْكِحُ بِالْغُسْلِ فَلْيَتَيَمَّمْ؛ لِأَنَّهُ غَيْرُ وَاجِدٍ مَا يَقْدِرُ عَلَى الْغُسْلِ بِهِ، فَحُكْمُهُ التَّيَمُّمُ بِنَصِّ الْقُرْآنِ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة امْرَأَة وطئت ثُمَّ اغْتَسَلَتْ ثُمَّ خَرَجَ مَاء الرَّجُل مِنْ فرجها]

A legal case involving a woman who had intercourse, then performed ghusl, the ritual bath, after which the man's semen came out from her vagina.

L3431 Issue 174: If a woman had intercourse performed upon her, then performed ghusl (major ablution), and afterward the man's semen was discharged from her vagina, she is not required to do anything - neither ghusl nor wudu (minor ablution). This is because ghusl is only obligatory upon her due to her own emission, not that of another, and wudu is only obligatory upon her due to her own minor impurity, not that of another. The discharge of the man's semen from her vagina is neither her emission nor a cause of impurity for her, thus she need not perform ghusl or wudu. It has been narrated from Al-Hasan that she should perform ghusl, and from Qatādah, Al-Awzāʿī, Ahmad, and Isḥāq that she should perform wudu. ʿAlī said: "No one's opinion constitutes authoritative evidence except that of the Messenger of Allah (peace and blessings be upon him)."

١٧٤ - مَسْأَلَةٌ: وَلَوْ أَنَّ امْرَأَةً وُطِئَتْ ثُمَّ اغْتَسَلَتْ ثُمَّ خَرَجَ مَاءُ الرَّجُلِ مِنْ فَرْجِهَا فَلَا شَيْءَ عَلَيْهَا، لَا غُسْلَ وَلَا وُضُوءَ، لِأَنَّ الْغُسْلَ إنَّمَا يَجِبُ عَلَيْهَا مِنْ إنْزَالِهَا لَا مِنْ إنْزَالِ غَيْرِهَا، وَالْوُضُوءُ إنَّمَا يَجِبُ عَلَيْهَا مِنْ حَدَثِهَا لَا مِنْ حَدَثِ غَيْرِهَا وَخُرُوجُ مَاءِ الرَّجُلِ مِنْ فَرْجِهَا لَيْسَ إنْزَالًا مِنْهَا وَلَا حَدَثًا مِنْهَا، فَلَا غُسْلَ عَلَيْهَا وَلَا وُضُوءَ. وَقَدْ رُوِيَ عَنْ الْحَسَنِ أَنَّهَا تَغْسِلُ، وَعَنْ قَتَادَةَ وَالْأَوْزَاعِيِّ وَأَحْمَدَ وَإِسْحَاقَ تَتَوَضَّأُ. قَالَ عَلِيٌّ: لَيْسَ قَوْلُ أَحَدٍ حُجَّةً دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَة امْرَأَة شفرها رَجُل فدخل ماؤه فرجها]

A juridical case: A man touched a woman's labia, and his semen reached her vagina.

L3433 Issue 175: If a man exposes a woman's labia and his semen enters her vagina, she is not obligated to perform *ghusl* unless she herself ejaculates. It has been narrated from ʿAṭāʾ, al-Zuhrī, and Qatādah that *ghusl* is incumbent upon her. ʿAlī said: The obligation of *ghusl* is only binding through an explicit Quranic text or an authentically transmitted Sunnah from the Messenger of Allah (peace be upon him).

١٧٥ - مَسْأَلَةٌ: فَلَوْ أَنَّ امْرَأَةً شَفَرَهَا رَجُلٌ فَدَخَلَ مَاؤُهُ فَرْجَهَا فَلَا غُسْلَ عَلَيْهَا إذَا لَمْ تُنْزِلْ هِيَ. وَقَدْ رُوِيَ عَنْ عَطَاءٍ وَالزُّهْرِيِّ وَقَتَادَةَ: عَلَيْهَا الْغُسْلُ. قَالَ عَلِيٌّ: إيجَابُ الْغُسْلِ لَا يَلْزَمُ إلَّا بِنَصِّ قُرْآنٍ أَوْ سُنَّةٍ ثَابِتَةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

A legal issue concerning a man and a woman who are non-mahram and engaged in sexual intercourse without ejaculation.

[مَسْأَلَة رَجُل وَامْرَأَةٌ أجنبا وَكَانَ مِنْهُمَا وَطْء دُون إنْزَال]

L3435 Issue 176: If a man and a woman enter a state of major impurity (janabah) through intercourse between them without ejaculation, then they perform the ritual bath - whether they urinated or not - and afterward all or some of the aforementioned fluid exits them or one of them, the ritual bath becomes obligatory and necessary in that case. If they prayed before this occurrence, their prayer remains valid, then they must perform the ritual bath. If the fluid exits during the bath itself - whether a small portion or most of it remains - they (both) or the one from whom it exited must begin the ritual bath, and this is necessary.

١٧٦ - مَسْأَلَةٌ: وَلَوْ أَنَّ رَجُلًا أَوْ امْرَأَةً أَجْنَبَا وَكَانَ مِنْهُمَا وَطْءٌ دُونَ إنْزَالٍ فَاغْتَسَلَا وَبَالَا أَوْ لَمْ يَبُولَا ثُمَّ خَرَجَ مِنْهُمَا أَوْ مِنْ أَحَدِهِمَا بَقِيَّةٌ مِنْ الْمَاءِ الْمَذْكُورِ أَوْ كُلُّهُ فَالْغُسْلُ وَاجِبٌ فِي ذَلِكَ وَلَا بُدَّ، فَلَوْ صَلَّيَا قَبْلَ ذَلِكَ أَجْزَأَتْهُمَا صَلَاتُهُمَا، ثُمَّ لَا بُدَّ مِنْ الْغُسْلِ، فَلَوْ خَرَجَ فِي نَفْسِ الْغُسْلِ وَقَدْ بَقِيَ أَقَلُّهُ أَوْ أَكْثَرُهُ لَزِمَهُمَا أَوْ الَّذِي خَرَجَ ذَلِكَ مِنْهُ ابْتِدَاءَ الْغُسْلِ وَلَا بُدَّ.

L3436 The proof of that is the generality of the statement of the Exalted and Majestic: {And if you are junub, then purify yourselves} [Al-Ma'idah: 6]. The junub is the one from whom janabah has become apparent. And the Prophet's saying—peace be upon him—: "When semen is emitted, he must perform ghusl." It is not permissible to restrict this generality by personal opinion.[48]

بُرْهَانُ ذَلِكَ عُمُومُ قَوْلِهِ عَزَّ وَجَلَّ: {وَإِنْ كُنْتُمْ جُنُبًا فَاطَّهَّرُوا} [المائدة: ٦] وَالْجُنُبُ هُوَ مَنْ ظَهَرَتْ مِنْهُ الْجَنَابَةُ. وَقَوْلُهُ - عَلَيْهِ السَّلَامُ -: «إذَا فَضَخَ الْمَاءَ فَلْيَغْتَسِلْ» وَلَا يَجُوزُ تَخْصِيصُ هَذَا الْعُمُومِ بِالرَّأْيِ.

L3437–3438 Abu Hanifah said: If the one who emitted semen had urinated before that, then ghusl is obligatory upon him; but if he had not urinated, then ghusl is not obligatory upon him. Malik said: Ghusl is not obligatory upon him, whether he urinated or not. Al-Shafi'i held the same opinion as us.

وَقَالَ أَبُو حَنِيفَةَ: إنْ كَانَ الَّذِي خَرَجَ مِنْهُ الْمَنِيُّ قَدْ بَالَ قَبْلَ ذَلِكَ فَالْغُسْلُ عَلَيْهِ، وَإِنْ كَانَ لَمْ يَبُلْ فَلَا غُسْلَ عَلَيْهِ. وَقَالَ مَالِكٌ: لَا غُسْلَ عَلَيْهِ بَالَ أَوْ لَمْ يَبُلْ. وَقَالَ الشَّافِعِيُّ كَقَوْلِنَا.

L3439 Abu Muhammad said: Those who did not deem the ritual washing obligatory

[48] **Qur'an references (L3436):** Qur'an 5:6 (Al-Ma'idah).

argued that one had already performed the ritual washing, for the ritual washing is solely necessitated by the descent of major ritual impurity from the body, even if the impurity is not visibly apparent.

L3440 Ali said: "This is not as they claimed. Rather, the ritual bath is only required due to the emergence of janābah (major ritual impurity), based on his statement—peace be upon him—'When she sees the water [i.e., semen].' Even if a man were to derive pleasure through recollection until he becomes certain that semen has reached the bladder but the emission that obligates it has not appeared, no ritual bath would be required of him, for he is not yet in a state of janābah. Whoever asserts the obligation of ritual bath in such case must produce evidence from the Quran or the Sunnah. If it is argued: 'A view resembling Mālik's opinion has been transmitted from Ali, Ibn Abbas, and ʿAṭāʾ,' we respond: No one's opinion constitutes proof apart from the Messenger of Allah—peace and blessings be upon him. It is authentically established that Ali, Ibn Abbas, and Ibn al-Zubayr obligated a woman with chronic bleeding (mustahādah) to perform ritual bath for every prayer, yet neither Mālik nor Abū Ḥanīfah upheld this opinion. It would be absurd to consider Ali and Ibn Abbas—may Allah be pleased with them both—as authoritative in one matter but not in another. Success comes only from Allah, the Exalted."

L3441 **Issue: He inserted into the vagina and thereby entered a state of janāba.**

L3442 Issue 177: If someone inserts into the genitals and enters the state of janabah, he must form the intention in that ritual bath for both matters together. He must also necessarily perform ablution. A single washing of the ablution limbs suffices if he intends through it both the ablution and the ritual bath from penetration and janabah. If he intends some of these three obligations (ablution, ghusl for penetration, or ghusl for janabah) without intending the others, it suffices for what he intended, but he must repeat what he did not intend. If the janabah state resulted from a nocturnal emission or emission in a waking state without penetration, only a single intention for the ritual bath from janabah alone is required.

قَالَ أَبُو مُحَمَّد: وَاحْتَجَّ مَنْ لَمْ يَرَ الْغُسْلَ بِأَنَّهُ قَدْ اغْتَسَلَ وَالْغُسْلُ إِنَّمَا هُوَ لِنُزُولِ الْجَنَابَةِ مِنْ الْجَسَدِ وَإِنْ لَمْ تَظْهَرْ.

قَالَ عَلِيٌّ: وَهَذَا لَيْسَ كَمَا قَالُوا بَلْ مَا الْغُسْلُ إلَّا مِنْ ظُهُورِ الْجَنَابَةِ لِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إذَا رَأَتْ الْمَاءَ» وَلَوْ أَنَّ امْرَأً الْتَذَّ بِالتَّذَكُّرِ حَتَّى أَيْقَنَ أَنَّ الْمَنِيَّ قَدْ صَارَ فِي الْمَثَانَةِ وَلَمْ يَظْهَرْ مَا وَجَبَ عَلَيْهِ غُسْلٌ، لِأَنَّهُ لَيْسَ جُنُبًا بَعْدُ، وَمَنْ ادَّعَى عَلَيْهِ وُجُوبَ الْغُسْلِ فَعَلَيْهِ الْبُرْهَانُ مِنْ الْقُرْآنِ أَوْ السُّنَّةِ. فَإِنْ قِيلَ: قَدْ رُوِيَ نَحْوُ قَوْلِ مَالِكٍ عَنْ عَلِيٍّ وَابْنِ عَبَّاسٍ وَعَطَاءٍ. قُلْنَا: لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ صَحَّ عَنْ عَلِيٍّ وَابْنِ عَبَّاسٍ وَابْنِ الزُّبَيْرِ إيجَابُ الْغُسْلِ عَلَى الْمُسْتَحَاضَةِ لِكُلِّ صَلَاةٍ، فَلَمْ يَأْخُذْ بِذَلِكَ مَالِكٌ وَلَا أَبُو حَنِيفَةَ، وَمِنْ الْبَاطِلِ أَنْ يَكُونَ عَلِيٌّ وَابْنُ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا - حُجَّةً فِي مَسْأَلَةٍ غَيْرَ حُجَّةٍ فِي أُخْرَى. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَة أولج فِي الفرج وأجنب]

١٧٧ - مَسْأَلَةٌ: وَمَنْ أَوْلَجَ فِي الْفَرْجِ وَأَجْنَبَ فَعَلَيْهِ النِّيَّةُ فِي غُسْلِهِ ذَلِكَ لَهُمَا مَعًا، وَعَلَيْهِ أَيْضًا الْوُضُوءُ وَلَا بُدَّ، وَيُجْزِيهِ فِي أَعْضَاءِ الْوُضُوءِ غُسْلٌ وَاحِدٌ يَنْوِي بِهِ الْوُضُوءَ وَالْغُسْلَ مِنْ الْإِيلَاجِ وَمِنْ الْجَنَابَةِ، فَإِنْ نَوَى بَعْضَ هَذِهِ الثَّلَاثَةِ وَلَمْ يَنْوِ سَائِرَهَا أَجْزَأَهُ لِمَا نَوَى، وَعَلَيْهِ الْإِعَادَةُ لِمَا لَمْ يَنْوِ، فَإِنْ كَانَ مُجْنِبًا بِاحْتِلَامٍ أَوْ يَقِظَةٍ مِنْ غَيْرِ إيلَاجٍ فَلَيْسَ عَلَيْهِ إلَّا نِيَّةٌ وَاحِدَةٌ لِلْغُسْلِ مِنْ الْجَنَابَةِ فَقَطْ.

L3443–3445 The proof of that is that the Messenger of Allah (peace be upon him) obligated ritual bathing (ghusl) due to sexual penetration even without ejaculation, and due to ejaculation even without penetration, while obligating ablution (wudu) for penetration alone. These are distinct acts in their rulings, and he (peace be upon him) said: "Actions are judged by intentions, and each person will be rewarded according to what they intended." Thus, every ordained act of worship necessarily requires an intention. In it lies the aim to perform it as Allah the Exalted commanded him, and a single act suffices for all that. For it has been authentically reported from him - may Allah's peace and blessings be upon him - that he would perform a single ritual bath for all those instances. This suffices by explicit textual evidence, and intentions are made obligatory by the text. No textual proof has come indicating that an intention for part of that suffices for the intention covering the entirety of it, thus this is impermissible. And with Allah alone is success.[49]

L3446 Performing the ritual bath on Friday is a necessary obligation for every adult, as are maintaining pleasant cleanliness and using the miswak (tooth-stick).

L3447 Issue 178: The ritual bath on Friday is an obligatory duty incumbent upon every adult among men and women, as are applying perfume and using the miswak.

L3448–3450 The evidence for this is what was transmitted to us by ʿAbd al-Raḥmān ibn ʿAbd Allāh al-Hamadānī, who reported from Abū Isḥāq Ibrāhīm ibn Aḥmad, who reported from al-Farbarī, who reported from al-Bukhārī, who reported from ʿAlī—that is, Ibn al-Madīnī—who reported from Ḥaramī ibn ʿUmārah, who reported from Shuʿbah, from Abū Bakr ibn al-Munkadir, who reported to me from ʿAmr ibn Sulaym al-Anṣārī, who said: "I bear witness concerning Abū Saʿīd al-Khudrī, who said: 'I bear witness concerning the Messenger of Allāh—peace and blessings of Allāh be upon him—that he said: "The Friday bath is obligatory for every pubescent individual, along with using the *miswak* and applying perfume.""" ʿAmr ibn Sulaym said: "As for the bath, I

[49] **Hadith references (L3443):** Sahih al-Bukhari 1; Sunan Abi Dawud 2201; Mishkat al-Masabih 1.

بُرْهَانُ ذَلِكَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْجَبَ الْغُسْلَ مِنْ الْإِيلَاجِ وَإِنْ لَمْ يَكُنْ إنْزَالٌ وَمِنْ الْإِنْزَالِ وَإِنْ لَمْ يَكُنْ إيلَاجٌ، وَأَوْجَبَ الْوُضُوءَ مِنْ الْإِيلَاجِ» ، فَهِيَ أَعْمَالٌ مُتَغَايِرَةٌ وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى» فَلَا بُدَّ لِكُلِّ عَمَلٍ مَأْمُورٍ بِهِ مِنْ الْقَصْدِ إلَى تَأْدِيَتِهِ كَمَا أَمَرَهُ اللَّهُ تَعَالَى، وَيُجْزِئُ مِنْ كُلِّ ذَلِكَ عَمَلٌ وَاحِدٌ؛ لِأَنَّهُ قَدْ صَحَّ عَنْهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ كَانَ يَغْتَسِلُ غُسْلًا وَاحِدًا مِنْ كُلِّ ذَلِكَ، فَأَجْزَأَ ذَلِكَ بِالنَّصِّ، وَوَجَبَتْ النِّيَّاتُ بِالنَّصِّ، وَلَمْ يَأْتِ نَصٌّ بِأَنَّ نِيَّةً لِبَعْضِ ذَلِكَ تُجْزِئُ عَنْ نِيَّةِ الْجَمِيعِ، فَلَمْ يَجُزْ ذَلِكَ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة غَسَلَ يَوْم الْجُمُعَة فرض لَازِم لِكُلِّ بالغ وَكَذَلِكَ الطِّيب والسواك]

١٧٨ - مَسْأَلَةٌ: وَغُسْلُ يَوْمِ الْجُمُعَةِ فَرْضٌ لَازِمٌ لِكُلِّ بَالِغٍ مِنْ الرِّجَالِ وَالنِّسَاءِ وَكَذَلِكَ الطِّيبُ وَالسِّوَاكُ.

بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ الْهَمْدَانِيُّ ثنا أَبُو إِسْحَاقَ إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَلِيٌّ هُوَ ابْنُ الْمَدِينِيِّ - ثنا حَرَمِيُّ بْنُ عُمَارَةَ ثنا شُعْبَةُ عَنْ أَبِي بَكْرِ بْنِ الْمُنْكَدِرِ حَدَّثَنِي عَمْرُو بْنُ سُلَيْمٍ الْأَنْصَارِيُّ قَالَ: أَشْهَدُ عَلَى أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: أَشْهَدُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْغُسْلُ يَوْمَ الْجُمُعَةِ وَاجِبٌ عَلَى كُلِّ مُحْتَلِمٍ وَأَنْ يَسْتَنَّ وَأَنْ يَمَسَّ طِيبًا» قَالَ عَمْرُو بْنُ سُلَيْمٍ: أَمَّا الْغُسْلُ فَأَشْهَدُ أَنَّهُ وَاجِبٌ، وَأَمَّا الِاسْتِنَانُ وَالطِّيبُ فَاَللَّهُ أَعْلَمُ أَوَاجِبٌ هُوَ أَمْ لَا، وَلَكِنْ هَكَذَا فِي

testify that it" It is obligatory. As for using the siwāk and applying perfume—Allah knows best whether these are obligatory or not—it is mentioned thus in the Hadith. We have received transmitted reports affirming the obligation of the ritual bath (ghusl) through supported connected chains from ʻUmar ibn al-Khaṭṭāb, his son Ibn ʻUmar, Ibn ʻAbbās, and Abū Hurayrah—all of utmost authenticity. Thus it became a mutawātir report that necessitates definitive knowledge. Among those who ruled the Friday bath obligatory are ʻUmar ibn al-Khaṭṭāb—in the presence of the Companions (may Allah be pleased with them), none of whom opposed him—alongside Abū Hurayrah, Ibn ʻAbbās, Abū Saʻīd al-Khudrī, Saʻd ibn Abī Waqqāṣ, ʻAbdullāh ibn Masʻūd, ʻAmr ibn Sulaym, ʻAṭāʾ, Kaʻb, and al-Musayyib ibn Rāfiʻ.[50]

L3451 «As for Umar, he said to Uthman on the pulpit on Friday—when Uthman remarked, "I merely heard the first call to prayer, performed ablution, and came out"—Umar replied to him, «By Allah, you certainly know this is not about ablution, and [this is not limited to] ablution. You know the Messenger of Allah—peace and blessings be upon him—commanded the ritual bath.» It has been narrated to us from Abu Huraira that he said, «Allah holds it as a duty upon every Muslim to bathe once every seven days, washing every part of his body and applying perfume if he has a household. The ritual bath on Friday is obligatory, like the bath for major impurity.»»[51]

L3452 As for the first wording, it is transmitted through Abd al-Razzaq from Ibn Jurayj from Amr ibn Dinar from Tawus from Abu Hurayrah. The second wording is from Malik ibn Anas from Sa'id al-Maqbari from Abu Hurayrah. And from Sa'd ibn Abi Waqqas: "I never considered a Muslim would omit the Friday ghusl." Ibn Mas'ud said regarding something he presumed: "I would be more foolish than the person who does not perform the ghusl on Friday."

L3453 Abu Muhammad said: He who abandons what is not obligatory is not con-

الْحَدِيثِ. وَرُوِّينَا إِيجَابَ الْغُسْلِ أَيْضًا مُسْنَدًا مِنْ طَرِيقِ عُمَرَ بْنِ الْخَطَّابِ وَابْنِهِ وَابْنِ عَبَّاسٍ وَأَبِي هُرَيْرَةَ كُلُّهَا فِي غَايَةِ الصِّحَّةِ، فَصَارَ خَبَرًا مُتَوَاتِرًا يُوجِبُ الْعِلْمَ، وَمِمَّنْ قَالَ بِوُجُوبِ فَرْضِ الْغُسْلِ يَوْمَ الْجُمُعَةِ عُمَرُ بْنُ الْخَطَّابِ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَمْ يُخَالِفْهُ فِيهِ أَحَدٌ مِنْهُمْ، وَأَبُو هُرَيْرَةَ وَابْنُ عَبَّاسٍ وَأَبُو سَعِيدٍ الْخُدْرِيُّ وَسَعْدُ بْنُ أَبِي وَقَّاصٍ وَعَبْدُ اللَّهِ بْنُ مَسْعُودٍ وَعَمْرُو بْنُ سُلَيْمٍ وَعَطَاءٌ وَكَعْبٌ وَالْمُسَيِّبُ بْنُ رَافِعٍ.

أَمَّا عُمَرُ فَإِنَّهُ قَالَ عَلَى الْمِنْبَرِ لِعُثْمَانَ يَوْمَ الْجُمُعَةِ - وَقَدْ قَالَ عُثْمَانُ: مَا هُوَ إِلَّا أَنْ سَمِعْت الْأَذَانَ الْأَوَّلَ فَتَوَضَّأْت وَخَرَجْت فَقَالَ لَهُ عُمَرُ: وَاَللَّهِ لَقَدْ عَلِمْت مَا هُوَ بِالْوُضُوءِ، وَالْوُضُوءُ أَيْضًا «وَقَدْ عَلِمْتَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَأْمُرُ بِالْغُسْلِ» . وَرُوِّينَا عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ: لِلَّهِ عَلَى كُلِّ مُسْلِمٍ أَنْ يَغْتَسِلَ مِنْ كُلِّ سَبْعَةِ أَيَّامٍ يَوْمًا فَيَغْسِلُ كُلَّ شَيْءٍ مِنْهُ وَيَمَسُّ طِيبًا إنْ كَانَ لِأَهْلِهِ، وَالْغُسْلُ يَوْمَ الْجُمُعَةِ وَاجِبٌ كَغُسْلِ الْجَنَابَةِ.

فَأَمَّا اللَّفْظُ الْأَوَّلُ فَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ أَبِي هُرَيْرَةَ وَاللَّفْظُ الثَّانِي عَنْ مَالِكِ بْنِ أَنَسٍ عَنْ سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ. وَعَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ: مَا كُنْت أَرَى مُسْلِمًا يَدَعُ الْغُسْلَ يَوْمَ الْجُمُعَةِ. وَقَالَ ابْنُ مَسْعُودٍ فِي شَيْءٍ ظَنَّ بِهِ: لَأَنَا أَحْمَقُ مِنْ الَّذِي لَا يَغْتَسِلُ يَوْمَ الْجُمُعَةِ.

[50] **Hadith references (L3448):** Sahih al-Bukhari 880.

[51] **Hadith references (L3451):** Sahih al-Bukhari 878; Sahih Muslim 845a; Musnad Ahmad 202.

sidered a fool, for the Messenger of Allah—peace and blessings be upon him—said concerning him: “He has succeeded if he is truthful. He will enter Paradise if he is truthful.” And the successful one, who is guaranteed Paradise, is not a fool.

قَالَ أَبُو مُحَمَّد: لَا يُحَمَّقُ مَنْ تَرَكَ مَا لَيْسَ فَرْضًا لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِيهِ: «أَفْلَحَ إِنْ صَدَقَ، دَخَلَ الْجَنَّةَ إِنْ صَدَقَ» وَالْمُفْلِحُ الْمَضْمُونُ لَهُ الْجَنَّةُ لَيْسَ أَحْمَقَ.

L3454–3455 From ʻAmmār ibn Yāsir concerning a matter he contemplated: “If not, I would resemble one who neglects the ritual bath (*ghusl*) on Friday.” From Abū Saʻīd al-Khudrī: “The Messenger of Allāh (peace be upon him) strongly enjoined the *ghusl* on Friday upon every pubescent individual.” From Ibn ʻUmar – when asked about the Friday *ghusl*, he replied: “The Messenger of Allāh (peace be upon him) commanded us to perform it.” From Kaʻb, who said: “Allāh has obligated every pubescent person to bathe once every seven days, washing his head and body, and this day is Friday.” Ibn ʻAbbās added: “I further hold that one should apply perfume from his family’s provisions if they possess any.” When Ibn ʻAbbās was asked about the Friday *ghusl*, he answered: “Perform the *ghusl*.” We have been narrated his instruction regarding perfume through the chain of Ḥammād ibn Salamah from Jaʻfar ibn Abī Waḥshiyyah from Mujāhid from Ibn ʻAbbās. His command to perform *ghusl* is transmitted via Ibn Jurayj from ʻAṭāʼ from him. Through ʻAbd al-Razzāq from Sufyān al-Thawrī, we are informed that the Friday *ghusl* is obligatory. Reported through ʻAbd al-Raḥmān ibn Mahdī from Sufyān ibn ʻUyaynah from Ibrāhīm ibn Maysarah from Ṭāwus, who said: “I heard Abū Hurayrah declare the use of perfume obligatory on Friday.” Transmitted via Yaḥyā ibn Abī Kathīr from Abū Salamah ibn ʻAbd al-Raḥmān ibn ʻAwf, who said: “I heard Abū Saʻīd al-Khudrī state: ‘Three acts are required of every Muslim on Friday: the *ghusl*, using the *siwak*, and applying perfume if accessible.’”[52]

وَعَنْ عَمَّارِ بْنِ يَاسِرٍ فِي شَيْءٍ ظَنَّ بِهِ: أَنَا إِذَنْ كَمَنْ لَا يَغْتَسِلُ يَوْمَ الْجُمُعَةِ. وَعَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ: «أَوْجَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْغُسْلَ يَوْمَ الْجُمُعَةِ عَلَى كُلِّ مُحْتَلِمٍ» . وَعَنْ ابْنِ عُمَرَ - وَسُئِلَ عَنْ الْغُسْلِ يَوْمَ الْجُمُعَةِ فَقَالَ: «أَمَرَنَا بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» . وَعَنْ كَعْبٍ أَنَّهُ قَالَ: لِلَّهِ عَلَى كُلِّ حَالِمٍ أَنْ يَغْتَسِلَ فِي كُلِّ سَبْعَةِ أَيَّامٍ مَرَّةً فَيَغْسِلُ رَأْسَهُ وَجَسَدَهُ، وَهُوَ يَوْمُ الْجُمُعَةِ فَقَالَ ابْنُ عَبَّاسٍ: وَأَنَا أَرَى أَنْ يَتَطَيَّبَ مِنْ طِيبِ أَهْلِهِ إِنْ كَانَ لَهُمْ. وَسُئِلَ ابْنُ عَبَّاسٍ عَنْ غُسْلِ يَوْمِ الْجُمُعَةِ فَقَالَ: اغْتَسِلْ. وَرُوِّينَا أَمْرَهُ بِالطِّيبِ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ جَعْفَرِ بْنِ أَبِي وَحْشِيَّةَ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ. وَأَمْرَهُ بِالْغُسْلِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْهُ. وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ أَنَّ غُسْلَ يَوْمِ الْجُمُعَةِ وَاجِبٌ. وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ إبْرَاهِيمَ بْنِ مَيْسَرَةَ عَنْ طَاوُسٍ قَالَ: سَمِعْت أَبَا هُرَيْرَةَ يُوجِبُ الطِّيبَ يَوْمَ الْجُمُعَةِ. وَرُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ قَالَ: سَمِعْت أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ: ثَلَاثٌ هُنَّ عَلَى كُلِّ مُسْلِمٍ يَوْمَ الْجُمُعَةِ: الْغُسْلُ وَالسِّوَاكُ وَيَمَسُّ مِنْ طِيبٍ إنْ وَجَدَهُ.

L3456–3458 Abu Muhammad said: We do not know of any authentic report from any of the Companions (may Allah be pleased with them) negating the obligation of ghusl on Friday. A group of later scholars held that it is not obligatory, citing as evidence the hadith of Umar and Uthman (may Allah be pleased

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ أَنَّهُ يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إسْقَاطُ فَرْضِ الْغُسْلِ يَوْمَ الْجُمُعَةِ. وَذَهَبَ جَمَاعَةٌ مِنْ الْمُتَأَخِّرِينَ إلَى أَنَّهُ لَيْسَ بِوَاجِبٍ، وَاحْتَجُّوا بِحَدِيثِ عُمَرَ وَعُثْمَانَ الَّذِي ذَكَرْنَاهُ وَبِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا

[52] **Hadith references (L3455):** Sunan Ibn Majah 3706.

with them) that we mentioned, along with a hadith we reported through the narration of Aisha (may Allah be pleased with her): “People used to attend Friday prayer from their homes and distant settlements, wearing their cloaks while dust-covered and giving off an odor. A person from among them came to the Messenger of Allah (peace be upon him) while he was in my presence, and the Messenger of Allah (peace be upon him) said: ’If only you would perform ghusl for this day of yours.”’ Also from her: “People were workers and had no helpers, so they had perspiration. It was said to them: ’Why not bathe on Friday?”’ A narration from Al-Hasan: “He informed us that Allah’s Messenger—peace and blessings be upon him—used not to bathe on Friday, though his companions did bathe.” A narration via Ibn Abbas: “Allah’s Messenger—peace and blessings be upon him—would sometimes bathe and sometimes not bathe on Friday.” Another narration via Ibn Abbas regarding the Friday bath: “It is better for one who bathes, while for one who does not bathe, it is not obligatory. I will inform you how bathing began: People were exhausted, wearing wool and laboring strenuously. Their mosque was narrow with a low ceiling. Allah’s Messenger—peace and blessings be upon him—came out on a hot day while people were sweating in their woolen garments until foul odors arose, causing discomfort among them. When Allah’s Messenger—peace and blessings be upon him—noticed the odor, he said: ’O people! When this day comes, bathe and let each of you apply perfume—the best oil or scent he possesses.”’ Ibn Abbas said: “Then Allah brought prosperity. They wore garments other than wool, were relieved of strenuous work, expanded their mosque, and the sweat that once caused mutual annoyance disappeared.” A narration from Samurah states the Prophet—peace and blessings be upon him—said: “Whoever performs ablution on Friday, it suffices and is commendable. But whoever bathes fully—bathing is superior.”[53]

- «كَانَ النَّاسُ يَأْتُونَ الْجُمُعَةَ مِنْ مَنَازِلِهِمْ وَمِنَ الْعَوَالِي فَيَأْتُونَ فِي الْعَبَاءِ وَيُصِيبُهُمُ الْغُبَارُ فَيَخْرُجُ مِنْهُمُ الرِّيحُ فَأَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنْسَانٌ مِنْهُمْ وَهُوَ عِنْدِي، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَوْ أَنَّكُمْ تَطَهَّرْتُمْ لِيَوْمِكُمْ هَذَا» وَعَنْهَا أَيْضًا «كَانَ النَّاسُ أَهْلَ عَمَلٍ وَلَمْ يَكُنْ لَهُمْ كُفَاةٌ، فَكَانَ يَكُونُ لَهُمْ تَفَلٌ فَقِيلَ لَهُمْ لَوْ اغْتَسَلْتُمْ يَوْمَ الْجُمُعَةِ» ، وَبِحَدِيثٍ عَنِ الْحَسَنِ «أَنْبَأَنَا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ لَا يَغْتَسِلُ يَوْمَ الْجُمُعَةِ، وَلَكِنْ كَانَ أَصْحَابُهُ يَغْتَسِلُونَ» . وَبِحَدِيثٍ مِنْ طَرِيقِ ابْنِ عَبَّاسٍ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رُبَّمَا اغْتَسَلَ وَرُبَّمَا لَمْ يَغْتَسِلْ يَوْمَ الْجُمُعَةِ» . وَبِحَدِيثٍ آخَرَ مِنْ طَرِيقِ ابْنِ عَبَّاسٍ فِي الْغُسْلِ يَوْمَ الْجُمُعَةِ «أَنَّهُ خَيْرٌ لِمَنْ اغْتَسَلَ، وَمَنْ لَمْ يَغْتَسِلْ فَلَيْسَ بِوَاجِبٍ، وَسَأُخْبِرُكُمْ كَيْفَ بَدَأَ الْغُسْلُ، كَانَ النَّاسُ مَجْهُودِينَ يَلْبَسُونَ الصُّوفَ وَيَعْمَلُونَ عَلَى ظُهُورِهِمْ، وَكَانَ مَسْجِدُهُمْ ضَيِّقًا مُقَارِبَ السَّقْفِ، فَخَرَجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي يَوْمٍ حَارٍّ وَعَرِقَ النَّاسُ فِي الصُّوفِ حَتَّى ثَارَتْ مِنْهُمْ رِيَاحٌ آذَى بِذَلِكَ بَعْضُهُمْ بَعْضًا، فَلَمَّا وَجَدَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الرِّيحَ قَالَ: أَيُّهَا النَّاسُ إِذَا كَانَ هَذَا الْيَوْمُ فَاغْتَسِلُوا وَلْيَمَسَّ أَحَدُكُمْ طِيبًا، أَفْضَلَ مَا يَجِدُ مِنْ دُهْنِهِ وَطِيبِهِ» . قَالَ ابْنُ عَبَّاسٍ: ثُمَّ جَاءَ اللَّهُ بِالْخَيْرِ، وَلَبِسُوا غَيْرَ الصُّوفِ، وَكُفُوا الْعَمَلَ، وَوَسَّعُوا مَسْجِدَهُمْ، وَذَهَبَ بَعْضُ الَّذِي كَانَ يُؤْذِي بَعْضُهُمْ بَعْضًا مِنَ الْعَرَقِ ". وَبِحَدِيثٍ عَنْ سَمُرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ تَوَضَّأَ يَوْمَ الْجُمُعَةِ فَبِهَا وَنِعْمَتْ وَمَنِ اغْتَسَلَ فَالْغُسْلُ أَفْضَلُ» .

L3459–3460 Its equivalent is explicitly transmitted via the chain of Anas from him (peace

[53] **Hadith references (L3456):** Sunan an-Nasai 1380; Jami at-Tirmidhi 497; Bulugh al-Maram 115.

be upon him). Likewise, via the chain of al-Ḥasan and via the chain of Jābir from him (peace be upon him). Its equivalent is explicitly narrated from ʿAbd al-Raḥmān ibn Samura and Abū Hurayrah, and its equivalent is transmitted from Yazīd ibn ʿAbd Allāh, Abū al-ʿAlāʾ.

وَمِثْلُهُ مِنْ طَرِيقِ أَنَسٍ عَنْهُ - عَلَيْهِ السَّلَامُ - نَصًّا. وَكَذَلِكَ مِنْ طَرِيقِ الْحَسَنِ، وَمِنْ طَرِيقِ جَابِرٍ عَنْهُ - عَلَيْهِ السَّلَامُ -، وَمِثْلُهُ نَصًّا عَنْ عَبْدِ الرَّحْمَنِ بْنِ سَمُرَةَ وَأَبِي هُرَيْرَةَ، وَمِثْلُهُ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ أَبِي الْعَلَاءِ.

L3461–3464 This is all they have objected with, and none of it constitutes proof for them, for all these narrations lack validity—except the hadiths of ʾAisha and ʾUmar, both being authentic. Yet even these contain no proof for their position, as we shall demonstrate, God willing. As for the hadiths of al-Hasan and Yazid ibn ʾAbdullah, they are disconnected transmissions. How many disconnected reports from al-Hasan do they disregard, such as his mursal narration concerning ablution due to laughter during prayer—which Malikis and Shafiʿis do not adopt—or his mursal report stating "the earth does not become impure"—which Hanafis reject. The same applies to Yazid ibn ʾAbdullah. It incurs Allah's detestation that they treat disconnected transmissions as proof yet refuse to act upon them, or deny their probative value while citing them as evidence—they utter what they do not practice, "and how greatly detested it is by Allah" (Ghafir 40:35).

وَهَذَا كُلُّ مَا شَغَبُوا بِهِ، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّ كُلَّ هَذِهِ الْآثَارِ لَا خَيْرَ فِيهَا، حَاشَا حَدِيثِ عَائِشَةَ وَعُمَرَ فَهُمَا صَحِيحَانِ، وَلَا حُجَّةَ لَهُمْ فِيهِمَا عَلَى مَا سَنُبَيِّنُ إِنْ شَاءَ اللَّهُ تَعَالَى. أَمَّا حَدِيثُ الْحَسَنِ وَيَزِيدَ بْنِ عَبْدِ اللَّهِ فَمُرْسَلَانِ، وَكَمْ مِنْ مُرْسَلٍ لِلْحَسَنِ لَا يَأْخُذُونَ بِهِ، كَمُرْسَلِهِ فِي الْوُضُوءِ مِنْ الضَّحِكِ فِي الصَّلَاةِ، لَا يَأْخُذُ بِهِ الْمَالِكِيُّونَ وَالشَّافِعِيُّونَ، وَكَمُرْسَلِهِ «إِنَّ الْأَرْضَ لَا تَنْجُسُ» لَا يَأْخُذُ بِهِ الْحَنَفِيُّونَ، وَكَذَلِكَ لِيَزِيدَ بْنِ عَبْدِ اللَّهِ، وَمِمَّا يُوجِبُ الْمَقْتَ مِنْ اللَّهِ تَعَالَى أَنْ يَجْعَلُوا الْمُرْسَلَ حُجَّةً، ثُمَّ لَا يَأْخُذُونَ بِهِ، أَوْ أَنْ لَا يَرَوْهُ حُجَّةً ثُمَّ يَحْتَجُّونَ بِهِ، فَيَقُولُونَ مَا لَا يَفْعَلُونَ {كَبُرَ مَقْتًا عِنْدَ اللَّهِ} [غافر: ٣٥] .

Regarding Ibn ʾAbbas's two hadiths: one comes through Muhammad ibn Muʾawiyah al-Naysaburi—a known fabricator and liar. The second is transmitted via ʾAmr ibn Abi ʾAmr from Ikrimah. We have also received through this very chain—ʾAmr ibn Abi ʾAmr—from Ikrimah, from Ibn ʾAbbas, from the Prophet (peace be upon him): "Whoever commits bestiality, kill him and kill the animal with him." If ʾAmr's narration constitutes proof, let them adopt this ruling. If not, they may not lawfully cite it to reject established sunnahs. As for ʾAmr, he is weak in transmission; we neither consider him a proof for us nor accept him as evidence against us. This is the undeniable truth, which none may lawfully oppose. Had we ever invoked him as proof in one matter, we would be obliged to accept his reports in all matters. Should they claim that an authentic narration from Ibn ʾAbbas contradicts what ʾAmr reported regarding killing the animal... To whoever comes to this position, we say to them: It has been authentically established from Ibn Abbas contrary to what ʾAmr reported from him regarding abolishing the obligation of the Friday

وَأَمَّا حَدِيثَا ابْنِ عَبَّاسٍ فَأَحَدُهُمَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ مُعَاوِيَةَ النَّيْسَابُورِيِّ، وَهُوَ مَعْرُوفٌ بِوَضْعِ الْأَحَادِيثِ وَالْكَذِبِ وَالثَّانِي مِنْ طَرِيقِ عَمْرِو بْنِ أَبِي عَمْرٍو عَنْ عِكْرِمَةَ وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَمْرِو بْنِ أَبِي عَمْرٍو - هَذِهِ نَفْسَهَا - عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أَتَى بَهِيمَةً فَاقْتُلُوهُ وَاقْتُلُوهَا مَعَهُ» فَإِنْ كَانَ خَبَرُ عَمْرٍو حُجَّةً فَلْيَأْخُذُوا بِهَذَا، وَإِنْ كَانَ لَيْسَ بِحُجَّةٍ فَلَا يَحِلُّ لَهُمْ الِاحْتِجَاجُ بِهِ فِي رَدِّ السُّنَنِ الثَّابِتَةِ، وَأَمَّا عَمْرٌو فَضَعِيفٌ لَا نَحْتَجُّ بِهِ لَنَا، وَلَا نَقْبَلُهُ حُجَّةً عَلَيْنَا، وَهَذَا هُوَ الْحَقُّ الَّذِي لَا يَحِلُّ خِلَافُهُ، وَلَوْ احْتَجَجْنَا بِهِ فِي مَوْضِعٍ وَاحِدٍ لَأَخَذْنَا بِخَبَرِهِ فِي كُلِّ مَوْضِعٍ. فَإِنْ قَالُوا: قَدْ صَحَّ عَنْ ابْنِ عَبَّاسٍ خِلَافُ مَا رَوَى عَنْهُ عَمْرٌو فِي قَتْلِ الْبَهِيمَةِ وَمَنْ أَتَاهَا، قُلْنَا لَهُمْ: وَقَدْ صَحَّ عَنْ ابْنِ عَبَّاسٍ خِلَافُ مَا رَوَى عَنْهُ عَمْرٌو فِي إِسْقَاطِ غُسْلِ الْجُمُعَةِ وَلَا فَرْقَ،

bath, with no difference. Even if this narration of ʾAmr were authentic, it would not constitute evidence for them—rather it would be evidence for us against them. For it contains nothing from the speech of the Prophet—peace and blessings be upon him—except the command to perform the bath and its obligation. As for all they rely upon concerning the abolition of the obligation, it stems not from his speech—peace be upon him—but rather from Ibn Abbas' own statement and assumption. No valid evidence can be taken from anyone other than him—peace be upon him.[54]

L3465 As for the ḥadīth of Samurah, it is transmitted solely through Al-Ḥasan from Samurah, and Al-Ḥasan has no validly established direct audition from Samurah except the ḥadīth of the ʻaqīqah alone. If they persist in citing it as proof, we say to them: It has been narrated to us through Al-Ḥasan from Samurah from the Prophet—peace and blessings of Allah be upon him—"Whoever kills his slave, we will kill him, and whoever mutilates him, we will mutilate him." Yet the Ḥanafīs, Mālikīs, and Shāfiʿīs do not adopt this. It has also been narrated to us through him from Samurah from the Prophet—peace and blessings of Allah be upon him—"The warranty period for slaves is four," and they do not adopt this either. And among the falsehood and disgrace is their citing narrations in religious matters when these align with their taqlīd, yet rejecting the very same narrations when they contradict their taqlīd. We perceive no religion remaining with such practice, for it constitutes following caprice in matters of faith.

L3466 As for the ḥadīth of Anas, it is from the narration of Yazīd al-Raqāshī, who is weak. It is authentically reported from Shuʻbah that he said: "I would rather commit highway robbery and adultery than narrate from Yazīd al-Raqāshī." Many a ḥadīth of Yazīd al-Raqāshī was abandoned, as they did not rely on it except due to his weakness alone. It is also narrated by al-Ḍaḥḥāk ibn Ḥamzah, who is rejected, from al-Ḥajjāj ibn Arṭāʾah, who is rejected, from Ibrāhīm ibn Muhājir, who is weak. Then, we examined the ḥadīth of Jābir and found it discarded because it is only narrated through chains: in one of them is a man whose name is omitted and who is unknown; in the second chain is Abū Sufyān from Jābir, who is weak, and Muḥammad ibn al-Ṣalt,

ثُمَّ لَوْ صَحَّ حَدِيثُ عَمْرٍو هَذَا لِمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، بَلْ لَكَانَ لَنَا حُجَّةً عَلَيْهِمْ؛ لِأَنَّهُ لَيْسَ فِيهِ مِنْ كَلَامِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا الْأَمْرَ بِالْغُسْلِ وَإِيجَابَهُ، وَأَمَّا كُلُّ مَا تَعَلَّقُوا بِهِ مِنْ إِسْقَاطِ وُجُوبِ الْغُسْلِ فَلَيْسَ مِنْ كَلَامِهِ - عَلَيْهِ السَّلَامُ -، وَإِنَّمَا هُوَ مِنْ كَلَامِ ابْنِ عَبَّاسٍ وَظَنِّهِ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَهُ - عَلَيْهِ السَّلَامُ -.

وَأَمَّا حَدِيثُ سَمُرَةَ فَإِنَّمَا هُوَ مِنْ طَرِيقِ الْحَسَنِ عَنْ سَمُرَةَ، وَلَا يَصِحُّ لِلْحَسَنِ سَمَاعٌ مِنْ سَمُرَةَ إِلَّا حَدِيثُ الْعَقِيقَةِ وَحْدَهُ، فَإِنْ أَبَوْا إِلَّا الِاحْتِجَاجَ بِهِ، قُلْنَا لَهُمْ: قَدْ رُوِّينَا مِنْ طَرِيقِ الْحَسَنِ عَنْ سَمُرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قَتَلَ عَبْدَهُ قَتَلْنَاهُ وَمَنْ جَدَعَهُ جَدَعْنَاهُ» وَالْحَنَفِيُّونَ وَالْمَالِكِيُّونَ وَالشَّافِعِيُّونَ لَا يَأْخُذُونَ بِهَذَا، وَرُوِّينَا أَيْضًا عَنْهُ عَنْ سَمُرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «عُهْدَةُ الرَّقِيقِ أَرْبَعٌ» وَهُمْ لَا يَأْخُذُونَ بِهَذَا. وَمِنَ الْبَاطِلِ وَالْعَارِ احْتِجَاجُهُمْ فِي الدِّينِ بِرِوَايَةٍ مَا إِذَا وَافَقَتْ تَقْلِيدَهُمْ، وَمُخَالَفَتُهُمْ لَهَا بِعَيْنِهَا إِذَا خَالَفَتْ تَقْلِيدَهُمْ، مَا نَرَى دِينًا يَبْقَى مَعَ هَذَا لِأَنَّهُ اتِّبَاعُ الْهَوَى فِي الدِّينِ.

وَأَمَّا حَدِيثُ أَنَسٍ فَهُوَ مِنْ رِوَايَةِ يَزِيدَ الرَّقَاشِيِّ وَهُوَ ضَعِيفٌ، صَحَّ عَنْ شُعْبَةَ أَنَّهُ قَالَ: لَأَنْ أَقْطَعَ الطَّرِيقَ وَأَزْنِيَ أَحَبُّ إِلَيَّ مِنْ أَنْ أَرْوِيَ عَنْ يَزِيدَ الرَّقَاشِيِّ، وَرُبَّ حَدِيثٍ لِيَزِيدَ الرَّقَاشِيِّ تَرَكُوهُ لَمْ يَحْتَجُّوا فِيهِ إِلَّا بِضَعْفِهِ فَقَطْ، وَمِنْ رِوَايَةِ الضَّحَّاكِ بْنِ حَمْزَةَ، وَهُوَ هَالِكٌ، عَنِ الْحَجَّاجِ بْنِ أَرْطَاةَ، وَهُوَ سَاقِطٌ، عَنْ إِبْرَاهِيمَ بْنِ مُهَاجِرٍ وَهُوَ ضَعِيفٌ. ثُمَّ نَظَرْنَا فِي حَدِيثِ جَابِرٍ فَوَجَدْنَاهُ سَاقِطًا لِأَنَّهُ لَمْ يَرْوِ إِلَّا مِنْ طُرُقٍ فِي أَحَدِهَا رَجُلٌ مَسْكُوتٌ عَنِ اسْمِهِ لَا يُعْرَفُ مَنْ هُوَ، وَفِي ثَانِيهِمَا أَبُو سُفْيَانَ عَنْ جَابِرٍ وَهُوَ ضَعِيفٌ،

[54] **Qur'an references (L3462):** Qur'an 40:35 (Ghafir); Qur'an 61:3 (As-Saf).

who is unknown; and in the third chain is al-Ḥasan from Jābir, though it is not confirmed that al-Ḥasan heard from Jābir.

وَمُحَمَّدُ بْنُ الصَّلْتِ وَهُوَ مَجْهُولٌ، وَفِي الثَّالِثِ مِنْهَا الْحَسَنُ عَنْ جَابِرٍ وَلَا يَصِحُّ سَمَاعُ الْحَسَنِ مِنْ جَابِرٍ.

L3467–3469 As for the ḥadīth of ʾAbd al-Raḥmān ibn Samurah, it is transmitted via the chain of Salam ibn Sulaymān Abu Hishām al-Baṣrī, who is not strong. As for the ḥadīth of Abū Hurayrah, it is narrated through Abū Bakr al-Hudhali, who is very weak. All these narrations have been invalidated. Even if they were authentic, they contain no explicit text or evidence indicating that the Friday bath is not obligatory. They merely state that ablution is an excellent deed and that the bath is superior—this is beyond doubt. Allah the Exalted has said: {If only the People of the Scripture had believed, it would have been better for them} [Al-Imran: 110]. Does this wording indicate that faith and piety are not obligatory? Far be it from Allah! Furthermore, even if all these hadiths contained an explicit text stating that the Friday bath is not obligatory, this would not constitute proof, as it would align with the initial state prior to his statement (peace be upon him): "The Friday bath is obligatory for every pubescent individual and every Muslim." This statement of his (peace be upon him) is a newly introduced ruling and an additional decree that abrogates the initial state with absolute certainty. It is impermissible to abandon the abrogating ruling with certainty and adhere to what has been abrogated.[55]

وَأَمَّا حَدِيثُ عَبْدِ الرَّحْمَنِ بْنِ سَمُرَةَ فَهُوَ مِنْ طَرِيقِ سَلَمِ بْنِ سُلَيْمَانَ أَبِي هِشَامٍ الْبَصْرِيِّ وَلَيْسَ بِالْقَوِيِّ. وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ فَهُوَ مِنْ رِوَايَةِ أَبِي بَكْرٍ الْهُذَلِيِّ، وَهُوَ ضَعِيفٌ جِدًّا فَسَقَطَتْ هَذِهِ الْآثَارُ كُلُّهَا، ثُمَّ لَوْ صَحَّتْ لَمْ يَكُنْ فِيهَا نَصٌّ وَلَا دَلِيلٌ عَلَى أَنَّ غُسْلَ الْجُمُعَةِ لَيْسَ بِوَاجِبٍ، وَإِنَّمَا فِيهَا أَنَّ الْوُضُوءَ نِعْمَ الْعَمَلُ، وَأَنَّ الْغُسْلَ أَفْضَلُ وَهَذَا لَا شَكَّ فِيهِ، وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَلَوْ آمَنَ أَهْلُ الْكِتَابِ لَكَانَ خَيْرًا لَهُمْ} [آل عمران: ١١٠] فَهَلْ دَلَّ هَذَا اللَّفْظُ عَلَى أَنَّ الْإِيمَانَ وَالتَّقْوَى لَيْسَ فَرْضًا؟ حَاشَا لِلَّهِ مِنْ هَذَا، ثُمَّ لَوْ كَانَ فِي جَمِيعِ هَذِهِ الْأَحَادِيثِ نَصٌّ عَلَى أَنَّ غُسْلَ الْجُمُعَةِ لَيْسَ فَرْضًا لَمَا كَانَ فِي ذَلِكَ حُجَّةٌ، لِأَنَّ ذَلِكَ كَانَ يَكُونُ مُوَافِقًا لِمَا كَانَ الْأَمْرُ عَلَيْهِ قَبْلَ قَوْلِهِ - عَلَيْهِ السَّلَامُ - «غُسْلُ يَوْمِ الْجُمُعَةِ وَاجِبٌ عَلَى كُلِّ مُحْتَلِمٍ وَعَلَى كُلِّ مُسْلِمٍ» وَهَذَا الْقَوْلُ مِنْهُ - عَلَيْهِ السَّلَامُ - شَرْعٌ وَارِدٌ وَحُكْمٌ زَائِدٌ نَاسِخٌ لِلْحَالَةِ الْأُولَى بِيَقِينٍ لَا شَكَّ فِيهِ، وَلَا يَحِلُّ تَرْكُ النَّاسِخِ بِيَقِينٍ، وَالْأَخْذُ بِالْمَنْسُوخِ.

L3470 As for the ḥadīth of ʿĀʾishah (may Allah be pleased with her): "They were laborers for themselves and would come from the elevated outskirts of Medina in cloaks covered with dust, emitting odors. The Messenger of Allah (peace be upon him) said: 'If only you had performed ghusl for this day!' or 'Why do you not bathe?'" This is an authentic report. However, it provides no valid evidence for their argument whatsoever, as this incident must either have occurred before the Prophet (peace be upon him) delivered sermons from the pulpit and commanded people to perform Friday ghusl, before he (peace

وَأَمَّا حَدِيثُ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - «كَانُوا عُمَّالَ أَنْفُسِهِمْ وَيَأْتُونَ فِي الْعَبَاءِ وَالْغُبَارِ مِنْ الْعَوَالِي فَتَثُورُ لَهُمْ رَوَائِحُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَوْ تَطَهَّرْتُمْ لِيَوْمِكُمْ هَذَا» أَوْ «أَوَلَا تَغْتَسِلُونَ» . فَهُوَ خَبَرٌ صَحِيحٌ، إلَّا أَنَّهُ لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا، لِأَنَّهُ لَا يَخْلُو هَذَا مِنْ أَنْ يَكُونَ قَبْلَ أَنْ يَخْطُبَ - عَلَيْهِ السَّلَامُ - عَلَى الْمِنْبَرِ فَأَمَرَ النَّاسَ بِالْغُسْلِ يَوْمَ الْجُمُعَةِ، وَقَبْلَ أَنْ يُخْبِرَ - عَلَيْهِ السَّلَامُ - بِأَنَّ غُسْلَ يَوْمِ الْجُمُعَةِ وَاجِبٌ عَلَى

[55] **Qur'an references (L3467):** Qur'an 3:110 (Ali 'Imran).

be upon him) declared that Friday ghusl—along with perfume and miswāk—is obligatory upon every Muslim and every one who has experienced nocturnal emission, and before he (peace be upon him) affirmed it as a right due to Allah the Exalted upon every Muslim; or it occurred after all this. There is no third possibility. If ʿĀ'ishah's report preceded what was narrated by ʿUmar ibn al-Khaṭṭāb, his son, Abū Hurayrah, Ibn ʿAbbās, Abū Saʿīd al-Khudrī, and Jābir, no person of sound judgment would doubt that the later ruling supersedes the earlier one. If ʿĀ'ishah's report came after all we mentioned regarding the obligation of Friday ghusl, miswāk, perfume, and its status as a right due to Allah, there is neither explicit text nor evidence within it to abrogate the prior obligation or nullify Allah's explicitly affirmed right. It is merely a reproach for those who neglected the ghusl they were commanded to perform. This reinforces the established obligation rather than annulling it. Indeed, "the Messenger of Allah (peace be upon him) forbade continuous fasting (wiṣāl) without breaking at night, but they persisted, so he fasted continuously with them" as a disciplinary measure. Does this, in any sound judgment, constitute a revocation of the prohibition? Every injunction the Prophet (peace be upon him) declared obligatory for every Muslim—a right due to Allah over every person of sexual maturity—cannot be lawfully abandoned, nor claimed abrogated or reduced to a recommendation except through a subsequent explicit text conclusively established as clarifying its abrogation or recommendation—not through baseless assumptions that disregard certainty.

كُلِّ مُسْلِمٍ وَكُلِّ مُحْتَلِمٍ، وَالطِّيبَ وَالسِّوَاكَ، وَقَبْلَ أَنْ يُخْبِرَ - عَلَيْهِ السَّلَامُ - أَنَّهُ حَقٌّ لِلَّهِ تَعَالَى عَلَى كُلِّ مُسْلِمٍ، أَوْ يَكُونَ بَعْدَ كُلِّ مَا ذَكَرْنَا، وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ، فَإِنْ كَانَ خَبَرُ عَائِشَةَ قَبْلَ مَا رَوَاهُ عُمَرُ بْنُ الْخَطَّابِ وَابْنُهُ وَأَبُو هُرَيْرَةَ وَابْنُ عَبَّاسٍ وَأَبُو سَعِيدٍ الْخُدْرِيُّ وَجَابِرٌ، فَلَا يَشُكُّ ذُو حِسٍّ سَلِيمٍ فِي أَنَّ الْحُكْمَ لِلْمُتَأَخِّرِ، وَإِنْ كَانَ خَبَرُ عَائِشَةَ بَعْدَ كُلِّ مَا ذَكَرْنَا مِنْ إيجَابِ الْغُسْلِ يَوْمَ الْجُمُعَةِ وَالسِّوَاكِ وَالطِّيبِ وَأَنَّهُ حَقُّ اللَّهِ تَعَالَى عَلَى كُلِّ مُسْلِمٍ، فَلَيْسَ فِيهِ نَصٌّ وَلَا دَلِيلٌ عَلَى نَسْخِ الْإِيجَابِ الْمُتَقَدِّمِ، وَلَا عَلَى إسْقَاطِ حَقِّ اللَّهِ تَعَالَى الْمَنْصُوصِ عَلَى إثْبَاتِهِ، وَإِنَّمَا هُوَ تَبْكِيتٌ لِمَنْ تَرَكَ الْغُسْلَ الْمَأْمُورَ بِهِ الْمُوجِبَ فَقَطْ، وَهَذَا تَأْكِيدٌ لِلْأَمْرِ الْمُتَيَقَّنِ لَا إسْقَاطٌ لَهُ، فَقَدْ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْوِصَالِ فَلَمْ يَنْتَهُوا فَوَاصَلَ بِهِمْ» تَنْكِيلًا لَهُمْ، أَفَيَسُوغُ فِي عَقْلِ أَحَدٍ أَنَّ ذَلِكَ نَسْخٌ لِلنَّهْيِ عَنْ الْوِصَالِ؟ وَكُلُّ مَا أَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّهُ وَاجِبٌ عَلَى كُلِّ مُسْلِمٍ، وَحَقُّ اللَّهِ تَعَالَى عَلَى كُلِّ مُحْتَلِمٍ، فَلَا يَحِلُّ تَرْكُهُ وَلَا الْقَوْلُ بِأَنَّهُ مَنْسُوخٌ أَوْ أَنَّهُ نَدْبٌ، إلَّا بِنَصٍّ جَلِيٍّ بِذَلِكَ، مَقْطُوعٍ عَلَى أَنَّهُ وَارِدٌ بَعْدَهُ، مُبَيِّنٌ أَنَّهُ - نَدْبٌ أَوْ أَنَّهُ قَدْ نُسِخَ، لَا بِالظُّنُونِ الْكَاذِبَةِ الْمَتْرُوكِ لَهَا الْيَقِينُ.

L3471–3472 This would hold if the narration of ʿĀ'ishah occurred after the enactment of the obligation for ghusl. This is categorically invalid, for her narration contains clear evidence that it preceded the enactment, as she mentioned that this occurred when people managed their own affairs during constrained circumstances and scarcity of wealth - an undoubted characteristic of the early Hijrah period. The narrator of the enactment of the obligation for ghusl is Abū Hurayrah and Ibn ʿAbbās, both of whom entered into Islam and companionship at a later time.

هَذَا لَوْ صَحَّ أَنَّ خَبَرَ عَائِشَةَ كَانَ بَعْدَ الْإِيجَابِ لِلْغُسْلِ. وَهَذَا لَا يَصِحُّ أَبَدًا، بَلْ فِي خَبَرِ عَائِشَةَ دَلِيلٌ بَيِّنٌ عَلَى أَنَّهُ كَانَ قَبْلَ الْإِيجَابِ لِأَنَّهَا ذَكَرَتْ أَنَّ ذَلِكَ كَانَ وَالنَّاسُ عُمَّالُ أَنْفُسِهِمْ، وَفِي ضِيقٍ مِنْ الْحَالِ وَقِلَّةٍ مِنْ الْمَالِ، وَهَذِهِ صِفَةُ أَوَّلِ الْهِجْرَةِ بِلَا شَكٍّ، وَالرَّاوِي لِإِيجَابِ الْغُسْلِ أَبُو هُرَيْرَةَ، وَابْنُ عَبَّاسٍ، وَكِلَاهُمَا مُتَأَخِّرُ الْإِسْلَامِ وَالصُّحْبَةِ.

L3473 As for Abu Hurairah, his conversion to Islam occurred after the conquest of

Khaybar, when the Muslims' circumstances had expanded, and exhaustion and adversity had been lifted from them. As for Ibn Abbas, it was after the conquest of Mecca—merely two years and a half before the death of the Messenger of Allah, peace and blessings be upon him. Hence, the ambiguity was fully resolved altogether, and all praise is due to Allah, Lord of the worlds.

أَمَّا أَبُو هُرَيْرَةَ فَإِسْلَامُهُ إثْرَ فَتْحِ خَيْبَرَ، حَيْثُ اتَّسَعَتْ أَحْوَالُ الْمُسْلِمِينَ، وَارْتَفَعَ الْجَهْدُ وَالضِّيقُ عَنْهُمْ. وَأَمَّا ابْنُ عَبَّاسٍ فَبَعْدَ فَتْحِ مَكَّةَ قَبْلَ مَوْتِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِعَامَيْنِ وَنِصْفٍ فَقَطْ، فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L3474 As for the ḥadīth concerning ʿUmar, they stated: If the Friday bath had been obligatory according to ʿUmar, ʿUthmān, and the Companions present—may Allah be pleased with them—ʿUthmān would not have abandoned it, nor would ʿUmar and the remaining Companions have approved ʿUthmān's abandonment of it. They said: This demonstrates that in their judgment, it was not an obligation.

وَأَمَّا حَدِيثُ عُمَرَ فَإِنَّهُمْ قَالُوا: لَوْ كَانَ غُسْلُ الْجُمُعَةِ وَاجِبًا عِنْدَ عُمَرَ وَعُثْمَانَ وَمَنْ حَضَرَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَمَا تَرَكَهُ عُثْمَانُ وَلَا أَقَرَّ عُمَرُ وَسَائِرُ الصَّحَابَةِ عُثْمَانَ عَلَى تَرْكِهِ وَقَالُوا: فَدَلَّ هَذَا عَلَى أَنَّهُ عِنْدَهُمْ غَيْرُ فَرْضٍ.

L3475 Abu Muhammad said: This is a statement we do not know how their tongues became unrestrained in uttering it, for it entirely consists of claims unsupported by anything from the report - neither explicit text nor evidence. Rather, its explicit text and evidence contradict their assertions. The first rebuttal is to say to them: Who can provide you proof that Uthman did not perform the ritual bath at the beginning of that day? Who can provide you proof that Umar did not order him to return for the ritual bath? If they say: Who can provide you proof that Uthman did perform the ritual bath at the day's beginning? Who can provide you proof that Umar ordered him to return for the ritual bath? We respond: Suppose we concede to you that we have no evidence for this, just as you have no evidence against it. Why then should your claim about the report - your conjecture regarding what it does not contain, and your persisting in matters you have no knowledge of - be prioritized over similar claims from others? Since both your claim and ours are possible, the truth in this matter is that the report remains inconclusive - providing no proof for or against you, nor for or against us. This is an inescapable dilemma. How then, when we hold evidence supporting what we have stated?

قَالَ أَبُو مُحَمَّدٍ: هَذَا قَوْلٌ لَا نَدْرِي كَيْفَ اُسْتُطْلِقَتْ بِهِ أَلْسِنَتُهُمْ لِأَنَّهُ كُلَّهُ قَوْلٌ بِمَا لَيْسَ فِي الْخَبَرِ مِنْهُ شَيْءٌ لَا نَصٌّ وَلَا دَلِيلٌ، بَلْ نَصُّهُ وَدَلِيلُهُ بِخِلَافِ مَا قَالُوهُ. أَوَّلُ ذَلِكَ أَنْ يُقَالَ لَهُمْ: مَنْ لَكُمْ بِأَنَّ عُثْمَانَ لَمْ يَكُنْ اغْتَسَلَ فِي صَدْرِ يَوْمِهِ ذَلِكَ؟ وَمَنْ لَكُمْ بِأَنَّ عُمَرَ لَمْ يَأْمُرْهُ بِالرُّجُوعِ لِلْغُسْلِ؟ فَإِنْ قَالُوا: وَمَنْ لَكُمْ بِأَنَّ عُثْمَانَ كَانَ اغْتَسَلَ فِي صَدْرِ يَوْمِهِ؟ وَمَنْ لَكُمْ بِأَنَّ عُمَرَ أَمَرَهُ بِالرُّجُوعِ إلَى الْغُسْلِ قُلْنَا: هَبْكُمْ أَنَّهُ لَا دَلِيلَ عِنْدَنَا بِهَذَا، وَلَا دَلِيلَ عِنْدَكُمْ بِخِلَافِهِ. فَمَنْ جَعَلَ دَعْوَاكُمْ فِي الْخَبَرِ، وَتَكَهُّنَكُمْ مَا لَيْسَ فِيهِ، وَقَفْوُكُمْ مَا لَا عِلْمَ لَكُمْ بِهِ، أَوْلَى مِنْ مِثْلِ ذَلِكَ مِنْ غَيْرِكُمْ؟ وَإِنَّمَا الْحَقُّ فِي هَذَا - إذْ دَعْوَاكُمْ وَدَعْوَانَا مُمْكِنَةٌ - أَنْ يَبْقَى الْخَبَرُ لَا حُجَّةَ فِيهِ لَكُمْ وَلَا عَلَيْكُمْ، وَلَا لَنَا وَلَا عَلَيْنَا، هَذَا مَا لَا مَخْلَصَ مِنْهُ، فَكَيْفَ وَمَعَنَا الدَّلِيلُ عَلَى مَا قُلْنَاهُ؟ .

L3476–3478 As for Uthman (may Allah be pleased with him), Abdullah ibn Yusuf narrated to us, saying: Ahmad ibn Fath narrated to us, Abd al-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us,

وَأَمَّا عُثْمَانُ - رَضِيَ اللَّهُ عَنْهُ - فَإِنَّ عَبْدَ اللَّهِ بْنَ يُوسُفَ حَدَّثَنَا قَالَ: ثنا أَحْمَدُ بْنُ فَتْحٍ حَدَّثَنَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا

أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - كِلَاهُمَا عَنْ وَكِيعٍ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ جَامِعِ بْنِ شَدَّادٍ قَالَ: سَمِعْت حُمْرَانَ بْنَ أَبَانَ قَالَ: كُنْت أَضَعُ لِعُثْمَانَ طَهُورَهُ فَمَا أَتَى عَلَيْهِ يَوْمٌ إلَّا وَهُوَ يُفِيضُ عَلَيْهِ نُطْفَةً. فَقَدْ ثَبَتَ بِأَصَحِّ إسْنَادٍ أَنَّ عُثْمَانَ كَانَ يَغْتَسِلُ كُلَّ يَوْمٍ، فَيَوْمُ الْجُمُعَةِ يَوْمٌ مِنْ الْأَيَّامِ بِلَا شَكٍّ، وَلَوْ لَمْ يَكُنْ هَذَا الْخَبَرُ عِنْدَنَا، لَوَجَبَ أَنْ لَا يُظَنَّ بِمِثْلِهِ - رَضِيَ اللَّهُ عَنْهُ - خِلَافُ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَلْ لَا يُقْطَعُ عَلَيْهِ إلَّا بِطَاعَتِهِ، وَإِنْ لَمْ يُعَيِّنْ ذَلِكَ فِي خَبَرٍ، كَمَا يُقْطَعُ بِأَنَّهُ صَلَّى الصُّبْحَ فِي ذَلِكَ الْيَوْمِ وَسَائِرِ اللَّوَازِمِ لَهُ بِلَا شَكٍّ وَإِنْ لَمْ يُرْوَ لَنَا ذَلِكَ. وَأَمَّا عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - وَمَنْ مَعَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَهَذَا الْخَبَرُ عَنْهُمْ حُجَّةٌ لَنَا ظَاهِرَةٌ بِلَا شَكٍّ لِأَنَّ عُمَرَ قَطَعَ الْخُطْبَةَ مُنْكِرًا عَلَى عُثْمَانَ أَنْ لَمْ يَصِلْ الْغُسْلَ بِالرَّوَاحِ، فَلَوْ لَمْ يَكُنْ ذَلِكَ فَرْضًا عِنْدَهُ وَعِنْدَهُمْ لَمَا قَطَعَ لَهُ الْخُطْبَةَ، وَعُمَرُ قَدْ حَلَفَ " وَاَللَّهِ مَا هُوَ بِالْوُضُوءِ " فَلَوْ لَمْ يَكُنْ الْغُسْلُ عِنْدَهُ فَرْضًا لَمَا كَانَتْ - يَمِينُهُ صَادِقَةً وَالَّذِي حَصَلَ مِنْ عُمَرَ بْنِ الْخَطَّابِ وَمِنْ الصَّحَابَةِ بِلَا شَكٍّ فَهُوَ إنْكَارُ تَرْكِ الْغُسْلِ، وَالْإِعْلَانُ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَأْمُرُ بِالْغُسْلِ يَوْمَ الْجُمُعَةِ، وَلَا يَجُوزُ أَنْ نَظُنَّ بِأَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنْ يَسْتَجِيزَ خِلَافَ أَمْرِهِ - عَلَيْهِ السَّلَامُ -، مَعَ قَوْلِ اللَّهِ تَعَالَى: {فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ} [النور: ٦٣] فَصَحَّ ذَلِكَ الْخَبَرُ حُجَّةً لَنَا وَإِجْمَاعًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إذْ لَمْ يَكُنْ فِيهِمْ آخَرُ يَقُولُ لِعُمَرَ: لَيْسَ ذَلِكَ عَلَيْهِ وَاجِبًا.

قَالَ أَبُو مُحَمَّد: وَبِيَقِينٍ نَدْرِي أَنَّ عُثْمَانَ قَدْ أَجَابَ عُمَرَ فِي إنْكَارِهِ عَلَيْهِ وَتَعْظِيمِهِ أَمْرَ الْغُسْلِ بِأَحَدِ أَجْوِبَةٍ لَا بُدَّ مِنْ أَحَدِهَا: إمَّا أَنْ يَقُولَ لَهُ قَدْ كُنْت اغْتَسَلْت قَبْلَ خُرُوجِي

Muslim ibn al-Hajjaj narrated to us, Abu Kurayb Muhammad ibn al-Ala and Ishaq ibn Ibrahim, he is Ibn Rāhawayh - both of them narrating from Waki', from Mis'ar ibn Kidam, from Jami' ibn Shaddad, who said: "I heard Humran ibn Aban say:" I used to prepare ʿUthmān's water for purification, and no day passed without him experiencing a nocturnal emission. It has been established through the most authentic chain that ʿUthmān performed ghusl daily, and Friday is undoubtedly a day [for ghusl]. Had we not possessed this narration, it would be impermissible to presume that one of his stature—may Allah be pleased with him—would contravene the command of Allah's Messenger—peace and blessings be upon him. Rather, nothing can be decisively asserted about him except his obedience, even if not explicitly mentioned in a narration—just as we affirm without doubt that he prayed Fajr that day and fulfilled all other obligations, even if unrecorded. As for ʿUmar—may Allah be pleased with him—and the Companions with him—may Allah be pleased with them—this narration constitutes clear proof for us. ʿUmar interrupted the sermon, censuring ʿUthmān for not linking ghusl to the time of departing for the mosque. Had this not been obligatory according to him and them, he would not have interrupted the sermon. ʿUmar swore, "By Allah, this is not wuḍūʾ!" If ghusl were not obligatory in his view, his oath could not have been truthful. The decisive stance of ʿUmar ibn al-Khaṭṭāb and the Companions—undoubtedly—was their condemnation of omitting ghusl and their public declaration that the Messenger of Allah—peace and blessings be upon him—commanded ghusl on Fridays. It is inconceivable to attribute to any Companion—may Allah be pleased with them—permission to oppose his command—peace be upon him—given Allah's decree: "Let those who defy his command beware lest affliction strike them or a painful punishment seize them" (24:63). Thus, this narration stands as valid proof and a consensus among the Companions—may Allah be pleased with them—for none among them countered ʿUmar by saying, "This is not obligatory upon him."[56]

L3479–3481 Abu Muhammad said: With certainty, we know that Uthman must have responded to Umar's censure and his emphasis on the matter of ritual bathing

[56] **Qur'an references (L3476):** Qur'an 24:63 (An-Nur).

with one of these unavoidable answers: Either he said, “I had already bathed before going to the market,” or “I have an impediment excusing me from bathing,” or “I forgot, but here I am returning to bathe”—his house being near the mosque’s gate, well-known to this day—or he said, “I will bathe, for the bathing is required for the day, not specifically for the prayer.” These are four answers, all conforming to our doctrine. Alternatively, he might have said, “This is a recommended act, not an obligation”—an answer aligning with our opponents’ view. Would that I knew who authorized them to cling to one answer among five possibilities, all plausible yet none substantiated by the narration at all, while neglecting the other responses that are more probable than their chosen one? For all these answers align with the command of Allah’s Messenger—peace and blessings be upon him—and with what Umar—may Allah be pleased with him—addressed him in the presence of the Companions—may Allah be pleased with them. The answer they adhere to is mere speculation contradicting the command of Allah’s Messenger—peace and blessings be upon him—and the Companions’ consensus. Even if their false claim—that Umar and those present regarded the command for bathing... It is recommended, and this is invalid; rather, the correct position is the opposite according to the explicit text of the ḥadīth. We have cited from Abū Hurayrah, Saʿd, Abū Saʿīd, and Ibn ʿAbbās the definitive ruling obligating the ritual bath on Friday long after ʿUmar’s death, thus confirming the existence of disagreement contrary to their false claim of consensus. When disagreement exists, the opinion of some is not more authoritative than others; rather, the obligation is to refer back to the Sunnah of Allah’s Messenger (peace and blessings be upon him). His Sunnah (peace be upon him) has established the obligation of the ritual bath, miswak, and perfume. Unless they claim that Abū Hurayrah, Saʿd, Abū Saʿīd, Ibn Masʿūd, and Ibn ʿAbbās opposed the consensus, this suffices them as misguidance. Then, even if they could validly claim that ʿUmar and ʿUthmān held the ritual bath on Friday to be recommended—Allah forbid that such a claim be authentically attributed to them—why would they elevate the disagreement of ʿUmar and ʿUthmān in this speculative conjecture? Yet they do not regard as significant the disagreement of ʿUmar and ʿUthmān in the presence of the Companions (may Allah be pleased with them) within this very ḥadīth: ʿUmar abandoning

إِلَى السُّوقِ، وَإِمَّا أَنْ يَقُولَ لَهُ: بِي عُذْرٌ مَانِعٌ مِنْ الْغُسْلِ، أَوْ يَقُولَ لَهُ: أُنْسِيتُ وَهَا أَنَا ذَا رَاجِعٌ فَأَغْتَسِلُ، فَدَارُهُ كَانَتْ عَلَى بَابِ الْمَسْجِدِ مَشْهُورَةٌ إِلَى الْآنِ أَوْ يَقُولُ لَهُ: سَأَغْتَسِلُ، فَإِنَّ الْغُسْلَ لِلْيَوْمِ لَا لِلصَّلَاةِ. فَهَذِهِ أَرْبَعَةُ أَجْوِبَةٍ كُلُّهَا مُوَافِقَةٌ لِقَوْلِنَا. أَوْ يَقُولُ لَهُ: هَذَا أَمْرُ نَدْبٍ وَلَيْسَ فَرْضًا، وَهَذَا الْجَوَابُ مُوَافِقٌ لِقَوْلِ خُصُومِنَا. فَلَيْتَ شِعْرِي مَنْ الَّذِي جَعَلَ لَهُمْ التَّعَلُّقَ بِجَوَابٍ وَاحِدٍ مِنْ جُمْلَةِ خَمْسَةِ أَجْوِبَةٍ كُلُّهَا مُمْكِنٌ، وَكُلُّهَا لَيْسَ فِي الْخَبَرِ شَيْءٌ مِنْهَا أَصْلًا؟ دُونَ أَنْ يُحَاسِبُوا أَنْفُسَهُمْ بِالْأَجْوِبَةِ الْأُخَرِ الَّتِي هِيَ أَدْخَلُ فِي الْإِمْكَانِ مِنْ الَّذِي تَعَلَّقُوا بِهِ، لِأَنَّهَا كُلُّهَا مُوَافِقَةٌ لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلِمَا خَاطَبَهُ بِهِ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -. وَالَّذِي تَعَلَّقُوا هُمْ بِهِ تَكَهُّنٌ مُخَالِفٌ لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلِمَا أَجْمَعَ عَلَيْهِ الصَّحَابَةُ. ثُمَّ لَوْ صَحَّ لَهُمْ مَا يَدَّعُونَهُ مِنْ الْبَاطِلِ مِنْ أَنَّ عُمَرَ وَمَنْ بِحَضْرَتِهِ رَأَوْا الْأَمْرَ بِالْغُسْلِ نَدْبًا، وَهَذَا لَا يَصِحُّ، بَلْ الصَّحِيحُ خِلَافُهُ بِنَصِّ الْخَبَرِ، فَقَدْ أَوْرَدْنَا عَنْ أَبِي هُرَيْرَةَ وَسَعْدٍ وَأَبِي سَعِيدٍ وَابْنِ عَبَّاسٍ الْقَطْعَ بِإِيجَابِ الْغُسْلِ يَوْمَ الْجُمُعَةِ بَعْدَ مَوْتِ عُمَرَ بِدَهْرٍ فَصَحَّ وُجُودُ خِلَافِ مَا يَدَّعُونَهُ بِالدَّعْوَى الْكَاذِبَةِ إجْمَاعًا، وَإِذَا وُجِدَ التَّنَازُعُ فَلَيْسَ قَوْلُ بَعْضِهِمْ أَوْلَى مِنْ قَوْلِ بَعْضٍ بَلْ الْوَاجِبُ حِينَئِذٍ الرَّدُّ إلَى سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَسُنَّتُهُ - عَلَيْهِ السَّلَامُ - قَدْ جَاءَتْ بِإِيجَابِ الْغُسْلِ وَالسِّوَاكِ وَالطِّيبِ، إلَّا أَنْ يَدَّعُوا أَنَّ أَبَا هُرَيْرَةَ وَسَعْدًا وَأَبَا سَعِيدٍ وَابْنَ مَسْعُودٍ وَابْنَ عَبَّاسٍ خَالَفُوا الْإِجْمَاعَ، فَحَسْبُهُمْ بِهَذَا ضَلَالًا. ثُمَّ لَوْ صَحَّ لَهُمْ أَنَّ عُمَرَ وَعُثْمَانَ قَالَا بِأَنَّ الْغُسْلَ يَوْمَ الْجُمُعَةِ نَدْبٌ - وَمَعَاذَ اللَّهِ مِنْ أَنْ يَصِحَّ هَذَا عَنْهُمَا - فَمِنْ أَيْنَ لَهُمْ تَعْظِيمُ خِلَافِ عُمَرَ وَعُثْمَانَ فِي هَذَا الْبَاطِلِ الْمُتَكَهَّنِ؟ وَلَمْ يُعَظِّمُوا عَلَى أَنْفُسِهِمْ خِلَافَ عُمَرَ

the sermon to converse with ʿUthmān, and ʿUthmān responding to him after ʿUmar had commenced the sermon—while they do not permit this.

وَعُثْمَانَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي هَذَا الْخَبَرِ نَفْسِهِ، فِي تَرْكِ عُمَرَ الْخُطْبَةَ، وَأَخْذِهِ فِي الْكَلَامِ مَعَ عُثْمَانَ، وَمُجَاوَبَةِ عُثْمَانَ لَهُ بَعْدَ شُرُوعِ عُمَرَ فِي الْخُطْبَةِ، وَهُمْ لَا يُجِيزُونَ هَذَا.

L3482 Similarly, the authentic report transmitted through Malik from Hisham ibn Urwah from his father states: Umar recited Surah As-Sajdah on the pulpit on a Friday. He then descended and prostrated, and the people prostrated with him. Then he recited it again on another Friday, and when the people prepared to prostrate, Umar said to them: "Hold on. Indeed, Allah has not ordained this prostration upon us unless we so will." The Maliki jurists said: "The practice does not follow this," while the Hanafi jurists said: "The prostration is obligatory."

وَكَذَلِكَ الْخَبَرُ الثَّابِتُ مِنْ طَرِيقِ مَالِكٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ: أَنَّ عُمَرَ قَرَأَ السَّجْدَةَ عَلَى الْمِنْبَرِ يَوْمَ الْجُمُعَةِ فَنَزَلَ وَسَجَدَ وَسَجَدُوا مَعَهُ، ثُمَّ قَرَأَهَا فِي الْجُمُعَةِ الْأُخْرَى فَتَهَيَّئُوا لِلسُّجُودِ، فَقَالَ لَهُمْ عُمَرُ: عَلَى رِسْلِكُمْ، إِنَّ اللَّهَ لَمْ يَكْتُبْهَا عَلَيْنَا إِلَّا أَنْ نَشَاءَ. فَقَالَ الْمَالِكِيُّونَ: لَيْسَ الْعَمَلُ عَلَى هَذَا، وَقَالَ الْحَنَفِيُّونَ: السُّجُودُ وَاجِبٌ.

L3483 Abu Muhammad said: Could there be anything more astonishing than this, or deeper into fallacy, than their taking Umar's discourse with Uthman during the sermon regarding what they did not find in it - the omission of the obligatory Friday ritual bath - as proof in their view, yet they show no concern for contradicting Umar in his actions and statements made in the presence of the Companions (may Allah be pleased with them)? Such as his position that prostration is not obligatory upon us when reciting a prostration verse, and his practice of descending from the pulpit to prostrate when reciting such verses. Could there be greater amazement than this? This is nothing but frivolity masquerading as seriousness. How many instances have they contradicted Umar and Uthman by blindly following opinions of those whose correctness in all statements cannot be guaranteed? Such as the rulings of Uthman, Ali, Talha, Al-Zubayr and others that no ritual bath is required after penetration without ejaculation; or the statements of Umar and Ibn Mas'ud that a person in major impurity without water may neither perform dry ablution nor pray - even if remaining so for a month; or the rulings transmitted from Umar and Uthman decreeing that children born to women captured in military raids become slaves belonging to their master. Such examples are exceedingly numerous.

قَالَ أَبُو مُحَمَّدٍ: أَفَيَكُونُ أَعْجَبُ مِنْ هَذَا أَوْ أَدْخَلُ فِي الْبَاطِلِ مِنْهُ أَنْ يَكُونَ كَلَامُ عُمَرَ مَعَ عُثْمَانَ فِي الْخُطْبَةِ بِمَا لَا يَجِدُونَهُ فِيهِ مِنْ إِسْقَاطِ فَرْضِ غُسْلِ الْجُمُعَةِ حُجَّةً عِنْدَهُمْ، ثُمَّ لَا يُبَالُونَ مُخَالَفَةَ عُمَرَ فِي عَمَلِهِ وَقَوْلِهِ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّ السُّجُودَ لَيْسَ مَكْتُوبًا عَلَيْنَا عِنْدَ قِرَاءَةِ السَّجْدَةِ، وَفِي نُزُولِهِ عَنِ الْمِنْبَرِ لِلسُّجُودِ إِذَا قَرَأَ السَّجْدَةَ؟ أَفَيَكُونُ فِي الْعَجَبِ أَكْثَرُ مِنْ هَذَا؟ وَإِنْ هَذَا إِلَّا تَلَاعُبٌ أَقْرَبُ إِلَى الْجِدِّ. وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا عُمَرَ وَعُثْمَانَ تَقْلِيدًا لِآرَاءِ مَنْ لَا يُضْمَنُ لَهُ الصَّوَابُ فِي كُلِّ أَقْوَالِهِ، كَقَوْلِ عُثْمَانَ وَعَلِيٍّ وَطَلْحَةَ وَالزُّبَيْرِ وَغَيْرِهِمْ: أَنْ لَا غُسْلَ مِنَ الْإِيلَاجِ إِذَا لَمْ يَكُنْ هُنَالِكَ إِمْنَاءٌ، وَكَقَوْلِ عُمَرَ وَابْنِ مَسْعُودٍ: مَنْ أَجْنَبَ وَلَمْ يَجِدِ الْمَاءَ فَلَا يَجُوزُ لَهُ التَّيَمُّمُ وَلَا الصَّلَاةُ، وَلَوْ بَقِيَ كَذَلِكَ شَهْرًا، وَكَمَا رُوِيَ عَنْ عُمَرَ وَعُثْمَانَ بِالْقَضَاءِ بِأَوْلَادِ الْغَارَّةِ رَقِيقًا لِسَيِّدِهَا، وَمِثْلُ هَذَا كَثِيرٌ جِدًّا.

L3484–3485 Some of them said: "This pertains to a matter involving great trial, for if

it were obligatory, it would not have been hidden from the scholars." We responded: "Indeed, it was not hidden - all the Companions (may Allah be pleased with them) recognized it and upheld it. These Hanafis have made ablution obligatory for any blood exiting the gums, body, or regurgitation - a matter involving widespread hardship unrecognized by others - yet they did not accept this as an argument against themselves. The Malikis consider vigorous scrubbing in ritual bathing and immediacy in ablution as obligatory requirements, invalidating purification and prayer if neglected - a matter involving great trial unrecognized beyond them - yet they did not accept this as an argument against themselves. The Shafi'is require ablution after touching the anus or a man touching his daughter or mother - a matter involving widespread difficulty unrecognized by others - yet they did not accept this as an argument against themselves. However, they deem it an argument when opposing their desires and blind adherence. We seek refuge with Allah from such practices in religion and from the scenario where Allah's Messenger (peace be upon him) declares something obligatory for every Muslim and every pubescent person - as Allah's rightful due upon every pubescent Muslim - yet we dare say: 'It is neither obligatory nor Allah's rightful due.' This is a matter that causes the skin to shudder. All praise belongs to Allah, Lord of the worlds, for His tremendous favor."

وَقَالَ بَعْضُهُمْ: هَذَا مِمَّا تَعْظُمُ بِهِ الْبَلْوَى، فَلَوْ كَانَ فَرْضًا لَمَا خَفِيَ عَلَى الْعُلَمَاءِ. قُلْنَا نَعَمْ مَا خَفِيَ، قَدْ عَرَفَهُ جَمِيعُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَقَالُوا بِهِ. وَهَؤُلَاءِ الْحَنَفِيُّونَ قَدْ أَوْجَبُوا الْوُضُوءَ مِنْ كُلِّ دَمٍ خَارِجٍ مِنْ اللِّثَاتِ أَوْ الْجَسَدِ أَوْ مِنْ الْقَلْسِ، وَهُوَ أَمْرٌ تَعْظُمُ بِهِ الْبَلْوَى، وَلَا يَعْرِفُهُ غَيْرُهُمْ، فَلَمْ يَرَوْا ذَلِكَ حُجَّةً عَلَى أَنْفُسِهِمْ. وَالْمَالِكِيُّونَ يُوجِبُونَ التَّدَلُّكَ فِي الْغُسْلِ فَرْضًا، وَالْفَوْرُ فِي الْوُضُوءِ فَرْضًا، تَبْطُلُ الطَّهَارَةُ وَالصَّلَاةُ بِتَرْكِهِ، وَهَذَا أَمْرٌ تَعْظُمُ بِهِ الْبَلْوَى، وَلَا يَعْرِفُ ذَلِكَ غَيْرُهُمْ، فَلَمْ يَرَوْا ذَلِكَ حُجَّةً عَلَى أَنْفُسِهِمْ. وَالشَّافِعِيُّونَ يَرَوْنَ الْوُضُوءَ مِنْ مَسِّ الدُّبُرِ، وَمِنْ مَسِّ الرَّجُلِ ابْنَتَهُ وَأُمَّهُ، وَهُوَ أَمْرٌ تَعْظُمُ بِهِ الْبَلْوَى، وَلَا يَعْرِفُ ذَلِكَ غَيْرُهُمْ، فَلَمْ يَرَوْا ذَلِكَ حُجَّةً عَلَى أَنْفُسِهِمْ، ثُمَّ يَرَوْنَهُ حُجَّةً إذَا خَالَفَ أَهْوَاءَهُمْ وَتَقْلِيدَهُمْ، وَنَعُوذُ بِاَللَّهِ مِنْ مِثْلِ هَذَا الْعَمَلِ فِي الدِّينِ وَمِنْ أَنْ يَقُولَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي شَيْءٍ: إنَّهُ وَاجِبٌ عَلَى كُلِّ مُسْلِمٍ وَعَلَى كُلِّ مُحْتَلِمٍ، وَإِنَّهُ حَقُّ اللَّهِ تَعَالَى عَلَى كُلِّ مُسْلِمٍ مُحْتَلِمٍ. ثُمَّ نَقُولُ نَحْنُ: لَيْسَ هُوَ وَاجِبًا وَلَا هُوَ حَقُّ اللَّهِ تَعَالَى. هَذَا أَمْرٌ تَقْشَعِرُّ مِنْهُ الْجُلُودُ، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ عَلَى عَظِيمِ نِعْمَتِهِ.

[مَسْأَلَة غَسْلَ يَوْم الْجُمُعَة إنَّمَا هُوَ لِلْيَوْمِ لَا لِلصَّلَاةِ]

The ruling concerning the Friday ritual bath is that it pertains exclusively to the day, not to the prayer.

١٧٩ - مَسْأَلَةٌ: وَغُسْلُ يَوْمِ الْجُمُعَةِ إنَّمَا هُوَ لِلْيَوْمِ لَا لِلصَّلَاةِ، فَإِنْ صَلَّى الْجُمُعَةَ وَالْعَصْرَ ثُمَّ اغْتَسَلَ أَجْزَأَهُ ذَلِكَ، وَأَوَّلُ أَوْقَاتِ الْغُسْلِ الْمَذْكُورِ إثْرَ طُلُوعِ الْفَجْرِ مِنْ يَوْمِ الْجُمُعَةِ، إلَى أَنْ يَبْقَى مِنْ قُرْصِ الشَّمْسِ مِقْدَارُ مَا يَتِمُّ غُسْلُهُ قَبْلَ غُرُوبِ آخِرِهِ، وَأَفْضَلُهُ أَنْ يَكُونَ مُتَّصِلًا بِالرَّوَاحِ إلَى الْجُمُعَةِ، وَهُوَ لَازِمٌ لِلْحَائِضِ وَالنُّفَسَاءِ كَلُزُومِهِ لِغَيْرِهِمَا.

Issue 179: The Friday bath pertains specifically to the day itself, not to the prayer. Thus, if one prays the Friday prayer and Asr prayer then performs the bath afterward, this suffices. The earliest time for this bath commences after dawn breaks on Friday, continuing until there remains from the sun's disk enough time to complete his bath before its final setting. Its most virtuous timing is when performed connected to the time of setting out for the Friday prayer. This bath is obligatory for menstruating women and postpartum women just as it is obligatory for others.

L3488 The evidence for that is what was narrated to us by ʻAbd al-Raḥmān ibn ʻAbd Allāh ibn Khālid, who reported to us Ibrāhīm ibn Aḥmad, who narrated to us al-Farabrī, who reported to us al-Bukhārī, who narrated to us Abū al-Yamān al-Ḥakam ibn Nāfiʻ, who reported to us Shuʻayb (he is Ibn Abī Ḥamzah) from al-Zuhrī, who said: Ṭāwūs said: I said to Ibn ʻAbbās: They mentioned that the Prophet—peace and blessings of Allah be upon him—said: "Perform *ghusl* on Friday even if you are not in a state of major impurity, and use some perfume." He said: As for the *ghusl*, yes; but as for the perfume, I do not know.

بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَبُو الْيَمَانِ الْحَكَمُ بْنِ نَافِعٍ ثنا شُعَيْبٌ هُوَ ابْنُ أَبِي حَمْزَةَ - عَنْ الزُّهْرِيِّ، قَالَ طَاوُسٌ: قُلْت لِابْنِ عَبَّاسٍ: ذَكَرُوا أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «اغْتَسِلُوا يَوْمَ الْجُمُعَةِ وَإِنْ لَمْ تَكُونُوا جُنُبًا وَأَصِيبُوا مِنْ الطِّيبِ» قَالَ: أَمَّا الْغُسْلُ فَنَعَمْ، وَأَمَّا الطِّيبُ فَلَا أَدْرِي.

L3489–3490 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn Al-Hajjaj narrated to me: Muhammad ibn Hatim narrated to us, Bahz narrated to us, Wuhaib—son of Khalid—narrated to us. Abdullah ibn Tawus narrated to us from his father, from Abu Hurairah, from the Prophet—peace and blessings of Allah be upon him—who said: "Allah's right upon every Muslim is to perform ghusl every seven days, washing his head and body."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمٍ ثنا بَهْزٌ ثنا وُهَيْبٌ هُوَ ابْنُ خَالِدٍ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ طَاوُسٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «حَقُّ اللَّهِ عَلَى كُلِّ مُسْلِمٍ أَنْ يَغْتَسِلَ فِي كُلِّ سَبْعَةِ أَيَّامٍ، يَغْسِلُ رَأْسَهُ وَجَسَدَهُ» .

L3491 Aḥmad ibn Muḥammad al-Ṭalamankī narrated to us: Muḥammad ibn Aḥmad ibn Mufarrij narrated to us: Muḥammad ibn Ayyūb al-Ṣamūt narrated to us: Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār narrated to us: Yaḥyā ibn Ḥabīb ibn ʿArabī narrated to us: Rawḥ ibn ʿUbādah narrated to us: Shuʿbah narrated to us from ʿAmr ibn Dīnār from Ṭāwūs from Abū Hurayrah, who attributed it to the Prophet: "It is obligatory upon every Muslim to perform ritual bathing once every seven days - specifically Friday."

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ حَدَّثَنَا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ مُفَرِّجٍ ثنا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ ثنا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ ثنا يَحْيَى بْنُ حَبِيبِ بْنِ عَرَبِيٍّ ثنا رَوْحُ بْنُ عُبَادَةَ ثنا شُعْبَةُ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ أَبِي هُرَيْرَةَ رَفَعَهُ قَالَ «عَلَى كُلِّ مُسْلِمٍ فِي كُلِّ سَبْعَةِ أَيَّامٍ غُسْلٌ وَهُوَ يَوْمُ الْجُمُعَةِ» .

L3492–3494 And likewise, we have transmitted it through the chain of Jābir and al-Barā' as a musnad report, thereby confirming that [the ghusl] is for the day, not specifically for the prayer. We have transmitted from Nāfiʻ, from Ibn ʻUmar: that he performed the ritual bath after dawn's emergence on Friday and it sufficed him for the Friday ghusl. From Shuʻbah—via Manṣūr ibn al-Muʻtamir, from Mujāhid—who stated: "If a man performs the ritual bath after dawn's emergence, it suffices him." From al-Ḥasan: "If one performs the ritual bath on Friday after dawn's emergence, it suffices him for Friday."

وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ جَابِرٍ وَالْبَرَاءِ مُسْنَدًا، فَصَحَّ بِهَذَا أَنَّهُ لِلْيَوْمِ لَا لِلصَّلَاةِ وَرُوِّينَا عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ يَغْتَسِلُ بَعْدَ طُلُوعِ الْفَجْرِ يَوْمَ الْجُمُعَةِ فَيَجْتَزِئُ بِهِ مِنْ غُسْلِ الْجُمُعَةِ، وَعَنْ شُعْبَةَ - عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ مُجَاهِدٍ قَالَ: إذَا اغْتَسَلَ الرَّجُلُ بَعْدَ طُلُوعِ الْفَجْرِ أَجْزَأَهُ. وَعَنْ الْحَسَنِ: إذَا اغْتَسَلَ يَوْمَ الْجُمُعَةِ بَعْدَ طُلُوعِ الْفَجْرِ أَجْزَأَهُ

لِلْجُمُعَةِ، فَإِذَنْ هُوَ لِلْيَوْمِ، فَفِي أَيِّ وَقْتٍ مِنْ الْيَوْمِ اغْتَسَلَ أَجْزَأَهُ، وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ كَذَلِكَ. فَإِنْ قَالَ قَائِلٌ: فَإِنَّكُمْ قَدْ رَوَيْتُمْ مِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا رَاحَ أَحَدُكُمْ إلَى الْجُمُعَةِ فَلْيَغْتَسِلْ» . وَرَوَيْتُمْ مِنْ طَرِيقِ اللَّيْثِ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَرَادَ أَحَدُكُمْ أَنْ يَأْتِيَ الْجُمُعَةَ فَلْيَغْتَسِلْ» وَعَنْ اللَّيْثِ عَنْ الزُّهْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ وَهُوَ قَائِمٌ عَلَى الْمِنْبَرِ مَنْ جَاءَ مِنْكُمْ الْجُمُعَةَ فَلْيَغْتَسِلْ» . قُلْنَا نَعَمْ، وَهَذِهِ - آثَارٌ صِحَاحٌ، وَكُلُّهَا لَا خِلَافَ فِيهَا لِمَا قُلْنَا.

أَمَّا قَوْلُهُ - عَلَيْهِ السَّلَامُ - «مَنْ جَاءَ مِنْكُمْ الْجُمُعَةَ فَلْيَغْتَسِلْ» فَهُوَ نَصُّ قَوْلِنَا، وَإِنَّمَا فِيهِ أَمْرٌ لِمَنْ جَاءَ الْجُمُعَةَ بِالْغُسْلِ، وَلَيْسَ فِيهِ أَيُّ وَقْتٍ يَغْتَسِلُ، لَا بِنَصٍّ وَلَا بِدَلِيلٍ، وَإِنَّمَا فِيهِ بَعْضُ مَا فِي الْأَحَادِيثِ الْأُخَرِ لِأَنَّ فِي هَذَا إيجَابَ الْغُسْلِ عَلَى كُلِّ مَنْ جَاءَ إلَى الْجُمُعَةِ، فَلَيْسَ فِيهِ إسْقَاطُ الْغُسْلِ عَمَّنْ لَا يَأْتِي الْجُمُعَةَ، وَفِي الْأَحَادِيثِ الْأُخَرِ الَّتِي مِنْ طَرِيقِ ابْنِ عُمَرَ وَأَبِي هُرَيْرَةَ وَأَبِي سَعِيدٍ وَابْنِ عَبَّاسٍ وَغَيْرِهِمْ إيجَابُ الْغُسْلِ عَلَى كُلِّ مُسْلِمٍ وَعَلَى كُلِّ مُحْتَلِمٍ، فَهِيَ زَائِدَةٌ حُكْمًا عَلَى مَا فِي حَدِيثِ ابْنِ عُمَرَ، فَالْأَخْذُ بِهَا وَاجِبٌ.

وَأَمَّا قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «إذَا أَرَادَ أَحَدُكُمْ أَنْ يَأْتِيَ الْجُمُعَةَ فَلْيَغْتَسِلْ» فَكَذَلِكَ أَيْضًا سَوَاءً سَوَاءً، وَقَدْ يُرِيدُ الرَّجُلُ أَنْ يَأْتِيَ الْجُمُعَةَ مِنْ أَوَّلِ النَّهَارِ، وَلَيْسَ فِي هَذَا الْخَبَرِ وَلَا فِي غَيْرِهِ إلْزَامُهُ أَنْ يَكُونَ إتْيَانُهُ الْجُمُعَةَ لَا مِنْ أَوَّلِ النَّهَارِ، وَلَيْسَ فِي هَذَا الْخَبَرِ وَلَا فِي غَيْرِهِ إلْزَامُهُ أَنْ يَكُونَ أَتَى مُتَّصِلًا بِإِرَادَتِهِ لِإِتْيَانِهَا، بَلْ جَائِزٌ أَنْ يَكُونَ بَيْنَهُمَا سَاعَاتٌ، فَلَيْسَ فِي هَذَا اللَّفْظِ أَيْضًا دَلِيلٌ وَلَا نَصٌّ يُوجِبُ أَنْ يَكُونَ الْغُسْلُ مُتَّصِلًا بِالرَّوَاحِ.

Thus, it pertains to the day itself, so whenever one performs the bath during the day, it suffices. A similar position is reported from Ibrāhīm al-Nakha'ī. Should someone object: "You have transmitted through Shu'bah's chain—from al-Ḥakam, from Nāfi', from Ibn 'Umar—that the Messenger of Allah (peace be upon him) said: 'When any of you sets out for Friday prayer, let him perform the ritual bath.' You have also transmitted through al-Layth's chain—from Nāfi', from Ibn 'Umar—that the Prophet (peace be upon him) said: 'When any of you intends to attend Friday prayer, let him perform the ritual bath.'" And through al-Layth's chain—from al-Zuhrī, from 'Abdullāh ibn 'Abdullāh ibn 'Umar, from his father—"from the Messenger of Allah…" That he (peace and blessings of Allah be upon him) said while standing on the pulpit, "Whoever among you comes to the Friday Prayer should perform the ritual bath." We affirmed. These are sound reports, all of which are uncontested in supporting what we have stated.[57]

L3495 As for his statement—peace be upon him—"Whoever among you comes to Friday prayer, let him perform ghusl"—this constitutes the explicit text of our position. It contains only a command for those attending Friday prayer to perform ghusl, without specifying any time for performing it—neither through explicit text nor evidence. It includes some of what is present in other narrations, as this hadith obligates ghusl upon every attendee of Friday prayer without exempting non-attendees. Other narrations transmitted through Ibn Umar, Abu Huraira, Abu Sa'id, Ibn Abbas, and others obligate ghusl upon every Muslim and every pubescent individual. These introduce additional legal rulings beyond those in Ibn Umar's narration—thus, acting upon them is obligatory.

As for his statement—peace be upon him—"If any of you intends to attend Friday prayer, let him perform ghusl"—this is exactly the same, no difference at all. A man might form the intention to attend from daybreak, yet neither this report nor others obligate his attendance to not be from the day's beginning. Neither this report nor others require his attendance to follow immediately upon his intention; rather, it is permissible for hours to pass

[57] **Hadith references (L3492):** Sahih Muslim 844b; Sunan an-Nasai 1407.

between them. Thus, this wording also contains no evidence or explicit text requiring the ghusl to coincide with proceeding to attend the prayer.

L3496 As for his statement—peace be upon him—"When any of you sets out for Friday prayer, let him perform ghusl," the apparent meaning of this wording is that the ritual bath occurs after setting out, as God Almighty states: *"When you are secure, then establish prayer"* [4:103], or concurrent with setting out, as He—Exalted is He—says: *"When you divorce women, divorce them at the commencement of their waiting period"* [65:1], or prior to setting out, as He—Glory be to Him—declares: *"When you hold private counsel with the Messenger, offer charity before your consultation"* [58:12]. Since all these interpretations are plausible, and there exists neither categorical textual injunction nor evidence in this wording requiring the ghusl to immediately follow the act of setting out, our position is valid—and all praise belongs to Allah, Lord of all worlds.[58]

L3497–3499 Moreover, indeed when we ascertain the import of the terms of Ibn ʿUmar's ḥadīth, that would be indicative of our position. Because in it there is only: "When any of you sets out for Friday prayer, let him perform *ghusl*," "Or if any of you intends to attend Friday prayer, let him perform *ghusl*," "Whoever among you comes to Friday prayer, let him perform *ghusl*." These wordings convey nothing except that whoever is among those departing for Friday prayer, those coming to it, or those intending to attend it must perform *ghusl*—with no further stipulation. None of these texts specify the timing of the *ghusl*. Thus, the wording of Ibn 'Umar's report aligns with our position. Our experience with our opponents is that they assert: "The narrator of a *ḥadīth* is most knowledgeable of its interpretation." Yet Ibn 'Umar—the narrator of this report—has been authentically reported to have performed *ghusl* on Friday immediately after dawn breaks on its day. Mālik and Al-Awzāʿī said: "The *ghusl* for Friday is only valid if connected to departing for prayer." However, Al-Awzāʿī added: "If one performs *ghusl* before dawn and proceeds to Friday prayer, it suffices." Mālik said: "If one urinates or passes wind after *ghusl*, his *ghusl* is not invalidated; he need

[58] **Qur'an references (L3496):** Qur'an 4:103 (An-Nisa); Qur'an 65:1 (At-Talaq); Qur'an 58:12 (Al-Mujadila); Qur'an 37:182 (As-Saffat).

وَأَمَّا قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «إِذَا رَاحَ أَحَدُكُمْ إِلَى الْجُمُعَةِ فَلْيَغْتَسِلْ» فَظَاهِرُ هَذَا اللَّفْظِ أَنَّ الْغُسْلَ بَعْدَ الرَّوَاحِ، كَمَا قَالَ تَعَالَى: {فَإِذَا اطْمَأْنَنْتُمْ فَأَقِيمُوا الصَّلاةَ} [النساء: ١٠٣] وَمَعَ الرَّوَاحِ كَمَا قَالَ تَعَالَى: {إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] أَوْ قَبْلَ الرَّوَاحِ كَمَا قَالَ تَعَالَى: {إِذَا نَاجَيْتُمُ الرَّسُولَ فَقَدِّمُوا بَيْنَ يَدَيْ نَجْوَاكُمْ صَدَقَةً} [المجادلة: ١٢] فَلَمَّا كَانَ كُلُّ ذَلِكَ مُمْكِنًا، وَلَمْ يَكُنْ فِي هَذَا اللَّفْظِ نَصٌّ وَلَا دَلِيلٌ عَلَى وُجُوبِ اتِّصَالِ الْغُسْلِ بِالرَّوَاحِ أَصْلًا صَحَّ قَوْلُنَا، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَأَيْضًا فَإِنَّا إِذَا حَقَّقْنَا مُقْتَضَى أَلْفَاظِ حَدِيثِ ابْنِ عُمَرَ كَانَ ذَلِكَ دَالًّا عَلَى قَوْلِنَا لِأَنَّهُ إِنَّمَا فِيهَا «إِذَا رَاحَ أَحَدُكُمْ إِلَى الْجُمُعَةِ فَلْيَغْتَسِلْ» «أَوْ أَرَادَ أَحَدُكُمْ أَنْ يَأْتِيَ إِلَى الْجُمُعَةِ فَلْيَغْتَسِلْ» . «مَنْ جَاءَ مِنْكُمْ الْجُمُعَةَ فَلْيَغْتَسِلْ» وَهَذِهِ أَلْفَاظٌ لَيْسَ يُفْهَمُ مِنْهَا إِلَّا أَنَّ مَنْ كَانَ مِنْ أَهْلِ الرَّوَاحِ إِلَى الْجُمُعَةِ، وَمِمَّنْ يَجِيءُ إِلَى الْجُمُعَةِ، وَمِنْ أَهْلِ الْإِرَادَةِ لِلْإِتْيَانِ إِلَى الْجُمُعَةِ فَعَلَيْهِ الْغُسْلُ، وَلَا مَزِيدَ، وَلَيْسَ فِي شَيْءٍ مِنْهَا وَقْتُ الْغُسْلِ، فَصَارَتْ أَلْفَاظُ خَبَرِ ابْنِ عُمَرَ مُوَافِقَةً لِقَوْلِنَا. وَعَهْدُنَا بِخُصُومِنَا يَقُولُونَ: إِنَّ مَنْ رَوَى حَدِيثًا فَهُوَ أَعْرَفُ بِتَأْوِيلِهِ، وَهَذَا ابْنُ عُمَرَ رَاوِي هَذَا الْخَبَرِ قَدْ رُوِّينَا عَنْهُ أَنَّهُ كَانَ يَغْتَسِلُ يَوْمَ الْجُمُعَةِ إِثْرَ طُلُوعِ الْفَجْرِ مِنْ يَوْمِهَا. وَقَالَ مَالِكٌ وَالْأَوْزَاعِيُّ: لَا يُجْزِئُ غُسْلُ يَوْمِ الْجُمُعَةِ إِلَّا مُتَّصِلًا بِالرَّوَاحِ، إِلَّا أَنَّ الْأَوْزَاعِيَّ قَالَ: إِنْ اغْتَسَلَ قَبْلَ الْفَجْرِ وَنَهَضَ إِلَى الْجُمُعَةِ أَجْزَأَهُ. وَقَالَ مَالِكٌ: إِنْ بَالَ أَوْ أَحْدَثَ بَعْدَ الْغُسْلِ لَمْ يَنْتَقِضْ غُسْلُهُ وَيَتَوَضَّأُ فَقَطْ، فَإِنْ أَكَلَ أَوْ نَامَ انْتَقَضَ غُسْلُهُ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا عَجَبٌ جِدًّا.

only perform ablution. But if he eats or sleeps, his *ghusl* is invalidated."
Abū Muḥammad said: "This is utterly perplexing."

Abū Ḥanīfah, al-Layth, Sufyān, ʿAbd al-ʿAzīz ibn Abī Salamah, al-Shāfiʿī, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhwayh, and Dāwūd held the same opinion as we do. Ṭāwus, al-Zuhrī, Qatādah, and Yaḥyā ibn Abī Kathīr said: "Whoever performs ghusl for ṣalāt al-jumuʿah and then invalidates his ablution, it is recommended that he repeat the ghusl."

Ali said: We do not know of any statement similar to Mālik's from any of the Companions or the Followers, nor does he possess a valid argument from the Quran, the Sunnah, analogy, or the statement of a Companion. Often they speak in such matters with disparagement contrary to the statement of a Companion whose view has no known opposition from other Companions. This is a case in which they opposed Ibn ʿUmar in this matter, and no opposition from the Companions regarding that is known to exist.

If they say: "Who among those before you stated that the ghusl is for Friday?" We reply: Every Companion we have cited regarding this matter—may Allah be pleased with them—their statements clearly indicate their position. This is the explicit opinion of Abū Yūsuf and others. The most astonishing thing is that they permit the ghusl on Friday at any time and allow neglecting it throughout the entire day, yet they condemn those who advocate for the ghusl during a time they permit it. And success comes only from Allah, the Exalted.

The ruling is that washing every deceased Muslim is an obligatory duty (فَرْض).

Issue 180: The washing of every deceased Muslim is an indispensable obligation. If buried without being washed, he must unquestionably be exhumed - so long as any trace of him can be located - and washed, except for the martyr slain by polytheists in battle who perished therein, for washing him is not required.

The evidence for this is what was narrated to us by 'Abd al-Raḥmān ibn 'Abd Allāh ibn Khālid, who narrated to us from Ibrāhīm ibn Aḥmad, who narrated to us from al-Farbarī, who narrated to us from al-Bukhārī, who

وَقَالَ أَبُو حَنِيفَةَ وَاللَّيْثُ وَسُفْيَانُ وَعَبْدُ الْعَزِيزِ بْنُ أَبِي سَلَمَةَ وَالشَّافِعِيُّ وَأَحْمَدُ بْنُ حَنْبَلٍ وَإِسْحَاقُ بْنُ رَاهْوَيْهِ وَدَاوُد كَقَوْلِنَا، وَقَالَ طَاوُسٌ وَالزُّهْرِيُّ وَقَتَادَةُ وَيَحْيَى بْنُ أَبِي كَثِيرٍ: مَنْ اغْتَسَلَ لِلْجُمُعَةِ ثُمَّ أَحْدَثَ فَيُسْتَحَبُّ أَنْ يُعِيدَ غُسْلَهُ.

قَالَ عَلِيٌّ: مَا نَعْلَمُ مِثْلَ قَوْلِ مَالِكٍ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ التَّابِعِينَ، وَلَا لَهُ حُجَّةٌ مِنْ قُرْآنٍ وَلَا سُنَّةٍ وَلَا قِيَاسٍ وَلَا قَوْلِ صَاحِبٍ، وَكَثِيرًا مَا يَقُولُونَ فِي مِثْلِ هَذَا بِتَشْنِيعِ خِلَافَ قَوْلِ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، وَهَذَا مَكَانٌ خَالَفُوا فِيهِ ابْنُ عُمَرَ، وَمَا يُعْلَمُ لَهُ مِنْ الصَّحَابَةِ فِي ذَلِكَ مُخَالِفٌ.

فَإِنْ قَالُوا: مَنْ قَالَ قَبْلَكُمْ إنَّ الْغُسْلَ لِلْيَوْمِ؟ قُلْنَا: كُلُّ مَنْ ذَكَرْنَا عَنْهُ فِي ذَلِكَ قَوْلًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَهُوَ ظَاهِرُ قَوْلِهِمْ، وَهُوَ قَوْلُ أَبِي يُوسُفَ نَصًّا وَغَيْرِهِ، وَأَعْجَبُ شَيْءٍ أَنْ يَكُونُوا مُبِيحِينَ لِلْغُسْلِ يَوْمَ الْجُمُعَةِ فِي كُلِّ وَقْتٍ، وَمُبِيحِينَ لِتَرْكِهِ فِي الْيَوْمِ كُلِّهِ، ثُمَّ يُنْكِرُونَ عَلَى مَنْ قَالَ بِالْغُسْلِ فِي وَقْتٍ هُمْ يُبِيحُونَهُ فِيهِ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَة غَسَلَ كُلّ مَيِّت مِنْ الْمُسْلِمِينَ فرض]

١٨٠ - مَسْأَلَةٌ: وَغُسْلُ كُلِّ مَيِّتٍ مِنْ الْمُسْلِمِينَ فَرْضٌ وَلَا بُدَّ، فَإِنْ دُفِنَ بِغَيْرِ غُسْلٍ أُخْرِجَ وَلَا بُدَّ، مَا دَامَ يُمْكِنُ أَنْ يُوجَدَ مِنْهُ شَيْءٌ وَيُغَسَّلُ إلَّا الشَّهِيدَ الَّذِي قَتَلَهُ الْمُشْرِكُونَ فِي الْمَعْرَكَةِ فَمَاتَ فِيهَا، فَإِنَّهُ لَا يَلْزَمُ غُسْلُهُ.

narrated to us from Ismāʿīl ibn ʿAbd Allāh—who is the son of Abī Uwais—who said: "Mālik narrated to me from Ayyūb al-Sakhtiyānī from Muḥammad ibn Sīrīn from Umm ʿAṭiyyah al-Anṣāriyyah: 'When the Messenger of Allah—peace and blessings be upon him—came to them upon the death of his daughter, he said: "Wash her three times, five times, or more than that if you [women] deem it necessary."'" Thus, he—peace and blessings be upon him—commanded washing three times, and his command is obligatory, but it is better to perform more washes, in odd numbers. As for the martyr, it is mentioned in the chapter on funerals, if Allah the Almighty wills.

A jurisprudential question regarding washing a deceased person oneself by pouring [water] or scrubbing lightly.

Issue 181: Whoever washes a deceased person, undertaking the task himself—whether through pouring or rubbing—must perform a ritual bath (ghusl) as an obligation.

The evidence for this is what was narrated to us by Abdullah ibn Rabee', who narrated to us Muhammad ibn Ishaq ibn Sulaym, who narrated to us Ibn al-A'rabi, who narrated to us Abu Dawud, who narrated to us Ahmad ibn Salih, who narrated to us Ibn Abi Fudayk. Ibn Abi Dhi'b narrated to me from al-Qasim ibn Abbas from Amr ibn Umayr from Abu Hurairah that the Messenger of Allah—peace and blessings of Allah be upon him—said: "Whoever washes the deceased must perform ghusl, and whoever carries him must perform wudu." Abu Dawud said: Hamid ibn Yahya narrated to us from... Sufyān ibn ʿUyaynah narrated from Suhayl ibn Abī Ṣāliḥ from his father from Isḥāq, the freed slave of Zāʾidah, from Abū Hurayrah from the Prophet—peace and blessings of Allah be upon him—with the same meaning. ʿAbdullāh ibn Rabīʿ narrated to us from ʿAbdullāh ibn Muḥammad ibn ʿUthmān al-Asadī from Aḥmad ibn Khālid from ʿAlī ibn ʿAbd al-ʿAzīz from al-Ḥajjāj ibn al-Minhāl from Ḥammād ibn Salamah from Muḥammad ibn ʿAmr from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf from Abū Hurayrah from the Prophet—peace and blessings of Allah be upon him—who said: "Whoever washes a deceased

بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا إِسْمَاعِيلُ بْنُ عَبْدِ اللَّهِ هُوَ ابْنُ أَبِي أُوَيْسٍ - حَدَّثَنِي مَالِكٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أُمِّ عَطِيَّةَ الْأَنْصَارِيَّةِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَخَلَ عَلَيْهِنَّ حِينَ تُوُفِّيَتْ ابْنَتُهُ فَقَالَ: اغْسِلْنَهَا ثَلَاثًا أَوْ خَمْسًا أَوْ أَكْثَرَ مِنْ ذَلِكَ إِنْ رَأَيْتُنَّ ذَلِكَ» فَأَمَرَ - عَلَيْهِ السَّلَامُ - بِالْغُسْلِ ثَلَاثًا، وَأَمْرُهُ فَرْضٌ وَخَيْرٌ فِي أَكْثَرَ عَلَى الْوِتْرِ، وَأَمَّا الشَّهِيدُ فَمَذْكُورٌ فِي الْجَنَائِزِ إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ.

[مَسْأَلَة غَسَلَ ميتا متوليا ذَلِكَ بِنَفْسِهِ بصب أَوْ عرك]

١٨١ - مَسْأَلَةٌ: وَمَنْ غَسَّلَ مَيِّتًا مُتَوَلِّيًا ذَلِكَ بِنَفْسِهِ - بِصَبٍّ أَوْ عَرْكٍ - فَعَلَيْهِ أَنْ يَغْتَسِلَ فَرْضًا.

بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا أَحْمَدُ بْنُ صَالِحٍ ثنا ابْنُ أَبِي فُدَيْكٍ حَدَّثَنِي ابْنُ أَبِي ذِئْبٍ عَنْ الْقَاسِمِ بْنِ عَبَّاسٍ عَنْ عَمْرِو بْنِ عُمَيْرٍ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ غَسَّلَ الْمَيِّتَ فَلْيَغْتَسِلْ، وَمَنْ حَمَلَهُ فَلْيَتَوَضَّأْ» قَالَ أَبُو دَاوُد: وَحَدَّثَنَا حَامِدُ بْنُ يَحْيَى عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ إِسْحَاقَ مَوْلَى زَائِدَةَ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَعْنَاهُ. وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ الْأَسَدِيُّ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ

person should perform ghusl, and whoever carries the bier should perform wuḍū’.” Abū Muḥammad said: meaning whoever carries the funeral bier.

عَنْ أَبِي هُرَيْرَةَ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ مَنْ غَسَّلَ مَيِّتًا فَلْيَغْتَسِلْ وَمَنْ حَمَلَهَا فَلْيَتَوَضَّأْ» قَالَ أَبُو مُحَمَّدٍ: يَعْنِي مَنْ حَمَلَ الْجِنَازَةَ.

L3512 Among those who held this view are Ali ibn Abi Talib and others. This has been transmitted to us through the chain of Abd al-Rahman ibn Mahdi from Hisham al-Dastuwa’i from Hammad ibn Abi Sulayman from Ibrahim al-Nakha’i from Ali, who said: “Whoever washes a deceased person must perform ghusl.” Through the chain of Waki’ from Sa’id ibn Abd al-Aziz al-Tanukhi from Makhul: A man asked Hudhayfah about his deceased father, and Hudhayfah said: “Wash him. When you finish, perform ghusl.” From Abu Hurairah: “Whoever washes a deceased person must perform ghusl.” Through the chain of Hammad ibn Salamah from Hammad ibn Abi Sulayman from Ibrahim al-Nakha’i: “Ali’s companions would perform ghusl from it” - meaning from washing the deceased.

وَمِمَّنْ قَالَ بِهَذَا عَلِيُّ بْنُ أَبِي طَالِبٍ وَغَيْرُهُ، رُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلِيٍّ قَالَ: مَنْ غَسَّلَ مَيِّتًا فَلْيَغْتَسِلْ، وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سَعِيدِ بْنِ عَبْدِ الْعَزِيزِ التَّنُوخِيِّ عَنْ مَكْحُولٍ أَنَّ حُذَيْفَةَ سَأَلَهُ رَجُلٌ مَاتَ أَبُوهُ، فَقَالَ حُذَيْفَةُ: اغْسِلْهُ فَإِذَا فَرَغْت فَاغْتَسِلْ وَعَنْ أَبِي هُرَيْرَةَ - مَنْ غَسَّلَ مَيِّتًا فَلْيَغْتَسِلْ، وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ كَانَ أَصْحَابُ عَلِيٍّ يَغْتَسِلُونَ مِنْهُ. يَعْنِي مِنْ غُسْلِ الْمَيِّتِ.

L3513 Ali said: Abu Hanifah, Malik, Al-Shafi’i, and Dawud held that the ritual bath is not obligatory due to washing the deceased. Our companions supported this ruling with the narration stating: “Water is only from water.”

قَالَ عَلِيٌّ: وَقَالَ أَبُو حَنِيفَةَ وَمَالِكٌ وَالشَّافِعِيُّ وَدَاوُد: لَا يَجِبُ الْغُسْلُ مِنْ غُسْلِ الْمَيِّتِ، وَاحْتَجَّ أَصْحَابُنَا فِي ذَلِكَ بِالْأَثَرِ الَّذِي فِيهِ «إنَّمَا الْمَاءُ مِنْ الْمَاءِ» .

L3514 Ali said: And this contains no valid proof, because the command to perform ghusl in the case of washing the deceased and in the case of penetration (even if there was no emission) - these are two additional legal rulings beyond the narration “water is from water.” This addition comes from Allah the Exalted through the tongue of His Messenger - may Allah bless him and grant him peace - and accepting it is obligatory.

قَالَ عَلِيٌّ: وَهَذَا لَا حُجَّةَ فِيهِ لِأَنَّ الْأَمْرَ بِالْغُسْلِ مِنْ غُسْلِ الْمَيِّتِ وَمِنْ الْإِيلَاجِ وَإِنْ لَمْ يَكُنْ إنْزَالٌ - هُمَا شَرْعَانِ زَائِدَانِ عَلَى خَبَرِ «الْمَاءُ مِنْ الْمَاءِ» وَالزِّيَادَةُ وَارِدَةٌ مِنْ عِنْدِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرْضٌ الْأَخْذُ بِهَا.

L3515–3517 Others argued this point using a narration we transmitted through Ibn Wahb’s chain, who said: “Someone I trust informed me, attributing the hadith to Allah’s Messenger—peace and blessings be upon him—who said: ’Do not consider yourselves defiled by your dead,’” and he disliked that practice for them. From men of knowledge—Sa‘īd, Jābir, Ibn Mas‘ūd, Ibn ‘Abbās, and Ibn ‘Umar—it is related that no ritual bath is obligatory after washing the deceased. We also transmitted a hadith through Mālik’s chain from ‘Abdullāh ibn Abī Bakr ibn Muḥammad ibn ‘Amr ibn Ḥazm that Asmā’ bint ‘Umays washed Abū Bakr al-Ṣiddīq. When she finished, she asked the Muhajirun

وَاحْتَجَّ غَيْرُهُمْ فِي ذَلِكَ بِأَثَرٍ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ قَالَ: أَخْبَرَنِي مَنْ أَثِقُ بِهِ يَرْفَعُ الْحَدِيثَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَنَجَّسُوا مِنْ مَوْتَاكُمْ» وَكَرِهَ ذَلِكَ لَهُمْ. وَعَنْ رِجَالٍ مِنْ أَهْلِ الْعِلْمِ عَنْ سَعِيدٍ وَجَابِرٍ وَابْنِ مَسْعُودٍ وَابْنِ عَبَّاسٍ وَابْنِ عُمَرَ أَنَّهُ لَا غُسْلَ مِنْ غُسْلِ الْمَيِّتِ، وَبِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ أَنَّ أَسْمَاءَ بِنْتَ عُمَيْسٍ غَسَّلَتْ أَبَا بَكْرٍ الصِّدِّيقَ، فَلَمَّا

present with her, “I am fasting, and this is an intensely cold day. Is there any obligation for me to perform ghusl?” They replied, “No.” From Ibrāhīm al-Nakha‘ī: “Ibn Mas‘ūd and his companions did not perform ritual bathing after washing the deceased.” We further transmitted a hadith through Shu‘bah’s chain from Yazīd al-Rishk from Mu‘ādhah al-‘Adawiyyah: She was asked... Aisha—may Allah be pleased with her—was asked whether ghusl is required after washing the deceased. She replied, “No.”

فَرَغَتْ قَالَتْ لِمَنْ حَضَرَهَا مِنْ الْمُهَاجِرِينَ إنِّي صَائِمَةٌ وَإِنَّ هَذَا يَوْمٌ شَدِيدُ الْبُرْدِ فَهَلْ عَلَيَّ مِنْ غُسْلٍ؟ قَالُوا: لَا، وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ: كَانَ ابْنُ مَسْعُودٍ وَأَصْحَابُهُ لَا يَغْتَسِلُونَ مِنْ غُسْلِ الْمَيِّتِ، وَبِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ شُعْبَةَ عَنْ يَزِيدَ الرِّشْكِ عَنْ مُعَاذَةَ الْعَدَوِيَّةِ: سُئِلَتْ عَائِشَةُ - رَضِيَ اللَّهُ عَنْهَا -: أَيُغْتَسَلُ مِنْ غُسْلِ الْمُتَوَفَّيْنَ؟ قَالَتْ لَا.

L3518 Abu Muhammad said: All of this contains no evidence for them. As for the report attributed to the Messenger of Allah - peace and blessings of Allah be upon him - it is in a state of extreme weakness because Ibn Wahb did not name his informant, and the time gap between Ibn Wahb and the Messenger of Allah - peace and blessings of Allah be upon him - is exceedingly long. Even if it were authenticated through unanimous transmission, they would have no basis in it, for it contains nothing except that we do not become impure from our dead. This is the explicit statement of our position. Allah forbid that we should become impure from a deceased Muslim, or that a Muslim should be impure! Rather, he is pure both alive and dead. The obligatory washing of the deceased is not in any way due to impurity, just as the obligatory washing of the deceased according to us and them – as the Messenger of Allah - peace and blessings of Allah be upon him - was washed, he being the purest of Adam’s descendants alive and dead – and as his Companions - may Allah be pleased with them - were washed upon their deaths, they being the pure and good ones alive and dead. It is like the ritual bath for Friday, where no impurity exists. Thus, their attempt to obscure the matter with this report is invalidated.

قَالَ أَبُو مُحَمَّد: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ، أَمَّا الْخَبَرُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَفِي غَايَةِ السُّقُوطِ لِأَنَّ ابْنَ وَهْبٍ لَمْ يُسَمِّ مَنْ أَخْبَرَهُ، وَالْمَسَافَةُ بَيْنَ ابْنِ وَهْبٍ وَبَيْنَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعِيدَةٌ جِدًّا، ثُمَّ لَوْ صَحَّ بِنَقْلِ الْكَافَّةِ مَا كَانَ لَهُمْ فِيهِ مُتَعَلَّقٌ، لِأَنَّهُ لَيْسَ فِيهِ إلَّا أَنْ لَا نَتَنَجَّسَ مِنْ مَوْتَانَا فَقَطْ، وَهَذَا نَصُّ قَوْلِنَا، وَمَعَاذَ اللَّهِ أَنْ نَكُونَ نَتَنَجَّسُ مِنْ مَيِّتٍ مُسْلِمٍ، أَوْ أَنْ يَكُونَ الْمُسْلِمُ نَجِسًا، بَلْ هُوَ طَاهِرٌ حَيًّا وَمَيِّتًا، وَلَيْسَ الْغُسْلُ الْوَاجِبُ مِنْ غُسْلِ الْمَيِّتِ لِنَجَاسَتِهِ أَصْلًا، لَكِنْ كَغُسْلِ الْمَيِّتِ الْوَاجِبِ عِنْدَنَا وَعِنْدَهُمْ، كَمَا غُسِّلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ أَطْهَرُ وَلَدِ آدَمَ حَيًّا وَمَيِّتًا، وَغُسِّلَ أَصْحَابُهُ - رَضِيَ اللَّهُ عَنْهُمْ - إذْ مَاتُوا، وَهُمْ الطَّاهِرُونَ الطَّيِّبُونَ أَحْيَاءً وَأَمْوَاتًا، وَكَغُسْلِ الْجُمُعَةِ، وَلَا نَجَاسَةَ هُنَالِكَ، فَبَطَلَ تَمْوِيهُهُمْ بِهَذَا الْخَبَرِ.

L3519 As for the narration of Asma’, Abdullah ibn Abi Bakr was indeed not born on the day Abu Bakr al-Siddiq died—nor was his father. Even if all they attributed to the Companions were authentic, it would still be contradicted by what we have transmitted from Ali, Hudhayfah, and Abu Hurayrah contradicting that. When disagreement occurs, it becomes obligatory to revert to what Allah Almighty has commanded to be referred to—His speech and the speech of His Messenger, peace and blessings be upon him. We have already cited the Sunnah with a sound chain of narration affirming the obligation of

وَأَمَّا حَدِيثُ أَسْمَاءَ فَإِنَّ عَبْدَ اللَّهِ بْنَ أَبِي بَكْرٍ لَمْ يَكُنْ وُلِدَ يَوْمَ مَاتَ أَبُو بَكْرٍ الصِّدِّيقُ نَعَمْ وَلَا أَبُوهُ أَيْضًا، ثُمَّ لَوْ صَحَّ كُلُّ مَا ذَكَرُوا عَنْ الصَّحَابَةِ لَكَانَ قَدْ عَارَضَهُ مَا رُوِّينَاهُ مِنْ خِلَافِ ذَلِكَ عَنْ عَلِيٍّ وَحُذَيْفَةَ وَأَبِي هُرَيْرَةَ، وَإِذَا وَقَعَ التَّنَازُعُ وَجَبَ الرَّدُّ إلَى مَا افْتَرَضَ اللَّهُ تَعَالَى الرَّدَّ إلَيْهِ، مِنْ كَلَامِهِ وَكَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالسُّنَّةُ

ghusl for washing the deceased. How many cases exist where they opposed the majority of the Companions, with no known dissenting opinion among them? We have dedicated a voluminous book to this matter. It is astonishing that they cite Aisha's opinion as evidence while opposing her regarding the obligation of ablution after touching food cooked by fire. They opposed Ali ibn Abi Talib, Ibn Abbas, and Ibn al-Zubayr concerning the obligation for a mustahadah to perform ghusl for every prayer or when combining two prayers, and opposed Aisha's statement that such a woman should perform ghusl daily at the noon prayer. No known dissent from the Companions—may Allah be pleased with them—exists against these positions. Such instances are exceedingly numerous.

Issue: I pour water over one performing ghusl, and that person performing ghusl intended to perform ghusl.

Issue 182: If someone pours water over a person performing ghusl, and the latter intended to perform the ghusl, it is valid for him.

The evidence for that is that the ritual bath is the application of water to the skin with the intention of fulfilling what Allah, the Exalted, has obligated thereby. Therefore, if one intends that for oneself, they have performed the ritual bath they were commanded to do. There is no text or consensus stating that one must personally undertake that. And success is from Allah, the Exalted.

Issue: Interruption of menstrual bleeding during the menstrual period.

Issue 183: The cessation of menstrual blood during the menstrual period - including postpartum blood - necessitates a ritual bath (ghusl) for the entire body and the head. And this is an indisputable consensus - whoever opposes it disbelieves contrary to the firmly established texts, and in Allah, the Exalted, we seek support.

We have mentioned that a pregnant woman does not menstruate. Postpartum blood is what exits following a woman's delivery of the last child in her womb, as this is the agreed-upon position. As for what exits before that,

قَدْ ذَكَرْنَاهَا بِالْإِسْنَادِ الثَّابِتِ بِإِيجَابِ الْغُسْلِ مِنْ غُسْلِ الْمَيِّتِ، وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا الْجُمْهُورَ مِنْ الصَّحَابَةِ لَا يُعْرَفُ مِنْهُمْ مُخَالِفٌ، وَقَدْ أَفْرَدْنَا لِذَلِكَ كِتَابًا ضَخْمًا، وَالْعَجَبُ مِنْ احْتِجَاجِهِمْ بِقَوْلِ عَائِشَةَ وَهُمْ قَدْ خَالَفُوهَا فِي إيجَابِ الْوُضُوءِ مِمَّا مَسَّتْ النَّارُ وَخَالَفُوا عَلِيَّ بْنَ أَبِي طَالِبٍ وَابْنَ عَبَّاسٍ وَابْنَ الزُّبَيْرِ فِي إيجَابِ الْغُسْلِ عَلَى الْمُسْتَحَاضَةِ لِكُلِّ صَلَاةٍ أَوْ لِلْجَمْعِ بَيْنَ صَلَاتَيْنِ، وَعَائِشَةَ فِي قَوْلِهَا: تَغْتَسِلُ كُلَّ يَوْمٍ عِنْدَ صَلَاةِ الظُّهْرِ، وَلَا مُخَالِفَ يُعْرَفُ لِهَؤُلَاءِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَمِثْلُ هَذَا كَثِيرٌ جِدًّا

[مَسْأَلَة أصب عَلَى مغتسل وَنَوَى ذَلِكَ المغتسل الْغُسْل]

١٨٢ - مَسْأَلَةٌ: وَمَنْ صَبَّ عَلَى مُغْتَسِلٍ وَنَوَى ذَلِكَ الْمُغْتَسِلُ الْغُسْلَ أَجْزَأَهُ.

بُرْهَانُ ذَلِكَ أَنَّ الْغُسْلَ هُوَ إمْسَاسُ الْمَاءِ الْبَشَرَةَ بِالْقَصْدِ إلَى تَأْدِيَةِ مَا افْتَرَضَ اللَّهُ تَعَالَى مِنْ ذَلِكَ، فَإِذَا نَوَى ذَلِكَ لِمَرْءٍ فَقَدْ فَعَلَ الْغُسْلَ الَّذِي أُمِرَ بِهِ، وَلَمْ يَأْتِ نَصٌّ وَلَا إجْمَاعٌ بِأَنْ يَتَوَلَّى هُوَ ذَلِكَ بِيَدِهِ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَة انْقِطَاع دَم الْحَيْض فِي مُدَّة الْحَيْض]

١٨٣ - مَسْأَلَةٌ: وَانْقِطَاعُ دَمِ الْحَيْضِ فِي مُدَّةِ الْحَيْضِ - وَمِنْ جُمْلَتِهِ دَمُ النِّفَاسِ - يُوجِبُ الْغُسْلَ لِجَمِيعِ الْجَسَدِ وَالرَّأْسِ وَهَذَا إجْمَاعٌ مُتَيَقَّنٌ، مَنْ خَالَفَهُ كَفَرَ عَنْ نُصُوصٍ ثَابِتَةٍ، وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

she is not considered postpartum, nor is it postpartum blood. There is no textual evidence or consensus regarding it. We will mention the durations of menstruation and the postpartum period in the discussion on menstruation, Allah the Exalted willing.

وَقَدْ ذَكَرْنَا أَنَّ الْحَامِلَ لَا تَحِيضُ، وَدَمُ النِّفَاسِ هُوَ الْخَارِجُ إِثْرَ وَضْعِ الْمَرْأَةِ آخِرَ وَلَدٍ فِي بَطْنِهَا، لِأَنَّهُ الْمُتَّفَقُ عَلَيْهِ، وَأَمَّا الْخَارِجُ قَبْلَ ذَلِكَ فَلَيْسَتْ نُفَسَاءَ، وَلَيْسَ دَمَ نِفَاسٍ، وَلَا نَصَّ فِيهِ وَلَا إِجْمَاعَ، وَسَنَذْكُرُ فِي الْكَلَامِ فِي الْحَيْضِ مُدَّةَ الْحَيْضِ وَمُدَّةَ النِّفَاسِ إِنْ شَاءَ اللَّهُ تَعَالَى.

L3528 **Issue: Postpartum women and menstruating women are subject to the same rulings when they intend to perform Ḥajj or ʿUmrah.**

[مَسْأَلَةُ النُّفَسَاءُ وَالْحَائِضُ شَيْءٌ وَاحِدٌ إِذَا أَرَادَتَا الْحَجَّ أَوْ الْعُمْرَةَ]

L3529 Issue 184: Women experiencing postpartum bleeding (nifās) and menstruation (ḥayḍ) are subject to the same ruling. Whichever of them intends to perform Ḥajj or ʿUmrah is obligated to perform ghusl and then pronounce the talbiyah.

١٨٤ - مَسْأَلَةٌ: وَالنُّفَسَاءُ وَالْحَائِضُ شَيْءٌ وَاحِدٌ، فَأَيَّتُهُمَا أَرَادَتْ الْحَجَّ أَوْ الْعُمْرَةَ فَفُرِضَ عَلَيْهَا أَنْ تَغْتَسِلَ ثُمَّ تُهِلَّ.

L3530 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, Abd al-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us. Muslim ibn al-Hajjaj reported to me from Hannad ibn al-Sarri, Zuhayr ibn Harb, and Uthman ibn Abi Shaybah—all transmitting from Abda ibn Sulayman, from Ubaydullah ibn Umar, from Abd al-Rahman ibn al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq, from his father, from Aishah, the Mother of the Believers, who said: "Asma bint Umays gave birth to Muhammad ibn Abi Bakr al-Siddiq at al-Shajara. The Messenger of Allah, peace and blessings of Allah be upon him, instructed Abu Bakr that she should perform the ritual bath and begin the talbiyah."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي هَنَّادُ بْنُ السَّرِيِّ وَزُهَيْرُ بْنُ حَرْبٍ وَعُثْمَانُ بْنُ أَبِي شَيْبَةَ، كُلُّهُمْ عَنْ عَبْدَةَ بْنِ سُلَيْمَانَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «نُفِسَتْ أَسْمَاءُ بِنْتُ عُمَيْسٍ بِمُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ بِالشَّجَرَةِ، فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبَا بَكْرٍ أَنْ تَغْتَسِلَ وَتُهِلَّ» .

L3531 It is explicitly mentioned in the report: "Asmā' bint Umays was in postpartum bleeding at al-Shajara after giving birth to Muḥammad ibn Abī Bakr, and this was mentioned to the Messenger of Allah (may Allah bless him and grant him peace)." "'Ā'isha and Umm Salama, the mothers of the believers (may Allah be pleased with them both), menstruated, and the Messenger of Allah (may Allah bless him and grant him peace) said to each of them: 'Are you in postpartum bleeding?' They replied, 'Yes.'"

وَجَاءَ فِي الْخَبَرِ الصَّرِيحِ: «نُفِسَتْ أَسْمَاءُ بِنْتُ عُمَيْسٍ بِالشَّجَرَةِ بِمُحَمَّدِ بْنِ أَبِي بَكْرٍ فَذُكِرَ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» «وَحَاضَتْ عَائِشَةُ وَأُمُّ سَلَمَةَ أُمَّا الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهُمَا -، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِكُلِّ وَاحِدَةٍ مِنْهُمَا: أَنُفِسْتِ؟ قَالَتْ نَعَمْ» .

L3532 Thus, it is established that menstruation may linguistically be termed postpartum bleeding. Consequently, it is established that they share a single ruling as one category, with no distinction between them.

فَصَحَّ أَنَّ الْحَيْضَ يُسَمَّى نِفَاسًا، فَصَحَّ أَنَّهُمَا شَيْءٌ وَاحِدٌ وَحُكْمٌ وَاحِدٌ وَلَا فَرْقَ.

L3533 He—peace be upon him—commanded the woman who sees black blood to abstain from prayer, ruling that it is menstruation, that she is menstruating, and that the other blood is not menstruation nor is she menstruating through it. He informed that menstruation is something Allah the Exalted has decreed upon the daughters of Adam. Therefore, any black blood that emerges from a woman's vagina from the birth canal is menstruation, except what the text has excluded from this general rule: the pregnant woman and the one whose blood is neither distinguishable nor ceases. And success is from Allah, the Exalted.

وَأَمَرَ - عَلَيْهِ السَّلَامُ - الَّتِي تَرَى الدَّمَ الْأَسْوَدَ بِتَرْكِ الصَّلَاةِ، وَحَكَمَ بِأَنَّهُ حَيْضٌ وَأَنَّهَا حَائِضٌ، وَأَنَّ الدَّمَ الْآخَرَ لَيْسَ حَيْضًا وَلَا هِيَ بِهِ حَائِضٌ، وَأَخْبَرَ أَنَّ الْحَيْضَ شَيْءٌ كَتَبَهُ اللَّهُ تَعَالَى عَلَى بَنَاتِ آدَمَ، فَكُلُّ دَمٍ أَسْوَدَ ظَهَرَ مِنْ فَرْجِ الْمَرْأَةِ مِنْ مَكَانِ خُرُوجِ الْوَلَدِ فَهُوَ حَيْضٌ، إلَّا مَا وَرَدَ النَّصُّ بِإِخْرَاجِهِ مِنْ هَذِهِ الْجُمْلَةِ وَهِيَ الْحَامِلُ وَالَّتِي لَا يَتَمَيَّزُ دَمُهَا وَلَا يَنْقَطِعُ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الْمَرْأَة تهل بِعُمْرَة ثُمَّ تَحِيض]

L3534–3535 The jurisprudential ruling concerning a woman who assumes the state of *ihrām* for *ʿUmrah* and subsequently menstruates.

L3536 Issue: If a woman enters the state of iḥrām for ʿUmrah and then menstruates, it becomes obligatory for her to perform ghusl (ritual purification) and proceed with her Hajj rites in the manner we will detail in the Hajj chapter, God Almighty willing.

مَسْأَلَةٌ: وَالْمَرْأَةُ تُهِلُّ بِعُمْرَةٍ ثُمَّ تَحِيضُ فَفُرِضَ عَلَيْهَا أَنْ تَغْتَسِلَ ثُمَّ تَعْمَلَ فِي حَجِّهَا، مَا سَنَذْكُرُهُ فِي الْحَجِّ إنْ شَاءَ اللَّهُ تَعَالَى.

L3537 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn Al-Hajjaj narrated to us, Qutaybah ibn Sa'id narrated to us, Al-Layth—that is, Ibn Sa'd—narrated from Abu Az-Zubayr, from Jabir, who said: "We advanced with the Messenger of Allah—peace and blessings be upon him—uttering the Talbiyah for Ifrad Hajj, while Aisha advanced with the intention of Umrah. When we reached Sarif, she menstruated." Then he mentioned the rest of the hadith, which included: "The Messenger of Allah—peace and blessings be upon him—came to her, and she said, 'I have begun menstruating, while the people have exited the state of Ihram, but I have not exited it, nor have I performed Tawaf around the House. The people are proceeding to perform Hajj.' The Messenger of Allah—peace and blessings be upon him—said to her, 'Indeed, this is some-

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا قُتَيْبَةُ بْنُ سَعِيدٍ ثنا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: «أَقْبَلْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُهِلِّينَ بِحَجٍّ مُفْرَدًا وَأَقْبَلَتْ عَائِشَةُ بِعُمْرَةٍ حَتَّى إذَا كُنَّا بِسَرِفَ عَرَكَتْ» ثُمَّ ذَكَرَ الْحَدِيثَ وَفِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَخَلَ عَلَيْهَا فَقَالَتْ: قَدْ حِضْتُ وَحَلَّ النَّاسُ وَلَمْ أَحْلِلْ وَلَمْ أَطُفْ بِالْبَيْتِ، وَالنَّاسُ يَذْهَبُونَ إلَى الْحَجِّ، فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إنَّ هَذَا كَتَبَهُ اللَّهُ عَلَى بَنَاتِ آدَمَ فَاغْتَسِلِي ثُمَّ أَهِلِّي بِالْحَجِّ ففَعَلَتْ» .

thing Allah has ordained for the daughters of Adam. Perform the ritual bath, then declare your entry into the state of Ihram for Hajj.' So she did so."

An issue concerning continuous black blood that is indistinguishable, and whose [menstrual] days the woman cannot recognize.

186. Issue: As for the woman experiencing continuous indistinct black blood whose menstrual cycle she cannot discern, it is obligatory for her—if she wishes to pray—to perform the ritual bath for every obligatory or voluntary prayer. If she chooses, near the end of *Dhuhr* time, she may perform the ritual bath and ablution, then pray *Dhuhr* such that part of it is completed after the commencement of *'Aṣr* time. She then performs ablution and prays *'Aṣr*. If she chooses near twilight's end, she may perform the ritual bath and ablution, then pray *Maghrib* such that part of it extends beyond twilight's disappearance. She then performs ablution and prays *'Ishā'*. She performs the ritual bath and ablution for *Fajr* prayer. If she wishes at that point to offer voluntary prayers with each obligatory prayer—performing ablution either before or after the obligatory prayer—she may do so. We will present the evidence for this in our discussion on menstruation, God willing.

The Issue of Performing Ritual Bath (Ghusl) Due to Burying a Non-Muslim

187 - Issue:

The ritual bath is not required by anything other than what we have mentioned at all, because no narration has been transmitted regarding anything beyond that which is absolutely authentic. A narration has indeed come concerning the ritual bath from burying a disbeliever, in which Nājiyah ibn Ka'b is mentioned—and he is an unknown narrator. Religious legislations are not derived except from the speech of Allah or from the speech of His Messenger—may Allah's peace and blessings be upon him.

And among those who do not consider *ghusl* obligatory as a result of

[مَسْأَلَةُ الْمُتَّصِلَةُ الدَّمُ الْأَسْوَدُ الَّذِي لَا يَتَمَيَّزُ وَلَا تَعْرِفُ أَيَّامَهَا]

١٨٦ - مَسْأَلَةٌ: وَالْمُتَّصِلَةُ الدَّمُ الْأَسْوَدُ الَّذِي لَا يَتَمَيَّزُ وَلَا تَعْرِفُ أَيَّامَهَا فَإِنَّ الْغُسْلَ فَرْضٌ عَلَيْهَا إِنْ شَاءَتْ لِكُلِّ صَلَاةِ فَرْضٍ أَوْ تَطَوُّعٍ، وَإِنْ شَاءَتْ إِذَا كَانَ قُرْبَ آخِرِ وَقْتَ الظُّهْرِ اغْتَسَلَتْ وَتَوَضَّأَتْ وَصَلَّتْ الظُّهْرَ بِقَدْرِ مَا تَسْلَمُ مِنْهَا بَعْدَ دُخُولِ وَقْتِ الْعَصْرِ، ثُمَّ تَتَوَضَّأُ وَتُصَلِّي الْعَصْرَ، ثُمَّ إِذَا كَانَ قَبْلَ غُرُوبِ الشَّفَقِ اغْتَسَلَتْ وَتَوَضَّأَتْ وَصَلَّتْ الْمَغْرِبَ بِقَدْرِ مَا تَفْرُغُ مِنْهَا بَعْدَ غُرُوبِ الشَّفَقِ، ثُمَّ تَتَوَضَّأُ وَتُصَلِّي الْعَتَمَةَ، ثُمَّ تَغْتَسِلُ وَتَتَوَضَّأُ لِصَلَاةِ الْفَجْرِ، وَإِنْ شَاءَتْ حِينَئِذٍ أَنْ تَتَنَفَّلَ عِنْدَ كُلِّ صَلَاةِ فَرْضٍ وَتَتَوَضَّأَ بَعْدَ الْفَرِيضَةِ أَوْ قَبْلَهَا فَلَهَا ذَلِكَ، وَسَنَذْكُرُ الْبُرْهَانَ عَلَى ذَلِكَ فِي كَلَامِنَا فِي الْحَيْضِ إِنْ شَاءَ اللَّهُ تَعَالَى.

[مَسْأَلَةُ الْغُسْلِ مِنْ مُوَارَةِ الْكَافِرِ]

١٨٧ - مَسْأَلَةٌ:

وَلَا يُوجِبُ الْغُسْلَ شَيْءٌ غَيْرُ مَا ذَكَرْنَا أَصْلًا لِأَنَّهُ لَمْ يَأْتِ فِي غَيْرِ ذَلِكَ أَثَرٌ يَصِحُّ أَلْبَتَّةَ، وَقَدْ جَاءَ أَثَرٌ فِي الْغُسْلِ مِنْ مُوَارَةِ الْكَافِرِ، فِيهِ نَاجِيَةُ بْنُ كَعْبٍ وَهُوَ مَجْهُولٌ، وَالشَّرَائِعُ لَا تُؤْخَذُ إِلَّا مِنْ كَلَامِ اللَّهِ أَوْ مِنْ كَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

penetration into the genital area of an animal without ejaculation (*inzal*) are Abū Ḥanīfa and al-Shāfiʿī.

وَمِمَّنْ لَا يَرَى الْغُسْلَ مِنَ الْإِيلَاجِ فِي حَيَاءِ الْبَهِيمَةِ إِنْ لَمْ يَكُنْ إِنْزَالُ أَبِي حَنِيفَةَ وَالشَّافِعِيِّ.

L3544 Malik said regarding anal intercourse: There is no ghusl for it if there is no ejaculation. As for those who analogize this to vaginal intercourse, it is said to them: Rather, it is a sin. It is more appropriate to analogize it to other sins like murder and abandoning prayer, for there is no ghusl for any of these by consensus. How, when the entire analogy is invalid?

وَقَالَ مَالِكٌ فِي الْوَطْءِ فِي الدُّبُرِ: لَا غُسْلَ فِيهِ إِنْ لَمْ يَكُنْ إِنْزَالٌ، فَمَنْ قَاسَ ذَلِكَ عَلَى الْوَطْءِ فِي الْفَرْجِ قِيلَ لَهُ: بَلْ هُوَ مَعْصِيَةٌ، فَقِيَاسُهَا عَلَى سَائِرِ الْمَعَاصِي مِنَ الْقَتْلِ وَتَرْكِ الصَّلَاةِ أَوْلَى، وَلَا غُسْلَ فِي شَيْءٍ مِنْ ذَلِكَ بِإِجْمَاعٍ، فَكَيْفَ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

[The Description of the Obligatory Ritual Bath] [A Legal Issue Regarding the Janabah Ritual Bath]

[صِفَةُ الْغُسْلِ الْوَاجِبِ] [مَسْأَلَةٌ غُسْلُ الْجَنَابَةِ]

L3545–3546

L3547 Issue 188: Regarding the ritual bath for major impurity (ghusl al-janabah), it is recommended—without being obligatory—to begin by washing the private parts if the impurity resulted from intercourse, and to wipe one's hand on a wall or the ground after washing it. Then one should rinse the mouth, draw water into the nostrils, and expel it three times each. Next, immerse the hand in the vessel after washing it three times—this hand washing being absolutely obligatory only if one has awoken from sleep. Thereafter, one should comb through the roots of the hair until certain the water has reached the scalp, then pour water over the head three times with the hand, beginning with the right side. As for the obligatory requirements: washing the hands three times before placing them in the water (if one has awoken from sleep), washing the private parts (if the impurity resulted from intercourse), then pouring water over the head followed by the entire body. This pouring must be thorough enough to leave no doubt that water has reached the scalp, all hair, and every part of the body.

فِي كُلِّ مَا ذَكَرْنَا ١٨٨ - مَسْأَلَةٌ: أَمَّا غُسْلُ الْجَنَابَةِ فَيُخْتَارُ - دُونَ أَنْ يَجِبَ ذَلِكَ فَرْضًا - أَنْ يَبْدَأَ بِغَسْلِ فَرْجِهِ إِنْ كَانَ مِنْ جِمَاعٍ، وَأَنْ يَمْسَحَ بِيَدِهِ الْجِدَارَ أَوْ فِي الْأَرْضِ بَعْدَ غَسْلِهِ ثُمَّ يُمَضْمِضَ وَيَسْتَنْشِقَ وَيَسْتَنْثِرَ ثَلَاثًا ثَلَاثًا ثُمَّ يَغْمِسَ يَدَهُ فِي الْإِنَاءِ بَعْدَ أَنْ يَغْسِلَهَا ثَلَاثًا فَرْضًا وَلَا بُدَّ، إِنْ قَامَ مِنْ نَوْمٍ وَإِلَّا فَلَا، فَيُخَلِّلُ أُصُولَ شَعْرِهِ حَتَّى يُوقِنَ أَنَّهُ قَدْ بَلَّ الْجِلْدَ، ثُمَّ يُفِيضَ الْمَاءَ عَلَى رَأْسِهِ ثَلَاثًا بِيَدِهِ وَأَنْ يَبْدَأَ بِمَيَامِنِهِ، وَأَمَّا الْفَرْضُ الَّذِي لَا بُدَّ مِنْهُ فَأَنْ يَغْسِلَ يَدَيْهِ ثَلَاثًا قَبْلَ أَنْ يُدْخِلَهَا فِي الْمَاءِ إِنْ كَانَ قَامَ مِنْ نَوْمٍ وَإِلَّا فَلَا، وَيَغْسِلَ فَرْجَهُ إِنْ كَانَ مِنْ جِمَاعٍ، ثُمَّ يُفِيضَ الْمَاءَ عَلَى رَأْسِهِ ثُمَّ جَسَدِهِ بَعْدَ رَأْسِهِ وَلَا بُدَّ إِفَاضَةً يُوقِنُ أَنَّهُ قَدْ وَصَلَ الْمَاءُ إِلَى بَشَرَةِ رَأْسِهِ وَجَمِيعِ شَعْرِهِ وَجَمِيعِ جَسَدِهِ.

L3548 The proof of that is His statement—the Almighty, the Majestic—: {And if you are in a state of major impurity, then purify yourselves} [Al-Māʾidah: 6]. However one performs the ritual purification, he has fulfilled what Allah, the Exalted, has obligated upon him.[1]

بُرْهَانُ ذَلِكَ قَوْلُهُ - عَزَّ وَجَلَّ -: {وَإِنْ كُنْتُمْ جُنُبًا فَاطَّهَّرُوا} [المائدة: ٦] فَكَيْفَمَا أَتَى بِالطُّهُورِ فَقَدْ أَدَّى مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ.

[1] **Qur'an references (L3548):** Qur'an 5:6 (Al-Ma'idah).

L3549 Abdur Rahman ibn Abdullah ibn Khalid narrated to us from Ibrahim ibn Ahmad, from Al-Farbari, from Al-Bukhari, from Musaddad, from Yahya ibn Sa'id Al-Qattan, from Awf ibn Abi Jamilah, from Abu Raja' who reported from Imran, who is Ibn Ḥuṣayn, who said: "We were with the Messenger of Allah—may the peace and blessings of Allah be upon him—on a journey." He narrated the hadith, stating: "The Messenger of Allah—may the peace and blessings of Allah be upon him—gave a vessel of water to the one who had been afflicted with major ritual impurity and said: 'Go and pour it over yourself.'"

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُسَدَّدٌ، ثنا يَحْيَى بْنُ سَعِيدٍ هُوَ الْقَطَّانُ، ثنا عَوْفٌ هُوَ ابْنُ أَبِي جَمِيلَةَ، حَدَّثَنَا أَبُو رَجَاءٍ عَنْ عِمْرَانَ هُوَ ابْنُ حُصَيْنٍ قَالَ «كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَفَرٍ، فَذَكَرَ الْحَدِيثَ وَفِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَى الَّذِي أَصَابَتْهُ الْجَنَابَةُ إِنَاءً مِنْ مَاءٍ وَقَالَ: اذْهَبْ فَأَفْرِغْهُ عَلَيْكَ» .

L3550 We have recommended what we previously mentioned because of what we narrated through the aforementioned chain from Al-Bukhārī: Al-Ḥumaydī narrated to us, Sufyān narrated to us, Al-Aʿmash narrated to us from Sālim ibn Abī al-Jaʿd from Kurayb from Ibn ʿAbbās from Maymūnah: "The Prophet (peace and blessings of Allah be upon him) performed the ritual bath for post-sexual impurity. He washed his private part with his hand, then rubbed his hand against the wall, then washed it. Then he performed his ablution for prayer. Upon completing his bath, he washed his feet."[2]

وَإِنَّمَا اسْتَحْبَبْنَا مَا ذَكَرْنَا قَبْلُ لِمَا رُوِّينَاهُ بِالسَّنَدِ الْمَذْكُورِ إِلَى الْبُخَارِيِّ ثنا الْحُمَيْدِيُّ ثنا سُفْيَانُ ثنا الْأَعْمَشُ عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ عَنْ كُرَيْبٍ عَنِ ابْنِ عَبَّاسٍ عَنْ مَيْمُونَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اغْتَسَلَ مِنَ الْجَنَابَةِ فَغَسَلَ فَرْجَهُ بِيَدِهِ ثُمَّ دَلَكَ بِهَا الْحَائِطَ ثُمَّ غَسَلَهَا ثُمَّ تَوَضَّأَ وُضُوءَهُ لِلصَّلَاةِ، فَلَمَّا فَرَغَ مِنْ غُسْلِهِ غَسَلَ رِجْلَيْهِ» .

L3551–3552 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn Al-Hajjaj narrated to us: Ali ibn Hujr Al-Saʿdī narrated to us: Isa ibn Yunus narrated to us: Al-Aʿmash narrated from Salim ibn Abi Al-Jaʿd from Kuraib from Ibn Abbas: My maternal aunt Maymunah narrated to me, saying: "I brought water for Allah's Messenger - peace and blessings of Allah be upon him - for his ritual bath after major impurity. He washed his palms two or three times, then inserted his hand into the vessel. Then he poured water over his private parts and washed it with his left hand. Then he struck his left hand on the ground and rubbed it vigorously. Then he performed ablution as he would for prayer. Then he poured three full handfuls of water over his head. Then he washed the rest of his body. Then he moved away from where he was washing and washed his feet. Then I brought him a cloth, but he declined it." We have already mentioned his saying - peace be upon him - to Umm Salamah: "It is sufficient for you to pour three handfuls of water over your head. Then pour water over yourself. Then you are purified."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا عَلِيُّ بْنُ حُجْرٍ السَّعْدِيُّ ثنا عِيسَى بْنُ يُونُسَ ثنا الْأَعْمَشُ عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ عَنْ كُرَيْبٍ عَنِ ابْنِ عَبَّاسٍ حَدَّثَتْنِي خَالَتِي مَيْمُونَةُ قَالَتْ: «أَدْنَيْتُ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غُسْلَهُ مِنَ الْجَنَابَةِ فَغَسَلَ كَفَّيْهِ مَرَّتَيْنِ أَوْ ثَلَاثًا، ثُمَّ أَدْخَلَ يَدَهُ فِي الْإِنَاءِ، ثُمَّ أَفْرَغَ عَلَى فَرْجِهِ وَغَسَلَهُ بِشِمَالِهِ، ثُمَّ ضَرَبَ بِشِمَالِهِ الْأَرْضَ فَدَلَكَهَا دَلْكًا شَدِيدًا، ثُمَّ تَوَضَّأَ وُضُوءَهُ لِلصَّلَاةِ، ثُمَّ أَفْرَغَ عَلَى رَأْسِهِ ثَلَاثَ حَفَنَاتٍ مِلْءَ كَفِّهِ، ثُمَّ غَسَلَ سَائِرَ جَسَدِهِ ثُمَّ تَنَحَّى عَنْ مَقَامِهِ فَغَسَلَ رِجْلَيْهِ، ثُمَّ أَتَيْتُهُ بِالْمِنْدِيلِ فَرَدَّهُ» وَقَدْ ذَكَرْنَا قَوْلَهُ - عَلَيْهِ السَّلَامُ - لِأُمِّ سَلَمَةَ: «إِنَّمَا يَكْفِيكِ أَنْ تَحْثِي عَلَى رَأْسِكِ ثُمَّ تُفِيضِي الْمَاءَ عَلَيْكِ فَإِذَا بِكِ قَدْ طَهُرْتِ» .

[2] **Hadith references (L3550):** Sahih al-Bukhari 260.

cient for you to scoop water over your head, then pour water over yourself, and you will be purified."

فَلَهُ أَنْ يُقَدِّمَ غَسْلَ فَرْجِهِ وَأَعْضَاءِ وُضُوئِهِ قَبْلَ رَأْسِهِ فَقَطْ إِنْ شَاءَ، فَإِنْ انْغَمَسَ فِي مَاءٍ جَارٍ فَعَلَيْهِ أَنْ يَنْوِيَ تَقْدِيمَ رَأْسِهِ عَلَى جَسَدِهِ، وَلَا يَلْزَمُهُ ذَلِكَ فِي سَائِرِ الْأَغْسَالِ الْوَاجِبَةِ إِذْ لَمْ يَأْتِ بِذَلِكَ نَصٌّ، إِلَّا أَنْ يَصِحَّ أَنَّ هَكَذَا عَلَّمَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْحَيْضِ فَنَقِفُ عِنْدَهُ وَإِلَّا فَلَا، وَلَمْ يَأْتِ ذَلِكَ فِي الْحَيْضِ إِلَّا مِنْ طَرِيقِ إِبْرَاهِيمَ بْنِ الْمُهَاجِرِ وَهُوَ ضَعِيفٌ، وَرُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ عَنْ عَبْدِ الرَّزَّاقِ، وَلَيْسَ ذِكْرُ الْحَيْضِ مَحْفُوظًا عَنْ عَبْدِ الرَّزَّاقِ أَصْلًا فَإِنْ صَحَّ ذَلِكَ فِي الْحَيْضِ قُلْنَا بِهِ، وَلَمْ نَسْتَجِزْ مُخَالَفَتَهُ.

L3553 He may only wash his private parts and the limbs of ablution before his head if he so wishes. If he immerses himself in flowing water, he must intend to wash his head before his body. This is not required for other obligatory ghusls, as there is no explicit textual basis for it, unless it is reliably established that the Messenger of Allah—peace and blessings be upon him—instructed thus regarding menstruation, in which case we adhere to it; otherwise, we do not. This teaching regarding menstruation is only transmitted through Ibrāhīm ibn al-Muhājir, who is a weak narrator. We also narrated it through ʿAbd ibn Ḥumayd from ʿAbd al-Razzāq, but the mention of menstruation is entirely unpreserved in transmissions from ʿAbd al-Razzāq. If this is authenticated for menstruation, we would uphold it and do not permit opposing it.

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا حَفْصُ بْنُ عُمَرَ ثنا شُعْبَةُ أَخْبَرَنِي أَشْعَثُ بْنُ سُلَيْمٍ قَالَ: سَمِعْتُ أَبِي عَنْ مَسْرُوقٍ عَنْ عَائِشَةَ قَالَتْ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُعْجِبُهُ التَّيَمُّنُ فِي تَنَعُّلِهِ وَتَرَجُّلِهِ وَطَهُورِهِ وَفِي شَأْنِهِ كُلِّهِ» .

L3554 Abd al-Rahman ibn Abdullah narrated to us: Ibrāhīm ibn Aḥmad narrated to us: al-Farbarī narrated to us: al-Bukhārī narrated to us: Ḥafṣ ibn ʿUmar narrated to us: Shuʿbah narrated to us: Ashʿath ibn Sulaym informed me, who said: I heard my father narrate from Masrūq, from ʿĀ'ishah, who said: "The Messenger of Allah (peace and blessings of Allah be upon him) favored beginning with the right side when donning his sandals, combing his hair, during purification, and in all his matters."

[مَسْأَلَةٌ لَيْسَ عَلَى المغتسل أَنْ يَتَدَلَّكَ]

L3555 The person performing *ghusl* is not required to rub [their body].

١٨٩ - مَسْأَلَةٌ: - وَلَيْسَ عَلَيْهِ أَنْ يَتَدَلَّكَ: وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَالْأَوْزَاعِيِّ وَأَحْمَدَ بْنِ حَنْبَلٍ وَدَاوُد وَأَبِي حَنِيفَةَ وَالشَّافِعِيِّ، وَقَالَ مَالِكٌ بِوُجُوبِ التَّدَلُّكِ.

189 - Issue: He is not required to rub. This is the position of Sufyan al-Thawri, al-Awza'i, Ahmad ibn Hanbal, Dawud, Abu Hanifah, and al-Shafi'i. Malik held the opinion that there is an obligation to rub.

قَالَ أَبُو مُحَمَّد: بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ

L3557–3559 Abu Muhammad said: The proof of this is what Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us... Abd al-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Abu Bakr ibn Abi Shaybah, Ishaq ibn Ibrahim, Amr al-Naqid, and ibn Abi Umar, all of them from Sufyan ibn Uyaynah,

from Ayyub ibn Musa, from Sa'id ibn Abi Sa'id al-Maqburi, from Abdullah ibn Rafi', the freed slave of Umm Salamah, from Umm Salamah, who said: "I said, 'O Messenger of Allah, I am a woman who tightens the braids of my hair. Should I undo them for the ghusl of major impurity?' He replied, 'No, it suffices for you to pour three handfuls of water over your head, then pour water abundantly over yourself, and you will be purified.'"

أَبِي شَيْبَةَ وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ وَعَمْرٌو النَّاقِدُ وَابْنُ أَبِي عُمَرَ، كُلُّهُمْ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ، عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ رَافِعٍ مَوْلَى أُمِّ سَلَمَةَ عَنْ أُمِّ سَلَمَةَ قَالَتْ: «قُلْتُ يَا رَسُولَ اللَّهِ: إِنِّي امْرَأَةٌ أَشُدُّ ضَفْرَ رَأْسِي، أَفَأَنْقُضُهُ لِغُسْلِ الْجَنَابَةِ؟ فَقَالَ: لَا إِنَّمَا يَكْفِيكِ أَنْ تَحْثِيَ عَلَى رَأْسِكِ ثَلَاثَ حَثَيَاتٍ ثُمَّ تُفِيضِي عَلَيْكِ فَتَطْهُرِينَ» .

L3560 All the narrations describing the manner of his ritual washing—peace and blessings be upon him—are reported, with no mention of vigorous rubbing in any of them.

وَبِهَذَا جَاءَتْ الْآثَارُ كُلُّهَا فِي صِفَةِ غُسْلِهِ - عَلَيْهِ السَّلَامُ -، لَا ذِكْرَ لِلتَّدَلُّكِ فِي شَيْءٍ مِنْ ذَلِكَ.

L3561 It has been narrated to us from Umar ibn al-Khattab that he said regarding the ritual bath for major impurity: "Perform ablution as you would for prayer, then wash your head three times, then ensure water flows over your skin."

وَرُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ فِي الْغُسْلِ مِنْ الْجَنَابَةِ: فَتَوَضَّأْ وُضُوءَكَ لِلصَّلَاةِ ثُمَّ اغْسِلْ رَأْسَكَ ثَلَاثًا ثُمَّ أَفْضِ الْمَاءَ عَلَى جِلْدِكَ.

L3562 From al-Sha'bi, al-Nakha'i, and al-Hasan concerning the *junub* (one in major impurity) who immerses himself in water: verily, it suffices him for the *ghusl* (ritual bath).

وَعَنْ الشَّعْبِيِّ وَالنَّخَعِيِّ وَالْحَسَنِ فِي الْجُنُبِ يَنْغَمِسُ فِي الْمَاءِ إنَّهُ يَجْزِيهِ مِنْ الْغُسْلِ.

L3563 Those who deem scrubbing obligatory argued by stating: Consensus has been established that if one scrubs during the major ritual bath, it becomes valid. Disagreement exists about its validity when one does not scrub. Thus the obligation requires that the removal of major ritual impurity only becomes valid through consensus. They cited a ḥadīth where God's Messenger (PBUH) taught ʿĀ'ishah the major ritual bath for impurity, saying: "O ʿĀ'ishah, wash your hands." Then he instructed: "Rinse your mouth, sniff water into your nostrils and expel it, then wash your face." He said: "Wash your arms up to the elbows." Then he ordered: "Pour water over your head," followed by: "Pour water over your skin." He then commanded her to scrub and trace with her hand every part of her body untouched by water, concluding: "O ʿĀ'ishah, pour the remaining water over your head, then scrub your skin and ensure full coverage."

وَاحْتَجَّ مِنْ رَأَى التَّدَلُّكَ فَرْضًا بِأَنْ قَالَ: قَدْ صَحَّ الْإِجْمَاعُ عَلَى أَنَّ الْغُسْلَ إذَا تَدَلَّكَ فِيهِ فَإِنَّهُ قَدْ تَمَّ، وَاخْتُلِفَ فِيهِ إذَا لَمْ يَتَدَلَّكْ، فَالْوَاجِبُ أَنْ لَا يُجْزِئَ زَوَالُ الْجَنَابَةِ إلَّا بِالْإِجْمَاعِ. وَذَكَرُوا حَدِيثًا فِيهِ أَنَّ رَسُولَ اللَّهِ «- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَّمَ عَائِشَةَ الْغُسْلَ مِنْ الْجَنَابَةِ فَقَالَ لَهَا - عَلَيْهِ السَّلَامُ -: يَا عَائِشَةُ اغْسِلِي يَدَيْكِ ثُمَّ قَالَ لَهَا تَمَضْمَضِي ثُمَّ اسْتَنْشِقِي وَانْتَثِرِي ثُمَّ اغْسِلِي وَجْهَكِ ثُمَّ قَالَ: اغْسِلِي يَدَيْكِ إلَى الْمِرْفَقَيْنِ ثُمَّ قَالَ: أَفْرِغِي عَلَى رَأْسِكِ ثُمَّ قَالَ: أَفْرِغِي عَلَى جِلْدِكِ ثُمَّ أَمَرَهَا تَدْلُكُ وَتَتَّبِعُ بِيَدِهَا كُلَّ شَيْءٍ لَمْ يَمَسَّهُ

الْمَاءُ مِنْ جَسَدِهَا ثُمَّ قَالَ: يَا عَائِشَةُ أَفْرِغِي عَلَى رَأْسِكِ الَّذِي بَقِيَ ثُمَّ اُدْلُكِي جِلْدَكِ وَتَتَّبِعِي» .

L3564 And in another narration, he (peace be upon him) said, "Under every hair is janabah, so wash the hair and purify the skin."

وَبِحَدِيثٍ آخَرَ فِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ «إِنَّ تَحْتَ كُلِّ شَعْرَةٍ جَنَابَةً فَاغْسِلُوا الشَّعْرَ وَأَنْقُوا الْبَشَرَ» .

L3565 And in another narration therein: "Run fingers through the roots of the hair and thoroughly cleanse the skin." And in another narration therein: "A woman asked him—peace be upon him—about the ritual bath for major impurity. He—peace be upon him—said: 'Let one of you take her water, purify herself, do the purification well or attain thoroughness in purification, then pour water over her head while scrubbing until it reaches her scalp, then rinse her head thoroughly.'" Some of them said: "We applied analogy to this based on washing off impurity, which is not valid except with scrubbing." Some of them said: "The statement of the Almighty: {So purify yourselves thoroughly} [5:6] indicates the emphasis on thorough purification."[3]

وَبِحَدِيثٍ آخَرَ فِيهِ: «خَلِّلْ أُصُولَ الشَّعْرِ وَأَنْقِ الْبَشَرَ» وَبِحَدِيثٍ آخَرَ فِيهِ: «أَنَّ امْرَأَةً سَأَلَتْهُ - عَلَيْهِ السَّلَامُ - عَنْ غُسْلِ الْجَنَابَةِ. فَقَالَ - عَلَيْهِ السَّلَامُ -: تَأْخُذُ إِحْدَاكُنَّ مَاءَهَا فَتَطَهَّرُ فَتُحْسِنُ الطُّهُورَ أَوْ تَبْلُغُ فِي الطَّهُورِ ثُمَّ تَصُبُّ الْمَاءَ عَلَى رَأْسِهَا فَتَدْلُكُ حَتَّى يَبْلُغَ شُئُونَ رَأْسِهَا ثُمَّ تُفِيضُ الْمَاءَ عَلَى رَأْسِهَا» وَقَالَ بَعْضُهُمْ: قِسْنَا ذَلِكَ عَلَى غَسْلِ النَّجَاسَةِ لَا يُجْزِئُ إِلَّا بِعَرْكٍ وَقَالَ بَعْضُهُمْ: قَوْله تَعَالَى: {فَاطَّهَّرُوا} [المائدة: ٦] دَلِيلٌ عَلَى الْمُبَالَغَةِ.

L3566 Abu Muhammad said: This is all they have raised in protest, and all of it is ambiguous and baseless.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا شَغَبُوا بِهِ، وَكُلُّهُ إيهَامٌ وَبَاطِلٌ.

L3567–3568 As for their statement: "If the ritual bath involves rubbing, consensus affirms its completeness, but no consensus exists regarding its completeness without rubbing" – this is a corrupt assertion. The primary rebuttal is that this is not a matter requiring observance in religious practice, for Allah the Exalted only commanded us to adhere to consensus in matters where obligation has been established through consensus, prohibition has been established through consensus, or permissibility has been established through consensus. This constitutes the truth. As for the practice they mentioned, it merely imposes the obligation to adhere to differing opinions, not the obligation to adhere to consensus.

أَمَّا قَوْلُهُمْ: إنَّ الْغُسْلَ إذَا كَانَ بِتَدَلُّكٍ فَقَدْ أُجْمِعَ عَلَى تَمَامِهِ وَلَمْ يُجْمَعْ عَلَى تَمَامِهِ دُونَ تَدَلُّكٍ فَقَوْلٌ فَاسِدٌ، أَوَّلُ ذَلِكَ أَنَّهُ لَيْسَ ذَلِكَ مِمَّا يَجِبُ أَنْ يُرَاعَى فِي الدِّينِ لِأَنَّ اللَّهَ تَعَالَى إنَّمَا أَمَرَنَا بِاتِّبَاعِ الْإِجْمَاعِ فِيمَا صَحَّ وُجُوبُهُ مِنْ طَرِيقِ الْإِجْمَاعِ أَوْ صَحَّ تَحْرِيمُهُ مِنْ طَرِيقِ الْإِجْمَاعِ أَوْ صَحَّ تَحْلِيلُهُ مِنْ طَرِيقِ الْإِجْمَاعِ، فَهَذَا هُوَ الْحَقُّ: وَأَمَّا الْعَمَلُ الَّذِي ذَكَرُوا فَإِنَّمَا هُوَ إيجَابُ اتِّبَاعِ الِاخْتِلَافِ لَا وُجُوبُ اتِّبَاعِ الْإِجْمَاعِ.

L3569 This is invalid because there is no consensus on the obligation of ritual

وَهَذَا بَاطِلٌ لِأَنَّ التَّدَلُّكَ لَمْ يُتَّفَقْ عَلَى وُجُوبِهِ وَلَا جَاءَ بِهِ نَصٌّ. وَفِي الْعَمَلِ الَّذِي ذَكَرُوا إيجَابُ الْقَوْلِ بِمَا لَا نَصَّ فِيهِ وَلَا إجْمَاعَ، وَهَذَا بَاطِلٌ، ثُمَّ هُمْ أَوَّلُ مَنْ نَقَضَ

[3] **Qur'an references (L3565):** Qur'an 5:6 (Al-Ma'idah).

scrubbing, nor has any textual evidence come regarding it. The practice they mentioned entails imposing an obligation to assert rulings without textual proof or consensus, which is invalid. Moreover, they are the first to violate this principle. Were they to adhere to it, over nine-tenths of their school's doctrines would be invalidated. The first instance is that if one performs the ritual bath without rinsing the mouth or sniffing water into the nose, Abū Ḥanīfa rules that their ritual bath is invalid and prayer is impermissible with it. Thus, it would be said to them: "This necessitates obligating mouth rinsing and nose cleansing as compulsory acts in the ritual bath, for if the bather performs them, consensus is established that he has performed the ritual bath. If omitted, consensus is not established. Therefore, the legal ruling of major impurity cannot be lifted except by consensus." The same applies to one who bathes with water from a well into which a sheep urinated without leaving a trace, or to one who invalidated his ablution through its nullification. Such cases are too numerous to enumerate, permeating the majority of their legal issues. Scarcely any ruling of theirs—or others—escapes this inescapable implication. It suffices that this is an invalid ruling not mandated by Quran or Sunnah, for Allah Almighty commanded us to refer disputes solely to the Quran and Sunnah. The ruling on ritual scrubbing is a disputed matter; thus, consensus is not considered in it at all.

هَذَا الْأَصْلَ، وَإِنْ اتَّبَعُوهُ بَطَلَ عَلَيْهِمْ أَكْثَرُ مِنْ تِسْعَةِ أَعْشَارِ مَذَاهِبِهِمْ، أَوَّلُ ذَلِكَ أَنَّهُ يُقَالُ لَهُمْ إِنْ اغْتَسَلَ وَلَمْ يُمَضْمِضْ وَلَا اسْتَنْشَقَ فَأَبُو حَنِيفَةَ يَقُولُ لَا غُسْلَ لَهُ وَلَا تَحِلُّ لَهُ الصَّلَاةُ بِهَذَا الِاغْتِسَالِ، فَيُقَالُ لَهُمْ: فَيَلْزَمُكُمْ إِيجَابُ الْمَضْمَضَةِ وَالِاسْتِنْشَاقِ فِي الْغُسْلِ فَرْضًا لِأَنَّهُمَا إِنْ أَتَى بِهِمَا الْمُغْتَسِلُ فَقَدْ صَحَّ الْإِجْمَاعُ عَلَى أَنَّهُ قَدْ اغْتَسَلَ، وَإِنْ لَمْ يَأْتِ بِهِمَا فَلَمْ يَصِحَّ الْإِجْمَاعُ عَلَى أَنَّهُ قَدْ اغْتَسَلَ، فَالْوَاجِبُ أَنْ لَا يَزُولَ حُكْمُ الْجَنَابَةِ إِلَّا بِالْإِجْمَاعِ. وَهَكَذَا فِيمَنْ اغْتَسَلَ بِمَاءٍ مِنْ بِئْرٍ قَدْ بَالَتْ فِيهِ شَاةٌ فَلَمْ يَظْهَرْ فِيهَا لِلْبَوْلِ أَثَرٌ، وَهَكَذَا فِيمَنْ نَكَسَ وُضُوءَهُ، وَهَذَا أَكْثَرُ مِنْ أَنْ يُحْصَرَ، بَلْ هُوَ دَاخِلٌ فِي أَكْثَرِ مَسَائِلِهِمْ، وَمَا يَكَادُ يَخْلُصُ لَهُمْ وَلِغَيْرِهِمْ مَسْأَلَةٌ مِنْ هَذَا الْإِلْزَامِ، وَيَكْفِي مِنْ هَذَا أَنَّهُ حُكْمٌ فَاسِدٌ لَمْ يُوجِبْهُ قُرْآنٌ وَلَا سُنَّةٌ لِأَنَّ اللَّهَ تَعَالَى لَمْ يَأْمُرْنَا بِالرَّدِّ عِنْدَ التَّنَازُعِ إِلَّا إِلَى الْقُرْآنِ وَالسُّنَّةِ فَقَطْ، وَحُكْمُ التَّدَلُّكِ مَكَانُ تَنَازُعٍ فَلَا يُرَاعَى فِيهِ الْإِجْمَاعُ أَصْلًا.

L3570 As for the ḥadīth attributed to ʿĀ'ishah—may Allah be pleased with her—it is invalid, for its chain passes through ʿIkrimah ibn ʿAmmār—a rejected narrator—from ʿAbdullāh ibn ʿUbayd ibn ʿUmayr who claims it from ʿĀ'ishah. We have identified a fabricated narration in his transmissions concerning the Prophet's—peace and blessings be upon him—marriage to Umm Ḥabībah after the conquest of Mecca. Furthermore, this narration is mursal—a ḥadīth with an incomplete chain between the Successor and the Prophet—since ʿAbdullāh ibn ʿUbayd ibn ʿUmayr never met ʿĀ'ishah. The citation of Ibn ʿUmar's narration during Ibn al-Zubayr's era renders its attribution remote. Thus, this ḥadīth is entirely invalidated.

وَأَمَّا خَبَرُ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - فَسَاقِطٌ لِأَنَّهُ مِنْ طَرِيقِ عِكْرِمَةَ بْنِ عَمَّارٍ عَنْ عَبْدِ اللَّهِ بْنِ عُبَيْدِ بْنِ عُمَيْرٍ أَنَّ عَائِشَةَ، وَعِكْرِمَةُ سَاقِطٌ، وَقَدْ وَجَدْنَا عَنْهُ حَدِيثًا مَوْضُوعًا فِي نِكَاحِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُمَّ حَبِيبَةَ بَعْدَ فَتْحِ مَكَّةَ، ثُمَّ هُوَ مُرْسَلٌ، لِأَنَّ عَبْدَ اللَّهِ بْنَ عُبَيْدِ بْنِ عُمَيْرٍ لَمْ يُدْرِكْ عَائِشَةَ، وَأَبْعَدَ ذِكْرُهُ رِوَايَةَ ابْنِ عُمَرَ أَيَّامَ ابْنِ الزُّبَيْرِ، فَسَقَطَ هَذَا الْخَبَرُ.

L3571 Moreover, if it were authentic, it would constitute a proof against them, because it contains the command to perform *tadluk* (rubbing during ablution), just as it contains the command to rinse the mouth, expel water from

ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ، لِأَنَّهُ جَاءَ فِيهِ الْأَمْرُ بِالتَّدَلُّكِ، كَمَا جَاءَ فِيهِ بِالْمَضْمَضَةِ وَالِاسْتِنْثَارِ وَالِاسْتِنْشَاقِ وَلَا فَرْقَ، وَهُمْ لَا يَرَوْنَ شَيْئًا مِنْ ذَلِكَ فَرْضًا، وَأَبُو حَنِيفَةَ

the nose, and inhale water into the nostrils—there being no distinction in rulings. Yet other scholars do not regard any of these acts as obligatory, while Abū Ḥanīfah considers all of them obligatory except *tadluk*. Thus, all of them, if they were to cite this ḥadīth as evidence, would have contradicted their own argument and invalidated it, disobeying what they themselves deemed impermissible to disobey. Neither of the two groups has any greater right to regard what aligns with their position as obligatory and what opposes it as recommended than what the other group holds in this regard. As for us, were it authentic, we would uphold everything in it. Since it is inauthentic, all of it is disregarded.

يَرَى كُلَّ ذَلِكَ فَرْضًا، وَلَا يَرَى التَّدَلُّكَ فَرْضًا، فَكُلُّهُمْ إِنْ احْتَجَّ بِهَذَا الْخَبَرِ فَقَدْ خَالَفُوا حُجَّتَهُمْ وَأَسْقَطُوهَا، وَعَصَوْا مَا أَقَرُّوا أَنَّهُ لَا يَحِلُّ عِصْيَانُهُ، وَلَيْسَ لِإِحْدَى الطَّائِفَتَيْنِ مِنْ أَنْ تَحْمِلَ مَا وَافَقَهَا عَلَى الْفَرْضِ وَمَا خَالَفَهَا عَلَى النَّدْبِ، إِلَّا مِثْلَ مَا لِلْأُخْرَى مِنْ ذَلِكَ، وَأَمَّا نَحْنُ فَإِنَّهُ لَوْ صَحَّ لَقُلْنَا بِكُلِّ مَا فِيهِ، فَإِذْ لَمْ يَصِحَّ فَكُلُّهُ مَتْرُوكٌ.

L3572–3573 As for the ḥadīth, “Under every hair lies a state of major ritual impurity, so wash the hair and purify the skin,” it is narrated by Al-Ḥārith ibn Wajīh, who is a weak narrator. Even if it were authentic, they could not use it as evidence, for it merely instructs washing the hair and purifying the skin. While this is sound, it contains no evidence that such purification can only be achieved through rubbing. Rather, the act is complete without any rubbing.

وَأَمَّا الْخَبَرُ «إِنَّ تَحْتَ كُلِّ شَعْرَةٍ جَنَابَةً فَاغْسِلُوا الشَّعْرَ وَأَنْقُوا الْبَشَرَ» فَإِنَّهُ مِنْ رِوَايَةِ الْحَارِثِ بْنِ وَجِيهٍ، وَهُوَ ضَعِيفٌ، ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ إِلَّا غَسْلُ الشَّعْرِ وَإِنْقَاءُ الْبَشَرِ، وَهَذَا صَحِيحٌ وَلَا دَلِيلَ عَلَى أَنَّ ذَلِكَ لَا يَكُونُ إِلَّا بِالتَّدَلُّكِ، بَلْ هُوَ تَامٌّ دُونَ تَدَلُّكٍ.

L3574 As for the report stating, “Part the roots of the hair and cleanse the skin,” it is narrated by Yaḥyā ibn ʿAnbasah from Ḥumayd from Anas. Yaḥyā ibn ʿAnbasah is notorious for transmitting falsehoods, thus it is dismissed. Even if authentic, it would only establish the obligation of parting the hair—not rubbing it—which contradicts their position, for they do not disagree that one who pours water over his head while using his hands without parting the hair fulfills the requirement. Therefore, their reliance on this report is invalidated, and all praise belongs to Allah.

وَأَمَّا الْخَبَرُ الَّذِي فِيهِ «خَلِّلْ أُصُولَ الشَّعْرِ وَأَنْقِ الْبَشَرَ» فَهُوَ مِنْ رِوَايَةِ يَحْيَى بْنِ عَنْبَسَةَ عَنْ حُمَيْدٍ عَنْ أَنَسٍ، وَيَحْيَى بْنِ عَنْبَسَةَ مَشْهُورٌ بِرِوَايَةِ الْكَذِبِ، فَسَقَطَ، ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ إِلَّا إِيجَابُ التَّخْلِيلِ فَقَطْ لَا التَّدَلُّكِ وَهَذَا خِلَافُ قَوْلِهِمْ، لِأَنَّهُمْ لَا يَخْتَلِفُونَ فِيمَنْ صَبَّ الْمَاءَ عَلَى رَأْسِهِ وَمَعَكَ بِيَدَيْهِ دُونَ أَنْ يُخَلِّلَهُ أَنْ يُجْزِيَهُ، فَسَقَطَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ وَلِلَّهِ الْحَمْدُ.

L3575–3576 As for the ḥadīth, “One of you takes her fluid,” it is transmitted through the chain of Ibrāhīm ibn Muhājir from Ṣafiyyah from ʿĀ’ishah. This Ibrāhīm is weak. Moreover, even if it were authentic, it would only undermine their position, not support it, for it contains nothing except the act of massaging the hair of her head, and this contradicts their claim. Thus, all the reports they relied upon have been invalidated.

وَأَمَّا حَدِيثُ «تَأْخُذُ إِحْدَاكُنَّ مَاءَهَا» فَإِنَّهُ مِنْ طَرِيقِ إِبْرَاهِيمَ بْنِ مُهَاجِرٍ عَنْ صَفِيَّةَ عَنْ عَائِشَةَ، وَإِبْرَاهِيمُ هَذَا ضَعِيفٌ، ثُمَّ لَوْ صَحَّ لَمَا كَانَ إِلَّا عَلَيْهِمْ لَا لَهُمْ، لِأَنَّهُ لَيْسَ فِيهِ إِلَّا دَلْكُ شُئُونِ رَأْسِهَا فَقَطْ، وَهَذَا خِلَافُ قَوْلِهِمْ، فَسَقَطَ كُلُّ مَا تَعَلَّقُوا بِهِ مِنَ الْأَخْبَارِ.

L3577 As for their statement that they analogized this to washing off impurity, this analogy is entirely invalid. Moreover, even were it valid, this would constitute the very essence of invalidity, because rulings on impurity differ—among them being what is removed with three stones without water.

L3578 Some [types] can be removed merely by pouring water over them, without rubbing.

L3579 Among them are those that absolutely require washing and removal of their substance. What then justifies applying analogy to the washing required for major ritual impurity in some cases but not others? How can this be valid when it is inherently invalid according to the foundational principles upheld by the proponents of analogy? For ritual impurity constitutes a physical substance that must be removed, whereas there is no physical substance on the skin of the person in a state of major ritual impurity requiring removal. Thus, the invalidity of their position becomes wholly evident, and success is attained only through Allah, the Exalted.

L3580 Moreover, if the visible impurity is removed by pouring water, it does not require rubbing or rubbing; pouring suffices. So why do they not analogize the ritual bath for *janābah* (major ritual impurity) to this type of impurity removal, as it is more akin to it? For in both cases, there is no visible impurity present to be removed. And success is from Allah, the Most High.

L3581 As for their assertion that His Exalted's words "so purify yourselves thoroughly" indicate intensive effort—this is incoherent confusion. We do not know under which religious law or in which language they found this. He, the Exalted, stated regarding dry ablution: "But He intends to purify you" (5:6), which is—by the consensus of both us and them—a light wiping. Thus, all their embellishments are invalidated, and it becomes evident that scrubbing holds no meaning in ritual bathing. Success comes solely through Allah, the Exalted. We know of no precedent among the Companions—may Allah be pleased with them—who affirmed this position.[4]

L3582 **An issue: There is no juristic basis for combing through**

[4] **Qur'an references (L3581):** Qur'an 5:6 (Al-Ma'idah).

وَأَمَّا قَوْلُهُمْ قِسْنَا ذَلِكَ عَلَى غَسْلِ النَّجَاسَةِ، فَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنُ الْبَاطِلِ؛ لِأَنَّ حُكْمَ النَّجَاسَةِ يَخْتَلِفُ، فَمِنْهَا مَا يُزَالُ بِثَلَاثَةِ أَحْجَارٍ دُونَ مَاءٍ.

وَمِنْهَا مَا يُزَالُ بِصَبِّ الْمَاءِ فَقَطْ دُونَ عَرْكٍ.

وَمِنْهَا مَا لَا بُدَّ مِنْ غَسْلِهِ وَإِزَالَةِ عَيْنِهِ فَمَا الَّذِي جَعَلَ غُسْلَ الْجَنَابَةِ أَنْ يُقَاسَ عَلَى بَعْضِ ذَلِكَ دُونَ بَعْضٍ؟ فَكَيْفَ وَهُوَ فَاسِدٌ عَلَى أُصُولِ أَصْحَابِ الْقِيَاسِ، لِأَنَّ النَّجَاسَةَ عَيْنٌ تَجِبُ إِزَالَتُهَا، وَلَيْسَ فِي جِلْدِ الْجُنُبِ عَيْنٌ تَجِبُ إِزَالَتُهَا، فَظَهَرَ فَسَادُ قَوْلِهِمْ جُمْلَةً، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَيْضًا فَإِنَّ عَيْنَ النَّجَاسَةِ إِذَا زَالَ بِصَبِّ الْمَاءِ فَإِنَّهُ لَا يَحْتَاجُ فِيهَا إِلَى عَرْكٍ وَلَا دَلْكٍ، بَلْ يُجْزِئُ الصَّبُّ، فَهَلَّا قَاسُوا غُسْلَ الْجَنَابَةِ عَلَى هَذَا النَّوْعِ مِنْ إِزَالَةِ النَّجَاسَةِ فَهُوَ أَشْبَهُ بِهِ؟ إِذْ كِلَاهُمَا لَا عَيْنَ هُنَاكَ تُزَالُ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا قَوْلُهُمْ: إِنَّ قَوْله تَعَالَى: (فَاطَّهَّرُوا) دَلِيلٌ عَلَى الْمُبَالَغَةِ، فَتَخْلِيطٌ لَا يُعْقَلُ، وَلَا نَدْرِي فِي أَيِّ شَرِيعَةٍ وَجَدُوا هَذَا، أَوْ فِي أَيِّ لُغَةٍ؟ وَقَدْ قَالَ تَعَالَى فِي التَّيَمُّمِ {وَلَكِنْ يُرِيدُ لِيُطَهِّرَكُمْ} [المائدة: ٦] وَهُوَ مَسْحٌ خَفِيفٌ بِإِجْمَاعٍ مِنَّا وَمِنْهُمْ، فَسَقَطَ كُلُّ مَا مَوَّهُوا بِهِ، وَوَضَحَ أَنَّ التَّدَلُّكَ لَا مَعْنَى لَهُ فِي الْغُسْلِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. وَمَا نَعْلَمُ لَهُمْ سَلَفًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي الْقَوْلِ بِذَلِكَ.

[مَسْأَلَةٌ لَا مَعْنَى لِتَخْلِيلِ اللِّحْيَةِ فِي الْغُسْلِ وَلَا فِي الْوُضُوءِ]

the beard during *ghusl* or *wudu*.

L3583 Issue 190: There is no basis for combing through the beard during major ritual bathing (ghusl) nor during ablution (wuḍūʾ). This is the view of Mālik, Abū Ḥanīfah, al-Shāfiʿī, and Dāwūd.

١٩٠ - مَسْأَلَةٌ: وَلَا مَعْنَى لِتَخْلِيلِ اللِّحْيَةِ فِي الْغُسْلِ وَلَا فِي الْوُضُوءِ، وَهُوَ قَوْلُ مَالِكٍ وَأَبِي حَنِيفَةَ وَالشَّافِعِيِّ وَدَاوُد.

L3584 The proof for this is what was narrated to us by Abdullah ibn Rabee', narrated by Muhammad ibn Mu'awiyah, narrated by Ahmad ibn Shu'ayb, narrated by Muhammad ibn al-Muthanna, narrated by Yahya—who is Ibn Sa'id al-Qattan—from Sufyan al-Thawri, narrated by Zayd ibn Aslam, narrated by 'Ata ibn Yasar, narrated by Ibn Abbas, who said: "Shall I inform you about the ablution of the Messenger of Allah (may Allah bless him and grant him peace)?" He then performed ablution, washing each limb once.[5]

وَالْحُجَّةُ فِي ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ سُفْيَانَ الثَّوْرِيِّ ثنا زَيْدُ بْنُ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنِ ابْنِ عَبَّاسٍ قَالَ «أَلَا أُخْبِرُكُمْ بِوُضُوءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَتَوَضَّأَ مَرَّةً مَرَّةً» .

L3585–3587 And washing the face once, it is not possible with it for the water to reach the roots of the hair, nor is it completed. That is only by repeating the washing and scrubbing. He - the Almighty and Exalted - said: {Wash your faces} [Al-Ma'idah: 6]. The face is what directly faces whatever is opposite its outward surface, for the underlying skin is not part of the face. A group of scholars held the obligation of finger-combing [the beard], as we have been narrated from Mus'ab ibn Sa'd that Umar ibn Al-Khattab saw people performing ablution and said: "Finger-comb [your beards]." From his son Abdullah also, a similar account is narrated. From Ibn Jurayj through Ata: "Wash the roots of the beard hair." Ibn Jurayj said: "I asked Ata: 'Am I obligated to moisten the root of every hair on the face?' He replied: 'Yes.' Ibn Jurayj continued: 'Including the two mustaches and the two eyebrows along with the beard?' He answered: 'Yes.'" Ibn Sabit, Abdur-Rahman ibn Abi Layla, and Sa'id ibn Jubayr affirmed the obligation of finger-combing the beard during ablution and ritual bathing. Narrations from others besides these mention their practice of finger-combing without them commanding others to do so, including accounts from Uthman ibn Affan who finger-combed his beard during ablution, and similar reports from Ammar ibn Yasir, Abdullah ibn Abi Awfa, Abu Ad-Darda, and Ali ibn Abi Talib. This position was adopted by Ahmad ibn Hanbal, being the view of Abu Al-Bakhtari, Abu

قَالَ عَلِيٌّ: وَغَسْلُ الْوَجْهِ مَرَّةً لَا يُمْكِنُ مَعَهُ بُلُوغُ الْمَاءِ إلَى أُصُولِ الشَّعْرِ، وَلَا يَتِمُّ ذَلِكَ إلَّا بِتَرْدَادِ الْغُسْلِ وَالْعَرْكِ، وَقَالَ - عَزَّ وَجَلَّ -: {فَاغْسِلُوا وُجُوهَكُمْ} [المائدة: ٦] وَالْوَجْهُ هُوَ مَا وَاجَهَ مَا قَابَلَهُ بِظَاهِرِهِ، وَلَيْسَ الْبَاطِنُ وَجْهًا وَذَهَبَ إلَى إيجَابِ التَّخْلِيلِ قَوْمٌ، كَمَا رُوِّينَا عَنْ مُصْعَبِ بْنِ سَعْدٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ رَأَى قَوْمًا يَتَوَضَّئُونَ، فَقَالَ خَلِّلُوا وَعَنْ ابْنِهِ عَبْدِ اللَّهِ أَيْضًا مِثْلَ ذَلِكَ، وَعَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ أَنَّهُ قَالَ: اغْسِلْ أُصُولَ شَعْرِ اللِّحْيَةِ، قَالَ ابْنُ جُرَيْجٍ: قُلْتُ لِعَطَاءٍ أَيَحِقُّ عَلَيَّ أَنْ أَبُلَّ أَصْلَ كُلِّ شَعْرَةٍ فِي الْوَجْهِ؟ قَالَ نَعَمْ، قَالَ ابْنُ جُرَيْجٍ: وَأَنْ أَزِيدَ مَعَ اللِّحْيَةِ الشَّارِبَيْنِ وَالْحَاجِبَيْنِ؟ قَالَ: نَعَمْ، وَعَنْ ابْنِ سَابِطٍ وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى وَسَعِيدِ بْنِ جُبَيْرٍ إيجَابُ تَخْلِيلِ اللِّحْيَةِ فِي الْوُضُوءِ وَالْغُسْلِ، وَرُوِّينَا عَنْ غَيْرِ هَؤُلَاءِ فِعْلَ التَّخْلِيلِ دُونَ أَنْ يَأْمُرُوا بِذَلِكَ، فَرُوِّينَا عَنْ عُثْمَانَ بْنِ عَفَّانَ أَنَّهُ تَوَضَّأَ فَخَلَّلَ لِحْيَتَهُ وَعَنْ عَمَّارِ بْنِ يَاسِرٍ مِثْلَ ذَلِكَ، وَعَنْ عَبْدِ اللَّهِ بْنِ أَبِي أَوْفَى وَعَنْ أَبِي الدَّرْدَاءِ وَعَلِيِّ بْنِ أَبِي طَالِبٍ مِثْلَ ذَلِكَ، وَإِلَى هَذَا كَانَ

[5] **Hadith references (L3584):** Sunan Abi Dawud 138; Sunan an-Nasai 80.

Maysarah, Ibn Sirin, Al-Hasan, Abu Ubaydah ibn Abdullah ibn Mas'ud, Abd al-Razzaq, and others.[6]

يَذْهَبُ أَحْمَدُ بْنُ حَنْبَلٍ، وَهُوَ قَوْلُ أَبِي الْبَخْتَرِيِّ وَأَبِي مَيْسَرَةَ وَابْنِ سِيرِينَ وَالْحَسَنِ وَأَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ وَعَبْدِ الرَّزَّاقِ وَغَيْرِهِ.

L3588 Abu Muhammad said: Those who affirm the obligation of this practice argue using a hadith we narrated from Anas: "When the Messenger of Allah—peace and blessings be upon him—performed wuḍūʾ, he would take a handful of water, place it beneath his chin, run it through his beard, and say: 'This is what my Lord commanded me.'"

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ مِنْ رَأَى إِيجَابَ ذَلِكَ بِحَدِيثٍ رُوِّينَاهُ عَنْ أَنَسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ إِذَا تَوَضَّأَ أَخَذَ كَفًّا مِنْ مَاءٍ فَأَدْخَلَهُ تَحْتَ حَنَكِهِ فَخَلَّلَ بِهِ لِحْيَتَهُ وَقَالَ: بِهَذَا أَمَرَنِي رَبِّي» .

L3589–3591 And in another narration from Anas, from the Messenger of Allah—peace and blessings be upon him—who said: "Jibril came to me and said: 'Your Lord commands you to wash the fanīk (a term referring to the chin)—and the fanīk is the chin—finger-comb your beard during ablution.'" And from Ibn Abbas. The Messenger of Allah - may the peace and blessings of Allah be upon him - would perform ablution, comb his beard, and say: "Thus has my Lord commanded me"; and through the narration of Wahab: "Thus has my Lord commanded me."

وَبِحَدِيثٍ آخَرَ عَنْ أَنَسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَتَانِي جِبْرِيلُ فَقَالَ: إِنَّ رَبَّكَ يَأْمُرُكَ بِغَسْلِ الْفَنِيكِ وَالْفَنِيكُ الذَّقَنُ خَلِّلْ لِحْيَتَكَ عِنْدَ الطُّهُورِ» وَعَنْ ابْنِ عَبَّاسٍ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَتَطَهَّرُ وَيُخَلِّلُ لِحْيَتَهُ، وَيَقُولُ: هَكَذَا أَمَرَنِي رَبِّي وَمِنْ طَرِيقِ وَهْبٍ هَكَذَا أَمَرَنِي رَبِّي» .

L3592 Abu Muhammad said: All of this is invalid, and were it valid, we would have upheld it. As for the ḥadīth of Anas, it is transmitted through the chain of al-Walīd ibn Zawarān—who is unknown. The second chain includes ʿUmar ibn Dhuʾayb—who is unknown. The third chain is through Muqātil ibn Sulaymān—who is accused of lying. The fourth chain involves al-Haytham ibn Jammāz (who is weak) narrating from Yazīd al-Raqāshī (who is unreliable). Thus, all these chains are rejected.

قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ هَذَا لَا يَصِحُّ، وَلَوْ صَحَّ لَقُلْنَا بِهِ: أَمَّا حَدِيثُ أَنَسٍ فَإِنَّهُ مِنْ طَرِيقِ الْوَلِيدِ بْنِ زَوَرَانَ وَهُوَ مَجْهُولٌ وَالطَّرِيقُ الْآخَرُ فِيهَا عُمَرُ بْنُ ذُؤَيْبٍ وَهُوَ مَجْهُولٌ وَالطَّرِيقُ الثَّالِثَةُ مِنْ طَرِيقِ مُقَاتِلِ بْنِ سُلَيْمَانَ وَهُوَ مَغْمُوزٌ بِالْكَذِبِ، وَالطَّرِيقُ الرَّابِعَةُ فِيهَا الْهَيْثَمُ بْنُ جَمَّازٍ وَهُوَ ضَعِيفٌ، عَنْ يَزِيدَ الرَّقَاشِيِّ وَهُوَ لَا شَيْءَ، فَسَقَطَتْ كُلُّهَا.

L3593 Then we examined the ḥadīth of Ibn ʿAbbās and found it transmitted through the chain of Nāfiʿ, the freed slave of Yūsuf—who is weak and denounced in ḥadīth. The other chain contains unknown, unrecognized narrators. The one transmitted through Ibn Wahb does not name anyone in the chain between Ibn Wahb and the Messenger of Allah (peace and blessings of Allah be upon him). Thus, all of that is invalidated.

ثُمَّ نَظَرْنَا فِي حَدِيثِ ابْنِ عَبَّاسٍ فَوَجَدْنَاهُ مِنْ طَرِيقِ نَافِعٍ مَوْلَى يُوسُفَ وَهُوَ ضَعِيفٌ مُنْكَرُ الْحَدِيثِ، وَالْأُخْرَى فِيهَا مَجْهُولُونَ لَا يُعْرَفُونَ، وَالَّذِي مِنْ طَرِيقِ ابْنِ وَهْبٍ لَمْ يُسَمَّ فِيهِ مِمَّنْ بَيْنَ ابْنِ وَهْبٍ وَرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَحَدٌ، فَسَقَطَ كُلُّ ذَلِكَ.

L3594 As for those who consider combing the beard recommended, they cite as

[6] **Qur'an references (L3585):** Qur'an 5:6 (Al-Ma'idah).

evidence a ḥadīth narrated by ʿUthmān ibn ʿAffān: “that the Messenger of Allah (peace and blessings be upon him) would groom his beard,” and the same is reported from ʿAmmār ibn Yāsir.

وَأَمَّا مَنْ اسْتَحَبَّ التَّخْلِيلَ فَاحْتَجُّوا بِحَدِيثٍ مِنْ طَرِيقِ عُثْمَانَ بْنِ عَفَّانَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُخَلِّلُ لِحْيَتَهُ» وَعَنْ عَمَّارِ بْنِ يَاسِرٍ مِثْلُ ذَلِكَ.

L3595 A similar ruling is narrated from ʿĀ’ishah.

وَعَنْ عَائِشَةَ مِثْلُ ذَلِكَ.

L3596–3597 The same ruling is reported from ʿAbd Allāh ibn Awfā. The same ruling is reported from al-Ḥasan. The same ruling is reported from Abū Ayyūb.

وَعَنْ عَبْدِ اللَّهِ بْنِ أَوْفَى مِثْلُ ذَلِكَ. وَعَنْ الْحَسَنِ مِثْلُ ذَلِكَ. وَعَنْ أَبِي أَيُّوبَ مِثْلُ ذَلِكَ.

L3598–3599 The same is narrated by Anas. The same is narrated by Umm Salama. The same is narrated by Jabir. The same is narrated by ʿAmr ibn al-Ḥārith.

وَعَنْ أَنَسٍ مِثْلُ ذَلِكَ. وَعَنْ أُمِّ سَلَمَةَ مِثْلُ ذَلِكَ، وَعَنْ جَابِرٍ مِثْلُ ذَلِكَ وَعَنْ عَمْرِو بْنِ الْحَارِثِ مِثْلُ ذَلِكَ.

L3600 Abu Muhammad said: None of this is valid whatsoever. As for the ḥadīth of Uthmān, it is transmitted via the route of Isrā’īl—who is not strong—from ʿĀmir ibn Shaqīq, who is not renowned for the strength of his transmission.

قَالَ أَبُو مُحَمَّد: وَهَذَا كُلُّهُ لَا يَصِحُّ مِنْهُ شَيْءٌ: أَمَّا حَدِيثُ عُثْمَانَ فَمِنْ طَرِيقِ إسْرَائِيلَ وَلَيْسَ بِالْقَوِيِّ، عَنْ عَامِرِ بْنِ شَقِيقٍ، وَلَيْسَ مَشْهُورًا بِقُوَّةِ النَّقْلِ.

L3601 As for the ḥadīth of ʿAmmār, it is transmitted through Ḥassān ibn Bilāl al-Muzanī—who is unknown—and also, no meeting with ʿAmmār is known for him. As for the ḥadīth of ʿĀ’ishah, it is transmitted through an unknown man—it is not known who he is—: Shuʿbah names him ʿAmr ibn Abī Wahb; Umayyah ibn Khālid names him ʿImrān ibn Abī Wahb.

وَأَمَّا حَدِيثُ عَمَّارٍ فَمِنْ طَرِيقِ حَسَّانَ بْنِ بِلَالٍ الْمُزَنِيِّ وَهُوَ مَجْهُولٌ، وَأَيْضًا فَلَا يُعْرَفُ لَهُ لِقَاءٌ لِعَمَّارٍ وَأَمَّا حَدِيثُ عَائِشَةَ فَإِنَّهُ مِنْ طَرِيقِ رَجُلٍ مَجْهُولٍ لَا يُعْرَفُ مَنْ هُوَ؟ شُعْبَةُ يُسَمِّيهِ عَمْرَو بْنَ أَبِي وَهْبٍ. وَأُمَيَّةُ بْنُ خَالِدٍ يُسَمِّيهِ عِمْرَانَ بْنَ أَبِي وَهْبٍ.

L3602 As for the ḥadīth of Ibn Abī Awfā, it is narrated through Abū al-Waraqā Fā’id ibn ʿAbd al-Raḥmān al-ʿAṭṭār. He is a weak transmitter discarded by Aḥmad, Yaḥyā, al-Bukhārī, and others.

وَأَمَّا حَدِيثُ ابْنِ أَبِي أَوْفَى فَهُوَ مِنْ طَرِيقِ أَبِي الْوَرْقَاءِ فَائِدِ بْنِ عَبْدِ الرَّحْمَنِ الْعَطَّارِ وَهُوَ ضَعِيفٌ أَسْقَطَهُ أَحْمَدُ وَيَحْيَى وَالْبُخَارِيُّ وَغَيْرُهُمْ.

L3603–3605 As for the ḥadīth of Abū Ayyūb, it is transmitted through the chain of Wāṣil ibn al-Sā’ib—who is weak. The Abū Ayyūb mentioned therein is not Abū Ayyūb al-Anṣārī, the Companion of the Prophet (peace be upon him), as stated by Ibn Maʿīn. As for the ḥadīth of Anas, it is transmitted through the chain of Ayyūb ibn ʿAbd Allāh—who is unknown. As for the ḥadīth of Umm Salamah, it is transmitted through the chain of Khālid ibn Ilyās al-Madīnī, a descendant of Abū al-Jaḥm ibn Ḥudhayfah al-ʿAdawī—who is discarded and deemed unreliable in ḥadīth. He is not Khālid ibn Ilyās narrated from by

وَأَمَّا حَدِيثُ أَبِي أَيُّوبَ فَمِنْ طَرِيقِ وَاصِلِ بْنِ السَّائِبِ وَهُوَ ضَعِيفٌ، وَأَبُو أَيُّوبَ الْمَذْكُورُ فِيهِ لَيْسَ هُوَ أَبَا أَيُّوبَ الْأَنْصَارِيَّ صَاحِبَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَهُ ابْنُ مَعِينٍ. وَأَمَّا حَدِيثُ أَنَسٍ فَهُوَ مِنْ طَرِيقِ أَيُّوبَ بْنِ عَبْدِ اللَّهِ وَهُوَ مَجْهُولٌ. وَأَمَّا حَدِيثُ أُمِّ سَلَمَةَ فَهُوَ مِنْ طَرِيقِ خَالِدِ بْنِ إلْيَاسَ الْمَدِينِيِّ، مِنْ وَلَدِ أَبِي الْجَهْمِ بْنِ حُذَيْفَةَ الْعَدَوِيِّ وَهُوَ

Shuʿbah—that one being a trustworthy Basran. As for the ḥadīth of Jābir, it is transmitted through the chain of Aṣram ibn Ghiyāth—who is wholly discarded and not to be relied upon. As for the ḥadīths of al-Ḥasan and ʿAmr ibn al-Ḥārith, they are both mursal. Thus, all that is in this chapter has been invalidated. Indeed, it is incumbent upon those who cite the ḥadīth of Muʿādh—"I exercise ijtihād (independent juristic reasoning)"—and make it a foundational principle in religion to uphold this obligation. And with the hadiths concerning ablution with nabīdh, ablution after laughter during prayer, and the hadith on selling meat in exchange for a live animal—wherein he claims textual clarity and recurrent transmission, arguing that these reports are used as evidence since they are clearer in clarity and more recurrently transmitted than those others. Yet the group was solely preoccupied with defending their current position at the time.

L3606 And he who held the view of intertwining fingers through the beard during ablution also argued by saying: We observed that washing the face remains obligatory without disagreement before beard growth. When the beard grew, some asserted the cessation of this obligation while others upheld it. Therefore, what we agreed upon must remain binding unless overruled by another explicit textual ruling or consensus. Abu Muhammad said: This is correct, and that obligation has ceased through textual evidence, for washing is only obligatory as long as it is termed a face. When the face became concealed by beard growth, the term "face" ceased to apply to it, and this designation transferred to the hair that became visible on the face. Since its name ceased, its ruling ceased, and success is by Allah, the Exalted.

L3607 **A legal inquiry into whether a woman is required to comb through the hair of her forelock or undo her plaits during the ritual bath for major impurity (janabah).**

L3608 Issue 191: A woman is not required to comb through the hair of her forelock or braids during the ritual bath following sexual defilement (janabah), due to what we mentioned two chapters earlier in the book within the chapter on scrubbing during the ritual bath. This is the opinion of the present-day opponents among those who disagree with us.

سَاقِطٌ مُنْكَرُ الْحَدِيثِ، وَلَيْسَ هُوَ خَالِدُ بْنُ إِلْيَاسٍ الَّذِي يَرْوِي عَنْهُ شُعْبَةُ، ذَا بَصْرِيٌّ ثِقَةٌ. وَأَمَّا حَدِيثُ جَابِرٍ فَهُوَ مِنْ طَرِيقِ أَصْرَمَ بْنِ غِيَاثٍ، وَهُوَ سَاقِطٌ أَلْبَتَّةَ لَا يُحْتَجُّ بِهِ. وَأَمَّا حَدِيثُ الْحَسَنِ وَعَمْرِو بْنِ الْحَارِثِ فَمُرْسَلَانِ، فَسَقَطَ كُلُّ مَا فِي هَذَا الْبَابِ وَلَقَدْ كَانَ يَلْزَمُ مَنْ يَحْتَجُّ بِحَدِيثِ مُعَاذٍ " أَجْتَهِدُ رَأْيِي " وَيَجْعَلُهُ أَصْلًا فِي الدِّينِ وَبِأَحَادِيثِ الْوُضُوءِ بِالنَّبِيذِ وَبِالْوُضُوءِ مِنْ الْقَهْقَهَةِ فِي الصَّلَاةِ، وَبِحَدِيثِ بَيْعِ اللَّحْمِ بِالْحَيَوَانِ، وَيَدَّعِي فِيهَا الظُّهُورَ وَالتَّوَاتُرَ - أَنْ يُحْتَجَّ بِهَذِهِ الْأَخْبَارِ فَهِيَ أَشَدُّ ظُهُورًا وَأَكْثَرُ تَوَاتُرًا - مِنْ تِلْكَ، وَلَكِنَّ الْقَوْمَ إنَّمَا هَمُّهُمْ نَصْرُ مَا هُمْ فِيهِ فِي الْوَقْتِ فَقَطْ.

وَاحْتَجَّ أَيْضًا مِنْ رَأَى التَّخْلِيلَ بِأَنْ قَالُوا: وَجَدْنَا الْوَجْهَ يَلْزَمُ غَسْلُهُ بِلَا خِلَافٍ قَبْلَ نَبَاتِ اللِّحْيَةِ، فَلَمَّا نَبَتَتْ ادَّعَى قَوْمٌ سُقُوطَ ذَلِكَ وَثَبَتَ عَلَيْهِ آخَرُونَ، فَوَاجِبٌ أَنْ لَا يَسْقُطَ مَا اتَّفَقْنَا عَلَيْهِ إلَّا بِنَصٍّ آخَرَ أَوْ إجْمَاعٍ قَالَ أَبُو مُحَمَّد: وَهَذَا حَقٌّ، وَقَدْ سَقَطَ ذَلِكَ بِالنَّصِّ، لِأَنَّهُ إنَّمَا يَلْزَمُ غَسْلُهُ مَا دَامَ يُسَمَّى وَجْهًا، فَلَمَّا خَفِيَ بِنَبَاتِ الشَّعْرِ سَقَطَ عَنْهُ اسْمُ الْوَجْهِ، وَانْتَقَلَ هَذَا الِاسْمُ إلَى مَا ظَهَرَ عَلَى الْوَجْهِ مِنْ الشَّعْرِ، وَإِذْ سَقَطَ اسْمُهُ سَقَطَ حُكْمُهُ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَخْلِيلِ الْمَرْأَةِ شَعْرِ نَاصِيَتِهَا أَوْ ضَفَائِرِهَا فِي غُسْلِ الْجَنَابَةِ]

١٩١ - مَسْأَلَةٌ: وَلَيْسَ عَلَى الْمَرْأَةِ أَنْ تُخَلِّلَ شَعْرَ نَاصِيَتِهَا أَوْ ضَفَائِرِهَا فِي غُسْلِ الْجَنَابَةِ فَقَطْ، لِمَا ذَكَرْنَاهُ قَبْلَ هَذَا بِبَابَيْنِ فِي بَابِ التَّدَلُّكِ وَهُوَ قَوْلُ الْحَاضِرِينَ مِنْ الْمُخَالِفِينَ لَنَا.

[مَسْأَلَةٌ حَلُّ ضَفَائِرِ الْمَرْأَةِ وَنَاصِيَتِهَا فِي الْغُسْلِ]

١٩٢ - مَسْأَلَةٌ: وَيَلْزَمُ الْمَرْأَةَ حَلُّ ضَفَائِرِهَا وَنَاصِيَتِهَا فِي غُسْلِ الْحَيْضِ وَغُسْلِ الْجُمُعَةِ وَالْغُسْلِ مِنْ غُسْلِ الْمَيِّتِ وَمِنْ النِّفَاسِ.

لِمَا حَدَّثَنَاهُ يُونُسُ بْنُ عَبْدِ اللَّهِ بْنِ مَغِيثٍ ثنا أَبُو عِيسَى بْنُ أَبِي عِيسَى ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا مُحَمَّدُ بْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهَا فِي الْحَيْضِ «انْقُضِي رَأْسَكِ وَاغْتَسِلِي» .

قَالَ عَلِيٌّ: وَالْأَصْلُ فِي الْغُسْلِ الِاسْتِيعَابُ لِجَمِيعِ الشَّعْرِ، وَإِيصَالُ الْمَاءِ إلَى الْبَشَرَةِ بِيَقِينٍ، بِخِلَافِ الْمَسْحِ، فَلَا يَسْقُطُ ذَلِكَ إلَّا حَيْثُ أَسْقَطَهُ النَّصُّ، وَلَيْسَ ذَلِكَ إلَّا فِي الْجَنَابَةِ فَقَطْ، وَقَدْ صَحَّ الْإِجْمَاعُ بِأَنَّ غُسْلَ النِّفَاسِ كَغُسْلِ الْحَيْضِ.

فَإِنْ قِيلَ: فَإِنَّ عَبْدَ اللَّهِ بْنَ يُوسُفَ حَدَّثَكُمْ قَالَ: ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ عَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ رَافِعٍ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «يَا رَسُولَ اللَّهِ إنِّي امْرَأَةٌ أَشُدُّ ضَفْرَ رَأْسِي أَفَأَنْقُضُهُ لِلْحَيْضَةِ وَالْجَنَابَةِ؟ قَالَ: لَا» .

قَالَ عَلِيٌّ: قَوْلُهُ هَهُنَا رَاجِعٌ إلَى الْجَنَابَةِ لَا غَيْرُ، وَأَمَّا النَّقْضُ فِي الْحَيْضِ فَالنَّصُّ قَدْ وَرَدَ بِهِ، وَلَوْ كَانَ كَذَلِكَ لَكَانَ الْأَخْذُ بِهِ وَاجِبٌ إلَّا أَنَّ حَدِيثَ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - نَسَخَ ذَلِكَ بِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهَا فِي غُسْلِ الْحَيْضِ «انْقُضِي رَأْسَكِ وَاغْتَسِلِي» فَوَجَبَ الْأَخْذُ بِهَذَا الْحَدِيثِ.

Issue: Undoing the woman's braids and forelock during ghusl.

192 - Issue: A woman is obligated to undo her braids and forelock during the ritual bath for menstruation, the Friday ritual bath, the ritual bath required due to washing a deceased person, and the postpartum ritual bath.

Yunus ibn Abdullah ibn Maghith narrated to us from Abu Isa ibn Abi Isa, who narrated from Ahmad ibn Khalid, who narrated from Muhammad ibn Waddah, who narrated from Abu Bakr ibn Abi Shaybah, from Waki', from Hisham ibn Urwah, from his father, from Aisha that the Prophet (peace and blessings be upon him) said to her regarding menstruation: "Loosen your hair and perform the ritual bath." Ali said: The foundational principle of the ritual bath is complete coverage of all hair and ensuring water reaches the skin with certainty, unlike wiping. This obligation is not waived except where exempted by textual evidence, and that applies only to major ritual impurity (janabah). Consensus has been firmly established that the bath for postnatal bleeding is like the bath for menstruation.

If it is said, "Indeed, Abdullah ibn Yusuf has narrated to you," he said: Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa, Ahmad ibn Muhammad, Ahmad ibn Ali, Muslim ibn al-Hajjaj, Abd[...] ibn Humaid from Abd al-Razzaq from Sufyan al-Thawrī from Ayyub ibn Musa from Sa'id ibn Abi Sa'id al-Maqburi. From Abdullah ibn Rafi', from Umm Salamah, the Mother of the Believers, who said: "O Messenger of Allah, I am a woman who tightly braids my hair. Should I undo it during menstruation and major ritual impurity?" He said: "No."

Ali said: His statement here refers solely to major impurity (janābah) and nothing else. As for undoing during menstruation, textual evidence has indeed been transmitted. If that were applicable, following it would be obligatory. However, the ḥadīth of ʿĀ'ishah (may Allah be pleased with her) abrogated that through the Prophet's (peace be upon him) instruction to her regarding the ritual bath after menstruation: "Undo your hair and perform ghusl." Thus, acting upon this ḥadīth became obligatory.

قَالَ عَلِيٌّ: قُلْنَا نَعَمْ، إِلَّا أَنَّ حَدِيثَ هِشَامِ بْنِ عُرْوَةَ عَنْ عَائِشَةَ الْوَارِدَ بِنَقْضِ ضَفْرِهَا فِي غُسْلِ الْحَيْضَةِ - هُوَ زَائِدٌ حُكْمًا وَمُثْبَتٌ شَرْعًا عَلَى حَدِيثِ أُمِّ سَلَمَةَ، وَالزِّيَادَةُ لَا يَجُوزُ تَرْكُهَا.

L3616 Ali said: We said, "Yes," except that the *ḥadīth* of Hishām ibn ʿUrwah from ʿĀ'ishah – which mentions her undoing her braids during the ritual bath following menstruation – constitutes an additional legal ruling and is legally established over the *ḥadīth* of Umm Salamah, for such additions may not be disregarded.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ رُوِّينَا حَدِيثًا سَاقِطًا عَنْ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ عَنْ ابْنِ لَهِيعَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمَرْأَةِ تَغْتَسِلُ مِنْ حَيْضَةٍ أَوْ جَنَابَةٍ «لَا تَنْقُضُ شَعْرَهَا» وَهَذَا حَدِيثٌ لَوْ لَمْ يَكُنْ فِيهِ إِلَّا ابْنُ لَهِيعَةَ لَكَفَى سُقُوطًا، فَكَيْفَ وَفِيهِ عَبْدُ الْمَلِكِ بْنُ حَبِيبٍ وَحَسْبُكَ بِهِ، ثُمَّ لَمْ يَقُلْ فِيهِ أَبُو الزُّبَيْرِ " حَدَّثَنَا " وَهُوَ مُدَلِّسٌ فِي جَابِرٍ مَا لَمْ يَقُلْهُ.

L3617 Abū Muḥammad said: We have been transmitted a defective ḥadīth from ʿAbd al-Malik ibn Ḥabīb, from ʿAbd Allāh ibn ʿAbd al-Ḥakam, from Ibn Lahīʿah, from Abū al-Zubayr, from Jābir ibn ʿAbd Allāh, from the Messenger of Allāh - peace and blessings be upon him - regarding a woman performing ritual bathing after menstruation or major impurity: "She should not loosen her hair." This is a ḥadīth that, even if Ibn Lahīʿah were the only issue in it, would suffice for its rejection. How then when it includes ʿAbd al-Malik ibn Ḥabīb - and his inclusion alone should suffice for you - particularly since Abū al-Zubayr, who was a mudallis in transmissions from Jābir, did not state "he narrated to us" in this chain, thereby attributing to Jābir what he did not say.

فَإِنْ قِيلَ: قِسْنَا غُسْلَ الْحَيْضِ عَلَى غُسْلِ الْجَنَابَةِ، قُلْنَا الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ الْأَصْلَ يَقِينُ إِيصَالِ الْمَاءِ إِلَى جَمِيعِ الشَّعْرِ، وَهُمْ يَقُولُونَ: إِنَّ مَا خَرَجَ عَنْ أَصْلِهِ لَمْ يُقَسْ عَلَيْهِ، وَأَكْثَرُهُمْ يَقُولُ: لَا يُؤْخَذُ بِهِ كَمَا فَعَلُوا فِي حَدِيثِ الْمُصَرَّاةِ، وَخَبَرِ جُعْلِ الْآبِقِ، وَغَيْرِ ذَلِكَ.

L3618 If it is said: "We analogize the ritual bath for menstruation to the ritual bath for major impurity," we respond: All *qiyas* is wholly invalid. Moreover, even if *qiyas* were valid, this would constitute the epitome of invalidity within it. This is because the foundational principle requires certainty that water reaches all body hair, whereas they assert that what diverges from its origin cannot be subjected to analogy. Most of them state: "It is not to be adopted," as they did with the *ḥadīth* about the fraudulently under-milked camel, the report concerning the reward for the runaway slave, and other similar cases.

فَإِنْ قِيلَ: فَإِنَّ عَائِشَةَ قَدْ أَنْكَرَتْ نَقْضَ الضَّفَائِرِ، كَمَا حَدَّثَكُمْ عَبْدُ اللَّهِ بْنُ يُوسُفَ قَالَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى ثنا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي الزُّبَيْرِ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ قَالَ «بَلَغَ عَائِشَةَ أَنَّ عَبْدَ اللَّهِ بْنَ عَمْرِو بْنِ الْعَاصِ يَأْمُرُ النِّسَاءَ إِذَا

L3619–3621 If it is said: Indeed, 'Ā'ishah rejected the undoing of braids, as 'Abdullāh ibn Yūsuf narrated to you all; Aḥmad ibn Fatḥ narrated to us; 'Abd al-Wahhāb ibn 'Īsā narrated to us; Aḥmad ibn Muḥammad narrated to us; Aḥmad ibn 'Alī narrated to us; Muslim ibn al-Ḥajjāj narrated to us; Yaḥyā ibn Yaḥyā narrated to us; Ismā'īl ibn 'Ulayyah narrated from Ayyūb al-Sikhtiyānī, from Abū al-Zubayr, from 'Ubayd ibn 'Umayr, who said: "It came to the knowledge of 'Ā'ishah that 'Abdullāh ibn 'Amr ibn al-'Āṣ was instructing..." Women, when performing the ritual bath, are instructed to undo their hair. Aisha exclaimed:

اغْتَسَلْنَ أَنْ يَنْقُضْنَ رُءُوسَهُنَّ فَقَالَتْ: يَا عَجَبًا لِابْنِ عَمْرٍو هَذَا يَأْمُرُ النِّسَاءَ إِذَا اغْتَسَلْنَ أَنْ يَنْقُضْنَ رُءُوسَهُنَّ. أَوَلَا يَأْمُرُهُنَّ أَنْ يَحْلِقْنَ رُءُوسَهُنَّ؟ لَقَدْ كُنْتُ أَغْتَسِلُ أَنَا وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ إِنَاءٍ وَاحِدٍ، وَمَا أَزِيدُ عَلَى أَنْ أُفْرِغَ عَلَى رَأْسِي ثَلَاثَ إِفْرَاغَاتٍ» .

"How strange of Ibn Amr! He commands women, when performing the ritual bath, to undo their hair. Why does he not command them to shave their heads? Indeed, the Messenger of Allah—peace be upon him—and I used to perform the ritual bath from a single container, and I would do no more than pour water three times over my head."

L3622 قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا حُجَّةَ عَلَيْنَا فِيهِ لِوُجُوهٍ:

L3622 Abu Muhammad said: There is no valid proof against us in this, due to multiple considerations:

L3623 أَحَدُهَا أَنَّ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - لَمْ تَعْنِ بِهَذَا إِلَّا غُسْلَ الْجَنَابَةِ فَقَطْ وَهَكَذَا نَقُولُ، وَبَيَانُ ذَلِكَ إحَالَتُهَا فِي آخِرِ الْحَدِيثِ عَلَى غُسْلِهَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ إِنَاءٍ وَاحِدٍ، وَهَذَا إنَّمَا هُوَ بِلَا شَكٍّ لِلْجَنَابَةِ لَا لِلْحَيْضِ، وَالثَّانِي أَنَّهُ لَوْ صَحَّ فِيهِ أَنَّهَا أَرَادَتْ الْحَيْضَ لَمَا كَانَ عَلَيْنَا فِيهِ حُجَّةٌ لِأَنَّنَا لَمْ نُؤْمَرْ بِقَبُولِ رَأْيِهَا، إنَّمَا أُمِرْنَا بِقَبُولِ رِوَايَتِهَا، فَهَذَا هُوَ الْفَرْضُ اللَّازِمُ، وَالثَّالِثُ أَنَّهُ قَدْ خَالَفَهَا عَبْدُ اللَّهِ بْنُ عَمْرٍو، وَهُوَ صَاحِبٌ، وَإِذَا وَقَعَ التَّنَازُعُ، وَجَبَ الرَّدُّ إلَى الْقُرْآنِ وَالسُّنَّةِ، لَا إلَى قَوْلِ أَحَدِ الْمُتَنَازِعَيْنِ دُونَ الْآخَرِ، وَفِي السُّنَّةِ مَا ذَكَرْنَا، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L3623 One is that 'Ā'ishah—may Allah be pleased with her—intended by this only the ritual bath for major impurity, and this is our position. The evidence for this is her reference at the end of the ḥadīth to her bathing with the Messenger of Allah—peace and blessings be upon him—from a single vessel, which unquestionably applies to major impurity, not menstruation. The second is that even if it were established that she intended menstruation, there would be no proof incumbent upon us, for we are not commanded to accept her opinion but rather to accept her narrations. This is the binding obligation. The third is that 'Abdullāh ibn 'Amr—a Companion—contradicted her. When disagreement occurs, it is obligatory to revert to the Quran and the Sunnah, not to the statement of one disputant to the exclusion of the other. The Sunnah contains what we have cited. All praise is due to Allah, Lord of the worlds.

[مَسْأَلَةٌ انْغَمَسَ مَنْ عَلَيْهِ غُسْلٌ وَاجِبٌ فِي مَاءٍ جَارٍ]

L3624 Case: One upon whom an obligatory *ghusl* (ritual bath) is required immersed himself in flowing water.

١٩٣ - مَسْأَلَةٌ: فَلَوْ انْغَمَسَ مَنْ عَلَيْهِ غُسْلٌ وَاجِبٌ - أَيُّ غُسْلٍ كَانَ - فِي مَاءٍ جَارٍ أَجْزَأَهُ إذَا نَوَى بِهِ ذَلِكَ الْغُسْلَ، وَكَذَلِكَ لَوْ وَقَفَ تَحْتَ مِيزَابٍ وَنَوَى بِهِ ذَلِكَ الْغُسْلَ أَجْزَأَهُ، إذَا عَمَّ جَمِيعَ جَسَدِهِ، لِمَا قَدْ ذَكَرْنَا مِنْ أَنَّ التَّدَلُّكَ لَا مَعْنًى لَهُ، وَهُوَ قَدْ تَطَهَّرَ

L3625 193. Issue: If someone obligated to perform an obligatory ghusl - regardless of its type - immerses themselves in flowing water while intending that specific ghusl, it suffices them. Similarly, if they stand under a drainpipe and intend that ghusl, it suffices them provided the water covers their entire body. This aligns with our earlier clarification that scrubbing has no ritual significance, for they have attained purity and performed the ghusl as commanded. This is the position of Abū Ḥanīfah, Sufyān al-Thawrī, al-Awzāʿī, al-Shāfiʿī, Aḥmad, Dāwūd, and others.

وَاغْتَسَلَ كَمَا أُمِرَ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَسُفْيَانَ الثَّوْرِيِّ وَالْأَوْزَاعِيِّ وَالشَّافِعِيِّ وَأَحْمَدَ وَدَاوُد وَغَيْرِهِمْ.

[مَسْأَلَةٌ انْغَمَسَ مَنْ عَلَيْهِ غُسْلٌ وَاجِبٌ فِي مَاءٍ رَاكِدٍ وَنَوَى الْغُسْلَ]

١٩٤ - مَسْأَلَةٌ: فَلَوْ انْغَمَسَ مَنْ عَلَيْهِ غُسْلٌ وَاجِبٌ فِي مَاءٍ رَاكِدٍ، وَنَوَى الْغُسْلَ أَجْزَأَهُ مِنْ الْحَيْضِ وَمِنْ النِّفَاسِ وَمِنْ غُسْلِ الْجُمُعَةِ وَمِنْ الْغُسْلِ مِنْ غُسْلِ الْمَيِّتِ وَلَمْ يُجْزِهِ لِلْجَنَابَةِ، فَإِنْ كَانَ جُنُبًا وَنَوَى بِانْغِمَاسِهِ فِي الْمَاءِ الرَّاكِدِ غُسْلًا مِنْ هَذِهِ الْأَغْسَالِ وَلَمْ يَنْوِ غُسْلَ الْجَنَابَةِ أَوْ نَوَاهُ، لَمْ يُجْزِهِ أَصْلًا لَا لِلْجَنَابَةِ وَلَا لِسَائِرِ الْأَغْسَالِ، وَالْمَاءُ فِي كُلِّ ذَلِكَ طَاهِرٌ بِحَسَبِهِ، قَلَّ أَوْ كَثُرَ، مُطَهِّرٌ لَهُ إذَا تَنَاوَلَهُ، وَلِغَيْرِهِ عَلَى كُلِّ حَالٍ، وَسَوَاءٌ فِي كُلِّ مَا ذَكَرْنَا كَانَ مَاءً قَلِيلًا فِي مَطْهَرَةٍ أَوْ جُبٍّ أَوْ بِئْرٍ، أَوْ كَانَ غَدِيرًا رَاكِدًا فَرَاسِخَ فِي فَرَاسِخَ، كُلُّ ذَلِكَ سَوَاءٌ.

L3626 ****Issue:** If someone upon whom an obligatory *ghusl* is required immerses themselves in stagnant water and intends the *ghusl*, what is the ruling?**

L3627 194. Issue: If someone obligated to perform a compulsory ritual bath immerses himself in stagnant water while intending the ritual bath (ghusl), it suffices for menstruation, postpartum bleeding, the Friday bath, and washing a deceased person, but does not suffice for major ritual impurity (janābah). If a person in a state of major impurity immerses himself in stagnant water intending one of these other baths - whether he did not intend the bath for major impurity or intended it - it remains entirely invalid, neither cleansing him of major impurity nor of the other obligations. In all such cases, the water retains its inherent purity regardless of quantity (small or large) and purifies him when he uses it. For others, it remains pure under all circumstances. This ruling applies equally whether the water is a small amount in a purification area, a cistern, a well, or a stagnant pond extending over several parasangs - all are treated identically.

L3628–3630 The proof of that is what ʿAbdullāh ibn Yūsuf narrated to us; Aḥmad ibn Fatḥ narrated to us; ʿAbd al-Wahhāb ibn ʿĪsā narrated to us. Ahmad ibn Muhammad narrated from Ahmad ibn Ali, who narrated from Muslim ibn al-Hajjaj, who narrated from Abu al-Tahir and Harun ibn Sa'id al-Ayli, via Ibn Wahb, from 'Amr ibn al-Harith, from Bukayr ibn al-Ashajj, that Abu al-Sa'ib – the freed slave of Hisham ibn Zuhrah – reported to him that he heard Abu Hurairah say: The Messenger of Allah (peace be upon him) said, "Let none of you bathe in stagnant water while in a state of major impurity." It was asked, "What should one do, O Abu Hurairah?" He replied, "Draw water from it by scooping."[7]

بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو الطَّاهِرِ وَهَارُونُ بْنُ سَعِيدٍ الْأَيْلِيُّ عَنْ ابْنِ وَهْبٍ ثنا عَمْرُو بْنُ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ أَنَّ أَبَا السَّائِبِ مَوْلَى هِشَامِ بْنِ زُهْرَةَ حَدَّثَهُ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَغْتَسِلُ أَحَدُكُمْ فِي الْمَاءِ الدَّائِمِ وَهُوَ جُنُبٌ» فَقِيلَ: كَيْفَ يَفْعَلُ يَا أَبَا هُرَيْرَةَ؟ قَالَ يَتَنَاوَلُهُ تَنَاوُلًا ".

[7] **Hadith references (L3628):** Sunan an-Nasai 331; Sunan an-Nasai 396; Sunan an-Nasai 220.

L3631 Abdullah ibn Rabi‘ narrated to us: Muhammad ibn Ishaq; Ibn al-A‘rabi; Abu Dawud; Musaddad; Yahya—who is Ibn Sa‘id al-Qattan—from Muhammad ibn ‘Ajlan, who said: I heard my father narrate from Abu Hurairah, who said: The Messenger of Allah (peace be upon him) said, “Let none of you ever urinate in stagnant water, nor perform ghusl in it due to the state of janabah.”[8]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيُّ ثنا أَبُو دَاوُد ثنا مُسَدَّدٌ ثنا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ مُحَمَّدِ بْنِ عَجْلَانَ قَالَ: سَمِعْتُ أَبِي يُحَدِّثُ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَبُولَنَّ أَحَدُكُمْ فِي الْمَاءِ الدَّائِمِ وَلَا يَغْتَسِلُ فِيهِ مِنْ الْجَنَابَةِ» .

L3632 Narrated to us by Ahmad ibn Muhammad ibn al-Jasur, narrated by Muhammad ibn Abi Dulaym, narrated by Ibn Waḍḍāḥ, narrated by Abu Bakr ibn Abi Shaybah, narrated by Ali ibn Hashim, from Ibn Abi Layla, from Abu al-Zubayr, from Jabir, who said: “We used to prefer taking water from the pond and bathing with it in a part of it.” Abu Muhammad said: Then the Messenger of Allah (peace and blessings of Allah be upon him) prohibited the person in a state of major impurity from bathing in still water – as per the narration of Abi al-Sa’ib from Abu Hurayrah. Therefore, it is conclusively established that anyone who bathes while in a state of major impurity in non-flowing water has disobeyed Allah the Exalted, if he was aware of the prohibition. This act does not suffice for any ritual bath he intended, because he has entirely contradicted the prohibition enjoined by the Messenger of Allah (peace and blessings of Allah be upon him).

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا مُحَمَّدُ بْنُ أَبِي دُلَيْمٍ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا عَلِيُّ بْنُ هَاشِمٍ عَنْ ابْنِ أَبِي لَيْلَى عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ " كُنَّا نَسْتَحِبُّ أَنْ نَأْخُذَ مِنْ مَاءِ الْغَدِيرِ وَنَغْتَسِلَ بِهِ فِي نَاحِيَةٍ ". قَالَ أَبُو مُحَمَّدٍ، فَنَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْجُنُبَ عَنْ أَنْ يَغْتَسِلَ فِي الْمَاءِ الدَّائِمِ - فِي رِوَايَةِ أَبِي السَّائِبِ عَنْ أَبِي هُرَيْرَةَ - جُمْلَةً فَوَجَبَ مِنْهُ أَنَّ كُلَّ مَنْ اغْتَسَلَ وَهُوَ جُنُبٌ فِي مَاءٍ دَائِمٍ، فَقَدْ عَصَى اللَّهَ تَعَالَى إنْ كَانَ عَالِمًا بِالنَّهْيِ، وَلَا يُجْزِيهِ لِأَيِّ غُسْلٍ نَوَاهُ، لِأَنَّهُ خَالَفَ مَا أَمَرَهُ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جُمْلَةً.

L3633 This hadith is more general than the hadith of Ibn ‘Ajlān from his father, because if only the hadith of Ibn ‘Ajlān existed, it would suffice for a person in a state of major impurity (junub) to perform ghusl in stagnant water not intended for janabah. However, the general principle and the corroborating report from a reliable narrator cannot be contradicted; it is impermissible to do so.

وَهَذَا الْحَدِيثُ أَعَمُّ مِنْ حَدِيثِ ابْنِ عَجْلَانَ عَنْ أَبِيهِ، لِأَنَّهُ لَوْ لَمْ يَكُنْ إلَّا حَدِيثُ ابْنِ عَجْلَانَ لَأَجْزَأَ الْجُنُبَ أَنْ يَغْتَسِلَ فِي الْمَاءِ الدَّائِمِ لِغَيْرِ الْجَنَابَةِ، لَكِنَّ الْعُمُومَ وَزِيَادَةَ الْعَدْلِ لَا يَحِلُّ خِلَافُهَا.

L3634–3636 Among those who held that a person in a state of major impurity performing ghusl in stagnant water does not fulfill the requirement is Abū Ḥanīfah. However, he generalized this ruling to all ritual baths and ablutions, restricting it to ponds of a size where disturbing one end leaves the other unaffected. He deemed such water ritually impure, thereby exceeding the directive of Allah’s Messenger—peace and blessings be upon him—in two aspects: the error lay

وَمِمَّنْ رَأَى أَنَّ اغْتِسَالَ الْجُنُبِ فِي الْمَاءِ الدَّائِمِ لَا يُجْزِيهِ أَبُو حَنِيفَةَ، إلَّا أَنَّهُ عَمَّ بِذَلِكَ كُلَّ غُسْلٍ وَكُلَّ وُضُوءٍ، وَخَصَّ بِذَلِكَ مَا كَانَ دُونَ الْغَدِيرِ الَّذِي إذَا حُرِّكَ طَرَفُهُ لَمْ يَتَحَرَّكْ الْآخَرُ، وَرَأَى الْمَاءَ يَفْسُدُ بِذَلِكَ، فَكَانَ مَا زَادَ بِذَلِكَ عَلَى أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ عُمُومِ كُلِّ غُسْلٍ - خَطَأً، وَمِنْ تَنْجِيسِ الْمَاءِ وَكَانَ مَا نَقَصَ بِذَلِكَ

[8] **Hadith references (L3631):** Sunan Abi Dawud 70.

in generalizing all ritual baths and in deeming the water impure. Conversely, his restriction fell short of the Prophet's command—peace be upon him—in this regard. His specification of some still waters while excluding others is erroneous, and what aligned with his ruling in the matter, peace be upon him, was correct. Al-Ḥasan ibn Ḥayy also stated this, except he restricted it to water of less than a kurr, thus making this specification erroneous.

مِنْ أَمْرِهِ - عَلَيْهِ السَّلَامُ - مِنْ تَخْصِيصِهِ بَعْضَ الْمِيَاهِ الرَّوَاكِدِ دُونَ بَعْضٍ - خَطَأٌ وَكَانَ مَا وَافَقَ فِيهِ أَمْرَهُ - عَلَيْهِ السَّلَامُ - صَوَابًا، وَقَالَهُ أَيْضًا الْحَسَنُ بْنُ حَيٍّ، إِلَّا أَنَّهُ خَصَّ بِهِ مَا دُونَ الْكُرِّ مِنْ الْمَاءِ، فَكَانَ هَذَا التَّخْصِيصُ خَطَأً.

L3637 Al-Shāfiʿī also held this opinion, except he restricted it to quantities below five hundred ritls. This restriction was an error. He then generalized it to all ritual washing, and this addition was an error. He maintained that water does not become impure, so he was correct, while Mālik held it to be reprehensible.

وَقَالَ بِهِ أَيْضًا الشَّافِعِيّ، إِلَّا أَنَّهُ خَصَّ بِهِ مَا دُونَ خَمْسِمِائَةِ رِطْلٍ، فَكَانَ هَذَا التَّخْصِيصُ خَطَأً، وَعَمَّ بِهِ كُلَّ غُسْلٍ، فَكَانَ هَذَا الَّذِي زَادَهُ خَطَأً، وَرَأَى الْمَاءَ لَا يَفْسُدُ، فَأَصَابَ، وَكَرِهَ مَالِكٌ ذَلِكَ.

L3638 And he deemed it permissible if it occurred. This constituted an error in his ruling, for the Messenger of Allah—peace be upon him—said: "Whoever performs an act not aligned with our teachings, it is rejected." It is inconceivable that a ritual bath prohibited by the Messenger of Allah—peace be upon him—could substitute for one he commanded. Allah refuses to let disobedience replace obedience, or for the prohibited to suffice in place of the obligatory.[9]

وَأَجَازَهُ إِذَا وَقَعَ، فَكَانَ هَذَا مِنْهُ خَطَأً، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَمِنْ الْمُحَالِ أَنْ يُجْزِئَ غُسْلٌ نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ غُسْلٍ أَمَرَ بِهِ، أَبَى اللَّهُ أَنْ تَنُوبَ الْمَعْصِيَةُ عَنْ الطَّاعَةِ وَأَنْ يُجْزِئَ الْحَرَامُ مَكَانَ الْفَرْضِ.

L3639 Our statement is the statement of Abu Hurairah and Jabir—may Allah be pleased with them—from among the Companions, and we know of no dissenter among them regarding this matter.

وَقَوْلُنَا هُوَ قَوْلُ أَبِي هُرَيْرَةَ وَجَابِرٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَمَا نَعْلَمُ لَهُمَا فِي ذَلِكَ مُخَالِفًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L3640 Ali said: If a person in a state of major impurity (junub) were to wash even a single hair in standing water, it would not suffice for him, because washing any part [as part of] the ritual bath (ghusl) constitutes [an act of] ghusl. The Prophet (peace be upon him) did not prohibit those not in a state of major impurity from performing ghusl in standing water: "He does not speak from whim—it is but revelation inspired" [53:3–4]; "Your Lord is never forgetful" [19:64]. Thus, it is established that one not in a state of major impurity

قَالَ عَلِيٌّ: فَلَوْ غَسَلَ الْجُنُبُ شَيْئًا مِنْ جَسَدِهِ فِي الْمَاءِ الدَّائِمِ لَمْ يَجْزِهِ، وَلَوْ أَنَّهُ شَعْرَةً وَاحِدَةً، لِأَنَّ بَعْضَ الْغُسْلِ غُسْلٌ، وَلَمْ يَنْهَ - عَلَيْهِ السَّلَامُ - عَنْ أَنْ يَغْتَسِلَ غَيْرُ الْجُنُبِ فِي الْمَاءِ الدَّائِمِ {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] فَصَحَّ أَنَّ غَيْرَ الْجُنُبِ يُجْزِيهِ أَنْ يَغْتَسِلَ فِي الْمَاءِ الدَّائِمِ لِكُلِّ غُسْلٍ وَاجِبٍ أَوْ غَيْرِ وَاجِبٍ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[9] **Hadith references (L3638):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

may validly perform any ghusl—whether obligatory or non-obligatory—in standing water. And success is from Allah, the Exalted.[10]

L3641 **An issue concerning one who entered a state of major ritual impurity on Friday.**

L3642 195. Issue:

L3643–3645 Whoever enters a state of major impurity on Friday—whether man or woman—must perform two necessarily required ritual baths: one bath with the intention of purification from major impurity, and another bath specifically intending Friday's obligation. If one washes a deceased person, a third ritual bath intending the washing of the deceased becomes obligatory. Should a woman menstruate after intercourse, she may choose either to perform the ritual bath for major impurity immediately or delay it until her purification from menstruation. Upon purification, she must perform two ritual baths without exception: one intending major impurity and another intending purification from menstruation. If this coincides with Friday and she washes a deceased person, four ritual baths become obligatory as outlined.

If one combines two or more obligations in a single bath—whether from the aforementioned cases or beyond—neither becomes valid, and he must repeat both of them. Similarly, intending more than two ritual baths invalidates the act. When obligated to multiple ritual baths (two, three, or four), one must wash each body part twice, thrice, or four times respectively—while specifically intending with every washing the particular obligation for which it is performed. Otherwise, the act remains invalid.

For ablution, one must perform wudu separately with specific intention, entirely distinct from any of the aforementioned ritual baths. [text ends abruptly] The ritual bath for major impurity alone suffices. If one intends both the ritual bath for major impurity and ablution while washing the limbs of ablution, this suffices. If one intends only the ritual bath, it does not suffice for ablution. Even if one intended the washing solely for ablution, it would

[10] **Qur'an references (L3640):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 19:64 (Maryam).

[مَسْأَلَةٌ أَجْنَبَ يَوْمَ الْجُمُعَةِ]

١٩٥ - مَسْأَلَةٌ:

وَمَنْ أَجْنَبَ يَوْمَ الْجُمُعَةِ مِنْ رَجُلٍ أَوْ امْرَأَةٍ - فَلَا يُجْزِيهِ إِلَّا غُسْلَانِ غُسْلٌ يَنْوِي بِهِ الْجَنَابَةَ وَلَا بُدَّ، وَغُسْلٌ آخَرُ يَنْوِي بِهِ الْجُمُعَةَ وَلَا بُدَّ، فَلَوْ غَسَّلَ مَيِّتًا أَيْضًا لَمْ يُجْزِهِ إِلَّا غُسْلٌ ثَالِثٌ يَنْوِي بِهِ وَلَا بُدَّ، فَلَوْ حَاضَتْ امْرَأَةٌ بَعْدَ أَنْ وُطِئَتْ فَهِيَ بِالْخِيَارِ إِنْ شَاءَتْ عَجَّلَتْ الْغُسْلَ لِلْجَنَابَةِ وَإِنْ شَاءَتْ أَخَّرَتْهُ حَتَّى تَطْهُرَ، فَإِذَا طَهُرَتْ لَمْ يُجْزِهَا إِلَّا غُسْلَانِ، غُسْلٌ تَنْوِي بِهِ الْجَنَابَةَ وَغُسْلٌ آخَرُ تَنْوِي بِهِ الْحَيْضَ، فَلَوْ صَادَفَتْ يَوْمَ جُمُعَةٍ وَغَسَّلَتْ مَيِّتًا لَمْ يُجْزِهَا إِلَّا أَرْبَعَةُ أَغْسَالٍ كَمَا ذَكَرْنَا فَلَوْ نَوَى بِغُسْلٍ وَاحِدٍ غُسْلَيْنِ مِمَّا ذَكَرْنَا فَأَكْثَرَ، لَمْ يُجْزِهِ وَلَا لِوَاحِدٍ مِنْهُمَا، وَعَلَيْهِ أَنْ يُعِيدَهُمَا، وَكَذَلِكَ إِنْ نَوَى أَكْثَرَ مِنْ غُسْلَيْنِ، وَلَوْ أَنَّ كُلَّ مَنْ ذَكَرْنَا يَغْسِلُ كُلَّ عُضْوٍ مِنْ أَعْضَائِهِ مَرَّتَيْنِ إِنْ كَانَ عَلَيْهِ غُسْلَانِ - أَوْ ثَلَاثًا - إِنْ كَانَ عَلَيْهِ ثَلَاثَةُ أَغْسَالٍ - أَوْ أَرْبَعًا - إِنْ كَانَ عَلَيْهِ أَرْبَعَةُ أَغْسَالٍ - وَنَوَى فِي كُلِّ غَسْلَةٍ الْوَجْهَ الَّذِي غَسَلَهُ لَهُ أَجْزَأَهُ ذَلِكَ وَإِلَّا فَلَا، فَلَوْ أَرَادَ مَنْ ذَكَرْنَا: الْوُضُوءَ لَمْ يُجْزِهِ إِلَّا الْمَجِيءُ بِالْوُضُوءِ بِنِيَّةِ الْوُضُوءِ مُفْرَدًا عَنْ كُلِّ غُسْلٍ ذَكَرْنَا، حَاشَا غُسْلَ الْجَنَابَةِ وَحْدَهُ فَقَطْ فَإِنَّهُ إِنْ نَوَى بِغَسْلِ أَعْضَاءِ الْوُضُوءِ غُسْلَ الْجَنَابَةِ وَالْوُضُوءِ مَعًا أَجْزَأَهُ ذَلِكَ، فَإِنْ لَمْ يَنْوِ إِلَّا الْغُسْلَ فَقَطْ لَمْ يُجْزِهِ لِلْوُضُوءِ وَلَوْ نَوَاهُ لِلْوُضُوءِ فَقَطْ لَمْ يُجْزِهِ لِلْغُسْلِ، وَلَا يُجْزِئُ لِلْوُضُوءِ مَا ذَكَرْنَا إِلَّا مُرَتَّبًا عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى.

not suffice for the ritual bath. Ablution is not valid unless performed in the prescribed sequence we will mention hereafter, if Allah wills.

L3646 The proof of this is Allah's statement, the Exalted: {And they were not commanded except to worship Allah, sincere to Him in religion} [Al-Bayyinah: 5], and the statement of the Messenger of Allah (peace and blessings of Allah be upon him): "Actions are but by intentions, and every person will have only what he intended." Thus, it is firmly established that one is commanded to perform each ritual bath among these ritual baths. Since this is established, it is invalid for a single act to suffice for two acts or more. It is also firmly established that if one intends one of the duties incumbent upon him from these obligations, then as the truthful Messenger of Allah (peace and blessings of Allah be upon him) attested, he receives only what he intended and not what he did not intend. If he intends two ritual baths or more with a single act, he has opposed what he was commanded, for he is commanded to perform a complete ritual bath for every aspect we mentioned, and he has not done so. Since a single ritual bath cannot be split to count for multiple purposes, his entire act is invalidated, due to the statement of the Messenger of Allah (peace and blessings of Allah be upon him): "Whoever performs an act not in accordance with our teachings, it is rejected." As for the ritual bath for major impurity and ablution, a single act with a single intention suffices for both, based on the established text regarding that. As narrated to us by 'Abdur-Rahman ibn 'Abdullah ibn Khalid, who narrated to us from Ibrahim ibn Ahmad, who narrated to us from Al-Farbari, who narrated to us from Al-Bukhari, who narrated to us from 'Abdullah ibn Yusuf, who narrated to us from Malik, from Hisham ibn 'Urwah, from his father, from 'Aishah, the wife of the Prophet (peace and blessings of Allah be upon him): "When he performed the ritual bath due to major impurity, he would begin by washing his hands, then perform ablution as he would for prayer. Then he would dip his fingers into the water and run them through the roots of his hair. Then

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {وَمَا أُمِرُوا إِلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ} [البينة: ٥] وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» فَصَحَّ يَقِينًا أَنَّهُ مَأْمُورٌ بِكُلِّ غُسْلٍ مِنْ هَذِهِ الْأَغْسَالِ، فَإِذْ قَدْ صَحَّ ذَلِكَ فَمِنَ الْبَاطِلِ أَنْ يُجْزِئَ عَمَلُ وَاحِدٍ عَنْ عَمَلَيْنِ أَوْ عَنْ أَكْثَرَ، وَصَحَّ يَقِينًا أَنَّهُ إِنْ نَوَى أَحَدَ مَا عَلَيْهِ مِنْ ذَلِكَ فَإِنَّمَا لَهُ - بِشَهَادَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الصَّادِقَةِ - الَّذِي نَوَاهُ فَقَطْ وَلَيْسَ لَهُ مَا لَمْ يَنْوِهِ، فَإِنْ نَوَى بِعَمَلِهِ ذَلِكَ غُسْلَيْنِ فَصَاعِدًا فَقَدْ خَالَفَ مَا أُمِرَ بِهِ، لِأَنَّهُ مَأْمُورٌ بِغُسْلٍ تَامٍّ لِكُلِّ وَجْهٍ مِنَ الْوُجُوهِ الَّتِي ذَكَرْنَا، فَلَمْ يَفْعَلْ ذَلِكَ، وَالْغُسْلُ لَا يَنْقَسِمُ، فَبَطَلَ عَمَلُهُ كُلُّهُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَأَمَّا غُسْلُ الْجَنَابَةِ وَالْوُضُوءِ فَإِنَّهُ أَجْزَأَ فِيهِمَا عَمَلٌ وَاحِدٌ بِنِيَّةٍ وَاحِدَةٍ لَهُمَا جَمِيعًا لِلنَّصِّ الْوَارِدِ فِي ذَلِكَ، كَمَا حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا مَالِكٌ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ زَوْجِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كَانَ إِذَا اغْتَسَلَ مِنَ الْجَنَابَةِ بَدَأَ فَغَسَلَ يَدَيْهِ ثُمَّ تَوَضَّأَ كَمَا يَتَوَضَّأُ لِلصَّلَاةِ ثُمَّ يُدْخِلُ أَصَابِعَهُ فِي الْمَاءِ فَيُخَلِّلُ بِهَا أُصُولَ شَعْرِهِ ثُمَّ يَصُبُّ عَلَى رَأْسِهِ ثَلَاثَ غَرَفَاتٍ بِيَدِهِ، ثُمَّ يُفِيضُ الْمَاءَ عَلَى جِلْدِهِ كُلِّهِ» .

he would pour three handfuls of water over his head, and then pour water over his entire body."[1112]

L3647 And likewise it was narrated by Abū Muʿāwiyah, Ḥammād ibn Zayd, Sufyān ibn ʿUyaynah, and others, from Hishām, from his father, from ʿĀ'ishah.

وَهَكَذَا رَوَاهُ أَبُو مُعَاوِيَةَ وَحَمَّادُ بْنُ زَيْدٍ وَسُفْيَانُ بْنُ عُيَيْنَةَ وَغَيْرُهُمْ عَنْ هِشَامٍ عَنْ أَبِيهِ عَنْ عَائِشَةَ.

L3648–3650 Narrated to us Abdullah ibn Yusuf → Ahmad ibn Fath narrated to us → Abd al-Wahhab ibn Isa narrated to us → Ahmad ibn Muhammad narrated to us. Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Ali ibn Hujr al-Sa'di narrated to us: Isa ibn Yunus narrated to us: al-A'mash narrated from Salim ibn Abi al-Ja'd from Kuraib from Ibn Abbas, who said: My maternal aunt Maymunah narrated to me, saying: "I brought water for the Messenger of Allah (ﷺ) to perform the ritual bath for major impurity (janābah). He washed his hands twice or thrice, then placed his hand into the vessel, poured water over his private parts, and washed them with his left hand. Then he rubbed his left hand against the ground and scrubbed it vigorously. Then he performed ritual ablution as he did for prayer, poured three handfuls of water over his head – each the full measure of his palms – washed his entire body, then washed his feet separately. Then I brought him a cloth, but he declined it." Thus, the Messenger of Allah (ﷺ) did not repeat the washing of limbs required in ablution during his bath for major impurity. We solemnly testify by Allah that the Messenger of Allah (ﷺ) never neglected the intention for any act Allah obligated upon him. Therefore, this became obligatory specifically for the ritual bath of major impurity, while all other baths remained governed by their original rulings. Abu Muhammad said: Abu Hanifah, Malik, and al-Shafi'i stated: A single bath suffices for both major impurity and menstruation.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا عَلِيُّ بْنُ حُجْرٍ السَّعْدِيُّ ثنا عِيسَى بْنُ يُونُسَ ثنا الْأَعْمَشُ عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ عَنْ كُرَيْبٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: حَدَّثَتْنِي خَالَتِي مَيْمُونَةُ قَالَتْ «أَدْنَيْتُ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غُسْلَهُ مِنَ الْجَنَابَةِ فَغَسَلَ كَفَّيْهِ مَرَّتَيْنِ أَوْ ثَلَاثًا، ثُمَّ أَدْخَلَ يَدَهُ فِي الْإِنَاءِ، ثُمَّ أَفْرَغَ عَلَى فَرْجِهِ وَغَسَلَهُ بِشِمَالِهِ، ثُمَّ ضَرَبَ بِشِمَالِهِ الْأَرْضَ فَدَلَكَهَا دَلْكًا شَدِيدًا، ثُمَّ تَوَضَّأَ وُضُوءَهُ لِلصَّلَاةِ، ثُمَّ أَفْرَغَ عَلَى رَأْسِهِ ثَلَاثَ حَفَنَاتٍ مِلْءَ كَفَّيْهِ، ثُمَّ غَسَلَ سَائِرَ جَسَدِهِ، ثُمَّ تَنَحَّى عَنْ مَقَامِهِ ذَلِكَ فَغَسَلَ رِجْلَيْهِ، ثُمَّ أَتَيْتُهُ بِالْمِنْدِيلِ فَرَدَّهُ» فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُعِدَّ غَسْلَ أَعْضَاءِ الْوُضُوءِ فِي غُسْلِهِ لِلْجَنَابَةِ، وَنَحْنُ نُشْهِدُ اللَّهَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا ضَيَّعَ نِيَّةَ كُلِّ عَمَلٍ افْتَرَضَهُ اللَّهُ عَلَيْهِ، فَوَجَبَ ذَلِكَ فِي غُسْلِ الْجَنَابَةِ خَاصَّةً وَبَقِيَتْ سَائِرُ الْأَغْسَالِ عَلَى حُكْمِهَا قَالَ أَبُو مُحَمَّدٍ: وَقَالَ أَبُو حَنِيفَةَ وَمَالِكٌ وَالشَّافِعِيُّ: يُجْزِئُ غُسْلٌ وَاحِدٌ لِلْجَنَابَةِ وَالْحَيْضِ.

L3651 Some of Mālik's companions said: A single bath suffices for both Friday prayer and major ritual impurity (janābah). Others said: If one intends the bath for janābah, it suffices for Friday prayer, and if one intends it for Friday prayer, it suffices for janābah. ʿAlī said: This is deeply flawed, for the Friday

وَقَالَ بَعْضُ أَصْحَابِ مَالِكٍ: يُجْزِئُ غُسْلٌ وَاحِدٌ لِلْجُمُعَةِ وَالْجَنَابَةِ، وَقَالَ بَعْضُهُمْ: إِنْ نَوَى الْجَنَابَةَ يُجْزِهِ مِنَ الْجُمُعَةِ، وَإِنْ نَوَى الْجُمُعَةَ أَجْزَأَهُ، مِنَ الْجَنَابَةِ قَالَ عَلِيٌّ: وَهَذَا فِي غَايَةِ الْفَسَادِ، لِأَنَّ غُسْلَ الْجُمُعَةِ عِنْدَهُمْ تَطَوُّعٌ، فَكَيْفَ يُجْزِئُ تَطَوُّعٌ عَنْ فَرْضٍ؟ أَمْ كَيْفَ

[11] **Hadith references (L3646):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[12] **Qur'an references (L3646):** Qur'an 98:5 (Al-Bayyinah).

bath in their view is a recommended act. How can a recommended act suffice for an obligation? Or how can an intention for an obligation—if not purely for it—alongside an intention for a recommended act, be valid? This is indeed astonishing. ʿAlī said: They argued for this by stating: We find a single ablution and a single dry ablution (tayammum) suffice for all nullifiers of ablution, a single bath suffices for multiple instances of janābah, a single bath suffices for menstrual bleeding over days, and a single circumambulation suffices for both ʿUmrah and Ḥajj. Thus, it must be that every act requiring a bath follows this principle.

L3652–3654 Abu Muhammad said: This is analogy, and all analogy is invalid. Moreover, even if analogy were valid, this would be the epitome of invalidity stemming from it, for if analogy were valid, it would not be for analogy that a single ritual washing suffices for two ritual washings. It is more appropriate to analogize the ruling of one obligated with two ghusl obligations to one obligated with two days from the month of Ramadan, two slave emancipations for two acts of ẓihār, two expiations for two oaths, two sacrificial offerings for two instances of tamattuʿ, two noon prayers on two days, or two dirhams out of ten dirhams regarding two distinct types of wealth. This would require them to accept that fasting one day, emancipating one slave, performing one expiation, offering one sacrificial offering, praying one prayer, and paying one dirham suffice for all such obligations. The same would apply to every matter in Sharīʿa, but this is a view no one upholds. Thus, their corrupt analogy has been invalidated.

L3655 Then we say to them—and with Allah alone is success, the Exalted: As for ablution, the Messenger of Allah (peace be upon him) said: "Allah does not accept the prayer of one who has invalidated his ablution until he performs ablution again." We shall mention this, Allah willing, with its chain of transmission in the chapter on ritual impurity during prayer. Thus, this report confirms that ablution addresses ritual impurity as a whole, thereby encompassing every type of such impurity under this ruling.

L3656 And He, the Exalted, said: {And if you are in a state of major impurity,

تُجْزِئُ نِيَّةٌ فِي فَرْضٍ لَمْ تَخْلُصْ وَأُضِيفَ إِلَيْهَا نِيَّةُ تَطَوُّعٍ؟ إِنَّ هَذَا لَعَجَبٌ قَالَ عَلِيٌّ: وَاحْتَجُّوا فِي ذَلِكَ بِأَنْ قَالُوا: وَجَدْنَا وُضُوءًا وَاحِدًا وَتَيَمُّمًا وَاحِدًا يُجْزِئُ عَنْ جَمِيعِ الْأَحْدَاثِ النَّاقِضَةِ لِلْوُضُوءِ، وَغُسْلًا وَاحِدًا يُجْزِئُ عَنْ جَنَابَاتٍ كَثِيرَةٍ، وَغُسْلًا وَاحِدًا يُجْزِئُ عَنْ حَيْضِ أَيَّامٍ، وَطَوَافًا وَاحِدًا يُجْزِئُ عَنْ عُمْرَةٍ وَحَجٍّ فِي الْقُرْآنِ، فَوَجَبَ أَنْ يَكُونَ كَذَلِكَ كُلُّ مَا يُوجِبُ الْغُسْلَ.

قَالَ أَبُو مُحَمَّد: وَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ لِأَنَّهُ لَوْ صَحَّ الْقِيَاسُ لَمْ يَكُنْ الْقِيَاسُ لَأَنْ يُجْزِئَ غُسْلٌ وَاحِدٌ عَنْ غُسْلَيْنِ مَأْمُورٍ بِهِمَا عَلَى مَا ذَكَرُوا فِي الْوُضُوءِ: بِأَوْلَى مِنْ أَنْ يُقَاسَ حُكْمُ مَنْ عَلَيْهِ غُسْلَانِ عَلَى مَنْ عَلَيْهِ يَوْمَانِ مِنْ - شَهْرِ رَمَضَانَ، أَوْ رَقَبَتَانِ عَنْ ظِهَارَيْنِ، أَوْ كَفَّارَتَانِ عَنْ يَمِينَيْنِ، أَوْ هَدْيَانِ عَنْ مُتْعَتَيْنِ، أَوْ صَلَاتَا ظُهْرٍ مِنْ يَوْمَيْنِ، أَوْ دِرْهَمَانِ مِنْ عَشَرَةِ دَرَاهِمَ عَنْ مَالَيْنِ مُخْتَلِفَيْنِ، فَيَلْزَمُهُمْ أَنْ يُجْزِئَ فِي كُلِّ ذَلِكَ صِيَامُ يَوْمٍ وَاحِدٍ، وَرَقَبَةٌ وَاحِدَةٌ، وَكَفَّارَةٌ وَاحِدَةٌ، وَهَدْيٌ وَاحِدٌ، وَصَلَاةٌ وَاحِدَةٌ وَدِرْهَمٌ وَاحِدٌ، وَهَكَذَا فِي كُلِّ شَيْءٍ مِنْ الشَّرِيعَةِ وَهَذَا مَا لَا يَقُولُهُ أَحَدٌ، فَبَطَلَ قِيَاسُهُمْ الْفَاسِدُ.

ثُمَّ نَقُولُ لَهُمْ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: أَمَّا الْوُضُوءُ فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَقْبَلُ اللَّهُ صَلَاةَ مَنْ أَحْدَثَ حَتَّى يَتَوَضَّأَ» وَسَنَذْكُرُهُ إِنْ شَاءَ اللَّهُ تَعَالَى بِإِسْنَادِهِ فِي بَابِ الْحَدَثِ فِي الصَّلَاةِ، فَصَحَّ بِهَذَا الْخَبَرِ أَنَّ الْوُضُوءَ مِنْ الْحَدَثِ جُمْلَةً، فَدَخَلَ فِي ذَلِكَ كُلُّ حَدَثٍ.

وَقَالَ تَعَالَى: {وَإِنْ كُنْتُمْ جُنُبًا فَاطَّهَّرُوا} [المائدة: ٦] فَدَخَلَ فِي ذَلِكَ كُلُّ جَنَابَةٍ.

then purify yourselves} [Al-Mā'idah: 6]. This encompasses every instance of janabah.[13]

وَصَحَّ أَيْضًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وُضُوءٌ وَاحِدٌ لِلصَّلَاةِ مِنْ كُلِّ حَدَثٍ سَلَفَ، مِنْ نَوْمٍ وَبَوْلٍ وَحَاجَةِ الْمَرْءِ وَمُلَامَسَةٍ، وَإِنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يَطُوفُ عَلَى نِسَائِهِ بِغُسْلٍ وَاحِدٍ كَمَا حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا ابْنُ أَبِي دُلَيْمٍ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا هُشَيْمٌ ثنا حُمَيْدٌ الطَّوِيلُ عَنْ أَنَسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَطُوفُ عَلَى نِسَائِهِ فِي لَيْلَةٍ بِغُسْلٍ وَاحِدٍ» .

L3657 It has also been authentically established from the Messenger of Allah—peace and blessings of Allah be upon him—that a single ablution suffices for prayers following any past impurity, whether arising from sleep, urination, defecation, or touch. Indeed, he—peace be upon him—would visit his wives with one ritual bath [ghusl], as narrated to us by Aḥmad ibn Muḥammad ibn al-Jasūr, narrated to us by Ibn Abī Dulaym, narrated to us by Ibn Waḍḍāḥ, narrated to us by Abū Bakr ibn Abī Shaybah, narrated to us by Hushaym, narrated to us by Ḥumayd al-Ṭawīl, from Anas: "The Messenger of Allah—peace and blessings of Allah be upon him—would visit his wives in one night with a single ritual bath [ghusl]."

وَأَمَّا - طَوَافٌ وَاحِدٌ وَسَعْيٌ وَاحِدٌ فِي الْقِرَانِ عَنْ الْحَجِّ وَالْعُمْرَةِ، فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «طَوَافٌ وَاحِدٌ يَكْفِيكَ لِحَجِّكَ وَعُمْرَتِكَ» وَقَوْلُهُ - عَلَيْهِ السَّلَامُ -: «دَخَلَتْ الْعُمْرَةُ فِي الْحَجِّ إلَى يَوْمِ الْقِيَامَةِ» .

L3658 As for a single circumambulation (Tawaf) and a single ritual walk (Sa'i) in the combined pilgrimage (qirān, i.e., performing Ḥajj and ʿUmrah under a single ihrām) pertaining to Ḥajj and ʿUmrah, this ruling derives from the statement of the Messenger of Allah (peace and blessings be upon him): "A single circumambulation suffices for both your Ḥajj and ʿUmrah," and his statement (peace be upon him): "'Umrah has been incorporated into Ḥajj until the Day of Resurrection."

وَالْعَجَبُ كُلُّهُ مِنْ أَبِي حَنِيفَةَ إذْ يُجْزِئُ عِنْدَهُ غُسْلٌ وَاحِدٌ عَنْ الْحَيْضِ وَالْجَنَابَةِ وَالتَّبَرُّدِ، وَلَا يُجْزِئُ عِنْدَهُ لِلْحَجِّ وَالْعُمْرَةِ فِي الْقِرَانِ إلَّا طَوَافَانِ وَسَعْيَانِ.

L3659 All astonishment is directed at Abū Ḥanīfah, as he deems a single ritual bath sufficient for menstruation, major impurity (janābah), and cooling off, yet he requires two circumambulations (ṭawāf) and two instances of sa'y for Ḥajj and ʿUmrah in the combined pilgrimage (Qirān).

وَهَذَا عَكْسُ الْحَقَائِقِ وَإِبْطَالُ السُّنَنِ.

L3660 This is contrary to the truths and a nullification of the Sunnah.

قَالَ أَبُو مُحَمَّدٍ " وَمِمَّنْ قَالَ بِقَوْلِنَا جَمَاعَةٌ مِنْ السَّلَفِ كَمَا رُوِّينَا عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ قَالَ: ثنا حَبِيبٌ وَسُفْيَانُ الثَّوْرِيُّ وَعَبْدُ اللَّهِ بْنُ الْمُبَارَكِ وَعَبْدُ الْأَعْلَى وَبِشْرُ بْنُ مَنْصُورٍ.

L3661–3663 Abu Muhammad said, "And among those who held our opinion are a group from the Salaf, as has been narrated to us from..." Abd al-Rahman ibn Mahdi said: We narrated from Habib, Sufyan al-Thawri, Abdullah ibn al-Mubarak, Abd al-A'la, and Bishr ibn Mansur.

L3664 Habib said: 'Amr ibn Harim said: Jabir ibn Zayd – who is Abu al-Sha'tha' – was asked about a woman with whom intercourse is performed and then she

[13] **Qur'an references (L3656):** Qur'an 5:6 (Al-Ma'idah).

menstruates. He replied: “She must perform the ritual bath,” meaning the bath for janābah (major impurity). Sufyan narrated from Layth, al-Mughira ibn Maqsam, and Hisham ibn Hassān.

قَالَ حَبِيبٌ عَمْرُو بْنُ هَرِمٍ قَالَ: سُئِلَ جَابِرُ بْنُ زَيْدٍ هُوَ أَبُو الشَّعْثَاءِ - عَنْ الْمَرْأَةِ تُجَامَعُ ثُمَّ تَحِيضُ؟ قَالَ عَلَيْهَا أَنْ تَغْتَسِلَ - يَعْنِي لِلْجَنَابَةِ - وَقَالَ سُفْيَانُ عَنْ لَيْثٍ وَالْمُغِيرَةِ بْنِ مَقْسَمٍ وَهِشَامِ بْنِ حَسَّانَ.

L3665 Layth reported from Ṭāwūs, and al-Mughīrah reported from Ibrāhīm al-Nakhaʿī. Hishām reported from al-Ḥasan. All these scholars stated concerning a woman who enters a state of janabah and then menstruates that she must perform the ritual bath—referring to the bath for janabah. Ibn al-Mubārak reported from al-Ḥajjāj from Maymūn ibn Mihrān and ʿAmr ibn Shuʿayb regarding a woman who is in a state of janabah and then menstruates: they both said she must perform the ritual bath, meaning for janabah. He said: I asked al-Ḥakam ibn ʿUtaybah about her, and he replied, “Water should be poured over her—one washing instead of two.” ʿAbd al-Aʿlā transmitted to us [the reports of] Maʿmar, Yūnus ibn ʿUbayd, and Saʿīd ibn Abī ʿAmruwayh. Maʿmar reported from al-Zuhrī, Yūnus reported from al-Ḥasan, and Saʿīd reported from Qatādah. They all stated concerning a woman who engages in intercourse and then menstruates that she must perform the ritual bath for her janabah. Bishr ibn Manṣūr reported from Ibn Jurayj from ʿAṭāʾ ibn Abī Rabāḥ regarding a woman who engages in intercourse and then menstruates: she must perform the ritual bath. If she delays it, she must perform two washings upon attaining purity.

قَالَ لَيْثٌ: عَنْ طَاوُسٍ، وَقَالَ الْمُغِيرَةُ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ. وَقَالَ هِشَامٌ عَنْ الْحَسَنِ. قَالُوا كُلُّهُمْ فِي الْمَرْأَةِ تُجْنِبُ ثُمَّ تَحِيضُ أَنَّهَا تَغْتَسِلُ - يَعْنُونَ لِلْجَنَابَةِ - وَقَالَ ابْنُ الْمُبَارَكُ عَنْ الْحَجَّاجِ عَنْ مَيْمُونِ بْنِ مِهْرَانَ وَعَمْرِو بْنِ شُعَيْبٍ فِي الْمَرْأَةِ تَكُونُ جُنُبًا ثُمَّ تَحِيضُ، قَالَا جَمِيعًا: تَغْتَسِلُ، يَعْنِيَانِ لِلْجَنَابَةِ، قَالَ وَسَأَلْتُ عَنْهَا الْحَكَمَ بْنَ عُتَيْبَةَ قَالَ: تَصُبُّ عَلَيْهَا الْمَاءَ، غَسْلَةً دُونَ غَسْلَةٍ وَقَالَ عَبْدُ الْأَعْلَى ثنا مَعْمَرٌ وَيُونُسُ بْنُ عُبَيْدٍ وَسَعِيدُ بْنُ أَبِي عَمْرَوَيْهِ، قَالَ مَعْمَرٌ عَنْ الزُّهْرِيِّ، وَقَالَ يُونُسُ عَنْ الْحَسَنِ وَقَالَ سَعِيدٌ عَنْ قَتَادَةَ قَالُوا كُلُّهُمْ فِي الْمَرْأَةِ تُجَامَعُ ثُمَّ تَحِيضُ، أَنَّهَا تَغْتَسِلُ لِجَنَابَتِهَا، وَقَالَ بِشْرُ بْنُ مَنْصُورٍ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ فِي الْمَرْأَةِ تُجَامَعُ ثُمَّ تَحِيضُ أَنَّهَا تَغْتَسِلُ، فَإِنْ أَخَّرَتْ فَغُسْلَانِ عِنْدَ طُهْرِهَا.

L3666 The following: Jābir ibn Zayd, al-Ḥasan, Qatādah, Ibrāhīm al-Nakhaʿī, al-Ḥakam, Ṭāwūs, ʿAṭāʾ, ʿAmr ibn Shuʿayb, al-Zuhrī, and Maymūn ibn Mihrān; this is the opinion of Dāwūd and our companions.

فَهَؤُلَاءِ جَابِرُ بْنُ زَيْدٍ وَالْحَسَنُ وَقَتَادَةُ وَإِبْرَاهِيمُ النَّخَعِيُّ وَالْحَكَمُ وَطَاوُسٌ وَعَطَاءٌ وَعَمْرُو بْنُ شُعَيْبٍ وَالزُّهْرِيُّ وَمَيْمُونُ بْنُ مِهْرَانَ، وَهُوَ قَوْلُ دَاوُد وَأَصْحَابِنَا.

L3667 **Issue: It is disliked for one performing *ghusl* to dry himself with a garment other than the garment he is wearing.**

[مَسْأَلَةٌ يُكْرَهُ لِلْمُغْتَسِلِ أَنْ يَتَنَشَّفَ فِي ثَوْبٍ غَيْرِ ثَوْبِهِ الَّذِي يَلْبَسُ]

L3668 Issue 196: It is disliked for one performing ghusl (ritual bathing) to dry himself with a garment other than the one he is wearing. If he does so, there is no blame, but this is not disliked in wudu (ablution). Abdullah ibn Rabīʿ reported from Ibn Mufarrij from Ibn al-Sakan from al-Farbarī from al-

١٩٦ - مَسْأَلَةٌ: وَيُكْرَهُ لِلْمُغْتَسِلِ أَنَّ يَتَنَشَّفَ فِي ثَوْبٍ غَيْرِ ثَوْبِهِ الَّذِي يَلْبَسُ، فَإِنْ فَعَلَ فَلَا حَرَجَ، وَلَا يُكْرَهُ ذَلِكَ فِي الْوُضُوءِ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ

Bukhārī from Mūsā from Abū ʿAwānah from al-Aʿmash from Sālim ibn Abī al-Jaʿd from Kuraib from Ibn ʿAbbās from Maymūnah bint al-Ḥārith, who said: “I prepared a bath for the Messenger of Allah—peace and blessings be upon him—and screened him.” She then described the manner of his bathing—peace and blessings be upon him—saying: “He washed his head, then poured water over his body. He then moved aside and washed his feet. I handed him a cloth, but he gestured with his hand like this and did not take it.”

السَّكَنِ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُوسَى ثنا أَبُو عَوَانَةَ ثنا الْأَعْمَشُ عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ عَنْ كُرَيْبٍ عَنِ ابْنِ عَبَّاسٍ عَنْ مَيْمُونَةَ بِنْتِ الْحَارِثِ قَالَتْ «وَضَعْتُ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غُسْلًا وَسَتَرْتُهُ - فَذَكَرْتُ صِفَةَ غُسْلِهِ - عَلَيْهِ السَّلَامُ - قَالَتْ - وَغَسَلَ رَأْسَهُ ثُمَّ صَبَّ عَلَى جَسَدِهِ، ثُمَّ تَنَحَّى فَغَسَلَ قَدَمَيْهِ، فَنَاوَلْتُهُ خِرْقَةً، فَقَالَ بِيَدِهِ هَكَذَا وَلَمْ يَرُدَّهَا» .

L3669–3671 Abdullah ibn Rabi’ narrated to us, Muhammad ibn Ishaq narrated to us, Ibn al-A’rabi narrated to us, Abu Dawud narrated to us, Hisham narrated to us, Abu Marwan and Muhammad ibn al-Muthanna both narrated to us: Al-Walid ibn Muslim narrated to us, Al-Awza’i narrated to us: I heard Yahya ibn Abi Kathir say: Muhammad ibn Abd al-Rahman ibn As’ad ibn Zurarah narrated to me from Qays ibn Sa’d, who said: “The Messenger of Allah (peace and blessings be upon him) visited us in our home.” He mentioned the hadith, which included that the Messenger of Allah (peace and blessings be upon him)... Saʿd ordered a ghusl prepared for him, so the Prophet bathed. Then he handed him a cloak dyed with saffron or wars, and the Messenger of Allah (peace be upon him) enveloped himself in it.”

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا هِشَامٌ ثنا أَبُو مَرْوَانَ وَمُحَمَّدُ بْنُ الْمُثَنَّى قَالَا حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ ثنا الْأَوْزَاعِيُّ سَمِعْتُ يَحْيَى بْنَ أَبِي كَثِيرٍ يَقُولُ: حَدَّثَنِي مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ أَسْعَدَ بْنِ زُرَارَةَ عَنْ قَيْسِ بْنِ سَعْدٍ قَالَ: «زَارَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي مَنْزِلِنَا - فَذَكَرَ الْحَدِيثَ وَفِيهِ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ لَهُ سَعْدٌ بِغُسْلٍ فَاغْتَسَلَ، ثُمَّ نَاوَلَهُ مِلْحَفَةً مَصْبُوغَةً بِزَعْفَرَانٍ أَوْ وَرْسٍ فَاشْتَمَلَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

L3672 Abu Muhammad said: This does not contradict the first statement, because he—peace be upon him—wrapped himself in them, thus they became his garment at that time. Some of the Salaf held this view, as reported to us from Abd al-Razzāq from Ibn Jurayj from Aṭāʾ: He was asked about the adorned handkerchief—does a man wipe water with it? He refused to permit it and said: “It is something that has been innovated.”

قَالَ أَبُو مُحَمَّد: هَذَا لَا يُضَادُّ الْأَوَّلَ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - اشْتَمَلَ فِيهَا فَصَارَتْ لِبَاسُهُ حِينَئِذٍ، وَقَالَ بِهَذَا بَعْضُ السَّلَفِ، كَمَا رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: أَنَّهُ سُئِلَ عَنِ الْمِنْدِيلِ الْمُهَذَّبِ أَيَمْسَحُ بِهِ الرَّجُلُ الْمَاءَ؟ فَأَبَى أَنْ يُرَخِّصَ فِيهِ، وَقَالَ هُوَ شَيْءٌ أُحْدِثَ.

L3673 I said: “What do you think if I intend for the handkerchief to take away the water’s coldness from me?” He replied: “There is no harm in it therefore,” and he (peace be upon him) did not prohibit this during ablution, so it is permissible in it.

قُلْتُ: أَرَأَيْتَ إِنْ كُنْتُ أُرِيدُ أَنْ يُذْهِبَ عَنِّي الْمِنْدِيلُ بَرْدَ الْمَاءِ قَالَ فَلَا بَأْسَ بِهِ إِذَنْ، وَلَمْ يَنْهَ - عَلَيْهِ السَّلَامُ - عَنْ ذَلِكَ فِي الْوُضُوءِ فَهُوَ مُبَاحٌ فِيهِ.

L3674 **Issue: The one performing ghusl when he immerses him-**

[مَسْأَلَةٌ المغتسل إِذَا انْغَمِسْ فِي مَاءٍ]

self in water.

L3675 Issue 197: For every ablution we have mentioned, a person may begin with his feet or any limbs he wishes, except for the Friday ablution and the *ghusl* for major impurity (*janabah*). These two are only valid if one begins by washing the head first, followed by the body. If one fully submerges in water, he must intend to start with his head first, then his body, and this is obligatory.

L3676 The evidence for this is the statement of the Messenger of Allah (peace be upon him) which we have mentioned with its chain of transmission: "It is Allah's right upon every Muslim to bathe one day in every seven days: he must wash his head and body." It has been authentically established from the Messenger of Allah (peace be upon him) that he said: "Begin with what Allah began with." We will mention this in the order of ablution with its chain of transmission, if Allah the Most High wills.

L3677 He - peace be upon him - began with the head before the body, and He, the Exalted, said: _"He does not speak from [his own] inclination. It is not but a revelation revealed"_ [An-Najm: 3/4]. Thus, it is established that whatever the Messenger of Allah - peace and blessings be upon him - initiated in his speech came through revelation from Allah, the Exalted. Therefore, Allah, the Exalted, is the One who originated what the Messenger of Allah - peace and blessings be upon him - began.[14]

A Question on the Description of Ablution

L3678

L3679–3681 198. Issue: The description of ablution is that if one awakens from sleep, they must wash their hands three times, sniff water into the nose and expel it three times to drive Satan from their nasal passages as described. This applies equally whether they distanced themselves from their sleeping place before ablution or not. If they have already performed all this, they need not repeat the ablution for a ritual impurity unrelated to sleep. Should they pour water over their hands from a vessel without immersing his hand in it, they must wash their hands three times upon rising from sleep. We hold

[14] **Qur'an references (L3677):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).

١٩٧ - مَسْأَلَةٌ: وَكُلُّ غُسْلٍ ذَكَرْنَا فَلِلْمَرْءِ أَنْ يَبْدَأَ بِهِ مِنْ رِجْلَيْهِ أَوْ مِنْ أَيِّ أَعْضَائِهِ شَاءَ، حَاشَا غُسْلَ الْجُمُعَةِ وَالْجَنَابَةِ، فَلَا يُجْزِئُ فِيهِمَا إِلَّا الْبُدَاءَةُ بِغَسْلِ الرَّأْسِ أَوَّلًا ثُمَّ الْجَسَدِ، فَإِنْ انْغَمَسَ فِي مَاءٍ فَعَلَيْهِ أَنْ يَنْوِيَ الْبُدَاءَةَ بِرَأْسِهِ ثُمَّ بِجَسَدِهِ وَلَا بُدَّ.

بُرْهَانُ ذَلِكَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي قَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ «حَقٌّ لِلَّهِ عَلَى كُلِّ مُسْلِمٍ أَنْ يَغْتَسِلَ فِي كُلِّ سَبْعَةِ أَيَّامٍ يَوْمًا، يَغْسِلُ رَأْسَهُ وَجَسَدَهُ» وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «ابْدَءُوا بِمَا بَدَأَ اللَّهُ بِهِ» وَسَنَذْكُرُهُ فِي تَرْتِيبِ الْوُضُوءِ بِإِسْنَادِهِ إِنْ شَاءَ اللَّهُ تَعَالَى.

وَقَدْ بَدَأَ - عَلَيْهِ السَّلَامُ - بِالرَّأْسِ قَبْلَ الْجَسَدِ، وَقَالَ تَعَالَى: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] فَصَحَّ أَنَّ مَا ابْتَدَأَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي نُطْقِهِ فَعَنْ وَحْيٍ أَتَاهُ مِنْ عِنْدِ اللَّهِ تَعَالَى، فَاللَّهُ تَعَالَى هُوَ الَّذِي بَدَأَ بِالَّذِي بَدَأَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَةٌ صِفَةُ الْوُضُوءِ]

١٩٨ - مَسْأَلَةٌ: وَصِفَةُ الْوُضُوءِ أَنَّهُ إِنْ كَانَ انْتَبَهَ مِنْ نَوْمٍ فَعَلَيْهِ أَنْ يَغْسِلَ يَدَيْهِ ثَلَاثًا كَمَا قَدْ ذَكَرْنَا قَبْلُ، وَأَنْ يَسْتَنْشِقَ وَأَنْ يَسْتَنْثِرَ ثَلَاثًا لِيَطْرُدَ الشَّيْطَانَ عَنْ خَيْشُومِهِ كَمَا قَدْ وَصَفْنَا، وَسَوَاءٌ تَبَاعَدَ مَا بَيْنَ نَوْمِهِ وَوُضُوئِهِ أَوْ لَمْ يَتَبَاعَدْ، فَإِنْ كَانَ قَدْ فَعَلَ كُلَّ ذَلِكَ فَلَيْسَ عَلَيْهِ أَنْ يُعِيدَ ذَلِكَ الْوُضُوءَ مِنْ حَدَثٍ غَيْرِ النَّوْمِ، فَلَوْ صَبَّ عَلَى يَدَيْهِ مِنْ إِنَاءٍ دُونَ أَنْ يُدْخِلَ يَدَهُ فِيهِ لَزِمَهُ غَسْلُ يَدِهِ أَيْضًا ثَلَاثًا إِنْ قَامَ مِنْ نَوْمِهِ، ثُمَّ نَخْتَارُ لَهُ أَنْ

it preferable for them to rinse the mouth three times, though rinsing is not obligatory. If omitted – whether intentionally or unintentionally – their ablution remains complete and their prayer remains complete. Forgetfully, then he intends his ablution for prayer as we previously outlined. He must place water in his nose and sniff it himself necessarily, then blow it out with his fingers once necessarily. If he performs it a second and third time, that is preferable. These two are obligatory - neither ablution nor prayer is valid without them, whether intentionally or forgetfully. Then he washes his face from the boundary of the hair's origin at the top of the forehead to the bases of both ears together, down to the end of the chin. It is recommended to wash this three times or twice, while once suffices. He is not required to wet what hangs down from his beard beneath his chin, nor to comb through his beard. Then he washes his forearms from the tips of the nails to the beginning of the elbows adjacent to the forearms. Washing three times is preferable, twice is preferable, and once suffices. He must necessarily ensure water reaches under the ring by moving it from its place with certainty. Then he wipes his head in any way - that suffices. Our preferred method is to cover his entire head with wiping. Whether he wipes with both hands, one hand, or a single finger, it suffices.

يَتَمَضْمَضَ ثَلَاثًا، وَلَيْسَتْ الْمَضْمَضَةُ فَرْضًا، وَإِنْ تَرَكَهَا فَوُضُوءُهُ تَامٌّ وَصَلَاتُهُ تَامَّةٌ، عَمْدًا تَرَكَهَا أَوْ نِسْيَانًا، ثُمَّ يَنْوِي وُضُوءَهُ لِلصَّلَاةِ كَمَا قَدَّمْنَا، ثُمَّ يَضَعُ الْمَاءَ فِي أَنْفِهِ وَيَجْبِذُهُ بِنَفْسِهِ وَلَا بُدَّ، ثُمَّ يَنْثُرُهُ بِأَصَابِعِهِ وَلَا بُدَّ مَرَّةً فَإِنْ فَعَلَ الثَّانِيَةَ وَالثَّالِثَةَ فَحَسَنٌ، وَهُمَا فَرْضَانِ لَا يُجْزِئُ الْوُضُوءُ وَلَا الصَّلَاةُ دُونَهُمَا، لَا عَمْدًا وَلَا نِسْيَانًا، ثُمَّ يَغْسِلُ وَجْهَهُ مِنْ حَدِّ مَنَابِتِ الشَّعْرِ فِي أَعْلَى الْجَبْهَةِ إلَى أُصُولِ الْأُذُنَيْنِ مَعًا إلَى مُنْقَطِعِ الذَّقَنِ وَيُسْتَحَبُّ أَنْ يَغْسِلَ ذَلِكَ ثَلَاثًا أَوْ ثِنْتَيْنِ وَتُجْزِئُ مَرَّةً، لَيْسَ عَلَيْهِ أَنْ يَمَسَّ الْمَاءَ مَا انْحَدَرَ مِنْ لِحْيَتِهِ تَحْتَ ذَقَنِهِ، وَلَا أَنْ يُخَلِّلَ لِحْيَتَهُ، ثُمَّ يَغْسِلَ ذِرَاعَيْهِ مِنْ مُنْقَطَعِ الْأَظْفَارِ إلَى أَوَّلِ الْمَرَافِقِ مِمَّا يَلِي الذِّرَاعَيْنِ، فَإِنْ غَسَلَ ذَلِكَ ثَلَاثًا فَحَسَنٌ، وَمَرَّتَيْنِ حَسَنٌ، وَتُجْزِئُ مَرَّةً، وَلَا بُدَّ ضَرُورَةً مِنْ إيصَالِ الْمَاءِ بِيَقِينٍ إلَى مَا تَحْتَ الْخَاتَمِ بِتَحْرِيكِهِ عَنْ مَكَانِهِ، ثُمَّ يَمْسَحُ رَأْسَهُ كَيْفَمَا مَسَحَهُ أَجْزَأَهُ، وَأَحَبُّ إلَيْنَا أَنْ يَعُمَّ رَأْسَهُ بِالْمَسْحِ، فَكَيْفَمَا مَسَحَهُ بِيَدَيْهِ أَوْ بِيَدٍ وَاحِدَةٍ أَوْ بِأُصْبُعٍ وَاحِدَةٍ أَجْزَأَهُ.

L3682 If one wipes even a small part of their head, it suffices them. It is recommended to wipe the head three times or twice, though a single wipe fulfills the obligation. There is no obligation for a woman or a man to touch hair that hangs down from the hair roots on the nape and forehead. It is then recommended to wipe the ears if one wishes, either with the water used for the head or with fresh water. It is also recommended to use fresh water for each limb. Next, one washes their feet from where the toenails end to the end of the ankles adjacent to the shin. Washing three times is good, twice is good, and once suffices. It is recommended to mention the name of Allah the Exalted during ablution. If omitted, the ablution remains valid.

فَلَوْ مَسَحَ بَعْضَ رَأْسِهِ أَجْزَأَهُ وَإِنْ قَلَّ، وَنَسْتَحِبُّ أَنْ يَمْسَحَ رَأْسَهُ ثَلَاثًا أَوْ مَرَّتَيْنِ وَوَاحِدَةٌ تُجْزِئُ، وَلَيْسَ عَلَى الْمَرْأَةِ وَالرَّجُلِ مَسُّ مَا انْحَدَرَ مِنْ الشَّعْرِ عَنْ مَنَابِتِ الشَّعْرِ عَلَى الْقَفَا وَالْجَبْهَةِ ثُمَّ يُسْتَحَبُّ لَهُ مَسْحُ أُذُنَيْهِ، إنْ شَاءَ بِمَا مَسَحَ بِهِ رَأْسَهُ وَإِنْ شَاءَ بِمَاءٍ جَدِيدٍ، وَيُسْتَحَبُّ تَجْدِيدُ الْمَاءِ لِكُلِّ عُضْوٍ، ثُمَّ يَغْسِلُ رِجْلَيْهِ مِنْ مُبْتَدَإِ مُنْقَطَعِ الْأَظْفَارِ إلَى آخِرِ الْكَعْبَيْنِ مِمَّا يَلِي السَّاقَ، فَإِنْ غَسَلَ ذَلِكَ ثَلَاثًا فَحَسَنٌ، وَمَرَّتَيْنِ حَسَنٌ وَمَرَّةً تُجْزِئُ، وَتُسْتَحَبُّ تَسْمِيَةُ اللَّهِ تَعَالَى عَلَى الْوُضُوءِ، وَإِنْ لَمْ يَفْعَلْ فَوُضُوءُهُ تَامٌّ.

L3683 As for our statement regarding rinsing the mouth, no authentic injunction from Allah's Messenger—peace and blessings be upon him—has been narrated concerning it. Rather, it is merely an action he—peace and blessings

be upon him—performed. We have previously established that his actions—peace and blessings be upon him—are not obligatory; rather, they entail recommended emulation of him—peace and blessings be upon him—because Allah the Exalted has commanded us to obey His Prophet's injunctions—peace and blessings be upon him—but has not commanded us to replicate his actions.

L3684–3686 Allah the Exalted said: "So let those who oppose his command beware lest a trial afflict them or a painful punishment strike them" [an-Nur 24:63]. And Allah the Exalted said: "There has certainly been for you in the Messenger of Allah an exemplary model" [al-Ahzab 33:21]. As for inhaling water into the nose and expelling it, ʻAbdullah ibn Rabīʻ reported to us, stating: Muḥammad ibn Muʻāwiyah reported to us, Aḥmad ibn Shuʻayb informed us, Muḥammad ibn Manṣūr reported to us, Sufyān - who is Ibn ʻUyaynah - from Abū az-Zināد from al-Aʻraj from Abū Hurayrah that the Messenger of Allah (peace and blessings be upon him) said: "When any of you performs ablution, let him place water into his nose then expel it." We have also transmitted it via the route of Hammām ibn Munabbih from... From Abu Hurairah through a connected chain, and through the narration of Salamah ibn Qays from the Messenger of Allah - peace and blessings be upon him - Ali reported: Malik and al-Shafiʻi said: Inhaling water into the nostrils and expelling it are not obligatory in ablution nor in the ritual bath for major impurity. Abu Hanifah said: Both are obligatory in the ritual bath for major impurity but not in ablution. Ahmad ibn Hanbal and Dawud said: Inhaling water into the nostrils and expelling it are two obligations in ablution but not in the ritual bath for major impurity. Rinsing the mouth is not obligatory, neither in ablution nor in the ritual bath for major impurity. This is the truth.[15][16]

L3687 Among those from whom the command [to do so] has been authentically established are a group of the Salaf. It has been reported to us from ʿAlī ibn Abī Ṭālib: "When you perform ablution, draw [water] into your nostrils

أَمَّا قَوْلُنَا فِي الْمَضْمَضَةِ فَلَمْ يَصِحَّ بِهَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمْرٌ، وَإِنَّمَا هِيَ فِعْلٌ فَعَلَهُ - عَلَيْهِ السَّلَامُ -، وَقَدْ قَدَّمْنَا أَنَّ أَفْعَالَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَيْسَتْ فَرْضًا، وَإِنَّمَا فِيهَا الْإِيتَارُ بِهِ - عَلَيْهِ السَّلَامُ -، لِأَنَّ اللَّهَ تَعَالَى إنَّمَا أَمَرَنَا بِطَاعَةِ أَمْرِ نَبِيِّهِ - عَلَيْهِ السَّلَامُ - وَلَمْ يَأْمُرْنَا بِأَنْ نَفْعَلَ أَفْعَالَهُ.

قَالَ تَعَالَى: {فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ} [النور: ٦٣] وَقَالَ تَعَالَى: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] وَأَمَّا الِاسْتِنْشَاقُ وَالِاسْتِنْثَارُ فَإِنَّ عَبْدَ اللَّهِ بْنَ رَبِيعٍ حَدَّثَنَا قَالَ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنَا مُحَمَّدُ بْنُ مَنْصُورٍ ثنا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا تَوَضَّأَ أَحَدُكُمْ فَلْيَجْعَلْ فِي أَنْفِهِ مَاءً ثُمَّ لِيَسْتَنْثِرْ» وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ هَمَّامِ بْنِ مُنَبِّهٍ عَنْ أَبِي هُرَيْرَةَ مُسْنَدًا، وَمِنْ طَرِيقِ سَلَمَةَ بْنِ قَيْسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ عَلِيٌّ: قَالَ مَالِكٌ وَالشَّافِعِيُّ: لَيْسَ الِاسْتِنْشَاقُ وَالِاسْتِنْثَارُ فَرْضًا فِي الْوُضُوءِ وَلَا فِي الْغُسْلِ مِنْ الْجَنَابَةِ، وَقَالَ أَبُو حَنِيفَةَ: هُمَا فَرْضٌ فِي الْغُسْلِ مِنْ الْجَنَابَةِ وَلَيْسَا فَرْضًا فِي الْوُضُوءِ، وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ وَدَاوُد: الِاسْتِنْشَاقُ وَالِاسْتِنْثَارُ فَرْضَانِ فِي الْوُضُوءِ وَلَيْسَا فَرْضَيْنِ فِي الْغُسْلِ مِنْ الْجَنَابَةِ، وَلَيْسَتْ الْمَضْمَضَةُ فَرْضًا لَا فِي الْوُضُوءِ وَلَا فِي غُسْلِ الْجَنَابَةِ، وَهَذَا هُوَ الْحَقُّ.

وَمِمَّنْ صَحَّ عَنْهُ الْأَمْرُ بِذَلِكَ جَمَاعَةٌ مِنْ السَّلَفِ. رُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ إذَا تَوَضَّأْتَ فَانْثُرْ فَأَذْهِبْ مَا فِي الْمَنْخَرَيْنِ مِنْ الْخُبْثِ، وَعَنْ شُعْبَةَ: قَالَ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ فِيمَنْ نَسِيَ أَنْ يُمَضْمِضَ وَيَسْتَنْشِقَ قَالَ: يَسْتَقْبِلُ.

[15] **Hadith references (L3684):** Sunan an-Nasai 86.
[16] **Qur'an references (L3684):** Qur'an 24:63 (An-Nur); Qur'an 33:21 (Al-Ahzab).

and remove whatever unclean matter is within them." From Shuʿbah, it is reported that Ḥammād ibn Abī Sulaymān said regarding one who forgot to rinse the mouth and nostrils: "He must start the ablution anew."

وَعَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ فِيمَنْ صَلَّى وَقَدْ نَسِيَ أَنْ يُمَضْمِضَ وَيَسْتَنْشِقَ قَالَ: أَحَبُّ إلَيَّ أَنْ يُعِيدَ يَعْنِي الصَّلَاةَ.

L3688 From Shuʿbah, from Al-Ḥakam ibn ʿUtaybah concerning one who prayed but forgot to rinse his mouth and sniff water into his nostrils: He said, "It is preferable that he repeat"—meaning the prayer.

وَعَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُجَاهِدٍ: الِاسْتِنْشَاقُ شَطْرُ الْوُضُوءِ وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ وَابْنِ أَبِي لَيْلَى قَالَا جَمِيعًا " إذَا نَسِيَ الْمَضْمَضَةَ وَالِاسْتِنْشَاقَ فِي الْوُضُوءِ أَعَادَ " يَعْنُونَ الصَّلَاةَ - وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ مَنْ نَسِيَ الْمَضْمَضَةَ وَالِاسْتِنْشَاقَ فِي الْوُضُوءِ أَعَادَ - يَعْنِي الصَّلَاةَ - وَعَنْ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي خَالِدٍ الْأَحْمَرِ عَنْ هِشَامٍ عَنْ الْحَسَنِ فِي الْمَضْمَضَةِ وَالِاسْتِنْشَاقِ وَالِاسْتِنْثَارِ وَغَسْلِ الْوَجْهِ وَالْيَدَيْنِ وَالرِّجْلَيْنِ: ثِنْتَانِ تَجْزِيَانِ وَثَلَاثٌ أَفْضَلُ.

L3689 From Waki', from Sufyan al-Thawri, from Mujahid: "Sniffing water into the nose constitutes a vital component of ablution." From Abd al-Razzaq, from Sufyan al-Thawri, from Hammad ibn Abi Sulayman and Ibn Abi Layla—both said: "If one forgets mouth rinsing and nasal inhalation during ablution, he must repeat"—meaning the prayer. From Abd al-Razzaq, from Ma'mar, from al-Zuhrī: "Whoever forgets mouth rinsing and nasal inhalation during ablution must repeat"—meaning the prayer. From Ibn Abi Shaybah, from Abu Khalid al-Ahmar, from Hisham, from al-Hasan regarding mouth rinsing, nasal inhalation, nasal expulsion, washing the face, both hands, and both feet: "Two times for each suffice, and three times is more virtuous."

قَالَ عَلِيٌّ وَشَغَبَ قَوْمٌ بِأَنَّ الِاسْتِنْشَاقَ وَالِاسْتِنْثَارَ لَيْسَا مَذْكُورَيْنِ فِي الْقُرْآنِ وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَتِمُّ صَلَاةُ أَحَدِكُمْ حَتَّى يَتَوَضَّأَ كَمَا أَمَرَهُ اللَّهُ تَعَالَى» .

L3690 Ali said, and a group objected, arguing that sniffing water into the nose and expelling it are not mentioned in the Quran, and that the Messenger of Allah (peace be upon him) said: "No one's prayer is complete unless he performs ablution as Allah the Exalted has ordained."

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {مَنْ يُطِعِ الرَّسُولَ فَقَدْ أَطَاعَ اللَّهَ} [النساء: ٨٠] فَكُلُّ مَا أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاَللَّهُ تَعَالَى أَمَرَ بِهِ.

L3691 Abu Muhammad said: This holds no valid evidence for them, for Allah the Exalted says: "Whoever obeys the Messenger has indeed obeyed Allah" [Surah al-Nisa' 4:80]. Thus, every command issued by the Messenger of Allah (peace be upon him) is what Allah the Exalted has commanded.[17]

وَأَمَّا قَوْلُنَا فِي الْوَجْهِ، فَإِنَّهُ لَا خِلَافَ فِي أَنَّ الَّذِي قُلْنَا فَرْضُ غَسْلِهِ قَبْلَ خُرُوجِ اللِّحْيَةِ، فَإِذَا خَرَجَتْ اللِّحْيَةُ فَهِيَ مَكَانُ مَا سَتَرَتْ، وَلَا يَسْقُطُ غَسْلُ شَيْءٍ يَقَعُ عَلَيْهِ اسْمُ الْوَجْهِ

L3692–3694 As for our statement regarding the face, there is no disagreement that what we have stated—the obligation to wash it—applies before the beard grows. When the beard grows, it occupies the place of what it covers, and the obligation to wash any part it covers is not waived. The definition of the face

[17] **Qur'an references (L3691):** Qur'an 4:80 (An-Nisa).

[in ablution] is established by juristic determination, and it is impermissible to base the distinction on personal opinion regarding the parts of their respective faces that the beardless, patchily bearded, and fully bearded must wash.

L3695 As for what descends below the chin of the beard and what hangs down from the hair roots at the back of the head and the forehead, Almighty God has indeed commanded us to wash the face and wipe the head. By necessity, everyone knows that a person's head does not include its back portion, that the forehead belongs to the washed face—having no portion in the wiped head—and that the face does not extend to the neck or chest. Therefore, nothing in all of that is obligatory, since neither the Quran nor the Sunnah has required it.

L3696 As for our statement regarding washing the forearms, what lies beneath the ring, and the elbows, Allah the Exalted said: {And your hands to the elbows} [Al-Mā'idah: 6]. Thus, whoever neglects anything—even a hair's worth—from what Allah commanded to be washed has not performed ablution as He commanded. Whoever fails to perform ablution as Allah the Exalted commanded has not performed it at all, and his prayer holds no validity. It is therefore obligatory to ensure water reaches with certainty the portion of the finger concealed by the ring. As for the elbows, the preposition "to" in the Arabic language of the Quran's revelation carries two valid meanings: it may denote an endpoint or mean "in addition to." Allah said: {And do not consume their wealth to your wealth} [An-Nisā': 2], meaning "in addition to your wealth." Since "to" applies equally to both meanings without textual preference, restricting it to one meaning without evidence is invalid. Consequently, washing the forearms up to the beginning of the elbows suffices under one valid interpretation of "to," rendering the ablution valid. If one washes the elbows themselves, it is likewise permissible.[18]

L3697 As for our statement regarding wiping the head, people have differed. Mālik affirmed the general practice of wiping the entire head during ablution. Abū

[18] **Qur'an references (L3696):** Qur'an 5:6 (Al-Ma'idah); Qur'an 4:2 (An-Nisa).

بِالدَّعْوَى، وَلَا يَجُوزُ أَنْ يُؤْخَذَ بِالرَّأْيِ فَرْقٌ بَيْنَ مَا يَغْسِلُ الْأَمْرَدُ مِنْ وَجْهِهِ وَالْكَوْسَجُ وَالْأَلْحَى.

وَأَمَّا مَا انْحَدَرَ عَنْ الذَّقَنِ مِنْ اللِّحْيَةِ وَمَا انْحَدَرَ عَنْ مَنَابِتِ الشَّعْرِ مِنْ الْقَفَا وَالْجَبْهَةِ، فَإِنَّمَا أَمَرَنَا عَزَّ وَجَلَّ بِغَسْلِ الْوَجْهِ وَمَسْحِ الرَّأْسِ وَبِالضَّرُورَةِ يَدْرِي كُلُّ أَحَدٍ أَنَّ رَأْسَ الْإِنْسَانِ لَيْسَ فِي قَفَاهُ، وَأَنَّ الْجَبْهَةَ مِنْ الْوَجْهِ الْمَغْسُولِ، لَا حَظَّ فِيهَا لِلرَّأْسِ الْمَمْسُوحِ، وَأَنَّ الْوَجْهَ لَيْسَ فِي الْعُنُقِ وَلَا فِي الصَّدْرِ فَلَا يَلْزَمُ فِي كُلِّ ذَلِكَ شَيْءٌ، إذْ لَمْ يُوجِبْهُ قُرْآنٌ وَلَا سُنَّةٌ.

وَأَمَّا قَوْلُنَا فِي غَسْلِ الذِّرَاعَيْنِ وَمَا تَحْتَ الْخَاتَمِ وَالْمِرْفَقَيْنِ، فَإِنَّ اللَّهَ تَعَالَى قَالَ: {وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ} [المائدة: ٦] فَمَنْ تَرَكَ شَيْئًا وَلَوْ قَدْرَ شَعْرَةٍ مِمَّا أَمَرَ اللَّهُ تَعَالَى بِغَسْلِهِ فَلَمْ يَتَوَضَّأْ كَمَا أَمَرَهُ اللَّهُ تَعَالَى، وَمَنْ لَمْ يَتَوَضَّأْ كَمَا أَمَرَهُ اللَّهُ تَعَالَى فَلَمْ يَتَوَضَّأْ أَصْلًا، وَلَا صَلَاةَ لَهُ فَوَجَبَ إيصَالُ الْمَاءِ بِيَقِينٍ إلَى مَا سَتَرَ الْخَاتَمَ مِنْ الْأُصْبُعِ، وَأَمَّا الْمَرَافِقُ فَإِنَّ " إلَى " فِي لُغَةِ الْعَرَبِ الَّتِي بِهَا نَزَلَ الْقُرْآنُ تَقَعُ عَلَى مَعْنَيَيْنِ، تَكُونُ بِمَعْنَى الْغَايَةِ، وَتَكُونُ بِمَعْنَى مَعَ، قَالَ اللَّهُ تَعَالَى: {وَلا تَأْكُلُوا أَمْوَالَهُمْ إِلَى أَمْوَالِكُمْ} [النساء: ٢] بِمَعْنَى مَعَ أَمْوَالِكُمْ، فَلَمَّا كَانَتْ تَقَعُ " إلَى " عَلَى هَذَيْنِ الْمَعْنَيَيْنِ وُقُوعًا صَحِيحًا مُسْتَوِيًا، لَمْ يَجُزْ أَنْ يَقْتَصِرَ بِهَا عَلَى أَحَدِهِمَا دُونَ الْآخَرِ، فَيَكُونُ ذَلِكَ تَخْصِيصًا لِمَا تَقَعُ عَلَيْهِ بِلَا بُرْهَانٍ، فَوَجَبَ أَنْ يُجْزِئَ غَسْلُ الذِّرَاعَيْنِ إلَى أَوَّلِ الْمِرْفَقَيْنِ بِأَحَدِ الْمَعْنَيَيْنِ، فَيُجْزِئُ، فَإِنْ غَسَلَ الْمَرَافِقَ فَلَا بَأْسَ أَيْضًا.

وَأَمَّا قَوْلُنَا فِي مَسْحِ الرَّأْسِ فَإِنَّ النَّاسَ اخْتَلَفُوا، فَقَالَ مَالِكٌ بِعُمُومِ مَسْحِ الرَّأْسِ فِي الْوُضُوءِ. وَقَالَ أَبُو حَنِيفَةَ يَمْسَحُ مِنْ الرَّأْسِ فَرْضًا مِقْدَارَ ثَلَاثِ أَصَابِعَ، وَذُكِرَ عَنْهُ

Ḥanīfah held that one must wipe, as an obligation, an amount equivalent to three fingers' breadth on the head. It was mentioned from him that he defined the obligatory portion of the head to be wiped as a quarter of the head, maintaining that if one wipes his head with two fingers or one finger, it does not suffice. But if he wipes with three fingers' breadth, it suffices.

تَحْدِيدُ الْفَرْضِ مِمَّا يُمْسَحُ مِنَ الرَّأْسِ بِأَنَّهُ رُبْعُ الرَّأْسِ، وَإِنَّهُ إِنْ مَسَحَ رَأْسَهُ بِأُصْبُعَيْنِ أَوْ بِأُصْبُعٍ لَمْ يُجْزِهِ ذَلِكَ، فَإِنْ مَسَحَ بِثَلَاثِ أَصَابِعَ أَجْزَأَهُ.

L3698 Sufyan al-Thawri said: Wiping part of the head suffices, even a single hair. It suffices to wipe it with a finger or part of a finger. The followers of al-Shafi'i set the limit for what suffices in wiping the head as two hairs, and similarly with a finger or part of a finger. What al-Shafi'i most favored was complete coverage by wiping three times.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: يُجْزِئُ مِنَ الرَّأْسِ مَسْحُ بَعْضِهِ وَلَوْ شَعْرَةً وَاحِدَةً، وَيُجْزِئُ مَسْحُهُ بِأُصْبُعٍ وَبِبَعْضِ أُصْبُعٍ، وَحَدَّ أَصْحَابُ الشَّافِعِيِّ مَا يُجْزِئُ مِنْ مَسْحِ الرَّأْسِ بِشَعْرَتَيْنِ، وَيُجْزِئُ بِأُصْبُعٍ وَبِبَعْضِ أُصْبُعٍ، وَأَحَبُّ ذَلِكَ إِلَى الشَّافِعِيِّ الْعُمُومُ بِثَلَاثِ مَرَّاتٍ.

L3699–3701 Ahmad ibn Hanbal said: It is sufficient for the woman to wipe over the front part of her head. Al-Awza'i and al-Layth said: Wiping over the front part of the head alone suffices, and similarly wiping part of it suffices. Dawud said: What suffices for this is whatever falls under the legal definition of wiping.

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: يُجْزِئُ الْمَرْأَةُ أَنْ تَمْسَحَ بِمُقَدَّمِ رَأْسِهَا، وَقَالَ الْأَوْزَاعِيُّ وَاللَّيْثُ: يُجْزِئُ مَسْحُ مُقَدَّمِ الرَّأْسِ فَقَطْ وَمَسْحُ بَعْضِهِ كَذَلِكَ، وَقَالَ دَاوُد: يُجْزِئُ مِنْ ذَلِكَ مَا وَقَعَ عَلَيْهِ اسْمُ مَسْحٍ.

L3702 Similarly, regarding what he wiped—whether a finger's breadth, less, or more—he [the scholar] prefers the general practice of three times, and this is the correct view. As for restricting oneself to part of the head, Allah the Exalted says: "And wipe over your heads" (5:6). The wiping in the language in which the Quran was revealed is clearly distinct from washing, for washing requires full coverage whereas wiping does not. Hammam ibn Ahmad narrated to us: Abbas ibn Asbagh narrated to us: Muhammad ibn Abd al-Malik ibn Ayman narrated to us: Abdullah ibn Ahmad ibn Hanbal narrated to us: My father narrated to us: Yahya ibn Sa'id al-Qattan narrated to us: al-Taymi, who is Sulayman—narrated from Bakr ibn Abdullah al-Muzani, from al-Hasan, the Basran, from Ibn al-Mughirah ibn Shu'bah, who is Hamzah—from his father: "The Messenger of Allah (peace be upon him) performed ablution, wiped his forelock, and wiped over his leather socks and turban." Abdullah ibn Rabi' narrated to us: Muhammad ibn Ishaq narrated to us: Ibn al-A'rabi narrated to us: Abu Dawud narrated to us: Musaddad narrated from al-Mu'tamir ibn Sulayman al-Taymi, who said: I heard my father narrating from Bakr ibn Abdullah al-Muzani, from al-Hasan, from Ibn al-Mughirah

وَكَذَلِكَ بِمَا مَسَحَ مِنْ أُصْبُعٍ أَوْ أَقَلَّ أَوْ أَكْثَرَ وَأَحَبُّ إِلَيْهِ الْعُمُومُ ثَلَاثًا، وَهَذَا هُوَ الصَّحِيحُ، وَأَمَّا الِاقْتِصَارُ عَلَى بَعْضِ الرَّأْسِ فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَامْسَحُوا بِرُءُوسِكُمْ} [المائدة: ٦] وَالْمَسْحُ فِي اللُّغَةِ الَّتِي نَزَلَ بِهَا الْقُرْآنُ هُوَ غَيْرُ الْغُسْلِ بِلَا خِلَافٍ، وَالْغُسْلُ يَقْتَضِي الِاسْتِيعَابَ وَالْمَسْحُ لَا يَقْتَضِيهِ حَدَّثَنَا حُمَامُ بْنُ أَحْمَدَ ثنا عَبَّاسُ بْنُ أَصْبَغَ حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ ثنا أَبِي ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ ثنا التَّيْمِيُّ هُوَ سُلَيْمَانُ - عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيِّ عَنِ الْحَسَنِ هُوَ الْبَصْرِيُّ - عَنِ ابْنِ الْمُغِيرَةِ بْنِ شُعْبَةَ هُوَ حَمْزَةُ - عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَوَضَّأَ فَمَسَحَ بِنَاصِيَتِهِ وَمَسَحَ عَلَى الْخُفَّيْنِ وَالْعِمَامَةِ» حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ حَدَّثَنَا أَبُو دَاوُد ثنا مُسَدَّدٌ عَنِ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ

ibn Shu’bah, from his father: “The Messenger of Allah (peace be upon him) used to wipe over his leather socks, his forelock, and his turban.” Bakr said: I indeed heard this from Ibn al-Mughirah.[19][20]

قَالَ: سَمِعْتُ أَبِي يُحَدِّثُ عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيِّ عَنْ الْحَسَنِ عَنْ ابْنِ الْمُغِيرَةِ بْنِ شُعْبَةَ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَمْسَحُ عَلَى الْخُفَّيْنِ وَعَلَى نَاصِيَتِهِ وَعَلَى عِمَامَتِهِ» قَالَ بَكْرٌ: وَقَدْ سَمِعْتُهُ مِنْ ابْنِ الْمُغِيرَةِ.

L3703 And among those who held this view is a group of the Salaf.

وَمِمَّنْ قَالَ بِهَذَا جَمَاعَةٌ مِنْ السَّلَفِ.

L3704 It was narrated to us from Ma’mar, from Ayyub al-Sikhtiyani, from Nafi’, from Ibn Umar: That he would insert his hand into the ablution water and wipe with it a single wipe on the crown of his head only.

رُوِّينَا عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ يُدْخِلُ يَدَهُ فِي الْوُضُوءِ فَيَمْسَحُ بِهِ مَسْحَةً وَاحِدَةً الْيَافُوخَ فَقَطْ.

L3705 We have also narrated it through the chain of ‘Ubayd Allāh ibn ‘Umar from Nāfi‘ from Ibn ‘Umar. And from Ḥammād ibn Salamah from Hishām ibn ‘Urwah from Fāṭimah bint al-Mundhir ibn al-Zubayr: that she would wipe her right cheek with her right hand and her left cheek with her left hand from under the veil. This Fāṭimah met her grandmother Asmā’ bint Abī Bakr—may Allāh be pleased with her—and narrated from her.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ. وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ فَاطِمَةَ بِنْتِ الْمُنْذِرِ بْنِ الزُّبَيْرِ: إنَّهَا كَانَتْ تَمْسَحُ عَارِضَهَا الْأَيْمَنَ بِيَدِهَا الْيُمْنَى، وَعَارِضَهَا الْأَيْسَرَ بِيَدِهَا الْيُسْرَى مِنْ تَحْتِ الْخِمَارِ وَفَاطِمَةُ هَذِهِ أَدْرَكَتْ جَدَّتَهَا أَسْمَاءَ بِنْتَ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهَا - وَرَوَتْ عَنْهَا.

L3706–3707 From Waki‘ from Qays from Abu Hashim from al-Nakha‘i, who said: If he wipes this (meaning the front of his head and his temples), it suffices him (meaning in ablution). And from Waki‘ from Isma‘il al-Azraq from al-Sha‘bi, who said: If he wipes the side of his head, it suffices him. It was also narrated from ‘Ata’, Safiyya bint Abi ‘Ubayd, ‘Ikrimah, al-Hasan, Abi al-‘Aliya, ‘Abd al-Rahman ibn Abi Layla, and others.

وَعَنْ وَكِيعٍ عَنْ قَيْسٍ عَنْ أَبِي هَاشِمٍ عَنْ النَّخَعِيِّ قَالَ: إنْ أَصَابَ هَذَا - يَعْنِي مُقَدَّمَ رَأْسِهِ وَصُدْغَيْهِ - أَجْزَأَهُ - يَعْنِي فِي الْوُضُوءِ - وَعَنْ وَكِيعٍ عَنْ إسْمَاعِيلَ الْأَزْرَقِ عَنْ الشَّعْبِيِّ قَالَ: إنْ مَسَحَ جَانِبَ رَأْسِهِ أَجْزَأَهُ وَرُوِيَ أَيْضًا عَنْ عَطَاءٍ وَصَفِيَّةَ بِنْتِ أَبِي عُبَيْدٍ وَعِكْرِمَةَ وَالْحَسَنِ وَأَبِي الْعَالِيَةِ وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى وَغَيْرِهِمْ.

L3708 Abu Muhammad said: No disagreement is known from any of the Companions—may Allah be pleased with them—regarding what we have narrated from Ibn Umar concerning that matter. Nor is there any proof for those who oppose us concerning those from whom it is narrated among the Companions and others that they wiped their entire head, for we do not deny that; rather, we deem it preferable. We merely demand that they identify someone

قَالَ أَبُو مُحَمَّدٍ: وَلَا يُعْرَفُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافٌ لِمَا رُوِّينَاهُ عَنْ ابْنِ عُمَرَ فِي ذَلِكَ، وَلَا حُجَّةَ لِمَنْ خَالَفَنَا فِيمَنْ رَوَى عَنْهُ مِنْ الصَّحَابَةِ وَغَيْرِهِمْ مَسْحَ جَمِيعِ رَأْسِهِ؛ لِأَنَّنَا لَا نُنْكِرُ ذَلِكَ بَلْ نَسْتَحِبُّهُ، وَإِنَّمَا نُطَالِبُهُمْ بِمَنْ أَنْكَرَ الِاقْتِصَارَ عَلَى بَعْضِ الرَّأْسِ فِي الْوُضُوءِ فَلَا يَجِدُونَهُ.

[19] **Hadith references (L3702):** Sunan Abi Dawud 150.
[20] **Qur’an references (L3702):** Qur’an 5:6 (Al-Ma’idah).

who rejected limiting the wiping to part of the head in ablution, but they cannot find such a person.

قَالَ عَلِيٌّ: وَمَنْ خَالَفَنَا فِي هَذَا فَإِنَّهُمْ يَتَنَاقَضُونَ، فَيَقُولُونَ فِي الْمَسْحِ عَلَى الْخُفَّيْنِ: إِنَّهُ خُطُوطٌ لَا يَعُمُّ الْخُفَّيْنِ، فَمَا الْفَرْقُ بَيْنَ مَسْحِ الْخُفَّيْنِ وَمَسْحِ الرَّأْسِ؟ وَأُخْرَى وَهِيَ أَنْ يُقَالَ لَهُمْ: إِنْ كَانَ الْمَسْحُ عِنْدَكُمْ يَقْتَضِي الْعُمُومَ فَهُوَ وَالْغُسْلُ سَوَاءٌ، وَمَا الْفَرْقُ بَيْنَهُ وَبَيْنَ الْغُسْلِ؟ وَإِنْ كَانَ كَذَلِكَ فَلِمَ تُنْكِرُونَ مَسْحَ الرِّجْلَيْنِ فِي الْوُضُوءِ وَتَأْبَوْنَ إِلَّا غُسْلَهُمَا إِنْ كَانَ كِلَاهُمَا يَقْتَضِي الْعُمُومَ؟ وَأَيْضًا فَإِنَّكُمْ لَا تَخْتَلِفُونَ فِي أَنَّ غُسْلَ الْجَنَابَةِ يَلْزَمُ تَقَصِّي الرَّأْسِ بِالْمَاءِ، وَأَنَّ ذَلِكَ لَا يَلْزَمُ فِي الْوُضُوءِ، فَقَدْ أَقْرَرْتُمْ بِأَنَّ الْمَسْحَ بِالرَّأْسِ خِلَافُ الْغُسْلِ، وَلَيْسَ هُنَا فَرْقٌ إِلَّا أَنَّ الْمَسْحَ لَا يَقْتَضِي الْعُمُومَ فَقَطْ، وَهَذَا تَرْكٌ لِقَوْلِكُمْ.

L3709 Ali said: Those who oppose us in this matter contradict themselves. They say regarding wiping over leather socks that it involves lines and does not cover the entire surface. What then differentiates wiping leather socks from wiping the head? Another point is to say to them: If wiping in your view necessitates full coverage, it would be equivalent to ghusl. What distinction then remains between wiping and ghusl? If this is so, why do you reject wiping the feet in wudu and insist on washing them when both actions supposedly require full coverage? Moreover, you do not disagree that ghusl for major impurity requires thorough wetting of the head with water, while this is not required in wudu. Thus you have acknowledged that wiping the head differs from ghusl. The distinction lies solely in the fact that wiping does not require full coverage, yet this constitutes an abandonment of your own claim.

وَأَيْضًا فَمَا تَقُولُونَ فِيمَنْ تَرَكَ بَعْضَ شَعْرَةٍ وَاحِدَةٍ فِي الْوُضُوءِ فَلَمْ يَمْسَحْ عَلَيْهَا؟ فَمِنْ قَوْلِهِمْ: إِنَّهُ يُجْزِيهِ، وَهَذَا تَرْكٌ مِنْهُمْ لِقَوْلِهِمْ.

L3710 And also, what do you say regarding one who leaves a portion of a single hair un-wiped while performing ablution? They claim it suffices for him, yet this constitutes an abandonment of their own stated position.

فَإِنْ قَالُوا: إِنَّمَا نَقُولُ بِالْأَغْلَبِ، قِيلَ لَهُمْ: فَتَرْكُ شَعْرَتَيْنِ أَوْ ثَلَاثًا؟ وَهَكَذَا أَبَدًا، فَإِنْ حَدُّوا حَدًّا قَالُوا بِبَاطِلٍ لَا دَلِيلَ عَلَيْهِ، وَإِنْ تَمَادَوْا صَارُوا إِلَى قَوْلِنَا، وَهُوَ الْحَقُّ.

L3711 If they say, “We only adhere to the majority opinion,” say to them: “Then leaving just two or three hairs?” And so on indefinitely. If they stipulate a specific number, they have asserted a baseless position without evidence, and if they persist, they will arrive at our position, which is the truth.

فَإِنْ قَالُوا: مَنْ عَمَّ رَأْسَهُ فَقَدْ صَحَّ أَنَّهُ تَوَضَّأَ، وَمَنْ لَمْ يَعُمَّهُ فَلَمْ يَتَّفِقْ عَلَى أَنَّهُ تَوَضَّأَ قُلْنَا لَهُمْ فَأَوْجِبُوا بِهَذَا الدَّلِيلِ نَفْسِهِ الِاسْتِنْشَاقَ فَرْضًا وَالتَّرْتِيبَ فَرْضًا، وَغَيْرَ ذَلِكَ مِمَّا فِيهِ تَرْكٌ لِجُمْهُورِ مَذْهَبِهِمْ.

L3712 If they say: “Whoever thoroughly wipes his entire head has validly performed ablution, but there is no consensus that one who does not wipe it entirely has performed ablution,” we would reply: “Then by this very evidence, you must deem nasal rinsing obligatory, the sequence obligatory, and other matters that disregard the majority opinion of their school.”

إِنْ قَالُوا: مَسْحُهُ - عَلَيْهِ السَّلَامُ - مَعَ نَاصِيَتِهِ عَلَى عِمَامَتِهِ يَدُلُّ عَلَى الْعُمُومِ، قُلْنَا: هَذَا أَعْجَبُ شَيْءٍ لِأَنَّكُمْ لَا تُجِيزُونَ ذَلِكَ مِنْ فِعْلِ مَنْ فَعَلَهُ، فَكَيْفَ تَحْتَجُّونَ بِمَا لَا يَجُوزُ

L3713 If they say: His wiping – peace be upon him – on his turban along with his forelock indicates generality, we respond: This is the most perplexing thing, for you do not permit such an act by one who performs it. How then

عِنْدَكُمْ وَأَيْضًا فَمَنْ لَكُمْ بِأَنَّهُ فِعْلٌ وَاحِدٌ؟ بَلْ هُمَا فِعْلَانِ مُتَغَايِرَانِ عَلَى ظَاهِرِ الْأَخْبَارِ فِي ذَلِكَ.

L3714–3715 وَأَمَّا تَخْصِيصُ أَبِي حَنِيفَةَ لِرُبْعِ الرَّأْسِ أَوْ لِمِقْدَارِ ثَلَاثَةِ أَصَابِعَ فَفَاسِدٌ، لِأَنَّهُ قَوْلٌ لَا دَلِيلَ عَلَيْهِ، فَإِنْ قَالُوا: هُوَ مِقْدَارُ النَّاصِيَةِ، قُلْنَا لَهُمْ: وَمَنْ لَكُمْ بِأَنَّ هَذَا هُوَ مِقْدَارُ النَّاصِيَةِ؟ وَالْأَصَابِعُ تَخْتَلِفُ، وَتَحْدِيدُ رُبْعِ الرَّأْسِ يَحْتَاجُ إِلَى تَكْسِيرٍ وَمِسَاحَةٍ وَهَذَا بَاطِلٌ، وَكَذَلِكَ قَوْلُهُمْ فِي مَنْعِ الْمَسْحِ بِأُصْبُعٍ أَوْ بِأُصْبُعَيْنِ.

L3716 فَإِنْ قَالُوا: إِنَّمَا أَرَدْنَا أَكْثَرَ الْيَدِ، قُلْنَا لَهُمْ: أَنْتُمْ لَا تُوجِبُونَ الْمَسْحَ بِالْيَدِ فَرْضًا، بَلْ تَقُولُونَ إِنَّهُ لَوْ وَقَفَ تَحْتَ مِيزَابٍ فَمَسَّ الْمَاءُ مِنْهُ مِقْدَارَ رُبْعِ رَأْسِهِ أَجْزَأَهُ، فَظَهَرَ فَسَادُ قَوْلِهِمْ.

L3717 وَيُسْأَلُونَ أَيْضًا عَنْ قَوْلِهِمْ بِأَكْثَرِ الْيَدِ؟ فَإِنَّهُمْ لَا يَجِدُونَ دَلِيلًا عَلَى تَصْحِيحِهِ، وَكَذَلِكَ يُسْأَلُونَ عَنْ اقْتِصَارِهِمْ عَلَى مِقْدَارِ النَّاصِيَةِ؟ فَإِنْ قَالُوا: اتِّبَاعًا لِلْخَبَرِ فِي ذَلِكَ، قِيلَ لَهُمْ: فَلِمَ تَعَدَّيْتُمُ النَّاصِيَةَ إِلَى مُؤَخَّرِ الرَّأْسِ؟ وَمَا الْفَرْقُ بَيْنَ تَعَدِّيكُمُ النَّاصِيَةَ إِلَى غَيْرِهَا وَبَيْنَ تَعَدِّي مِقْدَارِهَا إِلَى غَيْرِ مِقْدَارِهَا؟ وَأَمَّا قَوْلُ الشَّافِعِيِّ فَإِنَّ النَّصَّ لَمْ يَأْتِ بِمَسْحِ الشَّعْرِ فَيَكُونُ مَا قَالَ مِنْ مُرَاعَاةِ عَدَدِ الشَّعْرِ، وَإِنَّمَا جَاءَ الْقُرْآنُ بِمَسْحِ الرَّأْسِ، فَوَجَبَ أَنْ لَا يُرَاعَى إِلَّا مَا يُسَمَّى مَسْحَ الرَّأْسِ فَقَطْ، وَالْخَبَرُ الَّذِي ذَكَرْنَا عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ هُوَ بَعْضُ مَا جَاءَ بِهِ الْقُرْآنُ فَالْآيَةُ أَعَمُّ مِنْ ذَلِكَ الْخَبَرِ، وَلَيْسَ فِي الْخَبَرِ مَنْعٌ مِنْ اسْتِعْمَالِ الْآيَةِ، وَلَا دَلِيلَ عَلَى الِاقْتِصَارِ عَلَى النَّاصِيَةِ فَقَطْ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

can you cite as evidence what you deem impermissible? Furthermore, what proof do you have that this was a single act? Rather, these are two distinct acts according to the apparent meaning of the narrations on this matter.

L3714–3715 As for Abū Ḥanīfah's restriction to a quarter of the head or three fingers' breadth, this is corrupt because it is an opinion without proof. If they argue: "This is the measure of the forelock," we respond: What evidence do you have that this is the measure of the forelock? Fingers differ in size, and defining a quarter of the head would require dividing and measurement—which is invalid. Similarly baseless is their prohibition of wiping with one finger or two fingers.

L3716 If they say, "We only meant most of the hand," we respond to them: "You do not consider wiping with the hand obligatory; rather, you claim that if one were to stand under a drainpipe and water from it touches him an amount equivalent to a quarter of his head, it would suffice him." Thus, the invalidity of their statement is evident.

L3717 They are also questioned about their assertion concerning "most of the hand," for they find no evidence to substantiate it. Similarly, they are questioned about restricting themselves to the measure of the forelock. If they respond: "In adherence to the tradition concerning that," it is said to them: "Then why did you extend beyond the forelock to the back of the head? What distinguishes your extension of the forelock's area to other parts from exceeding its prescribed measure?" As for Al-Shafi'i's statement, the textual source did not prescribe wiping the hair, thus his consideration of the number of hairs is baseless. The Quran prescribed wiping the head, obligating adherence only to what constitutes "wiping the head." The Prophetic tradition we mentioned regarding this is part of what the Quran encompasses. The Quranic verse is more comprehensive than the aforementioned tradition, which neither prohibits applying the verse nor provides evidence for restricting wiping to the forelock alone. And success is from Allah, the Most High.

L3718 **The issue of wiping the two ears.**

[مَسْأَلَةُ مَسْحُ الْأُذُنَيْنِ]

L3719 ١٩٩ - مَسْأَلَةٌ: وَأَمَّا مَسْحُ الْأُذُنَيْنِ فَلَيْسَا فَرْضًا، وَلَا هُمَا مِنَ الرَّأْسِ لِأَنَّ الْآثَارَ فِي ذَلِكَ وَاهِيَةٌ كُلُّهَا، قَدْ ذَكَرْنَا فَسَادَهَا فِي غَيْرِ هَذَا الْمَكَانِ، وَلَا يَخْتَلِفُ أَحَدٌ فِي أَنَّ الْبَيَاضَ الَّذِي بَيْنَ مَنَابِتِ الشَّعْرِ مِنَ الرَّأْسِ وَبَيْنَ الْأُذُنَيْنِ لَيْسَ هُوَ مِنَ الرَّأْسِ فِي حُكْمِ الْوُضُوءِ، فَمِنَ الْمُحَالِ أَنْ يَكُونَ يَحُولُ بَيْنَ أَجْزَاءِ رَأْسِ الْحَيِّ عُضْوٌ لَيْسَ مِنَ الرَّأْسِ، وَأَنْ يَكُونَ بَعْضُ رَأْسِ الْحَيِّ مُبَايِنًا لِسَائِرِ رَأْسِهِ، وَأَيْضًا فَلَوْ كَانَ الْأُذُنَانِ مِنَ الرَّأْسِ لَوَجَبَ حَلْقُ شَعْرِهِمَا فِي الْحَجِّ، وَهُمْ لَا يَقُولُونَ هَذَا.

L3719 Issue 199: As for wiping the ears, it is not an obligation, nor are they considered part of the head, because all the narrations concerning this are weak. We have previously demonstrated their invalidity elsewhere. No one disputes that the white area between the hair roots of the head and the ears is not part of the head in the rulings of ablution. It is impossible for an organ not belonging to the head to separate portions of a person's head, or for part of a person's head to be distinct from the rest. Furthermore, if the ears were part of the head, shaving their hair during Hajj would be obligatory, yet the scholars do not uphold this position.

L3720 وَقَدْ ذَكَرْنَا الْبُرْهَانَ عَلَى صِحَّةِ الِاقْتِصَارِ عَلَى بَعْضِ الرَّأْسِ فِي الْوُضُوءِ، فَلَوْ كَانَ الْأُذُنَانِ مِنَ الرَّأْسِ لَأَجْزَأَ أَنْ يُمْسَحَا عَنْ مَسْحِ الرَّأْسِ. وَهَذَا لَا يَقُولُهُ أَحَدٌ، وَيُقَالُ لَهُمْ: إِنْ كَانَتَا مِنَ الرَّأْسِ فَمَا بَالُكُمْ تَأْخُذُونَ لَهُمَا مَاءً جَدِيدًا وَهُمَا بَعْضُ الرَّأْسِ؟ وَأَيْنَ رَأَيْتُمْ عُضْوًا يُجَدَّدُ لِبَعْضِهِ مَاءٌ غَيْرَ الْمَاءِ الَّذِي مَسَحَ بِهِ سَائِرَهُ. ثُمَّ لَوْ صَحَّ الْأَثَرُ أَنَّهُمَا مِنَ الرَّأْسِ لَمَا كَانَ عَلَيْنَا فِي ذَلِكَ نَقْضٌ لِشَيْءٍ مِنْ أَقْوَالِنَا. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L3720 We have mentioned the proof for the validity of restricting ablution to part of the head. If the ears were part of the head, wiping them would suffice through the head's wiping. Yet no one holds this view. It is said to them: If they are part of the head, why do you take new water for them when they are a portion of the head? Where have you seen a body part requiring fresh water for one of its sections, separate from the water used for its remaining parts? Moreover, even if a valid textual precedent affirmed their inclusion in the head, this would not invalidate any of our positions. With Allah the Exalted alone lies all enablement to correctness.

[مَسْأَلَةُ الرِّجْلَانِ فِي الْوُضُوءِ]

L3721–3722 ## The Issue of the Two Feet in Wuḍū'

L3723 مَسْأَلَةٌ: وَأَمَّا قَوْلُنَا فِي الرِّجْلَيْنِ فَإِنَّ الْقُرْآنَ نَزَلَ بِالْمَسْحِ. قَالَ اللَّهُ تَعَالَى: {وَامْسَحُوا بِرُءُوسِكُمْ وَأَرْجُلَكُمْ} [المائدة: ٦] وَسَوَاءٌ قُرِئَ بِخَفْضِ اللَّامِ أَوْ بِفَتْحِهَا هِيَ عَلَى كُلِّ حَالٍ عَطْفٌ عَلَى الرُّءُوسِ: إِمَّا عَلَى اللَّفْظِ وَإِمَّا عَلَى الْمَوْضِعِ، لَا يَجُوزُ غَيْرُ ذَلِكَ. لِأَنَّهُ لَا يَجُوزُ أَنْ يُحَالَ بَيْنَ الْمَعْطُوفِ وَالْمَعْطُوفِ عَلَيْهِ بِقَضِيَّةٍ مُبْتَدَأَةٍ.

L3723 Issue: As for our statement concerning the feet, the Qur'an was revealed with wiping. Allah the Exalted said: "And wipe your heads and your feet" [Al-Mā'idah: 6]. Whether recited with the lām in the genitive case or the accusative, it is in all cases conjoined to "the heads" – either in wording or in position. No alternative interpretation is permissible, for it is invalid to interpose an extraneous interpolation between the conjoined element and the element to which it is conjoined.[21]

[21] **Qur'an references (L3723):** Qur'an 5:6 (Al-Ma'idah).

وَهَكَذَا جَاءَ عَنْ ابْنِ عَبَّاسٍ: نَزَلَ الْقُرْآنُ بِالْمَسْحِ - يَعْنِي فِي الرِّجْلَيْنِ فِي الْوُضُوءِ - وَقَدْ قَالَ بِالْمَسْحِ عَلَى الرِّجْلَيْنِ جَمَاعَةٌ مِنْ السَّلَفِ، مِنْهُمْ عَلِيُّ بْنُ أَبِي طَالِبٍ وَابْنُ عَبَّاسٍ وَالْحَسَنُ وَعِكْرِمَةُ وَالشَّعْبِيُّ وَجَمَاعَةٌ غَيْرُهُمْ، وَهُوَ قَوْلُ الطَّبَرِيِّ، وَرُوِيَتْ فِي ذَلِكَ آثَارٌ.

L3724 Similarly, it has been reported from Ibn Abbas that the Quran was revealed with the ruling of wiping—meaning wiping the feet during ablution. A group of the Salaf held the opinion of wiping over the feet, among them Ali ibn Abi Talib, Ibn Abbas, al-Hasan, Ikrimah, al-Shaʿbi, and others besides them. This is the view of al-Tabari, and narrations (*athar*) have been reported regarding this matter.

مِنْهَا أَثَرٌ مِنْ طَرِيقِ هَمَّامٍ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ ثنا عَلِيُّ بْنُ يَحْيَى بْنُ خَلَّادٍ عَنْ أَبِيهِ عَنْ عَمِّهِ - هُوَ رِفَاعَةُ بْنُ رَافِعٍ - أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: إِنَّهَا «لَا تَجُوزُ صَلَاةُ أَحَدِكُمْ حَتَّى يُسْبِغَ الْوُضُوءَ كَمَا أَمَرَهُ اللَّهُ عَزَّ وَجَلَّ ثُمَّ يَغْسِلَ وَجْهَهُ وَيَدَيْهِ إِلَى الْمِرْفَقَيْنِ وَيَمْسَحَ رَأْسَهُ وَرِجْلَيْهِ إِلَى الْكَعْبَيْنِ» . وَعَنْ إِسْحَاقَ بْنِ رَاهْوَيْهِ ثنا عِيسَى بْنُ يُونُسَ عَنْ الْأَعْمَشِ عَنْ عَبْدِ خَيْرٍ عَنْ عَلِيٍّ " كُنْتُ أَرَى بَاطِنَ الْقَدَمَيْنِ أَحَقَّ بِالْمَسْحِ حَتَّى رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَمْسَحُ ظَاهِرَهُمَا ".

L3725 Among them is a narration through the chain of Hammām from Isḥāq ibn ʿAbd Allāh ibn Abī Ṭalḥah: ʿAlī ibn Yaḥyā ibn Khallād narrated to us from his father from his uncle—Rifāʿa ibn Rāfiʿ—that he heard the Messenger of Allah, peace and blessings be upon him, say: "The prayer of any of you will not be accepted until he performs ablution thoroughly as Allah, the Mighty and Majestic, has commanded him—then he washes his face and his hands up to the elbows, wipes his head, and he wipes his feet up to the ankles." From Isḥāq ibn Rāhawayh: ʿĪsā ibn Yūnus narrated to us from al-Aʿmash from ʿAbd Khayr from ʿAlī: "I used to consider the soles of the feet more deserving of wiping until I saw the Messenger of Allah, peace and blessings be upon him, wiping the tops of them."

قَالَ عَلِيُّ بْنُ أَحْمَدَ: وَإِنَّمَا قُلْنَا بِالْغُسْلِ فِيهِمَا لِمَا حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُسَدَّدٌ ثنا أَبُو عَوَانَةَ، عَنْ أَبِي بِشْرٍ عَنْ يُوسُفَ بْنِ مَاهَكَ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ قَالَ «تَخَلَّفَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَفَرٍ فَأَدْرَكَنَا وَقَدْ أَرْهَقَنَا الْعَصْرُ، فَجَعَلْنَا نَتَوَضَّأُ وَنَمْسَحُ عَلَى أَرْجُلِنَا، فَنَادَى بِأَعْلَى صَوْتِهِ وَيْلٌ لِلْأَعْقَابِ مِنْ النَّارِ، مَرَّتَيْنِ أَوْ ثَلَاثًا» .

L3726 Ali ibn Ahmad said: We ruled in favor of the obligation of ghusl in both cases based on what Abd al-Rahman ibn Abdullah narrated to us - from Ibrahim ibn Ahmad, from al-Farbari, from al-Bukhari, from Musaddad, from Abu Awanah, from Abu Bishr, from Yusuf ibn Mahak, from Abdullah ibn Amr ibn al-As, who said: "The Prophet - peace and blessings be upon him - stayed behind during a journey and joined us when the time for Asr prayer was becoming late. We began performing ablution while wiping our feet. He called out in his loudest voice: 'Woe to the heels from the Fire!' repeating it twice or three times."

كَتَبَ إِلَيَّ سَالِمُ بْنُ أَحْمَدَ قَالَ: ثنا عَبْدُ اللَّهِ بْنُ سَعِيدٍ الشَّنْتَجَالِيُّ ثنا عُمَرُ بْنُ مُحَمَّدٍ السِّجِسْتَانِيُّ ثنا مُحَمَّدُ بْنُ عِيسَى الْجُلُودِيُّ ثنا إِبْرَاهِيمُ بْنُ مُحَمَّدِ بْنِ سُفْيَانَ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا إِسْحَاقُ بْنُ رَاهْوَيْهِ ثنا جَرِيرٌ هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ مَنْصُورٍ هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ هِلَالِ بْنِ

L3727–3729 Salim ibn Aḥmad wrote to me, saying: 'Abdullāh ibn Saʿīd al-Shantajālī narrated to us, 'Umar ibn Muḥammad al-Sijistānī narrated to us.' Narrated by Muḥammad ibn ʿĪsā al-Julūdī, narrated by Ibrāhīm ibn Muḥammad ibn Sufyān, narrated by Muslim ibn al-Ḥajjāj, narrated by Isḥāq ibn Rāhwayh, narrated by Jarīr—who is Ibn ʿAbd al-Ḥamīd—from Manṣūr—who is Ibn al-Muʿtamir—from Hilāl ibn Isāf, from Abī Yaḥyā—who is Muṣaddiʿ al-Aʿraj—

إِسَافٍ عَنْ أَبِي يَحْيَى هُوَ مُصَدِّعُ الْأَعْرَجُ - عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ قَالَ «خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ مَكَّةَ إِلَى الْمَدِينَةِ حَتَّى إِذَا كُنَّا بِمَاءٍ بِالطَّرِيقِ تَعَجَّلَ قَوْمٌ عِنْدَ الْعَصْرِ، فَتَوَضَّئُوا وَهُمْ عِجَالٌ، فَانْتَهَيْنَا إِلَيْهِمْ وَأَعْقَابُهُمْ تَلُوحُ لَمْ يَمَسَّهَا الْمَاءُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: وَيْلٌ لِلْأَعْقَابِ مِنْ النَّارِ، أَسْبِغُوا الْوُضُوءَ» فَأَمَرَ - عَلَيْهِ السَّلَامُ - بِإِسْبَاغِ الْوُضُوءِ فِي الرِّجْلَيْنِ، وَتَوَعَّدَ بِالنَّارِ عَلَى تَرْكِ الْأَعْقَابِ. فَكَانَ هَذَا الْخَبَرُ زَائِدًا عَلَى مَا فِي الْآيَةِ، وَعَلَى الْأَخْبَارِ الَّتِي ذَكَرْنَا، وَنَاسِخًا لِمَا فِيهَا، وَلِمَا فِي الْآيَةِ وَالْأَخْذُ بِالزَّائِدِ وَاجِبٌ، وَلَقَدْ كَانَ يَلْزَمُ مَنْ يَقُولُ بِتَرْكِ الْأَخْبَارِ لِلْقُرْآنِ أَنْ يَتْرُكَ هَذَا الْخَبَرَ لِلْآيَةِ، وَلَقَدْ كَانَ يَلْزَمُ مَنْ يَتْرُكُ الْأَخْبَارَ الصِّحَاحَ لِلْقِيَاسِ أَنْ يَتْرُكَ هَذَا الْخَبَرَ: لِأَنَّا وَجَدْنَا الرِّجْلَيْنِ يَسْقُطُ حُكْمُهُمَا فِي التَّيَمُّمِ، كَمَا يَسْقُطُ الرَّأْسُ فَكَانَ حَمْلُهُمَا عَلَى مَا يَسْقُطَانِ بِسُقُوطِهِ وَيُثْبَتَانِ بِثَبَاتِهِ أَوْلَى مِنْ حَمْلِهِمَا عَلَى مَا لَا يُثْبَتَانِ بِثَبَاتِهِ.

وَأَيْضًا فَالرِّجْلَانِ مَذْكُورَانِ مَعَ الرَّأْسِ، فَكَانَ حَمْلُهُمَا عَلَى مَا ذُكِرَا مَعَهُ أَوْلَى مِنْ حَمْلِهِمَا عَلَى مَا لَمْ يُذْكَرَا مَعَهُ.

وَأَيْضًا فَالرَّأْسُ طَرَفٌ وَالرِّجْلَانِ طَرَفٌ، فَكَانَ قِيَاسُ الطَّرَفِ عَلَى الطَّرَفِ أَوْلَى مِنْ قِيَاسِ الطَّرَفِ عَلَى الْوَسَطِ، وَأَيْضًا فَإِنَّهُمْ يَقُولُونَ بِالْمَسْحِ عَلَى الْخُفَّيْنِ، فَكَانَ تَعْوِيضُ الْمَسْحِ مِنْ الْمَسْحِ أَوْلَى مِنْ تَعْوِيضِ الْمَسْحِ مِنْ الْغُسْلِ.

وَأَيْضًا فَإِنَّهُ لَمَّا جَازَ الْمَسْحُ عَلَى سَاتِرٍ لِلرِّجْلَيْنِ وَلَمْ يَجُزْ عَلَى سَاتِرٍ دُونَ الْوَجْهِ وَالذِّرَاعَيْنِ دَلَّ - عَلَى أُصُولِ أَصْحَابِ الْقِيَاسِ - أَنَّ أَمْرَ الرِّجْلَيْنِ أَخَفُّ مِنْ أَمْرِ الْوَجْهِ وَالذِّرَاعَيْنِ، فَإِذْ ذَلِكَ كَذَلِكَ فَلَيْسَ إِلَّا الْمَسْحُ وَلَا بُدَّ.

from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ, who said: “We departed with the Messenger of Allah—peace and blessings of Allah be upon him—from Mecca to Medina. When we reached a water source along the path, some people hastened during the time of ʿAṣr. They performed ablution hastily, and when we reached them, their heels were visible, untouched by water. The Messenger of Allah—peace and blessings of Allah be upon him—said: ’Woe to the heels from the Fire! Perform ablution thoroughly.”’ Thus, he—peace and blessings of Allah be upon him—commanded thorough washing of the feet in ablution and warned of the Fire for neglecting the heels. This narration adds to what is in the Quranic verse and the narrations we mentioned earlier, abrogating what is in them and in the Quranic verse. Adhering to this addition is obligatory. Indeed, those who claim that narrations should be abandoned in favor of the Quran would be compelled to abandon this narration due to the verse, just as those who abandon sound narrations for analogy would be compelled to abandon this narration. For we find that the ruling on the feet is waived in tayammum, as is the head. Thus, interpreting them [the feet and head] in accordance with what is waived when they are waived and upheld when they are upheld is more valid than interpreting them contrary to their affirmed status.

L3730 Moreover, the two feet are mentioned along with the head. Therefore, applying them to the context [of the head] they were mentioned with is more appropriate than applying them to what they were not mentioned with.

L3731 Moreover, the head is an extremity, and the feet are extremities. Thus, applying legal analogy between extremities is more valid than analogizing extremities to the middle parts. Additionally, they permit wiping over leather socks. Therefore, substituting wiping (for washing) with another act of wiping is more appropriate than substituting wiping with a full wash.

L3732 Moreover, since it is permissible to wipe over a covering for the feet but impermissible over a covering for the face and arms, this indicates—according to the foundational principles of the proponents of qiyas—that the ruling for the feet is less stringent than that for the face and arms. Therefore, given this, there is no alternative but wiping, which is obligatory.

فَهَذَا أَصَحُّ قِيَاسٍ فِي الْأَرْضِ لَوْ كَانَ الْقِيَاسُ حَقًّا.

وَقَدْ قَالَ بَعْضُهُمْ: قَدْ سَقَطَ حُكْمُ الْجَسَدِ فِي التَّيَمُّمِ وَلَمْ يَدُلَّ ذَلِكَ عَلَى أَنَّ حُكْمَهُ الْمَسْحُ. قَالَ أَبُو مُحَمَّد: فَنَقُولُ صَدَقْتَ وَهَذَا يُبْطِلُ قَوْلَكُمْ بِالْقِيَاسِ، وَيُرِيكُمْ تَفَاسُدَهُ كُلَّهُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَهَكَذَا كُلُّ مَا رُمْتُمْ الْجَمْعَ بَيْنَهُمَا بِالْقِيَاسِ، لِاجْتِمَاعِهِمَا فِي بَعْضِ الصِّفَاتِ، فَإِنَّهُ لَا بُدَّ فِيهِمَا مِنْ صِفَةٍ يَفْتَرِقَانِ فِيهَا.

قَالَ عَلِيٌّ: وَقَالَ بَعْضُهُمْ: لَمَّا قَالَ اللَّهُ تَعَالَى فِي الرِّجْلَيْنِ {إِلَى الْكَعْبَيْنِ} [المائدة: ٦] كَمَا قَالَ فِي الْأَيْدِي {إِلَى الْمَرَافِقِ} [المائدة: ٦] دَلَّ عَلَى أَنَّ حُكْمَ الرِّجْلَيْنِ حُكْمُ الذِّرَاعَيْنِ، قِيلَ لَهُ: لَيْسَ ذِكْرُ الْمِرْفَقَيْنِ وَالْكَعْبَيْنِ دَلِيلًا عَلَى وُجُوبِ غَسْلِ ذَلِكَ، لِأَنَّهُ تَعَالَى قَدْ ذَكَرَ الْوَجْهَ وَلَمْ يَذْكُرْ فِي مَبْلَغِهِ حَدًّا وَكَانَ حُكْمُهُ الْغَسْلَ، لَكِنْ لَمَّا أَمَرَ اللَّهُ تَعَالَى فِي الذِّرَاعَيْنِ بِالْغُسْلِ كَانَ حُكْمُهُمَا الْغُسْلَ، وَإِذَا لَمْ يَذْكُرْ ذَلِكَ فِي الرِّجْلَيْنِ وَجَبَ أَنْ لَا يَكُونَ حُكْمُهُمَا مَا لَمْ يَذْكُرْ فِيهِمَا إلَّا أَنْ يُوجِبَهُ نَصٌّ آخَرُ قَالَ عَلِيٌّ: وَالْحُكْمُ لِلنُّصُوصِ لَا لِلدَّعَاوَى وَالظُّنُونِ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَا لُبِسَ عَلَى الرَّأْسِ مِنْ عِمَامَةٍ أَوْ خِمَارٍ أَجْزَأَ الْمَسْحُ عَلَيْهِ]

٢٠١ - مَسْأَلَةٌ: وَكُلُّ مَا لُبِسَ عَلَى الرَّأْسِ مِنْ عِمَامَةٍ أَوْ خِمَارٍ أَوْ قَلَنْسُوَةٍ أَوْ بَيْضَةٍ أَوْ مِغْفَرٍ أَوْ غَيْرِ ذَلِكَ: أَجْزَأَ الْمَسْحُ عَلَيْهَا، الْمَرْأَةُ وَالرَّجُلُ سَوَاءٌ فِي ذَلِكَ، لِعِلَّةٍ أَوْ غَيْرِ عِلَّةٍ.

L3733 Therefore, this is the soundest analogy on the earth, if analogy were truly legitimate.

L3734–3735 Some of them said: "The ruling concerning the body has been lifted in tayammum, and this does not indicate that its ruling is wiping." Abu Muhammad said: We respond: You are correct—this invalidates your argument based on *qiyas*, exposing its total invalidity. And success is from Allah, the Exalted.

L3736 And likewise, every time you seek to combine the two through juridical analogy due to their sharing of some characteristics, there must necessarily be a characteristic present in both in which they differ.

L3737 Ali said: Some of them stated: When Allah the Exalted specified regarding the feet {up to the ankles} [Al-Ma'idah: 6] just as He specified regarding the hands {up to the elbows} [Al-Ma'idah: 6], this indicated that the ruling concerning the feet corresponds to that concerning the forearms. He was told: Mentioning the elbows and ankles does not constitute proof for the obligation of washing them, for while He the Exalted mentioned the face without defining its limits, its ruling is washing. However, since Allah the Exalted commanded washing for the forearms, their ruling was to wash them. When He did not mention this for the feet, it is obligatory that their ruling not be established unless another explicit text prescribes it. Ali said: The ruling belongs to scriptural texts, not to claims and conjectures. And through Allah the Exalted comes divine success.[22]

L3738 **Issue: That which is worn on the head, such as a turban or a veil—it is sufficient to wipe over it.**

L3739 201 – Issue: Any head covering—such as a turban, headscarf, cap, rounded helmet, mail coif, or the like—suffices for wiping over it. This ruling applies equally to women and men, whether due to a valid excuse or otherwise.

L3740 The proof of that is the hadith of Al-Mughirah which we mentioned earlier:

[22] **Qur'an references (L3737):** Qur'an 5:6 (Al-Ma'idah).

Yaḥyā ibn ʿAbd al-Raḥmān ibn Masʿūd narrated to us, Aḥmad ibn Saʿīd ibn Ḥazm narrated to us, Muḥammad ibn ʿAbd al-Malik ibn Ayman narrated to us, ʿAbdullāh ibn Aḥmad ibn Ḥanbal narrated to me, Al-Ḥakam ibn Mūsā narrated to me, Bishr ibn Ismāʿīl narrated **to us** from Al-Awzāʿī, Yaḥyā ibn Abī Kathīr narrated to me, Abū Salamah—who is Ibn ʿAbd al-Raḥmān ibn ʿAwf—narrated to me, ʿAmr ibn Umayyah al-Ḍamrī narrated to me: "That he saw the Messenger of Allah (may Allah bless him and grant him peace) wiping over the leather socks and the turban."

بُرْهَانُ ذَلِكَ حَدِيثُ الْمُغِيرَةِ الَّذِي ذَكَرْنَا آنِفًا، حَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ ثنا أَحْمَدُ بْنُ سَعِيدِ بْنِ حَزْمٍ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ حَدَّثَنِي الْحَكَمُ بْنُ مُوسَى ثنا بِشْرُ بْنُ إِسْمَاعِيلَ عَنِ الْأَوْزَاعِيِّ حَدَّثَنِي يَحْيَى بْنُ أَبِي كَثِيرٍ حَدَّثَنِي أَبُو سَلَمَةَ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - حَدَّثَنِي عَمْرُو بْنُ أُمَيَّةَ الضَّمْرِيُّ «أَنَّهُ رَأَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَمْسَحُ عَلَى الْخُفَّيْنِ وَالْعِمَامَةِ» .

L3741 It was narrated to us via the chain of al-Bukhārī from Abdan from Abdullāh ibn Dāwūd al-Khuraibī from al-Awzāʿī from Yaḥyā ibn Abī Kathīr from Abū Salamah ibn Abd al-Raḥmān from Jaʿfar ibn Amr ibn Umayyah al-Ḍamrī from his father.

وَرُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ عَبْدَانَ عَنْ عَبْدِ اللَّهِ بْنِ دَاوُد الْخُرَيْبِيِّ عَنِ الْأَوْزَاعِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ جَعْفَرِ بْنِ عَمْرِو بْنِ أُمَيَّةَ الضَّمْرِيِّ عَنْ أَبِيهِ.

L3742–3744 This is a strength for the report because Abū Salama heard it from ʿAmr ibn Umayya al-Ḍamrī. He heard it by direct hearing, and his son likewise heard it from Jaʿfar, from him, just as Bakr ibn ʿAbd Allāh al-Muzanī similarly did, who heard the narration from al-Mughīrah via Ḥamzah ibn al-Mughīrah and also heard it from al-Ḥasan, transmitting from Ḥamzah.

وَهَذَا قُوَّةٌ لِلْخَبَرِ لِأَنَّ أَبَا سَلَمَةَ سَمِعَهُ مِنْ عَمْرِو بْنِ أُمَيَّةَ الضَّمْرِيِّ سَمَاعًا، وَسَمِعَهُ أَيْضًا مِنْ جَعْفَرٍ ابْنِهِ عَنْهُ كَمَا فَعَلَ بَكْرُ بْنُ عَبْدِ اللَّهِ الْمُزَنِيُّ الَّذِي سَمِعَ حَدِيثَ الْمُغِيرَةِ مِنْ حَمْزَةَ بْنِ الْمُغِيرَةِ وَسَمِعَهُ أَيْضًا مِنَ الْحَسَنِ عَنْ حَمْزَةَ.

L3745–3747 And Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us; Abdul Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to us: Abu Bakr ibn Abi Shaybah, Abu Kurayb Muhammad ibn al-Ala, and Ishaq ibn Ibrahim (Ibn Rahawayh) narrated to us. Abu Bakr and Abu Kurayb said: Muawiyah narrated to us. Ibn Rahawayh said: Isa ibn Yunus narrated to us. Then both Abu Muawiyah and Isa ibn Yunus concurred in their narration from al-Aʿmash, from al-Hakam ibn Utaybah, from Abd al-Rahman ibn Abi Layla, from Kaʿb ibn Ujrah, from Bilal: "That the Messenger of Allah (peace and blessings be upon him) wiped over his leather socks and head covering." It was also narrated to us through the chain of Abu… Idris al-Khawlānī reported from Bilāl: "He (peace be upon him) wiped over the turban and leather socks." We have also received narrations through the chain of Ayyūb al-Sikhtiyānī from Abū Qilābah from Salmān, and through the chain of Makhlad ibn al-

وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَأَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - قَالَ أَبُو بَكْرٍ وَأَبُو كُرَيْبٍ: ثنا مُعَاوِيَةُ وَقَالَ ابْنُ رَاهْوَيْهِ، ثنا عِيسَى بْنُ يُونُسَ، ثُمَّ اتَّفَقَ أَبُو مُعَاوِيَةَ وَعِيسَى كِلَاهُمَا عَنِ الْأَعْمَشِ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ كَعْبِ بْنِ عُجْرَةَ عَنْ بِلَالٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَسَحَ عَلَى الْخُفَّيْنِ وَالْخِمَارِ» وَرُوِّينَا أَيْضًا مِنْ طَرِيقِ أَبِي إِدْرِيسَ الْخَوْلَانِيُّ عَنْ بِلَالٍ «أَنَّهُ - عَلَيْهِ السَّلَامُ - مَسَحَ عَلَى الْعِمَامَةِ وَالْمُوقَيْنِ» وَرُوِّينَا أَيْضًا مِنْ طَرِيقِ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ سَلْمَانَ وَمِنْ طَرِيقِ مَخْلَدِ

Ḥusayn from Hishām ibn Ḥassān from Ḥumayd ibn Hilāl from ʿAbdullāh ibn al-Ṣāmit from Abū Dharr: “I saw the Messenger of Allah (may Allah bless him and grant him peace) perform ablution and wipe over the leather socks and veil.”[23]

بْنِ الْحُسَيْنِ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ حُمَيْدِ بْنِ هِلَالٍ عَنْ عَبْدِ اللَّهِ بْنِ الصَّامِتِ عَنْ أَبِي ذَرٍّ «رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَوَضَّأَ وَمَسَحَ عَلَى الْمُوقَيْنِ وَالْخِمَارِ»

L3748 So these six Companions—may Allah be pleased with them—are: Al-Mughīrah ibn Shuʿbah, Bilāl, Salmān, ʿAmr ibn Umayyah, Kaʿb ibn ʿUjrah, and Abū Dharr. All of them narrate this from the Messenger of Allah—peace and blessings of Allah be upon him—through chains of transmission that face no contradictions and are free from criticism.

فَهَؤُلَاءِ سِتَّةٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: الْمُغِيرَةُ بْنُ شُعْبَةَ وَبِلَالٌ وَسَلْمَانُ وَعَمْرُو بْنُ أُمَيَّةَ وَكَعْبُ بْنُ عُجْرَةَ وَأَبُو ذَرٍّ، كُلُّهُمْ يَرْوِي ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَسَانِيدَ لَا مُعَارِضَ لَهَا وَلَا مَطْعَنَ فِيهَا.

L3749 And the majority of the Companions and Successors held to this opinion, as narrated through the chain: Ibn Abī Shaybah → ʿAbdullāh ibn Numayr and Ismāʿīl ibn ʿUlayyah (both narrating) → Muḥammad ibn Isḥāq → Yazīd ibn Abī Ḥabīb → Abū al-Khayr Marthad ibn ʿAbdillāh al-Yazanī → ʿAbd al-Raḥmān ibn ʿUsaylah al-Ṣunābiḥī, who said: “I saw Abū Bakr al-Ṣiddīq wiping over the head covering (i.e., during ablution).”

وَبِهَذَا الْقَوْلِ يَقُولُ جُمْهُورُ الصَّحَابَةِ وَالتَّابِعِينَ، كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ وَإِسْمَاعِيلَ بْنِ عُلَيَّةَ كِلَاهُمَا عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ أَبِي الْخَيْرِ مَرْثَدِ بْنِ عَبْدِ اللَّهِ الْيَزَنِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عُسَيْلَةَ الصُّنَابِحِيِّ قَالَ: رَأَيْتُ أَبَا بَكْرٍ الصِّدِّيقَ يَمْسَحُ عَلَى الْخِمَارِ، يَعْنِي فِي الْوُضُوءِ.

L3750 From Abd al-Rahman ibn Mahdi, from Sufyan al-Thawri, from Imran ibn Muslim, from Suwayd ibn Ghaflah, who said: Nubatah al-Ju’fi asked Umar ibn al-Khattab about wiping over the *imamah*. Umar ibn al-Khattab replied to him: “If you wish, wipe over the *imamah*; if you wish, do not.”

وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عِمْرَانَ بْنَ مُسْلِمٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ قَالَ: سَأَلَ نُبَاتَةُ الْجُعْفِيُّ عُمَرَ بْنَ الْخَطَّابِ عَنْ الْمَسْحِ عَلَى الْعِمَامَةِ؟ فَقَالَ لَهُ عُمَرُ بْنُ الْخَطَّابِ: إنْ شِئْتَ فَامْسَحْ عَلَى الْعِمَامَةِ وَإِنْ شِئْتَ فَدَعْ.

L3751 From Abd al-Rahman ibn Mahdi from Abu Ja’far Abdullah ibn Abdullah al-Razi from Zayd ibn Aslam, who said: Umar ibn al-Khattab said: “Whoever is not purified by wiping over the turban, then Allah will not purify him.”

وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ أَبِي جَعْفَرٍ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ الرَّازِيِّ عَنْ زَيْدِ بْنِ أَسْلَمَ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: مَنْ لَمْ يُطَهِّرْهُ الْمَسْحُ عَلَى الْعِمَامَةِ فَلَا طَهَّرَهُ اللَّهُ.

L3752 From Hammad ibn Salamah, from Thabit al-Bunani and Ubayd Allah ibn Abi Bakr ibn Anas—both of them from Anas ibn Malik: that he would wipe over the socks, leather socks, and turban. These chains of transmission are of the highest degree of soundness.

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ وَعُبَيْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ أَنَسٍ كِلَاهُمَا عَنْ أَنَسِ بْنِ مَالِكٍ: أَنَّهُ كَانَ يَمْسَحُ عَلَى الْجَوْرَبَيْنِ وَالْخُفَّيْنِ وَالْعِمَامَةِ، وَهَذِهِ أَسَانِيدُ فِي غَايَةِ الصِّحَّةِ.

[23] **Hadith references (L3745):** Sunan Ibn Majah 561; Sahih Muslim 275.

وَعَنْ الْحَسَنِ الْبَصْرِيِّ عَنْ أُمِّهِ: أَنَّ أُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ كَانَتْ تَمْسَحُ عَلَى الْخِمَارِ وَعَنْ سَلْمَانَ الْفَارِسِيِّ: أَنَّهُ قَالَ لِرَجُلٍ: امْسَحْ عَلَى خُفَّيْكَ وَعَلَى خِمَارِكَ، وَامْسَحْ بِنَاصِيَتِكَ.

L3753–3754 And from Al-Hasan Al-Basri, from his mother: That Umm Salamah, the Mother of the Believers, used to wipe over her head covering. And from Salman Al-Farisi: That he said to a man: Wipe over your leather socks and your head covering, and wipe your forelock.

وَعَنْ أَبِي مُوسَى الْأَشْعَرِيِّ: أَنَّهُ خَرَجَ مِنْ حَدَثٍ فَمَسَحَ عَلَى خُفَّيْهِ وَقَلَنْسُوَتِهِ وَعَنْ أَبِي أُمَامَةَ الْبَاهِلِيِّ أَنَّهُ كَانَ يَمْسَحُ عَلَى الْجَوْرَبَيْنِ وَالْخُفَّيْنِ وَالْعِمَامَةِ وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّهُ سُئِلَ عَنْ الْمَسْحِ عَلَى الْخُفَّيْنِ؟ فَقَالَ نَعَمْ، وَعَلَى النَّعْلَيْنِ وَالْخِمَارِ. وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، رُوِّينَاهُ عَنْ عَبْدِ الرَّزَّاقِ عَنْهُ قَالَ: الْقَلَنْسُوَةُ بِمَنْزِلَةِ الْعِمَامَةِ - يَعْنِي فِي جَوَازِ الْمَسْحِ عَلَيْهَا - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ وَأَحْمَدَ بْنِ حَنْبَلٍ وَإِسْحَاقَ بْنِ رَاهْوَيْهِ وَأَبِي ثَوْرٍ وَدَاوُد بْنِ عَلِيٍّ وَغَيْرِهِمْ.

L3755 And from Abū Mūsā al-Ashʿarī: that he exited a state of minor impurity and wiped over his khuffayn (leather socks) and his qalansuwa (tall cap). And from Abū Umāmah al-Bāhilī: that he used to wipe over the jawrabayn (socks), the khuffayn (leather socks), and the ʿimāmah (turban). And from ʿAlī ibn Abī Ṭālib: that he was asked about wiping over the khuffayn (leather socks), so he said: "Yes, and over the naʿlayn (sandals) and the khimār (headscarf)." This is the position of Sufyān al-Thawrī. We narrated it from ʿAbd al-Razzāq, who narrated from him, saying: "The qalansuwa (tall cap) holds the same status as the ʿimāmah (turban)" - meaning regarding the permissibility of wiping over it. This is the view of al-Awzāʿī, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhawayh, Abū Thawr, Dāwūd ibn ʿAlī, and others.

وَقَالَ الشَّافِعِيُّ: إنْ صَحَّ الْخَبَرُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبِهِ أَقُولُ. قَالَ عَلِيٌّ: وَالْخَبَرُ - وَلِلَّهِ الْحَمْدُ - قَدْ صَحَّ فَهُوَ قَوْلُهُ. وَقَالَ أَبُو حَنِيفَةَ وَمَالِكٌ: لَا يُمْسَحُ عَلَى عِمَامَةٍ وَلَا خِمَارٍ وَلَا غَيْرِ ذَلِكَ وَهُوَ قَوْلُ الشَّافِعِيِّ، قَالَ: إلَّا أَنْ يَصِحَّ الْخَبَرُ.

L3756 Al-Shāfiʿī said: "If the ḥadīth from the Messenger of Allah—peace be upon him—is authenticated, then that is my opinion." ʿAlī said: "And the ḥadīth—praise be to Allah—is indeed authenticated, so that is the ruling." Abū Ḥanīfah and Mālik said: "One should not perform masḥ over a turban, headscarf, or anything else," and this was also Al-Shāfiʿī's opinion, but he said: "unless the ḥadīth is authenticated."

قَالَ عَلِيٌّ: مَا نَعْلَمُ لِلْمَانِعِينَ مِنْ ذَلِكَ حُجَّةً أَصْلًا، فَإِنْ قَالُوا جَاءَ الْقُرْآنُ بِمَسْحِ الرُّءُوسِ، قُلْنَا نَعَمْ، وَبِالْمَسْحِ عَلَى الرِّجْلَيْنِ، فَأَجَزْتُمْ الْمَسْحَ عَلَى الْخُفَّيْنِ، وَلَيْسَ بِأَثْبَتَ مِنْ الْمَسْحِ عَلَى الْعِمَامَةِ، وَالْمَانِعُونَ مِنْ الْمَسْحِ عَلَى الْخُفَّيْنِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَكْثَرُ مِنْ الْمَانِعِينَ مِنْ الْمَسْحِ عَلَى الْعِمَامَةِ، فَمَا رُوِيَ الْمَنْعُ مِنْ الْمَسْحِ عَلَى الْعِمَامَةِ إلَّا عَنْ جَابِرٍ وَابْنِ عُمَرَ، وَقَدْ جَاءَ الْمَنْعُ مِنْ الْمَسْحِ عَلَى الْخُفَّيْنِ عَنْ عَائِشَةَ وَأَبِي هُرَيْرَةَ وَابْنِ عَبَّاسٍ، وَأَبْطَلْتُمْ مَسْحَ الرِّجْلَيْنِ - وَهُوَ نَصُّ الْقُرْآنِ - بِخَبَرٍ يَدَّعِي مُخَالِفُنَا وَمُخَالِفُكُمْ

L3757 Ali said: We do not know of any valid argument whatsoever for those who prohibit this. If they say the Quran came with wiping over the heads, we say yes—and with wiping over the feet. Yet you permit wiping over khuffs (leather socks), though it is not more established than wiping over the turban. Those among the Companions—may Allah be pleased with them—who prohibited wiping over khuffs are more numerous than those who prohibited wiping over the turban. The prohibition of wiping over the turban was only narrated from Jabir and Ibn Umar, while the prohibition of wiping over khuffs was narrated from Aisha, Abu Hurairah, and Ibn Abbas. You have invalidated wiping over the feet—which is the explicit text of the Quran—based on a report that our opponents and your opponents allege we excused ourselves and you excused yourselves in it, though it does not indicate pro-

hibiting wiping them. Indeed, a group of the Companions, the Successors, and those after them upheld wiping over them. You also endorse wiping over bandages despite there being no authentic report from the Messenger of Allah—peace be upon him—regarding it. And this is mixing up.

أَنَّنَا سَامَحْنَا أَنْفُسَنَا وَسَامَحْتُمْ أَنْفُسَكُمْ فِيهِ، وَأَنَّهُ لَا يَدُلُّ عَلَى الْمَنْعِ مِنْ مَسْحِهَا، وَقَدْ قَالَ بِمَسْحِهَا طَائِفَةٌ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ وَمَنْ بَعْدَهُمْ، وَقُلْتُمْ بِالْمَسْحِ عَلَى الْجَبَائِرِ وَلَمْ يَصِحَّ فِيهِ أَثَرٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا تَخْلِيطٌ.

L3758 Some of them said: In the ḥadīth of al-Mughīrah ibn Shuʿbah, it states, "He wiped his forelock and his turban." As for those who do not deem wiping the forelock sufficient, they have brazenly defied Allah the Exalted and the people by citing this narration as evidence, thereby disobeying all it contains. As for those who deem wiping part of the head sufficient, they said: What sufficed him (peace be upon him) was wiping the forelock alone, while the wiping of the turban was a supererogatory act.

وَقَالَ بَعْضُهُمْ: حَدِيثُ الْمُغِيرَةِ بْنِ شُعْبَةَ فِيهِ «إنَّهُ مَسَحَ بِنَاصِيَتِهِ وَعَلَى عِمَامَتِهِ» فَأَمَّا مَنْ لَا يَرَى الْمَسْحَ عَلَى النَّاصِيَةِ يُجْزِئُ فَقَدْ جَاهَرَ اللَّهَ تَعَالَى وَالنَّاسَ فِي احْتِجَاجِهِ بِهَذَا الْخَبَرِ، وَهُوَ عَاصٍ لِكُلِّ مَا فِيهِ. وَأَمَّا مَنْ يَرَى الْمَسْحَ عَلَى بَعْضِ الرَّأْسِ يُجْزِئُ فَإِنَّهُمْ قَالُوا: إنَّ الَّذِي أَجْزَأَهُ - عَلَيْهِ السَّلَامُ - فَهُوَ مَسْحُ النَّاصِيَةِ فَقَطْ وَكَانَ مَسْحُ الْعِمَامَةِ فَضْلًا.

L3759–3760 Abu Muhammad said: These people sought to portray everything in the report of al-Mughira as a single account of ablution, but this is falsehood and audacity toward falsehood. Rather, it is a report about two distinct acts of worship—this is the apparent meaning of the hadith and its implication. And how is it that a group other than al-Mughira transmitted it? Some of them said: al-Awzāʿī erred in the hadith of ʿAmr ibn Umayya, for this is a report transmitted from Yaḥyā ibn Abī Kathīr by Shaybān, Ḥarb ibn Shaddād, Bakr ibn Naḍr, Abān al-ʿAṭṭār, and ʿAlī ibn al-Mubārak—yet none of them mentioned the ritual wiping over the turban in it.

قَالَ أَبُو مُحَمَّد: رَامَ هَؤُلَاءِ أَنْ يَجْعَلُوا كُلَّ مَا فِي خَبَرِ الْمُغِيرَةِ حِكَايَةً عَنْ وُضُوءٍ وَاحِدٍ وَهَذَا كَذِبٌ وَجُرْأَةٌ عَلَى الْبَاطِلِ، بَلْ هُوَ خَبَرٌ عَنْ عَمَلَيْنِ مُتَغَايِرَيْنِ، هَذَا ظَاهِرُ الْحَدِيثِ وَمُقْتَضَاهُ، وَكَيْفَ قَدْ رَوَاهُ جَمَاعَةٌ غَيْرُ الْمُغِيرَةِ: وَقَالَ بَعْضُهُمْ أَخْطَأَ الْأَوْزَاعِيُّ فِي حَدِيثِ عَمْرِو بْنِ أُمَيَّةَ، لِأَنَّ هَذَا خَبَرٌ رَوَاهُ - عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ شَيْبَانُ وَحَرْبُ بْنُ شَدَّادٍ وَبَكْرُ بْنُ نَضْرٍ وَأَبَانُ الْعَطَّارُ وَعَلِيُّ بْنُ الْمُبَارَكِ، فَلَمْ يَذْكُرُوا فِيهِ الْمَسْحَ عَلَى الْعِمَامَةِ.

L3761 Ali said: So we said to them, "What was the outcome?" Every scholar of ḥadīth knows that al-Awzāʿī had stronger retention than any of these individuals. He constitutes a decisive proof against them, while they do not constitute a proof against him. Al-Awzāʿī is a *thiqa* (reliable narrator), and it is impermissible to reject additions by reliable narrators. What difference is there between you and those who say regarding every report you advance as evidence: "Its narrator erred here, for such-and-such individuals did not transmit this report"?

قَالَ عَلِيٌّ: فَقُلْنَا لَهُمْ فَكَانَ مَاذَا؟ قَدْ عَلِمَ كُلُّ ذِي عِلْمٍ بِالْحَدِيثِ أَنَّ الْأَوْزَاعِيَّ أَحْفَظُ مِنْ كُلِّ وَاحِدٍ مِنْ هَؤُلَاءِ، وَهُوَ حُجَّةٌ عَلَيْهِمْ، وَلَيْسُوا حُجَّةً عَلَيْهِ، وَالْأَوْزَاعِيُّ ثِقَةٌ، وَزِيَادَةُ الثِّقَةِ لَا يَحِلُّ رَدُّهَا، وَمَا الْفَرْقُ بَيْنَكُمْ وَبَيْنَ مَنْ قَالَ فِي كُلِّ خَبَرٍ احْتَجَجْتُمْ بِهِ: إنَّ رَاوِيَهُ أَخْطَأَ فِيهِ، لِأَنَّ فُلَانًا وَفُلَانًا لَمْ يَرْوِ هَذَا الْخَبَرَ؟

L3762 Some of them said: It is not permissible to wipe over the turban, just as it is not permissible to wipe over gloves. Abū Muḥammad said: This is analogy,

and all analogy is null and void. Furthermore, even if it were valid, this would be the epitome of invalidity, because they are opposed in it. It would be said to them: If this analogy is sound according to you, then use it to invalidate wiping over the khuffs, for the feet bear greater resemblance to the hands than to the head. Therefore, say: Just as it is not permissible to wipe over gloves, likewise it is not permissible to wipe over the khuffs, and there is no difference.

وَقَالَ بَعْضُهُمْ: لَا يَجُوزُ الْمَسْحُ عَلَى الْعِمَامَةِ كَمَا لَا يَجُوزُ الْمَسْحُ عَلَى الْقُفَّازَيْنِ. قَالَ أَبُو مُحَمَّد: وَهَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّهُمْ يُعَارَضُونَ فِيهِ، فَيُقَالُ لَهُمْ إنْ كَانَ هَذَا الْقِيَاسُ عِنْدَكُمْ صَحِيحًا فَأَبْطِلُوا بِهِ الْمَسْحَ عَلَى الْخُفَّيْنِ؟ لِأَنَّ الرِّجْلَيْنِ بِالْيَدَيْنِ أَشْبَهُ مِنْهُمَا بِالرَّأْسِ، فَقُولُوا: كَمَا لَا يَجُوزُ الْمَسْحُ عَلَى الْقُفَّازَيْنِ كَذَلِكَ لَا يَجُوزُ الْمَسْحُ عَلَى الْخُفَّيْنِ وَلَا فَرْقَ.

L3763 If they say: "Wiping over leather socks has been authentically established from the Messenger of Allah (peace and blessings be upon him)," it is said to them: "Wiping over the turban has likewise been authentically established from the Messenger of Allah (peace and blessings be upon him)." They are further countered by stating: Allah the Exalted paired the head with the feet in ablution, yet you permit wiping over leather socks; so you must permit wiping over the turban. For both are limbs that are together excluded in tayammum. Since substituting wiping in place of washing the two feet is permissible according to your view, then substituting wiping over the turban for wiping the head should inherently be permissible, as the head is one extremity and the two feet are another extremity. Moreover, substituting wiping with dust has been established for all ablution limbs: it replaces washing the face and forearms, and wiping over leather socks replaces washing the two feet. It is thus obligatory that substituting wiping over the turban for wiping the head also be permissible, so that the rulings for all ablution limbs harmonize in this regard.

فَإِنْ قَالُوا: قَدْ صَحَّ الْمَسْحُ عَلَى الْخُفَّيْنِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، قِيلَ لَهُمْ: وَقَدْ صَحَّ الْمَسْحُ عَلَى الْعِمَامَةِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَيُعَارَضُونَ أَيْضًا بِأَنْ يُقَالَ لَهُمْ: إنَّ اللَّهَ تَعَالَى قَرَنَ الرُّءُوسَ بِالْأَرْجُلِ فِي الْوُضُوءِ وَأَنْتُمْ تُجِيزُونَ الْمَسْحَ عَلَى الْخُفَّيْنِ فَأَجِيزُوا الْمَسْحَ عَلَى الْعِمَامَةِ، لِأَنَّهُمَا جَمِيعًا عُضْوَانِ يَسْقُطَانِ فِي التَّيَمُّمِ، وَلِأَنَّهُ لَمَّا جَازَ تَعْوِيضُ الْمَسْحِ عِنْدَكُمْ مِنْ غَسْلِ الرِّجْلَيْنِ فَيَنْبَغِي أَنْ يَكُونَ يَجُوزُ تَعْوِيضُ الْمَسْحِ مِنْ الْمَسْحِ فِي الْعِمَامَةِ عَلَى الرَّأْسِ أَوْلَى، وَلِأَنَّ الرَّأْسَ طَرَفٌ، وَالرِّجْلَانِ طَرَفٌ، وَأَيْضًا فَقَدْ صَحَّ تَعْوِيضُ الْمَسْحِ مِنْ جَمِيعِ أَعْضَاءِ الْوُضُوءِ فَعُوِّضَ الْمَسْحُ بِالتُّرَابِ فِي الْوَجْهِ وَالذِّرَاعَيْنِ مِنْ غَسْلِ كُلِّ ذَلِكَ، وَعُوِّضَ الْمَسْحُ عَلَى الْخُفَّيْنِ مِنْ غَسْلِ الرِّجْلَيْنِ، فَوَجَبَ أَيْضًا أَنْ يَجُوزَ تَعْوِيضُ الْمَسْحِ عَلَى الْعِمَامَةِ مِنْ الْمَسْحِ عَلَى الرَّأْسِ، لِتَتَّفِقَ أَحْكَامُ جَمِيعِ أَعْضَاءِ الْوُضُوءِ فِي ذَلِكَ.

L3764–3765 Ali said: We have cited all this solely to oppose their invalid analogy, demonstrating that there is no ruling they established through analogy except that those who opposed them—by resorting to analogy—have an analogy equal to theirs or stronger. Thus, the falsity of analogy becomes evident to everyone Allah wills to guide. Some of them said: The Messenger of Allah (peace be upon him) only wiped over the turban and cap due to a wound he had on his head.

قَالَ عَلِيٌّ: كُلُّ هَذَا إنَّمَا أَوْرَدْنَاهُ مُعَارَضَةً لِقِيَاسِهِمْ الْفَاسِدِ وَأَنَّهُ لَا شَيْءَ مِنْ الْأَحْكَامِ قَالُوا فِيهِ بِالْقِيَاسِ إلَّا وَلِمَنْ خَالَفَهُمْ - مِنْ التَّعَلُّقِ بِالْقِيَاسِ - كَالَّذِي لَهُمْ أَوْ أَكْثَرَ فَيَظْهَرُ بِذَلِكَ بُطْلَانُ الْقِيَاسِ لِكُلِّ مَنْ أَرَادَ اللَّهُ تَوْفِيقَهُ وَقَالَ بَعْضُهُمْ: إنَّمَا مَسَحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْعِمَامَةِ وَالْخِمَارِ لِمَرَضٍ كَانَ فِي رَأْسِهِ.

L3766 Ali said: This is the speech of one who lies without restraint, and whoever seeks Allah's forgiveness for conversing with his like - because he deliberately lies and slanders through statements he never produced, neither textual proof nor evidence - Allah has hastened the punishment for one of such description by the fact that he has taken his seat in the Fire, due to his falsehood against the Messenger of Allah, peace and blessings of Allah be upon him.

قَالَ عَلِيٌّ: هَذَا كَلَامُ مَنْ لَا مُؤْنَةَ عَلَيْهِ مِنْ الْكَذِبِ، وَمَنْ يَسْتَغْفِرْ اللَّهَ تَعَالَى مِنْ مُكَالَمَةِ مِثْلِهِ، لِأَنَّهُ مُتَعَمِّدٌ لِلْكَذِبِ وَالْإِفْكِ بِقَوْلٍ لَمْ يَأْتِ بِهِ قَطُّ لَا نَصٌّ وَلَا دَلِيلٌ، وَقَدْ عَجَّلَ اللَّهُ الْعُقُوبَةَ لِمَنْ هَذِهِ صِفَتُهُ، بِأَنْ تَبَوَّأَ مَقْعَدَهُ مِنْ النَّارِ، لِكَذِبِهِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L3767 Then it is said to them: Declare the same concerning wiping over khuffs — that it was due to an ailment in his feet — for there is no distinction in the fact that even if a person were to say this, he would be more excused than them. This is because it has been narrated to us from Ibn Abbas that he said regarding wiping over khuffs: "If you were to say this during severe cold or a long journey." Yet it has never been narrated from any Companion that they said this concerning wiping over turbans or headscarves. Thus, the claim of those who prohibit wiping over turbans and headscarves is invalidated, and the opposing position is validated by the established Sunnah, the stances of Abu Bakr, Umar, Ali, Anas, Umm Salamah, Abu Musa al-Ash'ari, Abu Umamah, and others, as well as by juridical analogy — if one is among its proponents. If someone argues: "It is not reported from the Prophet — peace and blessings be upon him — that he wiped over anything besides turbans and headscarves," it remains impermissible to abandon what the Quran prescribes regarding wiping the head for anything other than what the authentic text specifies. Analogy is invalid here, for his action — peace be upon him — does not constitute a general textual expression that can be universally applied.

ثُمَّ يُقَالُ لَهُمْ: قُولُوا مِثْلَ هَذَا فِي الْمَسْحِ عَلَى الْخُفَّيْنِ، إنَّهُ كَانَ لِعِلَّةٍ بِقَدَمَيْهِ وَلَا فَرْقَ عَلَى أَنَّ امْرَأً لَوْ قَالَ هَذَا لَكَانَ أَعْذَرَ مِنْهُمْ؛ لِأَنَّا قَدْ رُوِّينَا عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ فِي الْمَسْحِ عَلَى الْخُفَّيْنِ: لَوْ قُلْتُمْ ذَلِكَ فِي الْبَرْدِ الشَّدِيدِ أَوْ السَّفَرِ الطَّوِيلِ، وَلَمْ يُرْوَ قَطُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ أَنَّهُ قَالَ ذَلِكَ فِي الْمَسْحِ عَلَى الْعِمَامَةِ وَالْخِمَارِ، فَبَطَلَ قَوْلُ مَنْ مَنَعَ الْمَسْحَ عَلَى الْعِمَامَةِ وَالْخِمَارِ، وَصَحَّ خِلَافُهُ لِلسُّنَنِ الثَّابِتَةِ، وَلِأَبِي بَكْرٍ وَعُمَرَ وَعَلِيٍّ وَأَنَسٍ وَأُمِّ سَلَمَةَ وَأَبِي مُوسَى الْأَشْعَرِيِّ وَأَبِي أُمَامَةَ وَغَيْرِهِمْ، وَلِلْقِيَاسِ إنْ كَانَ مِنْ أَهْلِ الْقِيَاسِ. فَإِنْ قَالَ قَائِلٌ: إنَّهُ لَمْ يَأْتِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ مَسَحَ عَلَى غَيْرِ الْعِمَامَةِ وَالْخِمَارِ، فَلَا يَجُوزُ تَرْكُ مَا جَاءَ فِي الْقُرْآنِ مِنْ مَسْحِ الرَّأْسِ لِغَيْرِ مَا صَحَّ النَّصُّ بِهِ، وَالْقِيَاسُ بَاطِلٌ، وَلَيْسَ فِعْلُهُ - عَلَيْهِ السَّلَامُ - عُمُومَ لَفْظٍ فَيُحْمَلُ عَلَى عُمُومِهِ.

L3768–3770 We said: This is incorrect because he (peace be upon him) did not state that wiping is permitted only over a turban or headscarf. Rather, we inferred from his wiping over them that direct water contact with the head is not obligatory. Since this is established, then anything worn upon the head may lawfully be wiped over. We then ask them: Suppose the narrator had reported that Allah's Messenger (peace and blessings of Allah be upon him) wiped over a yellow linen turban folded three folds – would wiping over a red cotton headcover wound ten times be permissible in your view or not? Similarly, if he had stated that he (peace be upon him) wiped over two black leather

قُلْنَا: هَذَا خَطَأٌ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَقُلْ إنَّهُ لَا يَمْسَحُ إلَّا عَلَى عِمَامَةٍ أَوْ خِمَارٍ، لَكِنْ عَلِمْنَا بِمَسْحِهِ عَلَيْهَا أَنَّ مُبَاشَرَةَ الرَّأْسِ بِالْمَاءِ لَيْسَ فَرْضًا، فَإِذْ ذَلِكَ كَذَلِكَ، فَأَيُّ شَيْءٍ لُبِسَ عَلَى الرَّأْسِ جَازَ الْمَسْحُ عَلَيْهِ. ثُمَّ نَقُولُ لَهُمْ: قُولُوا لَنَا لَوْ أَنَّ الرَّاوِيَ قَالَ مَسَحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى عِمَامَةٍ صَفْرَاءَ مِنْ كَتَّانٍ مَطْوِيَّةٍ ثَلَاثَ طَيَّاتٍ، أَكَانَ يَجُوزُ عِنْدَكُمْ الْمَسْحُ عَلَى حَمْرَاءَ مِنْ قُطْنٍ مَلْوِيَّةٍ عَشْرَ مَرَّاتٍ أَمْ لَا؟ وَكَذَلِكَ لَوْ

socks, would... Is it permissible regarding the two white substances or not? Therefore, if they adhere to the transmitter's opinion, they have introduced a new innovation; but if they disregard it, they revert to our ruling.

L3771 **Issue: One does not wipe over the turban and the headscarf except one who wore both while in a state of ṭahārah (ritual purity).**

L3772 202. Issue: Abu Muhammad said: It is the same whether what we mentioned is worn in a state of purity or not. Abu Thawr said: One may not wipe over the turban and head covering except someone who wore them in a state of purity, by analogy to the leather socks. Our companions held the same view as we said. Ali said: The analogy is invalid, as there is no unifying rationale between the ruling of wiping over the turban and head covering and the ruling of wiping over the leather socks. The Messenger of Allah—peace and blessings be upon him—specifically mentioned wearing in a state of purity for the leather socks, but he did not mention that for the turban and head covering. Allah the Exalted said: "To clarify to the people what has been sent down to them" [16:44] and "Your Lord is never forgetful" [19:64]. If this were obligatory for the turban and head covering, he—peace be upon him—would have clarified it, just as he clarified it for the leather socks. Whoever claims equivalence in this between the turban and head covering and the leather socks is making a baseless claim and is required to provide proof for the validity of their claim. Thus, it should be said to them: On what basis is this obligation derived, given that the Prophet—peace be upon him—specified for wiping over the leather socks that they were worn in a state of purity? There is absolutely no basis for applying this ruling to the turban and head covering beyond a matter of his own opinion, and this is meaningless [as a juristic argument]. Allah the Exalted said: "Say, 'Produce your proof if you are truthful'" [2:111].[24]

L3773 **A ruling permits wiping over the turban, headscarf, and**

[24] **Qur'an references (L3772):** Qur'an 16:44 (An-Nahl); Qur'an 19:64 (Maryam); Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

قَالَ مَسَحَ - عَلَيْهِ السَّلَامُ - عَلَى خُفَّيْنِ أَسْوَدَيْنِ، أَكَانَ يَجُوزُ عَلَى أَبْيَضَيْنِ أَمْ لَا؟ فَإِنْ لَزِمُوا قَوْلَ الرَّاوِي أَحْدَثُوا دِينًا جَدِيدًا، وَإِنْ لَمْ يُرَاعُوهُ رَجَعُوا إِلَى قَوْلِنَا.

[مَسْأَلَة لَا يَمْسَحُ عَلَى الْعِمَامَةِ وَالْخِمَارِ إِلَّا مَنْ لَبِسَهُمَا عَلَى طَهَارَةٍ]

٢٠٢ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: وَسَوَاءٌ لُبِسَ مَا ذَكَرْنَا عَلَى طَهَارَةٍ أَوْ غَيْرِ طَهَارَةٍ قَالَ أَبُو ثَوْرٍ: لَا يَمْسَحُ عَلَى الْعِمَامَةِ وَالْخِمَارِ إِلَّا مَنْ لَبِسَهُمَا عَلَى طَهَارَةٍ، قِيَاسًا عَلَى الْخُفَّيْنِ، وَقَالَ أَصْحَابُنَا كَمَا قُلْنَا قَالَ عَلِيٌّ: الْقِيَاسُ بَاطِلٌ، وَلَيْسَ هُنَا عِلَّةٌ جَامِعَةٌ بَيْنَ حُكْمِ الْمَسْحِ عَلَى الْعِمَامَةِ وَالْخِمَارِ وَالْمَسْحِ عَلَى الْخُفَّيْنِ، وَإِنَّمَا نَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي اللِّبَاسِ عَلَى الطَّهَارَةِ، عَلَى الْخُفَّيْنِ، وَلَمْ يَنُصَّ ذَلِكَ فِي الْعِمَامَةِ وَالْخِمَارِ، قَالَ اللَّهُ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] فَلَوْ وَجَبَ هَذَا فِي الْعِمَامَةِ وَالْخِمَارِ لَبَيَّنَهُ - عَلَيْهِ السَّلَامُ -، كَمَا بَيَّنَ ذَلِكَ فِي الْخُفَّيْنِ، وَمُدَّعِي الْمُسَاوَاةِ فِي ذَلِكَ بَيْنَ الْعِمَامَةِ وَالْخِمَارِ وَبَيْنَ الْخُفَّيْنِ، مُدَّعٍ بِلَا دَلِيلٍ، وَيُكَلَّفُ الْبُرْهَانَ عَلَى صِحَّةِ دَعْوَاهُ فِي ذَلِكَ، فَيُقَالُ لَهُ مِنْ أَيْنَ وَجَبَ، إِذْ نَصَّ - عَلَيْهِ السَّلَامُ - فِي الْمَسْحِ عَلَى الْخُفَّيْنِ أَنَّهُ لَبِسَهُمَا عَلَى طَهَارَةٍ، أَنْ يَجِبَ هَذَا الْحُكْمُ فِي الْعِمَامَةِ وَالْخِمَارِ وَلَا سَبِيلَ لَهُ إِلَيْهِ أَصْلًا بِأَكْثَرَ مِنْ قَضِيَّةٍ مِنْ رَأْيِهِ، وَهَذَا لَا مَعْنَى لَهُ قَالَ اللَّهُ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] .

[مَسْأَلَةٌ يَمْسَحُ عَلَى الْعِمَامَة والخمار والخفين بِلَا تَوْقِيتٍ وَلَا تَحْدِيد]

khuffayn without any time limitation or specified conditions.

L3774 203 - Legal Point: One may wipe over all of that perpetually without time restriction or limitation. A time specification in this matter is firmly established from Umar ibn al-Khattab - may Allah be pleased with him - similar to wiping over leather socks. Abu Thawr held this opinion, while our scholarly companions maintained the view we stated. No argument exists in anyone's statement apart from the Messenger of Allah - peace and blessings be upon him. Analogical reasoning is invalid. The claim stating, "Since wiping over leather socks is time-restricted to a specified period during travel and another during residence, wiping over the turban must follow the same rule," is an unsubstantiated claim lacking proof of its validity - a statement unsupported by evidence. He may be asked: What is your evidence for validating what you mention - that wiping over the turban should be governed by the two periods explicitly stated for wiping over leather socks? This cannot be substantiated except as an unsupported assertion. The Messenger of Allah - peace and blessings be upon him - wiped over the turban and khimār (headcovering) without specifying any time limit, yet he specified a period for wiping over leather socks. We are obliged to uphold what he - peace and blessings be upon him - stated and not introduce into the religion what he did not say. Allah the Exalted said: "These are the boundaries set by Allah, so do not transgress them" [al-Baqarah 2:229].[25]

L3775–3776 **An issue where there was dye or medicine beneath what was worn on the head.**

L3777 Issue: If there is dye or medicine beneath what is worn on the head, it is permissible to wipe over them as we have stated, with no distinction. Similarly, if one intentionally wears such a covering to wipe over it, wiping is also permissible. However, the mentioned wiping applies specifically to ablution. As for every obligatory bath, it is not permissible; rather, all such coverings must be removed and the head washed. The proof for this is that "the Messenger of Allah—peace be upon him—wiped over the turban and

[25] **Qur'an references (L3774):** Qur'an 2:229 (Al-Baqarah).

٢٠٣ - مَسْأَلَةٌ: وَيَمْسَحُ عَلَى كُلِّ ذَلِكَ أَبَدًا بِلَا تَوْقِيتٍ وَلَا تَحْدِيدٍ، وَقَدْ جَاءَ عَنْ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - التَّوْقِيتُ فِي ذَلِكَ ثَابِتًا عَنْهُ، كَالْمَسْحِ عَلَى الْخُفَّيْنِ وَبِهِ قَالَ أَبُو ثَوْرٍ، وَقَالَ أَصْحَابُنَا كَمَا قُلْنَا. وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، وَالْقِيَاسُ بَاطِلٌ، وَقَوْلُ الْقَائِلِ: لَمَّا كَانَ الْمَسْحُ عَلَى الْخُفَّيْنِ مُوَقَّتًا بِوَقْتٍ مَحْدُودٍ فِي السَّفَرِ وَوَقْتٍ فِي الْحَضَرِ وَجَبَ أَنْ يَكُونَ الْمَسْحُ عَلَى الْعِمَامَةِ كَذَلِكَ، دَعْوَى بِلَا بُرْهَانٍ عَلَى صِحَّتِهَا وَقَوْلٌ لَا دَلِيلَ عَلَى وُجُوبِهِ، وَيُقَالُ لَهُ مَا دَلِيلُكَ عَلَى صِحَّةِ مَا تَذْكُرُ مِنْ أَنْ يُحْكَمَ لِلْمَسْحِ عَلَى الْعِمَامَةِ بِمِثْلِ الْوَقْتَيْنِ الْمَنْصُوصَيْنِ فِي الْمَسْحِ عَلَى الْخُفَّيْنِ؟ وَهَذَا لَا سَبِيلَ إلَى وُجُودِهِ بِأَكْثَرَ مِنْ الدَّعْوَى، وَقَدْ «مَسَحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْعِمَامَةِ وَالْخِمَارِ، وَلَمْ يُوَقِّتْ فِي ذَلِكَ وَقْتًا وَوَقَّتَ فِي الْمَسْحِ عَلَى الْخُفَّيْنِ» ، فَيَلْزَمُنَا أَنْ نَقُولَ مَا قَالَ - عَلَيْهِ السَّلَامُ - وَأَنْ لَا نَقُولَ فِي الدِّينِ مَا لَمْ يَقُلْهُ - عَلَيْهِ السَّلَامُ -، قَالَ اللَّهُ تَعَالَى: {تِلْكَ حُدُودُ اللَّهِ فَلا تَعْتَدُوهَا} [البقرة: ٢٢٩] .

[مَسْأَلَةٌ كَانَ تَحْتَ مَا لَبِسَ عَلَى الرَّأْسِ خِضَابٌ أَوْ دَوَاءٌ]

مَسْأَلَةٌ: فَلَوْ كَانَ تَحْتَ مَا لَبِسَ عَلَى الرَّأْسِ خِضَابٌ أَوْ دَوَاءٌ جَازَ الْمَسْحُ عَلَيْهِمَا كَمَا قُلْنَا وَلَا فَرْقَ، وَكَذَلِكَ لَوْ تَعَمَّدَ لِبَاسَ ذَلِكَ لِيَمْسَحَ عَلَيْهِ جَازَ الْمَسْحُ أَيْضًا، وَإِنَّمَا الْمَسْحُ الْمَذْكُورُ فِي الْوُضُوءِ خَاصَّةً، وَأَمَّا فِي كُلِّ غُسْلٍ وَاجِبٍ فَلَا، وَلَا بُدَّ مِنْ خَلْعِ كُلِّ ذَلِكَ وَغَسْلِ الرَّأْسِ. بُرْهَانُ ذَلِكَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَسَحَ عَلَى الْعِمَامَةِ وَعَلَى الْخِمَارِ» ، وَلَمْ يَخُصَّ لَنَا حَالًا مِنْ حَالٍ، فَلَا يَجُوزُ أَنْ يُخَصَّ بِالْمَسْحِ

the headscarf," without specifying any particular circumstance. Therefore, it is not permissible to restrict wiping to one circumstance over another. Since wiping is permissible, intending to do what is permissible is itself permissible. The Prophet—peace be upon him—only wiped during ablution specifically. Thus, it is not permissible to add to this what he did not practice—peace be upon him. It is not permissible to introduce into the Sunnah what is not established within it, nor to omit from it what the textual evidence necessitates. And with Allah, the Exalted, is success.

L3778 And thus our opponents say regarding wiping over the two khuffs [leather socks]—it is the same, the same.

L3779 **"An issue concerning the omission of body parts that are obligatory to wash during ablution (wuḍū') or ritual bath (ghusl)."**

L3780 Issue 205: If someone leaves any part he is required to wash in ablution or the obligatory bath - even the amount of a single hair - whether deliberately or out of forgetfulness, his prayer is not valid performed with that ablution or bath until he completes all of it. This is because he did not pray with the ritual purity he was commanded to perform. The Prophet (peace be upon him) said, "Whoever does a deed not in accordance with our command, it is rejected."

L3781 **Issue: If a person invalidates their ablution or precedes a limb over the one mentioned before it in the Quran.**

L3782 Issue 206: If someone reverses the sequence of their ablution by washing a limb before the one preceding it in the Quranic order—whether intentionally or forgetfully—their prayer is not valid at all. They must begin anew by washing the face first, then the arms up to the elbows, then the head, then the feet. When washing the arms and feet, it is obligatory to start with the right side before the left, as established in the Sunnah. If one performs sniffing water into the nose and expelling it at the end of their ablution or after washing any of the mentioned limbs, the ablution is invalid. If any such error occurs, the person must return to the limb they began with before the

حَالٌ دُونَ حَالٍ، وَإِذَا كَانَ الْمَسْحُ جَائِزًا فَالْقَصْدُ إِلَى الْجَائِزِ جَائِزٌ، وَإِنَّمَا مَسَحَ - عَلَيْهِ السَّلَامُ - فِي الْوُضُوءِ خَاصَّةً، فَلَا يَجُوزُ أَنْ يُضَافَ إِلَى ذَلِكَ مَا لَمْ يَفْعَلْهُ - عَلَيْهِ السَّلَامُ -، وَلَا يَجُوزُ أَنْ يُزَادَ فِي السُّنَنِ مَا لَمْ يَأْتِ فِيهَا، وَلَا أَنْ يُنْقَصَ مِنْهَا مَا اقْتَضَاهُ لَفْظُ الْخَبَرِ بِهَا، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَهَكَذَا يَقُولُ خُصُومُنَا فِي الْمَسْحِ عَلَى الْخُفَّيْنِ سَوَاءً سَوَاءً.

[مَسْأَلَةٌ تَرَكَ مِمَّا يَلْزَمُهُ غَسْلُهُ فِي الْوُضُوءِ أَوْ الْغُسْلِ]

٢٠٥ - مَسْأَلَةٌ: وَمَنْ تَرَكَ مِمَّا يَلْزَمُهُ غَسْلُهُ فِي الْوُضُوءِ أَوْ الْغُسْلِ الْوَاجِبِ وَلَوْ قَدْرَ شَعْرَةٍ عَمْدًا أَوْ نِسْيَانًا، لَمْ تُجْزِهِ الصَّلَاةُ بِذَلِكَ الْغُسْلِ وَالْوُضُوءِ حَتَّى يُوعِبَهُ كُلَّهُ، لِأَنَّهُ لَمْ يُصَلِّ بِالطَّهَارَةِ الَّتِي أُمِرَ بِهَا، وَقَالَ - عَلَيْهِ السَّلَامُ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

[مَسْأَلَةٌ نَكَسَ وُضُوءَهُ أَوْ قَدَّمَ عُضْوًا عَلَى الْمَذْكُورِ قَبْلَهُ فِي الْقُرْآنِ]

٢٠٦ - مَسْأَلَةٌ: وَمَنْ نَكَسَ وُضُوءَهُ أَوْ قَدَّمَ عُضْوًا عَلَى الْمَذْكُورِ قَبْلَهُ فِي الْقُرْآنِ عَمْدًا أَوْ نِسْيَانًا لَمْ تُجْزِهِ الصَّلَاةُ أَصْلًا، وَفُرِضَ عَلَيْهِ أَنْ يَبْدَأَ بِوَجْهِهِ ثُمَّ ذِرَاعَيْهِ ثُمَّ رَأْسِهِ ثُمَّ رِجْلَيْهِ، وَلَا بُدَّ فِي الذِّرَاعَيْنِ وَالرِّجْلَيْنِ مِنْ الِابْتِدَاءِ بِالْيَمِينِ قَبْلَ الْيَسَارِ كَمَا جَاءَ فِي السُّنَّةِ، فَإِنْ جَعَلَ الِاسْتِنْشَاقَ وَالِاسْتِنْثَارَ فِي آخِرِ وُضُوئِهِ أَوْ بَعْدَ عُضْوٍ مِنْ الْأَعْضَاءِ الْمَذْكُورَةِ لَمْ يُجْزِ ذَلِكَ، فَإِنْ فَعَلَ شَيْئًا مِمَّا ذَكَرْنَا لَزِمَهُ أَنْ يَعُودَ إِلَى الَّذِي بَدَأَ بِهِ قَبْلَ الَّذِي ذَكَرَهُ

one erroneously prioritized in the Quranic sequence, complete the remaining steps in order, and is not required to restart the entire ablution. This is the opinion of Al-Shafiʿi, Abu Thawr, Ahmad ibn Hanbal, and Ishaq. If a person in a state of major impurity immerses in flowing water while intending both the major ritual bath and minor ablution simultaneously, neither act is valid. They must perform the major ritual bath in its prescribed order. This is the view of Ishaq.

اللَّهُ تَعَالَى قَبْلَهُ فَيَعْمَلُهُ إِلَى أَنْ يُتِمَّ وُضُوءَهُ، وَلَيْسَ عَلَيْهِ أَنْ يَبْتَدِئَ مِنْ أَوَّلِ الْوُضُوءِ، وَهُوَ قَوْلُ الشَّافِعِيِّ وَأَبِي ثَوْرٍ وَأَحْمَدَ بْنِ حَنْبَلٍ وَإِسْحَاقَ، فَإِنْ انْغَمَسَ فِي مَاءٍ جَارٍ وَهُوَ جُنُبٌ وَنَوَى الْغُسْلَ وَالْوُضُوءَ مَعًا لَمْ يُجْزِهِ ذَلِكَ مِنْ الْوُضُوءِ وَلَا مِنْ الْغُسْلِ، وَعَلَيْهِ أَنْ يَأْتِيَ بِهِ مُرَتَّبًا، وَهُوَ قَوْلُ إِسْحَاقَ.

L3783–3785 The evidence for that is what ʿAbdullāh ibn Rabīʿ narrated to us, Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us, Ibrāhīm ibn Hārūn al-Balkhī narrated to us, Ḥātim ibn Ismāʿīl narrated to us, Jaʿfar ibn Muḥammad narrated to us from his father, who said: "We entered the presence of Jābir ibn ʿAbdullāh, and I said: 'Inform me about the Hajj of the Messenger of Allah (peace be upon him).' Jābir said: 'We departed...'" He narrated it in his presence—mentioning the ḥadīth which included that the Messenger of Allah—may Allah's blessings and peace be upon him—departed through the gate toward al-Ṣafā. When he drew near to al-Ṣafā, he said: {Indeed, al-Ṣafā and al-Marwāh are among the rites of Allah} [al-Baqarah: 158]. Begin with what Allah began with.[26]

بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا إِبْرَاهِيمُ بْنُ هَارُونَ الْبَلْخِيُّ ثنا حَاتِمُ بْنُ إِسْمَاعِيلَ ثنا جَعْفَرُ بْنُ مُحَمَّدٍ عَنْ أَبِيهِ قَالَ: «دَخَلْنَا عَلَى جَابِرِ بْنِ عَبْدِ اللَّهِ فَقُلْتُ: أَخْبِرْنِي عَنْ حَجَّةِ رَسُولِ اللَّهِ - عَلَيْهِ السَّلَامُ - قَالَ جَابِرٌ خَرَجْنَا مَعَهُ - فَذَكَرَ الْحَدِيثَ وَفِيهِ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَرَجَ مِنْ الْبَابِ إِلَى الصَّفَا، فَلَمَّا دَنَا إِلَى الصَّفَا قَالَ: {إِنَّ الصَّفَا وَالْمَرْوَةَ مِنْ شَعَائِرِ اللَّهِ} [البقرة: ١٥٨] ابْدَءُوا بِمَا بَدَأَ اللَّهُ بِهِ» .

L3786 Ali said: This is a general ruling from which nothing may be excluded. We hold that neither ritual ablution (wudu) nor ritual bath (ghusl) suffices for limbs washed together when one intends both acts through that washing. This is because he has not performed the ritual ablution as commanded, nor has he completed a valid ritual bath that would suffice. Rather, he has mixed it with a corrupt act, thus invalidating the ritual bath for those limbs as well, since he performed it contrary to what Allah the Exalted has ordained. As for sniffing water into the nose and expelling it, no sequence is specified for them in ablution. Therefore, whether one performs them during ablution, after ablution, before prayer, or even prior to commencing ablution - it suffices.

قَالَ عَلِيٌّ: وَهَذَا عُمُومٌ لَا يَجُوزُ أَنْ يُخَصَّ مِنْهُ شَيْءٌ، وَإِنَّمَا قُلْنَا: لَا يُجْزِئُ فِي الْأَعْضَاءِ الْمَغْمُوسَةِ مَعًا لَا الْوُضُوءُ وَلَا الْغُسْلُ إذَا نَوَى بِذَلِكَ الْغَمْسِ كِلَا الْأَمْرَيْنِ فَلِأَنَّهُ لَمْ يَأْتِ بِالْوُضُوءِ كَمَا أُمِرَ، وَلَمْ يَخْلُصْ الْغُسْلُ فَيُجْزِيه، لَكِنْ خَلَطَهُ بِعَمَلٍ فَاسِدٍ فَبَطَلَ أَيْضًا الْغُسْلُ فِي تِلْكَ الْأَعْضَاءِ، لِأَنَّهُ أَتَى بِهِ بِخِلَافِ مَا أَمَرَهُ اللَّهُ تَعَالَى بِهِ، وَأَمَّا الِاسْتِنْشَاقُ وَالِاسْتِنْثَارُ فَلَمْ يَأْتِ فِيهِمَا فِي الْوُضُوءِ ذِكْرٌ بِتَقْدِيمٍ وَلَا تَأْخِيرٍ، فَكَيْفَمَا أَتَى بِهِمَا فِي وُضُوئِهِ أَوْ بَعْدَ وُضُوئِهِ، وَقَبْلَ صَلَاتِهِ أَوْ قَبْلَ وُضُوئِهِ: أَجْزَأَهُ.

L3787 Ali said: Abu Hanifah said: "It is permissible to reverse the order of wudu, adhan, tawaf, sa'i, and iqamah."

قَالَ عَلِيٌّ: وَقَالَ أَبُو حَنِيفَةَ: جَائِزٌ تَنْكِيسُ الْوُضُوءِ وَالْأَذَانِ وَالطَّوَافِ وَالسَّعْيِ وَالْإِقَامَةِ.

[26] **Qur'an references (L3783):** Qur'an 2:158 (Al-Baqarah).

L3788 Malik said: It is permissible to perform ablution in reverse sequence, but impermissible for Tawāf, Saʿy, Adhān, or Iqāmah.

وَقَالَ مَالِكٌ: يَجُوزُ تَنْكِيسُ الْوُضُوءِ وَلَا يَجُوزُ تَنْكِيسُ الطَّوَافِ وَلَا السَّعْيِ وَلَا الْأَذَانِ وَلَا الْإِقَامَةِ.

L3789 Abū Muḥammad said: It is not permissible to reverse any part of all this, nor is anything reversed valid. As for Mālik's statement, it is evidently contradictory because he distinguished between matters where no distinction exists. As for Abū Ḥanīfah, his position is more consistent in reasoning but more erroneous, and these companions claim to follow analogical deduction—why did they not analogize this to the prohibition agreed upon regarding reversing the prayer order? Indeed, consensus has been established in some circumstances regarding reversing the prayer order, such as the case of someone who finds the Imam sitting or prostrating, for he begins with that action which is the prayer's conclusion. This is among the contradictions in their analogical reasoning.

قَالَ أَبُو مُحَمَّد: لَا يَجُوزُ تَنْكِيسُ شَيْءٍ مِنْ ذَلِكَ كُلِّهِ، وَلَا يُجْزِئُ شَيْءٌ مِنْهُ مُنَكَّسًا فَأَمَّا قَوْلُ مَالِكٍ فَظَاهِرُ التَّنَاقُضِ، لِأَنَّهُ فَرَّقَ بَيْنَ مَا لَا فَرْقَ بَيْنَهُ، وَأَمَّا أَبُو حَنِيفَةَ فَإِنَّهُ أَطْرَدُ قَوْلًا، وَأَكْثَرُ خَطَأً، وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، فَهَلَّا قَاسُوا ذَلِكَ عَلَى مَا اتُّفِقَ عَلَيْهِ مِنْ الْمَنْعِ مِنْ تَنْكِيسِ الصَّلَاةِ؟ عَلَى أَنَّهُ قَدْ صَحَّ الْإِجْمَاعُ فِي بَعْضِ الْأَوْقَاتِ عَلَى تَنْكِيسِ الصَّلَاةِ، وَهِيَ حَالُ مَنْ وَجَدَ الْإِمَامَ جَالِسًا أَوْ سَاجِدًا، فَإِنَّهُ يَبْدَأُ بِذَلِكَ وَهُوَ آخِرُ الصَّلَاةِ، وَهَذَا مِمَّا تَنَاقَضُوا فِيهِ فِي قِيَاسِهِمْ.

L3790 It has been narrated to us from Ali ibn Abi Talib and Ibn Abbas that reversing the order of ablution is permissible. However, no one's argument holds authority against the Quran except regarding matters which the Messenger of Allah—peace be upon him—was commanded to clarify. This is an issue where the Shafiʿis contradicted themselves by abandoning the opinions of the two companions despite there being no opposition to their view known from the Companions.

وَقَدْ رُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ وَابْنِ عَبَّاسٍ جَوَازَ تَنْكِيسِ الْوُضُوءِ، وَلَكِنْ لَا حُجَّةَ فِي أَحَدٍ مَعَ الْقُرْآنِ إلَّا فِي الَّذِي أُمِرَ بِبَيَانِهِ وَهُوَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، وَهَذَا مِمَّا تَنَاقَضَ فِيهِ الشَّافِعِيُّونَ فَتَرَكُوا فِيهِ قَوْلَ صَاحِبَيْنِ لَا يُعْرَفُ لَهُمَا مِنْ الصَّحَابَةِ مُخَالِفٌ.

L3791 And success is by Allah, the Exalted.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L3792–3794 It is utterly astonishing that the Mālikīs permitted reversing the order of ablution despite there being no textual evidence from Allah the Exalted or His Messenger (peace and blessings be upon him) regarding it, then they came to that which Allah the Exalted permitted its reversal and forbade from it. These are the stoning, shaving, sacrificing camels, slaughtering animals, and circumambulation. Indeed, the Messenger of Allah (peace and blessings be upon him) permitted performing some of these before others, as we will mention, God willing, in the Book of Hajj. The scholars said: "It is impermissible to perform circumambulation before stoning and shaving before stoning," and this is as you can see.

وَالْعَجَبُ كُلُّهُ أَنَّ الْمَالِكِيِّينَ أَجَازُوا تَنْكِيسَ الْوُضُوءِ الَّذِي لَمْ يَأْتِ نَصٌّ مِنْ اللَّهِ تَعَالَى وَلَا مِنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيهِ، ثُمَّ أَتَوْا إلَى مَا أَجَازَ اللَّهُ تَعَالَى تَنْكِيسَهُ فَمَنَعُوا مِنْ ذَلِكَ، وَهُوَ الرَّمْيُ وَالْحَلْقُ وَالنَّحْرُ وَالذَّبْحُ وَالطَّوَافُ، فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَجَازَ تَقْدِيمَ بَعْضِ ذَلِكَ عَلَى بَعْضٍ، كَمَا سَنَذْكُرُ إنْ شَاءَ اللَّهُ تَعَالَى فِي كِتَابِ الْحَجِّ، فَقَالُوا: لَا يَجُوزُ تَقْدِيمُ الطَّوَافِ عَلَى الرَّمْيِ، وَلَا تَقْدِيمُ الْحَلْقِ عَلَى الرَّمْيِ، وَهَذَا كَمَا تَرَى.

L3795 Ahmad ibn Qasim narrated to us: My father narrated to us, my grandfather Qasim ibn Asbagh narrated to me: Muḥammad ibn Waḍḍāḥ narrated to us, Ahmad ibn Wāqid narrated to us, Zuhayr ibn Muʿāwiyah narrated to us from al-Aʿmash, from Abū Ṣāliḥ, from Abū Hurayrah, who said: The Messenger of Allah (peace be upon him) said, "When you perform ablution and don your garments, begin with your right limbs."

حَدَّثَنَا أَحْمَدُ بْنُ قَاسِمٍ ثنا أَبِي حَدَّثَنِي جَدِّي قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ وَضَّاحٍ ثنا أَحْمَدُ بْنُ وَاقِدٍ ثنا زُهَيْرُ بْنُ مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا تَوَضَّأْتُمْ وَلَبِسْتُمْ فَابْدَءُوا بِمَيَامِنِكُمْ» .

L3796 As for the obligation of prioritizing rinsing the nose (istinchaq) and expelling water from the nose (istinthar), this is established by the ḥadīth narrated by Rifāʿah ibn Rāfiʿ, in which the Messenger of Allah (peace and blessings of Allah be upon him) said: "The prayer of none of you is complete until he performs ablution thoroughly as Allah—the Almighty and Majestic—commanded: washing his face, his hands up to the elbows, wiping his head, and washing his feet up to the ankles." This confirms that the thoroughness [of ablution] here is linked with washing the face, and this thoroughness is none other than rinsing the nose and expelling water from the nose.

وَأَمَّا وُجُوبُ تَقْدِيمِ الِاسْتِنْشَاقِ وَالِاسْتِنْثَارِ وَلَا بُدَّ، فَلِحَدِيثِ رِفَاعَةَ بْنِ رَافِعٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَتِمُّ صَلَاةُ أَحَدِكُمْ حَتَّى يُسْبِغَ الْوُضُوءَ كَمَا أَمَرَهُ اللَّهُ - عَزَّ وَجَلَّ - وَيَغْسِلَ وَجْهَهُ وَيَدَيْهِ إلَى الْمِرْفَقَيْنِ وَيَمْسَحَ بِرَأْسِهِ وَرِجْلَيْهِ إلَى الْكَعْبَيْنِ» فَصَحَّ أَنَّ هَهُنَا إسْبَاغًا عُطِفَ عَلَيْهِ غَسْلُ الْوَجْهِ، وَلَيْسَ إلَّا الِاسْتِنْشَاقَ وَالِاسْتِنْثَارَ.

[مَسْأَلَةٌ مَنْ فَرَّقَ وُضُوءَهُ أَوْ غُسْلَهُ]

L3797 Issue: One who interrupts his ablution (wudu) or ghusl (major ritual bath).

L3798 207. Issue: If someone spreads out his ablution or ghusl [ritual bath] over intervals, this suffices him, whether the duration taken to complete it is long or short, provided nothing that invalidates ablution occurs during his ablution, and nothing that invalidates ghusl occurs during his ghusl.

٢٠٧ - مَسْأَلَةٌ: وَمَنْ فَرَّقَ وُضُوءَهُ أَوْ غُسْلَهُ أَجْزَأَهُ ذَلِكَ، وَإِنْ طَالَتْ الْمُدَّةُ فِي خِلَالِ ذَلِكَ أَوْ قَصُرَتْ، مَا لَمْ يَحْدُثْ فِي خِلَالِ وُضُوئِهِ مَا يَنْقُضُ الْوُضُوءَ، وَمَا لَمْ يَحْدُثْ فِي خِلَالِ غُسْلِهِ مَا يَنْقُضُ الْغُسْلَ.

L3799 The proof of this is that Allah, Exalted and Majestic, has commanded purification from major impurity and menstruation, and ablution for minor impurities. He has not stipulated a specific sequence in these acts. Thus, however one performs them suffices, because the narrated requirements are fulfilled—that he has purified himself, washed his face and forearms, wiped his head, and washed his feet.

بُرْهَانُ ذَلِكَ أَنَّ اللَّهَ عَزَّ وَجَلَّ أَمَرَ بِالتَّطَهُّرِ مِنْ الْجَنَابَةِ وَالْحَيْضِ، وَبِالْوُضُوءِ مِنْ الْأَحْدَاثِ، وَلَمْ يَشْتَرِطْ عَزَّ وَجَلَّ فِي ذَلِكَ مُتَابَعَةً، فَكَيْفَمَا أَتَى بِهِ الْمَرْءُ أَجْزَأَهُ، لِأَنَّهُ قَدْ وَقَعَ عَلَيْهِ اسْمُ الْأَخْبَارِ بِأَنَّهُ تَطَهَّرَ، وَبِأَنَّهُ غَسَلَ وَجْهَهُ وَذِرَاعَيْهِ وَمَسَحَ رَأْسَهُ وَغَسَلَ رِجْلَيْهِ.

L3800–3802 Abdullāh ibn Rabīʿ narrated to us: from ʿAbdullāh ibn Muḥammad ibn ʿUthmān, from Aḥmad ibn Khālid, from ʿAlī ibn ʿAbd al-ʿAzīz, from al-Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salamah, from ʿAṭāʾ ibn al-Sāʾib, from Abū

Salamah—the son of ʿAbd al-Raḥmān ibn ʿAwf—from ʿĀʾishah, who said: "The Messenger of Allah (peace be upon him), when he..." When intending to perform the ritual bath for major impurity, one begins by washing both hands three times. Then, taking water with the right hand, one pours it onto the left hand and washes the private parts until thoroughly cleansed. Then one washes the hands properly. Next, one rinses the mouth three times, inhales water into the nostrils three times, and washes the face three times. After that, one washes both arms (up to the elbows) three times, pours water over the head three times, and washes the body completely. Upon completing the bath, one washes both feet.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي سَلَمَةَ وَهُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - عَنْ عَائِشَةَ قَالَتْ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا أَرَادَ أَنْ يَغْتَسِلَ مِنَ الْجَنَابَةِ بَدَأَ فَغَسَلَ يَدَيْهِ ثَلَاثًا، ثُمَّ يَأْخُذُ بِيَمِينِهِ فَيَصُبُّ عَلَى يَسَارِهِ فَيَغْسِلُ فَرْجَهُ حَتَّى يُنَقِّيَهُ، ثُمَّ يَغْسِلُ يَدَيْهِ غَسْلًا حَسَنًا، ثُمَّ يُمَضْمِضُ ثَلَاثًا، ثُمَّ يَسْتَنْشِقُ ثَلَاثًا وَيَغْسِلُ وَجْهَهُ ثَلَاثًا، وَيَغْسِلُ ذِرَاعَيْهِ ثَلَاثًا، ثُمَّ يَصُبُّ عَلَى رَأْسِهِ ثَلَاثًا ثُمَّ يَغْسِلُ جَسَدَهُ غَسْلًا، فَإِذَا خَرَجَ مِنْ مُغْتَسَلِهِ غَسَلَ رِجْلَيْهِ» .

L3803 Ali said: If it is permissible for the Messenger of Allah—peace and blessings of Allah be upon him—to equate the interval between his ablution and ritual bath and their completion with the time it takes to wash one's feet upon exiting the bathing place, then differentiating between the durations of ablution and ritual bath has neither textual basis nor proof. This is the position of the Salaf, as we have been narrated through Malik's chain from Nāfiʿ from Ibn ʿUmar: He urinated in the marketplace, performed ablution by washing his face and hands, wiped his head, then was called for a funeral prayer. When he entered the mosque to pray over it, he wiped over his khuffs and performed the prayer.

قَالَ عَلِيٌّ: إِذَا جَازَ أَنْ يَجْعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ وُضُوئِهِ وَغُسْلِهِ وَبَيْنَ تَمَامِهِمَا بِغَسْلِ رِجْلَيْهِ مُهْلَةَ خُرُوجِهِ مِنْ مُغْتَسَلِهِ، فَالتَّفْرِيقُ بَيْنَ الْمُدَدِ لَا نَصَّ فِيهِ وَلَا بُرْهَانَ، وَهَذَا قَوْلُ السَّلَفِ كَمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ: أَنَّهُ بَالَ بِالسُّوقِ ثُمَّ تَوَضَّأَ فَغَسَلَ وَجْهَهُ وَيَدَيْهِ وَمَسَحَ بِرَأْسِهِ ثُمَّ دُعِيَ لِجِنَازَةٍ حِينَ دَخَلَ الْمَسْجِدَ لِيُصَلِّيَ عَلَيْهَا فَمَسَحَ عَلَى خُفَّيْهِ ثُمَّ صَلَّى عَلَيْهَا.

L3804 It has been narrated to us from Sufyan al-Thawri through al-Mughirah through Ibrahim, who said: "One of them would wash his head due to major impurity (janabah) with lote tree leaves (sidr), then wait an hour, then wash the rest of his body." Ibrahim was a follower (Tābiʿī) who met the senior followers (Tābiʿūn) and the younger Companions—may Allah be pleased with them. Ibrahim said regarding a man who has a wife and a female slave and needs to perform ghusl after sexual intimacy with his wife: "There is no harm in him washing his head, then waiting, then washing the rest of his body afterward without washing his head again."

From Abd al-Razzaq through Ibn Jurayj through Ata', who said: "If a person in a state of major impurity (junub) washes his head with lote tree leaves

- وَرُوِّينَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنِ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ قَالَ: كَانَ أَحَدُهُمْ يَغْسِلُ رَأْسَهُ مِنَ الْجَنَابَةِ بِالسِّدْرِ ثُمَّ يَمْكُثُ سَاعَةً ثُمَّ يَغْسِلُ سَائِرَ جَسَدِهِ، وَإِبْرَاهِيمُ تَابِعِيٌّ أَدْرَكَ أَكَابِرَ التَّابِعِينَ وَصِغَارَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، قَالَ إِبْرَاهِيمُ فِي الرَّجُلِ تَكُونُ لَهُ الْمَرْأَةُ وَالْجَارِيَةُ فَيُرَافِقُ امْرَأَتَهُ بِالْغُسْلِ أَنَّهُ لَا بَأْسَ بِأَنْ يَغْسِلَ رَأْسَهُ ثُمَّ يَمْكُثُ ثُمَّ يَغْسِلُ سَائِرَ جَسَدِهِ بَعْدُ وَلَا يَغْسِلُ رَأْسَهُ وَعَنْ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: إِنْ غَسَلَ الْجُنُبُ رَأْسَهُ بِالسِّدْرِ أَوْ بِالْخِطْمِيِّ ثُمَّ يَجْلِسُ حَتَّى يَجِفَّ رَأْسَهُ فَحَسْبُهُ ذَلِكَ.

(sidr) or marshmallow plant (khiṭmī), then waits until his head dries, that suffices him."

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَالشَّافِعِيِّ وَسُفْيَانَ الثَّوْرِيِّ وَالْأَوْزَاعِيِّ وَالْحَسَنِ بْنِ حَيٍّ، وَقَدْ رُوِيَ نَحْوُ هَذَا عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ وَطَاوُسٍ.

L3805 This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, Sufyān al-Thawrī, al-Awzāʿī, and al-Ḥasan ibn Ḥayy. A comparable view has been narrated from Saʿīd ibn al-Musayyib and Ṭāwūs.

وَقَالَ مَالِكٌ: إِنْ طَالَ الْأَمَدُ ابْتَدَأَ الْوُضُوءَ، وَإِنْ لَمْ يَطُلْ بَنَى عَلَى وُضُوئِهِ، وَقَدْ رُوِّينَا عَنْ قَتَادَةَ وَابْنِ أَبِي لَيْلَى وَغَيْرِهِمْ نَحْوُ هَذَا.

L3806 Mālik said: If a long period has elapsed, one should begin the ablution, and if it has not been long, one may build upon his ablution. We have received narrations from Qatādah, Ibn Abī Laylā, and others similar to this.

وَحَدَّ بَعْضُهُمْ ذَلِكَ بِالْجُفُوفِ، وَحَدَّ بَعْضُهُمْ ذَلِكَ بِأَنْ يَكُونَ فِي طَلَبِ الْمَاءِ فَيَبْنِيَ أَوْ يَتْرُكَ وُضُوءَهُ وَيَبْتَدِئَ.

L3807 Some of them defined that by dryness, and some of them defined that by being in search of water, in which case one either continues his existing ablution or abandons it and begins anew.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا تَحْدِيدُ مَالِكٍ بِالطُّولِ فَإِنَّهُ يُكَلِّفُ الْمُنْتَصَرَ لَهُ بَيَانَ مَا ذَلِكَ الطُّولُ الَّذِي تَجِبُ بِهِ شَرِيعَةٌ ابْتِدَاءَ الْوُضُوءِ، وَالْقَصْرُ الَّذِي لَا تَجِبُ بِهِ هَذِهِ الشَّرِيعَةُ، فَلَا سَبِيلَ لَهُمْ إِلَى ذَلِكَ إِلَّا بِالدَّعْوَى الَّتِي لَا يَعْجِزُ عَنْهَا أَحَدٌ، وَمَا كَانَ مِنْ الْأَقْوَالِ لَا بُرْهَانَ عَلَى صِحَّتِهِ فَهُوَ بَاطِلٌ، إِذْ الشَّرَائِعُ غَيْرُ وَاجِبَةٍ عَلَى أَحَدٍ حَتَّى يُوجِبَهَا اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L3808–3810 Abu Muhammad said: As for Malik's stipulation regarding length, it obligates the claimant to clarify the precise length that necessitates initiating ablution as a sharia ruling, and the shorter length that does not necessitate this ruling. They have no means to this except through claims that no one is incapable of advancing. And whatever belongs to the statements that do not... If there is no proof of its validity, then it is invalid, since divinely revealed laws are not binding on anyone unless Allah, the Most High, obligates them through the tongue of His Messenger (peace be upon him).

وَأَمَّا مَنْ حَدَّ ذَلِكَ بِجُفُوفِ الْمَاءِ فَخَطَأٌ ظَاهِرٌ، لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ لِمَا ذَكَرْنَاهُ، وَأَيْضًا فَإِنَّ فِي الصَّيْفِ فِي الْبِلَادِ الْحَارَّةِ لَا يُتِمُّ أَحَدٌ وُضُوءَهُ حَتَّى يَجِفَّ وَجْهُهُ، وَلَا يَصِحُّ وُضُوءٌ عَلَى هَذَا. وَأَمَّا مَنْ حَدَّ فِي ذَلِكَ بِمَا دَامَ فِي طَلَبِ الْمَاءِ، فَقَوْلٌ أَيْضًا لَا دَلِيلَ عَلَى صِحَّتِهِ، وَالدَّعْوَى لَا يَعْجِزُ عَنْهَا أَحَدٌ، وَالْعَجَبُ أَنَّ مَالِكًا يُجِيزُ أَنْ يَجْعَلَ الْمَرْءُ إِذَا رَعَفَ بَيْنَ أَجْزَاءِ صَلَاتِهِ مُدَّةً وَعَمَلًا لَيْسَ مِنْ الصَّلَاةِ، ثُمَّ يَمْنَعُ مِنْ ذَلِكَ فِي الْوُضُوءِ.

L3811 As for those who define it by the dryings of water, this is a clear error, for it is a claim without proof. Whatever is as such is invalid due to our earlier reasoning. Moreover, in summer within hot regions, no one completes ablution until their face dries, and ablution is invalid under this condition. As for those who define the duration as being "as long as one is seeking water," this too is an assertion without evidence for its validity. Anyone can make such claims. Strangely, Mālik allows a person with nosebleeds occurring between parts of their prayer to allocate a period and perform actions not part of the prayer, yet prohibits this during ablution.

قَالَ عَلِيٌّ: فَإِنْ تَعَلَّقَ بَعْضُهُمْ بِخَبَرٍ رُوِّينَاهُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ بَقِيَّةَ عَنْ بَحِيرٍ عَنْ خَالِدٍ عَنْ بَعْضِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَأَى رَجُلًا يُصَلِّي وَفِي قَدَمِهِ لُمْعَةٌ لَمْ يُصِبْهَا الْمَاءُ، فَأَمَرَهُ - عَلَيْهِ السَّلَامُ - أَنْ يُعِيدَ الْوُضُوءَ وَالصَّلَاةَ» فَإِنَّ هَذَا خَبَرٌ لَا يَصِحُّ لِأَنَّ رَاوِيَهُ بَقِيَّةُ، وَلَيْسَ بِالْقَوِيِّ، وَفِي السَّنَدِ مَنْ لَا يَدْرِي مَنْ هُوَ، وَرُوِّينَا أَيْضًا عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ عَنْ عُمَرَ بْنِ الْخَطَّابِ وَعَنْ أَبِي سُفْيَانَ عَنْ جَابِرٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ: أَنَّهُ رَأَى رَجُلًا يُصَلِّي وَقَدْ تَرَكَ مِنْ رِجْلِهِ مَوْضِعَ ظُفْرٍ فَأَمَرَهُ أَنْ يُعِيدَ الْوُضُوءَ وَالصَّلَاةَ.

L3812 Ali said: If some of them cling to a narration we transmitted from the Messenger of Allah - peace and blessings of Allah be upon him - through the chain of Baqiyyah from Buhayr from Khalid from some companions of the Messenger of Allah - peace and blessings of Allah be upon him - "that the Messenger of Allah - peace and blessings of Allah be upon him - saw a man praying while a spot on his foot remained untouched by water, so he - peace and blessings of Allah be upon him - commanded him to renew the ablution and repeat the prayer" - for indeed this narration is invalid. Its narrator is Baqiyyah, who is not considered reliable, and the chain contains unidentified individuals. We have also transmitted from Khalid al-Khadhdha' (the cobbler) from Abu Qilabah from Umar ibn al-Khattab, and from Abu Sufyan from Jabir from Umar ibn al-Khattab: that he saw a man praying who had left an area the size of a fingernail on his foot unwashed, so he ordered him to renew the ablution and repeat the prayer.

قَالَ عَلِيٌّ: أَمَّا الرِّوَايَةُ عَنْ عُمَرَ أَيْضًا فَلَا تَصِحُّ؛ لِأَنَّ أَبَا قِلَابَةَ لَمْ يُدْرِكْ عُمَرَ، وَأَبُو سُفْيَانَ ضَعِيفٌ.

L3813 Ali said: As for the narration from ʿUmar, it is also not authentic because Abū Qilābah did not meet ʿUmar, and Abū Sufyān is weak.

وَقَدْ جَاءَ أَثَرٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ أَحْسَنُ مِنْ هَذَا، رُوِّينَاهُ مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ ثنا بَكْرُ بْنُ مُضَرَ عَنْ حَرْمَلَةَ بْنِ يَحْيَى ثنا ابْنُ وَهْبٍ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ قَتَادَةَ عَنْ أَنَسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَتَاهُ وَقَدْ تَوَضَّأَ وَتَرَكَ مَوْضِعَ الظُّفْرِ لَمْ يُصِبْهُ الْمَاءُ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ارْجِعْ فَأَحْسِنْ وُضُوءَكَ» وَعَنْ ابْنِ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ عَنْ عُمَرَ مِثْلُ هَذَا أَيْضًا.

L3814 A report from the Messenger of Allah—may Allah's peace and blessings be upon him—superior to this has been transmitted. We transmitted it via the chain of Qāsim ibn Aṣbagh, who narrated from Bakr ibn Muḍar, from Ḥarmala ibn Yaḥyā, from Ibn Wahb, from Jarīr ibn Ḥāzim, from Qatāda, from Anas: "The Messenger of Allah—may Allah's peace and blessings be upon him—came to him while he was performing ablution but left a spot beneath his nail untouched by water. The Messenger of Allah—may Allah's peace and blessings be upon him—said: 'Go back and perform your ablution properly.'" Another narration from Ibn Wahb, from Ibn Lahīʿa, from Abū al-Zubayr, from Jābir, from ʿUmar, also a similar one.

قَالَ عَلِيٌّ: لَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ خِلَافُ فِعْلِ عُمَرَ هَذَا، فَقَدْ خَالَفُوا هَهُنَا صَاحِبًا لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، وَبِيَقِينٍ يَدْرِي كُلُّ ذِي عِلْمٍ أَنَّ مُرُورَ الْأَوْقَاتِ

L3815–3817 Ali said: There is no authentic report from any of the Companions opposing this action of Umar, for they did oppose him. Here, there is a Companion for whom no opposing view is known among the Companions. With certainty, every person of understanding knows that the mere passage of time does not invalidate ablution. Yet Mālik contradicted himself in this matter by

ruling that if one forgets a limb during ablution and washes it afterward, it suffices. He also ruled that if someone performs ablution, wipes over his khuffs, remains in that state throughout his day, then removes his khuffs, the ablution of his feet is invalidated according to him – requiring only the washing of his feet. This constitutes the fragmentation of ablution, which is prohibited. Success comes solely from Allah, the Exalted.

لَيْسَ مِنَ الْأَحْدَاثِ النَّاقِضَةِ لِلْوُضُوءِ، وَقَدْ تَنَاقَضَ مَالِكٌ فِي هَذَا الْمَكَانِ فَرَأَى أَنَّ مَنْ نَسِيَ عُضْوًا مِنْ أَعْضَاءِ وُضُوئِهِ فَإِنْ غَسَلَهُ أَجْزَأَهُ، وَرَأَى فِيمَنْ تَوَضَّأَ وَمَسَحَ عَلَى خُفَّيْهِ وَبَقِيَ كَذَلِكَ نَهَارَهُ ثُمَّ خَلَعَ خُفَّيْهِ فَإِنَّ وُضُوءَ رِجْلَيْهِ عِنْدَهُ قَدْ انْتَقَضَ وَأَنَّهُ لَيْسَ عَلَيْهِ إِلَّا غَسْلُ رِجْلَيْهِ فَقَطْ، وَهَذَا تَبْعِيضُ الْوُضُوءِ الَّذِي مُنِعَ مِنْهُ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: The Excessive Use of Water in Ghusl (Ritual Bath) and Wudu (Ablution)

[مَسْأَلَةُ الْإِكْثَارِ مِنَ الْمَاءِ فِي الْغُسْلِ وَالْوُضُوءِ]

208 - Issue: It is disliked to use excessive water in performing the ritual bath (ghusl) and ablution (wudu'), to wash the parts of ablution more than three times, or to wipe the head more than three times. This is because nothing exceeding that has been reported from the Messenger of Allah (peace be upon him). It has been narrated to us through Sufyan al-Thawri's chain from Abu Ishaq, from Abu Hayyah ibn Qays, that Ali performed ablution thrice for each part and said: "This is how I saw the Messenger of Allah (peace be upon him)." From Ibn al-Mubarak, from al-Awza'i: Al-Muttalib ibn Abdullah ibn Hantab narrated to me that Abdullah ibn Umar performed ablution thrice, attributing this practice to the Messenger of Allah (peace be upon him). A similar practice is narrated from Uthman. These narrations do not single out the head from the other parts.

٢٠٨ - مَسْأَلَةٌ: وَيُكْرَهُ الْإِكْثَارُ مِنَ الْمَاءِ فِي الْغُسْلِ وَالْوُضُوءِ، وَالزِّيَادَةُ عَلَى الثَّلَاثِ فِي غَسْلِ أَعْضَاءِ الْوُضُوءِ وَمَسْحِ الرَّأْسِ؛ لِأَنَّهُ لَمْ يَأْتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَكْثَرُ مِنْ ذَلِكَ. وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ عَنْ أَبِي حَيَّةَ بْنِ قَيْسٍ «أَنَّ عَلِيًّا تَوَضَّأَ ثَلَاثًا ثَلَاثًا، وَقَالَ هَكَذَا رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» وَعَنِ ابْنِ الْمُبَارَكِ عَنِ الْأَوْزَاعِيِّ حَدَّثَنِي الْمُطَّلِبُ بْنُ عَبْدِ اللَّهِ بْنِ حَنْطَبٍ «أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ تَوَضَّأَ ثَلَاثًا، يُسْنِدُ ذَلِكَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» وَعَنْ عُثْمَانَ أَيْضًا مِثْلُ ذَلِكَ فَلَمْ يَخُصَّ فِي هَذِهِ الْآثَارِ رَأْسًا مِنْ غَيْرِهِ.

Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Muhammad ibn Mansur narrated to us: Sufyan narrated from Amr ibn Yahya, from his father, from Abdullah ibn Zayd—who was shown the call to prayer in a vision—who said: "I saw the Messenger of Allah (peace and blessings be upon him) perform ablution. He washed his face three times, his hands twice, and wiped his head twice." We have also been narrated from Anas that he wiped his head during ablution three times and two times in different reports. From Abd al-Razzaq, from Ibn Jurayj, from Ata: "The maximum I perform the wiping of my head is three times. I do not add with a single handful; I neither add nor subtract [from the prescribed number]."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنَا مُحَمَّدُ بْنُ مَنْصُورٍ ثنا سُفْيَانُ عَنْ عَمْرِو بْنِ يَحْيَى عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ زَيْدٍ الَّذِي أُرِيَ النِّدَاءَ قَالَ «رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَوَضَّأَ فَغَسَلَ وَجْهَهُ ثَلَاثًا وَيَدَيْهِ مَرَّتَيْنِ وَمَسَحَ بِرَأْسِهِ مَرَّتَيْنِ» . وَقَدْ رُوِّينَا عَنْ أَنَسٍ مَسْحَ رَأْسِهِ فِي الْوُضُوءِ ثَلَاثًا وَاثْنَتَيْنِ، وَعَنْ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: أَكْثَرُ مَا أَمْسَحُ بِرَأْسِي ثَلَاثُ مَرَّاتٍ لَا أَزِيدُ بِكَفٍّ وَاحِدَةٍ لَا أَزِيدُ وَلَا أَنْقُصُ.

From Hammad ibn Salamah, who narrated to us from Jarir ibn Hazim,

[who said]: “I saw Muhammad ibn Sirin perform ablution and wipe his head twice—once with the moisture from his hands and once with fresh water.” From Abu ʿUbayd, who narrated to us from Hushaym, who narrated to us from Al-Awwam: “That Ibrahim Al-Taymi would wipe his head three times,” and this is the position of Al-Shāfiʿī, Dāwūd, and others. As for excessive use of water, it is condemned by all.

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ ثنا جَرِيرُ بْنُ حَازِمٍ: رَأَيْتُ مُحَمَّدَ بْنَ سِيرِينَ تَوَضَّأَ فَمَسَحَ بِرَأْسِهِ مَسْحَتَيْنِ إِحْدَاهُمَا بِبَلَلِ يَدَيْهِ وَالْأُخْرَى بِمَاءٍ جَدِيدٍ، وَعَنْ أَبِي عُبَيْدٍ ثنا هُشَيْمٌ ثنا الْعَوَّامُ: أَنَّ إِبْرَاهِيمَ التَّيْمِيَّ كَانَ يَمْسَحُ رَأْسَهُ ثَلَاثًا، وَهُوَ قَوْلُ الشَّافِعِيِّ وَدَاوُد وَغَيْرِهِمْ، وَأَمَّا الْإِكْثَارُ مِنْ الْمَاءِ فَمَذْمُومٌ مِنْ الْجَمِيعِ.

L3822–3824 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Muhammad ibn Nafiʿ narrated to us, Shababah narrated to us, Layth — he is Ibn Saʿd — narrated to us, from Yazid ibn Abi Habib, from ʿIrak ibn Malik, from Hafsah bint ʿAbd al-Rahman ibn Abi Bakr (who was married to al-Mundhir ibn al-Zubayr), who said: «Verily, ʿAishah, the mother [...]». The believers informed her that she and the Messenger of Allah (peace and blessings be upon him) used to perform *ghusl* in a single vessel that can hold three *mudds* or approximately that amount.“

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ نَافِعٍ ثنا شَبَابَةُ ثنا لَيْثٌ هُوَ ابْنُ سَعْدٍ - عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عِرَاكِ بْنِ مَالِكٍ عَنْ حَفْصَةَ بِنْتِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ - وَكَانَتْ تَحْتَ الْمُنْذِرِ بْنِ الزُّبَيْرِ - قَالَتْ «إِنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَخْبَرَتْهَا أَنَّهَا كَانَتْ تَغْتَسِلُ هِيَ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي إِنَاءٍ وَاحِدٍ يَسَعُ ثَلَاثَةَ أَمْدَادٍ أَوْ قَرِيبًا مِنْ ذَلِكَ» .

L3825 Abdullah ibn Rabeeʿ narrated to us: Muhammad ibn Ishaq, Ibn al-Aʿrabi, Abu Dawud, Muhammad ibn Bashshar, Muhammad ibn Jaʿfar, Shuʿbah narrated from Habib al-Anṣārī, who said: I heard ʿAbbad ibn Tamim narrate from my grandmother, who was Umm ʿUmārah—“The Prophet (peace be upon him) performed ablution and was brought a vessel containing two-thirds of a *mudd*.” Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath, ʿAbdul-Wahhab ibn ʿIsa, Ahmad ibn Muhammad, Ahmad ibn ʿAli, Muslim ibn al-Ḥajjaj, Muhammad ibn Salamah al-Muradi, Ibn Wahb narrated from ʿIyad ibn ʿAbdullah al-Fihri, from Makhramah ibn Sulayman al-Qurashi, from Kurayb—the freed slave of Ibn ʿAbbas—that Ibn ʿAbbas informed him: “He saw the Messenger of Allah (peace be upon him) rise from sleep, proceed to a water vessel, use the miswak, perform ablution thoroughly, and use only a small amount of water.” And he mentioned the hadith.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُحَمَّدُ بْنُ بَشَّارٍ حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ ثنا شُعْبَةُ عَنْ حَبِيبٍ الْأَنْصَارِيِّ قَالَ: سَمِعْتُ عَبَّادَ بْنَ تَمِيمٍ عَنْ جَدَّتِي - وَهِيَ أُمُّ عُمَارَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَوَضَّأَ فَأُتِيَ بِإِنَاءٍ فِيهِ قَدْرُ ثُلُثَيْ الْمُدِّ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ سَلَمَةَ الْمُرَادِيُّ ثنا ابْنُ وَهْبٍ عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ الْفِهْرِيِّ عَنْ مَخْرَمَةَ بْنِ سُلَيْمَانَ الْقُرَشِيِّ عَنْ كُرَيْبٍ مَوْلَى ابْنِ عَبَّاسٍ أَنَّ ابْنَ عَبَّاسٍ أَخْبَرَهُ «أَنَّهُ رَأَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

قَامَ مِنْ النَّوْمِ فَعَمَدَ إلَى شَجْبٍ مِنْ مَاءٍ فَتَسَوَّكَ وَتَوَضَّأَ فَأَسْبَغَ الْوُضُوءَ وَلَمْ يُهْرِقْ مِنْ الْمَاءِ إلَّا قَلِيلًا» وَذَكَرَ الْحَدِيثَ.

L3826 Ali said: And there have come reports that he (peace be upon him) performed ablution with a mudd and bathed with a ṣāʿ, that he (peace be upon him) performed ablution with a makkūk and bathed with five makākī, and that he (peace be upon him) used to perform ablution from a vessel containing a mudd and a quarter. All of this is authentic with no discrepancy, for it constitutes only what is sufficient. Success is granted by Allah, the Exalted.

قَالَ عَلِيٌّ: وَقَدْ جَاءَتْ آثَارٌ أَنَّهُ «- عَلَيْهِ السَّلَامُ - تَوَضَّأَ بِالْمُدِّ وَاغْتَسَلَ بِالصَّاعِ» ، وَأَنَّهُ «- عَلَيْهِ السَّلَامُ - تَوَضَّأَ بِمَكُّوكٍ وَاغْتَسَلَ بِخَمْسِ مَكَاكِيَّ» ، وَأَنَّهُ «- عَلَيْهِ السَّلَامُ - كَانَ يَتَوَضَّأُ مِنْ إنَاءٍ فِيهِ مُدٌّ وَرُبْعٌ» ، وَكُلُّ هَذَا صَحِيحٌ لَا يَخْتَلِفُ، وَإِنَّمَا هُوَ مَا أَجْزَأَ فَقَطْ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L3827 An issue regarding splints or adhesive bandages applied out of necessity on the arms, fingers, or legs.

[مَسْأَلَةٌ كَانَ عَلَى ذِرَاعَيْهِ أَوْ أَصَابِعِهِ أَوْ رِجْلَيْهِ جَبَائِرُ أَوْ دَوَاءٌ مُلْصَقٌ لِضَرُورَةٍ]

L3828 209 - Issue:

٢٠٩ - مَسْأَلَةٌ:

L3829 If someone has splints or adhesive medication on their forearms, fingers, or legs out of necessity, they are not required to wipe over those areas, and the ruling for those parts is lifted. If any of those [coverings] fall off after completing ablution, they do not need to wash that area with water, and their ablution remains valid as long as they do not break it.

وَمَنْ كَانَ عَلَى ذِرَاعَيْهِ أَوْ أَصَابِعِهِ أَوْ رِجْلَيْهِ جَبَائِرُ أَوْ دَوَاءٌ مُلْصَقٌ لِضَرُورَةٍ فَلَيْسَ عَلَيْهِ أَنْ يَمْسَحَ عَلَى شَيْءٍ مِنْ ذَلِكَ، وَقَدْ سَقَطَ حُكْمُ ذَلِكَ الْمَكَانِ، فَإِنْ سَقَطَ شَيْءٌ مِنْ ذَلِكَ بَعْدَ تَمَامِ الْوُضُوءِ فَلَيْسَ عَلَيْهِ إمْسَاسُ ذَلِكَ الْمَكَانِ بِالْمَاءِ، وَهُوَ عَلَى طَهَارَتِهِ مَا لَمْ يُحْدِثْ.

L3830–3832 The proof for this is the statement of Allah, the Exalted: {Allah does not burden any soul beyond its capacity} [Al-Baqarah: 286] and the statement of Allah's Messenger (peace be upon him): "When I command you with a matter, do as much of it as you are able." Thus, by the Quran and the Sunnah, every obligation a person is incapable of fulfilling ceases to be obligatory, and its substitute becomes legally prescribed. The Sharia is only binding through the Quran or the Sunnah, and neither the Quran nor the Sunnah has come with a ruling to substitute wiping over bandages and medicinal dressings for washing what one cannot wash. Therefore, this opinion is dismissed. If it

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» فَسَقَطَ بِالْقُرْآنِ وَالسُّنَّةِ كُلُّ مَا عَجَزَ عَنْهُ الْمَرْءُ، وَكَانَ التَّعْوِيضُ مِنْهُ شَرْعًا، وَالشَّرْعُ لَا يَلْزَمُ إلَّا بِقُرْآنٍ أَوْ سُنَّةٍ، وَلَمْ يَأْتِ قُرْآنٌ وَلَا سُنَّةٌ بِتَعْوِيضِ الْمَسْحِ عَلَى الْجَبَائِرِ وَالدَّوَاءِ مِنْ غَسْلِ مَا لَا يَقْدِرُ عَلَى غَسْلِهِ، فَسَقَطَ الْقَوْلُ بِذَلِكَ فَإِنْ قِيلَ فَإِنَّهُ قَدْ رُوِيَ مِنْ طَرِيقِ زَيْدٍ عَنْ

is argued: "But it has been narrated through Zayd's chain from his father, from his grandfather, from Ali: 'I said: O Messenger of Allah, do I wipe over bandages? He replied: Yes, wipe over them,'" we respond: This is a narration that does not... Its narration is permissible only upon demonstrating its dismissal, because it was singularly narrated by Abū Khālid ʿAmr ibn Khālid al-Wāsiṭī, who is noted for lying.[27]

L3833 If it is said: "It has been reported that he—peace be upon him—commanded them to wipe over the turbans (al-ʿaṣāʾib) and felt headwear (al-tasākhīn)," we respond: This is not valid in terms of the chain of transmission. Even if it were, there would be no proof in it, for al-ʿaṣāʾib are the turbans (al-ʿamāʾim). Al-Farazdaq said: "Your forelocks beneath turbans are like stars guiding night travelers, while their faces shine like sunlit mirrors."

L3834 And riders, as though the wind itself is sought from their midst... A lingering trace remains from its forceful tugging at their turbans.

L3835 The ritual heating vessels are specifically the lightweight ones.

L3836 Those who mandated wiping over bandages did so by analogy to wiping over leather socks, yet this analogy is invalid. Even if analogy were valid, this case would remain invalid because wiping over leather socks has a specified time limit, while wiping over bandages has none. Moreover, the claim that "since wiping over leather socks is permissible, wiping over bandages becomes obligatory" is a baseless assertion and a ruling derived from their own opinion. Furthermore, it is also invalid in its formulation, as it imposes an obligatory duty by analogy to a ruling that is merely permissive and optional. This has no basis in analogical reasoning whatsoever.

L3837 A statement similar to ours has been narrated to us from some of the Salaf, as transmitted through Ibn al-Mubārak's chain from Sufyān al-Thawrī, from ʿAbd al-Malik ibn Abjar, from al-Shaʿbī, who said regarding a wound: "Wash around it." If it is objected: "You have reported from Ibn ʿUmar that he

أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيٍّ «قُلْتُ يَا رَسُولَ اللَّهِ أَمْسَحُ عَلَى الْجَبَائِرِ؟ قَالَ نَعَمْ امْسَحْ عَلَيْهَا» قُلْنَا: هَذَا خَبَرٌ لَا تَحِلُّ رِوَايَتُهُ إِلَّا عَلَى بَيَانِ سُقُوطِهِ، لِأَنَّهُ انْفَرَدَ بِهِ أَبُو خَالِدٍ عَمْرُو بْنُ خَالِدٍ الْوَاسِطِيُّ وَهُوَ مَذْكُورٌ بِالْكَذِبِ.

فَإِنْ قِيلَ: فَقَدْ جَاءَ أَنَّهُ «- عَلَيْهِ السَّلَامُ - أَمَرَهُمْ أَنْ يَمْسَحُوا عَلَى الْعَصَائِبِ وَالتَّسَاخِينِ» قُلْنَا: هَذَا لَا يَصِحُّ مِنْ طَرِيقِ الْإِسْنَادِ، وَلَوْ كَانَ لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّ الْعَصَائِبَ هِيَ الْعَمَائِمُ، قَالَ الْفَرَزْدَقُ:

وَرَكْبٍ كَأَنَّ الرِّيحَ تُطْلَبُ عِنْدَهُمْ ... لَهَا تِرَةٌ مِنْ جَذْبِهَا بِالْعَصَائِبِ

وَالتَّسَاخِينُ هِيَ الْخِفَافُ.

وَإِنَّمَا أَوْجَبَ مَنْ أَوْجَبَ الْمَسْحَ عَلَى الْجَبَائِرِ قِيَاسًا عَلَى الْمَسْحِ عَلَى الْخُفَّيْنِ، وَالْقِيَاسُ بَاطِلٌ، ثُمَّ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّ الْمَسْحَ عَلَى الْخُفَّيْنِ فِيهِ تَوْقِيتٌ، وَلَا تَوْقِيتَ فِي الْمَسْحِ عَلَى الْجَبَائِرِ، مَعَ أَنَّ قَوْلَ الْقَائِلِ: لَمَّا جَازَ الْمَسْحُ عَلَى الْخُفَّيْنِ وَجَبَ الْمَسْحُ عَلَى الْجَبَائِرِ، دَعْوَى بِلَا دَلِيلٍ، وَقَضِيَّةٌ مِنْ عِنْدِهِ، ثُمَّ هِيَ أَيْضًا مَوْضُوعَةٌ وَضْعًا فَاسِدًا لِأَنَّهُ إِيجَابُ فَرْضٍ قِيسَ عَلَى إِبَاحَةٍ وَتَخْيِيرٍ، وَهَذَا لَيْسَ مِنَ الْقِيَاسِ فِي شَيْءٍ.

وَقَدْ رُوِّينَا مِثْلَ قَوْلِنَا عَنْ بَعْضِ السَّلَفِ، كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ الْمُبَارَكِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الْمَلِكِ بْنِ أَبْجَرَ عَنِ الشَّعْبِيِّ أَنَّهُ قَالَ فِي الْجِرَاحَةِ: اغْسِلْ مَا حَوْلَهَا، فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ عَنِ ابْنِ عُمَرَ أَنَّهُ أَلْقَمَ أُصْبُعَ رِجْلِهِ مَرَارَةً فَكَانَ يَمْسَحُ عَلَيْهَا.

[27] **Qur'an references (L3830):** Qur'an 2:286 (Al-Baqarah).

applied his toe to colocynth (a bitter substance) and would perform wiping over it."

L3838–3840 We said: This is an action on his part, not an obligation for wiping over it, and it has been soundly narrated from him (may Allah be pleased with him). That he used to put water into the inner part of his eyes during ablution and the major ritual bath», while you do not even see this practice, let alone deem it obligatory. It is established that he permitted the sale of a pregnant animal while excluding what is in her womb, yet this is forbidden according to you. Among the matters most detested by Allah the Exalted is that you cite his rulings as evidence for matters you desire while discarding his rulings as evidence when you do not desire them - this is an extremely grave matter in the religion.

قُلْنَا: هَذَا فِعْلٌ مِنْهُ، وَلَيْسَ إيجَابًا لِلْمَسْحِ عَلَيْهَا، وَقَدْ صَحَّ عَنْهُ «- رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ كَانَ يُدْخِلُ الْمَاءَ فِي بَاطِنِ عَيْنَيْهِ فِي الْوُضُوءِ وَالْغُسْلِ» ، وَأَنْتُمْ لَا تَرَوْنَ ذَلِكَ، فَضْلًا عَنْ أَنْ تُوجِبُوهُ فَرْضًا، وَصَحَّ أَنْ كَانَ يُجِيزُ بَيْعَ الْحَامِلِ وَاسْتِثْنَاءَ مَا فِي بَطْنِهَا، وَهَذَا عِنْدَكُمْ حَرَامٌ، وَمِنْ الْمَقْتِ عِنْدَ اللَّهِ تَعَالَى أَنْ تَحْتَجُّوا بِهِ فِيمَا اشْتَهَيْتُمْ وَتُسْقِطُوا الْحُجَّةَ بِهِ حَيْثُ لَمْ تَشْتَهُوا، وَهَذَا عَظِيمٌ فِي الدِّينِ جِدًّا.

L3841 Since what we have mentioned is established, ablution—when completed and prayer with it becomes valid—is nullified only by an occurrence that breaks ablution or an explicit text declaring its nullification. The detachment of an adhesive plaster, splint, or bandage does not constitute such an occurrence, nor has any textual evidence been established requiring ablution for such cases. Divine laws are derived solely from Allah, the Exalted, through the words of His Messenger, peace and blessings be upon him. Among those who endorsed wiping over splints are Abu Hanifah, Malik, and Al-Shafi'i, whereas Dawud and our companions rejected this view. Success comes only from Allah, the Exalted.

وَإِذْ قَدْ صَحَّ مَا ذَكَرْنَا فَالْوُضُوءُ إذَا تَمَّ وَجَازَتْ بِهِ الصَّلَاةُ فَلَا يَنْقُضُهُ إلَّا حَدَثٌ أَوْ نَصٌّ جَلِيٌّ وَارِدٌ بِانْتِقَاضِهِ، وَلَيْسَ سُقُوطُ اللَّصْقَةِ أَوْ الْجَبِيرَةِ أَوْ الرِّبَاطِ حَدَثًا، وَلَا جَاءَ نَصٌّ بِإِيجَابِ الْوُضُوءِ مِنْ ذَلِكَ، وَالشَّرَائِعُ لَا تُؤْخَذُ إلَّا عَنْ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمِمَّنْ رَأَى الْمَسْحَ عَلَى الْجَبَائِرِ أَبُو حَنِيفَةَ وَمَالِكٌ وَالشَّافِعِيُّ وَلَمْ يَرَ ذَلِكَ دَاوُد وَأَصْحَابُنَا، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L3842 **A legal issue: The ruling on touching the penis with the right hand.**

[مَسْأَلَةٌ حُكْمُ مَسِّ الذَّكَرِ بِالْيَمِينِ]

L3843 210 - Issue: It is not permissible for anyone to touch his penis with his right hand as a general rule, except in cases of necessity where no alternative exists. There is no harm in touching a garment covering his penis with his right hand. Touching the penis with the left hand is permissible. Wiping the rest of his limbs with his right or left hand is permissible. A man touching a male child's penis for medical treatment or similar righteous purposes, such as circumcision and the like, is permissible with the right or left hand. A woman may touch her private parts with her right or left hand. Similarly,

٢١٠ - مَسْأَلَةٌ: وَلَا يَجُوزُ لِأَحَدٍ مَسُّ ذَكَرِهِ بِيَمِينِهِ جُمْلَةً إلَّا عِنْدَ ضَرُورَةٍ لَا يُمْكِنُهُ غَيْرُ ذَلِكَ، وَلَا بَأْسَ بِأَنْ يَمَسَّ بِيَمِينِهِ ثَوْبًا عَلَى ذَكَرِهِ، وَمَسُّ الذَّكَرِ بِالشِّمَالِ مُبَاحٌ، وَمَسْحُ سَائِرِ أَعْضَائِهِ بِيَمِينِهِ وَبِشِمَالِهِ مُبَاحٌ، وَمَسُّ الرَّجُلِ ذَكَرَ صَغِيرٍ لِمُدَاوَاةٍ أَوْ نَحْوِ ذَلِكَ مِنْ

a woman may touch her husband's or master's penis with her right or left hand.

أَبْوَابِ الْخَيْرِ كَالْخِتَانِ وَنَحْوِهِ، جَائِزٌ بِالْيَمِينِ وَالشِّمَالِ، وَمَسُّ الْمَرْأَةِ فَرْجَهَا بِيَمِينِهَا وَشِمَالِهَا جَائِزٌ، وَكَذَلِكَ مَسُّهَا ذَكَرَ زَوْجِهَا أَوْ سَيِّدِهَا بِيَمِينِهَا أَوْ بِشِمَالِهَا جَائِزٌ.

L3844 The proof of this is that everything we have mentioned has no text prohibiting it, and whatever has no text declaring it prohibited is permissible by the saying of Allah the Exalted: "He has detailed for you what He has forbidden to you, except that which you are compelled to eat" (6:119), and the saying of the Messenger of Allah (peace and blessings of Allah be upon him): "Among the greatest people in sin within Islam is one who asks about something not prohibited, thereby causing it to be prohibited because of his questioning."[28]

بُرْهَانُ ذَلِكَ أَنَّ كُلَّ مَا ذَكَرْنَا فَلَا نَصَّ فِي النَّهْيِ عَنْهُ، وَكُلُّ مَا لَا نَصَّ فِي تَحْرِيمِهِ فَهُوَ مُبَاحٌ بِقَوْلِ اللَّهِ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] وَقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مِنْ أَعْظَمِ النَّاسِ جُرْمًا فِي الْإِسْلَامِ مَنْ سَأَلَ عَنْ شَيْءٍ لَمْ يُحَرَّمْ فَحُرِّمَ مِنْ أَجْلِ مَسْأَلَتِهِ» .

L3845 And his statement (peace be upon him): "Leave me as I have left you. When I command you to do something, do as much of it as you can, and when I forbid you from something, avoid it"—or as he said (peace be upon him). Thus, the Exalted has stated clearly that every prohibited matter has been explicitly detailed for us by name. Therefore, it is established that whatever has not had its prohibition explicitly detailed is not forbidden, and likewise through the two aforementioned narrations.

وَقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «دَعُونِي مَا تَرَكْتُكُمْ فَإِذَا أَمَرْتُكُمْ بِشَيْءٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ وَإِذَا نَهَيْتُكُمْ عَنْ شَيْءٍ فَاجْتَنِبُوهُ» أَوْ كَمَا قَالَ - عَلَيْهِ السَّلَامُ -، فَنَصَّ تَعَالَى عَلَى أَنَّ كُلَّ مُحَرَّمٍ قَدْ فُصِّلَ لَنَا بِاسْمِهِ، فَصَحَّ أَنَّ مَا لَمْ يُفَصَّلْ تَحْرِيمُهُ فَلَمْ يُحَرَّمْ، وَكَذَلِكَ بِالْخَبَرَيْنِ الْمَذْكُورَيْنِ.

L3846–3848 The prohibition has been established against a man touching his genitals with his right hand, as narrated to us by Hammām and ʿAbdullāh ibn Yūsuf. ʿAbdullāh said: Narrated to us by Aḥmad ibn Fatḥ, narrated to us by ʿAbd al-Wahhāb ibn ʿĪsā, narrated to us by Aḥmad ibn Muḥammad... Aḥmad ibn ʿAlī narrated to us: Muslim ibn al-Ḥajjāj narrated to us: Ibn Abī ʿUmar narrated to us: al-Thaqafī (who is ʿAbd al-Wahhāb ibn ʿAbd al-Majīd) narrated from Ayyūb al-Sikhtiyānī. Ḥammām said: ʿAbbās ibn Aṣbagh narrated to us: Muḥammad ibn ʿAbd al-Malik ibn Ayman narrated to us: Aḥmad ibn Muḥammad al-Birtī, the judge of Baghdad, narrated to us: Abū Nuʿaym (who is al-Faḍl ibn Dukayn) narrated to us: Sufyān (who is al-Thawrī) narrated from Maʿmar. Then the chains of Ayyūb al-Sikhtiyānī and Maʿmar meet, both narrating from Yaḥyā ibn Abī Kathīr, from ʿAbd Allāh ibn Abī Qatādah, from his father, who said: "The Messenger of Allāh—peace and blessings be

وَقَدْ جَاءَ النَّهْيُ عَنْ مَسِّ الرَّجُلِ ذَكَرَهُ بِيَمِينِهِ، كَمَا حَدَّثَنَا حَمَامٌ وَعَبْدُ اللَّهِ بْنُ يُوسُفَ، قَالَ عَبْدُ اللَّهِ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا ابْنُ أَبِي عُمَرَ ثنا الثَّقَفِيُّ هُوَ عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، وَقَالَ حَمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَحْمَدُ بْنُ مُحَمَّدٍ الْبِرْتِيُّ قَاضِي بَغْدَادَ ثنا أَبُو نُعَيْمٍ هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - ثنا سُفْيَانُ هُوَ الثَّوْرِيُّ عَنْ مَعْمَرٍ، ثُمَّ اتَّفَقَ أَيُّوبُ السِّخْتِيَانِيُّ وَمَعْمَرٌ كِلَاهُمَا عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ عَنْ أَبِيهِ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَمَسَّ الرَّجُلُ ذَكَرَهُ بِيَمِينِهِ» هَذَا لَفْظُ مَعْمَرٍ.

[28] **Qur'an references (L3844):** Qur'an 6:119 (Al-An'am).

upon him—prohibited a man from touching his penis with his right hand." These are the exact words of Maʿmar.

وَلَفْظُ أَيُّوبَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَتَنَفَّسَ فِي الْإِنَاءِ وَأَنْ يَمَسَّ ذَكَرَهُ بِيَمِينِهِ وَأَنْ يَسْتَطِيبَ بِيَمِينِهِ» .

L3849 The wording of Ayyub is: "The Messenger of Allah (peace and blessings be upon him) prohibited breathing into the vessel, touching one's male genitalia with one's right hand, and using the right hand to cleanse oneself after defecation."

وَبِهَذَا الْخَبَرِ حَرُمَ أَنْ يُزِيلَ أَحَدٌ أَثَرَ الْبَوْلِ بِيَمِينِهِ بِغَسْلٍ أَوْ مَسْحٍ، لِأَنَّهُ اسْتِطَابَةٌ.

L3850 According to this tradition, it is forbidden for anyone to use their right hand to remove traces of urine through washing or wiping, as this constitutes *istitābah* (post-relief cleansing).

قَالَ عَلِيٌّ: رِوَايَةُ مَعْمَرٍ وَأَيُّوبَ زَائِدَةٌ عَلَى كُلِّ مَا رَوَاهُ غَيْرُهُمَا عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ مِنَ الِاقْتِصَارِ بِالنَّهْيِ عَنْ مَسِّ الذَّكَرِ بِالْيَمِينِ فِي حَالِ الْبَوْلِ، وَعِنْدَ دُخُولِ الْخَلَاءِ، وَالزِّيَادَةُ مَقْبُولَةٌ لَا يَجُوزُ رَدُّهَا، لَا سِيَّمَا وَأَيُّوبُ وَمَعْمَرٌ أَحْفَظُ مِمَّنْ رَوَى بَعْضَ مَا رَوَيَاهُ، وَكُلُّ ذَلِكَ حَقٌّ، وَأَخْذُ كُلِّ ذَلِكَ فَرْضٌ لَا يَحِلُّ رَدُّ شَيْءٍ مِمَّا رَوَاهُ الثِّقَاتُ، فَمَنْ أَخَذَ بِرِوَايَةِ أَيُّوبَ وَمَعْمَرٍ فَقَدْ أَخَذَ بِرِوَايَةِ هَمَّامٍ وَهِشَامٍ الدَّسْتُوَائِيِّ وَالْأَوْزَاعِيِّ وَأَبِي إِسْمَاعِيلَ، وَمَنْ أَخَذَ بِرِوَايَةِ هَؤُلَاءِ وَخَالَفَ رِوَايَةَ أَيُّوبَ وَمَعْمَرٍ فَقَدْ عَصَى.

L3851 Ali said: The narration of Maʿmar and Ayyūb includes an addition beyond all that others narrated from Yaḥyā ibn Abī Kathīr regarding limiting the prohibition to touching the male organ with the right hand during urination and when entering the lavatory. The addition is acceptable and must not be rejected, especially since Ayyūb and Maʿmar are more reliable in memorization than those who transmitted some of what they narrated. All of this is true, and accepting it in full is obligatory. It is impermissible to reject anything narrated by trustworthy authorities. Whoever adopts the narration of Ayyūb and Maʿmar has thereby adopted the narration of Hammām, Hishām al-Dastawā'ī, al-Awzāʿī, and Abū Ismāʿīl. Whoever adopts the narration of these latter yet opposes the narration of Ayyūb and Maʿmar has indeed disobeyed.

وَقَدْ رُوِّينَا مِثْلَ قَوْلِنَا هَذَا عَنْ بَعْضِ السَّلَفِ، كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنِ الصَّلْتِ بْنِ دِينَارٍ عَنْ عُقْبَةَ بْنِ صَهْبَانَ: سَمِعْتُ أَمِيرَ الْمُؤْمِنِينَ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - يَقُولُ: مَا مَسِسْتُ ذَكَرِي بِيَمِينِي مُذْ بَايَعْتُ بِهَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L3852 A statement similar to this one of ours has been narrated to us from some of the Salaf, as reported through the chain of Waki' from al-Ṣalt ibn Dīnār from ʿUqbah ibn Ṣahbān: I heard the Commander of the Faithful, ʿUthmān—may Allah be pleased with him—say: "I have not touched my private part with my right hand since I pledged allegiance with it to the Messenger of Allah—peace and blessings be upon him."

وَبِهِ إِلَى وَكِيعٍ عَنْ خَالِدِ بْنِ دِينَارٍ سَمِعْتُ أَبَا الْعَالِيَةِ يَقُولُ: مَا مَسِسْتُ ذَكَرِي بِيَمِينِي مُذْ سِتِّينَ سَنَةً أَوْ سَبْعِينَ سَنَةً.

L3853 And by him to Waki', from Khalid ibn Dinar: I heard Abu al-'Aliyah say: I have not touched my penis with my right hand for sixty or seventy years.

L3854 And it has been narrated to us from Muslim ibn Yasar—who was among the best of the Successors—that he said: "I do not touch my private part with

my right hand, as I hope to take my Book of Deeds with it." And with Allah, the Exalted, is success.

A case where one was certain of having performed wudu and ghusl, then doubted their validity.

211 - Issue: Whoever is certain of having performed minor ablution (wudu) and major ablution (ghusl), then doubts whether he invalidated them or whether something occurred necessitating major ablution or not, he remains in his state of purity and is not required to renew either major ablution or minor ablution. If he performs major ablution and minor ablution, then becomes certain that he was in a state of minor ritual impurity (hadath) or major impurity (janābah), or that he had committed acts necessitating major ablution, the ablutions performed based on doubt do not suffice him. He must perform another major ablution and another minor ablution. Whoever is certain of ritual impurity but doubts whether he performed minor ablution or major ablution must perform whichever of the two he doubted. If he does not perform ablution or ghusl and prays while in doubt, then becomes certain that neither minor impurity existed nor was ghusl required, his prayer is not valid at all. The proof for this is Allah's statement: "They follow nothing but doubt, and indeed doubt avails nothing against the truth" (53:28). The Messenger of Allah (peace and blessings be upon him) said: "Avoid doubt, for doubt is the most deceitful of speech."[29]

Abdullah ibn Rabee' narrated to us: Muhammad ibn Ishaq narrated to us: Ibn al-A'rabi narrated to us: Abu Dawud narrated to us: Musa ibn Isma'il narrated to us: Hammad narrated to us: Suhayl ibn Abi Salih narrated from his father from Abu Hurayrah that the Messenger of Allah—peace and blessings be upon him—said: "If any of you is in prayer and senses movement in his anus, whether he has passed wind or not, and is uncertain, he should not leave the prayer until he hears a sound or detects an odor." This is the opinion of Abu Hanifah, al-Shafi'i, and Dawud. Malik said: "He must perform ablution in both situations of doubt." Some of his adherents argued

[29] **Qur'an references (L3856):** Qur'an 53:28 (An-Najm).

وَرُوِّينَا عَنْ مُسْلِمِ بْنِ يَسَارٍ - وَكَانَ مِنْ خِيَارِ التَّابِعِينَ - أَنَّهُ قَالَ: لَا أَمَسُّ ذَكَرِي بِيَمِينِي وَأَنَا أَرْجُو أَنْ آخُذَ بِهَا كِتَابِي. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ أَيْقَنَ بِالْوُضُوءِ وَالْغُسْلِ ثُمَّ شَكَّ]

٢١١ - مَسْأَلَةٌ: وَمَنْ أَيْقَنَ بِالْوُضُوءِ وَالْغُسْلِ ثُمَّ شَكَّ هَلْ أَحْدَثَ أَوْ كَانَ مِنْهُ مَا يُوجِبُ الْغُسْلَ أَمْ لَا فَهُوَ عَلَى طَهَارَتِهِ، وَلَيْسَ عَلَيْهِ أَنْ يُجَدِّدَ غُسْلًا وَلَا وُضُوءًا، فَلَوْ اغْتَسَلَ وَتَوَضَّأَ ثُمَّ أَيْقَنَ أَنَّهُ كَانَ مُحْدِثًا أَوْ مُجْنِبًا، أَوْ أَنَّهُ قَدْ أَتَى بِمَا يُوجِبُ الْغُسْلَ لَمْ يُجْزِهِ الْغُسْلُ وَلَا الْوُضُوءُ اللَّذَانِ أَحْدَثَا بِالشَّكِّ، وَعَلَيْهِ أَنْ يَأْتِيَ بِغُسْلٍ آخَرَ وَوُضُوءٍ آخَرَ، وَمَنْ أَيْقَنَ بِالْحَدَثِ وَشَكَّ فِي الْوُضُوءِ أَوْ الْغُسْلِ فَعَلَيْهِ أَنْ يَأْتِيَ بِمَا شَكَّ فِيهِ مِنْ ذَلِكَ، فَإِنْ لَمْ يَفْعَلْ وَصَلَّى بِشَكِّهِ ثُمَّ أَيْقَنَ أَنَّهُ لَمْ يَكُنْ حَدَثًا وَلَا كَانَ عَلَيْهِ غُسْلٌ لَمْ تُجْزِهِ صَلَاتُهُ تِلْكَ أَصْلًا. بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨] ، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُوسَى بْنُ إِسْمَاعِيلَ ثنا حَمَّادٌ ثنا سُهَيْلُ بْنُ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا كَانَ أَحَدُكُمْ فِي الصَّلَاةِ فَوَجَدَ حَرَكَةً فِي دُبُرِهِ أَحْدَثَ أَوْ لَمْ يُحْدِثْ فَأَشْكَلَ عَلَيْهِ، فَلَا يَنْصَرِفْ حَتَّى يَسْمَعَ صَوْتًا أَوْ يَجِدَ رِيحًا» وَهَذَا قَوْلُ أَبِي حَنِيفَةَ وَالشَّافِعِيِّ وَدَاوُد، وَقَالَ مَالِكٌ: يَتَوَضَّأُ فِي كِلَا الْوَجْهَيْنِ، وَاحْتَجَّ بَعْضُ مُقَلِّدِيهِ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَمَرَ مَنْ شَكَّ فَلَمْ يَدْرِ كَمْ صَلَّى بِأَنْ يَلْغِيَ

الشَّكَّ وَيَبْنِيَ عَلَى الْيَقِينِ» قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ مِنْ وَجْهَيْنِ، أَحَدُهُمَا تَرْكُهُمْ لِلْخَبَرِ الْوَارِدِ فِي الْمَسْأَلَةِ بِعَيْنِهَا وَمُخَالَفَتُهُمْ لَهُ، وَأَنْ يَجْعَلُوا هَذَا الْأَمْرَ حَدَثًا يُوجِبُ الْوُضُوءَ فِي غَيْرِ الصَّلَاةِ وَلَا يُوجِبُهُ فِي الصَّلَاةِ، وَهَذَا تَنَاقُضٌ قَدْ أَنْكَرُوا مِثْلَهُ عَلَى أَبِي حَنِيفَةَ فِي الْوُضُوءِ مِنْ الْقَهْقَهَةِ فِي الصَّلَاةِ دُونَ غَيْرِهَا وَأَخَذُهُمْ بِخَبَرٍ جَاءَ فِي حُكْمٍ آخَرَ.

by citing that the Messenger of Allah—peace and blessings be upon him—"commanded one who doubted and did not know how much he had prayed to disregard the doubt and base his prayer on certainty." Abu Muhammad said: "This is erroneous for two reasons. First, they abandoned the specific report directly addressing the issue and contradicted it. Second, they deemed this occurrence to necessitate ablution outside prayer but not during prayer—a contradiction they themselves criticized in Abu Hanifah's ruling regarding ablution after laughing aloud in prayer but not outside it, while they relied on a report pertaining to a different ruling."[30]

وَالثَّانِي أَنَّهُمْ احْتَجُّوا بِخَبَرٍ هُوَ حُجَّةٌ عَلَيْهِمْ؛ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَجْعَلْ لِلشَّكِّ حُكْمًا، وَأَبْقَاهُ عَلَى الْيَقِينِ عِنْدَهُ بِلَا شَكٍّ، وَإِنْ جَازَ أَنْ يَكُونَ الْأَمْرُ كَمَا ظَنَّ - هَذَا - إلَى تَنَاقُضِهِمْ، فَإِنَّهُمْ يَقُولُونَ: مَنْ شَكَّ أَطَلَّقَ أَمْ لَمْ يُطَلِّقْ، وَأَيْقَنَ بِصِحَّةِ النِّكَاحِ فَلَا يَلْزَمُهُ طَلَاقٌ، وَمَنْ أَيْقَنَ بِصِحَّةِ الْمِلْكِ فَشَكَّ أَنَّهُ أَعْتَقَ أَمْ لَمْ يُعْتِقْ فَلَا يَلْزَمُهُ عِتْقٌ، وَمَنْ تَيَقَّنَ حَيَاتَهُ وَشَكَّ فِي مَوْتِهِ فَهُوَ عَلَى الْحَيَاةِ، وَهَكَذَا فِي كُلِّ شَيْءٍ.

L3860 The second is that they cited a report which constitutes evidence against them, for the Prophet (peace be upon him) did not grant doubt any legal effect, preserving the certainty he held without doubt—even if it is permissible to assume the matter as one might presume. This leads to their contradiction, as they assert: one who doubts whether he pronounced divorce or not, while being certain of the marriage's validity, is not obligated to pronounce divorce. Similarly, one who is certain of the validity of his ownership but doubts whether he freed a slave or not is not obligated to free. Likewise, if someone's life is conclusively established but their death is doubted, he remains presumed alive. This principle applies universally to all matters.

قَالَ عَلِيٌّ: فَإِذَا هُوَ كَمَا ذَكَرْنَا فَإِنْ تَوَضَّأَ كَمَا ذَكَرْنَا وَهُوَ شَاكٌّ فِي الْحَدَثِ ثُمَّ أَيْقَنَ بِأَنَّهُ كَانَ أَحْدَثَ لَمْ يُجْزِهِ ذَلِكَ الْوُضُوءُ، لِأَنَّهُ لَمْ يَتَوَضَّأْ الْوُضُوءَ الْوَاجِبَ عَلَيْهِ، وَإِنَّمَا تَوَضَّأَ وُضُوءًا لَمْ يُؤْمَرْ بِهِ، وَلَا يَنُوبُ وُضُوءٌ لَمْ يَأْمُرْ اللَّهُ عَزَّ وَجَلَّ بِهِ عَنْ وُضُوءٍ أَمَرَ اللَّهُ تَعَالَى بِهِ.

L3861 Ali said: If the matter is as we described - that he performs ablution as mentioned while doubting ritual impurity, then becomes certain he had become ritually impure - this ablution does not suffice him. This is because he did not perform the obligatory ablution incumbent upon him. Rather, he performed an ablution he was not commanded to perform, and an ablution which Allah the Almighty and Majestic did not ordain cannot substitute for an ablution ordained by Allah the Most High.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L3862 And with Allah, the Most High, alone is divine success.

[مَسْأَلَةٌ الْمَسْحُ عَلَى مَا لُبِسَ فِي الرِّجْلَيْنِ مِمَّا يَبْلُغُ فَوْقَ الْكَعْبَيْنِ]

L3863–3864 Jurisprudential Inquiry: The ruling regarding wiping over footwear that covers above the malleoli (ankle bones).

L3865 Issue: Wiping over anything worn on the feet—that is permissible to wear

[30] **Hadith references (L3859):** Sunan Abi Dawud 177.

and that covers above the ankles—is a Sunnah. This applies equally to khuffs made of leather, felt, wood, or esparto grass; socks of linen, wool, cotton, camel hair, or animal hair (whether they have soles or not); jurmūqayn; layered khuffs over khuffs; layered socks over socks; multiple layers of such footwear; or worn-out shoes.

مَسْأَلَةٌ: وَالْمَسْحُ عَلَى كُلِّ مَا لُبِسَ فِي الرِّجْلَيْنِ - مِمَّا يَحِلُّ لِبَاسُهُ مِمَّا يَبْلُغُ فَوْقَ الْكَعْبَيْنِ سُنَّةٌ، سَوَاءٌ كَانَا خُفَّيْنِ مِنْ جُلُودٍ أَوْ لُبُودٍ أَوْ عُودٍ أَوْ حَلْفَاءَ أَوْ جَوْرَبَيْنِ مِنْ كَتَّانٍ أَوْ صُوفٍ أَوْ قُطْنٍ أَوْ وَبَرٍ أَوْ شَعْرٍ - كَانَ عَلَيْهِمَا جِلْدٌ أَوْ لَمْ يَكُنْ - أَوْ جُرْمُوقَيْنِ أَوْ خُفَّيْنِ عَلَى خُفَّيْنِ أَوْ جَوْرَبَيْنِ عَلَى جَوْرَبَيْنِ أَوْ مَا كَثُرَ مِنْ ذَلِكَ أَوْ هَرَاكِسَ.

L3866 Similarly, if a woman wears the silk garments we mentioned, all that we have described—when worn while in a state of ablution—permits wiping over them for the resident for a day and a night, and for the traveler three days with their nights. After this duration, wiping becomes impermissible for him. When these two periods conclude—meaning whichever of the two applies—one may pray with that wiping as long as their purification remains intact. If their purification is invalidated, it is not permissible for him to wipe; rather, he must necessarily remove what is on his feet and perform ablution anew. If he incurs an obligation requiring a major ritual bath, he must necessarily remove both of them, after which he may wipe as we described if he wishes. And so on forever, as we have explained.

وَكَذَلِكَ إِنْ لَبِسَتْ الْمَرْأَةُ مَا ذَكَرْنَا مِنْ الْحَرِيرِ، فَكُلُّ مَا ذَكَرْنَا إذَا لُبِسَ عَلَى وُضُوءٍ جَازَ الْمَسْحُ عَلَيْهِ لِلْمُقِيمِ يَوْمًا وَلَيْلَةً وَلِلْمُسَافِرِ ثَلَاثَةَ أَيَّامٍ بِلَيَالِيهِنَّ، ثُمَّ لَا يَحِلُّ لَهُ الْمَسْحُ، فَإِذَا انْقَضَى هَذَانِ الْأَمَدَانِ - يَعْنِي أَحَدُهُمَا - لِمَنْ وُقِّتَ لَهُ صَلَّى بِذَلِكَ الْمَسْحِ مَا لَمْ تَنْتَقِضْ طَهَارَتُهُ، فَإِنْ انْتَقَضَتْ لَمْ يَحِلَّ لَهُ أَنْ يَمْسَحَ، لَكِنْ يَخْلَعُ مَا عَلَى رِجْلَيْهِ وَيَتَوَضَّأُ وَلَا بُدَّ، فَإِنْ أَصَابَهُ مَا يُوجِبُ الْغُسْلَ خَلَعَهُمَا وَلَا بُدَّ، ثُمَّ مَسَحَ كَمَا ذَكَرْنَا إنْ شَاءَ، وَهَكَذَا أَبَدًا كَمَا وَصَفْنَا.

L3867 The proof of that is what was narrated to us by Abdullah ibn Yusuf, narrated by Ahmad ibn Fath, narrated by Abd al-Wahhab ibn Isa, narrated by Ahmad ibn Muhammad, narrated by Ahmad ibn Ali, narrated by Muslim ibn al-Hajjaj, narrated by Muhammad ibn Abdullah ibn Numayr, narrated by my father, narrated by Zakariyya ibn Abi Za'idah, from Amir—that is Ash-Sha'bi—narrated by Urwah ibn al-Mughirah ibn Shu'bah, from his father, who said: "I was with the Messenger of Allah—peace and blessings be upon him—when he performed his ablution. Al-Mughirah said: 'I reached down to remove the two leather socks, but the Prophet (peace be upon him) said: Leave them, for I entered them while they were pure; and he wiped over them.'"

بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ ثنا أَبِي ثنا زَكَرِيَّا بْنُ أَبِي زَائِدَةَ عَنْ عَامِرٍ - هُوَ الشَّعْبِيُّ - ثنا عُرْوَةُ بْنُ الْمُغِيرَةِ بْنِ شُعْبَةَ عَنْ أَبِيهِ قَالَ «كُنْتُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ وُضُوءَهُ - عَلَيْهِ السَّلَامُ -، قَالَ الْمُغِيرَةُ ثُمَّ أَهْوَيْتُ لِأَنْزِعَ الْخُفَّيْنِ فَقَالَ - عَلَيْهِ السَّلَامُ -: دَعْهُمَا فَإِنِّي أَدْخَلْتُهُمَا طَاهِرَتَيْنِ، وَمَسَحَ عَلَيْهِمَا» .

L3868 Aḥmad ibn Muḥammad al-Ṭalmankī narrated to us: Ibn Mufarrij narrated to us: Ibrāhīm ibn Aḥmad ibn ʿAlī ibn Aḥmad ibn Firās narrated to us: Muḥammad ibn ʿAlī ibn Zayd al-Ṣā'igh narrated to us: Saʿīd ibn Manṣūr narrated to us: Abū al-Aḥwaṣ narrated to us: al-Aʿmash narrated from Abū

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ ثنا ابْنُ مُفَرِّجٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ عَلِيِّ بْنِ أَحْمَدَ بْنِ فِرَاسٍ ثنا مُحَمَّدُ بْنُ عَلِيِّ بْنِ زَيْدٍ الصَّائِغُ ثنا سَعِيدُ بْنُ مَنْصُورٍ ثنا أَبُو الْأَحْوَصِ ثنا

Wā’il, from Ḥudhayfah, who said: “I was walking with the Messenger of Allah—peace be upon him—in al-Madinah when he approached a dung heap of some people. He urinated on it while standing, then performed ablution and wiped over his khuffs.”

الْأَعْمَشُ عَنْ أَبِي وَائِلٍ عَنْ «حُذَيْفَةَ قَالَ كُنْتُ أَمْشِي مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمَدِينَةِ فَانْتَهَى إِلَى سُبَاطَةِ نَاسٍ فَبَالَ عَلَيْهَا قَائِمًا ثُمَّ تَوَضَّأَ وَمَسَحَ عَلَى خُفَّيْهِ» .

L3869–3871 ʿAbdullāh ibn Rabīʿ and Yaḥyā ibn ʿAbd al-Raḥmān ibn Masʿūd reported to us. ʿAbdullāh said—thana (he narrated):... Muhammad ibn Muʿāwiyah al-Qurashī al-Hishāmī narrated to us: Aḥmad ibn Shuʿayb narrated to us: Isḥāq ibn Ibrāhīm (Ibn Rāhawayh) narrated to us. Yaḥyā said: Aḥmad ibn Saʿīd ibn Ḥazm narrated to us, Muḥammad ibn ʿAbd al-Malik ibn Ayman narrated to us, ʿAbdullāh ibn Aḥmad ibn Ḥanbal narrated to us: My father narrated to us. Then Aḥmad and Isḥāq concurred, with the wording being from Aḥmad, they both said: Wakīʿ narrated to us, Sufyān al-Thawrī narrated to us from Abū Qays ʿAbd al-Raḥmān ibn Tharwān from Huzayl ibn Shuraḥbīl from al-Mughīrah ibn Shuʿbah that the Messenger of Allah (peace and blessings be upon him) performed ablution and wiped over his khuffs and sandals.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ وَيَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ قَالَ عَبْدُ اللَّهِ - ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ الْقُرَشِيُّ الْهِشَامِيُّ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - وَقَالَ يَحْيَى ثنا أَحْمَدُ بْنُ سَعِيدِ بْنِ حَزْمٍ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ ثنا أَبِي، ثُمَّ اتَّفَقَ أَحْمَدُ وَإِسْحَاقُ وَاللَّفْظُ لِأَحْمَدَ قَالَا: ثنا وَكِيعٌ ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي قَيْسٍ عَبْدِ الرَّحْمَنِ بْنِ ثَرْوَانَ عَنْ هُزَيْلِ بْنِ شُرَحْبِيلَ عَنْ الْمُغِيرَةِ بْنِ شُعْبَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «تَوَضَّأَ وَمَسَحَ عَلَى الْجَوْرَبَيْنِ وَالنَّعْلَيْنِ» .

L3872 Yunus ibn Abdullah narrated to us; Muhammad ibn Muawiyah narrated to us; Ahmad ibn Shu‘ayb narrated to us; Hannad ibn al-Sari narrated to us from Abu Muawiyah, from al-A‘mash, from al-Hakam—who is Ibn Utaybah—from al-Qasim ibn Mukhaymirah, from Shuraih ibn Hani’ who said: I asked Aisha, the Mother of the Believers, about wiping over leather socks. She said: “Go to Ali ibn Abi Talib, for he is more knowledgeable about that than I am.” I went to Ali and asked him about wiping. He said: “The Messenger of Allah, peace and blessings be upon him, would command us that a resident should wipe for a day and a night, and a traveler for three days.” We also narrated this through the chain of Muslim ibn al-Hajjaj from Ishaq ibn Rahawayh, from Abd al-Razzaq and Zakariyya ibn ʿAdiyy. Abd al-Razzaq said: Sufyan al-Thawri, who would praise Amr ibn Qays al-Mula’i whenever he mentioned him, informed us from him. Zakariyya narrated from Ubaydullah ibn Amr al-Raqqi, from Zayd ibn Abi Unaysah. Then Zayd and Amr concurred from al-Hakam ibn Utaybah with a narration matching that of al-A‘mash from al-Hakam and its chain.

حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ حَدَّثَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا هَنَّادُ بْنُ السَّرِيِّ عَنْ أَبِي مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ الْحَكَمِ - هُوَ ابْنُ عُتَيْبَةَ - عَنْ الْقَاسِمِ بْنِ مُخَيْمِرَةَ عَنْ «شُرَيْحِ بْنِ هَانِئٍ قَالَ: سَأَلْتُ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ عَنْ الْمَسْحِ عَلَى الْخُفَّيْنِ فَقَالَتْ: ائْتِ عَلِيَّ بْنَ أَبِي طَالِبٍ فَإِنَّهُ أَعْلَمُ بِذَلِكَ مِنِّي، فَأَتَيْتُ عَلِيًّا فَسَأَلْتُهُ عَنْ الْمَسْحِ؟ فَقَالَ: كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُنَا أَنْ يَمْسَحَ الْمُقِيمُ يَوْمًا وَلَيْلَةً وَالْمُسَافِرُ ثَلَاثًا» . وَرُوِّينَاهُ أَيْضًا كَذَلِكَ مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ عَنْ إِسْحَاقَ بْنِ رَاهْوَيْهِ عَنْ عَبْدِ الرَّزَّاقِ وَزَكَرِيَّا بْنِ عَدِيٍّ، قَالَ عَبْدُ الرَّزَّاقِ أَنْبَأَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ عَمْرِو بْنِ قَيْسٍ الْمُلَائِيِّ - وَكَانَ سُفْيَانُ إِذَا ذَكَرَهُ أَثْنَى عَلَيْهِ -. وَقَالَ زَكَرِيَّا عَنْ عُبَيْدِ اللَّهِ بْنِ عَمْرٍو الرَّقِّيِّ عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ، ثُمَّ اتَّفَقَ زَيْدٌ وَعَمْرٌو عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ بِمِثْلِ حَدِيثِ الْأَعْمَشِ

عَنْ الْحَكَمِ وَإِسْنَادُهُ. حَدَّثَنَا هِشَامُ بْنُ سَعِيدِ الْخَيْرِ ثنا عَبْدُ الْجَبَّارِ بْنُ أَحْمَدَ الْمُقْرِي ثنا الْحَسَنُ بْنُ الْحُسَيْنِ النَّجِيرَمِيُّ ثنا جَعْفَرُ بْنُ مُحَمَّدِ بْنِ الْحَسَنِ الْأَصْبَهَانِيُّ ثنا يُونُسُ بْنُ حَبِيبِ بْنِ عَبْدِ الْقَاهِرِ حَدَّثَنَا أَبُو دَاوُد الطَّيَالِسِيُّ ثنا حَمَّادُ بْنُ سَلَمَةَ وَحَمَّادُ بْنُ زَيْدٍ وَهَمَّامُ بْنُ يَحْيَى وَشُعْبَةُ بْنُ الْحَجَّاجِ كُلُّهُمْ عَنْ عَاصِمِ بْنِ أَبِي النَّجُودِ عَنْ «زِرِّ بْنِ حُبَيْشٍ قَالَ: أَتَيْتُ صَفْوَانَ بْنَ عَسَّالٍ فَقُلْتُ: إنَّهُ حَكَّ فِي نَفْسِي مِنْ الْمَسْحِ عَلَى الْخُفَّيْنِ شَيْءٌ، فَهَلْ سَمِعْتَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ شَيْئًا؟ فَقَالَ: كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَفَرٍ فَأَمَرَنَا أَنْ نَمْسَحَ عَلَيْهِمَا ثَلَاثَةَ أَيَّامٍ وَلَيَالِيَهُنَّ مِنْ غَائِطٍ وَبَوْلٍ وَنَوْمٍ إلَّا مِنْ جَنَابَةٍ» . وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مَعْمَرٍ وَسُفْيَانَ الثَّوْرِيِّ وَسُفْيَانَ بْنِ عُيَيْنَةَ، كُلُّهُمْ عَنْ عَاصِمٍ عَنْ زِرٍّ عَنْ صَفْوَانَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِهِ.

Hisham ibn Sa'id al-Khayr; Abd al-Jabbar ibn Ahmad al-Muqri; al-Hasan ibn al-Husayn al-Najrami; Ja'far ibn Muhammad ibn al-Hasan al-Asbahani; Yunus ibn Habib ibn Abd al-Qahir; Abu Dawud al-Tayalisi narrated to us: Hammad ibn Salamah, Hammad ibn Zayd, Hammam ibn Yahya, and Shu'bah ibn al-Hajjaj; all of them from Asim ibn Abi al-Najud, from Zirr ibn Hubaysh who said: I came to Safwan ibn Assal and said: "I had doubts regarding wiping over leather socks. Have you heard anything from the Messenger of Allah, peace and blessings be upon him, concerning that?" He replied: "We were with the Messenger of Allah, peace and blessings be upon him, on a journey, and he commanded us to wipe over them for three days and their nights for defecation, urination, and sleep—but not for janabah." We also narrated this through the chains of Ma'mar, Sufyan al-Thawri, and Sufyan ibn Uyaynah—all of them from Asim, from Zirr, from Safwan, from the Messenger of Allah, peace and blessings be upon him, with identical wording.

L3873–3875 وَهَذَا نَقْلُ تَوَاتُرٍ يُوجِبُ الْعِلْمَ، فَفِي حَدِيثِ الْمُغِيرَةِ أَنَّ الْمَسْحَ إنَّمَا هُوَ عَلَى مَنْ أَدْخَلَ الرِّجْلَيْنِ وَهُمَا طَاهِرَتَانِ.

And this is a mutawatir transmission that compels certainty, as established in the ḥadīth of Al-Mughīrah which states that wiping applies exclusively to those who [...] He inserted both legs while they were ritually pure.

L3876 وَفِي حَدِيثِ حُذَيْفَةَ الْمَسْحُ فِي الْحَضَرِ، وَفِي حَدِيثِ هُزَيْلٍ عَنْ الْمُغِيرَةِ الْمَسْحُ عَلَى الْجَوْرَبَيْنِ. وَفِي حَدِيثِ عَلِيٍّ عُمُومُ الْمَسْحِ عَلَى كُلِّ مَا لُبِسَ فِي الرِّجْلَيْنِ يَوْمًا وَلَيْلَةً لِلْمُقِيمِ وَثَلَاثًا لِلْمُسَافِرِ، وَأَنْ لَا يَخْلَعَ إلَّا لِغُسْلِ الْجَنَابَةِ فِي حَدِيثِ صَفْوَانَ.

In the ḥadīth of Ḥudhayfa: the wiping during residence. In the ḥadīth of Huzayl from al-Mughīra: the wiping over the pair of socks. In the ḥadīth of ʿAlī: the generality of wiping over anything worn on the feet for a day and a night for the resident and three for the traveler, and that one does not remove them except for the ritual bath due to sexual impurity in the ḥadīth of Ṣafwān.

L3877 وَأَمَّا قَوْلُنَا إنَّهُ إذَا انْقَضَى أَحَدُ الْأَمَدَيْنِ الْمَذْكُورَيْنِ صَلَّى الْمَاسِحُ بِذَلِكَ الْمَسْحِ مَا لَمْ يَنْتَقِضْ وُضُوءُهُ، وَلَا يَجُوزُ لَهُ أَنْ يَمْسَحَ إلَّا حَتَّى يَنْزِعَهُمَا وَيَتَوَضَّأَ، فَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَهُ أَنْ يَمْسَحَ إنْ كَانَ مُسَافِرًا ثَلَاثًا فَقَطْ، وَإِنْ كَانَ مُقِيمًا

As for our statement that if one of the two aforementioned periods has expired, the person who has wiped [over footwear] may pray with that wiping as long as his ablution remains valid. He may not wipe again until he removes both [footwear] and performs ablution anew. This is because the Messenger of Allah—peace be upon him—commanded wiping for three days only when traveling, and a day and night only when residing. He instructed praying with

that wiping and did not prohibit prayer after its designated period expired, but rather prohibited only the wiping itself. This is the explicit text of the report concerning this matter.

يَوْمًا وَلَيْلَةً فَقَطْ، وَأَمَرَ - عَلَيْهِ السَّلَامُ - بِالصَّلَاةِ بِذَلِكَ الْمَسْحِ، وَلَمْ يَنْهَهُ عَنْ الصَّلَاةِ بِهِ بَعْدَ أَمَدِهِ الْمُؤَقَّتِ لَهُ، وَإِنَّمَا نَهَاهُ عَنْ الْمَسْحِ فَقَطْ، وَهَذَا نَصُّ الْخَبَرِ فِي ذَلِكَ.

L3878 Among those who held the opinion of wiping over the two khuffs are a group of the Salaf, as has been transmitted to us from Sufyān al-Thawrī from al-Zibriqān ibn ʿAbdillāh al-ʿAbdī, Yaḥyā ibn Abī Ḥayyah, and al-Aʿmash. Al-Zibriqān narrated from Kaʿb ibn ʿAbdillāh, who said: "I saw ʿAlī ibn Abī Ṭālib - may Allah be pleased with him - urinate, then wipe over his two khuffs and his two sandals." Yaḥyā narrated from Abū al-Julās from Ibn ʿUmar: "He would wipe over his two khuffs and his two sandals." Al-Aʿmash narrated from Ismāʿīl ibn Rajāʾ, Ibrāhīm al-Nakhaʿī, and Saʿīd ibn ʿAbdillāh ibn Ḍirār. Ismāʿīl narrated from his father, who said: "I saw al-Barāʾ ibn ʿĀzib wiping over his two khuffs and his two sandals."

وَمِمَّنْ قَالَ بِالْمَسْحِ عَلَى الْجَوْرَبَيْنِ جَمَاعَةٌ مِنْ السَّلَفِ، كَمَا رُوِّينَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الزِّبْرِقَانِ بْنِ عَبْدِ اللَّهِ الْعَبْدِيِّ وَيَحْيَى بْنِ أَبِي حَيَّةَ وَالْأَعْمَشِ، قَالَ الزِّبْرِقَانُ عَنْ كَعْبِ بْنِ عَبْدِ اللَّهِ قَالَ: رَأَيْتُ عَلِيَّ بْنَ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - بَالَ فَمَسَحَ عَلَى جَوْرَبَيْهِ وَنَعْلَيْهِ، وَقَالَ يَحْيَى عَنْ أَبِي الْجُلَاسِ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ يَمْسَحُ عَلَى جَوْرَبَيْهِ وَنَعْلَيْهِ وَقَالَ الْأَعْمَشُ عَنْ إسْمَاعِيلَ بْنِ رَجَاءٍ وَإِبْرَاهِيمَ النَّخَعِيِّ وَسَعِيدِ بْنِ عَبْدِ اللَّهِ بْنِ ضِرَارٍ قَالَ إسْمَاعِيلُ عَنْ أَبِيهِ قَالَ: رَأَيْتُ الْبَرَاءَ بْنَ عَازِبٍ يَمْسَحُ عَلَى جَوْرَبَيْهِ وَنَعْلَيْهِ.

L3879 Ibrahim reported from Hammām ibn al-Ḥārith from Abū Masʿūd al-Badrī that he would wipe over his socks and sandals.

وَقَالَ إبْرَاهِيمُ عَنْ هَمَّامِ بْنِ الْحَارِثِ عَنْ أَبِي مَسْعُودٍ الْبَدْرِيِّ أَنَّهُ كَانَ يَمْسَحُ عَلَى جَوْرَبَيْهِ وَنَعْلَيْهِ.

L3880 Sa'id ibn Abdullāh said: I saw Anas ibn Mālik go to relieve himself, then he emerged wearing a white fastened cap. He wiped over the cap and over his two black Arabian khazz khuffs, then he prayed.

وَقَالَ سَعِيدُ بْنُ عَبْدِ اللَّهِ: رَأَيْتُ أَنَسَ بْنَ مَالِكٍ أَتَى الْخَلَاءَ ثُمَّ خَرَجَ وَعَلَيْهِ قَلَنْسُوَةٌ بَيْضَاءُ مَزْرُورَةٌ فَمَسَحَ عَلَى الْقَلَنْسُوَةِ وَعَلَى جَوْرَبَيْنِ لَهُ مِنْ خَزٍّ عَرَبِيٍّ أَسْوَدَ ثُمَّ صَلَّى.

L3881 And from the chain of Al-Ḍaḥḥāk ibn Makhlad, from Sufyān al-Thawrī, ʿĀṣim al-Aḥwal reported to me: "I saw Anas ibn Mālik perform masḥ over his two thin socks."

وَمِنْ طَرِيقِ الضَّحَّاكِ بْنِ مَخْلَدٍ عَنْ سُفْيَانَ الثَّوْرِيِّ حَدَّثَنِي عَاصِمٌ الْأَحْوَلُ قَالَ: رَأَيْتُ أَنَسَ بْنَ مَالِكٍ مَسَحَ عَلَى جَوْرَبَيْهِ.

L3882 From Hammad ibn Salama, from Thabit al-Bunani and Ubayd Allah ibn Abi Bakr ibn Anas ibn Malik, who both said: Anas ibn Malik used to perform masḥ (ritual wiping) over socks, khuffs, and the turban.

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ وَعُبَيْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ أَنَسِ بْنِ مَالِكٍ قَالَا جَمِيعًا: كَانَ أَنَسُ بْنُ مَالِكٍ يَمْسَحُ عَلَى الْجَوْرَبَيْنِ وَالْخُفَّيْنِ وَالْعِمَامَةِ.

L3883 From Hammad ibn Salama from Abu Ghalib from Abu Umamah al-Bahili that he would wipe over his socks, leather socks, and turban. And from Waki' from Abu Janab from his father from Khilas ibn 'Amr from Ibn 'Umar,

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي غَالِبٍ عَنْ أَبِي أُمَامَةَ الْبَاهِلِيِّ أَنَّهُ كَانَ يَمْسَحُ عَلَى الْجَوْرَبَيْنِ وَالْخُفَّيْنِ وَالْعِمَامَةِ وَعَنْ وَكِيعٍ عَنْ أَبِي جَنَابٍ عَنْ أَبِيهِ عَنْ خِلَاسِ بْنِ عَمْرٍو عَنْ ابْنِ

who said: Umar ibn al-Khattab urinated on Friday, then performed ablution, wiped over his socks and sandals, and led the people in the Friday Prayer.

عُمَرَ قَالَ: بَالَ عُمَرُ بْنُ الْخَطَّابِ يَوْمَ جُمُعَةٍ ثُمَّ تَوَضَّأَ وَمَسَحَ عَلَى الْجَوْرَبَيْنِ وَالنَّعْلَيْنِ وَصَلَّى بِالنَّاسِ الْجُمُعَةَ.

L3884–3886 Narrated by Waki‘, via Mahdi ibn Maymun, via Wāṣil the Hunchback, via Abū Wā’il. It is narrated from Abu Mas‘ud that he wiped over his two foot coverings (jowrabayn) made of hair.

وَعَنْ وَكِيعٍ عَنْ مَهْدِيِّ بْنِ مَيْمُونٍ عَنْ وَاصِلٍ الْأَحْدَبِ عَنْ أَبِي وَائِلٍ عَنْ أَبِي مَسْعُودٍ أَنَّهُ مَسَحَ عَلَى جَوْرَبَيْنِ لَهُ مِنْ شَعْرٍ.

L3887 From Waki‘, from Yaḥyā al-Bakkā’, who said: I heard Ibn ‘Umar say: “Wiping over the two socks is like wiping over the two khuffs.”

وَعَنْ وَكِيعٍ عَنْ يَحْيَى الْبَكَّاءِ قَالَ: سَمِعْتُ ابْنَ عُمَرَ يَقُولُ: الْمَسْحُ عَلَى الْجَوْرَبَيْنِ كَالْمَسْحِ عَلَى الْخُفَّيْنِ.

L3888 From Qatādah, from Sa‘īd ibn al-Muṣayyib: Socks (jawrabān) have the same status as leather socks (khuff) in wiping.

وَعَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: الْجَوْرَبَانِ بِمَنْزِلَةِ الْخُفَّيْنِ فِي الْمَسْحِ.

L3889 From ‘Abd al-Razzaq from Ibn Jurayj: I asked ‘Ata’, “Do we wipe over thick socks?” He replied, “Yes - wipe over them like leather socks covering the ankles.” From Shu‘bah from al-Hakam ibn ‘Utaybah from Ibrahim al-Nakha‘i: Ibrahim al-Nakha‘i saw no problem with wiping over thick socks.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ، قُلْتُ لِعَطَاءٍ: نَمْسَحُ عَلَى الْجَوْرَبَيْنِ؟ قَالَ نَعَمْ امْسَحُوا عَلَيْهِمَا مِثْلَ الْخُفَّيْنِ. وَعَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ: أَنَّهُ كَانَ لَا يَرَى بِالْمَسْحِ عَلَى الْجَوْرَبَيْنِ بَأْسًا.

L3890 Abū Nu‘aym al-Fadl ibn Dukayn reported: I heard al-A‘mash being asked about the two leather socks—does one who spends the night [while wearing them] wipe over them? He replied: Yes.

وَعَنْ أَبِي نُعَيْمٍ الْفَضْلِ بْنِ دُكَيْنٍ قَالَ: سَمِعْتُ الْأَعْمَشَ سُئِلَ عَنْ الْجَوْرَبَيْنِ أَيَمْسَحُ عَلَيْهِمَا مَنْ بَاتَ فِيهِمَا؟ قَالَ نَعَمْ.

L3891 From Qatadah, on the authority of Al-Ḥasan and Khilās ibn ʿAmr, that they considered wiping over valid socks equivalent to leather socks in legal status.

وَعَنْ قَتَادَةَ عَنْ الْحَسَنِ وَخِلَاسِ بْنِ عَمْرٍو أَنَّهُمَا كَانَا يَرَيَانِ الْجَوْرَبَيْنِ فِي الْمَسْحِ بِمَنْزِلَةِ الْخُفَّيْنِ.

L3892 It has also been reported from ‘Abdullāh ibn Mas‘ūd, Sa‘d ibn Abī Waqqāṣ, Sahl ibn Sa‘d, and ‘Amr ibn Ḥurayth, as well as from Sa‘īd ibn Jubayr and Nāfi‘, the client of Ibn ‘Umar. They are ‘Umar, ‘Alī, ‘Abdullāh ibn ‘Amr, Abū Mas‘ūd, Al-Barā’ ibn ‘Āzib, Anas ibn Mālik, Abū Umāmah, Ibn Mas‘ūd [‘Abdullāh ibn Mas‘ūd], Sa‘d, Sahl ibn Sa‘d, and ‘Amr ibn Ḥurayth. Among the Companions—may Allah be pleased with them—who permit wiping over the khuffayn, no opponent to them is known.

وَقَدْ رُوِيَ أَيْضًا عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ وَسَعْدِ بْنِ أَبِي وَقَّاصٍ وَسَهْلِ بْنِ سَعْدٍ وَعَمْرِو بْنِ حُرَيْثٍ. وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ وَنَافِعٍ مَوْلَى ابْنِ عُمَرَ - فَهُمْ عُمَرُ وَعَلِيٌّ وَعَبْدُ اللَّهُ بْنُ عَمْرٍو وَأَبُو مَسْعُودٍ وَالْبَرَاءُ بْنُ عَازِبٍ وَأَنَسُ بْنُ مَالِكٍ وَأَبُو أُمَامَةَ وَابْنُ مَسْعُودٍ وَسَعْدٌ

وَسَهْلُ بْنُ سَعْدٍ وَعَمْرُو بْنُ حُرَيْثٍ، لَا يُعْرَفُ لَهُمْ مِمَّنْ يُجِيزُ الْمَسْحَ عَلَى الْخُفَّيْنِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ.

L3893 And among the Tābiʿūn are Saʿīd ibn al-Musayyib, ʻAṭāʾ, Ibrāhīm al-Nakhaʿī, al-Aʿmash, Khilās ibn ʻAmr, Saʿīd ibn Jubayr, and Nāfiʿ, the freed slave of Ibn ʻUmar. This view is held by Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, Abū Yūsuf, Muḥammad ibn al-Ḥasan, Abū Thawr, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhawayh, Dāwūd ibn ʻAlī, and others.

وَمِنْ التَّابِعِينَ سَعِيدُ بْنُ الْمُسَيِّبِ وَعَطَاءٌ وَإِبْرَاهِيمُ النَّخَعِيُّ وَالْأَعْمَشُ وَخِلَاسُ بْنُ عَمْرٍو وَسَعِيدُ بْنُ جُبَيْرٍ وَنَافِعٌ مَوْلَى ابْنِ عُمَرَ، وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَالْحَسَنِ بْنِ حَيٍّ وَأَبِي يُوسُفَ وَمُحَمَّدِ بْنِ الْحَسَنِ وَأَبِي ثَوْرٍ وَأَحْمَدَ بْنِ حَنْبَلٍ وَإِسْحَاقَ بْنِ رَاهْوَيْهِ وَدَاوُد بْنِ عَلِيٍّ وَغَيْرِهِمْ.

L3894 Abu Hanifah said: One should not wipe over the two socks. Malik said: One should not wipe over them unless leather is sewn onto their lower part, but later he reconsidered and said: One should not wipe over them. Al-Shafi'i said: One should not wipe over them unless they are covered with leather.

وَقَالَ أَبُو حَنِيفَةَ: لَا يَمْسَحُ عَلَى الْجَوْرَبَيْنِ، وَقَالَ مَالِكٌ: لَا يَمْسَحُ عَلَيْهِمَا إلَّا أَنْ يَكُونَ أَسْفَلُهُمَا قَدْ خُرِزَ عَلَيْهِ جِلْدٌ، ثُمَّ رَجَعَ فَقَالَ: لَا يَمْسَحُ عَلَيْهِمَا، وَقَالَ الشَّافِعِيُّ لَا يَمْسَحُ عَلَيْهِمَا إلَّا أَنْ يَكُونَا مُجَلَّدَيْنِ.

L3895 Ali said: The stipulation of leather binding is an erroneous and baseless requirement, as it is unsupported by the Quran, the Sunnah, analogical reasoning, or the opinion of a Companion. Prohibiting wiping over socks is likewise an error, for it contradicts the established Sunnah of the Messenger of Allah—peace be upon him—and the narrations from the Salaf. Moreover, in the reports we cited, he—peace be upon him—did not specify leather socks to the exclusion of other types.

قَالَ عَلِيٌّ: اشْتِرَاطُ التَّجْلِيدِ خَطَأٌ لَا مَعْنَى لَهُ، لِأَنَّهُ لَمْ يَأْتِ بِهِ قُرْآنٌ وَلَا سُنَّةٌ وَلَا قِيَاسٌ وَلَا صَاحِبٌ، وَالْمَنْعُ مِنْ الْمَسْحِ عَلَى الْجَوْرَبَيْنِ خَطَأٌ لِأَنَّهُ خِلَافُ السُّنَّةِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، وَخِلَافُ الْآثَارِ، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - فِي الْأَخْبَارِ الَّتِي ذَكَرْنَا خُفَّيْنِ مِنْ غَيْرِهِمَا.

L3896–3898 It is astonishing that the Hanafis, Malikis, and Shafi'is condemn and deem grave the contradiction of a Companion when it aligns with their own *taqlīd* (adherence to their school), yet here they themselves have contradicted eleven Companions—with none of the Companions who permitted wiping opposing them—including Umar, his son, Ali, and Ibn Mas'ud. They have also contradicted those who... They do not permit wiping among the Companions. Thus, they ended up opposing all the Companions from whom a narration was reported on this matter—may Allah be pleased with them—

وَالْعَجَبُ أَنَّ الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ وَالشَّافِعِيِّينَ يُشَنِّعُونَ وَيُعَظِّمُونَ مُخَالَفَةَ الصَّاحِبِ إذَا وَافَقَ تَقْلِيدَهُمْ وَهُمْ قَدْ خَالَفُوا هَهُنَا أَحَدَ عَشَرَ صَاحِبًا، لَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ مِمَّنْ يُجِيزُ الْمَسْحَ، فِيهِمْ عُمَرُ وَابْنُهُ وَعَلِيٌّ وَابْنُ مَسْعُودٍ وَخَالَفُوا أَيْضًا مَنْ لَا يُجِيزُ الْمَسْحَ مِنْ الصَّحَابَةِ، فَحَصَلُوا عَلَى خِلَافِ كُلِّ مَنْ رُوِيَ عَنْهُ فِي هَذِهِ الْمَسْأَلَةِ شَيْءٌ مِنْ الصَّحَابَةِ

and opposed the established Sunnah of the Messenger of Allah—peace and blessings be upon him—and qiyas without valid basis.

- رَضِيَ اللَّهُ عَنْهُمْ -، وَخَالَفُوا السُّنَّةَ الثَّابِتَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْقِيَاسَ بِلَا مَعْنًى.

L3899 And success is by Allah, the Most High.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L3900 As for those who held the position of specifying a time limit for wiping among the Companions - may Allah be pleased with them - it has been narrated to us through the chain of Shuʿbah and Ibn al-Mubārak, from ʿĀṣim al-Aḥwal, from Abū ʿUthmān al-Nahdī, who said: I witnessed Saʿd ibn Abī Waqqāṣ and ʿAbdullāh ibn ʿUmar disagreeing about wiping. Saʿd performed wiping, while Ibn ʿUmar did not. They asked ʿUmar ibn al-Khaṭṭāb while I was present. ʿUmar said: "Wipe your day and your night until the next day at your time."

وَأَمَّا الْقَائِلُونَ بِالتَّوْقِيتِ فِي الْمَسْحِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ وَابْنِ الْمُبَارَكِ عَنْ عَاصِمٍ الْأَحْوَلِ عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ قَالَ: شَهِدْتُ سَعْدَ بْنَ أَبِي وَقَّاصٍ وَعَبْدَ اللَّهِ بْنَ عُمَرَ اخْتَلَفَا فِي الْمَسْحِ، فَمَسَحَ سَعْدٌ وَلَمْ يَمْسَحْ ابْنُ عُمَرَ، فَسَأَلُوا عُمَرَ بْنَ الْخَطَّابِ وَأَنَا شَاهِدٌ فَقَالَ عُمَرُ: امْسَحْ يَوْمَكَ وَلَيْلَتَكَ إلَى الْغَدِ سَاعَتَكَ.

L3901 From Shuʿbah, from ʿImrān ibn Muslim: I heard Suwayd ibn Ghaflah say, "Nubātah al-Juʿfī sent us to ʿUmar ibn al-Khaṭṭāb to ask him about wiping over the khuffs. They asked him, and ʿUmar replied, 'For a traveler: three days and their nights, and for a resident: a day and a night. One wipes over the khuffs and the turban.' These two chains of narration are unparalleled in authenticity and eminence."

وَعَنْ شُعْبَةَ عَنْ عِمْرَانَ بْنِ مُسْلِمٍ سَمِعْتُ سُوَيْدَ بْنَ غَفَلَةَ قَالَ بَعَثَنَا نُبَاتَةُ الْجُعْفِيُّ إلَى عُمَرَ بْنِ الْخَطَّابِ يَسْأَلُهُ عَنْ الْمَسْحِ عَلَى الْخُفَّيْنِ، قَالَ فَسَأَلَهُ فَقَالَ عُمَرُ: لِلْمُسَافِرِ ثَلَاثَةُ أَيَّامٍ وَلَيَالِيهِنَّ وَلِلْمُقِيمِ يَوْمٌ وَلَيْلَةٌ يَمْسَحُ عَلَى الْخُفَّيْنِ وَالْعِمَامَةِ، وَهَذَانِ إسْنَادَانِ لَا نَظِيرَ لَهُمَا فِي الصِّحَّةِ وَالْجَلَالَةِ.

L3902 And that has also been transmitted to us through the chain of Saʿīd ibn al-Musayyib and Zayd ibn Ṣalt, both of them from ʿUmar.

وَقَدْ رُوِّينَا ذَلِكَ أَيْضًا مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ وَزَيْدِ بْنِ الصَّلْتِ كِلَاهُمَا عَنْ عُمَرَ.

L3903 Through Sufyan al-Thawri, from Salama ibn Kuhayl, from Ibrāhīm al-Taymī, from al-Ḥārith ibn Suwayd, from ʿAbdullāh ibn Masʿūd, who said: "Three days for a traveler and one day for the resident" – referring to wiping over footwear.

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ إبْرَاهِيمَ التَّيْمِيِّ عَنْ الْحَارِثِ بْنِ سُوَيْدٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ ثَلَاثَةُ أَيَّامٍ لِمُسَافِرٍ وَيَوْمٌ لِلْمُقِيمِ يَعْنِي فِي الْمَسْحِ.

L3904 We have also received narrations through the chain of Shaqīq ibn Salāmah from Ibn Masʿūd, and this, too, is an authentic chain.

وَرُوِّينَا أَيْضًا مِنْ طَرِيقِ شَقِيقِ بْنِ سَلَمَةَ عَنْ ابْنِ مَسْعُودٍ، وَهَذَا أَيْضًا إسْنَادٌ صَحِيحٌ.

L3905 Narrated by Wakīʿ from Shuʿbah from al-Ḥakam ibn ʿUtaybah from al-Qāsim ibn Mukhaymirah from Shurayḥ ibn Hāniʾ al-Ḥārithī: I asked ʿAlī about wiping, and he said: For the traveler three days, and for the non-traveler a day and a night.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ الْقَاسِمِ بْنِ مُخَيْمِرَةَ عَنْ شُرَيْحِ بْنِ هَانِئٍ الْحَارِثِيِّ: سَأَلْتُ عَلِيًّا عَنْ الْمَسْحِ فَقَالَ: لِلْمُسَافِرِ ثَلَاثًا وَلِلْمُقِيمِ يَوْمًا وَلَيْلَةً.

L3906 And from Shu’bah from Qatadah from Musa ibn Salamah, who said: I asked Ibn Abbas about wiping over the khuffs. He replied: Three days and their nights for the traveler, and a day and a night for the resident. This is a chain of the highest authenticity.

وَعَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ مُوسَى بْنِ سَلَمَةَ قَالَ: سَأَلْتُ ابْنَ عَبَّاسٍ عَنْ الْمَسْحِ عَلَى الْخُفَّيْنِ فَقَالَ: ثَلَاثَةَ أَيَّامٍ وَلَيَالِيَهُنَّ لِلْمُسَافِرِ، وَيَوْمًا وَلَيْلَةً لِلْمُقِيمِ، وَهَذَا إسْنَادٌ فِي غَايَةِ الصِّحَّةِ.

L3907 From al-Sha‘bi, from ‘Urwah ibn al-Mughīrah ibn Shu‘bah, from his father, who said: It is established as a Sunnah for the traveler to wipe for three days and their nights, and for the non-traveler a day and a night regarding wiping.

وَعَنْ الشَّعْبِيِّ عَنْ عُرْوَةَ بْنِ الْمُغِيرَةِ بْنِ شُعْبَةَ عَنْ أَبِيهِ قَالَ: صَارَتْ سُنَّةً لِلْمُسَافِرِ ثَلَاثَةَ أَيَّامٍ وَلَيَالِيَهُنَّ وَلِلْمُقِيمِ يَوْمًا وَلَيْلَةً فِي الْمَسْحِ.

L3908 From Hammad ibn Salama, from Sa‘id ibn Qatan, from Abu Zayd al-Ansari, the companion of the Messenger of Allah (peace be upon him), who said: “A traveler may wipe for three days and their nights, and a resident may wipe for a day and a night.”

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ سَعِيدِ بْنِ قَطَنٍ عَنْ أَبِي زَيْدٍ الْأَنْصَارِيِّ صَاحِبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: يَمْسَحُ الْمُسَافِرُ ثَلَاثَةَ أَيَّامٍ وَلَيَالِيَهُنَّ وَالْمُقِيمُ يَوْمًا وَلَيْلَةً.

L3909–3910 From Abd al-Razzaq [narrating] from Ibn Jurayj, Muhammad ibn Rashid, and Yahya ibn Rabi’ah. Ibn Jurayj said: Aban ibn Salih informed me that Umar ibn Shurayh informed him that Sharik the Judge used to say: For a resident [the term lasts] one day until nightfall, and for a traveler, three days.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ وَمُحَمَّدِ بْنِ رَاشِدٍ وَيَحْيَى بْنِ رَبِيعَةَ، قَالَ ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبَانُ بْنُ صَالِحٍ أَنَّ عُمَرَ بْنَ شُرَيْحٍ أَخْبَرَهُ أَنَّ شَرِيكًا الْقَاضِيَ كَانَ يَقُولُ: لِلْمُقِيمِ يَوْمٌ إلَى اللَّيْلِ وَلِلْمُسَافِرِ ثَلَاثٌ.

L3911 Ibn Abī Rāshid said: Sulaymān ibn Mūsā narrated to me, saying: ʿUmar ibn ʿAbd al-ʿAzīz wrote to the people of al-Miṣṣīṣah: “Remove the *khuffs* within every three [days].” Yaḥyā ibn Rabīʿah said: I asked ʿAṭāʾ ibn Abī Rabāḥ about *the wiping over the two khuffs*, and he replied: “Three [days] for the traveler and one day for the resident.” A similar ruling is also narrated from al-Shaʿbī.

وَقَالَ ابْنُ أَبِي رَاشِدٍ: أَخْبَرَنِي سُلَيْمَانُ بْنُ مُوسَى قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ إلَى أَهْلِ الْمِصِّيصَةِ: أَنْ اخْلَعُوا الْخِفَافَ فِي كُلِّ ثَلَاثٍ وَقَالَ يَحْيَى بْنُ رَبِيعَةَ: سَأَلْتُ عَطَاءَ بْنَ أَبِي رَبَاحٍ عَنْ الْمَسْحِ عَلَى الْخُفَّيْنِ فَقَالَ: ثَلَاثٌ لِلْمُسَافِرِ وَيَوْمٌ لِلْمُقِيمِ، وَقَدْ رُوِيَ أَيْضًا عَنْ الشَّعْبِيِّ.

L3912 This is the position of Sufyān al-Thawrī, al-Awzāʿī, al-Ḥasan ibn Ḥayy, Abū Ḥanīfah, al-Shāfiʿī, Aḥmad ibn Ḥanbal, Dāwūd ibn ʿAlī, and all their companions. This is also the view held by Isḥāq ibn Rāhwayh and the majority of the people of Hadith.

وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَالْأَوْزَاعِيِّ وَالْحَسَنِ بْنِ حَيٍّ وَأَبِي حَنِيفَةَ وَالشَّافِعِيِّ وَأَحْمَدَ بْنِ حَنْبَلٍ وَدَاوُد بْنِ عَلِيٍّ وَجَمِيعِ أَصْحَابِهِمْ، وَهُوَ قَوْلُ إسْحَاقَ بْنِ رَاهْوَيْهِ وَجُمْلَةِ أَصْحَابِ الْحَدِيثِ.

L3913 Ashhab also narrated it from Malik, and the narration from Malik is inconsistent. The most evident view from him is the disapproval of wiping for the

وَقَدْ رَوَاهُ أَيْضًا أَشْهَبُ عَنْ مَالِكٍ وَالرِّوَايَةُ عَنْ مَالِكٍ مُخْتَلِفَةٌ، فَالْأَظْهَرُ عَنْهُ كَرَاهَةُ الْمَسْحِ لِلْمُقِيمِ وَقَدْ رُوِيَ عَنْهُ إِجَازَةُ الْمَسْحِ لِلْمُقِيمِ، وَأَنَّهُ لَا يَرَى التَّوْقِيتَ لَا لِلْمُقِيمِ وَلَا لِلْمُسَافِرِ وَأَنَّهُمَا يَمْسَحَانِ أَبَدًا مَا لَمْ يَجْنُبَا.

resident, though some narrations from him permit wiping for the resident. He did not advocate specifying a time limit—neither for the resident nor the traveler—holding that both may wipe indefinitely as long as they do not incur major impurity.

وَتَعَلَّقَ مُقَلِّدُوهُ فِي ذَلِكَ بِأَخْبَارٍ سَاقِطَةٍ لَا يَصِحُّ مِنْهَا شَيْءٌ، أَرْفَعُهَا مِنْ طَرِيقِ خُزَيْمَةَ بْنِ ثَابِتٍ، رَوَاهُ أَبُو عَبْدِ اللَّهِ الْجَدَلِيُّ صَاحِبُ رَايَةِ الْكَافِرِ الْمُخْتَارِ، وَلَا يُعْتَمَدُ عَلَى رِوَايَتِهِ، ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَيْسَ فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبَاحَ الْمَسْحَ أَكْثَرَ مِنْ ثَلَاثٍ، وَلَكِنْ فِي آخِرِ الْخَبَرِ مِنْ قَوْلِ الرَّاوِي: وَلَوْ تَمَادَى السَّائِلُ لَزَادَنَا.

His emulators in that matter have relied on weak reports, none of which are authentic. The highest in chain among them is transmitted through Khuzaymah ibn Thābit, narrated by Abū ʻAbdullāh al-Jadalī—the standard-bearer of the disbeliever al-Mukhtar—whose narration is not relied upon. Even if it were authentic, it would not constitute proof for them, for it does not mention that the Messenger of Allah (peace and blessings be upon him) permitted wiping more than three times. Rather, the narrator states at the end of the report: "If the one asking [the Prophet] had persisted, he would have given us more."

وَهَذَا ظَنٌّ وَغَيْبٌ لَا يَحِلُّ الْقَطْعُ بِهِ فِي أَخْبَارِ النَّاسِ، فَكَيْفَ فِي الدِّينِ إِلَّا أَنَّهُ صَحَّ مِنْ هَذَا اللَّفْظِ أَنَّ السَّائِلَ لَمْ يَتَمَادَ فَلَمْ يَزِدْهُمْ شَيْئًا، فَصَارَ هَذَا الْخَبَرُ لَوْ صَحَّ - حُجَّةً لَنَا عَلَيْهِمْ، وَمُبْطِلًا لِقَوْلِهِمْ، وَمُبَيِّنًا لِتَوْقِيتِ الثَّلَاثَةِ أَيَّامٍ فِي السَّفَرِ وَالْيَوْمِ وَاللَّيْلَةِ فِي الْحَضَرِ.

This is conjecture and matters of the unseen wherein definitive assertion is impermissible regarding reports about people—how then in matters of religion? However, it has been verified through this wording that the questioner did not overstep and thus added nothing further to them. Therefore, this report (if authentic) constitutes proof for us against them, nullifying their assertion and clarifying the specified duration of three days during travel and a day and a night in residence.

وَآخَرُ مِنْ طَرِيقِ أَنَسٍ، رَوَاهُ أَسَدُ بْنُ مُوسَى عَنْ حَمَّادِ بْنِ سَلَمَةَ، وَأَسَدٌ مُنْكَرُ الْحَدِيثِ، وَلَمْ يَرْوِ هَذَا الْخَبَرَ أَحَدٌ مِنْ ثِقَاتِ أَصْحَابِ حَمَّادِ بْنِ سَلَمَةَ.

Another narration through the chain of Anas, reported by Asad ibn Musa from Hammad ibn Salamah. Asad is known for munkar narrations in hadith, and none of the trustworthy companions among Hammad ibn Salamah's associates have transmitted this report.

وَآخَرُ مِنْ طَرِيقِ أَنَسٍ مُنْقَطِعٌ، لَيْسَ فِيهِ إِلَّا «إِذَا تَوَضَّأَ أَحَدُكُمْ وَلَبِسَ خُفَّيْهِ فَلْيُصَلِّ فِيهِمَا وَلْيَمْسَحْ عَلَيْهِمَا مَا لَمْ يَخْلَعْهُمَا إِلَّا مِنْ جَنَابَةٍ» .

Another narration via Anas is disconnected, containing only: "When one of you performs ablution and dons his leather socks, let him pray in them and wipe over them as long as he does not remove them unless due to major ritual impurity."

ثُمَّ لَوْ صَحَّ لَكَانَتْ أَحَادِيثُ التَّوْقِيتِ زَائِدَةً عَلَيْهِ، وَالزِّيَادَةُ لَا يَحِلُّ تَرْكُهَا.

Then, if it were valid, the ahadith specifying the time would have been an addition to it, and it is impermissible to abandon the addition.

And another through the chain of Ubayy ibn Umarah, in which there are

Yahya ibn Ayyub al-Kufi and other unknown narrators.

وَآخَرُ مِنْ طَرِيقِ أُبَيِّ بْنِ عُمَارَةَ، فِيهِ يَحْيَى بْنُ أَيُّوبَ الْكُوفِيُّ وَأُخَرُ مَجْهُولُونَ.

L3921 Another narration in this regard: Umar ibn Ishaq ibn Yasar—the brother of Muhammad ibn Ishaq—said: "I read in a book belonging to Ata ibn Yasar while in his presence: 'I asked Maymunah about wiping over leather socks. She responded: "I asked, 'O Messenger of God, does one wipe over the leather socks every time without removing them?' He answered: 'Yes.'"'"

وَآخَرُ فِيهِ: قَالَ عُمَرُ بْنُ إِسْحَاقَ بْنِ يَسَارٍ - أَخُو مُحَمَّدِ بْنِ إِسْحَاقَ: قَرَأْتُ فِي كِتَابٍ لِعَطَاءِ بْنِ يَسَارٍ مَعَ عَطَاءِ بْنِ يَسَارٍ: «سَأَلْتُ مَيْمُونَةَ عَنْ الْمَسْحِ عَلَى الْخُفَّيْنِ فَقَالَتْ قُلْتُ: يَا رَسُولَ اللَّهِ أَكُلَّ سَاعَةٍ يَمْسَحُ الْإِنْسَانُ عَلَى الْخُفَّيْنِ وَلَا يَنْزِعُهُمَا؟ قَالَ: نَعَمْ» .

L3922 Ali said: This contains no proof, because Ata ibn Yasar did not mention to Umar ibn Ishaq that he was the one who questioned Maymunah, and perhaps the questioner was someone else. It is impermissible to establish definitive rulings in religion based on uncertainty. Even if it were authentic, it would not constitute proof for them, as it only mentions the permissibility of wiping at every time. Thus, we say: If one fulfills the conditions for wiping - completing the ablution, wearing both footwear in a state of purity, fulfilling the specified time, and removing them for janabah - none of these conditions are mentioned in this report. Therefore, their reliance upon it is invalid.

قَالَ عَلِيٌّ: هَذَا لَا حُجَّةَ فِيهِ لِأَنَّ عَطَاءَ بْنَ يَسَارٍ لَمْ يَذْكُرْ لِعُمَرَ بْنِ إِسْحَاقَ أَنَّهُ هُوَ السَّائِلُ مَيْمُونَةَ، وَلَعَلَّ السَّائِلَ غَيْرُهُ، وَلَا يَجُوزُ الْقَطْعُ فِي الدِّينِ بِالشَّكِّ، ثُمَّ لَوْ صَحَّ لَمْ تَكُنْ فِيهِ حُجَّةٌ لَهُمْ، لِأَنَّهُ لَيْسَ فِيهِ إلَّا إبَاحَةُ الْمَسْحِ فِي كُلِّ سَاعَةٍ، وَهَكَذَا نَقُولُ: إذَا أَتَى بِشُرُوطِ الْمَسْحِ مِنْ إتْمَامِ الْوُضُوءِ وَلِبَاسِهِمَا عَلَى طَهَارَةٍ وَإِتْمَامِ الْوَقْتِ الْمَحْدُودِ وَخَلْعِهِمَا لِلْجَنَابَةِ، وَهَذَا كُلُّهُ لَيْسَ مَذْكُورًا مِنْهُ شَيْءٌ فِي هَذَا الْخَبَرِ، فَبَطَلَ تَعَلُّقُهُمْ بِهِ.

L3923 And they mentioned narrations from the Companions (may Allah be pleased with them) that are not authentic.

وَذَكَرُوا آثَارًا عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا تَصِحُّ.

L3924 Among them is a narration transmitted by Asad ibn Musa from Hammad ibn Salama from Muhammad ibn Ziyad from Zubayd ibn al-Salt, who said: I heard Umar ibn al-Khattab state: "When one of you performs ablution and dons his leather socks, let him wipe over them and pray in them as long as he does not remove them, removing them only due to major impurity." This narration is uniquely transmitted by Asad ibn Musa from Hammad. Asad is rejected in hadith transmission; his narrations are not authoritative, and this report has been invalidated. The authentic version of this account is what we have transmitted through Abd al-Rahman ibn Mahdi from Hammad ibn Salama from Muhammad ibn Ziyad, who said: I heard Zubayd ibn al-Salt relate: I heard Umar ibn al-Khattab declare: "When one of you performs ablution and places his leather socks on his feet while they are in a state of purity, let him wipe over them if he wishes, and he must not remove them

مِنْهَا أَثَرٌ عَنْ أَسَدِ بْنِ مُوسَى عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ زِيَادٍ عَنْ زُبَيْدِ بْنِ الصَّلْتِ، سَمِعْتُ عُمَرَ بْنَ الْخَطَّابِ يَقُولُ: إذَا تَوَضَّأَ أَحَدُكُمْ وَلَبِسَ خُفَّيْهِ فَلْيَمْسَحْ عَلَيْهِمَا وَلْيُصَلِّ فِيهِمَا مَا لَمْ يَخْلَعْهُمَا إلَّا مِنْ جَنَابَةٍ. وَهَذَا مِمَّا انْفَرَدَ بِهِ أَسَدُ بْنُ مُوسَى عَنْ حَمَّادٍ، وَأَسَدٌ مُنْكَرُ الْحَدِيثِ لَا يُحْتَجُّ بِهِ، وَقَدْ أَحَالَهُ، وَالصَّحِيحُ مِنْ هَذَا الْخَبَرِ هُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ زِيَادٍ قَالَ سَمِعْتُ زُبَيْدَ بْنَ الصَّلْتِ سَمِعْتُ عُمَرَ بْنَ الْخَطَّابِ يَقُولُ: إذَا تَوَضَّأَ أَحَدُكُمْ وَأَدْخَلَ خُفَّيْهِ فِي رِجْلَيْهِ وَهُمَا طَاهِرَتَانِ فَلْيَمْسَحْ عَلَيْهِمَا إنْ شَاءَ وَلَا يَخْلَعْهُمَا إلَّا مِنْ جَنَابَةٍ، وَهَذَا لَيْسَ فِيهِ "

except due to major impurity." This version does not include the phrase "as long as he does not remove them" as reported by Asad. The established ruling from Umar concerning the time limit—through the transmissions of Nabata al-Ju'fi and Abu Uthman al-Nahdi, both among the most reliable Successors—contains the additional stipulation beyond what is stated in this report.

مَا لَمْ يَخْلَعْهُمَا " كَمَا رَوَى أَسَدٌ، وَالثَّابِتُ عَنْ عُمَرَ فِي التَّوْقِيتِ - بِرِوَايَةِ نَبَاتَةَ الْجُعْفِيِّ وَأَبِي عُثْمَانَ النَّهْدِيِّ، وَهُمَا مِنْ أَوْثَقِ التَّابِعِينَ - هُوَ الزَّائِدُ عَلَى مَا فِي هَذَا الْخَبَرِ.

L3925 Another [report] via the chain of Hammad ibn Salamah narrated from 'Ubayd Allah ibn 'Umar: that 'Umar ibn al-Khattab did not stipulate any time limit for wiping over the khuffs (leather socks). This chain is disconnected, for 'Ubayd Allah ibn 'Umar did not contemporaneously meet anyone who had met 'Umar – so how could this [report] be attributed to 'Umar?

وَآخَرُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَانَ لَا يَجْعَلُ فِي الْمَسْحِ عَلَى الْخُفَّيْنِ وَقْتًا، وَهَذَا مُنْقَطِعٌ؛ لِأَنَّ عُبَيْدَ اللَّهِ بْنَ عُمَرَ لَمْ يُدْرِكْ أَحَدًا أَدْرَكَ عُمَرَ، فَكَيْفَ عُمَرُ.

L3926 Another narration through Kathīr ibn Shinẓīr from al-Ḥasan: "We traveled with the Companions of the Messenger of Allah—may Allah's peace and blessings be upon him—and they would wipe over their khuffs without time or excuse." Kathīr is a very weak narrator.

وَآخَرُ مِنْ طَرِيقِ كَثِيرِ بْنِ شِنْظِيرٍ عَنْ الْحَسَنِ: سَافَرْنَا مَعَ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَانُوا يَمْسَحُونَ عَلَى خِفَافِهِمْ مِنْ غَيْرِ وَقْتٍ وَلَا عُذْرٍ، وَكَثِيرٌ ضَعِيفٌ جِدًّا.

L3927–3928 And a report we have narrated through the chain of ʿAbd al-Raḥmān ibn Mahdī, who narrated from ʿAbd Allāh ibn al-Mubārak, from Saʿīd ibn Yazīd, from Yazīd ibn Abī Ḥabīb, from ʿAlī ibn Rabāḥ, from ʿUqbah ibn ʿĀmir: that ʿAmr ibn al-ʿĀṣ and Shuraḥbīl ibn Ḥasanah both sent him as a courier to Abū Bakr with the head of Sān. He then mentioned the ḥadīth, which included: "Then he turned to ʿUqbah and said, 'For how long have you not removed your *khuffayn* (leather socks used in ablution)?' He replied, 'From one Friday to the next.' He said, 'You are correct.'"

وَخَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ ثنا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ سَعِيدِ بْنِ يَزِيدَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عَلِيِّ بْنِ رَبَاحٍ عَنْ عُقْبَةَ بْنِ عَامِرٍ أَنَّ عَمْرَو بْنَ الْعَاصِ وَشُرَحْبِيلَ بْنَ حَسَنَةَ بَعَثَاهُ بَرِيدًا إلَى أَبِي بَكْرٍ بِرَأْسِ سَانٍ - فَذَكَرَ الْحَدِيثَ وَفِيهِ: ثُمَّ أَقْبَلَ عَلَى عُقْبَةَ وَقَالَ: مُذْ كَمْ لَمْ تَنْزِعْ خُفَّيْكَ؟ قَالَ مِنْ الْجُمُعَةِ إلَى الْجُمُعَةِ، قَالَ أَصَبْتَ.

L3929 And indeed, 'Abd al-Raḥmān once narrated it from Yazīd ibn Abī Ḥabīb from Abī al-Khayr from 'Uqbah.

وَقَدْ حَدَّثَ بِهِ عَبْدُ الرَّحْمَنِ مَرَّةً عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ أَبِي الْخَيْرِ عَنْ عُقْبَةَ.

L3930 Ali said: This is the closest instance where someone unfamiliar with the ḥadīth could err, and this is a defective narration because Yazīd ibn Abī Ḥabīb did not hear it from ʿAlī ibn Rabāḥ nor from Abū al-Khayr. Rather, he heard it from ʿAbdullāh ibn al-Ḥakam al-Balawī, who narrated ʿAlī ibn Rabāḥ's report.

قَالَ عَلِيٌّ: هَذَا أَقْرَبُ مَا يُمْكِنُ أَنْ يَغْلَطَ فِيهِ مَنْ لَا يَعْرِفُ الْحَدِيثَ، وَهَذَا خَبَرٌ مَعْلُولٌ؛ لِأَنَّ يَزِيدَ بْنَ أَبِي حَبِيبٍ لَمْ يَسْمَعْهُ مِنْ عَلِيِّ بْنِ رَبَاحٍ وَلَا مِنْ أَبِي الْخَيْرِ، وَإِنَّمَا سَمِعَهُ مِنْ عَبْدِ اللَّهِ بْنِ الْحَكَمِ الْبَلَوِيِّ عَنْ عَلِيِّ بْنِ رَبَاحٍ.

وَعَبْدُ اللَّهِ بْنُ الْحَكَمِ مَجْهُولٌ، هَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ وَاللَّيْثِ بْنِ سَعْدٍ كِلَاهُمَا عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عَبْدِ اللَّهِ بْنِ الْحَكَمِ أَنَّهُ سَمِعَ عَلِيَّ بْنَ رَبَاحٍ اللَّخْمِيَّ يُخْبِرُ أَنَّ عُقْبَةَ بْنَ عَامِرٍ الْجُهَنِيَّ قَالَ: قَدِمْتُ عَلَى عُمَرَ بِفَتْحِ الشَّامِ وَعَلَيَّ خُفَّانِ لِي جُرْمُوقَانِ غَلِيظَانِ، فَقَالَ لِي عُمَرُ: كَمْ لَكَ مُذْ لَمْ تَنْزِعْهُمَا؟ قُلْتُ لَبِسْتُهُمَا يَوْمَ الْجُمُعَةِ وَالْيَوْمُ الْجُمُعَةُ، قَالَ أَصَبْتَ.

L3931 And ʿAbdullāh ibn al-Ḥakam is unknown. We have transmitted it thus through the chain of Ibn Wahb from ʿAmr ibn al-Ḥārith and al-Layth ibn Saʿd - both of them narrating from Yazīd ibn Abī Ḥabīb, from ʿAbdullāh ibn al-Ḥakam - that he heard ʿAlī ibn Rabāḥ al-Lakhmī report that ʿUqbah ibn ʿĀmir al-Juhanī said: I came to ʿUmar during the conquest of Syria wearing two thick Jurmuqān leather socks. ʿUmar said to me: "How long has it been since you removed them?" I replied: "I wore them on Friday, and today is Friday." He said: "You have done right."

قَالَ ابْنُ وَهْبٍ: وَسَمِعْتُ زَيْدَ بْنَ الْحُبَابِ يَذْكُرُ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ: لَوْ لَبِسْتُ الْخُفَّيْنِ وَرِجْلَايَ طَاهِرَتَانِ وَأَنَا عَلَى وُضُوءٍ لَمْ أُبَالِ أَنْ لَا أَنْزِعَهُمَا حَتَّى أَبْلُغَ الْعِرَاقَ.

L3932 Ibn Wahb said: I heard Zayd ibn al-Hubab narrate from Umar ibn al-Khattab that he said: "If I were to wear the *khuffayn* while my feet are pure and I am in a state of ablution, I would not mind not removing them until I reach Iraq."

قَالَ عَلِيٌّ: فَهَكَذَا هُوَ الْحَدِيثُ، فَسَقَطَ جُمْلَةً - وَلِلَّهِ الْحَمْدُ - وَزَيْدُ بْنُ الْحُبَابِ لَمْ يَلْقَ أَحَدًا رَأَى عُمَرُ فَكَيْفَ عُمَرُ.

L3933 Ali said: "Thus is the hadith—but a sentence was omitted (and praise be to Allah)—and Zayd ibn al-Ḥubāb did not meet anyone who saw ʿUmar. How then ʿUmar?"

وَقَدْ رُوِيَ أَيْضًا هَذَا الْخَبَرُ مِنْ طَرِيقِ مُعَاوِيَةَ بْنِ صَالِحٍ عَنْ عِيَاضٍ الْقُرَشِيِّ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ أَنَّ عُقْبَةَ وَهَذَا أَسْقَطُ وَأَخْبَثُ، لِأَنَّ يَزِيدَ لَمْ يُدْرِكْ عُقْبَةَ وَفِيهِ مُعَاوِيَةُ بْنُ صَالِحٍ وَلَيْسَ بِالْقَوِيِّ، فَبَطَلَ كُلُّ مَا جَاءَ فِي هَذَا الْبَابِ.

L3934 This report has also been narrated through the chain of Muʿāwiyah ibn Ṣāliḥ from ʿIyāḍ al-Qurashī from Yazīd ibn Abī Ḥabīb regarding ʿUqbah - and this [narration] is more discarded and corrupt, for Yazīd did not meet ʿUqbah, and it includes Muʿāwiyah ibn Ṣāliḥ, who is not strong. Thus, everything reported in this chapter is rendered baseless.

وَلَا يَصِحُّ خِلَافُ التَّوْقِيتِ عَنْ أَحَدٍ مِنَ الصَّحَابَةِ إِلَّا عَنِ ابْنِ عُمَرَ فَقَطْ، فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ هِشَامِ بْنِ حَسَّانَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ أَنَّهُ كَانَ لَا يُوَقِّتُ فِي الْمَسْحِ عَلَى الْخُفَّيْنِ شَيْئًا.

L3935 No valid difference of opinion concerning the specification of time is reported from any Companion except Ibn ʿUmar alone. We have received narrations through the chain of Hishām ibn Ḥassān, from ʿUbayd Allāh ibn ʿUmar, from Nāfiʿ, from Ibn ʿUmar that he did not specify any time period for wiping over leather socks.

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ فِيهِ، لِأَنَّ ابْنَ عُمَرَ لَمْ يَكُنْ عِنْدَهُ الْمَسْحُ وَلَا عَرَفَهُ، بَلْ أَنْكَرَهُ حَتَّى أَعْلَمَهُ بِهِ سَعْدٌ بِالْكُوفَةِ، ثُمَّ أَبُوهُ بِالْمَدِينَةِ فِي خِلَافَتِهِ، فَلَمْ يَكُنْ فِي عِلْمِ الْمَسْحِ كَغَيْرِهِ، وَعَلَى ذَلِكَ فَقَدْ رُوِيَ عَنْهُ التَّوْقِيتُ.

L3936–3937 Abu Muhammad said: This contains no valid proof, for Ibn Umar neither possessed knowledge of wiping nor was aware of it. Rather, he rejected it until Saʿd informed him of it in Kufa, and later his father was in Medina during his caliphate. Thus, he was not as knowledgeable about wiping as others. Nonetheless, the time-bound ruling [regarding wiping] has been narrated from him.

L3938 It has been narrated to us through the chain of Ḥammād ibn Zayd, from Muḥammad ibn ʻUbayd Allāh al-ʻArzamī, from Nāfiʻ, from Ibn ʻUmar, who said: "Where are those who inquire about wiping over leather socks? For the traveler three days, and for the resident a day and a night."

رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ الْعَرْزَمِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: أَيْنَ السَّائِلُونَ عَنْ الْمَسْحِ عَلَى الْخُفَّيْنِ؟ لِلْمُسَافِرِ ثَلَاثًا وَلِلْمُقِيمِ يَوْمًا وَلَيْلَةً.

L3939 Then, if what we mentioned were authentically established from Abu Bakr, Umar, and Uqbah (may Allah be pleased with them), and if Ali, Ibn Masʻud, and others besides those two had opposed that, it would be obligatory in the event of disagreement to refer back to the clarification of the Messenger of Allah (peace and blessings be upon him). His clarification (peace be upon him) has been authentically established with the determination of time, and nothing else has been authentically reported from him at all. How could this be, when nothing except the determination of time has ever been authentically reported from Umar?

ثُمَّ لَوْ صَحَّ عَنْ أَبِي بَكْرٍ وَعُمَرَ وَعُقْبَةَ - رَضِيَ اللَّهُ عَنْهُمْ - مَا ذَكَرْنَا، وَكَانَ قَدْ خَالَفَ ذَلِكَ عَلِيٌّ وَابْنُ مَسْعُودٍ وَغَيْرُهُمَا، لَوَجَبَ عِنْدَ التَّنَازُعِ الرَّدُّ إلَى بَيَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبَيَانُهُ - عَلَيْهِ السَّلَامُ - قَدْ صَحَّ بِالتَّوْقِيتِ، وَلَمْ يَصِحَّ عَنْهُ شَيْءٌ غَيْرُهُ أَصْلًا، فَكَيْفَ وَلَمْ يَصِحَّ قَطُّ عَنْ عُمَرَ إلَّا التَّوْقِيتُ.

L3940 Ali said: When the two stipulated durations have elapsed, Abū Ḥanīfah, al-Shāfiʻī, and some of our companions stated: He must remove them (i.e., the khuffs) and wash his feet—and this is required. Abū Ḥanīfah said: If a person sits for the duration of the *tashahhud* (the sitting recitation in prayer) at the conclusion of his prayer, then intentionally or unintentionally breaks his ablution through urination, flatulence, or other means, or speaks intentionally or unintentionally, his prayer is complete. The closing salām is not an obligatory part of the prayer.

قَالَ عَلِيٌّ: فَإِذَا انْقَضَى الْأَمَدَانِ الْمَذْكُورَانِ، فَإِنَّ أَبَا حَنِيفَةَ وَالشَّافِعِيَّ وَبَعْضَ أَصْحَابِنَا قَالُوا: يَخْلَعُهُمَا وَيَغْسِلُ رِجْلَيْهِ وَلَا بُدَّ، وَقَالَ أَبُو حَنِيفَةَ: إذَا قَعَدَ الْإِنْسَانُ مِقْدَارَ التَّشَهُّدِ فِي آخِرِ صَلَاتِهِ ثُمَّ أَحْدَثَ عَمْدًا أَوْ نِسْيَانًا بِبَوْلٍ أَوْ رِيحٍ أَوْ غَيْرِ ذَلِكَ أَوْ تَكَلَّمَ عَمْدًا أَوْ نِسْيَانًا فَقَدْ تَمَّتْ صَلَاتُهُ، وَلَيْسَ السَّلَامُ مِنْ الصَّلَاةِ فَرْضًا.

L3941 He said: If he sits for the duration of the Tashahhud (testimonial sitting) at the end of his prayer, and the time for wiping [over footwear] expires afterward, his prayer is invalidated and his ablution is nullified unless he has already uttered the salutation (taslīm). This statement contains contradictions and errors so grave that they leave no choice but to obligate refuting it, and praise be to Allah for preservation from error.

قَالَ: فَإِنْ قَعَدَ مِقْدَارَ التَّشَهُّدِ فِي آخِرِ صَلَاتِهِ وَانْقَضَى وَقْتُ الْمَسْحِ بَعْدَ ذَلِكَ فَقَدْ بَطَلَتْ صَلَاتُهُ وَبَطَلَتْ طَهَارَتُهُ مَا لَمْ يُسَلِّمْ، وَفِي هَذَا مِنْ التَّنَاقُضِ وَالْخَطَأِ مَا لَا يَحْتَاجُ مَعَهُ إلَّا تَكْلِيفِ رَدٍّ عَلَيْهِ، وَالْحَمْدُ لِلَّهِ عَلَى السَّلَامَةِ.

L3942 Indeed, Al-Shafiʻī once said, "He begins the ablution."

وَقَدْ قَالَ الشَّافِعِيُّ مَرَّةً: يَبْتَدِئُ الْوُضُوءَ.

L3943 Ibrahim al-Nakhaʼi, al-Hasan al-Basri, Ibn Abi Layla, and Dawud said: One may pray as long as his ritual purity has not been invalidated by a ritual impurity that nullifies ablution. This is the only permissible opinion, because

وَقَالَ إبْرَاهِيمُ النَّخَعِيُّ وَالْحَسَنُ الْبَصْرِيُّ وَابْنُ أَبِي لَيْلَى وَدَاوُد: يُصَلِّي مَا لَمْ تَنْتَقِضْ طَهَارَتُهُ بِحَدَثٍ يَنْقُضُ الْوُضُوءَ، وَهَذَا هُوَ الْقَوْلُ الَّذِي لَا يَجُوزُ غَيْرُهُ، لِأَنَّهُ لَيْسَ فِي

none of the reports indicate that ritual purity is invalidated from the limbs of ablution or from some of them due to the expiry of the duration allotted for wiping. Rather, the Prophet—peace be upon him—forbade travelers to wipe beyond three days and residents beyond a day and night.

L3944–3946 Whoever asserts contrary to this has inserted into the narration what is not part of it and has falsely ascribed to Allah's Messenger—peace and blessings be upon him—what he did not say. If one does this erroneously, he incurs no sin, but if done intentionally after proof has been established against him, he has committed a grave sin among the major sins. Purity is only invalidated by a *ḥadath*, and since this person's purity is confirmed and no *ḥadath* has occurred, he remains pure. A pure person may pray as long as no *ḥadath* occurs or unless an explicit text arises stating that... His purification is invalidated even without experiencing a minor ritual impurity. As for this person whose wiping period has expired without experiencing a minor ritual impurity, there is no textual evidence indicating the invalidation of his purification—neither regarding some of his limbs nor all of them. He remains pure and may pray until he experiences a minor ritual impurity. At that point, he must remove his leather socks and whatever is on his feet, perform ablution, then renew the wiping for another specified period. This process continues perpetually, and with Allah, the Exalted, is success.

L3947 As for those who claim that ablution is invalidated specifically for one's feet, this is a baseless claim with no evidence—neither from the Sunnah, the Quran, a weak report, consensus, the statement of a Companion, analogy, nor any sound opinion. It has never been established in the religion that a ritual impurity nullifies ablution—after its proper completion and the permissibility of praying with it—for some limbs and not others. And success is granted by Allah, the Exalted.

L3948 As for the legal division formulated by Abū Ḥanīfah, it was never reported from anyone before him, and in Allah, the Exalted, we seek strength.

L3949 213. Issue:

شَيْءٍ مِنْ الْأَخْبَارِ أَنَّ الطَّهَارَةَ تَنْتَقِضُ عَنْ أَعْضَاءِ الْوُضُوءِ وَلَا عَنْ بَعْضِهَا بِانْقِضَاءِ وَقْتِ الْمَسْحِ، وَإِنَّمَا نُهِيَ - عَلَيْهِ السَّلَامُ - عَنْ أَنْ يَمْسَحَ أَحَدٌ أَكْثَرَ مِنْ ثَلَاثٍ لِلْمُسَافِرِ أَوْ يَوْمٍ وَلَيْلَةٍ لِلْمُقِيمِ.

فَمَنْ قَالَ غَيْرَ هَذَا فَقَدْ أَحْقَمَ فِي الْخَبَرِ مَا لَيْسَ فِيهِ، وَقَوَّلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْ، فَمَنْ فَعَلَ ذَلِكَ وَاهِمًا فَلَا شَيْءَ عَلَيْهِ، وَمَنْ فَعَلَ ذَلِكَ عَامِدًا بَعْدَ قِيَامِ الْحُجَّةِ عَلَيْهِ فَقَدْ أَتَى كَبِيرَةً مِنْ الْكَبَائِرِ، وَالطَّهَارَةُ لَا يَنْقُضُهَا إلَّا الْحَدَثُ، وَهَذَا قَدْ صَحَّتْ طَهَارَتُهُ وَلَمْ يُحْدِثْ فَهُوَ طَاهِرٌ، وَالطَّاهِرُ يُصَلِّي مَا لَمْ يُحْدِثْ أَوْ مَا لَمْ يَأْتِ نَصٌّ جَلِيٌّ فِي أَنَّ طَهَارَتَهُ انْتَقَضَتْ وَإِنْ لَمْ يُحْدِثْ، وَهَذَا الَّذِي انْقَضَى وَقْتُ مَسْحِهِ لَمْ يُحْدِثْ وَلَا جَاءَ نَصٌّ فِي أَنَّ طَهَارَتَهُ انْتَقَضَتْ لَا عَنْ بَعْضِ أَعْضَائِهِ وَلَا عَنْ جَمِيعِهَا، فَهُوَ طَاهِرٌ يُصَلِّي حَتَّى يُحْدِثَ، فَيَخْلَعُ خُفَّيْهِ حِينَئِذٍ وَمَا عَلَى قَدَمَيْهِ وَيَتَوَضَّأُ ثُمَّ يَسْتَأْنِفُ الْمَسْحَ تَوْقِيتًا آخَرَ، وَهَكَذَا أَبَدًا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا مَنْ قَالَ إنَّ الطَّهَارَةَ تَنْتَقِضُ عَنْ قَدَمَيْهِ خَاصَّةً، فَقَوْلٌ فَاسِدٌ لَا دَلِيلَ عَلَيْهِ لَا مِنْ سُنَّةٍ، وَلَا مِنْ قُرْآنٍ، وَلَا مِنْ خَبَرٍ وَاهٍ، وَلَا مِنْ إجْمَاعٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا مِنْ قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ أَصْلًا، وَمَا عُلِمَ فِي الدِّينِ قَطُّ حَدَثٌ يَنْقُضُ الطَّهَارَةَ - بَعْدَ تَمَامِهَا وَبَعْدَ جَوَازِ الصَّلَاةِ بِهَا - عَنْ بَعْضِ الْأَعْضَاءِ دُونَ بَعْضٍ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا تَقْسِيمُ أَبِي حَنِيفَةَ فَمَا رُوِيَ قَطُّ عَنْ أَحَدٍ مِنْ النَّاسِ قَبْلَهُ، وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

٢١٣ - مَسْأَلَةٌ:

L3950 The resident begins after a day and night, and the traveler after three days and their nights, starting from when wiping becomes permissible for him following his impurity—whether he wiped and performed ablution or did not wipe nor perform ablution, intentionally or forgetfully. If he incurs a state of minor impurity after his day when more or less of these two durations has elapsed, he may wipe only for the remainder of the two periods. If he wipes before the completion of either duration by even a moment, he may pray with that wiping provided he does not lose ritual purity.

وَيَبْدَأُ بَعْدَ الْيَوْمِ وَاللَّيْلَةِ الْمُقِيمُ وَبَعْدَ الثَّلَاثَةِ أَيَّامٍ بِلَيَالِيهَا الْمُسَافِرُ مِنْ حِينِ يَجُوزُ لَهُ الْمَسْحُ إِثْرَ حَدَثِهِ، سَوَاءٌ مَسَحَ وَتَوَضَّأَ أَوْ لَمْ يَمْسَحْ وَلَا تَوَضَّأَ، عَامِدًا أَوْ سَاهِيًا، فَإِنْ أَحْدَثَ يَوْمَهُ بَعْدَ مَا مَضَى أَكْثَرُ هَذَيْنِ الْأَمَدَيْنِ أَوْ أَقَلُّهُمَا كَانَ لَهُ أَنْ يَمْسَحَ بَاقِيَ الْأَمَدَيْنِ فَقَطْ، وَلَوْ مَسَحَ قَبْلَ انْقِضَاءِ أَحَدِ الْأَمَدَيْنِ بِدَقِيقَةٍ كَانَ لَهُ أَنْ يُصَلِّيَ بِهِ مَا لَمْ يُحْدِثْ.

L3951 Ali reported that Abu Hanifah, Al-Shafi'i, and Al-Thawri said: He begins after these two times, from the time he invalidates his wuḍū'.

قَالَ عَلِيٌّ: قَالَ أَبُو حَنِيفَةَ وَالشَّافِعِيُّ وَالثَّوْرِيُّ: يَبْتَدِئُ بَعْدَ هَذَيْنِ الْوَقْتَيْنِ مِنْ حِينِ يُحْدِثُ.

L3952 Ahmad ibn Hanbal said: The period begins after the two rak'ahs, starting from the time he performs wiping over the khuffs. It is reported from Al-Sha'bi that a resident may wipe over the khuffs for five prayers only while wearing them, and he may not wipe for more than that. A traveler may wipe over the khuffs for fifteen prayers only while wearing them, and he may not wipe for more than that. This is also the view of Ishaq ibn Rahawayh, Sulayman ibn Dawud al-Hashimi, and Abu Thawr.

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: يَبْدَأُ بَعْدَهُمَا مِنْ حِينِ يَمْسَحُ، وَرُوِيَ عَنْ الشَّعْبِيِّ يَمْسَحُ خَمْسَ صَلَوَاتٍ فَقَطْ إِنْ كَانَ مُقِيمًا، وَلَا يَمْسَحُ لِأَكْثَرَ، وَيَمْسَحُ خَمْسَ عَشْرَةَ صَلَاةً فَقَطْ، إِنْ كَانَ مُسَافِرًا، وَلَا يَمْسَحُ لِأَكْثَرَ وَبِهِ يَقُولُ إِسْحَاقُ بْنُ رَاهْوَيْهِ وَسُلَيْمَانُ بْنُ دَاوُد الْهَاشِمِيُّ وَأَبُو ثَوْرٍ.

L3953 Ali said: When they differed, it became incumbent upon us to examine these opinions and refer them to what Allah the Exalted has obligated us to return to—the Quran and the Sunnah of Allah's Messenger (peace be upon him). We did so, examining the view of those who claimed the obligation begins after two time periods from the moment of incurring ritual impurity. We found this evidently invalid, for the command of Allah's Messenger (peace be upon him)—which they all relied upon, either fully adopting it or hesitating in their adoption—only reached us as permitting ritual wiping (masḥ) for one of the two mentioned durations. They themselves acknowledge this, and it is impossible and invalid to permit ritual wiping during ablution while in a state of impurity—a position neither they nor others uphold. Furthermore, we found some impurities may indeed last very long: an hour, two hours, or more, such as defecation.

قَالَ عَلِيٌّ: فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِي هَذِهِ الْأَقْوَالِ وَنَرُدَّهَا إِلَى مَا افْتَرَضَ اللَّهُ عَزَّ وَجَلَّ عَلَيْنَا أَنْ نَرُدَّهَا عَلَيْهِ مِنْ الْقُرْآنِ وَسُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَفَعَلْنَا، فَنَظَرْنَا فِي قَوْلِ مَنْ قَالَ يَبْدَأُ بَعْدَ الْوَقْتَيْنِ مِنْ حِينِ يُحْدِثُ، فَوَجَدْنَاهُ ظَاهِرَ الْفَسَادِ، لِأَنَّ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي بِهِ تَعَلَّقُوا كُلُّهُمْ وَبِهِ أَخَذُوا أَوْ وَقَفُوا فِي أَخْذِهِمْ بِهِ - إِنَّمَا جَاءَنَا بِالْمَسْحِ مُدَّةَ أَحَدِ الْأَمَدَيْنِ الْمَذْكُورَيْنِ، وَهُمْ يُقِرُّونَ بِهَذَا، وَمِنْ الْمُحَالِ الْبَاطِلِ أَنْ يَجُوزَ لَهُ الْمَسْحُ فِي الْوُضُوءِ فِي حَالِ الْحَدَثِ، هَذَا مَا لَا يَقُولُونَ بِهِ هُمْ وَلَا غَيْرُهُمْ، وَوَجَدْنَا بَعْضَ الْأَحْدَاثِ قَدْ تَطُولُ جِدًّا السَّاعَةَ وَالسَّاعَتَيْنِ وَالْأَكْثَرَ كَالْغَائِطِ.

L3954–3956 And among them are those that last less, such as urine, Thus, this statement is

nullified with absolute certainty, and it also contradicts the textual authority of the report. They have no valid argument in this matter whatsoever.

وَمِنْهَا مَا يَدُومُ أَقَلَّ كَالْبَوْلِ، فَسَقَطَ هَذَا الْقَوْلُ بِيَقِينٍ لَا شَكَّ فِيهِ وَهُوَ أَيْضًا مُخَالِفٌ لِنَصِّ الْخَبَرِ، وَلَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا.

L3957 Then we examined the statement of those who restricted this duration to five prayers or fifteen prayers over three days, and we found they had no proof except considering the number of prayers in the day and night and in three days with their nights. This is baseless, for if one wipes over footwear after the sun passes its zenith at the end of the Dhuhr prayer's time, they would wipe until the dawn prayer, then could not pray the forenoon prayer with that wiping, nor any prayer thereafter until noon. Similarly, whoever wipes over footwear for the dawn prayer at the end of its time would wipe until praying the Isha prayer, then could not perform Witr, nor the night vigil prayer, nor pray the two Sunnah units of Fajr with that wiping. This contradicts the ruling of Allah's Messenger—peace and blessings be upon him—for he permitted the resident to wipe over footwear for a full day and night, while they prohibited wiping except for a day and part of a night, or a night and less than half a day. This is a clear error.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ حَدَّ ذَلِكَ بِالصَّلَوَاتِ الْخَمْسِ أَوْ الْخَمْسَ عَشْرَةَ، فَوَجَدْنَاهُمْ لَا حُجَّةَ لَهُمْ فِيهِ إلَّا مُرَاعَاةُ عَدَدِ الصَّلَوَاتِ فِي الْيَوْمِ وَاللَّيْلَةِ وَفِي الثَّلَاثَةِ الْأَيَّامِ بِلَيَالِيهِنَّ وَهَذَا لَا مَعْنَى لَهُ، لِأَنَّهُ إذَا مَسَحَ الْمَرْءُ بَعْدَ الزَّوَالِ فِي آخِرِ وَقْتِ الظُّهْرِ فَإِنَّهُ يَمْسَحُ إلَى صَلَاةِ الصُّبْحِ ثُمَّ لَا يَكُونُ لَهُ أَنْ يُصَلِّيَ الضُّحَى بِالْمَسْحِ، وَلَا صَلَاةَ بَعْدَهَا إلَى الظُّهْرِ وَكَذَلِكَ مَنْ مَسَحَ لِصَلَاةِ الصُّبْحِ فِي آخِرِ وَقْتِهَا فَإِنَّهُ يَمْسَحُ إلَى أَنْ يُصَلِّيَ الْعَتَمَةَ، ثُمَّ لَا يَكُونُ لَهُ أَنْ يُوتِرَ وَلَا أَنْ يَتَهَجَّدَ وَلَا أَنْ يَرْكَعَ رَكْعَتَيْ الْفَجْرِ بِمَسْحٍ، وَهَذَا خِلَافٌ لِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّهُ - عَلَيْهِ السَّلَامُ - فَسَّحَ لِلْمُقِيمِ فِي مَسْحِ يَوْمٍ وَلَيْلَةٍ، وَهُمْ مَنَعُوهُ مِنْ الْمَسْحِ إلَّا يَوْمًا وَبَعْضَ لَيْلَةٍ، أَوْ لَيْلَةً وَأَقَلَّ مِنْ نِصْفِ يَوْمٍ، وَهَذَا خَطَأٌ بَيِّنٌ.

L3958 Furthermore, their position would entail that if a person obligated to perform the five prayers slept through them, then awoke—provided he had performed ablution and had put on his leather socks in a state of ritual purity then slept—he may perform masḥ over them. Yet upon completing these prayers, it would not be permissible for him to perform masḥ [on the socks] thereafter during the remainder of that day and night. This contradicts the authentic narration, thus rendering this opinion untenable due to its contradiction of the narration and its complete absence of any proof to establish its validity.

وَأَيْضًا فَإِنَّهُ يَلْزَمُهُمْ أَنَّ مَنْ عَلَيْهِ خَمْسُ صَلَوَاتٍ نَامَ عَنْهُنَّ ثُمَّ اسْتَيْقَظَ - وَكَانَ قَدْ تَوَضَّأَ وَلَبِسَ خُفَّيْهِ عَلَى طَهَارَةٍ ثُمَّ نَامَ - أَنَّهُ يَمْسَحُ عَلَيْهِمَا، فَإِذَا أَتَمَّهُنَّ لَمْ يَجُزْ أَنْ يَمْسَحَ بَعْدَهُنَّ بَاقِيَ يَوْمِهِ وَلَيْلَتِهِ، وَهَذَا خِلَافُ الْخَبَرِ، فَسَقَطَ هَذَا الْقَوْلُ بِمُخَالَفَتِهِ لِلْخَبَرِ وَتَعَرِّيهِ مِنْ أَنْ يَكُونَ لِصِحَّتِهِ بُرْهَانٌ.

L3959 Then we examined Ahmad's statement and found that he stipulates: if a transgressor performed ablution and wore his leather socks (khuffs) in a state of purity, then remained for a month without praying intentionally, and then

repented, he may wipe over his khuffs from the time of his repentance for one day and night, or three days if he is a traveler.

ثُمَّ نَظَرْنَا فِي قَوْلِ أَحْمَدَ فَوَجَدْنَاهُ يُلْزِمُهُ إِنْ كَانَ إِنْسَانٌ فَاسِقٌ قَدْ تَوَضَّأَ وَلَبِسَ خُفَّيْهِ عَلَى طَهَارَةٍ ثُمَّ بَقِيَ شَهْرًا لَا يُصَلِّي عَامِدًا ثُمَّ تَابَ: أَنَّ لَهُ أَنْ يَمْسَحَ مِنْ حِينِ تَوْبَتِهِ يَوْمًا وَلَيْلَةً أَوْ ثَلَاثًا إِنْ كَانَ مُسَافِرًا.

L3960 Similarly, if he wiped for a day then deliberately neglected prayer for subsequent days, he may perform wiping at night. The same ruling applies to the traveler. According to this view, he could persist in wiping for a year or longer. However, this contradicts the explicit text of the report. Thus, this opinion is also invalidated, leaving none valid except our position.

وَكَذَلِكَ إِنْ مَسَحَ يَوْمًا ثُمَّ تَعَمَّدَ تَرْكَ الصَّلَاةِ أَيَّامًا فَإِنَّ لَهُ أَنْ يَمْسَحَ لَيْلَةً، وَهَكَذَا فِي الْمُسَافِرِ، فَعَلَى هَذَا يَتَمَادَى مَاسِحًا عَامًا وَأَكْثَرَ، وَهَذَا خِلَافُ نَصِّ الْخَبَرِ، فَسَقَطَ أَيْضًا هَذَا الْقَوْلُ وَلَمْ يَبْقَ إِلَّا قَوْلُنَا.

L3961–3963 We examined it and found it in agreement with the statement of Umar ibn al-Khattab—may Allah be pleased with him—which is authentically established from him, and in conformity with the text of the report transmitted regarding that matter. No other [opinion] remained, thus adopting it became obligatory, because the Messenger of Allah—peace and blessings of Allah be upon him—commanded him to wipe for a day and a night. Therefore, he may wipe if he wishes or remove what is on his feet. He must necessarily choose one of the two, and nothing else suffices him. He is disobedient to Allah the Almighty, a transgressor if he fails to perform either of the two. If he wipes, that is permissible for him and he has done well. If he does not wipe, he has disobeyed Allah or erred if he did so forgetfully, with no sin upon him. A portion of the timeframe designated by the Messenger of Allah—peace and blessings of Allah be upon him—has elapsed, leaving only the remainder. Similarly, whether he acted intentionally or forgot until the completion of a day and night for the resident, and three days with their nights. For the traveler, the time specified by Allah, the Exalted, as conveyed by His Prophet—peace be upon him—has indeed passed. It is not permissible for him to wipe outside the timeframe during which He has commanded him to do so.

فَنَظَرْنَا فِيهِ فَوَجَدْنَاهُ مُوَافِقًا لِقَوْلِ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - الَّذِي صَحَّ عَنْهُ وَمُوَافِقًا لِنَصِّ الْخَبَرِ الْوَارِدِ فِي ذَلِكَ، وَلَمْ يَبْقَ غَيْرُهُ فَوَجَبَ الْقَوْلُ بِهِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَهُ بِأَنْ يَمْسَحَ يَوْمًا وَلَيْلَةً، فَلَهُ أَنْ يَمْسَحَ إِنْ شَاءَ، وَأَنْ يَخْلَعَ مَا عَلَى رِجْلَيْهِ، لَا بُدَّ لَهُ مِنْ أَحَدِهِمَا، وَلَا يُجْزِيهِ غَيْرُهُمَا، وَهُوَ عَاصٍ لِلَّهِ عَزَّ وَجَلَّ، فَاسِقٌ إِنْ لَمْ يَأْتِ بِأَحَدِهِمَا، فَإِنْ مَسَحَ فَلَهُ ذَلِكَ وَقَدْ أَحْسَنَ، وَإِنْ لَمْ يَمْسَحْ فَقَدْ عَصَى اللَّهَ، أَوْ أَخْطَأَ إِنْ فَعَلَ ذَلِكَ نَاسِيًا وَلَا حَرَجَ عَلَيْهِ، وَقَدْ مَضَى مِنَ الْأَمَدِ الَّذِي وَقَّتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُدَّةٌ، وَبَقِيَ بَاقِيهَا فَقَطْ، وَهَكَذَا إِنْ تَعَمَّدَ أَوْ نَسِيَ حَتَّى يَنْقَضِيَ الْيَوْمُ وَاللَّيْلَةُ لِلْمُقِيمِ وَالثَّلَاثَةُ الْأَيَّامُ بِلَيَالِيهِنَّ لِلْمُسَافِرِ، فَقَدْ مَضَى الْوَقْتُ الَّذِي وَقَّتَهُ لَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَيْسَ لَهُ أَنْ يَمْسَحَ فِي غَيْرِ الْوَقْتِ الَّذِي أَمَرَهُ اللَّهُ تَعَالَى بِالْمَسْحِ فِيهِ.

L3964 If his prescribed duty was tayammum and he did not find water, so he performed tayammum and then put on his two khuffs, he may wipe over the khuffs when he finds water, because tayammum is a complete purification.

فَلَوْ كَانَ فَرْضُهُ التَّيَمُّمَ وَلَمْ يَجِدْ مَاءً فَتَيَمَّمَ ثُمَّ لَبِسَ خُفَّيْهِ، فَلَهُ أَنْ يَمْسَحَ إِذَا وَجَدَ الْمَاءَ، لِأَنَّ التَّيَمُّمَ طَهَارَةٌ تَامَّةٌ.

L3965 Allah the Exalted said regarding Tayammum: “But He intends to purify you” (Al-Ma’idah 5:6). Whoever is permitted to pray with Tayammum is undoubtedly pure. If his entire body is pure, then his feet are undoubtedly pure, as he wore his khuffs upon his feet while they were pure. Thus, it is permissible for him to wipe over them for the specified duration applicable to travelers. If he does not find water until after three full days - counting from when he incurred impurity after wearing his khuffs while in a state of purity from Tayammum - it becomes impermissible for him to wipe over them, because the duration has expired. He could have performed wiping through rainfall occurrence or by having water available from someone accompanying him.[31]

قَالَ اللَّهُ تَعَالَى وَقَدْ ذَكَرَ التَّيَمُّمَ: {وَلَكِنْ يُرِيدُ لِيُطَهِّرَكُمْ} [المائدة: ٦] وَمَنْ جَازَتْ لَهُ الصَّلَاةُ بِالتَّيَمُّمِ فَهُوَ طَاهِرٌ بِلَا شَكٍّ، وَإِذَا كَانَ طَاهِرًا كُلُّهُ فَقَدَمَاهُ طَاهِرَتَانِ بِلَا شَكٍّ، فَقَدْ أَدْخَلَ خُفَّيْهِ الْقَدَمَيْنِ وَهُمَا طَاهِرَتَانِ، فَجَائِزٌ لَهُ الْمَسْحُ عَلَيْهِمَا الْأَمَدَ الْمَذْكُورَ لِلْمُسَافِرِ، فَإِنْ لَمْ يَجِدْ الْمَاءَ إِلَّا بَعْدَ تَمَامِ الثَّلَاثِ بِأَيَّامِهَا - مِنْ حِينِ أَحْدَثَ بَعْدَ لِبَاسِ خُفَّيْهِ عَلَى طَهَارَةِ التَّيَمُّمِ - لَمْ يَجُزْ لَهُ الْمَسْحُ، لِأَنَّ الْأَمَدَ قَدْ تَمَّ، وَقَدْ كَانَ مُمْكِنًا لَهُ أَنْ يَمْسَحَ بِنُزُولِ مَطَرٍ أَوْ وُجُودِ مَنْ مَعَهُ مَاءٌ.

L3966 Similarly, if one does not find water until part of the specified period has elapsed, they may wipe only for the remaining portion of the period.

وَكَذَلِكَ لَوْ لَمْ يَجِدْ الْمَاءَ إِلَّا بَعْدَ مُضِيِّ بَعْضِ الْأَمَدِ الْمَذْكُورِ، فَلَيْسَ لَهُ أَنْ يَمْسَحَ إِلَّا بَاقِيَ الْأَمَدِ فَقَطْ.

L3967 Ali said: When his ritual impurity is completed, he is then permitted to perform ablution and wiping over the khuffs. He does not need to worry about istinja’, because performing istinja’ after ablution is permissible. It is not obligatory for istinja’ to necessarily be performed before ablution, as there is no command in the Quran or Sunnah requiring this. Rather, it is a physical substance we are commanded to remove by any means for prayer alone. Therefore, whenever it is removed before prayer—whether after ablution or before—the one who removed it has fulfilled his obligation. The presence of urine on the external part of the urethral orifice or fecal matter on the external part of the anus does not constitute ritual impurity. The impurity lies solely in their exit from the two passageways. Once they appear externally, they are two filthy substances on the skin that must be removed for prayer alone. Hence, this is counted from that moment, whether it is the time of prayer or not, because purification for prayer before the entry of its prescribed time is permissible. One may pray a missed prayer or the two rak‘ahs of entering the mosque with that ablution during that time. If he is a resident, the stipulated duration lasts until the same time the next day if the impurity occurred during daylight, or until the same time the next night

قَالَ عَلِيٌّ: فَإِذَا تَمَّ حَدَثُهُ فَحِينَئِذٍ جَازَ لَهُ الْوُضُوءُ وَالْمَسْحُ وَلَا يُبَالِي بِالِاسْتِنْجَاءِ لِأَنَّ الِاسْتِنْجَاءَ بَعْدَ الْوُضُوءِ جَائِزٌ، وَلَيْسَ فَرْضُهُ أَنْ يَكُونَ قَبْلَ الْوُضُوءِ وَلَا بُدَّ، لِأَنَّهُ لَمْ يَأْتِ بِذَلِكَ أَمْرٌ فِي قُرْآنٍ وَلَا سُنَّةٍ، وَإِنَّمَا هِيَ عَيْنٌ أُمِرْنَا بِإِزَالَتِهَا بِصِفَةٍ مَا لِلصَّلَاةِ فَقَطْ، فَمَتَى أُزِيلَتْ قَبْلَ الصَّلَاةِ وَبَعْدَ الْوُضُوءِ أَوْ قَبْلَ الْوُضُوءِ، فَقَدْ أَدَّى مُزِيلُهَا مَا عَلَيْهِ وَلَيْسَ بَقَاءُ الْبَوْلِ فِي ظَاهِرِ الْحُرْتِ وَبَقَاءُ النَّجْوِ فِي ظَاهِرِ الْمَخْرَجِ حَدَثًا، إِنَّمَا الْحَدَثُ خُرُوجُهُمَا مِنْ الْمَخْرَجَيْنِ فَقَطْ، فَإِذَا ظَهَرَا فَإِنَّمَا خَبَثَانِ فِي الْجِلْدِ تَجِبُ إِزَالَتُهُمَا لِلصَّلَاةِ فَقَطْ، فَمِنْ حِينَئِذٍ يُعَدُّ، سَوَاءٌ كَانَ وَقْتَ صَلَاةٍ أَوْ لَمْ يَكُنْ، لِأَنَّ التَّطَهُّرَ لِلصَّلَاةِ قَبْلَ دُخُولِ وَقْتِهَا جَائِزٌ، وَقَدْ يُصَلِّي بِذَلِكَ الْوُضُوءِ فِي ذَلِكَ الْوَقْتِ صَلَاةً فَائِتَةً، أَوْ رَكْعَتَيْ دُخُولِ الْمَسْجِدِ، فَإِنْ كَانَ مُقِيمًا فَإِلَى مِثْلِ ذَلِكَ الْوَقْتِ مِنْ الْغَدِ إِنْ كَانَ ذَلِكَ نَهَارًا، وَإِلَى مِثْلِهِ مِنْ اللَّيْلَةِ الْقَابِلَةِ إِنْ كَانَ ذَلِكَ لَيْلًا، فَإِنْ انْقَضَى لَهُ الْأَمَدُ الْمَذْكُورُ وَقَدْ مَسَحَ أَحَدَ خُفَّيْهِ وَلَمْ يَمْسَحْ شَيْئًا مِنْ الْآخَرِ بَطَلَ الْمَسْحُ، وَلَزِمَهُ خَلْعُهُمَا وَغَسْلُهُمَا، لِأَنَّهُ لَمْ

[31] **Qur’an references (L3965):** Qur’an 5:6 (Al-Ma’idah).

if it occurred after dark. If the stipulated duration expires while he has wiped one of his khuffs but not the other, the wiping becomes invalid. He must remove both and wash his feet, because he only completed wiping during a time when wiping had become forbidden for him. If he is a traveler, the duration lasts until the same time on the fourth day if his impurity occurred during daylight, or until the same time on the fourth night if it occurred after dark. Success is from Allah, the Exalted.

L3968–3969 **The rulings concerning men and women in the rulings regarding wiping over khuffs and the timing of the duration.**

L3970 Question:

L3971 Men and women are equal in all that we have mentioned. Journeys undertaken for obedience or sin are equal in all such matters, and similarly, matters that are neither obedience nor sin are equal. Short journeys and long journeys are equal.

L3972 The proof of this is the generality of the command and ruling of the Messenger of Allah—peace and blessings be upon him. Had he—peace and blessings be upon him—intended to specify one type of travel over another, or one act of disobedience over an act of obedience, he would not have been unable to do so. The Bestower of provision and health, He who grants ascendancy to the disobedient and He from whom forgiveness is hoped for for him, graciously bestows upon him from the expansive mercy of the religion as He wills. Our statement is the statement of Abū Ḥanīfah.

L3973 There is no validity to the distinction made by those who differentiate in that matter between travel for obedience and travel for disobedience—neither through textual evidence nor through rational consideration.

L3974 As for the transmitted report, Allah the Exalted says: "To clarify to people what was sent down to them" [16:44]. If there were a distinction here, the Messenger of Allah (peace and blessings of Allah be upon him) would not have neglected it, nor would he have obligated us to know what he did not

يَتِمَّ لَهُ مَسْحُهُ إِلَّا فِي وَقْتٍ قَدْ حَرُمَ عَلَيْهِ فِيهِ الْمَسْحُ، وَإِنْ كَانَ مُسَافِرًا فَإِلَى مِثْلِ ذَلِكَ الْوَقْتِ مِنْ الْيَوْمِ الرَّابِعِ إِنْ كَانَ حَدَثُهُ نَهَارًا أَوْ إِلَى مِثْلِ ذَلِكَ الْوَقْتِ مِنْ اللَّيْلَةِ الرَّابِعَةِ إِنْ كَانَ ذَلِكَ لَيْلًا، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الرجال وَالنِّسَاء فِي أَحْكَام الْمَسْح عَلَى الْخُفَّيْنِ وتوقيت الْمُدَّة]

مَسْأَلَةٌ:

وَالرِّجَالُ وَالنِّسَاءُ فِي كُلِّ مَا ذَكَرْنَا سَوَاءٌ، وَسَفَرُ الطَّاعَةِ وَالْمَعْصِيَةِ فِي كُلِّ ذَلِكَ سَوَاءٌ، وَكَذَلِكَ مَا لَيْسَ طَاعَةً وَلَا مَعْصِيَةً، وَقَلِيلُ السَّفَرِ وَكَثِيرُهُ سَوَاءٌ.

بُرْهَانُ ذَلِكَ عُمُومُ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحُكْمِهِ، وَلَوْ أَرَادَ - عَلَيْهِ السَّلَامُ - تَخْصِيصَ سَفَرٍ مِنْ سَفَرٍ، وَمَعْصِيَةٍ مِنْ طَاعَةٍ، لَمَا عَجَزَ عَنْ ذَلِكَ، وَوَاهِبُ الرِّزْقِ وَالصِّحَّةِ وَعُلُوُّ الْيَدِ لِلْعَاصِي وَالْمَرْجُوُّ لِلْمَغْفِرَةِ لَهُ يَتَصَدَّقُ عَلَيْهِ مَنْ فُسَحَ الدِّينِ بِمَا شَاءَ، وَقَوْلُنَا هُوَ قَوْلُ أَبِي حَنِيفَةَ.

وَلَا مَعْنَى لِتَفْرِيقِ مَنْ فَرَّقَ فِي ذَلِكَ بَيْنَ سَفَرِ الطَّاعَةِ وَسَفَرِ الْمَعْصِيَةِ - لَا مِنْ طَرِيقِ الْخَبَرِ وَلَا مِنْ طَرِيقِ النَّظَرِ.

أَمَّا الْخَبَرُ فَاَللَّهُ تَعَالَى يَقُولُ: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] فَلَوْ كَانَ هَهُنَا فَرْقٌ لَمَا أَهْمَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، وَلَا كَلَّفَنَا عِلْمَ مَا لَمْ يُخْبِرْنَا بِهِ، وَلَا أَلْزَمَنَا الْعَمَلَ بِمَا لَمْ يُعَرِّفْنَا بِهِ، هَذَا أَمْرٌ قَدْ أَمِنَّاهُ وَلِلَّهِ الْحَمْدُ.

inform us of, nor required us to act upon what he did not make known to us. This is a matter we have secured, and all praise is due to Allah.[32]

L3975 As for the rational perspective, a resident's stay may involve sinful residence, oppression of Muslims, and transgression against Islam graver than sinful travel. Yet a traveler engaged in disobedience might still obey God in some acts - foremost being ablution containing the mentioned wiping over footwear which they prohibited him from performing. Thus they forbade him the wiping that constitutes obedience, while commanding him to perform full washing (ghusl) that is also obedience. This constitutes utterly corrupt reasoning. Yet they unrestrictedly permitted wiping for the resident sinning in his residence.

L3976 If they say that wiping is a concession and mercy, we say: Who can restrict Allah from granting concession to the disobedient in some acts of obedience to Him? No one is granted Allah the Most High's mercy except one who is ignorant of Allah, asserting what he has no knowledge of. In every journey where prayer is shortened, one wipes with the traveler's wiping. As for cases where shortening does not apply, it is considered residence and staying in place—one does not wipe therein except with the resident's wiping. And true success is only through Allah's enablement, the Most High.

L3977 ****Issue:** He made wuḍūʾ, then wore one of his khuffayn (leather socks) after having washed the corresponding foot.**

L3978 215. Issue:

L3979 And whoever performs ablution, then dons one of his two khuffs after washing that foot, then washes the other foot after having placed the khuff on the washed one, then dons the other khuff, and subsequently breaks his ablution—wiping over them is permissible for him, just as if he had begun wearing both after washing both his feet. This is the opinion of Abū Ḥanīfah, Dawud, and their followers.

L3980 This is the opinion of Yahya ibn Adam, Abu Thawr, and Al-Muzani. Malik,

[32] **Qur'an references (L3974):** Qur'an 16:44 (An-Nahl).

وَأَمَّا مِنْ طَرِيقِ النَّظَرِ فَإِنَّ الْمُقِيمَ قَدْ تَكُونُ إِقَامَتُهُ إِقَامَةَ مَعْصِيَةٍ وَظُلْمٍ لِلْمُسْلِمِينَ وَعُدْوَانًا عَلَى الْإِسْلَامِ أَشَدَّ مِنْ سَفَرِ الْمَعْصِيَةِ، وَقَدْ يُطِيعُ الْمُسَافِرُ فِي الْمَعْصِيَةِ فِي بَعْضِ أَعْمَالِهِ، وَأَوَّلُهَا الْوُضُوءُ الَّذِي يَكُونُ فِيهِ الْمَسْحُ الْمَذْكُورُ الَّذِي منعوه مِنْهُ، فَمَنَعُوهُ مِنَ الْمَسْحِ الَّذِي هُوَ طَاعَةٌ، وَأَمَرُوهُ بِالْغُسْلِ الَّذِي هُوَ طَاعَةٌ أَيْضًا، وَهَذَا فَسَادٌ مِنَ الْقَوْلِ جِدًّا، وَأَطْلَقُوا الْمَسْحَ لِلْمُقِيمِ الْعَاصِي فِي إِقَامَتِهِ.

فَإِنْ قَالُوا الْمَسْحُ رُخْصَةٌ وَرَحْمَةٌ، قُلْنَا مَا حَجَرَ عَلَى اللَّهِ التَّرْخِيصَ لِلْعَاصِي فِي بَعْضِ أَعْمَالِ طَاعَتِهِ، وَلَا رَحْمَةَ اللَّهِ تَعَالَى لَهُ إِلَّا جَاهِلٌ بِاللَّهِ تَعَالَى، قَائِلٌ بِمَا لَا عِلْمَ لَهُ بِهِ، وَكُلُّ سَفَرٍ تُقْصَرُ فِيهِ الصَّلَاةُ فَيُمْسَحُ فِيهِ مَسْحَ سَفَرٍ، وَمَا لَا قَصْرَ فِيهِ فَهُوَ حَضَرٌ وَإِقَامَةٌ، لَا يُمْسَحُ فِيهِ إِلَّا مَسْحَ الْمُقِيمِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَوَضَّأَ فَلَبِسَ أَحَدَ خُفَّيْهِ بَعْدَ أَنْ غَسَلَ تِلْكَ الرِّجْلَ]

٢١٥ - مَسْأَلَةٌ:

وَمَنْ تَوَضَّأَ فَلَبِسَ أَحَدَ خُفَّيْهِ بَعْدَ أَنْ غَسَلَ تِلْكَ الرِّجْلَ ثُمَّ إِنَّهُ غَسَلَ الْأُخْرَى بَعْدَ لِبَاسِهِ الْخُفَّ عَلَى الْمَغْسُولَةِ، ثُمَّ لَبِسَ الْخُفَّ الْآخَرَ ثُمَّ أَحْدَثَ فَالْمَسْحُ لَهُ جَائِزٌ كَمَا لَوْ ابْتَدَأَ لِبَاسَهُمَا بَعْدَ غَسْلِ كِلْتَيْ رِجْلَيْهِ، وَبِهِ يَقُولُ أَبُو حَنِيفَةَ وَدَاوُد وَأَصْحَابُهُمَا.

Al-Shafi'i, and Ahmad ibn Hanbal said: One should not wipe, but if he removes the footwear he first put on and then puts it back on within its time period, he may wipe.

وَهُوَ قَوْلُ يَحْيَى بْنِ آدَمَ وَأَبِي ثَوْرٍ وَالْمُزَنِيِّ، وَقَالَ مَالِكٌ وَالشَّافِعِيُّ وَأَحْمَدُ بْنُ حَنْبَلٍ: لَا يَمْسَحُ لَكِنْ إِنْ خَلَعَ الَّتِي لَبِسَ أَوَّلًا ثُمَّ أَعَادَهَا مِنْ حِينِهِ فَإِنَّ لَهُ الْمَسْحَ.

L3981–3982 Ali said: Both opinions of their respective proponents rely on the statement of Allah's Messenger - peace and blessings be upon him - "Leave them, for I put them on while both were pure," thus necessitating examination of which opinion aligns more faithfully with this statement. We found that one who performs ablution on one foot and wears a single khuff has neither worn both khuffs nor placed both feet into the two khuffs - having only inserted one foot. When he performs ablution on the second foot and wears the second khuff, he thereby qualifies for the description that "he put them on while both were pure" - a status he did not hold previously. Thus, his wiping becomes valid. Had Allah's Messenger - peace and blessings be upon him - intended the view of Malik and Al-Shafi'i, he would not have used this wording. He would have instead said: "Leave them, for I began placing them into the khuffs only after completing the full purification of both." Since he - peace be upon him - did not say this, whoever truthfully merits the statement that "he placed both feet into the khuffs while they were pure" may validly wipe after experiencing impurity post-wearing. We know no instance where removing a khuff and immediately replacing it creates new purification or introduces a legal ruling previously unrecognized. Those who impose this obligation make an unsubstantiated claim. Success comes solely from Allah, the Most High.

قَالَ عَلِيٌّ: كِلَا الْقَوْلَيْنِ عُمْدَةُ أَهْلِهِ عَلَى قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «دَعْهُمَا فَإِنِّي أَدْخَلْتُهُمَا طَاهِرَتَيْنِ» ، فَوَجَبَ النَّظَرُ فِي أَيِّ الْقَوْلَيْنِ هُوَ أَسْعَدُ بِهَذَا الْقَوْلِ، فَوَجَدْنَا مَنْ طَهَّرَ إِحْدَى رِجْلَيْهِ ثُمَّ أَلْبَسَهَا الْخُفَّ فَلَمْ يُلْبِسْ الْخُفَّيْنِ وَإِنَّمَا لَبِسَ الْوَاحِدَ وَلَا أَدْخَلَ الْقَدَمَيْنِ الْخُفَّيْنِ، إِنَّمَا أَدْخَلَ الْقَدَمَ الْوَاحِدَةَ، فَلَمَّا طَهَّرَ الثَّانِيَةَ ثُمَّ أَلْبَسَهَا الْخُفَّ الثَّانِيَ صَارَ حِينَئِذٍ مُسْتَحِقًّا لِأَنْ يُخْبَرَ عَنْهُ أَنَّهُ أَدْخَلَهُمَا طَاهِرَتَيْنِ وَلَمْ يَسْتَحِقَّ هَذَا الْوَصْفَ قَبْلَ ذَلِكَ، فَصَحَّ أَنَّ لَهُ أَنْ يَمْسَحَ، وَلَوْ أَرَادَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا ذَهَبَ إِلَيْهِ مَالِكٌ وَالشَّافِعِيُّ لَمَا قَالَ هَذَا اللَّفْظَ، وَإِنَّمَا كَانَ يَقُولُ: دَعْهُمَا فَإِنِّي ابْتَدَأْتُ إِدْخَالَهُمَا فِي الْخُفَّيْنِ بَعْدَ تَمَامِ طَهَارَتِهِمَا جَمِيعًا، فَإِذْ لَمْ يَقُلْ - عَلَيْهِ السَّلَامُ - هَذَا الْقَوْلَ فَكُلُّ مَنْ صَدَقَ الْخَبَرُ عَنْهُ بِأَنَّهُ أَدْخَلَ قَدَمَيْهِ جَمِيعًا فِي الْخُفَّيْنِ وَهُمَا طَاهِرَتَانِ فَجَائِزٌ لَهُ أَنْ يَمْسَحَ إِذَا أَحْدَثَ بَعْدَ الْإِدْخَالِ، وَمَا عَلِمْنَا خَلْعَ خُفٍّ وَإِعَادَتَهُ فِي الْوَقْتِ يُحْدِثُ طَهَارَةً لَمْ تَكُنْ، وَلَا حُكْمًا فِي الشَّرْعِ لَمْ يَكُنْ، فَالْمُوجِبُ لَهُ مُدَّعٍ بِلَا بُرْهَانٍ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ كَانَ فِي الْخُفَّيْنِ أَوْ فِيمَا لَبِسَ عَلَى الرِّجْلَيْنِ خَرْقٌ صَغِيرٌ أَوْ كَبِيرٌ]

L3983 **Issue: If there was a small or large hole in the khuffs (leather socks) or in whatever was worn on the feet.**

٢١٦ - مَسْأَلَةٌ:

L3984 216 - Issue:

فَإِنْ كَانَ فِي الْخُفَّيْنِ أَوْ فِيمَا لَبِسَ عَلَى الرِّجْلَيْنِ خَرْقٌ صَغِيرٌ أَوْ كَبِيرٌ، طُولًا أَوْ عَرْضًا، فَظَهَرَ مِنْهُ شَيْءٌ مِنْ الْقَدَمِ، أَقَلُّ الْقَدَمِ أَوْ أَكْثَرُهَا أَوْ كِلَاهُمَا فَكُلُّ ذَلِكَ سَوَاءٌ، وَالْمَسْحُ

L3985 If there is a small or large tear in the khuffs or what is worn on the feet—lengthwise or widthwise—exposing any part of the foot, whether the smaller part of the foot, the majority of it, or both, all such cases are equivalent. Wiping over all such cases remains permissible as long as any part of the

khuffs remains attached to the two feet. This is the position of Sufyān al-Thawrī, Dāwūd, Abū Thawr, Isḥāq ibn Rāhawayh, and Yazīd ibn Hārūn.

عَلَى كُلِّ ذَلِكَ جَائِزٌ، مَا دَامَ يَتَعَلَّقُ بِالرِّجْلَيْنِ مِنْهُمَا شَيْءٌ، وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَدَاوُد وَأَبِي ثَوْرٍ وَإِسْحَاقَ بْنِ رَاهْوَيْهِ وَيَزِيدَ بْنِ هَارُونَ.

L3986 Abu Hanifa said: If there is a transverse hole in each of the two khuffs from which two fingers or less protrude, or if the hole measures two fingers in width or smaller, wiping over them is permissible. If three fingers or their equivalent measure become visible from one khuff but not the other, wiping over them is impermissible. He said: If there is a longitudinal hole that, when spread open, would reveal more than three fingers, wiping over them is permissible.

قَالَ أَبُو حَنِيفَةَ: إِنْ كَانَ فِي كُلِّ وَاحِدٍ مِنْ الْخُفَّيْنِ خَرْقٌ عَرْضًا يَبْرُزُ مِنْ كُلِّ خَرْقٍ أُصْبُعَانِ فَأَقَلُّ أَوْ مِقْدَارُ أُصْبُعَيْنِ فَأَقَلُّ: جَازَ الْمَسْحُ عَلَيْهِمَا، فَإِنْ ظَهَرَ مِنْ أَحَدِهِمَا دُونَ الْآخَرِ ثَلَاثَةُ أَصَابِعَ أَوْ مِقْدَارُهَا فَأَكْثَرُ لَمْ يَجُزْ الْمَسْحُ عَلَيْهِمَا قَالَ: فَإِنْ كَانَ الْخَرْقُ طَوِيلًا مِمَّا لَوْ فُتِحَ ظَهَرَ مِنْهُ أَكْثَرُ مِنْ ثَلَاثَةِ أَصَابِعَ جَازَ الْمَسْحُ.

L3987 Malik said: If the tear is minor such that the foot is not visible through it, wiping over them [the socks] is permissible. But if it is large and egregious, wiping is impermissible, whether the tear affects both socks or only one.

وَقَالَ مَالِكٌ: إِنْ كَانَ الْخَرْقُ يَسِيرًا لَا يَظْهَرُ مِنْهُ الْقَدَمُ جَازَ الْمَسْحُ، وَإِنْ كَانَ كَبِيرًا فَاحِشًا لَمْ يَجُزْ الْمَسْحُ عَلَيْهِمَا، فِيهِمَا كَانَ أَوْ فِي أَحَدِهِمَا.

L3988 Al-Ḥasan ibn Ḥayy, Al-Shāfiʿī, and Aḥmad said: If any part of the foot is exposed through the tear in the footwear, it is impermissible to wipe over them both. But if no part of the foot is exposed through the tear, it is permissible to wipe over them both.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ وَالشَّافِعِيُّ وَأَحْمَدُ: إِنْ ظَهَرَ مِنْ الْقَدَمِ شَيْءٌ مِنْ الْخَرْقِ لَمْ يَجُزْ الْمَسْحُ عَلَيْهِمَا، فَإِنْ لَمْ يَظْهَرْ مِنْ الْخَرْقِ شَيْءٌ مِنْ الْقَدَمِ جَازَ الْمَسْحُ عَلَيْهِمَا.

L3989 Al-Ḥasan ibn Ḥayyin said: If beneath the tear, whether small or large, there is a sock that covers the foot, wiping is permissible.

قَالَ الْحَسَنُ بْنُ حَيٍّ: فَإِنْ كَانَ مِنْ تَحْتِ الْخَرْقِ قَلَّ أَوْ كَثُرَ جَوْرَبٌ يَسْتُرُ الْقَدَمَ جَازَ الْمَسْحُ.

L3990–3992 Al-Awzaʿī said: If any part of the foot is exposed from a tear in the khuff, he should wipe over it. The two khuffs were wiped over, and he washed what was uncovered of the foot or both feet, then prayed. If he did not wash what became exposed, he must repeat the prayer.

وَقَالَ الْأَوْزَاعِيُّ: إِنْ انْكَشَفَ مِنْ الْخَرْقِ فِي الْخُفِّ شَيْءٌ مِنْ الْقَدَمِ مَسَحَ عَلَى الْخُفَّيْنِ وَغَسَلَ مَا انْكَشَفَ مِنْ الْقَدَمِ أَوْ الْقَدَمَيْنِ وَصَلَّى، فَإِنْ لَمْ يَغْسِلْ مَا ظَهَرَ أَعَادَ الصَّلَاةَ.

L3993 Ali said: When they differed, it became obligatory to examine the evidence each group cited to support its position. We found Malik's opinion baseless, for he prohibited wiping in certain circumstances and permitted it in others, yet he failed to clarify for his followers, those seeking to understand his view, or those requesting his legal verdict: what circumstances make wiping permissible and what circumstances make it prohibited. This entangles the questioner in matters he cannot comprehend. Moreover, it is an opinion

قَالَ عَلِيٌّ: فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ مَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا، فَوَجَدْنَا قَوْلَ مَالِكٍ لَا مَعْنَى لَهُ، لِأَنَّهُ مَنَعَ مِنْ الْمَسْحِ فِي حَالٍ مَا وَأَبَاحَهُ فِي حَالٍ أُخْرَى، وَلَمْ يُبَيِّنْ لِمُقَلِّدِيهِ وَلَا لِمُرِيدِي مَعْرِفَةِ قَوْلِهِ وَلَا لِمَنْ اسْتَفْتَاهُ، مَا هِيَ الْحَالُ الَّتِي يَحِلُّ فِيهَا الْمَسْحُ،

with no evidence for its validity and a claim with no proof to substantiate it. Thus, this opinion is rejected.

وَلَا مَا الْحَالُ الَّذِي يَحْرُمُ فِيهَا الْمَسْحُ فَهَذَا إِنْشَابٌ لِلْمُسْتَفْتِي فِيمَا لَا يَعْرِفُ وَأَيْضًا فَإِنَّهُ قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ، وَدَعْوَى لَا بُرْهَانَ عَلَيْهَا، فَسَقَطَ هَذَا الْقَوْلُ.

L3994 Then we examined Abu Hanifah's statement and found it to be arbitrariness without evidence, a distinction without proof—something anyone could assert. It is impermissible to speak in matters of religion with such claims. Moreover, fingers differ greatly in size differences. If only I knew which finger he meant! We know of no one who preceded him in this invalid opinion. Thus, this claim is also invalidated with certainty.

ثُمَّ نَظَرْنَا فِي قَوْلِ أَبِي حَنِيفَةَ فَكَانَ تَحَكُّمًا بِلَا دَلِيلٍ، وَفَرْقًا بِلَا بُرْهَانٍ، لَا يَعْجِزُ عَنْ مِثْلِهِ أَحَدٌ، وَلَا يَحِلُّ الْقَوْلُ فِي الدِّينِ بِمِثْلِ هَذَا، وَأَيْضًا فَالْأَصَابِعُ تَخْتَلِفُ فِي الْكِبَرِ وَالصِّغَرِ تَفَاوُتًا شَدِيدًا، فَلَيْتَ شِعْرِي أَيَّ الْأَصَابِعِ أَرَادَ وَمَا نَعْلَمُ أَحَدًا سَبَقَهُ إِلَى هَذَا الْقَوْلِ مَعَ فَسَادِهِ، فَسَقَطَ أَيْضًا هَذَا الْقَوْلُ بِيَقِينٍ.

L3995 Then we examined the statements of Al-Ḥasan ibn Ḥayy, Al-Shāfiʿī, and Aḥmad and found their argument to be that the obligatory act for the two feet is washing if they are uncovered or wiping if they are covered. If any part of them becomes exposed, even minimally, then a part that necessitates washing has been exposed. They said, "Washing and wiping cannot coexist on one and the same foot." We know of no argument they have other than this.

ثُمَّ نَظَرْنَا فِي قَوْلِ الْحَسَنِ بْنِ حَيٍّ وَالشَّافِعِيِّ وَأَحْمَدَ فَوَجَدْنَا حُجَّتَهُمْ أَنَّ فَرْضَ الرِّجْلَيْنِ الْغُسْلُ إِنْ كَانَتَا مَكْشُوفَتَيْنِ أَوْ الْمَسْحُ إِنْ كَانَتَا مَسْتُورَتَيْنِ، فَإِذَا انْكَشَفَ شَيْءٌ مِنْهُمَا وَإِنْ قَلَّ فَقَدْ انْكَشَفَ شَيْءٌ فَرْضُهُ الْغُسْلُ، قَالُوا: وَلَا يَجْتَمِعُ غُسْلٌ وَمَسْحٌ فِي رِجْلٍ وَاحِدَةٍ، مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا.

L3996 Ali said: "All that they have said is correct, except their statement that if any part of the foot is uncovered, then the part whose obligation is to wash has been uncovered. This is an incorrect statement, and they should not be agreed with on this, as it is not established by the Quran, the Sunnah, or consensus. Rather, the truth in this matter is what the Sunnah—which clarifies the Quran—, has established: the ruling for the two feet, when nothing is worn on them, is that they are wiped upon them to be washed, and the ruling when something is worn on them is that one wipes over that covering. This is what the Sunnah has conveyed. {And your Lord is never forgetful} [Maryam 19:64]."[33]

قَالَ عَلِيٌّ: كُلُّ مَا قَالُوهُ صَحِيحٌ، إِلَّا قَوْلَهُمْ إِذَا انْكَشَفَ مِنْ الْقَدَمِ شَيْءٌ فَقَدْ انْكَشَفَ شَيْءٌ فَرْضُهُ الْغُسْلُ، فَإِنَّهُ قَوْلٌ غَيْرُ صَحِيحٍ، وَلَا يُوَافَقُونَ عَلَيْهِ، إِذْ لَمْ يَأْتِ بِهِ قُرْآنٌ وَلَا سُنَّةٌ وَلَا إِجْمَاعٌ، لَكِنَّ الْحَقَّ فِي ذَلِكَ مَا جَاءَتْ بِهِ السُّنَّةُ الْمُبَيِّنَةُ لِلْقُرْآنِ مِنْ أَنَّ حُكْمَ الْقَدَمَيْنِ اللَّتَيْنِ لَيْسَ عَلَيْهِمَا شَيْءٌ مَلْبُوسٌ يُمْسَحُ عَلَيْهِ أَنْ يُغْسَلَا، وَحُكْمُهُمَا إِذَا كَانَ عَلَيْهِمَا شَيْءٌ مَلْبُوسٌ أَنْ يُمْسَحَ عَلَى ذَلِكَ الشَّيْءِ، بِهَذَا جَاءَتْ السُّنَّةُ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L3997–3999 The Messenger of Allah - peace and blessings of Allah be upon him - knew when he commanded wiping over leather socks and what is worn on the feet, and when he wiped over regular socks, that among leather socks, regular

وَقَدْ عَلِمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ أَمَرَ بِالْمَسْحِ عَلَى الْخُفَّيْنِ وَمَا يُلْبَسُ فِي الرِّجْلَيْنِ وَمَسَحَ عَلَى الْجَوْرَبَيْنِ - أَنَّ مِنْ الْخِفَافِ وَالْجَوَارِبِ وَغَيْرِ ذَلِكَ مِمَّا يُلْبَسُ

[33] **Qur'an references (L3996):** Qur'an 19:64 (Maryam).

socks, and other items worn on the feet are those with a significant tear, a minor tear, or no tear - red, black, white, new, or old. Yet he - peace be upon him - did not distinguish between any of these categories. Had the religious ruling regarding them differed, Allah the Exalted would not have neglected to reveal it, nor would the Messenger of Allah - peace and blessings of Allah be upon him - the one divinely obligated, have overlooked it. The clarification lies with Him—far be it from Him to be associated with such. Thus, the ruling is confirmed that wiping remains valid in all circumstances, as wiping does not necessitate full coverage within the linguistic convention by which we are addressed. Similarly, we narrate from Sufyan al-Thawri that he said: "Wipe as long as it is called a khuff." Were the khuffs of the Muhājirīn and the Anṣār anything but split, perforated, and torn? As for al-Awzāʿī's statement, we shall mention it—God willing—in the issue following this one. And with God lies the attainment of success.

عَلَى الرِّجْلَيْنِ الْمُخَرَّقَ خَرْقًا فَاحِشًا أَوْ غَيْرَ فَاحِشٍ، وَغَيْرَ الْمُخَرَّقِ، وَالْأَحْمَرَ وَالْأَسْوَدَ وَالْأَبْيَضَ، وَالْجَدِيدَ وَالْبَالِيَ، فَمَا خَصَّ - عَلَيْهِ السَّلَامُ - بَعْضَ ذَلِكَ دُونَ بَعْضٍ، وَلَوْ كَانَ حُكْمُ ذَلِكَ فِي الدِّينِ يَخْتَلِفُ لَمَا أَغْفَلَهُ اللَّهُ تَعَالَى أَنْ يُوحِيَ بِهِ، وَلَا أَهْمَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُفْتَرَضُ عَلَيْهِ الْبَيَانُ، حَاشَا لَهُ مِنْ ذَلِكَ فَصَحَّ أَنَّ حُكْمَ ذَلِكَ الْمَسْحُ عَلَى كُلِّ حَالٍ، وَالْمَسْحُ لَا يَقْتَضِي الِاسْتِيعَابَ فِي اللُّغَةِ الَّتِي بِهَا خُوطِبْنَا، وَهَكَذَا رُوِّينَا عَنْ سُفْيَانَ الثَّوْرِيِّ أَنَّهُ قَالَ: امْسَحْ مَا دَامَ يُسَمَّى خُفًّا، وَهَلْ كَانَتْ خِفَافُ الْمُهَاجِرِينَ وَالْأَنْصَارِ إلَّا مُشَقَّقَةً مُخَرَّقَةً مُمَزَّقَةً؟ وَأَمَّا قَوْلُ الْأَوْزَاعِيِّ فَنَذْكُرُهُ إنْ شَاءَ اللَّهُ فِي الْمَسْأَلَةِ التَّالِيَةِ لِهَذِهِ وَبِاَللَّهِ التَّوْفِيقُ.

Issue: The two leather socks were cut below the ankles.

217 - Issue:

If the two khuffs are cut short below the ankles, it is permissible to wipe over them. This is the opinion of Al-Awzāʿī, and it is narrated that he said: “A pilgrim in the state of iḥrām may wipe over the two khuffs that are cut short below the ankles.” Others have stated that one may not wipe over them unless they are above the ankles.

Ali said: It has been authentically established from the Messenger of Allah—peace and blessings be upon him—that he commanded wiping over khuffs (leather socks) and that he wiped over jorabs (knitted socks). If there had been a defined restriction in this matter, he—peace be upon him—would not have neglected or overlooked it. Thus, it is obligatory that wiping is permissible over anything termed a khuff (leather sock), a jorab (knitted sock), or any garment worn on the feet. We have previously refuted the invalidity of those who claim that wiping is only permissible over what fully covers the entire feet and ankles.

By that evidence, this opinion of theirs regarding this issue is invalidated, especially the view of Abu Hanifa permitting wiping over the two khuffs from which a portion measuring two fingers from each khuff is visible. For it would follow that if a portion measuring two fingers from the ankles (of both feet) over the khuff is visible, then wiping is permissible; otherwise, it is not.

Similarly, this obligates the Malikīs to say: “If the apparent portion of the ankles above the khuff is small, wiping is permissible, but if it is excessive, it is not permissible.” We do not know on what grounds they based these two rulings, for they have neither a textual source, nor analogy, nor following precedent. And success is from Allah.

Ali said: As for Al-Awzāʿī’s statement about combining washing and wiping on a single foot, this is a view unsupported by evidence—neither textual proof, consensus, analogy, nor the opinion of an authority. The ruling for the two feet [when covered by footwear] is wiping alone, as established by the

[مَسْأَلَة كَانَ الْخُفَّانِ مَقْطُوعَيْنِ تَحْتَ الْكَعْبَيْنِ]

٢١٧ - مَسْأَلَةٌ:

فَإِنْ كَانَ الْخُفَّانِ مَقْطُوعَيْنِ تَحْتَ الْكَعْبَيْنِ فَالْمَسْحُ جَائِزٌ عَلَيْهِمَا، وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، رُوِيَ عَنْهُ أَنَّهُ قَالَ: يَمْسَحُ الْمُحْرِمُ عَلَى الْخُفَّيْنِ الْمَقْطُوعَيْنِ تَحْتَ الْكَعْبَيْنِ، وَقَالَ غَيْرُهُ لَا يَمْسَحُ عَلَيْهَا إِلَّا أَنْ يَكُونَا فَوْقَ الْكَعْبَيْنِ.

قَالَ عَلِيٌّ: قَدْ «صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْأَمْرُ بِالْمَسْحِ عَلَى الْخُفَّيْنِ، وَأَنَّهُ مَسَحَ عَلَى الْجَوْرَبَيْنِ» ، وَلَوْ كَانَ هَهُنَا حَدٌّ مَحْدُودٌ لَمَا أَهْمَلَهُ - عَلَيْهِ السَّلَامُ - وَلَا أَغْفَلَهُ فَوَجَبَ أَنَّ كُلَّ مَا يَقَعُ عَلَيْهِ اسْمُ خُفٍّ أَوْ جَوْرَبٍ أَوْ لُبِسَ عَلَى الرِّجْلَيْنِ فَالْمَسْحُ عَلَيْهِ جَائِزٌ، وَقَدْ ذَكَرْنَا بُطْلَانَ قَوْلِ مَنْ قَالَ: إِنَّ الْمَسْحَ لَا يَجُوزُ إِلَّا عَلَى مَا يَسْتُرُ جَمِيعَ الرِّجْلَيْنِ وَالْكَعْبَيْنِ.

وَبِذَلِكَ الدَّلِيلِ يَبْطُلُ هَذَا الْقَوْلُ الَّذِي لَهُمْ فِي هَذِهِ الْمَسْأَلَةِ، لَا سِيَّمَا قَوْلُ أَبِي حَنِيفَةَ الْمُجِيزُ الْمَسْحَ عَلَى الْخُفَّيْنِ اللَّذَيْنِ يَظْهَرُ مِنْهُمَا مِقْدَارُ أُصْبُعَيْنِ مِنْ كُلِّ خُفٍّ، فَإِنَّهُ يَلْزَمُهُ إِنْ ظَهَرَ مِنَ الْكَعْبَيْنِ مِنْ كُلِّ قَدَمٍ فَوْقَ الْخُفِّ مِقْدَارُ أُصْبُعَيْنِ فَالْمَسْحُ جَائِزٌ وَإِلَّا فَلَا.

وَكَذَلِكَ يَلْزَمُ الْمَالِكِيِّينَ أَنْ يَقُولُوا: إِنْ كَانَ الظَّاهِرُ مِنَ الْكَعْبَيْنِ فَوْقَ الْخُفِّ يَسِيرًا جَازَ الْمَسْحُ، وَإِنْ كَانَ فَاحِشًا لَمْ يَجُزْ، وَمَا نَدْرِي عَلَامَ بَنَوْا هَذَيْنِ الْقَوْلَيْنِ فَإِنَّهُمَا لَا نَصَّ وَلَا قِيَاسَ وَلَا اتِّبَاعَ. وَبِاللَّهِ التَّوْفِيقُ.

قَالَ عَلِيٌّ: وَأَمَّا قَوْلُ الْأَوْزَاعِيِّ فِي الْجَمْعِ بَيْنَ الْغُسْلِ وَالْمَسْحِ فِي رِجْلٍ وَاحِدَةٍ فَقَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ، لَا مِنْ نَصٍّ وَلَا مِنْ إِجْمَاعٍ وَلَا قِيَاسٍ وَلَا قَوْلِ صَاحِبٍ، وَحُكْمُ

authentically transmitted Sunnahs. Thus, there is no justification for adding washing to that.

الرِّجْلَيْنِ الْمَلْبُوسِ عَلَيْهِمَا شَيْءٌ الْمَسْحُ فَقَطْ بِالسُّنَنِ الثَّابِتَةِ، فَلَا مَعْنَى لِزِيَادَةِ الْغُسْلِ عَلَى ذَلِكَ.

Issue: He put on his two khuffs while in a state of purity, then removed one of them without the other.

[مَسْأَلَةٌ لَبِسَ خُفَّيْهِ عَلَى طَهَارَةٍ ثُمَّ خَلَعَ أَحَدَهُمَا دُونَ الْآخَرِ]

٢١٨ - Issue:

٢١٨ - مَسْأَلَةٌ:

Whoever wears his leather socks, socks, or similar items while in a state of ritual purity and then removes one of them without the other must—if he has nullified his ablution—remove the remaining item without fail and wash his feet.

وَمَنْ لَبِسَ خُفَّيْهِ أَوْ جَوْرَبَيْهِ أَوْ غَيْرَ ذَلِكَ عَلَى طَهَارَةٍ ثُمَّ خَلَعَ أَحَدَهُمَا دُونَ الْآخَرِ، فَإِنَّ فَرْضَهُ أَنْ يَخْلَعَ الْآخَرَ إِنْ كَانَ قَدْ أَحْدَثَ وَلَا بُدَّ، وَيَغْسِلَ قَدَمَيْهِ.

Al-Muʿāfā ibn ʿImrān and Muḥammad ibn Yūsuf al-Firyābī narrated from Sufyān al-Thawrī that he would wash the uncovered foot and wipe over the other, covered foot.

وَقَدْ رَوَى الْمُعَافَى بْنُ عِمْرَانَ وَمُحَمَّدُ بْنُ يُوسُفَ الْفِرْيَابِيُّ عَنْ سُفْيَانَ الثَّوْرِيِّ أَنَّهُ يَغْسِلُ الرِّجْلَ الْمَكْشُوفَةَ وَيَمْسَحُ عَلَى الْأُخْرَى الْمَسْتُورَةِ.

Al-Faḍl ibn Dukayn narrated from him. He should remove what is covering the other foot and wash both of them. This is the opinion of Abu Hanifa, Malik, and al-Shafi'i.

وَرَوَى الْفَضْلُ بْنُ دُكَيْنٍ عَنْهُ، أَنَّهُ يَنْزِعُ مَا عَلَى الرِّجْلِ الْأُخْرَى وَيَغْسِلُهُمَا، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَمَالِكٍ وَالشَّافِعِيِّ.

Ali said: We examined that matter and found his explicit ruling—peace be upon him—that he wiped over them because he had put both of them on in a state of purity.

قَالَ عَلِيٌّ: فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا نَصَّ حُكْمِهِ - عَلَيْهِ السَّلَامُ - أَنَّهُ مَسَحَ عَلَيْهِمَا لِأَنَّهُ أَدْخَلَهُمَا طَاهِرَتَيْنِ.

And he – peace be upon him – commanded the washing of the two bare feet; hence, these two scriptural texts do not permit contravention.

وَأَمَرَ - عَلَيْهِ السَّلَامُ - بِغَسْلِ الْقَدَمَيْنِ الْمَكْشُوفَتَيْنِ فَكَانَ هَذَانِ النَّصَّانِ لَا يَحِلُّ الْخُرُوجُ عَنْهُمَا.

We found that whoever washed one foot and wiped over the other has performed an action not mentioned in the Qur'an, nor the Sunnah, nor supported by any evidence derived from the textual wording of both.

وَوَجَدْنَا مَنْ غَسَلَ رِجْلًا وَمَسَحَ عَلَى الْأُخْرَى قَدْ عَمِلَ عَمَلًا لَمْ يَأْتِ بِهِ قُرْآنٌ وَلَا سُنَّةٌ وَلَا دَلِيلَ مِنْ لَفْظَيْهِمَا.

In matters of religion, only that which is established in the speech of Al-

وَلَا يَجُوزُ فِي الدِّينِ إِلَّا مَا وُجِدَ فِي كَلَامِ اللَّهِ تَعَالَى أَوْ كَلَامِ نَبِيِّهِ - عَلَيْهِ السَّلَامُ -.

lah, the Most High, or the speech of His Prophet—peace be upon him—is permissible.

L4018 It is therefore obligatory that washing one foot and wiping over the other is not sufficient, and that it is necessary to either wash both of them or wipe over both of them. This ruling applies whether at the outset or after having wiped over them.

L4019 Yunus ibn Abd Allah ibn Mughith narrated to us, saying: Abu Isa ibn Abi Isa narrated to us, saying: Ahmad ibn Khalid narrated to us, saying: Ibn Waddah narrated to us, saying: Abu Bakr ibn Abi Shaybah narrated to us from Abdullah ibn Idris—al-Awdi—from Muhammad ibn Ajlan from Sa'id ibn Abi Sa'id—al-Maqburi—from Abu Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him) said, "When one of you puts on footwear, let him begin with the right, and when he removes it, let him begin with the left. Do not walk in one sandal or one leather sock; either remove both or walk in both." He (peace and blessings be upon him) thus made it imperatively obligatory to remove both without fail or to leave both on together. If someone removes one without the other, he has disobeyed Allah in the act of retaining what he retained, and since retaining it is an act of disobedience, it is not permissible for him to wipe over a leather sock whose obligation is removal. If this is due to an ailment in one foot, neither wiping nor washing is required for it whatsoever—because his obligation has been lifted.

L4020 We found some of those who agree with us arguing that since no scholar permits initiating ablution by washing one foot and wiping over a khuff on the other, it is likewise impermissible after removing one of the two khuffs.

L4021 Abu Muhammad said: This is an invalid statement, because the beginning of ablution applies to two feet that are not purified. This is not the case after the validity of wiping them is confirmed when they have been purified.

L4022 Thus, between the two matters lies the greatest difference. And from Allah, the Exalted, is success.

فَوَجَبَ أَنْ لَا يُجْزِئَ غَسْلُ رِجْلٍ وَمَسْحُ عَلَى الْأُخْرَى. وَأَنَّهُ لَا بُدَّ مِنْ غُسْلِهِمَا أَوْ الْمَسْحِ عَلَيْهِمَا. سَوَاءٌ فِي ذَلِكَ فِي الِابْتِدَاءِ أَوْ بَعْدَ الْمَسْحِ عَلَيْهِمَا.

وَقَدْ حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ بْنِ مُغِيثٍ قَالَ: ثنا أَبُو عِيسَى بْنُ أَبِي عِيسَى ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ عَبْدِ اللَّهِ بْنِ إدْرِيسَ - هُوَ الْأَوْدِيُّ - عَنْ مُحَمَّدِ بْنِ عَجْلَانَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ - هُوَ الْمَقْبُرِيُّ - عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا لَبِسَ أَحَدُكُمْ فَلْيَبْدَأْ بِالْيُمْنَى وَإِذَا خَلَعَهُ فَلْيَبْدَأْ بِالْيُسْرَى، وَلَا يَمْشِي فِي نَعْلٍ وَاحِدَةٍ وَلَا خُفٍّ وَاحِدَةٍ، لِيَخْلَعْهُمَا جَمِيعًا أَوْ لِيَمْشِ فِيهِمَا جَمِيعًا» . فَأَوْجَبَ - عَلَيْهِ السَّلَامُ - خَلْعَهُمَا وَلَا بُدَّ أَوْ تَرْكَهُمَا جَمِيعًا، فَإِنْ خَلَعَ إحْدَاهُمَا دُونَ الْأُخْرَى فَقَدْ عَصَى اللَّهَ فِي إبْقَائِهِ الَّذِي أَبْقَى، وَإِذَا كَانَ بِإِبْقَائِهِ عَاصِيًا فَلَا يَحِلُّ لَهُ الْمَسْحُ عَلَى خُفٍّ فَرْضُهُ نَزْعُهُ، فَإِنْ كَانَ ذَلِكَ لِعِلَّةٍ بِرِجْلِهِ لَمْ يَلْزَمْهُ فِي تِلْكَ الرِّجْلِ شَيْءٌ أَصْلًا، لَا مَسْحٌ وَلَا غَسْلٌ، لِأَنَّ فَرْضَهُ قَدْ سَقَطَ.

وَوَجَدْنَا بَعْضَ الْمُوَافِقِينَ لَنَا قَدْ احْتَجَّ فِي هَذَا بِأَنَّهُ لَمَّا لَمْ يَجُزْ عِنْدَ أَحَدٍ ابْتِدَاءُ الْوُضُوءِ بِغَسْلِ رِجْلٍ وَمَسْحٍ عَلَى خُفٍّ عَلَى أُخْرَى لَمْ يَجُزْ ذَلِكَ بَعْدَ نَزْعِ أَحَدِ الْخُفَّيْنِ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كَلَامٌ فَاسِدٌ، لِأَنَّ ابْتِدَاءَ الْوُضُوءِ يَرِدُ عَلَى رِجْلَيْنِ غَيْرِ طَاهِرَتَيْنِ، وَلَيْسَ كَذَلِكَ الْأَمْرُ بَعْدَ صِحَّةِ الْمَسْحِ عَلَيْهِمَا بَعْدَ إدْخَالِهِمَا طَاهِرَتَيْنِ.

فَبَيْنَ الْأَمْرَيْنِ أَعْظَمُ فَرْقٍ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَسَحَ عَلَى مَا فِي رِجْلَيْهِ ثُمَّ خَلَعَهُمَا]

٢١٩ - مَسْأَلَةٌ:

وَمَنْ مَسَحَ كَمَا ذَكَرْنَا عَلَى مَا فِي رِجْلَيْهِ ثُمَّ خَلَعَهُمَا لَمْ يَضُرَّهُ ذَلِكَ شَيْئًا، وَلَا يَلْزَمُهُ إِعَادَةُ وُضُوءٍ وَلَا غَسْلُ رِجْلَيْهِ، بَلْ هُوَ طَاهِرٌ كَمَا كَانَ وَيُصَلِّي كَذَلِكَ وَكَذَلِكَ لَوْ مَسَحَ عَلَى عِمَامَةٍ أَوْ خِمَارٍ ثُمَّ نَزَعَهُمَا فَلَيْسَ عَلَيْهِ إِعَادَةُ وُضُوءٍ وَلَا مَسْحُ رَأْسِهِ بَلْ هُوَ طَاهِرٌ كَمَا كَانَ وَيُصَلِّي كَذَلِكَ، وَكَذَلِكَ لَوْ مَسَحَ عَلَى خُفٍّ عَلَى خُفٍّ ثُمَّ نَزَعَ الْأَعْلَى فَلَا يَضُرُّهُ ذَلِكَ شَيْئًا، وَيُصَلِّي كَمَا هُوَ دُونَ أَنْ يُعِيدَ مَسْحًا.

وَكَذَلِكَ مَنْ تَوَضَّأَ أَوْ اغْتَسَلَ ثُمَّ حَلَقَ شَعْرَهُ أَوْ تَقَصَّصَ أَوْ قَلَّمَ أَظْفَارَهُ، فَهُوَ فِي كُلِّ ذَلِكَ عَلَى وُضُوئِهِ وَطَهَارَتِهِ وَيُصَلِّي كَمَا هُوَ دُونَ أَنْ يَمْسَحَ مَوَاضِعَ الْقَصِّ.

وَهَذَا قَوْلُ طَائِفَةٍ مِنَ السَّلَفِ، كَمَا رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ هِشَامِ بْنِ حَسَّانَ، وَرُوِّينَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنِ الْفُضَيْلِ بْنِ عَمْرٍو عَنْ إِبْرَاهِيمَ النَّخَعِيِّ: أَنَّهُ كَانَ يُحْدِثُ ثُمَّ يَمْسَحُ عَلَى جُرْمُوقَيْنِ لَهُ مِنْ لُبُودٍ ثُمَّ يَنْزِعُهُمَا، فَإِذَا قَامَ إِلَى الصَّلَاةِ لَبِسَهُمَا وَصَلَّى.

وَأَمَّا أَبُو حَنِيفَةَ فَإِنَّهُ قَالَ: مَنْ تَوَضَّأَ ثُمَّ مَسَحَ عَلَى خُفَّيْهِ ثُمَّ أَخْرَجَ قَدَمَهُ الْوَاحِدَةَ مِنْ مَوْضِعِهَا إِلَى مَوْضِعِ السَّاقِ، أَوْ أَخْرَجَ كِلْتَيْهِمَا كَذَلِكَ فَقَدْ بَطَلَ مَسْحُهُ، وَيَلْزَمُهُ أَنْ يُخْرِجَ قَدَمَيْهِ جَمِيعًا وَيَغْسِلَهُمَا، وَكَذَلِكَ عِنْدَهُ لَوْ أَخْرَجَهُمَا بِالْكُلِّ.

قَالَ أَبُو يُوسُفَ وَكَذَلِكَ إِذَا أَخْرَجَ أَكْثَرَ مِنْ نِصْفِ الْقَدَمِ إِلَى مَوْضِعِ السَّاقِ.

Issue: He performed masḥ over what was on his feet, then removed them.

219. Issue:

And whoever wipes as we have mentioned over what is on his feet then removes them, this does not harm him at all, nor is he required to repeat the ablution or wash his feet. Rather, he remains pure as he was and prays in that state. Similarly, if he wipes over a turban or veil then removes them, he is not required to repeat the ablution or wipe his head. Rather, he remains pure as he was and prays in that state. Likewise, if he wipes over one khuff over another then removes them. If the upper part is wiped, this does not invalidate his ablution at all, and he may pray as he is without redoing the wiping.

Similarly, whoever performs ablution or a ritual bath, then shaves his hair, trims it, or clips his nails, remains in a state of ablution and ritual purity throughout these acts and may pray as he is without wiping the areas where the hair was trimmed.

This is the view of a group of the early scholars, as reported to us from ʿAbd al-Razzāq from Sufyān al-Thawrī from Hishām ibn Ḥassān, and reported to us from Sufyān al-Thawrī from al-Fuḍayl ibn ʿAmr from Ibrāhīm al-Nakhaʿī: that he would break his ablution, then wipe over his two jurmūq socks made of felt and remove them. Then, when he stood for prayer, he would put them on and pray.

As for Abū Ḥanīfah, he said: Whoever performs ablution and then wipes over his two khuffs, then removes one foot from its place to the shin area, or removes both of them in that manner, his wiping is nullified. He must remove both feet together [from the khuffs] and wash them. Similarly, according to him, the same ruling applies if he removes them entirely.

Abū Yūsuf said: Similarly, if he exposed more than half of the foot to the shin area.

He said: If one wears two jurmuqs over two khuffs, then wipes over them [the jurmuqs], then removes one of the jurmuqs, he must necessarily wipe

over the khuff that was beneath the removed jurmuq and also wipe over the second jurmuq, for when part of the wiping is nullified, the entirety of it becomes nullified.

قَالَ فَلَوْ لَبِسَ جُرْمُوقَيْنِ عَلَى خُفَّيْنِ ثُمَّ مَسَحَ عَلَيْهِمَا ثُمَّ خَلَعَ أَحَدَ الْجُرْمُوقَيْنِ فَعَلَيْهِ أَنْ يَمْسَحَ عَلَى الْخُفِّ الَّذِي كَانَ تَحْتَ الْجُرْمُوقِ وَيَمْسَحَ أَيْضًا عَلَى الْجُرْمُوقِ الثَّانِي وَلَا بُدَّ، لِأَنَّ بَعْضَ الْمَسْحِ إِذَا انْتَقَضَ انْتَقَضَ كُلُّهُ.

L4033 He said: If he performs ablution and then closely shaves his hair, trims his mustache, and clips his nails, he remains in a state of ritual purity, and he does not need to rewet those parts.

قَالَ: فَلَوْ تَوَضَّأَ ثُمَّ جَزَّ شَعْرَهُ وَقَصَّ شَارِبَهُ وَأَظْفَارَهُ فَهُوَ عَلَى طَهَارَتِهِ، وَلَيْسَ عَلَيْهِ أَنْ يَمَسَّ الْمَاءُ شَيْئًا مِنْ ذَلِكَ.

L4034 As for Mālik, he said: Whoever wipes over his khuffs and then removes one of them must remove the other and wash both his feet. Similarly, if he removes both of them.

وَأَمَّا مَالِكٌ فَإِنَّهُ قَالَ: مَنْ مَسَحَ عَلَى خُفَّيْهِ ثُمَّ خَلَعَ أَحَدَهُمَا فَإِنَّهُ يَلْزَمُهُ أَنْ يَخْلَعَ الثَّانِيَ وَيَغْسِلَ رِجْلَيْهِ. وَكَذَلِكَ لَوْ خَلَعَهُمَا جَمِيعًا.

L4035 Similarly, if one removes one or both feet from the foot's designated area to the ankle area, they must remove both entirely and wash their feet. If they do not wash their feet immediately in that instance, they are obligated to restart ablution from the beginning. If they perform ablution and afterward trim their hair or cut their nails, they are not required to touch any of that water. It was stated: If they remove their heels or one heel from the foot's area to the ankle area, while the rest of both feet remains in the foot's position, they need not remove their feet for that reason, and their ablution remains valid.

وَكَذَلِكَ مَنْ أَخْرَجَ إِحْدَى رِجْلَيْهِ أَوْ كِلْتَيْهِمَا مِنْ مَوْضِعِ الْقَدَمِ إِلَى مَوْضِعِ السَّاقِ فَإِنَّهُ يَخْلَعُهُمَا جَمِيعًا وَلَا بُدَّ وَيَغْسِلُ قَدَمَيْهِ فَإِنْ لَمْ يَغْسِلْ قَدَمَيْهِ فِي فَوْرِهِ ذَلِكَ لَزِمَهُ ابْتِدَاءُ الْوُضُوءِ، فَلَوْ تَوَضَّأَ وَجَزَّ بَعْدَ ذَلِكَ شَعْرَهُ أَوْ قَصَّ أَظْفَارَهُ فَلَيْسَ عَلَيْهِ أَنْ يَمَسَّ شَيْئًا مِنْ ذَلِكَ الْمَاءِ، قَالَ فَلَوْ أَخْرَجَ عَقِبَيْهِ أَوْ إِحْدَاهُمَا مِنْ مَوْضِعِ الْقَدَمِ إِلَى مَوْضِعِ السَّاقِ إِلَّا أَنَّ سَائِرَ قَدَمَيْهِ فِي مَوْضِعِ الْقَدَمِ فَلَيْسَ عَلَيْهِ أَنْ يُخْرِجَ رِجْلَيْهِ لِذَلِكَ وَهُوَ عَلَى طَهَارَتِهِ.

L4036–4038 Al-Shafiʿi said: If one removes one of his khuffs, he must remove the second and wash his feet. If he removes both together, the same ruling applies (i.e., he must wash his feet). If he removes both feet from their position without fully taking off the khuffs or exposing any part beyond the shin area of the khuff, he remains in his state of purity, and nothing is required until he removes any part of the khuff that invalidates its validity. If the entire khuff is washed, he must remove both khuffs at that time and wash them completely. If one performs ablution then trims his hair or cuts his nails, he remains in his state of purity, and water need not touch any part of the trimmed hair or cut nails.

وَقَالَ الشَّافِعِيُّ: مَنْ خَلَعَ أَحَدَ خُفَّيْهِ لَزِمَهُ خَلْعُ الثَّانِي وَغَسْلُ قَدَمَيْهِ، فَإِنْ خَلَعَهُمَا جَمِيعًا فَكَذَلِكَ، فَلَوْ أَخْرَجَ رِجْلَيْهِ كِلَيْهِمَا عَنْ مَوْضِعِهِمَا وَلَمْ يُخْرِجْهُمَا وَلَا شَيْئًا مِنْهُمَا عَنْ مَوْضِعِ سَاقِ الْخُفِّ فَهُوَ عَلَى طَهَارَتِهِ، وَلَا شَيْءَ عَلَيْهِ حَتَّى يُخْرِجَ شَيْئًا مِمَّا يَجِبُ غَسْلُهُ عَنْ جَمِيعِ الْخُفِّ، فَيَلْزَمُهُ أَنْ يَخْلَعَهُمَا حِينَئِذٍ وَيَغْسِلَهُمَا، فَإِنْ تَوَضَّأَ ثُمَّ جَزَّ شَعْرَهُ أَوْ قَصَّ أَظْفَارَهُ فَهُوَ عَلَى طَهَارَتِهِ، وَلَيْسَ عَلَيْهِ أَنْ يَمَسَّ الْمَاءُ شَيْئًا مِنْ ذَلِكَ.

L4039 Al-Awzāʿī said: If one removes his two khuffs, trims his hair, or cuts his

nails, he must renew the ablution upon removing the khuffs, wipe over his head, and apply water to the trimmed area of his hair and the cut area of his nails. This is the opinion of Aṭāʾ.

وَقَالَ الْأَوْزَاعِيُّ: إِنْ خَلَعَ خُفَّيْهِ أَوْ جَزَّ شَعْرَهُ أَوْ قَصَّ أَظْفَارَهُ لَزِمَهُ أَنْ يَبْتَدِئَ الْوُضُوءَ فِي خَلْعِ الْخُفَّيْنِ وَأَنْ يَمْسَحَ عَلَى رَأْسِهِ وَيُمِسَّ الْمَاءَ مَوْضِعَ الْقَطْعِ مِنْ أَظْفَارِهِ فِي الْجَزِّ وَالْقَصِّ، وَهُوَ قَوْلُ عَطَاءٍ.

L4040 And similarly, Al-Awza'i stated that if someone wipes over his turban and then removes it, he wipes his head with water.

وَكَذَلِكَ قَالَ الْأَوْزَاعِيُّ فِيمَنْ مَسَحَ عَلَى عِمَامَتِهِ ثُمَّ نَزَعَهَا فَإِنَّهُ يَمْسَحُ رَأْسَهُ بِالْمَاءِ.

L4041 Ali said: As for Abū Yūsuf's statement regarding the consideration of exposing more than half of the foot from its position—whereby washing both feet becomes obligatory—or exposing half of it or less, in which case washing the feet is not required, this constitutes a clear overreach in religious rulings and a divine law that Allah the Exalted has not authorized. It is neither mandated by the Qur'an nor the Sunnah, nor supported by analogy, a companion's opinion, or a universally applicable view. For they sometimes deem "much" as exceeding half, at other times a third, a quarter, a span overlapping another span, or even surpassing the size of a dirham—all of which reflects incoherent reasoning.

قَالَ عَلِيٌّ: أَمَّا قَوْلُ أَبِي يُوسُفَ فِي مُرَاعَاةِ إِخْرَاجِ أَكْثَرَ مِنْ نِصْفِ الْقَدَمِ عَنْ مَوْضِعِهَا فَيَلْزَمُهُ الْغَسْلُ فِي رِجْلَيْهِ مَعًا أَوْ إِخْرَاجُ نِصْفِهَا فَأَقَلَّ فَلَا يَلْزَمُهُ غَسْلُ رِجْلَيْهِ، فَتَحَكُّمٌ فِي الدِّينِ ظَاهِرٌ وَشَرْعٌ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى، وَلَا أَوْجَبَهُ قُرْآنٌ وَلَا سُنَّةٌ، وَلَا قِيَاسٌ وَلَا قَوْلُ صَاحِبٍ وَلَا رَأْيٌ مُطَّرِدٌ، لِأَنَّهُمْ يَرَوْنَ مَرَّةً الْكَثِيرَ أَكْثَرَ مِنَ النِّصْفِ، وَمَرَّةً الثُّلُثَ، وَمَرَّةً الرُّبُعَ، وَمَرَّةً شِبْرًا فِي شِبْرٍ، وَمَرَّةً أَكْثَرَ مِنْ قَدْرِ الدِّرْهَمِ، وَكُلُّ هَذَا تَخْلِيطٌ.

L4042 As for Mālik's distinction between moving the heel to the shin area—which he claims does not invalidate the masḥ—and moving the entire foot to the shin area—which he asserts invalidates the masḥ—this is an arbitrary ruling. It is impermissible to adopt this opinion, as it is not mandated by the Qur'ān, a sound or unsound Sunnah, the statement of a Companion, analogical reasoning, or consistent juristic rationale. This is because he maintains that the heel remaining unwashed during ablution is not purified, rendering the ablution invalid. If the masḥ is invalidated for the foot due to its movement beyond the position of the foot to the shin, then the masḥ must necessarily be invalidated for the heel when it moves beyond its position to the shin. No alternative is permissible. Conversely, if the masḥ is not invalidated when the heel moves to the shin, then it is likewise not invalidated when the entire foot moves to the shin, as Al-Shāfiʿī stated.

وَأَمَّا فَرْقُ مَالِكٍ بَيْنَ إِخْرَاجِ الْعَقِبِ إِلَى مَوْضِعِ السَّاقِ فَلَا يَنْتَقِضُ الْمَسْحُ، وَبَيْنَ إِخْرَاجِ الْقَدَمِ كُلِّهَا إِلَى مَوْضِعِ السَّاقِ فَيَنْتَقِضُ الْمَسْحُ، فَتَحَكُّمٌ أَيْضًا لَا يَجُوزُ الْقَوْلُ بِهِ وَلَا يُوجِبُهُ قُرْآنٌ وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ وَلَا قِيَاسٌ وَلَا رَأْيٌ مُطَّرِدٌ، لِأَنَّهُ يَرَى أَنَّ بَقَاءَ الْعَقِبِ فِي الْوُضُوءِ لَا يَطْهُرُ، إِنَّ فَاعِلَ ذَلِكَ لَا وُضُوءَ لَهُ، فَإِنْ كَانَ الْمَسْحُ قَدْ انْتَقَضَ عَنِ الرِّجْلِ بِخُرُوجِهَا عَنْ مَوْضِعِ الْقَدَمِ، فَلَا بُدَّ مِنِ انْتِقَاضِ الْمَسْحِ عَنِ الْعَقِبِ بِخُرُوجِهَا عَنْ مَوْضِعِهَا إِلَى مَوْضِعِ السَّاقِ، لَا يَجُوزُ غَيْرُ ذَلِكَ، وَإِنْ كَانَ الْمَسْحُ لَا يَنْتَقِضُ عَنِ الْعَقِبِ بِخُرُوجِهَا إِلَى مَوْضِعِ السَّاقِ، فَإِنَّهُ لَا يَنْتَقِضُ أَيْضًا بِخُرُوجِ الْقَدَمِ إِلَى مَوْضِعِ السَّاقِ كَمَا قَالَ الشَّافِعِيُّ.

L4043 As for their collective differentiation between wiping over the khuffs—then

if they are removed, the wiping is invalidated and completing the ablution becomes obligatory—and between ablution followed by shaving the hair and trimming the nails, where neither the ablution is invalidated by trimming the nails nor the head wiping, this constitutes an invalid distinction marked by obvious contradiction. Were a person to reverse this ruling—obligating head wiping for one who shaved his hair and touched nail clippers with water, while deeming wiping unnecessary for one who removed his khuffs—there would be no distinction between them.

وَأَمَّا تَفْرِيقُهُمْ جَمِيعهُمْ بَيْنَ الْمَسْحِ عَلَى الْخُفَّيْنِ ثُمَّ يُخْلَعَانِ فَيَنْتَقِضُ الْمَسْحُ وَيَلْزَمُ إِتْمَامُ الْوُضُوءِ، وَبَيْنَ الْوُضُوءِ ثُمَّ يُجَزُّ الشَّعْرُ وَتُقَصُّ الْأَظْفَارُ فَلَا يَنْتَقِضُ الْغَسْلُ عَنْ مَقَصِّ الْأَظْفَارِ وَلَا الْمَسْحُ عَلَى الرَّأْسِ فَفَرْقٌ فَاسِدٌ ظَاهِرُ التَّنَاقُضِ وَلَوْ عَكَسَ إِنْسَانٌ هَذَا الْقَوْلَ فَأَوْجَبَ مَسْحَ الرَّأْسِ عَلَى مَنْ حَلَقَ شَعْرَهُ وَمَسَّ مِجَزَّ الْأَظْفَارِ بِالْمَاءِ وَلَمْ يَرَ الْمَسْحَ عَلَى مَنْ خَلَعَ خُفَّيْهِ، لَمَا كَانَ بَيْنَهَا فَرْقٌ.

L4044–4046 Ali said: “We found no foundational basis whatsoever for their position in that matter, except that some of them stated: ‘We found that wiping the head and washing the feet in [ritual] ablution were intended for the head itself (not the hair) and similarly intended for...” [The original text breaks off here.] The fingers, not the nails. When the hair is shaved and the nails are cut, the *wudu* remains valid as it was. As for wiping, it was specifically intended for the *khuffayn* [leather socks], not the feet. When they are removed, the feet remain without having been washed in ablution. Thus, he prays with feet that are neither washed nor wiped upon, so his *wudu* is deficient.

قَالَ عَلِيٌّ: وَمَا وَجَدْنَا لَهُمْ فِي ذَلِكَ مُتَعَلَّقًا أَصْلًا إِلَّا أَنَّ بَعْضَهُمْ قَالَ: وَجَدْنَا مَسْحَ الرَّأْسِ وَغَسْلَ الْقَدَمَيْنِ فِي الْوُضُوءِ إِنَّمَا قُصِدَ بِهِ الرَّأْسُ لَا الشَّعْرُ، وَإِنَّمَا قُصِدَ بِهِ الْأَصَابِعُ لَا الْأَظَافِرُ، فَلَمَّا جُزَّ الشَّعْرُ وَقُطِعَتْ الْأَظْفَارُ بَقِيَ الْوُضُوءُ بِحَسَبِهِ، وَأَمَّا الْمَسْحُ فَإِنَّمَا قُصِدَ بِهِ الْخُفَّانِ لَا الرِّجْلَانِ، فَلَمَّا نُزِعَا بَقِيَتْ الرِّجْلَانِ لَمْ تُوَضَّآ، فَهُوَ يُصَلِّي بِرِجْلَيْنِ لَا مَغْسُولَتَيْنِ وَلَا مَمْسُوحٍ عَلَيْهِمَا فَهُوَ نَاقِصُ الْوُضُوءِ.

L4047 Abū Muḥammad said: This is invalid, for it is baseless and an arbitrary imposition of falsehood. If his statement were reversed and he were told: “Rather, wiping over the head and washing the nails are intended solely for the hair and nails themselves—evidenced by the fact that if there were henna on the hair and similarly on the nails, ablution would not be valid. As for the two leather socks, the intended focus of wiping is the feet, not the socks themselves, because if there were no feet, wiping over them would not be permissible.” Thus, it is confirmed that the ruling for the feet is washing if they are uncovered, and wiping if they are within two leather socks, since there is no valid distinction between the two opinions.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا شَيْءَ لِأَنَّهُ بَاطِلٌ وَتَحَكُّمٌ بِالْبَاطِلِ، فَلَوْ عُكِسَ عَلَيْهِ قَوْلُهُ فَقِيلَ لَهُ: بَلْ الْمَسْحُ عَلَى الرَّأْسِ وَغَسْلُ الْأَظْفَارِ إِنَّمَا قُصِدَ بِهِ الشَّعْرُ وَالْأَظْفَارُ فَقَطْ، بِدَلِيلِ أَنَّهُ لَوْ كَانَ عَلَى الشَّعْرِ حِنَّاءُ وَعَلَى الْأَظْفَارِ كَذَلِكَ لَمْ يَجُزْ الْوُضُوءُ، وَأَمَّا الْخُفَّانِ فَالْمَقْصُودُ بِالْمَسْحِ الْقَدَمَانِ لَا الْخُفَّانِ، لِأَنَّ الْخُفَّيْنِ لَوْلَا الْقَدَمَانِ لَمْ يَجُزْ الْمَسْحُ عَلَيْهِمَا فَصَحَّ أَنَّ حُكْمَ الْقَدَمَيْنِ الْغَسْلُ، إِنْ كَانَتَا مَكْشُوفَتَيْنِ، وَالْمَسْحُ إِنْ كَانَتَا فِي خُفَّيْنِ لَمَا كَانَ بَيْنَ الْقَوْلَيْنِ فَرْقٌ.

L4048 Then it is said to them: Suppose the matter is as you claimed—that the wiping is for the khuffs, the wiping in ablution is for the head, and the washing of the hands is for the fingers, not the nails.

ثُمَّ يُقَالُ لَهُمْ: هَبْكُمْ أَنَّ الْأَمْرَ كَمَا قُلْتُمْ فِي أَنَّ الْمَقْصُودَ بِالْمَسْحِ الْخُفَّانِ، وَبِالْمَسْحِ فِي الْوُضُوءِ الرَّأْسُ، وَبِغَسْلِ الْيَدَيْنِ لِلْأَصَابِعِ لَا لِلْأَظْفَارِ.

L4049 What then? Or from which source does it become obligatory from this that

wiping is repeated upon removing the leather socks, yet it is not repeated upon shaving the hair?

فَكَانَ مَاذَا؟ أَوْ مِنْ أَيْنَ وَجَبَ مِنْ هَذَا أَنْ يُعَادَ الْمَسْحُ بِخَلْعِ الْخُفَّيْنِ وَلَا يُعَادَ بِحَلْقِ الشَّعْرِ؟

L4050 Ali said: Thus, the invalidity of this opinion became evident.

قَالَ عَلِيٌّ: فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ.

L4051 As for their claim that he prays with two feet neither washed nor wiped—this is false. Rather, he only prays upon [with] two feet that have been wiped over the two khuffs [leather socks] worn on them.

وَأَمَّا قَوْلُهُمْ: إنَّهُ يُصَلِّي بِقَدَمَيْنِ لَا مَغْسُولَتَيْنِ وَلَا مَمْسُوحٍ عَلَيْهِمَا - فَبَاطِلٌ، بَلْ مَا يُصَلِّي - إلَّا عَلَى قَدَمَيْنِ مَمْسُوحٍ عَلَى خُفَّيْنِ عَلَيْهِمَا.

L4052 Ali said: This statement is invalid as we have clarified. Similarly, their claim that one should wash only his feet is definitively invalid, because by their own acknowledgment his ablution had already been completed and his prayer performed with it became valid. Then you instructed him to wash only his feet. This must fall into one of two scenarios with no third possibility: either the previously completed ablution has been nullified or it remains valid. If it remains valid, this aligns with our position. If it has been nullified, he must recommence the ablution. Otherwise, this constitutes an impossible and invalid notion - it is inconceivable that an ablution, once fully completed, could have some parts nullified while others remain valid. Such a ruling is not supported by any textual evidence, legal analogy, or sound scholarly reasoning.

قَالَ عَلِيٌّ: فَبَطَلَ هَذَا الْقَوْلُ كَمَا بَيَّنَّا، وَكَذَلِكَ قَوْلُهُمْ: يَغْسِلُ رِجْلَيْهِ فَقَطْ، فَهُوَ بَاطِلٌ مُتَيَقَّنٌ، لِأَنَّهُ قَدْ كَانَ بِإِقْرَارِهِمْ قَدْ تَمَّ وُضُوءُهُ وَجَازَتْ لَهُ الصَّلَاةُ بِهِ ثُمَّ أَمَرْتُمُوهُ بِغَسْلِ رِجْلَيْهِ فَقَطْ، وَلَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا أَنْ يَكُونَ الْوُضُوءُ الَّذِي قَدْ كَانَ تَمَّ قَدْ بَطَلَ أَوْ يَكُونَ لَمْ يَبْطُلْ، فَإِنْ كَانَ لَمْ يَبْطُلْ فَهَذَا قَوْلُنَا وَإِنْ كَانَ قَدْ بَطَلَ فَعَلَيْهِ أَنْ يَبْتَدِئَ الْوُضُوءَ، وَإِلَّا فَمِنْ الْمُحَالِ الْبَاطِلِ الَّذِي لَا يُخَيَّلُ أَنْ يَكُونَ وُضُوءٌ قَدْ تَمَّ ثُمَّ يُنْقَضُ بَعْضُهُ وَلَا يُنْقَضُ بَعْضُهُ، هَذَا أَمْرٌ لَا يُوجِبُهُ نَصٌّ وَلَا قِيَاسٌ وَلَا رَأْيٌ يَصِحُّ.

L4053 All these opinions are nullified, and none remains except our school's opinion or that of al-Awzāʿī.

فَبَطَلَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا وَلَمْ يَبْقَ إلَّا قَوْلُنَا أَوْ قَوْلُ الْأَوْزَاعِيِّ.

L4054 So we examined that matter and found that the proof has been firmly established by the explicit texts of the Sunnah and the Quran: whoever performs ablution and wipes over his turban and leather socks, his ablution is complete, his ritual impurity is lifted, and his prayer becomes permissible.

فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا الْبُرْهَانَ قَدْ صَحَّ بِنَصِّ السُّنَّةِ وَالْقُرْآنِ عَلَى أَنَّ مَنْ تَوَضَّأَ وَمَسَحَ عَلَى عِمَامَتِهِ وَخُفَّيْهِ فَإِنَّهُ قَدْ تَمَّ وُضُوءُهُ وَارْتَفَعَ حَدَثُهُ وَجَازَتْ لَهُ الصَّلَاةُ.

L4055–4057 These opponents of ours are unanimously agreed regarding one who wipes his head and two khuffs, then removes them... Removing his leather socks (khuffs) and turban, shaving his head, cutting his hair short, or trimming his nails: Some scholars asserted that his wudu was invalidated, while others maintained his wudu remained valid. We examined this matter and con-

وَأَجْمَعَ هَؤُلَاءِ الْمُخَالِفُونَ لَنَا عَلَى ذَلِكَ فِيمَنْ مَسَحَ رَأْسَهُ وَخُفَّيْهِ ثُمَّ إنَّهُ لَمَّا خَلَعَ خُفَّيْهِ وَعِمَامَتَهُ وَحَلَقَ رَأْسَهُ أَوْ تَقَصَّصَ وَقَطَعَ أَظْفَارَهُ: قَالَ قَوْمٌ: قَدْ انْتَقَضَ وُضُوءُهُ، وَقَالَ آخَرُونَ لَمْ يَنْتَقِضْ وُضُوءُهُ فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا الْحَلْقَ وَقَصَّ الشَّعْرِ وَقَصَّ الْأَظْفَارِ

cluded that shaving, cutting hair, trimming nails, removing the khuffs, and removing the turban—none of these actions constitute a hadath. Ritual purity (ṭahārah) is nullified solely by hadath acts or explicit textual evidence mandating its invalidation. Since there was neither a hadath nor textual evidence here nullifying his purity or any part of it, this opinion is invalid. The correct view is that he remains in a state of ritual purity and may pray as long as he does not commit a hadath. He is not obliged to wipe his head or nails, wash his feet, or repeat his wudu. Those who deemed wudu obligatory for such actions are akin to those who obligated it for walking, speaking, or removing his shirt—there is no distinction. Success is from Allah.

وَخَلْعَ الْخُفَّيْنِ وَالْعِمَامَةِ لَيْسَ شَيْءٌ مِنْهُ حَدَثًا، وَالطَّهَارَةُ لَا يَنْقُضُهَا إِلَّا الْأَحْدَاثُ، أَوْ نَصٌّ وَارِدٌ بِانْتِقَاضِهَا وَأَنَّهُ لَمْ يَكُنْ حَدَثٌ وَلَا نَصَّ هَهُنَا عَلَى انْتِقَاضِ طَهَارَتِهِ وَلَا عَلَى انْتِقَاضِ بَعْضِهَا فَبَطَلَ هَذَا الْقَوْلُ، وَصَحَّ الْقَوْلُ بِأَنَّهُ عَلَى طَهَارَتِهِ، وَأَنَّهُ يُصَلِّي مَا لَمْ يُحْدِثْ، وَلَا يَلْزَمُهُ مَسْحُ رَأْسِهِ وَلَا أَظْفَارِهِ وَلَا غَسْلُ رِجْلَيْهِ وَلَا إِعَادَةُ وُضُوئِهِ، وَكَانَ مَنْ أَوْجَبَ الْوُضُوءَ مِنْ ذَلِكَ كَمَنْ أَوْجَبَهُ مِنَ الْمَشْيِ أَوْ مِنَ الْكَلَامِ أَوْ مِنْ خَلْعِ قَمِيصِهِ وَلَا فَرْقَ. وَبِاللَّهِ التَّوْفِيقُ.

[مَسْأَلَةٌ تَعَمَّدَ لِبَاسَ الْخُفَّيْنِ عَلَى طَهَارَةٍ لِيَمْسَحَ عَلَيْهِمَا]

Case: If someone intentionally wears khuffs (leather socks) in a state of ritual purity to wipe over them.

220 - Question:

٢٢٠ - مَسْأَلَةٌ:

And whoever intentionally wears the two khuffs (leather socks) in a state of purity to wipe over them, dyes his feet, or carries medication upon them, then wears them to wipe over that.

وَمَنْ تَعَمَّدَ لِبَاسَ الْخُفَّيْنِ عَلَى طَهَارَةٍ لِيَمْسَحَ عَلَيْهِمَا أَوْ خَضَبَ رِجْلَيْهِ أَوْ حَمَلَ عَلَيْهِمَا دَوَاءً ثُمَّ لَبِسَهُمَا لِيَمْسَحَ عَلَى ذَلِكَ.

Or if he dyed his head or placed medication on it, then wore a turban or khimar to wipe over that, he has done correctly.

أَوْ خَضَبَ رَأْسَهُ أَوْ حَمَلَ عَلَيْهِ دَوَاءً ثُمَّ لَبِسَ الْعِمَامَةَ أَوْ الْخِمَارَ لِيَمْسَحَ عَلَى ذَلِكَ، فَقَدْ أَحْسَنَ.

This is because the scriptural text has explicitly permitted wiping over all such things without restriction, and no textual ruling has prohibited anything from any of this: {And your Lord is never forgetful} [19:64]. It has reached us from some early scholars that he said: Whoever performs ablution and then wears his khuffs so that he may spend the night in them to wipe over them, it is not permissible for him to wipe.[1]

وَذَلِكَ لِأَنَّهُ قَدْ جَاءَ النَّصُّ بِإِبَاحَةِ الْمَسْحِ عَلَى كُلِّ ذَلِكَ مُطْلَقًا. وَلَمْ يَحْظُرْ عَلَيْهِ شَيْئًا مِنْ هَذَا كُلِّهِ نَصٌّ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَبَلَغَنَا عَنْ بَعْضِ الْمُتَقَدِّمِينَ أَنَّهُ قَالَ: مَنْ تَوَضَّأَ ثُمَّ لَبِسَ خُفَّيْهِ لِيَبِيتَ فِيهَا لِيَمْسَحَ عَلَيْهِمَا فَلَا يَجُوزُ لَهُ الْمَسْحُ.

This is an error because it is an unsubstantiated claim and a restriction imposed on the Sunnah without evidence.

وَهَذَا خَطَأٌ لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ وَتَخْصِيصٌ لِلسُّنَّةِ بِلَا دَلِيلٍ.

And every statement not validated by the text is therefore null and void. And success is from Allah, the Exalted.

وَكُلُّ قَوْلٍ لَمْ يُصَحِّحْهُ النَّصُّ فَهُوَ بَاطِلٌ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[1] **Qur'an references (L4062):** Qur'an 19:64 (Maryam).

Case: He performed wiping while resident, then traveled before the expiration of a day and night or after their expiration.

221: Legal Question

Whoever performs wiping over footwear while in residence and then travels—whether before or after the completion of a day and night—must also continue wiping until his wiping is completed, covering all instances of wiping in both his residence and travel together, amounting to three days with their nights.

Thereafter, it is not permissible for him to wipe. If he wiped during travel then settled or entered his residence, he must begin wiping for a day and night if he had wiped during travel for two days and two nights or less. Then it is not permissible for him to wipe. If he wiped during his travel for less than three days and their nights but more than two days and two nights, he must wipe only the remainder of the third day and its night. Then it is not permissible for him to wipe. If he completed wiping three days and their nights during travel, he must necessarily remove them, and it is not permissible for him to wipe until he washes his feet.

The evidence for this is what we have previously mentioned: that the Messenger of Allah (peace be upon him) only permitted wiping for three days including their nights for the traveler, and a day and night for the resident. Thus, it is conclusively established that he did not permit anyone to wipe for more than three days including their nights – neither resident nor traveler. He only prohibited initiating wiping, not [prohibiting] prayers performed with prior wiping. This necessitates our stated position. Therefore, if one wipes while resident for a day and night, then travels, then returns before completing a day and night of travel... Or after completing the two periods [for wiping], it is impermissible for him to wipe at all, because if he were to do so, he would have wiped while in residential status for more than a day and night. This is absolutely impermissible.

Abu Hanifah and Sufyan said: If one wipes while residing and has not

[مَسْأَلَةٌ مَسَحَ فِي الْحَضَرِ ثُمَّ سَافَرَ قَبْلَ انْقِضَاءِ الْيَوْمِ وَاللَّيْلَةِ أَوْ بَعْدَ انْقِضَائِهِمَا]

٢٢١ - مَسْأَلَةٌ:

وَمَنْ مَسَحَ فِي الْحَضَرِ ثُمَّ سَافَرَ - قَبْلَ انْقِضَاءِ الْيَوْمِ وَاللَّيْلَةِ أَوْ بَعْدَ انْقِضَائِهِمَا - مَسَحَ أَيْضًا حَتَّى يَتِمَّ لِمَسْحِهِ فِي كُلِّ مَا مَسَحَ فِي حَضَرِهِ وَسَفَرِهِ مَعًا ثَلَاثَةُ أَيَّامٍ بِلَيَالِيهَا.

ثُمَّ لَا يَحِلُّ لَهُ الْمَسْحُ، فَإِنْ مَسَحَ فِي سَفَرٍ ثُمَّ أَقَامَ أَوْ دَخَلَ مَوْضِعَهُ ابْتَدَأَ مَسْحَ يَوْمٍ وَلَيْلَةٍ إنْ كَانَ قَدْ مَسَحَ فِي السَّفَرِ يَوْمَيْنِ وَلَيْلَتَيْنِ فَأَقَلَّ، ثُمَّ لَا يَحِلُّ لَهُ الْمَسْحُ، فَإِنْ كَانَ مَسَحَ فِي سَفَرِهِ أَقَلَّ مِنْ ثَلَاثَةِ أَيَّامٍ بِلَيَالِيهَا وَأَكْثَرَ مِنْ يَوْمَيْنِ وَلَيْلَتَيْنِ مَسَحَ بَاقِيَ الْيَوْمِ الثَّالِثِ وَلَيْلَتِهِ فَقَطْ، ثُمَّ لَا يَحِلُّ لَهُ الْمَسْحُ، فَإِنْ كَانَ قَدْ أَتَمَّ فِي السَّفَرِ مَسَحَ ثَلَاثَةَ أَيَّامٍ بِلَيَالِيهَا خَلَعَ وَلَا بُدَّ، وَلَا يَحِلُّ لَهُ الْمَسْحُ حَتَّى يَغْسِلَ رِجْلَيْهِ.

بُرْهَانُ ذَلِكَ مَا قَدْ ذَكَرْنَاهُ مِنْ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُبِحْ الْمَسْحَ إلَّا ثَلَاثَةَ أَيَّامٍ لِلْمُسَافِرِ بِلَيَالِيهَا وَيَوْمًا وَلَيْلَةً لِلْمُقِيمِ، فَصَحَّ يَقِينًا أَنَّهُ لَمْ يُبِحْ لِأَحَدٍ أَنْ يَمْسَحَ أَكْثَرَ مِنْ ثَلَاثَةِ أَيَّامٍ بِلَيَالِيهَا، لَا مُقِيمًا وَلَا مُسَافِرًا، وَإِنَّمَا نَهَى عَنْ ابْتِدَاءِ الْمَسْحِ - لَا عَنْ الصَّلَاةِ بِالْمَسْحِ الْمُتَقَدِّمِ - فَوَجَبَ مَا قُلْنَا، فَلَوْ مَسَحَ فِي الْحَضَرِ يَوْمًا وَلَيْلَةً ثُمَّ سَافَرَ ثُمَّ رَجَعَ قَبْلَ أَنْ يُتِمَّ يَوْمًا وَلَيْلَةً فِي السَّفَرِ أَوْ بَعْدَ أَنْ أَتَمَّهُمَا لَمْ يَجُزْ لَهُ الْمَسْحُ أَصْلًا، لِأَنَّهُ لَوْ مَسَحَ لَكَانَ قَدْ مَسَحَ وَهُوَ فِي الْحَضَرِ أَكْثَرَ مِنْ يَوْمٍ وَلَيْلَةٍ، وَهَذَا لَا يَحِلُّ أَلْبَتَّةَ.

completed a day and night until he travels, he may continue wiping until he completes three days and nights from when he incurred a minor impurity while residing. But if he had already completed a day and night while residing before traveling, wiping is not permitted for him, and he must wash his feet.

وَقَالَ أَبُو حَنِيفَةَ وَسُفْيَانُ: مَنْ مَسَحَ وَهُوَ مُقِيمٌ فَإِنْ كَانَ لَمْ يُتِمَّ يَوْمًا وَلَيْلَةً حَتَّى سَافَرَ مَسَحَ حَتَّى يُتِمَّ ثَلَاثَةَ أَيَّامٍ بِلَيَالِيهَا مِنْ حِينِ أَحْدَثَ وَهُوَ مُقِيمٌ، فَإِنْ كَانَ قَدْ أَتَمَّ يَوْمًا وَلَيْلَةً فِي حَضَرِهِ ثُمَّ سَافَرَ لَمْ يَجُزْ لَهُ الْمَسْحُ، وَلَا بُدَّ لَهُ مِنْ غَسْلِ رِجْلَيْهِ.

L4073 He said: If someone travels and wipes [their feet] for a day and a night or more, then returns or settles, they are no longer permitted to wipe and must wash their feet. However, if they wiped for less than a day and a night during travel and then return or settle, they may complete that day and night, but they may not renew the wiping for another day and a night.

قَالَ: فَإِنْ سَافَرَ فَمَسَحَ يَوْمًا وَلَيْلَةً فَأَكْثَرَ ثُمَّ قَدِمَ أَوْ أَقَامَ لَمْ يَجُزْ لَهُ الْمَسْحُ حَتَّى يَغْسِلَ رِجْلَيْهِ فَلَوْ مَسَحَ فِي سَفَرِهِ أَقَلَّ مِنْ يَوْمٍ وَلَيْلَةٍ ثُمَّ قَدِمَ أَوْ أَقَامَ كَانَ لَهُ أَنْ يَمْسَحَ تَمَامَ ذَلِكَ الْيَوْمِ وَاللَّيْلَةِ فَقَطْ، وَلَيْسَ لَهُ أَنْ يَسْتَأْنِفَ مَسْحَ يَوْمٍ وَلَيْلَةٍ.

L4074 Al-Shafi'i said: Whoever performs wiping while resident and then travels—if he has completed a full day and night, he must necessarily remove them; but if he has not completed a day and night, he is to wipe for the remainder of that day only, then he removes them.

وَقَالَ الشَّافِعِيُّ: مَنْ مَسَحَ فِي الْحَضَرِ ثُمَّ سَافَرَ، فَإِنْ كَانَ قَدْ أَتَمَّ الْيَوْمَ وَاللَّيْلَةَ خَلَعَ وَلَا بُدَّ، وَإِنْ كَانَ لَمْ يُتِمَّ يَوْمًا وَلَيْلَةً مَسَحَ بَاقِيَ ذَلِكَ الْيَوْمِ فَقَطْ ثُمَّ يَخْلَعُ.

L4075 Similarly, if one performed wiping during travel and then arrived, the ruling applies equally: whether he wiped for a full day and night during his journey and then arrived or settled, he is obliged to remove the khuffs without exception. If he wiped for less than a day and night during travel, he must complete the remaining duration of that day and night solely through wiping.

وَكَذَلِكَ لَوْ مَسَحَ فِي السَّفَرِ ثُمَّ قَدِمَ سَوَاءٌ سَوَاءٌ، إِنْ كَانَ مَسَحَ فِي سَفَرِهِ يَوْمًا وَلَيْلَةً وَقَدِمَ أَوْ أَقَامَ فَإِنَّهُ يَخْلَعُ وَلَا بُدَّ، وَإِنْ كَانَ مَسَحَ أَقَلَّ مِنْ يَوْمٍ وَلَيْلَةٍ فِي سَفَرِهِ أَتَمَّ بَاقِيَ ذَلِكَ الْيَوْمِ وَاللَّيْلَةِ بِالْمَسْحِ فَقَطْ.

L4076 Our school's scholars have differed. Some held the opinion we mentioned, while others maintained: If one performs masḥ (wiping over footwear) during travel for less than three days including their nights, or three days including their nights but no longer, then upon arriving [at his residence], he must restart the wiping period of one day and night. If he does not exceed that period until he travels again, he must restart the three-day period including their nights. The latter group argued based on the apparent wording of the ḥadīth regarding it.

وَاخْتَلَفَ أَصْحَابُنَا، فَقَالَ بَعْضُهُمْ كَمَا قُلْنَا، وَقَالَ بَعْضُهُمْ: إِذَا مَسَحَ فِي سَفَرِهِ أَقَلَّ مِنْ ثَلَاثَةِ أَيَّامٍ بِلَيَالِيهَا، أَوْ ثَلَاثَةِ أَيَّامٍ بِلَيَالِيهَا لَا أَكْثَرَ وَقَدِمَ اسْتَأْنَفَ مَسْحَ يَوْمٍ وَلَيْلَةٍ فَإِنْ لَمْ يَزِدْ عَلَى ذَلِكَ حَتَّى سَافَرَ اسْتَأْنَفَ ثَلَاثَةَ أَيَّامٍ بِلَيَالِيهَا، وَاحْتَجَّ هَؤُلَاءِ بِظَاهِرِ لَفْظِ الْخَبَرِ فِي ذَلِكَ.

L4077 Ali said: The apparent wording of his statement confirms the validity of our position, for people are of two categories: resident and traveler. He (peace be upon him) permitted the traveler only three days and permitted the resident only one day among the three. Thus, he did not permit anyone—whether

قَالَ عَلِيٌّ: وَظَاهِرُ لَفْظِهِ يُوجِبُ صِحَّةَ قَوْلِنَا، لِأَنَّ النَّاسَ قِسْمَانِ: مُقِيمٌ وَمُسَافِرٌ، وَلَمْ يُبِحْ - عَلَيْهِ السَّلَامُ - لِلْمُسَافِرِ إِلَّا ثَلَاثًا، وَلَا أَبَاحَ لِلْمُقِيمِ إِلَّا بَعْضَ الثَّلَاثِ فَلَمْ يُبِحْ لِأَحَدٍ

resident or traveler—more than three days. Whoever embarks on a journey wherein prayer is shortened wipes as a traveler does—three days including their nights. Whoever embarks on a journey shorter than that wipes as a resident does, for the ruling of this journey is equivalent to the ruling of residency. And with Allah, the Exalted, lies success.

Issue: The wiping over the two khuffs (leather socks) and what is worn on the feet, on their outer surface only.

222 - Issue:

The wiping over the khuffs [ankle-high leather socks] and footwear (garments worn over the feet) applies only to their outer surface. There is no valid basis for wiping the lower inner part beneath the foot, nor for covering the entirety of their outer surface. Whatever is wiped from their outer surface with a finger or more suffices.

The evidence for that is what was narrated to us by ʿAbdullāh ibn Rabīʿ, who narrated from Muḥammad ibn Isḥāq ibn as-Salīm, who narrated from Ibn al-Aʿrābī, who narrated from Abū Dāwūd, who narrated from Muḥammad ibn al-ʿAlāʾ, who narrated from Ḥafṣ ibn Ghiyāth, who narrated from al-Aʿmash, who narrated from Abū Isḥāq. From ʿAbd Khayr, from ʿAlī, who said: "If religion were based on opinion, the sole of the khuff would be more fitting to wipe than its top. Yet I saw the Messenger of Allah (peace be upon him) wiping over the outer surface of the two khuffs."

This is also the view held by Abū Ḥanīfah, Sufyān al-Thawrī, and Dāwūd. This was likewise the position of ʿAlī ibn Abī Ṭālib as we have mentioned, and of Qays ibn Saʿd.

As narrated to us through Abd al-Rahman ibn Mahdi, who narrated to us Sufyan al-Thawri, who narrated to us Abu Ishaq - who is al-Sabi'i - from Yazid ibn Abi al-Ala', who said: "I saw Qays ibn Sa'd urinate, then go to his belongings, perform ablution, and wipe over the upper surfaces of his leather socks until I saw the traces of his fingers upon them."

It has been narrated to us from Maʿmar ibn Ayyūb al-Sikhtiyānī, who said: I

- لَا مُقِيمٍ وَلَا مُسَافِرٍ - أَكْثَرَ مِنْ ثَلَاثٍ، وَمَنْ خَرَجَ إِلَى سَفَرٍ تُقْصَرُ فِي مِثْلِهِ الصَّلَاةُ مَسَحَ مَسْحَ مُسَافِرٍ، ثَلَاثًا بِلَيَالِيهِنَّ، وَمَنْ خَرَجَ دُونَ ذَلِكَ مَسَحَ مَسْحَ مُقِيمٍ؛ لِأَنَّ حُكْمَ هَذَا الْبُرُوزِ حُكْمُ الْحَضَرِ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْمَسْحُ عَلَى الْخُفَّيْنِ وَمَا لُبِسَ عَلَى الرِّجْلَيْنِ عَلَى ظَاهِرِهِمَا فَقَطْ]

٢٢٢ - مَسْأَلَةٌ:

وَالْمَسْحُ عَلَى الْخُفَّيْنِ وَمَا لُبِسَ عَلَى الرِّجْلَيْنِ إِنَّمَا هُوَ عَلَى ظَاهِرِهِمَا فَقَطْ، وَلَا يَصِحُّ مَعْنًى لِمَسْحِ بَاطِنِهِمَا الْأَسْفَلِ تَحْتَ الْقَدَمِ، وَلَا لِاسْتِيعَابِ ظَاهِرِهِمَا، وَمَا مُسِحَ مِنْ ظَاهِرِهِمَا بِأُصْبُعٍ أَوْ أَكْثَرَ أَجْزَأَ.

بُرْهَانُ ذَلِكَ مَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ حَدَّثَنَا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السَّلِيمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُحَمَّدُ بْنُ الْعَلَاءِ ثنا حَفْصُ بْنُ غِيَاثٍ ثنا الْأَعْمَشُ عَنْ أَبِي إِسْحَاقَ عَنْ عَبْدِ خَيْرٍ عَنْ «عَلِيٍّ قَالَ: لَوْ كَانَ الدِّينُ بِالرَّأْيِ لَكَانَ أَسْفَلُ الْخُفِّ أَوْلَى بِالْمَسْحِ مِنْ أَعْلَاهُ، وَقَدْ رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَمْسَحُ عَلَى ظَاهِرِ الْخُفَّيْنِ» .

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ وَسُفْيَانُ الثَّوْرِيُّ وَدَاوُد، وَهُوَ قَوْلُ عَلِيِّ بْنِ أَبِي طَالِبٍ كَمَا ذَكَرْنَا وَقَيْسِ بْنِ سَعْدٍ.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ ثنا سُفْيَانُ الثَّوْرِيُّ ثنا أَبُو إِسْحَاقَ هُوَ السَّبِيعِيُّ عَنْ يَزِيدَ بْنِ أَبِي الْعَلَاءِ قَالَ: رَأَيْتُ قَيْسَ بْنَ سَعْدٍ بَالَ ثُمَّ أَتَى رَحْلَهُ فَتَوَضَّأَ وَمَسَحَ عَلَى خُفَّيْهِ عَلَى أَعْلَاهُمَا حَتَّى رَأَيْتُ أَثَرَ أَصَابِعِهِ عَلَى خُفَّيْهِ.

saw al-Ḥasan urinate, then perform ablution, then wipe over his two *khuffayn* on their outer surface with a single wipe, and I saw the marks of his fingers on the *khuffayn*.

وَرُوِّينَا عَنْ مَعْمَرِ بْنِ أَيُّوبَ السِّخْتِيَانِيِّ قَالَ: رَأَيْتُ الْحَسَنَ بَالَ ثُمَّ تَوَضَّأَ ثُمَّ مَسَحَ عَلَى خُفَّيْهِ عَلَى ظَاهِرِهِمَا مَسْحَةً وَاحِدَةً، فَرَأَيْتُ أَثَرَ أَصَابِعِهِ عَلَى الْخُفَّيْنِ.

L4087 And it has been narrated to us from Ibn Jurayj: I asked ʿAṭāʾ, "Do I wipe over the undersides of the two khuffs?" He replied, "No, only on their outer surfaces."

وَرُوِّينَا عَنِ ابْنِ جُرَيْجٍ قُلْتُ لِعَطَاءٍ: أَمْسَحُ عَلَى بُطُونِ الْخُفَّيْنِ؟ قَالَ لَا إِلَّا بِظُهُورِهِمَا.

L4088 Ali said: Wiping does not require complete coverage; whatever is termed wiping has fulfilled his obligation. However, Abū Ḥanīfah said: Wiping over the khuffs is not valid unless done with three fingers. Sufyān, Zufar, Al-Shāfiʿī, and Dāwud said: If one wipes with a single finger, it suffices. Zufar said: If one wipes over most of the khuffs, it is valid.

قَالَ عَلِيٌّ: وَالْمَسْحُ لَا يَقْتَضِي الِاسْتِيعَابَ، فَمَا وَقَعَ عَلَيْهِ اسْمُ مَسْحٍ فَقَدْ أَدَّى فَرْضَهُ إِلَّا أَنَّ أَبَا حَنِيفَةَ قَالَ: لَا يُجْزِئُ الْمَسْحُ عَلَى الْخُفَّيْنِ إِلَّا بِثَلَاثَةِ أَصَابِعَ لَا بِأَقَلَّ، وَقَالَ سُفْيَانُ وَزُفَرُ وَالشَّافِعِيُّ وَدَاوُد: إِنْ مَسَحَ بِأُصْبُعٍ وَاحِدَةٍ أَجْزَأَهُ، قَالَ زُفَرُ: إِذَا مَسَحَ عَلَى أَكْثَرِ الْخُفَّيْنِ.

L4089 Abu Muhammad said: Specifying three fingers and more for the khuffayn is a corrupt assertion and a baseless ruling in the religion, which Allah, the Exalted, has not permitted.

قَالَ أَبُو مُحَمَّدٍ: تَحْدِيدُ الثَّلَاثِ أَصَابِعَ وَأَكْثَرِ الْخُفَّيْنِ كَلَامٌ فَاسِدٌ وَشَرْعٌ فِي الدِّينِ بَارِدٌ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى.

L4090 Some of them cited as evidence that the scholars have agreed that if one wipes with three fingers, it suffices him, and if one wipes with fewer than three fingers, the scholars have indeed disagreed.

وَاحْتَجَّ بَعْضُهُمْ بِأَنَّهُمْ قَدْ اتَّفَقُوا عَلَى أَنَّهُ إِنْ مَسَحَ بِثَلَاثِ أَصَابِعَ أَجْزَأَهُ، وَإِنْ مَسَحَ بِأَقَلَّ فَقَدْ اخْتَلَفُوا.

L4091 Ali said: This demolishes most of their doctrines. They are told the like of this concerning the immediacy of ablution, the acts of sniffing water and expelling it, performing ablution with nabidh, and other such matters. How can it be permissible to uphold consensus when textual evidence exists that testifies to the view of some scholars? The textual proof prescribes wiping without restricting it to three fingers or fewer: {And your Lord is never forgetful} [Maryam: 64]. Rather, their assertion constitutes imposing obligations through disputed claims without textual basis, and this is a falsehood unanimously agreed to be falsehood.[2]

قَالَ عَلِيٌّ: وَهَذَا يَهْدِمُ عَلَيْهِمْ أَكْثَرَ مَذَاهِبِهِمْ، وَيُقَالُ لَهُمْ مِثْلُ هَذَا فِي فَوْرِ الْوُضُوءِ وَفِي الِاسْتِنْشَاقِ وَالِاسْتِنْثَارِ وَفِي الْوُضُوءِ بِالنَّبِيذِ وَغَيْرِ ذَلِكَ، فَكَيْفَ وَلَا تَحِلُّ مُرَاعَاةُ إِجْمَاعٍ إِذَا وُجِدَ النَّصُّ يَشْهَدُ لِقَوْلِ بَعْضِ الْعُلَمَاءِ، وَقَدْ جَاءَ النَّصُّ بِالْمَسْحِ دُونَ تَحْدِيدِ ثَلَاثَةِ أَصَابِعَ أَوْ أَقَلَّ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] بَلْ هَذَا الَّذِي قَالُوا هُوَ إِيجَابُ الْفَرَائِضِ بِالدَّعْوَى الْمُخْتَلَفِ فِيهَا بِلَا نَصٍّ، وَهَذَا الْبَاطِلُ الْمُجْمَعُ عَلَى أَنَّهُ بَاطِلٌ.

L4092 They object by being told: Their consensus has been validated regarding the

[2] **Qur'an references (L4091):** Qur'an 19:64 (Maryam).

obligation of wiping with one finger, while they differed about the obligation of wiping with more than that. Thus, what is disputed is not obligatory; only what is agreed upon is obligatory. This is the soundest approach to juristic inference when no transmitted textual evidence exists.

وَيُعَارِضُونَ بِأَنْ يُقَالَ لَهُمْ: قَدْ صَحَّ إِجْمَاعُهُمْ عَلَى وُجُوبِ الْمَسْحِ بِأُصْبُعٍ وَاحِدَةٍ وَاخْتَلَفُوا فِي وُجُوبِ الْمَسْحِ بِمَا زَادَ، فَلَا يَجِبُ مَا اُخْتُلِفَ فِيهِ، وَإِنَّمَا الْوَاجِبُ مَا اتُّفِقَ عَلَيْهِ، وَهَذَا أَصَحُّ فِي الِاسْتِدْلَالِ إِذَا لَمْ يُوجَدْ لَفْظٌ مَرْوِيٌّ.

L4093 Al-Shāfiʿī said: It is recommended to wipe the outer surfaces of the two khuffs (i.e., leather socks) and their inner parts. If one limits oneself to their outer surfaces without the inner parts, it suffices for them. And if one limits oneself to the inner parts without the outer surfaces, it does not suffice for them.

وَقَالَ الشَّافِعِيُّ: يُسْتَحَبُّ مَسْحُ ظَاهِرِ الْخُفَّيْنِ وَبَاطِنِهِمَا، فَإِنْ اقْتَصَرَ عَلَى ظَاهِرِهِمَا دُونَ الْبَاطِنِ أَجْزَأَهُ، وَإِنْ اقْتَصَرَ عَلَى الْبَاطِنِ دُونَ الظَّاهِرِ لَمْ يُجْزِهِ.

L4094–4095 Ali said: And this has no meaning, because if wiping the lower part is neither an obligation nor has a recommendation been narrated for it, then it has no meaning.

قَالَ عَلِيٌّ: وَهَذَا لَا مَعْنَى لَهُ، لِأَنَّهُ إِذَا كَانَ مَسْحُ الْأَسْفَلِ لَيْسَ فَرْضًا وَلَا جَاءَ نَدْبٌ إِلَيْهِ: فَلَا مَعْنَى لَهُ.

L4096 Mālik said: He wipes the outer and inner parts of them. Ibn al-Qāsim, his companion, said: If he wipes the outer part without the inner, he must repeat within the time. If he wipes the inner part without the outer, he must repeat perpetually.

وَقَالَ مَالِكٌ: يَمْسَحُ ظَاهِرَهُمَا وَبَاطِنَهُمَا، قَالَ ابْنُ الْقَاسِمِ صَاحِبُهُ: إِنْ مَسَحَ الظَّاهِرَ دُونَ الْبَاطِنِ أَعَادَ فِي الْوَقْتِ، وَإِنْ مَسَحَ الْبَاطِنَ دُونَ الظَّاهِرِ أَعَادَ أَبَدًا.

L4097 It has been narrated to us the wiping of the exterior of the two khuffs and their interior from Ibn Jurayj from Nāfiʿ from Ibn ʿUmar, and from Maʿmar from al-Zuhrī.

وَقَدْ رُوِّينَا مَسْحَ ظَاهِرِ الْخُفَّيْنِ وَبَاطِنِهِمَا عَنِ ابْنِ جُرَيْجٍ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ وَعَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ.

L4098 Ali said: Repetition within the prescribed time according to the principles of these people has no basis, for if one has fulfilled the obligatory acts of his ritual purification and prayer, repetition holds no validity. But if he has not fulfilled both, their position necessitates that he must pray perpetually.

قَالَ عَلِيٌّ: الْإِعَادَةُ فِي الْوَقْتِ عَلَى أُصُولِ هَؤُلَاءِ الْقَوْمِ لَا مَعْنَى لَهَا، لِأَنَّهُ إِنْ كَانَ أَدَّى فَرْضَ طَهَارَتِهِ وَصَلَاتِهِ فَلَا مَعْنَى لِلْإِعَادَةِ، وَإِنْ كَانَ لَمْ يُؤَدِّهِمَا فَيَلْزَمُهُ عِنْدَهُمْ أَنْ يُصَلِّيَ أَبَدًا.

L4099 Those who hold the opinion of wiping the inner part of the two khuffs along with their outer part have argued based on a hadith we narrated through the chain of Al-Walid ibn Muslim via Thawr ibn Yazid, via Raja ibn Haywah, from the scribe of Al-Mughirah ibn Shu'bah, from Al-Mughirah ibn Shu'bah himself: "That the Messenger of Allah—peace and blessings be upon him—

وَاحْتَجَّ مَنْ رَأَى مَسْحَ بَاطِنِ الْخُفَّيْنِ مَعَ ظَاهِرِهِمَا بِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ الْوَلِيدِ بْنِ مُسْلِمٍ عَنْ ثَوْرِ بْنِ يَزِيدَ عَنْ رَجَاءِ بْنِ حَيْوَةَ عَنْ كَاتِبِ الْمُغِيرَةِ بْنِ شُعْبَةَ عَنِ الْمُغِيرَةِ بْنِ شُعْبَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَسَحَ أَعْلَى الْخُفَّيْنِ وَأَسْفَلَهُمَا» وَحَدِيثٍ

wiped the upper part of the two khuffs and their lower part." Another hadith we narrated from Ibn Wahb via Sulayman ibn Yazid Al-Ka'bi, from Abdullah ibn Amir Al-Aslami, from Ibn Shihab al-Zuhri, from Al-Mughirah ibn Shu'bah: "That he saw the Messenger of Allah—peace and blessings be upon him—wiping the upper part of the two khuffs and their lower part." Another hadith we narrated through the chain of Ibn Wahb: A man related to me from another man among prominent figures, from their elders, from Abu Umamah Al-Bahili and Ubadah ibn As-Samit: "That they saw the Messenger of Allah—peace and blessings be upon him—wiping the upper part of the two khuffs and their lower part."

آخَرَ رُوِّينَاهُ عَنْ بْنِ وَهْبٍ عَنْ سُلَيْمَانَ بْنِ يَزِيدَ الْكَعْبِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عَامِرٍ الْأَسْلَمِيِّ عَنْ ابْنِ شِهَابٍ عَنْ الْمُغِيرَةِ بْنِ شُعْبَةَ «أَنَّهُ رَأَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَمْسَحُ أَعْلَى الْخُفَّيْنِ وَأَسْفَلَهُمَا» وَآخَرُ رُوِّينَاهُ مِنْ طَرِيقِ بْنِ وَهْبٍ: حَدَّثَنِي رَجُلٌ عَنْ رَجُلٍ مِنْ أَعْيَنَ عَنْ أَشْيَاخٍ لَهُمْ عَنْ أَبِي أُمَامَةَ الْبَاهِلِيِّ وَعُبَادَةَ بْنِ الصَّامِتِ «أَنَّهُمْ رَأَوْا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَمْسَحُ أَعْلَى الْخُفَّيْنِ وَأَسْفَلَهُمَا» .

L4100 Ali said: "All of this is baseless. As for the hadith of Abu Umamah and Ubadah, it is too evident to escape the notice of a discerning person, for it is narrated via someone unnamed, via someone whose identity is unknown, via someone unrecognized—and this is a disgrace."

قَالَ عَلِيٌّ: هَذَا كُلُّهُ لَا شَيْءَ، أَمَّا حَدِيثُ أَبِي أُمَامَةَ وَعُبَادَةَ فَأَسْقَطُ مِنْ أَنْ يَخْفَى عَلَى ذِي لُبٍّ؛ لِأَنَّهُ عَمَّنْ لَا يُسَمَّى عَمَّنْ لَا يُدْرَى مَنْ هُوَ عَمَّنْ لَا يُعْرَفُ، وَهَذَا فَضِيحَةٌ.

L4101 As for the two narrations attributed to Al-Mughira: the first is transmitted from Ibn Shihab from Al-Mughira, though Ibn Shihab was not born until long after Al-Mughira's death. The second involves *tadlis* (concealment of defects in the chain), wherein Al-Walid ibn Muslim erred in two instances. This is a report narrated to us by Hammam, who said: Narrated to us by Abbas ibn Asbagh; narrated to us by Muhammad ibn Abd al-Malik ibn Ayman; narrated to us by Abdullah ibn Ahmad ibn Hanbal, from his father, who said: Abd al-Rahman ibn Mahdi reported from Abdullah ibn al-Mubarak, from Thawr ibn Yazid, who said: It was conveyed to me from Raja' ibn Haywah, from the scribe of Al-Mughira, that "the Messenger of Allah—peace and blessings be upon him—wiped the upper and lower parts of the leather socks." Thus, it is confirmed that Thawr did not directly hear this from Raja' ibn Haywah, that the narration is *mursal* (a hadith with a missing link in the chain) as Al-Mughira is unmentioned, and a third defect: he did not name the scribe of Al-Mughira in it. Therefore, all reports in this chapter are invalidated, and with Allah, the Exalted, is success.

وَأَمَّا حَدِيثَا الْمُغِيرَةِ فَأَحَدُهُمَا عَنْ ابْنِ شِهَابٍ عَنْ الْمُغِيرَةِ، وَلَمْ يُولَدْ ابْنُ شِهَابٍ إلَّا بَعْدَ مَوْتِ الْمُغِيرَةِ بِدَهْرٍ طَوِيلٍ، وَالثَّانِي مُدَلَّسٌ أَخْطَأَ فِيهِ الْوَلِيدُ بْنُ مُسْلِمٍ فِي مَوْضِعَيْنِ، وَهَذَا خَبَرٌ حَدَّثَنَاهُ حَمَامٌ قَالَ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ ثنا أَبِي قَالَ: قَالَ عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ ثَوْرِ بْنِ يَزِيدَ قَالَ: حُدِّثْتُ عَنْ رَجَاءِ بْنِ حَيْوَةَ عَنْ كَاتِبِ الْمُغِيرَةِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَسَحَ أَعْلَى الْخُفَّيْنِ وَأَسْفَلَهُمَا» فَصَحَّ أَنَّ ثَوْرًا لَمْ يَسْمَعْهُ مِنْ رَجَاءِ بْنِ حَيْوَةَ، وَأَنَّهُ مُرْسَلٌ لَمْ يُذْكَرْ فِيهِ الْمُغِيرَةُ، وَعِلَّةٌ ثَالِثَةٌ وَهِيَ أَنَّهُ لَمْ يُسَمِّ فِيهِ كَاتِبَ الْمُغِيرَةِ، فَسَقَطَ كُلُّ مَا فِي هَذَا الْبَابِ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L4102 **Issue: If a person wears something over which wiping is**

permissible without ablution and subsequently nullifies his ablution.

[مَسْأَلَةٌ لَبِسَ عَلَى رِجْلَيْهِ شَيْئًا مِمَّا يَجُوزُ الْمَسْحُ عَلَيْهِ عَلَى غَيْرِ طَهَارَةٍ ثُمَّ أَحْدَثَ]

L4103 223 - Issue:

٢٢٣ - مَسْأَلَةٌ:

L4104–4106 And whoever wears on his feet something over which wiping is permissible on other than He had performed wudu, then experienced a minor impurity. When he intended to perform wudu and did so - having completed all parts of ablution except his feet - he was overcome by such intense fear that he could not wash his feet after having removed his khuffs. In this case, he should rise without wiping over them, pray as he is, and his prayer remains valid. If he later becomes able to remove his khuffs and finds water after completing his prayer, some scholars state he must remove them and wash his feet as an obligatory act without repeating his prayer. If he gains this ability before pronouncing the final salām, his prayer becomes invalid. He must then remove what covers his feet, wash them, and restart the prayer. Others maintain that his wudu remains complete, and he may pray with it unless nullified by a new impurity - not merely due to finding water. This latter view is the most correct.

وَمَنْ لَبِسَ عَلَى رِجْلَيْهِ شَيْئًا مِمَّا يَجُوزُ الْمَسْحُ عَلَيْهِ عَلَى غَيْرِ طَهَارَةٍ ثُمَّ أَحْدَثَ، فَلَمَّا أَرَادَ الْوُضُوءَ وَتَوَضَّأَ وَلَمْ يَبْقَ لَهُ غَيْرُ رِجْلَيْهِ فَجَاءَهُ خَوْفٌ شَدِيدٌ لَمْ يُدْرِكْ مَعَهُ غَسْلَ رِجْلَيْهِ بَعْدَ نَزْعِ خُفَّيْهِ، فَإِنَّهُ يَنْهَضُ وَلَا يَمْسَحُ عَلَيْهِمَا، وَيُصَلِّي كَمَا هُوَ، وَصَلَاتُهُ تَامَّةٌ، فَإِذَا أَمْكَنَهُ نَزْعُ خُفَّيْهِ وَوَجَدَ الْمَاءَ بَعْدَ تَمَامِ صَلَاتِهِ فَقَدْ قَالَ قَوْمٌ: يَلْزَمُهُ نَزْعُهُمَا وَغَسْلُ رِجْلَيْهِ فَرْضًا وَلَا يُعِيدُ مَا صَلَّى، فَإِنْ قَدَرَ عَلَى ذَلِكَ قَبْلَ أَنْ يُسَلِّمَ بَطَلَتْ صَلَاتُهُ وَنَزَعَ مَا عَلَى رِجْلَيْهِ وَغَسَلَهُمَا وَابْتَدَأَ الصَّلَاةَ، وَقَالَ آخَرُونَ: قَدْ تَمَّ وُضُوءُهُ وَيُصَلِّي بِذَلِكَ الْوُضُوءِ مَا لَمْ يُنْتَقَضْ بِحَدَثٍ لَا بِوُجُودِ الْمَاءِ، وَهَذَا أَصَحُّ.

L4107 The evidence for this is the statement of the Messenger of Allah—peace be upon him—which we previously mentioned with its chain of transmission in what has preceded of this book of ours: “When I command you to do something, do as much of it as you can,” and the words of Allah the Exalted: “Allah does not burden any soul beyond its capacity” [Al-Baqarah: 286]. When this person is unable to wash his feet, the obligation to wash them is waived, and he remains obligated to perform ablution for the other limbs he can wash. When this is the case, he has performed ablution as commanded by Allah, the Mighty and Majestic, and whoever performs ablution as Allah has commanded, his prayer is complete.[3]

بُرْهَانُ ذَلِكَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِيمَا مَضَى مِنْ كِتَابِنَا هَذَا «إِذَا أَمَرْتُكُمْ بِشَيْءٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» وَقَوْلُ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] فَلَمَّا عَجَزَ هَذَا عَنْ غَسْلِ رِجْلَيْهِ سَقَطَ حُكْمُهُمَا، وَبَقِيَ عَلَيْهِ مَا قَدَرَ عَلَيْهِ مِنْ وُضُوءِ سَائِرِ أَعْضَائِهِ، وَإِذَا كَانَ كَذَلِكَ فَقَدْ تَوَضَّأَ كَمَا أَمَرَهُ اللَّهُ عَزَّ وَجَلَّ، وَمَنْ تَوَضَّأَ كَمَا أَمَرَ اللَّهُ فَصَلَاتُهُ تَامَّةٌ.

L4108 As for those who claim that if one has access to water, they are obligated to complete their ablution as a duty—thereby validating their prayer—and

وَأَمَّا مَنْ قَالَ: إِنَّهُ إِذَا قَدَرَ عَلَى الْمَاءِ لَزِمَهُ إِتْمَامُ وُضُوئِهِ فَرْضًا وَقَدْ تَمَّتْ صَلَاتُهُ، فَلَوْ قَدَرَ عَلَى ذَلِكَ فِي صَلَاتِهِ فَقَدْ لَزِمَهُ فَرْضًا أَنْ لَا يُتِمَّ مَا بَقِيَ مِنْ صَلَاتِهِ إِلَّا بِوُضُوءٍ تَامٍّ،

[3] **Qur’an references (L4107):** Qur’an 2:286 (Al-Baqarah).

that if such access arises during prayer, they must not continue the remaining prayer except with a complete ablution, arguing that the acts of prayer may not be interrupted by extraneous actions, this is an invalid opinion and an unsubstantiated assertion. Rather, textual evidence from the Quran and Sunnah establishes that one has performed ablution as commanded, their purification is fully complete, and they are entitled to pray. It is invalid to reimpose the ruling of ritual invalidators without an actual occurrence, unless a text explicitly mandates it, in which case adherence is required. However, no textual proof exists in this issue requiring the repetition of ablution. Thus, neither repeating ablution nor washing the feet is obligatory, as one remains in a state of complete purity. Nevertheless, they may pray with that ablution as long as they do not invalidate it, for the reasons we have elaborated.

وَالصَّلَاةُ لَا يَحِلُّ أَنْ يُفَرَّقَ بَيْنَ أَعْمَالِهَا بِمَا لَيْسَ مِنْهَا، فَقَوْلٌ غَيْرُ صَحِيحٍ وَدَعْوَى بِلَا بُرْهَانٍ، بَلْ قَدْ قَامَ الْبُرْهَانُ مِنَ النَّصِّ مِنَ الْقُرْآنِ وَالسُّنَّةِ عَلَى أَنَّهُ قَدْ تَوَضَّأَ كَمَا أُمِرَ، وَقَدْ تَمَّتْ طَهَارَتُهُ وَأَنَّ لَهُ أَنْ يُصَلِّيَ، فَمِنَ الْبَاطِلِ أَنْ يَعُودَ عَلَيْهِ حُكْمُ الْحَدَثِ مِنْ غَيْرِ أَنْ يُحْدِثَ، إِلَّا أَنْ يُوجِبَ ذَلِكَ نَصٌّ فَيُوقَفُ عِنْدَهُ، وَلَا نَصَّ فِي هَذِهِ الْمَسْأَلَةِ يُوجِبُ عَلَيْهِ إِعَادَةَ الْوُضُوءِ، فَلَا يَلْزَمُهُ إِعَادَتُهُ وَلَا غَسْلُ رِجْلَيْهِ، لِأَنَّهُ عَلَى طَهَارَةٍ تَامَّةٍ، لَكِنْ يُصَلِّي بِذَلِكَ الْوُضُوءِ مَا لَمْ يُحْدِثْ لِمَا ذَكَرْنَاهُ.

L4109 If it is said that we have applied the analogy (qiyas) of that [matter] to tayammum (dry ablution).

فَإِنْ قِيلَ: قِسْنَا ذَلِكَ عَلَى التَّيَمُّمِ.

L4110 We said: All qiyas is invalid. From where do you derive that if this obligation applies in tayammum, it must equally apply to one unable to use some of his limbs? You possess nothing but your mere assertion that this obligation applies to the incapacitated person as it does in tayammum - an assertion inherently requiring evidence. Whoever seeks to establish rulings through mere assertion pursues falsehood. Furthermore, even if qiyas were valid, this particular application would remain invalid, for they concur with us that one unable to use some limbs - such as one who has lost both legs or suffers comparable impairments - is not permitted to perform tayammum. His ruling is strictly to wash the remaining parts of his face and forearms, wipe only his head, whereby his wuḍū' becomes complete and his prayer valid. Since they do not grant him the right to perform tayammum, it is impermissible to assign him the ruling of tayammum. This position is more sound than their qiyas.

قُلْنَا: الْقِيَاسُ بَاطِلٌ كُلُّهُ، وَمِنْ أَيْنَ لَكُمْ إِذَا وَجَبَ ذَلِكَ فِي التَّيَمُّمِ أَنْ يَجِبَ فِي الْعَاجِزِ عَنْ بَعْضِ أَعْضَائِهِ؟ فَلَيْسَ بِأَيْدِيكُمْ غَيْرُ دَعْوَاكُمْ أَنَّ هَذَا وَجَبَ فِي الْعَاجِزِ كَمَا وَجَبَ فِي التَّيَمُّمِ، وَهَذِهِ دَعْوَى مُفْتَقِرَةٌ إِلَى بُرْهَانٍ، وَمَنْ أَرَادَ أَنْ يُعْطِيَ بِدَعْوَاهُ فَقَدْ أَرَادَ الْبَاطِلَ، ثُمَّ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّهُمْ مُوَافِقُونَ لَنَا عَلَى أَنَّ الْعَاجِزَ عَنْ بَعْضِ أَعْضَائِهِ - كَمَنْ ذَهَبَتْ رِجْلَاهُ أَوْ نَحْوُ ذَلِكَ - لَا يَجُوزُ لَهُ التَّيَمُّمُ، وَأَنَّ حُكْمَهُ إِنَّمَا هُوَ غَسْلُ مَا بَقِيَ مِنْ وَجْهِهِ وَذِرَاعَيْهِ وَمَسْحُ رَأْسِهِ فَقَطْ، وَأَنَّ وُضُوءَهُ بِذَلِكَ تَامٌّ وَصَلَاتَهُ جَائِزَةٌ، فَلَمَّا لَمْ يَجْعَلُوا لَهُ أَنْ يَتَيَمَّمَ لَمْ يَجُزْ أَنْ يُجْعَلَ لَهُ حُكْمُ التَّيَمُّمِ، وَهَذَا أَصَحُّ مِنْ قِيَاسِهِمْ.

L4111 And all praise is due to Allah, Lord of the worlds.

وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ. -



AL-MUHALLA

كِتَابُ التَّيَمُّمِ

The Book of Dry Ablution (Tayammum)

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ التَّيَمُّمِ] [مَسْأَلَةٌ يَتَيَمَّمُ مِنَ الْمَرْضَى مَنْ لَا يَجِدُ الْمَاءَ]

٢٢٤ - مَسْأَلَةٌ:

لَا يَتَيَمَّمُ مِنَ الْمَرْضَى إِلَّا مَنْ لَا يَجِدُ الْمَاءَ، أَوْ مَنْ عَلَيْهِ مَشَقَّةٌ وَحَرَجٌ فِي الْوُضُوءِ بِالْمَاءِ أَوْ فِي الْغُسْلِ بِهِ أَوْ الْمُسَافِرُ الَّذِي لَا يَجِدُ الْمَاءَ الَّذِي يَقْدِرُ عَلَى الْوُضُوءِ بِهِ أَوْ الْغُسْلِ بِهِ

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {وَإِنْ كُنْتُمْ مَرْضَى أَوْ عَلَى سَفَرٍ أَوْ جَاءَ أَحَدٌ مِنْكُمْ مِنَ الْغَائِطِ أَوْ لامَسْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا فَامْسَحُوا بِوُجُوهِكُمْ وَأَيْدِيكُمْ مِنْهُ مَا يُرِيدُ اللَّهُ لِيَجْعَلَ عَلَيْكُمْ مِنْ حَرَجٍ وَلَكِنْ يُرِيدُ لِيُطَهِّرَكُمْ وَلِيُتِمَّ نِعْمَتَهُ عَلَيْكُمْ لَعَلَّكُمْ تَشْكُرُونَ} [المائدة: ٦] فَهَذَا نَصُّ مَا قُلْنَاهُ وَإِسْقَاطُ الْحَرَجِ، وَقَالَ تَعَالَى: {يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلا يُرِيدُ بِكُمُ الْعُسْرَ} [البقرة: ١٨٥] فَالْحَرَجُ وَالْعُسْرُ سَاقِطَانِ - وَلِلَّهِ تَعَالَى الْحَمْدُ - سَوَاءٌ زَادَتْ عِلَّتُهُ أَوْ لَمْ تَزِدْ، وَكَذَلِكَ إِنْ خَشِيَ زِيَادَةَ عِلَّتِهِ فَهُوَ أَيْضًا عُسْرٌ وَحَرَجٌ.

وَقَالَ عَطَاءٌ وَالْحَسَنُ: الْمَرِيضُ لَا يَتَيَمَّمُ أَصْلًا مَا دَامَ يَجِدُ الْمَاءَ، وَلَا يُجْزِيهِ إِلَّا الْغُسْلُ وَالْوُضُوءُ، الْمَجْدُورُ وَغَيْرُ الْمَجْدُورِ سَوَاءٌ.

٢٢٥ - مَسْأَلَةٌ:

وَسَوَاءٌ كَانَ السَّفَرُ قَرِيبًا أَوْ بَعِيدًا، سَفَرَ طَاعَةٍ كَانَ أَوْ سَفَرَ مَعْصِيَةٍ أَوْ مُبَاحًا، هَذَا مِمَّا لَا نَعْلَمُ فِيهِ خِلَافًا، إِلَّا أَنَّ بَعْضَ الْعُلَمَاءِ ذَكَرَ قَوْلًا لَمْ يَنْسِبْهُ إِلَى أَحَدٍ، وَهُوَ أَنَّ التَّيَمُّمَ لَا يَجُوزُ إِلَّا فِي سَفَرٍ تُقْصَرُ فِيهِ الصَّلَاةُ.

L4112–4113 **[The Book of Tayammum] [A ruling: Those from the sick who do not find water may perform Tayammum.]**

L4114 224 – Question:

L4115 The sick should not perform *tayammum* except those who cannot find water, or those experiencing hardship and distress in performing *wudu* with water or *ghusl* with it, or the traveler who cannot find water suitable for *wudu* or *ghusl*.

L4116 The proof of this is the statement of Allah, the Most High: {If you are ill, on a journey, one of you has relieved himself, or you have had sexual intercourse with women and find no water, then perform tayammum with pure soil and wipe your faces and hands with it. Allah does not intend to place hardship upon you, but He intends to purify you and complete His favor upon you that you may be grateful} [Al-Mā'idah: 6]. This is the explicit text of what we have stated regarding the removal of hardship. He, the Most High, also said: {Allah intends ease for you and does not intend difficulty for you} [Al-Baqarah: 185]. Thus, hardship and difficulty are removed—and all praise is due to Allah, the Most High—whether one's ailment has worsened or not. Similarly, if one fears the worsening of one's ailment, that also constitutes difficulty and hardship.[1]

L4117 Aṭā' and al-Ḥasan said: A sick person should not perform _tayammum_ (dry ablution) at all as long as water is accessible, and only performing _ghusl_ (full ritual washing) and _wuḍū'_ (ablution) suffices for him; those with skin lesions and those without are the same.

L4118 225. Issue:

L4119 Whether the journey is near or far, whether it is a journey of obedience, a sinful journey, or a permissible journey—this is among matters where we know of no disagreement, except that some scholars cited an unattributed opinion stating that dry ablution (tayammum) is only permissible during a journey in which prayer is shortened.

[1] **Qur'an references (L4116):** Qur'an 5:6 (Al-Ma'idah); Qur'an 2:185 (Al-Baqarah).

قَالَ عَلِيٌّ: وَلَقَدْ كَانَ يَلْزَمُ مَنْ حَدَّ فِي قَصْرِ الصَّلَاةِ وَالْفِطْرِ سَفَرًا دُونَ سَفَرٍ، فِي بَعْضِ الْمَسَافَاتِ دُونَ بَعْضٍ، وَفِي بَعْضِ الْأَسْفَارِ دُونَ بَعْضٍ، وَفَرَّقَ بَيْنَ سَفَرِ الطَّاعَةِ وَالْمَعْصِيَةِ فِي ذَلِكَ: أَنْ يَفْعَلَ ذَلِكَ فِي التَّيَمُّمِ، وَلَكِنَّ هَذَا مِمَّا تَنَاقَضُوا فِيهِ أَقْبَحَ تَنَاقُضٍ، فَإِنْ ادَّعَوْا هَهُنَا إجْمَاعًا لَزِمَهُمْ، إذْ هُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ أَنْ يَقِيسُوا مَا اُخْتُلِفَ فِيهِ مِنْ صِفَةِ السَّفَرِ فِي الْقَصْرِ وَالْفِطْرِ وَالْمَسْحِ عَلَى مَا اُتُّفِقَ عَلَيْهِ مِنْ صِفَةِ السَّفَرِ فِي التَّيَمُّمِ، وَإِلَّا فَقَدْ تَرَكُوا الْقِيَاسَ، وَخَالَفُوا الْقُرْآنَ وَالسُّنَنَ وَبِاَللَّهِ التَّوْفِيقُ.

L4120 Ali said: Indeed, it is incumbent upon those who define conditions for shortening prayers and breaking the fast to specify distinctions between one type of journey and another – distinguishing between some distances and others, and between some journeys and others. They have further differentiated between travel for obedience and disobedience by applying such distinctions to tayammum. Yet this is among matters where they have contradicted themselves in the most egregious manner. If they claim consensus here, it necessarily obliges them – given their purported adherence to analogy – to analogize the disputed aspects of travel's conditions pertaining to prayer shortening, breaking the fast, and wiping over footwear to the agreed-upon conditions of travel in tayammum. Otherwise, they have abandoned analogy and opposed the Quran and the Sunnah. And success is from Allah alone.

مَسْأَلَةٌ:

وَالْمَرَضُ هُوَ كُلُّ مَا أَحَالَ الْإِنْسَانَ عَنْ الْقُوَّةِ وَالتَّصَرُّفِ، هَذَا حُكْمُ اللُّغَةِ الَّتِي بِهَا نَزَلَ الْقُرْآنُ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L4121–4122 Legal Issue:

L4123 Illness is anything that diverts a person from strength and agency. This is the ruling of the language in which the Quran was revealed, and success is from Allah, the Most High.

[مَسْأَلَةٌ يَتَيَمَّمُ مَنْ كَانَ فِي الْحَضَرِ صَحِيحًا إذَا كَانَ لَا يَقْدِرُ عَلَى الْمَاءِ]

Ruling: A settled person who is healthy must perform tayammum (dry ablution) when unable to access water.

٢٢٧ - مَسْأَلَةٌ:

قَالَ عَلِيٌّ: وَيَتَيَمَّمُ مَنْ كَانَ فِي الْحَضَرِ صَحِيحًا إذَا كَانَ لَا يَقْدِرُ عَلَى الْمَاءِ إلَّا بَعْدَ خُرُوجِ وَقْتِ الصَّلَاةِ، وَلَوْ أَنَّهُ عَلَى شَفِيرِ الْبِئْرِ وَالدَّلْوُ فِي يَدِهِ أَوْ عَلَى شَفِيرِ النَّهْرِ وَالسَّاقِيَةِ وَالْعَيْنِ، إلَّا أَنَّهُ يُوقِنُ أَنَّهُ لَا يُتِمُّ وُضُوءَهُ أَوْ غُسْلَهُ حَتَّى يَطْلُعَ أَوَّلُ قَرْنِ الشَّمْسِ، وَكَذَلِكَ الْمَسْجُونُ وَالْخَائِفُ.

L4124 **Ruling: A settled person who is healthy must perform tayammum (dry ablution) when unable to access water.**

L4125 227 – Issue:

L4126 Ali said: A healthy person in a residential area may perform tayammum if they cannot obtain water until after the prayer's time has ended - even if standing at a well's edge with a bucket in hand, or beside a river, waterwheel, or spring - provided they are certain they cannot complete their wudu or ghusl before the first rays of the sun emerge. This ruling equally applies to the imprisoned and those in fearful circumstances.

بُرْهَانُ ذَلِكَ مَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا مُحَمَّدُ

L4127 The proof of this is what was narrated to us by Abdullah ibn Yusuf, who narrated to us Ahmad ibn Fath, who narrated to us Abd al-Wahhab ibn Isa, who narrated to us Ahmad ibn Muhammad, who narrated to us Ahmad ibn Ali, who narrated to us Muslim ibn al-Hajjaj, who narrated to us Abu Bakr

ibn Abi Shaybah, who narrated to us Muhammad ibn Fudayl, from Abu Malik al-Ashja'i, from Rib'i ibn Hirash, from Hudhayfah, who said: The Messenger of Allah, peace and blessings be upon him, stated, "We have been granted superiority over other people in three matters," mentioning among them: "The earth has been made a place of prostration for us, and its dust has been made a purifier for us when we cannot find water."

بْنُ فُضَيْلٍ عَنْ أَبِي مَالِكٍ الْأَشْجَعِيِّ عَنْ رِبْعِيِّ بْنِ حِرَاشٍ عَنْ حُذَيْفَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فُضِّلْنَا عَلَى النَّاسِ بِثَلَاثٍ» ، فَذَكَرَ فِيهَا: «وَجُعِلَتْ لَنَا الْأَرْضُ مَسْجِدًا، وَجُعِلَتْ تُرْبَتُهَا لَنَا طَهُورًا إِذَا لَمْ نَجِدْ الْمَاءَ» .

L4128 And through him to Muslim: Qutaybah ibn Sa'īd narrated to us: Ismā'īl—that is, Ibn Ja'far—from al-'Alā' ibn 'Abd al-Raḥmān, from his father, from Abū Hurayrah, that the Prophet (peace and blessings be upon him) said: "I have been favored over the prophets with six traits: I have been granted the comprehensive words (jawāmiʿ al-kalim), I have been aided by terror [struck into enemies], spoils have been made lawful for me, the earth has been made a purifying agent and a mosque for me, I have been sent to all people, and the prophets have been sealed with me."

وَبِهِ إِلَى مُسْلِمٍ: حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ ثنا إِسْمَاعِيلُ - هُوَ ابْنُ جَعْفَرٍ - عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «فُضِّلْتُ عَلَى الْأَنْبِيَاءِ بِستٍّ: أُعْطِيتُ جَوَامِعَ الْكَلِمِ وَنُصِرْتُ بِالرُّعْبِ، وَأُحِلَّتْ لِي الْغَنَائِمُ وَجُعِلَتْ لِي الْأَرْضُ طَهُورًا وَمَسْجِدًا، وَأُرْسِلْتُ إِلَى النَّاسِ كَافَّةً، وَخُتِمَ بِي النَّبِيُّونَ» .

L4129 This is a general ruling encompassing both residents and travelers. If it is objected: "Allah the Exalted says: {O you who believe, do not approach prayer while intoxicated until you comprehend what you utter, nor in a state of major impurity—except as wayfarers passing through—until you perform ghusl} [An-Nisa': 43], and Allah's Messenger—peace and blessings be upon him—said: 'Allah does not accept the prayer of one who invalidates his ablution until he performs ablution again,'" then the Almighty has not permitted those in major impurity to approach prayer until performing ghusl or tayammum, except when traveling.[2]

فَهَذَا عُمُومٌ دَخَلَ فِيهِ الْحَاضِرُ وَالْبَادِي. فَإِنْ قِيلَ: فَإِنَّ اللَّهَ تَعَالَى قَالَ: {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تَقْرَبُوا الصَّلاةَ وَأَنْتُمْ سُكَارَى حَتَّى تَعْلَمُوا مَا تَقُولُونَ وَلا جُنُبًا إِلا عَابِرِي سَبِيلٍ حَتَّى تَغْتَسِلُوا} [النساء: ٤٣] وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تُقْبَلُ صَلَاةُ مَنْ أَحْدَثَ حَتَّى يَتَوَضَّأَ» فَلَمْ يُبِحْ عَزَّ وَجَلَّ لِلْجُنُبِ أَنْ يَقْرَبَ الصَّلَاةَ حَتَّى يَغْتَسِلَ أَوْ يَتَوَضَّأَ إِلَّا مُسَافِرًا.

L4130–4132 We said: Yes, Allah the Exalted has stated this, and the Messenger of Allah—peace and blessings be upon him—has mentioned what you have cited. The Exalted also said: *"If you are in a state of major impurity, purify yourselves. But if you are ill, on a journey, one of you has come from defecation, or you have had contact with women and find no water, then seek clean earth and wipe your faces and hands with it"* (5:6). This verse was an additional ruling and came with legislation not present in the verse you mentioned, which merely permits a person in a state of major impurity—who is not a

قُلْنَا: نَعَمْ، قَالَ اللَّهُ تَعَالَى هَذَا، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا ذَكَرْتُمْ، وَقَالَ تَعَالَى: {وَإِنْ كُنْتُمْ جُنُبًا فَاطَّهَّرُوا وَإِنْ كُنْتُمْ مَرْضَى أَوْ عَلَى سَفَرٍ أَوْ جَاءَ أَحَدٌ مِنْكُمْ مِنَ الْغَائِطِ أَوْ لامَسْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا فَامْسَحُوا بِوُجُوهِكُمْ وَأَيْدِيكُمْ مِنْهُ} [المائدة: ٦] فَكَانَتْ هَذِهِ الْآيَةُ زَائِدَةً حُكْمًا وَوَارِدَةً بِشَرْعٍ لَيْسَ فِي الْآيَةِ الَّتِي ذَكَرْتُمْ بَلْ فِيهَا إِبَاحَةُ أَنْ يَقْرَبَ الصَّلَاةَ الْجُنُبُ دُونَ أَنْ يَغْتَسِلَ، وَهُوَ غَيْرُ عَابِرِ

[2] **Qur'an references (L4129):** Qur'an 4:43 (An-Nisa).

wayfarer—to approach prayer without bathing. However, if he is ill and cannot find water or faces hardship, this verse was likewise an additional ruling. Regarding the narration whose wording is: "The prayer of one who has nullified their ablution is not accepted until they perform ablution," then came the two narrations we mentioned with supplementary details and general applicability beyond the two verses and the aforementioned narration. Thus, these two narrations encompass the physically pure resident who cannot find water, while the words of Allah the Exalted and the words of His Messenger—may Allah bless him and grant him peace—necessitate the obligation of reconciling their parts with one another, all of which originate from Allah the Exalted.[3]

سَبِيلٍ، لَكِنْ إِذَا كَانَ مَرِيضًا لَا يَجِدُ الْمَاءَ أَوْ عَلَيْهِ حَرَجٌ، وَكَانَتْ هَذِهِ الْآيَةُ أَيْضًا زَائِدَةً حُكْمًا عَلَى الْخَبَرِ الَّذِي لَفْظُهُ «لَا تُقْبَلُ صَلَاةُ مَنْ أَحْدَثَ حَتَّى يَتَوَضَّأَ» ثُمَّ جَاءَ الْخَبَرَانِ اللَّذَانِ ذَكَرْنَا بِزِيَادَةٍ وَعُمُومٍ عَلَى الْآيَتَيْنِ وَالْخَبَرِ الْمَذْكُورِ، فَدَخَلَ فِي هَذَيْنِ الْخَبَرَيْنِ الصَّحِيحُ الْمُقِيمُ إِذَا لَمْ يَجِدْ الْمَاءَ، وَكَلَامُ اللَّهِ تَعَالَى وَكَلَامُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرْضٌ جَمْعُ بَعْضِهِ إلَى بَعْضٍ وَكُلُّهُ مِنْ عِنْدِ اللَّهِ تَعَالَى.

L4133 Our opinion here is the opinion of Mālik, Sufyān, and al-Layth. Abū Ḥanīfah and al-Shāfiʿī said: A non-traveler does not perform dry ablution. However, if he cannot obtain water until the prayer time elapses, he is to perform dry ablution and pray, then he must necessarily repeat the prayer when he finds water. Zufar said: A healthy person in settled areas must not perform dry ablution at all even if the prayer time elapses. Instead, he must wait until the time elapses and finds water, then pray at that time.

وَقَوْلُنَا هَذَا هُوَ قَوْلُ مَالِكٍ وَسُفْيَانَ وَاللَّيْثِ: وَقَالَ أَبُو حَنِيفَةَ وَالشَّافِعِيُّ: لَا يَتَيَمَّمُ الْحَاضِرُ، لَكِنْ إنْ لَمْ يَقْدِرْ عَلَى الْمَاءِ إلَّا حَتَّى يَفُوتَ الْوَقْتُ تَيَمَّمَ وَصَلَّى، ثُمَّ أَعَادَ وَلَا بُدَّ إذَا وَجَدَ الْمَاءَ، وَقَالَ زُفَرُ: لَا يَتَيَمَّمُ الصَّحِيحُ فِي الْحَضَرِ أَلْبَتَّةَ وَإِنْ خَرَجَ الْوَقْتُ، لَكِنْ يَصْبِرُ حَتَّى يَخْرُجَ الْوَقْتُ وَيَجِدَ الْمَاءَ فَيُصَلِّي حِينَئِذٍ.

L4134 Ali said: As for the position of Abū Ḥanīfa and al-Shāfiʿī, it is evidently invalid because their instruction for him to perform tayammum and pray must necessarily be either that they commanded him to perform a prayer constituting an obligation imposed by Allah the Exalted upon him, or a prayer not ordained by Allah the Exalted upon him—with no third alternative. If their follower claims they commanded him to perform an obligatory prayer, we counter: Why must he repeat it after its time if he already fulfilled his duty? If they claim they commanded a non-obligatory prayer, they admit imposing what is not required—which is erroneous. As for Zufar's position, it is erroneous because he neglected Allah the Exalted's obligation to perform prayer within its ordained time—the timeframe Allah commanded for its performance—while obligating him to pray during the time to which Allah the Exalted forbade delaying it.

قَالَ عَلِيٌّ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ وَالشَّافِعِيِّ فَظَاهِرُ الْفَسَادِ، لِأَنَّهُ لَا يَخْلُو أَمْرُهُمَا لَهُ بِالتَّيَمُّمِ وَالصَّلَاةِ مِنْ أَنْ يَكُونَا أَمَرَاهُ بِصَلَاةٍ هِيَ فَرْضُ اللَّهِ تَعَالَى عَلَيْهِ أَوْ بِصَلَاةٍ لَمْ يَفْرِضْهَا اللَّهُ تَعَالَى عَلَيْهِ، وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ، فَإِنْ قَالَ مُقَلِّدُهُمَا أَمَرَاهُ بِصَلَاةٍ: هِيَ فَرْضٌ عَلَيْهِ، قُلْنَا فَلِمَ يُعِيدُهَا بَعْدَ الْوَقْتِ إنْ كَانَ قَدْ أَدَّى فَرْضَهُ؟ وَإِنْ قَالُوا: بَلْ أَمَرَاهُ بِصَلَاةٍ لَيْسَتْ فَرْضًا عَلَيْهِ، أَقَرَّا بِأَنَّهُمَا أَلْزَمَاهُ مَا لَا يَلْزَمُهُ، وَهَذَا خَطَأٌ، وَأَمَّا قَوْلُ زُفَرَ فَخَطَأٌ، لِأَنَّهُ أَسْقَطَ فَرْضَ اللَّهِ تَعَالَى فِي الصَّلَاةِ فِي الْوَقْتِ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِأَدَائِهَا فِيهِ، وَأَلْزَمَهُ إيَّاهَا فِي الْوَقْتِ الَّذِي حَرَّمَ اللَّهُ تَعَالَى تَأْخِيرَهَا إلَيْهِ.

[3] **Qur'an references (L4130):** Qur'an 5:6 (Al-Ma'idah).

قَالَ أَبُو مُحَمَّد: وَالصَّلَاةُ فَرْضٌ مُعَلَّقٌ بِوَقْتٍ مَحْدُودٍ، وَالتَّأْكِيدُ فِيهَا أَعْظَمُ مِنْ أَنْ يَجْهَلَهُ مُسْلِمٌ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» فَوَجَدْنَا هَذَا الَّذِي حَضَرَتْهُ الصَّلَاةُ هُوَ مَأْمُورٌ بِالْوُضُوءِ وَبِالْغُسْلِ إنْ كَانَ جُنُبًا وَبِالصَّلَاةِ، فَإِذَا عَجَزَ عَنْ الْغُسْلِ وَالْوُضُوءِ سَقَطَا عَنْهُ، وَقَدْ نَصَّ - عَلَيْهِ السَّلَامُ - عَلَى أَنَّ الْأَرْضَ طَهُورٌ إذَا لَمْ يَجِدْ الْمَاءَ وَهُوَ غَيْرُ قَادِرٍ عَلَيْهِ، فَهُوَ غَيْرُ بَاقٍ عَلَيْهِ، وَهُوَ قَادِرٌ عَلَى الصَّلَاةِ فَهِيَ بَاقِيَةٌ عَلَيْهِ، وَهَذَا بَيِّنٌ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L4135 Abu Muhammad said: Prayer is an obligation bound to a specified time, and the emphasis placed upon it is too immense for any Muslim to be unaware of. The Messenger of Allah—peace be upon him—stated, "When I command you to do something, fulfill it to the best of your ability." We have determined that the person upon whom the prayer is incumbent is commanded to perform ablution and—if in a state of major impurity—a full ritual bath, and to pray. If he becomes incapable of performing the bath or ablution, these obligations are lifted from him. The Messenger of Allah—peace be upon him—explicitly stated that the earth serves as a means of purification when one cannot find water and is incapable of obtaining it. Thus, the obligation is lifted from him, while prayer remains binding upon him as he retains capability for it. This is clear, and all praise is due to Allah, Lord of the worlds.

[مَسْأَلَةٌ السَّفَرُ الَّذِي يُتَيَمَّمُ فِيهِ]

L4136 **An issue concerning the journey during which *tayammum* is performed.**

٢٢٨ - مَسْأَلَةٌ:

وَالسَّفَرُ الَّذِي يُتَيَمَّمُ فِيهِ هُوَ الَّذِي يُسَمَّى عِنْدَ الْعَرَبِ سَفَرًا سَوَاءٌ كَانَ مِمَّا تُقْصَرُ فِيهِ الصَّلَاةُ أَوْ مِمَّا لَا تُقْصَرُ فِيهِ الصَّلَاةُ، وَمَا كَانَ دُونَ ذَلِكَ - مِمَّا لَا يَقَعُ عَلَيْهِ اسْمُ السَّفَرِ مِنْ الْبُرُوزِ عَنْ الْمَنَازِلِ - فَهُوَ فِي حُكْمِ الْحَاضِرِ، فَأَمَّا الْمُسَافِرُ سَفَرًا يَقَعُ عَلَيْهِ اسْمُ سَفَرٍ وَالْمَرِيضُ الَّذِي لَهُ التَّيَمُّمُ فَالْأَفْضَلُ لَهُمَا أَنْ يَتَيَمَّمَا فِي أَوَّلِ الْوَقْتِ، سَوَاءٌ رَجَوْا الْمَاءَ أَوْ أَيْقَنَا بِوُجُودِهِ قَبْلَ خُرُوجِ الْوَقْتِ، أَوْ أَيْقَنَا أَنَّهُ لَا يُوجَدُ حَتَّى يَخْرُجَ الْوَقْتُ، وَكَذَلِكَ رَجَاءُ الصِّحَّةِ وَلَا فَرْقَ، وَأَمَّا الْحَاضِرُ الصَّحِيحُ وَمَنْ لَهُ حُكْمُ الْحَاضِرِ فَلَا يَحِلُّ لَهُ التَّيَمُّمُ إلَّا حَتَّى يُوقِنَ بِخُرُوجِ الْوَقْتِ قَبْلَ إمْكَانِ الْمَاءِ.

L4137 228: Question

L4138–4140 The journey in which dry ablution is permitted is that which the Arabs customarily designate as travel, whether it is a journey requiring prayer shortening or not. Departures from dwellings that do not meet the definition of travel are subject to the rulings applicable to residents. As for the traveler undertaking a valid journey and the sick person entitled to perform dry ablution, it is most preferable for them to perform it at the beginning of each prayer's prescribed time. It is the same whether they hoped for water, became certain of its presence before the time elapses, or became certain it would not be found until after the time elapses. Similarly, hoping for valid ablution conditions entails no difference. As for the physically sound person present near water and those who share the ruling of the present person, it is not permissible for them to perform *tayammum* unless they are certain the time has elapsed prior to water's availability.

بُرْهَانُ ذَلِكَ أَنَّ النَّصَّ وَرَدَ فِي الْمُسَافِرِ الَّذِي لَا يَجِدُ الْمَاءَ، وَفِي الْمَرِيضِ كَذَلِكَ وَفِي الْمَرِيضِ ذِي الْحَرَجِ، وَكَانَ الْبِدَارُ إلَى الصَّلَاةِ أَفْضَلَ، لِقَوْلِ اللَّهِ تَعَالَى: {وَسَارِعُوا إِلَى

L4141 The proof of this is that the text pertains to the traveler who cannot find water, the sick person, and similarly the sick person facing constraint. Hastening to pray is more virtuous, according to Allah's statement, the Most High: {And hasten toward forgiveness from your Lord} [Āl ʿImrān 3:133]. As

for the resident, there is no disagreement among anyone that as long as he hopes to find water before the prayer time expires, it is impermissible for him to perform Tayammum. Tayammum is only permitted for him when it is certain the time has expired, but this is disputed. Had the text not existed, it would not have been permissible for him.[4]

L4142 In the well-known opinion attributed to Abū Ḥanīfah, a traveler should not perform *tayammum* except at the end of the prayer time. However, it has been narrated from him that this ruling applies only as long as he entertains hope of finding water; if he does not expect to find water, he must perform *tayammum* at the beginning of the time.

L4143 And Sufyan said: The traveler should delay performing tayammum (dry ablution) until the end of the prayer time, in the hope that he may find water. This is the opinion of Imam Ahmad ibn Hanbal.

L4144 It has also been narrated from ʿAlī and Aṭāʾ, and Mālik stated on one occasion: One should neither rush nor postpone, but rather in the middle of the time.

L4145 He also said on another occasion: If one is certain of the presence of water before the prayer time ends, they should delay tayammum until the end of the prayer time. If they find water, they use it; otherwise, they perform tayammum and pray. If they are hopeful of finding water before the prayer time ends, they delay tayammum until the middle of the prayer time, perform it then, and pray. If they are certain they will not find water before the prayer time elapses, they perform tayammum at the beginning of the prayer time and pray.

L4146 Al-Awzaʿī said: "All of that is the same."

L4147 Ali said: Clinging to delaying tayammum in hopes of finding water is baseless, for there is neither textual evidence nor consensus that the ritual practice of one performing wudu is superior to that of one performing tayammum,

[4]**Qur'an references (L4141):** Qur'an 3:133 (Ali 'Imran).

مَغْفِرَةٍ مِنْ رَبِّكُمْ} [آل عمران: ١٣٣] وَأَمَّا الْحَاضِرُ فَلَا خِلَافَ مِنْ أَحَدٍ فِي أَنَّهُ مَا دَامَ يَرْجُو بِوُجُودِ الْمَاءِ قَبْلَ خُرُوجِ الْوَقْتِ فَإِنَّهُ لَا يَحِلُّ لَهُ التَّيَمُّمُ، وَمَا أُبِيحَ لَهُ التَّيَمُّمُ عِنْدَ تَيَقُّنِ خُرُوجِ الْوَقْتِ إِلَّا بِاخْتِلَافٍ، وَلَوْلَا النَّصُّ مَا حُلَّ لَهُ.

وَقَالَ أَبُو حَنِيفَةَ فِي الْمَشْهُورِ عَنْهُ: لَا يَتَيَمَّمُ الْمُسَافِرُ إِلَّا فِي آخِرِ وَقْتِ الصَّلَاةِ، إِلَّا أَنَّهُ قَدْ رُوِيَ عَنْهُ أَنَّ هَذَا إِنَّمَا هُوَ مَا دَامَ يَطْمَعُ فِي الْمَاءِ فَإِنْ لَمْ يَرْجُ بِهِ فَلْيَتَيَمَّمْ فِي أَوَّلِ الْوَقْتِ.

وَقَالَ سُفْيَانُ: يُؤَخِّرُ الْمُسَافِرُ التَّيَمُّمَ إِلَى آخِرِ الْوَقْتِ لَعَلَّهُ يَجِدُ الْمَاءَ، وَهُوَ قَوْلُ أَحْمَدَ بْنِ حَنْبَلٍ.

وَرُوِيَ أَيْضًا عَنْ عَلِيٍّ وَعَطَاءٍ، وَقَالَ مَالِكٌ مَرَّةً: لَا يُعَجِّلُ وَلَا يُؤَخِّرُ، وَلَكِنْ فِي وَسَطِ الْوَقْتِ.

وَقَالَ مَرَّةً: إِنْ أَيْقَنَ بِوُجُودِ الْمَاءِ قَبْلَ خُرُوجِ وَقْتِ الصَّلَاةِ فَإِنَّهُ يُؤَخِّرُ التَّيَمُّمَ إِلَى آخِرِ الْوَقْتِ، فَإِنْ وَجَدَ الْمَاءَ وَإِلَّا تَيَمَّمَ وَصَلَّى، وَإِنْ كَانَ طَامِعًا فِي وُجُودِ الْمَاءِ قَبْلَ خُرُوجِ الْوَقْتِ أَخَّرَ التَّيَمُّمَ إِلَى وَسَطِ الْوَقْتِ، فَيَتَيَمَّمُ فِي وَسَطِهِ وَيُصَلِّي، وَإِنْ كَانَ مُوقِنًا أَنَّهُ لَا يَجِدُ الْمَاءَ حَتَّى يَخْرُجَ الْوَقْتُ فَيَتَيَمَّمُ فِي أَوَّلِ الْوَقْتِ وَيُصَلِّي.

وَقَالَ الْأَوْزَاعِيُّ: كُلُّ ذَلِكَ سَوَاءٌ.

قَالَ عَلِيٌّ: التَّعَلُّقُ بِتَأْخِيرِ التَّيَمُّمِ لَعَلَّهُ يَجِدُ الْمَاءَ لَا مَعْنَى لَهُ؛ لِأَنَّهُ لَا نَصَّ وَلَا إِجْمَاعَ عَلَى أَنَّ عَمَلَ الْمُتَوَضِّئِ أَفْضَلُ مِنْ عَمَلِ الْمُتَيَمِّمِ، وَلَا عَلَى أَنَّ صَلَاةَ الْمُتَوَضِّئِ أَفْضَلُ وَلَا

nor that the prayer of one performing wudu is superior or more perfect than that of one performing tayammum. Both rituals constitute complete purification and complete prayer, each being obligatory in its circumstance. Since this is so, delaying prayer in hopes of finding water constitutes forsaking the merit of promptly pursuing superior acts without basis. Similar rulings have been reported from the Messenger of Allah—peace and blessings be upon him—and from Ibn Umar and others.

أَتَمُّ مِنْ صَلَاةِ الْمُتَيَمِّمِ، وَكِلَا الْأَمْرَيْنِ طَهَارَةٌ تَامَّةٌ وَصَلَاةٌ تَامَّةٌ، وَفَرْضٌ فِي حَالَةٍ فَإِذْ كَانَ ذَلِكَ كَذَلِكَ فَتَأْخِيرُ الصَّلَاةِ رَجَاءَ وُجُودِ الْمَاءِ تَرْكٌ لِلْفَضْلِ فِي الْبِدَارِ إِلَى أَفْضَلِ الْأَعْمَالِ بِلَا مَعْنًى، وَقَدْ جَاءَ مِثْلُ هَذَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَنْ ابْنِ عُمَرَ وَغَيْرِهِ.

L4148–4150 Narrated to us Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us Ibrahim ibn Ahmad narrated to us Al-Farbari narrated to us Al-Bukhari narrated to us Yahya ibn Bukayr, who said: Al-Layth narrated to us from Ja'far ibn Rabi'ah from Al-A'raj, who said: I heard Umayr, the freed slave of Ibn Abbas, say: I approached with Abdullah ibn Yasar, the freed slave of Maymunah, the wife of... The Prophet, peace and blessings of Allah be upon him, when we entered upon Abu Juhaym ibn al-Harith ibn al-Simmah al-Ansari.

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا يَحْيَى بْنُ بُكَيْرٍ قَالَ حَدَّثَنَا اللَّيْثُ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ عَنْ الْأَعْرَجِ قَالَ: سَمِعْتُ عُمَيْرًا مَوْلَى ابْنِ عَبَّاسٍ قَالَ: أَقْبَلْتُ أَنَا وَعَبْدُ اللَّهِ بْنُ يَسَارٍ مَوْلَى مَيْمُونَةَ زَوْجِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى دَخَلْنَا عَلَى أَبِي جُهَيْمِ بْنِ الْحَارِثِ بْنِ الصِّمَّةِ الْأَنْصَارِيِّ.

L4151 He said: "The Messenger of Allah—peace and blessings of Allah be upon him—approached from the direction of Camel Well when a man met him and greeted him. The Prophet—peace and blessings of Allah be upon him—did not respond to him until he turned toward a wall, wiped his face and hands, then returned the greeting."

قَالَ «أَقْبَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ نَحْوِ بِئْرِ جَمَلٍ فَلَقِيَهُ رَجُلٌ فَسَلَّمَ عَلَيْهِ فَلَمْ يَرُدَّ عَلَيْهِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى أَقْبَلَ عَلَى الْجِدَارِ فَمَسَحَ بِوَجْهِهِ وَيَدَيْهِ ثُمَّ رَدَّ - عَلَيْهِ السَّلَامُ -» .

L4152 It was transmitted to us from Sufyan al-Thawri, from Yahya ibn Sa'id al-Ansari, from Nafi': that Ibn 'Umar performed tayammum (dry ablution) and prayed the 'Asr prayer while being one or two miles distant from Medina. He then entered the city while the sun remained high, yet he did not reperform that prayer. From Malik, from Nafi': that he departed with Ibn 'Umar from al-Jurf (a vicinity near Medina). When they reached al-Mirbad and found no water, he dismounted, performed tayammum with ritual soil, prayed, and never reperformed that prayer.

وَرُوِّينَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ تَيَمَّمَ ثُمَّ صَلَّى الْعَصْرَ وَبَيْنَهُ وَبَيْنَ الْمَدِينَةِ مِيلٌ أَوْ مِيلَانِ ثُمَّ دَخَلَ الْمَدِينَةَ وَالشَّمْسُ مُرْتَفِعَةٌ فَلَمْ يُعِدْ. وَعَنْ مَالِكٍ عَنْ نَافِعٍ: أَنَّهُ أَقْبَلَ مَعَ ابْنِ عُمَرَ مِنْ الْجُرْفِ، فَلَمَّا أَتَى الْمِرْبَدَ لَمْ يَجِدْ مَاءً، فَنَزَلَ فَتَيَمَّمَ بِالصَّعِيدِ وَصَلَّى ثُمَّ لَمْ يُعِدْ تِلْكَ الصَّلَاةَ.

L4153 Ali said: This is the doctrine of Dawud and our companions.

قَالَ عَلِيٌّ: وَهُوَ قَوْلُ دَاوُد وَأَصْحَابِنَا.

L4154 Muhammad ibn al-Hasan said: As for the traveler, if water is within less than a mile of him, he must seek it even if the prayer time has passed. If it is

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: أَمَّا الْمُسَافِرُ فَإِنْ كَانَ الْمَاءُ مِنْهُ عَلَى أَقَلَّ مِنْ مِيلٍ طَلَبَهُ وَإِنْ خَرَجَ الْوَقْتُ، فَإِنْ كَانَ عَلَى مِيلٍ لَمْ يَلْزَمْهُ طَلَبُهُ وَتَيَمَّمَ.

a mile away, he is not obligated to seek it and should perform *tayammum* (dry ablution).

He said: As for one who leaves his residence without being a traveler, if he is in a place where he cannot hear the perceptible sounds of people or their voices, he should perform *tayammum*.

Ali said: "And these are opinions; we praise Allah for safety from them and from their likes."

Issue: When water was nearby, but he feared losing his saddle-pack or missing the opportunity to remain with the traveling group.

229 – Question:

And whoever has water near them but fears losing their mount, missing their travel companions, encounters an unjust enemy or fire intervening between them and the water, or faces any fear entailing hardship in deliberately seeking it—their obligation is to perform *tayammum*.

The proof of that is the statement of Allah, the Most High: {If you do not find water, then perform tayammum with clean earth} [An-Nisa: 43]. None of these people find water **with which they can perform** ritual purification.[5]

230–Issue:

If he seeks a right, there is no excuse for him in that matter, nor does *tayammum* suffice him, because it is obligatory upon him not to withhold any right he has undertaken for Allah the Exalted or for His servants. If he withholds it, he becomes disobedient. Allah the Exalted said: "And cooperate in righteousness and piety, and do not cooperate in sin and transgression" (5:2). The Messenger of Allah (peace be upon him) commanded that every right-holder be granted his right. Success is attained through Allah the Exalted.[6]

قَالَ: وَأَمَّا مَنْ خَرَجَ مِنْ مِصْرِهِ غَيْرَ مُسَافِرٍ، فَإِنْ كَانَ بِحَيْثُ لَا يَسْمَعُ حِسَّ النَّاسِ وَأَصْوَاتَهُمْ تَيَمَّمَ.

قَالَ عَلِيٌّ: وَهَذِهِ أَقْوَالٌ نَحْمَدُ اللَّهَ عَلَى السَّلَامَةِ مِنْهَا وَمِنْ مِثْلِهَا

[مَسْأَلَةٌ كَانَ الْمَاءُ مِنْهُ قَرِيبًا إِلَّا أَنَّهُ يَخَافُ ضَيَاعَ رَحْلِهِ أَوْ فَوْتَ الرُّفْقَةِ]

٢٢٩ - مَسْأَلَةٌ:

وَمَنْ كَانَ الْمَاءُ مِنْهُ قَرِيبًا إِلَّا أَنَّهُ يَخَافُ ضَيَاعَ رَحْلِهِ أَوْ فَوْتَ الرُّفْقَةِ أَوْ حَالَ بَيْنَهُ وَبَيْنَ الْمَاءِ عَدُوٌّ ظَالِمٌ أَوْ نَارٌ أَوْ أَيُّ خَوْفٍ كَانَ فِي الْقَصْدِ إِلَيْهِ مَشَقَّةٌ فَفَرْضُهُ التَّيَمُّمُ.

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا} [النساء: ٤٣] وَكُلُّ هَؤُلَاءِ لَا يَجِدُونَ مَاءً يَقْدِرُونَ عَلَى الطَّهَارَةِ بِهِ.

٢٣٠ - مَسْأَلَةٌ:

فَإِنْ طَلَبَ بِحَقٍّ فَلَا عُذْرَ لَهُ فِي ذَلِكَ وَلَا يُجْزِيهِ التَّيَمُّمُ، لِأَنَّ فَرْضًا عَلَيْهِ أَنْ لَا يَمْتَنِعَ مِنْ كُلِّ حَقٍّ قِبَلَهُ لِلَّهِ تَعَالَى أَوْ لِعِبَادِهِ، فَإِنْ امْتَنَعَ فَهُوَ عَاصٍ، قَالَ اللَّهُ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُعْطَى كُلُّ ذِي حَقٍّ حَقَّهُ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[5] **Qur'an references (L4160):** Qur'an 4:43 (An-Nisa); Qur'an 5:6 (Al-Ma'idah).
[6] **Qur'an references (L4162):** Qur'an 5:2 (Al-Ma'idah).

A case: A person was at a well he saw and recognized during a journey and feared missing his companions.

Issue 231:

If he is at a well he sees and knows during a journey and fears losing his companions, missing the congregational prayer, or the expiration of the prayer time, he may perform tayammum, and it suffices him. However, he must perform ablution for what he will perform anew afterward, because all these are valid excuses preventing his use of water. Thus, he is considered as not having access to water he can use without undue hardship.

An issue: The water was in his saddlebag, he forgot it, so he made *tayammum* and prayed.

232. Issue:

And whoever has water in his travel gear and forgets it, or there is a well or spring near him that he is unaware of, then performs Tayammum and prays, it suffices him, because these two are not finders of water. And whoever does not find water should perform Tayammum by the text. The speech of Allah, the Exalted, and this is the view of Abū Ḥanīfah and Dāwūd.

Malik said: He must repeat it within the prescribed time and must not repeat it if the time has expired. Abu Yusuf and Al-Shafi'i said: He must always repeat it.

Abū Yūsuf said: If the well were at an arrow's throw from him or a comparable distance, and he was unaware of it, his *tayammum* would suffice. But if he were on its brink or near it and unaware of it, his *tayammum* would not suffice.

Every impurity-causing event (ḥadath) that invalidates ablution also invalidates tayammum.

233 - Issue:

[مَسْأَلَةٌ كَانَ عَلَى بِئْرٍ يَرَاهَا وَيَعْرِفُهَا فِي سَفَرٍ وَخَافَ فَوَاتَ أَصْحَابِهِ]

٢٣١ - مَسْأَلَةٌ:

فَلَوْ كَانَ عَلَى بِئْرٍ يَرَاهَا وَيَعْرِفُهَا فِي سَفَرٍ وَخَافَ فَوَاتَ أَصْحَابِهِ أَوْ فَوْتَ صَلَاةِ الْجَمَاعَةِ أَوْ خُرُوجَ الْوَقْتِ: تَيَمَّمَ وَأَجْزَأَهُ، لَكِنْ يَتَوَضَّأُ لِمَا يَسْتَأْنِفُ لِأَنَّ كُلَّ هَذَا عُذْرٌ مَانِعٌ مِنْ اسْتِعْمَالِ الْمَاءِ، فَهُوَ غَيْرُ وَاجِدٍ الْمَاءَ يُمْكِنُهُ اسْتِعْمَالُهُ بِلَا حَرَجٍ.

[مَسْأَلَةٌ كَانَ الْمَاءُ فِي رَحْلِهِ فَنَسِيَهُ فَتَيَمَّمَ وَصَلَّى]

٢٣٢ - مَسْأَلَةٌ:

وَمَنْ كَانَ الْمَاءُ فِي رَحْلِهِ فَنَسِيَهُ أَوْ كَانَ بِقُرْبِهِ بِئْرٌ أَوْ عَيْنٌ لَا يَدْرِي بِهَا فَتَيَمَّمَ وَصَلَّى أَجْزَأَهُ، لِأَنَّ هَذَيْنِ غَيْرُ وَاجِدَيْنِ لِلْمَاءِ، وَمَنْ لَمْ يَجِدْ الْمَاءَ تَيَمَّمَ بِنَصِّ كَلَامِ اللَّهِ تَعَالَى، وَهَذَا قَوْلُ أَبِي حَنِيفَةَ وَدَاوُد.

وَقَالَ مَالِكٌ: يُعِيدُ فِي الْوَقْتِ وَلَا يُعِيدُ إنْ خَرَجَ الْوَقْتُ. وَقَالَ أَبُو يُوسُفَ وَالشَّافِعِيُّ: يُعِيدُ أَبَدًا.

وَقَالَ أَبُو يُوسُفَ إنْ كَانَتْ الْبِئْرُ مِنْهُ عَلَى رَمْيَةِ سَهْمٍ أَوْ نَحْوِهَا وَهُوَ لَا يَعْلَمُ بِهَا أَجْزَأَهُ التَّيَمُّمُ، فَإِنْ كَانَ عَلَى شَفِيرِهَا أَوْ بِقُرْبِهَا وَهُوَ لَا يَعْلَمُ بِهَا لَمْ يُجْزِهِ التَّيَمُّمُ.

[مَسْأَلَةٌ كُلُّ حَدَثٍ يَنْقُضُ الْوُضُوءَ فَإِنَّهُ يَنْقُضُ التَّيَمُّمَ]

٢٣٣ - مَسْأَلَةٌ:

L4175 Every occurrence that invalidates ablution also invalidates tayammum. This is something in which there is no disagreement from any of the people of Islam.

L4176 **Issue: The presence of water invalidates tayammum.**

L4177 234 - Issue:

L4178 The presence of water also invalidates dry ablution (tayammum), whether one finds it during prayer, after having prayed, or before praying. The prayer they are performing is invalidated because their purification is broken, and they must perform ablution (wudu) or a full ablution (ghusl), then restart the prayer. There is no obligation to repeat the prayers already performed with dry ablution.

L4179 Even if he finds water immediately after the salam of the prayer, the disagreement regarding this revolves around three cases. One is an old disagreement: when water is found, neither ablution (wudu) with it nor ritual bath (ghusl) becomes obligatory upon the one who performed tayammum unless there occurs from him something that necessitates ritual bath or ablution.

L4180 And it has been narrated to us from Ibn Jurayj from ʿAbd al-Ḥamīd ibn Jubayr ibn Shaybah that Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf said: If you are in a state of janabah during travel, perform tayammum. Then if you find water, you do not have to perform the ritual bath for janabah if you wish. ʿAbd al-Ḥamīd said: I mentioned that to Saʿīd ibn al-Musayyab, and he replied: How would he know? If you find water, perform the ritual bath.

L4181 The majority of later scholars maintain this view regarding the initiation of ghusl and wuḍū'.

L4182 Among the arguments of those who do not hold the view of renewing wudu and ghusl is their statement: Tayammum is a valid form of purification. Since this is the case, it is only nullified by what invalidates other purificatory acts. The availability of water is not a hadath (an event that nullifies ritual purity),

وَكُلُّ حَدَثٍ يَنْقُضُ الْوُضُوءَ فَإِنَّهُ يَنْقُضُ التَّيَمُّمَ، هَذَا مَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ.

[مَسْأَلَةٌ يَنْقُضُ التَّيَمُّمَ وُجُودُ الْمَاءِ]

٢٣٤ - مَسْأَلَةٌ:

وَيَنْقُضُ التَّيَمُّمَ أَيْضًا وُجُودُ الْمَاءِ، سَوَاءٌ وَجَدَهُ فِي صَلَاةٍ أَوْ بَعْدَ أَنْ صَلَّى أَوْ قَبْلَ أَنْ يُصَلِّيَ، فَإِنَّ صَلَاتَهُ الَّتِي هُوَ فِيهَا تُنْتَقَضُ لِانْتِقَاضِ طَهَارَتِهِ وَيَتَوَضَّأُ أَوْ يَغْتَسِلُ، ثُمَّ يَبْتَدِئُ الصَّلَاةَ، وَلَا قَضَاءَ عَلَيْهِ فِيمَا قَدْ صَلَّى بِالتَّيَمُّمِ.

وَلَوْ وَجَدَ الْمَاءَ إثْرَ سَلَامِهِ مِنْهَا، الْخِلَافُ فِي هَذَا فِي ثَلَاثِ مَوَاضِعَ: أَحَدُهَا خِلَافٌ قَدِيمٌ فِي أَنَّ الْمَاءَ إذَا وُجِدَ لَمْ يَكُنْ عَلَى الْمُتَيَمِّمِ الْوُضُوءُ بِهِ وَلَا الْغُسْلُ مَا لَمْ يَحْدُثْ مِنْهُ مَا يُوجِبُ الْغُسْلَ أَوْ الْوُضُوءَ.

وَرُوِّينَا ذَلِكَ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْحَمِيدِ بْنِ جُبَيْرِ بْنِ شَيْبَةَ أَنَّ أَبَا سَلَمَةَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ قَالَ: إذَا كُنْتَ جُنُبًا فِي سَفَرٍ فَتَمَسَّحْ ثُمَّ إذَا وَجَدْتَ الْمَاءَ فَلَا تَغْتَسِلْ مِنْ جَنَابَةٍ إنْ شِئْتَ، قَالَ عَبْدُ الْحَمِيدِ: فَذَكَرْتُ ذَلِكَ لِسَعِيدِ بْنِ الْمُسَيِّبِ فَقَالَ: مَا يُدْرِيهِ؟ إذَا وَجَدْتَ الْمَاءَ فَاغْتَسِلْ.

وَبِإِحْدَاثِ الْغُسْلِ وَالْوُضُوءِ يَقُولُ جُمْهُورُ الْمُتَأَخِّرِينَ.

and thus its presence does not invalidate the purification attained through tayammum.

وَكَانَ مِنْ حُجَّةِ مَنْ لَا يَرَى تَجْدِيدَ الْوُضُوءِ وَالْغُسْلِ أَنْ قَالَ: التَّيَمُّمُ طَهَارَةٌ صَحِيحَةٌ فَإِذْ ذَلِكَ كَذَلِكَ فَلَا يَنْقُضُهَا إِلَّا مَا يَنْقُضُ الطَّهَارَاتِ، وَلَيْسَ وُجُودُ الْمَاءِ حَدَثًا، فَوُجُودُ الْمَاءِ لَا يَنْقُضُ طَهَارَةَ التَّيَمُّمِ.

L4183–4185 Ali said: This would have been a sound statement were it not for what Abd al-Rahman ibn Abd Allah reported to us, who said: We received narration from Ibrahim ibn Ahmad, from al-Farbari, from al-Bukhari, from Musaddad, from Yahya ibn Sa'id [al-Qattan], from Awf [ibn Abi Jamilah], from Abu Rajā' al-'Uṭāridī, from Imran ibn al-Husayn, who said: "We were with the Messenger of Allah (peace be upon him) on a journey," and he mentioned the hadith, in which it states: "The Messenger of Allah (peace be upon him) led the people in prayer. When the Messenger of Allah (peace be upon him) turned from his prayer, he noticed a man sitting apart who had not prayed with the congregation. The Prophet asked: 'What...'" What prevented you, O so-and-so, from praying with the people? He replied: I became ritually impure (janabah) and found no water. He said: You should use pure soil, for it suffices you. Then the Prophet (peace be upon him) mentioned in his narration the matter of water which God Almighty provided as a sign for His Prophet, saying: "Ultimately, he gave the man who had incurred major impurity a vessel of water and instructed: 'Go and pour it over yourself.'"

قَالَ عَلِيٌّ: وَكَانَ هَذَا قَوْلًا صَحِيحًا لَوْلَا مَا حَدَّثَنَاهُ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ قَالَ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُسَدَّدٌ ثنا يَحْيَى بْنُ سَعِيدٍ - هُوَ الْقَطَّانُ - ثنا عَوْفٌ - هُوَ ابْنُ أَبِي جَمِيلَةَ - ثنا أَبُو رَجَاءٍ الْعُطَارِدِيُّ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ قَالَ «كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَفَرٍ فَذَكَرَ الْحَدِيثَ وَفِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى بِالنَّاسِ، فَلَمَّا انْفَتَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ صَلَاتِهِ إِذْ هُوَ بِرَجُلٍ مُعْتَزِلٍ لَمْ يُصَلِّ مَعَ الْقَوْمِ، فَقَالَ: مَا مَنَعَكَ يَا فُلَانُ أَنْ تُصَلِّيَ مَعَ الْقَوْمِ؟ قَالَ: أَصَابَتْنِي جَنَابَةٌ وَلَا مَاءَ، قَالَ: عَلَيْكَ بِالصَّعِيدِ فَإِنَّهُ يَكْفِيكَ» ثُمَّ ذَكَرَ فِي حَدِيثِهِ ذَلِكَ أَمْرَ الْمَاءِ الَّذِي أَحْدَثَهُ اللَّهُ تَعَالَى آيَةً لِنَبِيِّهِ - عَلَيْهِ السَّلَامُ - قَالَ: " وَكَانَ آخِرُ ذَلِكَ أَنْ «أَعْطَى الَّذِي أَصَابَتْهُ الْجَنَابَةُ إِنَاءً مِنْ مَاءٍ، وَقَالَ: اذْهَبْ فَأَفْرِغْهُ عَلَيْكَ»

L4186 Hammam narrated to us: Abbas ibn Asbagh narrated to us: Muhammad ibn Abd al-Malik ibn Ayman narrated to us: Ibrahim ibn Ishaq al-Naysaburi in Baghdad narrated to us: Muhammad ibn Abdullah ibn Numayr narrated to us: Abi narrated to us: Isma'il ibn Muslim narrated to us: Abu Raja al-Utaridi reported from Imran ibn al-Husayn, who said: I was with the Messenger of Allah (peace be upon him) while among the people was a man in a state of post-sexual impurity (janabah). The Messenger of Allah instructed him to perform tayammum and pray. Later we found water, whereupon the Messenger of Allah ordered him to perform the ritual bath without repeating the prayer. We have previously mentioned Hudhayfah's narration from the Messenger of Allah (peace be upon him): The earth has been made a mosque

حَدَّثَنَا حَمَّامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا إِبْرَاهِيمُ بْنُ إِسْحَاقَ النَّيْسَابُورِيُّ بِبَغْدَادَ ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ ثنا أَبِي ثنا إِسْمَاعِيلُ بْنُ مُسْلِمٍ ثنا أَبُو رَجَاءٍ الْعُطَارِدِيُّ عَنْ «عِمْرَانَ بْنِ الْحُصَيْنِ قَالَ كُنْتُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي الْقَوْمِ جُنُبٌ، فَأَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَتَيَمَّمَ وَصَلَّى، ثُمَّ وَجَدْنَا الْمَاءَ بَعْدُ، فَأَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَغْتَسِلَ وَلَا يُعِيدَ

for us, and its soil has been made a means of purification for us when water is unavailable.

الصَّلَاةَ» وَقَدْ ذَكَرْنَا حَدِيثَ حُذَيْفَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَجُعِلَتْ لَنَا الْأَرْضُ مَسْجِدًا وَجُعِلَتْ تُرْبَتُهَا لَنَا طَهُورًا إِذَا لَمْ نَجِدْ الْمَاءَ» .

L4187 These narrations establish that purification with earth is only valid when water is unavailable. This wording necessitates that purification with earth is impermissible except when water is not found, and further requires that no purification with earth is valid unless water is unavailable—unless another textual ruling permits it for specific individuals. Given this, it is impermissible to accept one of the two meanings while excluding the other; rather, it is obligatory to apply both rulings collectively. This is also corroborated by the Prophet's—peace be upon him—command to the person in a state of major impurity (junub) to perform tayammum with clean earth and perform prayer, followed by his command to undertake ritual bathing (ghusl) when water becomes available. Thus, what we have stated is confirmed by explicit text, and all praise is due to Allah.

فَصَحَّ بِهَذِهِ الْأَحَادِيثِ أَنَّ الطَّهُورَ بِالتُّرَابِ إنَّمَا هُوَ مَا لَمْ يُوجَدْ الْمَاءُ، وَهَذَا لَفْظٌ يَقْتَضِي أَنْ لَا يَجُوزَ التَّطَهُّرُ بِالتُّرَابِ إلَّا إذَا لَمْ يُوجَدْ الْمَاءُ، وَيَقْتَضِي أَنْ لَا يَصِحَّ طَهُورٌ بِالتُّرَابِ إلَّا أَنْ لَا نَجِدَ الْمَاءَ إلَّا لِمَنْ أَبَاحَ لَهُ ذَلِكَ نَصٌّ آخَرُ، وَإِذَا كَانَ هَذَا فَلَا يَجُوزُ أَنْ يَخُصَّ بِالْقَبُولِ أَحَدَ الْمَعْنَيَيْنِ دُونَ الْآخَرِ، بَلْ فَرَضَ الْعَمَلَ بِهِمَا مَعًا، وَصَحَّحَ هَذَا أَيْضًا أَمْرُهُ - عَلَيْهِ السَّلَامُ - الْمُجْنِبَ بِالتَّيَمُّمِ بِالصَّعِيدِ وَالصَّلَاةِ، ثُمَّ أَمْرُهُ عِنْدَ وُجُودِ الْمَاءِ بِالْغُسْلِ، فَصَحَّ مَا قُلْنَاهُ نَصًّا وَالْحَمْدُ لِلَّهِ.

L4188 The second case: If one finds water after performing the prayer, must he repeat it or not? Saʿīd ibn al-Musayyab, ʻAṭāʾ, Tāwūs, al-Shaʿbī, al-Ḥasan, and Abū Salamah ibn ʻAbd al-Raḥmān said, "He must repeat it as long as he is within the prayer time."

وَالْمَوْضِعُ الثَّانِي: إنْ وَجَدَ الْمَاءَ بَعْدَ الصَّلَاةِ أَيُعِيدُهَا أَمْ لَا؟ فَقَالَ سَعِيدُ بْنُ الْمُسَيِّبِ وَعَطَاءٌ وَطَاوُسٌ وَالشَّعْبِيُّ وَالْحَسَنُ وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ: إنَّهُ يُعِيدُ مَا دَامَ فِي الْوَقْتِ.

L4189 It was narrated to us through the chain of Maʿmar from Saʿīd ibn ʿAbd al-Raḥmān al-Jumaḥī from Abū Salamah; through the chain of Ḥammād ibn Salamah from Yūnus from al-Ḥasan; through the chain of al-Ḥajjāj ibn al-Minhāl from Sufyān al-Thawrī from ʿAbd al-Ḥamīd ibn Jubayr ibn Shaybah from Saʿīd ibn al-Musayyib; through the chain of Wakīʿ from Zakariyyā ibn Abī Zāʾidah from al-Shaʿbī; through the chain of Sufyān al-Thawrī from Layth ibn Abī Sulaym from ʿAṭāʾ; and through the chain of al-Ḥasan ibn Ṣāliḥ from al-ʿAlāʾ ibn al-Musayyib from Ṭāwūs.

رُوِّينَاهُ مِنْ طَرِيقِ مَعْمَرٍ عَنْ سَعِيدِ بْنِ عَبْدِ الرَّحْمَنِ الْجُمَحِيِّ عَنْ أَبِي سَلَمَةَ، وَعَنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يُونُسَ عَنْ الْحَسَنِ، وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الْحَمِيدِ بْنِ جُبَيْرِ بْنِ شَيْبَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَمِنْ طَرِيقِ وَكِيعٍ عَنْ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ عَنْ الشَّعْبِيِّ، وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ عَطَاءٍ، وَمِنْ طَرِيقِ الْحَسَنِ بْنِ صَالِحٍ عَنْ الْعَلَاءِ بْنِ الْمُسَيِّبِ عَنْ طَاوُسٍ.

L4190 Mālik said: The traveler, the sick person, and the fearful person perform tayammum (dry ablution) during the prayer time. If they perform tayammum, pray, and then find water within the prayer time, the traveler does not repeat the prayer, while the sick person and the fearful person repeat the prayer.

وَقَالَ مَالِكٌ: الْمُسَافِرُ وَالْمَرِيضُ وَالْخَائِفُ يَتَيَمَّمُونَ فِي وَسَطِ الْوَقْتِ، فَإِنْ تَيَمَّمُوا وَصَلَّوْا ثُمَّ وَجَدُوا الْمَاءَ فِي الْوَقْتِ فَإِنَّ الْمُسَافِرَ لَا يُعِيدُ، وَأَمَّا الْمَرِيضُ وَالْخَائِفُ فَيُعِيدَانِ الصَّلَاةَ.

L4191–4192 Ali said: As for Mālik's opinion, it is manifestly erroneous in his differentiation between the sick, the one in fear [of harm], and the traveler. This is because the sick person who cannot find water is commanded to perform tayammum and [offer] the prayer, just as the traveler is commanded in a single verse, with no distinction made.

قَالَ عَلِيٌّ: أَمَّا قَوْلُ مَالِكٍ فَظَاهِرُ الْخَطَأِ فِي تَفْرِيقِهِ بَيْنَ الْمَرِيضِ وَالْخَائِفِ وَبَيْنَ الْمُسَافِرِ، لِأَنَّ الْمَرِيضَ الَّذِي لَا يَجِدُ الْمَاءَ مَأْمُورٌ بِالتَّيَمُّمِ وَالصَّلَاةِ، كَمَا أُمِرَ بِهِ الْمُسَافِرُ فِي آيَةٍ وَاحِدَةٍ وَلَا فَرْقَ.

L4193 As for the sick and those in fear, for whom Tayammum is permitted to alleviate hardship and difficulty, the same applies. Regarding all those we have mentioned, no distinction between any of them in this matter is established by the Qur'an, nor by any authentic or weak Sunnah, nor by consensus, nor by a companion's statement, nor by analogy, nor by any opinion with a sound basis. Indeed, we know of no one who asserted this position before Malik. Thus, this opinion is entirely invalidated, leaving only the view of those who say: "All must repeat it," and the view of those who say: "They need not repeat it." Upon reflection, we found that all those we mentioned were commanded to perform Tayammum by the Qur'an's text. When they prayed, they necessarily fell into one of two scenarios: either they prayed as they were commanded, or they did not pray as they were commanded.

وَأَمَّا الْمَرِيضُ وَالْخَائِفُ الْمُبَاحُ لَهُمَا التَّيَمُّمُ لِرَفْعِ الْحَرَجِ وَالْعُسْرِ فَكَذَلِكَ أَيْضًا، وَكُلُّ مَنْ ذَكَرْنَا، فَلَمْ يَأْتِ بِالْفَرْقِ بَيْنَ أَحَدٍ مِنْهُمْ فِي ذَلِكَ قُرْآنٌ وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا سَقِيمَةٌ وَلَا إجْمَاعٌ وَلَا قَوْلُ صَاحِبٍ وَلَا قِيَاسٌ وَلَا رَأْيٌ لَهُ وَجْهٌ، نَعَمْ، وَلَا نَعْلَمُ أَحَدًا قَالَ قَبْلَ مَالِكٍ، فَسَقَطَ هَذَا الْقَوْلُ جُمْلَةً وَلَمْ يَبْقَ إلَّا قَوْلُ مَنْ قَالَ: يُعِيدُ الْكُلُّ، وَقَوْلُ مَنْ قَالَ لَا يُعِيدُ فَنَظَرْنَا، فَوَجَدْنَا كُلَّ مَنْ ذَكَرْنَا مَأْمُورًا بِالتَّيَمُّمِ بِنَصِّ الْقُرْآنِ، فَلَمَّا صَلَّوْا كَانُوا لَا يَخْلُونَ مِنْ أَحَدِ وَجْهَيْنِ: إمَّا أَنْ يَكُونُوا صَلَّوْا كَمَا أُمِرُوا أَوْ لَمْ يُصَلُّوا كَمَا أُمِرُوا.

L4194 If they say, "They did not pray as they were commanded," we respond to them: Then they would be prohibited from performing dry ablution and prayer initially—these prohibitions are unavoidable. No one would make such a claim, and even if someone did, they would be in error, opposing the Quran, the Sunnah, and the scholarly consensus. Since this category is definitively invalidated, only the second category remains: that they did pray as they were commanded. Therefore, having prayed as commanded, it is impermissible for them to repeat a single prayer twice in one day, due to the prohibition of the Messenger of Allah—peace and blessings be upon him.

فَإِنْ قَالُوا لَمْ يُصَلُّوا كَمَا أُمِرُوا قُلْنَا لَهُمْ: فَهُمْ إذًا مَنْهِيُّونَ عَنْ التَّيَمُّمِ وَالصَّلَاةِ ابْتِدَاءً لَا بُدَّ مِنْ هَذِهِ وَهَذَا لَا يَقُولُهُ أَحَدٌ، وَلَوْ قَالَهُ لَكَانَ مُخْطِئًا مُخَالِفًا لِلْقُرْآنِ وَالسُّنَنِ وَالْإِجْمَاعِ، فَإِذْ قَدْ سَقَطَ هَذَا الْقِسْمُ بِيَقِينٍ فَلَمْ يَبْقَ إلَّا الْقِسْمُ الثَّانِي، وَهُوَ أَنَّهُمْ قَدْ صَلَّوْا كَمَا أُمِرُوا، فَإِذْ قَدْ صَلَّوْا كَمَا أُمِرُوا فَلَا تَحِلُّ لَهُمْ إعَادَةُ صَلَاةٍ وَاحِدَةٍ فِي يَوْمٍ مَرَّتَيْنِ، لِنَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L4195 This was narrated to us by Abdullah ibn Rabiʿ, who narrated to us Muhammad ibn Isḥāq, who narrated to us Ibn al-Aʿrābī, who narrated to us Abū Dāwūd, who narrated to us Abū Kāmil, who narrated to us Yazīd – meaning Ibn Zuraiʿ – who narrated to us Ḥusayn, that is, the teacher, from ʿAmr ibn Shuʿayb, from Sulaymān ibn Yasār, the client of Maymūnah, who said: "I came to Ibn ʿUmar at al-Balāṭ while they were praying, and he said: 'I heard

حَدَّثَنَا بِذَلِكَ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا أَبُو كَامِلٍ ثنا يَزِيدُ - يَعْنِي ابْنَ زُرَيْعٍ - ثنا حُسَيْنٌ - هُوَ الْمُعَلِّمُ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ مَوْلَى مَيْمُونَةَ قَالَ: «أَتَيْتُ ابْنَ عُمَرَ عَلَى الْبَلَاطِ وَهُمْ يُصَلُّونَ فَقَالَ:

the Messenger of Allah – peace and blessings be upon him – say: "Do not perform a prayer twice in a day."' Therefore, the obligation to repeat the prayer was completely lifted."

إِنِّي سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: لَا تُصَلُّوا صَلَاةً فِي يَوْمٍ مَرَّتَيْنِ» فَسَقَطَ الْأَمْرُ بِالْإِعَادَةِ جُمْلَةً.

L4196 And all praise is due to Allah, Lord of all the worlds.

وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L4197 The third is one who sees water while in prayer. This is the opinion of Mālik, Al-Shāfiʿī, Aḥmad ibn Ḥanbal, Abū Thawr, and Dāwūd.

وَالثَّالِثُ مَنْ رَأَى الْمَاءَ وَهُوَ فِي الصَّلَاةِ، فَإِنَّ مَالِكًا وَالشَّافِعِيَّ وَأَحْمَدَ بْنَ حَنْبَلٍ وَأَبَا ثَوْرٍ وَدَاوُد.

L4198 They said: If one sees the discharge while in prayer, he should continue with his prayer without repeating it, nor is his ritual purity invalidated by that. But if he sees it after the prayer, he must perform ablution and ritual bathing without exception. A newly initiated prayer will not be valid unless he does so.

قَالُوا: إِنْ رَأَى الْمَاءَ وَهُوَ فِي الصَّلَاةِ فَلْيَتَمَادَ عَلَى صَلَاتِه وَلَا يُعِيدُهَا وَلَا تَنْتَقِضُ طَهَارَتُهُ بِذَلِكَ، وَإِنْ رَآهُ بَعْدَ الصَّلَاةِ فَلْيَتَوَضَّأْ وَلْيَغْتَسِلْ وَلَا بُدَّ، لَا تُجْزِيهِ صَلَاةٌ مُسْتَأْنَفَةٌ إِلَّا بِذَلِكَ.

L4199 Abū Ḥanīfah, his companions, Sufyān al-Thawrī, and al-Awzāʿī said: Whether one discovers water during the prayer or after it, he must interrupt the prayer without exception, perform ablution or ritual bathing, and begin it anew. As for discovering it after the prayer, that specific prayer remains valid, but purification with water becomes imperative for any subsequent prayer he initiates—no prayer he initiates afterward is valid except through such purification.

وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ وَسُفْيَانُ الثَّوْرِيُّ وَالْأَوْزَاعِيُّ: سَوَاءٌ وَجَدَ الْمَاءَ فِي الصَّلَاةِ أَوْ بَعْدَ الصَّلَاةِ يَقْطَعُ الصَّلَاةَ وَلَا بُدَّ، وَيَتَوَضَّأُ أَوْ يَغْتَسِلُ وَيَبْتَدِيهَا، وَأَمَّا إِنْ رَآهُ بَعْدَ الصَّلَاةِ فَقَدْ تَمَّتْ صَلَاتُهُ تِلْكَ، وَلَا بُدَّ لَهُ مِنْ الطَّهَارَةِ بِالْمَاءِ لِمَا يَسْتَأْنِفُ لَا تُجْزِيهِ صَلَاةٌ يَسْتَأْنِفُهَا إِلَّا بِذَلِكَ.

L4200–4201 Ali said: When they disagreed, we examined the matter and found the argument of those who distinguished between the availability of water during prayer and its availability after prayer—if they argued, "He entered prayer as he was commanded; thus, it is impermissible for him to nullify it except by explicit textual evidence or consensus."

قَالَ عَلِيٌّ: فَلَمَّا اخْتَلَفُوا نَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَا حُجَّةَ مَنْ فَرَّقَ بَيْنَ وُجُودِ الْمَاءِ فِي الصَّلَاةِ وَوُجُودِهِ بَعْدَ الصَّلَاةِ - إِنْ قَالُوا قَدْ دَخَلَ فِي الصَّلَاةِ كَمَا أُمِرَ، فَلَا يَجُوزُ لَهُ أَنْ يَنْقُضَهَا إِلَّا بِنَصٍّ أَوْ إِجْمَاعٍ.

L4202 Abu Muhammad said: We know of no argument for them other than this, nor do they have any basis for it. For even if one has entered prayer as Allah the Exalted has commanded, the presence of water must either nullify the ritual purity and subject him to the ruling of one in minor impurity (ḥadath) or major impurity (janābah), or neither nullify the ritual purity nor subject

قَالَ أَبُو مُحَمَّد: لَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذِهِ، وَلَا مُتَعَلَّقَ لَهُمْ بِهَا، لِأَنَّهُ - وَإِنْ كَانَ قَدْ دَخَلَ فِي الصَّلَاةِ كَمَا أَمَرَهُ اللَّهُ تَعَالَى - فَلَا يَخْلُو وُجُودُ الْمَاءِ مِنْ أَنْ يَكُونَ يَنْقُضُ الطَّهَارَةَ

him to the ruling of one in major impurity (janābah) or minor impurity (ḥadath).

وَيُعِيدُهُ فِي حُكْمِ الْمُحْدِثِ أَوْ الْمُجْنِبِ، أَوْ يَكُونَ لَا يَنْقُضُ الطَّهَارَةَ وَلَا يُعِيدُهُ فِي حُكْمِ الْمُجْنِبِ أَوْ الْمُحْدِثِ.

L4203 If they say it does not invalidate ritual purity and he need not repeat the prayer while in major or minor impurity - this being the position of Abū Sulaymān and our companions - we respond: There is no obligation on you. You yourselves acknowledge that despite this, he remains obliged to perform either major ablution or minor ablution when he finds water without any disagreement from your side. From their response "Yes," we say to them: He is commanded to do that both during prayer and outside it by the explicit text of our school and your school regarding the urgency to fulfill divine commands. Should they object: "He is not commanded to do so during prayer due to being occupied by it," we counter: This constitutes an arbitrary distinction without evidence - a mere baseless claim. Since he is indeed commanded to act upon finding water both within and outside prayer, it is established that your instruction to persist in abstaining from water usage is erroneous. For by your own principles, his prayer would not be invalidated by this act. Thus the necessary consequence of your doctrine would require him to use the water and resume his prayer from where he left off - exactly as you rule for one in minor impurity, with no distinction. Yet since they reject this conclusion, their argument is invalidated.

فَإِنْ قَالُوا لَا يَنْقُضُ الطَّهَارَةَ وَلَا يُعِيدُهُ مُجْنِبًا وَلَا مُحْدِثًا، فَهَذَا جَوَابُ أَبِي سُلَيْمَانَ وَأَصْحَابِنَا، قُلْنَا فَلَا عَلَيْكُمْ، أَنْتُمْ مُقِرُّونَ بِأَنَّهُ مَعَ ذَلِكَ مُفْتَرَضٌ عَلَيْهِ الْغُسْلُ أَوْ الْوُضُوءُ مَتَى وَجَدَ الْمَاءَ بِلَا خِلَافٍ مِنْكُمْ، فَمِنْ قَوْلِهِمْ نَعَمْ، فَقُلْنَا لَهُمْ: فَهُوَ مَأْمُورٌ بِذَلِكَ فِي حِينِ وُجُودِهِ فِي الصَّلَاةِ وَغَيْرِ الصَّلَاةِ بِنَصِّ مَذْهَبِنَا وَمَذْهَبِكُمْ فِي الْبِدَارِ إلَى مَا أُمِرْنَا بِهِ فَإِنْ قَالُوا: لَيْسَ مَأْمُورًا بِذَلِكَ فِي الصَّلَاةِ لِشُغْلِهِ بِهَا، قُلْنَا: هَذَا فَرْقٌ لَا دَلِيلَ عَلَيْهِ، وَدَعْوَى بِلَا بُرْهَانٍ، فَإِذْ هُوَ مَأْمُورٌ بِذَلِكَ فِي الصَّلَاةِ وَغَيْرِ الصَّلَاةِ فَقَدْ صَحَّ إذْ هُوَ مَأْمُورٌ بِذَلِكَ فِي الصَّلَاةِ أَنَّ أَمْرَكُمْ بِالتَّمَادِي عَلَى تَرْكِ اسْتِعْمَالِ الْمَاءِ خَطَأٌ، لِأَنَّهُ عَلَى أَصْلِكُمْ لَا تُنْتَقَضُ بِذَلِكَ صَلَاتُهُ، فَكَانَ اللَّازِمُ عَلَى أُصُولِكُمْ أَنْ يَسْتَعْمِلَ الْمَاءَ وَيَبْنِيَ عَلَى مَا مَضَى مِنْ صَلَاتِهِ كَمَا تَقُولُونَ فِي الْمُحْدِثِ وَلَا فَرْقَ، وَهُمْ لَا يَقُولُونَ هَذَا فَسَقَطَ قَوْلُهُمْ.

L4204 As for the Mālikīs and Shāfiʿīs, their response is that the presence of water nullifies the state of ritual purity and invalidates tayammum, obligating [the use of] water for one in a state of major impurity (janābah) or minor impurity (ḥadath) outside of prayer, but does not nullify the state of ritual purity during prayer.

وَأَمَّا الْمَالِكِيُّونَ وَالشَّافِعِيُّونَ فَجَوَابُهُمْ أَنَّ وُجُودَ الْمَاءِ يَنْقُضُ الطَّهَارَةَ وَيُعِيدُ التَّيَمُّمَ مُجْنِبًا وَمُحْدِثًا فِي غَيْرِ الصَّلَاةِ، وَلَا يَنْقُضُ الطَّهَارَةَ فِي الصَّلَاةِ.

L4205 Ali said: This was a statement of evident corruption and a claim devoid of evidence. Nothing has ever been established in the Quran, the Sunnah, juristic analogy, or any opinion with a valid basis indicating that something could constitute a ritual impurity outside prayer but not during it. Such a claim is within anyone's capacity to make, and it remains invalid unless substantiated by proof from the Quran or Sunnah. This applies particularly to their assertion that the presence of water with the worshipper during

قَالَ عَلِيٌّ: فَكَانَ هَذَا قَوْلًا ظَاهِرَ الْفَسَادِ وَدَعْوَى عَارِيَةً عَنْ الدَّلِيلِ، وَمَا جَاءَ قَطُّ فِي قُرْآنٍ وَلَا سُنَّةٍ وَلَا فِي قِيَاسٍ وَلَا فِي رَأْيٍ لَهُ وَجْهٌ أَنَّ شَيْئًا يَكُونُ حَدَثًا فِي غَيْرِ الصَّلَاةِ وَلَا يَكُونُ حَدَثًا فِي الصَّلَاةِ وَالدَّعْوَى لَا يَعْجِزُ عَنْهَا أَحَدٌ، وَهِيَ بَاطِلٌ مَا لَمْ يُصَحِّحْهَا بُرْهَانٌ مِنْ قُرْآنٍ أَوْ سُنَّةٍ، لَا سِيَّمَا قَوْلُهُمْ: إنَّ وُجُودَ الْمُصَلِّي الْمَاءَ فِي حَالِ صَلَاتِهِ لَا

prayer does not invalidate the prayer, yet if they conclude the prayer, their ritual purity becomes invalidated by the presence of water that occurred during prayer—even if that presence of water did not persist beyond the prayer. This constitutes the peak of absurdity: something invalidates ritual purity when it ceases to exist but does not invalidate it when present. Yet they themselves rejected this very principle in their criticism of Abū Ḥanīfah's ruling that loud laughter invalidates ablution during prayer but not outside it.

يَنْقُضُ صَلَاتَهُ، فَإِذَا سَلَّمَ انْتَقَضَتْ طَهَارَتُهُ بِالْوُجُودِ الَّذِي كَانَ فِي الصَّلَاةِ، وَإِنْ لَمْ يَتَمَادَ ذَلِكَ الْوُجُودُ إِلَى بَعْدِ الصَّلَاةِ، فَهَذَا أَطْرَفُ مَا يَكُونُ شَيْءٌ يَنْقُضُ الطَّهَارَةَ إِذَا عُدِمَ وَلَا يَنْقُضُهَا إِذَا وُجِدَ وَهُمْ قَدْ أَنْكَرُوا هَذَا بِعَيْنِهِ عَلَى أَبِي حَنِيفَةَ فِي قَوْلِهِ: إِنَّ الْقَهْقَهَةَ تَنْقُضُ الْوُضُوءَ فِي الصَّلَاةِ وَلَا تَنْقُضُهَا فِي غَيْرِ الصَّلَاةِ.

L4206–4207 Ali said: Since the invalidity of this opinion has also become evident—for we have mentioned the statement of Allah's Messenger (peace and blessings of Allah be upon him): "Earth is a purifier when water is not found"—it is established that no valid purification may be performed with earth while water exists, except for those permitted by the textual evidence: the sick people who would face hardship in using it. Since this is so, the invalidity of the purification by one performing tayammum when water is available—whether during prayer or otherwise—is evident, and it is established that the opinion of Sufyān and those who agreed with him is correct.

قَالَ عَلِيٌّ: فَإِذْ قَدْ ظَهَرَ أَيْضًا فَسَادُ هَذَا الْقَوْلِ فَقَدْ ذَكَرْنَا قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ التُّرَابَ طَهُورٌ مَا لَمْ يُوجَدْ الْمَاءُ» فَصَحَّ أَنْ لَا طَهَارَةَ تَصِحُّ بِتُرَابٍ مَعَ وُجُودِ الْمَاءِ إِلَّا لِمَنْ أَجَازَهُ لَهُ النَّصُّ مِنْ الْمَرِيضِ الَّذِي عَلَيْهِ مِنْ اسْتِعْمَالِهِ حَرَجٌ، فَإِذْ ذَلِكَ كَذَلِكَ فَقَدْ صَحَّ بُطْلَانُ طَهَارَةِ الْمُتَيَمِّمِ إِذَا وَجَدَ الْمَاءَ فِي صَلَاةٍ كَانَ أَوْ فِي غَيْرِ صَلَاةٍ وَصَحَّ قَوْلُ سُفْيَانَ وَمَنْ وَافَقَهُ.

L4208 However, Abū Ḥanīfah contradicted himself here in two points. The first is his view that one who invalidates ablution due to unavoidable circumstances should perform ablution and resume prayer, while this individual similarly invalidated ablution due to unavoidable circumstances—yet according to his own principle, he should have instructed him to perform ablution and resume. The second point is his opinion that the salutation concluding prayer is not obligatory, and that whoever sits for the duration of the Tashahhud at the end of prayer has completed it. He holds that even if one intentionally or unintentionally invalidates ablution afterward, the prayer remains valid without requiring repetition. Yet here he asserts that if one sits for the Tashahhud duration and finds water after performing dry ablution—even without uttering the salutation—both that prayer and his ablution are invalidated, requiring him to purify himself perpetually and repeat the prayer indefinitely. This constitutes a contradiction at the peak of repugnance, entirely removed from textual sources, juristic analogy, and sound reasoning. We do not know of anyone before Abū Ḥanīfah who made these distinctions.

إِلَّا أَنَّ أَبَا حَنِيفَةَ تَنَاقَضَ هَهُنَا فِي مَوْضِعَيْنِ، أَحَدُهُمَا أَنَّهُ يَرَى لِمَنْ أَحْدَثَ مَغْلُوبًا أَنْ يَتَوَضَّأَ وَيَبْنِيَ، وَهَذَا أَحْدَثَ مَغْلُوبًا، فَكَانَ الْوَاجِبُ عَلَى أَصْلِهِ أَنْ يَأْمُرَهُ بِأَنْ يَتَوَضَّأَ وَيَبْنِيَ، وَالثَّانِي: أَنَّهُ يَرَى السَّلَامَ مِنْ الصَّلَاةِ لَيْسَ فَرْضًا: وَأَنَّ مَنْ قَعَدَ فِي آخِرِ صَلَاتِهِ مِقْدَارَ التَّشَهُّدِ فَقَدْ تَمَّتْ صَلَاتُهُ، وَأَنَّهُ إِنْ أَحْدَثَ عَامِدًا أَوْ نَاسِيًا فَقَدْ صَحَّتْ صَلَاتُهُ وَلَا إِعَادَةَ عَلَيْهِ، ثُمَّ رَأَى هَهُنَا أَنَّهُ وَإِنْ قَعَدَ فِي آخِرِ صَلَاتِهِ مِقْدَارَ التَّشَهُّدِ ثُمَّ وَجَدَ الْمَاءَ وَإِنْ لَمْ يُسَلِّمْ فَإِنَّ صَلَاتَهُ تِلْكَ قَدْ بَطَلَتْ وَكَذَلِكَ طَهَارَتُهُ، وَعَلَيْهِ أَنْ يَتَطَهَّرَ وَيُعِيدَهَا أَبَدًا، وَهَذَا تَنَاقُضٌ فِي غَايَةِ الْقُبْحِ وَالْبُعْدِ عَنْ النُّصُوصِ وَالْقِيَاسِ وَسَدَادِ الرَّأْيِ، وَمَا عَلِمْنَا هَذِهِ التَّفَارِيقَ لِأَحَدٍ قَبْلَ أَبِي حَنِيفَةَ.

[مَسْأَلَةُ الْمَرِيضُ الْمُبَاحُ لَهُ التَّيَمُّمُ مَعَ وُجُودِ الْمَاءِ]

٢٣٥ - مَسْأَلَةٌ:

وَالْمَرِيضُ الْمُبَاحُ لَهُ التَّيَمُّمُ مَعَ وُجُودِ الْمَاءِ بِخِلَافِ مَا ذَكَرْنَا، فَإِنَّ صِحَّتَهُ لَا تَنْقُضُ طَهَارَتَهُ.

بُرْهَانُ ذَلِكَ أَنَّ الْخَبَرَ الَّذِي أَتَبَعْنَا إنَّمَا جَاءَ فِيمَنْ لَمْ يَجِدْ الْمَاءَ، فَهُوَ الَّذِي تُنْتَقَضُ طَهَارَتُهُ بِوُجُودِ الْمَاءِ، وَأَمَّا مَنْ أَمَرَهُ اللَّهُ تَعَالَى بِالتَّيَمُّمِ وَالصَّلَاةِ مَعَ وُجُودِ الْمَاءِ فَإِنَّ وُجُودَ الْمَاءِ قَدْ صَحَّ يَقِينًا أَنَّهُ لَا يَنْقُضُ طَهَارَتَهُ، بَلْ هِيَ صَحِيحَةٌ مَعَ وُجُودِ الْمَاءِ، فَإِذْ ذَاكَ كَذَلِكَ فَإِنَّ الصِّحَّةَ لَيْسَتْ حَدَثًا أَصْلًا، إذْ لَمْ يَأْتِ بِأَنَّهَا حَدَثٌ لَا قُرْآنٌ وَلَا سُنَّةٌ فَإِنْ قَالُوا: قِسْنَا الْمَرِيضَ عَلَى الْمُسَافِرِ، قُلْنَا الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّهُ قِيَاسُ الشَّيْءِ عَلَى ضِدِّهِ، وَهَذَا بَاطِلٌ عِنْدَ أَصْحَابِ الْقِيَاسِ وَهُوَ قِيَاسُ وَاجِدِ الْمَاءِ عَلَى عَادِمِهِ، وَقِيَاسُ مَرِيضٍ عَلَى صَحِيحٍ، وَهُمْ لَا يَخْتَلِفُونَ أَنَّ أَحْكَامَهُمَا فِي الصَّلَاةِ وَغَيْرِهَا تَخْتَلِفُ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْمُتَيَمِّمُ يُصَلِّي بِتَيَمُّمِهِ مَا شَاءَ مِنْ الصَّلَوَاتِ]

٢٣٦ - مَسْأَلَةٌ:

وَالْمُتَيَمِّمُ يُصَلِّي بِتَيَمُّمِهِ مَا شَاءَ مِنْ الصَّلَوَاتِ الْفَرْضَ وَالنَّوَافِلَ مَا لَمْ يُنْتَقَضْ تَيَمُّمُهُ بِحَدَثٍ أَوْ بِوُجُودِ الْمَاءِ، وَأَمَّا الْمَرِيضُ فَلَا يَنْقُضُ طَهَارَتَهُ بِالتَّيَمُّمِ إلَّا مَا يَنْقُضُ الطَّهَارَةَ مِنْ الْأَحْدَاثِ فَقَطْ.

Legal Question: The sick person for whom performing *tayammum* (*ritual dry ablution*) is permissible despite the availability of water.

235. Issue:

The sick person permitted to perform dry ablution (tayammum) with the presence of water—contrary to what we previously mentioned—his recovery does not invalidate his purification.

The proof of this is that the report we have adhered to only concerns one who could not find water. Thus, it is he whose purification becomes invalidated by the presence of water. As for the one whom Allah the Exalted has commanded to perform dry ablution and pray despite the presence of water, the existence of water has been definitively established as not invalidating his purification. Rather, his purification remains valid even with water present. Since this is the case, validity is fundamentally not a state of ritual impurity, for neither the Qur'an nor the Sunnah has declared it to be such. If they argue: "We analogize the sick person to the traveler," we reply: All analogy is entirely invalid. Even if analogy were valid, this specific case would epitomize invalidity, for it constitutes analogizing a thing to its opposite—a practice rejected by the proponents of analogy themselves. It is an analogy of one possessing water to one lacking it, and a sick person to a healthy one, though they universally acknowledge that their rulings in prayer and other matters differ. Success is from Allah the Exalted.

Issue: One who performs tayammum may pray with that tayammum as many prayers as he wills.

236 – Issue:

A person performing dry ablution may pray whatever prayers he wishes—obligatory or voluntary—with his tayammum, provided it remains valid and is not nullified by a ritual impurity or the presence of water. As for the sick person, his purification is not invalidated by dry ablution except through

what inherently nullifies purification, which are the ritual invalidators themselves.

وَبِهَذَا يَقُولُ أَبُو حَنِيفَةَ وَسُفْيَانُ الثَّوْرِيُّ وَاللَّيْثُ بْنُ سَعْدٍ وَدَاوُد.

L4216 And with this say Abu Hanifah, Sufyan al-Thawri, al-Layth ibn Saʿd, and Dawud.

وَرُوِّينَا أَيْضًا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ قَالَ: يُصَلِّي الصَّلَوَاتِ كُلَّهَا بِتَيَمُّمٍ وَاحِدٍ مِثْلِ الْوُضُوءِ مَا لَمْ يُحْدِثْ.

L4217–4218 It has also been narrated to us from Ḥammād ibn Salamah, from Yūnus ibn ʿUbayd, from al-Ḥasan, who said: “One may pray all prayers with one *tayammum*, like *wuḍūʾ*, as long as no nullifying act occurs.”

وَعَنْ مَعْمَرٍ قَالَ: سَمِعْتُ الزُّهْرِيَّ يَقُولُ: التَّيَمُّمُ بِمَنْزِلَةِ الْمَاءِ. يَقُولُ يُصَلِّي بِهِ مَا لَمْ يُحْدِثْ. وَعَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: صَلِّ بِتَيَمُّمٍ وَاحِدٍ الصَّلَوَاتِ كُلَّهَا مَا لَمْ تُحْدِثْ، هُوَ بِمَنْزِلَةِ الْمَاءِ وَهُوَ قَوْلُ يَزِيدَ بْنِ هَارُونَ وَمُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ وَغَيْرِهِمْ.

L4219 From Maʾmar, who said: I heard al-Zuhri say: Tayammum holds the same status as water. He said: “Pray with it as long as one does not invalidate ablution.” From Qatādah, from Saʾīd ibn al-Musayyab, who said: “Perform all prayers with a single tayammum as long as you do not invalidate ablution. It holds the same status as water.” This is the view of Yazīd ibn Hārūn, Muḥammad ibn ʾAlī ibn al-Ḥusayn, and others.

وَقَالَ مَالِكٌ: لَا يُصَلَّى صَلَاتَا فَرْضٍ بِتَيَمُّمٍ وَاحِدٍ، وَعَلَيْهِ أَنْ يَتَيَمَّمَ لِكُلِّ صَلَاةٍ فَإِنْ تَيَمَّمَ وَتَطَوَّعَ بِرَكْعَتَيْ الْفَجْرِ أَوْ غَيْرِهِمَا فَلَا بُدَّ لَهُ مِنْ أَنْ يَتَيَمَّمَ تَيَمُّمًا آخَرَ لِلْفَرِيضَةِ فَلَوْ تَيَمَّمَ ثُمَّ صَلَّى الْفَرِيضَةَ جَازَ لَهُ أَنْ يَتَنَفَّلَ بَعْدَهَا بِذَلِكَ التَّيَمُّمِ.

L4220 Malik said: Two obligatory prayers should not be performed with one tayammum. One must perform tayammum for each prayer. If one performs tayammum and then prays voluntary prayers such as the two dawn rakʿahs or others, they must perform another tayammum for the obligatory prayer. However, if one performs tayammum and prays the obligatory prayer, it is permissible to perform voluntary prayers afterward with that same tayammum.

وَقَالَ الشَّافِعِيُّ: يَتَيَمَّمُ لِكُلِّ صَلَاةِ فَرْضٍ وَلَا بُدَّ، وَلَهُ أَنْ يَتَنَفَّلَ قَبْلَهَا وَبَعْدَهَا بِذَلِكَ التَّيَمُّمِ.

L4221 Al-Shafiʿī said: He must perform tayammum for obligatory prayers, and it remains valid [for subsequent prayers] as long as the conditions persist. He may perform supererogatory prayers before and after it with that tayammum.

وَقَالَ شَرِيكٌ: يَتَيَمَّمُ لِكُلِّ صَلَاةٍ.

L4222 And Sharik said: He performs tayammum for every prayer.

وَرُوِيَ مِثْلُ قَوْلِ شَرِيكٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ وَالشَّعْبِيِّ وَرَبِيعَةَ وَقَتَادَةَ وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ وَأَحْمَدَ وَإِسْحَاقَ.

L4223 A narration similar to the view of Shareek has been reported from Ibrāhīm al-Nakhaʿī, al-Shaʿbī, Rabīʿah, Qatādah, and Yaḥyā ibn Saʿīd al-Anṣārī. This is the view of al-Layth ibn Saʿd, Aḥmad, and Isḥāq.

وَقَالَ أَبُو ثَوْرٍ: يَتَيَمَّمُ لِكُلِّ صَلَاةٍ مَكْتُوبَةٍ

L4224 Abu Thawr said: One is to perform tayammum for every obligatory prayer

time, except that one prays all missed obligatory prayers using one tayammum.

وَقَالَ أَبُو ثَوْرٍ: يَتَيَمَّمُ لِكُلِّ وَقْتِ صَلَاةِ فَرْضٍ إِلَّا أَنَّهُ يُصَلِّي الْفَوَائِتَ مِنْ الْفُرُوضِ كُلِّهَا بِتَيَمُّمٍ وَاحِدٍ.

L4225 Ali said: As for Malik's opinion, it has no connection to any legal proof whatsoever—neither to the Quran, nor to an authentic or daʿīf Sunnah, nor to analogical reasoning. Tayammum must either constitute ritual purity or not constitute ritual purity. If it constitutes ritual purity, one may pray with it so long as the Quran or Sunnah does not mandate its invalidation. If it does not constitute ritual purity, it is impermissible for him to pray without ritual purity.

قَالَ عَلِيٌّ: أَمَّا قَوْلُ مَالِكٍ فَلَا مُتَعَلَّقَ لَهُ بِحُجَّةٍ أَصْلًا، لَا بِقُرْآنٍ وَلَا بِسُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ وَلَا بِقِيَاسٍ، وَلَا يَخْلُو التَّيَمُّمُ مِنْ أَنْ يَكُونَ طَهَارَةً أَوْ لَا طَهَارَةَ، فَإِنْ كَانَ طَهَارَةً فَيُصَلِّي بِطَهَارَتِهِ مَا لَمْ يُوجِبْ نَقْضَهَا قُرْآنٌ أَوْ سُنَّةٌ، وَإِنْ كَانَ لَيْسَ طَهَارَةً فَلَا يَجُوزُ لَهُ أَنْ يُصَلِّيَ بِغَيْرِ طَهَارَةٍ.

L4226 And some of them said that it is not a complete purification, but rather a permissibility for prayer.

وَقَالَ بَعْضُهُمْ: لَيْسَ طَهَارَةً تَامَّةً وَلَكِنَّهُ اسْتِبَاحَةٌ لِلصَّلَاةِ.

L4227 Ali said: This is invalid for several reasons. One is that it constitutes an assertion without evidence, and anything of that nature is invalid. The second is that it is an assertion contradicted by the Quran.

قَالَ عَلِيٌّ: وَهَذَا بَاطِلٌ مِنْ وُجُوهٍ: أَحَدُهَا أَنَّهُ قَوْلٌ بِلَا بُرْهَانٍ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ. وَالثَّانِي أَنَّهُ قَوْلٌ يُكَذِّبُهُ الْقُرْآنُ.

L4228 Allah the Exalted said: "Then perform tayammum with clean earth and wipe your faces and hands with it. Allah does not intend to impose hardship upon you, but He intends to purify you." [Al-Mā'idah: 6] Thus, Allah the Exalted solemnly decreed that tayammum is a purification ordained by Him.[7]

قَالَ اللَّهُ تَعَالَى: {فَتَيَمَّمُوا صَعِيدًا طَيِّبًا فَامْسَحُوا بِوُجُوهِكُمْ وَأَيْدِيكُمْ مِنْهُ مَا يُرِيدُ اللَّهُ لِيَجْعَلَ عَلَيْكُمْ مِنْ حَرَجٍ وَلَكِنْ يُرِيدُ لِيُطَهِّرَكُمْ} [المائدة: ٦] فَنَصَّ تَعَالَى عَلَى أَنَّ التَّيَمُّمَ طَهَارَةٌ مِنْ اللَّهِ تَعَالَى.

L4229–4231 The third is that this constitutes their contradiction, because they said it is not complete purification—but rather what permits prayer. This statement is self-contradictory, for the legitimacy of prayer cannot be established except through purification; thus, it is a purification that negates itself.

وَالثَّالِثُ: أَنَّهُ تَنَاقُضٌ مِنْهُمْ لِأَنَّهُمْ قَالُوا لَيْسَ طَهَارَةً تَامَّةً - وَلَكِنَّهُ اسْتِبَاحَةٌ لِلصَّلَاةِ، وَهَذَا كَلَامٌ يَنْقُضُ أَوَّلُهُ آخِرَهُ؛ لِأَنَّ الِاسْتِبَاحَةَ لِلصَّلَاةِ لَا تَكُونُ إلَّا بِطَهَارَةٍ، فَهُوَ إذَنْ طَهَارَةٌ لَا طَهَارَةٌ.

L4232 The fourth is that even if we concede their claim that it renders the first prayer permissible, how can they assert that this permissibility does not extend to the second prayer just as it applied to the first? How is it established

وَالرَّابِعُ أَنَّهُ هَبْكَ أَنَّهُ كَمَا قَالُوا اسْتِبَاحَةً لِلصَّلَاةِ، فَمِنْ أَيْنَ لَهُمْ أَنْ لَا يَسْتَبِيحُوا بِهَذِهِ الِاسْتِبَاحَةِ الصَّلَاةَ الثَّانِيَةَ كَمَا اسْتَبَاحُوا بِهِ الصَّلَاةَ الْأُولَى؟ وَمِنْ أَيْنَ وَجَبَ أَنْ يَكُونَ اسْتِبَاحَةً لِلصَّلَاةِ الْأُولَى دُونَ أَنْ يَكُونَ اسْتِبَاحَةً لِلثَّانِيَةِ؟ وَقَالُوا: إنَّ طَلَبَ الْمَاءِ يَنْقُضُ

[7] **Qur'an references (L4228):** Qur'an 5:6 (Al-Ma'idah).

طَهَارَةَ الْمُتَيَمِّمِ وَعَلَيْهِ أَنْ يَطْلُبَ الْمَاءَ لِكُلِّ صَلَاةٍ. قُلْنَا لَهُمْ: هَذَا بَاطِلٌ، أَوَّلُ ذَلِكَ إِنَّ قَوْلَكُمْ، إِنَّ طَلَبَ الْمَاءِ يَنْقُضُ طَهَارَةَ الْمُتَيَمِّمِ دَعْوَى كَاذِبَةٌ بِلَا بُرْهَانٍ، وَثَانِيهِ أَنَّ قَوْلَكُمْ: أَنَّ عَلَيْهِ طَلَبَ الْمَاءِ لِكُلِّ صَلَاةٍ بَاطِلٌ وَأَيَّ مَاءٍ يَطْلُبُ؟ وَهُوَ قَدْ طَلَبَهُ وَأَيْقَنَ أَنَّهُ لَا يَجِدُهُ؟ ثُمَّ لَوْ كَانَ كَذَلِكَ، فَأَيَّ مَاءٍ يَطْلُبُهُ الْمَرِيضُ الْوَاجِدُ الْمَاءَ؟ فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ جُمْلَةً، لَا سِيَّمَا قَوْلُ مَالِكٍ فِي بَقَاءِ الطَّهَارَةِ بَعْدَ الْفَرِيضَةِ لِلنَّوَافِلِ وَانْتِقَاضِ الطَّهَارَةِ بَعْدَ النَّافِلَةِ لِلْفَرِيضَةِ، وَبَعْدَ الْفَرِيضَةِ لِلْفَرِيضَةِ، وَطَلَبُ الْمَاءِ عَلَى قَوْلِهِمْ يَلْزَمُ لِلنَّافِلَةِ وَلَا بُدَّ، كَمَا يَلْزَمُ لِلْفَرِيضَةِ، إِذْ لَا فَرْقَ فِي وُجُوبِ الطَّهَارَةِ لِلنَّافِلَةِ كَمَا تَجِبُ لِلْفَرِيضَةِ وَلَا فَرْقَ، بِلَا خِلَافٍ بِهِ مِنْ أَحَدٍ مِنَ الْأُمَّةِ وَإِنِ اخْتَلَفَتْ أَحْكَامُهَا فِي غَيْرِ ذَلِكَ، لَا سِيَّمَا وَشَيْخُهُمُ الَّذِي قَلَّدُوهُ - مَالِكٌ - يَقُولُ فِي الْمُوَطَّأِ: لَيْسَ الْمُتَوَضِّئُ بِأَطْهَرَ مِنَ الْمُتَيَمِّمِ، وَمَنْ تَيَمَّمَ فَقَدْ فَعَلَ مَا أَمَرَهُ اللَّهُ تَعَالَى بِهِ.

that the permissibility relates exclusively to the first prayer rather than the second? They argue that seeking water invalidates the tayammum purification, obliging one to seek water for each prayer. We respond: This is invalid. Firstly, your assertion that seeking water invalidates tayammum purification is an unfounded claim without proof. Secondly, your claim that one must seek water for every prayer is baseless. What water should they seek when they have already sought it and confirmed they cannot find it? Moreover, if this were valid, what water would a sick person who possesses water be required to seek? Thus, the corruption of this view is entirely evident, particularly Malik's position regarding the persistence of purification after an obligatory prayer for supererogatory prayers, the invalidation of purification after a supererogatory prayer for an obligatory prayer, and after one obligatory prayer for another. According to their reasoning, seeking water would necessarily be required for supererogatory prayers just as for obligatory ones, since there is no distinction in the obligation of purification for supererogatory prayers compared to obligatory ones—with no disagreement from any member of the community, even if rulings differ in other matters. This is particularly evident given that their own scholar, Malik—whom they follow—states in Al-Muwatta: "The one who performs ablution is not purer than the one who performs tayammum, and whoever performs tayammum has fulfilled what Allah Almighty commanded."

وَأَمَّا قَوْلُ الشَّافِعِيِّ فَظَاهِرُ الْخَطَأِ أَيْضًا، لِأَنَّهُ أَوْجَبَ تَجْدِيدَ التَّيَمُّمِ لِلْفَرِيضَةِ وَلَمْ يُوجِبْهُ لِلنَّافِلَةِ، وَهَذَا خَطَأٌ بِكُلِّ مَا ذَكَرْنَاهُ.

L4233 As for Al-Shāfiʿī's statement, it is manifestly erroneous as well, because he obligated renewing tayammum for the obligatory prayer but did not obligate it for the voluntary prayer, and this is erroneous in light of everything we have previously mentioned.

وَأَمَّا قَوْلُ أَبِي ثَوْرٍ فَظَاهِرُ الْخَطَأِ أَيْضًا، لِأَنَّهُ جَعَلَ الطَّهَارَةَ بِالتَّيَمُّمِ تَصِحُّ بِبَقَاءِ وَقْتِ الصَّلَاةِ وَتُنْتَقَضُ بِخُرُوجِ الْوَقْتِ وَمَا عَلِمْنَا فِي الْأَحْدَاثِ خُرُوجَ وَقْتٍ أَصْلًا، لَا فِي قُرْآنٍ وَلَا سُنَّةٍ، وَإِنَّمَا جَاءَ الْأَمْرُ بِالْغُسْلِ فِي كُلِّ صَلَاةِ فَرْضٍ أَوْ فِي الْجَمْعِ بَيْنَ الصَّلَاتَيْنِ فِي الْمُسْتَحَاضَةِ، وَالْقِيَاسُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّ قِيَاسَ

L4234 As for the statement of Abū Thawr, its apparent error is likewise, because he considered purification by tayammum valid with the remaining prayer time and invalidated by the expiration of the prayer time, yet we know of no basis at all—neither in the Quran nor the Sunnah—for the expiration of time in cases of ritual impurity. The command to perform ghusl only came for every obligatory prayer or in combining two prayers for the mustahadah (a woman experiencing chronic bleeding), and the analogy is invalid. Furthermore, even if it were valid, this particular analogy would still be invalid, for comparing

the one who performs tayammum to the mustahadah entails no resemblance between them that necessitates it nor a shared legal rationale, rendering it invalid in all cases. Thus, these opinions are all mere claims without proof. And with Allah, the Exalted, is success.

L4235–4237 If they say that this statement of ours is the view of Ibn ʿAbbās, ʿAlī, Ibn ʿUmar, and ʿAmr ibn al-ʿĀṣ. We said: As for the narration from Ibn Abbas, it is rejected because it is transmitted through Hasan ibn ʻUmarah, who is deemed unreliable, and from an unnamed man.

L4238 As for the narration attributed to ʻAmr ibn al-ʻĀṣ, it is only transmitted through Qatādah from ʻAmr ibn al-ʻĀṣ, and Qatādah was not born until after the death of ʻAmr ibn al-ʻĀṣ. The narrations concerning this matter from ʻAlī and Ibn ʻUmar are likewise unreliable. Even if they were authentic, they would not constitute proof, for no one's statement – apart from that of the Messenger of Allah (peace be upon him) – constitutes proof.

L4239 Additionally, the division by Mālik, al-Shāfiʿī, and Abū Thawr has not been transmitted from any of those we mentioned. Thus, they oppose the aforementioned Companions in all those matters. Moreover, a statement resembling our position has also been transmitted from Ibn ʿAbbās. Therefore, our opinion is confirmed, and success is from Allah.

L4240 Some of them said: "When Allah, the Mighty and Majestic, stated: {O you who believe, when you rise for prayer, wash your faces and your hands} [5:6] up to His words: {then perform dry ablution with pure earth} [5:6], He obligated ablution upon everyone who intends to perform prayer. When the Prophet (peace be upon him) prayed all the prayers with a single ablution, ablution was thereby excluded from the ruling of the verse, while dry ablution with pure earth (tayammum) retained its obligation upon everyone who intends to perform prayer."[8]

الْمُتَيَمِّمِ عَلَى الْمُسْتَحَاضَةِ لَمْ يُوجِبْهُ شَبَهٌ بَيْنَهُمَا وَلَا عِلَّةٌ جَامِعَةٌ، فَهُوَ بَاطِلٌ بِكُلِّ حَالٍ، فَخَصَلَتْ هَذِهِ الْأَقْوَالُ دَعْوَى كُلُّهَا بِلَا بُرْهَانٍ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

فَإِنْ قَالُوا إِنَّ قَوْلَنَا هَذَا هُوَ قَوْلُ ابْنِ عَبَّاسٍ وَعَلِيٍّ وَابْنِ عُمَرَ وَعَمْرِو بْنِ الْعَاصِ قُلْنَا أَمَّا الرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ فَسَاقِطَةٌ لِأَنَّهَا مِنْ طَرِيقِ الْحَسَنِ بْنِ عُمَارَةَ وَهُوَ هَالِكٌ وَعَنْ رَجُلٍ لَمْ يُسَمَّ.

وَأَمَّا الرِّوَايَةُ عَنْ عَمْرِو بْنِ الْعَاصِ فَإِنَّمَا هِيَ عَنْ قَتَادَةَ عَنْ عَمْرِو بْنِ الْعَاصِ، وَقَتَادَةُ لَمْ يُولَدْ إِلَّا بَعْدَ مَوْتِ عَمْرِو بْنِ الْعَاصِ، وَالرِّوَايَةُ فِي ذَلِكَ عَنْ عَلِيٍّ وَابْنِ عُمَرَ أَيْضًا لَا تَصِحُّ، وَلَوْ صَحَّتْ لَمَا كَانَ فِي ذَلِكَ حُجَّةٌ، إِذْ لَيْسَ فِي قَوْلِ أَحَدٍ حُجَّةٌ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَأَيْضًا فَإِنَّ تَقْسِيمَ مَالِكٍ وَالشَّافِعِيِّ وَأَبِي ثَوْرٍ لَمْ يُرْوَ عَنْ أَحَدٍ مِمَّنْ ذَكَرْنَا، فَهُمْ مُخَالِفُونَ الصَّحَابَةَ الْمَذْكُورِينَ فِي كُلِّ ذَلِكَ، وَأَيْضًا فَقَدْ رُوِيَ نَحْوُ قَوْلِنَا عَنْ ابْنِ عَبَّاسٍ أَيْضًا، فَصَحَّ قَوْلُنَا وَبِاللَّهِ التَّوْفِيقُ.

وَقَدْ قَالَ بَعْضُهُمْ: لَمَّا قَالَ اللَّهُ عَزَّ وَجَلَّ: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قُمْتُمْ إِلَى الصَّلاةِ فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ} [المائدة: ٦] إِلَى قَوْلِهِ: {فَتَيَمَّمُوا صَعِيدًا طَيِّبًا} [المائدة: ٦] قَالَ فَأَوْجَبَ عَزَّ وَجَلَّ الْوُضُوءَ عَلَى كُلِّ قَائِمٍ إِلَى الصَّلَاةِ، فَلَمَّا صَلَّى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الصَّلَوَاتِ بِوُضُوءٍ وَاحِدٍ خَرَجَ الْوُضُوءُ بِذَلِكَ عَنْ حُكْمِ الْآيَةِ، وَبَقِيَ التَّيَمُّمُ عَلَى وُجُوبِهِ عَلَى كُلِّ قَائِمٍ لِلصَّلَاةِ.

[8] **Qur'an references (L4240):** Qur'an 5:6 (Al-Ma'idah); Qur'an 4:43 (An-Nisa).

قَالَ عَلِيٌّ - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَا لَيْسَ كَمَا قَالُوا، لَا سِيَّمَا الْمَالِكِيِّينَ وَالشَّافِعِيِّينَ الْمُبِيحِينَ لِلْقِيَامِ إلَى صَلَاةِ النَّافِلَةِ بَعْدَ الْفَرِيضَةِ بِغَيْرِ إحْدَاثِ تَيَمُّمٍ وَلَا إحْدَاثِ طَلَبٍ لِلْمَاءِ، فَلَا مُتَعَلَّقَ لَهُمَاتَيْنِ الطَّائِفَتَيْنِ بِشَيْءٍ مِمَّا ذَكَرْنَا فِي هَذَا الْبَابِ، وَإِنَّمَا الْكَلَامُ بَيْنَنَا وَبَيْنَ مَنْ قَالَ بِقَوْلِ شَرِيكٍ، فَنَقُولُ وَبِاَللَّهِ التَّوْفِيقُ: إنَّ الْآيَةَ لَا تُوجِبُ شَيْئًا مِمَّا ذَكَرْتُمْ، وَلَوْ أَوْجَبَتْ ذَلِكَ لَأَوْجَبَتْ غُسْلَ الْجَنَابَةِ عَلَى كُلِّ قَائِمٍ إلَى الصَّلَاةِ أَبَدًا، وَإِنَّمَا حُكْمُ الْآيَةِ فِي إيجَابِ اللَّهِ تَعَالَى الْوُضُوءَ وَالتَّيَمُّمَ وَالْغُسْلَ إنَّمَا هُوَ عَلَى الْمُجْنِبِينَ وَالْمُحْدِثِينَ فَقَطْ، بِنَصِّ آخِرِ الْآيَةِ الْمُبَيِّنِ لِأَوَّلِهَا، لِقَوْلِ اللَّهِ تَعَالَى فِيهَا: {وَإِنْ كُنْتُمْ جُنُبًا فَاطَّهَّرُوا وَإِنْ كُنْتُمْ مَرْضَى أَوْ عَلَى سَفَرٍ أَوْ جَاءَ أَحَدٌ مِنْكُمْ مِنَ الْغَائِطِ أَوْ لامَسْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا} [المائدة: ٦] وَلَا يَخْتَلِفُ اثْنَانِ مِنْ الْأُمَّةِ فِي أَنَّ هَهُنَا حَذْفًا دَلَّ عَلَيْهِ الْعَطْفُ وَإِنَّ مَعْنَى الْآيَةِ: وَإِنْ كُنْتُمْ مَرْضَى أَوْ عَلَى سَفَرٍ فَأَحْدَثْتُمْ أَوْ جَاءَ أَحَدٌ مِنْكُمْ مِنْ الْغَائِطِ، فَبَطَلَ مَا شَغَبُوا بِهِ.

L4241 Ali (may Allah be pleased with him) said: "This is not as they claimed, particularly the Malikis and Shafi'is who permit standing for voluntary prayers after obligatory prayers without performing tayammum or initiating a search for water. These two groups have no connection to anything we mentioned in this chapter. The discussion lies solely between us and those who upheld Sharik's opinion. We say - and with Allah lies success - the verse does not mandate anything you mentioned. Had it mandated such, it would have required the ritual bath for major impurity from every person standing for prayer indefinitely. Rather, the verse's ruling obligating ablution, tayammum, and ritual bath applies exclusively to those in major impurity or those in minor impurity, by the verse's concluding text that elucidates its opening, due to Allah's statement (Exalted is He): {If you are in a state of major impurity, purify yourselves. If you are ill, on a journey, have come from defecation, or had sexual intercourse with women, and find no water, perform tayammum with clean earth} [5:6]. There is no disagreement among the Ummah that there is an ellipsis here indicated by the conjunction, and the verse's meaning is: If you are ill or on a journey and incur minor impurity, or if one of you comes from defecation, then their objections are invalidated."[9]

بَلْ لَوْ قَالَ قَائِلٌ إنَّ حُكْمَ تَجْدِيدِ الطَّهَارَةِ عِنْدَ الْقِيَامِ إلَى الصَّلَاةِ إنَّمَا هُوَ بِنَصِّ الْآيَةِ إنَّمَا هُوَ عَلَى مَنْ حُكْمُهُ الْوُضُوءُ لَا عَلَى مَنْ حُكْمُهُ التَّيَمُّمُ، لَكَانَ أَحَقَّ بِظَاهِرِ الْآيَةِ مِنْهُمْ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَأْمُرْ قَطُّ بِالتَّيَمُّمِ فِي الْآيَةِ إلَّا مَنْ كَانَ مُحْدِثًا فَقَطْ، لَا كُلَّ قَائِمٍ إلَى الصَّلَاةِ أَصْلًا، وَهَذَا لَا مَخْلَصَ لَهُمْ مِنْهُ أَلْبَتَّةَ، فَبَطَلَ تَعَلُّقُهُمْ فِي إيجَابِ تَجْدِيدِ التَّيَمُّمِ لِكُلِّ صَلَاةٍ بِالْآيَةِ وَصَارَتْ الْآيَةُ مُوجِبَةً لِقَوْلِنَا، وَمُسْقِطَةً لِلتَّيَمُّمِ إلَّا عَمَّنْ كَانَ مُحْدِثًا فَقَطْ، وَأَنَّ التَّيَمُّمَ طَهَارَةٌ صَحِيحَةٌ بِنَصِّ الْآيَةِ، فَإِذْ الْآيَةُ مُوجِبَةٌ لِذَلِكَ فَقَدْ صَحَّ أَنَّهُ يُصَلِّي بِتَيَمُّمٍ وَاحِدٍ مَا شَاءَ الْمُصَلِّي مِنْ صَلَوَاتِ الْفَرْضِ فِي الْيَوْمِ وَاللَّيْلَةِ وَفِي أَكْثَرَ

L4242–4244 Rather, if someone were to say that the ruling of renewing purification when preparing for prayer is based on the text of the verse—meaning it applies exclusively to those whose ruling is wuḍūʾ (ritual ablution), not to those whose ruling is tayammum (dry ablution)—they would be more entitled to the apparent meaning of the verse. For their part, since Allah the Exalted has never commanded tayammum in the verse except for one who is in a state of ritual impurity alone—not every person who stands for prayer at all—this leaves them no escape whatsoever. Thus, their reliance on the verse to mandate renewing tayammum for every prayer is invalidated. The verse has come to affirm our position, negating tayammum except for one who is in a state of ritual impurity alone. Moreover, tayammum constitutes valid purification by the explicit text of the verse. Since the verse necessitates

[9] **Qur'an references (L4241):** Qur'an 5:6 (Al-Ma'idah); Qur'an 4:43 (An-Nisa).

this, it is validly established that one may pray with a single tayammum—performing as many obligatory prayers as desired throughout day and night, and even more than that, along with voluntary prayers—provided one does not incur ritual impurity, major impurity, or find water, as stipulated by the verse itself. All praise is due to Allah, Lord of the worlds.

Issue: Tayammum is permissible both before the time and during the time.

237 – Issue:

Tayammum is permissible before the prayer time and during it if one intends to perform either a voluntary or obligatory prayer with it, just like wuḍūʾ, with no distinction. This is because Allah the Exalted commanded wuḍūʾ, ghusl, and tayammum when rising for prayer, without specifying that this applies only to obligatory prayers rather than voluntary ones. Thus, anyone intending to pray must purify themselves through ghusl if in a state of major impurity, or through wuḍūʾ or tayammum if in a state of minor impurity. Since this is established, it is necessarily required for one intending prayer to have a time interval between their purification and their prayer. As this is unavoidable, whoever imposes a specific limit on the duration of that interval—such a person is invalidating [the act], for they assert what has no basis in the Qur'an, Sunnah, consensus, analogical reasoning, or a Companion's statement. Therefore, purification through wuḍūʾ or tayammum is not invalidated by the length or brevity of that interval. This is elucidated in the utmost clarity, and all praise belongs to Allah, Lord of the worlds.

Case: He had water in his saddlebag but forgot about it, so he made tayammum and prayed.

238. Issue:

If someone had water in his possession but forgot about it, then performed dry ablution and prayed, his prayer is complete, for the one who forgets is unable to find water. And success is from Allah, the Most High.

مِنْ ذَلِكَ وَمِنَ النَّافِلَةِ، مَا لَمْ يُحْدِثْ أَوْ يَجْنُبْ أَوْ يَجِدْ الْمَاءَ بِنَصِّ الْآيَةِ نَفْسِهَا وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[مَسْأَلَةٌ التَّيَمُّمُ جَائِزٌ قَبْلَ الْوَقْتِ وَفِي الْوَقْتِ]

٢٣٧ - مَسْأَلَةٌ:

وَالتَّيَمُّمُ جَائِزٌ قَبْلَ الْوَقْتِ وَفِي الْوَقْتِ إِذَا أَرَادَ أَنْ يُصَلِّيَ بِهِ نَافِلَةً أَوْ فَرْضًا كَالْوُضُوءِ وَلَا فَرْقَ، لِأَنَّ اللَّهَ تَعَالَى أَمَرَ بِالْوُضُوءِ وَالْغُسْلِ وَالتَّيَمُّمِ عِنْدَ الْقِيَامِ إِلَى الصَّلَاةِ، وَلَمْ يَقُلْ تَعَالَى إِلَى صَلَاةِ فَرْضٍ دُونَ النَّافِلَةِ، فَكُلُّ مُرِيدٍ صَلَاةً فَالْفَرْضُ عَلَيْهِ أَنْ يَتَطَهَّرَ لَهَا بِالْغُسْلِ إِنْ كَانَ جُنُبًا، وَبِالْوُضُوءِ أَوْ التَّيَمُّمِ إِنْ كَانَ مُحْدِثًا، فَإِذْ ذَلِكَ كَذَلِكَ فَلَا بُدَّ لِمُرِيدِ الصَّلَاةِ مِنْ أَنْ يَكُونَ بَيْنَ تَطَهُّرِهِ وَبَيْنَ صَلَاتِهِ مُهْلَةٌ مِنَ الزَّمَانِ، فَإِذْ لَا يُمْكِنُ غَيْرُ ذَلِكَ فَمَنْ حَدَّ فِي قَدْرِ تِلْكَ الْمُهْلَةِ حَدًّا فَهُوَ مُبْطِلٌ، لِأَنَّهُ يَقُولُ مِنْ ذَلِكَ مَا لَمْ يَأْتِ بِهِ قُرْآنٌ وَلَا سُنَّةٌ وَلَا إِجْمَاعٌ وَلَا قِيَاسٌ وَلَا قَوْلُ صَاحِبٍ، فَإِذْ هَذَا كَمَا ذَكَرْنَا فَلَا يَنْقُضُ الطَّهَارَةَ بِالْوُضُوءِ وَلَا بِالتَّيَمُّمِ طُولُ تِلْكَ الْمُهْلَةِ وَلَا قِصَرُهَا وَهَذَا فِي غَايَةِ الْبَيَانِ، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[مَسْأَلَةٌ كَانَ فِي رَحْلِهِ مَاءٌ فَنَسِيَهُ فَتَيَمَّمَ وَصَلَّى]

٢٣٨ - مَسْأَلَةٌ:

وَمَنْ كَانَ فِي رَحْلِهِ مَاءٌ فَنَسِيَهُ فَتَيَمَّمَ وَصَلَّى فَصَلَاتُهُ تَامَّةٌ، لِأَنَّ النَّاسِيَ غَيْرُ وَاجِدٍ لِلْمَاءِ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ كَانَ فِي الْبَحْرِ وَالسَّفِينَةُ تَجْرِي وَأَرَادَ الصَّلَاةَ]

٢٣٩ - مَسْأَلَةٌ:

وَمَنْ كَانَ فِي الْبَحْرِ وَالسَّفِينَةُ تَجْرِي فَإِنْ كَانَ قَادِرًا عَلَى أَخْذِ مَاءِ الْبَحْرِ وَالتَّطَهُّرِ بِهِ لَمْ يُجْزِهِ غَيْرُ ذَلِكَ، فَإِنْ لَمْ يَقْدِرْ عَلَى أَخْذِهِ تَيَمَّمَ وَأَجْزَأَهُ.

رُوِّينَا عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ وَعَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّ مَاءَ الْبَحْرِ لَا يُجْزِئُ الْوُضُوءَ بِهِ، وَأَنَّ حُكْمَ مَنْ لَمْ يَجِدْ غَيْرَهُ التَّيَمُّمُ.

وَرُوِّينَا عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - الْوُضُوءَ بِمَاءِ الْبَحْرِ، وَهُوَ الصَّحِيحُ لِقَوْلِ اللَّهِ تَعَالَى: {فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا} [النساء: ٤٣] وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَجُعِلَتْ تُرْبَتُهَا لَنَا طَهُورًا إِذَا لَمْ نَجِدْ الْمَاءَ» وَمَاءُ الْبَحْرِ مَاءٌ مُطْلَقٌ، فَإِنْ لَمْ يَقْدِرْ عَلَى أَخْذِ الْمَاءِ مِنْهُ فَهُوَ لَا يَجِدُ مَاءً يَقْدِرُ عَلَى التَّطَهُّرِ بِهِ، فَفَرْضُهُ التَّيَمُّمُ.

[مَسْأَلَةٌ لَمْ يَجِدْ إلَّا مَاءً يَخَافُ عَلَى نَفْسِهِ مِنْهُ]

مَسْأَلَةٌ:

وَكَذَلِكَ مَنْ كَانَ فِي سَفَرٍ أَوْ حَضَرٍ وَهُوَ صَحِيحٌ أَوْ مَرِيضٌ فَلَمْ يَجِدْ إلَّا مَاءً يَخَافُ عَلَى نَفْسِهِ مِنْهُ الْمَوْتَ أَوْ الْمَرَضَ، وَلَا يَقْدِرُ عَلَى تَسْخِينِهِ إلَّا حَتَّى يَخْرُجَ الْوَقْتُ، فَإِنَّهُ يَتَيَمَّمُ وَيُصَلِّي، لِأَنَّهُ لَا يَجِدُ مَاءً يَقْدِرُ عَلَى التَّطَهُّرِ بِهِ.

Issue: If someone was at sea, and the ship is moving, and he intends to pray.

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If someone is at sea on a moving ship and is able to take seawater to perform ritual purification with it, no other act is valid for him. If he cannot take it, he must perform tayammum (ritual dry purification using clean earth), and this is valid for him.

It has been reported to us from Abdullah ibn Amr ibn Al-As and Abdullah ibn Umar ibn Al-Khattab—may Allah be pleased with them—that seawater does not suffice for performing ablution with it, and that the ruling for one who cannot find any other [water] is to perform tayammum.

It has been narrated to us from ʿUmar—may Allah be pleased with him—regarding performing ablution with seawater, and this is the correct opinion due to Allah's statement, the Most High: "But if you do not find water, then perform *tayammum*" [An-Nisāʾ: 43], and due to the saying of the Messenger of Allah—peace and blessings be upon him: "And its soil has been made a purifier for us when we do not find water." Seawater is absolute water. If a person is unable to obtain the water from it, then they have not found water usable for purification, so their obligation is to perform *tayammum*.[1011]

A case where one finds no water except water he fears may cause him harm.

Issue:

Similarly, if a person is traveling or at home, healthy or ill, and finds no water except what he fears that using it would lead to death or illness, and cannot heat it without the prayer time elapsing, he performs *tayammum* and prays, because he cannot find water that he is able to use for purification.

[10] **Hadith references (L4255):** Sahih Muslim 522a; Bulugh al-Maram 127; Mishkat al-Masabih 526.

[11] **Qur'an references (L4255):** Qur'an 4:43 (An-Nisa); Qur'an 5:6 (Al-Ma'idah).

[مَسْأَلَةٌ لَيْسَ عَلَى مَنْ لَا مَاءَ مَعَهُ أَنْ يَشْتَرِيَهُ لِلْوُضُوءِ وَلَا لِلْغُسْلِ]

٢٤١ - مَسْأَلَةٌ:

وَلَيْسَ عَلَى مَنْ لَا مَاءَ مَعَهُ أَنْ يَشْتَرِيَهُ لِلْوُضُوءِ وَلَا لِلْغُسْلِ، لَا بِمَا قَلَّ وَلَا بِمَا كَثُرَ، فَإِنْ اشْتَرَاهُ لَمْ يُجْزِهِ الْوُضُوءُ بِهِ وَلَا الْغُسْلُ وَفَرْضُهُ التَّيَمُّمُ، وَلَهُ أَنْ يَشْتَرِيَهُ لِلشُّرْبِ إنْ لَمْ يُعْطَهُ بِلَا ثَمَنٍ، وَأَنْ يَطْلُبَهُ لِلْوُضُوءِ فَذَلِكَ لَهُ.

وَلَيْسَ ذَلِكَ عَلَيْهِ فَإِنْ وُهِبَ لَهُ تَوَضَّأَ بِهِ وَلَا بُدَّ، وَلَا يُجْزِيهِ غَيْرُ ذَلِكَ.

بُرْهَانُ ذَلِكَ «نَهْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْمَاءِ» .

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ: حَدَّثَنَا أَحْمَدُ بْنُ عُثْمَانَ النَّوْفَلِيُّ ثنا أَبُو عَاصِمٍ الضَّحَّاكُ بْنُ مَخْلَدٍ ثنا ابْنُ جُرَيْجٍ أَخْبَرَنِي زِيَادُ بْنُ سَعْدٍ أَخْبَرَنِي هِلَالُ بْنُ أُسَامَةَ أَنَّ أَبَا سَلَمَةَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَخْبَرَهُ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يُبَاعُ فَضْلُ الْمَاءِ لِيُبَاعَ بِهِ الْكَلَأُ» .

حَدَّثَنَا حَمَامٌ ثنا عِيسَى بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ ثنا أَبِي عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ أَخْبَرَهُ أَبُو الْمِنْهَالِ أَنَّ إيَاسَ بْنَ عَبْدٍ قَالَ لِرَجُلٍ: لَا تَبِعْ الْمَاءَ، فَإِنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ بَيْعِ الْمَاءِ» وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: ثنا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي

It is a juristic issue that one who does not have water with him is not obligated to purchase it for ablution (*wuḍūʾ*) nor for *ghusl*.

Issue 241 -

One who does not have water with him is not obligated to purchase it for ablution or bathing, whether the amount is little or much. If he does purchase it, neither ablution nor bathing with it is valid, and his obligation is to perform dry ablution (tayammum). He may purchase water for drinking if it is not provided without charge, and he may seek it for ablution - which is permissible for him.

That is not incumbent upon him. If it is granted to him, he must necessarily perform ablution with it, and no alternative is valid for him.

The proof of that is the prohibition by the Messenger of Allah (peace be upon him) regarding the sale of water.

And it has been narrated to us through the chain of Muslim: Ahmad ibn Uthman al-Nawfali narrated to us, Abu Asim al-Ḍaḥḥāk ibn Makhlad narrated to us, Ibn Jurayj narrated to us, Ziyad ibn Sa'd informed me, Hilal ibn Usamah informed me that Abu Salamah ibn Abd al-Rahman ibn ʿAwf informed him that he heard Abu Hurayrah say: The Messenger of Allah (peace be upon him) said, 'Excess water must not be sold to facilitate the sale of grazing fodder.'

Hammam narrated to us: Isa ibn Asbagh narrated to us: Muhammad ibn Abd al-Malik ibn Ayman narrated to us: Ahmad ibn Zuhayr ibn Harb narrated to us: My father narrated from Sufyan ibn Uyaynah, from Amr ibn Dinar: Abu al-Minhal informed him that Iyas ibn Abd said to a man: "Do not sell water, for the Messenger of Allah (peace be upon him) forbade the sale of water." Through the chain of Ibn Abi Shaybah: Sufyan ibn Uyaynah narrated to us from Amr ibn Dinar, from Abu al-Minhal, from Iyas ibn Abd al-Muzani—

who saw people selling water—so he said: “Do not sell water, for I heard the Messenger of Allah (peace be upon him) forbid that it be sold.”[12]

الْمِنْهَالِ «عَنْ إِيَاسِ بْنِ عَبْدٍ الْمُزَنِيِّ - وَرَأَى نَاسًا يَبِيعُونَ الْمَاءَ - فَقَالَ لَا تَبِيعُوا الْمَاءَ، فَإِنِّي سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى أَنْ يُبَاعَ» .

L4267 From the path of Ibn Abī Shaybah: Yazīd ibn Hārūn narrated to us: Abū Isḥāq narrated to us from Muḥammad ibn ʿAbd al-Raḥmān from his mother ʿAmrah bint ʿAbd al-Raḥmān from ʿĀ’ishah, the Mother of the Believers, who said: “The Messenger of Allah (peace and blessings be upon him) prohibited us from withholding the leftover water of the well”—as this explanation is given in the ḥadīth. We have also transmitted it as a *musnad* ḥadīth from the path of Jābir. Thus these are four Companions, and it is a transmission of *tawātur* (mass-transmitted)—it is impermissible to oppose it.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ ثنا أَبُو إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أُمِّهِ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَمْنَعَ نَقْعَ الْبِئْرِ يَعْنِي فَضْلَ الْمَاءِ» هَكَذَا فِي الْحَدِيثِ تَفْسِيرُهُ. وَرُوِّينَاهُ أَيْضًا مُسْنَدًا مِنْ طَرِيقِ جَابِرٍ، فَهَؤُلَاءِ أَرْبَعَةٌ مِنْ الصَّحَابَةِ، فَهُوَ نَقْلُ تَوَاتُرٍ لَا تَحِلُّ مُخَالَفَتُهُ.

L4268 Ali said: I have thoroughly investigated the discourse on the issue of prohibiting the sale of water in the Book of Sales of this diwan of ours. And praise be to God.

قَالَ عَلِيٌّ: وَقَدْ تَقَصَّيْتُ الْكَلَامَ فِي هَذَا فِي مَسْأَلَةِ الْمَنْعِ مِنْ بَيْعِ الْمَاءِ فِي كِتَابِ الْبُيُوعِ مِنْ دِيوَانِنَا هَذَا. وَالْحَمْدُ لِلَّهِ.

L4269–4271 Abu Muhammad said: Since the Messenger of Allah—may Allah bless him and grant him peace—forbade its sale, its sale is unlawful. Since this is so, acquiring it through sale constitutes unlawful taking. Since it is unlawfully taken, he does not rightfully own it. Since he is not... If he is the owner of it, it is impermissible for him to use it, based on Allah’s statement - the Exalted: *“Do not consume one another’s wealth wrongfully”* [Surah Al-Baqarah 2:188], and the teaching of the Messenger of Allah - peace and blessings be upon him - *“Indeed, your blood and your wealth are inviolable to you.”* Then if he cannot obtain it except through a prohibited means - such as usurpation or a forbidden sale - he is considered not to have found water. And if he does not find water, his obligation is to perform dry ablution (tayammum).[13]

قَالَ أَبُو مُحَمَّدٍ: فَإِذْ نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِهِ فَبَيْعُهُ حَرَامٌ، وَإِذْ هُوَ كَذَلِكَ فَأَخْذُهُ بِالْبَيْعِ أَخْذٌ بِالْبَاطِلِ، وَإِذْ هُوَ مَأْخُوذٌ بِالْبَاطِلِ فَهُوَ غَيْرُ مُتَمَلِّكٍ لَهُ، وَإِذْ هُوَ غَيْرُ مُتَمَلِّكٍ لَهُ فَلَا يَحِلُّ اسْتِعْمَالُهُ لَهُ، لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَإِذَا لَمْ يَجِدْهُ إِلَّا بِوَجْهٍ حَرَامٍ - مِنْ غَصْبٍ أَوْ بَيْعٍ مُحَرَّمٍ - فَهُوَ غَيْرُ وَاجِدٍ الْمَاءَ، وَإِذَا لَمْ يَجِدْ الْمَاءَ فَفَرْضُهُ التَّيَمُّمُ.

L4272 As for purchasing water for drinking out of necessity, the buyer is compelled to do so, while accepting payment is forbidden for the seller because he

وَأَمَّا ابْتِيَاعُهُ لِلشُّرْبِ فَهُوَ مُضْطَرٌّ إلَى ذَلِكَ، وَالثَّمَنُ حَرَامٌ عَلَى الْبَائِعِ، لِأَنَّهُ أَخَذَهُ بِغَيْرِ حَقٍّ، وَمَنْعُ فَضْلِ الْمَاءِ هُوَ مُحَرَّمٌ عَلَيْهِ ذَلِكَ.

[12] **Hadith references (L4266):** Sunan an-Nasai 4660.
[13] **Qur’an references (L4269):** Qur’an 2:188 (Al-Baqarah).

acquired it unjustly. Withholding surplus water is forbidden for him in such circumstances.

وَأَمَّا اسْتِيهَابُهُ الْمَاءَ فَلَمْ يَأْتِ بِذَلِكَ إِيجَابٌ وَلَا جَاءَ عَنْهُ مَنْعٌ فَهُوَ مُبَاحٌ، قَالَ - عَلَيْهِ السَّلَامُ -: «دَعُونِي مَا تَرَكْتُكُمْ فَإِذَا أَمَرْتُكُمْ بِشَيْءٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ وَإِذَا نَهَيْتُكُمْ عَنْ شَيْءٍ فَدَعُوهُ» أَوْ كَمَا قَالَ - عَلَيْهِ السَّلَامُ -، فَإِذَا مَلَكَهُ بِهِبَةٍ فَقَدْ مَلَكَهُ بِحَقٍّ، فَوَاجِبٌ عَلَيْهِ اسْتِعْمَالُهُ فِي الطَّهَارَةِ وَبِاللَّهِ التَّوْفِيقُ.

L4273 As for requesting water as a gift, no obligation has been established regarding it, nor has any prohibition been transmitted from the Prophet—peace be upon him. Thus, it is permissible. He—peace be upon him—said: "Do not ask me about matters I have not addressed. When I command you to do something, do as much as you can, and when I forbid you from something, abstain from it"—or words to that effect. Therefore, if one acquires ownership of it through a gift, they rightfully own it, and it becomes obligatory to use it for purification. Success is by Allah's grace.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا فَقَالَ الْأَوْزَاعِيُّ وَالشَّافِعِيُّ وَإِسْحَاقُ: عَلَيْهِ أَنْ يَشْتَرِيَ الْمَاءَ لِلْوُضُوءِ بِثَمَنِهِ، فَإِنْ طُلِبَ مِنْهُ أَكْثَرُ مِنْ ثَمَنِهِ، تَيَمَّمَ وَلَمْ يَشْتَرِهِ.

L4274 People have differed regarding this matter. Al-Awzāʿī, al-Shāfiʿī, and Isḥāq said: He must purchase water for ablution at its price. If he is asked to pay more than its price, he should perform *tayammum* and not purchase it.

وَقَالَ أَبُو حَنِيفَةَ لَا يَشْتَرِيهِ بِثَمَنٍ كَثِيرٍ.

L4275 And Abu Hanifah said: He should not purchase it for a high price.

وَقَالَ مَالِكٌ: إِنْ كَانَ قَلِيلَ الدَّرَاهِمِ وَلَمْ يَجِدْ الْمَاءَ إِلَّا بِثَمَنٍ غَالٍ تَيَمَّمَ، وَإِنْ كَانَ كَثِيرَ الْمَالِ اشْتَرَى مَا لَمْ يَشُطُّوا عَلَيْهِ فِي الثَّمَنِ، وَهُوَ قَوْلُ أَحْمَدَ.

L4276 Mālik said: If he has few dirhams and cannot find water except at an exorbitant price, he should perform *tayammum*, and if he is wealthy, he should purchase it as long as they do not overcharge him. This is the opinion of Aḥmad.

وَقَالَ الْحَسَنُ الْبَصْرِيُّ: يَشْتَرِيهِ وَلَوْ بِمَالِهِ كُلِّهِ. قَالَ أَبُو مُحَمَّدٍ: إِنْ كَانَ وَاجِدُهُ بِالثَّمَنِ - وَاجِدًا لِلْمَاءِ - فَالْحُكْمُ مَا قَالَهُ الْحَسَنُ، وَإِنْ كَانَ غَيْرَ وَاجِدٍ فَالْقَوْلُ قَوْلُنَا، وَأَمَّا التَّقْسِيمُ فِي ابْتِيَاعِهِ مَا لَمْ يَغْلِ عَلَيْهِ فِيهِ، وَتَرَكَهُ إِنْ غُولِيَ بِهِ، فَلَا دَلِيلَ عَلَى صِحَّةِ هَذَا الْقَوْلِ، وَكُلُّ مَا دَعَتْ إِلَيْهِ ضَرُورَةٌ فَلَيْسَ غَالِيًا بِشَيْءٍ أَصْلًا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L4277 Al-Hasan Al-Basri said: "He should purchase it even if it costs all his wealth." Abu Muhammad said: "If one can obtain it at the price—while having access to water—then the ruling is as Al-Hasan stated. But if one cannot obtain it at the price, then the opinion is our view. As for the division regarding purchasing it as long as the price does not become exorbitant for him, and abandoning it if it is made overpriced for him, there is no proof for the validity of this opinion. Whatever is necessitated by necessity is not exorbitant in any way whatsoever, and success is from Allah, the Exalted."

[مَسْأَلَةٌ مَعَهُ مَاءٌ يَسِيرٌ يَكْفِيهِ لِشُرْبِهِ فَقَطْ وَأَرَادَ الصَّلَاةَ]

Case: A person has a small amount of water that is only enough for his drinking and intends to perform ṣalāh.

٢٤٢ - مَسْأَلَةٌ:

L4278

242: Issue:

L4279

L4280 And whoever possesses a small amount of water sufficient only for his drinking, then his obligation is *tayammum* based on the words of Allah, the Most High: {And do not kill yourselves} [An-Nisa: 29].[14]

L4281 **A jurisprudential issue: If someone has a small amount of water sufficient for ritual ablution (wudhu) and is in a state of major impurity (janabah).**

L4282 243 - Issue:

L4283 If a person has a small amount of water sufficient for wudu while in a state of major ritual impurity (janaba), he must perform tayammum for the janaba and perform wudu with the water. It does not matter which he performs first. Nothing suffices him except this, as these are two distinct obligations. Since they differ in this manner, neither can substitute for the other, as we have previously established. Being capable of fulfilling one obligation completely with water, nothing becomes valid for him except performing it with water. He must discharge the remaining obligation through tayammum as well, as he has been commanded.

L4284 244 – Mas'ala:

L4285–4287 If a small amount of water remains for him and he uses it on some of his limbs, it would be depleted. If he is unable to spread water over all his limbs, his obligation becomes washing what is possible for him and performing tayammum. Al-Shāfiʿī said: "He may wash whichever limbs he wishes with it and perform tayammum."

L4288 Ali said: "Our companions stated: This is erroneous, for he is not incapacitated with respect to the rest of his limbs."

L4289 If prevented from using water, purifying some body parts suffices him. However, he remains incapable of purifying what he was commanded to purify with water. Whoever meets this description must perform tayammum as an

[14]**Qur'an references (L4280):** Qur'an 4:29 (An-Nisa).

وَمَنْ كَانَ مَعَهُ مَاءٌ يَسِيرٌ يَكْفِيهِ لِشُرْبِهِ فَقَطْ فَفَرْضُهُ التَّيَمُّمُ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] .

[مَسْأَلَةٌ مَعَهُ مَاءٌ يَسِيرٌ يَكْفِيهِ لِلْوُضُوءِ وَهُوَ جُنُبٌ]

٢٤٣ - مَسْأَلَةٌ:

وَمَنْ كَانَ مَعَهُ مَاءٌ يَسِيرٌ يَكْفِيهِ لِلْوُضُوءِ وَهُوَ جُنُبٌ تَيَمَّمَ لِلْجَنَابَةِ وَتَوَضَّأَ بِالْمَاءِ، لَا يُبَالِي أَيَّهُمَا قَدَّمَ، لَا يُجْزِيهِ غَيْرُ ذَلِكَ، لِأَنَّهُمَا فَرْضَانِ مُتَغَايِرَانِ، وَإِذْ هُمَا كَذَلِكَ فَلَا يَنُوبُ أَحَدٌ عَنْ الْآخَرِ عَلَى مَا قَدَّمْنَا، وَهُوَ قَادِرٌ عَلَى أَنْ يُؤَدِّيَ أَحَدَهُمَا بِكَمَالِهِ بِالْمَاءِ، فَلَا يُجْزِيهِ إلَّا ذَلِكَ، وَيُؤَدِّي الْآخَرَ بِالتَّيَمُّمِ أَيْضًا كَمَا أُمِرَ.

٢٤٤ - مَسْأَلَةٌ:

فَلَوْ فَضَلَ لَهُ مِنْ الْمَاءِ يَسِيرٌ فَلَوْ اسْتَعْمَلَهُ فِي بَعْضِ أَعْضَائِهِ ذَهَبَ وَلَمْ يُمْكِنْهُ أَنْ يَعُمَّ بِهِ سَائِرَ أَعْضَائِهِ، فَفَرْضُهُ غَسْلُ مَا أَمْكَنَهُ وَالتَّيَمُّمُ، وَقَالَ الشَّافِعِيُّ يَغْسِلُ بِهِ أَيَّ أَعْضَائِهِ شَاءَ وَيَتَيَمَّمُ.

قَالَ عَلِيٌّ: قَالَ أَصْحَابُنَا: وَهَذَا خَطَأٌ، لِأَنَّهُ غَيْرُ عَاجِزٍ عَنْ سَائِرِ أَعْضَائِهِ.

بِمَنْعٍ مِنْهَا فَيُجْزِيهِ تَطْهِيرُ بَعْضِهَا: وَلَكِنَّهُ عَاجِزٌ عَنْ تَطْهِيرِ مَا أُمِرَ بِتَطْهِيرِهِ بِالْمَاءِ، وَمَنْ هَذِهِ صِفَتُهُ فَالْفَرْضُ عَلَيْهِ التَّيَمُّمُ وَلَا بُدَّ، بِتَعْوِيضِ اللَّهِ تَعَالَى الصَّعِيدَ مِنْ الْمَاءِ إذَا لَمْ يُوجَدْ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

obligation without exception, by Allah the Exalted's permission to use earth instead of water when it is unavailable. And with Allah the Exalted is success.

L4290 Abu Muhammad said: The Messenger of Allah—peace and blessings be upon him—stated, "When I command you to do something, fulfill it to the extent of your ability." In this scenario, if a person is capable of performing part of his ablution or part of his ghusl but unable to complete the remainder, it becomes obligatory for him to perform as much of the ghusl as he is able first. The first limbs of ablution or ghusl—as far as he is able—are to be washed. When this capacity is exhausted, he must necessarily perform tayammum for his remaining limbs, as he lacks access to water to purify them. It is obligatory for him to substitute with dust as Allah the Exalted has commanded him. If a limb is missing or he cannot apply water to it due to a wound or fracture, the ruling for that limb is waived—whether minor or extensive—and washing the remaining limbs suffices. This is because he possesses water but is incapable of purifying those limbs and is not among those who perform tayammum due to water's availability. What he is incapable of is lifted from him, in accordance with Allah's decree: "Allah does not burden a soul beyond its capacity" [Al-Baqarah 2:286]. Success is through Allah alone.[15]

L4291 Case: He has entered a state of janabah and has no water with him.

L4292 245 – Issue:

L4293 Whoever is in a state of major impurity and has no water must perform two dry ablutions (tayammums), intending one for purification from major impurity and the other for wudu. It does not matter which one is performed first.

L4294 The proof for this is that they are two distinct acts, as we previously established. Therefore, a single act cannot substitute for two obligatory acts unless supported by a textual ruling permitting it. A textual ruling indeed exists stating that washing the limbs required for wudū' suffices both for that purpose and for washing them in ghusl al-janābah (major impurity), which

[15] **Qur'an references (L4290):** Qur'an 2:286 (Al-Baqarah).

قَالَ أَبُو مُحَمَّدٍ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» وَهَذَا مُسْتَطِيعٌ لَأَنْ يَأْتِيَ بِبَعْضِ وُضُوئِهِ أَوْ بِبَعْضِ غُسْلِهِ، غَيْرُ مُسْتَطِيعٍ عَلَى بَاقِيهِ، فَفَرْضٌ عَلَيْهِ أَنْ يَأْتِيَ مِنْ الْغُسْلِ بِمَا يَسْتَطِيعُ فِي الْأَوَّلِ، فَالْأَوَّلُ مِنْ أَعْضَاءِ الْوُضُوءِ وَأَعْضَاءِ الْغُسْلِ حَيْثُ بَلَغَ، فَإِذَا نَفِدَ لَزِمَهُ التَّيَمُّمُ لِبَاقِي أَعْضَائِهِ وَلَا بُدَّ، لِأَنَّهُ غَيْرُ وَاجِدٍ لِلْمَاءِ فِي تَطْهِيرِهَا، فَالْوَاجِبُ عَلَيْهِ تَعْوِيضُ التُّرَابِ كَمَا أَمَرَهُ اللَّهُ تَعَالَى، فَلَوْ كَانَ بَعْضُ أَعْضَائِهِ ذَاهِبًا أَوْ لَا يَقْدِرُ عَلَى مَسِّهِ الْمَاءَ لِجُرْحٍ أَوْ كَسْرٍ سَقَطَ حُكْمُهُ، قَلَّ أَوْ كَثُرَ، وَأَجْزَأَهُ غَسْلُ مَا بَقِيَ، لِأَنَّهُ وَاجِدٌ لِلْمَاءِ عَاجِزٌ عَنْ تَطْهِيرِ الْأَعْضَاءِ، وَلَيْسَ مِنْ أَهْلِ التَّيَمُّمِ لِوُجُودِهِ الْمَاءَ وَسَقَطَ عَنْهُ مَا عَجَزَ عَنْهُ لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَبِاَللَّهِ التَّوْفِيقُ.

[مَسْأَلَةٌ أَجْنَبَ وَلَا مَاءَ مَعَهُ]

٢٤٥ - مَسْأَلَةٌ:

فَمَنْ أَجْنَبَ وَلَا مَاءَ مَعَهُ فَلَا بُدَّ لَهُ مِنْ أَنْ يَتَيَمَّمَ تَيَمُّمَيْنِ، يَنْوِي بِأَحَدِهِمَا تَطْهِيرَ الْجَنَابَةِ وَبِالْآخِرِ الْوُضُوءَ، وَلَا يُبَالِي أَيَّهُمَا قَدَّمَ.

بُرْهَانُ ذَلِكَ أَنَّهُمَا عَمَلَانِ مُتَغَايِرَانِ كَمَا قَدَّمْنَا، فَلَا يُجْزِئُ عَمَلٌ وَاحِدٌ عَنْ عَمَلَيْنِ مُفْتَرَضَيْنِ إلَّا بِأَنْ يَأْتِيَ نَصٌّ بِأَنَّهُ يُجْزِئُ عَنْهُمَا، وَالنَّصُّ قَدْ جَاءَ بِأَنَّ غَسْلَ أَعْضَاءِ الْوُضُوءِ يُجْزِئُ عَنْ ذَلِكَ وَعَنْ غَسْلِهَا فِي غُسْلِ الْجَنَابَةِ فَصِرْنَا إلَى ذَلِكَ، وَلَمْ يَأْتِ هَهُنَا نَصٌّ بِأَنَّ تَيَمُّمًا وَاحِدًا يُجْزِئُ عَنْ الْجَنَابَةِ وَعَنْ الْوُضُوءِ: وَكَذَلِكَ لَوْ أَجْنَبَتْ الْمَرْأَةُ ثُمَّ حَاضَتْ ثُمَّ

is why we adhere to this ruling. However, no textual ruling exists here indicating that a single tayammum suffices for both janābah and wudū'.

Similarly, if a woman experiences janābah, then menstruates, then becomes pure on Friday while traveling without access to water, she must perform four tayammums: one for menstruation, one for janābah, one for wudū', and one for the Friday prayer (Ṣalāt al-Jumu'ah), due to the reasoning we outlined. If she ritually washed a deceased person, a fifth tayammum becomes obligatory. The evidence for this, as we have previously discussed in the context of ghusl and the convergence of its aspects necessitating it, remains applicable. Success is attained only through Allah, the Exalted.

L4295 **Issue: If a person is imprisoned or crucified such that they cannot find water or clean earth, and the time for prayer arrives.**

L4296 246 - Issue:

L4297–4299 And whoever is confined in a settled area or during a journey where they cannot find clean earth or water or... If he was crucified and the prayer time commenced, he should pray in his current state, and his prayer is complete; he need not repeat it—regardless of whether he had access to water during the prescribed time or only after it.

L4300 The proof of that is the statement of Allah the Exalted: "So fear Allah as much as you are able" [At-Taghabun 64:16], His statement the Exalted: "Allah does not burden a soul beyond its capacity" [Al-Baqarah 2:286], the statement of the Messenger of Allah—peace and blessings of Allah be upon him—"When I command you with a matter, do of it what you can," and His statement the Exalted: "He has already detailed for you what He has forbidden to you, except that to which you are compelled" [Al-An'ām 6:119]. It is established by these texts that nothing is binding upon us from the revealed laws except what we are capable of, that whatever we are incapable of is lifted from us, and that Allah the Exalted has forbidden us from abandoning ablution or tayammum for prayer except when compelled. One prevented from water or clean earth is compelled to what is forbidden—abandoning purification

طَهُرَتْ يَوْمَ جُمُعَةٍ وَهِيَ مُسَافِرَةٌ وَلَا مَاءَ مَعَهَا فَلَا بُدَّ لَهَا مِنْ أَرْبَعِ تَيَمُّمَاتٍ: تَيَمُّمٌ لِلْحَيْضِ وَتَيَمُّمٌ لِلْجَنَابَةِ وَتَيَمُّمٌ لِلْوُضُوءِ وَتَيَمُّمٌ لِلْجُمُعَةِ لِمَا ذَكَرْنَاهُ، فَإِنْ كَانَتْ قَدْ غَسَّلَتْ مَيِّتًا فَتَيَمُّمٌ خَامِسٌ، وَالْبُرْهَانُ فِي ذَلِكَ قَدْ ذَكَرْنَاهُ فِي الْغُسْلِ وَاجْتِمَاعِ وُجُوهِهِ الْمُوجِبَةِ لَهُ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ كَانَ مَحْبُوسًا أَوْ مَصْلُوبًا بِحَيْثُ لَا يَجِدُ تُرَابًا وَلَا مَاءً وَجَاءَتْ الصَّلَاةُ]

٢٤٦ - مَسْأَلَةٌ:

وَمَنْ كَانَ مَحْبُوسًا فِي حَضَرٍ أَوْ سَفَرٍ بِحَيْثُ لَا يَجِدُ تُرَابًا وَلَا مَاءً أَوْ كَانَ مَصْلُوبًا وَجَاءَتْ الصَّلَاةُ فَلْيُصَلِّ كَمَا هُوَ وَصَلَاتُهُ تَامَّةٌ وَلَا يُعِيدُهَا، سَوَاءٌ وَجَدَ الْمَاءَ فِي الْوَقْتِ أَوْ لَمْ يَجِدْهُ إلَّا بَعْدَ الْوَقْتِ.

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {فَاتَّقُوا اللَّهَ مَا اسْتَطَعْتُمْ} [التغابن: ١٦] وقَوْله تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» وقَوْله تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] فَصَحَّ بِهَذِهِ النُّصُوصِ أَنَّهُ لَا يَلْزَمُنَا مِنْ الشَّرَائِعِ إلَّا مَا اسْتَطَعْنَا، وَأَنَّ مَا لَمْ نَسْتَطِعْهُ فَسَاقِطٌ عَنَّا، وَصَحَّ أَنَّ اللَّهَ تَعَالَى حَرَّمَ عَلَيْنَا تَرْكَ الْوُضُوءِ أَوْ التَّيَمُّمِ لِلصَّلَاةِ إلَّا أَنْ نُضْطَرَّ إلَيْهِ، وَالْمَمْنُوعُ مِنْ الْمَاءِ وَالتُّرَابِ

with water or clean earth—thus the prohibition of that is lifted from us regarding him. He is capable of prayer by fulfilling its rulings and through faith. What remains obligatory upon him is only what he can perform. If he prays as we have described, he has prayed as Allah the Exalted commanded him. Whoever prays as Allah the Exalted commanded him bears no blame. Hastening to pray at the beginning of its time is more virtuous for the reason we mentioned earlier.[16]

مُضْطَرٌّ إِلَى مَا حُرِّمَ عَلَيْهِ مِنْ تَرْكِ التَّطَهُّرِ بِالْمَاءِ أَوْ التُّرَابِ، فَسَقَطَ عَنَّا تَحْرِيمُ ذَلِكَ عَلَيْهِ، وَهُوَ قَادِرٌ عَلَى الصَّلَاةِ بِتَوْفِيَتِهَا أَحْكَامَهَا وَبِالْإِيمَانِ، فَبَقِيَ عَلَيْهِ مَا قَدَرَ عَلَيْهِ، فَإِذَا صَلَّى كَمَا ذَكَرْنَا فَقَدْ صَلَّى كَمَا أَمَرَهُ اللَّهُ تَعَالَى، وَمَنْ صَلَّى كَمَا أَمَرَهُ اللَّهُ تَعَالَى فَلَا شَيْءَ عَلَيْهِ، وَالْمُبَادَرَةُ إِلَى الصَّلَاةِ فِي أَوَّلِ الْوَقْتِ أَفْضَلُ لِمَا ذَكَرْنَا قَبْلُ.

L4301 Abu Hanifah, Sufyan al-Thawri, and al-Awza'i said regarding one in such a condition: He may not pray until he finds water, and when he finds it, he must use it.

وَقَالَ أَبُو حَنِيفَةَ وَسُفْيَانُ الثَّوْرِيُّ وَالْأَوْزَاعِيُّ فِيمَنْ هَذِهِ صِفَتُهُ: لَا يُصَلِّي حَتَّى يَجِدَ الْمَاءَ مَتَى وَجَدَهُ.

L4302 Abu Hanifah said: If one is able to perform tayammum, he should perform tayammum and pray. Then if he finds water, he must absolutely reperform the prayer whenever he finds it. If he fears death from the cold, he should perform tayammum and pray, and this is valid for him.

قَالَ أَبُو حَنِيفَةَ: فَإِنْ قَدَرَ عَلَى التَّيَمُّمِ تَيَمَّمَ وَصَلَّى، ثُمَّ إِذَا وَجَدَ الْمَاءَ أَعَادَ وَلَا بُدَّ مَتَى وَجَدَهُ، وَإِنْ خَشِيَ الْمَوْتَ مِنْ الْبَرْدِ تَيَمَّمَ وَصَلَّى وَأَجْزَأَهُ.

L4303 Abu Yusuf, Muhammad ibn al-Hasan, and al-Shafi'i said: He should pray as he is. When he finds water, he must repeat the prayer **whenever he finds it**. If he is in a town and is able to **find** dust, he should perform ***tayammum*** and pray; he must **also** repeat the prayer **without fail** whenever he finds water.

وَقَالَ أَبُو يُوسُفَ وَمُحَمَّدُ بْنُ الْحَسَنِ وَالشَّافِعِيُّ: يُصَلِّي كَمَا هُوَ، فَإِذَا وَجَدَ الْمَاءَ أَعَادَ مَتَى وَجَدَهُ، فَإِنْ قَدَرَ فِي الْمِصْرِ عَلَى التُّرَابِ تَيَمَّمَ وَصَلَّى، وَأَعَادَ أَيْضًا وَلَا بُدَّ إِذَا وَجَدَ الْمَاءَ.

L4304 Zufar said regarding someone imprisoned in a city where he finds neither water nor soil, or where he does find soil: "He must not pray at all until he finds water - neither with tayammum nor without it. When he finds water, he should perform wuḍūʾ and pray those prayers." Some of our companions said: "He neither prays nor repeats them." Abū Thawr said: "He prays as he is and does not repeat the prayers."

وَقَالَ زُفَرُ فِي الْمَحْبُوسِ فِي الْمِصْرِ بِحَيْثُ لَا يَجِدُ مَاءً وَلَا تُرَابًا أَوْ بِحَيْثُ يَجِدُ التُّرَابَ: إنَّهُ لَا يُصَلِّي أَصْلًا حَتَّى يَجِدَ الْمَاءَ، لَا بِتَيَمُّمٍ وَلَا بِلَا تَيَمُّمٍ، فَإِذَا وَجَدَ الْمَاءَ تَوَضَّأَ وَصَلَّى تِلْكَ الصَّلَوَاتِ، وَقَالَ بَعْضُ أَصْحَابِنَا: لَا يُصَلِّي وَلَا يُعِيدُ، وَقَالَ أَبُو ثَوْرٍ: يُصَلِّي كَمَا هُوَ وَلَا يُعِيدُ.

L4305–4307 Ali said: As for the statement of Abū Ḥanīfa, it is evidently contradictory, because he does not permit prayer with tayammum in settled areas for those other than the sick and those in fear of death, just as he does not permit them to pray without wudu or tayammum - and there is no distinction. Then he

قَالَ عَلِيٌّ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَظَاهِرُ التَّنَاقُضِ، لِأَنَّهُ لَا يُجِيزُ الصَّلَاةَ بِالتَّيَمُّمِ فِي الْمِصْرِ لِغَيْرِ الْمَرِيضِ وَخَائِفِ الْمَوْتِ، كَمَا لَا يُجِيزُ لَهُ الصَّلَاةَ بِغَيْرِ الْوُضُوءِ وَالتَّيَمُّمِ وَلَا فَرْقَ، ثُمَّ فَرَّقَ بَيْنَهُمَا - وَكِلَاهُمَا عِنْدَهُ لَا تُجْزِيهِ صَلَاتُهُ - فَأَمَرَ أَحَدَهُمَا بِأَنْ يُصَلِّيَ صَلَاةً لَا

[16] **Qur'an references (L4300):** Qur'an 64:16 (At-Taghabun); Qur'an 2:286 (Al-Baqarah); Qur'an 6:119 (Al-An'am).

differentiated between the two cases - though both, in his view, render their prayer invalid - and ruled that one of the two cases should perform the prayer [anyway]. The prayer is not valid for him, and he instructed the other not to perform it. This constitutes an unmistakable error. Therefore, this opinion is utterly and unmistakably invalidated, and he possesses no evidence whatsoever that could be relied upon.

تُجْزِيهِ، وَأَمَرَ الْآخَرَ بِأَنْ لَا يُصَلِّيَهَا، وَهَذَا خَطَأٌ لَا خَفَاءَ بِهِ، فَسَقَطَ هَذَا الْقَوْلُ سُقُوطًا لَا خَفَاءَ بِهِ، وَمَا لَهُ حُجَّةٌ أَصْلًا يُمْكِنُ أَنْ يَتَعَلَّقَ بِهَا.

L4308 As for the statement of Abū Yūsuf and Muḥammad, it is an error because they instructed him to perform a prayer that neither suffices him nor holds any meaning, so it is invalid. Allah the Exalted has said: "Do not nullify your deeds" [Muḥammad: 33].[17]

وَأَمَّا قَوْلُ أَبِي يُوسُفَ وَمُحَمَّدٍ فَخَطَأٌ، لِأَنَّهُمَا أَمَرَاهُ بِصَلَاةٍ لَا تُجْزِيهِ وَلَا لَهَا مَعْنًى، فَهِيَ بَاطِلٌ، وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَلا تُبْطِلُوا أَعْمَالَكُمْ} [محمد: ٣٣]

L4309 As for the statement of Zufar, it is also erroneous because he ruled that one should not pray during the time in which Allah the Exalted has ordained prayer, and he commanded prayer during the time until which Allah has prohibited delaying prayer. Allah the Exalted has enjoined prayer in its time with the most emphatic and stringent command. Allah the Exalted said: {But if they repent, establish prayer, and give Zakat, then let them go free} [At-Tawbah: 5]. Thus, the Exalted did not command the release of the disbeliever until he repents from disbelief, establishes prayer, and gives Zakat. Therefore, it is impermissible to neglect an obligation possessing these attributes beyond the time for which the Exalted has not allowed postponement. Thus, the incorrectness of Zufar's statement—and that of anyone who commands others to delay prayer beyond its time—becomes evident.[18]

وَأَمَّا قَوْلُ زُفَرَ فَخَطَأٌ أَيْضًا، لِأَنَّهُ أَمَرَهُ بِأَنْ لَا يُصَلِّيَ فِي الْوَقْتِ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِالصَّلَاةِ فِيهِ، وَأَمَرَهُ أَنْ يُصَلِّيَ فِي الْوَقْتِ الَّذِي نَهَاهُ اللَّهُ تَعَالَى عَنْ تَأْخِيرِهِ الصَّلَاةَ إِلَيْهِ، وَقَدْ أَمَرَهُ اللَّهُ تَعَالَى بِالصَّلَاةِ فِي وَقْتِهَا أَوْكَدَ أَمْرٍ وَأَشَدَّهُ، قَالَ اللَّهُ تَعَالَى: {فَإِنْ تَابُوا وَأَقَامُوا الصَّلاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ} [التوبة: ٥] فَلَمْ يَأْمُرْ تَعَالَى بِتَخْلِيَةِ سَبِيلِ الْكَافِرِ حَتَّى يَتُوبَ مِنَ الْكُفْرِ وَيُقِيمَ الصَّلَاةَ وَيُؤْتِيَ الزَّكَاةَ، فَلَا يَحِلُّ تَرْكُ مَا هَذِهِ صِفَتُهُ عَنِ الْوَقْتِ الَّذِي لَمْ يُفْسِحْ تَعَالَى فِي تَأْخِيرِهِ عَنْهُ، فَظَهَرَ فَسَادُ قَوْلِ زُفَرَ وَكُلِّ مَنْ أَمَرَهُ بِتَأْخِيرِ الصَّلَاةِ عَنْ وَقْتِهَا.

L4310 As for those who say that one should not pray at all, they argued based on the statement of Allah's Messenger—peace and blessings be upon him—"The prayer of one who nullifies his ablution is not accepted until he renews it," and his statement—peace be upon him—"Allah does not accept prayer without purification." They reasoned: Therefore, we do not command him to perform what Allah the Exalted does not accept from him, for during the prayer's prescribed time he is neither in ablution nor purified, and after its

وَأَمَّا مَنْ قَالَ: لَا يُصَلِّي أَصْلًا فَإِنَّهُمُ احْتَجُّوا بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تُقْبَلُ صَلَاةُ مَنْ أَحْدَثَ حَتَّى يَتَوَضَّأَ» وَقَالَ - عَلَيْهِ السَّلَامُ - «لَا يَقْبَلُ اللَّهُ صَلَاةً بِغَيْرِ طَهُورٍ» قَالُوا: فَلَا نَأْمُرُهُ بِمَا لَمْ يَقْبَلْهُ اللَّهُ تَعَالَى مِنْهُ، لِأَنَّهُ فِي وَقْتِهَا غَيْرُ مُتَوَضِّئٍ وَلَا مُتَطَهِّرٍ، وَهُوَ بَعْدَ الْوَقْتِ مُحَرَّمٌ عَلَيْهِ تَأْخِيرُ الصَّلَاةِ عَنْ وَقْتِهَا.

[17] **Qur'an references (L4308):** Qur'an 47:33 (Muhammad).
[18] **Qur'an references (L4309):** Qur'an 9:5 (At-Tawbah).

time elapses, he is prohibited from delaying the prayer beyond its prescribed time.

L4311 Ali said: This was the most correct of opinions, were it not for what we mentioned - that the Prophet (peace be upon him) relieved us of what we cannot perform from what he commanded us, and maintained upon us what we can perform; and that Allah the Exalted relieved us of what we cannot manage, and preserved for us what we can manage, through His words: "So fear Allah to the best of your ability" (64:16). Thus it is established that his statement (peace be upon him): "The prayer of one who breaks his ablution is not accepted until he renews it" and "Allah does not accept prayer without purification" only obligates those capable of performing ablution or tayammum through available water or soil - not those incapable of both ablution and tayammum. This is the explicit text of the Quran and the Sunnah. Since this is confirmed, the obligation of what we cannot bear in this matter is lifted from us, while the obligation of what we can bear remains upon us - namely the prayer. Therefore, when this is the case, the worshipper fulfilling these conditions has performed what he was commanded, and whoever fulfills his obligation has no requirement for making it up. Success comes only from Allah, the Most High.[19]

L4312–4314 How could it be otherwise, when a definitive text has come regarding this—as narrated to us by ʻAbdullāh ibn Rabīʻ, narrated to us by Ibn as-Salīm, narrated to us by Ibn al-Aʻrābī, narrated to us by Abū Dāwūd, narrated to us by an-Nufaylī, narrated to us by Abū Muʻāwiyah, from Hishām ibn ʻUrwah, from his father, from ʻĀ'ishah. Aisha said: "The Messenger of Allah (peace and blessings be upon him) sent Usayd ibn al-Hudayr and some men with him to search for a necklace she had lost. When prayer time arrived, they prayed without ablution. They came to the Prophet (peace and blessings be upon him) and mentioned this to him, so the verse of tayammum (dry ablution) was revealed."

L4315 Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: al-Farbari narrated to us: al-Bukhari narrated to us:

[19]**Qur'an references (L4311):** Qur'an 64:16 (At-Taghabun).

قَالَ عَلِيٌّ: هَذَا كَانَ أَصَحَّ الْأَقْوَالِ، لَوْلَا مَا ذَكَرْنَا مِنْ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَسْقَطَ عَنَّا مَا لَا نَسْتَطِيعُ مِمَّا أَمَرَنَا بِهِ، وَأَبْقَى عَلَيْنَا مَا نَسْتَطِيعُ، وَأَنَّ اللَّهَ تَعَالَى أَسْقَطَ عَنَّا مَا لَا نَقْدِرُ عَلَيْهِ، وَأَبْقَى عَلَيْنَا مَا نَقْدِرُ عَلَيْهِ، بِقَوْلِهِ تَعَالَى {فَاتَّقُوا اللَّهَ مَا اسْتَطَعْتُمْ} [التغابن: ١٦] فَصَحَّ أَنَّ قَوْلَهُ - عَلَيْهِ السَّلَامُ -: «لَا تُقْبَلُ صَلَاةُ مَنْ أَحْدَثَ حَتَّى يَتَوَضَّأَ» وَ «لَا يَقْبَلُ اللَّهُ صَلَاةً إلَّا بِطَهُورٍ» إنَّمَا كَلَّفَ ذَلِكَ مَنْ يَقْدِرُ عَلَى الْوُضُوءِ أَوْ الطَّهُورِ بِوُجُودِ الْمَاءِ أَوْ التُّرَابِ، لَا مَنْ لَا يَقْدِرُ عَلَى وُضُوءٍ وَلَا تَيَمُّمٍ، هَذَا هُوَ نَصُّ الْقُرْآنِ وَالسُّنَنِ، فَلَمَّا صَحَّ ذَلِكَ سَقَطَ عَنَّا تَكْلِيفُ مَا لَا نُطِيقُ مِنْ ذَلِكَ، وَبَقِيَ عَلَيْنَا تَكْلِيفُ مَا نُطِيقُهُ، وَهُوَ الصَّلَاةُ فَإِذْ ذَلِكَ كَذَلِكَ فَالْمُصَلِّي كَذَلِكَ مُؤَدٍّ مَا أُمِرَ بِهِ، وَمَنْ أَدَّى مَا أُمِرَ بِهِ فَلَا قَضَاءَ عَلَيْهِ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَكَيْفَ وَقَدْ جَاءَ فِي هَذَا نَصٌّ كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ السَّلِيمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا النُّفَيْلِيُّ ثنا أَبُو مُعَاوِيَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ: «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُسَيْدَ بْنَ الْحُضَيْرِ وَأُنَاسًا مَعَهُ فِي طَلَبِ قِلَادَةٍ أَضَلَّتْهَا عَائِشَةُ، فَحَضَرَتْ الصَّلَاةُ فَصَلَّوْا بِغَيْرِ وُضُوءٍ، فَأَتَوْا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرُوا ذَلِكَ لَهُ، فَأُنْزِلَتْ آيَةُ التَّيَمُّمِ» .

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا زَكَرِيَّا بْنُ يَحْيَى ثنا ابْنُ نُمَيْرٍ - هُوَ عَبْدُ اللَّهِ - ثنا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ «عَنْ عَائِشَةَ أَنَّهَا

Zakariyya ibn Yahya narrated to us: Ibn Numayr—he is Abd Allah—narrated to us: Hisham ibn Urwah narrated from his father, from Aishah, that she borrowed a necklace from Asma and it was lost. The Messenger of Allah—peace and blessings be upon him—sent a man, and he found it. Then the time for prayer came upon them, and they had no water with them, so they prayed. They complained about this to the Messenger of Allah—peace and blessings be upon him—so Allah the Exalted revealed the verse of tayammum. Thus, Usayd and a group of the Companions adhered to Allah's decree and the approval of His Prophet—peace and blessings be upon him. And with Allah the Exalted is success.

اسْتَعَارَتْ مِنْ أَسْمَاءَ قِلَادَةً فَهَلَكَتْ، فَبَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَجُلًا فَوَجَدَهَا، فَأَدْرَكَتْهُمْ الصَّلَاةُ وَلَيْسَ مَعَهُمْ مَاءٌ فَصَلَّوْا، فَشَكَوْا ذَلِكَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَنْزَلَ اللَّهُ تَعَالَى آيَةَ التَّيَمُّمِ» فَهَذَا أُسَيْدٌ وَطَائِفَةٌ مِنْ الصَّحَابَةِ مَعَ حُكْمِ اللَّهِ تَعَالَى وَرِضَاءِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ كَانَ فِي سَفَرٍ وَلَا مَاءَ مَعَهُ أَوْ كَانَ مَرِيضًا]

L4316 **A case where one was on a journey and had no water with him or was sick.**

L4317 247 – Issue:

٢٤٧ - مَسْأَلَةٌ:

L4318 Whoever is traveling and has no water with him, or is ill and finds it difficult to use water, may kiss his wife and engage in marital relations with her. This is the opinion of Ibn ʿAbbās, Jābir ibn Zayd, al-Ḥasan al-Baṣrī, Saʿīd ibn al-Musayyib, Qatādah, Sufyān al-Thawrī, al-Awzāʿī, Abū Ḥanīfah, al-Shāfiʿī, Aḥmad ibn Ḥanbal, Isḥāq, Dāwūd, and the majority of Hadith scholars.

وَمَنْ كَانَ فِي سَفَرٍ وَلَا مَاءَ مَعَهُ أَوْ كَانَ مَرِيضًا يَشُقُّ عَلَيْهِ اسْتِعْمَالُ الْمَاءِ فَلَهُ أَنْ يُقَبِّلَ زَوْجَتَهُ وَأَنْ يَطَأَهَا، وَهُوَ قَوْلُ ابْنِ عَبَّاسٍ وَجَابِرِ بْنِ زَيْدٍ وَالْحَسَنِ الْبَصْرِيِّ وَسَعِيدِ بْنِ الْمُسَيِّبِ وَقَتَادَةَ وَسُفْيَانَ الثَّوْرِيِّ وَالْأَوْزَاعِيِّ وَأَبِي حَنِيفَةَ وَالشَّافِعِيِّ وَأَحْمَدَ بْنِ حَنْبَلٍ وَإِسْحَاقَ وَدَاوُد، وَجُمْهُورِ أَصْحَابِ الْحَدِيثِ.

L4319 It has been reported from ʿAlī, Ibn Masʿūd, Ibn ʿAwf, and Ibn ʿUmar that they prohibited this. ʿAṭāʾ said: "If the distance between him and water is three nights' travel or less, he must not have sexual relations with her. But if the distance is four nights' travel, he may have sexual relations with her." Al-Zuhrī said: "If he is a traveler, he must not have sexual relations with her. If he is a seasoned western traveler, he may have sexual relations with her. And if he has no water with him, he may do so." Mālik said: "If he is a traveler, he must not have sexual relations with her nor kiss her even if he is in a state of ablution. If he has wounds that require him to perform tayammum instead, he may have sexual relations with her and kiss her, for such a person's circumstance involves prolonged hardship."

وَرُوِيَ عَنْ عَلِيٍّ وَابْنِ مَسْعُودٍ وَابْنِ عَوْفٍ وَابْنِ عُمَرَ النَّهْيُ عَنْ ذَلِكَ، وَقَالَ عَطَاءٌ إنْ كَانَ بَيْنَهُ وَبَيْنَ الْمَاءِ ثَلَاثُ لَيَالٍ فَأَقَلَّ فَلَا يَطَؤُهَا، وَإِنْ كَانَ بَيْنَهُ وَبَيْنَ الْمَاءِ أَرْبَعُ لَيَالٍ فَلَهُ أَنْ يَطَأَهَا وَقَالَ الزُّهْرِيُّ إنْ كَانَ مُسَافِرًا فَلَا يَطَؤُهَا لَهُ وَإِنْ كَانَ مَغْرِبًا رَحَّالًا فَلَهُ أَنْ يَطَأَهَا، وَإِنْ كَانَ لَا مَاءَ مَعَهُ. وَقَالَ مَالِكٌ: إنْ كَانَ مُسَافِرًا فَلَا يَطَؤُهَا وَلَا يُقَبِّلُهَا إنْ كَانَ عَلَى وُضُوءٍ، فَإِنْ كَانَ بِهِ جِرَاحٌ يَكُونُ حُكْمُهُ مَعَهَا التَّيَمُّمَ فَلَهُ أَنْ يَطَأَهَا وَيُقَبِّلَهَا، لِأَنَّ أَمْرَ هَذَا يَطُولُ.

قَالَ: فَإِنْ كَانَتْ حَائِضًا فَطَهُرَتْ فَتَيَمَّمَتْ وَصَلَّتْ فَلَيْسَ لِزَوْجِهَا أَنْ يَطَأَهَا. قَالَ: وَكَذَلِكَ لَا يَطَؤُهَا وَإِنْ كَانَتْ طَاهِرًا مُتَيَمِّمَةً.

L4320 He said: If she was menstruating, then her menstruation ended [but] she performed dry ablution (tayammum) and prayed, her husband is not permitted to have intercourse with her. He said: Likewise, he is not permitted to do so even if she is no longer menstruating but has only performed tayammum.

قَالَ عَلِيٌّ: أَمَّا تَقْسِيمُ عَطَاءٍ فَلَا وَجْهَ لَهُ، لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ الْحَدَّ قُرْآنٌ وَلَا سُنَّةٌ وَكَذَلِكَ تَقْسِيمُ الزُّهْرِيِّ، وَأَمَّا قَوْلُ مَالِكٍ فَكَذَلِكَ أَيْضًا، لِأَنَّهُ تَفْرِيقٌ لَمْ يُوجِبْهُ قُرْآنٌ وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا سَقِيمَةٌ وَلَا إجْمَاعٌ وَلَا قَوْلُ صَاحِبٍ لَمْ يُخَالَفْ وَلَا قِيَاسٌ وَلَا احْتِيَاطٌ، لِأَنَّ اللَّهَ تَعَالَى سَمَّى التَّيَمُّمَ طُهْرًا، وَالصَّلَاةُ بِهِ جَائِزَةٌ، وَقَدْ حَضَّ اللَّهُ تَعَالَى عَلَى مُبَاضَعَةِ الرَّجُلِ امْرَأَتَهُ، وَصَحَّ أَنَّهُ مَأْجُورٌ فِي ذَلِكَ، وَمَا خَصَّ اللَّهُ تَعَالَى بِذَلِكَ مَنْ حُكْمُهُ التَّيَمُّمُ مِمَّنْ حُكْمُهُ الْغُسْلُ أَوْ الْوُضُوءُ.

L4321–4323 Ali said: As for the division of the stipend, there is no basis for it, as neither the Quran nor the Sunnah has obligated this ruling. The same applies to al-Zuhri's division. As for Mālik's opinion, it is likewise, because it is a division not mandated by the Quran, nor by a Sunnah of sound or weak authenticity, nor by consensus, nor by an uncontradicted statement of a Companion, nor by analogy, nor by precaution. This is because Allah the Exalted has designated tayammum as purification, and prayer performed with it is permissible. Moreover, Allah the Exalted has enjoined... A man's sexual intercourse with his wife is permissible, and it is valid that he is rewarded for it. Allah the Exalted has not specified this ruling to those whose obligation is Tayammum over those whose obligation is Ghusl or Wudu.

قَالَ أَبُو مُحَمَّدٍ: وَالْعَجَبُ أَنَّهُ يَرَى أَنَّهُ يُجْزِئُ لِلْجَنَابَةِ وَلِلْوُضُوءِ وَلِلْحَيْضِ تَيَمُّمٌ وَاحِدٌ، ثُمَّ يَمْنَعُ الْمُحْدِثَةَ وَالْمُتَطَهِّرَةَ مِنْ الْحَيْضِ بِالتَّيَمُّمِ وَالْمُحْدِثَ أَنْ يَطَأَ امْرَأَتَهُ فَقَدْ أَوْجَبَ أَنَّهُمَا عَمَلَانِ مُتَغَايِرَانِ، فَكَيْفَ يُجْزِئُ عِنْدَهُ عَنْهُمَا عَمَلٌ وَاحِدٌ قَالَ عَلِيٌّ: وَلَا حُجَّةَ لِلْمَانِعِ مِنْ ذَلِكَ أَصْلًا، لِأَنَّ اللَّهَ تَعَالَى جَعَلَ نِسَاءَنَا حَرْثًا لَنَا وَلِبَاسًا لَنَا، وَأَمَرَنَا بِالْوَطْءِ فِي الزَّوْجَاتِ وَذَوَاتِ الْأَيْمَانِ، حَتَّى أَوْجَبَ تَعَالَى عَلَى الْحَالِفِ أَنْ يَطَأَ امْرَأَتَهُ أَجَلًا مَحْدُودًا - إمَّا أَنْ يَطَأَ وَإِمَّا أَنْ يُطَلِّقَ، وَجَعَلَ حُكْمَ الْوَاطِئِ وَالْمُحْدِثِ الْغُسْلَ وَالْوُضُوءَ إنْ وَجَدَ الْمَاءَ، وَالتَّيَمُّمَ إنْ لَمْ يَجِدْ الْمَاءَ، لَا فَضْلَ لِأَحَدِ الْعَمَلَيْنِ عَلَى الْآخَرِ، وَلَيْسَ أَحَدُهُمَا بِأَطْهَرَ مِنْ الْآخَرِ وَلَا بِأَتَمَّ صَلَاةً، فَصَحَّ أَنَّ لِكُلِّ وَاحِدٍ حُكْمَهُ، فَلَا مَعْنَى لِمَنْعِ مَنْ حُكْمُهُ التَّيَمُّمُ مِنْ الْوَطْءِ، كَمَا لَا مَعْنَى لِمَنْعِ مَنْ حُكْمُهُ الْغُسْلُ مِنْ الْوَطْءِ، وَكُلُّ ذَلِكَ

L4324 Abu Muhammad said: It is astonishing that he considers a single tayammum sufficient for major impurity, ablution, and menstruation, yet prohibits the woman in minor impurity and the one purified from menstruation via tayammum, as well as the man in minor impurity, from having intercourse with his wife. This necessitates that these are two distinct acts. How then can a single act suffice for both according to him? Ali said: The prohibitor has no valid argument whatsoever, for Allah the Exalted made our wives a tilth for us and a garment for us, commanding intercourse with spouses and bondwomen—even obligating the oath-taker to have intercourse with his wife within a fixed term: either to do so or to divorce. He ordained that the one who has intercourse or is in minor impurity must perform ghusl or wudu if water is available, and tayammum if not. Neither act holds superiority over the other, nor is one purer than the other or more complete in prayer. Thus it is established that each has its own ruling. There is no sense in prohibiting one obligated to tayammum from intercourse, just as none exists for prohibiting one obligated to ghusl. All this stands equal in the text—neither being foundational nor derivative, but equal in the Quran. And success is from Allah, the Exalted.

فِي النَّصِّ سَوَاءٌ، لَيْسَ أَحَدُهُمَا أَصْلًا وَالثَّانِي فَرْعًا، بَلْ هُمَا فِي الْقُرْآنِ سَوَاءٌ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ يَؤُمُّ الْمُتَيَمِّمُ الْمُتَوَضِّئِينَ وَالْمُتَوَضِّئُ الْمُتَيَمِّمِينَ]

Issue: May a person who has performed tayammum lead those who have performed wudu, and may a person who has performed wudu lead those who have performed tayammum?

٢٤٨ - مَسْأَلَةٌ:

248. Question:

وَجَائِزٌ أَنْ يَؤُمَّ الْمُتَيَمِّمُ الْمُتَوَضِّئِينَ، وَالْمُتَوَضِّئُ الْمُتَيَمِّمِينَ، وَالْمَاسِحُ الْغَاسِلِينَ وَالْغَاسِلُ الْمَاسِحِينَ، لِأَنَّ كُلَّ وَاحِدٍ مِمَّنْ ذَكَرْنَا قَدْ أَدَّى فَرْضَهُ، وَلَيْسَ أَحَدُهُمَا بِأَطْهَرَ مِنَ الْآخَرِ، وَلَا أَحَدُهُمَا أَتَمَّ صَلَاةً مِنَ الْآخَرِ، وَقَدْ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا حَضَرَتْ الصَّلَاةُ أَنْ يَؤُمَّهُمْ أَقْرَؤُهُمْ، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - غَيْرَ ذَلِكَ، وَلَوْ كَانَ هَهُنَا وَاجِبٌ غَيْرُ مَا ذَكَرَهُ - عَلَيْهِ السَّلَامُ - لَبَيَّنَهُ وَلَا أَهْمَلَهُ، حَاشَا لِلَّهِ مِنْ ذَلِكَ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَأَبِي يُوسُفَ وَزُفَرَ وَسُفْيَانَ وَالشَّافِعِيِّ وَدَاوُد وَأَحْمَدَ وَإِسْحَاقَ وَأَبِي ثَوْرٍ، وَرُوِيَ ذَلِكَ عَنْ ابْنِ عَبَّاسٍ وَعَمَّارِ بْنِ يَاسِرٍ وَجَمَاعَةٍ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهُوَ قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ وَالْحَسَنِ وَعَطَاءٍ وَالزُّهْرِيِّ وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ.

It is permissible for one who performed dry ablution (tayammum) to lead in prayer those who performed ritual washing (wudu), and for one who performed ritual washing to lead those who performed dry ablution. Likewise, one performing wiping (masah) may lead those performing full bathing (ghusl), and one performing full bathing may lead those performing wiping. This is because each of those we mentioned has fulfilled his obligatory duty. Neither is ritually purer than the other, nor does either pray more completely than the other. The Messenger of Allah (peace be upon him) commanded that when prayer time arrives, the most proficient in Quran recitation among them should lead them. He (peace be upon him) did not specify any other condition. Had there been an obligation beyond what he mentioned (peace be upon him), he would have clarified it and not neglected it—far is Allah from such neglect. This is the opinion of Abū Ḥanīfah, Abū Yūsuf, Zufar, Sufyān, al-Shāfiʿī, Dāwūd, Aḥmad, Isḥāq, Abū Thawr, and it is reported from Ibn ʿAbbās, ʿAmmār ibn Yāsir, and a group of the Companions (may Allah be pleased with them). It is also the view of Saʿīd ibn al-Musayyab, al-Ḥasan, ʿAṭāʾ, al-Zuhrī, and Ḥammād ibn Abī Sulaymān.

وَرُوِيَ الْمَنْعُ فِي ذَلِكَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، قَالَ: لَا يَؤُمُّ الْمُتَيَمِّمُ الْمُتَوَضِّئِينَ وَلَا الْمُقَيَّدُ الْمُطْلَقِينَ، وَقَالَ رَبِيعَةُ: لَا يَؤُمُّ الْمُتَيَمِّمُ مِنْ جَنَابَةٍ إِلَّا مَنْ هُوَ مِثْلُهُ، وَبِهِ يَقُولُ يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ.

It has been reported that the prohibition regarding this is from ʿAli ibn Abi Talib, who said: "One who performs dry ablution should not lead in prayer those who have performed ablution with water, nor should a person under restrictions lead those who are not restricted." Rabiʿah said: "One who performs dry ablution due to major impurity (janabah) should not lead [in

prayer] except someone in the same state as him." Yahya ibn Sa'id al-Ansari also holds this view.

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ وَالْحَسَنُ بْنُ حَيٍّ: لَا يَؤُمُّهُمْ.

L4329 Muhammad ibn al-Ḥasan and al-Ḥasan ibn Ḥayyin said: He should not lead them in prayer.

Key refinements: 1. Corrected transliteration of "حَيٍّ" to **Ḥayyin** (reflecting the genitive *tanwīn*). 2. Used singular verb "said" to mirror Arabic grammatical structure (قَالَ with compound subject). 3. Retained implied pronoun "he" (from يَؤُمُّهُمْ) without expansion for strict literalness.

وَكَرِهَ مَالِكٌ وَعُبَيْدُ اللَّهِ بْنُ الْحَسَنِ أَنْ يَؤُمَّهُمْ، فَإِنْ فَعَلَ أَجْزَأَهُ. وَقَالَ الْأَوْزَاعِيُّ: لَا يَؤُمُّهُمْ إِلَّا إِنْ كَانَ أَمِيرًا.

L4330 Mālik and 'Ubayd Allāh ibn al-Ḥasan disliked that someone lead them in prayer. If he does so, it suffices him. Al-Awzā'ī said: He should not lead them unless he is a leader.

قَالَ عَلِيٌّ: النَّهْيُ عَنْ ذَلِكَ أَوْ كَرَاهَتُهُ لَا دَلِيلَ عَلَيْهِ مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ وَلَا مِنْ إِجْمَاعٍ وَلَا مِنْ قِيَاسٍ، وَكَذَلِكَ تَقْسِيمُ مَنْ قَسَّمَ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L4331–4332 Ali said: There is no evidence from the Quran, the Sunnah, consensus, or analogy to support prohibiting that matter or deeming it disliked. Similarly, the arbitrary classifications of those who categorize are baseless. And success comes only from Allah, the Most High.

[مَسْأَلَةٌ يَتَيَمَّمُ الْجُنُبُ وَالْحَائِضُ وَكُلُّ مَنْ عَلَيْهِ غُسْلٌ وَاجِبٌ]

[Issue:] A person in a state of major impurity (*junub*), a menstruating woman, and anyone required to perform the obligatory ritual bath (*ghusl*) must perform *tayammum* (dry ablution).

٢٤٩ - مَسْأَلَةٌ:

L4334 249. Legal Question:

وَيَتَيَمَّمُ الْجُنُبُ وَالْحَائِضُ وَكُلُّ مَنْ عَلَيْهِ غُسْلٌ وَاجِبٌ كَمَا يَتَيَمَّمُ الْمُحْدِثُ وَلَا فَرْقَ.

L4335 The *junub* (person in major impurity), the menstruating woman, and everyone required to perform ghusl perform *tayammum* [dry ablution] just as one in a state of minor impurity (*ḥadath*) does, with no distinction.

وَرُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ وَابْنِ مَسْعُودٍ - رَضِيَ اللَّهُ عَنْهُمَا -: أَنَّ الْجُنُبَ لَا يَتَيَمَّمُ حَتَّى يَجِدَ الْمَاءَ، وَعَنْ الْأَسْوَدِ وَإِبْرَاهِيمَ مِثْلُ ذَلِكَ. كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ

L4336 It has been narrated to us from 'Umar ibn al-Khaṭṭāb and Ibn Mas'ūd – may Allah be pleased with them both – that a person in major ritual impurity (*junub*) must not perform dry ablution until he finds water. A similar ruling has been transmitted from al-Aswad and Ibrāhīm. As narrated to us by Muḥammad ibn Sa'īd ibn Nabāt, narrated to us by Aḥmad ibn 'Abd al-

Baṣīr, narrated to us by Qāsim ibn Aṣbagh, narrated to us by Muḥammad ibn ʻAbd al-Salām al-Khushanī, narrated to us by Muḥammad ibn Bashshār, narrated to us by Muḥammad ibn Jaʻfar, narrated to us by Shuʻbah, from Wāṣil al-Aḥdab and al-Ḥakam ibn ʻUtaybah. Wāṣil said: I heard Abū Wāʼil report: ʻUmar ibn al-Khaṭṭāb and ʻAbdullāh ibn Masʻūd – and they are superior to me – would state: "If he does not find water, he must not pray," referring to the *junub* (i.e., the person in major impurity). He added: "But if I did not find water, I would perform dry ablution and pray."

حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا مُحَمَّدُ بْنُ جَعْفَرٍ ثنا شُعْبَةُ عَنْ وَاصِلٍ الْأَحْدَبِ وَالْحَكَمِ بْنِ عُتَيْبَةَ، قَالَ وَاصِلٌ: سَمِعْتُ أَبَا وَائِلٍ قَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ وَعَبْدُ اللَّهِ بْنُ مَسْعُودٍ - وَهُمَا خَيْرٌ مِنِّي - يَقُولَانِ: إِنْ لَمْ يَجِدْ الْمَاءَ لَمْ يُصَلِّ - يَعْنِي الْجُنُبَ - قَالَ: وَأَنَا لَوْ لَمْ أَجِدْ الْمَاءَ تَيَمَّمْتُ وَصَلَّيْتُ.

L4337 Al-Hakam said: I asked Ibrāhīm al-Nakhaʻī, "If you do not find water while in a state of major impurity?" He replied, "I would not pray." Shuʻbah said: I asked Abū Isḥāq, "Did Ibn Masʻūd say, 'If I do not find water for a month, I would not pray'—referring to someone in major impurity?" Abū Isḥāq answered, "Yes, and al-Aswad [also said so]."

وَقَالَ الْحَكَمُ: سَأَلْتُ إِبْرَاهِيمَ النَّخَعِيَّ إِذَا لَمْ تَجِدْ الْمَاءَ وَأَنْتَ جُنُبٌ؟ قَالَ لَا أُصَلِّي قَالَ شُعْبَةُ: وَقُلْتُ لِأَبِي إِسْحَاقَ: أَقَالَ ابْنُ مَسْعُودٍ إِنْ لَمْ أَجِدْ الْمَاءَ شَهْرًا لَمْ أُصَلِّ؟ - يَعْنِي الْجُنُبَ - فَقَالَ أَبُو إِسْحَاقَ: قَالَ نَعَمْ وَالْأَسْوَدُ.

L4338 Other Companions besides those two said that a person in a state of major impurity should perform dry ablution. Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us; Ibrahim ibn Ahmad narrated to us; al-Farbari narrated to us; al-Bukhari narrated to us; Musaddad narrated to us; Yahya ibn Sa'id al-Qattan narrated to us; Awf—the son of Abi Jamilah—narrated to us; Abu Raja' al-Utaridi narrated to us from Imran ibn al-Husayn, who said: "We were with the Messenger of Allah (peace and blessings be upon him). He mentioned the Hadith and that he (peace be upon him) led the people in prayer. When he (peace be upon him) turned away after concluding his prayer, he noticed a man isolated who had not prayed with the congregation. He asked: 'What prevented you from praying with the people?' The man replied: 'I was in a state of major impurity and there is no water.' He said: 'You should use clean earth, for it suffices you.'"

وَقَالَ غَيْرُهُمَا مِنْ الصَّحَابَةِ يَتَيَمَّمُ الْجُنُبُ. حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُسَدَّدٌ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ ثنا عَوْفٌ - هُوَ ابْنُ أَبِي جَمِيلَةَ - ثنا أَبُو رَجَاءٍ - هُوَ الْعُطَارِدِيُّ - عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ قَالَ «كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ الْحَدِيثَ وَأَنَّهُ - عَلَيْهِ السَّلَامُ - صَلَّى بِالنَّاسِ فَلَمَّا انْفَتَلَ - عَلَيْهِ السَّلَامُ - مِنْ صَلَاتِهِ إِذَا هُوَ بِرَجُلٍ مُعْتَزِلٍ لَمْ يُصَلِّ مَعَ الْقَوْمِ فَقَالَ مَا مَنَعَكَ أَنْ تُصَلِّيَ مَعَ الْقَوْمِ؟ قَالَ أَصَابَتْنِي جَنَابَةٌ وَلَا مَاءَ، قَالَ عَلَيْكَ بِالصَّعِيدِ فَإِنَّهُ يَكْفِيكَ» .

L4339 Those who adhered to the opinion of Ibn Mas'ud argued by citing the words of the Almighty: "And if you are in a state of major impurity, then purify yourselves" [Al-Ma'idah: 6]. He said: "He did not prescribe for the sexually impure except the ritual bath (ghusl)." We replied to him: "Indeed, the Messenger of Allah—peace be upon him—is the one who clarifies from Allah, the Mighty and Majestic." Allah, the Exalted, said: "To make clear

وَاحْتَجَّ مَنْ ذَهَبَ إِلَى قَوْلِ ابْنِ مَسْعُودٍ بِقَوْلِهِ تَعَالَى: {وَإِنْ كُنْتُمْ جُنُبًا فَاطَّهَّرُوا} [المائدة: ٦] قَالَ فَلَمْ يَجْعَلْ لِلْجُنُبِ إِلَّا الْغُسْلَ، قُلْنَا لَهُ: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ الْمُبَيِّنُ عَنْ اللَّهِ عَزَّ وَجَلَّ، قَالَ اللَّهُ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤]

to the people what was sent down to them" [An-Nahl: 44], and He said: "Whoever obeys the Messenger has obeyed Allah" [An-Nisa: 80], and He said: "Nor does he speak from [his own] inclination" [An-Najm: 3], "It is nothing but a revelation sent down" [An-Najm: 4]. And he—peace be upon him—has clarified that the ruling for the sexually impure is tayammum (dry ablution) in the absence of water.[20]

وَقَالَ تَعَالَى: {مَنْ يُطِعِ الرَّسُولَ فَقَدْ أَطَاعَ اللَّهَ} [النساء: ٨٠] وَقَالَ تَعَالَى: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] وَهُوَ - عَلَيْهِ السَّلَامُ - قَدْ بَيَّنَ أَنَّ الْجُنُبَ حُكْمُهُ التَّيَمُّمُ عِنْدَ عَدَمِ الْمَاءِ.

L4340–4341 If they mention what Muḥammad ibn Saʿīd ibn Nabāt narrated to us: Aḥmad ibn ʿAwn Allāh narrated to us: Qāsim ibn Aṣbagh narrated to us: Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us: Muḥammad ibn Bashshār narrated to us: Muḥammad ibn Abī ʿAdiyy narrated to us: Shuʿbah narrated from al-Mukhāriq ibn ʿAbd Allāh from Ṭāriq ibn Shihāb, who said: "A man came to the Messenger of Allāh—peace and blessings be upon him—and said: 'O Messenger of Allāh, I entered a state of major impurity (janābah) and did not pray.' He replied: 'You did well.' Another man came to him and said: 'I entered a state of major impurity (janābah) and performed dry ablution (tayammum) using clean earth, then prayed.' He said: 'You did well.'" We said: This is a sound report. Al-Mukhāriq is trustworthy, a Successor (Tābiʿī), and Ṭāriq is a Companion with authentic status, well-known. Based on this report, we state: The one who entered major impurity and did not pray was not obligated to perform tayammum, so he acted correctly by not praying because he was unaware of the ruling. Religious laws are only binding after reaching puberty.

فَإِنْ ذَكَرُوا مَا حَدَّثَنَاهُ مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا أَحْمَدُ بْنُ عَوْنِ اللَّهِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ ثنا شُعْبَةُ عَنْ الْمُخَارِقِ بْنِ عَبْدِ اللَّهِ عَنْ طَارِقِ بْنِ شِهَابٍ قَالَ: «جَاءَ رَجُلٌ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إنِّي أَجْنَبْتُ فَلَمْ أُصَلِّ، فَقَالَ أَحْسَنْتَ. وَجَاءَهُ آخَرُ فَقَالَ: إنِّي أَجْنَبْتُ فَتَيَمَّمْتُ فَصَلَّيْتُ، قَالَ أَحْسَنْتَ» قُلْنَا: هَذَا خَبَرٌ صَحِيحٌ، وَالْمُخَارِقُ ثِقَةٌ، تَابِعٌ، وَطَارِقٌ صَاحِبٌ، صَحِيحُ الصُّحْبَةِ مَشْهُورٌ وَالْخَبَرُ بِهِ نَقُولُ، وَهَذَا الَّذِي أَجْنَبَ فَلَمْ يُصَلِّ لَمْ يَكُنْ عَلَيْهِ حُكْمُ التَّيَمُّمِ، فَأَصَابَ إذْ لَمْ يُصَلِّ بِمَا لَا يَدْرِي، وَإِنَّمَا تَلْزَمُ الشَّرَائِعُ بَعْدَ الْبُلُوغِ.

L4342 Allah the Exalted said: {To warn you thereby and whoever it reaches} [Al-An'ām 6:19]. Whoever performs dry ablution (tayammum) while knowing its obligation and acts upon it - it is absolutely impermissible for this matter to be otherwise. Either tayammum constitutes an obligation for the sexually impure (junub) when water is unavailable, making those upon whom it is incumbent who neglect it erroneous; or tayammum does not constitute an obligation for the aforementioned sexually impure person, making those who perform it erroneous. It has been confirmed through what we mentioned in the narration of 'Imrān ibn Ḥuṣayn that tayammum is indeed his obligation.

قَالَ اللَّهُ تَعَالَى: {لأُنْذِرَكُمْ بِهِ وَمَنْ بَلَغَ} [الأنعام: ١٩] وَالَّذِي تَيَمَّمَ عَلِمَ فَرْضَ التَّيَمُّمِ فَفَعَلَهُ، لَا يَجُوزُ أَلْبَتَّةَ أَنْ يَكُونَ غَيْرُ هَذَا، فَإِمَّا أَنْ يَكُونَ التَّيَمُّمُ فَرْضَ الْمُجْنِبِ إذَا لَمْ يَجِدْ الْمَاءَ، فَيُخْطِئُ مَنْ تَرَكَ الْفَرْضَ مِمَّنْ عَلَيْهِ، أَوْ يَكُونَ التَّيَمُّمُ لَيْسَ فَرْضَ الْمُجْنِبِ الْمَذْكُورِ فَيُخْطِئُ مَنْ فَعَلَهُ، وَقَدْ صَحَّ أَنَّهُ فَرْضُهُ بِمَا ذَكَرْنَا فِي خَبَرِ عِمْرَانَ بْنِ الْحُصَيْنِ فَصَحَّ مَا قُلْنَاهُ مِنْ أَنَّ أَحَدَهُمَا لَمْ يَعْلَمْهُ وَالْآخَرَ عَلِمَهُ، فَأَتَى بِهِ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[20] **Qur'an references (L4339):** Qur'an 5:6 (Al-Ma'idah); Qur'an 16:44 (An-Nahl); Qur'an 4:80 (An-Nisa); Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).

Thus our statement stands verified: that one of the two parties remained unaware of the obligation while the other knew it and fulfilled it. And with Allah alone is success.[21]

L4343 As for the menstruating woman and everyone obligated to perform an obligatory ghusl, we have mentioned the statement of Allah's Messenger (peace and blessings be upon him): "The earth has been made a masjid and its soil a purification for us when we do not find water." Every individual commanded to perform ritual purification, if they do not find water, then the soil is to be used by the explicit generality of this report. And success is from Allah, the Exalted.

L4344 **Issue: The description of dry ablution (tayammum) for major ritual impurity (janābah), menstruation (ḥayḍ), every obligatory ritual bath (ghusl), and in place of minor ablution (wuḍūʾ) is performed in the same way.**

L4345 Issue 250:

L4346 The description of tayammum for major impurity, menstruation, every obligatory bath, and ablution follows a single method of action. What is obligatory in all these cases is to intend the specific purpose for which tayammum is performed—whether purification for prayer, major impurity, insertion into the vagina, purification from menstruation, postpartum bleeding, for Friday prayer, or washing the deceased. One must then strike the ground with both palms while maintaining this intention, blow into them, and wipe the face and the backs of the hands up to the wrists with a single strike. It is not required to cover the entire face or hands, nor to wipe the arms, head, feet, or any part of the body during tayammum. As for intention, we have previously affirmed its obligation. Abū Ḥanīfah held that ablution and the major ritual bath are valid without intention, but tayammum in their place is only valid with intention. Al-Ḥasan ibn Ḥayy stated that all these acts are valid without intention. The validity of tayammum's procedure for major impurity, menstruation, postpartum bleeding, and all other mentioned cases,

[21] **Qur'an references (L4342):** Qur'an 6:19 (Al-An'am).

وَأَمَّا الْحَائِضُ وَكُلُّ مَنْ عَلَيْهِ غُسْلٌ وَاجِبٌ، فَقَدْ ذَكَرْنَا قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «جُعِلَتْ لَنَا الْأَرْضُ مَسْجِدًا وَتُرْبَتُهَا طَهُورًا إِذَا لَمْ نَجِدْ الْمَاءَ» وَكُلُّ مَأْمُورٍ بِالطَّهُورِ إِذَا لَمْ يَجِدْ الْمَاءَ فَالتُّرَابُ بِنَصِّ عُمُومِ هَذَا الْخَبَرِ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ صِفَةُ التَّيَمُّمِ لِلْجَنَابَةِ وَلِلْحَيْضِ وَلِكُلِّ غُسْلٍ وَاجِبٍ وَلِلْوُضُوءِ صِفَةُ عَمَلٍ وَاحِدٍ]

٢٥٠ - مَسْأَلَةٌ:

وَصِفَةُ التَّيَمُّمِ لِلْجَنَابَةِ وَلِلْحَيْضِ وَلِكُلِّ غُسْلٍ وَاجِبٍ وَلِلْوُضُوءِ صِفَةُ عَمَلٍ وَاحِدٍ، إنَّمَا يَجِبُ فِي كُلِّ ذَلِكَ أَنْ يَنْوِيَ بِهِ الْوَجْهَ الَّذِي تَيَمَّمَ لَهُ، مِنْ طَهَارَةٍ لِلصَّلَاةِ أَوْ جَنَابَةٍ أَوْ إيلَاجٍ فِي الْفَرْجِ أَوْ طَهَارَةٍ مِنْ حَيْضٍ أَوْ مِنْ نِفَاسٍ أَوْ لِيَوْمِ الْجُمُعَةِ أَوْ مِنْ غَسْلِ الْمَيِّتِ، ثُمَّ يَضْرِبُ الْأَرْضَ بِكَفَّيْهِ مُتَّصِلًا بِهَذِهِ النِّيَّةِ ثُمَّ يَنْفُخُ فِيهِمَا وَيَمْسَحُ وَجْهَهُ وَظَهْرَ كَفَّيْهِ إلَى الْكُوعَيْنِ بِضَرْبَةٍ وَاحِدَةٍ فَقَطْ، وَلَيْسَ عَلَيْهِ اسْتِيعَابُ الْوَجْهِ وَلَا الْكَفَّيْنِ وَلَا يَمْسَحُ فِي شَيْءٍ مِنْ التَّيَمُّمِ ذِرَاعَيْهِ وَلَا رَأْسَهُ وَلَا رِجْلَيْهِ وَلَا شَيْئًا مِنْ جِسْمِهِ. أَمَّا النِّيَّةُ فَقَدْ ذَكَرْنَا وُجُوبَهَا قَبْلُ، وَقَالَ أَبُو حَنِيفَةَ يُجْزِئُ الْوُضُوءُ وَغُسْلُ الْجَنَابَةِ بِلَا نِيَّةٍ، وَلَا يُجْزِئُ التَّيَمُّمُ فِيهِمَا إلَّا بِنِيَّةٍ، وَقَالَ الْحَسَنُ بْنُ حَيٍّ: كُلُّ ذَلِكَ يُجْزِئُ بِلَا نِيَّةٍ، وَأَمَّا كَوْنُ عَمَلِ

in the same manner as its procedure for removing ritual impurity, is established by unanimous consensus among all who uphold these ritual baths and tayammum for them.

L4347–4348 As for the omission of wiping the head, feet, and the rest of the body in tayammum, there is a definitely established consensus—except for an act performed by ʾAmmār ibn Yāsir (may Allah be pleased with him) during the lifetime of Allah's Messenger (peace and blessings be upon him), which the Prophet (peace and blessings be upon him) prohibited him from. Regarding other aspects, there is disagreement: some hold that tayammum necessarily requires two taps (of the hands on earth); a group maintains it entails full coverage of the face and hands (up to the wrists); another group argues for covering the arms up to the armpits; while others say up to the elbows.

L4349 As for those who maintained that tayammum consists of two strikes—one for the face and another for the hands and forearms up to the elbows—they substantiated their position through a narration transmitted via Abū Umāmah al-Bāhilī from the Messenger of Allah (peace be upon him), who stated regarding tayammum: "Two strikes: one for the face and another for the forearms." They further cited a narration through ʿAmmār that the Messenger of Allah (peace be upon him) specified: "Up to the elbows," and another narration through Ibn ʿUmar (peace be upon him) who recounted: "A man offered salām to the Messenger of Allah (peace be upon him) on a path, but he did not respond. He (peace be upon him) then struck his hands against the wall, wiped his face with them, performed another strike, wiped his forearms up to the elbows, and subsequently responded to the man's greeting. He (peace be upon him) explained: ʾNothing prevented me from returning your salām except that I was not in a state of ritual purity.'"[22]

L4350 Then the report of Al-Asla' - a man from Banu Al-A'raj ibn Ka'b - who said: "I said: ʾO Messenger of Allah, I have incurred major impurity.' He remained silent until Gabriel came to him with clean earth. He said: ʾArise, O Asla', and proceed.'" He said: "Then Allah's Messenger (peace be upon him) taught

[22]**Hadith references (L4349):** Sunan Abi Dawud 330; Mishkat al-Masabih 466.

التَّيَمُّمِ لِلْجَنَابَةِ وَلِلْحَيْضِ وَلِلنِّفَاسِ وَلِسَائِرِ مَا ذَكَرْنَا - كَصِفَتِهِ لِرَفْعِ الْحَدَثِ فَإِجْمَاعٌ لَا خِلَافَ فِيهِ مِنْ كُلِّ مَنْ يَقُولُ بِشَيْءٍ مِنْ هَذِهِ الْأَغْسَالِ وَبِالتَّيَمُّمِ لَهَا.

وَأَمَّا سُقُوطُ مَسْحِ الرَّأْسِ وَالرِّجْلَيْنِ وَسَائِرِ الْجَسَدِ فِي التَّيَمُّمِ فَإِجْمَاعٌ مُتَيَقَّنٌ، إِلَّا شَيْئًا فَعَلَهُ عَمَّارُ بْنُ يَاسِرٍ - رَضِيَ اللَّهُ عَنْهُ - فِي حَيَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَاهُ عَنْهُ - عَلَيْهِ السَّلَامُ -، وَفِي سَائِرِ ذَلِكَ اخْتِلَافٌ، وَهُوَ أَنَّ قَوْمًا قَالُوا بِأَنَّ التَّيَمُّمَ ضَرْبَتَانِ وَلَا بُدَّ، وَقَالَتْ طَائِفَةٌ عَلَيْهِ اسْتِيعَابُ الْوَجْهِ وَالْكَفَّيْنِ، وَقَالَتْ طَائِفَةٌ عَلَيْهِ اسْتِيعَابُ ذِرَاعَيْهِ إِلَى الْآبَاطِ، وَقَالَ آخَرُونَ إِلَى الْمَرَافِقِ.

فَأَمَّا الَّذِينَ قَالُوا: إِنَّ التَّيَمُّمَ ضَرْبَتَانِ وَاحِدَةٌ لِلْوَجْهِ وَالْأُخْرَى لِلْيَدَيْنِ وَالذِّرَاعَيْنِ إِلَى الْمَرَافِقِ، فَإِنَّهُ احْتَجُّوا بِحَدِيثٍ مِنْ طَرِيقِ أَبِي أُمَامَةَ الْبَاهِلِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي التَّيَمُّمِ «ضَرْبَتَانِ ضَرْبَةٌ لِلْوَجْهِ وَأُخْرَى لِلذِّرَاعَيْنِ» وَبِحَدِيثٍ مِنْ طَرِيقِ عَمَّارٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: " إِلَى الْمِرْفَقَيْنِ " وَبِحَدِيثٍ مِنْ طَرِيقِ ابْنِ عُمَرَ قَالَ «سَلَّمَ رَجُلٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سِكَّةٍ مِنْ السِّكَكِ فَلَمْ يَرُدَّ عَلَيْهِ ثُمَّ ضَرَبَ بِيَدَيْهِ - عَلَيْهِ السَّلَامُ - عَلَى الْحَائِطِ وَمَسَحَ بِهِمَا وَجْهَهُ، ثُمَّ ضَرَبَ ضَرْبَةً أُخْرَى فَمَسَحَ ذِرَاعَيْهِ ثُمَّ رَدَّ عَلَى الرَّجُلِ، وَقَالَ - عَلَيْهِ السَّلَامُ -: إِنَّهُ لَمْ يَمْنَعْنِي أَنْ أَرُدَّ عَلَيْكَ السَّلَامَ إِلَّا أَنِّي لَمْ أَكُنْ عَلَى طُهْرٍ» .

ثُمَّ بِحَدِيثِ الْأَسْلَعِ رَجُلٍ مِنْ بَنِي الْأَعْرَجِ بْنِ كَعْبٍ قَالَ «قُلْتُ يَا رَسُولَ اللَّهِ أَصَابَتْنِي جَنَابَةٌ. فَسَكَتَ - عَلَيْهِ السَّلَامُ - حَتَّى جَاءَهُ جِبْرِيلُ بِالصَّعِيدِ، فَقَالَ: قُمْ يَا أَسْلَعُ فَارْحَلْ، قَالَ: ثُمَّ عَلَّمَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - التَّيَمُّمَ، فَضَرَبَ بِكَفَّيْهِ

me tayammum. He struck the earth with his palms, shook them, then wiped his face with them until he wiped over his beard. Then he returned them to the earth, struck his palms on the earth, rubbed one against the other, shook them, then wiped his forearms - their outer and inner surfaces."

الْأَرْضَ ثُمَّ نَفَضَهُمَا ثُمَّ مَسَحَ بِهِمَا وَجْهَهُ حَتَّى أَمَرَّ عَلَى لِحْيَتِهِ، ثُمَّ أَعَادَهَا إِلَى الْأَرْضِ فَمَسَحَ كَفَّيْهِ الْأَرْضَ فَدَلَّكَ إِحْدَاهُمَا بِالْأُخْرَى ثُمَّ نَفَضَهُمَا ثُمَّ مَسَحَ ذِرَاعَيْهِ ظَاهِرَهُمَا وَبَاطِنَهُمَا» .

L4351 And a narration from Abu Dharr who said: "The Messenger of Allah (peace and blessings be upon him) placed his hands on the ground, shook off the dust, then wiped his face and his arms up to the elbows." This narration mentions only one strike. Another narration from Ibn Umar from the Prophet (peace and blessings be upon him) regarding tayammum states: "One strike for the face and one strike for the arms up to the elbows." Additionally, a narration from al-Waqidi reports that the Messenger of Allah (peace and blessings be upon him) said: "Tayammum is one strike for the face and one strike for the arms up to the elbows."

وَبِحَدِيثٍ عَنْ أَبِي ذَرٍّ قَالَ «وَضَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَدَيْهِ عَلَى الْأَرْضِ ثُمَّ نَفَضَهُمَا، ثُمَّ مسح وَجْهَهُ وَيَدَيْهِ إِلَى الْمِرْفَقَيْنِ» لَيْسَ فِي هَذَا الْخَبَرِ إِلَّا ضَرْبَةٌ وَاحِدَةٌ وَبِحَدِيثٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي التَّيَمُّمِ «ضَرْبَةٌ لِلْوَجْهِ وَضَرْبَةٌ لِلْيَدَيْنِ إِلَى الْمِرْفَقَيْنِ» وَبِحَدِيثٍ عَنْ الْوَاقِدِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «التَّيَمُّمُ ضَرْبَةٌ لِلْوَجْهِ وَضَرْبَةٌ لِلْيَدَيْنِ إِلَى الْمِرْفَقَيْنِ» .

L4352–4353 They said: It has been authentically reported from 'Umar ibn al-Khaṭṭāb, Jābir ibn 'Abdillāh, and Ibn 'Umar—from their legal verdicts and practices—that tayammum consists of two strikes: one strike for the face and one strike for the forearms and hands. They said: Since tayammum substitutes for ablution, and given that one renews the water for the face and another application for the forearms in ablution, it becomes obligatory for tayammum to follow the same manner. As ablution extends to the elbows, the tayammum that replaces it must likewise extend to the elbows.

وَقَالُوا: قَدْ صَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ وَعَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ وَعَنْ ابْنِ عُمَرَ، مِنْ فُتْيَاهُمْ وَفِعْلِهِمْ أَنَّ التَّيَمُّمَ ضَرْبَتَانِ، ضَرْبَةٌ لِلْوَجْهِ وَضَرْبَةٌ لِلذِّرَاعَيْنِ وَالْيَدَيْنِ، قَالُوا وَالتَّيَمُّمُ بَدَلٌ مِنْ الْوُضُوءِ، فَلَمَّا كَانَ يُجَدِّدُ الْمَاءَ لِلْوَجْهِ وَمَاءً آخَرَ لِلذِّرَاعَيْنِ وَجَبَ كَذَلِكَ فِي التَّيَمُّمِ، وَلَمَّا كَانَ الْوُضُوءُ إِلَى الْمِرْفَقَيْنِ وَجَبَ أَنْ يَكُونَ التَّيَمُّمُ الَّذِي هُوَ بَدَلُهُ كَذَلِكَ.

L4354 This is all they have clamored about, and none of it provides valid proof for their position.

هَذَا كُلُّ مَا شَغَبُوا بِهِ، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ.

L4355 As for the narrations, all of them are invalid; it is impermissible to cite anything from them as evidence.

أَمَّا الْأَخْبَارُ فَكُلُّهَا سَاقِطَةٌ، لَا يَجُوزُ الِاحْتِجَاجُ بِشَيْءٍ مِنْهَا.

L4356 As for the ḥadīth of Abū Umāmah, we have narrated it through the chain of Ibn Wahb from Muḥammad ibn ʿAmr al-Yāfiʿī from a man who narrated to him from Jaʿfar ibn al-Zubayr from al-Qāsim ibn ʿAbd al-Raḥmān from Abū Umāmah. It contains two defects: the first is al-Qāsim, for he is weak, and the second is that Muḥammad ibn ʿAmr did not name the one who informed him from Jaʿfar ibn al-Zubayr. Some people concealed the defect by stating:

أَمَّا حَدِيثُ أَبِي أُمَامَةَ فَإِنَّنَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مُحَمَّدِ بْنِ عَمْرٍو الْيَافِعِيِّ عَنْ رَجُلٍ حَدَّثَهُ عَنْ جَعْفَرِ بْنِ الزُّبَيْرِ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي أُمَامَةَ، فَفِيهِ عِلَّتَانِ: إِحْدَاهُمَا الْقَاسِمُ وَهُوَ ضَعِيفٌ، وَالثَّانِيَةُ أَنَّ مُحَمَّدَ بْنَ عَمْرٍو لَمْ يُسَمِّ مَنْ أَخْبَرَهُ بِهِ

"From Muḥammad ibn ʿAmr from Jaʿfar." Muḥammad never met Jaʿfar ibn al-Zubayr, thus this report is invalidated. As for the ḥadīth of ʿAmmār, we have narrated it through the chain of Abān ibn Yazīd al-ʿAṭṭār from Qatādah, who said: "A narrator informed me from al-Shaʿbī from ʿAbd al-Raḥmān ibn Abzā from ʿAmmār." Qatādah did not name the one who narrated to him. All established reports from ʿAmmār contradict this, thus this report is likewise invalidated.

عَنْ جَعْفَرِ بْنِ الزُّبَيْرِ وَقَدْ دَلَّسَهُ بَعْضُ النَّاسِ فَقَالَ: عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ جَعْفَرٍ. وَمُحَمَّدٌ لَمْ يُدْرِكْ جَعْفَرَ بْنَ الزُّبَيْرِ فَسَقَطَ هَذَا الْخَبَرُ. وَأَمَّا حَدِيثُ عَمَّارٍ فَإِنَّنَا رُوِّينَاهُ مِنْ طَرِيقِ أَبَانَ بْنِ يَزِيدَ الْعَطَّارِ عَنْ قَتَادَةَ قَالَ: حَدَّثَنِي مُحَدِّثٌ عَنْ الشَّعْبِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبْزَى عَنْ عَمَّارٍ، فَلَمْ يُسَمِّ قَتَادَةَ مَنْ حَدَّثَهُ. وَالْأَخْبَارُ الثَّابِتَةُ كُلُّهَا عَنْ عَمَّارٍ بِخِلَافِ هَذَا، فَسَقَطَ هَذَا الْخَبَرُ أَيْضًا.

L4357 As for the ḥadīth of Ibn ʿUmar, we have transmitted it through the chain of Muḥammad ibn Ibrāhīm al-Mawṣilī, from Muḥammad ibn Thābit al-ʿAbdī, from Nāfiʿ, from Ibn ʿUmar. Muḥammad ibn Thābit al-ʿAbdī is weak; his ḥadīth cannot be invoked as authoritative proof. Even if it were authentic, it would constitute evidence against them, for it mentions performing tayammum while in a settled state for a physically healthy person, performing tayammum to respond to the salutation of peace, and refraining from returning the salutation without purification - none of which they endorse. It is detestable for someone to cite as evidence something neither they nor their opponent accept as valid proof, or to cite a matter they themselves are the first to oppose. If this report serves as evidence for performing tayammum up to the elbows, then it equally serves as evidence for abstaining from returning the salutation except in a state of purity, and for performing tayammum indoors within the city to respond to the salutation. If it is not valid evidence for these matters, then it cannot be valid evidence for what they have cited.

وَأَمَّا حَدِيثُ ابْنِ عُمَرَ فَإِنَّنَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ إِبْرَاهِيمَ الْمَوْصِلِيِّ عَنْ مُحَمَّدِ بْنِ ثَابِتٍ الْعَبْدِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ، وَمُحَمَّدُ بْنِ ثَابِتٍ الْعَبْدِيُّ ضَعِيفٌ لَا يُحْتَجُّ بِحَدِيثِهِ، ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ، لِأَنَّ فِيهِ التَّيَمُّمَ فِي الْحَضَرِ لِلصَّحِيحِ، وَالتَّيَمُّمَ لِرَدِّ السَّلَامِ، وَتَرْكَ رَدِّ السَّلَامِ عَلَى غَيْرِ طَهَارَةٍ، وَهُمْ لَا يَقُولُونَ بِشَيْءٍ مِنْ هَذَا كُلِّهِ، وَمِنْ الْمَقْتِ احْتِجَاجُ امْرِئٍ بِمَا لَا يَرَاهُ لَا هُوَ وَلَا خَصْمُهُ حُجَّةً وَاحْتِجَاجُهُ بِشَيْءٍ هُوَ أَوَّلُ مُخَالِفٍ لَهُ، فَإِنْ كَانَ هَذَا الْخَبَرُ حُجَّةً فِي التَّيَمُّمِ إلَى الْمِرْفَقَيْنِ، فَهُوَ حُجَّةٌ فِي تَرْكِ رَدِّ السَّلَامِ إلَّا عَلَى طُهْرٍ، وَفِي التَّيَمُّمِ بَيْنَ الْحِيطَانِ فِي الْمَدِينَةِ لِرَدِّ السَّلَامِ، وَإِنْ لَمْ يَكُنْ حُجَّةً فِي هَذَا فَلَيْسَ حُجَّةً فِيمَا احْتَجُّوا بِهِ.

L4358 If they say: "It is recommended," we respond: Similarly, you must affirm regarding the method of dry ablution—performing it twice and reaching the elbows—that this too is merely recommended, with no substantive difference. Consequently, this textual evidence is likewise discarded.

فَإِنْ قَالُوا: هُوَ عَلَى النَّدْبِ، قُلْنَا: وَكَذَلِكَ قُولُوا فِي صِفَةِ التَّيَمُّمِ فِيهِ مَرَّتَيْنِ وَإِلَى الْمِرْفَقَيْنِ أَنَّهُ عَلَى النَّدْبِ وَلَا فَرْقَ، فَسَقَطَ هَذَا الْخَبَرُ أَيْضًا.

L4359–4361 As for the hadith of al-Aslaʿ, it is utterly baseless; for we have narrated it via the chain of... Yahya ibn ʿAbd al-Ḥamīd al-Ḥimānī narrated from ʿAlīlah (who is al-Rabīʿ), from his [al-Rabīʿ's] father, from his grandfather, from al-Aslaʿ.

All those we have mentioned are insignificant, and their narrations are not admissible as evidence.

وَأَمَّا حَدِيثُ الْأَسْلَعِ فَفِي غَايَةِ السُّقُوطِ، لِأَنَّنَا رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنُ عَبْدِ الْحَمِيدِ الْحِمَّانِيِّ عَنْ عَلِيلَةَ - هُوَ الرَّبِيعُ - عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ الْأَسْلَعِ، وَكُلُّ مَنْ ذَكَرْنَا فَلَيْسُوا بِشَيْءٍ وَلَا يُحْتَجُّ بِهِمْ.

L4362 As for the ḥadīth of Abū Dharr, we have transmitted it through the chain of Ibn Jurayj from ʻAṭā': "A man narrated to me that Abū Dharr"—and this, as you see, we do not know who that man is. Thus, this report is also rejected.

وَأَمَّا حَدِيثُ أَبِي ذَرٍّ فَإِنَّا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: حَدَّثَنِي رَجُلٌ أَنَّ أَبَا ذَرٍّ، وَهَذَا كَمَا تَرَى، لَا نَدْرِي مَنْ ذَلِكَ الرَّجُلُ، فَسَقَطَ هَذَا الْخَبَرُ أَيْضًا.

L4363 As for the second ḥadīth of Ibn ʿUmar, we have narrated it via the chain of Shabābat ibn Sawwār from Sulaymān ibn Dāwūd al-Ḥarrānī, from Sālim and Nāfiʿ, from Ibn ʿUmar. Sulaymān ibn Dāwūd al-Ḥarrānī is ḍaʿīf (weak), and his narrations are not used as proof.

وَأَمَّا حَدِيثُ ابْنِ عُمَرَ الثَّانِي فَرُوِّينَاهُ مِنْ طَرِيقِ شَبَابَةَ بْنِ سَوَّارٍ عَنْ سُلَيْمَانَ بْنِ دَاوُد الْحَرَّانِيِّ عَنْ سَالِمٍ وَنَافِعٍ عَنْ ابْنِ عُمَرَ، وَسُلَيْمَانُ بْنِ دَاوُد الْحَرَّانِيُّ ضَعِيفٌ لَا يُحْتَجُّ بِهِ.

L4364 As for the narration of Al-Wāqidī, it is too weak to warrant engagement because it originates from him—a transmitter criticized for dishonesty—and is itself a *mursal* narration (with a broken chain) transmitted directly by him. Thus, all the reports they have deceptively embellished are invalidated.

وَأَمَّا حَدِيثُ الْوَاقِدِيِّ فَأَسْقَطُ مِنْ أَنْ يُشْتَغَلَ بِهِ، لِأَنَّهُ عَنْ الْوَاقِدِيِّ وَهُوَ مَذْكُورٌ بِالْكَذِبِ ثُمَّ مُرْسَلٌ مِنْ عِنْدِهِ، فَسَقَطَ كُلُّ مَا مَوَّهُوا بِهِ مِنْ الْآثَارِ

L4365 As for their argument citing what is authentically established from ʿUmar, Ibn ʿUmar, and Jābir, it is likewise authentically established from ʿUmar and Ibn Masʿūd that one in a state of major ritual impurity may not perform dry ablution even if deprived of water for a month. It is also authentically established from Abū Bakr, ʿUmar, Ibn Masʿūd, Umm Salamah, and others that wiping over the turban is permissible. Yet they disregarded these positions. What makes them a proof when they wish, yet dismisses them as proof when they do not? This necessitates the Fire in the Hereafter and disgrace in this world. Moreover, in this very matter, ʿAlī ibn Abī Ṭālib, Ibn Masʿūd, ʿAmmār, and Ibn ʿAbbās contradicted ʿUmar, his son, and Jābir—as we shall later clarify, God willing. Thus, their reliance on the Companions—may God be pleased with them—is invalidated.

وَأَمَّا احْتِجَاجُهُمْ بِمَا صَحَّ مِنْ ذَلِكَ عَنْ عُمَرَ وَابْنِ عُمَرَ وَجَابِرٍ، فَقَدْ صَحَّ عَنْ عُمَرَ وَابْنِ مَسْعُودٍ: لَا يَتَيَمَّمُ الْجُنُبُ وَإِنْ لَمْ يَجِدْ الْمَاءَ شَهْرًا، وَقَدْ صَحَّ عَنْ أَبِي بَكْرٍ وَعُمَرَ وَابْنِ مَسْعُودٍ وَأُمِّ سَلَمَةَ وَغَيْرِهِمْ الْمَسْحُ عَلَى الْعِمَامَةِ، فَلَمْ يَلْتَفِتُوا إلَى ذَلِكَ، فَمَا الَّذِي جَعَلَهُمْ حُجَّةً حَيْثُ يَشْتَهِي هَؤُلَاءِ، وَلَمْ يَجْعَلْهُمْ حُجَّةً حَيْثُ لَا يَشْتَهُونَ؟ هَذَا مُوجِبٌ لِلنَّارِ فِي الْآخِرَةِ وَلِلْعَارِ فِي الدُّنْيَا، فَكَيْفَ وَقَدْ خَالَفَ فِي هَذِهِ الْمَسْأَلَةِ عُمَرُ وَابْنُهُ وَجَابِرًا عَلِيُّ بْنُ أَبِي طَالِبٍ وَابْنُ مَسْعُودٍ وَعَمَّارٌ وَابْنُ عَبَّاسٍ، عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى، فَسَقَطَ تَعَلُّقُهُمْ بِالصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L4366–4368 As for their assertion that dry ablution (tayammum) serves as a substitute for ritual ablution (wudu), it should be said to them: What is the implication of

this claim? From what source is it established that a substitute must conform to the attributes of the original obligation? If this principle were valid, you would be the first to contradict this ruling you yourselves deemed correct - having omitted the head and feet in tayammum though they are obligatory in wudu, neglected the entire body in tayammum for major impurity (janabah) though it is obligatory in full ablution (ghusl), mandated water application to limbs in wudu while not requiring dust application to the face and forearms in tayammum. Abū Ḥanīfah among you abolished the obligation of intention (niyyah) for wudu and ghusl yet imposed it for tayammum. Where then did you find in the Qur'an, the Sunnah, or scholarly consensus (ijmāʿ) that a substitute cannot exist except by mirroring the attributes of the original? Is this not an invalid and baseless claim? We observe that slave emancipation is obligatory for expiation (kaffārah) in cases of dhihār, broken oaths, accidental homicide, and deliberate intercourse intentionally during daytime in Ramadan while fasting. Yet the Exalted Allah substituted three days of fasting for a single slave in oath expiation, and fasting for multiple slaves in cases of homicide, intercourse, dhihār, and other expiations. Two consecutive months. Compensation is made by feeding the poor in cases of ẓihār and sexual intercourse, but no compensation is required for killing. This applies to all matters.

وَأَمَّا قَوْلُهُمْ إِنَّ التَّيَمُّمَ بَدَلٌ مِنْ الْوُضُوءِ، فَيُقَالُ لَهُمْ: فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ وَجَبَ أَنْ يَكُونَ الْبَدَلُ عَلَى صِفَةِ الْمُبْدَلِ مِنْهُ؟ وَإِنْ كَانَ هَذَا فَأَنْتُمْ أَوَّلُ مُخَالِفٍ لِهَذَا الْحُكْمِ الَّذِي قَضَيْتُمْ أَنَّهُ حَقٌّ، فَأَسْقَطْتُمْ فِي التَّيَمُّمِ الرَّأْسَ وَالرِّجْلَيْنِ، وَهُمَا فَرْضَانِ فِي الْوُضُوءِ وَأَسْقَطْتُمْ جَمِيعَ الْجَسَدِ فِي التَّيَمُّمِ لِلْجَنَابَةِ وَهُوَ فَرْضٌ فِي الْغُسْلِ، وَأَوْجَبْتُمْ أَنْ يُحْمَلَ الْمَاءُ إلَى الْأَعْضَاءِ فِي الْوُضُوءِ، وَلَمْ تُوجِبُوا حَمْلَ شَيْءٍ مِنْ التُّرَابِ إلَى الْوَجْهِ وَالذِّرَاعَيْنِ فِي التَّيَمُّمِ، وَأَسْقَطَ أَبُو حَنِيفَةَ مِنْهُمْ النِّيَّةَ فِي الْوُضُوءِ وَالْغُسْلِ وَأَوْجَبَهَا فِي التَّيَمُّمِ، ثُمَّ أَيْنَ وَجَدْتُمْ فِي الْقُرْآنِ أَوْ السُّنَّةِ أَوْ الْإِجْمَاعِ أَنَّ الْبَدَلَ لَا يَكُونُ إلَّا عَلَى صِفَةِ الْمُبْدَلِ مِنْهُ؟ وَهَلْ هَذَا إلَّا دَعْوَى فَاسِدَةٌ كَاذِبَةٌ؟ وَقَدْ وَجَدْنَا الرَّقَبَةَ وَاجِبَةً فِي الظِّهَارِ وَفِي كَفَّارَةِ الْيَمِينِ وَكَفَّارَةِ قَتْلِ الْخَطَأِ وَكَفَّارَةِ الْمُجَامِعِ عَمْدًا نَهَارًا فِي رَمَضَانَ وَهُوَ صَائِمٌ، ثُمَّ عَوَّضَهَا اللَّهُ تَعَالَى وَأَبْدَلَ مِنْ رَقَبَةِ الْكَفَّارَةِ صِيَامَ ثَلَاثَةِ أَيَّامٍ وَمِنْ رِقَابِ الْقَتْلِ وَالْجِمَاعِ وَالظِّهَارِ صِيَامَ شَهْرَيْنِ مُتَتَابِعَيْنِ، وَعَوَّضَ مِنْ ذَلِكَ إطْعَامًا فِي الظِّهَارِ وَالْجِمَاعِ، وَلَمْ يُعَوِّضْهُ فِي الْقَتْلِ، وَهَكَذَا فِي كُلِّ شَيْءٍ.

L4369 If they say: "We have analogized *tayammum* to *wudu*," we respond: "All *qiyas* is invalid. Even if *qiyas* were valid, this analogy would itself be invalid. Why did you not analogize what is wiped of the hands in *tayammum* to what is amputated of the hands in theft, just as you refrained from analogizing what makes lawful the private part of a free woman in marriage to what makes lawful the private part of a female slave in sale? Instead, you analogized it to the grounds for amputating a thief's hand—particularly when you have distinguished through textual proof and consensus between *tayammum* and *wudu* regarding the omission of the head and feet in *tayammum* unlike *wudu*, and the omission of the entire body in *tayammum* unlike *ghusl*."

فَإِنْ قَالُوا: قِسْنَا التَّيَمُّمَ عَلَى الْوُضُوءِ، قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، وَهَلَّا قِسْتُمْ مَا يُتَيَمَّمُ مِنْ الْيَدَيْنِ عَلَى مَا يُقْطَعُ مِنْ الْيَدَيْنِ فِي السَّرِقَةِ كَمَا تَرَكْتُمْ أَنْ تَقِيسُوا مَا يُسْتَبَاحُ بِهِ فَرْجُ الْحُرَّةِ فِي النِّكَاحِ عَلَى مَا يُسْتَبَاحُ بِهِ فَرْجُ الْأَمَةِ فِي الْبَيْعِ، وَقِسْتُمُوهُ عَلَى مَا تُقْطَعُ فِيهِ يَدُ السَّارِقِ لَا سِيَّمَا وَقَدْ فَرَّقْتُمْ بِالنَّصِّ وَالْإِجْمَاعِ بَيْنَ حُكْمِ التَّيَمُّمِ وَبَيْنَ الْوُضُوءِ فِي سُقُوطِ الرَّأْسِ وَالرِّجْلَيْنِ فِي التَّيَمُّمِ دُونَ الْوُضُوءِ، وَسُقُوطِ الْجَسَدِ كُلِّهِ فِي التَّيَمُّمِ دُونَ الْغُسْلِ.

L4370 They are told: Just as you considered Allah's silence [in revelation] regarding

the mention of the head and feet in tayammum as evidence for the waiver of that obligation, and did not apply analogy (qiyās) to wuḍū', why do you not treat His silence regarding specifying up to the elbows in tayammum as evidence for its waiver, instead of analogizing it to wuḍū'? This mirrors the reasoning of Abū Ḥanīfa and his followers concerning Allah's silence regarding the obligation to manumit a slave as expiation in ẓihār, where they did not apply analogy to the manumission explicitly stipulated for expiation in cases of killing. If you analogize tayammum substituting for wuḍū' to wuḍū', then analogize tayammum substituting for janābah (major impurity) to janābah, thereby requiring the entire body to be covered with dust—a conclusion from which there is no escape.

وَيُقَالُ لَهُمْ كَمَا جَعَلْتُمْ سُكُوتَ اللَّهِ تَعَالَى عَنْ ذِكْرِ الرَّأْسِ وَالرِّجْلَيْنِ فِي التَّيَمُّمِ دَلِيلًا عَلَى سُقُوطِ ذَلِكَ فِيهِ وَلَمْ تَقِيسُوهُ عَلَى الْوُضُوءِ، فَهَلَّا جَعَلْتُمْ سُكُوتَهُ تَعَالَى عَنْ ذِكْرِ التَّحْدِيدِ إِلَى الْمَرَافِقِ فِي التَّيَمُّمِ دَلِيلًا عَلَى سُقُوطِ ذَلِكَ، وَلَا تَقِيسُوهُ عَلَى الْوُضُوءِ؟ كَمَا فَعَلَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ فِي سُكُوتِ اللَّهِ تَعَالَى عَنْ دَيْنِ الرَّقَبَةِ فِي الظِّهَارِ، وَلَمْ يَقِيسُوهَا عَلَى الْمَنْصُوصِ عَلَيْهَا فِي رَقَبَةِ الْقَتْلِ، وَإِذَا قِسْتُمْ التَّيَمُّمَ لِلْوُضُوءِ عَلَى الْوُضُوءِ فَقِيسُوا التَّيَمُّمَ لِلْجَنَابَةِ عَلَى الْجَنَابَةِ، فَعُمُّوا بِهِ الْجَسَدَ وَهَذَا مَا لَا مَخْلَصَ مِنْهُ.

L4371 Divine enablement is with Allah, the Exalted.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L4372 Abu Muhammad said: Some people held the view that tayammum requires two strikes - one strike for the face and one strike for the palms only. They cited as evidence a ḥadīth we transmitted through the chain of Haramī ibn 'Umarah, who narrated to us from al-Ḥarīsh ibn al-Khirrīt (the brother of al-Zubayr ibn al-Khirrīt), who related to us from 'Abdullāh ibn Abī Mulaykah, from 'Ā'ishah, the Mother of the Believers: "When the verse of tayammum was revealed, the Messenger of Allah—peace be upon him—struck the ground once and wiped his face with it. Then he struck another strike upon the ground and wiped his palms with it."

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ رَأَى قَوْمٌ أَنَّ التَّيَمُّمَ ضَرْبَتَانِ، ضَرْبَةٌ لِلْوَجْهِ وَضَرْبَةٌ لِلْكَفَّيْنِ فَقَطْ، وَاحْتَجُّوا بِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ حَرَمِيِّ بْنِ عُمَارَةَ ثنا الْحَرِيشُ بْنُ الْخِرِّيتِ أَخُو الزُّبَيْرِ بْنِ الْخِرِّيتِ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ أَبِي مُلَيْكَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «نَزَلَتْ آيَةُ التَّيَمُّمِ فَضَرَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ضَرْبَةً وَمَسَحَ بِهَا وَجْهَهُ، ثُمَّ ضَرَبَ عَلَى الْأَرْضِ أُخْرَى فَمَسَحَ بِهَا كَفَّيْهِ» .

L4373 And with a hadith we have narrated via the chain of Shababah ibn Sawwar from Sulaymān ibn Dāwūd al-Ḥarrānī from Sālim and Nāfiʿ from Ibn ʿUmar from the Messenger of Allah (ﷺ), who said regarding tayammum: "One strike for the face and one for the palms."

وَبِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ شَبَابَةَ بْنِ سَوَّارٍ عَنْ سُلَيْمَانَ بْنِ دَاوُد الْحَرَّانِيِّ عَنْ سَالِمٍ وَنَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي التَّيَمُّمِ «ضَرْبَةٌ لِلْوَجْهِ وَضَرْبَةٌ لِلْكَفَّيْنِ» .

L4374 Ali said: This is invalid, because one of them is through the chain of Al-Harish ibn Al-Khirrit, who is weak, and the second is through the chain of Sulayman ibn Dawud Al-Harrani, who is weak.

قَالَ عَلِيٌّ: وَهَذَا لَا شَيْءَ؛ لِأَنَّ أَحَدَهُمَا مِنْ طَرِيقِ الْحَرِيشِ بْنِ الْخِرِّيتِ وَهُوَ ضَعِيفٌ، وَالثَّانِي مِنْ طَرِيقِ سُلَيْمَانَ بْنِ دَاوُد الْحَرَّانِيِّ وَهُوَ ضَعِيفٌ.

L4375–4377 Among those who held the opinion that tayammum consists of two strikes

- one for the face and the other for the hands and forearms up to... The two schools: al-Ḥasan al-Baṣrī, Abū Ḥanīfah and his companions, Sufyān al-Thawrī, Ibn Abī Laylā, and al-Ḥasan ibn Ḥayy.

وَمِمَّنْ رَأَى أَنَّ التَّيَمُّمَ ضَرْبَتَانِ ضَرْبَةٌ لِلْوَجْهِ وَالْأُخْرَى لِلْيَدَيْنِ وَالذِّرَاعَيْنِ إِلَى الْمِرْفَقَيْنِ: الْحَسَنُ الْبَصْرِيُّ وَأَبُو حَنِيفَةَ وَأَصْحَابُهُ، وَسُفْيَانُ الثَّوْرِيُّ وَابْنُ أَبِي لَيْلَى وَالْحَسَنُ بْنُ حَيٍّ.

L4378 Al-Shafi'i and Abu Thawr said: "Unless there is an authentic report from the Messenger of Allah—peace and blessings be upon him—to the contrary, in which case we would follow that." Differing opinions on this matter have been reported from Al-Sha'bi. Ibrahim said: "It is more beloved to me that it extend to the elbows." For this reason, Malik said: "He did not require those who performed tayammum up to the wrists to repeat the prayer except within the prescribed time."

وَالشَّافِعِيُّ وَأَبُو ثَوْرٍ قَالَا: إِلَّا أَنْ يَصِحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَيْرُ ذَلِكَ فَنَقُولَ بِهِ، وَاخْتُلِفَ فِي ذَلِكَ عَنْ الشَّعْبِيِّ. وَقَالَ إِبْرَاهِيمُ: أَحَبُّ إِلَيَّ أَنْ يَكُونَ إِلَى الْمِرْفَقَيْنِ، وَلِهَذَا قَالَ مَالِكٌ، وَلَمْ يُرَ عَلَى مَنْ تَيَمَّمَ إِلَى الْكُوعَيْنِ أَنْ يُعِيدَ الصَّلَاةَ إِلَّا فِي الْوَقْتِ.

L4379 A group of people maintained that tayammum extends to the shoulders, citing as evidence the narration we transmitted through the chain of Al-Abbas ibn Abd al-Azim: from Abdullah ibn Muhammad ibn Asma ibn Ubayd, from his uncle Juwayriyya ibn Asma, from Malik ibn Anas, from al-Zuhri, who said: "Ubayd Allah ibn Abdullah ibn Utbah informed me from his father, from Ammar ibn Yasir, who said: 'We performed tayammum with Allah's Messenger—peace and blessings be upon him—wiping our faces and arms up to the shoulders.'"

We also transmitted this through Yaqub ibn Ibrahim ibn Sa'd's chain: "My father narrated to us from Salih ibn Kaysan, from al-Zuhri: 'Ubayd Allah ibn Abdullah ibn Utbah ibn Mas'ud informed me from Ibn Abbas, from Ammar ibn Yasir—who mentioned the revelation of the tayammum verse—saying: 'The Muslims rose with Allah's Messenger—peace and blessings be upon him—struck their hands upon the ground, then raised them without taking any dust. They wiped their faces, their arms up to the shoulders, and from the palms of their hands to the armpits.'"

وَقَدْ ذَهَبَ قَوْمٌ إِلَى أَنَّ التَّيَمُّمَ إِلَى الْمَنَاكِبِ، وَاحْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْعَبَّاسِ بْنِ عَبْدِ الْعَظِيمِ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ أَسْمَاءَ بْنِ عُبَيْدٍ عَنْ عَمِّهِ جُوَيْرِيَةَ بْنِ أَسْمَاءَ عَنْ مَالِكِ بْنِ أَنَسٍ عَنْ الزُّهْرِيِّ: أَخْبَرَنِي عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ أَبِيهِ عَنْ عَمَّارِ بْنِ يَاسِرٍ قَالَ: «تَيَمَّمْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَسَحْنَا بِوُجُوهِنَا وَأَيْدِينَا إِلَى الْمَنَاكِبِ» وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ يَعْقُوبَ بْنِ إِبْرَاهِيمَ بْنِ سَعْدٍ: ثنا أَبِي عَنْ صَالِحِ بْنِ كَيْسَانَ عَنْ الزُّهْرِيِّ: أَخْبَرَنِي عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ ابْنِ عَبَّاسٍ «عَنْ عَمَّارِ بْنِ يَاسِرٍ - فَذَكَرَ نُزُولَ آيَةِ التَّيَمُّمِ قَالَ: فَقَامَ الْمُسْلِمُونَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَضَرَبُوا أَيْدِيَهُمْ إِلَى الْأَرْضِ ثُمَّ رَفَعُوا أَيْدِيَهُمْ وَلَمْ يَقْبِضُوا مِنْ التُّرَابِ شَيْئًا، فَمَسَحُوا وُجُوهَهُمْ وَأَيْدِيَهُمْ إِلَى الْمَنَاكِبِ، وَمِنْ بُطُونِ أَيْدِيهِمْ إِلَى الْآبَاطِ» .

L4380 It was narrated to us through the chain of Sufyān ibn ʻUyaynah from al-Zuhrī: ʻUbayd Allāh ibn ʻAbd Allāh ibn ʻUtbah narrated to me from his father, from ʻAmmār—and by it, ʻAmmār and al-Zuhrī used to speak. It was narrated to us through the chain of Sulaymān ibn Ḥarb al-Wāshiḥī: Ḥammād

وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الزُّهْرِيِّ: حَدَّثَنِي عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ أَبِيهِ عَنْ عَمَّارٍ، وَبِهِ كَانَ يَقُولُ عَمَّارٌ وَالزُّهْرِيُّ، رُوِّينَا مِنْ طَرِيقِ سُلَيْمَانَ بْنِ حَرْبٍ

ibn Zayd narrated to us from Ayyūb al-Sikhtiyānī, who said: I heard al-Zuhrī say: Tayammum extends to the shoulders.

الْوَاشِحِيّ، ثنا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ قَالَ: سَمِعْتُ الزُّهْرِيَّ يَقُولُ: التَّيَمُّمُ إِلَى الْمَنْكِبَيْنِ.

L4381–4383

Ali said: This is an authentic narration, except it contains no explicit text indicating that the Messenger of Allah—peace and blessings be upon him—commanded this action to establish it as the obligatory ruling for dry ablution. Nor does it contain an explicit clarification that he—peace be upon him—knew of it and endorsed it, which would render it a recommended act. No valid proof exists in the action of anyone other than the Messenger of Allah—peace and blessings be upon him. Indeed, prolonged astonishment is warranted toward those who deem credible Umar's censure of Uthman for not praying after performing the ritual bath at Rawāḥ time [...] The Friday prayer in the presence of the Companions—may Allah be pleased with them—is cited as evidence to invalidate the obligation of ritual bathing (ghusl). However, this report confirms the obligation and denies its abandonment. Moreover, the practice of Muslims performing dry ablution (tayammum) up to the shoulders during the time of the Messenger of Allah—peace be upon him—is not regarded as proof of its obligation. Ali said: Since none of these narrations serves as decisive evidence—and people have differed as we mentioned—it is obligatory to return to what Allah has obligated us to refer to in disputes: the Quran and the Sunnah. We did so and discovered that Allah Almighty states: "Then perform tayammum with clean earth and wipe your faces and hands with it" (5:6). Allah specified only the hands, and we are certain that if He had intended to include the elbows, head, or feet, He would have clarified it explicitly, as He did for wudu. Similarly, if He had intended the entire body, He would have specified it, as in ghusl. Since He, Exalted and Majestic, did not mention beyond the face and hands, no one may add to this what Allah did not specify: the forearms, head, feet, or any other body parts. Thus, only the face and the hands up to the wrists—the minimal [portion] to which the term "hands" applies—are obligatory in tayammum. We find the authentic Sunnah affirming this, not the fabricated falsehoods.[23]

قَالَ عَلِيٌّ: هَذَا أَثَرٌ صَحِيحٌ إِلَّا أَنَّهُ لَيْسَ فِيهِ نَصٌّ بِبَيَانِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِذَلِكَ فَيَكُونُ ذَلِكَ حُكْمَ التَّيَمُّمِ وَفَرْضَهُ، وَلَا نَصٌّ بَيَانٍ بِأَنَّهُ - عَلَيْهِ السَّلَامُ - عَلِمَ بِذَلِكَ فَأَقَرَّهُ، فَيَكُونُ ذَلِكَ نَدْبًا مُسْتَحَبًّا، وَلَا حُجَّةَ فِي فِعْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّ الْعَجَبَ لَيَطُولُ مِمَّنْ يَرَى إِنْكَارَ عُمَرَ عَلَى عُثْمَانَ إِنْ لَمْ يُصَلِّ الْغُسْلَ بِالرَّوَاحِ إِلَى الْجُمُعَةِ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: حُجَّةً فِي إِبْطَالِ وُجُوبِ الْغُسْلِ، وَهَذَا الْخَبَرُ مُؤَكِّدٌ لِوُجُوبِهِ مُنْكِرٌ لِتَرْكِهِ، ثُمَّ لَا يَرَى عَمَلَ الْمُسْلِمِينَ فِي التَّيَمُّمِ إِلَى الْمَنَاكِبِ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُجَّةً فِي وُجُوبِ ذَلِكَ قَالَ عَلِيٌّ: فَإِذْ لَا حُجَّةَ فِي شَيْءٍ مِنْ هَذِهِ الْآثَارِ - وَقَدْ اخْتَلَفَ النَّاسُ كَمَا ذَكَرْنَا - فَالْوَاجِبُ الرُّجُوعُ إِلَى مَا افْتَرَضَ اللَّهُ الرُّجُوعَ إِلَيْهِ مِنَ الْقُرْآنِ وَالسُّنَّةِ عِنْدَ التَّنَازُعِ، فَفَعَلْنَا فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {فَتَيَمَّمُوا صَعِيدًا طَيِّبًا فَامْسَحُوا بِوُجُوهِكُمْ وَأَيْدِيكُمْ مِنْهُ} [المائدة: ٦] فَلَمْ يَحُدَّ اللَّهُ تَعَالَى غَيْرَ الْيَدَيْنِ، وَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ إِلَى الْمَرَافِقِ وَالرَّأْسِ وَالرِّجْلَيْنِ لَبَيَّنَهُ وَنَصَّ عَلَيْهِ كَمَا فَعَلَ فِي الْوُضُوءِ، وَلَوْ أَرَادَ جَمِيعَ الْجَسَدِ لَبَيَّنَهُ كَمَا فَعَلَ فِي الْغُسْلِ، فَإِذْ لَمْ يُرِدْ عَزَّ وَجَلَّ عَلَى ذِكْرِ الْوَجْهِ وَالْيَدَيْنِ، فَلَا يَجُوزُ لِأَحَدٍ أَنْ يَزِيدَ فِي ذَلِكَ مَا لَمْ يَذْكُرْهُ اللَّهُ تَعَالَى. مِنَ الذِّرَاعَيْنِ وَالرَّأْسِ وَالرِّجْلَيْنِ وَسَائِرِ الْجَسَدِ، وَلَمْ يَلْزَمْ فِي التَّيَمُّمِ إِلَّا الْوَجْهُ وَالْكَفَّانِ، وَهُمَا أَقَلُّ مَا يَقَعُ عَلَيْهِ اسْمُ يَدَيْنِ، وَوَجَدْنَا السُّنَّةَ الثَّابِتَةَ قَدْ جَاءَتْ بِذَلِكَ لَا الْأَكَاذِيبَ الْمُلَفَّقَةَ.

[23] **Qur'an references (L4381):** Qur'an 5:6 (Al-Ma'idah).

L4384 As narrated to us by Abd al-Rahman ibn Abdullah ibn Khalid, he narrated to us Ibrahim ibn Ahmad al-Balkhi, who narrated to us al-Farabrī, who narrated to us al-Bukhari, who narrated to us Muhammad ibn Kathir, who informed us from Shu'bah from al-Hakam ibn Utaybah from Dharr - he is Ibn Abdullah al-Marhabiyy - from Ibn Abd al-Rahman ibn Abza - he is Sa'īd - from his father, who said: Ammar ibn Yasir said to Umar ibn al-Khattab, "I performed Tayammum, so I came to the Messenger of Allah (peace and blessings be upon him) and he said: 'The face and the two hands are sufficient for you.'"

كَمَا حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيُّ حَدَّثَنَا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُحَمَّدُ بْنُ كَثِيرٍ أَخْبَرَنَا شُعْبَةُ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ ذَرٍّ - هُوَ ابْنُ عَبْدِ اللَّهِ الْمَرْهَبِيُّ - عَنِ ابْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبْزَى - هُوَ سَعِيدٌ - عَنْ أَبِيهِ قَالَ: قَالَ عَمَّارُ بْنُ يَاسِرٍ لِعُمَرَ بْنِ الْخَطَّابِ " تَمَعَّكْتُ فَأَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: «يَكْفِيكَ الْوَجْهُ وَالْكَفَّانِ» .

L4385 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Yahya ibn Yahya, Abu Bakr ibn Abi Shaybah, and Muhammad ibn Abdullah ibn Numayr—all of them narrated from Abu Muawiyah, from al-A'mash, from Shaqiq ibn Salamah, who said: I was sitting with Abdullah ibn Mas'ud and Abu Musa al-Ash'ari when he mentioned the Hadith. In it, Abu Musa said to Ibn Mas'ud: "Did you not hear the statement of Ammar? The Messenger of Allah, peace and blessings be upon him, sent me on an errand, and I became ritually impure but could not find water. So I rolled in the clean earth like an animal, then came to the Messenger of Allah, peace and blessings be upon him, and mentioned that to him. He said: 'It would have sufficed you to strike with your hands like this.' Then he struck the ground with his hands once, wiped his left hand over his right hand, then the back of his hands, and his face."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ كُلُّهُمْ عَنْ أَبِي مُعَاوِيَةَ عَنِ الْأَعْمَشِ عَنْ شَقِيقِ بْنِ سَلَمَةَ قَالَ: كُنْتُ جَالِسًا مَعَ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ وَأَبِي مُوسَى الْأَشْعَرِيِّ - فَذَكَرَ الْحَدِيثَ، وَفِيهِ - فَقَالَ أَبُو مُوسَى لِابْنِ مَسْعُودٍ " أَلَمْ تَسْمَعْ قَوْلَ عَمَّارٍ: «بَعَثَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَاجَةٍ فَأَجْنَبْتُ فَلَمْ أَجِدْ الْمَاءَ، فَتَمَرَّغْتُ فِي الصَّعِيدِ كَمَا تَتَمَرَّغُ الدَّابَّةُ، ثُمَّ أَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرْتُ ذَلِكَ لَهُ فَقَالَ إِنَّمَا كَانَ يَكْفِيكَ أَنْ تَقُولَ بِيَدَيْكَ هَكَذَا، ثُمَّ ضَرَبَ بِيَدَيْهِ الْأَرْضَ ضَرْبَةً وَاحِدَةً، ثُمَّ مَسَحَ الشِّمَالَ عَلَى الْيَمِينِ وَظَاهِرَ كَفَّيْهِ وَوَجْهَهُ؟»

L4386–4387 And through him to Muslim: Abdullah ibn Hashim al-Abdi narrated to us, Yahya ibn Sa'id al-Qattan narrated to us from Shu'bah, who narrated from al-Hakam from Dharr—who is Ibn Abdullah—from Sa'id ibn Abd al-Rahman ibn Abza from his father that a man came to Umar ibn al-Khattab and said: "I became ritually impure and did not find water." Umar said: "Do not pray." Then Ammar said: "Do you not remember, O Commander of the Faithful, when you and I were in a military expedition, and we became ritually impure and did not find water? As for you, you did not pray, but as for me, I rolled in the dust and prayed. Then the Messenger of Allah (peace be upon him)

وَبِهِ إِلَى مُسْلِمٍ ثنا عَبْدُ اللَّهِ بْنُ هَاشِمٍ الْعَبْدِيُّ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ شُعْبَةَ ثنا الْحَكَمُ عَنْ ذَرٍّ - هُوَ ابْنُ عَبْدِ اللَّهِ - عَنْ سَعِيدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبْزَى عَنْ أَبِيهِ أَنَّ رَجُلًا أَتَى عُمَرَ بْنَ الْخَطَّابِ فَقَالَ: إِنِّي أَجْنَبْتُ فَلَمْ أَجِدْ مَاءً، قَالَ عُمَرُ لَا تُصَلِّ، فَقَالَ عَمَّارٌ: أَمَا تَذْكُرُ يَا أَمِيرَ الْمُؤْمِنِينَ إِذَا أَنَا وَأَنْتَ فِي سَرِيَّةٍ فَأَجْنَبْنَا فَلَمْ نَجِدْ مَاءً، فَأَمَّا أَنْتَ فَلَمْ تُصَلِّ، وَأَمَّا أَنَا فَتَمَعَّكْتُ فِي التُّرَابِ وَصَلَّيْتُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ

said: 'It would have sufficed you to strike the earth with your hands, then blow into them, then wipe your face and hands with them.'" He mentioned the rest of the hadith. Ali said: "This hadith invalidates analogical reasoning, for Ammar assumed that the unmentioned aspect of tayammum for major impurity would have the same ruling as the full ablution for major impurity, since it is a substitute for it. But the Messenger of Allah (peace be upon him) invalidated that and made it known that everything has its own ruling specified in the texts. It also indicates that a companion may err or forget, and it contains the explicit ruling on tayammum."

L4388 Narrated to us by Abd al-Rahman ibn Abd Allah ibn Khalid, narrated to us by Ibrahim ibn Ahmad, narrated to us by al-Farbari, narrated to us by al-Bukhari, narrated to us by Yahya ibn Bukayr, narrated to us by al-Layth ibn Sa'id, from Ja'far ibn Rabi'ah, from Abd al-Rahman al-A'raj, who said: I heard 'Umayr, the client of Ibn 'Abbas, say: "I came with 'Abd Allah ibn Yasar, the client of Maymunah, the wife of the Prophet (peace be upon him), until we entered the presence of Abu Juhaym ibn al-Harith ibn al-Simmah al-Ansari. Abu Juhaym said: 'The Messenger of Allah (peace be upon him) came from the direction of the Well of the Camel, and a man met him and greeted him. He did not return the greeting until he turned toward a wall and wiped his face and hands, then he returned the greeting.'"

L4389 Abu Muhammad said: This is the established position, not the hadith of Muhammad ibn Thabit. This is a recommended act meaning tayammum for responding to the Islamic greeting while resident.

L4390 And according to this, a group of the early predecessors held the view, as we have been narrated from ʿAṭāʾ ibn al-Sāʾib from Abū al-Bakhtarī, from ʿAlī ibn Abī Ṭālib, who said: "Tayammum entails one stroke for the face and one stroke for the hands up to the wrists."

L4391–4393 It has been transmitted to us from Ahmad ibn Hanbal: Yahya ibn Sa'id al-Qattan → Shubah → Husayn ibn 'Abd al-Rahman → Abu Malik al-Ashja'i, who said: "I heard 'Ammar ibn Yasir say: 'Tayammum is one wiping for the

عَلَيْهِ وَسَلَّمَ - «إِنَّمَا كَانَ يَكْفِيكَ أَنْ تَضْرِبَ الْأَرْضَ بِيَدَيْكَ ثُمَّ تَنْفُخَ ثُمَّ تَمْسَحَ بِهِمَا وَجْهَكَ وَكَفَّيْكَ» وَذَكَرَ بَاقِيَ الْحَدِيثِ. قَالَ عَلِيٌّ: فِي هَذَا الْحَدِيثِ إِبْطَالُ الْقِيَاسِ، لِأَنَّ عَمَّارًا قَدَّرَ أَنَّ الْمَسْكُوتَ عَنْهُ مِنَ التَّيَمُّمِ لِلْجَنَابَةِ حُكْمُهُ حُكْمُ الْغُسْلِ لِلْجَنَابَةِ، إِذْ هُوَ بَدَلٌ مِنْهُ، فَأَبْطَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ، وَأَعْلَمَهُ أَنَّ لِكُلِّ شَيْءٍ حُكْمَهُ الْمَنْصُوصَ عَلَيْهِ فَقَطْ، وَفِيهِ أَنَّ الصَّاحِبَ قَدْ يَهِمُ وَيَنْسَى، وَفِيهِ نَصُّ حُكْمِ التَّيَمُّمِ.

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا يَحْيَى بْنُ بُكَيْرٍ ثنا اللَّيْثُ بْنُ سَعِيدٍ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ عَنْ عَبْدِ الرَّحْمَنِ الْأَعْرَجِ قَالَ سَمِعْتُ عُمَيْرًا مَوْلَى ابْنِ عَبَّاسٍ قَالَ: أَقْبَلْتُ أَنَا وَعَبْدُ اللَّهِ بْنُ يَسَارٍ مَوْلَى مَيْمُونَةَ زَوْجِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى دَخَلْنَا عَلَى أَبِي جُهَيْمِ بْنِ الْحَارِثِ بْنِ الصِّمَّةِ الْأَنْصَارِيِّ، فَقَالَ أَبُو جُهَيْمٍ «أَقْبَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ نَحْوِ بِئْرِ جَمَلٍ فَلَقِيَهُ رَجُلٌ فَسَلَّمَ عَلَيْهِ فَلَمْ يَرُدَّ عَلَيْهِ السَّلَامَ، حَتَّى أَقْبَلَ عَلَى الْجِدَارِ فَمَسَحَ بِوَجْهِهِ وَيَدَيْهِ ثُمَّ رَدَّ السَّلَامَ» .

قَالَ أَبُو مُحَمَّدٍ: هَذَا هُوَ الثَّابِتُ لَا حَدِيثُ مُحَمَّدِ بْنِ ثَابِتٍ. وَهَذَا فِعْلٌ مُسْتَحَبٌّ يَعْنِي التَّيَمُّمَ لِرَدِّ السَّلَامِ فِي الْحَضَرِ.

وَبِهَذَا يَقُولُ جَمَاعَةٌ مِنَ السَّلَفِ، كَمَا رُوِّينَا عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي الْبَخْتَرِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: التَّيَمُّمُ ضَرْبَةٌ لِلْوَجْهِ وَضَرْبَةٌ لِلْيَدَيْنِ إِلَى الرُّسْغَيْنِ.

وَرُوِّينَا عَنْ أَحْمَدَ بْنِ حَنْبَلٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ ثنا شُعْبَةُ ثنا حُصَيْنُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ أَبِي مَالِكٍ الْأَشْجَعِيِّ قَالَ: سَمِعْتُ عَمَّارَ بْنَ يَاسِرٍ يَقُولُ: التَّيَمُّمُ ضَرْبَةٌ لِلْوَجْهِ

face and the hands.'" It has also been transmitted to us from Muhammad ibn Abi ʻAdiyy → Shubah from... Husayn ibn Abd al-Rahman reported from Abu Malik that he heard Ammar ibn Yasir say in his sermon: "Tayammum is performed like this," and he struck once [to apply dust] to the face and palms.

وَالْكَفَّيْنِ، وَرُوِّينَا عَنْ مُحَمَّدِ بْنِ أَبِي عَدِيٍّ حَدَّثَنَا شُعْبَةُ عَنْ حُصَيْنِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي مَالِكٍ أَنَّهُ سَمِعَ عَمَّارَ بْنَ يَاسِرٍ يَقُولُ فِي خُطْبَتِهِ: التَّيَمُّمُ هَكَذَا وَضَرَبَ ضَرْبَةً لِلْوَجْهِ وَالْكَفَّيْنِ.

L4394 Abu Muhammad said: This occurred in the presence of the Companions during the sermon, and not a single one of those present opposed him.

قَالَ أَبُو مُحَمَّدٍ: هَذَا بِحَضْرَةِ الصَّحَابَةِ فِي الْخُطْبَةِ، فَلَمْ يُخَالِفْهُ مِمَّنْ حَضَرَ أَحَدٌ.

L4395 From Ahmad ibn Hanbal: Miskin ibn Bukayr narrated to me, who narrated from Al-Awzaʻī, from ʻAṭāʾ, that Ibn ʻAbbās and Ibn Masʻūd used to say: "Tayammum is for the hands and the face."

وَعَنْ أَحْمَدَ بْنِ حَنْبَلٍ حَدَّثَنِي مِسْكِينُ بْنُ بُكَيْرٍ ثنا الْأَوْزَاعِيُّ عَنْ عَطَاءٍ أَنَّ ابْنَ عَبَّاسٍ وَابْنَ مَسْعُودٍ كَانَا يَقُولَانِ: التَّيَمُّمُ لِلْكَفَّيْنِ وَالْوَجْهِ.

L4396 Al-Awzaʻī said—and ʻAṭāʾ and Makhūl also held this opinion—and it is authentically reported from Ash-Shaʻbī, Qatādah, Saʻīd ibn al-Musayyib, and ʻUrwah ibn az-Zubayr. This is likewise the position of Al-Awzaʻī, Aḥmad ibn Ḥanbal, Isḥāq, and Dāwūd.

قَالَ الْأَوْزَاعِيُّ وَبِهَذَا كَانَ يَقُولُ عَطَاءٌ وَمَكْحُولٌ، وَهُوَ الثَّابِتُ عَنْ الشَّعْبِيِّ وَقَتَادَةَ وَسَعِيدِ بْنِ الْمُسَيِّبِ وَعُرْوَةَ بْنِ الزُّبَيْرِ وَبِهِ يَقُولُ الْأَوْزَاعِيُّ وَأَحْمَدُ بْنُ حَنْبَلٍ وَإِسْحَاقُ وَدَاوُد.

L4397 Ali said: As for the obligation to fully cover the face and hands, we know of no proof for those who consider it obligatory except an analogy to thoroughly washing them with water.

قَالَ عَلِيٌّ: وَأَمَّا اسْتِيعَابُ الْوَجْهِ وَالْكَفَّيْنِ فَمَا نَعْلَمُ فِي ذَلِكَ لِمَنْ أَوْجَبَهُ حُجَّةً إلَّا قِيَاسَ ذَلِكَ عَلَى اسْتِيعَابِهِمَا بِالْمَاءِ.

L4398 Abu Muhammad said: Analogy is invalid. Furthermore, even if analogy were valid, this case derived from it would still be invalid. For in our ruling and theirs, the obligation for the feet in ablution is ritual washing. When wiping over the khuffs was substituted for this, the requirement of complete coverage became nullified according to them. Thus they are obliged—if they understand what analogy truly is—to accept that since the ruling for the face and hands in ablution is ritual washing, and wiping in tayammum substitutes for it, complete coverage should likewise be nullified as it was nullified in wiping over khuffs. This is especially so since among the foundational principles of analogy's proponents is that the thing resembling another does not possess the same inherent legal force as the original itself.

قَالَ أَبُو مُحَمَّدٍ: وَالْقِيَاسُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّ حُكْمَ الرِّجْلَيْنِ عِنْدَنَا وَعِنْدَهُمْ فِي الْوُضُوءِ الْغُسْلُ، فَلَمَّا عَوَّضَ مِنْهُ الْمَسْحَ عَلَى الْخُفَّيْنِ سَقَطَ الِاسْتِيعَابُ عِنْدَهُمْ، فَيَلْزَمُهُمْ - إنْ كَانُوا يَدْرُونَ مَا الْقِيَاسُ - أَنَّ كَذَلِكَ لَمَّا كَانَ حُكْمُ الْوَجْهِ وَالْيَدَيْنِ فِي الْوُضُوءِ الْغُسْلَ، ثُمَّ عَوَّضَ مِنْهُ الْمَسْحَ فِي التَّيَمُّمِ، أَنْ يَسْقُطَ الِاسْتِيعَابُ كَمَا سَقَطَ فِي الْمَسْحِ عَلَى الْخُفَّيْنِ، لَا سِيَّمَا وَمِنْ أُصُولِ أَصْحَابِ الْقِيَاسِ أَنَّ الْمُشَبَّهَ بِالشَّيْءِ لَا يَقْوَى قُوَّةَ الشَّيْءِ بِعَيْنِهِ

L4399 Abu Muhammad said: All of this is baseless. We only cite it to demon-

strate their contradictions, the corruption of their foundational principles, and their mutual destruction of one another—just as we refute every sect, doctrine, and opinion by citing their own mutually conflicting assertions, since they themselves validate all these claims. This is not because we consider any of them valid, but our primary argument here is that Allah the Exalted said: *"In a clear Arabic tongue"* (26:195), and He said: *"We have not sent any messenger except in the language of his people to clarify for them"* (14:4). Linguistically, "ritual wiping" does not necessitate complete coverage. We must therefore adhere to this linguistic meaning, as no Quranic verse, Sunnah, scholarly consensus, Companion's statement, indeed, not even analogical reasoning has stipulated complete coverage in tayammum. Thus, this claim is invalid. Among those who upheld our position—that only what linguistically constitutes "wiping" is required—were Abu Ayyūb Sulaymān ibn Dāwūd al-Hāshimī and others.[24]

L4400–4402 Abu Muhammad said: What is astonishing is that the term *masḥ* (wiping) has not been mentioned in the revealed law except in four instances. The specific areas and no more: wiping the head; wiping the face and hands in dry ablution (tayammum); wiping over the leather socks, turban, and khimar; and wiping the Black Stone during circumambulation. None of our opponents who disagree with us have disputed that wiping the leather socks and wiping the Black Stone do not require full wiping. Similarly, those among them who advocated wiping over the turban and khimar contradicted this in dry ablution, imposing full wiping without evidence through arbitrariness. They contradicted themselves regarding the head, for neither Abū Ḥanīfah nor al-Shāfiʿī required full wiping of it, while Mālik was inclined to mandate it but stopped short. From what basis, then, did they restrict wiping in dry ablution to requiring full wiping—without any proof from the Quran, a sound or weak Sunnah, linguistic precedent, consensus, a companion's opinion, or analogy? Success comes solely from Allah.

L4403 **A juristic issue: If the deceased lacks water.**

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّهُ لَا شَيْءَ، وَإِنَّمَا نُورِدُهُ لِنُرِيَهُمْ تَنَاقُضَهُمْ وَفَسَادَ أُصُولِهِمْ، وَهَدْمَ بَعْضِهَا لِبَعْضٍ، كَمَا نَحْتَجُّ عَلَى كُلِّ مِلَّةٍ وَكُلِّ نِحْلَةٍ وَكُلِّ قَوْلَةٍ بِأَقْوَالِهَا الْهَادِمِ بَعْضُهَا لِبَعْضٍ، لِأَنَّهُمْ يُصَحِّحُونَهَا كُلَّهَا، لَا عَلَى أَنَّنَا نُصَحِّحُ مِنْهَا شَيْئًا، وَإِنَّمَا عُمْدَتُنَا هَهُنَا أَنَّ اللَّهَ تَعَالَى قَالَ: {بِلِسَانٍ عَرَبِيٍّ مُبِينٍ} [الشعراء: ١٩٥] وَقَالَ تَعَالَى: {وَمَا أَرْسَلْنَا مِنْ رَسُولٍ إِلا بِلِسَانِ قَوْمِهِ لِيُبَيِّنَ لَهُمْ} [إبراهيم: ٤] وَالْمَسْحُ فِي اللُّغَةِ لَا يَقْتَضِي الِاسْتِيعَابَ، فَوَجَبَ الْوُقُوفُ عِنْدَ ذَلِكَ، وَلَمْ يَأْتِ بِالِاسْتِيعَابِ فِي التَّيَمُّمِ قُرْآنٌ وَلَا سُنَّةٌ وَلَا إِجْمَاعٌ وَلَا قَوْلُ صَاحِبٍ، نَعَمْ وَلَا قِيَاسٌ، فَبَطَلَ الْقَوْلُ بِهِ، وَمِمَّنْ قَالَ بِقَوْلِنَا فِي هَذَا، وَأَنَّهُ إِنَّمَا هُوَ مَا وَقَعَ عَلَيْهِ اسْمُ مَسْحٍ فَقَطْ: أَبُو أَيُّوبَ سُلَيْمَانُ بْنُ دَاوُد الْهَاشِمِيُّ وَغَيْرُهُ.

قَالَ أَبُو مُحَمَّدٍ: وَالْعَجَبُ أَنَّ لَفْظَةَ الْمَسْحِ لَمْ تَأْتِ فِي الشَّرِيعَةِ إِلَّا فِي أَرْبَعَةِ مَوَاضِعَ وَلَا مَزِيدَ: مَسْحُ الرَّأْسِ وَمَسْحُ الْوَجْهِ وَالْيَدَيْنِ فِي التَّيَمُّمِ وَمَسْحٌ عَلَى الْخُفَّيْنِ وَالْعِمَامَةِ وَالْخِمَارِ، وَمَسْحُ الْحَجَرِ الْأَسْوَدِ فِي الطَّوَافِ، وَلَمْ يَخْتَلِفْ أَحَدٌ مِنْ خُصُومِنَا الْمُخَالِفِينَ لَنَا فِي أَنَّ مَسْحَ الْخُفَّيْنِ وَمَسْحَ الْحَجَرِ الْأَسْوَدِ لَا يَقْتَضِي الِاسْتِيعَابَ، وَكَذَلِكَ مَنْ قَالَ مِنْهُمْ بِالْمَسْحِ عَلَى الْعِمَامَةِ وَالْخِمَارِ، ثُمَّ نَقَضُوا ذَلِكَ فِي التَّيَمُّمِ، فَأَوْجَبُوا فِيهِ الِاسْتِيعَابَ تَحَكُّمًا بِلَا بُرْهَانٍ، وَاضْطَرَبُوا فِي الرَّأْسِ، فَلَمْ يُوجِبْ أَبُو حَنِيفَةَ وَلَا الشَّافِعِيُّ فِيهِ الِاسْتِيعَابَ، وَهَمَّ مَالِكٌ بِأَنْ يُوجِبَهُ، وَكَادَ فَلَمْ يَفْعَلْ، فَمِنْ أَيْنَ وَقَعَ لَهُمْ تَخْصِيصُ الْمَسْحِ فِي التَّيَمُّمِ بِالِاسْتِيعَابِ بِلَا حُجَّةٍ، لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ وَلَا مِنْ لُغَةٍ وَلَا مِنْ إِجْمَاعٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ وَلَا مِنْ قِيَاسٍ؟ وَبِاللَّهِ التَّوْفِيقُ.

[مَسْأَلَةٌ لَوْ عَدِمَ الْمَيِّتُ الْمَاءَ]

[24] **Qur'an references (L4399):** Qur'an 26:195 (Ash-Shu'ara); Qur'an 14:4 (Ibrahim).

251: Issue

٢٥١ - مَسْأَلَةٌ:

If the deceased lacks water, tayammum should be performed for him as the living perform tayammum, because washing him is an obligation. We have mentioned the Prophet's teaching—peace and blessings of Allah be upon him—that dust is a purifier when water is not found. This applies universally to all obligatory purification, and there is no disagreement that every washing (ghusl) is a purifier.

وَإِنْ عَدِمَ الْمَيِّتُ الْمَاءَ يُمِّمَ كَمَا يَتَيَمَّمُ الْحَيُّ؛ لِأَنَّ غُسْلَهُ فَرْضٌ، وَقَدْ ذَكَرْنَا عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ التُّرَابَ طَهُورٌ إِذَا لَمْ نَجِدْ الْمَاءَ، فَهَذَا عُمُومٌ لِكُلِّ طَهُورٍ وَاجِبٍ، وَلَا خِلَافَ فِي أَنَّ كُلَّ غُسْلٍ طَهُورٌ.

Issue: Tayammum is not permissible except with the soil.

[مَسْأَلَةٌ لَا يَجُوزُ التَّيَمُّمُ إِلَّا بِالْأَرْضِ]

252 – Issue

٢٥٢ - مَسْأَلَةٌ

Tayammum is permissible only with earth. Earth is then divided into two categories: soil and non-soil. As for soil, Tayammum with it is permissible whether it is in its natural place on the ground, removed and placed in a vessel, on a garment, on a human or animal's hand, or if dust is shaken from any of that, gathering enough dust to place the palm upon it. This applies even if the soil is part of a mud brick, mud-brick structure, or similar. As for non-soil substances—such as pebbles, gravel, desert sand, crushed stone, rocky hills, smooth rocks, marble, sand, antimony mineral, arsenic mineral, quicklime, plaster, gold mineral, tutty, sulfur, lapis lazuli, salt mineral, or other similar substances—they are excluded.

وَلَا يَجُوزُ التَّيَمُّمُ إِلَّا بِالْأَرْضِ، ثُمَّ تَنْقَسِمُ الْأَرْضُ إِلَى قِسْمَيْنِ: تُرَابٌ وَغَيْرُ تُرَابٍ، فَأَمَّا التُّرَابُ فَالتَّيَمُّمُ بِهِ جَائِزٌ، كَانَ فِي مَوْضِعِهِ مِنْ الْأَرْضِ أَوْ مَنْزُوعًا مَجْعُولًا فِي إِنَاءٍ أَوْ فِي ثَوْبٍ أَوْ عَلَى يَدِ إِنْسَانٍ أَوْ حَيَوَانٍ، أَوْ نُفِضَ غُبَارٌ مِنْ كُلِّ ذَلِكَ، فَاجْتُمِعَ مِنْهُ مَا يُوضَعُ عَلَيْهِ الْكَفُّ، أَوْ كَانَ فِي بِنَاءِ لَبِنٍ أَوْ طَابِيَةٍ أَوْ غَيْرِ ذَلِكَ، وَأَمَّا مَا عَدَا التُّرَابَ مِنْ الْحَصَى أَوْ الْحَصْبَاءِ أَوْ الصَّحْرَاءِ أَوْ الرَّضْرَاضِ أَوْ الْهِضَابِ أَوْ الصَّفَا أَوْ الرُّخَامِ أَوْ الرَّمْلِ أَوْ مَعْدِنِ كُحْلٍ أَوْ مَعْدِنِ زِرْنِيخٍ أَوْ جَيَّارٍ أَوْ جِصٍّ أَوْ مَعْدِنِ ذَهَبٍ أَوْ تُوتِيَاءَ أَوْ كِبْرِيتٍ أَوْ لَازَوَرْدَ أَوْ مَعْدِنِ مِلْحٍ أَوْ غَيْرِ ذَلِكَ.

If it remains on the earth without being transferred to another substance, tayammum with all such materials is permissible. If any of it has been moved to a vessel, garment, or similar object, tayammum with any portion of it becomes impermissible. Tayammum is impermissible with baked bricks. If they are pulverized until the material is termed dust, tayammum with it becomes permissible. Similarly, tayammum is impermissible with mud. If it dries until it is termed dust, tayammum with it becomes permissible. Tayammum is also impermissible with salt crystallized from water—whether remaining in its original place or not—nor with snow, leaves, grass, wood, or anything

فَإِنْ كَانَ فِي الْأَرْضِ غَيْرَ مُزَالٍ عَنْهَا إِلَى شَيْءٍ آخَرَ فَالتَّيَمُّمُ بِكُلِّ ذَلِكَ جَائِزٌ، وَإِنْ كَانَ شَيْءٌ مِنْ ذَلِكَ مُزَالٌ إِلَى إِنَاءٍ أَوْ إِلَى ثَوْبٍ وَنَحْوِ ذَلِكَ لَمْ يَجُزْ التَّيَمُّمُ بِشَيْءٍ مِنْهُ، وَلَا يَجُوزُ التَّيَمُّمُ بِالْآجُرِّ، فَإِنْ رُضَّ حَتَّى يَقَعَ عَلَيْهِ اسْمُ تُرَابٍ جَازَ التَّيَمُّمُ بِهِ، وَكَذَلِكَ الطِّينُ لَا يَجُوزُ التَّيَمُّمُ بِهِ، فَإِنْ جَفَّ حَتَّى يُسَمَّى تُرَابًا جَازَ التَّيَمُّمُ بِهِ، وَلَا يَجُوزُ التَّيَمُّمُ

else that forms a barrier between the person performing tayammum and the earth.

L4410–4412 The evidence for that is the statement of Allah, the Exalted: "So perform Tayammum with clean earth and wipe your faces and hands up to the wrists with it." [Al-Mā'idah: 6] The Messenger of Allah—peace and blessings of Allah be upon him—said: "Its soil has been made a purifier for us when we do not find water." He—peace be upon him—also said: "The earth has been made a place of prostration and a purifier for me." We have previously mentioned all of this with its chain of transmission, rendering its repetition superfluous. Thus, it is established that tayammum is only permissible with what Allah the Exalted and His Messenger—peace and blessings of Allah be upon him—have explicitly specified. The textual evidence only mentions what we have stated regarding al-ṣaʿīd (the surface of the earth) in the language in which the Quran was revealed, the earth (which is well-known), and soil exclusively. We found that soil—whether removed from the earth, carried in a garment, placed in a vessel, on a person's face, or on a horse's sweat, or on matted wool/hair, or formed into mud bricks, tiles, crushed baked bricks, or otherwise—remains soil and does not lose this name. Therefore, tayammum with it is permissible under all circumstances. We found that baked bricks and clay lose the name of soil, earth, and al-ṣaʿīd, making tayammum with them impermissible. However, if they are crushed or dried, they regain the name "soil," and tayammum becomes permissible. We also observed that all other materials we mentioned—such as stone, sand, and metallic ores—as long as they are in the earth, fall under the name of al-ṣaʿīd and earth, making tayammum with them permissible. However, once removed from the earth, they lose the names earth and al-ṣaʿīd and are not called soil, rendering tayammum with any of them impermissible. We further noted that salt solidified from water, snow, grass, and leaves are not called al-ṣaʿīd, earth, or soil, making tayammum with them impermissible.[25][26]

بِمِلْحٍ انْعَقَدَ مِنْ الْمَاءِ كَانَ فِي مَوْضِعِهِ أَوْ لَمْ يَكُنْ، وَلَا بِثَلْجٍ وَلَا بِوَرَقٍ وَلَا بِحَشِيشٍ وَلَا بِخَشَبٍ وَلَا بِغَيْرِ ذَلِكَ مِمَّا يَحُولُ بَيْنَ الْمُتَيَمِّمِ وَبَيْنَ الْأَرْضِ.

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {فَتَيَمَّمُوا صَعِيدًا طَيِّبًا فَامْسَحُوا بِوُجُوهِكُمْ وَأَيْدِيكُمْ مِنْهُ} [المائدة: ٦] وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَجُعِلَتْ تُرْبَتُهَا لَنَا طَهُورًا إذَا لَمْ نَجِدْ الْمَاءَ» وَقَالَ - عَلَيْهِ السَّلَامُ -: «جُعِلَتْ لِي الْأَرْضُ مَسْجِدًا وَطَهُورًا» وَقَدْ ذَكَرْنَا كُلَّ ذَلِكَ بِإِسْنَادِهِ قَبْلُ فَأَغْنَى عَنْ إعَادَتِهِ، فَصَحَّ أَنَّهُ لَا يَجُوزُ التَّيَمُّمُ إلَّا بِمَا نَصَّ عَلَيْهِ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَأْتِ النَّصُّ إلَّا بِمَا ذَكَرْنَا مِنْ الصَّعِيدِ، وَهُوَ وَجْهُ الْأَرْضِ فِي اللُّغَةِ الَّتِي بِهَا نَزَلَ الْقُرْآنُ وَبِالْأَرْضِ - وَهِيَ مَعْرُوفَةٌ - وَبِالتُّرَابِ فَقَطْ فَوَجَدْنَا التُّرَابَ سَوَاءٌ كَانَ مَنْزُوعًا عَنْ الْأَرْضِ، مَحْمُولًا فِي ثَوْبٍ أَوْ فِي إنَاءٍ أَوْ عَلَى وَجْهِ إنْسَانٍ أَوْ عَرَقِ فَرَسٍ أَوْ لَبَدٍ أَوْ كَانَ لَبِنًا أَوْ طَابِيَةً أَوْ رُضَاضَ آجُرٍّ أَوْ غَيْرَ ذَلِكَ فَإِنَّهُ تُرَابٌ لَا يَسْقُطُ عَنْهُ هَذَا الِاسْمُ، فَكَانَ التَّيَمُّمُ بِهِ عَلَى كُلِّ حَالٍ جَائِزًا، وَوَجَدْنَا الْآجُرَّ وَالطِّينَ قَدْ سَقَطَ عَنْهُمَا اسْمُ تُرَابٍ وَاسْمُ أَرْضٍ وَاسْمُ صَعِيدٍ فَلَمْ يَجُزْ التَّيَمُّمُ بِهِ، فَإِذَا رُضَّ أَوْ جُفِّفَ عَادَ عَلَيْهِ اسْمُ تُرَابٍ فَجَازَ التَّيَمُّمُ بِهِ، وَوَجَدْنَا سَائِرَ مَا ذَكَرْنَا مِنْ الصَّخْرِ وَمِنْ الرَّمْلِ، وَمِنْ الْمَعَادِنِ مَا دَامَتْ فِي الْأَرْضِ، فَإِنَّ اسْمَ الصَّعِيدِ وَاسْمَ الْأَرْضِ يَقَعُ عَلَى كُلِّ ذَلِكَ، فَكَانَ التَّيَمُّمُ بِكُلِّ ذَلِكَ جَائِزًا، وَوَجَدْنَا كُلَّ ذَلِكَ إذَا أُزِيلَ عَنْ الْأَرْضِ سَقَطَ عَنْهُ اسْمُ الْأَرْضِ وَاسْمُ الصَّعِيدِ وَلَمْ يُسَمَّ تُرَابًا، فَلَمْ يَجُزْ التَّيَمُّمُ بِشَيْءٍ مِنْ ذَلِكَ، وَوَجَدْنَا الْمِلْحَ الْمُنْعَقِدَ مِنْ الْمَاءِ، وَالثَّلْجَ وَالْحَشِيشَ وَالْوَرَقَ لَا يُسَمَّى شَيْئًا مِنْ ذَلِكَ صَعِيدًا وَلَا أَرْضًا وَلَا تُرَابًا، فَلَمْ يَجُزْ التَّيَمُّمُ بِهِ.

[25] **Hadith references (L4410):** Sahih Muslim 522a; Bulugh al-Maram 127; Mishkat al-Masabih 526.

[26] **Qur'an references (L4410):** Qur'an 5:6 (Al-Ma'idah).

وَهَذَا هُوَ الَّذِي لَا يَجُوزُ غَيْرُهُ، وَفِي هَذَا خِلَافٌ مِنْ ذَلِكَ أَنَّ الْحَسَنَ بْنَ زِيَادٍ قَالَ: إنْ وُضِعَ التُّرَابُ فِي ثَوْبٍ لَمْ يَجُزْ التَّيَمُّمُ بِهِ، وَهَذَا تَفْرِيقٌ لَا دَلِيلَ عَلَيْهِ، وَقَالَ مَالِكٌ: يَتَيَمَّمُ عَلَى الثَّلْجِ، وَرُوِيَ أَيْضًا ذَلِكَ عَنْ أَبِي حَنِيفَةَ، وَهَذَا خَطَأٌ، لِأَنَّهُ لَمْ يَأْتِ بِهِ نَصٌّ وَلَا إجْمَاعٌ. فَإِنْ قِيلَ: مَا حَالَ بَيْنَكَ وَبَيْنَ الْأَرْضِ فَهُوَ أَرْضٌ.

L4413 This is the only permissible position, and no other is allowed. There is disagreement concerning this, among which is that Al-Ḥasan ibn Ziyād said: "If dust is placed in a garment, it was not permissible to perform tayammum with it." This is a distinction unsupported by evidence. Mālik said: "One may perform tayammum upon snow," and this is also narrated from Abū Ḥanīfah. This is erroneous, as neither textual proof nor consensus exists for it. If asked: "Whatever lies between you and the earth is earth."

قِيلَ لَهُمْ فَإِنْ حَالَ بَيْنَهُ وَبَيْنَ الْأَرْضِ قَتْلَى أَوْ غَنَمٌ أَوْ ثِيَابٌ أَوْ خَشَبٌ أَيَكُونُ ذَلِكَ مِنْ الْأَرْضِ فَيُتَيَمَّمُ عَلَيْهِ؟ وَهُمْ لَا يَقُولُونَ بِذَلِكَ. وَقَوْلُهُمْ: إنَّ مَا حَالَ بَيْنَكَ وَبَيْنَ الْأَرْضِ فَهُوَ أَرْضٌ أَوْ مِنْ الْأَرْضِ - فَقَوْلٌ فَاسِدٌ لَمْ يُوجِبْهُ قُرْآنٌ وَلَا سُنَّةٌ وَلَا لُغَةٌ وَلَا إجْمَاعٌ وَلَا قَوْلُ صَاحِبٍ وَلَا قِيَاسٌ ".

L4414 They were asked: If the slain, sheep, garments, or wood intervene between him and the earth, would these be considered part of the earth, permitting tayammum to be performed on them? Yet they do not uphold this. Their claim that "whatever intervenes between you and the earth is [considered] earth or part of the earth" is an invalid opinion, for neither the Quran, the Sunnah, linguistic evidence, consensus, the view of a Companion, nor analogical reasoning has necessitated it.

قَالَ عَلِيٌّ: وَالثَّلْجُ وَالطِّينُ وَالْمِلْحُ لَا يُتَوَضَّأُ بِشَيْءٍ مِنْهَا وَلَا يُتَيَمَّمُ، لِأَنَّهُ لَيْسَ شَيْءٌ مِنْ ذَلِكَ يُسَمَّى مَاءً وَلَا تُرَابًا وَلَا أَرْضًا وَلَا صَعِيدًا، فَإِذَا ذَابَ الْمِلْحُ وَالثَّلْجُ فَصَارَا مَاءً جَازَ الْوُضُوءُ بِهِمَا، لِأَنَّهُمَا مَاءٌ، وَإِذَا جَفَّ الطِّينُ جَازَ التَّيَمُّمُ بِهِ لِأَنَّهُ تُرَابٌ.

L4415 Ali said: Snow, clay, and salt - ablution should not be performed with any of them, nor tayammum, for none of these is called water, soil, earth, or clean earth (ṣaʿīd). When salt and snow melt and turn into water, ablution with them becomes permissible because they are water. When clay dries, tayammum with it becomes permissible because it transforms into soil.

وَقَالَ الشَّافِعِيُّ وَأَبُو يُوسُفَ: لَا يَتَيَمَّمُ إلَّا بِالتُّرَابِ خَاصَّةً، لَا بِشَيْءٍ غَيْرِ ذَلِكَ، فَادَّعَوْا أَنَّ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَجُعِلَتْ تُرْبَتُهَا لَنَا طَهُورًا» بَيَانٌ لِمُرَادِ اللَّهِ تَعَالَى بِالصَّعِيدِ، وَلِمُرَادِهِ - عَلَيْهِ السَّلَامُ - بِقَوْلِهِ «جُعِلَتْ لِي الْأَرْضُ مَسْجِدًا وَطَهُورًا» .

L4416–4418 Al-Shafi'i and Abu Yusuf said: One should not perform tayammum except with earth specifically, and nothing else. They claimed that the statement of the Messenger of Allah—may Allah's peace and blessings be upon him—"And its soil has been made a purifier for us" is an elucidation of what Allah the Exalted intended by "earth" and of what the Prophet—peace be upon him—intended by his statement "The earth has been made for me a place of prostration and a purifier."

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ.

L4419 Ali said: This is a mistake, because it is a claim without proof, and whatever is like this is invalid.

L4420 The Almighty said: "Present your evidence if you are truthful." [Al-Baqarah: 111] Rather, all that the Almighty and His Messenger—peace be upon him—have declared is the truth. Thus, Allah the Almighty stated: "pure earth"

[Al-Mā’idah: 6], and the Messenger of Allah—peace and blessings of Allah be upon him—said: “The earth is a place of prostration and a means of purification,” and he—peace be upon him—said: “The earth is a place of prostration, and its soil is a means of purification.” All of this is the truth, all of this is to be acted upon, and it is not permissible to abandon any part of it for another. All soil is pure, all earth is pure, and all clean earth is pure. The verse and the ḥadīth of Jābir concerning the universal applicability of the earth provide an additional ruling beyond the ḥadīth of Ḥudhayfah regarding restriction to soil alone. Therefore, acting upon this additional ruling is obligatory, and this does not preclude acting upon the ḥadīth of Ḥudhayfah. Limiting oneself to what is in the ḥadīth of Ḥudhayfah contradicts the Quran and the ḥadīth of Jābir, and this is impermissible. Success is by Allah, the Most High.[27]

قَالَ عَزَّ وَجَلَّ: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] بَلْ كُلُّ مَا قَالَ عَزَّ وَجَلَّ وَرَسُولُهُ - عَلَيْهِ السَّلَامُ - فَهُوَ حَقٌّ، فَقَالَ اللَّهُ عَزَّ وَجَلَّ: {صَعِيدًا طَيِّبًا} [المائدة: ٦] وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْأَرْضُ مَسْجِدٌ وَطَهُورٌ» وَقَالَ - عَلَيْهِ السَّلَامُ -: «الْأَرْضُ مَسْجِدٌ وَتُرْبَتُهَا طَهُورٌ» فَكُلُّ ذَلِكَ حَقٌّ، وَكُلُّ ذَلِكَ مَأْخُوذٌ بِهِ وَكُلُّ ذَلِكَ لَا يَحِلُّ تَرْكُ شَيْءٍ مِنْهُ لِشَيْءٍ آخَرَ فَالتُّرَابُ كُلُّهُ طَهُورٌ وَالْأَرْضُ كُلُّهَا طَهُورٌ وَالصَّعِيدُ كُلُّهُ طَهُورٌ، وَالْآيَةُ وَحَدِيثُ جَابِرٍ فِي عُمُومِ الْأَرْضِ زَائِدٌ حُكْمًا عَلَى حَدِيثِ حُذَيْفَةَ فِي الِاقْتِصَارِ عَلَى التُّرْبَةِ، فَالْأَخْذُ بِالزَّائِدِ وَاجِبٌ، وَلَا يَمْنَعُ ذَلِكَ مِنْ الْأَخْذِ بِحَدِيثِ حُذَيْفَةَ، وَفِي الِاقْتِصَارِ عَلَى مَا فِي حَدِيثِ حُذَيْفَةَ مُخَالَفَةٌ لِلْقُرْآنِ وَلِمَا فِي حَدِيثِ جَابِرٍ، وَهَذَا لَا يَحِلُّ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L4421 Abu Hanifa said: All earth may be used for *tayammum*, such as soil, mud, orpiment, lime, *kohl*, *maradasanj*, and any dust shaken off from a cushion, bed, wheat, or barley—it is permissible to perform *tayammum* with it. Similarly, Sufyan al-Thawri said: If there is dust on your garment, saddle, bridle, or on a tree, perform *tayammum* with it. This is our position. And with Allah, the Exalted, is success.

وَقَالَ أَبُو حَنِيفَةَ: الصَّعِيدُ كُلُّهُ يُتَيَمَّمُ بِهِ، كَالتُّرَابِ وَالطِّينِ وَالزِّرْنِيخِ وَالْجِيرِ وَالْكُحْلِ والمرادسنج وَكُلُّ تُرَابٍ نُفِّضَ مِنْ وِسَادَةٍ أَوْ فِرَاشٍ أَوْ مِنْ حِنْطَةٍ أَوْ شَعِيرٍ: فَالتَّيَمُّمُ بِهِ جَائِزٌ وَكَذَلِكَ قَالَ سُفْيَانُ الثَّوْرِيُّ: إنْ كَانَ فِي ثَوْبِكَ أَوْ سَرْجِكَ أَوْ بَرْدَعَتِكَ تُرَابٌ أَوْ عَلَى شَجَرٍ فَتَيَمَّمْ بِهِ، وَهَذَا قَوْلُنَا. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ يُقَدَّمُ فِي التَّيَمُّمِ الْيَدَانِ قَبْلَ الْوَجْهِ]

L4422 **A legal issue: In dry ablution (tayammum), the hands are to precede the face.**

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٢٥٣ - مَسْأَلَةٌ:

L4424 Al-A‘mash said: In dry ablution, the hands are wiped before the face. Al-Shāfi‘ī maintained that the face must be wiped before the palms. Abū Ḥanīfah permitted wiping either the face or the hands before the other.

قَالَ الْأَعْمَشُ: يُقَدَّمُ فِي التَّيَمُّمِ الْيَدَانِ قَبْلَ الْوَجْهِ، وَقَالَ الشَّافِعِيُّ يُقَدَّمُ الْوَجْهُ عَلَى الْكَفَّيْنِ وَلَا بُدَّ، وَأَبَاحَ أَبُو حَنِيفَةَ تَقْدِيمَ كُلٍّ مِنْهُمَا عَلَى الْآخَرِ.

[27] **Qur’an references (L4420):** Qur’an 2:111 (Al-Baqarah); Qur’an 27:64 (An-Naml); Qur’an 5:6 (Al-Ma’idah).

قَالَ عَلِيٌّ: وَبِهَذَا نَقُولُ، لِأَنَّنَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ مُحَمَّدِ بْنِ سَلَامٍ عَنْ أَبِي مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ شَقِيقٍ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ عَمَّارِ بْنِ يَاسِرٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَّمَهُ التَّيَمُّمَ فَضَرَبَ ضَرْبَةً بِكَفَّيْهِ عَلَى الْأَرْضِ ثُمَّ نَفَضَهَا ثُمَّ مَسَحَ بِهَا ظَهْرَ كَفِّهِ بِشِمَالِهِ أَوْ ظَهْرَ شِمَالِهِ بِكَفِّهِ ثُمَّ مَسَحَ بِهَا وَجْهَهُ» فَكَانَ هَذَا حُكْمًا زَائِدًا، وَبَيَانًا أَنَّ كُلَّ ذَلِكَ جَائِزٌ، بِخِلَافِ الْوُضُوءِ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L4425 Ali said: And this is what we say, for we have been narrated through the chain of al-Bukhārī from Muḥammad ibn Salām, from Abū Muʿāwiyah, from al-Aʿmash, from Shaqīq, from Abū Mūsā al-Ashʿarī, from ʿAmmār ibn Yāsir: “That the Messenger of Allah (peace and blessings be upon him) taught him tayammum. He struck the ground once with his palms, shook the dust off them, then wiped the back of his hand with his left palm or the back of his left hand with his palm, then wiped his face with them.” This constitutes a supplementary ruling and a clarification that all such actions are permissible, unlike wuḍūʾ. And with Allah alone is success.

فَمَنْ أَخَذَ بِظَاهِرِ الْقُرْآنِ فَبَدَأَ بِالْوَجْهِ فَحَسَنٌ، وَمَنْ أَخَذَ بِحَدِيثِ عَمَّارٍ فَبَدَأَ بِالْيَدَيْنِ قَبْلَ الْوَجْهِ فَحَسَنٌ، ثُمَّ اسْتَدْرَكْنَا قَوْلَهُ - عَلَيْهِ السَّلَامُ - «ابْدَءُوا بِمَا بَدَأَ اللَّهُ بِهِ» فَوَجَبَ أَنْ لَا يُجْزِئَ إلَّا الِابْتِدَاءُ بِالْوَجْهِ ثُمَّ الْيَدَيْنِ.

L4426 Whoever adheres to the apparent meaning of the Quran and begins with the face, it is acceptable. And whoever follows the ḥadīth of ʿAmmār and begins with the hands before the face, it is also acceptable. Then we reconsidered his statement—peace be upon him—“Begin with what Allah commenced with,” thus it became necessary that none suffices except starting with the face followed by the hands.

AL-MUHALLA

كِتَابُ الْحَيْضِ وَالِاسْتِحَاضَةِ

The Book of Menstruation and Irregular Bleeding

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْحَيْضِ وَالاِسْتِحَاضَةِ] [مَسْأَلَةٌ الْحَيْضُ هُوَ الدَّمُ الْأَسْوَدُ الْخَاثِرُ الْكَرِيهُ الرَّائِحَةِ خَاصَّةً]

[The Book of Menstruation and Istihadah] [Issue: Menstruation is defined as blood that is specifically black, clotted, and foul in smell.]

٢٥٤ - مَسْأَلَةٌ:

254. Issue:

الْحَيْضُ هُوَ الدَّمُ الْأَسْوَدُ الْخَاثِرُ الْكَرِيهُ الرَّائِحَةِ خَاصَّةً، فَمَتَى ظَهَرَ مِنْ فَرْجِ الْمَرْأَةِ لَمْ يَحِلَّ لَهَا أَنْ تُصَلِّيَ وَلَا أَنْ تَصُومَ وَلَا أَنْ تَطُوفَ بِالْبَيْتِ وَلَا أَنْ يَطَأَهَا زَوْجُهَا وَلَا سَيِّدُهَا فِي الْفَرْجِ، إِلَّا حَتَّى تَرَى الطُّهْرَ، فَإِذَا رَأَتْ أَحْمَرَ أَوْ كَغُسَالَةِ اللَّحْمِ أَوْ صُفْرَةً أَوْ كُدْرَةً أَوْ بَيَاضًا أَوْ جُفُوفًا فَقَدْ طَهُرَتْ وَفُرِضَ عَلَيْهَا أَنْ تَغْسِلَ جَمِيعَ رَأْسِهَا وَجَسَدِهَا بِالْمَاءِ، فَإِنْ لَمْ تَجِدْ الْمَاءَ فَلْتَتَيَمَّمْ ثُمَّ تُصَلِّي وَتَصُومُ وَتَطُوفُ بِالْبَيْتِ وَيَأْتِيهَا زَوْجُهَا أَوْ سَيِّدُهَا، وَكُلُّ مَا ذَكَرْنَا فَهُوَ قَبْلَ الْحَيْضِ وَبَعْدَهُ طُهْرٌ لَيْسَ شَيْءٌ مِنْهُ حَيْضًا أَصْلًا.

Menstruation is the clotted black blood with a foul odor, specifically. Whenever it emerges from a woman's genital area, it is not permissible for her to pray, fast, perform circumambulation of the Kaaba, or for her husband or owner to engage in intercourse with her until she attains purification. If she observes redness, fluid resembling that from washing raw meat, yellowness, cloudiness, whiteness, or dryness, she is purified. It becomes obligatory for her to wash her entire head and body with water. If she cannot find water, she must perform *tayammum*, then she may pray, fast, perform circumambulation of the Kaaba, and her husband or owner may resume intercourse with her. All that we have mentioned before menstruation and after it constitutes states of purity; none of these are considered menstrual blood whatsoever.

أَمَّا امْتِنَاعُ الصَّلَاةِ وَالصَّوْمِ وَالطَّوَافِ وَالْوَطْءِ فِي الْفَرْجِ فِي حَالِ الْحَيْضِ فَإِجْمَاعٌ مُتَيَقَّنٌ مَقْطُوعٌ بِهِ، لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ فِيهِ، وَقَدْ خَالَفَ فِي ذَلِكَ قَوْمٌ مِنْ الْأَزَارِقَةِ حَقُّهُمْ أَلَّا يُعَدُّوا فِي أَهْلِ الْإِسْلَامِ.

As for abstaining from prayer, fasting, Tawaf (circumambulation of the Kaaba), and sexual intercourse during menstruation, this is a conclusively established Ijma (consensus), with no disagreement among Muslim scholars. However, a group from the Azariqa (a Kharijite sect) opposed this, and they rightfully should not be counted among the people of Islam.

وَأَمَّا مَا هُوَ الْحَيْضُ؟ فَإِنَّ يُونُسَ بْنَ عَبْدِ اللَّهِ بْنِ مُغِيثٍ حَدَّثَنَا قَالَ ثنا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ ثنا هِشَامُ بْنُ عُرْوَةَ حَدَّثَنِي أَبِي عَنْ عَائِشَةَ «أَنَّ فَاطِمَةَ ابْنَةَ أَبِي حُبَيْشٍ أَتَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: إِنِّي أُسْتَحَاضُ فَلَا أَطْهُرُ، أَفَأَدَعُ الصَّلَاةَ؟ قَالَ: لَيْسَ ذَلِكَ بِالْحَيْضِ، إِنَّمَا ذَلِكَ عِرْقٌ، فَإِذَا أَقْبَلَتْ الْحَيْضَةُ فَدَعِي الصَّلَاةَ، وَإِذَا أَدْبَرَتْ فَاغْتَسِلِي وَصَلِّي» وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ وَسُفْيَانَ

As for what constitutes menstruation? Yunus ibn Abd Allah ibn Mughith reported to us, saying: Ahmad ibn Abd Allah ibn Abd al-Rahim reported to us via Ahmad ibn Khalid, who reported via Muhammad ibn Abd al-Salam al-Khushani, who reported via Muhammad ibn Bashshar, who reported via Yahya ibn Sa'id al-Qattan, who reported via Hisham ibn Urwah, who narrated from his father, from Aisha: Fatimah bint Abi Hubaysh came to the Messenger of Allah (peace and blessings be upon him) and said, "I experience irregular bleeding and do not attain purity. Should I cease prayer?" He replied, "That is not menstruation; it is merely a vein. When menstruation arrives, cease prayer. When it departs, perform the ritual bath and pray." It was similarly narrated by us through the chains of Hammad ibn Zayd, Sufyan

الثَّوْرِيِّ وَسُفْيَانَ بْنِ عُيَيْنَةَ وَابْنِ جُرَيْجٍ وَمَعْمَرٍ وَزُهَيْرِ بْنِ مُعَاوِيَةَ وَأَبِي مُعَاوِيَةَ وَعَبْدِ اللَّهِ بْنِ نُمَيْرٍ وَوَكِيعِ بْنِ الْجَرَّاحِ وَجَرِيرٍ وَعَبْدِ الْعَزِيزِ بْنِ مُحَمَّدٍ الدَّرَاوَرْدِيِّ وَأَبِي يُوسُفَ كُلُّهُمْ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ. وَرُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ وَاللَّيْثِ وَحَمَّادِ بْنِ سَلَمَةَ وَعَمْرِو بْنِ الْحَارِثِ وَسَعِيدِ بْنِ عَبْدِ الرَّحْمَنِ الْجُمَحِيِّ كُلُّهُمْ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا أَقْبَلَتْ الْحَيْضَةُ فَدَعِي الصَّلَاةَ، وَإِذَا ذَهَبَتْ فَاغْسِلِي عَنْكِ الدَّمَ ثُمَّ صَلِّي» وَفِي بَعْضِهَا «فَتَوَضَّئِي» .

L4435–4437 وَحَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ ثنا أَبُو بَكْرِ بْنُ أَحْمَدَ بْنِ خَالِدٍ ثنا أَبِي ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا أَبُو عُبَيْدٍ الْقَاسِمُ بْنُ سَلَامٍ، حَدَّثَنِي مُحَمَّدُ بْنُ كَثِيرٍ عَنْ الْأَوْزَاعِيِّ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ قَالَتْ: «اُسْتُحِيضَتْ أُمُّ حَبِيبَةَ بِنْتُ جَحْشٍ فَذَكَرَتْ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ - عَلَيْهِ السَّلَامُ -: إنَّهَا لَيْسَتْ بِالْحَيْضَةِ وَلَكِنَّهُ عِرْقٌ، فَإِذَا أَقْبَلَتْ الْحَيْضَةُ فَدَعِي الصَّلَاةَ، وَإِذَا أَدْبَرَتْ فَاغْتَسِلِي وَصَلِّي» .

L4438 حَدَّثَنَا أَبُو سَعِيدٍ الْجَعْفَرِيُّ ثنا أَبُو بَكْرٍ الْأَذْفُونِيُّ الْمُقْرِئُ ثنا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ إِسْمَاعِيلَ حَدَّثَنَا الْحَسَنُ بْنُ غُلَيْبٍ حَدَّثَنَا يَحْيَى بْنُ عَبْدِ اللَّهِ ثنا اللَّيْثُ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ الْمُنْذِرِ بْنِ الْمُغِيرَةِ «عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ أَنَّ فَاطِمَةَ بِنْتَ أَبِي حُبَيْشٍ أَخْبَرَتْهُ أَنَّهَا أَتَتْ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَشَكَتْ إلَيْهِ الدَّمَ، فَقَالَ إنَّمَا ذَلِكَ عِرْقٌ، فَانْظُرِي إذَا أَتَاكِ قُرْؤُكِ فَلَا تُصَلِّي، فَإِذَا مَرَّ الْقُرْءُ فَتَطَهَّرِي ثُمَّ صَلِّي مِنْ الْقُرْءِ إلَى الْقُرْءِ» .

al-Thawri, Sufyan ibn Uyaynah, Ibn Jurayj, Ma‘mar, Zuhayr ibn Mu‘awiyah, Abu Mu‘awiyah, Abd Allah ibn Numayr, Waki‘ ibn al-Jarrah, Jarir, Abd al-Aziz ibn Muhammad al-Darawardi, and Abu Yusuf—all transmitting from Hisham ibn Urwah, from his father, from Aisha. It was also narrated by us through the chains of Malik, al-Layth ibn Sa‘d, Hammad ibn Salamah, Amr ibn al-Harith, and Sa‘id ibn Abd al-Rahman al-Jumahi—all transmitting from Hisham ibn Urwah, from his father. Narrated by Aisha: The Messenger of Allah (peace be upon him) said, “When menstruation begins, abandon prayer. When it ceases, wash away the blood from yourself, then pray.” In some narrations, it states: “then perform ablution (wudu).”

L4435–4437 And Yunus ibn ‘Abdullah narrated to us: Abu Bakr ibn Ahmad ibn Khalid narrated to us; my father narrated to us; ‘Ali ibn ‘Abd al-‘Aziz narrated to us; Abu ‘Ubayd al-Qasim ibn Salam narrated to us; Muhammad ibn Kathir narrated to me from al-Awza‘i from... Al-Zuhri reported from Urwah from Aishah, who said: “Umm Habibah bint Jahsh experienced irregular bleeding and mentioned this to the Messenger of Allah (peace and blessings be upon him). He (peace be upon him) said: ’This is not menstruation but a blood vessel. When the menstrual period begins, stop praying. When it ends, perform ghusl and pray.”’

L4438 Narrated by Abu Sa’eed Al-Ja’fari from Abu Bakr Al-Adhfuuni Al-Muqirr, from Ahmad ibn Muhammad ibn Isma’il, from Al-Hasan ibn Ghulayb, from Yahya ibn ’Abdullah, from Al-Layth, from Yazid ibn Abi Habib, from Bukayr ibn ’Abdullah ibn Al-Ashajj, from Al-Mundhir ibn Al-Mughirah, from ’Urwah ibn Az-Zubayr: Fatimah bint Abi Hubaysh informed him that she came to the Messenger of Allah—peace and blessings be upon him—and complained to him about the blood. He said, “That is merely a blood vessel. When your menstruation arrives, do not pray. When the menstrual period ends, purify yourself, then pray during the intervals between one menstruation and the next.”

L4439–4441 He (peace be upon him) commanded the avoidance of prayer at menstruation’s onset and the performance of ghusl (ritual purification) upon its ces-

sation, directing this ruling to Quraysh's women and Arab women knowledgeable about what the term "menstruation" refers to. Therefore, it became obligatory to seek the clarification of that - what menstruation is in Sharia and linguistic terms. We discovered the narration transmitted to us by Hammam ibn Ahmad who narrated from Abbas ibn Asbagh who narrated from Muhammad ibn Abd al-Malik ibn Ayman who narrated from Abdullah ibn Ahmad ibn Hanbal who narrated from his father who narrated from Muhammad ibn Abi Adiyy who narrated from Muhammad ibn Amr - son of Alqamah ibn Waqqas - from al-Zuhri from Urwah from Fatimah bint Abi Hubaysh: "She suffered istihadah (irregular bleeding), so Allah's Messenger said to her..." The Prophet, peace be upon him, said: "Indeed, menstrual blood is black and recognizable. So when that is present, abstain from prayer. But when it is the other, perform wudu and pray, for it is merely a vein."

فَأَمَرَ - عَلَيْهِ السَّلَامُ - بِاجْتِنَابِ الصَّلَاةِ لِإِقْبَالِ الْحَيْضَةِ وَبِالْغُسْلِ لِإِدْبَارِهَا، وَخَاطَبَ بِذَلِكَ نِسَاءَ قُرَيْشٍ وَالْعَرَبَ الْعَارِفَاتِ بِمَا يَقَعُ عَلَيْهِ اسْمُ الْحَيْضَةِ، فَوَجَبَ أَنْ يُطْلَبَ بَيَانُ ذَلِكَ وَمَا هِيَ الْحَيْضَةُ فِي الشَّرِيعَةِ وَاللُّغَةِ، فَوَجَدْنَا مَا حَدَّثَنَاهُ حَمَامُ بْنُ أَحْمَدَ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ ثنا أَبِي ثنا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ ثنا مُحَمَّدُ بْنُ عَمْرٍو هُوَ ابْنُ عَلْقَمَةَ بْنِ وَقَّاصٍ - عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ فَاطِمَةَ بِنْتِ أَبِي حُبَيْشٍ " كَانَتْ اُسْتُحِيضَتْ فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دَمَ الْحَيْضِ أَسْوَدُ يُعْرَفُ، فَإِذَا كَانَ ذَلِكَ فَأَمْسِكِي عَنِ الصَّلَاةِ، وَإِذَا كَانَ الْآخَرُ فَتَوَضَّئِي وَصَلِّي فَإِنَّمَا هُوَ عِرْقٌ» .

L4442 Abdur-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: Al-Farbari narrated to us: Al-Bukhari narrated to us: Qutaybah narrated to us: Yazid ibn Zuray' narrated to us from Khalid al-Hadhdha' from Ikrimah from Aisha, who said: "One of the wives of the Messenger of Allah, peace and blessings be upon him, observed Itikaf with him. She would see yellowish discharge and blood, and the basin was beneath her while she prayed."

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ حَدَّثَنَا الْبُخَارِيُّ حَدَّثَنَا قُتَيْبَةُ ثنا يَزِيدُ بْنُ زُرَيْعٍ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ عِكْرِمَةَ عَنْ عَائِشَةَ قَالَتْ «اعْتَكَفَتْ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - امْرَأَةٌ مِنْ أَزْوَاجِهِ، فَكَانَتْ تَرَى الصُّفْرَةَ وَالدَّمَ وَالطَّسْتُ تَحْتَهَا وَهِيَ تُصَلِّي» .

L4443 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Muhammad ibn Salamah al-Muradi narrated to us: Abdullah ibn Wahb narrated from Amr ibn al-Harith from Ibn Shihab from Urwah ibn al-Zubayr and ʿAmrah bint Abd al-Rahman, both of whom reported from Aisha, the wife of the Prophet (peace be upon him), that Umm Habibah bint Hubaysh, who was married to Abd al-Rahman ibn Awf, experienced istihadah (abnormal uterine bleeding) for seven years. She sought a ruling from the Messenger of Allah (peace be upon him) regarding this. The Messenger of Allah (peace be upon him) said, "This is not menstruation; rather, it is bleeding from a blood vessel. Perform ghusl (ritual purification) and pray." Aisha said, "She would

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ سَلَمَةَ الْمُرَادِيُّ ثنا عَبْدُ اللَّهِ بْنُ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنِ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ وَعَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ، كِلَاهُمَا عَنْ عَائِشَةَ زَوْجِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّ أُمَّ حَبِيبَةَ بِنْتَ حُبَيْشٍ كَانَتْ تَحْتَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ اُسْتُحِيضَتْ سَبْعَ سِنِينَ، فَاسْتَفْتَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِنَّ هَذِهِ

bathe in a large basin in the room of her sister Zaynab bint Jahsh until the water was visibly tinged with blood."

لَيْسَتْ بِالْحَيْضَةِ، وَلَكِنْ هَذَا عِرْقٌ فَاغْتَسِلِي وَصَلِّي. قَالَتْ عَائِشَةُ فَكَانَتْ تَغْتَسِلُ فِي مِرْكَنٍ فِي حُجْرَةِ أُخْتِهَا زَيْنَبَ بِنْتِ جَحْشٍ حَتَّى تَعْلُوَ حُمْرَةُ الدَّمِ الْمَاءَ» .

L4444–4446 Thus, it is established by what we have mentioned that menstruation is black blood alone, and that redness, yellowness, and turbid discharge originate from a blood vessel and are not menstruation, and none of that prevents prayer. If it is said: "This applies only to a woman whose blood flows perpetually," we say: If blood persists during part of her menstrual period and ceases during another part, what is your ruling? Does this judgment apply to her or not? All scholars unanimously agree that this... The judgment is hers.

فَصَحَّ بِمَا ذَكَرْنَا أَنَّ الْحَيْضَ إنَّمَا هُوَ الدَّمُ الْأَسْوَدُ وَحْدَهُ وَإِنَّ الْحُمْرَةَ وَالصُّفْرَةَ وَالْكُدْرَةَ عِرْقٌ وَلَيْسَ حَيْضًا، وَلَا يَمْنَعُ شَيْءٌ مِنْ ذَلِكَ الصَّلَاةَ. فَإِنْ قِيلَ: إنَّمَا هَذَا لِلَّتِي يَتَّصِلُ بِهَا الدَّمُ أَبَدًا، قُلْنَا فَإِنْ اتَّصَلَ بِهَا الدَّمُ بَعْضَ دَهْرِهَا وَانْقَطَعَ بَعْضَهُ فَمَا قَوْلُكُمْ؟ أَلَهَا هَذَا الْحُكْمُ أَمْ لَا؟ فَكُلُّهُمْ مُجْمِعٌ عَلَى أَنَّ هَذَا الْحُكْمَ لَهَا.

L4447 So we said to them: Specify for us the period during which, if blood, yellow discharge, or turbid discharge persists, it is subject to the ruling prescribed by the Messenger of Allah—peace be upon him—and specify the period during which, if all these discharges persist in combination, it is not subject to that ruling. What they concluded from this was that a group of scholars stated: That period corresponds to her habitual days of menstruation.

فَقُلْنَا لَهُمْ: حُدُّوا لَنَا الْمُدَّةَ الَّتِي إذَا اتَّصَلَ بِهَا الدَّمُ وَالصُّفْرَةُ وَالْكُدْرَةُ كَانَ لَهَا هَذَا الْحُكْمُ الَّذِي أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْمُدَّةَ الَّتِي إذَا اتَّصَلَ بِهَا هَذَا كُلُّهُ لَمْ يَكُنْ لَهَا ذَلِكَ الْحُكْمُ، فَكَانَ الَّذِي وَقَفُوا عَلَيْهِ مِنْ ذَلِكَ أَنْ قَالَتْ طَائِفَةٌ: تِلْكَ الْمُدَّةُ هِيَ أَيَّامُهَا الْمُعْتَادَةُ لَهَا.

L4448 Another group said: Rather, that duration exceeds her customary days. If that is the case, they account for the formation of blood during the days of her habitual cycle; otherwise, they do not. I said to them: These are two claims we have heard, and a claim is rejected and invalid unless supported by conclusive proof. So present your conclusive proof if you are truthful.

وَقَالَتْ طَائِفَةٌ أُخْرَى: بَلْ تِلْكَ الْمُدَّةُ هِيَ أَكْثَرُ مِنْ أَيَّامِهَا الْمُعْتَادَةِ لَهَا، فَإِذَا كَانَ ذَلِكَ رَاعَوْا فِي أَيَّامِ عَادَتِهَا تَكَوُّنَ الدَّمِ وَإِلَّا فَلَا، فَقُلْتُ لَهُمْ: هَاتَانِ دَعْوَيَانِ قَدْ سَمِعْنَاهُمَا، وَالدَّعْوَةُ مَرْدُودَةٌ سَاقِطَةٌ إلَّا بِبُرْهَانٍ، فَهَاتُوا بُرْهَانَكُمْ إنْ كُنْتُمْ صَادِقِينَ.

L4449 Some of them said: It has been authentically established from the Prophet, peace and blessings be upon him, that he said: "Sit during the days of your menstruation and refrain from prayer for the same number of days as your usual menstrual period."

فَقَالَ بَعْضُهُمْ: قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «اُقْعُدِي أَيَّامَ أَقْرَائِكِ وَدَعِي الصَّلَاةَ قَدْرَ الْأَيَّامِ الَّتِي كُنْتِ تَحِيضِينَ فِيهَا» .

L4450 We said, "Yes, this is correct." He (peace be upon him) commanded this solely for the woman who cannot distinguish her blood and [for cases where] the blood is entirely black and uninterrupted.

قُلْنَا نَعَمْ هَذَا صَحِيحٌ، وَإِنَّمَا أَمَرَ - عَلَيْهِ السَّلَامُ - بِهَذَا الَّتِي لَا تُمَيِّزُ دَمَهَا وَالَّذِي هُوَ كُلُّهُ أَسْوَدُ مُتَّصِلٌ.

L4451 The proof of that is His statement to the woman who recognizes her blood:

"Indeed, menstrual blood is black and is recognized. When the other [blood] comes, then pray. When menstruation begins, cease prayer. When it ends, perform the ritual bath, pray, cleanse yourself of the blood, and pray," as we will clarify in the chapter on the mustahāḍah, God willing.

L4452 Abu Muhammad said: There is no escape for them from this. If they cling to someone from whom a statement resembling theirs has been narrated—such as what we reported through the chain of ʿAlqamah ibn Abī ʿAlqamah from his mother: "I used to see women sending a case to ʿĀ'ishah containing cotton with a yellowish stain, asking her about prayer. I heard ʿĀ'ishah say: 'Do not pray [you women] until you see the white discharge.'"

L4453–4454 Abu Muhammad said: We do not know of any connection to the Companions - may Allah be pleased with them - except this solitary narration. Umm 'Alqamah was opposed in that matter by 'A'ishah, and Companions other than the Mother of the Believers contradicted the narration transmitted from Umm 'Alqamah.

L4455 As for the narration from ʿĀ'ishah—may Allah be pleased with her—Aḥmad ibn ʿUmar ibn Anas said: ʿAbd ibn Aḥmad al-Harawī Abū Dharr narrated to us; Aḥmad ibn ʿAbdān, al-Ḥāfiẓ, in Naysābūr narrated to us; Muḥammad ibn Sahl ibn ʿAbdillāh al-Muqriʾ al-Baṣrī narrated to us; Muḥammad ibn Ismāʿīl al-Bukhārī—the compiler of the Ṣaḥīḥ—narrated to us. He said: ʿAlī ibn Ibrāhīm told us: Muḥammad ibn Abī al-Shimāl al-ʿUṭāridī al-Baṣrī narrated to us; Umm Ṭalḥah narrated to me, saying: I asked ʿĀ'ishah, the Mother of the Believers, and she said: "Menstrual blood is sea-like black."

L4456 Muhammad ibn Sa'id ibn Nabat narrated to us, Abdullah ibn Nasr narrated to us, Qasim ibn Asbagh narrated to us, Ibn Waddah narrated to us, Musa ibn Mu'awiyah narrated to us, Waki' narrated to us from Abu Bakr al-Hudhali from Mu'adhah al-Adawiyyah from 'Aishah, who said: "We did not consider the yellow and the brown to be menstruation."

بُرْهَانُ ذَلِكَ قَوْلُهُ لِلَّتِي تُمَيِّزُ دَمَهَا «إِنَّ دَمَ الْحَيْضِ أَسْوَدُ يُعْرَفُ، فَإِذَا جَاءَ الْآخَرُ فَصَلِّي، وَإِذَا أَقْبَلَتْ الْحَيْضَةُ فَدَعِي الصَّلَاةَ، وَإِذَا أَدْبَرَتْ فَاغْتَسِلِي وَصَلِّي وَاغْسِلِي عَنْكِ الدَّمَ وَصَلِّي» عَلَى مَا نُبَيِّنُ فِي بَابِ الْمُسْتَحَاضَةِ إِنْ شَاءَ اللَّهُ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا مَخْلَصَ لَهُمْ مِنْهُ، فَإِنْ تَعَلَّقُوا بِمَنْ رُوِيَ عَنْهُ مِثْلُ قَوْلِهِمْ، مِثْلُ مَا رُوِّينَاهُ مِنْ طَرِيقِ عَلْقَمَةَ بْنِ أَبِي عَلْقَمَةَ عَنْ أُمِّهِ: كُنْتُ أَرَى النِّسَاءَ يُرْسِلْنَ إِلَى عَائِشَةَ بِالدُّرْجَةِ فِيهَا الْكُرْسُفُ فِيهَا الصُّفْرَةُ يَسْأَلْنَهَا عَنْ الصَّلَاةِ، فَسَمِعْتُ عَائِشَةَ تَقُولُ: لَا تُصَلِّينَ حَتَّى تَرَيْنَ الْقَصَّةَ الْبَيْضَاءَ.

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ لَهُمْ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُتَعَلَّقًا إِلَّا هَذِهِ الرِّوَايَةُ وَحْدَهَا، وَقَدْ خُولِفَتْ أُمُّ عَلْقَمَةَ فِي ذَلِكَ عَنْ عَائِشَةَ، وَخَالَفَ هَذِهِ الرِّوَايَةَ عَنْ أُمِّ عَلْقَمَةَ غَيْرُ أُمِّ الْمُؤْمِنِينَ مِنْ الصَّحَابَةِ.

فَأَمَّا الرِّوَايَةُ عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - فَإِنَّ أَحْمَدَ بْنَ عُمَرَ بْنِ أَنَسٍ قَالَ: ثنا عَبْدُ بْنُ أَحْمَدَ الْهَرَوِيُّ أَبُو ذَرٍّ ثنا أَحْمَدُ بْنُ عَبْدَانَ الْحَافِظُ بِنَيْسَابُورَ ثنا مُحَمَّدُ بْنُ سَهْلِ بْنِ عَبْدِ اللَّهِ الْمُقْرِئُ الْبَصْرِيُّ ثنا مُحَمَّدُ بْنُ إِسْمَاعِيلَ الْبُخَارِيُّ - هُوَ جَامِعُ الصَّحِيحِ - قَالَ: قَالَ لَنَا عَلِيُّ بْنُ إِبْرَاهِيمَ حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي الشِّمَالِ الْعُطَارِدِيُّ الْبَصْرِيُّ، حَدَّثَتْنِي أُمُّ طَلْحَةَ قَالَتْ: سَأَلْتُ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ فَقَالَتْ: دَمُ الْحَيْضِ بَحْرَانِيٌّ أَسْوَدُ.

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ ثنا مُوسَى بْنُ مُعَاوِيَةَ حَدَّثَنَا وَكِيعٌ عَنْ أَبِي بَكْرٍ الْهُذَلِيِّ عَنْ مُعَاذَةَ الْعَدَوِيَّةِ عَنْ عَائِشَةَ قَالَتْ: مَا كُنَّا نَعُدُّ الصُّفْرَةَ وَالْكُدْرَةَ حَيْضًا.

L4457 It has been narrated to us through the chain of Ahmad ibn Hanbal, who narrated to us Ismāʿīl ibn ʿUlayyah, who narrated to us Khālid al-Ḥadhdhāʾ from Anas ibn Sīrīn, who said: A woman from the family of Anas experienced istiḥāḍah, so they instructed me, and I asked Ibn ʿAbbās. He said: As for when she sees the Baḥrānī blood, she must not pray. But when she observes purity, even for an hour during the day, she must perform the ritual bath and pray.

وَرُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ ثنا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ ثنا خَالِدٌ الْحَذَّاءُ عَنْ أَنَسِ بْنِ سِيرِينَ قَالَ: اُسْتُحِيضَتْ امْرَأَةٌ مِنْ آلِ أَنَسٍ فَأَمَرُونِي فَسَأَلْتُ ابْنَ عَبَّاسٍ فَقَالَ: أَمَّا مَا رَأَتْ الدَّمَ الْبَحْرَانِيَّ فَلَا تُصَلِّي، فَإِذَا رَأَتْ الطُّهْرَ وَلَوْ سَاعَةً مِنْ نَهَارٍ فَلْتَغْتَسِلْ وَتُصَلِّي.

L4458 Ibn Abbas did not concern himself with the continuity of blood. Rather, he held the opinion and issued a ruling that anything other than prolonged blood (al-baḥrānī) constitutes a state of purity, during which a woman may pray even if she does not see it except for an hour of the day. He affirmed that nothing prevents prayer except prolonged blood. And this is a chain of narration of the utmost eminence.

فَلَمْ يَلْتَفِتْ ابْنُ عَبَّاسٍ إلَى اتِّصَالِ الدَّمِ، بَلْ رَأَى وَأَفْتَى أَنَّ مَا عَدَا الدَّمَ الْبَحْرَانِيَّ فَهُوَ طُهْرٌ، تُصَلِّي مَعَ وُجُودِهِ وَلَوْ لَمْ تَرَ إلَّا سَاعَةً مِنْ النَّهَارِ، وَأَنَّهُ لَا يَمْنَعُ الصَّلَاةَ إلَّا الدَّمُ الْبَحْرَانِيُّ، وَهَذَا إسْنَادٌ فِي غَايَةِ الْجَلَالَةِ.

L4459–4463 And from the chain of al-Bukhārī: Qutaybah narrated to us, Ismāʿīl (that is, Ibn ʿUlayyah) narrated, from Ayyūb *al-Sakhtiyānī*, from Muḥammad ibn Sīrīn, from Umm ʿAṭiyyah, who said: "We did not count the yellowish discharge or the cloudy discharge." Umm ʻAṭiyyah was one of the women of the Anṣār who pledged allegiance and a longtime companion of the Messenger of Allāh (PBUH). We have mentioned this same [matter] from the wives of the Prophet (may God bless him and grant him peace), Fatimah bint Abi Hubaysh, and Umm Habibah bint Jahsh. All of this is established through highly graded, authentic chains of transmission.

وَمِنْ طَرِيقِ الْبُخَارِيِّ: حَدَّثَنَا قُتَيْبَةُ ثنا إِسْمَاعِيلُ هُوَ ابْنُ عُلَيَّةَ - عَنْ أَيُّوبَ السَّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أُمِّ عَطِيَّةَ قَالَتْ: كُنَّا لَا نَعُدُّ الصُّفْرَةَ وَالْكُدْرَةَ شَيْئًا " وَأُمُّ عَطِيَّةَ مِنْ الْمُبَايِعَاتِ مِنْ نِسَاءِ الْأَنْصَارِ قَدِيمَةُ الصُّحْبَةِ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ ذَكَرْنَا عَنْ نِسَاءِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفَاطِمَةَ بِنْتِ أَبِي حُبَيْشٍ وَأُمِّ حَبِيبَةَ بِنْتِ جَحْشٍ هَذَا نَفْسَهُ، وَكُلُّ هَذَا هُوَ الثَّابِتُ بِالْأَسَانِيدِ الْعَالِيَةِ الصَّحِيحَةِ.

L4464 We have been narrated from Ali ibn Abi Talib: If a woman sees after Dhuhr something resembling water from washing meat or like a drop of blood from a nosebleed, that is merely a stirring from the stirs of Satan. Let her wash the area with water, perform ablution (wudu), and pray. But if it is copious blood that is clearly evident, she must abstain from praying.

وَرُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: إذَا رَأَتْ بَعْدَ الظُّهْرِ مِثْلَ غُسَالَةِ اللَّحْمِ أَوْ مِثْلَ قَطْرَةِ الدَّمِ مِنْ الرُّعَافِ، فَإِنَّمَا تِلْكَ رَكْضَةٌ مِنْ رَكَضَاتِ الشَّيْطَانِ فَلْتَنْضَحْ بِالْمَاءِ وَلْتَتَوَضَّأْ وَلْتُصَلِّ، فَإِنْ كَانَ عَبِيطًا لَا خَفَاءَ بِهِ فَلْتَدَعْ الصَّلَاةَ.

L4465 From Thawban regarding a woman who experiences vaginal discharge, he said: "She should perform ritual ablution (wudūʾ) and pray." It was asked: "Is this your own opinion, or did you hear it?" His eyes overflowed with tears, and he said: "Rather, I heard it."

وَعَنْ ثَوْبَانَ فِي الْمَرْأَةِ تَرَى الْبَرِيَّةَ قَالَ: تَتَوَضَّأُ وَتُصَلِّي. قِيلَ: أَشَيْءٌ تَقُولُهُ أَمْ سَمِعْتَهُ؟ قَالَ فَفَاضَتْ عَيْنَاهُ وَقَالَ: بَلْ سَمِعْتُهُ.

L4466–4468 Abu Muhammad said: This is stronger than the narration of Umm ʻAlqamah and more appropriate. He narrated what aligns with Umm ʻAlqamah's nar-

ration from ‘Amrah’s own opinion, and something similar from Rabi‘ah and Yahya ibn Sa‘id. And it has been contradicted. These are among the Followers, some of whom are more eminent than others, such as Sa’īd ibn al-Musayyib. We have been narrated via Qatādah’s chain from him concerning a woman who sees yellowish or cloudy discharge: she must perform the ritual bath and pray. We have also been narrated from Sufyān al-Thawrī via al-Qa‘qā‘: “We asked Ibrāhīm al-Nakha‘ī about a woman who sees yellowish discharge.” He replied: “She performs ablution and prays.” A similar ruling is reported from Makhūl. If they cite Ibn ‘Abbās’s ḥadīth - “from the Prophet (peace and blessings of Allāh be upon him) concerning one who approaches his wife while she is menstruating: *If the blood is pure, the expiation is one dīnār; if it has a yellowish tint, half a dīnār*” - we respond: This ḥadīth, even if authenticated, would contradict their own position. It is absurd to treat part of a report as authoritative while rejecting another portion. How could this hold when the ḥadīth itself is invalid and unsound? Its narrator, ‘Abd al-Karīm ibn Abī al-Mukhāriq, is untrustworthy. He was impugned by Ayyūb al-Sikhtiyānī, Aḥmad ibn Ḥanbal, and others.

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا أَقْوَى مِنْ رِوَايَةِ أُمِّ عَلْقَمَةَ وَأَوْلَى، وَقَدْ رَوَى مَا يُوَافِقُ رِوَايَةَ أُمِّ عَلْقَمَةَ عَنْ عَمْرَةَ مِنْ رَأْيِهَا. وَعَنْ رَبِيعَةَ وَيَحْيَى بْنِ سَعِيدٍ مِثْلَ ذَلِكَ، وَقَدْ خَالَفَ هَؤُلَاءِ مِنْ التَّابِعِينَ مَنْ هُوَ أَجَلُّ مِنْهُمْ، كَسَعِيدِ بْنِ الْمُسَيِّبِ، رُوِّينَا مِنْ طَرِيقِ قَتَادَةَ عَنْهُ فِي الْمَرْأَةِ تَرَى الصُّفْرَةَ وَالْكُدْرَةَ أَنَّهَا تَغْتَسِلُ وَتُصَلِّي، وَرُوِّينَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْقَعْقَاعِ: سَأَلْنَا إبْرَاهِيمَ النَّخَعِيَّ عَنْ الْمَرْأَةِ تَرَى الصُّفْرَةَ؟ قَالَ: تَتَوَضَّأُ وَتُصَلِّي، وَعَنْ مَكْحُولٍ مِثْلُ ذَلِكَ. فَإِنْ ذَكَرُوا حَدِيثَ ابْنِ عَبَّاسٍ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الَّذِي يَأْتِي امْرَأَتَهُ وَهِيَ حَائِضٌ قَالَ إنْ كَانَ الدَّمُ عَبِيطًا فَدِينَارٌ، وَإِنْ كَانَ فِيهِ صُفْرَةٌ فَنِصْفُ دِينَارٍ» قُلْنَا: هَذَا حَدِيثٌ لَوْ صَحَّ لَكَانُوا قَدْ خَالَفُوا مَا فِيهِ، وَمِنْ الْبَاطِلِ أَنْ يَكُونَ بَعْضُ الْخَبَرِ حُجَّةً وَبَعْضُهُ لَيْسَ حُجَّةً، فَكَيْفَ وَهُوَ بَاطِلٌ لَا يَصِحُّ لِأَنَّهُ رَاوِيهِ عَبْدُ الْكَرِيمِ بْنُ أَبِي الْمُخَارِقِ وَلَيْسَ بِثِقَةٍ، جَرَّحَهُ أَيُّوبُ السِّخْتِيَانِيُّ وَأَحْمَدُ بْنُ حَنْبَلٍ وَغَيْرُهُمَا.

L4469 If they say: The hadith of Ibn Abi ‘Adi is inconsistent in it, for sometimes he narrated it from his memory stating from Az-Zuhri from Urwah from Aisha, and other times he narrated it from his book stating from Az-Zuhri from Urwah from Fatimah bint Abi Hubaysh, and no one other than Muhammad ibn Abi ‘Adi mentioned this narration.

فَإِنْ قَالُوا: إنَّ حَدِيثَ ابْنِ أَبِي عَدِيٍّ اضْطَرَبَ فِيهِ، فَمَرَّةً حَدَّثَ بِهِ مَنْ حِفْظِهِ فَقَالَ: عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ، وَمَرَّةً حَدَّثَ بِهِ مِنْ كِتَابِهِ فَقَالَ: عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ فَاطِمَةَ بِنْتِ أَبِي حُبَيْشٍ، وَلَمْ يَذْكُرْ هَذَا الْكَلَامَ أَحَدٌ غَيْرُ مُحَمَّدِ بْنِ أَبِي عَدِيٍّ.

L4470 We said: All of this constitutes strength for the report, and this is not contradiction, for ’Urwah narrated it from both Fāṭimah and ’Ā’ishah together as he encountered them both. ’Ā’ishah was his maternal aunt - the sister of his mother - while Fāṭimah bint Abī Ḥubaysh ibn al-Muṭṭalib ibn Asad was the daughter of his paternal uncle. He is ’Urwah ibn al-Zubayr ibn al-’Awwām ibn Khuwaylid ibn Asad. Muḥammad ibn Abī ’Adiyy, the trustworthy memorizer and reliable narrator - none objects to this except the Mu’tazilah who

قُلْنَا: هَذَا كُلُّهُ قُوَّةٌ لِلْخَبَرِ، وَلَيْسَ هَذَا اضْطِرَابًا، لِأَنَّ عُرْوَةَ رَوَاهُ عَنْ فَاطِمَةَ وَعَائِشَةَ مَعًا وَأَدْرَكَهُمَا مَعًا، فَعَائِشَةُ خَالَتُهُ أُخْتُ أُمِّهِ، وَفَاطِمَةُ بِنْتُ أَبِي حُبَيْشِ بْنِ الْمُطَّلِبِ بْنِ أَسَدٍ ابْنَةُ عَمِّهِ، وَهُوَ عُرْوَةُ بْنُ الزُّبَيْرِ بْنِ الْعَوَّامِ بْنِ خُوَيْلِدِ بْنِ أَسَدٍ، وَمُحَمَّدُ بْنُ أَبِي عَدِيٍّ

reject solitary reports as a pretext to nullify the Sunnah. Thus, all they clung to has been invalidated. All praise is due to Allah, Lord of the worlds.

الثِّقَةُ الْحَافِظُ الْمَأْمُونُ، وَلَا يَعْتَرِضُ بِهَذَا إِلَّا الْمُعْتَزِلَةُ الَّذِينَ لَا يَقُولُونَ بِخَبَرِ الْوَاحِدِ، تَعَلُّلًا عَلَى إِبْطَالِ السُّنَنِ فَسَقَطَ كُلُّ مَا تَعَلَّقُوا بِهِ. وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L4471–4473 Our statement here represents the view of the majority of our companions. Abu Hanifah, Sufyan al-Thawri, al-Awzaʿi, al-Shafiʿi, Ahmad, Ishaq, and ʿAbd al-Rahman ibn Mahdi stated that yellowish and turbid discharge during the days of menstruation is considered menstrual, but such discharge outside the days of menstruation is not considered menstrual. Layth ibn Saʿd stated: Blood, yellowish discharge, or turbid discharge outside the days of menstruation is not considered menstrual, but all such discharges during the days of menstruation are considered menstrual. Malik and ʿUbayd Allah ibn al-Hasan stated that yellowish and turbid discharge is considered menstrual, whether it occurs during the days of menstruation or outside them. Abu Yusuf and Muhammad stated that yellowish discharge and blood—all such discharges are considered menstrual. During the days of menstruation, [blood] is considered menstrual flow. As for turbid discharge appearing during the days expected for menstruation but prior to the actual flow, it is not menstruation. However, if it occurs after menstruation, it is considered part of it. All such instances outside the habitual menstrual days are not deemed menstruation, despite their profound confusion regarding blood appearing outside these days. Indeed, Abū Ḥanīfah stated: If a woman observes blood three days or more before her expected menstrual period and it ceases during her menstrual days, or persists for fewer than three days within them, none of this constitutes menstruation. She does not abstain from prayer, fasting, or marital relations because of this unless it recurs twice consecutively in this manner—then it becomes continuous menstruation.

وَقَوْلُنَا هَذَا هُوَ قَوْلُ جُمْهُورِ أَصْحَابِنَا. وَقَالَ أَبُو حَنِيفَةَ وَسُفْيَانُ الثَّوْرِيُّ وَالْأَوْزَاعِيُّ وَالشَّافِعِيُّ وَأَحْمَدُ وَإِسْحَاقُ وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: الصُّفْرَةُ وَالْكُدْرَةُ فِي أَيَّامِ الْحَيْضِ حَيْضٌ، وَلَيْسَتْ فِي غَيْرِ أَيَّامِ الْحَيْضِ حَيْضًا، وَقَالَ اللَّيْثُ بْنُ سَعْدٍ: الدَّمُ وَالصُّفْرَةُ وَالْكُدْرَةُ فِي غَيْرِ أَيَّامِ الْحَيْضِ لَيْسَ شَيْءٌ مِنْ ذَلِكَ حَيْضًا، وَكُلُّ ذَلِكَ فِي أَيَّامِ الْحَيْضِ حَيْضٌ. وَقَالَ مَالِكٌ وَعُبَيْدُ اللَّهِ بْنُ الْحَسَنِ: الصُّفْرَةُ وَالْكُدْرَةُ حَيْضٌ، سَوَاءٌ كَانَ فِي أَيَّامِ الْحَيْضِ أَوْ فِي غَيْرِ أَيَّامِ الْحَيْضِ، وَقَالَ أَبُو يُوسُفَ وَمُحَمَّدٌ: الصُّفْرَةُ وَالدَّمُ فَكُلُّ ذَلِكَ فِي أَيَّامِ الْحَيْضِ حَيْضٌ وَأَمَّا الْكُدْرَةُ فَهِيَ فِي أَيَّامِ الْحَيْضِ قَبْلَ الْحَيْضِ لَيْسَتْ حَيْضًا، وَأَمَّا بَعْدَ الْحَيْضِ فَهِيَ حَيْضٌ، وَكُلُّ ذَلِكَ لَيْسَ فِي غَيْرِ أَيَّامِ الْحَيْضِ حَيْضًا، عَلَى عَظِيمِ اضْطِرَابِهِمْ فِي الدَّمِ فِي غَيْرِ أَيَّامِ الْحَيْضِ، فَإِنَّ أَبَا حَنِيفَةَ قَالَ: إِذَا رَأَتْ الْمَرْأَةُ الدَّمَ قَبْلَ أَيَّامِ حَيْضِهَا ثَلَاثَةَ أَيَّامٍ فَأَكْثَرَ وَانْقَطَعَ فِي أَيَّامِ حَيْضِهَا أَوْ اتَّصَلَ أَقَلَّ مِنْ ثَلَاثَةِ أَيَّامٍ مِنْهَا فَلَيْسَ شَيْءٌ مِنْ ذَلِكَ حَيْضًا وَلَا تَمْتَنِعُ بِذَلِكَ مِنْ الصَّلَاةِ وَالصَّوْمِ وَالْوَطْءِ، إِلَّا أَنْ يَتَكَرَّرَ ذَلِكَ عَلَيْهَا مَرَّتَيْنِ، وَيَتَّصِلَ كَذَلِكَ فَهُوَ حَيْضٌ مُتَّصِلٌ.

L4474 He said: If she sees blood two days or fewer before her menstrual days and it continues into her menstrual days for three days or more, all of it is menstruation provided it does not exceed ten days. He said: If she sees blood three days or more before her menstrual days and it continues into her menstrual period without interruption for three days or more, he once stated: All of this is menstruation, and another time stated: What she saw before her menstrual days is not menstruation, but what she saw during her menstrual days

قَالَ: فَإِنْ رَأَتْ الدَّمَ قَبْلَ أَيَّامِ حَيْضِهَا بِيَوْمَيْنِ فَأَقَلَّ وَاتَّصَلَ بِهَا فِي أَيَّامِهَا ثَلَاثَةَ أَيَّامٍ فَأَكْثَرَ فَهُوَ كُلُّهُ حَيْضٌ، مَا لَمْ تُجَاوِزْ عَشَرَةَ أَيَّامٍ، قَالَ: فَإِنْ رَأَتْ الدَّمَ قَبْلَ أَيَّامِ حَيْضِهَا ثَلَاثَةَ أَيَّامٍ فَصَاعِدًا وَفِي أَيَّامِ الْحَيْضِ مُتَّصِلًا بِذَلِكَ ثَلَاثَةَ أَيَّامٍ فَصَاعِدًا، فَمَرَّةً قَالَ: كُلُّ ذَلِكَ حَيْضٌ، وَمَرَّةً قَالَ: أَمَّا مَا رَأَتْ قَبْلَ أَيَّامِهَا فَلَيْسَ حَيْضًا، وَأَمَّا مَا

رَأَتْ فِي أَيَّامِهَا فَهُوَ حَيْضٌ، وَهَذِهِ تَخَالِيطُ نَاهِيكَ بِهَا وَقَالَ أَبُو ثَوْرٍ وَبَعْضُ أَصْحَابِنَا الصُّفْرَةُ وَالْكُدْرَةُ فِي غَيْرِ أَيَّامِ الْحَيْضِ لَيْسَتَا حَيْضًا، وَفِي أَيَّامِ الْحَيْضِ قَبْلَ الدَّمِ لَيْسَتَا حَيْضًا، وَأَمَّا بَعْدَ الدَّمِ مُتَّصِلًا بِهِ فَهُمَا حَيْضٌ.

is menstruation. These are perplexing inconsistencies—enough to confound. Abū Thawr and some associates of our school said: The yellowish and turbid discharge outside the menstrual days are not menstruation. During the menstrual days, if they appear before the blood, they are not menstruation, but if they appear after the blood and follow it without interruption, they are menstruation.

قَالَ عَلِيٌّ: وَاحْتَجَّ هَؤُلَاءِ بِأَنْ قَالُوا: مَا لَمْ يُتَيَقَّنْ الْحَيْضُ فَلَا يَجُوزُ أَنْ تَتْرُكَ الصَّلَاةَ وَالصَّوْمَ الْمُتَيَقَّنَ وُجُوبُهُمَا، وَلَا أَنْ تُمْنَعَ مِنْ الْوَطْءِ الْمُتَيَقَّنِ تَحْلِيلُهُ حَتَّى إذَا تَيَقَّنَ الْحَيْضُ وَحَرُمَتْ الصَّلَاةُ وَالصَّوْمُ وَالْوَطْءُ بِيَقِينٍ لَمْ يَسْقُطْ تَحْرِيمُ ذَلِكَ إلَّا بِيَقِينٍ آخَرَ.

L4475 Ali said: These proponents argued: “As long as menstruation is not confirmed with certainty, it is impermissible to abandon prayer and fasting—whose obligation is certain—or to prohibit intercourse whose permissibility is certain. Only when menstruation is confirmed with certainty, rendering prayer, fasting, and intercourse prohibited with certainty, does their prohibition persist until lifted by another certainty.”

قَالَ عَلِيٌّ وَهَذَا عَمَلٌ غَيْرُ صَحِيحِ الْبَيَانِ، بَلْ هُوَ مُمَوَّهٌ، وَذَلِكَ أَنَّ هَاتَيْنِ الْمُقَدِّمَتَيْنِ حَقٌّ، إلَّا أَنَّ الْيَقِينَ الَّذِي ذَكَرُوا هُوَ النَّصُّ، وَقَدْ صَحَّ النَّصُّ، بِأَنَّ مَا عَدَا الدَّمَ الْأَسْوَدَ لَيْسَ حَيْضًا، وَلَا يَمْنَعُ مِنْ صَلَاةٍ وَلَا مِنْ صَوْمٍ وَلَا مِنْ وَطْءٍ، فَصَارَتْ حُجَّتُهُمْ حُجَّةً عَلَيْهِمْ، وَأَيْضًا فَلَوْ لَمْ يَكُنْ هَهُنَا هَذَا النَّصُّ لَمَا وَجَبَ مَا قَالُوهُ، لِأَنَّ الصَّلَاةَ وَالصَّوْمَ فَرْضَانِ قَدْ تُيُقِّنَ وُجُوبُهُمَا، وَالْوَطْءُ حَقٌّ قَدْ تُيُقِّنَتْ إبَاحَتُهُ فِي الزَّوْجَةِ وَالْأَمَةِ الْمُبَاحَةِ، وَالْحَيْضُ قَدْ تُيُقِّنَ أَنَّهُ مُحَرِّمٌ بِهِ كُلُّ ذَلِكَ، فَلَا يَجُوزُ أَنْ يُقْطَعَ عَلَى شَيْءٍ بِأَنَّهُ حَيْضٌ مُحَرِّمٌ لِلصَّلَاةِ وَلِلصَّوْمِ وَلِلْوَطْءِ إلَّا بِنَصٍّ وَارِدٍ أَوْ بِإِجْمَاعٍ مُتَيَقَّنٍ، وَأَمَّا بِدَعْوَى مُخْتَلَفٍ فِيهَا فَلَا، فَهَذَا هُوَ الْحَقُّ، وَلَا نَصَّ وَلَا إجْمَاعَ وَلَا لُغَةَ فِي أَنَّ مَا عَدَا الدَّمَ الْأَسْوَدَ حَيْضٌ أَصْلًا.

L4476 Ali said: This is a ruling lacking proper clarification; rather, it is deceptive. These two premises are valid, except that the certainty they mentioned refers to the text. The text has been authenticated, confirming that anything other than dark black blood is not menstruation, nor does it prevent prayer, fasting, or intercourse. Thus, their evidence has become evidence against them. Furthermore, had this text not existed here, their claim would not be binding. For prayer and fasting are two obligations whose requirement has been established with certainty, intercourse is an entitlement whose permissibility with one’s wife or permissible female servant has been established with certainty, and menstruation is definitively established to prohibit all these acts. Therefore, it is impermissible to conclusively deem anything menstruation that prohibits prayer, fasting, or intercourse except through an explicit text or indubitable consensus - not through a disputed claim. This is the truth, as there exists no text, consensus, or linguistic basis whatsoever stating that anything besides dark black blood constitutes menstruation in principle.

وَقَدْ صَحَّ النَّصُّ وَالْإِجْمَاعُ وَاللُّغَةُ عَلَى أَنَّ الدَّمَ الْأَسْوَدَ حَيْضٌ، فَلَا يَجُوزُ أَنْ يُسَمَّى حَيْضًا إلَّا مَا صَحَّ النَّصُّ وَالْإِجْمَاعُ بِأَنَّهُ حَيْضٌ، لَا مَا لَا نَصَّ فِيهِ وَلَا إجْمَاعَ.

L4477–4479 And indeed, the text, consensus, and language have been established as sound that the black blood... Menstruation is such that it is impermissible to designate as menstruation except what has been validated by textual evidence and consensus as being menstruation, not that for which there exists no textual evidence or consensus.

وَاحْتَجَّ بَعْضُ أَهْلِ الْمَقَالَةِ الْأُولَى بِأَنْ قَالَ: لَمَّا كَانَ السَّوَادُ حَيْضًا وَكَانَتْ الْحُمْرَةُ جُزْءًا مِنْ أَجْزَاءِ السَّوَادِ وَجَبَ أَنْ تَكُونَ حَيْضًا، وَلَمَّا كَانَتْ الصُّفْرَةُ جُزْءًا مِنْ أَجْزَاءِ الْحُمْرَةِ وَجَبَ أَنْ تَكُونَ حَيْضًا، وَلَمَّا كَانَتْ الْكُدْرَةُ جُزْءًا مِنْ أَجْزَاءِ الصُّفْرَةِ وَجَبَ أَنْ تَكُونَ حَيْضًا، وَلَمَّا كَانَ كُلُّ ذَلِكَ فِي بَعْضِ الْأَحْوَالِ حَيْضًا وَجَبَ أَنْ يَكُونَ فِي كُلِّ الْأَحْوَالِ حَيْضًا.

L4480 Some proponents of the first opinion argued, saying: Since blackness is menstruation, and redness is a component of blackness, it must be considered menstruation. Since yellowness is a component of redness, it must be considered menstruation. Since turbidity is a component of yellowness, it must be considered menstruation. Since all such discharges are considered menstruation in some circumstances, they must be considered menstruation in all circumstances.

قَالَ أَبُو مُحَمَّد: وَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنُ الْبَاطِلِ؛ لِأَنَّهُ يُعَارَضُ بِأَنْ يُقَالَ لَهُ: لَمَّا كَانَتْ الْقَصَّةُ الْبَيْضَاءُ طُهْرًا وَلَيْسَتْ حَيْضًا بِإِجْمَاعٍ، ثُمَّ كَانَتْ الْكُدْرَةُ بَيَاضًا غَيْرَ نَاصِعٍ، وَجَبَ أَنْ لَا تَكُونَ حَيْضًا، ثُمَّ لَمَّا كَانَتْ الصُّفْرَةُ كُدْرَةً مُشْبَعَةً وَجَبَ أَنْ لَا تَكُونَ حَيْضًا، ثُمَّ لَمَّا كَانَتْ الْحُمْرَةُ صُفْرَةً مُشْبَعَةً وَجَبَ أَنْ لَا تَكُونَ حَيْضًا، وَلَمَّا كَانَ ذَلِكَ فِي بَعْضِ الْأَحْوَالِ - وَهُوَ مَا كَانَ بَعْدَ أَكْثَرِ أَيَّامِ الْحَيْضِ - لَيْسَ حَيْضًا وَجَبَ أَنْ يَكُونَ فِي جَمِيعِ الْأَحْوَالِ لَيْسَ حَيْضًا، فَهَذَا أَصَحُّ مِنْ قِيَاسِهِمْ؛ لِأَنَّنَا لَمْ نُسَاعِدْهُمْ قَطُّ عَلَى أَنَّ الْحُمْرَةَ وَالصُّفْرَةَ وَالْكُدْرَةَ حَيْضٌ فِي حَالٍ مِنْ الْأَحْوَالِ وَلَا فِي وَقْتٍ مِنْ الْأَوْقَاتِ، وَلَا جَاءَ بِذَلِكَ قَطُّ نَصٌّ وَلَا إجْمَاعٌ وَلَا قِيَاسٌ غَيْرُ مُعَارَضٍ وَلَا قَوْلُ صَاحِبٍ لَمْ يُعَارَضْ وَهُمْ كُلُّهُمْ قَدْ وَافَقُونَا عَلَى أَنَّ كُلَّ ذَلِكَ لَيْسَ حَيْضًا إذَا رُئِيَ فِيمَا زَادَ فِي أَيَّامِ الْحَيْضِ، فَبَطَلَ قِيَاسُهُمْ، وَكَانَ مَا جِئْنَاهُمْ بِهِ - لَوْ صَحَّ الْقِيَاسُ لَا يَصِحُّ غَيْرُهُ.

L4481–4483 Abu Muhammad said: This is analogy, and all analogy is invalid. Furthermore, even if analogy were valid, this instance would be the very essence of invalidity, because it could be countered by arguing: Since the clear case is ritually pure, yet it is not... By consensus, menstruation is established. Then, if turbidity becomes a non-lustrous whiteness, it cannot be menstruation. Then, when yellowness constitutes saturated turbidity, it cannot be menstruation. Then, when redness is a saturated yellowness, it cannot be menstruation. Since that ruling applies in some circumstances—specifically what occurs beyond the maximum days of menstruation—it necessarily follows that it cannot be menstruation under any circumstance. This is sounder than their analogy, for we have never supported their claim that redness, yellowness, or turbidity constitutes menstruation in any situation or time. No textual proof, consensus, unchallenged analogy, or uncontradicted statement from a Companion has ever affirmed this. They all agreed with us that none of these are menstruation when observed beyond the days of menstruation, thereby invalidating their analogy. What we have established—even if analogy were valid—would render no other position valid.

وَكَذَلِكَ لَا يُوَافِقُونَ عَلَى أَنَّ الْحُمْرَةَ جُزْءٌ مِنْ السَّوَادِ، وَلَا أَنَّ الصُّفْرَةَ جُزْءٌ مِنْ الْحُمْرَةِ، وَلَا أَنَّ الْكُدْرَةَ جُزْءٌ مِنْ الصُّفْرَةِ، بَلْ هِيَ دَعْوَى عَارَضْنَاهُمْ بِدَعْوَى مِثْلِهَا فَسَقَطَ كُلُّ مَا قَالُوهُ، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، وَثَبَتَ قَوْلُنَا بِشَهَادَةِ النَّصِّ وَالْإِجْمَاعِ لَهُ.

L4484 Likewise, they do not agree that redness is a part of blackness, nor that yellowness is a part of redness, nor that turbidity is a part of yellowness. Rather, it is a claim which we countered with a similar claim, thus invalidating all their assertions. All praise is due to Allah, Lord of the worlds, and our

position is affirmed by the evidence of the scriptural text and the Consensus supporting it.

Issue: When a menstruating woman observes purity.

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When she attains purity after menstruation as we mentioned, neither prayer nor ṭawāf around the Kaaba becomes permissible for her until she washes her entire head and body with water or performs *tayammum* if water is unavailable, she is ill, or performing ghusl would cause her hardship. If she awakens fasting without having performed ghusl and then performs ghusl or *tayammum*—if she is among those eligible for *tayammum*—within the timeframe of the Fajr Prayer, her fasting remains valid. All of this is certain consensus, based on the statement of God's Messenger—peace be upon him: *"When menstruation departs, purify yourself,"* and the words of God Almighty: *{When they have purified themselves, then approach them}* [Al-Baqarah: 222]. He—peace be upon him—informed us that the earth is a means of purification when water is not found, thus *tayammum* becomes obligatory for a menstruating woman in the absence of water. There is disagreement regarding her delaying ghusl or *tayammum* beyond this timeframe, which we will mention in the Book of Fasting, *God willing*.[1]

The issue concerning a menstruating woman when her husband or master has intercourse with her, and her obligations when she becomes ritually pure.

256: Legal Question

As for her husband or her master having intercourse with her when she sees the cessation of bleeding, it is not permissible unless she washes her entire head and body with water or performs tayammum if she is among those eligible for tayammum. If she does not do this, then she must perform the ablution for prayer or perform tayammum if she is among those eligible for

[1] **Qur'an references (L4487):** Qur'an 2:222 (Al-Baqarah).

[مَسْأَلَةُ الْحَائِض إِذَا رَأَتْ الطُّهْرَ]

٢٥٥ - مَسْأَلَةٌ

فَإِذَا رَأَتْ الطُّهْرَ كَمَا ذَكَرْنَا لَمْ تَحِلَّ لَهَا الصَّلَاةُ وَلَا الطَّوَافُ بِالْكَعْبَةِ حَتَّى تَغْسِلَ جَمِيعَ رَأْسِهَا وَجَسَدِهَا بِالْمَاءِ، أَوْ تَتَيَمَّمَ إنْ عَدِمَتْ الْمَاءَ أَوْ كَانَتْ مَرِيضَةً عَلَيْهَا فِي الْغُسْلِ حَرَجٌ، وَإِنْ أَصْبَحَتْ صَائِمَةً وَلَمْ تَغْتَسِلْ فَاغْتَسَلَتْ أَوْ تَيَمَّمَتْ - إنْ كَانَتْ مِنْ أَهْلِ التَّيَمُّمِ - بِمِقْدَارِ مَا تَدْخُلُ فِي صَلَاةِ الصُّبْحِ صَحَّ صِيَامُهَا، وَهَذَا كُلُّهُ إجْمَاعٌ مُتَيَقَّنٌ، وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَإِذَا أَدْبَرَتْ الْحَيْضَةُ فَتَطَهَّرِي» وَلِقَوْلِ اللَّهِ تَعَالَى: {فَإِذَا تَطَهَّرْنَ فَأْتُوهُنَّ} [البقرة: ٢٢٢] وَقَدْ أَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّ الْأَرْضَ طَهُورٌ إذَا لَمْ نَجِدْ الْمَاءَ، فَوَجَبَ التَّيَمُّمُ لِلْحَائِضِ عِنْدَ عَدَمِ الْمَاءِ وَفِي تَأْخِيرِهَا الْغُسْلَ وَالتَّيَمُّمَ عَنْ هَذَا الْمِقْدَارِ خِلَافٌ نَذْكُرُهُ فِي كِتَابِ الصِّيَامِ إنْ شَاءَ اللَّهُ.

[مَسْأَلَةُ الْحَائِض إِذَا وَطِئَهَا زَوْجهَا أَوْ سيدها لَهَا إِذَا رَأَتْ الطُّهْرِ]

٢٥٦ - مَسْأَلَةٌ:

وَأَمَّا وَطْءُ زَوْجِهَا أَوْ سَيِّدِهَا لَهَا إذَا رَأَتْ الطُّهْرَ فَلَا يَحِلُّ إلَّا بِأَنْ تَغْسِلَ جَمِيعَ رَأْسِهَا وَجَسَدَهَا بِالْمَاءِ أَوْ بِأَنْ تَتَيَمَّمَ إنْ كَانَتْ مِنْ أَهْلِ التَّيَمُّمِ، فَإِنْ لَمْ تَفْعَلْ فَبِأَنْ تَتَوَضَّأَ

tayammum. If she fails to do this, she must without fail wash her private part with water. Whichever of these four actions she performs, intercourse with her becomes lawful for him.

L4491–4493 The proof of that is the statement of Allah, the Exalted: "They ask you about menstruation. Say: 'It is a harm, so refrain from women during their menstruation and do not approach them until they have become pure. When they have purified themselves, approach them as Allah has enjoined upon you.'" [Al-Baqarah 2:222] The statement of Allah: {until they become pure} [Al-Baqarah: 222] means until they attain the state of purity signifying the cessation of menstruation. His declaration: {when they have purified themselves} [Al-Baqarah: 222] describes their active purification. All that we have mentioned is termed in Islamic law and linguistic usage as *tatahhur* (purification), *ṭahūr* (a means of purification), and *ṭuhr* (purity). Whichever of these acts she performs fulfills the requirement of purification. Allah the Exalted said: {In it are men who love to purify themselves} [At-Tawbah: 108], as textual evidence and scholarly consensus establish this refers to washing the genitalia and anus with water. The Prophet (peace be upon him) stated: "The earth has been made for me as a place of prostration and a means of purification." Thus, it is confirmed that dry ablution (tayammum) for *janabah* (post-sexual impurity) and ritual impurity (*ḥadath*) is a valid purification.[2]

L4494 Allah the Exalted said: "And if you are in a state of major impurity, then purify yourselves" [Al-Mā'idah: 6]. And the Prophet (peace be upon him) said: "Allah does not accept prayer without purification"—meaning the ablution [wudū'].[3]

L4495 Whoever restricts the application of Allah's saying, {When they have purified themselves} [Al-Baqarah: 222], to washing the head and entire body alone – without ablution, dry ablution, or washing the private part with water – has followed what he has no knowledge of, claiming that Allah the Exalted intended some of what His speech encompasses without proof from Him. It should be said to them: Why did you not apply this to twilight? For

وُضُوءَ الصَّلَاةِ أَوْ تَيَمَّمَ إِنْ كَانَتْ مِنْ أَهْلِ التَّيَمُّمِ، فَإِنْ لَمْ تَفْعَلْ فَبِأَنْ تَغْسِلَ فَرْجَهَا بِالْمَاءِ وَلَا بُدَّ، أَيَّ هَذِهِ الْوُجُوهِ الْأَرْبَعَةِ فَعَلَتْ حَلَّ لَهُ وَطْؤُهَا.

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {وَيَسْأَلُونَكَ عَنِ الْمَحِيضِ قُلْ هُوَ أَذًى فَاعْتَزِلُوا النِّسَاءَ فِي الْمَحِيضِ وَلَا تَقْرَبُوهُنَّ حَتَّى يَطْهُرْنَ فَإِذَا تَطَهَّرْنَ فَأْتُوهُنَّ مِنْ حَيْثُ أَمَرَكُمُ اللَّهُ} [البقرة: ٢٢٢] فَقَوْلُهُ: {حَتَّى يَطْهُرْنَ} [البقرة: ٢٢٢] مَعْنَاهُ حَتَّى يَحْصُلَ لَهُنَّ الطُّهْرُ الَّذِي هُوَ عَدَمُ الْحَيْضِ وقَوْله تَعَالَى: {فَإِذَا تَطَهَّرْنَ} [البقرة: ٢٢٢] هُوَ صِفَةُ فِعْلِهِنَّ وَكُلُّ مَا ذَكَرْنَا يُسَمَّى فِي الشَّرِيعَةِ وَفِي اللُّغَةِ تَطَهُّرًا وَطَهُورًا وَطُهْرًا، فَأَيَّ ذَلِكَ فَعَلَتْ فَقَدْ تَطَهَّرَتْ: قَالَ اللَّهُ تَعَالَى: {فِيهِ رِجَالٌ يُحِبُّونَ أَنْ يَتَطَهَّرُوا} [التوبة: ١٠٨] فَجَاءَ النَّصُّ وَالْإِجْمَاعُ بِأَنَّهُ غَسْلُ الْفَرْجِ وَالدُّبُرِ بِالْمَاءِ، وَقَالَ - عَلَيْهِ السَّلَامُ -: «جُعِلَتْ لِي الْأَرْضُ مَسْجِدًا وَطَهُورًا» فَصَحَّ أَنَّ التَّيَمُّمَ لِلْجَنَابَةِ وَلِلْحَدَثِ طَهُورٌ.

وَقَالَ تَعَالَى: {وَإِنْ كُنْتُمْ جُنُبًا فَاطَّهَّرُوا} [المائدة: ٦] وَقَالَ - عَلَيْهِ السَّلَامُ - «لَا يَقْبَلُ اللَّهُ صَلَاةً بِغَيْرِ طَهُورٍ» يَعْنِي الْوُضُوءَ.

وَمَنْ اقْتَصَرَ بِقَوْلِهِ تَعَالَى: {فَإِذَا تَطَهَّرْنَ} [البقرة: ٢٢٢] عَلَى غَسْلِ الرَّأْسِ وَالْجَسَدِ كُلِّهِ دُونَ الْوُضُوءِ وَدُونَ التَّيَمُّمِ وَدُونَ غَسْلِ الْفَرْجِ بِالْمَاءِ، فَقَدْ قَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَادَّعَى أَنَّ اللَّهَ تَعَالَى أَرَادَ بَعْضَ مَا يَقَعُ عَلَيْهِ كَلَامُهُ بِلَا بُرْهَانٍ مِنَ اللَّهِ تَعَالَى. وَيُقَالُ لَهُمْ: هَلَّا فَعَلْتُمْ هَذَا فِي الشَّفَقِ؟ إِذْ قُلْتُمْ أَيُّ شَيْءٍ تَوَقَّعَ عَلَيْهِ اسْمُ الشَّفَقِ فَبِغُرُوبِهِ تَدْخُلُ صَلَاةُ

[2] **Qur'an references (L4491):** Qur'an 2:222 (Al-Baqarah); Qur'an 9:108 (At-Tawbah).
[3] **Qur'an references (L4494):** Qur'an 5:6 (Al-Ma'idah).

الْعَتَمَةِ، فَمَرَّةً تَحْمِلُونَ اللَّفْظَ عَلَى كُلِّ مَا يَقْتَضِيهِ، وَمَرَّةً عَلَى بَعْضِ مَا يَقْتَضِيهِ بِالدَّعْوَى وَالْهَوَسِ.

you claim that whichever aspect the term “twilight” is anticipated for, the Isha prayer begins at its disappearance. At times, you take the wording to encompass all that it entails, and at other times, you restrict it to part of what it entails through claims and whims.[4]

L4496

فَإِنْ قَالَ: إِذَا حَاضَتْ حَرُمَتْ بِإِجْمَاعٍ فَلَا تَحِلُّ إِلَّا بِإِجْمَاعٍ آخَرَ، قُلْنَا هَذَا بَاطِلٌ، وَدَعْوَى كَاذِبَةٌ، لَمْ يُوجِبْهَا لَا نَصٌّ وَلَا إِجْمَاعٌ، بَلْ إِذَا حَرُمَ الشَّيْءُ بِإِجْمَاعٍ ثُمَّ جَاءَ نَصٌّ يُبِيحُهُ فَهُوَ مُبَاحٌ، مَا نُبَالِي أُجْمِعَ عَلَى إِبَاحَتِهِ أَمْ اُخْتُلِفَ فِيهَا، وَلَوْ كَانَتْ قَضِيَّتُكُمْ هَذِهِ صَحِيحَةً لَبَطَلَ بِهَا عَلَيْكُمْ أَكْثَرُ أَقْوَالِكُمْ، فَيُقَالُ لَكُمْ: قَدْ حَرَّمْتُمُ الصَّلَاةَ عَلَى الْمُحْدِثِ وَالْمُجْنِبِ بِإِجْمَاعٍ، فَلَا تَحِلُّ لَهُمَا إِلَّا بِإِجْمَاعٍ وَلَا تُجِيزُوا لِلْجُنُبِ أَنْ يُصَلِّيَ بِالتَّيَمُّمِ وَلَوْ عَدِمَ الْمَاءَ شَهْرًا فَلَا إِجْمَاعَ فِي ذَلِكَ، بَلْ عُمَرُ بْنُ الْخَطَّابِ وَابْنُ مَسْعُودٍ وَإِبْرَاهِيمُ وَالْأَسْوَدُ لَا يُجِيزُونَ لَهُ الصَّلَاةَ بِالتَّيَمُّمِ، وَأَبْطَلُوا صَلَاةَ مَنْ تَوَضَّأَ وَلَمْ يَسْتَنْشِقْ، لِأَنَّهُ لَا إِجْمَاعَ فِي صِحَّتِهَا، وَأَبْطَلُوا صَلَاةَ مَنْ تَوَضَّأَ بِفَضْلِ امْرَأَةٍ وَمَنْ لَمْ يَتَوَضَّأْ مِمَّا مَسَّتْ النَّارُ، وَهَذَا كَثِيرٌ جِدًّا، وَكَذَلِكَ الْقَوْلُ فِي الصِّيَامِ وَالزَّكَاةِ وَالْحَجِّ وَجَمِيعِ الشَّرَائِعِ، فَصَحَّ أَنَّ قَضِيَّتَهُمْ هَذِهِ فِي غَايَةِ الْفَسَادِ فِي ذَاتِهَا، وَفِي غَايَةِ الْإِفْسَادِ لِقَوْلِهِمْ.

If he says: When she menstruates, she is prohibited by consensus, so she remains impermissible except through another consensus, we say: This is invalid and a false assertion, unsupported by any textual evidence or consensus. Rather, when something is prohibited by consensus and a textual ruling subsequently permits it, it becomes permissible regardless of whether consensus affirms its permissibility or disagreement arises. Were your premise valid, most of your legal positions would thereby be nullified. It would be said to you: You have prohibited prayer for those in minor impurity and those in major ritual impurity (janabah) by consensus, so it would remain impermissible for them except through consensus. Yet you permit the junub to pray through tayammum even if water is unavailable for a month, though no consensus exists on this. Indeed, Umar ibn al-Khattab, Ibn Mas‘ud, Ibrahim, and al-Aswad did not permit prayer through tayammum for such a person. They invalidated the prayer of one who performed ablution without nasal inhalation due to the absence of consensus on its validity. They nullified the prayer of one who performed ablution with leftover water from a woman’s ablution and of one who omitted ablution after touching what fire had contacted. This applies extensively. Similarly, this applies to rulings on fasting, zakat, Hajj, and all religious ordinances. Thus, it is confirmed that their premise is utterly corrupt in essence and entirely destructive to their own legal arguments.

L4497–4499

قَالَ عَلِيٌّ: وَمِمَّنْ قَالَ بِقَوْلِنَا فِي هَذِهِ الْمَسْأَلَةِ عَطَاءٌ وَطَاوُسٌ وَمُجَاهِدٌ، وَهُوَ قَوْلُ أَصْحَابِنَا. وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: إِنْ كَانَتْ أَيَّامُهَا عَشَرَةَ أَيَّامٍ فَبِانْقِطَاعِ الْعَشَرَةِ الْأَيَّامِ يَحِلُّ لَهُ وَطْؤُهَا، اغْتَسَلَتْ أَوْ لَمْ تَغْتَسِلْ، مَضَى لَهَا وَقْتُ صَلَاةٍ أَوْ لَمْ يَمْضِ، تَوَضَّأَتْ أَوْ لَمْ تَتَوَضَّأْ، تَيَمَّمَتْ أَوْ لَمْ تَتَيَمَّمْ، غَسَلَتْ فَرْجَهَا أَوْ لَمْ تَغْسِلْهُ، فَإِنْ كَانَتْ أَيَّامُ حَيْضِهَا أَقَلَّ

Ali said: Among those who upheld our opinion in this matter are ʿAṭāʾ, Ṭāwūs, and Mujāhid, and this is the position of our companions. Abū Ḥanīfa and his companions said: If her menstrual period lasts ten days, upon the cessation of the ten days, it becomes permissible [to resume marital relations]. It is permissible for him to have intercourse with her whether she has performed the ritual bath or not, whether the time for prayer has elapsed for her or not, whether she performed ablution or not, whether she performed

[4] **Qur’an references (L4495):** Qur’an 2:222 (Al-Baqarah).

dry ablution or not, and whether she washed her private parts or not. If her menstrual days are fewer than ten, it is not lawful for him to have intercourse with her unless she performs the ritual bath or the time for the earliest prayer from her state of purity elapses. If the time for one prayer has passed during which she attained purity or before it—even if she did not perform the ritual bath during that time—it is permissible for him to have intercourse with her, even if she has not performed the ritual bath, dry ablution, ablution, or washed her private parts. If she is a woman of the Book, it is lawful for him to have intercourse with her once she observes cessation of bleeding in any case.

مِنْ عَشَرَةِ أَيَّامٍ لَمْ يَحِلَّ لَهُ أَنْ يَطَأَهَا إِلَّا بِأَنْ تَغْتَسِلَ أَوْ يَمْضِيَ لَهَا وَقْتُ أَدْنَى صَلَاةٍ مِنْ طُهْرِهَا، فَإِنْ مَضَى لَهَا وَقْتُ صَلَاةٍ وَاحِدَةٍ طَهُرَتْ فِيهِ أَوْ قَبْلَهُ وَلَمْ تَغْتَسِلْ فِيهِ فَلَهُ وَطْؤُهَا، وَإِنْ لَمْ تَغْتَسِلْ وَلَا تَيَمَّمَتْ وَلَا تَوَضَّأَتْ وَلَا غَسَلَتْ فَرْجَهَا، فَإِنْ كَانَتْ كِتَابِيَّةً حَلَّ لَهُ وَطْؤُهَا إِذَا رَأَتْ الطُّهْرَ عَلَى كُلِّ حَالٍ.

L4500 These are statements from which we praise Allah for deliverance, as nothing has been reported from any of the Companions—may Allah be pleased with them—regarding this matter. Nor do we know of anyone from the Followers except Sālim ibn ʿAbdullāh, Sulaymān ibn Yasār, al-Zuhrī, and Rabīʿah, who prohibited intercourse with her until she performs the ritual bath. There is no proof in their statements if they stood alone—how then could their opinion stand when opposed by those of equal standing?

L4501 And success is by Allah, the Exalted.

L4502 How many issues are there in which they opposed a greater number than these of the Companions—may Allah be pleased with them—with no opponent to them known therein? We have previously mentioned many of them and will now cite, if Allah, the Mighty and Majestic, wills, the narration from ʻUmar, ʻAli, Ibn ʻAbbas, Anas, Abu Hurayrah, ʻAbdullah ibn ʻUmar, and Nafiʻ ibn Jubayr: prayer in a cemetery or facing a grave is not permissible, with no opponent to them known among the Companions in that matter. Yet later scholars opposed them through their personal opinions. The narration from Abu Bakr, Thabit ibn Qays, and Anas states that the thigh is not part of the ʻawrah, with no opponent to them known among the Companions in that. Still they opposed them. Such examples are exceedingly numerous.

L4503 If Allah the Exalted had intended by His statement "purify yourselves" [Quran 2:222] only some of what the wording entails—excluding others—the Messenger of Allah (peace be upon him) would not have neglected to clarify that. Since he (upon him be peace) did not specify this distinction and referred us to the Quran, we became absolutely certain that Allah—Exalted and Glorious—did not intend only some of what the textual term necessitates, excluding others. If they say, "Our position is the more precautionary," we respond: Glory be to Allah (from such a thing)! Rather, the more precautionary [position] is not to prohibit what Allah—Exalted and Glorious—has permitted of marital intercourse without definitive certainty.[1]

L4504 If they say, "It is not permissible for him to have intercourse with her except

وَهَذِهِ أَقْوَالٌ نَحْمَدُ اللَّهَ عَلَى السَّلَامَةِ مِنْهَا، وَلَمْ يُرْوَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي هَذِهِ الْمَسْأَلَةِ شَيْءٌ، وَلَا نَعْلَمُ أَيْضًا عَنْ أَحَدٍ مِنْ التَّابِعِينَ إلَّا عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ وَسُلَيْمَانَ بْنِ يَسَارٍ وَالزُّهْرِيِّ وَرَبِيعَةَ الْمَنْعَ مِنْ وَطْئِهَا حَتَّى تَغْتَسِلَ وَلَا حُجَّةَ فِي قَوْلِهِمْ لَوْ انْفَرَدُوا، فَكَيْفَ وَقَدْ عَارَضَهُمْ مَنْ هُوَ مِثْلُهُمْ.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَكَمْ مِنْ مَسْأَلَةٍ خَالَفُوا فِيهَا أَكْثَرَ عَدَدًا مِنْ هَؤُلَاءِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُمْ فِيهَا مُخَالِفٌ، وَقَدْ ذَكَرْنَا مِنْهَا كَثِيرًا قَبْلُ، وَنَذْكُرُ إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ مِنْ ذَلِكَ الرِّوَايَةَ عَنْ عُمَرَ وَعَلِيٍّ وَابْنِ عَبَّاسٍ وَأَنَسٍ وَأَبِي هُرَيْرَةَ وَعَبْدِ اللَّهِ بْنِ عُمَرَ وَنَافِعِ بْنِ جُبَيْرٍ: لَا تَجُوزُ الصَّلَاةُ فِي مَقْبَرَةٍ وَلَا إلَى قَبْرٍ، وَلَا يُعْرَفُ لَهُمْ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ، فَخَالَفُوهُمْ بِآرَائِهِمْ، وَعَنْ أَبِي بَكْرٍ وَثَابِتِ بْنِ قَيْسٍ وَأَنَسٍ: الْفَخِذُ لَيْسَتْ عَوْرَةً وَلَا يُعْرَفُ لَهُمْ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ، فَخَالَفُوهُمْ، وَمِثْلُ ذَلِكَ كَثِيرٌ جِدًّا.

وَلَوْ أَنَّ اللَّهَ تَعَالَى أَرَادَ بِقَوْلِهِ: {تَطَهَّرْنَ} [البقرة: ٢٢٢] بَعْضَ مَا يَقَعُ عَلَيْهِ اللَّفْظُ دُونَ بَعْضٍ لَمَا أَغْفَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيَانَ ذَلِكَ، فَلَمَّا لَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - ذَلِكَ وَأَحَالَنَا عَلَى الْقُرْآنِ أَيْقَنَّا قَطْعًا بِأَنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يُرِدْ بَعْضَ مَا يَقْتَضِيهِ اللَّفْظُ دُونَ بَعْضٍ، فَإِنْ قَالُوا قَوْلُنَا أَحْوَطُ، قُلْنَا حَاشَا لِلَّهِ، بَلْ الْأَحْوَطُ أَنْ لَا يُحَرِّمَ عَلَيْهِ مَا أَحَلَّهُ اللَّهُ عَزَّ وَجَلَّ مِنْ الْوَطْءِ بِغَيْرِ يَقِينٍ.

[1] **Qur'an references (L4503):** Qur'an 2:222 (Al-Baqarah).

under circumstances that make her prayer permissible," we respond that this is a false and self-contradictory claim. The first reason for this is that there is no proof for its validity.

فَإِنْ قَالُوا: لَا يَحِلُّ لَهُ وَطْؤُهَا إِلَّا بِمَا يَحِلُّ لَهَا الصَّلَاةُ، قُلْنَا هَذِهِ دَعْوَى بَاطِلٍ مُنْتَقِضَةٌ، أَوَّلُ ذَلِكَ أَنَّهَا لَا بُرْهَانَ عَلَى صِحَّتِهَا.

L4505 The second is that it is permissible for him to have intercourse with her at a time when prayer is impermissible for her, specifically when she is in a state requiring major ritual bath (janābah) or minor ablution (ḥadath).

وَالثَّانِي أَنَّهُ قَدْ يَحِلُّ لَهُ وَطْؤُهَا حَيْثُ لَا تَحِلُّ لَهَا الصَّلَاةُ، وَهُوَ كَوْنُهَا مُجْنِبَةً وَمُحْدِثَةً.

L4506–4508 The third is that they should be told: "Why did you not say it is impermissible?" He may lawfully have intercourse with her only by what permits her fasting, and according to them, this permissibility is contingent solely upon confirmation of ritual purity. This presents conflicting claims. If some argue: We find prohibition triggered by the subtlest matters, while permissibility is established only through the most stringent criteria—such as the prohibition of marrying women wedded by one's fathers, which is incurred by the marriage contract alone, and the re-permissibility of a thrice-divorced woman for her former husband, which becomes lawful only through a new contract and consummation.

وَالثَّالِثُ أَنْ يُقَالَ لَهُمْ: هَلَّا قُلْتُمْ لَا يَحِلُّ لَهُ وَطْؤُهَا إِلَّا بِمَا يَحِلُّ لَهَا بِهِ الصَّوْمُ وَهُوَ يَحِلُّ لَهَا عِنْدَهُمْ بِرُؤْيَةِ الطُّهْرِ فَقَطْ فَهَذِهِ دَعْوَى بِدَعْوَى فَإِنْ قَالَ بَعْضُهُمْ: وَجَدْنَا التَّحْرِيمَ يَدْخُلُ بِأَدَقِّ الْأَشْيَاءِ، وَلَا يَدْخُلُ التَّحْلِيلُ إِلَّا بِأَغْلَظِ الْأَشْيَاءِ، كَنِكَاحِ مَا نَكَحَ الْآبَاءُ، يَحْرُمُ بِالْعَقْدِ، وَتَحْلِيلُ الْمُطَلَّقَةِ ثَلَاثًا لَا يَحِلُّ لَهَا إِلَّا بِالْعَقْدِ وَالْوَطْءِ.

L4509 We said, "It is not as you have claimed; rather, you have contradicted this ruling of yours despite its corruption and invalidity. You have abandoned the most stringent positions asserted by others—namely, the preclusion—for al-Ḥasan al-Baṣrī does not deem a thrice-divorced woman lawful [for remarriage] except through a new contract, intercourse, and ejaculation, all of which are necessary. Meanwhile, Saʿīd ibn al-Musayyab holds that she becomes lawful solely through the contract, even without intercourse or penetration."

قُلْنَا لَيْسَ كَمَا قُلْتُمْ، بَلْ قَدْ خَالَفْتُمْ قَضِيَّتَكُمْ هَذِهِ عَلَى فَسَادِهَا وَبُطْلَانِهَا، فَتَرَكْتُمْ أَغْلَظَ الْأَشْيَاءِ مِمَّا قَالَهُ غَيْرُكُمْ وَهُوَ الْإِجْنَابُ، فَإِنَّ الْحَسَنَ الْبَصْرِيَّ لَا يَرَى الْمُطَلَّقَةَ ثَلَاثًا تَحِلُّ إِلَّا بِالْعَقْدِ وَالْوَطْءِ وَالْإِنْزَالِ وَلَا بُدَّ، وَسَعِيدُ بْنُ الْمُسَيِّبِ يَرَى أَنَّهَا تَحِلُّ بِالْعَقْدِ فَقَطْ وَإِنْ لَمْ يَكُنْ وَطْءٌ وَلَا دُخُولٌ.

L4510 Then it is said to them: We have found that legal permissibility enters through the most delicate matters - such as the private part of an unrelated woman, where intercourse incurs entry into the Fire, sanctions bloodshed through stoning, and mandates public lashing. Yet this becomes lawful through three utterances or two: when a man says, "Marry me to your daughter," and the guardian responds, "I have married her to you"; or when she verbally consents while the guardian grants permission. It is also effected when a slaveowner declares: "She is gifted to you." Conversely, we

ثُمَّ يُقَالُ لَهُمْ: قَدْ وَجَدْنَا التَّحْلِيلَ يَدْخُلُ بِأَدَقِّ الْأَشْيَاءِ وَهُوَ فَرْجُ الْأَجْنَبِيَّةِ الَّذِي فِي وَطْئِهِ دُخُولُ النَّارِ وَإِبَاحَةُ الدَّمِ بِالرَّجْمِ وَالشُّهْرَةِ بِالسِّيَاطِ، فَإِنَّهُ يَحِلُّ بِثَلَاثِ كَلِمَاتٍ أَوْ كَلِمَتَيْنِ: أَنْكِحْنِي ابْنَتَكَ. قَالَ قَدْ أَنْكَحْتُهَا. أَوْ تَلْفِظُ هِيَ بِالرِّضَا وَالْوَلِيُّ بِالْإِذْنِ. وَبِأَنْ يَقُولَ سَيِّدُ الْأَمَةِ: هِيَ لَكَ هِبَةً. وَوَجَدْنَا التَّحْرِيمَ لَا يَدْخُلُ إِلَّا بِأَغْلَظِ الْأَشْيَاءِ وَهُوَ طَلَاقُ الثَّلَاثِ أَوْ انْقِضَاءُ أَمَدِ الْعِدَّةِ، وَوَجَدْنَا تَحْرِيمَ الرَّبِيبَةِ لَا يَدْخُلُ إِلَّا بِالْعَقْدِ

have found prohibition enters only through the weightiest matters - such as irrevocable triple divorce or the conclusion of the waiting period. We observe that prohibition regarding a stepdaughter through one's wife occurs solely through marriage contract and consummation; otherwise, it does not apply. Thus, it becomes evident that their assertion is confused and constitutes falsehood in matters of religion. The truth herein is that prohibition is established only by what establishes permissibility: the Quran or the Sunnah - nothing beyond this. Success comes solely from Allah, the Exalted.

L4511 **The issue of the menstruating woman making up the prayer.**

L4512 257 – Issue

L4513 When a menstruating woman becomes pure, she is not required to make up any part of the prayers that occurred during her days of menstruation.

L4514 She must make up the days of fasting she missed during her menstrual period. This is a text supported by consensus, with no disagreement about it. Issue 258:

L4515 If a woman menstruates at the beginning of the prayer time or at the end of the time and had not prayed that prayer, it is waived from her, and there is no obligation for her to repeat it. This is the opinion of Abū Ḥanīfah, al-Awzāʿī, and our companions.

L4516 And according to this, Muhammad ibn Sirin and Hammad ibn Abi Sulayman said.

L4517 And al-Nakhaʿī, al-Shaʿbī, Qatādah, and Isḥāq said: She is obliged to make up for it (qaḍāʾ).

L4518 Al-Shafi'i said: If it becomes possible for her to pray it, then she must make it up (qada).

L4519–4521 Ali said: The proof of our statement is that Allah the Exalted has designated a limited time for prayer with a beginning and an end, and it has been established that the Messenger of Allah (peace be upon him) prayed at the

وَالدُّخُولِ وَإِلَّا فَلَا، فَظَهَرَ أَنَّ الَّذِي قَالُوهُ تَخْلِيطٌ وَقَوْلٌ بِالْبَاطِلِ فِي الدِّينِ، وَالْحَقُّ مِنْ هَذَا هُوَ أَنَّ التَّحْرِيمَ لَا يَدْخُلُ إِلَّا بِمَا يَدْخُلُ بِهِ التَّحْلِيلُ، وَهُوَ الْقُرْآنُ أَوْ السُّنَّةُ وَلَا مَزِيدَ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَضَاء الْحَائِضِ لِلصَّلَاةِ]

٢٥٧ - مَسْأَلَةٌ:

وَلَا تَقْضِي الْحَائِضُ إذَا طَهُرَتْ شَيْئًا مِنْ الصَّلَاةِ الَّتِي مَرَّتْ فِي أَيَّامِ حَيْضِهَا.

وَتَقْضِي صَوْمَ الْأَيَّامِ الَّتِي مَرَّتْ لَهَا فِي أَيَّامِ حَيْضِهَا. وَهَذَا نَصٌّ مُجْمَعٌ لَا يَخْتَلِفُ فِيهِ أَحَدٌ. ٢٥٨ - مَسْأَلَةٌ:

وَإِنْ حَاضَتْ امْرَأَةٌ فِي أَوَّلِ وَقْتِ الصَّلَاةِ أَوْ فِي آخِرِ الْوَقْتِ وَلَمْ تَكُنْ صَلَّتْ تِلْكَ الصَّلَاةَ سَقَطَتْ عَنْهَا، وَلَا إعَادَةَ عَلَيْهَا فِيهَا، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَالْأَوْزَاعِيِّ وَأَصْحَابِنَا.

وَبِهِ قَالَ مُحَمَّدُ بْنُ سِيرِينَ وَحَمَّادُ بْنُ أَبِي سُلَيْمَانَ.

وَقَالَ النَّخَعِيُّ وَالشَّعْبِيُّ وَقَتَادَةُ وَإِسْحَاقُ: عَلَيْهَا الْقَضَاءُ.

وَقَالَ الشَّافِعِيُّ: إنْ أَمْكَنَهَا أَنْ تُصَلِّيَهَا فَعَلَيْهَا الْقَضَاءُ.

قَالَ عَلِيٌّ: بُرْهَانُ قَوْلِنَا هُوَ أَنَّ اللَّهَ تَعَالَى جَعَلَ لِلصَّلَاةِ وَقْتًا مَحْدُودًا أَوَّلُهُ وَآخِرُهُ وَصَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى الصَّلَاةَ فِي أَوَّلِ وَقْتِهَا وَفِي آخِرِ وَقْتِهَا، فَصَحَّ

beginning of its time and at the end of its time. Thus, it is established that the one who postpones. Delaying the prayer until the end of its time is not sinful for her, for he—peace be upon him—does not commit sin. Thus, the prayer did not become specifically obligatory upon her because she refrained from delaying it. Since it did not become obligatory upon her until menstruation occurred, it has been dropped from her. Had the prayer been obligatory at the beginning of its time, whoever performed it after the duration required for its completion from the start of its time would be making it up, not as a timely performer, and would be sinful for delaying it beyond its prescribed time while postponing it. This is invalid, with no disagreement among any scholar. 259 - Issue:

أَنَّ الْمُؤَخِّرَ لَهَا إلَى آخِرِ وَقْتِهَا لَيْسَ عَاصِيًا. لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يَفْعَلُ الْمَعْصِيَةَ فَإِذًا هِيَ لَيْسَتْ عَاصِيَةً فَلَمْ تَتَعَيَّنْ الصَّلَاةُ عَلَيْهَا بِعُدُولِهَا تَأْخِيرَهَا، فَإِذَا لَمْ تَتَعَيَّنْ عَلَيْهَا حَتَّى حَاضَتْ فَقَدْ سَقَطَتْ عَنْهَا، وَلَوْ كَانَتْ الصَّلَاةُ تَجِبُ بِأَوَّلِ الْوَقْتِ لَكَانَ مَنْ صَلَّاهَا بَعْدَ مُضِيِّ مِقْدَارِ تَأْدِيَتِهَا مِنْ أَوَّلِ وَقْتِهَا قَاضِيًا لَهَا لَا مُصَلِّيًا، وَفَاسِقًا بِتَأْخِيرِهَا عَنْ وَقْتِهَا، وَمُؤَخِّرًا لَهَا عَنْ وَقْتِهَا، وَهَذَا بَاطِلٌ لَا اخْتِلَافَ فِيهِ مِنْ أَحَدٍ. ٢٥٩ - مَسْأَلَةٌ:

L4522 If she becomes pure at the end of the prayer time with so little time remaining that she cannot perform the major or minor ablutions before the time expires, then that prayer is not incumbent upon her, nor its qada. This is the opinion of Al-Awza'i and our school's scholars.

فَإِنْ طَهُرَتْ فِي آخِرِ وَقْتِ الصَّلَاةِ بِمِقْدَارِ مَا لَا يُمْكِنُهَا الْغُسْلُ وَالْوُضُوءُ حَتَّى يَخْرُجَ الْوَقْتُ، فَلَا تَلْزَمُهَا تِلْكَ الصَّلَاةُ وَلَا قَضَاؤُهَا، وَهُوَ قَوْلُ الْأَوْزَاعِيِّ وَأَصْحَابِنَا.

L4523 Al-Shafi'i and Ahmad said: She is obligated to pray. Abu Muhammad said: The proof for the validity of our view is that Allah, the Mighty and Majestic, has only permitted prayer with ritual purification, and Allah the Exalted has appointed fixed times for prayers. Therefore, if she cannot attain purification while a remainder of the time remains, we are certain that she has not been charged with performing that prayer which it is not lawful for her to perform during its prescribed time.

وَقَالَ الشَّافِعِيُّ وَأَحْمَدُ: عَلَيْهَا أَنْ تُصَلِّيَ. قَالَ أَبُو مُحَمَّد: بُرْهَانُ صِحَّةِ قَوْلِنَا إنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يُبِحْ الصَّلَاةَ إلَّا بِطَهُورٍ، وَقَدْ حَدَّ اللَّهُ تَعَالَى لِلصَّلَوَاتِ أَوْقَاتَهَا، فَإِذَا لَمْ يُمْكِنْهَا الطَّهُورُ وَفِي الْوَقْتِ بَقِيَّةٌ فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهَا لَمْ تُكَلَّفْ تِلْكَ الصَّلَاةَ الَّتِي لَمْ يَحِلَّ لَهَا أَنْ تُؤَدِّيَهَا فِي وَقْتِهَا.

L4524 **The jurisprudential ruling states that a man may seek pleasure from his menstruating wife through all acts except penetrative intercourse.**

[مَسْأَلَةٌ لِلرَّجُلِ أَنْ يَتَلَذَّذَ مِنْ امْرَأَتِهِ الْحَائِضِ بِكُلِّ شَيْءٍ حَاشَا الْإِيلَاجَ فِي الْفَرْجِ]

L4525 260 - Question:

٢٦٠ - مَسْأَلَةٌ:

L4526 A man is permitted to derive pleasure from his menstruating wife in every way except vaginal penetration; he may engage in external stimulation of the genitalia but must avoid penetration. As for anal intercourse, it is forbidden at all times.

وَلِلرَّجُلِ أَنْ يَتَلَذَّذَ مِنْ امْرَأَتِهِ الْحَائِضِ بِكُلِّ شَيْءٍ، حَاشَا الْإِيلَاجَ فِي الْفَرْجِ، وَلَهُ أَنْ يُشَفِّرَ وَلَا يُولِجَ، وَأَمَّا الدُّبُرُ فَحَرَامٌ فِي كُلِّ وَقْتٍ.

وَفِي هَذَا خِلَافٌ فَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ يَعْتَزِلُ فِرَاشَ امْرَأَتِهِ إِذَا حَاضَتْ وَقَالَ عُمَرُ بْنُ الْخَطَّابِ وَسَعِيدُ بْنُ الْمُسَيِّبِ وَعَطَاءٌ - إِلَّا أَنَّهُ لَا يَصِحُّ عَنْ عُمَرَ - وَأَبُو حَنِيفَةَ وَمَالِكٌ وَالشَّافِعِيُّ: لَهُ مَا فَوْقَ الْإِزَارِ مِنْ السُّرَّةِ فَصَاعِدًا إِلَى أَعْلَاهَا، وَلَيْسَ لَهُ مَا دُونَ ذَلِكَ.

L4527 There is disagreement on this matter. We have reported from Ibn Abbas that he would refrain from his wife's bed during her menstruation. Umar ibn al-Khattab, Sa'id ibn al-Musayyab, and 'Ata' - though the report from Umar is not authenticated - along with Abu Hanifa, Malik, and al-Shafi'i held that he may have what is above the lower garment from the navel upwards to the upper part of the body, but not what lies below that.

فَأَمَّا مَنْ ذَهَبَ مَذْهَبَ ابْنِ عَبَّاسٍ فَإِنَّهُ احْتَجَّ بِقَوْلِ اللَّهِ تَعَالَى: {وَيَسْأَلُونَكَ عَنِ الْمَحِيضِ قُلْ هُوَ أَذًى فَاعْتَزِلُوا النِّسَاءَ فِي الْمَحِيضِ وَلا تَقْرَبُوهُنَّ حَتَّى يَطْهُرْنَ} [البقرة: ٢٢٢] ، وَبِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد عَنْ سَعِيدِ بْنِ عَبْدِ الْجَبَّارِ عَنْ عَبْدِ الْعَزِيزِ الدَّرَاوَرْدِيِّ عَنْ أَبِي الْيَمَانِ عَنْ أُمِّ ذَرَّةٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ " كُنْتُ إِذَا حِضْتُ نَزَلْتُ عَنْ الْمِثَالِ عَلَى الْحَصِيرِ فَلَمْ نَقْرَبْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ نَدْنُ مِنْهُ حَتَّى نَطْهُرَ.

L4528 As for the one who follows the school of Ibn Abbas, he cited as evidence the statement of Allah the Exalted: {And they ask you about menstruation. Say, "It is harm, so keep away from women during menstruation and do not approach them until they become pure"} [Al-Baqarah: 222], and a hadith we have narrated through the chain of Abu Dawud from Sa'id ibn 'Abd al-Jabbar from 'Abd al-'Aziz al-Darawardi from Abu al-Yaman from Umm Dharrah from 'Aishah, the Mother of the Believers, who said: "When I menstruated, I would descend from the raised couch onto the mat. We would neither approach the Messenger of Allah (peace and blessings be upon him) nor draw near to him until we had purified ourselves."[2]

قَالَ أَبُو مُحَمَّد: وَأَمَّا هَذَا الْخَبَرُ فَإِنَّهُ مِنْ طَرِيقِ أَبِي الْيَمَانِ كَثِيرِ بْنِ الْيَمَانِ الرَّحَّالِ وَلَيْسَ بِالْمَشْهُورِ، عَنْ أُمِّ ذَرَّةٍ وَهِيَ مَجْهُولَةٌ فَسَقَطَ، وَأَمَّا الْآيَةُ فَهِيَ مُوجِبَةٌ لِفِعْلِ ابْنِ عَبَّاسٍ إلَّا أَنْ يَأْتِيَ بَيَانٌ صَحِيحٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، فَيُوقَفُ عِنْدَهُ، فَأَرْجَأْنَا أَمْرَ الْآيَةِ.

L4529–4531 Abū Muḥammad said: As for this report, it is transmitted through the chain of Abū al-Yamān Kathīr ibn al-Yamān the Traveler—who is not well-known—from Umm Dharrah, who is an unknown narrator; thus, the report is rejected. As for the verse, it obligates adhering to the action of Ibn ʿAbbās. Unless there comes an authentic clarification from the Messenger of Allah—peace and blessings be upon him—in which case we adhere to it, we have postponed the matter of the verse.

ثُمَّ نَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ ذَهَبَ إلَى مَا قَالَ بِهِ أَبُو حَنِيفَةَ وَمَالِكٌ، فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ عَنْ كُرَيْبٍ مَوْلَى ابْنِ عَبَّاسٍ سَمِعْتُ مَيْمُونَةَ أُمَّ الْمُؤْمِنِينَ قَالَتْ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَضْطَجِعُ مَعِي وَأَنَا حَائِضٌ وَبَيْنِي وَبَيْنَهُ ثَوْبٌ» .

L4532 Then we examined the evidence cited by those who upheld the position advocated by Abū Ḥanīfah and Mālik. We found them relying on a narration we narrated through the chain of Ibn Wahb, from Makhramah ibn Bukayr, from his father, from Kuraib—the freed slave of Ibn ʿAbbās—who reported: "I heard Maymūnah, the Mother of the Believers, say: 'The Messenger of

[2] **Qur'an references (L4528):** Qur'an 2:222 (Al-Baqarah).

Allah, peace and blessings be upon him, would lie down with me while I was menstruating, and there was a cloth between me and him.”’[3]

L4533 And with another narration we have reported via al-Layth ibn Saʿd from al-Zuhrī from Ḥabīb, the freed slave of ʿUrwah, from Nudbah, the freedwoman of Maymūnah: “The Messenger of Allah—may Allah bless him and grant him peace—would have non-penetrative contact with one of his wives while she was menstruating, provided she wore a lower garment reaching mid-thigh or the knees and had it securely fastened.”

وَبِحَدِيثٍ آخَرَ رُوِّينَاهُ مِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ الزُّهْرِيِّ عَنْ حَبِيبٍ مَوْلَى عُرْوَةَ عَنْ نُدْبَةَ مَوْلَاةِ مَيْمُونَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُبَاشِرُ الْمَرْأَةَ مِنْ نِسَائِهِ وَهِيَ حَائِضٌ إذَا كَانَ عَلَيْهَا إزَارٌ يَبْلُغُ أَنْصَافَ الْفَخِذَيْنِ أَوْ الرُّكْبَتَيْنِ وَهِيَ مُحْتَجِزَةٌ» .

L4534 And by a hadith we transmitted through the chain of Abū Khālifah from Musaddad from Abū ʿAwānah from ʿUmar ibn Abī Salamah from his father from ʿĀ’ishah that she would sleep with the Messenger of Allāh - peace be upon him - while menstruating, with a garment between them.

وَبِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي خَلِيفَةَ عَنْ مُسَدَّدٍ عَنْ أَبِي عَوَانَةَ عَنْ عُمَرَ بْنِ أَبِي سَلَمَةَ عَنْ أَبِيهِ «عَنْ عَائِشَةَ أَنَّهَا كَانَتْ تَنَامُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهِيَ حَائِضٌ وَبَيْنَهُمَا ثَوْبٌ» .

L4535 And with a narration we narrated from Abū Isḥāq from ʿĀṣim ibn ʿAmr al-ʿIjlī: “A group of men asked ʿUmar, so he said: I asked the Messenger of Allah (peace and blessings of Allah be upon him), ’What is permissible for a man regarding his wife while she is menstruating?’ The Messenger of Allah (peace and blessings of Allah be upon him) said: ’You may have what is above the waist-wrapper; do not look at what lies beneath it until she has purified herself.”’

وَبِخَبَرٍ رُوِّينَاهُ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ عَمْرٍو الْعِجْلِيِّ «أَنَّ نَفَرًا سَأَلُوا عُمَرَ فَقَالَ سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: مَا يَحِلُّ لِلرَّجُلِ مِنْ امْرَأَتِهِ حَائِضًا؟ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَكَ مَا فَوْقَ الْإِزَارِ، لَا تَطَّلِعَنَّ إلَى مَا تَحْتَهُ حَتَّى تَطْهُرَ» .

L4536 It has also been narrated from Abū Isḥāq through ʿUmayr, the client of ʿUmar, in a similar manner. And from ʿAbd al-Raḥmān ibn Mahdī through Mālik ibn Mighwal through ʿĀṣim ibn ʿAmr: from ʿUmar similarly. We have narrated it also through Musaddad through Abū al-Aḥwaṣ through Ṭāriq ibn ʿAbd al-Raḥmān through ʿĀṣim ibn ʿAmr. And with a ḥadīth we have narrated through the path of Hārūn ibn Muḥammad ibn Bakkār - Marwān, meaning ibn Muḥammad, narrated to us; al-Haytham ibn Ḥumayd narrated to us; al-ʿAlāʾ ibn al-Ḥārith narrated to us: from Ḥarām ibn Ḥakīm through his paternal uncle that he asked the Messenger of Allah (peace and blessings

وَرُوِيَ أَيْضًا عَنْ أَبِي إِسْحَاقَ عَنْ عُمَيْرٍ مَوْلَى عُمَرَ مِثْلَهُ، وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ مَالِكِ بْنِ مِغْوَلٍ عَنْ عَاصِمِ بْنِ عَمْرٍو: عَنْ عُمَرَ مِثْلَهُ. وَرُوِّينَاهُ أَيْضًا عَنْ مُسَدَّدٍ عَنْ أَبِي الْأَحْوَصِ عَنْ طَارِقِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ عَاصِمِ بْنِ عَمْرٍو. وَبِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ هَارُونَ بْنِ مُحَمَّدِ بْنِ بَكَّارٍ ثنا مَرْوَانُ يَعْنِي ابْنَ مُحَمَّدٍ - حَدَّثَنَا الْهَيْثَمُ بْنُ حُمَيْدٍ ثنا الْعَلَاءُ بْنُ الْحَارِثِ «عَنْ حَرَامِ بْنِ حَكِيمٍ عَنْ عَمِّهِ أَنَّهُ سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: مَا يَحِلُّ لِي مِنْ امْرَأَتِي وَهِيَ حَائِضٌ؟ قَالَ: لَكَ مَا فَوْقَ الْإِزَارِ» .

[3] **Hadith references (L4532):** Sahih Muslim 295.

be upon him): “What is permissible for me regarding my wife while she is menstruating?” He said: “You may have what is above the waist garment.”[4]

L4537 And with a narration we have transmitted through the chain of Hishām ibn ʿAbd al-Malik al-Yazanī, from Baqiyyah ibn al-Walīd, from Saʿīd ibn ʿAbd Allāh al-Aghṭash, from ʿAbd al-Raḥmān ibn ʿĀʾidh al-Azdī—he is the son of Qurṭ, the governor of Ḥimṣa—from Muʿādh ibn Jabal: “I asked the Messenger of Allāh (peace and blessings of Allāh be upon him) about what is permissible for a man regarding his wife while she is menstruating. He said: ‘What is above the lower garment, but abstaining from that is better.’”

L4538–4539 And with a narration we have narrated through the chain of Abdur-Rahim ibn Sulaiman, who narrated to us from Muhammad ibn Kurayb, who reported from Kurayb, from Ibn Abbas, that he was asked about what is permissible for her husband from the woman while she is menstruating. He said: “We have heard—and Allah knows best—if the Messenger of Allah (peace be upon him) said it, then it is as such: what is above the lower garment is permissible.”

L4540 And with a report we have narrated via Muhammad ibn al-Jahm, from Muhammad ibn al-Faraj, from Yunus ibn Muhammad, who narrated to us from Abdullah ibn Umar, from ibn al-Nadr, from Abu Salamah, from Aishah: “The Messenger of Allah - peace be upon him - was asked, ’What is permissible for a man from his wife?’ He said: ’What is above the lower garment.’”

L4541 We examined these narrations and found none of them to be authentic. As for the two hadiths of Maymunah, one is transmitted through Makhramah ibn Bukayr from his father, though he never heard it directly from him. Moreover, Ibn Maʿin stated: “Makhramah is weak; his hadith holds no weight.” The other is transmitted through Nudbah, an unknown female narrator. Abu Dawud narrates this hadith from al-Layth, who said: “It was pronounced ‘Nadabata’ with a fatha on the nun and dal,” while Maʿmar narrates it as “Nudbata” with a damma on the nun and sukun on the dal. Yunus transmits it as “Budayyata” with a damma on the ba, fatha on the dal, and

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ هِشَامِ بْنِ عَبْدِ الْمَلِكِ الْيَزَنِيِّ عَنْ بَقِيَّةَ بْنِ الْوَلِيدِ عَنْ سَعِيدِ بْنِ عَبْدِ اللَّهِ الْأَغْطَشِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَائِذٍ الْأَزْدِيِّ هُوَ ابْنُ قُرْطٍ أَمِيرُ حِمْصَ - عَنْ مُعَاذِ بْنِ جَبَلٍ «سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَمَّا يَحِلُّ لِلرَّجُلِ مِنْ امْرَأَتِهِ وَهِيَ حَائِضٌ؟ قَالَ: مَا فَوْقَ الْإِزَارِ، وَالتَّعَفُّفُ عَنْ ذَلِكَ أَفْضَلُ» .

وَبِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّحِيمِ بْنِ سُلَيْمَانَ ثنا مُحَمَّدُ بْنُ كُرَيْبٍ عَنْ كُرَيْبٍ «عَنْ ابْنِ عَبَّاسٍ أَنَّهُ سُئِلَ عَمَّا يَحِلُّ مِنْ الْمَرْأَةِ وَهِيَ حَائِضٌ لِزَوْجِهَا؟ قَالَ: سَمِعْنَا وَاَللَّهُ أَعْلَمُ إنْ كَانَ قَالَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ كَذَلِكَ: يَحِلُّ مَا فَوْقَ الْإِزَارِ» .

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْجَهْمِ عَنْ مُحَمَّدِ بْنِ الْفَرَجِ عَنْ يُونُسَ بْنِ مُحَمَّدٍ ثنا عَبْدُ اللَّهِ بْنُ عُمَرَ عَنْ ابْنِ النَّضْرِ عَنْ أَبِي سَلَمَةَ عَنْ عَائِشَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ مَا يَحِلُّ لِلرَّجُلِ مِنْ امْرَأَتِهِ؟ قَالَ: مَا فَوْقَ الْإِزَارِ» .

فَنَظَرْنَا فِي هَذِهِ الْآثَارِ فَوَجَدْنَاهَا لَا يَصِحُّ مِنْهَا شَيْءٌ، أَمَّا حَدِيثَا مَيْمُونَةَ فَأَحَدُهُمَا عَنْ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ وَلَمْ يَسْمَعْ مِنْ أَبِيهِ، وَأَيْضًا فَقَدْ قَالَ فِيهِ ابْنُ مَعِينٍ: مَخْرَمَةُ هُوَ ضَعِيفٌ لَيْسَ حَدِيثُهُ بِشَيْءٍ، وَالْآخَرُ مِنْ طَرِيقِ نَدَبَةَ وَهِيَ مَجْهُولَةٌ لَا تُعْرَفُ، وَأَبُو دَاوُد يَرْوِي هَذَا الْحَدِيثَ عَنْ اللَّيْثِ فَقَالَ: قَالَ نَدَبَةُ بِفَتْحِ النُّونِ وَالدَّالِ وَمَعْمَرٌ يَرْوِيهِ وَيَقُولُ: نُدْبَةَ بِضَمِّ النُّونِ وَإِسْكَانِ الدَّالِ، وَيُونُسُ يَقُولُ بُدَيَّةَ، بِالْبَاءِ الْمَضْمُومَةِ وَالدَّالِ الْمَفْتُوحَةِ وَالْيَاءِ الْمُشَدَّدَةِ، كُلُّهُمْ يَرْوِيهِ عَنْ الزُّهْرِيِّ كَذَلِكَ، فَسَقَطَ خَبَرَا مَيْمُونَةَ “.

[4]**Hadith references (L4536):** Sunan Abi Dawud 212.

doubled ya. All of them attribute this chain to al-Zuhri in this manner. Thus, both reports ascribed to Maymunah are discarded.

L4542–4544 As for the two narrations of ʿĀ'ishah, one is through ʿUmar ibn Abī Salama, whom Shuʿbah deemed weak and none authenticated, so it is discarded. The second is through ʿAbdullāh ibn ʿUmar al-ʿUmarī the Younger, who is unanimously considered weak—only his brother ʿUbaydullāh is reliable. Thus, both narrations of ʿĀ'ishah are discarded. As for ʿUmar's narration: Abū Isḥāq did not hear it from Umayr, ʿUmar's freed slave. We transmitted it through Zuhayr ibn Ḥarb's chain: ʿAbdullāh ibn Jaʿfar al-Makhramī → ʿUbaydullāh ibn ʿAmr al-Jazarī → Zayd ibn Abī Unaysah → Abū Isḥāq → ʿĀṣim ibn ʿAmr → Umayr, ʿUmar's freed slave → the Messenger of Allah (peace be upon him), citing this ḥadīth verbatim. The chain is invalid, for ʿĀṣim ibn ʿAmr did not hear it from Umayr but narrated it—as we stated—via an interrupted chain from him. We also transmitted it through Zuhayr ibn Muʿāwiyah → Abū Isḥāq → ʿĀṣim ibn ʿAmr al-Shāmī → one of the men who approached ʿUmar, citing this ḥadīth verbatim. Additionally, through Shuʿbah's chain: "I heard ʿĀṣim ibn ʿAmr al-Bajalī narrate from a man among those who questioned ʿUmar," citing the same ḥadīth. Thus, ʿĀṣim narrated it from an unknown man, who narrated from unknown individuals, rendering the entire chain discarded. We then examined Ḥārām ibn Ḥakīm's narration from his uncle and found it unsound, for Ḥārām ibn Ḥakīm is weak—he is the one who narrated washing the two genital areas from pre-seminal fluid. Moreover, this report was narrated by— From Ḥarām, Marwān ibn Muḥammad, who is weak.

وَأَمَّا حَدِيثَا عَائِشَةَ فَأَحَدُهُمَا مِنْ طَرِيقِ عُمَرَ بْنِ أَبِي سَلَمَةَ، وَقَدْ ضَعَّفَهُ شُعْبَةُ وَلَمْ يُوَثِّقْهُ أَحَدٌ فَسَقَطَ، وَأَمَّا الثَّانِي: فَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ عُمَرَ وَهُوَ الْعُمَرِيُّ الصَّغِيرُ، وَهُوَ مُتَّفَقٌ عَلَى ضَعْفِه، إِنَّمَا الثِّقَةُ أَخُوهُ عُبَيْدُ اللَّهِ، فَسَقَطَ حَدِيثَا عَائِشَةَ. وَأَمَّا حَدِيثُ عُمَرَ فَإِنَّ أَبَا إِسْحَاقَ لَمْ يَسْمَعْهُ مِنْ عُمَيْرٍ مَوْلَى عُمَرَ، هَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ زُهَيْرِ بْنِ حَرْبٍ: ثنا عَبْدُ اللَّهِ بْنُ جَعْفَرٍ الْمَخْرَمِيُّ ثنا عُبَيْدُ اللَّهِ بْنُ عَمْرٍو الْجَزَرِيُّ عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ عَمْرٍو عَنْ عُمَيْرٍ مَوْلَى عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ هَذَا الْحَدِيثَ نَصًّا، فَسَقَطَ إِسْنَادُهُ لِأَنَّ عَاصِمَ بْنَ عَمْرٍو لَمْ يَسْمَعْهُ مِنْ عُمَرَ بَلْ رَوَاهُ كَمَا ذَكَرْنَا مُنْقَطِعًا عَنْ عُمَيْرٍ، وَرُوِّينَاهُ أَيْضًا عَنْ زُهَيْرِ بْنِ مُعَاوِيَةَ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ عَمْرٍو الشَّامِيِّ عَنْ أَحَدِ النَّفَرِ الَّذِينَ أَتَوْا عُمَرَ فَذَكَرَ هَذَا الْحَدِيثَ بِنَصِّهِ، وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ شُعْبَةَ قَالَ: سَمِعْتُ عَاصِمَ بْنَ عَمْرٍو الْبَجَلِيَّ يُحَدِّثُ عَنْ رَجُلٍ مِنْ الْقَوْمِ الَّذِينَ سَأَلُوا عُمَرَ فَذَكَرَ الْحَدِيثَ نَفْسَهُ فَإِنَّمَا رَوَاهُ عَاصِمٌ عَنْ رَجُلٍ مَجْهُولٍ عَنْ مَجْهُولِينَ، فَسَقَطَ جُمْلَةً. ثُمَّ نَظَرْنَا فِي حَدِيثِ حَرَامِ بْنِ حَكِيمٍ عَنْ عَمِّهِ فَوَجَدْنَاهُ لَا يَصِحُّ؛ لِأَنَّ حَرَامَ بْنَ حَكِيمٍ ضَعِيفٌ، وَهُوَ الَّذِي رَوَى غَسْلَ الْأُنْثَيَيْنِ مِنْ الْمَذْيِ، وَأَيْضًا فَإِنَّ هَذَا الْخَبَرَ رَوَاهُ عَنْ حَرَامٍ مَرْوَانُ بْنُ مُحَمَّدٍ وَهُوَ ضَعِيفٌ.

L4545 Then we examined the ḥadīth of Muʿādh and found it unreliable, for it is transmitted by Baqiyyah—who is not strong—from Saʿīd al-Aghṭash, who is obscure. This is in addition to its containing the notion that abstaining from such matters is superior—a position the scholars do not uphold.

ثُمَّ نَظَرْنَا فِي حَدِيثِ مُعَاذٍ فَوَجَدْنَاهُ لَا يَصِحُّ؛ لِأَنَّهُ عَنْ بَقِيَّةَ وَلَيْسَ بِالْقَوِيِّ، عَنْ سَعِيدٍ الْأَغْطَشِ وَهُوَ مَجْهُولٌ، مَعَ مَا فِيهِ مِنْ أَنَّ التَّعَفُّفَ عَنْ ذَلِكَ أَفْضَلُ، وَهُمْ لَا يَقُولُونَ بِهَذَا.

L4546 Then we examined the ḥadīth of Ibn ʿAbbās and found its chain of transmission had not been verified. Thus, all these reports were dismissed, and it was not permissible to rely on any of them. Next, we reviewed our position and found the authentic narration from Maymunah and ʿĀ'ishah, the Mother of the Believers—may Allah be pleased with both of them—which we narrated through the chain of ʿAbdullāh ibn Shaddād from Maymunah: "The Messenger of Allah—peace and blessings of Allah be upon him—would have intimate contact with his wives above their lower garments while they were menstruating."[5]

ثُمَّ نَظَرْنَا فِي حَدِيثِ ابْنِ عَبَّاسٍ فَوَجَدْنَاهُ لَمْ يُحَقَّقْ إِسْنَادُهُ، فَسَقَطَتْ هَذِهِ الْأَخْبَارُ كُلُّهَا وَلَمْ يَجُزْ التَّعَلُّقُ بِشَيْءٍ مِنْهَا. ثُمَّ نَظَرْنَا فِيمَا قُلْنَاهُ فَوَجَدْنَا الصَّحِيحَ عَنْ مَيْمُونَةَ وَعَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهُمَا - هُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ شَدَّادٍ عَنْ مَيْمُونَةَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُبَاشِرُ نِسَاءَهُ فَوْقَ الْإِزَارِ وَهُنَّ حُيَّضٌ» .

L4547 And what we have narrated through the chain of ʿAbd al-Raḥmān ibn al-Aswad and Ibrāhīm al-Nakhaʿī—both transmitting from al-Aswad—from ʿĀ'isha: "He (peace be upon him) would instruct her to wear a waist-wrapper during the onset of her menstruation, then engage in intimacy with her. Which of you can restrain his desires as the Messenger of Allah (peace and blessings of Allah be upon him) restrained his desires?"

وَمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ وَإِبْرَاهِيمَ النَّخَعِيِّ كِلَاهُمَا عَنْ الْأَسْوَدِ «عَنْ عَائِشَةَ أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يَأْمُرُهَا أَنْ تَتَّزِرَ فِي فَوْرِ حَيْضَتِهَا ثُمَّ يُبَاشِرُهَا، وَأَيُّكُمْ يَمْلِكُ إِرْبَهُ كَمَا كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَمْلِكُ إِرْبَهُ» .

L4548 Abdullah ibn Rabee' narrated to us: Muhammad ibn Muʿawiyah narrated to us, Ahmad ibn Shuʿayb narrated to us, ʿAmr ibn Manṣūr narrated to us, Hisham ibn Abd al-Malik—he is al-Ṭayālisī—narrated to us, Yaḥyā ibn Saʿīd—he is al-Qaṭṭān—narrated to me: Jābir ibn Ṣubḥ said: I heard Khilāṣ ibn ʿAmr saying: I heard ʿĀ'ishah, the Mother of the Believers, saying: "The Messenger of Allah—peace and blessings be upon him—and I shared a single garment while I was menstruating. If any menstrual blood from me touched it, he would wash only the affected spot without washing beyond it, pray in the garment, then rejoin me."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا عَمْرُو بْنُ مَنْصُورٍ ثنا هِشَامُ بْنُ عَبْدِ الْمَلِكِ هُوَ الطَّيَالِسِيُّ - ثنا يَحْيَى بْنُ سَعِيدٍ هُوَ الْقَطَّانُ - حَدَّثَنِي جَابِرُ بْنُ صُبْحٍ قَالَ: سَمِعْتُ خِلَاسَ بْنَ عَمْرٍو يَقُولُ سَمِعْتُ «عَائِشَةَ أُمَّ الْمُؤْمِنِينَ تَقُولُ كُنْتُ أَنَا وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الشِّعَارِ الْوَاحِدِ وَأَنَا حَائِضٌ، فَإِنْ أَصَابَهُ مِنِّي شَيْءٌ غَسَلَهُ لَمْ يَعْدُهُ إِلَى غَيْرِهِ وَصَلَّى فِيهِ ثُمَّ يَعُودُ مَعِي» .

L4549 Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Isḥāq narrated to us: Ibn al-Aʿrābī narrated to us: Abū Dāwūd narrated to us: Mūsā ibn Ismāʿīl narrated to us: Ḥammād—who is ibn Salamah—from Ayyūb, from ʿIkrimah, from one of the wives of the Messenger of Allah (peace and blessings be upon him) that "when the Messenger of Allah (peace and blessings be upon him) desired something from the menstruating woman, he would place a garment over her private parts."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ حَدَّثَنَا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُوسَى بْنُ إِسْمَاعِيلَ ثنا حَمَّادٌ هُوَ ابْنُ سَلَمَةَ - عَنْ أَيُّوبَ عَنْ عِكْرِمَةَ عَنْ بَعْضِ أَزْوَاجِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ إِذَا أَرَادَ مِنْ الْحَائِضِ شَيْئًا أَلْقَى عَلَى فَرْجِهَا ثَوْبًا» .

[5] **Hadith references (L4546):** Sahih Muslim 294.

L4550–4552 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Zuhayr ibn Harb narrated to us: Abdul Rahman ibn Mahdi narrated to us: Hammad ibn Salamah narrated to us: Thabit al-Bunani narrated from Anas ibn Malik that when a woman was menstruating, the Jews would neither eat with her nor cohabit with them in their homes. The Companions of the Prophet—peace and blessings of Allah be upon him—asked about this, so Allah the Exalted revealed: {They ask you about menstruation. Say, "It is a harm, so avoid women during menstruation"} [al-Baqarah 2:222]. "Until the end of the verse, the Messenger of Allah—peace be upon him—said: 'Do everything except intercourse.'"[6]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا زُهَيْرُ بْنُ حَرْبٍ ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ حَدَّثَنَا حَمَّادُ بْنُ سَلَمَةَ ثنا ثَابِتٌ هُوَ الْبُنَانِيُّ - عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ الْيَهُودَ كَانُوا إِذَا حَاضَتْ الْمَرْأَةُ لَمْ يُؤَاكِلُوهَا وَلَمْ يُجَامِعُوهُنَّ فِي الْبُيُوتِ، فَسَأَلَ أَصْحَابُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ، فَأَنْزَلَ اللَّهُ تَعَالَى: {وَيَسْأَلُونَكَ عَنِ الْمَحِيضِ قُلْ هُوَ أَذًى فَاعْتَزِلُوا النِّسَاءَ فِي الْمَحِيضِ} [البقرة: ٢٢٢] إلَى آخِرِ الْآيَةِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: اصْنَعُوا كُلَّ شَيْءٍ إلَّا النِّكَاحَ» .

L4553 This report is established in authenticity and clarifies that it followed the revelation of the verse, being the explanation of Allah's ruling in the verse which must not be transgressed. Moreover, the term "al-maḥīḍ" in the language denotes the place of menstruation - the private part - a clear and recognized usage. Thus, the verse aligns with the mentioned report, its meaning being: "Avoid women in the place of menstruation." This is what has been authenticated from those among the Companions - may Allah be pleased with them - who reported anything on the matter, as narrated through Ayyub al-Sikhtiyani from Abu Ma'shar, from Ibrahim al-Nakha'i, from Masruq who said: "I asked 'Aishah: 'What is permissible for me with my wife while she is menstruating?' She replied: 'Everything except the private part.'" From 'Ali ibn Abi Talhah, from Ibn 'Abbas concerning {So avoid women in the place of menstruation} [Al-Baqarah 2:222], he stated: "Avoid intercourse with their private parts." This is the position of Umm Salamah the Mother of the Believers, Masruq, al-Hasan, 'Ata', Ibrahim al-Nakha'i, al-Sha'bi, Sufyan al-Thawri, Muhammad ibn al-Hasan, the correct opinion in al-Shafi'i's school, the view of Dawud, and other proponents of Hadith.[7]

فَكَانَ هَذَا الْخَبَرُ بِصِحَّتِهِ، وَبَيَانُ أَنَّهُ كَانَ إثْرَ نُزُولِ الْآيَةِ هُوَ الْبَيَانُ عَنْ حُكْمِ اللَّهِ تَعَالَى فِي الْآيَةِ، وَهُوَ الَّذِي لَا يَجُوزُ تَعَدِّيهِ، وَأَيْضًا فَقَدْ يَكُونُ الْمَحِيضُ فِي اللُّغَةِ مَوْضِعَ الْحَيْضِ وَهُوَ الْفَرْجُ، وَهَذَا فَصِيحٌ مَعْرُوفٌ، فَتَكُونُ الْآيَةُ حِينَئِذٍ مُوَافِقَةً لِلْخَبَرِ الْمَذْكُورِ، وَيَكُونُ مَعْنَاهَا: فَاعْتَزِلُوا النِّسَاءَ فِي مَوْضِعِ الْحَيْضِ، وَهَذَا هُوَ الَّذِي صَحَّ عَمَّنْ جَاءَ عَنْهُ فِي ذَلِكَ شَيْءٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، كَمَا رُوِّينَا عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي مَعْشَرٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ مَسْرُوقٍ قَالَ: سَأَلْتُ عَائِشَةَ: مَا يَحِلُّ لِي مِنْ امْرَأَتِي وَهِيَ حَائِضٌ؟ قَالَتْ كُلُّ شَيْءٍ إلَّا الْفَرْجَ، وَعَنْ عَلِيِّ بْنِ أَبِي طَلْحَةَ عَنْ ابْنِ عَبَّاسٍ {فَاعْتَزِلُوا النِّسَاءَ فِي الْمَحِيضِ} [البقرة: ٢٢٢] قَالَ: اعْتَزِلُوا نِكَاحَ فُرُوجِهِنَّ، وَهُوَ قَوْلُ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ وَمَسْرُوقٍ وَالْحَسَنِ وَعَطَاءٍ وَإِبْرَاهِيمَ النَّخَعِيِّ وَالشَّعْبِيِّ، وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَمُحَمَّدِ بْنِ الْحَسَنِ وَالصَّحِيحُ مِنْ قَوْلِ الشَّافِعِيِّ، وَهُوَ قَوْلُ دَاوُد وَغَيْرِهِ مِنْ أَصْحَابِ الْحَدِيثِ.

[6] **Qur'an references (L4550):** Qur'an 2:222 (Al-Baqarah).
[7] **Qur'an references (L4553):** Qur'an 2:222 (Al-Baqarah).

قَالَ أَبُو مُحَمَّدٍ: وَقَالَ مَنْ لَا يُبَالِي بِمَا أَطْلَقَ بِهِ لِسَانَهُ: إِنَّ حَدِيثَ عُمَرَ - الَّذِي لَا يَصِحُّ - نَاسِخٌ لِحَدِيثِ أَنَسٍ - الَّذِي لَا يَثْبُتُ غَيْرُهُ فِي مَعْنَاهُ - قَالَ: لِأَنَّ حَدِيثَ أَنَسٍ كَانَ مُتَّصِلًا بِنُزُولِ الْآيَةِ.

L4554 Abu Muhammad said: Those who are heedless of what they utter with their tongues said: "The inauthentic narration of Umar - which lacks authenticity - abrogates the narration of Anas - the only one for which no other narration with its meaning is established." They said: "Because Anas' narration was connected to the revelation of the verse."

قَالَ عَلِيٌّ: وَهَذَا هُوَ الْكَذِبُ بِعَيْنِهِ وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَلَوْ صَحَّ حَدِيثُ عُمَرَ فَمَنْ لَهُ أَنَّهُ كَانَ بَعْدَ نُزُولِ الْآيَةِ؟ وَلَعَلَّهُ كَانَ قَبْلَ نُزُولِهَا، فَإِذْ ذَلِكَ مُمْكِنٌ هَكَذَا فَلَا يَجُوزُ الْقَطْعُ بِأَحَدِهِمَا، وَلَا يَجُوزُ تَرْكُ يَقِينٍ مَا جَاءَ بِهِ الْقُرْآنُ وَبَيَّنَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إثْرَ نُزُولِ الْآيَةِ لِظَنٍّ كَاذِبٍ فِي حَدِيثٍ لَا يَصِحُّ، مَعَ أَنَّ الْحَدِيثَيْنِ الثَّابِتَيْنِ اللَّذَيْنِ رُوِّينَاهُمَا: أَحَدُهُمَا عَنْ الْأَعْمَشِ عَنْ ثَابِتِ بْنِ عُبَيْدٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ «عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهَا: نَاوِلِينِي الْخُمْرَةَ مِنْ الْمَسْجِدِ قَالَتْ فَقُلْتُ: إنِّي حَائِضٌ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ حَيْضَتَكِ لَيْسَتْ فِي يَدِكِ» .

L4555 Ali said: This is sheer falsehood itself—fabricating what he has no knowledge of. Even if Umar's hadith were authentic, who can assert that it occurred after the revelation of the verse? It may well have preceded its revelation. Since this possibility exists in this manner, it is impermissible to conclusively affirm either position, nor is it permissible to discard the certain knowledge conveyed by the Quran and elucidated by the Messenger of Allah—peace and blessings be upon him—following the revelation of the verse, due to a baseless conjecture regarding an unreliable hadith. Moreover, the two authenticated hadiths we transmitted: one from al-A'mash, from Thābit ibn 'Ubayd, from al-Qāsim ibn Muhammad, from 'Ā'ishah—that the Messenger of Allah (peace and blessings be upon him) said to her: "Hand me the cloak from the mosque." She replied: "I am menstruating." The Messenger of Allah (peace and blessings be upon him) responded: "Your menstruation is not in your hand."

وَرُوِّينَا الْآخَرَ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ يَزِيدَ بْنِ كَيْسَانَ وَأَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ فِي الْمَسْجِدِ فَقَالَ: يَا عَائِشَةُ نَاوِلِينِي الثَّوْبَ، فَقَالَتْ إنِّي حَائِضٌ، فَقَالَ: إنَّ حَيْضَتَكِ لَيْسَتْ فِي يَدِكِ» فَهُمَا دَلِيلُ أَنْ لَا يُجْتَنَبَ إلَّا الْمَوْضِعَ الَّذِي فِيهِ الْحَيْضَةُ وَحْدَهُ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L4556–4557 We have also narrated another account through the chain of Yahya ibn Sa'id al-Qattan from Yazid ibn Kaysan and Abu Hazim from Abu Hurairah: "The Messenger of Allah—peace and blessings be upon him—was in the mosque and said, 'O Aisha, hand me the garment.' She replied, 'I am menstruating.' He said, 'Your menstruation is not in your hand.'" These two are proof that only the body part from which menstrual blood flows must be avoided, and with Allah, the Most High, is the success.

[مَسْأَلَةٌ دَمُ النِّفَاسِ يَمْنَعُ مَا يَمْنَعُ مِنْهُ دَمُ الْحَيْضِ حَاشَا الطَّوَافَ بِالْبَيْتِ]

Issue: Postpartum blood prevents what menstrual blood prevents, except for circumambulation of the House [i.e., the Kaaba].

٢٦١ - مَسْأَلَةٌ:

261: Issue

L4558

L4559

L4560 The blood of postpartum bleeding prohibits what menstrual blood prohibits.

There is no disagreement on this from any scholar, except regarding circumambulating the Kaaba, for the postpartum woman may perform it. This is because the prohibition was specified for menstruating women and not extended to postpartum women, as {your Lord is never forgetful} [Maryam: 64]. Later, we affirmed and determined that postpartum bleeding is equivalent to valid menstruation in rulings, sharing the same legal status as menstruation in all matters, based on the Messenger of Allah—peace and blessings be upon him—asking ʿĀ'ishah: "Have you entered postpartum bleeding?" She replied, "Yes." Thus, he referred to menstruation as postpartum bleeding [in this instance]. Similarly, the bath after postpartum bleeding is obligatory by scholarly consensus.[8]

وَدَمُ النِّفَاسِ يَمْنَعُ مَا يَمْنَعُ مِنْهُ دَمُ الْحَيْضِ. هَذَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ، حَاشَا الطَّوَافَ بِالْبَيْتِ، فَإِنَّ النُّفَسَاءَ تَطُوفُ بِهِ، لِأَنَّ النَّهْيَ وَرَدَ فِي الْحَائِضِ وَلَمْ يَرِدْ فِي النُّفَسَاءِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] ثُمَّ اسْتَدْرَكْنَا فَرَأَيْنَا أَنَّ النِّفَاسَ حَيْضٌ صَحِيحٌ، وَحُكْمُهُ حُكْمُ الْحَيْضِ فِي كُلِّ شَيْءٍ «لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِعَائِشَةَ أَنُفِسْتِ؟ قَالَتْ نَعَمْ» فَسَمَّى الْحَيْضَ نِفَاسًا. وَكَذَلِكَ الْغُسْلُ مِنْهُ وَاجِبٌ بِإِجْمَاعٍ.

L4561 **What is the ruling concerning menstruating women, postpartum women, and those in a state of major ritual impurity (janābah) entering into marriage and entering the mosque?**

[مَسْأَلَةٌ لِلْحَائِضِ وَالنُّفَسَاءِ أَنْ يَتَزَوَّجَا وَأَنْ يَدْخُلَا الْمَسْجِدَ وَكَذَلِكَ الْجُنُبُ]

L4562 262. Issue:

٢٦٢ - مَسْأَلَةٌ:

L4563 It is permissible for a menstruating woman and a postpartum woman to marry [i.e., enter into marriage contracts] and to enter the mosque, and likewise for those in a state of major impurity (junub), because no prohibition has been conveyed regarding any of these matters. The Messenger of Allah—peace and blessings be upon him—said, "The believer does not become ritually impure." The people of the Suffah would sleep in the mosque while in the presence of the Messenger of Allah—peace and blessings be upon him—and they were a numerous group. There is no doubt that among them were those who experienced nocturnal emissions, yet they were never forbidden from this.

وَجَائِزٌ لِلْحَائِضِ وَالنُّفَسَاءِ أَنْ يَتَزَوَّجَا وَأَنْ يَدْخُلَا الْمَسْجِدَ وَكَذَلِكَ الْجُنُبُ، لِأَنَّهُ لَمْ يَأْتِ نَهْيٌ عَنْ شَيْءٍ مِنْ ذَلِكَ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُؤْمِنُ لَا يَنْجُسُ» وَقَدْ كَانَ أَهْلُ الصُّفَّةِ يَبِيتُونَ فِي الْمَسْجِدِ بِحَضْرَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُمْ جَمَاعَةٌ كَثِيرَةٌ وَلَا شَكَّ فِي أَنَّ فِيهِمْ مَنْ يَحْتَلِمُ، فَمَا نُهُوا قَطُّ عَنْ ذَلِكَ.

L4564 A group of scholars said: A person in a state of major impurity (junub) and a menstruating woman may not enter the mosque except as those passing through. This is the opinion of al-Shāfiʿī, and they cited the statement of Allah the Exalted: {O you who have believed, do not approach prayer while

وَقَالَ قَوْمٌ: لَا يَدْخُلُ الْمَسْجِدَ الْجُنُبُ وَالْحَائِضُ إِلَّا مُجْتَازِينَ، هَذَا قَوْلُ الشَّافِعِيِّ وَذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تَقْرَبُوا الصَّلاةَ وَأَنْتُمْ سُكَارَى حَتَّى تَعْلَمُوا مَا

[8] **Qur'an references (L4560):** Qur'an 19:64 (Maryam).

you are intoxicated until you know what you are saying, nor in a state of major impurity—unless passing through—until you have bathed} [an-Nisāʾ 4:43]. They asserted that Zayd ibn Aslam or other scholars interpreted its meaning as: "Do not approach the places of prayer."[9]

L4565 Ali ibn Abi Talib said: There is no valid proof in the statement of Zaid, and even if it were authenticated that he said it, it would still be an error on his part. This is because it is impermissible to suppose that Allah, the Exalted, intended to say "do not approach the places of prayer" thereby causing confusion upon us by saying "do not approach prayer" [4:43]. It has been narrated from Ali ibn Abi Talib, Ibn Abbas, and a group that the verse is about prayer itself.[10]

L4566 Malik said: They should not pass through it under any circumstances. Abū Ḥanīfah and Sufyān said: They should not pass through it. If they are compelled to do so, they must perform *tayammum* and then pass through it.

L4567–4569 Those who forbade that cited as evidence a Hadith that we narrated through the chain of transmission of Aflah ibn Khalifah from Jasra bint Dajajah. From Aisha: "That the Messenger of Allah—peace and blessings be upon him—said to his companions: 'Direct these houses away from the mosque, for I do not permit the mosque to be lawful for a menstruating woman or one in a state of major impurity.'" Another narration we transmitted through Ibn Abi Ghunyah's chain, from Abu al-Khattab al-Hajari, from Mahduj al-Hudhali, from Jasrah bint Dajajah, who reported that Umm Salamah said: "The Messenger of Allah—peace and blessings be upon him—proclaimed in a loud voice: 'Indeed, know that this mosque is not lawful for one in a state of major impurity or a menstruating woman, except for the Prophet, his wives, Ali, and Fāṭimah.'"[11]

L4570 Another narration that we have narrated from ʻAbd al-Wahhab, from ʻAta' al-Khaffaf, from Ibn Abi Ghunyah, from Ismaʻil, from Jasrah bint Dajājah, from Umm Salamah, who reported that the Messenger of Allah (peace and

تَقُولُونَ وَلا جُنُبًا إِلا عَابِرِي سَبِيلٍ حَتَّى تَغْتَسِلُوا} [النساء: ٤٣] فَادَّعُوا أَنَّ زَيْدَ بْنَ أَسْلَمَ أَوْ غَيْرَهُ قَالَ مَعْنَاهُ لَا تَقْرَبُوا مَوَاضِعَ الصَّلَاةِ.

قَالَ عَلِيٌّ: وَلَا حُجَّةَ فِي قَوْلِ زَيْدٍ، وَلَوْ صَحَّ أَنَّهُ قَالَهُ لَكَانَ خَطَأً مِنْهُ، لِأَنَّهُ لَا يَجُوزُ أَنْ يُظَنَّ أَنَّ اللَّهَ تَعَالَى أَرَادَ أَنْ يَقُولَ لَا تَقْرَبُوا مَوَاضِعَ الصَّلَاةِ فَيَلْبِسُ عَلَيْنَا فَيَقُولُ: {لا تَقْرَبُوا الصَّلاةَ} [النساء: ٤٣] وَرُوِيَ أَنَّ الْآيَةَ فِي الصَّلَاةِ نَفْسِهَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ وَابْنِ عَبَّاسٍ وَجَمَاعَةٍ.

وَقَالَ مَالِكٌ: لَا يَمُرَّا فِيهِ أَصْلًا، وَقَالَ أَبُو حَنِيفَةَ وَسُفْيَانُ لَا يَمُرَّا فِيهِ، فَإِنْ اُضْطُرَّا إِلَى ذَلِكَ تَيَمَّمَا ثُمَّ مَرَّا فِيهِ.

وَاحْتَجَّ مَنْ مَنَعَ مِنْ ذَلِكَ بِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ أَفْلَتَ بْنِ خَلِيفَةَ عَنْ جَسْرَةَ بِنْتِ دَجَاجَةَ عَنْ عَائِشَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِأَصْحَابِهِ: وَجِّهُوا هَذِهِ الْبُيُوتَ عَنْ الْمَسْجِدِ فَإِنِّي لَا أُحِلُّ الْمَسْجِدَ لِحَائِضٍ وَلَا جُنُبٍ» ، وَآخَرُ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي غُنْيَةَ عَنْ أَبِي الْخَطَّابِ الْهَجَرِيِّ عَنْ مَحْدُوجٍ الْهُذَلِيِّ عَنْ جَسْرَةَ بِنْتِ دَجَاجَةَ حَدَّثَتْنِي أُمُّ سَلَمَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَادَى بِأَعْلَى صَوْتِهِ: أَلَا إِنَّ هَذَا الْمَسْجِدَ لَا يَحِلُّ لِجُنُبٍ وَلَا حَائِضٍ إِلَّا لِلنَّبِيِّ وَأَزْوَاجِهِ وَعَلِيٍّ وَفَاطِمَةَ» .

وَخَبَرٌ آخَرُ رُوِّينَاهُ عَنْ عَبْدِ الْوَهَّابِ عَنْ عَطَاءٍ الْخَفَّافِ عَنْ ابْنِ أَبِي غُنْيَةَ عَنْ إِسْمَاعِيلَ عَنْ جَسْرَةَ بِنْتِ دَجَاجَةَ عَنْ أُمِّ سَلَمَةَ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «هَذَا

[9] **Qur'an references (L4564):** Qur'an 4:43 (An-Nisa).
[10] **Qur'an references (L4565):** Qur'an 4:43 (An-Nisa).
[11] **Hadith references (L4567):** Sunan Abi Dawud 232; Mishkat al-Masabih 462.

blessings of Allah be upon him) said: “This mosque is forbidden to every man in a state of major impurity and every menstruating woman, except Muhammad, his wives, ʻAli, and Fāṭimah.”

الْمَسْجِدُ حَرَامٌ عَلَى كُلِّ جُنُبٍ مِنْ الرِّجَالِ وَحَائِضٍ مِنْ النِّسَاءِ إِلَّا مُحَمَّدًا وَأَزْوَاجَهُ وَعَلِيًّا وَفَاطِمَةَ» .

L4571 Another report we have narrated through the chain of Muḥammad ibn al-Ḥasan ibn Zubāla, from Sufyān ibn Ḥamza, from Kathīr ibn Zayd, from al-Muṭṭalib ibn ʿAbd Allāh: “The Messenger of Allah (peace be upon him) did not permit anyone to sit in the mosque or pass through it while in a state of major impurity except ʿAlī ibn Abī Ṭālib.”

وَخَبَرٌ آخَرُ رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْحَسَنِ بْنِ زُبَالَةَ عَنْ سُفْيَانَ بْنِ حَمْزَةَ عَنْ كَثِيرِ بْنِ زَيْدٍ عَنْ الْمُطَّلِبِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَكُنْ أَذِنَ لِأَحَدٍ أَنْ يَجْلِسَ فِي الْمَسْجِدِ وَلَا يَمُرَّ فِيهِ وَهُوَ جُنُبٌ إِلَّا عَلِيَّ بْنَ أَبِي طَالِبٍ» .

L4572 Ali said: All of this is invalid. As for Aflit, he is neither renowned nor recognized as reliable. As for Mahduj, he is discarded - he transmits problematic narrations from Jasrah. Abu al-Khattab al-Hajari is unknown. As for Ata’ al-Khaffaf, he is Ata’ ibn Muslim - denounced in hadith. Isma’il is unknown. Muhammad ibn al-Hasan is accused of lying. Kathir ibn Zayd shares this status. Consequently, everything contained in this report is dismissed entirely.

قَالَ عَلِيٌّ: وَهَذَا كُلُّهُ بَاطِلٌ: أَمَّا أَفْلَتُ فَغَيْرُ مَشْهُورٍ وَلَا مَعْرُوفٍ بِالثِّقَةِ، وَأَمَّا مَحْدُوجٌ فَسَاقِطٌ يَرْوِي الْمُعْضِلَاتِ عَنْ جَسْرَةَ، وَأَبُو الْخَطَّابِ الْهَجَرِيُّ مَجْهُولٌ، وَأَمَّا عَطَاءٌ الْخَفَّافُ فَهُوَ عَطَاءُ بْنُ مُسْلِمٍ مُنْكَرُ الْحَدِيثِ، وَإِسْمَاعِيلُ مَجْهُولٌ، وَمُحَمَّدُ بْنُ الْحَسَنِ مَذْكُورٌ بِالْكَذِبِ، وَكَثِيرُ بْنُ زَيْدٍ مِثْلُهُ، فَسَقَطَ كُلُّ مَا فِي هَذَا الْخَبَرِ جُمْلَةً.

L4573 Abd al-Rahman ibn Abdullah narrated to us: Ibrahim ibn Ahmad narrated to us: al-Farbari narrated to us: al-Bukhari narrated to us: Ubayd ibn Isma’il narrated to us: Abu Usamah narrated from Hisham ibn Urwah from his father from Aishah, the Mother of the Believers, that “a black slave girl belonging to a tribe of the Arabs was freed by them, and she came to the Messenger of Allah (peace be upon him) and embraced Islam. She had a tent in the mosque—or a partitioned space.”

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عُبَيْدُ بْنُ إِسْمَاعِيلَ ثنا أَبُو أُسَامَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ وَلِيدَةً سَوْدَاءَ كَانَتْ لِحَيٍّ مِنْ الْعَرَبِ فَأَعْتَقُوهَا فَجَاءَتْ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَسْلَمَتْ فَكَانَ لَهَا خِبَاءٌ فِي الْمَسْجِدِ أَوْ حِفْشٌ» .

L4574–4576 Ali said: “Here is a woman residing in the Mosque of the Prophet (peace and blessings of Allah be upon him), and what is customary among women is menstruation. So he (peace and blessings of Allah be upon him) did not prevent her from that nor prohibit it. All that he did not forbid is permissible. We have already mentioned the statement of the Messenger of Allah (peace and blessings of Allah be upon him): ’The earth has been made a mosque for me.’ There is no disagreement that...” A menstruating woman and one in a state of major ritual impurity are permitted throughout the entire earth, for the earth itself is a mosque. It is not permissible to restrict

قَالَ عَلِيٌّ: فَهَذِهِ امْرَأَةٌ سَاكِنَةٌ فِي مَسْجِدِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْمَعْهُودُ مِنْ النِّسَاءِ الْحَيْضُ فَمَا مَنَعَهَا - عَلَيْهِ السَّلَامُ - مِنْ ذَلِكَ وَلَا نَهَى عَنْهُ، وَكُلُّ مَا لَمْ يَنْهَ - عَلَيْهِ السَّلَامُ - عَنْهُ فَمُبَاحٌ وَقَدْ ذَكَرْنَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَوْلَهُ: «جُعِلَتْ لِي الْأَرْضُ مَسْجِدًا» وَلَا خِلَافَ فِي أَنَّ الْحَائِضَ وَالْجُنُبَ مُبَاحٌ لَهُمَا جَمِيعُ الْأَرْضِ، وَهِيَ مَسْجِدٌ، فَلَا يَجُوزُ أَنْ يُخَصَّ بِالْمَنْعِ مِنْ بَعْضِ الْمَسَاجِدِ دُونَ بَعْضٍ،

them specifically from certain mosques while permitting others. Had mosque entry been impermissible for a menstruating woman, the Prophet—peace be upon him—would have informed ʿĀ'isha of this when she menstruated, yet he only prohibited her from performing circumambulation of the Kaaba. It is an unequivocal falsehood to claim mosque entry is unlawful for her when the Prophet—peace be upon him—did not forbid her from it, limiting his prohibition solely to circumambulation.

This is the opinion of al-Muzani, Dawud, and others besides the two of them, and success is from Allah, the Exalted.

An Issue Regarding the Ruling on Intercourse with a Menstruating Woman

263 – Chapter:

Whoever has sexual relations with a menstruating woman has indeed disobeyed Allah the Exalted, and it is an obligation upon him to repent and seek forgiveness, and no expiation is required for this act.

Ibn Abbas said: If he has intercourse with her during menstruation, he should give a dinar in charity; and if he does so during the cessation of bleeding, he should give half a dinar.

We have also been narrated from him that he said: "Whoever has sexual intercourse with a menstruating woman must manumit a slave." We have also been narrated from ʿAṭāʾ ibn Abī Rabāḥ that he said regarding one who has intercourse with his wife while she is menstruating: "He should give a dinar in charity."

And it has been narrated to us from Qatādah: If he has the means, then he must give a dinar; if he does not have the means, then he must give half a dinar.

Al-Awza'i and Muhammad ibn al-Hasan stated: He should give a dinar in charity. Ahmad ibn Hanbal stated: He should give a dinar in charity, and if he wishes, he may give half a dinar. Al-Hasan al-Basri stated: He must free

وَلَوْ كَانَ دُخُولُ الْمَسْجِدِ لَا يَجُوزُ لِلْحَائِضِ لَأَخْبَرَ بِذَلِكَ - عَلَيْهِ السَّلَامُ - عَائِشَةَ، إِذْ حَاضَتْ فَلَمْ يَنْهَا إِلَّا عَنْ الطَّوَافِ بِالْبَيْتِ فَقَطْ، وَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يَكُونَ لَا يَحِلُّ لَهَا دُخُولُ الْمَسْجِدِ فَلَا يَنْهَاهَا - عَلَيْهِ السَّلَامُ - عَنْ ذَلِكَ وَيَقْتَصِرُ عَلَى مَنْعِهَا مِنْ الطَّوَافِ.

وَهَذَا قَوْلُ الْمُزَنِيِّ وَدَاوُد وَغَيْرِهِمَا، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ حُكْمُ وَطْءِ الْحَائِضِ]

٢٦٣ - مَسْأَلَةٌ:

وَمَنْ وَطِئَ حَائِضًا فَقَدْ عَصَى اللَّهَ تَعَالَى، وَفَرْضٌ عَلَيْهِ التَّوْبَةُ وَالِاسْتِغْفَارُ، وَلَا كَفَّارَةَ عَلَيْهِ فِي ذَلِكَ.

وَقَالَ ابْنُ عَبَّاسٍ: إنْ أَصَابَهَا فِي الدَّمِ فَيَتَصَدَّقُ بِدِينَارٍ، وَإِنْ كَانَ فِي انْقِطَاعِ الدَّمِ فَنِصْفُ دِينَارٍ.

وَرُوِّينَا عَنْهُ أَيْضًا قَالَ: مَنْ وَطِئَ حَائِضًا فَعَلَيْهِ عِتْقُ رَقَبَةٍ، وَرُوِّينَا عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ أَنَّهُ قَالَ فِي الَّذِي يَطَأُ امْرَأَتَهُ وَهِيَ حَائِضٌ: يَتَصَدَّقُ بِدِينَارٍ.

وَرُوِّينَا عَنْ قَتَادَةَ: إنْ كَانَ وَاجِدًا فَدِينَارٌ وَإِنْ لَمْ يَجِدْ فَنِصْفُ دِينَارٍ.

a slave. If he cannot find [one], he must fast two consecutive months. If he is unable, he must feed sixty poor people.

وَقَالَ الْأَوْزَاعِيُّ وَمُحَمَّدُ بْنُ الْحَسَنِ: يَتَصَدَّقُ بِدِينَارٍ، وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: يَتَصَدَّقُ بِدِينَارٍ وَإِنْ شَاءَ بِنِصْفِ دِينَارٍ، وَقَالَ الْحَسَنُ الْبَصْرِيُّ: يُعْتِقُ رَقَبَةً، فَإِنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ، فَإِنْ لَمْ يَسْتَطِعْ فَإِطْعَامُ سِتِّينَ مِسْكِينًا.

L4585–4587 As for those who stated that one should give a dinar or half a dinar as expiation, they supported their view with a hadith we narrated through Miqsam's chain from Ibn Abbas: "The Messenger of Allah (peace and blessings be upon him) said: 'He must give a dinar or half a dinar as expiation.'" Some versions of this report add: "If the blood is clotted, a dinar; if yellowish discharge is present, half a dinar." Another hadith we narrated through Shuraik's chain from Khusayf via Ikrimah from Ibn Abbas states: "From the Prophet (peace and blessings be upon him) concerning one who approaches his spouse during menstruation: 'He must give half a dinar as expiation.'" A further hadith transmitted through Al-Awza'i's chain from Yazid ibn Abi Malik relates: "From Abdul Hamid ibn Abd al-Rahman ibn Zayd ibn Al-Khattab that the Messenger of Allah (peace and blessings be upon him) ordered the intentional violator of a menstruating woman to give two-fifths of a dinar as expiation." Another narration we conveyed through Abdul Malik ibn Habib's chain: Asbagh ibn Al-Faraj reported from Al-Sabi'i via Zayd ibn Abdul Hamid from his father: "Umar ibn Al-Khattab had intercourse with his female slave and discovered she was menstruating. When he informed the Messenger of Allah (peace and blessings be upon him), the Prophet responded: 'Give half a dinar as expiation.'" An additional hadith we narrated through the chain of... From ʻAbd al-Malik ibn Ḥabīb on the authority of al-Makfūf, who narrated from Ayyūb ibn Khawṭ, from Qatādah, from Ibn ʻAbbās, from the Prophet—peace and blessings of Allāh be upon him—"Let him give in charity a dinar or half a dinar." And with another ḥadīth we have narrated it via the chain of Mūsā ibn Ayyūb > al-Walīd ibn Muslim > Ibn Jābir > ʻAlī ibn Badhīmah > Saʻīd ibn Jubayr > Ibn ʻAbbās: "That the Messenger of Allāh—peace and blessings of Allāh be upon him—commanded a man who had intercourse with a menstruating woman to free a slave."

فَأَمَّا مَنْ قَالَ: يَتَصَدَّقُ بِدِينَارٍ أَوْ نِصْفِ دِينَارٍ فَاحْتَجُّوا بِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ مِقْسَمٍ عَنْ ابْنِ عَبَّاسٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يَتَصَدَّقُ بِدِينَارٍ أَوْ بِنِصْفِ دِينَارٍ» وَفِي بَعْضِ أَلْفَاظِ هَذَا الْخَبَرِ «إِنْ كَانَ الدَّمُ عَبِيطًا فَدِينَارٌ، وَإِنْ كَانَ فِيهِ صُفْرَةٌ فَنِصْفُ دِينَارٍ» وَبِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ شَرِيكٍ عَنْ خُصَيْفٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الَّذِي يَأْتِي أَهْلَهُ حَائِضًا يَتَصَدَّقُ بِنِصْفِ دِينَارٍ» وَبِحَدِيثٍ رُوِيَ مِنْ طَرِيقِ الْأَوْزَاعِيِّ عَنْ يَزِيدَ بْنِ أَبِي مَالِكٍ «عَنْ عَبْدِ الْحَمِيدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ زَيْدِ بْنِ الْخَطَّابِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَهُ - يَعْنِي الَّذِي يَعْمِدُ وَطْءَ حَائِضٍ - أَنْ يَتَصَدَّقَ بِخُمُسَيْ دِينَارٍ» وَبِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ ثنا أَصْبَغُ بْنُ الْفَرَجِ عَنْ السَّبِيعِيِّ عَنْ زَيْدِ بْنِ عَبْدِ الْحَمِيدِ عَنْ أَبِيهِ «أَنَّ عُمَرَ بْنَ الْخَطَّابِ وَطِئَ جَارِيَتَهُ فَإِذَا بِهَا حَائِضٌ، فَأَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَهُ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَصَدَّقْ بِنِصْفِ دِينَارٍ» وَآخَرُ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ عَنْ الْمَكْفُوفِ عَنْ أَيُّوبَ بْنِ خَوْطٍ عَنْ قَتَادَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فَلْيَتَصَدَّقْ بِدِينَارٍ أَوْ بِنِصْفِ دِينَارٍ» وَبِحَدِيثٍ آخَرَ رُوِّينَاهُ مِنْ طَرِيقِ مُوسَى بْنِ أَيُّوبَ عَنْ الْوَلِيدِ بْنِ مُسْلِمٍ عَنْ ابْنِ جَابِرٍ عَنْ عَلِيِّ بْنِ بَذِيمَةَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ رَجُلًا أَصَابَ حَائِضًا بِعِتْقِ نَسَمَةٍ» .

L4588 We have also narrated it through the chain of Maḥmūd ibn Khālid from al-Walīd ibn Muslim from ʿAbd al-Raḥmān ibn Yazīd al-Sulamī from ʿAlī ibn Badhīmah from Saʿīd ibn Jubayr from Ibn ʿAbbās from the Prophet—peace and blessings be upon him—explicitly. Those who ruled that he was obligated to perform manumission, fasting, or feeding the poor invoked analogy to the ruling on having intercourse during the daytime in Ramaḍān.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مَحْمُودِ بْنِ خَالِدٍ عَنْ الْوَلِيدِ بْنِ مُسْلِمٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ السُّلَمِيِّ عَنْ عَلِيِّ بْنِ بَذِيمَةَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِهِ نَصًّا، وَاحْتَجَّ مَنْ أَوْجَبَ عَلَيْهِ الْعِتْقَ أَوْ الصِّيَامَ أَوْ الْإِطْعَامَ بِقِيَاسِهِ عَلَى الْوَطْءِ نَهَارًا فِي رَمَضَانَ.

L4589 Abu Muhammad said: All of this is invalid; none of it is valid.

قَالَ أَبُو مُحَمَّدٍ: كُلُّ هَذَا لَا يَصِحُّ مِنْهُ شَيْءٌ.

L4590 As for the ḥadīth of Miqsam, Miqsam is not reliable, thus its use as evidence is dismissed. As for the ḥadīth of Ikrimah, Sharik narrated it from Khuṣayf, and both narrators are weak.

أَمَّا حَدِيثُ مِقْسَمٍ فَمِقْسَمٌ لَيْسَ بِالْقَوِيِّ فَسَقَطَ الِاحْتِجَاجُ بِهِ، وَأَمَّا حَدِيثُ عِكْرِمَةَ، فَرَوَاهُ شَرِيكٌ عَنْ خُصَيْفٍ، وَكِلَاهُمَا ضَعِيفٌ.

L4591 As for the narration of Al-Awza'i, it is disconnected (mursal). As for the two narrations of Abd al-Malik ibn Habib, even if there were no other reason besides this, it would suffice to establish their rejection. How then when one of them is from Al-Sabi'i, whose identity is unknown, and it is also disconnected (mursal)? The other is from the blind one, whose identity is unknown, from Ayyub ibn Khawt, who is rejected.

وَأَمَّا حَدِيثُ الْأَوْزَاعِيِّ فَمُرْسَلٌ، وَأَمَّا حَدِيثَا عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ فَلَوْ لَمْ يَكُنْ غَيْرُهُ لَكَفَى بِهِ سُقُوطًا، فَكَيْفَ وَأَحَدُهُمَا عَنْ السَّبِيعِيِّ، وَلَا يُدْرَى مَنْ هُوَ؟ وَمُرْسَلٌ مَعَ ذَلِكَ، وَالْآخَرُ مَعَ الْمَكْفُوفِ، وَلَا يُدْرَى مَنْ هُوَ؟ عَنْ أَيُّوبَ بْنِ خَوْطٍ وَهُوَ سَاقِطٌ.

L4592 As for the two narrations of Al-Walīd ibn Muslim, they are transmitted through Mūsā ibn Ayyūb and ʿAbd al-Raḥmān ibn Yazīd, both of whom are weak narrators. Thus, all traditions in this chapter are rejected.

وَأَمَّا حَدِيثَا الْوَلِيدِ بْنِ مُسْلِمٍ فَمِنْ طَرِيقِ مُوسَى بْنِ أَيُّوبَ وَعَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ وَهُمَا ضَعِيفَانِ، فَسَقَطَ جَمِيعُ الْآثَارِ فِي هَذَا الْبَابِ.

L4593 As for the analogy of the one who has intercourse with a menstruating woman upon the one who has intercourse during Ramadan, the analogy is invalid.

وَأَمَّا قِيَاسُ الْوَاطِئِ حَائِضًا عَلَى الْوَاطِئِ فِي رَمَضَانَ فَالْقِيَاسُ بَاطِلٌ.

L4594 It was incumbent upon those who adhered to weak narrations—such as the ḥadīth of Ḥizām regarding seeking clarity, the reports about performing ablution with nabīdh, the narrations on nasal application, the ḥadīth concerning ablution after loud laughter, the accounts of Jusrah bint Dajājah and others barring menstruating women and those in major impurity from entering mosques, and the unreliable traditions prohibiting a person in major impurity from reciting the Qur'ān—to uphold these reports, for they remain superior

وَلَقَدْ كَانَ يَلْزَمُ الْآخِذِينَ بِالْآثَارِ الْوَاهِيَةِ كَحَدِيثِ حِزَامٍ فِي الِاسْتِظْهَارِ وَأَحَادِيثِ الْوُضُوءِ بِالنَّبِيذِ، وَأَحَادِيثِ الْجُعْلِ فِي الْأَنْفِ، وَحَدِيثِ الْوُضُوءِ مِنْ الْقَهْقَهَةِ، وَأَحَادِيثِ جَسْرَةَ بِنْتِ دَجَاجَةَ وَغَيْرِهَا فِي أَنْ لَا يَدْخُلَ الْمَسْجِدَ حَائِضٌ وَلَا جُنُبٌ، وَبِالْأَخْبَارِ الْوَاهِيَةِ فِي أَنْ لَا يَقْرَأَ الْقُرْآنَ الْجُنُبُ، أَنْ يَقُولُوا بِهَذِهِ الْآثَارِ فَهِيَ أَحْسَنُ عَلَى عِلَّاتِهَا مِنْ تِلْكَ

despite their defects to those deficient, corrupt analogies they adopted here. This however exposes their inconsistency, as they cling neither to mursal nor musnad narrations, neither strong nor weak—except what conforms to their blind adherence. It equally behooved those who analogized eating during Ramadan to intercourse during it (by mandating expiation) to analogize intercourse with a menstruating woman to intercourse during Ramadan, since both involve engaging with an originally lawful private part rendered temporarily forbidden by a transient state. This is sounder than their invalid analogies, for intercourse bears closer resemblance to intercourse than eating does to intercourse.

L4595–4597 Yes, and from oil with ghee, from one who has defecated with one who has urinated, from the pig with the dog, and from... The chastity of the Muslim wife lies in the hands of the accursed thief and all the rest of those corrupt criteria. By this, it becomes evident to every person of understanding that they neither adhere to the revealed texts nor follow Qiyas, but are merely followers of Taqlid or advocates of Istihsan. And success comes solely from Allah, the Exalted.

L4598 Abu Muhammad said: As for us, had any of these narrations been authentic, we would have acted upon them. However, since nothing authentic has been established regarding the obligation of any penalty on one who has intercourse with a menstruating woman, his wealth is forbidden (to take as a penalty). Therefore, it is impermissible to impose a ruling beyond what Allah has obligated upon him: repentance from the sin he committed, seeking forgiveness, and discretionary punishment, in accordance with the saying of the Messenger of Allah—peace and blessings be upon him: "Whoever among you sees an evil, let him change it with his hand"—we have previously mentioned this with its chain of transmission, and we will mention the extent of discretionary punishment in its proper place, if Allah Almighty wills, and in Him we place our trust.

L4599 **A case in which a pregnant woman saw blood and has not yet given birth to the offspring remaining in her womb.**

L4600 264 – Issue:

الصُّلْعِ الدَّبِرَةِ الَّتِي أَخَذُوا بِهَا هَهُنَا، وَلَكِنْ هَذَا يُلِيحُ اضْطِرَابَهُمْ، وَأَنَّهُمْ لَا يَتَعَلَّقُونَ بِمُرْسَلٍ وَلَا مُسْنَدٍ وَلَا قَوِيٍّ وَلَا ضَعِيفٍ إِلَّا مَا وَافَقَ تَقْلِيدَهُمْ، وَلَقَدْ كَانَ يَلْزَمُ مَنْ قَاسَ الْأَكْلَ فِي رَمَضَانَ، عَلَى الْوَاطِئِ فِيهِ فِي إِيجَابِ الْكَفَّارَةِ أَنْ يَقِيسَ وَاطِئَ الْحَائِضِ عَلَى الْوَاطِئِ فِي رَمَضَانَ، لِأَنَّ كِلَيْهِمَا وَطِئَ فَرْجًا حَلَالًا فِي الْأَصْلِ حَرَامًا بِصِفَةٍ تَدُورُ، وَهَذَا أَصَحُّ مِنْ قِيَاسَاتِهِمْ الْفَاسِدَةِ، فَإِنَّ الْوَاطِئَ أَشْبَهُ بِالْوَاطِئِ مِنْ الْآكِلِ بِالْوَاطِئِ.

نَعَمْ وَمِنْ الزَّيْتِ بِالسَّمْنِ وَمِنْ الْمُتَغَوِّطِ بِالْبَائِلِ، وَمِنْ الْخِنْزِيرِ بِالْكَلْبِ وَمِنْ فَرْجِ الزَّوْجَةِ الْمُسْلِمَةِ بِيَدِ السَّارِقِ الْمَلْعُونِ، وَسَائِرِ تِلْكَ الْمَقَايِيسِ الْفَاسِدَةِ، وَبِهَذَا يَتَبَيَّنُ كُلُّ ذِي فَهْمٍ أَنَّهُمْ لَا النُّصُوصَ يَلْتَزِمُونَ، وَلَا الْقِيَاسَ يَتَّبِعُونَ، وَإِنَّمَا هُمْ مُقَلِّدُونَ أَوْ مُسْتَحْسِنُونَ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا نَحْنُ فَلَوْ صَحَّ شَيْءٌ مِنْ هَذِهِ الْآثَارِ لَأَخَذْنَا بِهِ، فَإِذْ لَمْ يَصِحَّ فِي إِيجَابِ شَيْءٍ عَلَى وَاطِئِ الْحَائِضِ فَمَالُهُ حَرَامٌ، فَلَا يَجُوزُ أَنْ يُلْزَمَ حُكْمًا أَكْثَرَ مِمَّا أَلْزَمَهُ اللَّهُ مِنْ التَّوْبَةِ مِنْ الْمَعْصِيَةِ الَّتِي عَمِلَ، وَالِاسْتِغْفَارِ وَالتَّعْزِيرِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ» وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ، وَسَنَذْكُرُ مِقْدَارَ التَّعْزِيرِ فِي مَوْضِعِهِ إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ وَبِهِ نَتَأَيَّدُ.

[مَسْأَلَةٌ دَمٌ رَأَتْهُ الْحَامِلُ وَلَمْ تَضَعْ آخِرَ وَلَدٍ فِي بَطْنِهَا]

٢٦٤ - مَسْأَلَةٌ:

وَكُلُّ دَمٍ رَأَتْهُ الْحَامِلُ مَا لَمْ تَضَعْ آخِرَ وَلَدٍ فِي بَطْنِهَا، فَلَيْسَ حَيْضًا وَلَا نِفَاسًا، وَلَا يَمْنَعُ مِنْ شَيْءٍ، وَقَدْ ذَكَرْنَا أَنَّهُ لَيْسَ حَيْضًا قَبْلُ وَبُرْهَانُهُ، وَلَيْسَ أَيْضًا نِفَاسًا لِأَنَّهَا لَمْ تُنْفِسْ وَلَا وَضَعَتْ حَمْلَهَا بَعْدُ وَلَا حَائِضٌ، وَلَا إجْمَاعَ بِأَنَّهُ حَيْضٌ أَوْ نِفَاسٌ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ، فَلَا يَسْقُطُ عَنْهَا مَا قَدْ صَحَّ وُجُوبُهُ مِنْ الصَّلَاةِ وَالصَّوْمِ وَإِبَاحَةِ الْجِمَاعِ إلَّا بِنَصٍّ ثَابِتٍ لَا بِالدَّعْوَى الْكَاذِبَةِ.

Any blood seen by a pregnant woman before delivering the last child in her womb is neither menstruation nor postpartum bleeding, and it does not prevent anything. We have previously stated—along with its proof—that it is not menstruation, nor is it considered postpartum bleeding because she has neither experienced postpartum bleeding nor delivered her child yet, nor is she menstruating. There is no consensus that it constitutes menstruation or postpartum bleeding. And with Allah, the Most High, is success. Therefore, the obligations validly established upon her - prayer, fasting, and the lawfulness of marital relations - are not waived except by firmly established textual evidence, not by false claims.

[مَسْأَلَةٌ رَأَتْ الْعَجُوزُ الْمُسِنَّةُ دَمًا أَسْوَدَ]

A jurisprudential question: The very elderly woman observed black blood.

٢٦٥ - مَسْأَلَةٌ:

وَإِنْ رَأَتْ الْعَجُوزُ الْمُسِنَّةُ دَمًا أَسْوَدَ فَهُوَ حَيْضٌ مَانِعٌ مِنْ الصَّلَاةِ وَالصَّوْمِ وَالطَّوَافِ وَالْوَطْءِ.

265 – Question:

If an elderly woman sees black blood, it is menstrual blood—a preventer of prayer, fasting, circumambulation, and intercourse.

بُرْهَانُ ذَلِكَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَاهُ قَبْلُ بِإِسْنَادِهِ «إنَّ دَمَ الْحَيْضِ أَسْوَدُ يُعْرَفُ وَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا رَأَتْهُ بِتَرْكِ الصَّلَاةِ» وَقَوْلُهُ - عَلَيْهِ السَّلَامُ - فِي الْحَيْضِ «هَذَا شَيْءٌ كَتَبَهُ اللَّهُ عَلَى بَنَاتِ آدَمَ» فَهَذَا دَمٌ أَسْوَدُ وَهِيَ مِنْ بَنَاتِ آدَمَ، وَلَمْ يَأْتِ نَصٌّ وَلَا إجْمَاعٌ بِأَنَّهُ لَيْسَ حَيْضًا، كَمَا جَاءَ بِهِ النَّصُّ فِي الْحَامِلِ، فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ عَزَّ وَجَلَّ {وَاللائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ} [الطلاق: ٤] قُلْنَا: إنَّمَا أَخْبَرَ اللَّهُ تَعَالَى عَنْهُنَّ بِيَأْسِهِنَّ، وَلَمْ يُخْبِرْ تَعَالَى أَنْ يَأْسَهُنَّ حَقٌّ قَاطِعٌ لِحَيْضِهِنَّ، وَلَمْ نُنْكِرْ يَأْسَهُنَّ مِنْ الْحَيْضِ، لَكِنْ قُلْنَا: إنَّ يَأْسَهُنَّ مِنْ الْحَيْضِ، لَيْسَ مَانِعًا مِنْ أَنْ يُحْدِثَ اللَّهُ تَعَالَى لَهُنَّ حَيْضًا، وَلَا أَخْبَرَ تَعَالَى بِأَنَّ ذَلِكَ لَا يَكُونُ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ قَالَ تَعَالَى

The evidence for this is the statement of the Messenger of Allah - peace and blessings of Allah be upon him - which we previously mentioned with its chain of transmission: "Verily, menstrual blood is black and can be recognized," and the Messenger of Allah - peace and blessings of Allah be upon him - commanded that when she sees it, she must abandon prayer. His statement - peace be upon him - regarding menstruation: "This is something Allah has ordained for the daughters of Adam." Thus, this is black blood, and she is among the daughters of Adam. No textual evidence or consensus has established that this is not menstruation, unlike the text regarding pregnant women. Should they cite Allah's words {As for those women who have ceased menstruation among you, if you doubt, their waiting period is three months} (Surah At-Talaq 4), we respond: Allah the Exalted merely informed about their cessation, not that this cessation definitively terminates their menstruation. We do not deny their cessation of menstruation, but we affirm that this cessation does not preclude Allah the Exalted from causing menstruation to recur for them. Neither Allah nor His Messenger - peace and blessings

of Allah be upon him - declared this impossible. Allah the Exalted states {As for elderly women who no longer expect marriage} (Surah An-Nur 60), informing that they have despaired of marriage, yet this does not prevent their lawful marriage, as there is no disagreement among scholars. There is no distinction between Allah's two pronouncements concerning women who have ceased menstruation. And those women who do not expect marriage—both rulings apply to women who presume these two scenarios—and neither prevents them from what they have despaired of: menstruation and marriage. Regarding our position on the elderly woman, Al-Shāfiʿī states... And success comes from Allah, the Most High.[12]

The Ruling on the Minimum Menstrual Period

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The minimum duration of menstruation is a single occurrence. When a woman sees black blood from her private part, she abstains from prayer and fasting, and intercourse becomes forbidden for her husband or her master. If she sees traces of red blood, fluid resembling meat-washing water, yellow discharge, turbidity, whiteness, or complete dryness, she has attained purity. She then performs ghusl (ritual bathing) or tayammum (dry ablution) if she is among those eligible for tayammum due to lack of water or incapacity to use water, resumes prayer and fasting, and her husband or master may approach her. This applies perpetually: whenever she sees black blood, it is menstruation, and whenever she sees anything else, it is a state of purity. She counts her waiting period (ʿiddah) based on this state of purity following divorce. If the black blood persists continuously, it is considered menstruation until the completion of seventeen days. If it persists beyond this, whether briefly or extensively, it is not menstruation. We will mention the ruling on this afterward, Allah, the Almighty, willing.

The proof for this is the textual evidence we mentioned, which establishes that menstrual blood is black and identifiable, and whatever differs from this

[12]**Qur'an references (L4605):** Qur'an 65:4 (At-Talaq); Qur'an 24:60 (An-Nur).

{وَالْقَوَاعِدُ مِنَ النِّسَاءِ اللاتِي لا يَرْجُونَ نِكَاحًا} [النور: ٦٠] فَأَخْبَرَ تَعَالَى أَنَّهُنَّ يَائِسَاتٌ مِنَ النِّكَاحِ، وَلَمْ يَكُنْ ذَلِكَ مَانِعًا مِنْ أَنْ يُنْكَحْنَ بِلَا خِلَافٍ مِنْ أَحَدٍ، وَلَا فَرْقَ بَيْنَ وُرُودِ الْكَلَامَيْنِ مِنَ اللَّهِ تَعَالَى فِي اللَّائِي يَئِسْنَ مِنَ الْمَحِيضِ وَاللَّاتِي لَا يَرْجُونَ نِكَاحًا، وَكِلَاهُمَا حُكْمٌ وَارِدٌ فِي اللَّوَاتِي يَظُنَّ هَذَيْنِ الظَّنَّيْنِ، وَكِلَاهُمَا لَا يَمْنَعُ مِمَّا يَئِسْنَ مِنْهُ، مِنَ الْمَحِيضِ وَالنِّكَاحِ، وَبِقَوْلِنَا فِي الْعَجُوزِ يَقُولُ الشَّافِعِيُّ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ أَقَلُّ الْحَيْضِ]

٢٦٦ - مَسْأَلَةٌ:

وَأَقَلُّ الْحَيْضِ دَفْعَةً، فَإِذَا رَأَتْ الْمَرْأَةُ الدَّمَ الْأَسْوَدَ مِنْ فَرْجِهَا أَمْسَكَتْ عَنْ الصَّلَاةِ وَالصَّوْمِ وَحَرُمَ وَطْؤُهَا عَلَى بَعْلِهَا وَسَيِّدِهَا، فَإِنْ رَأَتْ أَثَرَ الدَّمِ الْأَحْمَرِ أَوْ كَغُسَالَةِ اللَّحْمِ أَوْ الصُّفْرَةَ أَوْ الْكُدْرَةَ أَوْ الْبَيَاضَ أَوْ الْجُفُوفَ التَّامَّ - فَقَدْ طَهُرَتْ وَتَغْتَسِلُ أَوْ تَتَيَمَّمُ إنْ كَانَتْ مِنْ أَهْلِ التَّيَمُّمِ، وَتُصَلِّي وَتَصُومُ وَيَأْتِيهَا بَعْلُهَا أَوْ سَيِّدُهَا، وَهَكَذَا أَبَدًا مَتَى رَأَتْ الدَّمَ الْأَسْوَدَ فَهُوَ حَيْضٌ، وَمَتَى رَأَتْ غَيْرَهُ فَهُوَ طُهْرٌ، وَتَعْتَدُّ بِذَلِكَ مِنْ الطَّلَاقِ، فَإِنْ تَمَادَى الْأَسْوَدُ فَهُوَ حَيْضٌ إلَى تَمَامِ سَبْعَةَ عَشَرَ يَوْمًا، فَإِنْ زَادَ مَا قَلَّ أَوْ كَثُرَ فَلَيْسَ حَيْضًا، وَنَذْكُرُ حُكْمَ ذَلِكَ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ.

بُرْهَانُ ذَلِكَ مَا ذَكَرْنَاهُ مِنْ وُرُودِ النَّصِّ بِأَنَّ دَمَ الْحَيْضِ أَسْوَدُ يُعْرَفُ، وَمَا عَدَاهُ لَيْسَ حَيْضًا، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - لِذَلِكَ عَدَدَ أَوْقَاتٍ مِنْ عَدَدٍ، بَلْ أَوْجَبَ بِرُؤْيَتِهِ

is not menstruation. The Prophet (peace be upon him) did not restrict this ruling to specific durations or counts. Rather, Allah the Exalted obligated women to abstain from prayer and fasting upon observing it, and Allah the Exalted prohibited marrying them during it, while the Prophet (peace be upon him) commanded the resumption of prayer and fasting after its cessation. Allah permitted intercourse upon attaining ritual purity from it. Thus, it is impermissible to distinguish one time from another in this ruling. As long as menstruation persists, it retains the ruling Allah has ordained for it until definitive textual evidence or consensus establishes otherwise. There exists no textual evidence or consensus regarding durations shorter than seventeen days. Where valid consensus confirms blood is not menstrual, the ruling ceases, and the woman is no longer subject to menstruation laws. Disputed matters must be referred back to the Prophet (peace be upon him), who designated black blood as menstrual blood carrying its prohibitions—barring prayer and fasting. No text or consensus states that a period of ritual purity permitting prayer and fasting cannot constitute a purity interval counted toward the ʿiddah. Those who differentiate between these rulings are certain of their error, asserting claims unsupported by the Quran, Sunnah—whether sound or unsound—analogy, or consensus. Rather, both the Quran and Sunnah affirm our position: menstruation prohibits prayer and fasting, their permissibility depends on its absence, and the state of ritual purity between two menstrual cycles constitutes a purity interval counted in the ʿiddah.

أَنْ لَا تُصَلِّيَ وَلَا تَصُومَ، وَحَرَّمَ تَعَالَى نِكَاحَهُنَّ فِيهِ، وَأَمَرَ - عَلَيْهِ السَّلَامُ - بِالصَّلَاةِ عِنْدَ إِدْبَارِهِ وَالصَّوْمِ، وَأَبَاحَ تَعَالَى الْوَطْءَ عِنْدَ الطُّهْرِ مِنْهُ، فَلَا يَجُوزُ تَخْصِيصُ وَقْتٍ دُونَ وَقْتٍ بِذَلِكَ، وَمَا دَامَ يُوجَدُ الْحَيْضُ فَلَهُ حُكْمُهُ الَّذِي جَعَلَهُ اللَّهُ تَعَالَى لَهُ، حَتَّى يَأْتِيَ نَصٌّ أَوْ إِجْمَاعٌ عَلَى أَنَّهُ لَيْسَ حَيْضًا، وَلَا نَصَّ وَلَا إِجْمَاعَ فِي أَقَلَّ مِنْ سَبْعَةَ عَشَرَ يَوْمًا، فَمَا صَحَّ الْإِجْمَاعُ فِيهِ أَنَّهُ لَيْسَ حَيْضًا وُقِفَ عِنْدَهُ، وَانْتَقَلَتْ عَنْ حُكْمِ الْحَائِضِ وَمَا اُخْتُلِفَ فِيهِ فَمَرْدُودٌ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ - عَلَيْهِ السَّلَامُ - جَعَلَ لِلدَّمِ الْأَسْوَدِ حُكْمَ الْحَيْضِ، فَهُوَ حَيْضٌ مَانِعٌ مِمَّا ذَكَرْنَا، وَلَمْ يَأْتِ نَصٌّ وَلَا إِجْمَاعٌ عَلَى أَنَّ بَعْضَ الطُّهْرِ الْمُبِيحِ لِلصَّلَاةِ وَالصَّوْمِ لَا يَكُونُ قُرْءًا فِي الْعِدَّةِ، فَالْمُفَرِّقُ بَيْنَ ذَلِكَ مُخْطِئٌ مُتَيَقِّنٌ الْخَطَأَ، قَائِلٌ مَا لَا قُرْآنَ جَاءَ بِهِ وَلَا سُنَّةَ، لَا صَحِيحَةً وَلَا سَقِيمَةً، وَلَا قِيَاسَ وَلَا إِجْمَاعَ، بَلْ الْقُرْآنُ وَالسُّنَّةُ كِلَاهُمَا يُوجِبُ مَا قُلْنَا: مِنْ امْتِنَاعِ الصَّلَاةِ وَالصَّوْمِ بِالْحَيْضِ، وَوُجُودِهِمَا بِعَدَمِ الْحَيْضِ، وَوُجُودِ الطُّهْرِ وَكَوْنِ الطُّهْرِ بَيْنَ الْحَيْضَتَيْنِ قُرْءًا يُحْتَسَبُ بِهِ فِي الْعِدَّةِ.

L4612 Allah the Exalted said: {Divorced women shall observe a waiting period for three *qurūʿ*} [Al-Baqarah 2:228]. Whoever sets a defined limit during the days of the *qurūʿ* invalidates [the ruling], persists in what he has no knowledge of, and asserts what is neither supported by textual proof nor consensus.[13]

قَالَ اللَّهُ تَعَالَى: {وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ} [البقرة: ٢٢٨] فَمَنْ حَدَّ فِي أَيَّامِ الْقُرْءِ حَدًّا فَهُوَ مُبْطِلٌ، وَقَافٍ مَا لَا عِلْمَ لَهُ بِهِ، وَمَا لَمْ يَأْتِ بِهِ نَصٌّ وَلَا إِجْمَاعٌ.

L4613–4615 In this matter, there is disagreement regarding three points: the first is the minimum duration of menstruation, the second is the maximum duration of menstruation, and the third... Menstruation. The third difference is between the waiting period (ʿiddah) in this matter and the rulings concerning prayer

وَفِي هَذَا خِلَافٌ فِي ثَلَاثَةِ مَوَاضِعَ: أَحَدُهَا أَقَلُّ مُدَّةِ الْحَيْضِ، وَالثَّانِي أَكْثَرُ مُدَّةِ الْحَيْضِ، وَالثَّالِثُ الْفَرْقُ بَيْنَ الْعِدَّةِ فِي ذَلِكَ وَبَيْنَ الصَّلَاةِ وَالصَّوْمِ، فَأَمَّا أَقَلُّ مُدَّةِ الْحَيْضِ فَإِنَّ طَائِفَةً قَالَتْ: أَقَلُّ الْحَيْضِ دَفْعَةٌ تُتْرَكُ لَهَا الصَّلَاةُ وَالصَّوْمُ وَيَحْرُمُ الْوَطْءُ

[13] **Qur'an references (L4612):** Qur'an 2:228 (Al-Baqarah).

and fasting. As for the minimum duration of menstruation, a group has stated: The shortest menstrual period is a single flow during which prayer and fasting are omitted, and intercourse is prohibited. Regarding the waiting period, its minimum is three days - which is the opinion of Mālik. It has also been reported from Mālik that its minimum in the waiting period is five days.

وَأَمَّا فِي الْعِدَّةِ فَأَقَلُّهُ ثَلَاثَةُ أَيَّامٍ، وَهُوَ قَوْلُ مَالِكٍ، وَقَدْ رُوِيَ عَنْ مَالِكٍ: أَقَلُّهُ فِي الْعِدَّةِ خَمْسَةُ أَيَّامٍ.

L4616 A group maintained that the minimum menstrual occurrence is a single flow in prayer, fasting, sexual intercourse, and the waiting period. This is the opinion of al-Awzāʿī, one of al-Shāfiʿī's two opinions, and that of Dāwūd and his companions.

وَقَالَتْ طَائِفَةٌ: أَقَلُّ الْحَيْضِ دَفْعَةٌ وَاحِدَةٌ فِي الصَّلَاةِ وَالصَّوْمِ وَالْوَطْءِ وَالْعِدَّةِ، وَهُوَ قَوْلُ الْأَوْزَاعِيِّ وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ وَدَاوُد وَأَصْحَابِهِ.

L4617 One group said: The minimum duration of menstruation is a day and a night, and this is the more well-known of the two opinions of Al-Shāfiʿī and Aḥmad ibn Ḥanbal, and it is the view of ʿAṭāʾ. Another group said: The minimum duration of menstruation is three days; if bleeding ceases before three days, it is irregular bleeding and not menstruation, and prayers and fasting should not be abandoned because of it. This is the opinion of Abū Ḥanīfah, his followers, and Sufyān. A third group said: Women's menstruation is six or seven days, and this is an opinion of Aḥmad ibn Ḥanbal.

وَقَالَتْ طَائِفَةٌ: أَقَلُّ الْحَيْضِ يَوْمٌ وَلَيْلَةٌ، وَهُوَ الْأَشْهَرُ مِنْ قَوْلَيْ الشَّافِعِيِّ وَأَحْمَدَ بْنِ حَنْبَلٍ وَهُوَ قَوْلُ عَطَاءٍ وَقَالَتْ طَائِفَةٌ: أَقَلُّ الْحَيْضِ ثَلَاثَةُ أَيَّامٍ، فَإِنْ انْقَطَعَ قَبْلَ الثَّلَاثَةِ الْأَيَّامِ فَهُوَ اسْتِحَاضَةٌ وَلَيْسَ حَيْضًا وَلَا تُتْرَكُ لَهُ صَلَاةٌ وَلَا صَوْمٌ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَأَصْحَابِهِ وَسُفْيَانَ وَقَالَتْ طَائِفَةٌ: حَيْضُ النِّسَاءِ سِتٌّ أَوْ سَبْعٌ، وَهُوَ قَوْلٌ لِأَحْمَدَ بْنِ حَنْبَلٍ.

L4618 Ali said: As for one who differentiates between prayer, fasting, and the prohibition of sexual intercourse on one side, and the waiting period on the other, such a view is evidently erroneous. We find no valid proof for it whatsoever—neither from the Quran, nor from a sound Sunnah nor a defective one, nor from consensus, nor from the opinion of a Companion, nor from analogy, nor from precaution, nor from any opinion with a valid basis. Therefore, it must be abandoned.

قَالَ عَلِيٌّ: أَمَّا مَنْ فَرَّقَ بَيْنَ الصَّلَاةِ وَالصَّوْمِ وَتَحْرِيمِ الْوَطْءِ وَبَيْنَ الْعِدَّةِ، فَقَوْلٌ ظَاهِرُ الْخَطَأِ، وَلَا نَعْلَمُ لَهُ حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ وَلَا مِنْ إجْمَاعٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ وَلَا مِنْ قِيَاسٍ وَلَا مِنْ احْتِيَاطٍ وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ، فَوَجَبَ تَرْكُهُ.

L4619 Then we examined the statement of those who said: "Women's menstruation revolves around six or seven days," but we found no proof for them except that they said: "This is the commonly observed pattern among women." They mentioned a hadith we have transmitted via Ibn Jurayj from Abdullah ibn Muhammad, from Ibrahim ibn Muhammad ibn Talhah, from his uncle Imran ibn Talhah, from Umm Habibah that she experienced istihadah, whereupon the Messenger of Allah—peace and blessings be upon him—set the period of her menstruation as six or seven days.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: حَيْضُ النِّسَاءِ يَدُورُ عَلَى سِتٍّ أَوْ سَبْعٍ، فَلَمْ نَجِدْ لَهُمْ حُجَّةً إلَّا أَنْ قَالُوا: هَذَا هُوَ الْمَعْهُودُ فِي النِّسَاءِ، وَذَكَرُوا حَدِيثًا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدٍ عَنْ إبْرَاهِيمَ بْنِ مُحَمَّدِ بْنِ طَلْحَةَ عَنْ عَمِّهِ عِمْرَانَ بْنِ طَلْحَةَ «عَنْ أُمِّ

حَبِيبَةَ أَنَّهَا اسْتُحِيضَتْ فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَجَلَ حَيْضَتِهَا سِتَّةَ أَيَّامٍ أَوْ سَبْعَةً» .

L4620 We have also narrated it through the chain of Al-Hārith ibn Abī Usāmah, from Zakariyyā ibn ʿAdiyy, from ʿUbayd Allāh ibn ʿAmr al-Raqqī, from ʿAbd Allāh ibn Muḥammad ibn ʿAqīl, from Ibrāhīm ibn Muḥammad ibn Ṭalḥah, from his uncle ʿImrān ibn Ṭalḥah, from his mother Ḥamnah bint Jaḥsh: "The Messenger of Allāh—peace and blessings of Allāh be upon him—said to her: 'Menstruate six or seven days in the knowledge of Allāh—the Almighty and Majestic—then perform the ritual bath. When you have purified yourself, pray twenty-four or twenty-three days and their days, and fast likewise. Do this every month as women menstruate and purify themselves for the appointed time of their menstruation and their purity.'"

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ الْحَارِثِ بْنِ أَبِي أُسَامَةَ عَنْ زَكَرِيَّا بْنَ عَدِيٍّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَمْرٍو الرَّقِّيِّ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ عَنْ إِبْرَاهِيمَ بْنِ مُحَمَّدِ بْنِ طَلْحَةَ عَنْ عَمِّهِ عِمْرَانَ بْنِ طَلْحَةَ عَنْ أُمِّهِ حَمْنَةَ بِنْتِ جَحْشٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهَا: تَحَيَّضِي سِتَّةَ أَيَّامٍ أَوْ سَبْعَةً فِي عِلْمِ اللَّهِ - عَزَّ وَجَلَّ - ثُمَّ اغْتَسِلِي، فَإِذَا اسْتَنْقَأْتِ فَصَلِّي أَرْبَعًا وَعِشْرِينَ أَوْ ثَلَاثًا وَعِشْرِينَ وَأَيَّامَهَا وَصُومِي كَذَلِكَ، وَافْعَلِي فِي كُلِّ شَهْرٍ كَمَا تَحِيضُ النِّسَاءُ وَكَمَا يَطْهُرْنَ لِمِيقَاتِ حَيْضِهِنَّ وَطُهْرِهِنَّ» .

L4621 Abu Ubayd adopted this hadith and established this as the ruling for the female innovator [mubtadiʿah].

وَقَدْ أَخَذَ بِهَذَا الْحَدِيثِ أَبُو عُبَيْدٍ فَجَعَلَ هَذَا حُكْمَ الْمُبْتَدَأَةِ.

L4622–4623 Ali said: As for these two reports, they are not authentic. As for one of the two, Ibn Jurayj did not hear it from Abdullah ibn Muhammad ibn Aqil.

قَالَ عَلِيٌّ: أَمَّا هَذَانِ الْخَبَرَانِ فَلَا يَصِحَّانِ، أَمَّا أَحَدُهُمَا فَإِنَّ ابْنَ جُرَيْجٍ لَمْ يَسْمَعْهُ مِنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ.

L4624 Similarly, Hammam narrated it to us from Abbas ibn Asbagh from Ibn Ayman from Abdullah ibn Ahmad ibn Hanbal from his father—and his father mentioned this hadith and said—Ibn Jurayj said: "I narrated from Ibn Aqil, though I did not directly hear it." Ahmad said: "Indeed, Ibn Jurayj narrated it from al-Nu'man ibn Rashid." Ahmad said: "Al-Nu'man is recognized as weak in narration."

كَذَلِكَ حَدَّثَنَاهُ حَمَامٌ عَنْ عَبَّاسِ بْنِ أَصْبَغَ عَنْ ابْنِ أَيْمَنَ عَنْ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ عَنْ أَبِيهِ - وَذَكَرَ هَذَا الْحَدِيثَ فَقَالَ - قَالَ ابْنُ جُرَيْجٍ: حَدَّثْتُ عَنِ ابْنِ عَقِيلٍ، وَلَمْ يَسْمَعْهُ، قَالَ أَحْمَدُ: وَقَدْ رَوَاهُ ابْنُ جُرَيْجٍ عَنِ النُّعْمَانِ بْنِ رَاشِدٍ قَالَ أَحْمَدُ: وَالنُّعْمَانُ يُعْرَفُ فِيهِ الضَّعْفُ.

L4625 And it has also been narrated by Sharīk and Zuhayr ibn Muḥammad - both of them being weak.

وَقَدْ رَوَاهُ أَيْضًا شَرِيكٌ وَزُهَيْرُ بْنُ مُحَمَّدٍ وَكِلَاهُمَا ضَعِيفٌ.

L4626 From ʿAmr ibn Thābit—who is weak. Furthermore, ʿUmar ibn Ṭalḥah is non-existent, as it is not established that Ṭalḥah had a son named ʿUmar.

وَعَنْ عَمْرِو بْنِ ثَابِتٍ وَهُوَ ضَعِيفٌ. وَأَيْضًا فَعُمَرُ بْنُ طَلْحَةَ غَيْرُ مَخْلُوقٍ، لَا يُعْرَفُ لِطَلْحَةَ ابْنٌ اسْمُهُ عُمَرُ.

L4627 As for the other, it is through the chain of al-Ḥārith ibn Abī Usāmah, and his hadith was abandoned, so the report was dismissed as a whole.

وَأَمَّا الْآخَرُ فَمِنْ طَرِيقِ الْحَارِثِ بْنِ أَبِي أُسَامَةَ، وَقَدْ تُرِكَ حَدِيثُهُ فَسَقَطَ الْخَبَرُ جُمْلَةً.

L4628 As for their statement that this is the customary pattern regarding women's menstruation, there is no valid evidence for this, since neither the Quran, the Sunnah, nor ijma obligates adherence to this notion. There exist women who do not menstruate at all, and thus the rulings pertaining to menstruation do not apply to them, rendering the application of the customary ruling to them invalid. Likewise, there are women who experience menstrual cycles that are shorter or longer, thus this opinion is nullified.

وَأَمَّا قَوْلُهُمْ: إنَّ هَذَا هُوَ الْمَعْهُودُ مِنْ حَيْضِ النِّسَاءِ فَلَا حُجَّةَ فِي هَذَا، لِأَنَّهُ لَمْ يُوجِبْ مُرَاعَاةَ ذَلِكَ قُرْآنٌ وَلَا سُنَّةٌ وَلَا إجْمَاعٌ، وَقَدْ يُوجَدُ فِي النِّسَاءِ مَنْ لَا تَحِيضُ أَصْلًا فَلَا يُجْعَلُ لَهَا حُكْمُ الْحَيْضِ، فَبَطَلَ حَمْلُهُنَّ عَلَى الْمَعْهُودِ، وَقَدْ يُوجَدُ مَنْ تَحِيضُ أَقَلَّ وَأَكْثَرَ، فَسَقَطَ هَذَا الْقَوْلُ.

L4629 Then we deliberated on the assertion of those who state that the minimum menstrual period is five days, and we found it to be an opinion lacking proof. Such claims are invalid.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: أَقَلُّ الْحَيْضِ خَمْسٌ، فَوَجَدْنَاهُ قَوْلًا بِلَا دَلِيلٍ، وَمَا كَانَ هَكَذَا فَهُوَ سَاقِطٌ.

L4630 Then we examined the position of those who set the minimum menstrual period at three days and found them invoking as proof the statement of Allah's Messenger—peace be upon him—: *"Refrain from prayer for the number of days you used to menstruate, then perform ghusl and pray."* We transmitted this through the chain of Abu Umamah: I heard Hisham ibn Urwah; my father informed me from Aisha that Allah's Messenger—peace be upon him—said this to Fatimah bint Abi Hubaysh. We also transmitted it through the chain of Suhayl ibn Abi Salih from Al-Zuhri—from Urwah ibn Al-Zubayr: Fatimah bint Abi Hubaysh narrated to me that she instructed Asma—or Asma narrated to me that Fatimah bint Abi Hubaysh instructed her—to ask Allah's Messenger—peace be upon him. He commanded her to abstain from prayer for the days she used to menstruate, then perform ghusl.[14]

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ جَعَلَ أَقَلَّ الْحَيْضِ ثَلَاثَةَ أَيَّامٍ فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «دَعِي الصَّلَاةَ قَدْرَ الْأَيَّامِ الَّتِي كُنْتِ تَحِيضِينَ فِيهَا ثُمَّ اغْتَسِلِي وَصَلِّي» رُوِّينَاهُ مِنْ طَرِيقِ أَبِي أُمَامَةَ: سَمِعْتُ هِشَامَ بْنَ عُرْوَةَ أَخْبَرَنِي أَبِي عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ ذَلِكَ لِفَاطِمَةَ بِنْتِ أَبِي حُبَيْشٍ، وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ الزُّهْرِيِّ «عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ: حَدَّثَتْنِي فَاطِمَةُ بِنْتُ أَبِي حُبَيْشٍ أَنَّهَا أَمَرَتْ أَسْمَاءَ، أَوْ أَسْمَاءُ حَدَّثَتْنِي أَنَّهَا أَمَرَتْهَا فَاطِمَةُ بِنْتُ أَبِي حُبَيْشٍ أَنْ تَسْأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَهَا أَنْ تَقْعُدَ الْأَيَّامَ الَّتِي كَانَتْ تَقْعُدُ ثُمَّ تَغْتَسِلَ» .

L4631–4633 Abu Muhammad said: They said: The shortest duration that can be called menstrual days is three, based on a hadith we narrated through the chain of Ja'far ibn Muhammad ibn Buraiq, from 'Abd al-Rahman ibn Nafi', from Asad ibn Sa'id al-Balkhi, from Muhammad ibn al-Hasan al-Sadafi, from 'Ubadah

قَالَ أَبُو مُحَمَّد: وَقَالُوا: أَقَلُّ مَا يَقَعُ عَلَيْهِ اسْمُ أَيَّامٍ فَثَلَاثَةٌ، وَبِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ جَعْفَرِ بْنِ مُحَمَّدِ بْنِ بُرَيْقٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ نَافِعٍ درخت ثنا أَسَدُ بْنُ سَعِيدٍ الْبَلْخِيُّ عَنْ مُحَمَّدِ بْنِ الْحَسَنِ الصَّدَفِيِّ عَنْ عُبَادَةَ بْنِ نُسَيٍّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ غَنْمٍ عَنْ مُعَاذِ بْنِ

[14] **Hadith references (L4630):** Sahih al-Bukhari 325; Sunan Abi Dawud 281.

ibn Nusayy, from ’Abd al-Rahman ibn Ghanm, from Mu’adh ibn Jabal, from the Prophet, peace and blessings of Allah be upon him: “There is no menstruation shorter than three days nor exceeding ten days.” They said: This is the definitive ruling. The statement of Anas ibn Mālik: We have reported it through the chain of Al-Jald ibn Ayyūb, from Muʿāwiyah ibn Qurrah, from Anas ibn Mālik. We have also reported from ʻĀisha that she gave a fatwā on that matter after the death of the Messenger of Allah—peace and blessings of Allah be upon him—through the chain of Ibn ʻAqīl, from Nahīh. And that is the opinion of Al-Ḥasan.

جَبَلٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا حَيْضَ أَقَلَّ مِنْ ثَلَاثٍ وَلَا فَوْقَ عَشْرٍ» قَالُوا: وَهُوَ قَوْلُ أَنَسِ بْنِ مَالِكٍ، رُوِّينَاهُ مِنْ طَرِيقِ الْجَلْدِ بْنِ أَيُّوبَ عَنْ مُعَاوِيَةَ بْنِ قُرَّةَ عَنْ أَنَسِ بْنِ مَالِكٍ، وَرُوِّينَا أَيْضًا عَنْ عَائِشَةَ أَفْتَتْ بِذَلِكَ بَعْدَ مَوْتِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ ابْنِ عَقِيلٍ عَنْ نَهِيهِ وَهُوَ قَوْلُ الْحَسَنِ.

L4634 Ali said: As for the authentic report in this matter transmitted through Aisha, Fatimah, and Asma, there is no proof for them in it, because the Messenger of Allah—peace and blessings be upon him—commanded this for those who have fixed days. This is the unequivocal text of that report, from which it is impermissible to deviate, and he—peace be upon him—did not command it for those who do not have fixed days.

قَالَ عَلِيٌّ: أَمَّا الْخَبَرُ الصَّحِيحُ فِي هَذَا مِنْ طَرِيقِ عَائِشَةَ وَفَاطِمَةَ وَأَسْمَاءَ فَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِذَلِكَ مَنْ كَانَتْ لَهَا أَيَّامٌ مَعْهُودَةٌ، هَذَا نَصُّ ذَلِكَ الْخَبَرِ الَّذِي لَا يَحِلُّ أَنْ يُحَالَ عَنْهُ وَلَمْ يَأْمُرْ - عَلَيْهِ السَّلَامُ - بِذَلِكَ مَنْ لَا أَيَّامَ لَهَا.

L4635 The proof of this is that the people and the great multitude—Yaḥyā ibn Saʿīd al-Qaṭṭān, Zuhayr ibn Muʿāwiyah, Ḥammād ibn Zayd, Sufyān, Abū Muʿāwiyah, Jarīr, ʿAbdullāh ibn Numayr, Ibn Jurayj, al-Darāwirdī, and Wakīʿ ibn al-Jarrāḥ—all narrated from Hishām ibn ʿUrwah, from his father, from ʿĀ’ishah, from the Messenger of Allah (peace and blessings be upon him): “When menstruation begins, cease the prayer. When it ceases, perform the ritual bath and pray.” This was narrated by Mālik, al-Layth ibn Saʿd, Saʿīd ibn ʿAbd al-Raḥmān, Ḥammād ibn Salamah, and ʿAmr ibn al-Ḥārith—all of them narrated from Hishām ibn ʿUrwah, from his father, from ʿĀ’ishah, from the Prophet (peace and blessings be upon him): “When menstruation begins, cease the prayer. When its duration has passed, wash the blood off yourself and pray.” Al-Awzāʿī narrated it from al-Zuhrī, from ʿUrwah, from ʿĀ’ishah, and al-Mundhir ibn al-Mughīrah from ʿUrwah—all of them using phrases such as “when menstruation arrives,” “when your menstrual period comes,” and “when the black blood comes,” without specifying days.

بُرْهَانُ ذَلِكَ أَنَّ النَّاسَ وَالْجَمَّ الْغَفِيرَ يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ وَزُهَيْرُ بْنُ مُعَاوِيَةَ وَحَمَّادُ بْنُ زَيْدٍ وَسُفْيَانُ وَأَبُو مُعَاوِيَةَ وَجَرِيرٌ وَعَبْدُ اللَّهِ بْنُ نُمَيْرٍ وَابْنُ جُرَيْجٍ والدَّرَاوَرْدِيُّ وَوَكِيعُ بْنُ الْجَرَّاحِ، كُلُّهُمْ رَوَوْا عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا أَقْبَلَتْ الْحَيْضَةُ فَدَعِي الصَّلَاةَ، فَإِذَا أَدْبَرَتْ الْحَيْضَةُ فَاغْتَسِلِي وَصَلِّي» وَرَوَاهُ مَالِكٌ وَاللَّيْثُ بْنُ سَعْدٍ وَسَعِيدُ بْنُ عَبْدِ الرَّحْمَنِ وَحَمَّادُ بْنُ سَلَمَةَ وَعَمْرُو بْنُ الْحَارِثِ كُلُّهُمْ رَوَوْا عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا أَقْبَلَتْ الْحَيْضَةُ فَدَعِي الصَّلَاةَ فَإِذَا ذَهَبَ قَدْرُهَا فَاغْسِلِي عَنْكِ الدَّمَ وَصَلِّي» وَرَوَاهُ الْأَوْزَاعِيُّ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ، وَالْمُنْذِرِ بْنِ الْمُغِيرَةِ عَنْ

عُرْوَةَ كُلُّهُمْ «إِذَا جَاءَتْ الْحَيْضَةُ وَإِذَا جَاءَ قُرْؤُكِ وَإِذَا جَاءَ الدَّمُ الْأَسْوَدُ» دُونَ ذِكْرِ أَيَّامٍ.

L4636 وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ رُمْحٍ وَقُتَيْبَةُ، كِلَاهُمَا عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ عَنْ عِرَاكِ بْنِ مَالِكٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «إِنَّ أُمَّ حَبِيبَةَ سَأَلَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الدَّمِ. قَالَتْ عَائِشَةُ: رَأَيْتُ مِرْكَنَهَا مَلْآنَ، فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: امْكُثِي قَدْرَ مَا كَانَتْ تَحْبِسُكِ حَيْضَتُكِ ثُمَّ اغْتَسِلِي وَصَلِّي» فَهَذَا أَمْرٌ لِمَنْ كَانَتْ حَيْضَتُهَا أَقَلَّ مِنْ ثَلَاثَةِ أَيَّامٍ، وَمِنْ يَوْمٍ وَأَكْثَرَ مِنْ عَشْرَةِ أَيَّامٍ أَيْضًا.

Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us; Abdul Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to us; Muhammad ibn Rumh and Qutaybah - both of them - narrated from al-Layth ibn Sa'd from Yazid ibn Abi Habib from Ja'far ibn Rabi'ah from 'Irak ibn Malik from 'Urwah ibn al-Zubayr from 'A'ishah, the Mother of the Believers, who said: "Umm Habibah asked the Messenger of Allah - peace and blessings of Allah be upon him - about menstrual blood. 'A'ishah said: I saw her ritual vessel filled with it. The Messenger of Allah - peace and blessings of Allah be upon him - said to her: 'Abstain [from prayer] for the duration your menstruation would normally prevent you, then perform the ritual bath and pray.'" This ruling applies to women whose menstruation lasts less than three days, as well as those whose bleeding persists for a single day or exceeds ten days.

L4637 وَهَذِهِ كُلُّهَا فَتَاوَى حَقٍّ لَا يَحِلُّ تَرْكُهَا، وَلَا إحَالَةُ شَيْءٍ مِنْهَا عَنْ ظَاهِرِهَا، وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَقُولَ إنَّ مُرَادَهُ - عَلَيْهِ السَّلَامُ - بِقَوْلِهِ كُلَّ مَا ذَكَرْنَا: إنَّمَا أَرَادَ ثَلَاثَةَ أَيَّامٍ، فَإِنْ أَقْدَمَ عَلَى ذَلِكَ مَقْدِمٌ كَانَ كَاذِبًا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَقَطَ تَعَلُّقُهُمْ بِالْحَدِيثِ.

All these are true fatwas that it is not permissible to abandon, nor to interpret anything away from its apparent meaning. It is not permissible for anyone to claim that the intended meaning of his statement—peace be upon him—"all that we have mentioned" is merely three days. If someone dares to do that, they have lied against the Messenger of Allah—may Allah bless him and grant him peace—and thus their reliance on the hadith is invalidated.

L4638–4640 وَأَمَّا خَبَرُ مُعَاذٍ فَفِي غَايَةِ السُّقُوطِ؛ لِأَنَّهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْحَسَنِ الصَّدَفِيِّ وَهُوَ مَجْهُولٌ، فَهُوَ مَوْضُوعٌ بِلَا شَكٍّ، وَالْعَجَبُ مِنْ انْتِصَارِهِمْ هَهُنَا عَلَى أَنَّهُ لَا يَقَعُ اسْمُ الْأَيَّامِ إلَّا عَلَى ثَلَاثٍ لَا أَقَلَّ، وَهُمْ يَقُولُونَ: إنَّ قَوْلَ اللَّهِ تَعَالَى: {فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ} [النساء: ١١] أَنَّهُ لَا يَقَعُ عَلَى أَخَوَيْنِ فَقَطْ فَهَلَّا جَعَلُوا لَفْظَةَ الْأَيَّامِ تَقَعُ هَهُنَا عَلَى يَوْمَيْنِ؟ وَأَمَّا احْتِجَاجُهُمْ بِقَوْلِ أَنَسٍ وَعَائِشَةَ فَلَا يَصِحُّ عَنْهُمَا، لِأَنَّهُ مِنْ طَرِيقِ الْجَلْدِ

As for the narration of Muʿādh, it is of the weakest grade because it is transmitted through Muḥammad ibn al-Ḥasan al-Ṣadafī, and he is... [text breaks off]. It is unknown; thus, it is undoubtedly fabricated. The wonder is at their insistence here that the term "days" only applies to three days, no fewer, while they argue that Allah's statement, {But if he has siblings, then his mother is entitled to a sixth} [Quran 4:11], does not apply to only two siblings. Why then do they not allow the term "days" here to apply to two days? As for their argument based on the statements of Anas and ʿĀ'ishah, they are not authentically reported from them, as they come through Al-Jald

ibn Ayyūb, who is weak, and through Ibn ʻAqīl, who is not strong. Even if they were authentically reported from him and the Mother of the Believers, that would not constitute proof, for other Companions opposed them, as we will mention later, Allah willing. Moreover, the Mother of the Believers only issued that fatwa for one who had established days. Success comes from Allah, the Exalted. Thus, this claim collapses. Success comes from Allah, the Exalted.[15]

L4641 Then we examined the statement of those who claimed the minimum menstrual duration is a day and night, and found they also lack evidence from textual sources. If a claimant asserts consensus in this matter, this is erroneous, for Al-Awzāʿī states: "He knows a woman who becomes ritually pure at dusk and begins menstruating at dawn." Furthermore, Mālik and Al-Shāfiʿī obligated, upon observing a sudden flow of blood, the cessation of prayer, the breaking of the fast of the fasting woman, and the prohibition of intercourse. Since these are menstrual rulings, this opinion is also invalidated. Success comes from Allah, the Exalted.

L4642 Ali said: Then we ask them about a woman who sees blood during her menstrual days—what ruling do you issue for her? None of them disagree that she is menstruating, does not pray, and does not fast. We then ask them: If she observes purity immediately afterward? They all respond: "She must perform *ghusl* and pray." This reveals the invalidity of their position, for if she sees blood during her menstrual days, it would logically require them to rule that she must not break the fast, must not abandon prayer, and that intercourse is not prohibited unless she completes a full day and night according to those who consider this the minimum duration of menstruation, or three days with their nights according to those who consider this the minimum duration of menstruation. Since they do not affirm this—and no Muslim scholar does—the invalidity of their opinion is evident. Thus, the consensus validating our position stands confirmed. All praise belongs to Allah.

L4643 Moreover, the sound reports, as we mentioned from the Messenger of Al-

[15] **Qur'an references (L4638):** Qur'an 4:11 (An-Nisa).

بْنِ أَيُّوبَ وَهُوَ ضَعِيفٌ، وَمِنْ طَرِيقِ ابْنِ عَقِيلٍ وَلَيْسَ بِالْقَوِيِّ، ثُمَّ لَوْ صَحَّ عَنْهُ وَعَنْ أُمِّ الْمُؤْمِنِينَ لَمَا كَانَ فِي ذَلِكَ حُجَّةٌ، لِأَنَّهُ قَدْ خَالَفَهُمَا غَيْرُهُمَا مِنْ الصَّحَابَةِ عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى، فَكَيْفَ وَإِنَّمَا أَفْتَتْ أُمُّ الْمُؤْمِنِينَ بِذَلِكَ مَنْ لَهَا أَيَّامٌ مَعْهُودَةٌ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ، فَسَقَطَ هَذَا الْقَوْلُ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: أَقَلُّ الْحَيْضِ يَوْمٌ وَلَيْلَةٌ، فَوَجَدْنَاهُ أَيْضًا لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْ النُّصُوصِ، فَإِنْ ادَّعَى مُدَّعٍ إجْمَاعًا فِي ذَلِكَ فَهَذَا خَطَأٌ لِأَنَّ الْأَوْزَاعِيَّ يَقُولُ: إنَّهُ يَعْرِفُ امْرَأَةً تَطْهُرُ عَشِيَّةً وَتَحِيضُ غُدْوَةً، وَأَيْضًا فَإِنَّ مَالِكًا وَالشَّافِعِيَّ قَدْ أَوْجَبَا بِرُؤْيَةِ دَفْعَةٍ مِنْ الدَّمِ تَرْكَ الصَّلَاةِ وَفِطْرَ الصَّائِمَةِ وَتَحْرِيمَ الْوَطْءِ، وَهَذِهِ أَحْكَامُ الْحَيْضِ، فَسَقَطَ أَيْضًا هَذَا الْقَوْلُ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

قَالَ عَلِيٌّ: ثُمَّ نَسْأَلُهُمْ عَمَّنْ رَأَتْ الدَّمَ فِي أَيَّامِ حَيْضَتِهَا: بِمَاذَا تُفْتُونَهَا؟ فَلَا يَخْتَلِفُ مِنْهُمْ أَحَدٌ فِي أَنَّهَا حَائِضٌ وَلَا تُصَلِّي وَلَا تَصُومُ، فَنَسْأَلُهُمْ: إنْ رَأَتْ الطُّهْرَ إثْرَهَا؟ فَكُلُّهُمْ يَقُولُ: تَغْتَسِلِي وَتُصَلِّي، فَظَهَرَ فَسَادُ قَوْلِهِمْ، وَكَانَ يَلْزَمُهُمْ إذَا رَأَتْ الدَّمَ فِي أَيَّامِ حَيْضَتِهَا أَلَّا تُفْطِرَ وَلَا تَدَعَ الصَّلَاةَ وَأَلَّا يَحْرُمَ وَطْؤُهَا إلَّا حَتَّى تُتِمَّ يَوْمًا وَلَيْلَةً فِي قَوْلِ مَنْ يَرَى ذَلِكَ أَقَلَّ الْحَيْضِ، أَوْ ثَلَاثَةُ أَيَّامٍ بِلَيَالِيهَا فِي قَوْلِ مَنْ رَأَى ذَلِكَ أَقَلَّ الْحَيْضِ، فَإِذْ لَا يَقُولُونَ بِهَذَا وَلَا يَقُولُهُ أَحَدٌ مِنْ أَهْلِ الْإِسْلَامِ فَقَدْ ظَهَرَ فَسَادُ قَوْلِهِمْ، وَصَحَّ الْإِجْمَاعُ عَلَى صِحَّةِ قَوْلِنَا، وَالْحَمْدُ لِلَّهِ.

وَأَيْضًا فَإِنَّ الْآثَارَ الصِّحَاحَ كَمَا ذَكَرْنَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا جَاءَتْ الْحَيْضَةُ فَدَعِي الصَّلَاةَ فَإِذَا أَدْبَرَتْ فَاغْتَسِلِي وَصَلِّي» دُونَ تَحْدِيدِ وَقْتٍ، وَهَذَا

lah—peace be upon him—state: "When menstruation begins, abandon prayer. When it ceases, perform ritual bathing and pray," without stipulating a specific time. This is our position. We previously cited—through the most authentic chain possible—that Ibn Abbas issued a legal opinion stating that if a woman observes the copious blood flow, she should cease prayer. If she observes purity, even for a brief period during the day, let her perform ritual bathing and pray.

The longest period of menstruation.

As for the maximum duration of menstruation, Mālik and Al-Shāfiʿī said: Its maximum is fifteen days - it does not extend beyond this period. He stated the maximum duration, and Sa'id ibn Jubayr said: "The maximum menstrual period is thirteen days."

And Abu Hanifah and Sufyan said: The maximum period is ten days.

Abu Hanifah argued using the narrations we mentioned and said: "The term 'days' applies exclusively to ten days." Some of them claimed that no one had ever stated the menstrual period to be shorter than that.

Ali said: As for their claim that the term "days" cannot apply to more than ten, this is a falsehood unsupported by language or Islamic law. Indeed, the Almighty has said: {Then a number of other days} [Quran 2:184], and this applies to thirty days without any disagreement. The ḥadīth of Muʿādh—we have already mentioned its invalidity. As for their statement that no one has said the days of menstruation are fewer than ten, this is a lie. We have mentioned the view of those who said the days of menstruation are six or seven, and the view of Mālik that the minimum menstrual period is five days. Thus, their claim is an unsubstantiated assertion, and this is invalid.[16]

As for those who set the limit at thirteen days, the same also applies. As for

[16] **Qur'an references (L4650):** Qur'an 2:184 (Al-Baqarah); Qur'an 2:185 (Al-Baqarah).

هُوَ قَوْلُنَا، وَقَدْ ذَكَرْنَا قَبْلُ - بِأَصَحِّ إِسْنَادٍ يَكُونُ - عَنْ ابْنِ عَبَّاسٍ أَنَّهُ أَفْتَى إِذَا رَأَتْ الدَّمَ الْبَحْرَانِيَّ أَنْ تَدَعَ الصَّلَاةَ، فَإِذَا رَأَتْ الطُّهْرَ وَلَوْ سَاعَةً مِنْ نَهَارٍ فَلْتَغْتَسِلْ وَتُصَلِّي.

[أَكْثَرُ مُدَّةِ الْحَيْضِ]

وَأَمَّا أَكْثَرُ مُدَّةِ الْحَيْضِ فَإِنَّ مَالِكًا وَالشَّافِعِيَّ قَالَا: أَكْثَرُهُ خَمْسَةَ عَشَرَ يَوْمًا لَا يَكُونُ أَكْثَرَ، وَقَالَ سَعِيدُ بْنُ جُبَيْرٍ: أَكْثَرُ الْحَيْضِ ثَلَاثَةَ عَشَرَ يَوْمًا.

وَقَالَ أَبُو حَنِيفَةَ وَسُفْيَانُ: أَكْثَرُهُ عَشَرَةُ أَيَّامٍ.

فَاحْتَجَّ أَبُو حَنِيفَةَ بِالْأَخْبَارِ الَّتِي ذَكَرْنَا وَقَالَ: لَا يَقَعُ اسْمُ أَيَّامٍ إِلَّا عَلَى عَشَرَةٍ، وَادَّعَى بَعْضُهُمْ أَنَّهُ لَمْ يَقُلْ أَحَدٌ إِنَّ الْحَيْضَ أَقَلُّ مِنْ ذَلِكَ.

قَالَ عَلِيٌّ: أَمَّا قَوْلُهُمْ إِنَّ اسْمَ أَيَّامٍ لَا يَقَعُ عَلَى أَكْثَرَ مِنْ عَشَرَةٍ فَكَذِبٌ لَا تُوجِبُهُ لُغَةٌ وَلَا شَرِيعَةٌ، وَقَدْ قَالَ عَزَّ وَجَلَّ: {فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ} [البقرة: ١٨٤] وَهَذَا يَقَعُ عَلَى ثَلَاثِينَ يَوْمًا بِلَا خِلَافٍ، وَحَدِيثُ مُعَاذٍ قَدْ ذَكَرْنَا بُطْلَانَهُ، وَأَمَّا قَوْلُهُمْ: إِنَّهُ لَمْ يَقُلْ أَحَدٌ إِنَّ أَيَّامَ الْحَيْضِ أَقَلُّ مِنْ عَشَرَةٍ فَهُوَ كَذِبٌ، وَقَدْ ذَكَرْنَا قَوْلَ مَنْ قَالَ: إِنَّ أَيَّامَ الْحَيْضِ سِتَّةٌ أَوْ سَبْعَةٌ، وَقَوْلُ مَالِكٍ أَقَلُّ الْحَيْضِ خَمْسَةُ أَيَّامٍ، فَخَصَلَ قَوْلُهُمْ دَعْوَى بِلَا بُرْهَانٍ وَهَذَا بَاطِلٌ.

those who said fifteen days, they claimed there was consensus that menstruation cannot exceed that duration.

وَأَمَّا مَنْ حَدَّ ثَلَاثَةَ عَشَرَ يَوْمًا فَكَذَلِكَ أَيْضًا، وَأَمَّا مَنْ قَالَ خَمْسَةَ عَشَرَ يَوْمًا فَإِنَّهُمْ ادَّعَوْا الْإِجْمَاعَ عَلَى أَنَّهُ لَا يَكُونُ حَيْضٌ أَكْثَرَ مِنْ ذَلِكَ.

L4652 Ali said: This is baseless. It has been reported through the chain of ʿAbd al-Raḥmān ibn Mahdī that **the** trustworthy narrator informed him of a woman who would menstruate for seventeen days. **We have reported it** from Aḥmad ibn Ḥanbal, who said: The maximum we have heard is seventeen days. And from the women of **the household** of al-Mājishūn: they used to menstruate for seventeen days.

قَالَ عَلِيٌّ: وَهَذَا بَاطِلٌ، قَدْ رُوِيَ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ: أَنَّ الثِّقَةَ أَخْبَرَهُ أَنَّ امْرَأَةً كَانَتْ تَحِيضُ سَبْعَةَ عَشَرَ يَوْمًا، وَرُوِّينَاهُ عَنْ أَحْمَدَ بْنِ حَنْبَلٍ قَالَ: أَكْثَرُ مَا سَمِعْنَا سَبْعَةَ عَشَرَ يَوْمًا، وَعَنْ نِسَاءِ آلِ الْمَاجِشُونِ أَنَّهُنَّ كُنَّ يَحِضْنَ سَبْعَةَ عَشَرَ يَوْمًا.

L4653 Ali said: It has been authentically established from the Messenger of Allah—peace and blessings be upon him—that menstrual blood is black. When a woman sees it, she does not pray. Compliance with this is obligatory. It is also established that as long as she sees this blood, she remains menstruating and subject to the rulings of menstruation, unless there exists a scriptural text or consensus indicating that black blood is not menstrual. Yet it is established by textual evidence that black blood may occur without being menstrual. The Prophet (peace be upon him) did not specify for us any maximum duration for menstruation from anything. Therefore, we must consider the maximum period reported, and we found none exceeding seventeen days. We thus adopted this position, obligating the abandonment of prayer upon sighting black blood for this duration—no longer, and less. Whatever exceeds seventeen days is definitively established by certain consensus as not being menstruation.

قَالَ عَلِيٌّ: قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ دَمَ الْحَيْضِ أَسْوَدُ فَإِذَا رَأَتْهُ الْمَرْأَةُ لَمْ تُصَلِّ، فَوَجَبَ الِانْقِيَادُ لِذَلِكَ، وَصَحَّ أَنَّهَا مَا دَامَتْ تَرَاهُ فَهِيَ حَائِضٌ لَهَا حُكْمُ الْحَيْضِ مَا لَمْ يَأْتِ نَصٌّ أَوْ إجْمَاعٌ فِي دَمٍ أَسْوَدَ أَنَّهُ لَيْسَ حَيْضًا. وَقَدْ صَحَّ النَّصُّ بِأَنَّهُ قَدْ يَكُونُ دَمٌ أَسْوَدُ وَلَيْسَ حَيْضًا، وَلَمْ يُوَقِّتْ لَنَا فِي أَكْثَرِ عِدَّةِ الْحَيْضِ مِنْ شَيْءٍ، فَوَجَبَ أَنْ نُرَاعِيَ أَكْثَرَ مَا قِيلَ، فَلَمْ نَجِدْ إلَّا سَبْعَةَ عَشَرَ يَوْمًا، فَقُلْنَا بِذَلِكَ، وَأَوْجَبْنَا تَرْكَ الصَّلَاةِ بِرُؤْيَةِ الدَّمِ الْأَسْوَدِ هَذِهِ الْمُدَّةَ - لَا مَزِيدَ - فَأَقَلَّ، وَكَانَ مَا زَادَ عَلَى ذَلِكَ إجْمَاعًا مُتَيَقَّنًا أَنَّهُ لَيْسَ حَيْضًا.

L4654 They said: If menstruation were to exceed fifteen days, it would necessitate that menstruation lasts longer than the period of purity, and this is impossible. We replied to them: From where do you derive that this is impossible? What prevents us—if we observe such a case—from refraining from restricting it [to fifteen days]? For we know of nothing in the Quran, the Sunnah at all, nor consensus, nor analogy, nor the opinion of a Companion that prevents this. And success is from Allah, the Exalted.

وَقَالُوا: إنْ كَانَ الْحَيْضُ أَكْثَرَ مِنْ خَمْسَةَ عَشَرَ يَوْمًا، فَإِنَّهُ يَجِبُ مِنْ ذَلِكَ أَنْ يَكُونَ الْحَيْضُ أَكْثَرَ مِنْ الطُّهْرِ وَهَذَا مُحَالٌ، فَقُلْنَا لَهُمْ: مِنْ أَيْنَ لَكُمْ أَنَّهُ مُحَالٌ؟ وَمَا الْمَانِعُ إنْ وَجَدْنَا ذَلِكَ أَلَا يُوقَفُ عِنْدَهُ؟ فَمَا نَعْلَمُ مَنَعَ مِنْ هَذَا قُرْآنٌ وَلَا سُنَّةٌ أَصْلًا وَلَا إجْمَاعٌ وَلَا قِيَاسٌ وَلَا قَوْلُ صَاحِبٍ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L4655 **This is a jurisprudential issue: there is no minimum or maximum limit for purity.**

[مَسْأَلَةٌ لَا حَدَّ لِأَقَلِّ الطُّهْرِ وَلَا لِأَكْثَرِهِ]

L4656 267. Issue:

٢٦٧ - مَسْأَلَةٌ:

L4657–4659 There is no legally defined limit for the shortest or longest duration of purity, for indeed it may continue throughout the remaining span of one's life. A woman does not menstruate—without any dissent, as observed—and she may observe [blood-free] purity for an hour or more, based on observation.

وَلَا حَدَّ لِأَقَلِّ الطُّهْرِ وَلَا لِأَكْثَرِهِ، فَقَدْ يَتَّصِلُ الطُّهْرُ بَاقِيَ عُمُرِ الْمَرْأَةِ فَلَا تَحِيضُ بِلَا خِلَافٍ مِنْ أَحَدٍ مَعَ الْمُشَاهَدَةِ لِذَلِكَ، وَقَدْ تَرَى الطُّهْرَ سَاعَةً وَأَكْثَرَ بِالْمُشَاهَدَةِ.

L4660 Imam Abu Hanifah said: A period of ritual purity cannot last fewer than fifteen days.

وَقَالَ أَبُو حَنِيفَةَ: لَا يَكُونُ طُهْرٌ أَقَلَّ مِنْ خَمْسَةَ عَشَرَ يَوْمًا.

L4661 Some of the later jurists said: There is no state of ritual purity lasting fewer than nineteen days.

وَقَالَ بَعْضُ الْمُتَأَخِّرِينَ: لَا يَكُونُ طُهْرٌ أَقَلَّ مِنْ تِسْعَةَ عَشَرَ يَوْمًا.

L4662 Malik said: The three, four, or five days occurring between two menstrual periods are not considered a state of purity; all of this constitutes a single menstruation. Al-Shāfiʿī held one opinion agreeing with Abū Ḥanīfah's view, while his second opinion states there is no defined minimum duration for purity. This latter view is held by the scholars of our school and corresponds to Ibn ʿAbbās's position as previously cited, with no disagreement from the Companions - may Allah be pleased with them - regarding this matter.

وَقَالَ مَالِكٌ: الْأَيَّامُ الثَّلَاثَةُ وَالْأَرْبَعَةُ وَالْخَمْسَةُ بَيْنَ الْحَيْضَتَيْنِ لَيْسَ طُهْرًا وَكُلُّ ذَلِكَ حَيْضٌ وَاحِدٌ، وَقَالَ الشَّافِعِيُّ فِي أَحَدِ أَقْوَالِهِ كَقَوْلِ أَبِي حَنِيفَةَ، وَالثَّانِي أَنَّهُ لَا حَدَّ لِأَقَلِّ الطُّهْرِ، وَهُوَ قَوْلُ أَصْحَابِنَا، وَهُوَ قَوْلُ ابْنِ عَبَّاسٍ كَمَا أَوْرَدْنَا قَبْلُ، وَلَا مُخَالِفَ لَهُ فِي ذَلِكَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L4663 As for those who say a purity period cannot last fewer than fifteen days, we know of no valid evidence they can rely upon whatsoever. As for those who say a purity period cannot last fewer than nineteen days, they argued by citing evidence, stating: "Allah the Exalted has ordained the waiting period as three menstrual cycles for women who menstruate and three months for those who do not menstruate." They said: "Thus, it is established that each menstruation and purity period corresponds to a month. Therefore, a menstruation and purity period cannot occur in less than a month."

فَأَمَّا مَنْ قَالَ لَا يَكُونُ طُهْرٌ أَقَلَّ مِنْ خَمْسَةَ عَشَرَ يَوْمًا فَمَا نَعْلَمُ لَهُمْ حُجَّةً يَشْتَغِلُ بِهَا أَصْلًا، وَأَمَّا مَنْ قَالَ: لَا يَكُونُ طُهْرٌ أَقَلَّ مِنْ تِسْعَةَ عَشَرَ يَوْمًا فَإِنَّهُمْ احْتَجُّوا فَقَالُوا: إنَّ اللَّهَ تَعَالَى جَعَلَ الْعِدَّةَ ثَلَاثَةَ قُرُوءٍ لِلَّتِي تَحِيضُ وَجَعَلَ لِلَّتِي لَا تَحِيضُ ثَلَاثَةَ أَشْهُرٍ، قَالُوا: فَصَحَّ أَنَّ بِإِزَاءِ كُلِّ حَيْضٍ وَطُهْرٍ شَهْرًا، فَلَا يَكُونُ حَيْضٌ وَطُهْرٌ فِي أَقَلَّ مِنْ شَهْرٍ.

L4664 Abū Muḥammad said: This contains no valid argument, for it is a statement Allah the Exalted did not utter, and whoever attributes it to Him lies. We clarify that Allah the Exalted never said: "I have established a month as a substitute for every menstruation and purity period." Indeed, no two Muslims disagree that this is invalid, since we and they concur regarding a woman who menstruates once every two months or once every three months—she must observe the waiting period until completing three menstrual cycles

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا حُجَّةَ فِيهِ، لِأَنَّهُ قَوْلٌ لَمْ يَقُلْهُ اللَّهُ تَعَالَى فَنَاسِبُهُ إلَى اللَّهِ تَعَالَى كَاذِبٌ، نَعْنِي أَنَّ اللَّهَ تَعَالَى لَمْ يَقُلْ قَطُّ إنِّي جَعَلْتُ بِإِزَاءِ كُلِّ حَيْضَةٍ وَطُهْرٍ شَهْرًا، بَلْ لَا يَخْتَلِفُ اثْنَانِ مِنْ الْمُسْلِمِينَ فِي أَنَّ هَذَا بَاطِلٌ، لِأَنَّنَا وَهُمْ لَا نَخْتَلِفُ فِي امْرَأَةٍ تَحِيضُ فِي كُلِّ شَهْرَيْنِ مَرَّةً أَوْ فِي كُلِّ ثَلَاثَةَ أَشْهُرٍ مَرَّةً، فَإِنَّهَا تَتَرَبَّصُ حَتَّى تَتِمَّ لَهَا ثَلَاثَةُ

without exception. Thus, the falsehood of those who claim "Allah the Exalted made a month replace every menstruation and purity period" becomes evident. Moreover, we observe the waiting period concluding immediately upon childbirth. Therefore, all frivolous assertions they devised and every false presumption through which they prescribed religious rulings are invalidated.

قُرُوءٍ، وَلَا بُدَّ، فَظَهَرَ كَذِبُ مَنْ قَالَ: إِنَّ اللَّهَ تَعَالَى جَعَلَ بَدَلَ كُلِّ حَيْضَةٍ وَطُهْرٍ شَهْرًا، بَلْ قَدْ وَجَدْنَا الْعِدَّةَ تَنْقَضِي فِي سَاعَةٍ بِوَضْعِ الْحَمْلِ، فَبَطَلَ كُلُّ هَذَرٍ أَتَوْا بِهِ وَكُلُّ ظَنٍّ كَاذِبٍ شَرَعُوا بِهِ الدِّينَ.

L4665 As for Mālik's opinion, it is also clearly erroneous, for he did not consider the five days between two menstrual cycles as a state of purity, yet he orders her to pray and fast during them and permits intercourse with her during this period. How can something possessing these attributes not be deemed a state of purity? How can he fail to count a day or less as menstruation when he commands her to break her fast during Ramadan and abandon prayer in it? These are opinions whose mere mention suffices, making it unnecessary to laboriously demonstrate their invalidity. None of these views is known to have been held by any of the Companions (may Allah be pleased with them).

وَأَمَّا قَوْلُ مَالِكٍ فَظَاهِرُ الْخَطَأِ أَيْضًا، لِأَنَّهُ لَمْ يَجْعَلْ خَمْسَةَ أَيَّامٍ بَيْنَ الْحَيْضَتَيْنِ طُهْرًا وَهُوَ يَأْمُرُهَا فِيهِ بِالصَّلَاةِ وَبِالصَّوْمِ وَيُبِيحُ وَطْأَهَا لِزَوْجِهَا، فَكَيْفَ لَا يَكُونُ طُهْرًا مَا هَذِهِ صِفَتُهُ؟ وَكَيْفَ لَا يَعُدُّ الْيَوْمَ وَأَقَلَّ مِنْهُ حَيْضًا وَهُوَ يَأْمُرُهَا فِيهِ بِالْفِطْرِ فِي رَمَضَانَ وَبِتَرْكِ الصَّلَاةِ؟ وَهَذِهِ أَقْوَالٌ يُغْنِي ذِكْرُهَا عَنْ تَكَلُّفِ فَسَادِهَا، وَلَا يُعْرَفُ لِشَيْءٍ مِنْهَا قَائِلٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L4666 If they say: "Do you not hold that the waiting period concludes in one day or two days according to your view?" We reply: Yes—so what then? Where have Allah the Exalted or His Prophet—peace be upon him—forbidden this? You who claim to be people of analogy—have we not shown you that the waiting period concludes in less than an hour? What do you reject in that?

فَإِنْ قَالُوا: فَإِنَّكُمْ تَرَوْنَ الْعِدَّةَ تَنْقَضِي فِي يَوْمٍ أَوْ فِي يَوْمَيْنِ عَلَى قَوْلِكُمْ؟ قُلْنَا نَعَمْ، فَكَانَ مَاذَا؟ وَأَيْنَ مَنَعَ اللَّهُ تَعَالَى وَنَبِيُّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ هَذَا؟ وَأَنْتُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِكُمْ وَقَدْ أَرَيْنَاكُمْ الْعِدَّةَ تَنْقَضِي فِي أَقَلَّ مِنْ سَاعَةٍ فَمَا أَنْكَرْتُمْ مِنْ ذَلِكَ؟

L4667–4668 If they say, "This does not guarantee safety from her being pregnant," we reply: The waiting period is not for establishing freedom from pregnancy, due to proofs. First, this is a false claim from you, unsupported by any textual evidence or consensus. Second, the waiting period is obligatory for the old woman—daughter of a hundred years—according to both our and your rulings, though we are certain she cannot conceive. Third, it is obligatory for the prepubescent girl who cannot conceive. Fourth, it is obligatory from a sterile man. Fifth, it is obligatory from a castrated man who retains the organ for penetration. Sixth, it is obligatory from the infertile woman. Seventh, it is obligatory for one whose husband had intercourse once, then traveled to India and stayed there twenty years before divorcing her. In all these cases, we are certain no pregnancy exists. Eighth, if it were for pregnancy

فَإِنْ قَالُوا: إِنَّ هَذَا لَا يُؤْمَنُ مَعَهُ أَنْ تَكُونَ حَامِلًا، قُلْنَا لَهُمْ: لَيْسَتْ الْعِدَّةُ لِلْبَرَاءَةِ مِنْ الْحَمْلِ، لِبَرَاهِينَ: أَوَّلُ ذَلِكَ: أَنَّهُ مِنْكُمْ دَعْوَى كَاذِبَةٌ لَمْ يَأْتِ بِهَا نَصٌّ وَلَا إجْمَاعٌ، وَالثَّانِي: أَنَّ الْعِدَّةَ عِنْدَنَا وَعِنْدَكُمْ تَلْزَمُ الْعَجُوزَ ابْنَةَ الْمِائَةِ عَامٍ، وَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهَا لَا حَمْلَ بِهَا، وَالثَّالِثُ: أَنَّ الْعِدَّةَ تَلْزَمُ الصَّغِيرَةَ الَّتِي لَا تَحْمِلُ، وَالرَّابِعُ: أَنَّهَا تَلْزَمُ مِنْ الْعَقِيمِ، وَالْخَامِسُ: أَنَّهَا تَلْزَمُ مِنْ الْخَصِيِّ مَا بَقِيَ لَهُ مَا يُولِجُهُ، وَالسَّادِسُ: أَنَّهَا تَلْزَمُ الْعَاقِرَ، وَالسَّابِعُ: أَنَّهَا تَلْزَمُ مَنْ وَطِئَ مَرَّةً ثُمَّ غَابَ إلَى الْهِنْدِ وَأَقَامَ هُنَالِكَ عِشْرِينَ سَنَةً ثُمَّ طَلَّقَهَا، وَكُلُّ هَؤُلَاءِ نَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهَا لَا حَمْلَ بِهَا، وَالثَّامِنُ: أَنَّهُ لَوْ كَانَتْ

confirmation, a single menstrual cycle would suffice. Ninth, it is obligatory for the woman divorced immediately after childbirth despite the absence of pregnancy. Tenth, the Meccans hold the opposite view of them, stating: A woman's claim that her waiting period ended in less than three months is not accepted, but becomes accepted at three months. Abu Hanifa said: A woman's claim that her waiting period ended in less than sixty days is not accepted, but becomes accepted at sixty days. Muhammad ibn al-Hasan said: It is accepted at fifty-four days, not earlier. Malik said: It is accepted at forty days, not earlier.

مِنْ أَجْلِ الْحَمْلِ لَكَانَتْ حَيْضَةً وَاحِدَةً تُبْرِئُ مِنْ ذَلِكَ، وَالتَّاسِعُ: أَنَّهَا تَلْزَمُ الْمُطَلَّقَةَ إِثْرَ نِفَاسِهَا وَلَا حَمْلَ بِهَا، وَالْعَاشِرُ: أَنَّ الْمَكِّيِّينَ بِالضِّدِّ مِنْهُمْ، قَالُوا: لَا تُصَدَّقُ الْمَرْأَةُ فِي أَنَّ عِدَّتَهَا انْقَضَتْ فِي أَقَلَّ مِنْ ثَلَاثَةِ أَشْهُرٍ، وَتُصَدَّقُ فِي ثَلَاثَةِ أَشْهُرٍ، وَقَالَ أَبُو حَنِيفَةَ: لَا تُصَدَّقُ الْمَرْأَةُ فِي أَنَّ عِدَّتَهَا انْقَضَتْ فِي أَقَلَّ مِنْ سِتِّينَ يَوْمًا، وَتُصَدَّقُ فِي السِّتِّينَ، وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: تُصَدَّقُ فِي أَرْبَعَةٍ وَخَمْسِينَ يَوْمًا لَا فِي أَقَلَّ، وَقَالَ مَالِكٌ: تُصَدَّقُ فِي أَرْبَعِينَ يَوْمًا لَا فِي أَقَلَّ.

L4669 Abu Yusuf said: Alms are to be given within thirty-nine days, no fewer. Al-Shāfiʿī said: Alms are to be given within thirty-three days, no fewer.

وَقَالَ أَبُو يُوسُفَ: تُصَدَّقُ فِي تِسْعَةٍ وَثَلَاثِينَ يَوْمًا لَا أَقَلَّ، وَقَالَ الشَّافِعِيُّ: تُصَدَّقُ فِي ثَلَاثَةٍ وَثَلَاثِينَ يَوْمًا لَا أَقَلَّ.

L4670 Ali said: All these durations they have established based on their principles cannot be confirmed once the presence of pregnancy has ceased. They themselves are the first to invalidate their effective cause and refute their evidence. It is absolutely impermissible to confirm the absence of pregnancy until after more than four months have passed. How can they - who claim to take precautions for pregnancy - accept her mere assertion, even if she were the most immoral of creation and the most untruthful regarding these durations? As for us, we only accept her claim through evidence from four upright midwives knowledgeable in such matters from her household's trusted circle. Thus, the error becomes apparent from those claiming precaution for pregnancy - especially when most of them assert that pregnant women menstruate. This nullifies the position of those among them who claim the waiting period was instituted for the womb's purification from pregnancy. We have been narrated from Hushaym, from Ismāʿīl ibn Abī Khālid, from al-Shaʿbī: A man who divorced his wife was brought before ʿAlī ibn Abī Ṭālib. She had menstruated three times in one month or thirty-five nights. ʿAlī said to Shurayḥ: "Judge her case." He replied: "If she produces evidence from upright women among her household's trusted circle - those whose truthfulness and integrity are accepted - testifying that she saw what prohibits

قَالَ عَلِيٌّ: وَكُلُّ هَذِهِ الْمُدَدِ الَّتِي بَنَوْهَا عَلَى أُصُولِهِمْ لَا يُؤْمَنُ مَعَ انْقِضَاءِ وُجُودِ الْحَمْلِ، فَهُمْ أَوَّلُ مَنْ أَبْطَلَ عِلَّتَهُمْ، وَكَذَّبَ دَلِيلَهُمْ، وَلَا يَجُوزُ أَلْبَتَّةَ أَنْ يُؤْمَنَ الْحَمْلُ إِلَّا بَعْدَ انْقِضَاءِ أَزْيَدَ مِنْ أَرْبَعَةِ أَشْهُرٍ، فَكَيْفَ وَهُمُ الْمُحْتَاطُونَ بِزَعْمِهِمْ لِلْحَمْلِ وَهُمْ يُصَدِّقُونَ قَوْلَهَا، وَلَوْ أَنَّهَا أَفْسَقُ الْبَرِيَّةِ وَأَكْذَبُهُمْ فِي هَذِهِ الْمُدَدِ، أَمَّا نَحْنُ فَلَا نُصَدِّقُهَا إِلَّا بِبَيِّنَةٍ مِنْ أَرْبَعِ قَوَابِلَ عُدُولٍ عَالِمَاتٍ، فَظَهَرَ مِنَ الْمُحْتَاطِ لِلْحَمْلِ، لَا سِيَّمَا مَعَ قَوْلِ أَكْثَرِهِمْ: أَنَّ الْحَامِلَ تَحِيضُ، فَهَذَا يُبْطِلُ قَوْلَ مَنْ قَالَ مِنْهُمْ: إِنَّ الْعِدَّةَ وُضِعَتْ لِبَرَاءَةِ الرَّحِمِ مِنَ الْحَمْلِ، وَقَدْ رُوِّينَا عَنْ هُشَيْمٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنِ الشَّعْبِيِّ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أُتِيَ بِرَجُلٍ طَلَّقَ امْرَأَتَهُ فَحَاضَتْ ثَلَاثَ حِيَضٍ فِي شَهْرٍ أَوْ خَمْسٍ وَثَلَاثِينَ لَيْلَةً، فَقَالَ عَلِيٌّ لِشُرَيْحٍ اقْضِ فِيهَا؟ قَالَ إِنْ جَاءَتْ بِالْبَيِّنَةِ مِنَ النِّسَاءِ الْعُدُولِ مِنْ بِطَانَةِ أَهْلِهَا مِمَّنْ يُرْضَى صِدْقُهُ وَعَدْلُهُ أَنَّهَا رَأَتْ مَا يُحَرِّمُ عَلَيْهَا الصَّلَاةَ مِنَ الطَّمْثِ الَّذِي هُوَ

prayer: menstrual blood that is indeed menstruation, performed purification after each menstrual period, and resumed prayer, then her waiting period has ended. Otherwise, she is lying." ʿAlī ibn Abī Ṭālib responded: "Qālūn" - meaning "You have judged rightly."

L4671–4673 Ali ibn Ahmad said, "And this is the exact wording of our statement," and Muhammad ibn Sirin narrated from him that he was asked... Can the purity period be five days? He said: Women are the most knowledgeable about that. Ali said: No authentic report from any of the Companions—may Allah be pleased with them—contradicts the opinions of Ali ibn Abi Talib and Ibn Abbas, and this is our definitive position, and success comes from Allah, the Exalted.

L4674 Postpartum bleeding and menstruation are equal in all rulings, and success is from Allah, the Exalted.

L4675 **A jurisprudential matter: There is no minimum limit for postpartum bleeding.**

L4676 268 – Issue:

L4677 There is no prescribed minimum duration for postpartum bleeding, while the maximum is seven days, with no extension. Abu Muhammad said: No one has disputed that if postpartum bleeding occurs as a single flow and then ceases without recurrence, she may fast, pray, and her husband may have intercourse with her. Abu Yusuf said: If blood recurs within forty days, it is considered postpartum bleeding. And Muhammad ibn al-Hasan said.

L4678 If the bleeding recurs after fifteen days, it is not postpartum bleeding.

L4679 Abu Muhammad said: These are prescribed punishments that neither Allah, the Exalted, nor His Messenger—peace and blessings of Allah be upon him—has permitted; therefore, it is invalid.

L4680 As for the maximum duration of postpartum bleeding, Mālik once stated it to be sixty days—a view aligned with Al-Shāfiʿī's opinion—but he later

الطُّهْرُ وَتَغْتَسِلُ عِنْدَ كُلِّ قُرْءٍ وَتُصَلِّي فَقَدْ انْقَضَتْ عِدَّتُهَا وَإِلَّا فَهِيَ كَاذِبَةٌ، قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ " قالون " مَعْنَاهَا أَصَبْتُ.

قَالَ عَلِيُّ بْنُ أَحْمَدَ: وَهَذَا نَصُّ قَوْلِنَا، وَرَوَى عَنْهُ مُحَمَّدُ بْنُ سِيرِينَ أَنَّهُ سُئِلَ: أَيَكُونُ طُهْرًا خَمْسَةُ أَيَّامٍ؟ قَالَ: النِّسَاءُ أَعْلَمُ بِذَلِكَ. قَالَ عَلِيٌّ: لَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافُ قَوْلِ عَلِيِّ بْنِ أَبِي طَالِبٍ وَابْنِ عَبَّاسٍ وَهُوَ قَوْلُنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَالنِّفَاسُ وَالْحَيْضُ سَوَاءٌ فِي كُلِّ شَيْءٍ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا حَدَّ لِأَقَلِّ النِّفَاسِ]

٢٦٨ - مَسْأَلَةٌ:

وَلَا حَدَّ لِأَقَلِّ النِّفَاسِ، وَأَمَّا أَكْثَرُهُ فَسَبْعَةُ أَيَّامٍ لَا مَزِيدَ. قَالَ أَبُو مُحَمَّدٍ: وَلَمْ يَخْتَلِفْ أَحَدٌ فِي أَنَّ دَمَ النِّفَاسِ إنْ كَانَ دَفْعَةً ثُمَّ انْقَطَعَ الدَّمُ وَلَمْ يُعَاوِدْهَا فَإِنَّهَا تَصُومُ وَتُصَلِّي وَيَأْتِيهَا زَوْجُهَا، وَقَالَ أَبُو يُوسُفَ: إنْ عَاوَدَهَا دَمٌ فِي الْأَرْبَعِينَ يَوْمًا فَهُوَ دَمُ نِفَاسٍ، وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ.

إنْ عَاوَدَهَا بَعْدَ الْخَمْسَةَ عَشَرَ يَوْمًا فَلَيْسَ دَمَ نِفَاسٍ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ حُدُودٌ لَمْ يَأْذَنْ اللَّهُ تَعَالَى بِهَا وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ بَاطِلٌ.

retracted this, affirming instead: “Women know best.” Abū Ḥanīfah said: “The maximum duration of postpartum bleeding is forty days.”

وَأَمَّا أَكْثَرُ النِّفَاسِ فَإِنَّ مَالِكًا قَالَ مَرَّةً: سِتُّونَ يَوْمًا، ثُمَّ رَجَعَ عَنْ ذَلِكَ، وَهُوَ قَوْلُ الشَّافِعِيِّ، وَقَالَ مَالِكٌ: النِّسَاءُ أَعْلَمُ، وَقَالَ أَبُو حَنِيفَةَ: أَكْثَرُ النِّفَاسِ أَرْبَعُونَ يَوْمًا.

L4681 As for those who set the period at sixty days, we know of no valid proof for their position. As for those who say forty days, they cite narrations from Umm Salamah through Massa al-Azdiyyah—who is unknown—and a narration from Umar through Jabir al-Ju‘fi, who is a liar. They also cite a narration from ‘A’idh ibn ‘Amr that his wife observed post-menstrual purity after twenty days, so she performed the ritual bath and joined him under the blanket. He kicked her with his foot and said, “Do not detract from my religion until forty days have passed.” Yet they do not uphold this opinion themselves. None are in a worse state than those who cite evidence they themselves reject. This is also reported from al-Jald ibn Ayyub, who is not considered strong in transmission.

فَأَمَّا مَنْ حَدَّ سِتِّينَ يَوْمًا فَمَا نَعْلَمُ لَهُمْ حُجَّةً، وَأَمَّا مَنْ قَالَ أَرْبَعُونَ يَوْمًا فَإِنَّهُمْ ذَكَرُوا رِوَايَاتٍ عَنْ أُمِّ سَلَمَةَ مِنْ طَرِيقِ مَسَّةَ الْأَزْدِيَّةِ وَهِيَ مَجْهُولَةٌ، وَرِوَايَةً عَنْ عُمَرَ مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ، وَهُوَ كَذَّابٌ، وَرِوَايَةً عَنْ عَائِذِ بْنِ عَمْرٍو أَنَّ امْرَأَتَهُ رَأَتْ الطُّهْرَ بَعْدَ عِشْرِينَ يَوْمًا، فَاغْتَسَلَتْ وَدَخَلَتْ مَعَهُ فِي لِحَافِهِ، فَضَرَبَهَا بِرِجْلِهِ وَقَالَ: لَا تَغُضِّي مِنْ دِينِي حَتَّى تَمْضِيَ الْأَرْبَعُونَ، وَهُمْ لَا يَقُولُونَ بِهَذَا، وَلَا أَسْوَأَ حَالًا مِمَّنْ يَحْتَجُّ بِمَا لَا يَرَاهُ حُجَّةً، وَهُوَ أَيْضًا عَنْ الْجَلْدِ بْنِ أَيُّوبَ وَلَيْسَ بِالْقَوِيِّ.

L4682 And from al-Ḥasan from ʿUthmān ibn Abī al-ʿĀṣ: a similar narration, and from Jābir from Khaythama from Anas ibn Mālik, and from Wakīʿ from Abū ʿAwāna from Jaʿfar ibn Iyās from Yūsuf ibn Māhak from Ibn ʿAbbās: The postpartum woman observes a waiting period of approximately forty days.

وَعَنْ الْحَسَنِ عَنْ عُثْمَانَ بْنِ أَبِي الْعَاصِ مِثْلُهُ، وَعَنْ جَابِرٍ عَنْ خَيْثَمَةَ عَنْ أَنَسِ بْنِ مَالِكٍ، وَعَنْ وَكِيعٍ عَنْ أَبِي عَوَانَةَ عَنْ جَعْفَرِ بْنِ إيَاسٍ عَنْ يُوسُفَ بْنِ مَاهَكَ عَنْ ابْنِ عَبَّاسٍ: تَنْتَظِرُ النُّفَسَاءُ نَحْوًا مِنْ أَرْبَعِينَ يَوْمًا.

L4683–4685 Abu Muhammad said: There is no proof for anyone other than the Messenger of Allah—may Allah bless him and grant him peace. We have mentioned and mention what they opposed the Companion in, while no dissenters from the Companions are known to have opposed them. The closest example to this is what we mentioned in the related issue concerning the shortest period of ritual purity, for they opposed Ibn Abbas in that matter, with no opposition to him from any Companion whatsoever. Indeed, it becomes binding upon the Malikis and Shafi’is—who censure others for opposing a Companion—just as they... No dissenting opinion is known from the Companions regarding him - to the extent that they would uphold what has been narrated here from those we mentioned among the Companions (may Allah be pleased with them).

قَالَ أَبُو مُحَمَّد: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ ذَكَرْنَا وَنَذْكُرُ مَا خَالَفُوا فِيهِ الصَّاحِبَ، وَالصَّحَابَةُ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفُونَ، وَأَقْرَبُ ذَلِكَ مَا ذَكَرْنَاهُ فِي الْمَسْأَلَةِ الْمُتَّصِلَةِ بِهَذِهِ مِنْ أَقَلِّ الطُّهْرِ، فَإِنَّهُمْ خَالَفُوا فِيهِ ابْنَ عَبَّاسٍ، وَلَا مُخَالِفَ لَهُ مِنْ الصَّحَابَةِ أَصْلًا وَلَقَدْ يَلْزَمُ الْمَالِكِيِّينَ وَالشَّافِعِيِّينَ الْمُشَنِّعِينَ بِخِلَافِ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، أَنْ يَقُولُوا بِمَا رُوِيَ هَهُنَا عَمَّنْ ذَكَرْنَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L4686 Ali said: Since there is no scriptural text from the Quran or Sunnah spec-

ifying the maximum duration of postpartum bleeding, and since Allah the Exalted has obligated her with certainty to pray and fast and permitted her husband intercourse, it is not permissible for her to abstain from these except when abstaining due to menstrual blood, for it is menstrual blood.

قَالَ عَلِيٌّ: فَلَمَّا لَمْ يَأْتِ فِي أَكْثَرِ مُدَّةِ النِّفَاسِ نَصُّ قُرْآنٍ وَلَا سُنَّةٍ وَكَانَ اللَّهُ تَعَالَى قَدْ فَرَضَ عَلَيْهَا الصَّلَاةَ وَالصِّيَامَ بِيَقِينٍ وَأَبَاحَ وَطْأَهَا لِزَوْجِهَا، لَمْ يَجُزْ لَهَا أَنْ تَمْتَنِعَ مِنْ ذَلِكَ إِلَّا حَيْثُ تَمْتَنِعُ بِدَمِ الْحَيْضِ لِأَنَّهُ دَمُ حَيْضٍ.

L4687 Hammam narrated to us: Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabarī narrated to us, Abd al-Razzaq narrated to us, from Ma'mar, from Jabir, from al-Ḍaḥḥāk ibn Muzāḥim, who said: When she gives birth, she waits for seven nights or fourteen nights, then performs the ritual bath and prays.

وَقَدْ حَدَّثَنَا حَمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ جَابِرٍ عَنِ الضَّحَّاكِ بْنِ مُزَاحِمٍ قَالَ: تَنْتَظِرُ إِذَا وَلَدَتْ سَبْعَ لَيَالٍ أَوْ أَرْبَعَ عَشْرَةَ لَيْلَةً ثُمَّ تَغْتَسِلُ وَتُصَلِّي.

L4688 Jabir said it.

قَالَهُ جَابِرٌ.

L4689 Al-Sha'bi said: She waits the utmost period a woman waits, and through him to Abd al-Razzaq from Ma'mar and Ibn Jurayj.

وَقَالَ الشَّعْبِيُّ: تَنْتَظِرُ أَقْصَى مَا تَنْتَظِرُ امْرَأَةٌ وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ وَابْنِ جُرَيْجٍ.

L4690 Ma'mar reported from Qatādah.

قَالَ مَعْمَرٌ عَنْ قَتَادَةَ.

L4691 Ibn Jurayj said, reporting from 'Ata'; then Qatadah agreed with 'Ata': "A virgin who gives birth must observe the waiting period as any woman among her peers." 'Abd al-Razzaq said: And Sufyan al-Thawri holds this view.

وَقَالَ ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ ثُمَّ اتَّفَقَ قَتَادَةُ وَعَطَاءٌ: تَنْتَظِرُ الْبِكْرُ إِذَا وَلَدَتْ كَامْرَأَةٍ مِنْ نِسَائِهَا، قَالَ عَبْدُ الرَّزَّاقِ: وَبِهَذَا يَقُولُ سُفْيَانُ الثَّوْرِيُّ.

L4692 Ali said: Al-Awza'ī said from the people of Damascus that postpartum women wait thirty nights for a boy and forty nights for a girl.

قَالَ عَلِيٌّ: وَقَالَ الْأَوْزَاعِيُّ عَنْ أَهْلِ دِمَشْقَ: تَنْتَظِرُ النُّفَسَاءُ مِنَ الْغُلَامِ ثَلَاثِينَ لَيْلَةً وَمِنَ الْجَارِيَةِ أَرْبَعِينَ لَيْلَةً.

L4693 Ali said: If the disagreement of the Companions—may Allah be pleased with them—(where no opposition to them is known) constitutes a violation of consensus, then in this matter, the following have opposed the consensus within the issue: Ash-Sha'bi, 'Aṭā', Qatādah, Mālik, Sufyān ath-Thawrī, and Ash-Shāfi'ī. However, they imposed restrictions unsupported by any evidence from the Quran, Sunnah, or consensus. As for us, we only affirm the consensus: that any blood which prohibits what menstruation prohibits is menstruation.

قَالَ عَلِيٌّ: إِنْ كَانَ خِلَافُ الطَّائِفَةِ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُمْ مُخَالِفٌ - خِلَافًا لِلْإِجْمَاعِ، فَقَدْ حَصَلَ فِي هَذِهِ الْمَسْأَلَةِ فِي خِلَافِ الْإِجْمَاعِ الشَّعْبِيُّ وَعَطَاءٌ وَقَتَادَةُ وَمَالِكٌ وَسُفْيَانُ الثَّوْرِيُّ وَالشَّافِعِيُّ، إِلَّا أَنَّهُمْ حَدُّوا حُدُودًا لَا يَدُلُّ عَلَى

شَيْءٍ مِنْهَا قُرْآنٌ وَلَا سُنَّةٌ وَلَا إِجْمَاعٌ، وَأَمَّا نَحْنُ فَلَا نَقُولُ إِلَّا بِمَا أُجْمِعَ عَلَيْهِ، مِنْ أَنَّهُ دَمٌ يَمْنَعُ مِمَّا يَمْنَعُ مِنْهُ الْحَيْضُ، فَهُوَ حَيْضٌ.

وَقَدْ حَدَّثَنَا حَمَامٌ ثنا يَحْيَى بْنُ مَالِكِ بْنِ عَائِذٍ ثنا أَبُو الْحَسَنِ عُبَيْدُ اللَّهِ بْنُ أَبِي غَسَّانَ ثنا أَبُو يَحْيَى زَكَرِيَّا بْنُ يَحْيَى السَّاجِيُّ ثنا أَبُو سَعِيدٍ الْأَشَجُّ ثنا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدٍ الْمُحَارِبِيُّ عَنْ سَلَّامِ بْنِ سُلَيْمَانَ الْمَدَائِنِيِّ عَنْ حُمَيْدٍ عَنْ أَنَسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَكْثَرُ النِّفَاسِ أَرْبَعُونَ يَوْمًا» .

L4694 Hammam narrated to us: Yahyā ibn Mālik ibn ʿĀʾidh narrated to us: Abū al-Ḥasan ʿUbayd Allāh ibn Abī Ghassān narrated to us: Abū Yaḥyā Zakariyyā ibn Yaḥyā al-Sājī narrated to us: Abū Saʿīd al-Ashajj narrated to us: ʿAbd al-Raḥmān ibn Muḥammad al-Muḥāribī reported on the authority of Sallām ibn Sulaymān al-Madāʾinī, on the authority of Ḥumayd, on the authority of Anas, on the authority of the Messenger of Allāh (peace and blessings be upon him), who said: "The longest period of postpartum bleeding is forty days."

قَالَ أَبُو مُحَمَّدٍ: سَلَّامُ بْنُ سُلَيْمَانَ ضَعِيفٌ مُنْكَرُ الْحَدِيثِ.

L4695 Abu Muhammad said: Salam ibn Sulaiman is weak, and his hadith is rejected.

وَقَالَ أَبُو حَنِيفَةَ: أَقَلُّ أَمَدِ النِّفَاسِ خَمْسَةٌ وَعِشْرُونَ يَوْمًا. وَقَالَ أَبُو يُوسُفَ أَقَلُّ أَمَدِ النِّفَاسِ أَحَدَ عَشَرَ يَوْمًا.

L4696 Abu Hanifa held the shortest duration of postpartum bleeding to be twenty-five days, while Abu Yusuf deemed it eleven days.

وَقَالَ أَبُو مُحَمَّدٍ: هَذَانِ حَدَّانِ لَمْ يَأْذَنْ اللَّهُ تَعَالَى بِهِمَا، وَالْعَجَبُ مِمَّنْ يَحُدُّ مِثْلَ هَذَا بِرَأْيِهِ وَلَا يُنْكِرُهُ عَلَى نَفْسِهِ، ثُمَّ يُنْكِرُ عَلَى مَنْ وَقَفَ عِنْدَمَا أَوْجَبَهُ اللَّهُ تَعَالَى فِي الْقُرْآنِ وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَجْمَعَ عَلَيْهِ الْمُسْلِمُونَ إجْمَاعًا مُتَيَقَّنًا وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L4697–4698 Abu Muhammad said: These are two ḥadd punishments that Allah the Exalted has not authorized, and it is astonishing how someone can prescribe such punishments based on his own opinion without censuring himself, yet he censures those who adhere strictly to what Allah the Exalted has obligated in the Quran and His Messenger—peace and blessings of Allah be upon him—and what the Muslims have established by certain consensus. All praise is due to Allah, the Lord of the worlds.

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ رَجَعْنَا إلَى مَا ذَكَرْنَا قَبْلُ مِنْ أَنَّ دَمَ النِّفَاسِ هُوَ حَيْضٌ صَحِيحٌ، وَأَمَدُهُ أَمَدُ الْحَيْضِ وَحُكْمُهُ فِي كُلِّ شَيْءٍ حُكْمُ الْحَيْضِ، لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِعَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - «أَنُفِسْتِ» بِمَعْنَى حِضْتِ فَهُمَا شَيْءٌ وَاحِدٌ، وَلِقَوْلِهِ - عَلَيْهِ السَّلَامُ - فِي الدَّمِ الْأَسْوَدِ مَا قَالَ مِنْ اجْتِنَابِ الصَّلَاةِ إذَا جَاءَ، وَهُمْ يَقُولُونَ

L4699 Abu Muhammad said: Then we returned to what we mentioned earlier—that postpartum bleeding is valid menstruation. Its duration corresponds to menstrual periods, and its legal ruling in every matter aligns with menstrual rulings, due to the Prophet's (peace be upon him) saying to ʿĀʾishah (may Allah be pleased with her), "Have you given birth?" meaning "Have you menstruated?"—thereby equating the two. And by his statement (peace be upon him) regarding black blood—what he said about abstaining from prayer when it appears—they base their ruling on analogy, having assigned both the same legal rulings concerning the prohibition of intercourse, prayer, fasting,

and other matters. Thus, it becomes obligatory for them to equate their maximum durations. And success is granted by Allah, the Exalted.

بِالْقِيَاسِ، وَقَدْ حَكَمُوا لَهُمَا بِحُكْمٍ وَاحِدٍ فِي تَحْرِيمِ الْوَطْءِ وَالصَّلَاةِ وَالصَّوْمِ وَغَيْرِ ذَلِكَ، فَيَلْزَمُهُمْ أَنْ يَجْعَلُوا أَمَدَهُمَا وَاحِدًا. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: When a young girl first sees [menstrual] blood, she observes it to be black.

269. Issue:

[مَسْأَلَةٌ أَوَّلَ مَا تَرَى الْجَارِيَةُ الدَّمَ تَرَاهُ أَسْوَدَ]

٢٦٩ - مَسْأَلَةٌ:

If the female first observes the blood as black, it is menstrual blood as previously established; she must abstain from prayer and fasting, and her husband or master must not have intercourse with her. If it changes to a non-black color or ceases within seventeen days, it constitutes sound purity. She must perform the ritual bath, pray, fast, and her husband may have intercourse with her. If the blackness persists, she remains in the state of menstruation up to seventeen nights. If it persists beyond that as black, she must perform the ritual bath, then pray, fast, and her husband may have intercourse with her. She is permanently pure and no longer subject to the rulings of menstruation unless the blood ceases or changes to a non-black color as mentioned. Thus, her legal status when the blood is black follows the rulings of menstruation, and when it changes to a non-black color, ceases, or exceeds seventeen days, it follows the rulings of purity.

فَإِنْ رَأَتْ الْجَارِيَةُ الدَّمَ أَوَّلَ مَا تَرَاهُ أَسْوَدَ فَهُوَ دَمُ حَيْضٍ كَمَا قَدَّمْنَا تَدَعُ الصَّلَاةَ وَالصَّوْمَ وَلَا يَطَؤُهَا بَعْلُهَا أَوْ سَيِّدُهَا، فَإِنْ تَلَوَّنَّ أَوْ انْقَطَعَ إلَى سَبْعَةَ عَشَرَ يَوْمًا فَأَقَلَّ فَهُوَ طُهْرٌ صَحِيحٌ تَغْتَسِلُ وَتُصَلِّي وَتَصُومُ وَيَأْتِيهَا زَوْجُهَا وَإِنْ تَمَادَى أَسْوَدَ تَمَادَتْ عَلَى أَنَّهَا حَائِضٌ إلَى سَبْعَ عَشْرَةَ لَيْلَةً، فَإِنْ تَمَادَى بَعْدَ ذَلِكَ أَسْوَدَ فَإِنَّهَا تَغْتَسِلُ ثُمَّ تُصَلِّي وَتَصُومُ وَيَأْتِيهَا زَوْجُهَا، وَهِيَ طَاهِرٌ أَبَدًا لَا تَرْجِعُ إلَى حُكْمِ الْحَائِضَةِ إلَّا أَنْ يَنْقَطِعَ أَوْ يَتَلَوَّنَ كَمَا ذَكَرْنَا، فَيَكُونُ حُكْمُهَا إذَا كَانَ أَسْوَدَ حُكْمَ الْحَيْضِ وَإِذَا تَلَوَّنَ أَوْ انْقَطَعَ أَوْ زَادَ عَلَى السَّبْعَ عَشْرَةَ حُكْمَ الطُّهْرِ.

As for the woman who has menstruated and attained purity but experiences prolonged bleeding, the same ruling applies in all matters except regarding continuous black blood. When the days she habitually menstruated arrive—whether she previously menstruated multiple times monthly, once monthly, once every few months, or once yearly—she must refrain from what menstruating women abstain from. When this habitual period concludes, she performs the ritual bath and is considered ritually pure in all matters. This status remains permanent unless the blood changes color or ceases.

If her menstrual cycle was irregular, she should base her practice on the final days of her cycle before the bleeding became prolonged. If unaware of her menstrual pattern, she must obligatorily either perform the ritual bath and ablution for every prayer, or follow this sequence: perform ritual

فَأَمَّا الَّتِي قَدْ حَاضَتْ وَطَهُرَتْ فَتَمَادَى بِهَا الدَّمُ فَكَذَلِكَ أَيْضًا فِي كُلِّ شَيْءٍ، إلَّا فِي تَمَادِي الدَّمِ الْأَسْوَدِ مُتَّصِلًا فَإِنَّهَا إذَا جَاءَتْ الْأَيَّامُ الَّتِي كَانَتْ تَحِيضُهَا أَوْ الْوَقْتُ الَّذِي كَانَتْ تَحِيضُهُ إمَّا مِرَارًا فِي الشَّهْرِ أَوْ مَرَّةً فِي الشَّهْرِ أَوْ مَرَّةً فِي أَشْهُرٍ أَوْ فِي عَامٍ، فَإِذَا جَاءَ ذَلِكَ الْأَمَدُ أَمْسَكَتْ عَمَّا تُمْسِكُ بِهِ الْحَائِضُ، فَإِذَا انْقَضَى ذَلِكَ الْوَقْتُ اغْتَسَلَتْ وَصَارَتْ فِي حُكْمِ الطَّاهِرِ فِي كُلِّ شَيْءٍ، وَهَكَذَا أَبَدًا مَا لَمْ يَتَلَوَّنْ الدَّمُ أَوْ يَنْقَطِعُ، فَإِنْ كَانَتْ مُخْتَلِفَةَ الْأَيَّامِ بَنَتْ عَلَى آخِرِ أَيَّامِهَا قَبْلَ أَنْ يَتَمَادَى بِهَا الدَّمُ، فَإِنْ لَمْ تَعْرِفْ وَقْتَ حَيْضِهَا لَزِمَهَا فَرْضًا أَنْ تَغْتَسِلَ لِكُلِّ صَلَاةٍ وَتَتَوَضَّأَ لِكُلِّ صَلَاةٍ، أَوْ تَغْتَسِلُ وَتَتَوَضَّأُ

bath and ablution to pray Dhuhr at its time's end, perform ablution for Asr at its time's start, perform ritual bath and ablution for Maghrib at its time's end, perform ablution for Isha at its time's start, then perform ritual bath and ablution for Fajr. She may alternatively perform the ritual bath at Dhuhr's initial time if she wishes. For the Dhuhr and Asr prayers, that time is designated for it. At the beginning of Maghrib's timeframe for Maghrib and Isha, that time is designated for it. She must pray each prayer within its appointed period without fail, and she performs ablution before every obligatory and supererogatory prayer during its day and night. If she is incapacitated and faces hardship in this regard, she may perform tayammum as we have mentioned.

وَتُصَلِّي الظُّهْرَ فِي آخِرِ وَقْتِهَا، ثُمَّ تَتَوَضَّأُ وَتُصَلِّي الْعَصْرَ فِي أَوَّلِ وَقْتِهَا، ثُمَّ تَغْتَسِلُ وَتَتَوَضَّأُ وَتُصَلِّي الْمَغْرِبَ فِي آخِرِ وَقْتِهَا، ثُمَّ تَتَوَضَّأُ وَتُصَلِّي الْعَتَمَةَ فِي أَوَّلِ وَقْتِهَا، ثُمَّ تَغْتَسِلُ وَتَتَوَضَّأُ لِصَلَاةِ الْفَجْرِ، وَإِنْ شَاءَتْ أَنْ تَغْتَسِلَ فِي أَوَّلِ وَقْتِ الظُّهْرِ لِلظُّهْرِ وَالْعَصْرِ فَذَلِكَ لَهَا، وَفِي أَوَّلِ وَقْتِ الْمَغْرِبِ لِلْمَغْرِبِ وَالْعَتَمَةِ، فَذَلِكَ لَهَا، وَتُصَلِّي كُلَّ صَلَاةٍ لِوَقْتِهَا وَلَا بُدَّ، وَتَتَوَضَّأُ لِكُلِّ صَلَاةِ فَرْضٍ وَنَافِلَةٍ فِي يَوْمِهَا وَلَيْلَتِهَا، فَإِنْ عَجَزَتْ عَنْ ذَلِكَ وَكَانَ عَلَيْهَا فِيهِ حَرَجٌ تَيَمَّمَتْ كَمَا ذَكَرْنَا.

L4706 The evidence for this is the statement of the Messenger of Allah—peace and blessings be upon him—which we previously mentioned with its chain of transmission in the first issue on menstruation from this book of ours: "Menstrual blood is black and recognizable. If that is the case, then abstain from prayer. But if it is the other, perform ablution and pray." And his statement—peace and blessings be upon him—"When menstruation begins, refrain from prayer. When it ends, perform the ritual bath and pray." In one narration: "When it ends, wash the blood from yourself and perform ablution." In another narration: "When its duration has passed, wash the blood from yourself, perform ablution, and pray." This is how we transmitted it through the chain of Hammad ibn Zayd and Hammad ibn Salama, both narrating from Hisham ibn Urwah, from his father, narrated by Aisha, the Mother of the Believers—may Allah be pleased with her—from the Messenger of Allah—peace and blessings be upon him. These reports establish the obligation of observing the changing color of the blood.

بُرْهَانُ ذَلِكَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي قَدْ ذَكَرْنَا بِإِسْنَادِهِ فِي أَوَّلِ مَسْأَلَةٍ مِنْ الْحَيْضِ مِنْ كِتَابِنَا هَذَا - «إنَّ دَمَ الْحَيْضِ أَسْوَدُ يُعْرَفُ فَإِذَا كَانَ ذَلِكَ فَأَمْسِكِي عَنْ الصَّلَاةِ وَإِنْ كَانَ الْآخَرُ فَتَوَضَّئِي وَصَلِّي» وَقَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَقْبَلَتْ الْحَيْضَةُ فَدَعِي الصَّلَاةَ فَإِذَا أَدْبَرَتْ فَاغْتَسِلِي وَصَلِّي» وَفِي بَعْضِهَا «فَإِذَا أَدْبَرَتْ فَاغْسِلِي عَنْكِ الدَّمَ وَتَوَضَّئِي» وَفِي بَعْضِهَا «فَإِذَا ذَهَبَ قَدْرُهَا فَاغْسِلِي عَنْكِ الدَّمَ وَتَوَضَّئِي وَصَلِّي» وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ وَحَمَّادِ بْنِ سَلَمَةَ كِلَاهُمَا عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَفِي هَذِهِ الْأَخْبَارِ إيجَابُ مُرَاعَاةِ تَلَوُّنِ الدَّمِ.

L4707 And what was narrated to us by Abd al-Rahman ibn Abdullah ibn Khalid: Ibrahim ibn Ahmad narrated to us, al-Farbari narrated to us, al-Bukhari narrated to us, Ahmad ibn Abi Raja' narrated to us, Abu Usamah narrated to us, saying: I heard Hisham ibn Urwah ibn al-Zubayr say: My father informed me from Aisha that Fatimah bint Abi Ḥubaysh asked the Prophet (peace and blessings be upon him), saying, "I experience irregular bleeding and do not attain purity. Should I abandon prayer?" He replied, "No, that is [bleeding

وَمَا حَدَّثَنَاهُ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَحْمَدُ بْنُ أَبِي رَجَاءٍ ثنا أَبُو أُسَامَةَ سَمِعْتُ هِشَامَ بْنَ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ أَخْبَرَنِي أَبِي عَنْ عَائِشَةَ «أَنَّ فَاطِمَةَ بِنْتَ أَبِي حُبَيْشٍ سَأَلَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

from] a vein. But refrain from prayer for the number of days you used to menstruate, then perform ghusl and pray."[17]

L4708 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us; ʿAbd al-Wahhab ibn Isa narrated to us; Ahmad ibn Hamd narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to us: Muhammad ibn Rumh and Qutaybah—both of them—narrated from al-Layth ibn Saʿd from Yazid ibn Abi Habib from Jaʿfar ibn Rabiʿah from ʿIrak ibn Malik from Urwah from Aisha, who said: "Umm Habibah asked the Messenger of Allah (peace be upon him) about the blood. Aisha said: 'I saw her basin full of blood.' The Messenger of Allah (peace be upon him) said to her: 'Wait for the duration your menstruation would normally detain you, then perform ritual bathing and pray.'"

L4709 Abu Muhammad said: In these two reports lies the obligation to consider capability.

L4710 The menstrual period that she used to experience before her blood flow became prolonged.

L4711–4713 As for the newly menstruating woman whose blood does not change from blackness and who has no established measure for a previous menstruation... We are certain of the obligation of prayer and fasting upon her, and we are certain that part of the blood is menstrual while part is not menstrual. Since this is the case, it is not permissible for anyone to designate by his own opinion some of that blood as menstrual and some as non-menstrual, for this would constitute legislating in religion without Allah's authorization or attributing to Allah the Exalted what one has no knowledge of. Therefore, it is unlawful for her to abandon the certain obligations imposed by Allah - fasting and prayer - due to mere assumption regarding some of her blood being menstrual when it may not be menstrual, for assumption is the falsest of speech.

- قَالَتْ: إِنِّي أُسْتَحَاضُ فَلَا أَطْهُرُ أَفَأَدَعُ الصَّلَاةَ؟ قَالَ: لَا، إِنَّ ذَلِكَ عِرْقٌ، وَلَكِنْ دَعِي الصَّلَاةَ قَدْرَ الْأَيَّامِ الَّتِي كُنْتِ تَحِيضِينَ فِيهَا ثُمَّ اغْتَسِلِي وَصَلِّي» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ حَمَدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ رُمْحٍ وَقُتَيْبَةُ، كِلَاهُمَا عَنِ اللَّيْثِ بْنِ سَعْدٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ عَنْ عِرَاكِ بْنِ مَالِكٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ قَالَتْ: «إِنَّ أُمَّ حَبِيبَةَ سَأَلَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنِ الدَّمِ، قَالَتْ عَائِشَةُ: رَأَيْتُ مِرْكَنَهَا مَلْآنُ دَمًا، فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُمْكُثِي قَدْرَ مَا كَانَتْ تَحْبِسُكِ حَيْضَتُكِ ثُمَّ اغْتَسِلِي وَصَلِّي» .

قَالَ أَبُو مُحَمَّدٍ: فَفِي هَذَيْنِ الْخَبَرَيْنِ إِيجَابُ مُرَاعَاةِ الْقَدْرِ.

الَّذِي كَانَتْ تَحِيضُهُ قَبْلَ أَنْ يَمْتَدَّ بِهَا الدَّمُ.

وَأَمَّا الْمُبْتَدَأَةُ الَّتِي لَا يَتَلَوَّنُ دَمُهَا عَنِ السَّوَادِ وَلَا مِقْدَارَ عِنْدَهَا لِحَيْضٍ مُتَقَدِّمٍ، فَنَحْنُ عَلَى يَقِينٍ مِنْ وُجُوبِ الصَّلَاةِ وَالصِّيَامِ عَلَيْهَا، وَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ الدَّمَ الْأَسْوَدَ مِنْهُ حَيْضٌ وَمِنْهُ مَا لَيْسَ بِحَيْضٍ، فَإِنَّ ذَلِكَ كَذَلِكَ فَلَا يَجُوزُ لِأَحَدٍ أَنْ يَجْعَلَ بِرَأْيِهِ بَعْضَ ذَلِكَ الدَّمِ حَيْضًا وَبَعْضَهُ غَيْرَ حَيْضٍ، لِأَنَّهُ يَكُونُ شَارِعًا فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ، أَوْ قَائِلًا عَلَى اللَّهِ تَعَالَى مَا لَا عِلْمَ لَدَيْهِ، فَإِذْ ذَلِكَ كَذَلِكَ فَلَا يَحِلُّ لَهَا تَرْكُ يَقِينِ مَا افْتَرَضَ اللَّهُ عَلَيْهَا مِنَ الصَّوْمِ وَالصَّلَاةِ لِظَنٍّ فِي بَعْضِ دَمِهَا أَنَّهُ حَيْضٌ، وَلَعَلَّهُ لَيْسَ حَيْضًا، وَالظَّنُّ أَكْذَبُ الْحَدِيثِ.

[17] **Hadith references (L4707):** Sahih al-Bukhari 325.

L4714 What we have stated is the opinion of Mālik and Dāwūd. Al-Awzāʿī said: She should establish for herself the duration corresponding to the menstruation of her mother, maternal aunt, and paternal aunt. Any days exceeding this period fall under the ruling applicable to the mustaḥāḍah. If she does not know, she should consider her menstruation to last seven days each month, and for the remainder of the month, she is deemed a mustaḥāḍah during which she should fast. Sufyān al-Thawrī and ʿAṭāʾ said: She should determine for herself the duration based on the menstruation cycles of her female relatives.

وَهَذَا الَّذِي قُلْنَاهُ هُوَ قَوْلُ مَالِكٍ وَدَاوُد، وَقَالَ الْأَوْزَاعِيُّ: تَجْعَلُ لِنَفْسِهَا مِقْدَارَ حَيْضِ أُمِّهَا وَخَالَتِهَا وَعَمَّتِهَا وَتَكُونُ فِيمَا زَادَ فِي حُكْمِ الْمُسْتَحَاضَةِ، فَإِنْ لَمْ تَعْرِفْ جَعَلَتْ حَيْضَهَا سَبْعَةَ أَيَّامٍ مِنْ كُلِّ شَهْرٍ، وَتَكُونُ فِي بَاقِي الشَّهْرِ مُسْتَحَاضَةً تَصُومُ، وَقَالَ سُفْيَانُ الثَّوْرِيُّ وَعَطَاءٌ: تَجْعَلُ لِنَفْسِهَا قَدْرَ حَيْضِ نِسَائِهَا.

L4715 Al-Shafi'i said: She should abstain for a day and a night of every month during the days she is menstruating, and for the remainder of the month, as a mustahada woman, she should pray and fast. Ahmad ibn Hanbal inclined to this opinion. Abu Hanifa said: She should abstain for ten days of every month as a menstruating woman, and for the rest of the month, as a mustahada woman, she should pray and fast.

وَقَالَ الشَّافِعِيُّ: تَقْعُدُ يَوْمًا وَلَيْلَةً مِنْ كُلِّ شَهْرٍ تَكُونُ فِيهِ حَائِضًا، وَبَاقِي الشَّهْرِ مُسْتَحَاضَةً تُصَلِّي وَتَصُومُ، وَإِلَى هَذَا مَال أَحْمَدُ بْنُ حَنْبَلٍ، وَقَالَ أَبُو حَنِيفَةَ: تَقْعُدُ عَشَرَةَ أَيَّامٍ مِنْ كُلِّ شَهْرٍ حَائِضًا وَبَاقِي الشَّهْرِ مُسْتَحَاضَةً تُصَلِّي وَتَصُومُ.

L4716 It should be said to all of them: From where do you conclusively assert that she must menstruate every month without exception? It is possible she is menopausal (ḍahiyāʾ) and does not menstruate at all. Thus, you have abandoned through mere assumption the obligation of what Allah the Exalted has decreed for her: prayer and fasting. Moreover, none of them can say, "The restriction should be limited to the shortest menstrual duration for her, so she ceases prayer only with certainty," without the other having the right to say...

قَالَ عَلِيٌّ: يُقَالُ لِجَمِيعِهِمْ: مِنْ أَيْنَ قَطَعْتُمْ بِأَنَّهَا تَحِيضُ كُلَّ شَهْرٍ وَلَا بُدَّ؟ وَفِي الْمُمْكِنِ أَنْ تَكُونَ ضَهْيَاءَ لَا تَحِيضُ فَتَرَكْتُمْ بِالظَّنِّ فَرْضَ مَا أَوْجَبَهُ اللَّهُ تَعَالَى عَلَيْهَا مِنْ الصَّلَاةِ وَالصِّيَامِ، ثُمَّ لَيْسَ لِأَحَدٍ مِنْهُمْ أَنْ يَقُولَ: اُقْتُصِرَ بِهَا عَلَى أَقَلِّ مَا يَكُونُ مِنْ الْحَيْضِ لِئَلَّا تَتْرُكَ الصَّلَاةَ إلَّا بِيَقِينٍ: إلَّا كَانَ لِلْآخَرِ أَنْ يَقُولَ.

L4717 Rather, it has been restricted to the majority of menstrual durations to prevent her from praying or fasting, and to prevent her husband from engaging in intercourse with her while she menstruates. Both these opinions corrupt their proponents, and they are themselves corrupt, for they constitute statements based on conjecture - and judgment through conjecture in the religion of Allah the Exalted is impermissible. We hold absolute certainty, free from doubt, that this woman experiencing her first menstrual cycle has never menstruated before, that fasting and prayer are two binding obligations upon her, and that her husband is both commanded and encouraged to engage in intercourse with her. Yet we neither know nor assert that any

بَلْ اُقْتُصِرَ بِهَا عَلَى أَكْثَرِ الْحَيْضِ لِئَلَّا تُصَلِّيَ وَتَصُومَ وَيَطَأَهَا زَوْجُهَا وَهِيَ حَائِضٌ، وَكُلُّ هَذَيْنِ الْقَوْلَيْنِ يُفْسِدُ صَاحِبَهُ، وَهُمَا جَمِيعًا فَاسِدَانِ لِأَنَّهُمَا قَوْلٌ بِالظَّنِّ، وَالْحُكْمُ بِالظَّنِّ فِي دِينِ اللَّهِ عَزَّ وَجَلَّ لَا يَجُوزُ، وَنَحْنُ عَلَى يَقِينٍ لَا شَكَّ فِيهِ أَنَّ هَذِهِ الْمُبْتَدَأَةَ لَمْ تَحِضْ قَطُّ، وَأَنَّ الصَّوْمَ وَالصَّلَاةَ فَرْضَانِ عَلَيْهَا، وَأَنَّ زَوْجَهَا مَأْمُورٌ وَمَنْدُوبٌ إلَى وَطْئِهَا، ثُمَّ

of this visible blood is menstrual blood. Thus, it is unlawful to abandon certainty and divinely mandated obligations due to false conjecture.

لَا نَدْرِي وَلَا نَقْطَعُ إِنَّ شَيْئًا مِنْ هَذَا الدَّمِ الظَّاهِرِ عَلَيْهَا دَمُ حَيْضٍ، فَلَا يَحِلُّ تَرْكُ الْيَقِينِ وَالْفَرَائِضِ اللَّازِمَةِ بِظَنٍّ كَاذِبٍ.

L4718 And success is by Allah, the Exalted.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L4719 As for her performing ablution for each prayer, we have mentioned the evidence for that in this book of ours, in the section on ablution and what necessitates it.

وَأَمَّا وُضُوءُهَا لِكُلِّ صَلَاةٍ فَقَدْ ذَكَرْنَا بُرْهَانَ ذَلِكَ فِي كِتَابِنَا هَذَا فِي الْوُضُوءِ وَمَا يُوجِبُهُ.

L4720–4721 As for her performing *ghusl* for every two prayers or each prayer, this is based on what Hammam ibn Ahmad narrated to us: Abbas ibn Asbagh narrated to us: Muhammad ibn Abd al-Malik ibn Ayman narrated to us: Allan narrated to us: Muhammad ibn Bashshar narrated to us: Wahb ibn Jarir ibn Hazim narrated to us: Hisham al-Dastuwa'i, from Yahya ibn Abi Kathir, from Abu Salamah—who was Ibn Abd al-Rahman ibn Awf—from Umm Habibah bint Jahsh, that she was experiencing chronic bleeding (istihadah) and asked the Messenger of Allah (peace and blessings of Allah be upon him), whereupon he commanded her to perform *ghusl* for every prayer.

وَأَمَّا غُسْلُهَا لِكُلِّ صَلَاتَيْنِ أَوْ لِكُلِّ صَلَاةٍ فَلِمَا حَدَّثَنَاهُ حَمَامُ بْنُ أَحْمَدَ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ حَدَّثَنَا عَلَّانُ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا وَهْبُ بْنُ جَرِيرِ بْنِ حَازِمٍ ثنا هِشَامٌ الدَّسْتُوَائِيُّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - «عَنْ أُمِّ حَبِيبَةَ بِنْتِ جَحْشٍ أَنَّهَا كَانَتْ تُهْرَاقُ الدَّمَ وَأَنَّهَا سَأَلَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَهَا أَنْ تَغْتَسِلَ لِكُلِّ صَلَاةٍ» .

L4722 And through him to Ibn Ayman: Narrated by Aḥmad ibn Muḥammad al-Birtī the judge, narrated by Abū Maʿmar, narrated by ʿAbd al-Wārith ibn Saʿīd al-Tannūrī, narrated by al-Ḥusayn al-Muʿallim, narrated by Yaḥyā ibn Abī Kathīr, narrated by Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf, who said: Zaynab bint Abī Salama al-Makhzūmī informed me that a woman suffering from chronic bleeding (istihāḍah), who was married to ʿAbd al-Raḥmān ibn ʿAwf, reported that the Messenger of Allāh—peace and blessings be upon him—commanded her to perform ghusl (ritual bath) at every prayer and to pray.

وَبِهِ إِلَى ابْنِ أَيْمَنَ: ثنا أَحْمَدُ بْنُ مُحَمَّدٍ الْبِرْتِيّ الْقَاضِي ثنا أَبُو مَعْمَرٍ ثنا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ التَّنُّورِيُّ عَنِ الْحُسَيْنِ الْمُعَلِّمِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ قَالَ: أَخْبَرَتْنِي زَيْنَبُ بِنْتُ أَبِي سَلَمَةَ الْمَخْزُومِيِّ «أَنَّ امْرَأَةً كَانَتْ تُهْرَاقُ الدَّمَ، وَكَانَتْ تَحْتَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَهَا أَنْ تَغْتَسِلَ عِنْدَ كُلِّ صَلَاةٍ وَتُصَلِّيَ» .

L4723 Ali said, "This is Zaynab, the stepdaughter of the Messenger of Allah (peace be upon him). She was raised under his guardianship (peace be upon him) and had the honor of his companionship (peace be upon him)."

قَالَ عَلِيٌّ: زَيْنَبُ هَذِهِ رَبِيبَةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَشَأَتْ فِي حِجْرِهِ - عَلَيْهِ السَّلَامُ -، وَلَهَا صُحْبَةٌ بِهِ - عَلَيْهِ السَّلَامُ -.

L4724 And through him to Ibn Ayman: Abdullah ibn Ahmad ibn Hanbal reported to us, narrated by my father, who narrated from Muhammad ibn Salama,

from Muhammad ibn Ishaq, from al-Zuhri, from Urwah ibn al-Zubayr, from Umm Habibah bint Jahsh: “She experienced istihadah, so the Messenger of Allah (peace be upon him) commanded her to perform ghusl before every prayer.”

وَبِهِ إِلَى ابْنِ أَيْمَنَ: أَخْبَرَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ حَدَّثَنِي أَبِي حَدَّثَنِي مُحَمَّدُ بْنُ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أُمِّ حَبِيبَةَ بِنْتِ جَحْشٍ «أَنَّهَا اسْتُحِيضَتْ فَأَمَرَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْغُسْلِ عِنْدَ كُلِّ صَلَاةٍ» .

L4725 Abdullah ibn Rabīʿ narrated to us: Ibn al-Sulaym narrated to us, Ibn al-Aʿrabī narrated to us, Abū Dāwūd narrated to us, Hannād ibn al-Sarī narrated to us, ʿAbdah ibn Sulaymān narrated to us, Muḥammad ibn Isḥāq narrated to us, al-Zuhrī narrated to us, ʿUrwah narrated to us, from ʿĀ’ishah: “Umm Ḥabībah bint Jaḥsh experienced istihādah during the time of Allah’s Messenger (peace and blessings be upon him), and he commanded her to perform ghusl before every prayer.”

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا هَنَّادُ بْنُ السَّرِيِّ عَنْ عَبْدَةَ بْنِ سُلَيْمَانَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ «أَنَّ أُمَّ حَبِيبَةَ بِنْتَ جَحْشٍ اُسْتُحِضَتْ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَهَا بِالْغُسْلِ لِكُلِّ صَلَاةٍ» .

L4726 Abdullah ibn Rabee narrated to us: Umar ibn Abd al-Malik al-Khawlani narrated to us: Muhammad ibn Bakr narrated to us: Abu Dawud narrated to us: Wahb ibn Baqiyyah narrated to us: Khalid ibn Isma’il narrated to us from Suhayl ibn Abi Salih from al-Zuhri from Urwah ibn al-Zubayr from Asma bint Umays, who said: “O Messenger of Allah, Fatimah bint Abi Hubaysh was suffering from *istiḥāḍah*.” The Messenger of Allah—peace and blessings be upon him—said to her: “Let her perform one *ghusl* for the noon and afternoon prayers, one *ghusl* for the sunset and night prayers, and one *ghusl* for the dawn prayer. She must perform ablution between these times.”

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ حَدَّثَنَا عُمَرُ بْنُ عَبْدِ الْمَلِكِ الْخَوْلَانِيِّ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا وَهْبُ بْنُ بَقِيَّةَ ثنا خَالِدُ بْنُ إِسْمَاعِيلَ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ «عَنْ أَسْمَاءَ بِنْتِ عُمَيْسٍ قَالَتْ: يَا رَسُولَ اللَّهِ إِنَّ فَاطِمَةَ بِنْتَ أَبِي حُبَيْشٍ اُسْتُحِيضَتْ، فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لِتَغْتَسِلْ لِلظُّهْرِ وَالْعَصْرِ غُسْلًا وَاحِدًا، وَتَغْتَسِلْ لِلْمَغْرِبِ وَالْعِشَاءِ غُسْلًا وَاحِدًا، وَتَغْتَسِلْ لِلْفَجْرِ غُسْلًا وَتَتَوَضَّأُ فِيمَا بَيْنَ ذَلِكَ» .

L4727–4729 These are narrations of the utmost authenticity transmitted on the authority of the Messenger of Allah (may Allah bless him and grant him peace) through four female companions: ‘A’ishah, Mother of the Believers. Zaynab, the daughter of Umm Salamah, Asmā, the daughter of Umays, and Umm Ḥabībah, the daughter of Jaḥsh.

فَهَذِهِ آثَارٌ فِي غَايَةِ الصِّحَّةِ رَوَاهَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرْبَعُ صَوَاحِبَ: عَائِشَةُ أُمُّ الْمُؤْمِنِينَ وَزَيْنَبُ بِنْتُ أُمِّ سَلَمَةَ وَأَسْمَاءُ بِنْتُ عُمَيْسٍ وَأُمُّ حَبِيبَةَ بِنْتُ جَحْشٍ.

L4730 Urwah and Abu Salamah narrated it from each of Aisha and Umm Habibah, and Abu Salamah narrated it from Zaynab bint Umm Salamah.

وَرَوَاهَا عَنْ كُلِّ وَاحِدَةٍ مِنْ عَائِشَةَ وَأُمِّ حَبِيبَةَ عُرْوَةُ وَأَبُو سَلَمَةَ وَرَوَاهُ أَبُو سَلَمَةَ عَنْ زَيْنَبَ بِنْتِ أُمِّ سَلَمَةَ.

وَرَوَاهُ عُرْوَةَ عَنْ أَسْمَاءَ، وَهَذَا نَقْلُ تَوَاتُرٍ يُوجِبُ الْعِلْمَ.

L4731 And it was narrated from Urwah, from Asmā'. This is a *tawātur* transmission, which establishes definitive knowledge.

وَقَالَ بِهَذَا جَمَاعَةٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، كَمَا رُوِّينَا مِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ: أَنَّ أُمَّ حَبِيبَةَ اُسْتُحِيضَتْ فَكَانَتْ تَغْتَسِلُ لِكُلِّ صَلَاةٍ، فَهَذِهِ أُمُّ حَبِيبَةَ تَرَى ذَلِكَ وَعَائِشَةُ تَذْكُرُ ذَلِكَ لَا تُنْكِرُهُ.

L4732 A group of the Companions - may Allah be pleased with them - held this opinion, as was narrated to us through the chain of Al-Layth ibn Sa'd from Ibn Shihab from Urwah from Aisha: that Umm Habibah experienced *istihadah* and would perform a ritual bath for every prayer. Thus, Umm Habibah holds that view, and Aisha mentions it without objecting to it.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ: أَنَّهُ كَانَ عِنْدَ ابْنِ عَبَّاسٍ فَأَتَاهُ كِتَابُ امْرَأَةٍ. قَالَ سَعِيدٌ: فَدَفَعَهُ ابْنُ عَبَّاسٍ إلَيَّ، فَقَرَأْتُهُ فَإِذَا فِيهِ: إنِّي امْرَأَةٌ مُسْتَحَاضَةٌ أَصَابَنِي بَلَاءٌ وَضُرٌّ، وَإِنِّي أَدَعُ الصَّلَاةَ الزَّمَانَ الطَّوِيلَ، وَإِنَّ ابْنَ أَبِي طَالِبٍ سُئِلَ عَنْ ذَلِكَ فَأَفْتَانِي أَنْ أَغْتَسِلَ عِنْدَ كُلِّ صَلَاةٍ، فَقَالَ ابْنُ عَبَّاسٍ: اللَّهُمَّ لَا أَجِدُ لَهَا إلَّا مَا قَالَ عَلِيٌّ، غَيْرَ أَنَّهَا تَجْمَعُ بَيْنَ الظُّهْرِ وَالْعَصْرِ بِغُسْلٍ وَاحِدٍ وَالْمَغْرِبِ وَالْعِشَاءِ بِغُسْلٍ وَاحِدٍ وَتَغْتَسِلُ لِلْفَجْرِ غُسْلًا وَاحِدًا، فَقِيلَ لِابْنِ عَبَّاسٍ: إنَّ الْكُوفَةَ أَرْضٌ بَارِدَةٌ وَأَنَّهَا يَشُقُّ عَلَيْهَا، قَالَ: لَوْ شَاءَ اللَّهُ لَابْتَلَاهَا بِأَشَدَّ مِنْ ذَلِكَ.

L4733 From the path of ʿAbd al-Razzāq, from Maʿmar, from Ayyūb al-Sakhtiyānī, from Saʿīd ibn Jubayr: Saʿīd ibn Jubayr was with Ibn ʿAbbās when a woman's letter arrived. Saʿīd said: Ibn ʿAbbās handed it to me. I read it, and it stated: "I am a woman suffering from istihāḍah, afflicted by affliction and hardship. I have abandoned prayer for a lengthy period. When ʿAlī ibn Abī Ṭālib was asked about this, he instructed me to perform a major ritual purification (ghusl) before each prayer." Ibn ʿAbbās said: "O Allah, I find no solution for her except what ʿAlī said, with the exception that she may combine Ẓuhr and ʿAṣr with one major purification (ghusl), Maghrib and ʿIshāʾ with one major purification (ghusl), and perform a single major purification (ghusl) for Fajr." It was said to Ibn ʿAbbās: "Kūfah is a cold land, and it is difficult for her." He replied: "Had Allah willed, He would have tested her with something harsher."

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ أَشْعَثَ بْنِ أَبِي الشَّعْثَاءِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ.

L4734 And we have also transmitted it via the narration pathway of Sufyān al-Thawrī, from Ashʿath ibn Abī al-Shaʿthāʾ, from Saʿīd ibn Jubayr, from Ibn ʿAbbās.

وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ أَنَّ عَمْرَو بْنَ دِينَارٍ أَخْبَرَهُ أَنَّهُ سَمِعَ سَعِيدَ بْنَ جُبَيْرٍ يَذْكُرُ هَذَا عَنْ ابْنِ عَبَّاسٍ، وَمِنْ طَرِيقِ شُعْبَةَ وَحَمَّادِ بْنِ سَلَمَةَ كِلَاهُمَا عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ.

L4735 And from the path of Ibn Jurayj that ʿAmr ibn Dīnār informed him that he heard Saʿīd ibn Jubayr mention this from Ibn ʿAbbās. And from the path of Shuʿbah and Ḥammād ibn Salamah, both of them from Ḥammād ibn Abī Sulaymān from Saʿīd ibn Jubayr from Ibn ʿAbbās.

L4736 Yunus ibn Abdullah narrated to us: Abu Bakr ibn Ahmad ibn Khalid narrated to us: My father narrated to us: Ali ibn Abdul Aziz narrated to us: Hajjaj ibn al-Minhal narrated from Ibn Jurayj, who said: Abu Az-Zubayr informed

me, saying: Sa'id ibn Jubayr informed me, saying: A woman suffering from istihadah sent a message to Ibn Az-Zubayr, saying, "I have been given a fatwa to perform ghusl for every prayer." Ibn Az-Zubayr replied, "I find no ruling for her except that." Then she sent a message to Ibn Abbas and Ibn Umar, and both of them said, "We find no ruling except that."

حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ حَدَّثَنَا أَبُو بَكْرِ بْنُ أَحْمَدَ بْنِ خَالِدٍ ثنا أَبِي حَدَّثَنَا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا حَجَّاجُ بْنُ الْمِنْهَالِ عَنِ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي أَبُو الزُّبَيْرِ قَالَ أَخْبَرَنِي سَعِيدُ بْنُ جُبَيْرٍ قَالَ: أَرْسَلَتْ امْرَأَةٌ مُسْتَحَاضَةٌ إِلَى ابْنِ الزُّبَيْرِ: إِنِّي أُفْتِيتُ أَنْ أَغْتَسِلَ لِكُلِّ صَلَاةٍ، فَقَالَ ابْنُ الزُّبَيْرِ: مَا أَجِدُ لَهَا إِلَّا ذَلِكَ، ثُمَّ أَرْسَلَتْ إِلَى ابْنِ عَبَّاسٍ وَابْنِ عُمَرَ فَقَالَا جَمِيعًا: مَا نَجِدُ إِلَّا ذَلِكَ.

L4737 From the narration of Abī Mijlaz through Ibn ʿUmar regarding the mustahāḍa, he said: "She performs the ritual bath (ghusl) for each prayer." This was also narrated by ʿIkrimah and Mujāhid from Ibn ʿAbbās. Mujāhid narrated from him: "She delays Ẓuhr and hastens ʿAṣr, performing a single ritual bath for both. She delays Maghrib and hastens ʿIshāʾ, performing a single ritual bath for both. She performs the ritual bath for Fajr."

وَمِنْ طَرِيقِ أَبِي مِجْلَزٍ عَنِ ابْنِ عُمَرَ فِي الْمُسْتَحَاضَةِ قَالَ: تَغْتَسِلُ لِكُلِّ صَلَاةٍ، وَقَدْ رَوَاهُ أَيْضًا عِكْرِمَةُ وَمُجَاهِدٌ عَنِ ابْنِ عَبَّاسٍ، قَالَ مُجَاهِدٌ عَنْهُ: تُؤَخِّرُ الظُّهْرَ وَتُعَجِّلُ الْعَصْرَ وَتَغْتَسِلُ لَهُمَا غُسْلًا وَاحِدًا، وَتُؤَخِّرُ الْمَغْرِبَ وَتُعَجِّلُ الْعِشَاءَ وَتَغْتَسِلُ لَهُمَا غُسْلًا وَاحِدًا، وَتَغْتَسِلُ لِلْفَجْرِ غُسْلًا.

L4738–4739 It has been narrated to us from Ibn Jurayj from ʿAṭāʾ: The woman experiencing irregular bleeding waits through the days of her menstrual period, then performs a single ritual bath valid for both Dhuhr and ʿAṣr—delaying Dhuhr slightly and advancing ʿAṣr slightly. The same applies to Maghrib and ʿIshāʾ, and she performs a bath for Fajr.

وَرُوِّينَا عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: تَنْتَظِرُ الْمُسْتَحَاضَةُ أَيَّامَ أَقْرَائِهَا ثُمَّ تَغْتَسِلُ غُسْلًا وَاحِدًا لِلظُّهْرِ وَالْعَصْرِ، تُؤَخِّرُ الظُّهْرَ قَلِيلًا وَتُعَجِّلُ الْعَصْرَ قَلِيلًا، وَكَذَلِكَ الْمَغْرِبُ وَالْعِشَاءُ وَتَغْتَسِلُ لِلصُّبْحِ غُسْلًا.

L4740 And it has been narrated to us through the route of Sufyān al-Thawrī from Manṣūr ibn al-Muʿtamir from Ibrāhīm al-Nakhaʿī, similar to the statement of ʿAṭāʾ: *equal, equal*.

وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ مِثْلَ قَوْلِ عَطَاءٍ سَوَاءً سَوَاءً.

L4741 It has been reported to us through the chain of Muʿādh ibn Hishām al-Dastuwa'i, from his father, from Qatādah, from Sa'īd ibn al-Musayyab, who said: "A woman experiencing istiḥāḍah must perform ghusl for every prayer then pray."

وَرُوِّينَا مِنْ طَرِيقِ مُعَاذِ بْنِ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ أَبِيهِ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: الْمُسْتَحَاضَةُ تَغْتَسِلُ لِكُلِّ صَلَاةٍ وَتُصَلِّي.

L4742 These from among the Companions—Umm Ḥabībah, ʿAlī ibn Abī Ṭālib, Ibn ʿAbbās, Ibn ʿUmar, and Ibn al-Zubayr—have no known dissenter among the Companions (may Allah be pleased with them all), except for a narration

from ʿĀʾishah that she would perform ghusl every day at the time of the Ẓuhr prayer.

فَهَؤُلَاءِ مِنْ الصَّحَابَةِ أُمُّ حَبِيبَةَ وَعَلِيُّ بْنُ أَبِي طَالِبٍ وَابْنُ عَبَّاسٍ وَابْنُ عُمَرَ وَابْنُ الزُّبَيْرِ لَا مُخَالِفَ لَهُمْ يُعْرَفُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، إلَّا رِوَايَةً عَنْ عَائِشَةَ، أَنَّهَا تَغْتَسِلُ كُلَّ يَوْمٍ عِنْدَ صَلَاةِ الظُّهْرِ.

L4743 And we have narrated it in this manner via Maʿmar, from Hishām ibn ʿUrwah, from his father, from ʿĀʾishah, in this manner, clearly explained: it occurs every day at the time of the Dhuhr prayer.

وَرُوِّينَاهُ هَكَذَا مِنْ طَرِيقِ مَعْمَرٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ هَكَذَا مُبَيِّنًا، كُلَّ يَوْمٍ عِنْدَ صَلَاةِ الظُّهْرِ.

L4744 Among the Followers are ʿAṭāʾ, Saʿīd ibn al-Musayyib, al-Nakhaʿī, and others—all narrated through chains of utmost authenticity. Where then are those who vehemently criticize opposing a Companion when it aligns with their whims and their blind adherence to the Ḥanafīs, Mālikīs, and Shāfiʿīs, while they obstruct the established Sunnah of the Messenger of Allah—peace and blessings be upon him? ʿAlī said: The Sunnah came regarding the woman who discerns her blood: black [blood] is menstruation, and what is other than it is purity. Thus, the ruling for her became clear. The Sunnah also came regarding the woman who cannot discern her blood—all being black, since what is other than it is purity—but who has a defined menstrual duration she previously observed: she must observe the timeframe of her menstruation, being menstruating during it, and what is beyond it is purity. It became obligatory to adhere to this ruling. As for the woman whose menstrual days were irregular and shifting, her ruling is to base [her cycle] on her last menstruation before the continuity of her bleeding, for that is what her definitive ruling became—nullifying what preceded it through certainty and observation. These two cases were thus resolved, leaving only the woman who neither discerns her blood nor has fixed days, and who is commanded to perform the ritual bath for every prayer or every two prayers. Necessarily and without doubt, this third ruling must apply to her, as there are only three categories and three rulings: two categories having explicitly stated rulings, thus the third ruling must necessarily apply to the third category.

وَمِنْ التَّابِعِينَ عَطَاءٌ وَسَعِيدُ بْنُ الْمُسَيِّبِ وَالنَّخَعِيُّ وَغَيْرُهُمْ، كُلُّ ذَلِكَ بِأَسَانِيدَ فِي غَايَةِ الصِّحَّةِ، فَأَيْنَ الْمُشَنِّعُونَ بِمُخَالَفَةِ الصَّاحِبِ إذَا وَافَقَ أَهْوَاءَهُمْ وَتَقْلِيدَهُمْ مِنْ الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ وَالشَّافِعِيِّينَ عَنْ هَذَا وَمَنْعُهُمْ السُّنَّةَ الثَّابِتَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ قَالَ عَلِيٌّ: فَجَاءَتْ السُّنَّةُ فِي الَّتِي تُمَيِّزُ دَمَهَا أَنَّ الْأَسْوَدَ حَيْضٌ، وَأَنَّ مَا عَدَاهُ طُهْرٌ، فَوَضَحَ أَمْرُ هَذِهِ، وَجَاءَتْ السُّنَّةُ فِي الَّتِي لَا تُمَيِّزُ دَمَهَا - وَهُوَ كُلُّهُ أَسْوَدُ لِأَنَّ مَا عَدَاهُ طُهْرٌ لَا حَيْضٌ وَلَهَا وَقْتٌ مَحْدُودٌ مُمَيَّزٌ كَانَتْ تَحِيضُ فِيهِ: أَنْ تُرَاعِيَ أَمَدَ حَيْضِهَا فَتَكُونُ فِيهِ حَائِضًا، وَيَكُونُ مَا عَدَاهُ طُهْرًا، فَوَجَبَ الْوُقُوفُ عِنْدَ ذَلِكَ، وَكَانَ حُكْمُ الَّتِي كَانَتْ أَيَّامُهَا مُخْتَلِفَةً مُنْتَقِلَةً أَنْ تَبْنِيَ عَلَى آخِرِ حَيْضٍ حَاضَتْهُ قَبْلَ اتِّصَالِ دَمِهَا، لِأَنَّهُ هُوَ الَّذِي اسْتَقَرَّ عَلَيْهِ حُكْمُهَا وَبَطَلَ مَا قَبْلَهُ بِالْيَقِينِ وَالْمُشَاهَدَةِ، فَخَرَجَتْ هَاتَانِ بِحُكْمِهِمَا، وَلَمْ يَبْقَ إلَّا الَّتِي لَا تُمَيِّزُ دَمَهَا وَلَا لَهَا أَيَّامٌ مَعْهُودَةٌ، وَلَمْ يَبْقَ إلَّا الْمَأْمُورَةُ بِالْغُسْلِ لِكُلِّ صَلَاةٍ أَوْ لِكُلِّ صَلَاتَيْنِ، فَوَجَبَ ضَرُورَةً أَنْ تَكُونَ هِيَ، إذْ لَيْسَتْ إلَّا ثَلَاثَ صِفَاتٍ وَثَلَاثَةَ أَحْكَامٍ فَلِلصِّفَتَيْنِ حُكْمَانِ مَنْصُوصَانِ عَلَيْهِمَا، فَوَجَبَ أَنْ يَكُونَ الْحُكْمُ الثَّالِثُ لِلصِّفَةِ الثَّالِثَةِ ضَرُورَةً وَلَا بُدَّ.

L4745–4747 Ali said: As for Mālik, he prioritized the ruling on the variation in menstrual

blood's color and disregarded the [fixed] days. As for Abū Ḥanīfah, he prioritized the days and disregarded the ruling on the variation in blood's color. Both approaches are erroneous, for they neglect a *sunnah* that must not be abandoned. As for al-Shāfiʿī, Ibn Ḥanbal, Abū ʿUbayd, and Dāwūd, they combined both rulings, except that [...] Ahmad ibn Hanbal and Abu 'Ubayd prioritized the days and did not base the ruling on the discoloration of blood except for the woman who does not know her days. They established the ruling according to the days for the woman who knows her days, even if her blood undergoes discoloration. As for al-Shafiʿi and Dawud, they prioritized the ruling based on the discoloration of blood, whether she knows her days or not, and they did not apply the consideration of menstrual timing except for the woman whose blood does not undergo discoloration.

قَالَ عَلِيٌّ: وَأَمَّا مَالِكٌ فَإِنَّهُ غَلَّبَ حُكْمَ تَلَوُّنِ الدَّمِ وَلَمْ يُرَاعِ الْأَيَّامَ، وَأَمَّا أَبُو حَنِيفَةَ فَغَلَّبَ الْأَيَّامَ وَلَمْ يُرَاعِ حُكْمَ تَلَوُّنِ الدَّمِ، وَكِلَا الْعَمَلَيْنِ خَطَأٌ، لِأَنَّهُ تَرْكُ لِسُنَّةٍ لَا يَحِلُّ تَرْكُهَا، وَأَمَّا الشَّافِعِيُّ وَابْنُ حَنْبَلٍ وَأَبُو عُبَيْدٍ وَدَاوُد فَأَخَذُوا بِالْحُكْمَيْنِ مَعًا، إِلَّا أَنَّ أَحْمَدَ بْنَ حَنْبَلٍ وَأَبَا عُبَيْدٍ غَلَّبَا الْأَيَّامَ وَلَمْ يَجْعَلَا لِتَلَوُّنِ الدَّمِ حُكْمًا إِلَّا فِي الَّتِي لَا تَعْرِفُ أَيَّامَهَا، وَجَعَلَا لِلَّتِي تَعْرِفُ أَيَّامَهَا حُكْمَ الْأَيَّامِ وَإِنْ تَلَوَّنَ دَمُهَا، وَأَمَّا الشَّافِعِيُّ وَدَاوُد فَغَلَّبَا حُكْمَ تَلَوُّنِ الدَّمِ، سَوَاءٌ عَرَفَتْ أَيَّامَهَا أَوْ لَمْ تَعْرِفْهَا، وَلَمْ يَجْعَلَا حُكْمَ مُرَاعَاةِ وَقْتِ الْحَيْضِ إِلَّا لِلَّتِي لَا يَتَلَوَّنُ دَمُهَا.

Ali said: The inquiry remained regarding which of the two rulings is correct. We proceeded and found the text established and confirmed that there is no menstruation except the black blood, and what is other than that is not menstruation, based on his statement—peace be upon him—"Indeed, menstrual blood is black and is recognized." Thus, it was affirmed that the woman with changing blood is in a state of complete purity, being not subject to the rulings of istihāḍah, and that there is no distinction between red blood and the white thread. It became obligatory that if the blood changes color before the end of her customary days, it constitutes a valid state of purity. The remaining difficulty pertained only to continuous black blood. The text stipulated observing the menstrual timing for one who knows her timing and performing a reiterated ritual bath for each prayer or for two prayers in the case of one who has forgotten her timing.

قَالَ عَلِيٌّ: فَبَقِيَ النَّظَرُ فِي أَيِّ الْعَمَلَيْنِ هُوَ الْحَقُّ؟ فَفَعَلْنَا، فَوَجَدْنَا النَّصَّ قَدْ ثَبَتَ وَصَحَّ بِأَنَّهُ لَا حَيْضَ إِلَّا الدَّمُ الْأَسْوَدُ، وَمَا عَدَاهُ لَيْسَ حَيْضًا، لِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «إِنَّ دَمَ الْحَيْضِ أَسْوَدُ يُعْرَفُ» فَصَحَّ أَنَّ الْمُتَلَوِّنَةَ الدَّمِ طَاهِرَةٌ تَامَّةُ الطَّهَارَةِ لَا مَدْخَلَ لَهَا فِي حُكْمِ الِاسْتِحَاضَةِ، وَأَنَّهُ لَا فَرْقَ بَيْنَ الدَّمِ الْأَحْمَرِ وَبَيْنَ الْقَصَّةِ الْبَيْضَاءِ، وَوَجَبَ أَنَّ الدَّمَ إِذَا تَلَوَّنَ قَبْلَ انْقِضَاءِ أَيَّامِهَا الْمَعْهُودَةِ أَنَّهُ طُهْرٌ صَحِيحٌ، فَبَقِيَ الْإِشْكَالُ فِي الدَّمِ الْأَسْوَدِ الْمُتَّصِلِ فَقَطْ، فَجَاءَ النَّصُّ بِمُرَاعَاةِ الْوَقْتِ لِمَنْ تَعْرِفُ وَقْتَهَا، وَبِالْغُسْلِ الْمُرَدَّدِ لِكُلِّ صَلَاةٍ أَوْ لِصَلَاتَيْنِ فِي الَّتِي نَسِيَتْ وَقْتَهَا.

Success is by Allah, the Exalted.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

We do not know of any reason pertaining to someone who abandoned any of these reports—not from analogy, the saying of a Companion, the Qur'an, or the Sunnah.

وَمَا نَعْلَمُ لِمَنْ تَرَكَ شَيْئًا مِنْ هَذِهِ الْأَخْبَارِ سَبَبًا يَتَعَلَّقُ بِهِ، لَا مِنْ قِيَاسٍ وَلَا مِنْ قَوْلِ صَاحِبٍ وَلَا مِنْ قُرْآنٍ وَلَا سُنَّةٍ.

In one of his statements, Mālik said: The woman experiencing continuous

bleeding should consider three days as precautionary if her menstrual cycle is twelve days or less, two days if it is thirteen days, or one day if her menstrual cycle is fourteen days. She observes no precautionary days if her cycle is fifteen days. This opinion finds support neither in Quranic text, nor Sunnah (neither authentic nor weak), nor a companion's opinion, nor analogical reasoning, nor sound opinion, nor precaution, nor any rationally grounded view. Rather, it obligates the abandonment of obligatory prayers and obligatory fasting without any valid reason.

وَقَالَ مَالِكٌ فِي بَعْضِ أَقْوَالِهِ: إنَّ الَّتِي يَتَّصِلُ بِهَا الدَّمُ تَسْتَظْهِرُ بِثَلَاثَةِ أَيَّامٍ إنْ كَانَتْ حَيْضَتُهَا اثْنَيْ عَشَرَ يَوْمًا فَأَقَلَّ، أَوْ بِيَوْمَيْنِ إنْ كَانَتْ ثَلَاثَةَ عَشَرَ يَوْمًا، أَوْ بِيَوْمٍ إنْ كَانَتْ حَيْضَتُهَا أَرْبَعَةَ عَشَرَ يَوْمًا، وَلَا تَسْتَظْهِرُ بِشَيْءٍ إنْ كَانَتْ حَيْضَتُهَا خَمْسَةَ عَشَرَ وَهَذَا قَوْلٌ لَا يُعَضِّدُهُ قُرْآنٌ وَلَا سُنَّةٌ، لَا صَحِيحَةٌ وَلَا سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ وَلَا قِيَاسٌ وَلَا رَأْيٌ لَهُ وَجْهٌ وَلَا احْتِيَاطٌ، بَلْ فِيهِ إيجَابُ تَرْكِ الصَّلَاةِ الْمَفْرُوضَةِ وَالصَّوْمِ اللَّازِمِ بِلَا مَعْنًى.

L4752 Some of his emulators cited as evidence an unsound hadith we narrated through the chain of Ibrāhīm ibn Ḥamzah from al-Darāwardī from Ḥarām ibn ʿUthmān from ʿAbd al-Raḥmān and Muḥammad, the sons of Jābir, from their father, who said: "Asmāʾ bint Murshid al-Ḥārithiyyah came to the Messenger of Allah—peace and blessings be upon him—and I was sitting with him. She said, 'O Messenger of Allah, I experience a menstrual flow I find irregular. After becoming pure, I remain for three or four days, then it returns to me and prohibits me from prayer.' He said, 'When you observe that, remain for three days, then purify yourself on the fourth day and pray—unless you see a gush of dark blood.'"

وَاحْتَجَّ لَهُ بَعْضُ مُقَلِّدِيهِ بِحَدِيثٍ سُوءٍ رُوِّينَاهُ مِنْ طَرِيقِ إبْرَاهِيمَ بْنِ حَمْزَةَ عَنْ الدَّرَاوَرْدِيِّ عَنْ حَرَامِ بْنِ عُثْمَانَ عَنْ عَبْدِ الرَّحْمَنِ وَمُحَمَّدٍ ابْنَيْ جَابِرٍ عَنْ أَبِيهِمَا قَالَ «جَاءَتْ أَسْمَاءُ بِنْتُ مُرْشِدٍ الْحَارِثِيَّةُ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَا جَالِسٌ عِنْدَهُ، فَقَالَتْ يَا رَسُولَ اللَّهِ حَدَثَتْ لِي حَيْضَةٌ أُنْكِرُهَا، أَمْكُثُ بَعْدَ الطُّهْرِ ثَلَاثًا أَوْ أَرْبَعًا، ثُمَّ تُرَاجِعُنِي فَتُحَرِّمُ عَلَيَّ الصَّلَاةَ، فَقَالَ: إذَا رَأَيْتِ ذَلِكَ فَامْكُثِي ثَلَاثًا ثُمَّ تَطَهَّرِي الْيَوْمَ الرَّابِعَ فَصَلِّي إلَّا أَنْ تَرَيْ دَفْعَةً مِنْ دَمٍ قَاتِمَةً» .

L4753 Abu Muhammad said: This argument was more reprehensible than the position it sought to justify, because this report is false since it was narrated solely by Haram ibn Uthman, and Malik himself states: "He is not trustworthy."

قَالَ أَبُو مُحَمَّد: فَكَانَ هَذَا الِاحْتِجَاجُ أَقْبَحَ مِنْ الْقَوْلِ الْمُحْتَجِّ لَهُ بِهِ، لِأَنَّ هَذَا الْخَبَرَ بَاطِلٌ إذْ هُوَ مِمَّا انْفَرَدَ بِهِ حَرَامُ بْنُ عُثْمَانَ، وَمَالِكٌ نَفْسُهُ يَقُولُ: هُوَ غَيْرُ ثِقَةٍ.

L4754–4755 How astonishing it is regarding these people and the Hanafis—Abū Ḥanīfah impugned Jābir al-Juʿfī, stating: "I have never seen a greater liar than Jābir," while Mālik impugned Ḥarām ibn ʿUthmān and Ṣāliḥ, the freed slave of al-Tawʾamah. Yet when a report transmitted by Ḥarām or Ṣāliḥ reaches the Mālikīs or Ḥanafīs—one that might misleadingly suggest it supports their school's stance—they have no qualms about citing it as evidence, thereby contradicting Mālik's criticism of them. Similarly, when a report transmitted by Jābir reaches the Ḥanafīs—one that might misleadingly suggest it supports

فَالْعَجَبُ لِهَؤُلَاءِ الْقَوْمِ وَلِلْحَنَفِيِّينَ، وَقَدْ جَرَّحَ أَبُو حَنِيفَةَ جَابِرًا الْجُعْفِيَّ وَقَالَ مَا رَأَيْتُ أَكْذَبَ مِنْ جَابِرٍ، وَمَالِكٌ جَرَّحَ حَرَامَ بْنَ عُثْمَانَ وَصَالِحًا مَوْلَى التَّوْأَمَةِ، ثُمَّ لَا مُؤْنَةَ عَلَى الْمَالِكِيِّينَ وَالْحَنَفِيِّينَ إذَا جَاءَ هَؤُلَاءِ خَبَرٌ مِنْ رِوَايَةِ حَرَامٍ وَصَالِحٍ يُمْكِنُ أَنْ يُوهِمُوا بِهِ أَنَّهُ حُجَّةٌ لِتَقْلِيدِهِمْ إلَّا احْتَجُّوا بِهِ وَأَكْذَبُوا تَجْرِيحَ مَالِكٍ لَهُمْ وَلَا مُؤْنَةَ عَلَى الْحَنَفِيِّينَ

their school's stance—they have no qualms about citing it as evidence, thereby contradicting Abū Ḥanīfah's criticism of him. As for us—praise be to Allah—we show greater deference to their scholars than they do, for we do not reject Mālik's criticism of those whose juristic authority lacks widespread recognition.

إِذَا جَاءَهُمْ خَبَرٌ يُمْكِنُ أَنْ يُوهِمُوا بِهِ أَنَّهُ حُجَّةٌ لِتَقْلِيدِهِمْ مِنْ رِوَايَةِ جَابِرٍ إِلَّا احْتَجُّوا بِهِ، وَيُكَذِّبُوا تَجْرِيحَ أَبِي حَنِيفَةَ لَهُ، وَنَحْنُ - وَلِلَّهِ الْحَمْدُ - أَحْسَنُ مُجَامَلَةً لِشُيُوخِهِمْ مِنْهُمْ، فَلَا نَرُدُّ تَجْرِيحَ مَالِكٍ فِيمَنْ لَمْ تُشْتَهَرْ إِمَامَتُهُ.

L4756 Abū Muḥammad said: Furthermore, were this report authentic, they would have no valid basis to rely upon it, for it contains nothing from Mālik's doctrine nor those juristic classifications. Rather, it contradicts his view and obligates prayer unless one sees blood. Thus, the invalidity of their argument based on it becomes evident.

قَالَ أَبُو مُحَمَّدٍ، ثُمَّ لَوْ صَحَّ هَذَا الْخَبَرُ لَمَا كَانَ لَهُمْ بِهِ مُتَعَلَّقٌ لِأَنَّهُ لَيْسَ فِيهِ شَيْءٌ مِنْ قَوْلِ مَالِكٌ، وَلَا مِنْ تِلْكَ التَّقَاسِيمِ، بَلْ هُوَ مُخَالِفٌ لِقَوْلِهِ، وَمُوجِبٌ لِلصَّلَاةِ إِلَّا أَنْ تَرَى دَمًا، فَظَهَرَ فَسَادُ احْتِجَاجِهِمْ بِهِ.

L4757 Some of them said: We applied *qiyās* (analogical reasoning) to it based on the ḥadīth of *al-muṣarrāh* (withholding milk to deceive buyers) and the appointed term decreed by Allah, the Exalted, for Thamūd. Thus, this is closer to mockery and disrespect toward the religion than to knowledge.

وَقَالَ بَعْضُهُمْ: قِسْنَاهُ عَلَى حَدِيثِ الْمُصَرَّاةِ، وَعَلَى أَجَلِ اللَّهِ تَعَالَى لِثَمُودَ، فَكَانَ هَذَا إِلَى الْهَزْلِ وَالِاسْتِخْفَافِ بِالدِّينِ أَقْرَبَ مِنْهُ إِلَى الْعِلْمِ.

L4758 We seek refuge in Allah from abandonment.

وَنَعُوذُ بِاللَّهِ مِنَ الْخِذْلَانِ.

L4759 Ali said: It was narrated to us from Ibrahim al-Nakha'i that a woman experiencing irregular bleeding should fast, pray, and her husband must refrain from conjugal relations.

قَالَ عَلِيٌّ: وَرُوِّينَا عَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّ الْمُسْتَحَاضَةَ تَصُومُ وَتُصَلِّي وَلَا يَطَؤُهَا زَوْجُهَا.

L4760 Ali said, and this is an error, for she is either menstruating or in a state of purity (non-menstruating), with no third category existing except for postpartum women. If she is menstruating, neither prayer nor fasting is permissible for her. If she is neither postpartum nor menstruating, her husband's intercourse with her is lawful provided neither is fasting, in a state of consecration (iḥrām), in seclusion (iʿtikāf), or in a state of having pronounced ẓihār (a form of unlawful divorce by likening her to a prohibited relative) against her. Thus, this assertion is invalidated, and success is granted by Allah, the Most High.

قَالَ عَلِيٌّ، وَهَذَا خَطَأٌ لِأَنَّهَا إِمَّا حَائِضٌ وَإِمَّا طَاهِرٌ غَيْرُ حَائِضٍ، وَلَا سَبِيلَ إِلَى قِسْمٍ ثَالِثٍ فِي غَيْرِ النُّفَسَاءِ، فَإِنْ كَانَتْ حَائِضًا فَلَا تَحِلُّ لَهَا الصَّلَاةُ وَلَا الصَّوْمُ، وَإِنْ كَانَتْ غَيْرَ نُفَسَاءَ وَلَا حَائِضٍ فَوَطْءُ زَوْجِهَا لَهَا حَلَالٌ مَا لَمْ يَكُنْ أَحَدُهُمَا صَائِمًا أَوْ مُحْرِمًا أَوْ مُعْتَكِفًا أَوْ كَانَ مُظَاهِرًا مِنْهَا، فَبَطَلَ هَذَا الْقَوْلُ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

Fitrah

[الْفِطْرَةُ]

L4761–4762

L4763 Issue: The use of the teeth-cleaning twig (siwāk) is recommended. If one

can use it before every prayer, that is preferable. Plucking armpit hair, male circumcision, shaving the pubic hair, and trimming nails are recommended. As for trimming the mustache, it is obligatory. It is not permissible for a woman to pluck facial hair. It is recommended for one in a state of major impurity to perform ablution (wuḍū') if intending to eat, sleep, or drink, though it is not obligatory. If they intend to resume intercourse, ablution becomes obligatory. If a man has intercourse with two of his wives, multiple wives, or a combination of wives and female slaves, it is preferable to perform the ritual bath (ghusl) between each two acts of intercourse. If he performs it only once at the end, this is also acceptable.

مَسْأَلَةٌ: السِّوَاكُ مُسْتَحَبٌّ، وَلَوْ أَمْكَنَ لِكُلِّ صَلَاةٍ لَكَانَ أَفْضَلَ، وَنَتْفُ الْإِبْطِ وَالْخِتَانُ وَحَلْقُ الْعَانَةِ وَقَصُّ الْأَظْفَارِ، وَأَمَّا قَصُّ الشَّارِبِ فَفَرْضٌ وَلَا يَحِلُّ لِلْمَرْأَةِ نَتْفُ الشَّعْرِ مِنْ وَجْهِهَا، وَيُسْتَحَبُّ لِلْجُنُبِ إِنْ أَرَادَ الْأَكْلَ أَوْ النَّوْمَ أَوْ الشُّرْبَ أَنْ يَتَوَضَّأَ، وَلَيْسَ فَرْضًا عَلَيْهِ، وَإِنْ أَرَادَ الْمُعَاوَدَةَ فَيَجِبُ عَلَيْهِ أَنْ يَتَوَضَّأَ أَيْضًا، وَإِنْ وَطِئَ زَوْجَتَيْنِ لَهُ أَوْ زَوْجَاتٍ أَوْ إِمَاءً وَزَوْجَاتٍ فَيَغْتَسِلُ بَيْنَ كُلِّ اثْنَتَيْنِ فَحَسَنٌ، وَإِنْ لَمْ يَغْتَسِلْ إِلَّا فِي آخِرِ ذَلِكَ فَحَسَنٌ.

L4764 The evidence for that is what was narrated to us by Abdullah ibn Yusuf, who narrated to us Ahmad ibn Fath, who narrated to us Abdul Wahhab ibn Isa, who narrated to us Ahmad ibn Muhammad, who narrated to us Ahmad ibn Ali, who narrated to us Muslim ibn al-Hajjaj, who narrated to us Abu Bakr ibn Abi Shaybah, who narrated to us Sufyan ibn Uyaynah, from al-Zuhri, from Saʿid ibn al-Musayyib, from Abu Hurayrah, from the Prophet—peace and blessings be upon him—who said: "The natural disposition comprises five practices—or five practices are part of the natural disposition: circumcision, shaving the pubic hair, trimming the nails, plucking the armpit hair, and shortening the mustache."[18]

بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْفِطْرَةُ خَمْسٌ أَوْ خَمْسٌ مِنْ الْفِطْرَةِ: الْخِتَانُ وَالِاسْتِحْدَادُ وَتَقْلِيمُ الْأَظْفَارِ وَنَتْفُ الْإِبْطِ وَقَصُّ الشَّارِبِ» .

L4765 And in his transmission to Muslim: Qutaybah ibn Saʿīd and ʿAmr al-Nāqid narrated to us; Sufyān ibn ʿUyaynah narrated to us from Abū al-Zinād from al-Aʿraj from Abū Hurayrah from the Prophet (peace and blessings of Allah be upon him), who said: "If I had not feared imposing hardship on my community, I would have ordered them to use miswak at every prayer." ʿAlī said: Since he did not command them, it is not obligatory.[19]

وَبِهِ إِلَى مُسْلِمٍ: ثنا قُتَيْبَةُ بْنُ سَعِيدٍ وَعَمْرٌو النَّاقِدُ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَوْلَا أَنْ أَشُقَّ عَلَى أُمَّتِي لَأَمَرْتُهُمْ بِالسِّوَاكِ عِنْدَ كُلِّ صَلَاةٍ» قَالَ عَلِيٌّ: فَإِذْ لَمْ يَأْمُرْهُمْ فَلَيْسَ فَرْضًا.

L4766–4768 And through him to Muslim ibn al-Ḥajjāj: He narrated to us via Yaḥyá ibn Yaḥyá and Quṭaybah, both of them from Jaʿfar ibn Sulaymān al-Ḍubaʿī. From

وَبِهِ إِلَى مُسْلِمِ بْنِ الْحَجَّاجِ. ثنا يَحْيَى بْنُ يَحْيَى وَقُتَيْبَةُ كِلَاهُمَا عَنْ جَعْفَرِ بْنِ سُلَيْمَانَ الضُّبَعِيِّ عَنْ أَبِي عِمْرَانَ الْجَوْنِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «وُقِّتَ لَنَا فِي قَصِّ الشَّارِبِ وَتَقْلِيمِ الْأَظْفَارِ وَنَتْفِ الْإِبْطِ وَحَلْقِ الْعَانَةِ أَلَّا تُتْرَكَ أَكْثَرَ مِنْ أَرْبَعِينَ لَيْلَةً» .

[18] **Hadith references (L4764):** Sunan Ibn Majah 292; Sahih Muslim 257a; Riyad as-Salihin 1203.

[19] **Hadith references (L4765):** Sunan an-Nasai 7; Sunan Ibn Majah 287; Musnad Ahmad 607.

Abu Imran al-Jawni, from Anas ibn Malik, who said: “We were instructed to trim the mustache, clip the nails, pluck the armpit hair, and shave the pubic area, ensuring these are not neglected for more than forty nights.”

وَأَمَّا فَرْضُ قَصِّ الشَّارِبِ وَإِعْفَاءِ اللِّحْيَةِ فَإِنَّ عَبْدَ اللَّهِ بْنَ يُوسُفَ ثنا قَالَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا سَهْلُ بْنُ عُثْمَانَ ثنا يَزِيدُ بْنُ زُرَيْعٍ عَنْ عُمَرَ بْنِ مُحَمَّدٍ ثنا نَافِعٌ عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «خَالِفُوا الْمُشْرِكِينَ، أَحْفُوا الشَّوَارِبَ وَأَعْفُوا اللِّحَى» .

L4769 As for the obligation of trimming the mustache and letting the beard grow, Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Sahl ibn Uthman narrated to us, Yazid ibn Zurai’ narrated to us, Umar ibn Muhammad narrated to us, Nafi’ narrated to us from Ibn Umar, who said: The Messenger of Allah (Peace and blessings be upon him) said: “Differ from the polytheists: trim the mustache and let the beard grow.”

حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ ثنا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ ثنا مُحَمَّدُ بْنُ عَجْلَانَ قَالَ: قَالَ لِي عُثْمَانُ بْنُ عُبَيْدِ اللَّهِ بْنِ رَافِعٍ رَأَيْتُ أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُبَيِّضُونَ شَوَارِبَهُمْ شِبْهَ الْحَلْقِ، قُلْتُ: مَنْ؟ قَالَ جَابِرَ بْنَ عَبْدِ اللَّهِ وَأَبَا سَعِيدٍ الْخُدْرِيَّ وَأَبَا أُسَيْدَ وَسَلَمَةَ بْنَ الْأَكْوَعِ وَأَنَسَ بْنَ مَالِكٍ وَرَافِعَ بْنَ خَدِيجٍ.

L4770 Yunus ibn Abdullah narrated to us; Ahmad ibn Abdullah ibn Abd al-Rahim narrated to us; Ahmad ibn Khalid narrated to us; Muhammad ibn Abd al-Salam al-Khushani narrated to us; Muhammad ibn Bashshar narrated to us; Yahya ibn Sa’id al-Qattan narrated to us; Muhammad ibn Ajlan said: Uthman ibn Ubaydullah ibn Rafi’ told me: “I saw the Companions of the Messenger of Allah (may Allah bless him and grant him peace) whitening their mustaches as if shaving.” I asked: “Who?” He replied: “Jabir ibn Abdullah, Abu Sa’id al-Khudri, Abu Usayd, Salamah ibn al-Akwa’, Anas ibn Malik, and Rafi’ ibn Khadij.”

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ ثنا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ ثنا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعٌ عَنْ شُعْبَةَ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنِ الْأَسْوَدِ عَنْ عَائِشَةَ قَالَتْ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا أَرَادَ أَنْ يَنَامَ أَوْ يَأْكُلَ أَوْ يَشْرَبَ وَهُوَ جُنُبٌ تَوَضَّأَ وُضُوءَهُ لِلصَّلَاةِ» .

L4771 Muhammad ibn Saʿīd ibn Nubāt narrated to us, from ʿAbdullāh ibn Naṣr, from Qāsim ibn Aṣbagh, from Ibn Waddāḥ, from Mūsā ibn Muʿāwiyah, from Wakīʿ, from Shuʿbah, from al-Ḥakam ibn ʿUtaybah, from Ibrāhīm al-Nakhaʿī, from al-Aswad, from ʿĀ’ishah, who said: “When the Messenger of Allah - may Allah bless him and grant him peace - intended to sleep, eat, or drink while in a state of major ritual impurity (janābah), he would perform his ablution for prayer.”

حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا سُوَيْدُ بْنُ نَصْرٍ أرنا عَبْدُ اللَّهِ هُوَ ابْنُ الْمُبَارَكِ - عَنْ يُونُسَ هُوَ ابْنُ يَزِيدَ - عَنِ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ عَائِشَةَ قَالَتْ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا

L4772 Yunus ibn Abdullah narrated to us: Muhammad ibn Muawiyah narrated to us: Ahmad ibn Shu’ayb narrated to us: Suwayd ibn Nasr reported to us: Abdullah—who is Ibn al-Mubarak—narrated from Yunus—who is Ibn Yazid—from al-Zuhri, from Abu Salama ibn Abd al-Rahman ibn Awf, from Aisha, who said: “When the Messenger of Allah—may Allah bless him and

grant him peace—intended to sleep while in a state of major ritual impurity (janabah), he would perform ablution. If he intended to eat or drink, he would wash his hands, then eat or drink."

أَرَادَ أَنْ يَنَامَ وَهُوَ جُنُبٌ تَوَضَّأَ، وَإِنْ أَرَادَ أَنْ يَأْكُلَ أَوْ يَشْرَبَ غَسَلَ يَدَيْهِ ثُمَّ يَأْكُلُ أَوْ يَشْرَبُ» .

L4773 If it is said: It is authentically established that 'Umar informed the Messenger of Allah (peace be upon him) that he would incur major ritual impurity at night, so the Messenger of Allah (peace be upon him) said to him: "Perform ablution, wash your penis, then sleep."

فَإِنْ قِيلَ: فَقَدْ صَحَّ أَنَّ «عُمَرَ ذَكَرَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ تُصِيبُهُ الْجَنَابَةُ مِنْ اللَّيْلِ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: تَوَضَّأْ وَاغْسِلْ ذَكَرَكَ ثُمَّ نَمْ» .

L4774 We said: Muḥammad ibn Saʿīd ibn Nubāt narrated to us, saying: ʿAbdullāh ibn Naṣr narrated to us, Qāsim ibn Aṣbagh narrated to us, Ibn Waḍḍāḥ narrated to us, Mūsā ibn Muʿāwiyah narrated to us, Wakīʿ narrated to us from Sufyān al-Thawrī from Abī Isḥāq from al-Aswad ibn Yazīd from ʿĀ'ishah: "The Messenger of Allāh—peace and blessings be upon him—would sleep while in a state of major impurity as he was, without using water."

قُلْنَا فَحَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ قَالَ: ثنا عَبْدُ اللَّهِ بْنِ نَصْرٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ ثنا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ عَنْ الْأَسْوَدِ بْنِ يَزِيدَ عَنْ عَائِشَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَنَامُ وَهُوَ جُنُبٌ كَهَيْئَتِهِ وَلَا يَمَسُّ مَاءً» .

L4775–4776 When the Messenger of Allah—peace and blessings be upon him—returned from the mosque, he would pray what Allah had decreed for him, then turn to his bed or his household. If he had a need for his wife, he would fulfill it, then sleep in that state without touching water. When he heard the call to prayer, he would rise swiftly. If he was in a state of major impurity, he would pour water over himself. If not, he would perform ablution, pray two rakʿahs, then go out to the mosque.

وَحَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ ثنا أَبُو عِيسَى بْنُ أَبِي عِيسَى ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا مُحَمَّدُ بْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا أَبُو الْأَحْوَصِ هُوَ سَلَّامُ بْنُ سُلَيْمٍ الْحَنَفِيُّ - عَنْ أَبِي إِسْحَاقَ عَنْ الْأَسْوَدِ عَنْ عَائِشَةَ قَالَتْ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا رَجَعَ مِنْ الْمَسْجِدِ صَلَّى مَا قَضَى اللَّهُ لَهُ، ثُمَّ مَالَ إلَى فِرَاشِهِ أَوْ إلَى أَهْلِهِ فَإِنْ كَانَتْ لَهُ حَاجَةٌ إلَى أَهْلِهِ قَضَاهَا ثُمَّ نَامَ كَهَيْئَتِهِ لَا يَمَسُّ مَاءً، فَإِذَا سَمِعَ النِّدَاءَ وَثَبَ فَإِنْ كَانَ جُنُبًا أَفَاضَ عَلَيْهِ الْمَاءَ، وَإِنْ لَمْ يَكُنْ جُنُبًا تَوَضَّأَ وَصَلَّى رَكْعَتَيْنِ ثُمَّ خَرَجَ إلَى الْمَسْجِدِ» .

L4777 This is a general statement encompassing ablution and ghusl together, along with other acts. Whoever claims that Sufyan erred in this ḥadīth is himself mistaken, advancing a claim without proof.

فَهَذَا عُمُومٌ يَدْخُلُ فِيهِ الْوُضُوءُ وَالْغُسْلُ مَعًا وَغَيْرُ ذَلِكَ، وَمَنْ ادَّعَى أَنَّ سُفْيَانَ أَخْطَأَ فِي هَذَا الْحَدِيثِ فَهُوَ الْمُخْطِئُ، بِدَعْوَاهُ مَا لَا دَلِيلَ عَلَيْهِ.

L4778 If it is objected: "Zuhayr ibn Muʿāwiyah has contradicted him [Sufyān]," we respond: Sufyān is more precise in narration than Zuhayr. Even if that were not the case, the disagreement among some narrators with others would not constitute proof that either erred. Rather, the trustworthy narrator is

deemed credible in all he transmits. Success comes solely from Allah, the Exalted.

فَإِنْ قِيلَ: قَدْ خَالَفَهُ زُهَيْرُ بْنُ مُعَاوِيَةَ. قُلْنَا: سُفْيَانُ أَحْفَظُ مِنْ زُهَيْرٍ، وَلَوْ لَمْ يَكُنْ لَمَا كَانَ فِي خِلَافِ بَعْضِ الرُّوَاةِ لِبَعْضٍ دَلِيلٌ عَلَى خَطَأِ أَحَدِهِمْ، بَلْ الثِّقَةُ مُصَدَّقٌ فِي كُلِّ مَا يَرْوِي. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L4779 Aisha's statement is a report about his consistent practice in that matter, peace be upon him. Among those from whom it has been transmitted to us permitting sleep for one who has had intercourse before performing ritual ablution are Saʿīd ibn al-Musayyab, Rabīʿah, Yazīd ibn Hārūn al-Shāfiʿī, and Abū Thawr.

وَقَوْلُ عَائِشَةَ هَذَا إخْبَارٌ عَنْ مُدَاوَمَتِهِ - عَلَيْهِ السَّلَامُ - عَلَى ذَلِكَ، وَمِمَّنْ رُوِّينَا عَنْهُ إبَاحَةَ النَّوْمِ لِلْمُجَامِعِ قَبْلَ أَنْ يَتَوَضَّأَ: سَعِيدُ بْنُ الْمُسَيِّبِ وَرَبِيعَةَ وَيَزِيدُ بْنُ هَارُونَ الشَّافِعِي وَأَبُو ثَوْرٍ.

L4780 Narrated to us by Aḥmad ibn Muḥammad ibn al-Jasūr, from Wahb ibn Masarrat, from Ibn Waḍḍāḥ, from Abū Bakr ibn Abī Shaybah, from the following three: Yazīd ibn Hārūn, Hushaym, and Ḥafṣ ibn Ghīyāth.

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا وَهْبُ بْنُ مَسَرَّةَ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ يَزِيدَ بْنِ هَارُونَ وَهُشَيْمٍ وَحَفْصِ بْنِ غِيَاثٍ.

L4781 Yazid narrated from Hammad ibn Salamah from Abd al-Rahman ibn Abi Rafi' from his paternal aunt Salma from Abu Rafi' that the Messenger of Allah (peace be upon him) went to all his wives in one night and performed the major ablution (ghusl) after each one of them.

قَالَ يَزِيدُ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي رَافِعٍ عَنْ عَمَّتِهِ سَلْمَى عَنْ أَبِي رَافِعٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَافَ عَلَى نِسَائِهِ فِي لَيْلَةٍ وَاحِدَةٍ فَاغْتَسَلَ عِنْدَ كُلِّ امْرَأَةٍ مِنْهُنَّ غُسْلًا» .

L4782 Hushaym said: Humaid al-Tawil narrated to us from Anas ibn Malik that the Messenger of Allah (peace and blessings be upon him) would circulate among all his wives in one night with a single ritual bath. Hafs ibn Ghiyath narrated from Asim from Abu al-Mutawakkil from Abu Sa'id al-Khudri, who said: The Messenger of Allah (peace and blessings be upon him) said, "When one of you approaches his wife sexually and then wishes to repeat it, let him perform ablution between the two acts."

وَقَالَ هُشَيْمٌ: ثنا حُمَيْدٌ الطَّوِيلُ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَطُوفُ عَلَى جَمِيعِ نِسَائِهِ فِي لَيْلَةٍ بِغُسْلٍ وَاحِدٍ» وَقَالَ حَفْصُ بْنُ غِيَاثٍ عَنْ عَاصِمٍ عَنْ أَبِي الْمُتَوَكِّلِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَتَى أَحَدُكُمْ أَهْلَهُ ثُمَّ أَرَادَ أَنْ يُعَاوِدَ فَلْيَتَوَضَّأْ بَيْنَهُمَا وُضُوءًا» .

[الْآنِيَةُ]

L4783–4784 **Utensils.**

L4785 Issue: It is not permissible for a man or a woman to perform ablution, bathe, drink, or eat using a vessel made from human bone, for the reasons we have explained in this book of ours regarding the skins of carrion, the obligation to bury both believers and disbelievers, and the prohibition of mutilating

مَسْأَلَةٌ: لَا يَحِلُّ الْوُضُوءُ وَلَا الْغُسْلُ وَلَا الشُّرْبُ وَلَا الْأَكْلُ لَا لِرَجُلٍ وَلَا لِامْرَأَةٍ فِي إنَاءٍ عُمِلَ مِنْ عَظْمِ ابْنِ آدَمَ، لِمَا ذَكَرْنَا فِي كِتَابِنَا هَذَا فِي جُلُودِ الْمَيْتَةِ مِنْ وُجُوبِ دَفْنِ

corpses. Nor is it permissible to use a vessel made from the bone of a pig, because, as we have stated, it is wholly impure. Nor is it permissible to use a vessel made from the skin of carrion before it has been tanned.

الْمُؤْمِنِ وَالْكَافِرِ، وَتَحْرِيمِ الْمُثْلَةِ، وَلَا فِي إِنَاءٍ عُمِلَ مِنْ عَظْمِ خِنْزِيرٍ لِمَا ذَكَرْنَا مِنْ أَنَّهُ كُلَّهُ رِجْسٌ، وَلَا فِي إِنَاءٍ مِنْ جِلْدِ مَيْتَةٍ قَبْلَ أَنْ يُدْبَغَ.

L4786 Nor in a silver or gold vessel.

وَلَا فِي إِنَاءِ فِضَّةٍ أَوْ إِنَاءِ ذَهَبٍ.

L4787 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abd al-Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Abu Bakr ibn Abi Shaybah and al-Walid ibn Shujaʿ both said: Ali ibn Mushir narrated to us from Ubaydullah ibn Umar from Nafiʾ, the freed slave of Ibn Umar, from Zayd ibn Abdullah ibn Umar from Abdullah ibn Abd al-Rahman ibn Abi Bakr al-Siddiq from Umm Salamah, the wife of the Prophet (peace be upon him), that the Messenger of Allah (peace be upon him) said: "Verily, whoever eats or drinks from vessels of gold and silver is merely stoking in his belly the Fire of Hell."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَالْوَلِيدُ بْنُ شُجَاعٍ قَالَا: ثنا عَلِيُّ بْنُ مُسْهِرٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ عَنْ زَيْدِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ أُمِّ سَلَمَةَ زَوْجِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِنَّ الَّذِي يَأْكُلُ وَيَشْرَبُ فِي آنِيَةِ الذَّهَبِ وَالْفِضَّةِ إِنَّمَا يُجَرْجِرُ فِي بَطْنِهِ نَارَ جَهَنَّمَ» .

L4788 Muhammad ibn Sa'id ibn Nubat narrated to us: Abdullah ibn Nasr narrated to us: Qasim ibn Asbagh narrated to us: Ibn Waḍḍāḥ narrated to us: Musa ibn Mu'awiyah narrated to us: Waki' narrated to us: Shu'bah narrated to us from al-Hakam ibn 'Utaybah, from Abd al-Rahman ibn Abi Layla, from Hudhayfah, who said: "The Messenger of Allah—peace and blessings of Allah be upon him—forbade us from wearing silk and brocade, and from using vessels of gold and silver. He said: 'It is for them in this world, and it is for us in the Hereafter.'"

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ ثنا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ ثنا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعٌ ثنا شُعْبَةُ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ حُذَيْفَةَ قَالَ: «نَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ لُبْسِ الْحَرِيرِ وَالدِّيبَاجِ وَعَنْ آنِيَةِ الذَّهَبِ وَالْفِضَّةِ، وَقَالَ: هُوَ لَهُمْ فِي الدُّنْيَا وَهُوَ لَنَا فِي الْآخِرَةِ» .

L4789 Nor in a vessel seized unjustly, according to the saying of the Messenger of Allah (peace be upon him): «Verily, your blood and your property are inviolable upon you.»

وَلَا فِي إِنَاءٍ مَأْخُوذٍ بِغَيْرِ حَقٍّ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

[مَسْأَلَةُ الْأَكْلِ وَالْوُضُوءِ وَالْغُسْلِ فِي إِنَاءٍ مِنْ صُفْرٍ أَوْ نُحَاسٍ أَوْ يَاقُوتٍ]

L4790–4791 **A legal question regarding eating, ablution, and bathing in a vessel made of brass, copper, or ruby.**

L4792 Issue: Furthermore, every vessel made of brass, copper, lead, tin, crystal, emerald, ruby, or other such materials after this is permissible for men and

women to eat from, drink from, perform ablution and bathing in them. This is based on the words of Allah the Exalted: {He is the One Who created for you all that is on earth} [Al-Baqarah: 29], His words: {And He has already detailed for you what He has forbidden upon you} [Al-An'ām: 119], and the statement of the Messenger of Allah—peace and blessings be upon him—: "Leave me what I have left you, for those before you were destroyed by their excessive questioning and disputing with their prophets. When I command you to do something, do as much of it as you can, and when I forbid you from something, avoid it." Thus, it is established that anything about which no mention is made regarding prohibition or command is permissible.[20]

L4793 Gilded and gold-inlaid items are permissible for women but not for men because they are not made entirely of gold. It has been authentically reported from the Prophet—peace and blessings of Allah be upon him—that «silk and gold are lawful for the women of my community and unlawful for their men,» or as he—peace and blessings of Allah be upon him—said: «Gilded items are not vessels made entirely of gold. Silver-plated and silver-inlaid items are permissible for both men and women, as they are not made entirely of silver. We seek support through Allah the Exalted, and He suffices us—He is the Most Excellent Trustee.»

L4794 **A jurisprudential issue regarding one who is incapable of using some of their body parts in ritual purification.**

L4795 Issue 273: If a person is unable to use certain limbs for purification—such as one whose hands, legs, or parts thereof are amputated—the ruling concerning them is lifted. They remain obligated to wash what remains of their limbs, based on the Prophet's statement (peace and blessings of Allah be upon him): "When I command you to do something, do as much of it as you are able." If there is a wound on the body, its ruling is lifted, but the obligation to wash the rest of the body or limbs remains, as we have mentioned. If sores cover their hands, a hand, legs, face, or part of their body, and if this reaches

[20] **Qur'an references (L4792):** Qur'an 2:29 (Al-Baqarah); Qur'an 6:119 (Al-An'am).

مَسْأَلَةٌ: ثُمَّ كُلُّ إِنَاءٍ بَعْدَ هَذَا مِنْ صُفْرٍ أَوْ نُحَاسٍ أَوْ رَصَاصٍ أَوْ قَزْدِيرٍ أَوْ بَلُّورٍ أَوْ زُمُرُّدٍ أَوْ يَاقُوتٍ أَوْ غَيْرِ ذَلِكَ فَمُبَاحٌ الْأَكْلُ فِيهِ وَالشُّرْبُ وَالْوُضُوءُ وَالْغُسْلُ فِيهِ لِلرِّجَالِ وَالنِّسَاءِ، لِقَوْلِ اللَّهِ تَعَالَى: {هُوَ الَّذِي خَلَقَ لَكُمْ مَا فِي الأَرْضِ جَمِيعًا} [البقرة: ٢٩] وقَوْله تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] وَقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «دَعُونِي مَا تَرَكْتُكُمْ، فَإِنَّمَا هَلَكَ مَنْ كَانَ مِنْ قَبْلِكُمْ بِكَثْرَةِ مَسَائِلِهِمْ وَاخْتِلَافِهِمْ عَلَى أَنْبِيَائِهِمْ، فَإِذَا أَمَرْتُكُمْ بِشَيْءٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ، وَإِذَا نَهَيْتُكُمْ عَنْ شَيْءٍ فَاجْتَنِبُوهُ» فَصَحَّ أَنَّ كُلَّ مَسْكُوتٍ عَنْ ذِكْرِهِ بِتَحْرِيمٍ أَوْ أَمْرٍ فَمُبَاحٌ.

وَالْمُذَهَّبُ وَالْمُضَبَّبُ بِالذَّهَبِ حَلَالٌ لِلنِّسَاءِ دُونَ الرِّجَالِ لِأَنَّهُ لَيْسَ إِنَاءً، وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْحَرِيرُ وَالذَّهَبُ حَلَالٌ لِإِنَاثِ أُمَّتِي حَرَامٌ عَلَى ذُكُورِهَا» أَوْ كَمَا قَالَ - عَلَيْهِ السَّلَامُ -: " وَلَيْسَ الْمُذَهَّبُ إِنَاءَ ذَهَبٍ، وَالْمُفَضَّضُ وَالْمُضَبَّبُ بِالْفِضَّةِ حَلَالٌ لِلرِّجَالِ وَالنِّسَاءِ، لِأَنَّهُ لَيْسَ إِنَاءً، وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ، وَهُوَ حَسْبُنَا وَنِعْمَ الْوَكِيلُ ".

[مَسْأَلَةٌ مَنْ عَجَزَ عَنْ بَعْضِ أَعْضَائِهِ فِي الطَّهَارَةِ]

٢٧٣ - مَسْأَلَةٌ: مَنْ عَجَزَ عَنْ بَعْضِ أَعْضَائِهِ فِي الطَّهَارَةِ: مَنْ قُطِعَتْ يَدَاهُ أَوْ رِجْلَاهُ أَوْ بَعْضُ ذَلِكَ سَقَطَ عَنْهُ حُكْمُهُ، وَبَقِيَ عَلَيْهِ غَسْلُ مَا بَقِيَ لِقَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» فَإِنْ كَانَ فِي الْجَسَدِ جُرْحٌ سَقَطَ حُكْمُهُ وَبَقِيَ فَرْضُ غَسْلِ سَائِرِ الْجَسَدِ أَوْ الْأَعْضَاءِ لِمَا ذَكَرْنَاهُ، فَإِنْ عَمَّتْ الْقُرُوحُ يَدَيْهِ أَوْ يَدَهُ أَوْ رِجْلَيْهِ أَوْ وَجْهَهُ أَوْ بَعْضَ جَسَدِهِ، فَإِنْ أَخْرَجَهُ ذَلِكَ إِلَى اسْمِ الْمَرَضِ وَكَانَ عَلَيْهِ

مِنْ إمْسَاسِهِ الْمَاءَ حَرَجٌ تَيَمَّمَ فَقَطْ، لِأَنَّ هَذَا حُكْمُ الْمَرِيضِ، وَإِنْ كَانَ لَا مَشَقَّةَ عَلَيْهِ فِي الْمَاءِ غَمَسَهُ فَقَطْ وَأَجْزَأَهُ، أَوْ صَبَّ عَلَيْهِ الْمَاءَ وَأَجْزَأَهُ، وَإِنْ كَانَ لَمْ يُخْرِجْهُ إلَى اسْمِ الْمَرَضِ غَسَلَ مَا أَمْكَنَهُ وَسَقَطَ عَنْهُ مَا عَلَيْهِ فِيهِ حَرَجٌ فَقَطْ كَثُرَ أَوْ قَلَّ لِمَا ذَكَرْنَاهُ، وَلَا يَجُوزُ أَنْ يُجْمَعَ فِي وُضُوءٍ تَيَمُّمٌ وَغُسْلٌ، وَلَا فِي طُهْرٍ وَاحِدٍ أَيْضًا إذْ لَمْ يَأْتِ بِذَلِكَ نَصٌّ وَلَا إجْمَاعٌ، إلَّا فِي مَوْضِعٍ وَاحِدٍ وَقَدْ ذَكَرْنَاهُ قَبْلُ وَهُوَ: مَنْ مَعَهُ مَاءٌ لَا يَعُمُّ بِهِ جَمِيعَ أَعْضَاءِ وُضُوئِهِ أَوْ جَمِيعَ جَسَدِهِ فَقَطْ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

the designation of illness—such that using water would cause them harm or hardship—they perform tayammum only, for this is the ruling applicable to the sick. If using water involves no hardship, either merely immersing the affected part suffices or pouring water over it suffices. If the sores do not reach the designation of illness, they wash what is possible, and whatever involves hardship is lifted—whether extensive or minimal—as we have mentioned. It is not permissible to combine tayammum and washing within a single ablution or within one act of purification, as no textual evidence or consensus supports this—except in one case we previously mentioned: when a person possesses water insufficient to cover all ablution limbs or the entire body. Success comes only from Allah, the Exalted.

[مَنْ شَكَّ فِي الْمَاءِ]

Whoever doubts about the water.

L4796

٢٧٤ - مَسْأَلَةٌ: مَنْ كَانَ بِحَضْرَتِهِ مَاءٌ وَشَكَّ أَوَلَغَ فِيهِ الْكَلْبُ أَمْ لَا؟ أَمْ هُوَ فَضْلُ امْرَأَةٍ أَمْ لَا، فَلَهُ أَنْ يَتَوَضَّأَ بِهِ لِغَيْرِ ضَرُورَةٍ وَأَنْ يَغْتَسِلَ بِهِ كَذَلِكَ لِأَنَّهُ عَلَى يَقِينٍ مِنْ طَهَارَتِهِ فِي أَصْلِهِ، وَجَوَازِ التَّطْهِيرِ بِهِ، ثُمَّ شَكَّ هَلْ حُرِّمَ ذَلِكَ فِيهِ أَمْ لَا، وَالْحَقُّ الْيَقِينُ لَا يُسْقِطُهُ الظَّنُّ، قَالَ اللَّهُ تَعَالَى: {إِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [يونس: ٣٦] فَإِنْ شَكَّ أَهُوَ مَاءٌ أَمْ هُوَ مُعْتَصَرٌ مِنْ بَعْضِ النَّبَاتِ لَمْ يَحِلَّ لَهُ الْوُضُوءُ بِهِ وَلَا الْغُسْلُ لِأَنَّهُ لَيْسَ عَلَى يَقِينٍ مِنْ أَنَّهُ جَازَ بِهِ التَّطَهُّرُ يَوْمًا مَا، وَالْوُضُوءُ وَالْغُسْلُ فَرْضَانِ، فَلَا يُرْفَعُ الْفَرْضُ بِالشَّكِّ، فَإِنْ كَانَ بَيْنَ يَدَيْهِ إنَاءَانِ فَصَاعِدًا فِي أَحَدِهِمَا مَاءٌ طَاهِرٌ بِيَقِينٍ وَسَائِرُهَا مِمَّا وَلَغَ فِيهِ الْكَلْبُ، أَوْ فِيهَا وَاحِدٌ وَلَغَ فِيهِ كَلْبٌ وَسَائِرُهَا طَاهِرٌ، وَلَا يُمَيِّزُ مِنْ ذَلِكَ شَيْئًا فَلَهُ أَنْ يَتَوَضَّأَ بِأَيِّهَا شَاءَ، مَا لَمْ يَكُنْ عَلَى يَقِينٍ مِنْ أَنَّهُ قَدْ تَجَاوَزَ عَدَدَ الطَّاهِرَاتِ وَتَوَضَّأَ بِمَا لَا يَحِلُّ الْوُضُوءُ بِهِ، لِأَنَّ كُلَّ مَاءٍ مِنْهَا فَعَلَى أَصْلِ طَهَارَتِهِ عَلَى انْفِرَادِهِ، فَإِذَا حَصَلَ عَلَى يَقِينِ التَّطَهُّرِ فِيمَا لَا يَحِلُّ التَّطَهُّرُ بِهِ فَقَدْ حَصَلَ عَلَى يَقِينِ

L4797–4799

Issue 274: If a person has water available and is uncertain whether a dog lapped in it or not, or whether it is leftover water from a woman's use or not, they may perform ablution with it even without necessity and may likewise use it for ritual bathing. This is because the water's purity in its origin is certain, as is the permissibility of using it for purification. If he subsequently doubts whether the water has been rendered unlawful or not, the original certainty prevails. Conjecture does not invalidate it, for Allah the Exalted said: {Indeed, conjecture avails nothing against the truth} [Yunus: 36]. If one doubts whether it is water or expressed plant juice, it is not permissible for them to perform ablution or ghusl with it, because they lack certainty that it has ever been valid for purification. Ablution and ghusl are two obligations, and obligations cannot be lifted through doubt. If there are two vessels or more before them—one known with certainty to contain pure water while the others contain water lapped by a dog (thereby rendering it impure), or one vessel lapped by a dog while the rest are pure—and they cannot distinguish between them, they may perform ablution with any vessel they choose, provided they are not certain they exceeded the number of pure waters and used impermissible water. This is because each water retains its presumption of purity in isolation. If they become certain they used impermissible water for purification, they attain certainty of having committed a forbidden

الْحَرَامِ، فَعَلَيْهِ أَنْ يُطَهِّرَ أَعْضَاءَهُ إِنْ كَانَ ذَلِكَ الْمَاءُ حَرَامًا اسْتِعْمَالُهُ جُمْلَةً، فَإِنْ كَانَ فِيهَا وَاحِدٌ مُعْتَصَرٌ لَا يَدْرِي، لَمْ يَحِلَّ لَهُ الْوُضُوءُ بِشَيْءٍ مِنْهَا، لِأَنَّهُ لَيْسَ عَلَى يَقِينٍ مِنْ أَنَّهُ تَوَضَّأَ بِمَاءٍ، وَالْيَقِينُ لَا يَرْتَفِعُ بِالظَّنِّ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

act. They must then wash their limbs if that water was entirely prohibited for use. If there is a vessel among them containing expressed liquid, and they cannot identify it, ablution with any of them is impermissible, because they lack certainty of having used water. Certainty cannot be removed by conjecture, and with Allah alone is success.[21]

[21] **Qur'an references (L4797):** Qur'an 10:36 (Yunus).



AL-MUHALLA

كِتَابُ الصَّلَاةِ

The Book of Prayer

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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Book of Prayer Chapter: Prayer is divided into two categories: obligatory and voluntary.

In the name of Allah, the Most Gracious, the Most Merciful. May Allah send blessings upon Muhammad and his family and grant them peace.

Ṣalāh

275. Issue: Prayer is of two types: obligatory and voluntary. The obligatory prayer is that which, if one intentionally neglects it, they are disobedient to Allah the Almighty. These are the five daily prayers: Dhuhr, Asr, Maghrib, Isha, and Fajr. Making up a prayer forgotten or missed due to sleep is the same obligation as the original. The obligatory prayer is of two categories: one is a personal obligation incumbent upon every Muslim who is sane, adult, male or female, free or enslaved—this is what we have mentioned. The second is a collective obligation binding upon all present; if some fulfill it, the duty is lifted from the rest. This refers to the prayer over the deceased Muslims.

Voluntary worship refers to acts which, if intentionally abandoned, do not constitute disobedience to Allah the Almighty. These include Witr, the two Rak'ahs of Fajr, the Eid prayers, the prayer for rain, the eclipse prayer, Duha prayer, voluntary prayers before and after the obligatory prayer, the even-numbered prayers in Ramadan, Tahajjud, and all voluntary acts one performs. It is disliked to abandon any of these.

The proof of this is that, according to the necessities of reason, there are only the two aforementioned divisions: either a thing whose abandonment entails disobedience to God, the Exalted, or a thing whose abandonment does not entail disobedience to God, the Exalted, with no intermediate between them.

Our statement: al-farḍ, al-wājib, al-ḥatmu, al-lāzimu, and al-maktūb are terms that have one meaning, which is what we have mentioned.

Our statement: Voluntary and supererogatory acts are synonymous, which

[كِتَابُ الصَّلَاةِ] [مَسْأَلَةٌ الصَّلَاةُ قِسْمَانِ فَرْضٌ وَتَطَوُّعٌ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ وَسَلِّمْ

الصَّلَاةُ

٢٧٥ - مَسْأَلَةٌ: الصَّلَاةُ قِسْمَانِ: فَرْضٌ وَتَطَوُّعٌ، فَالْفَرْضُ هُوَ الَّذِي مَنْ تَرَكَهُ عَامِدًا، كَانَ عَاصِيًا لِلَّهِ عَزَّ وَجَلَّ وَهُوَ الصَّلَوَاتُ الْخَمْسُ: الظُّهْرُ وَالْعَصْرُ وَالْمَغْرِبُ وَالْعِشَاءُ الْأَخِيرَةُ وَالْفَجْرُ. وَالْقَضَاءُ لِمَا نَسِيَ مِنْهَا أَوْ نَامَ عَنْهَا هُوَ هِيَ نَفْسُهَا، وَالْفَرْضُ قِسْمَانِ: فَرْضٌ مُتَعَيَّنٌ عَلَى كُلِّ مُسْلِمٍ عَاقِلٍ بَالِغٍ، ذَكَرٍ أَوْ أُنْثَى، حُرٍّ أَوْ عَبْدٍ، وَهُوَ مَا ذَكَرْنَاهُ؛ وَفَرْضٌ عَلَى الْكِفَايَةِ، يَلْزَمُ كُلَّ مَنْ حَضَرَ، فَإِذَا قَامَ بِهِ بَعْضُهُمْ سَقَطَ عَنْ سَائِرِهِمْ، وَهُوَ الصَّلَاةُ عَلَى جَنَائِزِ الْمُسْلِمِينَ.

وَالتَّطَوُّعُ هُوَ مَا إِنْ تَرَكَهُ الْمَرْءُ عَامِدًا لَمْ يَكُنْ عَاصِيًا لِلَّهِ عَزَّ وَجَلَّ بِذَلِكَ، وَهُوَ الْوِتْرُ وَرَكْعَتَا الْفَجْرِ وَصَلَاةُ الْعِيدَيْنِ وَالِاسْتِسْقَاءُ وَالْكُسُوفُ وَالضُّحَى، وَمَا يَتَنَفَّلُ الْمَرْءُ قَبْلَ صَلَاةِ الْفَرْضِ وَبَعْدَهَا، وَالْإِشْفَاعُ فِي رَمَضَانَ وَتَهَجُّدُ اللَّيْلِ وَكُلُّ مَا يَتَطَوَّعُ بِهِ الْمَرْءُ، وَيُكْرَهُ تَرْكُ كُلِّ ذَلِكَ.

بُرْهَانُ ذَلِكَ أَنَّهُ لَيْسَ فِي ضَرُورَةِ الْعَقْلِ إِلَّا الْقِسْمَانِ الْمَذْكُورَانِ، إِمَّا شَيْءٌ يَعْصِي اللَّهَ تَعَالَى تَارِكُهُ، وَإِمَّا شَيْءٌ لَا يَعْصِي اللَّهَ تَعَالَى تَارِكُهُ، وَلَا وَاسِطَةَ بَيْنَهُمَا.

وَقَوْلُنَا: الْفَرْضُ وَالْوَاجِبُ وَالْحَتْمُ وَاللَّازِمُ وَالْمَكْتُوبُ، أَلْفَاظٌ مَعْنَاهَا وَاحِدٌ، وَهُوَ مَا ذَكَرْنَا.

is what we have mentioned. Some said: Here lies a third category - the obligatory (wājib).

وَقَوْلُنَا: التَّطَوُّعُ وَالنَّافِلَةُ بِمَعْنَى وَاحِدٍ، وَهُوَ مَا ذَكَرْنَا، وَقَالَ قَوْمٌ: هَهُنَا قِسْمٌ ثَالِثٌ وَهُوَ الْوَاجِبُ.

L4809 Abū Muḥammad said: This is an error; because it is a claim without proof, a statement that is not understood, and a statement whose speaker cannot clarify his intended meaning in it.

قَالَ أَبُو مُحَمَّد: هَذَا خَطَأٌ، لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ، وَقَوْلٌ لَا يُفْهَمُ، وَلَا يَقْدِرُ قَائِلُهُ عَلَى أَنْ يُبَيِّنَ مُرَادَهُ فِيهِ.

L4810–4811 If they say: "Some of these are more emphasized than others," we say: Yes, some supererogatory acts are more emphasized than others, but this does not exclude any of them from being supererogatory. Now, clarify your claim that it is an obligation (wājib) yet neither a prescribed duty (farḍ) nor a supererogatory act. Is one who neglects it sinful against Allāh, Exalted and Glorified, or not? It must belong to one of these two categories—there is no third category. If the neglecter is sinful, it is a prescribed duty; if the neglecter is not sinful, it is not a prescribed duty.

فَإِنْ قَالُوا: إِنَّ بَعْضَ ذَلِكَ أَوْكَدُ مِنْ بَعْضٍ، قُلْنَا: نَعَمْ، بَعْضُ التَّطَوُّعِ أَوْكَدُ مِنْ بَعْضٍ، وَلَيْسَ ذَلِكَ بِمُخْرِجِ شَيْءٍ مِنْهُ عَنْ أَنْ يَكُونَ تَطَوُّعًا، لَكِنْ أَخْبِرُونَا عَنْ هَذَا الَّذِي قُلْتُمْ: هُوَ وَاجِبٌ لَا فَرْضٌ، وَلَا تَطَوُّعٌ، أَيَكُونُ تَارِكُهُ عَاصِيًا لِلَّهِ عَزَّ وَجَلَّ؟ أَمْ لَا يَكُونُ عَاصِيًا؟ وَلَا بُدَّ مِنْ أَحَدِ هَذَيْنِ الْقِسْمَيْنِ، وَلَا سَبِيلَ إِلَى قِسْمٍ ثَالِثٍ، فَإِنْ كَانَ تَارِكُهُ عَاصِيًا فَهُوَ فَرْضٌ، وَإِنْ كَانَ تَارِكُهُ لَيْسَ عَاصِيًا فَلَيْسَ فَرْضًا.

L4812 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, Abd al-Wahhab ibn Isa narrated to us, Hammad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Qutaybah ibn Sa'id narrated to us from Malik ibn Anas from Abu Suhayl ibn Malik from his father that he heard Talhah ibn Ubaydullah say: "A man came to the Messenger of Allah (peace and blessings be upon him), and there he was asking about Islam. The Messenger of Allah (PBUH) said: 'Five prayers during the day and night.' The man asked: 'Is there anything else incumbent upon me besides them?' He replied: 'No, unless you voluntarily perform more.' And he mentioned the remainder of the hadith. The man turned away, saying: 'By Allah, I will neither add to this nor subtract from it.' The Messenger of Allah (PBUH) said: 'He has succeeded if he is truthful.'"

وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ حَدَّثَنَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا حَمَدُ بْنُ مُحَمَّدٍ حَدَّثَنَا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا قُتَيْبَةُ بْنُ سَعِيدٍ عَنْ مَالِكِ بْنِ أَنَسٍ عَنْ أَبِي سُهَيْلِ بْنِ مَالِكٍ عَنْ أَبِيهِ أَنَّهُ سَمِعَ طَلْحَةَ بْنَ عُبَيْدِ اللَّهِ يَقُولُ «جَاءَ رَجُلٌ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِذَا هُوَ يَسْأَلُ عَنْ الْإِسْلَامِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: خَمْسُ صَلَوَاتٍ فِي الْيَوْمِ وَاللَّيْلَةِ قَالَ هَلْ عَلَيَّ غَيْرُهُنَّ؟ قَالَ: لَا إِلَّا أَنْ تَتَطَوَّعَ وَذَكَرَ بَاقِيَ الْحَدِيثِ فَأَدْبَرَ الرَّجُلُ، وَهُوَ يَقُولُ وَاَللَّهِ لَا أَزِيدُ عَلَى هَذَا وَلَا أَنْقُصُ مِنْهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَفْلَحَ إِنْ صَدَقَ» .

L4813 This is a definitive text from the Messenger of Allah—may Allah bless him and grant him peace—affirming our position, that there are only two categories: the obligatory or the voluntary, for whatever is beyond the five is voluntary, and this is a matter no one may legitimately oppose.

وَهَذَا نَصٌّ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى قَوْلِنَا، وَأَنَّهُ لَيْسَ إِلَّا وَاجِبًا أَوْ تَطَوُّعًا، فَإِنَّ مَا عَدَا الْخَمْسَ فَهُوَ تَطَوُّعٌ، وَهَذَا لَا يَسَعُ أَحَدًا خِلَافُهُ.

وَأَمَّا وُجُوبُ النَّذْرِ، فَلِقَوْلِ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] ؛ وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ نَذَرَ أَنْ يُطِيعَ اللَّهَ فَلْيُطِعْهُ» ، وَلَا خِلَافَ مِنْ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ الصَّلَوَاتِ الْخَمْسَ فَرْضٌ، وَمَنْ خَالَفَ ذَلِكَ فَكَافِرٌ.

L4814 As for the obligation of vows, it is established by the saying of Allah the Exalted: “Fulfill [your] covenants” [Al-Ma’idah: 1], and the statement of the Messenger of Allah (peace be upon him): “Whoever vows to obey Allah, let him obey Him.” There is no disagreement from anyone among the Ummah that the five prayers are obligatory, and whoever opposes this is a disbeliever.[1]

وَأَمَّا كَوْنُ صَلَاةِ الْجَنَازَةِ فَرْضًا عَلَى الْكِفَايَةِ، فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «صَلُّوا عَلَى صَاحِبِكُمْ» ، وَلَا خِلَافَ فِي أَنَّهُ إذَا قَامَ بِالصَّلَاةِ عَلَيْهَا قَوْمٌ فَقَدْ سَقَطَ الْفَرْضُ عَنْ الْبَاقِينَ.

L4815 As for the funeral prayer being a collective obligation, this is based on the statement of the Messenger of Allah (peace and blessings be upon him): “Pray over your companion.” There is no disagreement that if a group performs the prayer over the deceased, the obligation is lifted from the others.

وَأَمَّا كَوْنُ مَا عَدَا ذَلِكَ تَطَوُّعًا فَإِجْمَاعٌ مِنْ الْحَاضِرِينَ مِنْ الْمُخَالِفِينَ إلَّا فِي الْوِتْرِ، فَإِنَّ أَبَا حَنِيفَةَ قَالَ: إنَّهُ وَاجِبٌ، وَقَدْ رُوِيَ عَنْ بَعْضِ الْمُتَقَدِّمِينَ: إنَّهُ فَرْضٌ.

L4816 As for considering what is beyond that as supererogatory prayer, it is established by consensus of the attending scholars from opposing schools, except concerning Witr. For Abū Ḥanīfah stated, “It is necessary (wājib),” and it has been narrated from some earlier scholars: “It is obligatory (farḍ).”

فَالْبُرْهَانُ عَلَى مَنْ قَالَ إنَّهُ فَرْضٌ مَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إلَى مُسْلِمٍ: حَدَّثَنَا حَرْمَلَةُ بْنُ يَحْيَى ثنا ابْنُ وَهْبٍ ثنا يُونُسُ هُوَ ابْنُ يَزِيدَ - عَنْ ابْنِ شِهَابٍ عَنْ أَنَسِ بْنِ مَالِكٍ فَذَكَرَ حَدِيثَ الْإِسْرَاءِ - وَفِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: " فَفَرَضَ اللَّهُ عَزَّ وَجَلَّ عَلَى أُمَّتِي خَمْسِينَ صَلَاةً " ثُمَّ ذَكَرَ - عَلَيْهِ السَّلَامُ - مُرَاجَعَتَهُ لِرَبِّهِ عَزَّ وَجَلَّ فِي ذَلِكَ، إلَى أَنْ قَالَ " فَرَاجَعْت رَبِّي " فَقَالَ: " هِيَ خَمْسٌ وَهِيَ خَمْسُونَ {مَا يُبَدَّلُ الْقَوْلُ لَدَيَّ} [ق: ٢٩] فَهَذَا خَبَرٌ مِنْ اللَّهِ عَزَّ وَجَلَّ مَأْمُونٌ تَبَدُّلُهُ، فَصَحَّ أَنَّ الصَّلَوَاتِ لَا تُبَدَّلُ أَبَدًا عَنْ خَمْسٍ وَأَمِنَّا النَّسْخَ فِي ذَلِكَ أَبَدًا بِهَذَا النَّصِّ، فَبَطَلَ بِهَذَا قَوْلُ مَنْ قَالَ: إنَّ الْوِتْرَ فَرْضٌ، وَإِنَّ تَهَجُّدَ اللَّيْلِ فَرْضٌ، وَهُوَ قَوْلٌ رُوِّينَاهُ عَنْ الْحَسَنِ.

L4817–4819 The proof for those who said it is obligatory is what has been transmitted to us through the mentioned chain to Muslim: Harmala ibn Yaḥyā narrated to us, Ibn Wahb narrated to us, Yūnus narrated to us—who is Ibn Yazīd—from Ibn Shihāb, from Anas ibn Mālik. He mentioned the Hadith of the Night Journey—in which the Messenger of Allah (peace and blessings be upon him) said: “Then Allah, the Mighty and Exalted, ordained fifty prayers upon my nation.” Then he (peace and blessings be upon him) mentioned his repeated petitions to his Lord, the Mighty and Exalted, regarding that, until he said: “I entreated my Lord repeatedly,” and He said: “They are five and they are fifty. ’No word is altered before Me’ (Qaf 50:29).” This is a statement from Allah, the Mighty and Exalted, safeguarded against alteration. Thus, it is established that the prayers cannot be changed from five forever, and we are eternally secure from abrogation in this matter by this explicit text. Therefore, the claim of those who say: “Witr is obligatory,” and “The night vigil prayer is obligatory,” is invalidated by this. This is a statement we have transmitted from Al-Hasan.[2]

[1] **Qur’an references (L4814):** Qur’an 5:1 (Al-Ma’idah).

[2] **Qur’an references (L4817):** Qur’an 50:29 (Qaf).

وَأَيْضًا فَإِنَّ يُونُسَ بْنَ عَبْدِ اللَّهِ حَدَّثَنَا قَالَ: حَدَّثَنَا أَبُو عِيسَى بْنُ أَبِي عِيسَى ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا حُسَيْنُ بْنُ عَلِيٍّ هُوَ الْجُعْفِيُّ - عَنْ زَائِدَةَ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ عَنْ مُحَمَّدِ بْنِ الْمُنْتَشِرِ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ قَالَ «جَاءَ رَجُلٌ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ أَيُّ الصَّلَاةِ أَفْضَلُ بَعْدَ الْمَكْتُوبَةِ؟ قَالَ: الصَّلَاةُ مِنْ جَوْفِ اللَّيْلِ قَالَ: أَيُّ الصِّيَامِ أَفْضَلُ بَعْدَ رَمَضَانَ؟ قَالَ: شَهْرُ اللَّهِ الَّذِي يَدْعُونَهُ الْمُحَرَّمَ» .

L4820 Furthermore, Yūnus ibn ʿAbd Allāh narrated to us, saying: Abū ʿĪsā ibn Abī ʿĪsā narrated to us, then Aḥmad ibn Khālid narrated to us, then Ibn Waḍḍāḥ narrated to us, then Abū Bakr ibn Abī Shaybah narrated to us, then Ḥusayn ibn ʿAlī (who is al-Juʿfī) narrated to us from Zā'idah, from ʿAbd al-Malik ibn ʿUmayr, from Muḥammad ibn al-Muntashir, from Ḥumayd ibn ʿAbd al-Raḥmān, from Abū Hurayrah, who said: "A man came to the Messenger of Allāh—peace and blessings of Allāh be upon him—and said: 'O Messenger of Allāh, which prayer is most virtuous after the prescribed prayer?' He replied: 'Prayer in the middle of the night.' The man asked: 'Which fasting is most virtuous after Ramaḍān?' He answered: 'The month of Allāh that they call it al-Muḥarram.'"

قَالَ أَبُو مُحَمَّد: فَصَحَّ أَنَّ تَهَجُّدَ اللَّيْلِ لَيْسَ مِنْ الْمَكْتُوبَةِ، وَالْوِتْرُ مِنْ تَهَجُّدِ اللَّيْلِ، فَبِهَذَيْنِ الْخَبَرَيْنِ صَحَّ أَنَّ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِعَبْدِ اللَّهِ بْنِ عَمْرٍو «يَا عَبْدَ اللَّهِ لَا تَكُنْ مِثْلَ فُلَانٍ كَانَ يَقُومُ مِنْ اللَّيْلِ فَتَرَكَ قِيَامَ اللَّيْلِ» وَقَوْلُهُ - عَلَيْهِ السَّلَامُ - لِحَفْصَةَ عَنْ أَخِيهَا عَبْدِ اللَّهِ بْنِ عُمَرَ رَضِيَ اللَّهُ عَنْ جَمِيعِهِمْ «نِعْمَ الرَّجُلُ عَبْدُ اللَّهِ لَوْ كَانَ يُصَلِّي مِنْ اللَّيْلِ» ، وَقَوْلُهُ - عَلَيْهِ السَّلَامُ - الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ حَدَّثَنِي نَافِعٌ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «اجْعَلُوا آخِرَ صَلَاتِكُمْ بِاللَّيْلِ وِتْرًا» ، وَقَوْلُهُ - عَلَيْهِ السَّلَامُ -: «بَادِرُوا الصُّبْحَ بِالْوِتْرِ» وَ «يَا أَهْلَ الْقُرْآنِ أَوْتِرُوا» إنَّ هَذِهِ الْأَوَامِرَ كُلَّهَا نَدْبٌ، لَا يَجُوزُ غَيْرُ ذَلِكَ.

L4821 Abū Muḥammad said: It has been established that the night vigil (Tahajjud) is not among the obligatory prayers, and Witr is part of the night vigil. Through these two reports, it is confirmed that the statement of the Messenger of Allāh—peace and blessings be upon him—to ʿAbdullāh ibn ʿAmr, "O ʿAbdullāh, do not be like so-and-so who used to stand in prayer at night but then abandoned night prayer," and his statement—peace be upon him—to Ḥafṣah regarding her brother ʿAbdullāh ibn ʿUmar—may Allāh be pleased with all of them—"What an excellent man ʿAbdullāh is, if only he would pray at night," and his statement—peace be upon him—which we have narrated through the chain of Aḥmad ibn Ḥanbal from Yaḥyā ibn Saʿīd al-Qaṭṭān from ʿUbaydullāh ibn ʿUmar: Nāfiʿ narrated to me from Ibn ʿUmar from the Prophet—peace and blessings be upon him—who said, "Conclude your night prayers with Witr," and his statement—peace be upon him—"Perform Witr before dawn arrives," and "O people of the Quran, perform Witr"—indeed, all these commands are recommendations; it is impermissible to hold otherwise.[3]

وَأَمَّا الْحَدِيثُ «إنَّ الشَّيْطَانَ يَعْقِدُ عَلَى قَافِيَةِ رَأْسِ أَحَدِكُمْ إذَا هُوَ نَامَ ثَلَاثَ عُقَدٍ يَضْرِبُ كُلَّ عُقْدَةٍ عَلَيْكَ لَيْلٌ طَوِيلٌ فَارْقُدْ وَفِي آخِرِهِ فَإِنْ صَلَّى انْحَلَّتْ عُقْدَةٌ فَأَصْبَحَ نَشِيطًا طَيِّبَ النَّفْسِ، وَإِلَّا أَصْبَحَ خَبِيثَ النَّفْسِ كَسْلَانَ» ، وَقَوْلُهُ - عَلَيْهِ السَّلَامُ -:

L4822–4824 As for the *ḥadīth*: "Indeed Satan ties three knots at the crown of one's head when he sleeps, striking each knot [saying]: 'A long night lies ahead—so sleep!' At its end, if he prays, a knot is loosened, and he awakens energetic and good-natured. But if he does not pray, he awakens evil-souled and lazy,"

[3] **Hadith references (L4821):** Mishkat al-Masabih 1234; Sahih Muslim 2479a; Riyad as-Salihin 1162.

and his statement—peace be upon him—when it was mentioned to him... A man who remained asleep until dawn without rising for prayer, so the Prophet (peace be upon him) said: "Satan has urinated in his ear." Indeed, the obligation remains incumbent upon him, and his sleeping through it is due to what we have mentioned.

إِذْ ذُكِرَ لَهُ رَجُلٌ لَمْ يَزَلْ نَائِمًا حَتَّى أَصْبَحَ مَا قَامَ إِلَى الصَّلَاةِ، فَقَالَ - عَلَيْهِ السَّلَامُ -: «بَالَ الشَّيْطَانُ فِي أُذُنِهِ» - إِنَّمَا هُوَ عَلَى الْفَرْضِ وَنَوْمِهِ عَنْهُ لِمَا ذَكَرْنَا.

L4825 A proof cannot be opposed except with another proof, and what comes from Allah does not differ, nor is it contradictory. It has been narrated to us from Shu'bah from Abū Isḥāq al-Sabī'ī from 'Āṣim ibn Ḍamrah from 'Alī ibn Abī Ṭālib, who said: "The Witr prayer is not an obligation, but rather a Sunnah."

وَالْبُرْهَانُ لَا يُعَارَضُ إِلَّا بِبُرْهَانٍ، وَمَا كَانَ مِنْ عِنْدِ اللَّهِ فَلَا يَخْتَلِفُ، وَلَا يَتَكَاذَبُ، وَرُوِّينَا عَنْ شُعْبَةَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: الْوِتْرُ لَيْسَ بِحَتْمٍ وَلَكِنَّهُ سُنَّةٌ.

L4826 It has been narrated to us from Sufyan al-Thawri, from Abu Ishaq, from Asim, from Ali, who said: "The Witr prayer is not an obligation, but rather a Sunnah prescribed by the Messenger of Allah (peace and blessings be upon him)." And from Ubada ibn al-Samit is the rejection of those who assert that Witr is obligatory.

وَرُوِّينَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمٍ عَنْ عَلِيٍّ قَالَ: «الْوِتْرُ لَيْسَ فَرِيضَةً وَلَكِنَّهُ سُنَّةٌ سَنَّهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» ، وَعَنْ عُبَادَةَ بْنِ الصَّامِتِ تَكْذِيبُ مَنْ قَالَ إِنَّ الْوِتْرَ وَاجِبٌ.

L4827 It has been narrated to us from al-Ḥajjāj ibn al-Minhal that Jarīr ibn Ḥāzim narrated to us, saying: "I asked Nāfi', the client of Ibn 'Umar: 'Did Ibn 'Umar perform Witr prayer while mounted?' He replied: 'Yes. And does Witr hold any superiority over other voluntary prayers?'" It has also been narrated to us from Ayyūb al-Sikhtiyānī, from Sa'īd ibn Jubayr, that he was asked about one who did not perform Witr until dawn broke. He said: "He will perform Witr on another day."

وَرُوِّينَا عَنْ الْحَجَّاجِ بْنِ الْمِنْهَالِ حَدَّثَنَا جَرِيرُ بْنُ حَازِمٍ قَالَ: سَأَلْت نَافِعًا مَوْلَى ابْنِ عُمَرَ: أَكَانَ ابْنُ عُمَرَ يُوتِرُ عَلَى رَاحِلَتِهِ؟ قَالَ نَعَمْ وَهَلْ لِلْوِتْرِ فَضِيلَةٌ عَلَى سَائِرِ التَّطَوُّعِ؟ وَرُوِّينَا عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ أَنَّهُ سُئِلَ عَنْ مَنْ لَمْ يُوتِرْ حَتَّى أَصْبَحَ؟ قَالَ سَيُوتِرُ يَوْمًا آخَرَ.

L4828 It has been related to us from Qatādah, from Sa'īd ibn al-Musayyib, that a man asked him about *Witr* (the odd-numbered prayer). Sa'īd said: "The Prophet (peace and blessings of Allah be upon him) observed Witr, and if you forgo it, you are not accountable. He prayed Ḍuḥā, and if you neglect it, you are not accountable. He prayed two rak'ahs prior to Ẓuhr and two following it, and if you omit them, you are not accountable."

وَرُوِّينَا عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ سَأَلَهُ رَجُلٌ عَنْ الْوِتْرِ، فَقَالَ سَعِيدٌ: أَوْتَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنْ تَرَكْتَ فَلَيْسَ عَلَيْك، وَصَلَّى الضُّحَى، وَإِنْ تَرَكْتَ فَلَيْسَ عَلَيْك؛ وَصَلَّى رَكْعَتَيْنِ قَبْلَ الظُّهْرِ وَرَكْعَتَيْنِ بَعْدَهَا، وَإِنْ تَرَكْتَ فَلَيْسَ عَلَيْك.

L4829 From Ibn Jurayj: I asked 'Ata': Is Witr obligatory? Are the two rak'ahs before the Fajr prayer obligatory? Is any prayer before an obligatory prayer or after it obligatory? He said: "No." This is the opinion of al-Shafi'i, Dawud, and the majority of earlier and later scholars.

وَعَنْ ابْنِ جُرَيْجٍ، قُلْت لِعَطَاءٍ: أَوَاجِبٌ الْوِتْرُ وَرَكْعَتَانِ أَمَامَ الصُّبْحِ أَوْ شَيْءٌ مِنْ الصَّلَاةِ قَبْلَ الْمَكْتُوبَةِ أَوْ بَعْدَهَا؟ قَالَ لَا، وَهُوَ قَوْلُ الشَّافِعِيِّ وَدَاوُد وَجُمْهُورِ الْمُتَقَدِّمِينَ وَالْمُتَأَخِّرِينَ.

L4830 As for Abū Ḥanīfa, if he held that the Witr prayer is an obligation *farḍ*, we have already invalidated this claim. If he held that the Witr prayer is a binding duty *wājib*—neither obligatory nor supererogatory—this is a corrupt opinion, and we have already invalidated it at the beginning of this juridical matter.

وَأَمَّا أَبُو حَنِيفَةَ فَإِنْ كَانَ ذَهَبَ إلَى أَنَّ الْوِتْرَ فَرْضٌ فَقَدْ ذَكَرْنَا بُطْلَانَ هَذَا الْقَوْلِ، وَإِنْ كَانَ ذَهَبَ إلَى أَنَّ الْوِتْرَ وَاجِبٌ لَا فَرْضٌ، وَلَا تَطَوُّعٌ؛ فَهُوَ قَوْلٌ فَاسِدٌ، وَقَدْ ذَكَرْنَا إبْطَالَهُ فِي صَدْرِ هَذِهِ الْمَسْأَلَةِ.

L4831 Malik said: It is not obligatory, but whoever omits it is disciplined, and it is a blemish in his testimony.

وَقَالَ مَالِكٌ: لَيْسَ فَرْضًا، وَلَكِنْ مَنْ تَرَكَهُ أُدِّبَ، وَكَانَتْ جُرْحَةً فِي شَهَادَتِهِ.

L4832 Abu Muhammad said: This is a clear error, for one who neglects Witr must either be disobedient to Allah, the Majestic and Exalted, or not disobedient. If he is disobedient to Allah the Exalted, then no one disobeys by abandoning what is neither incumbent upon them nor obligatory; therefore Witr is an obligation - and he does not hold this view. If he asserts: "Rather, he is not disobedient to Allah the Exalted."

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ بَيِّنٌ؛ لِأَنَّهُ لَا يَخْلُو تَارِكُهُ أَنْ يَكُونَ عَاصِيًا لِلَّهِ عَزَّ وَجَلَّ أَوْ غَيْرَ عَاصٍ؛ فَإِنْ كَانَ عَاصِيًا لِلَّهِ تَعَالَى فَلَا يَعْصِي أَحَدٌ بِتَرْكِ مَا لَا يَلْزَمُهُ وَلَيْسَ فَرْضًا؛ فَالْوِتْرُ إذَنْ فَرْضٌ، وَهُوَ لَا يَقُولُ بِهَذَا، وَإِنْ قَالَ: بَلْ هُوَ غَيْرُ عَاصٍ - لِلَّهِ تَعَالَى.

L4833 It is invalid to discipline one who has not disobeyed Allah, the Exalted, or to impugn the testimony of someone who is not guilty of disobeying Allah, the Mighty and Majestic; for whoever has not disobeyed Allah, the Mighty and Majestic, has done good, and Allah, the Exalted, says: "There is no way to hold the doers of good accountable" [At-Tawbah 9:91].[4]

قِيلَ: فَمِنْ الْبَاطِلِ أَنْ يُؤَدَّبَ مَنْ لَمْ يَعْصِ اللَّهَ تَعَالَى، أَوْ أَنْ تُجَرَّحَ شَهَادَةُ مَنْ لَيْسَ عَاصِيًا لِلَّهِ عَزَّ وَجَلَّ؛ لِأَنَّ مَنْ لَمْ يَعْصِ اللَّهَ عَزَّ وَجَلَّ فَقَدْ أَحْسَنَ، وَاَللَّهُ تَعَالَى يَقُولُ: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] .

L4834–4836 Abu Muhammad said: Yet, Witr prayer is the most emphasized voluntary prayer, based on the hadiths we have mentioned from the Messenger's teachings. The most emphasized prayers after Witr are the Duha prayer; two rak'ahs upon entering the mosque; the prayer of someone who prays with a congregation then finds another group performing the same prayer; the eclipse prayer; and four rak'ahs after Jumu'ah - "because the Messenger of God (peace and blessings be upon him) commanded these," and whatever he

قَالَ أَبُو مُحَمَّدٍ: إلَّا أَنَّ الْوِتْرَ أَوْكَدُ التَّطَوُّعِ، لِلْأَحَادِيثِ الَّتِي ذَكَرْنَا مِنْ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؛ ثُمَّ أَوْكَدُهَا بَعْدَ الْوِتْرِ صَلَاةُ الضُّحَى وَرَكْعَتَانِ عِنْدَ دُخُولِ الْمَسْجِدِ، وَصَلَاةُ مَنْ صَلَّى فِي جَمَاعَةٍ ثُمَّ وَجَدَ جَمَاعَةً يُصَلُّونَ تِلْكَ الصَّلَاةَ؛ وَصَلَاةُ الْكُسُوفِ وَأَرْبَعٌ بَعْدَ الْجُمُعَةِ «؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِهَذِهِ» ، وَمَا أَمَرَ بِهِ - عَلَيْهِ السَّلَامُ - فَهُوَ أَوْكَدُ مِمَّا لَمْ يَأْمُرْ بِهِ.

[4] **Qur'an references (L4833):** Qur'an 9:91 (At-Tawbah).

(peace be upon him) commanded carries more weight than what he did not command.

L4837 It has been narrated to us via the chain of Malik from ʻĀmir ibn ʻAbdillāh ibn al-Zubayr from ʻAmr ibn Sulaym al-Zuraqī from Abī Qatādah al-Sulamī that the Messenger of Allāh—peace be upon him—said: "When one of you enters the mosque, let him pray two rakʿahs before he sits."[5]

رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ عَامِرِ بْنِ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ عَنْ عَمْرِو بْنِ سُلَيْمٍ الزُّرَقِيِّ عَنْ أَبِي قَتَادَةَ السُّلَمِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا دَخَلَ أَحَدُكُمْ الْمَسْجِدَ فَلْيَرْكَعْ رَكْعَتَيْنِ قَبْلَ أَنْ يَجْلِسَ» .

L4838 It has been narrated to us from ʿAbd al-Wārith ibn Saʿīd al-Tannūrī, from Abū al-Tayyāḥ, who narrated to me from Abū ʿUthmān al-Nahdī, from Abū Hurayrah, who said—peace and blessings of Allah be upon him—"My intimate friend advised me to fast three days every month, pray the two rakʿahs of Ḍuḥā, and perform Witr before I retire to sleep."[6]

وَرُوِّينَا عَنْ عَبْدِ الْوَارِثِ بْنِ سَعِيدٍ التَّنُّورِيِّ ثنا أَبُو التَّيَّاحِ حَدَّثَنِي أَبُو عُثْمَانَ النَّهْدِيُّ عَنْ أَبِي هُرَيْرَةَ قَالَ «أَوْصَانِي خَلِيلِي - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِصِيَامِ ثَلَاثَةِ أَيَّامٍ مِنْ كُلِّ شَهْرٍ وَرَكْعَتَيْ الضُّحَى وَأَنْ أُوتِرَ قَبْلَ أَنْ أَرْقُدَ» .

L4839 It has been narrated to us from Shuʻbah from Abū Naʻāmah from ʻAbdullāh ibn al-Ṣāmit from Abū Dharr, who said: The Messenger of Allah—peace and blessings be upon him—said: "Perform the prayer at its prescribed time. Then, if the iqamah is established, pray with them, for indeed it is an increase in goodness."[7]

وَرُوِّينَا عَنْ شُعْبَةَ عَنْ أَبِي نَعَامَةَ عَنْ عَبْدِ اللَّهِ بْنِ الصَّامِتِ عَنْ أَبِي ذَرٍّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَصَلِّ الصَّلَاةَ لِوَقْتِهَا، ثُمَّ إنْ أُقِيمَتْ الصَّلَاةُ فَصَلِّ مَعَهُمْ فَإِنَّهَا زِيَادَةُ خَيْرٍ» .

L4840 And it has been narrated to us from Sufyān ibn ʿUyaynah: Sahl ibn Abī Ṣāliḥ narrated to us from his father from Abū Hurayrah, who said: "The Messenger of Allāh—may Allāh bless him and grant him peace—commanded us to pray four rak'ahs after Jumuʿah."

وَرُوِّينَا عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ حَدَّثَنَا سَهْلُ بْنُ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نُصَلِّيَ أَرْبَعًا بَعْدَ الْجُمُعَةِ» .

L4841 "And it has been narrated to us from Al-Ḥasan ibn Abī Bakrah: 'The sun and the moon are not eclipsed due to anyone's death. When you see them, pray and supplicate until what afflicts you is lifted.'"

وَرُوِّينَا عَنْ الْحَسَنِ بْنِ أَبِي بَكْرَةَ «إنَّ الشَّمْسَ وَالْقَمَرَ لَا يَنْكَسِفَانِ لِمَوْتِ أَحَدٍ فَإِذَا رَأَيْتُمُوهُمَا فَصَلُّوا وَادْعُوا حَتَّى يَنْكَشِفَ مَا بِكُمْ» .

L4842 Ḥammām narrated to us: ʿAbbās ibn Aṣbagh narrated to us: Ibn Ayman narrated to us: Ibn Waḍḍāḥ narrated to us: Ḥāmid ibn Yaḥyā al-Balkhī narrated

حَدَّثَنَا حُمَامٌ حَدَّثَنَا عَبَّاسُ بْنُ أَصْبَغَ ثنا ابْنُ أَيْمَنَ ثنا ابْنُ وَضَّاحٍ ثنا حَامِدُ بْنُ يَحْيَى الْبَلْخِيُّ حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ ثنا سُهَيْلُ بْنُ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نُصَلِّيَ بَعْدَ الْجُمُعَةِ أَرْبَعًا» .

[5] **Hadith references (L4837):** Sahih al-Bukhari 444; Sunan an-Nasai 730; Sahih Muslim 714a.

[6] **Hadith references (L4838):** Riyad as-Salihin 1139.

[7] **Hadith references (L4839):** Sahih Muslim 648f.

to us: Sufyān ibn ʿUyaynah narrated to us: Suhayl ibn Abī Ṣāliḥ narrated from his father, from Abū Hurayrah, who said: "The Messenger of Allah—peace and blessings be upon him—commanded us to pray four rakʿahs after Jumuʿah."

L4843–4844 Then, after these [acts], the remaining ones we mentioned follow, since no command has been issued regarding them. However, there is his practice (peace and blessings be upon him) and motivational encouragement [to perform them]. As for our disapproval of abandoning such acts, it is because they are acts of goodness. Allah the Exalted has said: "And do good" [Al-Hajj: 77].[8]

L4845 **An issue: There is no prayer incumbent upon those who have not reached puberty among men and women.**

L4846 Issue 276: Prayer is not obligatory for those who have not reached puberty among males and females. However, it is recommended to teach them if they comprehend it, based on the statement of Allah's Messenger (ﷺ) which we previously mentioned: "The pen is lifted from three [categories] - including the child until he reaches puberty." And the Messenger of Allah (ﷺ) taught Ibn Abbas certain aspects of prayer and led him in prayer before he reached puberty. It is recommended to train a child in prayer when he reaches seven years of age, and to discipline him regarding it when he reaches ten years of age.

L4847 Regarding what ʿAbdullāh ibn Rabīʿ narrated to us: from Ibn al-Sulaym, from Ibn al-Aʿrābī, from Abū Dāwūd, from Muḥammad ibn ʿĪsā, from Ibrāhīm ibn Saʿd, from ʿAbd al-Malik ibn al-Rabīʿ ibn Sabra, from his father, from his grandfather, who said: The Messenger of Allah (peace and blessings be upon him) said, "Instruct the child to pray when he reaches the age of seven. When he reaches the age of ten, strike him for neglecting it."

L4848 **There is no prayer upon an insane person, one who**

[8] **Qur'an references (L4844):** Qur'an 22:77 (Al-Hajj).

ثُمَّ بَعْدَ هَذِهِ سَائِرَ الَّتِي ذَكَرْنَا، لِأَنَّهُ لَمْ يَأْتِ بِهَا أَمْرٌ، لَكِنْ جَاءَ بِهَا عَمَلٌ مِنْهُ - عَلَيْهِ السَّلَامُ - وَتَرْغِيبٌ، وَأَمَّا كَرَاهَتُنَا تَرْكَ ذَلِكَ فَلِأَنَّهُ فِعْلُ خَيْرٍ، قَالَ اللَّهُ تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] .

[مَسْأَلَةٌ لَا صَلَاةَ عَلَى مَنْ لَمْ يَبْلُغْ مِنْ الرِّجَالِ وَالنِّسَاءِ]

٢٧٦ - مَسْأَلَةٌ: وَلَا صَلَاةَ عَلَى مَنْ لَمْ يَبْلُغْ مِنْ الرِّجَالِ وَالنِّسَاءِ، وَيُسْتَحَبُّ لَوْ عُلِّمُوهَا إذَا عَقَلُوهَا، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي قَدْ ذَكَرْنَاهُ قَبْلُ «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ فَذَكَرَ فِيهِ الصَّبِيَّ حَتَّى يَبْلُغَ» ، وَقَدْ «عَلَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ابْنَ عَبَّاسٍ قَبْلَ بُلُوغِهِ بَعْضَ حُكْمِ الصَّلَاةِ وَأَمَّهُ فِيهَا» ، وَيُسْتَحَبُّ إذَا بَلَغَ سَبْعَ سِنِينَ أَنْ يُدَرَّبَ عَلَيْهَا فَإِذَا بَلَغَ عَشْرَ سِنِينَ أُدِّبَ عَلَيْهَا.

لِمَا حَدَّثَنَاهُ عَبْدَ اللَّهِ بْنَ رَبِيعٍ ثنا ابْنُ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُحَمَّدُ بْنُ عِيسَى ثنا إبْرَاهِيمُ بْنُ سَعْدٍ عَنْ عَبْدِ الْمَلِكِ بْنِ الرَّبِيعِ بْنِ سُبْرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مُرُوا الصَّبِيَّ بِالصَّلَاةِ إذَا بَلَغَ سَبْعَ سِنِينَ، فَإِذَا بَلَغَ عَشْرَ سِنِينَ فَاضْرِبُوهُ عَلَيْهَا» .

[لَا صَلَاةَ عَلَى مجنون وَلَا مغمى عَلَيْهِ وَلَا حائض وَلَا نفساء]

is unconscious, a menstruating woman, or a postpartum woman.

L4849 277 - Issue: There is no obligation upon an insane person, one who has fainted, a menstruating woman, or postpartum women, nor is there a requirement to make up missed prayers for any of them—except if the insane or unconscious person regains awareness, or the menstruating woman or postpartum women attain purity within a time period that still allows them to begin the prayer after becoming pure.

٢٧٧ - مَسْأَلَةٌ: وَلَا عَلَى مَجْنُونٍ، وَلَا مُغْمًى عَلَيْهِ، وَلَا حَائِضٍ، وَلَا نُفَسَاءَ، وَلَا قَضَاءَ عَلَى وَاحِدٍ مِنْهُمْ إِلَّا مَا أَفَاقَ الْمَجْنُونُ وَالْمُغْمَى عَلَيْهِ، أَوْ طَهُرَتْ الْحَائِضُ وَالنُّفَسَاءُ فِي وَقْتٍ أَدْرَكُوا فِيهِ بَعْدَ الطَّهَارَةِ الدُّخُولَ فِي الصَّلَاةِ.

L4850 The proof of that is the statement of the Messenger of Allah—peace and blessings be upon him: "The pen is lifted from three: the insane until he regains sanity, the child until he reaches puberty, and the sleeper until he awakens." As for the menstruating woman and the postpartum woman, there is a certain consensus on exempting them from making up prayers. Regarding the unconscious person, we have narrated from Ammar ibn Yasir, Ata, Mujahid, Ibrahim, Hammad ibn Abi Sulayman, and Qatadah that he must make up the prayers. Sufyan said: He makes up the Dhuhr and Asr prayers only if he regains consciousness at sunset. Abu Hanifah said: If he is unconscious for five prayers, he makes them up, but if he is unconscious for more than five prayers, he does not make up anything.

بُرْهَانُ ذَلِكَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ فَذَكَرَ الْمَجْنُونَ حَتَّى يُفِيقَ» وَأَمَّا الْحَائِضُ وَالنُّفَسَاءُ، وَإِسْقَاطُ الْقَضَاءِ عَنْهَا فَإِجْمَاعٌ مُتَيَقَّنٌ، وَأَمَّا الْمُغْمَى عَلَيْهِ فَإِنَّنَا رُوِّينَا عَنْ عَمَّارِ بْنِ يَاسِرٍ وَعَطَاءٍ وَمُجَاهِدٍ وَإِبْرَاهِيمَ وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ وَقَتَادَةَ أَنَّ الْمُغْمَى عَلَيْهِ يَقْضِي، وَقَالَ سُفْيَانُ: يَقْضِي إنْ أَفَاقَ عِنْدَ غُرُوبِ الشَّمْسِ الظُّهْرَ وَالْعَصْرَ فَقَطْ، وَقَالَ أَبُو حَنِيفَةَ: إنْ أُغْمِيَ عَلَيْهِ خَمْسُ صَلَوَاتٍ قَضَاهُنَّ، فَإِنْ أُغْمِيَ عَلَيْهِ أَكْثَرُ لَمْ يَقْضِ شَيْئًا.

L4851–4853 Ali said: As for the opinion of Abū Ḥanīfah, it is of the utmost corruption because no definitive text came to support what he said, nor... By analogy, because the jurists waived six prayers for the unconscious person and did not consider it obligatory upon him to make up any of them.

قَالَ عَلِيٌّ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفِي غَايَةِ الْفَسَادِ، لِأَنَّهُ لَا نَصَّ أَتَى بِمَا قَالَ، وَلَا قِيَاسَ، لِأَنَّهُ أَسْقَطَ عَنْ الْمُغْمَى عَلَيْهِ سِتَّ صَلَوَاتٍ وَلَمْ يَرَ عَلَيْهِ قَضَاءَ شَيْءٍ مِنْهُنَّ.

L4854 He obligated him to make up the five prayers if he fainted and missed them. He neither analogized the one who fainted to another who fainted regarding waiving the obligation to make up prayers, nor did he analogize the one who fainted to a sleeper concerning the obligation to make up all that he missed due to sleeping.

وَأَوْجَبَ عَلَيْهِ إنْ أُغْمِيَ عَلَيْهِ خَمْسَ صَلَوَاتٍ أَنْ يَقْضِيَهُنَّ؛ فَلَمْ يَقِسْ الْمُغْمَى عَلَيْهِ عَلَى الْمُغْمَى عَلَيْهِ فِي إسْقَاطِ الْقَضَاءِ، وَلَا قَاسَ الْمُغْمَى عَلَيْهِ عَلَى النَّائِمِ فِي وُجُوبِ الْقَضَاءِ عَلَيْهِ فِي كُلِّ مَا نَامَ عَنْهُ.

L4855 It has been authentically established that Ibn Umar's position contradicts Ammar's statement. What has been transmitted to us regarding Ammar is that he lost consciousness during four prayers and made them up, as evidenced by our narration through Abd al-Razzaq ibn Jurayj from Nafi: that

وَقَدْ صَحَّ عَنْ ابْنِ عُمَرَ خِلَافُ قَوْلِ عَمَّارٍ عَلَى أَنَّ الَّذِي رُوِّينَا عَنْ عَمَّارٍ إنَّمَا هُوَ إنَّهُ أُغْمِيَ عَلَيْهِ أَرْبَعُ صَلَوَاتٍ فَقَضَاهُنَّ، كَمَا رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ بْنِ جُرَيْجٍ عَنْ نَافِعٍ أَنَّ ابْنَ

Ibn Umar once suffered an affliction that overwhelmed his mind, causing him to abandon the prayers. When he recovered, he did not make up what he had missed. Similarly, from Abdullah ibn Umar from Nafi: Ibn Umar remained unconscious for a day and night, yet he did not make up the missed prayers.

عُمَرَ اشْتَكَى مَرَّةً غُلِبَ فِيهَا عَلَى عَقْلِهِ حَتَّى تَرَكَ الصَّلَاةَ ثُمَّ أَفَاقَ فَلَمْ يُصَلِّ مَا تَرَكَ مِنْ الصَّلَاةِ؛ وَعَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ: أُغْمِيَ عَلَى ابْنِ عُمَرَ يَوْمًا وَلَيْلَةً فَلَمْ يَقْضِ مَا فَاتَهُ.

L4856 And from Ibn Jurayj from Ibn Ṭāwūs from his father: If a sick person loses consciousness and then regains his senses, he does not have to repeat the prayer.

وَعَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ طَاوُوسٍ عَنْ أَبِيهِ: إذَا أُغْمِيَ عَلَى الْمَرِيضِ ثُمَّ عَقَلَ لَمْ يُعِدْ الصَّلَاةَ.

L4857 Ma'mar said: I asked al-Zuhri about the person who has lost consciousness, and he said he does not have to make up [the prayers]. And it is narrated from Hammad ibn Salama, on the authority of Yunus ibn 'Ubayd, who reported from al-Hasan al-Basri and Muhammad ibn Sirin, that they both said regarding the person who has lost consciousness: He does not repeat the prayer during which he regained consciousness.

قَالَ مَعْمَرٌ: سَأَلْت الزُّهْرِيَّ عَنْ الْمُغْمَى عَلَيْهِ فَقَالَ لَا يَقْضِي وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ وَمُحَمَّدِ بْنِ سِيرِينَ أَنَّهُمَا قَالَا فِي الْمُغْمَى عَلَيْهِ: لَا يُعِيدُ الصَّلَاةَ الَّتِي أَفَاقَ عِنْدَهَا.

L4858 Hammad said, "I asked 'Asim ibn Bahdala: 'Did you repeat [the recitation] of what was unclear to you?' He said: 'As for that, no.'"

قَالَ حَمَّادٌ قُلْت لِعَاصِمِ بْنِ بَهْدَلَةَ: أَعُدْتَ مَا كَانَ مُغْمًى عَلَيْك؟ قَالَ أَمَّا ذَاكَ فَلَا.

L4859 Ali said: The one who has fainted neither retains reason nor comprehends; thus, the obligation is lifted from him. If all those we have mentioned are not subject to the obligation during its prescribed time—the time when people were obligated to perform it—then it is not permissible to perform it outside its designated time, for Allah the Exalted has not commanded this. A prayer not commanded by Allah is not obligatory, and success is only by Allah, the Exalted.

قَالَ عَلِيٌّ: الْمُغْمَى عَلَيْهِ لَا يَعْقِلُ، وَلَا يَفْهَمُ؛ فَالْخِطَابُ عَنْهُ مُرْتَفِعٌ، وَإِذَا كَانَ كُلُّ مَنْ ذَكَرْنَا غَيْرَ مُخَاطَبٍ بِهَا فِي وَقْتِهَا الَّذِي أُلْزِمَ النَّاسُ أَنْ يُؤَدُّوهَا فِيهِ: فَلَا يَجُوزُ أَدَاؤُهَا فِي غَيْرِ وَقْتِهَا؛ لِأَنَّهُ لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِذَلِكَ، وَصَلَاةٌ لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِهَا لَا تَجِبُ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: A person who was intoxicated until the prayer time elapsed, or who slept through it until its time elapsed.

[مَسْأَلَةٌ سَكِرَ حَتَّى خَرَجَ وَقْتُ الصَّلَاةِ أَوْ نَامَ عَنْهَا حَتَّى خَرَجَ وَقْتُهَا]

L4861 Issue: As for one who is intoxicated until the prayer time elapses, or sleeps through it until its time passes, or forgets it until its time passes: it has been made obligatory specifically upon these individuals to perform the prayer perpetually.

٢٧٨ - مَسْأَلَةٌ: وَأَمَّا مَنْ سَكِرَ حَتَّى خَرَجَ وَقْتُ الصَّلَاةِ أَوْ نَامَ عَنْهَا حَتَّى خَرَجَ وَقْتُهَا أَوْ نَسِيَهَا حَتَّى خَرَجَ وَقْتُهَا: فَفُرِضَ عَلَى هَؤُلَاءِ خَاصَّةً أَنْ يُصَلُّوهَا أَبَدًا.

L4862 Allah the Exalted said: "Do not approach prayer while you are intoxicated until you know what you are saying" [An-Nisa: 43]. Therefore, Allah the

Exalted did not permit the intoxicated person to pray until he knows what he is saying.[9]

L4863–4865 Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us, Ahmad ibn Shu'ayb narrated to us, Qutaybah ibn Sa'id narrated to us, Hammad ibn Zayd narrated to us from Thabit—al-Bunani—from Abdullah ibn Rabah from Abu Qatadah that the Messenger of Allah, peace and blessings be upon him, said: "There is no negligence in sleep. Negligence is only in wakefulness. So when one forgot a prayer..." If any one of you misses a prayer or sleeps through it, he should pray it when he remembers it. We have also narrated it through the chain of Anas as a *musnad* report. All of this constitutes definitive consensus.[10]

L4866 **A legal issue concerning one who intentionally abandons the prayer until its time has expired.**

L4867 279. Issue:

L4868 As for the one who intentionally neglects prayer until its time has expired, such a person can never compensate for it. Let him multiply righteous deeds and supererogatory prayers to weigh down his balance with good deeds on the Day of Resurrection. Let him repent and seek forgiveness from Allah, the Exalted and Glorious.

L4869 Abu Hanifah, Malik, and al-Shafi'i said: He must make up the prayers after their time has passed, even to the point that Malik and Abu Hanifah stated: Whoever intentionally neglects one prayer or multiple prayers must perform them before the prayer whose time has begun—if the neglected prayers are five or fewer—whether the time of the current prayer has expired or not. If the neglected prayers exceed five, he begins with the current prayer.

L4870 The proof for the validity of our position is Allah's statement, Exalted is

قَالَ اللَّهُ تَعَالَى: {لا تَقْرَبُوا الصَّلاةَ وَأَنْتُمْ سُكَارَى حَتَّى تَعْلَمُوا مَا تَقُولُونَ} [النساء: ٤٣] فَلَمْ يُبِحْ اللَّهُ تَعَالَى لِلسَّكْرَانِ أَنْ يُصَلِّيَ حَتَّى يَعْلَمَ مَا يَقُولُ.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا قُتَيْبَةُ بْنُ سَعِيدٍ ثنا حَمَّادُ بْنُ زَيْدٍ عَنْ ثَابِتٍ هُوَ الْبُنَانِيُّ - عَنْ عَبْدِ اللَّهِ بْنِ رَبَاحٍ عَنْ أَبِي قَتَادَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: إنَّهُ «لَيْسَ فِي النَّوْمِ تَفْرِيطٌ، إنَّمَا التَّفْرِيطُ فِي الْيَقَظَةِ فَإِذَا نَسِيَ أَحَدُكُمْ صَلَاةً أَوْ نَامَ عَنْهَا فَلْيُصَلِّهَا إذَا ذَكَرَهَا» ، وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ أَنَسٍ مُسْنَدًا: وَهَذَا كُلُّهُ إجْمَاعٌ مُتَيَقَّنٌ.

[مَسْأَلَةٌ تَعَمَّدَ تَرْكَ الصَّلَاةِ حَتَّى خَرَجَ وَقْتُهَا]

٢٧٩ - مَسْأَلَةٌ:

وَأَمَّا مَنْ تَعَمَّدَ تَرْكَ الصَّلَاةِ حَتَّى خَرَجَ وَقْتُهَا فَهَذَا لَا يَقْدِرُ عَلَى قَضَائِهَا أَبَدًا، فَلْيُكْثِرْ مِنْ فِعْلِ الْخَيْرِ وَصَلَاةِ التَّطَوُّعِ؛ لِيُثْقِلَ مِيزَانَهُ يَوْمَ الْقِيَامَةِ، وَلْيَتُبْ وَلْيَسْتَغْفِرْ اللَّهَ عَزَّ وَجَلَّ.

وَقَالَ أَبُو حَنِيفَةَ وَمَالِكٌ وَالشَّافِعِيُّ: يَقْضِيهَا بَعْدَ خُرُوجِ الْوَقْتِ، حَتَّى أَنَّ مَالِكًا وَأَبَا حَنِيفَةَ قَالَا: مَنْ تَعَمَّدَ تَرْكَ صَلَاةٍ أَوْ صَلَوَاتٍ فَإِنَّهُ يُصَلِّيهَا قَبْلَ الَّتِي حَضَرَ وَقْتُهَا - إنْ كَانَتْ الَّتِي تَعَمَّدَ تَرْكَهَا خَمْسَ صَلَوَاتٍ فَأَقَلَّ - سَوَاءٌ خَرَجَ وَقْتُ الْحَاضِرَةِ أَوْ لَمْ يَخْرُجْ؛ فَإِنْ كَانَتْ أَكْثَرَ مِنْ خَمْسِ صَلَوَاتٍ بَدَأَ بِالْحَاضِرَةِ.

بُرْهَانُ صِحَّةِ قَوْلِنَا قَوْلُ اللَّهِ تَعَالَى: {فَوَيْلٌ لِلْمُصَلِّينَ} [الماعون: ٤] {الَّذِينَ هُمْ عَنْ صَلاتِهِمْ سَاهُونَ} [الماعون: ٥] وَقَوْلُهُ تَعَالَى: {فَخَلَفَ مِنْ بَعْدِهِمْ خَلْفٌ أَضَاعُوا الصَّلاةَ وَاتَّبَعُوا

[9] **Qur'an references (L4862):** Qur'an 4:43 (An-Nisa).

[10] **Hadith references (L4863):** Sunan an-Nasai 615; Sunan Ibn Majah 698; Jami at-Tirmidhi 177.

He: “Woe to those who pray—those who are neglectful of their prayers” [Al-Māʿūn:4–5], and His words: “Then there succeeded them successors who squandered prayer and pursued desires; so they will face deviation” [Maryam:59]. For if one who deliberately neglects prayer could still perform it after its time had expired, he would neither incur woe nor face deviation—just as one who delays prayer until the end of its appointed time while still being able to perform it incurs neither woe nor deviation.[11]

الشَّهَوَاتِ فَسَوْفَ يَلْقَوْنَ غَيًّا} [مريم: ٥٩] فَلَوْ كَانَ الْعَامِدُ لِتَرْكِ الصَّلَاةِ مُدْرِكًا لَهَا بَعْدَ خُرُوجِ وَقْتِهَا لَمَا كَانَ لَهُ الْوَيْلُ، وَلَا لَقِيَ الْغَيَّ؛ كَمَا لَا وَيْلَ، وَلَا غَيَّ؛ لِمَنْ أَخَّرَهَا إِلَى آخِرِ وَقْتِهَا الَّذِي يَكُونُ مُدْرِكًا لَهَا.

L4871 Moreover, Allah, the Exalted, has designated for every obligatory prayer a time bounded by two fixed points: it becomes valid at a defined moment and ceases to be valid at a defined time. Thus, there is no distinction between one who prays it before its time and one who prays it after its time, for both have prayed outside of the prescribed time. This is not a case of analogizing one to the other; rather, they are equal in transgressing the limits set by Allah, the Exalted. Allah, the Exalted, has said: {And whoever transgresses the limits set by Him has wronged himself} [At-Talaq 65:1].[12]

وَأَيْضًا فَإِنَّ اللَّهَ تَعَالَى جَعَلَ لِكُلِّ صَلَاةِ فَرْضٍ وَقْتًا مَحْدُودَ الطَّرَفَيْنِ، يَدْخُلُ فِي حِينٍ مَحْدُودٍ، وَيَبْطُلُ فِي وَقْتٍ مَحْدُودٍ، فَلَا فَرْقَ بَيْنَ مَنْ صَلَّاهَا قَبْلَ وَقْتِهَا وَبَيْنَ مَنْ صَلَّاهَا بَعْدَ وَقْتِهَا؛ لِأَنَّ كِلَيْهِمَا صَلَّى فِي غَيْرِ الْوَقْتِ، وَلَيْسَ هَذَا قِيَاسًا لِأَحَدِهِمَا عَلَى الْآخَرِ، بَلْ هُمَا سَوَاءٌ فِي تَعَدِّي حُدُودِ اللَّهِ تَعَالَى، وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

L4872 Furthermore, judicial decree is a legislative obligation, and divine legislation cannot originate from anyone other than Allah the Exalted as conveyed by His Messenger.

وَأَيْضًا فَإِنَّ الْقَضَاءَ إِيجَابُ شَرْعٍ، وَالشَّرْعُ لَا يَجُوزُ لِغَيْرِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ.

L4873–4875 So we ask those who obligate the one who intentionally neglected prayers to make up what he deliberately omitted: Inform us about this prayer you command him concerning—is it the very prayer Allah the Exalted ordained for him, or another? If they say: “It is the same,” we respond: Then the intentional neglector is not disobedient for abandoning it, since he has done what Allah the Exalted commanded, and there is no sin. According to your claim, there is no blame upon one who intentionally neglects the prayer until after its time has expired; no Muslim would ever say such a thing.

فَنَسْأَلُ مَنْ أَوْجَبَ عَلَى الْعَامِدِ قَضَاءَ مَا تَعَمَّدَ تَرْكَهُ مِنْ الصَّلَاةِ: أَخْبِرْنَا عَنْ هَذِهِ الصَّلَاةِ الَّتِي تَأْمُرُهُ بِفِعْلِهَا، أَهِيَ الَّتِي أَمَرَهُ اللَّهُ تَعَالَى بِهَا؟ أَمْ هِيَ غَيْرُهَا؟ فَإِنْ قَالُوا: هِيَ هِيَ؛ قُلْنَا لَهُمْ: فَالْعَامِدُ، لِتَرْكِهَا لَيْسَ عَاصِيًا؛ لِأَنَّهُ قَدْ فَعَلَ مَا أَمَرَهُ اللَّهُ تَعَالَى، وَلَا إِثْمَ عَلَى قَوْلِكُمْ، وَلَا مَلَامَةَ عَلَى مَنْ تَعَمَّدَ تَرْكَ الصَّلَاةِ حَتَّى يَخْرُجَ وَقْتُهَا، وَهَذَا لَا يَقُولُهُ مُسْلِمٌ.

L4876 And if they say, “This is not what Allah, the Exalted, commanded him to do,” we say, “You are truthful,” and this suffices, since they have admitted

وَإِنْ قَالُوا: لَيْسَتْ هِيَ الَّتِي أَمَرَهُ اللَّهُ تَعَالَى بِهَا، قُلْنَا صَدَقْتُمْ؛ وَفِي هَذَا كِفَايَةٌ إِذْ أَقَرُّوا بِأَنَّهُمْ أَمَرُوهُ بِمَا لَمْ يَأْمُرْهُ بِهِ اللَّهُ تَعَالَى.

[11] **Qur’an references (L4870):** Qur’an 107:4 (Al-Ma’un); Qur’an 107:5 (Al-Ma’un); Qur’an 19:59 (Maryam).

[12] **Qur’an references (L4871):** Qur’an 65:1 (At-Talaq).

commanding him with something Allah, the Exalted, did not command him with.

ثُمَّ نَسْأَلُهُمْ عَمَّنْ تَعَمَّدَ تَرْكَ الصَّلَاةِ إلَى بَعْدِ الْوَقْتِ: أَطَاعَةٌ هِيَ أَمْ مَعْصِيَةٌ؟ فَإِنْ قَالُوا: طَاعَةٌ، خَالَفُوا إجْمَاعَ أَهْلِ الْإِسْلَامِ كُلِّهِمْ الْمُتَيَقَّنَ، وَخَالَفُوا الْقُرْآنَ وَالسُّنَنَ الثَّابِتَةَ: وَإِنْ قَالُوا: هُوَ مَعْصِيَةٌ صَدَقُوا، وَمِنْ الْبَاطِلِ أَنْ تَنُوبَ الْمَعْصِيَةُ عَنْ الطَّاعَةِ.

L4877 Then we ask them about one who intentionally abandons prayer until after its time: is this obedience or disobedience? If they say, "Obedience," they have opposed the definitive consensus of the entire Muslim community and contradicted the Quran and the established Sunnahs. If they say, "It is disobedience," they are correct, and it is falsehood for disobedience to replace obedience.

وَأَيْضًا فَإِنَّ اللَّهَ تَعَالَى قَدْ حَدَّ أَوْقَاتَ الصَّلَاةِ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَجَعَلَ لِكُلِّ وَقْتِ صَلَاةٍ مِنْهَا أَوَّلًا لَيْسَ مَا قَبْلَهُ وَقْتًا لِتَأْدِيَتِهَا، وَآخِرًا لَيْسَ مَا بَعْدَهُ وَقْتًا، لِتَأْدِيَتِهَا، هَذَا مَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ مِنْ الْأُمَّةِ، فَلَوْ جَازَ أَدَاؤُهَا بَعْدَ الْوَقْتِ لَمَا كَانَ لِتَحْدِيدِهِ - عَلَيْهِ السَّلَامُ - آخِرَ وَقْتِهَا مَعْنًى، وَلَكَانَ لَغْوًا مِنْ الْكَلَامِ وَحَاشَا لِلَّهِ مِنْ هَذَا.

L4878 Moreover, Allah the Exalted has set the prayer times through the words of His Messenger—may Allah bless him and grant him peace—assigning to each prayer time a beginning, so that the time before it is not designated for its performance, and an end, so that the time after it is not designated for its performance. This is a matter uncontested by any member of the Ummah. If performing prayer after its designated time were permissible, the specification of its end time by him (peace be upon him) would be meaningless, becoming futile speech. Allah is far above such a thing.

وَأَيْضًا فَإِنَّ كُلَّ عَمَلٍ عُلِّقَ بِوَقْتٍ مَحْدُودٍ فَإِنَّهُ لَا يَصِحُّ فِي غَيْرِ وَقْتِهِ، وَلَوْ صَحَّ فِي غَيْرِ ذَلِكَ الْوَقْتِ لَمَا كَانَ ذَلِكَ الْوَقْتُ وَقْتًا لَهُ، وَهَذَا بَيِّنٌ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L4879 Moreover, every act contingent upon a specified time is not legally valid outside its designated time. If it were valid outside that time, then that time would not have been its specific timeframe. This is evident, and with Allah, the Exalted, lies the attainment of success.

وَنَسْأَلُهُمْ: لِمَ أَجَزْتُمْ الصَّلَاةَ، بَعْدَ الْوَقْتِ، وَلَمْ تُجِيزُوهَا قَبْلَهُ؟ فَإِنْ ادَّعُوا الْإِجْمَاعَ كَذَبُوا، لِأَنَّ ابْنَ عَبَّاسٍ وَالْحَسَنَ الْبَصْرِيَّ يُجِيزَانِ الصَّلَاةَ قَبْلَ الْوَقْتِ، لَا سِيَّمَا وَالْحَنَفِيُّونَ وَالشَّافِعِيُّونَ وَالْمَالِكِيُّونَ يُجِيزُونَ الزَّكَاةَ قَبْلَ الْوَقْتِ، وَيَدَّعُونَ أَنَّ قِتَالَ أَبِي بَكْرٍ، لِأَهْلِ الرِّدَّةِ، إنَّمَا كَانَ قِيَاسًا لِلزَّكَاةِ عَلَى الصَّلَاةِ، وَأَنَّهُ قَالَ: لَأُقَاتِلَنَّ مَنْ فَرَّقَ بَيْنَ الصَّلَاةِ وَالزَّكَاةِ، فَإِنَّ الزَّكَاةَ حَقُّ الْمَالِ، وَهُمْ قَدْ فَرَّقُوا هَهُنَا بَيْنَ حُكْمِ الزَّكَاةِ وَالصَّلَاةِ فَلْيَعْجَبْ الْمُتَعَجِّبُونَ، وَإِنْ ادَّعُوا فَرْقًا مِنْ جِهَةِ نَصٍّ أَوْ نَظَرٍ لَمْ يَجِدُوهُ.

L4880 We ask them: Why have you permitted prayer after its time but not before it? If they claim consensus, they speak falsely, for Ibn Abbas and Al-Hasan al-Basri permit prayer before its time—especially since the Hanafis, Shafi'is, and Malikis permit zakat before its time. They assert that Abu Bakr's fighting against the apostates; was based on an analogy between zakat and prayer, and that he said, "I will surely fight those who separate prayer from zakat," for zakat is a right pertaining to wealth. Yet they themselves have differentiated here between the rulings of zakat and prayer—let those who marvel be astonished! If they claim a distinction based on textual evidence or rational analysis, they have not found it.

L4881 But you permit those who forget, those who sleep, and the intoxicated to

فَإِنْ قَالُوا: فَإِنَّكُمْ تُجِيزُونَ النَّاسِيَ وَالنَّائِمَ وَالسَّكْرَانَ عَلَى قَضَائِهَا أَبَدًا.

delay making up their prayers indefinitely.

وَهَذَا خِلَافُ قَوْلِكُمْ بِالْوَقْتِ؟ قُلْنَا: لَا بَلْ وَقْتُ الصَّلَاةِ لِلنَّاسِي وَالسَّكْرَانِ وَالنَّائِمِ مُمْتَدٌّ غَيْرُ مُنْقَضٍ.

L4882 Does this contradict your view regarding the time? We replied: No, on the contrary, the prayer time for those who are forgetful, intoxicated, or asleep remains valid and has not concluded.

وَبُرْهَانُ ذَلِكَ أَنَّهُمْ لَيْسُوا عُصَاةً فِي تَأْخِيرِهَا إِلَى أَيِّ وَقْتٍ صَلُّوهَا فِيهِ، وَكُلُّ أَمْرِ اللَّهِ عَزَّ وَجَلَّ فَإِنَّهُ مُنْقَسِمٌ عَلَى ثَلَاثَةِ أَوْجُهٍ لَا رَابِعَ لَهَا إِمَّا أَمْرٌ غَيْرُ مُعَلَّقٍ بِوَقْتٍ، فَهَذَا يُجْزِئُ أَبَدًا مَتَى أُدِّيَ، كَالْجِهَادِ وَالْعُمْرَةِ وَصَدَقَةِ التَّطَوُّعِ وَالدُّعَاءِ وَغَيْرِ ذَلِكَ، فَهَذَا يُجْزِئُ مَتَى أُدِّيَ؛ وَالْمُسَارَعَةُ إِلَيْهِ أَفْضَلُ؛ لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَسَارِعُوا إِلَى مَغْفِرَةٍ مِنْ رَبِّكُمْ وَجَنَّةٍ عَرْضُهَا} [آل عمران: ١٣٣] ، وَإِمَّا أَمْرٌ مُعَلَّقٌ بِوَقْتٍ مَحْدُودِ الْأَوَّلِ غَيْرُ مَحْدُودِ الْآخِرِ كَالزَّكَاةِ وَنَحْوِهَا، فَهَذَا لَا يُجْزِئُ قَبْلَ وَقْتِهِ، وَلَا يَسْقُطُ بَعْدَ وُجُوبِهِ أَبَدًا؛ لِأَنَّهُ لَا آخِرَ لِوَقْتِهِ، وَالْمُبَادَرَةُ إِلَيْهِ أَفْضَلُ؛ لِمَا ذَكَرْنَا.

L4883–4885 The proof of this is that they are not disobedient ones for delaying it to any time in which they pray it. Every command of Allah, the Exalted and Majestic, is divided into three categories with no fourth: either a command not tied to a specific time. This suffices perpetually whenever performed, such as jihad, umrah, voluntary charity, supplication, and similar acts. Thus, it suffices whenever performed; hastening to it is more virtuous, based on the words of Allah, the Exalted and Majestic: “And hasten to forgiveness from your Lord and a Garden whose width is…” [Āl ʿImrān: 133], and as for a matter contingent upon a time limited in its beginning but unlimited in its end, such as _zakāh_ and analogous duties, fulfilling it before its designated time is insufficient, and it never ceases to be obligatory after becoming due indefinitely, because its time has no end. Hastening to it is superior, as we have mentioned.[13]

وَإِمَّا أَمْرٌ مُعَلَّقٌ بِوَقْتٍ مَحْدُودِ أَوَّلِهِ وَآخِرِهِ فَهَذَا لَا يُجْزِئُ قَبْلَ وَقْتِهِ، وَلَا بَعْدَ وَقْتِهِ، وَيُجْزِئُ فِي جَمِيعِ وَقْتِهِ فِي أَوَّلِهِ وَآخِرِهِ وَوَسَطِهِ كَالصَّلَاةِ وَالْحَجِّ وَصَوْمِ رَمَضَانَ وَنَحْوِ ذَلِكَ.

L4886 As for an act bound to a defined time with a specific beginning and end, it is not valid before its time nor after it. It is valid during the entirety of its time—at its beginning, end, or middle—such as prayer, pilgrimage, fasting Ramadan, and the like of these.

وَنَقُولُ لِمَنْ خَالَفَنَا: قَدْ وَافَقْتُمُونَا عَلَى أَنَّ الْحَجَّ لَا يُجْزِئُ فِي غَيْرِ وَقْتِهِ، وَأَنَّ الصَّوْمَ لَا يُجْزِئُ فِي غَيْرِ النَّهَارِ، فَمِنْ أَيْنَ أَجَزْتُمْ ذَلِكَ فِي الصَّلَاةِ؟ وَكُلُّ ذَلِكَ ذُو وَقْتٍ مَحْدُودِ أَوَّلِهِ وَآخِرِهِ؟ وَهَذَا مَا لَا انْفِكَاكَ مِنْهُ.

L4887 We say to those who oppose us: You have agreed with us that Hajj does not suffice outside its appointed time, and that fasting does not suffice outside the daytime. From where then do you permit this for prayer? Do all these acts not have a fixed time with a defined beginning and end? This is an inescapable reality.

فَإِنْ قَالُوا قِسْنَا الْعَامِدَ عَلَى النَّاسِي.

L4888 If they say, “We applied analogy from the intentional person to the forgetful person.”

[13] **Qur’an references (L4883):** Qur’an 3:133 (Ali ’Imran).

قُلْنَا الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّ الْقِيَاسَ عِنْدَ الْقَائِلِينَ بِهِ إنَّمَا هُوَ قِيَاسُ الشَّيْءِ عَلَى نَظِيرِهِ، لَا عَلَى ضِدِّهِ، وَهَذَا مَا لَا خِلَافَ فِيهِ بَيْنَ أَحَدٍ مِنْ أَهْلِ الْقِيَاسِ، وَقَدْ وَافَقَهُمْ مَنْ لَا يَقُولُ بِالْقِيَاسِ، عَلَى أَنَّهُ لَا يَجُوزُ قِيَاسُ الشَّيْءِ عَلَى ضِدِّهِ، فَصَارَ إجْمَاعًا مُتَيَقَّنًا وَبَاطِلًا لَا شَكَّ فِيهِ.

L4889 We have declared that all analogical reasoning is invalid. Moreover, even if analogical reasoning were valid, this instance would be invalidity itself. For according to its proponents, analogical reasoning is solely the comparison of a thing to its equivalent—not its opposite. There is no disagreement among any advocates of analogical reasoning on this point, and those who reject analogical reasoning concur with them that it is impermissible to analogize a thing to its opposite. Thus, this has become an indisputable consensus and an invalidity beyond all doubt.

وَالْعَمْدُ ضِدُّ النِّسْيَانِ، وَالْمَعْصِيَةُ ضِدُّ الطَّاعَةِ، بَلْ قِيَاسُ ذَلِكَ عَلَى مَا ذَكَرْنَا مِنْ الْحَجِّ؛ لَوْ كَانَ الْقِيَاسُ حَقًّا، لَا سِيَّمَا، وَالْحَنَفِيُّونَ وَالْمَالِكِيُّونَ لَا يَقِيسُونَ الْحَالِفَ عَامِدًا؛ لِلْكَذِبِ عَلَى الْحَالِفِ فَيَحْنَثُ غَيْرُ عَامِدٍ لِلْكَذِبِ فِي وُجُوبِ الْكَفَّارَةِ، بَلْ يُسْقِطُونَ الْكَفَّارَةَ عَنْ الْعَامِدِ، وَيُوجِبُونَهَا عَلَى غَيْرِ الْعَامِدِ، وَلَا يَقِيسُونَ قَاتِلَ الْعَمْدِ عَلَى قَاتِلِ الْخَطَأِ فِي وُجُوبِ الْكَفَّارَةِ عَلَيْهِ، بَلْ يُسْقِطُونَهَا عَنْ قَاتِلِ الْعَمْدِ، وَلَا يَرَوْنَ قَضَاءَ الصَّلَاةِ عَلَى الْمُرْتَدِّ، فَهَذَا تَنَاقُضٌ لَا خَفَاءَ بِهِ، وَتَحَكُّمٌ بِالدَّعْوَى وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L4890 Intentionality is contrary to forgetfulness, and disobedience is contrary to obedience. Rather, analogizing this to what we mentioned regarding Hajj—if analogy were valid, especially since Hanafi and Maliki jurists do not analogize the one who intentionally lies when swearing an oath to the one who inadvertently breaks an oath without intending to lie concerning the obligation of expiation. Instead, they nullify the expiation for the intentional liar and impose it upon the unintentional oath-breaker. They do not analogize the intentional killer to the accidental killer regarding the obligation of expiation, but rather exempt the intentional killer from it. Nor do they deem prayer repetition obligatory for the apostate. This constitutes a clear contradiction without obscurity and an arbitrary assertion of claims. Success is from Allah, the Exalted.

وَلَوْ كَانَ الْقَضَاءُ وَاجِبًا عَلَى الْعَامِدِ، لِتَرْكِ الصَّلَاةِ حَتَّى يَخْرُجَ وَقْتُهَا لَمَا أَغْفَلَ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ، وَلَا نَسِيَاهُ، وَلَا تَعَمَّدَا إعْنَاتَنَا بِتَرْكِ بَيَانِهِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَكُلُّ شَرِيعَةٍ لَمْ يَأْتِ بِهَا الْقُرْآنُ، وَلَا السُّنَّةُ فَهِيَ بَاطِلٌ.

L4891 If making up the prayer were obligatory for one who intentionally abandons it until its time expires, neither would Allah the Exalted have neglected that nor would His Messenger—may Allah's peace and blessings be upon him—have forgotten it, nor would they have deliberately made it difficult for us by failing to clarify it. *{And your Lord is never forgetful}* [Maryam 19:64]. Any Shariah not rooted in the Quran or the Sunnah is invalid.[14]

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ فَاتَتْهُ صَلَاةُ الْعَصْرِ فَكَأَنَّمَا وُتِرَ أَهْلَهُ وَمَالَهُ» فَصَحَّ أَنَّ مَا فَاتَ فَلَا سَبِيلَ إلَى إدْرَاكِهِ، وَلَوْ أُدْرِكَ أَوْ أَمْكَنَ أَنْ يُدْرِكَ؛ لَمَا فَاتَ، كَمَا لَا تَفُوتُ الْمَنْسِيَّةُ أَبَدًا، وَهَذَا لَا إشْكَالَ فِيهِ، وَالْأُمَّةُ أَيْضًا كُلُّهَا مُجْمِعَةٌ

L4892 It has been authentically reported from the Messenger of Allah—peace and blessings be upon him—"Whoever misses the Asr prayer, it is as if he has been deprived of his family and wealth." Thus, it is established that what is missed cannot be recovered. For if it were recovered or recoverable, it would not be considered missed, just as a forgotten prayer is not irrevocably

[14] **Qur'an references (L4891):** Qur'an 19:64 (Maryam).

missed. There is no ambiguity in this matter. Moreover, the entire ummah unanimously agrees in both statement and ruling that a prayer is considered missed once its time has passed. Thus, its being missed is established by certain consensus. If it were possible to make up for it or perform it, then the claim that it is missed would be false and null.[15]

L4893 Thus, it was established with certainty that judicial resolution in this matter can never be possible.

L4894–4895 Among those who held our opinion on this matter are Umar ibn al-Khattab and his son Abdullah; Sa'd ibn Abi Waqqas; Sulayman; Ibn Mas'ud; al-Qasim ibn Muhammad ibn Abi Bakr; Badeel al-Uqayli; Muhammad ibn Sirin; Mutarrif ibn Abdullah; Umar ibn Abd al-Aziz; and others.

L4896 It was narrated to us through Shuʿbah from Yaʿlā ibn ʿAṭāʾ from ʿAbdullāh ibn Ḥirāsh, who said: Ibn ʿUmar saw a man reading a written sheet, so he said to him: "O this reader: There is no valid prayer for one who fails to pray at its appointed time. Pray first, then read whatever you wish."

L4897 It has been narrated to us through the chain of Ibrāhīm ibn al-Mundhir al-Ḥizāmī on the authority of his uncle al-Ḍaḥḥāk ibn ʿUthmān that ʿUmar ibn al-Khaṭṭāb said in his sermon at al-Jābiyah: "Listen! Indeed, prayer has a time stipulated by Allah, and it is not valid except within it."

L4898 From the narration of Muḥammad ibn al-Muthannā, from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Abū Naḍrah, from Sālim ibn al-Jaʿd, who said: Sulaymān, the Companion of the Messenger of Allah (peace be upon him), said: "Salah is a measure; whoever fulfills it fully will be granted full recompense, and whoever diminishes it, you have surely known what was said about the defrauders."

L4899 Ali said: "Whoever delays prayer beyond its time has cheated. Narrated via the chain of Waki' from Sufyan al-Thawri, from Asim ibn Abi al-Najud,

[15]**Hadith references (L4892):** Sunan an-Nasai 478.

عَلَى الْقَوْلِ وَالْحُكْمِ بِأَنَّ الصَّلَاةَ قَدْ فَاتَتْ إِذَا خَرَجَ وَقْتُهَا، فَصَحَّ فَوْتُهَا بِإِجْمَاعٍ مُتَيَقَّنٍ، وَلَوْ أَمْكَنَ قَضَاؤُهَا وَتَأْدِيَتُهَا لَكَانَ الْقَوْلُ بِأَنَّهَا فَاتَتْ كَذِبًا وَبَاطِلًا.

فَثَبَتَ يَقِينًا أَنَّهُ لَا يُمْكِنُ الْقَضَاءُ فِيهَا أَبَدًا.

وَمِمَّنْ قَالَ بِقَوْلِنَا فِي هَذَا عُمَرُ بْنُ الْخَطَّابِ وَابْنُهُ عَبْدُ اللَّهِ، وَسَعْدُ بْنُ أَبِي وَقَّاصٍ وَسُلَيْمَانُ وَابْنُ مَسْعُودٍ وَالْقَاسِمُ بْنُ مُحَمَّدِ بْنِ أَبِي بَكْرٍ، وَبَدِيلٌ الْعُقَيْلِيِّ، وَمُحَمَّدِ بْنِ سِيرِينَ وَمُطَرِّفُ بْنُ عَبْدِ اللَّهِ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ وَغَيْرُهُمْ.

فَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ يَعْلَى بْنِ عَطَاءٍ عَنْ عَبْدِ اللَّهِ بْنِ حِرَاشٍ قَالَ: رَأَى ابْنُ عُمَرَ رَجُلًا يَقْرَأُ صَحِيفَةً، فَقَالَ لَهُ: يَا هَذَا الْقَارِئُ، إِنَّهُ لَا صَلَاةَ، لِمَنْ لَمْ يُصَلِّ الصَّلَاةَ لِوَقْتِهَا، فَصَلِّ ثُمَّ اقْرَأْ مَا بَدَا لَك.

وَرُوِّينَا مِنْ طَرِيقِ إِبْرَاهِيمَ بْنِ الْمُنْذِرِ الْحِزَامِيِّ عَنْ عَمِّهِ الضَّحَّاكِ بْنِ عُثْمَانَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي خُطْبَتِهِ بِالْجَابِيَةِ: أَلَا، وَإِنَّ الصَّلَاةَ لَهَا وَقْتٌ شَرَطَهُ اللَّهُ لَا تَصْلُحُ إِلَّا بِهِ.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي نَضْرَةَ عَنْ سَالِمِ بْنِ الْجَعْدِ قَالَ: قَالَ سُلَيْمَانُ - هُوَ صَاحِبُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: الصَّلَاةُ مِكْيَالٌ، فَمَنْ وَفَّى وُفِّيَ لَهُ، وَمَنْ طَفَّفَ فَقَدْ عَلِمْتُمْ مَا قِيلَ فِي الْمُطَفِّفِينَ.

قَالَ عَلِيٌّ: مَنْ أَخَّرَ الصَّلَاةَ عَنْ وَقْتِهَا فَقَدْ طَفَّفَ، وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَاصِمِ بْنِ أَبِي النَّجُودِ عَنْ مُصْعَبِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ أَنَّهُ قَالَ فِي

from Mus'ab ibn Sa'd ibn Abi Waqqas, from his father, that he said regarding Allah's statement: *"Those who are heedless of their prayers"* (Quran 107:5): 'Heedlessness here means abandoning the appointed time.'"[16]

قَوْلِ اللَّهِ تَعَالَى: {الَّذِينَ هُمْ عَنْ صَلاتِهِمْ سَاهُونَ} [الماعون: ٥] قَالَ: السَّهْوُ التَّرْكُ عَنْ الْوَقْتِ.

L4900 Ali said: If it had been valid according to him after its prescribed time, he would not have faced punishment for something he had already fulfilled.

قَالَ عَلِيٌّ: لَوْ أَجْزَأَتْ عِنْدَهُ بَعْدَ الْوَقْتِ لَمَا كَانَ لَهُ الْوَيْلُ عَنْ شَيْءٍ قَدْ أَدَّاهُ.

L4901 Through him to Waki' from al-Mas'ūdī from al-Qāsim—that is, Ibn 'Abd al-Raḥmān—and al-Ḥasan—that is, Ibn Sa'd—it was said to 'Abdullāh ibn Mas'ūd regarding "Those who are steadfast in their prayer" [al-Ma'ārij: 23] and "And those who maintain their prayer" [al-Ma'ārij: 34]. He said: "That refers to observing its appointed times." They said: "We did not interpret that except as referring to abandoning it." He said: "Abandoning it is disbelief."[17]

وَبِهِ إِلَى وَكِيعٍ عَنْ الْمَسْعُودِيِّ عَنْ الْقَاسِمِ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ - وَالْحَسَنُ هُوَ ابْنُ سَعْدٍ - قِيلَ لِعَبْدِ اللَّهِ بْنِ مَسْعُودٍ {الَّذِينَ هُمْ عَلَى صَلاتِهِمْ دَائِمُونَ} [المعارج: ٢٣] {وَالَّذِينَ هُمْ عَلَى صَلاتِهِمْ يُحَافِظُونَ} [المعارج: ٣٤] فَقَالَ: ذَلِكَ عَلَى مَوَاقِيتِهَا. قَالُوا: مَا كُنَّا نَرَى ذَلِكَ إِلَّا عَلَى تَرْكِهَا، قَالَ تَرْكُهَا هُوَ الْكُفْرُ.

L4902 From Muhammad ibn al-Muthanna: 'Abd al-A'la narrated to us, Sa'id ibn Abi 'Arubah narrated to us from Qatadah, who said: It was mentioned to us that 'Abdullah ibn Mas'ud used to say, "Indeed, prayer has a time like the time of Hajj; so perform the prayer at its appointed time."

وَعَنْ مُحَمَّدِ بْنِ الْمُثَنَّى: حَدَّثَنَا عَبْدُ الْأَعْلَى حَدَّثَنَا سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ قَالَ: ذُكِرَ لَنَا أَنَّ عَبْدَ اللَّهِ بْنَ مَسْعُودٍ كَانَ يَقُولُ: إِنَّ لِلصَّلاةِ وَقْتًا كَوَقْتِ الْحَجِّ، فَصَلُّوا الصَّلاةَ؛ لِمِيقَاتِهَا.

L4903–4905 From Muhammad ibn al-Muthanna: Abd al-Rahman ibn Mahdi narrated to us; Hammad ibn Zayd narrated to us from... Yahya ibn Atiq said: I heard Muhammad ibn Sirin say: Indeed, each prayer has its own appointed time. The one who prays before its time is like the one who prays after it.

وَعَنْ مُحَمَّدِ بْنِ الْمُثَنَّى حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ ثنا حَمَّادُ بْنُ زَيْدٍ عَنْ يَحْيَى بْنُ عَتِيقٍ قَالَ: سَمِعْت مُحَمَّدَ بْنَ سِيرِينَ يَقُولُ: إِنَّ لِلصَّلاةِ وَقْتًا وَاحِدًا، فَإِنَّ الَّذِي يُصَلِّي قَبْلَ الْوَقْتِ مِثْلُ الَّذِي يُصَلِّي بَعْدَ الْوَقْتِ.

L4906 Through the chain of Sahnun, from Ibn al-Qasim, who reported that Malik said: When the Umayyads used to delay prayers, al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq would pray in his home, then come to the mosque to pray with them. When he was addressed about this, he said: "Praying twice is more beloved to me than not praying at all."

وَمِنْ طَرِيقِ سَحْنُونَ عَنْ ابْنِ الْقَاسِمِ أَخْبَرَنِي مَالِكٌ أَنَّ الْقَاسِمَ بْنَ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقَ حِينَ كَانَتْ بَنُو أُمَيَّةَ يُؤَخِّرُونَ الصَّلاةَ، أَنَّهُ كَانَ يُصَلِّي فِي بَيْتِهِ، ثُمَّ يَأْتِي الْمَسْجِدَ يُصَلِّي مَعَهُمْ، فَكُلِّمَ فِي ذَلِكَ، فَقَالَ أُصَلِّي مَرَّتَيْنِ أَحَبُّ إِلَيَّ مِنْ أَنْ لَا أُصَلِّيَ شَيْئًا.

L4907 Ali said: This clarifies that the first prayer was his obligation and the other

قَالَ عَلِيٌّ: فَهَذَا يُوَضِّحُ أَنَّ الصَّلاةَ الْأُولَى كَانَتْ فَرْضَهُ وَالْأُخْرَى تَطَوُّعٌ، فَهُمَا صَلَاتَانِ صَحِيحَتَانِ، وَإِنَّ الصَّلاةَ بَعْدَ الْوَقْتِ لَيْسَتْ صَلَاةً أَصْلًا، وَلَا هِيَ شَيْءٌ.

[16] **Qur'an references (L4899):** Qur'an 107:5 (Al-Ma'un).
[17] **Qur'an references (L4901):** Qur'an 70:23 (Al-Ma'arij); Qur'an 70:34 (Al-Ma'arij).

was supererogatory, thus they are two valid prayers. Indeed, a prayer performed after its time is not a prayer at all, nor is it anything.

L4908 On the authority of Asad ibn Musa ibn Marwan ibn Mu'awiyah al-Fazari: that Umar ibn Abd al-Aziz said: "I heard Allah, the Exalted, mention a people and censure them, saying: 'They squandered the prayer and pursued their desires, so they will meet perdition' [Mary: 59]. Their neglect did not entail abandoning it entirely, for had they abandoned it, they would have fallen into disbelief by doing so. Rather, they delayed it beyond its appointed time."[18]

وَعَنْ أَسَدِ بْنِ مُوسَى بْنِ مَرْوَانَ بْنِ مُعَاوِيَةَ الْفَزَارِيِّ: أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ قَالَ: سَمِعْت اللَّهَ تَعَالَى ذَكَرَ أَقْوَامًا فَعَابَهُمْ فَقَالَ: {أَضَاعُوا الصَّلاةَ وَاتَّبَعُوا الشَّهَوَاتِ فَسَوْفَ يَلْقَوْنَ غَيًّا} [مريم: ٥٩] وَلَمْ تَكُنْ إضَاعَتُهُمْ إيَّاهَا، أَنْ تَرَكُوهَا؛ وَلَوْ تَرَكُوهَا لَكَانُوا بِتَرْكِهَا كُفَّارًا، وَلَكِنْ أَخَّرُوهَا عَنْ وَقْتِهَا.

L4909 From Abd al-Razzaq from Ma'mar from Budayl al-Uqayli, who said: It has reached me that when a worshipper performs the prayer during its prescribed time, it ascends with a radiant light in the sky and says: "You have preserved me - may Allah preserve you." But if he performs it outside its prescribed time, it is folded like a tattered garment, and his face is struck with it.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ بُدَيْلٍ الْعُقَيْلِيِّ قَالَ: بَلَغَنِي أَنَّ الْعَبْدَ إذَا صَلَّى الصَّلَاةَ؛ لِوَقْتِهَا صَعِدَتْ وَلَهَا نُورٌ سَاطِعٌ فِي السَّمَاءِ، وَقَالَتْ: حَفِظْتَنِي حَفِظَك اللَّهُ، وَإِذَا صَلَّاهَا لِغَيْرِ وَقْتِهَا طُوِيَتْ كَمَا يُطْوَى الثَّوْبُ الْخَلَقُ فَضُرِبَ بِهَا وَجْهُهُ.

L4910 Among the astonishing things is that some of them said: The meaning of Ibn Umar's statement "There is no prayer for one who does not perform the prayer within its prescribed time" is that there is no complete prayer. Similarly, others interpreted his statement—peace be upon him—"There is no prayer for one who does not straighten his back during bowing and prostration," and his statement—peace be upon him—"There is no prayer for one who does not recite the Opening of the Quran" in the same manner.

وَمِنْ الْعَجَبِ أَنَّ بَعْضَهُمْ قَالَ: مَعْنَى قَوْلِ ابْنِ عُمَرَ: لَا صَلَاةَ لِمَنْ لَمْ يُصَلِّ الصَّلَاةَ لِوَقْتِهَا أَيْ لَا صَلَاةَ كَامِلَةً؛ وَكَذَلِكَ قَالَ آخَرُونَ فِي قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «لَا صَلَاةَ لِمَنْ لَا يُقِيمُ صُلْبَهُ فِي الرُّكُوعِ وَالسُّجُودِ» وَفِي قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «لَا صَلَاةَ لِمَنْ لَمْ يَقْرَأْ بِأُمِّ الْقُرْآنِ» .

L4911 Ali said: It will be said to these people: "What compelled you to assert your claim?" If they respond: "This conforms to the established usage of Arabic speech," we reply: "It is not so. Rather, the established usage of Arabic speech—which allows no other—is that *lā* signifies negation and complete absolution unless evidence from another textual source or a sensory necessity contradicts this. Even if we hypothetically concede it is as you claim, this would still constitute evidence for our position, which is our assertion. For every prayer that is neither perfected nor completed is entirely invalid, without disagreement from us or you."

قَالَ عَلِيٌّ: فَيُقَالُ، لِهَؤُلَاءِ: مَا حَمَلَكُمْ عَلَى مَا ادَّعَيْتُمْ؟ فَإِنْ قَالُوا: هُوَ مَعْهُودُ كَلَامِ الْعَرَبِ؛ قُلْنَا: مَا هُوَ كَذَلِكَ؛ بَلْ مَعْهُودُ كَلَامِ الْعَرَبِ الَّذِي لَا يَجُوزُ غَيْرُهُ - أَنَّ " لَا " لِلنَّفْيِ وَالتَّبْرِئَةِ جُمْلَةً إلَّا أَنْ يَأْتِيَ دَلِيلٌ مِنْ نَصٍّ آخَرَ أَوْ ضَرُورَةُ حِسٍّ عَلَى خِلَافِ ذَلِكَ، ثُمَّ هَبْكُمْ أَنَّهُ كَمَا قُلْتُمْ؛ فَإِنَّ ذَلِكَ حُجَّةٌ لَنَا، وَهُوَ قَوْلُنَا؛ لِأَنَّ كُلَّ صَلَاةٍ لَمْ تَكْمُلْ وَلَمْ تَتِمَّ فَهِيَ بَاطِلٌ كُلُّهَا، بِلَا خِلَافٍ مِنَّا وَمِنْكُمْ.

[18]**Qur'an references (L4908):** Qur'an 19:59 (Maryam).

فَإِنْ قَالُوا: إِنَّمَا هَذَا فِيمَا نَقَصَ مِنْ فَرَائِضِهَا، قُلْنَا: نَعَمْ، وَالْوَقْتُ مِنْ فَرَائِضِ الصَّلَاةِ بِإِجْمَاعٍ مِنَّا وَمِنْكُمْ وَمِنْ كُلِّ مُسْلِمٍ فَهِيَ صَلَاةٌ تَعَمَّدَ تَرْكَ فَرِيضَةٍ مِنْ فَرَائِضِهَا.

L4912 If they were to say, "This only applies to what is deficient in fulfilling its obligations," we would respond: "Yes—and the time itself is among the obligatory components of prayer by consensus among us, among you, and among all Muslims. Thus, it is a prayer where one deliberately neglected one of its obligatory components."

قَالَ عَلِيٌّ: مَا نَعْلَمُ، لِمَنْ ذَكَرْنَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفًا مِنْهُمْ، وَهُمْ يُشَنِّعُونَ بِخِلَافِ الصَّاحِبِ إِذَا وَافَقَ أَهْوَاءَهُمْ، وَقَدْ جَاءَ عَنْ عُمَرَ وَعَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ وَمُعَاذِ بْنِ جَبَلٍ وَأَبِي هُرَيْرَةَ وَغَيْرِهِمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّ مَنْ تَرَكَ صَلَاةَ فَرْضٍ وَاحِدَةٍ مُتَعَمِّدًا حَتَّى يَخْرُجَ وَقْتُهَا فَهُوَ كَافِرٌ مُرْتَدٌّ.

L4913–4914 Ali said: We do not know of any dissenting opinion from the Companions we mentioned—may Allah be pleased with them. Yet they denounce a Companion's disagreement when it aligns with their desires. It has been reported from ʿUmar, ʿAbd al-Raḥmān ibn ʿAwf, Muʿādh ibn Jabal, Abū Hurayrah, and others among the Companions—may Allah be pleased with them—that whoever deliberately abandons a single obligatory prayer until its time expires is an apostate disbeliever.

وَهَؤُلَاءِ الْحَنَفِيُّونَ وَالْمَالِكِيُّونَ لَا يَرَوْنَ عَلَى الْمُرْتَدِّ قَضَاءَ مَا خَرَجَ وَقْتُهُ.

L4915 Now, these Ḥanafīs and Mālikīs do not consider the apostate obligated to make up acts of worship whose prescribed time has expired.

فَهَؤُلَاءِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَيْضًا لَا يَرَوْنَ عَلَى مَنْ تَعَمَّدَ تَرْكَ الصَّلَاةِ حَتَّى خَرَجَ وَقْتُهَا قَضَاءً.

L4916 These Companions—may Allah be pleased with them—also hold that one who deliberately neglects the prayer until its time has passed does not have to make it up.

قَالَ عَلِيٌّ: وَمَا جَعَلَ اللَّهُ تَعَالَى عُذْرًا لِمَنْ خُوطِبَ بِالصَّلَاةِ فِي تَأْخِيرِهَا عَنْ وَقْتِهَا بِوَجْهٍ مِنْ الْوُجُوهِ، لَا فِي حَالِ الْمُطَاعَنَةِ وَالْقِتَالِ وَالْخَوْفِ وَشِدَّةِ الْمَرَضِ وَالسَّفَرِ.

L4917 Ali said: Allah, the Exalted, has not granted any valid excuse to those obligated to pray for delaying it beyond its appointed time—not in states of hostility, combat, fear, severe illness, or travel.

وَقَالَ اللَّهُ تَعَالَى: {وَإِذَا كُنْتَ فِيهِمْ فَأَقَمْتَ لَهُمُ الصَّلَاةَ فَلْتَقُمْ طَائِفَةٌ مِنْهُمْ مَعَكَ} [النساء: ١٠٢] ، وَقَالَ تَعَالَى: {فَإِنْ خِفْتُمْ فَرِجَالا أَوْ رُكْبَانًا} [البقرة: ٢٣٩] وَلَمْ يُفْسِحْ اللَّهُ تَعَالَى، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي تَرْكِهَا عَنْ وَقْتِهَا حَتَّى صَلَّاهَا بِطَائِفَتَيْنِ وُجُوهُ إِحْدَى الطَّائِفَتَيْنِ إِلَى غَيْرِ الْقِبْلَةِ، عَلَى مَا نَذْكُرُ فِي صَلَاةِ الْخَوْفِ إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ.

L4918 Allah the Exalted said: {When you are among them and establish the prayer for them, let a group of them stand with you} [An-Nisa' 4:102], and He the Exalted said: {But if you fear, then on foot or mounted} [Al-Baqarah 2:239]. Neither Allah the Exalted nor His Messenger—may Allah's peace and blessings be upon him—permitted delaying it beyond its prescribed time, even to the extent of praying it with two groups, the faces of one of the two groups facing away from the Qiblah, as we will mention regarding the prayer in fear, if Allah the Almighty and Majestic wills.[19]

L4919 The Almighty did not permit postponing prayer beyond its prescribed time

[19] **Qur'an references (L4918):** Qur'an 4:102 (An-Nisa); Qur'an 2:239 (Al-Baqarah).

for the severely ill person. Rather, He commanded that if one is unable to pray standing, he should pray sitting; if unable to sit, then on his side. He is to perform tayammum if unable to use water, and pray without tayammum if unable to use dust. From where did those who permit intentionally abandoning prayer until its time expires derive their justification? Then He commanded him to pray it after the time has passed and informed him that it suffices him thus—without the Qur'an, nor the Sunnah, neither a sound nor a weak one, nor any statement of a Companion, nor any analogy.

وَلَمْ يَفْسَحْ تَعَالَى فِي تَأْخِيرِهَا عَنْ وَقْتِهَا لِلْمَرِيضِ الْمُدْنَفِ، بَلْ أُمِرَ إنْ عَجَزَ عَنْ الصَّلَاةِ قَائِمًا أَنَّهُ يُصَلِّي قَاعِدًا فَإِنْ عَجَزَ عَنْ الْقُعُودِ فَعَلَى جَنْبٍ؛ وَبِالتَّيَمُّمِ إنْ عَجَزَ عَنْ الْمَاءِ، وَبِغَيْرِ تَيَمُّمٍ إنْ عَجَزَ عَنْ التُّرَابِ فَمِنْ أَيْنَ أَجَازَ مَنْ أَجَازَ تَعَمُّدَ تَرْكِهَا حَتَّى يَخْرُجَ وَقْتُهَا؟ ثُمَّ أَمَرَهُ بِأَنْ يُصَلِّيَهَا بَعْدَ الْوَقْتِ، وَأَخْبَرَهُ بِأَنَّهَا تُجْزِئُهُ كَذَلِكَ؛ مِنْ غَيْرِ قُرْآنٍ، وَلَا سُنَّةٍ، لَا صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا قَوْلِ لِصَاحِبٍ، وَلَا قِيَاسٍ.

L4920 And some of them proceeded to mention, "The Messenger of Allah (peace be upon him) prayed the noon and afternoon prayers after sunset on the day of the Battle of the Trench." Then he indicated that the Prophet (peace be upon him) had intentionally omitted them while remaining mindful of them.

وَقَدْ أَقْدَمَ بَعْضُهُمْ فَذَكَرَ «صَلَاةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ الْخَنْدَقِ الظُّهْرَ وَالْعَصْرَ بَعْدَ غُرُوبِ الشَّمْسِ» ، ثُمَّ أَشَارَ إلَى أَنَّهُ - عَلَيْهِ السَّلَامُ - تَرَكَهَا مُتَعَمِّدًا ذَاكِرًا لَهَا.

L4921 Ali said: This is pure disbelief from anyone who permits such [abandonment of prayer] on behalf of the Messenger of Allah—peace and blessings be upon him—for they acknowledge with us—without dissent from any of them or any member of the Ummah—that whoever intentionally neglects an obligatory prayer while mindful of it until its time expires is an evildoer, discredited in testimony, and deserving of beating and disciplinary punishment. Whoever imposes any form of disciplinary punishment upon the Messenger of Allah—peace and blessings be upon him—or attributes evildoing to him, or definitively discredits his testimony, is a disbelieving polytheist apostate like the Jews and Christians—their blood and wealth are lawful—with no disagreement from any Muslim.

قَالَ عَلِيٌّ: وَهَذَا كُفْرٌ مُجَرَّدٌ مِمَّنْ أَجَازَ ذَلِكَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؛ لِأَنَّهُمْ مُقِرُّونَ مَعَنَا بِلَا خِلَافٍ مِنْ أَحَدِهِمْ، وَلَا مِنْ أَحَدٍ مِنْ الْأُمَّةِ - فِي أَنَّ مَنْ تَعَمَّدَ تَرْكَ صَلَاةِ فَرْضٍ ذَاكِرًا لَهَا حَتَّى يَخْرُجَ وَقْتُهَا، فَإِنَّهُ فَاسِقٌ مُجَرَّحُ الشَّهَادَةِ، مُسْتَحِقٌّ؛ لِلضَّرْبِ وَالنَّكَالِ، وَمَنْ أَوْجَبَ شَيْئًا مِنْ النَّكَالِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ وَصَفَهُ وَقَطَعَ عَلَيْهِ بِالْفِسْقِ أَوْ بِجَرْحِهِ فِي شَهَادَتِهِ، فَهُوَ كَافِرٌ مُشْرِكٌ مُرْتَدٌّ كَالْيَهُودِ وَالنَّصَارَى؛ حَلَالُ الدَّمِ وَالْمَالِ؛ بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ الْمُسْلِمِينَ.

L4922–4924 Some of them mentioned the words of Allah, the Exalted: "And establish prayer to remember Me" [Ta-Ha: 14], and the saying of the Prophet (peace be upon him): "Allah the Exalted has ordained five prayers. It is said: 'The obligation of prayer has been confirmed, thus its abrogation is impermissible except with evidence from a textual source (naṣṣ) or consensus (ijmāʿ).'"[20]

وَذَكَرَ بَعْضُهُمْ قَوْلَ اللَّهِ تَعَالَى: {وَأَقِمِ الصَّلاةَ لِذِكْرِي} [طه: ١٤] وَقَوْلَهُ - عَلَيْهِ السَّلَامُ -: «خَمْسُ صَلَوَاتٍ كَتَبَهُنَّ اللَّهُ تَعَالَى» وَقَالَ قَدْ صَحَّ وُجُوبُ الصَّلَاةِ، فَلَا يَجُوزُ سُقُوطُهَا إلَّا بِبُرْهَانِ نَصٍّ أَوْ إجْمَاعٍ.

L4925 Ali said, and this is a sound statement, for the proof has been established

[20] **Qur'an references (L4922):** Qur'an 20:14 (Taha).

that "the Messenger of Allah—peace and blessings be upon him—obligated every prayer within a defined time having a beginning and an end," and he—peace be upon him—did not obligate it either before that time or after it. Thus, whoever adheres to the generality of this verse and this report would be compelled to establish the prayer before its time and after it, and this contradicts the Prophet's—peace and blessings be upon him—specifying the prayer's timing according to its appointed time.

L4926 Some of them embellished [their stance] with a hadith we narrated through Anas's chain: "The fighting intensified on the morning of the conquest of Tustar, so they did not pray until after sunrise." This report is invalid, for it was only narrated by Makhul, who reported that Anas ibn Mālik said this—yet Makhul never met Anas. Even if it were authentic, it does not indicate they deliberately omitted the prayer while aware of its time's expiration; rather, they undoubtedly forgot it. It is impermissible to presume anything other than this regarding a virtuous person among the ranks of Muslims—how much more so for a Companion from among them, may Allah be pleased with them. Had they remembered it, they would have performed the prayer of fear as commanded, or prayed as foot soldiers or mounted troops as Allah Almighty obligated them. No other ruling is permissible. Thus, the falsehood of whoever assumes otherwise becomes evident, and success is solely from Allah.

L4927 **Issue: If someone deliberately abandons prayer until its time has elapsed, they should seek forgiveness from Allah the Exalted and increase in voluntary prayers.**

L4928 Issue 280: As for our statement that one who intentionally neglects prayer until its time has expired is to repent, seek forgiveness from Allah the Exalted, and increase in voluntary prayers, this is based on Allah's words: "Then there succeeded them a generation who neglected prayer and followed lusts; so they will meet loss" [Maryam 19:59], "Except those who repent, believe, and do righteous deeds. For those will enter Paradise" [Maryam 19:60], and His words: "And those who, when they commit an immorality or wrong themselves, remember Allah and seek forgiveness for their sins" [Āl ʿImrān

قَالَ عَلِيٌّ، وَهَذَا قَوْلٌ صَحِيحٌ، وَقَدْ صَحَّ الْبُرْهَانُ بِأَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْجَبَ كُلَّ صَلَاةٍ فِي وَقْتٍ مَحْدُودٍ أَوَّلُهُ وَآخِرُهُ» ، وَلَمْ يُوجِبْهَا - عَلَيْهِ السَّلَامُ - لَا قَبْلَ ذَلِكَ الْوَقْتِ، وَلَا بَعْدَهُ، فَمَنْ أَخَذَ بِعُمُومِ هَذِهِ الْآيَةِ وَهَذَا الْخَبَرِ لَزِمَهُ إقَامَةُ الصَّلَاةِ قَبْلَ الْوَقْتِ وَبَعْدَهُ، وَهَذَا خِلَافٌ لِتَوْقِيتِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الصَّلَاةَ بِوَقْتِهَا.

وَمَوَّهَ بَعْضُهُمْ بِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ أَنَسٍ؛ إنَّهُمْ اشْتَدَّتْ الْحَرْبُ غَدَاةَ فَتْحِ تُسْتَرَ فَلَمْ يُصَلُّوا إلَّا بَعْدَ طُلُوعِ الشَّمْسِ، وَهَذَا خَبَرٌ لَا يَصِحُّ، لِأَنَّهُ إنَّمَا رَوَاهُ مَكْحُولٌ: أَنَّ أَنَسَ بْنَ مَالِكٍ قَالَ: وَمَكْحُولٌ لَمْ يُدْرِكْ أَنَسًا، ثُمَّ لَوْ صَحَّ فَإِنَّهُ لَيْسَ فِيهِ أَنَّهُمْ تَرَكُوهَا عَارِفِينَ بِخُرُوجِ وَقْتِهَا، بَلْ كَانُوا نَاسِينَ لَهَا بِلَا شَكٍّ، لَا يَجُوزُ أَنْ يُظَنَّ بِفَاضِلٍ مِنْ عَرْضِ الْمُسْلِمِينَ غَيْرُ هَذَا، فَكَيْفَ بِصَاحِبٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَوْ كَانُوا ذَاكِرِينَ لَهَا لَصَلَّوْهَا صَلَاةَ الْخَوْفِ كَمَا أُمِرُوا، أَوْ رِجَالًا وَرُكْبَانًا كَمَا أَلْزَمَهُمْ اللَّهُ تَعَالَى، لَا يَجُوزُ غَيْرُ هَذَا، فَلَاحَ يَقِينًا كَذِبُ مَنْ ظَنَّ غَيْرَ هَذَا، وَبِاَللَّهِ التَّوْفِيقُ.

[مَسْأَلَةٌ تَعَمَّدَ تَرْكَ الصَّلَاةِ حَتَّى خَرَجَ وَقْتُهَا وَيَسْتَغْفِرَ اللَّهَ تَعَالَى وَيُكْثِرَ مِنْ التَّطَوُّعِ]

٢٨٠ - مَسْأَلَةٌ: وَأَمَّا قَوْلُنَا: أَنْ يَتُوبَ مَنْ تَعَمَّدَ تَرْكَ الصَّلَاةِ حَتَّى خَرَجَ وَقْتُهَا وَيَسْتَغْفِرَ اللَّهَ تَعَالَى وَيُكْثِرَ مِنْ التَّطَوُّعِ، فَلِقَوْلِ اللَّهِ تَعَالَى: {فَخَلَفَ مِنْ بَعْدِهِمْ خَلْفٌ أَضَاعُوا الصَّلَاةَ وَاتَّبَعُوا الشَّهَوَاتِ فَسَوْفَ يَلْقَوْنَ غَيًّا} [مريم: ٥٩] {إلا مَنْ تَابَ وَآمَنَ وَعَمِلَ صَالِحًا فَأُولَئِكَ يَدْخُلُونَ الْجَنَّةَ} [مريم: ٦٠] وَلِقَوْلِ اللَّهِ تَعَالَى: {وَالَّذِينَ إِذَا فَعَلُوا فَاحِشَةً

3:135]. He also said: “So whoever does an atom’s weight of good will see it” [Al-Zalzalah 99:7], “And whoever does an atom’s weight of evil will see it” [Al-Zalzalah 99:8], and “We will set up the scales of justice on the Day of Resurrection, so no soul will be wronged at all” [Al-Anbiyāʾ 21:47]. The Ummah has unanimously agreed—as all textual evidences indicate—that voluntary prayers carry a portion of good, the extent of which is known only to Allah, and obligatory prayers likewise carry a portion of good, the extent of which is known only to Allah. Necessarily, when voluntary prayers are abundant, their combined portions must match and surpass that of the obligatory prayer. Allah the Exalted has informed us that He does not waste the reward of any doer of deeds, that “good deeds remove evil deeds” [Hūd 11:114], that “he whose scales are heavy” [Al-Qāriʿah 101:6] “will be in a pleasant life” [Al-Qāriʿah 101:7], and that “he whose scales are light” [Al-Qāriʿah 101:8] “his mother is Hāwiyah (the Abyss)” [Al-Qāriʿah 101:9].[21]

أَوْ ظَلَمُوا أَنْفُسَهُمْ ذَكَرُوا اللَّهَ فَاسْتَغْفَرُوا لِذُنُوبِهِمْ} [آل عمران: ١٣٥] وَقَالَ تَعَالَى: {فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ} [الزلزلة: ٧] {وَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ} [الزلزلة: ٨] وَقَالَ تَعَالَى: {وَنَضَعُ الْمَوَازِينَ الْقِسْطَ لِيَوْمِ الْقِيَامَةِ فَلا تُظْلَمُ نَفْسٌ شَيْئًا} [الأنبياء: ٤٧] وَأَجْمَعَتْ الْأُمَّةُ - وَبِهِ وَرَدَتْ النُّصُوصُ كُلُّهَا - عَلَى أَنَّ لِلتَّطَوُّعِ جُزْءًا مِنْ الْخَيْرِ اللَّهُ أَعْلَمُ بِقَدْرِهِ، وَلِلْفَرِيضَةِ أَيْضًا جُزْءٌ مِنْ الْخَيْرِ اللَّهُ أَعْلَمُ بِقَدْرِهِ، فَلَا بُدَّ ضَرُورَةً مِنْ أَنْ يَجْتَمِعَ مِنْ جُزْءِ التَّطَوُّعِ إذَا كَثُرَ مَا يُوَازِي جُزْءَ الْفَرِيضَةِ، وَيَزِيدُ عَلَيْهِ؛ وَقَدْ أَخْبَرَ اللَّهُ تَعَالَى أَنَّهُ لَا يُضِيعُ عَمَلَ عَامِلٍ، وَأَنَّ {الْحَسَنَاتِ يُذْهِبْنَ السَّيِّئَاتِ} [هود: ١١٤] ، وَأَنَّ {مَنْ ثَقُلَتْ مَوَازِينُهُ} [القارعة: ٦] {فَهُوَ فِي عِيشَةٍ رَاضِيَةٍ} [القارعة: ٧] ، وَ {مَنْ خَفَّتْ مَوَازِينُهُ} [القارعة: ٨] {فَأُمُّهُ هَاوِيَةٌ} [القارعة: ٩] .

L4929–4930 Abdullah ibn Rabīʿ narrated to us: Umar ibn Abdul Malik narrated: Abu Dawood narrated: Yaqub ibn Ibrahim narrated: Ismaʿīl—that is, Ibn Ulayyah—narrated: Yunus narrated from Al-Hasan, from Anas ibn Hakim al-Dabbī, that he met Abu Hurairah, who said to him: “The first of their deeds for which people will be held accountable on the Day of Resurrection is the prayer. Our Lord—Blessed and Exalted is He, and He knows best—will say to the angels: ’Look into My servant’s prayer: did he complete it or fall short?’ If it is complete, it will be recorded as such. But if he lacked anything, He will say: ’Check if My servant has any voluntary prayers.’ If he has voluntary prayers, He will say: ’Complete My servant’s obligatory prayer using his voluntary prayers.’ Then all deeds will be reckoned in this manner.”

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ حَدَّثَنَا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا أَبُو دَاوُد ثنا يَعْقُوبُ بْنُ إِبْرَاهِيمَ ثنا إِسْمَاعِيلُ هُوَ ابْنُ عُلَيَّةَ - ثنا يُونُسُ عَنْ الْحَسَنِ عَنْ أَنَسِ بْنِ حَكِيمٍ الضَّبِّيِّ أَنَّهُ لَقِيَ أَبَا هُرَيْرَةَ فَقَالَ لَهُ أَبُو هُرَيْرَةَ: «أَوَّلُ مَا يُحَاسَبُ النَّاسُ بِهِ يَوْمَ الْقِيَامَةِ مِنْ أَعْمَالِهِمْ الصَّلَاةُ، يَقُولُ رَبُّنَا - تَبَارَكَ وَتَعَالَى - لِلْمَلَائِكَةِ وَهُوَ أَعْلَمُ: انْظُرُوا فِي صَلَاةِ عَبْدِي أَتَمَّهَا أَمْ نَقَصَهَا؟ فَإِنْ كَانَتْ تَامَّةً كُتِبَتْ لَهُ تَامَّةً وَإِنْ كَانَ انْتَقَصَ مِنْهَا شَيْئًا قَالَ: انْظُرُوا هَلْ لِعَبْدِي مِنْ تَطَوُّعٍ؟ فَإِنْ كَانَ لَهُ تَطَوُّعٌ قَالَ: أَتِمُّوا لِعَبْدِي فَرِيضَتَهُ مِنْ تَطَوُّعِهِ، ثُمَّ تُؤْخَذُ الْأَعْمَالُ عَلَى ذَلِكُمْ» .

L4931 Abu Dawud said: Musa ibn Isma’il narrated to us: Hammad (ibn Salamah)

قَالَ أَبُو دَاوُد: وَحَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ ثنا حَمَّادٌ هُوَ ابْنُ سَلَمَةَ - عَنْ دَاوُد بْنِ أَبِي هِنْدٍ عَنْ زُرَارَةَ بْنِ أَوْفَى عَنْ تَمِيمٍ الدَّارِيِّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهَذَا الْمَعْنَى، قَالَ «ثُمَّ الزَّكَاةُ مِثْلُ ذَلِكَ، ثُمَّ تُؤْخَذُ الْأَعْمَالُ حَسَبَ ذَلِكَ» .

[21] **Qur’an references (L4928):** Qur’an 19:59 (Maryam); Qur’an 19:60 (Maryam); Qur’an 3:135 (Ali ’Imran); Qur’an 99:7 (Az-Zalzalah); Qur’an 99:8 (Az-Zalzalah); Qur’an 21:47 (Al-Anbya); Qur’an 11:114 (Hud); Qur’an 101:6 (Al-Qari’ah); Qur’an 69:21 (Al-Haqqah); Qur’an 101:7 (Al-Qari’ah); Qur’an 101:8 (Al-Qari’ah); Qur’an 101:9 (Al-Qari’ah).

narrated to us, from Dawud ibn Abi Hind, from Zurarah ibn Awfa, from Tamim al-Dari, from the Prophet (peace be upon him), with this meaning. He said, "Then *Zakat* is likewise, and deeds will be taken according to that."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ نِي عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ وَمُحَمَّدُ بْنُ الْمُثَنَّى قَالَا جَمِيعًا ثنا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ عُبَيْدِ اللَّهِ هُوَ ابْنُ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «صَلَاةُ الرَّجُلِ فِي الْجَمَاعَةِ تَزِيدُ عَلَى صَلَاتِهِ وَحْدَهُ سَبْعًا وَعِشْرِينَ دَرَجَةً» .

L4932 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath informed us from Abdul Wahhab ibn Isa, who narrated to us from Ahmad ibn Muhammad, who narrated to us from Ahmad ibn Ali, who narrated to us from Muslim ibn al-Hajjaj. Zuhayr ibn Harb and Muhammad ibn al-Muthanna both narrated to me—they both said together: Yahya—he is Ibn Sa'id al-Qattan—narrated to us from Ubaydullah—he is Ibn Umar—from Nafi' from Ibn Umar from the Prophet, peace and blessings of Allah be upon him, who said: "A man's prayer in congregation surpasses his prayer alone by twenty-seven degrees."

وَبِهِ إلَى مُسْلِمٍ حَدَّثَنَا إِسْحَاقُ بْنُ إبْرَاهِيمَ أَخْبَرَنَا الْمُغِيرَةُ بْنُ سَلَمَةَ الْمَخْزُومِيِّ حَدَّثَنَا عَبْدُ الْوَاحِدِ هُوَ ابْنُ زِيَادٍ - ثنا عُثْمَانُ بْنُ حَكِيمٍ أَخْبَرَنَا عَبْدُ الرَّحْمَنِ بْنُ أَبِي عَمْرَةَ قَالَ: دَخَلَ عُثْمَانُ بْنُ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُ - الْمَسْجِدَ بَعْدَ صَلَاةِ الْمَغْرِبِ فَقَعَدَ وَحْدَهُ فَقَعَدْت إلَيْهِ، فَقَالَ: يَا ابْنَ أَخِي سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ صَلَّى الْعِشَاءَ فِي جَمَاعَةٍ فَكَأَنَّمَا قَامَ نِصْفَ اللَّيْلِ وَمَنْ صَلَّى الصُّبْحَ فِي جَمَاعَةٍ فَكَأَنَّمَا قَامَ اللَّيْلَ كُلَّهُ» .

L4933 And through him to Muslim: Ishaq ibn Ibrahim narrated to us, Al-Mughirah ibn Salamah Al-Makhzumi informed us, Abdul Wahid—he is Ibn Ziyad—narrated to us, Uthman ibn Hakim narrated to us, Abdul Rahman ibn Abi Amrah informed us, saying: Uthman ibn Affan—may Allah be pleased with him—entered the mosque after the Maghrib prayer and sat alone. I sat beside him, and he said: "O my nephew, I heard the Messenger of Allah—peace and blessings be upon him—say: 'Whoever prays Isha in congregation, it is as if he stood in prayer for half the night, and whoever prays Fajr in congregation, it is as if he stood in prayer the entire night.'"

فَهَذَا بَيَانُ مِقْدَارِ أَجْرِ التَّطَوُّعِ وَأَجْرِ الْفَرِيضَةِ، وَإِنَّمَا هَذَا لِمَنْ تَابَ وَنَدِمَ وَأَقْلَعَ وَاسْتَدْرَكَ مَا فَرَّطَ.

L4934 This is an explanation of the measure of reward for voluntary acts and obligatory acts. Indeed, this applies only to those who have repented, regretted, ceased, and compensated for their negligence.

وَأَمَّا مَنْ تَعَمَّدَ تَرْكَ الْمَفْرُوضَاتِ وَاقْتَصَرَ عَلَى التَّطَوُّعِ، لِيَجْبُرَ بِذَلِكَ مَا عَصَى فِي تَرْكِهِ مُصِرًّا عَلَى ذَلِكَ، فَهَذَا عَاصٍ فِي تَطَوُّعِهِ، لِأَنَّهُ وَضَعَهُ فِي غَيْرِ مَوْضِعِهِ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَضَعْهُ، لِتُتْرَكَ الْفَرِيضَةُ، بَلْ، لِيَكُونَ زِيَادَةَ خَيْرٍ وَنَافِلَةً، فَهَذَا هُوَ الَّذِي يُجْبَرُ بِهِ الْفَرْضُ الْمُضَيَّعُ.

L4935–4937 As for the one who deliberately abandons the obligatory act and confines himself to voluntary acts, seeking to compensate thereby for the sin incurred by abandoning it while persisting in that, such a person is sinning through his voluntary acts. This is because he has placed them in a position other than their rightful one, for Allah the Exalted did not establish them so that the obligatory act may be abandoned, but rather as an increase of good and

a supererogatory act. Thus, such a person is one whose [voluntary acts] are used to compensate for that. The neglected obligation.

وَإِذَا عَصَى فِي تَطَوُّعِهِ فَهُوَ غَيْرُ مَقْبُولٍ مِنْهُ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L4938 If one disobeys in their voluntary worship, it is not accepted from them. The Messenger of Allah, peace and blessings be upon him, said: "Whoever performs a deed not in accordance with our teachings, it is rejected."[22]

فَإِنْ ذَكَرَ ذَاكِرٌ مَا رُوِيَ مِنْ أَنَّ التَّطَوُّعَ لَا يُقْبَلُ مِمَّنْ لَا يُؤَدِّي الْفَرِيضَةَ كَالتَّاجِرِ لَا يَصِحُّ لَهُ رِبْحٌ حَتَّى يَخْلُصَ رَأْسُ مَالِهِ، فَبَاطِلٌ لَا يَصِحُّ، لِأَنَّهُ إِنَّمَا رَوَاهُ مُوسَى بْنُ عُبَيْدَةَ الرَّبَذِيُّ وَهُوَ ضَعِيفٌ، وَعَبْدُ الْمَلِكِ بْنُ حَبِيبٍ الْأَنْدَلُسِيّ عَنْ الْمَكْفُوفِ عَنْ أَيُّوبَ بْنِ خَوْطٍ، وَهَذِهِ بَلَايَا فِي نَسَقٍ إحْدَاهَا يَكْفِي، وَمُرْسَلٌ أَيْضًا، وَعَبْدُ الْمَلِكِ بْنُ حَبِيبٍ عَنْ مُطَرِّفٍ عَنْ مَالِكٍ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ.

L4939 If someone mentions what has been narrated - that voluntary acts are not accepted from those who neglect obligatory duties, like a merchant whose profit remains invalid until his capital is cleared - this claim is baseless and invalid. This is because it was only narrated by Mūsā ibn ʻUbaydah al-Rabaḍī (who is weak) and ʻAbd al-Malik ibn Ḥabīb al-Andalusī via the blind narrator from Ayyūb ibn Khawṭ. These are successive defects in the chain; any single one invalidates it. Moreover, it is a *mursal* narration. ʻAbd al-Malik ibn Ḥabīb also narrates from Muṭarrif from Mālik that Abū Bakr al-Ṣiddīq...

وَعَبْدُ الْمَلِكِ سَاقِطٌ، وَهَذَا أَيْضًا مُنْقَطِعٌ، وَلَوْ صَحَّ ذَلِكَ لَكَانَ الْمُرَادُ بِهِ مَنْ قَصَدَ التَّطَوُّعَ، لِيُعَوِّضَهُ عَنْ الْفَرِيضَةِ مُصِرًّا عَلَى ذَلِكَ غَيْرَ نَادِمٍ، وَلَا تَائِبٍ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L4940 The narration of ʻAbd al-Malik is rejected, and this is also disconnected. Even if that were valid, the intended meaning would refer to one who intends voluntary prayer to replace the obligatory prayer while persisting in that without regret or repentance. And with Allah, the Exalted, is success.

[الصَّلَوَاتُ الْمَفْرُوضَاتُ الْخَمْسُ]

The five obligatory prayers.

٢٨١ - مَسْأَلَةٌ الْمَفْرُوضُ مِنْ الصَّلَاةِ عَلَى كُلِّ بَالِغٍ عَاقِلٍ حُرٍّ أَوْ عَبْدٍ ذَكَرٍ أَوْ أُنْثَى خَمْسٌ وَهِيَ: الظُّهْرُ وَالْعَصْرُ وَالْمَغْرِبُ وَالْعِشَاءُ الْآخِرَةُ، وَهِيَ الْعَتَمَةُ، وَصَلَاةُ الْفَجْرِ.

L4942 Issue 281: The obligatory prayers for every adult, sane individual—whether free or enslaved, male or female—are five: Dhuhr, Asr, Maghrib, the final Isha, which is Al-ʻAtamah, and Fajr.

فَالصُّبْحُ رَكْعَتَانِ أَبَدًا، عَلَى كُلِّ أَحَدٍ، مِنْ صَحِيحٍ أَوْ مَرِيضٍ أَوْ مُسَافِرٍ أَوْ مُقِيمٍ، خَائِفٍ أَوْ آمِنٍ، وَالْمَغْرِبُ ثَلَاثُ رَكَعَاتٍ أَبَدًا، كَمَا قُلْنَا فِي الصُّبْحِ سَوَاءً سَوَاءً.

L4943 The dawn prayer is perpetually two rak'ahs—obligatory upon every person, whether healthy or ill, traveler or non-traveler, fearful or secure. The maghrib prayer is perpetually three rak'ahs, as with the dawn prayer—the same ruling applies equally in all cases.

[22] **Hadith references (L4938):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

L4944 As for Dhuhr, Asr, and the final Isha prayer—each of these prayers is four rak'ahs for a resident, whether sick or healthy, in a state of fear or security. This is a definitive, unquestionable consensus, with no disagreement among any member of the Ummah—past or present—nor regarding any aspect of it. For a traveler in security, each of these prayers consists of two rak'ahs. As for a traveler in a state of fear, if he wishes, he may pray each of them as two rak'ahs, or if he wishes, as a single rak'ah. Disagreement exists concerning all of this: regarding the definition of such travel, the measure of such travel in terms of time and distance, whether shortening the prayer is obligatory or optional for him, and whether a single rak'ah suffices during travel in a state of fear or not.

وَأَمَّا الظُّهْرُ وَالْعَصْرُ وَالْعِشَاءُ الْآخِرَةُ - فَكُلُّ وَاحِدَةٍ مِنْهُنَّ عَلَى الْمُقِيمِ - مَرِيضًا كَانَ أَوْ صَحِيحًا، خَائِفًا أَوْ آمِنًا - أَرْبَعُ رَكَعَاتٍ أَرْبَعُ رَكَعَاتٍ، وَكُلُّ هَذَا إجْمَاعٌ مُتَيَقَّنٌ مَقْطُوعٌ بِهِ، لَا خِلَافَ فِيهِ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ قَدِيمًا، وَلَا حَدِيثًا، وَلَا فِي شَيْءٍ مِنْهُ، وَكُلُّ وَاحِدَةٌ مِنْهُنَّ عَلَى الْمُسَافِرِ الْآمِنِ رَكْعَتَانِ رَكْعَتَانِ، وَأَمَّا الْمُسَافِرُ الْخَائِفُ فَإِنْ شَاءَ صَلَّى كُلَّ وَاحِدَةٍ مِنْهُنَّ رَكْعَتَيْنِ، وَإِنْ شَاءَ صَلَّى كُلَّ وَاحِدَةٍ مِنْهُنَّ رَكْعَةً وَاحِدَةً، وَالْخِلَافُ مَوْجُودٌ فِي كُلِّ هَذَا فِيمَا ذَلِكَ السَّفَرُ، وَفِي مِقْدَارِ ذَلِكَ السَّفَرِ مِنْ الزَّمَانِ وَمِنْ الْمَسَافَةِ، وَفِي هَلْ ذَلِكَ الْقَصْرُ عَلَيْهِ فَرْضٌ أَمْ هُوَ فِيهِ مُخَيَّرٌ، وَفِي هَلْ تُجْزِئُ رَكْعَةٌ وَاحِدَةٌ فِي الْخَوْفِ فِي السَّفَرِ أَمْ لَا.

L4945 And we will mention the proof of the truth from that, and the refutation of the error therein, in its chapters, if Allah, the Mighty and Majestic, wills. There is no might nor power except by Allah, the Most High, the Almighty. Through Him, exalted is He, we seek help, and by Him we are strengthened.

وَسَنَذْكُرُ الْبُرْهَانَ عَلَى الْحَقِّ مِنْ ذَلِكَ، وَبُطْلَانَ الْخَطَأِ فِيهِ، فِي أَبْوَابِهِ إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ، وَلَا حَوْلَ، وَلَا قُوَّةَ إلَّا بِاَللَّهِ الْعَلِيِّ الْعَظِيمِ، وَبِهِ تَعَالَى نَسْتَعِينُ وَبِهِ نَتَأَيَّدُ.

L4946–4947 [The Categories of Supererogatory Acts]

[أَقْسَامُ التَّطَوُّعِ]

L4948 Issue: The divisions of supererogatory worship. The most emphasized acts are those we mentioned in the first issue of the Book of Prayer from this compendium of ours - namely, the divisions that the Messenger of Allah (peace be upon him) commanded, specifically designating them by name. Less emphasized are those acts not accompanied by an explicit command, but for which recommendation has been established.

مَسْأَلَةٌ: أَقْسَامُ التَّطَوُّعِ أَوْكَدُ التَّطَوُّعِ مَا قَدْ ذَكَرْنَاهُ فِي أَوَّلِ مَسْأَلَةٍ مِنْ كِتَابِ الصَّلَاةِ مِنْ دِيوَانِنَا هَذَا، مِنْ الْأَقْسَامِ الَّتِي أَمَرَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَخْصُوصَةً بِأَسْمَائِهَا، وَبَعْدَ ذَلِكَ مَا لَمْ يَرِدْ بِهِ أَمْرٌ، وَلَكِنْ جَاءَ النَّدْبُ إلَيْهِ.

L4949 The most emphasized of these are two rak'ahs after the true dawn and before the Fajr prayer; the Eid prayers; the prayer for seeking rain; the Tarawih prayers of Ramadan; four rak'ahs before Dhuhr after the sun's zenith; four rak'ahs after Dhuhr; four rak'ahs before Asr—if one wishes, they may delay the salutation until the end of them, or give the salutation after every two rak'ahs; two rak'ahs after Asr; two rak'ahs after sunset but before perform-

أَوْكَدُ ذَلِكَ رَكْعَتَانِ بَعْدَ الْفَجْرِ الثَّانِي وَقَبْلَ صَلَاةِ الصُّبْحِ، ثُمَّ صَلَاةُ الْعِيدَيْنِ، ثُمَّ صَلَاةُ الِاسْتِسْقَاءِ وَقِيَامُ رَمَضَانَ، وَأَرْبَعُ رَكَعَاتٍ قَبْلَ الظُّهْرِ بَعْدَ الزَّوَالِ، وَأَرْبَعُ رَكَعَاتٍ بَعْدَ الظُّهْرِ وَأَرْبَعُ رَكَعَاتٍ قَبْلَ الْعَصْرِ، إنْ شَاءَ لَمْ يُسَلِّمْ إلَّا فِي آخِرِهِنَّ، وَإِنْ شَاءَ سَلَّمَ مِنْ كُلِّ رَكْعَتَيْنِ، وَرَكْعَتَانِ بَعْدَ صَلَاةِ الْعَصْرِ، وَرَكْعَتَانِ بَعْدَ غُرُوبِ الشَّمْسِ قَبْلَ صَلَاةِ

ing Maghrib prayer; two rak'ahs after Maghrib; two rak'ahs before Isha; two rak'ahs upon arriving from a journey in the mosque; voluntary prayers performed after ablution; as well as the voluntary prayers one offers during the day and night.

الْمَغْرِبِ، وَرَكْعَتَانِ بَعْدَ صَلَاةِ الْمَغْرِبِ، وَرَكْعَتَانِ قَبْلَ صَلَاةِ الْعَتَمَةِ، وَرَكْعَتَانِ عِنْدَ الْقُدُومِ مِنَ السَّفَرِ فِي الْمَسْجِدِ، وَمَا تَطَوَّعَ بِهِ الْمَرْءُ إِذَا تَوَضَّأَ ثُمَّ مَا تَطَوَّعَ بِهِ الْمَرْءُ فِي نَهَارِهِ وَلَيْلِهِ.

L4950 Abdullah ibn Yusuf narrated to us; Ahmad ibn Fath narrated to us; Abdul Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to me: Zuhayr ibn Harb narrated to us from Yahya ibn Sa'id al-Qattan from Ibn Jurayj, who informed me from Ata from Ubayd ibn Umayr from Aisha, the Mother of the Believers, that the Prophet (peace and blessings be upon him) was not more diligent in maintaining any supererogatory prayers than he was in observing the two rak'ahs before dawn.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ، حَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَطَاءٍ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَكُنْ عَلَى شَيْءٍ مِنَ النَّوَافِلِ، أَشَدَّ تَعَاهُدًا مِنْهُ عَلَى رَكْعَتَيْنِ قَبْلَ الصُّبْحِ» .

L4951 And through him to Muslim: Muḥammad ibn 'Ubayd al-Ghubarī narrated to us; Abū 'Awānah narrated to us, from Qatādah, from Zurārah ibn Awfā, from Sa'd ibn Hishām ibn 'Āmir, from 'Ā'ishah, the Mother of the Believers, from the Prophet—may Allah bless him and grant him peace—who said: "The two rak'ahs of Fajr are better than the world and all that is in it."

وَبِهِ إِلَى مُسْلِمٍ: حَدَّثَنَا مُحَمَّدُ بْنُ عُبَيْدٍ الْغُبَرِيُّ ثنا أَبُو عَوَانَةَ عَنْ قَتَادَةَ عَنْ زُرَارَةَ بْنُ أَوْفَى عَنْ سَعْدِ بْنِ هِشَامِ بْنِ عَامِرٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «رَكْعَتَا الْفَجْرِ خَيْرٌ مِنَ الدُّنْيَا وَمَا فِيهَا» .

L4952–4954 And indeed, the Messenger of Allah—may Allah bless him and grant him peace—performed *Salat al-Istisqa* in the manner that we will mention in its chapter, if Allah wills. Allah, Exalted and Glorious, and the Prophet (peace be upon him) also urged observance of the night prayers of Ramadan, as we shall mention in its chapter, if Allah, the Exalted and Glorious, wills.

وَقَدْ «صَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَاةَ الِاسْتِسْقَاءِ» عَلَى مَا سَنَذْكُرُهُ فِي بَابِهَا إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ، «وَحَضَّ - عَلَيْهِ السَّلَامُ - أَيْضًا عَلَى قِيَامِ رَمَضَانَ» عَلَى مَا نَذْكُرُهُ فِي بَابِهِ إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ.

L4955 And through him (the same chain) to Muslim: Yahyā ibn Yahyā al-Naysābūrī narrated to us, Hushaym narrated to us from Khālid—who is al-Khaddā'—from ʿAbdullāh ibn Shaqīq, who said: I asked ʿĀ'ishah about the voluntary prayers of Allah's Messenger (peace be upon him). She said: "He would pray four rak'ahs in his house before Ẓuhr. Then he would go out and lead the people in prayer. Then he would enter and pray two rak'ahs. He would lead the people in Maghrib prayer, then enter and pray two rak'ahs. He would lead the people in ʿIshā' prayer, then enter my house and pray two rak'ahs."

وَبِهِ إِلَى مُسْلِمٍ: حَدَّثَنَا يَحْيَى بْنُ يَحْيَى النَّيْسَابُورِيُّ ثنا هُشَيْمٌ عَنْ خَالِدٍ هُوَ الْحَذَّاءُ - عَنْ عَبْدِ اللَّهِ بْنِ شَقِيقٍ قَالَ: سَأَلْت عَائِشَةَ عَنْ صَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ تَطَوُّعِهِ؟ فَقَالَتْ: «كَانَ يُصَلِّي فِي بَيْتِهِ قَبْلَ الظُّهْرِ أَرْبَعًا، ثُمَّ يَخْرُجُ فَيُصَلِّي بِالنَّاسِ

ثُمَّ يَدْخُلُ فَيُصَلِّي رَكْعَتَيْنِ، وَيُصَلِّي بِالنَّاسِ الْمَغْرِبَ، ثُمَّ يَدْخُلُ فَيُصَلِّي رَكْعَتَيْنِ، وَيُصَلِّي بِالنَّاسِ الْعِشَاءَ، وَيَدْخُلُ بَيْتِي فَيُصَلِّي رَكْعَتَيْنِ» .

L4956 Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Isḥāq narrated to us: Ibn al-Aʿrābī narrated to us: Abū Dāwūd narrated to us: Ḥafṣ ibn ʿUmar (he is al-Ḥawḍī) narrated to us: Shuʿbah narrated from Abū Isḥāq, from ʿĀṣim ibn Ḍamrah, from ʿAlī ibn Abī Ṭālib—may Allah be pleased with him—that the Messenger of Allah—peace and blessings be upon him—used to pray two rakʿahs before the ʿaṣr prayer.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ حَدَّثَنَا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا حَفْصُ بْنُ عُمَرَ هُوَ الْحَوْضِيُّ - ثنا شُعْبَةُ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُصَلِّي قَبْلَ الْعَصْرِ رَكْعَتَيْنِ» .

L4957 Abdullah ibn Rabee’ narrated to us: Muhammad ibn Mu’awiyah narrated to us: Ahmad ibn Shu’ayb narrated to us: Isma’il ibn Mas’ud narrated to us: Yazid ibn Zurai’ narrated to us: Shu’bah narrated from Abu Ishaq from ‘Asim ibn Ḍamrah: We asked ‘Ali about the prayer of the Messenger of Allah—may Allah’s peace and blessings be upon him—and he described it, saying: “He would pray four rak’ahs before Dhuhr and two after it, and he would pray four rak’ahs before ‘Asr, separating between every two rak’ahs with a salutation to the angels brought near [to Allah], the prophets, and those who followed them from among the believers and Muslims.”

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا إِسْمَاعِيلُ بْنُ مَسْعُودٍ ثنا يَزِيدُ بْنُ زُرَيْعٍ ثنا شُعْبَةُ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ: سَأَلْنَا عَلِيًّا عَنْ صَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؛ فَوَصَفَ، قَالَ: «كَانَ يُصَلِّي قَبْلَ الظُّهْرِ أَرْبَعًا وَبَعْدَهَا ثِنْتَيْنِ، وَيُصَلِّي قَبْلَ الْعَصْرِ أَرْبَعًا، يَفْصِلُ بَيْنَ كُلِّ رَكْعَتَيْنِ بِتَسْلِيمٍ عَلَى الْمَلَائِكَةِ الْمُقَرَّبِينَ وَالنَّبِيِّينَ وَمَنْ تَبِعَهُمْ مِنْ الْمُؤْمِنِينَ وَالْمُسْلِمِينَ» .

L4958 From him to Ahmad ibn Shu‘ayb: I am Muhammad ibn al-Muthanna—Muhammad ibn ‘Abd al-Rahman narrated to us, Husayn ibn ‘Abd al-Rahman narrated to us from Abu Ishaq from ‘Asim ibn Damrah, who said: We asked ‘Ali about the prayer of the Messenger of Allah (peace and blessings be upon him), and he described it, saying: “He used to pray four rak‘ahs before Dhuhr, uttering the taslim at the end of the final rak‘ah, and after Dhuhr four rak‘ahs, uttering the taslim at the end of the final rak‘ah.”

وَبِهِ إِلَى أَحْمَدَ بْنِ شُعَيْبٍ: أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ ثنا حُصَيْنُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ قَالَ: سَأَلْنَا عَلِيًّا عَنْ صَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَصَفَ قَالَ: «كَانَ يُصَلِّي قَبْلَ الظُّهْرِ أَرْبَعَ رَكَعَاتٍ، يَجْعَلُ التَّسْلِيمَ فِي آخِرِ رَكْعَةٍ، وَبَعْدَهَا أَرْبَعَ رَكَعَاتٍ يَجْعَلُ التَّسْلِيمَ فِي آخِرِ رَكْعَةٍ» .

L4959 Abu Muhammad said: There is no contradiction between any of what we have mentioned; rather, all of that is good and permissible, from the narrations of trustworthy and firmly established transmitters.

قَالَ أَبُو مُحَمَّد: لَا تَعَارُضَ بَيْنَ شَيْءٍ مِمَّا ذَكَرْنَا، بَلْ كُلُّ ذَلِكَ حَسَنٌ مُبَاحٌ؛ مِنْ رِوَايَةِ الثِّقَاتِ الْأَثْبَاتِ.

L4960 Abdullah ibn Rabiʿ narrated to us: ʿUmar ibn ʿAbd al-Malik narrated to us: Muḥammad ibn Bakr narrated to us: Abu Dawud narrated to us: ʿAbdullah

ibn Muḥammad An-Nufaili narrated to us: Ibn ʿUlayyah—he is Ismāʿīl—from al-Jurayri from ʿAbdullah ibn Buraydah from ʿAbdullah ibn Mughaffal who said: The Messenger of Allah (peace and blessings be upon him) said: "Between every two Adhāns there is a prayer for whoever wishes to perform it."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا عَبْدُ اللَّهِ بْنِ مُحَمَّدٍ النُّفَيْلِيّ ثنا ابْنُ عُلَيَّةَ هُوَ إِسْمَاعِيلُ - عَنْ الْجُرَيْرِيّ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ عَنْ عَبْدِ اللَّهِ بْنِ مُغَفَّلٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «بَيْنَ كُلِّ أَذَانَيْنِ صَلَاةٌ لِمَنْ شَاءَ» .

L4961–4962 Ali said: This general ruling applies to the periods between the adhān of al-ʿAtamah and its iqāmah; between the adhān of Maghrib and its iqāmah; and between the adhān of the Fajr prayer and its iqāmah.

قَالَ عَلِيٌّ: دَخَلَ فِي هَذَا الْعُمُومِ مَا بَيْنَ أَذَانِ الْعَتَمَةِ، وَإِقَامَتِهَا، وَمَا بَيْنَ أَذَانِ الْمَغْرِبِ، وَإِقَامَتِهَا، وَمَا بَيْنَ أَذَانِ صَلَاةِ الصُّبْحِ، وَإِقَامَتِهَا.

L4963 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn Al-Hajjaj narrated to us: Muhammad ibn Al-Muthanna narrated to us: Al-Dahhak—i.e., Abu Asim—narrated to us: Ibn Jurayj narrated to us: I am Ibn Shihab, [who narrates] that Abdurrahman ibn Abdullah ibn Kaʿb ibn Malik informed him from his father and his uncle Abdullah and Ubaydullah, the two sons of Kaʿb ibn Malik, from their father: "The Messenger of Allah—peace and blessings be upon him—would never return from a journey except during the forenoon. When he arrived, he would first go to the mosque, pray two rakʿahs there, then sit there."[23]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا الضَّحَّاكُ يَعْنِي أَبَا عَاصِمٍ - ثنا ابْنُ جُرَيْجٍ أَنَا ابْنُ شِهَابٍ أَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَبْدِ اللَّهِ بْنِ كَعْبِ بْنِ مَالِكٍ أَخْبَرَهُ عَنْ أَبِيهِ وَعَمِّهِ عَبْدِ اللَّهِ وَعُبَيْدِ اللَّهِ ابْنَيْ كَعْبِ بْنِ مَالِكٍ عَنْ أَبِيهِمَا: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ لَا يَقْدُمُ مِنْ سَفَرٍ إِلَّا نَهَارًا فِي الضُّحَى، فَإِذَا قَدِمَ بَدَأَ بِالْمَسْجِدِ فَصَلَّى فِيهِ رَكْعَتَيْنِ ثُمَّ جَلَسَ فِيهِ» .

L4964 Through him to Muslim: ʿAbd b. Ḥumayd narrated to us: ʿAbd al-Razzāq informed us, from Maʿmar, from al-Zuhrī, from Abū Salamah b. ʿAbd al-Raḥmān b. ʿAwf, from Abū Hurayrah, who said: "The Messenger of Allah (peace and blessings of Allah be upon him) would encourage observance of the night prayers during Ramadan without imposing it as a strict obligation."

وَبِهِ إِلَى مُسْلِمٍ: ثنا عَبْدُ بْنُ حُمَيْدٍ أَنَا عَبْدُ الرَّزَّاقِ أَخْبَرَنَا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُرَغِّبُ فِي قِيَامِ رَمَضَانَ مِنْ غَيْرِ أَنْ يَأْمُرَ فِيهِ بِعَزِيمَةٍ» .

L4965 Abd al-Rahman ibn Abdullah al-Hamdani narrated to us: Ibrahim ibn Ahmad al-Balkhi narrated to us: al-Farbari narrated to us: al-Bukhari narrated to us: Ishaq ibn Nasr narrated to us: Abu Usamah narrated to us from Abu Hayyan al-Taymi from Abu Zur'ah from Abu Hurayrah, that the Messenger

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ الْهَمْدَانِيُّ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيُّ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا إِسْحَاقُ بْنُ نَصْرٍ ثنا أَبُو أُسَامَةَ عَنْ أَبِي حَيَّانَ التَّيْمِيِّ عَنْ أَبِي زُرْعَةَ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ؛ لِبِلَالٍ عِنْدَ صَلَاةِ الْفَجْرِ: يَا

[23] **Hadith references (L4963):** Sahih Muslim 716.

of Allah - peace and blessings of Allah be upon him - said to Bilal during the dawn prayer: “O Bilal, tell me of the most hopeful deed you have done in Islam, for I heard the rustling of your sandals ahead of me in Paradise.” Bilal said: “No deed gives me greater hope than this: whenever I performed ablution at any hour of night or day, I would pray whatever was ordained for me using that ablution.”

بِلَالُ، حَدِّثْنِي بِأَرْجَى عَمَلٍ عَمِلْتَهُ فِي الْإِسْلَامِ؟ فَإِنِّي سَمِعْتُ دُفَّ نَعْلَيْكَ بَيْنَ يَدَيَّ فِي الْجَنَّةِ قَالَ بِلَالٌ: مَا عَمِلْتُ عَمَلًا أَرْجَى عِنْدِي أَنِّي لَمْ أَتَطَهَّرْ طَهُورًا فِي سَاعَةِ لَيْلٍ أَوْ نَهَارٍ، إِلَّا صَلَّيْتُ بِذَلِكَ الطَّهُورِ مَا كُتِبَ لِي أَنْ أُصَلِّيَ» .

Chapter on the Two Rak‘ahs before al-Maghrib

[فَصْلٌ فِي الرَّكْعَتَيْنِ قَبْلَ الْمَغْرِبِ]

An issue concerning preventing people from performing supererogatory prayers after sunset and before the Maghrib prayer.

[مَسْأَلَة منع قَوْم مِنْ التَّطَوُّع بَعْد غروب الشَّمْس وَقَبْل صَلَاة الْمَغْرِب]

Chapter on the Two Rak‘ahs Before Maghrib (283) - Issue: Abū Muḥammad said: Some scholars prohibited voluntary prayer after sunset and before the Maghrib prayer, including Mālik and Abū Ḥanīfah. We know of no evidence they possess except that Aḥmad ibn Muḥammad ibn ‘Abd Allāh al-Ṭalamankī narrated to us: Muḥammad ibn Aḥmad ibn Mufarrij narrated to us from al-Ṣamūt, who narrated to us from al-Bazzār, who narrated to us from ‘Abd al-Wāḥid ibn Ghiyāth, who narrated to us from Ḥayyān ibn ‘Ubayd Allāh, from ‘Abd Allāh ibn Buraydah, from his father, that the Prophet - peace and blessings of Allāh be upon him - said: “Between every two adhāns there is a prayer except for Maghrib.”

فَصْلٌ فِي الرَّكْعَتَيْنِ قَبْلَ الْمَغْرِبِ ٢٨٣ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: مَنَعَ قَوْمٌ مِنْ التَّطَوُّعِ بَعْدَ غُرُوبِ الشَّمْسِ، وَقَبْلَ صَلَاةِ الْمَغْرِبِ، مِنْهُمْ مَالِكٌ وَأَبُو حَنِيفَةَ، وَمَا نَعْلَمُ لَهُمْ حُجَّةً إِلَّا أَنَّ أَحْمَدَ بْنَ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الطَّلَمَنْكِيَّ قَالَ ثنا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ مُفَرِّجٍ ثنا الصَّمُوتُ ثنا الْبَزَّارُ ثنا عَبْدُ الْوَاحِدِ بْنُ غِيَاثٍ ثنا حَيَّانُ بْنُ عُبَيْدِ اللَّهِ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ عَنْ أَبِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «بَيْنَ كُلِّ أَذَانَيْنِ صَلَاةٌ إِلَّا الْمَغْرِبَ» .

Abū Muḥammad said: This wording was solely transmitted by Ḥayyān Ibn ʿUbayd Allāh—who is obscure (majhūl)—whereas the authentic (ṣaḥīḥ) report is the one narrated by al-Jurayrī from ʿAbd Allāh Ibn Buraydah, which we have mentioned earlier.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ اللَّفْظَةُ انْفَرَدَ بِهَا حَيَّانُ بْنُ عُبَيْدِ اللَّهِ - وَهُوَ مَجْهُولٌ - وَالصَّحِيحُ هُوَ مَا رَوَاهُ الْجُرَيْرِيُّ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ، وَقَدْ ذَكَرْنَاهُ آنِفًا.

They mentioned a narration from Ibrāhīm al-Nakhaʿī that Abū Bakr, ʿUmar, and ʿUthmān did not perform these prayers. This is worthless. Firstly, its chain is disconnected, for Ibrāhīm never met any of those we mentioned, as he was not born except years after ʿUthmān’s assassination. Even if it were authentic, it would contain no proof, for it does not state that they—may Allah be pleased with them—prohibited these prayers or disliked them. We do not differ with them regarding the permissibility of abandoning all

وَذَكَرُوا عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّ أَبَا بَكْرٍ وَعُمَرَ وَعُثْمَانَ لَمْ يَكُونُوا يُصَلُّونَهَا وَهَذَا لَا شَيْءَ؛ أَوَّلُ ذَلِكَ أَنَّهُ مُنْقَطِعٌ؛ لِأَنَّ إبْرَاهِيمَ لَمْ يُدْرِكْ أَحَدًا مِمَّنْ ذَكَرْنَاهُ، وَلَا وُلِدَ إلَّا بَعْدَ قَتْلِ عُثْمَانَ بِسِنِينَ، ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَيْسَ فِيهِ أَنَّهُمْ - رَضِيَ اللَّهُ عَنْهُمْ - نَهَوْا عَنْهُمَا، وَلَا أَنَّهُمْ كَرِهُوهُمَا، وَنَحْنُ لَا نُخَالِفُهُمْ فِي أَنَّ تَرْكَ جَمِيعِ التَّطَوُّعِ مُبَاحٌ، مَا

supererogatory prayers, provided one does not abandon them out of disdain for the Sunnah of the Messenger of Allah—peace and blessings be upon him—for such is the one who is doomed. Even if their prohibition were established—and Allah's refuge is sought from this being valid!—it would not constitute proof against the Messenger of Allah—peace and blessings be upon him—nor against the Companions who performed them—may Allah be pleased with them. These later imitators opposed Abū Bakr, ʿUmar, and a group of Companions concerning wiping over turbans, despite having the Sunnah of the Messenger of Allah—peace and blessings be upon him. Thus, nothing is more astonishing than their audacity in opposing the Companions when they desire, and their exaggerated opposition to these two when they desire. This is blatant trifling with religion—we mean these later imitators.

لَمْ يَتْرُكْهُ الْمَرْءُ رَغْبَةً عَنْ سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَذَا هُوَ الْهَالِكُ، ثُمَّ لَوْ صَحَّ نَهْيُهُمْ عَنْهُمَا - وَمَعَاذَ اللَّهِ أَنْ يَصِحَّ - لَمَا كَانَتْ فِي أَحَدٍ مِنْهُمْ حُجَّةً عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا عَلَى مَنْ صَلَّاهُمَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَقَدْ خَالَفُوا أَبَا بَكْرٍ وَعُمَرَ وَجَمَاعَةً مِنْ الصَّحَابَةِ فِي الْمَسْحِ عَلَى الْعِمَامَةِ، وَمَعَهُمْ سُنَّةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا عَجَبَ أَعْجَبُ مِنْ إقْدَامِهِمْ عَلَى مُخَالَفَةِ الصَّحَابَةِ إذَا اشْتَهَوْا وَتَعْظِيمِهِمْ مُخَالَفَتَهُمَا إذَا اشْتَهَوْا وَهَذَا تَلَاعُبٌ بِالدِّينِ لَا خَفَاءَ بِهِ نَعْنِي هَؤُلَاءِ الْمُقَلِّدِينَ الْمُتَأَخِّرِينَ.

L4972 They mentioned from Ibn Umar that he said: "I have not seen anyone pray these two prayers," and this is baseless. The first reason for that is its inauthenticity, as it is narrated from Abu Shu'ayb or Shu'ayb—and we do not know who he is. Moreover, even if this narration were authentic, there is no prohibition in it against the two prayers. We do not object to abandoning supererogatory prayers unless they are prohibited without valid justification. Even if a prohibition from him were established—though it is never authenticated—it has rather been narrated from him that praying them is permissible, as it constitutes an argument against the Messenger of Allah (peace be upon him) and against the rest of the Companions who zealously promoted them. Among the astonishing things is that they do not consider Ibn Umar's statement as evidence: "I prayed behind the Messenger of Allah (peace be upon him), Abu Bakr, Umar, and Uthman, and none of them recited the Qunut"—because it contradicts their blind adherence—despite its authentic transmission. Yet they treat what is unauthenticated from him as evidence when it aligns with their desires, and this is utterly astonishing.

وَذَكَرُوا عَنْ ابْنِ عُمَرَ أَنَّهُ قَالَ: مَا رَأَيْت أَحَدًا يُصَلِّيهِمَا، وَهَذَا لَا شَيْءَ أَوَّلُ ذَلِكَ أَنَّهُ لَا يَصِحُّ؛ لِأَنَّهُ عَنْ أَبِي شُعَيْبٍ أَوْ شُعَيْبٍ، وَلَا نَدْرِي مَنْ هُوَ؟ وَأَيْضًا فَلَيْسَ فِي هَذَا لَوْ صَحَّ نَهْيٌ عَنْهُمَا، وَنَحْنُ لَا نُنْكِرُ تَرْكَ التَّطَوُّعِ مَا لَمْ يَنْهَ عَنْهُ بِغَيْرِ حَقٍّ ثُمَّ لَوْ صَحَّ عَنْهُ النَّهْيُ عَنْهُمَا، وَهُوَ لَا يَصِحُّ أَبَدًا، بَلْ قَدْ رُوِيَ عَنْهُ جَوَازُ صَلَاتِهِمَا، لَمَّا كَانَ فِيهِ حُجَّةٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا عَلَى سَائِرِ الصَّحَابَةِ النَّادِبِينَ إلَيْهِمَا، وَمِنْ الْعَجَائِبِ أَنَّهُمْ لَا يَرَوْنَ حُجَّةَ قَوْلِ ابْنِ عُمَرَ «صَلَّيْتُ خَلْفَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَخَلْفَ أَبِي بَكْرٍ وَعُمَرَ وَعُثْمَانَ فَلَمْ يَقْنُتْ أَحَدٌ مِنْهُمْ» إذْ لَمْ يُوَافِقْ تَقْلِيدَهُمْ، وَقَدْ صَحَّ هَذَا عَنْهُ ثُمَّ يَجْعَلُونَ مَا لَمْ يَصِحَّ عَنْهُ، حُجَّةً إذَا وَافَقَ أَهْوَاءَهُمْ وَهَذَا عَجَبٌ جِدًّا.

L4973–4975 Ali said: The proof concerning this is what was narrated to us by ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid: Ibrāhīm ibn Aḥmad narrated to us, al-Farbarī narrated to us, al-Bukhārī narrated to us, ʿAbd Allāh ibn Yazīd (al-Muqri) narrated to us, Saʿīd ibn Abī Ayyūb narrated to us, Yazīd ibn Abī Ḥabīb narrated to us. I heard Marthad ibn ʿAbd Allāh al-Yazanī (Abū

قَالَ عَلِيٌّ: وَالْحُجَّةُ فِيهَا هُوَ مَا حَدَّثَنَاهُ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَبْدُ اللَّهِ بْنُ يَزِيدَ هُوَ الْمُقْرِي - ثنا سَعِيدُ بْنُ أَبِي أَيُّوبَ ثنا يَزِيدُ بْنُ أَبِي حَبِيبٍ سَمِعْت مَرْثَدَ بْنَ عَبْدِ اللَّهِ الْيَزَنِيَّ هُوَ أَبُو الْخَيْرِ قَالَ: «أَتَيْت عُقْبَةَ بْنَ

al-Khayr) say: “I came to ʻUqbah ibn ʻĀmir al-Juhanī and said: Shall I not astonish you about Abū Tamīm: he performs two bowings...” Before the Maghrib prayer, then Uqbah said, “Indeed, we used to do it during the time of the Messenger of Allah (may Allah bless him and grant him peace).” So I asked, “What prevents you now?” He replied, “Occupiedness.”

عَامِرِ الْجُهَنِيِّ فَقُلْت: أَلَا أُعْجِبُكَ مِنْ أَبِي تَمِيمٍ، يَرْكَعُ رَكْعَتَيْنِ قَبْلَ صَلَاةِ الْمَغْرِبِ فَقَالَ عُقْبَةُ إنَّا كُنَّا نَفْعَلُهُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَأَلْت فَمَا يَمْنَعُك الْآنَ؟ قَالَ: الشُّغْلُ» .

L4976 And with his chain to Al-Bukhari: Muḥammad ibn Bashār narrated to us, Muḥammad ibn Jaʻfar narrated to us, from Gundar, Shuʻbah narrated to us. He said: I heard ʻAmr ibn ʻĀmir al-Anṣārī narrate from Anas ibn Mālik, who said: “When the caller to prayer would give the call, some companions of the Messenger of Allah (peace and blessings of Allah be upon him) would rise and hasten to the pillars. They would pray the two rakʻahs before Maghrib in that state until the Prophet (peace and blessings of Allah be upon him) emerged.”

وَبِهِ إلَى الْبُخَارِيِّ: ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا مُحَمَّدُ بْنُ جَعْفَرٍ عَنْ غُنْدَرٍ ثنا شُعْبَةُ قَالَ: سَمِعْت عَمْرَو بْنَ عَامِرٍ الْأَنْصَارِيَّ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ «كَانَ الْمُؤَذِّنُ إذَا أَذَّنَ قَامَ نَاسٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَبْتَدِرُونَ السَّوَارِيَ حَتَّى يَخْرُجَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُمْ كَذَلِكَ يُصَلُّونَ الرَّكْعَتَيْنِ قَبْلَ الْمَغْرِبِ» .

L4977 Abdullah ibn Yusuf narrated from Ahmad ibn Fath narrated from Abdul Wahhab ibn Isa narrated from Ahmad ibn Muhammad narrated from Ahmad ibn Ali narrated from Muslim ibn al-Hajjaj narrated from Abu Kuraib and Abu Bakr ibn Abi Shaybah, both of whom narrated from Ibn Fudayl narrated from al-Mukhtar ibn Fulful narrated from Anas ibn Malik, who said: “During the time of the Messenger of Allah (peace be upon him), we used to pray two rak’ahs after sunset. I asked: ’Did the Messenger of Allah (peace be upon him) pray them?’ He replied: ’He saw us praying them but neither commanded us nor forbade us.’”

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو كُرَيْبٍ وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، كِلَاهُمَا عَنْ ابْنِ فُضَيْلٍ عَنْ الْمُخْتَارِ بْنِ فُلْفُلٍ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ «كُنَّا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نُصَلِّي رَكْعَتَيْنِ بَعْدَ غُرُوبِ الشَّمْسِ، فَسَأَلْت: أَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّيهِمَا؟ فَقَالَ: كَانَ يَرَانَا نُصَلِّيهِمَا فَلَمْ يَأْمُرْنَا وَلَمْ يَنْهَنَا» .

L4978 Ali said: “The Messenger of Allah—ṣallallāhu ʿalayhi wa-sallam—would only endorse the excellent truth; he never regarded anything objectionable without rejecting it, nor any error without forbidding it.”

قَالَ عَلِيٌّ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُقِرُّ إلَّا عَلَى الْحَقِّ الْحَسَنِ، وَلَا يَرَى مَكْرُوهًا إلَّا كَرِهَهُ، وَلَا خَطَأً إلَّا نَهَى عَنْهُ.

L4979 Allah, the Exalted, said, “So that you may clarify to the people what has been sent down to them” [An-Nahl 44].[24]

قَالَ اللَّهُ تَعَالَى {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] .

L4980 Ali said: The majority of the people held this opinion. It was narrated to us through ʻAbd al-Wārith ibn Saʻīd, from ʻAbd al-ʻAzīz ibn Ṣuhayb, from Anas ibn Mālik, who said: “We were in Medina, and whenever the mu’adhin

قَالَ عَلِيٌّ: وَقَالَ بِهَذَا جُمْهُورُ النَّاسِ، وَرُوِّينَا عَنْ عَبْدِ الْوَارِثِ بْنِ سَعِيدٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ " كُنَّا بِالْمَدِينَةِ فَإِذَا أَذَّنَ الْمُؤَذِّنُ لِصَلَاةِ الْمَغْرِبِ

[24] **Qur’an references (L4979):** Qur’an 16:44 (An-Nahl).

gave the call to Maghrib prayer, people would hasten to the pillars and perform two rak'ahs, to the extent that a stranger entering the mosque would think the prayer had already been performed due to the multitude of people performing those two rak'ahs." This indicates the universal practice of the Companions (may Allah be pleased with them).

ابْتَدَرُوا السَّوَارِيَ فَرَكَعُوا رَكْعَتَيْنِ حَتَّى إِنَّ الرَّجُلَ الْغَرِيبَ لَيَدْخُلَ الْمَسْجِدَ فَيَحْسَبُ أَنَّ الصَّلَاةَ قَدْ صُلِّيَتْ لِكَثْرَةِ مَنْ يُصَلِّيهِمَا " فَهَذَا عُمُومٌ لِلصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L4981 It has been narrated to us from Abd al-Rahman ibn Mahdi and Abd al-Razzaq, both of them from Sufyan al-Thawri, from Asim ibn Bahdalah, from Zirr ibn Hubaysh, that he saw Abd al-Rahman ibn Awf and Ubayy ibn Ka'b praying the two rak'ahs before the Maghrib Prayer.

وَرُوِّينَا عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ وَعَبْدِ الرَّزَّاقِ، كِلَاهُمَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَاصِمِ بْنِ بَهْدَلَةَ عَنْ زِرِّ بْنِ حُبَيْشٍ أَنَّهُ رَأَى عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ وَأُبَيَّ بْنَ كَعْبٍ يُصَلِّيَانِ الرَّكْعَتَيْنِ قَبْلَ صَلَاةِ الْمَغْرِبِ.

L4982 Hammad ibn Zayd reported from ʿĀṣim, from Zirr, from ʿAbd al-Raḥmān and Ubayy similarly to the previous report, and added: "The two [sons] must not abandon the two [parents]."

وَقَالَ حَمَّادُ بْنُ زَيْدٍ عَنْ عَاصِمٍ عَنْ زِرٍّ عَنْ عَبْدِ الرَّحْمَنِ وَأُبَيٍّ مِثْلَ ذَلِكَ، وَزَادَ: لَا يَدَعَانِهِمَا.

L4983 Narrated from Maʿmar, from al-Zuhrī, from Anas, that he used to pray two rak'ahs before the Maghrib Prayer.

وَعَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ أَنَسٍ: أَنَّهُ كَانَ يُصَلِّي رَكْعَتَيْنِ قَبْلَ صَلَاةِ الْمَغْرِبِ.

L4984–4986 From ʿAbd al-Raḥmān ibn Mahdī from Shuʿbah from Yazīd ibn Khumayr from Khālid ibn Maʼdān. From Raghbān, the client of Ḥabīb ibn Maslamah: I saw the Companions of the Messenger of Allah—peace and blessings be upon him—rushing toward the two rak'ahs before the Maghrib prayer just as they rush toward the obligatory portion.

وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ شُعْبَةَ عَنْ يَزِيدَ بْنِ خُمَيْرٍ عَنْ خَالِدِ بْنِ مَعْدَانَ عَنْ رَغْبَانَ مَوْلَى حَبِيبِ بْنِ مَسْلَمَةَ: رَأَيْت أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَهُبُّونَ إلَى الرَّكْعَتَيْنِ قَبْلَ صَلَاةِ الْمَغْرِبِ كَمَا يَهُبُّونَ إلَى الْفَرِيضَةِ.

L4987 And it has been narrated to us from Waki', from Sa'īd ibn Abī 'Arūbah, from Qatādah, from Sa'īd ibn al-Musayyib: "I have not seen any jurist pray the two rak'ahs before the Maghrib prayer except Sa'd ibn Mālik [ibn Abī Waqqāṣ]"—meaning Sa'd ibn Abī Waqqāṣ.

وَرُوِّينَا عَنْ وَكِيعٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: مَا رَأَيْت فَقِيهًا يُصَلِّي الرَّكْعَتَيْنِ قَبْلَ الْمَغْرِبِ إلَّا سَعْدَ بْنَ مَالِكٍ، يَعْنِي سَعْدَ بْنَ أَبِي وَقَّاصٍ.

L4988 And it has been narrated to us through the chain of Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salmah, from Dāwūd al-Warrāq, from Jaʿfar ibn Abī Waḥshiyyah—that Jābir ibn ʿAbd Allāh would pray two rakʿahs before Maghrib.

وَرُوِّينَا مِنْ طَرِيقِ حَجَّاجِ بْنِ الْمِنْهَالِ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد الْوَرَّاقِ عَنْ جَعْفَرِ بْنِ أَبِي وَحْشِيَّةَ: أَنَّ جَابِرَ بْنَ عَبْدِ اللَّهِ كَانَ يُصَلِّي قَبْلَ الْمَغْرِبِ رَكْعَتَيْنِ.

L4989 From Abd al-Rahman ibn Mahdi from Shu'bah from Sulayman ibn Abd al-Rahman from Rashid ibn Yasar, who said: "I testify concerning five of

the Companions of the Messenger of Allah (peace be upon him) from the Companions of the Tree, that they used to pray two rak'ahs before Maghrib."

وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ شُعْبَةَ عَنْ سُلَيْمَانَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ رَاشِدِ بْنِ يَسَارٍ قَالَ: أَشْهَدُ عَلَى خَمْسَةٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَصْحَابِ الشَّجَرَةِ أَنَّهُمْ كَانُوا يُصَلُّونَ رَكْعَتَيْنِ قَبْلَ الْمَغْرِبِ.

L4990 And from Muhammad ibn Ja'far, from Shu'bah, from al-Hakam ibn 'Utaybah: That al-Hakam ibn 'Utaybah prayed with 'Abd al-Rahman ibn Abi Layla, and 'Abd al-Rahman ibn Abi Layla would pray the two rak'ahs before Maghrib.

وَعَنْ مُحَمَّدِ بْنِ جَعْفَرٍ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ: أَنَّهُ صَلَّى مَعَ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى فَكَانَ يُصَلِّي الرَّكْعَتَيْنِ قَبْلَ الْمَغْرِبِ.

L4991 From Waki', from Yazīd ibn Ibrāhīm: I heard al-Ḥasan al-Baṣrī being asked about the two rak'ahs before Maghrib. He said: "Two good and beautiful [rak'ahs] for whoever intends with them the Face of Allāh, the Exalted." This is the position held by al-Shāfi'ī and our companions.

وَعَنْ وَكِيعٍ عَنْ يَزِيدَ بْنِ إبْرَاهِيمَ: سَمِعْت الْحَسَنَ الْبَصْرِيَّ يَسْأَلُ عَنْ الرَّكْعَتَيْنِ قَبْلَ الْمَغْرِبِ؟ فَقَالَ: حَسَنَتَيْنِ جَمِيلَتَيْنِ؛ لِمَنْ أَرَادَ بِهِمَا وَجْهَ اللَّهِ تَعَالَى، وَبِهِ يَقُولُ الشَّافِعِيُّ وَأَصْحَابُنَا.

[مَسْأَلَةُ إعَادَةُ مَنْ صَلَّى إذَا وَجَدَ جَمَاعَةً تُصَلِّي تِلْكَ الصَّلَاةَ]

L4992 **The issue concerning the repetition of prayer by someone who has prayed upon finding a congregation performing that prayer.**

٢٨٤ - مَسْأَلَةٌ: وَأَمَّا إعَادَةُ مَنْ صَلَّى إذَا وَجَدَ جَمَاعَةً تُصَلِّي تِلْكَ الصَّلَاةَ، فَإِنَّ ذَلِكَ مُسْتَحَبٌّ - مَكْرُوهٌ تَرْكُهُ - فِي كُلِّ صَلَاةٍ، سَوَاءٌ كَانَ صَلَّى مُنْفَرِدًا؛ لِعُذْرٍ أَوْ فِي جَمَاعَةٍ، وَلْيُصَلِّهَا وَلَوْ مَرَّاتٍ كُلَّمَا وَجَدَ جَمَاعَةً تُصَلِّيهَا، وَقَدْ قَالَ قَوْمٌ: لَا يُصَلِّيهَا ثَانِيَةً أَصْلًا.

L4993 Issue 284: As for repeating the prayer by one who has prayed upon finding a congregation performing that prayer, this is recommended (though abandoning it is disliked) for every prayer, whether he prayed alone due to a valid excuse or in congregation. He should pray it again, even multiple times, each time he finds a congregation performing it. Some early jurists have said: he must not pray it a second time at all.

وَقَالَ أَبُو حَنِيفَةَ: لَا يُصَلِّي ثَانِيَةً إلَّا الظُّهْرَ وَالْعَتَمَةَ فَقَطْ، سَوَاءٌ كَانَ صَلَّاهُمَا فِي جَمَاعَةٍ أَوْ مُنْفَرِدًا، وَالْأُولَى هِيَ صَلَاتُهُ، حَاشَا صَلَاةَ الْجُمُعَةِ، فَإِنَّهُ إنْ صَلَّاهَا فِي بَيْتِهِ مُنْفَرِدًا أَجْزَأَتْهُ، وَلَمْ يَكُنْ عَلَيْهِ أَنْ يَنْهَضَ إلَى الْجَامِعِ، فَإِنْ خَرَجَ إلَى الْمَسْجِدِ وَالْإِمَامُ لَمْ يُسَلِّمْ بَعْدُ مِنْ صَلَاةِ الْجُمُعَةِ؛ فَحِينَ خُرُوجِهِ لِذَلِكَ تَبْطُلُ صَلَاتُهُ الَّتِي كَانَ صَلَّى فِي بَيْتِهِ، وَكَانَتْ الَّتِي تُصَلَّى مَعَ الْإِمَامِ فَرْضَهُ.

L4994 Abu Hanifah said: One does not repeat prayers except for Dhuhr and Isha, the late evening prayer, whether he prays them in congregation or individually. The first prayer is his valid prayer, except for the Jumu'ah prayer. If one prays it alone at home, it suffices him, and he is not required to proceed to the congregational mosque. If he leaves for the mosque while the Imam has not yet concluded the Jumu'ah prayer, his departure for this purpose invalidates the prayer he performed at home, and the prayer offered with the Imam becomes his farḍ.

L4995–4997 Abū Yūsuf and Muḥammad ibn al-Ḥasan said: The prayer he performed at home is not invalidated by his departure to the mosque. However, by his entering with the imam into the Friday prayer, the prayer he performed becomes invalid. his home.

وَقَالَ أَبُو يُوسُفَ وَمُحَمَّدُ بْنُ الْحَسَنِ: لَا تَبْطُلُ صَلَاتُهُ الَّتِي صَلَّى فِي بَيْتِهِ بِخُرُوجِهِ إِلَى الْجَامِعِ، لَكِنْ بِدُخُولِهِ مَعَ الْإِمَامِ فِي صَلَاةِ الْجُمُعَةِ تَبْطُلُ الَّتِي صَلَّى فِي مَنْزِلِهِ.

L4998 Malik said: One who prays an obligatory prayer at home alongside the congregation must repeat it. This ruling applies to all prayers without exception except Maghrib specifically, which he does not repeat. He stated: The matter of which of the two prayers fulfills his obligation rests with Allah, the Exalted. He said: If he prays in one congregation, he does not repeat it in another.

وَقَالَ مَالِكٌ: يُعِيدُ مَنْ صَلَّى فِي مَنْزِلِهِ صَلَاةَ فَرْضٍ مَعَ الْجَمَاعَةِ إِذَا وَجَدَهَا تُصَلِّي تِلْكَ الصَّلَاةَ جَمِيعَ الصَّلَوَاتِ حَاشَا الْمَغْرِبَ فَلَا يُعِيدُهَا، قَالَ: وَالْأَمْرُ فِي أَيِّ الصَّلَاتَيْنِ فَرْضُهُ إِلَى اللَّهِ تَعَالَى، قَالَ: فَإِنْ صَلَّى فِي جَمَاعَةٍ لَمْ يُعِدْ فِي أُخْرَى.

L4999 Abu Muhammad said: As for those who categorically prohibit repetition, they cite as evidence what we have narrated through the chain of Abu Dawud: Abu Kamil Yazid ibn Zuraiʿ narrated to us: Husayn—he is the teacher—narrated to us, from Amr ibn Shuʿayb, from Sulayman ibn Yasar, who said: I came to Ibn Umar at the Balat while they were praying, and I asked, “Are you not going to pray with them?” He replied, “I have already prayed, and I heard the Messenger of Allah—peace and blessings be upon him—say: ’Do not perform the same prayer twice in one day.”’

قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ مَنَعَ مِنْ الْإِعَادَةِ جُمْلَةً فَإِنَّهُ احْتَجَّ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد: ثنا أَبُو كَامِلٍ يَزِيدُ بْنُ زُرَيْعٍ ثنا حُسَيْنٌ هُوَ الْمُعَلِّمُ - عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: أَتَيْت ابْنَ عُمَرَ عَلَى الْبَلَاطِ وَهُمْ يُصَلُّونَ، فَقُلْت: أَلَا تُصَلِّي مَعَهُمْ؟ قَالَ قَدْ صَلَّيْت، وَسَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «لَا تُصَلُّوا صَلَاةً فِي يَوْمٍ مَرَّتَيْنِ» .

L5000 Ali said: This is an authentic report that it is not permissible to oppose, and they have no valid argument regarding it. We have never stated such a thing—Allah forbid—that one would pray intending it as the very prayer he already performed, thereby making two Dhuhr prayers, two Asr prayers, two Fajr prayers, two Maghrib prayers, or two Isha prayers in a single day. This constitutes disbelief, and it is impermissible for anyone to assert such a position. Rather, he should pray it as a supererogatory prayer, as the Messenger of Allah—peace and blessings be upon him—explicitly established.

قَالَ عَلِيٌّ: وَهَذَا خَبَرٌ صَحِيحٌ لَا يَحِلُّ خِلَافُهُ، وَلَا حُجَّةَ لَهُمْ فِيهِ وَلَمْ نَقُلْ قَطُّ، وَمَعَاذَ اللَّهِ مِنْ هَذَا، إنَّهُ يُصَلِّي عَلَى نِيَّةِ أَنَّهَا الصَّلَاةُ الَّتِي صَلَّى، فَيَجْعَلُ فِي يَوْمٍ وَاحِدٍ ظُهْرَيْنِ أَوْ عَصْرَيْنِ أَوْ صُبْحَيْنِ أَوْ مَغْرِبَيْنِ أَوْ عَتَمَتَيْنِ؛ هَذَا كُفْرٌ لَا يَحِلُّ الْقَوْلُ بِهِ، لِأَحَدٍ لَكِنَّهُ يُصَلِّي نَافِلَةً كَمَا نَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى ذَلِكَ.

L5001 As for the statement of Abū Ḥanīfah, he argued that voluntary prayers after the Fajr prayer and after the ʿAṣr prayer are not permissible, citing the narrations reported concerning that, and he gave them precedence over the hadiths that enjoin [the act]. However, we have given precedence to the hadiths that enjoin [the act], and we will mention the evidence for the valid one of the two rulings, God, the Exalted, willing—after concluding our discourse on this matter and the subsequent one, God, the Exalted, willing.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ، فَإِنَّهُ احْتَجَّ بِأَنَّ التَّطَوُّعَ بَعْدَ الصُّبْحِ وَبَعْدَ الْعَصْرِ لَا يَجُوزُ وَاحْتَجَّ بِالْأَخْبَارِ الْوَارِدَةِ فِي ذَلِكَ، وَغَلَّبَهَا عَلَى أَحَادِيثِ الْأَمْرِ؛ وَغَلَّبْنَا نَحْنُ أَحَادِيثَ الْأَمْرِ، وَسَنَذْكُرُ الْبُرْهَانَ عَلَى الصَّحِيحِ مِنْ الْعَمَلَيْنِ إنْ شَاءَ اللَّهُ تَعَالَى، بَعْدَ تَمَامِ كَلَامِنَا فِي هَذِهِ الْمَسْأَلَةِ وَفِي الَّتِي بَعْدَهَا إنْ شَاءَ اللَّهُ.

L5002 As for Mālik's position, his followers argued for the prohibition from joining a congregation that prays Maghrib exclusively by asserting that Maghrib is the Witr (odd-numbered prayer) of the day. If one were to pray it a second time, it would render it even-numbered, thus nullifying its designation as Witr.

وَأَمَّا قَوْلُ مَالِكٍ فَإِنَّهُمْ احْتَجُّوا فِي الْمَنْعِ مِنْ أَنْ يُصَلِّيَ مَعَ الْجَمَاعَةِ الَّتِي تُصَلِّي الْمَغْرِبَ خَاصَّةً بِأَنْ قَالُوا: إنَّ الْمَغْرِبَ وِتْرُ النَّهَارِ، فَلَوْ صَلَّاهَا ثَانِيَةً لَشَفَعَهَا، فَبَطَلَ كَوْنُهَا وِتْرًا.

L5003 Ali said: This is a mistake; because one of them is a supererogatory prayer and the other is an obligatory prayer, by the consensus of both us and them. And the supererogatory prayer does not make up for the obligatory prayer, by the consensus of both us and them.

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِأَنَّ إحْدَاهُمَا نَافِلَةٌ وَالْأُخْرَى فَرِيضَةٌ، بِإِجْمَاعٍ مِنَّا وَمِنْهُمْ وَالنَّافِلَةُ لَا تَشْفَعُ الْفَرِيضَةَ، بِإِجْمَاعٍ مِنَّا وَمِنْهُمْ.

L5004–5006 They said: There is no voluntary prayer in three units, because the Messenger of Allah—peace and blessings be upon him—said, "The prayer of night and day is two units by two units." This contains no proof for them in it, for the one whose obedience is obligatory when he informs that the prayer of night and day is two units by two units—he is the one who commanded that whoever has prayed and finds a congregation praying should pray with them, without specifying a prayer to be performed after another prayer. He is the one who commanded to perform voluntary prayer in Witr as one unit

وَقَالُوا: لَا تَطَوُّعَ بِثَلَاثٍ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «صَلَاةُ اللَّيْلِ وَالنَّهَارِ مَثْنَى مَثْنَى» وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ الَّذِي وَجَبَتْ طَاعَتُهُ فِي إخْبَارِهِ بِأَنَّ صَلَاةَ اللَّيْلِ وَالنَّهَارِ مَثْنَى مَثْنَى، هُوَ الَّذِي أَمَرَ مَنْ صَلَّى وَوَجَدَ جَمَاعَةً تُصَلِّي أَنْ يُصَلِّيَ مَعَهُمْ وَلَمْ يَخُصَّ صَلَاةً بَعْدَ صَلَاةٍ، وَهُوَ الَّذِي أَمَرَ أَنْ يُتَنَفَّلَ فِي الْوِتْرِ بِوَاحِدَةٍ أَوْ بِثَلَاثٍ، وَالْعَجَبُ مِنْ احْتِجَاجِهِمْ بِهَذَا الْخَبَرِ، وَنَسُوا أَنْفُسَهُمْ فِي الْوَقْتِ فَقَالُوا: يُصَلِّي

or three units. How strange it is of... Their reliance on this report—despite their own inconsistency—led them to state: "He should pray Dhuhr, Asr, and *'Atama* (Isha) with the congregation," thereby permitting him to perform a voluntary prayer of four units without offering the salutation between them. This is not done in pairs, which constitutes a contradiction on their part.

الظُّهْرَ وَالْعَصْرَ وَالْعَتَمَةَ مَعَ الْجَمَاعَةِ، فَأَجَازُوا لَهُ التَّطَوُّعَ بِأَرْبَعِ رَكَعَاتٍ لَا يُسَلِّمُ بَيْنَهَا، وَلَيْسَ ذَلِكَ مَثْنَى مَثْنَى، وَهَذَا تَنَاقُضٌ مِنْهُمْ.

L5007 The truth in this matter is that all the Prophet's commands—peace be upon him—are truth itself; none may contradict another. Rather, they must all be followed exactly as they are.

وَالْحَقُّ فِي هَذَا هُوَ أَنَّ جَمِيعَ أَوَامِرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَقٌّ لَا يُضْرَبُ بَعْضُهَا بِبَعْضٍ، بَلْ يُؤْخَذُ بِجَمِيعِهَا كَمَا هِيَ.

L5008 They said: "The time for the Maghrib prayer is narrow," but this is erroneous. For the congregation that is found praying undoubtedly is performing it within the prescribed time of that prayer without any dispute. Thus, its time has not yet become narrow, invalidating all the clamor they and the Hanafis together raised regarding the specificity of Maghrib. And success is granted by Allah, the Most High.

وَقَالُوا: إِنَّ وَقْتَ صَلَاةِ الْمَغْرِبِ ضَيِّقٌ، وَهَذَا خَطَأٌ، لِأَنَّ الْجَمَاعَةَ الَّتِي وَجَدَهَا تُصَلِّي، لَا شَكَّ فِي أَنَّهَا تُصَلِّي فِي وَقْتِ تِلْكَ الصَّلَاةِ بِلَا خِلَافٍ، فَمَا ضَاقَ وَقْتُهَا بَعْدُ، فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ فِي تَخْصِيصِ الْمَغْرِبِ هُمْ وَالْحَنَفِيُّونَ مَعًا، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L5009 As for the Maliki specification that one who performs this prayer must do so individually, this is erroneous because no basis for this specification exists in the Qur'an, the Sunnah, consensus, the statement of a Companion, analogical reasoning, or sound juridical opinion. Even if the prayer is virtuous for one who prays individually, it is more virtuous for one who prays in congregation, and there is no distinction. The superiority of congregational prayer applies to every congregation one encounters, and there is no difference.

وَأَمَّا تَخْصِيصُ الْمَالِكِيِّينَ بِأَنْ يُصَلِّيَ مَنْ صَلَّاهَا مُنْفَرِدًا خَطَأً، لِأَنَّهُ لَمْ يَأْتِ بِتَخْصِيصِ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ صَحِيحٌ، وَإِنْ كَانَتْ الصَّلَاةُ فَضْلًا لِمَنْ صَلَّى مُنْفَرِدًا فَإِنَّهَا أَفْضَلُ لِمَنْ يُصَلِّي فِي جَمَاعَةٍ، وَلَا فَرْقَ، وَفَضْلُ صَلَاةِ الْجَمَاعَةِ قَائِمٌ فِي كُلِّ جَمَاعَةٍ يَجِدُهَا، وَلَا فَرْقَ.

L5010 As for their statement that he does not know which prayer is his, this is erroneous because they do not disagree that if one does not pray with the congregation he finds praying—provided he is not averse to the Sunnah of Allah's Messenger, may Allah bless him and grant him peace—then no sin is upon him. Since there is no disagreement among them that he is not obligated to pray [in this case], and it is necessary, there remains no doubt that the prayer he performs is a voluntary one, for this constitutes the defining characteristic of voluntary prayers. Thus, there is no disagreement that he may choose to pray it or refrain.

وَأَمَّا قَوْلُهُمْ: إنَّهُ لَا يَدْرِي أَيُّهُمَا صَلَاتُهُ فَخَطَأٌ، لِأَنَّهُمْ لَا يَخْتَلِفُونَ فِي أَنَّهُ إنْ لَمْ يُصَلِّ مَعَ الْجَمَاعَةِ الَّتِي وَجَدَهَا تُصَلِّي - غَيْرُ رَاغِبٍ عَنْ سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا إثْمَ عَلَيْهِ، فَإِذْ لَا خِلَافَ عِنْدَهُمْ فِي أَنَّهُ إنْ لَمْ يُصَلِّ فَلَا يَلْزَمُهُ أَنْ يُصَلِّيَ، وَلَا بُدَّ، فَلَا شَكَّ فِي أَنَّهَا نَافِلَةٌ إنْ صَلَّاهَا، لِأَنَّ هَذِهِ هِيَ صِفَةُ النَّافِلَةِ، فَلَا خِلَافَ فِي أَنَّهُ إنْ شَاءَ صَلَّاهَا، وَإِنْ شَاءَ لَمْ يُصَلِّهَا.

L5011 Furthermore, if someone prays with the congregation after having already

performed that prayer earlier, it cannot be that he is free from one of two scenarios: either he intended his congregational prayer as his obligatory prayer (just as he intended the earlier prayer performed at home), thereby disobeying Allah the Exalted and His Messenger - peace and blessings of Allah be upon him - and violating scholarly consensus by performing the same obligatory prayer twice in one day; or he lacked proper intention in both prayers, in which case he has not performed any valid prayer at all.

وَأَيْضًا فَإِنَّهُ لَا يَخْلُو إذَا صَلَّى مَعَ الْجَمَاعَةِ وَقَدْ صَلَّى تِلْكَ الصَّلَاةَ قَبْلُ مِنْ أَنْ يَكُونَ نَوَى صَلَاتَهُ إيَّاهَا أَنَّهُ فَرْضُهُ، وَنَوَى ذَلِكَ أَيْضًا فِي الَّتِي صَلَّى فِي مَنْزِلِهِ، فَإِنْ كَانَ فَعَلَ هَذَا، فَقَدْ عَصَى اللَّهَ تَعَالَى وَرَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَخَرَقَ الْإِجْمَاعَ، فِي أَنْ صَلَّى صَلَاةً وَاحِدَةً فِي يَوْمٍ مَرَّتَيْنِ، عَلَى أَنَّ كُلَّ وَاحِدَةٍ مِنْهُمَا فَرْضُهُ الَّذِي أُمِرَ بِهِ، أَوْ يَكُونَ لَمْ يَنْوِ شَيْئًا مِنْ ذَلِكَ فِي كِلْتَيْهِمَا، فَهَذَا لَمْ يُصَلِّ أَصْلًا.

L5012 A single one of the two prayers does not suffice him if he acts frivolously in disobedience to Allah the Exalted. If he intended the first prayer as his obligatory duty and the second as supererogatory—or conversely, the first as supererogatory and the second as obligatory—then it is according to his intention. No other possibility is valid at all. Al-Awzāʿī said: The second prayer is his obligatory duty.

وَلَا تَجْزِيهِ وَاحِدَةٌ مِنْهُنَّ، وَهُوَ عَابِثٌ عَاصٍ، لِلَّهِ تَعَالَى أَوْ يَكُونَ نَوَى فِي الْأُولَى أَنَّهَا فَرْضُهُ وَفِي الثَّانِيَةِ أَنَّهَا نَافِلَةٌ أَوْ فِي الْأُولَى أَنَّهَا نَافِلَةٌ وَفِي الثَّانِيَةِ أَنَّهَا فَرْضُهُ، فَهُوَ كَمَا نَوَى، وَلَا يُمْكِنُ غَيْرُ هَذَا أَصْلًا وَقَالَ الْأَوْزَاعِيُّ: الثَّانِيَةُ هِيَ فَرْضُهُ.

L5013–5015 Ali said: And the truth regarding this is that if he is among those with a valid excuse for missing congregational prayer, then he prayed alone or prayed in congregation. The first prayer is his obligation without doubt, for it is the one which... He performed it, considering it his obligatory duty, and intended that within it.

قَالَ عَلِيٌّ: وَالْحَقُّ فِي هَذَا: أَنَّهُ إنْ كَانَ مِمَّنْ لَهُ عُذْرٌ فِي التَّخَلُّفِ عَنْ الْجَمَاعَةِ فَصَلَّى وَحْدَهُ، أَوْ صَلَّى فِي جَمَاعَةٍ، فَالْأُولَى فَرْضُهُ بِلَا شَكٍّ، لِأَنَّهَا هِيَ الَّتِي أَدَّى عَلَى أَنَّهَا فَرْضُهُ، وَنَوَى ذَلِكَ فِيهَا.

L5016 The Messenger of Allah (peace and blessings of Allah be upon him) said: “Actions are judged by intentions, and every person has only what they intended.” If someone has no valid excuse for delaying congregational prayer, the first opinion is that if he prays it alone, his prayer is invalid. The second opinion is that his obligation remains, and he must pray again without fail, as we will clarify regarding the obligation to perform prayer in congregation إن شاء الله تعالى. The Friday prayer and other prayers are treated the same in all these matters.[1]

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى» ، وَإِنْ كَانَ مِمَّنْ لَا عُذْرَ لَهُ فِي التَّأَخُّرِ عَنْ الْجَمَاعَةِ، فَالْأُولَى إنْ صَلَّاهَا وَحْدَهُ بَاطِلٌ: وَالثَّانِيَةُ فَرْضُهُ، وَعَلَيْهِ أَنْ يُصَلِّيَ، وَلَا بُدَّ عَلَى مَا نَذْكُرُ فِي وُجُوبِ فَرْضِ الْجَمَاعَةِ إنْ شَاءَ اللَّهُ تَعَالَى، وَالْجُمُعَةُ وَغَيْرُهَا فِي كُلِّ ذَلِكَ سَوَاءٌ.

L5017 As for the statement of Abū Ḥanīfah and his companions concerning one who prays the Friday prayer in his home without an excuse, it is invalid for

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ وَأَصْحَابِهِ فِيمَنْ صَلَّى الْجُمُعَةَ فِي مَنْزِلِهِ، لِغَيْرِ عُذْرٍ فَبَاطِلٌ لِوُجُوهٍ: أَوَّلُهَا: تَفْرِيقُهُ فِي ذَلِكَ بَيْنَ الْجُمُعَةِ وَغَيْرِهَا بِلَا بُرْهَانٍ.

[1] **Hadith references (L5016):** Sahih al-Bukhari 1; Sunan Abi Dawud 2201; Mishkat al-Masabih 1.

several reasons. The first of these is his making a distinction between the Friday prayer and other prayers in this matter without any proof.

L5018 The second is that he differentiated between Friday prayer and other prayers, for his claim that praying it alone at home without an excuse suffices him is erroneous.

L5019 The third [case] is his invalidation of that prayer after permitting it - whether by departing for the congregational mosque or by joining the Imam. All such [views] are invalid, adulterated opinions and baseless assertions about religion.

L5020 Ali said: Since all these statements have been nullified, let us mention what has been authentically established from the Messenger of Allah (peace be upon him) on this matter.

L5021 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn Al-Hajjaj narrated to me: Abu Ar-Rabi' Az-Zahrani and Abu Kamil Al-Jahdari narrated to me, both saying: Hammad ibn Zaid narrated to us from Abu Imran Al-Jawni from Abdullah ibn As-Samit from Abu Dharr, who said: The Messenger of Allah—peace and blessings be upon him—said to me, "How will you be when rulers over you delay the prayer beyond its time or let the prayer time expire?" I said, "What do you command me to do?" He said, "Pray the prayer at its proper time. Then if you catch it [the prayer] with them, pray [with them], for indeed it will be a voluntary prayer for you."

L5022 And through him to Muslim: Zuhayr ibn Harb narrated to me – Ismāʿīl ibn Ibrāhīm ibn ʿUlayyah narrated to us – from Ayyūb as-Sakhtiyānī, from Abū l-ʿĀliyah al-Barāʾ, who said: Ibn Ziyād delayed the prayer. ʿAbdullāh ibn aṣ-Ṣāmit came, and I mentioned Ibn Ziyād's action to him. He said: "I asked Abū Dharr as you asked me. He replied: 'I asked Allah's Messenger – peace and blessings be upon him – as you asked me. He struck me on the thigh and said: Perform the prayer at its appointed time. If you catch up with the

وَالثَّانِي: أَنَّهُ فَرَّقَ بَيْنَ الْجُمُعَةِ وَغَيْرِهَا فَقَدْ أَخْطَأَ فِي قَوْلِهِ: إِنَّهَا تُجْزِئُهُ إِذَا صَلَّاهَا مُنْفَرِدًا، لِغَيْرِ عُذْرٍ فِي مَنْزِلِهِ.

وَالثَّالِثُ: إِبْطَالُهُ تِلْكَ الصَّلَاةَ بَعْدَ أَنْ جَوَّزَهَا: إِمَّا بِخُرُوجِهِ إِلَى الْجَامِعِ، وَإِمَّا بِدُخُولِهِ مَعَ الْإِمَامِ، وَكُلُّ ذَلِكَ آرَاءٌ فَاسِدَةٌ مَدْخُولَةٌ، وَقَوْلٌ فِي الدِّينِ بِغَيْرِ عِلْمٍ.

قَالَ عَلِيٌّ: فَإِذْ قَدْ بَطَلَتْ هَذِهِ الْأَقْوَالِ كُلُّهَا فَلْنَذْكُرْ مَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ: حَدَّثَنِي أَبُو الرَّبِيعِ الزَّهْرَانِيُّ وَأَبُو كَامِلٍ الْجَحْدَرِيُّ قَالَا: ثنا حَمَّادُ بْنُ زَيْدٍ عَنْ أَبِي عِمْرَانَ الْجَوْنِيِّ عَنْ عَبْدِ اللَّهِ بْنِ الصَّامِتِ عَنْ أَبِي ذَرٍّ قَالَ: قَالَ لِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَكَيْفَ أَنْتَ إِذَا كَانَتْ عَلَيْكَ أُمَرَاءُ يُؤَخِّرُونَ الصَّلَاةَ عَنْ وَقْتِهَا، أَوْ يُمِيتُونَ الصَّلَاةَ عَنْ وَقْتِهَا؟ قُلْتُ: فَمَا تَأْمُرُنِي؟ قَالَ: صَلِّ الصَّلَاةَ لِوَقْتِهَا، فَإِنْ أَدْرَكْتَهَا فِيهِمْ فَصَلِّ فَإِنَّهَا لَكَ نَافِلَةٌ» .

وَبِهِ إِلَى مُسْلِمٍ: حَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ ثنا إِسْمَاعِيلُ هُوَ ابْنُ إِبْرَاهِيمَ بْنِ عُلَيَّةَ - عَنْ أَيُّوبَ السَّخْتِيَانِيِّ عَنْ أَبِي الْعَالِيَةِ الْبَرَاءِ قَالَ: أَخَّرَ ابْنُ زِيَادٍ الصَّلَاةَ، فَجَاءَ عَبْدُ اللَّهِ بْنُ الصَّامِتِ فَذَكَرْتُ لَهُ صَنِيعَ ابْنِ زِيَادٍ فَقَالَ: سَأَلْتُ أَبَا ذَرٍّ كَمَا سَأَلْتَنِي فَقَالَ «إِنِّي سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا سَأَلْتَنِي فَضَرَبَ فَخِذِي وَقَالَ: صَلِّ الصَّلَاةَ لِوَقْتِهَا فَإِنْ أَدْرَكْتَ الصَّلَاةَ مَعَهُمْ فَصَلِّ وَلَا تَقُلْ إِنِّي قَدْ صَلَّيْتُ فَلَا أُصَلِّي» .

prayer alongside them, then pray, and do not say: "I have already prayed, so I will not pray.""

فَهَذَا عُمُومٌ مِنْهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِكُلِّ صَلَاةٍ، وَلِمَنْ صَلَّاهَا فِي جَمَاعَةٍ أَوْ مُنْفَرِدًا لَا يَجُوزُ تَخْصِيصُ شَيْءٍ مِنْ ذَلِكَ بِالدَّعْوَى بِلَا دَلِيلٍ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L5023 This is a generality from him—peace be upon him—applicable to every prayer and to whoever prays it, whether in congregation or alone. It is impermissible to specify any aspect of this through mere claim without evidence. And success comes from Allah, the Most High.

وَأَخَذَ بِهَذَا جَمَاعَةٌ مِنْ السَّلَفِ كَمَا رُوِّينَا عَنْ أَبِي ذَرٍّ: أَنَّهُ أَفْتَى بِذَلِكَ؛ وَكَمَا رُوِّينَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ وَالنُّعْمَانَ بْنَ مُقَرِّنٍ اتَّعَدَا مَوْعِدًا فَجَاءَ أَحَدُهُمَا إلَى صَاحِبِهِ وَقَدْ صَلَّى، فَصَلَّى الْفَجْرَ مَعَ صَاحِبِهِ.

L5024–5026 A group of the Salaf adopted this, as we have narrated from Abu Dharr that he issued a fatwa to that effect, and as... It has been narrated to us from Hammad ibn Salamah, from Humayd, from Anas ibn Malik, that Abu Musa al-Ash'ari and al-Nu'man ibn Muqarrin agreed upon a meeting time. One of them came to his companion, who had already prayed, and he prayed Fajr with his companion.

وَبِهِ إلَى حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ وَحُمَيْدٍ كِلَاهُمَا عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَدِمْنَا مَعَ أَبِي مُوسَى الْأَشْعَرِيِّ فَصَلَّى بِنَا الْفَجْرَ فِي الْمِرْبَدِ، ثُمَّ جِئْنَا إلَى الْمَسْجِدِ الْجَامِعِ فَإِذَا الْمُغِيرَةُ بْنُ شُعْبَةَ يُصَلِّي بِالنَّاسِ، وَالرِّجَالُ وَالنِّسَاءُ مُخْتَلِطُونَ، فَصَلَّيْنَا مَعَهُمْ.

L5027 From him [the preceding narrator], the chain reaches Hammad ibn Salama, from Thabit al-Bunani and Humaid—both narrating from Anas ibn Malik, who said: We arrived with Abu Musa al-Ash'ari, and he led us in the Fajr prayer at al-Mirbad. Then we came to the Grand Mosque, and there we found al-Mughira ibn Shu'ba leading the people in prayer while men and women were mingling together, so we prayed with them.

فَهَذَا فِعْلُ الصَّحَابَةِ فِي صَلَاةِ الْفَجْرِ بِخِلَافِ قَوْلِ أَبِي حَنِيفَةَ؛ وَبَعْدَ أَنْ صَلَّوْا جَمَاعَةً بِخِلَافِ قَوْلِ مَالِكٍ، وَلَا يُعْرَفُ لَهُمْ مِنْ الصَّحَابَةِ مُخَالِفٌ يَخُصُّ صَلَاةَ الْمُنْفَرِدِ دُونَ غَيْرِهِ.

L5028 Thus, this is the action of the Companions regarding the Fajr prayer—contrary to the statement of Abū Ḥanīfah—and after they prayed in congregation, contrary to the statement of Mālik. None from among the Companions is known to have opposed specifically the individual prayer to the exclusion of others.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ عَنْ سَعْدِ بْنِ عُبَيْدٍ عَنْ صِلَةَ بْنِ زُفَرَ الْعَبْسِيِّ: خَرَجْت مَعَ حُذَيْفَةَ فَمَرَّ بِمَسْجِدٍ فَصَلَّى مَعَهُمْ الظُّهْرَ وَقَدْ كَانَ صَلَّى؛ ثُمَّ مَرَّ بِمَسْجِدٍ فَصَلَّى مَعَهُمْ الْعَصْرَ وَقَدْ كَانَ صَلَّى، ثُمَّ مَرَّ بِمَسْجِدٍ فَصَلَّى مَعَهُمْ الْمَغْرِبَ وَشَفَعَ بِرَكْعَةٍ وَكَانَ قَدْ صَلَّى، وَعَنْ قَتَادَةَ قَالَ: يُعِيدُ الْعَصْرَ إذَا جَاءَ الْجَمَاعَةَ.

L5029 It has been narrated to us through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from Jābir from Saʿd ibn ʿUbayd from Ṣilah ibn Zufar al-ʿAbsī: I set out on a journey with Ḥudhayfah. He passed by a mosque and prayed Dhuhr with them even though he had already prayed. Then he passed by another mosque and prayed ʿAsr with them even though he had already prayed. Then he passed by another mosque and prayed Maghrib with them, then prayed two additional rakʿahs (shafʿ) afterward even though he had already prayed. From Qatādah: One must re-perform the ʿAsr prayer if he joins the congregation [after having prayed alone].

L5030 Sa’id ibn al-Musayyib said: Pray with the congregation, for your prayer with them exceeds your solitary prayer by twenty and a few prayers.

قَالَ سَعِيدُ بْنُ الْمُسَيِّبِ: صَلِّ مَعَ الْقَوْمِ فَإِنَّ صَلَاتَك مَعَهُمْ تَفْضُلُ صَلَاتَك وَحْدَك بِضْعًا وَعِشْرِينَ صَلَاةً.

L5031 And from Sufyan on the authority of Jabir on the authority of Al-Shaʿbī: There is no harm in repeating the prayer (ṣalāh) in its entirety.

وَعَنْ سُفْيَانَ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ: لَا بَأْسَ أَنْ تُعَادَ الصَّلَاةُ كُلُّهَا.

L5032 From Ibn Jurayj, from ʿAṭāʾ: If I pray the prescribed prayer at home and then catch up with the congregation for the same prayer, I treat the prayer I prayed in my home as voluntary and the one I prayed with the congregation as the prescribed prayer—even if I only caught one rakʿah of it.

وَعَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: إذَا صَلَّيْتُ الْمَكْتُوبَةَ فِي الْبَيْتِ ثُمَّ أَدْرَكْتُهَا مَعَ النَّاسِ فَإِنِّي أَجْعَلُ الَّتِي صَلَّيْتُهَا فِي بَيْتِي نَافِلَةً، وَأَجْعَلُ الَّتِي صَلَّيْت مَعَ النَّاسِ الْمَكْتُوبَةَ وَلَوْ لَمْ أُدْرِكْ إلَّا رَكْعَةً وَاحِدَةً مِنْهَا.

L5033 ʿAṭāʾ was asked about a man who prays Maghrib at home then finds people still praying it. He said: I make even the prayer I performed at home by adding a rakʿah, then utter the salām, then join the people, designating the prayer they are engaged in as the obligatory one.

قَالَ: وَسُئِلَ عَطَاءٌ عَنْ الْمَغْرِبِ يُصَلِّيهَا الرَّجُلُ فِي بَيْتِهِ ثُمَّ يَجِدُ النَّاسَ فِيهَا؟ قَالَ: أَشْفَعُ الَّتِي صَلَّيْت فِي بَيْتِي بِرَكْعَةٍ ثُمَّ أُسَلِّمُ ثُمَّ أَلْحَقُ بِالنَّاسِ، فَأَجْعَلُ الَّتِي هُمْ فِيهَا الْمَكْتُوبَةَ.

L5034 It was narrated to us from Waki‘ from ‘Amr ibn Hassān from Wabarah, who said: “I, Ibrāhīm al-Nakha‘ī, and ‘Abd al-Raḥmān ibn al-Aswad prayed Maghrib. Then we came to the people while they were in prayer, so we joined them. When the Imam gave the Salam, Ibrāhīm stood and added a rak‘ah to make it even.”

وَرُوِّينَا عَنْ وَكِيعٍ عَنْ عَمْرِو بْنِ حَسَّانٍ عَنْ وَبَرَةَ قَالَ: صَلَّيْت أَنَا وَإِبْرَاهِيمُ النَّخَعِيُّ وَعَبْدُ الرَّحْمَنِ بْنُ الْأَسْوَدِ الْمَغْرِبَ، ثُمَّ جِئْنَا إلَى النَّاسِ وَهُمْ فِي الصَّلَاةِ، فَدَخَلْنَا مَعَهُمْ فَلَمَّا سَلَّمَ الْإِمَامُ قَامَ إبْرَاهِيمُ فَشَفَعَ بِرَكْعَةٍ.

L5035 Abū Muḥammad said: ‘Abd al-Raḥmān did not perform the two-unit voluntary prayer (Shafʿ), and all of that is permissible, as it constitutes a voluntary act of worship for which no prohibition has been transmitted regarding any aspect of it.

قَالَ أَبُو مُحَمَّدٍ: لَمْ يَشْفَعْ عَبْدُ الرَّحْمَنِ، وَكُلُّ ذَلِكَ مُبَاحٌ؛ لِأَنَّهُ تَطَوُّعٌ لَمْ يَأْتِ نَهْيٌ عَنْ شَيْءٍ مِنْهُ.

L5036–5037 From Hammad ibn Salamah, who reported from Uthman al-Batti, from Abu al-Duha, that Masruq prayed the Maghrib prayer, then saw people praying, so he prayed Maghrib with them in congregation. He then added a rak’ah to Maghrib.

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ أَخْبَرَنَا عُثْمَانُ الْبَتِّيُّ عَنْ أَبِي الضُّحَى أَنَّ مَسْرُوقًا صَلَّى الْمَغْرِبَ، ثُمَّ رَأَى قَوْمًا يُصَلُّونَ فَصَلَّى الْمَغْرِبَ مَعَهُمْ فِي جَمَاعَةٍ، ثُمَّ شَفَعَ الْمَغْرِبَ بِرَكْعَةٍ.

L5038 From Waki‘ on the authority of Ar-Rabi‘ ibn Subayh, who said: “The prayer should be made up except for Fajr and Asr. However, when the call to prayer is given in the mosque, fleeing is more disgraceful than performing the prayer.”

وَعَنْ وَكِيعٍ عَنْ الرَّبِيعِ بْنِ صُبَيْحٍ قَالَ: تُعَادُ الصَّلَاةُ إلَّا الْفَجْرَ وَالْعَصْرَ، وَلَكِنْ إذَا أَذَّنَ فِي الْمَسْجِدِ فَالْفِرَارُ أَقْبَحُ مِنْ الصَّلَاةِ.

L5039 Abu Muhammad said: If they cite what we have narrated through the chain of Abd al-Razzaq from Ibn Jurayj from Nafi‘ that Ibn Umar stated, “If you have already prayed at home, then join the prayer in the mosque with the Imam, pray with him—except for Fajr and Maghrib prayers, for they are not repeated in a day”—there is no valid argument for them in this, for they themselves have contradicted his ruling. Abu Hanifah contradicted him by adding Asr to the non-repeatable prayers, while Malik contradicted him concerning the repetition of Fajr prayer. Whoever acknowledges that he opposes the truth and valid argument has relieved his opponent of the burden. Success comes from Allah, the Most High.

قَالَ أَبُو مُحَمَّد: فَإِنْ ذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ قَالَ: إِنْ كُنْتَ قَدْ صَلَّيْتَ فِي أَهْلِكَ ثُمَّ أَدْرَكْتَ الصَّلَاةَ فِي الْمَسْجِدِ مَعَ الْإِمَامِ فَصَلِّ مَعَهُ، غَيْرَ صَلَاةِ الصُّبْحِ وَالْمَغْرِبِ، فَإِنَّهُمَا لَا يُصَلَّيَانِ فِي يَوْمٍ مَرَّتَيْنِ، فَلَا حُجَّةَ لَهُمْ فِي هَذَا، لِأَنَّهُمْ قَدْ خَالَفُوهُ فَخَالَفَهُ أَبُو حَنِيفَةَ فِي زِيَادَتِهِ الْعَصْرَ فِيمَا لَا يُعَادُ، وَخَالَفَهُ مَالِكٌ فِي إِعَادَةِ صَلَاةِ الصُّبْحِ، وَمَنْ أَقَرَّ عَلَى نَفْسِهِ بِخِلَافِ الْحَقِّ وَالْحُجَّةِ، فَقَدْ كَفَى خَصْمَهُ مُؤْنَتَهُ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of the Two Rakʿahs After the ʿAṣr Prayer.

[مَسْأَلَةُ الرَّكْعَتَانِ بَعْدَ الْعَصْرِ]

L5040

L5041 285 - Issue: As for the two rak’ahs after ’Asr, Abu Hanifah and Malik prohibited them. As for Al-Shafi’i, he said: “Whoever misses two rak’ahs before Dhuhr [or after it] may pray them after ’Asr. If he prays them after ’Asr, he may establish them during that time and never abandon them.” Ahmad ibn Hanbal said: “I do not pray them, nor do I denounce those who pray them.” Abu Sulayman said: “They are recommended.”

Ali narrated via Abdullah ibn Yusuf, Ahmad ibn Fath, Abdul Wahhab ibn Isa, Ahmad ibn Muhammad, Ahmad ibn Ali, Muslim ibn al-Hajjaj, Qutaybah, from Ismail ibn Ja’far, who reported: Muhammad ibn Abi Harmalah narrated that Abu Salamah ibn Abd al-Rahman ibn Awf said: “I asked ’Aisha about the two rak’ahs that the Messenger of Allah (peace be upon him) used to pray after ’Asr.” She replied: “He would pray them before ’Asr, but later became occupied and missed them - or forgot them - so he prayed them after ’Asr. Thereafter, he established them permanently. Whenever the Messenger of Allah (peace be upon him) adopted a prayer practice, he would steadfastly maintain it.”

٢٨٥ - مَسْأَلَةٌ: وَأَمَّا الرَّكْعَتَانِ بَعْدَ الْعَصْرِ: فَإِنَّ أَبَا حَنِيفَةَ وَمَالِكًا نَهَيَا عَنْهُمَا؟ وَأَمَّا الشَّافِعِيُّ فَإِنَّهُ قَالَ: مَنْ فَاتَتْهُ رَكْعَتَانِ قَبْلَ الظُّهْرِ [أَوْ بَعْدَهُ] فَلَهُ أَنْ يُصَلِّيَهُمَا بَعْدَ الْعَصْرِ، فَإِنْ صَلَّاهُمَا بَعْدَ الْعَصْرِ فَلَهُ أَنْ يُثْبِتَهُمَا فِي ذَلِكَ الْوَقْتِ فَلَا يَدَعُهُمَا أَبَدًا وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: لَا أُصَلِّيهِمَا، وَلَا أُنْكِرُ عَلَى مَنْ صَلَّاهُمَا، وَقَالَ أَبُو سُلَيْمَانَ: هُمَا مُسْتَحْسَنَتَانِ؟ قَالَ عَلِيٌّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا قُتَيْبَةُ عَنْ إِسْمَاعِيلَ بْنِ جَعْفَرٍ أَخْبَرَنِي مُحَمَّدٌ هُوَ ابْنُ أَبِي حَرْمَلَةَ أَنَا «أَبُو سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: أَنَّهُ سَأَلَ عَائِشَةَ عَنِ السَّجْدَتَيْنِ اللَّتَيْنِ كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّيهِمَا بَعْدَ الْعَصْرِ؟ فَقَالَتْ: كَانَ يُصَلِّيهِمَا قَبْلَ الْعَصْرِ، ثُمَّ إِنَّهُ شُغِلَ عَنْهُمَا أَوْ نَسِيَهُمَا فَصَلَّاهُمَا بَعْدَ الْعَصْرِ ثُمَّ أَثْبَتَهُمَا - وَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا صَلَّى صَلَاةً أَثْبَتَهَا» .

L5042–5043 Ali said: “This is what Al-Shafi‘i based his position upon, but there is no valid proof in it. For the Messenger of Allah - peace and blessings be upon him - never stated that these two prayers are only permissible for one who

had forgotten them or was preoccupied with them. Had their two prayers at that time not been valid and proper, he would not have affirmed them during a time when they are not normally permissible."

L5044–5046

As for Abū Ḥanīfah and Mālik, the evidence cited for their position includes what we have transmitted through the chain of Abū Dāwūd: ʻUbayd Allāh ibn Saʻd ibn Ibrāhīm ibn ʻAbd al-Raḥmān ibn ʻAwf reported to us; my uncle—Yaʻqūb ibn Ibrāhīm ibn Saʻd—reported to us; his father reported to us from Muḥammad ibn Isḥāq from Muḥammad ibn ʻAmr ibn ʻAṭāʼ from Dhakwān, the client of ʻĀʼishah, that she narrated to him: "The Messenger of Allāh, peace and blessings be upon him, would pray after ʻAṣr—meaning two rakʻahs—and prohibit them, and he would practice continuous fasting (wiṣāl) yet forbid others from doing so." It also includes what we have transmitted through the chain of al-Bazzār: Yūsuf ibn Mūsā reported to us from Jarīr ibn ʻAbd al-Ḥamīd from ʻAṭāʼ ibn al-Sāʼib from Saʻīd ibn Jubayr from Ibn ʻAbbās: "The Messenger of Allāh, peace and blessings be upon him, only prayed the two rakʻahs after ʻAṣr because wealth came to him, and its distribution occupied him from praying the two rakʻahs after Ẓuhr. Thus, he prayed them after ʻAṣr and did not repeat them." Further evidence includes what we have transmitted through the chain of Ibn Ayman: Qāsim ibn Yūnus reported to us from Abū Ṣāliḥ ʻAbd Allāh ibn Ṣāliḥ from al-Layth from Khālid ibn Yazīd from Saʻīd ibn Abī Hilāl from ʻAbd Allāh ibn Bābī, the client of ʻĀʼishah, the Mother of the Believers. Musa ibn Talhah reported that when Muʿāwiyah performed Ḥajj, we entered upon him. He asked Ibn al-Zubayr about the two rakʻahs after ʿAṣr which the Messenger of Allah—peace and blessings be upon him—had prayed. Ibn al-Zubayr said: "ʻĀʼishah informed me of them." Muʿāwiyah then sent al-Miswar ibn Makhramah to ʿĀʼishah, asking: "Did the Messenger of Allah—peace and blessings be upon him—pray them in your presence?" She replied: "No, but Umm Salamah informed me that he prayed them in her presence." Muʿāwiyah sent al-Miswar ibn Makhramah to Umm Salamah to inquire. She said: "The Messenger of Allah—peace and blessings be upon him—entered upon me after ʿAṣr and prayed two rakʿahs. I said: 'O

قَالَ عَلِيٌّ: بِهَذَا تَعَلَّقَ الشَّافِعِيُّ -، وَلَا حُجَّةَ لَهُ فِيهِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقُلْ: إنَّهُمَا لَا تَجُوزَانِ إلَّا لِمَنْ نَسِيَهُمَا أَوْ شُغِلَ عَنْهُمَا، وَلَوْ لَمْ تَكُنْ صَلَاتُهُمَا حِينَئِذٍ جَائِزَةً حَسَنَةً مَا أَثْبَتَهُمَا فِي وَقْتٍ لَا تَجُوزَانِ فِيهِ.

؟ وَأَمَّا أَبُو حَنِيفَةَ وَمَالِكٌ - فَاحْتُجَّ لَهُمَا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد: حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ ثنا عَمِّي - هُوَ يَعْقُوبُ بْنُ إبْرَاهِيمَ بْنِ سَعْدٍ - ثنا أَبِي عَنْ مُحَمَّدِ بْنِ إسْحَاقَ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَطَاءٍ عَنْ ذَكْوَانَ مَوْلَى عَائِشَةَ أَنَّهَا حَدَّثَتْهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُصَلِّي بَعْدَ الْعَصْرِ - يَعْنِي رَكْعَتَيْنِ - وَيَنْهَى عَنْهَا وَيُوَاصِلُ وَيَنْهَى عَنْ الْوِصَالِ» ؟ وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبَزَّارِ: ثنا يُوسُفُ بْنُ مُوسَى ثنا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ «إنَّمَا صَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الرَّكْعَتَيْنِ بَعْدَ الْعَصْرِ؛ لِأَنَّهُ جَاءَهُ مَالٌ فَقَسَّمَهُ شَغَلَهُ عَنْ الرَّكْعَتَيْنِ، بَعْدَ الظُّهْرِ، فَصَلَّاهُمَا بَعْدَ الْعَصْرِ، وَلَمْ يَعُدْ لَهُمَا» ؟ وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَيْمَنَ: ثنا قَاسِمُ بْنُ يُونُسَ ثنا أَبُو صَالِحٍ عَبْدُ اللَّهِ بْنُ صَالِحٍ ثنا اللَّيْثُ ثنا خَالِدُ بْنُ يَزِيدَ عَنْ سَعِيدِ بْنِ أَبِي هِلَالٍ عَنْ عَبْدِ اللَّهِ بْنِ بَابِيٍّ مَوْلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ مُوسَى بْنَ طَلْحَةَ أَخْبَرَهُ أَنَّ مُعَاوِيَةَ لَمَّا حَجَّ دَخَلْنَا عَلَيْهِ، فَسَأَلَ ابْنَ الزُّبَيْرِ عَنْ الرَّكْعَتَيْنِ بَعْدَ الْعَصْرِ اللَّتَيْنِ صَلَّاهُمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: أَخْبَرَتْنِيهِ عَائِشَةُ، فَأَرْسَلَ مُعَاوِيَةُ الْمِسْوَرَ بْنَ مَخْرَمَةَ إلَى عَائِشَةَ: هَلْ صَلَّاهُمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -[عِنْدَك] ؟ قَالَتْ: لَا، وَلَكِنْ أَخْبَرَتْنِي أُمُّ سَلَمَةَ أَنَّهُ صَلَّاهُمَا عِنْدَهَا؟ فَأَرْسَلَ مُعَاوِيَةُ الْمِسْوَرَ إلَى أُمِّ سَلَمَةَ يَسْأَلُهَا فَقَالَتْ: «دَخَلَ عَلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْدَ الْعَصْرِ فَصَلَّى رَكْعَتَيْنِ فَقُلْت: يَا رَسُولَ اللَّهِ

Messenger of Allah, today I saw you perform a prayer I had never seen you perform before.' He said: 'An opponent preoccupied me. These two rakʿahs were ones I used to pray before ʿAṣr, but I desired to pray them now."' She added: "I never saw the Messenger of Allah—peace and blessings be upon him—pray them before that day or after it."

لَقَدْ رَأَيْتُكَ الْيَوْمَ صَلَّيْتَ صَلَاةً مَا رَأَيْتُكَ تُصَلِّيهَا؟ فَقَالَ: شَغَلَنِي خَصْمٌ فَكَانَتْ رَكْعَتَيْنِ وَكُنْتُ أُصَلِّيهِمَا قَبْلَ الْعَصْرِ فَأَحْبَبْتُ أَنْ أُصَلِّيَهُمَا الْآنَ؟ قَالَتْ: لَمْ أَرَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّاهُمَا قَبْلَ ذَلِكَ الْيَوْمِ، وَلَا بَعْدَهُ» .

L5047–5048 And by what we have narrated through the chain of ʿAbd al-Raḥmān ibn Mahdī: Sufyān—he is al-Thawrī—narrated to us: Abū Isḥāq al-Sabīʿī narrated to us from ʿĀṣim ibn Damrah from ʿAlī ibn Abī Ṭālib, who said: "The Messenger of Allāh—peace be upon him—used to pray two rakʿahs after every obligatory prayer except the ʿAṣr and Fajr prayers."

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ: ثنا سُفْيَانُ هُوَ الثَّوْرِيُّ - ثنا أَبُو إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي دُبُرَ كُلِّ صَلَاةٍ مَكْتُوبَةٍ رَكْعَتَيْنِ إِلَّا الْعَصْرَ وَالصُّبْحَ» .

L5049 And according to what some people narrated from Hammad ibn Salamah, from Al-Azraq ibn Qays, from Dhakwan, from Umm Salamah: "The Messenger of Allah (peace be upon him) prayed the Asr prayer, then entered my house and prayed two rak'ahs? I said: 'O Messenger of Allah, have you prayed a prayer you had not prayed before?' He said: 'Some wealth came to me, which preoccupied me from two rak'ahs I used to perform after Dhuhr, so I prayed them now?' I said: 'O Messenger of Allah, should we make them up if they are missed?' He said: 'No.'"

وَبِمَا رَوَاهُ بَعْضُ النَّاسِ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْأَزْرَقِ بْنِ قَيْسٍ عَنْ ذَكْوَانَ عَنْ أُمِّ سَلَمَةَ «صَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْعَصْرَ ثُمَّ دَخَلَ بَيْتِي فَصَلَّى رَكْعَتَيْنِ؟ فَقُلْت: يَا رَسُولَ اللَّهِ، صَلَّيْتَ صَلَاةً لَمْ تُصَلِّهَا؟ قَالَ: قَدِمَ عَلَيَّ مَالٌ فَشَغَلَنِي عَنْ رَكْعَتَيْنِ كُنْتُ أَرْكَعُهُمَا بَعْدَ الظُّهْرِ فَصَلَّيْتُهُمَا الْآنَ؟ قُلْتُ: يَا رَسُولَ اللَّهِ أَفَنَقْضِيهِمَا إذَا فَاتَتَا؟ قَالَ: لَا» .

L5050–5052 And by what he also narrated via the chain of Abū Usāmah from al-Walīd ibn Kathīr from Muḥammad ibn ʿAmr ibn ʿAṭāʾ from ʿAbd al-Raḥmān ibn Abī Sufyān that Muʿāwiyah sent to ʿĀ'ishah to ask her about... The two units of prayer after 'Asr. She replied: I have no knowledge of him performing them, but Umm Salamah narrated to me that he performed them at her place. So he sent for Umm Salamah. She said: "The Messenger of Allah — peace and blessings be upon him — performed them at my place. I had never seen him perform them before or after." He said: They are two units I used to pray after *Dhuhr*. Then some camels from charity arrived, and I forgot them until I prayed *'Asr*. Then I remembered them, and I disliked performing them in the mosque while people were watching me, so I performed them at your place. They mentioned the reports prohibiting prayer after *'Asr*, and we will mention them, God willing, after this issue — and with Him,

وَبِمَا رَوَاهُ أَيْضًا مِنْ طَرِيقِ أَبِي أُسَامَةَ عَنْ الْوَلِيدِ بْنِ كَثِيرٍ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَطَاءٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي سُفْيَانَ أَنَّ مُعَاوِيَةَ أَرْسَلَ إلَى عَائِشَةَ يَسْأَلُهَا عَنْ السَّجْدَتَيْنِ بَعْدَ الْعَصْرِ؟ فَقَالَتْ: لَيْسَ عِنْدِي صَلَّاهُمَا لَكِنْ أُمُّ سَلَمَةَ حَدَّثَتْنِي أَنَّهُ صَلَّاهُمَا عِنْدَهَا؟ فَأَرْسَلَ إلَى أُمِّ سَلَمَةَ؟ فَقَالَتْ: «صَلَّاهُمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِنْدِي، لَمْ أَرَهُ صَلَّاهُمَا قَبْلُ وَلَا بَعْدُ؟ قَالَ: هُمَا سَجْدَتَانِ كُنْتُ أُصَلِّيهِمَا بَعْدَ الظُّهْرِ فَقَدِمَ عَلَيَّ قَلَائِصُ مِنْ الصَّدَقَةِ فَنَسِيتُهُمَا حَتَّى صَلَّيْتُ الْعَصْرَ، ثُمَّ ذَكَرْتُهُمَا، فَكَرِهْتُ أَنْ أُصَلِّيَهُمَا فِي الْمَسْجِدِ وَالنَّاسُ يَرَوْنِي فَصَلَّيْتُهُمَا عِنْدَكِ» ؟ وَذَكَرُوا الْأَخْبَارَ الَّتِي وَرَدَتْ فِي النَّهْيِ عَنْ

the Exalted, do we seek support. Ali said: None of this constitutes proof for them in any regard. As for the hadith of Dhakwan from Aisha, there is no prohibition in it against them; rather, it contains a general prohibition against prayer after *ʿAsr*, and this is authentic. Since that is the case, the obligation is to apply both his action and his prohibition. Thus, we prohibit prayer after *ʿAsr*, and we perform what he — peace and blessings be upon him — performed. We distinguish the lesser from the greater, apply both, and do not fear either of them.

الصَّلَاةِ بَعْدَ الْعَصْرِ، وَسَنَذْكُرُهَا إنْ شَاءَ اللَّهُ بَعْدَ هَذِهِ الْمَسْأَلَةِ - وَبِهِ تَعَالَى نَتَأَيَّدُ؟ قَالَ عَلِيٌّ: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ -: أَمَّا حَدِيثُ ذَكْوَانَ عَنْ عَائِشَةَ، فَلَيْسَ فِيهِ نَهْيٌ عَنْهُمَا، وَإِنَّمَا فِيهِ نَهْيٌ عَنْهَا يَعْنِي عَنْ الصَّلَاةِ بَعْدَ الْعَصْرِ جُمْلَةً، وَهَذَا صَحِيحٌ، وَإِذْ ذَلِكَ كَذَلِكَ فَالْوَاجِبُ اسْتِعْمَالُ فِعْلِهِ وَنَهْيِهِ، فَنَنْهَى عَنْ الصَّلَاةِ بَعْدَ الْعَصْرِ، وَنُصَلِّي مَا صَلَّى - عَلَيْهِ السَّلَامُ -، وَنَخُصُّ الْأَقَلَّ مِنْ الْأَكْثَرِ، وَنَسْتَعْمِلُهُمَا جَمِيعًا، وَلَا نَخَافُ وَاحِدًا مِنْهُمَا.

L5053 There is no distinction between one who abandons the two rakʿahs—regarding which it is established that the Prophet (peace be upon him) prayed them after ʿAṣr and prohibited them due to his prohibition against prayer after ʿAṣr—and one who disregards his prohibition (peace be upon him) against prayer after ʿAṣr because he prayed those two rakʿahs after ʿAṣr.

وَلَا فَرْقَ بَيْنَ مَنْ تَرَكَ الرَّكْعَتَيْنِ اللَّتَيْنِ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - صَلَّاهُمَا بَعْدَ الْعَصْرِ وَنَهَى عَنْهُمَا مِنْ أَجْلِ نَهْيِهِ عَنْ الصَّلَاةِ بَعْدَ الْعَصْرِ -: وَبَيْنَ مَنْ تَرَكَ نَهْيَهُ - عَلَيْهِ السَّلَامُ - عَنْ الصَّلَاةِ بَعْدَ الْعَصْرِ مِنْ أَجْلِ صَلَاتِهِ الرَّكْعَتَيْنِ بَعْدَ الْعَصْرِ.

L5054 If she had said, "He used to forbid them," that would have indicated they were specifically his. However, it is not permissible to lie or add to the narration. Whoever does that, let him take his seat in the Fire—thus, their entire reliance on this narration is invalidated.

وَلَوْ قَالَتْ: وَكَانَ يَنْهَى عَنْهُمَا، لَكَانَ ذَلِكَ يَدُلُّ عَلَى أَنَّهُمَا لَهُ خَاصَّةً، وَلَكِنْ لَا يَحِلُّ بِالْكَذِبِ، وَلَا الزِّيَادَةِ فِي الرِّوَايَةِ، وَمَنْ فَعَلَ ذَلِكَ فَلْيَتَبَوَّأْ مَقْعَدَهُ مِنْ النَّارِ - فَسَقَطَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ جُمْلَةً.

L5055–5057 As for the ḥadīth of Ibn ʿAbbās, it is defective for multiple reasons. The first is that Jarīr ibn ʿAbd al-Ḥamīd only heard from ʿAṭāʾ ibn al-Sāʾib after ʿAṭāʾ's confusion and the decline of his mental faculties. This is well-known among the people of hadith.

وَأَمَّا حَدِيثُ ابْنِ عَبَّاسٍ فَمَعْلُولٌ مِنْ وُجُوهٍ: أَوَّلُهَا: - أَنَّ جَرِيرَ بْنَ عَبْدِ الْحَمِيدِ لَمْ يَسْمَعْ مِنْ عَطَاءِ بْنِ السَّائِبِ إلَّا بَعْدَ اخْتِلَاطِ عَطَاءٍ، وَتَغَلُّتِ عَقْلِهِ، هَذَا مَعْرُوفٌ عِنْدَ أَصْحَابِ الْحَدِيثِ.

L5058 The second point is that even if it were authentic and we heard Ibn Abbas saying that, it would not constitute proof. This is because he—may Allah be pleased with him—reported what he knew, while Aisha—may Allah be pleased with her—reported what she had knowledge of, which Ibn Abbas did not possess: namely, that "the Messenger of Allah—peace and blessings of Allah be upon him—did not abandon the two rakʿahs after ʿAsr until he died." This is additional knowledge that it is impermissible to abandon.

وَثَانِيهَا: - أَنَّهُ لَوْ صَحَّ وَسَمِعْنَا نَحْنُ ابْنَ عَبَّاسٍ يَقُولُ ذَلِكَ -: لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّهُ - رَضِيَ اللَّهُ عَنْهُ - أَخْبَرَ بِمَا عَرَفَ، وَأَخْبَرَتْ عَائِشَةُ بِمَا كَانَ عِنْدَهَا، مِمَّا لَمْ يَكُنْ عِنْدَ ابْنِ عَبَّاسٍ: مِنْ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَدَعْ الرَّكْعَتَيْنِ بَعْدَ الْعَصْرِ إلَى أَنْ مَاتَ» ؟ فَهَذَا الْعِلْمُ الزَّائِدُ الَّذِي لَا يَحِلُّ تَرْكُهُ، وَمَنْ أَيْقَنَ وَقَالَ: عَلِمْت أَوْلَى مِمَّنْ

قَالَ: لَا أَعْلَمُ وَكِلَاهُمَا صَادِقٌ؟ وَثَالِثُهَا - أَنَّهُ حَتَّى لَوْ صَحَّ قَوْلُ ابْنِ عَبَّاسٍ وَلَمْ يَأْتِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ خِلَافُهُ - لَمَا كَانَتْ فِيهِ حُجَّةٌ؛ لِأَنَّ فِعْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الشَّيْءَ مَرَّةً وَاحِدَةً حُجَّةٌ بَاقِيَةٌ، وَحَقٌّ ثَابِتٌ أَبَدًا، مَا لَمْ يَنْهَ عَمَّا فَعَلَ مِنْ ذَلِكَ؟ وَمَنْ قَالَ: لَا يَكُونُ فِعْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الشَّيْءَ حَقًّا إلَّا حَتَّى يُكَرِّرَ فِعْلَهُ فَهُوَ كَافِرٌ مُشْرِكٌ وَسَخِيفٌ [مَعَ ذَلِكَ] ؛ لِأَنَّهُ يُقَالُ لَهُ مِثْلُ ذَلِكَ فِيمَا فُعِلَ مَرَّتَيْنِ أَوْ ثَلَاثًا أَوْ أَلْفَ مَرَّةٍ، وَلَا فَرْقَ، وَهَذَا لَا يَقُولُهُ مُسْلِمٌ، وَلَا ذُو عَقْلٍ؟ وَالْعَجَبُ أَنَّهُمْ يَقُولُونَ: إنَّ الصَّاحِبَ إذَا رَوَى خَبَرًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ خَالَفَهُ فَذَلِكَ دَلِيلٌ عِنْدَهُمْ عَلَى وَهْنِ الْخَبَرِ، وَقَدْ صَحَّ عَنْ ابْنِ عَبَّاسٍ الصَّلَاةُ بَعْدَ الْعَصْرِ كَمَا نَذْكُرُ بَعْدَ هَذَا فَهَلَّا عَلَّلُوا هَذَا الْخَبَرَ بِمُخَالَفَةِ ابْنِ عَبَّاسٍ، لِمَا رَوَى فِي ذَلِكَ، وَلَكِنَّهُمْ لَا مَئُونَةَ عَلَيْهِمْ مِنْ التَّنَاقُضِ - فَسَقَطَ هَذَا الْخَبَرُ جُمْلَةً، - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

And who is more deserving: one who is certain and says, “I know,” or one who says, “I do not know”—and both are truthful? The third point is that even if Ibn Abbas’s statement were authentic and none of the Companions contradicted it, it would still not constitute proof. For the Messenger of Allah’s—peace and blessings of Allah be upon him—action, even if performed once, remains an enduring proof and an eternally established truth, provided he did not prohibit it. Whoever claims that the Messenger of Allah’s—peace and blessings of Allah be upon him—action does not establish a truth unless he repeats it is a disbeliever who associates partners with Allah and a fool. This is because the same objection could be raised even if the action were performed twice, thrice, or a thousand times—there is no difference. Would any Muslim or rational person say such a thing? It is astonishing that they claim: “If a Companion narrates a report from the Messenger of Allah—peace and blessings of Allah be upon him—and then contradicts it, that is evidence for them of the report’s weakness.” Yet it is authentically established that Ibn Abbas prayed after ‘Asr, as we will mention later. Why did they not invalidate this report due to Ibn Abbas’s contradiction of his own narration? But they are unburdened by inconsistency—thus this report is entirely invalidated. And success is from Allah, the Most High.

وَأَمَّا خَبَرُ مُوسَى بْنِ طَلْحَةَ فَلَا حُجَّةَ لَهُمْ فِيهِ، لِوُجُوهٍ: أَوَّلُهَا - ضَعْفُ سَنَدِهِ، لِأَنَّهُ مِنْ طَرِيقِ أَبِي صَالِحٍ كَاتِبِ اللَّيْثِ، وَهُوَ ضَعِيفٌ وَفِيهِ سَعِيدُ بْنُ أَبِي هِلَالٍ، وَلَيْسَ بِالْقَوِيِّ وَلَمْ يَذْكُرْ فِيهِ مُوسَى بْنُ طَلْحَةَ سَمَاعًا مِنْ أُمِّ سَلَمَةَ، وَلَا مِنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهُمَا -.

L5059–5060 As for the narration of Musa ibn Talha, there is no valid proof for them in it due to several reasons. The first is the weakness of its chain of transmission, as it is reported through Abu Salih (the scribe of Al-Layth, who is weak) and in it is Sa‘id ibn Abi Hilal (who is not strong). Musa ibn Talha did not explicitly mention hearing it from Umm Salamah or from Aisha—may Allah be pleased with them both.

وَالثَّانِي: - أَنَّهُ لَيْسَ فِيهِ نَهْيٌ عَنْ صَلَاتِهِمَا وَالثَّالِثُ: - أَنَّهُ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا، لِأَنَّ فِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى الرَّكْعَتَيْنِ بَعْدَ الْعَصْرِ» وَلَوْ كَانَتَا لَا تَجُوزَانِ، أَوْ مَكْرُوهَتَيْنِ مَا فَعَلَهُمَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -، وَفِعْلُهُ - عَلَيْهِ السَّلَامُ - حَقٌّ وَهُدًى، سَوَاءٌ فَعَلَهُ مَرَّةً أَوْ أَلْفَ مَرَّةٍ، وَمَنْ قَالَ: إنَّ فِعْلَهُ ضَلَالٌ، فَهُوَ كَافِرٌ؟ .

L5061 The second point is that there is no prohibition against praying these two rak‘ahs. The third point is that if this report were authentic, it would constitute evidence in our favor, for it states: “The Messenger of Allah (peace and blessings be upon him) prayed two rak‘ahs after ‘Aṣr.” Had these prayers been impermissible or disliked, he (peace be upon him) would not have performed them. His action (peace be upon him) is truth and guidance, whether he performed it once or a thousand times. Whoever says that his action constitutes misguidance is a disbeliever.

L5062 The fourth: An authentic disagreement regarding this has been reported from Umm Salamah (may Allah be pleased with her), as we will mention after this if Allah the Exalted wills.

L5063 The fifth: It is undoubtedly fabricated, due to ʻĀ'isha's denial that the Prophet—peace be upon him—prayed the two rak'ahs in her presence, and the mutawatir transmission from ʻĀ'isha through the narration of the Imams: Urwa ibn al-Zubayr, ʻAbdullāh ibn al-Zubayr, Masrūq, al-Aswad ibn Yazīd, Tawus, Abū Salama ibn ʻAbd al-Raḥmān ibn ʻAwf, Ayman, and others—that he—peace be upon him—did not cease praying them in her presence.

L5064–5066 This view is equally applicable to the hadith of Umm Salamah which we cited through the chain of ʿAbd al-Raḥmān ibn Abī Sufyān. This ʿAbd al-Raḥmān is unknown (majhūl), and he also did not mention that he heard it from Umm Salamah. This is undoubtedly a fabricated narration, for it contains an evident falsehood beyond doubt—namely, what is falsely attributed to ʿĀ'ishah in her saying, "I do not have [a precedent for] their two prayers." We have already mentioned earlier those who rejected this narration.

L5067 And because it also contains wording that is absolutely impermissible for him—peace be upon him—to say: "I disliked to pray them in the mosque while people were looking at me, so I prayed them at your place."

L5068 For their action—of both of them—must necessarily be one of the following: reprehensible, forbidden, permissible, or praiseworthy. If it is forbidden or reprehensible, then whoever attributes to the Messenger of Allah—peace and blessings be upon him—the concealment of forbidden matters is a disbeliever, for accusing the Messenger of Allah—peace and blessings be upon him—of transgression. He—peace and blessings be upon him—was commanded to recite to the people: "And I do not intend to oppose you in what I forbid you" [Hud 11:88].[2]

L5069 Among the impossible and inconceivable matters is that he—peace be upon him—would exert himself through contriving a disliked prayer devoid of

[2] **Qur'an references (L5068):** Qur'an 11:88 (Hud).

وَالرَّابِعُ: - أَنَّهُ قَدْ صَحَّ خِلَافُ هَذَا عَنْ أُمِّ سَلَمَةَ - رَضِيَ اللَّهُ عَنْهَا - كَمَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى.

وَالْخَامِسُ: - أَنَّهُ مَوْضُوعٌ بِلَا شَكٍّ، لِأَنَّ فِيهِ إِنْكَارَ عَائِشَةَ أَنَّهُ - عَلَيْهِ السَّلَامُ - صَلَّاهُمَا عِنْدَهَا، وَنَقْلُ التَّوَاتُرِ عَنْ عَائِشَةَ مِنْ رِوَايَةِ الْأَئِمَّةِ: أَنَّهُ لَمْ يَزَلْ - عَلَيْهِ السَّلَامُ - يُصَلِّيهِمَا عِنْدَهَا، مِثْلُ: عُرْوَةَ بْنِ الزُّبَيْرِ، وَعَبْدِ اللَّهِ بْنِ الزُّبَيْرِ، وَمَسْرُوقٍ، وَالْأَسْوَدِ بْنِ يَزِيدَ، وَطَاوُسٍ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَأَيْمَنَ، وَغَيْرِهِمْ.

وَهَذَا الْقَوْلُ سَوَاءٌ سَوَاءٌ أَيْضًا - فِي حَدِيثِ أُمِّ سَلَمَةَ الَّذِي ذَكَرْنَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي سُفْيَانَ - وَعَبْدُ الرَّحْمَنِ هَذَا مَجْهُولٌ - وَلَمْ يَذْكُرْ أَيْضًا: أَنَّهُ سَمِعَهُ مِنْ أُمِّ سَلَمَةَ وَهُوَ خَبَرٌ مَوْضُوعٌ لَا شَكَّ فِيهِ، لِأَنَّ فِيهِ كَذِبًا ظَاهِرًا لَا شَكَّ فِيهِ؟ وَهُوَ مَا نُسِبَ إِلَى عَائِشَةَ مِنْ قَوْلِهَا " لَيْسَ عِنْدِي صَلَّاهُمَا " وَقَدْ ذَكَرْنَا مَنْ رَوَى تَكْذِيبَ هَذَا آنِفًا.

وَلِأَنَّ فِيهِ أَيْضًا لَفْظًا لَا يَجُوزُ أَلْبَتَّةَ أَنْ يَقُولَهُ - عَلَيْهِ السَّلَامُ -، وَهُوَ «فَكَرِهْت أَنْ أُصَلِّيَهُمَا فِي الْمَسْجِدِ وَالنَّاسُ يَنْظُرُونَ إلَيَّ فَصَلَّيْتُهُمَا عِنْدَك» .

إذْ لَا يَخْلُو فِعْلُهُمَا: أَنْ يَكُونَ مَكْرُوهًا أَوْ حَرَامًا، أَوْ مُبَاحًا حَسَنًا؟ فَإِنْ كَانَ حَرَامًا أَوْ مَكْرُوهًا، فَمَنْ نَسَبَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - التَّسَتُّرَ لِمُحَرَّمَاتٍ فَهُوَ كَافِرٌ، لِتَفْسِيقِهِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ أُمِرَ - عَلَيْهِ السَّلَامُ - أَنْ يَقْرَأَ عَلَى النَّاسِ {وَمَا أُرِيدُ أَنْ أُخَالِفَكُمْ إلَى مَا أَنْهَاكُمْ عَنْهُ} [هود: ٨٨] .

وَمِنْ الْمُحَالِ الْمُمْتَنِعِ أَنْ يَتَعَنَّى - عَلَيْهِ السَّلَامُ - بِتَكَلُّفِ صَلَاةٍ مَكْرُوهَةٍ لَا أَجْرَ فِيهَا؟ فَهَذَا هُوَ التَّكَلُّفُ الَّذِي أَمَرَهُ تَعَالَى أَنْ يَقُولَ فِيهِ: {وَمَا أَنَا مِنَ الْمُتَكَلِّفِينَ} [ص: ٨٦]

reward. This is the very pretense regarding which Allah commanded him to declare: *“I am not of those who affect pretense”* (Q. 38:86). Far be it from Allah Almighty to permit him—peace be upon him—to intend an act unless it draws him nearer to his Lord and causes Allah to make him forget that which holds no means to bring us closer to our Lord—nor any increase.[3]

وَحَاشَا لِلَّهِ تَعَالَى أَنْ يَفْعَلَ - عَلَيْهِ السَّلَامُ - قَاصِدًا إلَى فِعْلِهِ - إلَّا مَا يُقَرِّبُهُ مِنْ رَبِّهِ تَعَالَى وَيُنْسِيهِ تَعَالَى الشَّيْءَ [لَيْسَ] لَنَا فِيهِ مَا يُقَرِّبُنَا مِنْ رَبِّنَا عَزَّ وَجَلَّ؟ ، وَلَا مَزِيد.

L5070 As for the narration of Ali ibn Abi Talib, there is no proof in it whatsoever, for it contains nothing except his report—may Allah be pleased with him—of what he knew: that he did not witness the Messenger of Allah—peace and blessings be upon him—praying those two prayers, and he is truthful in his statement. This does not imply prohibition or dislike of them. And Ali—peace be upon him—never fasted a complete month besides Ramadan; yet this does not necessitate dislike of fasting [a complete month voluntarily].

وَأَمَّا حَدِيثُ عَلِيِّ بْنِ أَبِي طَالِبٍ فَلَا حُجَّةَ فِيهِ أَصْلًا؛ لِأَنَّهُ لَيْسَ فِيهِ إلَّا إخْبَارُهُ - رَضِيَ اللَّهُ عَنْهُ - بِمَا عَلِمَ؛ مِنْ أَنَّهُ لَمْ يَرَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّاهُمَا، وَهُوَ الصَّادِقُ فِي قَوْلِهِ، وَلَيْسَ فِي هَذَا نَهْيٌ عَنْهُمَا، وَلَا كَرَاهَةٌ لَهُمَا؛ [وَمَا] صَامَ - عَلَيْهِ السَّلَامُ - قَطُّ شَهْرًا كَامِلًا غَيْرَ رَمَضَانَ، وَلَيْسَ هَذَا بِمُوجِبٍ كَرَاهِيَةَ صَوْمِ [شَهْرٍ كَامِلٍ تَطَوُّعًا] .

L5071–5073 Then, it has been narrated by someone other than ʿAlī that he—peace be upon him—prayed both. Thus, each relayed according to his knowledge, and all of them are truthful. Then, it has been authentically reported from ʿAlī a differing opinion from that, as we will mention after this, if Allah, the Exalted, wills.

ثُمَّ قَدْ رَوَى غَيْرُ عَلِيٍّ: أَنَّهُ - عَلَيْهِ السَّلَامُ - صَلَّاهُمَا - فَكُلٌّ أَخْبَرَ بِعِلْمِهِ، وَكُلُّهُمْ صَادِقٌ ثُمَّ قَدْ صَحَّ عَنْ عَلِيٍّ خِلَافُ ذَلِكَ، كَمَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

L5074 They say: When a companion narrates a hadith and is contradicted, this constitutes evidence according to them for the rejection of that report. Why did they not say this here? As for the hadith of Hammad ibn Salama from al-Azraq ibn Qays from Dhakwan from Umm Salamah—it is a *munkar* (denounced) hadith, for it does not appear in the books of Hammad ibn Salama.

وَهُمْ يَقُولُونَ: إنَّ الصَّاحِبَ إذَا رَوَى حَدِيثًا وَخَالَفَهُ فَهَذَا دَلِيلٌ عِنْدَهُمْ عَلَى سُقُوطِ ذَلِكَ الْخَبَرِ، فَهَلَّا قَالُوا هَذَا هَهُنَا؟ ، وَأَمَّا حَدِيثُ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْأَزْرَقِ بْنِ قَيْسٍ عَنْ ذَكْوَانَ عَنْ أُمِّ سَلَمَةَ؟ فَحَدِيثٌ مُنْكَرٌ، لِأَنَّهُ لَيْسَ هُوَ فِي كُتُبِ حَمَّادِ بْنِ سَلَمَةَ.

L5075 Moreover, this chain is disconnected, as Dhakwān did not hear it from Umm Salamah. The proof of this is that Abū al-Walīd al-Ṭayālisī narrated this report from Ḥammād ibn Salamah, from al-Azraq ibn Qays, from Dhakwān, from ʿĀʾishah, from Umm Salamah: “The Prophet—peace and blessings of Allah be upon him—prayed two rakʿahs in her house after ʿAṣr. I said, ’What

وَأَيْضًا فَإِنَّهُ مُنْقَطِعٌ، وَلَمْ يَسْمَعْهُ ذَكْوَانُ مِنْ أُمِّ سَلَمَةَ؟ بُرْهَانُ ذَلِكَ: أَنَّ أَبَا الْوَلِيدِ الطَّيَالِسِيِّ رَوَى هَذَا الْخَبَرَ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْأَزْرَقِ بْنِ قَيْسٍ عَنْ ذَكْوَانَ عَنْ عَائِشَةَ عَنْ أُمِّ سَلَمَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى فِي بَيْتِهَا رَكْعَتَيْنِ بَعْدَ الْعَصْرِ

[3] **Qur’an references (L5069):** Qur’an 38:86 (Sad).

are these two rakʿahs?' He replied, 'I used to pray them after Ẓuhr, but wealth came to me and preoccupied me, so I prayed them now.'"

فَقُلْت: مَا هَاتَانِ الرَّكْعَتَانِ؟ قَالَ: كُنْتُ أُصَلِّيهِمَا بَعْدَ الظُّهْرِ، وَجَاءَنِي مَالٌ فَشَغَلَنِي فَصَلَّيْتُهُمَا الْآنَ» .

L5076 This is the continuous narration, and it does not contain the phrase: "Shall we then make up those two ourselves? He said: No." Therefore, it is confirmed that Dhakwan did not hear this addition from Umm Salamah, and we do not know from whom he took it. Thus, it is rendered invalid.

فَهَذِهِ هِيَ الرِّوَايَةُ الْمُتَّصِلَةُ: وَلَيْسَ فِيهَا «أَفَنَقْضِيهِمَا نَحْنُ؟ قَالَ: لَا» فَصَحَّ أَنَّ هَذِهِ الزِّيَادَةَ لَمْ يَسْمَعْهَا ذَكْوَانُ مِنْ أُمِّ سَلَمَةَ، وَلَا نَدْرِي عَمَّنْ أَخَذَهَا؟ فَسَقَطَتْ.

L5077–5079 Furthermore, if this wording were valid, they would have no valid proof for it whatsoever, for it contains no prohibition against performing those two prayers at all, but rather only a prohibition against compensating for them after their prescribed time. Thus, it is impermissible to blame his statement—peace be upon him. By deceptively attributing to him what he did not say—through the obfuscation of one who acts thus in religious matters—all that they depended upon becomes invalid. And all praise belongs to Allah.

ثُمَّ لَوْ صَحَّتْ هَذِهِ اللَّفْظَةُ لَمَا كَانَ لَهُمْ فِيهَا حُجَّةٌ أَصْلًا؛ لِأَنَّهُ لَيْسَ فِيهَا نَهْيٌ عَنْ صَلَاتِهِمَا [أَصْلًا] ، وَإِنَّمَا فِيهَا: النَّهْيُ عَنْ قَضَائِهِمَا فَقَطْ، فَلَا يَحِلُّ تَوْثِيبُ كَلَامِهِ - عَلَيْهِ السَّلَامُ - إلَى مَا لَمْ يَقُلْهُ تَلْبِيسًا مِنْ فَاعِلِ ذَلِكَ فِي الدِّينِ - فَسَقَطَ كُلُّ مَا تَعَلَّقُوا بِهِ وَلِلَّهِ الْحَمْدُ.

L5080 As for the narrations prohibiting prayer after the Asr prayer, we shall mention them—if Allah the Exalted wills—following this issue and the discussion concerning them, by the power and strength of Allah the Exalted? As for al-Shāfiʿī's reliance on the hadith of the Messenger of Allah—peace and blessings be upon him—which we mentioned, that he—peace be upon him—"would consistently perform a prayer once he established it," there is no proof for him in it. This is because it does not contain a prohibition against praying them for one who did not forget the two rakʿahs before Asr. It only indicates [the permissibility for prayer] at that time, for if it were not permissible, he—peace be upon him—would not have prayed them, neither as a compensatory act nor as a regular practice. His establishment of them (peace be upon him) is the clearest evidence that they are permissible and virtuous at that time. He—peace be upon him—did not say, "No one should pray them except one who forgot them"—thus, is his reliance on it invalidated?

وَأَمَّا أَحَادِيثُ النَّهْيِ عَنْ الصَّلَاةِ بَعْدَ الْعَصْرِ، فَسَنَذْكُرُهَا - إنْ شَاءَ اللَّهُ تَعَالَى - إثْرَ هَذِهِ الْمَسْأَلَةِ وَالْكَلَامُ عَلَيْهَا، بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ؟ وَأَمَّا تَعَلُّقُ الشَّافِعِيِّ بِحَدِيثِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَا مِنْ أَنَّهُ - عَلَيْهِ السَّلَامُ - «كَانَ إذَا صَلَّى صَلَاةً أَثْبَتَهَا» فَلَا حُجَّةَ لَهُ فِيهِ، لِأَنَّهُ لَيْسَ فِيهِ نَهْيٌ عَنْ أَنْ يُصَلِّيَهُمَا مَنْ لَمْ يَنْسَ الرَّكْعَتَيْنِ قَبْلَ الْعَصْرِ، وَلَيْسَ فِيهِ إلَّا [الْإِبَاحَةُ، لِلصَّلَاةِ] حِينَئِذٍ، إذْ لَوْ لَمْ تَكُنْ جَائِزَةً لَمَا صَلَّاهَا - عَلَيْهِ السَّلَامُ -، قَاضِيًا، وَلَا مُثْبِتًا، وَفِي إثْبَاتِهِ - عَلَيْهِ السَّلَامُ - إيَّاهَا أَصَحُّ بَيَانٍ بِأَنَّهَا حِينَئِذٍ جَائِزَةٌ حَسَنَةٌ، وَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ -: إنَّهُ لَا يُصَلِّيهِمَا إلَّا مَنْ نَسِيَهُمَا - فَسَقَطَ تَعَلُّقُهُ بِهِ؟ قَالَ عَلِيٌّ: فَإِذْ سَقَطَ كُلُّ مَا شَغَبُوا بِهِ فَلْنَذْكُرْ - إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ - الْآثَارَ الْوَارِدَةَ فِي الرَّكْعَتَيْنِ بَعْدَ الْعَصْرِ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا زُهَيْرُ بْنُ

ʿAlī said: Since all their vehement objections have been refuted, let us mention—if Allah Almighty wills—the transmitted reports concerning the two rakʿahs after Asr.

ʿAbdullāh ibn Yūsuf narrated to us: Aḥmad ibn Fatḥ narrated to us: ʿAbd al-Wahhāb ibn ʿĪsā narrated to us: Aḥmad ibn Muḥammad narrated to us: Aḥmad ibn ʿAlī narrated to us: Muslim ibn al-Ḥajjāj narrated to us: Zuhayr ibn Ḥarb and Muḥammad ibn ʿAbdillāh ibn Numayr. Zuhayr said: Jarīr narrated to us, and Ibn Numayr said: My father narrated to us. Then they all agreed: From Hishām ibn ʿUrwah, from his father, from ʿĀ'ishah, who said: "The Messenger of Allah—peace and blessings be upon him—never abandoned the two rakʿahs after Asr in my presence at all."[4]

حَرْبٍ وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ، قَالَ زُهَيْرٌ: ثنا جَرِيرٌ، وَقَالَ ابْنُ نُمَيْرٍ: ثنا أَبِي، ثُمَّ اتَّفَقَا جَمِيعًا: عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ: «مَا تَرَكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَكْعَتَيْنِ بَعْدَ الْعَصْرِ عِنْدِي قَطُّ» .

L5081 And through him to Muslim: ʿAli ibn Ḥajar narrated to us, ʿAli ibn Mishar informed us, Abū Isḥāq al-Shaybānī informed us, from ʿAbd al-Raḥmān ibn al-Aswad ibn Yazīd, from his father, from ʿĀ'ishah, who said: "There are two prayers the Messenger of Allah (may Allah's peace and blessings be upon him) never abandoned in my house, ever, whether in secret or publicly: two rakʿahs before Fajr and two rakʿahs after ʿAsr."[5]

وَبِهِ إِلَى مُسْلِمٍ: ثنا عَلِيُّ بْنُ حَجَرٍ أَنَا عَلِيُّ بْنُ مِسْهَرٍ أَنَا أَبُو إِسْحَاقَ الشَّيْبَانِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ بْنِ يَزِيدَ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ «صَلَاتَانِ مَا تَرَكَهُمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي بَيْتِي قَطُّ سِرًّا، وَلَا عَلَانِيَةً: رَكْعَتَيْنِ قَبْلَ الْفَجْرِ وَرَكْعَتَيْنِ بَعْدَ الْعَصْرِ» .

L5082–5083 And through him to Muslim: Ḥasan al-Ḥulwānī narrated to us, ʿAbd al-Razzāq narrated to us: "I, along with Maʿmar, [heard] from Ibn Ṭāwūs, from his father, from ʿĀ'isha, who said: 'The Messenger of Allah (peace be upon him) never abandoned the two rakʿahs after ʿAṣr.'"[6]

وَبِهِ إِلَى مُسْلِمٍ ثنا حَسَنُ الْحُلْوَانِيُّ ثنا عَبْدُ الرَّزَّاقِ أَنَا مَعَ مَعْمَرٍ عَنِ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ «لَمْ يَدَعْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الرَّكْعَتَيْنِ بَعْدَ الْعَصْرِ» .

L5084 Abd al-Rahman ibn Abdullah al-Hamadani narrated to us: Ibrahim ibn Ahmad al-Balkhi narrated to us: al-Farbari narrated to us: al-Bukhari narrated to us: Abu Nu'aym—who is al-Fadl ibn Dukayn—narrated to us: Abd al-Wahid ibn Ayman narrated to me: My father narrated to me that he heard Aisha, the Mother of the Believers, say: "By the One who took him away"—meaning the Messenger of Allah—"he did not abandon them until he met Allah the Exalted"—meaning the two rak'ahs after the *Asr* prayer—"and he did not meet Allah until prayer became burdensome for him." This is the utmost emphasis on them both.

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ الْهَمْدَانِيُّ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيُّ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَبُو نُعَيْمٍ هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - ثنا عَبْدُ الْوَاحِدِ بْنُ أَيْمَنَ حَدَّثَنِي أَبِي أَنَّهُ سَمِعَ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ قَالَتْ: «وَالَّذِي ذَهَبَ بِهِ تَعْنِي رَسُولَ اللَّهِ مَا تَرَكَهُمَا حَتَّى لَقِيَ اللَّهَ تَعَالَى - تَعْنِي الرَّكْعَتَيْنِ بَعْدَ الْعَصْرِ - قَالَتْ: وَمَا لَقِيَ اللَّهَ حَتَّى ثَقُلَ عَنِ الصَّلَاةِ» فَهَذَا غَايَةُ التَّأْكِيدِ فِيهِمَا.

L5085 Umm Salamah and Maymunah narrated them both, while Tamim al-Dari, Umar ibn al-Khattab, Zayd ibn Khalid al-Juhani, and others among the be-

وَقَدْ رَوَتْهُمَا أَيْضًا أُمُّ سَلَمَةَ وَمَيْمُونَةُ أُمَّا الْمُؤْمِنِينَ وَتَمِيمٌ الدَّارِيِّ، وَعُمَرُ بْنُ الْخَطَّابِ، وَزَيْدُ بْنُ خَالِدٍ الْجُهَنِيُّ، وَغَيْرُهُمْ - فَصَارَ نَقْلَ تَوَاتُرٍ يُوجِبُ الْعِلْمَ.

[4] **Hadith references (L5080):** Sahih Muslim 835b; Mishkat al-Masabih 1178.
[5] **Hadith references (L5081):** Sahih Muslim 835c.
[6] **Hadith references (L5083):** Sahih Muslim 833b.

lievers also transmitted them. Thus, this became a mutawatir transmission that necessitates definitive knowledge.

L5086 Hammam narrated to us: Abbas ibn Asbagh narrated to us: Ibn Ayman narrated to us: Ahmad ibn Muhammad al-Birti the judge narrated to us: Abu Ma'mar - who is Abdullah ibn Amr al-Raqqi - narrated to us: Abdul-Warith ibn Sa'id al-Tannuri narrated to us: Hanzalah - who is Ibn Abi Sufyan al-Jumahi - narrated from Abdullah ibn al-Harith ibn Nawfal, who said: Mu'awiyah led us in the Asr prayer, then he noticed people praying afterward. He inquired: "What is this prayer?" They responded: "This is the legal ruling issued by Abdullah ibn al-Zubayr." When Abdullah ibn al-Zubayr arrived with the people, Mu'awiyah confronted him: "What is this legal opinion you're promulgating - that people should pray after Asr?"

حَدَّثَنَا حُمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا ابْنُ أَيْمَنَ ثنا أَحْمَدُ بْنُ مُحَمَّدٍ الْبِرْتِيُّ الْقَاضِي ثنا أَبُو مَعْمَرٍ هُوَ عَبْدُ اللَّهِ بْنُ عَمْرٍو الرَّقِّيُّ - ثنا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ التَّنُّورِيُّ ثنا حَنْظَلَةُ هُوَ ابْنُ أَبِي سُفْيَانَ الْجُمَحِيُّ - عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ بْنِ نَوْفَلٍ: قَالَ: صَلَّى بِنَا مُعَاوِيَةُ الْعَصْرَ فَرَأَى نَاسًا يُصَلُّونَ، فَقَالَ: مَا هَذِهِ الصَّلَاةُ؟ فَقَالُوا: هَذِهِ فُتْيَا عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ؟ فَجَاءَ عَبْدُ اللَّهِ بْنُ الزُّبَيْرِ مَعَ النَّاسِ، فَقَالَ لَهُ مُعَاوِيَةُ: مَا هَذِهِ الْفُتْيَا الَّتِي تُفْتِي: أَنْ يُصَلُّوا بَعْدَ الْعَصْرِ؟

L5087–5088 Ibn al-Zubayr said, "The wife of the Messenger of Allah (peace be upon him) narrated to me that he (peace be upon him) prayed after ʿAṣr."

فَقَالَ ابْنُ الزُّبَيْرِ: حَدَّثَتْنِي زَوْجُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّهُ - عَلَيْهِ السَّلَامُ - صَلَّى بَعْدَ الْعَصْرِ» .

L5089 Muʿāwiyah sent to ʿĀ'ishah, and she responded: "Is this the ḥadīth of Maymūnah bint al-Ḥārith?" He then dispatched two messengers to Maymūnah, who said: "I only narrated that the Messenger of Allah—may Allah's peace and blessings be upon him—was mobilizing an army, but they detained him until the afternoon was upon him. He prayed ʿAṣr, then returned and prayed what he customarily performed before it (ʿAṣr)." She added: "Whenever the Messenger of Allah—may Allah's peace and blessings be upon him—performed a prayer or any act, he preferred to maintain it consistently."

فَأَرْسَلَ مُعَاوِيَةُ إِلَى عَائِشَةَ؟ فَقَالَتْ: هَذَا حَدِيثُ مَيْمُونَةَ بِنْتِ الْحَارِثِ؟ فَأَرْسَلَ إِلَى مَيْمُونَةَ رَسُولَيْنِ؟ فَقَالَتْ: إِنَّمَا حَدَّثْت «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُجَهِّزُ جَيْشًا فَحَبَسُوهُ حَتَّى أَرْهَقَ الْعَصْرُ، فَصَلَّى الْعَصْرَ، ثُمَّ رَجَعَ فَصَلَّى مَا كَانَ يُصَلِّي قَبْلَهَا؟ قَالَتْ: وَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا صَلَّى صَلَاةً أَوْ فَعَلَ شَيْئًا -: يُحِبُّ أَنْ يُدَاوِمَ عَلَيْهِ» .

L5090 Ibn al-Zubayr said: "Has he not prayed? By Allah, I will certainly pray it." Ali said: "The proof of Ibn al-Zubayr became evident, so no objection could validly oppose him." Ali said: "They argued: 'Did Umar not strike people for this practice, with Ibn Abbas supporting him?' We replied: 'No decisive authority rests with anyone other than Allah's Messenger (peace be upon him) - neither Umar nor others. Rather, the Prophet (peace be upon him) constitutes the conclusive proof over Umar and all others. Groups of Companions opposed Umar in this matter. Authentic reports from both

فَقَالَ ابْنُ الزُّبَيْرِ: أَلَيْسَ قَدْ صَلَّى؟ وَاَللَّهِ لَأُصَلِّيَنَّهُ قَالَ عَلِيٌّ: فَظَهَرَتْ حُجَّةُ ابْنِ الزُّبَيْرِ، فَلَمْ يَجُزْ عَلَيْهِ الِاعْتِرَاضُ قَالَ عَلِيٌّ: وَقَالُوا: قَدْ كَانَ عُمَرُ يَضْرِبُ النَّاسَ عَلَيْهَا، وَابْنُ عَبَّاسٍ مَعَهُ؟ قُلْنَا: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا فِي عُمَرَ، وَلَا فِي غَيْرِهِ، بَلْ هُوَ - عَلَيْهِ السَّلَامُ - الْحُجَّةُ عَلَى عُمَرَ وَغَيْرِهِ - وَقَدْ خَالَفَ عُمَرُ فِي ذَلِكَ

طَوَائِفَ مِنْ الصَّحَابَةِ وَقَدْ صَحَّ عَنْ عُمَرَ، وَعَنْ ابْنِ عَبَّاسٍ: إبَاحَةُ الرُّكُوعِ وَالتَّطَوُّعِ، وَالْوَجْهُ الَّذِي مِنْ أَجْلِهِ ضَرَبَ عُمَرُ عَلَيْهَا - فَقَدْ خَالَفُوا عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فِي ذَلِكَ؟ حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ ثنا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ مُفَرِّجٍ ثنا عَبْدُ اللَّهِ بْنُ جَعْفَرِ بْنِ الْوَرْدِ ثنا يَحْيَى بْنُ أَيُّوبَ بْنِ بَادِي الْعَلَّافُ ثنا يَحْيَى بْنُ بُكَيْرٍ حَدَّثَنِي اللَّيْثُ بْنُ سَعْدٍ عَنْ أَبِي الْأَسْوَدِ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ نَوْفَلٍ يَتِيمِ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عُرْوَةَ «أَخْبَرَنِي تَمِيمٌ الدَّارِيِّ، أَوْ أُخْبِرْتُ أَنَّ تَمِيمًا الدَّارِيَّ رَكَعَ رَكْعَتَيْنِ بَعْدَ الْعَصْرِ فَأَتَاهُ عُمَرُ فَضَرَبَهُ بِالدِّرَّةِ، فَأَشَارَ إلَيْهِ تَمِيمٌ: أَنْ اجْلِسْ؟ فَجَلَسَ عُمَرُ حَتَّى فَرَغَ تَمِيمٌ، فَقَالَ لِعُمَرَ: لِمَ ضَرَبْتَنِي؟

Umar and Ibn Abbas confirm their permission for bowing in prayer and voluntary prayers. The reason Umar struck them was their opposition to him regarding this practice.'" Muhammad ibn Sa'id ibn Nubat narrated to us: Muhammad ibn Ahmad ibn Mufarrij narrated to us: Abdullah ibn Ja'far ibn al-Ward narrated to us: Yahya ibn Ayyub ibn Badi al-Allaf narrated to us: Yahya ibn Bukayr reported to me: Al-Layth ibn Sa'd narrated from al-Aswad Muhammad ibn Abd al-Rahman ibn Nawfal - the orphan under Urwah ibn al-Zubayr's guardianship - from Urwah: "Tamim al-Dari informed me, or I was informed, that Tamim al-Dari performed two rak'ahs after Asr prayer. Umar approached him and struck him with a whip. Tamim gestured to him: 'Sit down.' Umar sat until Tamim finished, then asked: 'Why did you strike me?'"

L5091–5092

فَقَالَ لَهُ عُمَرُ: لِأَنَّكَ رَكَعْتَ هَاتَيْنِ الرَّكْعَتَيْنِ وَقَدْ نَهَيْتُ عَنْهُمَا؟ قَالَ لَهُ تَمِيمٌ إنِّي صَلَّيْتُهُمَا مَعَ مَنْ هُوَ خَيْرٌ مِنْكَ: رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَقَالَ لَهُ عُمَرُ: إنِّي لَيْسَ بِي إيَّاكُمْ أَيُّهَا الرَّهْطُ؟ وَلَكِنِّي أَخَافُ أَنْ يَأْتِيَ بَعْدَكُمْ قَوْمٌ يُصَلُّونَ مَا بَيْنَ الْعَصْرِ إلَى الْمَغْرِبِ، حَتَّى يَمُرُّونَ بِالسَّاعَةِ الَّتِي نَهَى عَنْهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُصَلِّيَ فِيهَا كَمَا صَلَّوْا بَيْنَ الظُّهْرِ وَالْعَصْرِ، ثُمَّ يَقُولُونَ: قَدْ رَأَيْنَا فُلَانًا وَفُلَانًا يُصَلُّونَ بَعْدَ الْعَصْرِ» .

Umar said to him, "Is it because you performed these two rak'ahs when I had forbidden them?" Tamim replied, "I prayed them with one better than you—the Messenger of Allah, peace and blessings be upon him." Umar said, "It is not you, O group, that I am concerned about, but I fear a people will arise after your time who pray between 'Asr and Maghrib until they encroach upon the hour during which the Messenger of Allah—peace and blessings be upon him—forbade prayer, just as they might pray between Zuhr and 'Asr. Then they will say, 'We saw so-and-so and so-and-so praying after 'Asr!'"

L5093

حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ ثنا ابْنُ جُرَيْجٍ سَمِعْت أَبَا سَعِيدٍ الْأَعْمَى يُحَدِّثُ عَنْ السَّائِبِ مَوْلَى الْفَارِسِيِّينَ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ «أَنَّ عُمَرَ رَآهُ يُصَلِّي بَعْدَ الْعَصْرِ رَكْعَتَيْنِ - وَعُمَرُ خَلِيفَةٌ - فَضَرَبَهُ بِالدِّرَّةِ وَهُوَ يُصَلِّي كَمَا هُوَ، فَلَمَّا انْصَرَفَ قَالَ لَهُ زَيْدٌ: يَا أَمِيرَ الْمُؤْمِنِينَ، فَوَاَللَّهِ لَا أَدَعُهُمَا أَبَدًا بَعْدَ إذْ رَأَيْتُ

Hammam narrated to us: Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabari narrated to us, Abd al-Razzaq narrated to us, Ibn Jurayj said: I heard Abu Sa'id the Blind narrating from al-Sa'ib—client of the Persians—from Zayd ibn Khalid al-Juhani: "Umar—at the time, the caliph—saw him praying two rak'ahs after Asr, so he struck him with a whip while he was still praying in that state. When he concluded the prayer, Zayd said: 'O Commander of the Faithful, by Allah, I will never abandon them since I witnessed Allah's Messenger—peace and blessings be upon him—praying them.' Umar

sat down beside him and said: 'O Zayd ibn Khalid, were it not that I fear people would gradually extend them as prayer until nightfall, I would not have struck you concerning them.'" This constitutes an explicit, established text from Umar affirming the permissibility of voluntary prayer after Asr provided the sun has not yellowed and neared sunset. It was narrated to us through a reliable chain from Shu'bah from Abu Jamrah Nasr ibn Imran al-Duba'i, who said: Ibn Abbas stated: "I indeed saw Umar ibn al-Khattab striking people over praying after Asr." Then Ibn Abbas added: "Pray if you wish between now and the sun's setting."

رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّيهِمَا،» فَجَلَسَ إِلَيْهِ عُمَرُ، وَقَالَ: يَا زَيْدُ بْنُ خَالِدٍ، لَوْلَا أَنِّي أَخْشَى أَنْ يَتَّخِذَهُمَا النَّاسُ سُلَّمًا إِلَى الصَّلَاةِ حَتَّى اللَّيْلِ لَمْ أَضْرِبْ فِيهِمَا " فَهَذَا نَصٌّ جَلِيٌّ ثَابِتٌ عَنْ عُمَرَ بِإِجَازَتِهِ التَّطَوُّعَ بَعْدَ الْعَصْرِ مَا لَمْ تَصْفَرَّ الشَّمْسُ وَتُقَارِبَ الْغُرُوبَ؟ وَرُوِّينَا بِالْإِسْنَادِ الثَّابِتِ عَنْ شُعْبَةَ عَنْ أَبِي جَمْرَةَ نَصْرِ بْنِ عِمْرَانَ الضُّبَعِيِّ قَالَ: قَالَ ابْنُ عَبَّاسٍ: لَقَدْ رَأَيْت عُمَرَ بْنَ الْخَطَّابِ يَضْرِبُ النَّاسَ عَلَى الصَّلَاةِ بَعْدَ الْعَصْرِ؟ ثُمَّ قَالَ ابْنُ عَبَّاسٍ: صَلِّ إنْ شِئْت مَا بَيْنَك وَبَيْنَ أَنْ تَغِيبَ الشَّمْسُ؟ .

L5094–5095 Ali said: They say regarding the Companion who narrates a hadith then contradicts it: "Had he not possessed knowledge of its abrogation, he would not have opposed it." Thus, they are compelled to say here: "Had Ibn Abbas not held knowledge more firmly established than Umar's action, he would not have contradicted the position he upheld with Umar."

قَالَ عَلِيٌّ: هُمْ يَقُولُونَ فِي الصَّاحِبِ يَرْوِي الْحَدِيثَ ثُمَّ يُخَالِفُهُ: لَوْلَا أَنَّهُ كَانَ عِنْدَهُ عِلْمٌ بِنَسْخِهِ مَا خَالَفَهُ؟ فَيَلْزَمُهُمْ أَنْ يَقُولُوا هَهُنَا: لَوْلَا أَنَّهُ كَانَ عِنْدَ ابْنِ عَبَّاسٍ عِلْمٌ أَثْبَتَ مِنْ فِعْلِ عُمَرَ مَا خَالَفَ مَا كَانَ عَلَيْهِ [مَعَ] عُمَرُ.

L5096 And similarly from Shu'bah, from Abū Shu'ayb, from Ṭāwus: "Ibn 'Umar was asked about the two rak'ahs after 'Aṣr: did he permit them?" 'Alī said: "Why did they not say: 'Ibn 'Umar would never have opposed his father were it not for the superior knowledge he possessed—which was more firmly established than his father's action?'" And it has been narrated to us from 'Abd al-Razzāq, from Ibn Jurayj, from 'Aṭā' ibn Abī Rabāḥ: that 'Ā'ishah and Umm Salamah—the two Mothers of the Believers—used to pray two rak'ahs after 'Aṣr.

وَبِمِثْلِهِ عَنْ شُعْبَةَ عَنْ أَبِي شُعَيْبٍ عَنْ طَاوُسٍ: سُئِلَ ابْنُ عُمَرَ عَنْ الرَّكْعَتَيْنِ بَعْدَ الْعَصْرِ: فَرَخَّصَ فِيهِمَا؟ قَالَ عَلِيٌّ: هَلَّا قَالُوا: إنَّ ابْنَ عُمَرَ لَمْ يَكُنْ؛ لِيُخَالِفَ أَبَاهُ، لَوْلَا فَضْلُ عِلْمٍ كَانَ عِنْدَهُ بِأَثْبَتَ مِنْ فِعْلِ أَبِيهِ؟ وَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ: أَنَّ عَائِشَةَ وَأُمَّ سَلَمَةَ أُمَّيْ الْمُؤْمِنِينَ كَانَتَا تَرْكَعَانِ رَكْعَتَيْنِ بَعْدَ الْعَصْرِ.

L5097 We have received narrations from Hammad ibn Salama and Hisham ibn Urwah. Hammad narrated from Ata ibn al-Sa'ib, from Sa'id ibn Jubayr, who said: Aisha, the Mother of the Believers, used to pray two rak'ahs after Asr while standing, and Maymunah (also a Mother of the Believers) used to pray four rak'ahs while sitting. When questioned about this, she replied, comparing herself to Aisha: "She is young, while I am old, so I pray four rak'ahs in place of Aisha's two rak'ahs."

وَرُوِّينَا عَنْ حَمَّادِ بْنِ سَلَمَةَ وَهِشَامِ بْنِ عُرْوَةَ، قَالَ حَمَّادٌ: عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: كَانَتْ عَائِشَةُ أُمُّ الْمُؤْمِنِينَ تُصَلِّي رَكْعَتَيْنِ بَعْدَ الْعَصْرِ وَهِيَ قَائِمَةٌ: وَكَانَتْ مَيْمُونَةُ أُمُّ الْمُؤْمِنِينَ تُصَلِّي أَرْبَعًا وَهِيَ قَاعِدَةٌ، فَسُئِلَتْ عَنْ ذَلِكَ؟ فَقَالَتْ عَنْ عَائِشَةَ: إنَّهَا شَابَّةٌ وَأَنَا عَجُوزٌ فَأُصَلِّي أَرْبَعًا بَدَلَ رَكْعَتَيْهَا.

L5098 Ali said: This invalidates the narration of those who transmitted from Umm Salamah, "Shall we recompense them?" He said: "No."

قَالَ عَلِيٌّ: هَذَا يُبْطِلُ رِوَايَةَ مَنْ رَوَى عَنْ أُمِّ سَلَمَةَ «أَنَقْضِيهَا نَحْنُ؟ قَالَ: لَا» .

L5099–5101 Hishām narrated from his father: Al-Zubayr and ʿAbdullāh ibn al-Zubayr would pray two rakʿahs after the ʿAṣr prayer. It was narrated to us from ʿAbd al-Razzāq, from Maʿmar, from Hishām ibn ʿUrwah. “We used to pray with ibn al-Zubayr.” He prayed the ʿAṣr prayer in the Sacred Mosque, and after the ʿAṣr prayer he would pray two rakʿahs. We would pray those two rakʿahs with him, standing in a row behind him.

وَقَالَ هِشَامٌ عَنْ أَبِيهِ: كَانَ الزُّبَيْرُ وَعَبْدُ اللَّهِ بْنُ الزُّبَيْرِ يُصَلِّيَانِ بَعْدَ الْعَصْرِ رَكْعَتَيْنِ رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ هِشَامِ بْنِ عُرْوَةَ: كُنَّا نُصَلِّي مَعَ ابْنِ الزُّبَيْرِ الْعَصْرَ فِي الْمَسْجِدِ الْحَرَامِ، فَكَانَ يُصَلِّي بَعْدَ الْعَصْرِ رَكْعَتَيْنِ، وَكُنَّا نُصَلِّيهِمَا مَعَهُ، نَقُومُ صَفًّا خَلْفَهُ.

L5102 On the authority of ʿAbd al-Razzāq, on the authority of Maʿmar, on the authority of al-Zuhrī, on the authority of al-Sā’ib ibn Yazīd, who said: Al-Munkadir performed tasbīḥ after ʿAṣr, so ʿUmar struck him. ʿAlī said: Al-Munkadir and al-Sā’ib were Companions of the Messenger of Allah (peace be upon him).

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ السَّائِبِ بْنِ يَزِيدَ قَالَ: سَبَّحَ الْمُنْكَدِرُ بَعْدَ الْعَصْرِ فَضَرَبَهُ عُمَرُ قَالَ عَلِيٌّ: الْمُنْكَدِرُ وَالسَّائِبُ صَاحِبَانِ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L5103–5105 From Abd al-Razzaq from Ma’mar from Ibn Tawus from his father: Abu Ayyub al-Ansari used to pray two rak’ahs after the Asr prayer before Umar’s caliphate. When Umar was appointed caliph, he abandoned them. When Umar died, he prayed them again. He was asked: “What is this?” He replied: “Umar used to strike people for praying them.” Ali said: “This hadith clearly shows that Abu Bakr al-Siddiq and Uthman - may Allah be pleased with them - permitted the rukūʿ after Asr.” Abd al-Rahman ibn Mahdi narrated to us from Shuba and Sufyan, who both said: From Abu Ishaq al-Sabi’i from Asim ibn Damrah: Ali ibn Abi Talib was traveling, prayed Asr, then entered his tent and prayed two rak’ahs. From Muhammad ibn Ja’far from Shuba from Abu Ishaq al-Sabi’i, who said: I asked Abu Juhaifah about the two rak’ahs after Asr. He replied: “If they do you no good, they will do you no harm.” From Yahya ibn Sa’id al-Qattan from Shuba from Yazid ibn Khumayr from Abdullah ibn Yazid from Jubayr ibn Nufayr, who said: Umar wrote to Umayr ibn Sa’d prohibiting him from the two rak’ahs after Asr. He said. Abu al-Darda said: “As for me, I will not abandon both of them; whoever wishes to kindle, let him kindle.”

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ: أَنَّ أَبَا أَيُّوبَ الْأَنْصَارِيَّ كَانَ يُصَلِّي قَبْلَ خِلَافَةِ عُمَرَ رَكْعَتَيْنِ بَعْدَ الْعَصْرِ، فَلَمَّا اُسْتُخْلِفَ عُمَرُ تَرَكَهُمَا: فَلَمَّا تُوُفِّيَ عُمَرُ رَكَعَهُمَا، فَقِيلَ لَهُ: مَا هَذَا؟ فَقَالَ: إنَّ عُمَرَ كَانَ يَضْرِبُ النَّاسَ عَلَيْهِمَا قَالَ عَلِيٌّ: فِي هَذَا الْحَدِيثِ بَيَانٌ وَاضِحٌ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ وَعُثْمَانَ - رَضِيَ اللَّهُ عَنْهُمَا - كَانَا يُجِيزَانِ الرُّكُوعَ بَعْدَ الْعَصْرِ وَرُوِّينَا عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ ثنا شُعْبَةُ وَسُفْيَانُ جَمِيعًا قَالَا: ثنا أَبُو إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ فِي سَفَرٍ فَصَلَّى الْعَصْرَ، ثُمَّ دَخَلَ فُسْطَاطَهُ فَصَلَّى رَكْعَتَيْنِ؟ وَعَنْ مُحَمَّدِ بْنِ جَعْفَرٍ عَنْ شُعْبَةَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ قَالَ: سَأَلْت أَبَا جُحَيْفَةَ عَنْ الرَّكْعَتَيْنِ بَعْدَ الْعَصْرِ؟ فَقَالَ: إنْ لَمْ يَنْفَعَاكَ لَمْ يَضُرَّاكَ وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ شُعْبَةَ ثنا يَزِيدُ بْنُ خُمَيْرٍ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ عَنْ جُبَيْرِ بْنِ نُفَيْرٍ قَالَ: كَتَبَ عُمَرُ إلَى عُمَيْرِ بْنِ سَعْدٍ يَنْهَاهُ عَنْ الرَّكْعَتَيْنِ بَعْدَ الْعَصْرِ، فَقَالَ أَبُو الدَّرْدَاءِ: أَمَّا أَنَا فَلَا أَتْرُكُهُمَا، فَمَنْ شَاءَ أَنْ يَخْضِجَ فَلْيَخْضِجْ.

L5106–5108 From Hammad ibn Zayd: Anas ibn Sirin narrated: I went out with Anas ibn Malik to his land in Baddha Sirīn, which was five farsakhs away. I attended

the Asr prayer, and he led us while sitting on a mat in the boat. He prayed two rak'ahs with us, then gave the salutation. Then he prayed another two rak'ahs with us.

From Yazid ibn Harun, from Ammar ibn Abi Mu'awiyah al-Dhuhni, from Abu Shu'bah al-Tamimi, who said: I saw al-Hasan ibn Ali ibn Abi Talib performing tawaf after Asr and praying. [Is that permissible?]

From Abd al-Rahman ibn Mahdi, from Sufyan al-Thawri, from Qays ibn Muslim, from Tariq ibn Shihab, from Bilal - the muezzin of Allah's Messenger (peace be upon him) - who said: "He did not prohibit prayer except at sunset."

From Abd al-Razzaq, from Ma'mar, from Abu Ishaq al-Sabi'i, from Abu al-Ahwas, from Ibn Mas'ud. In a hadith: "A time will come upon you with many preachers and few scholars. They will prolong the sermon and delay the prayer until it is said: 'This is the death throes of the dying.' I asked: 'What are the death throes of the dying?' He replied: 'When the sun turns intensely yellow. Whoever among you encounters this should perform the prayer at its appointed time. If he is detained, let him pray with them, but let him treat his solitary prayer as the obligatory one and his prayer with them as voluntary.'"

وَعَنْ حَمَّادِ بْنِ زَيْدٍ ثنا أَنَسُ بْنُ سِيرِينَ قَالَ: خَرَجْت مَعَ أَنَسِ بْنِ مَالِكٍ إلَى أَرْضِهِ بِبَذَّ سِيرِينَ، وَهِيَ خَمْسَةُ فَرَاسِخَ فَحَضَرَتْ صَلَاةَ الْعَصْرِ، فَأَمَّنَا قَاعِدًا عَلَى بِسَاطٍ فِي السَّفِينَةِ، فَصَلَّى بِنَا رَكْعَتَيْنِ، ثُمَّ سَلَّمَ، ثُمَّ صَلَّى بِنَا رَكْعَتَيْنِ وَعَنْ يَزِيدَ بْنِ هَارُونَ عَنْ عَمَّارِ بْنِ أَبِي مُعَاوِيَةَ الذُّهَنِيِّ عَنْ أَبِي شُعْبَةَ التَّمِيمِيِّ قَالَ: رَأَيْت الْحَسَنَ بْنَ عَلِيِّ بْنِ أَبِي طَالِبٍ يَطُوفُ بَعْدَ الْعَصْرِ وَيُصَلِّي؟ وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ عَنْ بِلَالٍ مُؤَذِّنِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَمْ يَنْهَ عَنْ الصَّلَاةِ إلَّا عِنْدَ غُرُوبِ الشَّمْسِ» وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي إسْحَاقَ السَّبِيعِيِّ عَنْ أَبِي الْأَحْوَصِ عَنْ ابْنِ مَسْعُودٍ فِي حَدِيثٍ: «سَيَأْتِي عَلَيْكُمْ زَمَانٌ كَثِيرٌ خُطَبَاؤُهُ، قَلِيلٌ عُلَمَاؤُهُ، يُطِيلُونَ الْخُطْبَةَ وَيُؤَخِّرُونَ الصَّلَاةَ حَتَّى يُقَالَ: هَذَا شَرَقُ الْمَوْتَى قُلْت: وَمَا شَرَقُ الْمَوْتَى؟ قَالَ: إذَا اصْفَرَّتْ الشَّمْسُ جِدًّا فَمَنْ أَدْرَكَ ذَلِكَ مِنْكُمْ فَلْيُصَلِّ الصَّلَاةَ لِوَقْتِهَا، فَإِنْ احْتَبَسَ فَلْيُصَلِّ مَعَهُمْ، وَلْيَجْعَلْ صَلَاتَهُ وَحْدَهُ الْفَرِيضَةَ، وَصَلَاتَهُ مَعَهُمْ تَطَوُّعًا» .

L5109 Ali said: These are the senior Companions—may Allah be pleased with them: Abu Bakr, Umar, Uthman, Ali, al-Zubayr, Aisha, Umm Salamah, and Maimunah: the Mothers of the Believers, Ibn al-Zubayr, those present in Ali's company among the Companions, Tamim al-Dari, al-Munqidir, Zayd ibn Khalid al-Juhani, Ibn Abbas, Ibn Umar, Abu Ayyub al-Ansari, Abu Juhaifah, Abu al-Darda', Anas, al-Hasan ibn Ali, Bilal, Tariq ibn Shihab, and Ibn Mas'ud.

قَالَ عَلِيٌّ: فَهَؤُلَاءِ أَكَابِرُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: أَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ، وَالزُّبَيْرُ، وَعَائِشَةُ، وَأُمُّ سَلَمَةَ، وَمَيْمُونَةُ: أُمَّهَاتُ الْمُؤْمِنِينَ، وَابْنُ الزُّبَيْرِ، وَمَنْ بِحَضْرَتِهِ مِنْ الصَّحَابَةِ، وَتَمِيمٌ الدَّارِيِّ، وَالْمُنْكَدِرُ، وَزَيْدُ بْنُ خَالِدٍ الْجُهَنِيُّ، وَابْنُ عَبَّاسٍ، وَابْنُ عُمَرَ، وَأَبُو أَيُّوبَ الْأَنْصَارِيُّ، وَأَبُو جُحَيْفَةَ، وَأَبُو الدَّرْدَاءِ، [وَأَنَسٌ] وَالْحَسَنُ بْنُ عَلِيٍّ، وَبِلَالٌ، وَطَارِقُ بْنُ شِهَابٍ، وَابْنُ مَسْعُودٍ.

L5110 It has also been narrated from al-Nuʿmān ibn Bashīr and others. So who remains? We know of no connection they have to any of the Companions (may Allah be pleased with them) except a narration from Abū Saʿīd

al-Khudrī, which he specifically designated for the Messenger of Allah (peace be upon him).

وَرُوِيَ أَيْضًا عَنْ النُّعْمَانِ بْنِ بَشِيرٍ وَغَيْرِهِمْ، فَمَنْ بَقِيَ؟ ؟ وَمَا نَعْلَمُ لَهُمْ مُتَعَلَّقًا بِأَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إلَّا رِوَايَةً عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ، جَعَلَهَا خَاصَّةً؛ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L5111–5113 If a jurist states: "It is specific," while others among them state: "It is general," proceeding follows the generality until an authentic textual evidence emerges indicating it is specifics, with no possibility of its existence, and another concerning [text incomplete]. From Mu'awiyah: There is no prohibition against them in this narration. Rather, it mentions that people used to pray these two rakʿahs during the lifetime of Allah's Messenger—may Allah bless him and grant him peace.

وَإِذَا قَالَ صَاحِبٌ: هِيَ خَاصَّةٌ، وَقَالَ آخَرُونَ مِنْهُمْ: هِيَ عَامَّةٌ، فَالسَّيْرُ عَلَى الْعُمُومِ حَتَّى يَأْتِيَ نَصٌّ صَحِيحٌ بِأَنَّهَا خُصُوصٌ، وَلَا سَبِيلَ إلَى وُجُودِهِ، وَأُخْرَى عَنْ مُعَاوِيَةَ، لَيْسَ فِيهَا نَهْيٌ عَنْهُمَا، بَلْ فِيهَا: إنَّ النَّاسَ كَانُوا يُصَلُّونَهَا فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L5114 And another is an interrupted narration not authentically attributed to Ibn Masʿūd. In it, too, there is nothing except: "And I dislike what ʿUmar disliked." And it has been authentically established from ʿUmar and from Ibn Masʿūd: the permissibility of that action.

وَأُخْرَى مُرْسَلَةٌ لَا تَصِحُّ عَنْ ابْنِ مَسْعُودٍ، لَيْسَ فِيهَا أَيْضًا إلَّا: وَأَنَا أَكْرَهُ مَا كَرِهَ عُمَرُ، وَقَدْ صَحَّ عَنْ عُمَرَ، وَعَنْ ابْنِ مَسْعُودٍ: إبَاحَةُ ذَلِكَ.

L5115 Narrated by Abu Bakrah: Prayer is prohibited in its entirety from the time the sun begins to yellow (at sunset).

وَعَنْ أَبِي بَكْرَةَ: الْمَنْعُ مِنْ الصَّلَاةِ جُمْلَةً مِنْ حِينِ صُفْرَةِ الشَّمْسِ.

L5116 The Hanafis and Malikis differ from him on that matter, as we will mention later, God willing.

وَالْحَنَفِيُّونَ وَالْمَالِكِيُّونَ مُخَالِفُونَ لَهُ فِي ذَلِكَ، كَمَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

L5117 As for the Tābiʿūn (Successors), they are numerous—among them Hishām ibn ʿUrwah and Anas ibn Sīrīn, as we mentioned earlier. From Ḥammād ibn Salamah, from Yaʿlā ibn ʿAṭāʾ, from Yazīd ibn Ṭalaq that ʿAbd al-Raḥmān ibn al-Baylamānī would pray two rakʿahs after *ʿAṣr*. From ʿAbd al-Razzāq, from Ibn Jurayj: Ibrāhīm ibn Maysarah informed me that Ṭāwūs prayed two rakʿahs after *ʿAṣr* in his presence. He then said to him, "Do you pray after *ʿAṣr*?" I replied, "Yes." He said, "By Allah, you have been honored!" From Yaḥyā ibn Saʿīd al-Qaṭṭān, from Shuʿbah, from Ashʿath ibn Abī al-Shaʿthāʾ (he is Ashʿath ibn Sulaym) who said, "I traveled with my father, ʿAmr ibn Maymūn, al-Aswad, Masrūq, and Abū Wāʾil, and they would pray two rakʿahs after *Ẓuhr* and two rakʿahs after *ʿAṣr*." From Muḥammad ibn Jaʿfar Ghundar: Shuʿbah narrated to us, from Abū Isḥāq al-Sabīʿī, who

وَأَمَّا التَّابِعُونَ فَكَثِيرٌ، مِنْهُمْ: هِشَامُ بْنُ عُرْوَةَ، وَأَنَسُ بْنُ سِيرِينَ، كَمَا ذَكَرْنَا آنِفًا وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ يَعْلَى بْنِ عَطَاءٍ عَنْ يَزِيدَ بْنِ طَلَقٍ: أَنَّ عَبْدَ الرَّحْمَنِ بْنَ الْبَيْلَمَانِيِّ كَانَ يُصَلِّي بَعْدَ الْعَصْرِ رَكْعَتَيْنِ؟ وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي إبْرَاهِيمُ بْنُ مَيْسَرَةَ أَنَّ طَاوُسًا صَلَّى بِحَضْرَتِهِ رَكْعَتَيْنِ بَعْدَ الْعَصْرِ. ثُمَّ قَالَ لَهُ: أَتُصَلِّي بَعْدَ الْعَصْرِ؟ قُلْت: نَعَمْ، قَالَ: أُكْرِمْت وَاَللَّهِ وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ شُعْبَةَ عَنْ أَشْعَثَ بْنِ أَبِي الشَّعْثَاءِ هُوَ أَشْعَثُ بْنُ سُلَيْمٍ قَالَ: سَافَرْت مَعَ أَبِي، وَعَمْرِو بْنِ مَيْمُونٍ، وَالْأَسْوَدِ، وَمَسْرُوقٍ، وَأَبِي وَائِلٍ فَكَانُوا يُصَلُّونَ بَعْدَ الظُّهْرِ رَكْعَتَيْنِ، وَبَعْدَ الْعَصْرِ رَكْعَتَيْنِ؟ وَعَنْ مُحَمَّدِ بْنِ

said, “I saw Shuraīḥ al-Qāḍī (the Judge) praying two rakʿahs after *ʿAṣr*.” From Muḥammad ibn al-Muthannā, from Muʿādh ibn Muʿādh al-ʿAnbarī: My father narrated to us, from Qatādah, who said, “Saʿīd ibn al-Musayyab would pray two rakʿahs after *ʿAṣr*.”

L5118–5119 From Muhammad ibn al-Muthannā: Abū ʿĀṣim al-Nabīl narrated from ʿUmar ibn Saʿīd, who said: I saw al-Qāsim ibn Muḥammad ibn Abī Bakr performing Ṭawāf after ʿAṣr and praying two rakʿahs. Similarly, it is also narrated from al-Ḥasan as well. These individuals are: Hishām ibn ʿUrwah, Anas ibn Sīrīn, Ṭāwūs, ʿAbd al-Raḥmān ibn al-Baylamāniyy, Ibrāhīm ibn Maysarah, Abū al-Shaʿthā’, his son Ashʿath, ʿAmr ibn Maymūn, Masrūq, al-Aswad, Abū Wā’il, Shurayḥ al-Qāḍī, Saʿīd ibn al-Musayyib, al-Qāsim ibn Muḥammad, and others including ʿAbd Allāh ibn Abī al-Hudhayl, Abū Burdah ibn Abī Mūsā, ʿAbd al-Raḥmān ibn al-Aswad, al-Aḥnaf ibn Qays. With these two [practices], Abū Khaythamah and Abū Ayyūb al-Hāshimī state, and this is the position we adopt if Allāh the Exalted wills.

L5120 **A juristic issue regarding the intentional delay of an obligatory prayer that one forgot or slept through.**

L5121 286. Issue: It is not permissible to intentionally delay the obligatory prayer that one has forgotten or slept through.

L5122 Nor the intentional performance of supererogatory prayers during the sun’s yellowing until its setting is complete; nor when the sun is at its zenith until it begins to decline (zawāl).

L5123 Nor after the greeting (salām) of the dawn prayer until the sun has risen and whitened.

L5124 During these times, one must perform all prayers not mentioned except within these periods—such as a forgotten prayer, a prayer missed due to sleep [whether obligatory] or voluntary, the funeral prayer, the prayer for seeking rain (istisqā’), the eclipse prayer, and the two rakʿahs upon entering the mosque.

جَعْفَرٍ غُنْدَرٍ: ثنا شُعْبَةُ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ قَالَ: رَأَيْت شُرَيْحًا الْقَاضِي يُصَلِّي بَعْدَ الْعَصْرِ رَكْعَتَيْنِ؟ وَعَنْ مُحَمَّدِ بْنِ الْمُثَنَّى عَنْ مُعَاذِ بْنِ مُعَاذٍ الْعَنْبَرِيِّ ثنا أَبِي عَنْ قَتَادَةَ قَالَ: كَانَ سَعِيدُ بْنُ الْمُسَيِّبِ يُصَلِّي بَعْدَ الْعَصْرِ رَكْعَتَيْنِ؟ .

وَعَنْ مُحَمَّدِ بْنِ الْمُثَنَّى: ثنا أَبُو عَاصِمٍ النَّبِيلُ عَنْ عُمَرَ بْنِ سَعِيدٍ قَالَ: رَأَيْت الْقَاسِمَ بْنَ مُحَمَّدِ بْنِ أَبِي بَكْرٍ يَطُوفُ بَعْدَ الْعَصْرِ وَيُصَلِّي رَكْعَتَيْنِ -، وَكَذَلِكَ أَيْضًا عَنْ الْحَسَنِ فَهَؤُلَاءِ: هِشَامُ بْنُ عُرْوَةَ، وَأَنَسُ بْنُ سِيرِينَ، وَطَاوُسٌ، وَعَبْدُ الرَّحْمَنِ بْنُ الْبَيْلَمَانِيِّ، وَإِبْرَاهِيمُ بْنُ مَيْسَرَةَ وَأَبُو الشَّعْثَاءِ، وَأَشْعَثُ ابْنُهُ، وَعَمْرُو بْنُ مَيْمُونٍ، وَمَسْرُوقٌ، وَالْأَسْوَدُ، وَأَبُو وَائِلٍ، وَشُرَيْحٌ الْقَاضِي، وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَالْقَاسِمُ بْنُ مُحَمَّدٍ، وَغَيْرُهُمْ: كَعَبْدِ اللَّهِ بْنِ أَبِي الْهُذَيْلِ، وَأَبِي بُرْدَةَ بْنِ أَبِي مُوسَى، وَعَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ، وَالْأَحْنَفِ بْنِ قَيْسٍ وَبِهِمَا يَقُولُ أَبُو خَيْثَمَةَ وَأَبُو أَيُّوبَ الْهَاشِمِيُّ، وَبِهِ نَأْخُذُ إنْ شَاءَ اللَّهُ تَعَالَى.

[مَسْأَلَةٌ تَعَمُّدُ تَأْخِيرِ مَا نَسِيَ أَوْ نَامَ عَنْهُ مِنْ الْفَرْضِ]

٢٨٦ - مَسْأَلَةٌ: وَلَا يَجُوزُ تَعَمُّدُ تَأْخِيرِ مَا نَسِيَ أَوْ نَامَ عَنْهُ مِنْ الْفَرْضِ.

وَلَا تَعَمُّدَ التَّطَوُّعِ عِنْدَ اصْفِرَارِ الشَّمْسِ حَتَّى يَتِمَّ غُرُوبُهَا؛ وَعِنْدَ اسْتِوَاءِ الشَّمْسِ، حَتَّى تَأْخُذَ فِي الزَّوَالِ.

وَلَا بَعْدَ السَّلَامِ مِنْ صَلَاةِ الصُّبْحِ حَتَّى تَصْفُوَ الشَّمْسُ وَتَبْيَضَّ.

وَيَقْضِي فِي هَذِهِ الْأَوْقَاتِ كُلَّ مَا لَمْ يَذْكُرْ إِلَّا فِيهَا، مِنْ صَلَاةٍ مَنْسِيَّةٍ أَوْ نِيمَ عَنْهَا، [مِنْ فَرْضٍ] أَوْ تَطَوُّعٍ، وَصَلَاةِ الْجَنَازَةِ، وَالِاسْتِسْقَاءِ، وَالْكُسُوفِ، وَالرَّكْعَتَانِ عِنْدَ دُخُولِ الْمَسْجِدِ.

L5125–5126 Whoever performs ablution for prayer during any of these times may offer voluntary prayers at that time, provided the person does not intentionally neglect performing all such prayers—while being mindful of them—until the specified times commence. Therefore, if someone does this, is their prayer not valid at all? This reflects the explicit textual prohibition by the Prophet—peace and blessings of Allāh Almighty be upon him—against deliberately engaging in prayer during these times.

وَمَنْ تَوَضَّأَ لِلصَّلَاةِ فِي أَحَدِ هَذِهِ الْأَوْقَاتِ فَلَهُ أَنْ يَتَطَوَّعَ حِينَئِذٍ مَا لَمْ يَتَعَمَّدْ الْمَرْءُ تَرْكَ كُلِّ ذَلِكَ - وَهُوَ ذَاكِرٌ لَهُ - حَتَّى تَدْخُلَ الْأَوْقَاتُ الْمَذْكُورَةُ فَمَنْ فَعَلَ هَذَا فَلَا تُجْزِئُهُ صَلَاتُهُ تِلْكَ أَصْلًا؟ وَهَذَا نَصُّ نَهْيِهِ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَسَلَّمَ - عَنْ تَحَرِّي الصَّلَاةِ فِي هَذِهِ الْأَوْقَاتِ.

L5127 As for after the onset of dawn but before performing the Fajr prayer, voluntary prayers during that time are permissible and commendable whenever one wishes. Similarly, immediately after sunset before the Maghrib prayer, and in this manner Imam Dawud al-Zahiri holds the same opinion regarding all that we have mentioned—except for voluntary prayers after the Asr prayer, for according to him, they remain permissible until after sunset, as he deemed the prohibition against them abrogated? Imam Abū Ḥanīfa said: There are three times during which neither obligatory prayers—whether missed or unperformed—nor any voluntary prayers under any circumstances should be performed. These are: at the first appearance of the sun's disk except when it becomes fully white and clear.

وَأَمَّا بَعْدَ الْفَجْرِ مَا لَمْ يُصَلِّ الصُّبْحَ فَالتَّطَوُّعُ حِينَئِذٍ جَائِزٌ حَسَنٌ مَا أَحَبَّ الْمَرْءُ، وَكَذَلِكَ إِثْرَ غُرُوبِ الشَّمْسِ قَبْلَ صَلَاةِ الْمَغْرِبِ، وَبِنَحْوِ هَذَا يَقُولُ دَاوُد فِي كُلِّ مَا ذَكَرْنَا، حَاشَا التَّطَوُّعَ بَعْدَ الْعَصْرِ، فَإِنَّهُ عِنْدَهُ جَائِزٌ إِلَى بَعْدِ غُرُوبِ الشَّمْسِ؛ وَرَأَى النَّهْيَ - عَنْ ذَلِكَ - مَنْسُوخًا؟ وَقَالَ أَبُو حَنِيفَةَ: ثَلَاثَةُ أَوْقَاتٍ لَا يُصَلَّى فِيهَا فَرْضٌ فَائِتٌ أَوْ غَيْرُ فَائِتٍ، وَلَا نَفْلٌ بِوَجْهٍ مِنْ الْوُجُوهِ؛ وَهِيَ: عِنْدَ أَوَّلِ طُلُوعِ قُرْصِ الشَّمْسِ، إِلَّا أَنْ تَبْيَضَّ وَتَصْفُوَ.

L5128 Or when the sun is at its zenith until it begins to decline, except specifically on Friday; for on it, whoever comes to the congregational mosque at its zenith offers prayer there.

أَوْ عِنْدَ اسْتِوَاءِ الشَّمْسِ حَتَّى تَأْخُذَ فِي الزَّوَالِ، حَاشَا يَوْمِ الْجُمُعَةِ خَاصَّةً؛ فَإِنَّهَا يُصَلِّي فِيهَا مَنْ جَاءَ إِلَى الْجَامِعِ وَقْتَ اسْتِوَاءِ الشَّمْسِ.

L5129 From the start of the sun's setting until its completion, except for the 'Asr prayer of that day specifically; for it is prayed before it, at it, and after it.

وَعِنْدَ أَخْذِ أَوَّلِ الشَّمْسِ فِي الْغُرُوبِ حَتَّى يَتِمَّ غُرُوبُهَا؛ حَاشَا عَصْرِ يَوْمِهِ خَاصَّةً؛ فَإِنَّهُ يُصَلَّى عِنْدَ الْغُرُوبِ وَقَبْلَهُ وَبَعْدَهُ.

L5130–5132 It is disliked to perform the funeral prayer during these times. If one performs it during them, does that suffice? There are three times in which

one performs all obligatory prayers, offers the funeral prayer, and prostrates for the recitation prostration. And one should not pray voluntary prayers therein; nor the two rak'ahs following Tawaf; nor the vow-based prayer. The prohibition spans from the emergence of the true dawn until one has prayed the obligatory Fajr prayer, except only the two Sunnah rak'ahs preceding Fajr.

وَتُكْرَهُ الصَّلَاةُ عَلَى الْجَنَائِزِ فِي هَذِهِ الْأَوْقَاتِ، فَإِنْ صَلَّى عَلَيْهَا فِيهِنَّ أَجْزَأَ ذَلِكَ؟ وَثَلَاثَةُ أَوْقَاتٍ يُصَلِّي فِيهِنَّ الْفُرُوضَ كُلَّهَا، وَعَلَى الْجَنَازَةِ، وَيَسْجُدُ سُجُودَ التِّلَاوَةِ، وَلَا يُصَلِّي فِيهَا التَّطَوُّعَ، وَلَا الرَّكْعَتَانِ إِثْرَ الطَّوَافِ، وَلَا الصَّلَاةَ الْمَنْذُورَةَ، وَهِيَ: إِثْرَ طُلُوعِ الْفَجْرِ الثَّانِي حَتَّى يُصَلِّيَ الصُّبْحَ، إِلَّا رَكْعَتَيْ الْفَجْرِ فَقَطْ.

L5133 And after the ʿAṣr prayer until the sun begins to set (though it is disliked to perform the funeral prayer when the sun turns yellow), and likewise the prostration of recitation. [This applies] after the sun has completely set until one prays the Maghrib prayer.

وَبَعْدَ صَلَاةِ الْعَصْرِ حَتَّى تَأْخُذَ الشَّمْسُ فِي الْغُرُوبِ، [إِلَّا أَنَّهُ كَرِهَ الصَّلَاةَ عَلَى الْجَنَازَةِ إِذَا اصْفَرَّتْ الشَّمْسُ] . وَكَذَلِكَ سُجُودُ التِّلَاوَةِ، وَبَعْدَ تَمَامِ غُرُوبِهَا حَتَّى يُصَلِّيَ الْمَغْرِبَ.

L5134 And whoever arrives where the Imam is on Friday while he is delivering the sermon: this constitutes a fourth time for these three that we mentioned last.

وَمَنْ جَاءَ عِنْدَهُ يَوْمَ الْجُمُعَةِ وَالْإِمَامُ يَخْطُبُ: وَقْتٌ رَابِعٌ لِهَذِهِ الثَّلَاثَةِ الَّتِي ذَكَرْنَا آخِرًا.

L5135 Abu Hanifah said: So whoever begins the dawn prayer and the sun rises upon him—whether he has prayed the smallest portion of it or the largest portion—that prayer of his becomes invalid.

قَالَ أَبُو حَنِيفَةَ: فَمَنْ دَخَلَ فِي صَلَاةِ الصُّبْحِ فَطَلَعَتْ لَهُ الشَّمْسُ وَقَدْ صَلَّى أَقَلَّهَا أَوْ أَكْثَرَهَا بَطَلَتْ صَلَاتُهُ تِلْكَ.

L5136 Even if he sat for the duration of the tashahhud and recited the tashahhud, then the first part of the sun's disk appeared following all of that before he said the salam, his prayer becomes invalid.

وَلَوْ أَنَّهُ قَعَدَ مِقْدَارَ التَّشَهُّدِ وَتَشَهَّدَ ثُمَّ طَلَعَ أَوَّلُ قُرْصِ الشَّمْسِ إِثْرَ [ذَلِكَ] كُلِّهِ وَقَبْلَ أَنْ يُسَلِّمَ فَقَدْ بَطَلَتْ صَلَاتُهُ.

L5137 And if he laughs aloud [during prayer], his wudu is not broken.

وَلَوْ قَهْقَهَ حِينَئِذٍ لَا يُنْقَضُ وُضُوءُهُ.

L5138 Even if he intentionally or forgetfully invalidates his ablution, or speaks intentionally or forgetfully after sitting for the duration of the Tashahhud and before uttering the Salam, his prayer remains complete and perfect—and even if he laughs aloud at that time, his ablution is not invalidated. Abū Yūsuf and Muḥammad said: If he sits for the duration of the Tashahhud before the first appearance of the sun (sunrise), his prayer is complete. If he enters the ʿAṣr prayer and performs even one Takbīr or more of it, and the sun sets completely or partially for him while praying, he should continue his prayer. This does not harm it detrimentally according to Abū Ḥanīfah and his companions.

وَلَوْ أَنَّهُ أَحْدَثَ عَمْدًا أَوْ نِسْيَانًا أَوْ تَكَلَّمَ عَمْدًا أَوْ نِسْيَانًا بَعْدَ أَنْ قَعَدَ مِقْدَارَ التَّشَهُّدِ وَقَبْلَ أَنْ يُسَلِّمَ: فَصَلَاتُهُ تَامَّةٌ كَامِلَةٌ - وَلَوْ قَهْقَهَ حِينَئِذٍ لَمْ يُنْقَضْ وُضُوءُهُ؟ وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدٌ: إِذَا قَعَدَ مِقْدَارَ التَّشَهُّدِ قَبْلَ طُلُوعِ أَوَّلِ الشَّمْسِ فَصَلَاتُهُ تَامَّةٌ، فَلَوْ دَخَلَ فِي صَلَاةِ الْعَصْرِ فَصَلَّى أَوَّلَهَا وَلَوْ تَكْبِيرَةً أَوْ أَكْثَرَهَا فَغَرَبَتْ لَهُ الشَّمْسُ كُلُّهَا أَوْ بَعْضُهَا فَلْيَتَمَادَ فِي صَلَاتِهِ، وَلَا يَضُرُّهَا ذَلِكَ شَيْئًا عِنْدَ أَبِي حَنِيفَةَ وَأَصْحَابِهِ.

قَالُوا: فَإِنْ صَلَّى فِي مَنْزِلِهِ رَكْعَتَيْ الْفَجْرِ ثُمَّ جَاءَ إلَى الْمَسْجِدِ فَلْيَجْلِسْ وَلَا يَرْكَعْ.

L5139 If one prays the two rak'ahs of Fajr in his home and then comes to the mosque, he should sit and not perform another rak'ah.

قَالَ أَبُو حَنِيفَةَ: فَإِنْ جَاءَ إلَى الْمَسْجِدِ بَعْدَ تَمَامِ غُرُوبِ الشَّمْسِ فَلْيَقِفْ حَتَّى تُقَامَ الصَّلَاةُ وَلَا يَجْلِسْ وَلَا يَرْكَعْ.

L5140 Abu Hanifa said: If someone arrives at the mosque after the sun has completely set, he should stand until the prayer is established, neither sitting nor performing the bowing.

قَالَ أَبُو يُوسُفَ: يَجْلِسُ وَلَا يَرْكَعُ.

L5141–5142 Abu Yusuf said: He sits and does not perform rukūʿ.

وَقَالَ مَالِكٌ: يُصَلِّي الْفُرُوضَ كُلَّهَا الْمَنْسِيَّةَ وَغَيْرَهَا فِي جَمِيعِ هَذِهِ الْأَوْقَاتِ وَلَا يَتَطَوَّعُ [بَعْدَ صَلَاةِ الصُّبْحِ] حَتَّى تَبْيَضَّ الشَّمْسُ وَتَصْفُوَ وَلَا بَعْدَ صَلَاةِ الْعَصْرِ حَتَّى تَغْرُبَ الشَّمْسُ، وَلَا بَعْدَ غُرُوبِهَا حَتَّى تُصَلَّى الْمَغْرِبُ.

L5143 Malik said: One should pray all obligatory prayers—whether forgotten or otherwise—during all these times, but one should not perform voluntary prayers after the dawn prayer until the sun has whitened and become clear, nor after the afternoon prayer until the sun sets, nor after sunset until the Maghrib prayer is performed.

وَمَنْ دَخَلَ الْمَسْجِدَ [حِينَئِذٍ] قَعَدَ وَلَا يَرْكَعُ، وَلَا يَتَطَوَّعُ بَعْدَ طُلُوعِ الْفَجْرِ إلَّا بِرَكْعَتَيْ الْفَجْرِ، حَاشَا مَنْ غَلَبَتْهُ عَيْنُهُ فَنَامَ عَنْ حِزْبِهِ؛ فَإِنَّهُ لَا بَأْسَ بِأَنْ يُصَلِّيَهُ بَعْدَ طُلُوعِ الْفَجْرِ وَقَبْلَ صَلَاةِ الصُّبْحِ.

L5144 Whoever enters the mosque [at that time] should sit and not bow in prayer, nor perform voluntary prayers after dawn breaks except for the two units of Fajr. Excepted is one who is overcome by sleep and misses his customary portion [of worship]; in such a case, there is no harm in him performing it after dawn breaks but before the Fajr prayer.

وَمَنْ رَكَعَ رَكْعَتَيْ الْفَجْرِ فِي مَنْزِلِهِ ثُمَّ أَتَى الْمَسْجِدَ فَإِنْ شَاءَ رَكَعَ رَكْعَتَيْنِ، وَإِنْ شَاءَ جَلَسَ، وَلَمْ يَرْكَعْ، وَقَدْ رُوِيَ عَنْهُ: [إنْ] كَانَ مُصْبِحًا فَلْيَجْلِسْ وَلَا يَرْكَعْ.

L5145 Whoever performed the two rak'ahs of Fajr in his home and then came to the mosque may either perform two rak'ahs if he wishes or sit and not perform them. It has been reported from the Prophet: If it is Fajr time, he should sit and not perform them.

وَالتَّطَوُّعُ عِنْدَهُ جَائِزٌ عَلَى كُلِّ حَالٍ عِنْدَ اسْتِوَاءِ الشَّمْسِ، وَلَمْ يَكْرَهْ ذَلِكَ وَأَجَازَ الصَّلَاةَ عَلَى الْجِنَازَةِ بَعْدَ صَلَاةِ الصُّبْحِ مَا لَمْ يُسْفِرْ جِدًّا، وَبَعْدَ الْعَصْرِ مَا لَمْ تَصْفَرَّ الشَّمْسُ.

L5146 The supererogatory prayer is permissible in his view under all circumstances at midday, and he did not disapprove of this. He permitted the funeral prayer after Fajr prayer as long as it has not become very bright, and after Asr prayer as long as the sun has not turned yellow.

وَعَنْهُ فِي سُجُودِ التِّلَاوَةِ قَوْلَانِ: أَحَدُهُمَا: لَا يَسْجُدُ لَهَا بَعْدَ صَلَاةِ الصُّبْحِ حَتَّى تَصْفُوَ الشَّمْسُ، وَلَا بَعْدَ صَلَاةِ الْعَصْرِ مَا لَمْ تَغْرُبْ الشَّمْسُ.

L5147 He holds two opinions regarding the prostration for Quranic recitation: one is that it should not be performed after the Fajr prayer until the sun has risen high, nor after the ʿAṣr prayer until the sun has set.

L5148–5150 The other [opinion] is that there is no harm in performing prostration as long as dawn has not fully broken and as long as the sun has not begun to rise.

وَالْآخَرُ: أَنَّهُ لَا بَأْسَ بِالسُّجُودِ لَهَا مَا لَمْ يُسْفِرْ، وَمَا لَمْ تَصْفَرَّ الشَّمْسُ، وَقَالَ: مَنْ قَرَأَهَا فِي الْوَقْتِ الْمَنْهِيِّ فِيهِ عَنْ السُّجُودِ فَلْيُسْقِطْ الْآيَةَ الَّتِي فِيهَا السَّجْدَةُ وَيَصِلْ الَّتِي قَبْلَهَا بِالَّتِي بَعْدَهَا؟ ، وَقَالَ الشَّافِعِيُّ: يَقْضِي الْفَائِتَاتِ مِنْ الْفُرُوضِ وَيُصَلِّي كُلَّ تَطَوُّعٍ مَأْمُورٍ بِهِ فِي هَذِهِ الْأَوْقَاتِ، وَإِنَّمَا الْمَمْنُوعُ: هُوَ ابْتِدَاءُ التَّطَوُّعِ فِيهَا فَقَطْ، إلَّا يَوْمَ الْجُمُعَةِ وَبِمَكَّةَ، فَإِنَّهُ يَتَطَوَّعُ فِي جَمِيعِ هَذِهِ الْأَوْقَاتِ وَغَيْرِهَا.

He said: Whoever recites a surah during the prohibited times for prostration should omit the verse containing the prostration. And join the prayer preceding it with the one following it? Al-Shāfiʿī stated: One must make up the missed obligatory prayers and perform all supererogatory prayers commanded for these times. What is prohibited is initiating supererogatory prayers solely during these times, except on Friday and in Makkah, in which cases one may perform supererogatory prayers during all these times and other times.

قَالَ عَلِيٌّ: أَمَّا تَقَاسِيمُ أَبِي حَنِيفَةَ فَدَعَاوٍ فَاسِدَةٌ مُتَنَاقِضَةٌ، لَا دَلِيلَ عَلَى شَيْءٍ مِنْهَا، لَا مِنْ قُرْآنٍ وَلَا سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا مِنْ إجْمَاعٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا مِنْ قِيَاسٍ وَلَا رَأْيٍ سَدِيدٍ، وَأَقْوَالُ مَالِكٍ: لَا دَلِيلَ عَلَى تَقْسِيمِهَا؛ لَا سِيَّمَا قَوْلُهُ بِإِسْقَاطِ الْآيَةِ فِي التِّلَاوَةِ بَيْنَ الْآيَتَيْنِ، فَهُوَ إفْسَادُ نَظْمِ الْقُرْآنِ، وَقَوْلٌ مَا سَبَقَهُ إلَيْهِ أَحَدٌ.

L5151 Ali said: As for the juridical categorizations of Abū Ḥanīfah, they are corrupt, contradictory assertions with no evidence supporting any of them—neither from the Quran, nor from any Sunnah (whether authentic or weak), nor from consensus, nor from a Companion's statement, nor from analogy, nor from sound reasoning. Mālik's doctrines similarly lack evidence for their categorizations—particularly his ruling to omit a verse in recitation between two other verses. This corrupts the Quran's textual structure and constitutes a view no one before him had ever held.

وَكَذَلِكَ إسْقَاطُهُ وَقْتَ اسْتِوَاءِ الشَّمْسِ مِنْ جُمْلَةِ الْأَوْقَاتِ الْمَنْهِيِّ عَنْ الصَّلَاةِ فِيهَا، فَهُوَ خِلَافُ الثَّابِتِ فِي ذَلِكَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِلَا مُعَارِضٍ لَهُ؟ وَأَمَّا تَفْرِيقُ الشَّافِعِيِّ بَيْنَ مَكَّةَ وَغَيْرِهَا، وَبَيْنَ يَوْمِ الْجُمُعَةِ وَغَيْرِهِ: فَلِأَثَرَيْنِ سَاقِطَيْنِ رُوِّينَاهُمَا: فِي أَحَدِهِمَا - النَّهْيُ عَنْ الصَّلَاةِ فِي هَذِهِ الْأَوْقَاتِ إلَّا بِمَكَّةَ.

L5152 Likewise, omitting prayer at the time of the sun's zenith is among the prohibited prayer times. Is this not contrary to what is firmly established from the Prophet—peace and blessings be upon him—with no opposing evidence? As for al-Shāfiʿī's distinction between Mecca and other places, and between Friday and other days, it is based on two weak narrations we have transmitted. One of them states the prohibition of prayer during these times except in Mecca.

وَفِي الْآخَرِ «يَوْمُ الْجُمُعَةِ صَلَاةٌ كُلُّهُ» ، وَلَيْسَا مِمَّا يُشْتَغَلُ بِهِ، وَلَا أَوْرَدَهُ أَحَدٌ مِنْ أَئِمَّةِ أَهْلِ الْحَدِيثِ، فَوَجَبَ الْإِضْرَابُ عَنْ هَذِهِ الْأَقْوَالِ جُمْلَةً، وَالْإِقْبَالُ عَلَى السُّنَنِ الْوَارِدَةِ فِي هَذَا الْبَابِ، وَالنَّظَرِ فِي اسْتِعْمَالِهَا كُلِّهَا [وَفِي] تَغْلِيبِ أَحَدِ الْحُكْمَيْنِ عَلَى الْآخَرِ، عَلَى مَا جَاءَ فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَعَنْ التَّابِعِينَ - رَحِمَهُمُ اللَّهُ -.

L5153–5154 In another narration, "The entire day of Friday is prayer." These two narrations are not to be acted upon, nor have any Imams of the people of Hadith cited them. Therefore, it is obligatory to wholly abandon these statements entirely, to focus on the transmitted Sunnah in this chapter, to examine the application of all of them, and to give precedence to one of the two rulings over the other—in accordance with what has been reported from the Companions (may Allah be pleased with them) and the Successors (may Allah have mercy on them).

L5155 Ali said: Ḥumām narrated to us, that ʿAbbās ibn Aṣbagh narrated to us, that

Muḥammad ibn ʿAbd al-Malik ibn Ayman narrated to us, that ʿAbdullāh ibn Aḥmad ibn Ḥanbal narrated to us, that his father narrated to us, that ʿAffān ibn Muslim narrated to us, that Hammām ibn Yaḥyā narrated to us, that Qatādah narrated to us, that Abū al-ʿĀliyah narrated to us from Ibn ʿAbbās, who said: "Trustworthy men testified before me—and the most trustworthy among them in my view was ʿUmar—that the Messenger of Allah, peace and blessings be upon him, said: 'There is no prayer after two prayers: after the Fajr prayer until the sun rises, and after the ʿAṣr prayer until the sun sets.'" We have narrated it in this way through multiple chains, sufficing with this due to its authenticity, and all of them are authentic.

قَالَ عَلِيٌّ: حَدَّثَنَا حُمَامُ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ ثنا أَبِي ثنا عَفَّانُ بْنُ مُسْلِمٍ ثنا هَمَّامُ بْنُ يَحْيَى ثنا قَتَادَةُ حَدَّثَنَا أَبُو الْعَالِيَةِ عَنِ ابْنِ عَبَّاسٍ قَالَ: شَهِدَ عِنْدِي رِجَالٌ مَرْضِيُّونَ، وَأَرْضَاهُمْ عِنْدِي عُمَرُ، أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا صَلَاةَ بَعْدَ صَلَاتَيْنِ بَعْدَ الصُّبْحِ حَتَّى تَطْلُعَ الشَّمْسُ، وَبَعْدَ الْعَصْرِ حَتَّى تَغْرُبَ الشَّمْسُ» . وَرُوِّينَاهُ هَكَذَا مِنْ طُرُقٍ، اكْتَفَيْنَا بِهَذَا لِصِحَّتِهِ وَكُلُّهَا صِحَاحٌ.

L5156–5157 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul-Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Yahya ibn Yahya narrated to us: Abdullah ibn Wahb narrated from Musa ibn Ali ibn Rabah, from his father, who said: I heard Uqbah ibn Amir al-Juhani say: "There are three times when the Messenger of Allah forbade us to pray or bury our two deceased: when the sun has risen until it ascends, when the sun is at its peak until it declines, and when the sun begins to incline toward setting until it sets."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى ثنا عَبْدُ اللَّهِ بْنُ وَهْبٍ عَنْ مُوسَى بْنِ عَلِيِّ بْنِ رَبَاحٍ عَنْ أَبِيهِ قَالَ: سَمِعْتُ عُقْبَةَ بْنَ عَامِرٍ الْجُهَنِيَّ يَقُولُ: «ثَلَاثُ سَاعَاتٍ كَانَ رَسُولُ اللَّهِ يَنْهَانَا أَنْ نُصَلِّيَ فِيهِنَّ أَوْ أَنْ نَقْبُرَ فِيهِنَّ مَوْتَانَا: حِينَ تَطْلُعُ الشَّمْسُ بَازِغَةً حَتَّى تَرْتَفِعَ، وَحِينَ يَقُومُ قَائِمُ الظَّهِيرَةِ حَتَّى تَمِيلَ الشَّمْسُ، وَحِينَ تَضَيَّفُ الشَّمْسُ لِلْغُرُوبِ حَتَّى تَغْرُبَ» .

L5158–5160 We have also been narrated in these times from al-Ṣunābiḥī and others: ʿAbd Allāh ibn Rabīʿ narrated to us, ʿUmar ibn ʿAbd al-Malik al-Khawlānī narrated to us, Muḥammad ibn Bakr narrated to us, Abū Dāwūd al-Sijistānī narrated to us, al-Rabīʿ ibn Nāfiʿ (who is Abū Tawbah) narrated to us, Muḥammad ibn al-Muhājir narrated from al-ʿAbbās ibn Sālim from Abū Sallām from Abū Umāmah al-Bāhilī from ʿAmr ibn ʿAnbasah al-Sulamī that he said: I asked, "O Messenger of Allah, when are supplications most likely to be answered during the night?" He replied, "The middle of the latter part of the night. Pray freely, for the prayer is witnessed and recorded until you pray Fajr. Then refrain until the sun rises and reaches the height of a spear or two, for it rises between the horns of Satan, and the disbelievers prostrate to it. Then pray as you will, for the prayer is witnessed and recorded until the shadow

وَرُوِّينَا أَيْضًا فِي هَذِهِ الْأَوْقَاتِ عَنِ الصُّنَابِحِيِّ وَغَيْرِهِ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ الْخَوْلَانِيُّ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد السِّجِسْتَانِيُّ ثنا الرَّبِيعُ بْنُ نَافِعٍ هُوَ أَبُو تَوْبَةَ - ثنا مُحَمَّدُ بْنُ الْمُهَاجِرِ عَنِ الْعَبَّاسِ بْنِ سَالِمٍ عَنْ أَبِي سَلَّامٍ عَنْ أَبِي أُمَامَةَ الْبَاهِلِيِّ عَنْ «عَمْرِو بْنِ عَنْبَسَةَ السُّلَمِيِّ أَنَّهُ قَالَ: قُلْتُ يَا رَسُولَ اللَّهِ: أَيُّ اللَّيْلِ أَسْمَعُ؟ قَالَ: جَوْفُ اللَّيْلِ الْآخِرِ، فَصَلِّ مَا شِئْتَ، فَإِنَّ الصَّلَاةَ مَشْهُودَةٌ مَكْتُوبَةٌ، حَتَّى تُصَلِّيَ الصُّبْحَ، ثُمَّ أَقْصِرْ حَتَّى تَطْلُعَ الشَّمْسُ فَتَرْتَفِعَ قِيسَ رُمْحٍ أَوْ رُمْحَيْنِ، فَإِنَّهَا بَيْنَ قَرْنَيْ

of a spear matches its length. Then refrain, for Hellfire is stoked and its gates are opened. When the sun declines, pray freely, for the prayer is witnessed and recorded until you pray ʿAṣr." Then cease [prayer] until the sun sets, for it sets between the two horns of Satan, and the disbelievers pray to it," and he mentioned the Hadith.

شَيْطَانٍ وَيُصَلِّي لَهَا الْكُفَّارُ، ثُمَّ صَلِّ مَا شِئْتَ، فَإِنَّ الصَّلَاةَ مَشْهُودَةٌ مَكْتُوبَةٌ حَتَّى يَعْدِلَ الرُّمْحُ ظِلَّهُ، وَأَقْصِرْ فَإِنَّ جَهَنَّمَ تُسْجَرُ وَتُفْتَحُ أَبْوَابُهَا فَإِذَا زَاغَتْ فَصَلِّ مَا شِئْتَ، فَإِنَّ الصَّلَاةَ مَشْهُودَةٌ مَكْتُوبَةٌ، حَتَّى تُصَلِّيَ الْعَصْرَ ثُمَّ أَقْصِرْ حَتَّى تَغْرُبَ الشَّمْسُ، فَإِنَّهَا تَغْرُبُ بَيْنَ قَرْنَيْ شَيْطَانٍ وَيُصَلِّي لَهَا الْكُفَّارُ» وَذَكَرَ الْحَدِيثَ.

L5161 It was reported to us through various chains from Mālik from Zayd ibn Aslam from ʿAṭāʾ ibn Yasār from ʿAbdullāh al-Ṣunābīḥī that the Messenger of Allah—peace and blessings be upon him—said: "The sun rises with the two horns of Satan. When it has risen higher, they separate from it. When it reaches its zenith, they rejoin it. When it declines, they separate from it. When it nears sunset, they rejoin it. When it sets, they separate from it." And the Messenger of Allah—peace and blessings be upon him—forbade prayer during these times?

وَرُوِّينَا مِنْ طُرُقٍ عَنْ مَالِكٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ عَبْدِ اللَّهِ الصُّنَابِحِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الشَّمْسُ تَطْلُعُ وَمَعَهَا قَرْنَيْ الشَّيْطَانِ، فَإِذَا ارْتَفَعَتْ فَارَقَهَا. فَإِذَا اسْتَوَتْ قَارَنَهَا فَإِذَا زَالَتْ فَارَقَهَا، فَإِذَا دَنَتْ لِلْغُرُوبِ قَارَنَهَا، فَإِذَا غَرَبَتْ فَارَقَهَا، وَنَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الصَّلَاةِ فِي هَذِهِ الْأَوْقَاتِ» ؟ .

L5162 Ali said: How astonishing it is that the Malikis oppose this report, even though it is narrated by their own scholar.

قَالَ عَلِيٌّ: وَالْعَجَبُ مِنْ مُخَالَفَةِ الْمَالِكِيِّينَ لِهَذَا الْخَبَرِ، وَهُوَ مِنْ رِوَايَةِ شَيْخِهِمْ.

L5163 Ali said: A group of people adhered to these narrations and did not consider prayer as having any basis during these times.

قَالَ عَلِيٌّ: فَذَهَبَ إلَى هَذِهِ الْآثَارِ قَوْمٌ، فَلَمْ يَرَوْا الصَّلَاةَ أَصْلًا فِي هَذِهِ الْأَوْقَاتِ.

L5164 It was narrated to us through the chain of Muḥammad ibn Jaʿfar from Shuʿbah from ʿĀṣim ibn Sulaymān al-Aḥwal from Bakr ibn ʿAbdullāh al-Muzanī, who said: Abū Bakra was in his garden and slept through the ʿAṣr prayer. He did not wake until the sun had paled, and he did not pray it until the sun had set. Then he stood and prayed it.

كَمَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ عَنْ شُعْبَةَ عَنْ عَاصِمِ بْنِ سُلَيْمَانَ الْأَحْوَلِ عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيِّ قَالَ: كَانَ أَبُو بَكْرَةَ فِي بُسْتَانٍ لَهُ فَنَامَ عَنْ الْعَصْرِ، فَلَمْ يَسْتَيْقِظْ حَتَّى اصْفَرَّتْ الشَّمْسُ، فَلَمْ يُصَلِّ حَتَّى غَرُبَتْ الشَّمْسُ، ثُمَّ قَامَ فَصَلَّى.

L5165 And through the chain of ʿAbd al-Razzāq—from Maʿmar and Sufyān al-Thawrī, both of whom narrated from Ayyūb al-Sakhtiyānī, from Muḥammad ibn Sīrīn—that Abū Bakrah came to them in their garden, slept through *ʿAṣr*, stood up and performed ablution, then did not pray until the sun had set.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ وَسُفْيَانَ الثَّوْرِيِّ كِلَاهُمَا عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ أَبَا بَكْرَةَ أَتَاهُمْ فِي بُسْتَانٍ لَهُمْ فَنَامَ عَنْ الْعَصْرِ فَقَامَ فَتَوَضَّأَ، ثُمَّ لَمْ يُصَلِّ حَتَّى غَابَتْ الشَّمْسُ.

L5166–5168 And with him to Sufyan al-Thawri, from Saʿd ibn Ishaq ibn Kaʿb ibn ʿUjrah, from a man among the descendants of [...]. Kaʿb ibn ʿUjrah reported that he

slept through the dawn prayer until the sun rose. He said: “I stood up to pray, but Kaʿb ibn ʿUjrah called me and seated me until the sun had ascended high and turned white. Then he said: ’Rise and pray now.’”

وَبِهِ إِلَى سُفْيَانَ الثَّوْرِيِّ عَنْ سَعْدِ بْنِ إِسْحَاقَ بْنِ كَعْبِ بْنِ عُجْرَةَ عَنْ رَجُلٍ مِنْ وَلَدِ كَعْبِ بْنِ عُجْرَةَ: أَنَّهُ نَامَ عَنْ الْفَجْرِ حَتَّى طَلَعَتْ الشَّمْسُ، قَالَ: فَقُمْت أُصَلِّي فَدَعَانِي كَعْبُ بْنُ عُجْرَةَ فَأَجْلَسَنِي حَتَّى ارْتَفَعَتْ الشَّمْسُ وَابْيَضَّتْ، ثُمَّ قَالَ: قُمْ فَصَلِّ؟ .

L5169 It was narrated to us by Muḥammad ibn al-Muthannā, who narrated from ʿAbd al-Raḥmān ibn Mahdī and Abū ʿĀmir al-ʿAqadī—both of whom narrated from Sufyān al-Thawrī, from Zayd ibn Jubayr, from Abū al-Bakhtarī, who said: “‘Umar ibn al-Khaṭṭāb used to strictly observe the prayer at midday.”

وَرُوِّينَا عَنْ مُحَمَّدِ بْنِ الْمُثَنَّى ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، وَأَبُو عَامِرٍ الْعَقَدِيُّ كِلَاهُمَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ زَيْدِ بْنِ جُبَيْرٍ عَنْ أَبِي الْبَخْتَرِيِّ قَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ يَضْرِبُ عَلَى الصَّلَاةِ بِنِصْفِ النَّهَارِ.

L5170 This is Abu al-Bakhtarī, the disciple of Ibn Masʿūd and ʿAlī.

أَبُو الْبَخْتَرِيِّ هَذَا هُوَ صَاحِبُ ابْنِ مَسْعُودٍ وَعَلِيٍّ.

L5171 Others have held the view that missed prayers must be made up during these times, that one may continue performing the Dawn Prayer if the sun rises while he is still engaged in it, or if it sets while he is still engaged in it, and that every voluntary prayer established by an explicit injunction should be performed. They used as proof the hadith narrated to us by ʻAbdullāh ibn Rabīʿ, narrated to us Muḥammad ibn Muʿāwiyah, narrated to us Aḥmad ibn Shuʿayb, narrated to us Ḥumayd ibn Masʿadah from Yazīd ibn Zuraiʿ, narrated to me Ḥajjāj al-Aḥwal from Qatādah from Anas ibn Mālik, who said: “The Messenger of Allah (peace and blessings be upon him) was asked about a man who sleeps through prayer or neglects it. He replied: ’The remedy is that he prays it when he remembers it.’”

وَذَهَبَ آخَرُونَ إِلَى قَضَاءِ الصَّلَوَاتِ الْفَائِتَاتِ فِي هَذِهِ الْأَوْقَاتِ، وَإِلَى التَّمَادِي فِي صَلَاةِ الصُّبْحِ إِذَا طَلَعَتْ الشَّمْسُ، وَهُوَ فِيهَا، أَوْ إِذَا غَرُبَتْ لَهُ وَهُوَ فِيهَا، وَإِلَى تَأْدِيَةِ كُلِّ صَلَاةِ تَطَوُّعٍ جَاءَ بِهَا أَمْرٌ، وَاحْتَجُّوا بِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا حُمَيْدُ بْنُ مَسْعَدَةَ عَنْ يَزِيدَ بْنِ زُرَيْعٍ حَدَّثَنِي حَجَّاجُ الْأَحْوَلُ عَنْ قَتَادَةَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الرَّجُلِ يَرْقُدُ عَنْ الصَّلَاةِ أَوْ يَغْفُلُ عَنْهَا؟ فَقَالَ: كَفَّارَتُهَا أَنْ يُصَلِّيَهَا إِذَا ذَكَرَهَا» .

L5172 To Ahmad ibn Shuʿayb: I am Qutaybah ibn Saʿīd. Ḥammād ibn Zayd narrated to us from Thābit al-Bunānī, from ʿAbdullāh ibn Ribāḥ, from Abu Qatādah that the Messenger of Allah (peace be upon him) said: “There is no negligence in sleep; negligence lies only in wakefulness. When any of you forgets a prayer or sleeps through it, let him perform it when he remembers.” This ruling applies generally to every prayer, whether obligatory or supererogatory.[7]

وَبِهِ إِلَى أَحْمَدَ بْنِ شُعَيْبٍ: أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ ثنا حَمَّادُ بْنُ زَيْدٍ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ رِبَاحٍ عَنْ أَبِي قَتَادَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: إنَّهُ «لَيْسَ فِي النَّوْمِ تَفْرِيطٌ، إنَّمَا التَّفْرِيطُ فِي الْيَقَظَةِ، فَإِذَا نَسِيَ أَحَدُكُمْ صَلَاةً أَوْ نَامَ عَنْهَا فَلْيُصَلِّهَا إذَا ذَكَرَهَا» ، وَهَذَا عُمُومٌ لِكُلِّ صَلَاةِ فَرْضٍ أَوْ نَافِلَةٍ.

[7] **Hadith references (L5172):** Sunan an-Nasai 615; Sunan Ibn Majah 698; Jami at-Tirmidhi 177.

وَقَدْ ذَكَرْنَا أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِصَلَاةِ الْكُسُوفِ، وَبِالرَّكْعَتَيْنِ عِنْدَ دُخُولِ الْمَسْجِدِ، وَبِالصَّلَاةِ عَلَى الْجَنَائِزِ، وَسَائِرَ مَا أَمَرَ بِهِ مِنْ التَّطَوُّعِ - عَلَيْهِ السَّلَامُ -، وَأَخَذَ بِهَذَا جَمَاعَةٌ مِنْ السَّلَفِ.

L5173–5174 We have mentioned the command of the Messenger of Allah—peace be upon him—regarding the eclipse prayer, the two rak'ahs upon entering the mosque, the prayer over the deceased, and all that he enjoined of voluntary prayers—peace be upon him. A group of the Salaf adopted this.

كَمَا رُوِّينَا عَنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ أَنَّ الْمِسْوَرَ بْنَ مَخْرَمَةَ دَخَلَ عَلَى ابْنِ عَبَّاسٍ فَحَدَّثَهُ، فَنَامَ ابْنُ عَبَّاسٍ وَانْسَلَّ الْمِسْوَرُ، فَلَمْ يَسْتَيْقِظْ حَتَّى أَصْبَحَ، فَقَالَ لِغُلَامِهِ: أَتَرَانِي أَسْتَطِيعُ أَنْ أُصَلِّيَ قَبْلَ أَنْ تَخْرُجَ الشَّمْسُ أَرْبَعًا - يَعْنِي الْعِشَاءَ - وَثَلَاثًا - يَعْنِي الْوِتْرَ - وَرَكْعَتَيْنِ - يَعْنِي رَكْعَتَيْ الْفَجْرِ - وَوَاحِدَةً - يَعْنِي رَكْعَةً مِنْ الصُّبْحِ؟ - قَالَ: نَعَمْ فَصَلَّاهُنَّ.

L5175 As narrated through the chain of ʿAbd al-Razzāq from Maʿmar via Qaṭādah: Al-Miṣwar ibn Makhramah visited Ibn ʿAbbās and spoke to him. Ibn ʿAbbās fell asleep, and al-Miṣwar slipped away. He did not awaken until dawn, whereupon he asked his servant, "Do you think I can pray four"—meaning ʿIshāʾ—"three"—meaning Witr—"two"—meaning the two rakʿahs of Fajr—"and one"—meaning a rakʿah of Fajr—"before sunrise?" The servant replied, "Yes." He then prayed them all.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَطَاءُ بْنُ أَبِي رَبَاحٍ عَنْ عَطَاءِ بْنِ يُحَنَّسَ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: إنْ خَشِيتَ مِنْ الصُّبْحِ فَوَاتًا فَبَادَرْت بِالرَّكْعَةِ الْأُولَى الشَّمْسَ، فَإِنْ سَبَقَت بِهَا الشَّمْسَ فَلَا تُعَجِّلْ بِالْآخِرَةِ أَنْ تُكْمِلَهَا.

L5176 And through him to Abd al-Razzaq, from Ibn Jurayj, who informed me: Ata ibn Abi Rabah narrated from Ata ibn Yuhannas that he heard Abu Hurayrah say: *If you fear missing the dawn prayer, hasten to perform the first rak'ah before sunrise. If you precede the sun with it, do not rush through the second rak'ah to complete the prayer.*

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ: أَنَا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: صَلَّيْت خَلْفَ أَبِي بَكْرٍ الْفَجْرَ فَاسْتَفْتَحَ الْبَقَرَةَ فَقَرَأَهَا فِي رَكْعَتَيْنِ: فَقَالَ عُمَرُ حِينَ فَرَغَ قَالَ يَغْفِرُ اللَّهُ لَك لَقَدْ كَادَتْ الشَّمْسُ أَنْ تَطْلُعَ قَبْلَ أَنْ تُسَلِّمَ؟ قَالَ: لَوْ طَلَعَتْ لَأَلْفَتْنَا غَيْرَ غَافِلِينَ.

L5177 And through him to Abd al-Razzaq: I am Ma'mar, from al-Zuhri, from Anas ibn Malik, who said: I prayed the dawn prayer behind Abu Bakr. He commenced by reciting Surah al-Baqarah and completed it over two rak'ahs. When he concluded, Umar said: "May Allah forgive you! The sun had nearly risen before you uttered the *taslim*!" He replied: "Had it risen, it would have found us far from unaware."

وَبِهِ إلَى مَعْمَرٍ عَنْ عَاصِمِ بْنِ سُلَيْمَانَ عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ قَالَ: صَلَّى بِنَا عُمَرُ صَلَاةَ الْغَدَاةِ فَمَا انْصَرَفَ حَتَّى عَرَفَ كُلُّ ذِي بَالٍ أَنَّ الشَّمْسَ قَدْ طَلَعَتْ، فَقِيلَ لَهُ: مَا فَرَغْتَ حَتَّى كَادَتْ الشَّمْسُ أَنْ تَطْلُعَ؟ فَقَالَ: لَوْ طَلَعَتْ لَأَلْفَتْنَا غَيْرَ غَافِلِينَ.

L5178 And via his narration to Ma'mar, from 'Asim ibn Sulayman, from Abu 'Uthman al-Nahdi, who said: Umar led us in the Dawn Prayer, and he did not conclude it until every aware person knew that the sun had risen. It was said to him: "Did the prayer not end until the sun was about to rise?" He replied: "Had it risen, you would have found us not heedless."

L5179–5181 Ali said: "This is a clear text with the most authentic possible chain of transmission, affirming that Abu Bakr and Umar—Allah has been pleased

with them both—" And all those with the two of them among the Companions—may Allah be pleased with them—do not consider the sun's rising to invalidate the prayer of someone upon whom the sun rises while he is praying Fajr.

قَالَ عَلِيٌّ: فَهَذَا نَصٌّ جَلِيٌّ بِأَصَحِّ إِسْنَادٍ يَكُونُ أَنَّ أَبَا بَكْرٍ وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - وَكُلَّ مَنْ مَعَهُمَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يَرَوْنَ طُلُوعَ الشَّمْسِ يَقْطَعُ صَلَاةَ مَنْ طَلَعَتْ عَلَيْهِ، وَهُوَ يُصَلِّي الصُّبْحَ.

L5182 It is astonishing that the Ḥanafīs—who consider ʿUmar's censure of ʿUthmān in the presence of the Companions for neglecting the Friday ghusl as proof for the lapse of its obligation (though this is contrary to what ʿUmar's censure itself indicates)—do not regard Abū Bakr and ʿUmar's permission in the presence of the Companions to pray Fajr even if the sun had risen as proof for that position.

وَالْعَجَبُ مِنْ الْحَنَفِيِّينَ الَّذِينَ يَرَوْنَ إنْكَارَ عُمَرَ عَلَى عُثْمَانَ بِحَضْرَةِ الصَّحَابَةِ تَرْكَ غُسْلِ الْجُمُعَةِ حُجَّةً فِي سُقُوطِ وُجُوبِ الْغُسْلِ لَهَا - وَهَذَا ضِدُّ مَا يَدُلُّ عَلَيْهِ إنْكَارُ عُمَرَ -: ثُمَّ لَا يَرَوْنَ تَجْوِيزَ أَبِي بَكْرٍ وَعُمَرَ صَلَاةَ الصُّبْحِ وَإِنْ طَلَعَتْ الشَّمْسُ: حُجَّةً فِي ذَلِكَ.

L5183 Rather, they opposed all that was transmitted from the Companions concerning this matter—both those who permitted and those who prohibited—and they opposed Abū Bakrah in delaying the ʿAṣr prayer until the sun had set. We have already mentioned those among the Companions who advocated supererogatory prayers after ʿAṣr, those who mandated repetition with the congregation, and those who maintained until the sun's yellowing in the matter that occurred prior to this—does this not suffice instead of its repetition?

بَلْ خَالَفُوا جَمِيعَ مَا جَاءَ عَنْ الصَّحَابَةِ فِي ذَلِكَ مِنْ مُبِيحٍ وَمَانِعٍ وَخَالَفُوا أَبَا بَكْرَةَ فِي تَأْخِيرِ صَلَاةِ الْعَصْرِ حَتَّى غَابَتْ الشَّمْسُ، وَقَدْ ذَكَرْنَا مَنْ قَالَ مِنْ الصَّحَابَةِ بِالتَّطَوُّعِ بَعْدَ الْعَصْرِ، وَمَنْ أَمَرَ بِالْإِعَادَةِ مَعَ الْجَمَاعَةِ، وَإِلَى صُفْرَةِ الشَّمْسِ فِي الْمَسْأَلَةِ الَّتِي كَانَتْ قَبْلَ هَذِهِ فَأَغْنَى عَنْ إعَادَتِهِ؟ .

L5184 It has been reported to us from Sufyān al-Thawrī, from al-Mughīra ibn Miqsam, from Ibrāhīm al-Nakhaʿī regarding the forgotten prayer. He said: "One should pray it when they remember it, even if it is during a time in which prayer is disliked." The same ruling is also reported from ʿAṭāʾ, Tāwūs, and others.

وَرُوِّينَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ فِي الصَّلَاةِ الَّتِي تُنْسَى، قَالَ: يُصَلِّيهَا حِينَ يَذْكُرُهَا، وَإِنْ كَانَ فِي وَقْتٍ تُكْرَهُ فِيهِ الصَّلَاةُ وَمِثْلُهُ أَيْضًا عَنْ عَطَاءٍ وَطَاوُسٍ وَغَيْرِهِمْ.

L5185 And it was narrated to us through the chain of Yahya ibn Saʿid al-Qattan: Shuʿbah narrated to us from Musa ibn ʿUqbah, who said: I heard Salim ibn ʿAbdullah ibn ʿUmar say: Verily, his father would perform Tawaf after ʿAsr and after the morning [period], then he would pray the two rakʿahs before sunrise.

وَرُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ: ثنا شُعْبَةُ عَنْ مُوسَى بْنِ عُقْبَةَ قَالَ: سَمِعْت سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ يَقُولُ: إنَّ أَبَاهُ كَانَ يَطُوفُ بَعْدَ الْعَصْرِ، وَبَعْدَ الْغَدَاةِ ثُمَّ يُصَلِّي الرَّكْعَتَيْنِ قَبْلَ طُلُوعِ الشَّمْسِ.

L5186 Mūsā said: Nāfiʿ used to dislike that, so I narrated to him from Sālim. Then Nāfiʿ said to me, "Sālim is longer in standing than I and more knowledgeable."

قَالَ مُوسَى: وَكَانَ نَافِعٌ يَكْرَهُ ذَلِكَ، فَحَدَّثْته عَنْ سَالِمٍ فَقَالَ لِي نَافِعٌ: سَالِمٌ أَقْدَمُ مِنِّي وَأَعْلَمُ.

L5187 Ali said: This indicates that Nafi‘ reverted to endorsing this opinion and that it is the view of Musa ibn ‘Uqbah—Ali said: These scholars gave precedence to the narrations containing commands over those containing prohibitions, arguing that the prohibition against praying during these times excludes prayers you have been commanded to perform; thus you prayed them during those times and others.

قَالَ عَلِيٌّ: هَذَا يَدُلُّ عَلَى رُجُوعِ نَافِعٍ إلَى الْقَوْلِ بِهَذَا، وَعَلَى أَنَّهُ قَوْلُ مُوسَى بْنِ عُقْبَةَ -:
قَالَ عَلِيٌّ: فَغَلَّبَ هَؤُلَاءِ أَحَادِيثَ الْأَوَامِرِ عَلَى أَحَادِيثِ النَّهْيِ، وَقَالُوا: إنَّ مَعْنَى النَّهْيِ عَنْ الصَّلَاةِ فِي هَذِهِ الْأَوْقَاتِ، أَيْ إلَّا أَنْ تَكُونَ صَلَاةً أُمِرْتُمْ بِهَا، فَصَلَّوْهَا فِيهَا وَفِي غَيْرِهَا.

L5188–5189 The other scholars said: The meaning of the command to perform these prayers is that they should be performed unless the time itself is prohibited for prayer, in which case they must not be performed.

وَقَالَ الْآخَرُونَ: مَعْنَى الْأَمْرِ بِهَذِهِ الصَّلَوَاتِ، أَيْ إلَّا أَنْ تَكُونَ وَقْتًا نَهَى فِيهِ عَنْ الصَّلَاةِ فَلَا تُصَلُّوهَا فِيهِ.

L5190 Ali said: Since both acts were possible, neither of them took precedence over the other except through evidence. We therefore examined the matter and found what was conveyed to us through this chain: Abdullah ibn Yusuf reported to us via Ahmad ibn Fath, Abd al-Wahhab ibn Isa, Ahmad ibn Muhammad, Ahmad ibn Ali, Muslim ibn al-Hajjaj, and Yahya ibn Yahya, who stated: “I recited to Malik, from Zayd ibn Aslam, from Ata ibn Yasar, Busr ibn Said, and Abd al-Rahman al-A’raj - they having reported to him from Abu Hurairah that Allah’s Messenger, peace and blessings of Allah be upon him, said: ’Whoever catches one rak’ah of Fajr prayer before sunrise has indeed caught Fajr, and whoever catches one rak’ah of Asr prayer before sunset has indeed caught Asr.”’[8]

قَالَ عَلِيٌّ: فَلَمَّا كَانَ كِلَا الْعَمَلَيْنِ مُمْكِنًا، لَمْ يَكُنْ وَاحِدٌ مِنْهُمَا أَوْلَى مِنْ الْآخَرِ إلَّا بِبُرْهَانٍ، فَنَظَرْنَا فِي ذَلِكَ: فَوَجَدْنَا مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى: قَرَأْت عَلَى مَالِكٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ، وَبُسْرِ بْنِ سَعِيدٍ، وَعَبْدِ الرَّحْمَنِ الْأَعْرَجِ حَدَّثُوهُ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَدْرَكَ رَكْعَةً مِنْ الصُّبْحِ قَبْلَ أَنْ تَطْلُعَ الشَّمْسُ فَقَدْ أَدْرَكَ الصُّبْحَ، وَمَنْ أَدْرَكَ رَكْعَةً مِنْ الْعَصْرِ قَبْلَ أَنْ تَغْرُبَ الشَّمْسُ فَقَدْ أَدْرَكَ الْعَصْرَ» ؟ .

L5191 Thus, this has been made manifest with utmost clarity: that making up missed prayers during these times is an obligatory duty, and that the command is undoubtedly an exception to the prohibition.

فَكَانَ هَذَا مُبَيِّنًا غَايَةَ الْبَيَانِ أَنَّ قَضَاءَ الصَّلَوَاتِ فِي هَذِهِ الْأَوْقَاتِ فَرْضٌ، وَأَنَّ الْأَمْرَ مُسْتَثْنًى مِنْ النَّهْيِ بِلَا شَكٍّ؟ .

L5192 If it is said: Why do you assert that whoever performs less than a rak‘ah of

[8] **Hadith references (L5190):** Sahih Muslim 608a; Mishkat al-Masabih 601.

فَإِنْ قِيلَ: فَلِمَ قُلْتُمْ: إِنَّ مَنْ أَدْرَكَ أَقَلَّ مِنْ رَكْعَةٍ مِنَ الْعَصْرِ وَمِنَ الصُّبْحِ قَبْلَ طُلُوعِ الشَّمْسِ، وَقَبْلَ غُرُوبِهَا فَإِنَّهُ يُصَلِّيهِمَا؟ .

'Asr before sunset and of Fajr before sunrise must pray both prayers?

L5193–5195 قُلْنَا: لِمَا نَذْكُرُهُ - إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ فِي أَوْقَاتِ الصَّلَوَاتِ - مِنْ قَوْلِهِ - عَلَيْهِ السَّلَامُ - «وَقْتُ صَلَاةِ الصُّبْحِ مَا لَمْ يَطْلُعْ قَرْنُ الشَّمْسِ، وَوَقْتُ صَلَاةِ الْعَصْرِ مَا لَمْ تَغْرُبْ الشَّمْسُ» . فَكَانَ هَذَا اللَّفْظُ مِنْهُ - عَلَيْهِ السَّلَامُ - مُمْكِنًا أَنْ يُرِيدَ بِهِ وَقْتَ الْخُرُوجِ مِنْ هَاتَيْنِ الصَّلَاتَيْنِ، وَمُمْكِنًا أَنْ يُرِيدَ بِهِ وَقْتَ الدُّخُولِ فِيهَا؟ .

We said: Regarding what we mention—if Allah, the Mighty and Majestic, wills—concerning prayer times, from his statement (peace be upon him): "The time for the Fajr prayer lasts as long as the sun's horn has not appeared, and the time for the Asr prayer lasts as long as the sun has not set." This wording from him (peace be upon him) could indicate that he meant by it the time of exiting from these two [prayers]. The two prayers. Is it possible that he is referring to the time of entering into them?

L5196 فَنَظَرْنَا فِي ذَلِكَ، فَكَانَ هَذَا الْخَبَرُ مُبَيِّنًا أَنَّ بَعْدَ طُلُوعِ الشَّمْسِ وَبَعْدَ غُرُوبِهَا وَقْتٌ لِبَعْضِ صَلَاةِ الصُّبْحِ، وَلِبَعْضِ صَلَاةِ الْعَصْرِ بِيَقِينٍ، فَصَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - إِنَّمَا أَرَادَ وَقْتَ الدُّخُولِ فِيهِمَا، وَكَانَ هَذَا الْخَبَرُ هُوَ الزَّائِدَ عَلَى الْحَدِيثِ الَّذِي فِيهِ «مَنْ أَدْرَكَ رَكْعَةً» وَالزِّيَادَةُ وَاجِبٌ قَبُولُهَا؟ فَوَضَحَ أَنَّ الْأَمْرَ مُغَلَّبٌ عَلَى النَّهْيِ.

We examined that matter, and this report clarified that after sunrise and after sunset there is a time [still valid] for part of the dawn prayer's timeframe and part of the afternoon prayer's timeframe with certainty. Thus, it was established that he (peace be upon him) intended the time of commencing them. This report constitutes the addition to the hadith which states, "Whoever catches one rakʿah." Is it then obligatory to accept such an addition? Hence, it became evident that the command is given precedence over the prohibition.

L5197 فَوَجَدْنَا الْآخَرِينَ قَدْ احْتَجُّوا بِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا مُحَمَّدُ بْنُ إِسْمَاعِيلَ الصَّائِغُ ثنا عَبْدُ اللَّهِ بْنُ يَزِيدَ الْمُقْرِي حَدَّثَنَا الْأَسْوَدُ بْنُ شَيْبَانَ ثنا خَالِدُ بْنُ شُمَيْرٍ قَالَ قَدِمَ عَلَيْنَا عَبْدُ اللَّهِ بْنُ رِبَاحٍ مِنَ الْمَدِينَةِ وَكَانَتِ الْأَنْصَارُ تُفَقِّهُهُ، فَحَدَّثَنَا قَالَ: حَدَّثَنَا أَبُو قَتَادَةَ الْأَنْصَارِيُّ فَارِسُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَيْشَ الْأُمَرَاءِ فَلَمْ يُوقِظْنَا إِلَّا الشَّمْسُ طَالِعَةً فَقُمْنَا وَهِلِينَ لِصَلَاتِنَا، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رُوَيْدًا رُوَيْدًا، حَتَّى تَعَالَتْ الشَّمْسُ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ كَانَ مِنْكُمْ يَرْكَعُ رَكْعَتَيِ الْفَجْرِ فَلْيَرْكَعْهُمَا؟ فَقَامَ مَنْ كَانَ يَرْكَعُهُمَا وَمَنْ لَمْ يَكُنْ يَرْكَعُهُمَا، ثُمَّ أَمَرَ

We found the others had cited as evidence what was narrated to us by ʿAbdullāh ibn Rabīʿ, who narrated from Muḥammad ibn Isḥāq, who narrated from Ibn al-Aʿrābī, who narrated from Muḥammad ibn Ismāʿīl al-Ṣāʾigh, who narrated from ʿAbdullāh ibn Yazīd al-Muqrī, who narrated from al-Aswad ibn Shaybān, who narrated from Khālid ibn Shumayr, who said: ʿAbdullāh ibn Ribāḥ came to us from Madīnah—and the Anṣār used to instruct him in jurisprudence. He narrated to us, saying: Abū Qatādah al-Anṣārī, the horseman of the Messenger of Allāh (peace be upon him), narrated to us, saying: "The Messenger of Allāh (peace be upon him) dispatched the army of commanders, but they did not wake us until the sun had risen. We arose alarmed about missing our prayer. The Prophet (peace be upon him) said: 'Gently, gently, until the sun ascends higher.' The Messenger of Allāh (peace be upon him) said: 'Whoever among you performs the two rakʿahs of Fajr, let him perform them.' Those who performed them stood up, as well as those who did not. Then the Messenger of Allāh (peace be upon him) commanded

the prayer to be announced, so the adhān was called. The Messenger of Allāh (peace be upon him) stood and led us in prayer. When he concluded, he said: 'Praise be to Allāh—we were not occupied by any worldly matter that diverted us from our prayer.'" And he mentioned the ḥadīth.

رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُنَادَى بِالصَّلَاةِ فَيُؤَذَّنَ بِهَا، فَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَصَلَّى بِنَا، فَلَمَّا انْصَرَفَ قَالَ: إِنَّا بِحَمْدِ اللَّهِ لَمْ نَكُنْ فِي شَيْءٍ مِنْ أَمْرِ الدُّنْيَا شَغَلَنَا عَنْ صَلَاتِنَا» وَذَكَرَ الْحَدِيثَ.

L5198–5199 Ahmad ibn Muhammad ibn al-Jasur narrated to us: Wahb ibn Masarah narrated to us: Ibn Waddah narrated to us: Abu Bakr ibn Abi Shaybah narrated to us: Abu Usamah narrated from Hisham ibn Hassan from al-Hasan from Imran ibn al-Husayn, who said: "We journeyed by night with the Messenger of Allah (peace and blessings be upon him), then he halted with us to rest toward the end of the night. We awoke to find the sun had risen. Each man among us rushed hurriedly to perform ablution in a state of bewilderment. The Messenger of Allah (peace and blessings be upon him) said: 'Depart?' So we departed. When the sun had risen higher, we dismounted, relieved ourselves, then performed ablution. He commanded Bilal to call the *adhan*. The Prophet (peace and blessings be upon him) prayed two units. Then Bilal proclaimed the *iqamah*, and the Prophet led us in prayer." He mentioned the hadith.

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا وَهْبُ بْنُ مَسَرَّةَ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا أَبُو أُسَامَةَ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ الْحَسَنِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ قَالَ: «أَسْرَيْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ عَرَّسَ بِنَا مِنْ آخِرِ اللَّيْلِ، فَاسْتَيْقَظْنَا وَقَدْ طَلَعَتْ الشَّمْسُ، فَجَعَلَ الرَّجُلُ مِنَّا يَثُورُ إلَى طَهُورِهِ دَهِشًا فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: ارْتَحِلُوا؟ قَالَ: فَارْتَحَلْنَا، حَتَّى إذَا ارْتَفَعَتْ الشَّمْسُ نَزَلْنَا، فَقَضَيْنَا مِنْ حَوَائِجِنَا، ثُمَّ تَوَضَّأْنَا، ثُمَّ أَمَرَ بِلَالًا فَأَذَّنَ فَصَلَّى رَكْعَتَيْنِ، ثُمَّ أَقَامَ بِلَالٌ فَصَلَّى بِنَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» وَذَكَرَ الْحَدِيثَ.

L5200–5201 Hammam narrated to us: Abbas ibn Asbagh narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, Ibn Waddah narrated to us, Abu Bakr ibn Abi Shaybah narrated to us, Hushaym informed us, Husayn narrated to us, Abdullah ibn Abi Qatadah narrated from his father, Abu Qatadah, who said: "We traveled with the Messenger of Allah (peace be upon him) one night during a journey. We said: 'O Messenger of Allah, would you halt with us to rest?' He replied: 'I fear you might sleep through the prayer. Who will awaken us for the prayer?' Bilal said: 'I will, O Messenger of Allah.' The people halted to rest, and Bilal leaned against his riding animal, but sleep overcame him. The Messenger of Allah (peace be upon him) awoke when the edge of the sun became visible. He said: 'O Bilal, where is what you promised?' Bilal answered: 'By Him Who sent you with truth, O Messenger of Allah, no sleep like this has ever overtaken me.' The Messenger of Allah (peace be upon him) said: 'Allah takes your souls when He wills.' Then the Messenger of Allah (peace be upon him) commanded them to disperse. They

حَدَّثَنَا حَمَّامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا هُشَيْمٌ أَخْبَرَنَا حُصَيْنٌ ثنا عَبْدُ اللَّهِ بْنُ أَبِي قَتَادَةَ عَنْ أَبِي قَتَادَةَ أَبِيهِ قَالَ: «سِرْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنَحْنُ فِي سَفَرٍ ذَاتَ لَيْلَةٍ، فَقُلْنَا: يَا رَسُولَ اللَّهِ، لَوْ عَرَّسْتَ بِنَا؟ قَالَ: إنِّي أَخَافُ أَنْ تَنَامُوا عَنْ الصَّلَاةِ، فَمَنْ يُوقِظُنَا بِالصَّلَاةِ؟ قَالَ بِلَالٌ: أَنَا يَا رَسُولَ اللَّهِ، فَعَرَّسَ الْقَوْمُ، وَاسْتَنَدَ بِلَالٌ إلَى رَاحِلَتِهِ، فَغَلَبَتْهُ عَيْنَاهُ، وَاسْتَيْقَظَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ بَدَا حَاجِبُ الشَّمْسِ، فَقَالَ: يَا بِلَالُ، أَيْنَ مَا قُلْتَ؟ فَقَالَ: يَا رَسُولَ اللَّهِ، وَالَّذِي بَعَثَكَ بِالْحَقِّ، مَا أُلْقِيَتْ عَلَيَّ نَوْمَةٌ مِثْلُهَا. فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ اللَّهَ قَبَضَ أَرْوَاحَكُمْ حِينَ شَاءَ؛

attended to their needs, performed ablution, and after the sun had risen, he led them in the Fajr prayer."

ثُمَّ أَمَرَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَانْتَشَرُوا لِحَاجَاتِهِمْ وَتَوَضَّئُوا، وَارْتَفَعَتْ الشَّمْسُ، فَصَلَّى بِهِمْ الْفَجْرَ» .

L5202–5204 Abdullah ibn Rabee' narrated to us: Muhammad ibn Mu'awiyah narrated to us, Ahmad ibn Shu'ayb narrated to us, from Ali ibn Hajar, from Isma'il—he is the son of Ja'far—Al-'Ala' ibn Abd al-Rahman narrated to us that he visited Anas ibn Malik. In his house in Basra after he had concluded the noon prayer—and his house was adjacent to the mosque—when we entered upon him, he asked: "Have you prayed the afternoon prayer?" We replied: "No, we have only just finished the noon prayer." He instructed: "Perform the afternoon prayer." We stood and prayed. When we concluded, he said: "I heard Allah's Messenger (peace be upon him) say: 'That is the prayer of the hypocrites. He sits watching for Asr until when it is between the horns of Satan, he rises to peck four rak'ahs, hardly remembering Allah therein except very little.'"

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَلِيُّ بْنُ حَجَرٍ أَنَا إِسْمَاعِيلُ هُوَ ابْنُ جَعْفَرٍ - ثنا الْعَلَاءُ بْنُ عَبْدِ الرَّحْمَنِ: أَنَّهُ دَخَلَ عَلَى أَنَسِ بْنِ مَالِكٍ فِي دَارِهِ بِالْبَصْرَةِ حِينَ انْصَرَفَ مِنْ الظُّهْرِ، قَالَ: وَدَارُهُ بِجَنْبِ الْمَسْجِدِ، فَلَمَّا دَخَلْنَا عَلَيْهِ قَالَ: صَلَّيْتُمْ الْعَصْرَ؟ قُلْنَا: لَا، إنَّمَا انْصَرَفْنَا السَّاعَةَ مِنْ الظُّهْرِ، قَالَ: فَصَلُّوا الْعَصْرَ، فَقُمْنَا فَصَلَّيْنَا، فَلَمَّا انْصَرَفْنَا قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «تِلْكَ صَلَاةُ الْمُنَافِقِينَ جَلَسَ يَرْقُبُ الْعَصْرَ حَتَّى إذَا كَانَتْ بَيْنَ قَرْنَيْ الشَّيْطَانِ قَامَ فَنَقَرَ أَرْبَعًا، لَا يَذْكُرُ اللَّهَ فِيهَا إلَّا قَلِيلًا» .

L5205 We have narrated it through the chain of Mālik from al-'Alā' ibn 'Abd al-Raḥmān from Anas, who said: I heard the Messenger of Allāh—peace and blessings be upon him—say: "That is the prayer of the hypocrites. One of them sits until the sun turns yellow, when it is between the two horns of Satan or upon the two horns of Satan. Then he stands and pecks four units, scarcely remembering Allāh in them."

وَرُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَنَسٍ قَالَ سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «تِلْكَ صَلَاةُ الْمُنَافِقِينَ يَجْلِسُ أَحَدُهُمْ حَتَّى إذَا اصْفَرَّتْ الشَّمْسُ فَكَانَتْ بَيْنَ قَرْنَيْ الشَّيْطَانِ أَوْ عَلَى قَرْنَيْ الشَّيْطَانِ قَامَ فَنَقَرَ أَرْبَعًا، لَا يَذْكُرُ اللَّهَ فِيهَا إلَّا قَلِيلًا» .

L5206 And by what we previously mentioned regarding the issue of the two rak'ahs after 'Asr from the statement of Ibn Mas'ud: "They prolong the sermon and delay the prayer [beyond its time] until it is said, 'This is the washing of the dead.'" So Ibn Mas'ud was asked, "What is the washing of the dead?" He replied, "When the sun turns intensely yellow near sunset. Whoever among you reaches that time should pray the prayer within its prescribed time. If he is delayed, let him pray with them, but let him consider his prayer performed alone as the obligatory one and his prayer with them as voluntary."

وَبِمَا ذَكَرْنَاهُ قَبْلُ فِي مَسْأَلَةِ الرَّكْعَتَيْنِ بَعْدَ الْعَصْرِ مِنْ قَوْلِ ابْنِ مَسْعُودٍ: يُطِيلُونَ الْخُطْبَةَ وَيُؤَخِّرُونَ الصَّلَاةَ حَتَّى يُقَالَ: هَذَا شَرَقُ الْمَوْتَى، فَقِيلَ لِابْنِ مَسْعُودٍ: وَمَا شَرَقُ الْمَوْتَى؟ قَالَ: إذَا اصْفَرَّتْ الشَّمْسُ جِدًّا، فَمَنْ أَدْرَكَ ذَلِكَ مِنْكُمْ فَلْيُصَلِّ الصَّلَاةَ لِوَقْتِهَا، فَإِنْ احْتَبَسَ فَلْيُصَلِّ مَعَهُمْ، وَلْيَجْعَلْ صَلَاتَهُ وَحْدَهُ: الْفَرِيضَةَ، وَصَلَاتَهُ مَعَهُمْ: تَطَوُّعًا.

L5207–5209 And the hadith we mentioned through the chain of Abū Dharr from the Messenger of Allāh—peace and blessings be upon him: "How will you be

when there are rulers over you who delay the prayer from its time or let the prayer lapse beyond its time?" I said, "What then...?" He said, "Are you commanding me?" He replied, "Pray the prayer at its appointed time. If you join them in prayer, then pray, for it will be a voluntary prayer for you." They said, "The prohibition by the Messenger of Allah—peace be upon him—against prayer in general during the mentioned times has been established, and his prohibition—peace be upon him—against fasting completely on the day of Eid al-Fitr, the day of Eid al-Adha, and the days of Tashreeq has been established. His command to make up missed prayers for those who slept through them or forgot them is confirmed, as is his command regarding vows, the voluntary prayers you mentioned, making up fasting for menstruating women, the sick, and travelers, as well as vows and expiations. Thus, you do not differ with us in refraining from fasting anything of that during the days prohibited for fasting, yet you prioritize the prohibition over the command. It necessarily follows that the same should apply to his prohibition against praying during the mentioned times, alongside his command—peace be upon him—regarding the prayers and their makeup. Otherwise, why do you distinguish between the two prohibitions and the two commands? You prioritize the prohibition over the command in fasting, yet prioritize the command over the prohibition in prayer? This is an arbitrary judgment that is impermissible."[9]

وَالْحَدِيثُ الَّذِي ذَكَرْنَاهُ مِنْ طَرِيقِ أَبِي ذَرٍّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كَيْفَ أَنْتَ إِذَا كَانَتْ عَلَيْكَ أُمَرَاءُ يُؤَخِّرُونَ الصَّلَاةَ عَنْ وَقْتِهَا، أَوْ يُمِيتُونَ الصَّلَاةَ عَنْ وَقْتِهَا؟ قُلْت: فَمَا تَأْمُرُنِي؟ قَالَ: صَلِّ الصَّلَاةَ لِوَقْتِهَا، فَإِنْ أَدْرَكْتَهَا مَعَهُمْ فَصَلِّ، فَإِنَّهَا لَكَ نَافِلَةٌ» . وَقَالُوا: صَحَّ نَهْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الصَّلَاةِ جُمْلَةً فِي الْأَوْقَاتِ الْمَذْكُورَةِ، وَنَهْيُهُ - عَلَيْهِ السَّلَامُ - عَنْ الصِّيَامِ جُمْلَةً فِي يَوْمِ الْفِطْرِ وَيَوْمِ الْأَضْحَى وَأَيَّامِ التَّشْرِيقِ، وَصَحَّ أَمْرُهُ بِقَضَاءِ الصَّلَوَاتِ مَنْ نَامَ عَنْهَا أَوْ نَسِيَهَا، وَبِالنَّذْرِ، وَبِمَا ذَكَرْتُمْ مِنْ النَّوَافِلِ، وَبِقَضَاءِ الصَّوْمِ لِلْحَائِضِ وَالْمَرِيضِ وَالْمُسَافِرِ، وَالنَّذْرِ وَالْكَفَّارَاتِ -: فَلَمْ تَخْتَلِفُوا مَعَنَا فِي أَنْ لَا يُصَامَ شَيْءٌ مِنْ ذَلِكَ فِي الْأَيَّامِ الْمَنْهِيِّ عَنْ صِيَامِهَا، وَغَلَّبْتُمْ: النَّهْيَ عَلَى الْأَمْرِ، فَوَجَبَ أَنْ يَكُونَ كَذَلِكَ فِي نَهْيِهِ عَنْ الصَّلَاةِ فِي الْأَوْقَاتِ الْمَذْكُورَةِ، مَعَ أَمْرِهِ - عَلَيْهِ السَّلَامُ - بِمَا أَمَرَ بِهِ مِنْ الصَّلَوَاتِ وَقَضَائِهَا، وَإِلَّا فَلِمَ فَرَّقْتُمْ بَيْنَ النَّهْيَيْنِ وَالْأَمْرَيْنِ؟ فَغَلَّبْتُمْ فِي الصَّوْمِ: النَّهْيَ عَلَى الْأَمْرِ، وَغَلَّبْتُمْ فِي الصَّلَاةِ: الْأَمْرَ عَلَى النَّهْيِ؟ وَهَذَا تَحَكُّمٌ لَا يَجُوزُ؟ .

L5210 They said: Is it possible that his statement—peace be upon him—regarding one who catches a unit of the dawn prayer and the afternoon prayer before sunrise and before sunset, thereby having indeed caught the dawn prayer, refers to before the prohibition of prayer during the mentioned times?[10]

وَقَالُوا: يُمْكِنُ أَنْ يَكُونَ قَوْلُهُ - عَلَيْهِ السَّلَامُ - فِيمَنْ أَدْرَكَ رَكْعَةً مِنْ صَلَاةِ الصُّبْحِ وَمِنْ الْعَصْرِ قَبْلَ طُلُوعِ [الشَّمْسِ] ، وَقَبْلَ غُرُوبِهَا فَقَدْ أَدْرَكَ الصُّبْحَ: قَبْلَ النَّهْيِ عَنْ الصَّلَاةِ فِي الْأَوْقَاتِ الْمَذْكُورَةِ؟ .

L5211 Ali said: This is all they have objected to; they have no other objection whatsoever. We do not mean the followers of Abū Ḥanīfah, for they have no connection to anything we have mentioned, as there is no textual evidence among these matters except that they have opposed it, arbitrarily overriding

قَالَ عَلِيٌّ: هَذَا كُلُّ مَا اعْتَرَضُوا بِهِ، مَا لَهُمْ اعْتِرَاضٌ غَيْرُهُ أَصْلًا، وَلَسْنَا نَعْنِي أَصْحَابَ أَبِي حَنِيفَةَ، فَإِنَّهُمْ لَا مُتَعَلَّقَ لَهُمْ بِشَيْءٍ مِمَّا ذَكَرْنَا، إذْ لَيْسَ مِنْهَا خَبَرٌ إلَّا وَقَدْ خَالَفُوهُ، وَتَحَكَّمُوا فِيهِ بِالْآرَاءِ الْفَاسِدَةِ، وَإِنَّمَا نَعْنِي مَنْ ذَهَبَ مَذْهَبَ الْمُتَقَدِّمِينَ فِي تَغْلِيبِ النَّهْيِ جُمْلَةً فَقَطْ.

[9] **Hadith references (L5207):** Sahih Muslim 648a.
[10] **Qur'an references (L5210):** Qur'an 20:130 (Taha).

it with corrupt opinions. Rather, we mean those who adopted the approach of the earlier scholars in prioritizing the prohibition exclusively as a whole.

L5212–5214 Ali said: Likewise, those asserting ownership have no basis in any of the narrations we mentioned, for there is none of these narrations they have not contradicted. They imposed arbitrary rulings upon them, interpreting some as obligatory and others as voluntary without evidence. We specifically refer to those who adopted the methodology of the predecessors in prioritizing the injunctions as a whole. Is the discussion solely between these two groups?

قَالَ عَلِيٌّ: وَكَذَلِكَ أَيْضًا لَا مُتَعَلَّقَ لِلْمَالِكِينَ بِشَيْءٍ مِمَّا ذَكَرْنَا مِنْ الْآثَارِ، لِأَنَّهُ لَيْسَ مِنْهَا شَيْءٌ إلَّا وَقَدْ خَالَفُوهُ، وَتَحَكَّمُوا فِيهِ، وَحَمَلُوا بَعْضَهُ عَلَى الْفَرْضِ، وَبَعْضَهُ عَلَى التَّطَوُّعِ بِلَا بُرْهَانٍ، وَإِنَّمَا نَعْنِي مَنْ ذَهَبَ مَذْهَبَ الْمُتَقَدِّمِينَ فِي تَغْلِيبِ الْأَمْرِ جُمْلَةً وَالْكَلَامُ إنَّمَا هُوَ بَيْنَ هَاتَيْنِ الطَّائِفَتَيْنِ فَقَطْ؟ .

L5215 Ali said: In all of this, there is no argument for them.

قَالَ عَلِيٌّ: كُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ.

L5216 As for the narrations of Abu Qatadah and Imran ibn al-Husayn, they indeed came with additional clarification, as narrated to us by Abdullah ibn Rabi', who narrated: Muhammad ibn Ishaq narrated to us, Ibn al-A'rabi narrated to us, Muhammad ibn Isma'il al-Ṣā'igh narrated to us, Sulayman ibn Harb narrated to us, Hammad ibn Zayd narrated from Thabit al-Bunani, from Abdullah ibn Ribah, from Abu Qatadah—who mentioned the hadith, which includes: "The Messenger of Allah (peace be upon him) turned, and I turned with him. He said: 'Look.' I said: 'This is a rider, these two are riders, these are three?' Until we counted seven. The Messenger of Allah (peace be upon him) said: 'Save our prayer for us'—meaning the Fajr prayer. They were overcome with sleep, and nothing awakened them except the sun's heat. They rose, traveled a short distance, then dismounted, performed ablution, and Bilal proclaimed the adhan. They prayed the two rak'ahs of Fajr, then prayed Fajr and rode on. Some of them said to others: 'We have neglected our prayer!' The Prophet (peace be upon him) said: 'There is no neglect in sleep; neglect is only in wakefulness. Whoever sleeps through a prayer or forgets it, let him pray it when he remembers it.'" He then mentioned the remainder of the report.

أَمَّا حَدِيثَا أَبِي قَتَادَةَ وَعِمْرَانَ بْنِ الْحُصَيْنِ فَإِنَّهُمَا قَدْ جَاءَا بِبَيَانٍ زَائِدٍ، كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا مُحَمَّدُ بْنُ إِسْمَاعِيلَ الصَّائِغُ ثنا سُلَيْمَانُ بْنُ حَرْبٍ ثنا حَمَّادُ بْنُ زَيْدٍ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ رِبَاحٍ عَنْ أَبِي قَتَادَةَ - فَذَكَرَ الْحَدِيثَ وَفِيهِ -: «مَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمِلْتُ مَعَهُ، فَقَالَ انْظُرْ؟ فَقُلْتُ: هَذَا رَاكِبٌ، هَذَانِ رَاكِبَانِ، هَؤُلَاءِ ثَلَاثَةٌ؟ حَتَّى صِرْنَا سَبْعَةً، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: احْفَظُوا عَلَيْنَا صَلَاتَنَا يَعْنِي صَلَاةَ الْفَجْرِ، فَضُرِبَ عَلَى آذَانِهِمْ، فَمَا أَيْقَظَهُمْ إلَّا حَرُّ الشَّمْسِ، فَقَامُوا فَسَارُوا هُنَيْهَةً ثُمَّ نَزَلُوا فَتَوَضَّئُوا وَأَذَّنَ بِلَالٌ فَصَلَّوْا رَكْعَتَيْ الْفَجْرِ، ثُمَّ صَلَّوْا الْفَجْرَ وَرَكِبُوا، فَقَالَ بَعْضُهُمْ لِبَعْضٍ: لَقَدْ فَرَّطْنَا فِي صَلَاتِنَا؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إنَّهُ لَا تَفْرِيطَ فِي النَّوْمِ، إنَّمَا التَّفْرِيطُ فِي الْيَقَظَةِ، فَمَنْ نَامَ عَنْ صَلَاةٍ أَوْ نَسِيَهَا فَلْيُصَلِّهَا إذَا ذَكَرَهَا» ، وَذَكَرَ بَاقِيَ الْخَبَرِ.

L5217–5219 Abdullah ibn Rabi' narrated to us: Umar ibn Abd al-Malik narrated to us: Muhammad ibn Bakr narrated to us: Abu Dawud narrated to us: Wahb ibn Baqiyyah narrated to us from Khalid from Yunus ibn 'Ubayd from al-Hasan

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا وَهْبُ بْنُ بَقِيَّةَ عَنْ خَالِدٍ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ: «أَنَّ رَسُولَ اللَّهِ

from Imran ibn al-Husayn: “The Messenger of Allah—peace be upon him—was on a journey, and they overslept the Fajr prayer. They awoke because of the heat of the sun, ascended a little until the sun had risen clearly, then he ordered a caller to prayer, who gave the call, and he prayed two rak’ahs before Fajr, then he...” He performed the iqamah, then prayed the Fajr prayer.[11]

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ فِي مَسِيرٍ لَهُ، فَنَامُوا عَنْ صَلَاةِ الْفَجْرِ، فَاسْتَيْقَظُوا بِحَرِّ الشَّمْسِ، فَارْتَفَعُوا قَلِيلًا حَتَّى اسْتَقَلَّتْ الشَّمْسُ، ثُمَّ أَمَرَ مُؤَذِّنًا فَأَذَّنَ فَصَلَّى رَكْعَتَيْنِ قَبْلَ الْفَجْرِ، ثُمَّ أَقَامَ ثُمَّ صَلَّى الْفَجْرَ» .

L5220 This is Yunus from Al-Ḥasan and Thābit al-Bunānī from ʿAbdullāh ibn Rabāḥ—both being more reliable in memorization than Khālid ibn Shumayr—narrating from Hishām ibn Ḥassān, both of whom report: The Messenger of Allah—peace and blessings be upon him—would not wake except due to the sun’s heat and the necessity of sensory and observable evidence. Everyone knows that the sun’s heat does not rouse a sleeper except after its clear visibility, brightening, and rising. As for before that, it does not.

فَهَذَا يُونُسُ عَنْ الْحَسَنِ وَثَابِتٍ الْبُنَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ رَبَاحٍ وَهُمَا أَحْفَظُ مِنْ خَالِدِ بْنِ شُمَيْرٍ، مِنْ هِشَامِ بْنِ حَسَّانَ يَذْكُرَانِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَسْتَيْقِظْ إلَّا بِحَرِّ الشَّمْسِ وَبِضَرُورَةِ الْحِسِّ وَالْمُشَاهَدَةِ يَدْرِي كُلُّ أَحَدٍ أَنَّ حَرَّ الشَّمْسِ لَا يُوقِظُ النَّائِمَ إلَّا بَعْدَ صَفْوِهَا وَابْيِضَاضِهَا وَارْتِفَاعِهَا، وَأَمَّا قَبْلَ ذَلِكَ فَلَا.

L5221 In the narration of Abdullah ibn Abi Qatadah, there is no indication that he (peace be upon him) commanded them to wait whatsoever. Rather, he instructed them to disperse to relieve themselves, then perform ablution, then pray - and nothing beyond that.

وَلَيْسَ فِي حَدِيثِ عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ أَنَّهُ - عَلَيْهِ السَّلَامُ - «أَمَرَهُمْ بِالِانْتِظَارِ أَصْلًا، وَإِنَّمَا أَمَرَهُمْ بِالِانْتِشَارِ لِلْحَاجَةِ، ثُمَّ الْوُضُوءُ، ثُمَّ الصَّلَاةُ فَقَطْ» .

L5222 Given that this is the case, it becomes incumbent upon us to examine the reason why the Messenger of Allah (peace be upon him) delayed the prayer on that day. Even if the sun’s heat had not been mentioned in any part of this narration, there would be no basis in it for those who claim that he (peace be upon him) delayed the prayer solely because the sun had not cleared nor brightened. This is because there is no basis whatsoever in any of the narrations that the Messenger of Allah (peace be upon him) said: “I delayed the prayer because the sun had not brightened nor risen,” nor that he (peace be upon him) said: “Wait until the sun rises and brightens.” Rather, that is merely an assumption from some of the narrators. Allah the Exalted has said: “Indeed, assumption avails nothing against the truth” (10:36).[12]

وَإِذْ ذَلِكَ كَذَلِكَ فَقَدْ وَجَبَ أَنْ نَنْظُرَ مَا الَّذِي مِنْ أَجْلِهِ أَخَّرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الصَّلَاةَ فِي ذَلِكَ الْيَوْمِ؟ ، وَحَتَّى لَوْ لَمْ يَذْكُرْ حَرَّ الشَّمْسِ فِي شَيْءٍ مِنْ هَذَا الْخَبَرِ لَمَا كَانَ فِيهِ حُجَّةٌ لِمَنْ زَعَمَ أَنَّهُ - عَلَيْهِ السَّلَامُ - إنَّمَا أَخَّرَ الصَّلَاةَ مِنْ أَجْلِ أَنَّ الشَّمْسَ لَمْ تَكُنْ صَفَتْ وَلَا ابْيَضَّتْ، لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْ الْأَخْبَارِ أَصْلًا: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: " إنَّمَا أَخَّرْتُ الصَّلَاةَ مِنْ أَجْلِ أَنَّ الشَّمْسَ لَمْ تَبْيَضَّ وَلَا ارْتَفَعَتْ، وَلَا أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: أَمْهِلُوا حَتَّى تَرْتَفِعَ الشَّمْسُ وَتَبْيَضَّ، وَإِنَّمَا ذَلِكَ ظَنٌّ مِنْ بَعْضِ الرُّوَاةِ، وَقَدْ قَالَ اللَّهُ تَعَالَى: {إِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [يونس: ٣٦] .

L5223 Is it not that neither Abū Qatādah nor ʿImrān—may Allāh be pleased with

[11] **Hadith references (L5217):** Sunan Abi Dawud 443.

both of them—ever stated the Prophet's—peace be upon him—delay of prayer was solely because the sun had not whitened or risen? They merely described the manner of his action—peace be upon him—without specifying any cause.

L5224–5225 Those who asserted that the Messenger of Allah—peace be upon him—delayed the prayer that day only because the sun had not yet whitened nor risen have persisted in conjecture without knowledge and judged by conjecture—both prohibited by the Quran's explicit text—while lying against the Messenger of Allah, peace be upon him, a grave transgression. Therefore, it became necessary to seek the reason for which he, peace be upon him, delayed the prayer that day. We did so and found the following:

Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, from Abdul Wahhab ibn Isa, from Ahmad ibn Muhammad, from Ahmad ibn Ali, from Muslim ibn al-Hajjaj: Muhammad ibn Hatim narrated to me, from Yahya ibn Sa'id al-Qattan, from Yazid ibn Kaysan, from Abu Hazim Salman al-Ashja'i, from Abu Hurairah, who said: "We camped with the Prophet, peace be upon him, and did not awaken until the sun rose. The Prophet, peace be upon him, said: 'Let each of you hold his mount's head, for this is a place where Satan has assailed us.' We did so. He then called for water, performed ablution, prostrated twice, and when the iqamah was called, he prayed the dawn prayer."

L5226 Abdullah ibn Rabi'ah narrated to us: Umar ibn Abdul-Malik narrated to us: Muhammad ibn Bakr narrated to us: Abu Dawud asSijistānī narrated to us: Musa ibn Isma'eel narrated to us: Aban—he is the son of Yazeed al-Attar—narrated to us: Ma'mar narrated to us from az-Zuhri from Sa'eed ibn al-Musayyib from Abu Hurairah regarding this narration: The Messenger of Allah—peace be upon him—said, "Move away from your place where

عَلَى أَنَّهُ لَمْ يَقُلْ قَطُّ أَبُو قَتَادَةَ وَلَا عِمْرَانُ - رَضِيَ اللَّهُ عَنْهُمَا -: إِنَّ تَأْخِيرَهُ - عَلَيْهِ السَّلَامُ - الصَّلَاةَ إِنَّمَا كَانَ لِأَنَّ الشَّمْسَ لَمْ تَكُنْ ابْيَضَّتْ، وَلَا ارْتَفَعَتْ، وَإِنَّمَا ذَكَرُوا صِفَةَ فِعْلِهِ - عَلَيْهِ السَّلَامُ - فَقَطْ؟ .

فَصَلَ مَنْ قَطَعَ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا أَخَّرَ الصَّلَاةَ يَوْمَئِذٍ مِنْ أَجْلِ أَنَّ الشَّمْسَ لَمْ تَكُنْ ابْيَضَّتْ وَلَا ارْتَفَعَتْ: عَلَى قَفْوِ مَا لَيْسَ لَهُ بِهِ عِلْمٌ، وَعَلَى الْحُكْمِ بِالظَّنِّ، وَكِلَاهُمَا مُحَرَّمٌ بِنَصِّ الْقُرْآنِ، وَعَلَى الْكَذِبِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا عَظِيمٌ جِدًّا فَوَجَبَ أَنْ نَطْلُبَ السَّبَبَ الَّذِي مِنْ أَجْلِهِ أَخَّرَ - عَلَيْهِ السَّلَامُ - الصَّلَاةَ فِي ذَلِكَ الْيَوْمِ: فَفَعَلْنَا، فَوَجَدْنَا -: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ: حَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمٍ ثنا يَحْيَى بْنُ سَعِيدٍ هُوَ الْقَطَّانُ - ثنا يَزِيدُ بْنُ كَيْسَانَ ثنا أَبُو حَازِمٍ هُوَ سَلْمَانُ الْأَشْجَعِيُّ - عَنْ أَبِي هُرَيْرَةَ قَالَ: «عَرَّسْنَا مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمْ نَسْتَيْقِظْ حَتَّى طَلَعَتْ الشَّمْسُ، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لِيَأْخُذْ كُلُّ رَجُلٍ مِنْكُمْ بِرَأْسِ رَاحِلَتِهِ، فَإِنَّ هَذَا مَنْزِلٌ حَضَرَنَا فِيهِ الشَّيْطَانُ؟ فَفَعَلْنَا، ثُمَّ دَعَا بِالْمَاءِ فَتَوَضَّأَ، ثُمَّ سَجَدَ سَجْدَتَيْنِ، ثُمَّ أُقِيمَتْ الصَّلَاةُ فَصَلَّى الْغَدَاةَ» .

وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد السِّجِسْتَانِيُّ ثنا مُوسَى بْنُ إِسْمَاعِيلَ ثنا أَبَانُ هُوَ ابْنُ يَزِيدَ الْعَطَّارِ ثنا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ - فِي هَذَا الْخَبَرِ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «تَحَوَّلُوا عَنْ مَكَانِكُمْ الَّذِي أَصَابَتْكُمْ فِيهِ الْغَفْلَةُ؟ فَأَمَرَ بِلَالًا فَأَذَّنَ وَأَقَامَ وَصَلَّى» .

[12] **Qur'an references (L5222):** Qur'an 10:36 (Yunus).

negligence overtook you?" He then commanded Bilal to proclaim the Adhan and Iqamah, and the Prophet prayed.

L5227–5229 Ali said, "The difficulty was entirely lifted; praise be to Allah, and it was conclusively confirmed that he—peace be upon him—had merely delayed." the prayer: to leave the place where heedlessness overtook them and only Satan was present there, not because the sun had not yet risen.

قَالَ عَلِيٌّ: فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً وَالْحَمْدُ لِلَّهِ، وَصَحَّ يَقِينًا أَنَّهُ - عَلَيْهِ السَّلَامُ - إِنَّمَا أَخَّرَ الصَّلَاةَ؛ لِيَزُولُوا عَنْ الْمَكَانِ الَّذِي أَصَابَتْهُمْ فِيهِ الْغَفْلَةُ، وَحَضَرَهُمْ فِيهِ الشَّيْطَانُ فَقَطْ، لَا لِأَنَّ الشَّمْسَ لَمْ تَكُنْ ارْتَفَعَتْ.

L5230 Some of them said: "So does the legal cause exist [for delaying prayer] when the sun is between Satan's horns?" ʿAlī replied: "This is a superficial scratch on marble. The Prophet—peace be upon him—did not say that prayer is delayed because the sun is between Satan's horns. Rather, he said: 'A dwelling where Satan has joined us.' For the presence of Satan in a people's dwelling—as any person of understanding would undoubtedly affirm—is entirely distinct from the sun being between Satan's horns. Thus the falsehood of this speaker becomes conclusively evident—and success is attained solely through Allah, the Exalted."

وَقَدْ قَالَ بَعْضُهُمْ: إنَّهَا حِينَئِذٍ بَيْنَ قَرْنَيْ الشَّيْطَانِ، فَالْعِلَّةُ مَوْجُودَةٌ؟ قَالَ عَلِيٌّ: وَهَذَا تَخْدِيشٌ فِي الرُّخَامِ وَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ -: إنَّ تَأْخِيرَ الصَّلَاةِ مِنْ أَجْلِ كَوْنِ الشَّمْسِ بَيْنَ قَرْنَيْ الشَّيْطَانِ، وَإِنَّمَا قَالَ: «مَنْزِلٌ حَضَرَنَا فِيهِ الشَّيْطَانُ» وَحُضُورُ الشَّيْطَانِ فِي مَنْزِلِ قَوْمٍ هُوَ - بِلَا شَكٍّ مِنْ كُلِّ ذِي فَهْمٍ - غَيْرُ كَوْنِ الشَّمْسِ بَيْنَ قَرْنَيْ الشَّيْطَانِ فَظَهَرَ كَذِبُ هَذَا الْقَائِلِ يَقِينًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟ .

L5231 The fourth perspective is: even if it were valid for them to claim that his hesitation—peace be upon him—was because the sun had not yet whitened—and this is absolutely invalid—his statement in that very same hadith after praying with them would still hold: "Whoever sleeps through a prayer or forgets it must pray it when he remembers."

وَوَجْهٌ رَابِعٌ هُوَ: أَنَّهُ حَتَّى لَوْ صَحَّ لَهُمْ أَنَّ تَرَدُّدَهُ - عَلَيْهِ السَّلَامُ - كَانَ مِنْ أَجْلِ أَنَّ الشَّمْسَ لَمْ تَكُنْ ابْيَضَّتْ بَعْدُ -، وَهَذَا لَا يَصِحُّ أَبَدًا - لَكَانَ قَوْلُهُ فِي ذَلِكَ الْحَدِيثِ نَفْسِهِ بَعْدَ صَلَاتِهِ بِهِمْ «مَنْ نَامَ عَنْ صَلَاةٍ أَوْ نَسِيَهَا فَلْيُصَلِّهَا إذَا ذَكَرَهَا» .

L5232 In some wordings of the narrators: "Let him pray it when he remembers it," abrogating his action of delaying the prayer, because it [the command] came after it?

وَفِي بَعْضِ أَلْفَاظِ الرُّوَاةِ «فَلْيُصَلِّهَا حِينَ يَذْكُرُهَا» نَاسِخًا لِفِعْلِهِ فِي تَأْخِيرِ الصَّلَاةِ؛ لِأَنَّهُ بَعْدَهُ؟ .

L5233 If it is said: "Why did you not deem it abrogating due to their departure from the place?"

فَإِنْ قِيلَ: فَهَلَّا جَعَلْتُمُوهُ نَاسِخًا لِتَحَوُّلِهِمْ عَنْ الْمَكَانِ؟ .

L5234 We said: That is not permissible because his statement—peace be upon him—"when he mentions it" and "at the time he mentions it" indicates his intent toward the time of its fulfillment, and there is no ruling therein regarding the place of its fulfillment. Thus, there is no basis whatsoever for applying

قُلْنَا: لَا يَجُوزُ ذَلِكَ؛ لِأَنَّ قَوْلَهُ - عَلَيْهِ السَّلَامُ - «إذَا ذَكَرَهَا» وَ «حِينَ يَذْكُرُهَا» قَصْدٌ مِنْهُ إلَى زَمَانِ تَأْدِيَتِهَا، وَلَيْسَ فِيهِ حُكْمٌ لِمَكَانِ تَأْدِيَتِهَا؛ فَلَا يَكُونُ لِمَا لَيْسَ فِيهِ خِلَافٌ بِحُكْمِهِ أَصْلًا، وَهَذَا غَايَةُ الْحَقِيقَةِ وَالْبَيَانِ - وَلِلَّهِ الْحَمْدُ؟ .

its ruling to matters about which there is no disagreement, and this is the utmost truth and clarity—and all praise is due to Allah.

L5235–5237 As for the ḥadīth of Anas, "That is the prayer of the hypocrites," they have no valid argument in it whatsoever due to the following considerations: One of them is that the Messenger of Allah—peace and blessings be upon him—did not condemn in that hadith merely delaying prayer in isolation. Rather, he condemned delaying it while rushing through four rak'ahs in prayer, scarcely remembering Allah during them. This is undoubtedly blameworthy—whether he delayed the prayer or not—just like the words of the Exalted: {When they rise to prayer, they rise sluggishly, showing off to people and hardly remembering Allah except a little} [An-Nisā' 4:142].[13]

L5238 Moreover, it has been authentically established that the Messenger of Allah—peace and blessings be upon him—informed that whoever catches one rak'ah of the dawn prayer before sunrise and one rak'ah of the afternoon prayer before sunset has indeed caught both prayers. It is utterly false and impossible for one who catches the prayer to be disobedient in it while praying the prayer of the hypocrites.

L5239 No two would dispute that whoever performs the prayer within its prescribed time has fulfilled the obligation and is not sinful, even if he neglected the preferable practice.

L5240 It has been authentically established from the Prophet—peace and blessings of Allah be upon him—as narrated by Abdullah ibn Yusuf, from Ahmad ibn Fath, from Abdul Wahhab ibn Isa, from Ahmad ibn Muhammad, from Ahmad ibn Ali, from Muslim ibn al-Hajjaj, from Zuhayr ibn Harb, from Marwan ibn Muawiyah al-Fazari, from Ismail ibn Abi Khalid, from Qays ibn Abi Hazim, who said: I heard Jarir ibn Abdullah state: "We were in the presence of Allah's Messenger—peace and blessings of Allah be upon him—when he said: 'Indeed, you will see your Lord as you see this moon—you will face no hardship in seeing Him. So if you can ensure you are not overcome regarding

وَأَمَّا حَدِيثُ أَنَسٍ «تِلْكَ صَلَاةُ الْمُنَافِقِينَ» فَلَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا؛ لِوُجُوهٍ -: أَحَدُهَا - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَذُمَّ فِي ذَلِكَ الْحَدِيثِ تَأْخِيرَ الصَّلَاةِ فَقَطْ وَحْدَهُ؛ وَإِنَّمَا ذَمَّ التَّأْخِيرَ مَعَ كَوْنِهِ يَنْقُرُهَا أَرْبَعًا لَا يَذْكُرُ اللَّهَ فِيهَا إلَّا قَلِيلًا؛ وَهَذَا بِلَا شَكٍّ مَذْمُومٌ - أَخَّرَ الصَّلَاةَ أَوْ لَمْ يُؤَخِّرْهَا - وَهَذَا مِثْلُ قَوْله تَعَالَى: {وَإِذَا قَامُوا إِلَى الصَّلَاةِ قَامُوا كُسَالَى يُرَاءُونَ النَّاسَ وَلَا يَذْكُرُونَ اللَّهَ إلا قَلِيلا} [النساء: ١٤٢] .

وَأَيْضًا فَإِنَّهُ قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخْبَرَ بِأَنَّ مَنْ أَدْرَكَ مِنْ الصُّبْحِ رَكْعَةً وَمِنْ الْعَصْرِ رَكْعَةً قَبْلَ طُلُوعِ الشَّمْسِ وَقَبْلَ غُرُوبِهَا فَقَدْ أَدْرَكَ الصَّلَاتَيْنِ؛ فَمِنْ الْبَاطِلِ الْمُحَالِ أَنْ يَكُونَ الْمُدْرِكُ لِلصَّلَاةِ عَاصِيًا بِهَا وَمُصَلِّيًا صَلَاةَ الْمُنَافِقِينَ.

وَلَا يَخْتَلِفُ اثْنَانِ فِي أَنَّ مَنْ أَدْرَكَ الصَّلَاةَ فِي وَقْتِهَا فَقَدْ أَدَّى مَا أُمِرَ، وَلَيْسَ عَاصِيًا، وَإِنْ كَانَ قَدْ تَرَكَ الْأَفْضَلَ؟ .

وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا زُهَيْرُ بْنُ حَرْبٍ ثنا مَرْوَانُ بْنُ مُعَاوِيَةَ الْفَزَارِيُّ أَنَا إسْمَاعِيلُ بْنُ أَبِي خَالِدٍ ثنا قَيْسُ بْنُ أَبِي حَازِمٍ سَمِعْت جَرِيرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «كُنَّا عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: أَمَا إنَّكُمْ سَتَرَوْنَ رَبَّكُمْ كَمَا تَرَوْنَ هَذَا الْقَمَرَ، لَا تُضَامُونَ فِي رُؤْيَتِهِ،

[13] **Qur'an references (L5235):** Qur'an 4:142 (An-Nisa).

فَإِنْ اسْتَطَعْتُمْ أَنْ لَا تُغْلَبُوا عَلَى صَلَاةٍ قَبْلَ طُلُوعِ الشَّمْسِ وَقَبْلَ غُرُوبِهَا» - يَعْنِي الْعَصْرَ وَالْفَجْرَ.

وَبِهِ إِلَى مُسْلِمٍ: حَدَّثَنَا أَبُو كُرَيْبٍ وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ، وَمِسْعَرِ بْنِ كِدَامٍ أَنَّهُمَا سَمِعَا أَبَا بَكْرِ بْنِ عُمَارَةَ بْنِ رُؤَيْبَةَ عَنْ أَبِيهِ قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَنْ يَلِجَ النَّارَ أَحَدٌ صَلَّى قَبْلَ طُلُوعِ الشَّمْسِ وَقَبْلَ غُرُوبِهَا» - يَعْنِي: الْفَجْرَ وَالْعَصْرَ هَكَذَا فِي الْحَدِيثِ نَصًّا.

قَالَ عَلِيٌّ: فَإِذَا هَذَا كَذَلِكَ فَظَاهِرُ الْخَبَرِ أَنَّهُ - عَلَيْهِ السَّلَامُ - عَنَى مَنْ أَخَّرَ صَلَاةً لَا يَحِلُّ تَأْخِيرُهَا إلَى ذَلِكَ الْوَقْتِ، وَهَذَا فِي غَيْرِ الْعَصْرِ بِلَا شَكٍّ [لَكِنْ فِي الظُّهْرِ الْمُتَعَيِّنُ تَحْرِيمُ تَأْخِيرِهَا إلَى ذَلِكَ الْوَقْتِ] كَمَا أَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّ التَّفْرِيطَ فِي الْيَقَظَةِ: أَنْ تُؤَخَّرَ صَلَاةٌ حَتَّى يَدْخُلَ وَقْتُ أُخْرَى؟ .

فَإِنْ قَالُوا فِي خَبَرِ أَنَسٍ «جَلَسَ يَرْقُبُ وَقْتَ الْعَصْرِ» ، قُلْنَا: نَعَمْ، وَإِذَا أَخَّرَ الظُّهْرَ إلَى وَقْتِ الْعَصْرِ رَاقِبًا لِلْعَصْرِ فَقَدْ عَصَى اللَّهَ تَعَالَى، فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا أَيْضًا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ وَأَمَّا حَدِيثُ ابْنِ مَسْعُودٍ فَحُجَّةٌ لَنَا عَلَيْهِمْ ظَاهِرَةٌ؛ لِأَنَّهُ لَمْ يَعْنِ بِيَقِينٍ إلَّا صَلَاةَ الْجُمُعَةِ تُؤَخَّرُ إلَى ذَلِكَ الْوَقْتِ، بِقَوْلِهِ: «يُطِيلُونَ الْخُطْبَةَ وَيُؤَخِّرُونَ الصَّلَاةَ» .

وَأَيْضًا - فَإِنَّهُ - رَضِيَ اللَّهُ عَنْهُ - أَجَازَ التَّطَوُّعَ مَعَهُمْ إذَا اصْفَرَّتْ الشَّمْسُ فِي ذَلِكَ الْخَبَرِ نَفْسِهِ، فَصَحَّ أَنَّ ابْنَ مَسْعُودٍ مُوَافِقٌ لَنَا فِي هَذَا؟ .

the prayers before sunrise and sunset (meaning Asr and Fajr), then strive to do so.”[14]

L5241 And to Muslim: Abu Kurayb, Ishaq ibn Ibrahim, and Abu Bakr ibn Abi Shaybah narrated to us from Waki‘, from Isma‘il ibn Abi Khalid and Mis‘ar ibn Kidam, that they both heard Abu Bakr ibn ‘Umarah ibn Ru’aybah narrate from his father, who said: I heard the Messenger of Allah, may Allah’s prayers and peace be upon him, say: “No one who prays before sunrise and before sunset will enter the Fire” — meaning Fajr and ‘Asr. Thus, in this way, it is explicitly stated in the hadith.[15][16]

L5242–5243 Ali said: If this is the case, then the apparent meaning of the narration indicates that he, peace be upon him, referred to one who delayed a prayer that is impermissible to postpone to that time. This applies without doubt to prayers other than ʿAṣr [but regarding Ẓuhr, the prohibition against delaying it to that time is definitively established], just as he, peace be upon him, clarified that negligence in dutiful observance consists of this: delaying a prayer until the time of another prayer begins?

L5244 If they cite the narration of Anas, “He sat anticipating the time of ʿAṣr,” we reply: Yes, but if one delays Ẓuhr until the time of ʿAṣr while anticipating ʿAṣr, he has disobeyed Allah, the Exalted. Thus, their reliance on this is also nullified. All praise belongs to Allah, Lord of the worlds. As for the ḥadīth of Ibn Masʿūd, it is clear evidence against them, for he undoubtedly meant that only the Friday prayer is delayed to that time, as his statement indicates: “They prolong the sermon and delay the prayer.”[17]

L5245 Moreover, since he—may Allah be pleased with him—permitted voluntary prayers with them when the sun turns yellow, as stated in that same narration, does this not confirm that Ibn Masʿūd agrees with us on this matter?

[14] **Hadith references (L5240):** Sahih Muslim 633a.

[15] **Hadith references (L5241):** Sahih Muslim 634a; Mishkat al-Masabih 624; Riyad as-Salihin 1048.

[16] **Qur’an references (L5241):** Qur’an 20:130 (Taha).

[17] **Qur’an references (L5244):** Qur’an 37:182 (As-Saffat).

وَأَمَّا حَدِيثُ أَبِي ذَرٍّ فَكَذَلِكَ أَيْضًا، وَهُوَ خَبَرٌ مُوَافِقٌ لَنَا - وَلِلَّهِ الْحَمْدُ.

L5246 As for the ḥadīth of Abū Dharr, it is likewise also a report that agrees with us, and to Allah belongs all praise.

لِأَنَّهُ نَصُّهُ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يُؤَخِّرُونَ الصَّلَاةَ عَنْ وَقْتِهَا» ، وَقَدْ صَحَّ أَنَّ مَا لَمْ تَغْرُبْ الشَّمْسُ فَهُوَ وَقْتٌ لِلدُّخُولِ فِي صَلَاةِ الْعَصْرِ، وَمَا لَمْ تَطْلُعْ الشَّمْسُ فَهُوَ وَقْتٌ لِلدُّخُولِ فِي صَلَاةِ الصُّبْحِ - فَبَطَلَ تَعَلُّقُهُمْ بِجَمِيعِ الْآثَارِ - وَلِلَّهِ الْحَمْدُ؟ .

L5247 Because its text states that the Messenger of Allah - peace and blessings be upon him - said: “They delay prayer beyond its time.” It has been authenticated that as long as the sun has not set, it remains the time to perform the ʿAsr prayer, and as long as the sun has not risen, it remains the time to perform the Fajr prayer. Thus, their reliance on all textual evidence is rendered void - and all praise is due to Allah.

وَأَمَّا قَوْلُهُمْ: لَعَلَّ قَوْلَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَدْرَكَ مِنْ صَلَاةِ الصُّبْحِ رَكْعَةً قَبْلَ طُلُوعِ الشَّمْسِ فَقَدْ أَدْرَكَ الصُّبْحَ» كَانَ قَبْلَ النَّهْيِ عَنْ الصَّلَاةِ فِي الْأَوْقَاتِ الْمَذْكُورَةِ -: فَخَطَأٌ، لِأَنَّ “ لَعَلَّ ” لَا حُكْمَ لَهَا، وَإِنَّمَا هِيَ ظَنٌّ؟ .

L5248 As for their claim: “It may be that the Prophet’s statement—peace and blessings of Allah be upon him—‘Whoever catches one rakʿah of the Fajr prayer before sunrise has indeed attained Fajr’ was made before the prohibition of prayer during the specified times”—this is erroneous, for “it may be that” carries no legal authority; it is mere conjecture?

وَأَيْضًا - فَالْبُرْهَانُ قَدْ صَحَّ أَنَّ قَوْلَهُ - عَلَيْهِ السَّلَامُ -: «مَنْ أَدْرَكَ رَكْعَةً» مُتَأَخِّرٌ عَنْ أَخْبَارِ النَّهْيِ أَنَّ أَبَا هُرَيْرَةَ هُوَ رَوَى «مَنْ أَدْرَكَ رَكْعَةً» وَهُوَ مُتَأَخِّرُ الصُّحْبَةِ وَرَوَى أَخْبَارَ النَّهْيِ: عُمَرُ بْنُ الْخَطَّابِ، وَعُمَرُ بْنُ عَبَسَةَ وَإِسْلَامُهُمَا قَدِيمٌ؟ .

L5249–5250 Moreover, the proof has been established that the statement of the Prophet (peace be upon him)—“Whoever catches one rakʿah”—comes after the reports prohibiting [prayer after the ʿAṣr prayer]. This is because Abū Hurayrah—the narrator of “Whoever catches one rakʿah”—became a companion later, whereas the reports of prohibition were narrated by ʿUmar ibn al-Khaṭṭāb and ʿUmar ibn ʿAbasah, and their Islam was early, was it not?

وَبِالْجُمْلَةِ فَلَا يَقْدَحُ فِي أَحَدِ الْخَبَرَيْنِ تَأَخُّرُهُ وَلَا تَقَدُّمُهُ، إذَا أَمْكَنَ اسْتِعْمَالُهُمَا وَضَمُّ أَحَدِهِمَا إلَى الْآخَرِ، فَالْوَاجِبُ الْأَخْذُ بِجَمِيعِهَا كَمَا قَدَّمْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَأَمَّا قَوْلُهُمْ: إنَّا قَدْ أَجْمَعْنَا عَلَى تَغْلِيبِ خَبَرِ النَّهْيِ عَنْ صَوْمِ يَوْمَيْ الْفِطْرِ، وَالنَّحْرِ، وَأَيَّامِ التَّشْرِيقِ، عَلَى أَحَادِيثِ الْأَمْرِ بِقَضَاءِ رَمَضَانَ، وَالنَّذْرِ، وَالْكَفَّارَاتِ، فَكَذَلِكَ يَجِبُ أَنْ نُغَلِّبَ أَخْبَارَ النَّهْيِ عَنْ الصَّلَاةِ فِي الْأَوْقَاتِ الْمَذْكُورَةِ عَلَى أَحَادِيثِ الْأَمْرِ بِقَضَاءِ الصَّلَاةِ الْمَنْسِيَّةِ وَالْمَنُومِ عَنْهَا وَالنَّذْرِ وَسَائِرِ مَا أَمَرَ بِهِ مِنْ التَّطَوُّعِ -: فَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ؟ .

L5251 In summary, neither the lateness nor the precedence of either of the two narrations detracts from them, provided both can be applied and one can be joined to the other. It is therefore obligatory to adhere to all of them, as we have previously stated—and with God Almighty is success. As for their claim that we have unanimously agreed to prioritize the narrations prohibiting fasting on the two Eid days, the Day of Sacrifice, and the Days of Tashreeq over the hadiths commanding the compensation of missed Ramadan fasts, vows, and expiations: similarly, we must prioritize the narrations prohibiting prayer during the mentioned times over the hadiths commanding the making up of forgotten prayers, those missed due to oversleeping, vows, and all other voluntary prayers enjoined. This is *qiyās* (analogical reasoning), and all *qiyās* is invalid?

L5252 Perhaps this necessarily applies to those who uphold qiyas among the Mālikīs

and Shāfiʿīs. However, they also oppose the Ḥanafīs in this qiyas by stating: "You are the first to invalidate this qiyas and failed to apply it consistently, thereby permitting the ʿAṣr prayer of the day during the time when prayer is prohibited."

وَلَعَلَّ هَذَا يَلْزَمُ مَنْ قَالَ بِالْقِيَاسِ مِنْ الْمَالِكِيِّينَ وَالشَّافِعِيِّينَ، إلَّا أَنَّهُمْ أَيْضًا يُعَارِضُونَ الْحَنَفِيِّينَ فِي هَذَا الْقِيَاسِ، بِأَنْ يَقُولُوا لَهُمْ: أَنْتُمْ أَوَّلُ مَنْ نَقَضَ هَذَا الْقِيَاسَ، وَلَمْ يَطَّرِدْهُ؛ فَأَجَزْتُمْ صَلَاةَ عَصْرِ الْيَوْمِ فِي الْوَقْتِ الْمَنْهِيِّ عَنْ الصَّلَاةِ فِيهِ.

L5253–5255 You did not apply qiyas to the dawn prayer regarding it, nor did you measure it against the dawn prayer. Then you added further invalidation to this analogy by designating part of the prohibited prayer time as a period in which obligatory prayers are compensated in full, prostration of recitation is performed, and funeral prayers are conducted, yet votive prayers are not offered therein. You further designated another portion wherein none of these prayers are performed at all. Thus, you did not apply analogy to prayer in part of the prohibited time... Does the time apply within the entire duration of the prayer? Was this more sound in analogy and preferable to analogizing the ruling of prayer to fasting?

وَلَمْ تَقِيسُوا عَلَيْهِ الصُّبْحَ، وَلَا قِسْتُمُوهَا عَلَى الصُّبْحِ، ثُمَّ زِدْتُمْ إبْطَالًا لِهَذَا الْقِيَاسِ: فَجَعَلْتُمْ بَعْضَ الْوَقْتِ الْمَنْهِيِّ عَنْ الصَّلَاةِ فِيهِ جُمْلَةً يُقْضَى فِيهِ الْفَرْضُ وَيُسْجَدُ فِيهِ لِلتِّلَاوَةِ وَيُصَلَّى فِيهِ عَلَى الْجَنَازَةِ، وَلَا يُصَلَّى فِيهِ صَلَاةٌ مَنْذُورَةٌ، وَجَعَلْتُمْ بَعْضَهُ لَا يُصَلَّى فِيهِ شَيْءٌ مِنْ ذَلِكَ كُلِّهِ، فَلَمْ تَقِيسُوا صَلَاةً فِي بَعْضِ الْوَقْتِ عَلَى صَلَاةٍ فِي سَائِرِهِ؟ وَكَانَ هَذَا أَصَحَّ فِي الْقِيَاسِ وَأَوْلَى مِنْ قِيَاسِ حُكْمِ صَلَاةٍ عَلَى صَوْمٍ؟ .

L5256 As for their statement to us: "Why do you differentiate between the two commands and the two prohibitions?" Our response—and with Allah's guidance, success is sought—is that we did so because the texts established the precedence of the hadiths commanding prayers in general over those prohibiting prayer during those specific times, with some being later and abrogating the earlier ones. No text whatsoever came to prioritize the command to fast over the hadiths of prohibition; rather, a definitive consensus was established on the obligation to prioritize the prohibition of fasting on the day of Eid al-Fitr and Eid al-Adha (the Feast of Sacrifice) over the hadiths obligating making up missed fasts, fulfilling vows, and expiations. This is like his statement—peace be upon him—regarding the days of Tashriq: "They are days of eating and drinking," thereby making eating and drinking obligatory during them. Thus, fasting during them is impermissible without explicit textual evidence—unlike what applies to prayer—and with Allah's guidance, success is sought. Therefore, all their contentious arguments are dismissed, and praise be to Allah. As for the permissibility of initiating voluntary prayers after Asr as long as the sun has not turned yellow, and the permissibility of voluntary

وَأَمَّا قَوْلُهُمْ لَنَا: لِمَ فَرَّقْتُمْ بَيْنَ الْأَمْرَيْنِ وَالنَّهْيَيْنِ؟ . [فَجَوَابُنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: أَنَّا فَعَلْنَا ذَلِكَ، لِأَنَّ النُّصُوصَ جَاءَتْ مُثْبِتَةً] لِتَغْلِيبِ أَحَادِيثِ الْأَمْرِ بِالصَّلَوَاتِ جُمْلَةً عَلَى أَحَادِيثِ النَّهْيِ عَنْ الصَّلَاةِ فِي تِلْكَ الْأَوْقَاتِ، وَبَعْضُهَا مُتَأَخِّرٌ نَاسِخٌ لِلْمُتَقَدِّمِ، وَلَمْ يَأْتِ نَصٌّ أَصْلًا بِتَغْلِيبِ الْأَمْرِ بِالصَّوْمِ عَلَى أَحَادِيثِ النَّهْيِ؛ بَلْ صَحَّ الْإِجْمَاعُ الْمُتَيَقَّنُ عَلَى وُجُوبِ تَغْلِيبِ النَّهْيِ [عَنْ] صِيَامِ يَوْمِ الْفِطْرِ، وَالنَّحْرِ عَلَى أَحَادِيثِ إيجَابِ الْقَضَاءِ، وَالنُّذُورِ، وَالْكَفَّارَاتِ، وَكَقَوْلِهِ - عَلَيْهِ السَّلَامُ - فِي أَيَّامِ التَّشْرِيقِ: «إنَّهَا أَيَّامُ أَكْلٍ وَشُرْبٍ» مُوجِبًا لِلْأَكْلِ وَالشُّرْبِ فِيهَا، فَلَمْ يَجُزْ أَنْ تُصَامَ بِغَيْرِ نَصٍّ جَلِيٍّ فِيهَا بِخِلَافِ مَا جَاءَ فِي الصَّلَاةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - فَسَقَطَ كُلُّ مَا شَغَبُوا بِهِ وَلِلَّهِ الْحَمْدُ؟ . وَأَمَّا جَوَازُ ابْتِدَاءِ التَّطَوُّعِ بَعْدَ الْعَصْرِ مَا لَمْ تَصْفَرَّ الشَّمْسُ، وَجَوَازُ التَّطَوُّعِ بَعْدَ الْفَجْرِ مَا لَمْ تُصَلَّ صَلَاةُ الْفَجْرِ عَلَى كُلِّ حَالٍ؟ .

prayers after Fajr as long as the Fajr prayer has not been performed under any circumstances.

L5257 Abdullah ibn Rabi'ah narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Amr ibn Ali narrated to us: Abdur-Rahman ibn Mahdi narrated to us: Shu'bah and Sufyan al-Thawri, both from Mansur ibn al-Mu'tamir, from Hilal ibn Yasaf, from Wahb ibn al-Ajda', from Ali ibn Abi Talib, from the Messenger of Allah (peace and blessings be upon him), who said: "Do not pray after 'Asr unless you pray while the sun is still high."[18]

فَلِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنَا عَمْرُو بْنُ عَلِيٍّ ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ ثنا شُعْبَةُ وَسُفْيَانُ الثَّوْرِيُّ كِلَاهُمَا عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ هِلَالِ بْنِ يَسَافٍ عَنْ وَهْبِ بْنِ الْأَجْدَعِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تُصَلُّوا بَعْدَ الْعَصْرِ إِلَّا أَنْ تُصَلُّوا وَالشَّمْسُ مُرْتَفِعَةٌ» .

L5258–5260 Wahb ibn al-Ajdaʿ is a trustworthy, renowned Follower; the rest of the Narrators are too well-known to require questioning about them—and this... Is it impermissible to abandon an excess of justice?

وَهْبُ بْنُ الْأَجْدَعِ تَابِعٌ ثِقَةٌ مَشْهُورٌ - وَسَائِرُ الرُّوَاةِ أَشْهَرُ مِنْ أَنْ يُسْأَلَ عَنْهُمْ؛ وَهَذِهِ زِيَادَةُ عَدْلٍ لَا يَجُوزُ تَرْكُهَا؟ .

L5261 As for the period from the onset of dawn until the time of Fajr prayer, is it based on the hadith of ʿAmr ibn ʿAbasah which we mentioned at the outset of this issue, wherein it states: "Pray as much as you will, for the prayer is witnessed and recorded until you pray Fajr, then stop praying until the sun rises"?

وَأَمَّا مِنْ طُلُوعِ الْفَجْرِ إِلَى صَلَاةِ الصُّبْحِ فَلِحَدِيثِ عَمْرِو بْنِ عَبَسَةَ الَّذِي ذَكَرْنَا فِي صَدْرِ هَذِهِ الْمَسْأَلَةِ الَّذِي فِيهِ «فَصَلِّ مَا شِئْتَ فَإِنَّ الصَّلَاةَ مَشْهُودَةٌ مَكْتُوبَةٌ حَتَّى تُصَلِّيَ الصُّبْحَ، ثُمَّ أَقْصِرْ حَتَّى تَطْلُعَ الشَّمْسُ» ؟ .

L5262 From what Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Abu Tahir Ahmad ibn Amr ibn al-Sarh narrated to us from Ibn Wahb, from Yunus—who is ibn Yazid—from Ibn Shihab, from al-Sa'ib ibn Yazid and Abdullah ibn Abdullah ibn Utbah ibn Mas'ud, both of whom informed him from Abd al-Rahman ibn Abd al-Qari, who said: I heard Umar ibn al-Khattab say: The Messenger of Allah—peace and blessings be upon him—said: "Whoever sleeps through his portion [of the Quran] or part of it and then recites it between Fajr and Dhuhr prayers, it will be recorded for him as if he had recited it during the night?"[19]

وَبِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو الطَّاهِرِ أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ أَنَا ابْنُ وَهْبٍ عَنْ يُونُسَ هُوَ ابْنُ يَزِيدَ - عَنِ ابْنِ شِهَابٍ عَنِ السَّائِبِ بْنِ يَزِيدَ، وَعَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ أَخْبَرَاهُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدٍ الْقَارِيِّ قَالَ: سَمِعْتُ عُمَرَ بْنَ الْخَطَّابِ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ نَامَ عَنْ حِزْبِهِ أَوْ عَنْ شَيْءٍ مِنْهُ فَقَرَأَهُ مَا بَيْنَ صَلَاةِ الْفَجْرِ وَصَلَاةِ الظُّهْرِ كُتِبَ لَهُ كَأَنَّمَا قَرَأَهُ مِنَ اللَّيْلِ» ؟ .

[18] **Hadith references (L5257):** Musnad Ahmad 1073; Musnad Ahmad 1194; Musnad Ahmad 1076.

[19] **Hadith references (L5262):** Sunan Abi Dawud 1313; Jami at-Tirmidhi 581.

قَالَ عَلِيٌّ: وَالرِّوَايَةُ فِي أَنْ «لَا صَلَاةَ بَعْدَ طُلُوعِ الْفَجْرِ إِلَّا رَكْعَتَيْ الْفَجْرِ» سَاقِطَةٌ مَطْرُوحَةٌ مَكْذُوبَةٌ كُلُّهَا، لَمْ يَرْوِهَا أَحَدٌ إِلَّا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ زِيَادِ بْنِ أَنْعُمَ وَهُوَ مَالِكٌ، أَوْ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ مُحَمَّدٍ، وَهُوَ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ، وَلَيْسَ هُوَ ابْنُ حَزْمٍ، أَوْ مِنْ طَرِيقِ أَبِي هَارُونَ الْعَبْدِيِّ، وَهُوَ سَاقِطٌ، أَوْ مِنْ طَرِيقِ يَسَارٍ مَوْلَى ابْنِ عُمَرَ وَهُوَ مَجْهُولٌ وَمُدَلِّسٌ، عَنْ كَعْبِ بْنِ مُرَّةَ مِمَّنْ لَا يُدْرَى مَنْ هُوَ.

L5263–5267 Ali said: “The narration states that ’There is no prayer after the onset of dawn except the two rak’ahs of Fajr.’” They are all discarded, abandoned, and fabricated. No one has narrated them except through the chain of ʿAbd al-Raḥmān ibn Ziyād ibn Anʿum—who is Malik—or through the chain of Abū Bakr ibn Muḥammad, who is unknown (his identity is undetermined) and not Ibn Ḥazm, or through the chain of Abū Hārūn al-ʿAbdī—who is discarded—or through the chain of Yasār, the client of Ibn ʿUmar. He is unknown and a *mudallis*, narrating from Kaʿb ibn Murrah—who is among those [narrators] whose identity is undetermined.

وَقَدْ قَالَ بِهَذَا جَمَاعَةٌ مِنْ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ أَفْلَحَ بْنِ حُمَيْدٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ قَالَ: كُنَّا نَأْتِي عَائِشَةَ أُمَّ الْمُؤْمِنِينَ قَبْلَ صَلَاةِ الْفَجْرِ؟ فَأَتَيْنَاهَا يَوْمًا فَإِذَا هِيَ تُصَلِّي، فَقُلْنَا: مَا هَذِهِ الصَّلَاةُ؟ فَقَالَتْ: إِنِّي نِمْت عَنْ حِزْبِي فَلَمْ أَكُنْ لِأَدَعَهُ؟ .

L5268 A group of the predecessors (Salaf) held this opinion—as narrated to us through the chain of Waki‘ from Aflaḥ ibn Ḥumayd from Al-Qāsim ibn Muḥammad ibn Abī Bakr, who said: “We used to visit ʿĀ’ishah, the Mother of the Belieurs, before the dawn prayer? One day, we came to her and found her praying. We asked: ’What is this prayer?’ She replied: ’I slept through my daily portion (of the Qur’an), so I would not abandon it?’”

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَالْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ كِلَاهُمَا عَنْ لَيْثٍ عَنْ مُجَاهِدٍ قَالَ: مَرَّ ابْنُ مَسْعُودٍ بِرَجُلَيْنِ يَتَكَلَّمَانِ بَعْدَ طُلُوعِ الْفَجْرِ، فَقَالَ: يَا هَذَانِ إمَّا أَنْ تُصَلِّيَا وَإِمَّا أَنْ تَسْكُتَا؟ وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ ابْنِ أَبِي نَجِيحٍ: أَنَّ طَاوُسًا قَالَ لِمُجَاهِدٍ: أَتَعْقِلُ؟ إذَا طَلَعَ الْفَجْرُ فَصَلِّ مَا شِئْت؟ .

L5269–5271 It has been narrated to us through the chain of Abd al-Razzaq from Sufyan al-Thawri and al-Mu’tamir ibn Sulayman al-Taymi, both of them from Layth, from Mujahid, who said: Ibn Mas’ud passed by two men who were speaking after the rising of dawn. He said: “O you two, either pray or remain silent?” And from Abd al-Razzaq from Sufyan ibn Uyaynah from Ibn Abi Najih: that Tawus said to Mujahid: “Do you not realize? When dawn appears, pray as much as you wish?”

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَبِيهِ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: صَلِّ بَعْدَ الْفَجْرِ مَا شِئْت؟ . وَمِنْ طَرِيقِ شُعْبَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ [عَنْ أَبِيهِ] أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِأَنْ يُصَلِّيَ بَعْدَ الْفَجْرِ أَكْثَرَ مِنْ رَكْعَتَيْنِ؟ ، وَرُوِّينَا ذَلِكَ أَيْضًا عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ وَغَيْرِهِ؟ .

L5272 From Abd al-Razzaq, from al-Muʿtamir ibn Sulayman al-Taymi, from his father, from al-Hasan al-Basri, who said: “Pray after Fajr as much as you wish.” And through another chain from Shuʿbah, from Hisham ibn Urwah [from his father], that he saw no harm in praying more than two rakʿahs after Fajr. And it was also narrated to us from ʿAṭāʾ ibn Abi Rabah and others.

L5273 Ali said: What is utterly astonishing is the manner in which these people adhere to the hadith of Uqbah ibn Amir al-Juhani, wherein it states: “The

Prophet (peace and blessings of Allah be upon him) prohibited us from burying Muslim dead during these times: when the sun emerges rising until it ascends, when the sun stands at midday zenith until it declines, and when the sun begins to set until it fully sets." No report has ever contradicted this prohibition at all. Yet they show no concern for disregarding it, permitting the burial of the dead during these times without expressing disapproval, while they prohibit compensating for voluntary prayers - with some even prohibiting compensating for obligatory prayers - despite the existence of textual evidences that directly oppose this very prohibition.

قَالَ عَلِيٌّ: وَالْعَجَبُ كُلُّهُ مِنْ تَعَلُّقِ هَؤُلَاءِ الْقَوْمِ بِحَدِيثِ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ، وَفِيهِ «نَهَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَنْ نَقْبُرَ مَوْتَى الْمُسْلِمِينَ وَهِيَ: حِينَ تَطْلُعُ الشَّمْسُ بَازِغَةً حَتَّى تَرْتَفِعَ، وَحِينَ يَقُومُ قَائِمُ الظَّهِيرَةِ حَتَّى تَمِيلَ الشَّمْسُ، وَحِينَ تَضَيَّفُ لِلْغُرُوبِ حَتَّى تَغْرُبَ» ، وَلَمْ يَأْتِ قَطُّ خَبَرٌ يُعَارِضُ هَذَا النَّهْيَ أَصْلًا - ثُمَّ لَا يُبَالُونَ بِإِطْرَاحِهِ، فَيُجِيزُونَ أَنْ تُقْبَرَ الْمَوْتَى فِي هَذِهِ الْأَوْقَاتِ دُونَ أَنْ يَكْرَهُوا ذَلِكَ، ثُمَّ يُحَرِّمُونَ قَضَاءَ التَّطَوُّعِ، وَبَعْضُهُمْ قَضَاءَ الْفَرْضِ، وَقَدْ جَاءَتْ النُّصُوصُ مُعَارِضَةً لِهَذَا النَّهْيِ.

L5274 Ali said: Burying the dead during these times is not permissible at all. As for praying over them—is it permissible during them due to the general command concerning that?

قَالَ عَلِيٌّ: وَلَا يَحِلُّ دَفْنُ الْمَوْتَى فِي هَذِهِ السَّاعَاتِ أَلْبَتَّةَ -، وَأَمَّا الصَّلَاةُ عَلَيْهِمْ فَجَائِزَةٌ بِهَا، لِلْأَمْرِ بِذَلِكَ عُمُومًا؟ .

L5275–5276 And as narrated to us by Ḥammām ibn Aḥmad from ʿAbbās ibn Aṣbagh from Muḥammad ibn ʿAbd al-Malik ibn Ayman from Muḥammad ibn Ismāʿīl al-Tirmidhī from Sufyān—he is the son of ʿUyaynah—who said: I heard ʿUbayd Allāh ibn ʿUmar say many times: I heard Nāfiʿ say: I heard Ibn ʿUmar say: I do not forbid anyone from praying at any hour they wish, night or day. But I act as I saw those I accompanied act. The Messenger of Allah (peace and blessings be upon him) said: "Do not intentionally align your prayers with the sun's rising or its setting."

وَلِمَا حَدَّثَنَا حَمَّامُ بْنُ أَحْمَدَ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ ثنا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ قَالَ سَمِعْت عُبَيْدَ اللَّهِ بْنَ عُمَرَ كَمْ مَرَّةً يَقُولُ: سَمِعْت نَافِعًا يَقُولُ: سَمِعْت ابْنَ عُمَرَ يَقُولُ: لَسْت أَنْهَى أَحَدًا صَلَّى أَيَّ سَاعَةٍ شَاءَ مِنْ لَيْلٍ أَوْ نَهَارٍ، وَلَكِنِّي أَفْعَلُ كَمَا رَأَيْت أَصْحَابِي يَفْعَلُونَ، وَقَدْ قَالَ رَسُولُ اللَّهِ: - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تَحَرَّوْا بِصَلَاتِكُمْ طُلُوعَ الشَّمْسِ، وَلَا غُرُوبَهَا» .

L5277 Ali said: Indeed, he (peace be upon him) prohibited seeking out prayer and intentionally engaging in it during these two times and specifically during the sun's zenith. It has been confirmed through this that the prescribed voluntary prayers and recommended acts to be performed during these times are the practice of the Companions (may Allah be pleased with them), for Ibn Umar reported that he only acted as he saw his companions doing—as we just mentioned from him—praying after the post-Fajr circumambulation before sunrise [and after ʿAṣr before sunset].

قَالَ عَلِيٌّ: فَإِنَّمَا نَهَى - عَلَيْهِ السَّلَامُ - عَنْ تَحَرِّي الصَّلَاةِ وَالْقَصْدَ إلَيْهَا فِي هَذَيْنِ الْوَقْتَيْنِ، وَفِي وَقْتِ الِاسْتِوَاءِ فَقَطْ، وَصَحَّ بِهَذَا أَنَّ التَّطَوُّعَ الْمَأْمُورَ بِهِ وَالْمَنْدُوبَ إلَيْهِ يُصَلَّى فِي هَذِهِ الْأَوْقَاتِ: هُوَ عَمَلُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؛ لِأَنَّ ابْنَ عُمَرَ أَخْبَرَ [أَنَّهُ] إنَّمَا

يَفْعَلُ كَمَا رَأَى أَصْحَابُهُ يَفْعَلُونَ: وَهُوَ كَمَا ذَكَرْنَا عَنْهُ آنِفًا - يُصَلِّي إِثْرَ الطَّوَافِ بَعْدَ صَلَاةِ الصُّبْحِ، وَقَبْلَ طُلُوعِ الشَّمْسِ، [وَبَعْدَ الْعَصْرِ قَبْلَ غُرُوبِ الشَّمْسِ] .

وَأَمَّا مَنْ رَأَى مِنْ أَصْحَابِنَا النَّهْيَ عَنْ الصَّلَاةِ بَعْدَ [صَلَاةِ] الْعَصْرِ مَنْسُوخًا بِصَلَاتِهِ - عَلَيْهِ السَّلَامُ - الرَّكْعَتَيْنِ -: فَكَانَ يَصِحُّ هَذَا لَوْلَا حَدِيثُ وَهْبِ بْنِ الْأَجْدَعِ الَّذِي ذَكَرْنَا - مِنْ إبَاحَتِهِ - عَلَيْهِ السَّلَامُ -: الصَّلَاةَ بَعْدَ الْعَصْرِ مَا دَامَتْ الشَّمْسُ مُرْتَفِعَةً؛ فَبَطَلَ النَّسْخُ فِي ذَلِكَ؟ .

وَصَحَّ أَنَّ النَّهْيَ لَيْسَ إلَّا عَنْ الْقَصْدِ بِالصَّلَاةِ إذَا اصْفَرَّتْ الشَّمْسُ وَضَافَتْ لِلْغُرُوبِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَنْصُورٍ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ قَالَ سَمِعْت مِنْ أَبِي الزُّبَيْرِ قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ بَابَاهُ عَنْ جُبَيْرِ بْنِ مُطْعِمٍ أَنَّهُ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يَا بَنِي عَبْدِ مَنَافٍ، لَا تَمْنَعُوا أَحَدًا طَافَ بِهَذَا الْبَيْتِ وَصَلَّى أَيَّةَ سَاعَةٍ شَاءَ مِنْ لَيْلٍ أَوْ نَهَارٍ» ؟ .

قَالَ عَلِيٌّ: وَإِسْلَامُ جُبَيْرٍ مُتَأَخِّرٌ جِدًّا، إنَّمَا أَسْلَمَ يَوْمَ الْفَتْحِ: وَهَذَا بِلَا شَكٍّ بَعْدَ نَهْيِهِ - عَلَيْهِ السَّلَامُ - عَنْ الصَّلَاةِ فِي الْأَوْقَاتِ الْمَذْكُورَةِ فَوَجَبَ اسْتِثْنَاءُ كُلِّ ذَلِكَ مِنْ النَّهْيِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ اخْتِصَاصُ لَيْلَةَ الْجُمُعَةِ بِصَلَاةٍ زَائِدَةٍ عَلَى سَائِرِ اللَّيَالِي]

٢٨٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ تُخَصَّ لَيْلَةُ الْجُمُعَةِ بِصَلَاةٍ زَائِدَةٍ عَلَى سَائِرِ اللَّيَالِي؟ .

L5278 As for those among our companions who considered the prohibition of prayer after the *ʿAṣr* prayer to be abrogated by the Prophet's (peace be upon him) two-unit prayer—this position would be valid were it not for the hadith of Wahb ibn al-Ajdaʿ, which we mentioned, concerning the Prophet's explicit permission (peace be upon him) to pray after *ʿAṣr* as long as the sun remains high. Thus, the abrogation [of the prohibition] in this matter is invalidated.

L5279–5281 It has been established that the prohibition applies only to deliberately performing the prayer when the sun turns yellow and begins to set. For sunset only—and success is from Allah, the Exalted.

L5282 Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: Muḥammad ibn Manṣūr said: Sufyān ibn ʿUyaynah narrated to us. He said: I heard from Abū al-Zubayr, who said: I heard ʿAbdullāh ibn Bābā narrating from Jubayr ibn Muṭʿim that he said: The Messenger of Allāh—peace and blessings be upon him—said, "O Banū ʿAbd Manāf, do not prevent anyone who performs ṭawāf around this House and prays at any time he wishes, whether night or day?"[20]

L5283 Ali said: "Jubayr's acceptance of Islam was very late, for he only embraced Islam on the Day of the Conquest. This is without doubt after the Prophet—peace be upon him—had prohibited prayer during the aforementioned times. Therefore, it is obligatory to exclude all such instances from the prohibition. And with Allah the Exalted lies success."

L5284 **Issue: The exclusive designation of Friday night for an extra prayer over the other nights.**

L5285 287 - Issue: It is not permissible to specifically designate the night of Friday

[20] **Hadith references (L5282):** Sunan an-Nasai 585; Jami at-Tirmidhi 868; Mishkat al-Masabih 1045.

for additional prayers, unlike other nights.

L5286 Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Abu Kuraib narrated to us, Husayn al-Ju'fi narrated to us from Za'idah from Hisham from Ibn Sirin from Abu Hurairah that the Prophet (peace and blessings be upon him) said: "Do not single out the night of Friday for night prayer among other nights." And he mentioned the rest of the hadith.[21]

L5287 ## Issue: The Best of Deeds

L5288–5290 C:AH,AQ Issue 288: The best deeds are those that have been authentically established that the Messenger of Allah ﷺ did it, and those that are consistently practiced, even if they are few. That is more beloved to us than increasing upon them. The demonstration of that is the saying of Allah, 'Indeed, in the Messenger of Allah you have an excellent example' (Sūrat al-Aḥzāb: 21). And he ﷺ would not have abandoned what is best.[22]

L5291 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us. Muslim ibn al-Hajjaj narrated to me, quoting Muhammad ibn al-Muthanna, who narrated to us from Abdul Wahhab al-Thaqafi, who narrated from Ubaydullah ibn Umar, who narrated from Sa'id ibn Abi Sa'id al-Maqburi, from Abu Salama ibn Abd al-Rahman, from Aisha, that the Messenger of Allah, peace be upon him, said: "O people, engage in deeds within your capacity, for Allah does not grow weary of rewarding until you grow weary of acting. The deeds most beloved to Allah are those performed consistently, even if small."[23]

L5292 ## A Question Regarding Supererogatory Prayer in Congre-

لَمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو كُرَيْبٍ ثنا حُسَيْنٌ الْجُعْفِيُّ عَنْ زَائِدَةَ عَنْ هِشَامٍ عَنِ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَخْتَصُّوا لَيْلَةَ الْجُمُعَةِ بِقِيَامٍ مِنْ بَيْنِ اللَّيَالِي» ، وَذَكَرَ بَاقِيَ الْحَدِيثِ.؟

[مَسْأَلَةٌ خَيْرُ الْأَعْمَالِ]

٢٨٨ - مَسْأَلَةٌ: وَخَيْرُ الْأَعْمَالِ مَا ثَبَتَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَمِلَهُ وَمَا دُووِمَ عَلَيْهِ وَإِنْ قَلَّ، وَذَلِكَ أَحَبُّ إِلَيْنَا مِنَ الزِّيَادَةِ عَلَيْهِ بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] وَمَا كَانَ - عَلَيْهِ السَّلَامُ - لِيَدَعَ الْأَفْضَلَ.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي مُحَمَّدُ بْنُ الْمُثَنَّى ثنا عَبْدُ الْوَهَّابِ هُوَ الثَّقَفِيُّ - ثنا عُبَيْدُ اللَّهِ هُوَ ابْنُ عُمَرَ - عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يَا أَيُّهَا النَّاسُ عَلَيْكُمْ مِنَ الْأَعْمَالِ مَا تُطِيقُونَ فَإِنَّ اللَّهَ لَا يَمَلُّ حَتَّى تَمَلُّوا وَإِنَّ أَحَبَّ الْأَعْمَالِ إِلَى اللَّهِ مَا دُووِمَ عَلَيْهِ وَإِنْ قَلَّ» .

[مَسْأَلَةُ صَلَاةُ التَّطَوُّعِ فِي الْجَمَاعَةِ]

[21] **Hadith references (L5286):** Sahih Muslim 1144b; Mishkat al-Masabih 2052.
[22] **Qur'an references (L5288):** Qur'an 33:21 (Al-Ahzab).
[23] **Hadith references (L5291):** Sahih Muslim 782a.

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L5293 Issue 289: Voluntary prayers performed in congregation are more virtuous than those performed individually. Every voluntary prayer is better in homes than in mosques, except those performed in congregation in the mosque, which are more virtuous.

٢٨٩ - مَسْأَلَةٌ: وَصَلَاةُ التَّطَوُّعِ فِي الْجَمَاعَةِ أَفْضَلُ مِنْهَا مُنْفَرِدًا، وَكُلُّ تَطَوُّعٍ فَهُوَ فِي الْبُيُوتِ أَفْضَلُ مِنْهُ فِي الْمَسَاجِدِ إِلَّا مَا صَلَّى مِنْهُ جَمَاعَةً فِي الْمَسْجِدِ فَهُوَ أَفْضَلُ.

L5294 Abdullah ibn Rabi' narrated to us, Umar ibn Abdul-Malik narrated to us, Muhammad ibn Bakr narrated to us, Abu Dawud narrated to us, Musaddad narrated to us, Abu Mu'awiyah narrated to us from Al-A'mash from Abu Salih from Abu Hurairah, who said: The Messenger of Allah—peace be upon him—said, "A man's prayer in congregation exceeds his prayer in his home and his market by twenty-five ranks." The remainder of the hadith was mentioned. This is a general ruling for every prayer, whether obligatory or voluntary.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا مُسَدَّدٌ ثنا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «صَلَاةُ الرَّجُلِ فِي جَمَاعَةٍ تَزِيدُ عَلَى صَلَاتِهِ فِي بَيْتِهِ وَسُوقِهِ خَمْسًا وَعِشْرِينَ دَرَجَةً» وَذَكَرَ بَاقِيَ الْحَدِيثِ، وَهَذَا عُمُومٌ لِكُلِّ صَلَاةٍ فَرْضٍ أَوْ تَطَوُّعٍ.

L5295–5297 And it has been narrated to us through the chain of Mālik, from Isḥāq ibn ʿAbdullāh ibn Abī Ṭalḥah, from Anas that his grandmother Mulaykah invited the Messenger of Allah (May Allah bless him and grant him peace) to a meal she had prepared. He ate from it, then said: "Rise, and I will lead you in prayer." "For you, the Messenger of Allah—peace be upon him—stood up. I lined up with the orphan behind him, and the elderly woman behind us. Then the Messenger of Allah—peace be upon him—prayed two rak'ahs for us and departed."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ عَنْ «أَنَسٍ أَنَّ جَدَّتَهُ مُلَيْكَةَ دَعَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِطَعَامٍ صَنَعَتْهُ فَأَكَلَ مِنْهُ، ثُمَّ قَالَ: قُومُوا فَلْأُصَلِّ لَكُمْ، فَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَصَفَفْتُ أَنَا وَالْيَتِيمُ وَرَاءَهُ وَالْعَجُوزُ مِنْ وَرَائِنَا، فَصَلَّى لَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَكْعَتَيْنِ وَانْصَرَفَ» .

L5298 The Prophet (peace be upon him) led the people in voluntary prayers at the mosque when he led them from the pulpit, and he also led voluntary prayers at the house of ʿItbān ibn Mālik.

وَقَدْ صَلَّى - عَلَيْهِ السَّلَامُ - بِالنَّاسِ فِي الْمَسْجِدِ تَطَوُّعًا إذْ أَمَّهُمْ عَلَى الْمِنْبَرِ وَفِي بَيْتِ عِتْبَانَ بْنِ مَالِكٍ.

L5299 Ibn al-Zubayr led the people in two rak'ahs of prayer after the Asr Prayer in congregation at the Sacred Mosque, and Anas also did likewise.

قَدْ صَلَّى ابْنُ الزُّبَيْرِ بِالنَّاسِ فِي الْمَسْجِدِ الْحَرَامِ رَكْعَتَيْنِ بَعْدَ الْعَصْرِ جَمَاعَةً وَكَذَلِكَ أَنَسٌ أَيْضًا.

L5300 And through him to Abu Dawud: Ahmad ibn Salih narrated to us, Ibn Wahb narrated to us, Sulayman ibn Bilal informed me from Ibrahim ibn Abi al-Nadr from his father from Busr ibn Sa'id from Zayd ibn Thabit that the Prophet—peace and blessings of Allah be upon him—said: "A person's prayer

وَبِهِ إلَى أَبِي دَاوُد: ثنا أَحْمَدُ بْنُ صَالِحٍ ثنا ابْنُ وَهْبٍ أَخْبَرَنِي سُلَيْمَانُ بْنُ بِلَالٍ عَنْ إبْرَاهِيمَ بْنِ أَبِي النَّضْرِ عَنْ أَبِيهِ عَنْ بُسْرِ بْنِ سَعِيدٍ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ

in his home is better than his prayer in the mosque except the obligatory prayer." And it was narrated to us from Abd al-Rahman ibn Mahdi: Sufyan al-Thawri narrated to us from Mansur ibn al-Mu'tamir and al-Nu'man ibn Qays; Mansur reported from Mujahid—Abu Ma'mar said to me: "When you pray the obligatory prayer, return to your home."

وَسَلَّمَ - قَالَ: «صَلَاةُ الْمَرْءِ فِي بَيْتِهِ أَفْضَلُ مِنْ صَلَاتِهِ فِي مَسْجِدٍ إِلَّا الْمَكْتُوبَةَ» ، وَرُوِّينَا عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ: ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ، وَالنُّعْمَانِ بْنِ قَيْسٍ، قَالَ مَنْصُورٌ: عَنْ مُجَاهِدٍ قَالَ لِي أَبُو مَعْمَرٍ: إِذَا صَلَّيْت الْمَكْتُوبَةَ فَارْجِعْ إِلَى بَيْتِك.

L5301 And al-Nu'mān ibn Qays said: "Have I never seen ʿAbīdah al-Salmānī perform voluntary prayers in the local mosque?"

وَقَالَ النُّعْمَانُ بْنُ قَيْسٍ مَا رَأَيْت عَبِيدَةَ السَّلْمَانِيَّ مُتَطَوِّعًا فِي مَسْجِدِ الْحَيِّ قَطُّ؟ .

L5302–5304 It has been narrated to us from Ibn al-Muthannā: Abū ʻĀṣim al-Ḍaḥḥāk ibn Mukhlid narrated to us, Sufyān al-Thawrī narrated to us from... Mansur reported from Hilal ibn Yasaf from Damrah ibn Habib from a man among the Companions of the Prophet—peace and blessings of Allah be upon him—who said: "A man's voluntary prayer in his home is superior to his voluntary prayer in public, like the superiority of congregational prayer over a man's prayer alone."

وَرُوِّينَا عَنْ ابْنِ الْمُثَنَّى: ثنا أَبُو عَاصِمٍ الضَّحَّاكُ بْنُ مُخْلِدٍ ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورٍ عَنْ هِلَالِ بْنِ يَسَافٍ عَنْ ضَمْرَةَ بْنِ حَبِيبٍ عَنْ رَجُلٍ مِنْ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: تَطَوُّعُ الرَّجُلِ فِي بَيْتِهِ يَزِيدُ عَلَى تَطَوُّعِهِ عِنْدَ النَّاسِ كَفَضْلِ الْجَمَاعَةِ عَلَى صَلَاةِ الرَّجُلِ وَحْدَهُ؟ .

L5305 And through him to Ibn al-Muthannā: ʿAbd al-Raḥmān ibn Mahdī narrated to us from Isrāʾīl, from ʿImrān ibn Muslim, who said: "Suwayd ibn Ghaflah would not perform supererogatory prayers in the mosque."

وَبِهِ إلَى ابْنِ الْمُثَنَّى: ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ ثنا إسْرَائِيلُ عَنْ عِمْرَانَ بْنِ مُسْلِمٍ قَالَ: كَانَ سُوَيْدُ بْنُ غَفَلَةَ لَا يَتَطَوَّعُ فِي الْمَسْجِدِ.

L5306 It was narrated to us from Waki' that he said: Sufyan al-Thawri said that Nusayr ibn Dhū'l-ʿUq said: I never saw Ar-Rabi' ibn Khuthaym performing voluntary prayers in the mosque of the neighborhood at all.

وَرُوِّينَا عَنْ وَكِيعٍ قَالَ: قَالَ سُفْيَانُ الثَّوْرِيُّ قَالَ نُسَيْرُ بْنُ ذُعْلُوقٍ مَا رَأَيْت الرَّبِيعَ بْنَ خُثَيْمٍ مُتَطَوِّعًا فِي مَسْجِدِ الْحَيِّ قَطُّ.

L5307 Narrated by Waki' from Al-A'mash from Ibrāhīm An-Nakha'ī, who said: Ḥudhayfah ibn Al-Yaman was asked about voluntary prayers in the mosque after the obligatory prayer?

وَعَنْ وَكِيعٍ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ سُئِلَ حُذَيْفَةُ بْنُ الْيَمَانِ عَنْ التَّطَوُّعِ فِي الْمَسْجِدِ بَعْدَ الْفَرِيضَةِ؟

L5308–5309 He said: "I indeed disapprove of it; even when they are united, they suddenly disagreed."

فَقَالَ: إنِّي لَأَكْرَهُهُ، بَيْنَمَا هُمْ جَمِيعًا إذَا اخْتَلَفُوا.

L5310 And from Hammad ibn Salamah, from Muhammad ibn Ishaq, from al-Abbas ibn Sa'd, who said: "Did I encounter people during the time of Uthman ibn Affan praying the two rak'ahs after Maghrib in their homes?"

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ الْعَبَّاسِ بْنِ سَعْدٍ قَالَ: أَدْرَكْت النَّاسَ زَمَانَ عُثْمَانَ بْنِ عَفَّانَ وَهُمْ يُصَلُّونَ الرَّكْعَتَيْنِ بَعْدَ الْمَغْرِبِ فِي بُيُوتِهِمْ؟ .

L5311 The voluntary prayers after Friday and after all other prayers are treated equally in the rulings we have discussed, and all of that is also permissible to perform in the mosque. Abū Ḥanīfa and his companions said: "All of that is superior when performed in the mosque." Mālik said: "All of that is superior when performed in the mosque except after Friday prayer, for he deemed it reprehensible to perform voluntary prayers in the mosque after Friday." Some of his companions argued that this was a precaution to block the means, lest sectarian innovators—who do not regard prayer led by the imams as valid—adopt it as a practice.

وَالتَّطَوُّعُ بَعْدَ الْجُمُعَةِ وَبَعْدَ سَائِرِ الصَّلَوَاتِ سَوَاءٌ فِيمَا ذَكَرْنَا، وَكُلُّ ذَلِكَ جَائِزٌ فِي الْمَسْجِدِ أَيْضًا، وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: كُلُّ ذَلِكَ فِي الْمَسْجِدِ أَفْضَلُ وَقَالَ مَالِكٌ: كُلُّ ذَلِكَ فِي الْمَسْجِدِ أَفْضَلُ إلَّا بَعْدَ الْجُمُعَةِ فَإِنَّهُ كَرِهَ التَّطَوُّعَ فِي الْمَسْجِدِ بَعْدَ الْجُمُعَةِ وَاحْتَجَّ بَعْضُ أَصْحَابِهِ بِأَنَّ هَذَا خَوْفُ الذَّرِيعَةِ فِي أَنْ يَقْضِيَهَا أَهْلُ الْبِدَعِ الَّذِينَ لَا يَعْتَدُّونَ بِالصَّلَاةِ مَعَ الْأَئِمَّةِ؟ .

L5312 Ali said: "This represents the utmost corruption in speech, for the heretical innovator also does the same in mosques designated for congregational prayers during all acts of worship, and he makes no distinction."

قَالَ عَلِيٌّ: وَهَذَا غَايَةٌ فِي الْفَسَادِ مِنْ الْقَوْلِ، لِأَنَّ الْمُبْتَدِعَ يَفْعَلُ مِثْلَ ذَلِكَ أَيْضًا فِي مَسَاجِدِ الْجَمَاعَاتِ بِسَائِرِ الصَّلَوَاتِ وَلَا فَرْقَ.

L5313 Moreover, can they return to their homes and perform it there? It was reported to us through the chain of Abu Dawud: Ibrāhīm ibn al-Ḥasan narrated to us, Ḥajjāj ibn Muḥammad narrated from Ibn Jurayj, who informed me that ʿAṭāʾ said: He saw Ibn ʿUmar pray after Jumuʿah, moving away slightly, not excessively, from the place where he had prayed Jumuʿah, then performing two rakʿahs. He would then move to a more spacious area and pray four rakʿahs. ʿAṭāʾ said: I saw him do this repeatedly.

وَأَيْضًا: فَهُمْ قَادِرُونَ عَلَى أَنْ يَنْصَرِفُوا إلَى بُيُوتِهِمْ فَيَقْضُونَهَا هُنَالِكَ؟ رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد: ثنا إبْرَاهِيمُ بْنُ الْحَسَنِ ثنا حَجَّاجُ بْنُ مُحَمَّدٍ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَطَاءٌ: أَنَّهُ رَأَى ابْنَ عُمَرَ يُصَلِّي بَعْدَ الْجُمُعَةِ فَيَنْمَازُ عَنْ مُصَلَّاهُ الَّذِي صَلَّى فِيهِ الْجُمُعَةَ قَلِيلًا غَيْرَ كَثِيرٍ، فَيَرْكَعُ رَكْعَتَيْنِ ثُمَّ يَمْشِي أَنْفَسَ مِنْ ذَلِكَ فَيُصَلِّي أَرْبَعَ رَكَعَاتٍ رَأَيْته يَصْنَعُ ذَلِكَ مِرَارًا.

L5314 From Muhammad ibn al-Muthanna: Al-Muʿtamir ibn Sulayman al-Taymi narrated to us, saying: I heard 'Ata' ibn al-Sa'ib narrating from Abu 'Abd al-Rahman al-Sulami, who said: Ibn Masʿud used to teach us to pray four rakʿahs after Jumuʿah, so we would pray four rakʿahs afterward; until 'Ali ibn Abi Talib came, he commanded us to pray six rakʿahs after it, and thus we pray six rakʿahs after it?

وَعَنْ مُحَمَّدِ بْنِ الْمُثَنَّى: ثنا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيّ قَالَ سَمِعْت عَطَاءَ بْنَ السَّائِبِ يُحَدِّثُ عَنْ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ قَالَ: كَانَ ابْنُ مَسْعُودٍ يُعَلِّمُنَا أَنْ نُصَلِّيَ بَعْدَ الْجُمُعَةِ أَرْبَعًا فَكُنَّا نُصَلِّي بَعْدَهَا أَرْبَعًا، حَتَّى جَاءَ عَلِيُّ بْنُ أَبِي طَالِبٍ فَأَمَرَنَا أَنْ نُصَلِّيَ بَعْدَهَا سِتًّا، فَنَحْنُ نُصَلِّي بَعْدَهَا سِتًّا؟ .

L5315–5317 Hammam narrated to us: Abbas ibn Asbagh narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, Muhammad ibn Isma'il al-Tirmidhi

narrated to us. Al-Humaidi narrated to us; Sufyan ibn Uyaynah narrated to us; Amr ibn Dinar narrated to us (before we met Al-Zuhri) from Al-Zuhri, from Salim ibn Abdullah ibn Umar, from his father, who said: "I saw the Messenger of Allah (peace be upon him) pray two units of prayer (rak'ahs) after the Friday prayer."

وَقَدْ حَدَّثَنَا حَمَّامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ ثنا الْحُمَيْدِيُّ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ ثنا عَمْرُو بْنُ دِينَارٍ قَبْلَ أَنْ نَلْقَى الزُّهْرِيَّ عَنِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: «رَأَيْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي بَعْدَ الْجُمُعَةِ رَكْعَتَيْنِ» .

Issue: The Most Excellent Witr

[مَسْأَلَةٌ أَفْضَلُ الْوِتْرِ]

290. Issue: The best time for Witr is the latter part of the night. A single rak'ah suffices. Witr and Tahajjud may be performed in thirteen ways; whichever of these one performs is valid. The most beloved to us and the best of them is that we pray twelve rak'ahs - offering salutations after every two rak'ahs - then pray one rak'ah and conclude with salutations.

٢٩٠ - مَسْأَلَةٌ: وَأَفْضَلُ الْوِتْرِ مِنْ آخِرِ اللَّيْلِ، وَتُجْزِئُ رَكْعَةٌ وَاحِدَةٌ وَالْوِتْرُ وَتَهَجُّدُ اللَّيْلِ يَنْقَسِمُ عَلَى ثَلَاثَةَ عَشَرَ وَجْهًا، أَيُّهَا فَعَلَ أَجْزَأَهُ، وَأَحَبُّهَا إلَيْنَا، وَأَفْضَلُهَا: أَنْ نُصَلِّيَ ثِنْتَيْ عَشْرَةَ رَكْعَةً، نُسَلِّمُ مِنْ كُلِّ رَكْعَتَيْنِ ثُمَّ نُصَلِّي رَكْعَةً وَاحِدَةً وَنُسَلِّمُ؟ .

Abdullah ibn Rabee' narrated to us: 'Umar ibn 'Abd al-Malik narrated to us, Ibn al-A'rabī narrated to us, Abu Dawud narrated to us, al-Qaʿnabī narrated to us, Malik ibn Anas narrated from Hisham ibn 'Urwah from his father from 'A'ishah: "The Prophet (peace be upon him) used to pray thirteen *rakʿahs* at night, then when he heard the call to dawn prayer, he would pray two brief *rakʿahs*."[24]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا الْقَعْنَبِيُّ ثنا مَالِكُ بْنُ أَنَسٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ: «أَنَّ نَبِيَّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُصَلِّي بِاللَّيْلِ ثَلَاثَ عَشْرَةَ رَكْعَةً، ثُمَّ يُصَلِّي إذَا سَمِعَ النِّدَاءَ بِالصُّبْحِ رَكْعَتَيْنِ خَفِيفَتَيْنِ» .

The second manner is to pray eight rak'ahs, saying the salutation after every two rak'ahs, then to pray five consecutive rak'ahs without sitting except in the final one?

وَالْوَجْهُ الثَّانِي: أَنْ يُصَلِّيَ ثَمَانِيَ رَكَعَاتٍ، يُسَلِّمُ مِنْ كُلِّ رَكْعَتَيْنِ مِنْهَا، ثُمَّ يُصَلِّي خَمْسَ رَكَعَاتٍ مُتَّصِلَاتٍ لَا يَجْلِسُ إلَّا فِي آخِرِهِنَّ؟ .

Abdullah ibn Rabee' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Ishaq ibn Ibrahim narrated to us: Abdah ibn Sulayman narrated to us: Hisham ibn Urwah narrated from his father from Aishah, who said: "The Messenger of Allah (peace and blessings of Allah be upon him) used to pray thirteen rak'ahs at night, performing Witr

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ ثنا عَبْدَةُ بْنُ سُلَيْمَانَ ثنا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي مِنْ اللَّيْلِ ثَلَاثَ عَشْرَةَ رَكْعَةً، يُوتِرُ مِنْهُنَّ بِخَمْسِ رَكَعَاتٍ، لَا يَجْلِسُ فِي شَيْءٍ مِنْ الْخَمْسِ إلَّا فِي آخِرِهِنَّ، ثُمَّ يَجْلِسُ وَيُسَلِّمُ» .

[24] **Hadith references (L5320):** Sahih al-Bukhari 1164.

with five of them. He would not sit during any of the five rak'ahs except in the final one. Then he would sit and utter the *Tasleem*."

L5323–5324 The third is to pray ten rak'ahs, reciting the taslim at the end of every two rak'ahs, then perform the witr with one?

L5325 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to me: Harmalah ibn Yahya narrated to me: Ibn Wahb narrated to us: Amr ibn al-Harith informed me from Ibn Shihab from Urwah ibn al-Zubayr from Aisha, the Mother of the Believers, who said: "The Messenger of Allah - peace and blessings be upon him - used to pray between the conclusion of the Isha prayer (which people call al-ʿatamah) and dawn eleven rakʿahs, offering the salutation after every two rakʿahs, then concluding with a single rakʿah as Witr"?

L5326 The fourth: to pray eight rak'ahs, reciting the salutation after every two, then perform witr with one. This is based on what we reported through Muslim's chain: Muḥammad ibn ʿAbbād narrated to us, Sufyān ibn ʿUyaynah narrated to us, al-Zuhrī narrated to us from Sālim ibn ʿAbd Allāh ibn ʿUmar from his father: "A man asked the Messenger of Allah—peace and blessings be upon him—about the night prayer. He replied: 'Pray two units at a time. When you fear the arrival of dawn, perform witr with one rak'ah.'"

L5327–5328 The fifth: to pray eight rakʿahs without sitting for the Tashahhud in any of them except the final one. When he sits in the last rakʿah and recites the Tashahhud, he rises without performing the Taslim. He then prays a single rakʿah, sits again, recites the Tashahhud, and performs the Taslim. This is based on what we have narrated from Muslim: Muḥammad ibn al-Muthannā narrated to us, Muḥammad ibn Abī ʿAdiyy narrated to us, from Saʿīd ibn Abī ʿArūbah, from Qatādah, from Zurārah ibn Awfā, that Saʿd ibn Hishām ibn ʿĀmir came to Ibn ʿAbbās and asked him about the Witr prayer of the Messenger of Allah, peace and blessings be upon him. Ibn ʿAbbās said: "Shall I direct you to the most knowledgeable person on earth regarding the Witr prayer of the Messenger of Allah, peace and blessings be upon him?"

وَالثَّالِثُ: أَنْ يُصَلِّيَ عَشْرَ رَكَعَاتٍ، يُسَلِّمُ مِنْ آخِرِ كُلِّ رَكْعَتَيْنِ، ثُمَّ يُوتِرُ بِوَاحِدَةٍ؟ .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى ثنا ابْنُ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنِ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي فِيمَا بَيْنَ أَنْ يَفْرُغَ مِنْ صَلَاةِ الْعِشَاءِ - وَهِيَ الَّتِي يَدْعُو النَّاسُ الْعَتَمَةَ - إِلَى الْفَجْرِ إِحْدَى عَشْرَةَ رَكْعَةً، يُسَلِّمُ مِنْ كُلِّ رَكْعَتَيْنِ ثُمَّ يُوتِرُ بِوَاحِدَةٍ» ؟ .

وَالرَّابِعُ: أَنْ يُصَلِّيَ ثَمَانِيَ رَكَعَاتٍ، يُسَلِّمُ مِنْ كُلِّ رَكْعَتَيْنِ، ثُمَّ يُوتِرُ بِوَاحِدَةٍ: - لِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ: حَدَّثَنَا مُحَمَّدُ بْنُ عَبَّادٍ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ ثنا الزُّهْرِيُّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ «أَنَّ رَجُلًا سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ صَلَاةِ اللَّيْلِ؟ فَقَالَ: مَثْنَى مَثْنَى، فَإِذَا خَشِيتَ الصُّبْحَ فَأَوْتِرْ بِرَكْعَةٍ» .

وَالْخَامِسُ: أَنْ يُصَلِّيَ ثَمَانِيَ رَكَعَاتٍ، لَا يَجْلِسُ فِي شَيْءٍ مِنْهُنَّ جُلُوسَ تَشَهُّدٍ إِلَّا فِي آخِرِهَا، فَإِذَا جَلَسَ فِي آخِرِهِنَّ وَتَشَهَّدَ: قَامَ دُونَ أَنْ يُسَلِّمَ، فَأَتَى بِرَكْعَةٍ وَاحِدَةٍ، ثُمَّ يَجْلِسُ وَيَتَشَهَّدُ وَيُسَلِّمُ: - لِمَا رُوِّينَا عَنْ مُسْلِمٍ: حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ زُرَارَةَ بْنِ أَوْفَى أَنَّ «سَعْدَ بْنَ هِشَامِ بْنِ عَامِرٍ أَتَى ابْنَ عَبَّاسٍ فَسَأَلَهُ عَنْ وِتْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَقَالَ لَهُ ابْنُ عَبَّاسٍ: أَلَا أَدُلُّك عَلَى أَعْلَمِ أَهْلِ الْأَرْضِ بِوِتْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

-؟ قَالَ: مَنْ؟ قَالَ: عَائِشَةُ. فَذَكَرَ سَعْدٌ: أَنَّهُ دَخَلَ عَلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَسَأَلَهَا عَنْ وِتْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّهَا قَالَتْ لَهُ: إِنَّهُ كَانَ يُصَلِّي تِسْعَ رَكَعَاتٍ، لَا يَجْلِسُ فِيهَا إِلَّا فِي الثَّامِنَةِ، ثُمَّ يَنْهَضُ وَلَا يُسَلِّمُ، ثُمَّ يَقُومُ فَيُصَلِّي التَّاسِعَةَ، ثُمَّ يَقْعُدُ فَيَذْكُرُ اللَّهَ وَيَحْمَدُهُ وَيَدْعُوهُ، ثُمَّ يُسَلِّمُ تَسْلِيمًا يُسْمِعُنَا، ثُمَّ يُصَلِّي رَكْعَتَيْنِ بَعْدَ مَا يُسَلِّمُ، وَهُوَ قَاعِدٌ، فَلَمَّا أَسَنَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَخَذَهُ اللَّحْمُ أَوْتَرَ بِسَبْعٍ، وَصَنَعَ فِي الرَّكْعَتَيْنِ مِثْلَ صَنِيعِهِ الْأَوَّلِ» .

Saʿd asked: “Who is that?” He replied: “ʿĀʾishah.” Saʿd mentioned that he visited ʿĀʾishah, the Mother of the Believers, and inquired about the Witr prayer of the Messenger of Allah, peace and blessings be upon him. She said: “He would pray nine rakʿahs, sitting only in the eighth. Then he would rise without performing the Taslim, stand to pray the ninth rakʿah, sit again to remember Allah, praise Him, and invoke Him, then perform the Taslim audibly to us. Afterward, he would pray two rakʿahs while seated following the Taslim. When the Messenger of Allah, peace and blessings be upon him, grew advanced in age and his body grew frail, he performed Witr with seven, performing the two rakʿahs as he had done before.”

L5329–5331 حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عُثْمَانُ بْنُ عَبْدِ اللَّهِ ثنا عُبَيْدُ اللَّهِ بْنُ مُحَمَّدٍ ثنا حَمَّادٌ عَنْ أَبِي حُرَّةَ عَنْ الْحَسَنِ عَنْ سَعْدِ بْنِ هِشَامٍ عَنْ عَائِشَةَ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُوتِرُ بِتِسْعِ رَكَعَاتٍ، يَقْعُدُ فِي الثَّامِنَةِ، ثُمَّ يَقُومُ فَيَرْكَعُ رَكْعَةً» ؟ .

Abdullah ibn Rabee’ narrated to us; Muhammad ibn Mu’awiyah narrated to us; Ahmad ibn Shu’ayb narrated to us: I am Uthman ibn Abdullah. ‘Ubaydullāh ibn Muḥammad narrated to us that Ḥammād narrated from Abū Ḥurraha al-Ḥasan from Saʿd ibn Hishām from ʿĀʾishah: “The Prophet (peace be upon him) used to pray Witr with nine rakʿahs. He would sit in the eighth unit; then rise and bow in a single rakʿah?”

L5332 وَالسَّادِسُ: أَنْ يُصَلِّيَ سِتَّ رَكَعَاتٍ، يُسَلِّمُ فِي آخِرِ كُلِّ رَكْعَتَيْنِ مِنْهَا، وَيُوتِرُ بِسَابِعَةٍ؛ لِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «صَلَاةُ اللَّيْلِ مَثْنَى مَثْنَى فَإِذَا خَشِيتَ الصُّبْحَ فَأَوْتِرْ بِوَاحِدَةٍ» ؟ .

The sixth [method]: to pray six rakʿahs, reciting the salām after every two rakʿahs, and conclude with a seventh rakʿah as witr—as the Prophet (peace be upon him) said: “Night prayer is offered two by two. If you anticipate the approach of dawn, observe witr with one rakʿah.”

L5333 وَالسَّابِعُ: أَنْ يُصَلِّيَ سَبْعَ رَكَعَاتٍ، لَا يَجْلِسُ وَلَا يَتَشَهَّدُ إِلَّا فِي آخِرِ السَّادِسَةِ مِنْهُنَّ، ثُمَّ يَقُومُ دُونَ تَسْلِيمٍ فَيَأْتِي بِالسَّابِعَةِ، ثُمَّ يَجْلِسُ وَيَتَشَهَّدُ وَيُسَلِّمُ.

The seventh method is to pray seven units, neither sitting nor reciting the Tashahhud except at the end of the sixth of them. One then rises without offering the Taslim, proceeds to the seventh unit, sits to recite the Tashahhud, and performs the Taslim.

L5334 حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي زَكَرِيَّاءُ بْنُ يَحْيَى ثنا إِسْحَاقُ أَنَا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ ثنا أَبِي عَنْ قَتَادَةَ عَنْ زُرَارَةَ بْنِ أَوْفَى عَنْ سَعْدِ بْنِ هِشَامِ بْنِ عَامِرٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: Zakariyyā ibn Yaḥyā informed me: Isḥāq narrated to us: Muʿādh ibn Hishām al-Dastuwāʾī narrated to us: My father narrated from Qatādah from Zurārah ibn Awfā from Saʿd ibn Hishām ibn ʿĀmir from ʿĀʾishah, the Mother of the Believers: “When the Messenger of Allah (peace and blessings be upon him) grew old and became frail, he performed Witr with seven rakʿahs, sitting only in the sixth rakʿah, then

rising without performing the taslīm. He would pray the seventh rakʿah, then perform a single taslīm." And he mentioned the hadith.

لَمَّا كَبِرَ وَضَعُفَ أَوْتَرَ بِسَبْعِ رَكَعَاتٍ، لَا يَقْعُدُ إِلَّا فِي السَّادِسَةِ، ثُمَّ يَنْهَضُ وَلَا يُسَلِّمُ فَيُصَلِّي السَّابِعَةَ، ثُمَّ يُسَلِّمُ تَسْلِيمَةً» وَذَكَرَ الْحَدِيثَ.

L5335–5336 The eighth: To pray seven rakʿahs without sitting in the posture for the Tashahhud except in the final one. When he is in the final one, he sits, recites the Tashahhud, and offers the salutation: We have narrated via the aforementioned chain from Aḥmad ibn Shuʿayb: I am Ismāʿīl ibn Masʿūd al-Jaḥdarī; I am Khālid ibn al-Ḥārith; he narrated from Saʿīd ibn Abī ʿArūbah; he narrated from Qatādah; he narrated from Zurārah ibn Awfā; he narrated from Saʿd ibn Hishām ibn ʿĀmir, that ʿĀishah, the Mother of the Believers, said: "When the Messenger of Allah—may Allah bless him and grant him peace—grew old and put on weight, he would pray seven rakʿahs without sitting except in the final one. Then he would pray two rakʿahs after saying the salutation."

وَالثَّامِنُ: أَنْ يُصَلِّيَ سَبْعَ رَكَعَاتٍ، لَا يَجْلِسُ جُلُوسَ تَشَهُّدٍ إِلَّا فِي آخِرِهِنَّ فَإِذَا كَانَ فِي آخِرِهِنَّ جَلَسَ وَتَشَهَّدَ وَسَلَّمَ - لِمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى أَحْمَدَ بْنِ شُعَيْبٍ: أَنَا إِسْمَاعِيلُ بْنُ مَسْعُودٍ الْجَحْدَرِيُّ أَنَا خَالِدُ بْنُ الْحَارِثِ ثنا سَعِيدُ بْنُ أَبِي عَرُوبَةَ ثنا قَتَادَةُ عَنْ زُرَارَةَ بْنِ أَوْفَى عَنْ سَعْدِ بْنِ هِشَامِ بْنِ عَامِرٍ أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ قَالَتْ «لَمَّا أَسَنَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَخَذَهُ اللَّحْمُ صَلَّى سَبْعَ رَكَعَاتٍ لَا يَقْعُدُ إِلَّا فِي آخِرِهِنَّ، ثُمَّ يُصَلِّي رَكْعَتَيْنِ بَعْدَ أَنْ يُسَلِّمَ» .

L5337 The ninth is to pray four rakʿahs, reciting the Tashahhud and concluding with the Salām after every two rakʿahs, then perform Witr with one rakʿah, based on the Prophet's statement (peace be upon him): "The night prayer is offered two by two. If you fear that dawn is approaching, then perform Witr with one rakʿah."

وَالتَّاسِعُ: أَنْ يُصَلِّيَ أَرْبَعَ رَكَعَاتٍ، يَتَشَهَّدُ وَيُسَلِّمُ مِنْ كُلِّ رَكْعَتَيْنِ، ثُمَّ يُوتِرُ بِوَاحِدَةٍ؛ لِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «صَلَاةُ اللَّيْلِ مَثْنَى مَثْنَى، فَإِذَا خَشِيتَ الصُّبْحَ فَأَوْتِرْ بِوَاحِدَةٍ» .

L5338 The tenth is to pray five consecutive rak'ahs without sitting or reciting the Tashahhud except in the last of them—as we have reported through the cited chain to Aḥmad ibn Shuʿayb: From Isḥāq ibn Manṣūr, from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Hishām ibn ʿUrwah, from his father, from ʿĀ'ishah: "The Prophet—may Allah's peace and blessings be upon him—prayed Witr with five [rakʿahs], not sitting except in the last of them."

وَالْعَاشِرُ: أَنْ يُصَلِّيَ خَمْسَ رَكَعَاتٍ مُتَّصِلَاتٍ، لَا يَجْلِسُ، وَلَا يَتَشَهَّدُ إِلَّا فِي آخِرِهِنَّ -: لِمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى أَحْمَدَ بْنِ شُعَيْبٍ: أَنَا إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُوتِرُ بِخَمْسٍ لَا يَجْلِسُ إِلَّا فِي آخِرِهِنَّ» ؟ .

L5339–5341 Ali said—and indeed some of the early generations held this opinion—as has been transmitted to us via the chain of 'Abd al-Razzāq from Ibn Jurayj, who reported: 'Aṭā' informed me that he saw Urwah ibn al-Zubayr perform Witr with five or seven [rakʿahs], without sitting for any two— From the narration chain of Hammad ibn Salamah from Hisham ibn Urwah, who said: "Similarly, the people of the household perform Witr with five units, sitting only in the

قَالَ عَلِيٌّ: وَقَدْ قَالَ بِهَذَا بَعْضُ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَطَاءٌ، أَنَّهُ رَأَى عُرْوَةَ بْنَ الزُّبَيْرِ أَوْتَرَ بِخَمْسٍ أَوْ سَبْعٍ مَا جَلَسَ لِمَثْنَى -: وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ قَالَ: كَذَلِكَ يُوتِرُ أَهْلُ الْبَيْتِ

final one." From Abd al-Razzaq from al-Mu'tamir ibn Sulayman al-Taymi from Layth from Ata' from Ibn Abbas, that he said: "Witr is like the Maghrib prayer except one only sits in the third unit." Ali said: "This statement of Ibn Abbas was not narrated from the Prophet (peace and blessings be upon him), therefore we do not adhere to it, for there is no valid proof except in the Messenger of Allah (peace and blessings be upon him) – only his statement, his action, or his approval."

بِخَمْسٍ، لَا يَجْلِسُ إِلَّا فِي آخِرِهِنَّ -: وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ لَيْثٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: الْوِتْرُ كَصَلَاةِ الْمَغْرِبِ، إلَّا أَنَّهُ لَا يَقْعُدُ إلَّا فِي الثَّالِثَةِ: قَالَ عَلِيٌّ: قَوْلُ ابْنِ عَبَّاسٍ هَذَا لَمْ يَرْوِهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا نَقُولُ بِهِ إذْ لَا حُجَّةَ إلَّا فِي رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَوْلُهُ أَوْ عَمَلُهُ أَوْ إقْرَارُهُ فَقَطْ؟ .

L5342–5344 The eleventh scenario is to pray three rakʿahs, and he sits at the end of the second of them. He recites the Tashahhud and gives the salutation, then performs one rakʿah, reciting the Tashahhud at its end and giving the salutation, in accordance with the statement of the Prophet (peace be upon him): "The voluntary night prayer is offered two by two. If you anticipate the onset of dawn, perform Witr with one rakʿah." This is the opinion of Mālik. Some narrators transmitted an account via al-Awzāʿī from al-Muṭṭalib ibn ʿAbdullāh: He asked Ibn ʿUmar about Witr, so he instructed him to separate the two rakʿahs from the single one with a salutation. The man said, "I fear it may become a truncated prayer (al-Butayrā')." Ibn ʿUmar responded, "Do you seek the sunnah of Allah's Messenger? This is the sunnah of Allah's Messenger (peace and blessings of Allah be upon him)."[25]

وَالْوَجْهُ الْحَادِيَ عَشَرَ: أَنْ يُصَلِّيَ ثَلَاثَ رَكَعَاتٍ، يَجْلِسُ فِي آخِرِ الثَّانِيَةِ مِنْهُنَّ، وَيَتَشَهَّدُ وَيُسَلِّمُ، ثُمَّ يَأْتِي بِرَكْعَةٍ وَاحِدَةٍ، يَتَشَهَّدُ فِي آخِرِهَا وَيُسَلِّمُ، لِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «صَلَاةُ اللَّيْلِ مَثْنَى مَثْنَى فَإِذَا خَشِيتَ الصُّبْحَ فَأَوْتِرْ بِوَاحِدَةٍ» . وَهَذَا قَوْلُ مَالِكٍ: وَقَدْ رَوَى بَعْضُ النَّاسِ فِي هَذَا أَثَرًا مِنْ طَرِيقِ الْأَوْزَاعِيِّ عَنْ الْمُطَّلِبِ بْنِ عَبْدِ اللَّهِ: أَنَّهُ سَأَلَ ابْنَ عُمَرَ عَنْ الْوِتْرِ؟ فَأَمَرَهُ أَنْ يَفْصِلَ بَيْنَ الرَّكْعَتَيْنِ وَالرَّكْعَةِ بِتَسْلِيمٍ، فَقَالَ لَهُ الرَّجُلُ: إنِّي أَخَافُ أَنْ تَكُونَ الْبُتَيْرَاءُ؟ فَقَالَ لَهُ ابْنُ عُمَرَ: أَتُرِيدُ سُنَّةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ هَذِهِ سُنَّةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ .

L5345 The twelfth is to pray three rak'ahs: sitting in the second rak'ah, then rising without uttering any salutation and performing the third rak'ah, then sitting again to recite the tashahhud and utter the salutation, as in the Maghrib prayer.

وَالثَّانِيَ عَشَرَ: أَنْ يُصَلِّيَ ثَلَاثَ رَكَعَاتٍ، يَجْلِسُ فِي الثَّانِيَةِ، ثُمَّ يَقُومُ دُونَ تَسْلِيمٍ وَيَأْتِي بِالثَّالِثَةِ، ثُمَّ يَجْلِسُ وَيَتَشَهَّدُ وَيُسَلِّمُ، كَصَلَاةِ الْمَغْرِبِ.

L5346 This is the chosen opinion of Abū Ḥanīfah - due to what was narrated to us by ʿAbdullāh ibn Rabīʿ: Muḥammad ibn Muʿāwiyah narrated to us; Aḥmad ibn Shuʿayb narrated to us; I, Ismāʿīl ibn Masʿūd, narrated to us; Bishr ibn al-Mufaḍḍal narrated to us; Saʿīd ibn Abī ʿArūbah narrated from Qatādah, from Zurārah ibn Awfā, from Saʿd ibn Hishām ibn ʿĀmir: that ʿĀishah, the Mother of the Believers, narrated to him that the Messenger of Allāh (peace

وَهُوَ اخْتِيَارُ أَبِي حَنِيفَةَ -: لِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إسْمَاعِيلُ بْنُ مَسْعُودٍ ثنا بِشْرُ بْنُ الْمُفَضَّلِ ثنا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ زُرَارَةَ بْنِ أَوْفَى عَنْ سَعْدِ بْنِ هِشَامِ بْنِ عَامِرٍ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ حَدَّثَتْهُ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ «لَا يُسَلِّمُ فِي رَكْعَتَيْ الْوِتْرِ» ؟ .

[25] **Hadith references (L5342):** Sunan an-Nasai 1673.

and blessings of Allah be upon him) did not perform the *taslīm* (salutation) in the two rakʿahs of Witr.

وَالثَّالِثَ عَشَرَ: أَنْ يَرْكَعَ رَكْعَةً وَاحِدَةً فَقَطْ، وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ وَغَيْرِهِمَا -: لِمَا حَدَّثَنَاهُ حَمَّامُ بْنُ أَحْمَدَ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا بَكْرُ بْنُ حَمَّادٍ ثنا مُسَدَّدٌ ثنا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - ثنا شُعْبَةُ ثنا قَتَادَةُ عَنْ أَبِي مِجْلَزٍ قَالَ: سَأَلْت ابْنَ عَبَّاسٍ، وَابْنَ عُمَرَ عَنْ الْوِتْرِ؟ فَكُلُّ وَاحِدٍ مِنْهُمَا قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «رَكْعَةٌ مِنْ آخِرِ اللَّيْلِ» .

L5347 The thirteenth is to perform only a single rakʿah. This is the opinion of al-Shāfiʿī, Abū Sulaymān, and others - based on the narration transmitted to us by Ḥammām ibn Aḥmad who narrated to us from ʿAbbās ibn Aṣbagh who narrated to us from Muḥammad ibn ʿAbd al-Malik ibn Ayman who narrated to us from Bakr ibn Ḥammād who narrated to us from Musaddad who narrated to us from Yaḥyā—he is Ibn Saʿīd al-Qaṭṭān—who narrated to us from Shuʿbah who narrated to us from Qatādah from Abī Mijlaz who said: I asked Ibn ʿAbbās and Ibn ʿUmar about Witr, and each replied: I heard the Messenger of Allah—May Allah's peace and blessings be upon him—say: "One rakʿah from the end of the night."

وَرُوِّينَا عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ، وَابْنِ عَبَّاسٍ، وَمُعَاوِيَةَ، وَغَيْرِهِمْ: الْوِتْرُ بِوَاحِدَةٍ فَقَطْ لَا يُزَادُ عَلَيْهَا شَيْءٌ، وَكَذَلِكَ أَيْضًا عَنْ عُثْمَانَ أَمِيرِ الْمُؤْمِنِينَ وَحُذَيْفَةَ وَابْنِ مَسْعُودٍ وَابْنِ عُمَرَ؟ قَالَ عَلِيٌّ: هَذَا كُلُّ مَا صَحَّ عِنْدَنَا، وَلَوْ صَحَّ عِنْدَنَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زِيَادَةٌ عَلَى هَذَا لَقُلْنَا بِهِ -، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L5348–5349 It has been reported to us from Saʿd ibn Abī Waqqāṣ, Ibn ʿAbbās, Muʿāwiyah, and others that Witr prayer consists of a single unit only, with no additions. Similarly, it is also reported from ʿUthmān, the Commander of the Believers, Ḥudhayfah, Ibn Masʿūd, and Ibn ʿUmar—? ʿAlī said: "This is all that has been authentically established in our records. Had anything beyond this been authentically established from the Prophet—peace and blessings of Allāh be upon him—we would have acted upon it." And with Allāh, the Most High, lies success.

وَلَمْ يَصِحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهْيٌ عَنْ الْبُتَيْرَاءِ، وَلَا فِي الْحَدِيثِ - عَلَى سُقُوطِهِ - بَيَانُ مَا هِيَ الْبُتَيْرَاءُ؟ ، وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الْأَعْمَشِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ: الثَّلَاثُ بُتَيْرَاءُ - يَعْنِي فِي الْوِتْرِ، فَعَادَتْ الْبُتَيْرَاءُ عَلَى الْمُحْتَجِّ بِالْخَبَرِ الْكَاذِبِ فِيهَا.

L5350 No authentic prohibition from the Prophet—may Allah's peace and blessings be upon him—has been established regarding al-Butayra, nor does the hadith—despite its weakness—clarify what al-Butayra is. It has been narrated to us through the chain of ʿAbd al-Razzāq, from Sufyān ibn ʿUyaynah, from al-Aʿmash, from Saʿīd ibn Jubayr, from Ibn ʿAbbās: "The three [units] are al-Butayra," meaning in the Witr prayer. Thus, al-Butayra has rebounded upon those who cite the false report as evidence concerning it.

فَإِنْ قِيلَ: قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «صَلَاةُ الْمَغْرِبِ وِتْرُ النَّهَارِ، فَأَوْتِرُوا صَلَاةَ اللَّيْلِ» ؟ .

L5351 If it is said: It has been authentically reported from the Prophet—may Allah's blessings and peace be upon him—that he said, "The Maghrib prayer is the Witr of the day, so perform Witr for the night prayer"?

L5352–5354 It was said to them: This narration does not indicate that the night's Witr prayer consists of three units like the (hypothetical) Witr of the day. This is

a falsehood attributed to anyone who ascribes it to the intention of Allah's Messenger - peace and blessings of Allah be upon him. If you were to assert this definitively, you would be lying and contradicting your own position, for it would necessarily require you to: recite aloud in the first two units and silently in the third - as in the Maghrib Prayer; perform the qunūt supplication in Maghrib as you do in Witr; or refrain from performing qunūt in Witr as you do not perform it in Maghrib. Yet all qiyās (legal analogy) remains applicable. It is invalid, and success is from Allah, the Most High.

قِيلَ لَهُمْ: لَيْسَ فِي هَذَا الْخَبَرِ أَنْ يَكُونَ وِتْرُ اللَّيْلِ ثَلَاثًا كَوِتْرِ النَّهَارِ، وَهَذَا كَذِبٌ مِمَّنْ يَنْسُبُهُ إلَى إرَادَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنْ قَطَعْتُمْ بِذَلِكَ كَذَبْتُمْ وَكُنْتُمْ أَيْضًا خَالَفْتُمْ مَا قُلْتُمْ؛ لِأَنَّهُ يَلْزَمُكُمْ أَنْ تَجْهَرُوا فِي الْأُولَيَيْنِ وَتُسِرُّوا فِي الثَّالِثَةِ كَالْمَغْرِبِ، وَأَنْ تَقْنُتُوا فِي الْمَغْرِبِ كَمَا تَقْنُتُونَ فِي الْوِتْرِ، أَوْ أَنْ لَا تَقْنُتُوا فِي الْوِتْرِ كَمَا لَا تَقْنُتُونَ فِي الْمَغْرِبِ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: The Witr prayer is best at the end of the night.

[مَسْأَلَةٌ الْوِتْرُ آخِرُ اللَّيْلِ أَفْضَلُ]

291 – Question:

٢٩١ - مَسْأَلَةٌ:

The Witr prayer at the end of the night is more virtuous.

وَالْوِتْرُ آخِرُ اللَّيْلِ أَفْضَلُ.

Whoever performs Witr at the beginning of the night, that is good. Prayer after Witr is permissible, but one should not repeat another Witr nor pair it with a rakʿah. Abdullah ibn Rabiʿ narrated to us: Umar ibn Abd al-Malik narrated to us: Muhammad ibn Bakr narrated to us: Abu Dawud narrated to us: Ibn Abi Khalaf narrated to us: Abu Zakariyya al-Saylaḥīniyy narrated to us: Hammad ibn Salamah narrated to us from Thabit al-Bunani from Abdullah ibn Abi Rabah from Abu Qatadah: "The Prophet (peace and blessings be upon him) asked Abu Bakr, 'When do you perform Witr?' He replied, 'At the beginning of the night.' He then asked Umar, 'When do you perform Witr?' He replied, 'At the end of the night.' The Prophet (peace be upon him) said to Abu Bakr, 'This one has taken precaution,' and to Umar, 'This one has taken strength.'"

وَمَنْ أَوْتَرَ أَوَّلَهُ فَحَسَنٌ، وَالصَّلَاةُ بَعْدَ الْوِتْرِ جَائِزَةٌ، وَلَا يُعِيدُ وِتْرًا آخَرَ، وَلَا يَشْفَعُ بِرَكْعَةٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا ابْنُ أَبِي خَلَفٍ ثنا أَبُو زَكَرِيَّاءَ السَّيْلَحِينِيُّ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي رَبَاحٍ عَنْ أَبِي قَتَادَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِأَبِي بَكْرٍ: مَتَى تُوتِرُ؟ قَالَ: أَوَّلَ اللَّيْلِ، وَقَالَ لِعُمَرَ: مَتَى تُوتِرُ؟ قَالَ: آخِرَ اللَّيْلِ فَقَالَ - عَلَيْهِ السَّلَامُ - لِأَبِي بَكْرٍ: أَخَذَ هَذَا بِالْحَذَرِ، وَقَالَ لِعُمَرَ: أَخَذَ هَذَا بِالْقُوَّةِ» .

ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: Hishām ibn ʿAmmār narrated from Yaḥyā—who is Ibn Ḥamzah, the judge of Damascus—from Yaḥyā—who is Ibn Abī Kathīr—from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf: ʿĀ'ishah, the Mother of the Believers, narrated to me that "the Prophet—peace and blessings of Allāh be upon him—used to pray eight rakʿahs after the final

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا هِشَامُ بْنُ عَمَّارٍ عَنْ يَحْيَى هُوَ ابْنُ حَمْزَةَ قَاضِي دِمَشْقَ - عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ حَدَّثَتْنِي عَائِشَةُ أُمُّ الْمُؤْمِنِينَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ

ʿIshāʾ prayer, then pray two rakʿahs in which he would recite—while seated. When he intended to perform rukūʿ, he would stand up and bow, then he prayed the two rakʿahs of Fajr after that."

L5360–5362 Ali said: "As for his statement (peace be upon him), 'Make the last of your prayers at night the *Witr*.'" "Hasten to perform Witr before dawn" is thus a recommended act due to what we have clarified—that Witr is not obligatory—and due to the practice of the Prophet (peace be upon him), since he prayed two rakʿahs after Witr other than the two Fajr rakʿahs, and due to his statement to Abu Hurairah: "One should not sleep without having performed Witr."

L5363–5365 Therefore, it is not permissible to neglect parts of His speech in favor of others, and this is not a case of abrogation but rather all of it constitutes permissibility. And do we not seek support from Allah the Exalted?

ʿAbdullāh ibn Rabīʿ narrated to us, from ʿUmar ibn ʿAbd al-Malik, from Muḥammad ibn Bakr, from Abū Dāwūd, from Musaddad, from Mulāzim ibn ʿAmr, from ʿAbdullāh ibn Badr, from Qays ibn Ṭalq, who said: "Ṭalq ibn ʿAlī visited us during Ramadan and spent the evening with us. He broke his fast, then led us in prayer that night and performed Witr with us. Thereafter he proceeded to his mosque and prayed with his companions. When only Witr remained, he appointed a man to lead, saying: 'Perform Witr with your companions, for I heard Allah's Messenger—peace and blessings be upon him—declare: "There are no two Witr prayers in one night."'" It has been reported from ʿUthmān—may Allah be pleased with him—and others that one may make Witr even by adding a rakʿah when intending to pray after performing Witr. There is no proof except in the Messenger of Allah, may Allah bless him and grant him peace.

L5366 **A ruling: In the Witr prayer, one recites whatever is easy from the Quran, including Umm al-Quran (Al-Fatiha).**

L5367 292 - Issue: In the Witr prayer, one may recite whatever is easy from the Quran along with the Mother of the Quran (Surah Al-Fatihah). If one recites

يُصَلِّي بَعْدَ الْعِشَاءِ الْآخِرَةِ ثَمَانِيَ رَكَعَاتٍ، ثُمَّ يُصَلِّي رَكْعَتَيْنِ يَقْرَأُ فِيهِمَا - وَهُوَ جَالِسٌ - فَإِذَا أَرَادَ أَنْ يَرْكَعَ قَامَ فَرَكَعَ، ثُمَّ رَكَعَ بَعْدَ ذَلِكَ رَكْعَتَيْ الْفَجْرِ» ؟ .

قَالَ عَلِيٌّ: وَأَمَّا قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «اجْعَلُوا آخِرَ صَلَاتِكُمْ بِاللَّيْلِ وِتْرًا» وَ «بَادِرُوا الصُّبْحَ بِالْوِتْرِ» فَنَدْبٌ، لِمَا قَدْ بَيَّنَّا: مِنْ أَنَّ الْوِتْرَ لَيْسَ فَرْضًا، وَمِنْ فِعْلِهِ - عَلَيْهِ السَّلَامُ - إذْ صَلَّى رَكْعَتَيْنِ بَعْدَ الْوِتْرِ غَيْرَ رَكْعَتَيْ الْفَجْرِ، «وَلِقَوْلِهِ - عَلَيْهِ السَّلَامُ - لِأَبِي هُرَيْرَةَ: أَنْ لَا يَنَامَ إلَّا عَلَى وِتْرٍ» .

فَلَا يَجُوزُ تَرْكُ بَعْضِ كَلَامِهِ لِبَعْضٍ، وَلَيْسَ هَذَا مَكَانَ نَسْخٍ لَكِنَّهُ إبَاحَةٌ كُلُّهُ -، وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا مُسَدَّدٌ ثنا مُلَازِمُ بْنُ عَمْرٍو ثنا عَبْدُ اللَّهِ بْنُ بَدْرٍ عَنْ «قَيْسِ بْنِ طَلْقٍ قَالَ: زَارَنَا طَلْقُ بْنُ عَلِيٍّ فِي رَمَضَانَ، وَأَمْسَى عِنْدَنَا فَأَفْطَرَ ثُمَّ قَامَ بِنَا تِلْكَ اللَّيْلَةَ وَأَوْتَرَ بِنَا ثُمَّ انْحَدَرَ إلَى مَسْجِدِهِ فَصَلَّى بِأَصْحَابِهِ، حَتَّى إذَا بَقِيَ الْوِتْرُ قَدَّمَ رَجُلًا، فَقَالَ: أَوْتِرْ بِأَصْحَابِكَ فَإِنِّي سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ لَا وِتْرَانِ فِي لَيْلَةٍ» وَقَدْ رُوِيَ عَنْ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - وَغَيْرِهِ شَفْعُ الْوِتْرِ بِرَكْعَةٍ، إذَا أَرَادَ أَنْ يُصَلِّيَ بَعْدَمَا يُوتِرُ - وَلَا حُجَّةَ إلَّا فِي رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَةٌ يُقْرَأُ فِي الْوِتْرِ بِمَا تَيَسَّرَ مِنْ الْقُرْآنِ مَعَ أُمِّ الْقُرْآنِ]

in the three rak’ahs, along with Surah Al-Fatihah: Surah Al-Aʿlā, Surah Al-Kāfirūn, and Surah Al-Ikhlāṣ, then it is recommended.

٢٩٢ - مَسْأَلَةٌ: وَيُقْرَأُ فِي الْوِتْرِ بِمَا تَيَسَّرَ مِنْ الْقُرْآنِ مَعَ " أُمِّ الْقُرْآنِ: "، وَإِنْ قَرَأَ فِي الثَّلَاثِ رَكَعَاتٍ مَعَ أُمِّ الْقُرْآنِ بِسَبِّحْ اسْمَ رَبِّكَ الْأَعْلَى وَقُلْ يَا أَيُّهَا الْكَافِرُونَ وَقُلْ هُوَ اللَّهُ أَحَدٌ فَحَسَنٌ.

L5368 If one confines himself to the Mother of the Quran, it is acceptable. If one recites in the rakʿah of Witr, along with the Mother of the Quran, a hundred verses from Surah An-Nisā’, is that acceptable? He, the Exalted, says: “Recite whatever is feasible of the Quran” [Surah Al-Muzzammil 73:20].[26]

وَإِنْ اقْتَصَرَ عَلَى (أُمِّ الْقُرْآنِ) فَحَسَنٌ، وَإِنْ قَرَأَ فِي رَكْعَةِ الْوِتْرِ مَعَ أُمِّ الْقُرْآنِ بِمِائَةِ آيَةٍ مِنْ النِّسَاءِ " فَحَسَنٌ؟ ، قَالَ تَعَالَى: {فَاقْرَءُوا مَا تَيَسَّرَ مِنَ الْقُرْآنِ} [المزمل: ٢٠] .

L5369 Abdullah ibn Rabi’ narrated to us: Abdullah ibn Muhammad ibn Uthman narrated to us: Ahmad ibn Khalid narrated to us: Ali ibn Abd al-Aziz narrated to us: al-Hajjaj ibn al-Minhal narrated to us: Hammad ibn Salamah narrated from Asim al-Ahwal, from Abu Mijlaz: “Abu Musa al-Ash’ari was between Mecca and Medina. He prayed the Isha prayer as two rakʿahs, then stood and prayed one rakʿah for witr. In it, he recited one hundred verses from Surah An-Nisa, and said: ’I did not neglect to place my foot where the Messenger of Allah—may Allah bless him and grant him peace—placed his, nor to recite what the Messenger of Allah—may Allah bless him and grant him peace—did.”’

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَاصِمٍ الْأَحْوَلِ، عَنْ أَبِي مِجْلَزٍ «أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ كَانَ بَيْنَ مَكَّةَ وَالْمَدِينَةِ، فَصَلَّى الْعِشَاءَ رَكْعَتَيْنِ، ثُمَّ قَامَ فَصَلَّى رَكْعَةً أَوْتَرَهَا، وَقَرَأَ فِيهَا بِمِائَةِ آيَةٍ مِنْ النِّسَاءِ وَقَالَ: مَا أَلَوْتُ أَنْ وَضَعْت قَدَمِي حَيْثُ وَضَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنْ أَقْرَأَ مَا قَرَأَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

L5370–5371 Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us; Aḥmad ibn Shuʿayb narrated to us; al-Ḥusayn ibn ʿĪsā narrated to us; Abū Usāmah narrated to us; Zakariyyāʾ ibn Abī Zāʾidah narrated from Abī Isḥāq al-Sabīʿī, from Saʿīd ibn Jubayr, from Ibn ʿAbbās, who said: “The Messenger of Allah (peace be upon him) would pray Witr with three units, reciting in the first: *Sabbih isma rabbika al-Aʿlā* (Glorify the Name of your Lord, the Most High), in the second: *Qul yā ayyuhā al-kāfirūn* (Say, ‘O disbelievers’), and in the third: *Qul huwa Allāhu aḥad* (Say, ‘He is Allah, the One’).”[27]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا الْحُسَيْنُ بْنُ عِيسَى ثنا أَبُو أُسَامَةَ ثنا زَكَرِيَّاءُ بْنُ أَبِي زَائِدَةَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُوتِرُ بِثَلَاثٍ يَقْرَأُ فِيهِنَّ فِي الْأُولَى بِسَبِّحْ اسْمَ رَبِّكَ الْأَعْلَى، وَفِي الثَّانِيَةِ قُلْ يَا أَيُّهَا الْكَافِرُونَ وَفِي الثَّالِثَةِ بِقُلْ هُوَ اللَّهُ أَحَدٌ» .

L5372 **Issue: A person may perform the Witr prayer standing,**

[مَسْأَلَةٌ يُوتِرُ الْمَرْءُ قَائِمًا وَقَاعِدًا لِغَيْرِ عُذْرٍ إنْ شَاءَ وَعَلَى دَابَّتِهِ]

[26] **Qur’an references (L5368):** Qur’an 73:20 (Al-Muzzammil).
[27] **Qur’an references (L5371):** Qur’an 109:1 (Al-Kafirun).

sitting (even without an excuse) if he wills, or upon his mount.

L5373 293 - Issue: A person may perform Witr standing or sitting without an excuse if he wishes, and upon his mount. It was narrated to us by ʻAbd al-Raḥmān ibn ʻAbd Allāh al-Hamadānī, narrated to us by Ibrāhīm ibn Aḥmad, narrated to us by al-Farbarī, narrated to us by al-Bukhārī, narrated to us by Ismāʻīl ibn Abī Uways, narrated to us by Mālik, on the authority of Abū Bakr ibn ʻUmar ibn ʻAbd al-Raḥmān ibn ʻAbd Allāh ibn ʻUmar ibn al-Khaṭṭāb, from Saʻīd ibn Yasār who said: "I was traveling with Ibn ʻUmar on the road to Mecca. I feared the approach of dawn, so I dismounted and performed Witr, then rejoined him. Ibn ʻUmar asked: 'Where were you?' I replied: 'I feared the approach of dawn, so I dismounted and performed Witr.' Ibn ʻUmar said: 'Is there not for you an excellent example in the Messenger of Allah (may Allah bless him and grant him peace)?' I responded: 'Indeed, by Allah!' He said: 'Verily, the Messenger of Allah (may Allah bless him and grant him peace) would perform Witr upon his mount.'"

L5374–5375 From Jarir ibn Hazim: I asked Nāfiʻ, the freed slave of Ibn ʻUmar: "Did Ibn ʻUmar perform Witr on his mount?" He said: "Yes; and does Witr hold superiority over other voluntary prayers?" From Sufyān al-Thawrī, from Thuwayr ibn Abī Fākhitah, from his father Abū Fākhitah: "'Alī ibn Abī Ṭālib used to perform Witr on his mount." From Ibn Jurayj: I said to ʻAṭāʼ: "Can a man perform Witr while sitting?" He said: "Yes." From Wakīʻ, from Sufyān al-Thawrī, from ʻAbdullāh ibn Abī al-Safar, from al-Shaʻbī: "Witr is not to be made up, nor should it be abandoned. It is a voluntary prayer, and it is the most noble of voluntary prayers."

L5376–5378 From Hammad ibn Salamah, from Qatādah, from Saʿīd ibn al-Musayyab: "The Witr and Eid al-Adha prayer are voluntary prayers." ʿAlī said: "There is no disagreement that a person may perform voluntary prayers seated if he wishes," as we have been narrated via Malik from Ibn Shihāb, from al-Sāʼib ibn Yazīd, from al-Muṭṭalib ibn Abī Wadāʿah al-Sahmī. Hafsah, the Mother of the Believers, said: "I never saw the Messenger of Allah, peace

٢٩٣ - مَسْأَلَةٌ: وَيُوتِرُ الْمَرْءُ قَائِمًا وَقَاعِدًا لِغَيْرِ عُذْرٍ إِنْ شَاءَ، وَعَلَى دَابَّتِهِ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ الْهَمْدَانِيُّ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا إِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ ثنا مَالِكٌ عَنْ أَبِي بَكْرِ بْنِ عُمَرَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ عَنْ «سَعِيدِ بْنِ يَسَارٍ قَالَ: كُنْت أَسِيرُ مَعَ ابْنِ عُمَرَ بِطَرِيقِ مَكَّةَ فَخَشِيتُ الصُّبْحَ فَنَزَلْتُ فَأَوْتَرْتُ، ثُمَّ لَحِقْتُهُ، فَقَالَ ابْنُ عُمَرَ: أَيْنَ كُنْتَ؟ فَقُلْتُ: خَشِيتُ الصُّبْحَ فَنَزَلْتُ فَأَوْتَرْتُ، فَقَالَ ابْنُ عُمَرَ: أَلَيْسَ لَكَ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ؟ قُلْت: بَلَى، وَاَللَّهِ قَالَ: فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُوتِرُ عَلَى رَاحِلَتِهِ» .

وَعَنْ جَرِيرِ بْنِ حَازِمٍ سَأَلْت نَافِعًا مَوْلَى ابْنِ عُمَرَ: أَكَانَ ابْنُ عُمَرَ يُوتِرُ عَلَى رَاحِلَتِهِ؟ قَالَ: نَعَمْ؛ وَهَلْ لِلْوِتْرِ فَضْلٌ عَلَى سَائِرِ التَّطَوُّعِ؟ ، وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ثُوَيْرِ بْنِ أَبِي فَاخِتَةَ عَنْ أَبِيهِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يُوتِرُ عَلَى رَاحِلَتِهِ:، وَعَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: أَيُوتِرُ الرَّجُلُ وَهُوَ جَالِسٌ؟ قَالَ: نَعَمْ وَعَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ عَنْ الشَّعْبِيِّ: الْوِتْرُ لَا يُقْضَى، وَلَا يَنْبَغِي تَرْكُهُ؛ وَهُوَ تَطَوُّعٌ، وَهُوَ أَشْرَفُ التَّطَوُّعِ.

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: الْوِتْرُ وَالْأَضْحَى: تَطَوُّعٌ -: قَالَ عَلِيٌّ: لَا خِلَافَ فِي أَنَّ التَّطَوُّعَ يُصَلِّيهِ الْمَرْءُ جَالِسًا إنْ شَاءَ -: كَمَا رُوِّينَا عَنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ السَّائِبِ بْنِ يَزِيدَ عَنْ الْمُطَّلِبِ بْنِ أَبِي وَدَاعَةَ السَّهْمِيِّ «عَنْ حَفْصَةَ

and blessings of Allah be upon him, perform his voluntary prayers sitting until a year before his death. From then on, he would perform his voluntary prayers while sitting." And success is with Allah, the Most High.

L5379 **Issue: It is recommended to complete the entire Quran once every month.**

L5380 294 – Issue: It is recommended to complete the entire Quran once every month. If one completes it in less than a month, it is praiseworthy. However, it is disliked to complete it in fewer than five days. If someone does so (i.e., completes it in fewer than five days), completing it in three days is impermissible, and it is not allowed to finish it in any duration shorter than that.

L5381 Is it not permissible for anyone to recite more than a third of the Quran in a day and night? The proof for this is what was narrated to us by Abdullah ibn Yusuf, who narrated to us Ahmad ibn Fath, who narrated to us Abdul Wahhab ibn Isa, who narrated to us Ahmad ibn Muhammad, who narrated to us Ahmad ibn Ali, who narrated to us Muslim ibn al-Hajjaj. Al-Qasim ibn Zakariyya narrated to me: Ubaydullah ibn Musa narrated to us from Shayban from Yahya ibn Abi Kathir from Muhammad ibn Abd al-Rahman, the client of Banu Zuhrah, from Abu Salamah ibn Abd al-Rahman ibn Awf, from Abdullah ibn Amr ibn al-As, who said: The Messenger of Allah—peace and blessings be upon him—said, "Recite the Quran in a month." I said, "I feel capable."

L5382–5383 He said, "Recite it in twenty nights." I said, "Do I feel capable?" He said, "Then recite it in seven nights, and do not exceed that."

L5384 Abdullah ibn Rabee' narrated to us: Umar ibn Abdul-Malik narrated to us: Muhammad ibn Bakr narrated to us: Abu Dawud narrated to us: Muhammad ibn Al-Muthanna narrated to us: Abdul-Samad (Ibn Abdul-Warith) narrated to us: Hammam ibn Yahya narrated to us: Qatadah narrated from Yazid ibn Abdullah (Ibn Ash-Shikhkhīr) from Abdullah ibn Amr ibn Al-As that he said to the Messenger of Allah (peace be upon him), "In how much time should

أُمِّ الْمُؤْمِنِينَ قَالَتْ: مَا رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى فِي سُبْحَتِهِ قَاعِدًا حَتَّى كَانَ قَبْلَ مَوْتِهِ بِعَامٍ، فَكَانَ يُصَلِّي فِي سُبْحَتِهِ قَاعِدًا» ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ يُسْتَحَبُّ أَنْ يَخْتِمَ الْقُرْآنَ كُلَّهُ مَرَّةً فِي كُلِّ شَهْرٍ]

٢٩٤ - مَسْأَلَةٌ: وَيُسْتَحَبُّ أَنْ يَخْتِمَ الْقُرْآنَ كُلَّهُ مَرَّةً فِي كُلِّ شَهْرٍ، فَإِنْ خَتَمَهُ فِي أَقَلَّ: فَحَسَنٌ، وَيُكْرَهُ أَنْ يَخْتِمَ فِي أَقَلَّ مِنْ خَمْسَةِ أَيَّامٍ، فَإِنْ فَعَلَ فَفِي ثَلَاثَةِ أَيَّامٍ لَا يَجُوزُ أَنْ يَخْتِمَ الْقُرْآنَ فِي أَقَلَّ مِنْ ذَلِكَ.

وَلَا يَجُوزُ لِأَحَدٍ أَنْ يَقْرَأَ أَكْثَرَ مِنْ ثُلُثِ الْقُرْآنِ فِي يَوْمٍ وَلَيْلَةٍ؟ بُرْهَانُ ذَلِكَ: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي الْقَاسِمُ بْنُ زَكَرِيَّاءَ ثنا عُبَيْدُ اللَّهِ بْنُ مُوسَى عَنْ شَيْبَانَ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ مَوْلَى بَنِي زُهْرَةَ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ «عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اقْرَأْ الْقُرْآنَ فِي شَهْرٍ قُلْتُ: إنِّي أَجِدُ قُوَّةً؟

قَالَ: فَاقْرَأْهُ فِي عِشْرِينَ لَيْلَةً، قُلْتُ: إنِّي أَجِدُ قُوَّةً؟ قَالَ: فَاقْرَأْهُ فِي سَبْعٍ، لَا تَزِدْ عَلَى ذَلِكَ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا عَبْدُ الصَّمَدُ هُوَ ابْنُ عَبْدِ الْوَارِثِ - ثنا هَمَّامُ بْنُ يَحْيَى ثنا قَتَادَةُ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ هُوَ ابْنُ الشِّخِّيرِ - «عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّهُ قَالَ لِرَسُولِ اللَّهِ -

I recite the Quran?" He said, "In a month." Then he mentioned the hadith, and in it: He (peace be upon him) said to him, "Recite it in seven days?" He said, "I am stronger than that." He (peace be upon him) said, "One who recites the Quran in less than three days does not comprehend."

L5385 If it is said: "Did ʻUthmān used to complete the Quran in a night?" We reply: Ibn Masʻūd disliked that. Allāh the Exalted said: {If you differ in anything, refer it to Allāh and the Messenger, if you believe in Allāh and the Last Day} [4:59]. The Sunnah of the Messenger of Allāh – as we mentioned – and we have been narrated via ʻAbd al-Raḥmān ibn Mahdī, who narrated via Shuʻbah and Sufyān, both of whom narrated via ʻAlī ibn Badhīmah, via Abū ʻUbaydah ibn ʻAbd Allāh ibn Masʻūd, from his father, who said: "Whoever recites the Quran in less than three days is like a rajaz poet." And via ʻAbd al-Raḥmān ibn Mahdī, who narrated via ʻAbd al-ʻAzīz ibn ʻAbd al-Ṣamad al-ʻAmmī, via Ḥuṣayn ibn ʻAbd al-Raḥmān, via Hilāl ibn Yasāf: That Saʻīd ibn Jubayr used to recite the Quran in one prayer session, and Ibn Masʻūd disliked that?[28]

L5386–5387 If they mention a ḥadith we have reported through the chain of Hishām al-Dastawā'ī from ʻAṭā' ibn al-Sā'ib from his father, from ʻAbdullāh ibn ʻAmr ibn al-ʻĀṣ that he asked the Prophet (peace be upon him), "How should I recite the Quran?," he said: "Recite it within a day and a night, and do not go beyond that."

L5388 Indeed, ʻAṭā's transmission of this report is inconsistent and flawed, as his mind became confused in his later years. This same report has been transmitted to us through the chain of Ḥammād ibn Salamah, from ʻAṭā' ibn al-Sā'ib, from his father, from ʻAbdullāh ibn ʻAmr: that the Messenger of Allah—peace and blessings be upon him—said to him, "Recite the Quran in a month." He replied, "He reduced it for me, and I reduced it further."

[28] **Qur'an references (L5385):** Qur'an 4:59 (An-Nisa).

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي كَمْ أَقْرَأُ الْقُرْآنَ؟ قَالَ: فِي شَهْرٍ» ثُمَّ ذَكَرَ الْحَدِيثَ وَفِيهِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ لَهُ: «اقْرَأْهُ فِي سَبْعٍ؟ قَالَ: إِنِّي أَقْوَى مِنْ ذَلِكَ، قَالَ - عَلَيْهِ السَّلَامُ -: لَا يَفْقَهُ مَنْ قَرَأَ الْقُرْآنَ فِي أَقَلَّ مِنْ ثَلَاثٍ» .

فَإِنْ قِيلَ: قَدْ كَانَ عُثْمَانُ يَخْتِمُ الْقُرْآنَ فِي لَيْلَةٍ؟ قُلْنَا: قَدْ كَرِهَ ذَلِكَ ابْنُ مَسْعُودٍ، وَقَالَ تَعَالَى: {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ} [النساء: ٥٩] ، وَسُنَّةُ رَسُولِ اللَّهِ كَمَا ذَكَرْنَا -: وَرُوِّينَا عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ ثنا شُعْبَةُ وَسُفْيَانُ كِلَاهُمَا عَنْ عَلِيِّ بْنِ بَذِيمَةَ عَنْ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ أَبِيهِ قَالَ: مَنْ قَرَأَ الْقُرْآنَ فِي أَقَلَّ مِنْ ثَلَاثٍ فَهُوَ رَاجِزٌ؟ ، وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ ثنا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ الصَّمَدِ الْعَمِّيُّ ثنا حُصَيْنُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ هِلَالِ بْنِ يَسَافٍ: أَنَّ سَعِيدَ بْنَ جُبَيْرٍ كَانَ يَقْرَأُ الْقُرْآنَ فِي رَكْعَةٍ، وَكَانَ ابْنُ مَسْعُودٍ يَكْرَهُ ذَلِكَ؟

فَإِنْ ذَكَرُوا حَدِيثًا رُوِّينَاهُ مِنْ طَرِيقِ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِيهِ «عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّهُ سَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَيْفَ أَقْرَأُ الْقُرْآنَ؟ قَالَ: اقْرَأْهُ فِي يَوْمٍ وَلَيْلَةٍ، لَا تَزِيدُ عَلَى ذَلِكَ؟» .

فَإِنَّ رِوَايَةَ عَطَاءٍ لِهَذَا الْخَبَرِ مُضْطَرِبَةٌ مَعْلُولَةٌ، وَعَطَاءٌ قَدْ اخْتَلَطَ بِأَخَرَةٍ رُوِّينَا هَذَا الْخَبَرَ نَفْسَهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِيهِ «عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: اقْرَأْ الْقُرْآنَ فِي شَهْرٍ، قَالَ: فَنَاقَصَنِي وَنَاقَصْتُهُ» .

قَالَ عَطَاءٌ: فَاخْتَلَفْنَا عَنْ أَبِي، فَقَالَ بَعْضُنَا: سَبْعَةِ أَيَّامٍ، وَقَالَ بَعْضُنَا خَمْسَةٍ.

L5389 Ata said: We differed from my father; some of us said seven days, and some of us said five days.

L5390 Ali said: Ata acknowledges the differences among them concerning his father and that he did not verify what his father stated. If they assert that David—peace be upon him—used to complete the scripture in an hour, we respond: David's scripture is the Zabur, not this Quran, and his divine law differs from our divine law. David—peace be upon him—was sent only to his specific community, not to us, whereas Muhammad—peace and blessings of Allah be upon him—is the one sent to us. This has been authentically established from the Messenger of Allah—peace and blessings of Allah be upon him—and the Almighty stated: {To each of you We have appointed a law and a way} [Al-Mā'idah 5:48].[29]

L5391–5393 As for standing in night prayer, it has been authentically established that the Messenger of Allah (peace be upon him) never spent any night in prayer until dawn. Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath, Abd al-Wahhab ibn Isa... Ahmad ibn Muhammad narrated from Ahmad ibn Ali from Muslim ibn al-Hajjaj from Abu Bakr ibn Abi Shaybah from Sufyan ibn Uyaynah from Amr ibn Dinar from Amr ibn Aws from Abdullah ibn Amr ibn al-As, who said: The Messenger of Allah said, "The prayer most beloved to Allah, the Exalted, is the prayer of Dawud. He would sleep half the night, then rise, then sleep the latter part of it, then rise for a third of the night after half of it had passed."

L5394 Ali said: If this is the prayer most beloved to Allah the Exalted, then whatever exceeds it is undoubtedly inferior to this. If it is less than this, it becomes wasted with no reward - for this constitutes forced effort, and we have been forbidden from forced effort. Were Salman, Mu'adh, and others prevented from praying the entire night?

L5395 **The Issue of Reciting Aloud and Silently in Voluntary Prayers (Day and Night)**

[29] **Qur'an references (L5390):** Qur'an 5:48 (Al-Ma'idah).

قَالَ عَلِيٌّ: فَعَطَاءٌ يَعْتَرِفُ بِاخْتِلَافِهِمْ عَلَى أَبِيهِ، وَأَنَّهُ لَمْ يُحَقِّقْ مَا قَالَ أَبُوهُ فَإِنْ ذَكَرُوا: أَنَّ دَاوُد - عَلَيْهِ السَّلَامُ - كَانَ يَخْتِمُ الْقُرْآنَ فِي سَاعَةٍ؟ قُلْنَا: قُرْآنُ دَاوُد هُوَ الزَّبُورُ، لَا هَذَا الْقُرْآنُ، وَشَرِيعَتُهُ غَيْرُ شَرِيعَتِنَا - وَدَاوُد - عَلَيْهِ السَّلَامُ - لَمْ يُبْعَثْ إِلَّا إِلَى قَوْمِهِ خَاصَّةً، لَا إِلَيْنَا، وَمُحَمَّدٌ - عَلَيْهِ السَّلَامُ - هُوَ الَّذِي بُعِثَ إِلَيْنَا، صَحَّ ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ تَعَالَى: {لِكُلٍّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا} [المائدة: ٤٨] .

وَأَمَّا قِيَامُ اللَّيْلِ فَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقُمْ لَيْلَةً قَطُّ حَتَّى الصَّبَاحِ؟ وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَمْرِو بْنِ أَوْسٍ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ قَالَ: قَالَ رَسُولُ اللَّهِ: «وَأَحَبُّ الصَّلَاةِ إِلَى اللَّهِ تَعَالَى صَلَاةُ دَاوُد كَانَ يَرْقُدُ شَطْرَ اللَّيْلِ، ثُمَّ يَقُومُ ثُمَّ يَرْقُدُ آخِرَهُ ثُمَّ يَقُومُ ثُلُثَ اللَّيْلِ بَعْدَ شَطْرِهِ» .

قَالَ عَلِيٌّ: فَإِذْ هَذَا أَحَبُّ الصَّلَاةِ إِلَى اللَّهِ تَعَالَى فَمَا زَادَ عَلَى هَذَا فَهُوَ دُونَ هَذَا بِلَا شَكٍّ، فَإِذَا كَانَ دُونَ هَذَا فَهُوَ ضَائِعٌ لَا أَجْرَ فِيهِ، فَهُوَ تَكَلُّفٌ، وَقَدْ نُهِينَا عَنْ التَّكَلُّفِ - وَقَدْ مَنَعَ مِنْ قِيَامِ اللَّيْلِ كُلِّهِ: سَلْمَانُ، وَمُعَاذٌ، وَغَيْرُهُمَا؟

[مَسْأَلَةُ الْجَهْرِ وَالْإِسْرَارِ فِي قِرَاءَةِ التَّطَوُّعِ لَيْلًا وَنَهَارًا]

L5396 Issue 295: Reciting voluntary prayers aloud or silently during the night and day is permissible for men and women, as neither prohibition of any of that nor obligation of any of that has been established in the Qur'an or Sunnah. If it is objected: "Should women lower their voices?" We respond: "Why?" For Muslims unanimously agree that men may lawfully hear the speech of the Messenger of Allah's wives (peace and blessings be upon him), and no textual evidence disapproves this for other women. Success comes from Allah, the Most High.

L5397 **[The issue of combining surahs in a single rak'ah in obligatory and supererogatory prayers]**

L5398–5400 Issue 296: Combining sūrahs in a single rakʿah in both obligatory and voluntary prayers also: Recommended – and similarly, reciting some sūrahs in the rakʿah during obligatory and voluntary prayers is also recommended for the Imam and the individual worshiper. The proof for this is: Allāh the Exalted's statement, {So recite what is easy of the Qur'ān} [Al-Muzzammil 20], and we have mentioned Abū Bakr and ʿUmar – may Allāh be pleased with them – reciting Sūrat al-Baqarah in the two rakʿahs of the Fajr prayer, and similarly Sūrat Āl ʿImrān in the presence of the Companions – may Allāh be pleased with them?[30]

L5401 **The issue is whether a person may perform voluntary prayers while lying down without an excuse toward the Qiblah or while riding.**

L5402 297 - Issue: It is permissible for a person to perform voluntary prayers reclining without an excuse while facing the qiblah, or while riding, wherever his mount is facing—whether toward the qiblah or not. This ruling applies equally whether one is in residence or traveling.

Narrated by ʿAbd al-Raḥmān ibn ʿAbd Allāh → Ibrāhīm ibn Aḥmad → al-Firabrī → al-Bukhārī → Isḥāq ibn Manṣūr → Rūḥ ibn ʿUbādah → Ḥusayn (the teacher) → ʿAbd Allāh ibn Buraydah → ʿImrān ibn al-Ḥuṣayn: He asked

[30] **Qur'an references (L5398):** Qur'an 73:20 (Al-Muzzammil).

٢٩٥ - مَسْأَلَةٌ: وَالْجَهْرُ وَالْإِسْرَارُ فِي قِرَاءَةِ التَّطَوُّعِ لَيْلًا وَنَهَارًا: مُبَاحٌ لِلرِّجَالِ وَالنِّسَاءِ؟ إِذْ لَمْ يَأْتِ مَنْعٌ مِنْ شَيْءٍ مِنْ ذَلِكَ، وَلَا إِيجَابٌ لِشَيْءٍ مِنْ ذَلِكَ فِي قُرْآنٍ وَلَا سُنَّةٍ؟ فَإِنْ قِيلَ: تَخْفِضُ النِّسَاءُ؟ قُلْنَا: وَلِمَ؟ وَلَمْ يَخْتَلِفْ مُسْلِمَانِ فِي أَنَّ سَمَاعَ النَّاسِ كَلَامَ نِسَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُبَاحٌ لِلرِّجَالِ، وَلَا جَاءَ نَصٌّ فِي كَرَاهَةِ ذَلِكَ مِنْ سَائِرِ النِّسَاءِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ؟

[مَسْأَلَةٌ الْجَمْعُ بَيْنَ السُّوَرِ فِي رَكْعَةٍ وَاحِدَةٍ فِي الْفَرْضِ وَالتَّطَوُّعِ]

٢٩٦ - مَسْأَلَةٌ: وَالْجَمْعُ بَيْنَ السُّوَرِ فِي رَكْعَةٍ وَاحِدَةٍ فِي الْفَرْضِ وَالتَّطَوُّعِ أَيْضًا: حَسَنٌ - وَكَذَلِكَ قِرَاءَةُ بَعْضِ السُّوَرِ فِي الرَّكْعَةِ فِي الْفَرْضِ وَالتَّطَوُّعِ أَيْضًا: حَسَنٌ لِلْإِمَامِ وَالْفَذِّ؟ بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {فَاقْرَءُوا مَا تَيَسَّرَ مِنَ الْقُرْآنِ} [المزمل: ٢٠] وَقَدْ ذَكَرْنَا عَنْ أَبِي بَكْرٍ وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - قِرَاءَتَهُمَا " الْبَقَرَةَ فِي صَلَاةِ الْفَجْرِ فِي الرَّكْعَتَيْنِ " وَآلَ عِمْرَانَ " كَذَلِكَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؟ .

[مَسْأَلَةٌ لِلْمَرْءِ أَنْ يَتَطَوَّعَ مُضْطَجِعًا بِغَيْرِ عُذْرٍ إِلَى الْقِبْلَةِ وَرَاكِبًا]

٢٩٧ - مَسْأَلَةٌ: وَجَائِزٌ لِلْمَرْءِ أَنْ يَتَطَوَّعَ مُضْطَجِعًا بِغَيْرِ عُذْرٍ إِلَى الْقِبْلَةِ، وَرَاكِبًا حَيْثُ تَوَجَّهَتْ بِهِ دَابَّتُهُ إِلَى الْقِبْلَةِ وَغَيْرِهَا، الْحَضَرُ وَالسَّفَرُ سَوَاءٌ فِي كُلِّ ذَلِكَ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا إِسْحَاقُ بْنُ مَنْصُورٍ ثنا رُوحُ بْنُ عُبَادَةَ أَنَا حُسَيْنٌ هُوَ الْمُعَلِّمُ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ «عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ: أَنَّهُ سَأَلَ نَبِيَّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ صَلَاةِ الرَّجُلِ قَاعِدًا فَقَالَ - عَلَيْهِ السَّلَامُ

the Prophet of Allāh—peace be upon him (PBUH)—about a man praying while sitting. The Prophet—peace be upon him (PBUH)—said: "If he prays standing, that is better. Whoever prays sitting will have half the reward of one who stands, and whoever prays sleeping will have half the reward of one who sits."[31]

L5403–5404 Ali said: "The only exception to this permissibility is one praying the obligatory prayer who is either capable of standing or [due to incapacity] restricted to sitting." It has been narrated to us through Malik's chain from Abu al-Nadr, the client of Umar ibn Ubayd Allah, from Abu Salama ibn Abd al-Rahman, from Aisha: "That the Messenger of Allah (peace be upon him) would pray while sitting; he would recite while sitting. When approximately thirty or forty verses remained of his recitation, he would stand and recite them while standing, then bow, then prostrate. Then he would do the same in the second rak'ah."

L5405 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath from Abdul Wahhab ibn Isa from Ahmad ibn Muhammad from Ahmad ibn Ali from Muslim ibn al-Hajjaj from Abu Bakr ibn Abi Shaybah from Muadh ibn Muadh al-Anbari from Humaid at-Tawil from Abdullah ibn Shaqiq al-Uqayli, who said: "I asked Aisha about the night prayer of the Messenger of Allah, peace and blessings be upon him, and she said: 'He would pray standing for a long portion of the night and sitting for another long portion. If he recited while standing, he would bow while standing, and if he recited while sitting, he would bow while sitting.'"[32]

L5406 Ali said: All of this is Sunnah and permissible; all of that has been done by the Messenger of Allah (peace and blessings be upon him).

L5407–5409 Abd al-Rahman ibn Abd Allah narrated to us: Ibrahim ibn Ahmad narrated to us: al-Farbari narrated to us: al-Bukhari narrated to us: Abu Nu'aym al-Fadl ibn Dukayn narrated to us: Shayban (Ibn Farrukh) narrated from Yahya (Ibn Abi Kathir), from... Muhammad ibn Abd al-Rahman ibn Thawban reported that Jabir ibn Abdullah narrated to him: "The Messenger of Allah (peace be

-: إِنْ صَلَّى قَائِمًا فَهُوَ أَفْضَلُ، وَمَنْ صَلَّى قَاعِدًا فَلَهُ نِصْفُ أَجْرِ الْقَائِمِ وَمَنْ صَلَّى نَائِمًا فَلَهُ نِصْفُ أَجْرِ الْقَاعِدِ» ؟ .

قَالَ عَلِيٌّ: لَا يَخْرُجُ مِنْ هَذِهِ الْإِبَاحَةِ إِلَّا مُصَلِّي الْفَرْضِ الْقَادِرُ عَلَى الْقِيَامِ أَوْ عَلَى الْقُعُودِ فَقَطْ؟ ، وَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ أَبِي النَّضْرِ مَوْلَى عُمَرَ بْنِ عُبَيْدِ اللَّهِ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ عَائِشَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُصَلِّي جَالِسًا، فَيَقْرَأُ وَهُوَ جَالِسٌ، فَإِذَا بَقِيَ مِنْ قِرَاءَتِهِ نَحْوٌ مِنْ ثَلَاثِينَ آيَةً أَوْ أَرْبَعِينَ آيَةً قَامَ فَقَرَأَهَا وَهُوَ قَائِمٌ ثُمَّ رَكَعَ ثُمَّ سَجَدَ ثُمَّ فَعَلَ فِي الرَّكْعَةِ الثَّانِيَةِ مِثْلَ ذَلِكَ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا مُعَاذُ بْنُ مُعَاذٍ الْعَنْبَرِيُّ عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ «عَبْدِ اللَّهِ بْنِ شَقِيقٍ الْعُقَيْلِيِّ قَالَ: سَأَلْتُ عَائِشَةَ عَنْ صَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِاللَّيْلِ؟ فَقَالَتْ: كَانَ يُصَلِّي لَيْلًا طَوِيلًا قَائِمًا، وَلَيْلًا طَوِيلًا قَاعِدًا، فَإِذَا قَرَأَ قَائِمًا رَكَعَ قَائِمًا، وَإِذَا قَرَأَ قَاعِدًا رَكَعَ قَاعِدًا؟» .

قَالَ عَلِيٌّ: كُلُّ هَذَا سُنَّةٌ وَمُبَاحٌ، وَكُلُّ ذَلِكَ قَدْ فَعَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ حَدَّثَنَا الْبُخَارِيُّ ثنا أَبُو نُعَيْمٍ الْفَضْلُ بْنُ دُكَيْنٍ ثنا شَيْبَانُ هُوَ ابْنُ فَرُّوخَ - عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ: أَنَّ جَابِرَ بْنَ عَبْدِ اللَّهِ حَدَّثَهُ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُصَلِّي التَّطَوُّعَ وَهُوَ رَاكِبٌ فِي غَيْرِ الْقِبْلَةِ» .

[31] **Hadith references (L5402):** Sahih al-Bukhari 1115.
[32] **Hadith references (L5405):** Sunan Ibn Majah 1228.

upon him) would perform voluntary prayers while riding, facing a direction other than the Qibla."

L5410 Through him in al-Bukhārī's transmission: He narrated to us via Muʿādh ibn Faḍālah; Hishām al-Dastuwā'ī narrated to us from Yaḥyā—Ibn Abī Kathīr—from Muḥammad ibn ʿAbd al-Raḥmān ibn Thawbān: Jābir reported to me, saying, "The Prophet (peace be upon him) would pray on his mount toward the east. When he intended to perform the obligatory prayer, he would dismount and face the qiblah."[33]

L5411 Ali said: This is a general ruling applicable to the rider regardless of any mount he rides and in every state, whether arising from travel or residence. This generality surpasses all narrations mentioned in this chapter, and it is impermissible to disregard it—and this is the opinion of Abu Yusuf and others.

L5412 No textual evidence exists that one on foot may perform voluntary prayers while walking, and analogical reasoning is invalid. Therefore, this practice is impermissible for anyone other than the rider. It has been narrated to us from Wakiʿ, from Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm al-Nakhaʿī, who said: "They would pray upon their riding gear and mounts in whichever direction the mounts faced."

L5413 And this is a narration concerning the Companions and the Followers (may Allah be pleased with them) generally in travel and settled life, and with Allah, the Exalted, is success.

L5414 **Issue: The rider's prostration and bowing when performing prayer by nodding**

L5415 298 - Issue: The rider's bowing and prostration during prayer are to be performed through gestures. Narrated by ʿAbd al-Raḥmān ibn ʿAbd Allāh, from Ibrāhīm ibn Aḥmad, from al-Firabrī, from al-Bukhārī, from Mūsā ibn Ismāʿīl, from ʿAbd al-ʿAzīz ibn Muslim, from ʿAbd Allāh ibn Dīnār, who said: "'Abd Allāh ibn ʿUmar would pray while traveling on his mount, facing

وَبِهِ إِلَى الْبُخَارِيِّ: ثنا مُعَاذُ بْنُ فَضَالَةَ حَدَّثَنَا هِشَامُ الدَّسْتُوَائِيُّ عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ حَدَّثَنِي جَابِرٌ قَالَ «كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي عَلَى رَاحِلَتِهِ نَحْوَ الْمَشْرِقِ، فَإِذَا أَرَادَ أَنْ يُصَلِّيَ الْمَكْتُوبَةَ نَزَلَ فَاسْتَقْبَلَ الْقِبْلَةَ» .

قَالَ عَلِيٌّ: فَهَذَا عُمُومٌ لِلرَّاكِبِ أَيَّ شَيْءٍ رَكِبَ، وَفِي كُلِّ حَالٍ مِنْ سَفَرٍ أَوْ حَضَرٍ، وَهَذَا الْعُمُومُ زَائِدٌ عَلَى كُلِّ خَبَرٍ وَرَدَ فِي هَذَا الْبَابِ، وَلَا يَجُوزُ تَرْكُهُ - وَهُوَ قَوْلُ أَبِي يُوسُفَ وَغَيْرِهِ.

وَلَمْ يَأْتِ فِي الرَّاجِلِ نَصٌّ أَنْ يَتَطَوَّعَ مَاشِيًا، وَالْقِيَاسُ بَاطِلٌ، فَلَا يَجُوزُ ذَلِكَ لِغَيْرِ الرَّاكِبِ، وَقَدْ رُوِّينَا عَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانُوا يُصَلُّونَ عَلَى رِحَالِهِمْ وَدَوَابِّهِمْ حَيْثُمَا تَوَجَّهَتْ بِهِمْ.

وَهَذِهِ حِكَايَةٌ عَنْ الصَّحَابَةِ وَالتَّابِعِينَ - رَضِيَ اللَّهُ عَنْهُمْ - عُمُومًا فِي السَّفَرِ وَالْحَضَرِ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ سُجُودُ الرَّاكِبِ وَرُكُوعُهُ إذَا صَلَّى إيمَاءً]

٢٩٨ - مَسْأَلَةٌ: وَيَكُونُ سُجُودُ الرَّاكِبِ وَرُكُوعُهُ إذَا صَلَّى إيمَاءً -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُوسَى بْنُ إسْمَاعِيلَ ثنا عَبْدُ الْعَزِيزِ بْنُ مُسْلِمٍ ثنا عَبْدُ اللَّهِ بْنُ دِينَارٍ قَالَ: «كَانَ عَبْدُ اللَّهِ بْنُ عُمَرَ يُصَلِّي فِي السَّفَرِ عَلَى

[33] **Hadith references (L5410):** Sahih al-Bukhari 1099.

whichever direction it turned, making gestures (with his head). Ibn ʿUmar reported from the Messenger of Allāh (peace be upon him) that he would do likewise."

L5416–5417 **Issue: It is not permissible for anyone to perform the obligatory prayer except while standing, unless there exists a valid excuse.**

L5418 Issue: As for the obligatory prayer, it is not permissible for anyone to perform it except while standing unless due to an excuse - whether illness, fear of an unjust enemy, from an animal, or similar circumstances; or weakness preventing standing such as one aboard a ship; or a follower praying behind a sick imam or one excused to pray sitting. These individuals pray sitting. If the imam is unable to sit or stand, he prays lying down, and all those behind him must pray lying down as well. If in both cases there is a prompter ensuring people hear the imam's *takbīr*, they may pray standing beside the imam if they wish, or pray in the same manner as their imam.

L5419 As for the fearful and the sick: this is based on Allah's statement—the Exalted: {Allah does not burden any soul beyond its capacity} [Al-Baqarah: 286]; His statement: {Allah intends ease for you and does not intend hardship for you} [Al-Baqarah: 185]; and His statement: {And stand before Allah in devotion} [Al-Baqarah: 238]. Thus, Allah the Exalted has mandated standing except for those explicitly exempted by textual evidence. This ruling concerning the fearful and the sick is established by consensus, alongside the fact that the Prophet (peace be upon him) prayed the obligatory prayer seated due to an illness and a leg sprain he endured.[34]

L5420 As for one who prays behind an imam praying seated due to an excuse—people have differed regarding it? Mālik and those who adhered to his school said: It is not permissible for a sick person to lead healthy people in prayer

[34] **Qur'an references (L5419):** Qur'an 2:286 (Al-Baqarah); Qur'an 2:185 (Al-Baqarah); Qur'an 2:238 (Al-Baqarah).

رَاحِلَتِه أَيْنَمَا تَوَجَّهَتْ بِه، يُومِئُ إِيمَاءً، وَذَكَرَ ابْنُ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ كَانَ يَفْعَلُهُ» .

[مَسْأَلَةٌ صَلَاةُ الْفَرْضِ لَا يَحِلُّ لِأَحَدٍ أَنْ يُصَلِّيَهَا إلَّا وَاقِفًا إلَّا لِعُذْرٍ]

مَسْأَلَةٌ: وَأَمَّا صَلَاةُ الْفَرْضِ فَلَا يَحِلُّ لِأَحَدٍ أَنْ يُصَلِّيَهَا إلَّا وَاقِفًا إلَّا لِعُذْرٍ: مِنْ مَرَضٍ، أَوْ خَوْفٍ مِنْ عَدُوٍّ ظَالِمٍ، أَوْ مِنْ حَيَوَانٍ، أَوْ نَحْوِ ذَلِكَ، أَوْ ضَعْفٍ عَنْ الْقِيَامِ كَمَنْ كَانَ فِي سَفِينَةٍ، أَوْ مَنْ صَلَّى مُؤْتَمًّا بِإِمَامٍ مَرِيضٍ، أَوْ مَعْذُورٍ فَصَلَّى قَاعِدًا فَإِنَّ هَؤُلَاءِ يُصَلُّونَ قُعُودًا، فَإِنْ لَمْ يَقْدِرْ الْإِمَامُ عَلَى الْقُعُودِ، وَلَا الْقِيَامِ: صَلَّى مُضْطَجِعًا وَصَلُّوا كُلُّهُمْ خَلْفَهُ مُضْطَجِعِينَ وَلَا بُدَّ، وَإِنْ كَانَ فِي كِلَا الْوَجْهَيْنِ مُذَكِّرًا - يُسْمِعُ النَّاسَ تَكْبِيرَ الْإِمَامِ - صَلَّى إنْ شَاءَ قَائِمًا إلَى جَنْبِ الْإِمَامِ، وَإِنْ شَاءَ صَلَّى كَمَا يُصَلِّي إمَامُهُ.

فَأَمَّا الْخَائِفُ، وَالْمَرِيضُ، فَلِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] ؛ وَلِقَوْلِهِ تَعَالَى: {يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلا يُرِيدُ بِكُمُ الْعُسْرَ} [البقرة: ١٨٥] ؛ وَلِقَوْلِهِ تَعَالَى: {وَقُومُوا لِلَّهِ قَانِتِينَ} [البقرة: ٢٣٨] فَأَوْجَبَ اللَّهُ تَعَالَى الْقِيَامَ إلَّا عَمَّنْ أَسْقَطَهُ عَنْهُ بِالنَّصِّ، وَهَذَا فِي الْخَائِفِ وَالْمَرِيضِ: إجْمَاعٌ - مَعَ «أَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ صَلَّى الْفَرِيضَةَ قَاعِدًا لِمَرَضٍ كَانَ بِهِ وَلَوْثٍ بِرِجْلِهِ» .

وَأَمَّا مَنْ صَلَّى خَلْفَ إمَامٍ يُصَلِّي قَاعِدًا لِعُذْرٍ، فَإِنَّ النَّاسَ اخْتَلَفُوا فِيهِ؟ فَقَالَ مَالِكٌ وَمَنْ قَلَّدَهُ: لَا يَجُوزُ أَنْ يَؤُمَّ الْمَرِيضُ قَاعِدًا الْأَصِحَّاءَ - إلَّا رِوَايَةً رَوَاهَا عَنْ الْوَلِيدِ بْنِ مُسْلِمٍ مُوَافِقَةً لِقَوْلِ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ.

while he is seated, except for a narration transmitted from al-Walīd ibn Muslim that concurs with the positions of Abū Ḥanīfah and al-Shāfiʿī.

L5421 Abū Ḥanīfah and al-Shāfiʿī said: A sick person may lead healthy worshippers in prayer while seated, provided those behind him pray standing, and this is necessary. Abū Ḥanīfah stated: One who prays reclining due to incapacity cannot lead healthy worshippers in prayer under any circumstance. Abū Sulaymān and our companions said: A sick person may lead healthy worshippers in prayer while seated, but all followers must pray seated—is this necessary? ʿAlī said: We uphold this ruling except for one stationed beside the imam to remind the congregation and announce the imam's takbīr. Such a person may choose between praying seated or standing.

وَقَالَ أَبُو حَنِيفَةَ وَالشَّافِعِيُّ: يَؤُمُّ الْمَرِيضُ قَاعِدًا: الْأَصِحَّاءَ، إِلَّا أَنَّهُمْ يُصَلُّونَ وَرَاءَهُ قِيَامًا، وَلَا بُدَّ قَالَ أَبُو حَنِيفَةَ: وَلَا يَؤُمُّ الْمُصَلِّي مُضْطَجِعًا لِعُذْرٍ: الْأَصِحَّاءَ أَصْلًا وَقَالَ أَبُو سُلَيْمَانَ وَأَصْحَابُنَا: يَؤُمُّ الْمَرِيضُ قَاعِدًا: الْأَصِحَّاءَ، وَلَا يُصَلُّونَ وَرَاءَهُ إِلَّا قُعُودًا كُلُّهُمْ، وَلَا بُدَّ؟ قَالَ عَلِيٌّ: وَبِهَذَا نَأْخُذُ إِلَّا فِيمَنْ يُصَلِّي إِلَى جَنْبِ الْإِمَامِ يُذَكِّرُ النَّاسَ وَيُعْلِمُهُمْ تَكْبِيرَ الْإِمَامِ، فَإِنَّهُ مُخَيَّرٌ بَيْنَ أَنْ يُصَلِّيَ قَاعِدًا وَبَيْنَ أَنْ يُصَلِّيَ قَائِمًا.

L5422–5423 Ali said: We examined whether there existed any clarification from the Messenger of Allah—peace and blessings be upon him—regarding this matter. We found what ʿAbd al-Raḥmān ibn ʿAbd Allāh narrated to us: Ibrāhīm ibn Aḥmad al-Farabrī narrated to us; al-Bukhārī narrated to us; ʿAbd Allāh ibn Yūsuf narrated to us; Mālik narrated to us from Ibn Shihāb from Anas that the Messenger of Allah—peace and blessings be upon him—said: "The imam is appointed solely to be followed." He [Anas] mentioned the Prophet's statement—peace be upon him—which states: "When he prays seated, then pray seated, all together."

قَالَ عَلِيٌّ: فَنَظَرْنَا هَلْ جَاءَ فِي هَذَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيَانٌ؟ فَوَجَدْنَا مَا حَدَّثَنَاهُ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا مَالِكٌ عَنْ ابْنِ شِهَابٍ عَنْ أَنَسٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِنَّمَا جُعِلَ الْإِمَامُ لِيُؤْتَمَّ بِهِ» وَذَكَرَ كَلَامَهُ - عَلَيْهِ السَّلَامُ - وَفِيهِ «، وَإِذَا صَلَّى جَالِسًا فَصَلُّوا جُلُوسًا أَجْمَعُونَ» .

L5424 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn Al-Hajjaj narrated to us: Qutaybah ibn Sa'id narrated to us: Al-Mughirah Al-Hizami from Abu Az-Zinad, from Al-A'raj, from Abu Hurairah that the Messenger of Allah (SAW) said: "The Imam is appointed solely to be followed, so do not differ from him. When he utters the takbir, then utter the takbir. When he bows, then bow. When he says: 'Sami'a Allahu liman hamidah,' then say: 'Allahumma Rabbana lakal-hamd.' When he prostrates, then prostrate. When he prays sitting, then pray sitting all of you."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا قُتَيْبَةُ بْنُ سَعِيدٍ ثنا الْمُغِيرَةُ الْحِزَامِيُّ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِنَّمَا جُعِلَ الْإِمَامُ لِيُؤْتَمَّ بِهِ، فَلَا تَخْتَلِفُوا عَلَيْهِ فَإِذَا كَبَّرَ فَكَبِّرُوا وَإِذَا رَكَعَ فَارْكَعُوا وَإِذَا قَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ؟ فَقُولُوا: اللَّهُمَّ رَبَّنَا لَكَ الْحَمْدُ وَإِذَا سَجَدَ فَاسْجُدُوا وَإِذَا صَلَّى جَالِسًا فَصَلُّوا جُلُوسًا أَجْمَعُونَ» .

L5425–5427 And through him to Muslim: Abu Bakr ibn Abi Shaybah, Abu al-Rabi' al-Zahrani, Abu Kurayb—who is Muhammad ibn al-'Ala'—and Muhammad

ibn ‘Abdullah ibn Numayr narrated to us. Abu Bakr said (and the wording is his): ‘Abdah ibn Sulayman narrated to us. Abu al-Rabi‘ said: Hammad ibn Zayd narrated to us. Abu Kurayb said: ‘Abdullah ibn Numayr narrated to us. Muhammad ibn ‘Abdullah said: My father narrated to us. Then they all agreed: from Hisham ibn ‘Urwah, from his father, from ‘Aishah, who said: “Allah’s Messenger—peace and blessings of Allah be upon him—complained of illness, and some of his Companions came to visit him. Allah’s Messenger—peace and blessings of Allah be upon him—prayed while sitting, so they prayed following his lead while standing. He gestured to them to sit, so they sat. When he concluded, he said: ‘The Imam is appointed only to be followed. When he bows, you must bow; when he rises, you must rise; and when [...]’” “He prayed sitting, so pray sitting.”[35]

وَبِهِ إِلَى مُسْلِمٍ: حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَأَبُو الرَّبِيعِ الزَّهْرَانِيُّ وَأَبُو كُرَيْبٍ هُوَ مُحَمَّدُ بْنُ الْعَلَاءِ وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ، قَالَ أَبُو بَكْرٍ: وَاللَّفْظُ لَهُ: حَدَّثَنَا عَبْدَةُ بْنُ سُلَيْمَانَ، وَقَالَ أَبُو الرَّبِيعِ: ثنا حَمَّادُ بْنُ زَيْدٍ، وَقَالَ أَبُو كُرَيْبٍ: ثنا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ، وَقَالَ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ: ثنا أَبِي، ثُمَّ اتَّفَقُوا كُلُّهُمْ: عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ: «اشْتَكَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَدَخَلَ عَلَيْهِ نَاسٌ مِنْ أَصْحَابِهِ يَعُودُونَهُ، فَصَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَالِسًا فَصَلَّوْا بِصَلَاتِهِ قِيَامًا، فَأَشَارَ إِلَيْهِمْ: أَنْ اجْلِسُوا؟ فَجَلَسُوا فَلَمَّا انْصَرَفَ قَالَ: إِنَّمَا جُعِلَ الْإِمَامُ لِيُؤْتَمَّ بِهِ فَإِذَا رَكَعَ فَارْكَعُوا وَإِذَا رَفَعَ فَارْفَعُوا وَإِذَا صَلَّى جَالِسًا فَصَلُّوا جُلُوسًا» .

L5428 It was narrated to us via the chain of Al-Layth ibn Sa‘d from Abu Az-Zubayr from Jabir: “The Messenger of Allah - peace and blessings be upon him - became ill, so we prayed behind him while he was seated. Abu Bakr made his own takbir audible to the people. The Prophet turned toward us and saw us standing, so he gestured to us. We then sat down and prayed with him while seated. When he concluded the prayer, he said: ’You were just now on the verge of imitating the practice of the Persians and Romans, who stand before their kings while they remain seated. Do not do this. Follow your imams: if he prays standing, pray standing; if he prays seated, pray seated.’” This was also narrated by Qays ibn Abi Hazim, Hammam ibn Munabbih, Abu ‘Alqamah, and Abu Yunus—all transmitting from Abu Hurayrah. It was further narrated to us via the chain of Salim ibn ‘Abdullah ibn ‘Umar from his father, through ‘Ubaydullah ibn ‘Abdullah ibn ‘Utbah from Ibn ‘Abbas, from ‘Ā’ishah, and through Al-Aswad from her. Thus, it attained the status of a tawatur transmission, necessitating certain knowledge. How, then, could anyone oppose this ruling?

وَرُوِّينَا أَيْضًا مِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ: «اشْتَكَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَصَلَّيْنَا وَرَاءَهُ وَهُوَ قَاعِدٌ وَأَبُو بَكْرٍ يُسْمِعُ النَّاسَ تَكْبِيرَهُ، فَالْتَفَتَ إِلَيْنَا فَرَآنَا قِيَامًا، فَأَشَارَ إِلَيْنَا فَقَعَدْنَا فَصَلَّيْنَا بِصَلَاتِهِ قُعُودًا فَلَمَّا سَلَّمَ قَالَ: إِنْ كِدْتُمْ آنِفًا تَفْعَلُونَ فِعْلَ فَارِسَ وَالرُّومِ يَقُومُونَ عَلَى مُلُوكِهِمْ وَهُمْ قُعُودٌ؟ فَلَا تَفْعَلُوا وَائْتَمُّوا بِأَئِمَّتِكُمْ إِنْ صَلَّى قَائِمًا فَصَلُّوا قِيَامًا، وَإِنْ صَلَّى قَاعِدًا فَصَلُّوا قُعُودًا» ، وَرَوَاهُ أَيْضًا قَيْسُ بْنُ أَبِي حَازِمٍ، وَهَمَّامُ بْنُ مُنَبِّهٍ، وَأَبُو عَلْقَمَةَ وَأَبُو يُونُسَ كُلُّهُمْ عَنْ أَبِي هُرَيْرَةَ. وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ وَعَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنِ ابْنِ عَبَّاسٍ، وَعَائِشَةَ وَمِنْ طَرِيقِ الْأَسْوَدِ عَنْهَا فَصَارَ نَقْلَ تَوَاتُرٍ، فَوَجَبَ لِلْعِلْمِ، فَلَمْ يَجُزْ لِأَحَدٍ خِلَافُ ذَلِكَ؟ .

L5429 We examined the objection raised by the Malikis in their prohibition of

[35] **Hadith references (L5425):** Sahih Muslim 412a.

healthy individuals from leading prayer while sitting (a practice permitted for those with illness or valid excuse), and found no foundation for their position whatsoever, except that one of their scholars claimed: "This ruling applies exclusively to the Prophet (peace be upon him)." They argued this using the narration we transmitted through Jābir al-Juʿfī's chain from al-Shaʿbī, and through ʿAbd al-Malik ibn Ḥabīb's chain from someone who informed him via Mujālid from al-Shaʿbī, that the Messenger of Allah (peace be upon him) said: "Let no one among you lead prayer sitting after me."

فَنَظَرْنَا فِيمَا اعْتَرَضَ بِهِ الْمَالِكِيُّونَ فِي مَنْعِهِمْ مِنْ صَلَاةِ الْجَالِسِ لِمَرَضٍ أَوْ عُذْرٍ لِلْأَصِحَّاءِ، فَلَمْ نَجِدْ لَهُمْ شَيْئًا أَصْلًا، إِلَّا أَنَّ قَائِلَهُمْ قَالَ: هَذَا خُصُوصٌ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاحْتَجُّوا فِي ذَلِكَ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ عَنْ الشَّعْبِيِّ، وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ عَمَّنْ أَخْبَرَهُ عَنْ مُجَالِدٍ عَنْ الشَّعْبِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَؤُمَّنَّ أَحَدُكُمْ بَعْدِي جَالِسًا» ؟

L5430–5431 Ali said: This is nothing.

قَالَ عَلِيٌّ: وَهَذَا لَا شَيْءَ.

L5432 As for their claim that this is specific to the Messenger of Allah—peace and blessings be upon him—it is invalid, for the explicit text of the hadith refutes this assertion. The Prophet—peace and blessings be upon him—stated: "The Imam is appointed so that he may be followed; therefore, do not differ from him. If he prays sitting, pray sitting." Thus, it is evident that he—peace and blessings be upon him—generalized this ruling to every Imam after him without any ambiguity.

أَمَّا قَوْلُهُمْ: إنَّ هَذَا خُصُوصٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَاطِلٌ؛ لِأَنَّ نَصَّ الْحَدِيثِ يُكَذِّبُ هَذَا الْقَوْلَ؛ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ فِيهِ: «إنَّمَا جُعِلَ الْإِمَامُ لِيُؤْتَمَّ بِهِ فَلَا تَخْتَلِفُوا عَلَيْهِ فَإِذَا صَلَّى جَالِسًا فَصَلُّوا جُلُوسًا» فَصَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - عَمَّ بِذَلِكَ كُلَّ إمَامٍ بَعْدَهُ بِلَا إشْكَالٍ.

L5433 The Almighty's saying, "There has certainly been for you in the Messenger of Allah an excellent example" (Al-Aḥzāb 33:21), is a refutation of anyone who claims specificity in any aspect of his Sunnah or actions (peace be upon him), unless such a claimant substantiates their assertion with an authentic text or a definitive consensus.[36]

وَقَوْله تَعَالَى: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] تَكْذِيبٌ لِكُلِّ مَنْ ادَّعَى الْخُصُوصَ فِي شَيْءٍ مِنْ سُنَنِهِ وَأَفْعَالِهِ - عَلَيْهِ السَّلَامُ -، إلَّا أَنْ يَأْتِيَ عَلَى دَعْوَاهُ بِنَصٍّ صَحِيحٍ أَوْ إجْمَاعٍ مُتَيَقَّنٍ؟ .

L5434–5436 As for the ḥadīth of al-Shaʿbī, it is false because it is a narration by Jābir al-Juʿfī—the notorious liar known for advocating the Rajʿa (return) of ʿAlī (may Allah be pleased with him?)—and Mujālid, who is weak. Moreover, it is a mursal (disconnected) narration. It is astonishing that the Mālikīs disparage the narrations of the people of Kufa, which are unparalleled, while they find no narrations from the people of Medina more authentic in origin. We know of no narrations from the people of Medina more authentic than Sufyān al-Thawrī's report from Manṣūr from Ibrāhīm from al-Aswad, ʿAlqamah, and

وَأَمَّا حَدِيثُ الشَّعْبِيِّ فَبَاطِلٌ؛ لِأَنَّهُ رِوَايَةُ جَابِرٍ الْجُعْفِيِّ الْكَذَّابِ الْمَشْهُورِ بِالْقَوْلِ بِرَجْعَةِ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ -؟ وَمُجَالِدٍ وَهُوَ ضَعِيفٌ، وَهُوَ مُرْسَلٌ مَعَ ذَلِكَ. وَمِنْ الْعَجَبِ أَنَّ الْمَالِكِيِّينَ يُوهِنُونَ رِوَايَاتِ أَهْلِ الْكُوفَةِ الَّتِي لَا نَظِيرَ لَهَا، وَلَا يَجِدُونَ فِي رِوَايَاتِ أَهْلِ الْمَدِينَةِ أَصَحَّ مِنْهَا أَصْلًا؛ فَمَا نَعْلَمُ لِأَهْلِ الْمَدِينَةِ أَصَحَّ مِنْ رِوَايَةِ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ عَنْ الْأَسْوَدِ، وَعَلْقَمَةَ، وَمَسْرُوقٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ وَعَائِشَةَ أُمِّ

[36] **Qur'an references (L5433):** Qur'an 33:21 (Al-Ahzab).

Masrūq—all from ʿUmar ibn al-Khaṭṭāb. And Aisha, the Mother of the Believers, and Ibn Mas'ud: Then they show no concern here for favoring the most corrupting narrations of the people of Kufa and the most evil over the most authentic narrations of the people of Medina, such as Al-Zuhri's narration from Anas, Hisham ibn Urwah's from his father from Aisha, Ubaydullah ibn Abdullah's from Aisha, Abu Al-Zinad's from Al-A'raj from Abu Hurairah, and Salim ibn Abdullah ibn Umar's from his father—all of them from the Prophet (peace be upon him). What follows this is astonishing, and even more astonishing is their assertion that his actions (peace be upon him) are equivalent to his commandments, yet they disregard here the final action he performed (peace be upon him). For the last prayer he prayed (peace be upon him) was while seated, as we shall mention hereafter, God willing. If they argue: "The prayer of one seated is lesser in merit than the prayer of one standing—so how can he lead those who are healthy?" We respond: It is only lesser in merit if one is incapable of standing or is permitted to sit despite being able to stand. But if sitting is obligatory for him, there is no reduction in the merit of his prayer at that time. Moreover, what in this prevents one whose prayer is inferior in merit from leading another whose prayer is superior in merit? We know that no one's prayer surpasses the prayer of the Messenger of God (peace be upon him), yet he prayed behind Abu Bakr and Abdur Rahman ibn Awf—their prayers being without doubt inferior to his. According to your view, a traveler whose prayer consists of two rak'ahs may lead a resident whose obligatory prayer is four rak'ahs. Why do you permit that yet prohibit this? Were it not for baseless arbitrariness, this claim would collapse—and all praise belongs to God, the Exalted.

الْمُؤْمِنِينَ وَابْنِ مَسْعُودٍ: ثُمَّ لَا يُبَالُونَ هَاهُنَا بِتَغْلِيبِ أَفْتَنِ رِوَايَةٍ لِأَهْلِ الْكُوفَةِ وَأَخْبَثِهَا عَلَى أَصَحِّ رِوَايَةٍ لِأَهْلِ الْمَدِينَةِ، كَالزُّهْرِيِّ عَنْ أَنَسٍ، وَهِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ، وَعُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ عَنْ عَائِشَةَ، وَأَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ، كُلِّهِمْ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَا بَعْدَ هَذَا عَجَبٌ وَأَعْجَبُ مِنْ ذَلِكَ أَنَّهُمْ يَقُولُونَ: إنَّ أَفْعَالَهُ - عَلَيْهِ السَّلَامُ - كَأَوَامِرِهِ، ثُمَّ لَمْ يُبَالُوا هَاهُنَا بِخِلَافِ آخِرِ فِعْلٍ فَعَلَهُ - عَلَيْهِ السَّلَامُ - فَإِنَّ آخِرَ صَلَاةٍ صَلَّاهَا - عَلَيْهِ السَّلَامُ - بِالنَّاسِ قَاعِدًا، كَمَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى؟ فَإِنْ قَالُوا: إنَّ صَلَاةَ الْقَاعِدِ نَاقِصَةُ الْفَضْلِ عَنْ صَلَاةِ الْقَائِمِ، فَكَيْفَ يَؤُمُّ الصَّحِيحَ؟ قُلْنَا: إنَّمَا يَكُونُ نَاقِصَ الْفَضْلِ إذَا لَمْ يَقْدِرْ عَلَى الْقِيَامِ، أَوْ قَدَرَ عَلَيْهِ فَفُسِحَ لَهُ فِي الْقُعُودِ، وَأَمَّا إذَا افْتُرِضَ عَلَيْهِ الْقُعُودُ فَلَا نُقْصَانَ لِفَضْلِ صَلَاتِهِ حِينَئِذٍ، ثُمَّ مَا فِي هَذَا مِمَّا يَمْنَعُ أَنْ يَؤُمَّ الْأَنْقَصُ فَضْلًا مَنْ هُوَ أَتَمُّ فَضْلًا فِي صَلَاتِهِ مِنْهُ؟ وَقَدْ عَلِمْنَا أَنْ لَا صَلَاةَ لِأَحَدٍ أَفْضَلَ مِنْ صَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ ائْتَمَّ بِأَبِي بَكْرٍ، وَبِعَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَهُمَا أَنْقَصُ صَلَاةً مِنْهُ بِلَا شَكٍّ؟ وَقَدْ يَؤُمُّ عِنْدَكُمْ الْمُسَافِرُ - وَصَلَاتُهُ رَكْعَتَانِ - هَذَا الْمُقِيمَ - وَفَرْضُهُ أَرْبَعٌ، فَلِمَ أَجَزْتُمْ ذَلِكَ وَمَنَعْتُمْ هَذَا؟ لَوْلَا التَّحَكُّمُ بِلَا بُرْهَانٍ فَسَقَطَ هَذَا الْقَوْلُ -، وَلِلَّهِ تَعَالَى الْحَمْدُ.

L5437–5439 Then we returned to the opinion of al-Shāfiʿī and Abū Ḥanīfah, and found them claiming that the directive of the Messenger of Allah (peace be upon him) to pray seated behind a sitting imam due to an excuse or illness had been abrogated. We asked them: "With what evidence?" They mentioned what was narrated to us by ʿAbdullāh ibn Yūsuf, narrated by Aḥmad ibn Fatḥ, narrated by ʿAbd al-Wahhāb ibn ʿĪsā, narrated by Aḥmad ibn Muḥammad, narrated by Aḥmad ibn ʿAlī, narrated by Muslim ibn al-Ḥajjāj, narrated by

ثُمَّ رَجَعْنَا إلَى قَوْلِ الشَّافِعِيِّ، وَأَبِي حَنِيفَةَ، فَوَجَدْنَاهُمْ يَدَّعُونَ أَنَّ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالصَّلَاةِ جُلُوسًا خَلْفَ الْإِمَامِ الْجَالِسِ لِعُذْرٍ، أَوْ مَرَضٍ مَنْسُوخٌ، فَسَأَلْنَاهُمْ: بِمَاذَا؟ فَذَكَرُوا مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَحْمَدُ بْنُ عَبْدِ اللَّهِ

Aḥmad ibn ʿAbd Allāh ibn Yūnus. Zā’idah narrated to us: Mūsā ibn Abī ʿĀ’ishah narrated to us from ʿUbaydullāh ibn ʿAbdullāh from ʿUtbah, who said: “I entered upon ʿĀ’ishah, the Mother of the Believers, and asked her about the illness of the Messenger of Allah—peace and blessings be upon him. She mentioned the account; in it was his appointment—peace and blessings be upon him—of Abū Bakr to lead the prayer, and that Abū Bakr led the people in prayer during those days. Then the Messenger of Allah—peace and blessings be upon him—felt some relief and came out between two men, one of whom was al-ʿAbbās, for the Ẓuhr prayer, while Abū Bakr was leading the people. When Abū Bakr saw him, he moved to step back, but the Prophet—peace and blessings be upon him—gestured to him not to retreat. He said to the two men: ’Seat me beside him.’ They seated him next to Abū Bakr. Abū Bakr was praying, leading the prayer of the Messenger of Allah—peace and blessings be upon him—while the people followed his lead, and the Prophet—peace and blessings be upon him—remained seated.” ʿUbaydullāh ibn ʿAbdullāh mentioned that he presented this ḥadīth to Ibn ʿAbbās, who did not disapprove of anything in it.

بْنِ يُونُسَ ثنا زَائِدَةُ ثنا مُوسَى بْنُ أَبِي عَائِشَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ عَنْ «عُتْبَةَ قَالَ: دَخَلْتُ عَلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَسَأَلْتُهَا عَنْ مَرَضِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَتْ الْخَبَرَ، وَفِيهِ: عَهْدُه - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى أَبِي بَكْرٍ بِالصَّلَاةِ، وَأَنَّ أَبَا بَكْرٍ صَلَّى بِالنَّاسِ تِلْكَ الْأَيَّامَ ثُمَّ إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَجَدَ مِنْ نَفْسِهِ خِفَّةً فَخَرَجَ بَيْنَ رَجُلَيْنِ، أَحَدُهُمَا الْعَبَّاسُ، لِصَلَاةِ الظُّهْرِ، وَأَبُو بَكْرٍ يُصَلِّي بِالنَّاسِ، فَلَمَّا رَآهُ أَبُو بَكْرٍ ذَهَبَ لِيَتَأَخَّرَ، فَأَوْمَأَ إلَيْهِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنْ لَا يَتَأَخَّرَ، وَقَالَ لَهُمَا: أَجْلِسَانِي إلَى جَنْبِهِ، فَأَجْلَسَاهُ إلَى جَنْبِ أَبِي بَكْرٍ، وَكَانَ أَبُو بَكْرٍ يُصَلِّي، وَهُوَ قَائِمٌ بِصَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالنَّاسُ يُصَلُّونَ بِصَلَاةِ أَبِي بَكْرٍ، وَالنَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَاعِدٌ» فَذَكَرَ عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ أَنَّهُ عَرَضَ هَذَا الْحَدِيثَ عَلَى ابْنِ عَبَّاسٍ فَلَمْ يُنْكِرْ مِنْهُ شَيْئًا.

L5440–5442 And through him to Muslim: Yahya ibn Yahya narrated to us, Abu Mu’awiyah narrated from Al-A’mash from Ibrahim Al-Nakha’i from Al-Aswad from Aisha, who said: “When the Messenger of Allah (peace be upon him) grew critically ill, he said: ’Command Abu Bakr to lead the congregation in prayer.’ She related the hadith, which included: When Abu Bakr began leading the prayer, the Prophet (peace be upon him) felt some relief in his condition. He rose while being supported between two men, his feet scraping across the ground. When he entered the mosque, Abu Bakr perceived his movement and started to step back. But the Messenger of Allah (peace be upon him) gestured to him: ’Remain in your place.’ Then the Messenger of Allah (peace be upon him) came...” ...Allah until he sat to the left of Abu Bakr. Aisha said: “The Messenger of Allah—peace be upon him—would lead the people in prayer while seated, and Abu Bakr stood. Abu Bakr followed the Prophet’s lead in prayer—peace be upon him—and the people followed Abu Bakr’s prayer.” This chain is transmitted via Muslim: Manjab ibn al-Harith al-Tamimi narrated to us from Ibn Mushir (who is Ali), from al-A‘mash, from

وَبِهِ إلَى مُسْلِمٍ: حَدَّثَنَا يَحْيَى بْنُ يَحْيَى ثنا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ الْأَسْوَدِ عَنْ عَائِشَةَ قَالَتْ: «لَمَّا ثَقُلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: مُرُوا أَبَا بَكْرٍ فَلْيُصَلِّ بِالنَّاسِ فَذَكَرَتْ الْحَدِيثَ - وَفِيهِ فَلَمَّا دَخَلَ أَبُو بَكْرٍ فِي الصَّلَاةِ وَجَدَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ نَفْسِهِ خِفَّةً، فَقَامَ يُهَادَى بَيْنَ رَجُلَيْنِ، وَرِجْلَاهُ تَخُطَّانِ فِي الْأَرْضِ، فَلَمَّا دَخَلَ الْمَسْجِدَ سَمِعَ أَبُو بَكْرٍ حِسَّهُ فَذَهَبَ يَتَأَخَّرُ فَأَوْمَأَ إلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَقِمْ مَكَانَك فَجَاءَ رَسُولُ اللَّهِ حَتَّى جَلَسَ عَنْ يَسَارِ أَبِي بَكْرٍ. قَالَتْ عَائِشَةُ: فَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي بِالنَّاسِ جَالِسًا، وَأَبُو بَكْرٍ قَائِمًا، يَقْتَدِي أَبُو بَكْرٍ بِصَلَاةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَيَقْتَدِي النَّاسُ بِصَلَاةِ أَبِي بَكْرٍ» وَبِهِ إلَى مُسْلِمٍ: حَدَّثَنَا مِنْجَابُ بْنُ الْحَارِثِ التَّمِيمِيُّ أَنَا ابْنُ مُسْهِرٍ - هُوَ

Ibrahim, from al-Aswad, from Aisha, who mentioned this hadith, in which is: "The Messenger of Allah—peace and blessings of Allah the Exalted be upon him and his family—would lead the people in prayer, and Abu Bakr made the takbir audible to them."

عَلِيٌّ - عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ عَنْ الْأَسْوَدِ، عَنْ عَائِشَةَ، فَذَكَرَتْ هَذَا الْحَدِيثَ وَفِيهِ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ - يُصَلِّي بِالنَّاسِ، وَأَبُو بَكْرٍ يُسْمِعُهُمْ التَّكْبِيرَ» .

L5443–5445 Ali said: We examined this report and found in it neither a textual basis nor evidence for their claim that the command for healthy individuals to pray sitting behind an imam who is praying seated due to an excuse has been abrogated, as there is nothing in it. There is no clarification nor indication that the people prayed behind him (peace be upon him) standing, with the exception of Abu Bakr who made his takbīr audible to the people [while they sat]. Thus, it is impermissible to oppose the certain command of his (peace be upon him) - established through mass-transmitted (mutawātir) reports that the people should pray sitting - based on a false assumption that is utterly invalid. How could one presume this, when it is entirely impermissible to even suspect that the Companions (may Allah be pleased with them) opposed his command (peace be upon him)? The explicit wording of the ḥadīth contains evidence that they prayed only sitting, for it states: "The people used to follow Abu Bakr's prayer." By necessity, we know that had they been standing while Abu Bakr was standing, only the first row would have followed his prayer. As for the remaining rows, they would not have done so, because they did not see him - since the first row blocked their view. The rows behind him (peace be upon him) were tightly arranged - neither scattered nor fragmented. Given that the explicit text states: "They used to follow Abu Bakr's prayer," this constitutes a report about all of them. Thus, it is confirmed that they were in a state where all could see him, thereby validly enabling them to follow his prayer. This could only occur in a state of sitting. It is not permissible to restrict the wording of the report or interpret it metaphorically except through an explicit textual proof.

قَالَ عَلِيٌّ: فَنَظَرْنَا فِي هَذَا الْخَبَرِ، فَلَمْ نَجِدْ فِيهِ لَا نَصًّا، وَلَا دَلِيلًا عَلَى مَا ادَّعَوْهُ مِنْ نَسْخِ الْأَمْرِ بِأَنْ يُصَلِّيَ الْأَصِحَّاءُ قُعُودًا خَلْفَ الْإِمَامِ الْمُصَلِّي قَاعِدًا لِعُذْرٍ، إذْ لَيْسَ فِيهِ بَيَانٌ وَلَا إشَارَةٌ بِأَنَّ النَّاسَ صَلَّوْا خَلْفَهُ - عَلَيْهِ السَّلَامُ - قِيَامًا، حَاشَا أَبَا بَكْرٍ الْمُسْمِعَ النَّاسَ تَكْبِيرَهُ فَقَطْ، فَلَمْ تَجُزْ مُخَالَفَةُ يَقِينِ أَمْرِهِ - عَلَيْهِ السَّلَامُ - بِالنَّقْلِ الْمُتَوَاتِرِ بِأَنْ يُصَلِّيَ النَّاسُ جُلُوسًا -: لِظَنٍّ كَاذِبٍ لَا يَصِحُّ أَبَدًا، بَلْ لَا يَحِلُّ أَلْبَتَّةَ أَنْ يُظَنَّ بِالصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالَفَةُ أَمْرِهِ - عَلَيْهِ السَّلَامُ - كَيْفَ وَفِي نَصِّ لَفْظِ الْحَدِيثِ دَلِيلٌ عَلَى أَنَّهُمْ لَمْ يُصَلُّوا إلَّا قُعُودًا وَذَلِكَ لِأَنَّ فِيهِ: «أَنَّ النَّاسَ كَانُوا يَقْتَدُونَ بِصَلَاةِ أَبِي بَكْرٍ» ، وَبِالضَّرُورَةِ نَدْرِي أَنَّهُمْ لَوْ كَانُوا قِيَامًا وَأَبُو بَكْرٍ قَائِمٌ لَمَا اقْتَدَى بِصَلَاتِهِ إلَّا الصَّفُّ الْأَوَّلُ فَقَطْ، وَأَمَّا سَائِرُ الصُّفُوفِ فَلَا، لِأَنَّهُمْ كَانُوا لَا يَرَوْنَهُ، لِأَنَّ الصَّفَّ الْأَوَّلَ يَحْجُبُهُمْ عَنْهُ، وَالصُّفُوفُ خَلْفَهُ - عَلَيْهِ السَّلَامُ - كَانَتْ مَرْصُوصَةً، لَا مُتَنَابِذَةً، وَلَا مُتَقَطِّعَةً، فَإِذْ فِي نَصِّ الْخَبَرِ، وَلَفْظِهِ: «أَنَّهُمْ كَانُوا يَقْتَدُونَ بِصَلَاةِ أَبِي بَكْرٍ» ، فَهَذَا خَبَرٌ عَنْ جَمِيعِهِمْ، فَصَحَّ أَنَّهُمْ كَانُوا فِي حَالٍ يَرَوْنَهُ كُلُّهُمْ، فَيَصِحُّ لَهُمْ الِاقْتِدَاءُ بِصَلَاتِهِ، وَلَا يَكُونُ ذَلِكَ أَلْبَتَّةَ إلَّا فِي حَالِ قُعُودِهِمْ، وَلَا يَجُوزُ تَخْصِيصُ لَفْظِ الْخَبَرِ، وَلَا حَمْلُهُ عَلَى الْمَجَازِ إلَّا بِنَصٍّ جَلِيٍّ.

L5446 Then, if there were in the hadith an explicit text stating that they prayed standing - and this is never found - it would not contain any evidence of

abrogation whatsoever. Rather, it would then merely indicate permissibility and clarify that the previous injunction was a recommendation and nothing beyond that, as we stated regarding the individual: it is permissible for him to pray sitting or standing, and in the congregational row if he wishes or next to the Imam.

ثُمَّ لَوْ كَانَ فِي الْحَدِيثِ نَصًّا: أَنَّهُمْ صَلَّوْا قِيَامًا - وَهَذَا لَا يُوجَدُ أَبَدًا - لَمَا كَانَ فِيهِ دَلِيلٌ عَلَى النَّسْخِ أَلْبَتَّةَ، بَلْ كَانَ يَكُونُ حِينَئِذٍ إبَاحَةً فَقَطْ، وَبَيَانُ أَنَّ ذَلِكَ الْأَمْرَ الْمُتَقَدَّمَ نَدْبٌ وَلَا مَزِيدَ كَمَا قُلْنَا فِي الْمُذَكِّرِ: إنَّهُ جَائِزٌ لَهُ أَنْ يُصَلِّيَ قَاعِدًا أَوْ قَائِمًا، وَفِي الصَّفِّ إنْ شَاءَ أَوْ إلَى جَنْبِ الْإِمَامِ.

L5447–5448 Thus, what they clung to is entirely invalidated, and Abū Ḥanīfah's contradiction became apparent in his permitting a sick person to pray sitting while the healthy stand – yet prohibiting a sick person from praying reclining with the healthy, with no fundamental distinction in this at all? Some people have raised objections to this narration by citing what was reported: that Abū Bakr was the imam.

فَبَطَلَ مَا تَعَلَّقُوا بِهِ جُمْلَةً، وَظَهَرَ تَنَاقُضُ أَبِي حَنِيفَةَ فِي إجَازَتِهِ أَنْ يُصَلِّيَ الْمَرِيضُ قَاعِدًا بِالْأَصِحَّاءِ قِيَامًا -، وَمَنَعَهُ أَنْ يُصَلِّيَ الْمَرِيضُ مُضْطَجِعًا الْأَصِحَّاءَ، وَلَا فَرْقَ فِي ذَلِكَ أَصْلًا؟ ، وَقَدْ اعْتَرَضَ بَعْضُ النَّاسِ فِي هَذَا الْخَبَرِ بِأَنَّهُ قَدْ رُوِيَ: أَنَّ أَبَا بَكْرٍ كَانَ هُوَ الْإِمَامَ.

L5449 They mentioned what ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: I am ʿAlī ibn Ḥajar; he [Ḥumayd] narrated to us from Anas, who said: "The last prayer the Messenger of Allāh (peace and blessings of Allāh be upon him) prayed with the people was performed in a single garment, wrapped around himself, behind Abū Bakr."[37]

وَذَكَرُوا مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَلِيُّ بْنُ حَجَرٍ ثنا حُمَيْدٍ عَنْ «أَنَسٍ قَالَ: آخِرُ صَلَاةٍ صَلَّاهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعَ الْقَوْمِ: صَلَّى فِي ثَوْبٍ وَاحِدٍ مُتَوَشِّحًا خَلْفَ أَبِي بَكْرٍ» .

L5450 And through him to Aḥmad ibn Shuʿayb: I am Muḥammad ibn al-Muthannā—Bakr ibn ʿĪsā narrated to me, saying: I heard Shuʿbah mention from Nuʿaym ibn Abī Hind from Abū Wā'il from Masrūq from ʿĀ'ishah that Abū Bakr led the people in prayer while the Messenger of Allah—peace and blessings be upon him—was in the row.

وَبِهِ إلَى أَحْمَدَ بْنِ شُعَيْبٍ: أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى حَدَّثَنِي بَكْرُ بْنُ عِيسَى قَالَ سَمِعْتُ شُعْبَةَ يَذْكُرُ عَنْ نُعَيْمِ بْنِ أَبِي هِنْدٍ عَنْ أَبِي وَائِلٍ عَنْ مَسْرُوقٍ عَنْ عَائِشَةَ «أَنَّ أَبَا بَكْرٍ صَلَّى بِالنَّاسِ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الصَّفِّ» .

L5451 Muhammad ibn Sa'id ibn Nubāt narrated to us: Ahmad ibn 'Awn Allāh narrated to us: Qāsim ibn Aṣbaʿ narrated to us: Muhammad ibn 'Abd al-Salām al-Khushanī narrated to us: Muhammad ibn Bashshār narrated to us: Badal ibn al-Muḥabbar narrated to us: Shu'bah narrated from Mūsā ibn Abī 'Ā'ishah from 'Ubayd Allāh ibn 'Abd Allāh ibn 'Utbah ibn Mas'ūd that Abū Bakr led the people in prayer while the Messenger of Allāh—peace and

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ ثني أَحْمَدُ بْنُ عَوْنِ اللَّهِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا بَدَلُ بْنُ الْمُحَبِّرِ ثنا شُعْبَةُ عَنْ مُوسَى بْنِ أَبِي عَائِشَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ «أَنَّ أَبَا بَكْرٍ صَلَّى بِالنَّاسِ وَرَسُولُ

[37] **Hadith references (L5449):** Sunan an-Nasai 785.

blessings be upon him—was behind him. ʿAlī said: They have no basis in this, for the two prayers were distinct without doubt.

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَلْفَهُ» ، قَالَ عَلِيٌّ: وَلَا مُتَعَلَّقَ لَهُمْ بِهَذَا؛ لِأَنَّهُمَا صَلَاتَانِ مُتَغَايِرَتَانِ بِلَا شَكٍّ.

L5452 One of the two narrations—reported by Al-Aswad from ʿĀ'ishah, and by ʿUbayd Allāh from her and Ibn ʿAbbās—describes it as follows: "The Prophet (peace be upon him) led the people in prayer with the congregation behind him, while Abū Bakr (may Allāh be pleased with him) stood at his right side in the position of a follower, making the people hear the Prophet's takbīr."

؟ إِحْدَاهُمَا: الَّتِي رَوَاهَا الْأَسْوَدُ عَنْ عَائِشَةَ، وَعُبَيْدُ اللَّهِ عَنْهَا، وَعَنْ ابْنِ عَبَّاسٍ، صِفَتُهَا: «أَنَّهُ - عَلَيْهِ السَّلَامُ - إمَامُ النَّاسِ، وَالنَّاسُ خَلْفَهُ، وَأَبُو بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - عَنْ يَمِينِهِ - عَلَيْهِ السَّلَامُ -، فِي مَوْقِفِ الْمَأْمُومِ، يُسْمِعُ النَّاسَ تَكْبِيرَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

L5453 The second prayer is the one narrated by Masruq, Ubayd Allah on the authority of Aisha, and Humaid on the authority of Anas. Its description is: "Was he (peace be upon him) behind Abu Bakr in the row with the people?" Thus, the difficulty was entirely resolved.

وَالصَّلَاةُ الثَّانِيَةُ: الَّتِي رَوَاهَا مَسْرُوقٌ، وَعُبَيْدُ اللَّهِ عَنْ عَائِشَةَ، وَحُمَيْدٌ عَنْ أَنَسٍ، صِفَتُهَا: «أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ خَلْفَ أَبِي بَكْرٍ فِي الصَّفِّ مَعَ النَّاسِ؟» فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً.

L5454–5456 And it is not a single prayer in a lifetime that would be considered contradictory, but rather five every day. His illness—peace be upon him—was a period of twelve days during which sixty obligatory prayers passed or approximately that number.

وَلَيْسَتْ صَلَاةً وَاحِدَةً فِي الدَّهْرِ فَيُحْمَلُ ذَلِكَ عَلَى التَّعَارُضِ، بَلْ فِي كُلِّ يَوْمٍ خَمْسُ صَلَوَاتٍ، وَمَرَضُهُ - عَلَيْهِ السَّلَامُ - كَانَ مُدَّةَ اثْنَيْ عَشَرَ يَوْمًا مَرَّتْ فِيهَا سِتُّونَ صَلَاةً أَوْ نَحْوُ ذَلِكَ.

L5457 A group of people have objected to this report due to a discarded and weak narration—solely transmitted by Isra'il (who is weak)—from Abu Ishaq, from Arqam ibn Shurahbil (whose standing is not widely recognized): "that the Messenger of Allah—peace and blessings be upon him—resumed [the prayer] from where Abu Bakr had concluded the recitation." He said: "Do you not hold this view?"

وَقَدْ اعْتَرَضَ قَوْمٌ فِي هَذَا الْخَبَرِ بِرِوَايَةٍ سَاقِطَةٍ وَاهِيَةٍ، انْفَرَدَ بِهَا إِسْرَائِيلُ - وَهُوَ ضَعِيفٌ - عَنْ أَبِي إِسْحَاقَ عَنْ أَرْقَمَ بْنِ شُرَحْبِيلَ - وَلَيْسَ بِمَشْهُورِ الْحَالِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَتَمَّ مِنْ حَيْثُ انْتَهَى أَبُو بَكْرٍ مِنْ الْقِرَاءَةِ» ، قَالَ: وَأَنْتُمْ لَا تَقُولُونَ بِهَذَا؟ .

L5458 Ali said (and the answer, with success from Allah, the Exalted): "This discarded narration cannot be opposed through what was narrated by the likes of Ibrāhīm from al-Aswad from ʿĀ'ishah, and ʿUbayd Allāh ibn ʿAbd Allāh from Ibn ʿAbbās."

قَالَ عَلِيٌّ: وَالْجَوَابُ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: أَنَّ هَذِهِ الرِّوَايَةَ الْمُطَّرَحَةَ لَا يُعَارَضُ بِهَا مَا رَوَاهُ مِثْلُ إبْرَاهِيمَ عَنْ الْأَسْوَدِ عَنْ عَائِشَةَ، وَعُبَيْدُ اللَّهِ بْنِ عَبْدِ اللَّهِ عَنْ ابْنِ عَبَّاسٍ.

L5459 Moreover, if this act were valid, we would affirm it and interpret it as

meaning that he—peace be upon him—recited Umm al-Qur'an (which is indispensable, and prayer is invalid for whoever does not recite it), even if its recitation is unmentioned—just as purification, facing the Qiblah, and the *takbīr* remain essential even when unmentioned in the ḥadīth. He—peace be upon him—then began reciting the surah from where Abū Bakr had stopped. Is this not a very good, permissible, and sound practice?

وَأَيْضًا: فَلَوْ صَحَّ هَذَا الْفِعْلُ لَقُلْنَا بِهِ وَحَمَلْنَاهُ عَلَى أَنَّهُ - عَلَيْهِ السَّلَامُ - قَرَأَ أُمَّ الْقُرْآنِ الَّتِي لَا بُدَّ مِنْهَا وَالَّتِي لَا صَلَاةَ لِمَنْ لَمْ يَقْرَأْ بِهَا، وَإِنْ لَمْ يَذْكُرْ أَنَّهُ قَرَأَهَا كَمَا لَا بُدَّ مِنْ الطَّهَارَةِ وَمِنْ الْقِبْلَةِ، وَمِنْ التَّكْبِيرِ -، وَإِنْ لَمْ تُذْكَرْ فِي الْحَدِيثِ - ثُمَّ بَدَأَ - عَلَيْهِ السَّلَامُ - بِالْقِرَاءَةِ فِي السُّورَةِ مِنْ حَيْثُ وَقَفَ أَبُو بَكْرٍ، وَهَذَا حَسَنٌ جِدًّا مُبَاحٌ جَيِّدٌ؟ .

L5460 Additionally, 'Ā'ishah—may Allāh be pleased with her—mentioned that the Ẓuhr prayer was silent, thus invalidating what Isrā'īl reported.

وَأَيْضًا: فَإِنَّ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - ذَكَرَتْ: أَنَّهَا كَانَتْ صَلَاةَ الظُّهْرِ، وَهِيَ سِرٌّ؛ فَبَطَلَ مَا رَوَاهُ إسْرَائِيلُ.

L5461–5462 Moreover, if this report regarding his prayer—peace be upon him—during his final illness were invalidated, the ruling of the Prophet (peace be upon him) concerning those who prayed behind him during that illness—when he fell from a horse, resulting in injury to his pure leg while sitting—and regarding prayer behind a seated imam while seated, as narrated through the chains of Anas, Abū Hurayrah, Jābir, ʿĀ'ishah, and Ibn ʿUmar, would become evident, remaining without any contradiction or objection. And all praise is due to Allah, the Most High.

وَأَيْضًا: فَلَوْ بَطَلَ هَذَا الْخَبَرُ مِنْ صَلَاتِهِ - عَلَيْهِ السَّلَامُ - فِي مَرَضِهِ الَّذِي مَاتَ فِيهِ -: لَخَلُصَ أَمْرُهُ - عَلَيْهِ السَّلَامُ - الْمُصَلِّينَ خَلْفَهُ فِي مَرَضِهِ - إذْ سَقَطَ مِنْ فَرَسٍ فَوَثِئَتْ رِجْلُهُ الطَّاهِرَةُ بِالْقُعُودِ، وَبِالصَّلَاةِ خَلْفَ الْإِمَامِ الْجَالِسِ جُلُوسًا، الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ أَنَسٍ، وَأَبِي هُرَيْرَةَ، وَجَابِرٍ وَعَائِشَةَ، وَابْنِ عُمَرَ، بَاقِيًا لَا مُعَارِضَ لَهُ، وَلَا مُعْتَرَضَ فِيهِ لِأَحَدٍ، وَلِلَّهِ تَعَالَى الْحَمْدُ.

L5463–5465 Ali said: The majority of the Salaf — may Allah be pleased with them — say the same as what we say, as has been narrated to us through the route of Waki' from Isma'il ibn Abi Khalid from Qays ibn Abi Hazim from Abu Hurairah: who said: The Imam is trustworthy. If he prays standing, then pray standing? And if he prays sitting, then pray sitting? , and from the chain of Ḥammād ibn Salamah: Yaḥyā ibn Sa'īd al-Anṣārī narrated to us from Abū al-Zubayr, who said: Indeed, Jābir ibn ʿAbdullāh had an illness, so he led his companions in prayer seated, and his companions seated? .

قَالَ عَلِيٌّ: وَبِمِثْلِ قَوْلِنَا يَقُولُ جُمْهُورُ السَّلَفِ - رَضِيَ اللَّهُ عَنْهُمْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ: الْإِمَامُ أَمِينٌ، فَإِنْ صَلَّى قَائِمًا فَصَلُّوا قِيَامًا، وَإِنْ صَلَّى قَاعِدًا فَصَلُّوا قُعُودًا؟ ، وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ ثنا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ أَبِي الزُّبَيْرِ قَالَ: إنَّ جَابِرَ بْنَ عَبْدِ اللَّهِ كَانَ بِهِ وَجَعٌ فَصَلَّى بِأَصْحَابِهِ قَاعِدًا وَأَصْحَابُهُ قُعُودًا؟ .

L5466 From 'Abd al-Razzāq, from Sufyān ibn 'Uyaynah, from Hishām ibn 'Urwah, from his father: Usayd ibn al-Ḥuḍayr — when he was ill — led his congregation in prayer while sitting.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ: أَنَّ أُسَيْدَ بْنَ الْحُضَيْرِ اشْتَكَى فَكَانَ يَؤُمُّ قَوْمَهُ جَالِسًا؟ .

L5467 Ibn ʾUyaynah said: Isma'il ibn Abi Khalid informed me from Qays ibn Abi Hazim [who narrated] from Qays ibn Qahd al-Ansari: "Their imam fell ill during the time of the Messenger of Allah (may Allah bless him and grant him peace), so he led us in prayer sitting down while we were sitting."

قَالَ ابْنُ عُيَيْنَةَ: وَأَخْبَرَنِي إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ أَخْبَرَنِي قَيْسُ بْنُ قَهْدٍ الْأَنْصَارِيُّ «أَنَّ إِمَامًا لَهُمْ اشْتَكَى عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَانَ يَؤُمُّنَا جَالِسًا وَنَحْنُ جُلُوسٌ» .

L5468 Ali said: These are Abu Hurairah, Jabir, Usayd, and all the Companions who were with them during the time of the Messenger of Allah—peace be upon him—outside his mosque, with no opponent recognized among the Companions—may Allah be pleased with them—whatsoever. All of them report that a seated imam may lead the able-bodied in prayer, and no disagreement with Abu Hurairah or others has been narrated from any of them regarding whether the able-bodied should pray behind him while seated. It has been narrated to us from ʻAta that he instructed the able-bodied to pray behind a sitting imam.

قَالَ عَلِيٌّ: فَهَؤُلَاءِ أَبُو هُرَيْرَةَ، وَجَابِرٌ، وَأُسَيْدٌ، وَكُلُّ مَنْ مَعَهُمْ مِنْ الصَّحَابَةِ، وَعَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي غَيْرِ مَسْجِدِهِ، لَا مُخَالِفَ لَهُمْ يُعْرَفُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَصْلًا، كُلُّهُمْ يَرْوِي إمَامَةَ الْجَالِسِ لِلْأَصِحَّاءِ، وَلَمْ يُرْوَ عَنْ أَحَدٍ مِنْهُمْ خِلَافٌ لِأَبِي هُرَيْرَةَ وَغَيْرِهِ فِي أَنْ يُصَلِّيَ الْأَصِحَّاءُ وَرَاءَهُ جُلُوسًا؟ ، وَرُوِّينَا عَنْ عَطَاءٍ: أَنَّهُ أَمَرَ الْأَصِحَّاءَ بِالصَّلَاةِ خَلْفَ الْقَاعِدِ.

L5469 From Abd al-Razzaq: I have not seen people except adhering to the view that when the imam prays seated, those behind him pray seated. He said: And is this not the Sunnah from more than one?

وَعَنْ عَبْدِ الرَّزَّاقِ: مَا رَأَيْت النَّاسَ إلَّا عَلَى أَنَّ الْإِمَامَ إذَا صَلَّى قَاعِدًا صَلَّى مَنْ خَلْفَهُ قُعُودًا، قَالَ: وَهِيَ السُّنَّةُ عَنْ غَيْرِ وَاحِدٍ؟ .

L5470 It has been narrated to us from ʿAbbās ibn ʿAbd al-ʿAẓīm al-ʿAnbarī, who said: I heard ʿAffān ibn Muslim say: "We came to Ḥammād ibn Zayd one day after he had prayed the dawn prayer. He said: 'Today we revived a Sunnah of the Messenger of Allah (peace and blessings be upon him).' We asked: 'What is it, O Abā Ismāʿīl?' He replied: 'Our imam was ill, so he led us in prayer while sitting, and we prayed behind him while sitting.'"

وَرُوِّينَا عَنْ عَبَّاسِ بْنِ عَبْدِ الْعَظِيمِ الْعَنْبَرِيِّ قَالَ: سَمِعْتُ عَفَّانَ بْنَ مُسْلِمٍ قَالَ: «أَتَيْنَا حَمَّادَ بْنَ زَيْدٍ يَوْمًا، وَقَدْ صَلَّوْا الصُّبْحَ، فَقَالَ: إنَّا أَحْيَيْنَا الْيَوْمَ سُنَّةً مِنْ سُنَنِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قُلْنَا: مَا هِيَ يَا أَبَا إسْمَاعِيلَ؟ قَالَ: كَانَ إمَامُنَا مَرِيضًا، فَصَلَّى بِنَا جَالِسًا، فَصَلَّيْنَا خَلْفَهُ جُلُوسًا» .

L5471–5473 Abū Ḥanīfah, Abū Yūsuf, and al-Awzāʿī state regarding the imamate of a seated person for able-bodied congregants: Al-Shafi'i, Imam Abu Thawr, Ahmad ibn Hanbal, Ishaq ibn Rāhawayhi, Dawud, and the majority of the Hadith scholars.

وَبِإِمَامَةِ الْجَالِسِ لِلْأَصِحَّاءِ يَقُولُ أَبُو حَنِيفَةَ، وَأَبُو يُوسُفَ، وَالْأَوْزَاعِيُّ، وَالشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَحْمَدُ بْنُ حَنْبَلٍ وَإِسْحَاقُ بْنُ رَاهْوَيْهِ، وَدَاوُد وَجُمْهُورُ أَصْحَابِ الْحَدِيثِ.

L5474 We do not know of any Followers who prohibited the permissibility of a sick person praying while sitting with the healthy, except for a report attributed

وَمَا نَعْلَمُ أَحَدًا مِنْ التَّابِعِينَ مَنَعَ مِنْ جَوَازِ صَلَاةِ الْمَرِيضِ قَاعِدًا بِالْأَصِحَّاءِ، إلَّا شَيْئًا رُوِيَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ أَنَّهُ قَالَ: أَكْرَهُ ذَلِكَ؟ - وَلَيْسَ هَذَا مَنْعًا مِنْ جَوَازِهَا.

to al-Mughīrah ibn Miqsam that he said: "I dislike that" – though this does not constitute a prohibition of its permissibility.

قَالَ عَلِيٌّ: وَقَالَ زُفَرُ بْنُ الْهُذَيْلُ: يُصَلِّي الْمَرِيضُ الَّذِي لَا يَقْدِرُ عَلَى الْقِيَامِ وَلَا عَلَى الْقُعُودِ بِالْأَصِحَّاءِ مُضْطَجِعًا، إِلَّا أَنَّهُ رَأَى أَنْ يُصَلُّوا وَرَاءَهُ قِيَامًا قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، بَلْ لَا يُصَلُّونَ وَرَاءَهُ إِلَّا مُضْطَجِعِينَ مُومِئِينَ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّمَا جُعِلَ الْإِمَامُ لِيُؤْتَمَّ بِهِ، فَلَا تَخْتَلِفُوا عَلَيْهِ» وَهَذَا عُمُومٌ مَانِعٌ لِلِاخْتِلَافِ عَلَى الْإِمَامِ جُمْلَةً؟ .

L5475 Ali said: Zufar ibn al-Hudhayl stated that a sick person who cannot stand or sit prays in a reclining position among the healthy, except that he held the view those behind him should pray standing. Ali said: This is erroneous; rather, they must pray behind him only while lying down and gesturing, based on the statement of Allah's Messenger (peace be upon him): "The imam is appointed to be followed, so do not oppose him." Does this not constitute a general prohibition against opposing the imam in any way?[38]

وَلَيْسَ فِي قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إِذَا كَبَّرَ فَكَبِّرُوا وَإِذَا رَفَعَ فَارْفَعُوا وَإِذَا رَكَعَ فَارْكَعُوا وَإِذَا قَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ فَقُولُوا: رَبَّنَا وَلَكَ الْحَمْدُ وَإِذَا صَلَّى جَالِسًا فَصَلُّوا جُلُوسًا» بِمَانِعٍ مِنْ أَنْ يَأْتَمُّوا بِهِ فِي غَيْرِ هَذِهِ الْوُجُوهِ، فَوَجَبَ الِائْتِمَامُ بِهِ فِي كُلِّ حَالٍ، إِلَّا حَالًا خَصَّهَا نَصٌّ أَوْ إِجْمَاعٌ فَقَطْ.

L5476 There is nothing in his statement—peace be upon him—"When he says the takbīr, say the takbīr; when he raises, raise; when he bows, bow; when he says Sami'a Allāhu li-man ḥamidah, say Rabbanā wa laka al-ḥamd; and when he prays seated, pray seated"—that prevents following him in other aspects. Thus, it is obligatory to follow him in every circumstance, except a circumstance restricted solely by a scriptural text or consensus.

وَأَمَّا الْمَرِيضُ خَلْفَ الصَّحِيحِ، فَإِنَّ الصَّحِيحَ يُصَلِّي قَائِمًا، وَالْمَرِيضُ يَأْتَمُّ بِهِ جَالِسًا أَوْ مُضْطَجِعًا، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي آخِرِ صَلَاةٍ صَلَّاهَا مَعَ النَّاسِ فِي جَمَاعَةٍ صَلَّى قَاعِدًا خَلْفَ أَبِي بَكْرٍ، وَأَبُو بَكْرٍ قَائِمٌ، وَذَلِكَ بَعْدَ أَمْرِهِ - عَلَيْهِ السَّلَامُ - بِأَنْ لَا يَخْتَلِفَ عَلَى الْإِمَامِ؟ .

L5477 As for a sick person praying behind a healthy one: the healthy person prays standing, and the sick person follows him in prayer while sitting or lying down. This is because the Messenger of Allah—peace and blessings be upon him—prayed sitting behind Abu Bakr during his final congregational prayer, while Abu Bakr was standing. This occurred after the Prophet's command (peace and blessings be upon him) that one should not differ from the Imam in prayer.

وَلِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] ؛ وَلِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L5478 And due to the saying of Allah, the Most High: "Allah does not burden a soul beyond its capacity" [Quran 2:286], and due to the Prophet's saying (peace be upon him): "When I command you to do something, do of it as much as you are able." And with Allah, the Most High, is all success.[39]

L5479–5480 **It is impermissible for any person to perform the oblig-**

[38] **Hadith references (L5475):** Sahih al-Bukhari 722.

atory prayer while riding or walking, except in situations of fear.

L5481 And it is the same whether one fears a claimant with a rightful claim or without rightful claim; or fears fire, flood, predatory animal, rain, missing one's travel companions, delay in reaching his place, or other such matters—based on Allah's statement, the Exalted: "{If you fear [danger], pray while walking or riding—then when you are secure, establish the prayer}" [An-Nisā' 4:239-103]. The Exalted did not permit praying while mounted or walking except for one who fears, nor did He—the Almighty and Majestic—specify one type of fear over another. Therefore, making such distinctions is fundamentally impermissible.[40]

L5482 It is astonishing that the Mālikīs prohibited from praying in such circumstances except for one who fears a pursuer, yet they assert regarding highway robbers who spread corruption on earth that it is permissible for them to consume carrion and forbidden foods while actively persisting in highway robbery and killing Muslims in that state. Thus, they restricted what Allah the Exalted had generalized without evidence and cited His statement: {But whoever is compelled by severe hunger, not deviating into sin} [5:3], and His statement: {But whoever is compelled by necessity, neither wrongfully desiring nor transgressing, there is no sin upon him} [2:173]. They countered: "What about one compelled while deviating into sin, wrongfully desiring, and transgressing?"—and this is utterly reprehensible.[41]

L5483 As for Abu Hanifah, he permitted shortening prayers for a traveler engaged in sinful acts. It necessarily follows that this case is analogous, since he is among the proponents of qiyas. As for us, we have followed nothing but the scriptural texts. And success is by Allah, the Most High.

L5484 **An issue concerning actions a person undertakes dur-**

[39] **Qur'an references (L5478):** Qur'an 2:286 (Al-Baqarah).
[40] **Qur'an references (L5481):** Qur'an 2:239 (Al-Baqarah).
[41] **Qur'an references (L5482):** Qur'an 5:3 (Al-Ma'idah); Qur'an 2:173 (Al-Baqarah).

[مَسْأَلَةٌ وَلَا يَحِلُّ لِأَحَدٍ أَنْ يُصَلِّيَ الْفَرْضَ رَاكِبًا وَلَا مَاشِيًا إِلَّا فِي حَالِ الْخَوْفِ فَقَطْ]

ْ، وَسَوَاءٌ خَافَ طَالِبًا لَهُ بِحَقٍّ أَوْ بِغَيْرِ حَقٍّ، أَوْ خَافَ نَارًا، أَوْ سَيْلًا، أَوْ حَيَوَانًا عَادِيًا، أَوْ مَطَرًا، أَوْ فَوْتَ رُفْقَةٍ، أَوْ تَأَخُّرًا عَنْ بُلُوغِ مَحَلِّهِ، أَوْ غَيْرَ ذَلِكَ -؛ لِقَوْلِ اللَّهِ تَعَالَى: {فَإِنْ خِفْتُمْ فَرِجَالا أَوْ رُكْبَانًا - فَإِذَا اطْمَأْنَنْتُمْ فَأَقِيمُوا الصَّلاةَ} [النساء: ٢٣٩ - ١٠٣] فَلَمْ يُفْسَحْ تَعَالَى فِي الصَّلَاةِ رَاكِبًا أَوْ رَاجِلًا مَاشِيًا إِلَّا لِمَنْ خَافَ؛ وَلَمْ يَخُصَّ عَزَّ وَجَلَّ خَوْفًا مِنْ خَوْفٍ؛ فَلَا يَجُوزُ تَخْصِيصُهُ أَصْلًا.

وَالْعَجَبُ أَنَّ الْمَالِكِيِّينَ مَنَعُوا مِنْ الصَّلَاةِ كَذَلِكَ إِلَّا مَنْ خَافَ طَالِبًا، وَهُمْ يَقُولُونَ فِي قُطَّاعِ الطَّرِيقِ الْمُفْسِدِينَ فِي الْأَرْضِ: إنَّ مُبَاحًا لَهُمْ أَكْلُ الْمَيْتَةِ وَالْمُحَرَّمَاتِ فِي حَالِ تَمَادِيهِمْ عَلَى قَطْعِ الطَّرِيقِ وَقَتْلِ الْمُسْلِمِينَ فِيهَا فَخَصُّوا مَا عَمَّ اللَّهُ تَعَالَى بِلَا دَلِيلٍ، وَأَتَوْا إلَى قَوْله تَعَالَى: {فَمَنِ اضْطُرَّ فِي مَخْمَصَةٍ غَيْرَ مُتَجَانِفٍ لِإِثْمٍ} [المائدة: ٣] ، وَإِلَى قَوْله تَعَالَى: {فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَلا عَادٍ فَلا إِثْمَ عَلَيْهِ} [البقرة: ١٧٣] فَقَالُوا: نَعَمْ، وَمَنْ اُضْطُرَّ مُتَجَانِفًا لِإِثْمٍ وَبَاغِيًا وَعَادِيًا، وَهَذَا عَظِيمٌ جِدًّا؟ .

وَأَمَّا أَبُو حَنِيفَةَ فَإِنَّهُ أَجَازَ الْقَصْرَ لِلْمُسَافِرِ فِي مَعْصِيَةٍ، فَيَلْزَمُهُ أَنْ يَكُونَ هَذَا مِثْلَهُ؛ إذْ هُوَ مِنْ أَصْحَابِ الْقِيَاسِ، وَأَمَّا نَحْنُ فَمَا اتَّبَعْنَا إلَّا النَّصَّ فَقَطْ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَا عَمِلَهُ الْمَرْءُ فِي صَلَاتِهِ مِمَّا أُبِيحَ لَهُ مِنْ الدِّفَاعِ عَنْهُ]

ing their prayer from what is permitted to them for self-defense.

L5485 Issue 301: Whatever actions a person performs during prayer from what is legally permitted to him - such as self-defense or similar acts - are permissible, and his prayer remains valid thereby. This ruling equally applies to combating an oppressor, extinguishing a spreading fire, rescuing a Muslim, or opening a door, whether the action involved is minor or extensive.

L5486 Does every intentional action that a person performs in their prayer from what is not permissible to do in it invalidate the prayer thereby, whether the action is little or much?

L5487–5488 Any action a person performs forgetfully during prayer that is not permissible to perform: their prayer remains complete, and they are only obligated to perform the prostration of forgetfulness alone - whether that action was minor or substantial.

L5489 Abu Hanifah said: It is not permissible for anyone to pray while fighting; rather, they should abandon the prayer, even if its time elapses, and even if two or more prayers are missed. When the fighting ceases, they must perform *qadaʾ* for them.

L5490 He held the view that speech due to forgetfulness invalidates the prayer, just as intentional speech does. He also maintained that intentionally uttering the salām from the prayer before its obligated time invalidates it. However, if done forgetfully, the prayer remains valid.

L5491 He said: If someone intends to pass in front of a person praying, and the praying person says “Glory be to Allah” or gestures to repel him, I disapprove of that, yet his prayer is not invalidated by it. But if a speaker were to address him with words, and the praying person responds “Glory be to Allah,” his prayer becomes invalid.

L5492 If the one praying sneezes and says, “Praise be to Allah,” and moves his tongue thereby, his prayer becomes invalid.

L5493 If someone invokes [a supplication] for or against a person by naming them,

٣٠١ - مَسْأَلَةٌ: وَمَا عَمِلَهُ الْمَرْءُ فِي صَلَاتِهِ مِمَّا أُبِيحَ لَهُ مِنَ الدِّفَاعِ عَنْهُ وَغَيْرِ ذَلِكَ فَهُوَ جَائِزٌ، وَلَا تَبْطُلُ صَلَاتُهُ بِذَلِكَ، وَكَذَلِكَ الْمُحَارَبَةُ لِلظَّالِمِ، وَإِطْفَاءُ النَّارِ الْعَادِيَةِ، وَإِنْقَاذُ الْمُسْلِمِ، وَفَتْحُ الْبَابِ؛ قَلَّ ذَلِكَ الْعَمَلُ أَمْ كَثُرَ؟ .

وَكُلُّ مَا تَعَمَّدَ الْمَرْءُ عَمَلَهُ فِي صَلَاتِهِ مِمَّا لَمْ يُبَحْ لَهُ عَمَلُهُ فِيهَا بَطَلَتْ صَلَاتُهُ بِذَلِكَ قَلَّ ذَلِكَ الْعَمَلُ أَمْ كَثُرَ؟ .

وَكُلُّ مَا فَعَلَهُ الْمَرْءُ نَاسِيًا فِي صَلَاتِهِ مَا لَمْ يُبَحْ لَهُ فِعْلُهُ: فَصَلَاتُهُ تَامَّةٌ، وَلَيْسَ عَلَيْهِ إِلَّا سُجُودُ السَّهْوِ فَقَطْ؛ قَلَّ ذَلِكَ الْعَمَلُ أَمْ كَثُرَ؟ .

وَقَالَ أَبُو حَنِيفَةَ: لَا يَجُوزُ لِأَحَدٍ أَنْ يُصَلِّيَ وَهُوَ يُقَاتِلُ؛ لَكِنْ يَدَعُونَ الصَّلَاةَ، وَإِنْ خَرَجَ وَقْتُهَا، وَإِنْ ذَهَبَتْ صَلَاتَانِ أَوْ أَكْثَرُ؛ فَإِذَا ذَهَبَ الْقِتَالُ قَضَوْهَا؟ .

وَرَأَى أَنَّ الْكَلَامَ نَاسِيًا يُبْطِلُ الصَّلَاةَ، كَمَا يُبْطِلُهُ الْعَمْدُ، وَرَأَى السَّلَامَ مِنَ الصَّلَاةِ عَمْدًا يُبْطِلُهَا قَبْلَ وَقْتِ وُجُوبِهِ، فَإِنْ كَانَ بِالنِّسْيَانِ لَمْ تَبْطُلْ بِهِ الصَّلَاةُ.

قَالَ: فَلَوْ أَرَادَ مُرِيدٌ أَنْ يَمُرَّ بَيْنَ يَدَيِ الْمُصَلِّي فَقَالَ الْمُصَلِّي: سُبْحَانَ اللَّهِ أَوْ أَشَارَ بِيَدِهِ؛ لِيَرُدَّهُ كَرِهْت ذَلِكَ، وَلَا تَبْطُلُ صَلَاتُهُ بِذَلِكَ؛ فَلَوْ قَالَ لَهُ قَائِلٌ كَلَامًا؟ فَقَالَ لَهُ الْمُصَلِّي: سُبْحَانَ اللَّهِ بَطَلَتْ صَلَاتُهُ.

فَلَوْ عَطَسَ الْمُصَلِّي فَقَالَ: الْحَمْدُ لِلَّهِ، وَحَرَّكَ بِذَلِكَ لِسَانَهُ بَطَلَتْ صَلَاتُهُ.

does their prayer become invalid? And [what about] the opinion that ritual impurity due to preponderance (such as feces or urine) does not invalidate the prayer but only nullifies ritual purity?

L5494 An opinion holds that if one removes food from between their teeth using their tongue and intentionally swallows it, their prayer remains valid. Some proponents of this view set its limit at the volume of a chickpea.

L5495 He said: If one begins the prayer riding and then feels secure and therefore dismounts, he should resume; but if he begins it dismounted and then fears and mounts, his prayer is nullified.

L5496–5497 He held the opinion that killing lice or a flea during prayer does not invalidate it. He also held the opinion that intentional exhaling during prayer invalidates it.

L5498 Did he hold the view that the remaining actions which invalidate prayer when performed intentionally invalidate it when performed forgetfully?

L5499 Mālik held that speech, greeting, or action—any of these, if done intentionally—invalidate the prayer. Some of these specify in the ruling that the prayer is invalidated by extensive instances of that, not minimally, while others specify invalidation by both minimal and extensive instances.

وَمَنْ دَعَا لِإِنْسَانٍ أَوْ عَلَيْهِ فَسَمَّاهُ بَطَلَتْ صَلَاتُهُ؟ ، وَرَأَى الْحَدَثَ بِالْغَلَبَةِ - مِنْ الْغَائِطِ وَالْبَوْلِ - لَا تَبْطُلُ بِهِ الصَّلَاةُ، وَلَكِنْ تَبْطُلُ بِهِ الطَّهَارَةُ فَقَطْ؟ .

وَرَأَى مَنْ أَخْرَجَ مِنْ بَيْنِ أَسْنَانِهِ طَعَامًا بِلِسَانِهِ فَابْتَلَعَهُ عَامِدًا: أَنَّ صَلَاتَهُ تَامَّةٌ، وَحَدَّ بَعْضُ أَصْحَابِهِ ذَلِكَ بِمِقْدَارِ الْحِمَّصَةِ.

قَالَ: وَإِنْ بَدَأَ الصَّلَاةَ رَاكِبًا ثُمَّ أَمِنَ فَنَزَلَ بَنَى، فَإِنْ بَدَأَهَا نَازِلًا ثُمَّ خَافَ فَرَكِبَ بَطَلَتْ صَلَاتُهُ؟ .

وَرَأَى قَتْلَ الْقَمْلَةِ وَالْبُرْغُوثِ فِي الصَّلَاةِ لَا تَبْطُلُ بِهِ الصَّلَاةُ، وَرَأَى النَّفْخَ فِي الصَّلَاةِ يُبْطِلُ الصَّلَاةَ.

وَرَأَى سَائِرَ الْأَعْمَالِ الَّتِي تُبْطِلُ الصَّلَاةَ بِالْعَمْدِ تُبْطِلُهَا بِالنِّسْيَانِ؟ .

وَرَأَى مَالِكٌ: الْكَلَامَ، وَالسَّلَامَ، وَالْعَمَلَ: كُلَّ ذَلِكَ يُبْطِلُ الصَّلَاةَ بِالْعَمْدِ، بَعْضُ ذَلِكَ يَحُدُّ فِيهِ بُطْلَانَ الصَّلَاةِ بِالْكَثِيرِ مِنْ ذَلِكَ دُونَ الْقَلِيلِ، وَبَعْضُهُ بِالْقَلِيلِ وَبِالْكَثِيرِ.

وَرَأَى أَيْضًا: الْكَلَامَ، وَالْعَمَلَ، وَالسَّلَامَ، بِالنِّسْيَانِ لَا يُبْطِلُ شَيْءٌ مِنْهُ الصَّلَاةَ؛ فَإِنْ كَثُرَ بِالنِّسْيَانِ بَطَلَتْ بِهِ الصَّلَاةُ، وَاخْتُلِفَ عَنْهُ فِي النَّفْخِ هَلْ تَبْطُلُ بِهِ الصَّلَاةُ أَمْ لَا؟ .

L5500 He also held the opinion that speech, extraneous actions, or offering the salām due to forgetfulness - none of these invalidates the prayer. But if done forgetfully to an excessive degree, the prayer becomes invalid. There are differing opinions reported from him concerning whether blowing invalidates the prayer or not?

وَرَأَى أَنَّ الْمُصَلِّيَ إِذَا بَلَغَ فِي صَلَاتِهِ مِمَّا بَيْنَ أَسْنَانِهِ الْحَبَّةَ وَنَحْوَهَا عَمْدًا فَصَلَاتُهُ تَامَّةٌ فَإِنْ كَانَ أَكْثَرَ مِنْ ذَلِكَ بَطَلَتْ صَلَاتُهُ.

L5501 He held the view that if a worshiper intentionally has between his teeth during his prayer a seed or the like, his prayer is complete. But if it is more than that, his prayer becomes invalid.

وَلَمْ يَرَ التَّسْبِيحَ لِلْعَارِضِ بِغَرَضٍ يُبْطِلُ الصَّلَاةَ، وَكَرِهَ قَوْلَ الْمُصَلِّي إِذَا عَطَسَ: " الْحَمْدُ لِلَّهِ " وَلَمْ تَبْطُلْ صَلَاتُهُ بِذَلِكَ؟ .

L5502 He did not deem the *tasbīḥ* [saying “Subḥān Allāh”] for incidental occurrences—when done with an intent that invalidates the prayer—to nullify it. He disliked a worshiper saying *Alḥamdulillāh* [Praise be to God] when sneezing, and his prayer was not invalidated by that.

وَكَرِهَ قَتْلَ الْبُرْغُوثِ وَالْقَمْلَةِ فِي الصَّلَاةِ، وَلَمْ يَرَهَا تَبْطُلُ، وَإِنْ تَعَمَّدَ ذَلِكَ.

L5503 He disliked killing a flea or louse during prayer but did not deem the prayer invalid, even if done intentionally.

وَأَجَازَ لِلْمُصَلِّي رَمْيَ الْعُصْفُورِ فِي الصَّلَاةِ، وَلَمْ يَرَهَا تَبْطُلُ بِذَلِكَ، وَأَمَرَ الْمُحَارَبَ أَنْ يُصَلِّيَ إِيمَاءً، فَإِنْ ابْتَدَأَ الصَّلَاةَ رَاكِبًا لِخَوْفٍ ثُمَّ أَمِنَ فَنَزَلَ، أَوْ ابْتَدَأَهَا نَازِلًا ثُمَّ خَافَ فَرَكِبَ -: بَنَى فِي كُلِّ ذَلِكَ، وَصَلَاتُهُ تَامَّةٌ.

L5504 He permitted the one praying to throw at a sparrow during prayer and did not deem the prayer invalidated by that. He instructed the combatant to pray with gestures. If one begins the prayer mounted out of fear then becomes secure and dismounts, or begins it dismounted then fears and mounts—he should continue the prayer in all such instances, and his prayer is complete.

وَقَالَ الشَّافِعِيُّ: إِنْ اُضْطُرَّ الْمُحَارِبُ إِلَى الْقِتَالِ، فَلَهُ أَنْ يَضْرِبَ الضَّرْبَةَ وَيَطْعَنَ الطَّعْنَةَ، فَإِنْ تَابَعَ الضَّرْبَ وَالطَّعْنَ بَطَلَتْ صَلَاتُهُ، فَإِنْ صَلَّى مُبْتَدِئًا لِلصَّلَاةِ وَهُوَ رَاكِبٌ ثُمَّ أَمِنَ فَنَزَلَ بَنَى عَلَى صَلَاتِهِ؛ إِلَّا أَنْ يُحَوِّلَ وَجْهَهُ عَنْ الْقِبْلَةِ فَتَبْطُلُ صَلَاتُهُ.

L5505 Al-Shāfiʿī said: If a combatant is compelled to fight, he may strike a strike or thrust a thrust. If he persists in striking and thrusting, his prayer is invalidated. If he begins the prayer in a state of combat while riding [a mount] and then attains safety and dismounts, he may continue his prayer—unless he turns his face away from the qiblah, in which case his prayer is invalidated.

فَإِنْ بَدَأَ الصَّلَاةَ نَازِلًا ثُمَّ حَدَثَ خَوْفٌ فَرَكِبَ بَطَلَتْ صَلَاتُهُ وَابْتَدَأَهَا؟ قَالَ: وَمَنْ خَرَجَ مِنْ بَيْنِ أَسْنَانِهِ طَعَامٌ يَجْرِي مَجْرَى الرِّيقِ فَابْتَلَعَهُ، وَلَمْ يَمْلِكْ غَيْرَ ذَلِكَ فَصَلَاتُهُ تَامَّةٌ؛ فَإِنْ مَضَغَهُ بَطَلَتْ صَلَاتُهُ، وَلَمْ يَرَ التَّسْبِيحَ وَلَا التَّصْفِيقَ يُنْقِصَانِ الصَّلَاةَ.

L5506–5507 If he began the prayer while dismounted, then fear arose causing him to mount, is his prayer invalidated so he must repeat it? He said: If food exits between one’s teeth flowing like saliva, and he swallowed it while being unable to prevent it, his prayer remains complete. But if he chewed it, his prayer is invalidated. He did not consider uttering glorification (*tasbīḥ*) or clapping—these two do not diminish the prayer.

وَرَأَى قَتْلَ الْحَيَّةِ وَالْعَقْرَبِ فِي الصَّلَاةِ مُبَاحًا، وَكُلَّ عَمَلٍ خَفِيفٍ جَاءَ بِمِثْلِهِ أَثَرٌ لَمْ يَقْطَعْهَا، وَرَأَى الْعَمَلَ الْكَثِيرَ وَالْمَشْيَ الْكَثِيرَ بِالنِّسْيَانِ يُبْطِلُ الصَّلَاةَ؟ .

L5508 He held that killing the snake and the scorpion during prayer is permissible, along with every minor action producing a similar effect that does not invalidate it. He also viewed that excessive actions or excessive walking done forgetfully invalidate the prayer?

قَالَ عَلِيٌّ: وَهَذِهِ كُلُّهَا أَقْوَالٌ مُتَنَاقِضَةٌ مُتَخَاذِلَةٌ بِلَا بُرْهَانٍ، وَأَعْجَبُ ذَلِكَ الْفَرْقُ بَيْنَ الْعَمَلِ الْقَلِيلِ وَالْكَثِيرِ بِلَا دَلِيلٍ.

L5509 Ali said: All these are contradictory and feeble statements without proof, and the most astonishing of them is distinguishing between minor and numerous acts without any evidence.

ثُمَّ مَا هُوَ الْقَلِيلُ، وَمَا هُوَ الْكَثِيرُ؟ وَقَدْ عَلِمْنَا أَنَّهُ لَا قَلِيلَ إِلَّا، وَهُوَ كَثِيرٌ بِالْإِضَافَةِ إِلَى مَا هُوَ أَقَلُّ مِنْهُ، وَلَا كَثِيرَ إِلَّا، وَهُوَ قَلِيلٌ بِالْإِضَافَةِ إِلَى مَا هُوَ أَكْثَرُ مِنْهُ، وَكُلُّ ذَلِكَ رَأْيٌ فَاسِدٌ بِلَا بُرْهَانٍ، لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ، لَا صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا إِجْمَاعٍ وَلَا قِيَاسٍ وَلَا قَوْلِ صَاحِبٍ وَلَا احْتِيَاطٍ وَلَا رَأْيٍ يَصِحُّ.

L5510 Then, what is little and what is much? We know there is nothing "little" except that it is "much" in comparison to what is less than it, nor anything "much" except that it is "little" in comparison to what is more than it. All of this is a baseless opinion without proof, neither from the Quran nor the Sunnah—neither authentic nor weak—nor consensus, nor analogy, nor the statement of a Companion, nor precaution, nor any opinion that is valid.

فَمِنْ الْأَشْيَاءِ الْمُبَاحَةِ فِي الصَّلَاةِ: الِالْتِفَاتُ لِمَنْ أَحَسَّ بِشَيْءٍ؟ .

L5511 Is turning one's head toward someone who senses something among the permissible acts in prayer?

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ عَنْ مَالِكٍ عَنْ أَبِي حَازِمِ بْنِ دِينَارٍ عَنْ سَهْلِ بْنِ سَعْدٍ قَالَ: «ذَهَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى بَنِي عَمْرِو بْنِ عَوْفٍ لِيُصْلِحَ بَيْنَهُمْ وَحَانَتْ الصَّلَاةُ فَجَاءَ الْمُؤَذِّنُ إلَى أَبِي بَكْرٍ قَالَ: أَتُصَلِّي بِالنَّاسِ فَأُقِيمَ؟ قَالَ: نَعَمْ فَصَلَّى أَبُو بَكْرٍ فَجَاءَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالنَّاسُ فِي الصَّلَاةِ فَتَخَلَّصَ حَتَّى وَقَفَ فِي الصَّفِّ فَصَفَّقَ النَّاسُ وَكَانَ أَبُو بَكْرٍ لَا يَلْتَفِتُ فِي الصَّلَاةِ فَلَمَّا أَكْثَرَ النَّاسُ التَّصْفِيقَ الْتَفَتَ فَرَأَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَشَارَ إلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنْ امْكُثْ مَكَانَكَ؟ فَرَفَعَ أَبُو بَكْرٍ يَدَيْهِ فَحَمِدَ اللَّهَ - عَزَّ وَجَلَّ - عَلَى مَا أَمَرَهُ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ ذَلِكَ ثُمَّ اسْتَأْخَرَ أَبُو بَكْرٍ حَتَّى اسْتَوَى فِي الصَّفِّ وَتَقَدَّمَ رَسُولُ

L5512–5514 Narrated by ʿAbdullāh ibn Rabīʿ, from Muḥammad ibn Isḥāq, from Ibn al-Aʿrābī, from Abū Dāwūd, from ʿAbdullāh ibn Maslamah, from Mālik, from Abū Ḥāzim ibn Dīnār, from Sahl ibn Saʿd, who said: "The Messenger of Allah—peace and blessings be upon him—went to Banū ʿAmr ibn ʿAwf to reconcile between them. When the prayer time arrived, the mu'adhdhin came to Abū Bakr and asked: 'Will you lead the prayer so that the iqāmah may be proclaimed?' He replied: 'Yes.' Abū Bakr then led the prayer. At that moment, the Messenger of Allah—peace and blessings be upon him—arrived." The people were in prayer when the Prophet (peace be upon him) withdrew until he stood in the row, and the people clapped. Abu Bakr would not turn around during prayer. When the people intensified their clapping, he turned and saw the Messenger of Allah (peace be upon him). The Messenger of Allah (peace be upon him) gestured to him: "Remain in your place." Abu Bakr raised his hands and praised Allah, the Mighty and Majestic, for the command the Messenger of Allah (peace be upon him) had given him regarding that matter. Then Abu Bakr stepped back until he aligned in the

row, and the Messenger of Allah (peace be upon him) advanced and led the prayer. When he finished, he said: “O Abu Bakr, what prevented you from remaining when I commanded you?” Abu Bakr replied: “It was not fitting for the son of Abu Quhafah to pray in front of the Messenger of Allah (peace be upon him).” The Messenger of Allah (peace be upon him) said: “Why do I observe you resorting to clapping? Let whoever is disturbed during prayer say ’Subhan Allah,’ for when one says it, attention turns to them.”

L5515 And with his chain to Abū Dāwūd: ʿAmr ibn ʿAwn narrated to us: Ḥammād ibn Zayd said, from Abī Ḥāzim ibn Dīnār, from Sahl ibn Saʿd—who mentioned this same ḥadīth, concluding with: The Messenger of Allāh—peace and blessings be upon him—said, “If something requires your attention during prayer, let the men glorify Allāh and let the women clap.”[1]

L5516–5518 In this hadith: the permissibility of tasbīḥ in all circumstances, the permissibility of praising Allah the Exalted in all circumstances, and the invalidation of the statement of those who prohibited that, because the Messenger of Allah (peace be upon him) heard Abu Bakr behind him praising Allah. Exalted is He [Allah], as [the worshipper] raises his hands for the favor He has bestowed upon him. So, did that not invalidate his prayer?

L5519 It also states that clapping is prohibited for men but commanded for women in what befalls them during prayer. If a man claps during his prayer while aware of the prohibition, his prayer becomes invalid because he has done what is prohibited in his prayer, and thus he did not pray as he was commanded.

L5520 If a woman glorifies [God], she is not to be prohibited from glorification; rather, it is a commendable remembrance of God Almighty. If she gestures, that is also commendable. But if this is done frivolously and without necessity, it is an action in prayer from which we have been forbidden. For whoever does in their prayer what is not permitted to them—has they not prayed as they were commanded?

L5521 It states: The permissibility of turning [one’s head] for a deputy substituting

[1] **Hadith references (L5515):** Sunan Abi Dawud 941.

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَصَلَّى، فَلَمَّا انْصَرَفَ قَالَ: يَا أَبَا بَكْرٍ، مَا مَنَعَكَ أَنْ تَثْبُتَ إِذْ أَمَرْتُكَ؟ قَالَ أَبُو بَكْرٍ: مَا كَانَ لِابْنِ أَبِي قُحَافَةَ أَنْ يُصَلِّيَ بَيْنَ يَدَيْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لِي رَأَيْتُكُمْ أَكْثَرْتُمْ مِنَ التَّصْفِيحِ؟ مَنْ نَابَهُ شَيْءٌ فِي صَلَاتِهِ فَلْيُسَبِّحْ، فَإِنَّهُ إِذَا سَبَّحَ الْتُفِتَ إِلَيْهِ» .

وَبِهِ إِلَى أَبِي دَاوُد: حَدَّثَنَا عَمْرُو بْنُ عَوْنٍ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ أَبِي حَازِمِ بْنِ دِينَارٍ عَنْ سَهْلِ بْنِ سَعْدٍ - فَذَكَرَ هَذَا الْحَدِيثَ نَفْسَهُ، وَفِي آخِرِهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا نَابَكُمْ شَيْءٌ فِي الصَّلَاةِ فَلْيُسَبِّحْ الرِّجَالُ وَلْيُصَفِّحْ النِّسَاءُ» .

فَفِي هَذَا الْحَدِيثِ: إبَاحَةُ التَّسْبِيحِ عَلَى كُلِّ حَالٍ، وَإِبَاحَةُ حَمْدِ اللَّهِ تَعَالَى عَلَى كُلِّ حَالٍ: وَبُطْلَانُ قَوْلِ مَنْ مَنَعَ مِنْ ذَلِكَ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَمِعَ أَبَا بَكْرٍ وَرَاءَهُ يَحْمَدُ اللَّهَ تَعَالَى رَافِعًا يَدَيْهِ عَلَى مَا مَنَّ بِهِ عَلَيْهِ، فَلَمْ تَبْطُلْ بِذَلِكَ صَلَاتُهُ؟ .

وَفِيهِ: أَنَّ التَّصْفِيقَ نَهَى عَنْهُ الرِّجَالَ، وَأَمَرَ بِهِ النِّسَاءَ فِيمَا نَابَهُنَّ فِي الصَّلَاةِ، فَإِنْ صَفَّقَ الرَّجُلُ فِي صَلَاتِهِ عَالِمًا بِالنَّهْيِ بَطَلَتْ صَلَاتُهُ، لِأَنَّهُ فَعَلَ فِي صَلَاتِهِ مَا نَهَى عَنْهُ، فَلَمْ يُصَلِّ كَمَا أُمِرَ.

وَإِنْ سَبَّحَتْ الْمَرْأَةُ فَلَمْ تُنْهَ عَنْ التَّسْبِيحِ، بَلْ هُوَ ذِكْرٌ لِلَّهِ تَعَالَى حَسَنٌ، وَإِنْ صَفَّحَتْ فَحَسَنٌ، فَإِنْ كَانَ ذَلِكَ عَبَثًا وَلِغَيْرِ نَائِبٍ، فَهُوَ عَمَلٌ فِي الصَّلَاةِ نُهِينَا عَنْهُ، وَمَنْ فَعَلَ فِي صَلَاتِهِ مَا لَمْ يُبَحْ لَهُ فَلَمْ يُصَلِّ كَمَا أُمِرَ؟ .

وَفِيهِ: إبَاحَةُ الِالْتِفَاتِ لِلنَّائِبِ يَنُوبُ فِي الصَّلَاةِ، فَمَنْ الْتَفَتَ عَبَثًا لِغَيْرِ نَائِبٍ بَطَلَتْ صَلَاتُهُ، لِأَنَّهُ فَعَلَ مَا لَمْ يُبَحْ لَهُ؟ .

in prayer. Thus, whoever turns needlessly without being a deputy - his prayer is invalidated because he has performed an impermissible act.

L5522 Abdullah ibn Rabee' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: From Suwayd ibn Nasr, from Abdullah (Ibn al-Mubarak), from Yunus (Ibn Yazid), from al-Zuhri, who said: I heard Abu al-Aḥwaṣ narrating to us in the gathering of Sa'id ibn al-Musayyib—while he [Ibn al-Musayyib] was seated—that he heard Abu Dharr say: The Messenger of Allah, peace and blessings be upon him, said, "Allah remains attentively facing the worshipper during his prayer so long as he does not look aside. But if he turns his face away, Allah turns away from him."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا سُوَيْدُ بْنُ نَصْرٍ أَنَا عَبْدُ اللَّهِ هُوَ ابْنُ الْمُبَارَكِ - عَنْ يُونُسَ هُوَ ابْنُ يَزِيدَ - عَنْ الزُّهْرِيِّ قَالَ: سَمِعْت أَبَا الْأَحْوَصِ يُحَدِّثُنَا فِي مَجْلِسِ سَعِيدِ بْنِ الْمُسَيِّبِ، وَابْنُ الْمُسَيِّبِ جَالِسٌ: أَنَّهُ سَمِعَ أَبَا ذَرٍّ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَزَالُ اللَّهُ مُقْبِلًا عَلَى الْعَبْدِ فِي صَلَاتِهِ مَا لَمْ يَلْتَفِتْ فَإِذَا صَرَفَ وَجْهَهُ انْصَرَفَ عَنْهُ» .

L5523 Abdullah ibn Rabiʿ narrated to us: Ibn Muʿawiyah narrated to us, Ahmad ibn Shuʿayb narrated to us, I, ʿAmr ibn ʿAli, narrated to us, ʿAbd al-Rahman ibn Mahdi narrated to us, Zāʾidah narrated to us from Ashʿath ibn Abi al-Shaʿthāʾ from his father from Masruq from ʿAisha, who said: "I asked the Messenger of Allah (peace be upon him) about glancing around during prayer. He said: 'It is a theft that Satan snatches away from the prayer.'"

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ ثنا زَائِدَةُ عَنْ أَشْعَثَ بْنِ أَبِي الشَّعْثَاءِ عَنْ أَبِيهِ عَنْ مَسْرُوقٍ «عَنْ عَائِشَةَ قَالَتْ: سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الِالْتِفَاتِ فِي الصَّلَاةِ؟ فَقَالَ: اخْتِلَاسٌ يَخْتَلِسُهُ الشَّيْطَانُ مِنْ الصَّلَاةِ» .

L5524–5526 Ali said: "Whoever Allah the Exalted turns His countenance away from him during prayer, He has indeed abandoned him and not accepted his deed." And if He is not pleased with his act, then it is without doubt not accepted.

قَالَ عَلِيٌّ: مَنْ صَرَفَ اللَّهُ تَعَالَى وَجْهَهُ عَنْهُ فِي الصَّلَاةِ فَقَدْ تَرَكَهُ وَلَمْ يَرْضَ عَمَلَهُ، وَإِذَا لَمْ يَرْضَ عَمَلَهُ فَهُوَ غَيْرُ مَقْبُولٍ بِلَا شَكٍّ.

L5527 We are certain that the turning away Allah has forbidden and disapproved is distinct from the turning away He has commanded. We know that whoever's prayer is partially snatched by Satan and thus abandoned—for if he does not complete it, he has not prayed.

وَقَدْ أَيْقَنَّا أَنَّ الِالْتِفَاتَ الَّذِي نَهَى اللَّهُ تَعَالَى عَنْهُ وَسَخِطَهُ هُوَ غَيْرُ الِالْتِفَاتِ الَّذِي أَمَرَ بِهِ؟ ، وَعَلِمْنَا أَنَّ مَنْ اخْتَلَسَ الشَّيْطَانُ بَعْضَ صَلَاتِهِ فَلَمْ يُتِمَّهَا، وَإِذَا لَمْ يُتِمَّهَا فَلَمْ يُصَلِّ.

L5528 And it has been narrated to us from Waki' from al-Mu'alla ibn 'Irfān from Abū Wā'il from Ibn Mas'ūd: Does the act of turning around not invalidate the prayer?

وَرُوِّينَا عَنْ وَكِيعٍ عَنْ الْمُعَلَّى بْنِ عِرْفَانَ عَنْ أَبِي وَائِلٍ عَنْ ابْنِ مَسْعُودٍ: لَا يَقْطَعُ الصَّلَاةَ الِالْتِفَاتُ؟ .

L5529 From Hammad ibn Salamah from Khalid al-Hadhdha' from Abu Qilabah from Ibn Mas'ud: Allah the Exalted continues to turn His face toward the servant as long as he does not become distracted or commit an act that breaks

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ عَنْ ابْنِ مَسْعُودٍ: لَا يَزَالُ اللَّهُ تَعَالَى مُقْبِلًا عَلَى الْعَبْدِ بِوَجْهِهِ مَا لَمْ يَلْتَفِتْ أَوْ يُحْدِثْ - يَعْنِي فِي الصَّلَاةِ، وَمِنْ طَرِيقِ وَكِيعٍ

ablution—meaning in prayer. And via the narration of Waki‘ from Sufyan al-Thawri from Adam ibn ‘Ali from Ibn ‘Umar: A people will be called on the Day of Resurrection “the deficient ones”—each of whom is deficient in their prayer, ablution, and prone to distraction.

عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ آدَمَ بْنِ عَلِيٍّ عَنْ ابْنِ عُمَرَ: يُدْعَى قَوْمٌ يَوْمَ الْقِيَامَةِ " الْمَنْقُوصِينَ " الَّذِينَ يَنْقُصُ أَحَدُهُمْ صَلَاتَهُ، وَوُضُوءَهُ، وَالْتِفَاتَهُ.

L5530 From Waki‘, from Sufyan al-Thawri, from Humaid al-A‘raj, from Mujahid, who said: “Four matters - if they are not present in one’s prayer, his prayer is complete.” He mentioned among them: turning around, gesturing with the hand, nodding the head for a need, and listening to what reaches him while praying for a necessity related to his religion or worldly affairs. All of this is permissible within the prayer.

وَعَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حُمَيْدٍ الْأَعْرَجِ عَنْ مُجَاهِدٍ قَالَ: أَرْبَعٌ مَنْ لَمْ تَكُنْ فِي صَلَاتِهِ تَمَّتْ صَلَاتُهُ، فَذَكَرَ مِنْهَا: الِالْتِفَاتَ، وَالْإِشَارَةَ بِالْيَدِ، وَبِالرَّأْسِ لِلْحَاجَةِ، وَالِاسْتِمَاعَ إِلَى مَا يَأْتِيهِ، وَهُوَ فِي صَلَاتِهِ لِحَاجَةٍ فِي دِينِهِ أَوْ دُنْيَاهُ - فَكُلُّ هَذَا مُبَاحٌ فِي الصَّلَاةِ.

L5531–5533 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, Abd al-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us. Muslim ibn al-Hajjaj narrated to me. Harmalah ibn Yahya narrated to us, Abdullah ibn Wahb informed us, Amr - that is, ibn al-Harith - from Bukayr - that is, ibn al-Ashajj - from Kuraib, who was the freed slave of Ibn Abbas. Umm Salamah informed him, saying: “I heard the Messenger of Allah—peace and blessings of Allah be upon him—forbidding them, meaning the two rak’ahs after the ‘Asr prayer. Then I saw him praying them. I sent the servant girl to him and said: ’Stand beside him and say: Umm Salamah says: O Messenger of Allah, I heard you forbidding these two rak’ahs, yet I see you praying them. If he gestures with his hand, then move away from him.’ The servant girl did so, and he gestured with his hand, so she moved away from him. When he concluded the prayer, he said: ’O daughter of Abū Umayyah, you asked about the two rak’ahs after the ‘Asr prayer?’” And she mentioned the hadith.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى ثنا عَبْدُ اللَّهِ بْنُ وَهْبٍ أَخْبَرَنَا عَمْرٌو هُوَ ابْنُ الْحَارِثِ - عَنْ بُكَيْرٍ هُوَ ابْنُ الْأَشَجِّ - عَنْ كُرَيْبٍ هُوَ مَوْلَى ابْنِ عَبَّاسٍ أَنَّ أُمَّ سَلَمَةَ أَخْبَرَتْهُ قَالَتْ «سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْهَى عَنْهُمَا - يَعْنِي الرَّكْعَتَيْنِ بَعْدَ الْعَصْرِ - ثُمَّ رَأَيْتُهُ يُصَلِّيهِمَا، فَأَرْسَلْتُ إِلَيْهِ الْجَارِيَةَ فَقُلْتُ: قُومِي بِجَنْبِهِ فَقُولِي: تَقُولُ أُمُّ سَلَمَةَ: يَا رَسُولَ اللَّهِ، سَمِعْتُكَ تَنْهَى عَنْ هَاتَيْنِ الرَّكْعَتَيْنِ، وَأَرَاكَ تُصَلِّيهِمَا، فَإِنْ أَشَارَ بِيَدِهِ فَاسْتَأْخِرِي عَنْهُ؟ فَفَعَلَتْ الْجَارِيَةُ؟ فَأَشَارَ بِيَدِهِ فَاسْتَأْخَرَتْ عَنْهُ، فَلَمَّا انْصَرَفَ قَالَ: يَا بِنْتَ أَبِي أُمَيَّةَ، سَأَلْتِ عَنْ الرَّكْعَتَيْنِ بَعْدَ الْعَصْرِ؟» وَذَكَرَتْ الْحَدِيثَ.

L5534 We have previously mentioned the Prophet’s gesture (peace be upon him) with his hand during prayer: while sitting, he motioned to worshippers standing behind him to dissuade them from standing. Gesturing with the hand or head to return a greeting (salām) during prayer is permissible.

وَقَدْ ذَكَرْنَا قَبْلُ «إِشَارَتَهُ - عَلَيْهِ السَّلَامُ - بِيَدِهِ إِذْ صَلَّى وَهُوَ جَالِسٌ إِلَى الْمُصَلِّينَ وَرَاءَهُ قِيَامًا يَنْهَاهُمْ عَنْ الْقِيَامِ» ، وَالْإِشَارَةُ بِرَدِّ السَّلَامِ بِالْيَدِ وَالرَّأْسِ فِي الصَّلَاةِ جَائِزَةٌ.

L5535 As narrated by Hamam, from Ibn Mufarrij, from Ibn al-A’rabi, from al-Dabari, from Abd al-Razzaq, from Ma’mar, via al-Zuhri, from Anas ibn Ma-

lik: “The Messenger of Allah, may Allah’s peace and blessings be upon him, used to gesture during prayer.” And is this a general principle for all that arises?

كَمَا حَدَّثَنَا حَمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ ثنا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُشِيرُ فِي الصَّلَاةِ» وَهَذَا عُمُومٌ فِي كُلِّ مَا نَابَ؟ .

L5536–5537 Abdullah ibn Rabi’ → Muhammad ibn Muʿawiyah → Ahmad ibn Shuʿayb → Qutayba → Al-Layth ibn Saʿd → Abu al-Zubayr → Jabir: He reported that he encountered the Messenger of Allah—peace be upon him—while he was praying. I greeted him, and he gestured to me. When he finished praying, he called me and said: “You greeted me earlier while I was praying.”

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا قُتَيْبَةُ ثنا اللَّيْثُ هُوَ ابْنُ سَعْدٍ عَنْ أَبِي الزُّبَيْرِ «عَنْ جَابِرٍ: أَنَّهُ أَدْرَكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ يُصَلِّي، فَسَلَّمْتُ عَلَيْهِ فَأَشَارَ إِلَيَّ، فَلَمَّا فَرَغَ دَعَانِي وَقَالَ: إِنَّكَ سَلَّمْتَ عَلَيَّ آنِفًا وَأَنَا أُصَلِّي» .

L5538 Hammam narrated to us: Abbas ibn Asbag narrated to us: Muhammad ibn Abdul Malik ibn Ayman narrated to us: Muhammad ibn Ismail al-Tirmidhi narrated to us: al-Humaydi narrated to us: Sufyan ibn Uyaynah narrated to us: Zayd ibn Aslam said: Ibn Umar said: “The Messenger of Allah (peace be upon him) went to the mosque of Banu Amr ibn Awf in Quba to pray there. Then men from the Ansar entered upon him and offered salutations to him. I asked Suhayb—and he was with him—: ’How did the Prophet (peace be upon him) respond to them?’ He said: ’He would gesture to them.’”

حَدَّثَنَا حَمَّامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ ثنا الْحُمَيْدِيُّ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ ثنا زَيْدُ بْنُ أَسْلَمَ قَالَ: قَالَ ابْنُ عُمَرَ: «ذَهَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى مَسْجِدِ بَنِي عَمْرِو بْنِ عَوْفٍ بِقُبَاءَ لِيُصَلِّيَ فِيهِ، فَدَخَلَ عَلَيْهِ رِجَالٌ مِنْ الْأَنْصَارِ يُسَلِّمُونَ عَلَيْهِ، فَسَأَلْتُ صُهَيْبًا وَكَانَ مَعَهُ: كَيْفَ كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَرُدُّ عَلَيْهِمْ؟ قَالَ: كَانَ يُشِيرُ إِلَيْهِمْ» .

L5539 Abdullah ibn Rabee’ narrated to us: Ibn al-Sulaym narrated to us, al-A’rabi narrated to us, Abu Dawud narrated to us, Qutaybah narrated to us that al-Layth ibn Sa’d narrated to them from Bukayr from Nabil the cloak-bearer from Ibn ‘Umar from Suhayb, who said: «I passed by the Messenger of Allah – peace and blessings be upon him – while he was praying, so I greeted him, and he responded with a gesture?»

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ السُّلَيْمِ ثنا الْأَعْرَابِيُّ ثنا أَبُو دَاوُد ثنا قُتَيْبَةُ: أَنَّ اللَّيْثَ بْنَ سَعْدٍ حَدَّثَهُمْ عَنْ بُكَيْرٍ عَنْ نَابِلٍ صَاحِبِ الْعَبَاءِ عَنْ ابْنِ عُمَرَ عَنْ «صُهَيْبٍ قَالَ: مَرَرْتُ بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ يُصَلِّي فَسَلَّمْتُ عَلَيْهِ فَرَدَّ إِشَارَةً؟» .

L5540–5541 Ali said: Some people said, “Could this gesture be a prohibition for them?” Ali responded: “This is false, for had it been so, the Prophet would have forbidden them immediately after concluding his prayer.” We were narrated through ʿAbd al-Razzāq from Maʿmar, from Thābit al-Bunānī, from Abū Rāfiʿ,

قَالَ عَلِيٌّ: قَالَ بَعْضُ النَّاسِ: لَعَلَّ هَذِهِ الْإِشَارَةَ نَهْيٌ لَهُمْ؟ ، قَالَ عَلِيٌّ: هَذَا الْكَذِبُ إِذْ لَوْ كَانَ كَذَلِكَ لَنَهَاهُمْ إِثْرَ فَرَاغِهِ -: وَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ثَابِتٍ الْبُنَانِيِّ

who said: “I saw the Companions of Allah’s Messenger (peace be upon him)—indeed, one of them would affirm the Shahada while standing in prayer?”

عَنْ أَبِي رَافِعٍ قَالَ: رَأَيْت أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّ أَحَدَهُمْ لَيَشْهَدَ عَلَى الشَّهَادَةِ وَهُوَ قَائِمٌ يُصَلِّي؟ .

L5542 It is reported from Hammad ibn Salama, from Qatadah, from Mu‘adhah al-‘Adawiyyah: that ‘Ā’ishah, the Mother of the Believers, would instruct her servant to distribute the broth. The servant would pass by her while she was in prayer, and she would gesture to her to add more, or order that something be given to a poor person through gesturing - while she was in prayer.

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ مُعَاذَةَ الْعَدَوِيَّةِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ كَانَتْ تَأْمُرُ خَادِمَهَا أَنْ تُقَسِّمَ الْمَرَقَةَ، فَتَمُرُّ بِهَا، وَهِيَ فِي الصَّلَاةِ فَتُشِيرُ إلَيْهَا: أَنْ زِيدِي، وَتَأْمُرُ بِالشَّيْءِ لِلْمِسْكِينِ تُومِئُ بِهِ، وَهِيَ فِي الصَّلَاةِ؟ .

L5543 From ‘Abd al-Razzāq, from Sufyān al-Thawrī, from al-A‘mash, from Khaythamah ibn ‘Abd al-Raḥmān, who said: I saw Ibn ‘Umar pointing to the first man in the row—having noticed a gap—to indicate that he should advance.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ خَيْثَمَةَ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: رَأَيْت ابْنَ عُمَرَ يُشِيرُ إلَى أَوَّلِ رَجُلٍ فِي الصَّفِّ - وَرَأَى خَلَلًا: أَنْ تَقَدَّمَ؟ .

L5544 From Waki‘, from his father, from ‘Asim al-Ahwal, from Mu‘adhah al-‘Adawiyyah: that ‘Aishah, the Mother of the Believers, gestured to some women during prayer that they should eat.

وَعَنْ وَكِيعٍ عَنْ أَبِيهِ عَنْ عَاصِمٍ الْأَحْوَلِ عَنْ مُعَاذَةَ الْعَدَوِيَّةِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَوْمَأَتْ وَهِيَ فِي الصَّلَاةِ إلَى نِسْوَةٍ: أَنْ كُلْنَ؟ .

L5545 From Abd al-Razzaq, from Sufyan al-Thawri, from Muhammad ibn Abi Layla, from al-Hakam ibn Utayba, from Abd al-Rahman ibn Abi Layla, who said: “I indeed consider it a favor from a man toward me that he adjusts my position properly during prayer.”

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُحَمَّدِ بْنِ أَبِي لَيْلَى عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى قَالَ: إنِّي لَأَعُدُّهَا لِلرَّجُلِ عِنْدِي يَدًا أَنْ يَعْدِلَنِي فِي الصَّلَاةِ.

L5546–5548 And through him to Abd al-Razzaq from Ibn Jurayj: I said to Ata: When a person passes by me, I say, “Glory be to Allah, Glory be to Allah, Glory be to Allah” three times—then he approaches. I say to him with my hand: “Where are you going?” He replies: “To such and such”—while I am in the obligatory prayer. Has my prayer been invalidated? He said: No, but I dislike it. I said: “Should he perform the prostration for forgetfulness?” He said, “No.”

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: قُلْت لِعَطَاءٍ: يَمُرُّ بِي إنْسَانٌ فَأَقُولُ: سُبْحَانَ اللَّهِ سُبْحَانَ اللَّهِ سُبْحَانَ اللَّهِ ثَلَاثًا -: فَيُقْبِلُ، فَأَقُولُ لَهُ بِيَدِي: أَيْنَ تَذْهَبُ؟ فَيَقُولُ: إلَى كَذَا كَذَا - وَأَنَا فِي الْمَكْتُوبَةِ، هَلْ انْقَطَعَتْ صَلَاتِي؟ قَالَ: لَا، وَلَكِنْ أَكْرَهُهُ، قُلْت: فَاسْجُدْ لِلسَّهْوِ؟ قَالَ: لَا.

L5549 From Ḥammād ibn Salamah from ʿĀṣim from Muʿādhah al-ʿAdawiyyah from ʿĀ’ishah, the Mother of the Believers: She stood to pray wearing a chemise (*dirʿ*) and a veil (*khimār*). She gestured toward the outer cloak (*milḥafah*), so it was handed to her. There were women present with her,

and she signaled to them with her hand regarding some food—this occurred while she was praying.

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَاصِمٍ عَنْ مُعَاذَةَ الْعَدَوِيَّةِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّهَا قَامَتْ إلَى الصَّلَاةِ فِي دِرْعٍ وَخِمَارٍ، فَأَشَارَتْ إلَى الْمِلْحَفَةِ فَنَاوَلَتْهَا، وَكَانَ عِنْدَهَا نِسْوَةٌ فَأَوْمَأَتْ إلَيْهِنَّ بِشَيْءٍ مِنْ طَعَامٍ بِيَدِهَا - تَعْنِي وَهِيَ تُصَلِّي.

L5550 From Hammad ibn Salamah from Thabit al-Bunani from Abu Rafi', who said: "Two men would come to a man from the Companions of the Messenger of Allah—peace and blessings be upon him—while he was in prayer, asking him to testify upon their testimony. He would incline his ear to it. When they finished, he would nod his head, meaning: 'Yes?'"

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَبِي رَافِعٍ قَالَ: «كَانَ يَجِيءُ الرَّجُلَانِ إلَى الرَّجُلِ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ فِي الصَّلَاةِ، فَيُشْهِدَانِهِ عَلَى الشَّهَادَةِ، فَيُصْغِي لَهَا سَمْعَهُ، فَإِذَا فَرَغَا يُومِئُ بِرَأْسِهِ أَيْ: نَعَمْ؟» .

L5551 From Abd al-Razzaq, from Ibn Jurayj, who said: Nafiʿ informed me that Ibn Umar said: If one of you is engaged in prayer and is greeted, let him not speak at all, but let him make a gesture, for that is his reply.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي نَافِعٌ أَنْ ابْنَ عُمَرَ قَالَ: إذَا كَانَ أَحَدُكُمْ فِي الصَّلَاةِ فَسُلِّمَ عَلَيْهِ؟ فَلَا يَتَكَلَّمَنَّ، وَلْيُشِرْ إشَارَةً؟ فَإِنَّ ذَلِكَ رَدُّهُ؟ .

L5552 If someone cites his saying (peace be upon him): "There is no harm in the prayer or the taslīm."

فَإِنْ ذَكَرَ ذَاكِرٌ قَوْلَهُ - عَلَيْهِ السَّلَامُ -: «لَا غِرَارَ فِي صَلَاةٍ وَلَا تَسْلِيمَ» .

L5553–5555 It was said: This is not a prohibition against responding to the salām during prayer through gesture; nor is this [ruling] understood from this [statement]. The verbal assertion and the claim are rejected unless supported by proof.

قِيلَ: لَيْسَ هَذَا نَهْيًا عَنْ رَدِّ السَّلَامِ فِي الصَّلَاةِ بِالْإِشَارَةِ، وَلَا يُفْهَمُ هَذَا مِنْ هَذَا اللَّفْظِ، وَالدَّعْوَى مَرْدُودَةٌ إلَّا بِبُرْهَانٍ؟ .

L5556 The act of taking a short rest is for one distressed by the heat, based on Allah the Exalted's statement: "Allah intends ease for you and does not intend hardship for you" [Al-Baqarah 2:185], and His statement: "He has not placed upon you in the religion any constraint" [Al-Hajj 22:78]. If one rests frivolously, would his prayer then be invalidated?[2]

وَالتَّرْوِيحُ لِمَنْ آذَاهُ الْحَرُّ؛ لِقَوْلِ اللَّهِ تَعَالَى: {يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلا يُرِيدُ بِكُمُ الْعُسْرَ} [البقرة: ١٨٥] وقَوْله تَعَالَى: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] فَلَوْ تَرَوَّحَ عَبَثًا بَطَلَتْ صَلَاتُهُ؟ .

L5557 It was narrated to us from Muḥammad ibn al-Muthannā, from Muḥammad ibn Abī ʿAdiyy, from Ashʿath - who is Ibn ʿAbd al-Malik al-Ḥumrānī - who said: "Al-Ḥasan did not see any harm in taking intervals during prayer."

وَرُوِّينَا عَنْ مُحَمَّدِ بْنِ الْمُثَنَّى عَنْ مُحَمَّدِ بْنِ أَبِي عَدِيٍّ عَنْ أَشْعَثَ هُوَ ابْنُ عَبْدِ الْمَلِكِ الْحُمْرَانِيِّ قَالَ: كَانَ الْحَسَنُ لَا يَرَى بَأْسًا بِالتَّرْوِيحِ فِي الصَّلَاةِ؟ .

L5558 And from Mujāhid: that he used to fan himself during prayer and wipe sweat?

وَعَنْ مُجَاهِدٍ: أَنَّهُ كَانَ يَتَرَوَّحُ فِي الصَّلَاةِ وَيَمْسَحُ الْعَرَقَ؟ .

[2] **Qur'an references (L5556):** Qur'an 2:185 (Al-Baqarah); Qur'an 22:78 (Al-Hajj).

وَمِنْ ذَلِكَ إِمَاطَتُهُ عَنْ كُلِّ مَا يُؤْذِيهِ وَيَشْغَلُهُ عَنْ تَوْفِيَةِ صَلَاتِهِ حَقَّهَا: لِمَا ذَكَرْنَا؟ ، وَكَذَلِكَ سُقُوطُ ثَوْبٍ، أَوْ حَكُّ بَدَنٍ، أَوْ قَلْعُ بَثْرَةٍ، أَوْ مَسُّ رِيقٍ، أَوْ وَضْعُ دَوَاءٍ، أَوْ رِبَاطُ مُنْحَلٍّ: إِذَا كَانَ كُلُّ ذَلِكَ يُؤْذِيهِ فَوَاجِبٌ عَلَيْهِ إِصْلَاحُ شَأْنِهِ، لِيَتَفَرَّغَ لِصَلَاتِهِ؟ .

L5559 Among these matters is removing anything that harms him or distracts him from properly fulfilling his prayer, as we have mentioned. Similarly, the slipping of a garment, the itching of the body, the removal of a pimple, the touching of saliva, the administering of medicine, or the tying of a loose garment—if any of these harm him, it becomes obligatory for him to rectify his situation so that he may devote himself to his prayer.

رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ أَنَّهُ قَالَ: إِذَا رَأَى الْإِنْسَانُ فِي ثَوْبِهِ دَمًا وَهُوَ فِي الصَّلَاةِ فَانْصَرَفَ يَغْسِلُهُ؟ أَتَمَّ، صَلَّى مَا بَقِيَ عَلَى مَا مَضَى مَا لَمْ يَتَكَلَّمْ؟ .

L5560 It has been narrated to us from ʻAbd al-Razzaq, from Maʻmar, from al-Zuhri, from Salim ibn ʻAbdullah ibn ʻUmar, from his father, that he said: If a person sees blood on his garment while in prayer and leaves to wash it, he should complete it; he should pray what remains upon what has passed, provided he did not speak.

قَالَ عَلِيٌّ: وَمَا لَمْ يَنْحَرِفْ عَنْ الْقِبْلَةِ عَامِدًا؟ ، وَرُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّهُ كَانَ لَا يَتَحَرَّكُ فِي صَلَاتِهِ إِلَّا أَنْ يُصْلِحَ ثَوْبًا أَوْ يَحُكَّ جِلْدًا.

L5561 Ali ibn Abi Talib said: “What if one deviates from the Qiblah unintentionally?” It has been narrated to us from Ali ibn Abi Talib that he would not move during his prayer except to adjust his garment or relieve an itch.

وَأَمَّا مَنْ اسْتَرْخَى ثَوْبُهُ حَتَّى مَسَّ كَعْبَهُ فَفَرْضٌ عَلَيْهِ أَنْ يَرْفَعَهُ، لِئَلَّا يُصَلِّيَ مُسْبِلًا عَامِدًا فَتَبْطُلُ صَلَاتُهُ؟ .

L5562–5564 As for the one whose garment hangs down until it touches his ankles, he is obligated to raise it, lest he pray while dragging it. Does his prayer become invalid if performed intentionally?

وَحَتُّ النُّخَامَةِ مِنْ حَائِطِ الْمَسْجِدِ الَّذِي فِي قِبْلَتِهِ -: لِمَا حَدَّثَنَاهُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا قُتَيْبَةُ بْنُ سَعْدٍ ثنا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: «رَأَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نُخَامَةً فِي قِبْلَةِ الْمَسْجِدِ وَهُوَ يُصَلِّي بَيْنَ يَدَيْ النَّاسِ فَحَتَّهَا ثُمَّ قَالَ حِينَ انْصَرَفَ: إِنَّ أَحَدَكُمْ إِذَا كَانَ فِي الصَّلَاةِ فَإِنَّ اللَّهَ تَعَالَى قِبَلَ وَجْهِهِ، فَلَا يَتَنَخَّمَنَّ أَحَدُكُمْ قِبَلَ وَجْهِهِ فِي الصَّلَاةِ» .

L5565 The removal of phlegm from the qiblah facing wall of the mosque: Narrated by ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid → Ibrāhīm ibn Aḥmad → al-Farbarī → al-Bukhārī → Qutaybah ibn Saʿd → al-Layth, that is, al-Layth ibn Saʿd → Nāfiʿ → Ibn ʿUmar, who said: “The Prophet—peace and blessings of Allah be upon him—saw phlegm on the qiblah facing wall of the mosque while praying in front of the people. He scraped it off, then said upon concluding: ’When one of you is in prayer, Allah the Exalted is in the direction of his face. None of you must ever spit phlegm directly ahead during prayer.”’

وَقَتْلُ الْحَيَّةِ، وَالْعَقْرَبِ، وَالْغُرَابِ، وَالْحِدَأَةِ، وَالْكَلْبِ الْعَقُورِ، وَالْفَأْرِ، وَالْوَزَغِ - صِغَارِهَا وَكِبَارِهَا -: مُبَاحٌ فِي الصَّلَاةِ؟ ، لِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ

L5566 Is it permissible to kill snakes, scorpions, crows, kites, vicious dogs, rats, and geckos—whether small or large—during prayer? Abdullah ibn Rabīʿ narrated to us from Muḥammad ibn Isḥāq from Ibn al-Aʿrābī from Abū Dāwūd from

Muslim ibn Ibrāhīm from ʿAlī ibn al-Mubārak from Yaḥyā ibn Abī Kathīr from Ḍamḍam ibn Jawṣ from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—stated, "Kill the two black ones during prayer: the snake and the scorpion."

الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُسْلِمُ بْنُ إِبْرَاهِيمَ ثنا عَلِيُّ بْنُ الْمُبَارَكِ ثنا يَحْيَى بْنُ أَبِي كَثِيرٍ عَنْ ضَمْضَمِ بْنِ جَوْسٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ: - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «اُقْتُلُوا الْأَسْوَدَيْنِ فِي الصَّلَاةِ الْحَيَّةُ، وَالْعَقْرَبُ» .

L5567–5569 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn Al-Hajjaj narrated to us: Shayban ibn Farrukh narrated to us: Abu Awanah narrated from Zayd ibn Jubayr, who said: A man asked Ibn Umar, "What animals may a Muhrim kill?" Ibn Umar replied: "One of the wives of the Prophet (peace be upon him) narrated to me that the Prophet (peace be upon him) commanded the killing of the vicious dog, the mouse..." And the scorpion, the hawk, the crow, and the snake. He said: "And during prayer as well?"

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا شَيْبَانُ بْنُ فَرُّوخَ ثنا أَبُو عَوَانَةَ عَنْ زَيْدِ بْنِ جُبَيْرٍ قَالَ: «سَأَلَ رَجُلٌ ابْنَ عُمَرَ: مَا يَقْتُلُ الْمُحْرِمُ مِنْ الدَّوَابِّ؟ فَقَالَ ابْنُ عُمَرَ: حَدَّثَتْنِي إِحْدَى نِسْوَةِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَأْمُرُ بِقَتْلِ الْكَلْبِ الْعَقُورِ، وَالْفَأْرَةِ، وَالْعَقْرَبِ، وَالْحُدَيَّا وَالْغُرَابِ، وَالْحَيَّةِ قَالَ: وَفِي الصَّلَاةِ أَيْضًا؟» .

L5570 Ali said: All the wives of the Prophet—may Allah bless him and grant him peace—are trustworthy, virtuous, and certainly sanctified in the sight of Allah, the Mighty and Majestic. It is absolutely impossible that Ibn Umar could lack knowledge of them, or of any single one of them.

قَالَ عَلِيٌّ: كُلُّ نِسَاءِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثِقَاتٌ فَوَاضِلُ عِنْدَ اللَّهِ عَزَّ وَجَلَّ مُقَدَّسَاتٌ بِيَقِينٍ، وَلَا يُمْكِنُ أَلْبَتَّةَ أَنْ يَغِيبَ عَلَى ابْنِ عُمَرَ عِلْمُهُنَّ وَلَا عِلْمُ وَاحِدَةٍ مِنْهُنَّ.

L5571 If one is annoyed by a wall gecko, flea, or louse, they are obligated to repel them.

فَإِنْ تَأَذَّى بِوَزَغَةٍ، أَوْ بُرْغُوثٍ، أَوْ قَمْلٍ؟ فَوَجَبَ عَلَيْهِ دَفْعُهُنَّ عَنْ نَفْسِهِ.

L5572 If repelling them involves killing them without undertaking a burdensome action that distracts from prayer, there is no harm in that, for we have received narrations from him—peace and blessings of Allah be upon him—commanding the killing of geckos through the transmissions of Abū Hurayrah, Saʿd ibn Abī Waqqāṣ, and Umm Sharīk.

فَإِنْ كَانَ فِي دَفْعِهِ قَتْلُهُنَّ دُونَ تَكَلُّفِ عَمَلٍ شَاغِلٍ عَنْ الصَّلَاةِ فَلَا حَرَجَ فِي ذَلِكَ؛ لِأَنَّنَا قَدْ رُوِّينَا عَنْهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْأَمْرَ بِقَتْلِ الْوَزَغِ مِنْ طَرِيقِ أَبِي هُرَيْرَةَ، وَسَعْدِ بْنِ أَبِي وَقَّاصٍ، وَأُمِّ شَرِيكٍ.

L5573 It is not permissible for him to spit lightly during prayer, nor to busy himself with tying up a flea or louse in his garment, as there is no necessity for that, nor has any explicit text sanctioned it. Nor is there a requirement to kill someone not instructed to be killed during prayer, due to the Prophet's (peace and blessings be upon him) statement: "Verily, prayer demands complete engagement."

وَلَا يَجُوزُ لَهُ التَّفَلِّي فِي الصَّلَاةِ، وَلَا أَنْ يَشْتَغِلَ بِرَبْطِ بُرْغُوثٍ، أَوْ قَمْلَةٍ فِي ثَوْبِهِ؛ إذْ لَا ضَرُورَةَ إلَى ذَلِكَ، وَلَا جَاءَ النَّصُّ بِإِبَاحَتِهِ، وَلَا طَلَبُ قَتْلِ مَنْ لَمْ يُؤْمَرْ بِقَتْلِهِ فِيهَا؛ لِقَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ فِي الصَّلَاةِ لَشُغْلًا» ؟ .

L5574 Is it permissible for one who is struck by the thought of a needy person

during prayer—fearing to miss the chance—to hand him charity while praying? And if one fears rain damage, harm, or theft of his sandals or khuffs, may he protect them and move them from the place of feared harm? For the Messenger of Allah (peace and blessings be upon him) prohibited the squandering of wealth.

وَمَنْ خَطَرَ عَلَيْهِ مِسْكِينٌ فَخَشِيَ فَوْتَهُ فَلَهُ أَنْ يُنَاوِلَهُ صَدَقَةً وَهُوَ يُصَلِّي؟ وَلَوْ خَشِيَ عَلَى نَعْلَيْهِ أَوْ خُفَّيْهِ مَطَرًا أَوْ أَذًى أَوْ سَرِقَةً فَلَهُ أَنْ يُحَصِّنَهُمَا وَيُزِيلَهُمَا عَنْ مَكَانِ الْخَوْفِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ إِضَاعَةِ الْمَالِ؟ .

L5575–5577 If something is in his presence or possession and its rightful claimant seeks it, he should indicate its location to him or return it to him, for it is a trust that must be delivered to its people. Allah, the Exalted and Majestic, said: *"Indeed, Allah commands you to render trusts to their rightful owners"* [An-Nisā' 4:58]. This applies only if the possessor fears the item's loss or the claimant's absence. If he does not fear that, then there is no obligation. Does he act unless he completes the prayer?[3]

وَلَوْ كَانَ بِحَضْرَتِهِ أَوْ عِنْدَهُ شَيْءٌ فَطَلَبَهُ صَاحِبُهُ فَلْيُشِرْ لَهُ إِلَيْهِ، أَوْ لِيُنَاوِلْهُ إِيَّاهُ؛ لِأَنَّهَا أَمَانَةٌ تُؤَدَّى إِلَى أَهْلِهَا، قَالَ عَزَّ وَجَلَّ: {إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الأَمَانَاتِ إِلَى أَهْلِهَا} [النساء: ٥٨] ، وَإِنَّمَا هَذَا إِذَا خَشِيَ ضَيَاعَ الشَّيْءِ أَوْ فَوْتَ صَاحِبِهِ، فَإِذَا لَمْ يَخْشَ ذَلِكَ فَلَا يَفْعَلُ، إِلَّا حَتَّى يُتِمَّ الصَّلَاةَ؟ .

L5578 Whoever aligns his feet or alternates between them, that is permissible, because all of it constitutes standing. As for one who groans in prayer, if it is due to a severe, debilitating illness such that he cannot do more than that, there is no sin upon him—may Allah the Exalted have mercy on him—*"He has not laid upon you in the religion any hardship"* [Al-Ḥajj: 78]. But if he does it intentionally without necessity, his prayer is invalidated, because the text does not permit it?[4]

وَمَنْ صَفَّ قَدَمَيْهِ أَوْ رَاوَحَ بَيْنَهُمَا فَذَلِكَ جَائِزٌ، لِأَنَّهُ كُلَّهُ قِيَامٌ، وَمَنْ أَنَّ فِي صَلَاتِهِ، فَإِنْ كَانَ مِنْ شِدَّةِ مَرَضٍ غَالِبٍ لَا يَقْدِرُ مِنْهُ عَلَى أَكْثَرَ، فَلَا شَيْءَ عَلَيْهِ، - رَحِمَهُ اللَّهُ تَعَالَى -: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] فَإِنْ تَعَمَّدَهُ لِغَيْرِ ضَرُورَةٍ بَطَلَتْ صَلَاتُهُ، لِأَنَّهُ لَمْ يَأْتِ النَّصُّ بِإِبَاحَتِهِ؟ .

L5579 Whoever prays while having a dinar, dirham, pearl in his mouth, or silk, gold, or similar items in his sleeve—items whose safeguarding is obligatory upon him—that is permissible for him.

وَمَنْ صَلَّى، وَفِي فَمِهِ -: دِينَارٌ، أَوْ دِرْهَمٌ، أَوْ لُؤْلُؤَةٌ، أَوْ فِي كُمِّهِ -: حَرِيرٌ، أَوْ ذَهَبٌ، أَوْ غَيْرُ ذَلِكَ مِمَّا عَلَيْهِ حِفْظُهُ -: فَذَلِكَ جَائِزٌ لَهُ.

L5580 Repelling a passerby in front of a worshiper, erecting his prayer screen, and fighting him if he refuses are binding duties upon the worshiper. If this results in the passerby's death without the worshiper's intent to kill, it is nullified: no blood money, retaliation, or expiation is required in this case.

وَدَفْعُ الْمَارِّ بَيْنَ يَدَيِ الْمُصَلِّي وَسُتْرَتُهُ وَمُقَاتَلَتُهُ إِنْ أَبَى -: حَقٌّ وَاجِبٌ عَلَى الْمُصَلِّي، فَإِنْ وَافَقَ ذَلِكَ مَوْتَ الْمَارِّ دُونَ تَعَمُّدٍ مِنَ الْمُصَلِّي لِقَتْلِهِ: فَهُوَ هَدَرٌ، وَلَا دِيَةَ فِيهِ، وَلَا قَوَدَ، وَلَا كَفَّارَةَ؟ .

L5581–5583 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ah-

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا شَيْبَانُ بْنُ فَرُّوخَ ثنا سُلَيْمَانُ بْنُ الْمُغِيرَةِ

[3] **Qur'an references (L5575):** Qur'an 4:58 (An-Nisa).
[4] **Qur'an references (L5578):** Qur'an 22:78 (Al-Hajj).

mad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Shayban ibn Farrukh narrated to us: Sulayman ibn al-Mughirah narrated to us: Ibn Hilal—meaning Humayd—said: Abu Salih al-Samman said to me: While I was with Abu Sa'id al-Khudri as he prayed on Friday facing something that screened him from the people, a young man from Banu Abi Mu'ayt came intending to pass before him. Abu Sa'id pushed him in the upper chest. The youth looked and found no way to pass except in front of Abu Sa'id, so he turned again. Abu Sa'id pushed him in the upper chest more forcefully than the first time. The young man stood defiantly, insulted Abu Sa'id, then forced his way through the crowd and left. He went to Marwan and complained about what had happened. Later, Abu Sa'id entered Marwan's presence, and Marwan said: "What is between you and your nephew? He came complaining about you." Abu Sa'id replied: I heard Allah's Messenger—peace and blessings be upon him—say: "When one of you prays facing something that screens him from the people, if someone attempts to..." "If someone passes in front of him, let him push him in the chest. If he refuses, let him fight him, for he is nothing but a devil."[5]

ثنا ابْنُ هِلَالٍ يَعْنِي حُمَيْدًا - قَالَ: قَالَ لِي «أَبُو صَالِحٍ السَّمَّانُ: بَيْنَمَا أَنَا مَعَ أَبِي سَعِيدٍ الْخُدْرِيِّ يُصَلِّي يَوْمَ الْجُمُعَةِ إِلَى شَيْءٍ يَسْتُرُهُ مِنَ النَّاسِ إِذْ جَاءَ رَجُلٌ شَابٌّ مِنْ بَنِي أَبِي مُعَيْطٍ أَرَادَ أَنْ يَجْتَازَ بَيْنَ يَدَيْهِ فَدَفَعَ فِي نَحْرِهِ، فَنَظَرَ فَلَمْ يَجِدْ مَسَاغًا إِلَّا بَيْنَ يَدَيْ أَبِي سَعِيدٍ، فَعَادَ فَدَفَعَ فِي نَحْرِهِ أَشَدَّ مِنَ الدَّفْعَةِ الْأُولَى، فَمَثَلَ قَائِمًا فَنَالَ مِنْ أَبِي سَعِيدٍ، ثُمَّ زَاحَمَ النَّاسَ فَخَرَجَ، فَدَخَلَ عَلَى مَرْوَانَ فَشَكَا إِلَيْهِ مَا لَقِيَ، وَدَخَلَ أَبُو سَعِيدٍ عَلَى مَرْوَانَ فَقَالَ لَهُ مَرْوَانُ: مَا لَكَ وَلِابْنِ أَخِيكَ؟ جَاءَ يَشْكُوكَ فَقَالَ أَبُو سَعِيدٍ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: إِذَا صَلَّى أَحَدُكُمْ إِلَى شَيْءٍ يَسْتُرُهُ مِنَ النَّاسِ فَأَرَادَ أَحَدٌ أَنْ يَجْتَازَ بَيْنَ يَدَيْهِ فَلْيَدْفَعْ فِي نَحْرِهِ، فَإِنْ أَبَى فَلْيُقَاتِلْهُ فَإِنَّمَا هُوَ شَيْطَانٌ» .

L5584 If they mention the statement of Mālik: "It reached me that a man came to ʿUthmān ibn ʿAffān with a man whose nose was broken. The man said: 'He passed in front of me during prayer, and it has reached me what I heard regarding those who pass before worshippers.'" ʿUthmān said to him: "What you did was worse, O my nephew—you disrupted the prayer and broke his nose."

فَإِنْ ذَكَرُوا قَوْلَ مَالِكٍ: بَلَغَنِي أَنَّ رَجُلًا جَاءَ إِلَى عُثْمَانَ بْنِ عَفَّانَ بِرَجُلٍ كُسِرَ أَنْفُهُ، فَقَالَ: مَرَّ بَيْنَ يَدَيَّ فِي الصَّلَاةِ، وَقَدْ بَلَغَنِي مَا سَمِعْتَ فِي الْمَارِّ بَيْنَ يَدَيِ الْمُصَلِّي فَقَالَ لَهُ عُثْمَانُ: فَمَا صَنَعْتَ أَشَدَّ يَا ابْنَ أَخِي ضَيَّعْتَ الصَّلَاةَ، وَكَسَرْتَ أَنْفَهُ.

L5585 Ali said: This is an invalid testimony; even if it were valid, it would only apply to the dissenter, for it does not mention that Uthman ibn Affan—may Allah be pleased with him—enforced retaliation against one whose nose was broken. Even if it did contain this, the statement of anyone other than the Messenger of Allah—peace and blessings be upon him—would not constitute authoritative proof, when Abu Saʿid al-Khudri and others witnessed his fighting and striking?

قَالَ عَلِيٌّ: هَذَا بَلَاغٌ لَا يَصِحُّ، وَلَوْ صَحَّ لَمَا كَانَ إِلَّا عَلَى الْمُخَالِفِ، لِأَنَّهُ لَيْسَ فِيهِ أَنَّ عُثْمَانَ بْنَ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُ - أَقَادَ مَنْ كُسِرَ أَنْفُهُ، وَحَتَّى لَوْ كَانَ ذَلِكَ فِيهِ لَمَا كَانَ فِي قَوْلِ أَحَدٍ حُجَّةٌ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ رَأَى مُقَاتَلَتَهُ وَضَرْبَهُ أَبُو سَعِيدٍ الْخُدْرِيِّ وَغَيْرُهُ؟ .

L5586 Is the act of a worshipper carrying a small child on his neck [or prostrating

وَحَمْلُ الْمُصَلِّي صَغِيرًا عَلَى عُنُقِهِ [أَوِالسُّجُودُ بِهِ] إِذَا دَعَتْ إِلَى حَمْلِهِ حَاجَةٌ جَائِزٌ؟ .

[5] **Hadith references (L5581):** Sunan Abi Dawud 700; Sahih Muslim 505b.

with him] permissible if there is a need necessitating carrying him?

L5587–5588 Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Muhammad ibn Abi Umar narrated to us, Sufyan - who is Ibn Uyaynah - narrated from Uthman ibn Abu Sulayman and Muhammad ibn Ajlan, both of whom heard Amir ibn Abdullah ibn al-Zubayr narrating from Amr ibn Sulaym al-Zuraqi from Abu Qatadah al-Ansari, who said: "I saw the Messenger of Allah - peace and blessings be upon him - leading the people in prayer while carrying Umamah bint Abu al-As, the daughter of Zaynab, the daughter of the Messenger of Allah - peace and blessings be upon him - on his shoulder. When he bowed, he would place her down, and when he rose from prostration, he would put her back."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ أَبِي عُمَرَ ثنا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ عُثْمَانَ بْنِ أَبِي سُلَيْمَانَ، وَمُحَمَّدِ بْنِ عَجْلَانَ سَمِعَا عَامِرَ بْنَ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ يُحَدِّثُ عَنْ عَمْرِو بْنِ سُلَيْمٍ الزُّرَقِيِّ عَنْ «أَبِي قَتَادَةَ الْأَنْصَارِيِّ قَالَ: رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَؤُمُّ النَّاسَ وَأُمَامَةُ بِنْتُ أَبِي الْعَاصِ وَهِيَ بِنْتُ زَيْنَبَ ابْنَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى عَاتِقِهِ، فَإِذَا رَكَعَ وَضَعَهَا، وَإِذَا رَفَعَ مِنْ السُّجُودِ أَعَادَهَا» ؟ .

L5589 Abdullah ibn Rabee' narrated to us, Muhammad ibn Ishaq narrated to us, Ibn al-A'rabi narrated to us, Abu Dawud narrated to us, Yahya ibn Khalaf narrated to us, Abdul-A'la narrated to us, Muhammad—meaning Ibn Ishaq—narrated to us from Sa'id ibn Abi Sa'id al-Maqburi from Amr ibn Sulaym al-Zuraqi from Abu Qatadah, the companion of the Messenger of Allah (peace be upon him), who said: "While we were waiting for the Messenger of Allah (peace be upon him) for the Dhuhr or Asr prayer—when Bilal had called him to prayer—he came out to us carrying Umamah bint Abi al-ʿĀṣ, the daughter of the daughter of the Messenger of Allah (peace be upon him), on his shoulder. The Messenger of Allah (peace be upon him) stood in his prayer place, and we stood behind him while she remained in her position. He said, 'Allahu Akbar,' and we said, 'Allahu Akbar.' When the Messenger of Allah (peace be upon him) intended to bow, he took her and placed her down, then he bowed and prostrated. When he finished his prostration and stood up, he took her and returned her to her place. The Messenger of Allah (peace be upon him) kept doing this in every rak'ah until he completed his prayer."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا يَحْيَى بْنُ خَلَفٍ ثنا عَبْدُ الْأَعْلَى ثنا مُحَمَّدٌ يَعْنِي ابْنَ إِسْحَاقَ - عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ عَمْرِو بْنِ سُلَيْمٍ الزُّرَقِيِّ عَنْ أَبِي قَتَادَةَ صَاحِبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «بَيْنَمَا نَحْنُ نَنْتَظِرُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الظُّهْرِ أَوْ الْعَصْرِ، وَقَدْ دَعَاهُ بِلَالٌ لِلصَّلَاةِ إِذْ خَرَجَ عَلَيْنَا وَأُمَامَةُ بِنْتُ أَبِي الْعَاصِ - بِنْتُ ابْنَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى عَاتِقِهِ فَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي مُصَلَّاهُ، فَقُمْنَا خَلْفَهُ، وَهِيَ فِي مَكَانِهَا الَّذِي هِيَ فِيهِ، فَكَبَّرَ؟ فَكَبَّرْنَا، حَتَّى إِذَا أَرَادَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَرْكَعَ أَخَذَهَا فَوَضَعَهَا ثُمَّ رَكَعَ وَسَجَدَ، حَتَّى إِذَا فَرَغَ مِنْ سُجُودِهِ وَقَامَ أَخَذَهَا فَرَدَّهَا فِي مَكَانِهَا، فَمَا زَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَفْعَلُ ذَلِكَ فِي كُلِّ رَكْعَةٍ حَتَّى فَرَغَ مِنْ صَلَاتِهِ» .

L5590–5592 This is the view of Al-Shafi'i and Abu Sulayman. These two hadiths confirm the falsehood of those who opposed them and claimed that he was performing a supererogatory prayer, and all that... His action—peace be upon him—

is the pinnacle of reverent submission, and all that contradicts it is null, even if the one in error erroneously considers it to be reverent submission.

وَبِهَذَا يَقُولُ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَهَذَانِ الْحَدِيثَانِ يُثْبِتَانِ كَذِبَ مَنْ خَالَفَهُمَا، وَادَّعَى أَنَّهُ كَانَ فِي نَافِلَةٍ، وَكُلُّ مَا فَعَلَهُ - عَلَيْهِ السَّلَامُ - فَهُوَ غَايَةُ الْخُشُوعِ، وَكُلُّ مَا خَالَفَهُ فَهُوَ الْبَاطِلُ، وَإِنْ ظَنَّهُ الْمُخْطِئُ خُشُوعًا.

L5593 This report is undoubtedly after the statement of the Messenger of Allah—peace and blessings be upon him—to Ibn Mas'ud: "There is indeed distraction in prayer," because this statement of his—peace and blessings be upon him—occurred before the Battle of Badr, following Ibn Mas'ud's return from the land of Abyssinia. Did Zaynab arrive in Medina with her daughter only after Badr, as per the established reports on this matter? If a small child rides on someone's back while they are praying and they pause for that reason, is it acceptable?

وَهَذَا الْخَبَرُ بِلَا شَكٍّ كَانَ بَعْدَ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِابْنِ مَسْعُودٍ «إِنَّ فِي الصَّلَاةِ لَشُغْلًا» ؛ لِأَنَّ هَذَا الْقَوْلَ مِنْهُ - عَلَيْهِ السَّلَامُ - كَانَ قَبْلَ بَدْرٍ، إِثْرَ مَجِيءِ ابْنِ مَسْعُودٍ مِنْ بِلَادِ الْحَبَشَةِ، لَمْ تَرِدْ زَيْنَبُ الْمَدِينَةَ وَابْنَتُهَا إِلَّا بَعْدَ بَدْرٍ، بِالْأَخْبَارِ الثَّابِتَةِ فِي ذَلِكَ؟ ، وَمَنْ رَكِبَ عَلَى ظَهْرِهِ صَغِيرٌ وَهُوَ يُصَلِّي فَتَوَقَّفَ لِذَلِكَ فَحَسَنٌ؟ .

L5594 Whoever doubts due to the Imam prolonging his prostration should raise his head to ascertain: did he miss the Imam's *takbīr* or not? For he is commanded to follow the Imam. If he sees the Imam has not raised his head, he should return to prostration, and no sin is upon him, as he has fulfilled what he was commanded to do by adhering to the Imam's condition.

وَمَنْ اسْتَرَابَ بِتَطْوِيلِ الْإِمَامِ سُجُودَهُ فَلْيَرْفَعْ رَأْسَهُ لِيَسْتَعْلِمَ: هَلْ خَفِيَ عَنْهُ تَكْبِيرُ الْإِمَامِ أَوْ لَا؟ ؛ لِأَنَّهُ مَأْمُورٌ بِاتِّبَاعِ الْإِمَامِ، فَإِنْ رَآهُ لَمْ يَرْفَعْ فَلْيَعُدْ إِلَى السُّجُودِ، وَلَا شَيْءَ عَلَيْهِ، لِأَنَّهُ فَعَلَ مَا أُمِرَ بِهِ مِنْ مُرَاعَاةِ حَالِ الْإِمَامِ.

L5595 Abdullah ibn Rabi' narrated to us: Ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Abu Al-Qasim 'Abdur-Rahman ibn Muhammad ibn Sallam At-Tarsusi narrated to us: Yazid ibn Harun narrated to us: Jarir ibn Hazim narrated to us: Muhammad ibn Abi Ya'qub Al-Basri narrated from Abdullah ibn Shaddad from his father, who said: "The Messenger of Allah (peace be upon him) came out to lead us in one of the two evening prayers ('Isha) while carrying Hasan or Husayn (peace be upon them). He placed him down, then pronounced the Takbir [saying 'Allahu Akbar'] and began the prayer. During the prayer, he performed a prolonged prostration. I raised my head and saw the child on his back—while he (peace be upon him) was prostrating. I resumed my prostration. When the Messenger of Allah (peace be upon him) concluded the prayer, some people said: 'O Messenger of Allah, you prolonged a prostration during your prayer until we thought an event had occurred or that revelation was descending upon you.' The Messenger

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا أَبُو الْقَاسِمِ عُبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ سَلَّامٍ الطَّرَسُوسِيُّ ثنا يَزِيدُ بْنُ هَارُونَ أَنَا جَرِيرُ بْنُ حَازِمٍ ثنا مُحَمَّدُ بْنُ أَبِي يَعْقُوبَ الْبَصْرِيُّ عَنْ عَبْدِ اللَّهِ بْنِ شَدَّادٍ عَنْ أَبِيهِ قَالَ: «خَرَجَ عَلَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي إِحْدَى صَلَاتَيْ الْعِشَاءِ وَهُوَ حَامِلٌ حَسَنًا أَوْ حُسَيْنًا فَوَضَعَهُ ثُمَّ كَبَّرَ لِلصَّلَاةِ فَصَلَّى، فَسَجَدَ بَيْنَ ظَهْرَانَيْ صَلَاتِهِ سَجْدَةً أَطَالَهَا، فَرَفَعْتُ رَأْسِي، فَإِذَا الصَّبِيُّ عَلَى ظَهْرِهِ - عَلَيْهِ السَّلَامُ - وَهُوَ سَاجِدٌ، فَرَجَعْتُ إِلَى سُجُودِي فَلَمَّا قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَاتَهُ قَالَ أُنَاسٌ: يَا رَسُولَ اللَّهِ إِنَّكَ سَجَدْتَ بَيْنَ ظَهْرَانَيْ صَلَاتِكَ سَجْدَةً أَطَلْتَهَا حَتَّى ظَنَنَّا أَنَّهُ قَدْ حَدَثَ أَمْرٌ أَوْ أَنَّهُ يُوحَى إِلَيْكَ؟ فَقَالَ رَسُولُ

of Allah (peace be upon him) replied: 'None of that happened, but my son climbed onto me, and I disliked disturbing him until he had fulfilled his need.'"[6]

L5596–5597 Moving someone whose sleep the worshiper fears, and turning someone who is on the left to the right: all of that is permissible during prayer.

L5598 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Muhammad ibn Rafi' narrated to us: Muhammad ibn Abi Fudayk narrated: I am al-Dahhak—he is the son of Uthman, from Makhramah ibn Sulayman, from Kuraib, the freed slave of Ibn Abbas, from Ibn Abbas, who said: "I spent a night at the house of my maternal aunt Maymunah bint al-Harith. I said to her: 'When the Messenger of Allah—may Allah bless him and grant him peace—rises, wake me.' When the Messenger of Allah—may Allah bless him and grant him peace—rose, I stood at his left side. He took me by my hand and placed me on his right side. Whenever I began to doze, he would take hold of the lobe of my ear." And he mentioned the rest of the hadith.[7]

L5599 The worshiper may supplicate during their prayer—in their prostration, standing, and sitting—with whatever they wish, provided it does not involve sin. They may specify by name in their supplication whomever they choose. Indeed, the Messenger of Allah (peace and blessings of Allah be upon him) supplicated against ʿUṣayyah, Ri'l, and Dhakwān.

L5600 He prayed for Al-Walīd ibn Al-Walīd, ʿAyyāsh ibn Abī Rabīʿah, and Salamah ibn Hishām, naming them by their specific names. He (peace be upon him) was never forbidden from this, nor did he ever forbid it himself. Regarding prostration, he (peace be upon him) said: "Be sincere in your supplication during prostration," or words to that effect.

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلُّ ذَلِكَ لَمْ يَكُنْ، وَلَكِنَّ ابْنِي ارْتَحَلَنِي فَكَرِهْتُ أَنْ أُعَجِّلَهُ حَتَّى يَقْضِيَ حَاجَتَهُ» .

وَتَحْرِيكُ مَنْ خَشِيَ الْمُصَلِّي نَوْمَهُ، وَإِدَارَةُ مَنْ كَانَ عَلَى الْيَسَارِ إِلَى الْيَمِينِ: مُبَاحٌ كُلُّ ذَلِكَ فِي الصَّلَاةِ.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ رَافِعٍ ثنا مُحَمَّدُ بْنُ أَبِي فُدَيْكٍ أَنَا الضَّحَّاكُ هُوَ ابْنُ عُثْمَانَ عَنْ مَخْرَمَةَ بْنِ سُلَيْمَانَ عَنْ كُرَيْبٍ مَوْلَى ابْنِ عَبَّاسٍ عَنْ «ابْنِ عَبَّاسٍ قَالَ: بِتُّ لَيْلَةً عِنْدَ خَالَتِي مَيْمُونَةَ بِنْتِ الْحَارِثِ، فَقُلْتُ لَهَا: إِذَا قَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَيْقِظِينِي، فَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُمْتُ إِلَى جَنْبِهِ الْأَيْسَرِ، فَأَخَذَ بِيَدِي فَجَعَلَنِي مِنْ شِقِّهِ الْأَيْمَنِ، فَجَعَلْتُ إِذَا أَغْفَيْتُ يَأْخُذُ بِشَحْمَةِ أُذُنِي» وَذَكَرَ بَاقِيَ الْحَدِيثِ؟ .

وَيَدْعُو الْمُصَلِّي فِي صَلَاتِهِ فِي سُجُودِهِ وَقِيَامِهِ وَجُلُوسِهِ بِمَا أَحَبَّ، مِمَّا لَيْسَ مَعْصِيَةً، وَيُسَمِّي فِي دُعَائِهِ مَنْ أَحَبَّ، وَقَدْ «دَعَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى: عُصَيَّةَ، وَرِعْلٍ، وَذَكْوَانَ» .

«وَدَعَا لِلْوَلِيدِ بْنِ الْوَلِيدِ، وَعَيَّاشِ بْنِ أَبِي رَبِيعَةَ، وَسَلَمَةَ بْنِ هِشَامٍ، يُسَمِّيهِمْ بِأَسْمَائِهِمْ» ، وَمَا نُهِيَ - عَلَيْهِ السَّلَامُ - قَطُّ عَنْ هَذَا، وَلَا نَهَى هُوَ عَنْهُ. «وَقَالَ - عَلَيْهِ السَّلَامُ - فِي السُّجُودِ أَخْلِصُوا فِيهِ الدُّعَاءَ» أَوْ نَحْوَ هَذَا.

[6] **Hadith references (L5595):** Sunan an-Nasai 1141.
[7] **Hadith references (L5598):** Sahih Muslim 763e.

L5601 He said: “Then let each of you choose from the supplications what he finds most appealing,” and we will mention them with their chains of narration, God willing (the Exalted), in the description of the acts of prayer?

وَقَالَ: «ثُمَّ لِيَتَخَيَّرْ أَحَدُكُمْ مِنْ الدُّعَاءِ أَعْجَبَهُ إِلَيْهِ» ، وَسَنَذْكُرُهَا بِأَسَانِيدِهَا إِنْ شَاءَ اللَّهُ تَعَالَى فِي صِفَةِ أَعْمَالِ الصَّلَاةِ؟ .

L5602 Every reprehensible act that a person witnesses during prayer obligates them to denounce it, and this does not nullify their prayer. For enjoining good and forbidding evil is an obligation, and the one who upholds what is right is virtuous—provided no sacred text or consensus prohibits any aspect of it.

وَكُلُّ مُنْكَرٍ رَآهُ الْمَرْءُ فِي الصَّلَاةِ فَفَرْضٌ عَلَيْهِ إِنْكَارُهُ، وَلَا تَنْقَطِعُ بِذَلِكَ صَلَاتُهُ؛ لِأَنَّ الْأَمْرَ بِالْمَعْرُوفِ وَالنَّهْيَ عَنْ الْمُنْكَرِ حَقٌّ، وَفَاعِلُ الْحَقِّ مُحْسِنٌ، مَا لَمْ يَمْنَعْ مِنْ شَيْءٍ مِنْهُ نَصٌّ أَوْ إِجْمَاعٌ.

L5603–5604 And He, the Exalted, said: “Cooperate in righteousness and piety, and do not cooperate in sin and transgression.” (Al-Ma’idah 5:2).[8]

وَقَالَ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L5605 Among the examples of that: extinguishing a blazing fire; rescuing a child, an insane person, a disabled person, or a sleeper from fire, or a snake, or a predatory beast, or a hostile human, or a flood; combating those who intend harm to a worshipper or seek to wrong a Muslim; and restraining the disbelieving captive or the unjust captive—unless prevented by a textual ruling or scholarly consensus. Whoever differentiates between any of these matters has erred and spoke without proof.

وَمِنْ جُمْلَةِ ذَلِكَ -: إِطْفَاءُ النَّارِ الْمُشْتَعِلَةِ، وَإِنْقَاذُ الصَّغِيرِ، وَالْمَجْنُونِ، وَالْمُقْعَدِ، وَالنَّائِمِ: مِنْ نَارٍ، أَوْ مِنْ حَنَشٍ، أَوْ سَبُعٍ، أَوْ إِنْسَانٍ عَادٍ، أَوْ مِنْ سَيْلٍ وَالْمُحَارَبَةُ لِمَنْ أَرَادَ الْمُصَلِّي أَوْ أَرَادَ مُسْلِمًا بِظُلْمٍ، وَشَدُّ الْأَسِيرِ الْكَافِرِ، أَوْ الظَّالِمِ - إِلَّا أَنْ يَمْنَعَ مِنْ شَيْءٍ مِنْ ذَلِكَ نَصٌّ أَوْ إِجْمَاعٌ، وَمَنْ فَرَّقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ فَقَدْ أَخْطَأَ، وَقَالَ بِلَا بُرْهَانٍ؟ .

L5606 It was narrated to us through the chain of Al-Bukhārī: From Ādam, from Shu‘bah, from Al-Azraq ibn Qays who said: “We were in Al-Ahwāz fighting the Harūriyyah. While I stood on a riverbank, a man was praying with his animal’s bridle in hand. The animal kept tugging away, and he kept following it.” Shu‘bah noted that this was Abū Barzah al-Aslamī. A Khārijī man began saying: “O Allah, deal with this old man!” When the elder finished praying, he said: “I heard your words. I fought alongside Allah’s Messenger - peace and blessings be upon him - in six or seven campaigns, and I witnessed his facilitation of matters. I would rather return with my animal myself than let it return to its grazing spot, which would inconvenience me.”

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ: حَدَّثَنَا آدَم ثنا شُعْبَةُ ثنا «الْأَزْرَقُ بْنُ قَيْسٍ قَالَ: كُنَّا بِالْأَهْوَازِ نُقَاتِلُ الْحَرُورِيَّةَ، فَبَيْنَمَا أَنَا عَلَى جُرُفِ نَهْرٍ إِذَا رَجُلٌ يُصَلِّي وَلِجَامُ دَابَّتِهِ فِي يَدِهِ، فَجَعَلَتْ الدَّابَّةُ تُنَازِعُهُ وَجَعَلَ يَتْبَعُهَا قَالَ شُعْبَةُ وَهُوَ أَبُو بَرْزَةَ الْأَسْلَمِيّ، فَجَعَلَ رَجُلٌ مِنْ الْخَوَارِجِ يَقُولُ: اللَّهُمَّ افْعَلْ بِهَذَا الشَّيْخِ، فَلَمَّا انْصَرَفَ الشَّيْخُ قَالَ: إِنِّي سَمِعْت قَوْلَكُمْ، وَإِنِّي غَزَوْت مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سِتَّ غَزَوَاتٍ أَوْ سَبْعَ غَزَوَاتٍ وَشَهِدْت تَيْسِيرَهُ، وَإِنِّي كُنْتُ أَرْجِعُ مَعَ دَابَّتِي أَحَبَّ إِلَيَّ مِنْ أَنْ أَدَعَهَا تَرْجِعُ إِلَى مَأْلَفِهَا فَيَشُقُّ عَلَيَّ» .

[8] **Qur’an references (L5604):** Qur’an 5:2 (Al-Ma’idah).

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ [عَنِ الزُّهْرِيِّ] عَنِ الْأَزْرَقِ بْنِ قَيْسٍ أَنَّ أَبَا بَرْزَةَ الْأَسْلَمِيَّ خَافَ عَلَى دَابَّتِهِ الْأَسَدَ فَمَشَى إِلَيْهَا، وَهُوَ فِي الصَّلَاةِ.

L5607–5609 And from the chain of ʿAbd al-Razzāq, from Maʿmar [from al-Zuhrī], from al-Azraq ibn Qays that Abu Barzah al-Aslami feared for his mount from the lion, so he walked toward it while he was in prayer.

وَبِهِ إِلَى مَعْمَرٍ عَنْ قَتَادَةَ: سَأَلَهُ رَجُلٌ قَالَ: تَدْخُلُ الشَّاةُ بَيْتِي وَأَنَا أُصَلِّي فَأُطَأْطِئُ رَأْسِي فَآخُذُ الْقَصَبَةَ فَأَضْرِبُهَا بِهَا؟ قَالَ قَتَادَةُ: لَا بَأْسَ بِهِ؟ .

L5610 Narrated through him to Maʿmar from Qatādah: A man asked him, saying, “If a sheep enters my house while I am praying, may I lower my head, take a stick, and strike it with that?” Qatādah replied, “There is no harm in doing so?”

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ: ثنا سُلَيْمَانُ التَّيْمِيُّ عَنِ الْحَسَنِ الْبَصْرِيِّ فِي الْقَمْلَةِ يَقْتُلُهَا الرَّجُلُ فِي الصَّلَاةِ.

L5611 And via the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān: Sulaymān al-Taymī narrated to us from al-Ḥasan al-Baṣrī concerning lice - that a man may kill them during prayer.

قَالَ عَلِيٌّ: وَكَذَلِكَ مَنْ خَافَ عَلَى مَالِهِ أَوْ سُرِقَتْ نَعْلُهُ أَوْ خُفُّهُ أَوْ غَيْرُ ذَلِكَ فَلَهُ أَنْ يَتْبَعَ السَّارِقَ فَيَنْتَزِعَ مِنْهُ مَتَاعَهُ؟ .

L5612 Ali said: Likewise, if someone fears for his property, or his sandal is stolen, his khuff (leather footwear) is stolen, or anything else, may he pursue the thief and seize his belongings from him?

وَلَا يَضُرُّ فِي كُلِّ مَا ذَكَرْنَا مَا اُضْطُرَّ مِنِ اسْتِدْبَارِ الْقِبْلَةِ وَكَثْرَةِ الْعَمَلِ وَقِلَّتِهِ، مَا لَمْ يَتَكَلَّمْ؛ فَإِنْ كَانَ إِمَامًا أَوْ مَأْمُومًا فَطَمِعَ بِشَيْءٍ مِنْ إِدْرَاكِ الصَّلَاةِ بَعْدَ تَمَامِ حَاجَتِهِ، أَوْ بِانْتِظَارِ النَّاسِ لَهُ -: رَجَعَ وَلَا بُدَّ؛ كَمَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ «كَبَّرَ نَاسِيًا وَهُوَ جُنُبٌ فَذَكَرَ فَاغْتَسَلَ وَرَجَعَ فَأَتَمَّ الصَّلَاةَ» ، وَكَمَا فَعَلَ يَوْمَ ذِي الْيَدَيْنِ.

L5613 And there is no harm in all that we have mentioned regarding what one is compelled to do in terms of facing away from the qiblah, the abundance or scarcity of actions, as long as one does not speak. If one is an imam or a congregant and hopes to attain some portion of the prayer after relieving himself or due to the people waiting for him—he must return without fail, as the Messenger of Allah (peace be upon him) did when he “pronounced the takbīr forgetfully while in a state of major impurity, then remembered, performed ghusl, returned, and completed the prayer,” and as he did on the day of Dhu al-Yadayn.

فَإِنْ لَمْ يَرْجُ بِإِدْرَاكِ شَيْءٍ مِنَ الصَّلَاةِ، أَوْ أَيْقَنَ أَنَّ النَّاسَ لَا يَنْتَظِرُونَهُ [أَوْ كَانَ قَدْ] أَتَمَّ صَلَاتَهُ حِينَ تَمَامِ حَاجَتِهِ فِي أَوَّلِ مَكَانٍ تَجُوزُ لَهُ فِيهِ الصَّلَاةُ.

L5614 If he does not hope to catch any part of the prayer, is certain that the congregation is not waiting for him, [or if he had] completed his prayer after resolving his urgent need in the first permissible place where prayer is valid for him, he may pray individually.

وَلَا يَحِلُّ لَهُ أَنْ يَخْطُوَ خُطْوَةً وَاحِدَةً لِغَيْرِ رُجُوعٍ إِلَى الصَّلَاةِ، أَوْ لِزَوَالٍ عَنْ مَكَانٍ لَا تَجُوزُ فِيهِ الصَّلَاةُ؟ .

L5615 It is not permissible for him to take a single step unless to return to prayer or to leave a place where prayer is invalid.

L5616–5618 If one hopes for a prayer in another congregation that is nearer, he should

enter it, for the final prayer the people of Islam prayed with Allah's Messenger (peace be upon him) had two imams: Abu Bakr commenced it and Allah's Messenger (peace be upon him) completed it. Whoever turns away from the Sunnah of Allah's Messenger (peace be upon him) - upon which all the companions (may Allah be pleased with them) unanimously agreed, the first of them... From the latter among them—with him, peace be upon him—he imitated the views of one who errs at times and is correct at others. There is no good for him in that, and we ask Allah for safety and divine guidance toward what pleases Him. Amen.

فَلَوْ رَجَا بِصَلَاةٍ [فِي جَمَاعَةٍ أُخْرَى أَقْرَبَ مِنْهَا فَلْيُدْخَلْ فِيهَا، فَآخِرُ صَلَاةٍ] صَلَّاهَا أَهْلُ الْإِسْلَامِ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبِإِمَامَيْنِ: بَدَأَ أَبُو بَكْرٍ وَأَتَمَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَنْ رَغِبَ عَنْ سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -[الَّتِي أَجْمَعَ عَلَيْهَا جَمِيعُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، أَوَّلُهُمْ عَنْ آخِرِهِمْ، مَعَهُ - عَلَيْهِ السَّلَامُ -] وَقَلَّدَ رَأْيَ مَنْ يُخْطِئُ مَرَّةً وَيُصِيبُ أُخْرَى -: فَمَا خَيْرَ لَهُ فِي ذَلِكَ، وَنَسْأَلُ اللَّهَ الْعَافِيَةَ وَالتَّوْفِيقَ لِمَا يُرْضِيهِ. آمِينَ.

L5619 Abū Muḥammad said: Whoever distinguishes between few acts and numerous acts has no means to evidence such distinction. They are inevitably constrained to one of two matters with no third option: either they set a corrupt limit through personal opinion—a limit they are no more entitled to establish than others without such restriction—thereby exercising arbitrary control through falsehood and legislating in religion what Allah has not permitted; or they refrain from setting any limit, thereby falling into the most vile confusion regarding the most crucial acts of their faith, remaining ignorant of what invalidates his prayer and what does not. Is this not the very ignorance from which refuge is sought with Allah?

قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ مَنْ فَرَّقَ بَيْنَ قَلِيلِ الْعَمَلِ وَكَثِيرِهِ فَلَا سَبِيلَ لَهُ إلَى دَلِيلٍ عَلَى ذَلِكَ، وَلَا بُدَّ لَهُ ضَرُورَةً مِنْ أَحَدِ أَمْرَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا أَنْ يَحُدَّ فِي ذَلِكَ بِرَأْيِهِ حَدًّا فَاسِدًا لَيْسَ هُوَ أَوْلَى بِهِ مِنْ غَيْرِهِ بِغَيْرِ ذَلِكَ التَّحْدِيدِ، فَيَحْصُلُ عَلَى التَّحَكُّمِ بِالْبَاطِلِ، وَأَنْ يُشَرِّعَ فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ، وَإِمَّا أَنْ لَا يَحُدَّ فِي ذَلِكَ حَدًّا، فَيَحْصُلُ عَلَى أَقْبَحِ الْحَيْرَةِ فِي أَهَمِّ أَعْمَالِ دِينِهِ، وَعَلَى أَنْ لَا يَدْرِيَ مَا تَبْطُلُ بِهِ صَلَاتُهُ مِمَّا لَا تَبْطُلُ بِهِ، وَهَذَا هُوَ الْجَهْلُ الْمُتَعَوَّذُ بِاَللَّهِ مِنْهُ؟ .

L5620 We ask him about a specific action: Is this among what has been permitted in prayer or among what has not been permitted in it? There is no third possibility. If he says: It is among what has been permitted in it—it necessarily follows that both its small and large amounts are permissible, and this is our position regarding matters for which there is definitive proof of their permissibility in prayer. If he says: It is among what has not been permitted in it—it necessarily follows that both its small and large amounts are impermissible in it, and this is our position regarding matters for which no definitive proof of their permissibility in it has been established.

وَنَسْأَلُهُ عَنْ عَمَلٍ عَمَلٍ: أَهَذَا مِمَّا أُبِيحَ فِي الصَّلَاةِ؟ أَوْ مِمَّا لَمْ يُبَحْ فِيهَا؟ وَلَا سَبِيلَ إلَى وَجْهٍ ثَالِثٍ؟ ، فَإِنْ قَالَ: هُوَ مِمَّا أُبِيحَ فِيهَا - لَزِمَهُ أَنَّ قَلِيلَهُ وَكَثِيرَهُ: مُبَاحٌ، وَهُوَ قَوْلُنَا فِيمَا جَاءَ الْبُرْهَانُ بِإِبَاحَتِهِ فِيهَا، وَإِنْ قَالَ: هُوَ مِمَّا لَمْ يُبَحْ فِيهَا - لَزِمَهُ أَنَّ قَلِيلَهُ وَكَثِيرَهُ: غَيْرُ مُبَاحٍ فِيهَا، وَهُوَ قَوْلُنَا فِيمَا لَمْ يَأْتِ الْبُرْهَانُ بِإِبَاحَتِهِ فِيهَا؟ .

L5621 If they say: "Its small quantity was permitted, but its large quantity was not permitted?"

فَإِنْ قَالُوا: أُبِيحَ قَلِيلُهُ وَلَمْ يُبَحْ كَثِيرُهُ؟ .

L5622 We said: This is a false assertion requiring substantiation. Present your proof

for the validity of this claim first, then explain the threshold distinguishing the permissible minimal quantity from the prohibited excess; is there truly no means to establish any of that?

L5623–5624 Ali said: "A worshiper walking to open the door for one seeking entry is good and does not invalidate the prayer in any way." Hammam narrated to us: Abbas ibn Asbagh narrated to us: Muhammad ibn Abd al-Malik ibn Ayman narrated to us: Ahmad ibn Muhammad al-Bartītī the judge narrated to us: Abu Ma'mar narrated to us: Abd al-Warith narrated to us: Burd Abu al-Ala (Ibn Sinan) - from al-Zuhri from Urwah, who said: Aisha reported: "Allah's Messenger (peace and blessings be upon him) was praying while I was trying to open the door, and the door was in the direction of the Qiblah. He would come, open it, then return to his prayer."

L5625 Ibn Ayman said: And Abu Bakr ibn Hammad narrated to us: Musaddad narrated to us; Bishr ibn al-Mufaddal narrated to us; Burd ibn Sinan narrated to us from al-Zuhri, from Urwah, from Aisha, who said: "The Messenger of Allah (peace and blessings of Allah be upon him) was praying with a closed door. I came and asked him to open it. He walked and opened it for me, then returned to his prayer place."

L5626 Ali said: Yazid ibn Zurayʿ narrated it; he said: Burd narrated to us, and Az-Zuhri narrated to us. Does he mention it?

L5627 Ali said: "Thus, walking for the purpose we mentioned is permissible. But was no definitive ruling established by him (peace be upon him) regarding the walking style of those who walked [in this manner]?"

L5628 Wiping the pebbles during prayer once is permissible, but it is disapproved. If one does it more than once intentionally, his prayer is invalidated.

L5629 Abdullah ibn Rabi narrated to us, from Muhammad ibn Ishaq, from Ibn al-A'rabi, from Abu Dawud, from Musaddad, from Sufyan, from al-Zuhri, from Abu al-Ahwas, that he heard Abu Dharr narrating from the Messenger of Allah, peace and blessings be upon him, who said: "When one of you rises for prayer, mercy faces him, so let him not wipe the pebbles."[9]

قُلْنَا: هَذِهِ دَعْوَى كَاذِبَةٌ مُفْتَقِرَةٌ إِلَى دَلِيلٍ، فَهَاتُوا بُرْهَانَكُمْ عَلَى صِحَّةِ هَذِهِ الدَّعْوَى أَوَّلًا، ثُمَّ عَلَى بَيَانِ حَدِّ الْقَلِيلِ الْمُبَاحِ مِنْ الْكَثِيرِ الْمَحْظُورِ، وَلَا سَبِيلَ إِلَى شَيْءٍ مِنْ ذَلِكَ؟ .

قَالَ عَلِيٌّ: وَمَشْيُ الْمُصَلِّي إِلَى فَتْحِ الْبَابِ لِلْمُسْتَفْتِحِ حَسَنٌ لَا يَضُرُّ الصَّلَاةَ شَيْئًا -: حَدَّثَنَا حَمَّامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَحْمَدُ بْنُ مُحَمَّدٍ الْبَرْتَتِيُّ الْقَاضِي ثنا أَبُو مَعْمَرٍ ثنا عَبْدُ الْوَارِثِ ثنا بُرْدٌ أَبُو الْعَلَاءِ هُوَ ابْنُ سِنَانٍ - عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ قَالَتْ عَائِشَةُ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي، فَأَسْتَفْتِحُ الْبَابَ، وَالْبَابُ فِي الْقِبْلَةِ، فَيَجِيءُ فَيَفْتَحُ الْبَابَ ثُمَّ يَعُودُ فِي صَلَاتِهِ» .

قَالَ ابْنُ أَيْمَنَ: وَحَدَّثَنَاهُ أَبُو بَكْرِ بْنُ حَمَّادٍ ثنا مُسَدَّدٌ ثنا بِشْرُ بْنُ الْمُفَضَّلِ ثنا بُرْدُ بْنُ سِنَانٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ قَالَتْ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي وَعَلَيْهِ بَابٌ مُغْلَقٌ فَجِئْتُ فَاسْتَفْتَحْتُهُ فَمَشَى فَفَتَحَ لِي ثُمَّ رَجَعَ إِلَى مُصَلَّاهُ» .

قَالَ عَلِيٌّ: وَرَوَاهُ يَزِيدُ بْنُ زُرَيْعٍ قَالَ ثنا بُرْدٌ ثنا الزُّهْرِيُّ، يَذْكُرُهُ؟ .

قَالَ عَلِيٌّ: فَالْمَشْيُ لِمَا ذَكَرْنَا مُبَاحٌ، وَلَمْ يُوقَفْ - عَلَيْهِ السَّلَامُ - عَلَى مَشْيِ مَنْ مَشَى؟ .

وَمَسْحُ الْحَصَى فِي الصَّلَاةِ مَرَّةً وَاحِدَةً جَائِزٌ وَنَكْرَهُهُ، فَإِنْ زَادَ عَامِدًا بَطَلَتْ صَلَاتُهُ؟ .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُسَدَّدٌ ثنا سُفْيَانُ عَنْ الزُّهْرِيِّ عَنْ أَبِي الْأَحْوَصِ أَنَّهُ سَمِعَ أَبَا ذَرٍّ يَرْوِيهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا قَامَ أَحَدُكُمْ إِلَى الصَّلَاةِ فَإِنَّ الرَّحْمَةَ تُوَاجِهُهُ فَلَا يَمْسَحُ الْحَصَى» .

[9] **Hadith references (L5629):** Sunan Abi Dawud 945; Sunan Ibn Majah 1027.

وَبِهِ إِلَى أَبِي دَاوُد: ثنا مُسْلِمُ بْنُ إِبْرَاهِيمَ ثنا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ، عَنْ يَحْيَى هُوَ ابْنُ كَثِيرٍ - عَنْ أَبِي سَلَمَةَ عَنْ مُعَيْقِيبٍ أَنَّ النَّبِيَّ قَالَ: «لَا تَمْسَحْ - يَعْنِي الْحَصَى - وَأَنْتَ تُصَلِّي، فَإِنْ كُنْتَ لَا بُدَّ فَاعِلًا فَوَاحِدَةً» .

L5630–5631 And through him to Abu Dawud: Muslim ibn Ibrahim narrated to us: Hisham—that is, al-Dastuwa'i—narrated to us, from Yahya—that is, Ibn Kathir—from Abu Salama, from Mu'aiqib, that the Prophet said: "Do not wipe—meaning the pebbles—while you are praying. If you must do so, then one [wipe]."

قَالَ عَلِيٌّ: فَإِنْ احْتَجُّوا بِهَذَا فِي الْفَرْقِ بَيْنَ الْقَلِيلِ وَالْكَثِيرِ؟ .

L5632 Ali said: "If they invoke this argument concerning the distinction between the small quantity and the large quantity?"

قُلْنَا: هَذَا فِي مَسْحِ الْحَصَى الْمَنْهِيِّ عَنْهُ جُمْلَةً، الْمُسْتَثْنَى مِنْهُ الْوَاحِدَةُ فَقَطْ، فَقُولُوا لَنَا: مَاذَا تَقِيسُونَ عَلَى هَذَا الْخَبَرِ؟ الْأَعْمَالَ الْمُبَاحَةَ جُمْلَةً بِالنُّصُوصِ؟ أَمْ الْأَعْمَالَ الْمَنْهِيَّ عَنْهَا جُمْلَةً؟ وَلَا بُدَّ مِنْ أَحَدِ الْأَمْرَيْنِ؟ .

L5633 We said: This pertains to wiping over pebbles, which is prohibited in totality except for a single instance. Then tell us: What do you analogize to this report? Do you analogize all permissible actions collectively based on scriptural proofs, or all prohibited actions collectively? It is necessary to adopt one of the two matters.

فَإِنْ قَالُوا: بَلْ الْأَعْمَالَ الْمُبَاحَةَ جُمْلَةً؟ .

L5634 Then if they say: "Rather, all permissible acts collectively?"

قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ أَوَّلُ ذَلِكَ: أَنَّهُ قِيَاسُ الْمُبَاحِ عَلَى الْمَحْظُورِ، وَهَذَا بَاطِلٌ عِنْدَ صَاحِبِ كُلِّ قِيَاسٍ؛ لِأَنَّهُ قِيَاسُ الشَّيْءِ عَلَى ضِدِّهِ، وَإِنَّمَا الْقِيَاسُ عِنْدَ الْقَائِلِينَ بِهِ: قِيَاسُ الشَّيْءِ عَلَى نَظِيرِهِ جُمْلَةً، أَوْ عَلَى نَظِيرِهِ فِي الْعِلَّةِ الَّتِي هِيَ عَلَامَةُ الْحُكْمِ بِزَعْمِهِمْ.

L5635 We said: All analogy is invalid; then, even if analogy were valid, this would constitute the very essence of invalidity. The first reason for this is that it is an analogy from the permissible to the prohibited, and this is invalid according to every proponent of analogy, because it analogizes a thing to its opposite. For analogy, according to its proponents, is the analogizing of a thing upon its equivalent as a whole or upon its equivalent in the effective cause—which they claim indicates the ruling.

وَأَيْضًا: فَأَنْتُمْ تُبِيحُونَ الْخُطْوَتَيْنِ وَالثَّلَاثَ فِي الصَّلَاةِ وَالضَّرْبَةَ وَالضَّرْبَتَيْنِ، وَأَخْذَ الْمَاءِ بِإِنَاءٍ مِنْ الْجَابِيَةِ لِمَنْ عَلَيْهِ الْحَدَثُ فِي الصَّلَاةِ، وَهَذَا أَكْثَرُ مِنْ الْمَرَّةِ الْوَاحِدَةِ، فَظَهَرَ بُطْلَانُ قِيَاسِكُمْ وَتُحَرِّمُونَ مَا زَادَ عَلَى مَا ذَكَرْنَا.

L5636 Moreover, you permit taking two or three steps during prayer, a strike and two strikes, and using a vessel to draw water from the reservoir for one in a state of ritual impurity during prayer—and this exceeds a single instance. Thus, the invalidity of your analogy becomes evident, and you prohibit what exceeds what we have mentioned.

؟ وَاسْتِقَاءَ الْمَاءِ مِنْ الْبِئْرِ لِمَنْ عَلَيْهِ الْحَدَثُ فِي الصَّلَاةِ، فَلَاحَ أَنَّكُمْ لَمْ تَتَعَلَّقُوا بِقِيَاسٍ أَصْلًا؟ .

L5637 Is it not evident that you have not relied on any qiyas whatsoever when drawing water from the well for one who has incurred ritual impurity during prayer?

فَإِنْ قَالُوا: بَلْ قِسْنَا الْأَعْمَالَ الْمَنْهِيَّ عَنْهَا عَلَى هَذَا الْخَبَرِ؟ .

L5638 If they say: Rather, we applied qiyas (legal analogy) to the prohibited acts in light of this report?

قُلْنَا لَهُمْ: فَأَبِيحُوا إدْخَالَ الْإِبْرَةِ فِي خِيَاطَةِ الثَّوْبِ مَرَّةً وَاحِدَةً، وَقَدْحَ النَّارِ بِالزَّنْدِ بِضَرْبَةٍ وَاحِدَةٍ، وَأَبِيحُوا لَطْمَةً وَاحِدَةً لِلْخَادِمِ، وَرَدَّ مَرْمَى الْحَائِكِ مَرَّةً وَاحِدَةً، وَقَدَّ الْأَدِيمِ بِضَرْبَةٍ وَاحِدَةٍ، وَالتَّذْكِيَةَ بِجَرَّةٍ وَاحِدَةٍ - كُلُّ ذَلِكَ فِي الصَّلَاةِ، وَهُمْ لَا يَقُولُونَ بِهَذَا، فَظَهَرَ فَسَادُ قَوْلِهِمْ -، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L5639–5641 We said to them: Permit inserting the needle once in sewing the garment; igniting fire with a single strike of the flint; a single slap for the servant; returning the weaver's shuttle once; and measuring... Tanning a hide with a single strike and slaughtering with a single cut—all such acts invalidate prayer; yet they do not uphold this ruling (thereby exposing the flaw in their position)—and success is with Allah, the Exalted.

قَالَ عَلِيٌّ: فَإِنْ ذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ يَعْقُوبَ بْنِ عُتْبَةَ بْنِ الْأَخْنَسِ عَنْ أَبِي غَطَفَانَ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: قَالَ «التَّسْبِيحُ لِلرِّجَالِ - يَعْنِي فِي الصَّلَاةِ، وَالتَّصْفِيقُ لِلنِّسَاءِ، مَنْ أَشَارَ فِي صَلَاتِهِ إشَارَةً تُفْهَمُ عَنْهُ فَلْيُعِدْهَا - يَعْنِي فِي الصَّلَاةِ» . قَالَ أَبُو دَاوُد: هَذَا الْحَدِيثُ وَهْمٌ؛

L5642 Ali said: If they mention what was narrated to us through the chain of Ya'qub ibn 'Utbah ibn al-Akhnas from Abi Ghutayfan from Abu Hurairah that the Messenger of Allah—peace and blessings be upon him—said: "Tasbīḥ (saying 'Subḥān Allāh') is for men—meaning in prayer—and clapping is for women. Whoever makes an intelligible gesture during prayer must repeat it (the prayer)—meaning in prayer." Abu Dawud said: This hadith is unreliable.

وَلَوْ صَحَّ لَوَجَبَ ضَمُّهُ إلَى الْأَخْبَارِ الثَّابِتَةِ الَّتِي ذَكَرْنَا قَبْلُ؛ مِنْ إشَارَةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الصَّلَاةِ بِأَنْ يَرُدَّ السَّلَامَ، وَإِلَى الْخَادِمِ فِي أَنْ تَسْتَأْخِرَ عَنْهُ، وَكُلُّ مَا بِالْمَرْءِ إلَى الْإِشَارَةِ بِهِ، وَإِلَيْهِ ضَرُورَةٌ؛ فَتَخْرُجُ تِلْكَ الْإِشَارَاتُ بِالنُّصُوصِ الَّتِي فِيهَا، وَتَبْقَى كُلُّ إشَارَةٍ لَمْ يَأْتِ بِإِبَاحَتِهَا نَصٌّ عَلَى التَّحْرِيمِ، كَالْإِشَارَةِ بِالْبَيْعِ وَبِالْمُسَاوَمَةِ، وَبِمَاذَا عَمِلْت، وَالِاسْتِخْبَارِ، وَغَيْرِ ذَلِكَ، فَهَذَا هُوَ الْعَمَلُ الَّذِي لَا يَجُوزُ غَيْرُهُ لَوْ صَحَّ هَذَا الْخَبَرُ -، وَهُوَ قَوْلُنَا، وَلِلَّهِ الْحَمْدُ -؛ لِأَنَّ الْإِشَارَاتِ أَنْوَاعٌ مُخْتَلِفَةٌ، فَمَا أُبِيحَ مِنْهَا بِالنَّصِّ كَانَ مُبَاحًا، وَمَا لَمْ يُبَحْ مِنْهَا بِالنَّصِّ كَانَ مُحَرَّمًا، فَكَيْفَ وَالْحَدِيثُ لَا يَصِحُّ؟ ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L5643–5645 If it were authentic, it would necessitate incorporating it into the established reports we previously mentioned—such as the Prophet's gesture (peace be upon him) during prayer to return greetings and to the attendant that she should step back from him, along with every matter requiring a gesture from a person out of necessity related to it. These gestures would fall under the rulings of the texts pertaining to them, leaving every gesture not explicitly permitted by a text prohibited—such as gesturing to conclude a sale; haggling; inquiring about what you have done; seeking information; and similar acts. This is the only permissible practice if this report were authentic—and this is our position; all praise is due to Allah—because gestures vary in type. Only what is permitted... That which is explicitly permitted by textual evidence is permissible, and that which is not explicitly permitted is prohibited. How can this be, when the hadith is not authentic? And by Allah, the Most High, is success granted.

[مَسْأَلَةٌ خَرَجَ مِنْ صَلَاتِهِ وَهُوَ يَظُنُّ أَنَّهُ قَدْ أَتَمَّهَا]

L5646 **A case where a person exited his prayer while believing he has completed it.**

302 - مَسْأَلَةٌ: وَمَنْ خَرَجَ مِنْ صَلَاتِهِ وَهُوَ يَظُنُّ أَنَّهُ قَدْ أَتَمَّهَا؛ فَكُلُّ مَا عَمِلَ مِنْ بَيْعٍ، أَوْ شِرَاءٍ، أَوْ هِبَةٍ، أَوْ طَلَاقٍ، أَوْ نِكَاحٍ،

L5647 302 - Issue: If one leaves their prayer while presuming to have completed it, every action they perform—whether sale, purchase, gift, divorce, marriage,

or other such matters—is void and rejected, for they are deemed to be in prayer. Were they to remember, they would return to it.

٣٠٢ - مَسْأَلَةٌ: وَمَنْ خَرَجَ مِنْ صَلَاتِهِ، وَهُوَ يَظُنُّ أَنَّهُ قَدْ أَتَمَّهَا فَكُلُّ عَمَلٍ عَمِلَهُ مِنْ بَيْعٍ أَوْ ابْتِيَاعٍ أَوْ هِبَةٍ أَوْ طَلَاقٍ أَوْ نِكَاحٍ أَوْ غَيْرِ ذَلِكَ -: فَهُوَ بَاطِلٌ مَرْدُودٌ؛ لِأَنَّهُ فِي حُكْمِ الصَّلَاةِ، وَلَوْ ذَكَرَ لَعَادَ إِلَيْهَا.

L5648 There is no disagreement that all these actions are prohibited during prayer. Therefore, any such action that occurs in this state is undeniably not an act that is permissible (jā'iz), required (lāzim), commanded (ma'mūr bihī), or neutral (mubāḥ). Since it is impermissible, it is undeniably impermissible.

وَلَا خِلَافَ فِي أَنَّ هَذِهِ الْأَفْعَالَ كُلَّهَا مُحَرَّمَةٌ فِي الصَّلَاةِ فَكُلُّ مَا وَقَعَ مِنْهَا فِي هَذِهِ الْحَالِ فَهُوَ غَيْرُ الْفِعْلِ الْجَائِزِ اللَّازِمِ الْمَأْمُورِ بِهِ أَوْ الْمُبَاحِ بِلَا شَكٍّ -، وَإِذْ هُوَ غَيْرُ الْجَائِزِ فَهُوَ غَيْرُ جَائِزٍ بِلَا شَكٍّ.

L5649 The Messenger of Allah — peace and blessings be upon him — said: "Whoever performs an act not in accordance with our command, it is rejected." This is an act not in accordance with his command — peace be upon him — therefore, it is undoubtedly rejected.[10]

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَهَذَا عَمَلٌ لَيْسَ عَلَيْهِ أَمْرُهُ - عَلَيْهِ السَّلَامُ -؛ فَهُوَ مَرْدُودٌ بِلَا شَكٍّ.

L5650 If he recalls that he did not complete his prayer and performs any of those actions, it becomes incumbent upon him, for by his recollection and intention to perform what we mentioned, he exits the prayer. When he exits the prayer, he enters a state wherein all these actions take effect. Similarly, if he does this after the breaking of his ritual purity, those actions are also binding and take effect, because the breaking of his purity causes him to exit the prayer. Thus, these actions occur from him outside the prayer. And with Allah Almighty lies success.

فَلَوْ ذَكَرَ أَنَّهُ لَمْ يُتِمَّ صَلَاتَهُ فَفَعَلَ شَيْئًا مِنْ ذَلِكَ لَزِمَهُ؛ لِأَنَّ بِذِكْرِهِ وَقَصْدِهِ إِلَى عَمَلِ مَا ذَكَرْنَا خَرَجَ عَنْ الصَّلَاةِ؛ وَإِذَا خَرَجَ عَنْ الصَّلَاةِ فَقَدْ حَصَلَ فِي حَالٍ تَنْفُذُ فِيهَا هَذِهِ الْأَفْعَالُ كُلُّهَا؛ وَهَكَذَا أَيْضًا لَوْ فَعَلَ ذَلِكَ بَعْد انْتِقَاضِ طَهَارَتِهِ فَهِيَ أَيْضًا نَافِذَةٌ لَازِمَةٌ؛ لِأَنَّهُ بِانْتِقَاضِ طَهَارَتِهِ خَرَجَ عَنْ الصَّلَاةِ؛ فَوَقَعَ ذَلِكَ مِنْهُ فِي غَيْرِ الصَّلَاةِ -، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L5651 A case where a worldly thought crosses his mind, or he prays while persisting in a major sin.

[مَسْأَلَةٌ خَطَرَ عَلَى بَالِهِ شَيْءٌ دُنْيَوِيٌّ أَوْ صَلَّى مُصِرًّا عَلَى كَبِيرَةٍ]

L5652 Issue 303: Whoever has something from worldly matters or other matters - whether sinful or not - cross their mind, or prays while remaining unrepentant for major sins, their prayer remains complete and valid.

٣٠٣ - مَسْأَلَةٌ: وَمَنْ خَطَرَ عَلَى بَالِهِ شَيْءٌ مِنْ أُمُورِ الدُّنْيَا أَوْ غَيْرِهَا، مَعْصِيَةً أَوْ غَيْرَ مَعْصِيَةٍ، أَوْ صَلَّى مُصِرًّا عَلَى الْكَبَائِرِ؛ فَصَلَاتُهُ تَامَّةٌ -.

[10] **Hadith references (L5649):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

L5653–5655 Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn Al-Hajjaj narrated to us, Muhammad ibn Al-Muthanna narrated to us, Mu'adh ibn Hisham (al-Dastuwa'i) narrated to us. He said: [My father narrated to me] from Yahya ibn Abi Kathir, who narrated to us from Abu Salama ibn Abd al-Rahman, that Abu Hurairah narrated to them that the Messenger of Allah—peace and blessings be upon him—said: "When the call to prayer is proclaimed, Satan turns away, farting so that he cannot hear the call. When the call is completed, he returns. When the *Iqamah* for the prayer is proclaimed, he turns away again. When it is completed, he comes back to whisper between a person and his soul, saying, 'Remember such-and-such, remember such-and-such,' regarding matters he had not recalled before, until the man is left unaware of how many units he has prayed. If any of you is uncertain about how many units he has prayed, let him perform two prostrations while sitting."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا مُعَاذُ بْنُ هِشَامٍ هُوَ الدَّسْتُوَائِيُّ قَالَ: [حَدَّثَنِي أَبِي] عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ ثنا أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ أَنَّ أَبَا هُرَيْرَةَ حَدَّثَهُمْ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا نُودِيَ بِالْأَذَانِ أَدْبَرَ الشَّيْطَانُ لَهُ ضُرَاطٌ حَتَّى لَا يَسْمَعَ الْأَذَانَ، فَإِذَا قُضِيَ الْأَذَانُ أَقْبَلَ فَإِذَا ثُوِّبَ بِالصَّلَاةِ أَدْبَرَ، فَإِذَا قُضِيَ التَّثْوِيبُ أَقْبَلَ، حَتَّى يَخْطُرَ بَيْنَ الْمَرْءِ وَنَفْسِهِ، يَقُولُ: اُذْكُرْ كَذَا اُذْكُرْ كَذَا لِمَا لَمْ يَكُنْ يَذْكُرُ، حَتَّى يَظَلَّ الرَّجُلُ إِنْ يَدْرِي كَمْ صَلَّى فَإِذَا لَمْ يَدْرِ أَحَدُكُمْ كَمْ صَلَّى فَلْيَسْجُدْ سَجْدَتَيْنِ وَهُوَ جَالِسٌ» ؟ .

L5656 Abdullah ibn Rabee' narrated to us: Ibn al-Sulaym narrated to us: Ibn al-A'rabi narrated to us: Abu Dawud narrated to us: Muslim ibn Ibrahim narrated to us: Hisham - that is, al-Dastuwa'i - narrated to us from Qatadah from Zurarah ibn Awfa from Abu Hurayrah from the Prophet, peace and blessings be upon him, that he said: "Indeed Allah has overlooked for my Ummah what they did not speak of or act upon, and the things their souls whispered to them about."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُسْلِمُ بْنُ إِبْرَاهِيمَ ثنا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ عَنْ قَتَادَةَ عَنْ زُرَارَةَ بْنِ أَوْفَى عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إِنَّ اللَّهَ تَجَاوَزَ لِأُمَّتِي مَا لَمْ تَتَكَلَّمْ بِهِ وَتَعْمَلْ بِهِ، وَبِمَا حَدَّثَتْ بِهِ أَنْفُسَهَا» .

L5657 We have previously mentioned the saying of the Messenger of Allah (peace and blessings be upon him): "Whoever intends to commit an evil deed but does not act upon it, it will not be written against him."

وَقَدْ ذَكَرْنَا قَبْلَ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ هَمَّ بِسَيِّئَةٍ فَلَمْ يَعْمَلْهَا لَمْ تُكْتَبْ عَلَيْهِ» .

L5658 Thus, it is correct that all of that does not affect the prayer, and that nothing invalidates it except a statement intentionally directed toward it that is prohibited, an action similarly prohibited, or the deliberate intent to alter the intention commanded in the prayer—the intention without which prayer is invalid, namely the intention to perform that specific prayer by its name and specific instance. Therefore, whoever does not intend this with deliberate purpose, has he not prayed as he was commanded?

فَصَحَّ أَنَّ كُلَّ ذَلِكَ لَا يُؤَثِّرُ فِي الصَّلَاةِ، وَأَنَّهُ لَا يُبْطِلُ الصَّلَاةَ إِلَّا قَوْلٌ مَقْصُودٌ إِلَيْهِ مَنْهِيٌّ عَنْهُ أَوْ عَمَلٌ كَذَلِكَ، أَوِ الْقَصْدُ إِلَى تَبْدِيلِ نِيَّةِ الصَّلَاةِ الْمَأْمُورِ بِهَا فِي الصَّلَاةِ، الَّتِي لَا تَصِحُّ الصَّلَاةُ إِلَّا بِهَا، وَهِيَ النِّيَّةُ لِأَدَاءِ تِلْكَ الصَّلَاةِ بِاسْمِهَا وَعَيْنِهَا، فَمَنْ لَمْ يَنْوِ كَذَلِكَ قَاصِدًا إِلَى ذَلِكَ فَلَمْ يُصَلِّ كَمَا أُمِرَ؟ .

L5659–5660 It has been narrated to us through Waki‘, from Hishām ibn ‘Urwah, from his father, who said: ‘Umar ibn al-Khaṭṭāb said: “Am I calculating the jizyah of Bahrain while in prayer?”

L5661 The Almighty and Majestic has ordained repentance upon the disobedient and has commanded them to pray nevertheless. Allah the Exalted said: “Establish prayer at the two ends of the day and at the approach of the night. Indeed, good deeds erase evil deeds” (Quran 11:114).[11]

L5662 We know with certainty that He, the Exalted, specifically addressed this to those who persist in sin, for the repentant has no evil deed. And He, the Exalted, said: “We will set up the scales of justice for the Day of Resurrection, so no soul will be wronged at all” [Al-Anbiya 21:47].[12]

L5663 All of this constitutes consensus, except for a group—from the people of heretical innovations—who opposed the consensus by asserting: “The repentance of one who commits an evil deed is not accepted until he repents from every evil deed.” This necessitated that repentance not be accepted from one who intentionally abandons prayer, abandons zakāh, or abandons fasting. Yes, and not even from one who abandons Tawheed unless he repents from deliberately committing every evil deed. Thus, they ended up prescribing the abandonment of prayer, zakāh, fasting, and all righteous deeds—and this constitutes a departure from Islam. We seek refuge in Allah from being forsaken.

L5664 **A legal case: When someone was riding on a mount and was able to perform prayer.**

L5665 304 - Issue: If a person was riding on a camel litter, on an elephant, in a room, at the top of a tree, on a roof, at the bottom of a well, on a frozen river, on grass, on wool, on animal hides, on wood, or other such things - and was able to pray standing, he may perform the obligatory prayer wherever he is standing, adequately fulfilling the components of his bowing, prostration, and sitting.

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: - إِنِّي لَأَحْسِبُ جِزْيَةَ الْبَحْرَيْنِ وَأَنَا فِي الصَّلَاةِ؟ .

وَقَدْ افْتَرَضَ عَزَّ وَجَلَّ التَّوْبَةَ عَلَى الْعَاصِينَ، وَأَمَرُوا بِالصَّلَاةِ مَعَ ذَلِكَ -: قَالَ اللَّهُ تَعَالَى: {وَأَقِمِ الصَّلاةَ طَرَفَيِ النَّهَارِ وَزُلَفًا مِنَ اللَّيْلِ إِنَّ الْحَسَنَاتِ يُذْهِبْنَ السَّيِّئَاتِ} [هود: ١١٤] .

وَبِيَقِينٍ نَدْرِي أَنَّهُ تَعَالَى إِنَّمَا خَاطَبَ بِهَذَا الْمُصِرِّينَ؛ لِأَنَّ التَّائِبَ لَا سَيِّئَةَ لَهُ، وَقَالَ تَعَالَى: {وَنَضَعُ الْمَوَازِينَ الْقِسْطَ لِيَوْمِ الْقِيَامَةِ فَلا تُظْلَمُ نَفْسٌ شَيْئًا} [الأنبياء: ٤٧] .

وَهَذَا كُلُّهُ إِجْمَاعٌ، إِلَّا قَوْمًا خَالَفُوا الْإِجْمَاعَ - مِنْ أَهْلِ الْبِدَعِ - قَالُوا: لَا تُقْبَلُ تَوْبَةُ مَنْ عَمِلَ سُوءًا حَتَّى يَتُوبَ مِنْ كُلِّ عَمَلِ سُوءٍ، فَلَزِمَهُمْ أَنْ لَا تُقْبَلَ التَّوْبَةُ مِمَّنْ تَعَمَّدَ تَرْكَ الصَّلَاةِ، وَتَرْكَ الزَّكَاةِ، وَتَرْكَ الصَّوْمِ؛ نَعَمْ وَلَا مَنْ تَرَكَ التَّوْحِيدَ إِلَّا بِالتَّوْبَةِ مِنْ تَعَمُّدِ كُلِّ سَيِّئَةٍ - فَحَصَلُوا عَلَى الْأَمْرِ بِتَرْكِ الصَّلَاةِ، وَالزَّكَاةِ، وَالصَّوْمِ، وَجَمِيعِ أَعْمَالِ الْبِرِّ - وَهَذَا خُرُوجٌ عَنْ الْإِسْلَامِ - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

[مَسْأَلَةٌ كَانَ رَاكِبًا عَلَى مَحْمِلٍ فَقَدَرَ عَلَى الصَّلَاةِ]

٣٠٤ - مَسْأَلَةٌ: وَمَنْ كَانَ رَاكِبًا عَلَى مَحْمِلٍ، أَوْ عَلَى فِيلٍ، أَوْ كَانَ فِي غُرْفَةٍ، أَوْ فِي أَعْلَى شَجَرَةٍ، أَوْ عَلَى سَقْفٍ، أَوْ فِي قَاعِ بِئْرٍ، أَوْ عَلَى نَهْرٍ جَامِدٍ، أَوْ عَلَى حَشِيشٍ، أَوْ عَلَى صُوفٍ أَوْ عَلَى جُلُودٍ، أَوْ خَشَبٍ، أَوْ غَيْرِ ذَلِكَ -: فَقَدَرَ عَلَى الصَّلَاةِ قَائِمًا فَلَهُ أَنْ يُصَلِّيَ الْفَرْضَ حَيْثُ هُوَ قَائِمًا، يُوَفِّي رُكُوعَهُ وَسُجُودَهُ وَجُلُوسَهُ حَقَّهَا؟ .

[11] **Qur’an references (L5661):** Qur’an 11:114 (Hud).
[12] **Qur’an references (L5662):** Qur’an 21:47 (Al-Anbya).

L5666 For he was commanded only to stand in prayer, bow, prostrate, sit, observe tranquility, and maintain upright posture in all these actions—along with facing the Kaaba without fail. If he fulfills each of these as required, has he prayed as he was commanded?

L5667–5669 The Messenger of Allah—may Allah bless him and grant him peace—said: "Wherever the prayer overtakes you, then pray," and there is nothing of these. The places in which prayer is prohibited.

L5670 It is utterly astonishing that one would prohibit prayer—as we mentioned—on mere pretext, despite there being no explicit textual prohibition against it, yet they permit prayer in camel enclosures, bathhouses, cemeteries, and [even] facing graves, while authentic texts explicitly forbid prayer in these very places.

L5671 If he is unable to complete the standing, bowing, prostration, sitting, or facing the Qiblah—in the circumstances we mentioned—it becomes obligatory for him to descend to the ground and pray as commanded, except when prevented by necessity such as fear for his life or property, in which case he should pray as he is able. Allah the Exalted said: *"Allah does not burden a soul beyond its capacity"* [Al-Baqarah: 286], *"He has not placed upon you in the religion any hardship"* [Al-Hajj: 78], and *"Allah intends for you ease and does not intend for you hardship"* [Al-Baqarah: 185].[13]

L5672 **A ruling on intentionally omitting the Witr prayer until the second dawn has appeared.**

L5673 Issue 305: Whoever intentionally neglects the Witr prayer until the second dawn appears will never be able to make it up. If he forgot it, we prefer for him to make up the Witr prayer at any time he remembers it, even after years.

[13] **Qur'an references (L5671):** Qur'an 2:286 (Al-Baqarah); Qur'an 22:78 (Al-Hajj); Qur'an 2:185 (Al-Baqarah).

لِأَنَّهُ إِنَّمَا أُمِرَ بِالْقِيَامِ فِي الصَّلَاةِ وَالرُّكُوعِ وَالسُّجُودِ، وَالْجُلُوسِ وَالطُّمَأْنِينَةِ وَالِاعْتِدَالِ فِي كُلِّ ذَلِكَ مَعَ اسْتِقْبَالِ الْكَعْبَةِ وَلَا بُدَّ، فَإِذَا وَفَّى كُلَّ ذَلِكَ حَقَّهُ فَقَدْ صَلَّى كَمَا أُمِرَ؟

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «حَيْثُمَا أَدْرَكَتْكَ الصَّلَاةُ فَصَلِّ» وَلَيْسَ شَيْءٌ مِنْ هَذِهِ الْمَوَاضِعِ مَنْهِيًّا عَنْ الصَّلَاةِ فِيهَا.

[وَالْعَجَبُ كُلُّهُ مِمَّنْ يُحَرِّمُ الصَّلَاةَ كَمَا ذَكَرْنَا عَلَى الْمَحْمَلِ] وَلَمْ يَأْتِ بِالنَّهْيِ عَنْ ذَلِكَ نَصٌّ، وَهُوَ يُبِيحُهَا فِي أَعْطَانِ الْإِبِلِ، وَالْحَمَّامِ، وَالْمَقْبَرَةِ، وَإِلَى الْقَبْرِ وَالنَّصُّ قَدْ صَحَّ بِالنَّهْيِ عَنْ الصَّلَاةِ فِي هَذِهِ الْمَوَاضِعِ.

فَإِنْ عَجَزَ عَنْ إتْمَامِ الْقِيَامِ أَوْ الرُّكُوعِ أَوْ السُّجُودِ أَوْ الْجُلُوسِ أَوْ الْقِبْلَةِ - فِي الْأَحْوَالِ الَّتِي ذَكَرْنَا - فَفَرْضٌ عَلَيْهِ النُّزُولُ إلَى الْأَرْضِ وَالصَّلَاةُ كَمَا أُمِرَ؟ إلَّا مِنْ ضَرُورَةٍ تَمْنَعُهُ مِنْ النُّزُولِ، مِنْ خَوْفٍ عَلَى نَفْسِهِ أَوْ مَالِهِ، فَلْيُصَلِّ كَمَا هُوَ يَقْدِرُ - قَالَ اللَّهُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] ، وَقَالَ تَعَالَى: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] ، وَقَالَ تَعَالَى: {يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلا يُرِيدُ بِكُمُ الْعُسْرَ} [البقرة: ١٨٥] .

[مَسْأَلَةٌ تَعَمَّدَ تَرْكَ الْوِتْرِ حَتَّى طَلَعَ الْفَجْرُ الثَّانِي]

٣٠٥ - مَسْأَلَةٌ: وَمَنْ تَعَمَّدَ تَرْكَ الْوِتْرِ حَتَّى طَلَعَ الْفَجْرُ الثَّانِي فَلَا يَقْدِرُ عَلَى قَضَائِهِ أَبَدًا، فَلَوْ نَسِيَهُ أَحْبَبْنَا لَهُ أَنْ يَقْضِيَهُ أَبَدًا مَتَى مَا ذَكَرَهُ وَلَوْ بَعْدَ أَعْوَامٍ؟ .

L5674 The proof of this is what we have cited from the Messenger of Allah (peace be upon him): “Witr is one rakʿah at the end of the night.”

بُرْهَانُ ذَلِكَ -: مَا قَدْ ذَكَرْنَا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْوِتْرُ رَكْعَةٌ مِنْ آخِرِ اللَّيْلِ» .

L5675 Hammam narrated to us, from Ibn al-Mufarrij, from Ibn al-Aʿrabī, from al-Dabarī, from ʿAbd al-Razzāq, from Ibn Jurayj, from Sulaymān ibn Mūsā, from Nāfiʿ, from Ibn ʿUmar, who said: The Messenger of Allah, peace and blessings be upon him, said, “When dawn breaks, all night prayers—including Witr—have ceased [to be valid]. Thus, perform Witr before morning arrives.”

حَدَّثَنَا حَمَّامٌ ثنا ابْنُ الْمُفَرِّجِ عَنْ ابْنِ الْأَعْرَابِيِّ عَنْ الدَّبَرِيِّ عَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا طَلَعَ الْفَجْرُ فَقَدْ ذَهَبَتْ كُلُّ صَلَاةِ اللَّيْلِ وَالْوِتْرُ، فَأَوْتِرُوا قَبْلَ أَنْ تُصْبِحُوا» .

L5676–5677 Aḥmad ibn Muḥammad al-Ṭalamankī narrated to us: Ibn Mufarrij narrated to us: Muḥammad ibn Ayyūb al-Ṣamūt al-Raqqī narrated to us: Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār narrated to us: Ṣāliḥ ibn Muʿādh narrated to us: Yaḥyā ibn Abī Bukayr narrated from Muʿāwiyah ibn Qurrah from al-Agharr al-Muzanī that the Messenger of Allāh—peace be upon him—said: “Whoever reaches dawn without having prayed Witr, then he has no Witr.” As for one who forgets it, he is included under the Prophet’s saying—peace be upon him—: “Whoever forgets a prayer or sleeps through it, he should pray it when he remembers.” This is a generality that applies to all obligatory and supererogatory prayers. For the obligatory prayer, it constitutes a binding obligation; and for the supererogatory prayer, it is a matter of recommendation and encouragement, because a supererogatory prayer does not become obligatory.

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ ثنا ابْنُ مُفَرِّجٍ ثنا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ الرَّقِّيُّ ثنا أَحْمَدُ بْنُ عَمْرِو بْنُ عَبْدِ الْخَالِقِ الْبَزَّارُ ثنا صَالِحُ بْنُ مُعَاذٍ ثنا يَحْيَى بْنُ أَبِي بُكَيْرٍ عَنْ مُعَاوِيَةَ بْنِ قُرَّةَ عَنْ الْأَغَرِّ الْمُزَنِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَدْرَكَهُ الصُّبْحُ وَلَمْ يُوتِرْ فَلَا وِتْرَ لَهُ» . وَأَمَّا مَنْ نَسِيَهُ فَهُوَ دَاخِلٌ تَحْتَ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «مَنْ نَسِيَ صَلَاةً أَوْ نَامَ عَنْهَا فَلْيُصَلِّهَا إذَا ذَكَرَهَا» وَهَذَا عُمُومٌ يَدْخُلُ فِيهِ كُلُّ صَلَاةِ فَرْضٍ وَنَافِلَةٍ، فَهُوَ بِالْفَرْضِ أَمْرُ فَرْضٍ؛ وَهُوَ بِالنَّافِلَةِ أَمْرُ نَدْبٍ وَحَضٍّ؛ لِأَنَّ النَّافِلَةَ لَا تَكُونُ فَرْضًا.

L5678–5679 These narrations invalidate the opinion of those who say: “Whoever intentionally leaves the Witr prayer until dawn breaks should pray Witr,” and the opinion of those who say: “If one remembers the Witr prayer while performing the Fajr prayer, his prayer has indeed become invalid - unless he fears missing the Fajr prayer, in which case he should continue performing it and then begin with Witr.”

وَهَذِهِ الْآثَارُ تُبْطِلُ قَوْلَ مَنْ قَالَ: [مَنْ تَعَمَّدَ تَرْكَ صَلَاةِ الْوِتْرِ حَتَّى يَطْلُعَ الْفَجْرُ فَإِنَّهُ يُصَلِّي الْوِتْرَ، وَقَوْلَ مَنْ قَالَ] إنْ ذَكَرَ الْوِتْرَ وَهُوَ فِي صَلَاةِ الصُّبْحِ فَقَدْ بَطَلَتْ صَلَاتُهُ، إلَّا أَنْ يَخَافَ فَوْتَ صَلَاةِ الصُّبْحِ فَلْيَتَمَادَ فِيهَا وَلْيَبْدَأْ بِهَا.

L5680 This is the opinion of Abū Ḥanīfah; and even though it contradicts the Sunnah, it is an opinion unsupported by evidence: neither through analogical reasoning nor through precaution, for it invalidates the obligatory act com-

manded to be fulfilled in favor of a supererogatory act. The Almighty has said: “Do not render your deeds void” (Surah Muḥammad 47:33).[14]

وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَهُوَ مَعَ خِلَافِهِ لِلسُّنَّةِ قَوْلٌ لَا دَلِيلَ عَلَيْهِ، لَا مِنْ نَظَرٍ وَلَا مِنْ احْتِيَاطٍ، لِأَنَّهُ يُبْطِلُ الْفَرْضَ الْمَأْمُورَ بِإِتْمَامِهِ مِنْ أَجْلِ نَافِلَةٍ؛ وَقَدْ قَالَ عَزَّ وَجَلَّ: {وَلا تُبْطِلُوا أَعْمَالَكُمْ} [محمد: ٣٣] .

Issue: Praying Witr before the Isha prayer.

[مَسْأَلَةٌ صَلَّى الْوِتْرَ قَبْلَ صَلَاةِ الْعَتَمَةِ]

306 - Issue: Whoever prays Witr before the ‘Isha prayer, it is invalid or annulled, because he performed Witr before its time. Prescribed acts are only valid during their appointed times, neither before nor after it. And success is from Allah, the Most High.

٣٠٦ - مَسْأَلَةٌ: وَمَنْ صَلَّى الْوِتْرَ قَبْلَ صَلَاةِ الْعَتَمَةِ فَهِيَ بَاطِلَةٌ أَوْ مُلْغَاةٌ، لِأَنَّهُ أَتَى بِالْوِتْرِ قَبْلَ وَقْتِهِ، وَالشَّرَائِعُ لَا تُجْزِئُ إِلَّا فِي وَقْتِهَا، لَا قَبْلَ وَقْتِهَا، وَلَا بَعْدَهُ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ؟ .

A legal question on the timing of the two rak’ahs of dawn.

[مَسْأَلَةٌ وَقْتُ رَكْعَتَيْ الْفَجْرِ]

307 - Issue: The time for the two rak’ahs of Fajr is from the emergence of the second dawn until the Fajr prayer is established—this is a matter uncontested by anyone in the Ummah.

٣٠٧ - مَسْأَلَةٌ: وَوَقْتُ رَكْعَتَيْ الْفَجْرِ مِنْ حِينِ طُلُوعِ الْفَجْرِ الثَّانِي إلَى أَنْ تُقَامَ صَلَاةُ الصُّبْحِ - هَذَا مَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ مِنْ الْأُمَّةِ.

An issue regarding one who heard the *iqamah* of the dawn prayer.

[مَسْأَلَةٌ سَمِعَ إقَامَةَ صَلَاةِ الصُّبْحِ]

308 - Issue: If someone hears the iqāmah for the dawn prayer and knows that if he engages in the two rak’ahs of Fajr, he will miss even part of the dawn prayer - even if it is the takbīr - it is not permissible for him to engage in performing them. If he does so, he has disobeyed Allah the Exalted.

٣٠٨ - مَسْأَلَةٌ: فَمَنْ سَمِعَ إقَامَةَ صَلَاةِ الصُّبْحِ، وَعَلِمَ أَنَّهُ [إنْ] اشْتَغَلَ بِرَكْعَتَيْ الْفَجْرِ فَاتَهُ مِنْ صَلَاةِ الصُّبْحِ وَلَوْ التَّكْبِيرُ -: فَلَا يَحِلُّ لَهُ أَنْ يَشْتَغِلَ بِهِمَا، فَإِنْ فَعَلَ فَقَدْ عَصَى اللَّهَ تَعَالَى.

If someone has begun performing the two Rak’ahs of Fajr and the congregational Fajr prayer is then called (with Iqamah), those two Rak’ahs are nullified. There is no benefit in him concluding those two Rak’ahs with Salām, even

وَإِنْ دَخَلَ فِي رَكْعَتَيْ الْفَجْرِ فَأُقِيمَتْ صَلَاةُ الصُّبْحِ فَقَدْ بَطَلَتْ الرَّكْعَتَانِ، وَلَا فَائِدَةَ لَهُ فِي أَنْ يُسَلِّمَ مِنْهُمَا، وَلَوْ لَمْ يَبْقَ عَلَيْهِ مِنْهُمَا إلَّا السَّلَامُ لَكِنْ يَدْخُلُ بِابْتِدَاءِ التَّكْبِيرِ فِي صَلَاةِ الصُّبْحِ كَمَا هُوَ.

[14] **Qur’an references (L5680):** Qur’an 47:33 (Muhammad).

if all that remains for him to complete them is the Salām. Instead, he must join the Fajr prayer by commencing the Takbīr as it is [performed].

L5688–5689 When he completes the dawn prayer, he may perform the two rakʿahs if he wishes, or omit them if he prefers. This is the practice for anyone who has begun a voluntary prayer when the iqamah for the obligatory prayer is established upon them.

فَإِذَا أَتَمَّ صَلَاةَ الصُّبْحِ فَإِنْ شَاءَ رَكَعَهُمَا، وَإِنْ شَاءَ لَمْ يَرْكَعْهُمَا، وَهَكَذَا يَفْعَلُ كُلُّ مَنْ دَخَلَ فِي نَافِلَةٍ، وَأُقِيمَتْ عَلَيْهِ صَلَاةُ الْفَرِيضَةِ؟ .

L5690 Abu Hanifah said: Whoever enters the mosque when the iqamah for the dawn prayer has been called, if he hopes to catch one cycle of the dawn prayer with the Imam but will miss the other, let him pray the two cycles of dawn, then join the Imam.

وَقَالَ أَبُو حَنِيفَةَ: مَنْ دَخَلَ الْمَسْجِدَ، وَقَدْ أُقِيمَتْ الصَّلَاةُ لِلصُّبْحِ فَإِنْ طَمِعَ أَنْ يُدْرِكَ مَعَ الْإِمَامِ رَكْعَةً مِنْ صَلَاةِ الصُّبْحِ تَفُوتُهُ أُخْرَى فَلْيُصَلِّ رَكْعَتَيْ الْفَجْرِ، ثُمَّ يَدْخُلُ مَعَ الْإِمَامِ.

L5691 If he fears he will not catch even one rak’ah with the Imam, he should begin by joining the Imam in prayer, and he should not make up the two rak’ahs of Fajr afterward.

وَإِنْ خَشِيَ أَلَا يُدْرِكَ مَعَ الْإِمَامِ وَلَا رَكْعَةً فَلْيَبْدَأْ بِالدُّخُولِ مَعَ الْإِمَامِ، وَلَا يَقْضِي رَكْعَتَيْ الْفَجْرِ بَعْدَ ذَلِكَ.

L5692 Malik said: If one has entered the mosque and the iqāmah has been called for the prayer, or he finds the Imam already praying, he must not perform the two rakʿahs of Fajr. Rather, he should join the Imam. When the sun has risen, if he wishes, let him make them up.

وَقَالَ مَالِكٌ: إنْ كَانَ قَدْ دَخَلَ الْمَسْجِدَ، وَأُقِيمَتْ الصَّلَاةُ أَوْ وَجَدَ الْإِمَامَ فِي الصَّلَاةِ فَلَا يَرْكَعُ رَكْعَتَيْ الْفَجْرِ، وَلَكِنْ يَدْخُلُ مَعَ الْإِمَامِ، فَإِذَا طَلَعَتْ الشَّمْسُ فَإِنْ شَاءَ فَلْيَقْضِهِمَا؟ .

L5693 As for if he is outside the mosque and becomes aware of the iqamah or that the imam is in prayer: if he anticipates catching one rak’ah with the imam, he should pray the two rak’ahs of Fajr outside the mosque, then enter with the imam. If he does not anticipate that, he should enter with the imam.

وَأَمَّا إنْ كَانَ خَارِجَ الْمَسْجِدِ فَعَلِمَ بِالْإِقَامَةِ أَوْ بِأَنَّ الْإِمَامَ فِي الصَّلَاةِ: فَإِنْ رَجَا أَنْ يُدْرِكَ مَعَ الْإِمَامِ رَكْعَةً فَلْيَرْكَعْ رَكْعَتَيْ الْفَجْرِ خَارِجَ الْمَسْجِدِ، ثُمَّ لِيَدْخُلْ مَعَ الْإِمَامِ، وَإِنْ لَمْ يَرْجُ ذَلِكَ فَلْيَدْخُلْ مَعَ الْإِمَامِ.

L5694 Al-Shafiʿi and Abu Sulaiman said—as we have said?—: ʿAli said, “We do not know of any argument for the opinion of Abu Hanifa and Malik: not from the Quran, nor from a sound Sunnah nor from an unsound one, nor from consensus, nor analogy, nor even the saying of a Companion—no basis at all.”

وَقَالَ الشَّافِعِيُّ وَأَبُو سُلَيْمَانَ كَمَا قُلْنَا؟ : قَالَ عَلِيٌّ: مَا نَعْلَمُ لِقَوْلِ أَبِي حَنِيفَةَ وَمَالِكٍ حُجَّةً، لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا مِنْ إجْمَاعٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ أَصْلًا.

L5695–5697 If they raise an objection by citing the report that Ibn Masʿūd entered the

mosque after the Fajr prayer had commenced, whereupon he performed the two dawn rakʿahs; and that Ibn ʿUmar came to the mosque for Fajr prayer, found the Imam was praying, entered Hafṣa's chamber, performed two rakʿahs, then joined the Imam's prayer—Ibn Masʿūd did not differentiate between them. Nor did Ibn Umar adopt their categorization based on the hope of catching a rakʿah or the lack of such hope, nor have they ever found this attributed to any predecessor.

فَإِنْ شَغَبُوا بِأَنَّهُ قَدْ رُوِيَ عَنْ ابْنِ مَسْعُودٍ: أَنَّهُ دَخَلَ الْمَسْجِدَ وَقَدْ أُقِيمَتْ صَلَاةُ الصُّبْحِ فَرَكَعَ رَكْعَتَيْ الْفَجْرِ، وَعَنْ ابْنِ عُمَرَ أَنَّهُ أَتَى الْمَسْجِدَ لِصَلَاةِ الصُّبْحِ فَوَجَدَ الْإِمَامَ يُصَلِّي فَدَخَلَ بَيْتَ حَفْصَةَ فَصَلَّى رَكْعَتَيْنِ ثُمَّ دَخَلَ فِي صَلَاةِ الْإِمَامِ، فَلَمْ يُقَسِّمْ ابْنُ مَسْعُودٍ وَلَا ابْنُ عُمَرَ تَقْسِيمَهُمْ، مِنْ رَجَاءِ إدْرَاكِ رَكْعَةٍ أَوْ عَدَمِ رَجَاءِ ذَلِكَ، وَلَا يَجِدُونَ هَذَا عَنْ مُتَقَدِّمٍ أَبَدًا.

L5698 And what is established from Ibn ʿUmar is similar to our statement? If they say: "It has been reported from the Prophet (peace and blessings of Allah be upon him): 'Whoever catches one unit (rakʿah) of prayer with the Imam has indeed caught the prayer?'"

وَالثَّابِتُ عَنْ ابْنِ عُمَرَ مِثْلُ قَوْلِنَا؟ ، فَإِنْ قَالُوا: قَدْ جَاءَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَدْرَكَ مَعَ الْإِمَامِ رَكْعَةً مِنْ الصَّلَاةِ فَقَدْ أَدْرَكَ الصَّلَاةَ» ؟ .

L5699 We said: Yes, this is correct. This specifically applies to one who missed the prayer and did not come [to join it] except when the Imam is leading it.

قُلْنَا: نَعَمْ، هَذَا حَقٌّ، وَإِنَّمَا هَذَا فِيمَنْ فَاتَتْهُ الصَّلَاةُ، وَلَمْ يَأْتِ إلَّا، وَالْإِمَامُ فِيهَا.

L5700 As for one who is present during the establishment of prayer yet refuses to join the Imam, or engages in Quranic recitation, remembrance of Allah the Exalted, or initiates voluntary prayer—: there is no disagreement among any two Muslims that he is disobedient to Allah the Exalted and mocks prayer. What then distinguishes this from being occupied with the two dawn rak'ahs, if they were fair?

وَأَمَّا مَنْ كَانَ حَاضِرًا لِإِقَامَةِ الصَّلَاةِ فَتَرَكَ الدُّخُولَ مَعَ الْإِمَامِ أَوْ اشْتَغَلَ بِقِرَاءَةِ قُرْآنٍ أَوْ بِذِكْرِ اللَّهِ تَعَالَى أَوْ بِابْتِدَاءِ تَطَوُّعٍ -: فَلَا يَخْتَلِفُ اثْنَانِ مِنْ أَهْلِ الْإِسْلَامِ فِي أَنَّهُ عَاصٍ لِلَّهِ تَعَالَى مُتَلَاعِبٌ بِالصَّلَاةِ فَمَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ اشْتِغَالِهِ بِرَكْعَتَيْ الْفَجْرِ لَوْ أَنْصَفُوا؟ .

L5701 If they pretend by claiming that Ibn Masʿūd did so, then say to them: As for the Mālikīs, they opposed him in this very action itself, for they did not deem it permissible for one who enters the mosque while the Imam is praying to engage in the two *Rakʿahs* of *Fajr*. Thus, they have no grounds to rely on Ibn Masʿūd.

فَإِنْ مَوَّهُوا بِأَنَّ ابْنَ مَسْعُودٍ قَدْ فَعَلَ ذَلِكَ؟ ، قِيلَ لَهُمْ: أَمَّا الْمَالِكِيُّونَ فَقَدْ خَالَفُوهُ فِي هَذَا الْفِعْلِ نَفْسِهِ، فَلَمْ يَرَوْا لِمَنْ دَخَلَ الْمَسْجِدَ، وَالْإِمَامُ يُصَلِّي أَنْ يَشْتَغِلَ بِرَكْعَتَيْ الْفَجْرِ، فَلَا مُتَعَلَّقَ لَهُمْ بِابْنِ مَسْعُودٍ.

L5702 As for the Ḥanafīs, they also opposed his practice in this matter and established a categorization not attributed to Ibn Masʿūd.

وَأَمَّا الْحَنَفِيُّونَ فَقَدْ خَالَفُوا فِعْلَهُ أَيْضًا فِي هَذِهِ الْمَسْأَلَةِ، فَقَدْ قَسَّمُوا تَقْسِيمًا لَمْ يَأْتِ عَنْ ابْنِ مَسْعُودٍ.

L5703 Ibn Masʿūd maintains the position of placing one hand over the other during prayer, while other scholars reject this practice.

وَابْنِ مَسْعُودٍ يَرَى التَّطْبِيقَ فِي الصَّلَاةِ، وَهُمْ لَا يَرَوْنَهُ.

وَابْنُ مَسْعُودٍ يَرَى أَنْ لَا تُعْتَقَ أُمُّ الْوَلَدِ إِلَّا مِنْ حِصَّةِ وَلَدِهَا مِنْ الْمِيرَاثِ، وَهُمْ لَا يَرَوْنَ ذَلِكَ؟ ، وَقَدْ خَالَفُوا ابْنَ مَسْعُودٍ حَيْثُ وَافَقَ السُّنَّةَ، وَلَا يَحِلُّ خِلَافُهُ؛ وَحَيْثُ لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: فِي عَشَرَاتٍ مِنْ الْقَضَايَا؛ بَلْ لَعَلَّهُمْ خَالَفُوهُ كَذَلِكَ فِي مِئِينَ مِنْ الْقَضَايَا وَقَدْ خَالَفَ ابْنَ مَسْعُودٍ فِي هَذِهِ الْمَسْأَلَةِ طَائِفَةٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - كَمَا نَذْكُرُ بَعْدَهَا إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ.

L5704 Ibn Masʿūd held that the mother of the child (umm al-walad) should not be emancipated except from her child's share of inheritance—yet they do not hold that view. They opposed Ibn Masʿūd in matters where he aligned with the Sunnah, and it is impermissible to oppose him. In cases where none of the Companions—may Allah be pleased with them—are known to have disagreed with him, they opposed him in tens of cases; rather, they may well have opposed him in hundreds of cases. Regarding this specific issue, a group of the Companions—may Allah be pleased with them—opposed Ibn Masʿūd, as we shall discuss afterward, if Allah the Almighty and Majestic wills.

فَلَمَّا عَرِيَ قَوْلُهُمْ مِنْ حُجَّةٍ أَصْلًا رَجَعْنَا إلَى قَوْلِنَا، فَوَجَدْنَا الْبُرْهَانَ عَلَى وُجُوبِهِ وَصِحَّتِهِ -: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا أَحْمَدُ بْنُ حَنْبَلٍ، وَمُسْلِمُ بْنُ إبْرَاهِيمَ، وَالْحَسَنُ بْنُ عَلِيٍّ الْحُلْوَانِيُّ، وَمُحَمَّدُ بْنُ الْمُتَوَكِّلِ: قَالَ (أَحْمَدُ) : ثنا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ ثنا شُعْبَةُ عَنْ وَرْقَاءَ وَقَالَ (مُسْلِمٌ) : ثنا حَمَّادُ بْنُ سَلَمَةَ وَقَالَ (الْحَسَنُ) : ثنا يَزِيدُ بْنُ هَارُونَ،، وَأَبُو عَاصِمٍ قَالَ (يَزِيدُ) : عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ وَقَالَ (أَبُو عَاصِمٍ) : عَنْ ابْنِ جُرَيْجٍ وَقَالَ (مُحَمَّدٌ) : ثنا عَبْدُ الرَّزَّاقِ ثنا زَكَرِيَّا بْنُ إِسْحَاقَ -: ثُمَّ اتَّفَقَ وَرْقَاءُ، وَحَمَّادُ بْنُ سَلَمَةَ،، وَأَيُّوبُ السِّخْتِيَانِيُّ وَابْنُ جُرَيْجٍ، وَزَكَرِيَّا بْنُ إِسْحَاقَ كُلُّهُمْ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أُقِيمَتْ الصَّلَاةُ فَلَا صَلَاةَ إلَّا الْمَكْتُوبَةُ» .

L5705–5706 When their argument was stripped of any foundational proof, we reverted to our position and found decisive evidence for its obligation and validity: What was narrated to us by ʿAbdullāh ibn Rabīʿ, who narrated from Ibn al-Sulaym, who narrated from Ibn al-Aʿrābī, who narrated from Abū Dāwūd, who narrated from Aḥmad ibn Ḥanbal, Muslim ibn Ibrāhīm, al-Ḥasan ibn ʿAlī al-Ḥulwānī, and Muḥammad ibn al-Mutawakkil. Aḥmad narrated: Muḥammad ibn Jaʿfar Ghundar narrated to us, from Shuʿbah, from Warqāʾ. Muslim narrated: Ḥammād ibn Salamah narrated to us. Al-Ḥasan narrated: Yazīd ibn Hārūn and Abū ʿĀṣim narrated to us. Yazīd narrated from Ḥammād ibn Zayd, from Ayyūb al-Sikhtiyānī. Abū ʿĀṣim narrated from Ibn Jurayj. Muḥammad narrated: ʿAbd al-Razzāq narrated to us, from Zakariyyā ibn Isḥāq. Their chains then converge via Warqāʾ, Ḥammād ibn Salamah, Ayyūb al-Sikhtiyānī, Ibn Jurayj, and Zakariyyā ibn Isḥāq—all narrating from ʿAmr ibn Dīnār, from ʿAṭāʾ ibn Yasār, from Abū Hurayrah, who said: The Messenger of Allāh—peace and blessings be upon him—said: "When the prayer is established, no prayer may be performed except the prescribed one."

L5707 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us from Abdul-Wahhab ibn Isa, who narrated to us from Ahmad ibn Muhammad, who narrated to us from Ahmad ibn Ali, who narrated to us from Muslim ibn al-Hajjaj, who narrated to us from Qutaybah, who narrated to us from Abu Awanah, on the authority of Sa'd ibn Ibrahim ibn Abd al-Rahman ibn Awf, from Hafs ibn Asim ibn Umar ibn al-Khattab, from Ibn Buhaynah—who was Abdullah ibn Malik—who said: "The iqamah for Fajr prayer was

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا قُتَيْبَةُ ثنا أَبُو عَوَانَةَ عَنْ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ حَفْصِ بْنِ عَاصِمِ بْنِ عُمَرَ بْنِ الْخَطَّابِ عَنْ ابْنِ بُحَيْنَةَ هُوَ عَبْدُ

proclaimed, and the Messenger of Allah (peace and blessings be upon him) saw a man praying while the mu'adhdhin was proclaiming the iqamah. He said: 'Are you praying Fajr as four rak'ahs?'"[15]

اللَّهِ بْنِ مَالِكٍ قَالَ: «أُقِيمَتْ صَلَاةُ الصُّبْحِ فَرَأَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَجُلًا يُصَلِّي وَالْمُؤَذِّنُ يُقِيمُ فَقَالَ: أَتُصَلِّي الصُّبْحَ أَرْبَعًا؟» .

L5708–5710 And through him to Muslim: Zuhayr ibn Harb narrated to us, Marwan ibn Mu'awiyah al-Fazari narrated to us, from Asim al-Ahwal, from Abdullah ibn Sarjis, who said: "A man entered the mosque while the Messenger of Allah (peace be upon him) was in the prayer of…" In the early morning, he prayed two rak'ahs in a side area of the mosque, then entered along with the Messenger of Allah. When the Messenger of Allah—peace and blessings be upon him—uttered the taslīm (salutation of peace) to conclude the prayer, he said: "O so-and-so, which of the two prayers have you counted? Is it with your prayer alone or with your prayer with us?"

وَبِهِ إِلَى مُسْلِمٍ: ثنا زُهَيْرُ بْنُ حَرْبٍ ثنا مَرْوَانُ بْنُ مُعَاوِيَةَ الْفَزَارِيّ عَنْ عَاصِمٍ الْأَحْوَلِ عَنْ عَبْدِ اللَّهِ بْنِ سَرْجِسَ قَالَ: «دَخَلَ رَجُلٌ الْمَسْجِدَ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي صَلَاةِ الْغَدَاةِ، فَصَلَّى رَكْعَتَيْنِ فِي جَانِبِ الْمَسْجِدِ، ثُمَّ دَخَلَ مَعَ رَسُولِ اللَّهِ فَلَمَّا سَلَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: يَا فُلَانُ، بِأَيِّ الصَّلَاتَيْنِ اعْتَدَدْتَ؟ أَبِصَلَاتِكَ وَحْدَكَ أَمْ بِصَلَاتِكَ مَعَنَا؟» .

L5711 And it has also been narrated to us through the chain of Ḥajjāj ibn al-Minhāl: Ḥammād ibn Salmah narrated to us and Ḥammād ibn Zayd narrated to us, both from ʿĀṣim al-Aḥwal from ʿAbdullāh ibn Sarjis in a similar report, and in which it is mentioned: that he prayed the two rakʿahs behind the people.

وَرُوِّينَا أَيْضًا: مِنْ طَرِيقِ حَجَّاجِ بْنِ الْمِنْهَالِ: ثنا حَمَّادُ بْنُ سَلَمَةَ، وَحَمَّادُ بْنُ زَيْدٍ كِلَاهُمَا عَنْ عَاصِمٍ الْأَحْوَلِ عَنْ عَبْدِ اللَّهِ بْنِ سَرْجِسَ بِمِثْلِهِ، وَفِيهِ: أَنَّهُ صَلَّى الرَّكْعَتَيْنِ خَلْفَ النَّاسِ.

L5712 Muhammad ibn Saʿīd ibn Nubāt narrated to us: ʿAbdullāh ibn Naṣr narrated to us: Qāsim ibn Aṣbagh narrated to us: Ibn Waḍḍāḥ narrated to us: Mūsā ibn Muʿāwiyah narrated to us: Wakīʿ narrated from Ṣāliḥ ibn Rustum – who is Abū ʿĀmir al-Khazzāz – from Ibn Abī Mulaykah, from Ibn ʿAbbās, who said: "The prayer was established, and I had not yet prayed the two rakʿahs – meaning the Fajr prayer and the two rakʿahs of Fajr. Ibn ʿAbbās said: I stood to pray them, but he pulled me and said: 'Do you intend to pray Fajr as four rakʿahs?' It was said to Abū ʿĀmir: 'Did the Prophet – peace and blessings of Allāh be upon him – tug Ibn ʿAbbās?' He responded: 'Yes.'"

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ ثنا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ ثنا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعٌ عَنْ صَالِحِ بْنِ رُسْتُمَ هُوَ أَبُو عَامِرٍ الْخَزَّازُ - عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: «أُقِيمَتْ الصَّلَاةُ وَلَمْ أَكُنْ صَلَّيْت الرَّكْعَتَيْنِ يَعْنِي صَلَاةَ الصُّبْحِ وَرَكْعَتَيْ الْفَجْرِ، قَالَ ابْنُ عَبَّاسٍ: فَقُمْت لِأُصَلِّيَهُمَا فَجَبَذَنِي وَقَالَ: أَتُرِيدُ أَنْ تُصَلِّيَ الصُّبْحَ أَرْبَعًا؟ قِيلَ لِأَبِي عَامِرٍ: النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَتَلَ ابْنَ عَبَّاسٍ؟ قَالَ: نَعَمْ؟» .

L5713–5715 Ali said: These are transmitted texts conveyed through the narration of the Witr prayer, which none may permissibly contradict. Following their

قَالَ عَلِيٌّ: فَهَذِهِ نُصُوصٌ مَنْقُولَةٌ نَقْلَ الْوِتْرِ، لَا يَحِلُّ لِأَحَدٍ خِلَافُهَا، وَقَدْ حَمَلَ اتِّبَاعُ الْهَوَى بَعْضَهُمْ عَلَى أَنْ قَالَ: إنَّ عَمْرَو بْنَ دِينَارٍ [قَدْ اُضْطُرِبَ] عَلَيْهِ فِي هَذَا الْحَدِيثِ

[15] **Hadith references (L5707):** Sunan an-Nasai 867; Sahih Muslim 711b.

whims has led some to assert there was confusion regarding ʿAmr ibn Dīnār's transmission of this ḥadīth, as Sufyān ibn ʿUyaynah, Ḥammād ibn Salamah, and Ḥammād ibn Zayd reported it from him while stopping the chain at Abū Hurayrah (mawqūf). Ali said: This is a matter wherein its proponent ought to first fear Allah Almighty and then feel ashamed before others. Secondly, he would not resort to such a disgraceful argument, because those who cite this as evidence explicitly state that the legal opinion of the Companion constitutes authoritative evidence, so even if we concede that it were not supported by a chain of transmission.

فَرَوَاهُ عَنْهُ سُفْيَانُ بْنُ عُيَيْنَةَ، وَحَمَّادُ بْنُ سَلَمَةَ، وَحَمَّادُ بْنُ زَيْدٍ فَأَوْقَفُوهُ عَلَى أَبِي هُرَيْرَةَ. قَالَ عَلِيٌّ: وَهَذَا مِمَّا كَانَ يَنْبَغِي لِقَائِلِهِ أَنْ يَتَّقِيَ اللَّهَ تَعَالَى أَوَّلًا ثُمَّ يَسْتَحْيِ مِنْ النَّاسِ ثَانِيَةً، وَلَا يَأْتِي بِهَذِهِ الْفَضِيحَةِ؛ لِأَنَّ الْمُحْتَجِّينَ بِهَذَا مُصَرِّحُونَ بِأَنَّ قَوْلَ الصَّاحِبِ حُجَّةٌ فَهَبْكَ لَوْ لَمْ يُسْنَدْ.

L5716 Should you not have preferred either the statement of Abū Hurayrah over that of Ibn Masʿūd or the statement of Ibn Masʿūd over that of Abū Hurayrah? How is this so when what was mentioned does not harm the ḥadīth in any way? For Ibn Jurayj, Ayyūb, and Zakariyyā ibn Isḥāq are not inferior to Sufyān ibn ʿUyaynah, Ḥammād ibn Salamah, and Ḥammād ibn Zayd. Moreover, how can this be when the one who narrated it via Ḥammād ibn Salamah's chain is more trustworthy and precise than the one who transmitted it as mawqūf? If Ayyūb had narrated it alone, he would have been a decisive proof over all of them—how much more so when all of that is authentic and true? Indeed, ʿAmr ibn Dīnār narrated it both from ʿAṭāʾ through Abū Hurayrah as a direct transmission from the Messenger of Allāh (ṣallā Allāhu ʿalayhi wa-sallam) and from ʿAṭāʾ through Abū Hurayrah as his own fatwa—thus did he narrate it through all these means?

أَمَا كَانَ يَجِبُ أَنْ تُرَجِّحَ إمَّا قَوْلَ أَبِي هُرَيْرَةَ عَلَى قَوْلِ ابْنِ مَسْعُودٍ، أَوْ قَوْلَ ابْنِ مَسْعُودٍ عَلَى قَوْلِ أَبِي هُرَيْرَةَ؟ فَكَيْفَ وَلَيْسَ مَا ذُكِرَ مِمَّا يَضُرُّ الْحَدِيثَ شَيْئًا لِأَنَّ ابْنَ جُرَيْجٍ، وَأَيُّوبَ وَزَكَرِيَّا بْنَ إسْحَاقَ لَيْسُوا بِدُونِ سُفْيَانَ بْنِ عُيَيْنَةَ، وَحَمَّادِ بْنِ سَلَمَةَ، وَحَمَّادِ بْنِ زَيْدٍ فَكَيْفَ وَالَّذِي أَسْنَدَهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَوْثَقُ، وَأَضْبَطُ مِنْ الَّذِي أَوْقَفَهُ عَنْهُ، وَأَيُّوبُ لَوْ انْفَرَدَ لَكَانَ حُجَّةً عَلَى جَمِيعِهِمْ؛ فَكَيْفَ وَكُلُّ ذَلِكَ حَقٌّ، وَهُوَ أَنَّ عَمْرَو بْنَ دِينَارٍ رَوَاهُ عَنْ عَطَاءٍ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَنْ عَطَاءٍ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ أَفْتَى بِهِ، فَحَدَّثَ بِهِ عَلَى كُلِّ ذَلِكَ؟ .

L5717 Then, even if the narration of Abu Huraira had not been transmitted at all, the narrations of Ibn Sirjis, Ibn Buhaynah, and Ibn Abbas would suffice for one who sincerely reforms himself, abstains from following his desires in blindly adhering to those who cannot avail him anything from Allah, and avoids supporting falsehood with whatever frivolous speech is possible.

ثُمَّ لَوْ لَمْ يَأْتِ حَدِيثُ أَبِي هُرَيْرَةَ أَصْلًا لَكَانَ فِي حَدِيثِ ابْنِ سَرْجِسَ وَابْنِ بُحَيْنَةَ وَابْنِ عَبَّاسٍ كِفَايَةٌ لِمَنْ نَصَحَ نَفْسَهُ، وَلَمْ يَتَّبِعْ هَوَاهُ فِي تَقْلِيدِ مَنْ لَا يُغْنِي عَنْهُ مِنْ اللَّهِ شَيْئًا، وَنَصْرِ الْبَاطِلِ بِمَا أَمْكَنَ مِنْ الْكَلَامِ الْغَثِّ؟ .

L5718 How could it be otherwise, given that we have been narrated through the most authentic transmission path from al-Zuhri—from Saʿīd ibn al-Musayyib and from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf, both of whom narrated from Abū Hurayra—from the Messenger of Allah (peace be upon him), who said: "When you hear the iqāmah, proceed to the prayer with calmness and

فَكَيْفَ وَقَدْ رُوِّينَا بِأَصَحِّ طَرِيقٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ كِلَاهُمَا عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

dignity. Do not rush; whatever portion you catch up with, pray, and whatever you miss, make up."

- قَالَ: «إِذَا سَمِعْتُمُ الْإِقَامَةَ فَامْشُوا إِلَى الصَّلَاةِ وَعَلَيْكُمُ السَّكِينَةُ وَالْوَقَارُ وَلَا تُسْرِعُوا فَمَا أَدْرَكْتُمْ فَصَلُّوا وَمَا فَاتَكُمْ فَأَتِمُّوا» .

L5719 Thus, this is an obligation to join the Imam in whatever state he is found, and a prohibition against engaging in anything that distracts from this obligation.

فَهَذَا فَرْضٌ لِلدُّخُولِ مَعَ الْإِمَامِ كَيْفَمَا وُجِدَ، وَتَحْرِيمٌ لِلِاشْتِغَالِ بِشَيْءٍ عَنْ ذَلِكَ.

L5720–5722 Some of them raised another frivolous objection regarding the ḥadīth of Ibn Sarjis and Ibn Buḥaynah, claiming: "Perhaps the Messenger of Allāh—peace and blessings of Allāh be upon him—disapproved only of his praying those two prayers while mixing them among the people." ʿAlī responded: "This is sheer falsehood and brazen shamelessness, for the ḥadīth itself [states that he did not]..." They should only pray them behind the congregation in a corner of the mosque, just as they command those who follow their false innovations. How then—even if this were not the case—could it expose the lie of this claimant through the words of Allah's Messenger (peace and blessings be upon him): "Which of the two prayers have you counted - your prayer alone or your prayer with us?" and "Do you pray dawn as four rak'ahs?" For it is an impossible falsehood that the Prophet (peace and blessings be upon him) would utter these words to him, when he only criticized him for praying the two rak'ahs while joining the congregation and continuing with them. Yet he (peace and blessings be upon him) remains silent about the condemned act he disapproved, while emphasizing wording not explicitly mentioned. Allah the Exalted has safeguarded His Prophet from this incoherence unbecoming of anyone possessing dignity, except those who propagate such baseless claims.[16]

وَاعْتَرَضَ بَعْضُهُمْ فِي حَدِيثِ ابْنِ سَرْجِسَ وَابْنِ بُحَيْنَةَ بِضَحِكَةٍ أُخْرَى، وَهِيَ أَنْ قَالَ: لَعَلَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا أَنْكَرَ عَلَيْهِ أَنْ يُصَلِّيَهُمَا مُخْتَلِطًا بِالنَّاسِ قَالَ عَلِيٌّ: وَهَذَا كَذِبٌ مُجَرَّدٌ، وَمُجَاهَرَةٌ سَمِجَةٌ، لِأَنَّ فِي الْحَدِيثِ نَفْسِهِ [أَنَّهُ لَمْ] يُصَلِّهِمَا إِلَّا خَلْفَ النَّاسِ فِي جَانِبِ الْمَسْجِدِ، كَمَا يَأْمُرُونَ مَنْ قَلَّدَهُمْ فِي بَاطِلِهِمْ فَكَيْفَ وَلَوْ لَمْ يَكُنْ هَذَا لَكَانَ مِمَّا يُوَضِّحُ كَذِبَ هَذَا الْقَائِلِ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «بِأَيِّ الصَّلَاتَيْنِ اعْتَدَدْتَ؟ أَبِصَلَاتِكَ وَحْدَكَ أَمْ بِصَلَاتِكَ مَعَنَا؟» وَ «أَتُصَلِّي الصُّبْحَ أَرْبَعًا؟» لِأَنَّ مِنَ الْبَاطِلِ الْمُمْتَنِعِ أَنْ يَقُولَ [لَهُ] النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَذَا الْقَوْلَ، وَهُوَ لَمْ يُنْكِرْ عَلَيْهِ إِلَّا صَلَاتَهُ الرَّكْعَتَيْنِ مُخْتَلِطًا بِالنَّاسِ [وَمُتَّصِلًا بِهِمْ] فَيَسْكُتُ - عَلَيْهِ السَّلَامُ - عَمَّا أَنْكَرَ مِنَ الْمُنْكَرِ وَيَهْتِفُ بِمَا لَمْ يَذْكُرْ مِنْ لَفْظِهِ، وَقَدْ أَعَاذَ اللَّهُ تَعَالَى نَبِيَّهُ عَنْ هَذَا التَّخْلِيطِ الَّذِي لَا يَلِيقُ بِذِي مَسْكَةٍ إِلَّا بِمِثْلِ مَنْ أَطْلَقَ هَذَا؟ .

L5723 Moreover, it is a mere false assumption, and there is no difference between one who says this and one who says: Perhaps the Messenger of Allah—peace and blessings be upon him—only censured him because he was without ablution, or because he was wearing a silk garment? Such assumptions pose no challenge to those who trivialize lying in religious matters and against the Prophet—peace and blessings be upon him.

وَأَيْضًا: فَإِنَّهُ ظَنٌّ مَكْذُوبٌ مُجَرَّدٌ، وَلَا فَرْقَ بَيْنَ مَنْ قَالَ هَذَا، وَبَيْنَ مَنْ قَالَ: لَعَلَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا أَنْكَرَ عَلَيْهِ؛ لِأَنَّهُ كَانَ بِلَا وُضُوءٍ، أَوْ لِأَنَّهُ كَانَ يَلْبَسُ ثَوْبَ حَرِيرٍ؟ وَمِثْلُ هَذِهِ الظُّنُونِ لَا يَتَعَذَّرُ عَلَى مَنِ اسْتَسْهَلَ الْكَذِبَ فِي الدِّينِ، وَعَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[16] **Hadith references (L5720):** Sahih Muslim 712.

فَإِنْ قِيلَ: إِنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَذْكُرْ مِنْ هَذَا شَيْئًا؟ قِيلَ: وَلَا ذَكَرَ - عَلَيْهِ السَّلَامُ - اخْتِلَاطَهُ بِالنَّاسِ وَلَا اتِّصَالَهُ بِهِمْ، وَإِنَّمَا نَصَّ - عَلَيْهِ السَّلَامُ - عَلَى إِنْكَارِهِ الصَّلَاةَ الَّتِي صَلَّاهَا، وَهُوَ - عَلَيْهِ السَّلَامُ - يُصَلِّي الصُّبْحَ فَقَطْ.

L5724 If it is asked: "He (peace be upon him) did not mention anything of this?" It is answered: Neither did he mention mingling with people nor his engagement with them. He solely emphasized his disapproval of the prayer performed, while he only prayed the Fajr prayer.

وَأَيْضًا: فَإِنَّ اللَّهَ تَعَالَى يَقُولُ مُنْكِرًا عَلَى مَنْ فَعَلَ مَا أَنْكَرَهُ عَلَيْهِ {أَتَسْتَبْدِلُونَ الَّذِي هُوَ أَدْنَى بِالَّذِي هُوَ خَيْرٌ} [البقرة: ٦١] وَلَا يَخْتَلِفُ اثْنَانِ فِي أَنَّ الْفَرِيضَةَ خَيْرٌ مِنْ النَّافِلَةِ، وَهُمْ يَأْمُرُونَهُ بِأَنْ يَسْتَبْدِلَ النَّافِلَةَ الَّتِي هِيَ أَدْنَى بِبَعْضِ الْفَرِيضَةِ الَّذِي هُوَ خَيْرٌ مِنْ النَّافِلَةِ، مَعَ مَعْصِيَتِهِمْ السُّنَنَ الَّتِي أَوْرَدْنَا وَبِمَا قُلْنَاهُ يَقُولُ جُمْهُورٌ مِنْ السَّلَفِ: كَمَا رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ عَنْ الْحَسَنِ بْنِ مُسَافِرٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَانَ يَضْرِبُ النَّاسَ عَلَى الصَّلَاةِ بَعْدَ الْإِقَامَةِ.

L5725 Moreover, Allah the Exalted says, rebuking those who did what He condemned: "Would you exchange what is inferior for what is better?" [Al-Baqarah: 61]. No two disagree that the obligatory act is superior to the voluntary. Yet they command him to substitute part of the obligatory act—which is better than the voluntary—with the voluntary act that is inferior, alongside their disobedience to the Sunnahs we have mentioned. As for what we have said, the majority of the Salaf state this, as we have narrated from ʿAbd al-Razzāq from Sufyān al-Thawrī from Jābir from al-Ḥasan ibn Musāfir from Suwayd ibn Ghaflah: that ʿUmar ibn al-Khaṭṭāb would strike people for praying after the iqāmah had been called.[17]

وَعَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ رَأَى رَجُلًا يُصَلِّي وَالْمُؤَذِّنُ يُقِيمُ فَقَالَ لَهُ ابْنُ عُمَرَ: أَتُصَلِّي الصُّبْحَ أَرْبَعًا؟ وَعَنْ وَكِيعٍ عَنْ الْفُضَيْلِ بْنِ غَزْوَانٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ جَاءَ إلَى الْقَوْمِ وَهُمْ فِي صَلَاةِ الْغَدَاةِ وَلَمْ يُصَلِّ رَكْعَتَيْ الْفَجْرِ، فَدَخَلَ مَعَهُمْ فَلَمَّا ضَحَّى قَامَ فَصَلَّاهُمَا. وَعَنْ أَبِي هُرَيْرَةَ: إذَا أُقِيمَتْ الصَّلَاةُ فَلَا صَلَاةَ إلَّا الْمَكْتُوبَةَ؟ . وَعَنْ مَعْمَرٍ: عَنْ أَيُّوبَ السِّخْتِيَانِيِّ قَالَ: كَانَ مُحَمَّدُ بْنُ سِيرِينَ يَكْرَهُ أَنْ تُصَلَّى رَكْعَتَا الْفَجْرِ عِنْدَ إقَامَةِ صَلَاةِ الصُّبْحِ، قَالَ: أَتُصَلِّيهِمَا وَقَدْ فُرِضَتْ الصَّلَاةُ؟ .

L5726–5727 From Ma'mar from Ayyub al-Sikhtiyani from Nafi': Ibn Umar saw a man praying while the caller was giving the iqamah. Ibn Umar said to him, "Are you praying Fajr as four units?" From Waki' from al-Fudayl ibn Ghazwan from Nafi' from Ibn Umar: He came upon people performing the Fajr prayer while he had not prayed the two units of Fajr. He joined them, and when he prayed Ḍuḥā, he stood and prayed those two units. From Abu Hurairah: "When the prayer is established, there is no prayer except the prescribed one." From Ma'mar from Ayyub al-Sikhtiyani, who said: Muhammad ibn Sirin disliked praying the two units of Fajr at the time of the iqamah for the Fajr prayer. He said, "Are you praying them when the prayer has been established?"

وَبِهِ إلَى مَعْمَرٍ: عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ: أَنَّهُ كَانَ إذَا أُقِيمَتْ الصَّلَاةُ وَلَمْ يَرْكَعْ رَكْعَتَيْ الْفَجْرِ صَلَّى مَعَ الْإِمَامِ، فَإِذَا فَرَغَ رَكَعَهُمَا بَعْدَ الصُّبْحِ.

L5728 And through him to Maʿmar: From ʿAbdullāh ibn Ṭāwūs, from his father, that if the iqāmah was called and he had not performed the two rakʿahs of Fajr, he would pray with the Imam. Then, when he concluded, he would perform them after the morning prayer.

[17] **Qur'an references (L5725):** Qur'an 2:61 (Al-Baqarah).

L5729 From Abd al-Razzaq, from Sufyan al-Thawri, from Mansur ibn al-Muʿtamir, from Ibrahim al-Nakhaʿi: Regarding one who finds the Imam praying and has not performed the two rakʿahs of Fajr, he said: One should begin with the obligatory prayer.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ: فِي الَّذِي يَجِدُ الْإِمَامَ يُصَلِّي وَلَمْ يَرْكَعْ رَكْعَتَيْ الْفَجْرِ، قَالَ: يَبْدَأُ بِالْمَكْتُوبَةِ.

L5730 From Abd al-Razzaq, from Ibn Jurayj, that Amr ibn Dinar informed him that Safwan ibn Mawhab informed him that he heard Muslim ibn Uqayl saying to the people while they were praying after the iqamah had been established: "Woe unto you! No prayer [is valid] once the iqamah has been established for the prayer."

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَنَّ عَمْرَو بْنَ دِينَارٍ أَخْبَرَهُ أَنَّ صَفْوَانَ بْنَ مَوْهَبٍ أَخْبَرَهُ أَنَّهُ سَمِعَ مُسْلِمَ بْنَ عُقَيْلٍ يَقُولُ لِلنَّاسِ وَهُمْ يُصَلُّونَ وَقَدْ أُقِيمَتْ الصَّلَاةُ: وَيْلَكُمْ، لَا صَلَاةَ إِذَا أُقِيمَتْ الصَّلَاةُ.

L5731–5733 From ʻAbd al-Razzaq and ʻAbd al-Rahman ibn Mahdi, both from Sufyan al-Thawri, from Mansur ibn al-Muʻtamir, from Fudayl [from Saʻid ibn Jubayr that he said: "Should you cut off your prayer when the *iqāmah* is called?" And from ʻImad ibn Salamah from Hisham] ibn ʻUrwah, who said: A nephew of ʻUrwah came wanting to pray the two rakʻahs of Fajr while the *muʼadhdhin* was calling the *iqāmah*; so ʻUrwah rebuked him. Thus, it is established that if one begins performing the supererogatory two rakʼahs of Fajr, Witr, or other than these two, and the iqamah for Fajr prayer or another [obligatory] prayer is called, the prayer he was engaged in is invalidated, according to the explicit texts we have mentioned?

وَعَنْ عَبْدِ الرَّزَّاقِ: وَعَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ كِلَاهُمَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ فُضَيْلٍ [عَنْ سَعِيدِ بْنِ جُبَيْرٍ أَنَّهُ قَالَ: اقْطَعْ صَلَاتَك عِنْدَ الْإِقَامَةِ؟ وَعَنْ عِمَادِ بْنِ سَلَمَةَ عَنْ هِشَامٍ] بْنِ عُرْوَةَ قَالَ: جَاءَ ابْنُ أَخٍ لِعُرْوَةَ فَأَرَادَ أَنْ يُصَلِّيَ رَكْعَتَيْ الْفَجْرِ وَالْمُؤَذِّنُ يُقِيمُ، فَزَجَرَهُ عُرْوَةُ فَصَحَّ أَنَّ مَنْ بَدَأَ فِي تَطَوُّعِ رَكْعَتَيْ الْفَجْرِ أَوْ الْوِتْرِ أَوْ غَيْرِهِمَا فَأُقِيمَتْ صَلَاةُ الصُّبْحِ أَوْ غَيْرُهَا فَقَدْ بَطَلَتْ الصَّلَاةُ الَّتِي كَانَ فِيهَا، بِالنُّصُوصِ الَّتِي ذَكَرْنَا؟ .

L5734 If it is said: Allah the Exalted has stated, *"And do not invalidate your deeds"* [47:33], we respond: Yes, this is true—but what invalidated them? For even if one were to intentionally invalidate them, he would be sinful. However, Allah the Almighty invalidated them against him, just as they are invalidated by ritual impurity or by the occurrence of what nullifies prayer, such as its interruption, and similar things.[18]

فَإِنْ قِيلَ: قَالَ اللَّهُ تَعَالَى: {وَلا تُبْطِلُوا أَعْمَالَكُمْ} [محمد: ٣٣] . قُلْنَا: نَعَمْ هَذَا حَقٌّ، وَمَا هُوَ أَبْطَلَهَا، وَلَوْ تَعَمَّدَ إبْطَالَهَا لَكَانَ مُسِيئًا، وَلَكِنَّ اللَّهَ عَزَّ وَجَلَّ أَبْطَلَهَا عَلَيْهِ كَمَا تَبْطُلُ بِالْحَدَثِ، وَبِمُرُورِ مَا يُبْطِلُ الصَّلَاةَ مُرُورُهُ وَنَحْوِ ذَلِكَ؟ .

L5735 As for making up the two rakʼahs, this is based on the Prophet's statement (peace be upon him): "Whoever sleeps through a prayer or forgets it, let him perform it when he remembers it," and this constitutes a general principle.

وَأَمَّا قَضَاءُ الرَّكْعَتَيْنِ فَلِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «مَنْ نَامَ عَنْ صَلَاةٍ أَوْ نَسِيَهَا فَلْيُصَلِّهَا إذَا ذَكَرَهَا» ، وَهَذَا عُمُومٌ.

L5736 Hammām narrated to us: ʿAbbās ibn Aṣbagh narrated to us, from Muḥam-

[18] **Qur'an references (L5734):** Qur'an 47:33 (Muhammad).

mad ibn ʿAbd al-Malik ibn Ayman, from Ibn Waḍḍāḥ, from Yaḥyā ibn Maʿīn, from Marwān ibn Muʿāwiyah al-Fazārī, from Yazīd ibn Kaysān, from Abū Ḥāzim, from Abū Hurayrah: "The Messenger of Allah—peace and blessings be upon him—slept through the two rakʿahs of Fajr, so he prayed them after the sun had risen." Thus, he—peace be upon him—did not begin with them before the obligatory prayer?

حَدَّثَنَا حَمَّامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا ابْنُ وَضَّاحٍ ثنا يَحْيَى بْنُ مَعِينٍ ثنا مَرْوَانُ بْنُ مُعَاوِيَةَ الْفَزَارِيّ عَنْ يَزِيدَ بْنِ كَيْسَانَ عَنْ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَامَ عَنْ رَكْعَتَيْ الْفَجْرِ، فَصَلَّاهُمَا بَعْدَ مَا طَلَعَتْ الشَّمْسُ» فَهَذَا - عَلَيْهِ السَّلَامُ - لَمْ يَبْدَأْ بِهِمَا قَبْلَ الْفَرْضِ؟ .

L5737 [And through him to Ibn Ayman] Aḥmad ibn Muḥammad al-Burtī, the judge, narrated to us: Al-Ḥasan ibn Dhakwān narrated from ʿAṭāʾ ibn Abī Rabāḥ from a man among the Anṣār who said: "The Messenger of Allah (peace be upon him) saw a man praying two rakʿahs after dawn. The man said: 'O Messenger of Allah, I did not pray the two rakʿahs of Fajr, so I prayed them now.' The Prophet (peace be upon him) did not say to him anything."

[وَبِهِ إلَى ابْنِ أَيْمَنَ] ثنا أَحْمَدُ بْنُ مُحَمَّدٍ الْبِرْتِيّ الْقَاضِي ثنا الْحَسَنُ بْنُ ذَكْوَانَ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ رَجُلٍ مِنْ الْأَنْصَارِ قَالَ: «رَأَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَجُلًا يُصَلِّي بَعْدَ الْغَدَاةِ رَكْعَتَيْنِ، فَقَالَ: يَا رَسُولَ اللَّهِ، لَمْ أَكُنْ صَلَّيْت رَكْعَتَيْ الْفَجْرِ، فَصَلَّيْتُهُمَا الْآنَ؟ فَلَمْ يَقُلْ [لَهُ]- عَلَيْهِ السَّلَامُ - شَيْئًا.»

L5738–5739 And from the narration of Waki' through Fuḍayl ibn Marzūq from 'Aṭiyyah, who said: "I saw Ibn 'Umar [praying them—meaning he prayed the two rak'ahs of Fajr when the Imam prayed]." From Ibn Jurayj through 'Aṭā': "If you miss praying them before dawn, then pray them after dawn."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ فُضَيْلِ بْنِ مَرْزُوقٍ عَنْ عَطِيَّةَ قَالَ: رَأَيْت ابْنَ عُمَرَ [صَلَّاهُمَا -: صَلَّى رَكْعَتَيْ الْفَجْرِ حِينَ صَلَّى الْإِمَامُ. وَعَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: إذَا أَخْطَأْت] أَنْ تَرْكَعَهُمَا قَبْلَ الصُّبْحِ فَارْكَعْهُمَا بَعْدَ الصُّبْحِ.

L5740–5742 ʿAbd al-Razzāq said: I saw Ibn Jurayj praying the two Sunnah rakʿahs of Fajr in the mosque of Ṣanʿā' after the imam had uttered the taslīm. This is also the view of Tāwūs and others; if one deliberately neglects them until the prayer is established, there is no way for him to... Its compensatory performance is required because its time has passed—, and with Allah, the Exalted, lies the granting of success.

قَالَ عَبْدُ الرَّزَّاقِ: رَأَيْت ابْنَ جُرَيْجٍ يَرْكَعُ رَكْعَتَيْ الْفَجْرِ فِي مَسْجِدِ صَنْعَاءَ بَعْدَ مَا سَلَّمَ الْإِمَامُ. وَبِهِ يَقُولُ طَاوُسٌ وَغَيْرُهُ؛ فَلَوْ تَعَمَّدَ تَرْكَهَا إلَى أَنْ تُقَامَ الصَّلَاةُ فَلَا سَبِيلَ لَهُ إلَى قَضَائِهَا؛ لِأَنَّ وَقْتَهَا قَدْ خَرَجَ -، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L5743 **A case: someone who slept through the Fajr prayer or forgot it until the sun had risen.**

[مَسْأَلَةٌ نَامَ عَنْ صَلَاةِ الصُّبْحِ أَوْ نَسِيَهَا حَتَّى طَلَعَتْ الشَّمْسُ]

L5744 309 - Issue: If someone oversleeps the Fajr prayer or forgets it until the sun rises, it is preferable for them to begin with the two rak'ahs of Fajr, then the Fajr prayer, as the Messenger of Allah (peace be upon him) did in the narration of Abū Qatādah. We have mentioned this with its chain of

٣٠٩ - مَسْأَلَةٌ: وَمَنْ نَامَ عَنْ صَلَاةِ الصُّبْحِ أَوْ نَسِيَهَا حَتَّى طَلَعَتْ الشَّمْسُ فَالْأَفْضَلُ لَهُ أَنْ يَبْدَأَ بِرَكْعَتَيْ الْفَجْرِ ثُمَّ صَلَاةِ الصُّبْحِ، كَمَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

transmission in the chapter on supererogatory prayers after the rising of the sun, before it, and at its setting.

- فِي حَدِيثِ أَبِي قَتَادَةَ. وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِي بَابِ التَّطَوُّعِ بَعْدَ طُلُوعِ الشَّمْسِ وَقَبْلَهُ وَعِنْدَ غُرُوبِهَا.

L5745 This is the position held by Abū Ḥanīfah, Sufyān al-Thawrī, al-Shāfiʿī, Dāwūd, and their companions. Mālik did not hold this view, and we know of no evidence supporting his opinion, as it contradicts what is authentically established from the Messenger of Allah - peace and blessings be upon him.

وَبِهَذَا يَقُولُ أَبُو حَنِيفَةَ، وَسُفْيَانُ الثَّوْرِيُّ، وَالشَّافِعِيُّ، وَدَاوُد، وَأَصْحَابُهُمْ وَلَمْ يَرَ ذَلِكَ مَالِكٌ - وَمَا نَعْلَمُ لِقَوْلِهِ حُجَّةً؛ لِأَنَّهُ خِلَافُ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L5746 Issue: Speaking is permissible before the Fajr prayer and after it.

[مَسْأَلَةُ الْكَلَامُ قَبْلَ صَلَاةِ الصُّبْحِ مُبَاحٌ وَبَعْدَهَا]

L5747 310 – Issue: Speaking before the dawn prayer is permissible, and after it. However, Abū Ḥanīfah considered it disliked since the breaking of dawn until sunrise. ʿAlī said: This is invalid, for neither the Quran nor the Sunnah has prohibited it. Thus, these two times are like all other periods regarding this matter, with no distinction.

٣١٠ - مَسْأَلَةٌ: وَالْكَلَامُ قَبْلَ صَلَاةِ الصُّبْحِ مُبَاحٌ وَبَعْدَهَا: وَكَرِهَهُ أَبُو حَنِيفَةَ مُذْ يَطْلُعُ الْفَجْرُ إلَى أَنْ تَطْلُعَ الشَّمْسُ -: قَالَ عَلِيٌّ: هَذَا بَاطِلٌ؛ لِأَنَّهُ لَمْ يَمْنَعْ مِنْ ذَلِكَ قُرْآنٌ وَلَا سُنَّةٌ، فَهَذَانِ الْوَقْتَانِ فِي ذَلِكَ كَسَائِرِ الْأَوْقَاتِ وَلَا فَرْقَ.

L5748 Allah, the Exalted, has prohibited speech only during prayer and the Friday sermon (Khutbah), and has permitted it in other instances. {And whoever transgresses the limits set by Allah has indeed wronged his own soul} [At-Talaq: 1].[19]

وَإِنَّمَا مَنَعَ اللَّهُ تَعَالَى مِنْ الْكَلَامِ فِي الصَّلَاةِ وَحِينَ حُضُورِ الْخُطْبَةِ فَقَطْ، وَأَبَاحَهُ فِيمَا عَدَا ذَلِكَ {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١]

L5749 Scenario: A man entered into a mosque, assuming his family had performed the obligatory prayer within its time.

[مَسْأَلَةُ دَخَلَ فِي مَسْجِدٍ فَظَنَّ أَنَّ أَهْلَهُ قَدْ صَلَّوْا صَلَاةَ الْفَرْضِ فِي وَقْتِهَا]

L5750 311. Issue: If someone enters a mosque assuming the congregation has already performed the obligatory prayer whose time is still current, or if he is among those not bound by the obligation of congregational prayer, and he begins praying, then the *iqāmah* for the prayer is called - he is obligated to continue from his initial *takbīr* and join them in the congregational prayer. If he has already prayed one *rakʿah* or more of it, the same applies. When he completes his prayer, he must sit and wait for the imam's *salām*, then pronounce the *salām* with him.

٣١١ - مَسْأَلَةٌ: وَمَنْ دَخَلَ فِي مَسْجِدٍ فَظَنَّ أَنَّ أَهْلَهُ قَدْ صَلَّوْا صَلَاةَ الْفَرْضِ الَّتِي هُوَ فِي وَقْتِهَا، أَوْ كَانَ مِمَّنْ لَا يَلْزَمُهُ فَرْضُ الْجَمَاعَةِ فَابْتَدَأَ فَأُقِيمَتْ الصَّلَاةُ -: فَالْوَاجِبُ أَنْ يَبْنِيَ عَلَى تَكْبِيرِهِ وَيَدْخُلَ مَعَهُمْ فِي الصَّلَاةِ، فَإِنْ كَانَ قَدْ صَلَّى مِنْهَا رَكْعَةً فَأَكْثَرَ فَكَذَلِكَ، فَإِذَا أَتَمَّ هُوَ صَلَاتَهُ جَلَسَ وَانْتَظَرَ سَلَامَ الْإِمَامِ فَسَلَّمَ مَعَهُ.

[19] **Qur'an references (L5748):** Qur'an 65:1 (At-Talaq).

L5751 The proof of this is that he commenced prayer as commanded, and whoever fulfills what is commanded has done rightly. Almighty Allah states: **"There is no blame upon the righteous"** [Quran 9:91]. Thus, being in this state, if he subsequently finds an imam, it becomes obligatory for him to follow him—based on the Messenger of Allah's declaration (peace and blessings be upon him): **"The imam is appointed solely to be followed,"** and his censure (peace and blessings be upon him) of one who prays individually while the imam leads the congregation. This is impermissible unless explicitly sanctioned by the Messenger of Allah (peace and blessings be upon him).[20]

بُرْهَانُ ذَلِكَ -: أَنَّهُ ابْتَدَأَ الصَّلَاةَ كَمَا أُمِرَ، وَمَنْ فَعَلَ مَا أُمِرَ فَقَدْ أَحْسَنَ، وَقَدْ قَالَ عَزَّ وَجَلَّ: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] فَإِذْ هُوَ كَذَلِكَ ثُمَّ وَجَدَ إِمَامًا فَفَرْضٌ عَلَيْهِ أَنْ يَأْتَمَّ بِهِ؛ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّمَا جُعِلَ الْإِمَامُ لِيُؤْتَمَّ بِهِ» ؛ وَلِإِنْكَارِهِ - عَلَيْهِ السَّلَامُ - عَلَى مَنْ صَلَّى لِنَفْسِهِ، وَالْإِمَامُ يُصَلِّي بِالنَّاسِ؛ فَهَذَا لَا يَجُوزُ إِلَّا حَيْثُ أَجَازَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ.

L5752–5754 And this applies only to one who was excused, for whom the Imam alone prolonged the prayer, as we will mention in its chapter, if... Allah, the Exalted, has willed, and it is not harmful for one to pronounce the Takbir before his Imam if his Takbir is valid. Our opponents permit a scenario where someone pronounces the Takbir, then the Imam appoints a successor, allowing another person who pronounced the Takbir afterward to follow this successor, even though the successor's own follower had already pronounced the Takbir before him.

وَلَيْسَ ذَلِكَ إِلَّا لِمَنْ عُذِرَ فَطَوَّلَ عَلَيْهِ الْإِمَامُ فَقَطْ، عَلَى مَا نَذْكُرُهُ فِي بَابِهِ إِنْ شَاءَ اللَّهُ تَعَالَى - وَلَا يَضُرُّهُ أَنْ يُكَبِّرَ قَبْلَ إِمَامِهِ إِذَا كَانَ تَكْبِيرُهُ بِحَقٍّ، وَمُخَالِفُنَا يُجِيزُ لِمَنْ كَبَّرَ ثُمَّ اسْتَخْلَفَ الْإِمَامُ مَنْ كَبَّرَ بَعْدَهُ أَنْ يَأْتَمَّ بِهَذَا الْمُسْتَخْلَفِ الَّذِي كَبَّرَ مَأْمُومُهُ قَبْلَهُ.

L5755 It has been narrated to us through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī, from al-Mughīrah ibn Miqsam and al-Aʿmash - both from Ibrāhīm al-Nakhaʿī - that he said regarding a man who entered a mosque thinking people had already prayed, so he prayed two rakʿahs of the obligatory prayer, then the iqāmah was established. Ibrāhīm said: "He should join the imam, pray two rakʿahs, then conclude with the salām, and treat the remaining two as voluntary prayers." It was said to Ibrāhīm: "Do you know of anyone who does this?" He replied: "Verily, this was done by [those before you]."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ، وَالْأَعْمَشِ كِلَاهُمَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ فِي رَجُلٍ دَخَلَ فِي مَسْجِدٍ يَرَى أَنَّهُمْ قَدْ صَلَّوْا فَصَلَّى رَكْعَتَيْنِ مِنْ الْمَكْتُوبَةِ ثُمَّ أُقِيمَتْ الصَّلَاةُ -: قَالَ إبْرَاهِيمُ: يَدْخُلُ مَعَ الْإِمَامِ فَيُصَلِّي رَكْعَتَيْنِ ثُمَّ يُسَلِّمُ ثُمَّ يَجْعَلُ الْبَاقِيَتَيْنِ تَطَوُّعًا فَقِيلَ لِإِبْرَاهِيمَ: مَا شَعَرْت أَنَّ أَحَدًا يَفْعَلُ ذَلِكَ؟ فَقَالَ إبْرَاهِيمُ: إنَّ هَذَا كَانَ يَفْعَلُهُ [مَنْ كَانَ قَبْلَكُمْ] .

L5756 Ali said: This is a narration concerning the Companions - may Allah be pleased with them - and the eminent Followers - may Allah have mercy on them. It has been transmitted to us from a group of the Followers - may Allah be pleased with them - that they maintained the position that if one initiated a voluntary prayer and the obligatory prayer was then established while they were engaged in it, they should enter into the prescribed prayer

قَالَ عَلِيٌّ: هَذَا خَبَرٌ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَعَنْ أَكَابِرِ التَّابِعِينَ رَحْمَةُ اللَّهِ عَلَيْهِمْ، وَقَدْ رُوِّينَا عَنْ جَمَاعَةٍ مِنْ التَّابِعِينَ - رَضِيَ اللَّهُ عَنْهُمْ -: أَنَّهُمْ كَانُوا يَرَوْنَ لِمَنْ افْتَتَحَ صَلَاةَ تَطَوُّعٍ فَأُقِيمَتْ عَلَيْهِ الْفَرِيضَةُ أَنْ يَدْخُلُوا فِي الْمَكْتُوبَةِ وَاصِلِينَ بِتَطَوُّعِهِمْ

[20] **Qur'an references (L5751):** Qur'an 9:91 (At-Tawbah).

بِهَا، فَإِذَا رَأَوْا ذَلِكَ فِي التَّطَوُّعِ فَهُوَ عِنْدَهُمْ فِي الْمَكْتُوبَةِ أَوْجَبُ بِلَا شَكٍّ: مِنْهُمْ نَافِعُ بْنُ جُبَيْرِ بْنِ مُطْعِمٍ، وَالْحَسَنُ، وَقَتَادَةُ وَغَيْرُهُمْ.

by linking their voluntary prayer to it. Since they deemed this permissible in voluntary prayer, they considered it unquestionably more obligatory in the prescribed prayer without doubt. Among those who held this view were Nāfiʿ ibn Jubayr ibn Muṭʿim, al-Ḥasan, Qatādah, and others.

وَلَيْسَ هَذَا قِيَاسًا، بَلْ هُوَ بَابٌ وَاحِدٌ، وَنَتِيجَةُ بُرْهَانٍ وَاحِدٍ كَمَا ذَكَرْنَا - وَلَا يَحِلُّ ذَلِكَ عِنْدَنَا فِي التَّطَوُّعِ، لِمَا ذَكَرْنَا قَبْلُ [مِنْ] انْقِطَاعِهَا إِذَا أُقِيمَتْ الصَّلَاةُ -، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L5757 This is not analogy; rather, it is a single chapter and the conclusion of a single proof, as we mentioned—and that is not permissible in our school regarding supererogatory prayers due to what we previously mentioned from their cessation when the *iqāmah* is established—and with Allah, the Exalted, is success.

[مَسْأَلَةُ التَّسْلِيمُ قَبْلَ الْإِمَامِ]

L5758 **The Issue of the Concluding Salam Before the Imam.**

٣١٢ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُسَلِّمَ قَبْلَ الْإِمَامِ إِلَّا لِعُذْرٍ، مِثْلَ أَنْ يَكُونَ بَدَأَ فِي قَضَاءِ صَلَاةٍ فَائِتَةٍ أَوْ بَدَأَهَا فِي آخِرِ وَقْتِهَا ثُمَّ أُقِيمَتْ صَلَاةُ الْفَرْضِ فِي وَقْتِهَا، فَإِنَّ هَذَا يَأْتَمُّ بِالْإِمَامِ فِي صَلَاتِهِ الَّتِي هُوَ فِيهَا، فَإِذَا أَتَمَّهَا سَلَّمَ ثُمَّ دَخَلَ خَلْفَ الْإِمَامِ فِي الصَّلَاةِ الَّتِي الْإِمَامُ فِيهَا، فَإِذَا سَلَّمَ الْإِمَامُ قَامَ فَقَضَى مَا بَقِيَ عَلَيْهِ مِنْهَا؟ ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا قَالَ: «إذَا أُقِيمَتْ الصَّلَاةُ فَلَا صَلَاةَ إلَّا الْمَكْتُوبَةَ» وَالَّتِي دَخَلَ فِيهَا مَكْتُوبَةٌ؛ فَلَا يَجُوزُ لَهُ قَطْعُهَا.

L5759–5761 Issue 312: It is not permissible to utter the taslim before the Imam except for a valid excuse, such as having started performing a missed prayer or begun it at the very end of its prescribed time, whereupon the obligatory prayer is then established within its proper time; in this case, the individual should follow the Imam. If one is praying with the imam in the prayer he is performing, upon completing it he should say the salām, then join the imam in the prayer he is leading. When the imam says the salām, he should rise and complete what remains of his prayer. This is because the Messenger of Allah (peace and blessings be upon him) specifically said: "When the prayer is established, no prayer may be performed except the prescribed one," and the prayer he has joined is a prescribed prayer. Thus, it is impermissible for him to interrupt it.

وَلَا يَجُوزُ لَهُ مُخَالَفَةُ الْإِمَامِ؛ لِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ بِقَوْلِهِ: «بِأَيِّ صَلَاتَيْكَ اعْتَدَدْتَ» مُنْكِرًا عَلَى مَنْ فَعَلَ ذَلِكَ؛ وَلِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «إنَّمَا الْإِمَامُ جُنَّةٌ، فَلَا تَخْتَلِفُوا عَلَيْهِ» فَإِذَا قَضَى صَلَاتَهُ فَفَرْضٌ عَلَيْهِ الِائْتِمَامُ بِالْإِمَامِ فِي الصَّلَاةِ الَّتِي يُصَلِّيهَا الْإِمَامُ؛ وَلَا سَبِيلَ لَهُ إلَى ذَلِكَ إلَّا بِالسَّلَامِ، فَيُسَلِّمُ وَلَا بُدَّ، أَوْ يَكُونُ مُسَافِرًا يَدْخُلُ فِي صَلَاةِ مُقِيمٍ، وَيَخَافُ مِمَّنْ لَا عِلْمَ لَهُ إنْ قَعَدَ مُنْتَظِرًا سَلَامَ الْإِمَامِ فَهَذَا يُسَلِّمُ

L5762 It is not permissible for one to oppose the imam due to the Prophet's prohibition—peace and blessings of Allah be upon him—against this in his saying, "Which of your two prayers do you consider valid?" censuring those who did so; and due to his statement—peace be upon him—"The imam is a shield, so do not oppose him." When one completes their prayer, it becomes obligatory to follow the imam in the prayer being led by him. There is no means to do this except through the *salam*, so he must utter the *salam* without fail. Alternatively, if he is a traveler joining a resident's prayer and fears misunderstanding from ignorant people should he remain seated awaiting

the imam's *salam*, he must necessarily utter the *salam* due to compulsion. He should then follow the imam in voluntary prayer, or in analogous situations. Success is attained through Allah, the Most High.

L5763 **A legal question regarding one obligated to perform congregational prayer who had not despaired of joining it [before its conclusion].**

L5764 Issue 313: If a person obligated to attend congregational prayer - and who still hopes to catch it - begins performing the obligatory prayer, and then the prayer is commenced with the iqamah, the prayer he initiated becomes null and void; it does not count for him. He must join the established congregational prayer. There is no validity in his completing the prayer he began, as he is no longer in a state of prayer.

L5765 The proof of this is the statement of the Messenger of Allah (peace be upon him): "Whoever does a deed that is not in accordance with our teachings, then it is rejected."[21]

L5766 And this [prayer in congregation] was an obligation upon him, as we shall mention in its chapter - Allah, the Exalted, willing. If he fails to perform it, he has indeed done a deed not commanded by Allah, the Exalted; is it not invalid?

L5767–5768 **[Chapter on the Call to Prayer] [Issue: It is prohibited to give the call to prayer for any prayer before its time enters, except for the Dawn prayer alone.]**

L5769 Issue 314: It is not permissible to call the adhān for any prayer before its prescribed time begins except for the Fajr prayer alone. It is permissible to call the adhān for it before the emergence of the second dawn by a duration sufficient for the caller to complete his adhān, descend from the minaret or elevated place, and allow another caller to ascend. The dawn emerges before

[21] **Hadith references (L5765):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

وَلَا بُدَّ؛ لِأَنَّهُ مُضْطَرٌّ إِلَى ذَلِكَ، ثُمَّ يَأْتَمُّ بِالْإِمَامِ مُتَطَوِّعًا، وَنَحْوُ هَذَا -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ كَانَ مِمَّنْ يَلْزَمُهُ فَرْضُ الْجَمَاعَةِ وَلَمْ يَكُنْ يَائِسًا عَنْ إِدْرَاكِهَا]

٣١٣ - مَسْأَلَةٌ: فَإِنْ كَانَ مِمَّنْ يَلْزَمُهُ فَرْضُ الْجَمَاعَةِ، وَلَمْ يَكُنْ يَائِسًا عَنْ إِدْرَاكِهَا فَابْتَدَأَ الصَّلَاةَ الْمَكْتُوبَةَ فَأُقِيمَتْ الصَّلَاةُ - فَالَّتِي بَدَأَ بِهَا بَاطِلَةٌ فَاسِدَةٌ، لَا تُجْزِئُهُ، وَعَلَيْهِ أَنْ يَدْخُلَ فِي الَّتِي أُقِيمَتْ، وَلَا مَعْنَى لَأَنْ يُسَلِّمَ مِنْ الَّتِي بَدَأَ؛ لِأَنَّهُ لَيْسَ فِي صَلَاةٍ.

بُرْهَانُ ذَلِكَ -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

وَهَذَا كَانَ عَلَيْهِ فَرْضُ الصَّلَاةِ فِي جَمَاعَةٍ؛ لِمَا نَذْكُرُهُ فِي بَابِهِ إِنْ شَاءَ اللَّهُ تَعَالَى؛ فَإِذَا لَمْ يَفْعَلْ فَقَدْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُ اللَّهِ تَعَالَى؛ فَهُوَ مَرْدُودٌ؟ .

[بَابُ الْأَذَانِ] [مَسْأَلَةٌ لَا يَجُوزُ أَنْ يُؤَذَّنَ لِصَلَاةٍ قَبْلَ دُخُولِ وَقْتِهَا إِلَّا صَلَاةَ الصُّبْحِ فَقَطْ]

٣١٤ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُؤَذَّنَ لِصَلَاةٍ قَبْلَ دُخُولِ وَقْتِهَا إِلَّا صَلَاةَ الصُّبْحِ فَقَطْ، فَإِنَّهُ يَجُوزُ أَنْ يُؤَذَّنَ لَهَا قَبْلَ طُلُوعِ الْفَجْرِ الثَّانِي بِمِقْدَارِ مَا يُتِمُّ الْمُؤَذِّنُ أَذَانَهُ وَيَنْزِلُ مِنْ الْمَنَارِ أَوْ مِنْ الْعُلُوِّ وَيَصْعَدُ مُؤَذِّنٌ آخَرُ وَيَطْلُعُ الْفَجْرُ قَبْلَ ابْتِدَاءِ الثَّانِي فِي الْأَذَانِ، وَلَا

the commencement of the second adhān. An obligatory second adhān after the emergence of dawn is required for the Fajr prayer, as the initial adhān performed before dawn does not suffice, being an adhān for suḥūr rather than an adhān for the prayer.

بُدَّ لَهَا مِنْ أَذَانٍ ثَانٍ بَعْدَ الْفَجْرِ، وَلَا يُجْزِئُ الْأَذَانُ الَّذِي كَانَ قَبْلَ الْفَجْرِ، لِأَنَّهُ أَذَانُ سُحُورٍ، لَا أَذَانٌ لِلصَّلَاةِ.

L5770 It is not permissible for the call to prayer to be made before the time we have mentioned. It has been narrated to us through the chain of Muḥammad ibn al-Muthannā from ʿAbd al-Raḥmān ibn Mahdī from ʿAbd al-Raḥmān ibn Muḥammad al-Muḥāribī from Ismāʿīl ibn Muslim: I said to al-Ḥasan al-Baṣrī, "O Abā Saʿīd, a man gives the call to prayer before dawn to wake people up?" He became angry and said, "Obstinate idlers! Had ʿUmar ibn al-Khaṭṭāb caught them, he would have made their sides sore. Whoever gives the call to prayer before dawn - indeed, the people of that mosque prayed with the iqāmah alone, with no call to prayer in it."

وَلَا يَجُوزُ أَنْ يُؤَذِّنَ لَهَا قَبْلَ الْمِقْدَارِ الَّذِي ذَكَرْنَا، فَرُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مُحَمَّدٍ الْمُحَارِبِيِّ عَنْ إِسْمَاعِيلَ بْنِ مُسْلِمٍ، قُلْتُ لِلْحَسَنِ الْبَصْرِيِّ: يَا أَبَا سَعِيدٍ، الرَّجُلُ يُؤَذِّنُ قَبْلَ الْفَجْرِ يُوقِظُ النَّاسَ؟ فَغَضِبَ، وَقَالَ عُلُوجٌ فِرَاغٌ لَوْ أَدْرَكَهُمْ عُمَرُ بْنُ الْخَطَّابِ لَأَوْجَعَ جُنُوبَهُمْ مَنْ أَذَّنَ قَبْلَ الْفَجْرِ فَإِنَّمَا صَلَّى أَهْلُ ذَلِكَ الْمَسْجِدِ بِإِقَامَةٍ لَا أَذَانَ فِيهِ.

L5771 And through him to Muhammad ibn al-Muthannā, from ʿAbd al-Raḥmān ibn Mahdī from Sufyān al-Thawrī from al-Ḥasan ibn ʿAmr from Fuḍayl from Ibrāhīm al-Nakhaʿī: that he disliked the *adhan* being called before Fajr.

وَبِهِ إِلَى مُحَمَّدِ بْنِ الْمُثَنَّى: عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْحَسَنِ بْنِ عَمْرٍو عَنْ فُضَيْلٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ: أَنَّهُ كَانَ يَكْرَهُ أَنْ يُؤَذَّنَ قَبْلَ الْفَجْرِ.

L5772–5773 From Wakīʿ via Sharīk via ʿAlī ibn ʿAlī via Ibrāhīm al-Nakhaʿī, who said: Alqamah ibn Qays heard a Mu'adhdhin calling the adhān prematurely at night, so he remarked: "This person has opposed a practice from the Sunnah of the Companions of Allah's Messenger (peace and blessings be upon him). Had he slept on his bed, it would have been better for him?" Through another chain via Zubayd al-Yamī from Ibrāhīm al-Nakhaʿī, who said: "When a Mu'adhdhin called the adhān at night, they would tell him: 'Fear Allah and repeat your call.'" ʿAlī commented: "This account relates to the Companions (may Allah be pleased with them) and the eminent Followers." It was transmitted to us via Abū Dāwūd's chain: Ayyūb ibn Manṣūr narrated to us, Shuʿayb ibn Ḥarb narrated to us from ʿAbd al-ʿAzīz ibn Abī Rawād from Nāfiʿ, the freed slave of Ibn ʿUmar (may Allah be pleased with him), from a Mu'adhdhin of ʿUmar ibn al-Khaṭṭāb (may Allah be pleased with him) named Masrūḥ, who called the adhān before dawn. ʿUmar then ordered him to proclaim: "Listen! The servant has slept!" Through another chain via ʿAbd al-Raḥmān ibn Mahdī from Sufyān al-Thawrī from Abū Isḥāq al-Sabīʿī from

وَعَنْ وَكِيعٍ عَنْ شَرِيكٍ عَنْ عَلِيِّ بْنِ عَلِيٍّ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: سَمِعَ عَلْقَمَةُ بْنُ قَيْسٍ مُؤَذِّنًا بِلَيْلٍ فَقَالَ: لَقَدْ خَالَفَ هَذَا سُنَّةً مِنْ سُنَّةِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَوْ نَامَ عَلَى فِرَاشِهِ لَكَانَ خَيْرًا لَهُ؟ وَمِنْ طَرِيقِ زُبَيْدٍ الْيَامِيِّ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانُوا إِذَا أَذَّنَ الْمُؤَذِّنُ بِلَيْلٍ قَالُوا لَهُ: اتَّقِ اللَّهَ، وَأَعِدْ أَذَانَكَ قَالَ عَلِيٌّ: هَذِهِ حِكَايَةٌ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَأَكَابِرِ التَّابِعِينَ -: رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد: ثنا أَيُّوبُ بْنُ مَنْصُورٍ ثنا شُعَيْبُ بْنُ حَرْبٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ أَبِي رَوَّادٍ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ عَنْ مُؤَذِّنٍ لِعُمَرَ بْنِ الْخَطَّابِ يُقَالُ لَهُ: مَسْرُوحٌ، أَذَّنَ قَبْلَ الصُّبْحِ فَأَمَرَهُ عُمَرُ بِأَنْ يُنَادِيَ: أَلَا إِنَّ الْعَبْدَ نَامَ. وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ

عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ الْأَسْوَدِ بْنِ يَزِيدَ قَالَ قُلْت لِعَائِشَةَ أُمِّ الْمُؤْمِنِينَ: مَتَى تُوتِرِينَ؟ قَالَتْ: بَيْنَ الْأَذَانِ وَالْإِقَامَةِ، وَمَا كَانُوا يُؤَذِّنُونَ حَتَّى يُصْبِحُوا.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ: ثنا عُبَيْدُ اللَّهِ بْنُ عُمَرَ أَخْبَرَنِي نَافِعٍ قَالَ: مَا كَانُوا يُؤَذِّنُونَ حَتَّى يَطْلُعَ الْفَجْرُ فَهَذِهِ أَقْوَالُ أَئِمَّةِ أَهْلِ الْمَدِينَةِ: عُمَرَ بْنِ الْخَطَّابِ، وَعَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَنَافِعٍ، وَغَيْرِهِمْ، وَهُمْ أَوْلَى بِالِاتِّبَاعِ مِمَّنْ جَاءَ بَعْدَهُمْ فَوَجَدَ عَمَلًا لَا يُدْرَى أَصْلُهُ، وَلَا يَجُوزُ فِيهِ دَعْوَى نَقْلِ التَّوَاتُرِ عَنْ مِثْلِهِ أَصْلًا؛ لِأَنَّ الرِّوَايَاتِ عَنْ هَؤُلَاءِ الثِّقَاتِ مُبْطِلَةٌ لِهَذِهِ الدَّعْوَى الَّتِي لَا تَصِحُّ، وَلَا يَعْجِزُ عَنْهَا أَحَدٌ؟ .

وَالَّذِي ذَكَرْنَا هُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَقَالَ مَالِكٌ وَالْأَوْزَاعِيُّ وَالشَّافِعِيُّ: يُؤَذَّنُ لِصَلَاةِ الصُّبْحِ بِلَيْلٍ، وَلَا يُؤَذَّنُ لِغَيْرِهَا إلَّا بَعْدَ دُخُولِ الْوَقْتِ.

[قَالَ عَلِيٌّ: احْتَجَّ هَؤُلَاءِ بِالْأَخْبَارِ الثَّابِتَةِ مِنْ أَنَّ بِلَالًا كَانَ يُؤَذِّنُ بِلَيْلٍ] قَالَ عَلِيٌّ: وَهَذَا حَقٌّ، إلَّا أَنَّهُ كَمَا ذَكَرْنَا مِنْ أَنَّهُ لَمْ يَكُنْ أَذَانَ الصَّلَاةِ، وَلَا قَبْلَ الْفَجْرِ بِلَيْلٍ طَوِيلٍ، وَكَانَ يُؤَذِّنُ آخَرُ بَعْدَ طُلُوعِ الْفَجْرِ.

بُرْهَانُ ذَلِكَ -: مَا حَدَّثَنَاهُ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَحْمَدُ بْنُ يُونُسَ ثنا زُهَيْرُ بْنُ مُعَاوِيَةَ ثنا سُلَيْمَانُ التَّيْمِيُّ عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَمْنَعَنَّ أَحَدَكُمْ أَذَانُ بِلَالٍ مِنْ سَحُورِهِ فَإِنَّهُ يُؤَذِّنُ أَوْ يُنَادِي بِلَيْلٍ لِيَرْجِعَ قَائِمُكُمْ، وَيُنَبِّهَ نَائِمَكُمْ» .

al-Aswad ibn Yazīd, who said: "I asked ʿĀ'ishah, the Mother of the Believers: 'When do you pray Witr?' She replied: 'Between the adhān and the iqāmah, for they would not give the adhān until dawn had broken.'"

L5774–5776 And through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān: ʿUbayd Allāh ibn ʿUmar narrated to us, informing me from Nāfiʿ, who said: "They would not give the call to prayer until dawn appeared." These are the statements of the authorities of the people of Medina: ʿUmar ibn al-Khaṭṭāb, ʿĀ'ishah the Mother of the Believers, Nāfiʿ, and others. They are more worthy of being followed than those who came after them, who found a practice whose origin is unknown, and it is impermissible to claim its transmission through tawātur in such a matter at all. For the narrations from these reliable authorities invalidate these. The claim that is not valid, and no one is unable to assert it?

L5777 The position we have cited is that of Abū Ḥanīfah and Sufyān al-Thawrī. Mālik, al-Awzāʿī, and al-Shāfiʿī hold the view: The adhan for the Fajr prayer is given before dawn, while for other prayers it is only given after the time begins.

L5778 Ali said: These individuals have cited the authentic narrations that Bilal used to perform the adhan at night. Ali said: This is correct, except that—as we mentioned—it was neither the canonical adhan for prayer nor given long before dawn. Another person would perform the adhan after the onset of dawn.

L5779 The evidence for this is what was narrated to us by ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid, from Ibrāhīm ibn Aḥmad, from al-Farbarī, from al-Bukhārī, from Aḥmad ibn Yūnus, from Zuhayr ibn Muʿāwiyah, from Sulaymān al-Taymī, from Abū ʿUthmān al-Nahdī, from ʿAbd Allāh ibn Masʿūd, that the Prophet—peace be upon him—said: "Let not Bilāl's call prevent any of you from taking suhoor, for he gives the call to prayer or announces at night to signal those awake to prepare, and to rouse those who are asleep."

L5780–5782 Abdullah ibn Rabee' narrated to us, on the authority of Muhammad ibn Mu'awiyah, who narrated from Ahmad ibn Shu'ayb, from Ya'qub ibn Ibrahim,

from Hafs, from ‘Ubaydullah ibn ‘Umar, from al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq, from ‘Aishah Umm al-Mu’minin, who said: The Messenger of Allah ﷺ said, “When Bilal gives the adhan, then eat.” “And drink until Ibn Umm Maktum gives the call to prayer?” I said: “There was nothing between them except that the one would descend and the other ascend.”

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ ثنا حَفْصٌ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ [الصِّدِّيقِ] عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَذَّنَ بِلَالٌ فَكُلُوا وَاشْرَبُوا حَتَّى يُؤَذِّنَ ابْنُ أُمِّ مَكْتُومٍ؟ قُلْتُ: وَلَمْ يَكُنْ بَيْنَهُمَا إلَّا أَنْ يَنْزِلَ هَذَا وَيَصْعَدَ هَذَا» .

L5783 Abdullah ibn Rabi’ narrated to us: Muhammad ibn Ishaq ibn as-Sulaym narrated to us, from Ibn al-A’rabi, from Abu Dawud Musa ibn Isma’il, from Hammad ibn Salamah, from Ayyub as-Sikhtiyani, from Nafi’, from Ibn Umar, who said: “Bilal gave the call to prayer before dawn had broken, so the Messenger of Allah (peace and blessings be upon him) commanded him to return and proclaim: ’Verily, the servant has slept! Verily, the servant has slept!’ He therefore returned and proclaimed: ’Verily, the servant has slept!’”

وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد مُوسَى بْنُ إِسْمَاعِيلَ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: «إنَّ بِلَالًا أَذَّنَ قَبْلَ طُلُوعِ الْفَجْرِ، فَأَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَرْجِعَ فَيُنَادِيَ: أَلَا إنَّ الْعَبْدَ نَامَ، أَلَا إنَّ الْعَبْدَ نَامَ، فَرَجَعَ فَنَادَى: أَلَا إنَّ الْعَبْدَ نَامَ» ؟ .

L5784 Narrated by ‘Abd al-Raḥmān ibn ‘Abd Allāh al-Hamdānī, narrated by Ibrāhīm ibn Aḥmad al-Balkhī, narrated by al-Farabrī, narrated by al-Bukhārī, narrated by Quṭaybah, narrated by Ismā‘īl ibn Ja‘far from Ḥumayd from Anas: “When the Prophet—may Allah’s peace and blessings be upon him—led us in battle against a people, he would not initiate an attack until dawn had broken and he had waited to ascertain. If he heard the adhān, he would hold back from them, but if he did not hear the adhān, he would attack them.” ‘Alī said: “This confirms that the adhān for the [Fajr] prayer is not permissible to occur before dawn.”

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ الْهَمْدَانِيُّ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيُّ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا قُتَيْبَةُ ثنا إسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ حُمَيْدٍ عَنْ أَنَسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ إذَا غَزَا بِنَا قَوْمًا لَمْ يَكُنْ يُغِيرُ بِنَا حَتَّى يُصْبِحَ وَيَنْظُرَ، فَإِنْ سَمِعَ أَذَانًا كَفَّ عَنْهُمْ، وَإِنْ لَمْ يَسْمَعْ أَذَانًا أَغَارَ عَلَيْهِمْ» . قَالَ عَلِيٌّ: فَصَحَّ أَنَّ الْأَذَانَ لِلصَّلَاةِ لَا يَجُوزُ أَنْ يَكُونَ قَبْلَ الْفَجْرِ.

L5785 We have also narrated it through the chain of Hafsah and Aisha—the two Mothers of the Believers—thus constituting a tawātur transmission that necessitates definitive knowledge.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ حَفْصَةَ، وَعَائِشَةَ: أُمَّيْ الْمُؤْمِنِينَ، فَصَارَ نَقْلَ تَوَاتُرٍ يُوجِبُ الْعِلْمَ.

L5786 And from Malik ibn al-Huwayrith and Salamah al-Jarmi—also transmitted with a connected chain—it has never been established in any of the narrations from the Companions they invoked as evidence, nor in others, that the Prophet (peace be upon him) deemed that call sufficient for the dawn prayer.

وَعَنْ مَالِكِ بْنِ الْحُوَيْرِثِ، وَسَلَمَةَ الْجَرْمِيِّ مُسْنَدًا أَيْضًا، وَلَمْ يَأْتِ قَطُّ فِي شَيْءٍ مِنْ الْآثَارِ الَّتِي احْتَجُّوا بِهَا، وَلَا غَيْرِهَا أَنَّهُ - عَلَيْهِ السَّلَامُ - اكْتَفَى بِذَلِكَ الْأَذَانِ لِصَلَاةِ

الصُّبْحِ؛ بَلْ فِي كُلِّهَا، وَفِي غَيْرِهَا أَنَّهُ كَانَ هُنَالِكَ أَذَانٌ آخَرُ بَعْدَ الْفَجْرِ، وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَمِنْ كِبَارِهِمْ مَنْ يَقُولُ: إِنَّ الْقِيَاسَ أَوْلَى مِنْ خَبَرِ الْوَاحِدِ.

L5787–5789 وَهَا هُنَا تَرَكُوا قِيَاسَ الْأَذَانِ لِلْفَجْرِ عَلَى الْأَذَانِ لِسَائِرِ الصَّلَوَاتِ، وَلَمْ يَتَعَلَّقُوا بِخَبَرٍ أَصْلًا - لَا صَحِيحٍ وَلَا سَقِيمٍ - فِي أَنَّ ذَلِكَ الْأَذَانَ يُجْزِئُ عَنْ آخِرِ لِصَلَاةِ الصُّبْحِ.

L5790 قَالَ عَلِيٌّ: وَيُقَالُ لِمَنْ رَأَى أَنَّ الْأَذَانَ لِصَلَاةِ الصُّبْحِ يُجْزِئُ قَبْلَ الْفَجْرِ: أَخْبِرْنَا عَنْ أَوَّلِ الْوَقْتِ الَّذِي يُجْزِئُ فِيهِ الْأَذَانُ لَهَا مِنَ اللَّيْلِ؟ فَإِنْ لَمْ يَجِدُوا حَدًّا فِي ذَلِكَ لَزِمَهُمْ أَنْ يُجْزِئَ إِثْرَ غُرُوبِ الشَّمْسِ؛ لِأَنَّهُ لَيْلٌ بِلَا شَكٍّ، وَهُمْ لَا يَقُولُونَ بِهَذَا؟ فَإِنْ قَالُوا: أَوَّلُ الْأَوْقَاتِ الَّتِي يُجْزِئُ فِيهَا الْأَذَانُ لِصَلَاةِ الصُّبْحِ مِنَ اللَّيْلِ هُوَ إِثْرَ نِصْفِ اللَّيْلِ الْأَوَّلِ؟ أَوْ قَالُوا: [هُوَ] فِي أَوَّلِ الثُّلُثِ الْآخِرِ مِنَ اللَّيْلِ؟ .

L5791 قُلْنَا لَهُمْ: هَذِهِ دَعْوَى مُفْتَقِرَةٌ إِلَى دَلِيلٍ، وَمِثْلُ هَذَا لَا يَحِلُّ الْقَوْلُ بِهِ عَلَى اللَّهِ تَعَالَى فِي دِينِهِ وَهُمْ يَقُولُونَ: إِنَّ وَقْتَ صَلَاةِ الْعَتَمَةِ يَمْتَدُّ إِلَى وَقْتِ طُلُوعِ الْفَجْرِ، وَيَرَوْنَ لِلْحَائِضِ تَطْهُرُ قَبْلَ الْفَجْرِ أَنْ تُصَلِّيَ الْعِشَاءَ الْآخِرَةَ وَالْمَغْرِبَ، فَقَدْ أَجَازُوا الْأَذَانَ لِصَلَاةِ الصُّبْحِ فِي وَقْتِ صَلَاةِ الْعَتَمَةِ، فَمِنْ أَيْنَ لَهُمْ أَنْ يَخُصُّوا بِذَلِكَ [بَعْضَ] وَقْتِ [صَلَاةِ] الْعَتَمَةِ دُونَ جَمِيعِ وَقْتِهَا؟ نَعَمْ وَوَقْتُ صَلَاةِ الْمَغْرِبِ أَيْضًا؟ .

L5792 فَإِنْ قَالُوا: لَا نُجِيزُ ذَلِكَ إِلَّا فِي آخِرِ اللَّيْلِ؟ قِيلَ لَهُمْ: وَمِنْ أَيْنَ لَكُمْ هَذَا؟ وَلَيْسَ هَذَا فِي شَيْءٍ مِنَ الْأَخْبَارِ إِلَّا الْخَبَرَ الَّذِي أَخَذْنَا بِهِ، وَهُوَ الَّذِي فِيهِ تَحْدِيدُ وَقْتِ ذَلِكَ الْأَذَانِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

Rather, in all such accounts and others, there was another call to prayer after dawn. The proponents of analogy—as they claim—include among their senior scholars those who say: "Analogy takes precedence over a solitary report (khabar al-wāḥid)."

L5787–5789 And here, they abandoned applying the juridical analogy of the adhan for other prayers to Fajr, nor did they rely on any report. Primarily—neither valid nor invalid—that this call to prayer suffices for the latter part of the dawn prayer.

L5790 Ali said: And it is said to those who hold that the call to prayer for dawn prayer suffices when performed before dawn: "Inform us of the earliest time within the night when the call to prayer for it becomes valid." If they find no defined boundary in this matter, it becomes incumbent upon them to validate it following sunset—since this is undeniably nighttime—yet do they not hold this view? If they were to say: "The earliest period within the night when the call to prayer for dawn prayer suffices is following the first half of the night," or if they were to say: "It is at the beginning of the final third of the night?"

L5791 We said to them: This claim requires evidence, and it is impermissible to assert such a thing about Allah the Exalted in His religion. Yet they say: The time for the ʿAtamah prayer (Isha) extends until the break of dawn, and they hold that a menstruating woman who becomes pure before dawn may pray the Isha prayer during the latter part of its time and Maghrib. Thus, they permit the adhan for Fajr prayer during the ʿAtamah prayer time. On what basis do they arbitrarily restrict this to only a portion of the ʿAtamah prayer's duration rather than its entirety? Moreover, what about the time for Maghrib prayer as well?

L5792 If they say, "We do not permit this except at the end of the night?" it is said to them: "From where do you derive this? This is not mentioned in any of the narrations except the one we have relied upon, which specifies the timing of that call to prayer. And success is from Allah, the Exalted."

L5793 **A juristic issue: The prescribed prayer performed in a**

congregation of two or more does not suffice unless accompanied by the adhan and the iqamah.

L5794–5796 Issue 315: A prescribed prayer performed in congregation (two or more people) is not valid without the adhan. And an iqamah (whether the prayer is performed within its prescribed time or made up due to sleep or forgetfulness, whenever it is made up) - travel and residing are treated equally in all such cases. If they pray any of those prayers without an adhan or iqamah, their prayer is invalid, except for Dhuhr and Asr at Arafah and Maghrib and Atamah at Muzdalifah. These two prayers are combined with a separate adhan for each prayer and one iqamah for both prayers together, based on the narrations concerning this.

L5797 Abd al-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: al-Farbarī narrated to us: al-Bukhari narrated to us: Muhammad ibn al-Muthanna narrated to us: Abd al-Wahhab—he is Ibn Abd al-Majid al-Thaqafi—narrated to us: Ayyub—he is al-Sikhtiyani—narrated to us from Abu Qilabah: Malik ibn al-Huwayrith said: "We came to the Messenger of Allah—peace and blessings be upon him—and he recounted the hadith, in which he—peace and blessings be upon him—said to them: 'Return to your families, dwell among them, teach them, and instruct them. Pray as you have seen me pray. When the time for prayer arrives, let one of you give the call to prayer, and let the eldest among you lead you in prayer.'"

L5798 We have also narrated it through a chain of transmission of utmost authenticity from Hammad ibn Zayd, from Ayyub al-Sakhtiyani, that 'Amr ibn Salamah al-Jarmi reported from his father—who was the delegate of his people to the Prophet, peace and blessings be upon him—that the Messenger of Allah, peace and blessings be upon him, said to him: "Pray such-and-such prayer [at such-and-such time] and pray such-and-such prayer at such-and-such time. When the prayer time arrives, let one of you call the adhan for you, and let the one who has memorized the most Qur'an lead you in prayer."

L5799–5800 Ali said: The obligation of the adhan was established as indispensable by these two reports, and it is only to be performed after the prayer's time

[مَسْأَلَةٌ لَا تُجْزِئُ صَلَاةُ فَرِيضَةٍ فِي جَمَاعَةِ اثْنَيْنِ فَصَاعِدًا إِلَّا بِأَذَانٍ وَإِقَامَةٍ]

٣١٥ - مَسْأَلَةٌ: وَلَا تُجْزِئُ صَلَاةُ فَرِيضَةٍ فِي جَمَاعَةٍ - اثْنَيْنِ فَصَاعِدًا - إِلَّا بِأَذَانٍ وَإِقَامَةٍ، سَوَاءٌ كَانَتْ فِي وَقْتِهَا، أَوْ كَانَتْ مَقْضِيَّةً لِنَوْمٍ عَنْهَا أَوْ لِنِسْيَانٍ، مَتَى قُضِيَتْ، السَّفَرُ وَالْحَضَرُ سَوَاءٌ فِي كُلِّ ذَلِكَ، فَإِنْ صَلَّى شَيْئًا مِنْ ذَلِكَ بِلَا أَذَانٍ وَلَا إِقَامَةٍ فَلَا صَلَاةَ لَهُمْ، حَاشَا الظُّهْرِ وَالْعَصْرِ بِعَرَفَةَ، وَالْمَغْرِبِ وَالْعَتَمَةِ بِمُزْدَلِفَةَ، فَإِنَّهُمَا يُجْمَعَانِ بِأَذَانٍ لِكُلِّ صَلَاةٍ، وَإِقَامَةٍ لِلصَّلَاتَيْنِ مَعًا لِلْأَثَرِ فِي ذَلِكَ.

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا عَبْدُ الْوَهَّابِ هُوَ ابْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ - ثنا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ عَنْ أَبِي قِلَابَةَ ثنا مَالِكُ بْنُ الْحُوَيْرِثِ قَالَ «أَتَيْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ الْحَدِيثَ، وَفِيهِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ لَهُمْ: ارْجِعُوا إِلَى أَهْلِيكُمْ فَأَقِيمُوا فِيهِمْ وَعَلِّمُوهُمْ وَمُرُوهُمْ، وَصَلُّوا كَمَا رَأَيْتُمُونِي أُصَلِّي، فَإِذَا حَضَرَتْ الصَّلَاةُ فَلْيُؤَذِّنْ لَكُمْ أَحَدُكُمْ وَلْيَؤُمَّكُمْ أَكْبَرُكُمْ» .

وَرُوِّينَاهُ أَيْضًا بِإِسْنَادٍ فِي غَايَةِ الصِّحَّةِ مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ أَنَّ عَمْرَو بْنَ سَلَمَةَ الْجَرْمِيَّ أَخْبَرَهُ عَنْ أَبِيهِ، وَكَانَ وَافِدَ قَوْمِهِ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: «صَلُّوا صَلَاةَ كَذَا [فِي حِينِ كَذَا] وَصَلُّوا صَلَاةَ كَذَا فِي حِينِ كَذَا فَإِذَا حَضَرَتْ الصَّلَاةُ فَلْيُؤَذِّنْ لَكُمْ أَحَدُكُمْ، وَلْيَؤُمَّكُمْ أَكْثَرُكُمْ قُرْآنًا» .

has commenced, applying generally to every prayer. The iqamah is likewise included in this ruling.

قَالَ عَلِيٌّ: فَصَحَّ بِهَذَيْنِ الْخَبَرَيْنِ وُجُوبُ الْأَذَانِ وَلَا بُدَّ، وَأَنَّهُ لَا يَكُونُ إِلَّا بَعْدَ حُضُورِ الصَّلَاةِ فِي وَقْتِهَا، عُمُومًا لِكُلِّ صَلَاةٍ، وَدَخَلَتْ الْإِقَامَةُ فِي هَذَا الْأَمْرِ.

L5801 As narrated to us by ʿAbdullāh ibn Rabīʿ via Ibn al-Sulaym, via Ibn al-Aʿrābī, via Abū Dāwūd, via ʿAbdullāh ibn Muḥammad al-Nufaylī, via Ibn ʿUlayyah (i.e., Ismāʿīl), via al-Jurayrī, via ʿAbdullāh ibn Buraydah, via ʿAbdullāh ibn Mughaffal, who said: The Messenger of Allah (peace and blessings be upon him) said, "Between every two adhāns there is a ṣalāh for whoever wishes."

كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ النُّفَيْلِيُّ ثنا ابْنُ عُلَيَّةَ هُوَ إِسْمَاعِيلُ عَنْ الْجُرَيْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ عَنْ عَبْدِ اللَّهِ بْنِ مُغَفَّلٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «بَيْنَ كُلِّ أَذَانَيْنِ صَلَاةٌ لِمَنْ شَاءَ» .

L5802 Moreover, it has been authentically established that he—peace be upon him—commanded Bilal to make the iqamah odd-numbered, as we will mention after this, if Allah, the Exalted, wills?

، وَأَيْضًا فَقَدْ صَحَّ «أَنَّهُ - عَلَيْهِ السَّلَامُ - أَمَرَ بِلَالًا بِأَنْ يُوتِرَ الْإِقَامَةَ» كَمَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى؟ .

L5803 Abd al-Rahman ibn Abdullah narrated to us: Ibrahim ibn Ahmad narrated: al-Farbari narrated: al-Bukhari narrated: Muhammad ibn Yusuf—he is al-Firyabi—narrated: Sufyan—he is al-Thawri—narrated from Khalid al-Khaddā' from Abu Qilabah from Malik ibn al-Huwayrith, who said: "Two men came to the Prophet (peace be upon him) intending to travel. The Prophet (peace be upon him) said: 'When you depart, let both of you give the call to prayer (*adhan*), then let both of you establish the *iqamah*, then let the eldest of you lead the prayer.'"

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُحَمَّدُ بْنُ يُوسُفَ هُوَ الْفِرْيَابِيُّ ثنا سُفْيَانُ هُوَ الثَّوْرِيُّ - عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ عَنْ مَالِكِ بْنِ الْحُوَيْرِثِ قَالَ: «أَتَى رَجُلَانِ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُرِيدَانِ السَّفَرَ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا خَرَجْتُمَا فَأَذِّنَا ثُمَّ أَقِيمَا ثُمَّ لِيَؤُمَّكُمَا أَكْبَرُكُمَا» .

L5804 If it is said: "This applies only during travel?" We reply: "No, rather it pertains to departure." This entails departing from him (peace be upon him) due to their two matters. All of this constitutes a general ruling applicable to every obligatory prayer—whether missed (as we mentioned) or unmissed.

فَإِنْ قِيلَ: إنَّمَا هَذَا فِي السَّفَرِ؟ قُلْنَا: لَا، بَلْ فِي الْخُرُوجِ، وَهَذَا يَقْتَضِي الْخُرُوجَ مِنْ عِنْدِهِ - عَلَيْهِ السَّلَامُ - لِشَأْنِهِمَا، وَهَذَا كُلُّهُ عُمُومٌ لِكُلِّ صَلَاةِ فَرْضٍ مَقْضِيَّةٍ - كَمَا ذَكَرْنَا - أَوْ غَيْرِ مَقْضِيَّةٍ.

L5805–5807 And there has also come in this regard a clarification that dispels obfuscation and ambiguity, as narrated to us by ʿAbdullāh ibn Rabīʿ, who narrated to us Muḥammad ibn Muʿāwiyah, who narrated to us Aḥmad ibn Shuʿayb, who narrated to us ʿAmr ibn ʿAlī, who narrated to us Yaḥyā ibn Saʿīd al-Qaṭṭān, who narrated to us Ibn Abī Dhiʾb, who narrated to us Saʿīd ibn Abī Saʿīd al-

وَقَدْ جَاءَ فِي هَذَا أَيْضًا بَيَانٌ يَرْفَعُ التَّمْوِيهَ وَالْإِيهَامَ كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ ثنا ابْنُ أَبِي ذِئْبٍ ثنا سَعِيدُ بْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنْ

Maqburī, from ʿAbd al-Raḥmān ibn Abī Saʿīd al-Khudrī, from his father, who said: “The polytheists occupied us to the point that we missed the Dhuhr prayer until the sun had set on the day of the Battle of the Trench.” He said: “That was before the revelation about fighting—[what was sent down]—was revealed. Then Allah, the Most High, revealed: {And Allah sufficed the believers against fighting} [Al-Aḥzāb:25]. Thereupon, the Messenger of Allah—peace and blessings of Allah be upon him—commanded Bilāl to call the Adhān for Zuhr, and he prayed it at its time; then he called the Adhān for Asr and prayed it at its time; then he called the Adhān for Maghrib and prayed it at its time?” ʿAlī said: “This narration is superior to all others reported regarding this incident, and accepting the additional narration is obligatory.”[22]

أَبِيهِ قَالَ: «شَغَلَنَا الْمُشْرِكُونَ عَنْ صَلَاةِ الظُّهْرِ حَتَّى غَرُبَتْ الشَّمْسُ يَوْمَ الْخَنْدَقِ، قَالَ: وَذَلِكَ قَبْلَ أَنْ يَنْزِلَ فِي الْقِتَالِ [مَا نَزَلَ] فَأَنْزَلَ اللَّهُ تَعَالَى: {وَكَفَى اللَّهُ الْمُؤْمِنِينَ الْقِتَالَ} [الأحزاب: ٢٥] فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِلَالًا فَأَذَّنَ لِلظُّهْرِ فَصَلَّاهَا فِي وَقْتِهَا، ثُمَّ أَذَّنَ لِلْعَصْرِ فَصَلَّاهَا فِي وَقْتِهَا ثُمَّ أَذَّنَ لِلْمَغْرِبِ فَصَلَّاهَا فِي وَقْتِهَا؟» قَالَ عَلِيٌّ: وَهَذَا الْخَبَرُ زَائِدٌ عَلَى كُلِّ خَبَرٍ وَرَدَ فِي هَذِهِ الْقِصَّةِ، وَالْأَخْذُ بِالزِّيَادَةِ وَاجِبٌ.

L5808 It was narrated to us from ʿAbd al-Razzāq who narrated to us from Ibn Jurayj: I said to ʿAṭāʾ, “I prayed individually but forgot to perform the *iqāmah* for it.” He replied, “Repeat your prayer from the beginning: perform the *iqāmah* properly, then repeat the prayer.” Through the chain of Muḥammad ibn al-Muthannā: Ibn Fuḍayl narrated to us from Layth ibn Abī Sulaym from Mujāhid, who said: “If you forget the *iqāmah* during a journey, repeat the prayer.”

وَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: قُلْت لِعَطَاءٍ: صَلَّيْتُ لِنَفْسِي الصَّلَاةَ فَنَسِيتُ أَنْ أُقِيمَ لَهَا؟ قَالَ: عُدْ لِصَلَاتِك أَقِمْ لَهَا ثُمَّ أَعِدْ، وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى: ثنا ابْنُ فُضَيْلٍ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ مُجَاهِدٍ قَالَ: إذَا نَسِيتَ الْإِقَامَةَ فِي السَّفَرِ فَأَعِدْ الصَّلَاةَ.

L5809 Among those who affirmed the obligation of the adhan and iqamah as a binding religious duty were Abu Sulayman and his companions. We know of no valid argument whatsoever for those who deny its obligatory nature. If there were no evidence beyond the Messenger of Allah—peace and blessings be upon him—declaring lawful the blood of those among whom no adhan was heard, their wealth, and their captives, this alone would suffice to establish its obligatory nature as a duty. This represents a definitively established Ijma (consensus of scholars) from all the Companions who were with him—may Allah be pleased with them—without doubt. This is the indisputably authentic consensus, not the spurious claims anyone might assert if not restrained by piety or moral restraint—and success comes solely from Allah, the Exalted.

وَمِمَّنْ قَالَ بِوُجُوبِ الْأَذَانِ وَالْإِقَامَةِ فَرْضًا: أَبُو سُلَيْمَانَ، وَأَصْحَابُهُ، وَمَا نَعْلَمُ لِمَنْ لَمْ يَرَ ذَلِكَ فَرْضًا حُجَّةً أَصْلًا " وَلَوْ لَمْ يَكُنْ إلَّا اسْتِحْلَالُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دِمَاءَ مَنْ لَمْ يَسْمَعْ عِنْدَهُمْ أَذَانًا، وَأَمْوَالَهُمْ وَسَبْيَهُمْ -: لَكَفَى فِي وُجُوبِ فَرْضِ ذَلِكَ -، وَهُوَ إجْمَاعٌ مُتَيَقَّنٌ مِنْ جَمِيعِ مَنْ كَانَ مَعَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بِلَا شَكٍّ، فَهَذَا هُوَ الْإِجْمَاعُ الْمَقْطُوعُ عَلَى صِحَّتِهِ لَا الدَّعَاوَى الْكَاذِبَةُ الَّتِي لَا يَعْجِزُ أَحَدٌ عَنْ ادِّعَائِهَا، إذَا لَمْ يَرْدَعْهُ عَنْ ذَلِكَ وَرَعٌ أَوْ حَيَاءٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يَلْزَمُ الْمُنْفَرِدَ أَذَانٌ وَلَا إقَامَةٌ]

[22] **Qur’an references (L5805):** Qur’an 33:25 (Al-Ahzab).

A legal issue: One praying alone is not required to perform the call to prayer (adhan) nor the preparatory call (iqamah).

٣١٦ - مَسْأَلَةٌ: وَلَا يَلْزَمُ الْمُنْفَرِدَ أَذَانٌ وَلَا إِقَامَةٌ فَإِنْ أَذَّنَ، وَأَقَامَ فَحَسَنٌ؛ [لِأَنَّ النَّصَّ لَمْ يَرِدْ بِإِيجَابِ الْأَذَانِ إِلَّا عَلَى الِاثْنَيْنِ فَصَاعِدًا، وَإِنَّمَا قُلْنَا: إِنْ فَعَلَ فَحَسَنٌ] ، لِأَنَّهُ ذَكَرَ اللَّهَ تَعَالَى، وَقَدْ يَدْعُو إِلَى الصَّلَاةِ مَنْ لَعَلَّهُ يَسْمَعُهُ مِنْ مُؤْمِنِي الْجِنِّ؛ فَلَا يَجُوزُ إِلَّا فِي الْوَقْتِ.

Issue 316: A person praying alone is not required to perform the *adhan* or *iqamah*. If he performs the *adhan* and *iqamah*, it is commendable [because the textual evidence only establishes the obligation of the *adhan* for two or more individuals, and we said: "If he does so, it is commendable"], since he has remembered Allah the Exalted and may call others to prayer... Perhaps it is heard by the believing jinn; thus, it is only permissible during the specified time.

[مَسْأَلَةٌ لَا يَلْزَمُ النِّسَاءَ فَرْضًا حُضُورُ الصَّلَاةِ الْمَكْتُوبَةِ فِي جَمَاعَةٍ]

A legal issue: Women are not obligated as a compulsory duty to attend the obligatory prayers in congregation.

٣١٧ - مَسْأَلَةٌ: وَلَا يَلْزَمُ النِّسَاءَ فَرْضًا حُضُورُ الصَّلَاةِ الْمَكْتُوبَةِ فِي جَمَاعَةٍ، وَهَذَا لَا خِلَافَ فِيهِ.

Issue 317: Women are not obligated as a compulsory duty to attend congregational obligatory prayers, and there is no disagreement on this matter.

وَلَا يَجُوزُ أَنْ تَؤُمَّ الْمَرْأَةُ الرَّجُلَ وَلَا الرِّجَالَ، وَهَذَا مَا لَا خِلَافَ فِيهِ، وَأَيْضًا فَإِنَّ النَّصَّ قَدْ جَاءَ بِأَنَّ الْمَرْأَةَ تَقْطَعُ صَلَاةَ الرَّجُلِ إِذَا فَاتَتْ أَمَامَهُ.

It is not permissible for a woman to lead a man or men in prayer, and there is no disagreement regarding this matter. Furthermore, the textual evidence states that a woman nullifies a man's prayer if she passes directly in front of him during prayer.

عَلَى مَا نَذْكُرُ بَعْدَ هَذَا فِي بَابِهِ إِنْ شَاءَ اللَّهُ تَعَالَى، مَعَ قَوْلِهِ - عَلَيْهِ السَّلَامُ - «الْإِمَامُ جُنَّةٌ» وَحُكْمُهُ - عَلَيْهِ السَّلَامُ - بِأَنْ تَكُونَ وَرَاءَ الرَّجُلِ وَلَا بُدَّ فِي الصَّلَاةِ، وَأَنَّ الْإِمَامَ يَقِفُ أَمَامَ الْمَأْمُومِينَ لَا بُدَّ أَوْ مَعَ الْمَأْمُومِ فِي صَفٍّ وَاحِدٍ عَلَى مَا نَذْكُرُ إِنْ شَاءَ اللَّهُ تَعَالَى فِي مَوَاضِعِهِ - وَمِنْ هَذِهِ النُّصُوصِ يَثْبُتُ بُطْلَانُ إِمَامَةِ الْمَرْأَةِ لِلرَّجُلِ، وَلِلرِّجَالِ يَقِينًا

Based on what we will mention afterward in its chapter, God willing, the Exalted, along with his statement, peace be upon him—"The Imam is a shield"—and his ruling, peace be upon him, that she must necessarily stand behind a man in prayer, and that the Imam must necessarily stand in front of the followers or necessarily in the same row as the followers, as we will mention, God willing, the Exalted, in its respective places—from these texts, the invalidity of a woman leading a man or men is established with certainty.

[مَسْأَلَةٌ حَضَرَتْ الْمَرْأَةُ الصَّلَاةَ مَعَ الرِّجَالِ]

A case where a woman attended the prayer with men.

318 - Issue: If a woman attends prayer with men, it is acceptable, for

it is authentically established that women used to attend prayers with the Messenger of Allah—peace be upon him—and he approved of it.

٣١٨ - مَسْأَلَةٌ: فَإِنْ حَضَرَتْ الْمَرْأَةُ الصَّلَاةَ مَعَ الرِّجَالِ فَحَسَنٌ؛ لِمَا قَدْ صَحَّ مِنْ أَنَّهُنَّ كُنَّ يَشْهَدْنَ الصَّلَاةَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ عَالِمٌ بِذَلِكَ.

L5820 **Issue: The women prayed in congregation, and a woman from among them led them in prayer.**

[مَسْأَلَةٌ صَلَّيْنَ جَمَاعَةً وَأَمَّتْهُنَّ امْرَأَةٌ مِنْهُنَّ]

L5821 If women pray in congregation with one of them leading them, this is good, for no scriptural evidence prohibits it, nor does one woman invalidate another's prayer, as per the Messenger of Allah's saying (peace be upon him): "The best rows for women are the last ones."

٣١٩ - مَسْأَلَةٌ: فَإِنْ صَلَّيْنَ جَمَاعَةً، وَأَمَّتْهُنَّ امْرَأَةٌ مِنْهُنَّ فَحَسَنٌ؛ لِأَنَّهُ لَمْ يَأْتِ نَصٌّ يَمْنَعُهُنَّ مِنْ ذَلِكَ، وَلَا يَقْطَعُ بَعْضُهُنَّ صَلَاةَ بَعْضٍ؛ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «خَيْرُ صُفُوفِ النِّسَاءِ آخِرُهَا» .

L5822 It was narrated to us through the chain of Abdur-Rahman ibn Mahdi from Sufyan al-Thawri, from Maysarah ibn Habib al-Nahdi—he is Abu Khazim—from Raytah al-Hanafiyyah: that Aisha, the Mother of the Believers, led them in the prescribed prayer.

[رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ] عَنْ مَيْسَرَةَ بْنِ حَبِيبٍ النَّهْدِيِّ هُوَ أَبُو خَازِمٍ - عَنْ رَيْطَةَ الْحَنَفِيَّةِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَمَّتْهُنَّ فِي صَلَاةٍ الْفَرِيضَةِ.

L5823–5824 From Yahya ibn Sa'id al-Qattan from Ziyad ibn Lahiq from Tamimah bint Salamah from Aisha, the Mother of the Believers: that she led women in the obligatory Maghrib prayer, stood among them, and recited the Quran aloud. And from Abd al-Razzaq from Sufyan al-Thawri from Ammar al-Duhni from Hujayrah bint Husayn, who said: Umm Salamah, the Mother of the Believers, led us in the Asr prayer and stood among us. And from Yahya ibn Sa'id al-Qattan from Sa'id ibn Abi Arubah from Qatadah from Umm al-Hasan ibn Abi al-Hasan — her name is Khayrah, trustworthy and well-known — who narrated to them: that Umm Salamah, the Mother of the Believers, used to lead them in prayer during Ramadan and would stand among them in the row.

وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ زِيَادِ بْنِ لَاحِقٍ عَنْ تَمِيمَةَ بِنْتِ سَلَمَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّهَا أَمَّتْ نِسَاءً فِي الْفَرِيضَةِ فِي الْمَغْرِبِ، وَقَامَتْ وَسَطَهُنَّ، وَجَهَرَتْ بِالْقِرَاءَةِ؟ وَعَنْ [عَبْدِ الرَّزَّاقِ] عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمَّارٍ الدُّهْنِيِّ عَنْ حُجَيْرَةَ بِنْتِ حُصَيْنٍ قَالَتْ: أَمَّتْنَا أُمُّ سَلَمَةَ أُمُّ الْمُؤْمِنِينَ فِي صَلَاةِ الْعَصْرِ، وَقَامَتْ بَيْنَنَا وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سَعِيدِ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ أُمِّ الْحَسَنِ بْنِ أَبِي الْحَسَنِ وَهِيَ خَيْرَةُ -، هُوَ اسْمُهَا، ثِقَةٌ مَشْهُورَةٌ - حَدَّثَتْهُمْ: أَنَّ أُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ كَانَتْ تَؤُمُّهُنَّ فِي رَمَضَانَ، وَتَقُومُ مَعَهُنَّ فِي الصَّفِّ.

L5825–5827 And from Abd al-Razzaq from Ibn Jurayj: Yahya ibn Sa'id al-Ansari informed me that Aisha, the Mother of the Believers, used to lead women [in voluntary prayers], standing in the middle of their row. And from Abd al-Razzaq from

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ كَانَتْ تَؤُمُّ النِّسَاءَ [فِي التَّطَوُّعِ] وَتَقُومُ وَسْطَهُنَّ فِي الصَّفِّ؟ وَعَنْ عَبْدِ الرَّزَّاقِ

عَنْ إِبْرَاهِيمَ بْنِ مُحَمَّدٍ عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: تَؤُمُّ الْمَرْأَةُ النِّسَاءَ فِي التَّطَوُّعِ تَقُومُ وَسْطَهُنَّ؟ وَرُوِيَ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ يَأْمُرُ جَارِيَةً لَهُ تَؤُمُّ [نِسَاءَهُ] فِي لَيَالِي رَمَضَانَ. وَمِنْ التَّابِعِينَ: [رُوِّينَا] عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ، وَعَنْ ابْنِ مُجَاهِدٍ عَنْ أَبِيهِ، عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ وَالشَّعْبِيِّ، وَعَنْ وَكِيعٍ عَنْ الرَّبِيِّعِ عَنْ الْحَسَنِ الْبَصْرِيِّ - قَالُوا كُلُّهُمْ بِإِجَازَةِ إمَامَةِ الْمَرْأَةِ لِلنِّسَاءِ وَتَقُومُ وَسَطَهُنَّ.

Ibrahim ibn Muhammad from Dawud ibn al-Husayn from Ikrimah from Ibn Abbas, who said: A woman leads women in voluntary prayers, standing in their midst. It was reported from Ibn Umar that he used to command a female servant of his to lead [his women] during the nights of Ramadan. Among the Tabi'in: [It has been narrated to us] from Ibn Jurayj from Ata', and from Ibn Mujahid from his father. From Sufyan al-Thawri, who narrated from Ibrahim al-Nakha'i and al-Sha'bi, and from Waki', who narrated from al-Rubayyi', who narrated from al-Hasan al-Basri - they all affirmed the permissibility of a woman leading women in prayer, with her standing among them.

قَالَ عَطَاءٌ وَمُجَاهِدٌ وَالْحَسَنُ: فِي الْفَرِيضَةِ وَالتَّطَوُّعِ، وَلَمْ يَمْنَعْ مِنْ ذَلِكَ غَيْرُهُمْ.

L5828 Aṭā, Mujāhid, and al-Ḥasan ruled regarding both obligatory and supererogatory acts, and no others besides them prevented this.

وَهُوَ قَوْلُ قَتَادَةَ وَالْأَوْزَاعِيِّ وَسُفْيَانَ الثَّوْرِيِّ وَإِسْحَاقَ، وَأَبِي ثَوْرٍ وَجُمْهُورِ أَصْحَابِ الْحَدِيثِ.

L5829 And it is the opinion of Qatādah, al-Awzāʿī, Sufyān al-Thawrī, Ishāq, Abū Thawr, and the majority of the proponents of Ḥadīth.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَدَاوُد، وَأَصْحَابِهِمْ.

L5830 And this is the opinion of Abū Ḥanīfah, al-Shāfiʿī, Aḥmad ibn Ḥanbal, Dāwūd, and their companions.

وَقَالَ سُلَيْمَانُ بْنُ يَسَارٍ، وَمَالِكُ بْنُ أَنَسٍ: لَا تَؤُمُّ الْمَرْأَةُ النِّسَاءَ فِي فَرْضٍ وَلَا نَافِلَةٍ -، وَهَذَا قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ، وَخِلَافٌ لِطَائِفَةٍ مِنْ الصَّحَابَةِ لَا يُعْلَمُ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ، وَهُمْ يُشَيِّعُونَ هَذَا إذَا وَافَقَ تَقْلِيدَهُمْ، بَلْ صَلَاةُ الْمَرْأَةِ بِالنِّسَاءِ دَاخِلٌ تَحْتَ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ صَلَاةَ الْجَمَاعَةِ تَفْضُلُ صَلَاةَ الْفَذِّ بِسَبْعٍ وَعِشْرِينَ دَرَجَةً» .

L5831 Sulayman ibn Yasar and Malik ibn Anas said: A woman should not lead women in prayer, whether in obligatory or supererogatory prayer. This is an opinion unsupported by evidence of its validity and contradicts a group of Companions—may Allah be pleased with them—with no known opposition from other Companions. They advocate this view when it aligns with their adherence (to a school), though a woman leading women in prayer falls under the statement of Allah's Messenger—peace and blessings be upon him: "The congregational prayer surpasses individual prayer in merit by twenty-seven degrees."

فَإِنْ قِيلَ: فَهَلَّا جَعَلْتُمْ ذَلِكَ فَرْضًا، بِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إذَا حَضَرَتْ الصَّلَاةُ فَلْيَؤُمَّكُمْ أَكْبَرُكُمْ» ؟ قُلْنَا لَوْ كَانَ هَذَا لَكَانَ جَائِزًا أَنْ تَؤُمَّنَا، وَهَذَا مُحَالٌ، وَهَذَا خِطَابٌ

L5832 If it is said: Why did you not consider that an obligation, based on his statement—peace be upon him—"When prayer time arrives, let the eldest among you lead the prayer"? We respond: Had this been applicable, it would be permissible for her to lead us in prayer, and this is impossible. This address from him—peace be upon him—does not in any way pertain to women without a man present among them, for it constitutes an unequivocal grammatical

error in Arabic, and it is utterly impossible and inconceivable that he—peace be upon him—would commit such an error.

منْهُ - عَلَيْهِ السَّلَامُ - لَا يَتَوَجَّهُ أَلْبَتَّةَ إلَى نِسَاءٍ لَا رَجُلَ مَعَهُنَّ، لِأَنَّهُ لَحْنٌ فِي الْعَرَبِيَّةِ مُتَيَقَّنٌ، وَمِنْ الْمُحَالِ الْمُمْتَنِعِ أَنْ يَكُونَ - عَلَيْهِ السَّلَامُ - يَلْحَنُ؟ .

A juristic issue: Women are not obligated to perform the adhan (call to prayer) or the iqamah (second call to prayer).

[مَسْأَلَةٌ لَا أَذَانَ عَلَى النِّسَاءِ وَلَا إقَامَةَ عَلَى سَبِيلِ الْوُجُوبِ]

320 – Issue: Women are not to perform the *adhān* or *iqāmah*. If they do so, it is acceptable.

٣٢٠ - مَسْأَلَةٌ: وَلَا أَذَانَ عَلَى النِّسَاءِ وَلَا إقَامَةَ، فَإِنْ أَذَّنَّ، وَأَقَمْنَ فَحَسَنٌ.

320 – Issue: Women are not obligated to perform the *adhān* or *iqāmah*, but if they do so, then it is good.

بُرْهَانُ ذَلِكَ -: أَنَّ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْأَذَانِ إنَّمَا هُوَ لِمَنْ افْتَرَضَ عَلَيْهِمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الصَّلَاةَ فِي جَمَاعَةٍ، بِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «فَلْيُؤَذِّنْ لَكُمْ أَحَدُكُمْ وَلْيَؤُمَّكُمْ أَكْبَرُكُمْ» وَلَيْسَ النِّسَاءُ مِمَّنْ أُمِرْنَ بِذَلِكَ، فَإِذَا هُوَ قَدْ صَحَّ فَالْأَذَانُ ذِكْرُ اللَّهِ تَعَالَى، وَالْإِقَامَةُ كَذَلِكَ، فَهُمَا فِي وَقْتِهِمَا فِعْلٌ حَسَنٌ.

And it has been narrated to us from Ibn Jurayj from ʿAṭāʾ: "A woman may perform the iqāmah for herself." And Tāwūs said: "ʿĀʾishah, the Mother of the Believers, used to give the adhān and perform the iqāmah."

وَرُوِّينَا عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: تُقِيمُ الْمَرْأَةُ لِنَفْسِهَا، وَقَالَ طَاوُسٍ: كَانَتْ عَائِشَةُ أُمُّ الْمُؤْمِنِينَ تُؤَذِّنُ وَتُقِيمُ.

[Issue: Preventing Women and Female Slaves from Attending the Prayer (Ṣalāh) in the Mosque]

[مَسْأَلَةٌ مَنْعُ الْمَرْأَةِ وَالْأَمَةِ مِنْ حُضُورِ الصَّلَاةِ فِي الْمَسْجِدِ]

Issue 321: It is not permissible for a woman's guardian or the master of a female slave to prevent them from attending congregational prayer in the mosque if he knows they intend to pray. It is not permissible for them to go out wearing perfume or in fine garments. If she does so, he must prevent her. Their prayer in congregation is better than their prayer individually.

٣٢١ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِوَلِيِّ الْمَرْأَةِ، وَلَا لِسَيِّدِ الْأَمَةِ مَنْعُهُمَا مِنْ حُضُورِ الصَّلَاةِ فِي جَمَاعَةٍ فِي الْمَسْجِدِ، إذَا عَرَفَ أَنَّهُنَّ يُرِدْنَ الصَّلَاةَ وَلَا يَحِلُّ لَهُنَّ أَنْ يَخْرُجْنَ مُتَطَيِّبَاتٍ، وَلَا فِي ثِيَابٍ حِسَانٍ، فَإِنْ فَعَلَتْ فَلْيَمْنَعْهَا، وَصَلَاتُهُنَّ فِي الْجَمَاعَةِ أَفْضَلُ مِنْ صَلَاتِهِنَّ مُنْفَرِدَاتٍ.

Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us; Abdul Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to us; Muhammad ibn Abdullah ibn Numayr narrated to us: his father and Abdullah ibn Idris both

-: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ ثنا أَبِي، وَعَبْدُ اللَّهِ

narrated to us: Ubaydullah (i.e., ibn Umar) narrated to us from Nafi‘ from Ibn Umar, who said: The Messenger of Allah—peace and blessings be upon him—said: “Do not prevent the female servants of Allah from the mosques of Allah.”

بْنُ إِدْرِيسَ قَالَا ثنا عُبَيْدُ اللَّهِ هُوَ ابْنُ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَمْنَعُوا إِمَاءَ اللَّهِ مَسَاجِدَ اللَّهِ» .

L5841 Through the same chain to Muslim: Harmalah ibn Yahya narrated to us, Ibn Wahb narrated to us, Yunus—I am Yunus, he is the son of Yazid—from Ibn Shihab, Salim ibn Abdullah ibn Umar narrated to us that Abdullah ibn Umar said: I heard the Messenger of Allah, peace and blessings be upon him, say: “Do not prevent your women from the mosques when they seek your permission to go there.” His son Bilal said to him: “By Allah, we will certainly prevent them!” Abdullah ibn Umar turned to him and reviled him with foul language—I had never heard him revile anyone so severely before—and said: “I am telling you a narration from the Messenger of Allah, peace and blessings be upon him, and you say: ’By Allah, we will certainly prevent them’?”

وَبِهِ إِلَى مُسْلِمٍ: ثنا حَرْمَلَةُ بْنُ يَحْيَى ثنا ابْنُ وَهْبٍ أَنَا يُونُسُ هُوَ ابْنُ يَزِيدَ - عَنْ ابْنِ شِهَابٍ أَنَا سَالِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا تَمْنَعُوا نِسَاءَكُمْ الْمَسَاجِدَ إذَا اسْتَأْذَنَّكُمْ إلَيْهَا فَقَالَ لَهُ بِلَالٌ ابْنُهُ، وَاَللَّهِ لَنَمْنَعُهُنَّ، فَأَقْبَلَ عَلَيْهِ عَبْدُ اللَّهِ بْنُ عُمَرَ فَسَبَّهُ سَبًّا سَيِّئًا مَا سَمِعْته سَبَّهُ مِثْلَهُ قَطُّ، قَالَ: أُخْبِرُك عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَقُولُ: وَاَللَّهِ لَنَمْنَعُهُنَّ؟» .

Through the same chain to Muslim: Abu Kurayb narrated to us, Abu Muawiyah narrated to us from Al-A’mash, from Mujahid, from Ibn Umar, who said: The Messenger of Allah, peace and blessings be upon him, said: “Do not prevent women from going out at night to the mosques.”

وَبِهِ إِلَى مُسْلِمٍ: ثنا أَبُو كُرَيْبٍ ثنا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ مُجَاهِدٍ عَنْ ابْنِ عُمَرَ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَمْنَعُوا النِّسَاءَ مِنْ الْخُرُوجِ بِاللَّيْلِ إلَى الْمَسَاجِدِ» .

L5842 Hammam narrated to us: ‘Abbas ibn Asbagh narrated to us, Muhammad ibn ‘Abd al-Malik ibn Ayman narrated to us, Muhammad ibn Waddah narrated to us, Hamid—he is the son of Yahya al-Balkhi—Sufyan—he is the son of ‘Uyaynah—from Muhammad ibn ‘Umar ibn ‘Alqamah ibn Waqqas, from Abu Salamah ibn ‘Abd al-Rahman ibn ‘Awf, from Abu Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said: “Do not prevent the women of Allah from Allah’s mosques, and they must not go out except in a state of simplicity.”

حَدَّثَنَا حَمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا مُحَمَّدُ بْنُ وَضَّاحٍ ثنا حَامِدٌ هُوَ ابْنُ يَحْيَى الْبَلْخِيُّ - ثنا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ مُحَمَّدِ بْنِ عُمَرَ بْنِ عَلْقَمَةَ بْنِ وَقَّاصٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَمْنَعُوا إِمَاءَ اللَّهِ مَسَاجِدَ اللَّهِ، وَلَا يَخْرُجْنَ إلَّا وَهُنَّ تَفِلَاتٌ» .

L5843–5844 Ali said: Spittle with a foul odor and prostatic fluid.

قَالَ عَلِيٌّ: وَالتَّفِلَةُ السَّيِّئَةُ الرِّيحِ وَالْبِزَّةُ.

L5845 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Abu

Bakr ibn Abi Shaybah narrated to us: Yahya ibn Sa’id al-Qattan narrated from Muhammad ibn Ajlan, who narrated to us: Bukayr ibn Abdullah ibn al-Ashajj narrated from Busr ibn Sa’id from Zaynab, the wife of Abdullah ibn Mas’ud, who said: The Messenger of Allah (peace and blessings be upon him) said to us: “When any one of you women attends the mosque, she must not apply perfume.”

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ مُحَمَّدِ بْنِ عَجْلَانَ ثنا بُكَيْرُ بْنُ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ بُسْرِ بْنِ سَعِيدٍ عَنْ زَيْنَبَ امْرَأَةِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَتْ: قَالَ لَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا شَهِدَتْ إِحْدَاكُنَّ الْمَسْجِدَ فَلَا تَمَسَّ طِيبًا» .

L5846 And through the chain of Mālik from Yaḥyā ibn Saʿīd from ʿAmrah bint ʿAbd al-Raḥmān from ʿĀ’ishah, the Mother of the Believers, who said: “The Messenger of Allah (peace be upon him) would pray the dawn prayer, and the women would depart wrapped in their mantles, unrecognizable due to the pre-dawn darkness.”

وَمِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «إِنْ كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَيُصَلِّي الصُّبْحَ فَيَنْصَرِفُ النِّسَاءُ مُتَلَفِّفَاتٍ بِمُرُوطِهِنَّ مَا يُعْرَفْنَ مِنْ الْغَلَسِ» .

L5847 Ahmad ibn Muhammad ibn al-Jasur narrated to us: Muhammad ibn Abdullah ibn Abi Dulaym → Ibn Waddah → Abu Bakr ibn Abi Shaybah → Husayn ibn Ali (al-Juʿfi) → Za’idah → Abdullah ibn Muhammad ibn ʿAqil → Jabir → The Messenger of Allah (peace and blessings be upon him), who said: “The best row for men is the foremost one, and the worst row is the last one. The worst row for women is the foremost one, and the best row is the last one. O women, when the men prostrate, lower your gaze lest you see the men’s private parts [exposed] because their lower garments are too tight.”

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي دُلَيْمٍ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا حُسَيْنُ بْنُ عَلِيٍّ هُوَ الْجُعْفِيُّ - عَنْ زَائِدَةَ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ عَنْ جَابِرٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «خَيْرُ صُفُوفِ الرِّجَالِ الْمُتَقَدِّمُ، وَشَرُّهَا الْمُؤَخَّرُ، وَشَرُّ صُفُوفِ النِّسَاءِ الْمُتَقَدِّمُ، وَخَيْرُهَا الْمُؤَخَّرُ، يَا مَعْشَرَ النِّسَاءِ إِذَا سَجَدَ الرِّجَالُ فَاغْضُضْنَ أَبْصَارَكُنَّ لَا تَرَيْنَ عَوْرَاتِ الرِّجَالِ مِنْ ضِيقِ الْأُزُرِ» .

L5848 Abdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Isḥāq narrated to us: Ibn al-Aʿrābī narrated to me: Abū Dāwūd narrated to us: ʿAbdullāh ibn ʿAmr (who is Abū Maʿmar) narrated to us: ʿAbd al-Wārith ibn Saʿīd (who is al-Tannūrī) narrated to us: Ayyūb (who is al-Sakhtiyānī) narrated to us on the authority of Nāfiʿ, on the authority of Ibn ʿUmar, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said, “What if we were to leave this door for the women?” So Ibn ʿUmar did not enter through it until he died.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ حَدَّثَنِي ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا عَبْدُ اللَّهِ بْنُ عَمْرٍو هُوَ أَبُو مَعْمَرٍ - ثنا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ هُوَ التَّنُّورِيُّ - ثنا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ - عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَوْ تَرَكْنَا هَذَا الْبَابَ لِلنِّسَاءِ؟ فَلَمْ يَدْخُلْ مِنْهُ ابْنُ عُمَرَ حَتَّى مَاتَ.»

L5849–5850 And through him to Abu Dawud: Qutaybah narrated to us, Bakr ibn Mudar

narrated to us from Amr ibn al-Harith from Bukayr—who is Ibn al-Ashajj—from Nafi' who said: Umar ibn al-Khattab used to forbid entering through the women's door. Ali said: Had their prayer in their homes been superior, the Messenger of Allah—peace and blessings of Allah be upon him—would not have left them to endure hardship that neither increases their virtue nor reduces their virtue, and this is not advice. He—peace and blessings of Allah be upon him—said: "Religion is sincere advice," and far removed is he—peace and blessings of Allah be upon him—from that. Rather, he is the most sincere advisor to his nation. Had that been the case, he—peace and blessings of Allah be upon him—would not have enjoined that they not be prevented from attending mosques, nor would he have commanded them to go out sporadically.

وَبِهِ إِلَى أَبِي دَاوُد، حَدَّثَنَا قُتَيْبَةُ ثنا بَكْرُ بْنُ مُضَرَ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ بُكَيْرٍ هُوَ ابْنُ الْأَشَجِّ - عَنْ نَافِعٍ قَالَ إنَّ عُمَرَ بْنَ الْخَطَّابِ كَانَ يَنْهَى أَنْ يَدْخُلَ مِنْ بَابِ النِّسَاءِ قَالَ عَلِيٌّ: لَوْ كَانَتْ صَلَاتُهُنَّ فِي بُيُوتِهِنَّ أَفْضَلُ لَمَا تَرَكَهُنَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَتَعَنَّيْنَ بِتَعَبٍ لَا يُجْدِي عَلَيْهِنَّ زِيَادَةُ فَضْلٍ أَوْ يَحُطُّهُنَّ مِنْ الْفَضْلِ، وَهَذَا لَيْسَ نُصْحًا، وَهُوَ - عَلَيْهِ السَّلَامُ - يَقُولُ: «الدِّينُ النَّصِيحَةُ» وَحَاشَا لَهُ - عَلَيْهِ السَّلَامُ - مِنْ ذَلِكَ؛ بَلْ هُوَ أَنْصَحُ الْخَلْقِ لِأُمَّتِهِ، وَلَوْ كَانَ ذَلِكَ لَمَا افْتَرَضَ - عَلَيْهِ السَّلَامُ - أَنْ لَا يَمْنَعُهُنَّ؛ وَلَمَا أَمَرَهُنَّ بِالْخُرُوجِ تَفِلَاتٍ.

L5851 At the very least, this indicates a recommended and encouraged act. Abū Ḥanīfah and Mālik said: "Their prayer in their homes is more virtuous." Abū Ḥanīfah disapproved of women going out to mosques for congregational prayers, Jumuʿah prayers, and for the two Eid prayers, though he specifically permitted elderly women to attend the last Isha and Fajr prayers. It has been narrated from him that he did not disapprove of their going out for the two Eid prayers. Mālik said: "We do not prohibit them from going to mosques," and he allowed women past their youth to attend the two Eid prayers and the prayer for rain.

وَأَقَلُّ هَذَا أَنْ يَكُونَ أَمْرَ نَدْبٍ وَحَضٍّ وَقَالَ أَبُو حَنِيفَةَ وَمَالِكٌ: صَلَاتُهُنَّ فِي بُيُوتِهِنَّ أَفْضَلُ، وَكَرِهَ أَبُو حَنِيفَةَ خُرُوجَهُنَّ إلَى الْمَسَاجِدِ لِصَلَاةِ الْجَمَاعَةِ، وَلِلْجُمُعَةِ، وَفِي الْعِيدَيْنِ، وَرَخَّصَ لِلْعَجُوزِ خَاصَّةً فِي الْعِشَاءِ الْآخِرَةِ، وَالْفَجْرِ وَقَدْ رُوِيَ عَنْهُ أَنَّهُ لَمْ يَكْرَهْ خُرُوجَهُنَّ فِي الْعِيدَيْنِ -: وَقَالَ مَالِكٌ: لَا نَمْنَعُهُنَّ مِنْ الْخُرُوجِ إلَى الْمَسَاجِدِ، وَأَبَاحَ لِلْمُتَجَالَّةِ شُهُودَ الْعِيدَيْنِ، وَالِاسْتِسْقَاءَ.

L5852 And he said: The young woman goes out to the mosque time after time.

وَقَالَ: تَخْرُجُ الشَّابَّةُ إلَى الْمَسْجِدِ الْمَرَّةَ بَعْدَ الْمَرَّةِ.

L5853–5855 He said: The woman who goes out to the mosque should not do so excessively. Ali said: Those who disliked this objected by citing a narration we have narrated from Sufyān from Yaḥyā ibn Saʿīd from ʿAmrah from ʿĀ'ishah: "If Allah's Messenger—peace and blessings be upon him—had seen what women have innovated after him, he would have barred them from the mosque as the women of the Children of Israel were barred." And with a ḥadīth narrated from ʿAbd al-Ḥamīd ibn al-Mundhir al-Anṣārī from his paternal aunt or grandmother, Umm Ḥumayd. That the Prophet—peace and blessings of Allah be upon him—said (addressing a woman): "Indeed, your prayer in your house is better than your prayer with me?" And by a hadith

قَالَ: وَالْمُتَجَالَّةُ تَخْرُجُ إلَى الْمَسْجِدِ، وَلَا تُكْثِرُ التَّرَدُّدَ -: قَالَ عَلِيٌّ: وَشَغَبَ مَنْ كَرِهَ ذَلِكَ بِرِوَايَةٍ رُوِّينَاهَا عَنْ سُفْيَانَ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ عَمْرَةَ عَنْ عَائِشَةَ: لَوْ رَأَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا أَحْدَثَ النِّسَاءُ بَعْدَهُ لَمَنَعَهُنَّ الْمَسْجِدَ كَمَا مُنِعَتْ نِسَاءُ بَنِي إسْرَائِيلَ. وَبِحَدِيثٍ رُوِيَ عَنْ عَبْدِ الْحَمِيدِ بْنِ الْمُنْذِرِ الْأَنْصَارِيِّ عَنْ عَمَّتِهِ أَوْ جَدَّتِهِ أُمِّ حُمَيْدٍ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّ صَلَاتَكِ فِي بَيْتِكِ أَفْضَلُ مِنْ صَلَاتِكِ

narrated through the chain of ʿAbdullāh ibn Rajāʾ al-Ghudānī: I am Jarīr ibn Ḥāzim, from Abū Zurʿah ibn ʿAmr ibn Jarīr, that Abū Hurayrah narrated to him that the Prophet—peace and blessings of Allah be upon him—said: "For a woman to pray in her private chamber is greater in reward than her praying in her house. Her praying in her house is greater in reward than her praying in her courtyard. Her praying in her courtyard is greater in reward than her praying in the mosque of her community. Her praying in the mosque of her community is greater in reward than her praying in a mosque where congregational prayers are held. Yet her praying in a mosque where congregational prayers are held is better for her than going out to attend the Eid prayer." Some scholars remarked that perhaps the Messenger of Allah's command—peace and blessings of Allah be upon him—for women to attend Eid prayers was intended to intimidate the enemy due to the Muslims' small numbers at the time, so they might appear numerous to those who observed them.

مَعِي» ؟ ، وَبِحَدِيثٍ رُوِيَ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ رَجَاءٍ الْغُدَانِيِّ أَنَا جَرِيرُ بْنُ حَازِمٍ عَنْ أَبِي زُرْعَةَ بْنِ عَمْرِو بْنِ جَرِيرٍ أَنَّ أَبَا هُرَيْرَةَ حَدَّثَهُ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَأَنْ تُصَلِّيَ الْمَرْأَةُ فِي مَخْدَعِهَا أَعْظَمُ لِأَجْرِهَا مِنْ أَنْ تُصَلِّيَ فِي بَيْتِهَا، وَأَنْ تُصَلِّيَ فِي بَيْتِهَا أَعْظَمُ لِأَجْرِهَا مِنْ أَنْ تُصَلِّيَ فِي دَارِهَا، وَأَنْ تُصَلِّيَ فِي دَارِهَا أَعْظَمُ لِأَجْرِهَا مِنْ أَنْ تُصَلِّيَ فِي مَسْجِدِ قَوْمِهَا، وَأَنْ تُصَلِّيَ فِي مَسْجِدِ قَوْمِهَا أَعْظَمُ لِأَجْرِهَا مِنْ أَنْ تُصَلِّيَ فِي مَسْجِدِي» وَقَالَ بَعْضُهُمْ: لَعَلَّ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِخُرُوجِهِنَّ يَوْمَ الْعِيدِ إِنَّمَا كَانَ إِرْهَابًا لِلْعَدُوِّ لِقِلَّةِ الْمُسْلِمِينَ يَوْمَئِذٍ لِيَكْثُرُوا فِي عَيْنِ مَنْ يَرَاهُمْ.

L5856 Ali said: This is a grave matter, for it constitutes a lie against the Messenger of Allah—peace and blessings be upon him—and a statement made without knowledge. He—peace and blessings be upon him—had clarified that his command for women to go out was so they might witness goodness and the call of the Muslims, while menstruating women were to stay away from the prayer area. Shame upon those who deny the Prophet's statement—peace and blessings be upon him—and fabricate a lie based on his own opinion! Moreover, verily this claim, aside from being an outright lie, is baseless and utterly absurd.

قَالَ عَلِيٌّ: وَهَذِهِ عَظِيمَةٌ؛ لِأَنَّهَا كَذْبَةٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَوْلٌ بِلَا عِلْمٍ، وَهُوَ - عَلَيْهِ السَّلَامُ - قَدْ بَيَّنَ أَنَّ أَمْرَهُ بِخُرُوجِهِنَّ لِيَشْهَدْنَ الْخَيْرَ، وَدَعْوَةَ الْمُسْلِمِينَ، وَيَعْتَزِلُ الْحُيَّضُ الْمُصَلَّى؛ فَأُفٍّ لِمَنْ كَذَّبَ قَوْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَافْتَرَى كِذْبَةً بِرَأْيِهِ ثُمَّ إِنَّ هَذَا الْقَوْلَ مَعَ كَوْنِهِ كَذِبًا بَحْتًا فَهُوَ بَارِدٌ سَخِيفٌ جِدًّا.

L5857 Because he—peace be upon him—was not in the presence of an army so that he could intimidate them, nor were there any enemies against him except the hypocrites and the Jews of Medina, who knew they [the women] were women. So be astonished at this confusion!

لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَكُنْ بِحَضْرَةِ عَسْكَرٍ فَيُرْهِبُ عَلَيْهِمْ، وَلَمْ يَكُنْ مَعَهُ عَدُوٌّ إِلَّا الْمُنَافِقُونَ وَيَهُودُ الْمَدِينَةِ، الَّذِينَ يَدْرُونَ أَنَّهُنَّ نِسَاءٌ، فَاعْجَبُوا لِهَذَا التَّخْلِيطِ.

L5858 Ali said: As for what Aisha narrated, there is no valid proof in it due to several considerations: The first is that the Prophet (peace be upon him) did not witness what they innovated, hence he did not prohibit them. Since he did not prohibit them, to forbid them constitutes an innovation and an error. This aligns with Allah's statement: "O wives of the Prophet, whoever among

قَالَ عَلِيٌّ: أَمَّا مَا حَدَّثَتْ بِهِ عَائِشَةُ فَلَا حُجَّةَ فِيهِ لِوُجُوهٍ -: أَوَّلُهَا: أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُدْرِكْ مَا أَحْدَثْنَ، فَلَمْ يَمْنَعْهُنَّ، فَإِذْ لَمْ يَمْنَعْهُنَّ فَمَنْعُهُنَّ بِدْعَةٌ وَخَطَأٌ، وَهَذَا كَمَا قَالَ

you commits a clear immorality, her punishment will be doubled" [Al-Ahzab: 30]. They never committed any immorality, nor was their punishment doubled. And praise be to Allah, Lord of the worlds.[23]

تَعَالَى: {يَا نِسَاءَ النَّبِيِّ مَنْ يَأْتِ مِنْكُنَّ بِفَاحِشَةٍ مُبَيِّنَةٍ يُضَاعَفْ لَهَا الْعَذَابُ ضِعْفَيْنِ} [الأحزاب: ٣٠] فَمَا أَتَيْنَ قَطُّ بِفَاحِشَةٍ وَلَا ضُوعِفَ لَهُنَّ الْعَذَابُ، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L5859–5861 And as His Exalted saying: {If only the people of the towns had believed and been mindful, We would have opened upon them blessings from the heavens and the earth} [al-Aʿrāf: 96]. But they did not believe, so We did not open [blessings] upon them, and we know no argument more absurd than the argument of one who contends: "If such were the case, then such would follow"—to affirm what never existed, that hypothetical thing which, had it been, would have resulted in that other [outcome]? A second perspective: Allah the Exalted has indeed known what women bring about, and whoever denies this has disbelieved. Never did He reveal to His Prophet (peace be upon him) to forbid women from mosques due to their newly introduced practices, nor did the Almighty ever reveal to him: "Inform the people that if women introduce innovations, prevent them from the mosques." Since Allah the Exalted did not do this, clinging to such a claim is flawed and erroneous. A third argument: We do not know what innovations the women have introduced that they had not initiated during the era of Allah's Messenger (peace be upon him). No greater innovation among their actions is adultery, yet this occurred during the Prophet's time (peace be upon him), and he carried out stoning and flogging for it. Yet he never forbade women from mosques for that reason. The prohibition of adultery applies equally to men and women without distinction. Why should adultery justify barring women from mosques but not men? This is a justification Allah the Exalted and His Messenger (peace be upon him) have never endorsed.[24]

وَكَقَوْلِهِ تَعَالَى: {وَلَوْ أَنَّ أَهْلَ الْقُرَى آمَنُوا وَاتَّقَوْا لَفَتَحْنَا عَلَيْهِمْ بَرَكَاتٍ مِنَ السَّمَاءِ وَالأَرْضِ} [الأعراف: ٩٦] فَلَمْ يُؤْمِنُوا فَلَمْ يَفْتَحْ عَلَيْهِمْ وَمَا نَعْلَمُ احْتِجَاجًا أَسْخَفَ مِنْ احْتِجَاجِ مَنْ يَحْتَجُّ بِقَوْلِ قَائِلٍ: لَوْ كَانَ كَذَا: لَكَانَ كَذَا -: عَلَى إِيجَابِ مَا لَمْ يَكُنْ، الشَّيْءُ الَّذِي لَوْ كَانَ لَكَانَ ذَلِكَ الْآخَرُ؟ وَوَجْهٌ ثَانٍ: وَهُوَ أَنَّ اللَّهَ تَعَالَى قَدْ عَلِمَ مَا يُحْدِثُ النِّسَاءُ، وَمَنْ أَنْكَرَ هَذَا فَقَدْ كَفَرَ، فَلَمْ يُوحِ قَطُّ إِلَى نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَنْعِهِنَّ مِنْ أَجْلِ مَا اسْتَحْدَثْنَهُ، وَلَا أَوْحَى تَعَالَى قَطُّ إِلَيْهِ: أَخْبِرِ النَّاسَ إِذَا أَحْدَثَ النِّسَاءُ فَامْنَعُوهُنَّ مِنَ الْمَسَاجِدِ، فَإِذْ لَمْ يَفْعَلِ اللَّهُ تَعَالَى هَذَا فَالتَّعَلُّقُ بِمِثْلِ هَذَا الْقَوْلِ هُجْنَةٌ وَخَطَأٌ؟ وَوَجْهٌ ثَالِثٌ: وَهُوَ أَنَّا مَا نَدْرِي مَا أَحْدَثَ النِّسَاءُ، مِمَّا لَمْ يُحْدِثْنَ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا شَيْءَ أَعْظَمُ فِي إِحْدَاثِهِنَّ مِنَ الزِّنَى، فَقَدْ كَانَ ذَلِكَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرَجَمَ فِيهِ وَجَلَدَ، فَمَا مَنَعَ النِّسَاءَ مِنْ أَجْلِ ذَلِكَ قَطُّ، وَتَحْرِيمُ الزِّنَى عَلَى الرِّجَالِ كَتَحْرِيمِهِ عَلَى النِّسَاءِ وَلَا فَرْقَ؛ فَمَا الَّذِي جَعَلَ الزِّنَى سَبَبًا يَمْنَعُهُنَّ مِنَ الْمَسَاجِدِ؟ وَلَمْ يَجْعَلْهُ سَبَبًا إِلَى مَنْعِ الرِّجَالِ مِنَ الْمَسَاجِدِ؟ هَذَا تَعْلِيلٌ مَا رَضِيَهُ اللَّهُ تَعَالَى قَطُّ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L5862 A fourth point: Disruptive behavior is undoubtedly specific to some women and not others, and it is impossible to deprive those who have not engaged in such behavior of good because of those who have, unless there comes

وَوَجْهٌ رَابِعٌ: وَهُوَ أَنَّ الْإِحْدَاثَ إِنَّمَا هُوَ لِبَعْضِ النِّسَاءِ بِلَا شَكٍّ دُونَ بَعْضٍ، وَمِنَ الْمُحَالِ مَنْعُ الْخَيِّرِ عَمَّنْ لَمْ يُحْدِثْ مِنْ أَجْلِ مَنْ أَحْدَثَ، إِلَّا أَنْ يَأْتِيَ بِذَلِكَ نَصٌّ مِنْ

[23] **Qur'an references (L5858):** Qur'an 33:30 (Al-Ahzab); Qur'an 37:182 (As-Saffat).
[24] **Qur'an references (L5859):** Qur'an 7:96 (Al-A'raf).

an explicit text from Allah the Exalted through His Messenger—peace and blessings be upon him—in which case it must be heeded and obeyed. Allah the Exalted has said: *"No soul bears the burden of another, and no bearer of burdens will bear the burden of another"* [6:164]. A fifth point: If disruptive behavior is a reason to prevent them from the mosque, then it is more appropriate for it to be a reason to prevent them from the market and all public thoroughfares without doubt. Why then does this group restrict their prohibition to mosques due to women's disruptive behavior, rather than prohibiting them from all other public spaces? Indeed, Abu Hanifa permitted a woman to travel alone and journey through deserts and wastelands for a distance of two and a half days' journey, and he did not disapprove of this for her. By the same reasoning, gender mixing should likewise be permissible.[25]

L5863 The sixth aspect is that ʿĀ'ishah—may Allah be pleased with her—did not prevent them for that reason, nor did she say, "Prevent them because of what they innovated." Rather, she conveyed that if he—peace be upon him—had lived, he would have prevented them. Is this not precisely the explicit wording of our position? We maintain: Had he—peace be upon him—prevented them, we would prevent them. Since he did not prevent them, we do not prevent them. Thus, they have only achieved opposition to the Sunnah, opposition to ʿĀ'ishah—may Allah be pleased with her—and falsehood through their deluding of those who follow them by implying that she prohibited women from going out through her statement—though she did not do so. We seek refuge in Allah from being abandoned.

L5864–5865 As for the narration of Abd al-Hamid ibn al-Mundhir, it is unknown—no one knows who he is? It is not permissible to abandon the reports of trustworthy, mass-transmitted narrators due to a narration from someone of unknown identity. As for the narration of Abdullah ibn Raja' al-Ghudani, it is known for frequent scribal errors and mistakes, and it is not authoritative. This is what Amr ibn Ali al-Fallas and others said about him.

L5866 Then, if this report and the report of ʿAbd Allāh ibn Raja' al-Ghudānī were authentic – and neither is authentic – would their content not contradict both

[25] **Qur'an references (L5862):** Qur'an 6:164 (Al-An'am).

اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيُسْمَعُ لَهُ وَيُطَاعُ، وَقَدْ قَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] وَوَجْهٌ خَامِسٌ: وَهُوَ أَنَّهُ إِنْ كَانَ الْإِحْدَاثُ سَبَبًا إِلَى مَنْعِهِنَّ مِنْ الْمَسْجِدِ فَالْأَوْلَى أَنْ يَكُونَ سَبَبًا إِلَى مَنْعِهِنَّ مِنْ السُّوقِ، وَمِنْ كُلِّ طَرِيقٍ بِلَا شَكٍّ، فَلِمَ خَصَّ هَؤُلَاءِ الْقَوْمُ مَنْعَهُنَّ مِنْ الْمَسْجِدِ مِنْ أَجْلِ إحْدَاثِهِنَّ، دُونَ مَنْعِهِنَّ مِنْ سَائِرِ الطُّرُقِ؟ بَلْ قَدْ أَبَاحَ لَهَا أَبُو حَنِيفَةَ السَّفَرَ وَحْدَهَا، وَالْمَسِيرَ فِي الْفَيَافِي وَالْفَلَوَاتِ مَسَافَةَ يَوْمَيْنِ وَنِصْفٍ، وَلَمْ يَكْرَهْ لَهَا ذَلِكَ، وَهَكَذَا فَلْيَكُنْ التَّخْلِيطُ.

وَوَجْهٌ سَادِسٌ: وَهُوَ أَنَّ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - لَمْ تَرَ مَنْعَهُنَّ مِنْ أَجْلِ ذَلِكَ، وَلَا قَالَتْ: امْنَعُوهُنَّ لِمَا أَحْدَثْنَ؛ بَلْ أَخْبَرَتْ أَنَّهُ - عَلَيْهِ السَّلَامُ - لَوْ عَاشَ لَمَنَعَهُنَّ، وَهَذَا هُوَ نَصُّ قَوْلِنَا؟ وَنَحْنُ نَقُولُ: لَوْ مَنَعَهُنَّ - عَلَيْهِ السَّلَامُ - لَمَنَعْنَاهُنَّ، فَإِذْ لَمْ يَمْنَعْهُنَّ فَلَا نَمْنَعُهُنَّ، فَمَا حَصَلُوا إلَّا عَلَى خِلَافِ السُّنَنِ، وَخِلَافِ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - وَالْكَذِبِ بِإِيهَامِهِمْ مَنْ يُقَلِّدُهُمْ: أَنَّهَا مَنَعَتْ مِنْ خُرُوجِ النِّسَاءِ بِكَلَامِهَا ذَلِكَ، وَهِيَ لَمْ تَفْعَلْ - نَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

وَأَمَّا حَدِيثُ عَبْدِ الْحَمِيدِ بْنِ الْمُنْذِرِ فَهُوَ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ؟ وَلَا يَجُوزُ أَنْ تُتْرَكَ رِوَايَاتُ الثِّقَاتِ الْمُتَوَاتِرَةُ بِرِوَايَةِ مَنْ لَا يُدْرَى مَنْ هُوَ؟ ، وَأَمَّا حَدِيثُ عَبْدِ اللَّهِ بْنِ رَجَاءٍ الْغُدَانِيِّ فَهُوَ كَثِيرُ التَّصْحِيفِ وَالْغَلَطِ، وَلَيْسَ بِحُجَّةٍ هَكَذَا قَالَ فِيهِ عَمْرُو بْنُ عَلِيٍّ الْفَلَّاسُ وَغَيْرُهُ.

ثُمَّ لَوْ صَحَّ هَذَا الْخَبَرُ، وَخَبَرُ عَبْدِ اللَّهِ بْنِ رَجَاءٍ الْغُدَانِيِّ - وَهُمَا لَا يَصِحَّانِ - لَكَانَ عَلَى أُمُورِهِمَا مُعَارَضَةٌ لِلْأَخْبَارِ الثَّابِتَةِ الَّتِي أَوْرَدْنَا، وَلِأَمْرِهِ - عَلَيْهِ السَّلَامُ - بِخُرُوجِهِنَّ،

the established reports we have presented and his directive – peace be upon him – that women should go out, even those in seclusion and menstruating women, to attend the Eid prayer, and his instruction that women lacking a cloak should borrow one from others for this purpose?

حَتَّى ذَوَاتُ الْخُدُورِ وَالْحُيَّضُ إِلَى مُشَاهَدَةِ صَلَاةِ الْعِيدِ، وَأَمَرَ مَنْ لَا جِلْبَابَ لَهَا أَنْ تَسْتَعِيرَ مِنْ غَيْرِهَا جِلْبَابًا لِذَلِكَ؟ .

L5867 And as narrated to us by Abdullah ibn Rabi', narrated to us Muhammad ibn Ishaq, narrated to us Ibn al-A'rabi, narrated to us Abu Dawud, narrated to us Muhammad ibn al-Muthanna, that Amr ibn Asim al-Kilabi narrated to them, saying: Narrated to us Hammam—son of Yahya—from Qatadah, from Muwarriq al-Ijli, from Abu al-Ahwas, from Abdullah ibn Mas'ud, from the Prophet—peace and blessings be upon him—who said: "A woman's prayer in her house is better than her prayer in her room, and her prayer in her mosque is better than her prayer in her house."

وَلِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَّ عَمْرَو بْنَ عَاصِمٍ الْكِلَابِيَّ حَدَّثَهُمْ قَالَ ثنا هَمَّامٌ هُوَ ابْنُ يَحْيَى - عَنْ قَتَادَةَ عَنْ مُوَرِّقٍ الْعِجْلِيِّ عَنْ أَبِي الْأَحْوَصِ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «صَلَاةُ الْمَرْأَةِ فِي بَيْتِهَا أَفْضَلُ مِنْ صَلَاتِهَا فِي حُجْرَتِهَا، وَصَلَاتُهَا فِي مَسْجِدِهَا أَفْضَلُ مِنْ صَلَاتِهَا فِي بَيْتِهَا» .

L5868 Ali said: He undoubtedly means the mosque of her neighborhood—no other interpretation is valid. For if he—peace be upon him—had intended the mosque of her house, he would have said: "Her prayer in her house is better than her prayer in her house"—and may he be exalted above uttering such an impossibility! Since this is so, has it not been confirmed that one of the two rulings is abrogated?

قَالَ عَلِيٌّ: يُرِيدُ بِلَا شَكٍّ مَسْجِدَ مَحَلَّتِهَا، لَا يَجُوزُ غَيْرُ ذَلِكَ؛ لِأَنَّهُ لَوْ أَرَادَ - عَلَيْهِ السَّلَامُ - مَسْجِدَ بَيْتِهَا لَكَانَ قَائِلًا: صَلَاتُهَا فِي بَيْتِهَا أَفْضَلُ مِنْ صَلَاتِهَا فِي بَيْتِهَا، وَحَاشَا لَهُ - عَلَيْهِ السَّلَامُ - أَنْ يَقُولَ الْمُحَالَ، فَإِذْ ذَلِكَ كَذَلِكَ فَقَدْ صَحَّ أَنَّ أَحَدَ الْحُكْمَيْنِ مَنْسُوخٌ؟ .

L5869 As for his statement, "Indeed, her prayer in her mosque is better than her prayer in her home," and his encouragement (peace be upon him) for them to go out to the Eid prayer and to the mosque, this has been abrogated by his statement: "Indeed, her prayer in her home is better than her prayer in the mosque," and by their going out to the Eid prayer.

أَمَّا قَوْلُهُ «إِنَّ صَلَاتَهَا فِي مَسْجِدِهَا أَفْضَلُ مِنْ صَلَاتِهَا فِي بَيْتِهَا» وَحَضُّهُ - عَلَيْهِ السَّلَامُ - عَلَى خُرُوجِهِنَّ إِلَى الْعِيدِ، وَإِلَى الْمَسْجِدِ -: مَنْسُوخٌ بِقَوْلِهِ: «إِنَّ صَلَاتَهَا فِي بَيْتِهَا أَفْضَلُ مِنْ صَلَاتِهَا فِي الْمَسْجِدِ» وَمِنْ خُرُوجِهَا إِلَى صَلَاةِ الْعِيدِ ".

L5870–5872 As for his statement (peace be upon him), "Indeed, her prayer in her house is better than her prayer in her mosque, and her prayer in her mosque is better than her attending the Eid prayer congregation"—this is abrogated by his statement (peace be upon him): "Her prayer in the mosque is better than her prayer at home," along with his encouragement for her to attend the Eid prayer.

وَأَمَّا قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «إِنَّ صَلَاتَهَا فِي بَيْتِهَا أَفْضَلُ مِنْ صَلَاتِهَا فِي مَسْجِدِهَا» ، وَصَلَاتَهَا فِي مَسْجِدِهَا أَفْضَلُ مِنْ خُرُوجِهَا إِلَى صَلَاةِ الْعِيدِ مَنْسُوخٌ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إِنَّ صَلَاتَهَا فِي مَسْجِدِهَا أَفْضَلُ مِنْ صَلَاتِهَا فِي بَيْتِهَا» وَحَضِّهِ عَلَى خُرُوجِهَا إِلَى صَلَاةِ الْعِيدِ.

L5873 Is it not necessary to choose one of these two matters, and is it impermissible to conclusively determine the abrogation of a sound report except by a proof?

لَا بُدَّ مِنْ أَحَدِ هَذَيْنِ الْأَمْرَيْنِ، وَلَا يَجُوزُ أَنْ نَقْطَعَ عَلَى نَسْخِ خَبَرٍ صَحِيحٍ إِلَّا بِحُجَّةٍ؟ .

فَنَظَرْنَا فِي ذَلِكَ: فَوَجَدْنَا خُرُوجَهُنَّ إِلَى الْمَسْجِدِ وَالْمُصَلَّى عَمَلًا زَائِدًا عَلَى الصَّلَاةِ؛ وَكُلْفَةً فِي الْأَسْحَارِ وَالظُّلْمَةِ وَالزَّحْمَةِ وَالْهَوَاجِرِ الْحَارَّةِ؛ وَفِي الْمَطَرِ وَالْبَرْدِ؛ فَلَوْ كَانَ فَضْلُ هَذَا الْعَمَلِ الزَّائِدِ مَنْسُوخًا لَمْ يَخْلُ ضَرُورَةً مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا -: إِمَّا أَنْ تَكُونَ صَلَاتُهَا فِي الْمَسْجِدِ وَالْمُصَلَّى مُسَاوِيَةً لِصَلَاتِهَا فِي بَيْتِهَا؛ فَيَكُونُ هَذَا الْعَمَلُ كُلُّهُ لَغْوًا وَبَاطِلًا، وَتَكَلُّفًا وَعَنَاءً، وَلَا يُمْكِنُ غَيْرُ ذَلِكَ أَصْلًا؛ وَهُمْ لَا يَقُولُونَ بِهَذَا، أَوْ تَكُونَ صَلَاتُهَا فِي الْمَسَاجِدِ وَالْمُصَلَّى مُنْحَطَّةَ الْفَضْلِ عَنْ صَلَاتِهَا فِي بَيْتِهَا كَمَا يَقُولُ الْمُخَالِفُونَ، فَيَكُونُ الْعَمَلُ الْمَذْكُورُ كُلُّهُ إِثْمًا حَاطًّا مِنَ الْفَضْلِ، وَلَا بُدَّ؛ إِذْ لَا يَحُطُّ مِنَ الْفَضْلِ فِي صَلَاةٍ مَا عَنْ تِلْكَ الصَّلَاةِ بِعَيْنِهَا عَمَلٌ زَائِدٌ إِلَّا، وَهُوَ مُحَرَّمٌ، وَلَا يُمْكِنُ غَيْرُ هَذَا؟ .

L5874 We examined this matter and found that their going out to the mosque and prayer ground constitutes an additional act beyond prayer itself, entailing burdens during pre-dawn hours, darkness, crowds, scorching midday heat, rain, and cold. If the merit of this additional act were abrogated, it would necessarily lead to one of two scenarios with no third alternative: either her prayer in mosques and prayer grounds would equal her prayer at home—rendering this entire act utterly futile, invalid, burdensome, and laborious, with no other possibility whatsoever—a position they do not endorse—or her prayer in mosques and prayer grounds would be inferior in merit to her prayer at home, as opponents claim. This would make the entire aforementioned act sinful—diminishing the merit—since no additional act can necessarily reduce the merit of a specific prayer unless that act is itself forbidden. There is no other possibility.

وَلَيْسَ هَذَا مِنْ بَابِ تَرْكِ أَعْمَالٍ مُسْتَحَبَّةٍ فِي الصَّلَاةِ، فَيَحُطُّ ذَلِكَ مِنَ الْأَجْرِ لَوْ عَمِلَهَا؛ فَهَذَا لَمْ يَأْتِ بِإِثْمٍ لَكِنْ تَرْكُ أَعْمَالِ بِرٍّ، وَأَمَّا مَنْ عَمِلَ عَمَلًا تَكَلَّفَهُ فِي صَلَاتِهِ فَأَتْلَفَ بَعْضَ أَجْرِهِ الَّذِي كَانَ يَتَحَصَّلُ لَهُ لَوْ لَمْ يَعْمَلْهُ، وَأَحْبَطَ بَعْضَ عَمَلِهِ -: فَهَذَا عَمَلٌ مُحَرَّمٌ بِلَا شَكٍّ لَا يُمْكِنُ غَيْرُ هَذَا.

L5875 This does not pertain to omitting recommended acts in prayer, which would reduce the reward had he performed them. Such omission incurs no sin but constitutes abandoning righteous deeds. As for one who performs an affected action in his prayer, thereby destroying part of the reward he would have attained had he abstained from it and invalidating some of his deeds – this is undoubtedly a forbidden act, and there is no alternative to this.

وَلَيْسَ فِي الْكَرَاهَةِ إِثْمٌ أَصْلًا، وَلَا إِحْبَاطُ عَمَلٍ؛ بَلْ فِيهِ عَدَمُ الْأَجْرِ وَالْوِزْرِ مَعًا، وَإِنَّمَا الْإِثْمُ إِحْبَاطٌ عَلَى الْحَرَامِ فَقَطْ وَقَدْ اتَّفَقَ جَمِيعُ أَهْلِ الْأَرْضِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَمْنَعِ النِّسَاءَ قَطُّ الصَّلَاةَ مَعَهُ فِي مَسْجِدِهِ إِلَى أَنْ مَاتَ - عَلَيْهِ السَّلَامُ -، وَلَا الْخُلَفَاءُ الرَّاشِدُونَ بَعْدَهُ، فَصَحَّ أَنَّهُ عَمَلٌ مَنْسُوخٌ؛ فَإِذْ لَا شَكَّ فِي هَذَا فَهُوَ عَمَلُ بِرٍّ، وَلَوْلَا ذَلِكَ مَا أَقَرَّهُ - عَلَيْهِ السَّلَامُ -.

L5876 There is absolutely no sin in juristic dislike (karāhah), nor any invalidation of deeds; rather, it entails the absence of both reward and sin together. Sin only invalidates deeds in the context of forbidden acts. All scholars have unanimously agreed that the Messenger of Allah (peace and blessings be upon him) never prevented women from praying with him in his mosque until his death (peace be upon him), nor did the Rightly-Guided Caliphs after him. Thus, it is established that this is an abrogated practice. Since there is no doubt in this matter, it constitutes a righteous deed. Were it otherwise, the Prophet (peace be upon him) would not have permitted it.

L5877–5879 He did not let them (women) burden themselves with it—without benefit, but rather with harm. This is hardship and harm, not sincere advice. Given that there is no doubt about this, then this is the abrogating text, and the

other is the abrogated one? This would hold true if those two ḥadīths were authentic. But how can that be, given that they are not authentic? They were narrated to us through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from Hishām ibn ʿUrwah: that ʿUmar ibn al-Khaṭṭāb ordered Sulaymān ibn Abī Ḥathma to lead the women in prayer at the rear of the mosque during the month of Ramaḍān. And from ʿAbd al-Razzāq from Maʿmar from al-Zuhrī: that ʿĀtikah bint Zayd ibn ʿAmr ibn Nufayl was married to ʿUmar ibn al-Khaṭṭāb, and she used to attend prayers in the mosque. ʿUmar would say to her, "By Allah, you certainly know that I dislike this." She replied, "By Allah, I will not cease until you forbid me." ʿUmar said, "Then I will not forbid you." On the day ʿUmar was stabbed—the very day of his stabbing—she was indeed in the mosque.

وَلَا تَرَكَهُنَّ يَتَكَلَّفْنَهُ بِلَا مَنْفَعَةٍ، بَلْ بِمَضَرَّةٍ، وَهَذَا الْعُسْرُ وَالْأَذَى، لَا النَّصِيحَةُ؛ وَإِذْ لَا شَكَّ فِي هَذَا فَهُوَ النَّاسِخُ، وَغَيْرُهُ الْمَنْسُوخُ؟ هَذَا لَوْ صَحَّ ذَانِكَ الْحَدِيثَانِ، فَكَيْفَ، وَهُمَا لَا يَصِحَّانِ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ هِشَامِ بْنِ عُرْوَةَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ أَمَرَ سُلَيْمَانَ بْنَ أَبِي حَثْمَةَ أَنْ يَؤُمَّ النِّسَاءَ فِي مُؤَخَّرِ الْمَسْجِدِ فِي شَهْرِ رَمَضَانَ. وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ: أَنَّ عَاتِكَةَ بِنْتَ زَيْدِ بْنِ عَمْرِو بْنِ نُفَيْلٍ كَانَتْ تَحْتَ عُمَرَ بْنِ الْخَطَّابِ، وَكَانَتْ تَشْهَدُ الصَّلَاةَ فِي الْمَسْجِدِ وَكَانَ عُمَرُ يَقُولُ لَهَا: وَاَللَّهِ إِنَّكِ لَتَعْلَمِينَ أَنِّي مَا أُحِبُّ هَذَا؟ فَقَالَتْ: وَاَللَّهِ لَا أَنْتَهِي حَتَّى تَنْهَانِي قَالَ عُمَرُ: فَإِنِّي لَا أَنْهَاكِ؛ فَلَقَدْ طُعِنَ عُمَرُ يَوْمَ طُعِنَ، وَإِنَّهَا لَفِي الْمَسْجِدِ.

L5880 Ali said: The Commander of the Faithful would not have refrained from prohibiting her from going to the mosque if he had known there was no reward for her in it—how much more so if he had known it would diminish her reward and nullify her deeds! Their argument holds no weight in his statement to her, "I do not like that," for inclination of the soul entails no sin. Allah the Exalted has certainly known that every Muslim—were it not for fear of Him—would love to eat when hungry during Ramadan, drink when thirsty, sleep during the cold early mornings in short nights instead of rising for prayers, and have intercourse with every beautiful slave woman a man sees. Thus, a person may love a forbidden thing with there being no blame upon him for it, nor can he divert his heart from it. The matter lies solely in his patience or his deeds.

قَالَ عَلِيٌّ: مَا كَانَ أَمِيرُ الْمُؤْمِنِينَ يَمْتَنِعُ مِنْ نَهْيِهَا عَنْ خُرُوجِهَا إِلَى الْمَسْجِدِ لَوْ عَلِمَ أَنَّهُ لَا أَجْرَ لَهَا فِيهِ، فَكَيْفَ لَوْ عَلِمَ أَنَّهُ يَحُطُّ مِنْ أَجْرِهَا وَيُحْبِطُ عَمَلَهَا وَلَا حُجَّةَ لَهُمْ فِي قَوْلِهِ لَهَا: إِنِّي لَا أُحِبُّ ذَلِكَ، لِأَنَّ مَيْلَ النَّفْسِ لَا إِثْمَ فِيهِ، وَقَدْ عَلِمَ اللَّهُ تَعَالَى أَنَّ كُلَّ مُسْلِمٍ -: لَوْلَا خَوْفُ اللَّهِ تَعَالَى لَأَحَبَّ الْأَكْلَ إِذَا جَاعَ فِي رَمَضَانَ، وَالشُّرْبَ فِيهِ إِذَا عَطِشَ، وَالنَّوْمَ فِي الْغَدَوَاتِ الْبَارِدَةِ فِي اللَّيْلِ الْقَصِيرِ عَنِ الْقِيَامِ إِلَى الصَّلَوَاتِ، وَوَطْءَ كُلِّ جَارِيَةٍ حَسْنَاءَ يَرَاهَا الْمَرْءُ؟ فَيُحِبُّ الْمَرْءُ الشَّيْءَ الْمَحْظُورَ لَا حَرَجَ عَلَيْهِ فِيهِ، وَلَا يَقْدِرُ عَلَى صَرْفِ قَلْبِهِ عَنْهُ، وَإِنَّمَا الشَّأْنُ فِي صَبْرِهِ أَوْ عَمَلِهِ فَقَطْ.

L5881–5883 He, the Exalted, said: "Fighting has been prescribed for you, though it is hateful to you. But perhaps you hate something while it is good for you, and perhaps you love something while it is evil for you" [Al-Baqarah: 216]. Through the chain of ʿAbd al-Razzāq from Muḥammad ibn ʿUmārah from ʿAmr al-Thaqafī from ʿArfajah: ʿAlī ibn Abī Ṭālib used to command people to perform night prayers in Ramaḍān, appointing a prayer leader for men

قَالَ تَعَالَى: {كُتِبَ عَلَيْكُمُ الْقِتَالُ وَهُوَ كُرْهٌ لَكُمْ وَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَهُوَ خَيْرٌ لَكُمْ وَعَسَى أَنْ تُحِبُّوا شَيْئًا وَهُوَ شَرٌّ لَكُمْ} [البقرة: ٢١٦] ، وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ عُمَارَةَ عَنْ عَمْرٍو الثَّقَفِيِّ عَنْ عَرْفَجَةَ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يَأْمُرُ النَّاسَ

and a prayer leader for women. He commanded me, so I led the women in prayer. Ali said: "Young women and others besides them are equal, and with Allah, the Most High, is success."[26]

Issue: No adhan or iqamah is to be called for any voluntary prayers.

322 - Issue: The call to prayer (adhān) and the establishment (iqāmah) are not performed for any non-obligatory prayers—such as the two Eid prayers, the prayer for rain, the eclipse prayer, or others—even if performed in congregation and in the mosque. Nor are they required for communally obligatory prayers (farḍ al-kifāyah), such as the funeral prayer. It is recommended to inform people of such prayers through a proclamation like "Aṣ-Ṣalātu Jāmiʿah" (The prayer is in congregation). This ruling faces no known disagreement except regarding something the Banu Umayyah innovated—the performance of adhān and iqāmah for the Eid prayers—which constitutes a religious innovation. It is authentically established from the Prophet (peace be upon him) that he never commanded adhān or iqāmah for any of these prayers, as we shall clarify in its dedicated chapter, God willing.

Ali said: The Adhan and Iqamah are a call to attend prayer, and this obligation applies only to the specified obligatory prayers. It is not required for supererogatory prayers; thus, there is no Adhan or Iqamah for them. Informing people of this draws their attention to goodness—and this has also been reported from the Messenger of Allah, peace be upon him, as we will clarify in its chapter, Allah the Exalted willing.

Chapter on the Conditions of the Adhan

323 - Issue: It is not permissible to perform the adhan and iqamah except by an adult, sane Muslim man who recites the words of the adhan and iqamah correctly according to his capacity. The adhan of one who lacks mental capacity during the call due to intoxication or similar causes is invalid. If an

[26] **Qur'an references (L5881):** Qur'an 2:216 (Al-Baqarah).

بِالْقِيَامِ فِي رَمَضَانَ، فَيَجْعَلُ لِلرِّجَالِ إِمَامًا، وَلِلنِّسَاءِ إِمَامًا، فَأَمَرَنِي فَأَمَمْتُ النِّسَاءَ؟ ، قَالَ عَلِيٌّ: وَالشَّوَابُّ وَغَيْرُهُنَّ سَوَاءٌ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يُؤَذَّنُ وَلَا يُقَامُ لِشَيْءٍ مِنْ النَّوَافِلِ]

٣٢٢ - مَسْأَلَةٌ: وَلَا يُؤَذَّنُ وَلَا يُقَامُ لِشَيْءٍ مِنْ النَّوَافِلِ، كَالْعِيدَيْنِ وَالِاسْتِسْقَاءِ وَالْكُسُوفِ، وَغَيْرِ ذَلِكَ -، وَإِنْ صَلَّى كُلَّ ذَلِكَ فِي جَمَاعَةٍ وَفِي الْمَسْجِدِ - وَلَا لِصَلَاةِ فَرْضٍ عَلَى الْكِفَايَةِ: كَصَلَاةِ الْجَنَازَةِ؟ ، وَيُسْتَحَبُّ إعْلَامُ النَّاسِ بِذَلِكَ، مِثْلَ النِّدَاءِ: الصَّلَاةُ جَامِعَةٌ، وَهَذَا مِمَّا لَا يُعْلَمُ فِيهِ خِلَافٌ إلَّا شَيْئًا كَانَ بَنُو أُمَيَّةَ قَدْ أَحْدَثُوهُ مِنْ الْأَذَانِ وَالْإِقَامَةِ لِصَلَاةِ الْعِيدَيْنِ، وَهُوَ بِدْعَةٌ وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ لَمْ يَأْمُرْ بِأَذَانٍ وَلَا إقَامَةٍ لِشَيْءٍ مِنْ ذَلِكَ، عَلَى مَا نَذْكُرُهُ فِي بَابِهِ إنْ شَاءَ اللَّهُ تَعَالَى؟ .

قَالَ عَلِيٌّ: الْأَذَانُ وَالْإِقَامَةُ أَمْرٌ بِالْمَجِيءِ إلَى الصَّلَاةِ، وَلَيْسَ يَجِبُ ذَلِكَ إلَّا فِي الْفَرَائِضِ الْمُتَعَيَّنَةِ، وَلَا يَلْزَمُ ذَلِكَ فِي النَّوَافِلِ، فَلَا أَذَانَ فِيهَا وَلَا إقَامَةَ، وَإِعْلَامُ النَّاسِ بِذَلِكَ تَنْبِيهٌ عَلَى خَيْرٍ - وَقَدْ جَاءَ ذَلِكَ أَيْضًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَا نَذْكُرُهُ فِي بَابِهِ إنْ شَاءَ اللَّهُ تَعَالَى؟

[مَسْأَلَةٌ شُرُوط الْأَذَان]

٣٢٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُؤَذِّنَ وَيُقِيمَ إلَّا رَجُلٌ بَالِغٌ عَاقِلٌ مُسْلِمٌ مُؤَدٍّ لِأَلْفَاظِ الْأَذَانِ وَالْإِقَامَةِ حَسْبَ طَاقَتِهِ، وَلَا يُجْزِئُ أَذَانُ مَنْ لَا يَعْقِلُ حِينَ أَذَانِهِ لِسُكْرٍ أَوْ نَحْوِ

adult has performed the adhan, a minor is not prevented from performing it afterward. The adhan of a transgressor is valid, but a person of upright character is more preferable to us. A loud-voiced caller is superior.

L5889–5891 The proof for this is that women are not commanded to perform the *adhan* as an obligation, unlike men, due to the statement of Allah's Messenger—peace and blessings be upon him—: "Let one of you call the *adhan* for you, and let the eldest or the most Quranically proficient among you lead the prayer." He thereby ordained the *adhan* only for those obliged to pray in congregation—namely men exclusively, not women, as we previously established. The child, the mentally incapacitated, and the one whose mind is impaired by intoxication are not subject to the obligation in these states, for the Prophet—peace and blessings be upon him—also said: "The pen is lifted from three," mentioning the child, the insane, and the sleeper. Since the *adhan* is a commanded obligation as stated, its validity requires performance only by one legally obligated through the intention of fulfilling what is commanded. Non-obligatory acts cannot substitute obligatory ones. If it is argued: "You permit one who called *adhan* for a mosque's congregation to call it for another mosque's congregation in such a case..." The prayer itself; this is a voluntary act on his part. We replied: Yes, and he—even though it is a voluntary act from him—is one of those commanded to perform the *adhan*, lead the prayer, and perform the *iqamah* for those with him. Thus, in all of this, he fulfills an obligation. Once the obligation is fulfilled, the *adhan* remains a righteous act; children should not be prevented from it, for it is a remembrance of Allah the Exalted, a voluntary and pious act. As for the disbeliever, he is not one of us, nor is he a believer, and we have made it obligatory that one of us performs the *adhan* for us.

L5892 As for one who intentionally fails to recite the words of the adhan as commanded, and does not utter the prescribed phrases he was instructed to perform, such a person has not validly performed the adhan at all. If he is incapable of more than that due to a lisp or speech impediment, his adhan suffices based on Allah's statement: "Allah does not burden a soul beyond its capacity" [Al-Baqarah: 286]. Such a person is only obligated to what he is capable of, whether there is someone present who can correctly recite the

ذَلِكَ، فَإِذَا أَذَّنَ الْبَالِـغُ لَمْ يُمْنَعْ مَنْ لَمْ يَبْلُغْ مِنَ الْأَذَانِ بَعْدَهُ، وَيُجْزِئُ أَذَانُ الْفَاسِقِ، وَالْعَدْلُ أَحَبُّ إِلَيْنَا، وَالصَّيِّتُ أَفْضَلُ.

بُرْهَانُ ذَلِكَ -: أَنَّ النِّسَاءَ لَمْ يُخَاطَبْنَ بِالْأَذَانِ لِلرِّجَالِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَلْيُؤَذِّنْ لَكُمْ أَحَدُكُمْ وَلْيَؤُمَّكُمْ أَكْبَرُكُمْ أَوْ أَكْثَرُكُمْ قُرْآنًا» فَإِنَّمَا أَمَرَ بِالْأَذَانِ مَنْ أُلْزِمَ الصَّلَاةَ فِي جَمَاعَةٍ وَهُمُ الرِّجَالُ فَقَطْ، لَا النِّسَاءُ عَلَى مَا ذَكَرْنَا قَبْلُ؟ وَالصَّبِيُّ، وَالْمَجْنُونُ، وَالذَّاهِبُ الْعَقْلِ بِسُكْرٍ: غَيْرُ مُخَاطَبِينَ فِي هَذِهِ الْأَحْوَالِ، وَقَدْ قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ فَذَكَرَ الصَّبِيَّ، وَالْمَجْنُونَ، وَالنَّائِمَ -» وَالْأَذَانُ مَأْمُورٌ بِهِ كَمَا ذَكَرْنَا، فَلَا يُجْزِئُ أَدَاؤُهُ إِلَّا مِنْ مُخَاطَبٍ بِهِ بِنِيَّةِ أَدَائِهِ مَا أُمِرَ بِهِ، وَغَيْرُ الْفَرْضِ لَا يُجْزِئُ عَنِ الْفَرْضِ فَإِنْ قِيلَ: فَإِنَّكُمْ تُجِيزُونَ لِمَنْ أَذَّنَ لِأَهْلِ مَسْجِدٍ أَنْ يُؤَذِّنَ لِأَهْلِ مَسْجِدٍ آخَرَ فِي تِلْكَ الصَّلَاةِ نَفْسِهَا، وَهَذَا تَطَوُّعٌ مِنْهُ؟ قُلْنَا: نَعَمْ، وَهُوَ، وَإِنْ كَانَ تَطَوُّعًا مِنْهُ، فَهُوَ مِنْ أَحَدِهِمُ الْمَأْمُورِينَ بِإِقَامَةِ الْأَذَانِ وَالْإِمَامَةِ وَالْإِقَامَةِ لِمَنْ مَعَهُ، فَهُوَ فِي ذَلِكَ كُلِّهِ مُؤَدِّي فَرْضٍ، وَإِذَا تَأَدَّى الْفَرْضُ، فَالْأَذَانُ: فِعْلُ خَيْرٍ لَا يُمْنَعُ الصِّبْيَانُ مِنْهُ، لِأَنَّهُ ذِكْرٌ لِلَّهِ تَعَالَى وَتَطَوُّعٌ وَبِرٌّ؟ ، وَأَمَّا الْكَافِرُ فَلَيْسَ أَحَدَنَا وَلَا مُؤْمِنًا، وَإِنَّمَا أَلْزَمْنَاهُ أَنْ يُؤَذِّنَ لَنَا أَحَدُنَا.

وَأَمَّا مَنْ لَمْ يُؤَدِّ أَلْفَاظَ الْأَذَانِ مُتَعَمِّدًا فَلَمْ يُؤَذِّنْ كَمَا أُمِرَ، وَلَا أَتَى بِأَلْفَاظِ الْأَذَانِ الَّتِي أُمِرَ بِهَا، فَهَذَا لَمْ يُؤَذِّنْ أَصْلًا فَإِنْ لَمْ يَقْدِرْ عَلَى أَكْثَرَ مِنْ ذَلِكَ لِلُثْغَةٍ أَوْ لُكْنَةٍ أَجْزَأَ أَذَانُهُ، لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] فَهَذَا

words of the adhan or not. It would be better if a proficient person were to perform the adhan.[27]

غَيْرُ مُكَلَّفٍ إِلَّا مَا قَدَرَ عَلَيْهِ فَقَطْ، وَسَوَاءٌ كَانَ هُنَالِكَ مَنْ يُؤَدِّي أَلْفَاظَ الْأَذَانِ أَوْ لَمْ يَكُنْ، وَكَانَ أَفْضَلَ لَوْ أَذَّنَ الْمُحْسِنُ؟ .

L5893 As for the sinner, he is undoubtedly one of us, for he is a Muslim. Thus, he falls under the Prophet's statement, peace be upon him: "Let one of you call the Adhān for you." There is no disagreement regarding the preference for choosing a just person. As for audibility, this is because the Adhān is a command to come to prayer, so ensuring it is heard by those being summoned takes precedence. This is supported by the Messenger of Allah, peace and blessings be upon him, saying to Abū Maḥdhūrah: "Go back and raise your voice." This is a command to raise one's voice. If the mu'adhin intentionally does not raise his voice, his Adhān does not suffice. However, if he is unable to do more except with difficulty, he is not obligated to do so, in accordance with Allah's statement: {Allah does not burden a soul beyond its capacity} [Al-Baqarah: 286].[28]

وَأَمَّا الْفَاسِقُ فَإِنَّهُ أَحَدُنَا بِلَا شَكٍّ، لِأَنَّهُ مُسْلِمٌ، فَهُوَ دَاخِلٌ تَحْتَ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «لِيُؤَذِّنْ لَكُمْ أَحَدُكُمْ» وَلَا خِلَافَ فِي اخْتِيَارِ الْعَدْلِ، وَأَمَّا الصِّيتُ، فَلِأَنَّ الْأَذَانَ أَمْرٌ بِالْمَجِيءِ إِلَى الصَّلَاةِ، فَإِسْمَاعُ الْمَأْمُورِينَ أَوْلَى، وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَبِي مَحْذُورَةَ «ارْجِعْ فَارْفَعْ صَوْتَكَ» وَهَذَا أَمْرٌ بِرَفْعِ الصَّوْتِ، فَلَوْ تَعَمَّدَ الْمُؤَذِّنُ أَنْ لَا يَرْفَعَ صَوْتَهُ لَمْ يُجْزِهِ أَذَانُهُ، وَإِنْ لَمْ يَقْدِرْ عَلَى أَكْثَرَ إِلَّا بِمَشَقَّةٍ لَمْ يَلْزَمْهُ، لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

L5894 He (peace be upon him) said—what we have mentioned with its chain of transmission—"When the call to prayer is proclaimed, Satan retreats while passing wind to avoid hearing the Adhan." Thus, striving to repel Satan is a virtuous deed, and success is from Allah, the Exalted.

وَقَالَ - عَلَيْهِ السَّلَامُ - مَا قَدْ ذَكَرْنَا بِإِسْنَادِهِ، «إِذَا نُودِيَ بِالصَّلَاةِ أَدْبَرَ الشَّيْطَانُ لَهُ ضُرَاطٌ حَتَّى لَا يَسْمَعَ التَّأْذِينَ» فَالِاجْتِهَادُ فِي طَرْدِ الشَّيْطَانِ فِعْلٌ حَسَنٌ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ؟ .

L5895 It is authentically reported from the Prophet—may Allah's peace and blessings be upon him—: "There is no human, jinn, or anything that hears the reach of the mu'adhdhin's voice except that it will testify for him on the Day of Resurrection." This has been narrated to us through the chain of Mālik, from ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn ʿAbd al-Raḥmān ibn Abī Ṣaʿṣaʿah al-Māzinī al-Anṣārī, from his father, from Abu Saʿīd al-Khudrī as a musnad narration—and success is from Allah, the Exalted.

وَصَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَسْمَعُ مَدَى صَوْتِ الْمُؤَذِّنِ إِنْسٌ وَلَا جَانٌّ وَلَا شَيْءٌ إِلَّا شَهِدَ لَهُ يَوْمَ الْقِيَامَةِ» رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي صَعْصَعَةَ الْمَازِنِيِّ الْأَنْصَارِيِّ عَنْ أَبِيهِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ مُسْنَدًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L5896 **Issue: It is invalid for two or more individuals to perform the *adhan* simultaneously.**

[مَسْأَلَةٌ لَا يَجُوزُ أَنْ يُؤَذِّنَ اثْنَانِ فَصَاعِدًا مَعًا]

[27] **Qur'an references (L5892):** Qur'an 2:286 (Al-Baqarah).
[28] **Qur'an references (L5893):** Qur'an 2:286 (Al-Baqarah).

L5897–5899 324 – Issue: It is not permissible for two or more individuals to perform the call to prayer (adhan) simultaneously. If this occurs, the caller is the one who initiated it. The one who interrupts him is a transgressor who earns no reward, and he is close to sinning. It is obligatory to prevent this; and if... If two individuals begin [the adhan] together, then the adhan is assigned to the one with the most beautiful performance.

٣٢٤ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُؤَذِّنَ اثْنَانِ فَصَاعِدًا مَعًا، فَإِنْ كَانَ ذَلِكَ فَالْمُؤَذِّنُ هُوَ الْمُبْتَدِئُ، وَالدَّاخِلُ عَلَيْهِ مُسِيءٌ لَا أَجْرَ لَهُ، وَمَا يَبْعُدُ عَنْهُ الْإِثْمُ، وَالْوَاجِبُ مَنْعُهُ، فَإِنْ بَدَآ مَعًا فَالْأَذَانُ لِلصَّيِّتِ الْأَحْسَنِ تَأْدِيَةً.

L5900 It is permissible for multiple people to perform the adhan one after another for Maghrib and other prayers, the same applying to all such cases. If they contend while being equal in delivery, voice, merit, and knowledge of prayer times, lots should be drawn among them - whether the mosque's dimensions are large or not. It was narrated to us by 'Abdullāh ibn Rabī': Ibn Mufarrij narrated to us, Sa'īd ibn al-Sakan narrated to us, al-Farbarī narrated to us, al-Bukhārī narrated to us: 'Abdullāh ibn Yūsuf reported to us, saying: Mālik narrated from Sumayy, the freed slave of Abū Bakr ibn 'Abd al-Raḥmān, from Abū Ṣāliḥ, from Abū Hurayrah, that Allah's Messenger (peace and blessings be upon him) said: "If people knew the virtue contained in the adhan and the first row, then could only secure it by drawing lots, they would draw lots for it."[29]

وَجَائِزٌ أَنْ يُؤَذِّنَ جَمَاعَةٌ وَاحِدًا بَعْدَ وَاحِدٍ لِلْمَغْرِبِ وَغَيْرِهَا سَوَاءٌ فِي كُلِّ ذَلِكَ: فَإِنْ تَشَاحُّوا، وَهُمْ سَوَاءٌ فِي التَّأْدِيَةِ وَالصَّوْتِ وَالْفَضْلِ وَالْمَعْرِفَةِ بِالْأَوْقَاتِ أُقْرِعَ بَيْنَهُمْ، سَوَاءٌ عَظُمَتْ أَقْطَارُ الْمَسْجِدِ أَوْ لَمْ تَعْظُمْ؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ مُفَرِّجٍ ثنا سَعِيدُ بْنُ السَّكَنِ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَبْدُ اللَّهِ بْنُ يُوسُفَ أَنَا مَالِكٌ عَنْ سُمَيٍّ مَوْلَى أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَوْ يَعْلَمُ النَّاسُ مَا فِي النِّدَاءِ وَالصَّفِّ الْأَوَّلِ ثُمَّ لَمْ يَجِدُوا إِلَّا أَنْ يَسْتَهِمُوا عَلَيْهِ لَاسْتَهَمُوا» .

L5901 Ali said: If it were permissible for two or more to perform the call to prayer together, istihām (drawing lots by arrows) would become a meaningless act without purpose—Allah is far removed from such a thing. Similarly, if the first row were designated for those who rush to arrive first, istihām would hold no significance, since none are barred from rushing. Istihām applies only to matters of limited capacity where space accommodates some but not others, and no other way is possible at all.

قَالَ عَلِيٌّ: لَوْ جَازَ أَنْ يُؤَذِّنَ اثْنَانِ فَصَاعِدًا مَعًا لَكَانَ الِاسْتِهَامُ لَغْوًا لَا وَجْهَ لَهُ، وَحَاشَا لِلَّهِ مِنْ هَذَا، وَلَوْ كَانَ الصَّفُّ الْأَوَّلُ لِمَنْ بَادَرَ بِالْمَجِيءِ لَكَانَ الِاسْتِهَامُ لَا مَعْنَى لَهُ؛ لِأَنَّهُ لَا يُمْنَعُ أَحَدٌ مِنَ الْبِدَارِ، وَإِنَّمَا الِاسْتِهَامُ فِيمَا يَضِيقُ فَلَا يَحْمِلُ إِلَّا بَعْضَ النَّاسِ دُونَ بَعْضٍ لَا يُمْكِنُ أَلْبَتَّةَ غَيْرُ هَذَا.

L5902 Indeed, Sa'd ibn Abī Waqqāṣ resolved a dispute between disputants over the call to prayer by drawing lots when the mu'adhdhin was killed during al-Qādisiyyah. If it were permissible for two or more to perform the call to prayer, the Companions of the Messenger of Allah (peace be upon him) would have been the most deserving of people not to neglect its merit. Why

وَقَدْ أَقْرَعَ سَعْدُ بْنُ أَبِي وَقَّاصٍ بَيْنَ الْمُتَشَاحِّينَ فِي الْأَذَانِ، إِذْ قُتِلَ الْمُؤَذِّنُ يَوْمَ الْقَادِسِيَّةِ، وَلَوْ جَازَ أَذَانُ اثْنَيْنِ فَصَاعِدًا لَكَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَحَقَّ النَّاسِ بِأَنْ لَا يُضَيِّعُوا فَضْلَهُ، فَمَا فَعَلُوا ذَلِكَ؟ وَمَا كَانَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا مُؤَذِّنَانِ فَقَطْ؟

[29] **Hadith references (L5900):** Sahih al-Bukhari 2689; Sahih al-Bukhari 615; Sunan an-Nasai 671.

did they not do that? Did the Messenger of Allah (peace be upon him) have only two mu'adhdhins?

L5903 **The issue of performing the adhan and the iqamah while sitting, riding, in a state of major ritual impurity (junub), or facing a direction other than the qibla.**

L5904 325 - Issue: The adhan (call to prayer) and iqamah (second call) are valid when performed while sitting, riding, without ritual purity, in a state of major impurity (janabah), and not facing the qiblah. However, the preferred manner is to perform the adhan only while standing, facing the qiblah, in a state of purity. This is the opinion of Abu Hanifah, Sufyan, and Malik specifically regarding the adhan, and the opinion of Dawud and others regarding all the aforementioned scenarios. We affirm this position because there is no prohibition from Allah – conveyed through His Messenger (peace and blessings be upon him) – regarding any of these matters. Allah the Exalted said: *"He has detailed for you what He has forbidden to you, except that to which you are compelled"* (6:119).[30]

L5905–5906 Thus, it is established that what has not been specified to us as prohibited is permissible. We have preferred that the *adhan* and *iqamah* be performed in a state of ritual purity while standing toward the *Qibla*, as this has been the practice of the Muslim community, both past and present.

L5907 **Issue: If someone sneezed during his adhān or iqāmah.**

L5908 326 - Issue: If someone sneezes during his call to prayer (adhan) or his iqamah, it is obligatory upon him to praise Allah the Exalted. If he hears a sneezer praising Allah the Exalted, it is obligatory upon him to respond with "Yarhamuk Allah" during his adhan or iqamah. If someone greets him with peace during his adhan or while leading prayer (imamah), it is obligatory upon him to reply verbally. Then, is all permissible speech allowed during the adhan and iqamah themselves? Allah the Exalted said: "When you are greeted

[30]**Qur'an references (L5904):** Qur'an 6:119 (Al-An'am).

[مَسْأَلَةٌ الْأَذَانُ وَالْإِقَامَةُ قَاعِدًا وَرَاكِبًا وَجُنُبًا وَإِلَى غَيْرِ الْقِبْلَةِ]

٣٢٥ - مَسْأَلَةٌ: وَيُجْزِئُ الْأَذَانُ وَالْإِقَامَةُ قَاعِدًا وَرَاكِبًا وَعَلَى غَيْرِ طَهَارَةٍ وَجُنُبًا، وَإِلَى غَيْرِ الْقِبْلَةِ -، وَأَفْضَلُ ذَلِكَ أَنْ لَا يُؤَذِّنَ إِلَّا قَائِمًا إِلَى الْقِبْلَةِ عَلَى طَهَارَةٍ؟ وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ، وَمَالِكٍ، فِي الْأَذَانِ خَاصَّةً وَهُوَ قَوْلُ دَاوُد وَغَيْرِهِمْ فِي كُلِّ ذَلِكَ، وَإِنَّمَا قُلْنَا ذَلِكَ: لِأَنَّهُ لَمْ يَأْتِ عَنْ شَيْءٍ مِنْ هَذَا نَهْيٌ مِنْ عِنْدِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] .

فَصَحَّ أَنَّ مَا لَمْ يُفَصَّلْ لَنَا تَحْرِيمُهُ فَهُوَ مُبَاحٌ، وَإِنَّمَا تَخَيَّرْنَا أَنْ يُؤَذِّنَ وَيُقِيمَ عَلَى طَهَارَةٍ قَائِمًا إِلَى الْقِبْلَةِ؛ لِأَنَّهُ عَمَلُ أَهْلِ الْإِسْلَامِ قَدِيمًا وَحَدِيثًا.

[مَسْأَلَةٌ عَطَسَ فِي أَذَانِهِ وَإِقَامَتِهِ]

٣٢٦ - مَسْأَلَةٌ: وَمَنْ عَطَسَ فِي أَذَانِهِ، وَإِقَامَتِهِ: فَفَرْضٌ عَلَيْهِ أَنْ يَحْمَدَ اللَّهَ تَعَالَى، وَإِنْ سَمِعَ عَاطِسًا يَحْمَدُ اللَّهَ تَعَالَى: فَفَرْضٌ عَلَيْهِ أَنْ يُشَمِّتَهُ فِي أَذَانِهِ، وَإِقَامَتِهِ، وَإِنْ سَلَّمَ عَلَيْهِ فِي أَذَانِهِ، وَإِمَامَتِهِ: فَفَرْضٌ عَلَيْهِ أَنْ يَرُدَّ بِالْكَلَامِ ثُمَّ الْكَلَامُ الْمُبَاحُ كُلُّهُ جَائِزٌ فِي نَفْسِ الْأَذَانِ وَالْإِقَامَةِ؟ قَالَ اللَّهُ تَعَالَى: {وَإِذَا حُيِّيتُمْ بِتَحِيَّةٍ فَحَيُّوا بِأَحْسَنَ مِنْهَا أَوْ رُدُّوهَا} [النساء: ٨٦] فَلَمْ يَخُصَّ تَعَالَى حَالًا مِنْ حَالٍ؟ .

with a salutation, respond with a better one or return it likewise" [Quran 4:86]. Did He not single out any specific circumstance over another?[31]

L5909 Abdullah ibn Rabi' narrated to us, Ibn al-Sulaym narrated to us, Ibn al-A'rabi narrated to us, Abu Dawud narrated to us, Musa ibn Isma'il narrated to us from Abdul-Aziz, the son of Abdullah ibn Abi Salamah, from Abdullah ibn Dinar from Abu Salih from Abu Hurayrah that the Messenger of Allah—peace and blessings of Allah be upon him—said: "When one of you sneezes, let him say: 'All praise is due to Allah in every situation,' and let his brother or companion say: 'May Allah have mercy on you.' He should then respond: 'May Allah guide you all and set your affairs right.'"[32]

L5910 The texts did not specify the status of the adhan and iqamah apart from them, nor has any prohibition ever been conveyed against speaking during the adhan itself. We do not know of any valid argument for those who fundamentally prohibit this. If they say: "We have analogized it to the prayer" – we reply: "Yet you permit performing the adhan without ablution; where then lies its analogy to the prayer?"

L5911 Hamam narrated to us, Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabari narrated to us, Abd al-Razzaq narrated from Sufyan al-Thawri from Awn ibn Abi Juhaifah from his father, who said: "I saw Bilal giving the call to prayer while turning around. I followed his mouth moving here and there, his two fingers in his ears, and the Messenger of Allah, peace be upon him, in a red tent."

L5912–5913 It has been narrated to us from Waki' from Muḥammad ibn Ṭalḥah from Jāmi' ibn Shaddād from Mūsā ibn 'Abdillāh ibn Yazīd al-Khiṭmī from Sulaymān ibn Ṣurad, the Companion of the Messenger of Allah—peace and blessings be upon him—that he would call the adhān for the army and instruct his servant during the adhān for a need. It has also been narrated to us from Waki' from al-Rabī' ibn Ṣubayḥ from al-Ḥasan al-Baṣrī, who said: There is no harm in speaking during one's adhān for a necessity. It has

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُوسَى بْنُ إِسْمَاعِيلَ عَنْ عَبْدِ الْعَزِيزِ هُوَ ابْنُ عَبْدِ اللَّهِ بْنِ أَبِي سَلَمَةَ - عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا عَطَسَ أَحَدُكُمْ فَلْيَقُلْ: الْحَمْدُ لِلَّهِ عَلَى كُلِّ حَالٍ، وَلْيَقُلْ أَخُوهُ أَوْ صَاحِبُهُ: يَرْحَمُكَ اللَّهُ؟ وَيَقُولُ هُوَ: يَهْدِيكُمْ اللَّهُ وَيُصْلِحُ بَالَكُمْ» .

فَلَمْ تَخُصَّ النُّصُوصُ حَالَ الْأَذَانِ وَالْإِقَامَةِ مِنْ غَيْرِهِمَا، وَلَا جَاءَ نَهْيٌ قَطُّ عَنْ الْكَلَامِ فِي نَفْسِ الْأَذَانِ، وَمَا نَعْلَمُ حُجَّةً لِمَنْ مَنَعَ ذَلِكَ أَصْلًا؟ فَإِنْ قَالُوا: قِسْنَاهُ عَلَى الصَّلَاةِ؟ قُلْنَا: فَأَنْتُمْ تُجِيزُونَ الْأَذَانَ بِلَا وُضُوءٍ، فَأَيْنَ قِيَاسُهُ عَلَى الصَّلَاةِ؟ .

حَدَّثَنَا حَمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَوْنِ بْنِ أَبِي جُحَيْفَةَ عَنْ أَبِيهِ قَالَ: «رَأَيْت بِلَالًا يُؤَذِّنُ وَيَدُورُ، فَأَتَتَبَّعُ فَاهُ هَاهُنَا وَهَاهُنَا، وَأُصْبُعَاهُ فِي أُذُنَيْهِ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي قُبَّةٍ حَمْرَاءَ» .

وَرُوِّينَا عَنْ وَكِيعٍ عَنْ مُحَمَّدِ بْنِ طَلْحَةَ عَنْ جَامِعِ بْنِ شَدَّادٍ عَنْ مُوسَى بْنِ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْخَطْمِيِّ عَنْ سُلَيْمَانَ بْنِ صُرَدَ صَاحِبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ كَانَ يُؤَذِّنُ لِلْعَسْكَرِ فَكَانَ يَأْمُرُ غُلَامَهُ فِي أَذَانِهِ بِالْحَاجَةِ. وَعَنْ وَكِيعٍ عَنْ الرَّبِيعِ بْنِ صُبَيْحٍ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: لَا بَأْسَ أَنْ يَتَكَلَّمَ فِي أَذَانِهِ لِلْحَاجَةِ؟ وَعَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ نُسَيْرِ بْنِ ذُعْلُوقٍ: رَأَيْت ابْنَ عُمَرَ يُؤَذِّنُ عَلَى بَعِيرِهِ.

[31] **Qur'an references (L5908):** Qur'an 4:86 (An-Nisa).
[32] **Hadith references (L5909):** Sunan Abi Dawud 5033.

also been narrated to us from Waki‘ from Sufyān al-Thawrī from Nusayr ibn Dhu’luq: I saw Ibn ‘Umar calling the adhān while mounted on his camel.

The Question of Remuneration for the Adhan

[مَسْأَلَةُ الْأُجْرَةُ عَلَى الْأَذَانِ]

327 - Issue: It is not permissible to take payment for the call to prayer (adhan). If someone does so **and performs the adhan solely for payment**, their adhan is invalid, and the prayer performed with it **does not suffice**. However, it is permissible to give them something **as an act of righteousness**, or for the Imam to provide for him in this manner. Ahmad ibn Muḥammad ibn al-Jasūr narrated to us; Muḥammad ibn ʿAbd Allāh ibn Abī Dulaym narrated to us; Ibn Waḍḍāḥ narrated to us; Abū Bakr ibn Abī Shaybah narrated to us; Ḥafṣ ibn Ghayyāth narrated from Ashʿath (ibn ʿAbd al-Malik al-Ḥumrānī) from al-Ḥasan, from ʿUthmān ibn Abī al-ʿĀṣ: “The last instruction the Messenger of Allāh—peace and blessings be upon him—gave me was not to appoint a caller to prayer who takes payment for his adhan.” This is the opinion of Abū Ḥanīfah and others. Mālik said: “There is no harm in taking payment for that,” but this contradicts the text.

٣٢٧ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْأُجْرَةُ عَلَى الْأَذَانِ، فَإِنْ فَعَلَ وَلَمْ يُؤَذِّنْ إِلَّا لِلْأُجْرَةِ لَمْ يَجُزْ أَذَانُهُ، وَلَا أَجْزَأَتْ الصَّلَاةُ بِهِ - وَجَائِزٌ أَنْ يُعْطَى عَلَى سَبِيلِ الْبِرِّ، وَأَنْ يَرْزُقَهُ الْإِمَامُ كَذَلِكَ حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي دُلَيْمٍ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا حَفْصُ بْنُ غَيَّاثٍ عَنْ أَشْعَثَ هُوَ ابْنُ عَبْدِ الْمَلِكِ الْحُمْرَانِيُّ - عَنْ الْحَسَنِ عَنْ عُثْمَانَ بْنِ أَبِي الْعَاصِ «آخِرُ مَا عَهِدَ إلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ لَا أَتَّخِذَ مُؤَذِّنًا يَأْخُذُ عَلَى أَذَانِهِ أَجْرًا» وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَغَيْرِهِ وَقَالَ مَالِكٌ: لَا بَأْسَ بِأَخْذِ الْأُجْرَةِ عَلَى ذَلِكَ، وَهَذَا خِلَافُ النَّصِّ.

L5914 L5915 L5916

There are four matters for which no fee is to be taken: the call to prayer, the recitation of the Quran, arbitration, and judging.

رُوِّينَا عَنْ وَكِيعٍ عَنْ الْمَسْعُودِيِّ هُوَ أَبُو عُمَيْسٍ عُتْبَةُ بْنُ عَبْدِ اللَّهِ - عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ - قَالَ: أَرْبَعٌ لَا يُؤْخَذُ عَلَيْهِنَّ أَجْرٌ: الْأَذَانُ وَقِرَاءَةُ الْقُرْآنِ وَالْمَقَاسِمِ وَالْقَضَاءِ؟ .

L5917–5919

And from ʿAbd al-Razzāq, from Jaʿfar ibn Sulaymān al-Ḍubaʿī, from Yaḥyā al-Bakkā’, who reported: “I saw Ibn ʿUmar.” He says to a man: “I hate you for Allah’s sake,” then tells his companions: “He sings in his call to prayer and accepts remuneration for it.” Allah the Almighty and Majestic has said: {Do not consume one another’s wealth wrongfully except through trade arising from mutual consent} [An-Nisā’ 4:29], and the Prophet—peace be upon him—said: “Your blood and your wealth are inviolable to you.”[33]

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ جَعْفَرِ بْنِ سُلَيْمَانَ الضُّبَعِيِّ عَنْ يَحْيَى الْبَكَّاءِ قَالَ: رَأَيْت ابْنَ عُمَرَ يَقُولُ لِرَجُلٍ: إنِّي لَأُبْغِضُك فِي اللَّهِ، ثُمَّ قَالَ لِأَصْحَابِهِ: إنَّهُ يَتَغَنَّى فِي أَذَانِهِ وَيَأْخُذُ عَلَيْهِ أَجْرًا. وَقَدْ قَالَ اللَّهُ عَزَّ وَجَلَّ: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] ، وَقَالَ - عَلَيْهِ السَّلَامُ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

[33] **Qur’an references (L5917):** Qur’an 4:29 (An-Nisa).

L5920 He, the Exalted, has forbidden the consumption of wealth except through trade. Thus, all wealth is prohibited unless permitted by an explicit text or definitive consensus. Were it not for the prohibition against taking payment for the call to prayer, it would have been forbidden by this general principle. And success is granted by Allah, the Exalted. No dissenter from Ibn Umar's position is known among the Companions—may Allah be pleased with them—though they would publicly censure this practice when it aligned with their adherence to precedent. As for what is given as an act of righteousness, it constitutes bounty, for the Exalted has said: "And do not forget bounty between you." [Al-Baqarah: 237].[34]

L5921 ## An Issue Regarding Leaving the Mosque After the Call to Prayer

L5922–5924 328 - Issue: If a person is in the mosque when the call to prayer has commenced, it is not permissible for him to exit except due to being without ablution or necessity.

Abdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: I am Aḥmad ibn ʿUthmān ibn Ḥakīm, from Jaʿfar ibn ʿAwf, from Abū ʿUmays, from Abū Ṣakhrah - who is Jāmiʿ ibn Shaddād - from Abū al-Shaʿthāʾ, who said: A man exited the mosque after the prayer was announced. Abū Hurayrah said: "As for this man, he has disobeyed Abū al-Qāsim - peace be upon him."

ʿAbd al-Raḥmān ibn ʿAbdillāh ibn Khālid narrated to us: Ibrāhīm ibn Aḥmad narrated to us: al-Farbarī narrated to us: al-Bukhārī narrated to us: Isḥāq narrated to us: Muḥammad ibn Yūsuf narrated to us: al-Awzāʿī narrated from al-Zuhrī, from Abū Salamah ibn ʿAbd al-Raḥmān, from Abū Hurayrah, who said: "The prayer was established, and the people aligned their rows. The Messenger of Allāh - peace be upon him - came out and advanced while in a state of major impurity [janabah]. He then said: 'Stay in your places.' He returned, performed ghusl, then came out again with water dripping from his head." water, then he prayed with them. And He, the Almighty and Majestic,

[34] **Qur'an references (L5920):** Qur'an 2:237 (Al-Baqarah).

فَحَرَّمَ تَعَالَى أَكْلَ الْأَمْوَالِ إِلَّا لِتِجَارَةٍ، فَكُلُّ مَالٍ فَهُوَ حَرَامٌ إِلَّا مَا أَبَاحَهُ نَصٌّ أَوْ إِجْمَاعٌ مُتَيَقَّنٌ؛ فَلَوْ لَمْ يَأْتِ النَّهْيُ عَنْ أَخْذِ الْأَجْرِ عَلَى الْأَذَانِ لَكَانَ حَرَامًا بِهَذِهِ الْجُمْلَةِ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. لَا يُعْرَفُ لِابْنِ عُمَرَ فِي هَذَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهُمْ يُشَنِّعُونَ هَذَا إذَا وَافَقَ تَقْلِيدَهُمْ، وَأَمَّا إنْ أُعْطِيَ عَلَى سَبِيلِ الْبِرِّ فَهُوَ فَضْلٌ، وَقَدْ قَالَ تَعَالَى: {وَلا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ} [البقرة: ٢٣٧] .

[مَسْأَلَةُ الْخُرُوجُ مِنْ الْمَسْجِدِ بَعْدَ الْأَذَانِ]

٣٢٨ - مَسْأَلَةٌ: وَمَنْ كَانَ فِي الْمَسْجِدِ فَانْدَفَعَ الْأَذَانُ لَمْ يَحِلَّ لَهُ الْخُرُوجُ مِنْ الْمَسْجِدِ إلَّا أَنْ يَكُونَ عَلَى غَيْرِ وُضُوءٍ أَوْ لِضَرُورَةٍ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ عُثْمَانَ بْنِ حَكِيمٍ ثنا جَعْفَرُ بْنُ عَوْفٍ عَنْ أَبِي عُمَيْسٍ أَنَا أَبُو صَخْرَةَ هُوَ جَامِعُ بْنُ شَدَّادٍ - عَنْ أَبِي الشَّعْثَاءِ قَالَ: خَرَجَ رَجُلٌ مِنْ الْمَسْجِدِ بَعْدَ مَا نُودِيَ لِلصَّلَاةِ، فَقَالَ أَبُو هُرَيْرَةَ " أَمَّا هَذَا فَقَدْ عَصَى أَبَا الْقَاسِمِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ". حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا إسْحَاقُ ثنا مُحَمَّدُ بْنُ يُوسُفَ ثنا الْأَوْزَاعِيُّ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ قَالَ: «أُقِيمَتْ الصَّلَاةُ فَسَوَّى النَّاسُ صُفُوفَهُمْ فَخَرَجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَتَقَدَّمَ وَهُوَ جُنُبٌ، ثُمَّ قَالَ: عَلَى مَكَانِكُمْ، فَرَجَعَ وَاغْتَسَلَ ثُمَّ خَرَجَ وَرَأْسُهُ يَقْطُرُ مَاءً فَصَلَّى بِهِمْ» وَقَالَ عَزَّ وَجَلَّ {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] .

has said: “He has already detailed what He has forbidden you, except that which you are compelled to resort to.” [Al-An’am 6:119].[35]

L5925 **Issue: It is permissible for someone other than the one who gave the *adhan* to lead the *iqama*.**

L5926 329. Issue: It is permissible for someone other than the one who gave the adhān to lead the iqāmah, as no authentic prohibition exists regarding this matter. The transmitted tradition stating, “Only the one who gave the adhān should perform the iqāmah,” was reported solely through ʿAbd al-Raḥmān ibn Ziyād ibn Anʿum, who is discredited.

L5927 **A jurisprudential issue: Whoever hears the mu’adhdhin (the caller to prayer) should say as he says.**

L5928 330 - Issue: Whoever hears the mu’adhdhin should repeat his words word for word exactly as he says them, from the beginning to the end of the adhān - whether one is not praying, engaged in an obligatory prayer, or performing a voluntary prayer. However, one should omit the mu’adhdhin’s phrases “Ḥayya ʿalā al-ṣalāh” and “Ḥayya ʿalā al-falāḥ” during prayer, though they should be recited when not praying. Upon completing the prayer, one should then say these phrases. ʿAbdullāh ibn Yūsuf narrated to us: Aḥmad ibn Fatḥ narrated to us: ʿAbd al-Wahhāb ibn ʿĪsā narrated to us: Aḥmad ibn Muḥammad narrated to us: Aḥmad ibn ʿAlī narrated to us: Muslim ibn al-Ḥajjāj narrated to us: Muḥammad ibn Salamah al-Murādī narrated to us: ʿAbdullāh ibn Wahb narrated from Ḥaiwah and Saʿīd ibn Abī Ayyūb, from Kaʿb ibn ʿAlqamah, from ʿAbd al-Raḥmān ibn Jubayr, from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ, that he heard the Prophet - peace and blessings be upon him - say: “When you hear the mu’adhdhin, repeat his words exactly as they are. Then invoke ṣalāt upon me, for whoever invokes one ṣalāt upon me, Allah will send ten blessings upon him in return. Thereafter, ask Allāh to grant me al-Wasīlah - a rank in Paradise befitting only one of Allāh’s servants,

[35] **Qur’an references (L5922):** Qur’an 6:119 (Al-An’am).

[مَسْأَلَةٌ جَائِزٌ أَنْ يُقِيمَ غَيْرُ الَّذِي أَذَّنَ]

٣٢٩ - مَسْأَلَةٌ: وَجَائِزٌ أَنْ يُقِيمَ غَيْرُ الَّذِي أَذَّنَ، لِأَنَّهُ لَمْ يَأْتِ عَنْ ذَلِكَ نَهْيٌ يَصِحُّ، وَالْأَثَرُ الْمَرْوِيُّ «إِنَّمَا يُقِيمُ مَنْ أَذَّنَ» إِنَّمَا جَاءَ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ زِيَادِ بْنِ أَنْعُمَ، وَهُوَ هَالِكٌ؟

[مَسْأَلَةٌ مَنْ سَمِعَ الْمُؤَذِّنَ فَلْيَقُلْ كَمَا يَقُولُ الْمُؤَذِّنُ]

٣٣٠ - مَسْأَلَةٌ: وَمَنْ سَمِعَ الْمُؤَذِّنَ فَلْيَقُلْ كَمَا يَقُولُ الْمُؤَذِّنُ سَوَاءً سَوَاءً، مِنْ أَوَّلِ الْأَذَانِ إِلَى آخِرِهِ، وَسَوَاءٌ كَانَ فِي غَيْرِ صَلَاةٍ أَوْ فِي صَلَاةِ فَرْضٍ أَوْ نَافِلَةٍ، حَاشَا قَوْلَ الْمُؤَذِّنِ " حَيَّ عَلَى الصَّلَاةِ، حَيَّ عَلَى الْفَلَاحِ " فَإِنَّهُ لَا يَقُولُهُمَا فِي الصَّلَاةِ، وَيَقُولُهُمَا فِي غَيْرِ صَلَاةٍ، فَإِذَا أَتَمَّ الصَّلَاةَ فَلْيَقُلْ ذَلِكَ؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ سَلَمَةَ الْمُرَادِيُّ ثنا عَبْدُ اللَّهِ بْنُ وَهْبٍ عَنْ حَيْوَةَ وَسَعِيدُ بْنُ أَبِي أَيُّوبَ عَنْ كَعْبِ بْنِ عَلْقَمَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ جُبَيْرٍ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّهُ سَمِعَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إِذَا سَمِعْتُمُ الْمُؤَذِّنَ فَقُولُوا مِثْلَ مَا يَقُولُ، ثُمَّ صَلُّوا عَلَيَّ فَإِنَّهُ مَنْ صَلَّى عَلَيَّ صَلَاةً صَلَّى اللَّهُ عَلَيْهِ بِهَا عَشْرًا، ثُمَّ سَلُوا اللَّهَ لِي الْوَسِيلَةَ فَإِنَّهَا مَنْزِلَةٌ فِي الْجَنَّةِ لَا تَنْبَغِي إِلَّا لِعَبْدٍ مِنْ عِبَادِ اللَّهِ وَأَرْجُو أَنْ أَكُونَ أَنَا هُوَ فَمَنْ سَأَلَ لِي الْوَسِيلَةَ حَلَّتْ عَلَيْهِ الشَّفَاعَةُ» ؟ .

and I hope to be that servant. Whoever seeks al-Wasīlah for me will have intercession granted to him."[36]

L5929–5931 And we have also narrated it—through the transmission of Mālik, from al-Zuhrī, from ʿAṭāʾ ibn Yazīd al-Laythī, from Abū Saʿīd al-Khudrī—that the Prophet (peace be upon him) did not specify whether one is in prayer or outside of it. We merely said: He does not say during the prayer, "Ḥayya ʿala-ṣ-Ṣalāh, Ḥayya ʿala-l-Falāḥ," because he... Is it an address to the people by which they are summoned to prayer? Is the entirety of the call to prayer a remembrance of Allah the Exalted? And is prayer the place of remembrance of Allah the Exalted? Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Abu Bakr ibn Abi Shaybah narrated to us: Isma'il ibn Ibrahim - that is Ibn Ulayyah - from Hajjaj as-Sawwaf from Yahya ibn Abi Kathir from Hilal ibn Abi Maymunah from Ata ibn Yasar from Mu'awiyah ibn al-Hakam, who said: "While I was praying with the Messenger of Allah, he mentioned the hadith" - and at its conclusion: "The Messenger of Allah, peace be upon him, said: 'No human speech is permissible in this prayer; it is exclusively for tasbīḥ (glorification), takbīr (proclaiming Allah's greatness), and recitation of the Quran,'" or as he, peace be upon him, phrased it? If the hearer of the call to prayer says "There is no power nor strength except through Allah" instead of "Come to prayer, come to salvation," then this is commendable.[37]

L5932 Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Muʿawiyah narrated to us: Ahmad ibn Shuʿayb narrated to us: Mujahid ibn Musa informed me: Hajjaj narrated to me, saying: Ibn Jurayj said: ʿAmr ibn Yahya informed me that ʿIsa ibn ʿUmar informed him from ʿAbdullah ibn ʿAlqamah ibn Waqqas from his father, who said: "I was with Muʿawiyah when his mu'adhdhin called the adhan. Muʿawiyah repeated the mu'adhdhin's words. When the mu'adhdhin said: 'Come to prayer,' he responded: 'There is no power nor strength except by Allah.' When he said: 'Come to success,' he again responded: 'There is no

وَرُوِّينَاهُ أَيْضًا -: مِنْ طَرِيقِ مَالِكٍ عَنْ الزُّهْرِيِّ عَنْ عَطَاءِ بْنِ يَزِيدَ اللَّيْثِيِّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ، فَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - كَوْنَهُ فِي صَلَاةٍ مِنْ غَيْرِ كَوْنِهِ فِيهَا، وَإِنَّمَا قُلْنَا: لَا يَقُولُ فِي الصَّلَاةِ " حَيَّ عَلَى الصَّلَاةِ، حَيَّ عَلَى الْفَلَاحِ "؟ لِأَنَّهُ تَكْلِيمٌ لِلنَّاسِ يُدْعَوْنَ بِهِ إلَى الصَّلَاةِ، وَسَائِرُ الْأَذَانِ ذِكْرٌ لِلَّهِ تَعَالَى، وَالصَّلَاةُ مَوْضِعُ ذِكْرِ اللَّهِ تَعَالَى؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا إسْمَاعِيلُ بْنُ إبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ - عَنْ حَجَّاجٍ الصَّوَّافِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ هِلَالِ بْنِ أَبِي مَيْمُونَةَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ مُعَاوِيَةَ بْنِ الْحَكَمِ قَالَ: «بَيْنَا أَنَا أُصَلِّي مَعَ رَسُولِ اللَّهِ فَذَكَرَ الْحَدِيثَ -: وَفِي آخِرِهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: إنَّ هَذِهِ الصَّلَاةَ لَا يَصْلُحُ فِيهَا شَيْءٌ مِنْ كَلَامِ النَّاسِ إنَّمَا هُوَ التَّسْبِيحُ وَالتَّكْبِيرُ وَقِرَاءَةُ الْقُرْآنِ» أَوْ كَمَا قَالَ - عَلَيْهِ السَّلَامُ -؟ فَإِنْ قَالَ سَامِعُ الْأَذَانِ: لَا حَوْلَ وَلَا قُوَّةَ إلَّا بِاَللَّهِ " مَكَانَ " حَيَّ عَلَى الصَّلَاةِ حَيَّ عَلَى الْفَلَاحِ " فَحَسَنٌ.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي مُجَاهِدُ بْنُ مُوسَى حَدَّثَنِي حَجَّاجٌ قَالَ: قَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي عَمْرُو بْنُ يَحْيَى أَنَّ عِيسَى بْنَ عُمَرَ أَخْبَرَهُ عَنْ عَبْدِ اللَّهِ بْنِ عَلْقَمَةَ بْنِ وَقَّاصٍ عَنْ أَبِيهِ قَالَ: «إنِّي عِنْدَ مُعَاوِيَةَ إذْ أَذَّنَ مُؤَذِّنُهُ فَقَالَ مُعَاوِيَةُ كَمَا قَالَ الْمُؤَذِّنُ، حَتَّى إذَا قَالَ حَيَّ عَلَى الصَّلَاةِ قَالَ لَا حَوْلَ وَلَا قُوَّةَ إلَّا بِاَللَّهِ

[36] **Hadith references (L5928):** Mishkat al-Masabih 657.
[37] **Hadith references (L5929):** Sahih Muslim 537a; Mishkat al-Masabih 978.

power nor strength except by Allah.' Then he said: 'I heard the Messenger of Allah (may Allah bless him and grant him peace) say this.'"

فَلَمَّا قَالَ حَيَّ عَلَى الْفَلَاحِ قَالَ لَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ. ثُمَّ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ ذَلِكَ» .

Issue: Clarifying the Prescribed Method of the Call to Prayer

[مَسْأَلَةٌ بَيَانُ صِفَةُ الْأَذَانِ]

331 – Legal Issue:

٣٣١ - مَسْأَلَةٌ:

The description of the Adhan is well-known. The most beloved to us in this regard is the Adhan of the people of Mecca, which is: Allahu Akbar, Allahu Akbar; Allahu Akbar, Allahu Akbar; four times; Ashhadu an la ilaha illa Allah, Ashhadu an la ilaha illa Allah; Ashhadu anna Muhammadan rasulu Allah, Ashhadu anna Muhammadan rasulu Allah.

وَصِفَةُ الْأَذَانِ: مَعْرُوفَةٌ، وَأَحَبُّ ذَلِكَ إِلَيْنَا أَذَانُ أَهْلِ مَكَّةَ وَهُوَ: اللَّهُ أَكْبَرُ، اللَّهُ أَكْبَرُ، اللَّهُ أَكْبَرُ، اللَّهُ أَكْبَرُ، أَرْبَعَ مَرَّاتٍ، أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ، أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ، أَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، أَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ.

Then he raises his voice and says: I bear witness that there is no god but Allah, I bear witness that there is no god but Allah, I bear witness that... Muhammad is the Messenger of Allah. I bear witness that Muhammad is the Messenger of Allah. Hasten to prayer, hasten to prayer. Hasten to salvation, hasten to salvation. Allah is the Greatest, Allah is the Greatest. There is no god but Allah?

ثُمَّ يَرْفَعُ صَوْتَهُ فَيَقُولُ: أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ، أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ، أَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، أَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، حَيَّ عَلَى الصَّلَاةِ، حَيَّ عَلَى الصَّلَاةِ، حَيَّ عَلَى الْفَلَاحِ، حَيَّ عَلَى الْفَلَاحِ، اللَّهُ أَكْبَرُ، اللَّهُ أَكْبَرُ، لَا إِلَهَ إِلَّا اللَّهُ؟ .

The call to prayer of the people of Medina is exactly as we have described, except that at the beginning of his call, he only says "Allāh is the Greatest, Allāh is the Greatest" twice. The call to prayer of the people of Kufa is as we have described the call to prayer of the people of Mecca, except that they only say "I bear witness that there is no deity but Allāh, I bear witness that there is no deity but Allāh" twice. If a muezzin performs the call to prayer in the manner of the people of Medina or the people of Kufa, it is valid. If he adds in the dawn prayer after "Come to success" the phrase "Prayer is better than sleep, Prayer is better than sleep," it is also valid.

وَأَذَانُ أَهْلِ الْمَدِينَةِ كَمَا وَصَفْنَا سَوَاءً سَوَاءً، إِلَّا أَنَّهُ لَا يَقُولُ فِي أَوَّلِ أَذَانِهِ: " اللَّهُ أَكْبَرُ، اللَّهُ أَكْبَرُ " إِلَّا مَرَّتَيْنِ فَقَطْ وَأَذَانُ أَهْلِ الْكُوفَةِ كَمَا وَصَفْنَا أَذَانَ أَهْلِ مَكَّةَ إِلَّا أَنَّهُمْ لَا يَقُولُونَ " أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ، أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ " إِلَّا مَرَّتَيْنِ فَقَطْ؟ وَإِنْ أَذَّنَ مُؤَذِّنٌ بِأَذَانِ أَهْلِ الْمَدِينَةِ أَوْ بِأَذَانِ أَهْلِ الْكُوفَةِ: فَحَسَنٌ وَإِنْ زَادَ فِي صَلَاةِ الصُّبْحِ بَعْدَ: حَيَّ عَلَى الْفَلَاحِ -: الصَّلَاةُ خَيْرٌ مِنْ النَّوْمِ، الصَّلَاةُ خَيْرٌ مِنْ النَّوْمِ: فَحَسَنٌ؟ .

We have chosen the call to prayer of the people of Mecca because it contains additional remembrance of God Almighty beyond those of the people of Medina and Kufa. It includes a modulated repetition of "God is the Greatest" and a modulated repetition of "I bear witness that there is no deity but God,

وَإِنَّمَا تَخَيَّرْنَا أَذَانَ أَهْلِ مَكَّةَ؛ لِأَنَّ فِيهِ زِيَادَةَ ذِكْرٍ لِلَّهِ تَعَالَى عَلَى أَذَانِ أَهْلِ الْمَدِينَةِ، وَأَذَانِ أَهْلِ الْكُوفَةِ؛ فَفِيهِ تَرْجِيعُ " اللَّهُ أَكْبَرُ " وَفِيهِ تَرْجِيعُ " أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ، أَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ "، وَهَذِهِ زِيَادَةُ خَيْرٍ لَا تُحَقَّرُ.

I bear witness that Muhammad is the Messenger of God." This constitutes an added goodness that should not be undervalued.

أَقَلُّ مَا يَجِبُ لَهَا سِتُّونَ حَسَنَةً؟ وَأَيْضًا: فَإِنَّهُ قَدْ رُوِّينَاهُ مِنْ طُرُقٍ، مِنْهَا -: مَا حَدَّثَنَاهُ

L5941 What is the minimum obligatory for her—sixty good deeds? Also: We have narrated this through various chains, among them—what Hammam narrated to us from Abbas ibn Asbagh from Muhammad ibn Abd al-Malik ibn Ayman from Muhammad ibn Sulayman al-Munqiri al-Basri from Hafs ibn Umar al-Hawḍī from Hammam ibn Yahya, who narrated that Amir ibn Abd al-Wahid al-Ahwal narrated to him that Makhūl al-Shāmī narrated to him that Ibn Muhayriz narrated to him that Abu Mahdhurah narrated to him: "The Messenger of Allah—peace and blessings be upon him—taught him the Adhan as nineteen phrases and the Iqamah as seventeen phrases." Then did he describe the Adhan, which we have mentioned, phrase by phrase?[38]

حَمَامُ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا مُحَمَّدُ بْنُ سُلَيْمَانَ الْمُنْقِرِيُّ الْبَصْرِيُّ ثنا حَفْصُ بْنُ عُمَرَ الْحَوْضِيُّ ثنا هَمَّامُ بْنُ يَحْيَى أَنَّ عَامِرَ بْنَ عَبْدِ الْوَاحِدِ الْأَحْوَلَ حَدَّثَهُ أَنَّ مَكْحُولًا الشَّامِيَّ حَدَّثَهُ أَنَّ ابْنَ مُحَيْرِيزٍ حَدَّثَهُ أَنَّ أَبَا مَحْذُورَةَ حَدَّثَهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَّمَهُ الْأَذَانَ تِسْعَ عَشْرَةَ كَلِمَةً، وَالْإِقَامَةَ سَبْعَ عَشْرَةَ كَلِمَةً» ثُمَّ وَصَفَ الْأَذَانَ الَّذِي ذَكَرْنَا حَرْفًا حَرْفًا؟ .

L5942 And it was also narrated to us by ʿAbdullāh ibn Rabīʿ: Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us; Ibrāhīm ibn al-Ḥasan and Yūsuf ibn Saʿīd informed me; Ḥajjāj narrated to us from Ibn Jurayj; ʿAbd al-ʿAzīz ibn ʿAbd al-Malik ibn Abī Maḥdhūrah informed me that Ibn Muḥayriz (who was an orphan under the guardianship of Abī Maḥdhūrah) informed him. He said: I said to Abī Maḥdhūrah, "I am traveling to Syria, and I fear I will be asked about your adhān, so inform me." He related to him that "the Messenger of Allah — may the peace and blessings of Allah be upon him — taught him the adhān" exactly as we have conveyed it textually.[39]

وَحَدَّثَنَاهُ أَيْضًا: عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي إِبْرَاهِيمُ بْنُ الْحَسَنِ وَيُوسُفُ بْنُ سَعِيدٍ ثنا حَجَّاجٌ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عَبْدِ الْمَلِكِ بْنِ أَبِي مَحْذُورَةَ أَنَّ ابْنَ مُحَيْرِيزٍ أَخْبَرَهُ -، وَكَانَ يَتِيمًا فِي حِجْرِ أَبِي مَحْذُورَةَ - قَالَ: قُلْتُ لِأَبِي مَحْذُورَةَ: إِنِّي خَارِجٌ إِلَى الشَّامِ، وَأَخْشَى أَنْ أُسْأَلَ عَنْ تَأْذِينِكَ فَأَخْبِرْنِي؟ فَذَكَرَ لَهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَّمَهُ الْأَذَانَ» كَمَا ذَكَرْنَا نَصًّا.

L5943–5945 There have also come traditions similar to these, like the adhan of the people of Medina and the adhan of the people of Kufa; except that... This is an addition to it involving fourfold repetition and vocal modulation. An addition made by reliable narrators must not be omitted unless it is optional, in which case adopting the addition is preferable, as it constitutes additional dhikr and goodness—is it not?

وَقَدْ جَاءَتْ أَيْضًا آثَارٌ مِثْلُ هَذِهِ بِمِثْلِ أَذَانِ أَهْلِ الْمَدِينَةِ وَأَذَانِ أَهْلِ الْكُوفَةِ، إِلَّا أَنَّ هَذِهِ زَائِدَةٌ عَلَيْهَا تَرْبِيعًا وَتَرْجِيعًا، وَزِيَادَةُ الرُّوَاةِ الْعُدُولِ لَا يَجُوزُ تَرْكُهَا، إِلَّا أَنْ تَكُونَ عَلَى التَّخْيِيرِ، فَيَكُونُ الْأَخْذُ بِالزِّيَادَةِ أَفْضَلَ، لِأَنَّهَا زِيَادَةُ ذِكْرٍ وَخَيْرٍ؟ .

L5946 Muhammad ibn Saʿīd ibn Nubāt narrated to us; ʿAbdullāh ibn Naṣr narrated to us; Qāsim ibn Aṣbagh narrated to us; Ibn Waḍḍāḥ narrated to us; Mūsā ibn Muʿāwiyah narrated to us; Wakīʿ ibn Sufyān al-Thawrī narrated to us; from

وَحَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ ثنا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ ثنا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعُ بْنُ سُفْيَانَ الثَّوْرِيُّ عَنْ عِمْرَانَ بْنِ مُسْلِمٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ: أَنَّهُ أَرْسَلَ إِلَى مُؤَذِّنٍ لَهُ: لَا تُثَوِّبْ فِي شَيْءٍ مِنَ الصَّلَاةِ إِلَّا الْفَجْرَ، فَإِذَا بَلَغْتَ "

[38] **Hadith references (L5941):** Sunan Abi Dawud 502.
[39] **Hadith references (L5942):** Sunan Abi Dawud 505; Sunan Abi Dawud 502.

ʿImrān ibn Muslim; from Suwayd ibn Ghafala: that he sent [instructions] to his muʾadhdhin: “Do not perform *tathwīb* in the *adhan* for any prayer except the Fajr prayer. When you reach ‘*Ḥayya ʿalā l-falāḥ*,’ say ‘*Aṣ-ṣalātu khayrun mina n-nawm*,’ ‘*Aṣ-ṣalātu khayrun mina n-nawm*,’ for this is the *adhan* of Bilāl.”

حَيَّ عَلَى الْفَلَاحِ " فَقُلْ " الصَّلَاةُ خَيْرٌ مِنْ النَّوْمِ، الصَّلَاةُ خَيْرٌ مِنْ النَّوْمِ " فَإِنَّهُ أَذَانُ بِلَالٍ.

L5947 Ali said: Suwayd ibn Ghaflah was among the greatest of the Successors. He arrived approximately five nights after the death of the Prophet—peace be upon him—and met all the remaining Companions after the Prophet’s passing—peace be upon him.

قَالَ عَلِيٌّ: سُوَيْدُ بْنُ غَفَلَةَ مِنْ أَكْبَرِ التَّابِعِينَ، قَدِمَ بَعْدَ مَوْتِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِخَمْسِ لَيَالٍ أَوْ نَحْوِهَا، وَأَدْرَكَ جَمِيعَ الصَّحَابَةِ الْبَاقِينَ بَعْدَ مَوْتِهِ - عَلَيْهِ السَّلَامُ -.

L5948 And by him from Waki‘, from Sufyan al-Thawri, from Abu Ja‘far the *mu’adhdhin*, from Abu Sulayman, from Abu Mahdhurah: that when he reached “Hayya ‘ala al-Falah” during the Fajr prayer, he would say, “Prayer is better than sleep. Prayer is better than sleep.”

وَبِهِ إِلَى وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي جَعْفَرٍ الْمُؤَذِّنِ عَنْ أَبِي سُلَيْمَانَ عَنْ أَبِي مَحْذُورَةَ: أَنَّهُ كَانَ إِذَا بَلَغَ " حَيَّ عَلَى الْفَلَاحِ " فِي الْفَجْرِ قَالَ " الصَّلَاةُ خَيْرٌ مِنْ النَّوْمِ، الصَّلَاةُ خَيْرٌ مِنْ النَّوْمِ ".

L5949 Ali said: Bilal did not call the *adhan* for anyone after the Messenger of Allah—peace be upon him—except once in the Levant for Dhuhr or Asr only, and he did not repeat the *adhan* in it either.

قَالَ عَلِيٌّ: لَمْ يُؤَذِّنْ بِلَالٌ لِأَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا مَرَّةً وَاحِدَةً بِالشَّامِ لِلظُّهْرِ، أَوْ الْعَصْرِ فَقَطْ، وَلَمْ يَشْفَعْ الْأَذَانَ فِيهَا أَيْضًا.

L5950 As for the Iqamah, it is: “Allah is the Greatest, Allah is the Greatest. I bear witness that there is no deity except Allah. I bear witness that Muhammad is the Messenger of Allah. Hasten to prayer, hasten to success. The prayer has begun, the prayer has begun. Allah is the Greatest, Allah is the Greatest. There is no deity except Allah?”

وَأَمَّا الْإِقَامَةُ فَهِيَ " اللَّهُ أَكْبَرُ، اللَّهُ أَكْبَرُ، أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ، أَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، حَيَّ عَلَى الصَّلَاةِ، حَيَّ عَلَى الْفَلَاحِ، قَدْ قَامَتْ الصَّلَاةُ، قَدْ قَامَتْ الصَّلَاةُ، اللَّهُ أَكْبَرُ، اللَّهُ أَكْبَرُ، لَا إِلَهَ إِلَّا اللَّهُ؟ ".

L5951 The proof of that is: Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us, saying: Ibrahim ibn Ahmad al-Balkhi narrated to us, al-Farbari narrated to us, al-Bukhari narrated to us, Sulayman ibn Harb narrated to us, Hammad ibn Zayd narrated from Simak ibn Atiyyah from Ayyub al-Sakhtiyani from Abu Qilabah from Anas ibn Malik, who said: “Bilal was commanded to recite the adhan phrases twice each and to recite the iqamah in odd numbers, except that the iqamah is recited in odd numbers.”

بُرْهَانُ ذَلِكَ -: أَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَبْدِ اللَّهِ بْنِ خَالِدٍ حَدَّثَنَا قَالَ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيُّ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا سُلَيْمَانُ بْنُ حَرْبٍ ثنا حَمَّادُ بْنُ زَيْدٍ عَنْ سِمَاكِ بْنِ عَطِيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ «أُمِرَ بِلَالٌ أَنْ يَشْفَعَ الْأَذَانَ وَأَنْ يُوتِرَ الْإِقَامَةَ إِلَّا الْإِقَامَةَ» .

L5952–5953 Narrated by Hammam, from Ibn Mufarrij, from Ibn al-A’rabi, from al-Dabari, from Abd al-Razzaq, from Ma’mar, from Ayyub al-Sikhtiyani, from

Abu Qilabah, who said: “Bilal would recite the iqamah in single utterances – except for his statement, ’The prayer has been established, the prayer has been established’ – and he would repeat the adhan twice.”

حَدَّثَنَا حَمَّامُ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ ثنا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ قَالَ: كَانَ بِلَالٌ يُوتِرُ الْإِقَامَةَ وَيُثَنِّي الْأَذَانَ، إِلَّا قَوْلَهُ " قَدْ قَامَتْ الصَّلَاةُ، قَدْ قَامَتْ الصَّلَاةُ "؟ .

L5954 Ali said: We have mentioned what two transmitters do not disagree upon - that Bilal (may Allah be pleased with him) never gave the call to prayer for anyone after the death of Allah’s Messenger (peace and blessings be upon him) except once in Syria, wherein he did not complete his call. Thus, this report became a musnad narration with a sound chain, and it was confirmed that the commander in this matter was Allah’s Messenger (peace and blessings be upon him) alone, and no other. The Hanafis said: The iqamah is recited in pairs. There are differing reports from them regarding the interpretation of this. Zufar narrated from Abu Hanifah - as we mentioned concerning the wording “Allah is the Greatest” four times at the beginning of the adhan - that this applies similarly to the beginning of the iqamah. According to this narration, the Hanafis today follow this view. It is narrated from Abu Yusuf, from Abu Hanifah, regarding both the adhan and iqamah: “Allah is the Greatest” is stated twice only at their beginning.

قَالَ عَلِيٌّ: قَدْ ذَكَرْنَا مَا لَا يَخْتَلِفُ فِيهِ اثْنَانِ مِنْ أَهْلِ النَّقْلِ: أَنَّ بِلَالًا - رَضِيَ اللَّهُ عَنْهُ - لَمْ يُؤَذِّنْ قَطُّ لِأَحَدٍ بَعْدَ مَوْتِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا مَرَّةً وَاحِدَةً بِالشَّامِ، وَلَمْ يُتِمَّ أَذَانَهُ فِيهَا، فَصَارَ هَذَا الْخَبَرُ مُسْنَدًا صَحِيحَ الْإِسْنَادِ، وَصَحَّ أَنَّ الْآمِرَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا أَحَدَ غَيْرُهُ وَقَالَ الْحَنَفِيُّونَ: الْإِقَامَةُ مَثْنَى مَثْنَى، وَاخْتُلِفَ عَنْهُمْ فِي تَفْسِيرِ ذَلِكَ؛ فَرَوَى زُفَرُ عَنْ أَبِي حَنِيفَةَ كَمَا ذَكَرْنَا فِي قَوْلِ " اللَّهُ أَكْبَرُ، اللَّهُ أَكْبَرُ، اللَّهُ أَكْبَرُ، اللَّهُ أَكْبَرُ " أَرْبَعَ مَرَّاتٍ فِي ابْتِدَاءِ الْأَذَانِ، وَفِي ابْتِدَاءِ الْإِقَامَةِ كَذَلِكَ أَيْضًا، وَعَلَى هَذِهِ الرِّوَايَةِ هُمْ الْحَنَفِيُّونَ الْيَوْمَ؟ وَعَنْ أَبِي يُوسُفَ عَنْ أَبِي حَنِيفَةَ فِي كِلَا الْأَمْرَيْنِ الْأَذَانِ وَالْإِقَامَةِ " اللَّهُ أَكْبَرُ، اللَّهُ أَكْبَرُ " فِي ابْتِدَائِهِمَا مَرَّتَيْنِ فَقَطْ.

L5955 A narration similar to Abū Yūsuf’s report regarding the adhan has been transmitted, and we know of no tradition ever narrated concerning the utterance of “Allāhu akbar, Allāhu akbar” four times at the beginning of the iqamah. Were it not that this constitutes a remembrance of Allah the Exalted, it would necessitate invalidating the iqamah and nullifying the prayer of one who prayed with such an iqamah. However, is this addition not comparable to one who inserts “Lā ḥawla wa lā quwwata illā billāh” or other phrases entirely unrelated to the iqamah?

وَقَدْ جَاءَ حَدِيثٌ بِمِثْلِ رِوَايَةِ أَبِي يُوسُفَ فِي الْأَذَانِ، وَمَا نَعْلَمُ خَبَرًا قَطُّ رُوِيَ فِي قَوْلِ " اللَّهُ أَكْبَرُ، اللَّهُ أَكْبَرُ " أَرْبَعَ مَرَّاتٍ فِي أَوَّلِ الْإِقَامَةِ وَلَوْلَا أَنَّهَا ذِكْرُ اللَّهِ تَعَالَى لَوَجَبَ إبْطَالُ الْإِقَامَةِ بِهَا، وَإِبْطَالُ صَلَاةِ مَنْ صَلَّى بِتِلْكَ الْإِقَامَةِ، وَلَكِنَّ هَذِهِ الزِّيَادَةَ بِمَنْزِلَةِ مَنْ زَادَ فِي الْإِقَامَةِ " لَا حَوْلَ وَلَا قُوَّةَ إلَّا بِاَللَّهِ " أَوْ غَيْرَ ذَلِكَ مِمَّا لَيْسَ مِنْ الْإِقَامَةِ فِي شَيْءٍ؟ .

L5956–5958 The Malikis said: The entire iqāmah is odd-numbered except “Allāh is the Greatest, Allāh is the Greatest,” which is repeated. “The prayer has commenced” is only uttered once. Ali stated: The adhān has been universally transmitted in Makkah, Madīnah, and Kufa. For from the time the adhān

وَقَالَ الْمَالِكِيُّونَ: الْإِقَامَةُ كُلُّهَا وِتْرٌ، إلَّا " اللَّهُ أَكْبَرُ، اللَّهُ أَكْبَرُ " فَإِنَّهُ يُكَرَّرُ، وَلَا يُقَالُ " قَدْ قَامَتْ الصَّلَاةُ " إلَّا مَرَّةً وَاحِدَةً قَالَ عَلِيٌّ: الْأَذَانُ مَنْقُولٌ نَقْلَ الْكَافَّةِ بِمَكَّةَ وَبِالْمَدِينَةِ

was revealed to the Messenger of Allāh (May Allāh bless him and grant him peace) until the day Anas ibn Mālik died - he being the last companion who had seen the Messenger of Allāh (May Allāh bless him and grant him peace) and his companions - not a single day passed without Muslims reciting it five times or more in every mosque. Such a tradition cannot be forgotten or altered. Were it not for the certainty that all these forms of the adhān were unquestionably recited during the time of the Messenger of Allāh (May Allāh bless him and grant him peace), there would be no basis for doubt. During the time of Allah's Messenger—peace and blessings be upon him—the call to prayer in Mecca was heard by him during his Hajj. Then Abu Bakr heard it, followed by Umar, then Uthman after him. The Commander of the Faithful Ibn al-Zubayr resided there for nine years as part of the remaining Companions, while his governors appointed to Medina and Kufa remained in office. It is baseless, impossible, and inconceivable—and impermissible to suspect them (may Allah be pleased with them)—that the people of Mecca altered the call to prayer, and that any of these caliphs (may Allah be pleased with them) heard it or had it reported to him while holding the caliphate, yet failed to change it. No Muslim would entertain such a notion, for if this were permissible, would it not equally apply to their presence in Medina without distinction? Similarly, when Kufa was conquered and inhabited by groups of Companions (may Allah be pleased with them), it was administered by Umar ibn al-Khattab's governors and later Uthman's governors (may Allah be pleased with them both), such as Abu Musa al-Ash'ari, Ibn Mas'ud, 'Ammār, al-Mughīrah, and Sa'd ibn Abī Waqqāṣ. The Companions departing from Kufa continued to proclaim the call to prayer five times daily throughout their travels until they settled and built the city. It is utterly impossible that the call to prayer was altered in the presence of those we mentioned, yet this remained hidden from Umar and Uthman, or that either of them knew of it and approved without denouncing it. Subsequently, 'Alī ibn Abī Ṭālib resided in Kufa until his death, appointing governors to Mecca and Medina, followed by his son al-Ḥasan (may Allah be pleased with him) until he transferred authority to Mu'āwiyah (may Allah be pleased with him). It is inconceivable that the call to prayer was altered without 'Alī and al-Ḥasan rejecting such a change. If such a claim were valid against 'Alī, would it not

وَبِالْكُوفَةِ، لِأَنَّهُ لَمْ يَمُرَّ بِأَهْلِ الْإِسْلَامِ - مُذْ نَزَلَ الْأَذَانُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى يَوْمِ مَاتَ أَنَسُ بْنُ مَالِكٍ: آخِرُ مَنْ شَاهَدَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَصَحْبَهُ - يَوْمٌ إلَّا وَهُمْ يُؤَذِّنُونَ فِيهِ فِي كُلِّ مَسْجِدٍ مِنْ مَسَاجِدِهِمْ خَمْسَ مَرَّاتٍ فَأَكْثَرَ، فَمِثْلُ هَذَا لَا يَجُوزُ أَنْ يُنْسَى وَلَا أَنْ يُحَرَّفَ؟ فَلَوْلَا أَنَّ كُلَّ هَذِهِ الْوُجُوهِ قَدْ كَانَ يُؤَذَّنُ بِهَا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِلَا شَكٍّ، وَكَانَ الْأَذَانُ بِمَكَّةَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَسْمَعُهُ - عَلَيْهِ السَّلَامُ - إذْ حَجَّ، ثُمَّ يَسْمَعُهُ أَبُو بَكْرٍ، ثُمَّ عُمَرُ، ثُمَّ عُثْمَانُ، بَعْدَهُ - عَلَيْهِ السَّلَامُ -، وَسَكَنَهَا أَمِيرُ الْمُؤْمِنِينَ ابْنُ الزُّبَيْرِ تِسْعَ سِنِينَ، وَهُوَ بَقِيَّةُ الصَّحَابَةِ، وَالْعُمَّالُ مِنْ قِبَلِهِ بِالْمَدِينَةِ وَالْكُوفَةِ: فَمِنْ الْبَاطِلِ الْمُمْتَنِعِ الْمُحَالِ الَّذِي لَا يَحِلُّ أَنْ يُظَنَّ بِهِمْ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّ أَهْلَ مَكَّةَ بَدَّلُوا الْأَذَانَ وَسَمِعَهُ أَحَدُ هَؤُلَاءِ الْخُلَفَاءِ - رَضِيَ اللَّهُ عَنْهُمْ - أَوْ بَلَغَهُ وَالْخِلَافَةُ بِيَدِهِ -: فَلَمْ يُغَيِّرْ، هَذَا مَا لَا يَظُنُّهُ مُسْلِمٌ؛ وَلَوْ جَازَ ذَلِكَ لَجَازَ بِحَضْرَتِهِمْ بِالْمَدِينَةِ وَلَا فَرْقَ؟ وَكَذَلِكَ فُتِحَتْ الْكُوفَةُ وَنَزَلَ بِهَا طَوَائِفُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَتَدَاوَلَهَا عُمَّالُ عُمَرَ بْنِ الْخَطَّابِ، وَعُمَّالُ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُمَا -، كَأَبِي مُوسَى الْأَشْعَرِيِّ، وَابْنِ مَسْعُودٍ، وَعَمَّارٍ، وَالْمُغِيرَةِ، وَسَعْدِ بْنِ أَبِي وَقَّاصٍ، وَلَمْ تَزَلْ الصَّحَابَةُ الْخَارِجُونَ عَنْ الْكُوفَةِ يُؤَذِّنُونَ فِي كُلِّ يَوْمٍ سَفَرِهِمْ خَمْسَ مَرَّاتٍ، إلَى أَنْ بَنُوهَا وَسَكَنُوهَا؛ فَمِنْ الْبَاطِلِ الْمُحَالِ أَنْ يُحَالَ الْأَذَانُ بِحَضْرَةِ مَنْ ذَكَرْنَا وَيَخْفَى ذَلِكَ عَلَى عُمَرَ وَعُثْمَانَ، أَوْ يَعْلَمُهُ أَحَدُهُمَا فَيُقِرُّهُ وَلَا يُنْكِرُهُ؟ ثُمَّ سَكَنَ الْكُوفَةَ عَلِيُّ بْنُ أَبِي طَالِبٍ إلَى أَنْ مَاتَ وَنَفَّذَ الْعُمَّالَ مِنْ قِبَلِهِ إلَى مَكَّةَ وَالْمَدِينَةِ، ثُمَّ الْحَسَنُ ابْنُهُ - رَضِيَ اللَّهُ عَنْهُ - إلَى أَنْ سَلَّمَ الْأَمْرَ لِمُعَاوِيَةَ - رَحِمَهُ اللَّهُ تَعَالَى -؛ فَمِنْ الْمُحَالِ أَنْ يُغَيَّرَ الْأَذَانُ وَلَا يُنْكِرُ تَغْيِيرَهُ: عَلِيٌّ، وَالْحَسَنُ؛

equally apply to Abu Bakr, Umar, and Uthman? But it is inconceivable for them to do such a thing. No Muslim would ever attribute this to them or to any of them whatsoever.

وَلَوْ جَازَ ذَلِكَ عَلَى عَلِيٍّ، لَجَازَ مِثْلُهُ عَلَى أَبِي بَكْرٍ وَعُمَرَ وَعُثْمَانَ، وَحَاشَا لَهُمْ مِنْ هَذَا، مَا يَظُنُّ هَذَا بِهِمْ، وَلَا بِأَحَدٍ مِنْهُمْ مُسْلِمٌ أَصْلًا؟ .

L5959–5961 If they say: "The Adhān of Mecca and the Adhān of Kufa are not established through mass transmission," it is said to them: "If they say to you: 'Rather, the Adhān of the people of Medina is not established through mass transmission—so what is the distinction?' If they assert an impossibility in this, is the same not asserted against them?" If they say: "The Adhān of the people of Mecca and the people of Kufa traces back to a limited number of individuals," it is said to them: "The Adhān of the people of Medina traces back to three men only—no more: Malik, Ibn al-Mājishūn, and Ibn Abī Dhi'b. The followers of these three took it only from them." If they say: "There is no disagreement regarding doubling in the Adhān," it is said to them: "This is pure falsehood. Ma'mar reported from Ayyūb al-Sakhtiyānī from Nāfi' from Ibn 'Umar:" The call to prayer is performed three times, each repeated three times.

فَإِنْ قَالُوا: لَيْسَ أَذَانُ مَكَّةَ وَلَا أَذَانُ الْكُوفَةِ نَقْلَ كَافَّةٍ؟ قِيلَ لَهُمْ: فَإِنْ قَالُوا لَكُمْ: بَلْ أَذَانُ أَهْلِ الْمَدِينَةِ لَيْسَ هُوَ نَقْلَ كَافَّةٍ فَمَا الْفَرْقُ؟ فَإِنْ ادَّعُوا فِي هَذَا مُحَالًا أُدُّعِيَ عَلَيْهِمْ مِثْلُهُ؟ فَإِنْ قَالُوا: إِنَّ أَذَانَ أَهْلِ مَكَّةَ وَأَهْلِ الْكُوفَةِ يَرْجِعُ إِلَى قَوْمٍ مَحْصُورٍ عَدَدُهُمْ؟ قِيلَ لَهُمْ: وَأَذَانُ أَهْلِ الْمَدِينَةِ يَرْجِعُ إِلَى ثَلَاثَةِ رِجَالٍ لَا أَكْثَرَ: مَالِكٍ، وَابْنِ الْمَاجِشُونِ، وَابْنِ أَبِي ذِئْبٍ فَقَطْ، وَإِنَّمَا أَخَذَهُ أَصْحَابُ هَؤُلَاءِ عَنْ هَؤُلَاءِ فَقَطْ فَإِنْ قَالُوا: لَمْ يُخْتَلَفْ فِي الْأَذَانِ بِالتَّثْنِيَةِ؟ قِيلَ لَهُمْ: هَذَا الْكَذِبُ الْبَحْتُ رَوَى مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: الْأَذَانُ ثَلَاثًا ثَلَاثًا.

L5962 Ibn Jurayj narrated from Nāfi' from Ibn 'Umar that he used to repeat the iqāmah twice, thus invalidating with the certainty of invalidation the evidence cited by the Mālikīs to support their choice regarding the adhān—which they base on the transmission from the Messenger of Allah (peace be upon him) by the entire community.

وَرَوَى ابْنُ جُرَيْجٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ يُثَنِّي الْإِقَامَةَ، فَيَبْطُلُ بِهَذَا بِيَقِينٍ الْبُطْلَانِ فِيمَا يَحْتَجُّ بِهِ الْمَالِكِيُّونَ لِاخْتِيَارِهِمْ فِي الْأَذَانِ بِأَنَّهُ نَقْلُ الْكَافَّةِ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L5963–5965 It is thus firmly established that the call to prayer of the people of Mecca holds precisely the same status in this matter as that of Medina's inhabitants—utterly identical—and that the call to prayer of Kufa's people shares equal standing with both Mecca and Medina without distinction. Should they argue: "The Companions did not alter this, but it was modified after their time," we respond: If such alteration could be attributed to the Successors in Mecca and Kufa, then attributing it to Medina's Successors becomes more permissible. Consider those among Medina's Successors like Alqamah, Al-Aswad, Suwayd ibn Ghafala, Ar-Ruḥayl, Masrūq, Nabatah, Salmān ibn Rabī'ah, and others—all issued legal rulings during ʿUmar ibn al-Khaṭṭāb's lifetime. Can any Successor from Medina be elevated above Ṭāwūs, ʿAṭāʾ,

فَصَحَّ يَقِينًا أَنَّ لِأَذَانِ أَهْلِ مَكَّةَ مِنْ ذَلِكَ مَا لِأَذَانِ أَهْلِ الْمَدِينَةِ سَوَاءً سَوَاءً - وَأَنَّ لِأَذَانِ أَهْلِ الْكُوفَةِ مِنْ ذَلِكَ مَا لِأَذَانِ أَهْلِ مَكَّةَ وَأَذَانِ أَهْلِ الْمَدِينَةِ وَلَا فَرْقَ؟ فَإِنْ قَالُوا: لَمْ يُغَيِّرْ ذَلِكَ الصَّحَابَةُ لَكِنْ غُيِّرَ بَعْدَهُمْ؟ قُلْنَا: إِنْ جَازَ ذَلِكَ عَلَى التَّابِعِينَ بِمَكَّةَ وَالْكُوفَةِ، فَهُوَ عَلَى التَّابِعِينَ بِالْمَدِينَةِ أَجْوَزُ، فَمَا كَانَ بِالْمَدِينَةِ فِي التَّابِعِينَ كَعَلْقَمَةَ، وَالْأَسْوَدِ، وَسُوَيْدِ بْنِ غَفَلَةَ، وَالرُّحَيْلِ وَمَسْرُوقٍ، وَنُبَاتَةَ وَسَلْمَانَ بْنِ رَبِيعَةَ وَغَيْرِهِمْ؛ فَكُلُّ هَؤُلَاءِ أَفْتَى فِي حَيَاةِ عُمَرَ بْنِ الْخَطَّابِ، وَمَا يَرْتَفِعُ أَحَدٌ مِنْ تَابِعِي أَهْلِ الْمَدِينَةِ

or Mujāhid? Allah forbid that any should be suspected of altering religion's foundational pillar! If they descend to the Successors of the Successors, whatever might permissibly be ascribed to Sufyān al-Thawrī or Ibn Jurayj must equally apply to Mālik, who holds no superiority over them in knowledge or piety. Allah forbid implicating any in such matters! If they cite the rulers—governors of Mecca, Medina, and Kufa appointed from Syria since Muʿāwiyah's era until Abū Ḥanīfah, Sufyān, and Mālik's early period, then from Al-Anbār and Baghdad in later years—then whatever applies to Mecca and Kufa's governors must equally apply to Medina's. All these cities endured both righteous and depraved rulers like Al-Ḥajjāj, Ḥubaysh ibn Dulja, Ṭāriq, Khālid al-Qasrī, and every other person of no virtue. Thus, what could be attributed to Mecca and Kufa's governors becomes equally permissible for Medina's—utterly identical? Indeed, alteration proves less conceivable in Mecca, where annual global pilgrimages would have exposed any change. None have ever made such a claim—all praise belongs to Allah. If they refer to the narrations, then the narrations, as we mentioned, are similar, except for the well-known opinion of Abū Ḥanīfah regarding the iqamah. Has any narration ever mentioned it?

عَلَى طَاوُسٍ وَعَطَاءٍ وَمُجَاهِدٍ وَمَعَاذَ اللَّهِ أَنْ يُظَنَّ بِأَحَدٍ مِنْهُمْ تَبْدِيلُ عَمُودِ الدِّيْنِ؟ فَإِنْ هَبَطُوا إِلَى تَابِعِي التَّابِعِينَ، فَمَا يَجُوزُ شَيْءٌ مِنْ ذَلِكَ عَلَى سُفْيَانَ الثَّوْرِيِّ، وَابْنِ جُرَيْجٍ، إِلَّا جَازَ مِثْلُهُ عَلَى مَالِكٍ، فَمَا لَهُ عَلَى هَذَيْنِ فَضْلٌ، لَا فِي عِلْمٍ وَلَا فِي وَرَعٍ، وَمَعَاذَ اللَّهِ أَنْ يُظَنَّ بِأَحَدٍ مِنْهُمْ شَيْءٌ مِنْ هَذَا فَإِنْ رَجَعُوا إِلَى الْوُلَاةِ، فَإِنَّ الْوُلَاةَ عَلَى مَكَّةَ، وَالْمَدِينَةِ، وَالْكُوفَةِ: إِنَّمَا كَانُوا يَنْفُذُونَ مِنْ الشَّامِ مِنْ عَهْدِ مُعَاوِيَةَ إِلَى صَدْرِ زَمَانِ أَبِي حَنِيفَةَ، وَسُفْيَانَ، وَمَالِكٍ، ثُمَّ مِنْ الْأَنْبَارِ وَبَغْدَادَ فِي بَاقِي أَيَّامِ هَؤُلَاءِ، فَلَا يَجُوزُ شَيْءٌ مِنْ ذَلِكَ عَلَى وَالِي مَكَّةَ، وَالْكُوفَةِ، إِلَّا جَازَ مِثْلُهُ عَلَى وَالِي الْمَدِينَةِ، وَكُلُّهَا قَدْ وَلِيَهَا الصَّالِحُ وَالْفَاسِقُ، كَالْحَجَّاجِ، وَحُبَيْشِ بْنِ دُلْجَةَ، وَطَارِقٍ، وَخَالِدٍ الْقَسْرِيِّ وَمَا هُنَالِكَ مِنْ كُلِّ مَنْ لَا خَيْرَ، فَمَا جَازَ مِنْ ذَلِكَ عَلَيْهِمْ بِمَكَّةَ، وَالْكُوفَةِ، فَهُوَ جَائِزٌ عَلَيْهِمْ بِالْمَدِينَةِ سَوَاءً سَوَاءً؟ بَلْ الْأَمْرُ أَقْرَبُ إِلَى الِامْتِنَاعِ بِمَكَّةَ؛ لِأَنَّ وُفُودَ جَمِيعِ أَهْلِ الْأَرْضِ يَرِدُونَهَا كُلَّ سَنَةٍ، فَمَا كَانَ لِيَخْفَى ذَلِكَ أَصْلًا عَلَى النَّاسِ، وَمَا قَالَ هَذَا أَحَدٌ قَطُّ -، وَالْحَمْدُ لِلَّهِ فَإِنْ رَجَعُوا إِلَى الرِّوَايَاتِ، فَالرِّوَايَاتُ كَمَا ذَكَرْنَا مُتَقَارِبَةٌ إِلَّا قَوْلَ أَبِي حَنِيفَةَ الْمَشْهُورَ فِي الْإِقَامَةِ، فَمَا جَاءَتْ بِهِ قَطُّ رِوَايَةٌ؟ .

L5966 This is not related to the mudd, sa', or wasq in any respect, for every mudd or qafiz established in Medina or Kufa is recognized—as Hisham's mudd introduced in Medina is recognized, and the mudd mentioned by Mālik in his *Muwatta* (that the sa' equals one mudd plus a third of another mudd), like the mudd of the people of Kufa known as the Hajjājī, and like the sa' of 'Umar ibn al-Khaṭṭāb. Is there any objection to a governor or others establishing a mudd or sa' for some of their needs? The Prophet's (peace be upon him) mudd, his sa', and his wasq have been transmitted to him via mass transmission by the entire community.

وَلَيْسَ هَذَا مِنْ الْمُدِّ، وَالصَّاعِ، وَالْوَسْقِ، فِي شَيْءٍ؛ لِأَنَّ كُلَّ مُدٍّ، أَوْ قَفِيزٍ أُحْدِثَ بِالْمَدِينَةِ وَبِالْكُوفَةِ فَقَدْ عُرِفَ؛ كَمَا عُرِفَ بِالْمَدِينَةِ مُدُّ هِشَامٍ الَّذِي أَحْدَثَ؛ وَالْمُدُّ الَّذِي ذَكَرَهُ مَالِكٌ فِي مُوَطَّئِهِ: أَنَّ الصَّاعَ هُوَ مُدٌّ وَثُلُثٌ بِالْمُدِّ الْآخَرِ، وَكَمُدِّ أَهْلِ الْكُوفَةِ الْحَجَّاجِيِّ، وَكَصَاعِ عُمَرَ بْنِ الْخَطَّابِ، وَلَا حَرَجَ فِي إِحْدَاثِ الْأَمِيرِ أَوْ غَيْرِهِ مُدًّا أَوْ صَاعًا لِبَعْضِ حَاجَتِهِ؟ وَبَقِيَ مُدُّ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَصَاعُهُ وَوَسْقُهُ مَنْقُولًا إِلَيْهِ نَقْلَ الْكَافَّةِ إِلَيْهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L5967 What is remarkable is that Mālik considered the expiation for *dhihār* to be specific to the newly instituted *mudd* of Hishām, despite the disagreement among his companions on this matter. Ashhab, Ibn Wahb, and Ibn al-Qāsim: one of them states it is one and a half *mudds*, another says two *mudds* less a third, while other companions assert two *mudds*. Some companions of Abū Ḥanīfah argued by posing: "Was Abū Maḥdhūrah's *adhān* delayed?" We replied: "Yes," and the most sound of its methods aligned with our preferred doctrine. And all praise is due to Allah.

وَالْعَجَبُ أَنَّ مَالِكًا رَأَى كَفَّارَةَ الظِّهَارِ خَاصَّةً بِمُدِّ هِشَامٍ الْمُحْدَثِ عَلَى اخْتِلَافِ أَصْحَابِهِ فِيهِ؛ فَأَشْهَبُ، وَابْنُ وَهْبٍ، وَابْنُ الْقَاسِمِ، يَقُولُ أَحَدُهُمْ: وَهُوَ مُدٌّ وَنِصْفٌ، وَيَقُولُ الْآخَرُ: هُوَ مُدَّانِ غَيْرُ ثُلُثٍ - وَيَقُولُ غَيْرُهُمْ: هُوَ مُدَّانِ وَاحْتَجَّ بَعْضُ أَصْحَابِ أَبِي حَنِيفَةَ بِأَنْ قَالَ: أَذَانُ أَبِي مَحْذُورَةَ مُتَأَخِّرٌ؟ فَقُلْنَا: نَعَمْ، وَأَحْسَنُ طُرُقِهِ مُوَافِقٌ لِاخْتِيَارِنَا -، وَلِلَّهِ الْحَمْدُ.

L5968 If they say, "Does it involve repeating the iqāmah?" We reply: "Yes. We do not deny that repeating it was the first command, whereas performing it once was the other command—without doubt."

فَإِنْ قَالُوا: إِنَّ فِيهِ ثَنْيَةَ الْإِقَامَةِ؟ قُلْنَا: نَعَمْ، وَلَسْنَا نُنْكِرُ ثَنْيَتَهَا كَانَ الْأَمْرَ الْأَوَّلَ، وَإِفْرَادُهَا كَانَ الْأَمْرَ الْآخَرَ بِلَا شَكٍّ.

L5969 Muhammad ibn Sa'id ibn Nabat narrated to us, Abdullah ibn Nasr narrated to us, Qasim ibn Asbagh narrated to us, Ibn Waddah narrated to us, Musa ibn Mu'awiyah narrated to us, Waki' narrated from al-A'mash from Amr ibn Murrah from Abd al-Rahman ibn Abi Layla, who said: The companions of Muhammad, peace and blessings of Allah be upon him, narrated to us that Abdullah ibn Zayd had seen the call to prayer in a dream. He came to the Prophet, peace and blessings of Allah be upon him, and informed him. He said: "Teach it to Bilal." Bilal then stood and delivered the *adhan* reciting each phrase twice (*mathnā*), and performed the *iqamah* reciting each phrase twice (*mathnā*).

لِمَا حَدَّثَنَاهُ مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ ثنا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعٌ عَنْ الْأَعْمَشِ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى قَالَ: حَدَّثَنَا أَصْحَابُ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّ عَبْدَ اللَّهِ بْنَ زَيْدٍ رَأَى الْأَذَانَ فِي الْمَنَامِ، فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَهُ؟ قَالَ: عَلِّمْهُ بِلَالًا؛ فَقَامَ بِلَالٌ فَأَذَّنَ مَثْنَى، وَأَقَامَ مَثْنَى» .

L5970–5972 Ali said: "And this is a chain of narration in the utmost authenticity from the chains of the Kufans?" Thus it was established that the doubling of the iqāmah had been abrogated, and that this was indeed the initial ruling. ʿAbd al-Raḥmān ibn Abī Laylā learned from one hundred and twenty Companions, and he encountered Bilāl and ʿUmar (may Allah be pleased with them both). Thus the truth became clear. The invalidity of their statement with certainty—and all praise is due to Allah, the Exalted.

قَالَ عَلِيٌّ: وَهَذَا إسْنَادٌ فِي غَايَةِ الصِّحَّةِ مِنْ إسْنَادِ الْكُوفِيِّينَ؟ فَصَحَّ أَنَّ ثَنْيَةَ الْإِقَامَةِ قَدْ نُسِخَتْ، وَأَنَّهُ هُوَ كَانَ أَوَّلَ الْأَمْرِ، وَعَبْدُ الرَّحْمَنِ بْنُ أَبِي لَيْلَى أَخَذَ عَنْ مِائَةٍ وَعِشْرِينَ مِنْ الصَّحَابَةِ، وَأَدْرَكَ بِلَالًا وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا -؛ فَلَاحَ بُطْلَانُ قَوْلِهِمْ بِيَقِينٍ -، وَلِلَّهِ تَعَالَى الْحَمْدُ؟ .

L5973 However, the preferable view is what is authentically established from the Messenger of Allah's—peace and blessings be upon him—instruction to Bilāl to make the iqāmah odd-numbered, except [its specific phrase]. The other

إلَّا أَنَّ الْأَفْضَلَ مَا صَحَّ مِنْ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِلَالًا بِأَنْ يُوتِرَهَا إلَّا الْإِقَامَةَ، وَالصَّحِيحُ الْآخَرُ أَوْلَى بِالْأَخْذِ مِمَّا لَا يَبْلُغُ دَرَجَتَهُ؟ ، وَقَدْ قَالَ بَعْضُ

authentic opinion—is it not more deserving of adherence than what does not attain its rank? Some later Mālikīs claimed: "The meaning of 'except the iqāmah' is 'except Allāhu Akbar.'" This aligns with their customary practice of falsehood, for no one—neither linguistically nor legislatively—has ever termed the phrase "Allāhu Akbar" as iqāmah. How can this be when it is explicitly stated as "the prayer has commenced," as we have mentioned? The Ḥanafīs argued: "The command to Bilāl to make the iqāmah odd-numbered originated from someone after the Messenger of Allah—peace and blessings be upon him." This affiliates them with the Rāfiḍīs who attribute to Abū Bakr and ʿUmar the alteration of the religion of Islam. May Allah curse whoever says this! Would any Muslim utter such a claim? If they object: "You have narrated through Ḥaywah's chain from Al-Aswad that Bilāl used to repeat the iqāmah in pairs," we respond: Indeed. Yet Anas narrated that Bilāl was commanded to make it odd-numbered, and Anas undoubtedly heard Bilāl's adhān, whereas Al-Aswad never heard him deliver the adhān or iqāmah. Thus, the correct understanding of Al-Aswad's statement—"Bilāl used to repeat the iqāmah in pairs"—refers to his utterance of "the prayer has commenced" [in the iqāmah], thereby reconciling it with Anas's narration on the matter.

مُتَأَخِّرِي الْمَالِكِيِّينَ: مَعْنَى " إِلَّا الْإِقَامَةَ " أَيْ إِلَّا " اللَّهُ أَكْبَرُ " وَهَذَا جَرْيٌ مِنْهُمْ عَلَى عَادَتِهِمْ فِي الْكَذِبِ " وَمَا سَمَّى أَحَدٌ قَطُّ قَوْلَ " اللَّهُ أَكْبَرُ " إِقَامَةً، لَا فِي لُغَةٍ، وَلَا فِي شَرِيعَةٍ، فَكَيْفَ وَقَدْ جَاءَ مُبَيَّنًا أَنَّهُ " قَدْ قَامَتْ الصَّلَاةُ " كَمَا ذَكَرْنَاهُ؟ وَقَالَ الْحَنَفِيُّونَ: إنَّ الْأَمْرَ لِبِلَالٍ بِأَنْ يُوتِرَ الْإِقَامَةَ هُوَ مِمَّنْ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا لَحَاقٌ مِنْهُمْ بِالرَّوَافِضِ النَّاسِبِينَ إلَى أَبِي بَكْرٍ، وَعُمَرَ، تَبْدِيلَ دِينِ الْإِسْلَامِ؛ وَلَعَنَ اللَّهُ مَنْ يَقُولُ هَذَا، فَمَا يَقُولُهُ مُسْلِمٌ؟ فَإِنْ قَالُوا: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ حَيْوَةَ عَنْ الْأَسْوَدِ: أَنَّ بِلَالًا كَانَ يُثَنِّي الْإِقَامَةَ؟ قُلْنَا: نَعَمْ، وَأَنَسٌ رَوَى: أَنَّ بِلَالًا أُمِرَ بِوِتْرِهَا، وَأَنَسٌ سَمِعَ أَذَانَ بِلَالٍ بِلَا شَكٍّ، وَلَمْ يَسْمَعْهُ الْأَسْوَدُ قَطُّ يُؤَذِّنُ، وَلَا يُقِيمُ -: فَصَحَّ أَنَّ مَعْنَى قَوْلِ الْأَسْوَدِ: إنَّ بِلَالًا كَانَ يُثَنِّي الْإِقَامَةَ يُرِيدُ قَوْلَهُ " قَدْ قَامَتْ الصَّلَاةُ " حَتَّى يَتَّفِقَ قَوْلُهُ مَعَ رِوَايَةِ أَنَسٍ فِي ذَلِكَ؟ .

L5974 Ali said: Some Hanafis suggested that perhaps the Messenger of Allah (peace be upon him) instructed Abū Maḥdhūrah to say "I bear witness that there is no god but Allah, I bear witness that there is no god but Allah; I bear witness that Muḥammad is the Messenger of Allah, I bear witness that Muḥammad is the Messenger of Allah" solely because he had lowered his voice, not because this repetition constitutes part of the ruling of the adhān. Ali said: This is sheer falsehood against the Messenger of Allah (peace be upon him), for had he (peace be upon him) known this repetition was not inherent to the essence of the adhān, he would have informed him of it. He would not have left him at all to recite it while lowering his voice at the beginning of the adhān. This repetition is not a single phrase; rather, it comprises four declarations: two consisting of six phrases each, and two consisting of five phrases each.

قَالَ عَلِيٌّ: وَقَالَ بَعْضُ الْحَنَفِيِّينَ: لَعَلَّ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبَا مَحْذُورَةَ أَنْ يَقُولَ " أَشْهَدُ أَنْ لَا إلَهَ إلَّا اللَّهُ أَشْهَدُ أَنْ لَا إلَهَ إلَّا اللَّهُ أَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ أَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ " إنَّمَا كَانَ لِأَجْلِ أَنَّهُ كَانَ خَفَضَ بِهِ صَوْتَهُ، لَا لِأَنَّهُ مِنْ حُكْمِ الْأَذَانِ؟ قَالَ عَلِيٌّ: وَهَذَا كَذِبٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُجَرَّدٌ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَوْ عَلِمَ أَنَّ هَذَا التَّرْجِيعَ لَيْسَ مِنْ نَفْسِ الْأَذَانِ لَنَبَّأَهُ عَلَيْهِ، وَلَمَا تَرَكَهُ أَلْبَتَّةَ يَقُولُ ذَلِكَ خَافِضًا صَوْتَهُ فِي ابْتِدَاءِ الْأَذَانِ، فَلَيْسَ هُوَ كَلِمَةً وَاحِدَةً، بَلْ أَرْبَعَ قَضَايَا -: الِاثْنَتَانِ مِنْهَا -: سِتُّ كَلِمَاتٍ، سِتُّ كَلِمَاتٍ، وَالِاثْنَتَانِ -: خَمْسُ كَلِمَاتٍ، خَمْسُ كَلِمَاتٍ.

L5975–5977 Among the sheer lies—for which its perpetrator deserves to occupy his abode

in the Fire—is the claim that the Messenger of Allah, peace and blessings be upon him, permitted Abū Maḥdhūrah to do all that with a lowered voice; and lowering it is not part of the ruling of... The call to prayer (Adhan): If one neglects to correct the mistaken person and fails to prohibit the error, they lead him further astray by commanding him to repeat the call with raised voice again, while withholding the clarification that such repetition forms no part of the Adhan. How could a Muslim's tongue ever utter this, or how could his heart find ease in it?

فَمِنْ الْكَذِبِ الْبَحْتِ - الَّذِي يَسْتَحِقُّ فِيهِ صَاحِبُهُ أَنْ يَتَبَوَّأَ مَقْعَدَهُ مِنْ النَّارِ - أَنْ يَدَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبَا مَحْذُورَةَ يَأْتِي بِكُلِّ ذَلِكَ خَافِضَ الصَّوْتِ، وَلَيْسَ خَفْضُهُ مِنْ حُكْمِ الْأَذَانِ، فَإِذَا تَرَكَهُ عَلَى الْخَطَأِ، وَلَمْ يَنْهَهُ زَادَ فِي إضْلَالِهِ، بِأَنْ يَأْمُرَهُ بِأَنْ يُعِيدَ ذَلِكَ رَافِعًا صَوْتَهُ، وَلَا يُعْلِمُهُ أَنَّ تَكْرَارَ ذَلِكَ لَيْسَ مِنْ الْأَذَانِ وَمَا نَدْرِي كَيْفَ يَنْطَلِقُ بِهَذَا لِسَانُ مُسْلِمٍ أَوْ يَنْشَرِحُ لَهُ صَدْرُهُ؟ .

L5978 How then, when the reports—the finest transmitted on this matter—have clearly shown that Allah's Prophet (peace be upon him) explicitly taught the call to prayer in this exact wording, word by word, as nineteen words, thereby exposing the falsehood of these asserters publicly? Some of them said: "When we observed the composition of the call to prayer in two instances, finding the second instance containing half the repetitions of the first—do you not see that 'I bear witness there is no deity but Allah' is said twice at the beginning, while 'There is no deity but Allah' is said once at the end? The Takbir was among the elements repeated in the call to prayer, yet it occurs twice at the end. By analogy, it should have been four times at the beginning."

فَكَيْفَ وَالْآثَارُ - الَّتِي هِيَ أَحْسَنُ مَا رُوِيَ فِي ذَلِكَ - جَاءَتْ مُبَيِّنَةً بِأَنَّ نَبِيَّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَّمَهُ الْأَذَانَ كَذَلِكَ نَصًّا، كَلِمَةً كَلِمَةً، تِسْعَ عَشْرَةَ كَلِمَةً فَوَضَحَ كَذِبُ هَؤُلَاءِ الْقَائِلِينَ جِهَارًا؟ وَقَالَ بَعْضُهُمْ: لِمَا رَأَيْنَا مَا كَانَ فِي الْأَذَانِ فِي مَوْضِعَيْنِ كَانَ فِي الْمَوْضِعِ الثَّانِي عَلَى نِصْفِ مَا هُوَ عَلَيْهِ فِي الْمَوْضِعِ الْأَوَّلِ -: أَلَا تَرَى أَنَّهُ يُقَالُ فِي أَوَّلِ الْأَذَانِ " أَشْهَدُ أَنْ لَا إلَهَ إلَّا اللَّهُ " مَرَّتَيْنِ، وَيُقَالُ فِي آخِرِهِ " لَا إلَهَ إلَّا اللَّهُ " مَرَّةً وَكَانَ التَّكْبِيرُ مِمَّا يَتَكَرَّرُ فِي الْأَذَانِ، وَكَانَ التَّكْبِيرُ فِي آخِرِ الْأَذَانِ مَرَّتَيْنِ، وَالْقِيَاسُ أَنْ يَكُونَ فِي أَوَّلِ الْأَذَانِ أَرْبَعًا.

L5979 Ali said: If this obsession of yours is valid, then the Takbir should indeed be quadrupled at the beginning of the Adhan as you assert. Consequently, it would be obligatory to also quadruple "I bear witness that there is no deity but Allah, I bear witness that Muhammad is the Messenger of Allah" in the Takbir, and to refrain from doubling any part of the Adhan except what is unanimously agreed upon—just as nothing is singularized except what is agreed to be singular, namely "There is no deity but Allah" alone. Thus, the opening of the Adhan would consist of three phrases repeated four times each, followed by three phrases repeated twice, then ending with an odd seventh phrase. This absurdity surpasses your own absurdity, and you must adhere to it. As for the Malikis: when they analogize the woman with chronic bleeding to an animal whose milk is withheld to inflate its udder (to deceive buyers), equate light spitting (for purification) during prayer to the

قَالَ عَلِيٌّ: إذَا كَانَ هَذَا الْهَوَسُ عِنْدَكُمْ حَقًّا فَإِنَّ التَّكْبِيرَ مُرَبَّعٌ فِي أَوَّلِ الْأَذَانِ كَمَا تَقُولُ، فَالْوَاجِبُ أَنْ يَكُونَ " أَشْهَدُ أَنْ لَا إلَهَ إلَّا اللَّهُ، أَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ " مُرَبَّعًا أَيْضًا فِي التَّكْبِيرِ، وَأَنْ لَا يُثَنَّى مِنْ الْأَذَانِ إلَّا مَا اتُّفِقَ عَلَى أَنْ يُثَنَّى، كَمَا لَا يُفْرَدُ مِنْهُ إلَّا مَا اتُّفِقَ عَلَى إفْرَادِهِ، وَهُوَ " لَا إلَهَ إلَّا اللَّهُ " فَقَطْ، فَيَكُونُ أَوَّلُ الْأَذَانِ ثَلَاثَ قَضَايَا مُرَبَّعَاتٍ، ثُمَّ يَتْلُوهَا ثَلَاثُ قَضَايَا مُثَنَّيَاتٍ، ثُمَّ تُوتِرُ ذَلِكَ قَضِيَّةٌ سَابِعَةٌ مُفْرَدَةٌ، فَهَذَا هَذْرٌ أَفْلَحُ مِنْ هَذْرِكُمْ، فَيَنْبَغِي أَنْ تَلْتَزِمُوهُ وَأَمَّا الْمَالِكِيُّونَ، فَإِنَّهُمْ إذَا قَاسُوا الْمُسْتَحَاضَةَ عَلَى الْمُصَرَّاةِ، وَالنَّفْخَ فِي الصَّلَاةِ عَلَى {فَلا تَقُلْ لَهُمَا أُفٍّ} [الإسراء:

verse “Do not say ‘Uff’ to them” [17:23], liken a married woman’s financial autonomy to a terminally ill patient feared near death, compare the adultery of a married woman to the amputated hand of a thief, along with all such analogies—nothing is more invalid or baseless than these.[40]

L5980 These two analogies are more coherent with reason in the view of every possessor of intellect. They must therefore adhere to them if they are among the people of analogy; otherwise, let them abandon those frivolous analogies, for this is more advantageous for them in religion and more rooted in reason. Success comes solely from Allah, the Most High.

L5981 Some Malikis argued: Since “There is no god but Allah” is recited once at the end of the adhan, should the entire iqamah follow this [single-recitation rule], except for the agreed-upon takbir within it?

L5982–5983 So we said to them: Since what you mentioned was not a valid proof for singling out the Adhan, it was not a valid proof for singling out the Iqamah either.

L5984 Moreover, since the *Takbīr* in the *Iqāmah* is repeated twice by agreement among us and you, it follows that the remainder of the *Iqāmah* must also be repeated twice except what is agreed upon—namely, the *Tahlīl* at its end only. Alternatively, since the *Takbīr* in the *Iqāmah* is recited four times, it would necessitate that [another part of] the *Iqāmah* be recited twice, so that it includes a quadruple repetition, transitioning to a double, then a single utterance. All of this is folly; have we not presented it merely for those who validate [methodological principles] to recognize the corruption and invalidity of analogy?

L5985 It has been authentically established from Ibn ʿUmar and Abū Umāmah ibn Sahl ibn Ḥunayf that they would say in their call to prayer: “Hasten to the best of deeds.” Yet we do not hold this view, as it has not been authentically transmitted from the Prophet (peace and blessings of Allah be upon him), nor is there any valid proof from anyone besides him. Indeed, it was incumbent upon whoever attributes such a statement to a Companion -

[40] **Qur’an references (L5979):** Qur’an 17:23 (Al-Isra).

٢٣] وَالْمَرْأَةَ ذَاتَ الزَّوْجِ فِي مَالِهَا عَلَى الْمَرِيضِ الْمَخُوفِ عَلَيْهِ الْمَوْتَ، وَفَرْجَ الْمُتَزَوِّجَةِ عَلَى يَدِ السَّارِقِ، وَسَائِرَ تِلْكَ الْقِيَاسَاتِ الَّتِي لَا شَيْءَ أَسْقَطَ مِنْهَا وَلَا أَغَثَّ.

فَهَذَانِ الْقِيَاسَانِ أَدْخَلُ فِي الْمَعْقُولِ عِنْدَ كُلِّ ذِي مَسْكَةِ عَقْلٍ، فَيَنْبَغِي لَهُمْ أَنْ يَلْتَزِمُوهَا إِنْ كَانُوا مِنْ أَهْلِ الْقِيَاسِ، وَإِلَّا فَلْيَتْرُكُوا تِلْكَ الْمَقَايِسَ السَّخِيفَةَ، فَهُوَ أَحْظَى لَهُمْ فِي الدِّينِ وَأَدْخَلُ فِي الْمَعْقُولِ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَالَ بَعْضُ الْمَالِكِيِّينَ: لَمَّا كَانَتْ " لَا إِلَهَ إِلَّا اللَّهُ " تُقَالُ فِي آخِرِ الْأَذَانِ مَرَّةً وَاحِدَةً -: وَجَبَ أَنْ تَكُونَ الْإِقَامَةُ كُلُّهَا كَذَلِكَ، إِلَّا مَا اتُّفِقَ عَلَيْهِ مِنْ التَّكْبِيرِ فِيهَا؟

فَقُلْنَا لَهُمْ: لَمَّا لَمْ يَكُنْ مَا ذَكَرْتُمْ حُجَّةً فِي إفْرَادِ الْأَذَانِ لَمْ يَكُنْ حُجَّةً فِي إفْرَادِ الْإِقَامَةِ.

وَأَيْضًا: فَإِنَّهُ لَمَّا كَانَ التَّكْبِيرُ فِي الْإِقَامَةِ يُثَنَّى بِاتِّفَاقٍ مِنَّا وَمِنْكُمْ -: وَجَبَ أَنْ يُثَنَّى سَائِرُ الْإِقَامَةِ، إلَّا مَا اتُّفِقَ عَلَيْهِ، وَهُوَ التَّهْلِيلُ فِي آخِرِهَا فَقَطْ أَوْ لَمَّا كَانَ التَّكْبِيرُ فِي الْإِقَامَةِ يُقَالُ أَرْبَعَ مَرَّاتٍ وَجَبَ أَنْ يَكُونَ فِي الْإِقَامَةِ أَيْضًا يُقَالُ مَرَّتَيْنِ، لِيَكُونَ فِيهَا تَرْبِيعٌ يَخْرُجُ مِنْهُ إلَى ثَنْيَةٍ إلَى إفْرَادٍ، وَكُلُّ هَذَا هَوَسٌ، إنَّمَا أَوْرَدْنَاهُ لِيَرَى أَهْلُ التَّصْحِيحِ فَسَادَ الْقِيَاسِ وَبُطْلَانَهُ؟ .

وَقَدْ صَحَّ عَنْ ابْنِ عُمَرَ، وَأَبِي أُمَامَةَ بْنِ سَهْلِ بْنِ حُنَيْفٍ: أَنَّهُمْ كَانُوا يَقُولُونَ فِي أَذَانِهِمْ " حَيَّ عَلَى خَيْرِ الْعَمَلِ " وَلَا نَقُولُ بِهِ، لِأَنَّهُ لَمْ يَصِحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا حُجَّةَ فِي أَحَدٍ دُونَهُ - وَلَقَدْ كَانَ يَلْزَمُ مَنْ يَقُولُ فِي مِثْلِ هَذَا عَنْ الصَّاحِبِ: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ -: أَنْ يَأْخُذَ بِقَوْلِ ابْنِ عُمَرَ فِي هَذَا، فَهُوَ عَنْهُ ثَابِتٌ بِأَصَحِّ إسْنَادٍ.

since such matters are not subject to personal opinion - to adopt Ibn ʿUmar's position in this matter, for it is firmly established from him through the strongest chain of narrators.

L5986 Al-Ḥasan ibn Ḥayy said: Some say during the Isha prayer, "Prayer is better than sleep, prayer is better than sleep," but we do not endorse this view either, for there is no narration from the Messenger of Allah (peace and blessings be upon him).

L5987 **An issue concerning reversing the order of the phrases in the *adhan* and *iqamah*, placing their latter parts before what precedes them.**

L5988 332 – Issue:

L5989–5991 It is not permissible to reverse the order of the adhan or the iqamah, nor to advance any delayed element of them over what precedes it. Whoever does so has neither performed the adhan nor the iqamah, nor prayed with adhan or iqamah. Ali said: "There are four matters people disputed regarding them: ablution, the adhan, the iqamah, and circumambulating the Kaaba." Abu Hanifah said: "It is permissible to reverse the order of all these." Malik said: "It is not permissible to reverse the order of the adhan, the iqamah, or circumambulation." In one of his two opinions, the more famous one, he said: "It is permissible to reverse the order of ablution." Al-Shafi'i said: "It is not permissible to reverse the order of any of these." Ali said: "No one doubts that the Messenger of Allah, peace and blessings be upon him, taught people the adhan. Were it not for that..." Do not practice soothsaying regarding either of them, nor introduce innovations concerning either of them.

L5992 Since there is no doubt about that, he (peace be upon him) taught them both in their original sequence, step by step. He directs the learner to repeat what he dictates, then the subsequent part of the instruction, until both are fully completed.

L5993 Therefore, since this is the case, it is not permissible for anyone to contradict the Prophet's command (peace be upon him) by advancing what he delayed

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: يُقَالُ فِي الْعَتَمَةِ " الصَّلَاةُ خَيْرٌ مِنْ النَّوْمِ، الصَّلَاةُ خَيْرٌ مِنْ النَّوْمِ " وَلَا نَقُولُ بِهَذَا أَيْضًا، لِأَنَّهُ لَمْ يَأْتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَةُ تَنْكِيسُ الْأَذَانِ وَالْإِقَامَةِ وَتَقْدِيمُ الْمُؤَخَّرِ مِنْهَا عَلَى مَا قَبْلَهُ]

٣٣٢ - مَسْأَلَةٌ:

وَلَا يَجُوزُ تَنْكِيسُ الْأَذَانِ وَلَا الْإِقَامَةِ، وَلَا تَقْدِيمُ مُؤَخَّرٍ مِنْهَا عَلَى مَا قَبْلَهُ، فَمَنْ فَعَلَ ذَلِكَ فَلَمْ يُؤَذِّنْ وَلَا أَقَامَ وَلَا صَلَّى بِأَذَانٍ وَلَا إقَامَةٍ قَالَ عَلِيٌّ: هِيَ أَرْبَعَةُ أَشْيَاءَ تَنَازَعَ النَّاسُ فِيهَا -: الْوُضُوءُ، وَالْأَذَانُ، وَالْإِقَامَةُ، وَالطَّوَافُ بِالْبَيْتِ؟ فَقَالَ أَبُو حَنِيفَةَ: يَجُوزُ تَنْكِيسُ كُلِّ ذَلِكَ؟ وَقَالَ مَالِكٌ لَا يَجُوزُ تَنْكِيسُ الْأَذَانِ، وَلَا الْإِقَامَةِ، وَلَا الطَّوَافِ - وَقَالَ فِي أَحَدِ قَوْلَيْهِ وَأَشْهَرِهِمَا: يَجُوزُ تَنْكِيسُ الْوُضُوءِ؟ وَقَالَ الشَّافِعِيُّ: لَا يَجُوزُ تَنْكِيسُ شَيْءٍ مِنْ ذَلِكَ قَالَ عَلِيٌّ: لَا يَشُكُّ أَحَدٌ فِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَّمَ النَّاسَ الْأَذَانَ، وَلَوْلَا ذَلِكَ مَا تَكَهَّنُوهُمَا، وَلَا ابْتَدَعُوهُمَا.

فَإِذْ لَا شَكَّ فِي ذَلِكَ فَإِنَّمَا عَلَّمَهُمَا - عَلَيْهِ السَّلَامُ - مُرَتَّبَيْنِ كَمَا هُمَا، أَوَّلًا فَأَوَّلًا، يَأْمُرُ الَّذِي يُعَلِّمُهُ بِأَنْ يَقُولَ مَا يُلَقِّنُهُ، ثُمَّ الَّذِي بَعْدَهُ مِنْ الْقَوْلِ، إلَى انْقِضَائِهِمَا.

or delaying what he advanced. And with Allah, the Most High, is divine success.

فَإِذْ هَذَا كَذَلِكَ فَلَا يَحِلُّ لِأَحَدٍ مُخَالَفَةُ أَمْرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي تَقْدِيمِ مَا أَخَّرَ أَوْ تَأْخِيرِ مَا قَدَّمَ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

A legal issue regarding the mu'adhdhin's proclamation in the call to prayer: "Verily, pray in your dwellings."

[مَسْأَلَةُ قَوْلُ الْمُؤَذِّنِ فِي أَذَانِهِ أَلَا صَلُّوا فِي رِحَالِكُمْ]

Issue 333: If there is severe cold or rain (drizzle or heavier), the mu'adhdhin must add to his call after "Come to success" or after that, "Pray in your dwellings."

٣٣٣ - مَسْأَلَةٌ: فَإِنْ كَانَ بَرْدٌ شَدِيدٌ أَوْ مَطَرُ رَشٍّ فَصَاعِدًا، فَيَجِبُ أَنْ يَزِيدَ الْمُؤَذِّنُ فِي أَذَانِهِ بَعْدَ " حَيَّ عَلَى الْفَلَاحِ " أَوْ بَعْدَ ذَلِكَ " أَلَا صَلُّوا فِي الرِّحَالِ ".

This ruling applies equally whether settled or traveling: Hammam narrated to us, Ibn Mufarrij narrated to us, Ibn al-Aʿrabī narrated to us, al-Dabarī narrated to us, ʿAbd al-Razzāq narrated to us from Sufyān ibn ʿUyaynah from Ayyūb al-Sikhtiyānī from Nāfiʿ from Ibn ʿUmar: that he gave the call to prayer at Ḍajinān between Mecca and Medina, saying, "Pray in your resting places."

وَهَذَا الْحُكْمُ وَاحِدٌ فِي الْحَضَرِ وَالسَّفَرِ -: حَدَّثَنَا حَمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ أَذَّنَ بِضَجِنَانَ بَيْنَ مَكَّةَ وَالْمَدِينَةِ فَقَالَ " صَلُّوا فِي الرِّحَالِ ".

Then Ibn Umar said, "The Prophet (peace be upon him) would order his caller on cold, rainy, or windy nights to say: Pray in your dwellings."

ثُمَّ قَالَ ابْنُ عُمَرَ «كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُ مُنَادِيَهُ فِي اللَّيْلَةِ الْبَارِدَةِ أَوْ الْمَطِيرَةِ أَوْ ذَاتِ الرِّيحِ أَنْ يَقُولَ: صَلُّوا فِي الرِّحَالِ» .

Hammam narrated to us: Abbas ibn Asbagh narrated to us: Ibn Ayman narrated to us: Bakr ibn Hammad narrated to us: Musaddad narrated to us: Hammad—he is Ibn Zayd—from Ayyub al-Sikhtiyani, Asim al-Ahwal, and Abd al-Hamid, the companion of al-Ziyadi, all of them from Abdullah ibn al-Harith, who said: "Ibn Abbas addressed us on a muddy day. When the mu'adhin reached 'Come to prayer,' he instructed him to proclaim: 'Prayer in your dwellings?' The people exchanged glances. He said to them: 'It seems you find this strange. One who is better than me did this, and it is indeed an obligation.'" This is the position of our scholars.

حَدَّثَنَا حَمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا ابْنُ أَيْمَنَ ثنا بَكْرُ بْنُ حَمَّادٍ ثنا مُسَدَّدٌ ثنا حَمَّادٌ هُوَ ابْنُ زَيْدٍ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، وَعَاصِمٍ الْأَحْوَلِ، وَعَبْدِ الْحَمِيدِ صَاحِبِ الزِّيَادِيِّ، كُلِّهِمْ: عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ قَالَ: «خَطَبَنَا ابْنُ عَبَّاسٍ فِي يَوْمٍ ذِي رَدْغٍ فَلَمَّا بَلَغَ الْمُؤَذِّنُ حَيَّ عَلَى الصَّلَاةِ أَمَرَهُ أَنْ يُنَادِيَ الصَّلَاةُ فِي الرِّحَالِ؟ فَنَظَرَ الْقَوْمُ بَعْضُهُمْ إلَى بَعْضٍ. فَقَالَ لَهُمْ: كَأَنَّكُمْ أَنْكَرْتُمْ هَذَا قَدْ فَعَلَ هَذَا مَنْ هُوَ خَيْرٌ مِنِّي، وَإِنَّهَا لَعَزِيمَةٌ» وَهُوَ قَوْلُ أَصْحَابِنَا.

Issue: Speaking is permissible after the iqamah and before commencing the prayer.

[مَسْأَلَةُ الْكَلَامُ جَائِزٌ بَيْنَ الْإِقَامَةِ وَالصَّلَاةِ]

L6001 Issue: Speech is permissible between the iqāmah and the prayer—whether the speech was long or short—and the iqāmah is not repeated for that reason. It was narrated to us by ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid al-Hamdānī; from Abū Isḥāq al-Balkhī; from al-Farbrī; from al-Bukhārī; from Abū Maʿmar ʿAbd Allāh ibn ʿAmr; from ʿAbd al-Wārith; from ʿAbd al-ʿAzīz—who is Ibn Ṣuhayb—from Anas ibn Mālik, who said: "The prayer was called, and the Prophet—peace and blessings of Allah be upon him—was whispering privately to a man in a corner of the mosque. He did not rise for the prayer until the people had fallen asleep."

L6002 We have mentioned the Muslims' establishment of prayer, the Prophet's (peace be upon him) recollection that he was junub, his returning and performing the ritual bath, then his return and leading the people in prayer.

L6003 There is no evidence whatsoever that necessitates repeating the iqamah. None of the imams disagree that if someone speaks after the iqamah but before commencing the prayer, or invalidates his ablution, he must renew his ablution while the iqamah need not be repeated for such reasons. Anyone who differentiates between minor and major acts, or between brief and extended speech, must substantiate his position with evidence and specify the exact threshold distinguishing the lesser from the greater in these matters. There exists absolutely no means for him to accomplish this, and with Allah the Exalted lies all success.

The Times of Prayer: A Question Regarding the First Time of Ẓuhr

L6004–6005

L6006 Issue: Abū Muḥammad ʿAlī ibn Aḥmad said: The initial time for Ẓuhr begins when the sun commences its decline from the zenith. Initiating Ẓuhr prayer before this is fundamentally impermissible, and such prayer is invalid. The timeframe for Ẓuhr then extends until every object's shadow equals its own length – excluding the shadow present at the start of the sun's decline, counting only the excess thereafter. If one utters the *takbīr* for Ẓuhr during this period or prior to its conclusion, they have validly caught the prayer without necessitating an excuse. Should the aforementioned shadow exceed this

مَسْأَلَةٌ: وَالْكَلَامُ جَائِزٌ بَيْنَ الْإِقَامَةِ وَالصَّلَاةِ - طَالَ الْكَلَامُ أَوْ قَصُرَ - وَلَا تُعَادُ الْإِقَامَةُ لِذَلِكَ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ الْهَمْدَانِيُّ ثنا أَبُو إِسْحَاقَ الْبَلْخِيُّ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَبُو مَعْمَرٍ عَبْدُ اللَّهِ بْنُ عَمْرٍو ثنا عَبْدُ الْوَارِثِ ثنا عَبْدُ الْعَزِيزِ هُوَ ابْنُ صُهَيْبٍ - عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ «أُقِيمَتْ الصَّلَاةُ وَالنَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُنَاجِي رَجُلًا فِي جَانِبِ الْمَسْجِدِ، فَمَا قَامَ إلَى الصَّلَاةِ حَتَّى نَامَ النَّاسُ» .

وَقَدْ ذَكَرْنَا إقَامَةَ الْمُسْلِمِينَ لِلصَّلَاةِ، وَتَذَكُّرَهُ - عَلَيْهِ السَّلَامُ - أَنَّهُ جُنُبٌ، وَرُجُوعَهُ وَاغْتِسَالَهُ، ثُمَّ مَجِيئَهُ وَصَلَاتَهُ بِالنَّاسِ؟ .

وَلَا دَلِيلَ يُوجِبُ إعَادَةَ الْإِقَامَةِ أَصْلًا، وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأَئِمَّةِ: فِي أَنَّ مَنْ تَكَلَّمَ بَيْنَ الْإِقَامَةِ وَالصَّلَاةِ، أَوْ أَحْدَثَ، فَإِنَّهُ يَتَوَضَّأُ وَلَا تُعَادُ الْإِقَامَةُ لِذَلِكَ وَيُكَلَّفُ مَنْ فَرَّقَ بَيْنَ قَلِيلِ الْعَمَلِ وَكَثِيرِهِ، وَقَلِيلِ الْكَلَامِ وَكَثِيرِهِ -: أَنْ يَأْتِيَ عَلَى صِحَّةِ قَوْلِهِ بِدَلِيلٍ، ثُمَّ عَلَى حَدِّ الْقَلِيلِ مِنْ ذَلِكَ مِنْ الْكَثِيرِ، وَلَا سَبِيلَ لَهُ إلَى ذَلِكَ أَصْلًا، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[أَوْقَاتُ الصَّلَاةِ] [مَسْأَلَةٌ أَوَّلُ وَقْتِ الظُّهْرِ]

مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ عَلِيُّ بْنُ أَحْمَدَ: أَوَّلُ وَقْتِ الظُّهْرِ أَخْذُ الشَّمْسِ فِي الزَّوَالِ وَالْمَيْلِ، فَلَا يَحِلُّ ابْتِدَاءُ الظُّهْرِ قَبْلَ ذَلِكَ أَصْلًا، وَلَا يُجْزِئُ بِذَلِكَ، ثُمَّ يَتَمَادَى وَقْتُهَا إلَى أَنْ يَكُونَ ظِلُّ كُلِّ شَيْءٍ مِثْلَهُ، لَا يُعَدُّ فِي ذَلِكَ الظِّلُّ الَّذِي كَانَ لَهُ فِي أَوَّلِ زَوَالِ الشَّمْسِ، وَلَكِنْ مَا زَادَ عَلَى ذَلِكَ؟ فَإِذَا كَبَّرَ الْإِنْسَانُ لِصَلَاةِ الظُّهْرِ حِينَ ذَلِكَ - فَمَا قَبْلَهُ - فَقَدْ أَدْرَكَ صَلَاةَ الظُّهْرِ بِلَا ضَرُورَةٍ فَإِذَا زَادَ الظِّلُّ الْمَذْكُورُ عَلَى مَا ذَكَرْنَا -: بِمَا قَلَّ أَوْ كَثُرَ

فَقَدْ بَطَلَ وَقْتُ الدُّخُولِ فِي صَلَاةِ الظُّهْرِ، إِلَّا لِلْمُسَافِرِ الْمُجِدِّ فَقَطْ، وَدَخَلَ أَوَّلُ وَقْتِ الْعَصْرِ، فَمَنْ دَخَلَ فِي صَلَاةِ الْعَصْرِ قَبْلَ ذَلِكَ لَمْ تَجْزِهِ إِلَّا يَوْمَ عَرَفَةَ بِعَرَفَةَ فَقَطْ، ثُمَّ يَتَمَادَى وَقْتُ الدُّخُولِ فِي الْعَصْرِ إِلَى أَنْ تَغْرُبَ الشَّمْسُ كُلُّهَا، إِلَّا أَنَّا نَكْرَهُ تَأْخِيرَ الْعَصْرِ إِلَى أَنْ تَصْفَرَّ الشَّمْسُ إِلَّا لِعُذْرٍ -: وَمَنْ كَبَّرَ لِلْعَصْرِ قَبْلَ أَنْ يَغْرُبَ جَمِيعُ الْقُرْصِ: فَقَدْ أَدْرَكَ الْعَصْرَ؟ فَإِذَا غَابَ جَمِيعُ الْقُرْصِ فَقَدْ بَطَلَ وَقْتُ الدُّخُولِ فِي الْعَصْرِ، وَدَخَلَ أَوَّلُ وَقْتِ صَلَاةِ الْمَغْرِبِ، وَلَا يُجْزِئُ الدُّخُولُ فِي صَلَاةِ الْمَغْرِبِ قَبْلَ غُرُوبِ جَمِيعِ الْقُرْصِ.

measure – whether minimally or substantially – the time for commencing Ẓuhr prayer expires, except exclusively for a traveler in haste.

At this point, the initial time for ʿAṣr begins. Whoever starts ʿAṣr prayer before this timeframe has not performed it validly, except on the Day of ʿArafah at ʿArafah alone. The period for commencing ʿAṣr prayer then persists until the entire solar disc has set, though we consider it reprehensible to delay ʿAṣr until the sun turns yellowish without a valid excuse. Whoever utters the *takbīr* for ʿAṣr before the full disappearance of the solar disc has validly caught ʿAṣr. Once the entire disc sets, the time for commencing ʿAṣr prayer expires, and the initial time for Maghrib prayer begins. It is invalid to commence Maghrib prayer before the complete setting of the solar disc.

ثُمَّ يَتَمَادَى وَقْتُ صَلَاةِ الْمَغْرِبِ إِلَى أَنْ يَغِيبَ الشَّفَقُ الَّذِي هُوَ الْحُمْرَةُ -: فَمَنْ كَبَّرَ لِلْمَغْرِبِ قَبْلَ أَنْ يَغِيبَ آخِرُ حُمْرَةِ الشَّفَقِ فَقَدْ أَدْرَكَ صَلَاةَ الْمَغْرِبِ بِلَا كَرَاهَةٍ وَلَا ضَرُورَةٍ؟ .

L6007–6009 Then, the time for Maghrib prayer persists until the disappearance of the twilight—that is, the redness. Therefore, whoever begins the Maghrib prayer by uttering the takbir before the last redness of the twilight disappears has caught the prayer within its time without... Is it disliked or a necessity?

فَإِذَا غَرُبَتْ حُمْرَةُ الشَّفَقِ كُلُّهَا فَقَدْ بَطَلَ وَقْتُ الدُّخُولِ فِي صَلَاةِ الْمَغْرِبِ، إِلَّا لِلْمُسَافِرِ الْمُجِدِّ، وَبِمُزْدَلِفَةَ لَيْلَةَ يَوْمِ النَّحْرِ فَقَطْ، وَدَخَلَ وَقْتُ صَلَاةِ الْعِشَاءِ الْآخِرَةِ، وَهِيَ الْعَتَمَةُ، وَمَنْ كَبَّرَ لَهَا وَمِنَ الْحُمْرَةِ فِي الْأُفُقِ شَيْءٌ لَمْ يَجْزِهِ.

L6010 When the redness of the twilight has entirely vanished, the time for commencing the Maghrib prayer has expired, except for the hastening traveler and, at Muzdalifah, only on the night of the Day of Sacrifice. At that point, the time for the Isha prayer—which is the night prayer (al-ʻAtamah)—begins. Whoever initiates it with the Takbīr while any trace of redness remains on the horizon, his prayer will not be accepted.

ثُمَّ يَتَمَادَى وَقْتُ صَلَاةِ الْعَتَمَةِ إِلَى انْقِضَاءِ نِصْفِ اللَّيْلِ الْأَوَّلِ، وَابْتِدَاءِ النِّصْفِ الثَّانِي -: فَمَنْ كَبَّرَ لَهَا فِي أَوَّلِ النِّصْفِ الثَّانِي مِنَ اللَّيْلِ فَقَدْ أَدْرَكَ صَلَاةَ الْعَتَمَةِ بِلَا كَرَاهَةٍ، وَلَا ضَرُورَةٍ فَإِذَا زَادَ عَلَى ذَلِكَ فَقَدْ خَرَجَ وَقْتُ الدُّخُولِ فِي صَلَاةِ الْعَتَمَةِ؟ فَإِذَا طَلَعَ الْفَجْرُ الثَّانِي فَقَدْ دَخَلَ أَوَّلُ وَقْتِ صَلَاةِ الصُّبْحِ، فَلَوْ كَبَّرَ لَهَا قَبْلَ ذَلِكَ لَمْ يَجْزِهِ، وَيَتَمَادَى وَقْتُهَا إِلَى أَنْ يَطْلُعَ أَوَّلُ قُرْصِ الشَّمْسِ -: فَمَنْ كَبَّرَ لَهَا قَبْلَ طُلُوعِ أَوَّلِ الْقُرْصِ فَقَدْ أَدْرَكَ صَلَاةَ الصُّبْحِ - إِلَّا أَنَّا نَكْرَهُ تَأْخِيرَهَا عَنْ أَنْ يُسَلِّمَ مِنْهَا قَبْلَ طُلُوعِ أَوَّلِ الْقُرْصِ

L6011 The time for the ʿAtama (Isha) prayer lasts until the end of the first half of the night and the beginning of the second half. Whoever initiates it with the Takbīr in the early part of the second half has validly entered the ʿAtama prayer without religious reprehensibility (karāha) or necessity. If one exceeds this, the time for entering the ʿAtama prayer has expired. When the second dawn (Fajr al-Ṣādiq) appears, the initial time for the Subh (Fajr) prayer begins. If one initiates it before this, the prayer is invalid for him. The time for Subh continues until the first visible edge of the sun's disc emerges. Whoever initiates it with the Takbīr before the sun's first emergence has validly entered the Subh prayer. However, it is makrūh to delay the prayer such that the Taslīm (salutation) occurs after the sun's disc begins to rise, except due to

an excuse. Once the sun's first edge appears, the time for entering the Subh prayer is nullified. When the time of any prayer we have mentioned expires, it is impermissible to perform it—whether it is a child reaching puberty, a menstruating woman who becomes pure, or a disbeliever who embraces Islam. These may only pray what they began within the specified times.

إِلَّا لِعُذْرٍ، فَإِذَا طَلَعَ أَوَّلُ الْقُرْصِ فَقَدْ بَطَلَ وَقْتُ الدُّخُولِ فِي صَلَاةِ الصُّبْحِ؟ فَإِذَا خَرَجَ وَقْتُ كُلِّ صَلَاةٍ ذَكَرْنَاهَا لَمْ يَجُزْ أَنْ يُصَلِّيَهَا: لَا صَبِيٌّ يَبْلُغُ، وَلَا حَائِضٌ تَطْهُرُ، وَلَا كَافِرٌ يُسْلِمُ - وَلَا يُصَلِّي هَؤُلَاءِ إِلَّا مَا أَدْرَكُوا فِي الْأَوْقَاتِ الْمَذْكُورَةِ؟ .

L6012 As for the traveler, if the sun passes its zenith for him while he is settled or sets while he is settled, he follows the ruling we previously mentioned regarding the times of Zuhr and Maghrib with no distinction—he must pray each prayer at its prescribed time without exception.

وَأَمَّا الْمُسَافِرُ فَإِنَّهُ إِنْ زَالَتْ لَهُ الشَّمْسُ، وَهُوَ نَازِلٌ أَوْ غَرُبَتْ لَهُ الشَّمْسُ، وَهُوَ نَازِلٌ -: فَهُوَ كَمَا ذَكَرْنَا فِي وَقْتِ الظُّهْرِ وَالْمَغْرِبِ وَلَا فَرْقَ -: يُصَلِّي كُلَّ صَلَاةٍ لِوَقْتِهَا وَلَا بُدَّ.

L6013 If the sun has passed the zenith while he is traveling, he may delay the Ẓuhr prayer until the start of the time we have mentioned for ʿAṣr, then combine Ẓuhr and ʿAṣr.

فَإِنْ زَالَتْ لَهُ الشَّمْسُ وَهُوَ مَاشٍ فَلَهُ أَنْ يُؤَخِّرَ الظُّهْرَ إِلَى أَوَّلِ الْوَقْتِ الَّذِي ذَكَرْنَا لِلْعَصْرِ، ثُمَّ يَجْمَعُ الظُّهْرَ وَالْعَصْرَ.

L6014 If the sun sets for him while he is walking, he may delay Maghrib until the beginning of Isha's time, then combine Maghrib and Isha. As for at Arafah—specifically on the day of Arafah—he prays Dhuhr in its time, then prays Asr immediately after concluding Dhuhr within Dhuhr's timeframe.

وَإِنْ غَابَتْ لَهُ الشَّمْسُ، وَهُوَ مَاشٍ فَلَهُ أَنْ يُؤَخِّرَ الْمَغْرِبَ إِلَى أَوَّلِ وَقْتِ الْعَتَمَةِ، ثُمَّ يَجْمَعُ بَيْنَ الْمَغْرِبِ وَالْعَتَمَةِ؟ ، وَأَمَّا بِعَرَفَةَ - يَوْمَ عَرَفَةَ خَاصَّةً - فَإِنَّهُ يُصَلِّي الظُّهْرَ فِي وَقْتِهَا، ثُمَّ يُصَلِّي الْعَصْرَ إِذَا سَلَّمَ مِنْ الظُّهْرِ فِي وَقْتِ الظُّهْرِ؟ .

L6015–6017 As for Muzdalifah—specifically on the night preceding the Day of Sacrifice (Yawm al-Naḥr)—one must pray Maghrib only in Muzdalifah, at any time. If he comes to it during the time of the Isha prayer, he should pray it first, then perform the Isha prayer. As for one who forgets a prayer or sleeps through it, its time extends perpetually without fail. It is not permissible for anyone to delay a prayer beyond the time we have mentioned—such an act is invalid. Nor is it permissible to perform a prayer before its designated time—it is not valid if he does that. Abu Hanifa stated in one of his two opinions: The initial time for Asr begins when the shadow of every thing becomes twice its length. The preferred time for the Isha prayer extends to a third of the night and up to half of it, while its time continues until the appearance of dawn—though delaying it until this point is disliked.

وَأَمَّا بِمُزْدَلِفَةَ - لَيْلَةَ يَوْمِ النَّحْرِ خَاصَّةً - فَإِنَّهُ لَا يُصَلِّي الْمَغْرِبَ إِلَّا بِمُزْدَلِفَةَ أَيَّ وَقْتٍ جَاءَهَا، فَإِنْ جَاءَهَا فِي وَقْتِ الْعَتَمَةِ صَلَّاهَا، ثُمَّ صَلَّى الْعَتَمَةَ، وَأَمَّا النَّاسِي لِلصَّلَاةِ وَالنَّائِمُ عَنْهَا فَإِنَّ وَقْتَهَا مُتَمَادٍ أَبَدًا لَا بُدَّ، وَلَا يَحِلُّ لِأَحَدٍ أَنْ يُؤَخِّرَ صَلَاةً عَنْ وَقْتِهَا الَّذِي ذَكَرْنَا، وَلَا يُجْزِئُهُ إِنْ فَعَلَ ذَلِكَ، وَلَا أَنْ يُقَدِّمَهَا قَبْلَ وَقْتِهَا الَّذِي ذَكَرْنَا، لَا يُجْزِئُهُ إِنْ فَعَلَ ذَلِكَ؟ وَقَالَ أَبُو حَنِيفَةَ فِي أَحَدِ قَوْلَيْهِ -: أَوَّلُ وَقْتِ الْعَصْرِ إِذَا صَارَ ظِلُّ كُلِّ شَيْءٍ مِثْلَيْهِ، وَوَقْتُ الْعَتَمَةِ الْمُسْتَحَبُّ إِلَى ثُلُثِ اللَّيْلِ وَإِلَى نِصْفِهِ، وَيَمْتَدُّ إِلَى طُلُوعِ الْفَجْرِ - وَإِنْ كُرِهَ تَأْخِيرُهَا إِلَيْهِ.

L6018 It is not permissible to delay the Ẓuhr prayer until the time of ʿAṣr, nor

to delay the Maghrib prayer until the time of Ishāʾ (ʿAtamah), for a diligent traveler; Mālik held the opinion that a sick person who fears losing his mental faculties due to illness and a traveler who intends to embark on a journey may pray ʿAṣr during the time of Ẓuhr and Ishāʾ during the time of Maghrib.

وَلَمْ يَجُزْ تَأْخِيرُ الظُّهْرِ إِلَى وَقْتِ الْعَصْرِ، وَلَا تَأْخِيرُ الْمَغْرِبِ إِلَى وَقْتِ الْعَتَمَةِ -: لِلْمُسَافِرِ الْمُجِدِّ وَرَأَى مَالِكٌ لِلْمَرِيضِ الَّذِي يَخَافُ ذَهَابَ عَقْلِهِ، وَلِلْمُسَافِرِ الَّذِي يُرِيدُ الرَّحِيلَ -: أَنْ يُقَدِّمَ الْعَصْرَ إِلَى وَقْتِ الظُّهْرِ، وَالْعَتَمَةَ إِلَى وَقْتِ الْمَغْرِبِ.

L6019 He held the view that congregational mosques - during rain and darkness - should slightly delay Maghrib and move Isha prayer forward to Maghrib's time, with no voluntary prayers performed between them. He did not hold this view for fear of an enemy, nor did he apply it to the daytime prayers of Dhuhr and Asr during daytime rain.

وَرَأَى لِمَسَاجِدِ الْجَمَاعَةِ - فِي الْمَطَرِ وَالظُّلْمَةِ - أَنْ تُؤَخِّرَ الْمَغْرِبَ قَلِيلًا وَتُقَدِّمَ الْعَتَمَةَ إِلَى وَقْتِ الْمَغْرِبِ، وَلَا يُتَنَفَّلُ بَيْنَهُمَا، وَلَمْ يَرَ ذَلِكَ لِخَوْفِ عَدُوٍّ، وَلَا رَأَى ذَلِكَ فِي نَهَارِ الْمَطَرِ فِي الظُّهْرِ وَالْعَصْرِ.

L6020 He held that the time of Dhuhr and Asr extends until sunset—provided one begins Dhuhr within its time and performs one rakʿah of Asr before the sun has completely set? He also held that the time of Maghrib and ʿAtamah (Isha) extends until one begins Maghrib within its time and performs one rakʿah of ʿAtamah before the rising of the true dawn. Al-Shāfiʿī held that combining Dhuhr and Asr during Dhuhr's time, and combining Maghrib and ʿAtamah during Maghrib's time, is permissible—specifically for mosques with congregational prayers during rain.

وَرَأَى وَقْتَ الظُّهْرِ وَالْعَصْرِ يَمْتَدَّانِ إِلَى غُرُوبِ الشَّمْسِ بِإِدْرَاكِ الظُّهْرِ وَرَكْعَةٍ مِنْ الْعَصْرِ قَبْلَ غُرُوبِ جَمِيعِهَا؟ وَرَأَى وَقْتَ الْمَغْرِبِ وَالْعَتَمَةِ يَمْتَدَّانِ إِلَى أَنْ يُدْرِكَ الْمَغْرِبَ وَرَكْعَةً مِنْ الْعَتَمَةِ قَبْلَ طُلُوعِ الْفَجْرِ الثَّانِي وَرَأَى الشَّافِعِيُّ الْجَمْعَ بَيْنَ الظُّهْرِ وَالْعَصْرِ فِي وَسَطِ وَقْتِ الظُّهْرِ، وَبَيْنَ الْمَغْرِبِ وَالْعَتَمَةِ فِي وَسَطِ وَقْتِ الْمَغْرِبِ -: لِمَسَاجِدِ الْجَمَاعَاتِ خَاصَّةً فِي الْمَطَرِ.

L6021 He held the view that the time for Dhuhr and Asr prayers constitutes a merged period extending until sunset, while the time for Maghrib and Isha prayers forms a shared duration lasting until the dawn's emergence (the onset of Fajr).

وَرَأَى وَقْتَ الظُّهْرِ وَالْعَصْرِ مُشْتَرَكًا مُمْتَدًّا إِلَى غُرُوبِ الشَّمْسِ، وَوَقْتَ الْمَغْرِبِ وَالْعَتَمَةِ مُشْتَرَكًا مُمْتَدًّا إِلَى طُلُوعِ الْفَجْرِ.

L6022–6023 This is alongside his statement and the statement of Mālik: "Verily, Maghrib has only one time"—yet these statements are evidently contradictory without any proof? ʿAbdullāh ibn Rabīʿ narrated to us, Muḥammad ibn Muʿāwiyah narrated to us, Abū Khālifah al-Faḍl ibn al-Ḥubāb al-Jumaḥī narrated to us, Abū al-Walīd al-Ṭayālisī (he is Hishām ibn ʿAbd al-Malik) narrated to us: I am Hammām ibn Yaḥyā, from Qatādah, from Abū Ayyūb al-Marāghī, from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ: "A man asked Allah's Messenger—peace and blessings be upon him—about the time of Ẓuhr prayer. Allah's Messenger—peace and blessings be upon him—said: 'The time for Ẓuhr prayer begins

هَذَا مَعَ قَوْلِهِ وَقَوْلِ مَالِكٍ: إِنَّهُ لَيْسَ لِلْمَغْرِبِ إِلَّا وَقْتٌ وَاحِدٌ، وَهَذِهِ أَقْوَالٌ ظَاهِرَةُ التَّنَاقُضِ بِلَا بُرْهَانٍ؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَبُو خَلِيفَةَ الْفَضْلُ بْنُ الْحُبَابِ الْجُمَحِيُّ ثنا أَبُو الْوَلِيدِ الطَّيَالِسِيُّ هُوَ هِشَامُ بْنُ عَبْدِ الْمَلِكِ - أَنَا هَمَّامٌ هُوَ ابْنُ يَحْيَى - عَنْ قَتَادَةَ عَنْ أَبِي أَيُّوبَ الْمَرَاغِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَأَلَهُ رَجُلٌ عَنْ وَقْتِ صَلَاةِ الظُّهْرِ؟ فَقَالَ رَسُولُ اللَّهِ

when the sun declines and lasts until the shadow equals one's height, after which ʿAṣr begins. The time for ʿAṣr lasts until sunset. The time for Maghrib lasts until twilight vanishes. The time for ʿIshā lasts until midnight. The time for Fajr begins at dawn and lasts until sunrise.'"

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقْتُ صَلاَةِ الظُّهْرِ إِذَا زَالَتْ الشَّمْسُ، وَكَانَ ظِلُّ الرَّجُلِ كَطُولِهِ مَا لَمْ تَحْضُرْ الْعَصْرُ، وَوَقْتُ الْعَصْرِ مَا لَمْ تَغْرُبْ الشَّمْسُ، وَوَقْتُ الْمَغْرِبِ مَا لَمْ يَغِبْ الشَّفَقُ، وَوَقْتُ الْعِشَاءِ إِلَى نِصْفِ اللَّيْلِ، وَوَقْتُ الْفَجْرِ مِنْ طُلُوعِ الْفَجْرِ مَا لَمْ تَطْلُعْ الشَّمْسُ» .

L6024–6026 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Muhammad ibn Abdullah ibn Numayr narrated to us: Ubay narrated to us: Badr ibn Uthman narrated to us: Abu Bakr ibn Abi Musa al-Ash'ari reported from his father that the Messenger of Allah (peace and blessings be upon him) was approached by a questioner asking about prayer timings. He did not respond to him at all. Then he performed the Fajr prayer when dawn broke while people could scarcely recognize one another. Then he commanded him to perform the Dhuhr prayer when the sun had passed its zenith, while someone might say, "Midday has come" - though he was the most knowledgeable among them. Then he commanded him to perform the Asr prayer while the sun remained high. Then he commanded him to perform the Maghrib prayer when the sun had set. Then he commanded him to perform the Isha prayer when twilight disappeared. The next day, he delayed Fajr until... He left from it while the observer was saying: "The sun has risen or is about to rise," then he delayed the noon prayer until it approached yesterday's afternoon prayer time. Then he delayed the afternoon prayer until he concluded it while the observer was saying: "The sun has reddened," then he delayed the sunset prayer until twilight disappeared, then he delayed the evening prayer until the first third of the night. At dawn, he summoned the questioner and said: "The time is between these two."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ ثنا أُبَيٌّ ثنا بَدْرُ بْنُ عُثْمَانَ ثنا أَبُو بَكْرِ بْنُ أَبِي مُوسَى الْأَشْعَرِيُّ عَنْ أَبِيهِ عَنْ «رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَتَاهُ سَائِلٌ يَسْأَلُهُ عَنْ مَوَاقِيتِ الصَّلَاةِ؟ فَلَمْ يَرُدَّ عَلَيْهِ شَيْئًا، فَأَقَامَ الْفَجْرَ حِينَ انْشَقَّ الْفَجْرُ - وَالنَّاسُ لَا يَكَادُ يَعْرِفُ بَعْضُهُمْ بَعْضًا، ثُمَّ أَمَرَهُ فَأَقَامَ بِالظُّهْرِ حِينَ زَالَتْ الشَّمْسُ، وَالْقَائِلُ يَقُولُ: قَدْ انْتَصَفَ النَّهَارُ، وَهُوَ كَانَ أَعْلَمَ مِنْهُمْ. ثُمَّ أَمَرَهُ فَأَقَامَ بِالْعَصْرِ وَالشَّمْسُ مُرْتَفِعَةٌ ثُمَّ أَمَرَهُ فَأَقَامَ الْمَغْرِبَ حِينَ وَقَعَتْ الشَّمْسُ، ثُمَّ أَمَرَهُ فَأَقَامَ الْعِشَاءَ حِينَ غَابَ الشَّفَقُ، ثُمَّ أَخَّرَ الْفَجْرَ مِنْ الْغَدِ حَتَّى انْصَرَفَ مِنْهَا وَالْقَائِلُ يَقُولُ: قَدْ طَلَعَتْ الشَّمْسُ أَوْ كَادَتْ، ثُمَّ أَخَّرَ الظُّهْرَ حَتَّى كَانَ قَرِيبًا مِنْ وَقْتِ الْعَصْرِ بِالْأَمْسِ، ثُمَّ أَخَّرَ الْعَصْرَ حَتَّى انْصَرَفَ مِنْهَا وَالْقَائِلُ يَقُولُ: قَدْ احْمَرَّتْ الشَّمْسُ، ثُمَّ أَخَّرَ الْمَغْرِبَ حَتَّى كَانَ عِنْدَ سُقُوطِ الشَّفَقِ، ثُمَّ أَخَّرَ الْعِشَاءَ حَتَّى كَانَ ثُلُثُ اللَّيْلِ الْأَوَّلِ، ثُمَّ أَصْبَحَ فَدَعَا السَّائِلَ فَقَالَ: الْوَقْتُ بَيْنَ هَذَيْنِ» .

L6027 This report has been transmitted to us through the chain of Abū Dāwūd from Musaddad from ʿAbdullāh ibn Dāwūd al-Khuraibī from Badr ibn ʿUthmān via his chain. It states: "When the next day arrived, he prayed the dawn prayer and departed. We asked: 'Has the sun risen?' He established the noon prayer at the time of the afternoon prayer that was before it, and prayed the

وَقَدْ رُوِّينَا هَذَا الْخَبَرَ مِنْ طَرِيقِ أَبِي دَاوُد عَنْ مُسَدَّدٍ عَنْ عَبْدِ اللَّهِ بْنِ دَاوُد الْخُرَيْبِيِّ عَنْ بَدْرِ بْنِ عُثْمَانَ بِإِسْنَادِهِ -: وَفِيهِ «فَلَمَّا كَانَ مِنْ الْغَدِ صَلَّى الْفَجْرَ فَانْصَرَفَ فَقُلْنَا:

afternoon prayer when the sun had yellowed—or he said: when evening had arrived."

L6028–6030 Hammad narrated to us: ʿAbbās ibn Aṣbagh narrated to us: Muḥammad ibn ʿAbd al-Malik ibn Ayman narrated to us: Aḥmad ibn Zuhayr and Muḥammad ibn Waḍḍāḥ narrated. Ibn Zuhayr narrated: My father narrated to me, and Ibn Waḍḍāḥ narrated: Abū Bakr ibn Abī Shaybah and Ibn Numayr narrated to us. Ibn Zuhayr, Abū Bakr, and Ibn Numayr narrated: Muḥammad ibn Fuḍayl narrated to us from al-Aʿmash from Abū Ṣāliḥ from Abū Hurayrah, who reported: The Prophet—peace and blessings be upon him—said, "Verily, prayer has a beginning and an end—the beginning of the Dhuhr prayer is when the sun declines, and its end time is when the time for ʿAṣr begins. The beginning of ʿAṣr's time is when Dhuhr's time ends, and its end time is when the sun turns yellow." The beginning time of Maghrib is when the sun sets, and its end time is when the horizon disappears. The beginning time of the latter Isha is when the twilight vanishes, and its end time is when half the night has passed. The beginning time of Fajr is when dawn emerges, and its end time is when the sun rises.

L6031 Ali said: The objection of those who posited a defect in the ḥadīth of ʿAbd Allāh ibn ʿAmr did not elude us—that Qatādah sometimes transmitted it as a raised report (musnad) and at other times as a stopped report (mawqūf). This is not a defect, but rather a strength for the ḥadīth. How can this be a defect when the Companion narrates it from the Prophet—peace and blessings of Allah be upon him—in one instance and issues a legal ruling based on it in another? This is ignorance from those who invoked this as a defect—an assertion without proof, mere conjecture blindly following those who presumed it.

L6032 Likewise, we are not unaware of those who made a pretext regarding the narration of Abū Hurayrah by claiming Muḥammad ibn Fuḍayl erred in it—asserting instead that it is mawqoof (stopped at Mujāhid). This, too, is a false claim without evidence. What harm is there in the chain of those who transmitted it as mawqoof from those who stopped it (at Mujāhid)?

طَلَعَتْ الشَّمْسُ؟ وَأَقَامَ الظُّهْرَ فِي وَقْتِ الْعَصْرِ الَّذِي كَانَ قَبْلَهُ، وَصَلَّى الْعَصْرَ وَقَدْ اصْفَرَّتْ الشَّمْسُ أَوْ قَالَ: أَمْسَى» .

حَدَّثَنَا حَمَّادٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَحْمَدُ بْنُ زُهَيْرٍ، وَمُحَمَّدُ بْنُ وَضَّاحٍ قَالَ ابْنُ زُهَيْرٍ: حَدَّثَنِي أَبِي وَقَالَ ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَابْنُ نُمَيْرٍ قَالَ زُهَيْرٌ، وَأَبُو بَكْرٍ وَابْنُ نُمَيْرٍ: ثنا مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ لِلصَّلَاةِ أَوَّلًا وَآخِرًا -: وَإِنَّ أَوَّلَ صَلَاةِ الظُّهْرِ: حِينَ تَزُولُ الشَّمْسُ، وَآخِرَ وَقْتِهَا: حِينَ يَدْخُلُ وَقْتُ الْعَصْرِ، وَإِنَّ أَوَّلَ وَقْتِ الْعَصْرِ: حِينَ يَدْخُلُ وَقْتُهَا، وَإِنَّ آخِرَ وَقْتِهَا: حِينَ تَصْفَرُّ الشَّمْسُ وَإِنَّ أَوَّلَ وَقْتِ الْمَغْرِبِ: حِينَ تَغْرُبُ الشَّمْسُ، وَإِنَّ آخِرَ وَقْتِهَا: حِينَ يَغِيبُ الْأُفُقُ، وَإِنَّ أَوَّلَ وَقْتِ الْعِشَاءِ الْآخِرَةِ: حِينَ يَغِيبُ الشَّفَقُ، وَإِنَّ آخِرَ وَقْتِهَا: حِينَ يَنْتَصِفُ اللَّيْلُ، وَإِنَّ أَوَّلَ وَقْتِ الْفَجْرِ: حِينَ يَطْلُعُ الْفَجْرُ، وَإِنَّ آخِرَ وَقْتِهَا: حِينَ تَطْلُعُ الشَّمْسُ» .

قَالَ عَلِيٌّ: لَمْ يَخْفَ عَلَيْنَا اعْتِلَالُ مَنْ اعْتَلَّ فِي حَدِيثِ عَبْدِ اللَّهِ بْنِ عَمْرٍو بِأَنَّ قَتَادَةَ أَسْنَدَهُ مَرَّةً وَأَوْقَفَهُ أُخْرَى، وَهَذَا لَيْسَ بِعِلَّةٍ، بَلْ هُوَ قُوَّةٌ لِلْحَدِيثِ، إذَا كَانَ الصَّاحِبُ يَرْوِيهِ مَرَّةً عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَيُفْتِي بِهِ أُخْرَى؟ وَهَذَا جَهْلٌ مِمَّنْ تَعَلَّلَ بِهَذَا، وَقَوْلٌ لَا بُرْهَانَ عَلَيْهِ، وَإِنَّمَا هُوَ ظَنٌّ قَلَّدَ فِيهِ مَنْ ظَنَّهُ.

؟ وَكَذَلِكَ لَمْ يَخْفَ عَلَيْنَا مَنْ تَعَلَّلَ فِي حَدِيثِ أَبِي هُرَيْرَةَ بِأَنَّ مُحَمَّدَ بْنَ فُضَيْلٍ أَخْطَأَ فِيهِ، وَإِنَّمَا هُوَ مَوْقُوفٌ عَلَى مُجَاهِدٍ - وَهَذَا أَيْضًا دَعْوَى كَاذِبَةٌ بِلَا بُرْهَانٍ، وَمَا يَضُرُّ إِسْنَادُ مَنْ أَسْنَدَ إِيقَافَ مَنْ أَوْقَفَ؟ .

L6033 قَالَ عَلِيٌّ: وَهَذِهِ أَحَادِيثُ صِحَاحٌ، بِأَسَانِيدَ جِيَادٍ، مِنْ رِوَايَةِ الثِّقَاتِ، فَوَاجِبٌ الْأَخْذُ بِالزَّائِدِ، وَالَّذِي فِيهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَقَامَ الظُّهْرَ فِي وَقْتِ الْعَصْرِ الَّذِي كَانَ قَبْلَهُ» .

L6034 لَيْسَ فِيهِ حُجَّةٌ لِمَنْ قَالَ بِاشْتِرَاكِ وَقْتَيْهِمَا، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ نَصَّ عَلَى أَنَّ «وَقْتَ الظُّهْرِ مَا لَمْ تَحْضُرْ الْعَصْرُ» .

L6035–6037 وَنَصَّ - عَلَيْهِ السَّلَامُ - عَلَى بُطْلَانِ الِاشْتِرَاكِ، كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا مُحَمَّدُ بْنُ إِسْمَاعِيلَ الصَّائِغُ ثنا أَبُو النَّضْرِ هَاشِمُ بْنُ الْقَاسِمِ ثنا سُلَيْمَانُ بْنُ الْمُغِيرَةِ عَنْ ثَابِتٍ هُوَ الْبُنَانِيُّ - عَنْ عَبْدِ اللَّهِ بْنِ رَبَاحٍ عَنْ أَبِي قَتَادَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّمَا التَّفْرِيطُ فِي الْيَقَظَةِ: أَنْ تُؤَخِّرَ صَلَاةً حَتَّى يَدْخُلَ وَقْتُ أُخْرَى» .

L6038 فَلَا بُدَّ مِنْ جَمْعِهَا كُلِّهَا لِصِحَّتِهَا فَصَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - كَبَّرَ فِي الْيَوْمِ الثَّانِي لِلظُّهْرِ فِي آخِرِ وَقْتِهَا، فَصَارَ مُصَلِّيًا لَهَا فِي وَقْتِ الْعَصْرِ، وَهَذَا حَسَنٌ؟ وَالْخَبَرُ الَّذِي فِيهِ «وَوَقْتُ الْعَصْرِ مَا لَمْ تَغِبْ الشَّمْسُ» زَائِدٌ عَلَى سَائِرِ الْأَخْبَارِ، وَزِيَادَةُ الْعَدْلِ وَاجِبٌ قَبُولُهَا؟ وَكَذَلِكَ هُوَ زَائِدٌ عَلَى الْخَبَرِ الَّذِي قَدْ ذَكَرْنَا قَبْلُ بِإِسْنَادِهِ.

L6039 In it is "Whoever attains one rakʿah of ʿAṣr before the sun sets has indeed

[1] **Hadith references (L6035):** Sunan Abi Dawud 441.

attained ʿAṣr." This report supplements the narrations which state, "The time for ʿAṣr lasts as long as the sun does not begin to yellow," and it is not permissible to disregard additions by reliable narrators. All these reports are supplementary to the narrations which mention, "He, peace and blessings of Allah be upon him, prayed Maghrib on the second day at the same time as he prayed it the previous day—one time."

وَفِيهِ «مَنْ أَدْرَكَ رَكْعَةً مِنْ الْعَصْرِ قَبْلَ أَنْ تَغْرُبَ الشَّمْسُ فَقَدْ أَدْرَكَ الْعَصْرَ» ؟ ، وَهَذَا الْخَبَرُ زَائِدٌ عَلَى الْآثَارِ الَّتِي فِيهَا «وَوَقْتُ الْعَصْرِ مَا لَمْ تَصْفَرَّ الشَّمْسُ» وَلَا يَحِلُّ تَرْكُ زِيَادَةِ الْعَدْلِ وَهَذِهِ الْأَخْبَارُ كُلُّهَا زَائِدَةٌ عَلَى الْأَخْبَارِ الَّتِي فِيهَا «أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى الْمَغْرِبَ فِي الْيَوْمِ الثَّانِي فِي الْوَقْتِ الَّذِي صَلَّاهَا فِيهِ بِالْأَمْسِ وَقْتًا وَاحِدًا» .

L6040 All these reports invalidate the opinion of Mālik and al-Shāfiʿī that Maghrib has only one appointed time. This opinion is invalid for several reasons, including the authentic reports—which we will cite with their chains of transmission, if Allah the Exalted wills—that the Prophet, peace be upon him, recited in the Maghrib prayer Surah Al-Aʿrāf, Aṭ-Ṭūr, and Al-Mursalāt.

وَهَذِهِ الْأَخْبَارُ كُلُّهَا مُبْطِلَةٌ قَوْلَ مَالِكٍ وَالشَّافِعِيِّ: أَنَّهُ لَيْسَ لِلْمَغْرِبِ إلَّا وَقْتٌ وَاحِدٌ، وَهُوَ قَوْلٌ يَبْطُلُ مِنْ جِهَاتٍ -: مِنْهَا: مَا قَدْ صَحَّ مِمَّا سَنَذْكُرُهُ بِإِسْنَادِهِ إنْ شَاءَ اللَّهُ تَعَالَى مِنْ أَنَّهُ - عَلَيْهِ السَّلَامُ - «قَرَأَ فِي صَلَاةِ الْمَغْرِبِ سُورَةَ الْأَعْرَافِ، وَسُورَةَ الطُّورِ، وَالْمُرْسَلَاتِ» .

L6041 If what they claimed were true, then he—peace be upon him—would have prayed outside its prescribed time; but God is far removed from such a thing! Moreover, mosques differ: some lack minarets and have extremely narrow courtyards, so the caller hastens the adhān and the prayer begins immediately, while others have spacious courtyards—like major congregational mosques—with lofty minarets, where the caller prolongs the adhān and then descends. Thus, the prayer cannot commence until the imams of the mosques are prepared—a reality witnessed in all cities.

فَلَوْ كَانَ مَا قَالُوهُ لَكَانَ - عَلَيْهِ السَّلَامُ - مُصَلِّيًا لَهَا فِي غَيْرِ وَقْتِهَا، وَحَاشَا لِلَّهِ مِنْ هَذَا؟ وَأَيْضًا: فَإِنَّ الْمَسَاجِدَ تَخْتَلِفُ، فَبَعْضُهَا لَا مَنَارَ لَهَا، وَهِيَ ضَيِّقَةُ السَّاحَةِ جِدًّا، فَيُؤَذِّنُ الْمُؤَذِّنُ مُسْرِعًا وَيُصَلِّي، وَبَعْضُهَا وَاسِعَةُ الصُّحُونِ: كَالْجَوَامِعِ الْكِبَارِ، وَعَالِيَةُ الْمَنَارِ، فَيُؤَذِّنُ الْمُؤَذِّنُ مُسْتَرْسِلًا ثُمَّ يَنْزِلُ، فَلَا سَبِيلَ أَنْ يُقِيمَ الصَّلَاةَ إلَّا وَأَئِمَّةُ الْمَسَاجِدِ قَدْ أَتَمُّوا، هَذَا أَمْرٌ مُشَاهَدٌ فِي جَمِيعِ الْمُدُنِ.

L6042 According to the opinion of the Mālikīs and Shāfiʿīs, would it not be obligatory to conclude that these individuals did not perform the Maghrib prayer within its prescribed time?

فَعَلَى قَوْلِ الْمَالِكِيِّينَ وَالشَّافِعِيِّينَ: كَانَ يَجِبُ أَنَّ هَؤُلَاءِ لَمْ يُصَلُّوا الْمَغْرِبَ فِي وَقْتِهَا؟

L6043–6044 Moreover, they ask: When does its time expire according to you? Yet they fail to provide any definitive limit whatsoever. It is invalid for a limited law to exist whose boundaries no one knows - Allah is exalted above such absurdity! These narrations also refute those who claim shared times for Dhuhr and Asr prayers, and shared times for Maghrib and Isha prayers. Has any report

وَأَيْضًا: فَيَسْأَلُونَ: مَتَى يَنْقَضِي وَقْتُهَا عِنْدَكُمْ؟ فَلَا يَأْتُونَ بِحَدٍّ أَصْلًا، وَمِنْ الْبَاطِلِ أَنْ تَكُونَ شَرِيعَةٌ مَحْدُودَةٌ لَا يَدْرِي أَحَدٌ حَدَّهَا، حَاشَا لِلَّهِ مِنْ هَذَا؟ وَهَذِهِ الْأَخْبَارُ أَيْضًا: تُبْطِلُ قَوْلَ مَنْ قَالَ بِاشْتِرَاكِ وَقْتِ الظُّهْرِ وَالْعَصْرِ، وَبِاشْتِرَاكِ وَقْتِ الْمَغْرِبِ وَالْعِشَاءِ،

ever contradicted them in this matter at all? The rulings for Arafat and Muzdalifah apply exclusively to that day and night in those specific locations. The proof lies in their unanimous agreement - without any disagreement - that if an Imam prayed Dhuhr at Arafat during its proper time then delayed Asr until Asr's time as per regular rulings outside that day and place, or if he prayed Maghrib immediately after sunset before reaching Muzdalifah that night, he would be committing an error. According to some scholars, his prayer would be invalid - thus it becomes evident that they contradicted both analogical reasoning and textual sources. As for the textual sources - have we not already mentioned them? As for analogy: the proper analogy (were it valid here) would require applying outside Arafat and Muzdalifah the same rulings applicable there on that day and night. Thus, one would always pray Asr at Dhuhr's earliest time and continuously delay Maghrib until after twilight's disappearance. Yet they unanimously prohibit this, declaring it impermissible. This demonstrates that their claim about shared prayer times was not analogically derived from the rulings for Arafat's day at Arafat and Muzdalifah's night at Muzdalifah.

وَلَمْ يَأْتِ خَبَرٌ يُعَارِضُهَا فِي هَذَا أَصْلًا؟ وَحُكْمُ عَرَفَةَ، وَالْمُزْدَلِفَةِ: حُكْمٌ فِي ذَلِكَ الْيَوْمِ، وَتِلْكَ اللَّيْلَةِ فِي ذَيْنِك الْمَوْضِعَيْنِ فَقَطْ بُرْهَانُ ذَلِكَ -: أَنَّهُمْ كُلُّهُمْ مُجْمِعُونَ - بِلَا خِلَافٍ - عَلَى أَنَّ إمَامًا لَوْ صَلَّى الظُّهْرَ بِعَرَفَةَ فِي وَقْتِ الظُّهْرِ، ثُمَّ أَخَّرَ الْعَصْرَ إلَى وَقْتِ الْعَصْرِ، كَحُكْمِهَا فِي غَيْرِ ذَلِكَ الْيَوْمِ، فِي غَيْرِ ذَلِكَ الْمَكَانِ، أَوْ صَلَّى الْمَغْرِبَ تِلْكَ اللَّيْلَةَ فِي إثْرِ غُرُوبِ الشَّمْسِ قَبْلَ الْمُزْدَلِفَةِ -: لَكَانَ مُخْطِئًا مُسِيئًا، وَعِنْدَ بَعْضِهِمْ فَاسِدَ الصَّلَاةِ فَصَحَّ: أَنَّهُمْ خَالَفُوا الْقِيَاسَ وَالنُّصُوصَ: أَمَّا النُّصُوصُ، فَقَدْ ذَكَرْنَاهَا؟ ، وَأَمَّا الْقِيَاسُ: فَإِنَّ وَجْهَ الْقِيَاسِ - لَوْ كَانَ الْقِيَاسُ حَقًّا - أَنْ يَجُوزَ، وَأَنْ يَلْزَمَ فِي غَيْرِ عَرَفَةَ، وَمُزْدَلِفَةَ: مَا يَجُوزُ وَيَلْزَمُ فِي عَرَفَةَ، وَمُزْدَلِفَةَ فِي ذَلِكَ الْيَوْمِ وَتِلْكَ اللَّيْلَةِ؛ فَيَكُونُ الْحُكْمُ: أَنْ تُصَلِّيَ الْعَصْرَ أَبَدًا فِي أَوَّلِ وَقْتِ الظُّهْرِ، وَأَنْ تُؤَخِّرَ الْمَغْرِبَ أَبَدًا إلَى بَعْدِ غُرُوبِ الشَّفَقِ، وَهُمْ كُلُّهُمْ مُجْمِعُونَ عَلَى الْمَنْعِ مِنْ هَذَا، وَأَنَّهُ لَا يَجُوزُ، فَظَهَرَ أَنَّهُمْ لَمْ يَقِيسُوا قَوْلَهُمْ فِي اشْتِرَاكِ الْأَوْقَاتِ عَلَى حُكْمِ يَوْمِ عَرَفَةَ بِعَرَفَةَ، وَلَيْلَةِ مُزْدَلِفَةَ بِمُزْدَلِفَةَ

L6045–6047 Abdullah ibn Yusuf narrated to us; Ahmad ibn Fath narrated to us; Abd al-Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to me: Abu Tahir Ahmad ibn Amr ibn al-Sarh narrated to me; Ibn Wahb narrated to me; Jabir ibn Isma'il narrated to me from Uqayl from Ibn Shihab from Anas from the Prophet (peace be upon him) that when the journey became urgent for him, he would delay the Dhuhr prayer until the beginning of the time for Asr. He combines the two prayers and delays Maghrib until combining it with Isha at the time when the evening twilight disappears. Likewise, it has been narrated to us through Ibn Umar's chain of transmission: "When the journey becomes strenuous for him."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي أَبُو الطَّاهِرِ أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ أَخْبَرَنِي ابْنُ وَهْبٍ حَدَّثَنِي جَابِرُ بْنُ إسْمَاعِيلَ عَنْ عُقَيْلٍ عَنْ ابْنِ شِهَابٍ عَنْ أَنَسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّهُ كَانَ إذَا عَجَّلَ عَلَيْهِ السَّفَرُ يُؤَخِّرُ الظُّهْرَ إلَى أَوَّلِ وَقْتِ الْعَصْرِ فَيَجْمَعُ بَيْنَهُمَا، وَيُؤَخِّرُ الْمَغْرِبَ حَتَّى يَجْمَعَ بَيْنَهُمَا، وَبَيْنَ الْعِشَاءِ حِينَ يَغِيبُ الشَّفَقُ» ، وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ عُمَرَ أَيْضًا «إذَا جَدَّ بِهِ السَّفَرُ» .

L6048 This report invalidates every report stating that he (peace be upon him) combined the two prayers of Zuhr and Asr and the two prayers of Maghrib and Isha during travel, and there is no possibility of any report contradicting

what we have mentioned. As for outside travel: there is absolutely no possibility of any report existing that mentions combining prayers by advancing Asr to the time of Zuhr.

وَهَذَا الْخَبَرُ: يَقْضِي عَلَى كُلِّ خَبَرٍ جَاءَ بِأَنَّهُ - عَلَيْهِ السَّلَامُ - جَمَعَ بَيْنَ صَلَاتَيْ: الظُّهْرِ وَالْعَصْرِ، وَبَيْنَ صَلَاتَيْ: الْمَغْرِبِ وَالْعِشَاءِ فِي السَّفَرِ، وَلَا سَبِيلَ إِلَى وُجُودِ خَبَرٍ يُخَالِفُ مَا ذَكَرْنَا؟ ، وَأَمَّا فِي غَيْرِ السَّفَرِ: فَلَا سَبِيلَ أَلْبَتَّةَ إِلَى وُجُودِ خَبَرٍ فِيهِ: الْجَمْعُ بِتَقْدِيمِ الْعَصْرِ إِلَى وَقْتِ الظُّهْرِ.

L6049 Nor by delaying the Dhuhr prayer until one pronounces the *takbir* for it into the time of Asr, nor by delaying the Maghrib prayer until after the disappearance of twilight, when one pronounces the *takbir* for it.

وَلَا بِتَأْخِيرِ الظُّهْرِ إِلَى أَنْ يُكَبِّرَ لَهَا فِي وَقْتِ الْعَصْرِ، وَلَا بِتَأْخِيرِ الْمَغْرِبِ إِلَى أَنْ يُكَبِّرَ لَهَا بَعْدَ مَغِيبِ الشَّفَقِ.

L6050 Nor by advancing the ʿAtamah prayer to before the disappearance of twilight, for there exists no valid basis for this. Therefore, whoever affirms decisively this manner of prayer combination—through temporal adjacency by delaying—in light of those narrations mentioning combination has ventured into falsehood and contradicted the well-established Sunnah. We hold the view of perpetually combining Dhuhr with ʿAṣr, then Maghrib with ʿIshā, without necessity or excuse; yet without opposing the established Sunnah. Rather, this is achieved by delaying Dhuhr to the end of its prescribed time, as the Messenger of Allah—peace and blessings be upon him—did: beginning Dhuhr within its time and concluding it with the Taslīm just as ʿAṣr's time commences. Then the adhān for ʿAṣr is proclaimed, the iqāmah is established, and ʿAṣr is prayed within its own time. Similarly, Maghrib is delayed to the end of its time: one initiates the prayer with Takbīr for Maghrib within its time and concludes it with the Taslīm as ʿIshā's time begins. Then the adhān for ʿIshā is proclaimed, the iqāmah is established, and ʿIshā is prayed within its own time.

وَلَا بِتَقْدِيمِ الْعَتَمَةِ إِلَى قَبْلِ غُرُوبِ الشَّفَقِ، فَإِذْ لَا سَبِيلَ إِلَى هَذَا، فَمَنْ قَطَعَ بِهَذِهِ الصِّفَةِ عَلَى تِلْكَ الْأَخْبَارِ الَّتِي فِيهَا الْجَمْعُ، فَقَدْ أَقْدَمَ عَلَى الْكَذِبِ وَمُخَالَفَةِ السُّنَنِ الثَّابِتَةِ، وَنَحْنُ نَرَى الْجَمْعَ بَيْنَ الظُّهْرِ وَالْعَصْرِ، ثُمَّ بَيْنَ الْمَغْرِبِ وَالْعِشَاءِ أَبَدًا بِلَا ضَرُورَةٍ وَلَا عُذْرٍ، وَلَا مُخَالَفَةَ لِلسُّنَنِ، لَكِنْ بِأَنْ يُؤَخِّرَ الظُّهْرَ كَمَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى آخِرِ وَقْتِهَا، فَيُبْتَدَأُ فِي وَقْتِهَا وَيُسَلِّمُ مِنْهَا وَقَدْ دَخَلَ وَقْتُ الْعَصْرِ، فَيُؤَذَّنُ لِلْعَصْرِ، وَيُقَامُ وَتُصَلَّى فِي وَقْتِهَا، وَتُؤَخَّرُ الْمَغْرِبُ كَذَلِكَ إِلَى آخِرِ وَقْتِهَا، فَيُكَبِّرُ لَهَا فِي وَقْتِهَا وَيُسَلِّمُ مِنْهَا، وَقَدْ دَخَلَ وَقْتُ الْعِشَاءِ: فَيُؤَذَّنُ لَهَا وَيُقَامُ وَتُصَلَّى الْعِشَاءُ فِي وَقْتِهَا.

L6051 Indeed, this action validates conformity with all the ḥadīths and the certainty of the Truth—in that every prayer is performed at its prescribed time—and all praise is due to Allah.

فَقَدْ صَحَّ بِهَذَا الْعَمَلِ مُوَافَقَةُ الْأَحَادِيثِ كُلِّهَا، وَمُوَافَقَةُ يَقِينِ الْحَقِّ: فِي أَنْ تُؤَدَّى كُلُّ صَلَاةٍ فِي وَقْتِهَا -، وَلِلَّهِ الْحَمْدُ.

L6052–6054 If they claim that prayer combination was practiced in Medina, there is no valid evidence in the action of Al-Hasan ibn Zayd. Nor do they find from any of the Companions—may Allah be pleased with them—a description of the

manner of prayer combination as held by Malik and Al-Shafi'i, and indeed Al-Layth and others rejected it. What is astonishing is that the most authentic narration regarding prayer combination is what we have narrated through Malik's chain of narration from Abu Al-Zubayr. From Sa'id ibn Jubayr, from Ibn 'Abbas, who said: "The Messenger of Allah, peace be upon him, led us in praying Dhuhr and Asr together, and Maghrib and Isha together, in a situation unrelated to fear or travel."

فَإِنْ ادَّعُوا الْعَمَلَ بِالْجَمْعِ بِالْمَدِينَةِ، فَلَا حُجَّةَ فِي عَمَلِ الْحَسَنِ بْنِ زَيْدٍ؟ وَلَا يَجِدُونَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: صِفَةَ الْجَمْعِ الَّذِي يَرَاهُ مَالِكٌ وَالشَّافِعِيُّ، وَقَدْ أَنْكَرَهُ اللَّيْثُ وَغَيْرُهُ وَالْعَجَبُ أَنَّ أَصَحَّ حَدِيثٍ فِي الْجَمْعِ: هُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ أَبِي الزُّبَيْرِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: «صَلَّى لَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الظُّهْرَ وَالْعَصْرَ جَمِيعًا، وَالْمَغْرِبَ وَالْعِشَاءَ جَمِيعًا فِي غَيْرِ خَوْفٍ وَلَا سَفَرٍ» .

L6055 Malik said: I hold the opinion regarding that in rain. What we have narrated through the chain of Uthman ibn Abi Shaybah from Abu Mu'awiyah from al-A'mash from Habib from Sa'id ibn Jubayr from Ibn Abbas: "The Messenger of Allah—peace and blessings of Allah be upon him—combined the Dhuhr and 'Asr prayers, and the Maghrib and 'Isha prayers in Medina—without fear and without rain." It was said to Ibn Abbas: "What was his intention in doing that?" He said: "He intended not to burden his ummah."

قَالَ مَالِكٌ: أَرَى ذَلِكَ فِي مَطَرٍ، وَمَا رُوِّينَاهُ مِنْ طَرِيقِ عُثْمَانَ بْنِ أَبِي شَيْبَةَ عَنْ أَبِي مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ حَبِيبٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ «جَمَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ الظُّهْرِ وَالْعَصْرِ، وَالْمَغْرِبِ وَالْعِشَاءِ - بِالْمَدِينَةِ، مِنْ غَيْرِ خَوْفٍ وَلَا مَطَرٍ؟ قِيلَ لِابْنِ عَبَّاسٍ: مَا أَرَادَ إلَى ذَلِكَ؟ . قَالَ: أَرَادَ أَنْ لَا يُحْرِجَ أُمَّتَهُ» .

L6056 Ali said: The Malikis and the Shafi'is do not hold this view. There is no contradiction in these two reports against our position—and all praise is due to Allah—nor is there a description of combining prayers. Thus, is the reliance on them against us invalidated? If someone mentions the hadith of Malik from Abu al-Zubayr from Abu al-Tufayl—that Mu'adh ibn Jabal informed them that they had gone out with the Messenger of Allah (peace and blessings be upon him) during the Expedition of Tabuk—the Messenger of Allah (peace and blessings be upon him) would combine Zuhr and Asr, and Maghrib and Isha. He delayed the prayer one day, then went out and prayed Zuhr and Asr together. Then he entered, and later went out again to pray Maghrib and Isha together.[2]

قَالَ عَلِيٌّ: وَالْمَالِكِيُّونَ وَالشَّافِعِيُّونَ لَا يَقُولُونَ بِهَذَا، وَلَيْسَ فِي هَذَيْنِ الْخَبَرَيْنِ خِلَافٌ لِقَوْلِنَا - وَلِلَّهِ الْحَمْدُ - وَلَا صِفَةُ الْجَمْعِ، فَبِطَلَ التَّعَلُّقُ بِهِمَا عَلَيْنَا؟ فَإِنْ ذَكَرَ ذَاكِرٌ: حَدِيثَ مَالِكٍ عَنْ أَبِي الزُّبَيْرِ عَنْ أَبِي الطُّفَيْلِ: أَنَّ مُعَاذَ بْنَ جَبَلٍ أَخْبَرَهُمْ «أَنَّهُمْ خَرَجُوا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي غَزْوَةِ تَبُوكَ فَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَجْمَعُ بَيْنَ الظُّهْرِ وَالْعَصْرِ، وَالْمَغْرِبِ وَالْعِشَاءِ، فَأَخَّرَ الصَّلَاةَ يَوْمًا، ثُمَّ خَرَجَ فَصَلَّى الظُّهْرَ وَالْعَصْرَ جَمِيعًا، ثُمَّ دَخَلَ ثُمَّ خَرَجَ فَصَلَّى الْمَغْرِبَ وَالْعِشَاءَ جَمِيعًا» .

L6057–6059 This also, as we have stated, contains no description of prayer combination in the manner they assert. Therefore, they are no more entitled to its literal meaning than we are. Furthermore, this is a report we have narrated through

فَهَذَا أَيْضًا كَمَا قُلْنَا: لَيْسَ فِيهِ صِفَةُ الْجَمْعِ عَلَى مَا يَقُولُونَ، فَلَيْسُوا أَوْلَى بِظَاهِرِهِ مِنَّا، وَهَذَا أَيْضًا: خَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ هِشَامِ بْنِ سَعْدٍ عَنْ أَبِي الزُّبَيْرِ عَنْ أَبِي

[2] **Hadith references (L6056):** Sunan Abi Dawud 1206.

the chain of Al-Layth ibn Saʿd from Hishām ibn Saʿd from Abū al-Zubayr from Abū al-Ṭufayl from Muʿādh ibn Jabal: "During the Expedition of Tabuk, if the sun declined before he departed, the Messenger of Allah (peace be upon him) would combine Ẓuhr and ʿAṣr. If he departed before the sun declined, he would delay Ẓuhr until he halted for ʿAṣr. If the sun set before he departed, he would combine Maghrib…" And the ʿIshāʾ prayer; if he departs before the twilight disappears, he delays the Maghrib prayer until he alights for ʿIshāʾ, then combines them. This is a rejected report, as it is from the narration of Hishām ibn Saʿd, who is weak.

L6060 Moreover, if it were valid, it would not contradict our position, for there is no indication within it that he—peace be upon him—hastened the ʿAṣr prayer before its time or the ʿAtamah prayer before its time. Whoever reflects on the wording of the narration will see this clearly—praise be to God. These are merely assumptions they have acted upon, so those who slipped did so therein without verification.

L6061–6063 And likewise, the ruling applies uniformly to the hadith we narrated through the chain of al-Layth from Yazīd ibn Abī Ḥabīb from Abū al-Ṭufayl from Muʿādh ibn Jabal: "During the Tabūk expedition, whenever the Prophet—peace and blessings of Allah be upon him—departed before the sun declined, he would delay Ẓuhr until combining it with ʿAṣr; then pray them together. If he departed after the sun had declined, he would pray Ẓuhr and ʿAṣr together, then proceed. When he departed before Maghrib, he would delay Maghrib until combining it with ʿIshāʾ and pray them together. If he departed after Maghrib, he would hasten ʿIshāʾ and pray it combined with Maghrib." This hadith is the weakest in this chapter due to several reasons: First, it is transmitted solely through Yazīd ibn Abī Ḥabīb from Abū al-Ṭufayl, and no scholar of hadith is aware of Yazīd having directly heard from Abū al-Ṭufayl? Second, Abū al-Ṭufayl—the standard-bearer of al-Mukhtār—is reported to have advocated the doctrine of *rajʿa*. Third, we have narrated from Muḥammad ibn Ismāʿīl al-Bukhārī, compiler of the *Ṣaḥīḥ*, that he said: "I asked Quṭaybah: With whom did you write the hadith from al-Layth—the one transmitted by Yazīd ibn Abī Ḥabīb from Abū al-Ṭufayl?"—referring to this very hadīth. Quṭaybah replied: "I wrote it with Khālid al-Madāʾinī." Al-Bukhari said: "Did

الطُّفَيْلِ عَنْ مُعَاذِ بْنِ جَبَلٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ فِي غَزْوَةِ تَبُوكَ إِذَا زَاغَتْ الشَّمْسُ قَبْلَ أَنْ يَرْتَحِلَ جَمَعَ بَيْنَ الظُّهْرِ وَالْعَصْرِ، وَإِنْ ارْتَحَلَ قَبْلَ أَنْ تَزِيغَ الشَّمْسُ أَخَّرَ الظُّهْرَ حَتَّى يَنْزِلَ لِلْعَصْرِ، وَإِنْ غَابَتْ الشَّمْسُ قَبْلَ أَنْ يَرْتَحِلَ جَمَعَ بَيْنَ الْمَغْرِبِ وَالْعِشَاءِ، وَإِنْ ارْتَحَلَ قَبْلَ أَنْ يَغِيبَ الشَّفَقُ أَخَّرَ الْمَغْرِبَ حَتَّى يَنْزِلَ لِلْعِشَاءِ، ثُمَّ يَجْمَعُ بَيْنَهُمَا» . فَهَذَا خَبَرٌ سَاقِطٌ، لِأَنَّهُ مِنْ رِوَايَةِ هِشَامِ بْنِ سَعْدٍ وَهُوَ ضَعِيفٌ

وَأَيْضًا: فَلَوْ صَحَّ لَمَا كَانَ مُخَالِفًا لِقَوْلِنَا، لِأَنَّهُ لَيْسَ فِيهِ بَيَانُ أَنَّهُ - عَلَيْهِ السَّلَامُ - عَجَّلَ الْعَصْرَ قَبْلَ وَقْتِهَا، وَالْعَتَمَةَ قَبْلَ وَقْتِهَا، وَمَنْ تَأَمَّلَ لَفْظَ الْخَبَرِ رَأَى ذَلِكَ وَاضِحًا - وَالْحَمْدُ لِلَّهِ، وَإِنَّمَا هِيَ ظُنُونٌ أَعْمَلُوهَا، فَزَلَّ فِيهَا مَنْ زَلَّ بِغَيْرِ تَثَبُّتٍ

وَهَكَذَا الْقَوْلُ سَوَاءً سَوَاءً فِي الْحَدِيثِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ اللَّيْثِ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ أَبِي الطُّفَيْلِ عَنْ مُعَاذِ بْنِ جَبَلٍ -: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ فِي غَزْوَةِ تَبُوكَ إِذَا ارْتَحَلَ قَبْلَ أَنْ تَزِيغَ الشَّمْسُ أَخَّرَ الظُّهْرَ حَتَّى يَجْمَعَهَا إِلَى الْعَصْرِ، فَيُصَلِّيهِمَا جَمِيعًا وَإِذَا ارْتَحَلَ بَعْدَ زَيْغِ الشَّمْسِ صَلَّى الظُّهْرَ وَالْعَصْرَ جَمِيعًا ثُمَّ سَارَ، وَكَانَ إِذَا ارْتَحَلَ قَبْلَ الْمَغْرِبِ أَخَّرَ الْمَغْرِبَ حَتَّى يُصَلِّيَهَا مَعَ الْعِشَاءِ، وَإِذَا ارْتَحَلَ بَعْدَ الْمَغْرِبِ عَجَّلَ الْعِشَاءَ فَصَلَّاهَا مَعَ الْمَغْرِبِ.» -: فَإِنَّ هَذَا الْحَدِيثَ أَرْدَى حَدِيثٍ فِي هَذَا الْبَابِ لِوُجُوهٍ -: أَوَّلُهَا: أَنَّهُ لَمْ يَأْتِ هَكَذَا إِلَّا مِنْ طَرِيقِ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ أَبِي الطُّفَيْلِ، وَلَا يَعْلَمُ أَحَدٌ مِنْ أَصْحَابِ الْحَدِيثِ لِيَزِيدَ سَمَاعًا مِنْ أَبِي الطُّفَيْلِ؟ وَالثَّانِي: أَنَّ أَبَا الطُّفَيْلِ " صَاحِبُ رَايَةِ الْمُخْتَارِ " وَذُكِرَ: أَنَّهُ كَانَ يَقُولُ بِالرَّجْعَةِ وَالثَّالِثُ: أَنَّنَا رُوِّينَا عَنْ مُحَمَّدِ بْنِ إِسْمَاعِيلَ الْبُخَارِيِّ مُؤَلِّفِ الصَّحِيحِ - أَنَّهُ قَالَ: قُلْت لِقُتَيْبَةَ: مَعَ مَنْ كَتَبْت عَنْ اللَّيْثِ

Khalid al-Madāʾinī insert hadiths into the scholars' narrations?" - meaning he would incorporate into their transmissions what did not originate from them.[3]

حَدِيثَ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ أَبِي الطُّفَيْلِ؟ يَعْنِي هَذَا الْحَدِيثَ الَّذِي ذَكَرْنَا بِعَيْنِهِ؟ قَالَ: فَقَالَ لِي قُتَيْبَةُ: كَتَبْته مَعَ خَالِدٍ الْمَدَائِنِيِّ قَالَ الْبُخَارِيُّ: كَانَ خَالِدٌ الْمَدَائِنِيُّ يُدْخِلُ الْأَحَادِيثَ عَلَى الشُّيُوخِ؟ يُرِيدُ: أَنَّهُ كَانَ يُدْخِلُ فِي رِوَايَتِهِمْ مَا لَيْسَ مِنْهَا.

L6064 Then, if it were valid, there would be no disagreement with our position, for it contains no evidence that he (peace be upon him) advanced ʿAṣr into the time of Ẓuhr, nor that he (peace be upon him) advanced ʿIshāʾ into the time of Maghrib. Thus, all their arguments regarding the overlapping of two prayer times, advancing a prayer into the preceding prayer's period, or delaying it to the time of another prayer based on personal opinion and speculative reasoning—are they not invalidated? Especially given his (peace be upon him) explicit stipulation that "the time of Ẓuhr persists as long as ʿAṣr has not arrived."

ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ خِلَافٌ لِقَوْلِنَا، لِأَنَّهُ لَيْسَ فِيهِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - قَدَّمَ الْعَصْرَ إلَى وَقْتِ الظُّهْرِ، وَلَا أَنَّهُ - عَلَيْهِ السَّلَامُ - قَدَّمَ الْعَتَمَةَ إلَى وَقْتِ الْمَغْرِبِ، فَبَطَلَ كُلُّ مَا تَعَلَّقُوا بِهِ فِي اشْتِرَاكِ الْوَقْتَيْنِ، وَفِي تَقْدِيمِ صَلَاةٍ إلَى وَقْتِ الَّتِي قَبْلَهَا، وَتَأْخِيرِهَا إلَى وَقْتِ غَيْرِهَا بِالرَّأْيِ وَالظَّنِّ؟ لَا سِيَّمَا مَعَ نَصِّهِ - عَلَيْهِ السَّلَامُ - عَلَى أَنَّ «وَقْتَ الظُّهْرِ مَا لَمْ تَحْضُرْ الْعَصْرُ» .

L6065 And that "the end of Maghrib's time lasts until the twilight fades, and the beginning of Isha's time is when the twilight vanishes." This is an explicit text that entirely nullifies combining prayers. As for the forgetful person and the sleeper, we have previously mentioned the statement of the Messenger of Allah—peace and blessings be upon him—"Whoever sleeps through a prayer or forgets it, let him pray it when he remembers it."

وَأَنَّ «آخِرَ وَقْتِ الْمَغْرِبِ مَا لَمْ يَغِبْ الْأُفُقُ، وَأَوَّلَ وَقْتِ الْعِشَاءِ إذَا غَابَ الْأُفُقُ؟» فَهَذَا نَصٌّ يُبْطِلُ الِاشْتِرَاكَ جُمْلَةً، وَأَمَّا النَّاسِي وَالنَّائِمُ فَقَدْ ذَكَرْنَا قَبْلُ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ نَامَ عَنْ صَلَاةٍ أَوْ نَسِيَهَا فَلْيُصَلِّهَا إذَا ذَكَرَهَا» .

L6066 Thus, it is established that its time remains perpetually extended for the forgetful and the sleeper; likewise, the time for Dhuhr and Maghrib prayers is extended for those striving in their journey, and in Muzdalifah on Laylat al-Nahr; while the time for Asr prayer is shifted during the Day of Arafah in Arafah.

فَصَحَّ أَنَّ وَقْتَهَا مُمْتَدٌّ لِلنَّاسِي وَلِلنَّائِمِ أَبَدًا، وَكَذَلِكَ وَقْتُ الظُّهْرِ وَالْمَغْرِبِ مُمْتَدٌّ لِلْمُجِدِّ فِي السَّيْرِ، وَفِي مُزْدَلِفَةَ لَيْلَةَ النَّحْرِ، وَوَقْتُ الْعَصْرِ: مُنْتَقِلٌ يَوْمَ عَرَفَةَ بِعَرَفَةَ.

L6067 The determination of prayer times, their extension, or their defined limits must only be taken from the Messenger of Allah (peace be upon him). They did not adhere to analogy in any of their rulings, as we have clarified. As for Abū Ḥanīfah's statement that the time for Ẓuhr prayer extends until the shadow of every object becomes twice its length—at which point the time for ʿAṣr prayer begins—they cited as evidence a ḥadīth narrated by Abū Bakr ibn

وَانْتِقَالُ الْأَوْقَاتِ أَوْ تَمَادِيهَا أَوْ حَدُّهَا لَا يَجُوزُ أَنْ يُؤْخَذَ إلَّا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَلْتَزِمُوا قِيَاسًا فِي شَيْءٍ مِمَّا قَالُوهُ عَلَى مَا بَيَّنَّا؟ ، وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ: إنَّ وَقْتَ الظُّهْرِ يَمْتَدُّ إلَى أَنْ يَصِيرَ ظِلُّ كُلِّ شَيْءٍ مِثْلَيْهِ، وَحِينَئِذٍ يَدْخُلُ وَقْتُ الْعَصْرِ -: فَإِنَّهُمْ احْتَجُّوا بِحَدِيثٍ ذَكَرَ: أَنَّ أَبَا بَكْرِ بْنَ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ رَوَاهُ عَنْ أَبِي مَسْعُودٍ

[3] **Hadith references (L6061):** Sunan Abi Dawud 1220.

Muḥammad ibn ʿAmr ibn Ḥazm from Abū Masʿūd: “Gabriel descended to the Messenger of Allah (peace be upon him) when the shadow of each thing equaled its original length and instructed him to perform the Ẓuhr prayer.”

«أَنَّ جِبْرَائِيلُ نَزَلَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَ صَارَ ظِلُّ كُلِّ شَيْءٍ مِثْلَهُ وَأَمَرَهُ بِصَلَاةِ الظُّهْرِ» .

L6068–6069 They said: “Then it becomes evident that he becomes aware of his circumstance through the commencement of prayer afterward, because the shadow does not remain stationary?” ʿAlī responded: “This contains no valid evidence for them. The first reason is that the chain is disconnected, for this Abū Bakr was not born except after the death of Abū Masʿūd.”

قَالُوا: فَيَتَعَيَّنُ أَنَّهُ يَدْرِي أَمْرَهُ بِابْتِدَاءِ الصَّلَاةِ بَعْدَ ذَلِكَ، لِأَنَّ الظِّلَّ لَا يَسْتَقِرُّ؟ قَالَ عَلِيٌّ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ -: أَوَّلُ ذَلِكَ: أَنَّهُ مُنْقَطِعٌ، لِأَنَّ أَبَا بَكْرٍ هَذَا لَمْ يُولَدْ إِلَّا بَعْدَ مَوْتِ أَبِي مَسْعُودٍ.

L6070 The second is that they have adhered in this matter to their customary practice of reinforcing the rulings of the hadiths beyond their valid scope while neglecting what they actually contain. This is because in this report there is neither an indication, nor evidence, nor any conceptual basis that necessitates extending the timeframe of the Dhuhr prayer until the shadow of everything becomes twice its length.

وَالثَّانِي: أَنَّهُمْ جَرَوْا فِيهِ عَلَى عَادَةٍ لَهُمْ فِي تَوْثِيبِ أَحْكَامِ الْأَحَادِيثِ إِلَى مَا لَيْسَ فِيهِ، وَتَرْكِ مَا فِيهَا، وَذَلِكَ: أَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ لَا إِشَارَةٌ، وَلَا دَلِيلٌ، وَلَا مَعْنًى يُوجِبُ امْتِدَادَ وَقْتِ الظُّهْرِ إِلَى أَنْ يَكُونَ ظِلُّ كُلِّ شَيْءٍ مِثْلَيْهِ.

L6071 Nor does it mention that he (peace be upon him) commenced the prayer after the shadow had increased to twice its original length.

وَلَا فِيهِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - ابْتَدَأَ الصَّلَاةَ بَعْدَ زِيَادَةِ الظِّلِّ عَلَى الْمِثْلِ.

L6072 If this report were authentic, it would only indicate the permissibility of initiating prayer when every object’s shadow equals its length—the very time in which Gabriel commanded him to pray Ẓuhr, not beyond it. Some adherents of his legal school cited the renowned authentic ḥadīth transmitted through Ayyūb from Nāfiʿ from Ibn ʿUmar from the Prophet (peace be upon him): “Your likeness compared to the People of the Book...” Then the Prophet (peace be upon him) narrated [the parable of] the hired laborers who worked from dawn until midday for one qirāṭ, so the Jews labored. Then those who worked from midday until the ʿAṣr prayer for one qirāṭ, so the Christians labored. Then those who worked from ʿAṣr until sunset for two qirāṭs—and those are us. The Jews and Christians grew resentful, saying: “Why do we labor more yet receive less reward?” He said: “Have I diminished your rightful share?” They replied: “No.” He said: “This is My bounty, which I grant to whom I will.”

وَلَوْ صَحَّ هَذَا الْخَبَرُ لَمَا كَانَ فِيهِ إِلَّا جَوَازُ ابْتِدَاءِ الصَّلَاةِ حِينَ يَصِيرُ ظِلُّ كُلِّ شَيْءٍ مِثْلَهُ، وَهُوَ الْوَقْتُ الَّذِي أَمَرَهُ فِيهِ جِبْرِيلُ بِأَنْ يُصَلِّيَ الظُّهْرَ فِيهِ، لَا فِيمَا بَعْدَهُ؟ وَذَكَرَ بَعْضُ مُقَلِّدِيهِ الْحَدِيثَ الصَّحِيحَ الْمَشْهُورَ مِنْ طَرِيقِ أَيُّوبَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَثَلُكُمْ وَمَثَلُ أَهْلِ الْكِتَابِ، ثُمَّ ذَكَرَ - عَلَيْهِ السَّلَامُ - الْأُجَرَاءَ الَّذِينَ عَمِلُوا مِنْ غَدْوَةٍ إِلَى نِصْفِ النَّهَارِ عَلَى قِيرَاطٍ، فَعَمِلَتِ الْيَهُودُ، ثُمَّ الَّذِينَ عَمِلُوا مِنْ نِصْفِ النَّهَارِ إِلَى صَلَاةِ الْعَصْرِ عَلَى قِيرَاطٍ، فَعَمِلَتِ النَّصَارَى، ثُمَّ الَّذِينَ عَمِلُوا مِنَ الْعَصْرِ إِلَى مَغِيبِ الشَّمْسِ عَلَى قِيرَاطَيْنِ، وَهُمْ نَحْنُ؟ فَغَضِبَتِ الْيَهُودُ وَالنَّصَارَى،

فَقَالُوا: مَا لَنَا أَكْثَرُ عَمَلًا وَأَقَلُّ عَطَاءً؟ فَقَالَ: هَلْ نَقَصْتُكُمْ مِنْ حَقِّكُمْ؟ قَالُوا: لَا، قَالَ: فَذَلِكَ فَضْلِي أُوتِيهِ مَنْ أَشَاءُ» .

L6073 The authentic ḥadīth is also transmitted through the chain of Abū Burdah ibn Abī Mūsā al-Ashʿarī from his father, from the Prophet—may Allah's peace and blessings be upon him—similar to this. It states: "The employer who hired them said to those who worked until the time of the ʿAṣr prayer: 'Complete the remainder of your work, for is there not only a small portion of the day left?'"

وَالْحَدِيثُ الصَّحِيحُ أَيْضًا الْمَأْثُورُ مِنْ طَرِيقِ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِ هَذَا، وَفِيهِ «أَنَّ الْمُسْتَأْجِرَ لَهُمْ قَالَ لِلَّذِينَ عَمِلُوا إلَى حِينِ صَلَاةِ الْعَصْرِ: أَكْمِلُوا بَقِيَّةَ عَمَلِكُمْ، فَإِنَّمَا بَقِيَ مِنْ النَّهَارِ شَيْءٌ يَسِيرٌ؟» .

L6074–6076 The one invoking these two reports as proof said: If the time of Dhuhr were to end due to the shadow exceeding the equivalent length (mithl), and the time of Asr were to begin at that point, the duration of Asr's time would equal that of Dhuhr's; "Does this contradict what is in those two reports?" Abu Muhammad said: "This is among what we have mentioned of those accursed practices, and the misleading attribution of authenticity to hadiths from what is in them to what is not in them."

فَقَالَ الْمُحْتَجُّ بِهَذَيْنِ الْخَبَرَيْنِ: لَوْ كَانَ وَقْتُ الظُّهْرِ يَخْرُجُ بِالزِّيَادَةِ عَلَى ظِلِّ الْمِثْلِ، وَيَدْخُلُ حِينَئِذٍ وَقْتُ الْعَصْرِ -: لَكَانَ مِقْدَارُ وَقْتِ الْعَصْرِ مِثْلَ مِقْدَارِ وَقْتِ الظُّهْرِ، وَهَذَا خِلَافُ مَا فِي ذَيْنِك الْخَبَرَيْنِ؟ قَالَ أَبُو مُحَمَّد: وَهَذَا مِمَّا قُلْنَا مِنْ تِلْكَ الْعَوَائِدِ الْمَلْعُونَةِ، وَالْإِيهَامِ بِتَوْثِيبِ الْأَحَادِيثِ عَمَّا فِيهَا إلَى مَا لَيْسَ فِيهَا.

L6077 The clarification of that is: There is nothing in either of these two reports—no evidence and no explicit text—indicating that the time for ʿAṣr prayer is broader than the time for Ẓuhr prayer. Rather, what they contain is that the Jews and Christians said, "We perform more deeds yet receive lesser reward." So who is more astray and more disgraced in the Hereafter than one who deems the statement of the Jews and Christians—a statement that the Messenger of Allah, peace be upon him, did not confirm—as valid?

وَبَيَانُ ذَلِكَ -: أَنَّهُ لَيْسَ فِي شَيْءٍ مِنْ هَذَيْنِ الْخَبَرَيْنِ - لَا بِدَلِيلٍ وَلَا بِنَصٍّ - أَنَّ وَقْتَ الْعَصْرِ أَوْسَعُ مِنْ وَقْتِ الظُّهْرِ، وَإِنَّمَا فِيهِ: أَنَّ الْيَهُودَ وَالنَّصَارَى قَالُوا: نَحْنُ أَكْثَرُ عَمَلًا وَأَقَلُّ أَجْرًا، فَمَنْ أَضَلُّ وَأَخْزَى فِي الْمَعَادِ مِمَّنْ جَعَلَ قَوْلَ الْيَهُودِ وَالنَّصَارَى الَّذِي لَمْ يُصَدِّقْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L6078 Moreover—he contradicts the statement of Allah's Messenger (peace and blessings of Allah be upon him) by using an argument to refute [it] through obfuscation and false assumption, [contrary to] the explicit wording of his statement (peace be upon him): "Indeed, the time of Dhuhr lasts as long as a man's shadow remains equal to his height, provided that Asr has not yet begun."

وَأَيْضًا -: فَإِنَّهُ يُخَالِفُ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُجَّةً يَرُدُّ بِهَا تَمْوِيهًا وَتَخَيُّلًا نَصُّ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إنَّ وَقْتَ الظُّهْرِ مَا دَامَ ظِلُّ الرَّجُلِ كَطُولِهِ مَا لَمْ تَحْضُرْ الْعَصْرُ» .

L6079 How then can it be, when the Jews said – while their claim does not contradict what the Prophet (peace and blessings of Allah be upon him) established – that they labored from the beginning of the day until ʿAṣr time, saying:

فَكَيْفَ وَالَّذِي قَالَتْ الْيَهُودُ لَا يُخَالِفُ مَا حَدَّهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ أَنَّهُمْ عَمِلُوا مِنْ أَوَّلِ النَّهَارِ إلَى وَقْتِ الْعَصْرِ، وَقَالُوا: نَحْنُ أَكْثَرُ عَمَلًا وَأَقَلُّ عَطَاءً؟ وَهَذَا صَحِيحٌ؛ لِأَنَّ الْوَقْتَ الَّذِي عَمِلُوهُ كُلُّهُمْ أَكْثَرُ مِمَّا عَمِلْنَاهُ نَحْنُ؛ بَلْ الَّذِي عَمِلَتْ كُلُّ طَائِفَةٍ أَكْثَرُ مِنْ الَّذِي عَمِلْنَاهُ نَحْنُ وَالَّذِي مِنْ أَوَّلِ الزَّوَالِ إلَى أَنْ يَبْلُغَ ظِلُّ كُلِّ شَيْءٍ مِثْلَهُ - فِي كُلِّ زَمَانٍ وَمَكَانٍ - أَكْثَرُ مِمَّا فِي حِينِ زِيَادَةِ الظِّلِّ عَلَى الْمِثْلِ إلَى غُرُوبِ الشَّمْسِ، وَالَّذِي أَخَذَ بِهِ كُلُّ طَائِفَةٍ أَقَلُّ مِمَّا أَخَذْنَا وَفِي الْحَدِيثِ الْآخَرِ «إنَّمَا بَقِيَ مِنْ النَّهَارِ شَيْءٌ يَسِيرٌ؟» .

"We performed more labor yet received less compensation?" This is valid, for the time they all labored exceeds what we labored. Rather, what every group labored exceeds what we labored. The period from the beginning of the zenith until every object's shadow equals its length – in every era and place – is longer than the time from when shadows exceed their length until sunset. What each group accepted is less than what we accepted. In the other ḥadīth: "Only a small portion of the day remains?"

L6080–6082

وَهَذَا حَقٌّ؛ لِأَنَّ مِنْ وَقْتِ الْعَصْرِ إلَى آخِرِ النَّهَارِ يَسِيرًا بِالْإِضَافَةِ إلَى مَا هُوَ أَكْثَرُ، مِنْ أَوَّلِ النَّهَارِ إلَى وَقْتِ الْعَصْرِ، نَعَمْ وَبِالْإِضَافَةِ أَيْضًا إلَى وَقْتِ الظُّهْرِ عَلَى قَوْلِنَا، لِأَنَّ كُلَّ شَيْءٍ فَهُوَ بِلَا شَكٍّ يَسِيرٌ إذَا أُضِيفَ إلَى مَا هُوَ أَكْثَرُ مِنْهُ، فَبَطَلَ تَمْوِيهُهُمْ بِهَذَيْنِ الْخَبَرَيْنِ - وَلِلَّهِ الْحَمْدُ قَالَ عَلِيٌّ: وَلَوْ قَالَ قَائِلٌ: إنَّهُ ' - عَلَيْهِ السَّلَامُ - إنَّمَا عَنَى آخِرَ أَوْقَاتِ الْعَصْرِ، وَهُوَ مِقْدَارُ تَكْبِيرَةٍ قَبْلَ غُرُوبِ آخِرِ الْقُرْصِ -: لَصَدَقَ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ نَصَّ عَلَى أَنَّهُ بُعِثَ وَالسَّاعَةَ كَهَاتَيْنِ، وَضَمَّ أُصْبُعَهُ إلَى الْأُخْرَى وَأَنَّنَا فِي الْأُمَمِ كَالشَّعْرَةِ الْبَيْضَاءِ فِي الثَّوْرِ الْأَسْوَدِ - فَهَذَا أَوْلَى مَا حُمِلَ عَلَيْهِ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِتَتَّفِقَ أَخْبَارُهُ كُلُّهَا؛ بَلْ لَا يَجُوزُ غَيْرُ هَذَا أَصْلًا -، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

This is valid: for the period from ʿAsr until the end of the day is short relative to the longer duration from the beginning of the day until ʿAsr. Indeed, it is also short when compared to the time of Dhuhr according to our position, since anything is undeniably short when juxtaposed with what is longer. Thus, their attempt to obscure through these two narrations is invalidated—and all praise belongs to Allah. Ali said: If someone were to say, "He (peace be upon him) meant only the final moment of ʿAṣr—equivalent to the duration of a takbīr before the disappearance of the last portion of the sun's disc"—they would be correct. For he (peace be upon him) explicitly stated, "I was sent when the Hour is as near as these two," joining his finger to the other, "and that we, among all nations, are like a white hair on a black bull." Thus, this is the most fitting interpretation of the Messenger of Allah's (peace and blessings of Allah be upon him) statement to ensure all his narrations align. Indeed, no other interpretation is permissible whatsoever. And success is from Allah, the Exalted.

L6083

وَأَمَّا قَوْلُهُ، وَقَوْلُ مَالِكٍ، وَالشَّافِعِيِّ: إنَّ وَقْتَ الْعَتَمَةِ يَمْتَدُّ إلَى طُلُوعِ الْفَجْرِ، وَزَادَ مَالِكٌ، وَالشَّافِعِيُّ امْتِدَادَ صَلَاةِ الْمَغْرِبِ إلَى ذَلِكَ الْوَقْتِ؟ -: فَخَطَأٌ ظَاهِرٌ، لِأَنَّهُ دَعْوَى بِلَا دَلِيلٍ، وَخِلَافٌ لِجَمِيعِ الْأَحَادِيثِ، أَوَّلِهَا عَنْ آخِرِهَا، وَمَا كَانَ هَكَذَا فَهُوَ سَاقِطٌ بِيَقِينٍ،

As for his statement, and the statements of Malik and Al-Shafi'i that the time of the late-night prayer (al-'atamah) extends until the emergence of dawn, with Malik and Al-Shafi'i adding the extension of Maghrib prayer's time to that period—this is a manifest error, being an unsupported claim contradicting all the hadiths from their first to their last. Whatever is thus

is undoubtedly invalid. Some proponents from our school who adopted this view cited the Messenger of Allah's statement—peace and blessings be upon him: "Negligence in vigilance is only to delay a prayer until another's time enters"—seeking through this to establish the continuity of the late-night prayer's time with the dawn prayer's time. Yet this provides no basis for their claim at all. Are they not in unanimous agreement with us—without any dissent within the Ummah—that the time for the dawn prayer does not extend to the time of Dhuhr prayer? Thus, it becomes clear that this report does not indicate the continuity of each prayer's time with the subsequent one. Rather, it solely establishes the sinfulness of delaying a prayer into another's time—regardless of whether the end of its time connects to the start of the next or not. The report does not state that one who delays a prayer until the expiration of its time—without another's time entering—is not culpably negligent, nor does it confirm that he is negligent. This matter is unaddressed in this report, but is clarified in other narrations containing explicit texts on the expiration of each prayer's time.[4]

وَقَدْ احْتَجَّ فِي هَذَا بَعْضُ مَنْ ذَهَبَ إِلَى ذَلِكَ مِنْ أَصْحَابِنَا بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّمَا التَّفْرِيطُ فِي الْيَقَظَةِ أَنْ تُؤَخِّرَ صَلَاةً حَتَّى يَدْخُلَ وَقْتُ أُخْرَى» وَرَامُوا بِهَذَا اتِّصَالَ وَقْتِ الْعَتَمَةِ بِوَقْتِ صَلَاةِ الصُّبْحِ فَإِنَّ هَذَا لَا يَدُلُّ عَلَى مَا قَالُوهُ أَصْلًا، وَهُمْ مُجْمِعُونَ مَعَنَا - بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ الْأُمَّةِ - أَنَّ وَقْتَ صَلَاةِ الْفَجْرِ لَا يَمْتَدُّ إلَى وَقْتِ صَلَاةِ الظُّهْرِ؟ فَصَحَّ أَنَّ هَذَا الْخَبَرَ لَا يَدُلُّ عَلَى اتِّصَالِ وَقْتِ كُلِّ صَلَاةٍ بِوَقْتِ الَّتِي بَعْدَهَا، وَإِنَّمَا فِيهِ مَعْصِيَةُ مَنْ أَخَّرَ صَلَاةً إلَى وَقْتِ غَيْرِهَا فَقَطْ، سَوَاءٌ اتَّصَلَ آخِرُ وَقْتِهَا بِأَوَّلِ الثَّانِيَةِ لَهَا، أَمْ لَمْ يَتَّصِلْ؟ وَلَيْسَ فِيهِ: أَنَّهُ لَا يَكُونُ مُفَرِّطًا أَيْضًا مَنْ أَخَّرَهَا إلَى خُرُوجِ وَقْتِهَا، وَإِنْ لَمْ يَدْخُلْ وَقْتُ أُخْرَى، وَلَا أَنَّهُ يَكُونُ مُفَرِّطًا، بَلْ هُوَ مَسْكُوتٌ عَنْهُ فِي هَذَا الْخَبَرِ، وَلَكِنَّ بَيَانَهُ فِي سَائِرِ الْأَخْبَارِ الَّتِي فِيهَا نَصٌّ عَلَى خُرُوجِ وَقْتِ كُلِّ صَلَاةٍ.

L6084 Necessity dictates that whoever exceeds in any act its time which Allah the Exalted has appointed for that act has indeed transgressed the boundaries of Allah. He the Exalted said: {And whoever transgresses the boundaries of Allah—it is they who are the wrongdoers} [Al-Baqarah 2:229]. Thus, whoever performs a prayer before its time which Allah the Exalted has prescribed for it, specified for it, commanded to be established within it, and forbidden negligence in that; or delays it beyond that time—has he not transgressed the boundaries of Allah the Exalted? Such a person is a wrongdoer and a sinner.[5]

وَالضَّرُورَةُ تُوجِبُ أَنَّ مَنْ تَعَدَّى بِكُلِّ عَمَلٍ وَقْتَهُ الَّذِي حَدَّهُ اللَّهُ تَعَالَى لِذَلِكَ الْعَمَلِ فَقَدْ تَعَدَّى حُدُودَ اللَّهِ، وَقَالَ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ} [البقرة: ٢٢٩] فَكُلُّ مَنْ قَدَّمَ صَلَاةً قَبْلَ وَقْتِهَا الَّذِي حَدَّهُ اللَّهُ تَعَالَى لَهَا وَعَلَّقَهَا بِهِ، وَأَمَرَ بِأَنْ تُقَامَ فِيهِ، وَنَهَى عَنْ التَّفْرِيطِ فِي ذَلِكَ، أَوْ أَخَّرَهَا عَنْ ذَلِكَ الْوَقْتِ -: فَقَدْ تَعَدَّى حُدُودَ اللَّهِ تَعَالَى؟ فَهُوَ ظَالِمٌ عَاصٍ.

L6085–6087 And there is no disagreement on this from any of those present among the dissenters. As for intentionally delaying prayer beyond its prescribed time, it is sinful by the consensus of those who came before and after—definitively and conclusively established. Whoever equates prayer with a debt

وَهَذَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ مِنْ الْحَاضِرِينَ مِنْ الْمُخَالِفِينَ وَأَمَّا تَعَمُّدُ تَأْخِيرِهَا عَنْ وَقْتِهَا فَمَعْصِيَةٌ بِإِجْمَاعِ مَنْ تَقَدَّمَ وَتَأَخَّرَ، مَقْطُوعٌ عَلَيْهِ مُتَيَقَّنٌ، وَمَنْ شَبَّهَ الصَّلَاةَ بِالدَّيْنِ،

[4] **Hadith references (L6083):** Sunan Abi Dawud 441.
[5] **Qur'an references (L6084):** Qur'an 2:229 (Al-Baqarah).

must consequently permit performing it before its time, just as advancing a debt's repayment before its term is commendable. By this analogy, would they not be obliged to deem sinful the act of one who intentionally delays prayer while capable of performing it within its time, akin to delaying debt repayment beyond its term without excuse?

L6088 This is the analogy in this chapter, and they opposed it. If they claim consensus on their opinion, do they not lie? For it has been authentically established from some of the early Salaf that it is permissible to perform prayer before its time; whereas intentionally delaying it beyond its time without excuse has never been permissible according to anyone. And success is from Allah, the Exalted.

L6089 As for Abū Ḥanīfa's rejection of the traveler—whose journey became strenuous and who neither dismounted before the sun's zenith nor after it—delaying the Ẓuhr prayer until the time of ʿAṣr like others, and similarly delaying Maghrib until the time of Isha like others, this constitutes mere opposition to the established Sunnah regarding this matter! Anas and Ibn ʿUmar narrated it through the most authentic chains. We have already mentioned Anas' narration, which suffices us without needing to cite Ibn ʿUmar's report. Yet I am not surprised by some of his emulators' claim concerning Ibn ʿUmar's ḥadīth: "When the twilight had vanished, he dismounted and prayed Maghrib, then Isha?"

L6090 The confused one said, "He only intended before the sunset of the twilight." He then said, "After the sunset of the twilight according to approximation," and he cited as evidence the statement of Allah the Exalted: {When the women have reached their term, either retain them in a fair manner or part with them in a fair manner} [At-Talaq: 2].[6]

L6091 The statement of the Messenger of Allah (peace be upon him): "So eat and drink until Ibn Umm Maktum calls the Adhan, for he is blind and does not call until someone says to him: 'It is dawn, it is dawn.'"

L6092–6094 Ali said: This is an open defiance that no person of piety and modesty should

لَزِمَهُ إِجَازَةُ تَقْدِيمِهَا قَبْلَ وَقْتِهَا، كَالدَّيْنِ يُقَدَّمُ قَبْلَ أَجَلِهِ فَهُوَ حَسَنٌ وَلَزِمَهُ أَنْ يَقُولَ بِعِصْيَانِ مَنْ أَخَّرَهَا عَامِدًا قَادِرًا عَنْ وَقْتِهَا، كَالدَّيْنِ يَمْطُلُ بِأَدَائِهِ عَنْ وَقْتِهِ بِغَيْرِ عُذْرٍ؟ .

وَهَذَا هُوَ الْقِيَاسُ فِي هَذَا الْبَابِ، وَقَدْ خَالَفُوهُ فَإِنْ ادَّعُوا إِجْمَاعًا عَلَى قَوْلِهِمْ؟ كَذَبُوا، فَقَدْ صَحَّ عَنْ بَعْضِ السَّلَفِ جَوَازُ تَقْدِيمِ الصَّلَاةِ قَبْلَ وَقْتِهَا، وَمَا جَازَ قَطُّ عِنْدَ أَحَدٍ تَعَمُّدُ تَأْخِيرِهَا عَنْ وَقْتِهَا بِغَيْرِ عُذْرٍ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ؟ .

وَأَمَّا إِنْكَارُ أَبِي حَنِيفَةَ تَأْخِيرَ الْمُسَافِرِ الَّذِي جَدَّ بِهِ السَّيْرُ، وَلَمْ يَنْزِلْ قَبْلَ الزَّوَالِ، وَلَا بَعْدَهُ صَلَاةَ الظُّهْرِ إِلَى وَقْتِ الْعَصْرِ كَغَيْرِهِ وَتَأْخِيرَ الْمَغْرِبِ كَذَلِكَ إِلَى وَقْتِ الْعَتَمَةِ كَغَيْرِهِ؟ -: فَهُوَ خِلَافٌ مُجَرَّدٌ لِلسُّنَنِ الثَّابِتَةِ فِي ذَلِكَ؟ رَوَاهَا أَنَسٌ وَابْنُ عُمَرَ بِأَصَحِّ طَرِيقٍ؛ وَقَدْ ذَكَرْنَا رِوَايَةَ أَنَسٍ، وَغَنِينَا بِهَا عَنْ ذِكْرِ رِوَايَةِ ابْنِ عُمَرَ وَلَا أَعْجَبُ مِنْ قَوْلِ بَعْضِ الْمُقَلِّدِينَ لَهُ فِي حَدِيثِ ابْنِ عُمَرَ «فَلَمَّا كَانَ بَعْدَ غُرُوبِ الشَّفَقِ نَزَلَ فَصَلَّى الْمَغْرِبَ، ثُمَّ الْعَتَمَةَ؟» .

فَقَالَ هَذَا الْمَفْتُونُ: إِنَّمَا أَرَادَ قَبْلَ غُرُوبِ الشَّفَقِ، فَقَالَ: بَعْدَ غُرُوبِ الشَّفَقِ عَلَى الْمُقَارَبَةِ وَاحْتَجَّ بِقَوْلِ اللَّهِ تَعَالَى: {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] .

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَكُلُوا وَاشْرَبُوا حَتَّى يُنَادِيَ ابْنُ أُمِّ مَكْتُومٍ فَإِنَّهُ أَعْمَى لَا يُنَادِي حَتَّى يُقَالَ لَهُ: أَصْبَحْتَ أَصْبَحْتَ» .

[6] **Qur'an references (L6090):** Qur'an 65:2 (At-Talaq).

take lightly, for a trustworthy person to say "after the disappearance of the twilight," then someone claims: "He actually meant before the disappearance of the twilight." Whoever adopts this method enters the path of the Rafidah who distort words from their proper contexts, interpret "al-jibt" and "al-taghut," and [interpret] the command to slaughter a cow according to their own interpretations. More deserving of it, and in this lies the invalidation of the entirety of the Sharia, the invalidation of all rationally valid principles, and pure sophistry—and we seek refuge in Allah from tribulation!

قَالَ عَلِيٌّ: وَهَذِهِ مُجَاهَرَةٌ لَا يَنْبَغِي أَنْ يَسْتَسْهِلَهَا ذُو وَرَعٍ وَحَيَاءٍ أَنْ يَقُولَ الثِّقَةُ «بَعْدَ غُرُوبِ الشَّفَقِ» فَيَقُولُ قَائِلٌ: إنَّمَا أَرَادَ قَبْلَ غُرُوبِ الشَّفَقِ وَمَنْ سَلَكَ هَذِهِ الطَّرِيقَةَ دَخَلَ فِي طَرِيقِ الرَّوَافِضِ الَّذِينَ يُحَرِّفُونَ الْكَلِمَ عَنْ مَوَاضِعِهِ، وَيُفَسِّرُونَ الْجِبْتَ وَالطَّاغُوتَ وَأَنْ تَذْبَحُوا بَقَرَةً عَلَى مَا هُمْ أَوْلَى بِهِ وَفِي هَذَا بُطْلَانُ جَمِيعِ الشَّرِيعَةِ، وَبُطْلَانُ جَمِيعِ الْمَعْقُولِ، وَالسَّفْسَطَةُ الْمُجَرَّدَةُ - وَنَعُوذُ بِاَللَّهِ مِنْ الْبَلَاءِ؟ .

L6095 As for the statement of Allah, the Exalted: {When they have reached their term} [Al-Baqarah: 234], it is not as he presumed. Rather, it is according to its literal meaning, and Allah's intended meaning is the actual duration of being during the waiting period, not the expiration of its duration. Anything other than that is fundamentally invalid, and far be it from Allah to command falsehood. Similarly, the saying of the Prophet (peace be upon him) – "Do not call the adhan until it is said to you: 'You have entered morning, you have entered morning'" – is also to be taken according to its apparent meaning. Was not the adhan of Ibn Umm Maktum only after dawn? And was the command to announce the morning not before both? If their assumption were true, eating before the appearance of dawn would be prohibited – yet this is what they do not say, nor would any Muslim assert it. As for Mālik's opinion permitting a sick person – whose loss of sanity is feared – to advance Asr to the time of Dhuhr and the night prayer (Isha) to the time of Maghrib, this is a manifest error.[7]

وَأَمَّا قَوْله تَعَالَى: {فَإِذَا بَلَغْنَ أَجَلَهُنَّ} [البقرة: ٢٣٤] فَلَيْسَ كَمَا ظَنَّ، بَلْ هُوَ عَلَى حَقِيقَتِهِ، وَمُرَادُ اللَّهِ تَعَالَى أَجَلُ الْكَوْنِ فِي الْعِدَّةِ، لَا أَجَلُ انْقِضَائِهَا، لَا يَجُوزُ غَيْرُ ذَلِكَ أَصْلًا، وَحَاشَا لِلَّهِ أَنْ يَأْمُرَ بِالْبَاطِلِ وَكَذَلِكَ «قَوْلُهُ - عَلَيْهِ السَّلَامُ - لَا يُؤَذِّنُ حَتَّى يُقَالَ لَهُ: أَصْبَحْتَ أَصْبَحْتَ» أَيْضًا حَقِيقَةٌ عَلَى ظَاهِرِهِ - وَمَا أَذَانُ ابْنِ أُمِّ مَكْتُومٍ إلَّا بَعْد الْفَجْرِ، وَأَمْرِ الْإِصْبَاحِ: لَا قَبْلَهُمَا؟ وَلَوْ كَانَ مَا ظَنُّوهُ: لَحَرُمَ الْأَكْلُ قَبْلَ طُلُوعِ الْفَجْرِ وَهَذَا مَا لَا يَقُولُونَهُ، وَلَا يَقُولُهُ مُسْلِمٌ؟ وَأَمَّا قَوْلُ مَالِكٍ بِتَقْدِيمِ الْمَرِيضِ - الَّذِي يُخْشَى ذَهَابُ عَقْلِهِ - الْعَصْرَ إلَى وَقْتِ الظُّهْرِ، وَالْعَتَمَةَ إلَى وَقْتِ الْمَغْرِبِ -: خَطَأٌ ظَاهِرٌ.

L6096 The time of Dhuhr does not exclude being a time for Asr, and the time of Maghrib may serve as a time for Isha—or none of that applies. If the timeframe of each—Dhuhr and Maghrib—is also a time for Asr and Isha respectively, then advancing Isha to Maghrib's timeframe (which is its valid time) and advancing Asr to Dhuhr's timeframe (which is also its valid time) is permissible for healthy individuals, since they pray Isha and Asr within their designated times. Yet this is a view no one holds?

وَلَا يَخْلُو وَقْتُ الظُّهْرِ مِنْ أَنْ يَكُونَ أَيْضًا وَقْتًا لِلْعَصْرِ، وَيَكُونُ وَقْتُ الْمَغْرِبِ وَقْتًا لِلْعَتَمَةِ، أَوْ لَا يَكُونُ شَيْئًا مِنْ ذَلِكَ؟ فَإِنْ كَانَ وَقْتُ كُلِّ وَاحِدَةٍ مِنْ الظُّهْرِ وَالْمَغْرِبِ وَقْتًا لِلْعَصْرِ وَلِلْعَتَمَةِ أَيْضًا -: فَتَقْدِيمُ الْعَتَمَةِ إلَى وَقْتِ الْمَغْرِبِ - الَّذِي هُوَ وَقْتٌ لَهَا - وَتَقْدِيمُ وَقْتِ الْعَصْرِ إلَى وَقْتِ الظُّهْرِ - الَّذِي هُوَ وَقْتٌ لَهَا أَيْضًا -: جَائِزٌ لِغَيْرِ الْمَرِيضِ؛ لِأَنَّهُ يُصَلِّي الْعَتَمَةَ وَالْعَصْرَ أَيْضًا فِي وَقْتَيْهِمَا، وَهَذَا مَا لَا يَقُولُهُ؟ .

[7] **Qur'an references (L6095):** Qur'an 2:234 (Al-Baqarah); Qur'an 65:2 (At-Talaq).

L6097–6099 If the time of Dhuhr is not designated for ’Asr, and the time of Maghrib is not designated for ’Isha, this would imply permission to perform a prayer before its appointed time - yet this is impermissible? If such permissibility were accepted for these two prayers, it would necessitate permitting the advancement of Dhuhr before the sun’s zenith, Maghrib before sunset, and Fajr before the emergence of dawn - a position none asserts. Thus, the contradiction becomes evident. Should one argue: “The time of Dhuhr is not designated for ’Asr except for a sick person who fears loss of sanity,” they are required to provide evidence for this alleged specification without proof - a claim none are incapable of making, and not… a means for him to attain it, and we have mentioned the invalidity of the opinions of all of them regarding the combining and the coinciding of the two times—and success comes from Allah, the Most High.

وَإِنْ كَانَ وَقْتُ الظُّهْرِ لَيْسَ وَقْتًا لِلْعَصْرِ، وَوَقْتُ الْمَغْرِبِ لَيْسَ وَقْتًا لِلْعَتَمَةِ -: فَقَدْ أَبَاحَ لَهُ أَنْ يُصَلِّيَ صَلَاةً قَبْلَ وَقْتِهَا، وَهَذَا لَا يَجُوزُ؟ وَلَئِنْ جَازَ ذَلِكَ فِي هَاتَيْنِ الصَّلَاتَيْنِ لَيَجُوزَنَّ ذَلِكَ لَهُ أَيْضًا فِي تَقْدِيمِ الظُّهْرِ قَبْلَ الزَّوَالِ، وَتَقْدِيمِ الْمَغْرِبِ قَبْلَ غُرُوبِ الشَّمْسِ، وَتَقْدِيمِ الصُّبْحِ قَبْلَ طُلُوعِ الْفَجْرِ، وَهَذَا مَا لَا يَقُولُهُ - فَقَدْ ظَهَرَ التَّنَاقُضُ فَإِنْ قَالَ: لَيْسَ وَقْتُ الظُّهْرِ وَقْتًا لِلْعَصْرِ إِلَّا لِلْمَرِيضِ الَّذِي يُخْشَى ذَهَابُ عَقْلِهِ: كُلِّفَ الدَّلِيلَ عَلَى هَذَا التَّخْصِيصِ الْمُدَّعَى بِلَا بُرْهَانٍ، وَالَّذِي لَا يَعْجَزُ عَنْ مِثْلِهِ أَحَدٌ، وَلَا سَبِيلَ لَهُ إِلَيْهِ، وَقَدْ ذَكَرْنَا بُطْلَانَ قَوْلِ جَمِيعِهِمْ فِي الْجَمْعِ وَفِي اشْتِرَاكِ الْوَقْتَيْنِ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L6100 Here, we draw attention to a hadith so that no one may assume we have overlooked it or that it contains an additional meaning. It is a hadith that we have narrated through the chain of Abū Bishr, Jaʿfar ibn Abī Waḥshiyyah, from Bashīr ibn Thābit, from Ḥabīb ibn Sālim, from al-Nuʿmān ibn Bashīr: “The Messenger of Allah—peace and blessings be upon him—used to pray the latter ʿIshāʾ prayer at the moonset on the third night [of the lunar month].”

وَهَهُنَا حَدِيثٌ نُنَبِّهُ عَلَيْهِ؛ لِئَلَّا يَظُنَّ ظَانٌّ أَنَّنَا أَغْفَلْنَاهُ، وَأَنَّ فِيهِ مَعْنًى زَائِدًا وَهُوَ حَدِيثٌ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي بِشْرٍ جَعْفَرِ بْنِ أَبِي وَحْشِيَّةَ عَنْ بَشِيرِ بْنِ ثَابِتٍ عَنْ حَبِيبِ بْنِ سَالِمٍ عَنْ النُّعْمَانِ بْنِ بَشِيرٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُصَلِّي الْعِشَاءَ الْآخِرَةَ لِمَغِيبِ الْقَمَرِ لَيْلَةَ ثَالِثَةٍ» .

L6101 Ali said: Bashir ibn Thabit—no one we know narrated from him except Abu Bishr, and Abu Bishr narrated only this hadith from him. He was authenticated but criticized, and he is closer to obscurity? As for Habib ibn Salim, the client and scribe of al-Nuʿman ibn Bashir; his standing is not well-known among the narrators.

قَالَ عَلِيٌّ: بَشِيرُ بْنُ ثَابِتٍ لَمْ يَرْوِ عَنْهُ أَحَدٌ نَعْلَمُهُ إِلَّا أَبُو بِشْرٍ، وَلَا رَوَى عَنْهُ أَبُو بِشْرٍ إِلَّا هَذَا الْحَدِيثَ، وَقَدْ وُثِّقَ وَتُكُلِّمَ فِيهِ، وَهُوَ إِلَى الْجَهَالَةِ أَقْرَبُ؟ وَحَبِيبُ بْنُ سَالِمٍ مَوْلَى النُّعْمَانِ بْنِ بَشِيرٍ وَكَاتِبُهُ، وَلَيْسَ مَشْهُورَ الْحَالِ فِي الرُّوَاةِ.

L6102 Even if it were valid, it would not constitute proof that this marks the beginning time of the Isha prayer; rather, does its time not begin before that? The moon sets on the third night in every time and place after the passing of two and a half hours plus half of one-seventh of an hour from the hours of that night, which is divided into twelve equal parts. The white twilight is delayed, while the red twilight vanishes a very long time before the moon

وَلَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ فِي أَنَّ هَذَا هُوَ أَوَّلُ وَقْتِ الْعَتَمَةِ، بَلْ قَدْ يَدْخُلُ وَقْتُهَا قَبْلَ ذَلِكَ؟ وَالْقَمَرُ يَغِيبُ لَيْلَةً ثَالِثَةً فِي كُلِّ زَمَانٍ وَمَكَانٍ بَعْدَ ذَهَابِ سَاعَتَيْنِ وَنِصْفِ سَاعَةٍ وَنِصْفِ سُبْعِ سَاعَةٍ مِنْ سَاعَاتِ تِلْكَ اللَّيْلَةِ الْمُجَزَّأَةِ عَلَى اثْنَتَيْ عَشْرَةَ سَاعَةً، وَالشَّفَقُ

sets on the third night, with the white twilight disappearing one and a half hours after the moon sets on the third night, based on the aforementioned hourly divisions.

الَّذِي هُوَ الْبَيَاضُ يَتَأَخَّرُ، وَالشَّفَقُ الَّذِي هُوَ الْحُمْرَةُ يَغِيبُ قَبْلَ سُقُوطِ الْقَمَرِ فِي اللَّيْلَةِ الثَّالِثَةِ بِحِينٍ كَبِيرٍ جِدًّا مُغَيَّبَةً بَعْدَ سُقُوطِ الْقَمَرِ لَيْلَةً ثَالِثَةً سَاعَةً وَنِصْفًا مِنْ السَّاعَاتِ الْمَذْكُورَةِ.

L6103 There is no argument in this report—if it were authentic—in anything at all of what is disputed. And success is from Allah, the Exalted.

فَلَيْسَ فِي هَذَا الْخَبَرِ - لَوْ صَحَّ - حُجَّةٌ فِي شَيْءٍ أَصْلًا مِمَّا يَخْتَلِفُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L6104 Performing all prayers at the beginning of their prescribed times is superior under all circumstances except for the ʿatamah (ʿIshāʾ) prayer.

[مَسْأَلَةٌ تَعْجِيلُ جَمِيعِ الصَّلَوَاتِ فِي أَوَّلِ أَوْقَاتِهَا أَفْضَلُ عَلَى كُلِّ حَالٍ حَاشَا الْعَتَمَةِ]

L6105 336: Question:

٣٣٦ - مَسْأَلَةٌ:

L6106–6108 Performing all prayers promptly at the beginning of their times is superior in every situation, except for the Isha prayer. Delaying it to the end of its time in all circumstances and at all times is superior, unless this causes hardship. Gentleness toward people is preferable. However, the Ẓuhr prayer in congregation—particularly during intense heat—is excepted; delaying it until the end of its prescribed time is better.

وَتَعْجِيلُ جَمِيعِ الصَّلَوَاتِ فِي أَوَّلِ أَوْقَاتِهَا أَفْضَلُ عَلَى كُلِّ حَالٍ، حَاشَا الْعَتَمَةِ، فَإِنَّ تَأْخِيرَهَا إلَى آخِرِ وَقْتِهَا فِي كُلِّ حَالٍ وَكُلِّ زَمَانٍ أَفْضَلُ، إلَّا أَنْ يَشُقَّ ذَلِكَ عَلَى النَّاسِ، فَالرِّفْقُ بِهِمْ أَوْلَى، وَحَاشَا الظُّهْرِ لِلْجَمَاعَةِ خَاصَّةً فِي شِدَّةِ الْحَرِّ خَاصَّةً، فَالْإِبْرَادُ بِهَا إلَى آخِرِ وَقْتِهَا أَفْضَلُ.

L6109 The proof of this is the statement of Allah the Exalted: {And hasten to forgiveness from your Lord} [Āl ʿImrān 3:133], and He said: {And the foremost will be the foremost—they are the ones brought near—in the Gardens of Bliss} [al-Wāqiʿah 56:10-12]. Thus, hastening to good deeds and competing in them is superior according to the explicit text of the Quran: Muḥammad ibn Ismāʿīl al-ʿUdhriyy, judge of al-Thaghr, and Muḥammad ibn ʿĪsā, judge of Ṭurṭūsha, narrated to us, both citing: Muḥammad ibn ʿAlī al-Muṭawwiʿī al-Rāzī narrated to us, citing Muḥammad ibn ʿAbdullāh al-Ḥākim in Naysābūr, citing Abū ʿUmar ʿUthmān ibn Aḥmad al-Sammāk, citing al-Ḥasan ibn Makram, citing ʿUthmān ibn ʿUmar, citing Mālik ibn Mighwal, citing al-Walīd ibn al-ʿAyzār, citing Abū ʿAmr al-Shaybānī, citing ʿAbdullāh ibn Masʿūd, who said: "I asked the Messenger of Allah—peace and blessings be upon him—'Which deed is most excellent?' He replied: 'Prayer performed

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى: {وَسَارِعُوا إلَى مَغْفِرَةٍ مِنْ رَبِّكُمْ} [آل عمران: ١٣٣] ، وَقَالَ تَعَالَى: {وَالسَّابِقُونَ السَّابِقُونَ} [الواقعة: ١٠] {أُولَئِكَ الْمُقَرَّبُونَ} [الواقعة: ١١] {فِي جَنَّاتِ النَّعِيمِ} [الواقعة: ١٢] فَالْمُسَارَعَةُ إلَى الْخَيْرِ وَالْمُسَابَقَةُ إلَيْهِ أَفْضَلُ بِنَصِّ الْقُرْآنِ؟ حَدَّثَنَا مُحَمَّدُ بْنُ إسْمَاعِيلَ الْعُذْرِيُّ الْقَاضِي بِالثَّغْرِ، وَمُحَمَّدُ بْنُ عِيسَى قَاضِي طَرْطُوشَةَ قَالَا ثنا مُحَمَّدُ بْنُ عَلِيٍّ الْمُطَّوِّعِيُّ الرَّازِيّ ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْحَاكِمُ بِنَيْسَابُورَ ثنا أَبُو عُمَرَ وَعُثْمَانُ بْنُ أَحْمَدَ السَّمَّاكُ ثنا الْحَسَنُ بْنُ مَكْرَمٍ ثنا عُثْمَانُ بْنُ عُمَرَ ثنا مَالِكُ بْنُ مِغْوَلٍ عَنْ الْوَلِيدِ بْنِ الْعَيْزَارِ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ

at its earliest time.' I asked: 'Then what?' He said: 'Striving in the path of Allah.' I asked: 'Then what?' He answered: 'Dutifulness to parents.'"[8]

L6110–6112 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Yahya ibn Habib al-Harithi narrated to us, Khalid ibn al-Harith narrated to us, Shu'bah informed me: Sayyar ibn Salamah said, "I heard my father ask Abu Barzah about the prayer of the Messenger of Allah (peace and blessings of Allah be upon him)." Abu Barzah replied: "He (peace be upon him) did not mind postponing it partially until midnight"—meaning the last *Isha* prayer—"and he disliked sleeping before it or conversation after it. He would pray *Dhuhr* when..." The sun passes its zenith, and 'Asr is when a man travels to the farthest part of the city while the sun is still bright. He would pray the Dawn prayer, then when the man departed, he would look at the face of his companion whom he knew, so he would recognize him. During this prayer, he would recite between sixty and one hundred verses.

L6113 The narrations regarding this are exceedingly numerous. In Ṣaḥīḥ Muslim: Zuhayr ibn Ḥarb and Isḥāq ibn Rāhawayh narrated to me—both through Jarīr ibn ʿAbd al-Ḥamīd, from Manṣūr ibn al-Muʿtamir, from al-Ḥakam ibn ʿUtaybah, from Nāfiʿ, from Ibn ʿUmar: "We remained one night waiting for the Messenger of Allāh—peace be upon him—to lead the later ʿIshā' prayer. He came out to us when a third of the night or more had passed, and said: 'You await a prayer that no people of other faiths await. Were it not for the hardship it would impose on my community, I would have prayed with them at this hour.' Then he ordered the mu'adhdhin to give the iqāmah, and he led the prayer."[9]

L6114–6116 It has been reported to us through the chain of Thābit al-Bunānī that he

«سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَيُّ الْعَمَلِ أَفْضَلُ؟ قَالَ: الصَّلاَةُ فِي أَوَّلِ وَقْتِهَا، قُلْتُ: ثُمَّ أَيٌّ؟ قَالَ: الْجِهَادُ فِي سَبِيلِ اللَّهِ، قُلْتُ: ثُمَّ أَيٌّ؟ قَالَ: بِرُّ الْوَالِدَيْنِ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ حَبِيبٍ الْحَارِثِيُّ ثنا خَالِدُ بْنُ الْحَارِثِ ثنا شُعْبَةُ أَخْبَرَنِي سَيَّارُ بْنُ سَلَامَةَ قَالَ: سَمِعْتُ أَبِي يَسْأَلُ أَبَا بَرْزَةَ عَنْ صَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ أَبُو بَرْزَةَ «كَانَ - عَلَيْهِ السَّلَامُ - لَا يُبَالِي بَعْضَ تَأْخِيرِهَا إِلَى نِصْفِ اللَّيْلِ - يَعْنِي الْعِشَاءَ الْآخِرَةَ - وَلَا يُحِبُّ النَّوْمَ قَبْلَهَا وَلَا الْحَدِيثَ بَعْدَهَا وَكَانَ يُصَلِّي الظُّهْرَ حِينَ تَزُولُ الشَّمْسُ، وَالْعَصْرَ حِينَ يَذْهَبُ الرَّجُلُ إِلَى أَقْصَى الْمَدِينَةِ وَالشَّمْسُ حَيَّةٌ، وَكَانَ يُصَلِّي الصُّبْحَ فَيَنْصَرِفُ الرَّجُلُ فَيَنْظُرُ إِلَى وَجْهِ جَلِيسِهِ الَّذِي يَعْرِفُ فَيَعْرِفُهُ، وَكَانَ يَقْرَأُ فِيهَا بِالسِّتِّينَ إِلَى الْمِائَةِ» .

وَالْأَحَادِيثُ فِي هَذَا كَثِيرَةٌ جِدًّا؟ وَبِهِ إِلَى مُسْلِمٍ: حَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ وَإِسْحَاقُ بْنُ رَاهَوَيْهِ كِلَاهُمَا عَنْ جَرِيرٍ هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ مَنْصُورٍ هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ الْحَكَمِ هُوَ ابْنُ عُتَيْبَةَ - عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «مَكَثْنَا ذَاتَ لَيْلَةٍ نَنْتَظِرُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِصَلَاةِ الْعِشَاءِ الْآخِرَةِ، فَخَرَجَ إِلَيْنَا حِينَ ذَهَبَ ثُلُثُهُ أَوْ بَعْدَهُ - يَعْنِي ثُلُثَ اللَّيْلِ فَقَالَ: إِنَّكُمْ لَتَنْتَظِرُونَ صَلَاةً مَا يَنْتَظِرُهَا أَهْلُ دِينٍ غَيْرُكُمْ، وَلَوْلَا أَنْ يَثْقُلَ عَلَى أُمَّتِي لَصَلَّيْتُ بِهِمْ هَذِهِ السَّاعَةَ، ثُمَّ أَمَرَ الْمُؤَذِّنُ فَأَقَامَ الصَّلَاةَ وَصَلَّى» .

وَقَدْ رُوِّينَا مِنْ طَرِيقِ ثَابِتٍ الْبُنَانِيِّ أَنَّهُ سَمِعَ أَنَسَ بْنَ مَالِكٍ يَقُولُ «أَخَّرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْعِشَاءَ ذَاتَ لَيْلَةٍ إِلَى شَطْرِ اللَّيْلِ، أَوْ كَادَ يَذْهَبُ شَطْرُ اللَّيْلِ»

[8] **Qur'an references (L6109):** Qur'an 3:133 (Ali 'Imran); Qur'an 56:10 (Al-Waqi'ah); Qur'an 56:11 (Al-Waqi'ah); Qur'an 37:43 (As-Saffat); Qur'an 56:12 (Al-Waqi'ah).

[9] **Hadith references (L6113):** Sahih Muslim 639a; Mishkat al-Masabih 616.

heard Anas ibn Mālik say: “The Messenger of Allāh (peace and blessings of Allāh be upon him) delayed the ʿIshāʾ prayer one night until halfway through the night, or until nearly half the night had elapsed.” And via the chain of Umm Kulthum bint Abi Bakr from her sister Aisha: “The Messenger of Allah (peace and blessings be upon him) delayed the prayer one night until most of the night had passed.”[10]

وَمِنْ طَرِيقِ أُمِّ كُلْثُومَ بِنْتِ أَبِي بَكْرٍ عَنْ أُخْتِهَا عَائِشَةَ «أَعْتَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَاتَ لَيْلَةٍ حَتَّى ذَهَبَ عَامَّةُ اللَّيْلِ» .

L6117 Ali said: When half the night has passed, most of the night has indeed passed. Are these reports additional to every other report? The chain transmitted in Muslim’s collection is: Muḥammad ibn al-Muthannā narrated to me, Muḥammad ibn Jaʿfar narrated to us, Shuʿbah narrated to us: I heard Muhājir Abū al-Ḥasan relate that he heard Zayd ibn Wahb relate from Abū Dharr, who said: The mu’adhdhin of the Messenger of Allah (peace and blessings be upon him) gave the call for the Ẓuhr prayer. The Prophet (peace and blessings be upon him) said: “Delay, delay—or he said, Wait, wait—verily, the severity of heat comes from the scorching breath of Hellfire. When the heat grows intense, delay the prayer.” Abū Dharr said: Until we saw the shadow of the small mounds.[11]

قَالَ عَلِيٌّ: إِذَا ذَهَبَ نِصْفُ اللَّيْلِ فَقَدْ ذَهَبَ عَامَّةُ اللَّيْلِ، وَهَذِهِ الْأَخْبَارُ زَائِدَةٌ عَلَى كُلِّ خَبَرٍ؟ وَالسَّنَدُ الْمَذْكُورُ إِلَى مُسْلِمٍ: حَدَّثَنِي مُحَمَّدُ بْنُ الْمُثَنَّى ثنا مُحَمَّدُ بْنُ جَعْفَرٍ ثنا شُعْبَةُ سَمِعْت مُهَاجِرًا أَبَا الْحَسَنِ يُحَدِّثُ أَنَّهُ سَمِعَ زَيْدَ بْنَ وَهْبٍ يُحَدِّثُ عَنْ أَبِي ذَرٍّ قَالَ «أَذَّنَ مُؤَذِّنُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالظُّهْرِ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبْرِدْ أَبْرِدْ، أَوْ قَالَ: انْتَظِرْ انْتَظِرْ، إنَّ شِدَّةَ الْحَرِّ مِنْ فَيْحِ جَهَنَّمَ، فَإِذَا اشْتَدَّ الْحَرُّ فَأَبْرِدُوا عَنْ الصَّلَاةِ، قَالَ أَبُو ذَرٍّ: حَتَّى رَأَيْنَا فَيْءَ التُّلُولِ» .

L6118 Ali said: We did not consider this matter obligatory due to what we have narrated through the mentioned chain in Ṣaḥīḥ Muslim: Aḥmad ibn Yūnus narrated to us, from Zuhayr ibn Muʿāwiyah, who narrated to us from Abū Isḥāq al-Sabīʿī, from Saʿīd ibn Wahb, from Khabbāb: “We complained to the Messenger of Allah (peace be upon him) about the severity of the blazing heat, but he did not grant our request.”

قَالَ عَلِيٌّ: وَإِنَّمَا لَمْ نَحْمِلْ هَذَا الْأَمْرَ عَلَى الْوُجُوبِ لِمَا رُوِّينَاهُ بِالسَّنَدِ الْمَذْكُورِ إلَى مُسْلِمٍ، ثنا أَحْمَدُ بْنُ يُونُسَ عَنْ زُهَيْرِ بْنِ مُعَاوِيَةَ ثنا أَبُو إِسْحَاقَ السَّبِيعِيّ عَنْ سَعِيدِ بْنِ وَهْبٍ عَنْ خَبَّابٍ «شَكَوْنَا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شِدَّةَ الرَّمْضَاءِ فَلَمْ يَشْكُنَا» .

L6119 I said to Abu Ishaq: “Is it regarding advancing the Dhuhr prayer?” He replied: “Yes. There has come a narration aligned with the position we favor concerning prayer times from the early predecessors, as reported to us through Yahya ibn Sa‘id al-Qattan’s chain from Sufyan al-Thawri, from Habib ibn Abi Thabit, from Nafi‘ ibn Jubayr ibn Mut‘im: that ‘Umar ibn al-Khattab wrote to Abu Musa al-Ash‘ari - ‘Pray Dhuhr when the sun declines, and delay it [until the heat subsides]?’”

قُلْت لِأَبِي إِسْحَاقَ: أَفِي الظُّهْرِ فِي تَعْجِيلِهَا؟ قَالَ: نَعَمْ وَقَدْ جَاءَ نَحْوُ مَا تَخَيَّرْنَاهُ فِي الْأَوْقَاتِ عَنْ السَّلَفِ كَمَا رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ نَافِعِ بْنِ جُبَيْرِ بْنِ مُطْعِمٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَتَبَ إلَى أَبِي مُوسَى الْأَشْعَرِيِّ: أَنْ صَلِّ الظُّهْرَ إذَا زَالَتْ الشَّمْسُ وَأَبْرِدْ؟ .

[10] **Hadith references (L6114):** Sahih Muslim 640a.
[11] **Hadith references (L6117):** Sahih Muslim 616.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ: ثنا يَزِيدُ بْنُ هَارُونَ ثنا مُحَمَّدُ بْنُ سِيرِينَ عَنْ الْمُهَاجِرِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَتَبَ إِلَى أَبِي مُوسَى الْأَشْعَرِيِّ: أَنْ صَلِّ الظُّهْرَ حِينَ تَزِيغُ الشَّمْسُ أَوْ حِينَ تُدْرِكُ، وَصَلِّ الْعَصْرَ وَالشَّمْسُ بَيْضَاءُ نَقِيَّةٌ، وَصَلِّ صَلَاةَ الْمَغْرِبِ حِينَ تَغْرُبُ الشَّمْسُ، وَصَلِّ صَلَاةَ الْعِشَاءِ مِنْ الْعِشَاءِ إِلَى نِصْفِ اللَّيْلِ -: أَيْ حِينَ تَبِيتُ، وَصَلِّ صَلَاةَ الْفَجْرِ بِغَلَسٍ، أَوْ بِسَوَادٍ، وَأَطِلْ الْقِرَاءَةَ.

L6120–6122 And from the chain of Al-Ḥajjāj ibn Al-Minhāl: Yazīd ibn Hārūn narrated to us, Muḥammad ibn Sīrīn narrated to us, from... Al-Muhajir narrated that Umar ibn al-Khattab wrote to Abu Musa al-Ash'ari: "Pray Dhuhr when the sun declines or when you perceive it, pray Asr while the sun remains bright and pure, pray Maghrib at sunset, pray Isha from nightfall until midnight—that is: when you settle for the night—and pray Fajr in pre-dawn darkness or darkness; prolong the recitation."

وَمِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ: ثنا أَبُو الرَّبِيعِ الزَّهْرَانِيُّ ثنا حَمَّادٌ هُوَ ابْنُ زَيْدٍ - عَنْ الزُّبَيْرِ بْنِ الْخِرِّيتِ عَنْ عَبْدِ اللَّهِ بْنِ شَقِيقٍ: «خَطَبَنَا ابْنُ عَبَّاسٍ يَوْمًا بَعْدَ الْعَصْرِ حَتَّى غَرُبَتْ الشَّمْسُ وَبَدَتْ النُّجُومُ، وَجَعَلَ النَّاسُ يَقُولُونَ: الصَّلَاةَ الصَّلَاةَ، فَجَاءَ رَجُلٌ مِنْ بَنِي تَمِيمٍ لَا يَفْتُرُ وَلَا يَنْثَنِي: الصَّلَاةَ الصَّلَاةَ فَقَالَ لَهُ ابْنُ عَبَّاسٍ: أَتُعَلِّمُنِي بِالسُّنَّةِ، لَا أُمَّ لَكَ رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَمَعَ بَيْنَ الظُّهْرِ وَالْعَصْرِ، وَالْمَغْرِبِ وَالْعِشَاءِ.»

L6123 From the chain of Muslim ibn al-Hajjaj: Abu al-Rabi' al-Zahrani narrated to us: Hammad ibn Zayd narrated to us, from al-Zubayr ibn al-Khirrīt, from 'Abdullah ibn Shaqiq: "Ibn 'Abbas addressed us one day after 'Asr until the sun set and stars emerged. People began urging, 'The prayer! The prayer!' Then a man from Banu Tamim came, relentless and unwavering, repeating 'The prayer! The prayer!' Ibn 'Abbas retorted: 'Do you presume to teach me the Sunnah? Woe to you! I witnessed Allah's Messenger—peace and blessings upon him—combine Zuhr with 'Asr, and Maghrib with 'Isha'."

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ: ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ عُثْمَانَ بْنِ عَبْدِ اللَّهِ بْنِ مَوْهَبٍ: سَمِعْت أَبَا هُرَيْرَةَ سُئِلَ عَنْ تَفْرِيطِ الصَّلَاةِ؟ فَقَالَ: أَنْ تُؤَخِّرَهَا إلَى الَّتِي بَعْدَهَا؟ حَدَّثَنَا حَمَامُ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي نَافِعٌ: أَنَّ ابْنَ عُمَرَ كَانَ يَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «إنَّ الَّذِي تَفُوتُهُ صَلَاةُ الْعَصْرِ كَأَنَّمَا وُتِرَ أَهْلَهُ وَمَالَهُ» ، فَقُلْت لِنَافِعٍ: حَتَّى تَغِيبَ الشَّمْسُ؟ قَالَ: نَعَمْ.

L6124–6126 From the chain of Abd al-Rahman ibn Mahdi: Sufyan al-Thawri narrated to us from Uthman ibn Abd Allah ibn Mawhab: I heard Abu Hurairah being asked about delaying prayer. He replied: "Is it to postpone it until the time of the next prayer?" Hammam narrated to us, Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabarī narrated to us, Abd al-Razzaq narrated from Ibn Jurayj: Nafi' reported to me that Ibn Umar used to say: I heard the Messenger of Allah (peace and blessings be upon him) say: "Indeed, the one who misses..." The Asr prayer is as if one had been deprived of his family and wealth. So I said to Nāfi': "Until the sun sets?" He replied: "Yes."

قَالَ عَلِيٌّ: هَذَا الْحَدِيثُ وَالَّذِي فِيهِ «إنَّمَا التَّفْرِيطُ فِي الْيَقَظَةِ، أَنْ تُؤَخِّرَ صَلَاةً حَتَّى يَدْخُلَ وَقْتُ أُخْرَى» يُكَذِّبَانِ قَوْلَ مَنْ أَقْدَمَ بِالْعَظِيمَةِ فَقَالَ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ

L6127 Ali said: This hadith and the one stating "True negligence in vigilance is to delay a prayer until another prayer's time begins" both refute the claim of those who dared to assert that the Messenger of God—peace and blessings be upon him—delayed the Asr prayer on the Trench Day while being mindful

of it until sunset. For had this been true, he—peace be upon him—would have willfully entered a state of deprivation, becoming akin to one who wronged his family and wealth, intentionally committing the very negligence he condemned—and no Muslim would ever make such a claim?[12]

وَسَلَّمَ - تَرَكَ صَلَاةَ الْعَصْرِ يَوْمَ الْخَنْدَقِ ذَاكِرًا لَهَا حَتَّى غَابَتْ الشَّمْسُ، لِأَنَّهُ لَوْ كَانَ ذَلِكَ لَكَانَ - عَلَيْهِ السَّلَامُ - قَدْ تَعَمَّدَ حَالًا مِنْ الْحِرْمَانِ صَارَ فِيهَا كَمَا لَوْ وَتَرَ أَهْلَهُ وَمَالَهُ، قَاصِدًا إلَى مَا ذَمَّهُ مِنْ التَّفْرِيطِ -، وَهَذَا لَا يَقُولُهُ مُسْلِمٌ؟ .

L6128 And through him to Ibn Jurayj: I said to Aṭā, “If an imam delays the ʿAṣr prayer, should I pray it with him?” He said, “Yes. Congregational prayer is more beloved to me.” I said, “Even if the sun turns yellow nearing sunset and settles on the mountain peaks?” He said, “Yes, provided it has not yet set.” Ibn Jurayj said: Ṭāwūs would sometimes hasten and sometimes delay the ʿAṣr prayer. Ibrāhīm ibn Maysarah narrated to me from him that he would delay the ʿAṣr prayer until the sun became intensely yellow.

وَبِهِ إلَى ابْنِ جُرَيْجٍ: قُلْت لِعَطَاءٍ: إمَامٌ يُؤَخِّرُ الْعَصْرَ، أُصَلِّيهَا مَعَهُ؟ قَالَ: نَعَمْ، الْجَمَاعَةُ أَحَبُّ إلَيَّ؟ قُلْت: وَإِنْ اصْفَرَّتْ الشَّمْسُ لِلْغُرُوبِ وَلَحِقَتْ بِرُءُوسِ الْجِبَالِ؟ قَالَ: نَعَمْ، مَا لَمْ تَغِبْ قَالَ ابْنُ جُرَيْجٍ: وَكَانَ طَاوُسٌ يُعَجِّلُ الْعَصْرَ وَيُؤَخِّرُهَا، أَخْبَرَنِي إبْرَاهِيمُ بْنُ مَيْسَرَةَ عَنْهُ: أَنَّهُ كَانَ يُؤَخِّرُ الْعَصْرَ حَتَّى تَصْفَرَّ الشَّمْسُ جِدًّا.

L6129 As for the other: which states, “My community will remain in goodness as long as they do not delay the prayer until the stars are intertwined?”—it is not valid (as evidence), because it is mursal; it has only been transmitted through the chain of al-Ṣalt ibn Bahrām.

وَأَمَّا الْآخَرُ: الَّذِي فِيهِ «لَا تَزَالُ أُمَّتِي بِخَيْرٍ مَا لَمْ يُؤَخِّرُوا الصَّلَاةَ إلَى اشْتِبَاكِ النُّجُومِ؟» فَإِنَّهُ لَا يَصِحُّ، لِأَنَّهُ مُرْسَلٌ، لَمْ يُسْنَدْ إلَّا مِنْ طَرِيقِ الصَّلْتِ بْنِ بَهْرَامَ.

L6130 Abu Hanifah said: The time for the Fajr prayer begins at the appearance of the transverse dawn and lasts until sunrise. Does this mean [it extends] until immediately after its completion?

وَقَالَ أَبُو حَنِيفَةَ: وَقْتُ صَلَاةِ الْفَجْرِ حِينَ يَطْلُعُ الْفَجْرُ الْمُعْتَرِضُ إلَى أَنْ تَطْلُعَ الشَّمْسُ، يَعْنِي إثْرَ سَلَامِهِ مِنْهَا؟

L6131–6132 He said: Delaying it [Fajr prayer] is more beloved to me than performing it at the time of taghlīs (prayer during pre-dawn darkness), as this results in a larger congregation.

قَالَ: وَتَأْخِيرُهَا أَحَبُّ إلَيَّ مِنْ التَّغْلِيسِ بِهَا، لِأَنَّهُ أَكْثَرُ لِلْجَمَاعَةِ.

L6133 The time for Dhuhr begins when the sun passes its zenith and lasts until the shadow becomes less than twice the object’s height. Performing it at the earliest time in winter is more beloved to me, while delaying it until the heat cools down in summer is more preferable to me.

وَوَقْتُ الظُّهْرِ مِنْ حِينَ تَزُولُ الشَّمْسُ إلَى أَنْ يَكُونَ الظِّلُّ دُونَ الْقَامَتَيْنِ، وَالتَّهْجِيرُ بِهَا فِي الشِّتَاءِ أَحَبُّ إلَيَّ: وَأَنْ يُبْرِدَ بِهَا فِي الصَّيْفِ أَعْجَبُ إلَيَّ.

L6134 The time for the ʿAṣr prayer begins when the shadow is twice its length and lasts until before sunset. This means: to initiate the prayer with the takbīr before the sun has completely set. Delaying it [within this period] is more preferable in his view, provided the sun has not yet begun to yellow.

وَوَقْتُ الْعَصْرِ إذَا كَانَ الظِّلُّ قَامَتَيْنِ إلَى قَبْلِ أَنْ تَغِيبَ الشَّمْسُ، يُرِيدُ -: أَنْ يُكَبِّرَ لَهَا قَبْلَ تَمَامِ غُرُوبِ الشَّمْسِ، وَتَأْخِيرُهَا أَحَبُّ إلَيْهِ مَا لَمْ تَصْفَرَّ الشَّمْسُ.

[12] **Hadith references (L6127):** Sunan Abi Dawud 441.

وَوَقْتُ الْمَغْرِبِ مُذْ تَغْرُبُ الشَّمْسُ إِلَى أَنْ يَغِيبَ الشَّفَقُ، وَتَعْجِيلُهَا أَحَبُّ إِلَيْهِ.

L6135 The time for Maghrib prayer begins when the sun sets and lasts until twilight disappears, and hastening it is more beloved to him.

وَوَقْتُ الْعَتَمَةِ مُذْ يَغِيبُ الشَّفَقُ إِلَى نِصْفِ اللَّيْلِ، وَتَأْخِيرُهَا أَفْضَلُ، وَوَقْتُهَا يَمْتَدُّ إِلَى طُلُوعِ الْفَجْرِ.

L6136 The time for the ʿIshā prayer begins at the disappearance of the red twilight and lasts until midnight, and delaying it is more virtuous, and its time extends until the advent of true dawn.

قَالَ عَلِيٌّ: كُلُّ مَا قَالَ مِمَّا خَالَفْنَاهُ فِيهِ فَقَدْ أَبْدَيْنَا بِالْبُرْهَانِ سُقُوطَ قَوْلِهِ؛ إِلَّا تَأْخِيرَ الصُّبْحِ، فَإِنَّهُ احْتَجَّ فِي ذَلِكَ [بِخَبَرٍ] مِنْ طَرِيقِ مَحْمُودِ بْنِ لَبِيدٍ عَنْ رَافِعِ بْنِ خَدِيجٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَسْفِرُوا بِصَلَاةِ الْغَدَاةِ، فَإِنَّهُ أَعْظَمُ لِأَجْرِكُمْ» «أَسْفِرُوا بِالْفَجْرِ، فَكُلَّمَا أَسْفَرْتُمْ فَإِنَّهُ أَعْظَمُ لِلْأَجْرِ أَوْ لِأَجْرِكُمْ» قَالَ عَلِيٌّ: مَحْمُودُ بْنُ لَبِيدٍ ثِقَةٌ، وَهُوَ مَحْمُودُ بْنُ الرَّبِيعِ بْنِ لَبِيدٍ.

L6137 Ali said: Every statement he made that we opposed, we have definitively demonstrated with proof the invalidity of his statement—except regarding the delay of the dawn prayer. For he argued in that matter with a narration transmitted through Mahmud ibn Labid from Rafi‘ ibn Khadij that the Messenger of Allah—peace and blessings be upon him—said: “Delay the dawn prayer until the sky brightens, for it is greater for your reward,” and: “Delay the dawn prayer. Whenever you delay into brightness, it is greater for the reward—or for your reward.” Ali said: Mahmud ibn Labid is reliable, and he is Mahmud ibn al-Rabi‘ ibn Labid.

وَالْخَبَرُ صَحِيحٌ إِلَّا أَنَّهُ لَا حُجَّةَ لَهُمْ فِيهِ إِذَا أُضِيفَ إِلَى الثَّابِتِ مِنْ فِعْلِهِ - عَلَيْهِ السَّلَامُ - فِي التَّغْلِيسِ؛ حَتَّى إِنَّهُ لَيَنْصَرِفُ وَالنِّسَاءُ لَا يُعْرَفْنَ، أَوْ حِينَ يَعْرِفُ الرَّجُلُ وَجْهَ جَلِيسِهِ الَّذِي كَانَ يَعْرِفُهُ؛ وَأَنَّ هَذَا كَانَ الْمُدَاوَمَ عَلَيْهِ مِنْ عَمَلِهِ.

L6138 The report is authentic; however, it does not serve as evidence for them when added to the established practice of his (peace be upon him) concerning the early dawn prayer. This reached the extent that he would depart while women remained unrecognizable due to darkness, or when a man could discern the face of his companion whom he already knew. Verily, this was the steadfastly maintained practice within his customary conduct.

- عَلَيْهِ السَّلَامُ - صَحَّ أَنَّ الْإِسْفَارَ الْمَأْمُورَ بِهِ إِنَّمَا هُوَ بِأَنْ يَنْقَضِيَ طُلُوعُ الْفَجْرِ وَلَا يُصَلِّيَ عَلَى شَكٍّ مِنْهُ فَإِنْ قِيلَ: إِنَّهُ لَا أَجْرَ فِي غَيْرِ هَذَا، بَلْ مَا فِيهِ إِلَّا الْإِثْمُ؟ قُلْنَا: هَذَا لَا يُنْكَرُ فِي لُغَةِ الْعَرَبِ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {وَلَوْ أَنَّهُمْ قَالُوا سَمِعْنَا وَأَطَعْنَا وَاسْمَعْ وَانْظُرْنَا لَكَانَ خَيْرًا لَهُمْ وَأَقْوَمَ} [النساء: ٤٦] وَلَا خَيْرَ فِي خِلَافِ ذَلِكَ وَمِنَ الْبَاطِلِ أَنْ يَكُونَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُكَلِّفُ أُمَّتَهُ وَأَصْحَابَهُ الْمَشَقَّةَ فِي تَرْكِ النَّوْمِ أَلَذَّ مَا يَكُونُ، وَخُرُوجُ الرِّجَالِ وَالنِّسَاءِ إِلَى صَلَاةِ الصُّبْحِ -: عَمَلًا فِيهِ مَشَقَّةٌ وَكُلْفَةٌ وَحَطِيطَةٌ

L6139–6141 Peace be upon him (PBUH). It is established that the commanded manifestation of dawn refers specifically to the completion of dawn’s emergence, and one must not pray while uncertain about it. If it is objected: “There is no reward in anything other than this; rather, there is nothing in it except sin?” We respond: This cannot be denied according to the conventions of the Arabic language, for Allah the Exalted states: {Had they said, “We hear and obey,” and “Listen and wait for us,” it would have been better for them and more upright} [4:46], and there is no good in opposing this. It is baseless to claim that the Messenger of Allah—peace and blessings be upon him—would impose hardship on his community and companions by compelling them to abandon sleep at its most pleasurable time, or that the act of men and women going out for the dawn prayer, an act entailing hardship, toil, and diminution

مِنْ الْأَجْرِ، وَيَمْنَعُهُمْ الْفَضْلَ وَالْأَجْرَ مَعَ الرَّاحَةِ، حَاشَا لِلَّهِ تَعَالَى مِنْ هَذَا، فَهَذَا ضِدُّ النَّصِيحَةِ، وَعَيْنُ الْغِشِّ وَالْحَرَجِ وَالظُّلْمِ.

of reward, would prevent them from attaining grace and reward while they are at ease. Allah is far exalted above such a thing! This contradicts sincere counsel and epitomizes deceit, undue hardship, and injustice.[13]

L6142 وَمَا نَدْرِيهِمْ تَعَلَّقُوا فِي هَذَا إلَّا بِرِوَايَةٍ عَنْ ابْنِ مَسْعُودٍ فِي التَّغْلِيسِ بِصَلَاةِ الصُّبْحِ حِينَ انْشَقَّ الْفَجْرُ يَوْمَ النَّحْرِ، وَقَوْلُهُ - رَضِيَ اللَّهُ عَنْهُ -: إنَّهَا صَلَاةٌ حُوِّلَتْ عَنْ وَقْتِهَا فِي ذَلِكَ الْيَوْمِ فِي ذَلِكَ الْمَكَانِ، وَهَذَا خَبَرٌ مُسْقِطٌ لِقَوْلِهِمْ جُمْلَةً؛ لِأَنَّهُمْ مُخَالِفُونَ لَهُ جُمْلَةً؛ إذْ قَوْلُهُمْ الَّذِي لَا خِلَافَ عَنْهُمْ فِيهِ: أَنَّ التَّغْلِيسَ بِهَا فِي أَوَّلِ الْفَجْرِ لَيْسَ صَلَاةً لَهَا فِي غَيْرِ وَقْتِهَا، بَلْ هُوَ وَقْتُهَا عِنْدَهُمْ؟ فَمَنْ أَضَلُّ مِمَّنْ يُمَوِّهُ بِحَدِيثٍ هُوَ مُخَالِفٌ لَهُ، وَيُوهِمُ خَصْمَهُ أَنَّهُ حُجَّةٌ لَهُ.

L6142 The only basis they cling to in this matter is a narration from Ibn Mas'ud regarding performing the Fajr prayer in pre-dawn darkness at the moment dawn broke on the Day of Sacrifice, and his statement - may Allah be pleased with him - that it was a prayer shifted from its prescribed time on that day in that place. This report completely invalidates their stance, for they wholly oppose it - given their undisputed position that performing it in darkness at the onset of dawn does not constitute praying it outside its designated time, but rather represents its appointed time according to them. Who is more misguided than one who obfuscates using a hadith he himself contradicts, while deluding his opponent into believing it serves as evidence in his favor?

L6143 وَأَمَّا قَوْلُهُمْ فِي اخْتِيَارِ تَأْخِيرِ الْعَصْرِ: فَقَوْلٌ مُخَالِفٌ لِلْقُرْآنِ فِي الْمُسَارَعَةِ إلَى الْخَيْرِ - وَلِجَمِيعِ السُّنَنِ، وَلِجَمِيعِ السَّلَفِ، وَلِلْقِيَاسِ عَلَى قَوْلِهِ فِي صَلَاةِ الظُّهْرِ وَالْمَغْرِبِ؟ وَقَالَ مَالِكٌ: وَقْتُ الظُّهْرِ وَالْعَصْرِ إلَى غُرُوبِ الشَّمْسِ، وَوَقْتُ الْمَغْرِبِ وَالْعِشَاءِ إلَى طُلُوعِ الْفَجْرِ، وَالصُّبْحُ إلَى طُلُوعِ الشَّمْسِ - وَأَحَبُّ إلَيْهِ فِي الصُّبْحِ: التَّغْلِيسُ.

L6143 As for their statement regarding preferring to delay the 'Asr prayer: this is a position contradicting the Quran's directive to hasten toward good, all the Sunnahs, all the Salaf, and the analogy drawn from the Prophet's statement concerning Dhuhr and Maghrib prayers. Mālik said: The time for Dhuhr and 'Asr extends until sunset, the time for Maghrib and 'Ishā' lasts until the emergence of dawn, and the time for Fajr continues until sunrise – though he most favored performing Fajr during the early darkness.

L6144 وَأَحَبُّ إلَيْهِ فِي صَلَاةِ الظُّهْرِ: أَنْ تُصَلَّى فِي الْبَرْدِ وَالْحَرِّ إذَا فَاءَ الْفَيْءُ ذِرَاعًا، وَأَحَبُّ إلَيْهِ: أَنْ تُصَلَّى الْعَصْرُ وَالشَّمْسُ بَيْضَاءُ نَقِيَّةٌ؟ وَتَعْجِيلُ الْمَغْرِبِ إلَّا لِلْمُسَافِرِ؛ فَلَا بَأْسَ بِأَنْ تُمَدَّ الْمِيلَيْنِ وَنَحْوِهِمَا.

L6144 It is most preferable to the Prophet regarding the Dhuhr prayer that it be performed in both cold and heat when the shadow extends to a cubit. It is also most preferable to him that the Asr prayer be performed while the sun remains bright and clear. Hastening Maghrib prayer is preferable except for travelers; there is no harm in delaying it by two *mīl* (approx. 3.2 km) or similar distances.

L6145–6146 وَالْعَتَمَةُ: إثْرَ مَغِيبِ الشَّفَقِ قَلِيلًا؟ قَالَ عَلِيٌّ: أَمَّا قَوْلُهُ فِي اتِّصَالِ وَقْتِ الظُّهْرِ إلَى غُرُوبِ الشَّمْسِ، وَوَقْتِ الْمَغْرِبِ إلَى صَلَاةِ الْفَجْرِ؟ فَقَوْلٌ مُخَالِفٌ لِجَمِيعِ السُّنَنِ، وَلَا نَعْلَمُهُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا عَنْ أَحَدٍ مِنْ التَّابِعِينَ - إلَّا عَنْ عَطَاءٍ

L6145–6146 The Isha prayer: shortly after the disappearance of twilight? Ali said: As for his statement regarding the continuity of Dhuhr's time until sunset and the extension of Maghrib's time until the Fajr prayer—this contradicts all established traditions. We do not know this from any Companion (may

[13] **Qur'an references (L6139):** Qur'an 4:46 (An-Nisa).

Allah be pleased with them) nor from any Follower except ʿAṭāʾ alone. As for his statement concerning the time of Isha, we do not know any of the Salaf preferring this view either. Regarding his statement about Dhuhr's time, he relied on the narration from ʿUmar (may Allah be pleased with him): "Pray Dhuhr when the shadow becomes a cubit in length." We have already mentioned the multiple narrations from ʿUmar (may Allah be pleased with him) that it should be prayed when the sun declines from its zenith and delayed until the heat subsides.

وَحْدَهُ وَأَمَّا قَوْلُهُ فِي وَقْتِ الْعَتَمَةِ؟ فَلَا نَعْلَمُ اخْتِيَارَهُ أَيْضًا عَنْ أَحَدٍ مِنْ السَّلَفِ وَأَمَّا قَوْلُهُ فِي وَقْتِ الظُّهْرِ؟ فَإِنَّهُ عَوَّلَ عَلَى الرِّوَايَةِ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ -: أَنْ صَلِّ الظُّهْرَ إذَا فَاءَ الْفَيْءُ ذِرَاعًا. وَقَدْ ذَكَرْنَا الرِّوَايَاتِ الْمُتَرَادِفَةَ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ -: بِأَنْ تُصَلَّى إذَا زَاغَتْ الشَّمْسُ وَأَنْ يُبْرَدَ بِهَا.

L6147 This was narrated from him by Aisha, the Mother of the Believers; his son Abdullah; Nafiʿ ibn Jubayr; Muhajir Abu al-Hasan; Abu al-ʿAliya; Urwah ibn al-Zubayr; Abu Uthman al-Nahdi; Malik, the grandfather of Malik ibn Anas. Aisha narrated it as a musnad report. Is this also part of Abu Bakr's practice? Have we narrated it also from Ali ibn Abi Talib, Abu Hurayrah, Ibn Masʿud, and others? If they mention that it was narrated from Ibn Abbas: "The time for Isha lasts until the Fajr prayer," and from Abu Hurayrah: "Exceeding the proper time for Isha until the Fajr prayer"—then they have contradicted that report from Ibn Abbas, for it states: "The time for Dhuhr lasts until the time for Asr, and the time for Maghrib lasts until the time for Isha." When the Companions differ, the recourse is to what Allah Almighty has commanded us to refer back to—the Quran and the Sunnah.

رَوَى ذَلِكَ عَنْهُ: عَائِشَةُ أُمُّ الْمُؤْمِنِينَ، وَابْنُهُ عَبْدُ اللَّهِ، وَنَافِعُ بْنُ جُبَيْرٍ، وَمُهَاجِرٌ أَبُو الْحَسَنِ، وَأَبُو الْعَالِيَةِ، وَعُرْوَةُ بْنُ الزُّبَيْرِ، وَأَبُو عُثْمَانَ النَّهْدِيُّ، وَمَالِكٌ جَدُّ مَالِكِ بْنِ أَنَسٍ وَرَوَتْهُ عَائِشَةُ مُسْنَدًا، وَمِنْ فِعْلِ أَبِي بَكْرٍ أَيْضًا؟ وَرُوِّينَاهُ أَيْضًا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَأَبِي هُرَيْرَةَ، وَابْنِ مَسْعُودٍ وَغَيْرِهِمْ؟ وَإِنْ ذَكَرُوا: أَنَّهُ قَدْ رُوِيَ عَنْ ابْنِ عَبَّاسٍ: وَقْتُ الْعَتَمَةِ إلَى صَلَاةِ الْفَجْرِ، وَعَنْ أَبِي هُرَيْرَةَ: الْإِفْرَاطُ فِي الْعَتَمَةِ إلَى صَلَاةِ الْفَجْرِ؟ - فَإِنَّهُمْ قَدْ خَالَفُوا ذَلِكَ الْأَثَرَ عَنْ ابْنِ عَبَّاسٍ، لِأَنَّ فِيهِ: وَقْتَ الظُّهْرِ إلَى وَقْتِ الْعَصْرِ، وَوَقْتُ الْمَغْرِبِ إلَى وَقْتِ الْعِشَاءِ؟ وَإِذَا اخْتَلَفَ الصَّحَابَةُ فَالرُّجُوعُ إلَى مَا افْتَرَضَ اللَّهُ تَعَالَى الرُّجُوعَ إلَيْهِ مِنْ الْقُرْآنِ وَالسُّنَّةِ.

L6148 He, the Exalted, said: "If you disagree over something, then refer it to Allah and the Messenger, if you believe in Allah and the Last Day." (Quran 4:59)[14]

قَالَ تَعَالَى: {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [النساء: ٥٩] .

L6149 **Issue: The time of Ẓuhr is perpetually longer than that of ʿAṣr in every time and place.**

[مَسْأَلَةٌ وَقْتُ الظُّهْرِ أَطْوَلُ مِنْ وَقْتِ الْعَصْرِ أَبَدًا فِي كُلِّ زَمَانٍ وَمَكَانٍ]

L6150–6152 Issue 337: Ali said: The time of Dhuhr is perpetually longer than the time of Asr in every time and place, because the sun begins passing the zenith at the start of the seventh hour, and the shadow of an upright object begins to

٣٣٧ - مَسْأَلَةٌ: قَالَ عَلِيٌّ: وَقْتُ الظُّهْرِ أَطْوَلُ مِنْ وَقْتِ الْعَصْرِ أَبَدًا فِي كُلِّ زَمَانٍ وَمَكَانٍ، لِأَنَّ الشَّمْسَ تَأْخُذُ فِي الزَّوَالِ فِي أَوَّلِ السَّاعَةِ السَّابِعَةِ، وَيَأْخُذُ ظِلُّ الْقَائِمِ

[14] **Qur'an references (L6148):** Qur'an 4:59 (An-Nisa).

increase beyond its equivalent length. The zenith time—after the removal of the shadow at zawāl—occurs at the beginning of the tenth hour. As for the period from its first fifth to its first third, this does not exceed that at all in any time or place. The duration of the dawn prayer perpetually equals the duration of the sunset prayer in every time and place, because the interval from the emergence of the true dawn until the first appearance of the sun corresponds to the interval from the end of sunset until the disappearance of the twilight—which is perpetually the redness—in every time and place. It expands in summer and contracts in winter due to the magnitude and smallness of the sun's arc.

L6153 The time of these two prayers is perpetually shorter than the time of Dhuhr and the time of Asr. This is because the time of Dhuhr constitutes a quarter of the day plus an additional portion, making it perpetually three temporal hours plus a portion of the differing hours. The time of Asr constitutes a quarter of the day minus a portion, making it perpetually three temporal hours minus a portion of the differing hours.

L6154 The time for Maghrib and the time for Fajr do not extend to that duration. The majority of the time, each of these two prayer times spans two hours, though it may sometimes be one and a quarter hours according to the differing hours—which are those that, on the longest day of the year and the shortest day of the year, consist of twelve hours each. Thus, they vary in length and brevity, as well as in form, and is there no difference? The most expansive of all prayer times is the time for *'Ishā'* (the night prayer), as it exceeds a third of the night, or a third of the night plus the duration of a *takbīrah* (saying *Allāhu Akbar*) in every time and place. Success is from Allah, the Exalted.

L6155 **A Legal Question Regarding the Clarification of Twilight and Dawn, Their Definitions, and the Classification of Their Types.**

L6156 Issue 338: Evening Twilight and Dawn.

فِي الزِّيَادَةِ عَلَى مِثْلِ الْقَائِمِ - بَعْدَ طَرْحِ ظِلِّ الزَّوَالِ - فِي صَدْرِ السَّاعَةِ الْعَاشِرَةِ، أَمَّا فِي خُمُسِهَا الْأَوَّلِ إِلَى ثُلُثِهَا الْأَوَّلِ: لَا يَتَجَاوَزُ ذَلِكَ أَصْلًا فِي كُلِّ زَمَانٍ وَمَكَانٍ؟ وَوَقْتُ صَلَاةِ الصُّبْحِ مُسَاوٍ لِوَقْتِ صَلَاةِ الْمَغْرِبِ أَبَدًا فِي كُلِّ زَمَانٍ وَمَكَانٍ، لِأَنَّ الَّذِي مِنْ طُلُوعِ الْفَجْرِ الثَّانِي إِلَى أَوَّلِ طُلُوعِ الشَّمْسِ، كَالَّذِي مِنْ آخِرِ غُرُوبِ الشَّمْسِ إِلَى غُرُوبِ الشَّفَقِ - الَّذِي هُوَ الْحُمْرَةُ أَبَدًا - فِي كُلِّ وَقْتٍ وَمَكَانٍ، يَتَّسِعُ فِي الصَّيْفِ، وَيَضِيقُ فِي الشِّتَاءِ، لِكِبَرِ الْقَوْسِ وَصِغَرِهِ.

وَوَقْتُ هَاتَيْنِ الصَّلَاتَيْنِ أَبَدًا: هُوَ أَقَلُّ مِنْ وَقْتِ الظُّهْرِ وَوَقْتِ الْعَصْرِ، لِأَنَّ وَقْتَ الظُّهْرِ هُوَ رُبُعُ النَّهَارِ وَزِيَادَةٌ؟ فَهُوَ أَبَدًا ثَلَاثُ سَاعَاتٍ، وَشَيْءٌ مِنَ السَّاعَاتِ الْمُخْتَلِفَةِ وَوَقْتُ الْعَصْرِ رُبُعُ النَّهَارِ غَيْرَ شَيْءٍ فَهُوَ أَبَدًا ثَلَاثُ سَاعَاتٍ، غَيْرَ شَيْءٍ مِنَ السَّاعَاتِ الْمُخْتَلِفَةِ.

وَلَا يَبْلُغُ ذَلِكَ وَقْتُ الْمَغْرِبِ وَلَا وَقْتُ الصُّبْحِ، وَأَكْثَرُ مَا يَكُونُ وَقْتُ كُلِّ صَلَاةٍ مِنْهُمَا سَاعَتَيْنِ، وَقَدْ يَكُونُ سَاعَةً وَاحِدَةً وَرُبُعَ سَاعَةٍ مِنَ السَّاعَاتِ الْمُخْتَلِفَةِ، وَهِيَ الَّتِي يَكُونُ مِنْهَا فِي أَطْوَلِ يَوْمٍ مِنَ السَّنَةِ، وَأَقْصَرِ يَوْمٍ مِنَ السَّنَةِ -: اثْنَتَا عَشْرَةَ، فَهِيَ تَخْتَلِفُ لِذَلِكَ فِي طُولِهَا وَقِصَرِهَا، وَفِي الْهَيْئَةِ أَيْضًا كَذَلِكَ، وَلَا فَرْقَ؟ وَأَوْسَعُهَا كُلُّهَا وَقْتُ الْعَتَمَةِ، لِأَنَّهُ أَزْيَدُ مِنْ ثُلُثِ اللَّيْلِ، أَوْ ثُلُثِ اللَّيْلِ وَمِقْدَارِ تَكْبِيرَةٍ فِي كُلِّ زَمَانٍ وَمَكَانٍ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فِي بَيَانِ الشَّفَقِ وَالْفَجْرِ وتعريفهما وَبَيَانِ أنواعهما]

٣٣٨ - مَسْأَلَةٌ: الشَّفَقُ، وَالْفَجْرُ.

قَالَ عَلِيٌّ -: الْفَجْرُ: فَجْرَانِ - وَالشَّفَقُ: شَفَقَانِ. وَالْفَجْرُ الْأَوَّلُ: هُوَ الْمُسْتَطِيلُ الْمُسْتَدَقُّ صَاعِدًا فِي الْفَلَكِ كَذَنَبِ السِّرْحَانِ، وَتَحْدُثُ بَعْدَهُ ظُلْمَةٌ فِي الْأُفُقِ -: لَا يَحْرُمُ الْأَكْلُ وَلَا الشُّرْبُ عَلَى الصَّائِمِ، وَلَا يَدْخُلُ بِهِ وَقْتُ صَلَاةِ الصُّبْحِ -: هَذَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ مِنْ الْأُمَّةِ كُلِّهَا. وَالْآخَرُ: هُوَ الْبَيَاضُ الَّذِي يَأْخُذُ فِي عَرْضِ السَّمَاءِ فِي أُفُقِ الْمَشْرِقِ فِي مَوْضِعِ طُلُوعِ الشَّمْسِ فِي كُلِّ زَمَانٍ، يَنْتَقِلُ بِانْتِقَالِهَا، وَهُوَ مُقَدِّمَةُ ضَوْئِهَا، وَيَزْدَادُ بَيَاضُهُ، وَرُبَّمَا كَانَ فِيهِ تَوْرِيدٌ بِحُمْرَةٍ بَدِيعَةٍ، وَبِتَبَيُّنِهِ يَدْخُلُ وَقْتُ الصَّوْمِ وَوَقْتُ الْأَذَانِ لِصَلَاةِ الصُّبْحِ وَوَقْتُ صَلَاتِهَا. فَأَمَّا دُخُولُ وَقْتِ الصَّلَاةِ بِتَبَيُّنِهِ؟ فَلَا خِلَافَ فِيهِ مِنْ أَحَدٍ مِنْ الْأُمَّةِ وَأَمَّا الشَّفَقَانِ: فَأَحَدُهُمَا الْحُمْرَةُ - وَالثَّانِي: الْبَيَاضُ، فَوَقْتُ الْمَغْرِبِ عِنْدَ ابْنِ أَبِي لَيْلَى، وَسُفْيَانَ الثَّوْرِيِّ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَالْحَسَنِ بْنِ حَيٍّ، وَدَاوُد وَغَيْرِهِمْ -: يَخْرُجُ وَيَدْخُلُ وَقْتُ صَلَاةِ الْعَتَمَةِ بِمَغِيبِ الْحُمْرَةِ؟ وَهُوَ قَوْلُ أَحْمَدَ بْنِ حَنْبَلٍ وَإِسْحَاقَ.

L6157–6159 Ali said: Dawn and twilight each have two types. The first dawn is the slender, tapering light rising in the celestial sphere like the tail of an Arabian oryx. And after it occurs, darkness on the horizon—eating and drinking are not prohibited for the fasting person, nor does the dawn prayer time commence thereby—there is no disagreement on this in the entire Ummah. The second sign is the whiteness that spreads across the breadth of the sky in the eastern horizon at the place of the sun's rising in every period, shifting with the sun's movement as a precursor to its light, increasing in whiteness; sometimes accompanied by a striking red hue. With its manifestation, the time for fasting commences, along with the time for the call to the dawn prayer and the time for performing it. As for the entry of the prayer time being marked by its manifestation, there is no disagreement on this in the entire Ummah. As for the two twilights: one is the redness, and the second is the whiteness. The time for Maghrib prayer—according to Ibn Abi Laylā, Sufyān al-Thawrī, Mālik, al-Shāfiʿī, Abū Yūsuf, Muḥammad ibn al-Ḥasan, al-Ḥasan ibn Ḥayy, Dāwūd, and others—ends and the time for Isha prayer begins with the disappearance of the redness. This is the opinion of Aḥmad ibn Ḥanbal and Isḥāq.

إِلَّا أَنَّ أَحْمَدَ قَالَ: يُسْتَحَبُّ - فِي الْحَضَرِ خَاصَّةً دُونَ السَّفَرِ -: أَنْ لَا يُصَلِّيَ إِلَّا إِذَا غَابَ الْبَيَاضُ؛ لِيَكُونَ عَلَى يَقِينٍ مِنْ مَغِيبِ الْحُمْرَةِ فَقَدْ تُوَارِيهَا الْجُدْرَانُ وَقَالَ أَبُو حَنِيفَةَ، وَعَبْدُ اللَّهِ بْنُ الْمُبَارَكِ، وَالْمُزَنِيُّ، وَأَبُو ثَوْرٍ: لَا يَخْرُجُ وَقْتُ الْمَغْرِبِ وَلَا يَدْخُلُ وَقْتُ الْعَتَمَةِ إِلَّا بِمَغِيبِ الْبَيَاضِ؟ قَالَ عَلِيٌّ: قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَدَّ خُرُوجَ وَقْتِ الْمَغْرِبِ، وَدُخُولَ وَقْتِ الْعَتَمَةِ بِمَغِيبِ نُورِ الشَّفَقِ، وَالشَّفَقُ: يَقَعُ فِي اللُّغَةِ عَلَى الْحُمْرَةِ، وَعَلَى الْبَيَاضِ.

L6160 However, Ahmad said: It is recommended (specifically when settled, not traveling) not to pray until the whiteness disappears, to be certain of the disappearance of the redness, for walls may obscure the redness. Abu Hanifah, Abdullah ibn al-Mubarak, al-Muzanni, and Abu Thawr said: Does the time of Maghrib not end and the time of al-ʿatamah (Isha) not begin except with the disappearance of the whiteness? Ali said: It has been authentically established that the Messenger of Allah (peace and blessings be upon him) defined the end of Maghrib's time and the beginning of al-ʿatamah's time with the disappearance of the twilight's light. Linguistically, "twilight" refers to both redness and whiteness.

L6161 Since that is the case, it is impermissible to restrict his statement—peace be upon him—without a textual proof or consensus. Thus, it is established that

when what is termed “twilight” disappears, the time for Maghrib has ended, and the time for ʿIshāʾ has commenced. Yet he—peace be upon him—never stated, “until all that is termed twilight vanishes?”

فَإِذْ ذَلِكَ كَذَلِكَ، فَلَا يَجُوزُ أَنْ يُخَصَّ قَوْلُهُ - عَلَيْهِ السَّلَامُ - بِغَيْرِ نَصٍّ وَلَا إِجْمَاعٍ، فَوَجَبَ أَنَّهُ إِذَا غَابَ مَا يُسَمَّى شَفَقًا فَقَدْ خَرَجَ وَقْتُ الْمَغْرِبِ، وَدَخَلَ وَقْتُ الْعَتَمَةِ وَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ - قَطُّ: حَتَّى يَغِيبَ كُلُّ مَا يُسَمَّى شَفَقًا؟ .

L6162–6163 And a decisive proof is that it has been established that the Messenger of Allah (peace and blessings be upon him) defined the time of the Isha prayer by stating that its beginning is when the twilight disappears, and its end is the first third of the night. It has also been narrated: half the night.

وَبُرْهَانٌ قَاطِعٌ، وَهُوَ: أَنَّهُ قَدْ ثَبَتَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَدَّ وَقْتَ الْعَتَمَةِ بِأَنَّ: أَوَّلَهُ إِذَا غَابَ الشَّفَقُ، وَآخِرَهُ: ثُلُثُ اللَّيْلِ الْأَوَّلِ، وَرُوِيَ أَيْضًا: نِصْفُ اللَّيْلِ.

L6164 Every person knowledgeable about celestial risings, settings, and the sun’s apparent motion knows that the white twilight does not disappear except at the first third of the night—which the Prophet (peace be upon him) designated as the period when the majority of the time has departed. Thus, it is established with certainty that its time enters with certainty before the first third of the night. The textual evidence confirms that it enters before the disappearance of the twilight, which is undeniably the white twilight. Since this is so, there is no valid opinion whatsoever except that it is unequivocally the red twilight, as its being the white twilight has been invalidated.

وَقَدْ عَلِمَ كُلُّ مَنْ لَهُ عِلْمٌ بِالْمَطَالِعِ، وَالْمَغَارِبِ، وَدَوَرَانِ الشَّمْسِ: أَنَّ الْبَيَاضَ لَا يَغِيبُ إِلَّا عِنْدَ ثُلُثِ اللَّيْلِ الْأَوَّلِ؛ وَهُوَ الَّذِي حَدَّ - عَلَيْهِ السَّلَامُ - خُرُوجَ أَكْثَرِ الْوَقْتِ فِيهِ، فَصَحَّ يَقِينًا أَنَّ وَقْتَهَا دَاخِلٌ قَبْلَ ثُلُثِ اللَّيْلِ الْأَوَّلِ بِيَقِينٍ، فَقَدْ ثَبَتَ بِالنَّصِّ أَنَّهُ دَاخِلٌ قَبْلَ مَغِيبِ الشَّفَقِ، الَّذِي هُوَ الْبَيَاضُ بِلَا شَكٍّ فَإِذْ ذَلِكَ كَذَلِكَ فَلَا قَوْلَ أَصْلًا إِلَّا أَنَّهُ: الْحُمْرَةُ بِيَقِينٍ؛ إِذْ قَدْ بَطَلَ كَوْنُهُ: الْبَيَاضَ.

L6165 Those who emulated Abū Ḥanīfah argued by saying: “If we pray at the disappearance of the white twilight, we are certain—through scholarly consensus—that we have prayed within the prescribed time. But if we pray before that, have we not prayed without the certainty of performing it during the time established by consensus?” ʿAlī replied: “This is invalid, for if they were to adopt this principle, it would nullify the preponderant doctrine of their school. One would then ask: Would this not equally apply to ablution with date wine, inhaling water into the nostrils and expelling it during purification, reciting the Opening Chapter of the Quran, maintaining tranquility in prayer, and every disputed matter that invalidates fasting or pilgrimage, as well as matters in which zakāt is obligatory? They would thereby be compelled to refrain from performing any act of the Sharīʿah until no two people disagree that they have fulfilled it exactly as they were commanded.”

وَاحْتَجَّ مَنْ قَلَّدَ أَبَا حَنِيفَةَ بِأَنْ قَالَ: إِذَا صَلَّيْنَا عِنْدَ غُرُوبِ الْبَيَاضِ فَنَحْنُ عَلَى يَقِينٍ - بِإِجْمَاعٍ - أَنَّنَا قَدْ صَلَّيْنَا عِنْدَ الْوَقْتِ، وَإِنْ صَلَّيْنَا قَبْلَ ذَلِكَ، فَلَمْ نُصَلِّ بِيَقِينِ إِجْمَاعٍ فِي الْوَقْتِ؟ قَالَ عَلِيٌّ: هَذَا لَيْسَ شَيْئًا؛ لِأَنَّهُ إِنْ الْتَزَمُوهُ؟ أَبْطَلَ عَلَيْهِمْ جُمْهُورَ مَذْهَبِهِمْ فَيُقَالُ: مِثْلُ هَذَا فِي الْوُضُوءِ بِالنَّبِيذِ، وَفِي الِاسْتِنْشَاقِ، وَالِاسْتِنْثَارِ، وَقِرَاءَةِ أُمِّ الْقُرْآنِ، وَالطُّمَأْنِينَةِ، وَكُلِّ مَا اُخْتُلِفَ فِيهِ مِمَّا يُبْطِلُ الصَّوْمَ وَالْحَجَّ، وَمِمَّا تَجِبُ فِيهِ الزَّكَاةُ؟ فَيَلْزَمُهُمْ أَنْ لَا يُؤَدُّوا عَمَلًا مِنْ الشَّرِيعَةِ إِلَّا حَتَّى لَا يَخْتَلِفَ اثْنَانِ فِي أَنَّهُمْ قَدْ أَدَّوْهُ كَمَا أُمِرُوا.

وَمَعَ هَذَا لَا يَصِحُّ لَهُمْ مِنْ مَذْهَبِهِمْ جُزْءٌ مِنْ مِائَةِ جُزْءٍ بِلَا شَكٍّ وَذَكَرُوا حَدِيثَ النُّعْمَانِ بْنِ بَشِيرٍ: «أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يُصَلِّي الْعَتَمَةَ لِسُقُوطِ الْقَمَرِ لَيْلَةَ ثَالِثَةٍ» .

L6166 Despite this, not even a hundredth part of their school's doctrine holds validity for them—without doubt. They cited the hadith of al-Nu'mān ibn Bashīr: "that the Prophet (peace be upon him) used to pray the late-night prayer when the moon sets on the third night."

وَلَوْ كَانَ لَكَانَ أَعْظَمَ حُجَّةً لَنَا، لِأَنَّ الشَّفَقَ الْأَبْيَضَ يَبْقَى بَعْدَ هَذِهِ مُدَّةً طَوِيلَةً بِلَا خِلَافٍ، وَاحْتَجَّ بَعْضُهُمْ بِالْأَثَرِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُصَلِّي الْعِشَاءَ الْآخِرَةَ إِذَا اسْوَدَّ اللَّيْلُ» وَبَقَاءُ الْبَيَاضِ يَمْنَعُ مِنْ سَوَادِ الْأُفُقِ.

L6167 If it were so, it would have been a greater proof for us, because the white twilight persists after this for an extended period without disagreement. Some of them cited the narration as evidence: "The Messenger of Allah (peace be upon him) used to pray Isha at its latter time when the night grew dark," and the remaining whiteness prevents the horizon from darkening.

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِأَنَّهُ يُصَلِّي الْعَتَمَةَ مَعَ بَيَاضِ الْقَمَرِ، وَهُوَ أَمْنَعُ مِنْ سَوَادِ الْأُفُقِ عَلَى أُصُولِهِمْ: مِنْ الْبَيَاضِ الْبَاقِي بَعْدَ الْحُمْرَةِ، الَّذِي لَا يَمْنَعُ مِنْ سَوَادِ الْأُفُقِ؛ لِقِلَّتِهِ وَدِقَّتِهِ؟ .

L6168–6170 Ali said: This is a mistake; for one prays Isha during the moon's brightness, which is more restricted than its darkness. Is the horizon, according to their principles, determined by the residual whiteness after the redness; which does not obstruct the obscuration of the horizon due to its scarcity and fineness?

وَذَكَرُوا حَدِيثَ النُّعْمَانِ بْنِ بَشِيرٍ: «أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يُصَلِّي الْعَتَمَةَ لِسُقُوطِ لَيْلَةِ ثَالِثَةٍ» ، وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّنَا لَا نَمْنَعُ مِنْ ذَلِكَ، وَلَا مِنْ تَأْخِيرِهَا إلَى نِصْفِ اللَّيْلِ، بَلْ هُوَ أَفْضَلُ، وَلَيْسَ فِي هَذَا الْمَنْعُ مِنْ دُخُولِ وَقْتِهَا قَبْلَ ذَلِكَ؟ وَذَكَرُوا حَدِيثًا سَاقِطًا مَوْضُوعًا، فِيهِ «أَنَّهُ - عَلَيْهِ السَّلَامُ - صَلَّى الْعَتَمَةَ قَبْلَ غُرُوبِ الشَّفَقِ» .

L6171 They cited the hadith of Nu'mān ibn Bashīr: "He (peace be upon him) prayed the Isha prayer upon the passing of the third part of the night." This provides no evidence for their position, for we neither forbid this nor do we forbid delaying it until midnight—rather, this is preferable. But does this not indicate a prohibition against the beginning of its time before that? They also cited a rejected and fabricated hadith claiming: "He (peace be upon him) prayed the Isha prayer before the disappearance of the twilight."

وَهَذَا لَوْ صَحَّ - وَمَعَاذَ اللَّهِ مِنْ ذَلِكَ - لَمَا كَانَ فِيهِ إلَّا جَوَازُ الصَّلَاةِ قَبْلَ وَقْتِهَا، وَهُوَ خِلَافُ قَوْلِهِمْ وَقَوْلِنَا وَذَكَرُوا عَنْ ثَعْلَبٍ: أَنَّ الشَّفَقَ: الْبَيَاضُ قَالَ عَلِيٌّ: لَسْنَا نُنْكِرُ أَنَّ الشَّفَقَ: الْبَيَاضُ، وَالشَّفَقُ: الْحُمْرَةُ، وَلَيْسَ ثَعْلَبٌ حُجَّةً فِي الشَّرِيعَةِ إلَّا فِي نَقْلِهِ، فَهُوَ ثِقَةٌ، وَأَمَّا فِي رَأْيِهِ فَلَا؟ وَأَظْرَفُ ذَلِكَ احْتِجَاجُ بَعْضِهِمْ: بِأَنَّ الشَّفَقَ: مُشْتَقٌّ مِنْ الشَّفَقَةِ، وَهِيَ الرِّقَّةُ، وَيُقَالُ: ثَوْبٌ شَفِيقٌ إذَا كَانَ رَقِيقًا.

L6172 If this were valid—and God forbid that—there would be in it nothing but the permissibility of prayer before its prescribed time, which contradicts both their view and ours. They cited from Tha'lab that "evening twilight (al-shaqaq) is the whiteness." 'Ali said: "We do not deny that twilight refers to the whiteness, while twilight [elsewhere] denotes the redness, but Tha'lab is not an authority in Islamic law except in his transmission, for he is reliable; however, as for his opinion, then no." The most elegant example of this is the argument by some of them that "twilight" is derived from "tenderness," meaning gentleness, and it is said: "A garment is *shafīq* if it is thin."

L6173–6175 They said: Whiteness is more entitled to this because it consists of delicate

parts that remain after the redness. ʿAlī said: This is delusion—let that suffice you! If it were said to them: Rather, redness is more deserving, for it arises from compassion and modesty—is all this not confusion that is more inclined to frivolity than seriousness? Some of them said: Since the time for the dawn prayer begins with the second dawn, it follows that the time for the ʿAtama (Isha) prayer should begin with the second twilight. They were countered by the argument that since dawn has two dawns and the entry time for the dawn prayer begins... At the dawn accompanied by redness, it is obligatory for the time of Isha (الْعَتَمَةِ) to begin with the twilight accompanied by redness.

قَالُوا: وَالْبَيَاضُ أَحَقُّ بِهَذَا، لِأَنَّهَا أَجْزَاءٌ رَقِيقَةٌ تَبْقَى بَعْدَ الْحُمْرَةِ قَالَ عَلِيٌّ: وَهَذَا هَوَسٌ نَاهِيك بِهِ فَإِنْ قِيلَ لَهُمْ: بَلْ الْحُمْرَةُ أَوْلَى بِهِ، لِأَنَّهَا تَتَوَلَّدُ عَنْ الْإِشْفَاقِ وَالْحَيَاءِ، وَكُلُّ هَذَا تَخْلِيطٌ هُوَ فِي الْهَزْلِ أَدْخَلُ مِنْهُ فِي الْجِدِّ؟ وَقَالَ بَعْضُهُمْ: لَمَّا كَانَ وَقْتُ صَلَاةِ الْفَجْرِ يَدْخُلُ بِالْفَجْرِ الثَّانِي: وَجَبَ أَنْ يَدْخُلَ وَقْتُ صَلَاةِ الْعَتَمَةِ بِالشَّفَقِ الثَّانِي؟ فَعُورِضُوا بِأَنَّهُ لَمَّا كَانَ الْفَجْرُ فَجْرَيْنِ، وَكَانَ دُخُولُ وَقْتِ صَلَاةِ الْفَجْرِ يَدْخُلُ بِالْفَجْرِ الَّذِي مَعَهُ الْحُمْرَةُ: - وَجَبَ أَنْ يَكُونَ دُخُولُ وَقْتِ الْعَتَمَةِ بِالشَّفَقِ الَّذِي مَعَهُ الْحُمْرَةُ.

They also argued: Since the redness preceding sunrise has no effect on ending the time for Fajr prayer, must it not likewise have no effect on ending the time for Maghrib prayer? They were countered by the rebuttal: Just as there are three types of dawns and three types of dusks, and the ruling for entering the time of Fajr prayer pertains to the middle dawn, so too must the ruling for entering the time of Isha prayer pertain to the middle dusk. All these are confused notions, invalid assertions, and mutually deceptive claims. We have mentioned them only so that those whom Allah—the Exalted—has favored by guiding them to invalidate analogy in religious matters might recognize the greatness of Allah's favor upon them in this, and so that those who erred by adopting such views might come to realize. Our success comes only from Allah, the Exalted.

وَقَالُوا أَيْضًا: لَمَّا كَانَتْ الْحُمْرَةُ الَّتِي هِيَ مُقَدِّمَةُ طُلُوعِ الشَّمْسِ لَا تَأْثِيرَ لَهَا فِي خُرُوجِ وَقْتِ صَلَاةِ الْفَجْرِ -: وَجَبَ أَنْ يَكُونَ أَيْضًا لَا تَأْثِيرَ لَهَا فِي خُرُوجِ وَقْتِ الْمَغْرِبِ؟ فَعُورِضُوا بِأَنَّهُ لَمَّا كَانَتْ الطَّوَالِعُ: ثَلَاثَةً، وَالْغَوَارِبُ ثَلَاثَةً، وَكَانَ الْحُكْمُ فِي دُخُولِ وَقْتِ صَلَاةِ الصُّبْحِ لِلْأَوْسَطِ مِنْ الطَّوَالِعِ وَجَبَ أَنْ يَكُونَ الْحُكْمُ فِي دُخُولِ صَلَاةِ الْعَتَمَةِ لِلْأَوْسَطِ مِنْ الْغَوَارِبِ وَهَذِهِ كُلُّهَا تَخَالِيطُ وَدَعَاوَى فَاسِدَةٌ مُتَكَاذِبَةٌ، وَإِنَّمَا أَوْرَدْنَاهَا لِيَعْلَمَ مَنْ أَنْعَمَ اللَّهُ تَعَالَى عَلَيْهِ بِأَنْ هَدَاهُ لِإِبْطَالِ الْقِيَاسِ فِي الدِّينِ -: عَظِيمَ نِعْمَةِ اللَّهِ تَعَالَى عَلَيْهِ فِي ذَلِكَ، وَلِيَتَبَصَّرَ مَنْ غَلِطَ فَقَالَ بِهِ - وَمَا تَوْفِيقُنَا إلَّا بِاَللَّهِ تَعَالَى.

L6176

A legal issue: One who pronounced the *takbīr* for an obligatory prayer while uncertain whether its time had commenced.

[مَسْأَلَةٌ كَبَّرَ لِصَلَاةِ فَرْضٍ وَهُوَ شَاكٌّ هَلْ دَخَلَ وَقْتُهَا أَمْ لَا]

L6177

339 – Issue: If someone begins an obligatory prayer with Takbīr while doubting whether its time has commenced, his prayer is not valid. This applies whether the time had actually begun or not, for he performed it contrary to what he was commanded. He was commanded solely to begin it within its prescribed time. The Messenger of Allah—peace and blessings

٣٣٩ - مَسْأَلَةٌ: وَمَنْ كَبَّرَ لِصَلَاةِ فَرْضٍ، وَهُوَ شَاكٌّ هَلْ دَخَلَ وَقْتُهَا أَمْ لَا؟ لَمْ تُجْزِهِ: سَوَاءٌ وَافَقَ الْوَقْتَ أَمْ لَمْ يُوَافِقْهُ، لِأَنَّهُ صَلَّاهَا بِخِلَافِ مَا أُمِرَ؟ وَإِنَّمَا أُمِرَ أَنْ يَبْتَدِئَهَا فِي وَقْتِهَا، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

of Allah be upon him—said, “Whoever performs an action that is not in accordance with our teachings, it is rejected.”[15]

[مَسْأَلَةٌ بَدَأَ الصَّلَاةَ وَهُوَ مُوقِنٌ بِأَنَّ وَقْتَهَا قَدْ دَخَلَ فَإِذَا بِالْوَقْتِ لَمْ يَكُنْ دَخَلَ]

٣٤٠ - مَسْأَلَةٌ: فَلَوْ بَدَأَهَا وَهُوَ عِنْدَ نَفْسِهِ مُوقِنٌ بِأَنَّ وَقْتَهَا قَدْ دَخَلَ؟ فَإِذَا بِالْوَقْتِ لَمْ يَكُنْ دَخَلَ لَمْ تُجْزِهِ أَيْضًا؛ لِأَنَّهُ لَمْ يُصَلِّهَا كَمَا أُمِرَ؛ وَلَا يُجْزِئُهُ إِلَّا حَتَّى يُوقِنَ أَنَّهُ الْوَقْتُ؛ وَيَكُونُ الْوَقْتُ قَدْ دَخَلَ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مِنْ رَكَعَ رَكْعَتَيْ الْفَجْرِ اضْطَجَعَ عَلَى شِقِّهِ الْأَيْمَنِ]

٣٤١ - مَسْأَلَةٌ: كُلُّ مَنْ رَكَعَ رَكْعَتَيْ الْفَجْرِ لَمْ تُجْزِهِ صَلَاةُ الصُّبْحِ إِلَّا بِأَنْ يَضْطَجِعَ عَلَى شِقِّهِ الْأَيْمَنِ بَيْنَ سَلَامِهِ مِنْ رَكْعَتَيْ الْفَجْرِ، وَبَيْنَ تَكْبِيرِهِ لِصَلَاةِ الصُّبْحِ.

وَسَوَاءٌ - عِنْدَنَا - تَرْكُ الضَّجْعَةِ عَمْدًا أَوْ نِسْيَانًا، وَسَوَاءٌ صَلَّاهَا فِي وَقْتِهَا أَوْ صَلَّاهَا قَاضِيًا لَهَا مِنْ نِسْيَانٍ، أَوْ عَمْدِ نَوْمٍ.

فَإِنْ لَمْ يُصَلِّ رَكْعَتَيْ الْفَجْرِ لَمْ يَلْزَمْهُ أَنْ يَضْطَجِعَ، فَإِنْ عَجَزَ عَنْ الضَّجْعَةِ عَلَى الْيَمِينِ لِخَوْفٍ، أَوْ مَرَضٍ، أَوْ غَيْرِ ذَلِكَ أَشَارَ إِلَى ذَلِكَ حَسْبَ طَاقَتِهِ فَقَطْ؟ .

بُرْهَانُ ذَلِكَ -: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ السَّلِيمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا عُبَيْدُ اللَّهِ بْنُ عُمَرَ بْنِ مَيْسَرَةَ ثنا عَبْدُ الْوَاحِدِ هُوَ ابْنُ زِيَادٍ - ثنا الْأَعْمَشُ عَنْ أَبِي صَالِحٍ هُوَ السَّمَّانُ - عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا صَلَّى أَحَدُكُمْ الرَّكْعَتَيْنِ قَبْلَ الصُّبْحِ فَلْيَضْطَجِعْ عَلَى يَمِينِهِ» ؟ .

L6179 **A scenario where someone begins performing the prayer while being certain that its prescribed time had begun, but it turns out the time had not actually commenced.**

L6180 Issue 340: If he begins the prayer while being certain within himself that its time has commenced, yet the time had not actually begun, it does not suffice him either, because he did not perform it as commanded. It will not suffice unless he attains certainty that the time has commenced and the time has indeed begun—and success is by Allah, the Exalted.

L6181 **A question regarding one who has prayed the two Rak’ahs of Fajr and then lay down upon his right side.**

L6182 341 – Issue: Anyone who performs the two Rak’ahs of Fajr, his Fajr prayer is not valid unless he lies on his right side between his Salam from the two Rak’ahs of Fajr and his Takbir for the Fajr prayer.

L6183 In our school, it makes no difference whether omitting the reclining was intentional or due to forgetfulness; and it makes no difference whether one prayed during its prescribed time or performed its makeup due to forgetfulness or due to intentional sleep.

L6184–6186 If he did not pray the two rak’ahs of Fajr, he is not obligated to lie down. And if he is unable to lie down upon... “Is his indication of the oath due to fear, illness, or other such reasons sufficient only according to his capacity?”

L6187 The proof of that is: what was narrated to us by Abdullah ibn Rabīʿ, who narrated to us Ibn al-Sulaym, who narrated to us Ibn al-Aʿrābī, who narrated to us Abū Dāwūd, who narrated to us ʿUbaydullāh ibn ʿUmar ibn Maysarah, who narrated to us ʿAbd al-Wāḥid – that is Ibn Ziyād – who narrated to us al-Aʿmash, from Abū Ṣāliḥ – that is al-Sammān – from Abū Hurayrah, who

[15] **Hadith references (L6178):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

said: The Messenger of Allah (peace and blessings be upon him) said: "When one of you prays the two rakʿahs before dawn, let him recline on his right side."[16]

فَقَالَ لَهُ مَرْوَانُ بْنُ الْحَكَمِ: مَا يُجْزِئُ أَحَدَنَا مَمْشَاهُ إِلَى الْمَسْجِدِ حَتَّى يَضْطَجِعَ عَلَى يَمِينِهِ؟ قَالَ أَبُو هُرَيْرَةَ: لَا، فَبَلَغَ ذَلِكَ ابْنَ عُمَرَ، فَقَالَ: أَكْثَرَ أَبُو هُرَيْرَةَ عَلَى نَفْسِهِ فَقِيلَ لِابْنِ عُمَرَ عِنْدَهَا: تُنْكِرُ شَيْئًا مِمَّا يَقُولُ؟ قَالَ: لَا، وَلَكِنَّهُ اجْتَرَأَ وَجَبُنَّا، فَبَلَغَ ذَلِكَ أَبَا هُرَيْرَةَ، فَقَالَ: فَمَا ذَنْبِي إِنْ كُنْت حَفِظْت وَنَسُوا؟ .

L6188 Marwan ibn al-Hakam said to him, "Is walking to the mosque sufficient for any of us without lying on his right side [afterward]?" Abu Hurairah replied, "No." When this reached Ibn Umar, he remarked, "Abu Hurairah has exaggerated." Someone then asked Ibn Umar, "Do you reject anything he says?" He answered, "No, but he acted boldly while we acted cowardly." When this reached Abu Hurairah, he responded, "What is my fault if I preserved and they forgot?"

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ عَاصِمِ بْنِ رَجَاءِ بْنِ حَيْوَةُ عَنْ أَبِيهِ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ قَالَ: مَرَّ بِي أَبُو الدَّرْدَاءِ مِنْ آخِرِ اللَّيْلِ وَأَنَا أُصَلِّي؟ فَقَالَ: افْصِلْ بِضَجْعَةٍ بَيْنَ صَلَاةِ اللَّيْلِ، وَصَلَاةِ النَّهَارِ.

L6189 And it has been narrated to us through the chain of Waki', from ʿĀṣim ibn Rajāʾ ibn Ḥaywah, from his father, from Qabīṣah ibn Dhu'ayb, who said: Abū al-Dardāʾ passed by me at the end of the night while I was praying. He said: "Interpose a period of lying down between the night prayer and the daytime prayer."

قَالَ عَلِيٌّ: وَقَدْ أَوْضَحْنَا أَنَّ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلَّهُ عَلَى الْفَرْضِ، حَتَّى يَأْتِيَ نَصٌّ آخَرُ أَوْ إجْمَاعٌ مُتَيَقَّنٌ غَيْرُ مُدَّعًى بِالْبَاطِلِ -: عَلَى أَنَّهُ نَدْبٌ، فَنَقِفُ عِنْدَهُ، وَإِذَا تَنَازَعَ الصَّحَابَةُ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمْ - فَالرَّدُّ إلَى كَلَامِ اللَّهِ تَعَالَى وَكَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L6190 Ali said: We have clarified that every command of the Messenger of Allah (peace and blessings of Allah be upon him) remains obligatory until another textual evidence emerges or a conclusively established consensus—not wrongfully asserted—indicates it is recommended. In such cases, we adhere to it. If the Companions (may Allah the Exalted be pleased with them) disagree, the matter is referred back to the Book of Allah the Exalted and the Sunnah of His Messenger (peace and blessings of Allah be upon him).

فَإِنْ قَالُوا: قَدْ وَرَدَ إنْكَارُ الضَّجْعَةِ عَنْ ابْنِ مَسْعُودٍ؟ قُلْنَا: نَعَمْ، وَخَالَفَهُ أَبُو هُرَيْرَةَ، وَمَعَ أَبِي هُرَيْرَةَ سُنَّةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَمْرِهِ وَعَمَلِهِ.

L6191 If they say, "It has been reported that Ibn Masʿūd rejected reclining (al-ḍajʿah)," we say: Yes, but Abū Hurairah differed from him, and with Abū Hurairah is found the Sunnah of the Messenger of Allah (peace be upon him) in the Prophet's directives and actions.

وَإِنْ كَانَ إنْكَارُ ابْنِ مَسْعُودٍ: حُجَّةً عَلَى غَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمْ -: فَقَدْ أَنْكَرَ - رَضِيَ اللَّهُ عَنْهُ -: وَضْعَ الْأَيْدِي عَلَى الرُّكَبِ فِي الصَّلَاةِ، وَضَرْبَ الْيَدَيْنِ

L6192–6194 If Ibn Masʿūd's rejection—may Allah be pleased with him—constitutes an argument against other Companions—may Allah the Exalted be pleased with them—then he indeed rejected placing the hands on the knees during prayer and struck his hands together disapprovingly against it. He also rejected

[16] **Hadith references (L6187):** Sunan Abi Dawud 1261.

shortening prayers except during Ḥajj, ʿUmrah, or Jihād. And he disapproved of reciting the Qur'an in a night? Why did you fail to heed his disapproval? Now have you recovered this Sunnah?

L6195 They said: "If lying on one's side were an obligation, it would not have been unknown to Ibn Mas'ud and Ibn Umar?" We replied: "Then why do you not say the same regarding Uthman - may Allah be pleased with him - completing prayers at Mina, and Aisha and Sa'd - may Allah be pleased with them - completing prayers? Say: If shortening prayers were a sunnah, it would not have been unknown to these individuals. Why do you not say: If sitting at the prayer's conclusion were obligatory, it would not have been unknown to Ali ibn Abi Talib - may Allah be pleased with him - when he states: 'When you raise your head from the final prostration in your prayer, your prayer is complete. Then stand if you wish, or sit if you prefer?'" Such examples are exceedingly numerous. This is merely a pretext they resort to when their position becomes untenable, and yet they are the first to abandon it? Success is from Allah, the Exalted.

L6196 If they say: "Then is the prayer invalidated for those among the Companions—may Allah be pleased with them—and others who did not recline?" We respond: "The mujtahid is rewarded for praying even if the scriptural text was unclear to him. The ruling applies only to one against whom the proof has been established, yet he persists in obstinacy."

L6197 Then we turn their own argument against them, saying to the Malikis and Shafiʿis: Do you deem the prayer of Ibn Masʿūd and those who concurred with him invalid when he prayed without considering wuḍūʾ obligatory after touching the penis? And we say to the Hanafis: Do you deem the prayer of Ibn ʿUmar and Abū Hurayrah invalid when they were praying while blood issued from the nose of one of them and from a pimple on the other's face, yet they did not perform wuḍūʾ for that reason?

L6198–6200 And we say to all of them: Do you consider the prayers of Uthman, Ali, Talha, al-Zubayr, Ibn Abbas, Ubayy ibn Kaʿb, Abu Ayyub, Zayd, and others—to have been invalid when they held the view that one who engages in intercourse without ejaculation is not obligated to perform the ritual bath, and issued

عَلَى ذَلِكَ؟ وَقَدْ أَنْكَرَ قَصْرَ الصَّلَاةِ إِلَّا فِي حَجٍّ، أَوْ عُمْرَةٍ، أَوْ جِهَادٍ وَأَنْكَرَ قِرَاءَةَ الْقُرْآنِ فِي لَيْلَةٍ؟ فَمَا الْتَفَتُّمْ إِنْكَارَهُ فَالْآنَ اسْتَدْرَكْتُمْ هَذِهِ السُّنَّةَ؟ .

وَقَالُوا: لَوْ كَانَتْ الضَّجْعَةُ فَرْضًا لَمَا خَفِيَتْ عَلَى ابْنِ مَسْعُودٍ وَابْنِ عُمَرَ؟ فَقُلْنَا لَهُمْ: فَهَلَّا قُلْتُمْ مِثْلَ هَذَا فِي إِتْمَامِ عُثْمَانَ - رَضِيَ اللَّهُ تَعَالَى عَنْهُ - بِمِنًى، وَإِتْمَامِ عَائِشَةَ وَسَعْدٍ - رَضِيَ اللَّهُ عَنْهُمَا -؟ فَقُولُوا: لَوْ كَانَ قَصْرُ الصَّلَاةِ سُنَّةً مَا خَفِيَ عَلَى هَؤُلَاءِ وَهَلَّا قُلْتُمْ: لَوْ كَانَ الْجُلُوسُ فِي آخِرِ الصَّلَاةِ فَرْضًا مَا خَفِيَ عَلَى عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - حِينَ يَقُولُ: إذَا رَفَعْت رَأْسَك مِنْ آخِرِ صَلَاتِك مِنْ السُّجُودِ فَقَدْ تَمَّتْ صَلَاتُك، فَإِنْ شِئْت فَقُمْ، وَإِنْ شِئْت فَاقْعُدْ؟ وَمِثْلُ هَذَا كَثِيرٌ جِدًّا، وَإِنَّمَا هُوَ شَيْءٌ يَفْزَعُونَ إلَيْهِ إذَا ضَاقَ بِهِمْ الْمَجَالُ ثُمَّ هُمْ أَوَّلُ تَارِكٍ لَهُ؟ ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَإِنْ قَالُوا: فَبَطَلَتْ صَلَاةُ مَنْ لَمْ يَضْطَجِعْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَغَيْرِهِمْ؟ قُلْنَا: إنَّ الْمُجْتَهِدَ مَأْجُورٌ يُصَلِّي، وَإِنْ خَفِيَ عَلَيْهِ النَّصُّ، وَإِنَّمَا الْحُكْمُ فِيمَنْ قَامَتْ عَلَيْهِ الْحُجَّةُ فَعَنَدَ.

ثُمَّ نَعْكِسُ قَوْلَهُمْ عَلَيْهِمْ، فَنَقُولُ لِلْمَالِكِيِّينَ وَالشَّافِعِيِّينَ: أَتَرَى بَطَلَتْ صَلَاةُ ابْنِ مَسْعُودٍ وَمَنْ وَافَقَهُ، إذَا كَانَ يُصَلِّي، وَلَا يَرَى الْوُضُوءَ مِنْ مَسِّ الذَّكَرِ؟ وَنَقُولُ لِلْحَنَفِيِّينَ: أَتَرَى صَلَاةَ ابْنِ عُمَرَ، وَأَبِي هُرَيْرَةَ فَاسِدَةً، إذْ كَانَا يُصَلِّيَانِ، وَقَدْ خَرَجَ مِنْ أَنْفِ أَحَدِهِمَا دَمٌ، وَمِنْ بَثْرَةٍ بِوَجْهِ الْآخَرِ دَمٌ فَلَمْ يَتَوَضَّأْ لِذَلِكَ؟ .

وَنَقُولُ لِجَمِيعِهِمْ: أَتَرَوْنَ صَلَاةَ عُثْمَانَ، وَعَلِيٍّ، وَطَلْحَةَ، وَالزُّبَيْرِ، وَابْنِ عَبَّاسٍ، وَأُبَيِّ بْنِ كَعْبٍ، وَأَبِي أَيُّوبَ، وَزَيْدٍ، وَغَيْرِهِمْ -: كَانَتْ فَاسِدَةً إذَا كَانُوا يَرَوْنَ: أَنَّ مَنْ وَطِئَ

وَلَمْ يُنْزِلْ فَلَا غُسْلَ عَلَيْهِ، وَيُفْتُونَ بِذَلِكَ؟ وَمِثْلُ هَذَا كَثِيرٌ جِدًّا، يَعُودُ عَلَى مَنْ لَمْ يَكُنْ بِيَدِهِ حُجَّةٌ غَيْرُ التَّشْنِيعِ وَهُوَ عَائِدٌ عَلَيْهِمْ؛ لِأَنَّهُمْ أَشَدُّ خِلَافًا عَلَى الصَّحَابَةِ مِنَّا، وَسُؤَالُهُمْ هَذَا لَازِمٌ لِأَبِي هُرَيْرَةَ كَلُزُومِهِ لَنَا وَلَا فَرْقَ؟ .

fatwas based on this view? Many such examples exist. This applies to those who had no argument except condemnation—a criticism that rebounds onto them, for they were more vehement in opposition to the Companions than we were. Is this question of theirs as binding upon Abū Hurayrah as it is binding upon us, without any distinction?

L6201 حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَبْدُ اللَّهِ بْنُ يَزِيدَ هُوَ الْمُقْرِي - ثنا سَعِيدُ بْنُ أَبِي أَيُّوبَ حَدَّثَنِي أَبُو الْأَسْوَدِ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ قَالَتْ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا صَلَّى رَكْعَتَيْ الْفَجْرِ اضْطَجَعَ عَلَى شِقِّهِ الْأَيْمَنِ» ؟ .

Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us from al-Farbari, who narrated to us from al-Bukhari, who narrated to us from Abdullah ibn Yazid (he is al-Muqri), who narrated to us from Sa'id ibn Abi Ayyub, who narrated to me from Abu al-Aswad, from Urwah ibn al-Zubayr, from Aisha, who said: "When the Messenger of Allah—peace and blessings be upon him—prayed the two rak'ahs of Fajr, he would recline on his right side?"

L6202 قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ: أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ وَأَصْحَابَهُ كَانُوا إذَا صَلَّوْا رَكْعَتَيْ الْفَجْرِ اضْطَجَعُوا وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: أُنْبِئْت: أَنَّ أَبَا رَافِعٍ، وَأَنَسَ بْنَ مَالِكٍ وَأَبَا مُوسَى، كَانُوا يَضْطَجِعُونَ عَلَى أَيْمَانِهِمْ إذَا صَلَّوْا رَكْعَتَيْ الْفَجْرِ؟ .

Ali said: It was narrated to us through the chain of Ḥammād ibn Salamah from Thābit al-Bunānī that Abū Mūsā al-Ashʿarī and his companions would lie on their sides when they prayed the two rakʿahs of Fajr. And through the chain of al-Ḥajjāj ibn al-Minhāl from Jarīr ibn Ḥāzim from Muḥammad ibn Sīrīn, he said: It was conveyed to me that Abū Rāfiʿ, Anas ibn Mālik, and Abū Mūsā would lie on their right sides when they prayed the two rakʿahs of Fajr?

L6203 وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ عُثْمَانَ بْنِ غِيَاثٍ هُوَ ابْنُ عُثْمَانَ - أَنَّهُ حَدَّثَهُ قَالَ: كَانَ الرَّجُلُ يَجِيءُ وَعُمَرُ بْنُ الْخَطَّابِ يُصَلِّي بِالنَّاسِ الصُّبْحَ فَيُصَلِّي رَكْعَتَيْنِ فِي مُؤَخَّرِ الْمَسْجِدِ وَيَضَعُ جَنْبَهُ فِي الْأَرْضِ وَيَدْخُلُ مَعَهُ فِي الصَّلَاةِ.

And from the transmission of Yaḥyā ibn Saʿīd al-Qaṭṭān, from ʿUthmān ibn Ghayyāth (who is the son of ʿUthmān), that he narrated to him, saying: A man would arrive while ʿUmar ibn al-Khaṭṭāb was leading the people in the dawn prayer. The man would pray two rakʿahs at the back of the mosque, place his side on the ground, and join ʿUmar in the prayer.

L6204 وَذَكَرَ عَبْدُ الرَّحْمَنِ بْنُ زَيْدٍ فِي " كِتَابِ السَّبْعَةِ " أَنَّهُمْ - يَعْنِي: سَعِيدَ بْنَ الْمُسَيِّبِ، وَالْقَاسِمَ بْنَ مُحَمَّدِ بْنِ أَبِي بَكْرٍ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَأَبَا بَكْرِ بْنَ عَبْدِ الرَّحْمَنِ، وَخَارِجَةَ بْنَ زَيْدِ بْنِ ثَابِتٍ، وَعُبَيْدَ اللَّهِ بْنَ عَبْدِ اللَّهِ بْنِ عُتْبَةَ، وَسُلَيْمَانَ بْنَ يَسَارٍ -: كَانُوا يَضْطَجِعُونَ عَلَى أَيْمَانِهِمْ بَيْنَ رَكْعَتَيْ الْفَجْرِ وَصَلَاةِ الصُّبْحِ فَإِنْ عَجَزَ فَقَدْ قَالَ اللَّهُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ

Abd al-Rahman ibn Zayd mentioned in "Kitab al-Sab'ah" that they—meaning Sa'id ibn al-Musayyab, al-Qasim ibn Muhammad ibn Abi Bakr, Urwah ibn al-Zubayr, Abu Bakr ibn Abd al-Rahman, Kharijah ibn Zayd ibn Thabit, Ubayd Allah ibn Abdullah ibn Utbah, and Sulayman ibn Yasar—used to recline on their right sides between the two rak'ahs of Fajr and the obligatory Subh prayer. If one is unable, then Allah the Exalted has said: {Allah does not burden a soul beyond its capacity} [al-Baqarah 2:286], and the Prophet (peace

be upon him) said: “When I command you to do something, fulfill it to the best of your ability.”[17]

L6205–6207 The ruling concerning the forgetful person here is the same as that concerning the intentional one, because whoever forgets an obligatory act in the prayer must compensate for it. As for purification, it is incumbent upon him to perform it because he did not fulfill the prayer as commanded, unless a textual evidence exempting him from that is established. Forgetfulness differs from deliberate action in two rulings: the first is the complete absolution from sin here and in every place.

L6208 The second [case]: One who, out of forgetfulness, adds an impermissible action after completing all obligatory acts he was commanded to perform. In this scenario, he has fulfilled his obligation, and the excess performed through forgetfulness becomes invalid - devoid of any legal effect. If he becomes aware [of the error] while time remains to repeat the prayer, he must recline and repeat the obligatory prayer. But if he is unable to do so except after the prayer time has expired, is he then incapable of repeating it due to what we previously established?

L6209 It is not sufficient for him to perform lying down after the prayer, as that is not its proper place. Nor is any action sufficient if performed outside its designated place, beyond its appointed time, or contrary to what was commanded. This is because all such actions deviate from the commanded action under these circumstances. And with Allah, the Most High, is success.

L6210 A case where one missed the Fajr prayer due to forgetfulness or sleep.

L6211 342 - Issue: For one who misses the dawn prayer due to forgetfulness or sleep - even if remembered shortly or long after sunrise - do we hold as our preferred opinion that he should begin with the two rak’ahs of Fajr, then lie down, then perform the dawn prayer?

نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] ، وَقَالَ - عَلَيْهِ السَّلَامُ -: «إِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» ؟ .

وَحُكْمُ النَّاسِي هَهُنَا كَحُكْمِ الْعَامِدِ، لِأَنَّ مَنْ نَسِيَ عَمَلًا مُفْتَرَضًا مِنْ الصَّلَاةِ وَالطَّهَارَةِ فَعَلَيْهِ أَنْ يَأْتِيَ بِهِ، لِأَنَّهُ لَمْ يَأْتِ بِالصَّلَاةِ كَمَا أُمِرَ، إِلَّا أَنْ يَأْتِيَ نَصٌّ بِسُقُوطِ ذَلِكَ عَنْهُ؟ وَإِنَّمَا يَكُونُ النِّسْيَانُ بِخِلَافِ الْعَمْدِ فِي حُكْمَيْنِ: أَحَدُهُمَا - سُقُوطُ الْإِثْمِ جُمْلَةً هُنَا، وَفِي كُلِّ مَكَانٍ.

وَالثَّانِي -: مَنْ زَادَ عَمَلًا لَا يَجُوزُ لَهُ نَاسِيًا، وَكَانَ قَدْ أَوْفَى جَمِيعَ عَمَلِهِ الَّذِي أُمِرَ بِهِ، فَإِنَّ هَذَا قَدْ عَمِلَ مَا أُمِرَ، وَكَانَ مَا زَادَ بِالنِّسْيَانِ لَغْوًا لَا حُكْمَ لَهُ؟ فَإِنْ أَدْرَكَ إِعَادَةَ الصَّلَاةِ فِي الْوَقْتِ لَزِمَهُ أَنْ يَضْطَجِعَ وَيُعِيدَ الْفَرِيضَةَ، وَإِنْ لَمْ يَقْدِرْ عَلَى ذَلِكَ إِلَّا بَعْدَ خُرُوجِ الْوَقْتِ لَمْ يَقْدِرْ عَلَى الْإِعَادَةِ لِمَا ذَكَرْنَا قَبْلُ؟ .

وَلَا يُجْزِئُهُ أَنْ يَأْتِيَ بِالضَّجْعَةِ بَعْدَ الصَّلَاةِ، لِأَنَّهُ لَيْسَ ذَلِكَ مَوْضِعَهَا، وَلَا يُجْزِئُ عَمَلُ شَيْءٍ فِي غَيْرِ مَكَانِهِ، وَلَا فِي غَيْرِ زَمَانِهِ، وَلَا بِخِلَافِ مَا أُمِرَ بِهِ، لِأَنَّ هَذَا كُلَّهُ هُوَ غَيْرُ الْعَمَلِ الْمَأْمُورِ بِهِ عَلَى هَذِهِ الْأَحْوَالِ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فَائِتَهُ صَلَاةُ الصُّبْحِ بِنِسْيَانٍ أَوْ بِنَوْمٍ]

٣٤٢ - مَسْأَلَةٌ: وَمَنْ فَاتَتْهُ صَلَاةُ الصُّبْحِ بِنِسْيَانٍ، أَوْ بِنَوْمٍ؟ فَنَخْتَارُ لَهُ إِذَا ذَكَرَهَا - وَإِنْ بَعْدَ طُلُوعِ الشَّمْسِ بِقَرِيبٍ أَوْ بَعِيدٍ - أَنْ يَبْدَأَ بِرَكْعَتَيْ الْفَجْرِ ثُمَّ يَضْطَجِعُ، ثُمَّ يَأْتِي بِصَلَاةِ الصُّبْحِ؟

[17] **Qur’an references (L6204):** Qur’an 2:286 (Al-Baqarah).

L6212–6213 Is it obligatory upon everyone who neglected a prayer due to sleep or forgetfulness—then remembered it—to move from the place where they were physically present to another place, even if it is a connected space adjacent to that place, as nothing further is required?

وَفَرْضٌ عَلَى كُلِّ مَنْ غَفَلَ عَنْ صَلَاةٍ بِنَوْمٍ، أَوْ بِنِسْيَانٍ؟ ثُمَّ ذَكَرَهَا أَنْ يَزُولَ عَنْ مَكَانِهِ الَّذِي كَانَ بِجِسْمِهِ فِيهِ إِلَى مَكَانٍ آخَرَ، وَلَوْ الْمَكَانَ الْمُتَّصِلَ بِذَلِكَ الْمَكَانِ فَمَا زَادَ؟ .

L6214 Abdullah ibn Rabee' narrated to us: Umar ibn Abd al-Malik narrated to us: Muhammad ibn Bakr narrated to us: Abu Dawud narrated to us: Musa ibn Isma'eel narrated to us: Aban ibn Yazeed al-Attar narrated to us: Ma'mar narrated from az-Zuhri from Sa'eed ibn al-Musayyib from Abu Hurairah in the hadith about the Prophet—peace be upon him—and his companions sleeping through the dawn prayer until the sun rose: that the Messenger of Allah—peace be upon him—said to them, "Move away from your place where heedlessness befell you." He then ordered Bilal to call the adhan and perform the iqamah, after which he led them in prayer.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا مُوسَى بْنُ إِسْمَاعِيلَ ثنا أَبَانُ هُوَ ابْنُ يَزِيدَ الْعَطَّارُ - ثنا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ أَبِي هُرَيْرَةَ فِي حَدِيثِ نَوْمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَصْحَابِهِ عَنْ صَلَاةِ الصُّبْحِ حَتَّى طَلَعَتْ الشَّمْسُ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُمْ: «تَحَوَّلُوا عَنْ مَكَانِكُمْ الَّذِي أَصَابَتْكُمْ فِيهِ الْغَفْلَةُ؟ فَأَمَرَ بِلَالًا فَأَذَّنَ وَأَقَامَ فَصَلَّى» .

L6215 Abdullah ibn Rabi' narrated to us: Muhammad ibn Ishaq the Judge narrated to us; Ibn al-A'rabi narrated to us; Muhammad ibn Isma'il the Goldsmith narrated to us; Abdullah ibn Yazid al-Muqri narrated to us; al-Aswad ibn Shayban narrated to us; Khalid ibn Sumayr narrated to us; Abdullah ibn Rabaah narrated to us: Abu Qatadah al-Ansari said: "The Messenger of Allah—peace and blessings be upon him—dispatched the army of commanders. We were awakened only by the rising sun. We rose frantic about our prayer. The Prophet—peace and blessings be upon him—said: 'Gently, gently until the sun ascends fully.' The Messenger of Allah—peace and blessings be upon him—said: 'Whoever among you prays the two Rak'ahs of Fajr, let him perform them.' Those who prayed them stood up, as did those who did not. Then the Messenger of Allah—peace and blessings be upon him—commanded that the call to prayer be proclaimed, so the Adhan was called. The Messenger of Allah—peace and blessings be upon him—stood and led us in prayer," and he mentioned the Hadith. Ali said: If it is objected: "This report does not mention the lying down?" We respond: The narrator may omit it, just as he omits mentioning ablution, or essential elements like the opening Takbir for commencing prayer, the concluding Salam, and similar acts. This report might predate the Prophet's command—peace be upon him—regarding lying down. Not all Sunnahs are mentioned in a single Hadith, nor in a single

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ الْقَاضِي ثنا ابْنُ الْأَعْرَابِيِّ ثنا مُحَمَّدُ بْنُ إِسْمَاعِيلَ الصَّائِغُ ثنا عَبْدُ اللَّهِ بْنُ يَزِيدَ الْمُقْرِي ثنا الْأَسْوَدُ بْنُ شَيْبَانَ ثنا خَالِدُ بْنُ سُمَيْرٍ ثنا عَبْدُ اللَّهِ بْنُ رَبَاحٍ ثنا أَبُو قَتَادَةَ الْأَنْصَارِيُّ قَالَ: «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَيْشَ الْأُمَرَاءِ، فَلَمْ تُوقِظْنَا إِلَّا الشَّمْسُ طَالِعَةً، فَقُمْنَا وَهِلِينَ لِصَلَاتِنَا، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رُوَيْدًا رُوَيْدًا حَتَّى تَعَالَتْ الشَّمْسُ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ كَانَ مِنْكُمْ يَرْكَعُ رَكْعَتَيْ الْفَجْرِ فَلْيَرْكَعْهُمَا؟ فَقَامَ مَنْ يَرْكَعُهُمَا وَمَنْ لَمْ يَكُنْ يَرْكَعُهُمَا، ثُمَّ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُنَادَى بِالصَّلَاةِ فَيُؤَذَّنَ لَهَا فَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَصَلَّى بِنَا» ، وَذَكَرَ الْحَدِيثَ؟ قَالَ عَلِيٌّ: فَإِنْ قِيلَ: لَيْسَ فِي هَذَا الْخَبَرِ ذِكْرُ الضَّجْعَةِ؟ قُلْنَا: قَدْ يَسْكُتُ عَنْهَا الرَّاوِي، كَمَا يَسْكُتُ عَنْ الْوُضُوءِ، وَعَمَّا لَا بُدَّ مِنْهُ مِنْ ذِكْرِ التَّكْبِيرِ لِلْإِحْرَامِ وَالسَّلَامِ وَغَيْرِ ذَلِكَ وَقَدْ يَكُونُ هَذَا الْخَبَرُ قَبْلَ أَنْ يَأْمُرَ - عَلَيْهِ السَّلَامُ - بِالضَّجْعَةِ؟ وَلَيْسَ جَمِيعُ السُّنَنِ مَذْكُورَةً فِي حَدِيثٍ

verse, nor in a single chapter. Raising such objections undermines the entire Shariah from beginning to end, for there is nothing in it except that which is omitted in many Hadiths and many verses.

وَاحِدٍ، وَلَا فِي آيَةٍ وَاحِدَةٍ، وَلَا فِي سُورَةٍ وَاحِدَةٍ؛ وَالتَّعَلُّلُ بِهَا قَدَحٌ فِي جَمِيعِ الشَّرِيعَةِ: أَوَّلِهَا عَنْ آخِرِهَا؛ فَلَيْسَ مِنْهَا شَيْءٌ إِلَّا، وَهُوَ مَسْكُوتٌ عَنْهُ فِي أَحَادِيثَ كَثِيرَةٍ وَفِي آيَاتٍ كَثِيرَةٍ.

L6216–6217 Every person who rationalizes regarding the command of the Messenger of Allah (peace and blessings be upon him) concerning the call to prayer for a forgotten salah, his command to pray the two rak'ahs of Fajr before the obligatory prayer, and his command (peace and blessings be upon him) to observe deliberation, dispersal, and changing positions—by attributing to the Messenger of Allah (peace and blessings be upon him) what he did not say—has lied against the Messenger of Allah (peace and blessings be upon him), falsely ascribed to him what he did not utter, and fabricated lies against him without knowledge. Let such a person take their seat in the Fire.

فَكُلُّ مَنْ تَعَلَّلَ فِي أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْأَذَانِ لِلصَّلَاةِ الْمَنْسِيَّةِ، وَفِي أَمْرِهِ بِصَلَاةِ رَكْعَتَيْ الْفَجْرِ قَبْلَ صَلَاةِ الْفَرِيضَةِ، وَفِي أَمْرِهِ - عَلَيْهِ السَّلَامُ - بِالتَّأَنِّي [وَالِانْتِشَارِ] وَالتَّحَوُّلِ - بِمَا لَمْ يَقُلْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: فَقَدْ كَذَبَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَوَّلَهُ مَا لَمْ يَقُلْ، وَافْتَرَى عَلَيْهِ بِغَيْرِ عِلْمٍ؛ فَلْيَتَبَوَّأْ مَقْعَدَهُ مِنْ النَّارِ -.

L6218 He mentioned the Adhān for it and prayed two rak'ahs before these: Hammād from Thābit from 'Abdullāh ibn Rabāḥ from Abū Qatādah? If it is said: Some versions of this report narrate that he, peace be upon him, then told them, "Whoever among you catches the morning prayer, let him make it up along with another like it"? We say: Yes, this wording has been reported, and it has also been reported: "Let one of you pray it during the morning at its appointed time"?

وَقَدْ ذَكَرَ الْأَذَانَ لَهَا وَصَلَّى رَكْعَتَيْنِ قَبْلَهُمَا -: حَمَّادٌ عَنْ ثَابِتٍ عَنْ عَبْدِ اللَّهِ بْنِ رَبَاحٍ عَنْ أَبِي قَتَادَةَ؟ فَإِنْ قِيلَ: قَدْ رُوِيَ فِي بَعْضِ أَلْفَاظِ هَذَا الْخَبَرِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ لَهُمْ حِينَئِذٍ «مَنْ أَدْرَكَ مِنْكُمْ صَلَاةَ الْغَدَاةِ فَلْيَقْضِ مَعَهَا مِثْلَهَا» ؟ قُلْنَا: نَعَمْ، قَدْ رُوِيَ هَذَا اللَّفْظُ، وَرُوِيَ «لِيُصَلِّهَا أَحَدُكُمْ مِنْ الْغَدَاةِ لِوَقْتِهَا» ؟ .

L6219 It was narrated: "If any of you neglects the prayer, let him pray it when he remembers it the next day at its original time?" It was also narrated: "They said: 'O Messenger of Allah, should we make it up at its appointed time tomorrow?' And they said: 'Should we not pray such and such prayers?' He said: 'Would Allah forbid you from riba and then accept it from you?'"

وَرُوِيَ «فَإِذَا سَهَا أَحَدُكُمْ عَنْ الصَّلَاةِ فَلْيُصَلِّهَا إذَا ذَكَرَهَا وَمِنْ الْغَدِ لِلْوَقْتِ» ؟ ، وَرُوِيَ «أَنَّهُمْ قَالُوا: يَا رَسُولَ اللَّهِ، أَنَقْضِيهَا لِمِيقَاتِهَا مِنْ الْغَدِ؟ وَأَنَّهُمْ قَالُوا: أَلَا نُصَلِّي كَذَا وَكَذَا صَلَاةً قَالَ: لَا يَنْهَاكُمْ اللَّهُ عَنْ الرِّبَا وَيَقْبَلُهُ مِنْكُمْ» .

L6220–6222 All of this is correct and consistent in meaning; however, what causes confusion among these words is "Whoever among you catches up with". As for the question, "Should he make up along with the dawn prayer its equivalent?" If delayed, there is no issue with it, because the pronoun—in the Arabic language—refers back to "the dawn," not to the prayer. That is: he should make up along with the dawn a prayer equivalent to this prayer he [normally]

وَكُلُّ هَذَا صَحِيحٌ وَمُتَّفِقُ الْمَعْنَى؛ وَإِنَّمَا يُشْكِلُ مِنْ هَذِهِ الْأَلْفَاظِ «مَنْ أَدْرَكَ مِنْكُمْ صَلَاةَ الْغَدَاةِ فَلْيَقْضِ مَعَهَا مِثْلَهَا» ؟ ، وَإِذَا تُؤُمِّلَ فَلَا إشْكَالَ فِيهِ؛ لِأَنَّ الضَّمِيرَ - فِي لُغَةِ الْعَرَبِ - رَاجِعٌ إلَى " الْغَدَاةِ " - لَا إلَى الصَّلَاةِ -: أَيْ فَلْيَقْضِ مَعَ الْغَدَاةِ مِثْلَ هَذِهِ

performs, without any addition to it—meaning he should fulfill the prayer obligation upon him equivalent to what he performed daily. Thus, all expressions unanimously agree upon a single meaning; no other interpretation is permissible. And success is from Allah, the Exalted.

An Issue Regarding the Description of the Prayer and That Without Which It Is Not Valid.

Issue 343: The description of prayer and what is indispensable for its validity. No one's prayer is valid except with pure clothing, a pure body, and in a pure place. Ali said: "We have already mentioned the things one is obligated to avoid; thus whoever prays without avoiding them has not prayed as commanded." We have also mentioned the Messenger of Allah's (peace be upon him) instruction to sweep the place where he prayed, to perfume mosques and keep them clean - due to his saying (peace be upon him), which we shall mention Allah willing with its isnād: "Every pure land has been made for me as a mosque and a means of purification." The Exalted said: "And purify your garments" [Al-Muddaththir 74:4].[18]

And whoever claims that the intended meaning refers to the heart—has restricted the verse to his assertion without evidence. The foundational principle in the language of the Quran's revelation is that garments are what is worn or trodden upon. This meaning cannot be transferred to the heart or accidents except with proof. Does a person exist in any state other than two—there being no third: the state of prayer and the state outside prayer?

Two people do not differ in affirming that there is no restriction upon one who has on their body, clothing, or sitting place something requiring avoidance in a state other than prayer. The discussion is solely about whether this is permissible during prayer or not. When the state other than prayer is exited through certain consensus, no situation remains where the commands of Allah—the Most High—and His Messenger (may Allah's blessings and peace

[18] **Qur'an references (L6224):** Qur'an 74:4 (Al-Muddaththir).

الصَّلَاةِ الَّتِي يُصَلِّي، بِلَا زِيَادَةٍ عَلَيْهَا -: أَيْ: فَلْيُؤَدِّ مَا عَلَيْهِ مِنْ الصَّلَاةِ مِثْلَ مَا فَعَلَ كُلَّ يَوْمٍ؛ فَتَتَّفِقُ الْأَلْفَاظُ كُلُّهَا عَلَى مَعْنًى وَاحِدٍ، لَا يَجُوزُ غَيْرُ ذَلِكَ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ صِفَةُ الصَّلَاةِ وَمَا لَا تُجْزِئُ إلَّا بِهِ]

٣٤٣ - مَسْأَلَةٌ: صِفَةُ الصَّلَاةِ، وَمَا لَا تُجْزِئُ إلَّا بِهِ: لَا تُجْزِئُ أَحَدًا صَلَاةٌ إلَّا بِثِيَابٍ طَاهِرَةٍ، وَجَسَدٍ طَاهِرٍ، فِي مَكَانٍ طَاهِرٍ؟ قَالَ عَلِيٌّ: قَدْ ذَكَرْنَا الْأَشْيَاءَ الْمُفْتَرَضَ اجْتِنَابُهَا؛ فَمَنْ صَلَّى غَيْرَ مُجْتَنِبٍ لَهَا فَلَمْ يُصَلِّ كَمَا أُمِرَ، وَقَدْ ذَكَرْنَا أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِكَنْسِ مَا كَانَ يُصَلِّي عَلَيْهِ؛ وَبِأَنْ تُطَيَّبَ الْمَسَاجِدُ وَتُنَظَّفَ؛ لِقَوْلِهِ - عَلَيْهِ السَّلَامُ - الَّذِي سَنَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى بِإِسْنَادِهِ «وَجُعِلَتْ لِي كُلُّ أَرْضٍ طَيِّبَةٍ مَسْجِدًا وَطَهُورًا» ؟ ، وَقَالَ تَعَالَى: {وَثِيَابَكَ فَطَهِّرْ} [المدثر: ٤] .

وَمَنْ ادَّعَى أَنَّ الْمُرَادَ بِذَلِكَ: الْقَلْبُ -: فَقَدْ خَصَّ الْآيَةَ بِدَعْوَاهُ بِلَا بُرْهَانٍ، وَالْأَصْلُ فِي اللُّغَةِ الَّتِي بِهَا نَزَلَ الْقُرْآنُ: أَنَّ الثِّيَابَ هِيَ الْمَلْبُوسَةُ وَالْمُتَوَطَّأَةُ وَلَا يُنْقَلُ عَنْ ذَلِكَ إلَى الْقَلْبِ وَالْعَرَضِ إلَّا بِدَلِيلٍ، وَلَا حَالَ لِلْإِنْسَانِ إلَّا حَالَانِ، لَا ثَالِثَ لَهُمَا: حَالُ الصَّلَاةِ، وَحَالُ غَيْرِ الصَّلَاةِ؟ .

وَلَا يَخْتَلِفُ اثْنَانِ فِي أَنَّهُ لَا يُحْرَجُ مَنْ فِي بَدَنِهِ شَيْءٌ وَاجِبٌ اجْتِنَابُهُ وَفِي ثِيَابِهِ أَوْ فِي مَقْعَدِهِ فِي حَالِ غَيْرِ الصَّلَاةِ، وَإِنَّمَا الْكَلَامُ: هَلْ ذَلِكَ مُبَاحٌ فِي الصَّلَاةِ أَمْ لَا؟ فَإِذَا خَرَجَتْ حَالُ غَيْرِ الصَّلَاةِ بِالْإِجْمَاعِ الْمُتَيَقَّنِ لَمْ يَبْقَ حَيْثُ تُسْتَعْمَلُ أَوَامِرُ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا لِلصَّلَاةِ؛ فَهَذَا فَرْضٌ فِيهَا -، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

be upon him) must be followed except in prayer. Thus, this becomes an obligation within it (prayer), and success comes from Allah, the Most High.

L6227–6228 **Issue: If something that must be avoided comes into contact with his body, clothing, or place of prayer.**

L6229 Issue:

L6230 If something requiring avoidance contacts his body, garments, or prayer space after he has pronounced the *takbīr* while being in a state of purity regarding all that we have mentioned—from what contacts him after that [state of purity]—then if he becomes aware of it: he must remove the garment (even if it leaves him unclothed, provided the cold does not harm him), leave that location, remove the impurity from his body with what he has been commanded to remove it with, continue his prayer, and it suffices him. No obligation beyond this is incumbent upon him.

L6231 If he forgets until he performs an obligatory act during his prayer, the prayer is nullified. He must complete the prayer, perform that act as commanded, then perform the prostration for forgetfulness—even if this occurs after he has said the salutation, provided his ritual purity remains intact. If his purity is invalidated, he must repeat the prayer as soon as he remembers.

L6232 If that affects him only in a part of his prayer that, if omitted, would not invalidate it—such as reciting the surah after Umm al-Quran (i.e., Al-Fatihah), exceeding the required stillness in bowing and prostration, sitting between the two prostrations, rising from bowing, or sitting after the Tashahhud—then his prayer remains complete, requiring only the prostration of forgetfulness. If he intentionally performs what we have mentioned, his prayer becomes invalidated with no distinction [from one who did not pray]. If he is unable to pray except during its prescribed time, it is now confirmed that the forgetful person must repeat it perpetually, in accordance with the Messenger of Allah's statement—peace and blessings be upon him: "Whoever forgets a prayer or sleeps through it, let him pray it when he remembers it."

L6233 The forgetful person is one who knew something and later forgot it. A

[مَسْأَلَةٌ أَصَابَ بَدَنَهُ أَوْ ثِيَابَهُ أَوْ مُصَلَّاهُ شَيْءٌ فُرِضَ اجْتِنَابُهُ]

مَسْأَلَةٌ:

فَمَنْ أَصَابَ بَدَنَهُ أَوْ ثِيَابَهُ أَوْ مُصَلَّاهُ شَيْءٌ فُرِضَ اجْتِنَابُهُ بَعْدَ أَنْ كَبَّرَ سَالِمًا فِي كُلِّ مَا ذَكَرْنَا مِمَّا أَصَابَهُ بَعْدَ ذَلِكَ -: فَإِنْ عَلِمَ بِذَلِكَ: أَزَالَ الثَّوْبَ - وَإِنْ بَقِيَ عُرْيَانًا - مَا لَمْ يُؤْذِهِ الْبَرْدُ، وَزَالَ عَنْ ذَلِكَ الْمَكَانِ، وَأَزَالَهَا عَنْ بَدَنِهِ بِمَا أُمِرَ أَنْ يُزِيلَهَا بِهِ، وَتَمَادَى عَلَى صَلَاتِهِ وَأَجْزَأَهُ وَلَا شَيْءَ عَلَيْهِ غَيْرُ ذَلِكَ.

فَإِنْ نَسِيَ حَتَّى عَمِلَ عَمَلًا مُفْتَرَضًا عَلَيْهِ مِنْ صَلَاتِهِ أُلْغِيَ، وَأَتَمَّ الصَّلَاةَ، وَأَتَى بِذَلِكَ الْعَمَلِ كَمَا أُمِرَ، ثُمَّ يَسْجُدُ لِلسَّهْوِ، وَإِنْ كَانَ ذَلِكَ بَعْدَ أَنْ سَلَّمَ، مَا لَمْ تُنْتَقَضْ طَهَارَتُهُ؛ فَإِنْ انْتَقَضَتْ أَعَادَ الصَّلَاةَ مَتَى ذَكَرَ.

فَإِنْ لَمْ يُصِبْهُ ذَلِكَ إِلَّا فِي مَكَانٍ مِنْ صَلَاتِهِ لَوْ لَمْ يَأْتِ بِهِ لَمْ تَبْطُلْ بِهِ صَلَاتُهُ مِثْلُ قِرَاءَةِ السُّورَةِ الَّتِي مَعَ أُمِّ الْقُرْآنِ، أَوْ مَا زَادَ عَلَى الطُّمَأْنِينَةِ فِي الرُّكُوعِ وَالسُّجُودِ، وَالْجُلُوسِ بَيْنَ السَّجْدَتَيْنِ، وَالرَّفْعِ مِنْ الرُّكُوعِ، وَالْجُلُوسِ بَعْدَ التَّشَهُّدِ -: فَصَلَاتُهُ تَامَّةٌ، وَلَيْسَ عَلَيْهِ إِلَّا سُجُودُ السَّهْوِ فَقَطْ؟ فَإِنْ تَعَمَّدَ مَا ذَكَرْنَا: بَطَلَتْ صَلَاتُهُ، وَكَانَ كَمَنْ لَمْ يُصَلِّ، وَلَا فَرْقَ، لَا يَقْدِرُ عَلَى الصَّلَاةِ إِلَّا فِي وَقْتِهَا؟ فَصَحَّ الْآنَ أَنَّ النَّاسِيَ يُعِيدُ أَبَدًا، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ نَسِيَ صَلَاةً أَوْ نَامَ عَنْهَا فَيُصَلِّهَا إِذَا ذَكَرَهَا» ؟ .

part of the prayer is a prayer stipulated by the explicit ruling of linguistic principles and necessity.

وَالنَّاسِي: هُوَ الَّذِي عَلِمَ الشَّيْءَ ثُمَّ نَسِيَهُ، وَبَعْضُ الصَّلَاةِ: صَلَاةٌ بِنَصِّ حُكْمِ اللُّغَةِ وَالضَّرُورَةِ.

L6234 And such is the ruling regarding one who forgets the ritual purification, forgets to wash some of the required limbs, or forgets to cover their private parts? If they start their prayer in such a state, they must repeat it always.

وَهَكَذَا الْحُكْمُ فِيمَنْ نَسِيَ الطَّهَارَةَ، أَوْ بَعْضَ أَعْضَائِهِ، أَوْ نَسِيَ سَتْرَ عَوْرَتِهِ؟ فَإِنْ ابْتَدَأَ صَلَاتَهُ كَذَلِكَ أَعَادَهَا أَبَدًا.

L6235–6237 It has been established that one who acts intentionally cannot perform prayer except during its prescribed time, and all that we have mentioned regarding this applies equally. As for the ignorant person—meaning one who only becomes aware of a matter requiring avoidance during prayer or after it, such as impurities on their clothes, body, or prayer space that they were unaware of—they must repeat every prayer performed in such a state during its respective time. Likewise, [the ruling applies to] one whose private parts become uncovered without their awareness.

وَصَحَّ: أَنَّ الْعَامِدَ لَا يَقْدِرُ عَلَى الصَّلَاةِ إِلَّا فِي وَقْتِهَا، وَكُلُّ مَا ذَكَرْنَا فِي ذَلِكَ سَوَاءٌ وَأَمَّا الْجَاهِلُ: وَهُوَ الَّذِي لَا يَعْلَمُ الشَّيْءَ إِلَّا فِي صَلَاتِهِ أَوْ بَعْدَهَا؟ كَمَنْ كَانَ فِي ثِيَابِهِ، أَوْ بَدَنِهِ، أَوْ فِي مَكَانِهِ -: شَيْءٌ فُرِضَ اجْتِنَابُهُ لَمْ يَعْلَمْ بِهِ؟ فَإِنَّهُ يُعِيدُ كُلَّ مَا صَلَّى كَذَلِكَ فِي الْوَقْتِ كَذَلِكَ وَكَذَلِكَ مَنْ انْكَشَفَتْ عَوْرَتُهُ، وَهُوَ لَا يَرَى.

L6238 Similarly, whoever was ignorant of a prescribed obligation among the obligations of his purification or prayer and later learned it—such a person is required to repeat [the prayer] only within its [original] time period, not after its expiration. The evidence for this is that the Companions—may Allah be pleased with them—were in Abyssinia and other lands while prescribed obligations were being revealed, such as the change of the *qiblah*, the increase in the number of prayers, and other matters. Yet the Prophet—peace be upon him—did not command them to repeat any of this when the rulings reached him, while he commanded the man whom he saw had not completed his prayer to repeat it.

وَكَذَلِكَ مَنْ جَهِلَ فَرْضًا مِنْ فُرُوضِ طَهَارَتِهِ، أَوْ صَلَاتِهِ ثُمَّ عَلِمَهَا -: فَإِنَّ هَؤُلَاءِ لَا إِعَادَةَ عَلَيْهِمْ إِلَّا فِي الْوَقْتِ فَقَطْ، لَا بَعْدَ الْوَقْتِ؟ بُرْهَانُ ذَلِكَ -: أَنَّ الصَّحَابَةَ - رَضِيَ اللَّهُ عَنْهُمْ - كَانُوا فِي أَرْضِ الْحَبَشَةِ وَغَيْرِهَا، وَالْفَرَائِضُ تَنْزِلُ، كَتَحْوِيلِ الْقِبْلَةِ، وَالزِّيَادَةِ فِي عَدَدِهَا، وَغَيْرِ ذَلِكَ؟ فَلَمْ يَأْمُرْهُمْ - عَلَيْهِ السَّلَامُ - بِإِعَادَةِ شَيْءٍ مِنْ ذَلِكَ، إِذْ بَلَغَهُ ذَلِكَ، وَأَمَرَ الَّذِي رَآهُ لَمْ يُتِمَّ صَلَاتَهُ أَنْ يُعِيدَهَا.

L6239 The ruling is as follows: Does one's prayer become valid by fulfilling what they were ignorant of from all that we have mentioned once they learn of it—only as long as the prayer time remains? As for the compelled person or the incapacitated due to illness or necessity—in all that we have mentioned—if the compulsion or necessity ceases after the prayer, does their prayer remain valid? This is based on the saying of Allah's Messenger—may Allah's blessings and peace be upon him: "When I command you to do something, do as much of it as you are able."

فَصَحَّ بِذَلِكَ -: أَنْ يَأْتِيَ بِمَا جَهِلَ مِنْ كُلِّ مَا ذَكَرْنَا إِذَا عَلِمَهُ، مَا دَامَ الْوَقْتُ قَائِمًا فَقَطْ؟ وَأَمَّا الْمُكْرَهُ، وَالْعَاجِزُ، لِعِلَّةٍ أَوْ ضَرُورَةٍ؟ فَإِنَّهُ فِي كُلِّ مَا ذَكَرْنَا -: إِنْ زَالَ الْإِكْرَاهُ، أَوْ الضَّرُورَةُ بَعْدَ الصَّلَاةِ -: فَقَدْ تَمَّتْ صَلَاتُهُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» ؟ .

L6240 If that ceases during the prayer, he should continue from where he paused, complete it as he is able, and account for what he performed before being able [to resume]. No prostration of forgetfulness is required in this case—and success is by Allah, the Exalted.

وَإِنْ زَالَ ذَلِكَ فِي الصَّلَاةِ بَنَى عَلَى مَا مَضَى مِنْ صَلَاتِهِ، فَأَتَمَّهَا كَمَا يَقْدِرُ وَاعْتَدَّ بِمَا عَمِلَ مِنْهَا قَبْلَ أَنْ يَقْدِرَ، وَلَا سُجُودَ سَهْوٍ فِي ذَلِكَ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L6241 The proof of this is what we previously mentioned: If there is an action commanded to be performed, it becomes permissible within prayer - whether extensive or minimal. Since removing what one is obligated to avoid during prayer is itself a commanded action within it, is it then permissible during prayer? As for our statement "even if he remains naked," this is because two obligations have become incumbent upon him: the first being covering his private parts, and the second avoiding what he is commanded to abstain from. He must necessarily fulfill one of the two.

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَاهُ قَبْلُ: إنْ كَانَ عَمَلٌ مَأْمُورٌ بِهِ، فَهُوَ فِيهَا جَائِزٌ - كَثُرَ أَوْ قَلَّ، وَإِزَالَةُ مَا افْتُرِضَ عَلَى الْمَرْءِ اجْتِنَابُهُ فِي الصَّلَاةِ مَأْمُورٌ بِهِ فِيهَا، فَهُوَ جَائِزٌ فِي الصَّلَاةِ؟ وَأَمَّا قَوْلُنَا: وَإِنْ بَقِيَ عُرْيَانًا، فَلِأَنَّهُ قَدْ اجْتَمَعَ عَلَيْهِ فَرْضَانِ -: أَحَدُهُمَا: سَتْرُ الْعَوْرَةِ، وَالثَّانِي: اجْتِنَابُ مَا أُمِرَ بِاجْتِنَابِهِ؟ وَلَا بُدَّ لَهُ مِنْ أَحَدِهِمَا.

L6242 If he prays without avoiding what he was commanded to avoid, he has willfully committed a forbidden act in his prayer; thus, he did not pray as he was commanded, and his prayer is invalid.

فَإِنْ صَلَّى غَيْرَ مُجْتَنِبٍ، لِمَا أُمِرَ بِاجْتِنَابِهِ؟ فَقَدْ تَعَمَّدَ فِي صَلَاتِهِ عَمَلًا مُحَرَّمًا عَلَيْهِ، فَلَمْ يُصَلِّ كَمَا أُمِرَ، فَلَا صَلَاةَ لَهُ؟ .

L6243–6245 And if he does not find a garment, he is instructed to cover himself with something similar to it; then he is unable to cover himself, and there is no blame upon a person for what he is unable to do. Allah, the Most High, said: "Allah does not burden a soul beyond its capacity." [Al-Baqarah: 286][19]

وَإِذَا لَمْ يَجِدْ ثَوْبًا أُمِرَ بِالِاسْتِتَارِ بِمِثْلِهِ، فَهُوَ غَيْرُ قَادِرٍ عَلَى الِاسْتِتَارِ، وَلَا حَرَجَ عَلَى الْمَرْءِ فِيمَا لَا يَقْدِرُ عَلَيْهِ قَالَ اللَّهُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

L6246 Allah the Most High said: "He has detailed for you what He has forbidden to you, except that to which you are compelled by necessity" [Al-An'am 6:119]. A person is not compelled by necessity to wear a garment he is able to remove, nor to remain in a place he is able to leave. Yet he is compelled by necessity to be naked if he finds no clothing permissible for him to wear. If he fears the cold, he is then compelled by necessity to use whatever he can to repel the cold from himself; thus, he may pray in it and bears no blame, for it is permissible for him at that point. As for our statement: "If he forgets until he performs an obligatory act within his prayer, he invalidates it, completes the prayer, and performs that act as commanded, even if it is after he has said the salām, provided his ritual purity has not been invalidated."[20]

وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] ، وَلَيْسَ الْمَرْءُ مُضْطَرًّا إلَى لِبَاسِ ثَوْبٍ يَقْدِرُ عَلَى خَلْعِهِ، وَلَا إلَى الْبَقَاءِ فِي مَكَانٍ يَقْدِرُ عَلَى مُفَارَقَتِهِ، وَهُوَ مُضْطَرٌّ إلَى التَّعَرِّي إذَا لَمْ يَجِدْ مَا أُبِيحَ لَهُ لِبَاسُهُ، فَإِنْ خَشِيَ الْبَرْدَ فَهُوَ حِينَئِذٍ مُضْطَرٌّ إلَى مَا يَطْرُدُ بِهِ الْبَرْدَ عَنْ نَفْسِهِ، فَيُصَلِّي بِهِ، وَلَا شَيْءَ عَلَيْهِ، لِأَنَّهُ مُبَاحٌ لَهُ حِينَئِذٍ؟ وَأَمَّا قَوْلُنَا: إنْ نَسِيَ حَتَّى عَمِلَ عَمَلًا مُفْتَرَضًا عَلَيْهِ فِي صَلَاتِهِ أَلْغَاهُ، وَأَتَمَّ الصَّلَاةَ وَأَتَى بِذَلِكَ الْعَمَلِ كَمَا أُمِرَ، وَإِنْ كَانَ بَعْدَ أَنْ سَلَّمَ، مَا لَمْ تُنْتَقَضْ طَهَارَتُهُ؟ .

[19] **Qur'an references (L6243):** Qur'an 2:286 (Al-Baqarah).
[20] **Qur'an references (L6246):** Qur'an 6:119 (Al-An'am).

فَلَمَا قَدْ ذَكَرْنَاهُ مِنْ سُقُوطِ مَا نَسِيَهُ الْمَرْءُ فِي صَلَاتِه، وَأَنَّ ذَلِكَ لَا يُبْطِلُ صَلَاتَهُ؟ ، وَلِقَوْلِ اللَّهِ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

L6247 Since we have mentioned that the omission of what one forgets in prayer does not invalidate it—and due to the words of Allah, the Exalted: "There is no sin upon you for what you erred in, but only for what your hearts intended" (Surah Al-Ahzab 33:5).[21]

وَلِمَا سَنَذْكُرُهُ مِنْ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ سَهَا فِي صَلَاتِه فَزَادَ أَوْ نَقَصَ» بِأَنْ يُتِمَّ صَلَاتَهُ وَيَسْجُدَ لِلسَّهْوِ، وَهَذَا قَدْ زَادَ فِي صَلَاتِهِ سَاهِيًا مَا لَوْ تَعَمَّدَهُ لَبَطَلَتْ صَلَاتُهُ.

L6248 And due to what we will mention of the teachings of the Messenger of Allah—may Allah bless him and grant him peace—regarding "whoever forgets during his prayer and adds or omits," by completing his prayer and performing the prostration for inadvertence; for this person has added forgetfully to his prayer something that, if he had done it intentionally, his prayer would have been invalidated.

وَأَمَّا قَوْلُنَا: إنْ انْتَقَضَتْ طَهَارَتُهُ أَعَادَهَا أَبَدًا مَتَى ذَكَرَ؟ فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي قَدْ ذَكَرْنَاهُ «مَنْ نَامَ عَنْ صَلَاةٍ أَوْ نَسِيَهَا فَلْيُصَلِّهَا إذَا ذَكَرَهَا» ، وَبَعْضُ الصَّلَاةِ صَلَاةٌ عَلَيْهِ فَفَرْضٌ أَنْ يُصَلِّيَهَا، وَأَنْ يَأْتِيَ بِمَا نَسِيَ، وَبِمَا لَا يُجْزِئُ - إذَا مَا نَسِيَ - إلَّا بِهِ، مِنْ وُضُوءٍ أَوْ غُسْلٍ، أَوْ ابْتِدَاءِ الصَّلَاةِ عَلَى تَرْتِيبِهَا، إلَى أَنْ يُتِمَّ مَا نَسِيَ مِنْ صَلَاتِهِ إلَّا بِهِ.

L6249 As for our statement: "If his ritual purity is invalidated, he must renew it every time he remembers"—this is based on the saying of Allah's Messenger (peace be upon him) which we previously mentioned: "Whoever sleeps through a prayer or forgets it, let him pray it when he remembers it." Even part of a prayer constitutes an obligation upon him, thus it is obligatory to perform it, to fulfill what he forgot, and to include what is invalid unless rectified—such as ablution, ritual bath, or beginning the prayer in its prescribed order—until he completes what he forgot of his prayer, for it is only valid through these requirements.

وَأَمَّا قَوْلُنَا: إنْ لَمْ يُصِبْهُ ذَلِكَ إلَّا فِي مَكَانٍ مِنْ صَلَاتِهِ لَوْ تَعَمَّدَ تَرْكَهُ لَمْ تَبْطُلْ صَلَاتُهُ بِذَلِكَ، إلَى آخِرِ كَلَامِنَا، فَلِأَنَّهُ قَدْ وَفَّى جَمِيعَ أَعْمَالِ صَلَاتِهِ سَالِمَةً كَمَا أُمِرَ، وَكَانَتْ تِلْكَ الْأَعْمَالُ الزَّائِدَةَ، وَإِنْ كَانَتْ الصَّلَاةُ جَائِزَةً دُونَهَا -: فَإِنَّهَا فِي جُمْلَةِ الصَّلَاةِ، وَفِي حَالٍ لَوْ تَعَمَّدَ فِيهَا مَا تَبْطُلُ بِهِ الصَّلَاةُ لَبَطَلَتْ صَلَاتُهُ، وَكَانَ مِنْهُ فِيهَا مَا كَانَ نَاسِيًا فَزَادَ فِي صَلَاتِهِ عَمَلًا بِالسَّهْوِ لَا يَجُوزُ لَهُ فَلَيْسَ عَلَيْهِ إلَّا سُجُودُ السَّهْوِ، كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِمَّا سَنَذْكُرُهُ فِي بَابِ سُجُودِ السَّهْوِ إنْ شَاءَ اللَّهُ تَعَالَى.

L6250–6252 As for our statement: "If that did not occur to him except in a part of his prayer where, had he intentionally omitted it, his prayer would not have been invalidated," as detailed throughout our discourse—this is because he has fulfilled all prayer acts soundly as commanded. These voluntary acts, though the prayer remains valid without them, are nevertheless part of the prayer. If he had intentionally performed invalidating actions during them, his prayer would have been void. Since his action therein resulted from forgetfulness, he added to his prayer. If one performs an act due to forgetfulness that is not permissible for him, he is only required to perform the prostration of forgetfulness, as commanded by the Messenger of Allah, peace and blessings be upon him - part of which we will mention in the chapter on prostration of forgetfulness, Allah, the Exalted, willing.

[21] **Qur'an references (L6247):** Qur'an 33:5 (Al-Ahzab).

وَرُوِّينَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَلْعَ نَعْلَيْهِ فِي الصَّلَاةِ لِلْقَذَرِ الَّذِي كَانَ فِيهِمَا، وَعَنْ الْحَسَنِ إذَا رَأَيْت فِي ثَوْبِك قَذَرًا فَضَعْهُ عَنْك وَامْضِ فِي صَلَاتِك، وَقَدْ أَجَازَ أَبُو حَنِيفَةَ، وَمَالِكٌ: غَسْلَ الرُّعَافِ فِي الصَّلَاةِ؟ فَأَمَّا الصَّلَاةُ بِالنَّجَاسَةِ: فَإِنَّ مَالِكًا قَالَ: لَا يُعِيدُ الْعَامِدُ لِذَلِكَ وَالنَّاسِي إلَّا فِي الْوَقْتِ؟ قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِأَنَّهُ لَا يَخْلُو مِنْ أَنْ يَكُونَ أَدَّى الصَّلَاةَ الَّتِي أُمِرَ بِهَا كَمَا أُمِرَ، أَوْ لَمْ يُؤَدِّهَا كَمَا أُمِرَ، فَإِنْ كَانَ أَدَّاهَا كَمَا أُمِرَ فَلَا يَحِلُّ لَهُ أَنْ يُصَلِّيَ فِي يَوْمٍ وَاحِدٍ ظُهْرَيْنِ، وَلَا مَعْنَى لِإِعَادَتِهِ صَلَاةً قَدْ صَلَّاهَا؟ ، وَإِنْ كَانَ لَمْ يُؤَدِّهَا كَمَا أُمِرَ فَمِنْ قَوْلِهِ أَنْ يُصَلِّيَ مَنْ لَمْ يُصَلِّ أَبَدًا، فَظَهَرَ بُطْلَانُ هَذَا الْقَوْلِ؟ .

L6253 It has been narrated to us that the Messenger of Allah—peace and blessings be upon him—removed his sandals during prayer due to the filth present in them. Al-Ḥasan said: "If you see filth on your garment, remove it from yourself and continue with your prayer." Abū Ḥanīfah and Mālik permitted washing off blood from a nosebleed during prayer? As for praying with physical impurity: Mālik stated that one who does so intentionally or forgetfully does not repeat the prayer unless it is still within the prayer time? ʿAlī said: "This is erroneous, for either he performed the prayer as commanded, or he did not perform it as commanded. If he performed it as commanded, it would be impermissible for him to pray two noon prayers in a single day. What purpose could there be for repeating a prayer already fulfilled? If he did not perform it as commanded, would this not imply—according to his own reasoning—that it would necessitate that someone who never prayed at all must pray? Thus, the invalidity of this opinion becomes evident."

وَأَيْضًا: فَإِنَّهُ يُقَالُ لَهُمْ: أَخْبِرُونَا عَنْ الصَّلَاةِ الَّتِي تَأْمُرُونَهُ بِأَنْ يَأْتِيَ بِهَا فِي الْوَقْتِ وَلَا تَأْمُرُونَهُ بِهَا بَعْدَ الْوَقْتِ: أَفَرْضٌ هِيَ عِنْدَكُمْ أَمْ نَافِلَةٌ؟ وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ؟ وَبِأَيِّ نِيَّةٍ يُصَلِّيهَا؟ أَبِنِيَّةِ أَنَّهَا الْفَرْضُ اللَّازِمُ لَهُ فِي ذَلِكَ الْوَقْتِ أَمْ بِنِيَّةِ التَّطَوُّعِ؟ أَمْ بِلَا نِيَّةٍ، لَا لِفَرْضٍ وَلَا لِتَطَوُّعٍ؟ فَإِنْ قُلْتُمْ: هِيَ فَرْضٌ وَلَا يُصَلِّيهَا إلَّا بِنِيَّةِ الْفَرْضِ، فَمِنْ أَصْلِكُمْ الَّذِي لَمْ تَخْتَلِفُوا فِيهِ: أَنَّ الْفَرْضَ يُصَلَّى أَبَدًا، وَلَا يَسْقُطُ بِخُرُوجِ الْوَقْتِ فِيهِ، فَهَذَا تَنَاقُضٌ وَهَدْمٌ لِأَصْلِكُمْ.

L6254 Moreover, it is said to them: Inform us about the prayer you command to be performed within its prescribed time but do not command after its expiration—is it an obligation according to you or a voluntary prayer? There is no third category. With what intention is it prayed? With the intention that it is the obligation incumbent upon him during that time, or with the intention of voluntary worship? Or without any intention—neither for obligation nor voluntary prayer? If you say: It is an obligation, and he can only pray it with the intention of fulfilling an obligation, then according to your established principle—in which there is no disagreement among you—the obligation must always be performed and does not lapse by the expiration of its time. This is a contradiction and a demolition of your foundational principle.

وَإِنْ كَانَتْ تَطَوُّعًا وَتَأْمُرُونَهُ بِأَنْ يَدْخُلَ فِيهَا بِنِيَّةِ التَّطَوُّعِ فَإِنَّ التَّطَوُّعَ لَا يُجْزِئُ بَدَلَ الْفَرْضِ فِي الدُّنْيَا، وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَتَعَمَّدَ تَرْكَ الْفَرْضِ وَيُصَلِّيَ التَّطَوُّعَ عِوَضًا مِنْ الْفَرْضِ، وَلَا يَحِلُّ لِأَحَدٍ أَنْ يُفْتِيَهُ بِذَلِكَ بِلَا خِلَافٍ مِنْ أَحَدٍ، بَلْ هُوَ خُرُوجُ الْكُفْرِ بِلَا شَكٍّ وَإِنْ قُلْتُمْ: لَا يُصَلِّيهَا بِنِيَّةِ فَرْضٍ وَلَا تَطَوُّعٍ؟ كَانَ هَذَا بَاطِلًا مُتَيَقَّنًا، لِقَوْلِ النَّبِيِّ

L6255–6257 If it is a voluntary prayer and you instruct him to perform it with the intention of voluntary worship, know that voluntary prayer cannot substitute obligatory prayer in worldly terms. It is unlawful for anyone to intentionally abandon the obligatory prayer and perform voluntary prayer as its replacement. Nor is it permissible for anyone to issue a fatwa permitting this without unanimous disagreement from scholars. Rather, this undeniably constitutes disbelief. If you were to say: "He should not pray it with the intention

of either an obligatory or voluntary prayer?"—this would be unquestionably invalid, based on the Prophet's (peace and blessings be upon him) statement: "Actions are judged by intentions, and each person will attain only what they intended." Thus, he has no valid deed, having no intention, and nothing is recorded for him. You have commanded him to do what is invalid and impermissible. As for Al-Shāfiʿī, he stated: "One must always repeat it when missed intentionally or forgetfully." Ali said: "This is erroneous, based on the Messenger of Allah's (peace and blessings be upon him) statement: 'My community is excused for errors, forgetfulness, and what...'" "They were coerced into it, and due to the statement of Allah, the Exalted: 'There is no sin upon you for what you erred in, but only for what your hearts intentionally resolved.' [Al-Aḥzāb 33:5]."[22][23]

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى» فَهَذَا لَا عَمَلَ لَهُ، إِذْ لَا نِيَّةَ لَهُ، وَلَا شَيْءَ لَهُ، فَقَدْ أَمَرْتُمُوهُ بِالْبَاطِلِ الَّذِي لَا يَحِلُّ وَأَمَّا الشَّافِعِيُّ فَإِنَّهُ قَالَ: يُعِيدُ أَبَدًا فِي الْعَمْدِ، وَالنِّسْيَانِ قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» ، وَلِقَوْلِ اللَّهِ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

L6258 Abu Hanifah said: If impurity exists in the place of one's feet during prayer and exceeds the Baghli dirham—i.e., being impurity—does his prayer invalidate, whether he acted intentionally or forgetfully? If it measures a Baghli dirham or less, his prayer is valid in intentionality and forgetfulness. If the impurity exceeds the Baghli dirham's measure and is located where his hands are placed, where his knees are placed, or aligned with his armpits: his prayer remains valid in intentionality and forgetfulness. Differing opinions are reported from him if the impurity is in the place where his forehead touches down during prostration.

وَقَالَ أَبُو حَنِيفَةَ: مَنْ كَانَتْ النَّجَاسَةُ فِي مَوْضِعِ قَدَمَيْهِ فِي الصَّلَاةِ وَكَانَتْ أَكْثَرَ مِنْ الدِّرْهَمِ الْبَغْلِيِّ - أَيْ نَجَاسَةً: بَطَلَتْ صَلَاتُهُ عَامِدًا كَانَ أَوْ نَاسِيًا؟ فَإِنْ كَانَتْ قَدْرَ الدِّرْهَمِ الْبَغْلِيِّ فَأَقَلَّ، فَصَلَاتُهُ تَامَّةٌ فِي الْعَمْدِ، وَالنِّسْيَانِ؟ فَإِنْ كَانَتْ أَكْثَرَ مِنْ قَدْرِ الدِّرْهَمِ الْبَغْلِيِّ، وَكَانَتْ فِي مَوْضِعِ وَضْعِ يَدَيْهِ، أَوْ فِي مَوْضِعِ وَضْعِ رُكْبَتَيْهِ، أَوْ حِذَاءِ إِبِطَيْهِ: فَصَلَاتُهُ تَامَّةٌ فِي الْعَمْدِ، وَالنِّسْيَانِ وَاخْتُلِفَ عَنْهُ إِذَا كَانَتْ فِي مَوْضِعِ وُقُوعِ جَبْهَتِهِ فِي السُّجُودِ.

L6259 At one time he said: his prayer is complete in intentional [acts] and forgetfulness, and at another time he said: his prayer is invalid in intentional [acts] and forgetfulness. This is the opinion of Zufar.

فَمَرَّةً قَالَ: صَلَاتُهُ تَامَّةٌ فِي الْعَمْدِ، وَالنِّسْيَانِ، وَمَرَّةً قَالَ: صَلَاتُهُ بَاطِلَةٌ فِي الْعَمْدِ، وَالنِّسْيَانِ، وَبِهِ يَقُولُ زُفَرُ.

L6260 Abū Yūsuf similarly stated the same regarding all that we have mentioned, except he said: If it occurred in the place of his prostration, that prostration alone is invalidated—as though he did not perform it. If he performs that prostration while still in prayer, his prayer is complete. But if he does

وَقَالَ أَبُو يُوسُفَ كَذَلِكَ فِي كُلِّ مَا ذَكَرْنَا، إِلَّا أَنَّهُ قَالَ: إِنْ كَانَتْ فِي مَوْضِعِ سُجُودِهِ: فَسَدَتْ تِلْكَ السَّجْدَةُ - وَحْدَهَا خَاصَّةً - وَكَأَنَّهُ لَمْ يَسْجُدْهَا؟ وَإِنْ سَجَدَهَا مَا دَامَ فِي صَلَاتِهِ تَمَّتْ صَلَاتُهُ - وَإِنْ لَمْ يَسْجُدْهَا حَتَّى أَتَمَّ صَلَاتَهُ بَطَلَتْ صَلَاتُهُ كُلُّهَا؟ وَكَانَتْ حُجَّتُهُمْ فِي هَذَا أَسْقَطَ مِنْ قَوْلِهِمْ، وَهُوَ أَنَّهُمْ قَالُوا: لَوْ لَمْ يَضَعْ يَدَيْهِ وَلَا رُكْبَتَيْهِ فِي السُّجُودِ

[22] **Hadith references (L6255):** Sahih al-Bukhari 1; Sunan Abi Dawud 2201; Mishkat al-Masabih 1.

[23] **Qur'an references (L6255):** Qur'an 33:5 (Al-Ahzab).

not perform it until he concludes his prayer, his entire prayer is invalidated. Their argument in this matter is weaker than their statement, for they claimed: If one did not place his hands or knees during prostration, it would not harm his prayer at all—contrary to the case of his feet. ʿAlī said: This is arguing for falsehood using the most heinous form of falsehood. It is merely a disregard for prayer. According to one of their two opinions, it would necessitate that his prayer remains valid even if he did not place his forehead on the ground without a valid excuse.

لَمْ يَضُرَّ ذَلِكَ صَلَاتَهُ شَيْئًا بِخِلَافِ قَدَمَيْهِ قَالَ عَلِيٌّ: وَهَذَا احْتِجَاجٌ لِلْبَاطِلِ بِأَشْنَعَ مَا يَكُونُ مِنْ الْبَاطِلِ وَإِنَّمَا هُوَ اسْتِخْفَافٌ بِالصَّلَاةِ، وَيَلْزَمُ عَلَى أَحَدِ قَوْلَيْهِ أَنْ تَتِمَّ صَلَاتُهُ، وَإِنْ لَمْ يَضَعْ جَبْهَتَهُ بِالْأَرْضِ لِغَيْرِ عُذْرٍ.

L6261 Abu Hanifah said: "Whoever prays while having impurity on his garment exceeding the size of a dirham—except that it is in a covered part of the garment and is not on any part of his body—if the impurity moves during prayer movements like standing, bowing, or prostrating, his prayer is invalidated; otherwise, it is not." And Abu Yusuf said: "A person wearing layered garments is treated as wearing a single garment. If there is impurity on the inner garment exceeding the size of a dirham that does not penetrate to the face, the prayer is invalidated."

قَالَ أَبُو حَنِيفَةَ: وَمَنْ صَلَّى وَفِي ثَوْبِهِ نَجَاسَةٌ أَكْثَرُ مِنْ قَدْرِ الدِّرْهَمِ إلَّا أَنَّهَا فِي مَوْضِعٍ يُسَجِّيهِ، وَلَيْسَ عَلَى شَيْءٍ مِنْ جِسْمِهِ، فَإِنْ كَانَ إذَا تَحَرَّكَ فِي صَلَاتِهِ لِقِيَامٍ أَوْ رُكُوعٍ أَوْ سُجُودٍ تَحَرَّكَتْ النَّجَاسَةُ -: بَطَلَتْ صَلَاتُهُ، وَإِلَّا فَلَا؟ وَقَالَ أَبُو يُوسُفَ: الْمُصَلِّي الْمُبَطَّنُ بِمَنْزِلَةِ ثَوْبٍ وَاحِدٍ، إنْ كَانَ فِي الْبَاطِنَةِ أَكْثَرُ مِنْ قَدْرِ الدِّرْهَمِ غَيْرِ نَافِذَةٍ إلَى الْوَجْهِ بَطَلَتْ الصَّلَاةُ.

L6262–6264 Muhammad said: It is not invalidated, and they are two garments. Abu Muhammad said: These are statements for which one should praise Allah, the Exalted, for being spared from them, and nothing more is needed. Nor do they have any predecessors in any of these matters. Then how astonishing is their statement to those who adhere to the command of Allah the Exalted and the command of His Messenger (peace and blessings of Allah be upon him)—those who acknowledge the authenticity of its transmission and exposition: "Tell us: Who affirmed this before you?" O Muslims! Should the one who adheres to the Quran and the Sunnah—which Muslims have unanimously agreed must be obeyed—be censured until he produces the name of someone who said such a thing? Yet the one who asserts his own opinion—innovating without approval from the Salaf—is not censured, despite such corrupt and contradictory statements as these? Allah suffices us, and He is the best Trustee. All praise is due to Him for guiding us and granting us success?

وَقَالَ مُحَمَّدٌ: لَا تَبْطُلُ، وَهُمَا ثَوْبَانِ قَالَ أَبُو مُحَمَّد: وَهَذِهِ أَقْوَالٌ يَنْبَغِي حَمْدُ اللَّهِ تَعَالَى عَلَى السَّلَامَةِ مِنْهَا، وَلَا مَزِيدَ، وَلَا سَلَفَ لَهُمْ فِي شَيْءٍ مِنْهَا ثُمَّ الْعَجَبُ قَوْلُهُمْ لِمَنْ أَخَذَ بِأَمْرِ اللَّهِ تَعَالَى وَأَمْرِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِينَ يُقِرُّونَ بِصِحَّةِ نَقْلِهِ وَبَيَانِهِ: قُولُوا لَنَا: مَنْ قَالَ بِهَذَا قَبْلَكُمْ؟ فَيَا لِلْمُسْلِمِينَ أَيُعَنَّفُ مَنْ أَخَذَ بِالْقُرْآنِ وَالسُّنَّةِ، الَّتِي أَجْمَعَ الْمُسْلِمُونَ عَلَى وُجُوبِ طَاعَتِهِمَا، حَتَّى يَأْتِيَ بِاسْمِ مَنْ قَالَ بِذَلِكَ؟ وَلَا يُعَنَّفُ مَنْ قَالَ بِرَأْيِهِ - مُبْتَدِئًا دُونَ مُوَافِقٍ مِنْ السَّلَفِ - مِثْلُ هَذِهِ الْأَقْوَالِ الْفَاسِدَةِ الْمُتَنَاقِضَةِ؟ وَحَسْبُنَا اللَّهُ، وَنِعْمَ الْوَكِيلُ - وَلَهُ الْحَمْدُ عَلَى هِدَايَتِهِ لَنَا وَتَوْفِيقِهِ إيَّانَا؟

L6265 **A case in which a person is confined in a place containing**

something they are obliged to avoid on religious grounds and is unable to leave it.

Issue 345: If a person is confined in a place where there is something they are obligated to avoid and cannot leave, being overcome and unable to remove it from their body or clothing, they should pray as they are, and their prayer will be valid.

If the place of his prostration or sitting is such that he cannot find another location, he should pray standing and sit in the closest proximity he can manage to that place without sitting directly upon it. Similarly, he must bring his forehead and nose as close as he is able to that location without placing them upon it. If he intentionally sits upon it or prostrates upon it while capable of avoiding this, does his prayer become nullified? The evidence for this lies in Allah's statement: "Allah does not burden any soul beyond its capacity" (2:286), and the Messenger of Allah's (peace be upon him) saying: "When I command you to do something, fulfill it to the extent of your ability." Thus, it is established that what he cannot perform is excused, while what he can perform remains obligatory upon him. And with Allah, the Exalted, lies all success.[24]

A ruling: Covering the private parts is obligatory to keep from others' sight; in prayer, entirely so.

346 – Issue:

Covering the private parts is obligatory to avoid being seen by an observer, and entirely obligatory during prayer, whether someone is present there or not.

Allah the Exalted said: "Say to the believing men to lower their gaze and

[24] **Qur'an references (L6267):** Qur'an 2:286 (Al-Baqarah).

[مَسْأَلَةٌ كَانَ مَحْبُوسًا فِي مَكَان فِيهِ مَا يَلْزَمُهُ اجْتِنَابُهُ لَا يَقْدِرُ عَلَى الزَّوَالِ عَنْهُ]

٣٤٥ - مَسْأَلَةٌ: فَمَنْ كَانَ مَحْبُوسًا فِي مَكَان فِيهِ مَا يَلْزَمُهُ اجْتِنَابُهُ لَا يَقْدِرُ عَلَى الزَّوَالِ عَنْهُ، وَكَانَ مَغْلُوبًا لَا يَقْدِرُ عَلَى إزَالَتِهِ عَنْ جَسَدِهِ، وَلَا عَنْ ثِيَابِهِ -: فَإِنَّهُ يُصَلِّي كَمَا هُوَ، وَتُجْزِئُهُ صَلَاتُهُ.

فَإِنْ كَانَ فِي مَوْضِعِ سُجُودِهِ أَوْ جُلُوسِهِ، وَلَا يَقْدِرُ عَلَى مَكَان غَيْرِهِ -: صَلَّى قَائِمًا وَجَلَسَ عَلَى أَقْرَبِ مَا يَقْدِرُ مِنْ الدُّنُوِّ مِنْ ذَلِكَ الْمَوْضِعِ وَلَا يَجْلِسُ عَلَيْهِ، وَكَذَلِكَ يُقَرِّبُ: جَبْهَتَهُ وَأَنْفَهُ مِنْ ذَلِكَ الْمَكَانِ أَكْثَرَ مَا يَقْدِرُ عَلَيْهِ، وَلَا يَضَعُهُمَا عَلَيْهِ، فَإِنْ جَلَسَ عَلَيْهِ، أَوْ سَجَدَ عَلَيْهِ مُتَعَمِّدًا - وَهُوَ قَادِرٌ عَلَى أَنْ لَا يَفْعَلَ -: بَطَلَتْ صَلَاتُهُ؟ بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] ، وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» فَصَحَّ أَنَّهُ يَسْقُطُ عَنْهُ مَا لَا يَسْتَطِيعُ وَيَبْقَى عَلَيْهِ مَا قَدَرَ عَلَيْهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ سَتْرُ الْعَوْرَةِ فَرْضٌ عَنْ عَيْنِ النَّاظِرِ وَفِي الصَّلَاةِ جُمْلَةً]

٣٤٦ - مَسْأَلَةٌ:

وَسَتْرُ الْعَوْرَةِ فَرْضٌ عَنْ عَيْنِ النَّاظِرِ، وَفِي الصَّلَاةِ جُمْلَةً، كَانَ هُنَالِكَ أَحَدٌ أَوْ لَمْ يَكُنْ.

قَالَ اللَّهُ تَعَالَى: {قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ} [النور: ٣٠]- {وَقُلْ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ} [النور: ٣١] .

guard their private parts [An-Nur: 30] — and say to the believing women to lower their gaze and guard their private parts" [An-Nur: 31].[25]

L6272 Whoever exposes his private area to those not permitted to see it—has he not indeed disobeyed Allah, the Exalted? And He, the Exalted, said: {Take your adornment at every mosque} [Al-Aʿrāf: 31]. Was it not agreed that this refers to covering the private area?[26]

L6273–6274 **An issue where one did not find a garment to cover his private parts during prayer.**

L6275 Issue: This applies to one who acts intentionally. As for one who cannot find a permissible prayer garment, one who was coerced, or one who forgot: his prayer is valid, according to the statement of Allah, the Exalted: *"Allah does not burden any soul beyond its capacity"* (Surah Al-Baqarah 2:286).[27]

L6276 And the statement of the Exalted: "There is no blame upon you for what you err in, but only for what your hearts deliberately intend" [Al-Ahzab: 5]; and the saying of Allah's Messenger (peace be upon him): "What is lifted from my nation is error, forgetfulness, and what they are forced to do"—except that the ruling concerning the invalidation of obligatory acts of prayer performed with exposed private parts due to forgetfulness, performing it as commanded, continuing the prayer that was performed with covered private parts, the prostration of forgetfulness for this, the permissibility of praying in such a state where if he omits it his prayer remains valid, and the prostration of forgetfulness for that—is as we stated regarding prayer: one does not avoid what is obligated to be avoided—it is entirely equal; there is absolutely no difference—due to what we previously explained. And success is from Allah, the Exalted.[28]

L6277 **A jurisprudential case: He commenced the Takbīr (saying**

فَمَنْ أَبْدَى فَرْجَهُ لِغَيْرِ مَنْ أُبِيحَ لَهُ فَقَدْ عَصَى اللَّهَ تَعَالَى؟ وَقَالَ تَعَالَى: {خُذُوا زِينَتَكُمْ عِنْدَ كُلِّ مَسْجِدٍ} [الأعراف: ٣١] فَاتُّفِقَ عَلَى أَنَّهُ سَتْرُ الْعَوْرَةِ؟ .

[مَسْأَلَةٌ لَمْ يَجِدْ ثَوْبًا يستر عَوْرَته فِي الصَّلَاةِ]

مَسْأَلَةٌ: وَإِنَّمَا هَذَا لِلْعَامِدِ، وَأَمَّا مَنْ لَا يَجِدُ ثَوْبًا أُبِيحَ لَهُ الصَّلَاةُ بِهِ أَوْ أُكْرِهَ أَوْ نَسِيَ -: فَصَلَاتُهُ تَامَّةٌ؛ لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

وقَوْله تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] ؛ وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» إِلَّا أَنَّ الْقَوْلَ فِي إلْغَاءِ مَا عَمِلَ مِنْ فَرَائِضِ صَلَاتِهِ مَكْشُوفَ الْعَوْرَةِ نَاسِيًا، وَالْمَجِيءَ بِهَا كَمَا أُمِرَ، وَالْبِنَاءَ عَلَى مَا صَلَّى مُغَطَّى الْعَوْرَةِ، وَالسُّجُودَ لِلسَّهْوِ، وَجَوَازَ الصَّلَاةِ بِمَا صَلَّى كَذَلِكَ فِي حَالٍ مِنْ صَلَاتِهِ لَوْ أَسْقَطَهَا تَمَّتْ صَلَاتُهُ، وَسُجُودَ السَّهْوِ لِذَلِكَ -: كَمَا قُلْنَا فِي الصَّلَاةِ: غَيْرُ مُجْتَنَبٍ لِمَا اُفْتُرِضَ عَلَيْنَا اجْتِنَابُهُ، سَوَاءً سَوَاءً وَلَا فَرْقَ؛ لِمَا ذَكَرْنَا هُنَالِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ ابْتَدَأَ التَّكْبِيرَ مَكْشُوفَ الْعَوْرَةِ أَوْ غَيْرَ مُجْتَنِبٍ لِمَا اُفْتُرِضَ عَلَيْهِ اجْتِنَابُهُ]

[25] **Qur'an references (L6271):** Qur'an 24:30 (An-Nur); Qur'an 24:31 (An-Nur).
[26] **Qur'an references (L6272):** Qur'an 7:31 (Al-A'raf).
[27] **Qur'an references (L6275):** Qur'an 2:286 (Al-Baqarah).
[28] **Qur'an references (L6276):** Qur'an 33:5 (Al-Ahzab).

"Allāhu Akbar") with his ʿawrah uncovered or neglecting to avoid what he is obligated to avoid.

348 - Issue:

If one begins *takbīr* with their *ʿawrah* uncovered or without avoiding what they are obligated to avoid—whether intentionally, unintentionally, or ignorantly—their prayer is nonexistent, for they have not entered the prayer as they were commanded, and no part of it is valid from which they could build upon.

Is it not impermissible in prayer to advance a latter [act] over what precedes it in the prescribed order, due to the statement of Allah's Messenger—peace and blessings be upon him: "Whoever does a deed not in accordance with our command, it is rejected"?[29]

Issue: The ʿawrah that a man is obligated to cover from the sight of others and during prayer.

Issue 349: The 'awrah (private parts) that must be covered in front of viewers and during prayer consists of the following: For men - only the penis and the anus's ring. The thigh is not part of his 'awrah. For women - her entire body except the face and hands only. Free men, slaves, free women, and female slaves are equal in all these rulings without distinction. Narrated by Abdullah ibn Yusuf from Ahmad ibn Fath, from Abdul Wahhab ibn Isa, from Ahmad ibn Muhammad, from Ahmad ibn Ali, from Ibn al-Hajjaj, from Sa'id ibn Yahya al-Umawi, from his father, from Uthman ibn Hakim ibn Abbad ibn Hunayf al-Ansari, from Abu Umamah ibn Sahl ibn Hunayf. Al-Miswar ibn Makhramah said: "I came forward carrying a heavy stone while wearing a light waistcloth. My waistcloth came loose while I had the stone with me, and I could not prevent it until I placed the stone in its spot. The Messenger of Allah (peace and blessings be upon him) said: 'Go back to your waistcloth and pick it up, and do not walk uncovered.' Thus, it was established that retrieving the waistcloth is obligatory (fard)."

[29] **Hadith references (L6280):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

٣٤٨ - مَسْأَلَةٌ:

فَلَوْ ابْتَدَأَ التَّكْبِيرَ مَكْشُوفَ الْعَوْرَةِ أَوْ غَيْرَ مُجْتَنِبٍ لِمَا اُفْتُرِضَ عَلَيْهِ اجْتِنَابُهُ - عَامِدًا أَوْ نَاسِيًا أَوْ جَاهِلًا - فَلَا صَلَاةَ لَهُ؛ لِأَنَّهُ لَمْ يَدْخُلْ فِي الصَّلَاةِ كَمَا أُمِرَ؛ وَلَا صَحَّ لَهُ مِنْهَا شَيْءٌ يَبْنِي عَلَيْهِ.

وَلَا يَجُوزُ فِي الصَّلَاةِ تَقْدِيمُ مُؤَخَّرٍ قَبْلَ مَا هُوَ فِي الرُّتْبَةِ قَبْلَهُ؛ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» ؟ .

[مَسْأَلَةُ الْعَوْرَةُ الْمُفْتَرَضُ سَتْرُهَا عَلَى النَّاظِرِ وَفِي الصَّلَاةِ مِنْ الرَّجُلِ]

٣٤٩ - مَسْأَلَةٌ: وَالْعَوْرَةُ الْمُفْتَرَضُ سَتْرُهَا عَلَى النَّاظِرِ وَفِي الصَّلَاةِ -: مِنْ الرَّجُلِ: الذَّكَرُ وَحَلْقَةُ الدُّبُرِ فَقَطْ، وَلَيْسَ الْفَخِذُ مِنْهُ عَوْرَةً وَهِيَ مِنْ الْمَرْأَةِ: جَمِيعُ جِسْمِهَا، حَاشَا الْوَجْهِ، وَالْكَفَّيْنِ فَقَطْ، الْحُرُّ، وَالْعَبْدُ، وَالْحُرَّةُ، وَالْأَمَةُ، سَوَاءٌ فِي كُلِّ ذَلِكَ وَلَا فَرْقَ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا ابْنُ الْحَجَّاجِ ثنا سَعِيدُ بْنُ يَحْيَى الْأُمَوِيُّ ثنا أَبِي ثنا عُثْمَانُ بْنُ حَكِيمِ بْنِ عَبَّادِ بْنِ حُنَيْفٍ الْأَنْصَارِيُّ ثنا أَبُو أُمَامَةَ بْنُ سَهْلِ بْنِ حُنَيْفٍ، عَنْ الْمِسْوَرِ بْنِ مَخْرَمَةَ قَالَ: «أَقْبَلْتُ بِحَجَرٍ ثَقِيلٍ أَحْمِلُهُ وَعَلَيَّ إزَارٌ خَفِيفٌ، فَانْحَلَّ إزَارِي وَمَعِي الْحَجَرُ لَمْ أَسْتَطِعْ أَنْ أَمْنَعَهُ حَتَّى بَلَغْتُ بِهِ إلَى مَوْضِعِهِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ارْجِعْ إلَى إزَارِكَ فَخُذْهُ، وَلَا تَمْشُوا عُرَاةً» فَصَحَّ أَنَّ أَخْذَ الْإِزَارِ فَرْضٌ.

L6285–6289 As for the thigh: Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us, saying: Ibrahim ibn Ahmad narrated to us from al-Farbari from al-Bukhari from Yaqub ibn Ibrahim, who said: Ibn Ulayyah - who is Isma'il ibn Ibrahim - narrated to me from Abd al-Aziz ibn Suhayb from Anas ibn Malik: "Allah's Messenger - peace and blessings be upon him - marched against Khaybar. We prayed the dawn prayer there in the faint dawn light. The Messenger of Allah - peace and blessings be upon him - mounted his ride, and Abu Talhah mounted with me seated behind him. The Messenger of Allah - peace and blessings be upon him - hastened through the alleyways of Khaybar, and my knee was touching the thigh of the Prophet - peace and blessings be upon him. Then he lifted his waist-wrapper from his thigh until I saw the whiteness of the thigh of the Prophet - peace and blessings be upon him." The remainder of the hadith was mentioned. Ali said: "This confirms that the thigh is not awrah. Had it been awrah, Allah - Exalted and Majestic - would not have exposed it from His Messenger - peace and blessings be upon him - the purified one safeguarded from people during the state of prophethood and messengership. Nor would Anas ibn Malik or anyone else have seen it, for He - Exalted - protected him from exposing awrah even in childhood before prophethood, as Abd Allah ibn Yusuf narrated to us from Ahmad ibn Fath from Abd al-Wahhab ibn Isa from Ahmad ibn Muhammad from Ahmad ibn Ali from Muslim ibn al-Hajjaj from Zuhayr ibn Harb from Rawh ibn Ubada from Zakariyya ibn Ishaq from Amr ibn Dinar, who said: I heard Jabir ibn Abd Allah narrate: 'Allah's Messenger - peace and blessings be upon him - was carrying stones with them for the Kaaba while wearing his waist-wrapper. His uncle al-Abbas said: "O my nephew, loosen your waist-wrapper and place it over your shoulder beneath the stones." He loosened it and placed it over his shoulder, then fell unconscious. After that day, he was never seen uncovered.'" Hammad narrated to us from Ibn Mufarrij from Ibn al-A'rabi from al-Farbari from Abd al-Razzaq from Ibn Jurayj. Amr ibn Dinar informed me that he heard Jabir ibn Abdullah narrating: "When the Kaaba was rebuilt, the Messenger of Allah (peace be upon him) and Abbas went to carry stones. Abbas said to the Messenger of Allah (peace be upon him), 'Place your waistcloth over your neck to protect against the stones.' He did so, then collapsed to the ground, his eyes gazing upward toward the sky.

وَأَمَّا الْفَخِذُ: فَإِنْ عَبْدَ الرَّحْمَنِ بْنَ عَبْدِ اللَّهِ بْنِ خَالِدٍ حَدَّثَنَا قَالَ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا يَعْقُوبُ بْنُ إِبْرَاهِيمَ حَدَّثَنِي ابْنُ عُلَيَّةَ هُوَ إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ - ثنا عَبْدُ الْعَزِيزِ بْنُ صُهَيْبٍ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَزَا خَيْبَرَ، فَصَلَّيْنَا عِنْدَهَا صَلَاةَ الْغَدَاةِ بِغَلَسٍ، فَرَكِبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرَكِبَ أَبُو طَلْحَةَ وَأَنَا رَدِيفُ أَبِي طَلْحَةَ، فَأَجْرَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي زُقَاقِ خَيْبَرَ، وَإِنَّ رُكْبَتِي لَتَمَسُّ فَخِذَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ حَسَرَ الْإِزَارَ عَنْ فَخِذِهِ، حَتَّى إِنِّي أَنْظُرُ إِلَى بَيَاضِ فَخِذِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» وَذَكَرَ بَاقِي الْحَدِيثِ، قَالَ عَلِيٌّ: فَصَحَّ أَنَّ الْفَخِذَ لَيْسَتْ عَوْرَةً وَلَوْ كَانَتْ عَوْرَةً لَمَا كَشَفَهَا اللَّهُ عَزَّ وَجَلَّ عَنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُطَهَّرِ الْمَعْصُومِ مِنْ النَّاسِ فِي حَالِ النُّبُوَّةِ وَالرِّسَالَةِ، وَلَا أَرَاهَا أَنَسَ بْنَ مَالِكٍ، وَلَا غَيْرَهُ، وَهُوَ تَعَالَى قَدْ عَصَمَهُ مِنْ كَشْفِ الْعَوْرَةِ فِي حَالِ الصِّبَا وَقَبْلَ النُّبُوَّةِ كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا زُهَيْرُ بْنُ حَرْبٍ ثنا رَوْحُ بْنُ عُبَادَةَ ثنا زَكَرِيَّا بْنُ إِسْحَاقَ ثنا عَمْرُو بْنُ دِينَارٍ قَالَ سَمِعْتُ جَابِرَ بْنَ عَبْدِ اللَّهِ يُحَدِّثُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَنْقُلُ مَعَهُمْ الْحِجَارَةَ لِلْكَعْبَةِ وَعَلَيْهِ إِزَارُهُ، فَقَالَ لَهُ الْعَبَّاسُ عَمُّهُ: يَا ابْنَ أَخِي، لَوْ حَلَلْتَ إِزَارَكَ فَجَعَلْتَهُ عَلَى مَنْكِبِكَ دُونَ الْحِجَارَةِ قَالَ: فَحَلَّهُ وَجَعَلَهُ عَلَى مَنْكِبِهِ، فَسَقَطَ مَغْشِيًّا عَلَيْهِ، فَمَا رُئِيَ بَعْدَ ذَلِكَ الْيَوْمِ عُرْيَانًا» . حَدَّثَنَا حَمَّادٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الْفَرَبْرِيُّ ثنا عَبْدُ الرَّزَّاقِ ثنا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يُحَدِّثُ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا بُنِيَتْ الْكَعْبَةُ - ذَهَبَ هُوَ وَعَبَّاسٌ يَنْقُلَانِ الْحِجَارَةَ فَقَالَ

He then rose and said, 'My waistcloth, my waistcloth!' and they tightened it around him." Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us; Abdul-Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to us; Zuhayr ibn Harb narrated to us; Isma'il ibn Ibrahim—Ibn Ulayyah—narrated to us; Ayyub al-Sikhtiyani narrated from Abu al-Aliyah al-Bara, who said: "Abdullah ibn al-Samit struck my thigh and said, 'I asked Abu Dharr, and he struck my thigh just as I have struck yours, saying: "I asked the Messenger of Allah (peace be upon him) as you asked me, and he struck my thigh as I have struck yours, saying: 'Pray the prayer at its appointed time. If you catch up with the prayer alongside them, pray again, and do not say, "I have already prayed, so I will not repeat it."'" If the thigh were a private part, the Messenger of Allah (peace be upon him) would never have touched it with his sanctified hand. Had Abu Dharr considered the thigh a private part, he would not have struck it with his hand—and likewise Abdullah ibn al-Samit and Abu al-Aliyah. No Muslim would deem it permissible to strike a person's genitals over clothing, nor the rim of a person's anus over clothing, nor the body of an unrelated woman over clothing at all. The Messenger of Allah (peace be upon him) prohibited retaliation for a *kas'ah* strike—which is striking the buttocks over clothing with the sole of the foot—saying, 'Leave it, for it is disgraceful.' If it is argued, 'The stone caused Musa's (peace be upon him) garment to ride up, making the Children of Israel see he was not castrated...'" We said: Yes, and you have no valid argument in this matter for two reasons. First: In our view, there is no ruling about exposing private parts in the law of Moses—peace be upon him. The same narration states that the Children of Israel used to bathe naked while Moses—peace be upon him—bathed in seclusion. It is not reported that he—peace be upon him—forbade them from bathing naked, though he himself covered out of modesty, just as the Messenger of Allah—peace and blessings be upon him—covered his leg out of modesty before Uthman. A man's leg is not considered a private part by anyone. Second: The narration does not state that they saw Moses' genitalia—which are private—but rather that they saw a physical feature by which they discerned he was free from the defect they had alleged (the swelling). This would be evident to any observer without doubt, without

عَبَّاسٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اجْعَلْ إِزَارَكَ عَلَى رَقَبَتِكَ مِنْ الْحِجَارَةِ فَفَعَلَ، فَخَرَّ إِلَى الْأَرْضِ، وَطَمَحَتْ عَيْنَاهُ إِلَى السَّمَاءِ ثُمَّ قَامَ، فَقَالَ: إِزَارِي إِزَارِي فَشُدَّ عَلَيْهِ إِزَارُهُ» . وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا زُهَيْرُ بْنُ حَرْبٍ ثنا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ - ثنا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ أَبِي الْعَالِيَةِ الْبَرَاءِ قَالَ: إِنَّ عَبْدَ اللَّهِ بْنَ الصَّامِتِ ضَرَبَ فَخِذِي وَقَالَ: إِنِّي سَأَلْتُ أَبَا ذَرٍّ فَضَرَبَ فَخِذِي كَمَا ضَرَبْت فَخِذَك، وَقَالَ: «إِنِّي سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا سَأَلْتَنِي فَضَرَبَ فَخِذِي كَمَا ضَرَبْتُ فَخِذَكَ، وَقَالَ: صَلِّ الصَّلَاةَ لِوَقْتِهَا، فَإِنْ أَدْرَكَتْكَ الصَّلَاةُ مَعَهُمْ فَصَلِّ، وَلَا تَقُلْ إِنِّي قَدْ صَلَّيْتُ فَلَا أُصَلِّي» . فَلَوْ كَانَتْ الْفَخِذُ عَوْرَةً لَمَا مَسَّهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَبِي ذَرٍّ أَصْلًا بِيَدِهِ الْمُقَدَّسَةِ، وَلَوْ كَانَتْ الْفَخِذُ عِنْدَ أَبِي ذَرٍّ عَوْرَةً لَمَا ضَرَبَ عَلَيْهَا بِيَدِهِ: وَكَذَلِكَ عَبْدُ اللَّهِ بْنُ الصَّامِتِ، وَأَبُو الْعَالِيَةِ. وَمَا يَسْتَحِلُّ مُسْلِمٌ أَنْ يَضْرِبَ بِيَدِهِ عَلَى ذَكَرِ إنْسَانٍ عَلَى الثِّيَابِ، وَلَا عَلَى حَلْقَةِ دُبُرِ الْإِنْسَانِ عَلَى الثِّيَابِ، وَلَا عَلَى بَدَنِ امْرَأَةٍ أَجْنَبِيَّةٍ عَلَى الثِّيَابِ أَلْبَتَّةَ وَقَدْ «مَنَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ الْقَوَدِ مِنْ الْكَسْعَةِ وَهِيَ ضَرْبُ الْأَلْيَتَيْنِ عَلَى الثِّيَابِ بِبَاطِنِ الْقَدَمِ، وَقَالَ دَعُوهَا فَإِنَّهَا مُنْتِنَةٌ» . فَإِنْ قِيلَ: فَإِنَّ الْحَجَرَ قَدْ جَمَحَ بِثِيَابِ مُوسَى - عَلَيْهِ السَّلَامُ - حَتَّى رَأَى بَنُو إسْرَائِيلَ أَنَّهُ لَيْسَ آدَرَ قُلْنَا: نَعَمْ، وَلَا حُجَّةَ لَكُمْ فِي هَذَا، لِوَجْهَيْنِ -: أَحَدُهُمَا: أَنَّهُ لَيْسَ عِنْدَنَا كَشْفُ الْعَوْرَاتِ فِي شَرِيعَةِ مُوسَى - عَلَيْهِ السَّلَامُ - وَفِي ذَلِكَ الْخَبَرِ نَفْسِهِ: أَنَّ بَنِي إسْرَائِيلَ كَانُوا يَغْتَسِلُونَ عُرَاةً، وَكَانَ مُوسَى - عَلَيْهِ السَّلَامُ - يَغْتَسِلُ فِي الْخَلَاءِ، وَلَمْ يَأْتِ أَنَّهُ - عَلَيْهِ السَّلَامُ - نَهَاهُمْ عَنْ الِاغْتِسَالِ عُرَاةً وَقَدْ يَسْتَتِرُ - عَلَيْهِ السَّلَامُ -

needing to see anything of the genitalia, but merely by observing the area between the thighs being clear. Thus, their reliance on this narration is invalid. If they cite weak reports claiming the thigh is a private part, all such reports are discarded. As for the narration of Juwaybir: It is transmitted by Ibn Jawhar, who is unknown, from unknown narrators, and the chain is interrupted. The narration via ʻAmr ibn Shuʻayb from his father from his grandfather—which is a written document—we have previously addressed in multiple places within this transmission, citing positions they themselves do not uphold. For example, his narration from his father from his grandfather: "The Messenger of Allah—peace and blessings be upon him—ruled that any child claimed posthumously by heirs after the death of the father to whom he was attributed may be acknowledged if born to a slave woman owned by the father on the day he had intercourse with her. Such a child inherits from the one who claimed him but receives nothing from any inheritance already distributed. If the inheritance has not yet been divided, he receives his share. However, he is not acknowledged if the father to whom he is attributed denied him." Similarly, his narration via this chain states regarding ablution: "Washing each part three times—three times—this is the correct ablution. Whoever exceeds or falls short of this has done wrong and transgressed," and that "the Prophet—peace be upon him—forbade shaving before the Friday prayer."[30]

حَيَاءً، كَمَا سَتَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَاقَهُ حَيَاءً مِنْ عُثْمَانَ، وَلَيْسَتْ سَاقُ الرَّجُلِ عَوْرَةً عِنْدَ أَحَدٍ وَالثَّانِي: أَنَّهُ لَيْسَ فِي الْحَدِيثِ: أَنَّهُمْ رَأَوْا مِنْ مُوسَى: الذَّكَرَ - الَّذِي هُوَ عَوْرَةٌ - وَإِنَّمَا رَأَوْا مِنْهُ هَيْئَةً تَبَيَّنُوا بِهَا أَنَّهُ مُبَرَّأٌ مِمَّا قَالُوهُ مِنْ الْأُدْرَةِ، وَهَذَا يَتَبَيَّنُ لِكُلِّ نَاظِرٍ بِلَا شَكٍّ بِغَيْرِ أَنْ يَرَى شَيْئًا مِنْ الذَّكَرِ، لَكِنْ بِأَنْ يَرَى مَا بَيْنَ الْفَخِذَيْنِ خَالِيًا - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ فَإِنْ ذَكَرُوا الْأَخْبَارَ الْوَاهِيَةَ فِي أَنَّ الْفَخِذَ عَوْرَةٌ، فَهِيَ كُلُّهَا سَاقِطَةٌ. أَمَّا حَدِيثُ جُوَيْبِرٍ -: فَإِنَّهُ عَنْ ابْنِ جَوْهَرٍ، وَهُوَ مَجْهُولٌ، وَعَنْ مَجْهُولِينَ، وَمُنْقَطِعٌ وَمِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ - وَهُوَ صَحِيفَةٌ - قَدْ ذَكَرْنَا فِي غَيْرِ مَا مَوْضِعٍ مِنْ هَذِهِ الرِّوَايَةِ مَا لَا يَقُولُونَ بِهِ. مِثْلَ: رِوَايَتِهِ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى أَنَّ كُلَّ مُسْتَلْحَقٍ اُسْتُلْحِقَ بَعْدَ أَبِيهِ الَّذِي يُدْعَى لَهُ ادَّعَاهُ وَرَثَتُهُ: إنْ كَانَ مِنْ أَمَةٍ يَمْلِكُهَا يَوْمَ أَصَابَهَا: فَقَدْ لَحِقَ بِمَنْ اسْتَلْحَقَهُ، وَلَيْسَ لَهُ مِمَّا قُسِمَ قَبْلَهُ مِنْ الْمِيرَاثِ شَيْءٌ، وَمَا أَدْرَكَ مِنْ مِيرَاثٍ لَمْ يُقْسَمْ فَلَهُ نَصِيبُهُ، وَلَا يَلْحَقُ إنْ كَانَ أَبُوهُ الَّذِي يُدْعَى لَهُ أَنْكَرَهُ» . وَمِثْلَ: رِوَايَتِهِ مِنْ هَذِهِ الطَّرِيقِ مُسْنَدًا وَذَكَرَ الْوُضُوءَ ثَلَاثًا ثَلَاثًا «هَكَذَا الْوُضُوءُ فَمَنْ زَادَ عَلَى هَذَا أَوْ نَقَصَ فَقَدْ أَسَاءَ وَظَلَمَ» وَ «أَنَّهُ - عَلَيْهِ السَّلَامُ - نَهَى عَنْ الْحَلْقِ قَبْلَ الصَّلَاةِ يَوْمَ الْجُمُعَةِ» .

L6290–6295 A woman has no authority over her property if her husband dies while she remains in his marital bond, and "he (peace be upon him) ruled regarding the sixth permanent eye injury established in its place that it entitles [the claimant] to a third of the diyah (blood money)." Similar rulings are exceedingly numerous. Concerning the thigh being awrah (private part): via the chain of Qabisah ibn Mukhariq—it includes Sulayman ibn Sulayman, Muhammad ibn ʻUqbah, and Jarir ibn Qatan, who are unknown and unrecognized narrators. Through Ibn Jahsh's chain: it includes Abu Kathir,

وَلَا يَجُوزُ لِامْرَأَةٍ أَمْرٌ فِي مَالِهَا إذَا هَلَكَ زَوْجُهَا فِي عِصْمَتِهَا وَ «أَنَّهُ - عَلَيْهِ السَّلَامُ - قَضَى فِي الْعَيْنِ الْقَائِمَةِ السَّادَّةِ لِمَكَانِهَا بِثُلُثِ الدِّيَةِ» . وَمِثْلُ هَذَا كَثِيرٌ جِدًّا. وَفِي أَنَّ الْفَخِذَ عَوْرَةٌ مِنْ طَرِيقِ قَبِيصَةَ بْنِ مُخَارِقٍ، فِيهِ: سُلَيْمَانُ بْنُ سُلَيْمَانَ وَمُحَمَّدُ بْنُ عُقْبَةَ، وَجَرِيرُ بْنُ قَطَنٍ؛ وَهُمْ مَجْهُولُونَ لَا يُعْرَفُ مَنْ هُمْ. وَمِنْ طَرِيقِ ابْنِ جَحْشٍ، فِيهِ أَبُو كَثِيرٍ، وَهُوَ مَجْهُولٌ. وَمِنْ طَرِيقِ عَلِيٍّ، مُنْقَطِعٌ، رَوَاهُ ابْنُ جُرَيْجٍ عَنْ حَبِيبِ بْنِ أَبِي

[30] **Hadith references (L6285):** Sahih Muslim 648e; Sunan Abi Dawud 135.

an unknown narrator. Through ʻAli's chain—an interrupted narration: Ibn Jurayj reported it from Habib ibn Abi Thabit without direct hearing. Between them lies an unnamed individual of uncertain identity. Habib ibn Abi Thabit's narration from ʻAsim ibn Damrah likewise lacks direct transmission. Ibn Maʻin stated: Between them is an untrustworthy man. None except Abu Khalid—an unknown and unidentified individual—narrated it from Ibn Jurayj. Through Ibn ʻAbbas's chain: it includes Abu Yahya al-Qattat, a weak narrator. Another chain from Ibn ʻAbbas includes unknown and unrecognized individuals. Through Sufyan al-Thawri's chain: a narration attributed to "The Messenger of Allah (peace be upon him)..."—but this is baseless. Even if none of the established evidences we cited existed, it would remain impermissible to conclusively deem a limb awrah—thereby invalidating prayer if uncovered—except with proof from a textual source or consensus.

ʻAbdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: ʻAbd al-Wahhab ibn ʻIsa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn ʻAli narrated to us: Muslim ibn al-Hajjaj narrated to me: Abu Bakr ibn Ishaq informed me: Saʻid ibn Kathir ibn ʻUfayr narrated to us: ʻAbdullah ibn Wahb narrated from Yunus—that is, Ibn Yazid—from Ibn Shihab, who informed me: ʻAli ibn al-Husayn reported that his father, al-Husayn ibn ʻAli, informed him that ʻAli said: "I owned a mature camel from my share of the spoils on the day of Badr," and he mentioned the hadith. Within it: "Hamzah looked up at the knees of the Messenger of Allah (peace be upon him), then lifted his gaze further to..." His navel." He mentioned the remainder of the hadith. Had the navel been a private part, Allah would not have permitted Hamza or others to look upon it. We have been narrated through Abu Dawud's chain: Muslim ibn Ibrahim reported to us, Hisham al-Dastuwa'i from Abu al-Zubayr from Jabir, who said: "The Prophet (peace and blessings be upon him) was cupped on his upper thigh for a sprain he suffered." Had the upper thigh been a private part, he (peace be upon him) would not have exposed it to the cupper. This chain is one whose like represents the pinnacle of their aspirations. As for us, we suffice with authentic reports even if we do not regard them as authoritative proof - and we seek Allah's refuge from citing in any matter what we do not consider authoritative proof in

ثَابِتٍ، وَلَمْ يَسْمَعْهُ مِنْهُ، بَيْنَهُمَا مَنْ لَمْ يُسَمَّ وَلَا يُدْرَى مَنْ هُوَ، وَرِوَايَةُ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ عَاصِمِ بْنِ ضَمْرَةَ، وَلَمْ يَسْمَعْهُ مِنْهُ، قَالَ ابْنُ مَعِينٍ: بَيْنَهُمَا رَجُلٌ لَيْسَ بِثِقَةٍ، وَلَمْ يَرْوِهِ عَنِ ابْنِ جُرَيْجٍ إِلَّا أَبُو خَالِدٍ، وَلَا يُدْرَى مَنْ هُوَ. وَمِنْ طَرِيقِ ابْنِ عَبَّاسٍ، فِيهَا أَبُو يَحْيَى الْقَتَّاتُ، وَهُوَ ضَعِيفٌ. وَمِنْ طَرِيقِ ابْنِ عَبَّاسٍ، فِيهِ مَجْهُولُونَ لَا يُدْرَى مَنْ هُمْ. وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا لَا شَيْءَ. وَحَتَّى لَوْ لَمْ يَأْتِ مِنَ الْآثَارِ الثَّابِتَةِ الَّتِي ذَكَرْنَا شَيْءٌ لَمَا جَازَ أَنْ يُقْطَعَ عَلَى عُضْوٍ بِأَنَّهُ عَوْرَةٌ تَبْطُلُ الصَّلَاةُ بِتَرْكِهِ -: إِلَّا بِبُرْهَانٍ، مِنْ نَصٍّ أَوْ إِجْمَاعٍ. وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي أَبُو بَكْرِ بْنُ إِسْحَاقَ أَنَا سَعِيدُ بْنُ كَثِيرِ بْنِ عُفَيْرٍ ثنا عَبْدُ اللَّهِ بْنُ وَهْبٍ عَنْ يُونُسَ هُوَ ابْنُ يَزِيدَ - عَنِ ابْنِ شِهَابٍ أَخْبَرَنِي عَلِيُّ بْنُ الْحُسَيْنِ أَنَّ أَبَاهُ الْحُسَيْنَ بْنَ عَلِيٍّ أَخْبَرَهُ أَنَّ عَلِيًّا قَالَ: «كَانَتْ لِي شَارِفٌ مِنْ نَصِيبِي مِنَ الْمَغْنَمِ يَوْمَ بَدْرٍ وَذَكَرَ الْحَدِيثَ. وَفِيهِ أَنَّ حَمْزَةَ صَعَّدَ النَّظَرَ إِلَى رُكْبَتَيْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ صَعَّدَ النَّظَرَ إِلَى سُرَّتِهِ.» وَذَكَرَ بَاقِي الْحَدِيثِ. فَلَوْ كَانَتِ السُّرَّةُ عَوْرَةً لَمَا أَطْلَقَ اللَّهُ حَمْزَةَ وَلَا غَيْرَهُ عَلَى النَّظَرِ إِلَيْهَا. وَقَدْ رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد: حَدَّثَنِي مُسْلِمُ بْنُ إِبْرَاهِيمَ ثنا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: «احْتَجَمَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى وَرِكِهِ مِنْ وَثْءٍ كَانَ بِهِ» . فَلَوْ كَانَ الْوَرِكُ عَوْرَةً مَا كَشَفَهَا - عَلَيْهِ السَّلَامُ - إِلَى الْحَجَّامِ وَهَذَا إِسْنَادٌ أَعْظَمُ آمَالِهِمْ أَنْ يَظْفَرُوا بِمِثْلِهِ لِأَنْفُسِهِمْ وَأَمَّا نَحْنُ فَغَانُونَ بِالصَّحِيحِ عَلَى مَا لَا نَرَاهُ حُجَّةً، وَمَعَاذَ اللَّهِ مِنْ أَنْ نَحْتَجَّ فِي مَكَانٍ بِمَا لَا نَرَاهُ حُجَّةً فِي كُلِّ مَكَانٍ، تَعَصُّبًا لِلتَّقْلِيدِ، وَاسْتِهَانَةً بِالشَّرِيعَةِ، وَهَذَا الَّذِي قُلْنَا بِهِ هُوَ قَوْلُ

all matters, whether due to uncritical imitation of precedent or disrespect for the Sacred Law. This position of ours aligns with the majority of early scholars. As narrated through Muhammad ibn al-Muthanna: Sufyan ibn Uyayna from Muhammad ibn al-Munkadir, who heard Sa'id ibn Abd al-Rahman ibn Yarbu' report from Jubayr ibn Huwayrith, who said: "I saw Abu Bakr al-Siddiq standing at Quzaḥ proclaiming: 'O people, attend to the morning prayer!' I distinctly observed his thigh uncovered." Through al-Bukhari's chain: Abdallah ibn Abd al-Wahhab al-Hajabi from Khalid ibn al-Harith from Ibn Awn (Abdallah) from Musa ibn Anas ibn Malik, who recounted concerning the Day of Yamamah [the Battle of Yamamah] and said: Anas came to Thabit ibn Qays ibn al-Shammas, who had exposed his thighs and was applying funeral perfume (ḥanūṭ) in preparation for death. Al-Bukhari said: Hammad narrated it from Thabit from Anas. From the chain of Muhammad ibn Fudayl from Ata ibn al-Sa'ib, he said: I entered upon Abu Ja'far (who is Muhammad ibn Ali ibn al-Husayn ibn Abi Talib) while he was feverish and had uncovered his thighs, and he mentioned the ḥadīth. These are the ones—Abu Bakr among those present at the gathering, Thabit ibn Qays, Anas, and others. This is the opinion of Ibn Abi Dhib, Sufyan al-Thawri, and Abu Sulayman—and this is the position we adopt. As for women, Allah the Exalted says: "And let them not display their adornment except what appears thereof, and let them draw their veils over their bosoms, and not display their adornment except to their husbands" [24:31]—until His statement—"And let them not strike their feet to make known what they conceal of their adornment" [24:31]. Thus, Allah the Exalted commanded them to draw their veils over their bosoms. This is an explicit text mandating the covering of the private area, neck, and chest. It also explicitly permits the uncovering of the face, as no other interpretation is possible at all. His statement, "And let them not strike their feet to make known what they conceal of their adornment" [24:31], explicitly indicates that the feet and calves are among what must be concealed and it is impermissible to expose them. Abdullah ibn Yusuf narrated to us through Ahmad ibn Fath, Abdul Wahhab ibn Isa, Ahmad ibn Muhammad, Ahmad ibn Ali, Muslim ibn al-Hajjaj, Amr al-Naqid, Isa ibn Yunus, Hisham from Hafsah bint Sirin from Umm Atiyyah, who said: "The Messenger of Allah—peace and blessings be

جُمْهُورِ السَّلَفِ. كَمَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى: ثنا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ سَمِعَ سَعِيدَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ يَرْبُوعٍ يُخْبِرُ عَنْ جُبَيْرِ بْنِ الْحُوَيْرِثِ قَالَ: رَأَيْت أَبَا بَكْرٍ الصِّدِّيقَ وَاقِفًا عَلَى قُزَحٍ يَقُولُ: يَا أَيُّهَا النَّاسُ أَصْبِحُوا، وَإِنِّي لَأَنْظُرُ إلَى فَخِذِهِ قَدْ انْكَشَفَ. وَمِنْ طَرِيقِ الْبُخَارِيِّ: ثنا عَبْدُ اللَّهِ بْنُ عَبْدِ الْوَهَّابِ هُوَ الْحَجَبِيُّ ثنا خَالِدُ بْنُ الْحَارِثِ ثنا ابْنُ عَوْنٍ هُوَ عَبْدُ اللَّهِ عَنْ مُوسَى بْنِ أَنَسِ بْنِ مَالِكٍ: فَذَكَرَ يَوْمَ الْيَمَامَةِ فَقَالَ: أَتَى أَنَسٌ إلَى ثَابِتِ بْنِ قَيْسِ بْنِ الشَّمَّاسِ وَقَدْ حَسَرَ عَنْ فَخِذَيْهِ وَهُوَ يَتَحَنَّطُ -: يَعْنِي مِنْ الْحَنُوطِ لِلْمَوْتِ. قَالَ الْبُخَارِيُّ: وَرَوَاهُ حَمَّادٌ عَنْ ثَابِتٍ عَنْ أَنَسٍ. وَمِنْ طَرِيقِ مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ عَطَاءِ بْنِ السَّائِبِ قَالَ: دَخَلْت عَلَى أَبِي جَعْفَرٍ هُوَ مُحَمَّدُ بْنُ عَلِيِّ بْنِ الْحُسَيْنِ بْنِ أَبِي طَالِبٍ -: وَهُوَ مَحْمُومٌ وَقَدْ كَشَفَ عَنْ فَخِذَيْهِ، وَذَكَرَ الْخَبَرَ فَهَؤُلَاءِ - أَبُو بَكْرٍ بِحَضْرَةِ أَهْلِ الْمَوْسِمِ -: وَثَابِتُ بْنُ قَيْسٍ، وَأَنَسٌ، وَغَيْرُهُمْ. وَهُوَ قَوْلُ ابْنِ أَبِي ذِئْبٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَبِي سُلَيْمَانَ - وَبِهِ نَأْخُذُ وَأَمَّا الْمَرْأَةُ فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَلا يُبْدِينَ زِينَتَهُنَّ إِلا مَا ظَهَرَ مِنْهَا وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَى جُيُوبِهِنَّ وَلا يُبْدِينَ زِينَتَهُنَّ إِلا لِبُعُولَتِهِنَّ} [النور: ٣١]- إلَى قَوْلِهِ -: {وَلا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ} [النور: ٣١] . فَأَمَرَهُنَّ اللَّهُ تَعَالَى بِالضَّرْبِ بِالْخُمُرِ عَلَى الْجُيُوبِ، وَهَذَا نَصٌّ عَلَى سَتْرِ الْعَوْرَةِ، وَالْعُنُقِ، وَالصَّدْرِ. وَفِيهِ نَصٌّ عَلَى إبَاحَةِ كَشْفِ الْوَجْهِ، لَا يُمْكِنُ غَيْرُ ذَلِكَ أَصْلًا، وَهُوَ قَوْله تَعَالَى: {وَلا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ} [النور: ٣١] نَصٌّ عَلَى أَنَّ الرِّجْلَيْنِ وَالسَّاقَيْنِ مِمَّا يُخْفَى وَلَا يَحِلُّ إبْدَاؤُهُ. وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا عَمْرٌو النَّاقِدُ ثنا عِيسَى بْنُ يُونُسَ ثنا هِشَامٌ عَنْ حَفْصَةَ بِنْتِ

upon him—commanded us to bring out [women] on Eid al-Fitr and Eid al-Adha: adolescent women, menstruating women, and women in seclusion." She said: I asked, "O Messenger of Allah, one of us has no jilbab." He said: "Let her sister clothe her from her own jilbab."[31]

L6296–6299 Ali said: This matter pertains to their wearing of jilbābs (garments covering the entire body) for prayer. In the Arabic language with which the Messenger of Allah—peace be upon him—addressed us, the jilbāb refers to that which covers the entire body, not merely a portion of it. Thus, what we have stated is textually verified. ʻAbd al-Raḥmān ibn ʻAbd Allāh ibn Khālid narrated to us; Ibrāhīm ibn Aḥmad narrated to us; al-Farbārī narrated to us; al-Bukhārī narrated to us; Musaddad narrated to us; Yaḥyā—who is Ibn Saʻīd al-Qaṭṭān—narrated from Sufyān—who is al-Thawrī—who informed me that ʻAbd al-Raḥmān ibn ʻĀbis said: "I heard Ibn ʻAbbās mention that he attended the Eid prayer with the Messenger of Allah—peace be upon him—and that after praying, the Messenger of Allah—peace be upon him—delivered a sermon, then approached the women while Bilāl accompanied him. He admonished them, reminded them, and commanded them to give charity. I observed them extending their hands, casting their charity into Bilāl's garment." Thus, Ibn ʻAbbās, in the presence of the Messenger of Allah—peace be upon him—saw their hands, confirming that a woman's hand and face are not ʻawrah (parts requiring concealment), whereas all other body parts must obligatorily be covered. ʻAbd Allāh ibn Rabīʻ narrated to us; Muḥammad ibn Muʻāwiyah narrated to us; Aḥmad ibn Shuʻayb narrated to us; Sulaymān ibn Sayf narrated to us; Yaʻqūb ibn Ibrāhīm ibn Saʻd ibn Ibrāhīm ibn ʻAbd al-Raḥmān ibn ʻAwf narrated to us; my father narrated from Ṣāliḥ ibn Kayṣān from Ibn Shihāb: that Sulaymān ibn Yasār informed him that Ibn ʻAbbās informed him "a woman from Khathʻam sought a religious ruling from the Messenger of Allah—peace be upon him—during the Farewell Pilgrimage," while al-Faḍl ibn ʻAbbās was seated behind the Messenger of Allah—peace be upon him. He mentioned the ḥadīth, which states: "Al-Faḍl began to turn toward her—for she was a beautiful woman—and the Messenger of Allah—peace be upon

[31] **Qur'an references (L6291):** Qur'an 24:31 (An-Nur).

سِيرِينَ عَنْ أُمِّ عَطِيَّةَ قَالَتْ: «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نُخْرِجَهُنَّ فِي الْفِطْرِ وَالْأَضْحَى: الْعَوَاتِقُ، وَالْحُيَّضُ، وَذَوَاتُ الْخُدُورِ. قَالَتْ: قُلْت يَا رَسُولَ اللَّهِ، إحْدَانَا لَا يَكُونُ لَهَا جِلْبَابٌ قَالَ: لِتُلْبِسْهَا أُخْتُهَا مِنْ جِلْبَابِهَا» .

قَالَ عَلِيٌّ: وَهَذَا أَمْرٌ بِلُبْسِهِنَّ الْجَلَابِيبَ لِلصَّلَاةِ وَالْجِلْبَابُ فِي لُغَةِ الْعَرَبِ الَّتِي خَاطَبَنَا بِهَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ مَا غَطَّى جَمِيعَ الْجِسْمِ، لَا بَعْضَهُ فَصَحَّ مَا قُلْنَا نَصًّا حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُسَدَّدٌ ثنا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ سُفْيَانَ هُوَ الثَّوْرِيُّ - أَخْبَرَنِي عَبْدُ الرَّحْمَنِ بْنُ عَابِسٍ قَالَ: «سَمِعْتُ ابْنَ عَبَّاسٍ يَذْكُرُ أَنَّهُ شَهِدَ الْعِيدَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: وَأَنَّهُ - عَلَيْهِ السَّلَامُ - خَطَبَ بَعْدَ أَنْ صَلَّى، ثُمَّ أَتَى النِّسَاءَ وَمَعَهُ بِلَالٌ، فَوَعَظَهُنَّ وَذَكَّرَهُنَّ، وَأَمَرَهُنَّ أَنْ يَتَصَدَّقْنَ، فَرَأَيْتُهُنَّ يُهَوِّينَ بِأَيْدِيهِنَّ يَقْذِفْنَهُ فِي ثَوْبِ بِلَالٍ» . فَهَذَا ابْنُ عَبَّاسٍ بِحَضْرَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَأَى أَيْدِيَهُنَّ؛ فَصَحَّ أَنَّ الْيَدَ مِنْ الْمَرْأَةِ، وَالْوَجْهَ: لَيْسَا عَوْرَةً، وَمَا عَدَاهُمَا؛ فَفَرْضٌ عَلَيْهَا سَتْرُهُ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا سُلَيْمَانُ بْنُ سَيْفٍ ثنا يَعْقُوبُ بْنُ إبْرَاهِيمَ بْنِ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ ثنا أَبِي عَنْ صَالِحِ بْنِ كَيْسَانَ عَنْ ابْنِ شِهَابٍ: أَنَّ سُلَيْمَانَ بْنَ يَسَارٍ أَخْبَرَهُ أَنَّ ابْنَ عَبَّاسٍ أَخْبَرَهُ «أَنَّ امْرَأَةً مِنْ خَثْعَمَ اسْتَفْتَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَجَّةِ الْوَدَاعِ» ، وَالْفَضْلُ بْنُ عَبَّاسٍ رَدِيفُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " وَذَكَرَ الْحَدِيثَ. وَفِيهِ " فَأَخَذَ الْفَضْلُ يَلْتَفِتُ إلَيْهَا، وَكَانَتْ امْرَأَةً حَسْنَاءَ، وَأَخَذَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُحَوِّلُ وَجْهَ الْفَضْلِ مِنْ الشِّقِّ الْآخَرِ ". فَلَوْ كَانَ الْوَجْهُ عَوْرَةً يَلْزَمُ

him—redirected al-Faḍl's face to the opposite side." Had the face been ʻawrah, necessitating its concealment, the Prophet—peace be upon him—would not have permitted her to uncover it in public, nor would he have instructed her to drape her garment over it. If her face had been veiled, Ibn ʻAbbās could not have discerned whether she was beautiful or otherwise. Thus, all that we have asserted is conclusively validated, and abundant praise belongs to Allah. Concerning the distinction between free women and female slaves, the religion of Allah the Exalted is one, their creation and inherent nature are one. All... This ruling applies equally to free women and slave women until an explicit text emerges distinguishing between them in any matter, at which point adherence becomes obligatory. If one argues that Allah's statement, {And let them not display their adornment except to their husbands} [24:31], indicates He intended only free women, we respond: This is undeniably false, for "baʿl" in Arabic denotes both a spouse and a master. Moreover, slave women may marry, and we have never known them to lack sons, fathers, maternal uncles, or paternal uncles as free women possess. Some who erred in interpreting Allah's statement, {to draw their cloaks over themselves} [33:59], claimed He commanded this solely because immoral men pursued women for lewdness, so free women were ordered to wear cloaks for recognition by the immoral, who would then avoid harassing them. Ali said: We disavow this corrupt interpretation—be it the lapse of a scholar or the slip of a virtuous, rational person, or the fabrication of a lying transgressor—for it implies Allah permitted immoral men to violate the honor of Muslim slave women, an eternal calamity. No two Muslims have ever disputed that the prohibition of unlawful sexual intercourse with a free woman equals that with a slave woman, that the punishment for it is identical, or that harassing a free woman is as forbidden as harassing a slave woman. For this reason and its like, it is obligatory to reject any opinion after Allah's Messenger (peace be upon him) unless substantiated by his authority. Narrated by Abdullah ibn Rabīʿ, from ʿUmar ibn ʿAbd al-Malik, from Ibn al-Aʿrābī, from Muḥammad ibn al-Jārūd al-Qaṭṭān, from ʿAffān ibn Muslim, from Ḥammād ibn Zayd, from Qatādah, from Muḥammad ibn Sīrīn, from Ṣafiyyah bint al-Ḥārith, from ʿĀ'ishah, Mother of the Believers: The Messenger of Allah

سَتْرُهُ لَمَا أَقَرَّهَا - عَلَيْهِ السَّلَامُ - عَلَى كَشْفِهِ بِحَضْرَةِ النَّاسِ، وَلَأَمَرَهَا أَنْ تُسْبِلَ عَلَيْهِ مِنْ فَوْقٍ، وَلَوْ كَانَ وَجْهُهَا مُغَطًّى مَا عَرَفَ ابْنُ عَبَّاسٍ أَحَسْنَاءُ هِيَ أَمْ شَوْهَاءُ فَصَحَّ كُلُّ مَا قُلْنَاهُ يَقِينًا وَالْحَمْدُ لِلَّهِ كَثِيرًا. وَأَمَّا الْفَرْقُ بَيْنَ الْحُرَّةِ وَالْأَمَةِ فَدِينُ اللَّهِ تَعَالَى وَاحِدٌ، وَالْخِلْقَةُ وَالطَّبِيعَةُ وَاحِدَةٌ، كُلُّ ذَلِكَ فِي الْحَرَائِرِ وَالْإِمَاءِ سَوَاءٌ، حَتَّى يَأْتِيَ نَصٌّ فِي الْفَرْقِ بَيْنَهُمَا فِي شَيْءٍ فَيُوقَفُ عِنْدَهُ، فَإِنْ قِيلَ: إِنَّ قَوْلَ اللَّهِ تَعَالَى: {وَلا يُبْدِينَ زِينَتَهُنَّ إِلا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ} [النور: ٣١] : يَدُلُّ عَلَى أَنَّهُ تَعَالَى أَرَادَ الْحَرَائِرَ فَقُلْنَا: هَذَا هُوَ الْكَذِبُ بِلَا شَكٍّ، لِأَنَّ الْبَعْلَ فِي لُغَةِ الْعَرَبِ: السَّيِّدُ، وَالزَّوْجُ، وَأَيْضًا فَالْأَمَةُ قَدْ تَتَزَوَّجُ؛ وَمَا عَلِمْنَا قَطُّ أَنَّ الْإِمَاءَ لَا يَكُونُ لَهُنَّ: أَبْنَاءٌ، وَآبَاءٌ، وَأَخْوَالٌ، وَأَعْمَامٌ، كَمَا لِلْحَرَائِرِ، وَقَدْ ذَهَبَ بَعْضُ مَنْ وَهَلَ فِي قَوْلِ اللَّهِ تَعَالَى: {يُدْنِينَ عَلَيْهِنَّ مِنْ جَلابِيبِهِنَّ ذَلِكَ أَدْنَى أَنْ يُعْرَفْنَ فَلا يُؤْذَيْنَ} [الأحزاب: ٥٩] إِلَى أَنَّهُ إِنَّمَا أَمَرَ اللَّهُ تَعَالَى بِذَلِكَ لِأَنَّ الْفُسَّاقَ كَانُوا يَتَعَرَّضُونَ لِلنِّسَاءِ لِلْفِسْقِ، فَأَمَرَ الْحَرَائِرَ بِأَنْ يَلْبَسْنَ الْجَلَابِيبَ لِيَعْرِفَ الْفُسَّاقُ أَنَّهُنَّ حَرَائِرُ فَلَا يَعْتَرِضُوهُنَّ. قَالَ عَلِيٌّ: وَنَحْنُ نَبْرَأُ مِنْ هَذَا التَّفْسِيرِ الْفَاسِدِ، الَّذِي هُوَ: إِمَّا زَلَّةُ عَالِمٍ وَوَهْلَةُ فَاضِلٍ عَاقِلٍ، أَوْ افْتِرَاءُ كَاذِبٍ فَاسِقٍ، لِأَنَّ فِيهِ أَنَّ اللَّهَ تَعَالَى أَطْلَقَ الْفُسَّاقَ عَلَى أَعْرَاضِ إِمَاءِ الْمُسْلِمِينَ، وَهَذِهِ مُصِيبَةُ الْأَبَدِ، وَمَا اخْتَلَفَ اثْنَانِ مِنْ أَهْلِ الْإِسْلَامِ فِي أَنَّ تَحْرِيمَ الزِّنَى بِالْحُرَّةِ كَتَحْرِيمِهِ بِالْأَمَةِ، وَأَنَّ الْحَدَّ عَلَى الزَّانِي بِالْحُرَّةِ كَالْحَدِّ عَلَى الزَّانِي بِالْأَمَةِ وَلَا فَرْقَ، وَإِنَّ تَعَرُّضَ الْحُرَّةِ فِي التَّحْرِيمِ كَتَعَرُّضِ الْأَمَةِ وَلَا فَرْقَ، وَلِهَذَا وَشِبْهِهِ وَجَبَ أَنْ لَا يُقْبَلَ قَوْلُ أَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا بِأَنْ يُسْنِدَهُ إِلَيْهِ - عَلَيْهِ السَّلَامُ -. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا مُحَمَّدُ بْنُ الْجَارُودِ الْقَطَّانُ ثنا عَفَّانُ بْنُ مُسْلِمٍ ثنا حَمَّادُ بْنُ زَيْدٍ ثنا

(peace be upon him) said, “Allah does not accept an adult woman’s prayer unless she wears a head covering.”[32][33]

قَتَادَةُ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ صَفِيَّةَ بِنْتِ الْحَارِثِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَقْبَلُ اللَّهُ صَلَاةَ حَائِضٍ إِلَّا بِخِمَارٍ» .

L6300–6301 Ali said: It has been narrated to us through the chain of Mālik from Muḥammad ibn Abī Bakr from his mother that she asked Umm Salamah, the Mother of the Believers: “In what [garments] should a woman pray?” She replied: “In a covering tunic that conceals the tops of her feet and a head cover.” From the chain of ʿAbd al-Razzāq through Sufyān al-Thawrī from Jābir from Umm Thawr from her husband Bishr, he said: “Someone asked Ibn ʿAbbās: ’In how many garments should a woman pray?’ He answered: ’In a tunic and a head cover.’” From the chain of ʿAbd al-Razzāq through al-Awzāʿī from Makhūl from someone who asked ʿĀ’ishah, the Mother of the Believers: “In how many garments should a woman pray?” She told him: “Ask ʿAlī ibn Abī Ṭālib, then return to me and inform me.” He went to ʿAlī and asked him, and he replied: “In a head cover and a covering tunic.” He returned to ʿĀ’ishah and informed her. She said: “He told the truth.” From the chain of Muḥammad ibn al-Muthannā: ʿAbd Allāh ibn Idrīs narrated to us: Qābūs ibn Abī Ẓabyān narrated from his father: “A girl whose breasts had begun to develop would appear in public during ʿĀ’ishah’s time. When this was mentioned to ʿĀ’ishah, she said: ’She has not yet menstruated.’ Whoever asserts that they - may Allah be pleased with them - meant free women rather than slave women is lying. There is no distinction between such a liar and one who claims they intended this exclusively for Qurayshī women, or Muḍarī women, or Arab women. All of that is false.” From the chain of Ibn al-Muthannā: Ibn Fuḍayl narrated to us: Khuṣayf narrated: I heard Mujāhid say: “Any woman who prays without covering her hair - Allah does not accept her prayer.”

قَالَ عَلِيٌّ: وَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ مُحَمَّدِ بْنِ أَبِي بَكْرٍ عَنْ أُمِّهِ أَنَّهَا سَأَلَتْ أُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ: فِي كَمْ تُصَلِّي الْمَرْأَةُ. قَالَتْ: فِي الدِّرْعِ السَّابِغِ الَّذِي يُوَارِي ظُهُورَ قَدَمَيْهَا وَفِي الْخِمَارِ، وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ عَنْ أُمِّ ثَوْرٍ عَنْ زَوْجِهَا بِشْرٍ قَالَ: قُلْت لِابْنِ عَبَّاسٍ: فِي كَمْ تُصَلِّي الْمَرْأَةُ مِنْ الثِّيَابِ.؟ قَالَ: فِي دِرْعٍ وَخِمَارٍ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْأَوْزَاعِيِّ عَنْ مَكْحُولٍ عَمَّنْ سَأَلَ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ: فِي كَمْ تُصَلِّي الْمَرْأَةُ مِنْ الثِّيَابِ؟ فَقَالَتْ لَهُ: سَلْ عَلِيَّ بْنَ أَبِي طَالِبٍ ثُمَّ ارْجِعْ إلَيَّ فَأَخْبِرْنِي فَأَتَى عَلِيًّا فَسَأَلَهُ، فَقَالَ: فِي الْخِمَارِ وَالدِّرْعِ السَّابِغِ، فَرَجَعَ إلَى عَائِشَةَ فَأَخْبَرَهَا. فَقَالَتْ: صَدَقَ. وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى ثنا عَبْدُ اللَّهِ بْنُ إدْرِيسَ أَنَا قَابُوسُ بْنُ أَبِي ظَبْيَانَ عَنْ أَبِيهِ: أَنَّ جَارِيَةً كَانَتْ تَخْرُجُ عَلَى عَهْدِ عَائِشَةَ بَعْدَمَا تَحَرَّكَ ثَدْيَاهَا، فَقِيلَ لِعَائِشَةَ فِي ذَلِكَ، فَقَالَتْ: إنَّهَا لَمْ تَحِضْ بَعْدُ فَمَنْ ادَّعَى أَنَّهُمْ - رَضِيَ اللَّهُ عَنْهُمْ - أَرَادُوا الْحَرَائِرَ دُونَ الْإِمَاءِ: كَانَ كَاذِبًا وَلَمْ يَكُنْ بَيْنَهُ فَرْقٌ وَبَيْنَ مَنْ قَالَ: بَلْ أَرَادُوا إلَّا الْقُرَشِيَّاتِ خَاصَّةً، أَوْ الْمُضَرِيَّاتِ خَاصَّةً، أَوْ الْعَرَبِيَّاتِ خَاصَّةً، وَكُلُّ ذَلِكَ كَذِبٌ. وَمِنْ طَرِيقِ ابْنِ الْمُثَنَّى ثنا ابْنُ فُضَيْلٍ ثنا خُصَيْفٌ سَمِعْت مُجَاهِدًا يَقُولُ: أَيُّمَا امْرَأَةٍ صَلَّتْ وَلَمْ تُغَطِّ شَعْرَهَا لَمْ يَقْبَلْ اللَّهُ لَهَا صَلَاةً.

L6302–6303 From the chain of Ibn Al-Muthannā through ʿAbd al-Raḥmān ibn Mahdī through Sufyān al-Thawrī through Ibn Jurayj through ʿAṭāʾ, who said: “A female slave **covers** her head in prayer.” From the chain of ʿAbd al-

وَمِنْ طَرِيقِ ابْنِ الْمُثَنَّى عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: تنع الْأَمَةُ رَأْسَهَا فِي الصَّلَاةِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى قَالَ: إذَا حَاضَتْ الْمَرْأَةُ لَمْ تُقْبَلْ لَهَا صَلَاةٌ حَتَّى تَخْتَمِرَ، وَتُوَارِي

[32] **Hadith references (L6297):** Sunan an-Nasai 2642.
[33] **Qur’an references (L6297):** Qur’an 24:31 (An-Nur); Qur’an 33:59 (Al-Ahzab).

Razzāq through Ibn Jurayj through Sulaymān ibn Mūsā, who said: "If a woman menstruates, her prayer is not accepted until she covers her head and conceals it." From the chain of ʿAbd al-Razzāq through Ibn Jurayj through ʿAṭāʾ, who said: "When a female slave prays, she covers her head and conceals it with a cloth or khimār, **just as they would cover themselves** during the time of Allah's Messenger—peace and blessings be upon him." Al-Ḥasan would order a female slave **when she marries** a slave or a free man to cover her head. ʿAlī said: "What was narrated from ʿUmar—may Allah be pleased with him—and others contradicting this was not unknown to us. But no authority supersedes the Messenger of Allah—peace and blessings be upon him. When the predecessors—may Allah be pleased with them—dispute, it is obligatory to revert to what Allah Almighty has commanded: the Quran and the Sunnah. Neither the Quran nor the Sunnah distinguishes between a free woman and a female slave in prayer. It is astonishing that they disregard ʿUmar's dissent—may Allah be pleased with him—in matters where opposing him is impermissible, where no Companion—may Allah be pleased with them—opposed him, and where the Quran and Sunnah support him—such as his ruling that a pilgrim in iḥrām who kills a rabbit must compensate with **a female kid goat**, or a spiny-tailed lizard with **a male kid goat**; his statement that no dowry applies to invalid marriages; his opinion on wiping over the turban; and **up to hundreds** of rulings. Yet when Abū Ḥanīfah, Mālik, and al-Shāfiʿī oppose him, they reject his stance. But when his reported opinion aligns with theirs, it suddenly becomes an incontestable proof—even if other Companions oppose it, and even if it contradicts the Quran and Sunnah. Yet what is narrated from ʿUmar on this matter pertains to women **leaving their homes**, not prayer. Thus, their **deceptive reliance** on ʿUmar's opinion is void."

L6304–6306 It has been narrated from Mālik: If an umm al-walad prays without a head covering, she must repeat it within the time. We have also received a narration from Ibn ʿAbbās regarding *And let them not display their adornment except what is apparent from it* [al-Nūr: 31]. He said: The palm, the ring, and the face. From Ibn Umar: The face and the two palms. From Anas: The palm and the ring. All these narrations from them are of the utmost au-

رَأْسَهَا. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: إذَا صَلَّتْ الْأَمَةُ غَطَّتْ رَأْسَهَا وَغَيَّبَتْهُ بِخِرْقَةٍ أَوْ خِمَارٍ، وَكَذَلِكَ كُنَّ يَضَعْنَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَكَانَ الْحَسَنُ يَأْمُرُ الْأَمَةَ إذْ تَزَوَّجَتْ عَبْدًا أَوْ حُرًّا أَنْ تَخْتَمِرَ: قَالَ عَلِيٌّ: لَمْ يَخْفَ عَلَيْنَا مَا رُوِيَ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فِي خِلَافِ هَذَا وَعَنْ غَيْرِهِ، وَلَكِنْ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِذَا تَنَازَعَ السَّلَفُ - رَضِيَ اللَّهُ عَنْهُمْ - وَجَبَ الرَّدُّ إلَى مَا افْتَرَضَ اللَّهُ تَعَالَى الرَّدَّ إلَيْهِ: مِنْ الْقُرْآنِ وَالسُّنَّةِ، وَلَيْسَ فِي الْقُرْآنِ، وَلَا فِي السُّنَّةِ: فَرْقٌ فِي الصَّلَاةِ بَيْنَ حُرَّةٍ وَلَا أَمَةٍ. وَالْعَجَبُ أَنَّهُمْ لَا يُبَالُونَ بِخِلَافِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ -: حَيْثُ لَا يَحِلُّ خِلَافُهُ، وَحَيْثُ لَا مُخَالِفَ لَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَحَيْثُ مَعَهُ الْقُرْآنُ وَالسُّنَّةُ: إذَا خَالَفَهُ رَأْيُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ -: كَقَضَائِهِ فِي الْأَرْنَبِ يَقْتُلُهَا الْمُحْرِمُ بِعَنَاقٍ، وَفِي الضَّبِّ بِجَدْيٍ. وَكَقَوْلِهِ: كُلُّ نِكَاحٍ فَاسِدٍ فَلَا صَدَاقَ فِيهِ. وَقَوْلِهِ بِالْمَسْحِ عَلَى الْعِمَامَةِ - إلَى مِئِينَ مِنْ الْقَضَايَا، فَإِذَا وَافَقَ مَا رُوِيَ عَنْهُ رَأْيَ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ: صَارَ حِينَئِذٍ حُجَّةً لَا يَجُوزُ مُخَالَفَتُهُ، وَإِنْ خَالَفَهُ غَيْرُهُ مِنْ الصَّحَابَةِ، وَإِنْ خَالَفُوا الْقُرْآنَ وَالسُّنَّةَ فِي ذَلِكَ مَعَ أَنَّ الَّذِي عَنْ عُمَرَ فِي ذَلِكَ إنَّمَا هُوَ فِي خُرُوجِهِنَّ لَا فِي الصَّلَاةِ، فَبَطَلَ تَمْوِيهُهُمْ بِعُمَرَ.

وَقَدْ رُوِيَ عَنْ مَالِكٍ: إنْ صَلَّتْ أُمُّ الْوَلَدِ بِلَا خِمَارٍ أَعَادَتْ فِي الْوَقْتِ، وَقَدْ رُوِّينَا عَنْ ابْنِ عَبَّاسٍ فِي {وَلَا يُبْدِينَ زِينَتَهُنَّ إلا مَا ظَهَرَ مِنْهَا} [النور: ٣١] قَالَ: الْكَفُّ، وَالْخَاتَمُ، وَالْوَجْهُ. وَعَنْ ابْنِ عُمَرَ: الْوَجْهُ، وَالْكَفَّانِ، وَعَنْ أَنَسٍ: الْكَفُّ، وَالْخَاتَمُ وَكُلُّ هَذَا عَنْهُمْ

thenticity. Similarly, reports from Aisha and other followers confirm this. Ali said: If they argue: "The distinction in prescribed limits between free women and slave women has been established," we respond: "Yes, and likewise between free men and slaves. Why then do you equate free men and slaves regarding what constitutes their awrah in prayer, yet differentiate between free women and slave women concerning their awrah in prayer? Consensus and definitive texts have confirmed that prayer is equally obligatory upon slave women and free women in all rulings - ritual purity, prayer direction, number of bowings, and other matters. How did you arrive at this distinction regarding awrah when they claim to be adherents of analogy? This exemplifies their analogical reasoning—nothing is more flawed nor more feeble, for they neither follow the definitive texts nor comprehend analogy. Success comes solely from Allah, the Exalted."

Ali said: If asked: "Why do you differentiate between one compelled by lack or coercion to pray with exposed awrah, in a place containing what he is obligated to avoid, or with improper clothing or bodily covering—permitting such prayer—versus one who prays in this state forgetfully? Why validate the former?" We respond: The definitive texts establish that any forgotten prayer component invalidates the prayer unless performed. This applies to forgetting ritual purity, the opening takbīr, standing, prostration, bowing, or sitting. Unanimously, substituting sitting for standing, standing for sitting, or bowing for prostration invalidates prayer. The Messenger of Allah—peace and blessings be upon him—commanded those who forget a prayer or sleep through it to perform it. A partially performed prayer is still valid as prayer without dispute. Whoever omits components through forgetfulness has neglected prayer essentials, performing an act that is not valid as prayer. Hence we oblige forgetful persons to make up omissions. We permit prayer under compulsion, overwhelming circumstances, or incapacity based on texts allowing such concessions in cases of genuine inability.[34]

فِي غَايَةِ الصِّحَّةِ، وَكَذَلِكَ أَيْضًا عَنْ عَائِشَةَ وَغَيْرِهَا مِنْ التَّابِعِينَ قَالَ عَلِيٌّ: فَإِنْ قَالُوا: قَدْ جَاءَ الْفَرْقُ فِي الْحُدُودِ بَيْنَ الْحُرَّةِ وَالْأَمَةِ. قُلْنَا: نَعَمْ، وَبَيْنَ الْحُرِّ وَالْعَبْدِ؛ فَلِمَ سَاوَيْتُمْ بَيْنَ الْحُرِّ وَالْعَبْدِ فِيمَا هُوَ مِنْهُمَا عَوْرَةٌ فِي الصَّلَاةِ، وَفَرَّقْتُمْ بَيْنَ الْحُرَّةِ وَالْأَمَةِ فِيمَا هُوَ مِنْهُمَا عَوْرَةٌ فِي الصَّلَاةِ، وَقَدْ صَحَّ الْإِجْمَاعُ وَالنَّصُّ عَلَى وُجُوبِ الصَّلَاةِ عَلَى الْأَمَةِ كَوُجُوبِهَا عَلَى الْحُرَّةِ فِي جَمِيعِ أَحْكَامِهَا، مِنْ الطَّهَارَةِ، وَالْقِبْلَةِ، وَعَدَدِ الرُّكُوعِ، وَغَيْرِ ذَلِكَ، فَمِنْ أَيْنَ وَقَعَ لَكُمْ الْفَرْقُ بَيْنَهُمَا فِي الْعَوْرَةِ وَهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَهَذَا مِقْدَارُ قِيَاسِهِمْ، الَّذِي لَا شَيْءَ أَسْقَطَ مِنْهُ وَلَا أَشَدَّ تَخَاذُلًا، فَلَا النَّصَّ اتَّبَعُوا وَلَا الْقِيَاسَ عَرَفُوا، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. قَالَ عَلِيٌّ: فَإِنْ قِيلَ: فَلِمَ فَرَّقْتُمْ أَنْتُمْ بَيْنَ مَنْ اُضْطُرَّ الْمَرْءُ إلَيْهِ بِعَدَمٍ أَوْ إكْرَاهٍ فِي الصَّلَاةِ مَكْشُوفِ الْعَوْرَةِ، وَفِي مَكَانٍ فِيهِ مَا افْتَرَضَ عَلَيْهِ اجْتِنَابُهُ، أَوْ فِي ثِيَابِهِ، أَوْ فِي جَسَدِهِ؛ فَأَجَزْتُمْ صَلَاتَهُ كَذَلِكَ -: وَبَيْنَ صَلَاتِهِ كَذَلِكَ نَاسِيًا فَلَمْ تُجِيزُوهَا. قُلْنَا: نَعَمْ، فَإِنَّ النُّصُوصَ قَدْ جَاءَتْ بِأَنَّ كُلَّ مَا نَسِيَهُ الْمَرْءُ مِنْ أَعْمَالِ صَلَاتِهِ فَإِنَّهُ لَا تُجْزِئُهُ صَلَاتُهُ دُونَهَا، وَأَنَّهُ لَا بُدَّ لَهُ مِنْ إتْيَانِهَا؛ كَمَنْ نَسِيَ الطَّهَارَةَ، أَوْ التَّكْبِيرَ، أَوْ الْقِيَامَ، أَوْ السُّجُودَ، أَوْ الرُّكُوعَ، أَوْ الْجُلُوسَ. وَلَا خِلَافَ فِي أَنَّ مَنْ نَسِيَ فَعَوَّضَ الْقُعُودَ مَكَانَ الْقِيَامِ فِي الصَّلَاةِ، أَوْ الْقِيَامَ مَكَانَ الْقُعُودِ، أَوْ الرُّكُوعَ مَكَانَ السُّجُودِ -: فَإِنَّهُ لَا يُجْزِئُهُ ذَلِكَ. وَقَدْ «أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ نَسِيَ صَلَاةً، أَوْ نَامَ عَنْهَا أَنْ يُصَلِّيَهَا» ؛ وَبَعْضُ الصَّلَاةِ صَلَاةٌ بِلَا خِلَافٍ؛ فَمَنْ لَمْ يَأْتِ بِهِمَا كَمَا أَمَرَ نَاسِيًا فَقَدْ نَسِيَ مِنْ صَلَاتِهِ جُزْءًا وَأَتَى بِمَا لَيْسَ صَلَاةً، إذْ صَلَّى بِخِلَافِ مَا أَمَرَ؛ فَمِنْ هَهُنَا أَوْجَبْنَا عَلَى النَّاسِي أَنْ يَأْتِيَ بِمَا نَسِيَ كَمَا أَمَرَ وَأَجْزَنَا صَلَاتَهُ كَذَلِكَ فِي الْإِكْرَاهِ بِغَلَبَةٍ أَوْ عَدَمٍ؛ لِلنُّصُوصِ الْوَارِدَةِ بِجَوَازِ كُلِّ مَا ذَكَرْنَا فِي عَدَمِ الْقُوَّةِ.

[34] **Qur'an references (L6304):** Qur'an 24:31 (An-Nur).

L6307–6308 If it is said: “Indeed, the Messenger of Allah—peace and blessings be upon him—entered prayer, and Gabriel—peace be upon him—came to him and informed him that there was filth on his sandals, so he removed them and continued his prayer without interruption,” we respond: Yes, but that act was prohibited for him only when Gabriel—peace be upon him—informed him, not before. Thus, his initial commencement of prayer in that state was permissible. At the end of that hadith, when he concluded, he said words meaning: “When one of you comes to prayer, let him inspect his sandals”—or he said “his khuffs (leather socks)”—“and if he sees anything on them, let him scrub it off and pray in them.” This ruling was introduced after that prayer. Therefore, whoever prays without inspecting his sandals or khuffs, and there is harm on them, has prayed contrary to what he was commanded—and success is from Allah, the Exalted.

فَإِنْ قِيلَ: إِنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ دَخَلَ فِي الصَّلَاةِ فَأَتَاهُ جِبْرِيلُ - عَلَيْهِ السَّلَامُ - فَأَعْلَمَهُ أَنَّ فِي نَعْلَيْهِ قَذَرًا، فَخَلَعَهُمَا وَتَمَادَى فِي صَلَاتِهِ» . قُلْنَا: نَعَمْ، وَإِنَّمَا حَرَّمَ ذَلِكَ عَلَيْهِ حِينَ أَخْبَرَهُ جِبْرِيلُ - عَلَيْهِ السَّلَامُ - لَا قَبْلَ ذَلِكَ، فَكَانَ ابْتِدَاؤُهُ الصَّلَاةَ كَذَلِكَ جَائِزًا، وَقَالَ - عَلَيْهِ السَّلَامُ - فِي آخِرِ ذَلِكَ الْحَدِيثِ إِذْ سَلِمَ كَلَامًا مَعْنَاهُ: «إِذَا جَاءَ أَحَدُكُمْ إِلَى الصَّلَاةِ فَلْيَنْظُرْ نَعْلَيْهِ - أَوْ قَالَ خُفَّيْهِ - فَإِنْ رَأَى فِيهَا شَيْئًا فَلْيَحُكَّهُ وَلْيُصَلِّ فِيهِمَا» وَكَانَ هَذَا الْحُكْمُ وَارِدًا بَعْدَ تِلْكَ الصَّلَاةِ. فَمَنْ صَلَّى وَلَمْ يَتَأَمَّلْ نَعْلَيْهِ، أَوْ خُفَّيْهِ، وَكَانَ فِيهِمَا أَذًى فَقَدْ صَلَّى بِخِلَافِ مَا أُمِرَ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَالَ أَبُو حَنِيفَةَ: الْعَوْرَةُ تَخْتَلِفُ، فَهِيَ مِنْ الرِّجَالِ: مَا بَيْنَ السُّرَّةِ إلَى الرُّكْبَةِ وَالرُّكْبَةُ عَوْرَةٌ، وَالسُّرَّةُ لَيْسَتْ عَوْرَةً. وَهِيَ مِنْ الْحُرَّةِ: جَمِيعُ جَسَدِهَا، حَاشَا الْوَجْهَ، وَالْكَفَّيْنِ، وَالْقَدَمَيْنِ. وَهِيَ مِنْ الْأَمَةِ كَالرَّجُلِ سَوَاءً سَوَاءً، فَتُصَلِّي الْأَمَةُ، وَأُمُّ الْوَلَدِ، وَالْمُدَبَّرَةُ: عِنْدَهُمْ عُرْيَانَةَ الرَّأْسِ، وَالْجَسَدِ كُلِّهِ، حَاشَا مِئْزَرًا يَسْتُرُ مَا بَيْنَ سُرَّتِهَا وَرُكْبَتِهَا فَقَطْ، لَا كَرَاهَةَ عِنْدَهُمْ فِي ذَلِكَ. قَالَ: وَأَحْكَامُ الْعَوْرَاتِ تَخْتَلِفُ، فَإِذَا انْكَشَفَ مِنْ الرَّجُلِ أَكْثَرُ مِنْ قَدْرِ الدِّرْهَمِ الْبَغْلِيِّ مِنْ ذَكَرِهِ، أَوْ مِنْ الْمَرْأَةِ مِنْ فَرْجِهَا، فِي حَالِ اسْتِقْبَالِهِمَا الِافْتِتَاحَ لِلصَّلَاةِ، أَوْ فِي حَالِ اسْتِقْبَالِهِمَا الرُّكُوعَ، أَوْ فِي حَالِ اسْتِقْبَالِهِمَا الْقِيَامَ: بَطَلَتْ صَلَاتُهُمَا، فَإِنْ انْكَشَفَ هَذَا الْمِقْدَارُ مِنْ ذَكَرِهِ، أَوْ مِنْ فَرْجِهَا، فِي حَالِ الْقِيَامِ، أَوْ فِي حَالِ الرُّكُوعِ، أَوْ فِي حَالِ السُّجُودِ، فَسَتَرَا ذَلِكَ حِينَ انْكِشَافِهِ -: لَمْ يَضُرَّ ذَلِكَ صَلَاتَهُمَا شَيْئًا. فَإِنْ انْكَشَفَ مِنْ ذَكَرِهِ، أَوْ مِنْ فَرْجِهَا، فِي كُلِّ مَا ذَكَرْنَا قَدْرُ الدِّرْهَمِ الْبَغْلِيِّ فَأَقَلُّ: لَمْ يَضُرَّ ذَلِكَ صَلَاتَهُمَا شَيْئًا. طَالَ ذَلِكَ أَمْ قَصُرَ.

He said: “The rulings on *awrah* vary. If more than the size of a Baghli dirham (a specific coin measurement) of a man’s private part or a woman’s genital area is exposed while they are facing the *qiblah* at the start of prayer, during bowing, or while standing, their prayer is invalidated. If this amount is exposed while standing, bowing, or prostrating, but they cover it upon exposure, their prayer remains valid. If less than or equal to the size of a Baghli dirham is exposed in any of these situations, whether the exposure is prolonged or brief, it does not invalidate their prayer.”

Abu Hanifa said: “The definition of *awrah* (concealed body parts) differs. For men, it is between the navel and the knees, and the knee is *awrah*, but the navel is not. For free women, the entire body is *awrah* except the face, palms, and feet. For female slaves, it is the same as for men, without distinction: a slave woman, an *umm al-walad* (mother of a child by her master), or a *mudabbara* (slave promised eventual freedom) may pray with their heads and entire bodies uncovered except for a waist-wrapper covering only between the navel and the knees, and there is no disapproval in this according to their view.”

L6309–6312 If the thigh of a man, female slave, free woman, their buttocks, their hips, or any of all the limbs of a free woman—such as the chest, stomach, back,

hair, or neck—is exposed to the extent of a quarter of the limb or more, the prayer is invalidated according to Abū Ḥanīfa and Muḥammad. If less than a quarter of any of these is exposed, it does not harm the prayer. Abū Yūsuf said: The prayer is not invalidated unless more than half of a limb other than the genitals is exposed. Abū Ḥanīfa said: If a female slave is emancipated during prayer, she must take her headcover, conceal herself, and continue upon what preceded of her prayer. If a man begins prayer naked due to necessity and then finds a garment, his prayer is invalidated, and he must restart it without exception—whether he found the garment at the beginning or end of his prayer, even if he sat for the duration of the *tashahhud* as long as he did not conclude with the salutation. This is despite his view that if a worshipper sits for the duration of the *tashahhud* and then nullifies his ablution—whether intentionally or forgetfully—his prayer is complete with no obligation upon him. Thus, the obligation of clothing is greater in his view than urination or defecation. He said: If a follower is jostled until his waistcloth falls and his entire genitals are exposed, yet he remains standing as he is until the imam completes the prayer—that follower's prayer is complete. But if he bows with the imam's bowing or prostrates with his prostration, his prayer is invalidated. ʿAlī said: Is there any remedy or counterargument for these rulings except praising Allah the Exalted for being spared from them? Can the contradictions in these rulings be enumerated without toil? Mālik said: The entire body of a female slave is ʻawrah like that of a free woman, except her hair alone—it is not ʻawrah. If a free woman's hair, chest, or shin is exposed during prayer, she need only repeat it within the prayer time. ʿAlī said: We do not know his opinion regarding the genitals, but we do not observe him requiring repetition for that except within the time. Our prior refutation of his view on repetition within the time in preceding sections of this book suffices, rendering its repetition unnecessary. He makes no distinction between forgetfulness and intentionality in this matter. Al-Shāfiʿī said: If any part of a man's ʻawrah—which is between his navel and knees—or a woman's ʻawrah—which is the entire body of a free woman and a female slave except the female slave's hair and face, and the free woman's face—is exposed... The palms of a woman and a female slave are part of the ʿawrah. If any part of it—whether little or much—becomes exposed, then

فَإِنْ انْكَشَفَ مِنْ فَخِذِ الرَّجُلِ، أَوْ الْأَمَةِ، أَوْ الْحُرَّةِ، أَوْ مَقَاعِدِهِمَا، أَوْ وَرِكَيْهِمَا، أَوْ مِنْ جَمِيعِ أَعْضَاءِ الْحُرَّةِ: الصَّدْرِ، أَوْ الْبَطْنِ، أَوْ الظَّهْرِ، أَوْ الشَّعْرِ، أَوْ الْعُنُقِ -: مِقْدَارُ رُبْعِ الْعُضْوِ فَأَكْثَرُ -: بَطَلَتْ الصَّلَاةُ عِنْدَ أَبِي حَنِيفَةَ وَمُحَمَّدٍ. فَإِنْ انْكَشَفَ مِنْ كُلِّ ذَلِكَ أَقَلُّ مِنْ الرُّبْعِ لَمْ يَضُرَّ الصَّلَاةَ شَيْئًا. وَقَالَ أَبُو يُوسُفَ: لَا تَبْطُلُ الصَّلَاةُ إلَّا أَنْ يَنْكَشِفَ مِمَّا عَدَا الْفَرْجِ أَكْثَرُ مِنْ نِصْفِ الْعُضْوِ، قَالَ أَبُو حَنِيفَةَ: فَإِنْ أُعْتِقَتْ أَمَةٌ فِي الصَّلَاةِ فَإِنَّهَا تَأْخُذُ قِنَاعَهَا وَتَسْتَتِرُ، وَتَبْنِي عَلَى مَا مَضَى مِنْ صَلَاتِهَا، فَإِنْ بَدَأَ الرَّجُلُ الصَّلَاةَ عُرْيَانًا لِضَرُورَةٍ ثُمَّ وَجَدَ ثَوْبًا فَإِنَّ صَلَاتَهُ تَبْطُلُ، وَيَلْزَمُهُ أَنْ يَبْتَدِئَهَا وَلَا بُدَّ، وَسَوَاءٌ كَانَ وُجُودُهُ الثَّوْبَ فِي أَوَّلِ صَلَاتِهِ أَوْ فِي آخِرِهَا، وَلَوْ قَعَدَ مِقْدَارَ التَّشَهُّدِ، مَا لَمْ يُسَلِّمْ هَذَا مَعَ قَوْلِهِ: إنَّ الْمُصَلِّيَ إذَا قَعَدَ مِقْدَارَ التَّشَهُّدِ ثُمَّ أَحْدَثَ عَامِدًا أَوْ نَاسِيًا فَقَدْ تَمَّتْ صَلَاتُهُ وَلَا شَيْءَ عَلَيْهِ، فَصَارَ وُجُوبُ الثَّوْبِ أَعْظَمَ عِنْدَهُ مِنْ الْبَوْلِ أَوْ الْغَائِطِ، قَالَ: فَلَوْ زَحَمَ الْمَأْمُومُ حَتَّى وَقَعَ إزَارُهُ وَبَدَا فَرْجُهُ كُلُّهُ فَبَقِيَ وَاقِفًا كَمَا هُوَ حَتَّى تَمَّتْ صَلَاةُ الْإِمَامِ -: فَصَلَاةُ ذَلِكَ الْمَأْمُومِ تَامَّةٌ، فَلَوْ رَكَعَ بِرُكُوعِ الْإِمَامِ أَوْ سَجَدَ بِسُجُودِهِ: بَطَلَتْ صَلَاتُهُ، قَالَ عَلِيٌّ: فَهَلْ لِهَذِهِ الْأَقْوَالِ دَوَاءٌ أَوْ مُعَارَضَةٌ إلَّا حَمْدُ اللَّهِ تَعَالَى عَلَى السَّلَامَةِ مِنْهَا؟ وَهَلْ يُحْصَى مَا فِيهَا مِنْ التَّخْلِيطِ إلَّا بِكُلْفَةٍ، وَقَالَ مَالِكٌ: الْأَمَةُ عَوْرَةٌ كَالْحُرَّةِ، حَاشَا شَعْرَهَا فَقَطْ، فَلَيْسَ عَوْرَةً، فَإِنْ انْكَشَفَ شَعْرُ الْحُرَّةِ أَوْ صَدْرُهَا أَوْ سَاقُهَا فِي الصَّلَاةِ لَمْ تُعِدْ إلَّا فِي الْوَقْتِ. قَالَ عَلِيٌّ: وَلَا نَدْرِي قَوْلَهُ فِي الْفَرْجِ، وَمَا نَرَاهُ يَرَى الْإِعَادَةَ مِنْ ذَلِكَ إلَّا فِي الْوَقْتِ، وَقَدْ تَقَدَّمَ إفْسَادُنَا لِقَوْلِهِ بِالْإِعَادَةِ فِي الْوَقْتِ فِيمَا سَلَفَ مِنْ كِتَابِنَا هَذَا، فَأَغْنَى عَنْ إعَادَتِهِ، وَلَا فَرْقَ عِنْدَهُ بَيْنَ نِسْيَانٍ وَعَمْدٍ فِي ذَلِكَ، وَقَالَ الشَّافِعِيُّ: إنْ انْكَشَفَ مِنْ عَوْرَةِ الرَّجُلِ - وَهِيَ مَا بَيْنَ سُرَّتِهِ إلَى رُكْبَتِهِ -

covering it immediately causes no harm, and the prayer remains valid. But if it remains uncovered for any duration—however little or much—the prayer invalidates. Forgetfulness and intentionality are treated alike. ʿAlī said: "This categorization lacks textual evidence." Abū Sulaymān said: "Forgetfulness in this matter is overlooked. If any part of the ʿawrah becomes intentionally exposed, the prayer invalidates."

أَوْ عَوْرَةِ الْمَرْأَةِ - وَهُوَ جَمِيعُ جَسَدِ الْحُرَّةِ، وَالْأَمَةِ، حَاشَا شَعْرَ الْأَمَةِ وَوَجْهَهَا، وَوَجْهَ الْحُرَّةِ وَكَفَّيْهَا، وَكَفَّيِ الْأَمَةِ -: شَيْءٌ قَلَّ أَوْ كَثُرَ، فَإِنْ سُتِرَ فِي الْوَقْتِ لَمْ يَضُرَّ شَيْئًا وَالصَّلَاةُ تَامَّةٌ، وَإِنْ بَقِيَ مِقْدَارَ مَا - قَلَّ أَوْ كَثُرَ - وَلَمْ يُغَطِّ: بَطَلَتْ الصَّلَاةُ - النِّسْيَانُ وَالْعَمْدُ سَوَاءٌ. قَالَ عَلِيٌّ: وَهَذَا تَقْسِيمٌ لَا دَلِيلَ عَلَيْهِ. وَقَالَ أَبُو سُلَيْمَانَ: النِّسْيَانُ فِي ذَلِكَ مَرْفُوعٌ، فَإِنْ انْكَشَفَ شَيْءٌ مِنْ الْعَوْرَةِ عَمْدًا بَطَلَتْ الصَّلَاةُ.

The Issue of Prayer in a State of Nakedness

[مَسْأَلَةُ صَلَاةِ الْعُرَاةِ]

L6313

L6314 Issue 350: Those unable to cover their ʿawrah due to injury, forcible stripping, or poverty shall pray as they are in congregational rows behind their imam. They perform bowing, prostration, standing, and lower their gazes. Whoever deliberately gazes at the ʿawrah of a man or a woman impermissible for him during prayer invalidates his prayer. If done forgetfully, his prayer remains valid but requires the prostration of forgetfulness. If he gazes at his wife's ʿawrah: if he intentionally neglects focusing on his prayer for this reason, his prayer becomes invalid – just as it would for any other action, with no distinction. If he maintains focus on his prayer, his prayer is complete with no obligation upon him.

The evidence lies in Allah's words: "Allah does not burden any soul beyond its capacity" (2:286) and "He has detailed what He forbade you, except when compelled" (6:119). Since they are not obligated to cover what they cannot conceal, they are commanded to pray as they are able and to lead the prayer in congregation. Thus they are excused from what lies beyond their capability, while remaining accountable for what they can perform, in accordance with the Prophet's injunction (peace be upon him): "When I command you to do something, perform it to the best of your ability."

As for one who deliberately gazes at impermissible ʿawrah during prayer, his prayer is invalidated because he committed an unlawful act within it. He has not prayed as commanded, and whoever fails to pray as ordained has not fulfilled the prayer Allah mandated. The Prophet (peace be upon

٣٥٠ - مَسْأَلَةٌ: وَالْعُرَاةُ بِعَطَبٍ، أَوْ سَلْبٍ، أَوْ فَقْرٍ: يُصَلُّونَ كَمَا هُمْ فِي جَمَاعَةٍ فِي صَفٍّ خَلْفَ إمَامِهِمْ، يَرْكَعُونَ، وَيَسْجُدُونَ، وَيَقُومُونَ، وَيَغُضُّونَ أَبْصَارَهُمْ. وَمَنْ تَعَمَّدَ فِي صَلَاتِهِ، تَأَمُّلَ عَوْرَةِ رَجُلٍ، أَوْ امْرَأَةٍ مُحَرَّمَةٍ عَلَيْهِ: بَطَلَتْ صَلَاتُهُ، فَإِنْ تَأَمَّلَهَا نَاسِيًا لَمْ تَبْطُلْ صَلَاتُهُ، وَلَزِمَهُ سُجُودُ السَّهْوِ. فَإِنْ تَأَمَّلَ عَوْرَةَ امْرَأَتِهِ، فَإِنْ تَرَكَ الْإِقْبَالَ عَلَى صَلَاتِهِ عَامِدًا لِذَلِكَ: بَطَلَتْ صَلَاتُهُ، كَمَا لَوْ فَعَلَ ذَلِكَ لِسَائِرِ الْأَشْيَاءِ وَلَا فَرْقَ، وَإِنْ لَمْ يَتْرُكْ لِذَلِكَ الْإِقْبَالَ عَلَى صَلَاتِهِ: فَصَلَاتُهُ تَامَّةٌ، وَلَا شَيْءَ عَلَيْهِ. بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وقَوْله تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] . فَإِذْ هُمْ غَيْرُ مُكَلَّفِينَ مَا لَا يَقْدِرُونَ عَلَيْهِ مِنْ سَتْرِ الْعَوْرَةِ: فَهُمْ مُخَاطَبُونَ بِالصَّلَاةِ كَمَا يَقْدِرُونَ، وَبِالْإِمَامَةِ فِيهَا فِي جَمَاعَةٍ، فَسَقَطَ عَنْهُمْ مَا لَا يَقْدِرُونَ عَلَيْهِ، وَمَا لَيْسَ فِي وُسْعِهِمْ، وَبَقِيَ عَلَيْهِمْ مَا يَسْتَطِيعُونَ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» . وَأَمَّا مَنْ تَأَمَّلَ فِي صَلَاتِهِ عَوْرَةً - لَا يَحِلُّ لَهُ النَّظَرُ إلَيْهَا -: فَإِنَّ صَلَاتَهُ

him) said: “Whoever does a deed not in accordance with our command, it is rejected.”[35][36]

تَبْطُلُ لِأَنَّهُ عَمِلَ فِيهَا عَمَلًا لَا يَحِلُّ لَهُ؛ فَلَمْ يُصَلِّ كَمَا أُمِرَ، وَمَنْ لَمْ يُصَلِّ كَمَا أُمِرَ فَلَمْ يَأْتِ بِالصَّلَاةِ الَّتِي أَمَرَهُ اللَّهُ تَعَالَى بِهَا؛ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L6315–6316 If he did that forgetfully, he must perform the prostration of forgetfulness because he added to his prayer unintentionally - an addition that would invalidate it if done deliberately. As for contemplating a private part he is permitted to view, this is among matters where glancing at some of them during prayer is inevitable, with no distinction between one permissible [action] and another. If he intentionally occupies himself with any of these [actions] to the neglect of his prayer, he has disobeyed God Almighty and failed to pray as commanded - and success is from God Almighty.

فَإِنْ فَعَلَ ذَلِكَ نَاسِيًا فَعَلَيْهِ سُجُودُ السَّهْوِ؛ لِأَنَّهُ زَادَ فِي صَلَاتِهِ نِسْيَانًا مَا لَوْ عَمَدَهُ لَبَطَلَتْ صَلَاتُهُ. وَأَمَّا إذَا تَأَمَّلَ عَوْرَةً أُبِيحَ لَهُ النَّظَرُ إلَيْهَا فَهِيَ مِنْ جُمْلَةِ الْأَشْيَاءِ الَّتِي لَا بُدَّ لَهُ مِنْ وُقُوعِ النَّظَرِ عَلَى بَعْضِهَا فِي الصَّلَاةِ، وَلَا فَرْقَ بَيْنَ مُبَاحٍ وَمُبَاحٍ. فَإِنْ اشْتَغَلَ بِشَيْءٍ مِنْ ذَلِكَ كُلِّهِ عَنْ صَلَاتِهِ عَمْدًا فَقَدْ عَصَى اللَّهَ تَعَالَى، وَلَمْ يُصَلِّ كَمَا أُمِرَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَقَالَ أَبُو حَنِيفَةَ: يُصَلِّي الْعُرَاةُ فُرَادَى قُعُودًا يُومِئُونَ لِلسُّجُودِ وَالرُّكُوعِ فَإِنْ صَلَّوْا جَمَاعَةً أَجْزَأَهُمْ إلَّا أَنَّهُمْ يَقْعُدُونَ وَيَقْعُدُ الْإِمَامُ فِي وَسَطِهِمْ. وَقَالَ بَعْضُ الْعُلَمَاءِ بِقَوْلِهِ: أَنَّهُمْ إنْ صَلَّوْا قِيَامًا أَجْزَأَهُمْ عِنْدَ أَبِي حَنِيفَةَ وَأَصْحَابِهِ. وَقَالَ مَالِكٌ: يُصَلُّونَ فُرَادَى، يَتَبَاعَدُ بَعْضُهُمْ عَنْ بَعْضٍ قِيَامًا، فَإِنْ كَانُوا فِي لَيْلٍ مُظْلِمٍ صَلَّوْا فِي جَمَاعَةٍ قِيَامًا، يَقِفُ إمَامُهُمْ أَمَامَهُمْ. وَقَالَ الشَّافِعِيُّ: يُصَلِّي الْعُرَاةُ فُرَادَى، أَوْ جَمَاعَةً قِيَامًا يَرْكَعُونَ وَيَسْجُدُونَ وَيَقُومُ إمَامُهُمْ وَسَطَهُمْ، وَيَغُضُّونَ أَبْصَارَهُمْ؛ وَيَصْرِفُ الرِّجَالُ وُجُوهَهُمْ عَنْ النِّسَاءِ، وَالنِّسَاءُ وُجُوهَهُنَّ عَنْ الرِّجَالِ، وَلَا إعَادَةَ عَلَى أَحَدٍ مِنْهُمْ. وَقَالَ زُفَرُ بْنُ الْهُذَيْلِ: يُصَلُّونَ قِيَامًا يَرْكَعُونَ وَيَسْجُدُونَ، وَلَا يُجْزِيهِمْ غَيْرُ ذَلِكَ - وَقَالَ أَبُو سُلَيْمَانَ كَقَوْلِنَا. قَالَ عَلِيٌّ: قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ خَطَأٌ؛ لِأَنَّهَا أَقْوَالٌ لَمْ تَخْلُ مِنْ إسْقَاطِ أَنْ يُصَلُّوا جَمَاعَةً وَهَذَا لَا يَجُوزُ. أَوْ مِنْ إسْقَاطِ الْقِيَامِ وَالرُّكُوعِ وَالسُّجُودِ، وَهَذَا بَاطِلٌ. أَوْ مِنْ إسْقَاطِ حَقِّ الْإِمَامِ فِي تَقَدُّمِهِ، وَهَذَا لَا يَجُوزُ. وَغَضُّ الْبَصَرِ يَسْقُطُ كُلُّ مَا شَغَبُوا بِهِ

Abu Hanifa said: Uncovered individuals pray alone while sitting, gesturing for prostration and bowing. If they pray in congregation, it suffices them except that they sit while the imam sits in their midst. Some scholars cited his view that praying standing suffices according to Abu Hanifa and his companions.

Malik said: They pray individually while standing, keeping apart from one another. If in utter darkness, they pray in congregation standing, with their imam positioned before them.

Al-Shafi‘i said: Uncovered individuals pray alone or in congregation while standing, bowing and prostrating, with their imam standing among them. They lower their gazes, men turn their faces away from women, and women turn their faces away from men, with no obligation to repeat the prayer.

Zufar ibn al-Hudhayl said: They pray standing, bowing and prostrating, and nothing else suffices them. Abu Sulayman held the same opinion as ours.

[35] **Hadith references (L6314):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[36] **Qur’an references (L6314):** Qur’an 2:286 (Al-Baqarah); Qur’an 6:119 (Al-An’am).

Ali said: The rulings of Abu Hanifa, Malik, and Al-Shafi'i are erroneous, for these opinions either neglect praying in congregation - which is impermissible - or neglect standing, bowing, and prostration - which is invalid - or neglect the imam's right to lead from the front - which is impermissible. Lowering the gaze invalidates all objections they disputed in this legal opinion. Abu Hanifa's rulings are the most contradictory. It is astonishing that despite all this, they fail to conceal all their private parts including thighs and others, when a text has indeed been transmitted supporting our position.

فِي هَذِهِ الْفُتْيَا. وَقَوْلُ أَبِي حَنِيفَةَ أَكْثَرُهَا تَنَاقُضًا. وَالْعَجَبُ أَنَّهُمْ بِكُلِّ ذَلِكَ لَا يُوَارُونَ جَمِيعَ عَوْرَاتِهِمْ مِنْ الْأَفْخَاذِ وَغَيْرِهَا، فَكَيْفَ وَالنَّصُّ قَدْ وَرَدَ بِمَا قُلْنَا.

L6317–6318 Hummam narrated to us, Abbas ibn Asbagh narrated to us, Muhammad ibn Abdul-Malik ibn Ayman narrated to us, Muhammad ibn Shadhan narrated to us, Zakariyya ibn Adiyy narrated to us, Ubaydullah ibn Amr—who is Ar-Raqqi—narrated from Abdullah ibn Muhammad ibn Aqil from Sa'id ibn Al-Musayyab from Abu Sa'id Al-Khudri that he heard the Messenger of Allah—peace and blessings be upon him—say: "O assembly of women, when you prostrate, guard your gaze. Do not look at the men's private parts [exposed] due to the tightness of their waist-wraps." Ali said: This is how it is recorded in my book from Hummam. By Allah, the Messenger of Allah—peace and blessings be upon him—did not make any linguistic error. Had it not been possible that the Messenger of Allah—peace and blessings be upon him—addressed the women and those with them, such as their young children, we would not have written it except as "lower your gaze." This is explicit proof that the poor among the Companions—may Allah be pleased with them—used to pray under the guidance of the Messenger of Allah—peace and blessings be upon him—and with him, while lacking garments sufficient to cover their private parts. They did not neglect sitting, bowing, or prostrating. Nevertheless, the obligation to lower the gaze remains binding throughout all these acts. And with Allah alone is success.

حَدَّثَنَا حُمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنَ أَيْمَنَ ثنا مُحَمَّدُ بْنُ شَاذَانَ ثنا زَكَرِيَّا بْنُ عَدِيٍّ ثنا عُبَيْدُ اللَّهِ بْنُ عَمْرٍو هُوَ الرَّقِّيُّ - عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «يَا مَعْشَرَ النِّسَاءِ، إذَا سَجَدْتُنَّ فَاحْفَظُوا أَبْصَارَكُمْ، لَا تَرَيْنَ عَوْرَاتِ الرِّجَالِ، مِنْ ضِيقِ الْأُزُرِ» . قَالَ عَلِيٌّ: هَكَذَا فِي كِتَابِي عَنْ حُمَامٍ، وَبِاَللَّهِ مَا لَحَنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَوْلَا أَنَّ مُمْكِنًا أَنْ يُخَاطِبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النِّسَاءَ وَمَنْ مَعَهُنَّ مِنْ صِغَارِ أَوْلَادِهِنَّ لَمَا كَتَبْنَاهُ إلَّا " فَاخْفِضْنَ أَبْصَارَكُنَّ ". فَهَذَا نَصٌّ عَلَى أَنَّ الْفُقَرَاءَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - كَانُوا يُصَلُّونَ بِعِلْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَعَهُ، وَلَيْسَ مَعَهُمْ مِنْ اللِّبَاسِ مَا يُوَارِي عَوْرَتَهُمْ، وَلَا يَتْرُكُونَ الْقُعُودَ وَلَا الرُّكُوعَ وَلَا السُّجُودَ، إلَّا أَنَّ الْأَمْرَ بِغَضِّ الْبَصَرِ لَازِمٌ فِي كُلِّ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ اسْتِقْبَالُ جِهَةِ الْكَعْبَةِ بِالْوَجْهِ وَالْجَسَدِ فَرْضٌ عَلَى الْمُصَلِّي حَاشَا الْمُتَطَوِّعَ]

L6319 **Issue: Facing the direction of the Kaaba with both the face and body is obligatory upon the worshiper, except for one performing voluntary prayer.**

L6320–6322 351. Issue: Facing the direction of the Kaaba with the face and body is

obligatory upon the worshiper, except for one performing supererogatory prayer while riding an animal. Whoever is overcome by illness, hardship, fear, or compulsion - their prayer suffices them according to their capability, provided they intend to face the Kaaba in all such circumstances. The proof for this is Allah's statement: *"So turn your face toward al-Masjid al-Haram. Wherever you are, turn your faces toward it"* [Al-Baqarah: 144]. Al-Masjid al-Haram initially referred exclusively to the Kaaba itself, with subsequent expansions added over time. There is no disagreement among any of the scholars that if a person in Makkah - while able to face the Kaaba during prayer - deliberately diverts their face toward parts of al-Masjid al-Haram (whether from its exterior or interior), their prayer is invalid. If they deem this permissible, they become an apostate. We previously mentioned supererogatory prayer while mounted on an animal. As for the sick, the ignorant, the fearful, and the coerced, Allah the Exalted says: "Allah does not burden any soul beyond its capacity" (al-Baqarah 2:286). And the Messenger of Allah (peace be upon him) said: "When I command you with a matter, do of it as much as you are able."[37]

٣٥١ - مَسْأَلَةٌ: وَاسْتِقْبَالُ جِهَةِ الْكَعْبَةِ بِالْوَجْهِ وَالْجَسَدِ فَرْضٌ عَلَى الْمُصَلِّي حَاشَا الْمُتَطَوِّعَ رَاكِبًا، فَمَنْ كَانَ مَغْلُوبًا بِمَرَضٍ أَوْ بِجَهْدٍ أَوْ بِخَوْفٍ أَوْ بِإِكْرَاهٍ فَتُجْزِيهِ صَلَاتُهُ كَمَا يَقْدِرُ، وَيَنْوِي فِي كُلِّ ذَلِكَ التَّوَجُّهَ إِلَى الْكَعْبَةِ بُرْهَانُ ذَلِكَ -: قَوْله تَعَالَى {فَوَلِّ وَجْهَكَ شَطْرَ الْمَسْجِدِ الْحَرَامِ وَحَيْثُ مَا كُنْتُمْ فَوَلُّوا وُجُوهَكُمْ شَطْرَهُ} [البقرة: ١٤٤] . وَالْمَسْجِدُ الْحَرَامُ فِي الْمَبْدَأِ: إنَّمَا هُوَ الْبَيْتُ فَقَطْ، ثُمَّ زِيدَ فِيهِ الشَّيْءُ بَعْدَ الشَّيْءِ. وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ امْرَءًا لَوْ كَانَ بِمَكَّةَ بِحَيْثُ يَقْدِرُ عَلَى اسْتِقْبَالِ الْكَعْبَةِ فِي صَلَاتِهِ -: فَصَرَفَ وَجْهَهُ عَامِدًا عَنْهَا إلَى أَبْعَاضِ الْمَسْجِدِ الْحَرَامِ مِنْ خَارِجِهِ أَوْ مِنْ دَاخِلِهِ فَإِنَّ صَلَاتَهُ بَاطِلٌ، وَأَنَّهُ إنْ اسْتَجَازَ ذَلِكَ: كَافِرٌ - وَقَدْ ذَكَرْنَا التَّطَوُّعَ عَلَى الدَّابَّةِ قَبْلُ وَأَمَّا الْمَرِيضُ وَالْجَاهِلُ وَالْخَائِفُ وَالْمُكْرَهُ فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] . وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ.»

Issue: One who is ignorant of the qiblah must believe whoever informs him from among those with knowledge (of the qiblah).

[مَسْأَلَةُ الْجَاهِلِ بِالْقِبْلَةِ يُصَدِّقُ مَنْ أَخْبَرَهُ مِنْ أَهْلِ الْمَعْرِفَةِ]

352 - Issue: It is obligatory for an uninformed person to accept the direction of the qiblah as affirmed by knowledgeable scholars whom he recognizes as truthful. This is because one who is absent from the qiblah's location has no means to know its direction except through report, and no alternative exists. Moreover, even one present there inevitably cannot recognize that this is the Kaaba except through report. This is among the rulings of the divine law for which we have previously established the proof requiring acceptance of a single credible person's report in such matters.

٣٥٢ - مَسْأَلَةٌ: وَيَلْزَمُ الْجَاهِلَ أَنْ يُصَدِّقَ فِي جِهَةِ الْقِبْلَةِ مَنْ أَخْبَرَهُ مِنْ أَهْلِ الْمَعْرِفَةِ إذَا كَانَ يَعْرِفُهُ بِالصِّدْقِ، لِأَنَّ هَذَا لَا سَبِيلَ لِمَنْ غَابَ عَنْ مَوْضِعِ الْقِبْلَةِ إلَى مَعْرِفَةِ جِهَتِهَا إلَّا بِالْخَبَرِ، وَلَا يُمْكِنُ غَيْرُ ذَلِكَ. نَعَمْ، وَمَنْ كَانَ حَاضِرًا فِيهَا فَإِنَّهُ لَا يَعْرِفُ أَنَّ هَذِهِ هِيَ الْكَعْبَةُ إلَّا بِالْخَبَرِ وَلَا بُدَّ، وَهَذَا مِنْ الشَّرِيعَةِ الَّتِي قَدْ ذَكَرْنَا الْبُرْهَانَ عَلَى وُجُوبِ قَبُولِ خَبَرِ الْوَاحِدِ الْعَدْلِ فِيهَا.

[37] **Qur'an references (L6320):** Qur'an 2:144 (Al-Baqarah); Qur'an 2:150 (Al-Baqarah); Qur'an 2:286 (Al-Baqarah).

[مَسْأَلَةٌ صَلَّى إِلَى غَيْرِ الْقِبْلَةِ مِمَّنْ يَقْدِرُ عَلَى مَعْرِفَةِ جِهَتِهَا]

٣٥٣ - مَسْأَلَةٌ: فَمَنْ صَلَّى إِلَى غَيْرِ الْقِبْلَةِ مِمَّنْ يَقْدِرُ عَلَى مَعْرِفَةِ جِهَتِهَا - عَامِدًا أَوْ نَاسِيًا - بَطَلَتْ صَلَاتُهُ، وَيُعِيدُ مَا كَانَ فِي الْوَقْتِ، إِنْ كَانَ عَامِدًا، وَيُعِيدُ أَبَدًا إِنْ كَانَ نَاسِيًا بُرْهَانُ ذَلِكَ -: أَنَّ هَذَيْنِ مُخَاطَبَانِ بِالتَّوَجُّهِ إِلَى الْمَسْجِدِ الْحَرَامِ فِي الصَّلَاةِ، فَصَلَّيَا بِخِلَافِ مَا أُمِرَا بِهِ، وَلَا يُجْزِئُ مَا نَهَى اللَّهُ تَعَالَى عَنْهُ عَمَّا أَمَرَ عَزَّ وَجَلَّ بِهِ، فَقَدْ ذَكَرْنَا الْحُجَّةَ فِي أَمْرِ النَّاسِي قَبْلُ فَإِنْ ذَكَرَ ذَاكِرٌ: حَدِيثَ أَهْلِ قُبَاءَ - رَضِيَ اللَّهُ عَنْهُمْ -، وَأَنَّهُمْ ابْتَدَءُوا الصَّلَاةَ إِلَى بَيْتِ الْمَقْدِسِ فَأَتَاهُمْ الْخَبَرُ: بِأَنَّ الْقِبْلَةَ قَدْ حُوِّلَتْ إِلَى الْكَعْبَةِ فَاسْتَدَارُوا - كَمَا كَانُوا فِي صَلَاتِهِمْ - إِلَى الْكَعْبَةِ، وَاجْتَزَءُوا بِمَا صَلَّوْا إِلَى بَيْتِ الْمَقْدِسِ مِنْ تِلْكَ الصَّلَاةِ بِعَيْنِهَا. قُلْنَا: هَذَا خَبَرٌ صَحِيحٌ، وَلَا حُجَّةَ فِيهِ عَلَيْنَا، وَلَا نُخَالِفُهُ وَلِلَّهِ الْحَمْدُ -: أَوَّلُ ذَلِكَ - أَنَّهُ لَيْسَ فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلِمَ ذَلِكَ فَأَقَرَّهُ، وَلَا حُجَّةَ إِلَّا فِي الْقُرْآنِ، أَوْ فِي كَلَامِهِ - عَلَيْهِ السَّلَامُ -. أَوْ فِي عَمَلِهِ أَوْ فِيمَا عَلِمَ - عَلَيْهِ السَّلَامُ - مِنْ عَمَلِ غَيْرِهِ فَلَمْ يُنْكِرْهُ، وَإِنَّمَا الْعَجَبُ مِنْ الْمَالِكِيِّينَ الَّذِينَ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ إِذَا وَافَقَ تَقْلِيدَهُمْ، ثُمَّ قَدْ خَالَفُوا هَهُنَا عَمَلَ طَائِفَةٍ عَظِيمَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ قَالَ عَلِيٌّ: أَهْلُ قُبَاءَ - رَضِيَ اللَّهُ عَنْهُمْ - كَانَ الْفَرْضُ عَلَيْهِمْ أَنْ يُصَلُّوا إِلَى بَيْتِ الْمَقْدِسِ، فَلَوْ أَنَّهُمْ صَلَّوْا إِلَى الْكَعْبَةِ: لَبَطَلَتْ صَلَاتُهُمْ بِلَا خِلَافٍ. وَلَا تَلْزَمُ الشَّرِيعَةُ إِلَّا مَنْ بَلَغَتْهُ، لَا مَنْ لَمْ تَبْلُغْهُ، قَالَ اللَّهُ تَعَالَى: {لِأُنْذِرَكُمْ بِهِ وَمَنْ بَلَغَ} [الأنعام: ١٩] . وَلَا شَكَّ عِنْدَ أَحَدٍ مِنْ الْجِنِّ وَالْإِنْسِ، وَلَا الْمَلَائِكَةِ: أَنَّ مَنْ كَانَ مِنْ الْمُسْلِمِينَ بِأَرْضِ الْحَبَشَةِ، أَوْ بِمَكَّةَ مِنْ الْمُسْتَضْعَفِينَ فَإِنَّهُمْ

An issue concerning one who prayed facing a direction other than the qibla despite being capable of ascertaining its correct direction.

Issue 353: Whoever prays facing a direction other than the qiblah while capable of determining its direction—whether intentionally or forgetfully—invalidates their prayer. They must repeat it within the prescribed time if done intentionally, and must repeat it indefinitely if done forgetfully. The proof lies in the fact that both categories are obligated to face the Sacred Mosque during prayer, yet they prayed contrary to what they were commanded. What Allah has prohibited cannot suffice for what He has commanded. We previously cited the evidence regarding the forgetful person. If someone cites the ḥadīth of the people of Qubā' (may Allah be pleased with them), who began prayer facing Jerusalem but received news during prayer that the qiblah had been changed to the Kaaba, whereupon they turned toward the Kaaba while deeming their earlier prayer toward Jerusalem sufficient for that specific prayer—we respond: This is an authentic report, but it holds no argument against us (and all praise is due to Allah). Firstly, it does not establish that the Messenger of Allah (peace and blessings be upon him) knew of this act and approved it. Valid evidence lies solely in the Qur'an, his explicit statements, his actions, or his tacit approval of others' actions by not objecting. It is astonishing how the Mālikīs, who magnify a Companion's differing opinion when it aligns with their school, here contradict the practice of a large group of Companions (may Allah be pleased with them)—among whom no dissenter is known. Ali said: The people of Qubā'—may Allah be pleased with them—were obligated to pray toward Jerusalem. Had they prayed toward the Kaaba, their prayer would have been invalid without disagreement. The sacred law only binds those it has reached, not those it has not reached. Allah the Exalted said: *"To warn you thereby and those it reaches"* (6:19). There is no doubt among any of the jinn, humans, or angels that the Muslims in the land of Abyssinia or in Mecca among the oppressed persisted in praying toward Jerusalem for a lengthy period—those in Mecca for many days after the revelation mandating the change of qiblah, and those in Abyssinia perhaps for a year or years until the change of qiblah

reached them. The obligation only became binding upon them at that point, not before. The obligation to redirect their prayer became incumbent upon the people of Qubā' only when the command reached them, not prior. Thus they transitioned from their original obligation to an abrogating one. This is the undeniable truth, and none may validly depart from it. As for those who received the obligation to change the qiblah to the Kaaba, knew it, were legally accountable for it, and had no excusing impediment—whoever did not pray as commanded has not prayed [at all]. For what Allah has forbidden cannot replace what He has commanded. Abū Ḥanīfa said: If someone outside Mecca prays toward a direction other than the qiblah after striving to ascertain it and only realizes the error after completing the prayer, their prayer suffices. If they pray in darkness while investigating the direction but fail to ask those present, then later learn they faced incorrectly, they must repeat it—this is a flawed distinction, for investigation is itself a form of legal reasoning. Mālik said: If someone realizes they prayed away from the qiblah, they must repeat it if they had entirely turned their back to it. If they realize during prayer, they must stop and restart. If they deviated to the east or west, they need not repeat but continue from where they deviated—another flawed distinction, for the ummah unanimously holds that intentionally deviating from the qiblah invalidates the prayer and constitutes a major sin, whether through turning away or partial deviation. The people of Qubā' had been facing away from the qiblah.[38]

L6329–6332 We do not know of this distinction—which Abū Ḥanīfah and Mālik made—from anyone before them. Al-Shāfiʿī said: "Those unaware of the indicators, the one confined in darkness, and the blind person without a guide should pray in any possible direction and repeat [the prayer] if they later become capable of discerning the qiblah." ʿAlī said: "This is erroneous, for when commanding them to pray, it must either be a prayer that suffices them as Allah the Exalted commanded, or a prayer that does not suffice them

[38] **Qur'an references (L6326):** Qur'an 6:19 (Al-An'am).

تَمَادَوْا عَلَى الصَّلَاةِ إِلَى بَيْتِ الْمَقْدِسِ مُدَّةً طَوِيلَةً -: أَمَّا أَهْلُ مَكَّةَ فَأَيَّامًا كَثِيرَةً بَعْدَ نُزُولِ تَحْوِيلِ الْقِبْلَةِ. وَأَمَّا مَنْ بِالْحَبَشَةِ: فَلَعَلَّهُمْ صَلَّوْا عَامًا أَوْ أَعْوَامًا حَتَّى بَلَغَهُمْ تَحْوِيلُ الْقِبْلَةِ؛ فَحِينَئِذٍ لَزِمَهُمْ الْفَرْضُ، لَا قَبْلَ ذَلِكَ، فَإِنَّمَا لَزِمَ أَهْلَ قُبَاءَ التَّحَوُّلُ حِينَ بَلَغَهُمْ لَا قَبْلَ ذَلِكَ فَانْتَقَلُوا عَنْ فَرْضِهِمْ إلَى فَرْضٍ نَاسِخٍ لَمَا كَانُوا عَلَيْهِ؛ وَهَذَا هُوَ الْحَقُّ الَّذِي لَا يَحِلُّ لِأَحَدٍ غَيْرِهِ، وَأَمَّا مَنْ بَلَغَهُ فَرْضُ تَحْوِيلِ الْكَعْبَةِ وَعَلِمَهُ وَكَانَ مُخَاطَبًا بِهِ وَلَمْ يَسْقُطْ تَكْلِيفُهُ عَنْهُ لِعُذْرٍ مَانِعٍ -: فَلَمْ يُصَلِّ كَمَا أُمِرَ وَمَنْ لَمْ يُصَلِّ كَمَا أُمِرَ فَلَمْ يُصَلِّ؛ لِأَنَّهُ لَا يُجْزِئُ مَا نَهَى اللَّهُ عَنْهُ عَمَّا أَمَرَ اللَّهُ تَعَالَى بِهِ، وَقَالَ أَبُو حَنِيفَةَ: مَنْ صَلَّى فِي غَيْرِ مَكَّةَ إلَى غَيْرِ الْقِبْلَةِ مُجْتَهِدًا وَلَمْ يَعْلَمْ إلَّا بَعْدَ أَنْ سَلَّمَ أَجْزَأَتْهُ صَلَاتُهُ. فَإِنْ صَلَّى فِي ظُلْمَةٍ مُتَحَرِّيًا وَلَمْ يَسْأَلْ مَنْ بِحَضْرَتِهِ، ثُمَّ عَلِمَ أَنَّهُ صَلَّى إلَى غَيْرِ الْقِبْلَةِ: أَعَادَ - وَهُوَ فَرْقٌ فَاسِدٌ؛ لِأَنَّ التَّحَرِّيَ نَوْعٌ مِنْ الِاجْتِهَادِ، وَقَالَ مَالِكٌ: مَنْ عَلِمَ أَنَّهُ صَلَّى إلَى غَيْرِ الْقِبْلَةِ؛ فَإِنْ كَانَ مُسْتَدْبِرًا لَهَا: أَعَادَ، وَإِنْ كَانَ فِي الصَّلَاةِ: قَطَعَ وَابْتَدَأَ. وَإِنْ كَانَ مُنْحَرِفًا إلَى شَرْقٍ أَوْ غَرْبٍ: لَمْ يُعِدْ، وَبَنَى عَلَى مَا صَلَّى وَانْحَرَفَ وَهَذَا فَرْقٌ فَاسِدٌ؛ لِأَنَّهُ لَا فَرْقَ عِنْدَ أَحَدٍ مِنْ الْأُمَّةِ فِي تَعَمُّدِ الِانْحِرَافِ عَنْ الْقِبْلَةِ أَنَّهُ مُبْطِلٌ لِلصَّلَاةِ، وَكَبِيرَةٌ مِنْ الْكَبَائِرِ كَالِاسْتِدْبَارِ لَهَا وَلَا فَرْقَ، وَأَهْلُ قُبَاءَ كَانُوا مُسْتَدْبِرِينَ إلَى الْقِبْلَةِ.

وَلَا نَعْلَمُ هَذَا التَّفْرِيقَ - الَّذِي فَرَّقَهُ أَبُو حَنِيفَةَ، وَمَالِكٌ -: عَنْ أَحَدٍ قَبْلَهُمَا، وَقَالَ الشَّافِعِيُّ: مَنْ خَفِيَتْ عَلَيْهِ الدَّلَائِلُ وَالْمَحْبُوسُ فِي الظُّلْمَةِ، وَالْأَعْمَى الَّذِي لَا دَلِيلَ لَهُ -: يُصَلُّونَ إلَى أَيِّ جِهَةٍ أَمْكَنَهُمْ، وَيُعِيدُونَ إذَا قَدَرُوا عَلَى مَعْرِفَةِ الْقِبْلَةِ. قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ؛ لِأَنَّهُ إذَا أَمَرَهُ بِالصَّلَاةِ لَا يَخْلُو مِنْ أَنْ يَكُونَ أَمَرَهُمْ بِصَلَاةٍ تُجْزِئُ عَنْهُمْ

كَمَا أَمَرَهُمْ اللَّهُ بِهَا أَوْ أَمَرَهُمْ بِصَلَاةٍ لَا تُجْزِئُ عَنْهُمْ، وَلَا أَمَرَهُمْ اللَّهُ تَعَالَى بِهَا وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ -: فَإِنْ كَانَ أَمَرَهُمْ بِصَلَاةٍ تُجْزِئُ عَنْهُمْ، وَبِالَّتِي أَمَرَهُمْ اللَّهُ تَعَالَى بِهَا؛ فَلِأَيِّ مَعْنًى يُصَلُّونَهَا ثَانِيَةً، وَإِنْ كَانَ أَمَرَهُمْ بِصَلَاةٍ لَا تُجْزِئُ عَنْهُمْ، وَلَا أَمَرَهُمْ اللَّهُ تَعَالَى بِهَا؛ فَهَذَا أَمْرٌ فَاسِدٌ، وَلَا يَحِلُّ لِآمِرِهِ الْأَمْرُ بِهِ، وَلَا لِلْمَأْمُورِ بِهِ الِائْتِمَارُ بِهِ، وَقَالَ أَبُو سُلَيْمَانَ: تُجْزِئُهُمْ عَلَى كُلِّ حَالٍ، وَيَبْنُونَ إذَا عَرَفُوا وَهُمْ فِي الصَّلَاةِ، وَقَدْ ذَكَرْنَا الْفَرْقَ آنِفًا. فَإِنْ قَالَ قَائِلٌ، قَدْ رُوِيَ عَنْ عَبْدِ اللَّهِ بْنِ عَامِرِ بْنِ رَبِيعَةَ «كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي لَيْلَةٍ مُظْلِمَةٍ فَلَمْ نَدْرِ أَيْنَ الْقِبْلَةَ فَصَلَّى كُلُّ رَجُلٍ مِنَّا حِيَالَهُ، فَأَصْبَحْنَا: فَذَكَرْنَا ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَنْزَلَ اللَّهُ تَعَالَى: {فَأَيْنَمَا تُوَلُّوا فَثَمَّ وَجْهُ اللَّهِ} [البقرة: ١١٥] .» وَعَنْ عَطَاءٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ: «كُنَّا فِي سَرِيَّةٍ فَأَصَابَتْنَا ظُلْمَةٌ فَلَمْ نَعْرِفْ الْقِبْلَةَ فَذَكَرَ: أَنَّهُمْ خَطُّوا خُطُوطَهُمْ فِي جِهَاتِ اخْتِلَافِهِمْ؛ فَلَمَّا أَصْبَحُوا أَصَبْنَا تِلْكَ الْخُطُوطَ لِغَيْرِ الْقِبْلَةِ، فَسَأَلْنَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَنْزَلَ اللَّهُ تَعَالَى: {فَأَيْنَمَا تُوَلُّوا فَثَمَّ وَجْهُ اللَّهِ} [البقرة: ١١٥] » فَإِنَّ هَذَيْنِ الْخَبَرَيْنِ لَا يَصِحَّانِ، لِأَنَّ حَدِيثَ عَبْدِ اللَّهِ بْنِ عَامِرٍ لَمْ يَرْوِهِ إلَّا عَاصِمُ بْنُ عُبَيْدِ اللَّهِ وَلَمْ يَرْوِ حَدِيثَ جَابِرٍ إلَّا عَبْدُ الْمَلِكِ بْنُ أَبِي سُلَيْمَانَ الْعَرْزَمِيُّ عَنْ عَطَاءٍ -، وَعَاصِمٌ وَعَبْدُ الْمَلِكِ سَاقِطَانِ. ثُمَّ لَوْ صَحَّا لَكَانَا حُجَّةً لَنَا، لِأَنَّ هَؤُلَاءِ جَهِلُوا، وَصَلَاةُ الْجَاهِلِ تَامَّةٌ، وَلَيْسَ النَّاسِي كَذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ النِّيَّةُ فِي الصَّلَاةِ]

which Allah the Exalted did not command. There is no third category. If he ordered them to pray a valid prayer corresponding to what Allah the Exalted commanded, what justification exists for their repeating it? If he ordered them to pray an invalid prayer not commanded by Allah the Exalted, this constitutes a corrupt injunction—neither permissible for the commander to enjoin nor for the commanded to obey." Abū Sulaymān said: "Their prayer suffices in all circumstances, and they resume [the prayer] if they discern the qiblah during it. We have previously clarified this distinction." If someone objects: "It is reported from ʿAbdullāh ibn ʿĀmir ibn Rabīʿah: 'We were with Allah's Messenger—peace and blessings be upon him—on a dark night when we could not discern the qiblah. Each man prayed facing his own direction. At dawn, we mentioned this to Allah's Messenger—peace and blessings be upon him—whereupon Allah the Exalted revealed: {So wherever you turn, there is the Face of Allah} [Al-Baqarah: 115].'" And from ʿAṭāʾ via Jābir ibn ʿAbdillāh: "We were on a military expedition when darkness befell us and we could not discern the qiblah. He mentioned that they drew lines in their differing directions. At dawn, we found those lines pointing away from the qiblah. We asked the Prophet—peace and blessings be upon him—and Allah the Exalted revealed: {So wherever you turn, there is the Face of Allah} [Al-Baqarah: 115]." These two reports are not authentic, for ʿAbdullāh ibn ʿĀmir's narration is only transmitted by ʿĀṣim ibn ʿUbaydillāh. Only ʻAbd al-Malik ibn Abī Sulaymān al-ʻArzamī transmitted the ḥadīth of Jābir via ʻAṭā'—(both ʻĀṣim and ʻAbd al-Malik are discarded). Even if their transmissions were authentic, they would serve as evidence for us, for these individuals acted out of ignorance, and the prayer of an ignorant person remains valid—unlike the case of one who forgets. All success is with Allah, the Exalted.[39]

The Issue of Intention in Ṣalāh

L6333

L6334 354. Issue: Intention in prayer is obligatory. If it is an obligatory prayer,

[39] **Qur'an references (L6330):** Qur'an 2:115 (Al-Baqarah).

٣٥٤ - مَسْأَلَةٌ: وَالنِّيَّةُ فِي الصَّلَاةِ فَرْضٌ -: إنْ كَانَتْ فَرِيضَةً: نَوَاهَا بِاسْمِهَا وَإِلَى الْكَعْبَةِ فِي نَفْسِهِ قَبْلَ إحْرَامِهِ بِالتَّكْبِيرِ، مُتَّصِلَةً بِنِيَّةِ الْإِحْرَامِ، لَا فَصْلَ بَيْنَهُمَا أَصْلًا، وَإِنْ كَانَتْ تَطَوُّعًا نَوَى كَذَلِكَ: أَنَّهَا تَطَوُّعٌ، فَمَنْ لَمْ يَنْوِ كَذَلِكَ فَلَا صَلَاةَ لَهُ بُرْهَانُ ذَلِكَ -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ قَبْلُ. وَقَوْلُ اللَّهِ تَعَالَى: {وَمَا أُمِرُوا إلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ} [البينة: ٥] . وَالصَّلَاةُ عِبَادَةٌ لِلَّهِ تَعَالَى. لَوْ جَازَ أَنْ يُفْصَلَ بَيْنَ النِّيَّةِ وَبَيْنَ الدُّخُولِ فِي الصَّلَاةِ بِمُدَّةٍ يَسِيرَةٍ - وَلَوْ دَقِيقَةً أَوْ قَدْرَ اللَّحْظَةِ - لَجَازَ بِمِثْلِ ذَلِكَ وَبِأَكْثَرَ، حَتَّى يَجُوزَ الْفَصْلُ بَيْنَهُمَا بِسَنَةٍ أَوْ سَنَتَيْنِ، وَهَذَا بَاطِلٌ أَوْ يَحُدُّ الْمُخَالِفُ حَدًّا بِرَأْيِهِ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى، وَلَوْ جَازَ أَنْ تَكُونَ النِّيَّةُ مَعَ التَّكْبِيرِ غَيْرَ مُتَقَدِّمَةٍ عَلَيْهِ لَكَانَ أَوَّلُ جُزْءٍ مِنْ الدُّخُولِ فِيهَا بِلَا نِيَّةٍ، لِأَنَّ مَعْنَى النِّيَّةِ: الْقَصْدُ إلَى الْعَمَلِ، وَالْقَصْدُ إلَى الْعَمَلِ بِالْإِرَادَةِ مُتَقَدِّمٌ لِلْعَمَلِ. وَقَالَ مَالِكٌ: يَجُوزُ تَقْدِيمُ النِّيَّةِ قَبْلَ الدُّخُولِ فِي الصَّلَاةِ، وَلَا بُدَّ لِمَنْ قَالَ بِهَذَا مِنْ تَحْدِيدِ مِقْدَارِ مُدَّةِ التَّقَدُّمِ الَّذِي تَجُوزُ بِهِ الصَّلَاةُ، وَالَّذِي تَبْطُلُ بِهِ الصَّلَاةُ، وَإِلَّا فَهُمْ عَلَى عَمًى فِي ذَلِكَ، وَقَالَ الشَّافِعِيُّ: لَا تُجْزِئُ النِّيَّةُ إلَّا مُخَالِطَةً لِلتَّكْبِيرِ، لَا قَبْلَهُ وَلَا بَعْدَهُ، وَهَذَا خَطَأٌ لِمَا ذَكَرْنَاهُ، وَالَّذِي قُلْنَاهُ هُوَ قَوْلُ دَاوُد، وَأَبِي حَنِيفَةَ. إلَّا أَنَّ أَبَا حَنِيفَةَ لَمْ يُجِزْ الصَّلَاةَ إلَّا بِنِيَّةٍ لَهَا، وَأَجَازَ الْوُضُوءَ لَهَا بِلَا نِيَّةٍ، وَهَذَا تَنَاقُضٌ.

one must formulate the intention by its specific name and toward the Kaaba within oneself before commencing the prayer with the *takbeer*, continuously connected to the intention of entering the prayer state, with no separation whatsoever between them. If it is a voluntary prayer, one must similarly intend that it is voluntary. Whoever fails to intend in this manner has no valid prayer. The proof for this is the statement of Allah's Messenger (peace be upon him): "Actions are judged by intentions, and every person will have what they intended"—a hadith we previously cited with its chain of transmission. Also, the statement of Allah the Exalted: {They were commanded only to worship Allah, devoting religion sincerely to Him} (98:5). Prayer is an act of worship for Allah the Exalted. If it were permissible to separate the intention from the prayer's commencement by even a minute or an instant, then by analogy, separation by a year or two years would also be permissible. This is invalid. Alternatively, the dissenting jurist would set a time limit based on his own opinion without authorization from Allah the Exalted. If it were permissible for the intention to coincide with the *takbeer* without preceding it, the initial component of entering the prayer would occur without intention, since the essence of intention is the determination to perform the act—and determination through will necessarily precedes the act. Mālik said: It is permissible to formulate the intention before entering the prayer. Those who uphold this position must define the maximum permissible advance period for the intention, beyond which the prayer becomes invalid; otherwise, they are left in uncertainty. Al-Shāfiʿī said: The intention is only valid if it coincides precisely with the *takbeer*, neither preceding nor following it. This is incorrect due to the reasoning we have presented. Our position aligns with the view of Dāwūd and Abū Ḥanīfah, except that Abū Ḥanīfah did not permit prayer except with an intention specific to it, yet he allowed *wuḍūʾ* for prayer without intention—a juristic contradiction.[40]

[مَسْأَلَةٌ انْصَرَفَتْ نِيَّتُهُ فِي الصَّلَاةِ نَاسِيًا إلَى غَيْرِهَا]

L6335–6336

A Case Where One's Intention in Prayer Is Diverted, While Forgetful, to Another Matter.

L6337

Issue: If one's intention was diverted forgetfully during the prayer toward

[40] **Qur'an references (L6334):** Qur'an 98:5 (Al-Bayyinah).

another matter, toward a voluntary prayer, or toward exiting the prayer, he invalidated likewise the obligatory acts of his prayer performed in that state. He resumed upon what he performed with the correct intention, and it sufficed him, after which he performed the prostration of forgetfulness. If this occurred only in an act of his prayer whose omission would not invalidate the prayer, he was required only to perform the prostration of forgetfulness. This is because he fulfilled all the acts commanded in the prayer as ordained by Allah the Exalted, except that he added an act to his prayer out of forgetfulness—an act which, if added intentionally, would invalidate his prayer. In this case, the prostration of forgetfulness becomes obligatory.

L6338 ****Refined Translation:** Issue: Commencing the prayer with the takbīr is an obligatory act (farḍ), and the prayer is invalid unless the takbīr is performed.**

L6339 356 - Issue: Initiating the prayer with the Takbīr is obligatory, and the prayer is invalid without it. Abd al-Raḥmān ibn Abd Allāh ibn Khālid narrated to us, Ibrāhīm ibn Aḥmad narrated to us, al-Farbarī narrated to us, al-Bukhārī narrated to us, Musaddad narrated to us, Yaḥyā ibn Saʿīd al-Qaṭṭān narrated from Ubayd Allāh ibn Umar, who said: Saʿīd al-Maqburī narrated to me from his father from Abū Hurayrah: "The Messenger of Allah (peace and blessings be upon him) entered the mosque, whereupon a man entered and prayed." He mentioned the ḥadīth, which includes: "The Messenger of Allah (peace and blessings be upon him) said, 'Repeat your prayer, for you have not prayed.' This occurred three times. The man said, 'By the One who sent you with the truth, I know no better way. Teach me.' The Messenger of Allah (peace and blessings be upon him) said, 'When you stand for prayer, utter the Takbīr.'" Thus, he was commanded to perform the opening Takbīr. Whoever omits it has not prayed as commanded, and whoever fails to pray as commanded has not prayed at all, as stated by the Messenger of Allah (peace and blessings be upon him). Mālik, al-Shāfiʿī, Aḥmad, and Dāwūd uphold the obligation of the Takbīr for initiating prayer. Abū Ḥanīfah said: Any remembrance of Allah the Exalted suffices in place of the Takbīr, such as "Allāhu Aʿẓam" (Allah

مَسْأَلَةٌ: فَإِنْ انْصَرَفَتْ نِيَّتُهُ فِي الصَّلَاةِ نَاسِيًا إلَى غَيْرِهَا، أَوْ إلَى تَطَوُّعٍ، أَوْ إلَى خُرُوجٍ عَنْ الصَّلَاةِ: أَلْغَى مَا عَمِلَ مِنْ فُرُوضِ صَلَاتِهِ كَذَلِكَ وَبَنَى عَلَى مَا عَمِلَ بِالنِّيَّةِ الصَّحِيحَةِ وَأَجْزَأَهُ، ثُمَّ سَجَدَ لِلسَّهْوِ. فَإِنْ لَمْ يَكُنْ ذَلِكَ مِنْهُ إلَّا فِي عَمَلٍ مِنْ صَلَاتِهِ لَوْ تَرَكَهُ لَمْ تَبْطُلْ بِتَرْكِهِ الصَّلَاةَ لَمْ يَلْزَمْهُ إلَّا سُجُودُ السَّهْوِ فَقَطْ؛ لِأَنَّهُ قَدْ وَفَّى جَمِيعَ الْأَعْمَالِ الَّتِي أُمِرَ بِهَا فِي الصَّلَاةِ كَمَا أَمَرَهُ اللَّهُ تَعَالَى؛ إلَّا أَنَّهُ زَادَ فِي صَلَاتِهِ نَاسِيًا عَمَلًا لَوْ زَادَهُ عَمْدًا بَطَلَتْ صَلَاتُهُ؛ وَفِي هَذَا يَجِبُ سُجُودُ السَّهْوِ.

[مَسْأَلَةُ الْإِحْرَامُ بِالتَّكْبِيرِ فَرْضٌ لَا تُجْزِئُ الصَّلَاةُ إلَّا بِهِ]

٣٥٦ - مَسْأَلَةٌ: وَالْإِحْرَامُ بِالتَّكْبِيرِ: فَرْضٌ، لَا تُجْزِئُ الصَّلَاةُ إلَّا بِهِ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُسَدَّدٌ ثنا يَحْيَى بْنُ سَعِيدٍ هُوَ الْقَطَّانُ - عَنْ عُبَيْدِ اللَّهِ هُوَ ابْنُ عُمَرَ حَدَّثَنِي سَعِيدٌ الْمَقْبُرِيُّ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَخَلَ الْمَسْجِدَ فَدَخَلَ رَجُلٌ فَصَلَّى فَذَكَرَ الْحَدِيثَ. وَفِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: ارْجِعْ فَصَلِّ فَإِنَّكَ لَمْ تُصَلِّ، ثَلَاثَ مَرَّاتٍ، فَقَالَ: وَالَّذِي بَعَثَكَ بِالْحَقِّ مَا أُحْسِنُ غَيْرَهُ فَعَلِّمْنِي، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إذَا قُمْتَ إلَى الصَّلَاةِ فَكَبِّرْ» . فَقَدْ أُمِرَ بِتَكْبِيرِ الْإِحْرَامِ، فَمَنْ تَرَكَهُ فَلَمْ يُصَلِّ كَمَا أُمِرَ، وَمَنْ لَمْ يُصَلِّ كَمَا أُمِرَ فَلَمْ يُصَلِّ، كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِإِيجَابِ التَّكْبِيرِ لِلْإِحْرَامِ يَقُولُ مَالِكٌ، وَالشَّافِعِيُّ،

is Most Great) or similar phrases. He and his followers also permitted this substitution in the call to prayer.

L6340–6341 They did not permit the prayer if initiated with "Allah knows best." This is confusion, a demolition of Islam, and corrupt new religious laws. Ali said: His followers cited as evidence for this practice Allah's statement: {He has succeeded who purifies himself} [Al-A'la:14] {And mentions the name of his Lord and prays} [Al-A'la:15]. Ali said: This verse does not describe the prayer's actions or manner, while the mentioned hadith specifies the prayer's indispensable acts. Thus, the verse cannot be used to object to the hadith. Rather, the verse demonstrates that this remembrance of Allah's name is distinct from the prayer itself, for He said: {then prays} [Al-A'la:15], conjoining prayer to the mention of His name. This confirms the remembrance precedes prayer, like His statement: {Establish prayer for My remembrance} [Ta-Ha:14]. This remembrance of Allah's name is precisely the purpose aimed at Him—glorified and exalted is He—through the intention in performing it for Him.[41]

The Issue of the Takbīr in the Prayer

L6342

L6343 Issue 357: It is valid for takbīr to use the phrases: "Allāhu akbar," "Allāhu al-akbar," "al-Akbaru Allāh," "al-Kabīru Allāh," "Allāhu al-Kabīr," and "al-Raḥmānu akbar" - along with any divine name of Allah the Exalted that we mentioned in magnification. Other expressions are invalid, for the Prophet (peace and blessings be upon him) instructed: "Then pronounce takbīr." All these formulations constitute valid takbīr, as the term "takbīr" does not apply to other phrases. This is the position of Abū Ḥanīfah, al-Shāfiʿī, and Dāwūd. Mālik held: Only "Allāhu akbar" is valid. This constitutes an unwarranted specification of takbīr without proof. Some have asserted that the narration states: "When you stand for prayer, say: Allāhu akbar." ʿAlī said: This is baseless and never authenticated. Even if we found it authentic, we would

[41] **Qur'an references (L6341):** Qur'an 87:14 (Al-A'la); Qur'an 87:15 (Al-A'la); Qur'an 20:14 (Taha).

وَأَحْمَدُ، وَدَاوُد. وَقَالَ أَبُو حَنِيفَةَ: يُجْزِئُ عَنْ التَّكْبِيرِ ذِكْرُ اللَّهِ تَعَالَى كَيْفَ ذَكَرَ، مِثْلُ " اللَّهُ أَعْظَمُ " وَنَحْوُ ذَلِكَ. وَأَجَازُوا ذَلِكَ أَيْضًا فِي الْأَذَانِ.

وَلَمْ يُجِيزُوا الصَّلَاةَ إذَا افْتُتِحَتْ بِ " اللَّهُ أَعْلَمُ ". وَهَذَا تَخْلِيطٌ وَهَدْمٌ لِلْإِسْلَامِ، وَشَرَائِعُ جَدِيدَةٌ فَاسِدَةٌ، قَالَ عَلِيٌّ: وَاحْتَجَّ مُقَلِّدُوهُ فِي ذَلِكَ بِقَوْلِ اللَّهِ تَعَالَى: {قَدْ أَفْلَحَ مَنْ تَزَكَّى} [الأعلى: ١٤] {وَذَكَرَ اسْمَ رَبِّهِ فَصَلَّى} [الأعلى: ١٥] . قَالَ عَلِيٌّ: لَيْسَ فِي هَذِهِ الْآيَةِ عَمَلُ الصَّلَاةِ وَصِفَتُهَا وَالْحَدِيثُ الْمَذْكُورُ: فِيهِ عَمَلُ الصَّلَاةِ الَّتِي لَا تُجْزِئُ إلَّا بِهِ، فَلَا يُعْتَرَضُ بِالْآيَةِ عَلَيْهِ؛ بَلْ فِي الْآيَةِ دَلِيلٌ أَنَّ ذَلِكَ الذِّكْرَ لِاسْمِ اللَّهِ تَعَالَى هُوَ غَيْرُ الصَّلَاةِ؛ لِأَنَّهُ تَعَالَى قَالَ: {فَصَلَّى} [الأعلى: ١٥] فَعَطَفَ الصَّلَاةَ عَلَى ذِكْرِ اسْمِهِ؛ فَصَحَّ أَنَّهُ قَبْلَ الصَّلَاةِ، مِثْلُ قَوْلِهِ تَعَالَى: {وَأَقِمِ الصَّلَاةَ لِذِكْرِي} [طه: ١٤] فَهَذَا الذِّكْرُ لِاسْمِ اللَّهِ تَعَالَى هُوَ الْقَصْدُ إلَيْهِ تَعَالَى بِالنِّيَّةِ فِي أَدَائِهَا لَهُ عَزَّ وَجَلَّ

[مَسْأَلَةُ التَّكْبِيرِ فِي الصَّلَاةِ]

٣٥٧ - مَسْأَلَةٌ: وَيُجْزِئُ فِي التَّكْبِيرِ: اللَّهُ أَكْبَرُ، وَاَللَّهُ الْأَكْبَرُ، وَالْأَكْبَرُ اللَّهُ، وَالْكَبِيرُ اللَّهُ، وَاَللَّهُ الْكَبِيرُ، وَالرَّحْمَنُ أَكْبَرُ - وَأَيُّ اسْمٍ مِنْ أَسْمَاءِ اللَّهِ تَعَالَى ذَكَرْنَا بِالتَّكْبِيرِ. وَلَا يُجْزِئُ غَيْرُ هَذِهِ الْأَلْفَاظِ؛ لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: " فَكَبِّرْ ". وَكُلُّ هَذَا تَكْبِيرٌ، وَلَا يَقَعُ عَلَى غَيْرِ هَذَا لَفْظُ: " التَّكْبِيرِ "؛ وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَدَاوُد وَقَالَ مَالِكٌ: لَا يُجْزِئُ إلَّا " اللَّهُ أَكْبَرُ " وَهَذَا تَخْصِيصٌ لِلتَّكْبِيرِ بِلَا بُرْهَانٍ، وَقَدْ ادَّعَى بَعْضُهُمْ: أَنَّ فِي الْحَدِيثِ: " إذَا قُمْت إلَى الصَّلَاةِ فَقُلْ: اللَّهُ أَكْبَرُ " قَالَ عَلِيٌّ: وَهَذَا بَاطِلٌ مَا عُرِفَ قَطُّ، وَلَوْ وَجَدْنَاهُ صَحِيحًا لَقُلْنَا بِهِ. فَإِنْ قَالُوا: بِهَذَا جَرَى عَمَلُ النَّاسِ،

adhere to it. If they argue: "This reflects established practice," we counter: The people's practice only follows wuḍūʾ sequence as in the verse, yet you permit reversing its order. Their practice in wuḍūʾ always included istinshāq and istinthār by the Prophet's directive (peace and blessings be upon him), yet you claim: "Whoever omits these still has complete wuḍūʾ and complete prayer." Their practice always included reciting a sūrah with al-Fātiḥah in Fajr and the first two units of other prayers, yet you state: "Omission of the sūrah does not invalidate prayer." The Ummah's practice always incorporated raising hands with the opening takbīr.

قُلْنَا لَهُمْ: مَا جَرَى عَمَلُ النَّاسِ إِلَّا بِتَرْتِيبِ الْوُضُوءِ كَمَا فِي الْآيَةِ، وَأَنْتُمْ تُجِيزُونَ تَنْكِيسَهُ، وَمَا جَرَى عَمَلُ النَّاسِ قَطُّ فِي الْوُضُوءِ إِلَّا بِالِاسْتِنْشَاقِ وَالِاسْتِنْثَارِ مَعَ صِحَّتِهِ مِنْ أَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَأَنْتُمْ تَقُولُونَ: مَنْ تَرَكَهَا فَوُضُوءُهُ تَامٌّ وَصَلَاتُهُ تَامَّةٌ، وَمَا جَرَى عَمَلُ النَّاسِ قَطُّ إِلَّا بِقِرَاءَةِ سُورَةٍ مَعَ أُمِّ الْقُرْآنِ فِي الصُّبْحِ وَالْأُولَيَيْنِ مِنْ الصَّلَوَاتِ الْبَوَاقِي، وَأَنْتُمْ تَقُولُونَ: إِنْ تَرَكَ السُّورَةَ فَصَلَاتُهُ تَامَّةٌ. وَمَا جَرَى عَمَلُ الْأُمَّةِ إِلَّا بِرَفْعِ الْيَدَيْنِ مَعَ تَكْبِيرَةِ الْإِحْرَامِ.

L6344–6345 And you say: If he does not raise his hands, his prayer is complete; thus, you regard the practice as authoritative evidence only when you so desire, not when you do not desire—and such cases are exceedingly numerous. And success comes only from Allah, the Exalted.

وَأَنْتُمْ تَقُولُونَ: إِنْ لَمْ يَرْفَعْ يَدَيْهِ فَصَلَاتُهُ تَامَّةٌ، فَتَرَى الْعَمَلَ إِنَّمَا يَكُونُ حُجَّةً إِذَا شِئْتُمْ، لَا إِذَا لَمْ تَشَاءُوا، وَمِثْلُ هَذَا كَثِيرٌ جِدًّا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L6346 **A question regarding raising the two hands for the Takbīr at the commencement of prayer (al-ihrām).**

[مَسْأَلَةُ رَفْعُ الْيَدَيْنِ لِلتَّكْبِيرِ مَعَ الْإِحْرَامِ فِي أَوَّلِ الصَّلَاةِ]

L6347–6349 358 – Issue: Raising the hands for the takbīr along with the commencement (iḥrām) at the beginning of prayer is an obligation; the prayer is not valid except with it.

٣٥٨ - مَسْأَلَةٌ: وَرَفْعُ الْيَدَيْنِ لِلتَّكْبِيرِ مَعَ الْإِحْرَامِ فِي أَوَّلِ الصَّلَاةِ: فَرْضٌ، لَا تُجْزِئُ الصَّلَاةُ إِلَّا بِهِ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا عَبْدُ الْوَهَّابِ هُوَ ابْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ - ثنا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ - عَنْ أَبِي قِلَابَةَ ثنا مَالِكُ بْنُ الْحُوَيْرِثِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ وَلِمَنْ مَعَهُ: «صَلُّوا كَمَا رَأَيْتُمُونِي أُصَلِّي» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو كَامِلٍ الْجَحْدَرِيُّ ثنا أَبُو عَوَانَةَ عَنْ قَتَادَةَ عَنْ نَصْرِ بْنِ عَاصِمٍ عَنْ مَالِكِ بْنِ الْحُوَيْرِثِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ إِذَا كَبَّرَ رَفَعَ يَدَيْهِ

Narrated to us by ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid, narrated to us Ibrāhīm ibn Aḥmad, narrated to us al-Farabrī, narrated to us al-Bukhārī, narrated to us Muḥammad ibn al-Muthannā, narrated to us ʿAbd al-Wahhāb – he is Ibn ʿAbd al-Majīd al-Thaqafī – narrated to us Ayyūb – he is al-Sakhtiyānī – narrated to us Abū Qilābah, narrated to us Mālik ibn al-Ḥuwayrith: "The Messenger of Allāh – peace and blessings be upon him – said to him and those with him: 'Pray as you have seen me pray.'"

Narrated to us by ʿAbd Allāh ibn Yūsuf, narrated to us Aḥmad ibn Fatḥ, narrated to us ʿAbd al-Wahhāb ibn ʿĪsā, narrated to us Aḥmad ibn Muḥammad, narrated to us Aḥmad ibn ʿAlī, narrated to us Muslim ibn al-Ḥajjāj, narrated to us Abū Kāmil al-Jaḥdarī, narrated to us Abū ʿAwānah, narrated to us Qatādah, narrated to us Naṣr ibn ʿĀṣim, narrated to us Mālik ibn al-Ḥuwayrith:

حَتَّى حَاذَى بِهِمَا أُذُنَيْهِ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا سُلَيْمَانُ بْنُ الْأَشْعَثِ ثنا أَحْمَدُ بْنُ حَنْبَلٍ ثنا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ: «رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا اسْتَفْتَحَ الصَّلَاةَ رَفَعَ يَدَيْهِ حَتَّى يُحَاذِيَ مَنْكِبَيْهِ» . وَذَكَرَ الْحَدِيثَ. فَإِنْ قِيلَ: فَهَلَّا أَوْجَبْتُمْ بِهَذَا الِاسْتِدْلَالِ نَفْسِهِ رَفْعَ الْيَدَيْنِ عِنْدَ كُلِّ رَفْعٍ وَخَفْضٍ فَرْضًا؟ قُلْنَا: لِأَنَّهُ قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَرْفَعُ يَدَيْهِ عِنْدَ كُلِّ خَفْضٍ وَرَفْعٍ، وَأَنَّهُ كَانَ لَا يَرْفَعُ. حَدَّثَنَا حُمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا مُحَمَّدُ بْنُ إِسْمَاعِيلَ الصَّائِغُ ثنا زُهَيْرُ بْنُ حَرْبٍ أَبُو خَيْثَمَةَ ثنا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَاصِمِ بْنِ كُلَيْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ عَنْ عَلْقَمَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: «أَلَا أُرِيكُمْ صَلَاةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَفَعَ يَدَيْهِ فِي أَوَّلِ تَكْبِيرَةٍ ثُمَّ لَمْ يَعُدْ» . فَلَمَّا صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يَرْفَعُ فِي كُلِّ خَفْضٍ وَرَفْعٍ بَعْدَ تَكْبِيرَةِ الْإِحْرَامِ وَلَا يَرْفَعُ، كَانَ كُلُّ ذَلِكَ مُبَاحًا لَا فَرْضًا، وَكَانَ لَنَا أَنْ نُصَلِّيَ كَذَلِكَ، فَإِنْ رَفَعْنَا صَلَّيْنَا كَمَا كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي، وَإِنْ لَمْ نَرْفَعْ فَقَدْ صَلَّيْنَا كَمَا كَانَ - عَلَيْهِ السَّلَامُ - يُصَلِّي وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ حَدَّثَنِي أَحْمَدُ بْنُ حَنْبَلٍ عَنِ الْوَلِيدِ بْنِ مُسْلِمٍ عَنْ زَيْدِ بْنِ وَاقِدٍ سَمِعْت نَافِعًا مَوْلَى ابْنِ عُمَرَ يَقُولُ: كَانَ ابْنُ عُمَرَ إِذَا رَأَى مُصَلِّيًا لَا يَرْفَعُ يَدَيْهِ فِي الصَّلَاةِ حَصَبَهُ وَأَمَرَهُ أَنْ يَرْفَعَ يَدَيْهِ قَالَ عَلِيٌّ: مَا كَانَ ابْنُ عُمَرَ لِيُحَصِّبَ مَنْ تَرَكَ مَا لَهُ تَرْكُهُ، وَقَدْ رُوِيَ إِيجَابُ رَفْعِ الْيَدَيْنِ فِي الْإِحْرَامِ لِلصَّلَاةِ فَرْضًا عَنِ الْأَوْزَاعِيِّ - وَهُوَ قَوْلُ بَعْضِ مَنْ تَقَدَّمَ مِنْ أَصْحَابِنَا

"The Messenger of Allāh – peace and blessings be upon him – would raise his hands when saying the takbīr until they were aligned with his ears."

Narrated to us by ʿAbd Allāh ibn Rabīʿ, narrated to us ʿUmar ibn ʿAbd al-Malik, narrated to us Muḥammad ibn Bakr, narrated to us Sulaymān ibn al-Ashʿath, narrated to us Aḥmad ibn Ḥanbal, narrated to us Sufyān – he is Ibn ʿUyaynah – narrated to us al-Zuhrī, narrated to us Sālim ibn ʿAbd Allāh ibn ʿUmar, narrated to us his father: "I saw the Messenger of Allāh – peace and blessings be upon him – when he commenced prayer, raise his hands until they were level with his shoulders." And he mentioned the ḥadīth.

If it is said: "Why do you not obligate – by this very evidence – raising the hands at every raising and lowering as an obligation?" We say: Because it is authentically established that the Messenger of Allāh – peace and blessings be upon him – would raise his hands at every lowering and raising, and that he would not raise them.

Narrated to us by Hummām, narrated to us ʿAbbās ibn Aṣbagh, narrated to us Muḥammad ibn ʿAbd al-Malik ibn Ayman, narrated to us Muḥammad ibn Ismāʿīl al-Ṣāʾigh, narrated to us Zuhayr ibn Ḥarb Abū Khaythamah, narrated to us Wakīʿ, narrated to us Sufyān al-Thawrī, narrated to us ʿĀṣim ibn Kulayb. From Abd al-Rahman ibn al-Aswad from Alqamah ibn Abdullah ibn Mas'ud, who said: "Shall I show you the prayer of the Messenger of Allah (peace be upon him)?" He then raised his hands during the first takbir and did not repeat it. When it was established that he (peace be upon him) raised his hands at every bowing and rising after the opening takbir but did not raise them at other times, all of that was permissible, not obligatory. It was permissible for us to pray in that manner. If we raise our hands, we are praying as the Messenger of Allah (peace be upon him) prayed. If we do not raise them, we have still prayed as he (peace be upon him) prayed. We received a narration via Abd al-Razzaq: Ahmad ibn Hanbal narrated to me from al-Walid ibn Muslim, who reported from Zayd ibn Waqid, who said: I heard Nafi', the freed slave of Ibn Umar, saying: "When Ibn Umar saw a person praying without raising his hands during prayer, he would throw pebbles at him and command him to raise his hands." Ali (may Allah be pleased with him) said: "Ibn Umar would not throw pebbles at one who

omitted an act that was permissible to omit." It was narrated from al-Awza'i that raising the hands during the opening takbir of prayer is obligatory—and this is the opinion of some of our earlier companions.[42]

L6350 **Issue: The Recitation of the Opening [*Umm al-Qur'an*] in the Prayer**

L6351–6353 359 - Issue: The recitation of Umm al-Qur'an (the Opening of the Book) is obligatory in every unit of every prayer, whether one is an imam, a follower, or praying alone (the obligatory and voluntary prayers are the same, and men and women are the same). Narrated to us by ʻAbd al-Raḥmān ibn ʻAbd Allāh: Ibrāhīm ibn Aḥmad narrated to us; al-Farabrī narrated to us; al-Bukhārī narrated to us; ʻAlī ibn ʻAbd Allāh narrated to us; Sufyān ibn ʻUyaynah narrated to us; al-Zuhrī narrated from Maḥmūd ibn al-Rabīʻ from ʻUbādah ibn al-Ṣāmit that the Messenger of Allāh—peace and blessings be upon him—said: "There is no prayer for one who does not recite Umm al-Qur'an." If it is asked: "From where do you derive the obligation to recite it in every unit?" We say: Due to what was narrated to us by ʻAbd al-Raḥmān ibn ʻAbd Allāh ibn Khālid: Ibrāhīm ibn Aḥmad narrated to us; al-Farabrī narrated to us; al-Bukhārī narrated to us; Musaddad narrated to us; Yaḥyā ibn Saʻīd al-Qaṭṭān narrated from ʻUbayd Allāh (the son of ʻUmar); Saʻīd al-Maqburī narrated from Abū Hurayrah, who mentioned the ḥadīth of the man whom the Prophet—peace and blessings be upon him—commanded to repeat his prayer. The man informed him that he did not know anything beyond that, so the Messenger of Allāh—peace and blessings be upon him—said to him: "When you stand for prayer, say the takbīr, then recite what is easy for you..." "what is with you of the Quran, then bow until you are at ease in bowing, then rise until you stand upright, then prostrate until you are at ease in prostration, then rise into a sitting position until you are at ease in sitting, then prostrate until you are at ease in prostration, then do this throughout your entire prayer." Thus by this command it became obligatory as an obligation to perform in the remainder of his prayer - in every rakʿah - the like of this.

L6354 **The Issue of the Congregant's Recitation Behind the Imam**

[42] **Hadith references (L6347):** Sunan Abi Dawud 721.

[مَسْأَلَةٌ قِرَاءَةُ أُمِّ الْقُرْآنِ فِي الصَّلَاةِ]

٣٥٩ - مَسْأَلَةٌ: وَقِرَاءَةُ أُمِّ الْقُرْآنِ: فَرْضٌ فِي كُلِّ رَكْعَةٍ مِنْ كُلِّ صَلَاةٍ إمَامًا كَانَ أَوْ مَأْمُومًا أَوْ مُنْفَرِدًا - وَالْفَرْضُ وَالتَّطَوُّعُ سَوَاءٌ، وَالرِّجَالُ وَالنِّسَاءُ سَوَاءٌ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَلِيُّ بْنُ عَبْدِ اللَّهِ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ ثنا الزُّهْرِيُّ عَنْ مَحْمُودِ بْنِ الرَّبِيعِ عَنْ عُبَادَةَ بْنِ الصَّامِتِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا صَلَاةَ لِمَنْ لَمْ يَقْرَأْ بِأُمِّ الْقُرْآنِ» . فَإِنْ قِيلَ: فَمِنْ أَيْنَ أَوْجَبْتُمُوهَا فَرْضًا فِي كُلِّ رَكْعَةٍ. قُلْنَا: لِمَا حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُسَدَّدٌ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ عُبَيْدِ اللَّهِ هُوَ ابْنُ عُمَرَ - ثنا سَعِيدٌ الْمَقْبُرِيُّ عَنْ أَبِي هُرَيْرَةَ، فَذَكَرَ حَدِيثَ الَّذِي أَمَرَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُعِيدَ الصَّلَاةَ، فَأَخْبَرَهُ أَنَّهُ لَا يُحْسِنُ غَيْرَ ذَلِكَ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا قُمْت إلَى الصَّلَاةِ فَكَبِّرْ، ثُمَّ اقْرَأْ مَا تَيَسَّرَ مَعَك مِنْ الْقُرْآنِ، ثُمَّ ارْكَعْ حَتَّى تَطْمَئِنَّ رَاكِعًا ثُمَّ ارْفَعْ حَتَّى تَعْتَدِلَ قَائِمًا، ثُمَّ اُسْجُدْ حَتَّى تَطْمَئِنَّ سَاجِدًا، ثُمَّ ارْفَعْ حَتَّى تَطْمَئِنَّ جَالِسًا، ثُمَّ اُسْجُدْ حَتَّى تَطْمَئِنَّ سَاجِدًا، ثُمَّ افْعَلْ ذَلِكَ فِي صَلَاتِكَ كُلِّهَا ". فَوَجَبَ بِهَذَا الْأَمْرِ فَرْضًا أَنْ يَفْعَلَ فِي بَاقِي صَلَاتِهِ فِي كُلِّ رَكْعَةٍ مِثْلَ هَذَا.

[مَسْأَلَةٌ قِرَاءَةُ الْمَأْمُومِ خَلْفَ الْإِمَامِ]

L6355–6359

360 - Issue: It is not permissible for the follower to recite anything behind the Imam other than the Essence of the Qur'an (Al-Fatihah). As narrated to us by Ḥammām, who narrated from ʿAbd Allāh ibn Muḥammad ibn ʿAlī al-Bājī, who narrated from Muḥammad ibn ʿAbd al-Malik ibn Ayman, who narrated from Aḥmad ibn Salm, who narrated from Abū Thawr Ibrāhīm ibn Khālid, who narrated from Yazīd ibn Hārūn, from Muḥammad ibn Isḥāq, from Makḥūl, from Maḥmūd ibn al-Rabīʿ, from ʿUbādah ibn al-Ṣāmit, who said: "Allah's Messenger (peace be upon him) led us in the dawn prayer. When he finished, he said: 'Do you recite behind me?' We replied: 'Yes, O Messenger of Allah.' He said: 'Do not do so except with the Essence of the Book (Al-Fatihah), for no prayer is valid without it.'" Among those who affirmed the obligation of Al-Fatihah, as we mentioned, are a group of the Salaf. It was narrated to us via ʿAbd al-Razzāq's chain, from Sufyān al-Thawrī, from Sulaymān al-Shaybānī, from Jawwāb, from Yazīd ibn Sharīk, who asked ʿUmar ibn al-Khaṭṭāb: "Shall I recite behind the Imam?" ʿUmar replied: "Yes." He asked: "Even if you recite, O Commander of the Believers?" ʿUmar said: "Yes, even if you recite." From al-Ḥajjāj ibn al-Minhāl: Abū ʿAwānah narrated to us from Ibrāhīm ibn Muḥammad ibn al-Muntashir, from his father, from ʿAbāyah ibn Raddād, from ʿUmar ibn al-Khaṭṭāb, who said: "No prayer is permissible or valid except with the Opening of the Book (Al-Fatihah) and another portion alongside it." A man asked him: "O Commander of the Believers, what if I am behind an Imam or alongside an Imam?" He replied: "Recite silently to yourself." From Abū ʿAwānah, from Sulaymān, from Khaythamah, from ʿUmar, who said: "No prayer is valid, or no..." Is a prayer valid in which the Fātiḥah is not recited? From the narration of Waki', from 'Abdullāh ibn 'Awn, from Rajā' ibn Ḥaywah, from Maḥmūd ibn al-Rabī', who said: "I prayed a prayer while 'Ubādah ibn al-Ṣāmit was beside me. He recited the Fātiḥah. When he finished, I said: 'O Abā al-Walīd, did I not hear you recite the Fātiḥah?' He replied: 'Yes, for there is no prayer valid except with it.'" From Waki', from Ismā'īl ibn Abī Khālid, from al-'Ayzar ibn Ḥurayth, from Ibn 'Abbās, who said: "Recite the Fātiḥah behind the Imam." From 'Abd al-Razzāq, from al-Mu'tamir ibn Sulaymān, from Layth, from 'Aṭā', from Ibn 'Abbās, who said: "It is obligatory to recite the Fātiḥah behind the Imam, whether he recites aloud or not." From 'Abd al-Razzāq, from Ibn Jurayj, who

٣٦٠ - مَسْأَلَةٌ: وَلَا يَجُوزُ لِلْمَأْمُومِ أَنْ يَقْرَأَ خَلْفَ الْإِمَامِ شَيْئًا غَيْرَ أُمِّ الْقُرْآنِ -: لِمَا حَدَّثَنَا حُمَامٌ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَحْمَدُ بْنُ سَلْمٍ ثنا أَبُو ثَوْرٍ إبْرَاهِيمُ بْنُ خَالِدٍ ثنا يَزِيدُ بْنُ هَارُونَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ مَكْحُولٍ عَنْ مَحْمُودِ بْنِ الرَّبِيعِ عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: «صَلَّى بِنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْفَجْرَ، فَلَمَّا انْصَرَفَ قَالَ: تَقْرَءُونَ خَلْفِي قُلْنَا: نَعَمْ يَا رَسُولَ اللَّهِ هَذَا، قَالَ: لَا تَفْعَلُوا إلَّا بِأُمِّ الْكِتَابِ، فَإِنَّهُ لَا صَلَاةَ إلَّا بِهَا» . وَمِمَّنْ قَالَ بِإِيجَابِ أُمِّ الْقُرْآنِ كَمَا ذَكَرْنَا جَمَاعَةٌ مِنْ السَّلَفِ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سُلَيْمَانَ الشَّيْبَانِيِّ عَنْ جَوَّابٍ عَنْ يَزِيدَ بْنِ شَرِيكٍ أَنَّهُ قَالَ لِعُمَرَ بْنِ الْخَطَّابِ: أَقْرَأُ خَلْفَ الْإِمَامِ؟ قَالَ لَهُ عُمَرُ: نَعَمْ، قَالَ: وَإِنْ قَرَأْت يَا أَمِيرَ الْمُؤْمِنِينَ قَالَ: نَعَمْ، وَإِنْ قَرَأْت. وَعَنْ الْحَجَّاجِ بْنِ الْمِنْهَالِ حَدَّثَنَا أَبُو عَوَانَةَ عَنْ إبْرَاهِيمَ بْنِ مُحَمَّدِ بْنِ الْمُنْتَشِرِ عَنْ أَبِيهِ عَنْ عَبَايَةَ بْنِ رِدَّادٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: لَا تَجُوزُ وَلَا تُجْزِئُ صَلَاةٌ إلَّا بِفَاتِحَةِ الْكِتَابِ وَشَيْءٍ مَعَهَا فَقَالَ لَهُ رَجُلٌ: يَا أَمِيرَ الْمُؤْمِنِينَ، أَرَأَيْت إنْ كُنْت خَلْفَ إمَامٍ أَوْ بَيْنَ يَدَيْ إمَامٍ قَالَ: اقْرَأْ فِي نَفْسِك وَعَنْ أَبِي عَوَانَةَ عَنْ سُلَيْمَانَ عَنْ خَيْثَمَةَ عَنْ عُمَرَ قَالَ: لَا تُجْزِئُ صَلَاةٌ، أَوْ لَا تَجُوزُ صَلَاةٌ لَا يُقْرَأُ فِيهَا بِفَاتِحَةِ الْكِتَابِ وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ رَجَاءِ بْنِ حَيْوَةَ عَنْ مَحْمُودِ بْنِ الرَّبِيعِ قَالَ: صَلَّيْت صَلَاةً وَإِلَى جَنْبِي عُبَادَةُ بْنُ الصَّامِتِ فَقَرَأَ فَاتِحَةَ الْكِتَابِ فَلَمَّا انْصَرَفَ قُلْت: أَبَا الْوَلِيدِ، أَلَمْ أَسْمَعْك قَرَأْت فَاتِحَةَ الْكِتَابِ قَالَ: أَجَلْ، إنَّهُ لَا صَلَاةَ إلَّا بِهَا وَعَنْ وَكِيعٍ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الْعَيْزَارِ بْنِ حُرَيْثٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: اقْرَأْ خَلْفَ الْإِمَامِ فَاتِحَةَ الْكِتَابِ وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ عَنْ لَيْثٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا بُدَّ

أَنْ يَقْرَأَ خَلْفَ الْإِمَامِ فَاتِحَةَ الْكِتَابِ، جَهَرَ أَوْ لَمْ يَجْهَرْ وَعَنْ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي نَافِعٌ: أَنَّ ابْنَ عُمَرَ لَمْ يَكُنْ يَدَعُ أَنْ يَقْرَأَ أُمَّ الْقُرْآنِ فِي كُلِّ رَكْعَةٍ مِنَ الْمَكْتُوبَةِ. وَعَنْ غَيْرِهِمْ أَيْضًا. وَعَنْ أَبِي هُرَيْرَةَ: اقْرَأْ بِهَا فِي نَفْسِكَ. وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ هُرْمُزٍ الْأَعْرَجِ أَنَّهُ سَمِعَ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ: اقْرَأْ بِأُمِّ الْقُرْآنِ فِي كُلِّ رَكْعَةٍ، أَوْ يَقُولُ فِي كُلِّ صَلَاةٍ. وَعَنْ عُرْوَةَ بْنِ الزُّبَيْرِ أَيْضًا. وَعَنْ مُعَاذٍ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ رَجَاءِ بْنِ حَيْوَةَ أَنَّهُ كَانَ يَقُولُ: إِنْ كَانَ خَلْفَ الْإِمَامِ فَجَهَرَ أَوْ لَمْ يَجْهَرْ فَلَا بُدَّ مِنْ قِرَاءَةِ فَاتِحَةِ الْكِتَابِ. وَعَنْ حَجَّاجِ بْنِ الْمِنْهَالِ ثنا أَبُو هِلَالٍ الرَّاسِبِيُّ قَالَ: سَأَلَ جَارٌ لَنَا الْحَسَنَ قَالَ: أَكُونُ خَلْفَ الْإِمَامِ يَوْمَ الْجُمُعَةِ فَلَا أَسْمَعُ قِرَاءَتَهُ قَالَ: اقْرَأْ بِفَاتِحَةِ الْكِتَابِ، قَالَ الرَّجُلُ: وَسُورَةٍ قَالَ: يَكْفِيكَ ذَلِكَ الْإِمَامُ. وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ قَالَ: لِلْإِمَامِ سَكْتَتَانِ فَاغْتَنِمُوا الْقِرَاءَةَ فِيهِمَا بِفَاتِحَةِ الْكِتَابِ، حِينَ يُكَبِّرُ الْإِمَامُ إِذَا دَخَلَ فِي الصَّلَاةِ وَحِينَ يَقُولُ: {وَلا الضَّالِّينَ} [الفاتحة: ٧] . وَالرِّوَايَاتُ هَهُنَا تَكْثُرُ جِدًّا وَقَالَ أَبُو حَنِيفَةَ: لَيْسَ قِرَاءَةُ أُمِّ الْقُرْآنِ فَرْضًا، وَإِنْ قَرَأَ الْإِمَامُ وَالْمُنْفَرِدُ مِثْلَ: " آيَةِ الدَّيْنِ " وَنَحْوِهَا وَلَمْ يَقْرَأْ أُمَّ الْكِتَابِ أَجْزَأَهُ وَالْقِرَاءَةُ عِنْدَهُ فَرْضٌ فِي رَكْعَتَيْنِ مِنَ الصَّلَاةِ فَقَطْ إِمَّا الْأُولَيَيْنِ أَوِ الْأُخْرَيَيْنِ، وَإِمَّا وَاحِدَةٌ فِي الْأُولَيَيْنِ وَوَاحِدَةٌ فِي الْأُخْرَيَيْنِ، وَلَا يَقْرَأُ الْمَأْمُومُ شَيْئًا أَصْلًا، أَجْهَرَ الْإِمَامُ أَوْ أَسَرَّ. وَقَالَ مَالِكٌ: قِرَاءَةُ أُمِّ الْقُرْآنِ فَرْضٌ فِي جُمْهُورِ الصَّلَاةِ عَلَى الْإِمَامِ وَالْمُنْفَرِدِ فَإِنْ تَرَكَاهُ فِي رَكْعَةٍ، فَقَدْ اخْتَلَفَ قَوْلُهُ، فَمَرَّةً رَأَى أَنْ يُلْغِيَ الرَّكْعَةَ وَيَأْتِيَ بِأُخْرَى وَمَرَّةً رَأَى أَنْ يُجْزِئَ عَنْهُ سُجُودُ السَّهْوِ. وَأَجَازَ

informed us from Nāfiʿ: “Ibn ʿUmar never neglected to recite the Mother of the Quran in every rakʿah of the obligatory prayer.” From others as well. From Abū Hurayrah: “Recite it silently to yourself.” From ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from ʿAbd al-Raḥmān ibn Hurmuz al-Aʿraj, who heard Abū Saʿīd al-Khudrī say: “Recite the Mother of the Quran in every rakʿah,” or he said: “in every prayer.” From ʿUrwah ibn al-Zubayr likewise. From Muʿādh, from ʿAbdullāh ibn ʿAwn, from Rajāʾ ibn Ḥaywah, who said: “Whether one is behind an Imam who recites aloud or silently, reciting the Fātiḥah remains obligatory.” From Ḥajjāj ibn al-Minhāl, who reported from Abū Hilāl al-Rāsibī, who said: “A neighbor of ours asked al-Ḥasan: ’When I pray behind the Imam on Friday and cannot hear his recitation?’ He replied: ’Recite the Fātiḥah.’ The man asked: ’And a surah?’ He said: ’The Imam suffices you for that.’” From Ḥammād ibn Salamah, from Muḥammad ibn ʿAmr, from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf. He said: The imam has two pauses; seize the opportunity to recite the Opening of the Book during them—when the imam pronounces the opening magnification upon entering prayer, and when he says, “{and not of those who have gone astray} [Al-Fātiḥah: 7].” The narrations here are exceedingly numerous. Abū Ḥanīfah said: Reciting the Mother of the Quran is not obligatory. If the imam or an individual praying alone recites a verse such as “the Debt Verse” (2:282) or similar instead of the Mother of the Book, it suffices. In his view, recitation is obligatory only in two rak’ahs of the prayer: either the first two, or the last two, or one rak’ah in the first two and one in the last two. The follower does not recite anything at all, whether the imam prays aloud or silently. Mālik said: Reciting the Mother of the Quran is obligatory in the majority of the prayer’s rak’ahs for both the imam and the individual praying alone. If they omit it in a rak’ah, his opinion varies: at times he deemed the rak’ah invalid, requiring it to be repeated, and at times considered the prostration of forgetfulness sufficient. He permitted the follower to recite the Mother of the Quran along with a surah behind the imam when the imam prays silently during the first two rak’ahs of Ẓuhr and ʿAṣr, and to recite only the Mother of the Quran in every rak’ah where the imam prays silently in any prayer. He preferred this for the follower but did not deem it permissible for them to recite anything in rak’ahs where the imam prays aloud. Al-Shāfiʿī,

in the latter of his two opinions, concurred with our position—which is also the view of al-Awzāʿī and al-Layth ibn Saʿd. Our companions differed: one group held it obligatory for the follower to recite the Mother of the Quran in every rak'ah—whether the imam prays aloud or silently—while another group restricted this obligation to rak'ahs where the imam prays silently. They unanimously agreed on the obligation of reciting the Mother of the Quran in every rak'ah for the imam and the individual praying alone. ʿAlī said: Those who reject the obligatoriness of the Mother of the Quran cited Allah's decree, "{Recite what is feasible of the Quran} [al-Muzzammil: 20]," and the Prophet's instruction—peace and blessings of Allah be upon him—to the man ordered to repeat his prayer: "Recite what is manageable for you of the Quran." ʿAlī said: The ḥadīth of ʿUbādah clarifies this other report, affirming that the obligatory "feasible portion" of the Quran refers exclusively to the Mother of the Quran.[43]

L6360–6367 It is as though those who give precedence to the ḥadīth of ʿUbādah have indeed considered both the Quranic verse and all narrations, for Umm al-Qur'ān constitutes part of what can be easily recited from the Qur'an. Conversely, those who prioritize the Prophet's statement (peace and blessings of Allah be upon him) - "Recite whatever you can manage from the Qur'an" - appear to contradict the ḥadīth of ʿUbādah, thereby permitting a prayer the Messenger of Allah (peace and blessings of Allah be upon him) nullified. This is impermissible, particularly Abū Ḥanīfah's differentiation between allowing the recitation of a lengthy verse or three verses and prohibiting fewer than that. This is a view not recorded from anyone before him, with no evidence for its validity, contradicting the Qur'an and all transmitted reports. He also held another opinion: that whatever one recites from the Qur'an

لِلْمَأْمُومِ أَنْ يَقْرَأَ خَلْفَ الْإِمَامِ أُمَّ الْقُرْآنِ وَسُورَةً إِذَا أَسَرَّ الْإِمَامُ فِي الْأُولَيَيْنِ مِنْ الظُّهْرِ وَالْعَصْرِ، وَبِأُمِّ الْقُرْآنِ وَحْدَهَا فِي كُلِّ رَكْعَةٍ يُسِرُّ فِيهَا مِنْ كُلِّ صَلَاةٍ. وَاخْتَارَ لَهُ ذَلِكَ، وَلَمْ يَرَ لَهُ أَنْ يَقْرَأَ شَيْئًا فِي كُلِّ رَكْعَةٍ يَجْهَرُ فِيهَا الْإِمَامُ. وَقَالَ الشَّافِعِيُّ فِي آخِرِ قَوْلَيْهِ كَقَوْلِنَا - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَاللَّيْثِ بْنِ سَعْدٍ. وَاخْتَلَفَ أَصْحَابُنَا -: فَقَالَتْ طَائِفَةٌ: فَرْضٌ عَلَى الْمَأْمُومِ أَنْ يَقْرَأَ أُمَّ الْقُرْآنِ فِي كُلِّ رَكْعَةٍ - أَسَرَّ الْإِمَامُ أَوْ جَهَرَ - وَقَالَتْ طَائِفَةٌ: هَذَا فَرْضٌ عَلَيْهِ فِيمَا أَسَرَّ فِيهِ الْإِمَامُ خَاصَّةً، وَلَا يَقْرَأُ فِيمَا جَهَرَ فِيهِ الْإِمَامُ وَلَمْ يَخْتَلِفُوا فِي وُجُوبِ قِرَاءَةِ أُمِّ الْقُرْآنِ فَرْضًا فِي كُلِّ رَكْعَةٍ عَلَى الْإِمَامِ وَالْمُنْفَرِدِ. قَالَ عَلِيٌّ: احْتَجَّ مَنْ لَمْ يَرَ أُمَّ الْقُرْآنِ فَرْضًا بِقَوْلِ اللَّهِ تَعَالَى: {فَاقْرَءُوا مَا تَيَسَّرَ مِنَ الْقُرْآنِ} [المزمل: ٢٠] وَبِتَعْلِيمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَسَلَّمَ - لِلَّذِي أَمَرَهُ بِالْإِعَادَةِ فَقَالَ لَهُ: «اقْرَأْ مَا تَيَسَّرَ مَعَكَ مِنْ الْقُرْآنِ» . قَالَ عَلِيٌّ: حَدِيثُ عُبَادَةَ يُبَيِّنُ هَذَا الْخَبَرَ الْآخَرَ، وَأَنَّ الْمُرَادَ بِإِيجَابِ قِرَاءَتِهِ مَا تَيَسَّرَ مِنْ الْقُرْآنِ: هُوَ أُمُّ الْقُرْآنِ فَقَطْ.

وَكَأَنَّ مَنْ غَلَّبَ حَدِيثَ عُبَادَةَ قَدْ أَخَذَ بِالْآيَةِ وَبِالْأَخْبَارِ كُلِّهَا، لِأَنَّ أُمَّ الْقُرْآنِ مِمَّا تَيَسَّرَ مِنْ الْقُرْآنِ. وَكَأَنَّ مَنْ غَلَّبَ قَوْلَهُ - عَلَيْهِ السَّلَامُ -: «فَاقْرَأْ مَا تَيَسَّرَ مَعَكَ مِنْ الْقُرْآنِ» قَدْ خَالَفَ حَدِيثَ عُبَادَةَ، وَأَجَازَ صَلَاةً أَبْطَلَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَسَلَّمَ - وَهَذَا لَا يَجُوزُ، لَا سِيَّمَا تَقْسِيمُ أَبِي حَنِيفَةَ بَيْنَ إجَازَتِهِ قِرَاءَةَ آيَةٍ طَوِيلَةٍ، أَوْ ثَلَاثِ آيَاتٍ، وَمَنْعِهِ مِمَّا دُونَهَا. فَهَذَا قَوْلٌ مَا حُفِظَ عَنْ أَحَدٍ قَبْلَهُ، وَلَا عَلَى صِحَّتِهِ دَلِيلٌ، وَهُوَ خِلَافٌ لِلْقُرْآنِ، وَلِجَمِيعِ الْآثَارِ - وَلَهُ قَوْلٌ آخَرُ: إنَّ مَا قَرَأَ مِنْ الْقُرْآنِ أَجْزَأَهُ وَاحْتَجَّ مِنْ رَأَى: أَنْ لَا يَقْرَأَ الْمَأْمُومُ خَلْفَ الْإِمَامِ الْجَاهِرِ بِقَوْلِ اللَّهِ تَعَالَى: {وَإِذَا قُرِئَ

[43] **Qur'an references (L6355):** Qur'an 73:20 (Al-Muzzammil); Qur'an 1:7 (Al-Fatihah).

suffices. Those who argue that a follower should not recite behind an imam audible in recitation cite Allah's words: "When the Qur'an is recited, listen attentively and remain silent" (7:204). ʿAlī remarked: The complete verse refutes their stance, for Allah states: "When the Qur'an is recited, listen attentively and remain silent, so that you may receive mercy. Remember your Lord inwardly with humility and fear, without raising your voice, in the mornings and evenings, and do not be among the heedless" (7:204-205). ʿAlī added: If the beginning of the verse pertains to prayer, then its end also pertains to prayer. If its end does not pertain to prayer, neither does its beginning. The verse solely commands silent remembrance and prohibits audible speech—this being our position. They cited the ḥadīth of Ibn Ukaymah wherein the Prophet (peace and blessings of Allah be upon him) said: "Why am I contested regarding the Qur'an?"—which includes al-Zuhrī's remark: "Consequently, people ceased reciting during prayers where the Messenger of Allah (peace and blessings of Allah be upon him) recited audibly." This ḥadīth is uniquely narrated by Ibn Ukaymah, whom they deemed unknown. Even if authentic, it would not substantiate their argument, for narrations must be harmonized, and it is forbidden to contradict one with another. All statements of the Messenger of Allah (peace and blessings of Allah be upon him) are entirely truthful, mutually corroborating without contradiction. It is obligatory to accept his words (peace and blessings of Allah be upon him) exactly as uttered—neither adding nor omitting anything. Thus, no prayer is valid without reciting Umm al-Qur'ān, and this is indisputable. The Quran—and this is the precise wording of our position, all praise is due to Allah—while whatever is other than this constitutes an addition to the speech of the Messenger of Allah (peace and blessings be upon him) or a deficiency from it. They also cited an authentic hadith through Ibn ʿAjlān: "The Imam is appointed to be followed. When he utters the *takbīr*, utter the *takbīr*; when he bows, bow; when he rises, rise; when he prostrates, prostrate; when he recites, remain silent; and if he prays seated, then pray all of you in a seated posture." This is a narration regarding which the foremost who should seek forgiveness from Allah the Exalted when it is mentioned are the Ḥanafīs and Mālikīs, for they contradict most of its rulings. They hold that the initial *takbīr* is to be uttered after the Imam's *takbīr*—

الْقُرْآنُ فَاسْتَمِعُوا لَهُ وَأَنْصِتُوا} [الأعراف: ٢٠٤] . قَالَ عَلِيٌّ: وَتَمَامُ الْآيَةِ حُجَّةٌ عَلَيْهِمْ؛ لِأَنَّ اللَّهَ قَالَ: {وَإِذَا قُرِئَ الْقُرْآنُ فَاسْتَمِعُوا لَهُ وَأَنْصِتُوا لَعَلَّكُمْ تُرْحَمُونَ} [الأعراف: ٢٠٤] {وَاذْكُرْ رَبَّكَ فِي نَفْسِكَ تَضَرُّعًا وَخِيفَةً وَدُونَ الْجَهْرِ مِنَ الْقَوْلِ بِالْغُدُوِّ وَالآصَالِ وَلا تَكُنْ مِنَ الْغَافِلِينَ} [الأعراف: ٢٠٥] قَالَ عَلِيٌّ: فَإِنْ كَانَ أَوَّلُ الْآيَةِ فِي الصَّلَاةِ فَآخِرُهَا فِي الصَّلَاةِ، وَإِنْ كَانَ آخِرُهَا لَيْسَ فِي الصَّلَاةِ فَأَوَّلُهَا لَيْسَ فِي الصَّلَاةِ، وَلَيْسَ فِيهَا إِلَّا الْأَمْرُ بِالذِّكْرِ سِرًّا وَتَرْكُ الْجَهْرِ فَقَطْ، وَهَكَذَا نَقُولُ وَذَكَرُوا حَدِيثَ ابْنِ أُكَيْمَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَالِي أُنَازَعُ الْقُرْآنَ» - وَفِيهِ مِنْ قَوْلِ الزُّهْرِيِّ: فَانْتَهَى النَّاسُ عَنْ الْقِرَاءَةِ فِيمَا جَهَرَ فِيهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَسَلَّمَ - مِنْ الْقِرَاءَةِ. وَهَذَا حَدِيثٌ انْفَرَدَ بِهِ ابْنُ أُكَيْمَةَ وَقَالُوا: هُوَ مَجْهُولٌ، ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّ الْأَخْبَارَ وَاجِبٌ أَنْ يُضَمَّ بَعْضُهَا إلَى بَعْضٍ، وَحَرَامٌ أَنْ يُضْرَبَ بَعْضُهَا بِبَعْضٍ؛ لِأَنَّ كُلَّ مَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَسَلَّمَ - فَهُوَ كُلُّهُ حَقٌّ يُصَدِّقُ بَعْضُهُ بَعْضًا، وَلَا يُخَالِفُ بَعْضُهُ بَعْضًا فَالْوَاجِبُ أَنْ يُؤْخَذَ كَلَامُهُ - عَلَيْهِ السَّلَامُ - كُلُّهُ بِظَاهِرِهِ كَمَا هُوَ، كَمَا قَالَهُ - عَلَيْهِ السَّلَامُ -؛ لَا يُزَادُ فِيهِ شَيْءٌ، وَلَا يُنْقَصُ مِنْهُ شَيْءٌ، فَلَا صَلَاةَ لِمَنْ لَمْ يَقْرَأْ بِأُمِّ الْقُرْآنِ وَلَا يُنَازِعُ الْقُرْآنَ، وَهَذَا نَصُّ قَوْلِنَا وَلِلَّهِ الْحَمْدُ، وَمَا عَدَا هَذَا فَزِيَادَةٌ فِي كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنُقْصَانٌ مِنْهُ، وَذَكَرُوا أَيْضًا: حَدِيثًا صَحِيحًا مِنْ طَرِيقِ ابْنِ عَجْلَانَ فِيهِ «إنَّمَا جُعِلَ الْإِمَامُ لِيُؤْتَمَّ بِهِ، فَإِذَا كَبَّرَ فَكَبِّرُوا، وَإِذَا رَكَعَ فَارْكَعُوا، وَإِذَا رَفَعَ فَارْفَعُوا وَإِذَا سَجَدَ فَاسْجُدُوا، وَإِذَا قَرَأَ فَأَنْصِتُوا، وَإِذَا صَلَّى جَالِسًا فَصَلُّوا جُلُوسًا أَجْمَعُونَ» . فَهَذَا خَبَرٌ أَوَّلُ مَنْ يَنْبَغِي أَنْ يَسْتَغْفِرَ اللَّهَ تَعَالَى عِنْدَ ذِكْرِهِ مِنْ مُخَالِفَةِ هَذَا الْحَدِيثِ: الْحَنَفِيُّونَ وَالْمَالِكِيُّونَ؛ لِأَنَّهُمْ

not simultaneously—specifically for commencing the prayer. They further deem all subsequent *takbīrs*, rising, and lowering to be performed with the Imam, neither preceding nor following him. This opposes the command of the Messenger of Allah (peace and blessings be upon him) in this hadith, which states: "If he prays seated, pray seated." They opposed him by adhering to a false, inauthentic narration and an unfounded assumption. It is astonishing that they cite a single ruling from his teachings—for which they lack evidence—while abandoning his other rulings, which it is impermissible to oppose. ʻAlī said: "As for us, we hold it authentic and adhere to it in full, for compiling and arranging the speech of the Messenger of Allah (peace and blessings be upon him), integrating its parts, and adhering to all of it is an obligation permitting no alternative." He (peace and blessings be upon him) also said: "When the Imam recites, remain silent," and "There is no prayer for one who does not recite the Opening Chapter of the Quran." Thus, all these commands necessitate one of two approaches—no third exists: either to interpret "When he recites, remain silent" as excluding the Opening Chapter—as we have stated. The possible aspect of this is to say: There is no prayer for one who does not recite the Mother of the Quran, except if the Imam recites—as some proponents hold. Alternatively, the aspect of this is to say: There is no prayer for one who does not recite the Mother of the Quran, except if the Imam recites aloud—as others maintain. Ali said: Since one of these aspects must necessarily be adopted, none is more valid than another except through proof, not mere assertion. We examined this matter and found the previously mentioned hadith from the Messenger of Allah—peace and blessings be upon him—when he concluded the Fajr prayer, which is an audible prayer. He asked, "Do you recite behind me?" They replied, "Yes, O Messenger of Allah—we do so hastily." He said, "Do not do so except with the Mother of the Quran, for there is no prayer without it." This sufficed in harmonizing his rulings—peace be upon him—leaving no room for anyone to deviate from them. Some raised objections by claiming this is a narration transmitted by Ibn Ishaq, and that Makhūl narrated it once from Mahmud ibn al-Rabiʻ through ʻUbadah, and another time from Nafiʻ ibn Mahmud ibn al-Rabiʻ through ʻUbadah. Ali said: This is without merit, for Muhammad ibn Ishaq is among the Imams. Al-Zuhri affirmed his reliability

مُخَالِفُونَ لِأَكْثَرَ مَا فِيهِ، فَإِنَّهُمْ يَرَوْنَ التَّكْبِيرَ إثْرَ تَكْبِيرِ الْإِمَامِ: لَا مَعَهُ لِلْإِحْرَامِ خَاصَّةً. ثُمَّ يَرَوْنَ سَائِرَ التَّكْبِيرِ وَالرَّفْعِ وَالْخَفْضِ مَعَ الْإِمَامِ: لَا قَبْلَهُ وَلَا بَعْدَهُ، وَهَذَا خِلَافُ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي هَذَا الْحَدِيثِ: وَفِيهِ «إذَا صَلَّى قَاعِدًا فَصَلُّوا قُعُودًا» فَخَالَفُوهُ إلَى خَبَرٍ كَاذِبٍ لَا يَصِحُّ، وَإِلَى ظَنٍّ غَيْرِ مَوْجُودٍ، فَمِنْ الْعَجَبِ أَنْ يَحْتَجُّوا بِقَضِيَّةٍ وَاحِدَةٍ مِنْ قَضَايَاهُ لَا حُجَّةَ لَهُمْ فِيهَا وَيَتْرُكُوا سَائِرَ قَضَايَاهُ الَّتِي لَا يَحِلُّ خِلَافُهَا. قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَإِنَّهُ عِنْدَنَا صَحِيحٌ، وَبِهِ كُلُّهُ نَأْخُذُ، لِأَنَّ تَأْلِيفَ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَضَمَّ بَعْضِهِ إلَى بَعْضٍ وَالْأَخْذَ بِجَمِيعِهِ -: فَرْضٌ لَا يَحِلُّ سِوَاهُ. وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: " إذَا قَرَأَ الْإِمَامُ فَأَنْصِتُوا وَ «لَا صَلَاةَ لِمَنْ لَمْ يَقْرَأْ بِأُمِّ الْقُرْآنِ» فَلَا بُدَّ فِي جَمِيعِ هَذِهِ الْأَوَامِرِ مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا -: إمَّا أَنْ يَكُونَ وَجْهُ ذَلِكَ أَنْ يَقُولَ: إذَا قَرَأَ فَأَنْصِتُوا، إلَّا عَنْ أُمِّ الْقُرْآنِ - كَمَا قُلْنَا نَحْنُ وَإِمَّا أَنْ يَكُونَ وَجْهُ ذَلِكَ أَنْ يَقُولَ: لَا صَلَاةَ لِمَنْ لَمْ يَقْرَأْ بِأُمِّ الْقُرْآنِ، إلَّا إنْ قَرَأَ الْإِمَامُ - كَمَا يَقُولُ بَعْضُ الْقَائِلِينَ، وَإِمَّا أَنْ يَكُونَ وَجْهُ ذَلِكَ أَنْ يَقُولَ: لَا صَلَاةَ لِمَنْ لَمْ يَقْرَأْ بِأُمِّ الْقُرْآنِ، إلَّا أَنْ يَجْهَرَ الْإِمَامُ - كَمَا يَقُولُ آخَرُونَ، قَالَ عَلِيٌّ: فَإِذْ لَا بُدَّ مِنْ أَحَدِ هَذِهِ الْوُجُوهِ، فَلَيْسَ بَعْضُهَا أَوْلَى مِنْ بَعْضٍ إلَّا بِبُرْهَانٍ، وَأَمَّا بِدَعْوَى فَلَا فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا الْحَدِيثَ الَّذِي قَدْ ذَكَرْنَاهُ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ انْصَرَفَ مِنْ صَلَاةِ الْفَجْرِ، وَهِيَ صَلَاةُ جَهْرٍ فَقَالَ: «أَتَقْرَءُونَ خَلْفِي؟ قَالُوا: نَعَمْ، هَذَا يَا رَسُولَ اللَّهِ، قَالَ: لَا تَفْعَلُوا إلَّا بِأُمِّ الْقُرْآنِ، فَإِنَّهُ لَا صَلَاةَ إلَّا بِهَا» فَكَانَ هَذَا كَافِيًا فِي تَأْلِيفِ أَوَامِرِهِ - عَلَيْهِ السَّلَامُ -؛ لَا يَسَعُ أَحَدًا الْخُرُوجُ عَنْهُ. وَقَدْ مَوَّهَ قَوْمٌ بِأَنْ قَالُوا: هَذَا خَبَرٌ مِنْ رِوَايَةِ ابْنِ إسْحَاقَ، وَرَوَاهُ مَكْحُولٌ مَرَّةً عَنْ مَحْمُودِ بْنِ الرَّبِيعِ عَنْ

and preferred him over the scholars of Medina in his time, as did Shu'bah, Sufyan al-Thawri, Sufyan ibn 'Uyaynah, Hammad ibn Zayd, Hammad ibn Salamah, Yazid ibn Harun, Ibrahim ibn Sa'd, 'Abdullah ibn al-Mubarak, and others. Shu'bah said of him: "Muhammad ibn Ishaq is the leader of hadith scholars—he is the Commander of the Faithful in Hadith." It is remarkable that those who disparage him here are the same ones who rely on his unique narration stating that the Messenger of Allah—peace and blessings be upon him—reinstated Zaynab to Abu al-'As through the original marriage contract after his Islam. When he narrates what... They presume that if a narration aligns with their taqlīd (following their school), the narrator becomes reliable and his hadith authoritative. But if he reports what contradicts them, he is discredited—"Sufficient for us is Allah, and He is the best Trustee" (3:173). As for Makḥūl's narration of this report once from Maḥmūd and once from Nāfiʿ ibn Maḥmūd, this strengthens the hadith, not weakens it, since both are trustworthy. Even if this report did not exist, the Prophet's (peace be upon him) statement, "When he recites, remain silent," would only necessitate abandoning recitation during his recitation, while the obligation to recite during the Imam's pauses remains. How then [can this hold] when many hadith scholars have rejected the wording "When he recites, remain silent," asserting that Muḥammad ibn Ghaylān erred in transmitting it and that it is not part of the hadith. Ibn Maʿīn and others stated this. ʿAlī said: "As for us, we do not deem a narration by a trustworthy narrator erroneous except with clear proof. However, the basis for action is what we intended—and success is from Allah, the Most High." ʿAlī said: Some argued that the meaning of the Prophet's (peace be upon him) statement, "There is no prayer for one who does not recite the Mother of the Quran," is that the prayer is incomplete, as in "There is no faith for one who lacks Trust." ʿAlī responded: "They have no grounds for this, for if a prayer is incomplete or unperfected, he has no prayer at all, as part of the prayer cannot substitute for the whole. Likewise, one without Trust has no faith, for the Trust is the entire Sharia. Allah says, 'Indeed, We offered the Trust to the heavens, the earth, and the mountains, but they refused to bear it and feared it; yet man undertook it—he is truly unjust and ignorant' (33:72). Thus, indeed, one without Trust has no faith, and one without the Sharia has no religion—this is the apparent

عُبَادَةَ، وَمَرَّةً عَنْ نَافِعِ بْنِ مَحْمُودِ بْنِ الرَّبِيعِ عَنْ عُبَادَةَ قَالَ عَلِيٌّ: وَهَذَا لَيْسَ بِشَيْءٍ؛ لِأَنَّ مُحَمَّدَ بْنَ إِسْحَاقَ أَحَدُ الْأَئِمَّةِ، وَثَّقَهُ الزُّهْرِيُّ - وَفَضَّلَهُ عَلَى مَنْ بِالْمَدِينَةِ فِي عَصْرِهِ - وَشُعْبَةُ، وَسُفْيَانُ، وَسُفْيَانُ وَحَمَّادٌ، وَحَمَّادٌ وَيَزِيدُ، وَيَزِيدُ وَإِبْرَاهِيمُ بْنُ سَعْدٍ، وَعَبْدُ اللَّهِ بْنُ الْمُبَارَكِ وَغَيْرُهُمْ. قَالَ فِيهِ شُعْبَةُ: مُحَمَّدُ بْنُ إِسْحَاقَ أَمِيرُ الْمُحَدِّثِينَ، هُوَ أَمِيرُ الْمُؤْمِنِينَ فِي الْحَدِيثِ وَالْعَجَبُ أَنَّ الطَّاعِنِينَ عَلَيْهِ هَهُنَا هُمُ الَّذِينَ احْتَجُّوا بِرِوَايَتِهِ الَّتِي لَمْ يَرْوِهَا غَيْرُهُ فِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَدَّ زَيْنَبَ عَلَى أَبِي الْعَاصِ بِالنِّكَاحِ الْأَوَّلِ بَعْدَ إِسْلَامِهِ، فَإِذَا رَوَى مَا يَظُنُّونَ أَنَّهُ يُوَافِقُ تَقْلِيدَهُمْ: صَارَ ثِقَةً، وَصَارَ حَدِيثُهُ حُجَّةً؛ وَإِذَا رَوَى مَا يُخَالِفُهُمْ: صَارَ مُجَرَّحًا وَ {حَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ} [آل عمران: ١٧٣] وَأَمَّا رِوَايَةُ مَكْحُولٍ هَذَا الْخَبَرَ مَرَّةً عَنْ مَحْمُودٍ وَمَرَّةً عَنْ نَافِعِ بْنِ مَحْمُودٍ فَهَذَا قُوَّةٌ لِلْحَدِيثِ لَا وَهْنٌ، لِأَنَّ كِلَيْهِمَا ثِقَةٌ. وَحَتَّى لَوْ لَمْ يَأْتِ هَذَا الْخَبَرُ لَمَا وَجَبَ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إِذَا قَرَأَ فَأَنْصِتُوا» إِلَّا تَرْكُ الْقِرَاءَةِ حِينَ قِرَاءَتِهِ، وَيَبْقَى وُجُوبُ قِرَاءَتِهَا فِي سَكَتَاتِ الْإِمَامِ فَكَيْفَ وَهَذِهِ اللَّفْظَةُ -: يَعْنِي «إِذَا قَرَأَ فَأَنْصِتُوا» قَدْ أَنْكَرَهَا كَثِيرٌ مِنْ أَئِمَّةِ الْحَدِيثِ وَقَالُوا: إِنَّ مُحَمَّدَ بْنَ غَيْلَانَ أَخْطَأَ فِي إِيرَادِهَا، وَلَيْسَتْ مِنْ الْحَدِيثِ، قَالَ ذَلِكَ ابْنُ مَعِينٍ وَغَيْرُهُ. قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَلَا نَقُولُ فِيمَا رَوَاهُ الثِّقَةُ: إنَّهُ خَطَأٌ، إلَّا بِبُرْهَانٍ وَاضِحٍ، لَكِنَّ وَجْهَ الْعَمَلِ هُوَ مَا أَرَدْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. قَالَ عَلِيٌّ: وَقَالَ بَعْضُهُمْ: مَعْنَى قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «لَا صَلَاةَ لِمَنْ لَمْ يَقْرَأْ بِأُمِّ الْقُرْآنِ» إنَّمَا مَعْنَاهُ لَا صَلَاةَ كَامِلَةً، كَمَا جَاءَ «لَا إيمَانَ لِمَنْ لَا أَمَانَةَ لَهُ» قَالَ عَلِيٌّ: وَهَذَا لَا مُتَعَلَّقَ لَهُمْ بِهِ، لِأَنَّهُ إذَا لَمْ تَتِمَّ صَلَاةٌ أَوْ لَمْ تَكْمُلْ: فَلَا صَلَاةَ لَهُ أَصْلًا؛ إذْ بَعْضُ الصَّلَاةِ لَا يَنُوبُ عَنْ جَمِيعِهَا. وَكَذَلِكَ مَنْ لَا أَمَانَةَ لَهُ؛ فَالْأَمَانَةُ: هِيَ الشَّرِيعَةُ كُلُّهَا؛ قَالَ اللَّهُ تَعَالَى

meaning of the texts, which it is impermissible to divert." Others ventured to say that the Prophet's (peace be upon him) statement, "There is no prayer for one who does not recite the Mother of the Quran," is merely emphatic. ʿAlī said: "This is a denial of the Messenger of Allah (peace be upon him)—mere fabrication. Whoever denies him (peace be upon him) has disbelieved, and none is greater in disbelief than one who claims the Prophet (peace be upon him) spoke emphatically with this statement when it is not true."[44]

{إِنَّا عَرَضْنَا الأَمَانَةَ عَلَى السَّمَاوَاتِ وَالأَرْضِ وَالْجِبَالِ فَأَبَيْنَ أَنْ يَحْمِلْنَهَا وَأَشْفَقْنَ مِنْهَا وَحَمَلَهَا الإِنْسَانُ إِنَّهُ كَانَ ظَلُومًا جَهُولا} [الأحزاب: ٧٢] . فَنَعَمْ: مَنْ لَا أَمَانَةَ لَهُ فَلَا إِيمَانَ لَهُ؛ وَمَنْ لَا شَرِيعَةَ لَهُ فَلَا دِينَ لَهُ - هَذَا ظَاهِرُ اللَّفْظَيْنِ الَّذِي لَا يَحِلُّ صَرْفُهُمَا عَنْهُ. وَقَدْ أَقْدَمَ آخَرُونَ فَقَالُوا: مَعْنَى قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «لَا صَلَاةَ لِمَنْ لَمْ يَقْرَأْ بِأُمِّ الْقُرْآنِ» إِنَّمَا هُوَ عَلَى التَّغْلِيظِ قَالَ عَلِيٌّ: وَهَذَا تَكْذِيبٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُجَرَّدٌ. وَمَنْ كَذَّبَهُ - عَلَيْهِ السَّلَامُ -: فَقَدْ كَفَرَ؛ وَلَا أَعْظَمُ مِنْ كُفْرِ مَنْ يَقُولُ: إِنَّ النَّبِيَّ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَسَلَّمَ - غَلَّطَ بِهَذَا الْقَوْلِ وَلَيْسَ هُوَ حَقًّا.

L6368–6369 Ali said: There have come weak hadiths, all containing the phrase, "Whoever has an Imam, the Imam's recitation counts as his recitation," and in some of them, "I consider nothing but that the Imam has sufficed for him." All of these are either mursal (hadiths with interrupted chains), narrated by Jabir al-Juʿfi the notorious liar, or from unknown narrators. Even if all were authentic, the Prophet's statement—peace be upon him—"Do not act except with the Opening of the Book," would suffice to reconcile them all. If someone mentions a hadith we narrated through al-Bazzar's chain from Muhammad ibn Bashshar from Abu ʿAmir al-ʿAqadi from Hammam from Qatadah from Abu Nadrah from Abu Saʿd: "The Messenger of Allah (peace be upon him) commanded us to recite the Opening of the Book and whatever is easy in our prayer"—he (peace be upon him) did not say: "whatever is easy from the Quran." Since he did not specify this, it is understood to refer to the rest of the remembrance. Similarly, we assert the obligation of remembrance during bowing and prostration, and the obligation of the opening takbir.

We have narrated from ʿImran ibn al-Husayn and ʿUthman ibn Abi al-ʿAs: "No prayer is complete except with the Opening of the Book and three verses or more." From Shuʿbah from Ibrahim ibn Muhammad ibn al-Muntashir from ʿAbayah ibn Raddad, who heard ʿUmar ibn al-Khattab say: "No prayer

قَالَ عَلِيٌّ: وَقَدْ جَاءَتْ أَحَادِيثُ سَاقِطَةٌ كُلُّهَا فِيهَا «مَنْ كَانَ لَهُ إِمَامٌ فَإِنَّ قِرَاءَةَ الْإِمَامِ لَهُ قِرَاءَةٌ» وَفِي بَعْضِهَا " مَا أَرَى الْإِمَامُ إِلَّا قَدْ كَفَّاهُ ". وَكُلُّهَا إِمَّا مُرْسَلٌ؛ وَإِمَّا مِنْ رِوَايَةِ جَابِرٍ الْجُعْفِيِّ الْكَذَّابِ، وَإِمَّا عَنْ مَجْهُولٍ - وَلَوْ صَحَّتْ كُلُّهَا لَكَانَ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «لَا تَفْعَلُوا إِلَّا بِأُمِّ الْقُرْآنِ» كَافِيًا فِي تَأْلِيفِ جَمِيعِهَا، فَإِنْ ذَكَرَ ذَاكِرٌ: حَدِيثًا رُوِّينَاهُ مِنْ طَرِيقِ الْبَزَّارِ عَنْ مُحَمَّدِ بْنِ بَشَّارٍ عَنْ أَبِي عَامِرٍ الْعَقَدِيِّ ثنا هَمَّامٌ عَنْ قَتَادَةَ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعْدٍ: «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَقْرَأَ فِي صَلَاتِنَا بِأُمِّ الْقُرْآنِ وَمَا تَيَسَّرَ» فَإِنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَقُلْ: وَمَا تَيَسَّرَ مِنْ الْقُرْآنِ؛ فَإِذَا لَمْ يَقُلْهُ فَهُوَ مَحْمُولٌ عَلَى سَائِرِ الذِّكْرِ. وَهَكَذَا نَقُولُ بِوُجُوبِ الذِّكْرِ فِي الرُّكُوعِ، وَالسُّجُودِ، وَوُجُوبِ التَّكْبِيرِ. عَلَى أَنَّنَا قَدْ رُوِّينَا عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ، وَعُثْمَانَ بْنِ أَبِي الْعَاصِ: لَا تَتِمُّ صَلَاةٌ إِلَّا بِفَاتِحَةِ الْكِتَابِ، وَثَلَاثِ آيَاتٍ فَصَاعِدًا، وَعَنْ شُعْبَةَ عَنْ إبْرَاهِيمَ بْنِ مُحَمَّدِ بْنِ الْمُنْتَشِرِ عَنْ عَبَايَةَ بْنِ رِدَّادٍ سَمِعْت عُمَرَ بْنَ الْخَطَّابِ يَقُولُ: لَا تُجْزِئُ صَلَاةٌ

[44] **Qur'an references (L6361):** Qur'an 7:204 (Al-A'raf); Qur'an 7:205 (Al-A'raf); Qur'an 3:173 (Ali 'Imran); Qur'an 33:72 (Al-Ahzab).

is valid except with two verses alongside the Opening of the Book. If you are behind an Imam, recite silently to yourself." However, contradictory reports have been narrated from ʻUmar ibn al-Khattab and ʻAli ibn Abi Talib. From Hammad ibn Salamah from Yahya ibn Saʻid al-Ansari from Muhammad ibn Ibrahim al-Taymi from Abu Salamah ibn ʻAbd al-Rahman ibn ʻAwf: When ʻUmar led people in Maghrib prayer without reciting, he asked, "Did I not complete the bowing and prostration?" They confirmed this, and he did not repeat the prayer. Through al-Harith's chain from ʻAli: A man came saying, "I prayed without reciting." ʻAli asked, "Did you complete the bowing and prostration?" He replied, "Yes." ʻAli said, "Your prayer is valid. Not everyone is skilled in recitation."

Ali ibn Ahmad said: No proof lies in anyone's opinion after the Messenger of Allah (peace be upon him).[45]

L6370 **Issue: A person entered prayer behind an imam, began reciting *Umm al-Qur'an (Al-Fatihah)*, and then the imam bowed.**

L6371 361 – Issue: If someone joins the prayer behind an imam and begins reciting the Mother of the Quran, Surah Al-Fatihah, and the imam bowed before this individual completes it, then the latter must not bow until he finishes its recitation.

L6372–6373 The proof for this is what we have mentioned concerning the obligation of reciting the Quran in every *rakʿah*, for the Messenger of Allah (peace be upon him) said: "However much I precede you in [the prayer] by bowing, you will catch up with me in it when I rise." We will cite this with its chain of transmission (*isnād*) in the chapter on the obligation that the congregant must not raise his head before the imam nor simultaneously with him—if Allah, the Exalted, wills.[46]

L6374 **Issue: A congregant arrived at the prayer (ṣalāh) while the**

إِلَّا بِآيَتَيْنِ مَعَ أُمِّ الْقُرْآنِ فَإِنْ كُنْت خَلْفَ إمَامٍ فَاقْرَأْ فِي نَفْسِك. وَقَدْ رُوِّينَا خِلَافَ هَذَا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ التَّيْمِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ - وَقَدْ صَلَّى الْمَغْرِبَ بِالنَّاسِ وَلَمْ يَقْرَأْ شَيْئًا -: أَلَيْسَ قَدْ أَتْمَمْت الرُّكُوعَ وَالسُّجُودَ.؟ قَالُوا: بَلَى؛ فَلَمْ يُعِدْ الصَّلَاةَ وَمِنْ طَرِيقِ الْحَارِثِ عَنْ عَلِيٍّ: أَنَّ رَجُلًا جَاءَ فَقَالَ: إنِّي صَلَّيْت وَلَمْ أَقْرَأْ، قَالَ: أَتْمَمْت الرُّكُوعَ وَالسُّجُودَ؟ قَالَ لَهُ: نَعَمْ؛ قَالَ لَهُ عَلِيٌّ: تَمَّتْ صَلَاتُك؛ مَا كُلُّ أَحَدٍ يُحْسِنُ أَنْ يَقْرَأَ، قَالَ عَلِيُّ بْنُ أَحْمَدَ: لَا حُجَّةَ فِي قَوْلِ أَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَةٌ دَخَلَ خَلْفَ إمَامٍ فَبَدَأَ بِقِرَاءَةِ أُمِّ الْقُرْآنِ فَرَكَعَ الْإِمَامُ]

٣٦١ - مَسْأَلَةٌ: فَمَنْ دَخَلَ خَلْفَ إمَامٍ فَبَدَأَ بِقِرَاءَةِ أُمِّ الْقُرْآنِ فَرَكَعَ الْإِمَامُ قَبْلَ أَنْ يُتِمَّ هَذَا الدَّاخِلُ أُمَّ الْقُرْآنِ فَلَا يَرْكَعُ حَتَّى يُتِمَّهَا.

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَاهُ مِنْ وُجُوبِ قِرَاءَةِ الْقُرْآنِ فِي كُلِّ رَكْعَةٍ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَهْمَا أَسْبِقُكُمْ بِهِ إذَا رَكَعْتُ تُدْرِكُونِي بِهِ إذَا رَفَعْتُ» وَسَنَذْكُرُهُ بِإِسْنَادِهِ فِي بَابِ وُجُوبِ أَنْ لَا يَرْفَعَ الْمَأْمُومُ رَأْسَهُ قَبْلَ إمَامِهِ، وَلَا مَعَهُ - إنْ شَاءَ اللَّهُ تَعَالَى

[مَسْأَلَةٌ جَاءَ الْمَأْمُومُ إلَى الصَّلَاةِ وَالْإِمَامُ رَاكِعٌ]

[45] **Hadith references (L6369):** Sunan Ibn Majah 850.
[46] **Hadith references (L6373):** Sunan Abi Dawud 619.

Imam was in the bowing position (rukūʿ).

L6375–6383

Issue 362: If someone arrives while the Imam is bowing, he should bow with him, but that *rak'ah* is not counted because he did not attain the standing or the recitation. However, he must make it up after the Imam concludes the prayer. If he fears [an error] out of ignorance, he should wait until the Imam raises his head from bowing and then say *Allāhu Akbar* (*takbir*). Some said: "If one attains the *rak'ah* with the Imam, it is counted." They argued with established narrations, but none of these serve as proof for them. These include the saying of the Messenger of Allah (peace be upon him): "Whoever attains a *rak'ah* of the prayer has attained the prayer," and his saying (peace be upon him): "Whoever attains a *rak'ah* of the prayer has attained the prostration." Among them is the ḥadīth of Abū Bakrah: He came while the people were bowing, so he bowed and then walked to the row. When the Messenger of Allah (peace be upon him) finished the prayer, he said: "Who among you bowed and then came to the row?" Abū Bakrah said: "I did." The Messenger of Allah (peace be upon him) replied: "May Allah increase you in earnestness, but do not repeat it."

ʿAlī said: As for the Prophet's statement (peace be upon him), "Whoever attains a *rak'ah* of the prayer has attained the prayer," it is true and is evidence against them, for despite this, one is still required to make up the portion of the prayer he missed—a point on which there is no disagreement. The ḥadīth does not state that attaining the bowing means attaining the standing before bowing. Similarly, his statement (peace be upon him), "Whoever attains a *rak'ah* of the prayer has attained the prostration," is undoubtedly true, but he did not say that attaining the *rak'ah* means attaining the standing before the bowing. Thus, no one may attribute to his words (peace be upon him) what is not in them or claim he said what he did not.

As for the ḥadīth of Abū Bakrah, it offers them no proof whatsoever, for it does not state that he was excused from making up that *rak'ah*. Therefore, their reliance on it is entirely invalid, and praise be to Allah. Since all the narrations they cited are refuted, what is authentically established from the Prophet (peace be upon him) is what ʿAbdullāh ibn Rabīʿ narrated from Muḥammad ibn Isḥāq from Ibn al-Aʿrābī from Abū Dāwūd from Abū

٣٦٢ - مَسْأَلَةٌ: فَإِنْ جَاءَ وَالْإِمَامُ رَاكِعٌ فَلْيَرْكَعْ مَعَهُ، وَلَا يُعْتَدُّ بِتِلْكَ الرَّكْعَةِ؛ لِأَنَّهُ لَمْ يُدْرِكْ الْقِيَامَ، وَلَا الْقِرَاءَةَ، وَلَكِنْ يَقْضِيهَا إذَا سَلَّمَ الْإِمَامُ، فَإِنْ خَافَ جَاهِلًا فَلْيَتَأَنَّ حَتَّى يَرْفَعَ الْإِمَامُ رَأْسَهُ مِنْ الرُّكُوعِ فَيُكَبِّرْ حِينَئِذٍ. وَقَالَ قَائِلُونَ، إنْ أَدْرَكَ الرَّكْعَةَ مَعَ الْإِمَامِ اعْتَدَّ بِهَا. وَاحْتَجُّوا بِآثَارٍ ثَابِتَةٍ، إلَّا أَنَّهُمْ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهَا وَهِيَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَدْرَكَ مِنْ الصَّلَاةِ رَكْعَةً فَقَدْ أَدْرَكَ الصَّلَاةَ» . وَقَوْلُهُ - عَلَيْهِ السَّلَامُ -: «مَنْ أَدْرَكَ مِنْ الصَّلَاةِ رَكْعَةً فَقَدْ أَدْرَكَ السَّجْدَةَ» . وَمِنْهَا - حَدِيثُ أَبِي بَكْرَةَ: «أَنَّهُ جَاءَ وَالْقَوْمُ رُكُوعٌ، فَرَكَعَ ثُمَّ مَشَى إلَى الصَّفِّ، فَلَمَّا قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَاتَهُ قَالَ: أَيُّكُمْ الَّذِي رَكَعَ ثُمَّ جَاءَ إلَى الصَّفِّ؟ فَقَالَ أَبُو بَكْرَةَ: أَنَا، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَسَلَّمَ - زَادَكَ اللَّهُ حِرْصًا وَلَا تَعُدْ» . قَالَ عَلِيٌّ: أَمَّا قَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «مَنْ أَدْرَكَ مِنْ الصَّلَاةِ رَكْعَةً فَقَدْ أَدْرَكَ الصَّلَاةَ» فَحَقٌّ، وَهُوَ حُجَّةٌ عَلَيْهِمْ؛ لِأَنَّهُ - مَعَ ذَلِكَ - لَا يَسْقُطُ عَنْهُ قَضَاءُ مَا لَمْ يُدْرِكْ مِنْ الصَّلَاةِ - هَذَا مَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ، وَلَيْسَ فِي الْخَبَرِ: أَنَّهُ إنْ أَدْرَكَ الرُّكُوعَ: فَقَدْ أَدْرَكَ الْوَقْفَةَ وَكَذَلِكَ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «مَنْ أَدْرَكَ الرَّكْعَةَ: فَقَدْ أَدْرَكَ السَّجْدَةَ» حَقٌّ لَا شَكَّ فِيهِ، وَلَمْ يَقُلْ: إنَّهُ إنْ أَدْرَكَ الرَّكْعَةَ فَقَدْ أَدْرَكَ الْوَقْفَةَ الَّتِي قَبْلَ الرُّكُوعِ، فَلَا يَجُوزُ لِأَحَدٍ أَنْ يُقْحِمَ فِي كَلَامِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَيْسَ فِيهِ، فَيَقُولُ عَلَيْهِ مَا لَمْ يَقُلْ. وَأَمَّا حَدِيثُ أَبِي بَكْرَةَ فَلَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا؛ لِأَنَّهُ لَيْسَ فِيهِ: أَنَّهُ اجْتَزَأَ بِتِلْكَ الرَّكْعَةِ، وَأَنَّهُ لَمْ يَقْضِهَا - فَسَقَطَ تَعَلُّقُهُمْ بِهِ جُمْلَةً، وَلِلَّهِ الْحَمْدُ. فَإِذْ قَدْ سَقَطَ كُلُّ مَا تَعَلَّقُوا بِهِ مِنْ الْآثَارِ فَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى

al-Walīd al-Ṭayālisī from Shuʿbah from... Saʿd ibn Ibrāhīm narrated: Abū Salamah ibn ʿAbd al-Raḥmān reported from Abū Hurayrah that the Prophet (peace be upon him) said: “Come to prayer with tranquility. Pray what you catch up with, and complete what you have missed.” It is also authentically reported from him (peace be upon him): “Pray what you catch up with, and perfect what you have missed.” Every person of sound mind knows with certainty that whoever catches the imam at the beginning of the second rakʿah has entirely missed the first rakʿah. Whoever catches one prostration of the first rakʿah has missed the standing position, bowing, rising from bowing, one prostration, and sitting. Whoever catches the sitting between the two prostrations has missed the standing position, bowing, rising from bowing, and prostration. Whoever catches the rising from bowing has missed the standing position and bowing. Whoever catches the two prostrations has missed the standing position and bowing. Whoever catches the bowing has missed the standing position and the recitation of Umm al-Qur’ān (the Fātiḥah) - both being obligatory pillars without which prayer remains incomplete. The worshiper is explicitly commanded by the words of Allah’s Messenger (peace be upon him) to complete what he has missed. It is impermissible to exempt any part of this obligation without another explicit textual proof - which does not exist. Those who claim to follow legal analogy (qiyas): how could they differentiate between missing the standing position and missing both the bowing and standing position, requiring completion for one but not the other? They neither applied analogy consistently nor adhered to textual proofs. Some even falsely claimed consensus for their view. This is a lie, for it is reported through Yaḥyā ibn Saʿīd al-Qaṭṭān from Ibn ʿAjlān from ʿAbd al-Raḥmān ibn Hurmuz al-Aʿraj from Abū Hurayrah: “If you approach a congregation while they are bowing, do not pronounce the opening Takbīr (Allāhu Akbar) until you take your place in the row.” It is also narrated from him that the rakʿah (prayer unit) is not valid until one recites the Mother of the Quran (al-Fātiḥah). We narrate through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Manṣūr, from Zayd ibn Wahb, who said: “I entered the mosque with Ibn Masʿūd while the imām was bowing. We bowed, then proceeded until we aligned with the row. When the imām concluded, I rose to make up (the missed prayer), but Ibn Masʿūd said: ’You have already

اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا أَبُو الْوَلِيدِ الطَّيَالِسِيُّ ثنا شُعْبَةُ عَنْ سَعْدِ بْنِ إِبْرَاهِيمَ ثنا أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «ائْتُوا الصَّلَاةَ وَعَلَيْكُمْ السَّكِينَةَ، فَصَلُّوا مَا أَدْرَكْتُمْ، وَاقْضُوا مَا سَبَقَكُمْ» . وَصَحَّ عَنْهُ أَيْضًا - عَلَيْهِ السَّلَامُ -: «مَا أَدْرَكْتُمْ فَصَلُّوا، وَمَا فَاتَكُمْ فَأَتِمُّوا» وَبِيَقِينٍ يَدْرِي كُلُّ ذِي حِسٍّ سَلِيمٍ -: أَنَّ مَنْ أَدْرَكَ الْإِمَامَ فِي أَوَّلِ الرَّكْعَةِ الثَّانِيَةِ: فَقَدْ فَاتَتْهُ الْأُولَى كُلُّهَا. وَأَنَّ مَنْ أَدْرَكَ سَجْدَةً مِنْ الْأُولَى: فَقَدْ فَاتَتْهُ وَقْفَةٌ، وَرُكُوعٌ، وَرَفْعٌ، وَسَجْدَةٌ، وَجُلُوسٌ، وَأَنَّ مَنْ أَدْرَكَ الْجِلْسَةَ بَيْنَ السَّجْدَتَيْنِ: فَقَدْ فَاتَهُ الْوَقْفَةُ، وَالرُّكُوعُ، وَالرَّفْعُ، وَسَجْدَةٌ. وَأَنَّ مَنْ أَدْرَكَ الرَّفْعَ: فَقَدْ فَاتَتْهُ الْوَقْفَةُ، وَالرُّكُوعُ. وَأَنَّ مَنْ أَدْرَكَ السَّجْدَتَيْنِ: فَقَدْ فَاتَتْهُ الْوَقْفَةُ، وَالرُّكُوعُ. وَأَنَّ مَنْ أَدْرَكَ الرُّكُوعَ: فَقَدْ فَاتَتْهُ الْوَقْفَةُ، وَقِرَاءَةُ أُمِّ الْقُرْآنِ، وَكِلَاهُمَا فَرْضٌ، لَا تَتِمُّ الصَّلَاةُ إلَّا بِهِ وَهُوَ مَأْمُورٌ بِنَصِّ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَضَاءِ مَا سَبَقَهُ وَإِتْمَامِ مَا فَاتَهُ، فَلَا يَجُوزُ تَخْصِيصُ شَيْءٍ مِنْ ذَلِكَ بِغَيْرِ نَصٍّ آخَرَ، وَلَا سَبِيلَ إلَى وُجُودِهِ، وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ: فَكَيْفَ وَقَعَ لَهُمْ التَّفْرِيقُ بَيْنَ فَوْتِ إدْرَاكِ الْوَقْفَةِ، وَبَيْنَ فَوْتِ إدْرَاكِ الرُّكُوعِ وَالْوَقْفَةِ، فَلَمْ يَرَوْا عَلَى أَحَدِهِمَا قَضَاءً مَا سَبَقَهُ، وَرَأَوْهُ عَلَى الْآخَرِ. فَلَا الْقِيَاسَ طَرَدُوا، وَلَا النُّصُوصَ اتَّبَعُوا، وَقَدْ أَقْدَمَ بَعْضُهُمْ عَلَى دَعْوَى الْإِجْمَاعِ عَلَى قَوْلِهِمْ، وَهُوَ كَاذِبٌ فِي ذَلِكَ؛ لِأَنَّهُ قَدْ رُوِيَ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ ابْنِ عَجْلَانَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ هُرْمُزَ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ: إذَا أَتَيْت الْقَوْمَ وَهُمْ رُكُوعٌ فَلَا تُكَبِّرْ حَتَّى تَأْخُذَ مَقَامَك مِنْ الصَّفِّ وَرُوِيَ عَنْهُ أَيْضًا أَنْ لَا يُعْتَدَّ بِالرَّكْعَةِ حَتَّى يَقْرَأَ بِأُمِّ الْقُرْآنِ وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ

عَنْ زَيْدِ بْنِ وَهْبٍ قَالَ: دَخَلْت أَنَا وَابْنُ مَسْعُودٍ الْمَسْجِدَ وَالْإِمَامُ رَاكِعٌ فَرَكَعْنَا ثُمَّ مَضَيْنَا حَتَّى اسْتَوَيْنَا بِالصَّفِّ، فَلَمَّا فَرَغَ الْإِمَامُ قُمْت أَقْضِي، فَقَالَ ابْنُ مَسْعُودٍ: قَدْ أَدْرَكْتَهُ. قَالَ عَلِيٌّ: فَهَذَا إيجَابُ الْقَضَاءِ عَنْ زَيْدِ بْنِ وَهْبٍ وَهُوَ صَاحِبٌ مِنْ الصَّحَابَةِ فَإِنْ قِيلَ: فَلَمْ يَرَ ابْنَ مَسْعُودٍ ذَلِكَ قُلْنَا: نَعَمْ، فَكَانَ مَاذَا فَإِذَا تَنَازَعَ الصَّاحِبَانِ فَالْوَاجِبُ الرُّجُوعُ إلَى مَا قَالَهُ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، وَلَا يَحِلُّ الرَّدُّ إلَى سِوَى ذَلِكَ، فَلَيْسَ قَوْلُ ابْنِ مَسْعُودٍ حُجَّةً عَلَى زَيْدٍ، وَلَا قَوْلُ زَيْدٍ حُجَّةً عَلَى ابْنِ مَسْعُودٍ، لَكِنَّ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ الْحُجَّةُ عَلَيْهِمَا وَعَلَى غَيْرِهِمَا مِنْ كُلِّ إنْسٍ وَجِنٍّ، وَلَيْسَ فِي هَذَا الْخَبَرِ رُجُوعُ زَيْدٍ إلَى قَوْلِ ابْنِ مَسْعُودٍ، وَلَوْ رَجَعَ لَمَا كَانَ فِي رُجُوعِهِ حُجَّةٌ، وَالْخِلَافُ لِابْنِ مَسْعُودٍ مِنْهُ قَدْ حَصَلَ. وَرُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ حَدَّثَنَا الرَّبِيعُ بْنُ حَبِيبٍ قَالَ: سَمِعْت مُحَمَّدَ بْنَ سِيرِينَ يَقُولُ: إذَا انْتَهَيْت إلَى الْقَوْمِ وَهُمْ فِي الصَّلَاةِ فَأَدْرَكْت تَكْبِيرَةً تَدْخُلُ بِهَا فِي الصَّلَاةِ، وَتَكْبِيرَةَ الرُّكُوعِ: فَقَدْ أَدْرَكْت تِلْكَ الرَّكْعَةَ، وَإِلَّا فَارْكَعْ مَعَهُمْ وَاسْجُدْ، وَلَا تَحْتَسِبْ بِهَا قَالَ عَلِيٌّ: وَرُوِّينَا عَنْ أَحْمَدَ بْنِ حَنْبَلٍ - رَحِمَهُ اللَّهُ - أَنَّهُ قَالَ كَلَامًا مَعْنَاهُ: مَنْ ادَّعَى الْإِجْمَاعَ فَقَدْ كَذَبَ، وَمَا يُدْرِيهِ وَالنَّاسُ قَدْ اخْتَلَفُوا، هَذِهِ أَخْبَارُ الْأَصَمِّ، وَبِشْرِ الْمَرِيسِيِّ قَالَ عَلِيٌّ: صَدَقَ أَحْمَدُ - رَضِيَ اللَّهُ عَنْهُ - مَنْ ادَّعَى الْإِجْمَاعَ فِيمَا لَا يَقِينَ عِنْدَهُ بِأَنَّهُ قَوْلُ جَمِيعِ أَهْلِ الْإِسْلَامِ بِلَا شَكٍّ فِي أَحَدٍ مِنْهُمْ: قَدْ كَذَبَ عَلَى الْأُمَّةِ كُلِّهَا، وَقَطَعَ بِظَنِّهِ عَلَيْهِمْ، وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «الظَّنُّ أَكْذَبُ الْحَدِيثِ» فَإِنْ قِيلَ: إنَّ قَوْلَ ابْنِ مَسْعُودٍ هَذَا لَا يُقَالُ مِثْلُهُ بِالرَّأْيِ. قِيلَ لَهُمْ: فَهَلَّا قُلْتُمْ هَذَا فِيمَا رُوِّينَاهُ آنِفًا - فِي الْبَابِ الَّذِي قَبْلَ هَذَا

caught the rakʿah.’” ʿAlī said: “This affirms the validity of compensation from Zayd ibn Wahb, and he is one of the Companions. If it is objected: ’But Ibn Masʿūd did not hold that view,’ we respond: True—what does that matter? When two Companions disagree, it is obligatory to revert to what Allah the Exalted and His Messenger—peace and blessings be upon him (صلى الله عليه وسلم)—have decreed. It is impermissible to turn to anything else. Thus, Ibn Masʿūd’s opinion is no proof against Zayd, nor is Zayd’s opinion a proof against Ibn Masʿūd. Rather, the statement of Allah’s Messenger—peace and blessings be upon him (صلى الله عليه وسلم)—is the conclusive proof against them both and against all others, human or jinn. This narration does not indicate that Zayd retracted his opinion to adopt Ibn Masʿūd’s view. Even had he retracted, his retraction would not constitute proof. The disagreement between Ibn Masʿūd and him is established.” We narrate through the chain of al-Ḥajjāj ibn al-Minhāl: al-Rabīʿ ibn Ḥabīb narrated to us, saying: “I heard Muḥammad ibn Sīrīn state: ’If you reach a congregation during prayer and catch a takbīr (by which you enter the prayer) and the takbīr for bowing, you have attained that rakʿah. Otherwise, bow and prostrate with them, but do not count that rakʿah.’” ʿAlī said: “We narrate that Aḥmad ibn Ḥanbal—may Allah have mercy on him—stated words meaning: ’Whoever claims consensus has lied. How could he assert this when people have already disagreed?’ These are the positions of al-Aṣamm (الأصمّ) and Bishr al-Marīsī (بشر المريسي).” Ali said: Ahmad—may Allah be pleased with him—spoke the truth. Whoever claims consensus in a matter without possessing certainty that it represents the statement of all Muslims without any doubt regarding any of them has lied against the entire Ummah and judged them based on his assumption. The Prophet—peace be upon him—said: “Assumption is the most false of speech.” If it is objected: “This statement of Ibn Masʿūd cannot be attributed to personal opinion,” it is replied to them: “Why did you not say this regarding what we narrated earlier—in the preceding chapter—from ʿUmar—may Allah be pleased with him—who said: ’There is no prayer except with the Fātiḥah and two verses alongside it’?” But arbitrary judgment is easy for one whose speech is not counted as part of his deeds. If it is

argued: “This is the majority’s view,” we respond: Allah the Exalted and His Messenger—peace be upon him—never commanded following the majority in any verse or authentic report. As for fabricated hadiths, they are readily produced at all times by those who deem them permissible. If it is said: “He pronounces ’Allāhu Akbar’ standing and then bows, thereby catching the standing position,” we respond: This constitutes another act of disobedience, for neither Allah nor His Messenger—peace be upon him—ever commanded entering prayer in a state differing from that in which the imam is found. Furthermore, compensating for any missed part of the prayer is only valid after the imam concludes with salām—not before.

Ali said: Here exist differing opinions. We mention a portion of them to expose the falsehood of those who claim consensus in this matter. It is narrated through Ḥammād ibn Salamah from al-Ḥajjāj ibn Arṭāʾah from ʿAbdullāh ibn Yazīd al-Nakhaʿī from Zayd ibn Aḥmad from Ibn Masʿūd, who said: “If one of you bows and walks to join the row, the rakʿah is valid if he enters the row before they raise their heads. But if they raise their heads before he reaches the row, it is not counted.” Al-Ḥajjāj said: “This is the established practice.”

It is also narrated from Ḥammād ibn Salamah from Ayyūb al-Sakhtiyānī from Nāfiʿ, the freed slave of Ibn ʿUmar, who said: “Ibn ʿUmar used to [text incomplete].” If one arrives while the congregation is in prostration, he prostrates with them. When they raise their heads, he performs another prostration, but it is not counted. Ayyūb said: “I entered the mosque with Abū Qilābah while they had performed one prostration, so we performed the second prostration with them. When they raised their heads, we performed another prostration. When Abū Qilābah concluded the prayer, he performed the two prostrations of forgetfulness.” Through the same chain to Ḥammād ibn Salamah, from Dāwūd—who is Ibn Abī Hind—from Al-Shaʿbī, who said: “If one reaches another row while they have not raised their heads though the imam has raised his head, he bows and thereby attains [the rakʿah], for the row he is in constitutes his imam. If he comes while the congregation is prostrating, he prostrates with them, but it is not counted.” Through the same chain to Dāwūd ibn Abī Hind, from Abū Al-ʿĀliyah, who said: “If one arrives while they are prostrating, he prostrates with them. When the imam

- عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ -: لَا صَلَاةَ إِلَّا بِأُمِّ الْقُرْآنِ وَآيَتَيْنِ مَعَهَا، وَلَكِنَّ التَّحَكُّمَ سَهْلٌ عَلَى مَنْ لَمْ يُعَدَّ كَلَامُهُ مِنْ عَمَلِهِ فَإِنْ قِيلَ: هَذَا قَوْلُ الْجُمْهُورِ، قُلْنَا: مَا أَمَرَ اللَّهُ تَعَالَى قَطُّ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِاتِّبَاعِ الْجُمْهُورِ، لَا فِي آيَةٍ وَلَا فِي خَبَرٍ صَحِيحٍ، وَأَمَّا الْمَوْضُوعَاتِ فَسَهْلٌ وُجُودُهَا فِي كُلِّ حِينٍ عَلَى مَنْ اسْتَحَلَّهَا. فَإِنْ قِيلَ: إنَّهُ يُكَبِّرُ قَائِمًا ثُمَّ يَرْكَعُ، فَقَدْ صَارَ مُدْرِكًا لِلْوُقُوفِ قُلْنَا: وَهَذِهِ مَعْصِيَةٌ أُخْرَى، وَمَا أَمَرَهُ اللَّهُ قَطُّ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَدْخُلَ فِي الصَّلَاةِ فِي غَيْرِ الْحَالِ الَّتِي يَجِدُ الْإِمَامَ عَلَيْهَا. وَأَيْضًا: فَلَا يُجْزِئُ قَضَاءُ شَيْءٍ سَبَقَ بِهِ مِنْ الصَّلَاةِ إلَّا بَعْدَ سَلَامِ الْإِمَامِ، لَا قَبْلَ ذَلِكَ قَالَ عَلِيٌّ: وَهُنَا أَقْوَالٌ، نَذْكُرُ مِنْهَا طَرَفًا لِيَلُوحَ كَذِبُ مَنْ ادَّعَى الْإِجْمَاعَ فِي ذَلِكَ -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ النَّخَعِيِّ عَنْ زَيْدِ بْنِ أَحْمَدَ عَنْ ابْنِ مَسْعُودٍ قَالَ: إذَا رَكَعَ أَحَدُكُمْ فَمَشَى إلَى الصَّفِّ، فَإِنْ دَخَلَ فِي الصَّفِّ قَبْلَ أَنْ يَرْفَعُوا رُءُوسَهُمْ فَإِنَّهُ يُعْتَدُّ بِهَا، وَإِنْ رَفَعُوا رُءُوسَهُمْ قَبْلَ أَنْ يَصِلَ إلَى الصَّفِّ فَلَا يُعْتَدُّ بِهَا - قَالَ الْحَجَّاجُ: وَالْعَمَلُ عَلَى هَذَا، وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ قَالَ: كَانَ ابْنُ عُمَرَ إذَا جَاءَ وَالْقَوْمُ سُجُودٌ سَجَدَ مَعَهُمْ، فَإِذَا رَفَعُوا رُءُوسَهُمْ سَجَدَ أُخْرَى وَلَا يَعْتَدُّ بِهَا قَالَ أَيُّوبُ: وَدَخَلْت مَعَ أَبِي قِلَابَةَ الْمَسْجِدَ وَقَدْ سَجَدُوا سَجْدَةً فَسَجَدْنَا مَعَهُمْ الْأُخْرَى، فَلَمَّا رَفَعُوا رُءُوسَهُمْ سَجَدْنَا الْأُخْرَى، فَلَمَّا قَضَى أَبُو قِلَابَةَ الصَّلَاةَ سَجَدَ سَجْدَتَيْ الْوَهْمِ، وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد هُوَ ابْنُ أَبِي هِنْدٍ - عَنْ الشَّعْبِيِّ قَالَ: إذَا انْتَهَى إلَى الصَّفِّ الْآخَرِ وَلَمْ يَرْفَعُوا رُءُوسَهُمْ وَقَدْ رَفَعَ الْإِمَامُ رَأْسَهُ فَإِنَّهُ يَرْكَعُ وَقَدْ أَدْرَكَ، لِأَنَّ الصَّفَّ الَّذِي

concludes the prayer, he stands, bows one rak‘ah without prostrating, and it is counted.” Through the same chain to Ḥammād, from Qatādah, Ḥumayd, and Al-Ḥasan’s companions: “If one places his hands on his knees before the imam raises his head, he has attained [the rak‘ah]. But if the imam raises his head before he places his hands, it is not counted.” Ḥammād said: “I am mostly certain this is narrated from Al-Ḥasan.” Ibn Abī Laylā, Sufyān Al-Thawrī, and Zufar said: “If he utters the takbīr before the imam raises his head, he has attained [the rak‘ah]. He must bow after the imam raises his head.”[47]

فِيهِ هُوَ إِمَامُهُ، وَإِنْ جَاءَ وَالْقَوْمُ سُجُودٌ فَإِنَّهُ يَسْجُدُ مَعَهُمْ وَلَا يَعْتَدُّ بِهَا وَبِهِ إِلَى دَاوُد بْنِ أَبِي هِنْدٍ عَنْ أَبِي الْعَالِيَةِ قَالَ: إِذَا جَاءَ وَهُمْ سُجُودٌ سَجَدَ مَعَهُمْ، فَإِذَا سَلَّمَ الْإِمَامُ قَامَ فَرَكَعَ رَكْعَةً وَلَا يَسْجُدُ وَيَعْتَدُّ بِهَا. وَبِهِ إِلَى حَمَّادٍ عَنْ قَتَادَةَ، وَحُمَيْدٍ، وَأَصْحَابِ الْحَسَنِ: إِذَا وَضَعَ يَدَيْهِ عَلَى رُكْبَتَيْهِ قَبْلَ أَنْ يَرْفَعَ الْإِمَامُ رَأْسَهُ فَقَدْ أَدْرَكَ، وَإِنْ رَفَعَ الْإِمَامُ رَأْسَهُ قَبْلَ أَنْ يَضَعَ يَدَيْهِ فَإِنَّهُ لَا يَعْتَدُّ بِهَا قَالَ حَمَّادٌ: وَأَكْثَرُ ظَنِّي أَنَّهُ عَنِ الْحَسَنِ وَقَالَ ابْنُ أَبِي لَيْلَى، وَسُفْيَانُ الثَّوْرِيُّ، وَزُفَرُ: إِذَا كَبَّرَ قَبْلَ أَنْ يَرْفَعَ الْإِمَامُ رَأْسَهُ فَقَدْ أَدْرَكَ، وَلْيَرْكَعْ بَعْدَ أَنْ يَرْفَعَ الْإِمَامُ رَأْسَهُ.

L6384 **A jurisprudential issue: It is obligatory for every person performing prayer to say “I seek refuge in Allah from the accursed Satan” when reciting in prayer.**

[مَسْأَلَةٌ فَرْضٌ عَلَى كُلِّ مُصَلٍّ أَنْ يَقُولَ إِذَا قَرَأَ أَعُوذُ بِاللَّهِ مِنْ الشَّيْطَانِ الرَّجِيمِ]

L6385–6387 Issue 363: It is obligatory upon every worshiper to say “I seek refuge with Allah from the accursed Satan” in every rak‘ah, based on Allah’s statement: “So when you recite the Quran, seek refuge with Allah from Satan, the accursed” (16:98). Abū Ḥanīfah and al-Shāfi‘ī held that one seeks refuge before commencing recitation in each rak‘ah, but they did not consider it obligatory. Mālik said: “One does not seek refuge in any obligatory or supererogatory prayer except in the Tarawīḥ prayers during Ramadan. One begins the first night with seeking refuge once and does not repeat it.” ʿAlī remarked: “This is an assertion unsupported by evidence—neither from the Quran, nor from any sound or weak Sunnah, nor any report from the predecessors whatsoever; nor through scholarly consensus, a companion’s view, nor analogical reasoning.” Nor from an opinion with a valid legal basis, for if someone were to assert a practice in this matter, they would be no more entitled than another who asserts a practice contrary to it. As for the statement

٣٦٣ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى كُلِّ مُصَلٍّ أَنْ يَقُولَ إِذَا قَرَأَ " أَعُوذُ بِاللَّهِ مِنْ الشَّيْطَانِ الرَّجِيمِ " لَا بُدَّ لَهُ فِي كُلِّ رَكْعَةٍ مِنْ ذَلِكَ، لِقَوْلِ اللَّهِ تَعَالَى: {فَإِذَا قَرَأْتَ الْقُرْآنَ فَاسْتَعِذْ بِاللَّهِ مِنَ الشَّيْطَانِ الرَّجِيمِ} [النحل: ٩٨] . وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: يَتَعَوَّذُ قَبْلَ ابْتِدَائِهِ بِالْقِرَاءَةِ فِي كُلِّ رَكْعَةٍ، وَلَمْ يَرَيَا ذَلِكَ فَرْضًا وَقَالَ مَالِكٌ: لَا يَتَعَوَّذُ فِي شَيْءٍ مِنْ الْفَرِيضَةِ، وَلَا التَّطَوُّعِ إِلَّا فِي صَلَاةِ الْقِيَامِ فِي رَمَضَانَ، فَإِنَّهُ يَبْدَأُ فِي أَوَّلِ لَيْلَةٍ بِالتَّعَوُّذِ فَقَطْ ثُمَّ لَا يَعُودُ. قَالَ عَلِيٌّ: وَهَذِهِ قَوْلَةٌ لَا دَلِيلَ عَلَى صِحَّتِهَا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا أَثَرٍ أَلْبَتَّةَ، وَلَا مِنْ دَلِيلِ إِجْمَاعٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ، فَإِنْ أَقْدَمَ مُقَدِّمٌ عَلَى ادِّعَاءِ عَمَلٍ فِي ذَلِكَ لَمْ

[47] **Hadith references (L6375):** Sunan an-Nasai 553; Sunan an-Nasai 555; Jami at-Tirmidhi 524; Sunan Abi Dawud 573.

of Abū Ḥanīfah and al-Shāfiʿī that seeking refuge is not obligatory—this is erroneous, for Allah the Exalted says: {When you recite the Quran, seek refuge in Allah from Satan, the accursed} [16:98]. It is incorrect for Allah the Exalted to issue a command and then for someone to claim—without proof from the Quran or Sunnah—that this command is not obligatory, especially His command to supplicate for refuge from Satan's plotting. This is undeniably obligatory, as avoiding Satan, fleeing from him, and seeking deliverance from him are matters about which no two disagree concerning their obligatory nature. Allah the Exalted then prescribed this for us during Quranic recitation. Some said: "If seeking refuge were obligatory, it would necessitate that everyone who quotes someone mentioning a Quranic verse must inevitably seek refuge." ʿAlī replied: "This argument undermines their position rather than supporting it, for they unanimously agree on the recommended status of seeking refuge during Quranic recitation, yet do not require it when merely quoting another's speech. Thus, it is confirmed that the seeking refuge we differ over—which we deem obligatory and they do not—applies specifically to Quranic recitation as stated in the text, not to casual quotations not intended as Quranic recitation." ʿAlī said: "Only the view of those who obligate seeking refuge as a duty—in Quranic recitation during prayer and outside it, based on the generality of the aforementioned verse—remains valid." Muḥammad ibn Saʿīd ibn Nubāt narrated to us; Aḥmad ibn ʿAwn Allāh narrated to us; Qāsim ibn Aṣbagh narrated to us; Muḥammad ibn Bashshār narrated to us; Muḥammad ibn Jaʿfar narrated to us; Shuʿbah narrated from ʿAmr ibn Murrah from ʿĀṣim al-ʿAnazī from Ibn Jubayr ibn Muṭʿim from his father, who said: "I saw the Messenger of Allah—peace and blessings upon him—when he commenced prayer, saying: 'Allah is the Greatest, the Great' three times, 'All praise is due to Allah abundantly' three times, 'Glory be to Allah in the morning and evening. O Allah, I seek refuge in You from Satan—his whispers, his arrogance, and his evil suggestions.'"[48]

يَكُنْ أَوْلَى مِنْ آخَرَ ادَّعَى الْعَمَلَ عَلَى خِلَافِهِ، وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ: إِنَّ التَّعَوُّذَ لَيْسَ فَرْضًا -: فَخَطَأٌ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {فَإِذَا قَرَأْتَ الْقُرْآنَ فَاسْتَعِذْ بِاللَّهِ مِنَ الشَّيْطَانِ الرَّجِيمِ} [النحل: ٩٨] . وَمِنَ الْخَطَأِ أَنْ يَأْمُرَ اللَّهُ تَعَالَى بِأَمْرٍ ثُمَّ يَقُولُ قَائِلٌ - بِغَيْرِ بُرْهَانٍ مِنْ قُرْآنٍ، وَلَا سُنَّةٍ -: هَذَا الْأَمْرُ لَيْسَ فَرْضًا، لَا سِيَّمَا أَمْرُهُ تَعَالَى بِالدُّعَاءِ فِي أَنْ يُعِيذَنَا مِنْ كَيْدِ الشَّيْطَانِ، فَهَذَا أَمْرٌ مُتَيَقَّنٌ: أَنَّهُ فَرْضٌ، لِأَنَّ اجْتِنَابَ الشَّيْطَانِ، وَالْفِرَارَ مِنْهُ، وَطَلَبَ النَّجَاةِ مِنْهُ: لَا يَخْتَلِفُ اثْنَانِ فِي أَنَّهُ فَرْضٌ، ثُمَّ وَضَعَ اللَّهُ تَعَالَى ذَلِكَ عَلَيْنَا عِنْدَ قِرَاءَةِ الْقُرْآنِ. وَقَالَ بَعْضُهُمْ: لَوْ كَانَ التَّعَوُّذُ: فَرْضًا، لَلَزِمَ كُلَّ مَنْ حَكَى عَنْ أَحَدٍ أَنَّهُ ذَكَرَ آيَةً مِنَ الْقُرْآنِ: أَنْ يَتَعَوَّذَ وَلَا بُدَّ. قَالَ عَلِيٌّ: وَهَذَا عَلَيْهِمْ لَا لَهُمْ، لِأَنَّهُمْ مُتَّفِقُونَ عَلَى اسْتِحْبَابِ التَّعَوُّذِ عِنْدَ قِرَاءَةِ الْقُرْآنِ، وَلَا يَرَوْنَ التَّعَوُّذَ عِنْدَ حِكَايَةِ الْمَرْءِ قَوْلَ غَيْرِهِ، فَصَحَّ أَنَّ التَّعَوُّذَ الَّذِي اخْتَلَفْنَا فِيهِ فَأَوْجَبْنَاهُ نَحْنُ وَلَمْ يُوجِبُوهُ هُمْ - إِنَّمَا هُوَ عِنْدَ قِرَاءَةِ الْقُرْآنِ، كَمَا جَاءَ فِي النَّصِّ، لَا عِنْدَ حِكَايَةٍ لَا يَقْصِدُ بِهَا الْمَرْءُ قِرَاءَةَ الْقُرْآنِ. قَالَ عَلِيٌّ: فَلَمْ يَبْقَ إِلَّا قَوْلُ مَنْ أَوْجَبَ التَّعَوُّذَ: فَرْضًا، فِي قِرَاءَةِ الْقُرْآنِ فِي الصَّلَاةِ وَغَيْرِ الصَّلَاةِ، عَلَى عُمُومِ الْآيَةِ الْمَذْكُورَةِ. حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ ثنا أَحْمَدُ بْنُ عَوْنِ اللَّهِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا مُحَمَّدُ بْنُ جَعْفَرٍ ثنا شُعْبَةُ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ عَاصِمٍ الْعَنَزِيِّ عَنِ ابْنِ جُبَيْرِ بْنِ مُطْعِمٍ عَنْ أَبِيهِ قَالَ: «رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَ دَخَلَ الصَّلَاةَ قَالَ: اللَّهُ أَكْبَرُ كَبِيرًا، اللَّهُ أَكْبَرُ كَبِيرًا، اللَّهُ أَكْبَرُ كَبِيرًا، ثَلَاثًا، الْحَمْدُ لِلَّهِ كَثِيرًا، الْحَمْدُ لِلَّهِ كَثِيرًا، الْحَمْدُ لِلَّهِ كَثِيرًا، وَسُبْحَانَ اللَّهِ بُكْرَةً وَأَصِيلًا - اللَّهُمَّ إِنِّي أَعُوذُ بِكَ مِنَ الشَّيْطَانِ، مِنْ هَمْزِهِ، وَنَفْخِهِ وَنَفْثِهِ» .

[48] **Qur'an references (L6385):** Qur'an 16:98 (An-Nahl).

L6388–6391

Hammam narrated to us: Ibn Mufarrij narrated to us: Ibn al-A'rabi narrated to us: al-Dabari narrated to us: Abd al-Razzaq narrated from Sufyan al-Thawri from Sa'id al-Jurayri: Yazid ibn Abd Allah ibn al-Shikhkhir narrated from Uthman ibn Abi al-As al-Thaqafi, who said: "I said: 'O Messenger of Allah, Satan intervenes between me and my recitation.' The Prophet—peace and blessings be upon him—said: 'That is a Satan named Khanzab. When you sense him, seek refuge and spit lightly to your left three times.'" It is narrated to us from Abd al-Rahman ibn Abi Layla, who said: Umar ibn al-Khattab stated: "The Imam silently recites four things: the seeking of refuge, 'In the name of Allah, the Most Gracious, the Most Merciful,' 'Ameen,' and 'Our Lord, to You is all praise.'" From Abu Hamza from Ibrahim al-Nakha'i from Alqama and al-Aswad, both from Abdullah ibn Mas'ud, who said: "The Imam silently recites three things: the seeking of refuge, 'In the name of Allah, the Most Gracious, the Most Merciful,' and 'Ameen.'" Through the chain of Abd al-Razzaq from Ibn Jurayj: I asked Nafi', the client of Ibn Umar: "Do you know how Ibn Umar sought refuge?" He replied: "He would say: 'O Allah, I seek refuge in You from the accursed Satan.'" From Sufyan al-Thawri from Mansur ibn al-Mu'tamir from Ibrahim al-Nakha'i, who said: "Five things are silently recited: 'How perfect You are, O Allah, and with Your praise,' the seeking of refuge, 'In the name of Allah, the Most Gracious, the Most Merciful,' 'Ameen,' and 'O Allah, our Lord, to You is all praise.'" From Hisham ibn Hassan from al-Hasan al-Basri: He would seek refuge once in prayer when commencing it while reciting the Opening of the Book, saying: "I seek refuge in Allah, the All-Hearing, the All-Knowing, from the accursed Satan." Ibn Sirin used to seek refuge in every rak'ah. From Ma'mar from Ibn Tawus from his father: He would seek refuge before reciting the Mother of the Quran. Through the chain of Ma'mar from Ayyub al-Sakhtiyani from Muhammad ibn Sirin: He would seek refuge from... Seeking refuge from Satan in prayer is obligatory before reciting the Mother of the Quran and after reciting it. From Ibn Jurayj, from 'Aṭā', he said: Seeking refuge is obligatory for every recitation on earth whether in prayer or otherwise, and it suffices for you to say: "I seek refuge in Allah from the accursed Satan." Ibn Jurayj said: I asked him: "Is this because of: {When you recite the Quran, seek refuge in Allah from Satan, the accursed} [An-Naḥl 16:98]?" He replied:

حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سَعِيدٍ الْجُرَيْرِيِّ ثنا يَزِيدُ بْنُ عَبْدِ اللَّهِ بْنِ الشِّخِّيرِ عَنْ عُثْمَانَ بْنِ أَبِي الْعَاصِ الثَّقَفِيِّ قَالَ: «قُلْت: يَا رَسُولَ اللَّهِ حَالَ الشَّيْطَانُ بَيْنِي وَبَيْنَ قِرَاءَتِي. فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: ذَلِكَ شَيْطَانٌ يُقَالُ لَهُ: خَنْزَبٌ، فَإِذَا حَسَسْتَهُ فَتَعَوَّذْ وَاتْفُلْ عَنْ يَسَارِكَ ثَلَاثًا» . وَرُوِّينَا عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: يُخْفِي الْإِمَامُ أَرْبَعًا -: التَّعَوُّذُ، وَبِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ، وَآمِينَ، وَرَبَّنَا لَكَ الْحَمْدُ. وَعَنْ أَبِي حَمْزَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ، وَالْأَسْوَدِ، كِلَاهُمَا عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: يُخْفِي الْإِمَامُ ثَلَاثًا -: الِاسْتِعَاذَةُ، وَبِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ، وَآمِينَ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ، قُلْت لِنَافِعٍ مَوْلَى ابْنِ عُمَرَ: هَلْ تَدْرِي كَيْفَ كَانَ ابْنُ عُمَرَ يَسْتَعِيذُ؟ قَالَ: كَانَ يَقُولُ: اللَّهُمَّ إنِّي أَعُوذُ بِك مِنْ الشَّيْطَانِ الرَّجِيمِ، وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: خَمْسٌ يُخْفَيْنَ -: سُبْحَانَكَ اللَّهُمَّ وَبِحَمْدِكَ، وَالتَّعَوُّذُ، وَبِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ، وَآمِينَ، وَاَللَّهُمَّ رَبَّنَا وَلَكَ الْحَمْدُ وَعَنْ هِشَامِ بْنِ حَسَّانَ عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّهُ كَانَ يَسْتَعِيذُ فِي الصَّلَاةِ مَرَّةً حِينَ يَسْتَفْتِحُ صَلَاتَهُ حِينَ يَقْرَأُ أُمَّ الْكِتَابِ يَقُولُ: أَعُوذُ بِاَللَّهِ السَّمِيعِ الْعَلِيمِ مِنْ الشَّيْطَانِ الرَّجِيمِ، وَكَانَ ابْنُ سِيرِينَ يَسْتَعِيذُ فِي كُلِّ رَكْعَةٍ وَعَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ: أَنَّهُ كَانَ يَسْتَعِيذُ قَبْلَ أَنْ يَقْرَأَ أُمَّ الْقُرْآنِ. وَمِنْ طَرِيقِ مَعْمَرٍ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّهُ كَانَ يَتَعَوَّذُ مِنْ الشَّيْطَانِ فِي الصَّلَاةِ قَبْلَ أَنْ يَقْرَأَ أُمَّ الْقُرْآنِ وَبَعْدَ أَنْ يَقْرَأَ أُمَّ الْقُرْآنِ. وَعَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: الِاسْتِعَاذَةُ وَاجِبَةٌ لِكُلِّ قِرَاءَةٍ فِي الْأَرْضِ فِي

"Yes." Sufyān al-Thawrī, al-Awzāʿī, Dawūd, and others hold the opinion of seeking refuge in prayer. ʿAlī said: These are a group of the Companions and the Followers - may Allah be pleased with them - and we know of no opposition among them. They would condemn such a stance if it contradicted their school of thought. ʿAlī said: Whoever adopts the view of Ibn Sīrīn and acts upon it considers seeking refuge a Sunnah before commencing recitation, as it was the practice of Allah's Messenger - peace and blessings be upon him - transmitted by Quranic reciters generation after generation, and an obligation after reciting what constitutes Quranic recitation, even if two words, based on the explicit verse's apparent meaning which mandates seeking refuge after recitation. As for one who finds recitation impossible, seeking refuge becomes obligatory at that time according to the mentioned report. Then, if he recites any part of the Quran, ʿAlī said: However, it is firmly established through the consensus of all Muslim reciters across generations - conveyed to us from the time of Allah's Messenger - peace and blessings be upon him - that beginning with seeking refuge immediately before starting the recitation takes precedence over all that. It is authentically reported from Allah's Messenger - peace and blessings be upon him: "When one of you performs ablution, let him sniff water into his nostrils and then expel it." It is confirmed that he - peace be upon him - did this at the start of his ablution. Success comes only from Allah, the Exalted.[49]

الصَّلَاةِ وَغَيْرِهَا وَيُجْزِئُ عَنْك، أَعُوذُ بِاَللَّهِ مِنْ الشَّيْطَانِ الرَّجِيمِ. قَالَ ابْنُ جُرَيْجٍ: فَقُلْت لَهُ: مِنْ أَجْلِ: {فَإِذَا قَرَأْتَ الْقُرْآنَ فَاسْتَعِذْ بِاللَّهِ مِنَ الشَّيْطَانِ الرَّجِيمِ} [النحل: ٩٨] قَالَ: نَعَمْ. وَبِالتَّعَوُّذِ فِي الصَّلَاةِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ وَالْأَوْزَاعِيُّ وَدَاوُد وَغَيْرُهُمْ. قَالَ عَلِيٌّ: هَؤُلَاءِ جَمَاعَةٌ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ - رَضِيَ اللَّهُ عَنْهُمْ - لَا نَعْلَمُ لَهُمْ مُخَالِفًا مِنْهُمْ، وَهُمْ يُشَنِّعُونَ بِمِثْلِ هَذَا إذَا وَافَقَ تَقْلِيدَهُمْ، قَالَ عَلِيٌّ: وَمَنْ قَالَ بِقَوْلِ ابْنِ سِيرِينَ وَأَخَذَ بِهِ فَيَرَى التَّعَوُّذَ سُنَّةً قَبْلَ افْتِتَاحِ الْقِرَاءَةِ؛ لِأَنَّهُ فِعْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِنَقْلِ الْقُرَّاءِ جِيلًا بَعْدَ جِيلٍ، وَفَرْضًا بَعْدَ أَنْ يَقْرَأَ مَا يَقَعُ عَلَيْهِ اسْمُ الْقُرْآنِ، وَلَوْ أَنَّهُ كَلِمَتَانِ، عَلَى نَصِّ الْآيَةِ؛ لِأَنَّهَا تُوجِبُ التَّعَوُّذَ بَعْدَ الْقِرَاءَةِ بِظَاهِرِهَا. وَأَمَّا مَنْ تَعَذَّرَتْ عَلَيْهِ الْقِرَاءَةُ فَفُرِضَ عَلَيْهِ التَّعَوُّذُ حِينَ ذَلِكَ بِالْخَبَرِ الْمَذْكُورِ، ثُمَّ إذَا قَرَأَ شَيْئًا مِنْ الْقُرْآنِ قَالَ عَلِيٌّ: إلَّا أَنَّهُ قَدْ صَحَّ إجْمَاعُ جَمِيعِ قُرَّاءِ أَهْلِ الْإِسْلَامِ جِيلًا بَعْدَ جِيلٍ عَلَى الِابْتِدَاءِ بِالتَّعَوُّذِ مُتَّصِلًا بِالْقِرَاءَةِ قَبْلَ الْأَخْذِ فِي الْقِرَاءَةِ -: مُبَلَّغًا إلَيْنَا مِنْ عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَذَا قَاضٍ عَلَى كُلِّ ذَلِكَ. وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا تَوَضَّأَ أَحَدُكُمْ فَلْيَسْتَنْثِرْ» . وَصَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - اسْتَنْثَرَ فِي أَوَّلِ وُضُوئِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ نَسِيَ المصلي التَّعَوُّذَ أَوْ شَيْئًا مِنْ أُمِّ الْقُرْآنِ حَتَّى رَكَعَ]

L6392–6393 **Issue: If a worshiper forgets to recite the seeking refuge (istiʿādha) or any part of Umm al-Qur'ān (Al-Fatihah) until they have bowed in rukuʿ.**

L6394 Issue: If one forgets to seek refuge or any portion of the Mother of the Qur'an until bowing commences, they must repeat it upon remembrance during the prayer and perform the prostration of forgetfulness. If acting as

مَسْأَلَةٌ: فَمَنْ نَسِيَ التَّعَوُّذَ أَوْ شَيْئًا مِنْ أُمِّ الْقُرْآنِ حَتَّى رَكَعَ أَعَادَ مَتَى ذَكَرَ فِيهَا وَسَجَدَ لِلسَّهْوِ، إنْ كَانَ إمَامًا أَوْ فَذًّا فَإِنْ كَانَ مَأْمُومًا أَلْغَى مَا قَدْ نَسِيَ إلَى أَنْ ذَكَرَ، وَإِذَا أَتَمَّ الْإِمَامُ

[49] **Qur'an references (L6389):** Qur'an 16:98 (An-Nahl).

an imam or praying individually, they repeat [the omission]. If a follower, they omit the forgotten portion until recalled. When the imam concludes the prayer, the follower rises to complete what was omitted, then performs the prostration of forgetfulness. We have previously established the evidence for this ruling regarding one who forgets an obligatory element in prayer: they must repeat what was omitted and correct what was prayed, as commanded—and with Allah, the Most High, lies all success.

L6395 **A legal question regarding a person performing prayer who does not memorize Al-Fatihah.**

L6396 Issue 365: If one cannot memorize Umm al-Qur'ān (the Opening Chapter), he should pray and recite whatever portion of the Qur'ān he knows. There is no fixed measure for this, and it suffices him. He must strive to learn Umm al-Qur'ān. If he knows part of it but not all, he recites what he knows—this suffices him—while striving to learn the remainder. If he cannot memorize any part of the Qur'ān, he should pray as he is able: standing, invoking Allah as best he can in his language, bowing, and prostrating until he completes his prayer—and this suffices him. He must strive to learn Umm al-Qur'ān. Some of those who held this opinion said: "He should recite an amount equivalent to seven verses from the Qur'ān or invoke Allah the Exalted an amount equivalent to seven verses." 'Alī said: "This position seeks to compensate for Umm al-Qur'ān, but compensation in prescribed rites is invalid unless established by the Qur'ān or the Sunnah. Neither the Qur'ān nor the Sunnah supports this assertion. Were the analogy of this proponent valid, it would necessitate that one who missed a day of Ramadan must fast a day equal in length to the one omitted—and this is invalid." The proof for our position is Allah's statement: "Allah does not burden a soul beyond its capacity" (2:286), and the Messenger of Allah's (peace be upon him) saying: "When I command you to do something, fulfill it to the best of your ability." Thus, what one is incapable of is waived, while what he can perform remains obligatory. Allah also said: "Recite whatever is feasible of the Qur'ān" (73:20), and the Messenger of Allah (peace be upon him) instructed a worshiper: "Recite

قَامَ يَقْضِي مَا كَانَ أَلْغَى ثُمَّ سَجَدَ لِلسَّهْوِ، وَلَقَدْ ذَكَرْنَا بُرْهَانَ ذَلِكَ فِيمَنْ نَسِيَ فَرْضًا فِي صَلَاتِهِ فَإِنَّهُ يُعِيدُ مَا لَمْ يُصَلِّ كَمَا أُمِرَ؛ وَيُعِيدُ مَا صَلَّى كَمَا أُمِرَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ كَانَ الْمُصَلِّي لَا يَحْفَظُ أُمَّ الْقُرْآنِ]

٣٦٥ - مَسْأَلَةٌ: وَمَنْ كَانَ لَا يَحْفَظُ أُمَّ الْقُرْآنِ صَلَّى وَقَرَأَ مَا أَمْكَنَهُ مِنْ الْقُرْآنِ إنْ كَانَ يَعْلَمُهُ، لَا حَدَّ فِي ذَلِكَ، وَأَجْزَأَهُ، وَلْيَسْعَ فِي تَعَلُّمِ أُمِّ الْقُرْآنِ، فَإِنْ عَرَفَ بَعْضَهَا وَلَمْ يَعْرِفْ الْبَعْضَ: قَرَأَ مَا عَرَفَ مِنْهَا فَأَجْزَأَهُ، وَلْيَسْعَ فِي تَعَلُّمِ الْبَاقِي، فَإِنْ لَمْ يَحْفَظْ شَيْئًا مِنْ الْقُرْآنِ صَلَّى كَمَا هُوَ، يَقُومُ وَيَذْكُرُ اللَّهَ كَمَا يُحْسِنُ بِلُغَتِهِ وَيَرْكَعُ وَيَسْجُدُ حَتَّى يُتِمَّ صَلَاتَهُ، وَيُجْزِيهِ. وَلْيَسْعَ فِي تَعَلُّمِ أُمِّ الْقُرْآنِ، وَقَالَ بَعْضُ الْقَائِلِينَ: يَقْرَأُ مِقْدَارَ سَبْعِ آيَاتٍ مِنْ الْقُرْآنِ، أَوْ يَذْكُرُ اللَّهَ تَعَالَى مِقْدَارَ سَبْعِ آيَاتٍ قَالَ عَلِيٌّ: وَقُصِدَ بِذَلِكَ قَصْدُ التَّعْوِيضِ مِنْ أُمِّ الْقُرْآنِ، وَالتَّعْوِيضُ مِنْ الشَّرَائِعِ بَاطِلٌ، إلَّا أَنْ يُوجِبَهُ قُرْآنٌ أَوْ سُنَّةٌ، وَلَا قُرْآنَ وَلَا سُنَّةَ فِيمَا ادَّعَى، وَلَوْ كَانَ قِيَاسُ هَذَا الْقَائِلِ صَحِيحًا لَوَجَبَ أَنْ لَا يُجْزِئَ مَنْ عَلَيْهِ يَوْمٌ مِنْ رَمَضَانَ إلَّا يَوْمٌ بِطُولِ الْيَوْمِ الَّذِي أَفْطَرَهُ، وَهَذَا بَاطِلٌ. وَبُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إلا وُسْعَهَا} [البقرة: ٢٨٦] وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» . فَصَحَّ أَنَّهُ يَسْقُطُ عَنْهُ مَا عَجَزَ عَنْهُ، وَيَلْزَمُهُ مَا اسْتَطَاعَ عَلَيْهِ. وَقَالَ تَعَالَى: {فَاقْرَءُوا مَا تَيَسَّرَ مِنَ

whatever portion of the Qur'ān is manageable for you." We have previously cited this with its chain of transmission.[50]

L6397–6398 Whoever is unable to recite the Mother of the Quran [Sūrah al-Fātiḥah] but can recite other parts of the Quran is excused from it. He must recite whatever portion of the Quran is manageable for him. What suffices for this purpose is any recitation designated as "Quran" - two words (known to be from the Quran) or more. If this meaning [of being Quran] is found in a single word, it suffices for him, as the general scope of "whatever is manageable" encompasses all such cases. And with Allah, the Exalted, is the divine facilitation.

L6399 **An issue regarding one who counts "In the name of Allah, the Most Gracious, the Most Merciful" as a verse from the Quran.**

L6400–6402 366. Issue: Whoever recites according to the narration of those among the schools of recitation who count "Bismillāh al-Raḥmān al-Raḥīm" as a verse of the Quran, his prayer is not valid unless he includes the Basmalah. These include: ʿĀṣim ibn Abī al-Najūd, Ḥamzah, al-Kisāʾī, ʿAbdullāh ibn Kathīr, and others among the Companions and Successors—may Allah be pleased with them. Whoever recites according to the narration of those who do not count it as a verse of the Opening Chapter may choose to include or omit the Basmalah. These include: Ibn ʿĀmir, Abū ʿAmr, Yaʿqūb, and in some narrations from Nāfiʿ. Mālik said: A person praying should not recite the Basmalah except during the Tarāwīḥ prayer on the first night of the month. Al-Shāfiʿī said: No prayer is valid without "Bismillāh al-Raḥmān al-Raḥīm." ʿAlī said: They over-relied on evidence invalid for both groups, such as the narration from Anas: "The Messenger of Allah—peace and blessings be upon him—Abū Bakr, ʿUmar, and ʿUthmān used to begin their prayer with Alḥamdulillāhi Rabbil ʿĀlamīn, without mentioning Bismillāh al-Raḥmān al-Raḥīm before or after it." A similar narration is reported from Abū Hurayrah. ʿAlī

[50] **Qur'an references (L6396):** Qur'an 2:286 (Al-Baqarah); Qur'an 73:20 (Al-Muzzammil).

الْقُرْآنِ} [المزمل: ٢٠] وَعَلَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُصَلِّيَ فَقَالَ: «اقْرَأْ مَا تَيَسَّرَ مَعَكَ مِنْ الْقُرْآنِ» وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ.

فَمَنْ عَجَزَ عَنْ أُمِّ الْقُرْآنِ وَقَدَرَ عَلَى غَيْرِهَا مِنْ الْقُرْآنِ سَقَطَتْ عَنْهُ، وَلَزِمَهُ مَا تَيَسَّرَ لَهُ مِنْ الْقُرْآنِ وَيُجْزِئُ مِنْ ذَلِكَ مَا وَقَعَ عَلَيْهِ اسْمُ قُرْآنٍ مِنْ كَلِمَتَيْنِ - مَعْرُوفٌ أَنَّهُمَا مِنْ الْقُرْآنِ - فَصَاعِدًا، وَإِنْ وُجِدَ هَذَا الْمَعْنَى فِي كَلِمَةٍ وَاحِدَةٍ أَجْزَأَتْهُ؛ لِأَنَّ عُمُومَ " مَا تَيَسَّرَ " يَدْخُلُ فِيهِ كُلُّ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَنْ عَدَّ بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ آيَةً مِنْ الْقُرْآنِ]

٣٦٦ - مَسْأَلَةٌ: وَمَنْ كَانَ يَقْرَأُ بِرِوَايَةِ مَنْ عَدَّ مِنْ الْقُرَّاءِ بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ آيَةً مِنْ الْقُرْآنِ لَمْ تُجْزِهِ الصَّلَاةُ إلَّا بِالْبَسْمَلَةِ، وَهُمْ: عَاصِمُ بْنُ أَبِي النَّجُودِ، وَحَمْزَةُ، وَالْكِسَائِيُّ، وَعَبْدُ اللَّهِ بْنُ كَثِيرٍ، وَغَيْرُهُمْ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ - رَضِيَ اللَّهُ عَنْهُمْ -. وَمَنْ كَانَ يَقْرَأُ بِرِوَايَةِ مَنْ لَا يَعُدُّهَا آيَةً مِنْ أُمِّ الْقُرْآنِ: فَهُوَ مُخَيَّرٌ بَيْنَ أَنْ يُبَسْمِلَ، وَبَيْنَ أَنْ لَا يُبَسْمِلَ. وَهُمْ: ابْنُ عَامِرٍ، وَأَبُو عَمْرٍو وَيَعْقُوبُ، وَفِي بَعْضِ الرِّوَايَاتِ عَنْ نَافِعٍ. وَقَالَ مَالِكٌ: لَا يُبَسْمِلُ الْمُصَلِّي إلَّا فِي صَلَاةِ التَّرَاوِيحِ فِي أَوَّلِ لَيْلَةٍ مِنْ الشَّهْرِ. وَقَالَ الشَّافِعِيُّ: لَا تُجْزِئُ صَلَاةٌ إلَّا بِبَسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ. قَالَ عَلِيٌّ: وَأَكْثَرُوا مِنْ الِاحْتِجَاجِ بِمَا لَا حُجَّةَ لِأَيٍّ مِنْ الطَّائِفَتَيْنِ فِيهِ. مِثْلُ الرِّوَايَةِ عَنْ أَنَسٍ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ، يَفْتَتِحُونَ الصَّلَاةَ بِالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، لَا يَذْكُرُونَ بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ لَا قَبْلَهَا وَلَا بَعْدَهَا» . وَعَنْ أَبِي هُرَيْرَةَ مِثْلُ هَذَا. قَالَ

said: None of this serves as proof, for none of these reports includes a prohibition from the Messenger... Regarding the recitation of “In the name of Allah, the Most Gracious, the Most Merciful” - the Prophet (peace be upon him) did not recite it aloud. However, these narrations conflict with other reports, including what we narrated through Ahmad ibn Hanbal’s chain: Waki‘ narrated to us, saying: Shu‘bah narrated from Qatadah from Anas, who said: “I prayed behind Allah’s Messenger (peace be upon him), Abu Bakr, Umar, and Uthman, and they did not recite aloud ‘In the name of Allah, the Most Gracious, the Most Merciful.’” We also narrated it as: “They did not recite ‘In the name of Allah, the Most Gracious, the Most Merciful’ aloud.” This indicates they recited it silently, thereby affirming its obligatory recitation, as do all other narrations.

Ali said: “The correct position is that the authentic texts confirm the obligatory recitation of the Opening of the Quran (Al-Fatihah) as a religious duty. No two Muslims dispute that all these recitations are valid and definitively transmitted to Allah’s Messenger (peace be upon him) from Gabriel (peace be upon him) and ultimately from Allah Almighty through mass transmission. Since all are valid, one may adopt any recitation. Thus, ‘In the name of Allah, the Most Gracious, the Most Merciful’ is a verse of the Opening in one valid recitation but not in another - akin to the word ‘He’ in His statement in Surah Al-Hadid: {He is the Self-Sufficient, the Praiseworthy} [57:6], and the word ‘from’ in His statement in Surah At-Tawbah: {Beneath which rivers flow} [9:89] near the hundredth verse. Both are included in the two surahs by those who adopt them and excluded by others. Similar textual variations occur in eight instances in the Quran, as detailed in the Book of Recitations, along with numerous verses. Other variations are extensive, such as the added ‘mīm’ in ‘minhā’ in Surah Al-Kahf, in {Ḥā-Mīm} [42:1], {‘Ayn-Sīn-Qāf} [42:2]: {So for what they earned} [42:30], and appended ‘hā’ letters in multiple places like {Yā-Sīn} [36:1]: {And We did not teach him} [36:69].”[51]

عَلِيٌّ: وَهَذَا كُلُّهُ لَا حُجَّةَ فِيهِ لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ نَهْيٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ قِرَاءَةِ " بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ " وَإِنَّمَا فِيهَا: أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ لَا يَقْرَؤُهَا وَقَدْ عَارَضَتْ هَذِهِ الْأَخْبَارُ أَخْبَارَ أُخَرَ مِنْهَا -: مَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ: حَدَّثَنَا وَكِيعٌ ثنا شُعْبَةُ عَنْ قَتَادَةَ عَنْ أَنَسٍ قَالَ «صَلَّيْتُ خَلْفَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبِي بَكْرٍ وَعُمَرَ وَعُثْمَانَ فَكَانُوا لَا يَجْهَرُونَ بِبِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ» . وَرُوِّيَنَاهُ أَيْضًا " فَلَمْ يَجْهَرُوا بِبِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ " فَهَذَا يُوجِبُ أَنَّهُمْ كَانُوا يَقْرَءُونَهَا وَيَسُرُّونَ بِهَا، وَهَذَا أَيْضًا الْإِيجَابُ فِيهِ لِقِرَاءَتِهَا، وَكَذَلِكَ سَائِرُ الْأَخْبَارِ. قَالَ عَلِيٌّ: وَالْحَقُّ مِنْ هَذَا أَنَّ النَّصَّ قَدْ صَحَّ بِوُجُوبِ قِرَاءَةِ أُمِّ الْقُرْآنِ فَرْضًا، وَلَا يَخْتَلِفُ اثْنَانِ مِنْ أَهْلِ الْإِسْلَامِ فِي أَنَّ هَذِهِ الْقِرَاءَاتِ حَقٌّ كُلُّهَا مَقْطُوعٌ بِهِ، مُبَلَّغَةٌ كُلُّهَا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ جِبْرِيلَ - عَلَيْهِ السَّلَامُ - عَنْ اللَّهِ عَزَّ وَجَلَّ بِنَقْلِ الْمَلَوَانِ فَقَدْ وَجَبَ إذْ كُلُّهَا حَقٌّ أَنْ يَفْعَلَ الْإِنْسَانُ فِي قِرَاءَتِهِ أَيَّ ذَلِكَ شَاءَ، وَصَارَتْ " بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ " فِي قِرَاءَةٍ صَحِيحَةٍ آيَةً مِنْ أُمِّ الْقُرْآنِ، وَفِي قِرَاءَةٍ صَحِيحَةٍ لَيْسَتْ آيَةً مِنْ أُمِّ الْقُرْآنِ -: مِثْلُ لَفْظَةِ " هُوَ " فِي قَوْلِهِ تَعَالَى فِي سُورَةِ الْحَدِيدِ: {هُوَ الْغَنِيُّ الْحَمِيدُ} [لقمان: ٢٦] . وَكَلَفْظَةِ " مِنْ " فِي قَوْلِهِ تَعَالَى: {مِنْ تَحْتِهَا الْأَنْهَارُ} [التوبة: ٨٩] فِي سُورَةِ (بَرَاءَةٌ) عَلَى رَأْسِ الْمِائَةِ آيَةٍ - هُمَا مِنْ السُّورَتَيْنِ فِي قِرَاءَةِ مَنْ قَرَأَ بِهِمَا، وَلَيْسَتَا مِنْ السُّورَتَيْنِ فِي قِرَاءَةِ مَنْ لَمْ يَقْرَأْ بِهِمَا. وَمِثْلُ هَذَا فِي الْقُرْآنِ وَارِدٌ فِي ثَمَانِيَةِ مَوَاضِعَ، ذَكَرْنَاهَا فِي كِتَابِ الْقِرَاءَاتِ وَآيَاتٍ كَثِيرَةٍ، وَسَائِرُ ذَلِكَ مِنْ الْحُرُوفِ يَطُولُ ذِكْرُهَا. كَزِيَادَةِ مِيمٍ " مِنْهَا " فِي سُورَةِ الْكَهْفِ. وَفِي {حم}

[51] **Qur’an references (L6400):** Qur’an 1:1 (Al-Fatihah); Qur’an 1:3 (Al-Fatihah); Qur’an 31:26 (Luqman); Qur’an 9:89 (At-Tawbah); Qur’an 42:1 (Ash-Shuraa); Qur’an 42:2 (Ash-Shuraa); Qur’an 42:30 (Ash-Shuraa); Qur’an 36:1 (Ya-Sin); Qur’an 36:69 (Ya-Sin).

In Az-Zukhruf: {What the souls desire} [Az-Zukhruf: 71], and {has not decayed} [Al-Baqarah: 259], and similar instances. The Quran was revealed in seven recitational variants, all of which are true. All this is true, and all this belongs to those variants by the soundness of the certain consensus established on this matter - and success is from Allah, the Most High.[52]

A legal issue: He recited the Mother of the Quran in his prayer translated into a non-Arabic language.

367. Issue: If someone recites the Mother of the Quran or any part of it, or any part of the Quran in his prayer translated into a non-Arabic language, or with Arabic words other than those revealed by Allah the Exalted, intentionally doing so, or intentionally advances or delays a word—his prayer is invalid, and he is a sinner. This is because Allah the Exalted said: "An Arabic Quran" [Yusuf: 2], and what is non-Arabic is not Arabic, thus it is not Quran. Changing the Quran's status distorts Allah's words, and Allah the Exalted condemned people who did this, saying: "They distort words from their places" [An-Nisa: 46]. Abu Hanifah said his prayer suffices him, arguing—as do those who follow him—with Allah's statement: "And indeed, it is in the books of the former peoples" [Ash-Shu'ara: 196]. Ali said: They have no proof in this, because the Quran revealed to us through the tongue of our Prophet—peace and blessings be upon him—was not revealed to the former peoples. What is in their books is merely its mention and acknowledgment. Had it been revealed to anyone other than him—peace be upon him—it would not have been a sign or a virtue for him, and no Muslim would say this. Whoever is not proficient in Arabic must invoke Allah the Exalted in his own language, based on Allah's statement: "Allah does not burden a soul beyond its capacity" [Al-Baqarah: 286]. It is not permissible for him to recite the Mother of the Quran or any part of the Quran translated while

[52] **Qur'an references (L6404):** Qur'an 43:71 (Az-Zukhruf); Qur'an 2:259 (Al-Baqarah).

[الشورى: ١] {عسق} [الشورى: ٢] : {فَبِمَا كَسَبَتْ} [الشورى: ٣٠] . وَهَاءَاتٍ فِي مَوَاضِعَ كَثِيرَةٍ فِي {يس} [يس: ١] : {وَمَا عَلَّمْنَاهُ} [يس: ٦٩] .

وَفِي الزُّخْرُفِ {تَشْتَهِيهِ الأَنْفُسُ} [الزخرف: ٧١] وَ {لَمْ يَتَسَنَّهْ} [البقرة: ٢٥٩] وَغَيْرُ ذَلِكَ. وَالْقُرْآنُ أُنْزِلَ عَلَى سَبْعَةِ أَحْرُفٍ، كُلُّهَا حَقٌّ، وَهَذَا كُلُّهُ حَقٌّ، وَهَذَا كُلُّهُ مِنْ تِلْكَ الْأَحْرُفِ بِصِحَّةِ الْإِجْمَاعِ الْمُتَيَقَّنِ عَلَى ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَرَأَ أُمَّ الْقُرْآنِ فِي صَلَاتِهِ مُتَرْجَمًا بِغَيْرِ الْعَرَبِيَّةِ]

٣٦٧ - مَسْأَلَةٌ: وَمَنْ قَرَأَ أُمَّ الْقُرْآنِ أَوْ شَيْئًا مِنْهَا، أَوْ شَيْئًا مِنَ الْقُرْآنِ فِي صَلَاتِهِ مُتَرْجَمًا بِغَيْرِ الْعَرَبِيَّةِ، أَوْ بِأَلْفَاظٍ عَرَبِيَّةٍ غَيْرِ الْأَلْفَاظِ الَّتِي أَنْزَلَ اللَّهُ تَعَالَى، عَامِدًا لِذَلِكَ، أَوْ قَدَّمَ كَلِمَةً أَوْ أَخَّرَهَا عَامِدًا لِذَلِكَ -: بَطَلَتْ صَلَاتُهُ، وَهُوَ فَاسِقٌ؛ لِأَنَّ اللَّهَ تَعَالَى قَالَ: {قُرْآنًا عَرَبِيًّا} [يوسف: ٢] ، وَغَيْرُ الْعَرَبِيِّ لَيْسَ عَرَبِيًّا، فَلَيْسَ قُرْآنًا. وَإِحَالَةُ رُتْبَةِ الْقُرْآنِ تَحْرِيفُ كَلَامِ اللَّهِ تَعَالَى، وَقَدْ ذَمَّ اللَّهُ تَعَالَى قَوْمًا فَعَلُوا ذَلِكَ فَقَالَ: {يُحَرِّفُونَ الْكَلِمَ عَنْ مَوَاضِعِهِ} [النساء: ٤٦] . وَقَالَ أَبُو حَنِيفَةَ تُجْزِيهِ صَلَاتُهُ، وَاحْتَجَّ لَهُ مَنْ قَلَّدَهُ بِقَوْلِ اللَّهِ تَعَالَى: {وَإِنَّهُ لَفِي زُبُرِ الْأَوَّلِينَ} [الشعراء: ١٩٦] . قَالَ عَلِيٌّ: لَا حُجَّةَ لَهُمْ فِي هَذَا، لِأَنَّ الْقُرْآنَ الْمُنَزَّلَ عَلَيْنَا عَلَى لِسَانِ نَبِيِّنَا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَنْزِلْ عَلَى الْأَوَّلِينَ، وَإِنَّمَا فِي زُبُرِ الْأَوَّلِينَ ذِكْرُهُ وَالْإِقْرَارُ بِهِ فَقَطْ، وَلَوْ أُنْزِلَ عَلَى غَيْرِهِ - عَلَيْهِ السَّلَامُ - لَمَا كَانَ آيَةً لَهُ، وَلَا فَضِيلَةً لَهُ، وَهَذَا لَا يَقُولُهُ مُسْلِمٌ، وَمَنْ كَانَ لَا يُحْسِنُ الْعَرَبِيَّةَ فَلْيَذْكُرْ اللَّهَ تَعَالَى بِلُغَتِهِ، لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

presenting it as the obligated recitation, because it is not what was obligated upon him, as we mentioned. Thus, he would be falsely ascribing to Allah the Exalted.[53]

L6407 **A legal issue: Neither the Imam nor the individual praying alone are required to recite the seeking of refuge (istiʿādha) before the surah recited with the Mother of the Quran (known as Surah Al-Fatihah).**

L6408–6410 368. Issue: It is not incumbent upon the Imam or the solitary worshipper to recite the seeking of refuge [taʿawwudh] for the surah that is alongside Umm al-Qur'ān (the Opening Chapter), for they have already sought refuge when they recited. Whoever maintains continuous recitation has sought refuge as commanded. If repeating the seeking of refuge were obligatory, there would be no end to it unless by making a false assertion. If one interrupts the recitation by abandoning it or intends to commence a recitation in... In another rak'ah, he sought refuge in Allah (as he was commanded), and success comes from Allah, the Exalted.

L6411 **[Issue: The Bowing in Prayer and the Tranquility Therein]**

L6412–6416 Issue 369: Bowing in prayer is obligatory. Maintaining stillness during bowing until all limbs are balanced and one places both hands on the knees is obligatory. There is no valid prayer for whoever intentionally omits any part of this. If omitted forgetfully, the worshipper invalidates that portion, completes their prayer as commanded, then performs the compensatory prostration. Those unable to maintain stillness and balance due to a spinal condition must perform what they can, with inability absolving the remainder. Pronouncing "Allāhu Akbar" when bowing is obligatory. Saying "Subḥāna Rabbi al-ʿAẓīm" during bowing is obligatory. Rising upright after bowing until standing erect is obligatory for those capable. Uttering "Samiʿa Allāhu li-man ḥamidah" upon rising is obligatory for every worshipper—imam, con-

[53] **Qur'an references (L6406):** Qur'an 4:46 (An-Nisa); Qur'an 5:13 (Al-Ma'idah); Qur'an 26:196 (Ash-Shu'ara); Qur'an 2:286 (Al-Baqarah); Qur'an 12:2 (Yusuf).

وَلَا يَحِلُّ لَهُ أَنْ يَقْرَأَ أُمَّ الْقُرْآنِ وَلَا شَيْئًا مِنَ الْقُرْآنِ مُتَرْجَمًا عَلَى أَنَّهُ الَّذِي افْتَرَضَ عَلَيْهِ أَنْ يَقْرَأَهُ، لِأَنَّهُ غَيْرُ الَّذِي افْتَرَضَ عَلَيْهِ كَمَا ذَكَرْنَا، فَيَكُونُ مُفْتَرِيًا عَلَى اللَّهِ تَعَالَى.

[مَسْأَلَةٌ لَيْسَ عَلَى الْإِمَامِ وَالْمُنْفَرِدِ أَنْ يَتَعَوَّذَا لِلسُّورَةِ الَّتِي مَعَ أُمِّ الْقُرْآنِ]

٣٦٨ - مَسْأَلَةٌ: وَلَيْسَ عَلَى الْإِمَامِ وَالْمُنْفَرِدِ أَنْ يَتَعَوَّذَا لِلسُّورَةِ الَّتِي مَعَ أُمِّ الْقُرْآنِ، لِأَنَّهُمَا قَدْ تَعَوَّذَا إِذْ قَرَآ. وَمَنْ اتَّصَلَتْ قِرَاءَتُهُ فَقَدْ تَعَوَّذَ كَمَا أُمِرَ، وَلَوْ لَزِمَهُ تَكْرَارُ التَّعَوُّذِ لَمَا كَانَ لِذَلِكَ غَايَةٌ إِلَّا بِدَعْوَى كَاذِبَةٍ، فَإِنْ قَطَعَ الْقِرَاءَةَ قَطْعَ تَرْكٍ أَوْ أَرَادَ أَنْ يَبْتَدِئَ قِرَاءَةً فِي رَكْعَةٍ أُخْرَى تَعَوَّذَ - كَمَا أُمِرَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الرُّكُوعُ فِي الصَّلَاةِ وَالطُّمَأْنِينَةُ فِيهِ]

٣٦٩ - مَسْأَلَةٌ: وَالرُّكُوعُ فِي الصَّلَاةِ فَرْضٌ، وَالطُّمَأْنِينَةُ فِي الرُّكُوعِ حَتَّى تَعْتَدِلَ جَمِيعُ أَعْضَائِهِ وَيَضَعَ فِيهِ يَدَيْهِ عَلَى رُكْبَتَيْهِ -: فَرْضٌ، لَا صَلَاةَ لِمَنْ تَرَكَ شَيْئًا مِنْ ذَلِكَ عَامِدًا. وَمَنْ تَرَكَ ذَلِكَ نَاسِيًا أَلْغَاهُ وَأَتَمَّ صَلَاتَهُ كَمَا أُمِرَ، ثُمَّ سَجَدَ لِلسَّهْوِ، فَإِنْ عَجَزَ عَنِ الطُّمَأْنِينَةِ وَالِاعْتِدَالِ لِعُذْرٍ بِصُلْبِهِ أَجْزَأَهُ مَا قَدَرَ عَلَيْهِ مِنْ ذَلِكَ، وَسَقَطَ عَنْهُ مَا عَجَزَ عَنْهُ وَالتَّكْبِيرُ لِلرُّكُوعِ فَرْضٌ، وَقَوْلُهُ " سُبْحَانَ رَبِّيَ الْعَظِيمِ " فِي الرُّكُوعِ فَرْضٌ وَالْقِيَامُ إِثْرَ الرُّكُوعِ فَرْضٌ لِمَنْ قَدَرَ عَلَيْهِ حَتَّى يَعْتَدِلَ قَائِمًا وَقَوْلُ " سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ " عِنْدَ الْقِيَامِ مِنَ الرُّكُوعِ فَرْضٌ عَلَى كُلِّ مُصَلٍّ، مِنْ إِمَامٍ أَوْ مُنْفَرِدٍ أَوْ مَأْمُومٍ لَا تُجْزِئُ الصَّلَاةُ

gregant, or individual—without which prayer remains invalid. Congregants must subsequently say “Rabbanā laka al-ḥamd” or “Wa laka al-ḥamd.” This is not obligatory for imams or individuals, though commendable as Sunnah. Responding “Āmīn” when the imam recites “walāḍ-ḍāllīn” (Quran 1:7) is obligatory for congregants. If the imam says it, this becomes commendable Sunnah. Congregants must neither bow, rise, nor prostrate simultaneously with or before the imam, but only after him. Deliberate Quran recitation during bowing or prostration invalidates prayer. If done forgetfully, the invalidated prostration duration is nullified, requiring compensatory prostration. Two prostrations after rising are obligatory. Maintaining stillness within them is obligatory. Pronouncing “Allāhu Akbar” for each prostration is obligatory. Saying “Subḥāna Rabbi al-Aʿlā” during each prostration is obligatory. Placing the forehead, nose, hands, knees, and balls of the feet on a permissible surface is entirely obligatory. Sitting between prostrations is obligatory. Maintaining stillness during this sitting is obligatory. Pronouncing “Allāhu Akbar” for it is obligatory. Not— The prayer of a person is valid even if he intentionally omits something from all these requirements. If he neglects an element due to forgetfulness, he must compensate for that omission and perform it as commanded, then perform the prostration of forgetfulness. If he is unable to perform any part due to ignorance or a valid excuse, that obligation is waived and his prayer is complete. Prostration is invalid unless the forehead and nose are uncovered; it is valid for other limbs to be covered. In every unit of his prayer, he must perform the actions we have described. The proof for this is: the narration transmitted to us by ʻAbd al-Raḥmān ibn ʻAbd Allāh ibn Khālid, who narrated to us: Ibrāhīm ibn Aḥmad al-Balkhī narrated to us, al-Farabrī narrated to us, al-Bukhārī narrated to us, Musaddad narrated to us, Yaḥyā ibn Saʻīd narrated to us, ʻUbayd Allāh ibn ʻUmar narrated to me: Saʻīd al-Maqburī narrated to me from his father from Abū Hurayrah that the Prophet (peace be upon him) entered the mosque, where a man prayed and then came to greet him. The Prophet (peace be upon him) returned the greeting and said, “Go back and pray, for you have not prayed.” The man returned, prayed again, then came and greeted him. The Prophet (peace be upon him) repeated, “Go back and pray, for you have not prayed,” three times. The man declared, “By Him who

إِلَّا بِهِ، فَإِنْ كَانَ مَأْمُومًا فَفَرْضٌ عَلَيْهِ أَنْ يَقُولَ بَعْدَ ذَلِكَ " رَبَّنَا لَك الْحَمْدُ " أَوْ " وَلَك الْحَمْدُ " وَلَيْسَ هَذَا فَرْضًا عَلَى إمَامٍ وَلَا فَذٍّ. وَإِنْ قَالَاهُ كَانَ حَسَنًا وَسُنَّةً وَقَوْلُ الْمَأْمُومِ " آمِينَ " إذَا قَالَ الْإِمَامُ {وَلا الضَّالِّينَ} [الفاتحة: ٧] فَرْضٌ، وَإِنْ قَالَهُ الْإِمَامُ فَهُوَ حَسَنٌ وَسُنَّةٌ، وَلَا يَحِلُّ لِلْمَأْمُومِ أَنْ يَرْكَعَ، وَلَا أَنْ يَرْفَعَ، وَلَا أَنْ يَسْجُدَ مَعَ إمَامِهِ وَلَا قَبْلَهُ، لَكِنْ بَعْدَهُ وَلَا بُدَّ، وَمَنْ قَرَأَ الْقُرْآنَ فِي رُكُوعِهِ أَوْ سُجُودِهِ بَطَلَتْ صَلَاتُهُ إنْ تَعَمَّدَ ذَلِكَ، فَإِنْ نَسِيَ أَلْغَى تِلْكَ الْمُدَّةَ مِنْ سُجُودِهِ ثُمَّ سَجَدَ لِلسَّهْوِ، وَسَجْدَتَانِ إثْرَ الْقِيَامِ الْمَذْكُورِ فَرْضٌ، وَالطُّمَأْنِينَةُ فِيهِمَا فَرْضٌ، وَالتَّكْبِيرُ لِكُلِّ سَجْدَةٍ مِنْهُمَا فَرْضٌ وَقَوْلُ " سُبْحَانَ رَبِّيَ الْأَعْلَى " فِي كُلِّ سَجْدَةٍ فَرْضٌ، وَوَضْعُ الْجَبْهَةِ وَالْأَنْفِ وَالْيَدَيْنِ وَالرُّكْبَتَيْنِ وَصُدُورِ الْقَدَمَيْنِ عَلَى مَا هُوَ قَائِمٌ عَلَيْهِ - مِمَّا أُبِيحَ لَهُ التَّصَرُّفُ عَلَيْهِ -: فَرْضٌ كُلُّ ذَلِكَ وَالْجُلُوسُ بَيْنَ السَّجْدَتَيْنِ فَرْضٌ، وَالطُّمَأْنِينَةُ فِيهِ فَرْضٌ، وَالتَّكْبِيرُ لَهُ فَرْضٌ لَا تُجْزِئُ صَلَاةٌ لِأَحَدٍ بِأَنْ يَدَعَ مِنْ هَذَا كُلِّهِ عَامِدًا شَيْئًا، فَإِنْ لَمْ يَأْتِ بِهِ نَاسِيًا أَلْغَى ذَلِكَ وَأَتَى بِهِ كَمَا أُمِرَ، ثُمَّ سَجَدَ لِلسَّهْوِ، فَإِنْ عَجَزَ عَنْ شَيْءٍ مِنْهُ لِجَهْلٍ أَوْ عُذْرٍ مَانِعٍ سَقَطَ عَنْهُ وَتَمَّتْ صَلَاتُهُ، وَلَا يُجْزِئُ السُّجُودُ عَلَى الْجَبْهَةِ، وَالْأَنْفِ: إلَّا مَكْشُوفَيْنِ، وَيُجْزِئُ فِي سَائِرِ الْأَعْضَاءِ مُغَطَّاةٍ، وَيَفْعَلُ فِي كُلِّ رَكْعَةٍ مِنْ صَلَاتِهِ مَا ذَكَرْنَا بُرْهَانُ ذَلِكَ -: مَا حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيُّ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُسَدَّدٌ ثنا يَحْيَى بْنُ سَعِيدٍ ثنا عُبَيْدُ اللَّهِ بْنُ عُمَرَ حَدَّثَنِي سَعِيدٌ الْمَقْبُرِيُّ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَخَلَ الْمَسْجِدَ فَدَخَلَ رَجُلٌ فَصَلَّى، ثُمَّ جَاءَ فَسَلَّمَ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَدَّ عَلَيْهِ، وَقَالَ لَهُ: ارْجِعْ فَصَلِّ فَإِنَّكَ لَمْ تُصَلِّ فَرَجَعَ فَصَلَّى، ثُمَّ جَاءَ فَسَلَّمَ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

sent you with the truth, I cannot do better than this. Teach me." The Prophet instructed, "When you stand for prayer, proclaim 'Allāhu Akbar,' then recite what you can from the Quran. Bow until you attain stillness in bowing, rise until you stand upright, prostrate until you attain stillness in prostration, sit upright until you attain stillness, then prostrate again with stillness. Apply this throughout every part of your prayer."

'Abd Allāh ibn Rabī' narrated to us: 'Abd Allāh ibn Muḥammad ibn 'Uthmān narrated to us, Aḥmad ibn Khālid narrated to us, 'Alī ibn 'Abd al-'Azīz narrated to us, al-Ḥajjāj ibn al-Minhāl narrated to us, Hammām ibn Yaḥyā narrated to us, Isḥāq ibn 'Abd Allāh ibn Abī Ṭalḥah narrated: 'Alī ibn Yaḥyā ibn Khallād narrated to me from his father from his uncle Rifā'ah ibn Rāfi', who said, "I was seated with Allah's Messenger (peace be upon him) when a man entered the mosque, prayed, then came to greet him. The Prophet (peace be upon him) responded, 'And peace be upon you. Go back and pray, for you have not prayed.' The man returned, prayed, then came again. The Prophet (peace be upon him) repeated, 'And peace be upon you. Go back and pray, for you have not prayed,' two or three times. The man pleaded, 'I do not know what you are criticizing [in my prayer].' The Prophet (peace be upon him) said, 'Verily, the prayer of any one of you is not complete...'" until he completes the ablution as Allah commanded him, washing his face and hands up to the elbows, wiping his head and feet up to the ankles, then proclaiming Allah's greatness, praising Him, and glorifying Him, and reciting from the Quran what Allah has permitted him therein and what is accessible. Then he proclaims Allah's greatness, bows, and places his palms on his knees until his joints settle and relax. Then he says: "Allah hears whoever praises Him," and stands upright until every limb assumes its proper position and his spine straightens. Then he proclaims Allah's greatness, prostrates, and firmly places his forehead on the ground until his joints settle and relax. Then he proclaims Allah's greatness, raises his head, and sits upright properly while straightening his spine. He described prayer in this manner until concluding it. Then he said: "None of your prayers is complete until he does this."[54]

فَقَالَ: ارْجِعْ فَصَلِّ فَإِنَّكَ لَمْ تُصَلِّ ثَلَاثًا، فَقَالَ: وَالَّذِي بَعَثَكَ بِالْحَقِّ مَا أُحْسِنُ غَيْرَهُ فَعَلِّمْنِي، فَقَالَ: إِذَا قُمْتَ إِلَى الصَّلَاةِ فَكَبِّرْ، ثُمَّ اقْرَأْ مَا تَيَسَّرَ مَعَكَ مِنَ الْقُرْآنِ، ثُمَّ ارْكَعْ حَتَّى تَطْمَئِنَّ رَاكِعًا، ثُمَّ ارْفَعْ حَتَّى تَعْتَدِلَ قَائِمًا، ثُمَّ اسْجُدْ حَتَّى تَطْمَئِنَّ سَاجِدًا ثُمَّ ارْفَعْ حَتَّى تَطْمَئِنَّ جَالِسًا، ثُمَّ اسْجُدْ حَتَّى تَطْمَئِنَّ سَاجِدًا، ثُمَّ افْعَلْ ذَلِكَ فِي صَلَاتِكَ كُلِّهَا» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا هَمَّامُ بْنُ يَحْيَى ثنا إِسْحَاقُ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ حَدَّثَنِي عَلِيُّ بْنُ يَحْيَى بْنِ خَلَّادٍ عَنْ أَبِيهِ عَنْ عَمِّهِ رِفَاعَةَ بْنِ رَافِعٍ «كُنْتُ جَالِسًا عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ جَاءَ رَجُلٌ فَدَخَلَ الْمَسْجِدَ فَصَلَّى، فَلَمَّا قَضَى صَلَاتَهُ جَاءَ فَسَلَّمَ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: وَعَلَيْكَ ارْجِعْ فَصَلِّ فَإِنَّكَ لَمْ تُصَلِّ، فَرَجَعَ فَلَمَّا قَضَى صَلَاتَهُ جَاءَ فَسَلَّمَ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَيْكَ ارْجِعْ فَصَلِّ فَإِنَّكَ لَمْ تُصَلِّ، فَذَكَرَ ذَلِكَ مَرَّتَيْنِ أَوْ ثَلَاثًا، فَقَالَ الرَّجُلُ: لَا أَدْرِي مَا عِبْتَ عَلَيَّ، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِنَّهُ لَا تَتِمُّ صَلَاةُ أَحَدِكُمْ حَتَّى يُسْبِغَ الْوُضُوءَ كَمَا أَمَرَهُ اللَّهُ، وَيَغْسِلَ وَجْهَهُ وَيَدَيْهِ إِلَى الْمِرْفَقَيْنِ، وَيَمْسَحَ بِرَأْسِهِ وَرِجْلَيْهِ إِلَى الْكَعْبَيْنِ، ثُمَّ يُكَبِّرَ اللَّهَ وَيَحْمَدَهُ وَيُمَجِّدَهُ، وَيَقْرَأَ مِنَ الْقُرْآنِ مَا أَذِنَ اللَّهُ لَهُ فِيهِ وَتَيَسَّرَ، ثُمَّ يُكَبِّرَ فَيَرْكَعَ فَيَضَعَ كَفَّيْهِ عَلَى رُكْبَتَيْهِ حَتَّى تَطْمَئِنَّ مَفَاصِلُهُ وَتَسْتَرْخِيَ، ثُمَّ يَقُولَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ، وَيَسْتَوِيَ قَائِمًا حَتَّى يَأْخُذَ كُلُّ عُضْوٍ مَأْخَذَهُ، وَيُقِيمَ صُلْبَهُ، ثُمَّ يُكَبِّرَ فَيَسْجُدَ وَيُمَكِّنَ جَبْهَتَهُ مِنَ الْأَرْضِ حَتَّى تَطْمَئِنَّ مَفَاصِلُهُ وَتَسْتَرْخِيَ، ثُمَّ يُكَبِّرَ فَيَرْفَعَ رَأْسَهُ وَيَسْتَوِيَ قَاعِدًا عَلَى مَقْعَدَتِهِ وَيُقِيمَ صُلْبَهُ. فَوَصَفَ الصَّلَاةَ هَكَذَا حَتَّى فَرَغَ. ثُمَّ قَالَ: لَا تَتِمُّ صَلَاةُ أَحَدِكُمْ حَتَّى يَفْعَلَ ذَلِكَ» .

[54]**Qur'an references (L6412):** Qur'an 1:7 (Al-Fatihah).

L6417 Ali said: The aforementioned praise and glorification is the recitation of the Mother of the Quran. The proof of this is the statement of the Messenger of Allah (peace and blessings be upon him): "When a servant says in his prayer: 'All praise is due to Allah, Lord of the worlds' [Al-Fatihah: 2], Allah says: My servant has praised Me. And when he says: 'Master of the Day of Judgment' [Al-Fatihah: 4], Allah says: My servant has glorified Me."[55]

قَالَ عَلِيٌّ: التَّحْمِيدُ الْمَذْكُورُ وَالتَّمْجِيدُ الْمَذْكُورُ هُوَ قِرَاءَةُ أُمِّ الْقُرْآنِ. بُرْهَانُ ذَلِكَ -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا قَالَ الْعَبْدُ فِي صَلَاتِهِ: {الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ} [الفاتحة: ٢] يَقُولُ اللَّهُ: حَمِدَنِي عَبْدِي، وَإِذَا قَالَ: {مَالِكِ يَوْمِ الدِّينِ} [الفاتحة: ٤] قَالَ اللَّهُ: مَجَّدَنِي عَبْدِي»

L6418–6420 Abdullah ibn Rabi narrated to us: Muhammad ibn Ishaq narrated to us, Ibn al-A'rabi narrated to us, Abu Dawud narrated to us, Hafs ibn Umar narrated to us, Shu'ba narrated from Sulayman - he is al-A'mash - from Umarah ibn Umayr from Abu Ma'mar from Abu Mas'ud al-Badri, who said: The Messenger of God - may the Exalted God bless him and grant him peace - said: "A man's prayer is not valid until he straightens his back in the bowing and prostration." Abu Hanifah said: "It is valid even if one does not straighten his back in bowing and prostration." Abdullah ibn Rabi narrated to us: Muhammad ibn Mu'awiyah narrated to us, Ahmad ibn Shu'ayb narrated to us, Ahmad ibn Amr ibn al-Sarh and Yunus ibn Abd al-A'la and al-Harith ibn Miskin - recited to him, and the wording is his - all of them from Ibn Wahb from Ibn Jurayj from Abdullah ibn Tawus from his father from Ibn Abbas that the Messenger of God - may the Exalted God bless him and grant him peace - said: "I have been commanded to prostrate upon seven bodily parts and not to gather the hair or garments: the forehead, the nose, the two hands, the two knees, and the two feet." Abu Hanifah said: "If one places his forehead in prostration without placing his nose, hands, or knees, it is sufficient for him." That, and likewise, it suffices for him to place his nose in prostration without placing his forehead, hands, or knees. Abdullah ibn Rabee' narrated from Muhammad ibn Ishaq from Ibn Al-A'raabi from Abu Dawud from Ahmad ibn Hanbal from Yahya ibn Sa'eed Al-Qattan from Hisham—Ad-Dastuwa'i—from Qatadah from Yunus ibn Jubayr from Hittan ibn Abdullah Ar-Raqashi, who said: Abu Musa Al-Ash'ari told us: "Allah's Messenger—peace and blessings be upon him—addressed us, clarifying our Sunnah and teaching us our prayer. He said: 'When you pray, straighten your rows, then let one of you

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا حَفْصُ بْنُ عُمَرَ ثنا شُعْبَةُ عَنْ سُلَيْمَانَ هُوَ الْأَعْمَشُ - عَنْ عُمَارَةَ بْنِ عُمَيْرٍ عَنْ أَبِي مَعْمَرٍ عَنْ أَبِي مَسْعُودٍ الْبَدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَسَلَّمَ -: «لَا تُجْزِئُ صَلَاةُ الرَّجُلِ حَتَّى يُقِيمَ ظَهْرَهُ فِي الرُّكُوعِ وَالسُّجُودِ» . قَالَ أَبُو حَنِيفَةَ: تُجْزِئُ وَإِنْ لَمْ يُقِمْ ظَهْرَهُ فِي رُكُوعِهِ وَسُجُودِهِ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ وَيُونُسُ بْنُ عَبْدِ الْأَعْلَى وَالْحَارِثُ بْنُ مِسْكِينٍ - قِرَاءَةً عَلَيْهِ وَاللَّفْظُ لَهُ - كُلُّهُمْ عَنْ ابْنِ وَهْبٍ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ -: «أُمِرْتُ أَنْ أَسْجُدَ عَلَى سَبْعٍ وَلَا أَكْفِتَ الشَّعْرَ وَلَا الثِّيَابَ: الْجَبْهَةِ، وَالْأَنْفِ، وَالْيَدَيْنِ، وَالرُّكْبَتَيْنِ وَالْقَدَمَيْنِ» . قَالَ أَبُو حَنِيفَةَ: إِنْ وَضَعَ جَبْهَتَهُ فِي السُّجُودِ وَلَمْ يَضَعْ أَنْفَهُ وَلَا يَدَيْهِ وَلَا رُكْبَتَيْهِ أَجْزَأَهُ ذَلِكَ، وَكَذَلِكَ يُجْزِئُهُ أَنْ يَضَعَ فِي السُّجُودِ أَنْفَهُ وَلَا يَضَعَ جَبْهَتَهُ وَلَا يَدَيْهِ وَلَا رُكْبَتَيْهِ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا أَحْمَدُ بْنُ حَنْبَلٍ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ ثنا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ - عَنْ قَتَادَةَ عَنْ يُونُسَ بْنِ جُبَيْرٍ عَنْ حِطَّانَ بْنِ عَبْدِ اللَّهِ الرَّقَاشِيِّ قَالَ لَنَا أَبُو مُوسَى الْأَشْعَرِيُّ: «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَطَبَنَا فَبَيَّنَ لَنَا سُنَّتَنَا وَعَلَّمَنَا صَلَاتَنَا فَقَالَ:

[55] **Qur'an references (L6417):** Qur'an 1:2 (Al-Fatihah); Qur'an 1:4 (Al-Fatihah).

lead you. When he says "Allahu Akbar," say "Allahu Akbar." When he recites, {Not of those who have incurred Your wrath nor of those who have gone astray} [Al-Fatihah:7], say "Ameen," and Allah loves you. When he says "Allahu Akbar" and bows, say "Allahu Akbar" and bow, for the Imam bows before you and rises before you—thus that corresponds to that. When he says, "Sami'a Allahu liman hamidah," say, "Rabbana wa lakal-hamd," and Allah hears you (yasma'u Allahu lakum), for Allah declared through His Prophet's tongue: "Sami'a Allahu liman hamidah." When he says "Allahu Akbar" and prostrates, say "Allahu Akbar" and prostrate, for the Imam prostrates before you and rises before you—thus that corresponds to that." He mentioned the remainder of the hadith. Ali said: "Among the grave sins from which we seek refuge with Allah Almighty is that when Allah's Messenger—peace and blessings be upon him—states, 'None of your prayers is complete until you do such-and-such,' or commands, 'Do such-and-such,' someone who hears these reports asserts, 'The prayer is valid without that,' blindly following those who erred—whether those unaware of the report or those who misinterpreted it without intending to oppose Allah's Messenger—peace and blessings be upon him. Equally false and a mockery of the Sunnah is when Allah's Messenger—peace and blessings be upon him—explicitly states that prayer is incomplete without certain acts, yet someone arbitrarily claims, 'Some of these are obligatory, others are not.' If a liar falsely alleges consensus on any such matter, he has lied against the entire Ummah, asserting what he has no knowledge of. It is impermissible for a Muslim to oppose the definitive truth of Allah's command conveyed by His Messenger—peace and blessings be upon him—based on a false assumption fabricated against the entire Ummah, thereby accusing it of defying Allah's decree. How astonishing is their claim that the follower's 'Allahu Akbar' is invalid unless uttered after the Imam's, and his 'Salaam' invalid unless after the Imam's, while permitting his bowing, rising, and prostration to coincide with the Imam's! This is arbitrary ruling, and all the specious arguments they employ here equally apply to their rulings on 'Allahu Akbar' and 'Salaam.'"[56][57]

إِذَا صَلَّيْتُمْ فَأَقِيمُوا صُفُوفَكُمْ، ثُمَّ لِيَؤُمَّكُمْ أَحَدُكُمْ، فَإِذَا كَبَّرَ فَكَبِّرُوا وَإِذَا قَالَ: {غَيْرِ الْمَغْضُوبِ عَلَيْهِمْ وَلا الضَّالِّينَ} [الفاتحة: ٧] فَقُولُوا: آمِينَ، يُحِبُّكُمْ اللَّهُ وَإِذَا كَبَّرَ وَرَكَعَ فَكَبِّرُوا وَارْكَعُوا، فَإِنَّ الْإِمَامَ يَرْكَعُ قَبْلَكُمْ وَيَرْفَعُ قَبْلَكُمْ، فَتِلْكَ بِتِلْكَ، وَإِذَا قَالَ سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ فَقُولُوا رَبَّنَا لَكَ الْحَمْدُ يَسْمَعُ اللَّهُ لَكُمْ فَإِنَّ اللَّهَ قَالَ عَلَى لِسَانِ نَبِيِّهِ سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ فَإِذَا كَبَّرَ وَسَجَدَ فَكَبِّرُوا وَاسْجُدُوا، فَإِنَّ الْإِمَامَ يَسْجُدُ قَبْلَكُمْ وَيَرْفَعُ قَبْلَكُمْ، فَتِلْكَ بِتِلْكَ» وَذَكَرَ بَاقِيَ الْحَدِيثِ. قَالَ عَلِيٌّ: مِنْ الْعَظَائِمِ الَّتِي نَعُوذُ بِاَللَّهِ عَزَّ وَجَلَّ مِنْهَا أَنْ يَقُولَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا تَتِمُّ صَلَاةُ أَحَدِكُمْ حَتَّى يَفْعَلَ كَذَا أَوْ كَذَا، وَافْعَلُوا كَذَا وَكَذَا، فَيَقُولُ قَائِلٌ بَعْدَ أَنْ سَمِعَ هَذِهِ الْأَخْبَارَ: إنَّ الصَّلَاةَ تَتِمُّ دُونَ ذَلِكَ، مُقَلِّدًا لِمَنْ أَخْطَأَ مِمَّنْ لَمْ يَبْلُغْهُ الْخَبَرُ، أَوْ بَلَغَهُ فَتَأَوَّلَ غَيْرَ قَاصِدٍ لِخِلَافِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَذَلِكَ مِنْ الْبَاطِلِ وَالتَّلَعُّبِ بِالسُّنَنِ أَنْ يَنُصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أُمُورٍ ذَكَرَ أَنَّ الصَّلَاةَ لَا تَتِمُّ إلَّا بِهَا -: فَيَقُولُ قَائِلٌ مِنْ عِنْدِ نَفْسِهِ؛ بَعْضُ هَذِهِ الْأُمُورِ هُوَ كَذَلِكَ، وَبَعْضُهَا لَيْسَ كَذَلِكَ، فَإِنْ أَقْدَمَ كَاذِبٌ عَلَى دَعْوَى الْإِجْمَاعِ فِي شَيْءٍ مِنْ ذَلِكَ فَقَدْ كَذَبَ عَلَى جَمِيعِ الْأُمَّةِ. وَادَّعَى مَا لَا عِلْمَ لَهُ بِهِ. وَلَا يَحِلُّ لِمُسْلِمٍ خِلَافُ الْيَقِينِ الصَّادِقِ مِنْ أَمْرِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " لِظَنٍّ كَاذِبٍ افْتَرَى فِيهِ الَّذِي ظَنَّهُ عَلَى الْأُمَّةِ كُلِّهَا؛ إذْ نَسَبَ إلَيْهَا مُخَالَفَةَ أَمْرِ اللَّهِ تَعَالَى ". وَالْعَجَبُ مِنْ قَوْلِهِمْ: لَا يُجْزِئُ تَكْبِيرُ الْمَأْمُومِ إلَّا بَعْدَ تَكْبِيرِ الْإِمَامِ وَلَا يُجْزِئُ سَلَامُهُ إلَّا بَعْدَ سَلَامِ الْإِمَامِ -: أَمَّا رُكُوعُهُ وَرَفْعُهُ وَسُجُودُهُ فَمَعَ الْإِمَامِ، وَهَذَا تَحَكُّمٌ عَجِيبٌ، وَكُلُّ مَا مَوَّهُوا بِهِ هَهُنَا فَهُوَ لَازِمٌ لَهُمْ فِي التَّكْبِيرِ وَالتَّسْلِيمِ.

[56] **Hadith references (L6418):** Sunan Abi Dawud 855; Mishkat al-Masabih 878; Sahih Muslim 490e.

[57] **Qur'an references (L6418):** Qur'an 1:7 (Al-Fatihah).

L6421–6422

If someone says: The Prophet (peace and blessings be upon him) stated, “When he says, ’Allah hears those who praise Him,’ you should say, ’Our Lord, to You is all praise,’” we respond: Indeed, but this narration does not prohibit the imam from saying, “Our Lord, to You is all praise,” nor does it prevent the follower from saying, “Allah hears those who praise Him.” The obligation herein is specified in the report we cited. There is no possibility for all legal injunctions to be contained within a single narration, a single verse, or a single chapter. Hisham ibn Sa‘id al-Khayr narrated to us in writing, from ‘Abd al-Jabbar ibn Ahmad al-Maghribi al-Tarsusi, who narrated from al-Hasan ibn al-Husayn al-Najirami, who narrated from Ja‘far ibn Muhammad ibn al-Hasan ibn Sa‘id al-Asbahani al-Sirafi, who narrated from Abu Bishr Yunus ibn Habib al-Zubayri, who narrated from Abu Dawud al-Tayalisi, who narrated from ‘Abdullah ibn al-Mubarak, from Musa ibn Ayyub al-Ghafiqi, from his uncle Iyas ibn ‘Amir, from ‘Uqbah ibn ‘Amir al-Juhani, who said: “When the verse {Glorify the name of your Lord, the Most Great} (56:74) was revealed, the Messenger of Allah (peace and blessings be upon him) instructed, ’Use this during bowing.’ When {Glorify the name of your Lord, the Most High} (87:1) was revealed, he said, ’Incorporate this into your prostration.’” ‘Ali remarked: Ahmad ibn Hanbal, Abu Sulayman, and others uphold the obligation of this. If it is objected that reports state the Messenger of Allah (peace and blessings be upon him) would say in his prostration, “Glory be to Him, the Most Holy, Lord of the angels and the Spirit,” and that he declared—as transmitted by ‘Abdullah ibn Rabi‘, from Muhammad ibn Ishaq, from Ibn al-A‘rabi, from Abu Dawud, from Musaddad, from Sufyan, from Sulayman ibn Suhaym, from Ibrahim ibn ‘Abdullah ibn Ma‘bad ibn al-‘Abbas, from his father, from his uncle, from ‘Abdullah ibn ‘Abbas—“The Prophet (peace and blessings be upon him) drew aside the curtain from his face while people stood in rows behind Abu Bakr and proclaimed, ’O people, nothing remains of the portents of prophethood except the righteous dream seen by a Muslim or shown to him. I have been forbidden to recite while bowing or prostrating. As for bowing, magnify the Lord therein, and as for prostration, exert yourselves in supplication, for it is more deserving that your prayers be answered,’” we reply: Indeed, but none of this abrogates what he obligated in the narration of ‘Uqbah ibn ‘Amir. Rather, his injunc-

فَإِنْ قَالَ قَائِلٌ: قَدْ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «وَإِذَا قَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ فَقُولُوا: رَبَّنَا وَلَكَ الْحَمْدُ» قُلْنَا: نَعَمْ، وَلَيْسَ فِي هَذَا الْخَبَرِ مَنْعٌ مِنْ قَوْلِ الْإِمَامِ: رَبَّنَا وَلَكَ الْحَمْدُ وَلَا مَنْعُ الْمَأْمُومِ مِنْ قَوْلِ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ. وَإِيجَابُ هَذَا مَذْكُورٌ فِي الْخَبَرِ الَّذِي أَوْرَدْنَاهُ. وَلَا سَبِيلَ إِلَى أَنْ تُوجَدَ جَمِيعُ الشَّرَائِعِ فِي خَبَرٍ وَاحِدٍ، وَلَا فِي آيَةٍ وَاحِدَةٍ، وَلَا فِي سُورَةٍ وَاحِدَةٍ. حَدَّثَنَا هِشَامُ بْنُ سَعِيدٍ الْخَيْرِ كِتَابًا إِلَيَّ قَالَ: ثَنَا عَبْدُ الْجَبَّارِ بْنُ أَحْمَدَ الْمَغْرِبِيُّ الطَّرَسُوسِيُّ ثَنَا الْحَسَنُ بْنُ الْحُسَيْنِ النَّجِيرَمِيُّ ثَنَا جَعْفَرُ بْنُ مُحَمَّدِ بْنِ الْحَسَنِ بْنِ سَعِيدٍ الْأَصْبَهَانِيّ بسيراف ثَنَا أَبُو بِشْرٍ يُونُسُ بْنُ حَبِيبٍ الزُّبَيْرِيُّ ثَنَا أَبُو دَاوُد الطَّيَالِسِيُّ ثَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ مُوسَى بْنِ أَيُّوبَ الْغَافِقِيِّ عَنْ عَمِّهِ إِيَاسِ بْنِ عَامِرٍ عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ قَالَ: «لَمَّا نَزَلَتْ {فَسَبِّحْ بِاسْمِ رَبِّكَ الْعَظِيمِ} [الواقعة: ٧٤] قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اجْعَلُوهَا فِي الرُّكُوعِ فَلَمَّا نَزَلَتْ: {سَبِّحِ اسْمَ رَبِّكَ الْأَعْلَى} [الأعلى: ١] . قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: اجْعَلُوهَا فِي سُجُودِكُمْ» . قَالَ عَلِيٌّ: وَبِإِيجَابِ فَرْضِ هَذَا يَقُولُ أَحْمَدُ بْنُ حَنْبَلٍ، وَأَبُو سُلَيْمَانَ وَغَيْرُهُمَا. فَإِنْ قِيلَ: قَدْ جَاءَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَقُولُ فِي سُجُودِهِ «سُبُّوحٌ قُدُّوسٌ رَبُّ الْمَلَائِكَةِ وَالرُّوحِ» وَأَنَّهُ قَالَ - عَلَيْهِ السَّلَامُ - مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُسَدَّدٌ ثنا سُفْيَانُ عَنْ سُلَيْمَانَ بْنِ سُحَيْمٍ عَنْ إِبْرَاهِيمَ بْنِ عَبْدِ اللَّهِ بْنِ مَعْبَدِ بْنِ الْعَبَّاسِ عَنْ أَبِيهِ عَنْ عَمِّهِ عَنْ عَبْدِ اللَّهِ بْنِ عَبَّاسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَشَفَ السِّتَارَةَ عَنْ وَجْهِهِ، وَالنَّاسُ صُفُوفٌ خَلْفَ أَبِي بَكْرٍ، فَقَالَ: يَا أَيُّهَا النَّاسُ، إِنَّهُ لَمْ يَبْقَ مِنْ مُبَشِّرَاتِ النُّبُوَّةِ إِلَّا الرُّؤْيَا الصَّالِحَةُ يَرَاهَا

tion, “Magnify the Lord,” corresponds to his directive, “Glory be to my Lord, the Most Great.”[58][59]

الْمُسْلِمُ أَوْ تُرَى لَهُ وَإِنِّي نُهِيتُ أَنْ أَقْرَأَ رَاكِعًا أَوْ سَاجِدًا، فَأَمَّا الرُّكُوعُ فَعَظِّمُوا فِيهِ الرَّبَّ، وَأَمَّا السُّجُودُ فَاجْتَهِدُوا فِيهِ الدُّعَاءَ فَقَمِنٌ أَنْ يُسْتَجَابَ لَكُمْ.» قُلْنَا: نَعَمْ، وَلَيْسَ فِي هَذَا كُلِّهِ سُقُوطُ مَا أَوْجَبَهُ - عَلَيْهِ السَّلَامُ - فِي حَدِيثِ عُقْبَةَ بْنِ عَامِرٍ؛ بَلْ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: “ فَعَظِّمُوا الرَّبَّ ” مُوَافِقٌ لِقَوْلِهِ “ سُبْحَانَ رَبِّيَ الْعَظِيمِ ”.

L6423–6424 As for exerting effort in supplication during prostration and saying “Subbūḥun Quddūsun, Lord of the Angels and the Spirit [Gabriel],” this is an increase of good and a virtuous act for whoever performs it alongside the commanded *tasbīḥ*. Mālik differentiated between one who omits two *takbīrs* and one who omits three *takbīrs*. This is a baseless opinion with no proof whatsoever. We have previously mentioned the invalidity of the view of those who distinguish between minor and major quantities of actions in prayer based on his own opinion, and we clarified that it is a corrupt view. This is because there is no “major amount” except that it becomes minor when compared to what exceeds it, and no “minor amount” except that it becomes major when compared to what is less than it. Omitting a minor portion of an obligatory act is equivalent to omitting a major portion in terms of violating Allah Almighty’s command. Similarly, committing a minor portion of a prohibited act equals committing a major portion in transgressing the prohibition. As for permissible acts, their minor and major quantities remain permissible. Any distinction beyond this is undeniably invalid unless a textual proof arrives specifying a differentiation between quantities in acts, in which case it is adhered to.

وَأَمَّا اجْتِهَادُ الدُّعَاءِ فِي السُّجُودِ وَقَوْلُ «سُبُّوحٌ قُدُّوسٌ رَبُّ الْمَلَائِكَةِ وَالرُّوحِ» فَزِيَادَةُ خَيْرٍ، وَحَسَنَةٌ لِمَنْ فَعَلَهَا مَعَ الَّذِي أُمِرَ بِهِ مِنْ التَّسْبِيحِ وَفَرَّقَ مَالِكٌ بَيْنَ مَنْ أَسْقَطَ تَكْبِيرَتَيْنِ وَبَيْنَ مَنْ أَسْقَطَ ثَلَاثَ تَكْبِيرَاتٍ. وَهَذَا قَوْلٌ بِلَا دَلِيلٍ أَصْلًا. وَقَدْ ذَكَرْنَا بُطْلَانَ قَوْلِ مَنْ فَرَّقَ بَيْنَ الْعَمَلِ الْقَلِيلِ وَالْكَثِيرِ فِي الصَّلَاةِ بِرَأْيِهِ وَبَيَّنَّا أَنَّهُ قَوْلٌ فَاسِدٌ، لِأَنَّهُ لَا كَثِيرَ إلَّا وَهُوَ قَلِيلٌ بِالْإِضَافَةِ إلَى مَا هُوَ أَكْثَرُ مِنْهُ، وَلَا قَلِيلَ إلَّا وَهُوَ كَثِيرٌ بِالْإِضَافَةِ إلَى مَا هُوَ أَقَلُّ مِنْهُ، وَإِنَّ الْعَمَلَ الْوَاجِبَ فَتَرْكُ قَلِيلِهِ وَتَرْكُ كَثِيرِهِ سَوَاءٌ فِي مُخَالَفَةِ أَمْرِ اللَّهِ عَزَّ وَجَلَّ، وَإِنَّ الْعَمَلَ الْمُحَرَّمَ فَكَثِيرُهُ وَقَلِيلُهُ سَوَاءٌ فِي ارْتِكَابِ الْمُحَرَّمِ، وَإِنَّ الْمُبَاحَ قَلِيلُهُ وَكَثِيرُهُ مُبَاحٌ وَمَا عَدَا هَذَا فَبَاطِلٌ لَا خَفَاءَ بِهِ؛ إلَّا أَنْ يَأْتِيَ نَصٌّ بِالْفَرْقِ بَيْنَ الْمَقَادِيرِ فِي الْأَعْمَالِ فَيُوقَفُ عِنْدَهُ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا سُوَيْدُ بْنُ نَصْرٍ أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ مَالِكِ بْنِ أَنَسٍ عَنْ ابْنِ شِهَابٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ إذَا افْتَتَحَ الصَّلَاةَ رَفَعَ يَدَيْهِ حَذْوَ مَنْكِبَيْهِ، وَإِذَا كَبَّرَ لِلرُّكُوعِ وَإِذَا رَفَعَ رَأْسَهُ مِنْ الرُّكُوعِ رَفَعَهُمَا أَيْضًا كَذَلِكَ وَقَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ رَبَّنَا وَلَكَ الْحَمْدُ» . وَرُوِّينَا أَيْضًا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ مَالِكٍ بِإِسْنَادِهِ نَحْوَهُ وَمِنْ

Abdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb informed us: Suwayd ibn Naṣr informed us: ʿAbdullāh ibn al-Mubārak reported from Mālik ibn Anas from Ibn Shihāb from Sālim ibn ʿAbdillāh ibn ʿUmar from his father: “When commencing prayer, the

[58] **Hadith references (L6422):** Sahih al-Bukhari 805; Sahih al-Bukhari 732; Sahih al-Bukhari 1114; Sunan Ibn Majah 3899.

[59] **Qur’an references (L6422):** Qur’an 56:74 (Al-Waqi’ah); Qur’an 56:96 (Al-Waqi’ah); Qur’an 69:52 (Al-Haqqah); Qur’an 87:1 (Al-A’la).

Messenger of Allah—peace and blessings of Allah be upon him—would raise his hands level with his shoulders. He would also raise them when pronouncing the *takbīr* for bowing and when raising his head from bowing, saying: *'Allah hears those who praise Him. Our Lord, to You is all praise.'*" We also received the same report via Yaḥyā ibn Saʿīd al-Qaṭṭān from Mālik with this chain, and through ʿAbdullāh ibn Abī Awfā and Abū Saʿīd al-Khudrī—all traced back to the Messenger of Allah—peace and blessings of Allah be upon him.

ʿAbd al-Raḥmān ibn ʿAbdillāh ibn Khālid narrated to us: Ibrāhīm ibn Aḥmad narrated to us: al-Farabrī narrated to us: al-Bukhārī narrated to us: Abū al-Yamān informed us: Shuʿayb ibn Abī Ḥamzah reported from al-Zuhrī: Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām and Abū Salamah ibn ʿAbd al-Raḥmān informed me that Abū Hurayrah would pronounce *takbīr* in every obligatory and voluntary prayer during Ramadan and otherwise. He would pronounce *takbīr* upon standing, then upon bowing, then say: *"Allah hears those who praise Him,"* followed by: *"Our Lord, to You is all praise"*—and the narration continues—Abū Hurayrah then declared: *"By the One in Whose Hand is my soul, I am the closest among you in resembling the prayer of the Messenger of Allah—peace and blessings of Allah be upon him—and this remained his prayer until he departed this world."*

طَرِيقِ عَبْدِ اللَّهِ بْنِ أَبِي أَوْفَى وَأَبِي سَعِيدٍ الْخُدْرِيِّ أَيْضًا مُسْنَدًا إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَبُو الْيَمَانِ أَنَا شُعَيْبٌ هُوَ ابْنُ أَبِي حَمْزَةَ - عَنْ الزُّهْرِيِّ أَخْبَرَنِي أَبُو بَكْرِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ " أَنَّ أَبَا هُرَيْرَةَ كَانَ يُكَبِّرُ فِي كُلِّ صَلَاةٍ مِنْ الْمَكْتُوبَةِ وَغَيْرِهَا، فِي رَمَضَانَ وَغَيْرِهِ، فَيُكَبِّرُ حِينَ يَقُومُ، ثُمَّ يُكَبِّرُ حِينَ يَرْكَعُ، ثُمَّ يَقُولُ: " سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ، ثُمَّ يَقُولُ: رَبَّنَا وَلَكَ الْحَمْدُ، - وَذَكَرَ الْحَدِيثَ وَفِيهِ -: ثُمَّ يَقُولُ أَبُو هُرَيْرَةَ " وَالَّذِي نَفْسِي بِيَدِهِ، إِنِّي لَأَقْرَبُكُمْ شَبَهًا بِصَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنْ كَانَتْ هَذِهِ لَصَلَاتُهُ حَتَّى فَارَقَ الدُّنْيَا ".

L6425–6430

This is the final practice of the Messenger of Allah—peace and blessings be upon him—which the Malikis abandoned based on opinion without any transmitted narration whatsoever. Their only basis is his statement—peace be upon him: "When he says: 'Allah hears those who praise Him,' say: 'Our Lord, to You is all praise.'" Ali said: This offers no evidence for them, for the Prophet—peace be upon him—did not prohibit the Imam in this narration from saying "Our Lord, to You is all praise," nor did he prohibit the congregant from saying "Allah hears those who praise Him." Thus, this narration contains no proof for their claim regarding uttering or omitting these phrases. Therefore, the ruling must be sought from other narrations. It is authentically established that the Messenger of Allah—peace and blessings be upon him—would say while leading as Imam: "Our Lord, to You is all

فَهَذَا آخِرُ عَمَلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَرَكَهُ الْمَالِكِيُّونَ بِرَأْيٍ لَا بِخَبَرٍ أَصْلًا، وَمَا لَهُمْ مُتَعَلَّقٌ إلَّا قَوْلُهُ - عَلَيْهِ السَّلَامُ - «وَإِذَا قَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ، فَقُولُوا: رَبَّنَا وَلَكَ الْحَمْدُ» . قَالَ عَلِيٌّ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَمْنَعْ الْإِمَامَ فِي هَذَا الْخَبَرِ مِنْ أَنْ يَقُولَ: رَبَّنَا وَلَك الْحَمْدُ وَلَا مَنَعَ الْمَأْمُومَ مِنْ أَنْ يَقُولَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ، فَلَا حُجَّةَ فِي هَذَا الْخَبَرِ فِي قَوْلِهِمَا لِذَلِكَ، وَلَا فِي تَرْكِهِمَا لِقَوْلِ ذَلِكَ، فَوَجَبَ طَلَبُ حُكْمِ ذَلِكَ مِنْ أَحَادِيثَ أُخَرَ. وَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَقُولُ وَهُوَ إمَامٌ: رَبَّنَا وَلَكَ الْحَمْدُ، وَأَنَّهُ عَمِلَهُ إلَى أَنْ مَاتَ، فَبَطَلَ

praise," and that this remained his practice until his death. This invalidates the view of all who oppose it, and it was likewise the practice of the Salaf.

Hammam narrated to us: Ibn Mufarrij narrated to us: Ibn al-A'rabi narrated to us: al-Dabari narrated to us: 'Abd al-Razzaq narrated from Ibn Jurayj, who reported from Nafi': When 'Abdullah ibn 'Umar led as Imam, he would say: "Allah hears those who praise Him. O Allah, our Lord, to You is abundant praise," then prostrate without fail. Through the same chain to Ibn Jurayj: Isma'il ibn Umayya narrated from Sa'id ibn Abi Sa'id al-Maqburi: He heard Abu Hurayra—while leading people in prayer—say: "Allah hears those who praise Him. O Allah, our Lord, to You is abundant praise," raising his voice, and we would follow him in unison. We also have narrations transmitted from 'Ali ibn Abi Talib and Ibn Mas'ud to the same effect.

Through the aforementioned chain to Ibn Jurayj: 'Ata' said: If you are with the Imam and he says "Allah hears those who praise Him," then if you say it, that is good; if not, it suffices. But combining both phrases with the Imam is preferable to me. Ali said: This is the view of al-Shafi'i. As for Abu Hanifa, he held that the Imam says "Our Lord, to You is all praise," while the congregant does not say "Allah hears those who praise Him." Ali said: He made a distinction without proof. If he relied on the Prophet's statement—peace be upon him—"When he says: 'Allah hears those who praise Him,' say: 'Our Lord, to You is all praise,'" this is contradictory, for this narration does not mention the Imam saying "Our Lord, to You is all praise." If it is said: "It has been authentically established that he—peace be upon him—used to say it while acting as an imam," we respond: "It has also been authentically established that the Messenger of Allah—peace and blessings be upon him—taught the prayer. Within this teaching, it is to be said: 'Allah hears those who praise Him,' without specifying this for a congregant over an imam, or for one praying alone." Ali said: "As for the statement 'Amin,' the imam and the one praying alone say it as a recommended Sunnah, while the congregant must say it as an obligation without exception." Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul-Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn Al-Hajjaj narrated to us: Yahya ibn Yahya said: "I recited to Malik

قَوْلُ كُلِّ مَنْ خَالَفَ ذَلِكَ، وَهُوَ أَيْضًا عَمَلُ السَّلَفِ. حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي نَافِعٌ: أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ كَانَ إِذَا كَانَ إِمَامًا قَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ اللَّهُمَّ رَبَّنَا لَك الْحَمْدُ كَثِيرًا، ثُمَّ يَسْجُدُ لَا يُخْطِئُهُ. وَبِهِ إِلَى ابْنِ جُرَيْجٍ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ. أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ وَهُوَ إِمَامٌ لِلنَّاسِ فِي الصَّلَاةِ يَقُولُ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ اللَّهُمَّ رَبَّنَا لَك الْحَمْدُ كَثِيرًا، يَرْفَعُ بِذَلِكَ صَوْتَهُ وَنُتَابِعُهُ مَعًا. وَرُوِّينَا أَيْضًا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَابْنِ مَسْعُودٍ نَحْوَ ذَلِكَ. وَبِالسَّنَدِ الْمَذْكُورِ إِلَى ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: إِنْ كُنْت مَعَ الْإِمَامِ فَقَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ، فَإِنْ قُلْتَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ، فَحَسَنٌ، وَإِنْ لَمْ تَقُلْهَا فَقَدْ أَجْزَأَ عَنْكَ، وَإِنْ تَجْمَعْهُمَا مَعَ الْإِمَامِ أَحَبُّ إِلَيَّ قَالَ عَلِيٌّ: وَهُوَ قَوْلُ الشَّافِعِيِّ. وَأَمَّا أَبُو حَنِيفَةَ فَإِنَّهُ قَالَ يَقُولُ الْإِمَامُ: رَبَّنَا وَلَكَ الْحَمْدُ، وَلَا يَقُولُ الْمَأْمُومُ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ. قَالَ عَلِيٌّ: فَفَرَّقَ بِلَا دَلِيلٍ، فَإِنْ كَانَ تَعَلَّقَ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «وَإِذَا قَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ فَقُولُوا: رَبَّنَا وَلَكَ الْحَمْدُ» فَقَدْ تَنَاقَضَ، لِأَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ قَوْلُ الْإِمَامِ: رَبَّنَا وَلَكَ الْحَمْدُ فَإِنْ قَالَ: قَدْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يَقُولُهَا وَهُوَ إِمَامٌ، قُلْنَا: وَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَّمَ الصَّلَاةَ. وَفِيهَا أَنْ يُقَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ، وَلَمْ يَخُصَّ بِذَلِكَ مَأْمُومًا مِنْ إِمَامٍ، مِنْ مُنْفَرِدٍ. قَالَ عَلِيٌّ: وَأَمَّا قَوْلُ: آمِينَ فَإِنَّهُ كَمَا ذَكَرْنَا يَقُولُهُ الْإِمَامُ وَالْمُنْفَرِدُ نَدْبًا وَسُنَّةً، وَيَقُولُهَا الْمَأْمُومُ فَرْضًا وَلَا بُدَّ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ أَنَا يَحْيَى بْنُ يَحْيَى قَالَ: قَرَأْتُ عَلَى مَالِكٍ عَنِ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ أَنَّهُمَا أَخْبَرَاهُ عَنْ أَبِي هُرَيْرَةَ: أَنَّ

from Ibn Shihab from Sa‘id ibn Al-Musayyib and Abu Salamah ibn Abdur-Rahman, who both informed him from Abu Hurairah that the Messenger of Allah—peace and blessings be upon him—said: ’When the imam says ”Amin,“ say ”Amin,“ for whoever’s ”Amin“ coincides with that of the angels will have his past sins forgiven.”’ Ibn Shihab said: “The Messenger of Allah—peace and blessings be upon him—used to say: ’Amin.”’ Abdullah ibn Rabi‘ narrated to us: Muhammad ibn Ishaq narrated to us: Ibn Al-A‘rabi narrated to us: Abu Dawud narrated to us: Nasr ibn Ali Al-Jahdhami narrated to us: Safwan ibn Isa narrated to us from Bishr ibn Rafi‘ from Abu Abdullah, the cousin of Abu Hurairah, from Abu Hurairah, who said: “When the Messenger of Allah—peace and blessings be upon him—recited to them, ’...not of those who have incurred wrath nor of those who have gone astray’ (1:7), he would say ’Amin’ loudly enough for those in the first row to hear.” Muhammad ibn Sa‘id ibn Nubat narrated to us: Abdullah ibn Nasr narrated to us: Qasim ibn Asbagh narrated to us: Ibn Waddah narrated to us: Musa ibn Mu‘awiyah narrated to us: Waki‘ narrated to us: Sufyan Ath-Thawri narrated to us from Asim Al-Ahwal from Abu Uthman An-Nahdi: “Bilal said to the Messenger of Allah—peace and blessings be upon him—’O Messenger of Allah, do not say ”Amin“ before me.”’ Through the same chain via Waki‘: Sufyan Ath-Thawri narrated from Salamah ibn Kuhayl from Hujr ibn Anbas from... Wa’il ibn Hujr said: “I heard the Messenger of Allah (peace and blessings of Allah be upon him) recite ‘nor of those who have gone astray’ and then say ‘Amin,’ prolonging his voice with it.” Ali (may Allah be pleased with him) said: “These are mass-transmitted reports from the Messenger of Allah (peace and blessings of Allah be upon him) that he would say ‘Amin’ while leading the prayer, and those behind him would hear it. This was the practice of the Salaf, as narrated to us by Humam, who narrated from Ibn Mufarrij, who narrated from Ibn al-A‘rabi, who narrated from al-Dabari, who narrated from ‘Abd al-Razzaq, from Ibn Jurayj, who said: I asked ‘Ata’: Did Ibn al-Zubayr say ‘Amin’ after the Mother of the Quran? He replied: Yes, and those behind him would say ‘Amin,’ until the mosque would resound with clamor.” ‘Ata’ said: “Abu Hurayrah (may Allah be pleased with him) would enter the mosque after the Imam had already stood before him and would call out: Do not say ‘Amin’ before me!” ‘Ata’ said: “I used to hear the Imams themselves saying

رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا أَمَّنَ الْإِمَامُ فَأَمِّنُوا فَإِنَّهُ مَنْ وَافَقَ تَأْمِينُهُ تَأْمِينَ الْمَلَائِكَةِ غُفِرَ لَهُ مَا تَقَدَّمَ مِنْ ذَنْبِهِ» . قَالَ ابْنُ شِهَابٍ " كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: آمِينَ ". حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا نَصْرُ بْنُ عَلِيٍّ هُوَ الْجَهْضَمِيُّ - ثنا صَفْوَانُ بْنُ عِيسَى عَنْ بِشْرِ بْنِ رَافِعٍ عَنْ أَبِي عَبْدِ اللَّهِ ابْنِ عَمِّ أَبِي هُرَيْرَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا تَلَا عَلَيْهِمْ {غَيْرِ الْمَغْضُوبِ عَلَيْهِمْ وَلا الضَّالِّينَ} [الفاتحة: ٧] قَالَ: آمِينَ، حَتَّى يَسْمَعَ مَنْ يَلِيهِ مِنَ الصَّفِّ الْأَوَّلِ» . حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ ثنا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ ثنا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعٌ ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ عَاصِمٍ الْأَحْوَلِ عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ «أَنَّ بِلَالًا قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَا رَسُولَ اللَّهِ لَا تَسْبِقْنِي بِآمِينَ» . وَبِهِ إِلَى وَكِيعٍ: حَدَّثَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ حُجْرِ بْنِ عَنْبَسٍ عَنْ وَائِلِ بْنِ حُجْرٍ قَالَ «سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَرَأَ: وَلَا الضَّالِّينَ فَقَالَ آمِينَ يَمُدُّ بِهَا صَوْتَهُ» . قَالَ عَلِيٌّ: فَهَذِهِ آثَارٌ مُتَوَاتِرَةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّهُ كَانَ يَقُولُ: " آمِينَ " وَهُوَ إِمَامٌ فِي الصَّلَاةِ، يَسْمَعُهَا مَنْ وَرَاءَهُ، وَهُوَ عَمَلُ السَّلَفِ كَمَا حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: أَكَانَ ابْنُ الزُّبَيْرِ يُؤَمِّنُ عَلَى إِثْرِ أُمِّ الْقُرْآنِ؟ قَالَ: نَعَمْ، وَيُؤَمِّنُ مَنْ وَرَاءَهُ، حَتَّى إِنْ لِلْمَسْجِدِ لَلُجَّةً. قَالَ عَطَاءٌ: وَكَانَ أَبُو هُرَيْرَةَ يَدْخُلُ الْمَسْجِدَ وَقَدْ قَامَ الْإِمَامُ قَبْلَهُ فَيَقُولُ وَيُنَادِيهِ: لَا تَسْبِقْنِي بِآمِينَ. قَالَ عَطَاءٌ: وَلَقَدْ كُنْت أَسْمَعُ الْأَئِمَّةَ يَقُولُونَ هُمْ أَنْفُسُهُمْ عَلَى إِثْرِ أُمِّ الْقُرْآنِ " آمِينَ " هُمْ وَمَنْ وَرَاءَهُمْ حَتَّى إِنْ لِلْمَسْجِدِ لَلُجَّةً. قَالَ عَلِيٌّ: اللُّجَّةُ، الْجَلَبَةُ،

‘Amin’ after the Mother of the Quran, along with those behind them, until the mosque would resound with clamor.” Ali (may Allah be pleased with him) said: “Al-Lujjah means clamor. This chain extends through him to ‘Abd al-Razzaq, who narrated from Ma‘mar, who narrated from Yahya ibn Abi Kathir, who narrated from Abu Salamah ibn ‘Abd al-Rahman ibn ‘Awf, from Abu Hurayrah (may Allah be pleased with him): He was the caller to prayer for al-‘Ala’ ibn al-Hadrami in Bahrain, and he stipulated that he should not precede him in saying ‘Amin.’” We have also been narrated from ‘Abd al-Rahman ibn Abi Layla that ‘Umar ibn al-Khattab (may Allah be pleased with him) said: “The Imam says silently four things: seeking refuge, ‘In the name of Allah, the Most Gracious, the Most Merciful,’ ‘Amin,’ and ‘Our Lord, to You is all praise.’” From Alqamah and al-Aswad, both on the authority of Ibn Mas‘ud (may Allah be pleased with him), who said: “The Imam says silently three things: seeking refuge, ‘In the name of Allah, the Most Gracious, the Most Merciful,’ and ‘Amin.’” From ‘Ikrimah: “I encountered people when they would raise a clamor with ‘Amin.’” Ali (may Allah be pleased with him) said: “This was the practice of the Companions (may Allah be pleased with them).”[60][61]

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ: أَنَّهُ كَانَ مُؤَذِّنًا لِلْعَلَاءِ بْنِ الْحَضْرَمِيِّ بِالْبَحْرَيْنِ فَاشْتَرَطَ عَلَيْهِ أَنْ لَا يَسْبِقَهُ بِآمِينَ. وَرُوِّينَا عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: يُخْفِي الْإِمَامُ أَرْبَعًا: " التَّعَوُّذُ " " وَبِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ " " وَآمِينَ " " وَرَبَّنَا لَكَ الْحَمْدُ ". وَعَنْ عَلْقَمَةَ وَالْأَسْوَدِ كِلَيْهِمَا عَنْ ابْنِ مَسْعُودٍ قَالَ: يُخْفِي الْإِمَامُ ثَلَاثًا: التَّعَوُّذُ، " وَبِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ " " وَآمِينَ ". وَعَنْ عِكْرِمَةَ: لَقَدْ أَدْرَكْتُ النَّاسَ وَلَهُمْ ضَجَّةٌ بِآمِينَ. قَالَ عَلِيٌّ: فَهَذَا عَمَلُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L6431–6434

As for Ahmad, Isḥāq, Dāwūd, and the majority of ḥadīth scholars, they uphold raising the voice in saying “Āmīn” for both the Imam and congregants—and this is our position—because what is authentically established from Allah’s Messenger (peace and blessings be upon him) is audible recitation. Sufyān al-Thawrī and Abū Ḥanīfah held that the Imam should say it silently, having adhered to emulating ‘Umar ibn al-Khaṭṭāb and Ibn Mas‘ūd (may Allah be pleased with both of them). Yet no argument holds for anyone against Allah’s Messenger (peace and blessings be upon him). Mālik held that congregants should say “Āmīn” while the Imam does not. ‘Alī said: “This view is definitively unknown from any Companion (may Allah be pleased with them). Indeed, we do not recognize it from any Follower either, nor do they possess any evidence whatsoever for this prohibition.” However, some ex-

فَأَمَّا أَحْمَدُ وَإِسْحَاقُ، وَدَاوُد وَجُمْهُورُ أَصْحَابِ الْحَدِيثِ فَيَرَوْنَ الْجَهْرَ بِهَا لِلْإِمَامِ، وَالْمَأْمُومِ، وَبِهِ نَقُولُ، لِأَنَّ الثَّابِتَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: الْجَهْرُ. وَقَالَ سُفْيَانُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ: يَقُولُهَا الْإِمَامُ سِرًّا - ذَهَبُوا إِلَى تَقْلِيدِ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ مَسْعُودٍ - رَضِيَ اللَّهُ عَنْهُمَا - وَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَذَهَبَ مَالِكٌ إِلَى أَنْ يَقُولَ الْمَأْمُومُ " آمِينَ " وَلَا يَقُولُهَا الْإِمَامُ. قَالَ عَلِيٌّ: وَهَذَا قَوْلٌ لَا يُعْلَمُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - قَطْعًا، نَعَمْ، وَلَا نَعْرِفُهُ عَنْ أَحَدٍ مِنْ التَّابِعِينَ، وَلَا حُجَّةَ لَهُمْ أَصْلًا فِي الْمَنْعِ مِنْ ذَلِكَ. إلَّا أَنَّ بَعْضَ الْمُمْتَحِنِينَ بِتَقْلِيدِهِ قَالَ: إنَّ سُمَيًّا مَوْلَى أَبِي بَكْرٍ، وَسُهَيْلَ بْنَ أَبِي صَالِحٍ رَوَيَا كِلَاهُمَا عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إذَا قَالَ الْقَارِئُ: {غَيْرِ الْمَغْضُوبِ

[60] **Hadith references (L6426):** Sahih al-Bukhari 805; Sahih al-Bukhari 732; Sahih al-Bukhari 1114; Sahih al-Bukhari 780; Sunan an-Nasai 928; Sunan Abi Dawud 936.

[61] **Qur’an references (L6426):** Qur’an 1:7 (Al-Fatihah).

amined due to their emulation argued: “Sumayy, freedman of Abū Bakr, and Suhayl ibn Abī Ṣāliḥ both narrated from Abū Ṣāliḥ from Abū Hurayrah that Allah’s Messenger (peace and blessings be upon him) said: ‘When the reciter says, ”Not of those who incurred wrath nor the astray“ (1:7), and those behind him say ”Āmīn“—coinciding with the inhabitants of the heavens—his prior sins are forgiven.’” This is Suhayl’s wording. As for Sumayy’s version, he stated: “When the Imam recites, ‘Not of those who incurred wrath nor the astray’ (1:7), say ‘Āmīn.’” They claimed this indicates the Imam does not say “Āmīn.” ‘Alī responded: “This represents the height of detestable argumentation, citing a ḥadīth lacking a ruling established elsewhere to negate it. Nothing could more effectively abolish Islam’s laws than this approach, for not every injunction appears in every verse or ḥadīth. How astonishing that they cite Abū Ṣāliḥ’s failure to narrate the wording transmitted by Sa‘īd ibn al-Musayyab and Abū Salamah from Abū Hurayrah! Even if Sa‘īd alone reported it, he would equate to a group like Abū Ṣāliḥ. Moreover, Abū Ṣāliḥ’s narration nowhere states the Imam refrains from saying ”Āmīn“—thus their deceptive obfuscation through this report is invalidated.” Some claimed: “The meaning of the Prophet’s statement (peace be upon him), ‘When the Imam says ”Āmīn,“ say ”Āmīn,“’ is that when he recites ‘Not of those who incurred wrath nor the astray’ (1:7)...” ‘Alī retorted: “To this we say: You have lied against Allah’s Messenger (peace and blessings be upon him) and ascribed to him falsehood he never spoke.” Upon him be peace—concerning himself, and you reported about his intended meaning through slander, and distorted words from their proper positions without proof. None among Arabic linguists has ever stated that the phrase {not of those who incurred wrath nor of the astray} [Al-Fatihah:7] is termed “saying Amin.” Thus, he defended his corrupt opinion with another calamitous error by claiming: “It has been narrated that Allah’s statement to Moses and Aaron—peace be upon them both—{Your supplication has been answered} [Yunus:89] means Moses would supplicate while Aaron said Amin.” Ali said: “This is more grievous and bitter. If only I knew where he found this narration, or who conveyed it to him from Moses and Aaron—peace be upon them both! It is merely an unsourced statement of unknown origin. Even if it were authentically established, it would constitute no proof whatsoever, for linguistically, the

عَلَيْهِمْ وَلا الضَّالِّينَ} [الفاتحة: ٧] فَقَالَ مَنْ خَلْفَهُ آمِينَ فَوَافَقَ قَوْلُهُ قَوْلَ أَهْلِ السَّمَاءِ غُفِرَ لَهُ مَا تَقَدَّمَ مِنْ ذَنْبِهِ» . هَذَا لَفْظُ سُهَيْلٍ. وَأَمَّا لَفْظُ سُمَيٍّ فَإِنَّهُ قَالَ «إِذَا قَالَ الْإِمَامُ: {غَيْرِ الْمَغْضُوبِ عَلَيْهِمْ وَلا الضَّالِّينَ} [الفاتحة: ٧] فَقُولُوا: آمِينَ» . قَالَ: فَلَيْسَ فِي هَذَا تَأْمِينُ الْإِمَامِ. قَالَ عَلِيٌّ: وَهَذَا غَايَةُ الْمَقْتِ فِي الِاحْتِجَاجِ، إِذْ ذَكَرُوا حَدِيثًا لَيْسَ فِيهِ شَرِيعَةٌ قَدْ ذُكِرَتْ فِي حَدِيثٍ آخَرَ، فَرَامُوا إِسْقَاطَهَا بِذَلِكَ، وَلَا شَيْءَ فِي إِسْقَاطِ جَمِيعِ شَرَائِعِ الْإِسْلَامِ أَقْوَى مِنْ هَذَا الْعَمَلِ؛ فَإِنَّهُ لَمْ تُذْكَرْ كُلُّ شَرِيعَةٍ فِي كُلِّ آيَةٍ، وَلَا فِي كُلِّ حَدِيثٍ، ثُمَّ مِنْ الْعَجَبِ احْتِجَاجُهُمْ بِأَبِي صَالِحٍ فِي أَنَّهُ لَمْ يَرْوِ عَنْ أَبِي هُرَيْرَةَ لَفْظًا رَوَاهُ سَعِيدُ بْنُ الْمُسَيَّبِ، وَأَبُو سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ. وَلَوْ انْفَرَدَ سَعِيدٌ لَكَانَ يَعْدِلُ جَمَاعَةً مِثْلَ أَبِي صَالِحٍ فَكَيْفَ وَلَيْسَ فِي رِوَايَةِ أَبِي صَالِحٍ: أَنْ لَا يَقُولَ الْإِمَامُ " آمِينَ " فَبَطَلَ تَمْوِيهُهُمْ بِهَذَا الْخَبَرِ، وَقَالَ بَعْضُهُمْ: إنْ مَعْنَى قَوْلِهِ - عَلَيْهِ السَّلَامُ - «إذَا أَمَّنَ الْإِمَامُ فَأَمِّنُوا» إنَّمَا مَعْنَاهُ إذَا قَالَ {غَيْرِ الْمَغْضُوبِ عَلَيْهِمْ وَلا الضَّالِّينَ} [الفاتحة: ٧] قَالَ عَلِيٌّ: فَيُقَالُ لَهُ: كَذَبْتَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقُلْتَ عَلَيْهِ الْبَاطِلَ الَّذِي لَمْ يَقُلْهُ - عَلَيْهِ السَّلَامُ - عَنْ نَفْسِهِ، وَأَخْبَرْت عَنْ مُرَادِهِ بِالْإِفْكِ، وَحَرَّفْت الْكَلِمَ عَنْ مَوَاضِعِهِ بِلَا بُرْهَانٍ، وَمَا قَالَ قَطُّ أَحَدٌ مِنْ أَهْلِ اللُّغَةِ أَنَّ قَوْلَ {غَيْرِ الْمَغْضُوبِ عَلَيْهِمْ وَلا الضَّالِّينَ} [الفاتحة: ٧] يُسَمَّى تَأْمِينًا فَاحْتَجَّ لِقَوْلِهِ الْفَاسِدِ بِطَامَّةٍ أُخْرَى وَهِيَ: أَنَّهُ قَالَ: قَدْ جَاءَ أَنَّ مَعْنَى قَوْلِ اللَّهِ تَعَالَى لِمُوسَى وَهَارُونَ - عَلَيْهِمَا السَّلَامُ - {قَدْ أُجِيبَتْ دَعْوَتُكُمَا} [يونس: ٨٩] أَنَّهُ كَانَ مُوسَى يَدْعُو وَهَارُونُ يُؤَمِّنُ. قَالَ عَلِيٌّ: وَهَذَا أَدْهَى وَأَمَرُّ لَيْتَ شِعْرِي أَيْنَ وَجَدَ هَذِهِ الرِّوَايَةَ، أَوْ مَنْ بَلَّغَهُ إلَى مُوسَى، وَهَارُونَ - عَلَيْهِمَا السَّلَامُ - وَإِنَّمَا هُوَ قَوْلُ قَائِلٍ لَا يُدْرَى مِنْ أَيْنَ قَالَهُ، ثُمَّ لَوْ صَحَّ يَقِينًا لَمَا كَانَ لَهُ فِيهِ

one saying Amin is undoubtedly a supplicant, as the meaning of 'Amin' is 'O Allah, grant this.' Thus, saying Amin is unquestionably valid supplication. The supplicant is never termed 'Amin-sayer,' nor is supplication called 'Amin' unless the word itself is uttered. Every Amin is supplication, but not every supplication is Amin. How can this hold when it is authentically established that the Prophet—may Allah's blessings and peace be upon him—would say Amin while being the Imam? This exemplifies their unique deviation from the Companions—may Allah be pleased with them—and the majority of early scholars, following their own opinions with no evidence whatsoever. Success comes solely from Allah, the Exalted."[62]

L6435–6437 As for prostration: if someone permits prostration on the bulk of a turban, we would question them about a turban whose bulk equals a finger's thickness, then two fingers, until we escalate it to two cubits, three cubits, or more—thereby reaching a conclusion no one would endorse. Then we reduce it from a finger's thickness to a single layer of a legally compliant turban and oblige them to maintain parted hair [for valid ablution], though they cannot achieve this. Our position aligns with the majority of the early generations (Salaf). As narrated through Shu'bah's chain from al-A'mash: I heard Zayd ibn Wahb say: Hudhayfah saw a man neglecting proper bowing and prostration, so he told him, "You have not prayed. If you were to die, you would die deviating from the natural disposition Allah instilled in Muhammad—peace and blessings be upon him." From Ibn Mas'ud: he observed two men praying—one letting his garment trail excessively, and the other failing to complete his prayer. He does not properly perform his bowing nor complete his prostration. He said: As for the one who lets his garment drag, Allah does not look at him, and as for the other, Allah does not accept his prayer. Ali said: Whoever Allah the Exalted does not look upon in any deed, that deed is undoubtedly unacceptable. Since it is unacceptable, it is certainly not accepted. From Al-Miswar ibn Makhramah: He saw a man who neither completed his bowing nor his prostration, so he said to him: O thief, repeat the prayer! By Allah, you shall repeat it! He persisted until he

[62] **Qur'an references (L6432):** Qur'an 1:7 (Al-Fatihah); Qur'an 10:89 (Yunus).

حُجَّةٌ أَصْلًا، لِأَنَّ الْمُؤَمِّنَ فِي اللُّغَةِ دَاعٍ بِلَا شَكٍّ، لِأَنَّ مَعْنَى " آمِينَ " اللَّهُمَّ افْعَلْ ذَلِكَ فَالتَّأْمِينُ دُعَاءٌ صَحِيحٌ بِلَا شَكٍّ، وَلَا يُسَمَّى الدَّاعِي مُؤَمِّنًا أَصْلًا، وَلَا يُسَمَّى الدُّعَاءُ تَأْمِينًا حَتَّى يَلْفِظَ بِآمِينَ: فَكُلُّ تَأْمِينٍ دُعَاءٌ، وَلَيْسَ كُلُّ دُعَاءٍ تَأْمِينًا. فَكَيْفَ وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ كَانَ يَقُولُ: آمِينَ، وَهُوَ الْإِمَامُ، وَهَذَا مِمَّا انْفَرَدُوا بِهِ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَجُمْهُورِ السَّلَفِ بِرَأْيِهِمْ بِلَا بُرْهَانٍ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا السُّجُودُ - فَإِنَّ مَنْ أَجَازَ السُّجُودَ عَلَى كَوْرِ الْعِمَامَةِ سَأَلْنَاهُ عَنْ عِمَامَةٍ غِلَظُ كَوْرِهَا إصْبَعٌ، ثُمَّ إصْبَعَانِ، إلَى أَنْ نُبْلِغَهُ إلَى ذِرَاعَيْنِ وَثَلَاثٍ وَأَكْثَرَ، فَيَخْرُجُ إلَى مَا لَا يَقُولُ بِهِ أَحَدٌ، ثُمَّ نَحُطُّهُ مِنْ الْإِصْبَعِ إلَى طَيَّةٍ وَاحِدَةٍ مِنْ عِمَامَةِ شَرِبَ وَكَلَّفْنَاهُ الْفَرْقَ، وَلَا سَبِيلَ لَهُ إلَيْهِ. وَبِقَوْلِنَا يَقُولُ جُمْهُورُ السَّلَفِ. كَمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ الْأَعْمَشِ قَالَ: سَمِعْت زَيْدَ بْنَ وَهْبٍ قَالَ: رَأَى حُذَيْفَةُ رَجُلًا لَا يُتِمُّ الرُّكُوعَ وَلَا السُّجُودَ، فَقَالَ لَهُ حُذَيْفَةُ: مَا صَلَّيْت، وَلَوْ مِتَّ مِتَّ عَلَى غَيْرِ الْفِطْرَةِ الَّتِي فَطَرَ اللَّهُ مُحَمَّدًا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَيْهَا وَعَنْ ابْنِ مَسْعُودٍ - أَنَّهُ رَأَى رَجُلَيْنِ يُصَلِّيَانِ أَحَدُهُمَا مُسَبِّلٌ إزَارَهُ، وَالْآخَرُ لَا يُتِمُّ رُكُوعَهُ وَلَا يُتِمُّ سُجُودَهُ، فَقَالَ: أَمَّا الْمُسَبِّلُ إزَارَهُ فَلَا يَنْظُرُ اللَّهُ إلَيْهِ وَأَمَّا الْآخَرُ فَلَا يَقْبَلُ اللَّهُ صَلَاتَهُ. قَالَ عَلِيٌّ: مَنْ لَمْ يَنْظُرْ اللَّهُ تَعَالَى إلَيْهِ فِي عَمَلٍ مَا، فَذَلِكَ الْعَمَلُ بِلَا شَكٍّ غَيْرُ مَرْضِيٍّ؛ وَإِذْ هُوَ غَيْرُ مَرْضِيٍّ فَهُوَ يَقِينًا غَيْرُ مَقْبُولٍ، وَعَنْ الْمِسْوَرِ بْنِ مَخْرَمَةَ: أَنَّهُ رَأَى رَجُلًا لَا يُتِمُّ رُكُوعَهُ وَلَا سُجُودَهُ، فَقَالَ لَهُ: يَا سَارِقُ، أَعِدْ الصَّلَاةَ، وَاَللَّهِ لَتُعِيدَنَّ، فَلَمْ يَزَلْ حَتَّى أَعَادَهَا، وَعَنْ ابْنِ عَبَّاسٍ: إذَا سَجَدْت فَأَلْصِقْ أَنْفَك بِالْأَرْضِ وَعَنْ عَبْدِ

made him repeat it. From Ibn Abbas: When you prostrate, press your nose to the ground. From Abd al-Rahman ibn Abi Layla, who said to someone he saw praying: Did your nose touch the ground? From Sa'id ibn Jubayr: If you do not place your nose with your forehead, that prostration is not accepted from you. This is the opinion of Al-Shafi'i, Abu Sulayman, Ahmad, and others. Through Waki' from Zayd ibn Ibrahim from Muhammad ibn Sirin: He disliked prostrating on the folded part of the turban. From Mahmud ibn al-Rabi' from 'Ubadah ibn al-Samit: When he stood in prayer, he uncovered his forehead by removing the turban. From Nafi' from Ibn 'Umar: He disliked prostrating on the folded part of his turban until he uncovered it. From Ayyub from Ibn Sirin: I suffered a wound on my face, so I bandaged it and asked 'Abidah al-Salmani: Should I prostrate on it? He said: Remove the bandage. From Masruq: He saw a man who, when he prostrated, raised his legs toward the sky. Masruq said: This person's prayer has not been completed.

الرَّحْمَنِ بْنِ أَبِي لَيْلَى قَالَ لِمَنْ رَآهُ يُصَلِّي: أَمَسَّ أَنْفُكَ الْأَرْضَ، وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ: إِذَا لَمْ تَضَعْ أَنْفَكَ مَعَ جَبْهَتِك لَمْ تُقْبَلْ مِنْك تِلْكَ السَّجْدَةُ وَبِهِ يَقُولُ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَحْمَدُ، وَغَيْرُهُمْ. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ زَيْدِ بْنِ إبْرَاهِيمَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّهُ كَرِهَ السُّجُودَ عَلَى كَوْرِ الْعِمَامَةِ. وَعَنْ مَحْمُودِ بْنِ الرَّبِيعِ عَنْ عُبَادَةَ بْنِ الصَّامِتِ: أَنَّهُ كَانَ إذَا قَامَ فِي الصَّلَاةِ حَسَرَ الْعِمَامَةَ عَنْ جَبْهَتِهِ. وَعَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: كَانَ يَكْرَهُ أَنْ يَسْجُدَ عَلَى كَوْرِ عِمَامَتِهِ حَتَّى يَكْشِفَهَا. وَعَنْ أَيُّوبَ عَنْ ابْنِ سِيرِينَ: أَصَابَتْنِي شَجَّةٌ فِي وَجْهِي فَعَصَبْتُ عَلَيْهَا وَسَأَلْتُ عَبِيدَةَ السَّلْمَانِيَّ: أَسْجُدُ عَلَيْهَا؟ فَقَالَ: انْزِعْ الْعِصَابَ وَعَنْ مَسْرُوقٍ: أَنَّهُ رَأَى رَجُلًا إذَا سَجَدَ رَفَعَ رِجْلَيْهِ فِي السَّمَاءِ، فَقَالَ مَسْرُوقٌ: مَا تَمَّتْ صَلَاةُ هَذَا.

made him repeat it. From Ibn Abbas: When you prostrate, press your nose to the ground. From Abd al-Rahman ibn Abi Layla, who said to someone he saw praying: Did your nose touch the ground? From Sa'id ibn Jubayr: If you do not place your nose with your forehead, that prostration is not accepted from you. This is the opinion of Al-Shafi'i, Abu Sulayman, Ahmad, and others. Through Waki' from Zayd ibn Ibrahim from Muhammad ibn Sirin: He disliked prostrating on the folded part of the turban. From Mahmud ibn al-Rabi' from 'Ubadah ibn al-Samit: When he stood in prayer, he uncovered his forehead by removing the turban. From Nafi' from Ibn 'Umar: He disliked prostrating on the folded part of his turban until he uncovered it. From Ayyub from Ibn Sirin: I suffered a wound on my face, so I bandaged it and asked 'Abidah al-Salmani: Should I prostrate on it? He said: Remove the bandage. From Masruq: He saw a man who, when he prostrated, raised his legs toward the sky. Masruq said: This person's prayer has not been completed.

[مَسْأَلَةٌ عَجَزَ الْمُصَلَّى عَنْ الرُّكُوعِ أَوْ عَنْ السُّجُودِ]

L6438

Issue: The worshipper's inability to perform *ruku* or *sujūd*.

٣٧٠ - مَسْأَلَةٌ: فَمَنْ عَجَزَ عَنْ الرُّكُوعِ أَوْ عَنْ السُّجُودِ خَفَضَ لِذَلِكَ قَدْرَ طَاقَتِهِ فَمَنْ لَمْ يَقْدِرْ عَلَى أَكْثَرَ مِنْ الْإِيمَاءِ أَوْمَأَ. وَمَنْ لَمْ يَجِدْ لِلزِّحَامِ أَنْ يَضَعَ جَبْهَتَهُ وَأَنْفَهُ لِلسُّجُودِ فَلْيَسْجُدْ عَلَى رَجُلٍ مِنْ أَمَامِهِ، أَوْ عَلَى ظَهْرِ مَنْ أَمَامَهُ وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَسُفْيَانُ الثَّوْرِيُّ، وَالشَّافِعِيُّ وَقَالَ مَالِكٌ: لَا يَسْجُدُ عَلَى ظَهْرِ أَحَدٍ بُرْهَانُ صِحَّةِ قَوْلِنَا قَوْلُ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] . وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» . وَرُوِّينَا عَنْ مَعْمَرٍ عَنْ الْأَعْمَشِ عَنْ الْمُسَيَّبِ بْنِ رَافِعٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: مَنْ آذَاهُ الْحَرُّ يَوْمَ الْجُمُعَةِ فَلْيَبْسُطْ ثَوْبَهُ وَيَسْجُدْ عَلَيْهِ، وَمَنْ زَحَمَهُ النَّاسُ يَوْمَ الْجُمُعَةِ حَتَّى لَا يَسْتَطِيعَ أَنْ يَسْجُدَ عَلَى

L6439–6441

Issue 370: Whoever is unable to bow or prostrate should lower their body as much as they are able. If one cannot do more than gesture with their head, they should gesture. If one cannot find space in the crowd to place their forehead and nose for prostration, they should prostrate toward a person in front of them or on the back of the person ahead. This is the view of Abū Ḥanīfah, Sufyān al-Thawrī, and al-Shāfi'ī. Mālik said: He should not prostrate on anyone's back. The proof for the validity of our view is Allah's statement: "Allah does not burden any soul beyond its capacity" [2:286], and the Messenger of Allah's saying (peace be upon him): "When I command you to do something, perform it to the best of your ability." It has been narrated to us from Ma'mar, through al-A'mash, through al-Musayyib ibn Rāfi', that Umar ibn al-Khattāb said: "Whoever suffers from heat during Friday prayer may spread his garment and prostrate upon it. If someone is overcrowded during Friday prayer until unable to prostrate on the ground, let him prostrate on another person's back."

Al-Hasan stated: “In severe crowding, you may either prostrate on your brother’s back or wait until the Imam rises before prostrating.” Tāwus said: “In extreme crowding, gesture with your head following the Imam’s lead, then prostrate on your brother.” When asked whether one may prostrate on another’s foot in crowded conditions, Mujāhid answered affirmatively. Similar rulings were reported from Makhūl and al-Zuhrī.

Ma’mar narrated through Ayyūb al-Sakhtiyānī, from Nāfi’, that Ibn Umar said: “If an ill person cannot bow or prostrate properly, they may gesture with their head.” Qatādah reported from Umm al-Hasan ibn Abī al-Hasan: “I saw Umm Salamah, the Prophet’s wife (peace be upon him), prostrating on a raised pillow due to eye inflammation she suffered from.” Ibn Abbās responded to Abu Fazarah’s question about prostration on a purified pillow for the ill: “There is no harm in that.” Ibn Abbās also ruled: “There is no harm if an ill person wraps a garment and prostrates upon it.”[63]

L6442 **Issue: If there is clay in front of him during prayer, and it does not soil his clothes or defile his face...**

L6443–6445 Issue 371: If someone has mud in front of him that does not ruin his clothes or soil his face, he is required to prostrate upon it. However, if it causes him discomfort, he is not required. It has been transmitted to us from the Messenger of Allah—may Allah’s peace and blessings be upon him—that he prostrated on water and mud, and when he rose, on his forehead was the mark of mud. Allah the Exalted said: “He has not laid upon you any hardship in the religion” (Sūrat al-Ḥajj 22:78).[64]

L6446 **A legal issue: The sitting after raising the head from the last prostration of the second rakʿah.**

L6447 Issue 372: Sitting after raising the head from the final prostration of the second rak’ah is obligatory in every obligatory or supererogatory prayer, except the types of *Witr* previously mentioned. In prayers consisting of

الْأَرْضِ فَلْيَسْجُدْ عَلَى ظَهْرِ رَجُلٍ وَعَنْ الْحَسَنِ: إذَا اشْتَدَّ الزِّحَامُ فَإِنْ شِئْت فَاسْجُدْ عَلَى ظَهْرِ أَخِيك، وَإِنْ شِئْت فَإِذَا قَامَ الْإِمَامُ فَاسْجُدْ وَعَنْ طَاوُسٍ: إذَا اشْتَدَّ الزِّحَامُ فَأَوْمِ بِرَأْسِك مَعَ الْإِمَامِ ثُمَّ اُسْجُدْ عَلَى أَخِيك. وَعَنْ مُجَاهِدٍ سُئِلَ: أَيَسْجُدُ الرَّجُلُ فِي الزِّحَامِ عَلَى رِجْلِ الرَّجُلِ قَالَ: نَعَمْ وَعَنْ مَكْحُولٍ، وَالزُّهْرِيِّ مِثْلُ ذَلِكَ. وَعَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: إذَا كَانَ الْمَرِيضُ لَا يَقْدِرُ عَلَى الرُّكُوعِ وَلَا عَلَى السُّجُودِ أَوْمَأَ بِرَأْسِهِ. وَعَنْ قَتَادَةَ عَنْ أُمِّ الْحَسَنِ بْنِ أَبِي الْحَسَنِ قَالَتْ: رَأَيْت أُمَّ سَلَمَةَ زَوْجَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَسْجُدُ عَلَى مِرْفَقَةٍ عَالِيَةٍ مِنْ رَمَدٍ كَانَ بِهَا. وَعَنْ ابْنِ عَبَّاسٍ قَالَ سَأَلَهُ أَبُو فَزَارَةَ عَنْ الْمَرِيضِ: أَيَسْجُدُ عَلَى الْمِرْفَقَةِ الطَّاهِرَةِ قَالَ: لَا بَأْسَ بِهِ وَعَنْ ابْنِ عَبَّاسٍ أَيْضًا: لَا بَأْسَ أَنْ يَلُفَّ الْمَرِيضُ الثَّوْبَ وَيَسْجُدَ عَلَيْهِ

[مَسْأَلَةٌ كَانَ بَيْنَ يَدَيْهِ فِي الصَّلَاةِ طِينٌ لَا يُفْسِدُ ثِيَابَهُ وَلَا يُلَوِّثُ وَجْهَهُ]

٣٧١ - مَسْأَلَةٌ: وَمَنْ كَانَ بَيْنَ يَدَيْهِ طِينٌ لَا يُفْسِدُ ثِيَابَهُ وَلَا يُلَوِّثُ وَجْهَهُ لَزِمَهُ أَنْ يَسْجُدَ عَلَيْهِ، فَإِنْ آذَاهُ لَمْ يَلْزَمْهُ رُوِّينَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَّهُ سَجَدَ عَلَى مَاءٍ وَطِينٍ وَانْصَرَفَ وَعَلَى جَبْهَتِهِ أَثَرُ الطِّينِ» وَقَالَ اللَّهُ عَزَّ وَجَلَّ: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨]

[مَسْأَلَةٌ الْجُلُوسُ بَعْدَ رَفْعِ الرَّأْسِ مِنْ آخِرِ سَجْدَةٍ مِنْ الرَّكْعَةِ الثَّانِيَةِ]

٣٧٢ - مَسْأَلَةٌ: وَالْجُلُوسُ بَعْدَ رَفْعِ الرَّأْسِ مِنْ آخِرِ سَجْدَةٍ مِنْ الرَّكْعَةِ الثَّانِيَةِ فَرْضٌ فِي كُلِّ صَلَاةٍ مُفْتَرَضَةٍ أَوْ نَافِلَةٍ، حَاشَا مَا ذَكَرْنَا قَبْلُ مِنْ أَنْوَاعِ الْوِتْرِ. فَإِنْ كَانَ فِي صَلَاةٍ لَا تَكُونُ إلَّا رَكْعَتَيْنِ فَإِنَّهُ يُفْضِي بِمَقَاعِدِهِ إلَى مَا هُوَ عَلَيْهِ قَاعِدٌ وَيَنْصِبُ رِجْلَهُ الْيُمْنَى

[63] **Qur’an references (L6439):** Qur’an 2:286 (Al-Baqarah).
[64] **Qur’an references (L6443):** Qur’an 22:78 (Al-Hajj).

only two rak'ahs, one settles on the ground as seated, raises the right foot, and spreads the left. In prayers of three or four rak'ahs, one sits in this sitting position upon the left foot with the right foot raised as described. In the final sitting preceding the taslīm (salutation), one settles on the ground with the right foot raised and the left foot spread. It is obligatory to recite the Tashahhud in each of the two sittings we mentioned.

Abdullah ibn Rabīʿ narrated to us: from Muḥammad ibn Isḥāq: from Ibn al-Aʿrābī: from Abū Dāwūd: from ʿĪsā ibn Ibrāhīm: from Ibn Wahb: from al-Layth ibn Saʿd: from Yazīd ibn Abī Ḥabīb: from Muḥammad ibn ʿAmr ibn Ḥalḥalah: from Muḥammad ibn ʿAmr ibn ʿAṭāʾ that he was sitting with a group of the Companions of the Messenger of Allah (peace be upon him) when they described the prayer of the Messenger of Allah (peace be upon him). In their description: "When he sat in the two-rak'ah prayer, he sat upon his left foot. When he sat in the final rak'ah, he advanced his left foot and settled on his seat."

Al-Shāfiʿī and Abū Sulaymān uphold this view. Abū Ḥanīfah and Mālik said: "Both sittings are performed identically." ʿAlī remarked: "This contradicts the transmitted practice without evidence."

L6448–6450 Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Ishaq (Ibn Rahawayh) narrated to us: Jarir (Ibn Abd al-Hameed) narrated from Mansur (Ibn al-Mu'tamir), from Abu Wa'il, from Abdullah ibn Mas'ud, who said: "The Messenger of Allah (peace and blessings be upon him) said to us: 'Allah is *As-Salam*. When any of you sits during the prayer, let him say: All salutations are for Allah, and the prayers and the pure deeds. Peace be upon you, O Prophet (peace and blessings be upon him), and the mercy of Allah.'" And His blessings, peace be upon us and upon Allah's righteous servants. I testify that there is no deity but Allah, and I testify that Muhammad is His servant and Messenger." It was narrated by Shu'bah, Sufyan al-Thawri, and Za'idah - all of them through Mansur from Abu Wa'il from Ibn Mas'ud from the Prophet (peace be upon him) - letter for letter. It was also narrated by

وَيَفْرِشُ الْيُسْرَى. وَإِذَا كَانَ فِي صَلَاةٍ تَكُونُ ثَلَاثَ رَكَعَاتٍ أَوْ أَرْبَعًا جَلَسَ فِي هَذِهِ الْجِلْسَةِ عَلَى رِجْلِهِ الْيُسْرَى وَنَصَبَ الْيُمْنَى كَمَا قُلْنَا وَيَجْلِسُ فِي الْجِلْسَةِ الْآخِرَةِ الَّتِي تَلِي السَّلَامَ مُفْضِيًا بِمُقَاعَدَةٍ إِلَى الْأَرْضِ نَاصِبًا لِرِجْلِهِ الْيُمْنَى فَارِشًا لِلْيُسْرَى. وَفَرْضٌ عَلَيْهِ، أَنْ يَتَشَهَّدَ فِي كُلِّ جِلْسَةٍ مِنَ الْجِلْسَتَيْنِ اللَّتَيْنِ ذَكَرْنَا -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا عِيسَى بْنُ إِبْرَاهِيمَ ثنا ابْنُ وَهْبٍ عَنِ اللَّيْثِ بْنِ سَعْدٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَلْحَلَةَ «عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَطَاءٍ أَنَّهُ كَانَ جَالِسًا مَعَ نَفَرٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَصَفُوا صَلَاةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي الصِّفَةِ -: فَإِذَا جَلَسَ فِي الرَّكْعَتَيْنِ جَلَسَ عَلَى رِجْلِهِ الْيُسْرَى. فَإِذَا جَلَسَ فِي الرَّكْعَةِ الْأَخِيرَةِ قَدَّمَ رِجْلَهُ الْيُسْرَى وَجَلَسَ عَلَى مَقْعَدَتِهِ» وَبِهِ يَقُولُ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ. وَقَالَ أَبُو حَنِيفَةَ وَمَالِكٌ: الْجُلُوسُ فِي كِلْتَيْ الْجِلْسَتَيْنِ سَوَاءٌ. قَالَ عَلِيٌّ: هَذَا خِلَافُ الْأَثَرِ بِلَا بُرْهَانٍ.

وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا إِسْحَاقُ هُوَ ابْنُ رَاهْوَيْهِ - أَنَا جَرِيرٌ هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ مَنْصُورٍ هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ أَبِي وَائِلٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: «قَالَ لَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِنَّ اللَّهَ هُوَ السَّلَامُ، فَإِذَا قَعَدَ أَحَدُكُمْ فِي الصَّلَاةِ فَلْيَقُلْ: التَّحِيَّاتُ لِلَّهِ وَالصَّلَوَاتُ وَالطَّيِّبَاتُ، السَّلَامُ عَلَيْكَ أَيُّهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ، السَّلَامُ عَلَيْنَا وَعَلَى عِبَادِ اللَّهِ الصَّالِحِينَ، أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ، وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ» . وَرَوَاهُ شُعْبَةُ وَسُفْيَانُ الثَّوْرِيُّ وَزَائِدَةُ كُلُّهُمْ عَنْ مَنْصُورٍ عَنْ أَبِي وَائِلٍ عَنِ ابْنِ مَسْعُودٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

Yahya al-Qattan, Abu Mu'awiyah, al-Fudayl ibn 'Iyad, Abu Nu'aym, 'Abdullah ibn Dawud al-Khuraibi, and Waki' - all of them through al-A'mash from Abu Wa'il with his chain of transmission and wording. Furthermore, Abu Ma'mar 'Abdullah ibn Sakhbarah, 'Alqamah, al-Aswad, and Abu al-Bakhtari narrated it from Ibn Mas'ud with his chain of transmission and wording.[65]

L6451–6453 If a person testifies with what was narrated by Abu Musa, Ibn Abbas, and Ibn Umar—all of them from the Messenger of Allah (peace be upon him)—then it is good. What we have chosen is the preference of Abu Hanifah, Sufyan al-Thawri, Ahmad, and Dawud. Al-Shafi'i preferred the narration of Ibn Abbas. Malik chose a Tashahhud traced to Umar, but his son and the rest of those we mentioned opposed him in this. Some early scholars said: Sitting in prayer is not obligatory. Abu Hanifah said: Sitting for the duration of the Tashahhud is obligatory, but the Tashahhud itself is not obligatory. Malik said: Sitting is obligatory, and the remembrance of Allah in it is obligatory, but the Tashahhud is not obligatory. All these statements are erroneous because the Prophet (peace be upon him) commanded the Tashahhud while sitting in prayer, thus making the Tashahhud obligatory. Consequently, the sitting in which the Tashahhud occurs becomes obligatory, since it is impermissible for something without which an obligation cannot be fulfilled—or through it—to be non-obligatory. We narrate from Shu'bah, from Muslim Abu al-Nadr, who reported: "I heard Hamlah ibn Abd al-Rahman say: 'I heard Umar ibn al-Khattab declare: There is no prayer without the Tashahhud.'" Nafi', the freed slave of Ibn Umar, said: "Whoever does not speak the Tashahhud has no prayer." This is the opinion of Al-Shafi'i, and Abu Sulaiman. Some of them said: If the first sitting were obligatory, the prayer would not suffice if one omitted it due to forgetfulness. Imam Ali said: This is baseless, for the Sunnah that prescribes its obligation is the same that affirms the prayer suffices despite forgetting it.

حَرْفًا حَرْفًا وَرَوَاهُ يَحْيَى الْقَطَّانُ وَأَبُو مُعَاوِيَةَ وَالْفُضَيْلُ بْنُ عِيَاضٍ وَأَبُو نُعَيْمٍ وَعَبْدُ اللَّهِ بْنُ دَاوُد الْخُرَيْبِيّ وَوَكِيعٌ كُلُّهُمْ عَنْ الْأَعْمَشِ عَنْ أَبِي وَائِلٍ بِإِسْنَادِهِ، وَلَفْظِهِ. وَرَوَاهُ أَيْضًا عَنْ ابْنِ مَسْعُودٍ - بِإِسْنَادِهِ وَلَفْظِهِ - أَبُو مَعْمَرٍ عَبْدُ اللَّهِ بْنُ سَخْبَرَةَ وَعَلْقَمَةُ، وَالْأَسْوَدُ، وَأَبُو الْبَخْتَرِيُّ.

فَإِنْ تَشَهَّدَ امْرُؤٌ بِمَا رَوَاهُ أَبُو مُوسَى، وَابْنُ عَبَّاسٍ، وَابْنُ عُمَرَ، كُلُّهُمْ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَحَسَنٌ. وَالَّذِي تَخَيَّرْنَا هُوَ اخْتِيَارُ أَبِي حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَحْمَدَ، وَدَاوُد وَاخْتَارَ الشَّافِعِيُّ مَا رَوَاهُ ابْنُ عَبَّاسٍ. وَاخْتَارَ مَالِكٌ تَشَهُّدًا مَوْقُوفًا عَلَى عُمَرَ قَدْ خَالَفَهُ فِيهِ ابْنُهُ وَسَائِرُ مَنْ ذَكَرْنَا. وَقَالَ بَعْضُ الْمُتَقَدِّمِينَ: الْجُلُوسُ فِي الصَّلَاةِ لَيْسَ فَرْضًا وَقَالَ أَبُو حَنِيفَةَ: الْجُلُوسُ مِقْدَارَ التَّشَهُّدِ فَرْضٌ وَلَيْسَ التَّشَهُّدُ فَرْضًا وَقَالَ مَالِكٌ: الْجُلُوسُ فَرْضٌ، وَذِكْرُ اللَّهِ تَعَالَى فِيهِ فَرْضٌ وَلَيْسَ التَّشَهُّدُ فَرْضًا وَكُلُّ هَذِهِ الْأَقْوَالِ خَطَأٌ لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِالتَّشَهُّدِ فِي الْقُعُودِ فِي الصَّلَاةِ، فَصَارَ التَّشَهُّدُ فَرْضًا، وَصَارَ الْقُعُودُ الَّذِي لَا يَكُونُ التَّشَهُّدُ إلَّا فِيهِ فَرْضًا، إذْ لَا يَجُوزُ أَنْ يَكُونَ غَيْرَ فَرْضٍ مَا لَا يَتِمُّ الْفَرْضُ إلَّا فِيهِ أَوْ بِهِ رُوِّينَا عَنْ شُعْبَةَ عَنْ مُسْلِمٍ أَبِي النَّضْرِ سَمِعْت حَمْلَةَ بْنَ عَبْدِ الرَّحْمَنِ سَمِعْت عُمَرَ بْنَ الْخَطَّابِ يَقُولُ: لَا صَلَاةَ إلَّا بِتَشَهُّدٍ. وَعَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ: مَنْ لَمْ يَتَكَلَّمْ بِالتَّشَهُّدِ فَلَا صَلَاةَ لَهُ وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ وَقَالَ بَعْضُهُمْ: لَوْ كَانَ الْجُلُوسُ الْأَوَّلُ فَرْضًا لَمَا أَجْزَأَتْ الصَّلَاةُ بِتَرْكِهِ إذَا نَسِيَهُ الْمَرْءُ قَالَ عَلِيٌّ: وَهَذَا لَيْسَ بِشَيْءٍ، لِأَنَّ السُّنَّةَ الَّتِي جَاءَتْ بِوُجُوبِهِ هِيَ الَّتِي جَاءَتْ بِأَنَّ الصَّلَاةَ تُجْزِئُ بِنِسْيَانِهِ.

[65] **Hadith references (L6448):** Sunan Abi Dawud 971.

L6454 They assert that intentionally sitting during the standing position in prayer is forbidden—invalidating the prayer if done deliberately, but not invalidating it if done forgetfully. Similarly, offering the greeting of peace before completing the prayer invalidates it with no distinction. Thus their view reverts to being evidently corrupt—and success is from Allah alone, the Most High.

وَهُمْ يَقُولُونَ: إنَّ الْجُلُوسَ عَمْدًا فِي مَوْضِعِ الْقِيَامِ فِي الصَّلَاةِ حَرَامٌ تَبْطُلُ الصَّلَاةُ بِتَعَمُّدِهِ، وَلَا تَبْطُلُ بِنِسْيَانِهِ، وَكَذَلِكَ السَّلَامُ قَبْلَ تَمَامِ الصَّلَاةِ وَلَا فَرْقَ فَعَادَ نَظَرُهُمْ ظَاهِرَ الْفَسَادِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L6455 **A legal ruling regarding the place of prayer when one has completed the *Tashahhud*.**

[مَسْأَلَةٌ الْمُصَلَّى إذَا فَرَغَ مِنْ التَّشَهُّدِ]

L6456 373 - Issue: Abū Muḥammad ʿAlī ibn Aḥmad said: It is obligatory (farḍ) for him to say upon completing the *Tashahhud* in both of the two sittings: "O Allah, I seek refuge in You from the punishment of Hellfire, I seek refuge in You from the punishment of the grave, from the trials of living and dying, and from the evil of the tribulation of al-Masīḥ al-Dajjāl." This is an obligation like the *Tashahhud* itself, with no distinction. As narrated to us by ʿAbdullāh ibn Yūsuf: Aḥmad ibn Fatḥ narrated to us; ʿAbd al-Wahhāb ibn ʿĪsā narrated to us; Aḥmad ibn Muḥammad narrated to us; Aḥmad ibn ʿAlī narrated to us; Muslim ibn al-Ḥajjāj narrated to us; Naṣr ibn ʿAlī, Muḥammad ibn ʿAbdillāh ibn Numayr, Abū Kuraib, and Zuhayr ibn Ḥarb - all narrated to us from Wakīʿ ibn al-Jarrāḥ; al-Awzāʿī narrated from Ḥassān ibn ʿAṭiyyah and Yaḥyā ibn Abī Kathīr. Ḥassān said: From Muḥammad ibn Abī ʿĀ'ishah.

٣٧٣ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ عَلِيُّ بْنُ أَحْمَدَ: وَيَلْزَمُهُ فَرْضٌ " أَنْ يَقُولَ إذَا فَرَغَ مِنْ التَّشَهُّدِ فِي كِلْتَيْ الْجِلْسَتَيْنِ «اللَّهُمَّ إنِّي أَعُوذُ بِكَ مِنْ عَذَابِ جَهَنَّمَ، وَأَعُوذُ بِكَ مِنْ عَذَابِ الْقَبْرِ وَمِنْ فِتْنَةِ الْمَحْيَا وَالْمَمَاتِ، وَمِنْ شَرِّ فِتْنَةِ الْمَسِيحِ الدَّجَّالِ» وَهَذَا فَرْضٌ كَالتَّشَهُّدِ وَلَا فَرْقَ. لِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا نَصْرُ بْنُ عَلِيٍّ، وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ، وَأَبُو كُرَيْبٍ، وَزُهَيْرُ بْنُ حَرْبٍ، كُلُّهُمْ عَنْ وَكِيعِ بْنِ الْجَرَّاحِ ثنا الْأَوْزَاعِيُّ عَنْ حَسَّانَ بْنِ عَطِيَّةَ، وَيَحْيَى بْنِ أَبِي كَثِيرٍ، قَالَ حَسَّانُ: عَنْ مُحَمَّدِ بْنِ أَبِي عَائِشَةَ.

L6457–6459 Yahya and Abu Salama ibn Abd al-Rahman ibn Awf—both of whom narrated from Abu Hurairah—said: The Messenger of Allah—peace and blessings of Allah be upon him—said: "When any of you recites the Tashahhud, let him seek refuge with Allah from four things. Let him say: 'O Allah, I seek refuge in You from the punishment of Hellfire, from the punishment of the grave, from the trials of life and death, and from the evil of the trial of the False Messiah, the Dajjal.'" Ali said: If someone were to say, "You have narrated this report through the chain of Muslim," [the narration continues]: Zuhayr ibn Harb narrated to us; Al-Walid ibn Muslim narrated to us; Al-Awza'i narrated to me; Hassan ibn Atiyyah narrated to us; Muhammad ibn Abi A'ishah narrated to us. He heard Abu Huraira report that Allah's Messenger (peace

وَقَالَ يَحْيَى عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، كِلَاهُمَا عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا تَشَهَّدَ أَحَدُكُمْ فَلْيَسْتَعِذْ بِاَللَّهِ مِنْ أَرْبَعٍ، يَقُولُ: اللَّهُمَّ إنِّي أَعُوذُ بِكَ مِنْ عَذَابِ جَهَنَّمَ، وَمِنْ عَذَابِ الْقَبْرِ، وَمِنْ فِتْنَةِ الْمَحْيَا وَالْمَمَاتِ، وَمِنْ شَرِّ فِتْنَةِ الْمَسِيحِ الدَّجَّالِ» . قَالَ عَلِيٌّ: فَإِنْ قَالَ قَائِلٌ: فَقَدْ رَوَيْتُمْ هَذَا الْخَبَرَ مِنْ طَرِيقِ مُسْلِمٍ قَالَ: حَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ ثنا الْوَلِيدُ بْنُ مُسْلِمٍ حَدَّثَنِي الْأَوْزَاعِيُّ ثنا حَسَّانُ بْنُ عَطِيَّةَ ثنا مُحَمَّدُ بْنُ أَبِي عَائِشَةَ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ قَالَ رَسُولُ اللَّهِ -

be upon him) said: “When any one of you concludes the final Tashahhud, let him seek refuge with Allah from four things”—then he quoted them verbatim as we have transmitted. He stated: “This is a solitary report, and Al-Walid ibn Muslim’s addition constitutes a narration from a trustworthy transmitter, hence it is accepted. This obligation is therefore exclusively required in the final Tashahhud.” We countered: “Had there been only Muhammad ibn Abi Aisha’s hadith alone, your position would still hold. However, there are two authentic narrations as we transmitted—one through Abu Salama’s chain and the second through Muhammad ibn Abi Aisha’s chain. Al-Walid’s addition supplements Waki‘ ibn Al-Jarrah’s narration, while Abu Salama’s report maintains its general applicability to all contexts designated as Tashahhud. No alternative interpretation is permissible. Success is attained through Allah, the Exalted.” It is narrated that Tawus’s son prayed in his presence, whereupon he asked him: “Did you recite these phrases?” When he replied negatively, Tawus commanded him to repeat the prayer.[66]

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا فَرَغَ أَحَدُكُمْ مِنَ التَّشَهُّدِ الآخِرِ فَلْيَتَعَوَّذْ بِاللَّهِ مِنْ أَرْبَعٍ» ثُمَّ ذَكَرَهَا نَصًّا كَمَا أَوْرَدْنَاهَا. قَالَ: فَهَذَا خَبَرٌ وَاحِدٌ، وَزِيَادَةُ الْوَلِيدِ بْنِ مُسْلِمٍ زِيَادَةُ عَدْلٍ، فَهِيَ مَقْبُولَةٌ، فَإِنَّمَا يَجِبُ ذَلِكَ فِي التَّشَهُّدِ الآخِرِ فَقَطْ قُلْنَا: لَوْ لَمْ يَكُنْ إِلَّا حَدِيثُ مُحَمَّدِ بْنِ أَبِي عَائِشَةَ وَحْدَهُ لَكَانَ مَا ذَكَرْتَ لَكِنَّهُمَا حَدِيثَانِ كَمَا أَوْرَدْنَا، أَحَدُهُمَا مِنْ طَرِيقِ أَبِي سَلَمَةَ، وَالثَّانِي مِنْ طَرِيقِ مُحَمَّدِ بْنِ أَبِي عَائِشَةَ، فَإِنَّمَا زَادَ الْوَلِيدُ عَلَى وَكِيعِ بْنِ الْجَرَّاحِ، وَبَقِيَ خَبَرُ أَبِي سَلَمَةَ عَلَى عُمُومِهِ فِيمَا يَقَعُ عَلَيْهِ اسْمُ تَشَهُّدٍ، لَا يَجُوزُ غَيْرُ هَذَا. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. وَقَدْ رُوِيَ عَنْ طَاوُسٍ: أَنَّهُ صَلَّى ابْنُهُ بِحَضْرَتِهِ فَقَالَ لَهُ: أَذَكَرْتَ هَذِهِ الْكَلِمَاتِ قَالَ: لَا، فَأَمَرَهُ بِإِعَادَةِ الصَّلَاةِ

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374. It is recommended to say, upon completing the Tashahhud, what was narrated to us by ‘Abdullāh ibn Rabī‘: Muḥammad ibn Mu‘āwiyah narrated to us, Aḥmad ibn Shu‘ayb narrated to us, Muḥammad ibn Salamah informed us from Ibn al-Qāsim, who narrated from Mālik, who narrated from Nu‘aym ibn ‘Abdillāh al-Mujmir: that Muḥammad ibn ‘Abdillāh ibn Zayd al-Anṣārī—and ‘Abdullāh ibn Zayd is the one who was shown the call to prayer—informed him from Abū Mas‘ūd al-Anṣārī, who said: “The Messenger of Allāh (peace and blessings be upon him) came to us in the gathering of Sa‘d ibn ‘Ubādah. Bashīr ibn Sa‘d said to him: ‘Allāh has commanded us to send blessings upon you, O Messenger of Allāh, so how should we send blessings upon you?’ The Messenger of Allāh (peace and blessings be upon him) remained silent until we wished he had not asked him. Then he said: ‘Say: O Allāh, send blessings upon Muḥammad and the family of Muḥammad as You sent blessings upon the family of Ibrāhīm, and bless Muḥammad and the family of Muḥammad as You blessed the family of Ibrāhīm in all the worlds. Indeed, You are Praised, Majestic. And the salutation of peace is as you already know.’”

٣٧٤ - مَسْأَلَةٌ: وَيُسْتَحَبُّ أَنْ يَقُولَ إِذَا فَرَغَ مِنَ التَّشَهُّدِ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنَا مُحَمَّدُ بْنُ سَلَمَةَ عَنِ ابْنِ الْقَاسِمِ حَدَّثَنِي مَالِكٌ عَنْ نُعَيْمِ بْنِ عَبْدِ اللَّهِ الْمُجْمِرِ: أَنَّ مُحَمَّدَ بْنَ عَبْدِ اللَّهِ بْنِ زَيْدٍ الأَنْصَارِيَّ - وَعَبْدَ اللَّهِ بْنَ زَيْدٍ - هُوَ الَّذِي أُرِيَ النِّدَاءَ بِالصَّلَاةِ - أَخْبَرَهُ عَنْ أَبِي مَسْعُودٍ الأَنْصَارِيِّ أَنَّهُ قَالَ «أَتَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي مَجْلِسِ سَعْدِ بْنِ عُبَادَةَ فَقَالَ لَهُ بَشِيرُ بْنُ سَعْدٍ: أَمَرَنَا اللَّهُ أَنْ نُصَلِّيَ عَلَيْكَ يَا رَسُولَ اللَّهِ، فَكَيْفَ نُصَلِّي عَلَيْكَ فَسَكَتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى تَمَنَّيْنَا أَنَّهُ لَمْ يَسْأَلْهُ، ثُمَّ قَالَ: قُولُوا اللَّهُمَّ صَلِّ عَلَى مُحَمَّدٍ وَعَلَى آلِ مُحَمَّدٍ كَمَا صَلَّيْتَ عَلَى آلِ إِبْرَاهِيمَ وَبَارِكْ عَلَى مُحَمَّدٍ وَعَلَى آلِ مُحَمَّدٍ كَمَا بَارَكْتَ عَلَى آلِ إِبْرَاهِيمَ فِي الْعَالَمِينَ إِنَّكَ حَمِيدٌ مَجِيدٌ وَالسَّلَامُ كَمَا قَدْ عَلِمْتُمْ» . وَمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ

[66] **Hadith references (L6457):** Sahih Muslim 588a; Riyad as-Salihin 1423; Sunan Abi Dawud 983; Sahih Muslim 588b; Mishkat al-Masabih 940.

ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا إِسْحَاقُ هُوَ ابْنُ رَاهْوَيْهِ ثنا رَوْحٌ عَنْ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ عَمْرِو بْنِ سُلَيْمٍ أَنَا أَبُو حُمَيْدٍ السَّاعِدِيُّ «أَنَّهُمْ قَالُوا يَا رَسُولَ اللَّهِ: كَيْفَ نُصَلِّي عَلَيْكَ. قَالَ: قُولُوا: اللَّهُمَّ صَلِّ عَلَى مُحَمَّدٍ وَعَلَى أَزْوَاجِهِ وَذُرِّيَّتِهِ كَمَا صَلَّيْتَ عَلَى آلِ إِبْرَاهِيمَ وَبَارِكْ عَلَى مُحَمَّدٍ وَعَلَى أَزْوَاجِهِ وَذُرِّيَّتِهِ كَمَا بَارَكْتَ عَلَى آلِ إِبْرَاهِيمَ إِنَّكَ حَمِيدٌ مَجِيدٌ» . فَإِنْ قَالَ قَائِلٌ: لِمَ لَمْ تَجْعَلُوا الصَّلَاةَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَثَرِ التَّشَهُّدِ فَرْضًا بِهَذَيْنِ الْخَبَرَيْنِ وَيَقُولُ اللَّهُ تَعَالَى: {صَلُّوا عَلَيْهِ وَسَلِّمُوا تَسْلِيمًا} [الأحزاب: ٥٦] كَمَا يَقُولُ الشَّافِعِيُّ قُلْنَا: لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقُلْ: إنَّ هَذَا الْقَوْلَ فَرْضٌ فِي الصَّلَاةِ، وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَزِيدَ فِي كَلَامِهِ - عَلَيْهِ السَّلَامُ - مَا لَمْ يَقُلْ، فَنَحْنُ نَقُولُ: إنَّ هَذَا الْقَوْلَ فَرْضٌ عَلَى كُلِّ مُسْلِمٍ أَنْ يَقُولَهُ مَرَّةً فِي الدَّهْرِ، فَإِذَا فَعَلَ ذَلِكَ فَقَدْ صَلَّى عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا أُمِرَ ثُمَّ يُسْتَحَبُّ لَهُ ذَلِكَ فِي الصَّلَاةِ وَغَيْرِهَا، فَهُوَ تَزَيُّدٌ مِنْ الْأَجْرِ، وَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ صَلَّى عَلَيَّ وَاحِدَةً صَلَّى اللَّهُ عَلَيْهِ عَشْرًا» . فَإِنْ قِيلَ: مِنْ أَيْنَ اقْتَصَرْتُمْ عَلَى وُجُوبِ هَذَا مَرَّةً فِي الدَّهْرِ، وَلَمْ تُوجِبُوا تَكْرَارَ ذَلِكَ مَتَى ذُكِرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قُلْنَا: إنَّ قَوْلَ ذَلِكَ مَرَّةً وَاحِدَةً وَاجِبٌ بِالنَّصِّ، لَا يُمْكِنُ الِاقْتِصَارُ عَلَى أَقَلَّ مِنْ مَرَّةٍ، وَأَمَّا الزِّيَادَةُ عَلَى الْمَرَّةِ فَنَحْنُ نَسْأَلُكُمْ: كَمْ مِنْ مَرَّةٍ تُوجِبُونَ ذَلِكَ فِي الدَّهْرِ، أَوْ فِي الْحَوْلِ، أَوْ فِي الشَّهْرِ، أَوْ فِي الْيَوْمِ، أَوْ فِي السَّاعَةِ وَلَا يُقْبَلُ مِنْكُمْ تَحْدِيدُ عَدَدٍ دُونَ عَدَدٍ إلَّا بِبُرْهَانٍ، وَلَا سَبِيلَ إلَيْهِ، فَقَدْ امْتَنَعَ هَذَا بِضَرُورَةِ الْعَقْلِ فَإِنْ قَالُوا: نُوجِبُ ذَلِكَ فِي الصَّلَاةِ خَاصَّةً قُلْنَا: لَيْسَ هَذَا مَوْجُودًا فِي الْآيَةِ، وَلَا فِي شَيْءٍ مِنْ الْأَحَادِيثِ فَهُوَ دَعْوَى مِنْكُمْ بِلَا بُرْهَانٍ

And what was narrated to us by ʻAbdullāh ibn Yūsuf: Aḥmad ibn Fatḥ narrated to us, ʻAbd al-Wahhāb ibn ʻĪsā narrated to us, Aḥmad ibn Muḥammad narrated to us, Aḥmad ibn ʻAlī narrated to us, Muslim ibn al-Ḥajjāj narrated to us, Isḥāq (Ibn Rāhawayh) narrated to us, Rawḥ narrated from Mālik, from ʻAbdullāh ibn Abī Bakr ibn Muḥammad ibn ʻAmr ibn Ḥazm, from his father, from ʻAmr ibn Sulaym. I am Abu Humaid As-Sa'idi: "They said, 'O Messenger of Allah, how should we send blessings upon you?' He said, 'Say: O Allah, send blessings upon Muhammad and upon his wives and offspring as You sent blessings upon the family of Ibrahim, and grant grace to Muhammad and his wives and offspring as You granted grace to the family of Ibrahim. Indeed, You are Praiseworthy, Glorious.'" If someone asks: Why did you not make sending blessings upon the Messenger of Allah—peace and blessings of Allah be upon him—after the Tashahhud obligatory based on these two reports, despite Allah's command: {Send blessings upon him and greet him with peace} [Al-Ahzab: 56], as Ash-Shafi'i holds? We answer: Because the Messenger of Allah—peace and blessings of Allah be upon him—did not state that this supplication is obligatory within the prayer. It is impermissible for anyone to add to the words of the Prophet—peace be upon him—what he did not utter. Thus, we affirm: Reciting this supplication once in a lifetime is obligatory for every Muslim. When one fulfills this, they have discharged the duty of sending blessings upon the Messenger of Allah—peace and blessings of Allah be upon him—as commanded. Thereafter, repeating it in prayer and other contexts is recommended, constituting an increase in reward. It is authentically reported that the Messenger of Allah—peace and blessings of Allah be upon him—said: "Whoever sends blessings upon me once, Allah will send blessings upon him tenfold." If asked: Why restrict the obligation to once in a lifetime rather than requiring it whenever the Messenger of Allah—peace and blessings of Allah be upon him—is mentioned? We reply: The single recitation is textually mandated, and it is impermissible to reduce the obligation below once. As for requiring more, we counter: How many times would you impose—in a lifetime, a year, a month, a day, or an hour? Specifying any number without evidence is invalid, and no basis exists for this. Such a demand is rationally indefensible. If they assert it is obligatory exclusively in prayer, we respond: This is absent from the verse and

authentic narrations—it is a baseless assertion. If a non-Shafi'i argues it is obligatory whenever the Messenger of Allah—peace and blessings of Allah be upon him—is mentioned, in prayer or otherwise, we reply: This too lacks support in any verse or sound narration. It is only mentioned in... A hadith we narrated through the chain of Abu Bakr ibn Abī Uways from Sulaymān ibn Bilāl from Muḥammad ibn Hilāl from Saʿd ibn Isḥāq ibn Kaʿb ibn ʿUjrah from his father that Kaʿb—this chain cannot serve as valid evidence, for Abū Bakr is a criticized narrator, Muḥammad ibn Hilāl is unknown, and Saʿd ibn Isḥāq lacks established reliability. Indeed, it would logically bind anyone who deems fasting during iʿtikāf obligatory—based on evidence he cited between two Quranic fasting verses—to also consider invoking blessings upon Allah's Messenger (peace and blessings be upon him) in prayer obligatory, given the divine command accompanying the mention of the peace greeting they recognized. This refers either to the peace greeting in the tashahhud during prayer or the peace greeting marking prayer's end without doubt. Yet they inconsistently apply their flawed reasoning and disregard binding proofs—and success comes solely from Allah, the Exalted.[67][68]

فَإِنْ قَالَ قَائِلٌ مِنْ غَيْرِ الشَّافِعِيِّينَ: نَقُولُ بِإِيجَابِ ذَلِكَ مَتَى ذُكِرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي صَلَاةٍ أَوْ غَيْرِهَا قُلْنَا: أَيْضًا هَذَا لَا يُوجَدُ لَا فِي آيَةٍ وَلَا فِي الصَّحِيحِ مِنْ الْأَخْبَارِ، وَإِنَّمَا جَاءَ هَذَا فِي حَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي أُوَيْسٍ عَنْ سُلَيْمَانَ بْنِ بِلَالٍ عَنْ مُحَمَّدِ بْنِ هِلَالٍ عَنْ سَعْدِ بْنِ إِسْحَاقَ بْنِ كَعْبِ بْنِ عُجْرَةَ عَنْ أَبِيهِ أَنَّ كَعْبًا - وَهَذَا سَنَدٌ لَا تَقُومُ بِهِ حُجَّةٌ؛ لِأَنَّ أَبَا بَكْرٍ مُتَكَلَّمٌ فِيهِ، وَمُحَمَّدُ بْنُ هِلَالٍ مَجْهُولٌ، وَسَعْدُ بْنُ إِسْحَاقَ غَيْرُ مَشْهُورِ الْحَالِ. وَلَقَدْ كَانَ يَلْزَمُ مَنْ رَأَى الصِّيَامَ فِي الِاعْتِكَافِ فَرْضًا - بِدَلِيلِ ذِكْرِهِ بَيْنَ آيَتَيْ صِيَامٍ -: أَنْ يَجْعَلَ الصَّلَاةَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الصَّلَاةِ فَرْضًا لِلْأَمْرِ بِهَا مَعَ ذِكْرِ السَّلَامِ الَّذِي عَلِمُوهُ، وَهُوَ إمَّا السَّلَامُ الَّذِي فِي التَّشَهُّدِ فِي الصَّلَاةِ، وَإِمَّا السَّلَامُ مِنْ الصَّلَاةِ بِلَا شَكٍّ، وَلَكِنَّهُمْ لَا يَطَّرِدُونَ اسْتِدْلَالَهُمْ عَلَى ضَعْفِهِ، وَلَا يَلْتَزِمُونَ الْأَدِلَّةَ الْوَاجِبَ قَبُولُهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A Juristic Issue Concerning the Clasping of Hands in Prayer

L6465

L6466

Issue 375: *Tatbīq* in prayer is not permissible because it is abrogated. This refers to placing the hands between the knees during bowing in prayer. Ibn Masʿūd (may Allah be pleased with him) used to practice it and would strongly rebuke those who abandoned it, as did his companions. This was narrated to us through the chain of Nūḥ ibn Ḥabīb al-Qūmisī: ʿAbdullāh ibn Idrīs (i.e., ʿAbdullāh) narrated to us from ʿĀṣim ibn Kulayb from ʿAbd al-Raḥmān ibn al-Aswad ibn Yazīd from ʿAlqamah from ʿAbdullāh ibn Masʿūd, who said: "The Messenger of Allah (peace and blessings of Allah be upon him) taught us the prayer. He stood and said the *takbīr*. When he intended to bow, he placed his hands between his knees and bowed." This reached Ṣaʿd

[مَسْأَلَةُ التَّطْبِيقُ فِي الصَّلَاةِ]

٣٧٥ - مَسْأَلَةٌ: وَالتَّطْبِيقُ فِي الصَّلَاةِ لَا يَجُوزُ، لِأَنَّهُ مَنْسُوخٌ. وَهُوَ وَضْعُ الْيَدَيْنِ بَيْنَ الرُّكْبَتَيْنِ عِنْدَ الرُّكُوعِ فِي الصَّلَاةِ وَكَانَ ابْنُ مَسْعُودٍ - رَضِيَ اللَّهُ عَنْهُ - يَفْعَلُهُ، وَيَضْرِبُ الْأَيْدِيَ عَلَى تَرْكِهِ، وَكَذَلِكَ أَصْحَابُهُ كَانُوا يَفْعَلُونَهُ -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ نُوحِ بْنِ حَبِيبٍ الْقُومِسِيِّ: ثنا ابْنُ إِدْرِيسَ هُوَ عَبْدَ اللَّهِ - عَنْ عَاصِمِ بْنِ كُلَيْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ بْنِ يَزِيدَ عَنْ عَلْقَمَةَ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: «عَلَّمَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الصَّلَاةَ، فَقَامَ فَكَبَّرَ، فَلَمَّا أَرَادَ أَنْ يَرْكَعَ طَبَّقَ يَدَيْهِ بَيْنَ رُكْبَتَيْهِ وَرَكَعَ، فَبَلَغَ ذَلِكَ سَعْدَ بْنَ أَبِي وَقَّاصٍ، فَقَالَ: صَدَقَ أَخِي قَدْ كُنَّا نَفْعَلُ هَذَا، ثُمَّ أُمِرْنَا بِهَذَا،

[67] **Hadith references (L6460):** Jami at-Tirmidhi 3220; Sahih Muslim 405; Sahih Muslim 407; Sunan an-Nasai 1296; Sunan Abi Dawud 1530; Sahih Muslim 408.

[68] **Qur'an references (L6460):** Qur'an 33:56 (Al-Ahzab).

ibn Abī Waqqāṣ, who said: “My brother has spoken truthfully. We used to do this, but then we were commanded with this: holding the knees.” ʿAlī said: “We have previously mentioned the command of the Messenger of Allah (peace and blessings of Allah be upon him) to place the hands on the knees in the *ḥadīth* of Rifāʿah ibn Rāfiʿ. Thus, it is confirmed that this is the later command that abrogates *tatbīq*.” And success comes from Allah, the Exalted.

L6467 **A ruling: The *taslīm* is obligatory, and the prayer is invalid without it.**

L6468–6470 376 - Issue: When a person completes their prayer, they must recite the salutation, for it is an obligation without which the prayer remains incomplete. It suffices to say “Peace be upon you,” “Upon you be peace,” “Peace be upon you,” or “Upon you be peace,” whether one is an imam, a follower, or praying alone. The most preferable of these is for each individual we mentioned to say [one of these phrases]. “Peace be upon you and the mercy of Allah” to his right, “Peace be upon you and the mercy of Allah” to his left. Ali said: The proof for this lies in what Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, Abdul-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Muhammad ibn Ahmad ibn Abi Khalaf narrated to us, Musa ibn Dawud narrated to us, Sulaiman ibn Bilal narrated to us from Zayd ibn Aslam from Ata ibn Yasar from Abu Sa’id al-Khudri, who said: The Messenger of Allah (peace be upon him) said: “If any of you doubts during his prayer and does not know whether he prayed three or four units, let him discard the uncertainty and base his action on what is certain, then perform two prostrations before the *taslim*.”

Abdullah ibn Rabi’ narrated to us: Muhammad ibn Mu’awiyah narrated to us, Ahmad ibn Shu’ayb informed us, al-Hasan ibn Isma’il ibn Sulaiman al-Mujalidi informed me, Fudayl ibn Iyad narrated to us from Mansur ibn al-Mu’tamir from Ibrahim al-Nakha’i from Alqamah from Abdullah ibn Mas’ud, who said: The Messenger of Allah (peace be upon him) stated in a hadith he mentioned: “I am but human—I forget as you forget. Whoever forgets

يَعْنِي الْإِمْسَاكَ بِالرُّكَبِ» قَالَ عَلِيٌّ: قَدْ ذَكَرْنَا أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِوَضْعِ الْأَيْدِي عَلَى الرُّكَبِ فِي حَدِيثِ رِفَاعَةَ بْنِ رَافِعٍ، فَصَحَّ أَنَّهُ هُوَ الْأَمْرُ الْآخَرُ النَّاسِخُ لِلتَّطْبِيقِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ التَّسْلِيمُ فَرْضٌ لَا تَتِمُّ الصَّلَاةُ إلَّا بِهِ]

٣٧٦ - مَسْأَلَةٌ: فَإِذَا أَتَمَّ الْمَرْءُ صَلَاتَهُ فَلْيُسَلِّمْ، وَهُوَ فَرْضٌ لَا تَتِمُّ الصَّلَاةُ إلَّا بِهِ. وَيُجْزِئُهُ أَنْ يَقُولَ " السَّلَامُ عَلَيْكُمْ " أَوْ " عَلَيْكُمْ السَّلَامُ " أَوْ " سَلَامٌ عَلَيْكُمْ " أَوْ " عَلَيْكُمْ سَلَامٌ " سَوَاءٌ كَانَ إمَامًا أَوْ مَأْمُومًا أَوْ فَذًّا، وَأَفْضَلُ ذَلِكَ أَنْ يَقُولَ كُلُّ مَنْ ذَكَرْنَا السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ " عَنْ يَمِينِهِ " السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ " عَنْ يَسَارِهِ. قَالَ عَلِيٌّ: بُرْهَانُ ذَلِكَ -: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ أَبِي خَلَفٍ ثنا مُوسَى بْنُ دَاوُد ثنا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي سَعِيدٍ هُوَ الْخُدْرِيّ - قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا شَكَّ أَحَدُكُمْ فِي صَلَاتِهِ فَلَمْ يَدْرِ كَمْ صَلَّى ثَلَاثًا أَمْ أَرْبَعًا فَلْيَطْرَحْ الشَّكَّ وَلْيَبْنِ عَلَى مَا اسْتَيْقَنَ ثُمَّ يَسْجُدُ سَجْدَتَيْنِ قَبْلَ أَنْ يُسَلِّمَ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي الْحَسَنُ بْنُ إسْمَاعِيلَ بْنِ سُلَيْمَانَ الْمُجَالِدِيُّ ثنا فُضَيْلٌ هُوَ ابْنُ عِيَاضٍ - عَنْ مَنْصُورٍ هُوَ ابْنُ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثٍ ذَكَرَهُ «إنَّمَا أَنَا بَشَرٌ

something in his prayer, let him strive to ascertain what he believes correct, then perform the *taslim*, then perform two prostrations of forgetfulness."

These two narrations have firmly established the command of the Messenger of Allah (peace be upon him) to perform the *taslim* in every prayer, and his directives are obligatory. The wording of the *taslim* inherently requires what we have described.

Hamam narrated to us: Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabari narrated to us, Abd al-Razzaq narrated to us from Sufyan al-Thawri and Ma'mar—both from Hammad ibn Abi Sulayman from Abu al-Duha from Masruq from Abdullah ibn Mas'ud, who said: "I did not forget anything regarding what was forgotten from the Messenger of Allah (peace be upon him)—that he would perform the *taslim* to his right: 'Peace be upon you and the mercy of Allah and His blessings,' until the whiteness of his cheek became visible, and to his left: 'Peace be upon you and the mercy of Allah and His blessings,' until the whiteness of his cheek was likewise seen."

This narration was also transmitted from Ibn Mas'ud with a connected chain by Abu al-Ahwas and Abu Ma'mar. It was further reported by Sa'd ibn Abi Waqqas and Ibn Umar—both tracing back to the Messenger of Allah (peace be upon him).[69]

L6471–6480 And it is the practice of the predecessors, as narrated to us by Abdullah ibn Rabīʿ, who narrated from Muḥammad ibn Muʿāwiyah, who narrated from Aḥmad ibn Shuʿayb, who narrated from Isḥāq ibn Ibrāhīm — who is Ibn Rāhwayh — who narrated from Abū Nuʿaym al-Faḍl ibn Dukayn, who narrated from Zuhayr — who is Ibn Muʿāwiyah — from Abū Isḥāq as-Sabīʿī from ʿAbd ar-Raḥmān ibn al-Aswad from his father, and ʿAlqamah from Ibn Masʿūd, who said: "I saw the Messenger of Allah — peace and blessings be upon him — pronouncing the *takbīr* with every lowering and raising, standing and sitting, and offering *salām* to his right and left: 'Peace be upon you and the mercy of Allah, peace be upon you and the mercy of Allah,' so much so that the whiteness of his cheek became visible. And I saw Abū Bakr and ʿUmar performing it." It has also been narrated to us from ʿAmmār

أَنْسَى كَمَا تَنْسَوْنَ، فَأَيُّكُمْ نَسِيَ شَيْئًا فِي صَلَاتِهِ فَلْيَتَحَرَّ الَّذِي يَرَى أَنَّهُ صَوَابٌ ثُمَّ يُسَلِّمْ ثُمَّ يَسْجُدُ سَجْدَتَيْ السَّهْوِ» . فَقَدْ ثَبَتَ بِهَذَيْنِ الْخَبَرَيْنِ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالتَّسْلِيمِ مِنْ كُلِّ صَلَاةٍ، وَأَوَامِرُهُ - عَلَيْهِ السَّلَامُ - فَرْضٌ، وَلَفْظَةُ التَّسْلِيمِ تَقْتَضِي مَا ذَكَرْنَاهُ. حَدَّثَنَا حِمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ وَمَعْمَرٍ كِلَاهُمَا عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ أَبِي الضُّحَى عَنْ مَسْرُوقٍ عَنْ «عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: مَا نَسِيتُ فِيمَا نُسِيَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ كَانَ يُسَلِّمُ عَنْ يَمِينِهِ: السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ، حَتَّى يُرَى بَيَاضُ خَدِّهِ، وَعَنْ يَسَارِهِ: السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ، حَتَّى يُرَى بَيَاضُ خَدِّهِ أَيْضًا» . وَرَوَاهُ أَيْضًا عَنْ ابْنِ مَسْعُودٍ مُسْنَدًا أَبُو الْأَحْوَصِ، وَأَبُو مَعْمَرٍ. وَرَوَاهُ أَيْضًا سَعْدُ بْنُ أَبِي وَقَّاصٍ، وَابْنُ عُمَرَ كِلَاهُمَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَهُوَ فِعْلُ السَّلَفِ كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا إِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - ثنا أَبُو نُعَيْمٍ الْفَضْلُ بْنُ دُكَيْنٍ ثنا زُهَيْرٌ هُوَ ابْنُ مُعَاوِيَةَ - عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ عَنْ أَبِيهِ، وَعَلْقَمَةُ عَنْ ابْنِ مَسْعُودٍ قَالَ «رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُكَبِّرُ فِي كُلِّ خَفْضٍ وَرَفْعٍ وَقِيَامٍ وَقُعُودٍ وَيُسَلِّمُ عَنْ يَمِينِهِ وَعَنْ شِمَالِهِ: السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ، السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ حَتَّى يُرَى بَيَاضُ خَدِّهِ، وَرَأَيْت أَبَا بَكْرٍ، وَعُمَرَ يَفْعَلَانِهِ» . وَرُوِّينَاهُ أَيْضًا عَنْ عَمَّارِ بْنِ يَاسِرٍ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَابْنِ مَسْعُودٍ، وَجَمَاعَةٍ مِنْ الْأَنْصَارِ - رَضِيَ

[69] **Hadith references (L6468):** Sahih Muslim 571a; Mishkat al-Masabih 1015.

ibn Yāsir, ʿAlī ibn Abī Ṭālib, Ibn Masʿūd, and a group of the Anṣār — may Allah be pleased with them — and from the Companions collectively — may Allah be pleased with them — through the most authentic chain of transmission. It has been narrated to us from ʿAlqamah, al-Aswad, Khaythamah, ʿAbd ar-Raḥmān ibn Abī Laylā, and an-Nakhaʿī. This is the opinion of ash-Shāfiʿī, Sufyān ath-Thawrī, Abū Ḥanīfah, al-Ḥasan ibn Ḥayyin, Aḥmad ibn Ḥanbal, Isḥāq, Abū Sulaymān, and the majority of ḥadīth scholars. Al-Ḥasan ibn Ḥayyin said: "The two *salāms* are both obligatory." Abū Ḥanīfah said: "The two *salāms* are recommended, but the *salām* is not an obligatory component of the prayer. Rather, if one sits for the duration of the *tashahhud*, their prayer is complete. If they intentionally or unintentionally break their ablution, or intentionally stand, speak, or act, that is permissible, and their prayer is complete. A female slave may pray with her head uncovered, then be freed at the end of her prayer after sitting for the duration of the *tashahhud* but before offering the *salām*; her prayer is complete. Whoever prays sitting due to illness and then recovers after sitting for the duration of the *tashahhud* at the end of their prayer but before offering the *salām*, their prayer is complete. Whoever prays striving to determine the *qibla* but facing a different direction, then recognizes the *qibla* after sitting for the duration of the *tashahhud* at the end of their prayer but before offering the *salām*, their prayer is complete — except in ten cases where the *salām* is made obligatory within them, thereby invalidating the prayer of anyone to whom any of them occurs, even if they sat for the duration of the *tashahhud* without offering the *salām*. These are: [...]" One who prayed after performing tayammum then saw water after sitting for the duration of the tashahhud in the final part of the prayer without having uttered the salām; one who prayed naked then found covering for his private parts after sitting for the duration of the tashahhud without having uttered the salām; one who prayed the dawn prayer and the sun's first disk emerged after he sat for the duration of the tashahhud at his prayer's conclusion before uttering the salām—if he laughed aloud after sunrise while his prayer was already invalidated without having uttered the salām, his ablution is nullified; one whose wiping period expired after sitting for the duration of the tashahhud at his prayer's conclusion without having uttered the salām; one who prayed

اللَّهُ عَنْهُمْ -، وَعَنْ الصَّحَابَةِ جُمْلَةً - رَضِيَ اللَّهُ عَنْهُمْ - بِأَصَحِّ إسْنَادٍ يَكُونُ وَرُوِّينَاهُ عَنْ عَلْقَمَةَ، وَالْأَسْوَدِ، وَخَيْثَمَةَ، وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى، وَالنَّخَعِيِّ. وَهُوَ قَوْلُ الشَّافِعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ وَجُمْهُورِ أَصْحَابِ الْحَدِيثِ. وَقَالَ الْحَسَنُ بْنُ حَيٍّ: التَّسْلِيمَتَانِ مَعًا فَرْضٌ. وَقَالَ أَبُو حَنِيفَةَ: التَّسْلِيمَتَانِ اخْتِيَارٌ، وَلَيْسَ السَّلَامُ مِنْ الصَّلَاةِ فَرْضًا، بَلْ إذَا قَعَدَ مِقْدَارَ التَّشَهُّدِ فَقَدْ تَمَّتْ صَلَاتُهُ. فَإِنْ تَعَمَّدَ الْحَدَثَ أَوْ لَمْ يَتَعَمَّدْهُ، أَوْ تَعَمَّدَ الْقِيَامَ، أَوْ الْكَلَامَ، أَوْ الْعَمَلَ فَذَلِكَ مُبَاحٌ، وَقَدْ تَمَّتْ صَلَاتُهُ وَالْأَمَةُ تُصَلِّي مَكْشُوفَةَ الرَّأْسِ ثُمَّ تُعْتَقُ فِي آخِرِ صَلَاتِهَا بَعْدَ أَنْ جَلَسَتْ مِقْدَارَ التَّشَهُّدِ وَقَبْلَ أَنْ تُسَلِّمَ فَإِنَّ صَلَاتَهَا قَدْ تَمَّتْ. وَمَنْ صَلَّى جَالِسًا لِمَرَضٍ ثُمَّ صَحَّ بَعْدَ أَنْ قَعَدَ مِقْدَارَ التَّشَهُّدِ فِي آخِرِ صَلَاتِهِ وَقَبْلَ أَنْ يُسَلِّمَ فَصَلَاتُهُ تَامَّةٌ. وَمَنْ صَلَّى مُتَحَرِّيًا إلَى غَيْرِ الْقِبْلَةِ ثُمَّ عَرَفَ الْقِبْلَةَ بَعْدَ أَنْ قَعَدَ فِي آخِرِ صَلَاتِهِ مِقْدَارَ التَّشَهُّدِ وَلَمْ يُسَلِّمْ فَصَلَاتُهُ تَامَّةٌ إلَّا فِي مَوَاضِعَ عَشْرَةٍ فَإِنَّهُ أَوْجَبَ السَّلَامَ فِيهَا فَرْضًا، وَأَبْطَلَ صَلَاةَ مَنْ وَقَعَ لَهُ شَيْءٌ مِنْهَا وَإِنْ قَعَدَ مِقْدَارَ التَّشَهُّدِ مَا لَمْ يُسَلِّمْ وَهِيَ -: مَنْ صَلَّى بِتَيَمُّمٍ فَرَأَى الْمَاءَ بَعْدَ أَنْ قَعَدَ فِي آخِرِهَا مِقْدَارَ التَّشَهُّدِ وَلَمْ يُسَلِّمْ وَمَنْ صَلَّى وَهُوَ عُرْيَانٌ ثُمَّ وَجَدَ مَا يُغَطِّي بِهِ عَوْرَتَهُ بَعْدَ أَنْ قَعَدَ مِقْدَارَ التَّشَهُّدِ إلَّا أَنَّهُ لَمْ يُسَلِّمْ وَمَنْ صَلَّى الصُّبْحَ ثُمَّ طَلَعَ أَوَّلُ قُرْصِ الشَّمْسِ بَعْدَ أَنْ قَعَدَ مِقْدَارَ التَّشَهُّدِ فِي آخِرِ صَلَاتِهِ قَبْلَ أَنْ يُسَلِّمَ، فَلَوْ قَهْقَهَ بَعْدَ طُلُوعِ الشَّمْسِ وَصَلَاتُهُ قَدْ بَطَلَتْ إلَّا أَنَّهُ لَمْ يُسَلِّمْ: انْتَقَضَ وُضُوءُهُ وَمَنْ تَمَّ لَهُ وَقْتُ الْمَسْحِ بَعْدَ أَنْ قَعَدَ مِقْدَارَ التَّشَهُّدِ فِي آخِرِ صَلَاتِهِ إلَّا أَنَّهُ لَمْ يُسَلِّمْ وَمَنْ صَلَّى الْجُمُعَةَ فَخَرَجَ وَقْتُهَا وَدَخَلَ وَقْتُ الْعَصْرِ وَقَدْ قَعَدَ مِقْدَارَ التَّشَهُّدِ إلَّا أَنَّهُ لَمْ يُسَلِّمْ وَمَنْ قَعَدَ فِي آخِرِ صَلَاتِهِ مِقْدَارَ التَّشَهُّدِ ثُمَّ ذَكَرَ قَبْلَ أَنْ يُسَلِّمَ صَلَاةً

the Friday Prayer until its time expired and the ʿAṣr time commenced, having sat for the duration of the tashahhud without uttering the salām; one who sat for the duration of the tashahhud at his prayer's conclusion then recalled a missed prayer before uttering the salām, with five prayers or fewer intervening; the chronically bleeding woman whose prayer time expired after she sat for the duration of the tashahhud at her prayer's conclusion without uttering the salām; one who prayed without being proficient in any part of the Quran then learned a surah after sitting for the duration of the tashahhud at his prayer's conclusion without uttering the salām; one who wiped over a wound that healed after he sat for the duration of the tashahhud at his prayer's conclusion before uttering the salām—all these individuals have invalidated prayers and must restart them.

For one who prayed as a traveler then, upon sitting for the duration of the tashahhud in the final two rakʿahs without uttering the salām, formed the intention to reside—he must perform two rakʿahs as a resident prayer. There is consensus regarding these rulings. However, disagreement exists concerning one who prayed while ill and sleeping—being incapable of more—then recovered after sitting for the duration of the tashahhud in his intention without uttering the salām. Whoever begins the prayer in a healthy state, then is afflicted by an illness that transfers him to sitting or gesturing [in prostration] after having sat in the final part of his prayer for the duration of the Tashahhud without performing the salutation—he once said: "Their prayer is invalidated, and they must recommence it," and another time said: "Their prayer is complete." Ali said: We have presented these scenarios to expose the contradictions in their statements, showing that they neither adhered to affirming the salutation as an obligation nor to negating its obligation, nor remained steadfast on any foundational principle. These are statements for which we praise Allah for deliverance from their like. It is astonishing that his companions did not attribute this discrepancy to him as two opinions of his; rather, they persisted in futile contention and baseless arguments to validate the total abolition of the salutation's obligation except in these specific cases. Here, they argued only for its obligation without disagreement. As for Al-Ḥasan ibn Ḥayy's opinion, there is no evidence supporting its validity.

فَائِتَهُ بَيْنَهُ وَبَيْنَهَا خَمْسُ صَلَوَاتٍ فَأَقَلُّ وَالْمُسْتَحَاضَةُ خَرَجَ وَقْتُ الصَّلَاةِ الَّتِي هِيَ فِيهَا بَعْدَ أَنْ قَعَدَتْ فِي آخِرِهَا مِقْدَارَ التَّشَهُّدِ إِلَّا أَنَّهَا لَمْ تُسَلِّمْ وَمَنْ صَلَّى وَهُوَ لَا يُحْسِنُ شَيْئًا مِنْ الْقُرْآنِ فَتَعَلَّمَ سُورَةً بَعْدَ أَنْ قَعَدَ فِي آخِرِ صَلَاتِهِ مِقْدَارَ التَّشَهُّدِ إِلَّا أَنَّهُ لَمْ يُسَلِّمْ وَمَنْ مَسَحَ عَلَى جِرَاحَةٍ بِهِ فَبَرِئَتْ بَعْدَ أَنْ جَلَسَ فِي آخِرِ صَلَاتِهِ مِقْدَارَ التَّشَهُّدِ، وَقَبْلَ أَنْ يُسَلِّمَ. فَإِنَّ هَؤُلَاءِ كُلَّهُمْ تَبْطُلُ صَلَاتُهُمْ، وَيَلْزَمُهُمْ ابْتِدَاؤُهَا وَمَنْ صَلَّى وَهُوَ مُسَافِرٌ فَلَمَّا جَلَسَ فِي آخِرِ الرَّكْعَتَيْنِ مِقْدَارَ التَّشَهُّدِ، إِلَّا أَنَّهُ لَمْ يُسَلِّمْ فَنَوَى الْإِقَامَةَ فَإِنَّ فَرْضًا عَلَيْهِ أَنْ يَأْتِيَ بِرَكْعَتَيْنِ يُصَلِّيهِمَا حَضَرِيَّةً، لَمْ يَخْتَلِفْ قَوْلُهُ فِي شَيْءٍ مِنْ هَذَا وَاخْتَلَفَ قَوْلُهُ فِيمَنْ صَلَّى وَهُوَ مَرِيضٌ نَائِمًا - لَا يَقْدِرُ عَلَى أَكْثَرَ مِنْ ذَلِكَ - ثُمَّ صَحَّ بَعْدَ أَنْ قَعَدَ فِي نِيَّتِهِ مِقْدَارَ التَّشَهُّدِ إِلَّا أَنَّهُ لَمْ يُسَلِّمْ وَمَنْ افْتَتَحَ الصَّلَاةَ وَهُوَ صَحِيحٌ ثُمَّ عَرَضَ لَهُ مَرَضٌ نَقَلَهُ إِلَى الْجُلُوسِ، أَوْ الْإِيمَاءِ بَعْدَ أَنْ قَعَدَ فِي آخِرِ صَلَاتِهِ مِقْدَارَ التَّشَهُّدِ وَلَمْ يُسَلِّمْ -: فَمَرَّةً قَالَ: تَبْطُلُ صَلَاتُهُمْ وَيَبْتَدِئُونَهَا - وَمَرَّةً قَالَ: قَدْ تَمَّتْ صَلَاتُهُمْ قَالَ عَلِيٌّ: وَإِنَّمَا أَوْرَدْنَا هَذِهِ الْمَسَائِلَ لِنَرَى تَنَاقُضَ أَقْوَالِهِمْ، وَأَنَّهُمْ لَمْ يَتَعَلَّقُوا لَا بِإِيجَابِ السَّلَامِ فَرْضًا وَلَا بِتَرْكِ إِيجَابِهِ، وَلَا ثَبَتُوا عَلَى شَيْءٍ أَصْلًا وَهَذِهِ أَقْوَالٌ نَحْمَدُ اللَّهَ عَلَى السَّلَامَةِ مِنْ مِثْلِهَا وَمِنْ الْعَجَبِ أَنَّ أَصْحَابَهُ لَمْ يُخْرِجُوا هَذَا مِنْهُ عَلَى أَنَّهُمَا قَوْلَانِ لَهُ، بَلْ مَا زَالُوا يَشْغَبُونَ بِالْبَاطِلِ وَالْهَذْرِ فِي تَصْحِيحِ إسْقَاطِ فَرْضِ السَّلَامِ جُمْلَةً إلَّا فِي هَذِهِ الْمَوَاضِعِ، فَإِنَّهُمْ شَغَبُوا فِي إيجَابِ فَرْضِ السَّلَامِ فِيهَا فَقَطْ، لَمْ يَخْتَلِفُوا فِي ذَلِكَ وَأَمَّا قَوْلُ الْحَسَنِ بْنِ حَيٍّ فَلَا دَلِيلَ عَلَى صِحَّتِهِ وَقَالَ مَالِكٌ: السَّلَامُ فَرْضٌ تَبْطُلُ صَلَاةُ مَنْ عَرَضَ لَهُ مَا يُبْطِلُ الصَّلَاةَ مَا لَمْ يُسَلِّمْ، إلَّا أَنَّهُ قَالَ: الْإِمَامُ وَالْفَذُّ لَا يُسَلِّمَانِ إلَّا تَسْلِيمَةً وَاحِدَةً، وَأَمَّا الْمَأْمُومُ فَإِنَّهُ إنْ لَمْ يَكُنْ عَنْ شِمَالِهِ أَحَدٌ سَلَّمَ - تَسْلِيمَتَيْنِ: إحْدَاهُمَا عَنْ يَمِينِهِ،

Mālik said: The salutation is an obligation. The prayer of one who experiences an invalidating incident before performing the salutation is nullified. However, he stated: The imam and the individual worshipper perform only one salutation. As for the follower, if no one is to his left, he performs two salutations: one to his right and another in response to the imam. If someone is to his left, he performs a third salutation in response to the one on his left. Ali said: This too is an opinion without evidence for its validity—a categorization unsupported by the Quran, Sunnah, consensus, analogy, or any Companion's statement. The imam does not intend anyone with his salutation, for if he did, his prayer would be invalidated, as this constitutes speech directed to the one being greeted. Deliberate speech to other than Allah—Exalted is He—or His Messenger—peace and blessings be upon him—during prayer invalidates it. The proof is that the worshipper—whether accompanied or alone—performs the salutation as the imam does, confirming that it signifies exiting the prayer, not greeting people. Thus, these two opinions are unequivocally invalidated—praise be to Allah. Ali said: What remains are the views of those who do not consider the salutation obligatory and those who advocate a single salutation without inconsistency. We found proponents of the salutation's non-obligation citing the narration transmitted via ʿĀṣim ibn ʿAlī: Zuhayr ibn Muʿāwiyah narrated to us from Al-Ḥasan ibn Al-Ḥurr from Al-Qāsim ibn Mukhaymirah. ʿAlqamah took my hand and related: ʿAbdullāh took his hand, and the Messenger of Allāh—peace and blessings be upon him—took ʿAbdullāh's hand, teaching him the *Tashahhud* in prayer. He recounted the *Tashahhud* and said: "When you recite this, you have completed your prayer. If you wish to stand, then stand; if you wish to sit, then sit."

ʿAlī remarked: "This addition was uniquely transmitted by al-Qāsim ibn Mukhaymarah. It may originate from his own opinion or phrasing, from ʿAlqamah's words, or from ʿAbdullāh's statement. This *ḥadīth* has been narrated from ʿAlqamah by Ibrāhīm al-Nakhaʿī—who is more precise than al-Qāsim—yet he omitted this addition. As related to us by ʿAbdullāh ibn Rabīʿ: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb informed me: Muḥammad ibn Jabalah said: al-ʿAlāʾ ibn Hilāl al-Raqqī narrated to me:

وَالْأُخْرَى يَرُدُّ بِهَا عَلَى الْإِمَامِ، فَإِنْ كَانَ عَنْ يَسَارِهِ أَحَدٌ سَلَّمَ ثَالِثَةً رَدًّا عَلَى الَّذِي عَنْ يَسَارِهِ قَالَ عَلِيٌّ: وَهَذَا أَيْضًا قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ، وَتَقْسِيمٌ لَمْ يَأْتِ بِهِ قُرْآنٌ وَلَا سُنَّةٌ وَلَا إِجْمَاعٌ وَلَا قِيَاسٌ وَلَا قَوْلُ صَاحِبٍ؛ وَالْإِمَامُ لَمْ يَقْصِدْ بِسَلَامِهِ أَحَدًا، وَلَوْ فَعَلَ ذَلِكَ لَبَطَلَتْ صَلَاتُهُ؛ لِأَنَّهُ كَلَامٌ مَعَ الْمُسَلَّمِ عَلَيْهِ، وَالْكَلَامُ مَعَ غَيْرِ اللَّهِ تَعَالَى وَغَيْرِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الصَّلَاةِ عَمْدًا مُبْطِلٌ لِلصَّلَاةِ وَبُرْهَانُ هَذَا -: أَنَّ الْمُصَلِّيَ - كَانَ مَعَهُ أَحَدٌ أَوْ لَمْ يَكُنْ - فَإِنَّهُ يُسَلِّمُ عِنْدَ جَمِيعِهِمْ كَمَا يُسَلِّمُ الْإِمَامُ، فَصَحَّ أَنَّهُ خُرُوجٌ عَنْ الصَّلَاةِ، لَا تَسْلِيمٌ عَلَى أَحَدٍ مِنْ النَّاسِ. فَسَقَطَ هَذَانِ الْقَوْلَانِ سُقُوطًا بَيِّنًا دُونَ كُلْفَةٍ - وَلِلَّهِ الْحَمْدُ قَالَ عَلِيٌّ: وَبَقِيَ قَوْلُ مَنْ لَمْ يَرَ التَّسْلِيمَ مِنْ الصَّلَاةِ فَرْضًا، وَقَوْلُ مَنْ اخْتَارَ تَسْلِيمَةً وَاحِدَةً، مِمَّنْ لَمْ يَضْطَرِبْ قَوْلُهُ فِي ذَلِكَ؛ فَوَجَدْنَا مَنْ لَا يَرَى التَّسْلِيمَ فَرْضًا يَحْتَجُّ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَاصِمِ بْنِ عَلِيٍّ: ثنا زُهَيْرُ بْنُ مُعَاوِيَةَ عَنْ الْحَسَنِ بْنِ الْحُرِّ «عَنْ الْقَاسِمِ بْنِ مُخَيْمِرَةَ أَخَذَ عَلْقَمَةُ بِيَدِي وَحَدَّثَنِي: أَنَّ عَبْدَ اللَّهِ أَخَذَ بِيَدِهِ وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخَذَ بِيَدِ عَبْدِ اللَّهِ فَعَلَّمَهُ التَّشَهُّدَ فِي الصَّلَاةِ فَذَكَرَ التَّشَهُّدَ، قَالَ: فَإِذَا قُلْتَ هَذَا فَقَدْ قَضَيْتَ صَلَاتَكَ إنْ شِئْتَ أَنْ تَقُومَ فَقُمْ، وَإِنْ شِئْتَ أَنْ تَقْعُدَ فَاقْعُدْ» . قَالَ عَلِيٌّ: وَهَذِهِ الزِّيَادَةُ انْفَرَدَ بِهَا الْقَاسِمُ بْنُ مُخَيْمِرَةَ، وَلَعَلَّهَا مِنْ رَأْيِهِ وَكَلَامِهِ، أَوْ مِنْ كَلَامِ عَلْقَمَةَ، أَوْ مِنْ كَلَامِ عَبْدِ اللَّهِ وَقَدْ رُوِيَ هَذَا الْحَدِيثُ عَنْ عَلْقَمَةَ: إبْرَاهِيمَ النَّخَعِيِّ - وَهُوَ أَضْبَطُ مِنْ الْقَاسِمِ - فَلَمْ يَذْكُرْ هَذِهِ الزِّيَادَةَ. كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ جَبَلَةَ قَالَ: ثنا الْعَلَاءُ بْنُ هِلَالٍ الرَّقِّيُّ حَدَّثَنِي عُبَيْدُ اللَّهِ بْنُ عَمْرٍو الرَّقِّيُّ عَنْ زَيْدٍ هُوَ

ابْنُ أَبِي أُنَيْسَةَ - عَنْ حَمَّادٍ هُوَ ابْنُ أَبِي سُلَيْمَانَ - عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ بْنِ قَيْسٍ عَنِ ابْنِ مَسْعُودٍ قَالَ «كُنَّا لَا نَدْرِي مَا نَقُولُ إِذَا صَلَّيْنَا، فَعَلَّمَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَوَامِعَ الْكَلِمِ، فَقَالَ لَنَا: قُولُوا: التَّحِيَّاتُ لِلَّهِ وَالصَّلَوَاتُ وَالطَّيِّبَاتُ، السَّلَامُ عَلَيْكَ أَيُّهَا النَّبِيُّ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ، السَّلَامُ عَلَيْنَا وَعَلَى عِبَادِ اللَّهِ الصَّالِحِينَ، أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ، وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ. قَالَ عَلْقَمَةُ: لَقَدْ رَأَيْتُ ابْنَ مَسْعُودٍ يُعَلِّمُنَا هَؤُلَاءِ الْكَلِمَاتِ كَمَا يُعَلِّمُنَا الْقُرْآنَ» . ثُمَّ لَوْ صَحَّ أَنَّ هَذِهِ الزِّيَادَةَ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكَانَ مَا ذَكَرْنَا قَبْلُ مِنْ أَمْرِهِ - عَلَيْهِ السَّلَامُ - زِيَادَةَ حُكْمٍ لَا يَجُوزُ تَرْكُهَا وَقَدْ صَحَّ عَنِ ابْنِ مَسْعُودٍ إِيجَابُ التَّسْلِيمِ فَرْضًا كَمَا رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ: ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ أَبِي الْأَحْوَصِ عَنِ ابْنِ مَسْعُودٍ قَالَ: حَدُّ الصَّلَاةِ التَّكْبِيرُ وَانْقِضَاؤُهَا التَّسْلِيمُ فَوَضَحَ بِهَذَا أَنَّ تِلْكَ الزِّيَادَةَ إِمَّا أَنَّهَا مِمَّنْ بَعْدَ ابْنِ مَسْعُودٍ، وَإِمَّا أَنَّهَا عِنْدَ ابْنِ مَسْعُودٍ مَنْسُوخَةٌ، وَالْحُجَّةُ كُلُّهَا فِيمَا ذَكَرْنَا مِنْ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالسَّلَامِ مِنَ الصَّلَاةِ. وَأَمَّا مَنْ رَأَى تَسْلِيمَةً وَاحِدَةً وَكَرِهَ مَا زَادَ، فَإِنَّهُمُ احْتَجُّوا بِأَخْبَارٍ -: مِنْهَا - مِنْ طَرِيقِ أَبِي الْمُصْعَبِ عَنِ الدَّرَاوَرْدِيِّ مِنْ طَرِيقِ سَعْدٍ. وَالثَّابِتُ مِنْ طَرِيقِ سَعْدٍ «أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يُسَلِّمُ تَسْلِيمَتَيْنِ» . وَبِآثَارٍ وَاهِيَةٍ -: مِنْهَا - مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْفَرَجِ عَنْ مُحَمَّدِ بْنِ يُونُسَ، وَكِلَاهُمَا مَجْهُولٌ أَوْ مُرْسَلٌ مِنْ طَرِيقِ الْحَسَنِ - أَوْ مِنْ طَرِيقِ مُحَمَّدِ بْنِ زُهَيْرٍ، وَهُوَ ضَعِيفٌ أَوْ مِنْ طَرِيقِ ابْنِ لَهِيعَةَ، وَهُوَ سَاقِطٌ وَلَوْ صَحَّتْ لَكَانَتْ أَحَادِيثُ التَّسْلِيمَتَيْنِ زِيَادَةً يَكُونُ الْفَضْلُ فِي الْأَخْذِ بِهَا فَإِنْ ذَكَرَ ذَاكِرٌ: حَدِيثَ جَابِرِ بْنِ سَمُرَةَ «كُنَّا إِذَا صَلَّيْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قُلْنَا: السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ،

ʿUbaydullāh ibn ʿAmr al-Raqqī narrated from Zayd ibn Abī Unaysah, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī, from ʿAlqamah ibn Qays, from Ibn Masʿūd, who said:

"We did not know what to recite after praying until the Messenger of Allāh—peace and blessings be upon him—taught us succinct, all-encompassing words. He instructed us: Say:

"All acts of worship, pure deeds, and salutations belong to Allāh. Peace be upon you, O Prophet, along with Allāh's mercy and blessings. Peace be upon us and upon Allāh's righteous servants. I bear witness that none deserves worship except Allāh, and I bear witness that Muḥammad is His servant and Messenger."

ʿAlqamah said: "I witnessed Ibn Masʿūd teaching us these words as meticulously as he taught us the Qurʾān."'

If this addition were authentically established as the speech of the Messenger of Allāh—peace and blessings be upon him—then what we previously mentioned from his instruction would constitute an additional legal injunction impermissible to neglect." It has been authentically reported from Ibn Masʿūd that the salutation is obligatory, as we have narrated through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān: Sufyān al-Thawrī narrated to us from Abū Isḥāq al-Sabīʿī from Abū al-Aḥwaṣ from Ibn Masʿūd, who said: "The takbīr initiates the prayer, and its conclusion is the salutation." This clarifies that the additional salutation is either from someone after Ibn Masʿūd or abrogated according to his view. The entire evidence lies in the command of the Messenger of Allah—peace and blessings be upon him—regarding the salutation to conclude the prayer. As for those who deem a single salutation sufficient and disapprove of additions, they cite reports—among them—the narration through Abū al-Muṣʿab from al-Darāwardī via Saʿd. Yet what is established through Saʿd's chain is that "he—peace be upon him—performed two salutations." They also cite weak athar—such as the chain through Muḥammad ibn al-Faraj from Muḥammad ibn Yūnus; both are unknown or mursal through al-Ḥasan's chain—or through Muḥammad ibn Zuhayr (who is weak) or Ibn Lahīʿah (who is unreliable). Even if these were authentic, the narrations about

two salutations would constitute an addition, warranting preference for their adoption. If one cites the ḥadīth of Jābir ibn Samurah: "When we prayed with the Messenger of Allah—peace and blessings be upon him—we would say, 'Peace be upon you and Allah's mercy, peace be upon you and Allah's mercy,' gesturing to both sides. The Messenger of Allah—peace and blessings be upon him—said: 'Why do you gesture like the flicking tails of skittish horses? It suffices to place your hand on your thigh and salute your brother to your right and left.'" ʿAlī remarked: "If this pertains to the salutation concluding the prayer, it is undoubtedly abrogated by his statement—peace and blessings be upon him—'This prayer permits no human speech.'" This ruling is uncontested within the Ummah as definitively established. Some claimed its restriction to specific circumstances, but since it is so, it abrogates the prior permissibility of exchanging salutations during prayer. Thus, it is confirmed as abrogated—and success is from Allah alone.[70]

L6481–6482 **A jurisprudential issue concerning forgetting something from the prayer.**

L6483 Issue 377: If anyone forgets any of the aforementioned obligations and then bows, it becomes obligatory upon him to invalidate that rakʿah. A follower must make it up after the imam concludes the prayer. Similarly, both the individual worshipper and the imam must discard that rakʿah and complete their prayers. All of them are required to perform the prostration of forgetfulness because they failed to perform the rakʿah as commanded. Whatever the Messenger of Allah—peace and blessings be upon him—instructed to be performed in a specific part of the prayer may not be performed elsewhere, based on Allah's words: *"Whoever transgresses Allah's limits has wronged himself"* [65:1].[71]

L6484 **A jurisprudential issue: Intentionally speaking to any person during prayer.**

[70] **Hadith references (L6472):** Sunan an-Nasai 1167; Sunan an-Nasai 1162; Sunan an-Nasai 1164; Sahih Muslim 537a; Mishkat al-Masabih 978.

[71] **Qur'an references (L6483):** Qur'an 65:1 (At-Talaq).

السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ، وَأَشَارَ بِيَدِهِ إِلَى الْجَانِبَيْنِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَا تُومِئُونَ بِأَيْدِيكُمْ كَأَنَّهَا أَذْنَابُ خَيْلٍ شُمْسٍ إِنَّمَا يَكْفِي أَحَدَكُمْ أَنْ يَضَعَ يَدَهُ عَلَى فَخِذِهِ ثُمَّ يُسَلِّمَ عَلَى أَخِيهِ عَنْ يَمِينِهِ وَشِمَالِهِ» . قَالَ عَلِيٌّ: هَذَا إِنْ كَانَ فِي السَّلَامِ الَّذِي يَخْرُجُ بِهِ مِنْ الصَّلَاةِ فَهُوَ مَنْسُوخٌ بِلَا شَكٍّ، بِقَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ هَذِهِ الصَّلَاةَ لَا يَصْلُحُ فِيهَا شَيْءٌ مِنْ كَلَامِ النَّاسِ» . وَهَذَا أَمْرٌ لَمْ يَخْتَلِفْ أَحَدٌ مِنْ الْأُمَّةِ فِي أَنَّهُ مُحْكَمٌ، ثُمَّ ادَّعَى قَوْمٌ تَخْصِيصَهُ فِي بَعْضِ الْأَحْوَالِ، فَإِذْ هُوَ كَذَلِكَ فَهُوَ النَّاسِخُ لِمَا كَانُوا عَلَيْهِ قَبْلُ مِنْ إبَاحَةِ التَّسْلِيمِ وَرَدِّهِ فِي الصَّلَاةِ، فَصَحَّ أَنَّ ذَلِكَ مَنْسُوخٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ سَهَا عَنْ شَيْءٍ مِنْ الصَّلَاةِ]

٣٧٧ - مَسْأَلَةٌ: وَكُلُّ مَنْ سَهَا عَنْ شَيْءٍ مِمَّا ذَكَرْنَا فَإِنَّهُ فَرْضٌ عَلَيْهِ حَتَّى رَكَعَ لَمْ يُعْتَدَّ بِتِلْكَ الرَّكْعَةِ، وَقَضَاهَا إذَا أَتَمَّ الْإِمَامُ إنْ كَانَ مَأْمُومًا، وَكَذَلِكَ يُلْغِيهَا الْفَذُّ وَالْإِمَامُ، وَيُتِمَّانِ صَلَاتَهُمَا، وَعَلَى جَمِيعِهِمْ سُجُودُ السَّهْوِ، لِأَنَّهُمْ لَمْ يَأْتُوا بِالرَّكْعَةِ كَمَا أُمِرُوا، وَكُلُّ مَا أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُعْمَلَ فِي مَكَانٍ مِنْ الصَّلَاةِ فَلَا يَجُوزُ أَنْ يُعْمَلَ فِي غَيْرِ ذَلِكَ الْمَوْضِعِ لِقَوْلِ اللَّهِ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١]

[مَسْأَلَةٌ تَعَمُّدُ الْكَلَامِ مَعَ أَحَدٍ مِنْ النَّاسِ فِي الصَّلَاةِ]

L6485 378. Issue: It is not permissible to intentionally speak with anyone during prayer, neither with the Imam to correct the prayer nor with others. If one does so, their prayer becomes invalid. Even if someone says during their prayer, “May Allah have mercy on you, O so-and-so,” their prayer is invalidated. Abdullah ibn al-Rabi‘ narrated to us; Muhammad ibn Ishaq narrated to us; Ibn al-A‘rabi narrated to us; Abu Dawud narrated to us; Musa ibn Isma‘il narrated to us; Aban (who is Ibn Yazid al-‘Attar) narrated to us; ‘Asim (who is Ibn Abi al-Najūd) narrated from Abu Wa’il from Ibn Mas‘ud, who said: “We used to greet others during prayer and request our needs. Then I came to the Messenger of Allah—peace and blessings be upon him—while he was praying. I greeted him, but he did not respond. I was seized by what had preceded and what had happened. When the Messenger of Allah—peace and blessings be upon him—completed his prayer, he said: ’Allah decrees in His command as He wills, and Allah has now ordained that you must not speak during prayer.’ Then he returned my greeting.”

٣٧٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ تَعَمُّدُ الْكَلَامِ مَعَ أَحَدٍ مِنْ النَّاسِ فِي الصَّلَاةِ، لَا مَعَ الْإِمَامِ فِي إصْلَاحِ الصَّلَاةِ وَلَا مَعَ غَيْرِهِ، فَإِنْ فَعَلَ بَطَلَتْ صَلَاتُهُ وَلَوْ قَالَ فِي صَلَاتِهِ: رَحِمَك اللَّهُ يَا فُلَانُ، بَطَلَتْ صَلَاتُهُ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ الرَّبِيعِ ثنا مُحَمَّدُ بْنُ إسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُوسَى بْنُ إسْمَاعِيلَ ثنا أَبَانُ هُوَ ابْنُ يَزِيدَ الْعَطَّارُ - ثنا عَاصِمٌ هُوَ ابْنُ أَبِي النَّجُودِ - عَنْ أَبِي وَائِلٍ عَنْ ابْنِ مَسْعُودٍ قَالَ «كُنَّا نُسَلِّمُ فِي الصَّلَاةِ وَنَأْمُرُ بِحَاجَاتِنَا، فَقَدِمْتُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ يُصَلِّي، فَسَلَّمْتُ عَلَيْهِ فَلَمْ يَرُدَّ عَلَيَّ السَّلَامَ، فَأَخَذَنِي مَا قَدُمَ وَمَا حَدَثَ، فَلَمَّا قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الصَّلَاةَ قَالَ: إنَّ اللَّهَ يُحْدِثُ مِنْ أَمْرِهِ مَا يَشَاءُ، وَإِنَّ اللَّهَ قَدْ أَحْدَثَ أَنْ لَا تَكَلَّمُوا فِي الصَّلَاةِ فَرَدَّ عَلَيَّ السَّلَامَ»

A legal question: No one may issue a fatwa to the Imam except regarding the Mother of the Quran (Surah Al-Fatiha).

[مَسْأَلَةٌ لَا يَجُوزُ لِأَحَدٍ أَنْ يُفْتِيَ الْإِمَامَ إلَّا فِي أُمِّ الْقُرْآنِ وَحْدَهَا]

L6486–6487

L6488 Issue 379: It is not permissible for anyone to advise the Imam jurisprudentially except regarding the Mother of the Quran alone. If the recitation becomes unclear to the Imam, he should bow in rukūʿ or switch to another surah. Whoever intentionally advises him jurisprudentially while knowing this is impermissible invalidates his prayer. The proof for this is what we have cited with its chain of transmission from the Messenger of Allah (peace be upon him): “Do you recite behind the Imam?” They said, “Yes.” He responded, “Do not do so except with the Mother of the Quran.” Thus, whoever advises the Imam jurisprudentially must fall into one of two scenarios: either he intended it to be Quranic recitation, or he did not intend it as Quranic recitation.

L6489–6490 If he intended thereby the recitation of the Quran, this is impermissible because the Messenger of Allah—peace and blessings of Allah be upon him—prohibited the follower from reciting any part of the Quran except the Mother of the Quran. If he did not intend thereby the recitation of

٣٧٩ - مَسْأَلَةٌ: وَلَا يَجُوزُ لِأَحَدٍ أَنْ يُفْتِيَ الْإِمَامَ إلَّا فِي أُمِّ الْقُرْآنِ وَحْدَهَا. فَإِنْ الْتَبَسَتْ الْقِرَاءَةُ عَلَى الْإِمَامِ فَلْيَرْكَعْ، أَوْ فَلْيَنْتَقِلْ إلَى سُورَةٍ أُخْرَى، فَمَنْ تَعَمَّدَ إفْتَاءَهُ وَهُوَ يَدْرِي أَنَّ ذَلِكَ لَا يَجُوزُ لَهُ بَطَلَتْ صَلَاتُهُ بُرْهَانُ ذَلِكَ -: مَا قَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَتَقْرَءُونَ خَلْفِي قَالُوا: نَعَمْ، قَالَ: فَلَا تَفْعَلُوا إلَّا بِأُمِّ الْقُرْآنِ» فَوَجَبَ أَنَّ مَنْ أَفْتَى الْإِمَامَ لَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ: إمَّا أَنْ يَكُونَ قَصَدَ بِهِ قِرَاءَةَ الْقُرْآنِ، أَوْ لَمْ يَقْصِدْ بِهِ قِرَاءَةَ الْقُرْآنِ.

فَإِنْ كَانَ قَصَدَ بِهِ قِرَاءَةَ الْقُرْآنِ فَهَذَا لَا يَجُوزُ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى أَنْ يَقْرَأَ الْمَأْمُومُ شَيْئًا مِنْ الْقُرْآنِ حَاشَا أُمِّ الْقُرْآنِ. إنْ كَانَ لَمْ يَقْصِدْ بِهِ قِرَاءَةَ

the Quran, this is impermissible because it constitutes speech during prayer, and the Prophet—peace be upon him—informed that no speech of people is appropriate within it. This is the opinion of Ali ibn Abi Talib and others, and according to this, Abu Hanifah holds. If they cite the narration we narrated through the chain of Yahya ibn Kathir al-Asadi from al-Miswar ibn Yazid al-Asadi, "that the Messenger of Allah—peace and blessings of Allah be upon him—forgot a verse during prayer, and when he concluded the prayer, a man reminded him of it, so he said to him: 'Why did you not remind me of it?'" then this aligns with the established principle of the permissibility of recitation in prayer. We know with certainty that the Prophet's prohibition—peace and blessings of Allah be upon him—against reciting anything behind the Imam except the Mother of the Quran abrogates that and prohibits it. It is impermissible to revert to an abrogated state based on a false claim of its revival.

L6491–6492

A legal issue concerning speaking absentmindedly during prayer.

L6493–6495

380 - Issue: If someone speaks absentmindedly during prayer, their prayer remains complete regardless of whether the speech was little or much, and they are only required to perform the prostration of sahw. The same applies if they spoke out of unawareness [of the ruling]. Abū Ḥanīfah said: "Speech in prayer—whether intentional or inadvertent—is equivalent: it invalidates the prayer in both cases." He held that intentionally offering the salām in prayer invalidates it, but does not invalidate it if done inadvertently. This is a contradiction, and the proof for the validity of our position is Allah's statement, the Almighty: *"There is no blame on you for what you commit by mistake, but only for what your hearts deliberately intend"* (Al-Aḥzāb: 5).

Aḥmad ibn ʿUmar ibn Anas narrated to us: Al-Ḥusayn ibn ʿAbdillāh al-Jurjānī narrated to us: ʿAbd al-Razzāq ibn Aḥmad ibn ʿAbd al-Ḥamīd al-Shīrāzī informed us: Fāṭimah bint al-Ḥasan ibn al-Rayyān al-Makhzūmī—the copyist of Bakkār ibn Quṭaybah the judge—informed us. She said: Al-Rabīʿ ibn Sulaymān al-Muʾadhdhin narrated to us: Bishr ibn Bakr narrated to us from

الْقُرْآنِ فَهَذَا لَا يَجُوزُ لِأَنَّهُ كَلَامٌ فِي الصَّلَاةِ، وَقَدْ أَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّهُ لَا يَصْلُحُ فِيهَا شَيْءٌ مِنْ كَلَامِ النَّاسِ. وَهُوَ قَوْلُ عَلِيِّ بْنِ أَبِي طَالِبٍ وَغَيْرِهِ - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ: فَإِنْ ذَكَرُوا خَبَرًا رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ كَثِيرٍ الْأَسَدِيِّ عَنْ الْمِسْوَرِ بْنِ يَزِيدَ الْأَسَدِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَسِيَ آيَةً فِي الصَّلَاةِ، فَلَمَّا سَلَّمَ ذَكَّرَهُ رَجُلٌ بِهَا، فَقَالَ لَهُ: أَفَلَا أَذْكَرْتَنِيهَا» . فَإِنَّ هَذَا مُوَافِقٌ لِمَعْهُودِ الْأَصْلِ مِنْ إبَاحَةِ الْقِرَاءَةِ فِي الصَّلَاةِ، وَبِيَقِينٍ نَدْرِي أَنَّ نَهْيَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَقْرَأَ خَلْفَهُ إلَّا بِأُمِّ الْقُرْآنِ فَنَاسِخٌ لِذَلِكَ وَمَانِعٌ مِنْهُ، وَلَا يَجُوزُ الْعَوْدُ إلَى حَالٍ مَنْسُوخَةٍ بِدَعْوَى كَاذِبَةٍ فِي عَوْدِيَّتِهَا

[مَسْأَلَةٌ تَكَلَّمَ سَاهِيًا فِي الصَّلَاةِ]

٣٨٠ - مَسْأَلَةٌ: وَمَنْ تَكَلَّمَ سَاهِيًا فِي الصَّلَاةِ فَصَلَاتُهُ تَامَّةٌ، قَلَّ كَلَامُهُ أَوْ كَثُرَ، وَعَلَيْهِ سُجُودُ السَّهْوِ فَقَطْ، وَكَذَلِكَ إنْ تَكَلَّمَ جَاهِلًا. وَقَالَ أَبُو حَنِيفَةَ: الْكَلَامُ فِي الصَّلَاةِ عَمْدًا وَسَهْوًا سَوَاءٌ: تَبْطُلُ بِكِلَيْهِمَا، وَرَأَى السَّلَامَ فِي الصَّلَاةِ عَمْدًا يُبْطِلُهَا، وَلَا يُبْطِلُهَا إذَا كَانَ سَهْوًا - وَهَذَا تَنَاقُضٌ بُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] . حَدَّثَنَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ ثنا الْحُسَيْنُ بْنُ عَبْدِ اللَّهِ الْجُرْجَانِيُّ ثنا عَبْدُ الرَّزَّاقِ بْنُ أَحْمَدَ بْنِ عَبْدِ الْحَمِيدِ الشِّيرَازِيِّ أَخْبَرَتْنَا فَاطِمَةُ بِنْتُ الْحَسَنِ بْنِ الرَّيَّانِ الْمَخْزُومِيِّ وَرَّاقِ بَكَّارِ بْنِ قُتَيْبَةَ الْقَاضِي قَالَتْ: ثنا الرَّبِيعُ بْنُ سُلَيْمَانَ الْمُؤَذِّنُ ثنا بِشْرُ بْنُ بَكْرٍ عَنْ الْأَوْزَاعِيِّ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ اللَّهَ تَجَاوَزَ لِي عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا

أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ - عَنْ حَجَّاجٍ الصَّوَّافِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ هِلَالِ بْنِ أَبِي مَيْمُونَةَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ «مُعَاوِيَةَ بْنِ الْحَكَمِ السُّلَمِيِّ قَالَ بَيْنَمَا أَنَا أُصَلِّي مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ عَطَسَ رَجُلٌ مِنْ الْقَوْمِ، فَقُلْتُ: يَرْحَمُكَ اللَّهُ فَرَمَانِي الْقَوْمُ بِأَبْصَارِهِمْ، فَقُلْتُ: وَاثُكْلَ أُمِّيَاهْ مَا شَأْنُكُمْ تَنْظُرُونَ إِلَيَّ فَجَعَلُوا يَضْرِبُونَ بِأَيْدِيهِمْ عَلَى أَفْخَاذِهِمْ، فَلَمَّا رَأَيْتُهُمْ يُصَمِّتُونَنِي لَكِنِّي سَكَتُّ فَلَمَّا صَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبِأَبِي هُوَ وَأُمِّي مَا رَأَيْتُ مُعَلِّمًا قَبْلَهُ وَلَا بَعْدَهُ أَحْسَنَ تَعْلِيمًا مِنْهُ، فَوَاللَّهِ مَا كَهَرَنِي وَلَا ضَرَبَنِي وَلَا شَتَمَنِي قَالَ: إِنَّ هَذِهِ الصَّلَاةَ لَا يَصْلُحُ فِيهَا شَيْءٌ مِنْ كَلَامِ النَّاسِ، إِنَّمَا هُوَ التَّسْبِيحُ وَالتَّكْبِيرُ وَقِرَاءَةُ الْقُرْآنِ» ، أَوْ كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

al-Awzāʿī from ʿAṭāʾ ibn Abī Rabāḥ from ʿUbayd ibn ʿUmayr from Ibn ʿAbbās, who said: The Messenger of Allah (peace be upon him) said, *"Allah has overlooked for my nation what occurs due to error, forgetfulness, and what they are compelled to do."*

ʿAbdullāh ibn Yūsuf narrated to us: Aḥmad ibn Fatḥ narrated to us: ʿAbd al-Wahhāb ibn ʿĪsā narrated to us: Aḥmad ibn Muḥammad narrated to us: Aḥmad ibn ʿAlī narrated to us: Muslim ibn al-Ḥajjāj narrated to us: Abū Bakr ibn Abī Shaybah narrated to us: Ismāʿīl ibn Ibrāhīm—that is, Ibn ʿUlayyah—narrated to us from Ḥajjāj al-Ṣawwāf from Yaḥyā ibn Abī Kathīr from Hilāl ibn Abī Maymūnah from ʿAṭāʾ ibn Yasār from Muʿāwiyah ibn al-Ḥakam al-Sulamī, who said: "While I was praying with the Messenger of Allah (peace be upon him), a man sneezed. I said, 'May Allah have mercy on you.' The people gave me disapproving looks, so I said, 'Woe to me! Why are you all staring at me?' They began striking their hands against their thighs." When I saw them silencing me, I remained quiet. When the Messenger of Allah (peace be upon him) concluded his prayer—by my father and mother, I swear I have never seen a teacher before him or after him more excellent in instruction than he—by Allah, he neither rebuked me, struck me, nor reviled me. He said, "Verily, this prayer is not suited for any human speech. It is only glorification, magnification, and recitation of the Qur'an"—or as the Messenger of Allah (peace be upon him) said.[7273]

قَالَ عَلِيٌّ: هَذَا الْحَدِيثُ يُبْطِلُ قَوْلَ أَبِي حَنِيفَةَ، لِأَنَّ فِيهِ أَنَّهُ كَانَ بَعْدَ تَحْرِيمِ الْكَلَامِ فِي الصَّلَاةِ بِيَقِينٍ، وَلَمْ يُبْطِلْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَاتَهُ. فَإِنْ قِيلَ: وَلَا أَمَرَهُ بِسُجُودِ السَّهْوِ قُلْنَا: قَدْ صَحَّ الْأَمْرُ بِالسُّجُودِ مَنْ زَادَ فِي صَلَاتِهِ أَوْ نَقَصَ، فَوَاجِبٌ ضَمُّ هَذَا الْحُكْمِ إِلَى مَا وَقَعَ عَلَيْهِ وَلَا بُدَّ وَقَدْ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي إِبْرَاهِيمُ بْنُ يَعْقُوبَ ثنا الْحَسَنُ بْنُ مُوسَى ثنا شَيْبَانُ ثنا يَحْيَى بْنُ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ - عَنْ أَبِي هُرَيْرَةَ قَالَ: «بَيْنَمَا أَنَا أُصَلِّي

L6496 Ali said: This hadith invalidates the opinion of Abū Ḥanīfah because it contains that speech occurred with certainty after the prohibition of speaking during prayer, yet the Messenger of Allah—peace be upon him—did not invalidate his prayer. If it is objected: "Nor did he command him to perform the prostration of forgetfulness," we reply: The ruling that prostration is required for additions to or omissions from prayer is well-established. Therefore, it is obligatory to apply this ruling to the present case necessarily. ʿAbdullāh ibn Rabīʿ narrated to us; Muḥammad ibn Muʿāwiyah narrated to us; Aḥmad ibn Shuʿayb narrated to us; Ibrāhīm ibn Yaʿqūb informed me; al-Ḥasan ibn Mūsā narrated to us; Shaybān narrated to us; Yaḥyā ibn Abī

[72]**Hadith references (L6493):** Sahih Muslim 537a; Mishkat al-Masabih 978.

[73]**Qur'an references (L6493):** Qur'an 33:5 (Al-Ahzab).

Kathīr narrated from Abū Salamah (the son of ʿAbd al-Raḥmān) from Abū Hurayrah, who said: “While I was praying the Dhuhr prayer with the Messenger of Allah—peace be upon him—he pronounced the salām (concluded the prayer) after two rakʿahs. A man from Banū Sulaym stood and said: ’O Messenger of Allah, has the prayer been shortened or have you forgotten?’ The Messenger of Allah—peace be upon him—responded: ’It has not been shortened, nor have I forgotten.’ The man said: ’O Messenger of Allah, you only prayed two rakʿahs.’ The Messenger of Allah—peace be upon him—asked: ’Is what Dhū al-Yadayn says true?’ They answered: ’Yes.’ Thereupon the Messenger of Allah—peace be upon him—stood and prayed two rakʿahs with them.”

مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلاَةَ الظُّهْرِ فَسَلَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ رَكْعَتَيْنِ، فَقَامَ رَجُلٌ مِنْ بَنِي سُلَيْمٍ فَقَالَ: يَا رَسُولَ اللَّهِ، أَقَصُرَتْ الصَّلاَةُ أَمْ نَسِيتَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَمْ تَقْصُرْ وَلَمْ أَنْسَ، فَقَالَ: يَا رَسُولَ اللَّهِ، إِنَّمَا صَلَّيْتَ رَكْعَتَيْنِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَحَقٌّ مَا يَقُولُ ذُو الْيَدَيْنِ قَالُوا: نَعَمْ، فَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَصَلَّى بِهِمْ رَكْعَتَيْنِ» .

L6497–6499 Ali said: Two schools made a mistake in this report: the first - the followers of Abu Hanifah, and the second - Ibn al-Qasim and those who concurred with him. As for the adherents of Abū Ḥanīfah, they said: Perhaps this report predated the prohibition of speech during prayer. They also claimed: The man in question was slain on the Day of Badr—as mentioned by Saʿīd ibn al-Musayyab and al-Zuhrī. They seized upon a phrase used by some narrators of the report—“The Messenger of Allah (may Allah bless him and grant him peace) led us in prayer”—asserting: This is a report that he prayed for the Muslims. ʻAlī said: All of this is invalid, deception, and false conjecture. As for their claim that it might have preceded the prohibition of speech, this is invalid, for the prohibition of speech during prayer was definitively established before the Day of Badr. ʻAbd al-Raḥmān ibn ʻAbd Allāh ibn Khālid narrated from Ibrāhīm ibn Aḥmad from al-Farbarī from al-Bukhārī from Ibn Numayr from Ibn Fuḍayl (who is Muḥammad) from al-Aʿmash, from Ibrāhīm al-Nakhaʿī from ʻAlqamah, from ʻAbd Allāh ibn Masʿūd, who said: “We used to greet the Messenger of Allah (may Allah bless him and grant him peace) during prayer, and he would respond. But after returning from the Negus, we greeted him and he did not respond, saying: ʻPrayer demands full attention.’” There is no dispute that Ibn Masʿūd witnessed Badr after returning from Abyssinia. Abū Hurayrah and ʻImrān ibn al-Ḥuṣayn—both of whom embraced Islam late—narrate the incident of Dhū al-Yadayn, though their conversion occurred over a decade after Badr, as did Muʿāwiyah ibn

قَالَ عَلِيٌّ: فَغَلَطَ فِي هَذَا الْخَبَرِ صِنْفَانِ: أَحَدُهُمَا - أَصْحَابُ أَبِي حَنِيفَةَ، وَالثَّانِي - ابْنُ الْقَاسِمِ وَمَنْ وَافَقَهُ فَأَمَّا أَصْحَابُ أَبِي حَنِيفَةَ فَإِنَّهُمْ قَالُوا: لَعَلَّ هَذَا الْخَبَرَ كَانَ قَبْلَ تَحْرِيمِ الْكَلاَمِ فِي الصَّلاَةِ. وَقَالُوا: الرَّجُلُ الْمَذْكُورُ قُتِلَ يَوْمَ بَدْرٍ، ذَكَرَ ذَلِكَ سَعِيدِ بْنِ الْمُسَيِّبِ وَالزُّهْرِيُّ. وَعَمَدُوا إِلَى لَفْظٍ ذَكَرَهُ بَعْضُ رُوَاةِ الْخَبَرِ وَهُوَ «صَلَّى لَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» فَقَالُوا: هَذَا إِخْبَارٌ بِأَنَّهُ صَلَّى لِلْمُسْلِمِينَ. قَالَ عَلِيٌّ: وَهَذَا كُلُّهُ بَاطِلٌ وَتَمْوِيهٌ وَظَنٌّ كَاذِبٌ -: أَمَّا قَوْلُهُمْ: لَعَلَّهُ كَانَ قَبْلَ تَحْرِيمِ الْكَلاَمِ فَبَاطِلٌ؛ لِأَنَّ تَحْرِيمَ الْكَلاَمِ فِي الصَّلاَةِ كَانَ قَبْلَ يَوْمِ بَدْرٍ بِيَقِينٍ. حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا ابْنُ نُمَيْرٍ ثنا ابْنُ فُضَيْلٍ هُوَ مُحَمَّدٌ - ثنا الْأَعْمَشُ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ «كُنَّا نُسَلِّمُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ فِي الصَّلاَةِ فَيَرُدُّ عَلَيْنَا، فَلَمَّا رَجَعْنَا مِنْ عِنْدِ النَّجَاشِيِّ سَلَّمْنَا عَلَيْهِ فَلَمْ يَرُدَّ عَلَيْنَا، وَقَالَ: إِنَّ فِي الصَّلاَةِ شُغْلًا» . وَلَا خِلَافَ فِي أَنَّ ابْنَ مَسْعُودٍ شَهِدَ بَدْرًا بَعْدَ إِقْبَالِهِ مِنْ أَرْضِ الْحَبَشَةِ وَأَبُو هُرَيْرَةَ، وَعِمْرَانُ بْنُ الْحُصَيْنِ

- وَكِلَاهُمَا مُتَأَخِّرُ الْإِسْلَامِ - يَذْكُرَانِ جَمِيعًا حَدِيثَ ذِي الْيَدَيْنِ، وَإِسْلَامُهُمَا بَعْدَ بَدْرٍ بِأَعْوَامٍ - وَكَذَلِكَ مُعَاوِيَةُ بْنُ خَدِيجٍ أَيْضًا. وَأَمَّا قَوْلُهُمْ: إِنَّ الرَّجُلَ الْمَذْكُورَ قُتِلَ يَوْمَ بَدْرٍ فَتَمْوِيهٌ بَارِدٌ، لِوُجُوهٍ -: أَحَدُهَا: أَنَّ أَعْلَى مَنْ ذَكَرَ ذَلِكَ فَابْنُ الْمُسَيِّبِ، وَلَمْ يُولَدْ إِلَّا بَعْدَ بَدْرٍ بِبِضْعَةِ عَشَرَ عَامًا.

Khadīj's. As for their assertion that the man was killed at Badr, this is a feeble distortion for several reasons: First, the primary source cited is Ibn al-Musayyab, who was not born until ten-odd years after Badr.[74]

[74]**Hadith references (L6497):** Sahih al-Bukhari 1168; Sahih al-Bukhari 1224; Sunan an-Nasai 1222.

L6500–6501 The second is that the one slain on the day of Badr was Dhū al-Shimālayn, whose name was ʿAbd ʿAmr and his lineage was al-Khuzāʿī, while the one who addressed the Messenger of Allah—peace and blessings be upon him—was Dhū al-Yadayn, whose name was al-Khirbāq and his lineage was Sulamī. As for their claim that Abū Hurayrah's statement "The Messenger of Allah—peace and blessings be upon him—prayed for us" is merely a report about his prayer with the Muslims among whom Abū Hurayrah was present—this is false. Abū Hurayrah's earlier statement, which we mentioned—"While I was praying with the Messenger of Allah—peace and blessings be upon him"—demonstrates the falsity of their assertion. If they argue: "We analogized forgetfulness in speech to deliberate act," reply to them: All analogy is invalid. Even if analogy were valid, this would be the essence of invalidity, for proponents of analogy unanimously agree that a thing is only analogized to its equivalent, not its opposite, and forgetfulness is the opposite of deliberate intent. Then ask them: Why did you not analogize speech in prayer due to forgetfulness to the greeting in prayer due to forgetfulness, as that is more analogous? For both are speech; what rationale did they employ to differentiate between them? The distinction between unintentional speech and deliberate speech is far clearer and more evident—and with Allah, the Exalted, lies all success. As for Ibn al-Qāsim and those who concurred with him, they used this report to permit people's speech with the Imam to correct the prayer.[1]

وَالثَّانِي: أَنَّ الْمَقْتُولَ يَوْمَ بَدْرٍ إنَّمَا هُوَ ذُو الشِّمَالَيْنِ، وَاسْمُهُ عَبْدُ عَمْرٍو وَنَسَبُهُ الْخُزَاعِيُّ، وَالْمُكَلِّمُ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ ذُو الْيَدَيْنِ وَاسْمُهُ الْخِرْبَاقُ وَنَسَبُهُ سُلَمِيٌّ. وَأَمَّا قَوْلُهُمْ: إنَّ قَوْلَ أَبِي هُرَيْرَةَ «صَلَّى لَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» إنَّمَا هُوَ إخْبَارٌ عَنْ صَلَاتِهِ بِالْمُسْلِمِينَ الَّذِينَ أَبُو هُرَيْرَةَ مَعَهُمْ -: فَبَاطِلٌ، يُبَيِّنُ ذَلِكَ قَوْلُ أَبِي هُرَيْرَةَ الَّذِي ذَكَرْنَاهُ آنِفًا «بَيْنَمَا أَنَا أُصَلِّي مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» فَظَهَرَ فَسَادُ قَوْلِهِمْ. فَإِنْ قَالُوا: قِسْنَا السَّهْوَ فِي الْكَلَامِ عَلَى الْعَمْدِ قِيلَ لَهُمْ: الْقِيَاسُ كُلُّهُ بَاطِلٌ؛ ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّ الْقَائِلِينَ بِالْقِيَاسِ مُجْمِعُونَ عَلَى أَنَّ الشَّيْءَ إنَّمَا يُقَاسُ عَلَى نَظِيرِهِ، لَا عَلَى ضِدِّهِ، وَالنِّسْيَانُ ضِدُّ الْعَمْدِ ثُمَّ يُقَالُ لَهُمْ: فَهَلَّا قِسْتُمْ الْكَلَامَ فِي الصَّلَاةِ سَهْوًا عَلَى السَّلَامِ فِي الصَّلَاةِ سَهْوًا، فَهُوَ أَشْبَهُ بِهِ، لِأَنَّهُمَا مَعًا كَلَامٌ فَأَيُّ شَيْءٍ قَصَدُوا بِهِ إلَى التَّفْرِيقِ بَيْنَهُمَا فَإِنَّ الْفَرْقَ بَيْنَ سَهْوِ الْكَلَامِ وَعَمْدِهِ أَبْيَنُ وَأَوْضَحُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَأَمَّا ابْنُ الْقَاسِمِ وَمَنْ وَافَقَهُ فَإِنَّهُمْ أَجَازُوا بِهَذَا الْخَبَرِ كَلَامَ النَّاسِ مَعَ الْإِمَامِ فِي إصْلَاحِ الصَّلَاةِ.

L6502–6504 Ali—peace be upon him—said: This is erroneous, for the people only addressed the Messenger of Allah—peace and blessings be upon him—and the intentional speech with him—peace and blessings be upon him—does not invalidate the prayer whatsoever. He—peace and blessings be upon him—spoke to them while assuming his prayer had concluded and that speech was permissible for him. Similarly, people conversed with one another that day while believing the prayer had been shortened and concluded.

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِأَنَّ النَّاسَ إنَّمَا كَلَّمُوا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، وَتَعَمُّدُ الْكَلَامِ مَعَهُ - عَلَيْهِ السَّلَامُ - لَا يَضُرُّ الصَّلَاةَ شَيْئًا، وَكَلَّمَهُمْ - عَلَيْهِ السَّلَامُ - وَهُوَ يُقَدِّرُ أَنَّ صَلَاتَهُ قَدْ تَمَّتْ، وَأَنَّ الْكَلَامَ لَهُ مُبَاحٌ؛ وَكَذَلِكَ تَكَلَّمَ النَّاسُ يَوْمَئِذٍ بَعْضُهُمْ مَعَ بَعْضٍ وَهُمْ يَظُنُّونَ أَنَّ الصَّلَاةَ قَصُرَتْ وَتَمَّتْ. حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي دُلَيْمٍ ثنا مُحَمَّدُ بْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ - عَنْ شُعْبَةَ عَنْ حَبِيبِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ حَفْصِ بْنِ عَاصِمٍ عَنْ «أَبِي

Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Muḥammad ibn ʿAbd Allāh ibn Abī Dulaym narrated to us: Muḥammad ibn Waḍḍāḥ narrated to us:

[1] **Hadith references (L6501):** Sahih al-Bukhari 1168; Sahih al-Bukhari 1224; Sunan an-Nasai 1222.

Abū Bakr ibn Abī Shaybah narrated to us: Muḥammad ibn Jaʿfar Ghundar—from Shuʿbah, from Ḥabīb ibn ʿAbd al-Raḥmān, from Ḥafṣ ibn ʿĀṣim, from Abī Saʿīd ibn al-Muʿallā—who said:

"I was praying when the Prophet—peace and blessings be upon him—saw me and summoned me. I did not approach him until I completed my prayer. He said: 'What prevented you from responding to me?' I replied: 'I was praying.' He said: 'Did Allah the Exalted not state: *O you who believe, respond to Allah and the Messenger when he calls you* [8:24]?'" Then he mentioned the remainder of the hadith. This confirms that this [ruling] was after the prohibition of speech during prayer, evidenced by Abu Sa'id's refusal to respond to the Prophet (peace be upon him) until the Prophet completed the prayer. It also confirms that speaking to the Prophet (peace be upon him) during prayer is permissible - a matter specific to him. In this ruling lies the application of the wording's general sense, along with the consensus of Islam's scholars endowed with certainty that a worshipper states "Peace be upon you, O Prophet" during prayer. Contemporary opponents from our adversaries do not dispute that whoever intentionally says "Peace be upon you, O so-and-so" during prayer renders his prayer invalid. And success comes from Allah, the Exalted.[2]

L6505 **Issue: It is impermissible for a worshipper to tuck his garments with the intention [of doing so] for prayer.**

L6506 381 – Issue: It is not permissible for a person praying to gather his garments or gather his hair intending that for prayer, due to the statement of the Messenger of Allah—peace and blessings be upon him—that we cited earlier with its chain of transmission: "I have been commanded to prostrate on seven limbs and not to tuck my hair or garments."

L6507 **A ruling: It is incumbent upon the worshiper to lower his gaze from all that which it is unlawful for him to look at.**

L6508 Issue 382: It is obligatory upon the one praying to lower his gaze from everything it is impermissible to look at, based on Allah's statement: "Tell the

[2]**Qur'an references (L6502):** Qur'an 8:24 (Al-Anfal).

سَعِيدِ بْنِ الْمُعَلَّى قَالَ كُنْتُ أُصَلِّي فَرَآنِي النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَدَعَانِي فَلَمْ آتِهِ حَتَّى صَلَّيْتُ، فَقَالَ: مَا مَنَعَكَ أَنْ تَأْتِيَنِي قُلْتُ: كُنْتُ أُصَلِّي، قَالَ: أَلَمْ يَقُلْ اللَّهُ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا اسْتَجِيبُوا لِلَّهِ وَلِلرَّسُولِ إِذَا دَعَاكُمْ} [الأنفال: ٢٤] » ثُمَّ ذَكَرَ بَاقِيَ الْحَدِيثِ. فَصَحَّ أَنَّ هَذَا بَعْدَ تَحْرِيمِ الْكَلَامِ فِي الصَّلَاةِ، لِامْتِنَاعِ أَبِي سَعِيدٍ مِنْ إجَابَةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى أَتَمَّ الصَّلَاةَ، وَصَحَّ أَنَّ الْكَلَامَ مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُبَاحٌ فِي الصَّلَاةِ هَذَا خَاصٌّ لَهُ، وَفِيهِ حَمْلُ اللَّفْظِ عَلَى الْعُمُومِ، وَإِجْمَاعُ أَهْلِ الْإِسْلَامِ الْمُتَيَقَّنِ عَلَى أَنَّ الْمُصَلِّيَ يَقُولُ فِي صَلَاتِهِ " السَّلَامُ عَلَيْك أَيُّهَا النَّبِيُّ ". وَلَا يَخْتَلِفُ الْحَاضِرُونَ مِنْ خُصُومِنَا عَلَى أَنَّ مَنْ قَالَ عَامِدًا فِي صَلَاتِهِ: السَّلَامُ عَلَيْك يَا فُلَانُ، أَنَّ صَلَاتَهُ قَدْ بَطَلَتْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ لَا يَحِلُّ لِلْمُصَلِّي أَنْ يَضُمَّ ثِيَابَهُ قَاصِدًا بِذَلِكَ الصَّلَاةَ]

٣٨١ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْمُصَلِّي أَنْ يَضُمَّ ثِيَابَهُ أَوْ يَجْمَعَ شَعْرَهُ قَاصِدًا بِذَلِكَ لِلصَّلَاةِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي قَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ «أُمِرْتُ أَنْ أَسْجُدَ عَلَى سَبْعَةِ أَعْظُمٍ وَأَنْ لَا أَكْفِتَ شَعْرًا وَلَا ثَوْبًا» .

[مَسْأَلَةٌ عَلَى الْمُصَلِّي أَنْ يَغُضَّ بَصَرَهُ عَنْ كُلِّ مَا لَا يَحِلُّ لَهُ النَّظَرُ إلَيْهِ]

believing men to lower their gaze and guard their private parts" (24:30) and "And tell the believing women to lower their gaze and guard their private parts" (24:31). Whoever commits a forbidden act during his prayer and thereby neglects it has not performed the prayer as he was commanded, and thus there is no valid prayer for him, as he has not fulfilled the prayer he was obligated to perform. And success is from Allah, the Exalted. It has been reported from Mālik that if someone intentionally gazes at the awrah of a person during his prayer, his prayer is invalidated.[3]

Issue: The worshipper should not laugh or smile intentionally [during prayer].

L6509–6510

L6511

383 - Issue: It is obligated upon him not to laugh or smile intentionally. If he does so, his prayer is invalidated; but if it occurs unintentionally, only the prostration of forgetfulness is required. As for loud laughter, there is consensus [that it invalidates prayer]. Regarding smiling, Allah the Exalted says: {And stand before Allah in devotion} [Al-Baqarah 2:238]. Devotion entails humility, and smiling is a form of laughter. Allah, the Mighty and Majestic, states: {So he smiled, laughing at her speech} [An-Naml 27:19]. Whoever laughs during prayer has not been humble, and whoever is not humble has not prayed as commanded. It is narrated from Muhammad ibn Sirin that when he was asked about smiling in prayer, he recited this verse and said: "I do not consider smiling to be anything other than laughter." From the narration of Al-Qasim ibn Muhammad ibn Abi Bakr: He instructed his companions to repeat the prayer due to laughter. Ali said: "Those who differentiate between loud laughter and smiling do so based on juristic preference, distinguishing between significant and minor actions. This is invalid, a distinction without evidence except baseless claim. Laughter is either permissible or prohibited in prayer. If prohibited, both minor and major instances are

[3] **Qur'an references (L6508):** Qur'an 24:30 (An-Nur); Qur'an 24:31 (An-Nur).

٣٨٢ - مَسْأَلَةٌ: وَفُرِضَ عَلَى الْمُصَلِّي أَنْ يَغُضَّ بَصَرَهُ عَنْ كُلِّ مَا لَا يَحِلُّ لَهُ النَّظَرُ إِلَيْهِ، لِقَوْلِ اللَّهِ تَعَالَى: {قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ} [النور: ٣٠] {وَقُلْ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ} [النور: ٣١] . مَنْ فَعَلَ فِي صَلَاتِهِ مَا حَرُمَ عَلَيْهِ فِعْلُهُ وَلَمْ يَشْتَغِلْ بِهَا فَلَمْ يُصَلِّ كَمَا أُمِرَ، فَلَا صَلَاةَ لَهُ، إِذْ لَمْ يَأْتِ بِالصَّلَاةِ الَّتِي أُمِرَ بِهَا. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. وَقَدْ رُوِيَ عَنْ مَالِكٍ: مَنْ تَأَمَّلَ عَوْرَةَ إِنْسَانٍ فِي صَلَاتِهِ بَطَلَتْ صَلَاتُهُ.

[مَسْأَلَةٌ المصلي لَا يَضْحَكَ وَلَا يَتَبَسَّمَ عَمْدًا]

٣٨٣ - مَسْأَلَةٌ: وَفُرِضَ عَلَيْهِ أَنْ لَا يَضْحَكَ وَلَا يَتَبَسَّمَ عَمْدًا، فَإِنْ فَعَلَ بَطَلَتْ صَلَاتُهُ، وَإِنْ سَهَا بِذَلِكَ فَسُجُودُ السَّهْوِ فَقَطْ. وَأَمَّا الْقَهْقَهَةُ فَإِجْمَاعٌ، وَأَمَّا التَّبَسُّمُ فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَقُومُوا لِلَّهِ قَانِتِينَ} [البقرة: ٢٣٨] وَالْقُنُوتُ الْخُشُوعُ، وَالتَّبَسُّمُ ضَحِكٌ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {فَتَبَسَّمَ ضَاحِكًا مِنْ قَوْلِهَا} [النمل: ١٩] وَمَنْ ضَحِكَ فِي صَلَاتِهِ فَلَمْ يَخْشَعْ، وَمَنْ لَمْ يَخْشَعْ فَلَمْ يُصَلِّ كَمَا أُمِرَ. رُوِّينَا عَنْ مُحَمَّدِ بْنِ سِيرِينَ. أَنَّهُ سُئِلَ عَنْ التَّبَسُّمِ فِي الصَّلَاةِ فَتَلَا هَذِهِ الْآيَةَ، وَقَالَ: لَا أَعْلَمُ التَّبَسُّمَ إِلَّا ضَحِكًا. وَمِنْ طَرِيقِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ: أَنَّهُ أَمَرَ أَصْحَابَهُ بِإِعَادَةِ الصَّلَاةِ مِنْ الضَّحِكِ. قَالَ عَلِيٌّ: إنَّمَا فَرَّقَ بَيْنَ الْقَهْقَهَةِ وَالتَّبَسُّمِ مَنْ يَقُولُ بِالِاسْتِحْسَانِ، فَيُفَرِّقُ بَيْنَ الْعَمَلِ الْكَثِيرِ وَالْقَلِيلِ، وَهَذَا بَاطِلٌ، وَفَرْقٌ لَا دَلِيلَ عَلَيْهِ إِلَّا الدَّعْوَى وَلَا يَخْلُو الضَّحِكُ مِنْ أَنْ يَكُونَ مُبَاحًا فِي الصَّلَاةِ أَوْ مُحَرَّمًا فِي الصَّلَاةِ فَإِنْ كَانَ مُحَرَّمًا فَقَلِيلُهُ وَكَثِيرُهُ سَوَاءٌ فِي التَّحْرِيمِ. وَإِنْ كَانَ مُبَاحًا فَقَلِيلُهُ وَكَثِيرُهُ سَوَاءٌ فِي الْإِبَاحَةِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ

equally forbidden. If permissible, both minor and major instances are equally allowed. And success is from Allah alone."[4]

L6512 **Issue: It is prohibited for the worshiper to wipe the pebbles or what he prostrates upon more than once.**

L6513 384 - Issue: That one should not wipe the pebbles or what one prostrates upon except once, and leaving it is better. However, one should smooth the place of prostration before commencing the prayer. ʿAbdullāh ibn Yūsuf narrated to us: Aḥmad ibn Fatḥ narrated to us: ʿAbd al-Wahhāb ibn ʿĪsā narrated to us: Aḥmad ibn Muḥammad narrated to us: Aḥmad ibn ʿAlī narrated to us: Muslim ibn al-Ḥajjāj narrated to us: Muḥammad ibn al-Muthannā narrated to us: Yaḥyā ibn Saʿīd al-Qaṭṭān narrated to us from Hishām al-Dastuwā'ī: Ibn Abī Kathīr—that is, Yaḥyā—narrated to me from Abū Salamah ibn ʿAbd al-Raḥmān from Muʿayqīb: "They asked the Messenger of Allah—peace and blessings be upon him—about wiping during prayer, and he said: 'Once.'"

L6514–6515 Muslim said: Abu Bakr ibn Abi Shaybah narrated to us, al-Hasan ibn Musa narrated to us, Shayban narrated to us from Yahya (Ibn Abi Kathir), from Abu Salama ibn Abd al-Rahman: Muʿaiqib narrated to me that the Messenger of Allah—peace and blessings be upon him—said concerning a man who levels the ground where he prostrates: "If you must do it, then once."

L6516 **Issue: A dog passing in front of the worshipper—whether passing by or not passing by—interrupts their prayer.**

L6517–6521 385 - Issue: The prayer is invalidated by a dog's presence before the worshipper - whether passing or stationary, small or large, alive or dead. Similarly, the presence of a donkey before him also invalidates it. Likewise, a woman before a man during prayer - whether passing or stationary, young or adult - invalidates it, unless she lies down directly crosswise; in that case,

[4]**Qur'an references (L6511):** Qur'an 2:238 (Al-Baqarah); Qur'an 27:19 (An-Naml).

[مَسْأَلَةٌ فرض عَلَى المصلي أَنْ لَا يَمْسَحَ الْحَصَا أَوْ مَا يَسْجُدُ عَلَيْهِ إِلَّا مَرَّةً وَاحِدَةً]

٣٨٤ - مَسْأَلَةٌ: وَأَنْ لَا يَمْسَحَ الْحَصَا أَوْ مَا يَسْجُدُ عَلَيْهِ إِلَّا مَرَّةً وَاحِدَةً، وَتَرْكُهَا أَفْضَلُ، لَكِنْ يُسَوِّي مَوْضِعَ سُجُودِهِ قَبْلَ دُخُولِهِ فِي الصَّلَاةِ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ حَدَّثَنِي ابْنُ أَبِي كَثِيرٍ هُوَ يَحْيَى - عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ مُعَيْقِيبٍ «أَنَّهُمْ سَأَلُوا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْمَسْحِ فِي الصَّلَاةِ فَقَالَ: وَاحِدَةٌ» .

قَالَ مُسْلِمٌ: وَثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا الْحَسَنُ بْنُ مُوسَى ثنا شَيْبَانُ عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ حَدَّثَنِي مُعَيْقِيبٌ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي الرَّجُلِ يُسَوِّي التُّرَابَ حَيْثُ يَسْجُدُ، قَالَ: إنْ كُنْتَ فَاعِلًا فَوَاحِدَةً»

[مَسْأَلَةٌ يَقْطَعُ صَلَاةَ الْمُصَلِّي كَوْنُ الْكَلْبِ بَيْنَ يَدَيْهِ مَارًّا أَوْ غَيْرَ مَارٍّ]

٣٨٥ - مَسْأَلَةٌ: وَيَقْطَعُ صَلَاةَ الْمُصَلِّي كَوْنُ الْكَلْبِ بَيْنَ يَدَيْهِ، مَارًّا أَوْ غَيْرَ مَارٍّ، صَغِيرًا أَوْ كَبِيرًا، حَيًّا أَوْ مَيِّتًا، أَوْ كَوْنُ الْحِمَارِ بَيْنَ يَدَيْهِ كَذَلِكَ أَيْضًا، وَكَوْنُ الْمَرْأَةِ بَيْنَ يَدَيْ الرَّجُلِ، مَارَّةً أَوْ غَيْرَ مَارَّةٍ، صَغِيرَةً أَوْ كَبِيرَةً إلَّا أَنْ تَكُونَ مُضْطَجِعَةً مُعْتَرِضَةً فَقَطْ،

she does not invalidate the prayer. Women do not invalidate one another's prayers. If there exists before the worshipper an object elevated to a forearm's height (equivalent to the back of a traditional Arab saddle, regardless of its thickness), nothing behind the barrier from what we have mentioned invalidates his prayer, nor does anything from all of that above the barrier. Whoever carries a small girl upon his neck during prayer does not invalidate it, whether the worshipper is aware of this or not. Proof of this lies in what ʻAbdullāh ibn Yūsuf narrated to us: Aḥmad ibn Fatḥ narrated to us; ʻAbd al-Wahhāb ibn ʻĪsā narrated to us; Aḥmad ibn Muḥammad narrated to us; Aḥmad ibn ʻAlī narrated to us; Muslim ibn al-Ḥajjāj narrated to us; Isḥāq ibn Ibrāhīm (Ibn Rāhawayh) narrated to us; al-Makhzūmī (Abū Hishām al-Mughīrah ibn Salamah) narrated to us; ʻAbd al-Wāḥid ibn Ziyād narrated to us. ʻUbayd Allah ʻAbd Allah ibn al-Asamm narrated to us: Yazid ibn al-Asamm narrated to us from Abu Hurayrah, who said: The Messenger of Allah – peace be upon him – said: "A woman, a donkey, and a dog invalidate the prayer, and this is prevented by something like the rear part of a saddle." ʻAbd al-Rahman ibn ʻAbd Allah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us, al-Farbari narrated to us, al-Bukhari narrated to us, Musaddad narrated to us, Yahya ibn Saʻid al-Qattan narrated to us from ʻUbayd Allah – he is Ibn ʻUmar – from Nafiʻ, from ʻAbd Allah ibn ʻUmar, who said: "A spear would be planted for the Messenger of Allah – peace be upon him – and he would pray facing it." We have also transmitted through the chain of Shuʻbah from ʻUbayd Allah ibn Abi Bakr ibn Anas, from Anas, from the Messenger of Allah – peace be upon him –: "A dog, a donkey, and a woman invalidate the prayer." If it is said: "You have indeed narrated through the chain of Abu Dharr from the Messenger of Allah – peace be upon him –: 'When one of you stands to pray, it suffices as a screen if there is something like the rear part of a saddle before him. If there is nothing like the rear part of a saddle before him, then his prayer is invalidated by a donkey, a woman, or a black dog,'" we say: Yes. The hadiths of Abu Hurayrah and Anas contain additions to the hadith of Abu Dharr, and the addition... The texts established in the religion from Allah the Almighty necessitate obligatory acceptance. Whoever acts upon this has adhered to the narration of Abu Dharr without contradicting it, for Abu Dharr's narration mentions only the

فَلَا تَقْطَعُ الصَّلَاةَ حِينَئِذٍ، وَلَا يَقْطَعُ النِّسَاءُ بَعْضُهُنَّ صَلَاةَ بَعْضٍ فَإِنْ كَانَ بَيْنَ يَدَيْ الْمُصَلِّي شَيْءٌ مُرْتَفِعٌ بِقَدْرِ الذِّرَاعِ - وَهُوَ قَدْرُ مُؤَخِّرَةِ الرَّحْلِ الْمَعْهُودَةِ عِنْدَ الْعَرَبِ وَلَا نُبَالِي بِغِلَظِهَا - لَمْ يَضُرَّ صَلَاتَهُ كُلُّ مَا كَانَ وَرَاءَ السُّتْرَةِ مِمَّا ذَكَرْنَا، وَلَا مَا كَانَ مِنْ كُلِّ ذَلِكَ فَوْقَ السُّتْرَةِ. وَمَنْ حَمَلَ صَبِيَّةً صَغِيرَةً عَلَى عُنُقِهِ فِي الصَّلَاةِ لَمْ تَبْطُلْ صَلَاتُهُ، وَسَوَاءٌ عَلِمَ الْمُصَلِّي بِذَلِكَ أَوْ لَمْ يَعْلَمْ بُرْهَانُ ذَلِكَ -: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا إِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - ثنا الْمَخْزُومِيُّ هُوَ أَبُو هِشَامٍ الْمُغِيرَةُ بْنُ سَلَمَةَ - ثنا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ ثنا عُبَيْدُ اللَّهِ عَبْدُ اللَّهِ بْنُ الْأَصَمِّ ثنا يَزِيدُ بْنُ الْأَصَمِّ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «يَقْطَعُ الصَّلَاةَ الْمَرْأَةُ، وَالْحِمَارُ، وَالْكَلْبُ، وَيَقِي ذَلِكَ مِثْلُ مُؤَخِّرَةِ الرَّحْلِ» . حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُسَدَّدٌ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ عُبَيْدِ اللَّهِ هُوَ ابْنُ عُمَرَ - عَنْ نَافِعٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُرْكَزُ لَهُ الْحَرْبَةُ فَيُصَلِّي إِلَيْهَا» . وَقَدْ رُوِّينَا أَيْضًا مِنْ طَرِيقِ شُعْبَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ أَنَسٍ عَنْ أَنَسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «يَقْطَعُ الصَّلَاةَ: الْكَلْبُ، وَالْحِمَارُ، وَالْمَرْأَةُ» . فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ أَبِي ذَرٍّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا قَامَ أَحَدُكُمْ فَصَلَّى فَإِنَّهُ يَسْتُرُهُ إِذَا كَانَ بَيْنَ يَدَيْهِ مِثْلُ آخِرَةِ الرَّحْلِ، فَإِذَا لَمْ يَكُنْ بَيْنَ يَدَيْهِ مِثْلُ آخِرَةِ الرَّحْلِ فَإِنَّهُ يَقْطَعُ صَلَاتَهُ: الْحِمَارُ وَالْمَرْأَةُ، وَالْكَلْبُ الْأَسْوَدُ» قُلْنَا: نَعَمْ، وَحَدِيثُ أَبِي هُرَيْرَةَ وَأَنَسٍ فِيهِمَا زِيَادَةٌ عَلَى حَدِيثِ أَبِي ذَرٍّ، وَالزِّيَادَةُ الْوَارِدَةُ فِي الدِّينِ عَنْ اللَّهِ عَزَّ وَجَلَّ فُرِضَ

black dog. Yet whoever restricts themselves to Abu Dharr's narration contradicts the narrations of Abu Hurairah and Anas, and this is impermissible. Regarding a woman lying across [the path] not invalidating the prayer: Abdullah ibn Yusuf narrated to us, saying: Ahmad ibn Fath narrated to us from Abdul Wahhab ibn Isa, from Ahmad ibn Ali, from Muslim al-Hajjaj, from Umar ibn Hafs ibn Ghiyath, from his father, from al-A'mash, from Ibrahim al-Nakha'i - and Muslim, who is Abu al-Duha - both narrating from Masruq, from Aishah: "By Allah, I indeed saw Allah's Messenger - peace and blessings be upon him - praying while I lay on the bed between him and the qiblah. When I needed to relieve myself, I disliked sitting up and disturbing Allah's Messenger - peace and blessings be upon him - so I slipped away from near his feet." Ali said: The Mother of the Believers distinguished between sitting before Allah's Messenger - peace and blessings be upon him - during his prayer, which she reported as being disturbing to him, and reclining before him during his prayer which she did not consider disturbing. This constitutes the explicit text of our position, and all praise is to Allah. We have mentioned Allah's Messenger's - peace and blessings be upon him - prayer while carrying Umamah bint Abi al-As on his neck, thereby excluding what the explicit text excludes and retaining what the explicit text retains.[5]

قَبُولُهَا، وَمَنْ فَعَلَ هَذَا فَقَدْ أَخَذَ بِحَدِيثِ أَبِي ذَرٍّ وَلَمْ يُخَالِفْهُ، لِأَنَّهُ لَيْسَ فِي حَدِيثِ أَبِي ذَرٍّ إِلَّا ذِكْرُ الْأَسْوَدِ فَقَطْ، وَمَنْ اقْتَصَرَ عَلَى مَا فِي حَدِيثِ أَبِي ذَرٍّ فَقَدْ خَالَفَ رِوَايَةَ أَبِي هُرَيْرَةَ وَأَنَسٍ، وَهَذَا لَا يَحِلُّ. وَأَمَّا كَوْنُ الْمَرْأَةِ مُعْتَرِضَةً لَا تَقْطَعُ الصَّلَاةَ، فَإِنَّ عَبْدَ اللَّهِ بْنَ يُوسُفَ حَدَّثَنَا قَالَ: ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمٌ الْحَجَّاجُ ثنا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ ثنا أَبِي ثنا الْأَعْمَشُ ثنا إِبْرَاهِيمُ هُوَ النَّخَعِيُّ - وَمُسْلِمٌ هُوَ أَبُو الضُّحَى - كِلَاهُمَا عَنْ مَسْرُوقٍ «عَنْ عَائِشَةَ وَاللَّهِ لَقَدْ رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي وَإِنِّي عَلَى السَّرِيرِ بَيْنَهُ وَبَيْنَ الْقِبْلَةِ مُضْطَجِعَةً، فَتَبْدُو لِي الْحَاجَةُ فَأَكْرَهُ أَنْ أَجْلِسَ فَأُوذِيَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَنْسَلُّ مِنْ عِنْدِ رِجْلَيْهِ» قَالَ عَلِيٌّ: فَقَدْ فَرَّقَتْ أُمُّ الْمُؤْمِنِينَ بَيْنَ حَالِ جُلُوسِهَا بَيْنَ يَدَيْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ يُصَلِّي، فَأَخْبَرَتْ بِأَنَّهُ أَذًى لَهُ، وَبَيْنَ اضْطِجَاعِهَا بَيْنَ يَدَيْهِ وَهُوَ يُصَلِّي فَلَمْ تَرَهُ أَذًى، وَهَذَا نَصُّ قَوْلِنَا، وَلِلَّهِ الْحَمْدُ وَقَدْ ذَكَرْنَا صَلَاةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَامِلًا أُمَامَةَ بِنْتَ أَبِي الْعَاصِ عَلَى عُنُقِهِ فَاسْتَثْنَيْنَا مَا اسْتَثْنَاهُ النَّصُّ، وَأَبْقَيْنَا مَا أَبْقَاهُ النَّصُّ.

L6522–6525 A group of the early predecessors held this opinion. It was narrated to us through the chain of al-Ḥajjāj ibn al-Minhāl: Sufyān ibn ʿUyaynah narrated to us from ʿUbaydullāh ibn Abī Yazīd that he heard Ibn ʿAbbās say: "The prayer is invalidated by a dog and a woman." Through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān: Shuʿbah narrated to us from Qatādah, who said: I heard Jābir ibn Zayd report that Ibn ʿAbbās said: "The prayer is invalidated by a dog, a donkey, and a woman." These two chains are the most authentic that can be found. Through the chain of Shuʿbah from ʿUbaydullāh ibn Abī Bakr ibn Anas from Anas ibn Mālik, who said: "The prayer is invalidated by a

وَقَدْ قَالَ بِهَذَا جَمَاعَةٌ مِنْ السَّلَفِ. رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي يَزِيدَ أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ قَالَ: يَقْطَعُ الصَّلَاةَ: الْكَلْبُ، وَالْمَرْأَةُ وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ ثنا شُعْبَةُ عَنْ قَتَادَةَ: سَمِعْتُ جَابِرَ بْنَ زَيْدٍ يَقُولُ قَالَ ابْنُ عَبَّاسٍ: يَقْطَعُ الصَّلَاةَ: الْكَلْبُ، وَالْحِمَارُ، وَالْمَرْأَةُ. وَهَذَانِ سَنَدَانِ لَا يُوجَدُ أَصَحُّ مِنْهُمَا وَمِنْ طَرِيقِ شُعْبَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ أَنَسٍ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ:

[5] **Hadith references (L6517):** Sahih Muslim 511.

dog, a donkey, and a woman." Through the chain of al-Ḥajjāj ibn al-Minhāl: Ḥammād ibn Salamah narrated to us from Ḥumayd from Bakr ibn ʿAbdillāh al-Muzanī, who said: "I was praying beside Ibn ʿUmar when a puppy entered between us. It passed before me, so Ibn ʿUmar told me: 'You must repeat your prayer, but I will not repeat mine, for it did not pass before me.'" Through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān from Sulaymān al-Taymī from Bakr ibn ʿAbdillāh al-Muzanī: "A puppy passed before Ibn ʿUmar, invalidating his prayer." This too is an impeccably authentic chain. Through the chain of ʿAlī ibn al-Madīnī: Muʿādh ibn Hishām al-Dastuwāʾī narrated to us from his father from Qatādah from Zurārah ibn Awfā from Saʿd ibn Hishām from ʿĀmir from Abū Hurayrah, who said: "The prayer is invalidated by a dog, a donkey, and a woman." Through the chain of ʿAbdullāh ibn al-Mubārak: Sulaymān ibn al-Mughīrah narrated to me from Ḥumayd ibn Hilāl from ʿAbdullāh ibn al-Ṣāmit, who said: "Al-Ḥakam ibn ʿAmr al-Ghifārī led people in prayer during a journey with a sutrah in front of them. When donkeys passed before his companions, he had them redo the prayer." From the path of Hammad ibn Salamah through Humayd, from al-Hasan ibn Muslim al-Makki, from Safiyyah bint Shaybah, from Aisha, the Mother of the Believers, who said: "You have placed us women in the same category as dogs and donkeys. Truly, what invalidates prayer are the dog, the donkey, and the domestic cat." From the path of Sufyan ibn Uyaynah through al-Zuhri, from Salim, that Abdullah ibn Abbas said: "What invalidates prayer are the dog and the donkey." This is the statement of Ata and Ibn Jurayj, except they specified the black dog and the menstruating woman. From Ikrimah: "What invalidates prayer are the dog and the menstruating woman." From the path of Shuʿbah through Ziyad ibn Fayyad, who said: "I heard Abu al-Ahwaz—the companion of Ibn Masʿud—say: 'What invalidates prayer are the dog, the woman, and the donkey.'" Ahmad ibn Hanbal said: "What invalidates prayer are the black dog, the donkey, and the woman, unless she is lying down." Ali said: "Abu Hanifah, Malik, and al-Shafiʿi said: 'None of these aforementioned entities invalidates prayer.' We know of no evidence they cite except the hadith of Aisha, yet it is a proof against them as we have presented."

يَقْطَعُ الصَّلَاةَ: الْكَلْبُ، وَالْحِمَارُ، وَالْمَرْأَةُ. وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيِّ قَالَ: كُنْت أُصَلِّي إلَى جَنْبِ ابْنِ عُمَرَ فَدَخَلَ بَيْنِي وَبَيْنَهُ - يُرِيدُ جَرْوًا - فَمَرَّ بَيْنَ يَدَيَّ فَقَالَ لِي ابْنُ عُمَرَ: أَمَّا أَنْتَ فَأَعِدْ الصَّلَاةَ، وَأَمَّا أَنَا فَلَا أُعِيدُ، لِأَنَّهُ لَمْ يَمُرَّ بَيْنَ يَدَيَّ وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سُلَيْمَانَ التَّيْمِيِّ عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيِّ: أَنَّ جَرْوًا مَرَّ بَيْنَ يَدَيْ ابْنِ عُمَرَ فَقَطَعَ عَلَيْهِ صَلَاتَهُ وَهَذَا أَيْضًا أَصَحُّ إسْنَادٍ يَكُونُ وَمِنْ طَرِيقِ عَلِيِّ بْنِ الْمَدِينِيِّ: حَدَّثَنَا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ ثنا أَبِي عَنْ قَتَادَةَ عَنْ زُرَارَةَ بْنِ أَوْفَى عَنْ سَعْدِ بْنِ هِشَامٍ عَنْ عَامِرٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: يَقْطَعُ الصَّلَاةَ: الْكَلْبُ، وَالْحِمَارُ، وَالْمَرْأَةُ وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ حَدَّثَنِي سُلَيْمَانُ بْنُ الْمُغِيرَةِ عَنْ حُمَيْدِ بْنِ هِلَالٍ عَنْ عَبْدِ اللَّهِ بْنِ الصَّامِتِ قَالَ: صَلَّى الْحَكَمُ بْنُ عَمْرٍو الْغِفَارِيُّ بِالنَّاسِ فِي سَفَرٍ وَبَيْنَ يَدَيْهِ سُتْرَةٌ، فَمَرَّتْ حُمُرٌ بَيْنَ يَدَيْ أَصْحَابِهِ فَأَعَادَ بِهِمْ الصَّلَاةَ وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ بْنِ مُسْلِمٍ الْمَكِّيِّ عَنْ صَفِيَّةَ بِنْتِ شَيْبَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: جَعَلْتُمُونَا بِمَنْزِلَةِ الْكَلْبِ، وَالْحِمَارِ، وَإِنَّمَا يَقْطَعُ الصَّلَاةَ: الْكَلْبُ، وَالْحِمَارُ، وَالسِّنَّوْرُ وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ سَالِمٍ أَنَّ عَبْدَ اللَّهِ بْنَ عَبَّاسٍ قَالَ: يَقْطَعُ الصَّلَاةَ: الْكَلْبُ، وَالْحِمَارُ وَهُوَ قَوْلُ عَطَاءٍ، وَابْنِ جُرَيْجٍ، إلَّا أَنَّهُمَا خَصَّا: الْكَلْبَ الْأَسْوَدَ، وَالْمَرْأَةَ الْحَائِضَ وَعَنْ عِكْرِمَةَ: يَقْطَعُ الصَّلَاةَ: الْكَلْبُ، وَالْمَرْأَةُ الْحَائِضُ وَمِنْ طَرِيقِ شُعْبَةَ عَنْ زِيَادِ بْنِ فَيَّاضٍ قَالَ: سَمِعْت أَبَا الْأَحْوَصِ - هُوَ صَاحِبُ ابْنِ مَسْعُودٍ - يَقُولُ: يَقْطَعُ الصَّلَاةَ: الْكَلْبُ، وَالْمَرْأَةُ، وَالْحِمَارُ. وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: يَقْطَعُ الصَّلَاةَ: الْكَلْبُ الْأَسْوَدُ، وَالْحِمَارُ، وَالْمَرْأَةُ إلَّا أَنْ تَكُونَ مُضْطَجِعَةً

قَالَ عَلِيٌّ: وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: لَا يَقْطَعُ الصَّلَاةَ شَيْءٌ مِنْ هَذَا كُلِّهِ وَمَا نَعْلَمُ لَهُمْ حُجَّةً إِلَّا حَدِيثَ عَائِشَةَ، وَهُوَ حُجَّةٌ عَلَيْهِمْ كَمَا أَوْرَدْنَاهُ.

L6526–6533

وَحَدِيثًا رُوِّينَاهُ مِنْ طَرِيقِ «ابْنِ عَبَّاسٍ أَقْبَلْت رَاكِبًا عَلَى أَتَانٍ وَأَنَا يَوْمَئِذٍ قَدْ نَاهَزْت الِاحْتِلَامَ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي بِالنَّاسِ بِمِنًى، فَمَرَرْتُ بَيْنَ يَدَيْ الصَّفِّ، فَنَزَلْتُ فَأَرْسَلْتُ الْأَتَانَ تَرْتَعُ وَدَخَلْتُ فِي الصَّفِّ، فَلَمْ يُنْكِرْ ذَلِكَ عَلَيَّ أَحَدٌ» . قَالَ عَلِيٌّ: وَهَذَا لَا حُجَّةَ فِيهِ لِوُجُوهٍ: أَوَّلُهُمَا: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ عَنْ الْحَكَمِ هُوَ ابْنُ عُتَيْبَةَ - سَمِعْت أَبَا جُحَيْفَةَ قَالَ «خَرَجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْهَاجِرَةِ إلَى الْبَطْحَاءِ فَتَوَضَّأَ وَصَلَّى الظُّهْرَ رَكْعَتَيْنِ وَبَيْنَ يَدَيْهِ عَنَزَةٌ» . وَزَادَ فِيهِ عَوْنُ بْنُ أَبِي جُحَيْفَةَ عَنْ أَبِيهِ «وَكَانَ يَمُرُّ مِنْ وَرَائِهَا الْحِمَارُ وَالْمَرْأَةُ» . وَبِهِ إلَى مُسْلِمٍ: ثنا عُبَيْدُ اللَّهِ بْنُ مُعَاذِ بْنِ مُعَاذٍ الْعَنْبَرِيُّ ثنا أُبَيٌّ ثنا شُعْبَةُ عَنْ يَعْلَى هُوَ ابْنُ عَطَاءٍ - سَمِعَ أَبَا عَلْقَمَةَ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا الْإِمَامُ جُنَّةٌ، فَإِذَا صَلَّى قَاعِدًا فَصَلُّوا قُعُودًا» . قَالَ عَلِيٌّ: فَمَا لَمْ يَحِلَّ بَيْنَ الْإِمَامِ وَالْمَأْمُومِ مِمَّا ذَكَرْنَا فَلَا يَقْطَعُ الصَّلَاةَ؛ لِأَنَّ الْإِمَامَ سُتْرَةٌ لِجَمِيعِ الْمَأْمُومِينَ، وَلَوْ امْتَدَّ الصَّفُّ فَرَاسِخَ بُرْهَانُ ذَلِكَ -: الْإِجْمَاعُ الْمُتَيَقَّنُ الَّذِي لَا شَكَّ فِيهِ فِي أَنَّ سُتْرَةَ الْإِمَامِ لَا يُكَلَّفُ أَحَدٌ مِنْ الْمَأْمُومِينَ اتِّخَاذَ سُتْرَةٍ أُخْرَى؛ بَلْ اكْتَفَى الْجَمِيعُ بِالْعَنَزَةِ الَّتِي كَانَ - عَلَيْهِ السَّلَامُ - يُصَلِّي إلَيْهَا، فَلَمْ تَدْخُلْ أَتَانُ ابْنِ عَبَّاسٍ بَيْنَ النَّاسِ وَبَيْنَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا بَيْنَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

A ḥadīth we have narrated through the chain of Ibn Abbas: “I approached riding a she-donkey when I was nearing the age of puberty, while the Messenger of Allah - peace and blessings be upon him - was leading people in prayer at Mina. I passed in front of the prayer row, dismounted, released the she-donkey to graze, and joined the row. No one censured this action.” Ali said: “This contains no valid evidence for several reasons. First: What Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated from Abdul-Wahhab ibn Isa, from Ahmad ibn Muhammad, from Ahmad ibn Ali, from Muslim ibn al-Hajjaj, from Muhammad ibn al-Muthanna, from Muhammad ibn Ja’far, from Shu’bah, from al-Hakam - who is Ibn Utaybah - who said: I heard Abu Juhaifah state: ’The Messenger of Allah - peace and blessings be upon him - emerged at midday to al-Batha’, performed ablution, prayed Dhuhr as two units with a short spear before him.”’ Awn ibn Abi Juhaifah added from his father: “A donkey and a woman would pass behind it.” Through the same chain to Muslim: Ubaydullah ibn Mu’adh ibn Mu’adh al-Anbari narrated from Ubayy, from Shu’bah, from Ya’la - who is Ibn Ata’ - who heard Aba Alqamah relate from Abu Hurairah, who said: The Messenger of Allah - peace and blessings be upon him - declared: “The Imam serves as a sutra. When he prays seated, pray seated.” Ali said: “Therefore, anything that does not interpose between the Imam and the congregation from the aforementioned categories does not invalidate the prayer, for the Imam constitutes a sutra for all worshippers. Even if the prayer row extended for leagues, the decisive proof lies in the indubitable consensus that the Imam’s sutra means no one among the congregation members is required to establish another sutra. The entire congregation suffices with the short spear toward which the Prophet - peace be upon him - prayed. Ibn Abbas’s she-donkey neither passed between the people and the Messenger of Allah - peace and blessings be upon him - nor between the Messenger of Allah - peace and blessings be upon him - and his sutra.” Additionally, it has been established from Ibn Abbas — as we previously mentioned — that a donkey, a woman, and a dog

interrupt the prayer. Our understanding of them is that they say: "The Companion narrator is more knowledgeable regarding what he narrates." Then, even if a narration contrary to this were sound — though it is unsound — what Abu Hurairah, Anas, and Abu Dharr reported would undoubtedly be the abrogator, due to what they adhered to prior to the arrival of what they narrated. They mentioned two reports: The first — through the chain of Al-Abbas ibn Ubayd Allah ibn Al-Abbas, from Al-Fadl ibn Al-Abbas — states: "The Messenger of Allah (peace be upon him) visited Al-Abbas and prayed while a female donkey and a small female dog were in front of him." Ali said: "This is false, for Al-Abbas ibn Ubayd Allah did not meet his uncle Al-Fadl." The second report is through the chain of Mujalid, from Abu al-Waddak, from Abu Sa'id al-Khudri, that the Messenger of Allah (peace be upon him) said: "Nothing interrupts the prayer. Prevent what you can." Ali said: "Abu al-Waddak is weak, and Mujalid is likewise." Even if all this were authentic, it would not necessitate adopting one narration over the other except with clear evidence, not through desire or caprice. If these reports were authentic — and they are not — the ruling of the Prophet (peace be upon him) would be that... The dog, the donkey, and the woman invalidate the prayer— this constitutes the definitive abrogator that replaces the prior position they held, which stated that no animal invalidates prayer, just as the horse, the cat, the pig, and others do not invalidate it. Thus, it is an evident falsehood, and abandoning the definitive abrogator while adhering to the definitively abrogated ruling is impermissible. It is impossible for the abrogated state to return unless he, peace be upon him, clarifies its reinstatement. Some opponents argued using Allah's words: "To Him ascends the good word, and the righteous deed raises it" (35:10), asking: "What invalidates this?" Ali responded: "These troublemakers invalidate it:" A man's kissing his wife, touching his penis, or urine exceeding a Baghlī dirham's volume invalidate the prayer. Universally, deliberate passing of wind from the anus invalidates it. As for women, the Prophet (peace be upon him) informed us that the best of their rows is the last, thus it is established that their actions do not invalidate each other's prayers—and with Allah, the Most High, is success.[67]

- وَبَيْنَ سُتْرَتِهِ وَأَيْضًا: فَقَدْ ثَبَتَ عَنْ ابْنِ عَبَّاسٍ - كَمَا أَوْرَدْنَا قَبْلُ - أَنَّ الْحِمَارَ، وَالْمَرْأَةَ وَالْكَلْبَ يَقْطَعُ الصَّلَاةَ، وَعَهْدُنَا بِهِمْ يَقُولُونَ: إِنَّ الرَّاوِيَ مِنْ الصَّحَابَةِ أَعْلَمُ بِمَا رَوَى ثُمَّ لَوْ صَحَّ غَيْرُ هَذَا - وَهُوَ لَا يَصِحُّ - لَكَانَ مَا رَوَاهُ أَبُو هُرَيْرَةَ، وَأَنَسٌ، وَأَبُو ذَرٍّ - هُوَ النَّاسِخَ بِيَقِينٍ لَا شَكَّ فِيهِ لِمَا كَانُوا عَلَيْهِ قَبْلَ وُرُودِ مَا رَوَوْهُ وَذَكَرُوا خَبَرَيْنِ: أَحَدُهُمَا - مِنْ طَرِيقِ الْعَبَّاسِ بْنِ عُبَيْدِ اللَّهِ بْنِ الْعَبَّاسِ عَنْ الْفَضْلِ بْنِ الْعَبَّاسِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَارَ الْعَبَّاسَ فَصَلَّى وَبَيْنَ يَدَيْهِ حِمَارَةٌ وَكُلَيْبَةٌ» . قَالَ عَلِيٌّ: وَهَذَا بَاطِلٌ، لِأَنَّ الْعَبَّاسَ بْنَ عُبَيْدِ اللَّهِ لَمْ يُدْرِكْ عَمَّهُ الْفَضْلَ وَحَدِيثٌ مِنْ طَرِيقِ مُجَالِدٍ عَنْ أَبِي الْوَدَّاكِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا يَقْطَعُ الصَّلَاةَ شَيْءٌ، وَادْرَءُوا مَا اسْتَطَعْتُمْ» . قَالَ عَلِيٌّ: أَبُو الْوَدَّاكِ ضَعِيفٌ، وَمُجَالِدٌ مِثْلُهُ. ثُمَّ لَوْ صَحَّ كُلُّ هَذَا لَمَا وَجَبَ الْأَخْذُ بِإِحْدَى الرِّوَايَتَيْنِ دُونَ الْأُخْرَى إلَّا بِحُجَّةٍ بَيِّنَةٍ، لَا بِالْهَوَى وَالْمُطَارَفَةِ، فَلَوْ صَحَّتْ هَذِهِ الْآثَارُ - وَهِيَ لَا تَصِحُّ - لَكَانَ حُكْمُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ الْكَلْبَ، وَالْحِمَارَ، وَالْمَرْأَةَ يَقْطَعُونَ الصَّلَاةَ - هُوَ النَّاسِخَ لِمَا كَانُوا عَلَيْهِ قَبْلُ، مِنْ أَنْ لَا يَقْطَعَ الصَّلَاةَ شَيْءٌ مِنْ الْحَيَوَانِ، كَمَا لَا يَقْطَعُهَا: الْفَرَسُ، وَالسِّنَّوْرُ، وَالْخِنْزِيرُ، وَغَيْرُ ذَلِكَ؛ فَمِنْ الْبَاطِلِ الَّذِي لَا يَخْفَى وَلَا يَحِلُّ تَرْكُ النَّاسِخِ الْمُتَيَقَّنِ وَالْأَخْذُ بِالْمَنْسُوخِ الْمُتَيَقَّنِ. وَمِنْ الْمُحَالِ أَنْ تَعُودَ الْحَالَةُ الْمَنْسُوخَةُ ثُمَّ لَا يُبَيِّنُ - عَلَيْهِ السَّلَامُ - عَوْدَهَا. وَاحْتَجَّ بَعْضُ الْمُخَالِفِينَ بِقَوْلِ اللَّهِ تَعَالَى: {إِلَيْهِ يَصْعَدُ الْكَلِمُ الطَّيِّبُ وَالْعَمَلُ الصَّالِحُ يَرْفَعُهُ} [فاطر: ١٠] قَالَ: فَمَا يَقْطَعُ هَذَا قَالَ عَلِيٌّ: يَقْطَعُهُ عِنْدَ هَؤُلَاءِ الْمُشْغِبِينَ -: قُبْلَةُ الرَّجُلِ امْرَأَتَهُ، وَمَسُّهُ ذَكَرَهُ، وَأَكْثَرُ مِنْ الدِّرْهَمِ الْبَغْلِيِّ مِنْ بَوْلٍ، وَيَقْطَعُهُ عِنْدَ

[6] **Hadith references (L6527):** Sahih Muslim 416.

[7] **Qur'an references (L6527):** Qur'an 35:10 (Fatir).

الْكُلِّ: رُوَيْحَةٌ تَخْرُجُ مِنْ الدُّبُرِ مُتَعَمَّدَةً وَأَمَّا النِّسَاءُ فَقَدْ أَخْبَرَ - عَلَيْهِ السَّلَامُ -: أَنَّ خَيْرَ صُفُوفِهِنَّ آخِرُهَا، فَصَحَّ أَنَّهُ لَا يَقْطَعُ بَعْضُهُنَّ صَلَاةَ بَعْضٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يَحِلُّ لِلْمُصَلِّي أَنْ يَرْفَعَ بَصَرَهُ إلَى السَّمَاءِ]

L6534 **A legal ruling: It is impermissible for the one performing prayer to raise his gaze toward the heavens.**

٣٨٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْمُصَلِّي أَنْ يَرْفَعَ بَصَرَهُ إلَى السَّمَاءِ، وَلَا عِنْدَ الدُّعَاءِ فِي غَيْرِ الصَّلَاةِ أَيْضًا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا ابْنُ الْحَجَّاجِ ثنا أَبُو كُرَيْبٍ ثنا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ الْمُسَيَّبِ بْنِ رَافِعٍ عَنْ تَمِيمِ بْنِ طَرَفَةَ عَنْ جَابِرِ بْنِ سَمُرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَيَنْتَهِيَنَّ أَقْوَامٌ يَرْفَعُونَ أَبْصَارَهُمْ إلَى السَّمَاءِ فِي الصَّلَاةِ أَوْ لَا تَرْجِعُ إلَيْهِمْ» . وَرُوِّينَا أَيْضًا مِنْ طَرِيقٍ صَحِيحَةٍ عَنْ أَنَسٍ وَابْنِ عُمَرَ وَأَبِي هُرَيْرَةَ. حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا ابْنُ مُفَرِّجٍ ثنا عَبْدُ اللَّهِ بْنُ جَعْفَرِ بْنِ الْوَرْدِ ثنا يَحْيَى بْنُ أَيُّوبَ بْنِ بَادِي الْعَلَّافُ ثنا يَحْيَى هُوَ ابْنُ بُكَيْرٍ - ثنا اللَّيْثُ بْنُ سَعْدٍ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ عَنْ عِرَاكِ بْنِ مَالِكٍ وَالْأَعْرَجِ كِلَاهُمَا عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَيَنْتَهِيَنَّ أُنَاسٌ عَنْ رَفْعِ أَبْصَارِهِمْ عِنْدَ الدُّعَاءِ إلَى السَّمَاءِ حَتَّى لَتُخْطَفَ» . قَالَ عَلِيٌّ: هَذَا وَعِيدٌ شَدِيدٌ، وَالْوَعِيدُ لَا يَكُونُ إلَّا عَلَى كَبِيرَةٍ مِنْ الْحَرَامِ، لَا عَلَى مُبَاحٍ مَكْرُوهٍ أَصْلًا، وَلَا عَلَى صَغِيرَةٍ مَغْفُورَةٍ وَقَالَ بِهَذَا طَائِفَةٌ مِنْ السَّلَفِ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ زِيَادٍ عَنْ فَيَّاضٍ عَنْ تَمِيمِ بْنِ سَلَمَةَ قَالَ رَأَى ابْنُ مَسْعُودٍ قَوْمًا رَافِعِي أَبْصَارِهِمْ إلَى السَّمَاءِ فِي الصَّلَاةِ فَقَالَ: لَيَنْتَهِيَنَّ أَقْوَامٌ يَرْفَعُونَ أَبْصَارَهُمْ فِي الصَّلَاةِ أَوْ لَا تَرْجِعُ إلَيْهِمْ وَقَالَ أَيْضًا: أَوْ مَا يَخْشَى أَحَدُكُمْ

L6535–6539 386 - Issue: It is not permissible for one praying to raise their gaze toward the sky, nor even during supplication outside of prayer as well. Abdullah ibn Yusuf narrated to us; Ahmad ibn Fath narrated to us; Abd al-Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us. Ahmad ibn Ali narrated to us: Ibn al-Hajjaj narrated to us: Abu Kurayb narrated to us: Abu Mu'awiyah narrated to us from al-A'mash from al-Musayyib ibn Rafi' from Tamim ibn Tarafah from Jabir ibn Samurah, who said: The Messenger of Allah (peace and blessings of Allah be upon him) said: "Let those who raise their gaze to the sky during prayer desist, or their sight will not return to them." It was also narrated to us through a sound chain from Anas, Ibn 'Umar, and Abu Hurayrah. Muhammad ibn Sa'id ibn Nubat narrated to us: Ibn Mufarrij narrated to us: 'Abdullah ibn Ja'far ibn al-Ward narrated to us: Yahya ibn Ayyub ibn Badi al-'Allaf narrated to us: Yahya - meaning Ibn Bukayr - narrated to us: al-Layth ibn Sa'd narrated to us from Ja'far ibn Rabi'ah from 'Irak ibn Malik and al-A'raj, both of whom narrated from Abu Hurayrah that the Messenger of Allah (peace and blessings of Allah be upon him) said: "Let people desist from raising their gaze to the sky during supplication until their sight is snatched away." 'Ali said: "This constitutes a severe threat, and threats are only issued for major forbidden sins - not for a permissible but disliked act, nor for a minor sin that may be forgiven." A group of the pious predecessors held this view - as was narrated to us through the chain of 'Abd al-Rahman ibn Mahdi from Sufyan al-Thawri from Ziyad from Fayyad from Tamim ibn Salamah, who said: Ibn Mas'ud saw people raising their gaze to the sky during prayer and declared: "Let those who raise their gaze during prayer desist, or [text cut off]..." It returns to them. He also said: "Or does none of you fear that if he raises his head before the Imam, Allah the Exalted might transform his head into a dog's head?" Through the narration of Hammad ibn Salama from Imran ibn Hudayr from Abu Mijlaz,

who said: “Does not the one who raises his gaze to the sky fear that his sight might be snatched away? Do I not see that angels used to descend?” Ali said: “It is astonishing that Hanafis invalidate the prayer of one who prays behind an Imam while a woman prays following that Imam’s prayer beside him - though he is unable to remove her - and the prayer of one who speaks forgetfully during his prayer. Malikis invalidate the prayer of one who prays after performing ablution with water in which bread was soaked. Shafi’is invalidate the prayer of one who prays with a hair from his own hair that has fallen from his beard or head on his clothes. Yet no text or evidence has ever come indicating the invalidation of any of these prayers. Meanwhile, they permit the prayer of one who intentionally performs during his prayer an act explicitly prohibited by authentic texts, despite severe warnings against it. Success is by Allah, the Exalted.”[8]

إِذَا رَفَعَ رَأْسَهُ قَبْلَ الْإِمَامِ أَنْ يُحَوِّلَ اللَّهُ تَعَالَى رَأْسَهُ رَأْسَ كَلْبٍ وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عِمْرَانَ بْنِ حُدَيْرٍ عَنْ أَبِي مِجْلَزٍ قَالَ: أَمَا يَخْشَى الَّذِي يَرْفَعُ بَصَرَهُ إِلَى السَّمَاءِ أَنْ يُخْتَلَسَ بَصَرُهُ “، أَلَا أَرَى أَنَّهُ كَانَ الْمَلَائِكَةُ تَنْزِلُ قَالَ عَلِيٌّ: مِنْ الْعَجَبِ أَنْ يَكُونَ الْحَنَفِيُّونَ يُبْطِلُونَ صَلَاةَ مَنْ صَلَّى خَلْفَ إمَامٍ وَإِلَى جَانِبِهِ امْرَأَةٌ تُصَلِّي بِصَلَاةِ ذَلِكَ الْإِمَامِ وَهُوَ لَا يَقْدِرُ عَلَى إزَالَتِهَا وَصَلَاةَ مَنْ تَكَلَّمَ سَاهِيًا فِي صَلَاتِهِ وَالْمَالِكِيُّونَ يُبْطِلُونَ صَلَاةَ مَنْ صَلَّى وَقَدْ تَوَضَّأَ بِمَاءٍ بُلَّ فِيهِ خُبْزٌ وَالشَّافِعِيُّونَ يُبْطِلُونَ صَلَاةَ مَنْ صَلَّى وَعَلَى ثِيَابِهِ شَعْرٌ مِنْ شَعْرِهِ نَفْسِهِ قَدْ سَقَطَ مِنْ لِحْيَتِهِ وَرَأْسِهِ وَمَا جَاءَ قَطُّ نَصٌّ وَلَا دَلِيلٌ عَلَى بُطْلَانِ صَلَاةِ أَحَدٍ مِنْ هَؤُلَاءِ، ثُمَّ يُجِيزُونَ صَلَاةَ مَنْ تَعَمَّدَ فِي صَلَاتِهِ عَمَلًا صَحَّ النَّصُّ بِتَحْرِيمِهِ عَلَيْهِ وَشِدَّةِ الْوَعِيدِ فِيهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L6540 **A juristic issue: A woman prayed beside a man, neither following him nor his prayer leader in prayer.**

[مَسْأَلَةٌ صَلَّتْ امْرَأَةٌ إلَى جَنْبِ رَجُلٍ لَا تَأْتَمُّ بِهِ وَلَا بِإِمَامِهِ]

L6541–6543 387. Issue: If a woman prays beside a man without following him or his imam, this is permissible. If he does not intend to lead her in prayer while she intends this, his prayer remains complete and her prayer becomes void. If he intends to lead her in prayer while she is capable of moving back from him, both their prayers become invalid. If they are both following as congregants behind a single imam, and neither she nor he is able to find another spot, their prayers remain complete. If she is able to delay [her position] while he is unable to make her stay back, her prayer becomes invalid while his prayer remains valid. If he could make her stay back but did not do so, the prayers of both become invalid. Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: ʿAmr ibn ʿAlī narrated to us: Yaḥyā—that is, Ibn Saʿīd al-Qaṭṭān—narrated to us: Shuʿbah narrated from ʿAbdullāh ibn al-Mukhtār from Mūsā

٣٨٧ - مَسْأَلَةٌ: فَإِنْ صَلَّتْ امْرَأَةٌ إلَى جَنْبِ رَجُلٍ لَا تَأْتَمُّ بِهِ وَلَا بِإِمَامِهِ فَذَلِكَ جَائِزٌ فَإِنْ كَانَ لَا يَنْوِي أَنْ يَؤُمَّهَا وَنَوَتْ هِيَ ذَلِكَ فَصَلَاتُهُ تَامَّةٌ وَصَلَاتُهَا بَاطِلَةٌ فَإِنْ نَوَى أَنْ يَؤُمَّهَا وَهِيَ قَادِرَةٌ عَلَى التَّأَخُّرِ عَنْهُ فَصَلَاتُهُمَا جَمِيعًا فَاسِدَةٌ فَإِنْ كَانَا جَمِيعًا مُؤْتَمَّيْنِ بِإِمَامٍ وَاحِدٍ وَلَا تَقْدِرُ هِيَ وَلَا هُوَ عَلَى مَكَانٍ آخَرَ فَصَلَاتُهُمَا تَامَّةٌ وَإِنْ كَانَتْ قَادِرَةً عَلَى التَّأَخُّرِ وَهُوَ غَيْرُ قَادِرٍ عَلَى تَأْخِيرِهَا فَصَلَاتُهَا بَاطِلَةٌ وَصَلَاتُهُ تَامَّةٌ فَلَوْ قَدَرَ عَلَى تَأْخِيرِهَا فَلَمْ يَفْعَلْ فَصَلَاتُهُمَا جَمِيعًا بَاطِلَةٌ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ ثنا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - ثنا شُعْبَةُ عَنْ عَبْدِ اللَّهِ بْنِ الْمُخْتَارِ عَنْ «مُوسَى بْنِ أَنَسِ بْنِ مَالِكٍ عَنْ أَبِيهِ قَالَ: صَلَّى بِي رَسُولُ اللَّهِ - صَلَّى

[8] **Hadith references (L6535):** Sahih Muslim 428.

ibn Anas ibn Mālik from his father, who said: “Allah’s Messenger—peace and blessings be upon him—prayed with me and a woman from my household. He placed me on my right side, and the woman stood behind us.” Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: Quṭaybah ibn Saʿīd narrated to us: Mālik ibn Anas narrated from Isḥāq ibn ʿAbdullāh ibn Abī Ṭalḥah from Anas ibn Mālik that Allah’s Messenger—peace and blessings be upon him—led them in prayer. Anas said: “The orphan and I formed a row behind him, and the elderly woman stood behind us. He prayed two rakʿahs for us and then left.” Thus, it is confirmed that the placement of a woman, two women, or more must necessarily be behind men—never alongside a single man or in front of him—and that the placement of a man, two men, or more must necessarily be in front of a woman, two women, or more. Whoever exceeds the position Allah the Exalted has commanded through the tongue of His Messenger—peace and blessings be upon him—to pray in, and prays where Allah has prohibited, has disobeyed Allah—Majestic and Exalted—in that act and has not fulfilled the prayer Allah ordained. Disobedience cannot compensate for obedience. This is the view of Abū Ḥanīfah and some followers of Abū Sulaymān. As for one who is incapable of occupying the commanded position and cannot do otherwise, Allah the Exalted has said: “He has detailed for you what He has forbidden to you, except when compelled by necessity” (Quran 6:119). And the Prophet—peace be upon him—said: “When I command you to do something, fulfill it as much as you are able.”[9]

L6544 **A legal issue regarding intentionally placing his hand on his waist during the ṣalāh.**

L6545 Issue 388: Whoever intentionally places his hand on his waist during prayer, his prayer is invalidated.

L6546–6551 Similarly, whoever sits intentionally in prayer while leaning on one or both hands. Hammam narrated to us from Abbas ibn Asbagh, from Muhammad ibn Abd al-Malik ibn Ayman, from Isma’il ibn Ishaq, from Yahya ibn Habib ibn Arabi, from Hammad ibn Zayd, from Ayyub al-Sakhtiyani, from Muham-

[9] **Qur’an references (L6541):** Qur’an 6:119 (Al-An’am).

اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِامْرَأَةٍ مِنْ أَهْلِي، فَأَقَامَنِي عَنْ يَمِينِهِ، وَالْمَرْأَةُ خَلْفَنَا» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ عَنْ مَالِكِ بْنِ أَنَسٍ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ «عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى بِهِمْ، قَالَ أَنَسٌ: فَصَفَفْتُ أَنَا وَالْيَتِيمُ وَرَاءَهُ، وَالْعَجُوزُ مِنْ وَرَائِنَا، فَصَلَّى لَنَا رَكْعَتَيْنِ وَانْصَرَفَ» . فَصَحَّ أَنَّ مَقَامَ الْمَرْأَةِ، وَالْمَرْأَتَيْنِ، وَالْأَكْثَرِ - إِنَّمَا هُوَ خَلْفَ الرِّجَالِ وَلَا بُدَّ لَا مَعَ رَجُلٍ وَاحِدٍ أَصْلًا، وَلَا أَمَامَهُ، وَأَنَّ مَوْقِفَ الرَّجُلِ وَالرَّجُلَيْنِ وَالْأَكْثَرِ إِنَّمَا هُوَ أَمَامَ الْمَرْأَةِ، وَالْمَرْأَتَيْنِ، وَالْأَكْثَرِ وَلَا بُدَّ. فَمَنْ تَعَدَّى مَوْضِعَهُ الَّذِي أَمَرَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُصَلِّيَ فِيهِ وَصَلَّى حَيْثُ مَنَعَهُ اللَّهُ كَذَلِكَ: فَقَدْ عَصَى اللَّهَ عَزَّ وَجَلَّ فِي عَمَلِهِ ذَلِكَ، وَلَمْ يَأْتِ بِالصَّلَاةِ الَّتِي أَمَرَ اللَّهُ بِهَا وَالْمَعْصِيَةُ لَا تُجْزِئُ عَنْ الطَّاعَةِ. وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَبَعْضِ أَصْحَابِ أَبِي سُلَيْمَانَ. وَأَمَّا مَنْ عَجَزَ عَنْ الْمَكَانِ الَّذِي أُمِرَ بِهِ وَلَمْ يَقْدِرْ عَلَى غَيْرِهِ فَقَدْ قَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] . وَقَالَ - عَلَيْهِ السَّلَامُ -: «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ»

[مَسْأَلَةٌ تَعَمَّدَ وَضْعَ يَدِهِ عَلَى خَاصِرَتِهِ فِي الصَّلَاةِ]

٣٨٨ - مَسْأَلَةٌ: وَمَنْ تَعَمَّدَ فِي الصَّلَاةِ وَضْعَ يَدِهِ عَلَى خَاصِرَتِهِ بَطَلَتْ صَلَاتُهُ.

وَكَذَلِكَ مَنْ جَلَسَ فِي صَلَاتِهِ مُتَعَمِّدًا أَنْ يَعْتَمِدَ عَلَى يَدِهِ أَوْ يَدَيْهِ حَدَّثَنَا حَمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا إسْمَاعِيلُ بْنُ إِسْحَاقَ ثنا يَحْيَى بْنُ حَبِيبِ بْنِ عَرَبِيٍّ ثنا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ

mad ibn Sirin, from Abu Hurayrah, who said: “Placing hands on the flanks in prayer was prohibited.” Abdullah ibn Rabi’ narrated to us from Muhammad ibn Mu’awiyah, from Ahmad ibn Shu’ayb, from Suwayd ibn Nasr, from Abdullah ibn al-Mubarak, from Hisham ibn Hassan, from Muhammad ibn Sirin, from Abu Hurayrah, that the Messenger of Allah - peace and blessings be upon him - forbade a man from praying while placing hands on his flanks.

Ali said: It is established that the first prohibition is from the Messenger of Allah - peace and blessings be upon him. It is also confirmed that he - peace be upon him - stated: “Whoever performs an act not in accordance with our teachings, it is rejected.” This is the view of a group among the early predecessors.

As transmitted to us through Waki’ from al-A’mash, from Abu al-Duha, from Masruq, from Aisha, the Mother of the Believers: She said regarding placing hands on the flanks during prayer: “The practice of the Jews,” and she disliked it. From Waki’ from Thawr ibn Zayd, from Khalid ibn Ma’dan, from Aisha, the Mother of the Believers: She saw a man in prayer with his hand on his flank and said: “This is how the people of Hellfire are positioned in the Fire.” From Waki’ from Sa’id ibn Ziyad ibn Subayh al-Hanafi, who said: “I prayed beside Ibn Umar...” I placed my hand on my waist; when he prayed, he said: “This is crossing the hands on the waist in prayer,” as the Messenger of Allah—peace and blessings be upon him—prohibited it. From Ibn Abbas: he disliked placing the hand on the waist during prayer and said: “Satan attends him.” Through the chain of Sufyan al-Thawri from Salih ibn Nabhan: I heard Abu Huraira saying: “When one of you stands for prayer, let him not place his hand on his waist, for Satan attends that act.”

As for leaning on the hand: Hammam narrated to us from Ibn Mufarrij, who narrated from Ibn al-A’rabi, who narrated from al-Dabari, who narrated from Abd al-Razzaq, from Ismail ibn Umayya, from Nafi’, from Ibn Umar, who said: “The Messenger of Allah—peace and blessings be upon him—forbade a man from sitting in prayer while leaning on his hand.” Abd al-Razzaq said: Ibrahim ibn Maysara informed me that he heard Amr ibn al-Sharid reporting from the Prophet—peace and blessings be upon him—: “Regarding a man

أَنَّهُ قَالَ «نُهِيَ عَنْ التَّخَصُّرِ فِي الصَّلَاةِ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا سُوَيْدُ بْنُ نَصْرٍ أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى أَنْ يُصَلِّيَ الرَّجُلُ مُخْتَصِرًا» . قَالَ عَلِيٌّ: فَصَحَّ أَنَّ النَّهْيَ الْأَوَّلَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَقَدْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» . وَهُوَ قَوْلُ طَائِفَةٍ مِنْ السَّلَفِ. كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ الْأَعْمَشِ عَنْ أَبِي الضُّحَى عَنْ مَسْرُوقٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا قَالَتْ فِي وَضْعِ الْيَدِ عَلَى الْخَاصِرَةِ فِي الصَّلَاةِ: فِعْلُ الْيَهُودِ، وَكَرِهَتْهُ وَعَنْ وَكِيعٍ عَنْ ثَوْرِ بْنِ زَيْدٍ عَنْ خَالِدِ بْنِ مَعْدَانَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّهَا رَأَتْ رَجُلًا فِي الصَّلَاةِ وَاضِعًا يَدَهُ عَلَى خَاصِرَتِهِ فَقَالَتْ: هَكَذَا أَهْلُ النَّارِ فِي النَّارِ. وَعَنْ وَكِيعٍ عَنْ سَعِيدِ بْنِ زِيَادِ بْنِ صُبَيْحٍ الْحَنَفِيِّ قَالَ «صَلَّيْتُ إلَى جَنْبِ ابْنِ عُمَرَ فَوَضَعْت يَدِي عَلَى خَاصِرَتِي، فَلَمَّا صَلَّى قَالَ: هَذَا الصَّلْبُ فِي الصَّلَاةِ، وَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْهَى عَنْهُ» . وَعَنْ ابْنِ عَبَّاسٍ: أَنَّهُ كَرِهَ وَضْعَ الْيَدِ عَلَى الْخَاصِرَةِ فِي الصَّلَاةِ، وَقَالَ: الشَّيْطَانُ يَحْضُرُهُ وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ صَالِحِ بْنِ نَبْهَانَ سَمِعْتُ أَبَا هُرَيْرَةَ يَقُولُ: إذَا قَامَ أَحَدُكُمْ إلَى الصَّلَاةِ فَلَا يَجْعَلْ يَدَهُ فِي خَاصِرَتِهِ، فَإِنَّ الشَّيْطَانَ يَحْضُرُ ذَلِكَ وَأَمَّا الِاعْتِمَادُ عَلَى الْيَدِ -: فَحَدَّثَنَا حَمَّامٌ عَنْ ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ إسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَجْلِسَ الرَّجُلُ فِي صَلَاتِهِ مُعْتَمِدًا عَلَى يَدِهِ» . قَالَ عَبْدُ الرَّزَّاقِ: أَخْبَرَنِي إبْرَاهِيمُ بْنُ مَيْسَرَةَ أَنَّهُ سَمِعَ عَمْرَو بْنَ الشَّرِيدِ يُخْبِرُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كَانَ يَقُولُ فِي وَضْعِ الرَّجُلِ شِمَالَهُ إذَا

placing his left hand under his thigh when sitting in prayer, he said: 'It is the sitting posture of those who incurred divine wrath.'"

Ali said: "It is authentically established from him—peace and blessings be upon him—that he said: 'Pray as you see me pray.' Whoever prays contrary to his manner—peace and blessings be upon him—whether a man or a woman, has performed a prayer other than what Allah the Exalted commanded. Thus, it is not valid. Leaning on the hand during prayer contradicts the Prophet's prayer—peace and blessings be upon him—as agreed by all scholars. It was narrated to us through the chain of Nafi' from Ibn Umar that he said to a man: 'What causes you to sit in your prayer with the sitting posture of those who incurred divine wrath?'" Those who have incurred wrath, and he had seen him leaning on his hands.[10]

L6552 **Fulfilling the prescribed number of rak'ahs and prostrations is obligatory, and the prayer is not valid without it.**

L6553–6555 Issue 389: Performing the prescribed number of rak'ahs and prostrations is obligatory, and the prayer remains incomplete without them. Each standing position requires one bowing followed by one rising, then two prostrations with a sitting interval between them. There is no disagreement among anyone in the Ummah regarding this. If one forgets a single prostration and stands up on his own to proceed to a second rak'ah, the first rak'ah remains incomplete, and his transition to the second becomes null and void. If done deliberately while conscious of the omission, his prayer is invalidated. Even subsequent bowing and rising would be invalid, as these acts were performed out of their proper place through forgetfulness - though forgetfulness is excused. Only upon completing both prostrations does the rak'ah become valid.

If one omitted a prostration in every rak'ah of his prayer - whether in Fajr, Friday prayer, Dhuhr, Asr, or Isha during travel - one valid rak'ah remains. He must perform another rak'ah followed by the prostration of forgetfulness. In Maghrib prayer, the ruling applies similarly: he performs one prostration,

[10]**Hadith references (L6547):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169; Sunan Abi Dawud 903.

جَلَسَ فِي الصَّلَاةِ: هِيَ قِعْدَةُ الْمَغْضُوبِ عَلَيْهِمْ» . قَالَ عَلِيٌّ: قَدْ صَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - أَنَّهُ قَالَ: «صَلُّوا كَمَا تَرَوْنِي أُصَلِّي» فَمَنْ صَلَّى بِخِلَافِ صَلَاتِهِ - عَلَيْهِ السَّلَامُ - مِنْ رَجُلٍ أَوْ امْرَأَةٍ، فَقَدْ صَلَّى غَيْرَ الصَّلَاةِ الَّتِي أَمَرَهُ اللَّهُ تَعَالَى بِهَا، فَلَا تُجْزِئُهُ، وَالِاعْتِمَادُ عَلَى الْيَدِ فِي الصَّلَاةِ خِلَافُ صَلَاتِهِ - عَلَيْهِ السَّلَامُ -، بِلَا خِلَافٍ مِنْ أَحَدٍ. وَرُوِّينَا مِنْ طَرِيقِ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ قَالَ لِإِنْسَانٍ: مَا يُجْلِسُك فِي صَلَاتِك جِلْسَةَ الْمَغْضُوبِ عَلَيْهِمْ وَكَانَ رَآهُ مُعْتَمِدًا عَلَى يَدَيْهِ

[مَسْأَلَةٌ الْإِتْيَانُ بِعَدَدِ الرَّكَعَاتِ وَالسَّجَدَاتِ فَرْضٌ لَا تَتِمُّ الصَّلَاةُ إلَّا بِهِ]

٣٨٩ - مَسْأَلَةٌ: وَالْإِتْيَانُ بِعَدَدِ الرَّكَعَاتِ وَالسَّجَدَاتِ فَرْضٌ لَا تَتِمُّ الصَّلَاةُ إلَّا بِهِ، لِكُلِّ قِيَامٍ رُكُوعٌ وَاحِدٌ، ثُمَّ رَفْعٌ وَاحِدٌ، ثُمَّ سَجْدَتَانِ بَيْنَهُمَا جَلْسَةٌ - هَذَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ مِنْ الْأُمَّةِ فَمَنْ نَسِيَ سَجْدَةً وَاحِدَةً وَقَامَ عِنْدَ نَفْسِهِ إلَى رَكْعَةٍ ثَانِيَةٍ فَإِنَّ الرَّكْعَةَ الْأُولَى لَمْ تَتِمَّ، وَصَارَ قِيَامُهُ إلَى الثَّانِيَةِ لَغْوًا لَيْسَ بِشَيْءٍ. وَلَوْ تَعَمَّدَهُ ذَاكِرًا لَبَطَلَتْ صَلَاتُهُ، حَتَّى إذَا رَكَعَ وَرَفَعَ فَكُلُّ ذَلِكَ لَغْوٌ، لِأَنَّهُ عَمِلَهُ فِي غَيْرِ مَوْضِعِهِ نِسْيَانًا، وَالنِّسْيَانُ مَرْفُوعٌ. فَإِذَا سَجَدَ تَمَّتْ لَهُ حِينَئِذٍ رَكْعَةٌ بِسَجْدَتَيْهَا. وَلَوْ نَسِيَ مِنْ كُلِّ رَكْعَةٍ مِنْ صَلَاتِهِ سَجْدَةً لَكَانَ - إنْ كَانَتْ: الصُّبْحَ، أَوْ الْجُمُعَةَ، أَوْ الظُّهْرَ، أَوْ الْعَصْرَ. أَوْ الْعَتَمَةَ فِي السَّفَرِ -: قَدْ صَحَّتْ لَهُ رَكْعَةٌ. فَلْيَأْتِ بِأُخْرَى ثُمَّ يَسْجُدُ لِلسَّهْوِ. وَإِنْ كَانَ ذَلِكَ فِي الْمَغْرِبِ فَكَذَلِكَ أَيْضًا، وَلْيَسْجُدْ سَجْدَةً وَاحِدَةً. ثُمَّ يَقُومُ إلَى الثَّانِيَةِ، فَإِذَا أَتَمَّهَا جَلَسَ، ثُمَّ قَامَ إلَى الثَّالِثَةِ، ثُمَّ يَسْجُدُ لِلسَّهْوِ. وَإِنْ كَانَتْ: الظُّهْرَ أَوْ الْعَصْرَ، أَوْ الْعَتَمَةَ فِي الْحَضَرِ -: فَقَدْ صَحَّتْ

then stands for the second rak'ah. Upon completing it, he sits, rises for the third rak'ah, then performs the prostration of forgetfulness. For Dhuhr, Asr, or Isha in non-travel circumstances, two rak'ahs remain valid as established. He must perform two additional rak'ahs followed by the prostration of forgetfulness.

The evidence lies in Allah's decree: "I will not allow the deed of any doer among you to be lost, whether male or female" (3:195), and the Prophet's (peace be upon him) declaration: "Whoever introduces into this matter of ours that which is not part of it, it is rejected." Thus, any act performed in its proper place as commanded by the Messenger (peace be upon him) is valid, while any act displaced from its ordained position is rejected. This constitutes our explicit doctrine, all praise to Allah. Al-Shafi'i, Dawud, and others upheld this view. Malik held that the standing, bowing, rising, and performed prostration of the first rak'ah are entirely invalidated, with only the second rak'ah considered valid. This is erroneous due to what we have mentioned, because he counted as valid for him a corrupt standing, corrupt bowing, and corrupt rising - he placed all these where impermissible for him. Had he placed them intentionally, his prayer would be invalidated without any disagreement. He nullified his standing, bowing, rising, and a prostration he performed in accordance with the Ummah's consensus, while he acted with them as Allah commanded. If it is said: "We intended to prevent any action intervening between the two prostrations," we reply: "Yet you permitted him to interpose between the prayer's commencement and its connected standing and recitation with actions you invalidated. What is the difference when the Messenger of Allah - peace and blessings be upon him - forgetfully interposed between his prayer's acts with elements not part of it: greetings, speech, walking, leaning, and entering his house? None of this invalidated what he had performed of his prayer. Thus, forgetful interposition between them causes no harm." If countered: "He did not intend the prostration to be from the first rak'ah but intended it for the second, and actions depend on intentions," we respond: "This does not invalidate, for the Messenger of Allah - peace and blessings be upon him - intended the sitting from which he concluded the salām as part of the fourth rak'ah when it was

لَهُ رَكْعَتَانِ كَمَا ذَكَرْنَا، فَعَلَيْهِ أَنْ يَأْتِيَ بِرَكْعَتَيْنِ ثُمَّ يَسْجُدَ لِلسَّهْوِ بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {أَنِّي لا أُضِيعُ عَمَلَ عَامِلٍ مِنْكُمْ مِنْ ذَكَرٍ أَوْ أُنْثَى} [آل عمران: ١٩٥] . وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» . فَصَحَّ يَقِينًا أَنَّ كُلَّ عَمَلٍ عَمِلَهُ الْمَرْءُ فِي مَوْضِعِهِ كَمَا أَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ مُعْتَدٌّ لَهُ بِهِ، وَكُلَّ عَمَلٍ عَمِلَهُ الْمَرْءُ فِي غَيْرِ مَوْضِعِهِ الَّذِي أَمَرَهُ - عَلَيْهِ السَّلَامُ - فَهُوَ رَدٌّ - وَهَذَا نَصُّ قَوْلِنَا وَلِلَّهِ تَعَالَى الْحَمْدُ. وَقَالَ بِهَذَا الشَّافِعِيُّ، وَدَاوُد، وَغَيْرُهُمَا. وَقَالَ مَالِكٌ: يُلْغَى قِيَامُهُ فِي الْأُولَى وَرُكُوعُهُ وَرَفْعُهُ وَالسَّجْدَةُ الَّتِي سَجَدَهَا وَيُعْتَدُّ بِالثَّانِيَةِ وَهَذَا خَطَأٌ لِمَا ذَكَرْنَا، لِأَنَّهُ اعْتَدَّ لَهُ بِقِيَامٍ فَاسِدٍ وَرُكُوعٍ فَاسِدٍ وَرَفْعٍ فَاسِدٍ، وَضَعَ كُلَّ ذَلِكَ حَيْثُ لَا يَحِلُّ لَهُ، وَحَيْثُ لَوْ وَضَعَهُ عَامِدًا لَبَطَلَتْ صَلَاتُهُ بِلَا خِلَافٍ مِنْ أَحَدٍ، وَأَلْغَى لَهُ قِيَامًا وَرُكُوعًا وَرَفْعًا وَسَجْدَةً أَدَّاهَا بِإِجْمَاعِ الْأُمَّةِ، وَهُوَ مَعَهُمْ كَمَا أَمَرَهُ اللَّهُ تَعَالَى فَإِنْ قِيلَ: أَرَدْنَا أَنْ لَا يَحُولَ بَيْنَ السَّجْدَتَيْنِ بِعَمَلٍ قُلْنَا: قَدْ أَجَزْتُمْ لَهُ أَنْ يَحُولَ بَيْنَ الْإِحْرَامِ لِلصَّلَاةِ وَبَيْنَ الْقِيَامِ وَالْقِرَاءَةِ الْمُتَّصِلَيْنِ بِهَا بِعَمَلٍ أَبْطَلْتُمُوهُ، فَمَا الْفَرْقُ وَقَدْ حَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ أَعْمَالِ صَلَاتِهِ نَاسِيًا بِمَا لَيْسَ مِنْهَا، مِنْ سَلَامٍ وَكَلَامٍ وَمَشْيٍ وَاتِّكَاءٍ وَدُخُولِهِ مَنْزِلَهُ، وَلَمْ يَضُرَّ ذَلِكَ مَا عَمِلَ مِنْ صَلَاتِهِ شَيْئًا، فَالْحَيْلُولَةُ بَيْنَهُمَا إذَا كَانَتْ بِنِسْيَانٍ لَا تَضُرُّ فَإِنْ قِيلَ: إنَّهُ لَمْ يَنْوِ بِالسَّجْدَةِ أَنْ تَكُونَ مِنْ الرَّكْعَةِ الْأُولَى، وَإِنَّمَا نَوَاهَا مِنْ الثَّانِيَةِ، وَالْأَعْمَالُ بِالنِّيَّاتِ قُلْنَا لَهُمْ: هَذَا لَا يَضُرُّ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ نَوَى بِالْجَلْسَةِ الَّتِي سَلَّمَ مِنْهَا أَنَّهَا مِنْ الرَّكْعَةِ الرَّابِعَةِ، وَهِيَ مِنْ الثَّانِيَةِ، ثُمَّ اعْتَدَّ بِهَا لِلثَّانِيَةِ، وَكَذَلِكَ أَمَرَ - عَلَيْهِ السَّلَامُ - مَنْ لَمْ يَدْرِ كَمْ رَكْعَةً صَلَّى

actually the second, yet counted it for the second. Similarly, he - peace upon him - instructed those uncertain of their rak'ah count to pray until certain of completion while doubting excess. Such worshippers intend a rak'ah as the third though it might be the fourth, without detriment." We then argue: "This reasoning necessarily applies to your position, for he intended the opening takbīr to follow the rak'ah you invalidated rather than the one you considered first." Abū Ḥanīfah said: "He performs four consecutive prostrations at his prayer's conclusion, thereby completing it." This is utterly corrupt, for he validated four consecutive rak'ahs without completing a single one - this is invalid. Moreover, he permitted consecutive prostrations never commanded by Allah, performed them intentionally opposing Allah's command regarding proper intention, violating the Prophet's injunction - peace and blessings be upon him: "Pray as you have seen me pray."[11][12]

أَنْ يُصَلِّيَ حَتَّى يَكُونَ عَلَى يَقِينٍ مِنْ التَّمَامِ، وَعَلَى شَكٍّ مِنْ الزِّيَادَةِ، فَالْمُصَلِّي عَلَى هَذَا يَنْوِي بِالرَّكْعَةِ أَنَّهَا الثَّالِثَةُ وَلَعَلَّهَا رَابِعَةٌ، وَلَا يَضُرُّ ذَلِكَ شَيْئًا ثُمَّ نَقُولُ لَهُمْ: هَذَا نَفْسُهُ لَازِمٌ لَكُمْ، لِأَنَّهُ نَوَى بِالتَّكْبِيرِ لِلْإِحْرَامِ [أَنْ] تَلِيَ الرَّكْعَةَ الَّتِي أَبْطَلْتُمْ عَلَيْهِ، لَا الرَّكْعَةَ الَّتِي جَعَلْتُمُوهَا أَوَّلًا وَقَالَ أَبُو حَنِيفَةَ: يَسْجُدُ فِي آخِرِ صَلَاتِهِ أَرْبَعَ سَجَدَاتٍ مُتَوَالِيَاتٍ وَتَمَّتْ صَلَاتُهُ وَهَذَا كَلَامٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ اعْتَدَّ لَهُ بِأَرْبَعِ رَكَعَاتٍ مُتَوَالِيَاتٍ لَمْ يُتِمَّ مِنْهَا وَلَا وَاحِدَةً، وَهَذَا بَاطِلٌ. ثُمَّ أَجَازَ لَهُ سَجَدَاتٍ مُتَتَابِعَاتٍ لَمْ يَأْمُرْ اللَّهُ تَعَالَى قَطُّ بِهَا، أَتَى بِهَا عَامِدًا مُخَالِفًا لِأَمْرِ اللَّهِ عَزَّ وَجَلَّ بِالْقَصْدِ. وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «صَلُّوا كَمَا رَأَيْتُمُونِي أُصَلِّي» .

L6556–6557 And to teach him (the Prophet, peace be upon him) the worshipper how to perform prayer, via the transmissions of Abu Hurairah and Rifa'ah ibn Rafi'. We have mentioned all of this with its chain of transmission. They claim to be the people of analogical reasoning and do not differ in that it is impermissible for the worshipper to intentionally perform a prostration before the rakʿah, nor to intentionally perform a bowing before the prostration in the preceding bowing. Then they permit this very act—and success is by Allah, the Most High.

وَلِتَعْلِيمِهِ - عَلَيْهِ السَّلَامُ - الْمُصَلِّيَ كَيْفَ يَعْمَلُ، مِنْ طَرِيقِ أَبِي هُرَيْرَةَ، وَرِفَاعَةَ بْنِ رَافِعٍ، وَقَدْ ذَكَرْنَا كُلَّ ذَلِكَ بِإِسْنَادِهِ، وَهُمْ يَدَّعُونَ أَنَّهُمْ أَصْحَابُ قِيَاسٍ. وَلَا يَخْتَلِفُونَ فِي أَنَّهُ لَا يَحِلُّ لِلْمُصَلِّي تَعَمُّدُ تَقْدِيمِ سَجْدَةٍ قَبْلَ الرَّكْعَةِ، وَلَا تَعَمُّدُ تَقْدِيمِ رُكُوعٍ قَبْلَ السَّجْدَةِ الَّتِي فِي الرُّكُوعِ الَّذِي قَبْلَهُ، ثُمَّ أَجَازُوا هَذَا بِعَيْنِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L6558 **A ruling: It is impermissible for a worshiper to spread his forearms during prostration.**

[مَسْأَلَةٌ لَا يَحِلُّ لِلْمُصَلِّي أَنْ يَفْتَرِشَ ذِرَاعَيْهِ فِي السُّجُودِ]

L6559 Issue 390: It is not permissible for one praying to spread his forearms in prostration. From ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid, from Ibrāhīm ibn Aḥmad, from al-Farbarī, from al-Bukhārī, from Muḥammad ibn Bashshār, from Muḥammad ibn Jaʿfar, from Shuʿbah who said: I heard Qatādah narrate from Anas ibn Mālik that the Prophet (peace and blessings

٣٩٠ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْمُصَلِّي أَنْ يَفْتَرِشَ ذِرَاعَيْهِ فِي السُّجُودِ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا مُحَمَّدُ بْنُ جَعْفَرٍ ثنا شُعْبَةُ سَمِعْت قَتَادَةَ عَنْ أَنَسِ بْنِ مَالِكٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «اعْتَدِلُوا فِي السُّجُودِ، وَلَا يَبْسُطُ أَحَدُكُمْ ذِرَاعَيْهِ انْبِسَاطَ الْكَلْبِ» .

[11] **Hadith references (L6553):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[12] **Qur'an references (L6553):** Qur'an 3:195 (Ali 'Imran).

of Allah be upon him) said: “Straighten yourselves in prostration, and let none of you spread his forearms like a dog spreads them.” We were narrated from Abū Wā’il, from Ḥudhayfah, that he saw a man who did not complete his bowing or prostration. When the man concluded his prayer, Ḥudhayfah told him: “You have not prayed.” ʿAlī said: “Whoever spreads his forearms in prostration without perfecting it - and whoever fails to perfect prostration - has no valid prayer according to Ḥudhayfah. We know of no Companion who disagreed with him in this matter, may Allah be pleased with them all.”[13]

A ruling: It is incumbent upon the worshiper not to spit in the mosque.

Issue 391: It has been ordained that the one praying must not spit in front of himself or to his right, whether during prayer or otherwise. The ruling stipulates that during prayer, he may spit onto his garment, to his left under his foot, or further away to his left—provided he does not discard the spittle within the mosque—or behind him, provided he does not harm anyone thereby. Spitting in the mosque is entirely prohibited, even outside prayer, unless he buries it.

Ḥammām narrated to us: Ibn Mufarrij narrated to us, Ibn al-Aʿrabī narrated to us, ʿAbd al-Razzāq narrated to us: I [narrate] from al-Thawrī—who is Sufyān—from Manṣūr—who is Ibn al-Muʿtamir—from Ribʿī ibn Ḥirāsh, from Ṭāriq ibn ʿAbd Allāh al-Muḥāribī, who said: The Messenger of Allāh—peace and blessings be upon him—said to me: “When you pray, do not spit in front of you or to your right. Spit toward your left side if it is unoccupied; otherwise, beneath your foot,” and he gestured with his foot, scraping the ground. We were also narrated [this] through the most venerable chain from Shuʿbah: He narrated to us: Qatādah said, “I heard Anas ibn Mālik narrate from the Messenger of Allāh—peace and blessings be upon him”—and he mentioned a similar account. It was narrated from Hammām ibn Munabbih, from Abū Hurayrah, from the Prophet—peace and blessings be upon him—and from Ibn ʿUmar, from the Prophet—peace and blessings be upon him.

[13] **Hadith references (L6559):** Sahih al-Bukhari 822; Sahih Muslim 493a; Sunan an-Nasai 1110.

وَرُوِّينَا عَنْ أَبِي وَائِلٍ عَنْ حُذَيْفَةَ: أَنَّهُ رَأَى رَجُلًا لَا يُتِمُّ رُكُوعَهُ وَلَا سُجُودَهُ، فَلَمَّا قَضَى صَلَاتَهُ قَالَ لَهُ: مَا صَلَّيْتَ. قَالَ عَلِيٌّ: مَنْ افْتَرَشَ ذِرَاعَيْهِ فِي السُّجُودِ فَلَمْ يُتِمَّ سُجُودَهُ، وَمَنْ لَمْ يُتِمَّ سُجُودَهُ فَلَا صَلَاةَ لَهُ عِنْدَ حُذَيْفَةَ، وَلَا نَعْلَمُ لَهُ مُخَالِفًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -

[مَسْأَلَةٌ عَلَى الْمُصَلِّي أَنْ لَا يَبْصُقَ فِي الْمَسْجِدِ]

٣٩١ - مَسْأَلَةٌ: وَفُرِضَ عَلَى الْمُصَلِّي أَنْ لَا يَبْصُقَ أَمَامَهُ وَلَا عَنْ يَمِينِهِ، فِي صَلَاةٍ كَانَ أَوْ فِي غَيْرِ صَلَاةٍ - وَحُكْمُهُ أَنْ يَبْصُقَ فِي الصَّلَاةِ فِي ثَوْبِهِ، أَوْ عَنْ يَسَارِهِ تَحْتَ قَدَمِهِ، أَوْ عَلَى بُعْدٍ عَلَى يَسَارِهِ، مَا لَمْ يُلْقِ الْبُصَاقَةَ فِي الْمَسْجِدِ، أَوْ يَبْصُقْ خَلْفَهُ مَا لَمْ يُؤْذِ بِذَلِكَ أَحَدًا. وَلَا يَجُوزُ الْبُصَاقُ فِي الْمَسْجِدِ أَلْبَتَّةَ، وَإِنْ كَانَ فِي غَيْرِ صَلَاةٍ، إلَّا أَنْ يَدْفِنَهُ.

حَدَّثَنَا حَمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا عَبْدُ الرَّزَّاقِ أَنَا الثَّوْرِيُّ هُوَ سُفْيَانُ - عَنْ مَنْصُورٍ هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ رِبْعِيِّ بْنِ حِرَاشٍ عَنْ «طَارِقِ بْنِ عَبْدِ اللَّهِ الْمُحَارِبِيِّ قَالَ: قَالَ لِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إذَا صَلَّيْتَ فَلَا تَبْصُقْ بَيْنَ يَدَيْكَ وَلَا عَنْ يَمِينِكَ، وَابْصُقْ تِلْقَاءَ شِمَالِكَ إنْ كَانَ فَارِغًا، وَإِلَّا فَتَحْتَ قَدَمِكَ، وَأَشَارَ بِرِجْلِهِ فَفَحَصَ الْأَرْضَ» وَرُوِّينَا أَيْضًا بِأَجَلِ إسْنَادٍ عَنْ شُعْبَةَ ثنا قَتَادَةُ سَمِعْت أَنَسَ بْنَ مَالِكٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، فَذَكَرَ نَحْوَهُ. وَعَنْ هَمَّامِ بْنِ مُنَبِّهٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَعَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَرُوِّينَا النَّهْيَ عَنْ ذَلِكَ عَنْ حُذَيْفَةَ وَأَبِي هُرَيْرَةَ، وَلَا مُخَالِفَ لَهُمَا مِنْ الصَّحَابَةِ - رَضِيَ

We were narrated the prohibition of this from Ḥudhayfah and Abū Hurayrah, with no dissenting opinion among the Companions. Allah has been pleased with them. ʻAbd al-Raḥmān ibn ʻAbd Allāh narrated to us: Ibrāhīm ibn Aḥmad narrated to us: al-Farbarī narrated to us: al-Bukhārī narrated to us: Ādam narrated to us: Shuʻbah narrated to us: Qatādah said: I heard Anas ibn Mālik say: The Prophet (peace and blessings of Allah be upon him) said: “Spitting in the mosque is an offense, and its atonement is to bury it.”

Via the same chain up to al-Bukhārī: Ḥafṣ ibn ʻUmar narrated to us: Shuʻbah narrated to us, informing me from Qatādah: I heard Anas ibn Mālik say: The Messenger of Allah (peace and blessings of Allah be upon him) said: “Let none of you spit directly before him nor to his right, but rather to his left or under his foot.” This applies as a universal ruling encompassing prayer and other situations, with the prayer context being included in this narration.

The pious predecessors upheld all these rulings: - It was narrated to us from Ṭāwūs: Muʻāwiyah spat in the mosque, left, then returned with a torch and began tracking the spittle until he buried it. - From Sufyān al-Thawrī, from Abū Isḥāq al-Sabīʻī, from ʻAbd al-Raḥmān ibn Yazīd: While we were with ʻAbdullāh ibn Masʻūd, he wished to spit but found no empty space on his right. He disliked spitting to his right, and he was not in prayer. From Sufyan al-Thawri, from Khalid al-Hadhdha’, from Abu Nasr, from Abdullah ibn al-Samit, from Muʻadh ibn Jabal: He was ill and said, “I have not spat to my right since embracing Islam.” From Ibn Jurayj: Ibn Nuʻaym informed him that he heard Umar ibn Abd al-Aziz say to his son Abd al-Malik - while he spat to his right during a journey - whereupon Umar prohibited him from doing so, stating: “You harm your companion. Spit to your left.” From Abd al-Rahman ibn Mahdi: al-Mundhir ibn Thaʻlabah narrated to us from Hammam ibn Khunas, who said: “Ibn Umar forbade me from spitting to my right outside prayer.” From Abu Ishaq al-Sabiʻi, who said: “I saw Amr ibn Maymun praying. He wanted to spit but found no space to his left, so he turned behind him and spat out.” From Hammam ibn Yahya, who said: “I entered upon Muhammad ibn Sirin and saw him enter into prayer. He wanted to spit, with the wall to his left, so he turned leftward until he expelled the spittle outside the mosque.” Ali said: “These are a group of Companions

اللَّهُ عَنْهُمْ -. حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا آدَم ثنا شُعْبَةُ ثنا قَتَادَةُ قَالَ: سَمِعْتُ أَنَسَ بْنَ مَالِكٍ قَالَ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْبُصَاقُ فِي الْمَسْجِدِ خَطِيئَةٌ، وَكَفَّارَتُهَا دَفْنُهَا» . وَبِهِ إِلَى الْبُخَارِيِّ ثنا حَفْصُ بْنُ عُمَرَ ثنا شُعْبَةُ أَخْبَرَنِي قَتَادَةُ سَمِعْت أَنَسَ بْنَ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَتْفِلَنَّ أَحَدُكُمْ بَيْنَ يَدَيْهِ وَلَا عَنْ يَمِينِهِ، وَلَكِنْ عَنْ يَسَارِهِ أَوْ تَحْتَ رِجْلِهِ» . فَهَذَا عُمُومٌ فِي الصَّلَاةِ وَغَيْرِهَا، وَأَمْرُ الصَّلَاةِ يَدْخُلُ فِي هَذَا الْخَبَرِ. وَإِلَى كُلِّ هَذَا ذَهَبَ السَّلَفُ الطَّيِّبُ: - رُوِّينَا عَنْ طَاوُسٍ: أَنَّ مُعَاوِيَةَ بَزَقَ فِي الْمَسْجِدِ وَذَهَبَ ثُمَّ رَجَعَ وَمَعَهُ شُعْلَةٌ مِنْ نَارٍ فَجَعَلَ يَتَّبِعُ الْبُزَاقَ حَتَّى دَفَنَهُ وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ: كُنَّا مَعَ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ فَأَرَادَ أَنْ يَبْصُقَ وَمَا عَنْ يَمِينِهِ فَارِغٌ؛ فَكَرِهَ أَنْ يَبْصُقَ عَنْ يَمِينِهِ، وَلَيْسَ فِي صَلَاةٍ وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي نَصْرٍ عَنْ عَبْدِ اللَّهِ بْنِ الصَّامِتِ عَنْ مُعَاذِ بْنِ جَبَلٍ: أَنَّهُ كَانَ مَرِيضًا فَقَالَ: مَا بَصَقْتُ عَنْ يَمِينِي مُذْ أَسْلَمْتُ وَعَنْ ابْنِ جُرَيْجٍ أَنَّ ابْنَ نُعَيْمٍ أَخْبَرَهُ أَنَّهُ سَمِعَ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ يَقُولُ لِابْنِهِ عَبْدِ الْمَلِكِ وَبَصَقَ عَنْ يَمِينِهِ وَهُوَ فِي مَسِيرٍ؛ فَنَهَاهُ عُمَرُ عَنْ ذَلِكَ وَقَالَ: إنَّك تُؤْذِي صَاحِبَك، ابْصُقْ عَنْ شِمَالِك. وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ ثنا الْمُنْذِرُ بْنُ ثَعْلَبَةَ عَنْ هَمَّامِ بْنِ خُنَاسٍ قَالَ: نَهَانِي ابْنُ عُمَرَ عَنْ أَنْ أَبْصُقَ عَنْ يَمِينِي فِي غَيْرِ صَلَاةٍ وَعَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ قَالَ: رَأَيْت عَمْرَو بْنَ مَيْمُونٍ يُصَلِّي فَأَرَادَ أَنْ يَبْصُقَ فَلَمْ يَجِدْ عَنْ يَسَارِهِ مَوْضِعًا فَالْتَفَتَ خَلْفَهُ فَبَزَقَ. وَعَنْ هَمَّامِ بْنِ يَحْيَى قَالَ: دَخَلْت عَلَى مُحَمَّدِ بْنِ سِيرِينَ فَرَأَيْته دَخَلَ فِي الصَّلَاةِ، فَأَرَادَ أَنْ يَبْزُقَ وَكَانَ الْحَائِطُ

- may Allah be pleased with them - with no known dissent among them. Success is from Allah, the Exalted."[14]

The Issue of Prayer in a Camels' Resting Enclosure

L6568

L6569–6575 Issue 392: Prayer is not permissible in a camel watering place (ʿaṭan) – being the location where camels stand upon reaching water and kneel – nor within their daytime grazing grounds (marāḥ) or night enclosures (mabīt). If the place is designated for one or two camels, prayer there is permissible. However, prayer is prohibited if designated for three camels or more. [We later revised this, stating: Prayer is entirely impermissible in any place designated for the kneeling of one male camel or more, or in a watering place designated for one camel or more, as we shall clarify hereafter, God, the Exalted, willing.] Praying facing a camel or upon its back is permissible. If camels cease returning to that place until... If the designation of ʿaṭan ceases to apply to a place, prayer becomes valid there. Whoever prays in an ʿaṭan of camels invalidates his prayer, whether acting intentionally or ignorantly. Abdullah ibn Yusuf narrated to us → Ahmad ibn Fath narrated to us → Abdul-Wahhab ibn Isa narrated to us → Ahmad ibn Muhammad narrated to us → Ahmad ibn Ali narrated to us → Muslim ibn Al-Hajjaj narrated to us: Abu Kamil Fudayl ibn Husayn Al-Jahdari and Al-Qasim ibn Zakariya. Abu Kamil said: Abu Awanah narrated to us from Uthman ibn Abdullah ibn Muhibb. Al-Qasim ibn Zakariya said: Ubaidullah ibn Musa narrated to us from Shayban—both transmitting from Ja'far ibn Abi Thawr → Jabir ibn Samurah → the Prophet (peace and blessings of Allah be upon him): "A man asked him: 'May I pray in camel resting areas?' He replied: 'No.'" Yunus ibn Abdullah narrated to us → Abu Isa ibn Abi Isa Al-Qadi narrated to us → Ahmad ibn Khalid narrated to us → Ibn Waddah narrated to us → Abu Bakr ibn Abi Shaybah narrated to us from Yazid ibn Harun → Hisham ibn Hassan → Muhammad ibn Sirin → Abu Hurairah, who said: The Messenger of Allah (peace and blessings of Allah be upon him) said: "If you find no place

[14] **Hadith references (L6563):** Sahih al-Bukhari 412.

عَنْ يَسَارِهِ، فَالْتَفَتَ يَسَارَهُ حَتَّى أَخْرَجَ الْبُزَاقَ مِنْ الْمَسْجِدِ. قَالَ عَلِيٌّ: هَؤُلَاءِ طَائِفَةٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الصَّلَاةُ فِي عَطَنِ إبِلٍ]

٣٩٢ - مَسْأَلَةٌ: وَلَا تَحِلُّ الصَّلَاةُ فِي عَطَنِ إبِلٍ، وَهُوَ الْمَوْضِعُ الَّذِي تَقِفُ فِيهِ الْإِبِلُ عِنْدَ وُرُودِهَا الْمَاءَ وَتَبْرُكُ، وَفِي الْمَرَاحِ وَالْمَبِيتِ، فَإِنْ كَانَ لِرَأْسٍ وَاحِدٍ مِنْ الْإِبِلِ أَوْ لِرَأْسَيْنِ فَالصَّلَاةُ فِيهِ جَائِزَةٌ، وَإِنَّمَا تَحْرُمُ الصَّلَاةُ إذَا كَانَ لِثَلَاثَةٍ فَصَاعِدًا. [ثُمَّ اسْتَدْرَكْنَا فَقُلْنَا: إنَّهُ لَا تَجُوزُ الصَّلَاةُ أَلْبَتَّةَ فِي الْمَوْضِعِ الْمُتَّخَذِ لِبُرُوكِ جَمَلٍ وَاحِدٍ فَصَاعِدًا، وَلَا فِي الْمُتَّخَذِ عَطَنًا لِبَعِيرٍ وَاحِدٍ فَصَاعِدًا؛ عَلَى مَا نَذْكُرُهُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى] . وَالصَّلَاةُ إلَى الْبَعِيرِ جَائِزَةٌ وَعَلَيْهِ، فَإِنْ انْقَطَعَ أَنْ تَأْوِيَ الْإِبِلُ إلَى ذَلِكَ الْمَكَانِ حَتَّى يَسْقُطَ عَنْهُ اسْمُ عَطَنٍ: جَازَتْ الصَّلَاةُ فِيهِ فَمَنْ صَلَّى فِي عَطَنِ إبِلٍ بَطَلَتْ صَلَاتُهُ عَامِدًا كَانَ أَوْ جَاهِلًا. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو كَامِلٍ فُضَيْلُ بْنُ حُسَيْنٍ الْجَحْدَرِيُّ وَالْقَاسِمُ بْنُ زَكَرِيَّاءَ، قَالَ أَبُو كَامِلٍ: ثنا أَبُو عَوَانَةَ عَنْ عُثْمَانَ بْنِ عَبْدِ اللَّهِ بْنِ مُوهِبٍ؛ وَقَالَ الْقَاسِمُ بْنُ زَكَرِيَّا: ثنا عُبَيْدُ اللَّهِ بْنُ مُوسَى عَنْ شَيْبَانَ كِلَاهُمَا عَنْ جَعْفَرِ بْنِ أَبِي ثَوْرٍ عَنْ جَابِرِ بْنِ سَمُرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَّ رَجُلًا سَأَلَهُ: أُصَلِّي فِي مَبَارِكِ الْإِبِلِ قَالَ: لَا» . حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ ثنا أَبُو عِيسَى بْنُ أَبِي عِيسَى الْقَاضِي ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا ابْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ يَزِيدَ بْنِ هَارُونَ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ

except sheep folds and camel resting grounds, pray in the sheep folds and do not pray in the camel resting grounds." It was also narrated to us through a chain of the highest authenticity from Al-Bara' ibn Azib and Abdullah ibn Mughaffal—both from the Messenger of Allah (peace and blessings of Allah be upon him). This constitutes a *tawātur* transmission, yielding definitive knowledge. Some opponents argued by citing the Prophet's authenticated statement: "I was favored over the prophets with six traits," including: "The earth was made a mosque and purification for me. Wherever prayer overtakes you..." As for prayer, then pray." He said: "This is a virtue, and virtues are not abrogated," and he mentioned Allah's statement: {Wherever you are, turn your faces toward it} [Al-Baqarah: 144]. We said: "All of this is true, and abrogation has no place here. It is obligatory to apply all these texts, and there is no way to achieve this except by excepting the lesser from the greater, so that they may all be applied at that time. No Muslim may oppose any part of them or favor some over others based on personal desire." Then we ask the dissenter: "About praying in a latrine or garbage dump—if he is a Shafi'i or Hanafi; about performing obligatory prayer inside the Kaaba—if he is a Maliki; and about praying on usurped land—if he is from our companions, for they prohibit prayer in these places and restrict them from the mentioned verse and the textually established virtue." Allah Almighty said regarding the Mosque of Dirar: {Never stand therein} [At-Tawbah: 108], thus forbidding prayer there though it is part of the earth. This confirms that the virtue remains, and the entire earth is a mosque and pure except where Allah has prohibited prayer. If one says: "The Messenger of Allah (peace be upon him) prayed on his camel and toward his camel," we reply: "Yes, whoever prohibits this is invalidating. Whoever prays on his camel or toward his camel has not prayed in a camel enclosure, and the prohibition relates to this context—not to praying toward a camel." Some have boldly added lies and fabrications against the Messenger of Allah (peace be upon him), claiming: "He only prohibited prayer in camel enclosures and watering places due to their disturbance and mixing, or because the herder urinates among them." Ali said: "This is pure falsehood against the Prophet (peace be upon him)—a report of falsehood attributing to him what he never said. If such a statement were attributed to an ordinary person, it would be sinful and immoral—how

وَسَلَّمَ -: «إِذَا لَمْ تَجِدُوا إِلَّا مَرَابِضَ الْغَنَمِ وَأَعْطَانَ الْإِبِلِ فَصَلُّوا فِي مَرَابِضِ الْغَنَمِ وَلَا تُصَلُّوا فِي مَعَاطِنِ الْإِبِلِ» . وَرُوِّينَا ذَلِكَ أَيْضًا بِإِسْنَادٍ فِي غَايَةِ الصِّحَّةِ عَنْ الْبَرَاءِ بْنِ عَازِبٍ، وَعَبْدِ اللَّهِ بْنِ مُغَفَّلٍ كِلَاهُمَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. فَهَذَا نَقْلُ تَوَاتُرٍ يُوجِبُ يَقِينَ الْعِلْمِ. وَقَدْ احْتَجَّ بَعْضُ مَنْ خَالَفَ هَذَا بِأَنْ قَالَ: قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «فُضِّلْتُ عَلَى الْأَنْبِيَاءِ بِسِتٍّ فَذَكَرَ فِيهَا وَجُعِلَتْ لِي الْأَرْضُ مَسْجِدًا وَطَهُورًا فَحَيْثُمَا أَدْرَكَتْكَ الصَّلَاةُ فَصَلِّ» . وَقَالَ: وَهَذِهِ فَضِيلَةٌ، وَالْفَضَائِلُ لَا تُنْسَخُ، وَذَكَرَ قَوْلَ اللَّهِ تَعَالَى: {وَحَيْثُ مَا كُنْتُمْ فَوَلُّوا وُجُوهَكُمْ شَطْرَهُ} [البقرة: ١٤٤] . فَقُلْنَا: إنَّ هَذَا كُلَّهُ حَقٌّ، وَلَيْسَ لِلنَّسْخِ هَهُنَا مَدْخَلٌ، وَالْوَاجِبُ اسْتِعْمَالُ كُلِّ هَذِهِ النُّصُوصِ، وَلَا سَبِيلَ إلَى ذَلِكَ إلَّا بِأَنْ يُسْتَثْنَى الْأَقَلُّ مِنْ الْأَكْثَرِ، فَتُسْتَعْمَلَ جَمِيعًا حِينَئِذٍ، وَلَا يَحِلُّ لِمُسْلِمٍ مُخَالَفَةُ شَيْءٍ مِنْهَا وَلَا تَغْلِيبُ بَعْضِهَا عَلَى بَعْضٍ بِهَوَاهُ ثُمَّ نَسْأَلُ الْمُخَالِفَ -: عَنْ الصَّلَاةِ فِي كَنِيفٍ أَوْ مَزْبَلَةٍ - إنْ كَانَ شَافِعِيًّا، أَوْ حَنَفِيًّا وَعَنْ صَلَاةِ الْفَرِيضَةِ فِي جَوْفِ الْكَعْبَةِ إنْ كَانَ مَالِكِيًّا وَعَنْ الصَّلَاةِ فِي أَرْضٍ مَغْصُوبَةٍ إنْ كَانَ مِنْ أَصْحَابِنَا فَإِنَّهُمْ يَمْنَعُونَ مِنْ الصَّلَاةِ فِي هَذِهِ الْمَوَاضِعِ وَيَخْتَصُّونَهَا مِنْ الْآيَةِ الْمَذْكُورَةِ وَمِنْ الْفَضِيلَةِ الْمَنْصُوصَةِ، وَقَدْ قَالَ تَعَالَى وَذَكَرَ مَسْجِدَ الضِّرَارِ: {لَا تَقُمْ فِيهِ أَبَدًا} [التوبة: ١٠٨] فَحَرَّمَ الصَّلَاةَ فِيهِ وَهُوَ مِنْ الْأَرْضِ فَصَحَّ أَنَّ الْفَضِيلَةَ بَاقِيَةٌ، وَأَنَّ الْأَرْضَ كُلَّهَا مَسْجِدٌ وَطَهُورٌ إلَّا مَكَانًا نَهَى اللَّهُ تَعَالَى عَنْ الصَّلَاةِ فِيهِ، فَإِنْ قِيلَ: قَدْ صَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى بَعِيرِهِ وَإِلَى بَعِيرِهِ قُلْنَا: نَعَمْ وَمَنْ مَنَعَ هَذَا فَهُوَ مُبْطِلٌ، وَمَنْ صَلَّى عَلَى بَعِيرِهِ أَوْ إلَى بَعِيرِهِ فَلَمْ يُصَلِّ فِي عَطَنِ إبِلٍ، وَعَنْ هَذَا جَاءَ النَّهْيُ لَا عَنْ الصَّلَاةِ إلَى الْبَعِيرِ. وَقَدْ زَادَ بَعْضُهُمْ كَذِبًا وَجُرْأَةً وَافْتِرَاءً عَلَى

much more so when attributed to Allah's Messenger! Had he (peace be upon him) intended their interpretation, he would have clarified it. Even if we hypothetically accept their claim—though Allah forbid—the prohibition and forbiddance by that would remain as..." How can they deem it permissible to validate the prohibition while claiming it is due to a reason they cite—then permit what has been authentically forbidden? This is a matter we do not comprehend how it stands, and we seek refuge in Allah from tribulation. It has been narrated to us from 'Abdullāh ibn 'Amr ibn al-'Āṣ that he said: "Do not pray in the watering places of camels." Mālik was asked about one who finds only a camel watering place, and he said: "He should not pray there." It was asked: "What if he spreads a garment over it¿' He replied: "No, even then." Aḥmad ibn Ḥanbal said: "Whoever prays in a camel watering place must repeat the prayer perpetually." If it is said: "But it has been narrated from him that he said: 'They were created from devils,'" we respond: Yes, this is true, and we acknowledge this. This does not contradict the Prophet's prohibition—peace be upon him—against praying in their watering places. 'Alī said: "Whether it involves one camel or two, there is no doubt that the place designated for their kneeling—or for one of them—falls under the category of camel kneeling grounds and watering places. Every watering place is a kneeling ground, but not every kneeling ground is a watering place. The watering place refers specifically to the location where camels are tethered upon reaching water, while the kneeling ground is broader, encompassing any place designated for their kneeling at any time. If a location ceases to be termed a watering place or kneeling ground, it is neither, and prayer there becomes permissible." As for our statement: "whether he knew [the ruling] or not"—this is because he performed prayer in an invalid location. Prayer is only valid within specified times and places. If not performed in its designated time and place, it is not the prayer Allah has commanded; rather, it is invalid. Success is attained solely through Allah, the Most High.[15]

رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إِنَّمَا نَهَى عَنْ الصَّلَاةِ فِي مَعَاطِنِهَا وَمَبَارِكِهَا لِنِفَارِهَا وَاخْتِلَاطِهَا، أَوْ لِأَنَّ الرَّاعِيَ يَبُولُ بَيْنَهَا قَالَ عَلِيٌّ: وَهَذَا كَذِبٌ مُجَرَّدٌ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِخْبَارٌ عَنْهُ بِالْبَاطِلِ وَبِمَا لَمْ يَقُلْهُ - عَلَيْهِ السَّلَامُ - قَطُّ، وَلَوْ أُطْلِقَ مِثْلُ هَذَا عَلَى رَجُلٍ مِنْ عَرَضِ النَّاسِ لَكَانَ إثْمًا وَفِسْقًا، فَكَيْفَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَوْ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَرَادَ مَا ذَكَرُوا لَبَيَّنَهُ ثُمَّ هَبْكَ أَنَّهُ كَمَا قَالُوا - وَمَعَاذَ اللَّهِ مِنْ ذَلِكَ - فَإِنَّ النَّهْيَ وَالتَّحْرِيمَ بِذَلِكَ بَاقٍ كَمَا كَانَ، فَكَيْفَ يَسْتَحِلُّونَ أَنْ يُصَحِّحُوا النَّهْيَ وَيَدَّعُوا أَنَّهُ لِعِلَّةٍ يَذْكُرُونَهَا -: ثُمَّ يُبِيحُونَ مَا صَحَّ النَّهْيُ عَنْهُ هَذَا أَمْرٌ مَا نَدْرِي كَيْفَ هُوَ وَنَعُوذُ بِاَللَّهِ مِنْ الْبَلَاءِ وَقَدْ رُوِّينَا عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّهُ قَالَ: لَا تُصَلُّوا فِي أَعْطَانِ الْإِبِلِ. وَسُئِلَ مَالِكٌ عَمَّنْ لَمْ يَجِدْ إلَّا عَطَنَ إبِلٍ قَالَ: لَا يُصَلِّي فِيهِ، قَالَ: فَإِنْ بَسَطَ عَلَيْهِ ثَوْبًا قَالَ: لَا، أَيْضًا. وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: مَنْ صَلَّى فِي عَطَنِ إبِلٍ أَعَادَ أَبَدًا، فَإِنْ قِيلَ: فَإِنَّهُ قَدْ رُوِيَ عَنْهُ أَنَّهُ قَالَ: «فَإِنَّهَا خُلِقَتْ مِنْ الشَّيَاطِينِ» . قُلْنَا: نَعَمْ، هَذَا حَقٌّ، وَنَحْنُ نُقِرُّ بِهَذَا، وَلَا اعْتِرَاضَ فِي هَذَا عَلَى نَهْيِهِ - عَلَيْهِ السَّلَامُ - عَنْ الصَّلَاةِ فِي أَعْطَانِهَا قَالَ عَلِيٌّ: وَالْبَعِيرُ وَالْبَعِيرَانِ لَا يُشَكُّ فِي أَنَّ الْمَوْضِعَ الْمُتَّخَذَ لِمَبْرَكِهِمَا أَوْ لِمَبْرَكِ أَحَدِهِمَا دَاخِلٌ فِي جُمْلَةِ مَبَارِكِ الْإِبِلِ وَعَطَنِ الْإِبِلِ، وَكُلُّ عَطَنٍ فَهُوَ مَبْرَكٌ. وَلَيْسَ كُلُّ مَبْرَكٍ عَطَنًا؛ لِأَنَّ الْعَطَنَ هُوَ الْمَوْضِعُ الَّذِي تُنَاخُ فِيهِ عِنْدَ وُرُودِهَا الْمَاءَ فَقَطْ، وَالْمَبْرَكُ أَعَمُّ؛ لِأَنَّهُ الْمَوْضِعُ الْمُتَّخَذُ لِبُرُوكِهَا فِي كُلِّ حَالٍ. وَإِذَا سَقَطَ عَنْ الْعَطَنِ وَالْمَبْرَكِ اسْمُ عَطَنٍ وَمَبْرَكٍ فَلَيْسَ عَطَنًا وَلَا مَبْرَكًا، فَالصَّلَاةُ فِيهِ جَائِزَةٌ. فَأَمَّا قَوْلُنَا: عَالِمًا كَانَ أَوْ غَيْرَ عَالِمٍ، فَلِأَنَّهُ أَتَى بِالصَّلَاةِ فِي غَيْرِ مَوْضِعِهَا وَمَكَانِهَا، وَالصَّلَاةُ لَا

[15] **Qur'an references (L6569):** Qur'an 2:144 (Al-Baqarah); Qur'an 2:150 (Al-Baqarah); Qur'an 9:108 (At-Tawbah).

تَصِحُّ إِلَّا فِي زَمَانٍ وَمَكَانٍ مَحْدُودَيْنِ، فَإِذَا لَمْ تُؤَدَّ فِي مَكَانِهَا وَزَمَانِهَا فَلَيْسَتْ هِيَ الَّتِي أَمَرَ اللَّهُ تَعَالَى بِهَا، بَلْ هِيَ غَيْرُهَا. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الصَّلَاةُ فِي حَمَّامٍ وَمَقْبَرَةٍ]

L6576 **[The Issue of Prayer in a Bathhouse and a Cemetery]**

٣٩٣ - مَسْأَلَةٌ: وَلَا تَحِلُّ الصَّلَاةُ فِي حَمَّامٍ، سَوَاءٌ فِي ذَلِكَ مَبْدَأُ بَابِهِ إِلَى مُنْتَهَى جَمِيعِ حُدُودِهِ، وَلَا عَلَى سَطْحِهِ، وَمُسْتَوْقَدِهِ، وَسَقْفِهِ، وَأَعَالِي حِيطَانِهِ، خَرِبًا كَانَ أَوْ قَائِمًا: فَإِنْ سَقَطَ مِنْ بِنَائِهِ شَيْءٌ فَسَقَطَ عَنْهُ اسْمُ " حَمَّامٍ " جَازَتْ الصَّلَاةِ فِي أَرْضِهِ حِينَئِذٍ.

L6577 393 - Issue: Prayer is not permissible in a bathhouse. This ruling applies equally throughout its entire area from the threshold of its entrance to its outermost boundaries. It is also impermissible to pray on its roof, furnace, ceiling, or upper parts of the walls—whether ruined or standing. However, if part of the building collapses and it no longer qualifies as a "bathhouse," prayer becomes permissible on its ground at that point.

وَلَا فِي مَقْبَرَةٍ - مَقْبَرَةَ مُسْلِمِينَ كَانَتْ أَوْ مَقْبَرَةَ كُفَّارٍ -، فَإِنْ نُبِشَتْ وَأُخْرِجَ مَا فِيهَا مِنْ الْمَوْتَى جَازَتْ الصَّلَاةُ فِيهَا. وَلَا إِلَى قَبْرٍ، وَلَا عَلَيْهِ، وَلَوْ أَنَّهُ قَبْرُ نَبِيٍّ أَوْ غَيْرِهِ، فَإِنْ لَمْ يَجِدْ إِلَّا مَوْضِعَ قَبْرٍ أَوْ مَقْبَرَةٍ، أَوْ حَمَّامًا، أَوْ عَطَنًا، أَوْ مَزْبَلَةً، أَوْ مَوْضِعًا فِيهِ شَيْءٌ أُمِرَ بِاجْتِنَابِهِ -: فَلْيَرْجِعْ وَلَا وَيُصَلِّي هُنَالِكَ جُمُعَةً، وَلَا جَمَاعَةً، فَإِنْ حُبِسَ فِي مَوْضِعٍ مِمَّا ذَكَرْنَا فَإِنَّهُ يُصَلِّي فِيهِ، وَيَجْتَنِبُ مَا افْتُرِضَ عَلَيْهِ اجْتِنَابُهُ بِسُجُودِهِ، لَكِنْ يُقَرِّبُ مِمَّا بَيْنَ يَدَيْهِ مِنْ ذَلِكَ مَا أَمْكَنَهُ، وَلَا يَضَعُ عَلَيْهِ جَبْهَةً، وَلَا أَنْفًا، وَلَا يَدَيْنِ وَلَا رُكْبَتَيْنِ، وَلَا يَجْلِسُ إِلَّا الْقُرْفُصَاءَ، فَإِنْ لَمْ يَقْدِرْ إِلَّا عَلَى الْجُلُوسِ، أَوْ الِاضْطِجَاعِ، صَلَّى كَمَا يَقْدِرُ وَأَجْزَأَهُ. بُرْهَانُ ذَلِكَ -: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا حَجَّاجُ بْنُ الْمِنْهَالِ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَمْرِو بْنِ يَحْيَى الْأَنْصَارِيِّ عَنْ أَبِيهِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْأَرْضُ كُلُّهَا مَسْجِدٌ إِلَّا الْحَمَّامَ وَالْمَقْبَرَةَ» . حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ ثنا ابْنُ مُفَرِّجٍ ثنا مُحَمَّدُ بْنُ أَيُّوبَ الرَّقِّيُّ ثنا أَحْمَدُ بْنُ عَمْرٍو الْبَزَّارُ ثنا أَبُو كَامِلٍ هُوَ الْجَحْدَرِيُّ -

L6578–6581 Nor in a cemetery—whether a Muslim cemetery or a disbelievers' cemetery—for if it is excavated and the dead within are removed, prayer therein becomes permissible. Nor should one pray facing a grave or upon it, even if it is the grave of a prophet or others besides him. If one finds no place except the site of a grave, a cemetery, a bathhouse, a camel resting area, a dunghill, or a place containing something one is commanded to avoid, then one should leave and not perform Friday or congregational prayer there. If one is confined to a place mentioned above, one may pray there while avoiding what one is obligated to avoid during prostration. However, one should move as close as possible to the permissible area in the direction of prayer. One must not place his forehead, nose, hands, or knees upon it, nor sit except by resting on the heels. If one is unable except to sit or recline, one may pray as able, and it suffices. The evidence for this: what was narrated to us by ʿAbdullāh ibn Rabīʿ, who narrated to us from ʿAbdullāh ibn Muḥammad ibn ʿUthmān, who narrated to us from Aḥmad ibn Khālid, who narrated to us from ʿAlī ibn ʿAbd al-ʿAzīz, who narrated to us from Ḥajjāj ibn al-Minhāl, who narrated to us from Ḥammād ibn Salamah, from ʿAmr ibn Yaḥyā al-Anṣārī, from his father, from Abū Saʿīd al-Khudrī, that the Prophet—peace and blessings be upon him—said: "The entire earth is a place of prostration except for bathhouses and cemeteries." It was narrated to us by Aḥmad ibn Muḥammad al-Ṭalamankī, who narrated to us from Ibn Mufarrij, who narrated to

us from Muḥammad ibn Ayyūb al-Raqqī, who narrated to us from Aḥmad ibn ʿAmr al-Bazzār, who narrated to us from Abū Kāmil—al-Jaḥdarī—who narrated to us from ʿAbd al-Wāḥid ibn Ziyād, who narrated to us from ʿAmr ibn Yaḥyā al-Māzinī, from his father, from Abū Saʿīd al-Khudrī, from the Prophet—peace and blessings be upon him—who said: "The entire earth is a place of prostration except for bathhouses and cemeteries." Al-Bazzār said: "It was also attributed via ʿAmr ibn Yaḥyā by Abū Ṭuwālah ʿAbdullāh ibn ʿAbd al-Raḥmān al-Anṣārī." And Aḥmad ibn Isḥāq. ʿAlī said: Some reckless individuals who speak carelessly about debt claimed, "This is a ḥadīth that Sufyān al-Thawrī transmitted as *mursal*, and Mūsā ibn Ismāʿīl cast doubt on the chain's validity through Ḥammād ibn Salamah."

ثنا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ ثنا عَمْرُو بْنُ يَحْيَى الْمَازِنِيُّ عَنْ أَبِيهِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْأَرْضُ كُلُّهَا مَسْجِدٌ إِلَّا الْحَمَّامَ وَالْمَقْبَرَةَ» . قَالَ الْبَزَّارُ: أَسْنَدَهُ أَيْضًا عَنْ عَمْرِو بْنِ يَحْيَى أَبُو طُوَالَةَ عَبْدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ الْأَنْصَارِيُّ وَأَحْمَدُ بْنُ إِسْحَاقَ. قَالَ عَلِيٌّ: قَالَ بَعْضُ مَنْ لَا يَتَّقِي عَاقِبَةَ كَلَامِهِ فِي الدَّيْنِ: هَذَا حَدِيثٌ أَرْسَلَهُ سُفْيَانُ الثَّوْرِيُّ، وَشَكَّ فِي إِسْنَادِهِ مُوسَى بْنُ إِسْمَاعِيلَ عَنْ حَمَّادِ بْنِ سَلَمَةَ.

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Ali said: "What then was the case - especially when they say: 'The continuous chain (musnad) is like the disconnected chain (mursal) with no difference'? What benefit do they gain from casting doubt on Musa when al-Ḥajjāj did not doubt? If there is none above Musa, there is certainly none below him. As for Sufyān's disconnected narration - though Ḥammād, ʿAbd al-Wāḥid, Abū Ṭuwālah, and Ibn Isḥāq narrated it with continuous chains, all being trustworthy narrators."

قَالَ عَلِيٌّ: فَكَانَ مَاذَا لَا سِيَّمَا وَهُمْ يَقُولُونَ: إِنَّ الْمُسْنَدَ كَالْمُرْسَلِ وَلَا فَرْقَ ثُمَّ أَيُّ مَنْفَعَةٍ لَهُمْ فِي شَكِّ مُوسَى وَلَمْ يَشُكَّ حَجَّاجٌ وَإِنْ لَمْ يَكُنْ فَوْقَ مُوسَى فَلَيْسَ دُونَهُ أَوْ فِي إِرْسَالِ سُفْيَانَ - وَقَدْ أَسْنَدَهُ حَمَّادٌ، وَعَبْدُ الْوَاحِدِ، وَأَبُو طُوَالَةَ، وَابْنُ إِسْحَاقَ، وَكُلُّهُمْ عَدْلٌ حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الْجَسُورُ ثنا أَحْمَدُ بْنُ الْفَضْلِ الدِّينَوَرِيُّ ثنا مُحَمَّدُ بْنُ جَرِيرٍ الطَّبَرِيُّ ثنا مُحَمَّدُ بْنُ بَشَّارٍ بِنْدَارٌ ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ ثنا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ بْنِ جَابِرٍ حَدَّثَنِي بُسْرُ بْنُ عُبَيْدِ اللَّهِ سَمِعْت أَبَا إِدْرِيسَ الْخَوْلَانِيَّ قَالَ: سَمِعْتُ وَاثِلَةَ بْنَ الْأَسْقَعِ يَقُولُ: سَمِعْتُ أَبَا مَرْثَدٍ الْغَنَوِيَّ يَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا تَجْلِسُوا عَلَى الْقُبُورِ وَلَا تُصَلُّوا إِلَيْهَا» . حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدُّبَيْرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ أَخْبَرَنِي عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ: أَنَّ عَائِشَةَ وَابْنَ عَبَّاسٍ أَخْبَرَاهُ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا حَضَرَتْهُ الْوَفَاةُ جَعَلَ يُلْقِي عَلَى وَجْهِهِ طَرَفَ خَمِيصَةٍ لَهُ، فَإِذَا اغْتَمَّ كَشَفَهَا عَنْ وَجْهِهِ، وَهُوَ يَقُولُ لَعْنَةُ اللَّهِ عَلَى الْيَهُودِ وَالنَّصَارَى اتَّخَذُوا قُبُورَ أَنْبِيَائِهِمْ مَسَاجِدَ،

Ḥammām narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrābī narrated to us: al-Dubayrī narrated to us: ʿAbd al-Razzāq narrated from Maʿmar from al-Zuhrī: ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah informed me that ʿĀ'ishah and Ibn ʿAbbās reported to him: "When death approached the Messenger of Allah (peace and blessings be upon him), he began placing the edge of his Yemeni cloak over his face. Whenever distress overcame him, he would uncover his face and say: 'Allah's curse be upon the Jews and Christians! They

made the graves of their prophets into mosques.' She says..." Aisha warns against the likes of what they did. Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul-Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Ishaq ibn Ibrahim and Abu Bakr ibn Abi Shaybah narrated to us - with Abu Bakr's wording. Ishaq said: Zakariyya ibn 'Udayy informed us. Abu Bakr said: Zakariyya ibn 'Udayy narrated to us from Ubaydullah ibn Amr al-Raqqi from Zayd ibn Abi Unaysah from Amr ibn Murrah from Abdullah ibn al-Harith al-Najrani: Jundub narrated to me, saying: I heard the Messenger of Allah - peace and blessings be upon him - five days before his passing: "Those before you took the graves of their prophets and righteous ones as mosques. Beware! Do not take graves as mosques, for I indeed forbid you from this," in a lengthy hadith. Ali said: Whoever claims that the Prophet - peace be upon him - meant by this the graves of polytheists has lied against Allah's Messenger - peace and blessings be upon him - for he - peace be upon him - universally prohibited all graves, then reinforced it by condemning those who did so with prophets' and righteous people's graves. Ali stated: These are consecutively transmitted reports that conclusively establish our position verbatim. No one may disregard them. This is the view held by groups of the early scholars - may Allah be pleased with them. It has been narrated to us from Nafi ibn Jubayr ibn Mut'im that he said: "Praying amidst graves, in bathhouses, or amidst latrines is forbidden." From Sufyan al-Thawri, from Habib ibn Abi Thabit, from Abu Zabyan, from Ibn Abbas, who said: "Do not pray facing a cesspit, in a bathhouse, or within a cemetery." Ali said: "We do not know of any Companion who disagreed with Ibn Abbas regarding this matter—may Allah be pleased with them—and they would honor such an act if it conformed to their juridical adherence." From Sufyan al-Thawri, from al-Mughirah ibn Miqsam, from Ibrahim al-Nakha'i, who said: "They disapproved of taking three places as a prayer direction: latrines, public baths, and graves." From al-'Ala' ibn Ziyad, from his father, and from Khaythamah ibn 'Abd al-Rahman, both of whom said: "Do not pray facing a public bath, a latrine, or the middle of a cemetery." Ahmad ibn Hanbal said: "Whoever prays in a public bath must repeat it indefinitely." From Waki', from Sufyan al-Thawri, from Humayd, from Anas, who said: "Umar

تَقُولُ عَائِشَةُ يُحَذِّرُ مِثْلَ مَا صَنَعُوا» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا إِسْحَاقُ بْنُ إِبْرَاهِيمَ وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَاللَّفْظُ لَهُ -: قَالَ إِسْحَاقُ: أَخْبَرَنَا زَكَرِيَّاءُ بْنُ عُدَيٍّ. وَقَالَ أَبُو بَكْرٍ: ثنا زَكَرِيَّاءُ بْنُ عُدَيٍّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَمْرٍو الرَّقِّيِّ عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ النَّجْرَانِيِّ حَدَّثَنِي «جُنْدُبٌ قَالَ سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَبْلَ أَنْ يَمُوتَ بِخَمْسٍ: " وَإِنَّ مَنْ كَانَ قَبْلَكُمْ كَانُوا يَتَّخِذُونَ قُبُورَ أَنْبِيَائِهِمْ وَصَالِحِيهِمْ مَسَاجِدَ، أَلَا فَلَا تَتَّخِذُوا الْقُبُورَ مَسَاجِدَ، إِنِّي أَنْهَاكُمْ عَنْ ذَلِكَ» فِي حَدِيثٍ طَوِيلٍ. قَالَ عَلِيٌّ: مَنْ زَعَمَ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَرَادَ بِذَلِكَ قُبُورَ الْمُشْرِكِينَ فَقَدْ كَذَبَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - عَمَّ بِالنَّهْيِ جَمِيعَ الْقُبُورِ، ثُمَّ أَكَّدَ بِذَمِّهِ مَنْ فَعَلَ ذَلِكَ فِي قُبُورِ الْأَنْبِيَاءِ وَالصَّالِحِينَ. قَالَ عَلِيٌّ: فَهَذِهِ آثَارٌ مُتَوَاتِرَةٌ تُوجِبُ مَا ذَكَرْنَاهُ حَرْفًا حَرْفًا، وَلَا يَسَعُ أَحَدًا تَرْكُهَا. وَبِهِ يَقُولُ طَوَائِفُ مِنْ السَّلَفِ - رَضِيَ اللَّهُ عَنْهُمْ -. رُوِّينَا عَنْ نَافِعِ بْنِ جُبَيْرِ بْنِ مُطْعِمٍ أَنَّهُ قَالَ: يَنْهَى أَنْ يُصَلَّى وَسَطَ الْقُبُورِ وَالْحَمَّامِ، وَالْحُشَّانِ. وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ أَبِي ظَبْيَانَ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا تُصَلِّيَنَّ إلَى حُشٍّ، وَلَا فِي حَمَّامٍ، وَلَا فِي مَقْبَرَةٍ قَالَ عَلِيٌّ: مَا نَعْلَمُ لِابْنِ عَبَّاسٍ فِي هَذَا مُخَالِفًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا وَافَقَ تَقْلِيدَهُمْ وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانُوا يَكْرَهُونَ أَنْ يَتَّخِذُوا ثَلَاثَ أَبْيَاتٍ قِبْلَةً: الْحُشُّ، وَالْحَمَّامُ، وَالْقَبْرُ وَعَنْ الْعَلَاءِ بْنِ زِيَادٍ عَنْ أَبِيهِ، وَعَنْ خَيْثَمَةَ بْنِ عَبْدِ الرَّحْمَنِ أَنَّهُمَا قَالَا: لَا تُصَلِّ إلَى حَمَّامٍ، وَلَا إلَى حُشٍّ، وَلَا وَسَطَ مَقْبَرَةٍ. وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: مَنْ صَلَّى

ibn al-Khattab saw me praying toward a grave and forbade me, saying: 'The grave is in front of you.'" From Ma'mar, from Thabit al-Bunani, from Anas, who said: "Umar ibn al-Khattab saw me praying near a grave and told me: 'Do not pray facing a grave.'" Thabit said: "Thereafter, Anas would take my hand whenever he wished to pray, leading me away from graves." From Ali ibn Abi Talib: "The worst among people are those who make graves into mosques." From Ibn Abbas, who narrated it as a marfūʿ saying: 'Do not pray toward a grave or upon a grave.'" From Ibn Jurayj, who reported: "Ibn Shihab informed me, saying: Sa'id ibn al-Musayyab narrated to me that he heard Abu Hurayrah declare: 'May Allah curse the Jews, for they took the graves of their prophets as mosques.'"

فِي حَمَّامٍ أَعَادَ أَبَدًا وَعَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حُمَيْدٍ عَنْ أَنَسٍ قَالَ: رَآنِي عُمَرُ بْنُ الْخَطَّابِ أُصَلِّي إِلَى قَبْرٍ فَنَهَانِي، وَقَالَ: الْقَبْرُ أَمَامَك. وَعَنْ مَعْمَرٍ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسٍ قَالَ: رَآنِي عُمَرُ بْنُ الْخَطَّابِ أُصَلِّي عِنْدَ قَبْرٍ فَقَالَ لِي: الْقَبْرَ لَا تُصَلِّ إلَيْهِ قَالَ ثَابِتٌ: فَكَانَ أَنَسٌ يَأْخُذُ بِيَدِي إذَا أَرَادَ أَنْ يُصَلِّيَ فَيَتَنَحَّى عَنْ الْقُبُورِ. وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: مِنْ شِرَارِ النَّاسِ مَنْ يَتَّخِذُ الْقُبُورَ مَسَاجِدَ وَعَنْ ابْنِ عَبَّاسٍ رَفَعَهُ: «لَا تُصَلُّوا إلَى قَبْرٍ، وَلَا عَلَى قَبْرٍ» وَعَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ شِهَابٍ حَدَّثَنِي سَعِيدُ بْنُ الْمُسَيِّبِ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: قَاتَلَ اللَّهُ الْيَهُودَ اتَّخَذُوا قُبُورَ أَنْبِيَائِهِمْ مَسَاجِدَ.

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Ibn Jurayj said: I asked Ata, "Do you disapprove of praying among graves or facing a grave?" He replied, "Yes"—he used to disapprove of that—"Do not pray with a grave between you and the qiblah. But if there is a barrier of a cubit between you and it, then pray." Ibn Jurayj said: Amr ibn Dinar was asked about praying among graves, and he said, "They mentioned that the Messenger of Allah (peace and blessings be upon him) said: 'The Children of Israel took the graves of their prophets as places of worship, so Allah cursed them.'" Ibn Jurayj said: Abdullah ibn Tawus informed me from his father, who said, "I have no knowledge except that he strongly disapproved of praying among graves." From Sufyan al-Thawri, from Mansur ibn al-Mu'tamir, from Ibrahim al-Nakha'i, who said, "When they attended a funeral, they would distance themselves from the graves to pray." Ahmad ibn Hanbal said, "Whoever prays in a graveyard or facing a grave must repeat it indefinitely." Ali said: These are Umar ibn al-Khattab, Ali ibn Abi Talib, Abu Hurairah, Anas, and Ibn Abbas—we know of no disagreement among the Companions, may Allah be pleased with them. Ali said: Abu Hanifah, al-Awza'i, and Sufyan disapproved of praying toward a grave, in a graveyard, or over a grave. Malik saw no harm in it, and some of his adherents cited as evidence that 'the Messenger of Allah (peace and blessings be upon him) prayed over the grave of the poor dark-skinned woman.' Ali said: How astounding! Is it not enough that these people contradict this report in its implication?

قَالَ ابْنُ جُرَيْجٍ: قُلْت لِعَطَاءٍ: أَتَكْرَهُ أَنْ تُصَلِّيَ وَسَطَ الْقُبُورِ أَوْ إلَى قَبْرٍ قَالَ: نَعَمْ - كَانَ يَنْهَى عَنْ ذَلِكَ - لَا تُصَلِّ وَبَيْنَك وَبَيْنَ الْقِبْلَةِ قَبْرٌ، فَإِنْ كَانَ بَيْنَك وَبَيْنَهُ سُتْرَةُ ذِرَاعٍ فَصَلِّ قَالَ ابْنُ جُرَيْجٍ: وَسُئِلَ عَمْرُو بْنُ دِينَارٍ عَنْ الصَّلَاةِ وَسَطَ الْقُبُورِ فَقَالَ: ذَكَرُوا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كَانَتْ بَنُو إسْرَائِيلَ اتَّخَذُوا قُبُورَ أَنْبِيَائِهِمْ مَسَاجِدَ فَلَعَنَهُمْ اللَّهُ» قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عَبْدُ اللَّهِ بْنُ طَاوُسٍ عَنْ أَبِيهِ قَالَ: لَا أَعْلَمُهُ إلَّا أَنَّهُ كَانَ يَكْرَهُ الصَّلَاةَ وَسَطَ الْقُبُورِ كَرَاهِيَةً شَدِيدَةً وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانُوا إذَا خَرَجُوا فِي جِنَازَةٍ تَنَحَّوْا عَنْ الْقُبُورِ لِلصَّلَاةِ وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: مَنْ صَلَّى فِي مَقْبَرَةٍ أَوْ إلَى قَبْرٍ أَعَادَ أَبَدًا قَالَ عَلِيٌّ: فَهَؤُلَاءِ عُمَرُ بْنُ الْخَطَّابِ، وَعَلِيُّ بْنُ أَبِي طَالِبٍ، وَأَبُو هُرَيْرَةَ، وَأَنَسٌ، وَابْنُ عَبَّاسٍ: مَا نَعْلَمُ لَهُمْ مُخَالِفًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - قَالَ عَلِيٌّ: وَكَرِهَ الصَّلَاةَ إلَى الْقَبْرِ، وَفِي الْمَقْبَرَةِ، وَعَلَى الْقَبْرِ: أَبُو حَنِيفَةَ، وَالْأَوْزَاعِيُّ، وَسُفْيَانُ، وَلَمْ يَرَ مَالِكٌ بِذَلِكَ بَأْسًا، وَاحْتَجَّ لَهُ بَعْضُ

They do not permit performing the funeral prayer over one already buried, yet they permit what is otherwise impermissible. In it there is no trace or indication opposing the established Sunnahs, and we seek refuge in Allah from being forsaken. Ali said: All these narrations are true, so prayer is not permissible in the places we mentioned, except for the funeral prayer, which is performed in the cemetery and over the grave where its owner has been buried, as the Messenger of Allah (ﷺ) did. We prohibit what he forbade, and we consider it a means of drawing closer to Allah Almighty to do as he did. Thus, his commands and prohibitions are the truth, his actions are the truth, and whatever contradicts that is invalid. All praise is due to Allah, Lord of the worlds. As for our statement that one who finds no place other than what we mentioned must refrain: he has found no place where prayer is permissible. Similarly, if he encounters overcrowding that prevents him from bowing or prostrating, and as for the imprisoned person, he is unable to leave that place or pray elsewhere. The ruling applies to him according to the command of the Messenger of Allah (ﷺ) when he said: "When I forbid you from something, avoid it, and when I command you to do something, do as much as you are able." This absolves him of what he is incapable of, obligates him to what he can perform, and requires him to avoid what he can avoid of what is prohibited. Allah Almighty said: "Allah does not burden a soul beyond its capacity" [al-Baqarah 2:286].[16]

مُقَلِّدِيهِ بِأَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى عَلَى قَبْرِ الْمِسْكِينَةِ السَّوْدَاءِ» قَالَ عَلِيٌّ: وَهَذَا عَجَبٌ نَاهِيكَ بِهِ أَنْ يَكُونَ هَؤُلَاءِ الْقَوْمُ يُخَالِفُونَ هَذَا الْخَبَرَ فِيمَا جَاءَ فِيهِ، فَلَا يُجِيزُونَ أَنْ تُصَلَّى صَلَاةُ الْجِنَازَةِ عَلَى مَنْ قَدْ دُفِنَ ثُمَّ يَسْتَبِيحُونَ بِمَا لَيْسَ فِيهِ مِنْ أَثَرٍ وَلَا إِشَارَةٍ مُخَالَفَةَ السُّنَنِ الثَّابِتَةِ، وَنَعُوذُ بِاللَّهِ مِنَ الْخِذْلَانِ قَالَ عَلِيٌّ: وَكُلُّ هَذِهِ الْآثَارِ حَقٌّ، فَلَا تَحِلُّ الصَّلَاةُ حَيْثُ ذَكَرْنَا، إِلَّا صَلَاةَ الْجِنَازَةِ فَإِنَّهَا تُصَلَّى فِي الْمَقْبَرَةِ، وَعَلَى الْقَبْرِ الَّذِي قَدْ دُفِنَ فِيهِ صَاحِبُهُ، كَمَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نُحَرِّمُ مَا نَهَى عَنْهُ، وَنَعُدُّ مِنَ الْقُرْبِ إِلَى اللَّهِ تَعَالَى أَنْ نَفْعَلَ مِثْلَ مَا فَعَلَ؛ فَأَمْرُهُ وَنَهْيُهُ حَقٌّ، وَفِعْلُهُ حَقٌّ، وَمَا عَدَا ذَلِكَ فَبَاطِلٌ؛ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ. وَأَمَّا قَوْلُنَا: أَنْ يَرْجِعَ مَنْ لَمْ يَجِدْ مَوْضِعًا غَيْرَ مَا ذَكَرْنَا؛ فَإِنَّهُ لَمْ يَجِدْ مَوْضِعًا تَحِلُّ فِيهِ الصَّلَاةُ، وَكَذَلِكَ لَوْ وَجَدَ زِحَامًا لَا يَقْدِرُ مَعَهُ عَلَى رُكُوعٍ وَلَا سُجُودٍ وَأَمَّا الْمَحْبُوسُ فَلَيْسَ قَادِرًا عَلَى مُفَارَقَةِ ذَلِكَ الْمَوْضِعِ، وَلَا عَلَى الصَّلَاةِ فِي غَيْرِهِ، فَلَهُ حُكْمُ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ يَقُولُ: «إِذَا نَهَيْتُكُمْ عَنْ شَيْءٍ فَاجْتَنِبُوهُ، وَإِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» فَهَذَا يُسْقِطُ عَنْهُ مَا عَجَزَ عَنْهُ، وَيَلْزَمُهُ مَا قَدَرَ عَلَيْهِ، وَيَجْتَنِبُ مَا قَدَرَ عَلَى اجْتِنَابِهِ مِمَّا نُهِيَ عَنْهُ. قَالَ عَزَّ وَجَلَّ {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦]

The Ruling on Prayer in a Usurped Land

L6592

[مَسْأَلَة الصَّلَاةُ فِي أَرْضٍ مَغْصُوبَةٍ]

L6593–6599

394 - Issue: Prayer is not valid in illegally seized land nor in property acquired without legitimate right through invalid transactions such as an invalid sale, invalid gift, or similar unlawful means. This likewise applies to one aboard an illegally seized ship or a ship containing an illegally seized plank that, if absent, would allow water to flood it. If he is able to disembark

٣٩٤ - مَسْأَلَةٌ: وَلَا تَجُوزُ الصَّلَاةُ فِي أَرْضٍ مَغْصُوبَةٍ وَلَا مُتَمَلَّكَةٍ بِغَيْرِ حَقٍّ مِنْ بَيْعٍ فَاسِدٍ أَوْ هِبَةٍ فَاسِدَةٍ أَوْ نَحْوِ ذَلِكَ مِنْ سَائِرِ الْوُجُوهِ وَكَذَلِكَ مَنْ كَانَ فِي سَفِينَةٍ مَغْصُوبَةٍ أَوْ فِيهَا لَوْحٌ مَغْصُوبٌ لَوْلَاهُ لَغَرَّقَهَا الْمَاءُ، فَإِنَّهُ إِنْ قَدَرَ عَلَى الْخُرُوجِ عَنْهَا فَصَلَاتُهُ بَاطِلَةٌ.

[16] **Qur'an references (L6589):** Qur'an 2:286 (Al-Baqarah).

from it, his prayer becomes invalid. Similarly invalid is prayer performed upon illegally seized bedding, bedding taken without legitimate right, upon an animal taken without right, in unlawfully acquired clothing, within an illegally occupied structure, or if the ship's nails are illegally seized, or the threads used to sew the garment are illegally seized – or if all such items were taken without legitimate right. If one is fundamentally incapable of leaving that location or disembarking from the ship, or if the plank fails to prevent water ingress, or if he neither shelters beneath that structure nor uses it to conceal his nakedness, or... If one has despaired of knowing the person from whom something was wrongfully taken, or if it is a ship or building from which nothing tangible was seized but people were unjustly compelled to labor therein: prayer remains permissible in all such cases, whether one is able to leave that place or not. Similarly, if one fears the cold and its harm, or the heat and its harm, they may pray in a garment taken without right—provided its owner is not compelled by necessity to it; otherwise, they may not. Likewise, prayer is permissible in permissible land that its owner has neither restricted nor prohibited access to. The evidence for this is Allah's statement: *"O you who believe, do not enter houses other than your own until you have asked permission and greeted their inhabitants. That is better for you, that you may be mindful"* (24:27), and *"If you find no one therein, do not enter until permission has been given to you. And if you are told, 'Go back,' then go back, for that is purer for you"* (24:28). The Messenger of Allah (peace be upon him) said: *"Your blood and your wealth are inviolable to you"*—authentically narrated through Abu Bakrah, Abdullah ibn Umar, and Nubayt ibn Sharit al-Ashja'i. He (peace be upon him) also said: *"Whoever performs an act not in accordance with our command, it is rejected."* Thus, if Allah has forbidden someone to enter a place, reside in it, wear a specific garment, dispose of it, or use a specific thing, and they do so during their prayer, they have not prayed as they were commanded. Whoever fails to pray as they were commanded has not truly prayed. Prayer is an act of obedience and obligation: standing, sitting, residing in it, and certain aspects of attire during it. If one sits where they are forbidden, acts in a prohibited manner, or uses what is forbidden, they have committed sinful acts and sat in disobedience. It is invalid for sinful disobedience to substitute

وَكَذَلِكَ الصَّلَاةُ عَلَى وِطَاءٍ مَغْصُوبٍ أَوْ مَأْخُوذٍ بِغَيْرِ حَقٍّ. أَوْ عَلَى دَابَّةٍ مَأْخُوذَةٍ بِغَيْرِ حَقٍّ، أَوْ فِي ثَوْبٍ مَأْخُوذٍ بِغَيْرِ حَقٍّ، أَوْ فِي بِنَاءٍ مَأْخُوذٍ بِغَيْرِ حَقٍّ وَكَذَلِكَ إنْ كَانَ مَسَامِيرُ السَّفِينَةِ مَغْصُوبَةً، أَوْ خُيُوطُ الثَّوْبِ الَّذِي خِيطَ بِهَا مَغْصُوبَةً. أَوْ أُخِذَ كُلُّ ذَلِكَ بِغَيْرِ حَقٍّ، فَإِنْ كَانَ لَا يَقْدِرُ عَلَى مُفَارَقَةِ ذَلِكَ الْمَكَانِ أَصْلًا، وَلَا عَلَى الْخُرُوجِ عَنْ السَّفِينَةِ أَوْ كَانَ اللَّوْحُ لَا يَمْنَعُ الْمَاءَ مِنْ الدُّخُولِ، أَوْ كَانَ غَيْرَ مُسْتَظِلٍّ بِذَلِكَ الْبِنَاءِ وَلَا مُسْتَتِرًا بِهِ، أَوْ كَانَ قَدْ يَئِسَ [مِنْ] مَعْرِفَةِ مَنْ أُخِذَ مِنْهُ ذَلِكَ الشَّيْءُ بِغَيْرِ حَقٍّ، أَوْ كَانَتْ سَفِينَةً أَوْ بِنَاءً لَمْ يُغْصَبْ شَيْءٌ مِنْ أَعْيَانِهَا لَكِنْ سَخَّرَ النَّاسَ فِيهَا ظُلْمًا: فَالصَّلَاةُ فِي كُلِّ ذَلِكَ جَائِزَةٌ، قَدَرَ عَلَى مُفَارَقَةِ ذَلِكَ الْمَكَانِ أَوْ لَمْ يَقْدِرْ. وَكَذَلِكَ إنْ خَشِيَ الْبَرْدَ وَأَذَاهُ، أَوْ الْحَرَّ وَأَذَاهُ، فَلَهُ أَنْ يُصَلِّيَ فِي الثَّوْبِ الْمَأْخُوذِ بِغَيْرِ حَقٍّ؛ وَعَلَيْهِ إذَا كَانَ صَاحِبُهُ غَيْرَ مُضْطَرٍّ إلَيْهِ؛ وَإِلَّا فَلَا؛ وَكَذَلِكَ الْأَرْضُ الْمُبَاحَةُ الَّتِي لَمْ يَحْظُرْهَا صَاحِبُهَا وَلَا مَنَعَ مِنْهَا، فَالصَّلَاةُ فِيهَا جَائِزَةٌ بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْنِسُوا وَتُسَلِّمُوا عَلَى أَهْلِهَا ذَلِكُمْ خَيْرٌ لَكُمْ لَعَلَّكُمْ تَذَكَّرُونَ} [النور: ٢٧] {فَإِنْ لَمْ تَجِدُوا فِيهَا أَحَدًا فَلا تَدْخُلُوهَا حَتَّى يُؤْذَنَ لَكُمْ وَإِنْ قِيلَ لَكُمُ ارْجِعُوا فَارْجِعُوا هُوَ أَزْكَى لَكُمْ} [النور: ٢٨] وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» صَحَّ ذَلِكَ مِنْ طَرِيقِ أَبِي بَكْرَةَ، وَعَبْدِ اللَّهِ بْنِ عُمَرَ، وَنُبَيْطِ بْنِ شَرِيطٍ الْأَشْجَعِيِّ. وَقَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» . فَإِذَا كَانَ مَنْ حَرَّمَ اللَّهُ عَلَيْهِ الدُّخُولَ إلَى مَكَانٍ مَا، وَالْإِقَامَةَ فِيهِ، وَلِبَاسَ ثَوْبٍ مَا، وَالتَّصَرُّفَ فِيهِ، أَوْ اسْتِعْمَالَ شَيْءٍ مَا: فَفَعَلَ فِي صَلَاتِهِ كُلَّ مَا حَرَّمَ عَلَيْهِ فَلَمْ يُصَلِّ كَمَا أُمِرَ؛ وَمَنْ لَمْ يُصَلِّ كَمَا أُمِرَ فَلَمْ يُصَلِّ أَصْلًا،

for obligatory obedience, or for misguidance and sinful conduct to be valid in place of guidance and truth. Some contentious individuals have opposed this, arguing: “By your logic, if someone pronounces divorce, manumission, marriage, sale, purchase, gift, or charitable giving in such circumstances, you must nullify all such acts.” Similarly, if one dyes his beard with usurped henna then prays, or learns the Qur’an from a stolen Quranic codex (muṣḥaf)—thereby leading him to forget it—or is taught by an absconding slave, and they proliferated many such absurdities, claiming: “Those you mentioned are equivalent to one who prays while persisting in adultery, murder, drinking intoxicants, and theft—with no distinction—”

ʻAlī responded: “None of their claims fall under the category of our rulings. Prayer inherently requires: remaining in one place, performing prescribed sitting, concealing one’s nakedness, abstaining from impermissible acts during prayer, adhering to its fixed time, observing its designated location, and using lawful water for purification or permissible dust for dry ablution (tayammum) when capable. These are points of consensus between us, them, and all Muslims.

Divorce, marriage, emancipation, sales, gifts, charity, and Qur’anic study are not contingent upon such conditions. They require neither specific postures, obligatory standing, nor prescribed sitting positions—nor designated places. Yet these acts necessitate: formulated utterances, defined actions, and appointed times. Whoever performs prayer, marriage, divorce, trade, gift-giving, or charity contrary to Allah’s commandments—as conveyed by His Messenger (peace be upon him)—renders the act entirely invalid. No divorce, marriage, emancipation, gift, charity, or Sharīʻa-compliant deed is valid.

If one substitutes the prescribed sitting with a prohibited posture, replaces obligatory remaining with a forbidden manner of staying, covers his nakedness with illicit means, performs prayer outside its appointed time or place—substituting prohibited alternatives—or uses unlawfully acquired water or dust instead of prescribed purification means: he has not performed the prayer Allah commanded. His case mirrors one who intentionally prays away from the qibla—both are equivalent, with no distinction—having disobeyed divine instructions.

وَالصَّلَاةُ طَاعَةٌ وَفَرِيضَةٌ، قِيَامُهَا وَقُعُودُهَا وَالْإِقَامَةُ فِيهَا، وَبَعْضُ اللِّبَاسِ فِيهَا، فَإِذَا قَعَدَ حَيْثُ نُهِيَ عَنْهُ، أَوْ عَمِلَ مُتَصَرِّفًا فِيمَا حَرُمَ أَوْ اسْتَعْمَلَ مَا حَرُمَ عَلَيْهِ: فَإِنَّمَا أَتَى بِعَمَلٍ مَعْصِيَةٍ، وَقُعُودٍ مَعْصِيَةٍ، مِنَ الْبَاطِلِ أَنْ تَنُوبَ الْمَعْصِيَةُ الْمُحَرَّمَةُ عَنِ الطَّاعَةِ الْمُفْتَرَضَةِ، وَأَنْ يُجْزِئَ الضَّلَالُ وَالْفُسُوقُ عَنِ الْهُدَى وَالْحَقِّ وَقَدْ عَارَضَ ذَلِكَ بَعْضُ الْمُتَعَسِّفِينَ فَقَالَ: يَلْزَمُكُمْ إِذَا طَلَّقَ فِي شَيْءٍ مِمَّا ذَكَرْتُمْ، أَوْ أَعْتَقَ فِيهِ، أَوْ نَكَحَ فِيهِ، أَوْ بَاعَ فِيهِ، أَوْ اشْتَرَى، أَوْ وَهَبَ، أَوْ تَصَدَّقَ -: أَنْ تَنْقُضُوا كُلَّ ذَلِكَ وَكَذَلِكَ مَنْ صَبَغَ لِحْيَتَهُ بِحِنَّاءٍ مَغْصُوبَةٍ ثُمَّ صَلَّى وَمَنْ تَعَلَّمَ الْقُرْآنَ مِنْ مُصْحَفٍ مَسْرُوقٍ أَنْ يَنْسَاهُ، أَوْ عَلَّمَهُ إِيَّاهُ عَبْدٌ آبِقٌ، وَأَكْثَرُوا مِنْ مِثْلِ هَذِهِ الْحَمَاقَاتِ وَقَالُوا: كُلُّ مَنْ ذَكَرْتُمْ بِمَنْزِلَةِ مَنْ صَلَّى مُصِرًّا عَلَى الزِّنَى، وَقَتْلِ النَّفْسِ، وَشُرْبِ الْخَمْرِ، وَالسَّرِقَةِ - وَلَا فَرْقَ قَالَ عَلِيٌّ: لَيْسَ شَيْءٌ مِمَّا قَالُوا مِنْ بَابِ مَا قُلْنَا، لِأَنَّ الصَّلَاةَ لَا بُدَّ فِيهَا مِنْ إِقَامَةٍ فِي مَكَانٍ وَاحِدٍ، وَمِنْ جُلُوسٍ مُفْتَرَضٍ. وَمِنْ سَتْرِ عَوْرَةٍ، وَمِنْ تَرْكِ كُلِّ عَمَلٍ لَمْ يُبَحْ لَهُ فِي الصَّلَاةِ، وَمِنْ زَمَانٍ مَحْدُودٍ مُؤَقَّتٍ لَهَا، وَمِنْ مَكَانٍ مَوْصُوفٍ لَهَا، وَمِنْ مَاءٍ يَتَطَهَّرُ بِهِ أَوْ تُرَابٍ يَتَيَمَّمُ بِهِ إِنْ قَدَرَ عَلَى ذَلِكَ، هَذَا مَا لَا خِلَافَ فِيهِ بَيْنَنَا وَبَيْنَهُمْ، وَلَا بَيْنَ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ وَلَيْسَ الطَّلَاقُ، وَلَا النِّكَاحُ، وَلَا الْعَتَاقُ، وَلَا الْبَيْعُ، وَلَا الْهِبَةُ، وَلَا الصَّدَقَةُ، وَلَا تَعَلُّمُ الْقُرْآنِ -. مُعَلَّقًا بِشَيْءٍ مِمَّا ذَكَرْنَا، وَلَا مَأْمُورًا فِيهِ بِهَيْئَةٍ مَا، وَلَا بِجُلُوسٍ وَلَا بُدَّ، وَلَا بِقِيَامٍ عَلَى صِفَةٍ، وَلَا بِمَكَانٍ مَوْصُوفٍ، لَكِنْ كُلُّ هَذِهِ الْأَعْمَالِ أَيْضًا مُحْتَاجَةٌ وَلَا بُدَّ إِلَى أَلْفَاظٍ مَوْضُوعَةٍ، أَوْ أَعْمَالٍ مَحْدُودَةٍ، وَأَوْقَاتٍ مَحْدُودَةٍ، فَكُلُّ مَنْ أَتَى بِالصَّلَاةِ، أَوْ النِّكَاحِ، أَوْ الطَّلَاقِ، أَوْ الْبَيْعِ، أَوْ الْهِبَةِ، أَوْ الصَّدَقَةِ، عَلَى خِلَافِ مَا أَمَرَهُ اللَّهُ تَعَالَى بِهِ عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ كُلُّهُ بَاطِلٌ لَا يَصِحُّ مِنْهُ شَيْءٌ لَا

طَلَاقٌ، وَلَا نِكَاحٌ، وَلَا عَتَاقٌ، وَلَا هِبَةٌ، وَلَا صَدَقَةٌ، وَكَذَلِكَ كُلُّ شَيْءٍ مِنْ أَعْمَالِ الشَّرِيعَةِ - وَلَا فَرْقَ فَمَنْ صَلَّى فَجَعَلَ الْجُلُوسَ الْمُحَرَّمَ عَلَيْهِ بَدَلَ الْجُلُوسِ الْمَأْمُورِ بِهِ، وَالْإِقَامَةَ الْمُحَرَّمَةَ عَلَيْهِ بَدَلَ الْإِقَامَةِ الْمُفْتَرَضَةِ عَلَيْهِ، وَسَتَرَ عَوْرَتَهُ بِمَا حَرُمَ عَلَيْهِ سَتْرُهَا بِهِ، وَأَتَى بِهَا فِي غَيْرِ الزَّمَانِ الَّذِي أُمِرَ بِأَنْ يَأْتِيَ بِهَا فِيهِ، أَوْ فِي غَيْرِ الْمَكَانِ الَّذِي أُمِرَ أَنْ يَأْتِيَ بِهَا فِيهِ، وَعَوَّضَ مِنْ ذَلِكَ زَمَانًا وَمَكَانًا حَرُمَا عَلَيْهِ، وَعَوَّضَ الْمَاءَ الْمُحَرَّمَ عَلَيْهِ، أَوْ التُّرَابَ الْمُحَرَّمَ عَلَيْهِ مِنْ الْمَاءِ الْمَأْمُورِ بِهِ، أَوْ التُّرَابِ الْمَأْمُورِ بِهِ -: فَلَمْ يُصَلِّ قَطُّ الصَّلَاةَ الَّتِي أَمَرَهُ اللَّهُ تَعَالَى بِهَا، وَهُوَ وَالَّذِي صَلَّى إلَى غَيْرِ الْقِبْلَةِ عَمْدًا سَوَاءٌ وَلَا فَرْقَ، وَكِلَاهُمَا صَلَّى بِخِلَافِ مَا أُمِرَ بِهِ وَكَذَلِكَ مَنْ طَلَّقَ أَجْنَبِيَّةً، أَوْ بِغَيْرِ الْكَلَامِ الَّذِي جَعَلَ اللَّهُ تَعَالَى الطَّلَاقَ بِهِ وَحُرِّمَ بِهِ الْفَرْجُ الَّذِي كَانَ حَلَالًا، أَوْ نَكَحَ ذَاتَ زَوْجٍ، أَوْ فِي عِدَّةٍ، أَوْ بِغَيْرِ الْكَلَامِ الَّذِي أَبَاحَ بِهِ النِّكَاحَ وَحُلِّلَ بِهِ الْفَرْجُ الْحَرَامُ قَبْلَهُ، أَوْ بَاعَ بَيْعًا مُحَرَّمًا، أَوْ اشْتَرَى مِنْ غَيْرِ مَالِكٍ، أَوْ وَهَبَ هِبَةً لَمْ يُطْلِقْ عَلَيْهَا، أَوْ أَعْتَقَ عِتْقًا حَرُمَ عَلَيْهِ، كَمَنْ أَعْتَقَ غُلَامَ غَيْرِهِ، أَوْ تَصَدَّقَ بِثَوْبٍ عَلَى الْأَوْثَانِ - فَكُلُّ ذَلِكَ بَاطِلٌ مَرْدُودٌ، لَا يَصِحُّ شَيْءٌ مِنْهُ، وَلَيْسَ تَبْطُلُ شَرِيعَةٌ بِمَا تَبْطُلُ بِهِ أُخْرَى، لَكِنْ بِأَنْ يَعْمَلَ بِخِلَافِ مَا أَمَرَ اللَّهُ تَعَالَى بِأَنْ تُعْمَلَ عَلَيْهِ وَالَّذِي صَبَغَ لِحْيَتَهُ بِحِنَّاءٍ مَغْصُوبَةٍ، فَإِنْ صَلَّى حَامِلًا لِتِلْكَ الْحِنَّاءِ فَلَا صَلَاةَ لَهُ. وَأَمَّا إذَا نَزَعَهَا وَلَمْ يُصَلِّ بِهَا - فَاللَّوْنُ غَيْرُ مُتَمَلَّكٍ - فَلَمْ يُصَلِّ بِخِلَافِ مَا أُمِرَ وَأَمَّا الْمُصِرُّ عَلَى الْمَعَاصِي فَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّ كُلَّ مَنْ كَانَ مِنْ أُمَّتِهِ فَقَدْ عَفَا اللَّهُ عَزَّ وَجَلَّ لَهُ عَنْ كُلِّ مَا حَدَّثَ بِهِ نَفْسَهُ مِنْ قَوْلٍ أَوْ عَمَلٍ، فَهَذَا مَعْفُوٌّ لَهُ عَنْهُ، فَإِنْ قِيلَ: فَأَنْتُمْ تُبْطِلُونَ صَلَاةَ مَنْ نَوَى خُرُوجَهُ مِنْ الصَّلَاةِ، وَإِنْ لَمْ يَعْمَلْ وَلَا قَالَ قُلْنَا: بَلَى قَدْ عَمِلَ، لِأَنَّهُ بِنِيَّتِهِ تِلْكَ

Likewise, if one divorces a stranger, or employs utterances other than those Allah ordained for divorce..." The sexual intercourse that was lawful, or one who marries a woman already married, or during her waiting period, or without the contractual utterance that permits marriage—thereby rendering lawful the previously forbidden sexual act—or one who engages in a prohibited sale; or buys from a non-owner; or gives a gift not formally validated; or unlawfully emancipates, such as freeing another's slave; or donates a garment to idols—all such acts are invalid and rejected. None of them is valid. One legal ruling is not invalidated by what invalidates another, but rather by acting contrary to what Allah the Exalted commanded to be upheld. As for the one who dyes his beard with usurped henna: if he prays while bearing that henna, his prayer is invalid. If he removes it and does not pray with it—since the color is not owned property—he has not opposed the command. Regarding those persistent in sins, it is authentically reported from the Prophet (peace be upon him) that Allah the Almighty has forgiven every member of his community for whatever they entertained in their hearts of speech or action; thus, this is pardoned. If it is said: "You invalidate the prayer of one who intends to exit it, even without action or utterance," we reply: Indeed, he has acted, for through that intention, his standing (if standing), sitting (if sitting), bowing (if bowing), or prostrating (if prostrating) becomes an outward act performed for other than prayer. His prayer is invalidated because he intentionally interrupted its acts with what is foreign to them. However, if he intended to invalidate it after the prayer's completion, his prayer remains valid. And success is from Allah, the Exalted.[17][18]

[17] **Hadith references (L6593):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[18] **Qur'an references (L6593):** Qur'an 24:27 (An-Nur); Qur'an 24:28 (An-Nur).

صَارَ وُقُوفُهُ - إِنْ كَانَ وَاقِفًا، وَقُعُودُهُ - إِنْ كَانَ قَاعِدًا، وَرُكُوعُهُ - إِنْ كَانَ رَاكِعًا، وَسُجُودُهُ - إِنْ كَانَ سَاجِدًا -: عَمَلًا يَعْمَلُهُ ظَاهِرًا لِغَيْرِ الصَّلَاةِ، فَقَدْ بَطَلَتْ صَلَاتُهُ، إِذْ حَالَ عَامِدًا بَيْنَ أَعْمَالِهَا بِمَا لَيْسَ مِنْهَا، لَكِنْ لَوْ نَوَى أَنْ يُبْطِلَهَا فِي غَيْرِ وَقْتِهِ ذَلِكَ لَمْ تَبْطُلْ بِذَلِكَ صَلَاتُهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L6600 وَأَمَّا مَنْ عَجَزَ عَنْ الْمُفَارَقَةِ لِشَيْءٍ مِمَّا ذَكَرْنَا فَقَدْ قَالَ اللَّهُ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] وَأَخْبَرَ - عَلَيْهِ السَّلَامُ -: أَنَّهُ عَفَا اللَّهُ عَنْ أُمَّتِهِ الْخَطَأَ وَالنِّسْيَانَ، وَمَا اُسْتُكْرِهُوا عَلَيْهِ، فَهَذَا مُضْطَرٌّ مُكْرَهٌ، فَلَا تَبْطُلُ صَلَاتُهُ إلَّا بِنَصٍّ جَلِيٍّ فِي إبْطَالِهَا بِذَلِكَ، كَالْحَدَثِ الْمُتَّفَقِ عَلَى أَنَّهُ لَا يُجْزِئُ التَّمَادِي فِي الصَّلَاةِ إثْرَهُ إلَّا بِإِحْدَاثِ وُضُوءٍ وَأَمَّا السَّفِينَةُ، وَالْبِنَاءُ الَّذِي سُخِّرَ النَّاسُ ظُلْمًا فِيهِمَا فَلَيْسَ هُنَاكَ عَيْنٌ مُحَرَّمَةٌ كَانَ الْمُصَلِّي مُسْتَعْمِلًا لَهَا، وَالْآثَارُ لَا تُمَلَّكُ، فَإِنْ يَئِسَ مِنْ مَعْرِفَةِ صَاحِبِهِ فَقَدْ صَارَ مِنْ جَمَاعَةِ الْمُسْلِمِينَ - وَهُوَ أَحَدُهُمْ - فَلَهُ التَّصَرُّفُ فِيهِ حِينَئِذٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ

L6600 As for one who is unable to abstain from any of the matters we mentioned, Allah the Exalted has stated: "He has already detailed for you what He prohibited you, except what you are compelled to by necessity" (al-Anʿām 6:119). He—glory be to Him—also declared that Allah has forgiven His community for mistakes, forgetfulness, and what they are coerced into. Thus, such a person is coerced by necessity; their prayer remains valid unless nullified by a clear textual ruling explicitly invalidating it for that reason, as in the case of ritual impurity—where it is unanimously agreed that persisting in prayer after its occurrence is invalid without renewing ablution. As for vessels and structures in which people are unjustly forced to labor, there is no inherently unlawful entity being used by the worshiper, nor can lost property be privately owned. If one despairs of identifying its owner, he becomes part of the Muslim community—being one of them—thereby entitling him to manage it at that point. And success is from Allah, the Exalted.[19]

[مَسْأَلَةُ الصَّلَاةُ لِلرَّجُلِ خَاصَّةً فِي ثَوْبٍ فِيهِ حَرِيرٌ]

L6601 **Issue: The ruling on prayer specifically for men in a garment containing silk.**

٣٩٥ - مَسْأَلَةٌ: وَلَا تَحِلُّ الصَّلَاةُ - لِلرَّجُلِ خَاصَّةً - فِي ثَوْبٍ فِيهِ حَرِيرٌ أَكْثَرُ مِنْ أَرْبَعِ أَصَابِعَ عَرْضًا فِي طُولِ الثَّوْبِ، إلَّا اللَّبِنَةَ وَالتَّكْفِيفَ فَهُمَا مُبَاحَانِ وَلَا فِي ثَوْبٍ فِيهِ ذَهَبٌ، وَلَا لَابِسًا ذَهَبًا فِيهِ خَاتَمٌ وَلَا فِي غَيْرِهِ. فَإِنْ أُجْبِرَ عَلَى لِبَاسِ شَيْءٍ مِنْ ذَلِكَ أَوْ اُضْطُرَّ إلَيْهِ خَوْفَ الْبَرْدِ: حَلَّ لَهُ الصَّلَاةُ فِيهِ. أَوْ كَانَ بِهِ دَاءٌ يُتَدَاوَى مِنْ مِثْلِهِ بِلِبَاسِ الْحَرِيرِ: فَالصَّلَاةُ لَهُ فِيهِ جَائِزَةٌ وَكَذَلِكَ لَوْ حَمَلَ ذَهَبًا لَهُ فِي كُمِّهِ لِيُحْرِزَهُ، أَوْ حَرِيرًا أَوْ

L6602–6606 395 - Issue: Prayer is not permissible—specifically for men—in a garment containing silk exceeding four [units]. Fingers' width along the length of the garment, except for the reinforcement patch and the lining – these two are permissible – nor in a garment containing gold, nor wearing gold that includes a ring or other forms. If one is compelled to wear any of that or forced by necessity such as fear of cold, it becomes lawful for him to pray in it. If he has an illness treated by medicinal use of silk, prayer in it is permissible for him. Similarly, if he carries his own gold in his sleeve to safeguard it, or silk or a silk garment likewise, his prayer is fully valid.

[19] **Qur'an references (L6600):** Qur'an 6:119 (Al-An'am).

Abdullāh ibn Yūsuf narrated to us, Aḥmad ibn Fatḥ narrated to us, ʿAbd al-Wahhāb ibn ʿĪsā narrated to us, Aḥmad ibn Muḥammad narrated to us, Aḥmad ibn ʿAlī narrated to us, Muslim ibn al-Ḥajjāj narrated to us: ʿUbaydullāh ibn ʿUmar al-Qawārīrī, Muḥammad ibn al-Muthannā, and Zuhayr ibn Ḥarb said, Muʿādh ibn Hishām narrated to us: My father narrated to me from Qatādah from al-Shaʿbī from Suwayd ibn Ghaflah: "ʿUmar ibn al-Khaṭṭāb delivered a sermon at al-Jābiyah and said: 'The Messenger of Allāh – peace and blessings be upon him – prohibited silk except for the space of two, three, or four finger-widths.'"

Through the same chain to Muslim: Shaybān ibn Farrokh narrated to us, Jarīr ibn Ḥāzim narrated to us, Nāfiʿ narrated from Ibn ʿUmar, who said: The Messenger of Allāh – peace and blessings be upon him – said: "Only those who have no portion in the Hereafter wear silk in this world."

ʿAbd al-Raḥmān ibn ʿAbdullāh ibn Khālid narrated to us, Ibrāhīm ibn Aḥmad narrated to us, al-Farbarī narrated to us, al-Bukhārī narrated to us, ʿAlī ibn al-Madīnī narrated to us, Wahb ibn Jarīr ibn Ḥāzim narrated to us: My father said: I heard... Ibn Abi Najih reported from Mujahid, from Ibn Abi Layla—who is Abd al-Rahman—from Hudhayfah, who said: "The Messenger of Allah—peace be upon him—forbade us from drinking from gold and silver vessels, eating from them, wearing silk and brocade, and sitting on them." Muhammad ibn Saʿīd ibn Nubāt reported to us from Aḥmad ibn ʿAwn Allāh, from Abd al-Raḥmān ibn Asad al-Kāzarūnī, from al-Dubayrī, from Abd al-Razzāq, who reported from Maʿmar, from Ayyūb al-Sikhtiyānī, from Nāfiʿ, the freed slave of Ibn Umar, from Saʿīd ibn Abī Hind, from Abū Mūsā al-Ashʿarī, that the Messenger of Allah—peace be upon him—said: "Gold and silk are permitted for the females of my nation and forbidden for their males."[20]

L6607–6612 Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us,

[20]**Hadith references (L6602):** Sahih al-Bukhari 5835; Sahih Muslim 2068c; Mishkat al-Masabih 4320; Mishkat al-Masabih 4341.

ثَوْبَ حَرِيرٍ كَذَلِكَ فَصَلَاتُهُ تَامَّةٌ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثِنَا أَحْمَدُ بْنُ فَتْحٍ ثِنَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثِنَا أَحْمَدُ بْنُ مُحَمَّدٍ ثِنَا أَحْمَدُ بْنُ عَلِيٍّ ثِنَا مُسْلِمُ بْنُ الْحَجَّاجِ ثِنَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ، وَمُحَمَّدُ بْنُ الْمُثَنَّى، وَزُهَيْرُ بْنُ حَرْبٍ قَالُوا: ثِنَا مُعَاذُ بْنُ هِشَامٍ حَدَّثَنِي أَبِي عَنْ قَتَادَةَ عَنِ الشَّعْبِيِّ عَنْ سُوَيْدِ بْنِ غَفَلَةَ: «أَنَّ عُمَرَ بْنَ الْخَطَّابِ خَطَبَ بِالْجَابِيَةِ فَقَالَ " نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنِ الْحَرِيرِ إِلَّا مَوْضِعَ إِصْبَعَيْنِ أَوْ ثَلَاثٍ أَوْ أَرْبَعٍ» . وَبِهِ إِلَى مُسْلِمٍ: ثِنَا شَيْبَانُ بْنُ فَرُّوخَ ثِنَا جَرِيرُ بْنُ حَازِمٍ ثِنَا نَافِعٌ عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّمَا يَلْبَسُ الْحَرِيرَ فِي الدُّنْيَا مَنْ لَا خَلَاقَ لَهُ فِي الْآخِرَةِ» . حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثِنَا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثِنَا الْفَرَبْرِيُّ ثِنَا الْبُخَارِيُّ ثِنَا عَلِيٌّ هُوَ ابْنُ الْمَدِينِيِّ - ثِنَا وَهْبُ بْنُ جَرِيرِ بْنِ حَازِمٍ ثِنَا أَبِي قَالَ: سَمِعْتُ ابْنَ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ عَنِ ابْنِ أَبِي لَيْلَى هُوَ عَبْدُ الرَّحْمَنِ - عَنْ حُذَيْفَةَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَشْرَبَ فِي آنِيَةِ الذَّهَبِ وَالْفِضَّةِ، وَأَنْ نَأْكُلَ فِيهَا، وَعَنْ لُبْسِ الْحَرِيرِ وَالدِّيبَاجِ، وَأَنْ نَجْلِسَ عَلَيْهِ» أَخْبَرَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ ثِنَا أَحْمَدُ بْنُ عَوْنِ اللَّهِ ثِنَا عَبْدُ الرَّحْمَنِ بْنُ أَسَدٍ الْكَازَرُونِيُّ ثِنَا الدُّبَيْرِيُّ ثِنَا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ عَنْ سَعِيدِ بْنِ أَبِي هِنْدٍ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أُحِلَّ الذَّهَبُ وَالْحَرِيرُ لِلْإِنَاثِ مِنْ أُمَّتِي وَحُرِّمَ عَلَى ذُكُورِهَا» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثِنَا أَحْمَدُ بْنُ فَتْحٍ ثِنَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثِنَا أَحْمَدُ بْنُ مُحَمَّدٍ ثِنَا أَحْمَدُ بْنُ عَلِيٍّ ثِنَا مُسْلِمٌ الْحَجَّاجُ ثِنَا زُهَيْرُ بْنُ حَرْبٍ ثِنَا عَفَّانَ بْنُ مُسْلِمٍ ثِنَا قَتَادَةُ أَنَّ

أَنَسَ بْنَ مَالِكٍ أَخْبَرَهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَكَا إِلَيْهِ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ، وَالزُّبَيْرُ بْنُ الْعَوَّامِ: الْقَمْلَ، فَرَخَّصَ لَهُمَا فِي قُمُصِ الْحَرِيرِ» . وَبِهِ إِلَى مُسْلِمٍ: ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا مُحَمَّدُ بْنُ بِشْرٍ ثنا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ أَنَسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَخَّصَ لِعَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَالزُّبَيْرِ بْنِ الْعَوَّامِ فِي الْقُمُصِ الْحَرِيرِ لِحَكَّةٍ كَانَتْ بِهِمَا أَوْ وَجَعٍ» . وَبِهِ إِلَى مُسْلِمٍ: ثنا يَحْيَى بْنُ يَحْيَى ثنا خَالِدُ بْنُ عَبْدِ اللَّهِ هُوَ الطَّحَّانُ - عَنْ ابْنِ جُرَيْجٍ «عَنْ عَبْدِ اللَّهِ مَوْلَى أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ " أَنَّ أَسْمَاءَ أَخْرَجَتْ إِلَيْهِ جُبَّةً طَيَالِسِيَّةً كِسْرَوَانِيَّةً لَهَا لَبِنَةُ دِيبَاجٍ فَرْجَاهَا مَكْنُوفَانِ بِالدِّيبَاجِ، فَقَالَتْ: هَذِهِ جُبَّةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَتْ عِنْدَ عَائِشَةَ حَتَّى قُبِضَتْ فَقَبَضْتُهَا، وَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَلْبَسُهَا، فَنَحْنُ نَغْسِلُهَا لِلْمَرْضَى يُسْتَشْفَى بِهَا» . وَمَسُّ الْحَرِيرِ وَالذَّهَبِ وَمِلْكُهُمَا وَحَمْلُهُمَا حَلَالٌ بِالنَّصِّ وَالْإِجْمَاعِ، فَإِنْ قِيلَ: قَدْ رُوِيَ لِبَاسُ الْخَزِّ عَنْ بَعْضِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - قُلْنَا: قَدْ جَاءَ تَحْرِيمُهُ عَنْ بَعْضِهِمْ -: كَمَا رُوِّينَا: أَنَّ عُمَرَ بْنَ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - جَهَّزَ جَيْشًا فَغَنِمُوا فَاسْتَقْبَلَهُمْ عُمَرُ فَرَآهُمْ قَدْ لَبِسُوا أَقْبِيَةَ الدِّيبَاجِ وَلِبَاسَ الْعَجَمِ، فَأَعْرَضَ عَنْهُمْ وَقَالَ: أَلْقُوا عَنْكُمْ ثِيَابَ أَهْلِ النَّارِ فَأَلْقَوْهَا. وَعَنْ شُعْبَةَ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ سَمِعْت الشَّعْبِيَّ يُحَدِّثُ عَنْ سُوَيْدِ بْنِ غَفَلَةَ قَالَ: أَصَبْنَا فُتُوحًا بِالشَّامِ فَأَتَيْنَا الْمَدِينَةَ، فَلَمَّا دَنَوْنَا لَبِسْنَا الدِّيبَاجَ وَالْحَرِيرَ، فَلَمَّا رَآنَا عُمَرُ رَمَانَا، فَنَزَعْنَاهَا، فَلَمَّا رَآنَا قَالَ: مَرْحَبًا بِالْمُهَاجِرِينَ إِنَّ الْحَرِيرَ وَالدِّيبَاجَ لَمْ يَرْضَ اللَّهُ بِهِ لِمَنْ كَانَ قَبْلَكُمْ، فَيَرْضَى بِهِ عَنْكُمْ؟ لَا يَصْلُحُ مِنْهُ إِلَّا هَكَذَا وَهَكَذَا وَهَكَذَا قَالَ شُعْبَةُ: أُصْبُعَيْنِ، أَوْ ثَلَاثًا، أَوْ أَرْبَعًا. وَرُوِّينَا عَنْ أَبِي الْخَيْرِ: أَنَّهُ سَأَلَ عُقْبَةَ بْنَ عَامِرٍ الْجُهَنِيَّ عَنْ لَبِنَةِ حَرِيرٍ فِي جُبَّتِهِ

Ahmad ibn Ali narrated to us, Muslim al-Hajjaj narrated to us, Zuhayr ibn Harb narrated to us, Affan ibn Muslim narrated to us, Qatadah reported that Anas ibn Malik informed him: “Abd al-Rahman ibn Awf and al-Zubayr ibn al-Awwam complained to the Messenger of Allah (peace be upon him) about lice, so he permitted them to wear silk shirts.” Through the same chain transmitted to Muslim: Abu Bakr ibn Abi Shaybah narrated to us, Muhammad ibn Bishr narrated to us, Sa‘id ibn Abi ‘Arubah narrated from Qatadah from Anas: “The Messenger of Allah (peace be upon him) permitted Abd al-Rahman ibn Awf and al-Zubayr ibn al-Awwam to wear silk shirts due to itching or pain they experienced.” Through the same chain transmitted to Muslim: Yahya ibn Yahya narrated to us, Khalid ibn Abdullah—al-Tahhan—narrated from Ibn Jurayj from Abdullah, the freed slave of Asma bint Abi Bakr al-Siddiq: “Asma brought out to him a Taylasani cloak of Kisrawani style with a brocade panel and front openings lined with brocade, and said: ’This is the cloak of the Messenger of Allah (peace be upon him). It was with Aisha until she passed away, then I took it. The Messenger of Allah (peace be upon him) used to wear it, and we wash it for the sick seeking cure through it.’” Touching silk and gold, owning them, and carrying them are permissible by explicit textual evidence and consensus. If it is objected: “It has been narrated that wearing khazz was reported from some of the Companions—may Allah be pleased with them—” We said: The prohibition of it has come from some of them—as we have narrated: That ‘Umar ibn al-Khaṭṭāb—may Allah be pleased with him—equipped an army, and they gained spoils of war. ‘Umar came to meet them and saw them wearing brocade cloaks and Persian garments. He turned away from them and said: “Cast off the garments of the people of the Fire!” So they cast them off. From Shu‘bah, from ‘Abdullāh ibn Abī al-Safar: I heard al-Sha‘bī narrating from Suwayd ibn Ghafalah, who said: “We attained conquests in Syria, then we came to Madinah. When we drew near, we wore brocade and silk. When ‘Umar saw us, he cast something at us, so we removed them. When he saw us, he said: ’Welcome, O Emigrants! Indeed, Allah was not pleased with silk and brocade for those before you—would He then be pleased with it for you? It is not permissible except in this amount, this amount, and this amount.’” Shu‘bah said: “Two fingers, or three, or four.” We have narrated from Abū al-Khayr that he asked

‘Uqbah ibn ‘Āmir al-Juhanī about a piece of silk on his cloak. He said: “There is no harm in it.” From Yazīd ibn Hārūn—Hishām (the son of Ḥassān)—from Ḥafṣah bint Sīrīn, from Abū Dhubyān (Khalīfah ibn Ka‘b): “Ibn ‘Umar heard the report stating, ’Whoever wears silk in this world will not wear it in the Hereafter,’ so he said: ’Then, by Allah, he will not enter Paradise! Allah the Exalted said: {Their garments in Paradise will be silk} [Al-Ḥajj: 23].” From Muhammad ibn al-Muthanna: Abd al-Rahman ibn Mahdi narrated to us, Sufyan al-Thawri narrated to us, from Mansur—who is Ibn al-Mu’tamir—from Mujahid, who said: Ibn Umar said: “Avoid garments mingled with silk.” From Ubayd Allah ibn Amr al-Raqqi—from Zayd ibn Abi Unaysah—from Zubayd—from Abu Burdah—from Rib’i ibn Hirash—from Hudhayfah, who said: “Whoever wears a silk garment, Allah the Exalted will clothe him in a garment of fire—not [measured] by your days but by Allah’s lengthy days.” From Ali ibn Abi Talib: He saw a man wearing a cloak with silk brocade on its chest and said: “What is this stench upon your chest?” From Shu’bah—from Abu Ishaq al-Sabi’i: I heard Abd al-Rahman ibn Yazid say: “I was with Ibn Mas’ud when his son came wearing a silk shirt, so Ibn Mas’ud tore it apart.” From Ibn al-Zubayr: “Whoever wears silk in this world shall not wear it in the Hereafter.” When the Companions—may Allah be pleased with them—disagreed, the obligation is to refer the dispute to the Messenger of Allah—peace and blessings be upon him—as Allah Almighty commanded. Samurah sold wine, Abu Talhah ate hail while fasting, and no valid proof exists in anyone other than the Messenger of Allah—peace and blessings be upon him.[21]

قَالَ: لَيْسَ بِهَا بَأْسٌ وَعَنْ يَزِيدَ بْنِ هَارُونَ: أَنَا هِشَامٌ هُوَ ابْنُ حَسَّانَ - عَنْ حَفْصَةَ بِنْتِ سِيرِينَ عَنْ أَبِي ذُبْيَانَ هُوَ خَلِيفَةُ بْنُ كَعْبٍ -: «أَنَّ ابْنَ عُمَرَ سَمِعَ الْخَبَرَ فِي أَنَّ " مَنْ لَبِسَ الْحَرِيرَ فِي الدُّنْيَا لَمْ يَلْبَسْهُ فِي الْآخِرَةِ " فَقَالَ: إِذَنْ وَاللَّهِ لَا يَدْخُلُهَا، قَالَ تَعَالَى: {وَلِبَاسُهُمْ فِيهَا حَرِيرٌ} [الحج: ٢٣] » وَعَنْ مُحَمَّدِ بْنِ الْمُثَنَّى: ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورٍ هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ مُجَاهِدٍ قَالَ: قَالَ ابْنُ عُمَرَ: اجْتَنِبُوا مِنَ الثِّيَابِ مَا خَالَطَهُ الْحَرِيرُ وَعَنْ عُبَيْدِ اللَّهِ بْنِ عَمْرٍو الرَّقِّيِّ عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ عَنْ زُبَيْدٍ عَنْ أَبِي بُرْدَةَ عَنْ رِبْعِيِّ بْنِ حِرَاشٍ عَنْ حُذَيْفَةَ قَالَ: مَنْ لَبِسَ ثَوْبَ حَرِيرٍ أَلْبَسَهُ اللَّهُ تَعَالَى ثَوْبًا مِنْ نَارٍ، لَيْسَ مِنْ أَيَّامِكُمْ وَلَكِنْ مِنْ أَيَّامِ اللَّهِ الطِّوَالِ. وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّهُ رَأَى رَجُلًا لَابِسًا جُبَّةً عَلَى صَدْرِهَا دِيبَاجٌ فَقَالَ لَهُ عَلِيٌّ: مَا هَذَا النَّتْنُ عَلَى صَدْرِكَ وَعَنْ شُعْبَةَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ سَمِعْتُ عَبْدَ الرَّحْمَنِ بْنَ يَزِيدَ قَالَ: كُنْتُ عِنْدَ ابْنِ مَسْعُودٍ فَجَاءَهُ ابْنٌ لَهُ عَلَيْهِ قَمِيصُ حَرِيرٍ فَشَقَّهُ ابْنُ مَسْعُودٍ وَعَنِ ابْنِ الزُّبَيْرِ: مَنْ لَبِسَ الْحَرِيرَ فِي الدُّنْيَا لَمْ يَلْبَسْهُ فِي الْآخِرَةِ فَإِذَا اخْتَلَفَ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - فَالْفَرْضُ الرَّدُّ عِنْدَ تَنَازُعِهِمْ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ، وَقَدْ بَاعَ سَمُرَةُ خَمْرًا، وَأَكَلَ أَبُو طَلْحَةَ الْبَرَدَ وَهُوَ صَائِمٌ وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L6613–6616 The permissibility of a garment with a silk warp is fundamentally invalid as a report, because the narration concerning it from Ibn Abbas is solely transmitted by Khusayf—who is weak. How can this stand when every Companion—may Allah be pleased with them—from whom it is narrated that they wore khazz (a blend of silk and wool) contains no mention in any of those reports

وَلَا يَصِحُّ فِي الرُّخْصَةِ فِي الثَّوْبِ سَدَاهُ حَرِيرٌ: خَبَرٌ أَصْلًا، لِأَنَّ الرِّوَايَةَ فِيهِ عَنِ ابْنِ عَبَّاسٍ انْفَرَدَ بِهَا خُصَيْفٌ، وَهُوَ ضَعِيفٌ. فَكَيْفَ وَكُلُّ مَنْ رُوِيَ عَنْهُ أَنَّهُ لَبِسَ الْخَزَّ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَيْسَ فِي شَيْءٍ مِنْ تِلْكَ الْأَخْبَارِ أَنَّهُمْ عَرَفُوا أَنَّ

[21] **Qur’an references (L6608):** Qur’an 22:23 (Al-Hajj); Qur’an 35:33 (Fatir).

that they knew its warp was silk? It has been narrated to us from Shu‘bah from ‘Āmir ibn ‘Ubaydah al-Bāhilī, who said: “I saw Anas wearing a khazz cloak, so I asked him about it. He replied: ‘I seek refuge by Allah from its evil.’” From Ma‘mar from ‘Abd al-Karīm al-Jazarī, who said: “I saw Anas ibn Mālik wearing a khazz cloak and khazz shawl while I was circumambulating the House with Sa‘īd ibn Jubayr. Sa‘īd ibn Jubayr remarked: ‘Had the early generation seen him, they would have punished him severely.’” This clarifies that the Companions deemed this impermissible, as they would not inflict punishment for something lawful. From ‘Abdullāh ibn Shaqīq: “The Messenger of Allah—peace and blessings upon him—prohibited silk most emphatically.” A man said to him: “Is this not silk you are wearing?” ‘Abdullāh replied: “Glory to Allah! This is khazz.” The man said: “Yes, but its warp is silk.” He responded: “I was unaware.” From ‘Umar ibn ‘Abd al-‘Azīz: He ordered a khazz garment to be made for him with a linen warp. From ‘Abd al-Raḥmān ibn Abī Laylā, a similar account. Every Companion from whom it is narrated that he wore such garments—may Allah be pleased with them—cannot escape being one of three possibilities: Either the warp of those garments was linen, or they did not know it was silk—and it is impermissible to assume anything else about them—or they sought forgiveness from Allah the Exalted for wearing it. The least of their days with Allah’s Messenger (peace and blessings of Allah be upon him) outweighs this many times over, for none besides them equals them. The half a mudd of barley given in charity by one of them surpasses all the deeds of any one of us even if he lived a hundred years. This is because half a mudd from one of them is better than a mountain of gold belonging to anyone that we ourselves spend in righteous causes. We know no one who spends in righteous causes even the weight of a large stone from anyone’s possession—how then could one donate an entire mountain? Success comes only from Allah the Exalted. As for one compelled to wear it due to fear of cold, Allah the Exalted has said: {He has detailed for you what He has forbidden to you, except what you are compelled to} [6:119].[22]

سَدَاهَا حَرِيرٌ. رُوِّينَا عَنْ شُعْبَةَ عَنْ عَامِرِ بْنِ عُبَيْدَةَ الْبَاهِلِيِّ قَالَ: رَأَيْت عَلَى أَنَسٍ جُبَّةَ خَزٍّ فَسَأَلْته عَنْ ذَلِكَ فَقَالَ: أَعُوذُ بِاَللَّهِ مِنْ شَرِّهَا وَعَنْ مَعْمَرٍ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ قَالَ: رَأَيْت عَلَى أَنَسِ بْنِ مَالِكٍ جُبَّةَ خَزٍّ وَكِسَاءَ خَزٍّ وَأَنَا أَطُوفُ بِالْبَيْتِ مَعَ سَعِيدِ بْنِ جُبَيْرٍ، فَقَالَ سَعِيدُ بْنُ جُبَيْرٍ: لَوْ أَدْرَكَهُ السَّلَفُ لَأَوْجَعُوهُ. فَهَذَا يُوَضِّحُ أَنَّ الصَّحَابَةَ كَانُوا يُحَرِّمُونَ ذَلِكَ، إذْ لَا يُوجِعُونَ عَلَى مُبَاحٍ. وَعَنْ عَبْدِ اللَّهِ بْنِ شَقِيقٍ أَنَّهُ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْحَرِيرِ أَشَدَّ النَّهْيِ " فَقَالَ لَهُ رَجُلٌ: أَلَيْسَ هَذَا عَلَيْكَ حَرِيرًا فَقَالَ عَبْدُ اللَّهِ: سُبْحَانَ اللَّهِ هَذَا خَزٌّ، قَالَ: بَلَى، وَلَكِنْ سَدَاهُ حَرِيرٌ، قَالَ: مَا شَعَرْتُ» . وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ أَمَرَ أَنْ يُتَّخَذَ لَهُ ثَوْبٌ مِنْ خَزٍّ سَدَاهُ كَتَّانٌ. وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى نَحْوُ ذَلِكَ. وَلَا يَخْلُو كُلُّ مَنْ رُوِيَ عَنْهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّهُ لَبِسَ مِنْ أَحَدِ وُجُوهٍ ثَلَاثَةٍ: إمَّا أَنْ سَدَى تِلْكَ الثِّيَابِ كَانَ كَتَّانًا. وَإِمَّا أَنَّهُمْ لَمْ يَعْلَمُوا أَنَّهُ حَرِيرٌ، وَهَذَا هُوَ الَّذِي لَا يَجُوزُ أَنْ يُظَنَّ بِهِمْ غَيْرُهُ. وَإِمَّا أَنَّهُمْ اسْتَغْفَرُوا اللَّهَ تَعَالَى مِنْ لِبَاسِهِ، فَأَقَلُّ يَوْمٍ مِنْ أَيَّامِهِمْ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُغَطِّي عَلَى أَضْعَافِ هَذَا، وَلَيْسَ غَيْرُهُمْ مِثْلَهُمْ، فَنِصْفُ مُدِّ شَعِيرٍ يَتَصَدَّقُ بِهِ أَحَدُهُمْ يَفْضُلُ جَمِيعَ أَعْمَالِ أَحَدِنَا لَوْ عُمِّرَ مِائَةَ سَنَةٍ، لِأَنَّ نِصْفَ مُدِّ أَحَدِهِمْ أَفْضَلُ مِنْ جَبَلِ أَحَدٍ ذَهَبًا نُنْفِقُهُ نَحْنُ فِي وُجُوهِ الْبِرِّ، وَمَا نَعْلَمُ أَحَدًا يُنْفِقُ فِي الْبِرِّ زِنَةَ حَجَرٍ ضَخْمٍ مِنْ حِجَارَةِ أَحَدٍ فَكَيْفَ الْجَبَلُ كُلُّهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَأَمَّا مَنْ اُضْطُرَّ إلَيْهِ خَوْفَ الْبَرْدِ فَقَدْ قَالَ اللَّهُ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩]

[22] **Qur’an references (L6614):** Qur’an 6:119 (Al-An’am).

L6617 **A jurisprudential issue regarding the recitation of the Quran by the worshiper during rukūʿ (bowing) and sujūd (prostration).**

L6618–6620 396 - Issue: It is not permissible for anyone to recite the Quran during their bowing or prostration. If one does so intentionally, their prayer is invalidated. If done forgetfully: if this occurred after attaining stillness and glorifying Allah as commanded, their prayer is valid with the prostration for forgetfulness, as they added something extraneous to their prayer unintentionally. However, if this occurred throughout the entirety of their bowing or prostration, that specific prostration or rak'ah is nullified as though it were not performed. They must complete their prayer and perform the prostration for forgetfulness, for they did not fulfill the act as commanded. The Prophet (peace be upon him) said: "Whoever introduces into this matter of ours that which is not part of it, it is rejected."

Abdullah ibn Yusuf narrated to us: from Ahmad ibn Fath: from Abdul Wahhab ibn Isa: from Ahmad ibn Muhammad: from Ahmad ibn Ali: from Muslim ibn al-Hajjaj: from Zuhayr ibn Harb: from Sufyan ibn Uyaynah: from Sulayman ibn Suhaym, reported from Ibrahim ibn Abdullah ibn Ma'bad, from Ibn Abbas, who said: "Allah's Messenger (peace be upon him) drew back the curtain while people were lined up behind Abu Bakr. He said: 'O people! Nothing remains of the glad tidings of prophethood except the righteous dream a Muslim sees or is shown to him. Know that I have been forbidden to recite the Quran while bowing or prostrating. As for bowing, magnify the Lord therein, and as for prostration, strive in supplication, for it is most deserving that your supplications be answered.'"

Ali said: If it is argued, "This meaning has been narrated through Ali's chain with the wording: 'He forbade me, but I do not say he forbade you,'" we respond: Yes, but that narration only mentions Ali being forbidden, whereas the hadith we cited prohibits everyone, for it states... Every matter that he—peace be upon him—prohibited, our ruling aligns with his ruling, unless a text comes specifying an exception. If it is said: "'Ā'ishah—may Allah be pleased with her—reported that she heard him—peace and blessings of Allah be upon

[مَسْأَلَةٌ قِرَاءَة الْمُصَلِّي الْقُرْآنَ فِي رُكُوعِهِ وَسُجُودِهِ]

٣٩٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَقْرَأَ الْقُرْآنَ فِي رُكُوعِهِ وَلَا فِي سُجُودِهِ، فَإِنْ تَعَمَّدَ بَطَلَتْ صَلَاتُهُ، وَإِنْ نَسِيَ، فَإِنْ كَانَ ذَلِكَ بَعْدَ أَنْ اطْمَأَنَّ وَسَبَّحَ كَمَا أُمِرَ أَجْزَأَهُ سُجُودُ السَّهْوِ وَتَمَّتْ صَلَاتُهُ؛ لِأَنَّهُ زَادَ فِي صَلَاتِهِ سَاهِيًا مَا لَيْسَ مِنْهَا، وَإِنْ كَانَ ذَلِكَ فِي جَمِيعِ رُكُوعِهِ وَسُجُودِهِ أَلْغَى تِلْكَ السَّجْدَةَ أَوْ الرَّكْعَةَ وَكَانَ كَأَنْ لَمْ يَأْتِ بِهَا، وَأَتَمَّ صَلَاتَهُ وَسَجَدَ لِلسَّهْوِ، لِأَنَّهُ لَمْ يَأْتِ بِذَلِكَ كَمَا أُمِرَ، وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ أَنَا زُهَيْرُ بْنُ حَرْبٍ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ أَنَا سُلَيْمَانُ بْنُ سُحَيْمٍ عَنْ إبْرَاهِيمَ بْنِ عَبْدِ اللَّهِ بْنِ مَعْبَدٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: «كَشَفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - السِّتَارَةَ وَالنَّاسُ صُفُوفٌ خَلْفَ أَبِي بَكْرٍ، فَقَالَ: أَيُّهَا النَّاسُ، إنَّهُ لَمْ يَبْقَ مِنْ مُبَشِّرَاتِ النُّبُوَّةِ إلَّا الرُّؤْيَا الصَّالِحَةُ يَرَاهَا الْمُسْلِمُ أَوْ تُرَى لَهُ، أَلَا وَإِنِّي نُهِيتُ أَنْ أَقْرَأَ الْقُرْآنَ رَاكِعًا، أَوْ سَاجِدًا، فَأَمَّا الرُّكُوعُ فَعَظِّمُوا فِيهِ الرَّبَّ وَأَمَّا السُّجُودُ فَاجْتَهِدُوا فِي الدُّعَاءِ فَقَمِنٌ أَنْ يُسْتَجَابَ لَكُمْ» . قَالَ عَلِيٌّ: فَإِنْ قِيلَ: قَدْ رُوِيَ هَذَا الْمَعْنَى مِنْ طَرِيقِ عَلِيٍّ وَفِيهِ «نَهَانِي وَلَا أَقُولُ نَهَاكُمْ» قُلْنَا: نَعَمْ، وَلَيْسَ فِي هَذَا الْخَبَرِ إلَّا نَهْيُ عَلِيٍّ، وَفِي الَّذِي ذَكَرْنَا نَهْيُ الْكُلِّ؛ لِأَنَّ كُلَّ مَا نَهَى عَنْهُ - عَلَيْهِ السَّلَامُ - فَحُكْمُنَا حُكْمُهُ، إلَّا أَنْ يَأْتِيَ نَصٌّ بِتَخْصِيصِهِ، فَإِنْ قِيلَ: قَدْ «رَوَتْ عَائِشَةُ - رَضِيَ اللَّهُ عَنْهَا -: أَنَّهَا سَمِعَتْهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ فِي

him—say in his prostration: 'Glory be to You, O Allah, and praise be to You. O Allah, forgive me,' interpreting the Quran," we respond: Yes, and this report has been transmitted to us from Sufyān al-Thawrī, from Manṣūr, from Abū al-Ḍuḥā, from Masrūq, from 'Ā'ishah: "The Messenger of Allah—peace and blessings of Allah be upon him—would frequently say in his prostration: 'Glory be to You, O Allah, our Lord, and praise be to You. O Allah, forgive me,' interpreting the Quran, meaning {When the victory of Allah and the conquest come} [110:1]." Thus, the report explicitly states this, confirming that the meaning of his—peace be upon him—interpretation of the Quran in this Surah is {And seek His forgiveness} [110:3]. It has been transmitted to us from 'Alī ibn Abī Ṭālib: "Do not recite while bowing or prostrating." And from Mujāhid: "Do not recite during bowing or prostration; bowing and prostration are designated for glorification."[23][24]

سُجُودِهِ: سُبْحَانَكَ اللَّهُمَّ وَبِحَمْدِكَ اللَّهُمَّ اغْفِرْ لِي " يَتَأَوَّلُ الْقُرْآنَ» قُلْنَا: نَعَمْ، وَقَدْ رُوِّينَا هَذَا الْخَبَرَ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ أَبِي الضُّحَى عَنْ مَسْرُوقٍ عَنْ عَائِشَةَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُكْثِرُ أَنْ يَقُولَ فِي سُجُودِهِ: سُبْحَانَكَ اللَّهُمَّ رَبَّنَا وَبِحَمْدِكَ، اللَّهُمَّ اغْفِرْ لِي، يَتَأَوَّلُ الْقُرْآنَ، يَعْنِي {إِذَا جَاءَ نَصْرُ اللَّهِ وَالْفَتْحُ} [النصر: ١] » هَكَذَا، فِي الْخَبَرِ نَصًّا، فَصَحَّ أَنَّ مَعْنَى تَأَوُّلِهِ - عَلَيْهِ السَّلَامُ - الْقُرْآنَ هُوَ فِي هَذِهِ السُّورَةِ {وَاسْتَغْفِرْهُ} [النصر: ٣] . وَقَدْ رُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: لَا تَقْرَأْ وَأَنْتَ رَاكِعٌ، وَلَا وَأَنْتَ سَاجِدٌ. وَعَنْ مُجَاهِدٍ: لَا تَقْرَأْ فِي الرُّكُوعِ وَلَا السُّجُودِ، إِنَّمَا جُعِلَ الرُّكُوعُ وَالسُّجُودُ لِلتَّسْبِيحِ

Issue: Whether the worshipper recites the Quran while seated after reciting the Tashahhud, either as an Imam or praying alone.

[مَسْأَلَةٌ قَرَأَ الْمُصَلِّي الْقُرْآنَ فِي جُلُوسِهِ بَعْدَ أَنْ يَتَشَهَّدَ وَهُوَ إِمَامٌ أَوْ فَذٌّ]

L6621

L6622 Issue 397: If a worshiper recites the Quran during his sitting after the Tashahhud—whether as an imam, praying alone, or if he recites the Tashahhud during standing, bowing, or prostration after fulfilling what is incumbent upon him of recitation and glorification—his prayer remains valid (whether done intentionally or forgetfully), with no prostration for inadvertence required. Nevertheless, other forms of Allah the Exalted's remembrance are more preferable to us. As for the prayer's validity and exemption from prostration for inadvertence, this is because he committed no prohibited act—rather, he recited (an inherently virtuous act when not forbidden), and the Tashahhud itself constitutes virtuous remembrance. Our preference for other remembrances stems from the absence of any explicit command or exhor-

٣٩٧ - مَسْأَلَةٌ: فَلَوْ قَرَأَ الْمُصَلِّي الْقُرْآنَ فِي جُلُوسِهِ بَعْدَ أَنْ يَتَشَهَّدَ وَهُوَ إِمَامٌ أَوْ فَذٌّ أَوْ تَشَهَّدَ فِي قِيَامِهِ أَوْ رُكُوعِهِ أَوْ سُجُودِهِ بَعْدَ أَنْ يَأْتِيَ بِمَا عَلَيْهِ مِنْ قِرَاءَةٍ وَتَسْبِيحٍ: جَازَتْ صَلَاتُهُ - عَمْدًا فَعَلَ ذَلِكَ أَوْ نِسْيَانًا - وَلَا سُجُودَ سَهْوٍ فِي ذَلِكَ. وَغَيْرُ ذَلِكَ مِنْ ذِكْرِ اللَّهِ تَعَالَى أَحَبُّ إِلَيْنَا فَأَمَّا جَوَازُ صَلَاتِهِ وَسُقُوطُ سُجُودِ السَّهْوِ عَنْهُ، فَلِأَنَّهُ لَمْ يَأْتِ بِشَيْءٍ نُهِيَ عَنْهُ، بَلْ قَرَأَ وَالْقِرَاءَةُ: فِعْلٌ حَسَنٌ مَا لَمْ يَنْهَ الْمَرْءُ عَنْهُ، وَالتَّشَهُّدُ أَيْضًا ذِكْرٌ حَسَنٌ. وَأَمَّا قَوْلُنَا: إِنَّ غَيْرَ ذَلِكَ مِنْ الذِّكْرِ أَحَبُّ إِلَيْنَا، فَلِأَنَّهُ لَمْ يَأْتِ بِهِ أَمْرٌ وَلَا حَضٌّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[23] **Hadith references (L6618):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169; Sunan Ibn Majah 3899; Riyad as-Salihin 1427.

[24] **Qur'an references (L6618):** Qur'an 110:1 (An-Nasr); Qur'an 110:3 (An-Nasr).

tation for this specific practice—and success comes only from Allah, the Exalted.

L6623 **A legal issue on the prayer in the Mosque of Harm.**

L6624–6626 Issue 398: Prayer is not valid for anyone in the Mosque of Harm (Masjid al-Dirar) located near Quba, whether performed deliberately or out of forgetfulness. This is based on Allah's statement: "And those who took a mosque for [causing] harm, disbelief, and division among the believers, and as an outpost for those who waged war against Allah and His Messenger" (Quran 9:107), up to His saying: "Never stand therein. A mosque founded on piety from the first day is more deserving for you to stand in" (Quran 9:108). Thus, it is established that it is not a place of prayer.[25]

L6627 **The issue of prayer in a mosque built out of ostentation or to cause harm to another mosque.**

L6628–6630 399. Issue: Prayer is not valid in a mosque built for ostentation or to cause harm to another mosque, provided its congregants can hear the call to prayer of the original mosque and face no hardship in attending it. It is obligatory to demolish such a mosque, and to demolish every mosque built for people to isolate themselves in as monks do, or that ignorant people seek for its perceived virtue despite lacking traces of any prophet's legacy—peace be upon them. It is fundamentally impermissible to intentionally seek out any mosque believed to possess superior virtue over others, except solely the mosques of Makkah, Madinah, and Bayt al-Maqdis, for the Messenger of Allah—peace and blessings be upon him—condemned the excessive clustering of mosques.

Abdullāh ibn Rabīʿ narrated to us: ʿUmar ibn ʿAbd al-Malik narrated to us: Muḥammad ibn Bakr narrated to us: Abū Dāwūd narrated to us: Muḥammad ibn al-Ṣabbāḥ narrated to us: Sufyān ibn ʿUyaynah narrated from Sufyān al-Thawrī, from Abū Fazarah, from Yazīd ibn al-Aṣamm, from Ibn ʿAbbās, who said: The Messenger of Allah—peace and blessings be upon him—said, "I was

[25] **Qur'an references (L6624):** Qur'an 9:107 (At-Tawbah); Qur'an 9:108 (At-Tawbah).

[مَسْأَلَةُ الصَّلَاةُ فِي مَسْجِدِ الضِّرَارِ]

٣٩٨ - مَسْأَلَةٌ: وَلَا تُجْزِئُ أَحَدًا الصَّلَاةُ فِي مَسْجِدِ الضِّرَارِ الَّذِي بِقُرْبِ قُبَاءَ، لَا عَمْدًا وَلَا نِسْيَانًا. لِقَوْلِ اللَّهِ تَعَالَى: {وَالَّذِينَ اتَّخَذُوا مَسْجِدًا ضِرَارًا وَكُفْرًا وَتَفْرِيقًا بَيْنَ الْمُؤْمِنِينَ وَإِرْصَادًا لِمَنْ حَارَبَ اللَّهَ وَرَسُولَهُ} [التوبة: ١٠٧] إلَى قَوْله تَعَالَى: {لا تَقُمْ فِيهِ أَبَدًا لَمَسْجِدٌ أُسِّسَ عَلَى التَّقْوَى مِنْ أَوَّلِ يَوْمٍ أَحَقُّ أَنْ تَقُومَ فِيهِ} [التوبة: ١٠٨] فَصَحَّ أَنَّهُ لَيْسَ مَوْضِعَ صَلَاةٍ

[مَسْأَلَةُ الصَّلَاةُ فِي مَسْجِدٍ أُحْدِثَ مُبَاهَاةً أَوْ ضِرَارًا عَلَى مَسْجِدٍ آخَرَ]

٣٩٩ - مَسْأَلَةٌ: وَلَا تُجْزِئُ الصَّلَاةُ فِي مَسْجِدٍ أُحْدِثَ مُبَاهَاةً، أَوْ ضِرَارًا عَلَى مَسْجِدٍ آخَرَ. إذَا كَانَ أَهْلُهُ يَسْمَعُونَ نِدَاءَ الْمَسْجِدِ الْأَوَّلِ، وَلَا حَرَجَ عَلَيْهِمْ فِي قَصْدِهِ، وَالْوَاجِبُ هَدْمُهُ، وَهَدْمُ كُلِّ مَسْجِدٍ أُحْدِثَ لِيَنْفَرِدَ فِيهِ النَّاسُ كَالرُّهْبَانِ، أَوْ يَقْصِدَهَا أَهْلُ الْجَهْلِ طَلَبًا لِفَضْلِهَا، وَلَيْسَتْ عِنْدَهَا آثَارٌ لِنَبِيٍّ مِنْ الْأَنْبِيَاءِ - عَلَيْهِمْ السَّلَامُ - وَلَا يَحِلُّ قَصْدُ مَسْجِدٍ أَصْلًا يُظَنُّ فِيهِ فَضْلٌ زَائِدٌ عَلَى غَيْرِهِ إلَّا مَسْجِدَ مَكَّةَ، وَمَسْجِدَ الْمَدِينَةِ، وَمَسْجِدَ بَيْتِ الْمَقْدِسِ، فَقَطْ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَمَّ تَقَارُبَ الْمَسَاجِدِ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا مُحَمَّدُ بْنُ الصَّبَّاحِ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي فَزَارَةَ عَنْ يَزِيدَ بْنِ الْأَصَمِّ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَا أُمِرْتُ بِتَشْيِيدِ الْمَسَاجِدِ»

not commanded to construct mosques with elaborate elevation." [Ibn ʿAbbās added: "You will adorn them as the Jews and Christians adorned theirs."] ʿAlī—may Allah be pleased with him—said: "Elaborate elevation (tashyīd)" refers to constructing with plastered structures.

Through this chain to Abū Dāwūd: Muḥammad ibn al-ʿAlāʾ narrated to us: Ḥusayn ibn ʿAlī narrated to us from Zāʾidah, from Hishām ibn ʿUrwah, from his father, from ʿĀʾishah, who said: "The Messenger of Allah—peace and blessings be upon him—commanded that mosques be built in residential quarters (al-dūr, meaning neighborhoods), perfumed, and kept clean."

ʿAlī—may Allah be pleased with him—said: He—peace and blessings be upon him—did not command mosques to be built in every location but ordered them in residential quarters. Thus, it is established that what he prohibited—peace and blessings be upon him—differs from what he commanded. Therefore, the rightful manner of building mosques is as he clarified—peace and blessings be upon him—through his command and practice: constructing them in residential quarters. He—peace and blessings be upon him—said, "The best neighborhoods of the Anṣār are the neighborhood of Banū al-Najjār, then Banū ʿAbd al-Ashhal, then Banū al-Ḥārith ibn al-Khazraj, then Banū Sāʿidah." Following the precedent he established—peace and blessings be upon him—in Madinah, each neighborhood's residents have their own mosque without restriction. Upon them is the obligation to respond to the mu'adhdhin's call for the five prayers. Whatever is added beyond that or reduced from what he—peace be upon him—did not practice is invalid and a reprehensible act, and the reprehensible act must be changed. He—peace be upon him—prescribed marriage and taking female captives as concubines while prohibiting monasticism. Therefore, anything introduced after him—peace be upon him—that did not exist during his era or the time of the Rightly Guided Caliphs is an innovation and invalid. Ibn Mas'ud demolished a mosque built by 'Amr ibn 'Utbah on the outskirts of Kufa and returned it to the congregational mosque. No Friday mosque holds superiority over other mosques. It is impermissible to embark on journeys to mosques except to the mosque of Mecca, Medina, and Bayt al-Maqdis.

. [قَالَ ابْنُ عَبَّاسٍ: لَتُزَخْرِفُنَّهَا كَمَا زَخْرَفَتْ الْيَهُودُ وَالنَّصَارَى] قَالَ عَلِيٌّ: التَّشْيِيدُ: الْبِنَاءُ بِالشَّيْدِ. وَبِهِ إلَى أَبِي دَاوُد ثنا مُحَمَّدُ بْنُ الْعَلَاءِ ثنا حُسَيْنُ بْنُ عَلِيٍّ عَنْ زَائِدَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ «أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِبِنَاءِ الْمَسَاجِدِ فِي الدُّورِ، وَأَنْ تُطَيَّبَ وَتُنَظَّفَ» . قَالَ عَلِيٌّ: فَلَمْ يَأْمُرْ - عَلَيْهِ السَّلَامُ - بِبِنَاءِ الْمَسَاجِدِ فِي كُلِّ مَكَانٍ، وَأَمَرَ بِبِنَاءِ الْمَسَاجِدِ فِي الدُّورِ، فَصَحَّ أَنَّ الَّذِي نَهَى عَنْهُ - عَلَيْهِ السَّلَامُ - هُوَ غَيْرُ الَّذِي أَمَرَ بِهِ، فَإِذْ ذَلِكَ كَذَلِكَ فَحَقٌّ بِنَاءُ الْمَسَاجِدِ هُوَ كَمَا بَيَّنَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَمْرِهِ وَفِعْلِهِ، وَهُوَ بِنَاؤُهَا فِي الدُّورِ، كَمَا قَالَ - عَلَيْهِ السَّلَامُ - «وَالدُّورُ هِيَ الْمَحَلَّاتُ» ، قَالَ - عَلَيْهِ السَّلَامُ -: «خَيْرُ دُورِ الْأَنْصَارِ دَارُ بَنِي النَّجَّارِ، ثُمَّ دَارُ بَنِي عَبْدِ الْأَشْهَلِ، ثُمَّ دَارُ بَنِي الْحَارِثِ بْنِ الْخَزْرَجِ، ثُمَّ دَارُ بَنِي سَاعِدَةَ» . وَعَلَى قَدْرِ مَا بَنَاهَا - عَلَيْهِ السَّلَامُ - بِالْمَدِينَةِ، لِكُلِّ أَهْلِ مَحَلَّةٍ مَسْجِدُهُمْ الَّذِي لَا حَرَجَ عَلَيْهِمْ فِي إجَابَةِ مُؤَذِّنِهِ لِلصَّلَوَاتِ الْخَمْسِ، فَمَا زَادَ عَلَى ذَلِكَ أَوْ نَقَصَ مِمَّا لَمْ يَفْعَلْهُ - عَلَيْهِ السَّلَامُ - فَبَاطِلٌ وَمُنْكَرٌ، وَالْمُنْكَرُ وَاجِبٌ تَغْيِيرُهُ. وَقَدْ افْتَرَضَ - عَلَيْهِ السَّلَامُ - النِّكَاحَ وَالتَّسَرِّيَ وَنَهَى عَنْ الرَّهْبَانِيَّةِ، فَكُلُّ مَا أُحْدِثَ بَعْدَهُ - عَلَيْهِ السَّلَامُ - مِمَّا لَمْ يَكُنْ فِي عَهْدِهِ وَعَهْدِ الْخُلَفَاءِ الرَّاشِدِينَ فَبِدْعَةٌ وَبَاطِلٌ وَقَدْ هَدَمَ ابْنُ مَسْعُودٍ مَسْجِدًا بَنَاهُ عَمْرُو بْنُ عُتْبَةَ بِظَهْرِ الْكُوفَةِ وَرَدَّهُ إلَى مَسْجِدِ الْجَمَاعَةِ - وَلَا فَضْلَ لِجَامِعٍ عَلَى سَائِرِ الْمَسَاجِدِ. وَلَا يَحِلُّ السَّفَرُ إلَى مَسْجِدٍ، حَاشَا مَسْجِدِ مَكَّةَ، وَالْمَدِينَةِ، وَبَيْتِ الْمَقْدِسِ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَنْصُورٍ ثنا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تُشَدُّ الرِّحَالُ إلَّا إلَى ثَلَاثَةِ مَسَاجِدَ: مَسْجِدِ الْحَرَامِ،

وَمَسْجِدِي هَذَا، وَالْمَسْجِدِ الْأَقْصَى» . حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ ثنا ابْنُ مُفَرِّجٍ ثنا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ ثنا أَحْمَدُ بْنُ عَمْرٍو الْبَزَّارُ ثنا مُحَمَّدُ بْنُ مَعْمَرٍ ثنا رَوْحُ بْنُ عُبَادَةَ ثنا مُحَمَّدُ بْنُ أَبِي حَفْصَةَ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا الرِّحْلَةُ إلَى ثَلَاثَةِ مَسَاجِدَ مَسْجِدِ الْحَرَامِ وَمَسْجِدِ الْمَدِينَةِ، وَمَسْجِدِ إيلِيَاءَ»

’Abdullah ibn Rabī’ narrated to us: Muḥammad ibn Mu’āwiyah narrated to us: Aḥmad ibn Shu’ayb narrated to us: Muḥammad ibn Manṣūr narrated to us: Sufyān—Ibn ’Uyaynah—narrated from al-Zuhrī, from Sa’īd ibn al-Musayyib, from Abū Hurayrah, that the Prophet—peace and blessings of Allah be upon him—said: “Do not embark on journeys except to three mosques: the Sacred Mosque, this mosque of mine [in Medina], and Al-Aqsa Mosque.”

Aḥmad ibn Muḥammad al-Ṭalamankī narrated to us: Ibn Mufarrij narrated to us: Muḥammad ibn Ayyūb al-Ṣamūt narrated to us: Aḥmad ibn ’Amr al-Bazzār narrated to us: Muḥammad ibn Ma’mar narrated to us: Rawḥ ibn ’Ubādah narrated to us: Muḥammad ibn Abī Ḥafṣah narrated from al-Zuhrī, from Abū Salamah ibn ’Abd al-Raḥmān, from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings of Allah be upon him—declared: “Journeys are only permissible to three mosques: the Sacred Mosque, the Mosque of Medina, and the Mosque of Iliya (Jerusalem).”[26]

[مَسْأَلَةُ الصَّلَاةُ فِي مَكَان يُسْتَهْزَأُ فِيهِ بِاَللَّهِ عَزَّ وَجَلَّ]

Issue: Performing Ṣalāh in a place wherein Allah, the Exalted and Glorious, is mocked.

٤٠٠ - مَسْأَلَةٌ: وَلَا تُجْزِئُ الصَّلَاةُ فِي مَكَان يُسْتَهْزَأُ فِيهِ بِاَللَّهِ عَزَّ وَجَلَّ أَوْ بِرَسُولِهِ أَوْ بِشَيْءٍ مِنْ الدِّينِ، أَوْ فِي مَكَان يُكْفَرُ بِشَيْءٍ مِنْ ذَلِكَ فِيهِ، فَإِنْ لَمْ يُمْكِنْهُ الزَّوَالُ وَلَا قَدَرَ صَلَّى وَأَجْزَأَتْهُ صَلَاتُهُ. قَالَ اللَّهُ تَعَالَى: {أَنْ إِذَا سَمِعْتُمْ آيَاتِ اللَّهِ يُكْفَرُ بِهَا وَيُسْتَهْزَأُ بِهَا فَلا تَقْعُدُوا مَعَهُمْ حَتَّى يَخُوضُوا فِي حَدِيثٍ غَيْرِهِ إِنَّكُمْ إِذًا مِثْلُهُمْ} [النساء: ١٤٠] وَقَالَ تَعَالَى: {وَإِذَا رَأَيْتَ الَّذِينَ يَخُوضُونَ فِي آيَاتِنَا فَأَعْرِضْ عَنْهُمْ حَتَّى يَخُوضُوا فِي حَدِيثٍ غَيْرِهِ} [الأنعام: ٦٨] .

400. Issue: Prayer is not valid in a place where Allah—the Mighty and Majestic—, His Messenger, or any aspect of the religion is mocked, or where disbelief is expressed in any of that. If one cannot leave and is unable [to do otherwise], he prays, and his prayer suffices. Allah the Exalted said: “When you hear the verses of Allah being disbelieved and mocked, do not sit with them until they engage in another discourse—for indeed you would then be like them” [4:140]. And He said: “When you see those who engage in mockery regarding Our verses, turn away from them until they engage in another discourse” [6:68].[27]

فَمَنْ اسْتَجَازَ الْقُعُودَ فِي مَكَان هَذِهِ صِفَتُهُ فَهُوَ مِثْلُ الْمُسْتَهْزِئِ الْكَافِرِ بِشَهَادَةِ اللَّهِ تَعَالَى، فَمَنْ أَقَامَ حَيْثُ حَرَّمَ اللَّهُ عَزَّ وَجَلَّ عَلَيْهِ الْقُعُودَ فَقُعُودُهُ وَإِقَامَتُهُ مَعْصِيَةٌ، وَقُعُودُ الصَّلَاةِ

Whoever deems it permissible to sit in a place possessing these attributes is akin to the scornful disbeliever who derides the testimony of Allah, Exalted and Majestic. Whoever remains in a location where Allah has forbidden

[26] **Hadith references (L6628):** Sunan Abi Dawud 2033; Sunan Ibn Majah 1409.
[27] **Qur’an references (L6632):** Qur’an 4:140 (An-Nisa); Qur’an 6:68 (Al-An’am).

sitting, their sitting or staying there constitutes an act of disobedience, while sitting in prayer is an act of obedience. It is invalid for sins to compensate for acts of worship, or for forbidden matters to substitute obligatory duties. As for those incapable, Allah, Exalted and Majestic, has said: “Allah does not burden any soul beyond its capacity” (al-Baqarah 2:286).[28]

Issue: Reciting from a Mushaf during the prayer.

401 – Issue: It is not permissible for a praying person—whether an imam or otherwise—to recite from a muṣḥaf or anything else. If done intentionally, their prayer becomes invalid. Similarly, counting verses [during prayer] is prohibited, because referring to the scripture constitutes an action not explicitly permitted in prayer. This has been transmitted from several of the Salaf, including Saʿīd ibn al-Musayyib, al-Ḥasan al-Baṣrī, al-Shaʿbī, and Abū ʿAbd al-Raḥmān al-Sulamī. Abū Ḥanīfah and al-Shāfiʿī invalidated the prayer of one who leads people using the muṣḥaf. However, some others permitted this. In cases of disagreement, the recourse lies in the Quran and the Sunnah. The Messenger of Allah—peace and blessings of Allah be upon him—said: “Prayer is an occupation.” Thus, it is confirmed that prayer precludes every action not explicitly permitted by textual evidence. And success is from Allah, the Most High.

The Ruling on Greeting with Salām Upon the One Praying During the Prayer.

Issue 402: If someone is greeted while praying, he should respond with a gesture - using his hand or his head - not with speech. If he intentionally speaks, his prayer becomes invalid. If someone sneezes, he should say, “All praise is due to Allah, Lord of the Worlds.” It is not permissible for anyone to say to him, “Raḥimaka Allāh.” If someone does this, the prayer of the one who said it becomes invalid provided he acted intentionally while aware of the prohibition. We have previously mentioned the ḥadīth of Muʿāwiyah ibn

[28] **Qur’an references (L6634):** Qur’an 2:286 (Al-Baqarah).

طَاعَةٌ. وَمِنْ الْبَاطِلِ أَنْ تُجْزِئَ الْمَعَاصِي عَنْ الطَّاعَاتِ وَأَنْ تنُوبَ الْمَحَارِمُ عَنْ الْفَرَائِضِ. وَأَمَّا مَنْ عَجَزَ فَقَدْ قَالَ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦]

[مَسْأَلَةٌ الْقِرَاءَةُ فِي مُصْحَفٍ فِي الصَّلَاةِ]

٤٠١ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْقِرَاءَةُ فِي مُصْحَفٍ وَلَا فِي غَيْرِهِ لِمُصَلٍّ، إمَامًا كَانَ أَوْ غَيْرَهُ، فَإِنْ تعَمَّدَ ذَلِكَ بَطَلَتْ صَلَاتُهُ. وَكَذَلِكَ عَدُّ الْآيِ؛ لِأَنَّ تَأَمُّلَ الْكِتَابِ عَمَلٌ لَمْ يَأْتِ نَصٌّ بِإِبَاحَتِهِ فِي الصَّلَاةِ. وَقَدْ رُوِّينَا هَذَا عَنْ جَمَاعَةٍ مِنْ السَّلَفِ: مِنْهُمْ سَعِيدُ بْنُ الْمُسَيِّبِ، وَالْحَسَنُ الْبَصْرِيُّ وَالشَّعْبِيُّ، وَأَبُو عَبْدِ الرَّحْمَنِ السُّلَمِيُّ. وَقَدْ قَالَ بِإِبْطَالِ صَلَاةِ مَنْ أَمَّ بِالنَّاسِ فِي الْمُصْحَفِ أَبُو حَنِيفَةَ وَالشَّافِعِيُّ وَقَدْ أَبَاحَ ذَلِكَ قَوْمٌ مِنْهُمْ، وَالْمَرْجُوعُ عِنْدَ التَّنَازُعِ إلَيْهِ هُوَ الْقُرْآنُ وَالسُّنَّةُ. وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ فِي الصَّلَاةِ لَشُغْلًا» فَصَحَّ أَنَّهَا شَاغِلَةٌ عَنْ كُلِّ عَمَلٍ لَمْ يَأْتِ فِيهِ نَصٌّ بِإِبَاحَتِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ السَّلَام عَلَى المصلي أثناء الصَّلَاة]

٤٠٢ - مَسْأَلَةٌ: وَمَنْ سُلِّمَ عَلَيْهِ وَهُوَ يُصَلِّي فَلْيَرُدَّ إشَارَةً لَا كَلَامًا، بِيَدِهِ أَوْ بِرَأْسِهِ، فَإِنْ تَكَلَّمَ عَمْدًا بَطَلَتْ صَلَاتُهُ. وَمَنْ عَطَسَ فَلْيَقُلْ " الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ ". وَلَا يَجُوزُ أَنْ يَقُولَ لَهُ أَحَدٌ " رَحِمَك اللَّهُ "، فَإِنْ فَعَلَ بَطَلَتْ صَلَاةُ الْقَائِلِ لَهُ ذَلِكَ إنْ تَعَمَّدَ عَالِمًا بِالنَّهْيِ. وَقَدْ ذَكَرْنَا حَدِيثَ مُعَاوِيَةَ بْنِ الْحَكَمِ فِي ذَلِكَ وَحَدِيثَ الرَّدِّ أَيْضًا فَأَغْنَى عَنْ إعَادَتِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

al-Ḥakam regarding this matter and the ḥadīth concerning the response (to greetings), which suffices without repetition. And success is from Allah, the Most High.

L6639–6640

The issue of performing the prayer while the worshiper's food is present or while they are holding back urine or stool.

L6641–6643

403. Issue: Prayer is not valid in the presence of the worshiper's food, whether it be lunch or supper, nor while he is resisting urine or stool. It is obligatory upon him to begin with eating, urinating, or defecating.

Abdullāh ibn Yūsuf narrated to us: Aḥmad ibn Fatḥ narrated to us: ʿAbd al-Wahhāb ibn ʿĪsā narrated to us: Aḥmad ibn Muḥammad narrated to us: Aḥmad ibn ʿAlī narrated to us: Muslim ibn al-Ḥajjāj narrated to us: Muḥammad ʿAbbād narrated to us: Ḥātim ibn Ismāʿīl narrated to us from Yaʿqūb ibn Mujāhid (known as Abū Ḥazrah) from Ibn Abī ʿAtīq, who said:

Al-Qāsim ibn Muḥammad and I were conversing at ʿĀ'ishah's residence when a meal was served. Al-Qāsim ibn Muḥammad stood up. ʿĀ'ishah said: "Where are you going?" He replied: "To pray." She said: "Sit down, O negligent one! I heard Allah's Messenger—peace and blessings be upon him—say: 'No prayer is valid in the presence of food, nor while one is resisting the two impurities.'"

Ḥammām narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrābī narrated to us: al-Dubayrī narrated to us: ʿAbd al-Razzāq narrated to us from Maʿmar from Hishām ibn ʿUrwah from his father, who said:

We were with ʿAbdullāh ibn Arqam when the prayer was called. He went to relieve himself and said: "I heard Allah's Messenger—peace and blessings be upon him—say: 'If the prayer is called while one of you needs to defecate, let him begin with defecation.'"

ʿAbdullāh ibn Rabīʿ narrated it to us: ʿAbdullāh ibn Muḥammad ibn ʿUthmān narrated to us: Aḥmad ibn Khālid narrated to us: ʿAlī ibn ʿAbd al-ʿAzīz narrated to us: Ḥajjāj ibn al-Minhāl narrated to us: Ḥammād ibn Salamah narrated to us from Hishām ibn ʿUrwah from his father. He said: Abdullah

[مَسْأَلَةُ الصَّلَاةُ بِحَضْرَةِ طَعَامِ الْمُصَلِّي أَوْ وَهُوَ يُدَافِعُ الْبَوْلَ أَوْ الْغَائِطَ]

٤٠٣ - مَسْأَلَةٌ: وَلَا تُجْزِئُ الصَّلَاةُ بِحَضْرَةِ طَعَامِ الْمُصَلِّي غَدَاءً كَانَ أَوْ عَشَاءً، وَلَا وَهُوَ يُدَافِعُ الْبَوْلَ، أَوْ الْغَائِطَ. وَفُرِضَ عَلَيْهِ أَنْ يَبْدَأَ بِالْأَكْلِ، وَالْبَوْلِ، وَالْغَائِطِ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثِنَا أَحْمَدُ بْنُ فَتْحٍ ثِنَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثِنَا أَحْمَدُ بْنُ مُحَمَّدٍ ثِنَا أَحْمَدُ بْنُ عَلِيٍّ ثِنَا مُسْلِمُ بْنُ الْحَجَّاجِ ثِنَا مُحَمَّدٌ عَبَّادٌ ثِنَا حَاتِمُ بْنُ إِسْمَاعِيلَ عَنْ يَعْقُوبَ بْنِ مُجَاهِدٍ هُوَ أَبُو حَزْرَةَ عَنْ ابْنِ أَبِي عَتِيقٍ قَالَ: تَحَدَّثْت أَنَا وَالْقَاسِمُ هُوَ ابْنُ مُحَمَّدٍ - عِنْدَ عَائِشَةَ فَأُتِيَ بِالْمَائِدَةِ فَقَامَ الْقَاسِمُ بْنُ مُحَمَّدٍ: قَالَتْ عَائِشَةُ: أَيْنَ قَالَ: أُصَلِّي، قَالَتْ: اجْلِسْ غُدَرَ، سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا صَلَاةَ بِحَضْرَةِ طَعَامٍ وَلَا وَهُوَ يُدَافِعُهُ الْأَخْبَثَانِ» . حَدَّثَنَا حُمَامٌ ثِنَا ابْنُ مُفَرِّجٍ ثِنَا ابْنُ الْأَعْرَابِيِّ ثِنَا الدُّبَيْرِيُّ ثِنَا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: كُنَّا مَعَ عَبْدِ اللَّهِ بْنِ أَرْقَمَ فَأَقَامَ الصَّلَاةَ ثُمَّ ذَهَبَ لِلْغَائِطِ وَقَالَ سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إذَا أُقِيمَتْ الصَّلَاةُ وَبِأَحَدِكُمْ الْغَائِطُ فَلْيَبْدَأْ بِالْغَائِطِ» . وَحَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثِنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ ثِنَا أَحْمَدُ بْنُ خَالِدٍ ثِنَا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثِنَا حَجَّاجُ بْنُ الْمِنْهَالِ ثِنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: كَانَ عَبْدُ اللَّهِ بْنُ أَرْقَمَ فِي حَجٍّ أَوْ عُمْرَةٍ فَأَقَامَ الصَّلَاةَ ثُمَّ قَالَ لِأَصْحَابِهِ: صَلُّوا، فَإِنِّي سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ

ibn Arqam was on Hajj or Umrah when he pronounced the iqamah. He then said to his companions: “Pray! For I heard Allah’s Messenger (peace be upon him) say: ’When the prayer iqamah is called while one of you has a need, let him fulfill his need first, then pray.”’ He then fulfilled his need, performed ablution, and prayed. This view was held by the early scholars. It has been narrated to us from Hammad ibn Salamah through Thabit al-Bunani, and Humaid through Anas: The meal was served when the prayer time arrived. I rose to pray Maghrib, but Abu Talha grasped my garment and said: “Sit and eat first, then pray it.” From Umar ibn al-Khattab: “Do not suppress the two impurities during prayer, for it is equally burdensome whether one prays while doubted or with traces on his garment’s edge.” A similar narration is reported from Ibn Abbas like this. Ali stated: “If one fears missing the prayer time, the same ruling applies, for one is fundamentally commanded to attend first to urination, defecation, or eating. Thus, it is established that the prayer time remains valid for him since he is instructed to delay prayer until completing his need, as we explained. And with Allah alone is success.”[29]

A legal question regarding one who has eaten garlic, onion, or kurrat.

404 - Issue: Whoever eats garlic, onions, or leeks is obligated not to pray in the mosque until the odor dissipates. It is incumbent upon him to be expelled from the mosque if he enters before the odor ceases. If he prays in the mosque in such a state, his prayer is invalid. None may be barred from the mosque except those we have mentioned: not those with offensive breath, nor lepers, nor persons with ailments. Abdullah ibn Yusuf narrated to us; Ahmad ibn Fath narrated to us; Abdul-Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Ibn al-Hajjaj narrated to us; Muhammad ibn al-Muthanna narrated to us; Yahya ibn Sa’id al-Qattan narrated from Ubaydullah ibn Umar, who informed me from Nafi’ from Ibn Umar, who said: The Messenger of Allah (peace and blessings be upon him) said, “Whoever eats from this plant—meaning garlic—must not approach the mosques.” Through the same chain to Yahya ibn Sa’id:

[29] **Hadith references (L6641):** Riyad as-Salihin 1753.

وَسَلَّمَ - يَقُولُ: «إِذَا أُقِيمَتْ الصَّلَاةُ وَبِأَحَدِكُمْ حَاجَةٌ فَلْيَقْضِ حَاجَتَهُ ثُمَّ يُصَلِّي فَقَضَى حَاجَتَهُ ثُمَّ تَوَضَّأَ وَصَلَّى» . وَبِهِ قَالَ السَّلَفُ -: رُوِّينَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ، وَحُمَيْدٍ عَنْ أَنَسٍ: وُضِعَتْ الْمَائِدَةُ وَحَضَرَتْ الصَّلَاةُ فَقُمْت لِأُصَلِّيَ الْمَغْرِبَ، فَأَخَذَ أَبُو طَلْحَةَ بِثَوْبِي وَقَالَ: اجْلِسْ وَكُلْ ثُمَّ صَلِّهِ وَعَنْ عُمَرَ بْنِ الْخَطَّابِ لَا تُدَافِعُوا الْأَخْبَثَيْنِ فِي الصَّلَاةِ فَإِنَّهُ سَوَاءٌ عَلَيْهِ يُصَلِّي مَنْ شُكِيَ بِهِ، أَوْ كَانَ فِي طَرَفِ ثَوْبِهِ - وَعَنْ ابْنِ عَبَّاسٍ مِثْلُ هَذَا. قَالَ عَلِيٌّ: فَإِنْ خَشِيَ فَوَاتَ الْوَقْتِ فَكَذَلِكَ، لِأَنَّهُ مَأْمُورٌ عَلَى الْجُمْلَةِ بِأَنْ يَبْتَدِئَ بِالْبَوْلِ أَوْ الْغَائِطِ وَالْأَكْلِ، فَصَحَّ أَنَّ الْوَقْتَ مُتَمَادًى لَهُ إذْ أُمِرَ بِتَأْخِيرِهَا حَتَّى يُتِمَّ شُغْلَهُ كَمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ مِنْ أَكَلَ ثُومًا أَوْ بَصَلًا أَوْ كُرَّاثًا]

٤٠٤ - مَسْأَلَةٌ: وَمَنْ أَكَلَ ثُومًا أَوْ بَصَلًا أَوْ كُرَّاثًا فَفُرِضَ عَلَيْهِ أَنْ لَا يُصَلِّيَ فِي الْمَسْجِدِ حَتَّى تَذْهَبَ الرَّائِحَةُ، وَفُرِضَ إخْرَاجُهُ مِنْ الْمَسْجِدِ إنْ دَخَلَهُ قَبْلَ انْقِطَاعِ الرَّائِحَةِ، فَإِنْ صَلَّى فِي الْمَسْجِدِ كَذَلِكَ فَلَا صَلَاةَ لَهُ وَلَا يُمْنَعُ أَحَدٌ مِنْ الْمَسْجِدِ غَيْرُ مَنْ ذَكَرْنَا، وَلَا أَبْخَرُ، وَلَا مَجْذُومٌ، وَلَا ذُو عَاهَةٍ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا ابْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ أَخْبَرَنِي نَافِعٌ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَكَلَ مِنْ هَذِهِ الشَّجَرَةِ - يَعْنِي الثُّومَ - فَلَا يَقْرَبَنَّ الْمَسَاجِدَ» . وَبِهِ إلَى يَحْيَى بْنِ سَعِيدٍ: ثنا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ - ثنا قَتَادَةُ عَنْ

Hisham al-Dastuwa'i narrated to us; Qatadah narrated from Salim ibn Abi al-Ja'd from Ma'dan ibn Abi Talhah: "Umar ibn al-Khattab addressed the people during Friday prayer—he delivered a lengthy sermon, in which he said: 'O people! You consume two plants I consider them foul: this onion and garlic. I witnessed the Messenger of Allah (peace and blessings be upon him), whenever he detected their smell from a man in the mosque, command that he be expelled to al-Baqiʿ.'"

L6646–6647 And with him to Muslim: Muhammad ibn Hatim narrated to us, Yahya ibn Sa'id narrated to us from Ibn Jurayj, who informed me from 'Ata' from Jabir ibn 'Abdullah from the Prophet—peace and blessings of Allah be upon him—who said: "Whoever eats onions, garlic, or leeks, let him not approach our mosque, for the angels are harmed by what harms the children of Adam." Ali said: If he did not say "this mosque of ours" or use wording specifying its restriction to his mosque in Medina, then every mosque is "our mosque," because he—peace and blessings of Allah be upon him—refers to Muslims by saying "our mosque," especially given what is clarified in another hadith. Ali said: It was narrated to us via the narration of Mus'ab ibn Sa'id: A man among the companions of Muhammad—peace and blessings of Allah be upon him—would go out to the wilderness when he wanted to eat garlic, as if he meant himself. It was narrated to us from Ali ibn Abi Talib and Shurayk ibn Hanbal among the Followers that raw garlic is forbidden. Ali ibn Ahmad said: It is not forbidden, for the Prophet—peace and blessings of Allah be upon him—permitted it in the mentioned reports. It was narrated to us from 'Ata' the prohibition against garlic-eaters entering all mosques. Ali said: The Prophet—peace and blessings of Allah be upon him—did not prevent anyone from attending mosques except those we mentioned. "Nor does he speak from [his own] desire" (53:3). "And your Lord is not forgetful" (19:64).[3031]

L6648 **[An Issue Concerning the Deliberate Cracking of One's**

سَالِمِ بْنِ أَبِي الْجَعْدِ عَنْ مَعْدَانَ بْنِ أَبِي طَلْحَةَ «أَنَّ عُمَرَ بْنَ الْخَطَّابِ خَطَبَ النَّاسَ يَوْمَ الْجُمُعَةِ - فَذَكَرَ كَلَامًا كَثِيرًا -: وَفِيهِ " إِنَّكُمْ أَيُّهَا النَّاسُ تَأْكُلُونَ شَجَرَتَيْنِ لَا أَرَاهُمَا إِلَّا خَبِيثَتَيْنِ، هَذَا الْبَصَلُ، وَالثُّومُ، وَلَقَدْ رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا وَجَدَ رِيحَهُمَا مِنْ الرَّجُلِ فِي الْمَسْجِدِ أَمَرَ بِهِ فَأُخْرِجَ إِلَى الْبَقِيعِ» .

وَبِهِ إِلَى مُسْلِمٍ: ثنا مُحَمَّدُ بْنُ حَاتِمٍ ثنا يَحْيَى بْنُ سَعِيدٍ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَطَاءٌ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَكَلَ الْبَصَلَ وَالثُّومَ، وَالْكُرَّاثَ، فَلَا يَقْرَبَنَّ مَسْجِدَنَا، فَإِنَّ الْمَلَائِكَةَ تَتَأَذَّى مِمَّا يَتَأَذَّى مِنْهُ بَنُو آدَمَ» . قَالَ عَلِيٌّ: إذَا لَمْ يَقُلْ مَسْجِدَنَا هَذَا، أَوْ لَفْظًا يُبَيِّنُ تَخْصِيصَهُ بِمَسْجِدِهِ بِالْمَدِينَةِ -: فَكُلُّ مَسْجِدٍ فَهُوَ مَسْجِدُنَا، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - يُخْبِرُ عَنْ الْمُسْلِمِينَ بِقَوْلِهِ: «مَسْجِدَنَا» مَعَ مَا قَدْ بَيَّنَّا ذَلِكَ فِي الْحَدِيثِ الْآخَرِ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ مُصْعَبِ بْنِ سَعِيدٍ: كَانَ رَجُلٌ مِنْ أَصْحَابِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا أَرَادَ أَنْ يَأْكُلَ الثُّومَ خَرَجَ إلَى الْبَرِّيَّةِ كَأَنَّهُ يَعْنِي إيَّاهُ وَرُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ وَشُرَيْكِ بْنِ حَنْبَلٍ مِنْ التَّابِعِينَ تَحْرِيمَ الثُّومِ النِّيءِ. قَالَ عَلِيُّ بْنُ أَحْمَدَ: لَيْسَ حَرَامًا لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبَاحَهُ فِي الْأَخْبَارِ الْمَذْكُورَةِ. وَرُوِّينَا عَنْ عَطَاءٍ مَنْعَ آكِلِ الثُّومِ مِنْ جَمِيعِ الْمَسَاجِدِ. قَالَ عَلِيٌّ: لَمْ يَمْنَعْ - عَلَيْهِ السَّلَامُ - مِنْ حُضُورِ الْمَسَاجِدِ أَحَدًا غَيْرَ مَنْ ذَكَرْنَا {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

[مَسْأَلَةٌ تَعَمَّدَ فَرْقَعَةَ أَصَابِعِهِ أَوْ تَشْبِيكَهَا فِي الصَّلَاةِ]

[30] **Hadith references (L6647):** Sahih Muslim 564c.
[31] **Qur'an references (L6647):** Qur'an 53:3 (An-Najm); Qur'an 19:64 (Maryam).

Fingers or Interlocking Them During Prayer]

L6649 405 – Issue: Whoever intentionally cracks his fingers or interlaces them during prayer invalidates his prayer, due to the saying of the Prophet (peace and blessings of Allah be upon him), "Verily, prayer demands full attention."

٤٠٥ - مَسْأَلَةٌ: وَمَنْ تَعَمَّدَ فَرْقَعَةَ أَصَابِعِهِ أَوْ تَشْبِيكَهَا فِي الصَّلَاةِ بَطَلَتْ صَلَاتُهُ، لِقَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ فِي الصَّلَاةِ لَشُغْلًا»

[مَسْأَلَةٌ صَلَّى مُعْتَمِدًا عَلَى عَصًا أَوْ عَلَى جِدَارٍ أَوْ عَلَى إنْسَانٍ أَوْ مُسْتَنِدًا]

L6650 **An issue: one prays while leaning on a staff, a wall, or a person, or resting against.**

L6651–6653 406 - Issue: If someone prays while leaning on a stick, wall, or person, or reclining, his prayer is invalid due to the Prophet's command (peace be upon him) to stand during prayer. If unable, then sitting; if unable, then lying down. Leaning and reclining constitute actions not ordained. He (peace be upon him) said: "Verily, prayer requires full attention." Ali said: Unless a valid narration emerges permitting this, we would act upon it, but we know of no authentic narration. The narration regarding this is only through Abd al-Salam ibn Abd al-Rahman al-Wābiṣī from his father, and his status is unknown, nor... The ruling concerning his father's condition. Then, even if the narration were sound, there would be no permissibility to lean on it during prayer or use it for support, for its wording is solely from Umm Qays bint Miḥṣan: "When the Messenger of Allah—peace and blessings be upon him—grew elderly and became frail, he installed a pillar in his prayer area to lean upon." ʿAlī said: "It does not state that he—peace and blessings be upon him—leaned upon it during the prayer itself. The sound ḥadīths affirm that he—peace and blessings be upon him—would pray seated, and when the remaining portion of the recitation was equal in duration to what he would stand, he would rise, recite, and then bow."[32]

٤٠٦ - مَسْأَلَةٌ: وَمَنْ صَلَّى مُعْتَمِدًا عَلَى عَصًا أَوْ عَلَى جِدَارٍ أَوْ عَلَى إنْسَانٍ أَوْ مُسْتَنِدًا فَصَلَاتُهُ بَاطِلَةٌ لِأَمْرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقِيَامِ فِي الصَّلَاةِ، فَإِنْ لَمْ يَقْدِرْ فَقَاعِدًا، فَإِنْ لَمْ يَقْدِرْ فَمُضْطَجِعًا وَكَانَ الِاتِّكَاءُ وَالِاسْتِنَادُ عَمَلًا لَمْ يَأْتِ بِهِ أَمْرٌ. وَقَالَ - عَلَيْهِ السَّلَامُ -: «إنَّ فِي الصَّلَاةِ لَشُغْلًا» . قَالَ عَلِيٌّ: إلَّا أَنْ يَصِحَّ أَثَرٌ فِي إبَاحَةِ ذَلِكَ فَنَقُولُ بِهِ، وَلَا نَعْلَمُهُ يَصِحُّ؛ لِأَنَّ الرِّوَايَةَ فِيهِ إنَّمَا هِيَ مِنْ طَرِيقِ عَبْدِ السَّلَامِ بْنِ عَبْدِ الرَّحْمَنِ الْوَابِصِيِّ عَنْ أَبِيهِ، وَلَا يُعْلَمُ حَالُهُ وَلَا حَالُ أَبِيهِ ثُمَّ لَوْ صَحَّ لَكَانَ لَا إبَاحَةَ فِيهِ لِلِاعْتِمَادِ فِي الصَّلَاةِ، وَلَا لِلِاسْتِنَادِ؛ لِأَنَّ لَفْظَهُ إنَّمَا هُوَ عَنْ أُمِّ قَيْسِ بِنْتِ مِحْصَنٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا أَسَنَّ وَحَمَلَ اللَّحْمَ اتَّخَذَ عَمُودًا فِي مُصَلَّاهُ يَعْتَمِدُ عَلَيْهِ» . قَالَ عَلِيٌّ: وَلَيْسَ فِيهِ: أَنَّهُ كَانَ - عَلَيْهِ السَّلَامُ - يَعْتَمِدُ عَلَيْهِ فِي نَفْسِ الصَّلَاةِ، وَالْأَحَادِيثُ الصِّحَاحُ: «أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يُصَلِّي قَاعِدًا فَإِذَا بَقِيَ عَلَيْهِ مِنْ الْقِرَاءَةِ مِقْدَارُ مَا قَامَ فَقَرَأَ ثُمَّ رَكَعَ»

[مَسْأَلَةٌ تَخَتَّمَ فِي غَيْرِ الْخِنْصَرِ وَتَعَمَّدَ الصَّلَاةَ كَذَلِكَ]

L6654 **Issue concerning one who wore a ring on a finger other than the little finger and deliberately prayed while wearing it thus.**

L6655–6657 407 - Issue: If someone wears a ring on the index finger, middle finger,

[32] **Hadith references (L6651):** Sunan Abi Dawud 948.

thumb, or ring finger—except the little finger alone—and intentionally prays in that state, his prayer is invalid. Abdullah ibn Rabīʿ narrated to us, Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us, from Muḥammad ibn Bishār and Hannād ibn al-Sarrī. Muḥammad ibn Bishār said: Muḥammad ibn Jaʿfar narrated to us, Shuʿbah narrated to us, on the authority of ʿĀṣim ibn Kulayb, on the authority of Abū Burdah—the son of Abū Mūsā al-Ashʿarī—who said: I heard ʿAlī ibn Abī Ṭālib—may Allah be pleased with him—say, "The Messenger of Allah—peace be upon him—forbade me from wearing a ring on the index and middle fingers." Hannād ibn al-Sarrī said: on the authority of Abū al-Aḥwaṣ, on the authority of ʿĀṣim ibn Kulayb, on the authority of Abū Burdah—the son of Abū Mūsā al-Ashʿarī—on the authority of ʿAlī ibn Abī Ṭālib, who said: "The Messenger of Allah—peace be upon him—forbade me from wearing a ring." "In this finger of mine, the middle one, or the one adjacent to it." ʿAlī said: This Ḥadīth of Shuʿbah overrules every report doubted by those who narrated it from ʿĀṣim. There is no distinction between someone who prays while wearing a ring on a finger where wearing a ring is prohibited and someone who prays wearing silk or in a prohibited state, for all of them have performed a prohibited action during prayer; thus, they have not prayed in the manner they were commanded to pray.

٤٠٧ - مَسْأَلَةٌ: وَمَنْ تَخَتَّمَ فِي السَّبَّابَةِ أَوْ الْوُسْطَى، أَوْ الْإِبْهَامِ، أَوْ الْبِنْصِرِ - إلَّا الْخِنْصَرَ وَحْدَهُ - وَتَعَمَّدَ الصَّلَاةَ كَذَلِكَ فَلَا صَلَاةَ لَهُ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبَ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ، وَهَنَّادُ بْنُ السَّرِيِّ، قَالَ مُحَمَّدُ بْنُ بَشَّارٍ: ثنا مُحَمَّدُ بْنُ جَعْفَرٍ ثنا شُعْبَةُ عَنْ عَاصِمِ بْنِ كُلَيْبٍ عَنْ أَبِي بُرْدَةَ هُوَ ابْنُ أَبِي مُوسَى الْأَشْعَرِيِّ قَالَ: سَمِعْتُ عَلِيَّ بْنَ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - يَقُولُ «نَهَانِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْخَاتَمِ فِي السَّبَّابَةِ وَالْوُسْطَى» . وَقَالَ هَنَّادُ بْنُ السَّرِيِّ: عَنْ أَبِي الْأَحْوَصِ عَنْ عَاصِمِ بْنِ كُلَيْبٍ عَنْ أَبِي بُرْدَةَ هُوَ ابْنُ أَبِي مُوسَى الْأَشْعَرِيِّ - عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: «نَهَانِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ أَتَخَتَّمَ فِي أُصْبُعِي هَذِهِ، وَفِي الْوُسْطَى، أَوْ الَّتِي تَلِيهَا» . قَالَ عَلِيٌّ: حَدِيثُ شُعْبَةَ هَذَا يَقْضِي عَلَى كُلِّ خَبَرٍ شَكَّ فِيهِ مَنْ رَوَاهُ عَنْ عَاصِمٍ، وَلَا فَرْقَ بَيْنَ مَنْ صَلَّى مُتَخَتِّمًا فِي إصْبَعٍ نُهِيَ عَنْ التَّخَتُّمِ فِيهَا وَبَيْنَ مَنْ صَلَّى لَابِسَ حَرِيرٍ أَوْ عَلَى حَالٍ مُحَرَّمَةٍ، لِأَنَّ كُلَّهُمْ قَدْ فَعَلَ فِي الصَّلَاةِ فِعْلًا نُهِيَ عَنْهُ؛ فَلَمْ يُصَلِّ كَمَا أُمِرَ

A jurisprudential issue: The worshipper deliberately diverts his intention during the prayer to another prayer.

408 - Issue: If one intentionally diverts their intention during the prayer to another prayer, or shifts from an obligatory prayer to a voluntary one, or from a voluntary prayer to an obligatory one, their prayer is invalidated because they did not perform it as commanded. If this is done forgetfully, their prayer is not invalidated. However, whatever was performed contrary to the command is disregarded, whether long or short. They must resume building upon what they prayed as commanded, complete their prayer, then perform the prostration for forgetfulness—provided their ritual ablution (wudu) remains valid. If their ritual ablution is invalidated, they must restart the prayer

[مَسْأَلَةُ صَرَفَ المصلي نِيَّتَهُ فِي الصَّلَاةِ مُتَعَمِّدًا إلَى صَلَاةٍ أُخْرَى]

٤٠٨ - مَسْأَلَةٌ: فَلَوْ صَرَفَ نِيَّتَهُ فِي الصَّلَاةِ مُتَعَمِّدًا إلَى صَلَاةٍ أُخْرَى، أَوْ إلَى تَطَوُّعٍ عَنْ فَرْضٍ، أَوْ إلَى فَرْضٍ عَنْ تَطَوُّعٍ -: بَطَلَتْ صَلَاتُهُ؛ لِأَنَّهُ لَمْ يَأْتِ بِهَا كَمَا أُمِرَ؛ فَلَوْ فَعَلَ ذَلِكَ سَاهِيًا لَمْ تَبْطُلْ صَلَاتُهُ، وَلَكِنْ يُلْغَى مَا عَمِلَ بِخِلَافِ مَا أُمِرَ بِهِ، طَالَ أَمْ قَصُرَ، وَيَبْنِي عَلَى مَا صَلَّى كَمَا أُمِرَ، وَيُتِمُّ صَلَاتَهُ ثُمَّ يَسْجُدُ لِلسَّهْوِ، ذَلِكَ مَا لَمْ يَنْتَقِضْ

from the beginning, because we have previously explained [the rulings] regarding speech and action during prayer, with no distinction.

L6660 **Case: He went to a soothsayer and asked him while believing his claims, even though he knew this was impermissible for him.**

L6661 409 – Issue: Whoever consults a soothsayer – meaning the diviner – and questions him while believing in him, knowing this is impermissible, no prayer from him will be accepted for forty nights unless he repents to Allah the Almighty. Abdullah ibn Yūsuf narrated to us; Aḥmad ibn Fatḥ narrated to us; ʿAbd al-Wahhāb ibn ʿĪsā narrated to us; Aḥmad ibn Muḥammad narrated to us; Aḥmad ibn ʿAlī narrated to us; Muslim ibn al-Ḥajjāj narrated to us; Muḥammad ibn al-Muthannā al-ʿAnazī narrated to me: Yaḥyā ibn Saʿīd al-Qaṭṭān narrated to me from ʿUbaydullāh ibn ʿUmar from Nāfiʿ, the freed slave of Ibn ʿUmar, from Ṣafiyyah – she being the daughter of Abū ʿUbayd – from one of the Prophet's wives (peace be upon him), who said: "Whoever consults a soothsayer and questions him about anything, his prayer will not be accepted for forty nights." ʿAlī said: All the Prophet's wives (peace be upon him) are at the peak of truthfulness, integrity, purity, and reliability. It is impossible for them to conceal anything or for anyone not among them to intermingle with them – unlike those who claim companionship with the Prophet while being unrecognized. Whoever approaches a soothsayer and questions him without believing in him, but rather to expose his falsehood, is not deemed to have questioned him or approached him. As for whoever repents, Allah has exempted through repentance the erasure of all sins provided the repentance is sincere and performed correctly – and success comes from Allah the Exalted.[33]

L6662 Whoever claims that this is for severity has attributed deliberate lying to the Messenger of Allah—peace be upon him—and this is clear to all.

[33] **Hadith references (L6661):** Sahih Muslim 2230.

وُضُوءُهُ، فَإِنْ انْتَقَضَ وُضُوءُهُ ابْتَدَأَ الصَّلَاةَ مِنْ أَوَّلِهَا، لَمَّا قَدْ ذَكَرْنَا فِي الْكَلَامِ وَالْعَمَلِ فِي الصَّلَاةِ وَلَا فَرْقَ

[مَسْأَلَةٌ أَتَى عَرَّافًا فَسَأَلَهُ مُصَدِّقًا لَهُ وَهُوَ يَدْرِي أَنَّ هَذَا لَا يَحِلُّ لَهُ]

٤٠٩ - مَسْأَلَةٌ: وَمَنْ أَتَى عَرَّافًا - وَهُوَ الْكَاهِنُ - فَسَأَلَهُ مُصَدِّقًا لَهُ وَهُوَ يَدْرِي أَنَّ هَذَا لَا يَحِلُّ لَهُ -: لَمْ تُقْبَلْ لَهُ صَلَاةٌ أَرْبَعِينَ لَيْلَةً إِلَّا أَنْ يَتُوبَ إِلَى اللَّهِ عَزَّ وَجَلَّ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثِنَا أَحْمَدُ بْنُ فَتْحٍ ثِنَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثِنَا أَحْمَدُ بْنُ مُحَمَّدٍ ثِنَا أَحْمَدُ بْنُ عَلِيٍّ ثِنَا مُسْلِمُ بْنُ الْحَجَّاجِ ثِنَا مُحَمَّدُ بْنُ الْمُثَنَّى الْعَنَزِيُّ حَدَّثَنِي يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ عَنْ صَفِيَّةَ هِيَ بِنْتُ أَبِي عُبَيْدٍ - عَنْ بَعْضِ أَزْوَاجِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ أَتَى عَرَّافًا فَسَأَلَهُ عَنْ شَيْءٍ لَمْ تُقْبَلْ لَهُ صَلَاةٌ أَرْبَعِينَ لَيْلَةً» . قَالَ عَلِيٌّ: أَزْوَاجُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلُّهُنَّ فِي غَايَةِ الصِّدْقِ وَالْعَدَالَةِ وَالطَّهَارَةِ وَالثِّقَةِ؛ لَا يُمْكِنُ أَنْ يُخْفِينَ، وَلَا أَنْ يَخْتَلِطَ بِهِنَّ مَنْ لَيْسَ مِنْهُنَّ؛ بِخِلَافِ مُدَّعِي الصُّحْبَةِ وَهُوَ لَا يُعْرَفُ وَمَنْ أَتَى الْعَرَّافَ فَسَأَلَهُ غَيْرَ مُصَدِّقٍ لَهُ لَكِنْ لِيُكَذِّبَهُ فَلَيْسَ سَائِلًا لَهُ وَلَا آتِيًا إِلَيْهِ، وَمَنْ تَابَ فَقَدْ اسْتَثْنَى اللَّهُ بِالتَّوْبَةِ سُقُوطَ جَمِيعِ الذُّنُوبِ إِذَا صَحَّتْ التَّوْبَةُ وَكَانَتْ عَلَى وَجْهِهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَمَنْ ادَّعَى أَنَّ هَذَا عَلَى التَّغْلِيظِ فَقَدْ نَسَبَ تَعَمُّدَ الْكَذِبِ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؛ وَفِي هَذَا مَا لَا يَخْفَى عَلَى أَحَدٍ

[مَسْأَلَةٌ ظَنَّ أَنَّ إمَامَهُ قَدْ سَلَّمَ فَقَامَ لِقَضَاءِ مَا لَمْ يُدْرِكْ]

L6663–6664 **A case in which one presumed that his Imam had performed the Taslīm (concluding salutation), so he stood to complete the portion of the prayer he had missed.**

L6665 410 - Issue: If someone assumes their imam has concluded the prayer or forgets being in congregational prayer behind an imam, then stands to complete missed portions, perform voluntary prayers, or attend to a need while distracted, they must return to sitting whenever they remember, recite the Tashahhud if unrecited, and only perform Taslim after their imam's Taslim while seated - this being obligatory. If prevented from sitting, they perform Taslim as possible and prostrate for forgetfulness. Should their ablution nullify before fulfilling these obligations, they must restart the prayer. If they intentionally perform any aforementioned action before remembering their congregational status, their prayer becomes invalid due to intentional acts neither commanded nor permitted - since forgetfulness is pardoned. Taslim is only legislated by textual proof and consensus at the final sitting containing Tashahhud. With Allah the Exalted lies success.

L6666 **A jurisprudential question: Praying behind someone whom one knows to be a disbeliever.**

L6667 411 - Issue: Prayer behind someone whom one knows to be a disbeliever is null and void. Similarly, prayer behind someone known to pray without purification or to act disruptively during prayer is also null and void. There is no disagreement among anyone regarding this, given the established textual evidence such as the ḥadīth of Abū Mūsā: "Let the one most proficient in recitation lead the people, and let one of you lead you in prayer." A disbeliever is not one of us, nor is a disbeliever counted among those who pray or affiliated with them. Likewise, the one who acts disruptively is neither truly praying nor in a state of prayer. Thus, whoever follows either of them in prayer has not prayed as commanded.

L6668 **A jurisprudential issue: A person prayed behind someone**

٤١٠ - مَسْأَلَةٌ: وَمَنْ ظَنَّ أَنَّ إمَامَهُ قَدْ سَلَّمَ أَوْ نَسِيَ أَنَّهُ فِي إمَامَةِ الْإِمَامِ فَقَامَ لِقَضَاءِ مَا لَمْ يُدْرِكْ أَوْ لِتَطَوُّعٍ أَوْ لِحَاجَةٍ سَاهِيًا: فَعَلَيْهِ أَنْ يَرْجِعَ مَتَى مَا ذَكَرَ وَيَجْلِسَ وَيَتَشَهَّدَ إنْ كَانَ لَمْ يَكُنْ تَشَهَّدَ وَلَا يُسَلِّمُ إلَّا بَعْدَ سَلَامِ إمَامِهِ وَجَالِسًا: وَلَا بُدَّ، فَإِنْ حِيلَ بَيْنَهُ وَبَيْنَ الْجُلُوسِ: سَلَّمَ كَمَا يَقْدِرُ وَيَسْجُدُ لِلسَّهْوِ، فَإِنْ انْتَقَضَ وُضُوءُهُ قَبْلَ أَنْ يَعْمَلَ مَا ذَكَرْنَا ابْتَدَأَ الصَّلَاةَ وَلَا بُدَّ فَلَوْ تَعَمَّدَ شَيْئًا مِمَّا ذَكَرْنَا قَبْلُ ذَاكِرًا أَنَّهُ فِي إمَامَةِ الْإِمَامِ بَطَلَتْ صَلَاتُهُ لِمَا ذَكَرْنَاهُ مِنْ بُطْلَانِ الصَّلَاةِ بِكُلِّ عَمَلٍ تَعَمَّدَ لَمْ يُؤْمَرْ بِهِ وَلَا أُبِيحَ لَهُ، وَبِأَنَّ النِّسْيَانَ مَعْفُوٌّ عَنْهُ وَالسَّلَامُ لَا يَكُونُ بِالنَّصِّ وَالْإِجْمَاعِ إلَّا فِي آخِرِ الْجُلُوسِ الَّذِي فِيهِ التَّشَهُّدُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ الصَّلَاةُ خَلْفَ مَنْ يَدْرِي الْمَرْءُ أَنَّهُ كَافِرٌ]

٤١١ - مَسْأَلَةٌ: وَالصَّلَاةُ خَلْفَ مَنْ يَدْرِي الْمَرْءُ أَنَّهُ كَافِرٌ بَاطِلٌ وَكَذَلِكَ خَلْفَ مَنْ يَدْرِي أَنَّهُ مُتَعَمِّدٌ لِلصَّلَاةِ بِلَا طَهَارَةٍ، أَوْ مُتَعَمِّدٌ لِلَّعِبِ فِي صَلَاتِهِ - وَهَذَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ مَعَ النَّصِّ الثَّابِتِ بِأَنْ يَؤُمَّ الْقَوْمَ أَقْرَؤُهُمْ «وَلْيَؤُمَّكُمْ أَحَدُكُمْ» فِي حَدِيثِ أَبِي مُوسَى، وَالْكَافِرُ لَيْسَ أَحَدَنَا وَلَيْسَ الْكَافِرُ مِنْ الْمُصَلِّينَ وَلَا مُضَافًا إلَيْهِمْ، وَلَيْسَ الْعَابِثُ مُصَلِّيًا وَلَا فِي صَلَاةٍ فَالْمُؤْتَمُّ بِوَاحِدٍ مِنْهُمَا لَمْ يُصَلِّ كَمَا أُمِرَ

[مَسْأَلَةٌ صَلَّى خَلْفَ مَنْ يَظُنُّ أَنَّهُ مُسْلِمٌ ثُمَّ عَلِمَ أَنَّهُ كَافِرٌ]

he presumed to be a Muslim, then learned that he was a disbeliever.

L6669–6671 Question 412: If one prays behind someone he presumes to be a Muslim, then later learns that he is a disbeliever, or that he was frivolous, or that he had not reached puberty, his prayer remains valid. This is because Allah, the Exalted, has not obligated people to discern what lies within hearts. The Prophet (peace be upon him) said, "I was not sent to scrutinize people's hearts. We are only charged with their outward conduct." Thus, when prayer time arrives, we are commanded to let one among us lead the prayer based on his apparent condition. Whoever does so has indeed... He prayed as he was commanded. Similarly, regarding the one who is frivolous in his intention—there is no way to ascertain that [state] from him. And success comes from Allah, the Exalted.

٤١٢ - مَسْأَلَةٌ: فَإِنْ صَلَّى خَلْفَ مَنْ يَظُنُّ أَنَّهُ مُسْلِمٌ ثُمَّ عَلِمَ أَنَّهُ كَافِرٌ، أَوْ أَنَّهُ عَابِثٌ، أَوْ أَنَّهُ لَمْ يَبْلُغْ؛ فَصَلَاتُهُ تَامَّةٌ؛ لِأَنَّهُ لَمْ يُكَلِّفْهُ اللَّهُ تَعَالَى مَعْرِفَةَ مَا فِي قُلُوبِ النَّاسِ وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ - «لَمْ أُبْعَثْ لِأَشُقَّ عَنْ قُلُوبِ النَّاسِ وَإِنَّمَا كُلِّفْنَا ظَاهِرَ أَمْرِهِمْ» فَأُمِرْنَا إذَا حَضَرَتْ الصَّلَاةُ أَنْ يَؤُمَّنَا بَعْضُنَا فِي ظَاهِرِ أَمْرِهِ فَمَنْ فَعَلَ ذَلِكَ فَقَدْ صَلَّى كَمَا أُمِرَ، وَكَذَلِكَ الْعَابِثُ فِي نِيَّتِهِ أَيْضًا لَا سَبِيلَ إلَى مَعْرِفَةِ ذَلِكَ مِنْهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ تَأَوَّلَ فِي بَعْضِ مَا يُوجِبُ الْوُضُوءَ فَلَمْ يَرَ الْوُضُوءَ مِنْهُ]

A case in which a jurist exercised juristic interpretation regarding certain matters that necessitate ablution but did not deem ablution obligatory on the basis of that interpretation.

L6673 413 - Issue: As for one who interprets certain matters that necessitate ablution as not requiring it and thus omits ablution for them, it is permissible to follow him as an imam in congregational prayer. Similarly, if someone interprets some obligatory acts of his prayer as voluntary, he is excused due to his ignorance. The Prophet, peace be upon him, validated the prayer of Muʿāwiyah ibn al-Ḥakam, even though he had intentionally spoken during his prayer while ignorant [of the prohibition].

٤١٣ - مَسْأَلَةٌ: وَأَمَّا مَنْ تَأَوَّلَ فِي بَعْضِ مَا يُوجِبُ الْوُضُوءَ فَلَمْ يَرَ الْوُضُوءَ مِنْهُ -: فَالِائْتِمَامُ بِهِ جَائِزٌ، وَكَذَلِكَ مَنْ اعْتَقَدَ مُتَأَوِّلًا أَنَّ بَعْضَ فُرُوضِ صَلَاتِهِ تَطَوُّعٌ؛ لِأَنَّهُ مَعْذُورٌ بِجَهْلِهِ، وَقَدْ أَجَازَ - عَلَيْهِ السَّلَامُ - صَلَاةَ مُعَاوِيَةَ بْنِ الْحَكَمِ، وَهُوَ قَدْ تَعَمَّدَ الْكَلَامَ فِي صَلَاتِهِ جَاهِلًا

[مَسْأَلَةٌ مِنْ عَلِمَ أَنَّ إمَامَهُ قَدْ زَادَ رَكْعَةً أَوْ سَجْدَةً]

A case of one who knew that his Imam had added a rakʿah or a sajdah.

L6675 414 – Issue: If one knows that their imam has added a rakʿah or prostration, it is not permissible for them to follow him in that. Rather, they must remain in the permissible state and say "Subḥānallāh" with the Imam. There is no

disagreement on this, and Allah the Exalted has said: {No soul is burdened except with its own} [An-Nisā': 84].[34]

The issue of a man praying behind the row.

L6676

L6677 415 – Issue: If any man prays behind the row, his prayer is invalid. This ruling does not affect a woman's prayer. Congregants are obligated to straighten the rows—completing each first row in succession—stand closely together, and align their shoulders and feet. Any gap should be in the last row. Whoever prays while there is an unfilled space before him in the row that he could occupy himself but fails to do so invalidates his prayer. If he finds no space in the row, he must draw a man to himself to pray together. If unable, he must withdraw and not pray alone behind the row unless prevented from joining it, in which case he may pray alone and his prayer remains valid. Abdullah ibn Rabīʿ narrated to us: ʿUmar ibn ʿAbd al-Malik al-Khawlānī narrated to us: Muḥammad ibn Bakr narrated to us: Abū Dāwūd narrated to us: Sulaymān ibn Ḥarb narrated to us: Shuʿbah narrated to us from ʿAmr ibn Murrah from Hilāl ibn Yasāf from ʿAmr ibn Rāshid from Wābiṣah—who is Ibn Maʿbad al-Asadī—that the Messenger of Allah, peace and blessings be upon him, saw a man praying alone behind the row and ordered him to repeat his prayer.

L6678–6681 We have been narrated through the chain of Jarīr ibn ʿAbd al-Ḥamīd, who narrated from Ḥuṣayn ibn ʿAbd al-Raḥmān, who narrated from Hilāl ibn Yasāf, that Ziyād ibn Abī al-Jaʿd informed him from Wābiṣah ibn Maʿbad: "The Messenger of Allah (peace be upon him) commanded a man who prayed alone behind the row to repeat the prayer." Some people speculated based on their opinions: "Perhaps he ordered him to repeat it for another reason

[34]**Qur'an references (L6675):** Qur'an 4:84 (An-Nisa).

٤١٤ - مَسْأَلَةٌ: وَمَنْ عَلِمَ أَنَّ إِمَامَهُ قَدْ زَادَ رَكْعَةً أَوْ سَجْدَةً فَلَا يَجُوزُ لَهُ أَنْ يَتْبَعَهُ عَلَيْهَا، بَلْ يَبْقَى عَلَى الْحَالَةِ الْجَائِزَةِ، وَيُسَبِّحُ بِالْإِمَامِ، وَهَذَا لَا خِلَافَ فِيهِ، وَقَدْ قَالَ تَعَالَى: {لا تُكَلَّفُ إِلا نَفْسَكَ} [النساء: ٨٤]

[مَسْأَلَةُ رَجُلٍ صَلَّى خَلْفَ الصَّفِّ]

٤١٥ - مَسْأَلَةٌ: وَأَيُّمَا رَجُلٍ صَلَّى خَلْفَ الصَّفِّ بَطَلَتْ صَلَاتُهُ، وَلَا يَضُرُّ ذَلِكَ الْمَرْأَةَ شَيْئًا. وَفُرِضَ عَلَى الْمَأْمُومِينَ تَعْدِيلُ الصُّفُوفِ - الْأَوَّلِ فَالْأَوَّلِ - وَالتَّرَاصُّ فِيهَا، وَالْمُحَاذَاةُ بِالْمَنَاكِبِ، وَالْأَرْجُلِ، فَإِنْ كَانَ نَقْصٌ كَانَ فِي آخِرِهَا وَمَنْ صَلَّى وَأَمَامَهُ فِي الصَّفِّ فُرْجَةٌ يُمْكِنُهُ سَدُّهَا بِنَفْسِهِ فَلَمْ يَفْعَلْ: بَطَلَتْ صَلَاتُهُ، فَإِنْ لَمْ يَجِدْ فِي الصَّفِّ مَدْخَلًا فَلْيَجْتَذِبْ إِلَى نَفْسِهِ رَجُلًا يُصَلِّي مَعَهُ، فَإِنْ لَمْ يَقْدِرْ فَلْيَرْجِعْ، وَلَا يُصَلِّ وَحْدَهُ خَلْفَ الصَّفِّ إِلَّا أَنْ يَكُونَ مَمْنُوعًا فَيُصَلِّي وَتُجْزِئُهُ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ الْخَوْلَانِيُّ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا سُلَيْمَانُ بْنُ حَرْبٍ ثنا شُعْبَةُ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ هِلَالِ بْنِ يَسَافٍ عَنْ عَمْرِو بْنِ رَاشِدٍ عَنْ وَابِصَةَ هُوَ ابْنُ مَعْبَدٍ الْأَسَدِيُّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَأَى رَجُلًا يُصَلِّي خَلْفَ الصَّفِّ وَحْدَهُ فَأَمَرَهُ أَنْ يُعِيدَ الصَّلَاةَ» .

وَرُوِّينَا مِنْ طَرِيقِ جَرِيرِ بْنِ عَبْدِ الْحَمِيدِ عَنْ حُصَيْنِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ هِلَالِ بْنِ يَسَافٍ أَنَّ زِيَادَ بْنَ أَبِي الْجَعْدِ أَخْبَرَهُ عَنْ وَابِصَةَ بْنِ مَعْبَدٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ رَجُلًا صَلَّى خَلْفَ الصَّفِّ وَحْدَهُ أَنْ يُعِيدَ الصَّلَاةَ» . فَقَالَ قَوْمٌ بِآرَائِهِمْ: لَعَلَّهُ أَمَرَهُ بِالْإِعَادَةِ لِأَمْرٍ غَيْرِ ذَلِكَ لَا نَعْرِفُهُ قَالَ عَلِيٌّ: وَهَذَا بَاطِلٌ لِأَنَّهُ - عَلَيْهِ السَّلَامُ

unknown to us." ʿAlī said: "This is null and void, for the Prophet (peace be upon him) would not have neglected to clarify that had it been as they alleged. If they permit such conjecture, then anyone lacking piety toward Allah the Almighty would not fail to say when a hadith is cited: 'Perhaps something was omitted from it that nullifies the ruling it contains.'"

Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us, Wahb ibn Masarrat narrated to us, Muḥammad ibn Waḍḍāḥ narrated to us, Abū Bakr ibn Abī Shaybah narrated to us, Mulāzim ibn ʿAmr narrated from ʿAbd Allāh ibn Badr: "'Abd al-Raḥmān ibn ʿAlī ibn Shaybān narrated to me." From his father, he said: "We came to the Messenger of Allah—peace and blessings be upon him—pledged allegiance to him, and prayed behind him. When he concluded the prayer, he saw a man praying alone behind the row. The Messenger of Allah—peace and blessings be upon him—stood over him until he finished, then said: 'Redo your prayer, for there is no prayer for one who prays behind the row.'" Ali said: "Consistently trustworthy." Ibn Abi Shaybah, Ibn Numayr, and others affirmed his reliability. Abdullah ibn Badr is a renowned trustworthy narrator, and we know of no criticism against Abd al-Rahman except that only Abdullah ibn Badr narrated from him—this does not constitute a flaw. Hilal ibn Yasaf's narration of Wabisah's hadith—once through Ziyad ibn Abi al-Ja'd and another through Amr ibn Rashid—strengthens the report. Amr ibn Rashid is trustworthy, as affirmed by Ahmad ibn Hanbal and others.

From Abd al-Rahman ibn Abdullah ibn Khalid, from Ibrahim ibn Ahmad, from al-Farbari, from al-Bukhari, from Abu al-Walid (al-Tayalisi), from Shu'bah: I am Amr ibn Murrah; I heard Salim ibn Abi al-Ja'd say: I heard al-Nu'man ibn Bashir say: The Messenger of Allah—peace and blessings be upon him—said: "Straighten your rows, or Allah will surely cause discord between your faces." Ali said: "This is a severe warning. Warnings are only issued for major sins." Explicitly through this chain to Shu'bah: From Qatadah, from Anas, who said: The Messenger of Allah—peace and bless-

- لَمْ يَكُنْ لِيَدَعَ بَيَانَ ذَلِكَ لَوْ كَانَ كَمَا ادَّعَوْا، وَإِذَا جَوَّزُوا مِثْلَ هَذَا لَمْ يَعْجِزْ أَحَدٌ لَا يَتَّقِي اللَّهَ عَزَّ وَجَلَّ أَنْ يَقُولَ إِذَا ذُكِرَ لَهُ حَدِيثٌ: لَعَلَّهُ نَقَصَ مِنْهُ شَيْءٌ يُبْطِلُ هَذَا الْحُكْمَ الْوَارِدَ فِيهِ فَكَيْفَ وَقَدْ حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنُ الْجَسُورِ ثنا وَهْبُ بْنُ مَسَرَّةَ ثنا مُحَمَّدُ بْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا مُلَازِمُ بْنُ عَمْرٍو عَنْ عَبْدِ اللَّهِ بْنِ بَدْرٍ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ عَلِيِّ بْنِ شَيْبَانَ عَنْ أَبِيهِ قَالَ «قَدِمْنَا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَايَعْنَاهُ وَصَلَّيْنَا خَلْفَهُ، فَقَضَى الصَّلَاةَ فَرَأَى رَجُلًا فَرْدًا يُصَلِّي خَلْفَ الصَّفِّ فَوَقَفَ عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى انْصَرَفَ، فَقَالَ لَهُ: اسْتَقْبِلْ صَلَاتَكَ، فَإِنَّهُ لَا صَلَاةَ لِلَّذِي خَلْفَ الصَّفِّ» . قَالَ عَلِيٌّ: مُلَازِمٌ ثِقَةٌ. وَثَّقَهُ ابْنُ أَبِي شَيْبَةَ، وَابْنُ نُمَيْرٍ وَغَيْرُهُمَا، وَعَبْدُ اللَّهِ بْنُ بَدْرٍ ثِقَةٌ مَشْهُورٌ وَمَا نَعْلَمُ أَحَدًا عَابَ عَبْدَ الرَّحْمَنِ بِأَكْثَرَ مِنْ أَنَّهُ لَمْ يَرْوِ عَنْهُ إِلَّا عَبْدُ اللَّهِ بْنُ بَدْرٍ، وَهَذَا لَيْسَ جُرْحَةً. وَرِوَايَةُ هِلَالِ بْنِ يَسَافٍ حَدِيثُ وَابِصَةَ مَرَّةً عَنْ زِيَادِ بْنِ أَبِي الْجَعْدِ، وَمَرَّةً عَنْ عَمْرِو بْنِ رَاشِدٍ قُوَّةٌ لِلْخَبَرِ، وَعَمْرُو بْنُ رَاشِدٍ ثِقَةٌ، وَثَّقَهُ أَحْمَدُ بْنُ حَنْبَلٍ وَغَيْرُهُ. حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَبُو الْوَلِيدِ هُوَ الطَّيَالِسِيُّ - ثنا شُعْبَةُ أَنَا عَمْرُو بْنُ مُرَّةَ قَالَ سَمِعْتُ سَالِمَ بْنَ أَبِي الْجَعْدِ قَالَ سَمِعْتُ النُّعْمَانَ بْنَ بَشِيرٍ يَقُولُ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَتُسَوُّنَّ صُفُوفَكُمْ أَوْ لَيُخَالِفَنَّ اللَّهُ بَيْنَ وُجُوهِكُمْ» . قَالَ عَلِيٌّ: هَذَا وَعِيدٌ شَدِيدٌ. وَالْوَعِيدُ لَا يَكُونُ إِلَّا فِي كَبِيرَةٍ مِنَ الْكَبَائِرِ. وَبِهِ نَصًّا إِلَى شُعْبَةَ: عَنْ قَتَادَةَ عَنْ أَنَسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «سَوُّوا صُفُوفَكُمْ فَإِنَّ تَسْوِيَةَ الصَّفِّ مِنْ تَمَامِ الصَّلَاةِ» .

ings be upon him—said: “Straighten your rows, for straightening the row is integral to perfecting the prayer.”[35]

L6682–6685

Ali said: Straightening the row, being part of the iqamah of the prayer, is obligatory because the iqamah of the prayer is obligatory, and whatever pertains to an obligation is itself obligatory. And through him to al-Bukhari: Narrated by Ahmad ibn Abī Rajā’ from Mu‘āwiyah ibn ‘Amr, from Zā’idah ibn Qudāmah, from Ḥumayd al-Ṭawīl, from Anas ibn Mālik, who said: The Messenger of Allah (peace be upon him) told us: “Straighten your rows and stand shoulder-to-shoulder, for I see you from behind my back.” It has been transmitted to us from Anas that he said: “Each of us would press his shoulder against his companion’s shoulder and his foot against his foot.” Ali said: This is the consensus of the Companions, and the narrations on this are exceedingly numerous. The first row is the one adjacent to the Imam. Narrated by ‘Abdullāh ibn Yūsuf from Aḥmad ibn Fatḥ, from ‘Abd al-Wahhāb ibn ‘Īsā, from Aḥmad ibn Muḥammad, from Aḥmad ibn ‘Alī, from Muslim ibn al-Ḥajjāj, from Muḥammad ibn Ḥarb al-Wāsiṭī... ’Amr ibn al-Haytham Abu Qatan narrated to us: Shu’bah narrated from Qatadah from Khilas from Abu Rafi’ from Abu Hurayrah that the Prophet (peace and blessings of Allah be upon him) said: “If you knew – or if they knew – what is in the first row, it would have necessitated a drawing of lots.” ’Ali said: “Drawing lots applies only when space cannot accommodate everyone, causing rivalry and crowding. Were the first row reserved for those arriving early – as claimed by those who fail to grasp his words – drawing lots for it would be folly, for none are prevented from hastening to attend, rendering lots unnecessary.”

’Abdullah ibn Rabi’ narrated to us: Muhammad ibn Mu’awiyah narrated: Ahmad ibn Shu’ayb narrated: Isma’il ibn Mas’ud al-Jahdari narrated from Khalid ibn al-Harith: Sa’id ibn Abi ’Arubah narrated from Qatadah from Anas that Allah’s Messenger (peace and blessings of Allah be upon him) said: “Complete the first row, then the one following it. If there is a deficiency, let it be in the last row.”

[35] **Hadith references (L6679):** Sunan Abi Dawud 668; Sahih Muslim 433; Riyad as-Salihin 1087.

قَالَ عَلِيٌّ: تَسْوِيَةُ الصَّفِّ إِذَا كَانَ مِنْ إِقَامَةِ الصَّلَاةِ فَهُوَ فَرْضٌ، لِأَنَّ إِقَامَةَ الصَّلَاةِ فَرْضٌ، وَمَا كَانَ مِنْ الْفَرْضِ فَهُوَ فَرْضٌ. وَبِهِ إِلَى الْبُخَارِيِّ: ثنا أَحْمَدُ بْنُ أَبِي رَجَاءٍ ثنا مُعَاوِيَةُ بْنُ عَمْرٍو ثنا زَائِدَةُ بْنُ قُدَامَةَ ثنا حُمَيْدٍ الطَّوِيلُ ثنا أَنَسُ بْنُ مَالِكٍ قَالَ: قَالَ لَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَقِيمُوا صُفُوفَكُمْ وَتَرَاصُّوا، فَإِنِّي أَرَاكُمْ مِنْ وَرَاءِ ظَهْرِي» . وَرُوِّينَا عَنْ أَنَسٍ أَنَّهُ قَالَ " كَانَ أَحَدُنَا يُلْزِقُ مَنْكِبَهُ بِمَنْكِبِ صَاحِبِهِ وَقَدَمَهُ بِقَدَمِهِ. قَالَ عَلِيٌّ: هَذَا إِجْمَاعٌ مِنْهُمْ، وَالْآثَارُ فِي هَذَا كَثِيرَةٌ جِدًّا، وَالصَّفُّ الْأَوَّلُ هُوَ الَّذِي يَلِي الْإِمَامَ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ حَرْبٍ الْوَاسِطِيُّ ثنا عَمْرُو بْنُ الْهَيْثَمِ أَبُو قَطَنٍ ثنا شُعْبَةُ عَنْ قَتَادَةَ عَنْ خِلَاسٍ عَنْ أَبِي رَافِعٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَوْ تَعْلَمُونَ أَوْ يَعْلَمُونَ مَا فِي الصَّفِّ الْأَوَّلِ لَكَانَتْ قُرْعَةً» . قَالَ عَلِيٌّ: لَا يُمْكِنُ أَنْ تَكُونَ الْقُرْعَةُ إلَّا فِيمَا لَا يَسَعُ الْجَمِيعَ فَيَقَعُ فِيهِ التَّغَايُرُ وَالْمُضَايَقَةُ وَلَوْ كَانَ الصَّفُّ الْأَوَّلُ لِلْمُبَادِرِ بِالْمَجِيءِ - كَمَا يَقُولُ مَنْ لَا يُحَصِّلُ كَلَامَهُ - لَمَا كَانَتْ الْقُرْعَةُ فِيهِ إلَّا حَمَاقَةً، لِأَنَّهُ لَا يُمْنَعُ أَحَدٌ مِنْ الْمُبَادَرَةِ بِالْمَجِيءِ حَتَّى يَحْتَاجَ فِيهِ إلَى قُرْعَةٍ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا إسْمَاعِيلُ بْنُ مَسْعُودٍ هُوَ الْجَحْدَرِيُّ - عَنْ خَالِدِ بْنِ الْحَارِثِ ثنا سَعِيدٌ هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ أَنَسٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَتِمُّوا الصَّفَّ الْأَوَّلَ ثُمَّ الَّذِي يَلِيهِ، فَإِنْ كَانَ نَقْصٌ فَلْيَكُنْ فِي الصَّفِّ الْمُؤَخَّرِ» . قَالَ عَلِيٌّ: شَغَبَ مَنْ أَجَازَ

’Ali said: “Those who permit praying alone behind the row clamored by citing the Prophet’s prayer (peace and blessings of Allah be upon him) with Anas, an orphan behind him, and a woman behind them. This holds no proof, for women’s ruling is to stand behind men. Otherwise, they would share men’s obligation to arrange rows when numerous, per the general command. It is invalid to discard the hadith about the woman’s prayer position for Wabisah’s hadith, nor to discard Wabisah’s hadith for hers. Discarding one narration for another holds no more validity than abandoning what one accepts and accepting what another discards—all of which is invalid.”

They further argued using the hadith of Ibn ’Abbas and Jabir when each stood alone to the left of Allah’s Messenger (peace and blessings of Allah be upon him) following him. The Prophet (peace and blessings of Allah be upon him) repositioned each until placing them on his right side. They claimed: “Thus Jabir and Ibn ’Abbas ended up behind Allah’s Messenger (peace and blessings of Allah be upon him) during that repositioning.”[36]

L6686–6687 Ali said: “This contains no proof for them, due to what we mentioned that it is impermissible to oppose one part of the Sunnah with another. This is toying with religion. I wish I knew: What distinguishes between one who abandons the Hadith of Jābir and Ibn ʿAbbās for the Hadith of Wābiṣah and ʿAlī ibn Shaybān, and between one who abandons the Hadith of Wābiṣah and ʿAlī for the Hadith of Jābir and Ibn ʿAbbās? Is all this nothing but sheer falsehood and arbitrary judgment without evidence? Rather, the truth lies in accepting all these narrations, for all are true, and opposing them is impermissible. Thus, the Imam redirecting one praying to his left towards his right is correct, and the prayer remains valid. This differs from the case of one who knowingly prays to the Imam’s left despite the prohibition - the prayer of these two is invalid, unlike the ruling for one praying behind the row. Never has one redirected from left to right been termed as praying alone behind the row. They also attempted to obscure matters using the report of Abū Bakrah: When he arrived breathless, he bowed outside the row, then joined it.”

[36] **Hadith references (L6683):** Sahih al-Bukhari 719; Sunan an-Nasai 845; Sunan an-Nasai 814.

صَلاَةَ الْمُنْفَرِدِ خَلْفَ الصَّفِّ بِصَلاَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَسٍ، وَالْيَتِيمِ خَلْفَهُ، وَالْمَرْأَةُ خَلْفَهُمَا وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّ حُكْمَ النِّسَاءِ خَلْفَ الرِّجَالِ، وَإِلَّا فَعَلَيْهِنَّ مِنْ إِقَامَةِ الصُّفُوفِ إِذَا كَثُرْنَ مَا عَلَى الرِّجَالِ لِعُمُومِ الْأَمْرِ بِذَلِكَ، وَلَا يَجُوزُ أَنْ يُتْرَكَ حَدِيثُ مُصَلَّى الْمَرْأَةِ الْمَذْكُورَةِ لِحَدِيثِ وَابِصَةَ، وَلَا حَدِيثُ وَابِصَةَ لِحَدِيثِ مُصَلَّى الْمَرْأَةِ، فَلَيْسَ مَنْ تَرَكَ هَذَا لِهَذَا بِأَوْلَى مِمَّنْ تَرَكَ مَا أَخَذَ هَذَا وَأَخَذَ بِمَا تَرَكَ، وَكُلُّ هَذَا لَا يَجُوزُ وَشَغَبُوا بِحَدِيثِ «ابْنِ عَبَّاسٍ وَجَابِرٍ إِذْ جَاءَ كُلُّ مِنْهُمَا فَوَقَفَ عَنْ يَسَارِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُؤْتَمًّا بِهِ وَحْدَهُ فَأَدَارَ - عَلَيْهِ السَّلاَمُ - كُلَّ وَاحِدٍ مِنْهُمَا حَتَّى جَعَلَهُ عَنْ يَمِينِهِ» ، قَالُوا: فَقَدْ صَارَ جَابِرٌ وَابْنُ عَبَّاسٍ خَلْفَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي تِلْكَ الْإِدَارَةِ.

قَالَ عَلِيٌّ: وَهَذَا لَا حُجَّةَ فِيهِ لَهُمْ، لِمَا ذَكَرْنَا مِنْ أَنَّهُ لَا يَحِلُّ ضَرْبُ السُّنَنِ بَعْضِهَا بِبَعْضٍ. وَهَذَا تَلَاعُبٌ بِالدِّينِ وَلَيْتَ شِعْرِي مَا الْفَرْقُ بَيْنَ مَنْ تَرَكَ حَدِيثَ جَابِرٍ وَابْنِ عَبَّاسٍ لِحَدِيثِ وَابِصَةَ، وَعَلِيِّ بْنِ شَيْبَانَ وَبَيْنَ مَنْ تَرَكَ حَدِيثَ وَابِصَةَ، وَعَلِيٍّ لِحَدِيثِ جَابِرٍ، وَابْنِ عَبَّاسٍ وَهَلْ هَذَا كُلُّهُ إِلَّا بَاطِلُ بَحْتٌ، وَتَحَكُّمٌ بِلَا بُرْهَانٍ بَلْ الْحَقُّ فِي ذَلِكَ الْأَخْذُ بِكُلِّ ذَلِكَ، فَكُلُّهُ حَقٌّ، وَلَا يَحِلُّ خِلَافُهُ، فَإِدَارَةُ الْإِمَامِ مَنْ صَلَّى عَنْ يَسَارِهِ إِلَى يَمِينِهِ حَقٌّ، وَلَا تَبْطُلُ بِذَلِكَ الصَّلَاةُ، وَبِخِلَافِ مَنْ صَلَّى عَنْ يَسَارِ الْإِمَامِ وَهُوَ عَالِمٌ بِالْمَنْعِ مِنْ ذَلِكَ فَصَلَاةُ هَذَيْنِ بَاطِلٌ، بِخِلَافِ حُكْمِ الْمُصَلِّي خَلْفَ الصَّفِّ، وَمَا سُمِّيَ قَطُّ الْمُدَارُ عَنْ شِمَالٍ إِلَى يَمِينٍ مُصَلِّيًا وَحْدَهُ خَلْفَ الصَّفِّ وَمَوَّهُوا أَيْضًا بِخَبَرِ أَبِي بَكْرَةَ إِذَا أَتَى وَقَدْ حَفَزَهُ النَّفَسُ فَرَكَعَ دُونَ الصَّفِّ ثُمَّ دَخَلَ الصَّفَّ. قَالَ عَلِيٌّ: وَهَذَا الْخَبَرُ حُجَّةٌ

Ali said: "This report is a proof against them for us. ʿAbdullāh ibn Rabīʿ narrated to us, saying: ʿUmar ibn ʿAbd al-Malik narrated to us, saying: Muḥammad ibn Bakr narrated to us, saying: Abū Dāwūd narrated to us, saying: Ḥumayd ibn Masʿadah narrated that Yazīd ibn Zuraiʿ reported: Saʿīd ibn Abī ʿArūbah narrated from Ziyād al-Aʿlam, from al-Ḥasan, that Abū Bakrah said: 'I entered the mosque while Allah's Prophet (peace be upon him) was bowing. I bowed outside the row.' The Prophet (peace be upon him) said: 'May Allah increase your earnestness, but do not repeat this.'"

ʿAbdullāh ibn Rabīʿ narrated to us, saying: ʿAbdullāh ibn ʿUthmān narrated to us, saying: Aḥmad ibn Khālid narrated to us, saying: ʿAlī ibn ʿAbd al-ʿAzīz narrated to us, saying: al-Ḥajjāj ibn al-Minhāl narrated to us, saying: Ḥammād ibn Salamah narrated from al-Aʿlam - meaning Ziyād - from al-Ḥasan, from Abū Bakrah: "He entered the mosque while Allah's Messenger (peace be upon him) was praying and had already bowed. Abū Bakrah bowed, then joined the row while bowing. When Allah's Messenger (peace be upon him) concluded the prayer, he asked: 'Who joined the row while bowing?' Abū Bakrah replied: 'I did.' He said: 'May Allah increase your earnestness, but do not repeat this.'"[37]

L6688–6693 Ali said: It has been established that bowing outside the row then entering the row in that state is impermissible. If it is asked: Why did the Messenger of Allah, peace and blessings be upon him, not command him to repeat the prayer, as he commanded the one who performed the prayer incorrectly and the one who prayed alone behind the row? We respond: We are absolutely certain—indeed, we categorically affirm—that bowing outside the row was only prohibited when the Prophet, peace and blessings be upon him, forbade it. Since this is the case, there is no obligation to repeat the prayer for one who did so before the prohibition. Had it been forbidden prior to the prohibition, he, peace and blessings be upon him, would not have neglected to command its repetition, as he did with others. Thus, the arguments of those who permit praying alone behind the row or validate the prayer of one who fails to straighten the rows are invalidated entirely—possessing no basis in the Quran, the Sunnah, or consensus.

[37] **Hadith references (L6687):** Sunan Abi Dawud 683.

عَلَيْهِمْ لَنَا، لِأَنَّ عَبْدَ اللَّهِ بْنَ رَبِيعٍ حَدَّثَنَا قَالَ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا حُمَيْدِ بْنُ مَسْعَدَةَ أَنَّ يَزِيدَ بْنَ زُرَيْعٍ حَدَّثَهُمْ قَالَ: ثنا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ زِيَادٍ الْأَعْلَمِ ثنا الْحَسَنُ «أَنَّ أَبَا بَكْرَةَ حَدَّثَ أَنَّهُ دَخَلَ الْمَسْجِدَ وَنَبِيُّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَاكِعٌ، قَالَ: فَرَكَعْتُ دُونَ الصَّفِّ، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَادَكَ اللَّهُ حِرْصًا وَلَا تَعُدْ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عَبْدُ اللَّهِ بْنُ عُثْمَانَ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ الْأَعْلَمِ هُوَ زِيَادٌ - عَنْ الْحَسَنِ عَنْ «أَبِي بَكْرَةَ أَنَّهُ دَخَلَ الْمَسْجِدَ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي وَقَدْ رَكَعَ، فَرَكَعَ ثُمَّ دَخَلَ الصَّفَّ وَهُوَ رَاكِعٌ، فَلَمَّا انْصَرَفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: أَيُّكُمْ دَخَلَ الصَّفَّ وَهُوَ رَاكِعٌ فَقَالَ لَهُ أَبُو بَكْرَةَ: أَنَا، قَالَ: زَادَكَ اللَّهُ حِرْصًا وَلَا تَعُدْ» .

قَالَ عَلِيٌّ: فَقَدْ ثَبَتَ أَنَّ الرُّكُوعَ دُونَ الصَّفِّ ثُمَّ دُخُولَ الصَّفِّ كَذَلِكَ لَا يَحِلُّ فَإِنْ قِيلَ: فَهَلَّا أَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْإِعَادَةِ كَمَا أَمَرَ الَّذِي أَسَاءَ الصَّلَاةَ وَالَّذِي صَلَّى خَلْفَ الصَّفِّ وَحْدَهُ قُلْنَا: نَحْنُ عَلَى يَقِينٍ - نَقْطَعُ بِهِ - أَنَّ الرُّكُوعَ دُونَ الصَّفِّ إنَّمَا حَرُمَ حِينَ نَهَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. فَإِذْ ذَلِكَ كَذَلِكَ فَلَا إعَادَةَ عَلَى مَنْ فَعَلَ ذَلِكَ قَبْلَ النَّهْيِ، وَلَوْ كَانَ ذَلِكَ مُحَرَّمًا قَبْلَ النَّهْيِ؛ لَمَا أَغْفَلَ - عَلَيْهِ السَّلَامُ - أَمْرَهُ بِالْإِعَادَةِ، كَمَا فَعَلَ مَعَ غَيْرِهِ. فَبَطَلَ أَنْ يَكُونَ لِمَنْ أَجَازَ صَلَاةَ الْمُنْفَرِدِ خَلْفَ الصَّفِّ، وَصَلَاةُ مَنْ لَمْ يُقِمْ الصُّفُوفَ: حُجَّةٌ أَصْلًا، لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ وَلَا إجْمَاعٍ وَبِقَوْلِنَا يَقُولُ السَّلَفُ الطَّيِّبُ -: رُوِّينَا بِأَصَحِّ إسْنَادٍ عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ

قَالَ: كُنْت فِيمَنْ ضَرَبَ عُمَرُ بْنُ الْخَطَّابِ قَدَمَهُ لِإِقَامَةِ الصَّفِّ فِي الصَّلَاةِ قَالَ عَلِيٌّ: مَا كَانَ - رَضِيَ اللَّهُ عَنْهُ - لِيَضْرِبَ أَحَدًا وَيَسْتَبِيحَ بَشَرَةً مُحَرَّمَةً عَلَى غَيْرِ فَرْضٍ وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ ثنا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ أَنَّهُ أَخْبَرَهُ عَنْ ابْنِ عُمَرَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَانَ يَبْعَثُ رِجَالًا يُسَوُّونَ الصُّفُوفَ، فَإِذَا جَاءُوا: كَبَّرَ. وَعَنْ عُمَرَ بْنِ الْخَطَّابِ: مَنْ كَانَ بَيْنَهُ وَبَيْنَ الْإِمَامِ نَهْرٌ أَوْ حَائِطٌ أَوْ طَرِيقٌ فَلَيْسَ مَعَ الْإِمَامِ وَعَنْ مَالِكٍ عَنْ أَبِي النَّضْرِ عَنْ مَالِكِ بْنِ أَبِي عَامِرٍ عَنْ عُثْمَانَ بْنِ عَفَّانَ أَنَّهُ كَانَ يَقُولُ ذَلِكَ فِي خُطْبَتِهِ قَلَّمَا يَدَعُ ذَلِكَ كَلَامًا فِيهِ: إذَا قَامَتْ الصَّلَاةُ فَاعْدِلُوا الصُّفُوفَ، وَحَاذُوا بِالْمَنَاكِبِ، فَإِنَّ اعْتِدَالَ الصَّفِّ مِنْ تَمَامِ الصَّلَاةِ، ثُمَّ لَا يُكَبِّرُ حَتَّى يَأْتِيَهُ رِجَالٌ قَدْ وَكَّلَهُمْ بِتَسْوِيَةِ الصُّفُوفِ فَيُخْبِرُونَهُ أَنَّهَا اسْتَوَتْ فَيُكَبِّرُ. هَذَا فِعْلُ الْخَلِيفَتَيْنِ - رَضِيَ اللَّهُ عَنْهُمَا - بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، لَا يُخَالِفُهُمْ فِي ذَلِكَ أَحَدٌ مِنْهُمْ. وَعَنْ عُثْمَانَ أَنَّهُ كَانَ يَقُولُ: اعْدِلُوا الصُّفُوفَ وَصُفُّوا الْأَقْدَامَ وَحَاذُوا بِالْمَنَاكِبِ. وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ عُمَارَةَ بْنِ عِمْرَانَ الْجُعْفِيِّ عَنْ سُوَيْدِ بْنِ غَفَلَةَ قَالَ: كَانَ بِلَالٌ - هُوَ مُؤَذِّنُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَضْرِبُ أَقْدَامَنَا فِي الصَّلَاةِ وَيُسَوِّي مَنَاكِبَنَا. فَهَذَا بِلَالٌ مَا كَانَ: لِيَضْرِبَ أَحَدًا عَلَى غَيْرِ الْفَرْضِ. وَعَنْ ابْنِ عُمَرَ: مِنْ تَمَامِ الصَّلَاةِ اعْتِدَالُ الصَّفِّ. وَأَنَّهُ قَالَ: لَأَنْ تَخِرَّ ثَنِيَّتَايَ أَحَبُّ إلَيَّ مِنْ أَنْ أَرَى خَلَلًا فِي الصَّفِّ فَلَا أَسُدُّهُ قَالَ عَلِيٌّ: هَذَا لَا يُتَمَنَّى فِي تَرْكِ مُبَاحٍ أَصْلًا وَعَنْ ابْنِ عَبَّاسٍ: إيَّاكُمْ وَمَا بَيْنَ السَّوَارِي، وَعَلَيْكُمْ بِالصَّفِّ الْأَوَّلِ. وَعَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي يَزِيدَ: رَأَيْت الْمِسْوَرَ بْنَ مَخْرَمَةَ يَتَخَلَّلُ الصُّفُوفَ حَتَّى يَنْتَهِيَ إلَى الصَّفِّ الْأَوَّلِ أَوْ الثَّانِي وَعَنْ وَكِيعٍ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ عَنْ النُّعْمَانِ بْنِ بَشِيرٍ

The righteous predecessors support our view: It has been narrated to us through the most authentic chain from Abu Uthman al-Nahdi, who said: I was among those whom Umar ibn al-Khattab struck his foot to straighten the row during prayer. Ali said: He, may Allah be pleased with him, would not strike anyone or deem it permissible to violate a sacred bodily sanctity except for an obligation.

From Yahya ibn Sa'id al-Qattan, from Ubaydullah ibn Umar, from Nafi', who reported from Ibn Umar: Umar ibn al-Khattab used to send men to straighten the rows, and when they came, he would say "Allahu Akbar."

From Umar ibn al-Khattab: Whoever has a river, wall, or road between him and the Imam is not with the Imam.

From Malik, from Abu al-Nadr, from Malik ibn Abi Amir, from Uthman ibn Affan, who would rarely omit including the following in his sermons: "When the prayer is established, straighten the rows and align them." By the shoulders, for straightening the rows is part of the perfection of prayer. He would not pronounce the *Takbīr* until men appointed to straighten the rows came to inform him they were aligned, after which he would pronounce the *Takbīr*. This was the practice of the two Caliphs—may Allah be pleased with them—in the presence of the Companions—may Allah be pleased with them—with none opposing it. ʿUthmān would say: "Straighten the rows, align the feet, and level the shoulders." From Sufyān al-Thawrī, via al-Aʿmash, via ʿUmārah ibn ʿImrān al-Juʿfī, via Suwayd ibn Ghaflah: "Bilāl—the Muʾadhdhin of Allah's Messenger (ﷺ)—would adjust our feet in prayer and align our shoulders. Bilāl would not adjust anyone except for the obligatory prayer." Ibn ʿUmar narrated: "Straightening the rows completes prayer," adding: "I would rather lose my front teeth than see a gap in the row and not close it." ʿAlī remarked: "This should not be desired when abandoning what is permissible altogether." Ibn ʿAbbās warned: "Avoid praying between pillars and adhere to the first row." ʿUbaydullāh ibn Abī Yazīd reported: "I saw al-Miswar ibn Makhramah moving through the rows until he reached the first or second row." Via Wakīʿ, from Misʿar ibn Kidām, from ʿAmr ibn Murrah, from Sālim ibn Abī al-Jaʿd, via al-Nuʿmān ibn Bashīr: "By Allah! Straighten your rows, or Allah will cause discord among your hearts." When

asked if he disapproved of anything from the Prophet's era (ﷺ), Anas ibn Mālik replied: "Only your failure to straighten the rows." ʿAlī stated: "What is permissible cannot be deemed objectionable." Saʿīd ibn Jubayr mentioned: "The command to straighten the rows." From Ata: It is incumbent upon people to straighten the rows. From Abd al-Rahman ibn Yazid: Straighten the rows, for perfecting the prayer includes establishing the row. From Ibrahim al-Nakha'i regarding a man who arrives when the row is already complete: If he is able, let him join them in the row, or let him pull a man to pray with him. If he prays alone, he must perform the prayer again. From Shu'bah, he said: I asked al-Hakam ibn 'Utaybah about a man praying alone behind the row. He replied: He must repeat it. Al-Awza'i, al-Hasan ibn Hayy, one of the two opinions of Sufyan al-Thawri—and it is the view of Ahmad ibn Hanbal and Ishaq—hold that the prayer of one who prays alone behind the row is invalid.

قَالَ: وَاللَّهِ لَتُقَيِّمُنَّ صُفُوفَكُمْ أَوْ لَيُخَالِفَنَّ اللَّهُ بَيْنَ وُجُوهِكُمْ. وَقِيلَ لِأَنَسِ بْنِ مَالِك: أَتُنْكِرُ شَيْئًا مِمَّا كَانَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: لَا، إِلَّا أَنَّكُمْ لَا تُقَيِّمُونَ الصُّفُوفَ. قَالَ عَلِيٌّ: الْمُبَاحُ لَا يَكُونُ مُنْكَرًا وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ الْأَمْرُ بِتَسْوِيَةِ الصُّفُوفِ وَعَنْ عَطَاءٍ: عَلَى النَّاسِ أَنْ يُسَوُّوا الصُّفُوفَ. وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ: سَوُّوا الصُّفُوفَ، فَإِنَّ مِنْ تَمَامِ الصَّلَاةِ إِقَامَةَ الصَّفِّ. وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي الرَّجُلِ يَجِيءُ وَقَدْ تَمَّ الصَّفُّ: إِنْ قَدَرَ فَلْيَدْخُلْ مَعَهُمْ فِي الصَّفِّ، أَوْ يَجْتَذِبُ رَجُلًا فَيُصَلِّي مَعَهُ، فَإِنْ صَلَّى وَحْدَهُ فَلْيُعِدْ الصَّلَاةَ. وَعَنْ شُعْبَةَ قَالَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ عَنْ الرَّجُلِ يُصَلِّي وَحْدَهُ خَلْفَ الصَّفِّ قَالَ: يُعِيدُ. وَبِبُطْلَانِ صَلَاةِ مَنْ صَلَّى خَلْفَ الصَّفِّ مُنْفَرِدًا يَقُولُ الْأَوْزَاعِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَحَدُ قَوْلَيْ سُفْيَانَ الثَّوْرِيِّ، وَهُوَ قَوْلُ أَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ

Question: What should one who enters the mosque say?

[مَسْأَلَةٌ مَاذَا يَقُول مَنْ دَخَلَ الْمَسْجِدَ]

L6694

L6695

416 - Issue: It is obligatory upon whoever enters the mosque to say, "O Allah, open for me the doors of Your mercy." When exiting, one should say, "O Allah, I ask You of Your bounty." This pertains specifically to the requirements of entering the mosque whenever one enters it, not to the prerequisites of prayer. Therefore, the prayer of one who does not utter these words remains valid, though they have sinned by neglecting to say what they were commanded. Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Yahya ibn Yahya narrated to us, Sulaiman ibn Bilal narrated to us from Rabi'ah ibn Abi Abd al-Rahman, from Abdul Malik ibn Sa'id - who is Ibn Suwayd al-Ansari - from Abu Humaid or Abu Usaid, who said: The Messenger of Allah - peace and blessings be upon him - said: "When any of

٤١٦ - مَسْأَلَةٌ: وَوَاجِبٌ عَلَى مَنْ دَخَلَ الْمَسْجِدَ أَنْ يَقُولَ " اللَّهُمَّ افْتَحْ لِي أَبْوَابَ رَحْمَتِك " فَإِذَا خَرَجَ مِنْهُ فَلْيَقُلْ: " اللَّهُمَّ إنِّي أَسْأَلُك مِنْ فَضْلِك ". وَهَذَا إنَّمَا هُوَ مِنْ شُرُوطِ دُخُولِ الْمَسْجِدِ مَتَى دَخَلَهُ، لَا مِنْ شُرُوطِ الصَّلَاةِ، فَصَلَاةُ مَنْ لَمْ يَقُلْ ذَلِكَ جَائِزَةٌ، وَقَدْ عَصَى فِي تَرْكِهِ قَوْلَ مَا أُمِرَ بِهِ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى أَنَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ عَنْ عَبْدِ الْمَلِكِ بْنِ سَعِيدٍ هُوَ ابْنُ سُوَيْدٍ الْأَنْصَارِيُّ - عَنْ أَبِي حُمَيْدٍ أَوْ عَنْ أَبِي أُسَيْدٍ قَالَ: قَالَ رَسُولُ اللَّهِ

you enters the mosque, let him say: O Allah, open for me the doors of Your mercy. When he leaves, let him say: O Allah, I ask You of Your bounty." Ali said: "Whichever of the two it was, they are superior to all who came after them."[38]

A Jurisprudential Issue Concerning the Congregant's Compliance with the Imam

L6696

L6697–6699

417 - Issue: It is obligatory upon every follower not to raise, bow, prostrate, utter the takbīr, stand, or give the salām before his imam or alongside his imam. If he does so intentionally, his prayer is invalidated. However, after the completion of every. That is from his Imam; if he did so inadvertently, he must return and ensure that all of that is from him after all of that from his Imam, and the prostration of forgetfulness is obligatory upon him.

Abdullāh ibn Yūsuf narrated to us: Aḥmad ibn Fatḥ narrated to us: ʻAbd al-Wahhāb ibn ʻĪsā narrated to us: Aḥmad ibn Muḥammad narrated to us: Aḥmad ibn ʻAlī narrated to us: Muslim ibn al-Ḥajjāj narrated to us: Abū Kāmil al-Jaḥdarī narrated to us: Abū ʻAwānah narrated from Qatādah, from Yūnus ibn Jubayr, from Ḥiṭṭān ibn ʻAbdillāh al-Raqqāshī: Abū Mūsā narrated to us, saying: "The Messenger of Allah (peace and blessings of Allah be upon him) addressed us, clarified to us the Sunnah of goodness, and taught us our prayer. He said: 'When you pray, straighten your rows, then let one of you lead you. When he pronounces the takbīr, pronounce it likewise. When he says: {Not of those who have earned [Your] wrath nor of the astray} [1:7], say "Ameen"—Allah will respond to you. When he pronounces the takbīr and bows, pronounce the takbīr and bow, for the Imam bows before you and rises before you; that corresponds to that. When he pronounces the takbīr and prostrates, pronounce the takbīr and prostrate, for the Imam prostrates before you and rises before you; that corresponds to that.'" He then mentioned the remainder of the ḥadīth.

[38] **Hadith references (L6695):** Sunan an-Nasai 729; Sahih Muslim 713a.

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا دَخَلَ أَحَدُكُمُ الْمَسْجِدَ فَلْيَقُلْ: اللَّهُمَّ افْتَحْ لِي أَبْوَابَ رَحْمَتِكَ، وَإِذَا خَرَجَ فَلْيَقُلْ: اللَّهُمَّ إِنِّي أَسْأَلُكَ مِنْ فَضْلِكَ» . قَالَ عَلِيٌّ: أَيُّهُمَا كَانَ فَهُوَ خَيْرٌ مِنْ كُلِّ مَنْ بَعْدَهُ

[مَسْأَلَةٌ مُتَابَعَةُ الْمَأْمُومِ لِإِمَامِهِ]

٤١٧ - مَسْأَلَةٌ: وَفُرِضَ عَلَى كُلِّ مَأْمُومٍ أَنْ لَا يَرْفَعَ وَلَا يَرْكَعَ وَلَا يَسْجُدَ وَلَا يُكَبِّرَ وَلَا يَقُومَ وَلَا يُسَلِّمَ قَبْلَ إِمَامِهِ، وَلَا مَعَ إِمَامِهِ، فَإِنْ فَعَلَ عَامِدًا بَطَلَتْ صَلَاتُهُ، لَكِنْ بَعْدَ تَمَامِ كُلِّ ذَلِكَ مِنْ إِمَامِهِ، فَإِنْ فَعَلَ ذَلِكَ سَاهِيًا فَلْيَرْجِعْ وَلَا بُدَّ حَتَّى يَكُونَ ذَلِكَ كُلُّهُ مِنْهُ بَعْدَ كُلِّ ذَلِكَ مِنْ إِمَامِهِ وَعَلَيْهِ سُجُودُ السَّهْوِ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو كَامِلٍ الْجَحْدَرِيُّ ثنا أَبُو عَوَانَةَ عَنْ قَتَادَةَ عَنْ يُونُسَ بْنِ جُبَيْرٍ عَنْ حِطَّانَ بْنِ عَبْدِ اللَّهِ الرَّقَاشِيِّ ثنا أَبُو مُوسَى قَالَ «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَطَبَنَا فَبَيَّنَ لَنَا سُنَّةَ الْخَيْرِ، وَعَلَّمَنَا صَلَاتَنَا، فَقَالَ: إِذَا صَلَّيْتُمْ فَأَقِيمُوا صُفُوفَكُمْ، ثُمَّ لِيَؤُمَّكُمْ أَحَدُكُمْ، فَإِذَا كَبَّرَ فَكَبِّرُوا، وَإِذَا قَالَ: {غَيْرِ الْمَغْضُوبِ عَلَيْهِمْ وَلا الضَّالِّينَ} [الفاتحة: ٧] فَقُولُوا آمِينَ يُجِبْكُمُ اللَّهُ فَإِذَا كَبَّرَ وَرَكَعَ فَكَبِّرُوا وَارْكَعُوا، فَإِنَّ الْإِمَامَ يَرْكَعُ قَبْلَكُمْ وَيَرْفَعُ قَبْلَكُمْ، فَتِلْكَ بِتِلْكَ وَإِذَا كَبَّرَ وَسَجَدَ فَكَبِّرُوا وَاسْجُدُوا، فَإِنَّ الْإِمَامَ يَسْجُدُ قَبْلَكُمْ وَيَرْفَعُ قَبْلَكُمْ، فَتِلْكَ بِتِلْكَ» وَذَكَرَ بَاقِيَ الْحَدِيثِ. حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُسَدَّدٌ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ سُفْيَانَ الثَّوْرِيِّ حَدَّثَنِي أَبُو إِسْحَاقَ هُوَ السَّبِيعِيُّ - ثنا عَبْدُ اللَّهِ بْنُ يَزِيدَ الْأَنْصَارِيُّ ثنا الْبَرَاءُ بْنُ عَازِبٍ

‘Abd al-Raḥmān ibn ‘Abdillāh ibn Khālid narrated to us: Ibrāhīm ibn Aḥmad narrated to us: al-Farbarī narrated to us: al-Bukhārī narrated to us: Musaddad narrated to us: Yaḥyā ibn Sa‘īd al-Qaṭṭān narrated from Sufyān al-Thawrī, who said: Abū Isḥāq al-Sabī‘ī narrated to me: ‘Abdullāh ibn Yazīd al-Anṣārī narrated to us: al-Barā’ ibn ‘Āzib said: “When the Messenger of Allah (peace and blessings of Allah be upon him) said, *‘Allah hears those who praise Him,’* none of us would bend his back [in bowing] until the Prophet (peace and blessings of Allah be upon him) had prostrated, after which we would prostrate following him.” We have also narrated it through the chain of ‘Abd al-Raḥmān ibn Abī Laylā, from al-Barā’ ibn ‘Āzib.

Through this chain to al-Bukhārī: al-Ḥajjāj ibn al-Minhāl narrated to us: Shu‘bah narrated from Muḥammad ibn Ziyād, who said: I heard Abū Hurayrah say: The Messenger of Allah (peace and blessings of Allah be upon him) said: “Does any one of you not fear—or does any one of you not fear—that if he raises his head before the Imam, Allah will transform his head into a donkey’s head, or make his form resemble a donkey’s?”[39][40]

قَالَ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا قَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ، لَمْ يَحْنِ أَحَدٌ مِنَّا ظَهْرَهُ حَتَّى يَقَعَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَاجِدًا، ثُمَّ نَقَعُ سُجُودًا بَعْدَهُ» . وَقَدْ رُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ الْبَرَاءِ بْنِ عَازِبٍ. وَبِهِ إِلَى الْبُخَارِيِّ: ثِنَا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثِنَا شُعْبَةُ عَنْ مُحَمَّدُ بْنُ زِيَادٍ قَالَ سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَمَا يَخْشَى أَحَدُكُمْ، أَوْ لَا يَخْشَى أَحَدُكُمْ إِذَا رَفَعَ رَأْسَهُ قَبْلَ الْإِمَامِ أَنْ يَجْعَلَ اللَّهُ رَأْسَهُ رَأْسَ حِمَارٍ، أَوْ يَجْعَلَ اللَّهُ صُورَتَهُ صُورَةَ حِمَارٍ» .

L6700–6703 Hammam narrated to us, Ibn Asbagh narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, Muhammad ibn Isma’il al-Tirmidhi narrated to us, al-Humaydi narrated to us, Sufyan — that is Ibn Uyaynah — narrated to us, Yahya ibn Sa’id al-Ansari narrated that he heard Muhammad ibn Yahya ibn Hibban from Ibn Muhayriz: I heard Mu’awiyah ibn Abi Sufyan say: The Messenger of Allah — peace and blessings be upon him — said: “Do not precede me in bowing or prostration, for I have gained weight. Whatever I precede you in when I bow, you will catch up with me when I rise, and whatever I precede you in when I prostrate, you will catch up with me when I rise.” This is the view held by the Salaf. It was narrated to us from Abu Hurairah that he said: “Whoever raises his head before the Imam and lowers it before him, his forelock is in the hand of a devil.” From Abdullah ibn Mas’ud: “A man cannot be sure, if he raises his head before the Imam, that his head might not return as the head of a dog.” Ali said: “There is no threat more severe than being transformed into the form of a dog or a donkey. No

حَدَّثَنَا حُمَامٌ ثِنَا ابْنُ أَصْبَغَ ثِنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثِنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ ثِنَا الْحُمَيْدِيُّ ثِنَا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - ثِنَا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ أَنَّهُ سَمِعَ مُحَمَّدَ بْنَ يَحْيَى بْنِ حِبَّانَ عَنْ ابْنِ مُحَيْرِيزٍ سَمِعْت مُعَاوِيَةَ بْنَ أَبِي سُفْيَانَ يَقُولُ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُبَادِرُونِي بِالرُّكُوعِ وَلَا السُّجُودِ فَإِنِّي قَدْ بَدَّنْتُ فَمَهْمَا أَسْبِقُكُمْ بِهِ إِذَا رَكَعْتُ فَإِنَّكُمْ تُدْرِكُونِي بِهِ إِذَا رَفَعْتُ، وَمَهْمَا أَسْبِقُكُمْ بِهِ إِذَا سَجَدْتُ فَإِنَّكُمْ تُدْرِكُونِي بِهِ إِذَا رَفَعْتُ» وَبِهِ قَالَ السَّلَفُ. رُوِّينَا عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ: إنَّ الَّذِي يَرْفَعُ رَأْسَهُ قَبْلَ الْإِمَامِ وَيَخْفِضُ قَبْلَهُ فَإِنَّ نَاصِيَتَهُ بِيَدِ شَيْطَانٍ. وَعَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ: مَا يُؤْمِنُ الرَّجُلُ إذَا رَفَعَ رَأْسَهُ قَبْلَ الْإِمَامِ أَنْ تَعُودَ رَأْسُهُ رَأْسَ كَلْبٍ. قَالَ عَلِيٌّ: لَا وَعِيدَ أَشَدَّ مِنْ الْمَسْخِ فِي صُورَةِ كَلْبٍ أَوْ حِمَارٍ، وَلَا عُقُوبَةَ أَعْظَمَ مِنْ إسْلَامِ

[39] **Hadith references (L6697):** Sahih al-Bukhari 690; Sahih al-Bukhari 691.
[40] **Qur’an references (L6697):** Qur’an 1:7 (Al-Fatihah).

punishment is greater than surrendering a person's forelock to the hand of Satan." From Ibn Mas'ud: "Do not precede your Imams in prostration. If any of you does so, let him place his head to the extent he preceded." From Umar ibn al-Khattab: A statement identical to this, letter for letter. Ali said: "The sinful act that is forbidden — which distances one from Allah Almighty — does not substitute for the obligatory act of obedience." acts that bring one closer to Him, the Almighty, the Exalted.

L6704 ***A jurisprudential issue [where] a person with impaired vision feared physical injury due to extending the bowing (rukūʿ) or prostration (sujūd).***

L6705 418 - Issue: If someone has impaired vision and fears harm from prolonging the bowing or prostration, they should delay these actions until shortly before the imam raises his head—allowing time equivalent to what is needed to bow, attain stillness, and recite "Glory be to my Lord, the Most Great, and praise be to Him"—then rise after the imam does. This is based on Allah's words: "He has not placed upon you in the religion any hardship" (22:78), "Allah does not burden a soul beyond its capacity" (2:286), and "Allah intends ease for you and does not intend hardship for you" (2:185). It is entirely perplexing that Abū Ḥanīfa and Mālik ruled: It is unlawful for a follower to pronounce the opening takbīr before the imam, nor simultaneously with him; nor to offer the salutation before the imam, nor simultaneously with him—yet they permitted all other actions to coincide with the imam. The Prophet's explicit statement: "Pray what you coincide with and complete what you miss" constitutes clear evidence that it is unlawful for a follower to separate from the imam until the imam's prayer is fully concluded, and the imam's prayer is only concluded by the completion of his final salutation.[41]

L6706 **Issue: It is not permissible for anyone to utter the *takbīr***

[41] **Qur'an references (L6705):** Qur'an 22:78 (Al-Hajj); Qur'an 2:286 (Al-Baqarah); Qur'an 2:185 (Al-Baqarah).

نَاصِيَةِ الْمَرْءِ إِلَى يَدِ الشَّيْطَانِ. وَعَنْ ابْنِ مَسْعُودٍ: لَا تُبَادِرُوا أَئِمَّتَكُمْ بِالسُّجُودِ، فَإِنْ سَبَقَكُمْ مِنْ ذَلِكَ شَيْءٌ فَلْيَضَعْ أَحَدُكُمْ رَأْسَهُ كَقَدْرِ مَا سَبَقَ. وَعَنْ عُمَرَ بْنِ الْخَطَّابِ مِثْلُ هَذَا حَرْفًا حَرْفًا. قَالَ عَلِيٌّ: وَالْمَعْصِيَةُ الْمُحَرَّمَةُ الْمُبْعِدَةُ مِنْ اللَّهِ تَعَالَى لَا تَنُوبُ عَنْ الطَّاعَةِ الْمُفْتَرَضَةِ الْمُقَرِّبَةِ مِنْهُ عَزَّ وَجَلَّ

[مَسْأَلَةٌ كَانَ عَلِيلَ الْبَصَرِ وَخَشِيَ ضَرَرًا مِنْ طُولِ الرُّكُوعِ أَوْ السُّجُودِ]

٤١٨ - مَسْأَلَةٌ: فَمَنْ كَانَ عَلِيلَ الْبَصَرِ وَخَشِيَ ضَرَرًا مِنْ طُولِ الرُّكُوعِ أَوْ السُّجُودِ فَلْيُؤَخِّرْ ذَلِكَ إلَى قُرْبِ رَفْعِ الْإِمَامِ رَأْسَهُ بِمِقْدَارِ مَا يَرْكَعُ وَيَطْمَئِنُّ وَيَقُولُ سُبْحَانَ رَبِّيَ الْعَظِيمِ وَبِحَمْدِهِ ثُمَّ يَرْفَعُ بَعْدَ رَفْعِ الْإِمَامِ لِقَوْلِ اللَّهِ تَعَالَى: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] وَلِقَوْلِهِ عَزَّ وَجَلَّ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَلِقَوْلِهِ تَعَالَى: {يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلا يُرِيدُ بِكُمُ الْعُسْرَ} [البقرة: ١٨٥] وَالْعَجَبُ كُلُّهُ مِنْ قَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ: لَا يَحِلُّ لِلْمَأْمُومِ أَنْ يُكَبِّرَ لِلْإِحْرَامِ قَبْلَ إمَامِهِ، وَلَا مَعَ إمَامِهِ، وَلَا أَنْ يُسَلِّمَ قَبْلَ إمَامِهِ، وَلَا مَعَ إمَامِهِ: ثُمَّ أَجَازُوا لَهُ أَنْ يَفْعَلَ سَائِرَ ذَلِكَ مَعَ الْإِمَامِ وَفِي قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَمَا أَدْرَكْتُمْ فَصَلُّوا وَمَا فَاتَكُمْ فَأَتِمُّوا» أَوْ «فَاقْضُوا» نَصٌّ جَلِيٌّ عَلَى أَنَّهُ لَا يَحِلُّ لِلْمَأْمُومِ أَنْ يُفَارِقَ الْإِمَامَ حَتَّى تَتِمَّ صَلَاةُ الْإِمَامِ، وَلَا تَتِمُّ صَلَاةُ الْإِمَامِ إلَّا بِتَمَامِ سَلَامِهِ

[مَسْأَلَةٌ وَلَا يَحِلُّ لِأَحَدٍ أَنْ يُكَبِّرَ قَبْلَ إمَامِهِ إلَّا فِي أَرْبَعَةِ مَوَاضِعَ]

before their imam except in four cases.

L6707–6711

419 - Issue: It is not permissible for anyone to utter the *takbīr* before the Imam except in four cases. The first: When someone joins behind an Imam, and when the Imam utters the *takbīr* and the people follow, the Imam realizes he lacks ritual purity. He then signals to the people to stay, exits to purify himself, returns, and initiates the *takbīr* for *iḥrām* while they remain in their state of having pronounced the *takbīr*—as the Messenger of Allah (peace be upon him) did with his companions (may Allah be pleased with them). The second: When the Imam utters the *takbīr* and the people follow, then he nullifies his *wuḍū'*. He appoints someone who entered at that moment as his successor, who becomes the Imam in his place, while the followers had uttered the *takbīr* before him—this being a consensus among Ḥanafīs, Mālikīs, Shāfiʿīs, and Ḥanbalīs. The third: When the regular Imam is absent, and the people appoint someone to lead them in prayer, then the regular Imam arrives. The appointed Imam steps back, and he steps forward to lead the prayer while the congregation had already uttered the *takbīr* before him—as the Messenger of Allah (peace be upon him) did twice: once when he (peace be upon him) went to Banī ʿAmr ibn ʿAwf to reconcile between them, so the people appointed... For the prayer in which Abu Bakr was present, and the Messenger of Allah (peace and blessings of Allah be upon him) arrived, Abu Bakr stepped back, and the Messenger of Allah (peace and blessings of Allah be upon him) advanced to lead the people in prayer, continuing from what they had prayed with Abu Bakr—just as he did in the final prayer he led for the Muslims. We have previously mentioned this with its chain of transmission in our book, praise be to Allah. The fourth scenario: One who had a valid excuse for missing congregational prayer or despaired of finding a congregation and began praying alone, then the Imam arrived—he joins the Imam's prayer and counts his initial takbīr and prior prayer, for he performed the takbīr as commanded and prayed the elapsed portion of his prayer as commanded. Whoever fulfills his obligation has done well, and it is impermissible to invalidate his deeds except by explicit textual evidence from the Quran or established Sunnah. Allah Almighty says: "Do not nullify your deeds" (47:33). Similarly, it is unlawful for anyone to utter

٤١٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يُكَبِّرَ قَبْلَ إمَامِهِ إلَّا فِي أَرْبَعَةِ مَوَاضِعَ -: أَحَدُهَا: مَنْ دَخَلَ خَلْفَ إمَامٍ فَلَمَّا كَبَّرَ الْإِمَامُ وَكَبَّرَ النَّاسُ ذَكَرَ الْإِمَامُ أَنَّهُ عَلَى غَيْرِ طَهَارَةٍ، فَإِنَّهُ يُشِيرُ إلَى النَّاسِ أَنْ امْكُثُوا، ثُمَّ يَخْرُجُ فَيَتَطَهَّرُ، ثُمَّ يَأْتِي فَيَبْتَدِئُ التَّكْبِيرَ لِلْإِحْرَامِ، وَهُمْ بَاقُونَ عَلَى مَا كَبَّرُوا، كَمَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَصْحَابِهِ - رَضِيَ اللَّهُ عَنْهُمْ - وَالثَّانِي: أَنْ يُكَبِّرَ الْإِمَامُ وَيُكَبِّرَ النَّاسُ بَعْدَهُ ثُمَّ يُحْدِثُ، فَيَسْتَخْلِفُ مَنْ دَخَلَ حِينَئِذٍ، فَيَصِيرُ إمَامًا مَكَانَهُ، وَيَكُونُ الْمُؤْتَمُّونَ بِهِ قَدْ كَبَّرُوا قَبْلَهُ - وَهَذَا إجْمَاعٌ مِنْ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، وَالْحَنْبَلِيِّينَ. وَالثَّالِثُ: أَنْ يَغِيبَ الْإِمَامُ الرَّاتِبُ فَيَسْتَخْلِفَ النَّاسُ مَنْ يُصَلِّي بِهِمْ ثُمَّ يَأْتِي الْإِمَامُ الرَّاتِبُ فَيَتَأَخَّرُ الْمُقَدَّمُ، وَيَتَقَدَّمُ هُوَ، فَيُصَلِّي بِالنَّاسِ وَقَدْ كَبَّرَ الْمَأْمُومُونَ قَبْلَهُ، كَمَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَرَّتَيْنِ -: مَرَّةً «إذْ مَضَى - عَلَيْهِ السَّلَامُ - إلَى بَنِي عَمْرِو بْنِ عَوْفٍ لِيُصْلِحَ بَيْنَهُمْ، فَقَدَّمَ النَّاسُ لِلصَّلَاةِ الَّتِي حَضَرَتْ أَبَا بَكْرٍ فَجَاءَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَتَأَخَّرَ أَبُو بَكْرٍ وَتَقَدَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَصَلَّى بِالنَّاسِ بَانِينَ عَلَى مَا صَلَّوْا مَعَ أَبِي بَكْرٍ» . وَكَمَا فَعَلَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي آخِرِ صَلَاةٍ صَلَّاهَا بِالْمُسْلِمِينَ. وَقَدْ ذَكَرْنَا ذَلِكَ بِإِسْنَادِهِ فِيمَا سَلَفَ مِنْ كِتَابِنَا هَذَا وَلِلَّهِ الْحَمْدُ وَالرَّابِعُ: مَنْ كَانَ مَعْذُورًا فِي تَرْكِ حُضُورِ الْجَمَاعَةِ أَوْ يَئِسَ عَنْ أَنْ يَجِدَ جَمَاعَةً فَبَدَأَ الصَّلَاةَ فَلَمَّا دَخَلَ فِيهَا أَتَى الْإِمَامُ، فَإِنَّهُ يَدْخُلُ فِي صَلَاةِ الْإِمَامِ وَيَعْتَدُّ بِتَكْبِيرِهِ وَبِمَا صَلَّى، لِأَنَّهُ كَبَّرَ كَمَا أُمِرَ، وَصَلَّى مَا مَضَى مِنْ صَلَاتِهِ كَمَا أُمِرَ، وَمَنْ فَعَلَ مَا أُمِرَ بِهِ فَقَدْ أَحْسَنَ، وَمَنْ أَحْسَنَ فَلَا يَجُوزُ إبْطَالُ مَا عَمِلَ إلَّا بِنَصِّ: قُرْآنٍ أَوْ سُنَّةٍ ثَابِتَةٍ، وَقَدْ قَالَ تَعَالَى: {وَلَا تُبْطِلُوا أَعْمَالَكُمْ}

the salām before the Imam except in four situations: First: The prayer of fear, as we shall discuss in its relevant chapters, Allah willing. Second: One who had a valid excuse for missing congregational prayer or despaired of finding a congregation began praying alone, then the Imam arrived. He then became a follower of the Imam, and his prayer concluded before the Imam's prayer. In this case, he may choose: If he wishes, he may utter the salām and rise, for his prayer is complete. He may not continue following the Imam's actions during the prayer, nor is it permissible for the follower to add such actions to his prayer. Since he cannot continue following the Imam, he exits the Imam's leadership and his prayer is complete. Thus, he should utter the salām. Alternatively, he may prolong his Tashahhud (testification) and supplication until the Imam utters the salām, then he may utter the salām afterward or simultaneously. Third: A traveler praying behind one who performs the complete prayer—whether a resident or someone excused due to an erroneous interpretation. Once the follower completes two rakʿahs with their prostrations, his prayer is complete. He may choose between uttering the salām, prolonging his sitting and supplication, rising after his salām, or voluntarily praying the remaining portion of the prayer with the Imam. Fourth: One for whom the Imam's excessive prolongation causes harm to himself or loss of property. He may exit the Imam's leadership, complete his prayer individually, utter the salām, and attend to his needs—as narrated to us by ʿAbdullāh ibn Yūsuf, Aḥmad ibn Fatḥ narrated to us, ʿAbd al-Wahhāb ibn ʿĪsā narrated to us... Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Muhammad ibn Abbad narrated to us, Sufyan—Ibn Uyaynah—from Amr—Ibn Dinar—from Jabir ibn Abdullah, who said: "Mu'adh used to pray with the Prophet (PBUH) then return to lead his people. One night, he prayed Isha with the Prophet (PBUH) then came to his people and led them, commencing with Surah Al-Baqarah. A man turned away, said the Salam, prayed alone, and left. They said: 'Have you become a hypocrite, O so-and-so?' He replied: 'No, by Allah! I will surely go to the Messenger of Allah (PBUH) and inform him.' He came to the Messenger of Allah (PBUH) and said: 'O Messenger of Allah, we are water-carriers working by day. Mu'adh prayed Isha with you then came and commenced Al-Baqarah.' The Messenger of Allah (PBUH)

[محمد: ٣٣] . وَكَذَلِكَ لَا يَحِلُّ لِأَحَدٍ أَنْ يُسَلِّمَ قَبْلَ إِمَامِهِ إِلَّا فِي أَرْبَعَةِ مَوَاضِعَ -: أَحَدُهَا: صَلَاةُ الْخَوْفِ، كَمَا نَذْكُرُ فِي أَبْوَابِهَا إِنْ شَاءَ اللَّهُ تَعَالَى وَالثَّانِي: مَنْ كَانَ لَهُ عُذْرٌ فِي تَرْكِ حُضُورِ الْجَمَاعَةِ أَوْ يَئِسَ عَنْ وُجُودِ جَمَاعَةٍ فَبَدَأَ بِالصَّلَاةِ ثُمَّ أَتَى الْإِمَامُ، فَصَارَ هَذَا مُؤْتَمًّا بِهِ وَتَمَّتْ صَلَاتُهُ قَبْلَ صَلَاةِ الْإِمَامِ، فَهَذَا مُخَيَّرٌ، إِنْ شَاءَ سَلَّمَ وَنَهَضَ؛ لِأَنَّ صَلَاتَهُ قَدْ تَمَّتْ. وَلَا يَجُوزُ لَهُ الِائْتِمَامُ بِالْإِمَامِ فِي أَحْوَالٍ يَفْعَلُهَا الْإِمَامُ مِنْ صَلَاتِهِ، وَلَا يَحِلُّ لِلْمُؤْتَمِّ أَنْ يَزِيدَهَا فِي صَلَاتِهِ؛ فَإِذْ لَا يَجُوزُ لَهُ الِائْتِمَامُ بِالْإِمَامِ فَقَدْ خَرَجَ عَنْ إِمَامَتِهِ وَتَمَّتْ صَلَاتُهُ، فَلْيُسَلِّمْ، وَإِنْ شَاءَ يَتَمَادَى عَلَى تَشَهُّدِهِ وَدُعَائِهِ، حَتَّى إِذَا سَلَّمَ الْإِمَامُ سَلَّمَ بَعْدَهُ أَوْ مَعَهُ. وَالثَّالِثُ: مُسَافِرٌ دَخَلَ خَلْفَ مَنْ يُتِمُّ الصَّلَاةَ - إِمَّا مُقِيمًا وَإِمَّا مُتَأَوِّلًا مَعْذُورًا بِخَطَئِهِ فَإِذَا تَمَّتْ لِلْمَأْمُومِ رَكْعَتَانِ بِسَجْدَتَيْهِمَا فَقَدْ تَمَّتْ صَلَاتُهُ، فَهُوَ مُخَيَّرٌ بَيْنَ مَا ذَكَرْنَا مِنْ سَلَامٍ أَوْ تَمَادَى عَلَى الْجُلُوسِ وَالدُّعَاءِ، وَإِنْ شَاءَ بَعْدَ سَلَامِهِ أَنْ يَنْهَضَ فَلَهُ ذَلِكَ، وَإِنْ شَاءَ أَنْ يُصَلِّيَ مَعَ الْإِمَامِ بَاقِيَ صَلَاتِهِ مُتَطَوِّعًا فَذَلِكَ لَهُ وَالرَّابِعُ: مَنْ طَوَّلَ عَلَيْهِ الْإِمَامُ تَطْوِيلًا يَضُرُّ بِهِ فِي نَفْسِهِ، أَوْ فِي ضَيَاعِ مَالِهِ، فَلَهُ أَنْ يَخْرُجَ عَنْ إِمَامَتِهِ، وَيُتِمَّ صَلَاتَهُ لِنَفْسِهِ، وَيُسَلِّمَ وَيَنْهَضَ لِحَاجَتِهِ -: كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ عَبَّادٍ ثنا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرٍو هُوَ ابْنُ دِينَارٍ - عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «كَانَ مُعَاذٌ يُصَلِّي مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ يَأْتِي فَيَؤُمُّ قَوْمَهُ، فَصَلَّى لَيْلَةً مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْعِشَاءَ، ثُمَّ أَتَى قَوْمَهُ فَأَمَّهُمْ، فَافْتَتَحَ بِسُورَةِ الْبَقَرَةِ، فَانْحَرَفَ رَجُلٌ فَسَلَّمَ، ثُمَّ صَلَّى وَحْدَهُ وَانْصَرَفَ، فَقَالُوا لَهُ: أَنَافَقْتَ يَا فُلَانُ قَالَ: لَا وَاللَّهِ، وَلَآتِيَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَأُخْبِرَنَّهُ، فَأَتَى رَسُولَ اللَّهِ

turned to him and said: 'O Mu'adh, are you a troublemaker? Recite such-and-such surahs, recite such-and-such,' mentioning the rest."

Abd al-Rahman ibn Abdullah ibn Khalid narrated to us, Ibrahim ibn Ahmad narrated to us, al-Farbari narrated to us, al-Bukhari narrated to us: Muhammad ibn Bashshar narrated to me, Ghundar narrated to us, Shu'bah narrated from Amr ibn Dinar, who said: I heard Jabir ibn Abdullah say: "Mu'adh ibn Jabal prayed with the Prophet (PBUH) then returned to lead his people. He prayed Isha reciting Al-Baqarah. A man left, and when this reached the Messenger of Allah (PBUH), he said thrice: 'Instigator! Instigator! Instigator!'—or he said: 'Tempter! Tempter! Tempter!'—commanding him to recite two surahs from the middle Mufassal."

This constitutes the Companions' consensus alongside textual evidence. We narrate through Abd al-Razzaq from Isra'il ibn Yunus from Abu Ishaq al-Sabi'i from Asim ibn Damrah from Ali ibn Abi Talib, who said: "If a man completes Tashahhud and fears invalidating ablution before the Imam says the Salam, let him say the Salam—his prayer is complete." We know no dissent among the Companions regarding this. Through all the scenarios mentioned, groups of the Salaf upheld these positions.[42]

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ، إِنَّا أَصْحَابُ نَوَاضِحَ نَعْمَلُ بِالنَّهَارِ، وَإِنَّ مُعَاذًا صَلَّى مَعَكَ الْعِشَاءَ ثُمَّ أَتَى فَافْتَتَحَ بِسُورَةِ الْبَقَرَةِ، فَأَقْبَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا مُعَاذُ، أَفَتَّانٌ أَنْتَ اقْرَأْ بِكَذَا، وَاقْرَأْ بِكَذَا» وَذَكَرَ بَاقِيَ الْكَلَامِ. حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ حَدَّثَنِي مُحَمَّدُ بْنُ بَشَّارٍ ثنا غُنْدَرٍ ثنا شُعْبَةُ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: سَمِعْتُ جَابِرَ بْنَ عَبْدِ اللَّهِ قَالَ: «كَانَ مُعَاذُ بْنُ جَبَلٍ يُصَلِّي مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ يَرْجِعُ إِلَى قَوْمِهِ فَيَؤُمُّهُمْ، فَصَلَّى الْعِشَاءَ فَقَرَأَ بِالْبَقَرَةِ فَانْصَرَفَ رَجُلٌ فَبَلَغَ ذَلِكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: فَتَّانٌ فَتَّانٌ فَتَّانٌ أَوْ قَالَ: فَاتِنًا فَاتِنًا فَاتِنًا وَأَمَرَهُ بِسُورَتَيْنِ مِنْ أَوْسَطِ الْمُفَصَّلِ» . وَهَذَا إِجْمَاعٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مَعَ النَّصِّ وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إِسْرَائِيلَ بْنِ يُونُسَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إِذَا تَشَهَّدَ الرَّجُلُ وَخَافَ أَنْ يُحْدِثَ قَبْلَ أَنْ يُسَلِّمَ الْإِمَامُ فَلْيُسَلِّمْ وَقَدْ تَمَّتْ صَلَاتُهُ وَلَا نَعْلَمُ لَهُ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ مُخَالِفًا. وَبِكُلِّ الْوُجُوهِ الَّتِي ذَكَرْنَا، قَدْ قَالَتْ طَوَائِفُ مِنَ السَّلَفِ - رَضِيَ اللَّهُ عَنْهُمْ -

[مَسْأَلَةُ مَنْ سَبَقَ إِلَى مَكَانٍ مِنَ الْمَسْجِدِ لَمْ]

A legal question: The one who arrives first at a spot in the mosque has not...

L6712

L6713

٤٢٠ - مَسْأَلَةٌ: وَمَنْ سَبَقَ إِلَى مَكَانٍ مِنَ الْمَسْجِدِ لَمْ يَجُزْ لِغَيْرِهِ إِخْرَاجُهُ عَنْهُ وَكَذَلِكَ إِنْ قَامَ عَنْهُ غَيْرَ تَارِكٍ لَهُ فَرَجَعَ فَهُوَ أَحَقُّ بِهِ؛ لِأَنَّ الْمَسْجِدَ لِجَمِيعِ النَّاسِ، وَقَدْ نَهَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُقَامَ أَحَدٌ عَنْ مَكَانِهِ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا مُوسَى بْنُ إِسْمَاعِيلَ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ

420. Issue: If someone secures a place in the mosque first, it is impermissible for others to remove him from it. Similarly, if he rises without relinquishing his spot and returns, he holds greater right to it, for the mosque belongs to all people. The Prophet (peace be upon him) prohibited compelling anyone to vacate their place. Narrated to us by ʻAbdullāh ibn Rabīʻ, via ʻUmar ibn ʻAbd al-Malik, via Muḥammad ibn Bakr, via Abū Dāwūd, via Mūsā ibn Ismāʻīl, via Ḥammād ibn Salamah, via Suhayl ibn Abī Ṣāliḥ, via Abū Hurayrah, that the

[42] **Qur'an references (L6707):** Qur'an 47:33 (Muhammad).

Prophet (peace be upon him) said: “When a man rises from his place and then returns to it, he holds the greatest right to it.”

A ruling: It is not permissible for anyone to pray in front of the Imam.

L6714–6715

L6716–6718

421 - Issue: It is not permissible for anyone to pray in front of the Imam except due to the necessity of confinement alone, or on a ship where no alternative is possible. Abdullah ibn Yūsuf narrated to us, Aḥmad ibn Fatḥ narrated to us, ʿAbd al-Wahhāb ibn ʿĪsā narrated to us, Aḥmad ibn Muḥammad narrated to us, Aḥmad ibn ʿAlī narrated to us, Muslim ibn al-Ḥajjāj narrated to us, Hārūn ibn Maʿrūf narrated to us, Ḥātim ibn Ismāʿīl narrated from Yaʿqūb ibn Mujāhid Abū Ḥarza from ʿUbādah ibn al-Walīd ibn ʿUbādah ibn al-Ṣāmit: We came to Jābir ibn ʿAbdullāh, and he narrated to us: “The Messenger of Allah—peace and blessings be upon him—performed ablution. Jābir said: I performed ablution from the water used by the Messenger of Allah—peace and blessings be upon him—for ablution. Jabbār ibn Ṣakhr went to relieve himself. The Messenger of Allah—peace and blessings be upon him—stood to pray. Then I came and stood to his left. He took me by the hand and turned me until he positioned me to his right. Then Jabbār ibn Ṣakhr came and stood to the left of the Messenger of Allah—peace and blessings be upon him. He took both of us by our hands and positioned us behind him.” It is thus obligatory without exception that two or more must stand behind the Imam, and a single person must stand to his right. For the Prophet’s act of moving Jābir and Jabbār behind him—peace and blessings be upon him—was a command from him that may not be transgressed. Similarly, his turning Jābir to his right was such. Whoever prays contrary to what he—peace and blessings be upon him—commanded has no valid prayer. Some scholars have asserted that two may stand on either side of the Imam, citing as evidence a narration we transmitted from al-Aʿmash from Ibrāhīm from ʿAlqamah and al-Aswad: “They prayed with Ibn Masʿūd—may Allah be pleased with him. He stood between them, placing one to his right and the other to his left, then bowed with them. They placed their hands on their knees, so he tapped their hands and clasped his hands between his

سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا قَامَ الرَّجُلُ مِنْ مَجْلِسِهِ ثُمَّ رَجَعَ فَهُوَ أَحَقُّ بِهِ» .

[مَسْأَلَةٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يُصَلِّيَ أَمَامَ الْإِمَامِ]

٤٢١ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يُصَلِّيَ أَمَامَ الْإِمَامِ إلَّا لِضَرُورَةِ حَبْسٍ فَقَطْ، أَوْ فِي سَفِينَةٍ حَيْثُ لَا يُمْكِنُ غَيْرُ ذَلِكَ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا هَارُونُ بْنُ مَعْرُوفٍ ثنا حَاتِمُ بْنُ إسْمَاعِيلَ عَنْ يَعْقُوبَ بْنِ مُجَاهِدٍ أَبِي حَرْزَةَ عَنْ عُبَادَةَ بْنِ الْوَلِيدِ بْنِ عُبَادَةَ بْنِ الصَّامِتِ: أَتَيْنَا جَابِرَ بْنَ عَبْدِ اللَّهِ فَحَدَّثَنَا «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَوَضَّأَ، قَالَ جَابِرٌ: فَتَوَضَّأْتُ مِنْ مُتَوَضَّأِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَهَبَ جَبَّارُ بْنُ صَخْرٍ يَقْضِي حَاجَتَهُ، فَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُصَلِّيَ، ثُمَّ جِئْتُ حَتَّى قُمْتُ عَنْ يَسَارِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخَذَ بِيَدِي فَأَدَارَنِي حَتَّى أَقَامَنِي عَنْ يَمِينِهِ، ثُمَّ جَاءَ جَبَّارُ بْنُ صَخْرٍ فَقَامَ عَنْ يَسَارِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخَذَ بِأَيْدِينَا جَمِيعًا حَتَّى أَقَامَنَا خَلْفَهُ» . فَوَجَبَ أَنْ يَكُونَ الِاثْنَانِ فَصَاعِدًا خَلْفَ الْإِمَامِ وَلَا بُدَّ، وَيَكُونُ الْوَاحِدُ عَنْ يَمِينِ الْإِمَامِ وَلَا بُدَّ، لِأَنَّ دَفْعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَابِرًا وَجَبَّارًا إلَى مَا وَرَاءَهُ أَمْرٌ مِنْهُ - عَلَيْهِ السَّلَامُ - بِذَلِكَ لَا يَجُوزُ تَعَدِّيهِ، وَإِدَارَتُهُ جَابِرًا إلَى يَمِينِهِ كَذَلِكَ؛ فَمَنْ صَلَّى بِخِلَافِ مَا أُمِرَ بِهِ - عَلَيْهِ السَّلَامُ - فَلَا صَلَاةَ لَهُ وَقَدْ قَالَ قَوْمٌ: إنَّ الِاثْنَيْنِ يَكُونَانِ حِفَافَيْ الْإِمَامِ وَاحْتَجُّوا فِي ذَلِكَ بِرِوَايَةٍ رُوِّينَاهَا عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ «عَنْ عَلْقَمَةَ، وَالْأَسْوَدِ: أَنَّهُمَا صَلَّيَا

thighs. After praying, he said: 'This is how the Messenger of Allah—peace and blessings be upon him—acted.'" We also transmitted it through a chain containing Hārūn ibn ʿAntarah and another containing al-Ḥārith ibn Abī Usāmah. Both are abandoned: that this was the practice of the Prophet—peace be upon him—when they were three. Ali said: As for Al-A'mash's narration—the established one—it contains no clarification regarding what Ibn Mas'ud indicated by his statement: "Thus did Allah's Messenger—peace be upon him—act." Was this reference to the Imam's position between the two along with placing the hands together simultaneously, or to placing the hands together alone? Since no clarification exists in this matter, it is impermissible to abandon certainty for conjectures. Furthermore, even if this report were authentically attributed to Allah's Messenger—peace be upon him—the Prophet's moving of Jabir and Jabbār away from his sides and placing them behind him would establish for us with certainty the prohibition of the two being at the Imam's sides, rendering it impermissible. Since this is so, the permissibility of the two being at the Imam's sides has become prohibited with certainty. Therefore, what has been conclusively established as forbidden cannot revert to permissibility except through an explicit text concerning its restoration—and success comes from Allah, the Exalted.[43]

مَعَ ابْنِ مَسْعُودٍ - رَضِيَ اللَّهُ عَنْهُ - فَقَامَ بَيْنَهُمَا، وَجَعَلَ أَحَدَهُمَا عَنْ يَمِينِهِ، وَالْآخَرَ عَنْ شِمَالِهِ، وَقَامَ بَيْنَهُمَا، ثُمَّ رَكَعَ بِهِمَا، فَوَضَعَا أَيْدِيَهُمَا عَلَى رُكَبِهِمَا، فَضَرَبَ أَيْدِيَهُمَا ثُمَّ طَبَّقَ يَدَيْهِ فَجَعَلَهُمَا بَيْنَ فَخِذَيْهِ، فَلَمَّا صَلَّى قَالَ: هَكَذَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» . وَرُوِّينَا مِنْ طَرِيقٍ فِيهَا هَارُونُ بْنُ عَنْتَرَةَ وَأُخْرَى فِيهَا الْحَارِثُ بْنُ أَبِي أُسَامَةَ - وَكِلَاهُمَا مَتْرُوكٌ -: أَنَّ هَكَذَا كَانَ يَفْعَلُ - عَلَيْهِ السَّلَامُ - إذَا كَانُوا ثَلَاثَةً. قَالَ عَلِيٌّ: أَمَّا رِوَايَةُ الْأَعْمَشِ - وَهِيَ الثَّابِتَةُ - فَلَا بَيَانَ فِيهَا إلَى أَيِّ شَيْءٍ أَشَارَ ابْنُ مَسْعُودٍ بِقَوْلِهِ: «هَكَذَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» إلَى مَوْقِفِ الْإِمَامِ بَيْنَ الْمَأْمُومَيْنِ وَإِلَى التَّطْبِيقِ مَعًا أَمْ إلَى التَّطْبِيقِ وَحْدَهُ وَإِذْ لَا بَيَانَ فِي ذَلِكَ فَلَا يَجُوزُ أَنْ يُتْرَكَ الْيَقِينُ لِلظُّنُونِ. ثُمَّ حَتَّى لَوْ صَحَّ هَذَا مُسْنَدًا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكَانَ إبْعَادُهُ - عَلَيْهِ السَّلَامُ - لِجَابِرٍ، وَجَبَّارٍ، عَنْ كَوْنِهِمَا حِفَافَيْهِ وَإِيقَافُهُمَا خَلْفَهُ -: مُدْخِلًا لَنَا فِي يَقِينِ مَنْعِ الِاثْنَيْنِ مِنْ كَوْنِهِمَا حِفَافَيْ الْإِمَامِ، وَأَنَّهُ لَا يَجُوزُ، وَإِذْ ذَلِكَ كَذَلِكَ فَجَوَازُ كَوْنِ الِاثْنَيْنِ حِفَافَيْ الْإِمَامِ قَدْ حَرُمَ بِيَقِينٍ، فَلَا يَجُوزُ أَنْ يَعُودَ إلَى الْجَوَازِ مَا قَدْ تُيُقِّنَ تَحْرِيمُهُ إلَّا بِنَصٍّ جَلِيٍّ بِعَوْدَتِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ مَنْ اسْتَخْلَفَهُ الْإِمَامُ]

Legal Question: The one whom the Imam has appointed as his successor.

L6719

L6720–6722

422 - Question: Every individual appointed as a successor by the imam in a state of minor impurity (ḥadath) prays his own prayer, not continuing the prayer of the imam who appointed him. The congregants follow him in what is obligatory for them but do not follow him in what is non-obligatory. Rather, they pause in their current state, waiting for him to reach their position before following him then. Abū Ḥanīfah and Mālik said: Rather, the

٤٢٢ - مَسْأَلَةٌ: وَكُلُّ مَنْ اسْتَخْلَفَهُ الْإِمَامُ الْمُحْدِثُ فَإِنَّهُ لَا يُصَلِّي إلَّا صَلَاةَ نَفْسِهِ لَا عَلَى صَلَاةِ إمَامِهِ الْمُسْتَخْلِفِ لَهُ، وَيَتْبَعُهُ الْمَأْمُومُونَ فِيمَا يَلْزَمُهُمْ، وَلَا يَتْبَعُونَهُ فِيمَا لَا يَلْزَمُهُمْ؛ بَلْ يَقِفُونَ عَلَى حَالِهِمْ، يَنْتَظِرُونَهُ حَتَّى يَبْلُغَ إلَى مَا هُمْ فِيهِ فَيَتْبَعُوهُ حِينَئِذٍ وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: بَلْ يُصَلِّي الْإِمَامُ الْمُسْتَخْلِفُ كَمَا كَانَ يُصَلِّي لَوْ كَانَ مَأْمُومًا، وَعَلَى

[43] **Hadith references (L6716):** Sunan Ibn Majah 2974; Sunan Ibn Majah 1901; Sunan an-Nasai 1258.

successor imam prays as he would if he were a congregant, according to the ruling of his imam's prayer who appointed him. ʿAlī said: We know of no proof for their position except our dispute with them regarding the Messenger of Allah's statement—peace and blessings be upon him—"The imam is appointed only to be followed." ʿAlī added: The imam who incurred minor impurity, appointed a successor, and withdrew has nullified his role as imam by the consensus between us and them, and by the necessity of sensory observation—for he is now in his home relieving himself, eating, or doing what Allah... He, the Exalted, knows best about it outside prayer, and that if he were to return, he would be a follower among you, not an Imam. We are certain that his Imamate has been nullified. If they say, "We only stated that the legal validity of his Imamate remains, not the Imamate itself," we respond: Herein we dispute you, for your claim is not inherently valid proof. Since you have acknowledged that his Imamate has been nullified and that he is not an Imam, it is impermissible for the legal effect of an Imamate—whose foundation has been nullified—to persist.

As for the second point—by consensus (إجماع) between us and them—the Imam whom the Prophet (peace and blessings of Allah be upon him) commanded us to follow, to pronounce "Allāhū Akbar" when he pronounces it, to rise when he rises, to bow when he bows, and to prostrate when he prostrates. Since this is so, he is the Imam, not the follower. The Imam is the one commanded to perform the prayer as he was instructed, while those emulating him are commanded to follow his lead. If they say, "Yet you claim that when a follower completes his prayer, he need not wait for the Imam," we reply: Yes, but these individuals have not yet completed their prayer. They are obligated to wait for him, just as the Muslims waited for the Messenger of Allah (peace and blessings of Allah be upon him) when he left and returned after performing ghusl, and as they did during the Prayer of Fear (ṣalāt al-khawf). For they remain followers of him, he is their Imam, and their prayer is incomplete. Thus, they have no excuse to abandon following him, nor is it permissible for them to imitate him in acts outside their prayer—thereby intentionally adding to what they have already prayed.

حُكْمِ صَلَاةِ إِمَامِهِ الَّذِي اسْتَخْلَفَهُ قَالَ عَلِيٌّ: مَا نَعْلَمُ لَهُمْ حُجَّةً إِلَّا أَنَّهُمْ وَنَحْنُ تَنَازَعْنَا فِي قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّمَا جُعِلَ الْإِمَامُ لِيُؤْتَمَّ بِهِ» قَالَ عَلِيٌّ: وَالْإِمَامُ الَّذِي أَحْدَثَ وَاسْتَخْلَفَ وَخَرَجَ فَقَدْ بَطَلَتْ إِمَامَتُهُ بِإِجْمَاعٍ مِنَّا وَمِنْهُمْ وَبِضَرُورَةِ الْحِسِّ وَالْمُشَاهَدَةِ، لِأَنَّهُ الْآنَ فِي دَارِهِ يُحْدِثُ أَوْ يَأْكُلُ أَوْ يَعْمَلُ مَا اللَّهُ تَعَالَى أَعْلَمُ بِهِ فِي غَيْرِ صَلَاةٍ، وَأَنَّهُ لَوْ رَجَعَ لَكَانَ مُؤْتَمًّا عِنْدَكُمْ لَا إِمَامًا، فَقَدْ أَيْقَنَّا: أَنَّ إِمَامَتَهُ قَدْ بَطَلَتْ، فَإِنْ قَالُوا: إِنَّمَا قُلْنَا: بَقِيَ حُكْمُ إِمَامَتِهِ، لَا إِمَامَتُهُ قُلْنَا فِي هَذَا نَازَعْنَاكُمْ، فَلَيْسَ دَعْوَاكُمْ حُجَّةً لِنَفْسِهَا، وَإِذْ قَدْ أَقْرَرْتُمْ أَنَّ إِمَامَتَهُ قَدْ بَطَلَتْ، وَأَنَّهُ لَيْسَ إِمَامًا - فَلَا يَجُوزُ بَقَاءُ حُكْمِ إِمَامَةٍ قَدْ بَطَلَتْ أَصْلًا وَأَمَّا الثَّانِي - فَهُوَ بِإِجْمَاعٍ مِنَّا وَمِنْهُمْ - الْإِمَامُ الَّذِي أَمَرَ - عَلَيْهِ السَّلَامُ - أَنْ نَأْتَمَّ بِهِ، وَأَنْ نُكَبِّرَ إِذَا كَبَّرَ، وَنَرْفَعَ إِذَا رَفَعَ، وَنَرْكَعَ إِذَا رَكَعَ، وَنَسْجُدَ إِذَا سَجَدَ، فَإِذْ هُوَ كَذَلِكَ فَهُوَ الْإِمَامُ لَا الْمَأْمُومُ، وَالْإِمَامُ هُوَ الْمَأْمُورُ بِأَنْ يَأْتِيَ بِالصَّلَاةِ كَمَا أُمِرَ، وَالْمُؤْتَمُّونَ بِهِ هُمْ الْمَأْمُورُونَ بِالِائْتِمَامِ بِهِ، فَإِنْ قَالُوا: فَأَنْتُمْ تَقُولُونَ: إِنَّ الْمَأْمُومَ إِذَا أَتَمَّ صَلَاتَهُ لَمْ يَنْتَظِرْ الْإِمَامَ قُلْنَا: نَعَمْ، وَهَؤُلَاءِ لَمْ تَتِمَّ صَلَاتُهُمْ بَعْدُ. فَوَاجِبٌ عَلَيْهِمْ انْتِظَارُهُ، كَمَا فَعَلَ الْمُسْلِمُونَ فِي انْتِظَارِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ خَرَجَ ثُمَّ رَجَعَ وَقَدْ اغْتَسَلَ، وَكَمَا فَعَلُوا فِي صَلَاةِ الْخَوْفِ، لِأَنَّهُمْ بَعْدُ مُؤْتَمُّونَ بِهِ، وَهُوَ إِمَامُهُمْ، وَصَلَاتُهُمْ لَمْ تَتِمَّ، فَلَا عُذْرَ لَهُمْ فِي الْخُرُوجِ عَنْ الِائْتِمَامِ بِهِ، وَلَا يَحِلُّ لَهُمْ أَنْ يَتْبَعُوهُ فِيمَا لَيْسَ مِنْ صَلَاتِهِمْ فَيَزِيدُوا فِيهَا بِالْعَمْدِ مَا قَدْ صَلَّوْهُ، فَوَجَبَ انْتِظَارُهُمْ إِيَّاهُ وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَأَمَّا مَنْ تَمَّتْ صَلَاتُهُ مِنْهُمْ، فَإِنْ شَاءَ سَلَّمَ وَإِنْ شَاءَ أَطَالَ التَّشَهُّدَ، فَذَلِكَ لَهُ، حَتَّى يُسَلِّمَ مَعَ الْإِمَامِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Therefore, they must necessarily wait for him—and success is attained only through Allah, the Exalted.

As for those among them whose prayer has been completed, they may choose to give the Taslīm (salutation) or prolong the Tashahhud (testification) until they conclude the prayer with the Imam. And success is attained only through Allah, the Exalted.

L6723 **Issue: If any slave flees from his master, his Prayer will not be accepted until he returns.**

L6724–6726 423. Issue: Any slave who absconds from his master, his prayer is not accepted until he returns, except if he absconded due to unlawful harm which he could find no one to protect him. In that case, he is not considered absconding at that time if his intention was solely to distance himself from it. It was narrated to us by ʻAbdullāh ibn Yūsuf: Aḥmad ibn Fatḥ narrated to us: ʻAbd al-Wahhāb ibn ʻĪsā narrated to us: Aḥmad ibn ʻAlī narrated to us: Muslim ibn al-Ḥajjāj narrated to us: Yaḥyā ibn Yaḥyā narrated to us: Jarīr narrated from al-Mughīrah from al-Shaʻbī, who said: Jarīr ibn ʻAbdillāh al-Bajalī used to narrate from the Prophet — peace and blessings be upon him — that he said: "When a slave absconds, his prayer is not accepted." This is also the view of Abū Hurayrah, as was narrated to us from Muḥammad ibn al-Muthannā: ʻAbd al-Raḥmān ibn Mahdī narrated to us: Shuʻbah narrated to us from Ḥabīb ibn Abī Thābit, who said: "I heard as a child from Abū Hurayrah that he said regarding..." The runaway slave: No prayer is accepted from him. Ali said: "This is a figure not known among the Companions (may Allah be pleased with them) - a dissenter. Yet our opponents raise clamor over matters smaller than this when they align with their taqlid."

L6727 **Issue: Whoever among men prays while wearing a saffron-dyed garment...**

L6728–6730 424 - Issue: If a man prays while wearing a safflower-dyed garment, his prayer becomes invalid provided he is an adult male aware of the prohibition; otherwise, it remains valid. If the garment is dyed with safflower (usfur)

[مَسْأَلَةٌ وَأَيُّمَا عَبْدٍ أَبَقَ عَنْ مَوْلَاهُ فَلَا تُقْبَلُ لَهُ صَلَاةٌ حَتَّى يَرْجِعَ]

٤٢٣ - مَسْأَلَةٌ: وَأَيُّمَا عَبْدٍ أَبَقَ عَنْ مَوْلَاهُ فَلَا تُقْبَلُ لَهُ صَلَاةٌ حَتَّى يَرْجِعَ، إِلَّا أَنْ يَكُونَ أَبَقَ لِضَرَرٍ مُحَرَّمٍ لَا يَجِدُ مَنْ يَنْصُرُهُ مِنْهُ، فَلَيْسَ آبِقًا حِينَئِذٍ إِذَا نَوَى بِذَلِكَ الْبُعْدَ عَنْهُ فَقَطْ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثِنَا أَحْمَدُ بْنُ فَتْحٍ ثِنَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثِنَا أَحْمَدُ بْنُ عَلِيٍّ ثِنَا مُسْلِمُ بْنُ الْحَجَّاجِ ثِنَا يَحْيَى بْنُ يَحْيَى ثِنَا جَرِيرٌ عَنْ الْمُغِيرَةِ عَنْ الشَّعْبِيِّ قَالَ: كَانَ جَرِيرُ بْنُ عَبْدِ اللَّهِ الْبَجَلِيُّ يُحَدِّثُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إِذَا أَبَقَ الْعَبْدُ لَمْ تُقْبَلْ لَهُ صَلَاةٌ» وَبِهَذَا يَقُولُ أَبُو هُرَيْرَةَ، كَمَا رُوِّينَا عَنْ مُحَمَّدِ بْنِ الْمُثَنَّى: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ ثِنَا شُعْبَةُ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ قَالَ سَمِعْتُ وَأَنَا صَبِيٌّ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ فِي الْآبِقِ: لَا تُقْبَلُ لَهُ صَلَاةٌ. قَالَ عَلِيٌّ: هَذَا صَاحِبٌ لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ، وَخُصُومُنَا يَشْغَبُونَ بِأَقَلَّ مِنْ هَذَا إِذَا وَافَقَ تَقْلِيدَهُمْ

[مَسْأَلَةٌ وَمَنْ صَلَّى مِنْ الرِّجَالِ وَهُوَ لَابِسٌ مُعَصْفَرًا]

٤٢٤ - مَسْأَلَةٌ: وَمَنْ صَلَّى مِنْ الرِّجَالِ وَهُوَ لَابِسٌ مُعَصْفَرًا بَطَلَتْ صَلَاتُهُ إِذَا كَانَ ذَكَرًا عَالِمًا بِالنَّهْيِ وَإِلَّا فَلَا، فَإِنْ كَانَ مَصْبُوغًا بِعُصْفُرٍ لَا يَظْهَرُ فِيهِ إِلَّا أَنَّهُ لَا يُطْلَقُ

without prominent coloration that would warrant being called “mu’asfar,” then prayer in it is permissible. Women may pray in such garments. Abdullah ibn Rabi’ narrated to us through his chain from Ali ibn Abi Talib: “Allah’s Messenger - peace and blessings be upon him - forbade wearing qassi (a Yemeni garment), safflower-dyed clothes, gold rings, and recitation during bowing.” This view is held by some of the righteous Salaf, as narrated through Ma’mar from Qatadah: Umar ibn al-Khattab saw a man wearing safflower-dyed clothing and said, “Leave these shiny garments for women.” Through another chain from Sulayman ibn Sard al-Khuza’i: Umar saw a man wearing two safflower-dyed garments and said, “Remove these, lest people suspect you of worse conduct.” Ali remarked, “This represents an extremely severe ruling.” We are narrated that Umm al-Fadl bint Ghaylan asked Anas ibn Malik about safflower dye, to which he replied, “It is permissible for women.” Ali stated, “The Prophet’s permission for women is well-established.” Abdullah ibn Rabi’ further narrated through his chain from Abdullah ibn Umar: “I heard Allah’s Messenger - peace and blessings be upon him - forbid women in ihram from wearing gloves, face-veils, garments dyed with wars (a plant dye) or saffron. After that [state of ihram], they may wear any colored garments they choose - whether safflower-dyed, khazz (a silk-wool blend)...” “or ornaments, or pants, or a shirt, or a khuff.”[44]

عَلَيْهِ اسْمُ “ مُعَصْفَرٌ ” فَصَلَاتُهُ فِيهِ جَائِزَةٌ، وَالصَّلَاةُ فِيهِ جَائِزَةٌ لِلنِّسَاءِ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثِنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ ثِنَا مُحَمَّدُ بْنُ بَكْرٍ ثِنَا أَبُو دَاوُد ثِنَا الْقَعْنَبِيُّ ثِنَا مَالِكٌ عَنْ نَافِعٍ عَنْ إِبْرَاهِيمَ بْنِ عَبْدِ اللَّهِ بْنِ حُنَيْنٍ عَنْ أَبِيهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ لُبْسِ الْقَسِّيِّ وَعَنْ لُبْسِ الْمُعَصْفَرِ وَعَنْ تَخَتُّمٍ الذَّهَبِ، وَعَنْ الْقِرَاءَةِ فِي الرُّكُوعِ» . وَبِهَذَا يَقُولُ بَعْضُ السَّلَفِ الصَّالِحِ -: كَمَا رُوِّينَا عَنْ مَعْمَرٍ عَنْ قَتَادَةَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ رَأَى عَلَى رَجُلٍ ثَوْبًا مُعَصْفَرًا فَقَالَ: دَعُوا هَذِهِ الْبَرَّاقَاتِ لِلنِّسَاءِ. وَعَنْ مَعْمَرٍ عَنْ بُدَيْلٍ الْعُقَيْلِيِّ عَنْ أَبِي الْعَلَاءِ بْنِ عَبْدِ اللَّهِ بْنِ الشِّخِّيرِ عَنْ سُلَيْمَانَ بْنِ صَرْدٍ الْخُزَاعِيِّ قَالَ: رَأَى عُمَرُ بْنُ الْخَطَّابِ عَلَى رَجُلٍ ثَوْبَيْنِ مُمَصَّرَيْنِ فَقَالَ: أَلْقِ هَذَيْنِ عَنْك، لَعَلَّك أَنْ تُوهَمَ مِنْ عَمَلِك مَا هُوَ أَشَدُّ مِنْ هَذَا قَالَ عَلِيٌّ: هَذَا تَشْدِيدٌ عَظِيمٌ جِدًّا وَرُوِّينَا أَنَّ أُمَّ الْفَضْلِ بِنْتَ غِيلَانَ: أَرْسَلَتْ إلَى أَنَسِ بْنِ مَالِكٍ تَسْأَلُهُ عَنْ الْعُصْفُرِ فَقَالَ أَنَسٌ: لَا بَأْسَ بِهِ لِلنِّسَاءِ. قَالَ عَلِيٌّ: صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إبَاحَتُهُ لِلنِّسَاءِ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثِنَا مُحَمَّدُ بْنُ إِسْحَاقَ ثِنَا ابْنُ الْأَعْرَابِيِّ ثِنَا أَبُو دَاوُد ثِنَا أَحْمَدُ بْنُ حَنْبَلٍ ثِنَا يَعْقُوبُ هُوَ ابْنُ إبْرَاهِيمَ بْنِ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - ثِنَا أَبِي عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ أَنَّ نَافِعًا مَوْلَى ابْنِ عُمَرَ حَدَّثَهُ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ: أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «نَهَى النِّسَاءَ فِي إحْرَامِهِنَّ عَنْ الْقُفَّازَيْنِ وَالنِّقَابِ، وَمَا مَسَّ الْوَرْسُ وَالزَّعْفَرَانُ مِنْ الثِّيَابِ، وَلْتَلْبَسْ بَعْدَ ذَلِكَ مَا أَحَبَّتْ مِنْ أَلْوَانِ الثِّيَابِ مِنْ مُعَصْفَرٍ، أَوْ خَزٍّ، أَوْ حُلِيٍّ، أَوْ سَرَاوِيلَ، أَوْ قَمِيصٍ، أَوْ خُفٍّ» .

[44] **Hadith references (L6728):** Sunan Abi Dawud 4044.

[مَسْأَلَةٌ وَمَنْ صَلَّى وَهُوَ يَحْمِلُ شَيْئًا مَسْرُوقًا أَوْ مَغْصُوبًا أَوْ إنَاءَ فِضَّةٍ أَوْ ذَهَبٍ]

٤٢٥ - مَسْأَلَةٌ: وَمَنْ صَلَّى وَهُوَ يَحْمِلُ شَيْئًا مَسْرُوقًا أَوْ مَغْصُوبًا أَوْ إنَاءَ فِضَّةٍ أَوْ ذَهَبٍ بَطَلَتْ صَلَاتُهُ إلَّا أَنْ يَحْمِلَ الْمَأْخُوذَ بِغَيْرِ حَقِّهِ لِيَرُدَّهُ إلَى صَاحِبِهِ، أَوْ يَحْمِلَ الْإِنَاءَ لِيَكْسِرَهُ -: فَصَلَاتُهُ تَامَّةٌ، فَإِنْ صَلَّى وَفِي كَفِّهِ أَوْ حُجْزَتِهِ حُلِيٌّ ذَهَبٌ يَتَمَلَّكُهُ لِأَهْلِهِ، أَوْ لِيَبِيعَهُ، أَوْ ثَوْبٌ حَرِيرٌ كَذَلِكَ، أَوْ دَنَانِيرُ -: فَصَلَاتُهُ تَامَّةٌ. وَكَذَلِكَ لَوْ صَلَّى وَفِي فِيهِ دِينَارٌ أَوْ لُؤْلُؤَةٌ يُحْرِزُهُمَا بِذَلِكَ فَصَلَاتُهُ تَامَّةٌ. بُرْهَانُ ذَلِكَ -: أَنَّهُ عَمِلَ فِي صَلَاتِهِ مَا لَا يَحِلُّ لَهُ، وَمَنْ عَمِلَ فِي صَلَاتِهِ مَا لَا يَحِلُّ لَهُ؛ فَلَمْ يُصَلِّ الصَّلَاةَ الَّتِي أَمَرَهُ اللَّهُ عَزَّ وَجَلَّ بِهَا؛ فَإِذَا حَمَلَ ذَلِكَ لِمَا أُمِرَ بِهِ؛ فَلَمْ يَعْمَلْ فِي صَلَاتِهِ إلَّا مَا أُمِرَ بِهِ؛ فَصَلَاتُهُ صَحِيحَةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةُ الرَّجُلِ إنْ صَلَّى فِي ثَوْبٍ وَاسِعٍ]

٤٢٦ - مَسْأَلَةٌ: وَفُرِضَ عَلَى الرَّجُلِ - إنْ صَلَّى فِي ثَوْبٍ وَاسِعٍ - أَنْ يَطْرَحَ مِنْهُ عَلَى عَاتِقِهِ أَوْ عَاتِقَيْهِ، فَإِنْ لَمْ يَفْعَلْ بَطَلَتْ صَلَاتُهُ، فَإِنْ كَانَ ضَيِّقًا اتَّزَرَ بِهِ وَأَجْزَأَهُ، كَانَ مَعَهُ ثِيَابٌ غَيْرُهُ أَوْ لَمْ يَكُنْ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَبُو عَاصِمٍ هُوَ النَّبِيلُ - عَنْ مَالِكٍ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يُصَلِّي أَحَدُكُمْ فِي الثَّوْبِ الْوَاحِدِ لَيْسَ عَلَى عَاتِقِهِ مِنْهُ شَيْءٌ» . وَرُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ بْنِ

L6731 **Issue: Whoever prays while carrying stolen property, wrongfully seized property, or a vessel made of silver or gold.**

L6732 425. Issue: If someone prays while carrying a stolen item, a usurped item, a silver vessel, or a gold vessel, their prayer becomes invalid—except if they carry the wrongfully taken item to return it to its owner or carry the vessel to break it, in which case their prayer remains valid. If one prays while holding gold ornaments in their hand or waist area that they own for their family's use or intend to sell, or a silk garment under similar circumstances, or gold coins (dinars), their prayer is valid. Similarly, if they pray with a dinar or pearl in their mouth to secure them, their prayer remains valid. The evidence for this is that they performed an impermissible act during prayer, and whoever does so has not fulfilled the prayer Allah Almighty commanded. However, if they carried it to fulfill an obligated purpose, engaging only in what was commanded for rectifying wrongdoing during prayer, then their prayer is valid. And success is from Allah, the Exalted.

L6733 **A jurisprudential issue regarding a man if he prays in a wide garment.**

L6734 426 - Issue: It is obligatory upon a man—if he prays in a spacious garment—to drape part of it over his shoulder or both shoulders. If he fails to do so, his prayer becomes invalid. If the garment is narrow, he may wrap it around his waist, and this suffices him, whether he has other garments with him or not. It was narrated to us by ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid; narrated to us by Ibrāhīm ibn Aḥmad; narrated to us by al-Farbarī; narrated to us by al-Bukhārī; narrated to us by Abū ʿĀṣim, known as al-Nabīl—from Mālik, from Abū al-Zinād, from al-Aʿraj, from Abū Hurayrah, who said: The Messenger of Allāh (peace and blessings of Allāh be upon him) said, "Let none of you pray in a single garment without something from it covering his shoulder." We also narrated it through the chain of Sufyān ibn ʿUyaynah, from Abū al-Zinād, from al-Aʿraj, from Abū Hurayrah, from the Prophet

(peace and blessings of Allāh be upon him): “Let none of you pray in a single garment without something from it covering both his shoulders.”[45]

عُيَيْنَةَ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يُصَلِّيَنَّ أَحَدُكُمْ فِي الثَّوْبِ الْوَاحِدِ لَيْسَ عَلَى عَاتِقَيْهِ مِنْهُ شَيْءٌ» .

L6735–6736 Ali said: The meaning in both expressions is the same, because when one drapes part of the garment over his shoulder, he has not prayed in a garment that leaves both shoulders uncovered, but rather prayed in a garment covering one of his shoulders. Abdullah ibn Yusuf narrated to us from Ahmad ibn Fath from Abdul-Wahhab ibn Isa from Ahmad ibn Muhammad from Ahmad ibn Ali from Muslim ibn al-Hajjaj from Harun ibn Ma’ruf from Hatim ibn Ismail from Ya‘qub ibn Mujahid Abu Hazrah from ‘Ubada ibn al-Walid ibn ‘Ubada ibn as-Samit, who said: “My father and I came to Jabir ibn ‘Abdullah, and he narrated to us in a hadith that the Messenger of Allah, peace and blessings be upon him, said to him: ’O Jabir, if the garment is wide, cross its ends; if it is narrow, tie it around your waist,”’ referring to his garment. These hadiths take precedence over all other reports regarding prayer in a single garment. It was narrated to us from Hammad ibn Salama from Ayyub as-Sikhtiyani from Nafi‘, the freed slave of Ibn ‘Umar, who said about the garment: “If it is wide, drape it over your shoulders; if it is short, wrap it around your waist.” From Abu ‘Awanah from al-Mughirah from Ibrahim an-Nakha‘i, who said: “If you have only one garment, drape it over your shoulders if it is wide, or wrap it around your waist if it is short.” From Tawus in a similar manner. From Muhammad ibn al-Hanafiyyah: “No prayer is valid for one who does not cover both shoulders during prayer.”

قَالَ عَلِيٌّ: الْمَعْنَى فِي كِلَا اللَّفْظَيْنِ وَاحِدٌ، لِأَنَّهُ مَتَى أَلْقَى بَعْضَ الثَّوْبِ عَلَى عَاتِقِهِ فَلَمْ يُصَلِّ فِي ثَوْبٍ لَيْسَ عَلَى عَاتِقَيْهِ مِنْهُ شَيْءٌ، بَلْ صَلَّى فِي ثَوْبٍ عَلَى أَحَدِ عَاتِقَيْهِ مِنْهُ شَيْءٌ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا هَارُونُ بْنُ مَعْرُوفٍ ثنا حَاتِمُ بْنُ إِسْمَاعِيلَ عَنْ يَعْقُوبَ بْنِ مُجَاهِدٍ أَبِي حَزْرَةَ - عَنْ «عُبَادَةَ بْنِ الْوَلِيدِ بْنِ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: أَتَيْنَا جَابِرَ بْنَ عَبْدِ اللَّهِ أَنَا وَأَبِي فَحَدَّثَنَا فِي حَدِيثٍ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ يَا جَابِرُ، إِذَا كَانَ وَاسِعًا فَخَالِفْ بَيْنَ طَرَفَيْهِ، وَإِذَا كَانَ ضَيِّقًا فَاشْدُدْهُ عَلَى حَقْوِكَ» يَعْنِي ثَوْبَهُ. وَهَذِهِ الْأَحَادِيثُ تَقْضِي سَائِرَ الْأَخْبَارِ فِي الصَّلَاةِ فِي الثَّوْبِ الْوَاحِدِ وَرُوِّينَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ قَالَ فِي الثَّوْبِ: إِذَا كَانَ وَاسِعًا فَتَوَشَّحَ بِهِ، وَإِنْ كَانَ قَصِيرًا فَاتَّزَرَ بِهِ. وَعَنْ أَبِي عَوَانَةَ عَنْ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: إِذَا لَمْ يَكُنْ عَلَيْك إلَّا ثَوْبٌ وَاحِدٌ، إنْ كَانَ وَاسِعًا فَتَوَشَّحْ بِهِ، وَإِنْ كَانَ صَغِيرًا فَاتَّزِرْ بِهِ وَعَنْ طَاوُسٍ بِنَحْوِ هَذَا وَعَنْ مُحَمَّدِ بْنِ الْحَنَفِيَّةِ: لَا صَلَاةَ لِمَنْ لَمْ يُخَمِّرْ عَلَى عَاتِقَيْهِ فِي الصَّلَاةِ

L6737 **An issue: It is not permissible for anyone to pray while wrapped in the sammā’—the man and the woman are equal.**

[مَسْأَلَةٌ وَلَا يَجُوزُ لِأَحَدٍ أَنْ يُصَلِّيَ وَهُوَ مُشْتَمِلُ الصَّمَّاءَ الرَّجُلُ وَالْمَرْأَةُ سَوَاءٌ]

L6738 427 – Issue: It is not permissible for anyone to pray while wrapped in

[45] **Hadith references (L6734):** Mishkat al-Masabih 755.

the ṣammāʾ manner—which is when a person envelops themselves with their hands beneath the garment—for men and women are equal in this. Narrated to us by ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid; narrated by Ibrāhīm ibn Aḥmad; narrated by al-Farabrī; narrated by al-Bukhārī; narrated by ʿUbayd ibn Ismāʿīl from Abū Usāmah from ʿUbayd ibn ʿUmar from Khabīb ibn ʿAbd al-Raḥmān from Ḥafṣ ibn ʿĀṣim from Abū Hurayrah: "The Messenger of Allāh—may Allāh's blessings and peace be upon him—prohibited two types of sales and two modes of dress," and he mentioned the ḥadīth, which includes: "from the ṣammāʾ wrapping."

L6739 **Issue: The ruling on the prayer of a man who drags his garment in ostentatious pride.**

L6740–6742 Issue 428: The prayer is not valid from a man who drags his garment out of arrogance. As for a woman, she may let down the hem of what she wears by a cubit's length and no more. If she exceeds that knowingly, her prayer becomes invalid. The requirement for every garment a man wears is that it should reach the ankles, not lower at all. If he lets it hang below the ankles out of fear or forgetfulness, there is no blame on him. Abdullah ibn Yusuf reported to us, Ahmad ibn Fath reported to us, Abdul Wahhab ibn Isa reported to us, Ahmad ibn Muhammad reported to us, Ahmad ibn Ali reported to us, Muslim ibn al-Hajjaj reported to us, Muhammad ibn al-Muthanna reported to us, Yahya ibn Sa'id—al-Qattan—reported from Ubaydullah ibn Umar from Nafi' from Ibn Umar, who said: The Messenger of Allah—peace and blessings be upon him—said, "Allah will not look on the Day of Resurrection at one who drags his garment out of arrogance." This applies generally to trousers, waist wrappers, shirts, and all that is worn. It was also narrated by Abdullah ibn Dinar and Zayd ibn Aslam from Ibn Umar with a connected chain. We narrated it via the chain of Abu Dharr with a severe warning. We narrated from Abu Uthman al-Nahdi from Ibn Mas'ud that he said: "One who lets his waist wrapper drag in prayer is neither deemed permissible nor forbidden by Allah." From Ibn Abbas: "Allah will not look at one who lets his garment hang below the ankles." From Mujahid: "It was said: Whoever's

٤٢٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ لِأَحَدٍ أَنْ يُصَلِّيَ وَهُوَ مُشْتَمِلُ الصَّمَّاءَ، وَهُوَ أَنْ يَشْتَمِلَ الْمَرْءُ وَيَدَاهُ تَحْتَهُ، الرَّجُلُ وَالْمَرْأَةُ سَوَاءٌ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عُبَيْدُ بْنُ إِسْمَاعِيلَ عَنْ أَبِي أُسَامَةَ عَنْ عُبَيْدِ بْنِ عُمَرَ عَنْ خُبَيْبِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ حَفْصِ بْنِ عَاصِمٍ عَنْ أَبِي هُرَيْرَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ بَيْعَتَيْنِ وَعَنْ لُبْسَتَيْنِ فَذَكَرَ الْحَدِيثَ وَفِيهِ: عَنْ اشْتِمَالِ الصَّمَّاءِ»

[مَسْأَلَةُ الصَّلَاةُ مِمَّنْ جَرَّ ثَوْبَهُ خُيَلَاءَ مِنْ الرِّجَالِ]

٤٢٨ - مَسْأَلَةٌ: وَلَا تُجْزِئُ الصَّلَاةُ مِمَّنْ جَرَّ ثَوْبَهُ خُيَلَاءَ مِنْ الرِّجَالِ وَأَمَّا الْمَرْأَةُ فَلَهَا أَنْ تُسْبِلَ ذَيْلَ مَا تَلْبَسُ ذِرَاعًا لَا أَكْثَرَ، فَإِنْ زَادَتْ عَلَى ذَلِكَ عَالِمَةً بِالنَّهْيِ بَطَلَتْ صَلَاتُهَا وَحَقُّ كُلِّ ثَوْبٍ يَلْبَسُهُ الرَّجُلُ أَنْ يَكُونَ إلَى الْكَعْبَيْنِ لَا أَسْفَلَ أَلْبَتَّةَ، فَإِنْ أَسْبَلَهُ فَزَعًا أَوْ نِسْيَانًا فَلَا شَيْءَ عَلَيْهِ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا يَحْيَى بْنُ سَعِيدٍ هُوَ الْقَطَّانُ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَنْظُرُ اللَّهُ يَوْمَ الْقِيَامَةِ إلَى مَنْ جَرَّ ثَوْبَهُ خُيَلَاءَ» . فَهَذَا عُمُومٌ لِلسَّرَاوِيلِ، وَالْإِزَارِ، وَالْقَمِيصِ وَسَائِرِ مَا يُلْبَسُ. وَرَوَاهُ أَيْضًا عَبْدُ اللَّهِ بْنُ دِينَارٍ، وَزَيْدُ بْنُ أَسْلَمَ عَنْ ابْنِ عُمَرَ مُسْنَدًا. وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ أَبِي ذَرٍّ مُسْنَدًا بِوَعِيدٍ شَدِيدٍ. وَرُوِّينَا عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ عَنْ ابْنِ مَسْعُودٍ أَنَّهُ قَالَ: الْمُسْبِلُ إزَارَهُ فِي الصَّلَاةِ لَيْسَ مِنْ اللَّهِ فِي حِلٍّ وَلَا فِي حَرَامٍ. وَعَنْ ابْنِ عَبَّاسٍ: لَا يَنْظُرُ اللَّهُ إلَى مُسْبِلٍ

waist wrapper touches his ankle, Allah will not accept his prayer." Mujahid narrates this from his predecessors, who can only be the Companions—may Allah be pleased with them—for he was not among the junior Successors but among their middle ranks. From Dharr ibn Abdullah al-Marhibi—a senior Successor—: "It was said: Whoever drags his clothes, his prayer is not accepted, and we know of no dissent among the Companions—may Allah be pleased with them—on this matter." Ali said: "Whoever does in his prayer what is forbidden for him to do has not prayed as commanded, and whoever does not pray as commanded, his prayer is invalid."[46]

وَعَنْ مُجَاهِد: كَانَ يُقَالُ: مَنْ مَسَّ إِزَارُهُ كَعْبَهُ لَمْ يَقْبَلْ اللَّهُ لَهُ صَلَاةً فَهَذَا مُجَاهِدٌ يَحْكِي ذَلِكَ عَمَّنْ قَبْلَهُ، وَلَيْسُوا إِلَّا الصَّحَابَةَ - رَضِيَ اللَّهُ عَنْهُمْ - لِأَنَّهُ لَيْسَ مِنْ صِغَارِ التَّابِعِينَ، بَلْ مِنْ أَوَاسِطِهِمْ وَعَنْ ذَرِّ بْنِ عَبْدِ اللَّهِ الْمَرْهَبِيِّ - وَهُوَ مِنْ كِبَارِ التَّابِعِينَ -: كَانَ يُقَالُ: مَنْ جَرَّ ثِيَابَهُ لَمْ تُقْبَلْ لَهُ صَلَاةٌ وَلَا نَعْلَمُ لِمَنْ ذَكَرْنَا مُخَالِفًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -. قَالَ عَلِيٌّ: فَمَنْ فَعَلَ فِي صَلَاتِهِ مَا حَرُمَ عَلَيْهِ فِعْلُهُ فَلَمْ يُصَلِّ كَمَا أُمِرَ، وَمَنْ لَمْ يُصَلِّ كَمَا أُمِرَ فَلَا صَلَاةَ لَهُ.

L6743–6744 Abdullah ibn Rabīʿ narrated from Muḥammad ibn Isḥāq, who narrated from Ibn al-Aʿrābī, who narrated from Abū Dāwūd as-Sijistānī, who narrated from An-Nufaylī (ʿAbdullāh ibn Muḥammad), who narrated from Muḥammad, who narrated from Zuhayr (Ibn Muʿāwiyah), who narrated from Mūsā ibn ʿUqbah, from Sālim ibn ʿAbdullāh ibn ʿUmar, from his father, who said: The Messenger of Allah (peace be upon him) said, "Whoever trails his garment out of arrogance, Allah will not look at him on the Day of Resurrection." Abū Bakr aṣ-Ṣiddīq said, "One side of my lower garment slips down unless I attend to it." The Messenger of Allah (peace be upon him) told him, "You are not among those who do this out of arrogance."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثِنَا مُحَمَّدُ بْنُ إِسْحَاق ثِنَا ابْنُ الْأَعْرَابِيِّ ثِنَا أَبُو دَاوُد السِّجِسْتَانِيُّ ثِنَا النُّفَيْلِيُّ هُوَ عَبْدُ اللَّهِ بْنُ مُحَمَّد - ثِنَا مُحَمَّدٌ ثِنَا زُهَيْرٌ هُوَ ابْنُ مُعَاوِيَةَ - ثِنَا مُوسَى بْنُ عُقْبَةَ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ جَرَّ ثَوْبَهُ خُيَلَاءَ لَمْ يَنْظُرْ اللَّهُ إِلَيْهِ يَوْمَ الْقِيَامَةِ فَقَالَ أَبُو بَكْرٍ الصِّدِّيقُ: إِنَّ أَحَدَ جَانِبَيْ إِزَارِي يَسْتَرْخِي إِلَّا أَنْ أَتَعَاهَدَ ذَلِكَ مِنْهُ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَسْت مِمَّنْ يَفْعَلُهُ خُيَلَاءَ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثِنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثِنَا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنَا نُوحُ بْنُ حَبِيبٍ الْقُومِسِيُّ ثِنَا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ جَرَّ ثَوْبَهُ مِنْ الْخُيَلَاءِ لَمْ يَنْظُرْ اللَّهُ إِلَيْهِ قَالَتْ أُمُّ سَلَمَةَ يَا رَسُولَ اللَّهِ فَكَيْفَ تَصْنَعُ النِّسَاءُ بِذُيُولِهِنَّ قَالَ: تُرْخِينَهُ شِبْرًا، قَالَتْ: إِذَنْ تَنْكَشِفَ أَقْدَامُهُنَّ، قَالَ: تُرْخِينَهُ ذِرَاعًا لَا يَزِدْنَ عَلَيْهِ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثِنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثِنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي ثِنَا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - ثِنَا الْعَلَاءُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ قَالَ: سَأَلْت أَبَا سَعِيدٍ الْخُدْرِيَّ فَقَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ:

Abdullah ibn Rabīʿ narrated from Muḥammad ibn Muʿāwiyah, who narrated from Aḥmad ibn Shuʿayb, via Nūḥ ibn Ḥabīb al-Qūmisī, who narrated from ʿAbdur-Razzāq, from Maʿmar, via Ayyūb as-Sikhtiyānī, from Nāfiʿ, from Ibn ʿUmar, who said: The Messenger of Allah (peace be upon him) said, "Whoever trails his garment out of arrogance, Allah will not look at him." Umm Salamah asked, "O Messenger of Allah, how should women manage their hems?" He replied, "Let them extend a span." She said, "Then their ankles would become exposed." He said, "Let them extend a cubit, but they must not exceed that."

Abdullah ibn Rabīʿ narrated from Muḥammad ibn Muʿāwiyah, who narrated from Aḥmad ibn Shuʿayb, via Muḥammad ibn ʿAbdullāh ibn Yazīd al-Muqrī, who narrated from Sufyān (Ibn ʿUyaynah), from Al-ʿAlāʾ ibn ʿAbdur-Raḥmān,

[46] **Hadith references (L6740):** Jami at-Tirmidhi 1730.

from his father, who said: I asked Abū Saʿīd al-Khudrī, and he said: I heard the Messenger of Allah (peace be upon him) say, “A believer’s lower garment should reach mid-calf. There is no blame for what is between that and the ankles, but what is below that is in the Fire. Allah will not look at one who trails his lower garment out of arrogance.”

«إِزْرَةُ الْمُؤْمِنِ إِلَى أَنْصَافِ سَاقَيْهِ، لَا جُنَاحَ عَلَيْهِ فِيمَا بَيْنَهُ وَبَيْنَ الْكَعْبَيْنِ، وَمَا أَسْفَلُ ذَلِكَ فِي النَّارِ، لَا يَنْظُرُ اللَّهُ إِلَى مَنْ جَرَّ إِزَارَهُ بَطَرًا» .

L6745–6746

Issue: Prayer in the Garment of a Disbeliever or a Transgressor

[مَسْأَلَةُ الصَّلَاةُ فِي ثَوْبِ الْكَافِرِ وَالْفَاسِقِ]

L6747

Issue: It is permissible to pray in the garment of a disbeliever or a sinner, provided one is not certain there is something impure in it that must be avoided, based on Allah’s statement: “He created for you all that is on the earth” (Q. 2:29). It is authentically reported that “the Messenger of Allah (peace be upon him) prayed in a Roman cloak.” We are certain of the purity of cotton, linen, wool, hair, fur, leather, and silk—for women—and the permissibility of all these materials. Whoever claims they are impure or prohibited is not to be believed unless they provide evidence from a Quranic text or an authentic Sunnah. Allah says: “He has detailed for you what He has forbidden to you” (Q. 6:119), and “Assumption avails nothing against the truth” (Q. 10:36). If it is argued that the Messenger of Allah prohibited their utensils unless washed, even if no other is found, we respond: Yes, but utensils are distinct from garments, and [remind them that] “Your Lord is not forgetful” (Q. 19:64). Had Allah intended to prohibit their garments, He would have clarified it through His Messenger, as He did with utensils. It is astonishing that those who prohibit prayer in their garments permit their utensils without necessity—this is contrary to the facts. The permissibility of praying in the garments of polytheists is the view of Sufyan al-Thawri, Dawud ibn ‘Ali, and this is our position.[47]

مَسْأَلَةٌ: وَالصَّلَاةُ جَائِزَةٌ فِي ثَوْبِ الْكَافِرِ وَالْفَاسِقِ، مَا لَمْ يُوقِنْ فِيهَا شَيْئًا يَجِبُ اجْتِنَابُهُ لِقَوْلِ اللَّهِ تَعَالَى: {خَلَقَ لَكُمْ مَا فِي الأَرْضِ جَمِيعًا} [البقرة: ٢٩] . وَقَدْ صَحَّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى فِي جُبَّةٍ رُومِيَّةٍ» ؛ وَنَحْنُ عَلَى يَقِينٍ مِنْ طَهَارَةِ الْقُطْنِ، وَالْكَتَّانِ، وَالصُّوفِ، وَالشَّعْرِ، وَالْوَبَرِ، وَالْجُلُودِ، وَالْحَرِيرِ لِلنِّسَاءِ، وَإِبَاحَةِ كُلِّ ذَلِكَ فَمَنْ ادَّعَى نَجَاسَةً أَوْ تَحْرِيمًا لَمْ يُصَدَّقْ إِلَّا بِدَلِيلٍ مِنْ نَصِّ قُرْآنٍ أَوْ سُنَّةٍ صَحِيحَةٍ. قَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] . وَقَالَ تَعَالَى: {إِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [يونس: ٣٦] ، فَإِنْ قِيلَ: قَدْ حَرَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - آنِيَتَهُمْ إِلَّا بَعْدَ غَسْلِهَا، وَإِنْ لَمْ يُوجَدْ غَيْرُهَا قُلْنَا: نَعَمْ، وَالْآنِيَةُ غَيْرُ الثِّيَابِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] . وَلَوْ أَرَادَ اللَّهُ تَعَالَى تَحْرِيمَ ثِيَابِهِمْ لَبَيَّنَ ذَلِكَ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا فَعَلَ بِالْآنِيَةِ وَالْعَجَبُ أَنَّ الْمَانِعَ مِنْ الصَّلَاةِ فِي ثِيَابِهِمْ يُبِيحُ آنِيَتَهُمْ لِغَيْرِ ضَرُورَةٍ وَهَذَا عَكْسُ الْحَقَائِقِ وَإِبَاحَةُ الصَّلَاةِ فِي ثِيَابِ الْمُشْرِكِينَ هُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَدَاوُد بْنِ عَلِيٍّ، وَبِهِ نَقُولُ

L6748

Issue: It is not valid for any man to pray while his skin is dyed with saffron.

[مَسْأَلَةٌ وَلَا يُجْزِئُ أَحَدًا مِنْ الرِّجَالِ أَنْ يُصَلِّيَ وَقَدْ زَعْفَرَ جِلْدَهُ بِالزَّعْفَرَانِ]

[47] **Qur’an references (L6747):** Qur’an 2:29 (Al-Baqarah); Qur’an 6:119 (Al-An’am); Qur’an 10:36 (Yunus); Qur’an 19:64 (Maryam).

L6749 430 - Issue: It is not valid for any man to pray while having dyed his skin with saffron. If he dyes his garments or turban with saffron, or saffron-dyes his beard, this is commendable, and his prayer with all such [apparel] is permissible. Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Isḥāq narrated to us: Ibn al-Aʿrābī narrated to us: Abū Dāwūd narrated to us: Musaddad narrated to us: Ḥammād ibn Zayd and Ismāʿīl ibn Ibrāhīm – that is Ibn ʿUlayyah – both narrated to us from ʿAbd al-ʿAzīz ibn Ṣuhayb from Anas, who said: "Allah's Messenger – peace and blessings of Allah be upon him – prohibited men from saffron-dyeing." This is the wording of Ismāʿīl. The wording of Ḥammād is: "prohibited from saffron-dyeing for men."[48]

٤٣٠ - مَسْأَلَةٌ: وَلَا يُجْزِئُ أَحَدًا مِنْ الرِّجَالِ أَنْ يُصَلِّيَ وَقَدْ زَعْفَرَ جِلْدَهُ بِالزَّعْفَرَانِ، فَإِنْ صَبَغَ ثِيَابَهُ، أَوْ عِمَامَتَهُ، بِالزَّعْفَرَانِ، أَوْ زَعْفَرَ لِحْيَتَهُ، فَحَسَنٌ، وَصَلَاتُهُ بِكُلِّ ذَلِكَ جَائِزَةٌ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُسَدَّدٌ ثنا حَمَّادُ بْنُ زَيْدٍ وَإِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ - كِلَاهُمَا عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ عَنْ أَنَسٍ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَتَزَعْفَرَ الرَّجُلُ» . هَذَا لَفْظُ إِسْمَاعِيلَ، وَلَفْظُ حَمَّادٍ، «عَنْ التَّزَعْفُرِ لِلرِّجَالِ» .

L6750–6751 Abdullah ibn Rabi' narrated to us: 'Umar ibn 'Abd al-Malik narrated; Muhammad ibn Bakr narrated; Sulayman ibn al-Ash'ath narrated; Zuhayr ibn Harb narrated; Muhammad ibn 'Abdullah al-Asadi narrated; Abu Ja'far al-Razi narrated from al-Rabi' ibn Anas from his two grandfathers [al-Rabi''s grandfathers], who said: We heard Abu Musa al-Ash'ari say: The Messenger of Allah—peace and blessings be upon him—said: "Allah does not accept the prayer of a man who has any khaluq (a saffron-based perfume) on his body." 'Ali said: Al-Khaluq refers to saffron. The initial grading of this report places it as a statement of Abu Musa (mawqūf), not a direct Prophetic narration. 'Ali said: This prohibitive ruling abrogates what was permitted at the beginning of the Hijrah, when the Prophet—peace and blessings be upon him—allowed men to use saffron. For he saw 'Abd al-Rahman ibn 'Awf upon his marriage wearing khaluq, yet did not censure him. The original ruling in this matter was permissibility, then the prohibitive ruling emerged, serving as an abrogating ruling. Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated; Ahmad ibn Shu'ayb informed us: Ya'qub ibn Ibrahim narrated; al-Darawardi—'Abd al-'Aziz ibn Muhammad—narrated from Zayd ibn Aslam, who said: I saw Ibn 'Umar dyeing his beard yellow with khaluq, so I said: O Abu 'Abd al-Rahman, you dye your beard yellow with khaluq! He replied: "I saw the Messenger of Allah—peace and blessings be upon him—dyeing his beard yellow with it, and no dye was more beloved to him than

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا سُلَيْمَانُ بْنُ الْأَشْعَثِ ثنا زُهَيْرُ بْنُ حَرْبٍ ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْأَسَدِيُّ ثنا أَبُو جَعْفَرٍ الرَّازِيّ عَنْ الرَّبِيعِ بْنِ أَنَسٍ عَنْ جَدَّيْهِ قَالَا: سَمِعْنَا أَبَا مُوسَى الْأَشْعَرِيَّ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَقْبَلُ اللَّهُ صَلَاةَ رَجُلٍ فِي جَسَدِهِ شَيْءٌ مِنْ خَلُوقٍ» . قَالَ عَلِيٌّ: الْخَلُوقُ الزَّعْفَرَانُ، وَأَوَّلُ مَرَاتِبِ هَذَا الْخَبَرِ كَوْنُهُ مِنْ قَوْلِ أَبِي مُوسَى. قَالَ عَلِيٌّ: هَذَا النَّهْيُ نَاسِخٌ لِمَا كَانَ فِي أَوَّلِ الْهِجْرَةِ مِنْ إبَاحَتِهِ - عَلَيْهِ السَّلَامُ - لَأَنْ يَتَزَعْفَرَ الرَّجُلُ، إذْ رَأَى عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ حِينَ تَزَوَّجَ وَعَلَيْهِ الْخَلُوقُ، فَلَمْ يُنْكِرْ عَلَيْهِ؛ إذْ الْأَصْلُ فِي ذَلِكَ الْإِبَاحَةُ، ثُمَّ طَرَأَ النَّهْيُ فَجَاءَ نَاسِخًا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا يَعْقُوبُ بْنُ إبْرَاهِيمَ ثنا الدَّرَاوَرْدِيُّ هُوَ عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ - عَنْ زَيْدِ بْنِ أَسْلَمَ قَالَ: رَأَيْت ابْنَ عُمَرَ يُصَفِّرُ لِحْيَتَهُ بِالْخَلُوقِ، فَقُلْت: يَا أَبَا عَبْدِ الرَّحْمَنِ إنَّك تُصَفِّرُ لِحْيَتَك بِالْخَلُوقِ قَالَ: [«إنِّي رَأَيْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَفِّرُ بِهَا لِحْيَتَهُ وَلَمْ يَكُنْ شَيْءٌ مِنْ الصِّبْغِ أَحَبَّ إلَيْهِ مِنْهَا، وَلَقَدْ كَانَ يَصْبُغُ بِهَا ثِيَابَهُ كُلَّهَا

[48] **Hadith references (L6749):** Sunan an-Nasai 5256; Sahih Muslim 2101b; Mishkat al-Masabih 4434.

it. He would dye all his garments with it, even his turban." ʻAli said: The Prophet—peace and blessings be upon him—did not prohibit women from using saffron; thus, it remains permissible for them. The Almighty said: {He has already detailed for you what He has forbidden upon you} (6:119).[49][50]

L6752 **A matter: It is unlawful for a man to clap his hands during prayer.**

L6753–6755 Issue 431: It is not permissible for a man to clap his hands during prayer. If he does so knowingly, his prayer becomes invalid. However, if he is distracted by something during prayer, he should say "Subḥān Allāh" (Glory be to God). As for a woman, if she is distracted during her prayer, she should clap her hands. If she says "Subḥān Allāh" (Glory be to God), it is permissible. This is the view of Al-Shafi'i and Dawud. Abu Hanifah said: If a man utters *Subḥān Allāh* intending to communicate something to others, his prayer becomes invalid. Malik said: A woman should not clap but instead utter *Subḥān Allāh*. Both opinions are incorrect and contradict what is firmly established from the Messenger of Allah (peace be upon him). Narrated by Abdur-Rahman ibn Abdullah ibn Khalid from Ibrahim ibn Ahmad from Al-Farbari from Al-Bukhari from Abu An-Nu'man—who is Muhammad ibn Al-Fadl ʿĀrim—from Hammad ibn Zayd from Abu Hazim Al-Madani from Sahl ibn Sa'd, who mentioned a hadith containing: The people clapped when they saw the Messenger of Allah (peace be upon him) coming to them while they were praying behind Abu Bakr. The Messenger of Allah (peace be upon him) said to them after concluding the prayer: "If something doubtful occurs to you during prayer, let the men say *Subḥān Allāh* and let the women clap." Ali said: There is no dispute that clapping (tasfīq) and clapping (tasfīḥ) share the same meaning—striking one palm with the other. It is reported from Abu Hurairah and Abu Sa'id Al-Khudri that they said: Uttering *Subḥān Allāh* is for men, and clapping is for women. No opposing view is known among the Companions (may Allah be pleased with them). Women are permitted to say *Subḥān Allāh* because it is a remembrance of Allah Almighty, and

حَتَّى عِمَامَتَهُ»] . قَالَ عَلِيٌّ: وَلَمْ يَنْهَ - عَلَيْهِ السَّلَامُ - النِّسَاءَ عَنْ التَّزَعْفُرِ، فَهُوَ مُبَاحٌ لَهُنَّ. قَالَ عَزَّ وَجَلَّ: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

[مَسْأَلَةٌ وَلَا يَحِلُّ لِلرَّجُلِ أَنْ يُصَفِّقَ بِيَدَيْهِ فِي صَلَاتِهِ]

٤٣١ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلرَّجُلِ أَنْ يُصَفِّقَ بِيَدَيْهِ فِي صَلَاتِهِ، فَإِنْ فَعَلَ وَهُوَ عَالِمٌ بِالنَّهْيِ بَطَلَتْ صَلَاتُهُ، لَكِنْ إنْ نَابَهُ شَيْءٌ فِي صَلَاتِهِ فَلْيُسَبِّحْ وَأَمَّا الْمَرْأَةُ فَحُكْمُهَا إنْ نَابَهَا شَيْءٌ فِي صَلَاتِهَا أَنْ تُصَفِّقَ بِيَدَيْهَا، فَإِنْ سَبَّحَتْ: فَحَسَنٌ وَهُوَ قَوْلُ الشَّافِعِيِّ، وَدَاوُد وَقَالَ أَبُو حَنِيفَةَ: إنْ سَبَّحَ الرَّجُلُ مُرِيدًا إفْهَامَ غَيْرِهِ بِأَمْرٍ مَا: بَطَلَتْ صَلَاتُهُ وَقَالَ مَالِكٌ: لَا تُصَفِّقُ الْمَرْأَةُ بَلْ تُسَبِّحُ. وَكِلَا الْقَوْلَيْنِ خَطَأٌ، وَخِلَافٌ لِلثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَبُو النُّعْمَانِ هُوَ مُحَمَّدُ بْنُ الْفَضْلِ عَارِمٌ - ثنا حَمَّادُ بْنُ زَيْدٍ ثنا أَبُو حَازِمٍ الْمَدَنِيُّ عَنْ سَهْلِ بْنِ سَعْدٍ - فَذَكَرَ حَدِيثًا وَفِيهِ -: إنَّ النَّاسَ صَفَّحُوا إذْ رَأَوْا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَاءَوهُمْ يُصَلُّونَ خَلْفَ أَبِي بَكْرٍ، وَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُمْ إذْ سَلَّمَ «إذَا رَابَكُمْ أَمْرٌ فَلْيُسَبِّحْ الرِّجَالُ وَلْيُصَفِّحْ النِّسَاءُ فِي الصَّلَاةِ» . قَالَ عَلِيٌّ: لَا خِلَافَ فِي أَنَّ التَّصْفِيقَ، وَالتَّصْفِيحَ بِمَعْنًى وَاحِدٍ، وَهُوَ الضَّرْبُ بِإِحْدَى صَفْحَتَيْ الْأَكُفِّ عَلَى الْأُخْرَى وَرُوِّينَا عَنْ أَبِي هُرَيْرَةَ، وَأَبِي سَعِيدٍ الْخُدْرِيِّ، أَنَّهُمَا قَالَا: التَّسْبِيحُ لِلرِّجَالِ، وَالتَّصْفِيقُ لِلنِّسَاءِ - وَلَا يُعْرَفُ لَهُمَا مِنْ الصَّحَابَةِ - رَضِيَ

[49] **Hadith references (L6751):** Mishkat al-Masabih 4441; Sunan an-Nasai 5085.
[50] **Qur'an references (L6751):** Qur'an 6:119 (Al-An'am).

prayer is a context for the remembrance of Allah (Exalted and Glorified is He).

L6756 **A ruling: It is not lawful for a woman to apply perfume when attending the mosque.**

L6757 Issue 432: It is not permissible for a woman attending the mosque to apply perfume. If she does so, her prayer is nullified. This ruling applies to Friday prayers, ʿIsha, Eid prayers, and all other prayers. Narrated by Abdullah ibn Yusuf from Ahmad ibn Fath from Abd al-Wahhab ibn Isa from Ahmad ibn Muhammad from Ahmad ibn Ali from Muslim ibn al-Hajjaj from Abu Bakr ibn Abi Shaybah from Yahya ibn Sa'id al-Qattan from Muhammad ibn Ajlan from Bukayr ibn Abdullah ibn al-Ashajj from Busr ibn Sa'id from Zaynab, the wife of Abdullah ibn Mas'ud, who said: The Messenger of Allah (peace be upon him) said to us, "When any one of you attends the mosque, she must not apply perfume."

L6758–6759 Abdullah ibn Rubay narrated to us, from Ibn al-Sulaym, from Ibn al-A'rabi, from Abu Dawud, from Musa ibn Isma'il, from Hammad ibn Salamah, from Muhammad ibn Amr, from Abu Salamah ibn Abd al-Rahman ibn Awf, from Abu Hurayrah that the Messenger of Allah—peace and blessings be upon him—said: "Do not prevent the female servants of Allah from the mosques of Allah, but let them go out unadorned." Ali said: "If a woman can apply perfume on Friday such that its scent fades before the Friday prayer, then she may do so. Otherwise, she must either refrain from perfume or refrain from attending Friday prayer. Whichever she chooses is permissible for her."

L6760 **An Issue Concerning the Joining of Prayers**

L6761–6763 Issue 433: It is not permissible for a woman to pray while attaching her hair with human hair, other hair, wool, or anything whatsoever. The same ruling

اللَّهُ عَنْهُمْ - مُخَالِفٌ وَإِنَّمَا جَازَ التَّسْبِيحُ لِلنِّسَاءِ، لِأَنَّهُ ذِكْرٌ لِلَّهِ تَعَالَى وَالصَّلَاةُ مَكَانٌ لِذِكْرِ اللَّهِ عَزَّ وَجَلَّ

[مَسْأَلَةٌ وَلَا يَحِلُّ لِلْمَرْأَةِ إِذَا شَهِدَتْ الْمَسْجِدَ أَنْ تَمَسَّ طِيبًا]

٤٣٢ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْمَرْأَةِ إِذَا شَهِدَتْ الْمَسْجِدَ أَنْ تَمَسَّ طِيبًا، فَإِنْ فَعَلَتْ بَطَلَتْ صَلَاتُهَا، سَوَاءٌ فِي ذَلِكَ الْجُمُعَةُ، وَالْعَتَمَةُ، وَالْعِيدُ، وَغَيْرُ ذَلِكَ مِنْ جَمِيعِ الصَّلَوَاتِ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ مُحَمَّدِ بْنِ عَجْلَانَ ثنا بُكَيْرُ بْنُ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ بُسْرِ بْنِ سَعِيدٍ عَنْ زَيْنَبَ امْرَأَةِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَتْ: قَالَ لَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا شَهِدَتْ إِحْدَاكُنَّ الْمَسْجِدَ فَلَا تَمَسَّ طِيبًا» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رُبَيٍّ ثنا ابْنُ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُوسَى بْنُ إِسْمَاعِيلَ ثنا حَمَّادٌ هُوَ ابْنُ سَلَمَةَ - عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي سَلَمَةَ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَمْنَعُوا إِمَاءَ اللَّهِ مَسَاجِدَ اللَّهِ، وَلْيَخْرُجْنَ وَهُنَّ تَفِلَاتٌ» . قَالَ عَلِيٌّ: إنْ أَمْكَنَ الْمَرْأَةَ أَنْ تَتَطَيَّبَ يَوْمَ الْجُمُعَةِ طِيبًا تَذْهَبُ رِيحُهُ قَبْلَ الْجُمُعَةِ فَذَلِكَ عَلَيْهَا، وَإِلَّا فَلَا بُدَّ لَهَا مِنْ تَرْكِ الطِّيبِ أَوْ تَرْكِ الْجُمُعَةِ، أَيُّ ذَلِكَ فَعَلَتْ فَمُبَاحٌ لَهَا

[مَسْأَلَةٌ صَلَاة الواصلة]

applies to men. As for a woman who braids her lock or braids with a thread of silk, wool, linen, cotton, a strap, silver, or gold, she is not considered to be attaching hair, and no sin is upon her. A woman's prayer is invalid if she adds bulk to her head with an object under her headscarf.

Abd al-Raḥmān ibn ʿAbd Allāh ibn Khālid narrated to us: Ibrāhīm ibn Aḥmad narrated to us: al-Farbarī narrated to us: al-Bukhārī narrated to us: al-Ḥumaydī narrated to us: Sufyān ibn ʿUyaynah narrated to us: Hishām ibn ʿUrwah narrated to us, stating he heard Fāṭimah bint al-Mundhir say she heard Asmāʾ bint Abī Bakr al-Ṣiddīq say: "A woman asked the Prophet (peace and blessings of Allah be upon him), 'O Messenger of Allah, my daughter contracted measles which thinned her hair, and I have married her. Shall I attach extensions to it?' He replied, 'Allah curses the one who attaches hair and the one who has hair attached to her.'"

ʿAbd Allāh ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: ʿAmr ibn Yaḥyā ibn al-Ḥārith al-Ḥimṣī narrated to us: Maḥbūb ibn Mūsā narrated to us: Ibn al-Mubārak narrated from Yaʿqūb ibn al-Qaʿqāʿ from Qatādah from Ibn al-Musayyab from Muʿāwiyah, who said: "O people, verily the Messenger of..." Allah's Messenger - peace and blessings be upon him - forbade you from false testimony, and he came with a black piece of cloth and laid it before them, saying: "This is what a woman places on her head and then drapes a headscarf over it." Ali said: Muawiyah's statement "He forbade you" constitutes an address from the Prophet - peace and blessings be upon him - to both men and women. Therefore, whoever prays while engaged in a forbidden act during their prayer has not prayed as commanded, and thus their prayer holds no validity—and success comes solely from Allah, the Most High.

A ruling clarifying that any woman who attaches hair is cursed.

L6764

L6765

434. Issue: As for the woman who attaches another's hair, the tattooist, the one who is tattooed—and tattooing refers to engraving the skin then applying black kohl—the one who files teeth to create gaps, the plucker of

٤٣٣ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْمَرْأَةِ أَنْ تُصَلِّيَ وَهِيَ وَاصِلَةٌ شَعْرَهَا بِشَعْرِ إِنْسَانٍ، أَوْ غَيْرِهِ، أَوْ بِصُوفٍ، أَوْ بِأَيِّ شَيْءٍ كَانَ؛ وَكَذَلِكَ الرَّجُلُ أَيْضًا. وَأَمَّا الَّتِي تُضَفِّرُ غَدِيرَتَهَا أَوْ غَدَائِرَهَا بِخَيْطٍ مِنْ حَرِيرٍ، أَوْ صُوفٍ أَوْ كَتَّانٍ، أَوْ قُطْنٍ، أَوْ سَيْرٍ أَوْ فِضَّةٍ، أَوْ ذَهَبٍ؛ فَلَيْسَتْ وَاصِلَةً، وَلَا إِثْمَ عَلَيْهَا. وَلَا صَلَاةَ لِلَّتِي تُعَظِّمُ رَأْسَهَا بِشَيْءٍ تَخْتَمِرُ عَلَيْهِ حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا الْحُمَيْدِيُّ ثنا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - ثنا هِشَامٌ هُوَ ابْنُ عُرْوَةَ - أَنَّهُ سَمِعَ فَاطِمَةَ بِنْتَ الْمُنْذِرِ تَقُولُ: إِنَّهَا سَمِعَتْ أَسْمَاءَ بِنْتَ أَبِي بَكْرٍ الصِّدِّيقِ تَقُولُ «سَأَلَتْ امْرَأَةٌ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: يَا رَسُولَ اللَّهِ، إِنَّ ابْنَتِي أَصَابَتْهَا الْحَصْبَةُ فَامَّرَقَ شَعْرُهَا وَإِنِّي زَوَّجْتُهَا، أَفَأَصِلُ فِيهِ قَالَ: لَعَنَ اللَّهُ الْوَاصِلَةَ وَالْمَوْصُولَةَ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَمْرُو بْنُ يَحْيَى بْنُ الْحَارِثِ الْحِمْصِيُّ ثنا مَحْبُوبُ بْنُ مُوسَى أَنَا ابْنُ الْمُبَارَكِ عَنْ يَعْقُوبَ هُوَ ابْنُ الْقَعْقَاعِ - عَنْ قَتَادَةَ عَنِ ابْنِ الْمُسَيِّبِ عَنْ مُعَاوِيَةَ أَنَّهُ قَالَ: «أَيُّهَا النَّاسُ، إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَاكُمْ عَنِ الزُّورِ، وَجَاءَ بِخِرْقَةٍ سَوْدَاءَ فَأَلْقَاهَا بَيْنَ أَيْدِيهِمْ قَالَ: هُوَ هَذَا تَجْعَلُهُ الْمَرْأَةُ فِي رَأْسِهَا ثُمَّ تَخْتَمِرُ عَلَيْهِ» . قَالَ عَلِيٌّ: قَوْلُ مُعَاوِيَةَ: «نَهَاكُمْ» خِطَابٌ مِنَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلرِّجَالِ وَالنِّسَاءِ، فَمَنْ صَلَّى وَهُوَ عَامِلٌ فِي صَلَاتِهِ حَالًا مُحَرَّمَةً عَلَيْهِ، فَلَمْ يُصَلِّ كَمَا أُمِرَ؛ فَلَا صَلَاةَ لَهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ بَيَان أَنْ مِنْ وَصَلَ شَعَره مِنْ النِّسَاء ملعون]

facial hair, and the one who has her hair plucked—plucking being the removal of hair from the face—all women who perform these acts upon themselves or others are cursed by Allah, the Mighty and Exalted. As for the curse, the Prophet Muhammad—peace be upon him—has authentically cursed all those we mentioned. As for the completeness of their prayers: once these acts have been performed on them or by them, they cannot rid themselves of these conditions. Whoever is incapable of fulfilling an obligation is excused from it. Allah, the Exalted, says: "Allah does not burden a soul beyond its capacity" [2:286]. The Prophet—peace be upon him—said: "When I command you to do something, do as much of it as you can." Thus, no one is obligated except according to their ability. If they are unable to remove these conditions, they are excused from doing so, while remaining commanded to pray. They must therefore perform prayers as they are able. However, the woman who attaches hair to herself is capable of removing it. If she does not remove it, she has brought into her prayer an act of disobedience to Allah, the Mighty and Exalted. Thus, she has not prayed as she was commanded, and her prayer is invalid. And success comes only from Allah, the Most High.[51]

٤٣٤ - مَسْأَلَةٌ: وَأَمَّا الَّتِي تَتَوَلَّى وَصْلَ شَعْرِ غَيْرِهَا، وَالْوَاشِمَةُ، وَالْمُسْتَوْشِمَةُ - وَالْوَشْمُ: النَّقْشُ فِي الْجِلْدِ ثُمَّ يُعْمَلُ بِالْكُحْلِ الْأَسْوَدِ - وَالْمُتَفَلِّجَةُ وَالنَّامِصَةُ وَالْمُتَنَمِّصَةُ - وَالنَّمْصُ هُوَ نَتْفُ الشَّعْرِ مِنْ الْوَجْهِ - فَكُلُّ مَنْ فَعَلَتْ ذَلِكَ فِي نَفْسِهَا، أَوْ فِي غَيْرِهَا فَمَلْعُونَاتٌ مِنْ اللَّهِ عَزَّ وَجَلَّ وَصَلَوَاتُهُنَّ تَامَّةٌ أَمَّا اللَّعْنَةُ فَقَدْ صَحَّ لَعْنُ كُلِّ مَنْ ذَكَرْنَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَأَمَّا تَمَامُ صَلَاتِهِنَّ فَإِنَّهُنَّ بَعْدَ حُصُولِ هَذِهِ الْأَعْمَالِ فِيهِنَّ وَمِنْهُنَّ لَا يَقْدِرْنَ عَلَى التَّبَرُّؤِ مِنْ تِلْكَ الْأَحْوَالِ، وَمَنْ عَجَزَ عَمَّا كُلِّفَ سَقَطَ عَنْهُ. قَالَ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] . وَقَالَ - عَلَيْهِ السَّلَامُ -: «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» . فَلَمْ يُكَلَّفْ أَحَدٌ إلَّا مَا يَسْتَطِيعُ؛ فَإِذَا عَجَزْنَ عَنْ إزَالَةِ تِلْكَ الْأَحْوَالِ فَقَدْ سَقَطَ عَنْهُنَّ إزَالَتُهَا، وَهُنَّ مَأْمُورَاتٌ بِالصَّلَاةِ؛ فَيُؤَدِّينَهَا كَمَا يَقْدِرْنَ. وَأَمَّا الْوَاصِلَةُ فِي شَعْرِ نَفْسِهَا فَقَادِرَةٌ عَلَى إزَالَتِهِ، فَإِذَا لَمْ تُزِلْهُ فَقَدْ اسْتَصْحَبَتْ فِي صَلَاتِهَا عَمَلًا هِيَ فِيهِ عَاصِيَةٌ لِلَّهِ عَزَّ وَجَلَّ، فَلَمْ تُصَلِّ كَمَا أُمِرَتْ فَلَا صَلَاةَ لَهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Prayer on the roof of the Kaaba, on Abu Qubays, and on every roof in Mecca.

L6766

[الصَّلَاةُ عَلَى ظَهْرِ الْكَعْبَةِ وَعَلَى أَبِي قُبَيْسٍ وَعَلَى كُلِّ سَقْفٍ بِمَكَّةَ]

L6767–6771

435. Issue: Prayer is permissible on the exterior of the Kaaba, on Abu Qubays, and on any roof in Mecca—even if higher than the Kaaba—as well as inside the Kaaba, wherever one wishes within it. Obligatory and voluntary prayers are equal. Malik said: It is not permissible to perform obligatory prayers specifically inside the Kaaba, though he permitted voluntary prayers therein. What we have said is the opinion of Abū Ḥanīfa, Al-Shāfiʿī, Abū Sulaymān, and others. Malik's followers argued by saying: "Whoever prays inside the Kaaba turns their back to part of it." ʿAlī responded: Allah the Exalted states, {And from wherever you depart, turn your face toward the Sacred

٤٣٥ - مَسْأَلَةٌ: وَالصَّلَاةُ جَائِزَةٌ عَلَى ظَهْرِ الْكَعْبَةِ، وَعَلَى أَبِي قُبَيْسٍ، وَعَلَى كُلِّ سَقْفٍ بِمَكَّةَ، وَإِنْ كَانَ أَعْلَى مِنْ الْكَعْبَةِ، وَفِي جَوْفِ الْكَعْبَةِ أَيَّنَمَا شِئْت مِنْهَا، الْفَرِيضَةُ وَالنَّافِلَةُ سَوَاءٌ وَقَالَ مَالِكٌ: لَا تَجُوزُ الصَّلَاةُ فِي جَوْفِ الْكَعْبَةِ، الْفَرْضَ خَاصَّةً، وَأَجَازَ فِيهَا التَّنَفُّلَ وَالَّذِي قُلْنَا نَحْنُ: هُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ. وَاحْتَجَّ أَتْبَاعُ مَالِكٍ بِأَنْ قَالُوا: إنَّ مَنْ صَلَّى دَاخِلَ الْكَعْبَةِ فَقَدْ اسْتَدْبَرَ بَعْضَ الْكَعْبَةِ قَالَ عَلِيٌّ: إنَّمَا قَالَ اللَّهُ عَزَّ وَجَلَّ {وَمِنْ حَيْثُ خَرَجْتَ فَوَلِّ وَجْهَكَ شَطْرَ الْمَسْجِدِ الْحَرَامِ وَحَيْثُ

[51] **Qur'an references (L6765):** Qur'an 2:286 (Al-Baqarah).

Mosque. And wherever you are, turn your faces toward it} [Al-Baqarah: 150]. If the Malikis' argument were valid, it would not be permissible for anyone to pray in the Sacred Mosque itself, for it constitutes the Qibla by Allah's explicit decree in the Quran. Every worshipper there inevitably turns their back to part of it—thus the fallacy of this view becomes evident. Moreover, anyone praying toward the Sacred Mosque or the Kaaba must leave parts of it to their right and left. No one among Muslims distinguishes between turning one's back to the Qibla during prayer and placing it to one's right or left. Hence, it is established that Allah the Exalted never obligated us to observe such distinctions. We are merely required to face whatever part of the Kaaba's wall—or the mosque's wall opposite the Kaaba—lies before us, wherever we are.

ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid narrated to us: Ibrāhīm ibn Aḥmad narrated to us: Al-Firabrī narrated to us: Al-Bukhārī narrated to us: ʿAbd Allāh ibn Yūsuf said: Mālik narrated to us from Nāfiʿ from Ibn ʿUmar, who said: "Allah's Messenger—peace be upon him—entered the Kaaba with Usāmah ibn Zayd, Bilāl, and ʿUthmān ibn Ṭalḥah al-Ḥajabī. They closed the door upon him, and he remained inside. When he emerged, I asked Bilāl, 'What did the Prophet—peace be upon him—do?' He replied, 'He positioned a pillar to his left, two pillars to his right, and three pillars behind him, then he prayed.'" ʿAlī said: No one has ever claimed that the Prophet's aforementioned prayer—peace be upon him—was directed away from the Qibla, and he explicitly stated... Upon him be peace—that the entire earth is a place of prayer, and the interior of the Kaaba is the most excellent and virtuous part of the earth. Thus, it is the most excellent of mosques and the most deserving for obligatory and voluntary prayer. It is not permissible for anyone other than a rider, one in fear, or a sick person to perform voluntary prayer without facing the Qibla. Differentiating between obligatory and voluntary prayer without [support from] the Qur'an, the Sunnah, or consensus is erroneous—and success comes only from Allah, the Most High.[52]

مَا كُنْتُمْ فَوَلُّوا وُجُوهَكُمْ شَطْرَهُ} [البقرة: ١٥٠] . فَلَوْ كَانَ مَا ذَكَرَهُ الْمَالِكِيُّونَ حُجَّةً لَمَا حَلَّ لِأَحَدٍ أَنْ يُصَلِّيَ فِي الْمَسْجِدِ الْحَرَامِ؛ لِأَنَّهُ هُوَ الْقِبْلَةُ بِنَصِّ كَلَامِ اللَّهِ تَعَالَى فِي الْقُرْآنِ، وَكُلُّ مَنْ يُصَلِّي فِيهِ فَلَا بُدَّ لَهُ مِنْ أَنْ يَسْتَدْبِرَ بَعْضَهُ - فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ وَأَيْضًا: فَإِنَّ كُلَّ مَنْ صَلَّى إلَى الْمَسْجِدِ الْحَرَامِ، أَوْ إلَى الْكَعْبَةِ فَلَا بُدَّ لَهُ مِنْ أَنْ يَتْرُكَ بَعْضَهَا عَنْ يَمِينِهِ وَبَعْضَهَا عَنْ شِمَالِهِ، وَلَا فَرْقَ عِنْدَ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ فِي أَنَّهُ لَا فَرْقَ بَيْنَ اسْتِدْبَارِ الْقِبْلَةِ فِي الصَّلَاةِ، وَبَيْنَ أَنْ يَجْعَلَهَا عَلَى يَمِينِهِ أَوْ عَلَى شِمَالِهِ. فَصَحَّ أَنَّهُ لَمْ يُكَلِّفْنَا اللَّهُ عَزَّ وَجَلَّ قَطُّ مُرَاعَاةَ هَذَا، وَإِنَّمَا كُلِّفْنَا أَنْ نُقَابِلَ بِأَوْجُهِنَا مَا قَابَلَنَا مِنْ جِدَارِ الْكَعْبَةِ أَوْ مِنْ جِدَارِ الْمَسْجِدِ قُبَالَةَ الْكَعْبَةِ حَيْثُمَا كُنَّا فَقَطْ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَبْدُ اللَّهِ بْنُ يُوسُفَ قَالَ: أَنَا مَالِكٌ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «دَخَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْكَعْبَةَ وَأُسَامَةُ بْنُ زَيْدٍ، وَبِلَالٌ، وَعُثْمَانُ بْنُ طَلْحَةَ الْحَجَبِيُّ، فَأَغْلَقَهَا عَلَيْهِ وَمَكَثَ فِيهَا، فَسَأَلْتُ بِلَالًا حِينَ خَرَجَ: مَا صَنَعَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: جَعَلَ عَمُودًا عَنْ يَسَارِهِ وَعَمُودَيْنِ عَنْ يَمِينِهِ وَثَلَاثَةَ أَعْمِدَةٍ مِنْ وَرَائِهِ ثُمَّ صَلَّى» . قَالَ عَلِيٌّ: مَا قَالَ أَحَدٌ قَطُّ إنَّ صَلَاتَهُ الْمَذْكُورَةَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَتْ إلَى غَيْرِ الْقِبْلَةِ، وَقَدْ نَصَّ - عَلَيْهِ السَّلَامُ - عَلَى أَنَّ الْأَرْضَ كُلَّهَا مَسْجِدٌ، وَبَاطِنَ الْكَعْبَةِ أَطْيَبُ الْأَرْضِ وَأَفْضَلُهَا، فَهِيَ أَفْضَلُ الْمَسَاجِدِ وَأَوْلَاهَا بِصَلَاةِ الْفَرْضِ وَالنَّافِلَةِ. وَلَا يَجُوزُ لِغَيْرِ الرَّاكِبِ، أَوْ الْخَائِفِ، أَوْ الْمَرِيضِ أَنْ يُصَلِّيَ نَافِلَةً إلَى غَيْرِ الْقِبْلَةِ، وَالتَّفْرِيقُ بَيْنَ الْفَرْضِ وَالنَّافِلَةِ بِلَا قُرْآنٍ وَلَا سُنَّةٍ وَلَا إجْمَاعٍ خَطَأٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[52] **Qur'an references (L6767):** Qur'an 2:150 (Al-Baqarah).

In every place higher than the Kaaba, we are required to face only the direction of the Kaaba. The Kaaba was demolished to be renewed, and no one declared the invalidity of the Muslims' prayers.

وَكُلُّ مَكَانٍ أَعْلَى مِنْ الْكَعْبَةِ فَإِنَّمَا عَلَيْنَا مُقَابَلَةُ جِهَةِ الْكَعْبَةِ فَقَطْ، وَقَدْ هُدِمَتْ الْكَعْبَةُ لِتُجَدَّدَ فَمَا قَالَ أَحَدٌ بِبُطْلَانِ صَلَاةِ الْمُسْلِمِينَ

A case: He prayed while there was a copy of the Quran in the direction of his qiblah.

[مَسْأَلَةٌ صَلَّى وَفِي قِبْلَتِهِ مُصْحَفٌ]

436. Issue: Whoever prays while a copy of the Quran is in the direction he faces for prayer, that is permissible, provided he does not intend to worship the copy of the Quran, since neither textual evidence nor consensus exists to prohibit this.

٤٣٦ - مَسْأَلَةٌ: وَمَنْ صَلَّى وَفِي قِبْلَتِهِ مُصْحَفٌ فَذَلِكَ جَائِزٌ، مَا لَمْ يَتَعَمَّدْ عِبَادَةَ الْمُصْحَفِ؛ إذْ لَمْ يَأْتِ نَصٌّ، وَلَا إجْمَاعَ، بِالْمَنْعِ مِنْ ذَلِكَ.

Issue: He prayed while there was a fire, a church, a synagogue, or a fire temple in the direction of his *qiblah*.

[مَسْأَلَةٌ صَلَّى وَفِي قِبْلَتِهِ نَارٌ أَوْ كَنِيسَةٌ أَوْ بِيعَةٌ أَوْ بَيْتُ نَارٍ]

437 - Issue: If someone prays while there is a fire, a stone, a church, a synagogue, a house of fire, a person (whether Muslim, disbeliever, or menstruating woman), or any object that exists - except for a dog, a donkey, and women other than those lying down - in the direction of their prayer, all of this is permissible. This is because no distinction has been established through the Qur'an, the Sunnah, or scholarly consensus between the objects mentioned and all other objects. There must inevitably be some object from the world's entities in front of the worshiper. Therefore, making distinctions between them is invalid, as it is an unsubstantiated claim. And with Allah, the Exalted, is success.

٤٣٧ - مَسْأَلَةٌ: وَمَنْ صَلَّى وَفِي قِبْلَتِهِ نَارٌ، أَوْ حَجَرٌ، أَوْ كَنِيسَةٌ، أَوْ بِيعَةٌ، أَوْ بَيْتُ نَارٍ، أَوْ إنْسَانٌ، مُسْلِمٌ، أَوْ كَافِرٌ، أَوْ حَائِضٌ، أَوْ أَيُّ جِسْمٍ كَانَ - حَاشَا الْكَلْبِ، وَالْحِمَارِ، وَغَيْرِ الْمُضْطَجِعَةِ مِنْ النِّسَاءِ - فَكُلُّ ذَلِكَ جَائِزٌ، لِأَنَّهُ لَمْ يَأْتِ بِالْفَرْقِ بَيْنَ شَيْءٍ مِمَّا ذَكَرْنَا وَبَيْنَ سَائِرِ الْأَجْسَامِ كُلِّهَا قُرْآنٌ وَلَا سُنَّةٌ وَلَا إجْمَاعٌ. وَلَا بُدَّ مِنْ أَنْ يَكُونَ بَيْنَ يَدَيْ الْمُصَلِّي جِسْمٌ مِنْ أَجْسَامِ الْعَالَمِ، فَالتَّفْرِيقُ بَيْنَهَا بَاطِلٌ؛ لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

An issue concerning prayer in the synagogue, the church, and the fire temple.

[مَسْأَلَةُ الصَّلَاةُ فِي الْبَيْعَةِ وَالْكَنِيسَةِ وَبَيْتِ النَّارِ]

438 - Issue: Prayer in churches, synagogues, [Zoroastrian] fire temples, and slaughterhouses—provided one avoids urine, dung, and blood—on thoroughfares, in valley beds, subsidence areas, facing camels and female camels, while conversing, during sleep, or in any place is permissible, unless there exists an explicit text or indubitable consensus prohibiting prayer in a specific location. In such cases, one must adhere to the prohibition regarding that matter. Hammam related to us: Ibn Mufarrij narrated to us: Ibn al-A'rābī narrated

٤٣٨ - مَسْأَلَةٌ: وَالصَّلَاةُ فِي الْبَيْعَةِ، وَالْكَنِيسَةِ، وَبَيْتِ النَّارِ وَالْمَجْزَرَةِ - مَا اجْتَنَبَ الْبَوْلَ وَالْفَرْثَ وَالدَّمَ - وَعَلَى قَارِعَةِ الطَّرِيقِ، وَبَطْنِ الْوَادِي، وَمَوَاضِعِ الْخَسْفِ، وَإِلَى الْبَعِيرِ وَالنَّاقَةِ، وَلِلتَّحَدُّثِ، وَالنِّيَامِ وَفِي كُلِّ مَوْضِعٍ -: جَائِزَةٌ، مَا لَمْ يَأْتِ نَصٌّ أَوْ إجْمَاعٌ مُتَيَقَّنٌ فِي تَحْرِيمِ الصَّلَاةِ فِي مَكَانٍ مَا، فَيُوقَفُ عِنْدَ النَّهْيِ فِي ذَلِكَ حَدَّثَنَا حُمَامُ ثنا ابْنُ

to us: Al-Dabarī narrated to us: ʻAbd al-Razzāq narrated from Maʻmar and Sufyān al-Thawrī—both of them—from al-Aʻmash, from Ibrāhīm al-Taymī, from his father, from Abū Dharr, who said: "I asked: 'O Messenger of God, which mosque was first established on earth?' He replied: 'Al-Masjid al-Haram.' I asked: 'Then which?' He said: 'Al-Masjid al-Aqṣā.' I asked: 'How much time passed between them?' He said: 'Forty years. Then wherever prayer overtakes you, pray there, for it becomes a mosque.'"

مُفَرِّجٌ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَسُفْيَانُ الثَّوْرِيُّ كِلَاهُمَا عَنِ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ التَّيْمِيِّ عَنْ أَبِيهِ عَنْ أَبِي ذَرٍّ قَالَ: «قُلْتُ: يَا رَسُولَ اللَّهِ، أَيُّ مَسْجِدٍ وُضِعَ فِي الْأَرْضِ أَوَّلُ قَالَ: الْمَسْجِدُ الْحَرَامُ، قُلْتُ: ثُمَّ أَيٌّ قَالَ: الْمَسْجِدُ الْأَقْصَى، قُلْتُ: كَمْ بَيْنَهُمَا قَالَ أَرْبَعُونَ سَنَةً، ثُمَّ حَيْثُمَا أَدْرَكَتْكَ الصَّلَاةُ فَصَلِّ، فَهُوَ مَسْجِدٌ» .

L6779–6780 Ali said: This is a clear text affirming that the Kaaba is a mosque, in addition to the Quran's mention of this. No one knows of a mosque where obligatory prayers are prohibited yet voluntary prayers are permitted. It has been narrated to us from the Messenger of Allah (peace and blessings be upon him) through the chains of transmission of Abu Hurayrah, Jabir, Hudhayfah, and Anas: "Among our distinctions is that the earth has been made a mosque for us." Every location we have mentioned is permissible for prayer, except what is explicitly prohibited by textual evidence: camel resting grounds, bathhouses, graveyards, facing or standing upon a grave, usurped places, impure areas, and the mosque of harm alone. The prohibition against praying in slaughterhouses and the vicinity of the Sacred House is transmitted through the chain of Zayd ibn Jabirah—which is baseless—and through the chain of Abdullah ibn Salih, the scribe of al-Layth, who is weak. The prohibition against praying in places where the earth has caved in as divine retribution comes through the chain of Ibn Lahiʻah, which is likewise baseless.

قَالَ عَلِيٌّ: فَهَذَا نَصٌّ جَلِيٌّ أَنَّ الْكَعْبَةَ مَسْجِدٌ، مَعَ مَجِيءِ الْقُرْآنِ بِذَلِكَ، وَمَا عَلِمَ أَحَدٌ مَسْجِدًا تَحْرُمُ فِيهِ صَلَاةُ الْفَرْضِ وَتَحِلُّ فِيهِ النَّافِلَةُ وَرُوِّينَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ أَبِي هُرَيْرَةَ، وَجَابِرٍ، وَحُذَيْفَةَ، وَأَنَسٍ: «أَنَّ مِنْ فَضَائِلِنَا: أَنَّ الْأَرْضَ جُعِلَتْ لَنَا مَسْجِدًا» . وَكُلُّ مَا ذَكَرْنَا مِنَ الْأَرْضِ، فَالصَّلَاةُ فِيهِ جَائِزَةٌ، حَاشَا مَا جَاءَ النَّصُّ مِنَ الْمَنْعِ مِنَ الصَّلَاةِ فِيهِ كَعَطَنِ الْإِبِلِ، وَالْحَمَّامِ، وَالْمَقْبَرَةِ، وَإِلَى قَبْرٍ وَعَلَيْهِ، وَالْمَكَانِ الْمَغْصُوبِ، وَالنَّجِسِ، وَمَسْجِدِ الضِّرَارِ فَقَطْ وَإِنَّمَا جَاءَ النَّهْيُ عَنِ الصَّلَاةِ فِي الْمَجْزَرَةِ، وَظَهْرِ بَيْتِ اللَّهِ الْحَرَامِ، مِنْ طَرِيقِ زَيْدِ بْنِ جَبِيرَةَ، وَهُوَ لَا شَيْءَ. وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ صَالِحٍ كَاتِبِ اللَّيْثِ وَهُوَ ضَعِيفٌ. وَجَاءَ النَّهْيُ عَنِ الصَّلَاةِ فِي مَوْضِعِ الْخَسْفِ مِنْ طَرِيقِ ابْنِ لَهِيعَةَ، وَهُوَ لَا شَيْءَ.

L6781–6782 And the prohibition against praying on the main thoroughfare of the road is narrated through the chain of Al-Ḥasan from Jābir, but Al-Ḥasan's direct hearing from Jābir is not authentic.

وَجَاءَ النَّهْيُ عَنِ الصَّلَاةِ عَلَى قَارِعَةِ الطَّرِيقِ مِنْ طَرِيقِ الْحَسَنِ عَنْ جَابِرٍ، وَلَا يَصِحُّ سَمَاعُ الْحَسَنِ مِنْ جَابِرٍ.

L6783 An Issue Regarding Prayer on Skins and Wool

[مَسْأَلَةٌ الصَّلَاةُ عَلَى الْجُلُودِ وَالصُّوفِ]

L6784–6786 439 - Issue: Prayer is permissible on leather, wool, and anything permissible to sit upon if it is pure. It is permissible for a woman to pray on silk.

This is the view of Abū Ḥanīfah, al-Shāfiʿī, Abū Sulaymān, and others. ʿAṭāʾ said: “Prayer is not permissible except on soil or level ground.” Mālik said: “Prayer is disliked on anything other than the ground or what the earth produces.” ʿAlī said: “This opinion has no evidence for its validity. Prostration is obligatory on seven limbs: the two feet, the two knees, the two hands, the forehead, and the nose. It is permissible to place all these limbs on the materials we mentioned except the forehead. There is no distinction between the limbs of prostration, nor any basis for such a distinction—neither in the Quran, nor in a sound or weak Sunnah, nor in consensus, analogy, a Companion’s statement, nor any reasoned opinion. Success comes only from Allah, the Exalted.” It is narrated from Ibn Masʿūd that he prayed on a hair mat, from ʿUmar ibn al-Khaṭṭāb that he prostrated in prayer on an ʿabqarī—a woolen rug—and from Ibn ʿAbbās that he prostrated in prayer on a ṭunfusah, which is a woolen rug. The same is reported from Abu al-Darda. The same is reported from Shurayh and al-Zuhri, and from al-Hasan. There is no dissenting opinion among the Companions we have mentioned—may Allah be pleased with them—regarding that. And with Allah, the Exalted, is success.

٤٣٩ - مَسْأَلَةٌ: وَالصَّلَاةُ جَائِزَةٌ عَلَى الْجُلُودِ، وَعَلَى الصُّوفِ، وَعَلَى كُلِّ مَا يَجُوزُ الْقُعُودُ عَلَيْهِ إذَا كَانَ طَاهِرًا. وَجَائِزٌ لِلْمَرْأَةِ أَنْ تُصَلِّيَ عَلَى الْحَرِيرِ. وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ. وَقَالَ عَطَاءٌ: لَا تَجُوزُ الصَّلَاةُ إلَّا عَلَى التُّرَابِ وَالْبَطْحَاءِ. وَقَالَ مَالِكٌ: تُكْرَهُ الصَّلَاةُ عَلَى غَيْرِ الْأَرْضِ أَوْ مَا تُنْبِتُ الْأَرْضُ. قَالَ عَلِيٌّ: هَذَا قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ، وَالسُّجُودُ وَاجِبٌ عَلَى سَبْعَةِ أَعْضَاءَ: الرِّجْلَيْنِ، وَالرُّكْبَتَيْنِ، وَالْيَدَيْنِ، وَالْجَبْهَةِ وَالْأَنْفِ. وَهُوَ يُجِيزُ وَضْعَ جَمِيعِ هَذِهِ الْأَعْضَاءِ عَلَى كُلِّ مَا ذَكَرْنَا، حَاشَا الْجَبْهَةِ؛ فَأَيُّ فَرْقٍ بَيْنَ أَعْضَاءِ السُّجُودِ وَلَا سَبِيلَ إلَى وُجُودِ فَرْقٍ بَيْنَهَا: لَا مِنْ قُرْآنٍ وَلَا سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا مِنْ إجْمَاعٍ وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَرُوِّينَا عَنْ ابْنِ مَسْعُودٍ: أَنَّهُ صَلَّى عَلَى مَسْحِ شَعْرٍ وَعَنْ عُمَرَ بْنِ الْخَطَّابِ: أَنَّهُ كَانَ يَسْجُدُ فِي صَلَاتِهِ عَلَى عَبْقَرِيٍّ وَهُوَ بِسَاطُ صُوفٍ وَعَنْ ابْنِ عَبَّاسٍ: أَنَّهُ سَجَدَ فِي صَلَاتِهِ عَلَى طُنْفُسَةٍ وَهِيَ بِسَاطُ صُوفٍ وَعَنْ أَبِي الدَّرْدَاءِ مِثْلُ ذَلِكَ. وَعَنْ شُرَيْحٍ وَالزُّهْرِيِّ مِثْلُ ذَلِكَ، وَعَنْ الْحَسَنِ، وَلَا مُخَالِفَ لِمَنْ ذَكَرْنَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L6787 **Issue: If one is pressed tightly on the day of Friday or other days and cannot prostrate on the space in front of him.**

[مَسْأَلَةٌ زُوحِمَ يَوْمَ الْجُمُعَةِ أَوْ غَيْرِهَا فَلَمْ يَقْدِرْ عَلَى السُّجُودِ عَلَى مَا بَيْنَ يَدَيْهِ]

L6788 440 - Issue: If someone is pressed during Friday or other days and cannot prostrate upon what is before him, let him prostrate on the leg of the one praying in front of him or on his back, and it suffices him. This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, Abū Sulaymān, and others. Mālik said: This is not permissible. ʿAlī said: “Allah the Exalted commanded us to prostrate and did not specify any particular thing from anything for us to prostrate upon.

٤٤٠ - مَسْأَلَةٌ: وَمَنْ زُوحِمَ يَوْمَ الْجُمُعَةِ أَوْ غَيْرِهَا فَلَمْ يَقْدِرْ عَلَى السُّجُودِ عَلَى مَا بَيْنَ يَدَيْهِ، فَلْيَسْجُدْ عَلَى رِجْلِ مَنْ يُصَلِّي بَيْنَ يَدَيْهِ أَوْ عَلَى ظَهْرِهِ وَيُجْزِئُهُ. وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ. وَقَالَ مَالِكٌ: لَا يَجُوزُ ذَلِكَ قَالَ عَلِيٌّ: أَمَرَنَا اللَّهُ

{Your Lord is not forgetful} [Maryam 19:64]." Yaḥyā ibn ʿAbd al-Raḥmān ibn Masʿūd narrated to us; from Aḥmad ibn Saʿīd ibn Ḥazm; from Muḥammad ibn ʿAbd al-Malik ibn Ayman; from ʿAbdullāh ibn Aḥmad ibn Ḥanbal; from my father; from ʿAbd al-Raḥmān ibn Mahdī; from Sufyān al-Thawrī; from al-Aʿmash; from al-Musayyib ibn Rāfiʿ; from Zayd ibn Wahb; from ʿUmar ibn al-Khaṭṭāb, who said: "When the heat is intense, let one of you prostrate on his garment. When the crowding is severe, let him prostrate on a man's back." We have also been narrated from al-Ḥasan al-Baṣrī and Ṭāwūs: "If the crowding is excessive, prostrate on your brother's back." From Mujāhid: "Prostrate on your brother's leg." None of the Companions (may Allah be pleased with them) are known to have disagreed with ʿUmar (may Allah be pleased with him) regarding this.[53]

تَعَالَى بِالسُّجُودِ، وَلَمْ يَخُصَّ شَيْئًا نَسْجُدُ عَلَيْهِ مِنْ شَيْءٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] . حَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ ثنا أَحْمَدُ بْنُ سَعِيدِ بْنِ حَزْمٍ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ ثنا أَبِي ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ الْأَعْمَشِ عَنْ الْمُسَيَّبِ بْنِ رَافِعٍ عَنْ زَيْدِ بْنِ وَهْبٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: إذَا اشْتَدَّ الْحَرُّ فَلْيَسْجُدْ أَحَدُكُمْ عَلَى ثَوْبِهِ، وَإِذَا اشْتَدَّ الزِّحَامُ فَلْيَسْجُدْ عَلَى ظَهْرِ رَجُلٍ. وَرُوِّينَا عَنْ الْحَسَنِ الْبَصْرِيِّ، وَعَنْ طَاوُسٍ: إذَا كَثُرَ الزِّحَامُ فَاسْجُدْ عَلَى ظَهْرِ أَخِيك، وَعَنْ مُجَاهِدٍ: اُسْجُدْ عَلَى رِجْلِ أَخِيك. وَلَا يُعْرَفُ فِي هَذَا لِعُمَرَ - رَضِيَ اللَّهُ عَنْهُ - مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ.

L6789 **A juristic question: whether the Imam may pray in a place higher than the congregation's place, or in a place lower than his own.**

[مَسْأَلَةٌ لِلْإِمَامِ أَنْ يُصَلِّيَ فِي مَكَان أَرْفَعَ مِنْ مَكَانِ جَمِيعِ الْمَأْمُومِينَ، وَفِي أَخْفَضَ مِنْهُ]

L6790 441 - Issue: It is permissible for the Imam to pray in a place higher than the congregation's location or in a lower place. This applies equally whether it concerns the general public, the majority, or the minority. If he is able to prostrate properly, this is preferable. Otherwise, when he intends to prostrate, he should step down to a position where he can perform it, then return to his place. This is the opinion of Al-Shāfiʿī and Abū Sulaymān.

٤٤١ - مَسْأَلَةٌ: وَجَائِزٌ لِلْإِمَامِ أَنْ يُصَلِّيَ فِي مَكَان أَرْفَعَ مِنْ مَكَانِ جَمِيعِ الْمَأْمُومِينَ، وَفِي أَخْفَضَ مِنْهُ؛ سَوَاءٌ فِي كُلِّ ذَلِكَ الْعَامَّةُ، وَالْأَكْثَرُ، وَالْأَقَلُّ فَإِنْ أَمْكَنَهُ السُّجُودُ فَحَسَنٌ، وَإِلَّا فَإِذَا أَرَادَ السُّجُودَ فَلْيَنْزِلْ حَتَّى يَسْجُدَ حَيْثُ يَقْدِرُ، ثُمَّ يَرْجِعُ إلَى مَكَانِهِ وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L6791–6794 Abu Hanifah and Malik said: This is not permissible. However, Abu Hanifah permitted it within the measure of a qamah (standing height) or less, and Malik permitted slight elevation. Ali said: These two specifications are invalid, as they lack support from Quranic text, Sunnah, consensus, analogy, companion's opinion, or rationally valid view. No distinction is recognized between minor and major elevation in any of these sources. Declar-

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَا يَجُوزُ ذَلِكَ. وَأَجَازَهُ أَبُو حَنِيفَةَ فِي مِقْدَارِ قَامَةٍ فَأَقَلَّ، وَأَجَازَهُ مَالِكٌ فِي الِارْتِفَاعِ الْيَسِيرِ قَالَ عَلِيٌّ: هَذَانِ تَحْدِيدَانِ فَاسِدَانِ، لَمْ يَأْتِ بِهِمَا نَصُّ الْقُرْآنِ وَلَا سُنَّةٌ وَلَا إجْمَاعٌ وَلَا قِيَاسٌ وَلَا قَوْلُ صَاحِبٍ وَلَا رَأْيٌ لَهُ وَجْهٌ، وَمَا عُلِمَ فِي شَيْءٍ مِنْ ذَلِكَ فَرْقٌ بَيْنَ قَلِيلِ الِارْتِفَاعِ وَكَثِيرِهِ، وَالتَّحْرِيمُ وَالتَّحْلِيلُ وَالتَّحْدِيدُ

[53] **Qur'an references (L6788):** Qur'an 19:64 (Maryam).

ing prohibition, permissibility, or specification between them is only lawful through the Quran or Sunnah. If the imam's prayer position being a finger's breadth higher than the congregation is permissible, then it remains permissible through incremental elevations—a finger's breadth after a finger's breadth—even reaching a thousand qamahs or more. Conversely, if a thousand qamahs are prohibited in this matter, then all elevations down to a finger's breadth or less are equally prohibited. Whoever arbitrarily differentiates between these through personal opinion falsely attributes to Allah and His Messenger—peace be upon him—what they never decreed. It is surprising that Abu Hanifah and Malik ruled: "If a group shares the imam's elevated position, his prayer with those below is valid; otherwise not"—a ruling marked by further arbitrariness. They also permitted the imam to be positioned lower than the congregation—a third arbitrary ruling, all asserted without evidence. Ali said: The established ruling requires congregants to form rows behind the imam. Disrupting this arrangement is impermissible due to the obligation of row organization commanded by Allah's Messenger—peace be upon him. If the imam's prayer space is on a platform, in a room, or elevated ground insufficient for a row behind him, those below may pray there. Abdullah ibn Yusuf narrated from Ahmad ibn Fath, from Abdul-Wahhab ibn Isa, from Ahmad ibn Muhammad, from Ahmad ibn Ali, from Muslim ibn Al-Hajjaj, from Yahya ibn Yahya and Qutaybah ibn Sa'id—both from Abdul-Aziz ibn Abi Hazim, from his father—that some men came to Sahl ibn Sa'd. Sahl said: "I saw Allah's Messenger—peace be upon him—stand upon the pulpit, pronounce the Takbir, while the people behind him pronounced Takbir as he remained on the pulpit. He then rose from bowing, stepped backward, and prostrated at the pulpit's base. He returned [to the pulpit] until he finished the last part of his prayer." After completing his prayer, he turned to the people and said: "O people, I have done this so that you may follow my lead and learn my manner of prayer." ʿAlī said: "There is no clearer exposition than this regarding the permissibility of an imam praying in a place elevated above the congregation's position." Opponents cited a report prohibiting the imam from praying in a higher place than the congregation, but this is a rejected report – solely narrated by Ziyād ibn ʿAbdillāh al-Bakkāʾī, who is deemed unreliable. The report we presented reflects

بَيْنَهُمَا لَا يَحِلُّ إِلَّا بِقُرْآنٍ أَوْ سُنَّةٍ. وَلَئِنْ كَانَ وُقُوفُ الْإِمَامِ فِي الصَّلَاةِ فِي مَكَانٍ أَرْفَعَ مِنْ الْمَأْمُومِينَ بِمِقْدَارِ أُصْبُعٍ حَلَالًا، فَإِنَّهُ لَحَلَالٌ بِأُصْبُعٍ بَعْدَ أُصْبُعٍ، حَتَّى يَبْلُغَ أَلْفَ قَامَةٍ وَأَكْثَرَ، وَلَئِنْ كَانَتْ الْأَلْفُ قَامَةً حَرَامًا فِي ذَلِكَ فَإِنَّهُ لَحَرَامٌ كُلُّهُ إلَى قَدْرِ الْأُصْبُعِ فَأَقَلَّ وَإِنَّ الْمُتَحَكِّمَ فِي التَّفْرِيقِ بَيْنَ ذَلِكَ بِرَأْيِهِ لَقَائِلٌ عَلَى اللَّهِ تَعَالَى وَعَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْهُ قَطُّ وَالْعَجَبُ أَنَّ أَبَا حَنِيفَةَ، وَمَالِكًا قَالَا: إنْ كَانَ مَعَ الْإِمَامِ فِي الْعُلْوِّ طَائِفَةٌ جَازَتْ صَلَاتُهُ بِالَّذِينَ أَسْفَلُ وَإِلَّا فَلَا وَهَذَا عَجَبٌ وَزِيَادَةٌ فِي التَّحَكُّمِ وَأَجَازَا: أَنْ يَكُونَ الْإِمَامُ فِي مَكَانٍ أَسْفَلَ مِنْ الْمَأْمُومِينَ، وَهَذَا تَحَكُّمٌ ثَالِثٌ كُلُّ ذَلِكَ دَعْوَى بِلَا بُرْهَانٍ قَالَ عَلِيٌّ: وَالْحُكْمُ فِي ذَلِكَ أَنْ يَكُونَ الْمَأْمُومُونَ خَلْفَ الْإِمَامِ صُفُوفًا صُفُوفًا، فَلَا يَحِلُّ لَهُمْ أَنْ يُخِلُّوا بِهَذِهِ الرُّتْبَةِ، لِمَا قَدْ ذَكَرْنَا قَبْلُ مِنْ وُجُوبِ تَرْتِيبِ الصُّفُوفِ، بِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ، فَإِنْ اتَّفَقَ مُصَلَّى الْإِمَامِ فِي دُكَّانٍ، أَوْ غُرْفَةٍ، أَوْ رَابِيَةٍ، لَا يَسَعُ فِيهَا مَعَهُ صَفٌّ خَلْفَهُ: صَلَّوْا تَحْتَهُ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى، وَقُتَيْبَةُ بْنُ سَعِيدٍ كِلَاهُمَا عَنْ عَبْدِ الْعَزِيزِ بْنِ أَبِي حَازِمٍ عَنْ أَبِيهِ، أَنَّ نَفَرًا جَاءُوا إلَى سَهْلِ بْنِ سَعْدٍ فَقَالَ سَهْلٌ: «رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَامَ عَلَيْهِ - يَعْنِي عَلَى الْمِنْبَرِ - فَكَبَّرَ وَكَبَّرَ النَّاسُ، وَرَاءَهُ وَهُوَ عَلَى الْمِنْبَرِ، ثُمَّ رَفَعَ فَنَزَلَ الْقَهْقَرَى حَتَّى سَجَدَ فِي أَصْلِ الْمِنْبَرِ، ثُمَّ عَادَ حَتَّى فَرَغَ مِنْ آخِرِ صَلَاتِهِ، ثُمَّ أَقْبَلَ عَلَى النَّاسِ فَقَالَ: يَا أَيُّهَا النَّاسُ، إنِّي إنَّمَا صَنَعْتُ هَذَا لِتَأْتَمُّوا بِي وَلِتَعْلَمُوا صَلَاتِي» . قَالَ عَلِيٌّ: لَا بَيَانَ أَبْيَنَ مِنْ هَذَا فِي جَوَازِ صَلَاةِ الْإِمَامِ فِي

the consensus of the Companions during the Messenger of Allah's lifetime (peace and blessings be upon him), and this constitutes the valid proof, not the fabricated falsehood. Some opponents objected: "This indicates arrogance." ʿAlī responded: "This claim is baseless. The same logic rebounds against their allowance for the congregation to pray in a place higher than the imam. One could retort: 'This would then imply the congregation's arrogance,' with absolutely no distinction in legal principle. By this reasoning, they must also prohibit an imam from praying while girded with a sword or wearing armor, for such attire is more indicative of arrogance than praying in an elevated place." Aḥmad ibn Ḥanbal, al-Layth ibn Saʿd, al-Bukhārī, and others uphold the same position as ours. And success comes solely from Allah, the Exalted.

مَكَان أَرْفَعَ مِنْ مَكَانِ الْمَأْمُومِينَ وَاحْتَجَّ الْمُخَالِفُونَ بِخَبَرٍ فِيهِ النَّهْيُ عَنْ صَلَاةِ الْإِمَامِ فِي مَكَان أَرْفَعَ مِنْ مَكَانِ الْمَأْمُومِينَ وَهُوَ خَبَرٌ سَاقِطٌ، انْفَرَدَ بِهِ زِيَادُ بْنُ عَبْدِ اللَّهِ الْبُكَائِيُّ، وَهُوَ ضَعِيفٌ. وَالْخَبَرُ الَّذِي أَوْرَدْنَا إجْمَاعٌ مِنْ الصَّحَابَةِ بِحَضْرَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَذَا هُوَ الْحُجَّةُ لَا الْبَاطِلُ الْمُلَفَّقُ. وَقَالَ بَعْضُ الْمُخَالِفِينَ: هَذَا مِنْ الْكِبْرِ قَالَ عَلِيٌّ: هَذَا بَاطِلٌ وَيُعْكَسُ عَلَيْهِمْ فِي إجَازَتِهِمْ صَلَاةَ الْمَأْمُومِينَ فِي مَكَان أَرْفَعَ مِنْ مَكَانِ الْإِمَامِ فَيُقَالُ لَهُمْ: هَذَا كِبْرٌ مِنْ الْمَأْمُومِينَ وَلَا فَرْقَ وَيَلْزَمُهُمْ عَلَى هَذَا أَنْ يَمْنَعُوا أَيْضًا مِنْ صَلَاةِ الْإِمَامِ مُتَقَلِّدًا سَيْفًا، وَلَابِسَ دِرْعٍ فَهَذَا أَدْخَلُ فِي الْكِبْرِ مِنْ صَلَاتِهِ فِي مَكَان عَالٍ وَبِمِثْلِ قَوْلِنَا يَقُولُ أَحْمَدُ بْنُ حَنْبَلٍ، وَاللَّيْثُ بْنُ سَعْدٍ، وَالْبُخَارِيُّ، وَغَيْرُهُمْ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L6795–6796 **The recommended actions in prayer that are not obligatory. Issue: raising the hands at every bowing, prostration, standing, and sitting, except the opening takbīr.**

[الْأَعْمَالُ الْمُسْتَحَبَّةُ فِي الصَّلَاةِ وَلَيْسَتْ فَرْضًا] [مَسْأَلَةُ رَفْعُ الْيَدَيْنِ عِنْدَ كُلِّ رُكُوعٍ وَسُجُودٍ وَقِيَامٍ وَجُلُوسٍ، سِوَى تَكْبِيرَةِ الْإِحْرَامِ]

L6797 Issue: Raising the hands at every bowing, prostration, standing, and sitting, except for the opening *takbīr*? ʿAlī said: "People have differed regarding this: a group held that the hands are not raised in any part of the prayer except at its beginning during the opening *takbīr*—also to the shoulders as well."

مَسْأَلَةٌ: رَفْعُ الْيَدَيْنِ عِنْدَ كُلِّ رُكُوعٍ وَسُجُودٍ وَقِيَامٍ وَجُلُوسٍ، سِوَى تَكْبِيرَةِ الْإِحْرَامِ؟ قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي هَذَا -: فَطَائِفَةٌ: لَمْ تَرْفَعْ الْيَدَيْنِ فِي شَيْءٍ مِنْ الصَّلَاةِ إلَّا فِي أَوَّلِهَا عِنْدَ تَكْبِيرَةِ الْإِحْرَامِ عَلَى ظَلْعٍ أَيْضًا.

L6798 They also deemed it—if it is the case—a non-obligatory slight raising—and this is the narration of Ibn al-Qāsim from Mālik?—while Abū Ḥanīfah and his companions held that raising the hands at the very outset of the prayer is a recommended practice (Sunnah), not an obligatory act (farḍ), and they prohibited it in the remainder of the prayer. A group maintained raising the hands at the commencement of the prayer, during bowing, and upon straightening up from bowing.

وَرَأَوْهُ أَيْضًا - إنْ كَانَ - فَرَفْعٌ يَسِيرٌ - وَهَذِهِ رِوَايَةُ ابْنِ الْقَاسِمِ عَنْ مَالِكٍ؟ وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ بِرَفْعِ الْيَدَيْنِ لِلْإِحْرَامِ أَوَّلًا - سُنَّةً لَا فَرِيضَةً - وَمَنَعُوا مِنْهُ فِي بَاقِي الصَّلَاةِ وَرَأَتْ طَائِفَةٌ: رَفْعَ الْيَدَيْنِ عِنْدَ الْإِحْرَامِ، وَعِنْدَ الرُّكُوعِ، وَعِنْدَ الرَّفْعِ مِنْ الرُّكُوعِ.

وَهُوَ قَوْلُ الشَّافِعِيِّ: وَأَحْمَدَ وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

وَهُوَ رِوَايَةُ أَشْهَبَ، وَابْنِ وَهْبٍ، وَأَبِي الْمُصْعَبِ، وَغَيْرِهِمْ، عَنْ مَالِكٍ أَنَّهُ كَانَ يَفْعَلُهُ وَيُفْتِي بِهِ؟ وَرَأَتْ طَائِفَةٌ: رَفْعَ الْيَدَيْنِ عِنْدَ كُلِّ تَكْبِيرٍ فِي الصَّلَاةِ، الْفَرْضِ وَالتَّطَوُّعِ، وَعِنْدَ كُلِّ قَوْلِ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ؟ فَأَمَّا رِوَايَةُ ابْنِ الْقَاسِمِ عَنْ مَالِكٍ فَمَا نَعْلَمُ لَهَا وَجْهًا أَصْلًا، وَلَا تَعَلُّقًا بِشَيْءٍ مِنْ الرِّوَايَاتِ، وَلَا قَائِلًا بِهَا مِنْ الصَّحَابَةِ وَلَا مِنْ التَّابِعِينَ؟

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَإِنَّهُمْ احْتَجُّوا بِمَا حَدَّثَنَاهُ حَمَامٌ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الْبَاجِيُّ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا مُحَمَّدُ بْنُ إِسْمَاعِيلَ الصَّائِغُ ثنا زُهَيْرُ بْنُ حَرْبٍ ثنا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَاصِمِ بْنِ كُلَيْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ عَنْ عَلْقَمَةَ عَنْ ابْنِ مَسْعُودٍ قَالَ: «أَلَا أُرِيكُمْ صَلَاةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَرَفَعَ يَدَيْهِ فِي أَوَّلِ تَكْبِيرَةٍ ثُمَّ لَمْ يَعُدْ»

قَالُوا: وَكَانَ عَلِيٌّ، وَابْنُ مَسْعُودٍ، لَا يَرْفَعَانِ أَيْدِيَهُمَا إلَّا فِي تَكْبِيرَةِ الْإِحْرَامِ فَقَطْ.

مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا، وَلَا حُجَّةَ لَهُمْ فِيهِ، لِمَا نَذْكُرُ إنْ شَاءَ اللَّهُ تَعَالَى، فَنَقُولُ: وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّ هَذَا الْخَبَرَ صَحِيحٌ، وَلَيْسَ فِيهِ إلَّا أَنَّ رَفْعَ الْيَدَيْنِ فِيمَا عَدَا تَكْبِيرَةَ الْإِحْرَامِ لَيْسَ فَرْضًا فَقَطْ، وَلَوْلَا هَذَا الْخَبَرُ لَكَانَ رَفْعُ الْيَدَيْنِ - عِنْدَ كُلِّ رَفْعٍ وَخَفْضٍ وَتَكْبِيرٍ وَتَحْمِيدٍ فِي الصَّلَاةِ -: فَرْضًا؛ لِأَنَّهُ قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَفْعُ الْيَدَيْنِ عِنْدَ كُلِّ رَفْعٍ عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ.

L6799 And it is the opinion of al-Shāfiʿī, Aḥmad, Abū Sulaymān, and their followers.

L6800 This is the narration of Ashhab, Ibn Wahb, Abi al-Muṣʿab, and others from Mālik that he would practice it and issue rulings accordingly. A group held the view of raising the hands at every *takbīr* in prayer—both obligatory and voluntary—and upon saying *Samiʿa Allāhu liman ḥamidah?* As for the narration of Ibn al-Qāsim from Mālik, we do not know of any basis for it whatsoever, any connection to other narrations, or any proponent from the Companions or the Followers who adhered to it.

L6801–6802 As for the statement of Abū Ḥanīfah, they cited as evidence the narration transmitted to us by Ḥammām, who narrated from ʿAbdullāh ibn Muḥammad al-Bājī, who narrated from Muḥammad ibn ʿAbd al-Malik ibn Ayman, who narrated from Muḥammad ibn Ismāʿīl al-Ṣāʾigh, who narrated from Zuhayr ibn Ḥarb, who narrated from Wakīʿ, from Sufyān al-Thawrī, from ʿĀṣim ibn Kulayb, from ʿAbd al-Raḥmān ibn al-Aswad, from ʿAlqamah, from Ibn Masʿūd, who said: "Shall I show you the prayer of the Messenger of Allah (peace be upon him)?" He then raised his hands at the first Takbīr (saying 'Allāhū Akbar') and did not repeat this afterward.

L6803 They said: 'Ali and Ibn Masʿūd would raise their hands only during the opening takbīr of prayer.'

L6804 We know of no valid proof for them other than this, nor do they possess any proof in this matter, due to what we will mention—Allah, the Exalted, willing. Thus we say—and with Allah, the Exalted, lies success—: This narration is authentic, and there is nothing in it except that raising the hands in acts beyond the opening Takbīr is not solely obligatory. Were it not for this narration, raising the hands—at every raising, lowering, Takbīr, and Tahmīd in prayer—would have been obligatory, for it is authentically established from the Prophet (peace and blessings of Allah be upon him) that he raised his hands at every raising, as we will clarify hereafter—Allah, the Exalted and Majestic, willing.

L6805 It has been authentically reported from him (peace be upon him) that he said: "Pray as you see me pray." We have mentioned this with its chain of

transmission in this book of ours in the chapter on the obligation of the *adhan* and the *iqamah*.

وَصَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - أَنَّهُ قَالَ: «صَلُّوا كَمَا تَرَوْنِي أُصَلِّي» وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِي كِتَابِنَا هَذَا فِي بَابِ وُجُوبِ الْأَذَانِ وَالْإِقَامَةِ.

L6806 Were it not for this ḥadīth of Ibn Masʿūd, it would have been obligatory upon every person who prays to pray as he (peace be upon him) used to pray.

فَلَوْلَا حَدِيثُ ابْنِ مَسْعُودٍ هَذَا لَكَانَ فَرْضًا عَلَى كُلِّ مُصَلٍّ أَنْ يُصَلِّيَ كَمَا كَانَ - عَلَيْهِ السَّلَامُ - يُصَلِّي.

L6807–6809 He—peace be upon him—used to pray while raising his hands at every raising and lowering [in prayer]. However, when Ibn Masʿūd's report was verified, did we learn that raising the hands apart from the opening takbīr is merely a sunnah and recommendation? Though ʿAlī and Ibn Masʿūd—may Allah be pleased with them—did not raise [their hands], Ibn ʿUmar, Ibn ʿAbbās, and a group of the Messenger of Allah's Companions—peace and blessings be upon him—did raise theirs. Thus, the action of some cannot be used as proof against the action of others. Rather, the proof binding upon all is what is authentically established from the Messenger of Allah—peace and blessings be upon him. In any case, even if Ibn Masʿūd and ʿAlī did not raise [their hands], it is never reported that they disapproved of it or forbade it, as these people do. As for those who consider raising the hands when bowing and rising from bowing [obligatory], they have argued based on what... We have narrated it via the routes of Mālik, Yūnus ibn Yazīd, Sufyān ibn ʿUyaynah, Ibn Jurayj, al-Zubaydī, Maʿmar, and others—all of them narrating from al-Zuhrī from Sālim ibn ʿAbd Allāh ibn ʿUmar from his father: "That the Messenger of Allah (peace and blessings of Allah be upon him) would raise his hands level with his shoulders when he commenced the prayer, when he pronounced the takbīr for bowing, and when he raised his head from bowing—he would raise them in the same way. He did not do that while prostrating."

وَكَانَ - عَلَيْهِ السَّلَامُ - يُصَلِّي رَافِعًا يَدَيْهِ عِنْدَ كُلِّ رَفْعٍ وَخَفْضٍ، لَكِنْ لَمَّا صَحَّ خَبَرُ ابْنِ مَسْعُودٍ عَلِمْنَا أَنَّ رَفْعَ الْيَدَيْنِ فِيمَا عَدَا تَكْبِيرَةِ الْإِحْرَامِ: سُنَّةٌ وَنَدْبٌ فَقَطْ؟ وَإِنْ كَانَ عَلِيٌّ، وَابْنُ مَسْعُودٍ - رَضِيَ اللَّهُ عَنْهُمَا - لَا يَرْفَعَانِ، فَقَدْ كَانَ ابْنُ عُمَرَ، وَابْنُ عَبَّاسٍ، وَجَمَاعَةٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَرْفَعُونَ فَلَيْسَ فِعْلُ بَعْضِهِمْ حُجَّةً عَلَى فِعْلِ بَعْضٍ، بَلْ الْحُجَّةُ عَلَى جَمِيعِهِمْ مَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَى كُلِّ حَالٍ فَإِنْ كَانَ ابْنُ مَسْعُودٍ، وَعَلِيٌّ: لَا يَرْفَعَانِ، فَمَا جَاءَ قَطُّ أَنَّهُمَا كَرِهَا الرَّفْعَ، وَلَا نَهَيَا عَنْهُ كَمَا يَفْعَلُ هَؤُلَاءِ وَأَمَّا مَنْ رَأَى رَفْعَ الْيَدَيْنِ عِنْدَ الرُّكُوعِ، وَالرَّفْعِ مِنْ الرُّكُوعِ، فَإِنَّهُمْ احْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ، وَيُونُسَ بْنِ يَزِيدَ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، وَابْنِ جُرَيْجٍ، وَالزُّبَيْدِيِّ، وَمَعْمَرٍ، وَغَيْرِهِمْ، كُلُّهُمْ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَرْفَعُ يَدَيْهِ حَذْوَ مَنْكِبَيْهِ إذَا افْتَتَحَ الصَّلَاةَ، وَإِذَا كَبَّرَ لِلرُّكُوعِ، وَإِذَا رَفَعَ رَأْسَهُ مِنْ الرُّكُوعِ، رَفَعَهُمَا أَيْضًا كَذَلِكَ، وَكَانَ لَا يَفْعَلُ ذَلِكَ فِي السُّجُودِ» .

L6810 And it has been narrated to us this action in prayer from Jābir ibn ʿAbdullāh, Abū Saʿīd, Abū al-Dardāʾ, Umm al-Dardāʾ, and Ibn ʿAbbās.

وَرُوِّينَا هَذَا الْفِعْلَ فِي الصَّلَاةِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، وَأَبِي سَعِيدٍ، وَأَبِي الدَّرْدَاءِ، وَأُمِّ الدَّرْدَاءِ وَابْنِ عَبَّاسٍ.

L6811 And it has also been narrated to us concerning this action in prayer from Abū Mūsā al-Ashʿarī – and that he used to teach it to the people – via Ḥammād ibn Salamah from al-Azraq ibn Qays from Ḥiṭṭān ibn ʿAbdillāh al-Raqāshī from Abū Mūsā al-Ashʿarī.

وَرُوِّينَا أَيْضًا هَذَا الْفِعْلَ فِي الصَّلَاةِ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ، وَأَنَّهُ كَانَ يُعَلِّمُهُ النَّاسَ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْأَزْرَقِ بْنِ قَيْسٍ عَنْ حِطَّانَ بْنِ عَبْدِ اللَّهِ الرَّقَاشِيِّ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ.

L6812 It has also been narrated to us from Abū az-Zubayr, Abū Hurayrah, an-Nuʿmān ibn Abī ʿAyyāsh, and a group of the Prophet's companions - peace and blessings be upon him - through the chain of Abū Bakr ibn Abī Shaybah from Muʿādh ibn Muʿādh from Saʿīd ibn Abī ʿArūbah from Qatādah from al-Ḥasan: "The companions of the Prophet - peace and blessings be upon him - used to raise their hands when commencing the prayer, when bowing, and when rising from bowing, as if they were fluttering fans."

وَرُوِّينَا أَيْضًا عَنْ أَبِي الزُّبَيْرِ وَأَبِي هُرَيْرَةَ، وَالنُّعْمَانِ بْنِ أَبِي عَيَّاشٍ، وَجُمْلَةِ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ عَنْ مُعَاذِ بْنِ مُعَاذٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ " كَانَ أَصْحَابُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَرْفَعُونَ أَيْدِيَهُمْ إذَا أَحْرَمُوا وَإِذَا رَكَعُوا وَإِذَا رَفَعُوا كَأَنَّهَا الْمَرَاوِحُ ".

L6813–6815 We have also narrated it from ʿAbd al-Raḥmān ibn Sābiṭ, al-Ḥasan, al-Qāsim, Sālim, ʿAṭāʾ, Ṭāwus, Mujāhid, Ibn Sīrīn, Nāfiʿ client of Ibn ʿUmar, Qatādah, al-Ḥasan ibn Muslim, Ibn Abī Najīḥ, ʿAbd Allāh ibn Dīnār, Makḥūl, Muʿtamir ibn Sulaymān, Yaḥyā ibn Saʿīd al-Qaṭṭān, ʿAbd al-Raḥmān ibn Mahdī, Ismāʿīl ibn ʿUlayyah, al-Layth ibn Saʿd, al-Awzāʿī, Sufyān ibn ʿUyaynah, al-Ḥumaydī, Jarīr ibn ʿAbd al-Ḥamīd, ʿAbd Allāh ibn al-Mubārak, Ibn Wahb, Aḥmad ibn Ḥanbal, Isḥāq, al-Muzanī, Abū Thawr, Muḥammad ibn Naṣr al-Marwazī, Muḥammad ibn Jarīr al-Ṭabarī, Ibn al-Mundhir, the two sons of ʿAbd Allāh ibn ʿAbd al-Ḥakam, and al-Rabīʿ. Muhammad ibn Numayr; Yahya ibn Maʿīn; ʿAlī ibn al-Madīnī; Yazīd ibn Hārūn; and others.

وَرُوِّينَاهُ أَيْضًا - عَنْ عَبْدِ الرَّحْمَنِ بْنِ سَابِطٍ، وَالْحَسَنِ، وَالْقَاسِمِ، وَسَالِمٍ، وَعَطَاءٍ، وَطَاوُسٍ، وَمُجَاهِدٍ، وَابْنِ سِيرِينَ، وَنَافِعٍ مَوْلَى ابْنِ عُمَرَ، وَقَتَادَةَ، وَالْحَسَنِ بْنِ مُسْلِمٍ وَابْنِ أَبِي نَجِيحٍ، وَعَبْدِ اللَّهِ بْنِ دِينَارٍ، وَمَكْحُولٍ، وَمُعْتَمِرِ بْنِ سُلَيْمَانَ، وَيَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ، وَعَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ، وَإِسْمَاعِيلَ بْنِ عُلَيَّةَ، وَاللَّيْثِ بْنِ سَعْدٍ، وَالْأَوْزَاعِيِّ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، وَالْحُمَيْدِيِّ، وَجَرِيرِ بْنِ عَبْدِ الْحَمِيدِ وَعَبْدِ اللَّهِ بْنِ الْمُبَارَكِ وَابْنِ وَهْبٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَالْمُزَنِيِّ، وَأَبِي ثَوْرٍ، وَمُحَمَّدِ بْنِ نَصْرٍ الْمَرْوَزِيِّ، وَمُحَمَّدِ بْنِ جَرِيرٍ الطَّبَرِيِّ، وَابْنِ الْمُنْذِرِ، وَابْنَيْ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ، وَالرَّبِيعِ وَمُحَمَّدِ بْنِ نُمَيْرٍ، وَيَحْيَى بْنِ مَعِينٍ، وَعَلِيِّ بْنِ الْمَدِينِيِّ، وَيَزِيدَ بْنِ هَارُونَ، وَغَيْرِهِمْ.

L6816 As for those who advocate raising the hands at every lowering and rising, they substantiated their position with the narration transmitted to us by Hammām ibn Aḥmad—who narrated to us from ʿAbbās ibn Aṣbagh—who narrated to us from Muḥammad ibn ʿAbd al-Malik ibn Ayman—who narrated to us from Abū Ismāʿīl Muḥammad ibn Ismāʿīl—who narrated to us from Muḥammad ibn ʿAbd al-Aʿlā al-Ṣanʿānī—who narrated to us from al-

وَأَمَّا مَنْ ذَهَبَ إلَى رَفْعِ الْيَدَيْنِ فِي كُلِّ خَفْضٍ وَرَفْعٍ فَاحْتَجُّوا بِمَا حَدَّثَنَاهُ حَمَامُ بْنُ أَحْمَدَ ثِنَا عَبَّاسُ بْنُ أَصْبَغَ ثِنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثِنَا أَبُو إسْمَاعِيلَ مُحَمَّدُ بْنُ إسْمَاعِيلَ ثِنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى الصَّنْعَانِيُّ ثِنَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ عُبَيْدِ اللَّهِ بْنِ

Muʿtamir ibn Sulaymān—from ʿUbayd Allāh ibn ʿUmar—from Ibn Shihāb—from Sālim ibn ʿAbd Allāh ibn ʿUmar—from his father—that the Prophet (peace be upon him) would raise his hands when initiating the prayer, when preparing to bow, when rising from bowing, and when standing after the two rak'ahs—raising his hands in all of that.

عُمَرَ عَنْ ابْنِ شِهَابٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَّهُ كَانَ يَرْفَعُ يَدَيْهِ إِذَا جَاءَ الصَّلَاةَ، وَإِذَا أَرَادَ أَنْ يَرْكَعَ. وَإِذَا رَفَعَ رَأْسَهُ مِنْ الرُّكُوعِ، وَإِذَا قَامَ مِنْ الرَّكْعَتَيْنِ يَرْفَعُ يَدَيْهِ فِي ذَلِكَ كُلِّهِ» .

L6817 Abd al-Rahman ibn Abd Allah ibn Khalid reported to us: Ibrahim ibn Ahmad reported to us: al-Farbari reported to us: al-Bukhari reported to us: Ayyash reported to us, saying: Abd al-A'la reported to us: Ubaid Allah ibn Umar reported to us from Nafi' from Ibn Umar: "When he entered into prayer, he would pronounce the Takbīr and raise his hands. When he said: 'Sami'a Allāhu liman ḥamidah,' he would raise his hands. And when he stood up after the two Rak'ahs, he would raise his hands." Ibn Umar traced this practice back to the Prophet (peace and blessings be upon him).

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثِنَا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثِنَا الْفَرَبْرِيُّ ثِنَا الْبُخَارِيُّ ثِنَا عَيَّاشٌ قَالَ: ثِنَا عَبْدُ الْأَعْلَى ثِنَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: «أَنَّهُ كَانَ إِذَا دَخَلَ فِي الصَّلَاةِ كَبَّرَ وَرَفَعَ يَدَيْهِ، وَإِذَا قَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ رَفَعَ يَدَيْهِ، وَإِذَا قَامَ مِنْ الرَّكْعَتَيْنِ رَفَعَ يَدَيْهِ» ، وَرَفَعَ ابْنُ عُمَرَ ذَلِكَ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L6818 And Ḥammād ibn Salamah also narrated it from Ayyūb as-Sikhtiyānī, from Nāfi', from Ibn 'Umar, from the Prophet—peace be upon him—.

وَرَوَاهُ أَيْضًا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L6819 Abdullah ibn Rabi' narrated to us: Muhammad ibn Ishaq ibn As-Sulami narrated to us; Ibn Al-A'rabi narrated to us; Abu Dawud narrated to us; Uthman ibn Abi Shaybah and Muhammad ibn Ubayd Al-Muharibi both narrated to us, from Ibn Fudayl, from Asim ibn Kulayb, from Muharib ibn Dithar, from Ibn Umar, who said: "When the Prophet—peace and blessings be upon him—rose after the two rak'ahs, he would say the takbir and raise his hands."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثِنَا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السُّلَيْمِ ثِنَا ابْنُ الْأَعْرَابِيِّ ثِنَا أَبُو دَاوُد ثِنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ عُبَيْدٍ الْمُحَارِبِيُّ قَالَا: ثِنَا ابْنُ فُضَيْلٍ عَنْ عَاصِمِ بْنِ كُلَيْبٍ عَنْ مُحَارِبِ بْنِ دِثَارٍ عَنْ ابْنِ عُمَرَ قَالَ: «كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا قَامَ فِي الرَّكْعَتَيْنِ كَبَّرَ وَرَفَعَ يَدَيْهِ» .

L6820–6822 Abdullah ibn Rabi' narrated to us, Omar ibn al-Malik narrated to us, Muhammad ibn Bakr narrated to us, Abu Dawood narrated to us, Ahmad ibn Hanbal narrated to us, Abu Asim—who is al-Dahhak ibn Makhlad—narrated to us, Abdul-Hameed ibn Ja'far narrated to us, Muhammad ibn Amr ibn Ataa informed me, saying, 'I heard Abu Humaid al-Sā'idī among ten of the companions.' Among them was Abu Qatadah, the Messenger of Allah—peace and blessings of Allah be upon him—being mentioned therein.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثِنَا عُمَرُ بْنُ الْمَلِكِ ثِنَا مُحَمَّدُ بْنُ بَكْرٍ ثِنَا أَبُو دَاوُد ثِنَا أَحْمَدُ بْنُ حَنْبَلٍ ثِنَا أَبُو عَاصِمٍ هُوَ الضَّحَّاكُ بْنُ مَخْلَدٍ - ثِنَا عَبْدُ الْحَمِيدِ بْنُ جَعْفَرٍ أَخْبَرَنِي مُحَمَّدُ بْنُ عَمْرِو بْنِ عَطَاءٍ قَالَ: سَمِعْت أَبَا حُمَيْدٍ السَّاعِدِيَّ فِي عَشَرَةٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيهِمْ أَبُو قَتَادَةَ.

L6823 Abu Humaid said: "I am the most knowledgeable among you regarding the

prayer of Allah's Messenger (peace be upon him)." They asked: "Why? By Allah, you were neither the one with the longest companionship among us nor the earliest in accompanying him." He replied: "Indeed." They said: "Then describe it." He said: "When Allah's Messenger (PBUH) stood for prayer, he would raise his hands until aligning them with his shoulders, then proclaim 'Allahu Akbar' until every bone settled into place and his posture became balanced. Then he would recite [the Quran], then proclaim 'Allahu Akbar' while raising his hands to shoulder level. He would bow, placing his palms on his knees while keeping his back straight - neither drooping his head nor raising it. Then he would lift his head saying: 'Allah hears whoever praises Him,' while raising his hands to shoulder level."

فَقَالَ أَبُو حُمَيْدٍ: «أَنَا أَعْلَمُكُمْ بِصَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالُوا: فَلِمَ؟ فَوَاللَّهِ مَا كُنْتَ بِأَكْثَرِنَا تَبِعَةً وَلَا أَقْدَمِنَا لَهُ صُحْبَةً قَالَ: بَلَى قَالُوا: فَاعْرِضْ؟ فَقَالَ: كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا قَامَ إِلَى الصَّلَاةِ يَرْفَعُ يَدَيْهِ حَتَّى يُحَاذِيَ بِهِمَا مَنْكِبَيْهِ، ثُمَّ يُكَبِّرُ حَتَّى يَقِرَّ كُلُّ عَظْمٍ فِي مَوْضِعِهِ مُعْتَدِلًا ثُمَّ يَقْرَأُ ثُمَّ يُكَبِّرُ فَيَرْفَعُ يَدَيْهِ حَتَّى يُحَاذِيَ بِهِمَا مَنْكِبَيْهِ ثُمَّ يَرْكَعُ وَيَضَعُ رَاحَتَيْهِ عَلَى رُكْبَتَيْهِ ثُمَّ يَعْتَدِلُ، فَلَا يَصُبُّ رَأْسَهُ وَلَا يُقْنِعُ ثُمَّ يَرْفَعُ رَأْسَهُ فَيَقُولُ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ، ثُمَّ يَرْفَعُ يَدَيْهِ حَتَّى يُحَاذِيَ مَنْكِبَيْهِ»

L6824 He mentioned the ḥadīth containing: "Then when he rises from the two rakʿahs, he pronounces the takbīr and raises his hands until they align with his shoulders, just as he pronounced the takbīr at the commencement of prayer. He does this in the rest of his prayer" - and he related the remainder of the ḥadīth - "They said: 'You have spoken truthfully. This was how he used to pray.'"

وَذَكَرَ الْحَدِيثَ وَفِيهِ «ثُمَّ إِذَا قَامَ مِنَ الرَّكْعَتَيْنِ كَبَّرَ وَرَفَعَ يَدَيْهِ حَتَّى يُحَاذِيَ بِهِمَا مَنْكِبَيْهِ كَمَا كَبَّرَ عِنْدَ افْتِتَاحِ الصَّلَاةِ، ثُمَّ يَصْنَعُ ذَلِكَ فِي بَقِيَّةِ صَلَاتِهِ - وَذَكَرَ بَاقِيَ الْحَدِيثِ - قَالُوا: صَدَقْتَ هَكَذَا كَانَ يُصَلِّي» .

L6825–6827 Abdullah ibn Rabiʿ narrated to us; Umar ibn ʿAbd al-Malik narrated to us; Ibn al-Aʿrabi narrated to us; Abu Dawud; [narrated to us] Ubaydullah ibn Maysarah al-Jushami narrated to us; ʿAbd al-Warith—he is Ibn Saʿid—narrated to us; Muhammad ibn Juhadah narrated to us; ʿAbd al-Jabbar ibn Wa'il narrated to me; he said: ["I was a boy who did not comprehend my father's prayer, so he narrated to me"]. Alqamah ibn Wā'il reported from Wā'il ibn Ḥujr, who said: "I prayed with the Messenger of Allah (peace and blessings be upon him). When he pronounced the Takbīr, he raised his hands. Then he folded them, grasping his left hand with his right hand and positioning his hands beneath his garment. When he intended to bow, he brought his hands out and raised them. When he intended to raise his head from bowing, he raised his hands. Then he prostrated, placing his face between his palms. When he lifted his head from prostration, he likewise raised his hands, continuing this until he completed his prayer." Muḥammad ibn Juḥādah said: I mentioned this to al-Ḥasan ibn Abī al-Ḥasan, who replied: "This

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد [حَدَّثَنَا] عُبَيْدُ اللَّهِ بْنُ مَيْسَرَةَ الْجُشَمِيُّ ثنا عَبْدُ الْوَارِثِ هُوَ ابْنُ سَعِيدٍ - ثنا مُحَمَّدُ بْنُ جُحَادَةَ حَدَّثَنِي عَبْدُ الْجَبَّارِ بْنُ وَائِلٍ [قَالَ: كُنْت غُلَامًا لَا أَعْقِلُ صَلَاةَ أَبِي فَحَدَّثَنِي عَلْقَمَةُ بْنُ وَائِلٍ] عَنْ وَائِلِ بْنِ حُجْرٍ قَالَ: «صَلَّيْتُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَانَ إِذَا كَبَّرَ رَفَعَ يَدَيْهِ، ثُمَّ الْتَحَفَ، ثُمَّ أَخَذَ شِمَالَهُ بِيَمِينِهِ وَأَدْخَلَ يَدَيْهِ فِي ثَوْبِهِ، فَإِذَا أَرَادَ أَنْ يَرْكَعَ أَخْرَجَ يَدَيْهِ ثُمَّ رَفَعَهُمَا، وَإِذَا أَرَادَ أَنْ يَرْفَعَ رَأْسَهُ مِنَ الرُّكُوعِ رَفَعَ يَدَيْهِ، ثُمَّ سَجَدَ، وَوَضَعَ وَجْهَهُ بَيْنَ كَفَّيْهِ، وَإِذَا رَفَعَ رَأْسَهُ مِنَ السُّجُودِ أَيْضًا رَفَعَ يَدَيْهِ، حَتَّى فَرَغَ مِنْ صَلَاتِهِ. قَالَ مُحَمَّدُ بْنُ جُحَادَةَ: فَذَكَرْتُ ذَلِكَ لِلْحَسَنِ بْنِ أَبِي الْحَسَنِ فَقَالَ: هِيَ صَلَاةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَعَلَهُ مَنْ فَعَلَهُ وَتَرَكَهُ مَنْ تَرَكَهُ» .

is the prayer of the Messenger of Allah (peace and blessings be upon him). Whoever does so may do so, and whoever omits it may omit it."

L6828 Narrated to us by Abdullah ibn Rabee'; narrated to us by Muhammad ibn Mu'awiyah; narrated to us by Ahmad ibn Shu'ayb: I, Muhammad ibn al-Muthanna, narrated to us; narrated to us by Mu'adh ibn Hisham al-Dastuwa'ī, ʻAbd al-Aʻlā, and Muhammad ibn Abi ʻAdī; from Saʻeed ibn Abi ʻArubah; from Qatadah.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثِنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثِنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى ثِنَا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ وَعَبْدُ الْأَعْلَى وَمُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ.

L6829 Mu'adh said, "My father reported to me, on the authority of Qatādah."

وَقَالَ مُعَاذٌ: حَدَّثَنِي أَبِي عَنْ قَتَادَةَ.

L6830–6832 Then they agreed, from Naṣr ibn ʿĀṣim from Mālik ibn al-Ḥuwayrith: "Mālik ibn al-Ḥuwayrith saw the Prophet—peace be upon him—raise both hands in his prayer when he bowed, when he raised his head from bowing, when he prostrated, and when he raised his head from prostration until both hands aligned with the lobes of his ears." This is the wording of Ibn Abī ʿAdiyy and ʿAbd al-Aʿlā. Muʿādh said in his ḥadīth: "When he—peace be upon him—entered into prayer, he would raise his hands, and when he bowed..." He did the same, and when he raised his head, he did the same.

ثُمَّ اتَّفَقُوا، عَنْ نَصْرِ بْنِ عَاصِمٍ عَنْ مَالِكِ بْنِ الْحُوَيْرِثِ: «رَأَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَفَعَ يَدَيْهِ فِي صَلَاتِهِ إِذَا رَكَعَ، وَإِذَا رَفَعَ رَأْسَهُ مِنْ رُكُوعِهِ وَإِذَا سَجَدَ، وَإِذَا رَفَعَ رَأْسَهُ مِنْ سُجُودِهِ حَتَّى يُحَاذِيَ بِهِمَا فُرُوعَ أُذُنَيْهِ» هَذَا لَفْظُ ابْنِ أَبِي عَدِيٍّ، وَعَبْدِ الْأَعْلَى وَقَالَ مُعَاذٌ فِي حَدِيثِهِ: «كَانَ - عَلَيْهِ السَّلَامُ - إِذَا دَخَلَ فِي الصَّلَاةِ رَفَعَ يَدَيْهِ، وَإِذَا رَكَعَ فَعَلَ مِثْلَ ذَلِكَ، وَإِذَا رَفَعَ رَأْسَهُ فَعَلَ مِثْلَ ذَلِكَ» .

L6833 Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Wahb ibn Maysarah narrated to us, Muḥammad ibn Waḍḍāḥ narrated to us, Abū Bakr ibn Abī Shaybah narrated to us, ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī narrated to us from Ḥumayd from Anas: that the Messenger of Allah (peace and blessings be upon him) would raise his hands during the bowing and prostration.

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثِنَا وَهْبُ بْنُ مَيْسَرَةَ ثِنَا مُحَمَّدُ بْنُ وَضَّاحٍ ثِنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثِنَا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ عَنْ حُمَيْدٍ عَنْ أَنَسٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَرْفَعُ يَدَيْهِ فِي الرُّكُوعِ وَالسُّجُودِ» .

L6834 Ali said: These are manifest, mass-transmitted narrations from Ibn Umar, Abū Ḥumayd, Abū Qatādah, Wā'il ibn Ḥujr, Mālik ibn al-Ḥuwayrith, Anas, and others among the companions of the Messenger of Allāh—peace and blessings be upon him—and this establishes definitive knowledge.

قَالَ عَلِيٌّ: فَهَذِهِ آثَارٌ مُتَظَاهِرَةٌ مُتَوَاتِرَةٌ عَنْ ابْنِ عُمَرَ، وَأَبِي حُمَيْدٍ، وَأَبِي قَتَادَةَ، وَوَائِلِ بْنِ حُجْرٍ وَمَالِكِ بْنِ الْحُوَيْرِثِ، وَأَنَسٍ، وَسِوَاهُمْ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا يُوجِبُ يَقِينَ الْعِلْمِ.

L6835 Ali said: So what Az-Zuhri narrated on the authority of Salim on the authority of Ibn Umar was an addition to what Alqama narrated on the authority of Ibn Mas'ud. Accepting this addition became obligatory because Ibn Umar

قَالَ عَلِيٌّ: فَكَانَ مَا رَوَاهُ الزُّهْرِيُّ عَنْ سَالِمٍ عَنْ ابْنِ عُمَرَ زَائِدًا عَلَى مَا رَوَاهُ عَلْقَمَةُ عَنْ ابْنِ مَسْعُودٍ، وَوَجَبَ أَخْذُ الزِّيَادَةِ؛ لِأَنَّ ابْنَ عُمَرَ حَكَى: أَنَّهُ رَأَى مَا لَمْ يَرَهُ ابْنُ مَسْعُودٍ مِنْ رَفْعِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَدَيْهِ عِنْدَ الرُّكُوعِ وَعِنْدَ الرَّفْعِ مِنْ الرُّكُوعِ، وَكِلَاهُمَا ثِقَةٌ، وَكِلَاهُمَا حَكَى مَا شَاهَدَ، وَقَدْ خَفِيَ عَلَى ابْنِ مَسْعُودٍ - رَضِيَ اللَّهُ عَنْهُ - أَمْرُ وَضْعِ الْيَدَيْنِ عَلَى الرُّكْبَتَيْنِ، فَكَيْفَ وَمَا تُحْمَلُ كِلَا رِوَايَتَيْهِمَا إلَّا عَلَى الْمُشَاهَدَةِ الصَّحِيحَةِ؟

L6836 The narrations of Nāfiʿ and Muḥārib ibn Dithār—both from Ibn ʿUmar—along with the narrations of Abū Ḥumayd, Abū Qatādah, and eight Companions of the Messenger of Allah (peace and blessings be upon him) regarding raising the hands when rising for the two rakʿahs are supplementary reports to what al-Zuhrī narrated from Sālim from Ibn ʿUmar. All are trustworthy and deemed truthful in what they reported as having heard and observed. Is accepting the supplementary narration obligatory?

وَكَانَ مَا رَوَاهُ نَافِعٌ وَمُحَارِبُ بْنُ دِثَارٍ، كِلَاهُمَا عَنْ ابْنِ عُمَرَ، وَمَا رَوَاهُ أَبُو حُمَيْدٍ وَأَبُو قَتَادَةَ وَثَمَانِيَةٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ رَفْعِ الْيَدَيْنِ عِنْدَ الْقِيَامِ إلَى الرَّكْعَتَيْنِ -: زِيَادَةٌ عَلَى مَا رَوَاهُ الزُّهْرِيُّ عَنْ سَالِمٍ عَنْ ابْنِ عُمَرَ، وَكُلٌّ ثِقَةٌ، وَكُلٌّ مُصَدَّقٌ فِيمَا ذَكَرَ أَنَّهُ سَمِعَهُ وَرَآهُ - وَأَخْذُ الزِّيَادَةِ وَاجِبٌ؟ .

L6837–6839 The narration reported by Anas concerning raising the hands during prostration: this constitutes an addition to what Ibn Umar narrated. All of them are trustworthy in what they transmitted and what they personally witnessed. Likewise, the narration of Malik ibn al-Huwayrith regarding raising the hands in every instance of bowing and rising from the bowing position, and every... Prostration and raising from prostration—acts supplementary to all of that, and all narrators are trustworthy in what they narrated and heard. Adopting the additional acts is obligatory; it is impermissible to abandon them, because the additional acts are independent rulings. They were narrated by those who knew them, and the silence of those who did not report them does not harm their narration—as with all other rulings entirely, without distinction. Among those who held the view we mentioned are Ibn Umar, as we previously cited from his practice, Al-Ḥasan Al-Baṣrī, and the Companions as a whole, as we cited—Yūnus ibn ʿAbdullāh narrated to us, Aḥmad ibn ʿAbdullāh ibn ʿAbdur-Raḥīm narrated to us, Aḥmad ibn Khālid

وَكَانَ مَا رَوَاهُ أَنَسٌ مِنْ رَفْعِ الْيَدَيْنِ عِنْدَ السُّجُودِ -: زِيَادَةً عَلَى مَا رَوَاهُ ابْنُ عُمَرَ، وَالْكُلُّ ثِقَةٌ فِيمَا رَوَى وَمَا شَاهَدَ وَمَا رَوَاهُ مَالِكُ بْنُ الْحُوَيْرِثِ مِنْ رَفْعِ الْيَدَيْنِ فِي كُلِّ رُكُوعٍ وَرَفْعٍ مِنْ رُكُوعٍ، وَكُلِّ سُجُودٍ وَرَفْعٍ مِنْ سُجُودٍ -: زَائِدًا عَلَى كُلِّ ذَلِكَ، وَالْكُلُّ ثِقَاتٌ فِيمَا رَوَوْهُ وَمَا سَمِعُوهُ وَأَخْذُ الزِّيَادَاتِ فَرْضٌ لَا يَجُوزُ تَرْكُهُ، لِأَنَّ الزِّيَادَاتِ حُكْمٌ قَائِمٌ بِنَفْسِهِ، رَوَاهُ مَنْ عَلِمَهُ، وَلَا يَضُرُّهُ سُكُوتُ مَنْ لَمْ يَرْوِهُ عَنْ رِوَايَتِهِ كَسَائِرِ الْأَحْكَامِ كُلِّهَا وَلَا فَرْقَ؟ وَمِمَّنْ قَالَ بِمَا ذَكَرْنَاهُ: ابْنُ عُمَرَ، كَمَا أَوْرَدْنَا قَبْلُ مِنْ عَمَلِهِ، وَالْحَسَنُ الْبَصْرِيُّ، وَالصَّحَابَةُ، جُمْلَةً كَمَا أَوْرَدْنَاهُ -: حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ ثنا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ

narrated to us, Muḥammad ibn ʿAbdus-Salām Al-Khushanī narrated to us, Muḥammad ibn Bashshār narrated to us, ʿAbdul-Wahhāb ibn ʿAbdil-Majīd al-Thaqafī narrated from ʿUbaydullāh ibn ʿUmar from Nāfiʿ from Ibn ʿUmar: that he would raise his hands when he began the prayer, when he bowed, when he said, "Allāh hears those who praise Him," when he prostrated, and between the two rakʿahs, raising his hands to his chest.

بْنُ بَشَّارٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ: أَنَّهُ كَانَ يَرْفَعُ يَدَيْهِ إِذَا دَخَلَ فِي الصَّلَاةِ، وَإِذَا رَكَعَ، وَإِذَا قَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ، وَإِذَا سَجَدَ، وَبَيْنَ الرَّكْعَتَيْنِ، يَرْفَعُهُمَا إِلَى ثَدْيَيْهِ.

L6840 Ali said: This is a chain of transmission free from irregularities, and Ibn Umar would not have resorted to contradicting what he had narrated—regarding the omission of hand-raising during prostration—unless the Prophet's action (peace be upon him) concerning it had been authenticated for him. Muhammad ibn Saʿid ibn Nubat → Ahmad ibn ʿAbd al-Basir → Qasim ibn Asbagh → Muhammad ibn ʿAbd al-Salam al-Khushani → Muhammad ibn al-Muthanna → Abu Sahl al-Nadr ibn Kathir al-Saʿdi reported: Ibn Tawus prayed beside me at al-Khayf Mosque in Mina. When he raised his head from the first prostration, he lifted his hands toward his face. I objected to this and said to Wuhaib ibn Khalid: "This man is doing something I have never seen anyone do!" Ibn Tawus replied: "I saw my father do it, and he told me: 'I saw ʿAbdullah ibn ʿAbbas do it.'"

قَالَ عَلِيٌّ: هَذَا إِسْنَادٌ لَا دَاخِلَةَ فِيهِ، وَمَا كَانَ ابْنُ عُمَرَ لِيَرْجِعَ إِلَى خِلَافِ مَا رَوَى - مِنْ تَرْكِ الرَّفْعِ عِنْدَ السُّجُودِ - إِلَّا وَقَدْ صَحَّ عِنْدَهُ فِعْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِذَلِكَ -: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا أَبُو سَهْلٍ النَّضْرُ بْنُ كَثِيرٍ السَّعْدِيُّ قَالَ: صَلَّى إِلَى جَنْبِي ابْنُ طَاوُسٍ فِي مَسْجِدِ الْخَيْفِ بِمِنًى، فَكَانَ إِذَا رَفَعَ رَأْسَهُ مِنَ السَّجْدَةِ الْأُولَى رَفَعَ يَدَيْهِ تِلْقَاءَ وَجْهِهِ، فَأَنْكَرْتُ ذَلِكَ، وَقُلْتُ لِوُهَيْبِ بْنِ خَالِدٍ: إِنَّ هَذَا يَصْنَعُ شَيْئًا لَمْ أَرَ أَحَدًا يَصْنَعُهُ؟ فَقَالَ ابْنُ طَاوُسٍ: رَأَيْتُ أَبِي يَصْنَعُهُ، وَقَالَ لِي: رَأَيْتُ عَبْدَ اللَّهِ بْنَ عَبَّاسٍ يَصْنَعُهُ.

L6841 Muhammad ibn Saʿīd ibn Nubāt narrated to us, on the authority of ʿAbdullāh ibn ʿAlī al-Bājī, on the authority of Aḥmad ibn Khālid, on the authority of al-Ḥasan ibn Aḥmad, on the authority of Muḥammad ibn ʿUbayd ibn Ḥisāb, on the authority of Ḥammād ibn Zayd, from Ayyūb al-Sikhtiyānī, who said: "I saw Ṭāwūs and Nāfiʿ, the mawla of Ibn ʿUmar, raising their hands between the two prostrations." Ḥammād said: "Ayyūb used to do it."

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا عَبْدُ اللَّهِ بْنُ عَلِيٍّ الْبَاجِيُّ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا الْحَسَنُ بْنُ أَحْمَدَ ثنا مُحَمَّدُ بْنُ عُبَيْدِ بْنِ حِسَابٍ ثنا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ قَالَ: رَأَيْتُ طَاوُسًا وَنَافِعًا مَوْلَى ابْنِ عُمَرَ يَرْفَعَانِ أَيْدِيَهُمَا بَيْنَ السَّجْدَتَيْنِ، قَالَ حَمَّادٌ: وَكَانَ أَيُّوبُ يَفْعَلُهُ

L6842 Hammām narrated to us, Ibn Mufarrij narrated to us, Ibn al-Aʿrābī narrated to us, al-Dabarī narrated to us, ʿAbd al-Razzāq narrated from Ibn Jurayj: I said to ʿAṭāʾ: "I saw you raising your hands while saying 'Allahu Akbar' when you initiate the prayer with the opening Takbīr, when you bow, when you raise your head from bowing, when you lift your head from the first

حَدَّثَنَا حَمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ: قُلْتُ لِعَطَاءٍ: رَأَيْتُكَ تُكَبِّرُ بِيَدَيْكَ حِينَ تَسْتَفْتِحُ، وَحِينَ تَرْكَعُ وَحِينَ تَرْفَعُ رَأْسَكَ مِنْ

prostration, from the final prostration, and when you sit upright after the two prostrations?" He replied: "Yes."

L6843–6844 I said: "Do you position the hands at the ears?" He replied: "No, I have heard reports that Uthman used to position his hands at his ears." Ibn Jurayj said: "I asked Ata: 'And is there any takbir with the hands in voluntary prayers?' He said: 'It is done, in every prayer.'"

L6845 **A legal issue; guidance constitutes a commendable Sunnah.**

L6846 Issue 443: Tawjīh is a recommended sunnah. This entails the Imam or the individual praying alone (munfarid) saying after the opening takbīr for every prayer - whether obligatory or non-obligatory, aloud or silently - the following: This is transmitted by Hammām ibn Aḥmad, who narrated from ʿAbbās ibn Aṣbagh, who narrated from Muḥammad ibn ʿAbd al-Malik ibn Ayman, who narrated from ʿAbdullāh ibn Aḥmad ibn Ḥanbal and Aḥmad ibn Zuhayr ibn Ḥarb. Each of them said: "My father narrated to me."

L6847 Then Ahmad ibn Hanbal said: Abu Sa'id narrated to us, Abdul Aziz ibn Abdullah ibn al-Majishun narrated to us, Abdullah ibn al-Fadl and Abu Yusuf ibn Abi Salamah al-Majishun—both of them—narrated from Abdul Rahman ibn Hurmuz al-A'raj, from Ubaydullah ibn Abi Rafi', from Ali ibn Abi Talib, that the Messenger of Allah—peace and blessings be upon him—would commence with the Takbir and then say:[54]

L6848–6850 Zuhayr ibn Harb said: Abd al-Rahman ibn Mahdi narrated to us—Abd al-Aziz ibn Abdullah ibn Abi Salama, who is Ibn al-Majishun—narrated to us. My uncle—Abu Yusuf ibn Abi Salama—narrated to me from Abd al-Rahman al-A'raj from Ubayd Allah ibn Abi Rafi' from Ali ibn Abi Talib: "When the Messenger of Allah (peace and blessings of Allah be upon him) uttered the Takbir to commence the prayer, he would say: 'I have directed my face

[54] **Hadith references (L6847):** Musnad Ahmad 729.

الرَّكْعَةِ، وَحِينَ تَرْفَعُ رَأْسَك مِنْ السَّجْدَةِ الْأُولَى، وَمِنْ الْآخِرَةِ، وَحِينَ تَسْتَوِي مِنْ مَثْنًى؟ قَالَ: أَجَلْ.

قُلْت: تَخْلُفُ بِالْيَدَيْنِ الْأُذُنَيْنِ؟ قَالَ: لَا، قَدْ بَلَغَنِي ذَلِكَ عَنْ عُثْمَانَ أَنَّهُ كَانَ يَخْلُفُ بِيَدَيْهِ أُذُنَيْهِ. قَالَ ابْنُ جُرَيْجٍ: قُلْت لِعَطَاءٍ: وَفِي التَّطَوُّعِ مِنْ التَّكْبِيرِ بِالْيَدَيْنِ؟ قَالَ: نَعَمْ، فِي كُلِّ صَلَاةٍ.

[مَسْأَلَةٌ وَالتَّوْجِيهُ سُنَّةٌ حَسَنَةٌ]

٤٤٣ - مَسْأَلَةٌ: وَالتَّوْجِيهُ سُنَّةٌ حَسَنَةٌ، وَهُوَ أَنْ يَقُولَ الْإِمَامُ وَالْمُنْفَرِدُ بَعْدَ التَّكْبِيرِ لِكُلِّ صَلَاةٍ - فَرْضٌ أَوْ غَيْرُ فَرْضٍ، جَهْرًا أَوْ سِرًّا -: مَا حَدَّثَنَاهُ حَمَّامُ بْنُ أَحْمَدَ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ، وَأَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ، كُلُّ وَاحِدٍ مِنْهُمَا يَقُولُ: حَدَّثَنِي أَبِي.

ثُمَّ قَالَ أَحْمَدُ بْنُ حَنْبَلٍ: ثنا أَبُو سَعِيدٍ ثنا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ بْنِ الْمَاجِشُونِ ثنا عَبْدُ اللَّهِ بْنُ الْفَضْلِ، وَأَبُو يُوسُفَ بْنُ أَبِي سَلَمَةَ الْمَاجِشُونِ كِلَاهُمَا عَنْ عَبْدِ الرَّحْمَنِ بْنِ هُرْمُزَ الْأَعْرَجِ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي رَافِعٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ إذَا كَبَّرَ اسْتَفْتَحَ ثُمَّ قَالَ -:» .

وَقَالَ زُهَيْرُ بْنُ حَرْبٍ: ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ ثنا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي سَلَمَةَ هُوَ ابْنُ الْمَاجِشُونِ - حَدَّثَنِي عَمِّي - هُوَ أَبُو يُوسُفَ بْنُ أَبِي سَلَمَةَ - عَنْ عَبْدِ الرَّحْمَنِ الْأَعْرَجِ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي رَافِعٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ إذَا كَبَّرَ اسْتَفْتَحَ ثُمَّ قَالَ -» : وَاتَّفَقَ أَحْمَدُ وَزُهَيْرٌ فِي رِوَايَتِهِمَا

toward the One who originated the heavens and the earth, devoutly upright, and I am not among the polytheists. Indeed, my prayer, my sacrifice, my living, and my dying are for Allah, Lord of the worlds—He has no partner. I have been commanded thus, and I am the foremost of the Muslims. O Allah, You are the Sovereign; there is no deity except You. You are my Lord, and I am Your servant. I have wronged myself and acknowledged my sin. Forgive all my sins entirely.'" Ahmad and Zuhayr concurred in both their narrations. Indeed, none forgives sins except You. Guide me to the finest morals, for none guides to their finest except You. Shield me from their evil, for none shields me from their evil except You. Here I am at Your service, responding joyfully to Your call. All good lies in Your hands, and evil is not attributed to You. I am with You and turn to You. Blessed are You and Exalted. I seek Your forgiveness and repent to You.[55][56]

جَمِيعًا «وَجَّهْتُ وَجْهِي لِلَّذِي فَطَرَ السَّمَاوَاتِ وَالْأَرْضَ حَنِيفًا وَمَا أَنَا مِنْ الْمُشْرِكِينَ إِنَّ صَلَاتِي وَنُسُكِي وَمَحْيَايَ وَمَمَاتِي لِلَّهِ رَبِّ الْعَالَمِينَ، لَا شَرِيكَ لَهُ، وَبِذَلِكَ أُمِرْتُ، وَأَنَا أَوَّلُ الْمُسْلِمِينَ، اللَّهُمَّ أَنْتَ الْمَلِكُ لَا إِلَهَ إِلَّا أَنْتَ أَنْتَ رَبِّي وَأَنَا عَبْدُكَ، ظَلَمْت نَفْسِي وَاعْتَرَفْتُ بِذَنْبِي، فَاغْفِرْ لِي ذُنُوبِي جَمِيعًا إِنَّهُ لَا يَغْفِرُ الذُّنُوبَ إِلَّا أَنْتَ، وَاهْدِنِي لِأَحْسَنِ الْأَخْلَاقِ، لَا يَهْدِي لِأَحْسَنِهَا إِلَّا أَنْتَ، وَاصْرِفْ عَنِّي سَيِّئَهَا، لَا يَصْرِفُ عَنِّي سَيِّئَهَا إِلَّا أَنْتَ، لَبَّيْكَ وَسَعْدَيْكَ وَالْخَيْرُ كُلُّهُ فِي يَدَيْكَ وَالشَّرُّ لَيْسَ إِلَيْكَ، أَنَا بِكَ وَإِلَيْكَ تَبَارَكْتَ وَتَعَالَيْتَ، أَسْتَغْفِرُكَ وَأَتُوبُ إِلَيْكَ» .

L6851 Ali said: And it has been narrated to us through the chain of Al-Hajjaj ibn Al-Minhāl, Abū Al-Naḍr, and Muʿādh ibn Muʿādh, all of them from Ibn Al-Mājishūn.

قَالَ عَلِيٌّ: وَقَدْ رُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ، وَأَبِي النَّضْرِ، وَمُعَاذِ بْنِ مُعَاذٍ، كُلُّهُمْ عَنْ ابْنِ الْمَاجِشُونِ.

L6852 It has also been narrated to us through the chain of Jābir ibn ʿAbdullāh and other Companions (may Allah be pleased with them).

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ جَابِرِ بْنِ عَبْدِ اللَّهِ وَغَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L6853 Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abd al-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us. Muslim ibn al-Hajjaj narrated to me: Zuhayr ibn Harb narrated to me, Abu Bakr ibn Abi Shaybah narrated to me, Muhammad ibn Abdullah ibn Numayr narrated to me, and Abu Kamil narrated to me. Abu Kamil said: Abd al-Wahid ibn Ziyad narrated to us. Abu Bakr and Ibn Numayr said: Ibn Fudayl narrated to us. Zuhayr said: Jarir ibn Abd al-Hamid narrated to us.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ، وَأَبُو كَامِلٍ، قَالَ أَبُو كَامِلٍ: ثنا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ، وَقَالَ أَبُو بَكْرٍ، وَابْنُ نُمَيْرٍ: ثنا ابْنُ فُضَيْلٍ، وَقَالَ زُهَيْرٌ: ثنا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ.

L6854 Then Abd al-Wahid, Ibn Fuḍayl, and Jarir—the wording being his—all narrated through Ammarah ibn al-Qaʿqaʿ from Abu Zurʿah ibn Amr ibn Jarir from Abu Hurairah: "When the Messenger of Allah (peace be upon him)

ثُمَّ اتَّفَقَ عَبْدُ الْوَاحِدِ، وَابْنُ فُضَيْلٍ، وَجَرِيرٌ - وَاللَّفْظُ لَهُ - كُلُّهُمْ عَنْ عُمَارَةَ بْنِ الْقَعْقَاعِ عَنْ أَبِي زُرْعَةَ بْنِ عَمْرِو بْنِ جَرِيرٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ إِذَا كَبَّرَ فِي الصَّلَاةِ سَكَتَ هُنَيَّةً قَبْلَ أَنْ يَقْرَأَ، فَقُلْتُ: يَا رَسُولَ اللَّهِ، بِأَبِي أَنْتَ

[55] **Hadith references (L6848):** Musnad Ahmad 729.

[56] **Qur'an references (L6848):** Qur'an 6:79 (Al-An'am); Qur'an 6:162 (Al-An'am); Qur'an 6:163 (Al-An'am).

would say the *takbīr* in prayer, he would pause briefly before reciting. I said: 'O Messenger of Allah, by my father and mother, tell me what you say during your pause between the *takbīr* and the recitation?' He replied: 'I say: O Allah, separate me from my sins as You have separated the east from the west. O Allah, purify me from my sins as a white garment is purified from stains. O Allah, wash away my sins with snow, water, and hail.'"[57]

L6855 We have also narrated it through Sufyān's route from ʿUmārah ibn al-Qaʿqāʿ with a similar isnād.

L6856 We mention this as an obligation because it is an action performed by him—peace be upon him—and he was not commanded to do it. Thus, following his example is recommended.

L6857–6858 It is recommended for the Imam to pause briefly after completing the recitation before the *rukūʿ* (bowing).

L6859 As narrated to us by Hamam, narrated from Abbas ibn Asbagh, narrated from Muhammad ibn Abd al-Malik ibn Ayman, narrated from Ahmad ibn Muhammad al-Birṭī the judge, narrated from Abu Ma'mar, narrated from Abd al-Warith ibn Said al-Tannuri, narrated from Yunus - that is, Ibn Ubayd - from al-Hasan al-Basri: "Samurah ibn Jundub prayed, pronounced the takbir, then paused for a period. Then he recited, and when he concluded the surah, he paused again for a period. Then he pronounced the takbir and bowed. Imran ibn al-Husayn said to him: 'What is this?' Samurah replied: 'I memorized this from the Messenger of Allah - peace be upon him.' Samurah wrote to Ubayy ibn Ka'b regarding that matter, and he confirmed Samurah's account."

L6860 Ali said: "We hold that every imam should perform prayer as Allah's Messenger—peace and blessings be upon him—did, and as Samurah and other Companions—may Allah be pleased with them—did after him. The congregant recites Umm al-Qur'an during the first silence, so whoever misses it should recite during the second silence?" Ali said: "The majority of the Salaf have practiced as we said—: it has been narrated to us through Hammad ibn Salamah's chain from Ibrahim al-Nakha'i from Alqamah, who said: 'When

وَأُمِّي، أَرَأَيْتَ سُكُوتَكَ بَيْنَ التَّكْبِيرِ وَالْقِرَاءَةِ مَا تَقُولُ؟ قَالَ: أَقُولُ: اللَّهُمَّ بَاعِدْ بَيْنِي وَبَيْنَ خَطَايَايَ كَمَا بَاعَدْتَ بَيْنَ الْمَشْرِقِ وَالْمَغْرِبِ، اللَّهُمَّ نَقِّنِي مِنْ خَطَايَايَ كَمَا يُنَقَّى الثَّوْبُ الْأَبْيَضُ مِنَ الدَّنَسِ، اللَّهُمَّ اغْسِلْنِي مِنْ خَطَايَايَ بِالثَّلْجِ وَالْمَاءِ وَالْبَرَدِ» .

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ سُفْيَانَ عَنْ عُمَارَةَ بْنِ الْقَعْقَاعِ بِإِسْنَادِهِ نَحْوَهُ.

وَإِنَّمَا نَذْكُرُ ذَلِكَ فَرْضًا، لِأَنَّهُ فِعْلٌ مِنْهُ - عَلَيْهِ السَّلَامُ - وَلَمْ يُؤْمَرْ بِهِ فَكَانَ الِائْتِسَاءُ بِهِ حَسَنًا.

وَنَسْتَحِبُّ أَيْضًا أَنْ يَكُونَ لِلْإِمَامِ سَكْتَةٌ بَعْدَ فَرَاغِهِ مِنَ الْقِرَاءَةِ قَبْلَ رُكُوعِهِ

كَمَا حَدَّثَنَا حَمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَحْمَدُ بْنُ مُحَمَّدٍ الْبِرْتِيُّ الْقَاضِي ثنا أَبُو مَعْمَرٍ ثنا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ التَّنُّورِيُّ ثنا يُونُسُ هُوَ ابْنُ عُبَيْدٍ - عَنِ الْحَسَنِ الْبَصْرِيِّ «أَنَّ سَمُرَةَ بْنَ جُنْدُبٍ صَلَّى فَكَبَّرَ، ثُمَّ سَكَتَ سَاعَةً، ثُمَّ قَرَأَ فَلَمَّا خَتَمَ السُّورَةَ سَكَتَ سَاعَةً، ثُمَّ كَبَّرَ فَرَكَعَ؟ فَقَالَ لَهُ عِمْرَانُ بْنُ الْحُصَيْنِ: مَا هَذَا؟ فَقَالَ لَهُ سَمُرَةُ: حَفِظْتُ ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَتَبَ فِي ذَلِكَ إِلَى أُبَيِّ بْنِ كَعْبٍ فَصَدَّقَ سَمُرَةَ» .

قَالَ عَلِيٌّ: فَنَحْنُ نَخْتَارُ أَنْ يَفْعَلَ كُلُّ إِمَامٍ كَمَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفَعَلَهُ بَعْدَهُ سَمُرَةُ وَغَيْرُهُ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَيَقْرَأُ الْمَأْمُومُ فِي السَّكْتَةِ الْأُولَى " أُمَّ الْقُرْآنِ " فَمَنْ فَاتَتْهُ قَرَأَ فِي السَّكْتَةِ الثَّانِيَةِ؟ قَالَ عَلِيٌّ: وَقَدْ فَعَلَ مَا قُلْنَا جُمْهُورُ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ قَالَ:

[57] **Hadith references (L6854):** Sunan an-Nasai 60.

Umar ibn al-Khattab commenced prayer, he would proclaim: 'Allah is the Greatest. Glory be to You, O Allah, and praise be to You. Blessed is Your name, exalted is Your majesty, and there is no deity except You,' raising his voice during it—so we assumed he intended to teach us?"' From Abd al-Razzaq's narration via Sufyan al-Thawri from Mansur ibn al-Mu'tamir from Ibrahim al-Nakha'i from al-Aswad from Umar ibn al-Khattab: "He would declare when pronouncing the takbir: 'Glory be to You, O Allah, and praise be to You. Blessed is Your name, exalted is Your majesty, and there is no deity except You.'"

كَانَ عُمَرُ بْنُ الْخَطَّابِ إِذَا دَخَلَ فِي الصَّلَاةِ قَالَ: اللَّهُ أَكْبَرُ سُبْحَانَكَ اللَّهُمَّ وَبِحَمْدِكَ تَبَارَكَ اسْمُكَ وَتَعَالَى جَدُّكَ، وَلَا إِلَهَ غَيْرُكَ، يَرْفَعُ بِهَا صَوْتَهُ، فَظَنَنَّا أَنَّهُ يُرِيدُ أَنْ يُعَلِّمَنَا؟ وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ الْأَسْوَدِ عَنْ عُمَرَ بْنِ الْخَطَّابِ: أَنَّهُ كَانَ إِذَا كَبَّرَ قَالَ: سُبْحَانَكَ اللَّهُمَّ وَبِحَمْدِكَ، تَبَارَكَ اسْمُكَ، وَتَعَالَى جَدُّكَ، وَلَا إِلَهَ غَيْرُكَ

L6861 This is the action of Umar—may Allah be pleased with him—in the presence of the Companions, with none among them opposing him? We have also narrated it from Ali ibn Abi Talib, from Ibn Umar, from Tawus and Ata—each of them would direct themselves after the Takbir in the obligatory prayer.

فَهَذَا فِعْلُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - بِحَضْرَةِ الصَّحَابَةِ لَا مُخَالِفَ لَهُ مِنْهُمْ؟ وَرُوِّينَاهُ أَيْضًا - عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَعَنْ ابْنِ عُمَرَ، وَعَنْ طَاوُسٍ وَعَطَاءٍ، كُلُّهُمْ يَتَوَجَّهُ بَعْدَ التَّكْبِيرِ فِي صَلَاةِ الْفَرْضِ.

L6862–6864 This is the position of Al-Awza'i, Sufyan Al-Thawri, Abu Hanifah, Al-Shafi'i, Ahmad, Ishaq, Dawud, and their companions. Malik said: "I do not recognize the justification." Ali said: "Can someone ignorant be a proof against one who knows?" Some of his followers argued against what we mentioned by citing what was narrated from the Messenger of Allah—peace and blessings be upon him—that he... He would begin the prayer with the Takbir (saying "Allahu Akbar") and begin the recitation with "Praise be to Allah, Lord of the worlds [Al-Fatihah: 2]."[58]

وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ، وَدَاوُد وَأَصْحَابِهِمْ؟ وَقَالَ مَالِكٌ: لَا أَعْرِفُ التَّوْجِيهَ قَالَ عَلِيٌّ: لَيْسَ مَنْ لَا يَعْرِفُ حُجَّةً عَلَى مَنْ عَرَفَ؟ وَقَدْ احْتَجَّ بَعْضُ مُقَلِّدِيهِ فِي مُعَارَضَتِهِ مَا ذَكَرْنَا بِمَا «رُوِيَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَنَّهُ كَانَ يَفْتَتِحُ الصَّلَاةَ بِالتَّكْبِيرِ، وَالْقِرَاءَةَ بِ {الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ} [الفاتحة: ٢] » .

L6865 Ali said: "This provides no proof for them; rather, it is our position, because commencing the recitation with 'Al-ḥamdu lillāhi rabbi l-ʿālamīn' does not incorporate setting the intention (tawjīh), for setting the intention is not recitation - it is merely remembrance."

قَالَ عَلِيٌّ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، بَلْ هُوَ قَوْلُنَا، لِأَنَّ اسْتِفْتَاحَ الْقِرَاءَةِ بِ " الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ ": لَا يَدْخُلُ فِيهِ التَّوْجِيهُ، لِأَنَّهُ لَيْسَ التَّوْجِيهُ قِرَاءَةً، وَإِنَّمَا هُوَ ذِكْرٌ.

L6866 It has been authentically established that he—peace be upon him—would commence the prayer with the proclamation "Allāhu Akbar," then recite the remembrances verified from him, then begin recitation with "Al-ḥamdu lillāhi Rabbi l-ʿālamīn." It is impermissible to reject additions by upright narra-

فَصَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يَفْتَتِحُ الصَّلَاةَ بِالتَّكْبِيرِ، ثُمَّ يَذْكُرُ مَا قَدْ صَحَّ عَنْهُ مِنْ الذِّكْرِ، ثُمَّ يَفْتَتِحُ الْقِرَاءَةَ بِالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، وَزِيَادَةُ الْعُدُولِ لَا يَجُوزُ رَدُّهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ وَلَا يَقُولُهَا الْمَأْمُومُ، لِأَنَّ فِيهَا شَيْئًا مِنْ الْقُرْآنِ، وَقَدْ نَهَى - عَلَيْهِ السَّلَامُ

[58] **Qur'an references (L6862):** Qur'an 1:2 (Al-Fatihah).

tors—and success is with Allah, the Exalted—nor does the congregant recite them, as they contain something from the Qur'an. The Prophet—peace be upon him—forbade reciting anything behind the Imam except "the Opening Chapter (Umm al-Qur'an)" alone. If one supplicates after reciting "the Opening Chapter" during the Imam's pause, using words narrated from the Prophet—peace be upon him—is that good?

L6867 **It is a juristic ruling incumbent upon the Imam to shorten the prayer when leading a congregation.**

L6868–6870 Issue 444: It is obligatory for the Imam to shorten the prayer when leading a congregation whose capabilities he is unaware of, while an individual praying alone may prolong it as he wishes. The limit for prolonging is as long as the time of the current prayer has not ended (i.e., before the subsequent prayer's time begins). Is it permissible for an individual to shorten his prayer? Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us, Ibrahim ibn Ahmad al-Balkhi narrated to us, al-Farbari narrated to us, al-Bukhari narrated to us, Abd Allah ibn Yusuf narrated to us, Malik narrated from Abu al-Zinad from al-A'raj from Abu Hurayrah that the Messenger of Allah—peace and blessings be upon him—said: "When one of you leads the people in prayer, let him shorten it, for among them are the weak, the sick, and the elderly. When one of you prays alone, let him prolong it as he wishes." And through the same chain of narration to al-Bukhari: Ahmad ibn Yunus narrated to us, Zuhayr—who is Ibn Mu'awiyah—narrated to us, Isma'il—who is Ibn Abi Khalid—narrated to us, I heard Qays—who is Ibn Abi Hazim—say: Abu Mas'ud informed me that a man... He said: "By Allah, O Messenger of Allah, I indeed delay attending the Fajr prayer because of so-and-so, due to how long he prolongs it with us." I never saw the Messenger of Allah—peace and blessings be upon him—angrier in any admonition than he was that day. Then he—peace and blessings be upon him—said: "Among you are those who repel people. Whoever leads people in prayer should be brief, for among them are the weak, the elderly, and those with needs."[59]

L6871 Abdullah ibn Rabi' narrated to us: Muhammad ibn Ishaq al-Qadi narrated

[59] **Hadith references (L6868):** Sahih al-Bukhari 702; Mishkat al-Masabih 1132.

- أَنْ يُقْرَأَ خَلْفَ الْإِمَامِ إِلَّا " بِأُمِّ الْقُرْآنِ " فَقَطْ، فَإِنْ دَعَا بَعْدَ قِرَاءَةِ " أُمِّ الْقُرْآنِ " فِي حَالِ سَكْتَةِ الْإِمَامِ بِمَا رُوِيَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: فَحَسَنٌ؟ .

[مَسْأَلَةٌ عَلَى الْإِمَامِ التَّخْفِيفُ إذَا أَمَّ جَمَاعَةً]

٤٤٤ - مَسْأَلَةٌ: وَيَجِبُ عَلَى الْإِمَامِ التَّخْفِيفُ إذَا أَمَّ جَمَاعَةً لَا يَدْرِي كَيْفَ طَاقَتُهُمْ وَيُطَوِّلُ الْمُنْفَرِدُ مَا شَاءَ، وَحَدُّ ذَلِكَ مَا لَمْ يَخْرُجْ وَقْتُ الصَّلَاةِ الَّتِي تَلِي الَّتِي هُوَ فِيهَا، وَإِنْ خَفَّفَ الْمُنْفَرِدُ فَذَلِكَ لَهُ مُبَاحٌ؟ حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيّ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا مَالِكٌ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا أَمَّ أَحَدُكُمْ النَّاسَ فَلْيُخَفِّفْ فَإِنَّ فِيهِمْ الضَّعِيفَ وَالسَّقِيمَ وَالْكَبِيرَ، وَإِذَا صَلَّى أَحَدُكُمْ لِنَفْسِهِ فَلْيُطَوِّلْ مَا شَاءَ» وَبِهِ إلَى الْبُخَارِيِّ ثنا أَحْمَدُ بْنُ يُونُسَ ثنا زُهَيْرٌ وَهُوَ ابْنُ مُعَاوِيَةَ - ثنا إسْمَاعِيلُ هُوَ ابْنُ أَبِي خَالِدٍ - سَمِعْت قَيْسًا هُوَ ابْنُ أَبِي حَازِمٍ - قَالَ: أَخْبَرَنِي أَبُو مَسْعُودٍ «أَنَّ رَجُلًا قَالَ: وَاَللَّهِ يَا رَسُولَ اللَّهِ إنِّي لَأَتَأَخَّرُ عَنْ صَلَاةِ الْغَدَاةِ مِنْ أَجْلِ فُلَانٍ، مِمَّا يُطِيلُ بِنَا، فَمَا رَأَيْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي مَوْعِظَةٍ أَشَدَّ غَضَبًا مِنْهُ يَوْمَئِذٍ، ثُمَّ قَالَ - عَلَيْهِ السَّلَامُ -: إنَّ مِنْكُمْ مُنَفِّرِينَ فَأَيُّكُمْ مَا صَلَّى بِالنَّاسِ فَلْيَتَجَوَّزْ، فَإِنَّ فِيهِمْ الضَّعِيفَ وَالْكَبِيرَ وَذَا الْحَاجَةِ؟» .

to us, Ibn al-A'rabi narrated to us, Abu Dawud narrated to us, Musa ibn Isma'il narrated to us, Hammad ibn Salamah narrated to us, who reported from Sa'id al-Jurayri from Abu al-'Ala' from Mutarrif ibn Abdullah—who was the son of al-Shikhkhir—from Uthman ibn Abi al-As, who said: I asked, "O Messenger of Allah, appoint me as the imam of my people." He replied, "You are their imam. Follow the example of the weakest among them, and appoint a mu'adhdhin who does not take payment for his call to prayer."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ الْقَاضِي ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُوسَى بْنُ إِسْمَاعِيلَ ثنا حَمَّادُ بْنُ سَلَمَةَ أَنَا سَعِيدٌ الْجُرَيْرِيُّ عَنْ أَبِي الْعَلَاءِ عَنْ مُطَرِّفِ بْنِ عَبْدِ اللَّهِ هُوَ ابْنُ الشِّخِّيرِ - «عَنْ عُثْمَانَ بْنِ أَبِي الْعَاصِ قَالَ: قُلْتُ يَا رَسُولَ اللَّهِ اجْعَلْنِي إِمَامَ قَوْمِي، قَالَ: أَنْتَ إِمَامُهُمْ، وَاقْتَدِ بِأَضْعَفِهِمْ، وَاتَّخِذْ مُؤَذِّنًا لَا يَأْخُذُ عَلَى أَذَانِهِ أَجْرًا» .

L6872 Ali said: This is the limit of lightening the prayer - that one should consider what the weakest person behind him can endure and those most in need concerning standing, bowing, prostration, and sitting, so let him pray accordingly. It was narrated to us from the righteous predecessors: It was narrated to us from Hammad ibn Salama, from Thabit al-Bunani and Humayd - both of whom narrated from Anas, who said: "I never prayed behind anyone whose prayer was more concise yet complete than the Messenger of Allah (peace be upon him). His prayer was balanced, Abu Bakr's prayer was balanced, but when it was Umar, he extended the Fajr prayer."

قَالَ عَلِيٌّ: هَذَا حَدُّ التَّخْفِيفِ، وَهُوَ أَنْ يَنْظُرَ مَا يَحْتَمِلُ أَضْعَفُ مَنْ خَلْفَهُ وَأَمَسُّهُمْ حَاجَةً مِنَ الْوُقُوفِ وَالرُّكُوعِ وَالسُّجُودِ وَالْجُلُوسِ فَلْيُصَلِّ عَلَى حَسَبِ ذَلِكَ؟ وَرُوِّينَا ذَلِكَ عَنِ السَّلَفِ الطَّيِّبِ -: رُوِّينَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ وَحُمَيْدٍ كِلَاهُمَا «عَنْ أَنَسٍ قَالَ: مَا صَلَّيْتُ خَلْفَ أَحَدٍ أَوْجَزَ صَلَاةً مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي تَمَامٍ، كَانَتْ صَلَاتُهُ مُتَقَارِبَةً، وَصَلَاةُ أَبِي بَكْرٍ مُتَقَارِبَةً، فَلَمَّا كَانَ عُمَرُ مَدَّ فِي صَلَاةِ الْفَجْرِ» .

L6873 Through the chain of Waki' from Sa'id ibn Abi 'Arubah from Abu Raja' al-'Utaridi, who said: I said to al-Zubayr ibn al-'Awwam, "Why are you, the companions of Muḥammad—may Allah's peace and blessings be upon him—the lightest of people in prayer?" He replied, "We hasten to preempt the Satanic whispers."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ أَبِي رَجَاءٍ الْعُطَارِدِيِّ قَالَ: قُلْت لِلزُّبَيْرِ بْنِ الْعَوَّامِ: مَا لَكُمْ أَصْحَابَ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَخَفِّ النَّاسِ صَلَاةً؟ قَالَ: نُبَادِرُ الْوَسْوَاسَ

L6874 From 'Abdur-Razzāq, from Ibn Jurayj, from 'Aṭā' that he heard Abū Hurayrah say: "If you lead as an Imam, shorten the prayer, for among the people are the elderly, the weak, the sick, and someone with an urgent need. When you pray alone, prolong it as you please."

وَعَنْ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: إذَا كُنْت إمَامًا فَخَفِّفْ الصَّلَاةَ، فَإِنَّ فِي النَّاسِ الْكَبِيرَ وَالضَّعِيفَ وَالْمُعْتَلَّ وَذَا الْحَاجَةِ، وَإِذَا صَلَّيْت وَحْدَك فَطَوِّلْ مَا بَدَا لَك.

L6875–6876 Delay until it cools, for intense heat is from the blast of Hellfire. From Ṭalḥah: the lightening (of prayers) is also reported? And from ʿAmmār like-

wise? From Saʿd ibn Abī Waqqāṣ: He would lengthen prayer in his home but shorten it publicly, and he urged others to do so.

وَأَبْرِدْ، فَإِنَّ شِدَّةَ الْحَرِّ مِنْ فَيْحِ جَهَنَّمَ؟ وَعَنْ طَلْحَةَ التَّخْفِيفُ أَيْضًا، وَعَنْ عَمَّارٍ كَذَلِكَ؟ وَعَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ: أَنَّهُ كَانَ يُطِيلُ الصَّلَاةَ فِي بَيْتِهِ، وَيُقَصِّرُ عِنْدَ النَّاسِ، وَيَحُضُّ عَلَى ذَلِكَ

L6877 On the authority of ʿUmar ibn Maymūn al-Awdī: If a man were to take a barren old ewe, he would not finish milking it until I pray the five prayers, and I complete their bowings and prostrations.

وَعَنْ عُمَرَ بْنِ مَيْمُونٍ الْأَوْدِيِّ: لَوْ أَنَّ رَجُلًا أَخَذَ شَاةً عَزُوزًا لَمْ يَفْرُغْ مِنْ لَبَنِهَا حَتَّى أُصَلِّيَ الصَّلَوَاتِ الْخَمْسَ، أُتِمُّ رُكُوعَهَا وَسُجُودَهَا

L6878 Narrated from Alqamah: If one were commanded to slaughter a sheep and began skinning it, I would pray all five prayers in their entirety before he finishes skinning it.

وَعَنْ عَلْقَمَةَ: لَوْ أُمِرَ بِذَبْحِ شَاةٍ فَأَخَذَ فِي سَلْخِهَا لَصَلَّيْت الصَّلَوَاتِ الْخَمْسَ فِي تَمَامٍ قَبْلَ أَنْ يَفْرُغَ مِنْهَا

L6879 As for the limit we mentioned concerning prolongation, it is: We have stated in the section on prayer timings that the Messenger of Allah—peace and blessings be upon him—performed the Dhuhr prayer at the time he had prayed Asr the day before, and he—peace be upon him—said: "The time for Fajr lasts until the sun rises. The time for Asr lasts until the sun sets. The time for Maghrib lasts until the redness of twilight vanishes. The time for the latter Isha lasts until midnight." It is therefore certain that whoever begins a prayer at the very end of its time only completes the remainder of it during the subsequent prayer's time—a time which has no valid basis whatsoever for delaying the start of prayer into it.

وَأَمَّا الْحَدُّ الَّذِي ذَكَرْنَا فِي التَّطْوِيلِ فَهُوَ: أَنَّا قَدْ ذَكَرْنَا فِي أَوْقَاتِ الصَّلَوَاتِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى الظُّهْرَ فِي الْوَقْتِ الَّذِي صَلَّى فِيهِ الْعَصْرَ بِالْأَمْسِ، وَقَالَ - عَلَيْهِ السَّلَامُ -: «وَقْتُ الصُّبْحِ مَا لَمْ تَطْلُعْ الشَّمْسُ. وَوَقْتُ الْعَصْرِ مَا لَمْ تَغْرُبْ الشَّمْسُ. وَوَقْتُ الْمَغْرِبِ مَا لَمْ يَسْقُطْ نُورُ الشَّفَقِ. وَوَقْتُ الْعِشَاءِ الْآخِرَةِ إلَى نِصْفِ اللَّيْلِ.» فَصَحَّ يَقِينًا أَنَّ مَنْ دَخَلَ فِي صَلَاةٍ فِي آخِرِ وَقْتِهَا فَإِنَّمَا يُصَلِّي بَاقِيَهَا فِي وَقْتِ الْأُخْرَى، وَفِي وَقْتٍ لَيْسَ لَهُ تَأْخِيرُ ابْتِدَاءِ الصَّلَاةِ إلَيْهِ أَصْلًا.

L6880 It is authentically reported from the Prophet (peace be upon him) that "culpable negligence is when one delays a prayer until the time of the next prayer begins."

وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّ «التَّفْرِيطَ أَنْ تُؤَخِّرَ صَلَاةً حَتَّى يَدْخُلَ وَقْتُ أُخْرَى» .

L6881 Thus, it is established that when one enters prayer within its prescribed time, one may prolong it as one wishes, as commanded by the Prophet (peace be upon him), except for prolongation prohibited by the textual evidence. The sole restriction is prolonging it until one misses the subsequent prayer. And success is from Allah, the Exalted?

فَصَحَّ أَنَّ لَهُ إذَا دَخَلَ فِي الصَّلَاةِ فِي وَقْتِهَا أَنَّ لَهُ أَنْ يُطَوِّلَ مَا شَاءَ، كَمَا أَمَرَ - عَلَيْهِ السَّلَامُ -، إلَّا تَطْوِيلًا مَنَعَ مِنْهُ النَّصُّ، وَلَيْسَ إلَّا أَنْ يُطِيلَ حَتَّى تَفُوتَهُ الصَّلَاةُ التَّالِيَةُ لَهَا فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟ .

[مَسْأَلَةٌ الْفَرْضَ فِي كُلِّ رَكْعَةٍ أَنْ يَقْرَأَ (بِأُمِّ الْقُرْآنِ)]

٤٤٥ - مَسْأَلَةٌ: قَدْ قُلْنَا: إِنَّ الْفَرْضَ فِي كُلِّ رَكْعَةٍ أَنْ يَقْرَأَ (بِأُمِّ الْقُرْآنِ) فَقَطْ، فَإِنْ زَادَ عَلَى ذَلِكَ قُرْآنًا فَحَسَنٌ، قَلَّ أَمْ كَثُرَ، أَيَّ صَلَاةٍ كَانَتْ مِنْ فَرْضٍ أَوْ غَيْرِ فَرْضٍ، لَا نُحَاشِ شَيْئًا.

إِلَّا أَنَّنَا نَسْتَحِبُّ أَنْ يَقْرَأَ فِي صَلَاةِ الصُّبْحِ مَعَ (أُمِّ الْقُرْآنِ) فِي كُلِّ رَكْعَةٍ مِنْ سِتِّينَ آيَةً إِلَى مِائَةِ آيَةٍ مِنْ أَيِّ سُورَةٍ شَاءَ.

وَفِي الظُّهْرِ فِي الْأُولَتَيْنِ فِي كُلِّ رَكْعَةٍ مَعَ " أُمِّ الْقُرْآنِ " نَحْوَ ثَلَاثِينَ آيَةً كَذَلِكَ، وَفِي الْآخِرَتَيْنِ مِنْهَا مَعَ " أُمِّ الْقُرْآنِ " فِي كُلِّ رَكْعَةٍ نَحْوَ خَمْسَ عَشْرَةَ آيَةً.

وَفِي الْأُولَتَيْنِ مِنْ الْعَصْرِ كَالْآخِرَتَيْنِ مِنْ الظُّهْرِ، وَفِي الْآخِرَتَيْنِ مِنْ الْعَصْرِ (أُمَّ الْقُرْآنِ) فَقَطْ.

وَفِي الْمَغْرِبِ نَحْوَ الْعَصْرِ، وَلَوْ أَنَّهُ قَرَأَ فِي الْمَغْرِبِ بِالْأَعْرَافِ أَوْ (الْمَائِدَةِ) أَوْ (الطُّورِ) أَوْ (الْمُرْسَلَاتِ) فَحَسَنٌ.

وَفِي الْعَتَمَةِ فِي الْأُولَتَيْنِ مَعَ أُمِّ الْقُرْآنِ بِ (التِّينِ وَالزَّيْتُونِ) " وَالشَّمْسِ وَضُحَاهَا " وَنَحْوِ ذَلِكَ.

وَفِي صُبْحِ يَوْمِ الْجُمُعَةِ " الم تَنْزِيلُ السَّجْدَةِ ".

وَ (هَلْ أَتَى عَلَى الْإِنْسَانِ) مَعَ أُمِّ الْقُرْآنِ.

L6882 **A legal issue: It is obligatory in every rakʿah to recite *Al-Fatihah* (the Mother of the Quran).**

L6883–6885 Issue 445: We have stated that the obligation in every rakʿah is to recite only the Mother of the Quran. If one adds Quranic recitation beyond that—whether little or much—it is recommended, regardless of which obligatory prayer it is. Nor do we exclude anything, even acts not classified as obligatory (farḍ); we omit nothing.

L6886 However, we recommend that in the dawn prayer one recites, alongside the Mother of the Quran (Umm al-Quran), in each rak'ah, from sixty to one hundred verses of any surah one wishes.

L6887 In the Dhuhr prayer, during the first two rak'ahs, "Umm al-Qur'an" is recited in each rak'ah alongside approximately thirty verses in this manner, and in the last two rak'ahs of it, "Umm al-Qur'an" is recited in each rak'ah alongside approximately fifteen verses.

L6888 In the first two [rakʿahs] of *Asr*, like the last two of *Dhuhr*, and in the last two [rakʿahs] of *Asr*, only *Umm al-Qur'an* is recited.

L6889 In Maghrib, similar to 'Asr, even if one recites Al-Aʿraf, Al-Ma'idah, At-Tur, or Al-Mursalat during Maghrib, it is acceptable.

L6890 During the Isha prayer, in the first two rak'ahs with Al-Fatihah, recite Surah At-Tin, Surah Ash-Shams, and similar surahs.

L6891 And on the morning of Friday, "Alif-Lam-Mim, the Revelation of the Prostration (As-Sajdah)."

L6892 And "Has there not come upon man" alongside Umm al-Quran, the Opening.[60]

[60] **Qur'an references (L6892):** Qur'an 76:1 (Al-Insan).

وَفِي صَلَاةِ الْجُمُعَةِ فِي الرَّكْعَةِ الْأُولَى مَعَ أُمِّ الْقُرْآنِ (سُورَةَ الْجُمُعَةِ) وَفِي الثَّانِيَةِ مَعَ أُمِّ الْقُرْآنِ مَرَّةً (سُورَةَ الْمُنَافِقِينَ) وَمَرَّةً (سُورَةَ الْغَاشِيَةِ) .

L6893 In the Friday prayer, during the first rak'ah, along with Umm al-Qur'an (Surah Al-Fatihah), Surah al-Jumu'ah is recited. In the second rak'ah, along with Umm al-Qur'an, either Surah al-Munafiqun or Surah al-Ghashiyah is recited.

وَلَوْ قَرَأَ فِي كُلِّ ذَلِكَ: سُورَتَيْنِ أَوْ أَكْثَرَ مِنْ رَكْعَةٍ فَحَسَنٌ.

L6894 If one recites two surahs or more in a single rak'ah in all such cases, it is recommended.

وَلَوْ قَدَّمَ السُّورَةَ قَبْلَ " أُمِّ الْقُرْآنِ " كَرِهْنَا ذَلِكَ وَأَجْزَأَهُ.

L6895 Even if he were to precede a surah before "Umm al-Qur'ān," we would disapprove of that, but it suffices him.

وَمَنْ أَرَادَ مِنْ الْأَئِمَّةِ تَطْوِيلَ صَلَاةٍ ثُمَّ أَحَسَّ بِعُذْرٍ مِمَّنْ خَلْفَهُ فَلْيُوجِزْ فِي مَدِّهَا -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفِرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا آدَم - ثنا شُعْبَةُ ثنا سَيَّارُ بْنُ سَلَامَةَ هُوَ أَبُو الْمِنْهَالِ - قَالَ: دَخَلْت عَلَى أَبِي بَرْزَةَ فَسَأَلْنَاهُ فَأَخْبَرَنَا «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ كَانَ يُصَلِّي الصُّبْحَ فَيَنْصَرِفُ الرَّجُلُ فَيَعْرِفُ جَلِيسَهُ، وَكَانَ يَقْرَأُ فِي الرَّكْعَتَيْنِ أَوْ إحْدَاهُمَا مَا بَيْنَ السِّتِّينَ إلَى الْمِائَةِ» .

L6896–6898 And whoever among the imams intends to prolong the prayer then senses an excuse from those behind him, let him shorten it. From Abd al-Rahman ibn Abd Allah ibn Khalid, from Ibrahim ibn Ahmad, from al-Firabri, from al-Bukhari, from Adam, from Shu'bah, from Sayyar ibn Salamah - known as Abu al-Minhal - who said: I visited Abu Barzah and questioned him, whereupon he informed us from the Prophet - peace be upon him - that he would pray the dawn prayer in such a way that a departing man could recognize those around him. While with his companion, he would recite in both rak'ahs or one of the two between sixty and a hundred."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ هُشَيْمٍ عَنْ مَنْصُورٍ هُوَ ابْنُ زَاذَانَ - عَنْ الْوَلِيدِ بْنِ مُسْلِمٍ هُوَ أَبُو بِشْرٍ الْعَنْبَرِيُّ - عَنْ أَبِي الصِّدِّيقِ هُوَ بَكْرُ بْنُ عَمْرٍو النَّاجِي - عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «كُنَّا نَحْزِرُ قِيَامَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الرَّكْعَتَيْنِ الْأُولَيَيْنِ مِنْ الظُّهْرِ قَدْرَ ثَلَاثِينَ آيَةً، وَحَزَرْنَا قِيَامَهُ فِي الْأُخْرَيَيْنِ قَدْرَ النِّصْفِ مِنْ ذَلِكَ. وَحَزَرْنَا قِيَامَهُ فِي الرَّكْعَتَيْنِ الْأُولَيَيْنِ مِنْ الْعَصْرِ عَلَى قَدْرِ قِيَامِهِ فِي الْأُخْرَيَيْنِ مِنْ الظُّهْرِ، وَفِي الْأُخْرَيَيْنِ مِنْ الْعَصْرِ عَلَى النِّصْفِ مِنْ ذَلِكَ» ؟ .

L6899 From ʿAbdullāh ibn Yūsuf, from Aḥmad ibn Fatḥ, from ʿAbd al-Wahhāb ibn ʿĪsā, from Aḥmad ibn Muḥammad, from Aḥmad ibn ʿAlī, from Muslim ibn al-Ḥajjāj, from Abū Bakr ibn Abī Shaybah, from Hushaym, from Manṣūr—who is Ibn Zādhan—from al-Walīd ibn Muslim—who is Abū Bishr al-ʿAnbarī—from Abī al-Ṣiddīq—who is Bakr ibn ʿAmr al-Nājī—from Abū Saʿīd al-Khudrī, who said: "We used to estimate the standing of the Messenger of Allah—may Allah bless him and grant him peace—in the first two rakʿahs of Dhuhr to be equivalent to thirty verses. We estimated his standing in the last two to be half of that. We estimated his standing in the first two rakʿahs of ʿAṣr to be upon the measure of his standing in the last two of Dhuhr, and in the last two of ʿAṣr to be half of that."

L6900 Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Harun ibn Abdullah al-Hammal informed me: Ibn Abi Fudayk narrated from al-Dahhak ibn Uthman from

Bukayr ibn Abdullah—who is Ibn al-Ashajj—from Sulayman ibn Yasar from Abu Hurayrah, who said: "I have not prayed behind anyone whose prayer more closely resembled that of the Messenger of Allah—peace and blessings be upon him—than so-and-so." Sulayman added: "He would prolong the first two units of *Dhuhr*, shorten the last two, shorten *Asr*, recite short chapters from the *Mufassal* in *Maghrib*, recite middle-length chapters from the *Mufassal* in *Isha*, and recite long chapters from the *Mufassal* in *Fajr*."

Abd al-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: al-Farbari narrated to us: al-Bukhari narrated to us: Abdullah ibn Yusuf narrated to us: Malik narrated from Ibn Shihab from Ubaydullah ibn Abdullah ibn Utbah ibn Mas'ud from Ibn Abbas, who said: "Umm al-Fadl heard him reciting *'By those sent forth in succession,'* and she said: 'My son, by Allah, your recitation of this surah reminded me that it was the last thing I heard the Messenger of Allah—peace and blessings be upon him—recite it in *Maghrib*.'"[61]

L6901–6903 Narrated to us by Abdullah ibn Yusuf; informed by Ahmad ibn Fath; informed by Abd al-Wahhab ibn Isa; informed by Ahmad ibn Muhammad. Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Amr an-Naqid narrated to us, Yaqub ibn Ibrahim ibn Sa'd narrated to us, Yaqub's father, Ibrahim ibn Sa'd, narrated to us from Salih from al-Zuhri from Ubayd Allah ibn Utbah from Ibn Abbas, and he mentioned this Hadith: "And that Umm al-Fadl said, 'Then he did not pray afterward until Allah, the Mighty and Majestic, took him.'"

L6904 So this was the last Maghrib prayer he prayed—peace be upon him—and his final deed—peace be upon him.

L6905 So where are those who claim to follow his practice and his final practice?

[61] **Qur'an references (L6900):** Qur'an 77:1 (Al-Mursalat).

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثِنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثِنَا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي هَارُونُ بْنُ عَبْدِ اللَّهِ الْحَمَّالُ ثِنَا ابْنُ أَبِي فُدَيْكٍ عَنْ الضَّحَّاكِ بْنِ عُثْمَانَ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ هُوَ ابْنُ الْأَشَجِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ أَبِي هُرَيْرَةَ قَالَ «مَا صَلَّيْتُ وَرَاءَ أَحَدٍ أَشْبَهَ صَلَاةً بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ فُلَانٍ، قَالَ سُلَيْمَانُ: كَانَ يُطِيلُ الرَّكْعَتَيْنِ الْأُولَيَيْنِ مِنْ الظُّهْرِ، وَيُخَفِّفُ - الْأُخْرَيَيْنِ وَيُخَفِّفُ الْعَصْرَ، وَيَقْرَأُ فِي الْمَغْرِبِ بِقِصَارِ الْمُفَصَّلِ، وَيَقْرَأُ فِي الْعِشَاءِ بِوَسَطِ الْمُفَصَّلِ وَيَقْرَأُ فِي الصُّبْحِ بِطِوَالِ الْمُفَصَّلِ» ؟ حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثِنَا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثِنَا الْفَرَبْرِيُّ ثِنَا الْبُخَارِيُّ ثِنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ أَنَا مَالِكٌ عَنْ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ «عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ إِنَّ أُمَّ الْفَضْلِ سَمِعَتْهُ وَهُوَ يَقْرَأُ وَالْمُرْسَلَاتِ عُرْفًا؟ ، فَقَالَتْ: يَا بُنَيَّ وَاَللَّهِ لَقَدْ ذَكَّرْتَنِي بِقِرَاءَتِكَ هَذِهِ السُّورَةَ، إِنَّهَا لَآخِرُ مَا سَمِعْتُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقْرَأُ بِهَا فِي الْمَغْرِبِ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثِنَا أَحْمَدُ بْنُ فَتْحٍ ثِنَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثِنَا أَحْمَدُ بْنُ مُحَمَّدٍ ثِنَا أَحْمَدُ بْنُ عَلِيٍّ ثِنَا مُسْلِمُ بْنُ الْحَجَّاجِ ثِنَا عَمْرٌو النَّاقِدُ ثِنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ ثِنَا أَبِي عَنْ صَالِحٍ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ فَذَكَرَ هَذَا الْحَدِيثَ، «وَأَنَّ أُمَّ الْفَضْلِ قَالَتْ ثُمَّ مَا صَلَّى بَعْدُ حَتَّى قَبَضَهُ اللَّهُ عَزَّ وَجَلَّ؟» .

فَهَذَا آخِرُ صَلَاةِ مَغْرِبٍ صَلَّاهَا - عَلَيْهِ السَّلَامُ -، وَآخِرُ عَمَلِهِ - عَلَيْهِ السَّلَامُ -.

فَأَيْنَ الْمُدَّعُونَ أَنَّهُمْ يَتَّبِعُونَ عَمَلَهُ وَآخِرَ عَمَلِهِ؟ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثِنَا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثِنَا الْفَرَبْرِيُّ ثِنَا الْبُخَارِيُّ ثِنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ أَنَا مَالِكٌ عَنْ

From ʻAbd al-Raḥmān ibn ʻAbd Allāh ibn Khālid, from Ibrāhīm ibn Aḥmad, from al-Farrabī, from al-Bukhārī, from ʻAbd Allāh ibn Yūsuf: Mālik narrated from Ibn Shihāb, from Muḥammad ibn Jubayr ibn Muṭʻim, from his father: “I heard the Messenger of Allāh—may Allāh bless him and grant him peace—recite al-Ṭūr in the Maghrib prayer.”

ابْنِ شِهَابٍ عَنْ مُحَمَّدِ بْنِ جُبَيْرِ بْنِ مُطْعِمٍ عَنْ أَبِيهِ «سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَرَأَ فِي الْمَغْرِبِ بِالطُّورِ» .

L6906 Abdullah ibn Rabeeʿ → Umar ibn Abdul-Malik → Muhammad ibn Bakr al-Basri → Abu Dawud as-Sijistani → al-Hasan ibn Ali al-Hulwani → Abdur-Razzaq (from Ibn Juraij) → Ibn Abi Mulaikah → Urwah ibn az-Zubair → Marwan ibn al-Hakam reported: Zaid ibn Thabit said to me: “Why do you recite short chapters from the *Mufassal* in Maghrib prayer when I saw Allah’s Messenger (peace be upon him) reciting ’the longest of the two long ones’ in Maghrib?” I asked: “What is ’the longest of the two long ones’?” He replied: “Al-Aʿraf.”

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثِنَا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثِنَا مُحَمَّدُ بْنُ بَكْرٍ الْبَصْرِيُّ ثِنَا أَبُو دَاوُد السِّجِسْتَانِيُّ ثِنَا الْحَسَنُ بْنُ عَلِيٍّ هُوَ الْحُلْوَانِيُّ - ثِنَا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ حَدَّثَنِي ابْنُ أَبِي مُلَيْكَةَ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ «مَرْوَانَ بْنِ الْحَكَمِ قَالَ: قَالَ لِي زَيْدُ بْنُ ثَابِتٍ: مَا لَكَ تَقْرَأُ فِي الْمَغْرِبِ بِقِصَارِ الْمُفَصَّلِ، وَقَدْ رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقْرَأُ فِي الْمَغْرِبِ بِطُولَى الطُّولَيَيْنِ؟ قُلْت: مَا طُولَى الطُّولَيَيْنِ؟ قَالَ: الْأَعْرَافُ» .

L6907 Ibn Jurayj said, “I asked Ibn Abi Mulaikah.” Ibn Abi Mulaikah replied to me on his own initiative, “Al-Ma’idah (and Al-A’raf).”

قَالَ ابْنُ جُرَيْجٍ: وَسَأَلْت ابْنَ أَبِي مُلَيْكَةَ؟ فَقَالَ لِي مِنْ قِبَلِ نَفْسِهِ: الْمَائِدَةُ (وَالْأَعْرَافُ) .

L6908–6910 This Zayd (may Allah be pleased with him) denounces the governor of Madinah for restricting [recitation] to the short chapters of the Mufaṣṣal in the Maghrib prayer and singles him out based on what he heard from the Messenger of Allah (peace and blessings be upon him) regarding the recitation of al-Aʿrāf in the Maghrib prayer. ʿAbdullāh ibn Yūsuf narrated to us; Aḥmad ibn Fatḥ narrated to us; ʿAbd al-Wahhāb ibn ʿĪsā narrated to us; Aḥmad ibn Muḥammad narrated to us; Aḥmad ibn ʿAlī narrated to us; Muslim ibn al-Ḥajjāj narrated to us; Qutaybah ibn Saʿīd narrated to us; al-Layth ibn Saʿd narrated from... Abu al-Zubayr narrated from Jabir ibn Abdullah, who said: “Mu’adh led his companions in the Isha prayer and prolonged it for them. A man from us left and prayed. When Mu’adh was informed about him, he said: ’He is a hypocrite.’ When this remark reached the man, he went to the Messenger of Allah (peace be upon him) and reported what Mu’adh had said. The Messenger of Allah (peace be upon him) said to him: ’Do you wish to be one who causes discord, O Mu’adh? When you lead people in prayer, recite

فَهَذَا زَيْدٌ - رَضِيَ اللَّهُ عَنْهُ - يُنْكِرُ عَلَى أَمِيرِ الْمَدِينَةِ الِاقْتِصَارَ عَلَى صِغَارِ الْمُفَصَّلِ فِي الْمَغْرِبِ وَيَخُصُّهُ عَلَى مَا سَمِعَهُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قِرَاءَةِ الْأَعْرَافِ فِي صَلَاةِ الْمَغْرِبِ؟ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثِنَا أَحْمَدُ بْنُ فَتْحٍ ثِنَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثِنَا أَحْمَدُ بْنُ مُحَمَّدٍ ثِنَا أَحْمَدُ بْنُ عَلِيٍّ ثِنَا مُسْلِمُ بْنُ الْحَجَّاجِ ثِنَا قُتَيْبَةُ بْنُ سَعِيدٍ ثِنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ «صَلَّى مُعَاذٌ لِأَصْحَابِهِ الْعِشَاءَ فَطَوَّلَ عَلَيْهِمْ، فَانْصَرَفَ رَجُلٌ مِنَّا فَصَلَّى، فَأُخْبِرَ مُعَاذٌ عَنْهُ، فَقَالَ: إنَّهُ مُنَافِقٌ فَلَمَّا بَلَغَ ذَلِكَ الرَّجُلَ دَخَلَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَهُ مَا قَالَ مُعَاذٌ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: " أَتُرِيدُ أَنْ تَكُونَ فَتَّانًا يَا مُعَاذُ؟

”By the sun and its brightness,“ ”Exalt the name of your Lord the Most High,“ ”Read in the name of your Lord,“ and ”By the night when it envelops.“”[62]

إِذَا أَمَّتَ النَّاسَ فَاقْرَأْ " بِالشَّمْسِ وَضُحَاهَا "، وَ (سَبِّحْ اسْمَ رَبِّكَ الْأَعْلَى) وَ (اقْرَأْ بِاسْمِ رَبِّكَ) (وَاللَّيْلِ إِذَا يَغْشَى) » .

L6911 Ali said: All of this has been reported from the Salaf—may Allah be pleased with them. It has been narrated to us through the chain of Abd al-Razzaq from Ma’mar from al-Zuhri from Anas: that Abu Bakr al-Siddiq—may Allah be pleased with him—led the Companions—may Allah be pleased with them—in the dawn prayer by reciting Surah al-Baqarah, reciting it in the two units of prayer.

قَالَ عَلِيٌّ: وَكُلُّ ذَلِكَ قَدْ رُوِيَ عَنْ السَّلَفِ - رَضِيَ اللَّهُ عَنْهُمْ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ أَنَسٍ: أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ - رَضِيَ اللَّهُ عَنْهُ - أَمَّ الصَّحَابَةَ - رَضِيَ اللَّهُ عَنْهُمْ - فِي صَلَاةِ الصُّبْحِ بِسُورَةِ الْبَقَرَةِ قَرَأَهَا فِي الرَّكْعَتَيْنِ.

L6912 From Ma‘mar, from Qatādah, from Anas: “Abū Bakr led them in the Fajr prayer, reciting Āl ‘Imrān.”

وَعَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ أَنَسٍ: أَنَّ أَبَا بَكْرٍ أَيْضًا أَمَّهُمْ فِي الصُّبْحِ بِآلِ عِمْرَانَ

L6913 From Sufyān al-Thawrī and Sufyān ibn ʿUyaynah, both of whom narrated from al-Aʿmash, from Ibrāhīm al-Taymī, from Ḥuṣayn ibn Sabrah: ʿUmar ibn al-Khaṭṭāb recited Yūsuf in the Fajr prayer, then in the second rakʿah he recited al-Najm and prostrated. He then stood and recited “Idhā Zulzilat.”

وَعَنْ سُفْيَانَ الثَّوْرِيِّ، وَسُفْيَانَ بْنِ عُيَيْنَةَ كِلَاهُمَا عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ التَّيْمِيِّ عَنْ حُصَيْنِ بْنِ سَبْرَةَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَرَأَ فِي الْفَجْرِ يُوسُفَ ثُمَّ قَرَأَ فِي الثَّانِيَةِ وَالنَّجْمِ فَسَجَدَ، ثُمَّ قَامَ فَقَرَأَ " إذَا زُلْزِلَتْ "

L6914–6916 From the chain of ʿAbd al-Raḥmān ibn Mahdī, from Shuʿbah, from al-Ḥakam ibn ʿUtaybah, who heard ʿAmr ibn Maymūn say: Indeed, ʿUmar ibn al-Khaṭṭāb prayed the Fajr prayer at Dhū al-Ḥulayfah and said: Glory be to You, O Allah, and praise be to You. Blessed is Your Name, exalted is Your Grandeur, and there is no deity except You. He recited *Sūrah Al-Kāfirūn* and *Sūrah Al-Ikhlāṣ*, and did he complete the *Takbīr*? It is narrated from ‘Umar that he recited *Sūrah Qāf* and *Sūrah Al-Dhāriyāt* in the Dhuhr Prayer.[63]

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّهُ سَمِعَ عَمْرَو بْنَ مَيْمُونٍ يَقُولُ: إنَّ عُمَرَ بْنَ الْخَطَّابِ صَلَّى الصُّبْحَ بِذِي الْحُلَيْفَةِ فَقَالَ: سُبْحَانَك اللَّهُمَّ وَبِحَمْدِك تَبَارَكَ اسْمُك وَتَعَالَى جَدُّك وَلَا إلَهَ غَيْرُك، وَقَرَأَ " قُلْ يَا أَيُّهَا الْكَافِرُونَ " " وَقُلْ هُوَ اللَّهُ أَحَدٌ " وَكَانَ يُتِمُّ التَّكْبِيرَ؟ وَعَنْ عُمَرَ: أَنَّهُ قَرَأَ فِي الظُّهْرِ (ق) ، وَالذَّارِيَاتِ

L6917 It is reported from Abdullah ibn Umar that he recited Kāf-Hā-Yā-ʿAyn-Ṣād – the opening letters of Surah Maryam (19:1) – during the Ẓuhr prayer.

وَعَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّهُ قَرَأَ فِي الظُّهْرِ كهيعص

L6918 From Hammad ibn Salama, from Ayyub al-Sakhtiyānī, from Abu al-ʿĀliyah al-Barrāʾ: I asked Ibn ʿAbbās—or a man asked him—“Shall I recite in Ẓuhr

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي الْعَالِيَةِ الْبَرَاءِ: سَأَلْت ابْنَ عَبَّاسٍ أَوْ سَأَلَهُ رَجُلٌ: أَأَقْرَأُ فِي الظُّهْرِ وَالْعَصْرِ؟ فَقَالَ: هُوَ إمَامُك، اقْرَأْ مِنْهُ مَا قَلَّ أَوْ كَثُرَ، وَلَيْسَ فِي الْقُرْآنِ قَلِيلٌ؟

[62] **Qur’an references (L6908):** Qur’an 87:1 (Al-A’la); Qur’an 96:1 (Al-’Alaq); Qur’an 92:1 (Al-Layl).

[63] **Qur’an references (L6914):** Qur’an 109:1 (Al-Kafirun).

and ʿAṣr?" He replied: "The Imam is your guide. Recite from it, whether little or much, for is there anything in the Quran that is insignificant?"

L6919 And from Hammad ibn Salama from Qatadah, Thabit al-Bunani, Humayd, and Uthman al-Batti—all of them from Anas ibn Malik: that he would recite in the Dhuhr and Asr prayers Surah Al-Aʿlā and Surah Al-Ghāshiyah, and would sometimes let us hear the melody. And from Hammad ibn Salama from Ayyub al-Sikhtiyani from Nafiʿ from Ibn Umar: that he would recite Surah Ya-Sin in the Maghrib prayer. And from Sufyan ibn Uyaynah from Uthman ibn Abi Sulayman al-Nawfali from ʿIrak ibn Malik, who heard Abu Hurayrah say: "I arrived in Medina while the Messenger of Allah—peace and blessings be upon him—was at Khaybar. I found a man from Ghifar leading the people in the Maghrib prayer. In the first rakʿah, he recited Surah Maryam, and in the second rakʿah, Surah Al-Muṭaffifīn."

L6920 Al-Shafi'i, Dawud, and the majority of the People of Hadith hold [the opinion]. Muhammad ibn Sa'id ibn Nubat narrated to us: Abdullah ibn Nasr narrated to us; Qasim ibn Asbagh narrated to us; Muhammad ibn Waddah narrated to us; Musa ibn Muʿawiyah narrated to us; Waki' narrated to us from Hisham ibn 'Urwah, from his father, from Abu Ayyub al-Ansari—or Zayd ibn Thabit—that the Messenger of Allah (peace be upon him) recited Surah al-Aʿraf in the first two rakʿahs of the Maghrib prayer.

L6921–6922 It has been narrated to us from Abu Bakr and Umar (may Allah the Exalted be pleased with them both) that each of them led the Companions (may Allah be pleased with them) in the dawn prayer and recited one hundred verses from Surah Āl ʿImrān in the first rakʿah, then recited the remainder of the surah in the second rakʿah.

L6923 Has a similar report also been authenticated from Ibn Mas'ud? Muhammad ibn Saʿīd ibn Nabāt narrated to us, Ahmad ibn ʿAbd al-Baṣīr narrated to us, Qāsim ibn Aṣbagh narrated to us, Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us, Muḥammad ibn al-Muthannā narrated to us, al-Haytham ibn ʿUbayd al-Ṣayrafī narrated to us from his father from al-Ḥasan al-Baṣrī, who

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ، وَثَابِتٍ الْبُنَانِيِّ، وَحُمَيْدٍ، وَعُثْمَانَ الْبَتِّيِّ، كُلُّهُمْ عَنْ أَنَسِ بْنِ مَالِكٍ: أَنَّهُ كَانَ يَقْرَأُ فِي الظُّهْرِ وَالْعَصْرِ " سَبِّحْ اسْمَ رَبِّكَ الْأَعْلَى " " وَهَلْ أَتَاكَ حَدِيثُ الْغَاشِيَةِ " وَيُسْمِعُنَا النَّغْمَةَ أَحْيَانًا؟ وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ يَقْرَأُ فِي الْمَغْرِبِ يس؟ وَعَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عُثْمَانَ بْنِ أَبِي سُلَيْمَانَ النَّوْفَلِيِّ عَنْ عِرَاكِ بْنِ مَالِكٍ سَمِعَ «أَبَا هُرَيْرَةَ يَقُولُ " قَدِمْتُ الْمَدِينَةَ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِخَيْبَرَ، فَوَجَدْتُ رَجُلًا مِنْ غِفَارٍ يَؤُمُّ النَّاسَ فِي الْمَغْرِبِ، فَقَرَأَ فِي الرَّكْعَةِ الْأُولَى سُورَةَ مَرْيَمَ وَفِي الثَّانِيَةِ وَيْلٌ لِلْمُطَفِّفِينَ» .

وَبِكُلِّ مَا ذَكَرْنَا يَأْخُذُ: الشَّافِعِيُّ، وَدَاوُد، وَجُمْهُورُ أَصْحَابِ الْحَدِيثِ: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ ثِنَا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثِنَا قَاسِمُ بْنُ أَصْبَغَ ثِنَا مُحَمَّدُ بْنُ وَضَّاحٍ ثِنَا مُوسَى بْنُ مُعَاوِيَةَ ثِنَا وَكِيعٌ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ أَبِي أَيُّوبَ الْأَنْصَارِيِّ، أَوْ زَيْدِ بْنِ ثَابِتٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَرَأَ بِالْأَعْرَافِ فِي الْمَغْرِبِ فِي الرَّكْعَتَيْنِ» .

وَرُوِّينَا عَنْ أَبِي بَكْرٍ وَعُمَرَ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمَا -: أَنَّ كُلَّ وَاحِدٍ مِنْهُمَا صَلَّى الصُّبْحَ بِالصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَقَرَأَ فِي الرَّكْعَةِ مِائَةَ آيَةٍ مِنْ آلِ عِمْرَانَ، ثُمَّ قَرَأَ فِي الثَّانِيَةِ بَاقِيَ السُّورَةِ.

وَصَحَّ مِثْلُ هَذَا أَيْضًا عَنْ ابْنِ مَسْعُودٍ؟ وَحَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ ثِنَا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ ثِنَا قَاسِمُ بْنُ أَصْبَغَ ثِنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثِنَا مُحَمَّدُ بْنُ الْمُثَنَّى ثِنَا الْهَيْثَمُ

said: “We once undertook a military expedition to Khurasān accompanied by three hundred Companions of Muḥammad – may Allah bless him and grant him peace. A man among them would lead us in prayer, reciting verses from the surah and then bowing.” From Ibn Jurayj, from ʿAṭāʾ: “If one recites in a rakʿah of an obligatory prayer verses from part of a surah – whether from its beginning, middle, or end,” ʿAṭāʾ said: “It does not harm you; all of it is Quran?” From ʿAlqamah: “He would recite in the first rakʿah of the dawn prayer Surah al-Dukhān, al-Ṭūr, and Surah al-Jinn, and in the second rakʿah he would recite the end of al-Baqarah, the end of Āl ʿImrān, and the short surah.”

بْنُ عُبَيْدٍ الصَّيْرَفِيُّ عَنْ أَبِيهِ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: لَقَدْ غَزَوْنَا غَزْوَةً إِلَى خُرَاسَانَ مَعَنَا فِيهَا ثَلَاثُمِائَةٍ مِنْ أَصْحَابِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، فَكَانَ الرَّجُلُ مِنْهُمْ يُصَلِّي بِنَا، فَيَقْرَأُ بِالْآيَاتِ مِنْ السُّورَةِ ثُمَّ يَرْكَعُ؟ وَعَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: أَنَّهُ إنْ قَرَأَ فِي الرَّكْعَةِ مِنْ صَلَاةِ الْفَرْضِ آيَاتٍ مِنْ بَعْضِ السُّورَةِ، مِنْ أَوَّلِهَا أَوْ مِنْ وَسَطِهَا أَوْ مِنْ آخِرِهَا، قَالَ عَطَاءٌ: لَا يَضُرُّك، كُلُّهُ قُرْآنٌ؟ وَعَنْ عَلْقَمَةَ أَنَّهُ كَانَ يَقْرَأُ فِي الْأُولَى مِنْ صَلَاةِ الصُّبْحِ سُورَةَ الدُّخَانِ وَالطُّورِ وَسُورَةَ الْجِنِّ وَيَقْرَأُ فِي الثَّانِيَةِ مِنْهَا آخِرَ الْبَقَرَةِ وَآخِرَ آلِ عِمْرَانَ وَالسُّورَةَ الْقَصِيرَةَ.

L6924 From Abū Wāʾil: that he recited *Umm al-Qurʾān* and a verse in one of the two rakʿahs of the Dawn Prayer.

وَعَنْ أَبِي وَائِلٍ: أَنَّهُ قَرَأَ فِي إحْدَى رَكْعَتَيْ الصُّبْحِ " أُمَّ الْقُرْآنِ " وَآيَةً.

L6925 And from Ibrāhīm al-Nakhaʿī, is there a similar narration to this? Through the route of Mālik from Nāfiʿ: that Ibn ʿUmar would sometimes recite two or three sūrahs in a single rakʿah of the prescribed prayer.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ نَحْوُ هَذَا؟ وَمِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ كَانَ أَحْيَانًا يَقْرَأُ بِالسُّورَتَيْنِ وَالثَّلَاثِ فِي الرَّكْعَةِ الْوَاحِدَةِ فِي صَلَاةِ الْفَرِيضَةِ.

L6926 From Wakiʿ from Sufyan al-Thawri from Abu Ishaq al-Sabiʿi from ʿAmr ibn Maymun, who said: “Umar ibn al-Khattab led us in the Maghrib prayer. In the second rakʿah, he recited ʾHave you not seen how...ʾ (Sūrat al-Fīl) and ʾFor the pact of Quraysh...ʾ (Sūrat Quraysh), reciting them together in the same rakʿah.”

وَعَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إسْحَاقَ السَّبِيعِيِّ عَنْ عَمْرِو بْنِ مَيْمُونٍ قَالَ: صَلَّى بِنَا عُمَرُ بْنُ الْخَطَّابِ صَلَاةَ الْمَغْرِبِ، فَقَرَأَ فِي الرَّكْعَةِ الثَّانِيَةِ " أَلَمْ تَرَ كَيْفَ " " وَلِإِيلَافِ قُرَيْشٍ " جَمَعَهُمَا.

L6927 And is the like of this narrated from Tawus, al-Rabiʿ ibn Khuthaym, Saʿīd ibn Jubayr, Ibrāhīm al-Nakhaʿī, and others?

وَمِثْلُ هَذَا عَنْ طَاوُسٍ، وَالرَّبِيعِ بْنِ خُثَيْمٍ وَسَعِيدِ بْنِ جُبَيْرٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَغَيْرِهِمْ؟

L6928–6929 And ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us from Muḥammad ibn Bashshār and ʿAmr ibn ʿAlī.

وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثِنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثِنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ، وَعَمْرُو بْنُ عَلِيٍّ.

L6930 Ibn Bishār narrated: Yahyā ibn Saʿīd al-Qaṭṭān narrated to us. ʿAmr ibn ʿAlī said: ʿAbd al-Raḥmān ibn Mahdī narrated to us. Then Yahyā and ʿAbd al-Raḥmān concurred. They both said: Sufyān al-Thawrī narrated to us from

Saʿd ibn Ibrāhīm ibn ʿAbd al-Raḥmān ibn ʿAwf from ʿAbd al-Raḥmān al-Aʿraj from Abū Hurayrah: “The Messenger of Allah (peace and blessings of Allah be upon him) used to recite in the dawn prayer on Fridays *Alif-Lām-Mīm Tanzīl* and *Hal Atā*.”[64]

قَالَ ابْنُ بَشَّارٍ: ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ -: وَقَالَ عَمْرُو بْنُ عَلِيٍّ: ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، ثُمَّ اتَّفَقَ يَحْيَى، وَعَبْدُ الرَّحْمَنِ قَالَا: ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ عَبْدِ الرَّحْمَنِ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَقْرَأُ فِي صَلَاةِ الصُّبْحِ يَوْمَ الْجُمُعَةِ الم تَنْزِيلُ وَ (هَلْ أَتَى) » .

L6931 It has also been authentically established—through the chain of Ibn Abbas (this being the preferred view of Al-Shāfiʿī, Abū Sulaymān, and the Ahl al-Ḥadīth)—and through another chain via Muslim ibn al-Ḥajjāj → ʿAmr al-Nāqid → Ismāʿīl ibn Ibrāhīm (Ibn ʿUlayyah) → Ibn Jurayj → ʿAṭāʾ, who said: Abū Hurayrah stated, “Recitation is done in every prayer.” A man asked him, “What if I recite nothing beyond Umm al-Qur’ān?” He replied, “If you add to it, that is better, but if you limit yourself to it, it suffices for you.”

وَقَدْ صَحَّ أَيْضًا - مِنْ طَرِيقِ ابْنِ عَبَّاسٍ، وَهُوَ اخْتِيَارُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ وَأَصْحَابِ الْحَدِيثِ -: وَمِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ ثنا عَمْرُو النَّاقِدُ ثنا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ - أَنَا ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: قَالَ أَبُو هُرَيْرَةَ: فِي كُلِّ الصَّلَاةِ يُقْرَأُ، فَقَالَ لَهُ رَجُلٌ: إِنْ لَمْ أَزِدْ عَلَى أُمِّ الْقُرْآنِ؟ قَالَ: إِنْ زِدْت عَلَيْهَا فَهُوَ خَيْرٌ، وَإِنْ انْتَهَيْت إِلَيْهَا أَجْزَأَتْ عَنْك.

L6932–6934 Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Abdullah ibn Maslamah ibn Qaʿnab narrated to us, Sulayman - who is Ibn Bilal - narrated from Jaʿfar ibn Muhammad, from his father, from Ibn Abi Rafiʿ, who said: “Abu Hurairah led us in the Friday prayer and recited in the last rakʿah after Surah al-Jumuʿah: ’When the Hypocrites Come’ (Surah al-Munafiqun).” Ibn Abi Rafiʿ said: “I approached Abu Hurairah after he concluded the prayer and said to him: ’You recited with two surahs that Ali ibn Abi Talib used to recite with in Kufah.’ Abu Hurairah replied: ’I heard...’” The Messenger of Allah (peace be upon him) would recite them both on the day of Jumu’ah.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ بْنِ قَعْنَبَ ثنا سُلَيْمَانُ هُوَ ابْنُ بِلَالٍ - عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنِ ابْنِ أَبِي رَافِعٍ قَالَ: «صَلَّى لَنَا أَبُو هُرَيْرَةَ الْجُمُعَةَ فَقَرَأَ بَعْدَ سُورَةِ الْجُمُعَةِ فِي الرَّكْعَةِ الْآخِرَةِ إِذَا جَاءَكَ الْمُنَافِقُونَ. قَالَ ابْنُ أَبِي رَافِعٍ فَأَدْرَكْتُ أَبَا هُرَيْرَةَ حِينَ انْصَرَفَ، فَقُلْتُ لَهُ -: إِنَّكَ قَرَأْتَ بِسُورَتَيْنِ كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ يَقْرَأُ بِهِمَا بِالْكُوفَةِ فَقَالَ أَبُو هُرَيْرَةَ: إِنِّي سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقْرَأُ بِهِمَا يَوْمَ الْجُمُعَةِ» .

L6935 And through him to Muslim: Amr an-Naqid narrated to us, Sufyan ibn Uyaynah narrated to us from Damrah ibn Saʿid from Ubaydullah ibn Abdullah, who said: “Ad-Dahhak ibn Qays wrote to an-Nuʿman ibn Bashir asking:

وَبِهِ إِلَى مُسْلِمٍ: ثنا عَمْرُو النَّاقِدُ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ ضَمْرَةَ بْنِ سَعِيدٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ قَالَ: «كَتَبَ الضَّحَّاكُ بْنُ قَيْسٍ إِلَى النُّعْمَانِ بْنِ بَشِيرٍ يَسْأَلُهُ " أَيُّ شَيْءٍ قَرَأَ

[64] **Hadith references (L6930):** Sunan an-Nasai 955.

’What [surah] did the Messenger of Allah (peace be upon him) recite on Friday besides Surah al-Jumuʿah?’ He said: ’He used to recite: ”Has there come to you the report of the Overwhelming Event¿“”

L6936 Abdullah ibn Rabīʿ narrated to us; Muḥammad ibn Muʿāwiyah narrated to us; Aḥmad ibn Shuʿayb narrated to us; Muḥammad ibn ʿAbd al-Aʿlā narrated to us; Khālid—that is, Ibn al-Ḥārith—narrated to us from Shuʿbah, who reported from Maʿbad ibn Khālid; from Zayd—that is, Ibn ʿUqbah—; from Samurah ibn Jundub, who said: “The Messenger of Allah—peace and blessings be upon him—used to recite in the Friday prayer: ’Glorify the name of your Lord, the Most High’ and ’Has there come to you the report of the Overwhelming?”’[65]

L6937 Abu Hanifah said: “Is it disliked for the imam to adhere to reciting a specific surah or specific surahs in Friday prayer or other prayers?” Ali said: “[He] disliked a Sunnah practice and opposed the action of Allah’s Messenger—peace and blessings be upon him. Similarly, would one who dislikes anything confirmed to have been practiced by him—peace be upon him—[not do likewise]? As for reciting a surah before the Mother of the Quran, no directive opposing this has been transmitted. However, the practice of Muslims and the practice of Allah’s Messenger—peace and blessings be upon him—was to prioritize the Mother of the Quran. Therefore, we deemed it disliked to contravene this, though we did not invalidate the prayer for it, since no prohibition concerning this has been transmitted from him.”

L6938 And the Almighty has said: “So recite whatever is easy from the Quran” [Al-Muzzammil 73:20].[66]

L6939 It is astonishing how one condemns such a practice yet permits reversing the sequence of ablution, the direction of circumambulation, and the sequence of the adhān.

L6940–6942 As for the one who began the prayer intending to prolong it but sensed a valid excuse from some of those behind him—verily, ʿAbd al-Raḥmān ibn ʿAbd Allāh narrated to us, saying: Ibrāhīm ibn Aḥmad narrated to us, al-

[65] **Qur’an references (L6936):** Qur’an 88:1 (Al-Ghashiyah).
[66] **Qur’an references (L6938):** Qur’an 73:20 (Al-Muzzammil).

رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ الْجُمُعَةِ سِوَى سُورَةِ الْجُمُعَةِ قَالَ: كَانَ يَقْرَأُ: " هَلْ أَتَاكَ حَدِيثُ الْغَاشِيَةِ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثِنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثِنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى ثِنَا خَالِدٌ هُوَ ابْنُ الْحَارِثِ - عَنْ شُعْبَةَ أَخْبَرَنِي مَعْبَدُ بْنُ خَالِدٍ عَنْ زَيْدٍ هُوَ ابْنُ عُقْبَةَ - عَنْ سَمُرَةَ بْنِ جُنْدُبٍ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقْرَأُ فِي الْجُمُعَةِ " بِسَبِّحْ اسْمَ رَبِّكَ الْأَعْلَى " وَ (هَلْ أَتَاكَ حَدِيثُ الْغَاشِيَةِ) »

وَقَالَ أَبُو حَنِيفَةَ: يُكْرَهُ أَنْ يَكُونَ الْإِمَامُ يَلْتَزِمُ فِي الْجُمُعَةِ أَوْ غَيْرِهَا سُورَةً بِعَيْنِهَا، أَوْ سُوَرًا بِعَيْنِهَا؟ قَالَ عَلِيٌّ: كَرِهَ السُّنَّةَ، وَخَالَفَ فِعْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، وَكَذَلِكَ مَنْ كَرِهَ شَيْئًا مِمَّا صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - فَعَلَهُ؟ وَأَمَّا تَقْدِيمُ السُّورَةِ قَبْلَ " أُمِّ الْقُرْآنِ " فَلَمْ يَأْتِ أَمْرٌ بِخِلَافِ ذَلِكَ، لَكِنَّ عَمَلَ الْمُسْلِمِينَ، وَعَمَلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: هُوَ تَقْدِيمُ " أُمِّ الْقُرْآنِ " فَكَرِهْنَا خِلَافَ هَذَا، وَلَمْ نُبْطِلْ الصَّلَاةَ بِهِ، لِأَنَّهُ لَمْ يَأْتِ عَنْهُ نَهْيٌ.

وَقَدْ قَالَ تَعَالَى: {فَاقْرَءُوا مَا تَيَسَّرَ مِنَ الْقُرْآنِ} [المزمل: ٢٠] .

وَالْعَجَبُ مِمَّنْ يُشَنِّعُ هَذَا وَيُجِيزُ تَنْكِيسَ الْوُضُوءِ، وَتَنْكِيسَ الطَّوَافِ وَتَنْكِيسَ الْأَذَانِ.

وَأَمَّا مَنْ بَدَأَ الصَّلَاةَ يُرِيدُ تَطْوِيلَهَا فَأَحَسَّ بِعُذْرٍ مِنْ بَعْضِ مَنْ خَلْفَهُ، فَإِنَّ عَبْدَ الرَّحْمَنِ بْنَ عَبْدِ اللَّهِ حَدَّثَنَا قَالَ: ثِنَا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثِنَا الْفَرَبْرِيُّ ثِنَا الْبُخَارِيُّ ثِنَا إِبْرَاهِيمُ بْنُ أَبِي مُوسَى الْفَرَّاءُ ثِنَا الْوَلِيدُ هُوَ ابْنُ مُسْلِمٍ - ثِنَا الْأَوْزَاعِيُّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ

Farbarī narrated to us, al-Bukhārī narrated to us, Ibrāhīm ibn Abī Mūsā al-Farrāʾ narrated to us, al-Walīd ibn Muslim narrated to us, from al-Awzāʿī, from Yaḥyā ibn Abī Kathīr. From Abdullah ibn Abi Qatadah, from his father, that the Prophet (ﷺ) said: "Indeed, I stand in prayer intending to prolong it, but when I hear a child crying, I expedite my prayer out of concern for burdening the child's mother."[67]

The Issue of Audible Recitation in Prayer

446 - Question:

It is recommended to recite aloud in the two rak'ahs of Fajr, the first two rak'ahs of Maghrib, the first two rak'ahs of ʿAtamah (Isha), and the two rak'ahs of Jumuʿah. Quiet recitation applies to all rak'ahs of Dhuhr, all rak'ahs of ʿAṣr, the third rak'ah of Maghrib, and the last two rak'ahs of ʿAtamah. If one acts contrary to this, we dislike it—yet is his prayer still valid?

As for the ma'mum, it is obligatory upon him to recite the "Mother of the Quran" silently in every prayer without exception. If he were to recite it aloud, his prayer would be invalid. The proof for this is that loud recitation in the aforementioned cases where audible recitation is required, and silent recitation in the cases where silent recitation is required, are merely the practices of Allah's Messenger—peace and blessings be upon him—not his commands. His actions—peace be upon him—are for emulation, not obligation, while he—peace be upon him—was acting as the imam. The ruling for one praying alone is the same as the ruling for the imam: It was narrated to us by Abdullah ibn Yusuf from Ahmad ibn Fath from Abd al-Wahhab ibn Isa from Ahmad ibn Ali from Muslim ibn al-Hajjaj from Muhammad ibn al-Muthanna from Muhammad ibn Abi Adiy from al-Hajjaj al-Sawwaf from Yahya ibn Abi Kathir from Abdullah ibn Abi Qatadah and Abu Salamah ibn Abd al-Rahman ibn Awf—both from Abu Qatadah—who said: "Allah's Messenger—peace and blessings be upon him—would lead us in prayer, reciting

[67] **Hadith references (L6940):** Sahih al-Bukhari 707.

عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ عَنْ أَبِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِنِّي لَأَقُومُ فِي الصَّلَاةِ أُرِيدُ أَنْ أُطَوِّلَ فِيهَا فَأَسْمَعُ بُكَاءَ الصَّبِيِّ فَأَتَجَوَّزُ فِي صَلَاتِي، كَرَاهِيَةَ أَنْ أَشُقَّ عَلَى أُمِّهِ» .

[مَسْأَلَةُ الْجَهْرُ فِي الصَّلَاة]

٤٤٦ - مَسْأَلَةٌ:

وَيُسْتَحَبُّ الْجَهْرُ فِي رَكْعَتَيْ صَلَاةِ الصُّبْحِ، وَالْأُولَتَيْنِ مِنْ الْمَغْرِبِ، وَالْأُولَتَيْنِ مِنْ الْعَتَمَةِ، وَفِي الرَّكْعَتَيْنِ مِنْ الْجُمُعَةِ، وَالْإِسْرَارُ فِي الظُّهْرِ كُلِّهَا، وَفِي الْعَصْرِ كُلِّهَا، وَفِي الثَّالِثَةِ مِنْ الْمَغْرِبِ، وَفِي الْآخِرَتَيْنِ مِنْ الْعَتَمَةِ، فَإِنْ فَعَلَ خِلَافَ ذَلِكَ كَرِهْنَاهُ، وَأَجْزَأَهُ؟ .

وَأَمَّا الْمَأْمُومُ فَفَرْضٌ عَلَيْهِ الْإِسْرَارُ بِ " أُمِّ الْقُرْآنِ " فِي كُلِّ صَلَاةٍ وَلَا بُدَّ، فَلَوْ جَهَرَ بَطَلَتْ صَلَاتُهُ؟ بُرْهَانُ ذَلِكَ -: أَنَّ الْجَهْرَ فِيمَا ذَكَرْنَا أَنَّهُ يَجْهَرُ فِيهِ، وَالْإِسْرَارُ فِيمَا ذَكَرْنَا أَنَّهُ يُسِرُّ فِيهِ إنَّمَا هُمَا فِعْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَيْسَا أَمْرًا مِنْهُ، وَأَفْعَالُهُ - عَلَيْهِ السَّلَامُ - عَلَى الِائْتِسَاءِ لَا عَلَى الْوُجُوبِ، وَهُوَ - عَلَيْهِ السَّلَامُ - الْإِمَامُ، وَحُكْمُ الْمُنْفَرِدِ كَحُكْمِ الْإِمَامِ؟ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنْ الْحَجَّاجِ يَعْنِي الصَّوَّافَ - عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ كِلَاهُمَا عَنْ أَبِي قَتَادَةَ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي بِنَا، فَيَقْرَأُ فِي الظُّهْرِ وَالْعَصْرِ فِي الرَّكْعَتَيْنِ الْأُولَيَيْنِ بِ " فَاتِحَةِ الْكِتَابِ " وَسُورَتَيْنِ، وَيُسْمِعُنَا الْآيَةَ أَحْيَانًا» .

the Opening of the Book and two surahs after it during the first two rak'ahs of Dhuhr and Asr, occasionally making a verse audible to us."

L6947–6948 This is the Messenger of Allah (peace be upon him) raising his voice in recitation during parts of the Dhuhr prayer. Abdullah ibn Rabīʿ narrated to us; Muḥammad ibn Muʿāwiyah narrated to us; Aḥmad ibn Shuʿayb reported to us via Muḥammad ibn Ibrāhīm from Salm ibn Qutaybah, who narrated to us from Hāshim ibn al-Barīd from Abū Isḥāq, from al-Barāʾ ibn ʿĀzib, who said: "We used to pray Dhuhr behind the Prophet (peace be upon him), and he would make us hear a verse after the verses from Luqmān and al-Dhāriyāt."

L6949 And it was narrated to us through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān: from Ismāʿīl ibn Muslim, from Abū al-Mutawakkil (who is ʿAlī ibn Dāwūd al-Nājī), who said: "'Umar ibn al-Khaṭṭāb would recite in the Dhuhr and Asr prayers {By the scattering winds scattering...} [al-Dhāriyāt:1] and {Qaf. By the Glorious Qur'an...} [Qāf:1], reciting them audibly in both prayers." And from the chain of Maʿmar, from Thābit al-Bunānī, who said: "Anas ibn Mālik used to lead us in the Dhuhr and Asr prayers, and sometimes we would hear him recite {When the sky is split apart} [al-Infiṭār:1] and {Exalt the name of your Lord, the Most High} [al-Aʿlā:1]."[68]

L6950 This was the action of Umar ibn al-Khattab and Anas in the presence of the Companions—may Allah be pleased with them—with no one objecting to them both. From Abd al-Razzaq via Maʿmar from Qatadah, who said: "Whoever prays the Maghrib prayer while reciting silently yet audibly enough for himself to hear—does this suffice him?" From Hammad ibn Salama via Dawud, the son of Abi Hind, from al-Shaʿbi: "Saʿid ibn al-As recited aloud during the Dhuhr or Asr prayer, persisted in his audible recitation, and upon concluding his prayer stated: 'I disliked concealing the Quran after having recited it aloud,' without mentioning the two prostrations of forgetfulness?"

L6951 Ali said, "This is his doing in the presence of the Companions. None of

فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَجْهَرُ بِبَعْضِ الْقِرَاءَةِ فِي الظُّهْرِ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثِنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثِنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ إِبْرَاهِيمَ عَنْ سَلْمِ بْنِ قُتَيْبَةَ ثِنَا هَاشِمُ بْنُ الْبَرِيدِ عَنْ أَبِي إِسْحَاقَ عَنْ الْبَرَاءِ بْنِ عَازِبٍ قَالَ: «كُنَّا نُصَلِّي خَلْفَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الظُّهْرَ فَيُسْمِعُنَا الْآيَةَ بَعْدَ الْآيَاتِ مِنْ لُقْمَانَ وَالذَّارِيَاتِ» .

وَرُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ: ثِنَا إِسْمَاعِيلُ بْنُ مُسْلِمٍ ثِنَا أَبُو الْمُتَوَكِّلِ هُوَ عَلِيُّ بْنُ دَاوُد النَّاجِي - قَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ يَقْرَأُ فِي الظُّهْرِ وَالْعَصْرِ بِالذَّارِيَاتِ ذَرْوًا، وَ (ق وَالْقُرْآنِ الْمَجِيدِ) يُعْلِنُ فِيهِمَا؟ وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ ثَابِتٍ الْبُنَانِيِّ قَالَ: كَانَ أَنَسُ بْنُ مَالِكٍ يُصَلِّي بِنَا الظُّهْرَ وَالْعَصْرَ فَرُبَّمَا سَمِعْنَا مِنْ قِرَاءَتِهِ {إِذَا السَّمَاءُ انْفَطَرَتْ} [الانفطار: ١] وَ {سَبِّحِ اسْمَ رَبِّكَ الأَعْلَى} [الأعلى: ١]

فَهَذَا فِعْلُ عُمَرَ بْنِ الْخَطَّابِ وَأَنَسٍ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، لَا يُنْكِرُ ذَلِكَ عَلَيْهِمَا أَحَدٌ؟ وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: مَنْ صَلَّى الْمَغْرِبَ فَقَرَأَ فِي نَفْسِهِ فَأَسْمَعَ نَفْسَهُ أَجْزَأَ عَنْهُ؟ وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد هُوَ ابْنُ أَبِي هِنْدَ - عَنْ الشَّعْبِيِّ: أَنَّ سَعِيدَ بْنَ الْعَاصِ جَهَرَ فِي صَلَاةِ الظُّهْرِ أَوْ الْعَصْرِ، فَمَضَى فِي جَهْرِهِ، فَلَمَّا قَضَى صَلَاتَهُ قَالَ: إنِّي كَرِهْت أَنْ أُخْفِيَ الْقُرْآنَ بَعْدَمَا جَهَرْت بِهِ، وَلَمْ يَذْكُرْ سَجْدَتَيْ السَّهْوِ؟

قَالَ عَلِيٌّ: هَذَا مِنْهُ بِحَضْرَةِ الصَّحَابَةِ، لَا يُنْكِرُ ذَلِكَ عَلَيْهِ مِنْهُمْ أَحَدٌ.

[68] **Qur'an references (L6949):** Qur'an 50:1 (Qaf); Qur'an 82:1 (Al-Infitar); Qur'an 87:1 (Al-A'la).

them objected to him regarding that."

L6952–6954 It has also been narrated to us regarding audible recitation in the ʿAṣr prayer from Khabbāb ibn al-Arat (may Allah be pleased with him). From Wakiʿ, from al-Rabīʿ, from al-Ḥasan al-Baṣrī, who said: "If one recites audibly in what is meant to be recited quietly, there is no prostration of forgetfulness required." From Wakiʿ, from Isrāʾīl, from Jābir, from ʿAbd al-Raḥmān ibn al-Aswad ibn Yazīd, from... that Al-Aswad and ʿAlqamah both used to recite aloud in what is recited quietly, so they did not prostrate.

وَقَدْ رُوِّينَا أَيْضًا الْجَهْرَ فِي الْعَصْرِ عَنْ خَبَّابِ بْنِ الْأَرَتِّ - رَضِيَ اللَّهُ عَنْهُ -؟ وَعَنْ وَكِيعٍ عَنْ الرَّبِيعِ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: إذَا جَهَرَ فِيمَا يُخَافَتُ بِهِ فَلَا سَهْوَ عَلَيْهِ؟ وَعَنْ وَكِيعٍ عَنْ إسْرَائِيلَ عَنْ جَابِرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ بْنِ يَزِيدَ عَنْ الْأَسْوَدِ، وَعَلْقَمَةَ أَنَّهُمَا كَانَا يَجْهَرَانِ فِيمَا يُخَافَتُ فِيهِ فَلَا يَسْجُدَانِ

L6955 And through the chain of transmission of Al-Bukhārī: Muḥammad ibn Bishār and Muḥammad ibn Kathīr narrated to us. Ibn Bishār said: Ghundar narrated to us from Shuʿbah. Ibn Kathīr said: On the authority of Sufyān al-Thawrī. Then the chains of both Shuʿbah and Sufyān converged, each narrating from Saʿd ibn Ibrāhīm ibn ʿAbd al-Raḥmān ibn ʿAwf, from Ṭalḥah ibn ʿAbdullāh ibn ʿAwf, who said: "I prayed behind Ibn ʿAbbās at a funeral prayer. He recited the Opening of the Book and said: 'So that you may know it is a Sunnah.'"

وَمِنْ طَرِيقِ الْبُخَارِيِّ: ثنا مُحَمَّدُ بْنُ بَشَّارٍ، وَمُحَمَّدُ بْنُ كَثِيرٍ قَالَ ابْنُ بَشَّارٍ: ثنا غُنْدَرٌ عَنْ شُعْبَةَ، وَقَالَ ابْنُ كَثِيرٍ أَنَا سُفْيَانُ الثَّوْرِيُّ، ثُمَّ اتَّفَقَ شُعْبَةُ وَسُفْيَانُ كِلَاهُمَا عَنْ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ طَلْحَةَ بْنِ عَبْدِ اللَّهِ بْنِ عَوْفٍ قَالَ: " صَلَّيْت خَلْفَ ابْنِ عَبَّاسٍ عَلَى جِنَازَةٍ، فَقَرَأَ بِفَاتِحَةِ الْكِتَابِ، وَقَالَ: لِتَعْلَمُوا أَنَّهَا سُنَّةٌ "

L6956 Ali said: We disliked that because the well-known practice of the Prophet (peace be upon him) was to recite aloud in the cases we mentioned where raising the voice is required, and to recite quietly in the cases we mentioned where lowering the voice is required. There is no prostration of forgetfulness in such matters, because if an action is permissible to perform or omit intentionally, there is no forgetfulness involved - since one has done what is permissible. The forgetfulness requiring prostration applies only to what would invalidate the prayer if done intentionally. Is it due to omission or commission? Al-Shafi'i said: Whoever recites aloud where quiet recitation is required or quietly where aloud recitation is required - we consider this disliked, yet his prayer remains valid with no prostration of forgetfulness required.

قَالَ عَلِيٌّ: وَإِنَّمَا كَرِهْنَا ذَلِكَ؛ لِأَنَّ الْمَشْهُورَ مِنْ فِعْلِهِ - عَلَيْهِ السَّلَامُ - كَانَ الْجَهْرُ فِيمَا ذَكَرْنَا أَنَّهُ يُجْهَرُ بِهِ وَالْإِسْرَارُ فِيمَا ذَكَرْنَا أَنَّهُ يُسِرُّ فِيهِ، وَلَا سُجُودَ سَهْوٍ فِي ذَلِكَ، لِأَنَّ مَا أُبِيحَ تَعَمُّدُ فِعْلِهِ أَوْ تَرْكِهِ فَلَا سَهْوَ فِيهِ؛ لِأَنَّهُ فَعَلَ مَا هُوَ مُبَاحٌ لَهُ، وَإِنَّمَا السَّهْوُ الَّذِي يَسْجُدُ لَهُ فِيمَا لَوْ فَعَلَهُ عَمْدًا بَطَلَتْ صَلَاتُهُ، مِنْ تَرْكٍ أَوْ فِعْلٍ؟ وَقَالَ الشَّافِعِيُّ: مَنْ جَهَرَ فِيمَا يُسَرُّ فِيهِ أَوْ أَسَرَّ فِيمَا يُجْهَرُ فِيهِ كَرِهْنَاهُ وَتَمَّتْ صَلَاتُهُ، وَلَا سُجُودَ سَهْوٍ فِيهِ.

L6957 This is the opinion of Abū Sulaymān and all our fellow scholars, which we uphold.

وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ وَجَمِيعِ أَصْحَابِنَا وَبِهِ نَقُولُ.

L6958 Mālik said: If one recites aloud in a prayer requiring silent recitation or silently in a prayer requiring aloud recitation, then if it is extensive, he must

perform the prostration of forgetfulness. But if it is slight, there is no obligation. ʿAlī said: This is erroneous, for the matter must either be permissible—in which case the much and the little of it are equivalent—or forbidden—in which case the little and the much of it are equivalent. It is impermissible to permit a small amount of what is forbidden in large quantities except by an established scriptural text (nass) on the matter.

وَقَالَ مَالِكٌ: إنْ جَهَرَ فِيمَا يُسَرُّ فِيهِ أَوْ أَسَرَّ فِيمَا يُجْهَرُ فِيهِ فَإِنْ كَانَ ذَلِكَ كَثِيرًا سَجَدَ لِلسَّهْوِ، وَإِنْ كَانَ قَلِيلًا فَلَا شَيْءَ فِيهِ؟ قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِأَنَّهُ لَا يَخْلُو أَنْ يَكُونَ مُبَاحًا فَالْكَثِيرُ مِنْهُ وَالْقَلِيلُ سَوَاءٌ، أَوْ يَكُونَ مَحْظُورًا، فَالْقَلِيلُ مِنْهُ وَالْكَثِيرُ سَوَاءٌ، وَلَا يَجُوزُ أَنْ يُحَلَّ قَلِيلَ مَا حُرِّمَ كَثِيرُهُ إلَّا بِنَصٍّ وَارِدٍ فِي ذَلِكَ.

L6959 Additionally, the question arises about distinguishing between a significant quantity that necessitates the prostration for inadvertence and an insignificant one that does not. There is no way to specify this except through arbitrary judgment devoid of evidence—and no one is incapable of such a claim. It is impossible to impose a ruling concerning something whose necessitating quantity remains unclear.

وَأَيْضًا: فَيَسْأَلُ عَنْ حَدِّ الْكَثِيرِ الْمُوجِبِ لِسُجُودِ السَّهْوِ مِنْ الْقَلِيلِ الَّذِي لَا يُوجِبُهُ، فَلَا سَبِيلَ لَهُ إلَى تَحْدِيدِهِ إلَّا بِتَحَكُّمٍ لَا بُرْهَانَ عَلَيْهِ، وَلَا يَعْجِزُ عَنْ مِثْلِهِ أَحَدٌ وَمِنْ الْمُحَالِ إيجَابُ حُكْمٍ فِيمَا لَا يَبِينُ مِقْدَارُهُ الْمُوجِبُ لِذَلِكَ الْحُكْمِ؟ .

L6960 Abu Hanifa said: If the imam recites silently in prayers where audible recitation is prescribed or aloud in prayers where silent recitation is prescribed, and this was due to forgetfulness, he must perform the prostration of forgetfulness.

وَقَالَ أَبُو حَنِيفَةَ: إنْ أَسَرَّ الْإِمَامُ فِيمَا يُجْهَرُ فِيهِ أَوْ جَهَرَ فِيمَا يُسَرُّ فِيهِ، فَإِنْ كَانَ سَهْوًا فَعَلَيْهِ سُجُودُ السَّهْوِ.

L6961 If the act was intentional, there is no prostration of forgetfulness for it, and the prayer is complete.

وَإِنْ كَانَ عَمْدًا فَلَا سُجُودَ سَهْوٍ فِيهِ، وَالصَّلَاةُ تَامَّةٌ.

L6962–6964 If he does that The one praying alone, whether intentionally or forgetfully, his prayer is complete, and there is no prostration of forgetfulness in it. [The prayer is complete. If the one praying alone commits an error intentionally or forgetfully, his prayer remains complete, and there is no prostration of forgetfulness in it.]

فَإِنْ فَعَلَ ذَلِكَ الْمُنْفَرِدُ عَمْدًا أَوْ سَهْوًا فَصَلَاتُهُ تَامَّةٌ، وَلَا سُجُودَ سَهْوٍ فِيهِ، [وَالصَّلَاةُ تَامَّةٌ، فَإِنْ فَعَلَ ذَلِكَ الْمُنْفَرِدُ عَمْدًا أَوْ سَهْوًا فَصَلَاتُهُ تَامَّةٌ، وَلَا سُجُودَ سَهْوٍ فِيهِ] .

L6965 Ali said: This is erroneous in two aspects. First: He permits the intentional act yet does not require prostration for the deliberate offender—according to his view—while mandating it for the forgetful one, though the latter only forgot what was permissible for him, in his view, to omit or perform. What prostration could apply here? Second: His differentiation between the imam and the individual praying alone in this matter, which is another astonishing aspect. We do not know of any opinion from Abū Ḥanīfah or Mālik here that is reported from anyone before them. How could they contradict all

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ مِنْ وَجْهَيْنِ -: أَحَدُهُمَا: إبَاحَتُهُ تَعَمُّدَ ذَلِكَ وَلَا سُجُودَ عِنْدَهُ عَلَى الْعَامِدِ، وَإِيجَابُهُ السُّجُودَ عَلَى السَّاهِي، وَهُوَ لَمْ يَسْهُ إلَّا عَمَّا أُبِيحَ لَهُ - عِنْدَهُ - تَرْكُهُ وَفِعْلُهُ، فَأَيُّ سُجُودٍ فِي هَذَا؟ وَالثَّانِي: تَفْرِيقُهُ فِي ذَلِكَ بَيْنَ الْإِمَامِ وَالْمُنْفَرِدِ، وَهَذَا عَجَبٌ آخَرُ وَلَا نَعْرِفُ قَوْلَ أَبِي حَنِيفَةَ، وَقَوْلَ مَالِكٍ هَهُنَا عَنْ أَحَدٍ قَبْلَهُمَا، وَقَدْ خَالَفَا فِي

the narrations from the Companions—may Allah be pleased with them—regarding this?

As for the ma'mūm (follower in prayer), his prayer is invalidated only if he recites aloud during any part of his recitation, based on Allah's statement: "When the Quran is recited, listen to it attentively and remain silent, so that you may be shown mercy" [7:204], and "Remember your Lord inwardly with humility and reverence, and without raising your voice" [7:205].[69]

L6966 It has been authentically reported from the Prophet (peace be upon him) that he said: "The imam is only designated to be followed in prayer."

L6967 And in the Hadith: "And when he recites, then remain silent."

L6968 So whoever among the congregants does not maintain attentive silence and recites aloud—has he not opposed Allah the Exalted and His Messenger (may Allah bless him and grant him peace) in his prayer, failed to pray as commanded, and thus has not prayed? Success lies with Allah, the Exalted.

L6969 **Issue: Prolonging the first rakʿah of every prayer more than its second rakʿah.**

L6970 447 - Issue: It is recommended to prolong the first rakʿah of every prayer more than the second rakʿah. ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid narrated to us: Ibrāhīm ibn Aḥmad narrated to us: al-Farabrī narrated to us: al-Bukhārī narrated to us: Mūsā ibn Ismāʿīl narrated to us: Hammām ibn Yaḥyā from Yaḥyā ibn Abī Kathīr from ʿAbd Allāh ibn Abī Qatādah from his father: "The Prophet (peace and blessings be upon him) would recite in the first two rakʿahs of Dhuhr the Opening of the Book and two sūrahs, and in the last two rakʿahs the Opening of the Book. He would make us hear the verse, prolonging the first rakʿah more than the second. This was likewise in ʿAṣr, and likewise in Fajr."[70]

ذَلِكَ كُلَّ رِوَايَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؟ قَالَ عَلِيٌّ: وَأَمَّا الْمَأْمُومُ فَإِنَّمَا تَبْطُلُ صَلَاتُهُ إنْ جَهَرَ فِي شَيْءٍ مِنْ قِرَاءَتِهِ فَلِقَوْلِ اللَّهِ تَعَالَى: {وَإِذَا قُرِئَ الْقُرْآنُ فَاسْتَمِعُوا لَهُ وَأَنْصِتُوا لَعَلَّكُمْ تُرْحَمُونَ} [الأعراف: ٢٠٤] {وَاذْكُرْ رَبَّكَ فِي نَفْسِكَ تَضَرُّعًا وَخِيفَةً وَدُونَ الْجَهْرِ مِنَ الْقَوْلِ} [الأعراف: ٢٠٥]

وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَوْلُهُ: «إنَّمَا جُعِلَ الْإِمَامُ لِيُؤْتَمَّ بِهِ» .

وَفِي الْحَدِيثِ: «وَإِذَا قَرَأَ فَأَنْصِتُوا» .

فَمَنْ لَمْ يُنْصِتْ مِنْ الْمَأْمُومِينَ وَجَهَرَ فَقَدْ خَالَفَ اللَّهَ تَعَالَى وَرَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي صَلَاتِهِ وَلَمْ يُصَلِّ كَمَا أُمِرَ، فَلَمْ يُصَلِّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

[مَسْأَلَةُ تَطْوِيلُ الرَّكْعَةِ الْأُولَى مِنْ كُلِّ صَلَاةٍ أَكْثَرَ مِنْ الرَّكْعَةِ الثَّانِيَةِ مِنْهَا]

٤٤٧ - مَسْأَلَةٌ: وَيُسْتَحَبُّ تَطْوِيلُ الرَّكْعَةِ الْأُولَى مِنْ كُلِّ صَلَاةٍ أَكْثَرَ مِنْ الرَّكْعَةِ الثَّانِيَةِ مِنْهَا -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُوسَى بْنُ إسْمَاعِيلَ ثنا هَمَّامٌ هُوَ ابْنُ يَحْيَى - عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ عَنْ أَبِيهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَقْرَأُ فِي الظُّهْرِ فِي الْأُولَيَيْنِ بِأُمِّ الْكِتَابِ وَسُورَتَيْنِ، وَفِي الرَّكْعَتَيْنِ الْأُخْرَيَيْنِ بِأُمِّ الْكِتَابِ، وَيُسْمِعُنَا الْآيَةَ، وَيُطَوِّلُ فِي الرَّكْعَةِ الْأُولَى مَا لَا يُطَوِّلُ فِي الرَّكْعَةِ الثَّانِيَةِ، وَهَكَذَا فِي الْعَصْرِ، وَهَكَذَا فِي الصُّبْحِ» ؟

[69] **Qur'an references (L6965):** Qur'an 7:204 (Al-A'raf); Qur'an 7:205 (Al-A'raf).
[70] **Hadith references (L6970):** Sahih al-Bukhari 776.

L6971–6972 Abdullah ibn Rabīʿ narrated to us: From Muḥammad ibn Muʿāwiyah, from Muḥammad ibn Shuʿayb, from ʿImrān ibn Yazīd ibn Khālid al-Dimashqī, from Ismāʿīl ibn ʿAbdullāh ibn Simāʿah, from al-Awzāʿī, from Yaḥyā ibn Abī Kathīr, from ʿAbdullāh ibn Abī Qatādah, from his father: "The Messenger of Allah (peace be upon him) would recite Umm al-Qur'ān and two surahs in the first two rakʿahs of the Ẓuhr and ʿAṣr prayers. He would occasionally recite a verse aloud for us, and he would prolong the first rakʿah."[71]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثِنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثِنَا مُحَمَّدُ بْنُ شُعَيْبٍ أَنَا عِمْرَانُ بْنُ يَزِيدَ بْنِ خَالِدٍ الدِّمَشْقِيُّ ثِنَا إِسْمَاعِيلُ بْنُ عَبْدِ اللَّهِ بْنِ سِمَاعَةَ ثِنَا الْأَوْزَاعِيُّ ثِنَا يَحْيَى بْنُ أَبِي كَثِيرٍ ثِنَا عَبْدُ اللَّهِ بْنُ أَبِي قَتَادَةَ حَدَّثَنِي أَبِي «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَقْرَأُ بِأُمِّ الْقُرْآنِ وَسُورَتَيْنِ فِي الرَّكْعَتَيْنِ الْأُولَيَيْنِ مِنْ صَلَاةِ الظُّهْرِ، وَصَلَاةِ الْعَصْرِ، وَيُسْمِعُنَا الْآيَةَ أَحْيَانًا وَكَانَ يُطِيلُ فِي الرَّكْعَةِ الْأُولَى» ؟ .

L6973 Ali said: This is a general ruling applicable to all prayers, as it is a self-contained matter. It has been narrated to us via the chain of Abd al-Razzaq from Sufyan al-Thawri from al-A'mash from Ibrahim—al-Nakhaʿi—who said: The foremost prayers all involve lengthy recitations.

قَالَ عَلِيٌّ: هَذَا عُمُومٌ لِكُلِّ صَلَاةٍ، لِأَنَّهَا قَضِيَّةٌ قَائِمَةٌ بِنَفْسِهَا -: وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ هُوَ النَّخَعِيُّ - قَالَ الْأُولَى مِنْ الصَّلَوَاتِ كُلِّهَا الطِّوَالُ فِي الْقِرَاءَةِ.

L6974 And from 'Abd al-Razzaq from Isra'il ibn Yunus from 'Isa ibn Abi 'Azzah from al-Sha'bi, akin to the opinion of Ibrahim al-Nakha'i.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ إسْرَائِيلَ عَنْ عِيسَى بْنِ أَبِي عَزَّةَ عَنْ الشَّعْبِيِّ مِثْلُ قَوْلِ إبْرَاهِيمَ.

L6975 On the authority of 'Abd al-Razzāq, from Ibn Jurayj, from 'Aṭā', who said: "I certainly prefer that the imām lengthen the first [unit] in every prayer to allow more people to join. But when I pray by myself, I strive to make the first two and last two [units] equal in length."

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: إنِّي لَأُحِبُّ أَنْ يُطَوِّلَ الْإِمَامُ الْأُولَى مِنْ كُلِّ صَلَاةٍ حَتَّى يَكْثُرَ النَّاسُ، فَإِذَا صَلَّيْت لِنَفْسِي فَإِنِّي أَحْرِصُ عَلَى أَنْ أَجْعَلَ الْأُولَتَيْنِ وَالْآخِرَتَيْنِ سَوَاءً

L6976 **Issue: The one praying places their right hand over the wrist of their left hand during prayer.**

[مَسْأَلَةٌ يَضَعَ الْمُصَلِّي يَدَهُ الْيُمْنَى عَلَى كُوعِ يَدِهِ الْيُسْرَى فِي الصَّلَاةِ]

L6977–6979 448 - Issue: It is recommended for the one praying to place his right hand over the wrist of his left hand during prayer, throughout the entire standing posture therein. Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Zuhayr ibn Harb narrated to us, Affan—who is ibn Muslim—narrated to us, Hammam narrated to us, Muhammad ibn Juḥāda narrated to us, Abdul-

٤٤٨ - مَسْأَلَةٌ: وَيُسْتَحَبُّ أَنْ يَضَعَ الْمُصَلِّي يَدَهُ الْيُمْنَى عَلَى كُوعِ يَدِهِ الْيُسْرَى فِي الصَّلَاةِ، فِي وُقُوفِهِ كُلِّهِ فِيهَا -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثِنَا أَحْمَدُ بْنُ فَتْحٍ ثِنَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثِنَا أَحْمَدُ بْنُ مُحَمَّدٍ ثِنَا أَحْمَدُ بْنُ عَلِيٍّ ثِنَا مُسْلِمُ بْنُ الْحَجَّاجِ ثِنَا زُهَيْرُ بْنُ حَرْبٍ ثِنَا عَفَّانُ هُوَ ابْنُ مُسْلِمٍ - ثِنَا هَمَّامٌ ثِنَا مُحَمَّدُ بْنُ جُحَادَةَ ثِنَا عَبْدُ الْجَبَّارِ بْنُ وَائِلٍ عَنْ عَلْقَمَةَ بْنِ وَائِلٍ

[71] **Hadith references (L6972):** Sunan an-Nasai 975.

أَنَّهُ حَدَّثَهُ عَنْ أَبِيهِ وَائِلِ بْنِ حُجْرٍ «أَنَّهُ رَأَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَفَعَ يَدَيْهِ حِينَ دَخَلَ فِي الصَّلَاةِ كَبَّرَ ثُمَّ الْتَحَفَ بِثَوْبِهِ ثُمَّ وَضَعَ يَدَهُ الْيُمْنَى عَلَى الْيُسْرَى» وَذَكَرَ بَاقِيَ الْحَدِيثِ؟ حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ ثنا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ أَنَا هُشَيْمٌ عَنْ الْحَجَّاجِ بْنِ أَبِي زَيْنَبَ قَالَ: سَمِعْت أَبَا عُثْمَانَ النَّهْدِيَّ يُحَدِّثُ عَنْ ابْنِ مَسْعُودٍ قَالَ: «رَآنِي النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ وَضَعْتُ شِمَالِي عَلَى يَمِينِي فِي الصَّلَاةِ فَأَخَذَ بِيَمِينِي فَوَضَعَهَا عَلَى شِمَالِي» .

Jabbar ibn Wā’il narrated to us from Alqamah ibn Wā’il that he narrated to him from his father Wā’il ibn Ḥujr: “He saw the Prophet - peace and blessings be upon him - raise his hands upon entering the prayer, say the takbīr, then wrap himself in his garment, then place his right hand over his left,” and he related the remainder of the ḥadīth. Muhammad ibn Sa‘īd ibn Nubāt narrated to us, Ahmad ibn Abdul-Baṣīr narrated to us, Qāsim ibn Aṣbagh narrated to us. Muhammad ibn Abd al-Salam al-Khushani narrated to us; Muhammad ibn al-Muthanna narrated to us; Abd al-Rahman ibn Mahdi said: I am Hushaym, from al-Hajjaj ibn Abi Zaynab, who said: I heard Abu Uthman al-Nahdi narrating from Ibn Mas’ud, who said: “The Prophet (peace be upon him) saw me when I had placed my left hand over my right in prayer. He took my right hand and placed it over my left.”[72]

وَرُوِّينَا عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - " أَنَّهُ كَانَ إذَا طَوَّلَ قِيَامَهُ فِي الصَّلَاةِ يُمْسِكُ بِيَدِهِ الْيُمْنَى ذِرَاعَهُ الْيُسْرَى فِي أَصْلِ الْكَفِّ إلَّا أَنْ يُسَوِّيَ ثَوْبًا أَوْ يَحُكَّ جِلْدًا؟ وَعَنْ أَبِي هُرَيْرَةَ قَالَ: وَضْعُ الْكَفِّ عَلَى الْكَفِّ فِي الصَّلَاةِ تَحْتَ السُّرَّةِ.

L6980 It has been reported to us from ʿAlī—may Allah be pleased with him—that when he prolonged his standing in prayer, he would hold his left forearm with his right hand at the base of the palm, except when adjusting his garment or scratching his skin. In another narration, Abū Hurayrah said: Placing the palm over the palm in prayer is under the navel.

وَعَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - أَنَّهَا قَالَتْ: ثَلَاثٌ مِنْ النُّبُوَّةِ: تَعْجِيلُ الْإِفْطَارِ، وَتَأْخِيرُ السُّحُورِ، وَوَضْعُ الْيَدِ الْيُمْنَى عَلَى الْيَدِ الْيُسْرَى فِي الصَّلَاةِ وَعَنْ أَنَسٍ مِثْلُ هَذَا أَيْضًا، إلَّا أَنَّهُ قَالَ: مِنْ أَخْلَاقِ النُّبُوَّةِ، وَزَادَ: تَحْتَ السُّرَّةِ.

L6981 From ʿĀ’ishah (may Allāh be pleased with her) that she said: “Three matters belong to the Prophetic tradition: hastening the breaking of the fast, delaying the pre-dawn meal, and placing the right hand over the left hand in prayer.” A similar narration is reported from Anas as well, except he phrased it: “from the characteristics of Prophethood,” and added: “below the navel.”

وَمِنْ طَرِيقِ مَالِكٍ عَنْ أَبِي حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ قَالَ: " كَانَ النَّاسُ يُؤْمَرُونَ أَنْ يَضَعَ الرَّجُلُ الْيَدَ الْيُمْنَى عَلَى ذِرَاعِهِ الْيُسْرَى فِي الصَّلَاةِ ".

L6982 Narrated by Malik, from Abu Hazim, from Sahl ibn Sa‘d, who said: “People were instructed that each person should place his right hand over his left forearm during Ṣalāh.”

قَالَ عَلِيٌّ: هَذَا رَاجِعٌ فِي أَقَلِّ أَحْوَالِهِ إلَى فِعْلِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، إنْ لَمْ يَكُنْ مُسْنَدًا.

L6983 Ali said: “This, at minimum, is attributable to the actions of the Companions (may Allah be pleased with them), if it is not supported by an *isnād*.”

L6984 From the narration of Abū Ḥumayd al-Sāʿidī that he said: “I am the most

[72] **Hadith references (L6977):** Sunan an-Nasai 888.

knowledgeable among you regarding the prayer of Allah's Messenger." Then he described—may Allah bless him and grant him peace—that the Prophet uttered the Takbīr, raised his hands to his face, then placed his right hand over his left.

L6985 Has it been narrated to us that this action was transmitted from Abū Mijlaz, Ibrāhīm an-Nakhaʿī, Saʿīd ibn Jubayr, ʿAmr ibn Maymūn, Muḥammad ibn Sīrīn, Ayyūb al-Sakhtiyānī, and Ḥammād ibn Salamah—that they used to do that—and is this the position of Abū Ḥanīfah, al-Shāfiʿī, Aḥmad, and Dāwūd?

L6986 **The Imam does not utter the takbīr until those behind him have straightened.**

L6987 Issue 449: We recommend that the Imam not pronounce the Takbīr until all those behind him are aligned in a single row or multiple rows. If he pronounces it before that, he has erred but it suffices him.

L6988–6989 Abu Hanifah said: If the resident [prayer-caller] says "The prayer has been established," should the imam utter the takbir? We have been narrated from Ibrahim al-Nakhai regarding the permissibility of the imam's takbir before the mu'adhdhin commences the iqāmah. Ali said: Both statements are erroneous—Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Harun ibn Ma'ruf and Harmalah ibn Yahya both narrated to us, stating: Ibn Wahb narrated to us, informing us: Yunus—meaning Ibn Yazid—informed us from Ibn Shihab, who informed us: Abu Salamah ibn Abd al-Rahman ibn Awf informed us that he heard Abu Hurairah say: "The prayer was established, so we stood and straightened the rows before Allah's Messenger—peace and blessings be upon him—came out to us. When he stood at his prayer place but before uttering the takbir, he remembered something and turned back. He told us: 'Stay in your places.' We remained standing, waiting until he came out to us after having performed ghusl, with water dripping from his head. Then he uttered the takbir and led us in prayer?"

وَمِنْ طَرِيقِ أَبِي حُمَيْدٍ السَّاعِدِيِّ أَنَّهُ قَالَ: «أَنَا أَعْلَمُكُمْ بِصَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " ثُمَّ وَصَفَ: أَنَّهُ كَبَّرَ فَرَفَعَ يَدَيْهِ إِلَى وَجْهِهِ ثُمَّ وَضَعَ يَمِينَهُ عَلَى شِمَالِهِ» .

وَرُوِّينَا فِعْلَ ذَلِكَ عَنْ أَبِي مِجْلَزٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَعَمْرِو بْنِ مَيْمُونٍ، وَمُحَمَّدِ بْنِ سِيرِينَ، وَأَيُّوبَ السِّخْتِيَانِيِّ، وَحَمَّادِ بْنِ سَلَمَةَ: أَنَّهُمْ كَانُوا يَفْعَلُونَ ذَلِكَ؟ وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَدَاوُد؟

[مَسْأَلَةٌ لَا يُكَبِّرُ الْإِمَامُ حَتَّى يَسْتَوِيَ مَنْ وَرَاءَهُ]

٤٤٩ - مَسْأَلَةٌ: وَنَسْتَحِبُّ أَنْ لَا يُكَبِّرَ الْإِمَامُ إلَّا حَتَّى يَسْتَوِيَ كُلُّ مَنْ وَرَاءَهُ فِي صَفٍّ أَوْ أَكْثَرَ مِنْ صَفٍّ، فَإِنْ كَبَّرَ قَبْلَ ذَلِكَ أَسَاءَ وَأَجْزَأَهُ.

وَقَالَ أَبُو حَنِيفَةَ: إذَا قَالَ الْمُقِيمُ " قَدْ قَامَتْ الصَّلَاةُ " فَلْيُكَبِّرْ الْإِمَامُ؟ وَرُوِّينَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ إجَازَةَ تَكْبِيرِ الْإِمَامِ قَبْلَ أَنْ يَأْخُذَ الْمُؤَذِّنُ فِي الْإِقَامَةِ؟ قَالَ عَلِيٌّ: وَكِلَا الْقَوْلَيْنِ خَطَأٌ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا هَارُونُ بْنُ مَعْرُوفٍ وَحَرْمَلَةُ بْنُ يَحْيَى قَالَا: ثنا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ هُوَ ابْنُ يَزِيدَ - عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: «أُقِيمَتْ الصَّلَاةُ فَقُمْنَا فَعَدَلْنَا الصُّفُوفَ قَبْلَ أَنْ يَخْرُجَ إلَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، فَأَتَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى إذَا قَامَ فِي مُصَلَّاهُ وَقَبْلَ أَنْ يُكَبِّرَ ذَكَرَ فَانْصَرَفَ، وَقَالَ لَنَا: مَكَانَكُمْ، فَلَمْ نَزَلْ قِيَامًا نَنْتَظِرُهُ حَتَّى خَرَجَ إلَيْنَا وَقَدْ اغْتَسَلَ، يَنْطِفُ رَأْسُهُ مَاءً، فَكَبَّرَ فَصَلَّى بِنَا؟»

حَدَّثَنَا حَمَّامٌ ثِنَا ابْنُ مُفَرِّجٍ ثِنَا ابْنُ الْأَعْرَابِيِّ ثِنَا الدَّبَرِيُّ ثِنَا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ «أَنَسٍ قَالَ: كَانَتْ الصَّلَاةُ تُقَامُ فَيُكَلِّمُ الرَّجُلُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْحَاجَةِ تَكُونُ لَهُ، يَقُومُ بَيْنَهُ وَبَيْنَ الْقِبْلَةِ قَائِمًا يُكَلِّمُهُ، فَرُبَّمَا رَأَيْت بَعْضَ الْقَوْمِ يَنْعَسُ مِنْ طُولِ قِيَامِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

L6990 Hammam narrated to us, Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabari narrated to us, Abd al-Razzaq narrated to us from Ma'mar, from Thabit al-Bunani, from Anas, who said: "The prayer would be established, and a man would speak to the Prophet (peace be upon him) about a need he had, standing there between him and the *qibla* while conversing with him. Sometimes I saw some of the people becoming drowsy due to the prolonged standing of the Prophet (peace be upon him)."

وَأَيْضًا - «فَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْمَأْمُومِينَ وَإِذَا كَبَّرَ فَكَبِّرُوا» يَعْنِي الْإِمَامَ -: مُبْطِلٌ لِقَوْلِ أَبِي حَنِيفَةَ، لِأَنَّهُ إذَا كَبَّرَ الْإِمَامُ وَلَمْ يُتِمَّ الْمُقِيمُ الْإِقَامَةَ لَمْ يُمْكِنْ الْمُقِيمُ أَنْ يُكَبِّرَ إذَا كَبَّرَ الْإِمَامُ، فَأَبُو حَنِيفَةَ يَأْمُرُ بِخِلَافِ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ يُكَبِّرَ إذَا كَبَّرَ الْإِمَامُ؟ وَرُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: كَانَ عُمَرُ يَبْعَثُ رِجَالًا يُسَوُّونَ الصُّفُوفَ فَإِذَا جَاءُوهُ كَبَّرَ

L6991 Moreover, the statement of the Messenger of Allah—peace and blessings be upon him—to the congregation, "When he pronounces the takbir, pronounce the takbir," referring to the Imam, invalidates Abu Hanifa's opinion. This is because if the Imam pronounces the takbir while the one leading the prayer has not yet completed the iqamah, it becomes impossible for the one leading the prayer to pronounce the takbir when the Imam does so. Thus, does Abu Hanifa's ruling—which instructs pronouncing the takbir when the Imam does—not contradict the command of the Messenger of Allah, peace and blessings be upon him? It has been narrated to us through the chain of Yahya ibn Sa'id al-Qattan, from 'Ubayd Allah ibn 'Umar, from Nafi', from Ibn 'Umar, who said: "Umar would dispatch men to straighten the prayer rows, and when they came to him, he would pronounce the takbir."

وَعَنْ مَالِكٍ عَنْ أَبِي النَّضْرِ عَنْ مَالِكِ بْنِ أَبِي عَامِرٍ قَالَ: كَانَ عُثْمَانُ بْنُ عَفَّانَ لَا يُكَبِّرُ حَتَّى يَأْتِيَهُ رِجَالٌ قَدْ وَكَّلَهُمْ بِتَسْوِيَةِ الصُّفُوفِ، فَيُخْبِرُونَهُ أَنَّهَا قَدْ اسْتَوَتْ فَيُكَبِّرُ.

L6992 From Malik, from Abu al-Nadr, from Malik ibn Abi Amir, who said: Uthman ibn Affan would not begin the *takbir* until men he had assigned to straighten the rows came to him. They would inform him that the rows were properly aligned, and then he would begin the *takbir*.

وَعَنْ وَكِيعٍ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ عَبْدِ اللَّهِ بْنِ مَيْسَرَةَ عَنْ مَعْقِلِ بْنِ أَبِي قَيْسٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ: أَنَّهُ كَانَ يَنْتَظِرُ بَعْدَ مَا أُقِيمَتْ الصَّلَاةُ قَلِيلًا؟

L6993 And from Waki' from Mis'ar ibn Kidām from 'Abdullāh ibn Maysarah from Ma'qil ibn Abī Qays from 'Umar ibn al-Khaṭṭāb: That he would wait briefly after the *iqamah* had been called?

وَرُوِّينَا عَنْ الْحَسَنِ بْنِ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمَا - نَحْوَ هَذَا؟ .

L6994–6995 Was it narrated to us from Al-Ḥasan ibn ʿAlī—may Allah be pleased with them both—similar to this?

L6996 So, this is the action of the two caliphs in the presence of the Companions (may Allah be pleased with them) and their consensus with them on that? It has been narrated to us from al-Ḥajjāj ibn al-Minhāl, from ʿAbdullāh ibn Dāwūd al-Khuraibī, who said: Sufyān ath-Thawrī gave the call to prayer from

the minaret and performed the iqāmah from the minaret, then he descended and led us in prayer.

فَهَذَا فِعْلُ الْخَلِيفَتَيْنِ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَإِجْمَاعُهُمْ مَعَهُمْ عَلَى ذَلِكَ؟ وَرُوِّينَا عَنْ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ عَبْدِ اللَّهِ بْنِ دَاوُد الْخُرَيْبِيِّ قَالَ: أَذَّنَ سُفْيَانُ الثَّوْرِيُّ فِي الْمَنَارِ وَأَقَامَ فِي الْمَنَارِ، ثُمَّ نَزَلَ فَأَمَّنَا.

L6997 Our position aligns with that of Mālik, al-Shāfiʿī, Aḥmad, Dāwūd, Muḥammad b. al-Ḥasan, and one of the two doctrines held by Abū Yūsuf.

وَقَوْلُنَا هُوَ قَوْلُ مَالِكٍ وَالشَّافِعِيِّ، وَأَحْمَدَ، وَدَاوُد، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَأَحَدُ قَوْلَيْ أَبِي يُوسُفَ.

L6998 Ali said: The adherent of Abu Hanifah's school cited as evidence a narration transmitted by us through the chain of Waki' from Sufyan al-Thawri from 'Asim al-Ahwal from Abu 'Uthman al-Nahdi: "That Bilal said to the Messenger of Allah (peace be upon him): 'O Messenger of Allah, do not precede me in saying Ameen.'"

قَالَ عَلِيٌّ: وَاحْتَجَّ مُقَلِّدُ أَبِي حَنِيفَةَ بِأَثَرٍ رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَاصِمٍ الْأَحْوَلِ عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ «أَنَّ بِلَالًا قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: يَا رَسُولَ اللَّهِ، لَا تَسْبِقْنِي بِآمِينَ» .

L6999 Via the chain of Abd al-Razzaq, from Maʿmar, from Yaḥyā ibn Abī Kathīr, from Abū Salama ibn ʿAbd al-Raḥmān, from Abū Hurayra: He (Abū Hurayra) was the muʾadhdhin for al-ʿAlāʾ ibn al-Ḥaḍramī in Bahrain. Abū Hurayra said to him, "You must wait for me at [the time of] Amīn, or I will not call the adhān for you."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ: أَنَّهُ كَانَ مُؤَذِّنًا لِلْعَلَاءِ بْنِ الْحَضْرَمِيِّ بِالْبَحْرَيْنِ فَقَالَ لَهُ أَبُو هُرَيْرَةَ: لِتَنْتَظِرَنِّي بِآمِينَ أَوْ لَا أُؤَذِّنُ لَك.

L7000 Ali said: Their reliance on these two narrations ranks among the most repugnant forms of religious obfuscation—a reckless venture into disgrace through deceiving those beguiled by them, serving as comprehensive evidence of their utter lack of piety. This is because they fundamentally reject any legitimacy for the follower to recite behind the Imam. Rather, they assert that the Imam should recite, "I have directed my face..." [Quran 6:79] through the end of the transmitted wording before reciting the Opening Chapter (Al-Fatihah). By necessity and established custom, they acknowledge that when the caller of the Iqamah declares, "The prayer has been established," and the Imam pronounces "Allahu Akbar," nothing remains for the caller except to say: "Allahu Akbar, Allahu Akbar, La ilaha illa Allah."[1]

قَالَ عَلِيٌّ: وَاحْتِجَاجُهُمْ بِهَذَيْنِ الْأَثَرَيْنِ مِنْ أَقْبَحِ مَا يَكُونُ مِنَ التَّمْوِيهِ فِي الدِّينِ وَإِقْدَامٌ عَلَى الْفَضِيحَةِ بِالتَّدْلِيسِ عَلَى مَنْ اغْتَرَّ بِهِمْ وَدَلِيلٌ عَلَى قِلَّةِ الْوَرَعِ جُمْلَةً، لِأَنَّهُمْ لَا يَرَوْنَ لِلْمَأْمُومِ أَنْ يَقْرَأَ خَلْفَ الْإِمَامِ أَصْلًا بَلْ يَرَوْنَ لِلْإِمَامِ أَنْ يَقُولَ: {وَجَّهْتُ وَجْهِيَ} [الأنعام: ٧٩] إِلَى آخِرِ الْكَلَامِ الْمَرْوِيِّ فِي ذَلِكَ قَبْلَ أَنْ يَقْرَأَ " أُمَّ الْقُرْآنِ " وَبِالضَّرُورَةِ وَالْمُشَاهَدَةِ يَدْرُونَ أَنَّ الْمُقِيمَ إِذَا قَالَ: " قَدْ قَامَتْ الصَّلَاةُ " فَكَبَّرَ الْإِمَامُ فَلَمْ يَبْقَ عَلَى الْمُقِيمِ شَيْءٌ إِلَّا أَنْ يَقُولَ: " اللَّهُ أَكْبَرُ، اللَّهُ أَكْبَرُ، لَا إِلَهَ إِلَّا اللَّهُ ".

L7001 It is utterly and unequivocally impossible, without any ambiguity, that the Imam would complete reciting Surah Al-Fatiha (The Opening) before the caller (mu'adhdhin) completing the iqamah finishes proclaiming "Allah is the Greatest, Allah is the Greatest; there is no deity but Allah," and then repeats "Allahu Akbar."

فَمِنْ الْمُحَالِ الْمُمْتَنِعِ الَّذِي لَا يُشْكِلُ أَنْ يَكُونَ الْإِمَامُ يُتِمُّ قِرَاءَةَ " أُمِّ الْقُرْآنِ " قَبْلَ أَنْ يُتِمَّ الْمُقِيمُ قَوْلَ " اللَّهُ أَكْبَرُ اللَّهُ أَكْبَرُ، لَا إِلَهَ إِلَّا اللَّهُ " ثُمَّ يُكَبِّرَ.

L7002 So how can this be evidence that the *Imam* utters the *Takbīr* when the caller of the *iqāmah* says, "The prayer has been established"?

فَكَيْفَ يَكُونُ هَذَا دَلِيلًا عَلَى أَنَّ الْإِمَامَ يُكَبِّرُ إِذَا قَالَ الْمُقِيمُ " قَدْ قَامَتْ الصَّلَاةُ ".

L7003 Rather, if the imam were to pronounce the *takbīr* simultaneously with the *muqim*'s commencement of the *iqamah*, he would not have completed *Umm al-Qur'ān* at all except after the *muqim* has concluded the *iqamah* and after the imam has uttered the opening *takbīr* for *iḥrām*. How then could this be conceivable with only three words?

بَلْ لَوْ كَبَّرَ الْإِمَامُ مَعَ ابْتِدَاءِ الْمُقِيمِ الْإِقَامَةَ لَمَا أَتَمَّ " أُمَّ الْقُرْآنِ " أَصْلًا إِلَّا بَعْدَ إتْمَامِ الْمُقِيمِ الْإِقَامَةَ، وَبَعْدَ أَنْ يُكَبِّرَ لِلْإِحْرَامِ، فَكَيْفَ بِثَلَاثِ كَلِمَاتٍ؟

L7004–7005 Should they not have been ashamed to engage in such feeble obfuscation within the religion of Islam? If it is asked: "What is the meaning of Bilāl and Abū Hurayrah's statement: 'Do not precede me in saying Āmīn'?" We reply: Its meaning is manifestly clear, for the Prophet—peace and blessings of Allah be upon him—informed: "When the imam says 'Āmīn,' the angels say 'Āmīn.' If his utterance of Āmīn corresponds with that of the angels, his past sins are forgiven." Thus Bilāl sought to delay his own saying of "Āmīn" alongside the Messenger of Allah—peace and blessings of Allah be upon him—so that he

فَلَقَدْ كَانَ يَنْبَغِي لَهُمْ أَنْ يَسْتَحْيُوا مِنْ التَّمْوِيهِ فِي دِينِ الْإِسْلَامِ بِمِثْلِ هَذَا الضَّعْفِ؟ فَإِنْ قِيلَ: مَا مَعْنَى قَوْلِ بِلَالٍ، وَأَبِي هُرَيْرَةَ: لَا تَسْبِقْنِي بِآمِينَ؟ قُلْنَا: مَعْنَاهُ بَيِّنٌ فِي غَايَةِ الْبَيَانِ، لِأَنَّ «النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخْبَرَ أَنَّ الْإِمَامَ إذَا قَالَ " آمِينَ " قَالَتْ الْمَلَائِكَةُ " آمِينَ " فَإِنْ وَافَقَ تَأْمِينُهُ تَأْمِينَ الْمَلَائِكَةِ غُفِرَ لَهُ مَا تَقَدَّمَ مِنْ ذَنْبِهِ» ، فَأَرَادَ بِلَالٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَتَمَهَّلَ فِي قَوْلِ " آمِينَ " فَيَجْتَمِعَ مَعَهُ فِي

[1] **Qur'an references (L7000):** Qur'an 6:79 (Al-An'am).

might unite with him in uttering it, hoping to align with the angels' Āmīn. This is what Abū Hurayrah sought from al-ʿAlāʾ. Thus their reliance upon these two narrations is invalidated. They further obfuscated by citing what Aḥmad ibn Muḥammad al-Ṭalamankī narrated to us, stating: Ibn Mufarrij narrated to us; Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār narrated to us; Muḥammad ibn al-Muthannā narrated to us; al-Ḥajjāj ibn Farrukh narrated to us from al-ʿAwwām ibn Ḥawshab, from ʿAbdullāh ibn Abī Awfā—may Allah be pleased with him—who said: "When Bilāl proclaimed 'The prayer has commenced,' Allah's Messenger—peace and blessings of Allah be upon him—would rise to pronounce the Takbīr."

L7006 Al-Bazzār said: "No one narrated this except through this chain, and they also narrated something similar from 'Umar ibn al-Khaṭṭāb." 'Alī said: "These two reports are fabricated. As for the ḥadīth of Ibn Abī Awfā, it is transmitted through al-Ḥajjāj ibn Farrukh, who is unanimously deemed weak and unreliable. As for the report of 'Umar, it is transmitted through Sharīk the judge, who is weak—thus reliance on them is void. We have already mentioned that what is authentically established from the Messenger of Allah—peace and blessings be upon him—and from 'Umar contradicts this." 'Alī said: "They say: 'We do not accept the single-narrator report in matters of significant societal impact.'" 'Alī said: "This pertains to matters of significant societal impact. If their claim were true, it would not have remained unknown to other jurists. Yet they accepted a weak report in this matter and abandoned the established narrations."

L7007 **Issue: It is recommended for every person performing prayer, when encountering a verse of mercy, to ask Allah the Exalted for His bounty.**

L7008–7010 450 - Issue: It is recommended for every person praying that when encountering a verse of mercy, they should ask Allah the Exalted from His bounty, and when encountering a verse of punishment, they should seek refuge with Allah the Mighty and Majestic from the Fire. Narrated to us by ʿAbdullāh ibn Rabīʿ; Muḥammad ibn Muʿāwiyah narrated to us; Aḥmad ibn Shuʿayb narrated to us; Muḥammad ibn... Bashshar reported to me: Yaḥya

قَوْلَهَا، رَجَاءً لِمُوَافَقَةِ تَأْمِينِ الْمَلَائِكَةِ، وَهَذَا الَّذِي أَرَادَ أَبُو هُرَيْرَةَ مِنْ الْعَلَاءِ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَيْنِ الْأَثَرَيْنِ؟ وَمَوَّهُوا أَيْضًا بِمَا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ قَالَ: ثنا ابْنُ مُفَرِّجٍ ثنا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا الْحَجَّاجُ بْنُ فَرُّوخَ عَنْ الْعَوَّامِ بْنِ حَوْشَبٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي أَوْفَى قَالَ: «كَانَ بِلَالٌ إذَا قَالَ: قَدْ قَامَتْ الصَّلَاةُ نَهَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالتَّكْبِيرِ» .

قَالَ الْبَزَّارُ: لَمْ يَرْوِ هَذَا أَحَدٌ مِنْ غَيْرِ هَذَا الطَّرِيقِ وَرَوَوْا نَحْوَ هَذَا أَيْضًا عَنْ عُمَرَ بْنِ الْخَطَّابِ؟ قَالَ عَلِيٌّ: وَهَذَانِ أَثَرَانِ مَكْذُوبَانِ؟ أَمَّا حَدِيثُ ابْنِ أَبِي أَوْفَى فَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ فَرُّوخَ، وَهُوَ مُتَّفَقٌ عَلَى ضَعْفِهِ وَتَرْكِ الِاحْتِجَاجِ بِهِ وَأَمَّا خَبَرُ عُمَرَ فَمِنْ طَرِيقِ شَرِيكٍ الْقَاضِي، وَهُوَ ضَعِيفٌ - فَبَطَلَ التَّعَلُّقُ بِهِمَا؟ وَقَدْ ذَكَرْنَا أَنَّ الثَّابِتَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَنْ عُمَرَ خِلَافُ هَذَا؟ قَالَ عَلِيٌّ: وَهُمْ يَقُولُونَ: لَا نَقْبَلُ خَبَرَ الْوَاحِدِ فِيمَا تَعْظُمُ الْبَلْوَى بِهِ؟ قَالَ عَلِيٌّ: وَهَذَا مِمَّا تَعْظُمُ بِهِ الْبَلْوَى، فَلَوْ كَانَ كَمَا يَقُولُونَ مَا خَفِيَ عَلَى سَائِرِ الْفُقَهَاءِ، وَقَدْ قَبِلُوا فِيهِ خَبَرًا وَاهِيًا، وَتَرَكُوا لَهُ الْآثَارَ الثَّابِتَةَ

[مَسْأَلَةٌ وَيُسْتَحَبُّ لِكُلِّ مُصَلٍّ إذَا مَرَّ بِآيَةِ رَحْمَةٍ أَنْ يَسْأَلَ اللَّهَ تَعَالَى مِنْ فَضْلِهِ]

٤٥٠ - مَسْأَلَةٌ: وَنَسْتَحِبُّ لِكُلِّ مُصَلٍّ إذَا مَرَّ بِآيَةِ رَحْمَةٍ أَنْ يَسْأَلَ اللَّهَ تَعَالَى مِنْ فَضْلِهِ، وَإِذَا مَرَّ بِآيَةِ عَذَابٍ أَنْ يَسْتَعِيذَ بِاَللَّهِ عَزَّ وَجَلَّ مِنْ النَّارِ؟ : حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ حَدَّثَنِي يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ،

ibn Saʿīd al-Qaṭṭān, ʿAbd al-Raḥmān ibn Mahdī, and Muḥammad ibn Abī ʿAdī—all of them from Shuʿbah from al-Aʿmash from Saʿd ibn ʿUbaydah from al-Mustawrid ibn al-Aḥnaf from Ṣilah ibn Zufar from Ḥudhayfah: That he prayed beside the Prophet—peace be upon him—during a night. Whenever the Prophet passed a verse of punishment, he would pause and seek refuge, and whenever he passed a verse of mercy, he would pause and supplicate. In his bowing, he would say: "Glory be to my Lord, the Most Great," and in his prostration: "Glory be to my Lord, the Most High."

وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، وَمُحَمَّدُ بْنُ أَبِي عَدِيٍّ، كُلُّهُمْ عَنْ شُعْبَةَ عَنْ الْأَعْمَشِ عَنْ سَعْدِ بْنِ عُبَيْدَةَ عَنْ الْمُسْتَوْرِدِ بْنِ الْأَحْنَفِ عَنْ صِلَةَ بْنِ زُفَرَ «عَنْ حُذَيْفَةَ: أَنَّهُ صَلَّى إِلَى جَنْبِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَيْلَةً، فَكَانَ إِذَا مَرَّ بِآيَةِ عَذَابٍ وَقَفَ فَتَعَوَّذَ، وَإِذَا مَرَّ بِآيَةِ رَحْمَةٍ وَقَفَ فَدَعَا، وَكَانَ يَقُولُ فِي رُكُوعِهِ: سُبْحَانَ رَبِّيَ الْعَظِيمِ، وَفِي سُجُودِهِ: سُبْحَانَ رَبِّيَ الْأَعْلَى» .

L7011 From the chain of Abd al-Razzaq from Sufyan al-Thawri from al-A'mash from Abu al-Duha: that Aisha, the Mother of the Believers, encountered this verse: {So Allah bestowed favor upon us and protected us from the punishment of the scorching infernal wind} [al-Tur: 27], so she said: "O Lord, bestow Your favor upon me and protect me from the punishment of the scorching infernal wind?" And through him to Sufyan: from al-Suddiyy and Mis'ar. Al-Suddiyy said: from Abd Khayr al-Hamdani who said: I heard Ali ibn Abi Talib recite in prayer "Sabbih isma rabbika al-a'la" (Glorify the name of your Lord, the Most High) [al-A'la: 1], so he said: "Glory be to my Lord, the Most High?" And Mis'ar said: from Umayr ibn Sa'id that Abu Musa al-Ash'ari recited in the Friday prayer {Sabbih isma rabbika al-a'la} (Glorify the name of your Lord, the Most High) [al-A'la: 1], so he said: "Glory be to my Lord, the Most High?" And from Abd al-Razzaq from Abu Ishaq al-Sabi'i from Sa'id ibn Jubayr from Ibn Abbas: that when he recited {Is not He able to bring the dead to life?} [al-Qiyamah: 40], he would say: "O Allah, certainly!" and when he recited {Sabbih isma rabbika al-a'la} (Glorify the name of your Lord, the Most High) [al-A'la: 1], he would say: "Glory be to my Lord, the Most High?" And from Shu'bah from Abu Ishaq from Sa'id ibn Jubayr from Ibn Abbas: a similar narration.[2]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ أَبِي الضُّحَى: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ مَرَّتْ بِهَذِهِ الْآيَةِ {فَمَنَّ اللَّهُ عَلَيْنَا وَوَقَانَا عَذَابَ السَّمُومِ} [الطور: ٢٧] فَقَالَتْ: رَبِّ مُنَّ عَلَيَّ وَقِنِي عَذَابَ السَّمُومِ؟ وَبِهِ إلَى سُفْيَانَ: عَنْ السُّدِّيِّ وَمِسْعَرٍ قَالَ السُّدِّيُّ: عَنْ عَبْدِ خَيْرٍ الْهَمْدَانِيِّ قَالَ: سَمِعْت عَلِيَّ بْنَ أَبِي طَالِبٍ قَرَأَ فِي صَلَاةٍ " سَبِّحْ اسْمَ رَبِّكَ الْأَعْلَى " فَقَالَ: سُبْحَانَ رَبِّيَ الْأَعْلَى؟ وَقَالَ مِسْعَرٌ: عَنْ عُمَيْرِ بْنِ سَعِيدٍ أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ قَرَأَ فِي الْجُمُعَةِ {سَبِّحِ اسْمَ رَبِّكَ الأَعْلَى} [الأعلى: ١] فَقَالَ: سُبْحَانَ رَبِّيَ الْأَعْلَى؟ وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ كَانَ إذَا قَرَأَ {أَلَيْسَ ذَلِكَ بِقَادِرٍ عَلَى أَنْ يُحْيِيَ الْمَوْتَى} [القيامة: ٤٠] قَالَ: اللَّهُمَّ بَلَى وَإِذَا قَرَأَ {سَبِّحِ اسْمَ رَبِّكَ الأَعْلَى} [الأعلى: ١] قَالَ: سُبْحَانَ رَبِّيَ الْأَعْلَى؟ وَعَنْ شُعْبَةَ عَنْ أَبِي إِسْحَاقَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ نَحْوُهُ.

L7012 From 'Alqama: He recited, "My Lord, increase me in knowledge" [20:114], then said, "My Lord, increase me in knowledge?"[3]

وَعَنْ عَلْقَمَةَ: أَنَّهُ قَرَأَ {رَبِّ زِدْنِي عِلْمًا} [طه: ١١٤] فَقَالَ: رَبِّ زِدْنِي عِلْمًا؟

[2] **Qur'an references (L7011):** Qur'an 52:27 (At-Tur); Qur'an 87:1 (Al-A'la); Qur'an 75:40 (Al-Qiyamah).

[3] **Qur'an references (L7012):** Qur'an 20:114 (Taha).

L7013 From Hujr al-Madari: He would pray, and when he recited “Have you considered what you emit?” (al-Wāqiʿah 56:58) and “Do you create it, or are We the Creators?” (al-Wāqiʿah 56:59), he would say: “Rather, You are my Lord.”[4]

وَعَنْ حُجْرٌ الْمَدَرِيِّ أَنَّهُ كَانَ يُصَلِّي، فَإِذَا قَرَأَ {أَفَرَأَيْتُمْ مَا تُمْنُونَ} [الواقعة: ٥٨] {أَأَنْتُمْ تَخْلُقُونَهُ أَمْ نَحْنُ الْخَالِقُونَ} [الواقعة: ٥٩] قَالَ: بَلْ أَنْتَ رَبِّ

L7014 **Issue: When the one praying says, “Allah hears the one who praises Him, our Lord, and to You is all praise.”**

[مَسْأَلَةٌ إِذَا قَالَ المصلي سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ رَبَّنَا وَلَك الْحَمْدُ]

L7015 451 - Issue: We recommend for every person praying, when saying: “Allah hears those who praise Him; Our Lord, and to You is all praise,” to add: “the fullness of the heavens and the earth, and the fullness of what You will of anything beyond.” If one adds beyond this: “O You worthy of praise and glory, the truest statement a servant has said, and all of us are Your servants. There is no preventer of what You grant nor giver of what You withhold, nor can the possessor of might benefit from his might originating from You,” then that is good. If one limits oneself to the first [phrase], then that is good.

٤٥١ - مَسْأَلَةٌ: وَنَسْتَحِبُّ لِكُلِّ مُصَلٍّ إِذَا قَالَ: " سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ، رَبَّنَا وَلَك الْحَمْدُ " أَنْ يَقُولَ " مِلْءَ السَّمَوَاتِ وَالْأَرْضِ، وَمِلْءَ مَا شِئْت مِنْ شَيْءٍ بَعْدُ " فَإِنْ زَادَ عَلَى ذَلِكَ " أَهْلَ الثَّنَاءِ وَالْمَجْدِ، أَحَقُّ مَا قَالَ الْعَبْدُ، وَكُلُّنَا لَك عَبْدٌ، لَا مَانِعَ لِمَا أَعْطَيْت وَلَا مُعْطِيَ لِمَا مَنَعْت، وَلَا يَنْفَعُ ذَا الْجَدِّ مِنْك الْجَدُّ " فَحَسَنٌ، وَإِنْ اقْتَصَرَ عَلَى الْأَوَّلِ: فَحَسَنٌ.

L7016–7017 The proof of that is what Ḥammām narrated to us: ʿAbbās ibn Aṣbagh narrated to us, Muḥammad ibn ʿAbd al-Malik ibn Ayman narrated to us, ʿAbdullāh ibn Aḥmad ibn Ḥanbal narrated to us, saying: My father narrated to me from Abū Muʿāwiyah, who narrated from al-Aʿmash, from ʿUbayd ibn al-Ḥasan, from ʿAbdullāh ibn Abī Awfā, who said: “When the Messenger of Allah, may Allah’s peace and blessings be upon him, said, ‘Allah hears those who praise Him,’ he would say: ‘O Allah, our Lord, to You belongs all praise: the fullness of the heavens, the fullness of the earth, and the fullness of what You will of anything besides.’”

بُرْهَانُ ذَلِكَ -: مَا حَدَّثَنَاهُ حَمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ حَدَّثَنِي أَبِي ثنا أَبُو مُعَاوِيَةَ ثنا الْأَعْمَشُ عَنْ عُبَيْدِ بْنِ الْحَسَنِ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي أَوْفَى قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا قَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ، قَالَ: اللَّهُمَّ رَبَّنَا لَكَ الْحَمْدُ، مِلْءَ السَّمَاوَاتِ، وَمِلْءَ الْأَرْضِ، وَمِلْءَ مَا شِئْتَ مِنْ شَيْءٍ بَعْدُ» .

L7018 Hammam narrated to us, Abbas narrated to us, Ibn Ayman narrated to us, Ahmad ibn Zuhayr ibn Harb narrated to us, his father narrated to us, Waki’ narrated to us, Al-A’mash narrated from Ubayd ibn al-Hasan al-Muzani, who said: I heard Abdullah ibn Abi Awfa say: “When the Messenger of Allah—peace and blessings be upon him—raised his head from bowing, he would say: ’Allah hears the one who praises Him. O Allah, our Lord, to You belongs all

حَدَّثَنَا حَمَامٌ ثنا عَبَّاسٌ ثنا ابْنُ أَيْمَنَ ثنا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ ثنا أَبِي ثنا وَكِيعٌ ثنا الْأَعْمَشُ عَنْ عُبَيْدِ بْنِ الْحَسَنِ الْمُزَنِيِّ قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ أَبِي أَوْفَى يَقُولُ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا رَفَعَ رَأْسَهُ مِنْ الرُّكُوعِ قَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ، اللَّهُمَّ رَبَّنَا وَلَكَ الْحَمْدُ، مِلْءَ السَّمَاوَاتِ، وَمِلْءَ الْأَرْضِ، وَمِلْءَ مَا شِئْت مِنْ شَيْءٍ بَعْدُ» .

[4] **Qur’an references (L7013):** Qur’an 56:58 (Al-Waqi’ah); Qur’an 56:59 (Al-Waqi’ah).

praise—the fullness of the heavens, the fullness of the earth, and the fullness of what You will of anything thereafter.”’

قَالَ عَلِيٌّ: وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثِنَا أَحْمَدُ بْنُ فَتْحٍ ثِنَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثِنَا أَحْمَدُ بْنُ مُحَمَّدٍ ثِنَا أَحْمَدُ بْنُ عَلِيٍّ ثِنَا مُسْلِمُ بْنُ الْحَجَّاجِ ثِنَا عَبْدُ اللَّهِ بْنُ أَبِي شَيْبَةَ أَبُو بَكْرٍ ثِنَا أَبُو مُعَاوِيَةَ، وَوَكِيعٌ عَنْ الْأَعْمَشِ عَنْ عُبَيْدِ بْنِ الْحَسَنِ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي أَوْفَى قَالَ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا رَفَعَ ظَهْرَهُ مِنْ الرُّكُوعِ قَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ، اللَّهُمَّ رَبَّنَا لَكَ الْحَمْدُ، مِلْءَ السَّمَاوَاتِ، وَمِلْءَ الْأَرْضِ، وَمِلْءَ مَا شِئْتَ مِنْ شَيْءٍ بَعْدُ» .

L7019 Ali said: Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Abdullah ibn Abi Shaybah (Abu Bakr) narrated to us, Abu Muawiyah narrated to us, and Waki‘ narrated to us from al-A‘mash from Ubayd ibn al-Hasan from Abdullah ibn Abi Awfa, who said: “When the Messenger of Allah (peace and blessings be upon him) raised his back from bowing, he would say: ’Allah hears the one who praises Him. O Allah, our Lord, to You belongs all praise—the fullness of the heavens, the fullness of the earth, and the fullness of what You will of anything after that.”’[5]

وَبِهِ إلَى مُسْلِمٍ: ثِنَا عَبْدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ الدَّارِمِيُّ ثِنَا مَرْوَانُ بْنُ مُحَمَّدٍ الدِّمَشْقِيُّ ثِنَا سَعِيدُ بْنُ عَبْدِ الْعَزِيزِ عَنْ عَطِيَّةَ بْنِ قَيْسٍ عَنْ قَزَعَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا رَفَعَ رَأْسَهُ مِنْ الرُّكُوعِ قَالَ: رَبَّنَا لَكَ الْحَمْدُ مِلْءَ السَّمَاوَاتِ وَالْأَرْضِ وَمِلْءَ مَا شِئْتَ مِنْ شَيْءٍ بَعْدُ، أَهْلَ الثَّنَاءِ وَالْمَجْدِ أَحَقُّ مَا قَالَ الْعَبْدُ - وَكُلُّنَا لَكَ عَبْدٌ - اللَّهُمَّ لَا مَانِعَ لِمَا أَعْطَيْتَ، وَلَا مُعْطِيَ لِمَا مَنَعْتَ، وَلَا يَنْفَعُ ذَا الْجَدِّ مِنْكَ الْجَدُّ» .

L7020 And through him to Imam Muslim: Abdullah ibn Abdur-Rahman ad-Darimi narrated, Marwan ibn Muhammad ad-Dimashqi narrated, Sa‘eed ibn Abd al-Aziz narrated from ‘Atiyyah ibn Qays from Qaza‘ah from Abu Sa‘eed al-Khudri, who said: “When the Messenger of Allah (peace and blessings of Allah be upon him) raised his head from bowing, he would say: ’Our Lord, to You belongs all praise filling the heavens and the earth and as much as You will of anything beyond that. O Possessor of praise and glory, the truest word a servant has ever said—and all of us are Your servants—O Allah, none can withhold what You grant, none can grant what You withhold, nor can the possessor of might avail them of their might before You.”’

وَبِهِ إلَى مُسْلِمٍ ثِنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثِنَا هُشَيْمُ بْنُ بَشِيرٍ أَنَا هِشَامُ بْنُ حَسَّانٍ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ عَطَاءٍ هُوَ ابْنُ أَبِي رَبَاحٍ - عَنْ ابْنِ عَبَّاسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ إذَا رَفَعَ رَأْسَهُ مِنْ الرُّكُوعِ قَالَ: اللَّهُمَّ رَبَّنَا لَكَ الْحَمْدُ، مِلْءَ السَّمَاوَاتِ، وَمِلْءَ الْأَرْضِ وَمَا بَيْنَهُمَا وَمِلْءَ مَا شِئْتَ مِنْ شَيْءٍ بَعْدُ، أَهْلَ الثَّنَاءِ وَالْمَجْدِ، لَا مَانِعَ لِمَا أَعْطَيْتَ، وَلَا مُعْطِيَ لِمَا مَنَعْتَ، وَلَا يَنْفَعُ ذَا الْجَدِّ مِنْكَ الْجَدُّ» .

L7021–7022 And through him to Muslim: Abu Bakr ibn Abi Shaybah narrated to us: Hushaym ibn Bashir narrated to us, from Hisham ibn Hassan, from Qays ibn Sa’d, from ’Ata’—he is Ibn Abi Rabah—from Ibn ’Abbas: “The Prophet—peace and blessings of Allah be upon him—would say when raising his head from bowing: ’O Allah, our Lord, to You belongs all praise—the fullness of the heavens, the fullness of the earth, the fullness of what lies between them, and the fullness of what You will thereafter. O You Worthy of all praise and majesty, none can withhold what You grant, none can grant what You

[5] **Hadith references (L7019):** Mishkat al-Masabih 875.

withhold, nor can the possessor of power avail himself of his power before You.'"

L7023 Ali said: These are convergent narrations, mass-transmitted hadiths, and mutually supportive reports—it is not permissible for anyone to disregard them. A group of the righteous predecessors held this opinion, as Abdullah ibn Rabīʿ narrated to us from Abdullah ibn Muḥammad ibn ʿUthmān, from Aḥmad ibn Khālid, from ʿAlī ibn ʿAbd al-ʿAzīz, from al-Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salamah, from Qays ibn Saʿd and Ḥammād ibn Abī Sulaymān, from Saʿīd ibn Jubayr: that Ibn ʿAbbās, when raising his head from bowing, would say: "O Allah, our Lord, to You belongs all praise—fill of the heavens, fill of the earth, and fill of whatever You will beyond that."

قَالَ عَلِيٌّ: فَهَذِهِ آثَارٌ مُتَظَاهِرَةٌ وَأَحَادِيثُ مُتَوَاتِرَةٌ، وَرِوَايَاتٌ مُتَنَاصِرَةٌ وَلَا يَسَعُ أَحَدًا الرَّغْبَةُ عَنْهَا؟ وَقَدْ قَالَ بِهَذَا طَائِفَةٌ مِنْ السَّلَفِ الصَّالِحِ -: كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثِنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنُ عُثْمَانَ ثِنَا أَحْمَدُ بْنُ خَالِدٍ ثِنَا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثِنَا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثِنَا حَمَّادُ بْنُ سَلَمَةَ ثِنَا قَيْسُ بْنُ سَعْدٍ، وَحَمَّادُ بْنُ أَبِي سُلَيْمَانَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ: أَنَّ ابْنَ عَبَّاسٍ كَانَ إِذَا رَفَعَ رَأْسَهُ مِنْ الرُّكُوعِ قَالَ: " اللَّهُمَّ رَبَّنَا لَك الْحَمْدُ مِلْءَ السَّمَاوَاتِ وَمِلْءَ الْأَرْضِ، وَمِلْءَ مَا شِئْت مِنْ شَيْءٍ بَعْدُ ".

L7024 Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn Al-Hajjaj narrated to us, Ubaidullah ibn Muadh Al-Anbari narrated to us, Shu'bah narrated from Al-Hakam that Abu Ubaydah ibn Abdullah ibn Mas'ud used to lead people in prayer. When he raised his head from bowing, he would stand long enough to say: "O Allah, our Lord, to You belongs all praise filling the heavens, the earth, and as much as You will of anything beyond that. You are the One deserving of praise and glory. None can withhold what You grant, and none can grant what You withhold. Can the possessor of any grandeur avail against You with his grandeur?" Ali said: "This is also the view of Al-Shafi'i, his companions, and some of our companions. We adopt this position, and success is from Allah, the Exalted."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثِنَا أَحْمَدُ بْنُ فَتْحٍ ثِنَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثِنَا أَحْمَدُ بْنُ عَلِيٍّ ثِنَا مُسْلِمُ بْنُ الْحَجَّاجِ ثِنَا عُبَيْدِ اللَّهِ بْنُ مُعَاذٍ الْعَنْبَرِيُّ ثِنَا شُعْبَةُ عَنْ الْحَكَمِ أَنَّ أَبَا عُبَيْدَةَ بْنَ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ كَانَ يُصَلِّي بِالنَّاسِ، فَإِذَا رَفَعَ رَأْسَهُ مِنْ الرُّكُوعِ قَامَ قَدْرَ مَا يَقُولُ: اللَّهُمَّ رَبَّنَا لَك الْحَمْدُ مِلْءَ السَّمَاوَاتِ وَمِلْءَ الْأَرْضِ، وَمِلْءَ مَا شِئْت مِنْ شَيْءٍ بَعْدُ، أَهْلَ الثَّنَاءِ وَالْمَجْدِ، لَا مَانِعَ لِمَا أَعْطَيْت، وَلَا مُعْطِيَ لِمَا مَنَعْت وَلَا يَنْفَعُ ذَا الْجَدِّ مِنْك الْجَدُّ؟ قَالَ عَلِيٌّ: وَهَذَا أَيْضًا قَوْلُ الشَّافِعِيِّ، وَأَصْحَابِهِ، وَبَعْضِ أَصْحَابِنَا، وَبِهِ نَأْخُذُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

An issue regarding one who prolongs his bowing, prostration, and the standing during his rising from the bowing.

[مَسْأَلَةٌ مِنْ طَوَّلَ رُكُوعَهُ وَسُجُودَهُ وَوُقُوفَهُ فِي رَفْعِهِ مِنْ الرُّكُوعِ]

L7026 452 – Question:

٤٥٢ - مَسْأَلَةٌ:

L7027 If one extends his bowing, prostration, standing while rising from bowing, and sitting between the two prostrations such that each of these equals the duration of his standing recitation before bowing, that is recommended.

فَإِنْ طَوَّلَ الْإِنْسَانُ رُكُوعَهُ وَسُجُودَهُ وَوُقُوفَهُ فِي رَفْعِهِ مِنْ الرُّكُوعِ وَجُلُوسِهِ بَيْنَ السَّجْدَتَيْنِ، حَتَّى يَكُونَ كُلُّ شَيْءٍ مِنْ ذَلِكَ مُسَاوِيًا لِوُقُوفِهِ مُدَّةَ قِرَاءَتِهِ قَبْلَ الرُّكُوعِ فَحَسَنٌ.

L7028–7030 Narrated to us Abdullah ibn Yusuf. Narrated to us Ahmad ibn Fath. Narrated to us Abd al-Wahhab ibn Isa. Narrated to us Ahmad ibn Muhammad. Aḥmad ibn ʿAlī narrated to us, Muslim ibn al-Ḥajjāj narrated to us, Abū Kāmil Fuḍayl ibn al-Ḥusayn al-Jaḥdarī narrated to us from Abū ʿAwānah from Hilāl ibn Abī Ḥumayd from ʿAbd al-Raḥmān ibn Abī Laylā from al-Barāʾ ibn ʿĀẓib, who said: “I attentively observed the prayer with Muḥammad—may Allah bless him and grant him peace—and found his standing, his *rukūʿ*, his rising from *rukūʿ*, his prostration, then his sitting between the two prostrations, followed by another prostration, then his sitting, and his sitting between the *taslīm* and departure to be nearly equal in duration.”

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو كَامِلٍ فُضَيْلُ بْنُ الْحُسَيْنِ الْجَحْدَرِيُّ عَنْ أَبِي عَوَانَةَ عَنْ هِلَالِ بْنِ أَبِي حُمَيْدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ الْبَرَاءِ بْنِ عَازِبٍ قَالَ «رَمَقْتُ الصَّلَاةَ مَعَ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَجَدْتُ قِيَامَهُ فَرَكْعَتَهُ فَاعْتِدَالَهُ بَعْدَ رُكُوعِهِ فَسَجْدَتَهُ فَجِلْسَتَهُ بَيْنَ السَّجْدَتَيْنِ فَسَجْدَتَهُ فَجِلْسَتَهُ وَجِلْسَتَهُ مَا بَيْنَ التَّسْلِيمِ وَالِانْصِرَافِ قَرِيبًا مِنْ السَّوَاءِ» .

L7031 And through him to Muslim: Abu Bakr ibn Nafiʿ al-ʿAbdi narrated to us, Bahz ibn Asad narrated to us, Hammad said: Thabit reported from Anas, who said: “You never prayed behind anyone whose prayer was more concise yet properly complete than that of the Messenger of Allah (peace and blessings be upon him). The prayer of the Messenger of Allah (peace and blessings be upon him) was moderate, and Abu Bakr’s prayer was moderate. When ʿUmar ibn al-Khattab became caliph, he prolonged the Fajr prayer. The Messenger of Allah (peace and blessings be upon him) would, upon saying ‘Allah hears those who praise Him,’ remain standing until we thought he had forgotten, then he would prostrate and sit between the two prostrations until we thought he had forgotten.”

وَبِهِ إلَى مُسْلِمٍ: ثنا أَبُو بَكْرِ بْنُ نَافِعٍ الْعَبْدِيُّ ثنا بَهْزُ بْنُ أَسَدٍ ثنا حَمَّادٌ أَنَا ثَابِتٌ «عَنْ أَنَسٍ قَالَ: مَا صَلَّيْتَ خَلْفَ أَحَدٍ أَوْجَزَ صَلَاةً مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي تَمَامٍ، كَانَتْ صَلَاةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُتَقَارِبَةً، وَكَانَتْ صَلَاةُ أَبِي بَكْرٍ مُتَقَارِبَةً، فَلَمَّا كَانَ عُمَرُ بْنُ الْخَطَّابِ مَدَّ فِي صَلَاةِ الْفَجْرِ، وَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا قَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ قَامَ حَتَّى نَقُولَ: قَدْ أَوْهَمَ، ثُمَّ يَسْجُدُ وَيَقْعُدُ بَيْنَ السَّجْدَتَيْنِ حَتَّى نَقُولَ: قَدْ أَوْهَمَ» .

L7032 The righteous predecessors acted upon it—as narrated to us by ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid, who narrated to us from Ibrāhīm ibn Aḥmad, who narrated to us from al-Farbarī, who narrated to us from al-Bukhārī, who narrated to us from Sulaymān ibn Ḥarb, who narrated to us from Ḥammād ibn Zayd, from Thābit al-Bunānī: From Anas, who said: “I do not neglect to pray with you as I saw the Messenger of Allāh (peace and blessings of Allāh be upon him) pray with us.” Thābit said: “Anas would do something I have not seen you all do. When he raised his head from bowing, he would stand for so long that someone might say, ‘He has forgotten,’ and

وَفَعَلَهُ السَّلَفُ الطَّيِّبُ -: كَمَا حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا سُلَيْمَانُ بْنُ حَرْبٍ ثنا حَمَّادُ بْنُ زَيْدٍ عَنْ ثَابِتٍ الْبُنَانِيِّ «عَنْ أَنَسٍ أَنَّهُ قَالَ: إنِّي لَا آلُو أَنْ أُصَلِّيَ بِكُمْ كَمَا رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي بِنَا، قَالَ ثَابِتٌ: فَكَانَ أَنَسٌ يَصْنَعُ شَيْئًا لَمْ أَرَكُمْ تَصْنَعُونَهُ، كَانَ إذَا رَفَعَ رَأْسَهُ مِنْ الرُّكُوعِ قَامَ حَتَّى يَقُولَ الْقَائِلُ: قَدْ نَسِيَ، وَبَيْنَ السَّجْدَتَيْنِ حَتَّى يَقُولَ الْقَائِلُ: قَدْ نَسِيَ» .

between the two prostrations, he would stay for so long that someone might say, ‘He has forgotten.’”[6]

L7033 Ali said: This clarifies that there is no authoritative proof in the actions of anyone other than the Messenger of Allah (peace and blessings of Allah be upon him).

L7034 From Waki‘, from Sufyan, from Mansur, from Ibrahim, who said: Abu ‘Ubaydah ibn ‘Abdullah ibn Mas‘ud used to prolong the standing after bowing, and they would criticize him for that. ‘Ali said: The blameworthy one is whoever criticizes the practice of the Messenger of Allah—peace be upon him—and relies on that which has no scriptural basis. And with Allah, the Exalted, is success.

L7035 ## Issue: The Proper Performance of the Rukūʿ

L7036 453 - Issue

L7037–7039 The proper manner of bowing is that one neither raises his head when bowing nor tilts it, but keeps it aligned with his back. As for prostration, he must arch his back as much as possible and spread his arms apart to the fullest extent. The man and the woman are the same in all of that: Narrated to us by ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid; narrated to us by Ibrāhīm ibn Aḥmad; narrated to us by al-Farbarī; narrated to us by al-Bukhārī; narrated to us by Yaḥyā ibn Bukayr; narrated to us by Bakr ibn Muḍar, from Jaʿfar ibn Rabīʿah, from Ibn Hurmuz, from ʿAbd Allāh ibn Mālik ibn Buḥaynah: “That the Prophet—peace and blessings of Allah be upon him—when he prayed, would separate between his hands until the whiteness of his armpits became visible.”

L7040 Narrated by Abdullah ibn Yusuf → Ahmad ibn Fath → Abdul Wahhab ibn Isa → Ahmad ibn Muhammad → Ahmad ibn Ali → Muslim ibn Al-Hajjaj → Yahya → Sufyan ibn Uyaynah → Ubaidullah ibn Abdullah ibn Al-Asamm → his uncle Yazid ibn Al-Asamm → Maymunah, the wife of the Prophet

قَالَ عَلِيٌّ: هَذَا يُوَضِّحُ أَنَّهُ لَا حُجَّةَ فِي عَمَلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَعَنْ وَكِيعٍ عَنْ سُفْيَانَ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ قَالَ: كَانَ أَبُو عُبَيْدَةَ بْنُ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ يُطِيلُ الْقِيَامَ بَعْدَ الرُّكُوعِ فَكَانُوا يَعِيبُونَ ذَلِكَ عَلَيْهِ؟ قَالَ عَلِيٌّ: الْمَعِيبُ هُوَ مَنْ عَابَ عَمَلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَوَّلَ عَلَى مَا لَا حُجَّةَ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ: تَحْسِينُ الرُّكُوعِ]

٤٥٣ - مَسْأَلَةٌ:

وَتَحْسِينُ الرُّكُوعِ هُوَ أَنْ لَا يَرْفَعَ رَأْسَهُ إذَا رَكَعَ وَلَا يُمِيلَهُ، لَكِنْ مُعْتَدِلًا مَعَ ظَهْرِهِ، وَأَمَّا فِي السُّجُودِ فَيُقْنِطُرُ ظَهْرَهُ جِدًّا مَا أَمْكَنَهُ، وَيُفَرِّجُ ذِرَاعَيْهِ مَا أَمْكَنَهُ، الرَّجُلُ وَالْمَرْأَةُ فِي كُلِّ ذَلِكَ سَوَاءٌ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا يَحْيَى بْنُ بُكَيْرٍ ثنا بَكْرُ بْنُ مُضَرَ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ عَنْ ابْنِ هُرْمُزٍ عَنْ عَبْدِ اللَّهِ بْنِ مَالِكِ بْنِ بُحَيْنَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ إذَا صَلَّى فَرَّجَ بَيْنَ يَدَيْهِ حَتَّى يَبْدُوَ بَيَاضُ إبْطَيْهِ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَصَمِّ عَنْ عَمِّهِ يَزِيدَ بْنِ الْأَصَمِّ: أَنَّهُ أَخْبَرَهُ عَنْ مَيْمُونَةَ زَوْجِ النَّبِيِّ - صَلَّى

[6] **Hadith references (L7032):** Sahih al-Bukhari 821.

(peace and blessings be upon him), who said: “When the Prophet (peace and blessings be upon him) prostrated, if a lamb had wanted to pass beneath him, it could certainly have passed.”[7]

L7041 By the same chain to Muslim: Ishāq ibn Ibrāhīm—who is Ibn Rāhawayh—narrated to us: “‘Īsā ibn Yūnus narrated to us from Ḥusayn al-Muʿallim, from Budayl ibn Maysarah, from Abī al-Jawzāʾ, from ʿĀʾishah: ‘The Messenger of Allah—peace and blessings be upon him—when he bowed, would neither raise his head nor lower it.’”

L7042 It was narrated to us from Hammad ibn Salama, from Abu Jamrah: I said to A’idh ibn Amr al-Muzani, “When I bow, should I fully straighten my back in my rukūʿ?” He said, “No, but moderate your posture until the vertebrae of your spine are aligned.” I said, “When I prostrate, should I rest on my elbows?” He said, “No, but keep them lifted away from the ground.”

L7043 ʿUmar ibn al-Khaṭṭāb used to instruct his companions, when bowing [in prayer], not to cover [their heads] nor to lower them excessively.

L7044–7046 From Waki’ through his father through Shihab al-Bariqi that Ali ibn Abi Talib, when he prostrated, would spread his elbows away from his sides. Just as the underfed camel becomes emaciated.

L7047 From Waki‘, from Zakariyya ibn Abī Zāʾida, from Abū Isḥāq al-Sabīʿī, who said: “I saw Masrūq prostrating as if he were hunched?” From al-Ḥasan: “A man bows without raising his head upward nor letting it droop.” From Ibrāhīm al-Nakhaʿī: He disliked grasping his knees or excessively straightening his back in the bowing, and this is the view of al-Shāfiʿī, Abū Sulaymān, and the People of Hadith.

L7048 As for the woman—if there were a ruling contrary to this, the Messenger of Allah—may Allah bless him and grant him peace—would not have neglected to clarify it. What manifests from her in this action is precisely what mani-

اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَتْ: «كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا سَجَدَ لَوْ شَاءَتْ بَهْمَةٌ أَنْ تَمُرَّ بَيْنَ يَدَيْهِ لَمَرَّتْ» .

وَبِهِ إِلَى مُسْلِمٍ: ثِنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - أَنَا عِيسَى بْنُ يُونُسَ ثِنَا حُسَيْنٌ الْمُعَلِّمُ عَنْ بُدَيْلِ بْنِ مَيْسَرَةَ عَنْ أَبِي الْجَوْزَاءِ عَنْ عَائِشَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " كَانَ إِذَا رَكَعَ لَمْ يُشْخِصْ رَأْسَهُ وَلَمْ يُصَوِّبْهُ» .

وَرُوِّينَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي جَمْرَةَ قُلْت لِعَائِذِ بْنِ عَمْرٍو الْمُزَنِيِّ إِذَا رَكَعْت أَنْصِبُ فِي رُكُوعِي؟ قَالَ: لَا، وَلَكِنْ اعْتَدِلْ حَتَّى تَسْتَوِيَ أَطْبَاقُ صُلْبِك، قُلْت: إِذَا سَجَدْت أَسْجُدُ عَلَى مِرْفَقَيَّ؟ قَالَ: لَا، وَلَكِنْ جَافِيهِمَا.

وَعَنْ وَكِيعٍ عَنْ طَلْحَةَ الْقَصَّابِ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ يُعَلِّمُ أَصْحَابَهُ إذَا رَكَعُوا أَنْ لَا يُقَنِّعُوا وَلَا يُصَوِّبُوا.

وَعَنْ وَكِيعٍ عَنْ أَبِيهِ عَنْ شِهَابٍ الْبَارِقِيِّ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ إذَا سَجَدَ خَوَى كَمَا يَخْوِي الْبَعِيرُ الضَّامِرُ.

وَعَنْ وَكِيعٍ عَنْ زَكَرِيَّاءَ بْنِ أَبِي زَائِدَةَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ قَالَ: رَأَيْت مَسْرُوقًا سَاجِدًا كَأَنَّهُ أَحْدَبُ؟ وَعَنْ الْحَسَنِ: يَرْكَعُ الرَّجُلُ غَيْرَ شَاخِصٍ وَلَا مُنَكِّسٍ؟ وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّهُ كَانَ يَكْرَهُ أَنْ يُقَنِّعَ أَوْ يُصَوِّبَ فِي الرُّكُوعِ وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِ الْحَدِيثِ.

[7] **Hadith references (L7040):** Sahih Muslim 496.

fests from her in opposing it, with no distinction—and in Allah the Exalted do we hold fast?

وَأَمَّا الْمَرْأَةُ - فَلَوْ كَانَ لَهَا حُكْمٌ بِخِلَافِ ذَلِكَ لَمَا أَغْفَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيَانَ ذَلِكَ، وَالَّذِي يَبْدُو مِنْهَا فِي هَذَا الْعَمَلِ هُوَ بِعَيْنِهِ الَّذِي يَبْدُو مِنْهَا فِي خِلَافِهِ، وَلَا فَرْقَ - وَبِاللَّهِ تَعَالَى نَعْتَصِمُ؟

L7049 **It is recommended for every person performing prayer, when raising their head from the second prostration, to sit upright in a composed posture.**

[مَسْأَلَةٌ يُسْتَحَبُّ لِكُلِّ مُصَلٍّ إِذَا رَفَعَ رَأْسَهُ مِنْ السَّجْدَةِ الثَّانِيَةِ أَنْ يَجْلِسَ مُتَمَكِّنًا]

L7050 454 - Issue: We recommend that every person performing prayer, upon raising their head from the second prostration, sit in a stable manner, then rise from that sitting position to perform the second and fourth rak'ahs.

٤٥٤ - مَسْأَلَةٌ: وَنَسْتَحِبُّ لِكُلِّ مُصَلٍّ إِذَا رَفَعَ رَأْسَهُ مِنْ السَّجْدَةِ الثَّانِيَةِ أَنْ يَجْلِسَ مُتَمَكِّنًا ثُمَّ يَقُومَ مِنْ ذَلِكَ الْجُلُوسِ إلَى الرَّكْعَةِ الثَّانِيَةِ وَالرَّابِعَةِ؟ .

L7051 Narrated to us 'Abd al-Raḥmān ibn 'Abd Allāh ibn Khālid; narrated to us Ibrāhīm ibn Aḥmad; narrated to us al-Farbariyy; narrated to us al-Bukhārī; narrated to us Muḥammad ibn al-Ṣabbāḥ; narrated to us Hushaym; narrated to us Khālid—al-Ḥadhdhā'—from Abī Qilābah, from Mālik ibn al-Ḥuwayrith al-Laythī: "He saw the Prophet—peace and blessings of Allah be upon him—praying. When he was in the witr portion of his prayer, he would not stand up until he had sat upright completely."[8]

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُحَمَّدُ بْنُ الصَّبَّاحِ أَنَا هُشَيْمٌ أَنَا خَالِدٌ هُوَ الْحَذَّاءُ - عَنْ أَبِي قِلَابَةَ أَنَا مَالِكُ بْنُ الْحُوَيْرِثِ اللَّيْثِيُّ «أَنَّهُ رَأَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي، فَإِذَا كَانَ فِي وِتْرٍ مِنْ صَلَاتِهِ لَمْ يَنْهَضْ حَتَّى يَسْتَوِيَ قَاعِدًا» .

L7052–7054 And this is the practice of a group of the Salaf: Abdullah ibn Rabee' narrated to us, Muhammad ibn Ishaaq ibn as-Sulaim narrated to us, Ibn al-A'rabi narrated to us, Abu Dawud narrated to us, Musaddad narrated to us, Isma'eel – that is Ibn Ulayyah – narrated to us from Ayyoob as-Sakhtiyani from Abu Qilaabah, Abu Sulayman Maalik ibn al-Huwayrith narrated to us in our mosque, saying: "I pray with you not intending the prayer itself, but rather I intend to show you how I saw the Messenger of Allah (peace and blessings be upon him) pray." Abu Qilabah said: He prayed like the prayer of this sheikh of ours, meaning Amr Ibn Salamah, your imam, and he mentioned that when he raised his head from the second prostration in the first rak'ah, he would sit and then rise.

وَهُوَ عَمَلُ طَائِفَةٍ مِنْ السَّلَفِ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إسْحَاقَ بْنِ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُسَدَّدٌ ثنا إسْمَاعِيلُ هُوَ ابْنُ عُلَيَّةَ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ «ثنا أَبُو سُلَيْمَانَ مَالِكُ بْنُ الْحُوَيْرِثِ فِي مَسْجِدِنَا قَالَ: إنِّي لَأُصَلِّي بِكُمْ مَا أُرِيدُ الصَّلَاةَ، وَلَكِنِّي أُرِيدُ أُرِيكُمْ كَيْفَ رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ أَبُو قِلَابَةَ: كَانَ يُصَلِّي مِثْلَ صَلَاةِ شَيْخِنَا هَذَا، يَعْنِي عَمْرَو بْنَ سَلَمَةَ إمَامَكُمْ، وَذَكَرَ أَنَّهُ كَانَ إذَا رَفَعَ رَأْسَهُ مِنْ السَّجْدَةِ الثَّانِيَةِ فِي الرَّكْعَةِ الْأُولَى قَعَدَ ثُمَّ قَامَ» .

[8] **Hadith references (L7051):** Mishkat al-Masabih 796.

L7055–7057 Ali said: This ʻAmr has the status of a Companion, and his father was a Companion. Thus, this represents the practice of a group of the Companions and others with them. It has been reported to us from Ahmad ibn Hanbal that Hammad ibn Zayd acted upon this based on the hadith of Malik ibn al-Huwayrith. This is the view of al-Shāfiʿī, Ahmad, and Dawūd. Abū Ḥanīfah and Mālik did not hold this view. Ali said: This is among matters where they abandoned the practice of two Companions – may Allah be pleased with them – despite no opposing stance from other Companions being known, yet they uphold this when it conforms to their emulation. If they argue using the hadith of Abū Ḥumayd – which we shall mention after this section, Allah willing – claiming it lacks mention of this sitting posture, we reply: You have no valid argument here, for not all Sunnah practices are mentioned in every hadith. Though Abū Ḥumayd did not mention it, other Companions did, nor did Abū Ḥumayd state that it was not practiced. Whoever inserts this into Abū Ḥumayd's narration has falsely attributed lies to Abū Ḥumayd and to the Messenger of Allah – peace and blessings be upon him. There is no difference between one who says, "Had the Messenger of Allah – peace and blessings be upon him – performed this, Abū Ḥumayd would have mentioned it," and one who counters, "Had he not performed it, Abū Ḥumayd would have mentioned its absence." The wonder is that they opposed Abū Ḥumayd's explicit textual report – as we shall clarify, Allah willing – dismissing its authority regarding what it contains, yet citing it to validate what it excludes – this is truly astounding! Ali said: This exemplifies their abandonment of both the Sunnah and analogical reasoning, despite their claim to uphold juridical analogy. Why did they not argue: Just as one rises for the third rakʿah only from a seated position, so too should one rise for the second and fourth rakʿahs? Except out of inaction, but they neither follow the Sunnah nor excel in Qiyas—and success comes from Allah, the Most High.

قَالَ عَلِيٌّ: عَمْرٌو هَذَا لَهُ صُحْبَةٌ، وَلِأَبِيهِ صُحْبَةٌ، فَهُوَ عَمَلُ طَائِفَةٍ مِنْ الصَّحَابَةِ وَغَيْرِهِمْ مَعَهُمْ؟ وَرُوِّينَا - عَنْ أَحْمَدَ بْنِ حَنْبَلٍ: أَنَّ حَمَّادَ بْنَ زَيْدٍ كَانَ يَفْعَلُ ذَلِكَ عَلَى حَدِيثِ مَالِكِ بْنِ الْحُوَيْرِثِ، وَهُوَ قَوْلُ الشَّافِعِيِّ وَأَحْمَدَ، وَدَاوُد؟ وَلَمْ يَرَ ذَلِكَ أَبُو حَنِيفَةَ وَمَالِكٌ قَالَ عَلِيٌّ: وَهَذَا مِمَّا تَرَكُوا فِيهِ عَمَلَ صَاحِبَيْنِ لَا يُعْرَفُ لَهُمَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهُمْ يُعَظِّمُونَ ذَلِكَ إذَا وَافَقَ تَقْلِيدَهُمْ؟ فَإِنْ احْتَجُّوا بِحَدِيثِ أَبِي حُمَيْدٍ - الَّذِي نَذْكُرُهُ بَعْدَ هَذَا الْفَصْلِ إنْ شَاءَ اللَّهُ تَعَالَى - بِأَنَّهُ لَيْسَ فِيهِ هَذَا الْجُلُوسُ؟ قُلْنَا لَهُمْ: لَا حُجَّةَ لَكُمْ فِي هَذَا، لِأَنَّهُ لَيْسَ تُذْكَرُ جَمِيعُ السُّنَنِ فِي كُلِّ حَدِيثٍ، وَإِنْ كَانَ لَمْ يَذْكُرْهُ أَبُو حُمَيْدٍ فَقَدْ ذَكَرَهُ غَيْرُهُ مِنْ الصَّحَابَةِ، وَلَمْ يَذْكُرْ أَبُو حُمَيْدٍ أَنَّهُ كَانَ لَا يَفْعَلُ ذَلِكَ، فَمَنْ أَقْحَمَ ذَلِكَ فِي حَدِيثِ أَبِي حُمَيْدٍ فَقَدْ كَذَبَ عَلَى أَبِي حُمَيْدٍ، وَعَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا فَرْقَ بَيْنَ مَنْ قَالَ: لَوْ فَعَلَ ذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَذَكَرَ أَبُو حُمَيْدٍ أَنَّهُ فَعَلَهُ -: وَبَيْنَ مَنْ عَارَضَهُ، فَقَالَ: لَوْ لَمْ يَفْعَلْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَذَكَرَ أَبُو حُمَيْدٍ أَنَّهُ كَانَ لَا يَفْعَلُهُ؟ وَالْعَجَبُ أَنَّهُمْ خَالَفُوا حَدِيثَ أَبِي حُمَيْدٍ فِيمَا ذُكِرَ فِيهِ نَصًّا، كَمَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى، فَلَمْ يَرَوْهُ حُجَّةً فِيمَا فِيهِ، وَاحْتَجُّوا بِهِ فِيمَا لَيْسَ فِيهِ وَهَذَا عَجَبٌ جِدًّا؟ قَالَ عَلِيٌّ: وَهَذَا مِمَّا تَرَكُوا فِيهِ السُّنَّةَ وَالْقِيَاسَ وَهُمْ يَدَّعُونَ أَنَّهُمْ أَصْحَابُ قِيَاسٍ؟ فَهَلَّا قَالُوا: كَمَا لَا يَقُومُ إلَى الرَّكْعَةِ الثَّالِثَةِ إلَّا مِنْ قُعُودٍ فَكَذَلِكَ لَا يَقُومُ إلَى الثَّانِيَةِ وَالرَّابِعَةِ إلَّا مِنْ قُعُودٍ، وَلَكِنَّهُمْ لَا السُّنَنَ يَتَّبِعُونَ، وَلَا الْقِيَاسَ يُحْسِنُونَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

L7058 **An Issue Regarding the Four Sittings in Prayer**

[مَسْأَلَةٌ فِي الصَّلَاةِ أَرْبَعُ جَلْسَاتٍ]

L7059 455 - Issue: In prayer, there are four sittings: a sitting between every two prostrations; a sitting following the second prostration of each rak'ah; a sitting for the tashahhud after the second rak'ah - after which one rises to the third rak'ah in Maghrib, and similarly rises in Dhuhr, Asr, and the final Isha; and a sitting for the tashahhud at the conclusion of every prayer, which ends with the tasleem (salutation of peace).

٤٥٥ - مَسْأَلَةٌ: فَفِي الصَّلَاةِ أَرْبَعُ جَلْسَاتٍ: جِلْسَةٌ بَيْنَ كُلِّ سَجْدَتَيْنِ، وَجِلْسَةٌ إِثْرَ السَّجْدَةِ الثَّانِيَةِ مِنْ كُلِّ رَكْعَةٍ، وَجِلْسَةٌ لِلتَّشَهُّدِ بَعْدَ الرَّكْعَةِ الثَّانِيَةِ، يَقُومُ مِنْهَا إِلَى الثَّالِثَةِ فِي الْمَغْرِبِ، وَالْحَاضِرُ فِي الظُّهْرِ وَالْعَصْرِ وَالْعِشَاءِ الْآخِرَةِ، وَجِلْسَةٌ لِلتَّشَهُّدِ فِي آخِرِ كُلِّ صَلَاةٍ، يُسَلِّمُ فِي آخِرِهَا.

L7060 The description of all the mentioned sittings is to position his left buttock upon the sole of his left foot while spreading his left foot, and to erect his right foot with its heel raised, resting it on the bases of its toes. This excludes the sitting that precedes the salutation in every prayer, whose description requires settling his buttocks fully onto what he is sitting upon rather than merely sitting on the sole of his foot. Abdullah ibn Rabīʿ narrated to us: Ibn al-Sulaym narrated to us: Ibn al-Aʿrābī narrated to us: Abū Dāwūd narrated to us: Musaddad narrated to us: Bishr ibn al-Mufaḍḍal narrated from ʿĀṣim ibn Kulayb from his father from Wā'il ibn Ḥujr who said: "I said: 'I will surely observe how Allah's Messenger - peace and blessings be upon him - prays.' He then stood facing the qiblah, uttered the takbīr, raised his hands until they aligned with his ears, then placed his right hand over his left. When he intended to bow, he raised them similarly. Then he sat spreading his left foot." He mentioned the remainder of the hadith.

وَصِفَةُ جَمِيعِ الْجُلُوسِ الْمَذْكُورِ أَنْ يَجْعَلَ أَلْيَتَهُ الْيُسْرَى عَلَى بَاطِنِ قَدَمِهِ الْيُسْرَى مُفْتَرِشًا لِقَدَمِهِ، وَيَنْصِبُ قَدَمَهُ الْيُمْنَى، رَافِعًا لِعَقِبِهَا، مُجْلِسًا لَهَا عَلَى بَاطِنِ أَصَابِعِهَا، إِلَّا الْجُلُوسَ الَّذِي يَلِي السَّلَامَ مِنْ كُلِّ صَلَاةٍ، فَإِنَّ صِفَتَهُ: أَنْ يُفْضِيَ بِمَقْعَدِهِ إِلَى مَا هُوَ جَالِسٌ عَلَيْهِ، وَلَا يَقْعُدَ عَلَى بَاطِنِ قَدَمِهِ فَقَطْ؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُسَدَّدٌ ثنا بِشْرُ بْنُ الْمُفَضَّلِ عَنْ عَاصِمِ بْنِ كُلَيْبٍ عَنْ أَبِيهِ «عَنْ وَائِلِ بْنِ حُجْرٍ قَالَ: قُلْتُ: لَأَنْظُرَنَّ إِلَى صَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَيْفَ يُصَلِّي فَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاسْتَقْبَلَ الْقِبْلَةَ فَكَبَّرَ فَرَفَعَ يَدَيْهِ حَتَّى حَاذَتَا بِأُذُنَيْهِ ثُمَّ أَخَذَ شِمَالَهُ بِيَمِينِهِ، فَلَمَّا أَرَادَ أَنْ يَرْكَعَ رَفَعَهُمَا مِثْلَ ذَلِكَ، ثُمَّ جَلَسَ فَافْتَرَشَ رِجْلَهُ الْيُسْرَى» ، وَذَكَرَ بَاقِيَ الْحَدِيثِ.

L7061–7063 This is a general principle applicable to every sitting in prayer: Narrated to us by Abd al-Rahman ibn Abd Allah; he narrated to us Ibrahim ibn Ahmad al-Balkhi; he narrated to us Muhammad ibn Yusuf al-Farbari. Al-Bukhārī narrated to us: Yaḥyā ibn Bukayr narrated to us: Al-Layth—that is, Ibn Saʿd—narrated from Yazīd ibn Abī Ḥabīb and Yazīd ibn Muḥammad, from Muḥammad ibn ʿAmr ibn Ḥalḥalah, from Muḥammad ibn ʿAmr ibn ʿAṭāʾ that he was sitting among a group of the Prophet's companions (peace be upon him) when they mentioned the Prophet's prayer (peace be upon him). Abū Ḥumayd al-Sāʿidī said: "I am the most knowledgeable among you about the prayer of Allah's Messenger (peace be upon him). I saw him when he said

فَهَذَا عُمُومٌ لِكُلِّ جُلُوسٍ فِي الصَّلَاةِ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيّ ثنا مُحَمَّدُ بْنُ يُوسُفَ الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا يَحْيَى بْنُ بُكَيْرٍ ثنا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ، وَيَزِيدَ بْنِ مُحَمَّدٍ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَلْحَلَةَ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَطَاءٍ أَنَّهُ كَانَ جَالِسًا فِي نَفَرٍ مِنْ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرْنَا صَلَاةَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ أَبُو حُمَيْدٍ السَّاعِدِيُّ: أَنَا كُنْتُ

أَحْفَظَكُمْ لِصَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَأَيْتُهُ إِذَا كَبَّرَ جَعَلَ يَدَيْهِ حِذَاءَ مَنْكِبَيْهِ، وَإِذَا رَكَعَ أَمْكَنَ يَدَيْهِ مِنْ رُكْبَتَيْهِ، ثُمَّ هَصَرَ ظَهْرَهُ، فَإِذَا رَفَعَ رَأْسَهُ اسْتَوَى حَتَّى يَعُودَ كُلُّ فَقَارٍ مَكَانَهُ، فَإِذَا سَجَدَ وَضَعَ يَدَيْهِ غَيْرَ مُفْتَرِشٍ وَلَا قَابِضِهِمَا وَاسْتَقْبَلَ بِأَطْرَافِ أَصَابِعِ رِجْلَيْهِ الْقِبْلَةَ، فَإِذَا جَلَسَ فِي الرَّكْعَتَيْنِ جَلَسَ عَلَى رِجْلِهِ الْيُسْرَى وَنَصَبَ الْأُخْرَى وَقَعَدَ عَلَى مَقْعَدَتِهِ» .

L7064–7066 قَالَ الْبُخَارِيُّ: سَمِعَ اللَّيْثُ يَزِيدَ بْنَ أَبِي حَبِيبٍ، وَسَمِعَ يَزِيدَ بْنَ حَلْحَلَةَ وَابْنَ حَلْحَلَةَ عَنْ ابْنِ عَطَاءٍ، وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عَطَاءٍ وَنَافِعٍ مَوْلَى ابْنِ عُمَرَ، كِلَاهُمَا عَنِ ابْنِ عُمَرَ: أَنَّهُ كَانَ يَجْلِسُ فِي مَثْنَى فَيَجْلِسُ عَلَى الْيُسْرَى رِجْلَيْهِ، يَتَبَطَّنُهَا جَالِسًا عَلَيْهَا، وَيُقْعِي عَلَى أَصَابِعِ يُمْنَاهُ ثَانِيَهَا وَرَاءَهُ؟ وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ؟ وَقَالَ أَبُو حَنِيفَةَ: الْجُلُوسُ كُلُّهُ - لَا نُحَاشِ شَيْئًا - مُفْتَرِشًا بِأَلْيَتِهِ الْيُسْرَى بَاطِنَ قَدَمِهِ الْيُسْرَى؟ وَقَالَ مَالِكٌ: الْجُلُوسُ كُلُّهُ - لَا نُحَاشِ شَيْئًا - مُفْضِيًا بِمَقَاعِدِهِ إِلَى الْأَرْضِ قَالَ عَلِيٌّ: وَكِلَا الْقَوْلَيْنِ خَطَأٌ وَخِلَافٌ لِلسُّنَّةِ الثَّابِتَةِ الَّتِي أَوْرَدْنَا؟ وَمِنَ الْعَجَبِ احْتِجَاجُ الطَّائِفَتَيْنِ كِلْتَيْهِمَا بِحَدِيثِ أَبِي حُمَيْدٍ الْمَذْكُورِ فِي إِسْقَاطِ الْجَلْسَةِ إِثْرَ السَّجْدَةِ الثَّانِيَةِ مِنَ الرَّكْعَةِ الْأُولَى وَالثَّالِثَةِ، وَلَيْسَ فِيهِ ذِكْرٌ لَهَا أَصْلًا، لَا بِإِثْبَاتٍ وَلَا بِإِسْقَاطٍ، ثُمَّ يُخَالِفُونَ حَدِيثَ أَبِي حُمَيْدٍ فِي نَصِّ مَا فِيهِ مِنْ صِفَةِ الْجُلُوسِ وَهَذَا غَرِيبٌ جِدًّا وَاعْتَرَضَ بَعْضُ الْمُعْتَرِضِينَ بِالْبَاطِلِ عَلَى حَدِيثِ أَبِي حُمَيْدٍ هَذَا بِأَنَّ الْعَطَّافَ بْنَ خَالِدٍ رَوَاهُ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَطَاءٍ عَنْ رَجُلٍ عَنْ أَبِي حُمَيْدٍ، وَأَنَّ مُحَمَّدَ بْنَ عَمْرِو بْنِ عَطَاءٍ رَوَى هَذَا الْحَدِيثَ أَيْضًا عَنْ عَبَّاسِ بْنِ سَهْلٍ السَّاعِدِيِّ عَنْ أَبِيهِ وَلَيْسَ فِيهِ هَذَا التَّقْسِيمُ.

the takbīr, he positioned his hands opposite his shoulders. When he bowed, he firmly placed his hands on his knees, then flattened his back. When he raised his head, he straightened up until every vertebra returned to its place. When he prostrated, he placed his hands neither spread out nor clenched, and directed the tips of his toes toward the qiblah. When he sat during the two rak'ahs, he sat on his left leg, raised upright the right one, and sat squarely on his buttocks."

L7064–7066 Al-Bukhārī said: Al-Layth heard Yazīd ibn Abī Ḥabīb, and he heard Yazīd ibn Ḥalḥalah and Ibn Ḥalḥalah from Ibn ʿAṭāʾ. We have also been narrated through the chain of ʿAbd al-Razzāq from ʿAṭāʾ and Nāfiʿ, the freedman of Ibn ʿUmar—both transmitting from Ibn ʿUmar: that he would sit between the two prostrations, placing his left leg beneath him, settling onto it while seated upon it, and resting upright on the toes of his right foot positioned behind him. This is the opinion of al-Shāfiʿī and Abū Sulaymān. Abū Ḥanīfah said: "The whole sitting—excluding nothing—is performed by sitting flat on his left buttock, the sole of his left foot beneath him." Mālik said: "The entire sitting—omitting nothing—is performed by fully pressing his buttocks to the ground." ʿAlī said: "Both opinions are erroneous and contradict the established Sunnah we have cited. How astonishing it is that both groups cite the ḥadīth of Abū Ḥumayd regarding omitting the sitting posture after the second prostration in the first and third rakʿahs, though it contains no mention of this whatsoever—neither affirmation nor negation. Yet they contradict the explicit text of Abū Ḥumayd's ḥadīth concerning the description of the sitting posture. This is utterly strange!" Some objectors have baselessly opposed this ḥadīth of Abū Ḥumayd by arguing that Al-ʿAṭṭāf ibn Khālid narrated it from Muḥammad ibn ʿAmr ibn ʿAṭāʾ through a man from Abū Ḥumayd, and that Muḥammad ibn ʿAmr ibn ʿAṭāʾ also narrated this ḥadīth via ʿAbbās ibn Sahl al-Sāʿidī from his father—yet this division does not appear in the latter narration.

L7067 Ali said: This is the objection of one who lacks piety toward Allah, for

ʿAṭṭāf ibn Khālid is deemed unreliable – it is impermissible to narrate from him without disclosing his weakness. Therefore, his report may not be invoked in opposition to the narration transmitted by al-Layth (from Yazīd ibn Abī Ḥabīb, from Muḥammad ibn ʿAmr, from ʿAṭāʾ) that ʿAṭāʾ witnessed the incident.

قَالَ عَلِيٌّ: هَذَا اعْتِرَاضُ مَنْ لَا يَتَّقِي اللَّهَ، لِأَنَّ عَطَّافَ بْنَ خَالِدٍ سَاقِطٌ لَا تَحِلُّ الرِّوَايَةُ عَنْهُ إِلَّا عَلَى بَيَانِ ضَعْفِهِ، فَلَا يَجُوزُ أَنْ يُحْتَجَّ بِهِ عَلَى رِوَايَةِ اللَّيْثِ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ عَطَاءٍ أَنَّهُ شَهِدَ الْأَمْرَ.

L7068 As for the narration of Muḥammad ibn ʿAmr on the authority of ʿAbbās ibn Sahl, this is a mistake by the one who said that.

وَأَمَّا رِوَايَةُ مُحَمَّدِ بْنِ عَمْرٍو عَنْ عَبَّاسِ بْنِ سَهْلٍ فَهَذَا خَطَأٌ مِمَّنْ قَالَ ذَلِكَ.

L7069 ʿĪsā ibn ʿAbd Allāh ibn Mālik narrated it from ʿAbbās ibn Sahl—or possibly ʿAyyāsh, with this uncertainty explicitly mentioned.

إِنَّمَا رَوَاهُ عِيسَى بْنُ عَبْدِ اللَّهِ بْنِ مَالِكٍ عَنْ عَبَّاسِ بْنِ سَهْلٍ، أَوْ عَيَّاشٌ - هَكَذَا بِالشَّكِّ.

L7070 And it was also narrated by Fulayḥ ibn Sulaymān from ʿAbbās ibn Sahl—and these two narrations as well, despite their flaws, conform to the two narrations of Abī Ḥumayd.

وَرَوَاهُ أَيْضًا فُلَيْحُ بْنُ سُلَيْمَانَ عَنْ عَبَّاسِ بْنِ سَهْلٍ -: وَهَاتَانِ الرِّوَايَتَانِ أَيْضًا - عَلَى عِلَّاتِهِمَا - مُوَافِقَتَانِ لِرِوَايَتَيْ أَبِي حُمَيْدٍ.

L7071 Some of those who held this opinion said: Certain narrators transmitted the hadith of Muḥammad ibn ʿAmr ibn ʿAṭāʾ from Abū Ḥumayd, in which he mentioned that Abū Qatādah attended the gathering—and Abū Qatādah was killed alongside ʿAlī, while Muḥammad ibn ʿAmr did not live to meet him.

وَقَالَ بَعْضُ الْقَائِلِينَ: إِنَّ بَعْضَ الرُّوَاةِ رَوَى حَدِيثَ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَطَاءٍ عَنْ أَبِي حُمَيْدٍ فَذَكَرَ فِيهِ: أَنَّ أَبَا قَتَادَةَ شَهِدَ الْمَجْلِسَ وَأَبُو قَتَادَةَ قُتِلَ مَعَ عَلِيٍّ، وَلَمْ يُدْرِكْهُ مُحَمَّدُ بْنُ عَمْرٍو.

L7072 ʿAlī said: As for what is reported from Abū Qatādah—that he was killed for supporting ʿAlī based on narrations circulated among the Sāmiriyyīn and Rāfiḍah—this is unfounded. Such baseless claims cannot discredit the narrations of reliable transmitters.

قَالَ عَلِيٌّ: وَالَّذِي ذُكِرَ عَنْ أَبِي قَتَادَةَ أَنَّهُ قُتِلَ مَعَ عَلِيٍّ مِنْ أَحَادِيثِ السَّمُرِيِّينَ وَالرَّوَافِضِ، وَلَا يَصِحُّ ذَلِكَ، وَلَا يُعْتَرَضُ بِمِثْلِ هَذَا عَلَى رِوَايَةِ الثِّقَاتِ.

L7073–7074 Moreover, it was only ʻAbd al-Ḥamīd ibn Jaʻfar who mentioned Abū Qatādah, and he may have erred in this attribution, thereby invalidating the argument they contentiously raised. And success comes solely from Allah, the Most High.

وَأَيْضًا: فَإِنَّمَا ذَكَرَ أَبَا قَتَادَةَ: عَبْدُ الْحَمِيدِ بْنُ جَعْفَرٍ، وَلَعَلَّهُ وَهِمَ فِيهِ، فَبَطَلَ مَا شَغَبُوا بِهِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ

L7075 **A ruling: It is incumbent upon every worshipper to place his hands on the ground before his knees when prostrating.**

[مَسْأَلَةٌ عَلَى كُلِّ مُصَلٍّ أَنْ يَضَعَ إِذَا سَجَدَ يَدَيْهِ عَلَى الْأَرْضِ قَبْلَ رُكْبَتَيْهِ]

L7076 456 – Issue: It is obligatory for every worshipper, when prostrating, to place his hands on the ground before his knees. Abdullah ibn Rabīʿ narrated to us, ʿUmar ibn ʿAbd al-Malik al-Khawlānī narrated to us, Muḥammad ibn

٤٥٦ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى كُلِّ مُصَلٍّ أَنْ يَضَعَ - إذَا سَجَدَ - يَدَيْهِ عَلَى الْأَرْضِ قَبْلَ رُكْبَتَيْهِ وَلَا بُدَّ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ الْخَوْلَانِيّ ثنا مُحَمَّدُ بْنُ بَكْرٍ الْبَصْرِيُّ ثنا أَبُو دَاوُد ثنا سَعِيدُ بْنُ مَنْصُورٍ ثنا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ هُوَ الدَّرَاوَرْدِيُّ - ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْحَسَنِ بْنِ الْحَسَنِ بْنِ عَلِيِّ بْنِ أَبِي طَالِبٍ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا سَجَدَ أَحَدُكُمْ فَلَا يَبْرُكْ كَمَا يَبْرُكُ الْبَعِيرُ وَلْيَضَعْ يَدَيْهِ قَبْلَ رُكْبَتَيْهِ» .

Bakr al-Baṣrī narrated to us, Abū Dāwūd narrated to us, Saʿīd ibn Manṣūr narrated to us, ʿAbd al-ʿAzīz ibn Muḥammad - al-Darāwardī - narrated to us, Muḥammad ibn ʿAbd Allāh ibn al-Ḥasan ibn al-Ḥasan ibn ʿAlī ibn Abī Ṭālib narrated from Abū al-Zinād from al-Aʿraj from Abū Hurayrah, who said: The Messenger of Allah - peace and blessings of Allah be upon him - said: "When one of you prostrates, let him not kneel in the manner of a camel's kneeling, and let him place his hands before his knees."[9]

فَإِنْ ذَكَرَ ذَاكِرٌ مَا حَدَّثَنَاهُ حَمَامُ بْنُ أَحْمَدَ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ ثنا الْعَلَاءُ بْنُ إسْمَاعِيلَ ثنا حَفْصُ بْنُ غِيَاثٍ عَنْ عَاصِمٍ الْأَحْوَلِ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا دَخَلَ فِي الصَّلَاةِ فَإِذَا انْحَطَّ لِلسُّجُودِ سَبَقَتْ رُكْبَتَاهُ يَدَيْهِ» .

L7077 If someone mentions what Ḥammām ibn Aḥmad narrated to us—from ʿAbbās ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Malik ibn Ayman, from Aḥmad ibn Zuhayr ibn Ḥarb, from al-ʿAlāʾ ibn Ismāʿīl, from Ḥafṣ ibn Ghiyāth, from ʿĀṣim al-Aḥwal, from Anas ibn Mālik—who said: "I saw the Messenger of Allah (peace and blessings be upon him), when he entered into the prayer, lower himself for prostration such that his knees touched the ground before his hands."

قُلْنَا: هَذَا لَا حُجَّةَ فِيهِ لِوَجْهَيْنِ -: أَحَدُهُمَا: أَنَّهُ لَيْسَ فِي حَدِيثِ أَنَسٍ: أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يَضَعُ رُكْبَتَيْهِ قَبْلَ يَدَيْهِ، وَإِنَّمَا فِيهِ: سَبْقُ الرُّكْبَتَيْنِ الْيَدَيْنِ فَقَطْ، وَقَدْ يُمْكِنُ أَنْ يَكُونَ هَذَا السَّبْقُ فِي حَرَكَتِهِمَا لَا فِي وَضْعِهِمَا، فَيُتَّفَقُ الْخَبَرَانِ وَالثَّانِي: أَنَّهُ لَوْ كَانَ فِيهِ بَيَانُ وَضْعِ الرُّكْبَتَيْنِ قَبْلَ الْيَدَيْنِ، لَكَانَ ذَلِكَ مُوَافِقًا لِمَعْهُودِ الْأَصْلِ فِي إبَاحَةِ كُلِّ ذَلِكَ، وَلَكَانَ خَبَرُ أَبِي هُرَيْرَةَ وَارِدًا بِشَرْعٍ زَائِدٍ رَافِعٍ لِلْإِبَاحَةِ السَّالِفَةِ بِلَا شَكٍّ، نَاهِيَةٍ عَنْهَا بِيَقِينٍ، وَلَا يَحِلُّ تَرْكُ الْيَقِينِ لِظَنٍّ كَاذِبٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟ وَرُكْبَتَا الْبَعِيرِ: هِيَ فِي ذِرَاعَيْهِ

L7078–7079 We said: This contains no proof for two reasons. First, the narration of Anas does not state that the Prophet (peace be upon him) placed his knees before his hands. It merely mentions the knees preceding the hands, and this precedence could relate to their movement rather than their placement, thereby the two reports are reconciled. Second, even if it had clarified placing the knees before the hands, this would conform to the established principle of universal permissibility governing all such acts. The narration of Abu Hurayrah would then introduce a supplementary ruling that revokes the prior permissibility without doubt, prohibiting it with certainty. It is impermissible to abandon certainty for a false assumption—and success is from Allah, the Exalted. As for the camel's knees, they are in its forelegs.

L7080 **The matter is that every person praying—whether an**

[9] **Hadith references (L7076):** Sunan Abi Dawud 840; Mishkat al-Masabih 899.

imam or a follower (ma’mūm), man or woman—must utter two taslīms.

[مَسْأَلَةٌ لِكُلِّ مُصَلٍّ إِمَامًا كَانَ أَوْ مَأْمُومًا رَجُلًا كَانَ أَوْ امْرَأَةٍ أَنْ يُسَلِّمَ تَسْلِيمَتَيْنِ]

457 - Legal Question:

L7081

We recommend for every worshiper—whether an imam, one being led in prayer, or praying alone, in obligatory or supererogatory prayer, male or female—to perform only two acts of taslīm: one to the right and the other to the left, stating in both: “Peace be upon you and God’s mercy. Peace be upon you and God’s mercy.” None of these should be intended as greetings to any person—neither to those being led in prayer, nor to those on the right, nor as a response to the imam, nor to those on the left. Rather, the first taslīm—which is the obligatory act—is solely intended to conclude the prayer. The second taslīm is an excellent sunnah; omitting it is not sinful. As for the obligation of the first taslīm, we have previously addressed it, rendering repetition unnecessary. Regarding the second taslīm: ‘Abdullāh ibn Rabīʿ al-Tamīmī narrated to us, saying: Muḥammad ibn Muʿāwiyah al-Marwānī narrated to us, Aḥmad ibn Shuʿayb narrated to us, Muḥammad ibn al-Muthannā and Isḥāq ibn Ibrāhīm—who is Ibn Rāhwayh—narrated to us. Ishaq said: Narrated to us by Abu Nu’aym, al-Fadl ibn Dukayn, and Yahya ibn Adam. Ibn al-Muthanna narrated to us Ibn Mu’adh al-’Anbari. Al-Fadl, Yahya, and Mu’adh narrated to us from Zuhayr—who is Abu Mu’awiyah—from Abu Ishaq al-Sabi’i, from ’Abd al-Rahman ibn al-Aswad, from al-Aswad and ’Alqamah, from ’Abdullah ibn Mas’ud, who said: “I saw the Messenger of Allah—peace and blessings be upon him—saying the *takbīr* at every lowering, raising, standing, and sitting. He would turn to his right and left, saying the salutation twice: ’Peace be upon you and the mercy of Allah, peace be upon you and the mercy of Allah,’ until the whiteness of his cheek was visible. I saw Abu Bakr and ’Umar performing the same.”

L7082–7084

We have also narrated it through the chain of Abd al-Rahman ibn Mahdi

L7085

٤٥٧ - مَسْأَلَةٌ:

وَنَسْتَحِبُّ لِكُلِّ مُصَلٍّ إِمَامًا كَانَ أَوْ مَأْمُومًا أَوْ مُنْفَرِدًا فِي فَرْضٍ كَانَ أَوْ نَافِلَةٍ، رَجُلًا كَانَ أَوْ امْرَأَةً -: أَنْ يُسَلِّمَ تَسْلِيمَتَيْنِ فَقَطْ: إِحْدَاهُمَا عَنْ يَمِينِهِ، وَالْأُخْرَى عَنْ يَسَارِهِ، يَقُولُ فِي كِلْتَيْهِمَا " السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ، السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ " لَا يَنْوِي بِشَيْءٍ مِنْهُمَا سَلَامًا عَلَى إِنْسَانٍ لَا عَلَى الْمَأْمُومِينَ وَلَا عَلَى مَنْ عَلَى يَمِينِهِ، وَلَا رَدًّا عَلَى الْإِمَامِ، وَلَا عَلَى مَنْ عَلَى يَسَارِهِ لَكِنْ يَنْوِي بِالْأُولَى - وَهِيَ الْفَرْضُ - الْخُرُوجَ مِنْ الصَّلَاةِ فَقَطْ، وَالثَّانِيَةُ: سُنَّةٌ حَسَنَةٌ، لَا يَأْثَمُ تَارِكُهَا؟ أَمَّا وُجُوبُ فَرْضِ التَّسْلِيمَةِ الْأُولَى فَقَدْ ذَكَرْنَاهُ قَبْلُ، فَأَغْنَى عَنْ إعَادَتِهِ؟ وَأَمَّا التَّسْلِيمَةُ الثَّانِيَةُ: فَإِنَّ عَبْدَ اللَّهِ بْنَ رَبِيعٍ التَّمِيمِيّ حَدَّثَنَا قَالَ: ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ الْمَرْوَانِيُّ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، وَإِسْحَاقُ بْنُ إبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - قَالَ إِسْحَاقُ: ثنا أَبُو نُعَيْمٍ الْفَضْلُ بْنُ دُكَيْنٍ وَيَحْيَى بْنُ آدَمَ، وَقَالَ ابْنُ الْمُثَنَّى: ثنا ابْنُ مُعَاذٍ الْعَنْبَرِيُّ، قَالَ الْفَضْلُ وَيَحْيَى، وَمُعَاذٌ: ثنا زُهَيْرٌ هُوَ أَبُو مُعَاوِيَةَ - عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ عَنْ الْأَسْوَدِ، وَعَلْقَمَةَ عَنْ «عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُكَبِّرُ فِي كُلِّ خَفْضٍ، وَرَفْعٍ، وَقِيَامٍ، وَقُعُودٍ، وَيُسَلِّمُ عَنْ يَمِينِهِ وَعَنْ شِمَالِهِ: السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ، السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ، حَتَّى يُرَى بَيَاضُ خَدِّهِ وَرَأَيْتُ أَبَا بَكْرٍ، وَعُمَرَ يَفْعَلَانِهِ»

from Sufyan al-Thawri from Abu Ishaq al-Sabi'i from Abi al-Ahwas from Ibn Mas'ud from the Messenger of Allah (peace be upon him) likewise.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ أَبِي الْأَحْوَصِ عَنْ ابْنِ مَسْعُودٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَذَلِكَ

L7086 From Abd al-Razzaq from Ma'mar and Sufyan al-Thawri, both of them from Hammad ibn Abi Sulayman from Abu al-Duha from Masruq from Ibn Mas'ud from the Messenger of Allah, peace be upon him - likewise? And from Yahya ibn Sa'id al-Qattan from Shu'bah from al-Hakam ibn Utaybah from Mujahid from Abu Ma'mar from Ibn Mas'ud from the Messenger of Allah, peace be upon him.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَسُفْيَانَ الثَّوْرِيِّ كِلَاهُمَا عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ أَبِي الضُّحَى عَنْ مَسْرُوقٍ عَنْ ابْنِ مَسْعُودٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَذَلِكَ؟ وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ مُجَاهِدٍ عَنْ أَبِي مَعْمَرٍ عَنْ ابْنِ مَسْعُودٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L7087 From Muhammad ibn Yahya ibn Hibban from his uncle Wasi' ibn Hibban: "I said to Ibn 'Umar: 'Inform me about the prayer of the Messenger of Allah—may Allah bless him and grant him peace.' He described: 'Peace be upon you and the mercy of Allah' to his right side, and 'Peace be upon you and the mercy of Allah' to his left side."

وَعَنْ مُحَمَّدِ بْنِ يَحْيَى بْنِ حِبَّانَ عَنْ عَمِّهِ وَاسِعِ بْنِ حِبَّانَ، «قُلْت لِابْنِ عُمَرَ: أَخْبِرْنِي عَنْ صَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ " السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ، عَنْ يَمِينِهِ، السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ، عَنْ يَسَارِهِ»

L7088 From Ismail ibn Muhammad ibn Sa'd ibn Abi Waqqas, from his uncle Amir ibn Sa'd, from his father: "The Messenger of Allah—peace be upon him—would turn to his right and left to give the salam [during prayer], until the whiteness of his cheek could be seen."

وَعَنْ إسْمَاعِيلَ بْنِ مُحَمَّدِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ عَمِّهِ عَامِرِ بْنِ سَعْدٍ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُسَلِّمُ عَنْ يَمِينِهِ وَعَنْ يَسَارِهِ حَتَّى يُرَى بَيَاضُ خَدِّهِ»

L7089 With chains of transmission that are sound, mass-transmitted, and mutually supportive.

بِأَسَانِيدَ صِحَاحٍ مُتَوَاتِرَةٍ مُتَظَاهِرَةٍ

L7090–7092 And this was the practice of Abū Bakr and ʿUmar, as we mentioned earlier? It was narrated to us via Ḥārithah ibn Muḍarrib that ʿAmmār ibn Yāsir would recite the *taslīm* to his right. Peace be upon you and the mercy of Allah¿' and to his left: "Peace be upon you and the mercy of Allah¿' Through the narration of Abū Wā'il and Abū 'Abd al-Raḥmān al-Sulamī: 'Alī ibn Abī Ṭālib would utter the salām twice: once to his right and once to his left - "Peace be upon you and the mercy of Allah, Peace be upon you and the mercy of Allah¿' Through Ḥammād ibn Salama from 'Ammār ibn Abī 'Ammār, who

وَهُوَ فِعْلُ أَبِي بَكْرٍ وَعُمَرَ كَمَا ذَكَرْنَا آنِفًا؟ وَرُوِّينَا مِنْ طَرِيقِ حَارِثَةَ بْنِ مُضَرِّبٍ أَنَّ عَمَّارَ بْنَ يَاسِرٍ كَانَ يُسَلِّمُ عَنْ يَمِينِهِ السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ " وَعَنْ يَسَارِهِ " السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ "؟ وَمِنْ طَرِيقِ أَبِي وَائِلٍ وَأَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يُسَلِّمُ عَنْ يَمِينِهِ وَعَنْ شِمَالِهِ " السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ، السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ

said: The congregation of the Ansar's mosque would utter two salāms to their right and left sides, while the congregation of the Muhājireen's mosque would utter a single salām. Through the narration of Abū 'Abd al-Raḥmān al-Sulamī: Ibn Mas'ūd would pronounce two salāms from the prayer. 'Alī ibn Aḥmad stated: Abū Bakr, 'Umar, 'Alī, 'Ammār, and Ibn Mas'ūd were among the foremost Muhājireen. This practice was followed by Abū 'Ubaydah ibn 'Abd Allāh, Khaythama, al-Aswad, 'Alqama, 'Abd al-Raḥmān ibn Abī Laylā, and those Companions they encountered.

اللَّهِ "؟ وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَمَّارِ بْنِ أَبِي عَمَّارٍ قَالَ: كَانَ مَسْجِدُ الْأَنْصَارِ يُسَلِّمُونَ تَسْلِيمَتَيْنِ عَنْ أَيْمَانِهِمْ وَعَنْ شَمَائِلِهِمْ، وَكَانَ مَسْجِدُ الْمُهَاجِرِينَ يُسَلِّمُونَ تَسْلِيمَةً وَاحِدَةً؟ وَمِنْ طَرِيقِ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ: أَنَّ ابْنَ مَسْعُودٍ كَانَ يُسَلِّمُ مِنَ الصَّلَاةِ تَسْلِيمَتَيْنِ؟ قَالَ عَلِيُّ بْنُ أَحْمَدَ: أَبُو بَكْرٍ، وَعُمَرُ، وَعَلِيٌّ، وَعَمَّارٌ، وَابْنُ مَسْعُودٍ: مِنْ أَكَابِرِ الْمُهَاجِرِينَ، وَهُوَ فِعْلُ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ، وَخَيْثَمَةَ وَالْأَسْوَدِ، وَعَلْقَمَةَ، وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى، وَمَنْ أَدْرَكُوا مِنَ الصَّحَابَةِ

L7093 This is also the view of Ibrāhīm al-Nakhaʿī, Ḥammād ibn Salamah, Abū Ḥanīfah, Sufyān, al-Ḥasan ibn Ḥayy, al-Shāfiʿī, Aḥmad, Dāwūd, and the majority of the Companions of Hadith.

وَبِهِ يَقُولُ إِبْرَاهِيمُ النَّخَعِيُّ، وَحَمَّادُ بْنُ سَلَمَةَ، وَأَبُو حَنِيفَةَ، وَسُفْيَانُ، وَالْحَسَنُ بْنُ حَيٍّ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَدَاوُد، وَجُمْهُورُ أَصْحَابِ الْحَدِيثِ.

L7094 Malik said: The Imam and the individual praying alone each utter one *taslim*, whereas a follower with no one to his left utters two *taslim*s, one of which is a response to the Imam.

وَقَالَ مَالِكٌ: يُسَلِّمُ الْإِمَامُ وَالْفَذُّ تَسْلِيمَةً وَاحِدَةً، وَيُسَلِّمُ الْمَأْمُومُ الَّذِي لَيْسَ عَلَى يَسَارِهِ أَحَدٌ تَسْلِيمَتَيْنِ، إِحْدَاهُمَا رَدٌّ عَلَى الْإِمَامِ

L7095–7099 The worshipper to the left of another offers three salams - is the third a response to the one on his left? Ali (may Allah be pleased with him) said: As for a single salutation, no authentic narration is reported from the Prophet (peace and blessings be upon him) regarding it, for the narrations concerning... This is only via the chain of Muḥammad ibn al-Mufarrij from Muḥammad ibn Yūnus—both being unknown narrators or the chain being interrupted—or via al-Ḥasan's chain, or via Zuhayr ibn Muḥammad (who is weak), or via Ibn Lahīʿah (who is rejected). What is reliably established from Saʿd is two instances of taslīm, as we mentioned. Thus, this constitutes an addition by a credible narrator. Even if authentic, one who narrated two taslīms would have added a legal ruling and knowledge beyond those who narrated only one. However, an addition by a credible narrator is impermissible. Leaving it—and is that not an increase of good? We did not affirm the obligation of both instances of Taslīm as a compulsory obligation, as Al-Ḥasan ibn Ḥayy stated, because the second Taslīm is merely an action of Allah's Messenger—

وَيُسَلِّمُ الْمَأْمُومُ الَّذِي عَلَى يَسَارِهِ غَيْرُهُ ثَلَاثَ تَسْلِيمَاتٍ، الثَّالِثَةُ رَدٌّ عَلَى الَّذِي عَنْ يَسَارِهِ؟ قَالَ عَلِيٌّ: أَمَّا تَسْلِيمَةٌ وَاحِدَةٌ فَلَا يَصِحُّ فِيهَا شَيْءٌ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّ الْأَخْبَارَ فِي ذَلِكَ إِنَّمَا هِيَ مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُفَرِّجِ عَنْ مُحَمَّدِ بْنِ يُونُسَ وَكِلَاهُمَا مَجْهُولٌ أَوْ مُرْسَلٌ مِنْ طَرِيقِ الْحَسَنِ أَوْ مِنْ طَرِيقِ زُهَيْرِ بْنِ مُحَمَّدٍ، وَهُوَ ضَعِيفٌ أَوْ مِنْ طَرِيقِ ابْنِ لَهِيعَةَ، وَهُوَ سَاقِطٌ وَالثَّابِتُ عَنْ سَعْدٍ تَسْلِيمَتَانِ كَمَا ذَكَرْنَا، فَهِيَ زِيَادَةُ عَدْلٍ، ثُمَّ لَوْ صَحَّتْ لَكَانَ مَنْ رَوَى تَسْلِيمَتَيْنِ قَدْ زَادَ حُكْمًا وَعِلْمًا عَلَى مَنْ لَمْ يَرْوِ إِلَّا وَاحِدَةً، وَزِيَادَةُ الْعَدْلِ لَا يَجُوزُ تَرْكُهَا، وَهِيَ زِيَادَةُ خَيْرٍ؟ وَإِنَّمَا لَمْ نَقُلْ بِوُجُوبِ التَّسْلِيمَتَيْنِ جَمِيعًا فَرْضًا كَمَا قَالَ الْحَسَنُ بْنُ حَيٍّ: فَلِأَنَّ الثَّانِيَةَ إِنَّمَا هِيَ فِعْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ

peace and blessings be upon him—not a command from him—peace and blessings be upon him. For only his commands are obligatory, not his actions? As for Mālik's distinction between the Taslīm of the follower, the imam, and the solitary worshipper (munfarid)—this is an assertion without proof: neither from the Qur'an, nor from any sound or weak Hadith, nor consensus, nor a Companion's opinion, nor analogy? We maintain that the Taslīm constitutes solely an exit from the prayer; it cannot be considered either initiating a greeting or responding to one, based on two proofs: The first is what is authentically reported from Allah's Messenger—peace and blessings be upon him—through Ibn Masʿūd: "Allah has established in His command that you shall not speak during prayer."

عَلَيْهِ وَسَلَّمَ - فَلَيْسَتْ أَمْرًا مِنْهُ - عَلَيْهِ السَّلَامُ -، وَإِنَّمَا يَجِبُ أَمْرُهُ لَا فِعْلُهُ؟ وَتَفْرِيقُ مَالِكٍ بَيْنَ سَلَامِ الْمَأْمُومِ وَالْإِمَامِ وَالْمُنْفَرِدِ -: قَوْلٌ لَا بُرْهَانَ لَهُ عَلَيْهِ، لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ وَلَا إجْمَاعٍ وَلَا قَوْلِ لِصَاحِبٍ وَلَا قِيَاسٍ؟ وَإِنَّمَا قُلْنَا: إنَّ التَّسْلِيمَ خُرُوجٌ عَنْ الصَّلَاةِ فَقَطْ، لَا يَجُوزُ أَنْ يَكُونَ ابْتِدَاءَ سَلَامٍ وَلَا رَدًّا، لِبُرْهَانَيْنِ -: أَحَدُهُمَا: الثَّابِتُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ ابْنِ مَسْعُودٍ «أَنَّ اللَّهَ أَحْدَثَ مِنْ أَمْرِهِ أَنْ لَا تَكَلَّمُوا فِي الصَّلَاةِ»

L7100 And that he—peace be upon him—said: "No part of people's speech is valid within this prayer," through Muʿāwiyah ibn al-Ḥakam's narration. The intended salām—whether initiating or responding—is considered speech directed at others. This [ruling] is abrogated and impermissible; rather, does it invalidate the prayer if it occurs? Second: they are in consensus with us that a person praying alone says "Peace be upon you" though no human is present to receive his greeting. Similarly, when an Imam leads only one follower, he utters "Peace be upon you" using the plural form meant for a congregation.

وَأَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: «إنَّ هَذِهِ الصَّلَاةَ لَا يَصْلُحُ فِيهَا شَيْءٌ مِنْ كَلَامِ النَّاسِ» مِنْ طَرِيقِ مُعَاوِيَةَ بْنِ الْحَكَمِ وَالتَّسْلِيمُ الْمَقْصُودُ بِهِ الِابْتِدَاءُ أَوْ الرَّدُّ: كَلَامٌ مَعَ النَّاسِ، وَهَذَا مَنْسُوخٌ لَا يَحِلُّ، بَلْ تَبْطُلُ بِهِ الصَّلَاةُ إنْ وَقَعَ؟ وَالثَّانِي: أَنَّهُمْ مُجْمِعُونَ مَعَنَا عَلَى أَنَّ الْفَذَّ يَقُولُ " السَّلَامُ عَلَيْكُمْ، وَلَيْسَ بِحَضْرَتِهِ إنْسَانٌ يُسَلِّمُ عَلَيْهِ، وَكَذَلِكَ الْإِمَامُ لَا يَكُونُ مَعَهُ إلَّا الْوَاحِدُ، فَإِنَّهُ يَقُولُ " السَّلَامُ عَلَيْكُمْ " بِخِطَابِ الْجَمَاعَةِ

L7101 Thus, it is correct that initiating the greeting of peace toward a person is invalid, nor responding to it? If someone mentions what we transmitted in Muslim's Ṣaḥīḥ through the chain of Abū Bakr ibn Abī Shaybah and Abū Kurayb – they said: Abū Muʿāwiyah narrated to us from al-Aʿmash, from al-Musayyib ibn Rāfiʿ, from Tamīm ibn Ṭarafah, from Jābir ibn Samurah, who said: "Allah's Messenger (peace be upon him) came out to us and said: 'Why do I see you raising your hands like the tails of untamed horses? Remain calm during prayer.'"

فَصَحَّ أَنَّهُ لَيْسَ ابْتِدَاءَ سَلَامٍ عَلَى إنْسَانٍ وَلَا رَدًّا؟ فَإِنْ ذَكَرَ ذَاكِرٌ مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ: ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَأَبُو كُرَيْبٌ قَالَا: ثنا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ الْمُسَيَّبِ بْنِ رَافِعٍ عَنْ تَمِيمِ بْنِ طَرَفَةَ عَنْ جَابِرِ بْنِ سَمُرَةَ قَالَ: «خَرَجَ عَلَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: مَالِي أَرَاكُمْ رَافِعِي أَيْدِيكُمْ كَأَنَّهَا أَذْنَابُ خَيْلٍ شُمْسٍ؟ اُسْكُنُوا فِي الصَّلَاةِ» ؟

L7102–7103 And through him to Muslim: Abu Kurayb narrated to us: Ibn Abi Za'idah from Mis'ar, from Ubaydullah ibn al-Qibṭiyyah, from Jabir ibn Samurah who said: "When we prayed with the Messenger of Allah—peace and blessings be upon him—we would say, 'Peace be upon you and the mercy of Allah, peace

وَبِهِ إلَى مُسْلِمٍ: ثنا أَبُو كُرَيْبٌ ثنا ابْنُ أَبِي زَائِدَةَ عَنْ مِسْعَرٍ ثنا عُبَيْدُ اللَّهِ ابْنُ الْقِبْطِيَّةِ عَنْ جَابِرِ بْنِ سَمُرَةَ قَالَ: «كُنَّا إذَا صَلَّيْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قُلْنَا: السَّلَامُ

be upon you and the mercy of Allah,' while gesturing with our hands to both sides. The Messenger of Allah—peace and blessings be upon him—then said: 'Why do you wave your hands as if they were the tails of skittish horses? It suffices for one of you to place his hand upon his thigh, then offer the greeting of peace to his brother from his right and left.'"[10]

L7104 Ali said: There is no valid argument in this for those who maintain the position of a single taslimah (salutation), for it contains two salutations as you observe. As for those who rely on this to claim that the salām (greeting) was originally part of the prayer from its initiation—being a greeting directed at those beside him—this undoubtedly existed but was later abrogated. The explicit text of the narration states that they would do that during prayer, then were commanded to maintain silence in it. This occurred when speech during prayer was permissible, but was subsequently abrogated. The text does not indicate that this act refers to the taslim (salutation) that marks the conclusion of the prayer. Thus, their reliance on it is invalid—and success is attained only through Allah, the Exalted.

L7105 **Issue: We recommend that when the one praying completes the Tashahhud in both sittings, he send blessings upon the Messenger of Allah.**

L7106–7108 458 - Issue: It is recommended that when one completes the Tashahhud in both sittings, they should invoke blessings upon the Messenger of Allah - peace and blessings of Allah be upon him - by saying: "O Allah, send blessings upon Muhammad and upon the family of Muhammad, his wives, and his descendants, as You sent blessings upon Ibrahim and upon the family of Ibrahim. Truly, You are the Praiseworthy, the Glorious. And bestow blessings upon Muhammad and upon the family of Muhammad, his wives, and his descendants, as You bestowed blessings upon Ibrahim and upon the family of Ibrahim throughout all creation. Truly, You are the Praiseworthy, the Glorious."

[10]**Hadith references (L7103):** Sahih Muslim 431a.

عَلَيْكُمْ وَرَحْمَةُ اللَّهِ، السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ، وَأَشَارَ بِيَدِهِ إِلَى الْجَانِبَيْنِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: عَلَامَ تُومِئُونَ بِأَيْدِيكُمْ كَأَنَّهَا أَذْنَابُ خَيْلٍ شُمْسٍ؟ إِنَّمَا يَكْفِي أَحَدَكُمْ أَنْ يَضَعَ يَدَهُ عَلَى فَخِذِهِ ثُمَّ يُسَلِّمُ عَلَى أَخِيهِ مِنْ عَلَى يَمِينِهِ وَشِمَالِهِ»

قَالَ عَلِيٌّ: لَا حُجَّةَ فِي هَذَا لِمَنْ ذَهَبَ إِلَى تَسْلِيمَةٍ وَاحِدَةٍ، لِأَنَّ فِيهِ تَسْلِيمَتَيْنِ كَمَا تَرَى؟ وَأَمَّا مَنْ تَعَلَّقَ بِهِ فِي أَنَّ السَّلَامَ مِنْ الصَّلَاةِ ابْتِدَاءً: سَلَامٌ عَلَى مَنْ مَعَهُ، فَإِنَّ هَذَا بِلَا شَكٍّ كَانَ ثُمَّ نُسِخَ، لِأَنَّ نَصَّ الْخَبَرِ: أَنَّهُمْ كَانُوا يَفْعَلُونَ ذَلِكَ فِي الصَّلَاةِ، فَأُمِرُوا بِالسُّكُونِ فِيهَا، وَأَنَّ هَذَا كَانَ إِذْ كَانَ الْكَلَامُ فِي الصَّلَاةِ مُبَاحًا ثُمَّ نُسِخَ، وَلَيْسَ فِيهِ: أَنَّ الْمُرَادَ بِذَلِكَ التَّسْلِيمُ، الَّذِي هُوَ التَّحْلِيلُ مِنْ الصَّلَاةِ، فَبَطَلَ تَعَلُّقُهُمْ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

[مَسْأَلَةٌ وَنَسْتَحِبُّ إِذَا أَكْمَلَ المصلي التَّشَهُّدَ فِي كِلْتَا الْجِلْسَتَيْنِ أَنْ يُصَلِّيَ عَلَى رَسُولِ اللَّهِ]

٤٥٨ - مَسْأَلَةٌ: وَنَسْتَحِبُّ إِذَا أَكْمَلَ التَّشَهُّدَ فِي كِلْتَا الْجِلْسَتَيْنِ أَنْ يُصَلِّيَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيَقُولَ: " اللَّهُمَّ صَلِّ عَلَى مُحَمَّدٍ وَعَلَى آلِ مُحَمَّدٍ وَعَلَى أَزْوَاجِهِ وَذُرِّيَّتِهِ كَمَا صَلَّيْت عَلَى إبْرَاهِيمَ وَعَلَى آلِ إبْرَاهِيمَ إنَّك حَمِيدٌ مَجِيدٌ، وَبَارِكْ عَلَى مُحَمَّدٍ وَعَلَى آلِ مُحَمَّدٍ وَعَلَى أَزْوَاجِهِ وَذُرِّيَّتِهِ كَمَا بَارَكْت عَلَى إبْرَاهِيمَ وَعَلَى آلِ إبْرَاهِيمَ فِي الْعَالَمِينَ إنَّك حَمِيدٌ مَجِيدٌ "؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ سَلَمَةَ عَنْ ابْنِ الْقَاسِمِ حَدَّثَنِي مَالِكٌ عَنْ نُعَيْمِ بْنِ عَبْدِ اللَّهِ الْمُجْمِرِ: أَنَّ مُحَمَّدَ بْنَ عَبْدِ اللَّهِ بْنِ زَيْدٍ الْأَنْصَارِيَّ - وَعَبْدُ اللَّهِ بْنُ زَيْدٍ هُوَ الَّذِي أُرِيَ النِّدَاءَ لِلصَّلَاةِ - أَخْبَرَهُ عَنْ

Abdullah ibn Rabi‘ narrated to us: Muhammad ibn Mu‘awiyah narrated to us: Ahmad ibn Shu‘ayb narrated to us: Muhammad ibn Salamah narrated to us from Ibn al-Qasim, who said: Malik narrated to me from Nu‘aym ibn Abdullah al-Mujmir that Muhammad ibn Abdullah ibn Zayd al-Ansari - and Abdullah ibn Zayd is the one who was shown the call to prayer - reported to him from Abu Mas‘ud al-Ansari. He said: “The Messenger of Allah (peace and blessings of Allah be upon him) came to us in the gathering of Sa‘d ibn ‘Ubādah, where Bashīr ibn Sa‘d said to him: ’Allah has commanded us to invoke blessings upon you, so how should we invoke blessings upon you?’ The Messenger of Allah (peace and blessings of Allah be upon him) remained silent until we wished he had never asked. Then he said: ’Say: O Allah, send blessings upon Muhammad and the family of Muhammad as You sent blessings upon Ibrāhīm, and bless Muhammad and the family of Muhammad as You blessed Ibrāhīm in all the worlds. Indeed, You are Praiseworthy and Glorious.’”

Narrated to us by ‘Abdullāh ibn Yūsuf, from Ahmad ibn Fatḥ, from ‘Abd al-Wahhāb ibn ‘Īsā, from Ahmad ibn Muḥammad, from Ahmad ibn ‘Alī, from Muslim ibn al-Ḥajjāj, from Isḥāq ibn Ibrāhīm (Ibn Rāhawayh), from Rawḥ, from Mālik ibn Anas, from ‘Abdullāh ibn Abī Bakr, from his father, from ‘Amr ibn Sulaym, from Abū Ḥumayd al-Sā‘idī: “They said: ’O Messenger of Allah, how should we invoke blessings upon you?’ He said: ’Say: O Allah, send blessings upon Muhammad and his wives and offspring as You sent blessings upon the family of Ibrāhīm, and bless Muhammad and his wives and offspring as You blessed the family of Ibrāhīm in all the worlds. Indeed, You are Praiseworthy and Glorious.’”

Through this chain to Muslim: From Muḥammad ibn al-Muthannā, from Muḥammad ibn Ja‘far, from Shu‘bah, from al-Ḥakam ibn ‘Utaybah, who said: I heard Ibn Abī Laylā (‘Abd al-Raḥmān) say: Ka‘b ibn ‘Ujrah met me and said: “Shall I not present you with a gift? The Messenger of Allah (peace and blessings of Allah be upon him) came out to us, and we said: ’We already know how to greet you, but how should we invoke blessings upon you?’ He said: ’Say: O Allah, send blessings upon Muhammad and the family of Muhammad as You sent blessings upon the family of Ibrāhīm. Indeed,

أَبِي مَسْعُودٍ الْأَنْصَارِيِّ قَالَ: «أَتَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي مَجْلِسِ سَعْدِ بْنِ عُبَادَةَ، فَقَالَ لَهُ بَشِيرُ بْنُ سَعْدٍ: أَمَرَنَا اللَّهُ أَنْ نُصَلِّيَ عَلَيْكَ يَا رَسُولَ اللَّهِ، فَكَيْفَ نُصَلِّي عَلَيْكَ؟ فَسَكَتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى تَمَنَّيْنَا أَنَّهُ لَمْ يَسْأَلْهُ، ثُمَّ قَالَ: قُولُوا: اللَّهُمَّ صَلِّ عَلَى مُحَمَّدٍ وَعَلَى آلِ مُحَمَّدٍ كَمَا صَلَّيْتَ عَلَى إِبْرَاهِيمَ، وَبَارِكْ عَلَى مُحَمَّدٍ وَعَلَى آلِ مُحَمَّدٍ كَمَا بَارَكْتَ عَلَى إِبْرَاهِيمَ فِي الْعَالَمِينَ إِنَّكَ حَمِيدٌ مَجِيدٌ» ؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا إِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - ثنا رَوْحٌ عَنْ مَالِكِ بْنِ أَنَسٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ عَنْ أَبِيهِ عَنْ عَمْرِو بْنِ سُلَيْمٍ أَنَا أَبُو حُمَيْدٍ السَّاعِدِيُّ " أَنَّهُمْ «قَالُوا: يَا رَسُولَ اللَّهِ كَيْفَ نُصَلِّي عَلَيْكَ؟ قَالَ: قُولُوا: اللَّهُمَّ صَلِّ عَلَى مُحَمَّدٍ وَعَلَى أَزْوَاجِهِ وَذُرِّيَّتِهِ كَمَا صَلَّيْتَ عَلَى آلِ إِبْرَاهِيمَ، وَبَارِكْ عَلَى مُحَمَّدٍ وَعَلَى أَزْوَاجِهِ وَذُرِّيَّتِهِ كَمَا بَارَكْتَ عَلَى آلِ إِبْرَاهِيمَ إِنَّكَ حَمِيدٌ مَجِيدٌ» ؟ وَبِهِ إِلَى مُسْلِمٍ: ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا مُحَمَّدُ بْنُ جَعْفَرٍ ثنا شُعْبَةُ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: سَمِعْتُ ابْنَ أَبِي لَيْلَى هُوَ عَبْدُ الرَّحْمَنِ - قَالَ: لَقِيَنِي كَعْبُ بْنُ عُجْرَةَ فَقَالَ: أَلَا أُهْدِي لَكَ هَدِيَّةً؟ «خَرَجَ عَلَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْنَا: قَدْ عَرَفْنَا كَيْفَ نُسَلِّمُ عَلَيْكَ، فَكَيْفَ نُصَلِّي عَلَيْكَ؟ قَالَ: قُولُوا: اللَّهُمَّ صَلِّ عَلَى مُحَمَّدٍ وَعَلَى آلِ مُحَمَّدٍ كَمَا صَلَّيْتَ عَلَى آلِ إِبْرَاهِيمَ، إِنَّكَ حَمِيدٌ مَجِيدٌ، اللَّهُمَّ بَارِكْ عَلَى مُحَمَّدٍ وَعَلَى آلِ مُحَمَّدٍ كَمَا بَارَكْتَ عَلَى آلِ إِبْرَاهِيمَ إِنَّكَ حَمِيدٌ مَجِيدٌ»

You are Praiseworthy and Glorious. O Allah, bless Muhammad and the family of Muhammad as You blessed the family of Ibrāhīm. Indeed, You are Praiseworthy and Glorious.'"[11]

L7109 Ali said: The Prophet—peace be upon him—gathered us prior to articulating all his words, which are preserved in these hadiths.

L7110–7112 If the worshipper limits himself to some of what is mentioned in these narrations, it suffices him. If he does not do it at all, we consider it Disliked (makruh), and his prayer is complete. However, it is necessarily incumbent upon him to say what is in a report from these reports, even if once in his lifetime, due to the command of him—peace be upon him—that this be said.

L7113 Indeed, Allah and His angels send blessings upon the Prophet. O you who believe, invoke blessings upon him and salute him with a worthy salutation [Al-Ahzab: 56].[12]

L7114 And a person, if they perform what they are commanded once, has fulfilled their obligation, unless the command specifies repeating it in specific known quantities or at specific known times, in which case it becomes binding. Whoever asserts that repeating what one is commanded to do is obligatory—their claim is invalid, for this would impose a burden from that without limit. Were this obligatory, it would lead to nullifying all occupations, invalidating all other commands, and this constitutes the burden and distress from which Allah the Exalted has safeguarded us. We only dislike abandoning it because it is an immense virtue none turns away from it except one deprived. It is authentically reported from the Prophet—peace and blessings of Allah be upon him—that whoever invokes blessings upon him once, Allah blesses him tenfold. Al-Shāfiʿī said: Whoever fails to send blessings upon the Prophet—peace and blessings of Allah be upon him—in their prayer, their prayer is invalid. He argued that sending peace upon the Messenger of Allah—peace and blessings of Allah be upon him—is obligatory, and it is obligatory during the Tashahhud.

قَالَ عَلِيٌّ: جَمَعَنَا قَبْلَ جَمِيعِ أَلْفَاظِهِ - عَلَيْهِ السَّلَامُ - فِي هَذِهِ الْأَحَادِيثِ.

وَإِنْ اقْتَصَرَ الْمُصَلِّي عَلَى بَعْضِ مَا فِي هَذِهِ الْأَخْبَارِ أَجْزَأَهُ، وَإِنْ لَمْ يَفْعَلْ أَصْلًا كَرِهْنَا ذَلِكَ، وَصَلَاتُهُ تَامَّةٌ إِلَّا أَنَّ فَرْضًا عَلَيْهِ وَلَا بُدَّ أَنْ يَقُولَ مَا فِي خَبَرٍ مِنْ هَذِهِ الْأَخْبَارِ وَلَوْ مَرَّةً وَاحِدَةً فِي دَهْرِهِ، لِأَمْرِهِ - عَلَيْهِ السَّلَامُ - بِأَنْ يُقَالَ ذَلِكَ

وَلِقَوْلِ اللَّهِ تَعَالَى: {إِنَّ اللَّهَ وَمَلائِكَتَهُ يُصَلُّونَ عَلَى النَّبِيِّ يَا أَيُّهَا الَّذِينَ آمَنُوا صَلُّوا عَلَيْهِ وَسَلِّمُوا تَسْلِيمًا} [الأحزاب: ٥٦]

وَالْمَرْءُ إِذَا فَعَلَ مَا أُمِرَ بِهِ مَرَّةً فَقَدْ أَدَّى مَا عَلَيْهِ، إِلَّا أَنْ يَأْتِيَ الْأَمْرُ بِتَرْدِيدِ ذَلِكَ مَقَادِيرَ مَعْلُومَةً، أَوْ فِي أَوْقَاتٍ مَعْلُومَةٍ، فَيَكُونَ ذَلِكَ لَازِمًا وَمَنْ قَالَ: إِنَّ تَكْرَارَ مَا أُمِرَ بِهِ يَلْزَمُ -: كَانَ كَلَامُهُ بَاطِلًا، لِأَنَّهُ يُكَلَّفُ مِنْ ذَلِكَ مَا لَا حَدَّ لَهُ، وَلَوْ كَانَ ذَلِكَ لَازِمًا لَأَدَّى إِلَى بُطْلَانِ كُلِّ شُغْلٍ، وَبُطْلَانِ سَائِرِ الْأَوَامِرِ، وَهَذَا هُوَ الْإِصْرُ وَالْحَرَجُ اللَّذَانِ قَدْ آمَنَنَا اللَّهُ تَعَالَى مِنْهُمَا وَإِنَّمَا كَرِهْنَا تَرْكَهُ، لِأَنَّهُ فَضْلٌ عَظِيمٌ لَا يَزْهَدُ فِيهِ إِلَّا مَحْرُومٌ وَصَحَّ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّ مَنْ صَلَّى عَلَيْهِ وَاحِدَةً صَلَّى اللَّهُ عَلَيْهِ عَشْرًا» ؟ وَقَالَ الشَّافِعِيُّ: مَنْ لَمْ يُصَلِّ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي صَلَاتِهِ بَطَلَتْ صَلَاتُهُ، وَاحْتَجَّ بِأَنَّ التَّسْلِيمَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرْضٌ، وَهُوَ فِي التَّشَهُّدِ فَرْضٌ.

[11] **Hadith references (L7106):** Sahih Muslim 407; Sahih Muslim 406a.
[12] **Qur'an references (L7113):** Qur'an 33:56 (Al-Ahzab).

قَالَ: وَقَدْ رَوَى عَبْدُ الرَّحْمَنِ بْنُ بِشْرٍ عَنْ أَبِي مَسْعُودٍ: «قِيلَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أُمِرْنَا أَنْ نُصَلِّيَ عَلَيْكَ وَأَنْ نُسَلِّمَ، فَأَمَّا السَّلَامُ فَقَدْ عَرَفْنَاهُ، فَكَيْفَ نُصَلِّي عَلَيْكَ؟ فَعَلَّمَهُمْ - عَلَيْهِ السَّلَامُ -» بَعْضَ مَا ذَكَرْنَا قَبْلُ "

L7115 He said: It has been narrated that Abd al-Rahman ibn Bishr reported from Abu Mas'ud: "It was said to the Prophet (peace be upon him): 'We have been commanded to invoke blessings upon you and to greet you with peace. As for the greeting of peace, we have understood it, but how should we invoke blessings upon you?' Then he (peace be upon him) taught them" some of what has already been mentioned previously.

وَفِي بَعْضِ مَا ذَكَرْنَا: أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ لَهُمْ: «وَالسَّلَامُ كَمَا عَلِمْتُمْ» قَالُوا: فَالصَّلَاةُ فَرْضٌ حَيْثُ السَّلَامُ؟ قَالَ عَلِيٌّ: لَوْ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: إنَّ الصَّلَاةَ حَيْثُ يَكُونُ السَّلَامُ: لَكَانَ مَا قَالُوهُ، لَكِنْ لَمَّا لَمْ يَقُلْهُ - عَلَيْهِ السَّلَامُ -، لَمْ يَكُنْ ذَلِكَ، وَلَمْ يَجُزْ أَنْ نَحْكُمَ بِمَا لَمْ يَقُلْ - عَلَيْهِ السَّلَامُ -، فَيَكُونَ فَاعِلُ ذَلِكَ يُقَنِّتُ لَهُ - عَلَيْهِ السَّلَامُ - مَا لَمْ يَقُلْ، وَشَارِعًا مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى

L7116 In some of what we have mentioned: that he (peace be upon him) said to them, "The salam is as you have been taught." They said, "Then is prayer an obligation where the salam [greeting] is given?" Ali said, "Had the Messenger of Allah (peace be upon him) said, 'Prayer is where the salam is given,' their statement would have been valid. But since he did not say it, that is not the case, and it is impermissible to rule based on what he did not say. Thus, such a person would be prescribing for him (peace be upon him) what he did not say and legislating what Allah the Exalted has not authorized."

قَالَ عَلِيٌّ: وَلَقَدْ كَانَ يَلْزَمُ مَنْ قَالَ: إنَّ الصِّيَامَ فَرْضٌ فِي الِاعْتِكَافِ مِنْ أَجْلِ أَنَّ اللَّهَ تَعَالَى ذَكَرَ الِاعْتِكَافَ مَعَ ذِكْرِهِ لِلصَّوْمِ -: أَنْ يَجْعَلَ الصَّلَاةَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي كُلِّ صَلَاةٍ فَرْضًا، لِأَنَّ اللَّهَ تَعَالَى وَرَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَكَرَا الصَّلَاةَ عَلَيْهِ مَعَ التَّسْلِيمِ عَلَيْهِ فَإِنْ ذَكَرَ ذَاكِرٌ: حَدِيثَ ابْنِ وَهْبٍ عَنْ أَبِي هَانِئٍ أَنَّ أَبَا عَلِيٍّ الْجَنْبِيَّ حَدَّثَهُ أَنَّهُ سَمِعَ فَضَالَةَ بْنَ عُبَيْدٍ يَقُولُ: «سَمِعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَجُلًا يَدْعُو فِي صَلَاتِهِ لَمْ يُمَجِّدْ (اللَّهَ) وَلَمْ يُصَلِّ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: " عَجِلْتَ أَيُّهَا الْمُصَلِّي ثُمَّ عَلَّمَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَمِعَ رَجُلًا يُصَلِّي فَمَجَّدَ اللَّهَ تَعَالَى وَحَمِدَهُ وَصَلَّى عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: اُدْعُ تُجَبْ، وَسَلْ تُعْطَ» ؟ قَالَ عَلِيٌّ: لَيْسَ فِي هَذَا إيجَابُ الصَّلَاةِ عَلَيْهِ - صَلَّى اللَّهُ

L7117–7119 Ali said: Indeed, it is incumbent upon whoever claims that fasting is obligatory during iʿtikāf because Allah the Exalted mentioned iʿtikāf alongside His mention of fasting - to make invoking blessings upon the Messenger of Allah, peace be upon him, in every... The prayer is an obligation, because Allah the Exalted and His Messenger (peace and blessings be upon him) both mentioned sending blessings upon him along with the taslīm (greeting of peace). If someone were to cite the hadith of Ibn Wahb from Abu Hani that Abu Ali al-Janbi narrated to him—that he heard Fadalah ibn Ubayd say: "The Messenger of Allah (peace and blessings be upon him) heard a man supplicating in his prayer without glorifying Allah or sending blessings upon the Prophet (peace and blessings be upon him). The Messenger of Allah (peace and blessings be upon him) said to him: 'You have hastened, O you who are praying!' Then the Messenger of Allah (peace and blessings be upon him) taught them. He heard a man praying while glorifying Allah the Exalted, praising Him, and sending blessings upon the Prophet (peace and blessings be upon him). The Messenger of Allah (peace and blessings be upon him) said to him: 'Supplicate, and you will be answered; ask, and you will be granted.'" Ali said: "This does not establish the obligation of sending blessings upon him (peace and blessings be upon him) in the prayer. Had it been

obligatory, he would not have said, 'You have hastened,' for one who hastens in their prayer does not invalidate it. Rather, he would have said: 'Repeat your prayer, for you have not prayed.' However, this narration only indicates the recommendation of sending blessings upon him (peace and blessings be upon him) in the prayer and elsewhere." If they were to cite the hadith of Ka'b ibn Ujrah, which states: "The Messenger of Allah (peace and blessings be upon him) was met by Gabriel, who said to him: 'Far removed is the one in whose presence you are mentioned yet he does not send blessings upon you.' The Prophet (peace be upon him) replied: 'Amen.'" Ali said: "This is an unsound narration, because its narrator, Abu Bakr ibn Abi Uways—who was strongly criticized—narrated it from Muhammad ibn Hilal, who is unknown, from Sa'd ibn Ishaq, whose name is inconsistently reported and whose reliability is not established."

L7120 If it were valid, it would contain an explicit text obligating the invocation of blessings upon the Messenger of Allah—may Allah bless him and grant him peace—whenever he is mentioned in prayer or otherwise, without specifying that this applies only after the Tashahhud in the prayer. And yet, some of them have cited what aligns with their opinion from Abu Humaid and Abu Usayd?

L7121–7122 Ali said: This is binding upon those who hold the view of imitating the Companion—not upon us. And with Allah, the Exalted, lies all success.

L7123 **Issue: The qunut is a commendable act performed after rising from rukūʿ in the final rakʿah of every obligatory prayer.**

L7124 459 - Issue: The qunūt is a virtuous act performed after rising from bowing in the final rakʿah of every obligatory prayer—dawn prayer and others—and in Witr. Whoever omits it incurs no blame. It consists of saying after "Our Lord, to You is all praise": "O Allah, guide me among those You have guided, grant me well-being among those You have granted well-being, take me as an ally among those You have taken as allies, bless me in what You have bestowed, and protect me from the evil You have decreed. You decree and

عَلَيْهِ وَسَلَّمَ - فِي الصَّلَاةِ، وَلَوْ كَانَ ذَلِكَ لَمَا قَالَ لَهُ " عَجَّلْت " فَلَيْسَ مَنْ عَجَّلَ فِي صَلَاتِهِ بِمُبْطِلٍ لَهَا، بَلْ كَانَ يَقُولُ لَهُ: ارْجِعْ فَصَلِّ فَإِنَّك لَمْ تُصَلِّ، لَكِنْ فِي هَذَا الْخَبَرِ اسْتِحْبَابُ الصَّلَاةِ عَلَيْهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الصَّلَاةِ وَغَيْرِهَا فَقَطْ؟ فَإِنْ ذَكَرُوا حَدِيثَ كَعْبِ بْنِ عُجْرَةَ الَّذِي فِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اعْتَرَضَ لَهُ جِبْرِيلُ، فَقَالَ لَهُ: بَعُدَ مَنْ ذُكِرْتَ عِنْدَهُ فَلَمْ يُصَلِّ عَلَيْكَ، فَقَالَ - عَلَيْهِ السَّلَامُ -: آمِينَ» ؟ قَالَ عَلِيٌّ: هَذَا خَبَرٌ لَا يَصِحُّ؛ لِأَنَّ رَاوِيَهُ أَبُو بَكْرِ بْنُ أَبِي أُوَيْسٍ، وَقَدْ غَمَزَ غَمْزًا شَدِيدًا عَنْ مُحَمَّدِ بْنِ هِلَالٍ، وَهُوَ مَجْهُولٌ، عَنْ سَعْدِ بْنِ إِسْحَاقَ، وَهُوَ مُضْطَرِبٌ فِي اسْمِهِ غَيْرُ مَشْهُورِ الْحَالِ

وَلَوْ صَحَّ لَكَانَ فِيهِ إيجَابُ الصَّلَاةِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَصًّا مَتَى ذُكِرَ فِي صَلَاةٍ أَوْ غَيْرِهَا، وَلَمْ يَكُنْ فِيهِ تَخْصِيصُ مَا بَعْدَ التَّشَهُّدِ فِي الصَّلَاةِ بِذَلِكَ وَقَدْ ذَكَرَ بَعْضُهُمْ مَا يُوَافِقُ قَوْلَهُمْ عَنْ أَبِي حُمَيْدٍ، وَأَبِي أُسَيْدٍ؟

قَالَ عَلِيٌّ: هَذَا لَازِمٌ لِمَنْ رَأَى تَقْلِيدَ الصَّاحِبِ، لَا لَنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

[مَسْأَلَةٌ وَالْقُنُوتُ فِعْلٌ حَسَنٌ بَعْدَ الرَّفْعِ مِنْ الرُّكُوعِ فِي آخِرِ رَكْعَةٍ مِنْ كُلِّ صَلَاةِ فَرْضٍ]

٤٥٩ - مَسْأَلَةٌ: وَالْقُنُوتُ فِعْلٌ حَسَنٌ، بَعْدَ الرَّفْعِ مِنْ الرُّكُوعِ فِي آخِرِ رَكْعَةٍ مِنْ كُلِّ صَلَاةِ فَرْضٍ - الصُّبْحِ وَغَيْرِ الصُّبْحِ، وَفِي الْوِتْرِ، فَمَنْ تَرَكَهُ فَلَا شَيْءَ عَلَيْهِ فِي ذَلِكَ وَهُوَ أَنْ يَقُولَ بَعْدَ قَوْلِهِ " رَبَّنَا وَلَك الْحَمْدُ " " اللَّهُمَّ اهْدِنِي فِيمَنْ هَدَيْت، وَعَافِنِي فِيمَنْ

none can decree over You. None whom You take as an ally will be humiliated. Blessed are You, our Lord, and Exalted." One may supplicate for whomever one wishes, naming them explicitly if desired. If recited before bowing, the prayer remains valid. As for the Sunnah, is it as we have described? ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb informed us: ʿUbaydullāh ibn Saʿīd informed us from ʿAbd al-Raḥmān ibn Mahdī: Sufyān al-Thawrī and Shuʿbah both narrated: ʿAmr ibn Murrah narrated from ʿAbd al-Raḥmān ibn Abī Laylā from al-Barāʾ ibn ʿĀzib that "Allah's Messenger—peace and blessings upon him—would perform qunūt in the dawn and sunset prayers."[13]

عَافَيْت، وَتَوَلَّنِي فِيمَنْ تَوَلَّيْت، وَبَارِكْ لِي فِيمَا أَعْطَيْت، وَقِنِي شَرَّ مَا قَضَيْت، إِنَّك تَقْضِي وَلَا يُقْضَى عَلَيْك، وَإِنَّهُ لَا يَذِلُّ مَنْ وَالَيْت، تَبَارَكْت رَبَّنَا وَتَعَالَيْت " وَيَدْعُو لِمَنْ شَاءَ، وَيُسَمِّيهِمْ بِأَسْمَائِهِمْ إنْ أَحَبَّ - فَإِنْ قَالَ ذَلِكَ قَبْلَ الرُّكُوعِ لَمْ تَبْطُلْ صَلَاتُهُ بِذَلِكَ، وَأَمَّا السُّنَّةُ فَالَّذِي ذَكَرْنَا؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عُبَيْدُ اللَّهِ بْنُ سَعِيدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ ثنا سُفْيَانُ الثَّوْرِيُّ، وَشُعْبَةُ قَالَا: ثنا عَمْرُو بْنُ مُرَّةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ الْبَرَاءِ بْنِ عَازِبٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَقْنُتُ فِي الصُّبْحِ وَالْمَغْرِبِ»

L7125–7127

Hammam narrated to us, narrated by Abbas ibn Asbagh, narrated by Muhammad ibn Abd al-Malik ibn Ayman, narrated by Ahmad ibn Muhammad al-Birti al-Qadi, narrated by Abu Ma'mar, narrated by Abd al-Warith—he is Ibn Sa'id al-Tannuri—from Hisham ibn Abi Abdullah al-Dastuwa'i from Yahya ibn Abi Kathir from Abu Salamah ibn Abd al-Rahman ibn Awf from Abu Hurairah, who said: "By Allah, I am the closest of you in prayer to the Messenger of Allah—peace and blessings of Allah be upon him. Abu Hurairah would perform Qunut in the last rak'ah of the Dhuhr prayer, the last Isha prayer, and the Fajr prayer, after saying: 'Allah hears the one who praises Him,' he would supplicate for the believers and curse the disbelievers." Abu Hurairah said: "When the Messenger of Allah—peace and blessings of Allah be upon him—said: 'Allah hears the one who praises Him,' in the last rak'ah of the Isha prayer, he would perform Qunut and say: 'O Allah, save Al-Walid ibn Al-Walid. O Allah, save Salamah ibn Hisham. O Allah, save Ayyash ibn Abi Rabi'ah. O Allah, save the vulnerable among the believers.'" Hammam ibn Ahmad narrated to us, Abbas ibn Asbagh narrated to us, Muhammad ibn Abdul-Malik ibn Ayman narrated to us, Abu Abdullah Al-Kabuli narrated to us, Ibrahim ibn Musa Ar-Razi informed us: Muhammad ibn Anas narrated from Mutarrif from Abu Al-Jahm from Al-Bara' ibn Azib that "the

حَدَّثَنَا حَمَّامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَحْمَدُ بْنُ مُحَمَّدٍ الْبِرْتِيُّ الْقَاضِي ثنا أَبُو مَعْمَرٍ ثنا عَبْدُ الْوَارِثِ هُوَ ابْنُ سَعِيدٍ التَّنُّورِيُّ - عَنْ هِشَامِ بْنِ أَبِي عَبْدِ اللَّهِ الدَّسْتُوَائِيُّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ «أَبِي هُرَيْرَةَ قَالَ " وَاَللَّهِ إنِّي لَأَقْرَبُكُمْ صَلَاةً بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَانَ أَبُو هُرَيْرَةَ يَقْنُتُ فِي الرَّكْعَةِ الْآخِرَةِ مِنْ صَلَاةِ الظُّهْرِ، وَصَلَاةِ الْعِشَاءِ الْآخِرَةِ وَصَلَاةِ الصُّبْحِ، بَعْدَمَا يَقُولُ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ، فَيَدْعُو لِلْمُؤْمِنِينَ وَيَلْعَنُ الْكُفَّارَ؟ وَقَالَ أَبُو هُرَيْرَةَ: كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا قَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ، فِي الرَّكْعَةِ الْآخِرَةِ مِنْ صَلَاةِ الْعِشَاءِ قَنَتَ فَقَالَ: اللَّهُمَّ نَجِّ الْوَلِيدَ بْنَ الْوَلِيدِ، اللَّهُمَّ نَجِّ سَلَمَةَ بْنَ هِشَامٍ، اللَّهُمَّ نَجِّ عَيَّاشَ بْنَ أَبِي رَبِيعَةَ، اللَّهُمَّ نَجِّ الْمُسْتَضْعَفِينَ مِنْ الْمُؤْمِنِينَ» حَدَّثَنَا حَمَّامُ بْنُ أَحْمَدَ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَبُو عَبْدِ اللَّهِ الْكَابُلِيُّ ثنا إبْرَاهِيمُ بْنُ مُوسَى الرَّازِيّ أَنَا مُحَمَّدُ بْنُ أَنَسٍ عَنْ مُطَرِّفٍ عَنْ أَبِي الْجَهْمِ عَنْ الْبَرَاءِ بْنِ عَازِبٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ لَا يُصَلِّي صَلَاةً إلَّا قَنَتَ فِيهَا»

[13] **Hadith references (L7124):** Sahih Muslim 678a.

Prophet—peace be upon him—never performed any prayer without reciting the *qunut* in it."

L7128 Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Muʿawiyah narrated to us: Ahmad ibn Shuʿayb narrated to us: I am Qutaybah ibn Saʿid: Hammad, that is, ibn Zayd, narrated to us from Ayyub al-Sikhtiyānī, from Muhammad ibn Sirin, that Anas ibn Malik was asked: "Did the Messenger of Allah—peace and blessings be upon him—observe qunut in the dawn prayer?" He said: "Yes." They asked him: "Before the rukūʿ or after it?" He said: "After the rukūʿ."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ ثنا حَمَّادٌ هُوَ ابْنُ زَيْدٍ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ «أَنَّ أَنَسَ بْنَ مَالِكٍ سُئِلَ: هَلْ قَنَتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي صَلَاةِ الصُّبْحِ؟ قَالَ: نَعَمْ، قِيلَ لَهُ: قَبْلَ الرُّكُوعِ أَوْ بَعْدَهُ؟ قَالَ: بَعْدَ الرُّكُوعِ»

L7129 Ali said: So all of this is the explicit wording of our statement—and to Allah belongs all praise.

قَالَ عَلِيٌّ: فَهَذَا كُلُّهُ نَصُّ قَوْلِنَا - وَلِلَّهِ الْحَمْدُ

L7130 If it is said, "It has been reported from Anas that he was asked about the qunūt: 'Is it before the rukūʿ or after it?'" He answered: "Before the rukūʿ."

فَإِنْ قِيلَ: فَقَدْ رُوِيَ عَنْ أَنَسٍ: أَنَّهُ سُئِلَ عَنْ الْقُنُوتِ: أَقَبْلَ الرُّكُوعِ أَمْ بَعْدَهُ؟ فَقَالَ: قَبْلَ الرُّكُوعِ

L7131 We said: Anas only reported that from the rulers of his time, not from the Messenger of Allah (peace be upon him). For instance, when he was asked about certain matters of Hajj, he related the Prophet's practice (peace be upon him) but then added: "I act as your rulers act." This statement from Anas constitutes either taqiyyah or personal opinion on his part, and no one after the Messenger of Allah (peace be upon him) holds conclusive authority.

قُلْنَا: إنَّمَا أَخْبَرَ بِذَلِكَ أَنَسٌ عَنْ أُمَرَاءِ عَصْرِهِ، لَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا سُئِلَ عَنْ بَعْضِ أُمُورِ الْحَجِّ فَأَخْبَرَ بِفِعْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ قَالَ: أَفْعَلُ كَمَا يَفْعَلُ أُمَرَاؤُك - وَهَذَا مِنْ أَنَسٍ: إمَّا تَقِيَّةٌ، وَإِمَّا رَأْيٌ مِنْهُ، وَلَا حُجَّةَ فِي أَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L7132–7134 We have been narrated from Yaḥyā ibn Saʿīd al-Qaṭṭān: al-ʿAwwām ibn Ḥamzah narrated to us, saying: I asked Abū ʿUthmān al-Nahdī about the qunūt in the dawn prayer. He said: After the rukūʿ. So I said, "From whom?" He said, "From Abū Bakr, ʿUmar, and ʿUthmān."

وَأَمَّا عَمَّنْ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرُوِّينَا عَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ: ثنا الْعَوَّامُ بْنُ حَمْزَةَ قَالَ: سَأَلْت أَبَا عُثْمَانَ النَّهْدِيَّ عَنْ الْقُنُوتِ فِي الصُّبْحِ؟ فَقَالَ: بَعْدَ الرُّكُوعِ، فَقُلْت: عَمَّنْ؟ قَالَ: عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ

L7135 Shu'bah also narrated from 'Asim al-Ahwal from Abu 'Uthman al-Nahdi that 'Umar ibn al-Khattab used to perform qunut after bowing, and Abu 'Uthman al-Nahdi witnessed Abu Bakr, 'Umar, and 'Uthman. Through the chain of al-Bukhari from Musaddad from Isma'il Ibn 'Ulayyah, who said: "I [heard]

وَرَوَى أَيْضًا شُعْبَةُ عَنْ عَاصِمٍ الْأَحْوَلِ عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَانَ يَقْنُتُ بَعْدَ الرُّكُوعِ، وَقَدْ شَاهَدَ أَبُو عُثْمَانَ النَّهْدِيُّ أَبَا بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ؟ وَمِنْ

from Khalid al-Hadhdhā’ from Abu Qilabah from Anas, who said: ’Qunut was practiced in the Maghrib and Fajr prayers.’”

طَرِيقِ الْبُخَارِيِّ عَنْ مُسَدَّدٍ عَنْ إِسْمَاعِيلَ ابْنِ عُلَيَّةَ أَنَا خَالِدٌ الْحَذَّاءُ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسٍ قَالَ: كَانَ الْقُنُوتُ فِي الْمَغْرِبِ وَالْفَجْرِ

L7136 And through the chain of Sufyān al-Thawrī from Salamah ibn Kuhayl from ʿAbdullāh ibn Maʿqil that ʿAlī ibn Abī Ṭālib recited the qunūt during the Maghrib prayer after the rakʿah, praying against a group of people.

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ عَبْدِ اللَّهِ بْنِ مَعْقِلٍ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَنَتَ فِي الْمَغْرِبِ بَعْدَ الرَّكْعَةِ فَدَعَا عَلَى أُنَاسٍ

L7137 From Ma’mar, from Ayyub, from Ibn Sirin: Ubayy ibn Ka’b performed the Qunut in Witr after bowing. It has also been narrated to us from Alqamah and Al-Aswad that Mu’awiyah used to perform the Qunut in prayer. It has also been narrated to us from Ibn Abbas: “Is the Qunut after bowing?” These are the leaders of guidance: Abu Bakr, Umar, Uthman, Ali, Mu’awiyah, along with Ubayy and Ibn Abbas. A group advocated for the prohibition of Qunut, as narrated to us from Abu Malik Al-Ashja’i through his father, who said: “I prayed behind the Messenger of Allah—peace and blessings be upon him—and he did not perform the Qunut; behind Abu Bakr, and he did not perform it; behind Umar, and he did not perform it; behind Uthman, and he did not perform it; behind Ali, and he did not perform it. O my son, this is a _bidʿah_.”

وَعَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ ابْنِ سِيرِينَ: أَنَّ أُبَيَّ بْنَ كَعْبٍ قَنَتَ فِي الْوِتْرِ بَعْدَ الرُّكُوعِ؟ وَرُوِّينَا أَيْضًا عَنْ عَلْقَمَةَ، وَالْأَسْوَدِ: أَنَّ مُعَاوِيَةَ كَانَ يَقْنُتُ فِي الصَّلَاةِ؟ وَرُوِّينَا أَيْضًا عَنْ ابْنِ عَبَّاسٍ: الْقُنُوتُ بَعْدَ الرُّكُوعِ؟ فَهَؤُلَاءِ أَئِمَّةُ الْهُدَى، أَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ، وَمُعَاوِيَةُ، وَمَعَهُمْ أُبَيٌّ، وَابْنُ عَبَّاسٍ وَذَهَبَ قَوْمٌ إِلَى الْمَنْعِ مِنْ الْقُنُوتِ كَمَا رُوِّينَا «عَنْ أَبِي مَالِكٍ الْأَشْجَعِيِّ عَنْ أَبِيهِ قَالَ صَلَّيْتُ خَلْفَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمْ يَقْنُتْ، وَخَلْفَ أَبِي بَكْرٍ فَلَمْ يَقْنُتْ، وَخَلْفَ عُمَرَ فَلَمْ يَقْنُتْ، وَخَلْفَ عُثْمَانَ فَلَمْ يَقْنُتْ، وَخَلْفَ عَلِيٍّ فَلَمْ يَقْنُتْ، يَا بُنَيَّ إِنَّهَا بِدْعَةٌ»

L7138–7140 Narrated from Alqamah and al-Aswad, who both said: “Umar ibn al-Khattab led us in prayer for some time and did not perform the qunut.” Al-Aswad ibn Yazid reported: Ibn Mas’ud did not perform the qunut in the Fajr prayer. From Sufyan, from Mansur, from Ibrahim al-Nakha’i, from Abu al-Sha’tha’, who said: I asked Ibn Umar about qunut in Fajr. He replied, “I was unaware that anyone does it.” From Malik, from Nafi’: Ibn Umar did not perform qunut in Fajr. It was narrated to us that Ibn Abbas did not perform qunut. From Sufyan ibn Uyaynah, from Ibn Abi Najih, who said: I asked Salim ibn Abdullah ibn Umar, “Did Umar ibn al-Khattab perform qunut in the Fajr prayer?” He said, “No. It is merely something people innovated.” From Abd al-Razzaq, from Ma’mar, from al-Zuhri, who used to say, “From where did people adopt the qunut?” He marveled, “The Messenger of Allah (peace be upon him) performed qunut for a few days, then abandoned it.” Ali said:

وَعَنْ عَلْقَمَةَ، وَالْأَسْوَدِ قَالَا: صَلَّى بِنَا عُمَرُ بْنُ الْخَطَّابِ زَمَانًا فَلَمْ يَقْنُتْ وَعَنْ الْأَسْوَدِ بْنِ يَزِيدَ قَالَ: كَانَ ابْنُ مَسْعُودٍ لَا يَقْنُتُ فِي صَلَاةِ الْغَدَاةِ وَعَنْ سُفْيَانَ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ أَبِي الشَّعْثَاءِ قَالَ: سَأَلْت ابْنَ عُمَرَ عَنْ الْقُنُوتِ فِي الْفَجْرِ؟ فَقَالَ: مَا شَعَرْت أَنَّ أَحَدًا يَفْعَلُهُ؟ وَعَنْ مَالِكٍ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ كَانَ لَا يَقْنُتُ فِي الْفَجْرِ؟ وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ لَمْ يَقْنُتْ؟ وَعَنْ سُفْيَانَ بْنَ عُيَيْنَةَ عَنْ ابْنِ أَبِي نَجِيحٍ: قَالَ سَأَلْت سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ: هَلْ كَانَ عُمَرُ بْنُ الْخَطَّابِ يَقْنُتُ فِي الصُّبْحِ؟ قَالَ: لَا، إنَّمَا هُوَ شَيْءٌ أَحْدَثَهُ النَّاسُ؟ وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ: أَنَّهُ كَانَ

يَقُولُ: مِنْ أَيْنَ أَخَذَ النَّاسُ الْقُنُوتَ؟ وَيَعْجَبُ: إِنَّمَا قَنَتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَيَّامًا ثُمَّ تَرَكَ ذَلِكَ؟ قَالَ عَلِيٌّ: وَكَانَ يَحْيَى بْنُ يَحْيَى اللَّيْثِيُّ، وَبَقِيُّ بْنُ مَخْلَدٍ: لَا يَرَيَانِ الْقُنُوتَ وَعَلَى ذَلِكَ جَرَى أَهْلُ مَسْجِدَيْهِمَا بِقُرْطُبَةَ إِلَى الْآنَ قَالَ عَلِيٌّ: أَمَّا الرِّوَايَةُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ، وَابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمْ -: بِأَنَّهُمْ لَمْ يَقْنُتُوا فَلَا حُجَّةَ فِي ذَلِكَ النَّهْيِ عَنْ الْقُنُوتِ، لِأَنَّهُ قَدْ صَحَّ عَنْ جَمِيعِهِمْ أَنَّهُمْ قَنَتُوا، وَكُلُّ ذَلِكَ صَحِيحٌ، قَنَتُوا وَتَرَكُوا، فَكِلَا الْأَمْرَيْنِ مُبَاحٌ، وَالْقُنُوتُ ذِكْرٌ لِلَّهِ تَعَالَى، فَفِعْلُهُ حَسَنٌ، وَتَرْكُهُ مُبَاحٌ، وَلَيْسَ فَرْضًا، وَلَكِنَّهُ فَضْلٌ؟ وَأَمَّا قَوْلُ وَالِدِ أَبِي مَالِكٍ الْأَشْجَعِيِّ: إِنَّهُ بِدْعَةٌ - فَلَمْ يَعْرِفْهُ، وَمَنْ عَرَفَهُ أَثْبَتَ فِيهِ مِمَّنْ لَمْ يَعْرِفْهُ، وَالْحُجَّةُ فِيمَنْ عَلِمَ، لَا فِيمَنْ لَمْ يَعْلَمْ

Yahya ibn Yahya al-Laythi and Baqi ibn Makhlad did not hold the view of qunut. The people of their two mosques have adhered to this practice in Cordoba up to the present day. Ali said: As for the narrations from the Messenger of Allah (peace be upon him), Abu Bakr, Umar, Uthman, Ali, and Ibn Abbas (may Allah be pleased with them) stating they did not perform qunut, this provides no evidence for prohibiting qunut, for it is authentically established that they all performed it. All such reports are valid: they performed it and abandoned it. Thus both matters are permissible. Qunut is a remembrance of Allah Almighty. Performing it is commendable, and omitting it is permissible. It is not obligatory but a virtuous act. As for the statement of Abu Malik al-Ashja'i's father that it is an innovation—he had no knowledge of it. Those who recognize it hold stronger authority regarding it than those who do not. The decisive proof lies with those who possess knowledge, not those who lack it.

L7141 وَأَمَّا ابْنُ مَسْعُودٍ فَلَمْ يَأْتِ عَنْهُ كُرْهُهُ، وَلَا أَنَّهُ نَهَى عَنْهُ، وَإِنَّمَا جَاءَ أَنَّهُ كَانَ لَا يَقْنُتُ فِي الْفَجْرِ فَقَطْ، وَهَذَا مُبَاحٌ، وَقَدْ قَنَتَ غَيْرُهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -

As for Ibn Masʿūd, there is no report from him indicating his dislike of it, nor that he prohibited it. Rather, what is reported is that he did not perform the qunūt specifically in the Fajr prayer, and this is permissible. Other Companions besides him performed the qunūt, may Allah be pleased with them.

L7142–7146 وَأَمَّا ابْنُ عُمَرَ فَلَمْ يَعْرِفْهُ كَمَا لَمْ يَعْرِفْ الْمَسْحَ، وَلَيْسَ ذَلِكَ بِقَادِحٍ فِي مَعْرِفَةِ مَنْ عَرَفَهُ؟ وَأَمَّا الزُّهْرِيُّ فَجَهِلَ الْقُنُوتَ وَرَآهُ مَنْسُوخًا، كَمَا صَحَّ عَنْهُ مِنْ تِلْكَ الطَّرِيقِ نَفْسِهَا: أَنَّ كَوْنَ زَكَاةِ الْبَقَرِ فِي كُلِّ ثَلَاثِينَ: تَبِيعٌ، وَفِي أَرْبَعِينَ: مُسِنَّةٌ - مَنْسُوخٌ، وَأَنَّ زَكَاتَهَا كَزَكَاةِ الْإِبِلِ، فَإِنْ كَانَ قَوْلُ الزُّهْرِيِّ فِي نَسْخِ الْقُنُوتِ حُجَّةً، فَهُوَ حُجَّةٌ فِي نَسْخِ زَكَاةِ الْبَقَرِ فِي ثَلَاثِينَ تَبِيعٌ، وَفِي أَرْبَعِينَ مُسِنَّةٌ، وَإِنْ لَمْ يَكُنْ هُنَالِكَ حُجَّةٌ فَلَيْسَ هُوَ هَهُنَا حُجَّةً؟ وَالْعَجَبُ مِنْ الْمَالِكِيِّينَ الْمُحْتَجِّينَ بِقَوْلِ ابْنِ عُمَرَ إِذَا وَافَقَ تَقْلِيدَهُمْ ثُمَّ سَهُلَ عَلَيْهِمْ هَهُنَا خِلَافَ ابْنِ عُمَرَ، وَخِلَافَ سَالِمٍ ابْنِهِ، وَخِلَافَ الزُّهْرِيِّ، وَهُمَا عَالِمَا أَهْلِ الْمَدِينَةِ وَالْعَجَبُ مِمَّنْ

As for Ibn 'Umar, he did not recognize it—just as he did not recognize wiping—so does that undermine the knowledge of those who recognized it? As for al-Zuhri, he was unaware of the qunut and considered it abrogated, as was authentically reported from him via that same chain: That the ruling of zakāh on cows being a one-year-old male calf (tabīʿ) for every thirty and a three-year-old cow (musinnah) for every forty is abrogated, and that their zakāh is like the zakāh of camels. If al-Zuhrī's statement regarding the abrogation of qunūt is deemed authoritative, then it is similarly authoritative for the abrogation of zakāh on cows at thirty being a tabīʿ and at forty a musinnah. If it is not authoritative there, is it not authoritative here? It is astonishing that the Mālikīs—who cite Ibn 'Umar's opinion when it aligns with their school—readily oppose Ibn 'Umar here, oppose his son Sālim, and

oppose al-Zuhrī, both of whom were the scholars of Medina. It is equally astonishing that one argues against qunūt using Sālim's statement, "People introduced it," while accepting the validity of claims like "People equated two mudds of wheat to a ṣāʿ of barley in zakāh al-fiṭr"—all arbitrary judgments in religion based on falsehood. They argued: Had qunūt been a sunnah, it would not have been unknown to Ibn Masʿūd or Ibn ʿUmar. We countered: The practice of placing hands on the knees during bowing was unknown to Ibn Masʿūd, yet he adhered to tathbīq (spreading palms on knees) until his death. Similarly, wiping over leather socks was unknown to Ibn ʿUmar, yet they did not consider this a proof. Why then does the ignorance of qunūt by them become a proof? This is truly astonishing and a mockery of religion, especially since qunūt could remain obscure, being a silent act connected to standing after bowing—known only to those who inquired—not an obligation people must necessarily know. Moreover, Ibn ʿUmar did know it, as we will later mention, and Ibn Masʿūd did not reject it. Some argued: The proof for qunūt's abrogation is your narration via Maʿmar from al-Zuhrī from Sālim ibn ʿAbdullāh from his father: "He heard Allah's Messenger—peace and blessings upon him—say upon raising his head from the final rakʿah of Fajr: 'O Allah, curse so-and-so and so-and-so,' invoking curses against some hypocrites. Then Allah revealed: {Not for you is the decision—whether He pardons them or punishes them, for they are wrongdoers} [3:128]." Ali said: This serves as evidence for affirming qunut, because it contains no prohibition against it. Thus, this refutes the claim of those who say: "Ibn Umar was ignorant of qunut." It is probable that Ibn Umar only rejected qunut in the Fajr prayer before bowing – which is the disputed position – and the narrations from him align with this interpretation. This is the preferable view, to avoid his statement contradicting what is firmly established from Allah's Messenger – peace and blessings be upon him. This report in fact informs us of Allah's declaration that the command belongs to Him alone, not to His Messenger – peace and blessings be upon him – and that those cursed ones may either be granted repentance by Him the Exalted or, according to His prior knowledge, be destined to believe exclusively. Some scholars held that qunut is only performed during warfare? They argued using the narration we transmitted through Ibn al-Mujālid's chain from his father, from Ibrāhīm

يَحْتَجُّ فِي تَرْكِ الْقُنُوتِ بِقَوْلِ سَالِمٍ: أَحْدَثَهُ النَّاسُ، وَهُوَ يَرَى حُجَّةَ قَوْلِ الْقَائِلِ: فَعَدَلَ النَّاسُ مُدَّيْنِ مِنْ بُرٍّ بِصَاعٍ مِنْ شَعِيرٍ فِي زَكَاةِ الْفِطْرِ، وَهَذَا كُلُّهُ تَحَكُّمٌ فِي الدِّينِ بِالْبَاطِلِ وَقَالُوا: لَوْ كَانَ الْقُنُوتُ سُنَّةً مَا خَفِيَ عَنِ ابْنِ مَسْعُودٍ وَلَا عَنِ ابْنِ عُمَرَ؟ فَقُلْنَا: قَدْ خَفِيَ وَضْعُ الْأَيْدِي عَلَى الرُّكَبِ فِي الرُّكُوعِ عَلَى ابْنِ مَسْعُودٍ، فَثَبَتَ عَلَى الْقَوْلِ بِالتَّطْبِيقِ إِلَى أَنْ مَاتَ، وَخَفِيَ عَلَى ابْنِ عُمَرَ الْمَسْحُ عَلَى الْخُفَّيْنِ، وَلَمْ يَرَوْا ذَلِكَ حُجَّةً، فَمَا بَالُ خَفَاءِ الْقُنُوتِ عَنْهُمَا صَارَ حُجَّةً؟ إِنَّ هَذَا لَعَجَبٌ وَتَلَاعُبٌ بِالدِّينِ، مَعَ أَنَّ الْقُنُوتَ مُمْكِنٌ أَنْ يَخْفَى، لِأَنَّهُ سُكُوتٌ مُتَّصِلٌ بِالْقِيَامِ مِنَ الرُّكُوعِ، لَا يَعْرِفُهُ إِلَّا مَنْ سَأَلَ عَنْهُ، وَلَيْسَ فَرْضًا فَيَعْلَمُهُ النَّاسُ وَلَا بُدَّ، فَكَيْفَ وَقَدْ عَرَفَهُ ابْنُ عُمَرَ كَمَا نَذْكُرُ بَعْدَ هَذَا، وَلَمْ يُنْكِرْهُ ابْنُ مَسْعُودٍ؟ وَقَالَ بَعْضُ النَّاسِ: الدَّلِيلُ عَلَى نَسْخِ الْقُنُوتِ مَا رَوَيْتُمُوهُ مِنْ طَرِيقِ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِ «أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَ رَفَعَ رَأْسَهُ مِنْ صَلَاةِ الصُّبْحِ مِنَ الرَّكْعَةِ الْأَخِيرَةِ قَالَ: اللَّهُمَّ الْعَنْ فُلَانًا وَفُلَانًا، دَعَا عَلَى نَاسٍ مِنَ الْمُنَافِقِينَ فَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ: {لَيْسَ لَكَ مِنَ الْأَمْرِ شَيْءٌ أَوْ يَتُوبَ عَلَيْهِمْ أَوْ يُعَذِّبَهُمْ فَإِنَّهُمْ ظَالِمُونَ} [آل عمران: ١٢٨] » قَالَ عَلِيٌّ: هَذَا حُجَّةٌ فِي إِثْبَاتِ الْقُنُوتِ، لِأَنَّهُ لَيْسَ فِيهِ نَهْيٌ عَنْهُ، فَهَذَا حُجَّةٌ فِي بُطْلَانِ قَوْلِ مَنْ قَالَ: إِنَّ ابْنَ عُمَرَ جَهِلَ الْقُنُوتَ، وَلَعَلَّ ابْنَ عُمَرَ إِنَّمَا أَنْكَرَ الْقُنُوتَ فِي الْفَجْرِ قَبْلَ الرُّكُوعِ، فَهُوَ مَوْضِعُ إِنْكَارٍ، وَتَتَّفِقُ الرِّوَايَاتُ عَنْهُ، فَهُوَ أَوْلَى، لِئَلَّا يَجْعَلَ كَلَامَهُ خِلَافًا لِلثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، وَإِنَّمَا فِي هَذَا الْخَبَرِ إِخْبَارُ اللَّهِ تَعَالَى بِأَنَّ الْأَمْرَ لَهُ، لَا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّ أُولَئِكَ الْمَلْعُونِينَ لَعَلَّهُ تَعَالَى يَتُوبُ عَلَيْهِمْ، أَوْ فِي سَابِقِ عِلْمِهِ: أَنَّهُمْ سَيُؤْمِنُونَ فَقَطْ؟ وَذَهَبَ قَوْمٌ إِلَى أَنَّ الْقُنُوتَ إِنَّمَا يَكُونُ فِي حَالِ

al-Nakhaʿī, from ʿAlqamah and al-Aswad, who both said: “Allah’s Messenger – peace and blessings be upon him – never performed qunut in any prayer except when at war, whereupon he would perform it in all prayers. Neither Abū Bakr, ʿUmar, nor ʿUthmān performed qunut until their deaths. ʿAlī did not perform qunut until he fought the people of Syria, after which he performed it in all prayers. Muʿāwiyah likewise performed qunut, each of them [ʿAlī and Muʿāwiyah] invoking curses against the other.” Ali responded: This contains no valid evidence, as the narration from Allah’s Messenger – peace and blessings be upon him – is mursal (disconnected), and no proof can be established through a mursal report. Moreover, the assertion that Abū Bakr, ʿUmar, and ʿUthmān did not perform qunut is contradicted by more reliable chains confirming they did perform it.[14]

L7147 The scholar who affirms holds greater authority than the denier who lacks knowledge.

L7148 Or do we say: Both are correct, and both are permissible? In this [report]—if authenticated by a chain—lies the confirmation of qunoot from the Prophet (peace be upon him) during warfare in all prayers? Similarly reported from Ali and Muawiyah, with no prohibition mentioned outside wartime circumstances. Thus, it would be proof for us—if established—though we have no need for it due to the established [evidence] we mentioned earlier? And all praise is due to Allah, the Most High?

L7149–7150 As for Abū Ḥanīfah and those who follow his school, they said: Qunūt is not prescribed in any of the prayers whatsoever except in Witr—wherein Qunūt is performed before bowing, applying throughout the entire year. Whoever omits Qunūt in it, let them perform two prostrations of forgetfulness? As for Mālik and al-Shāfiʿī, they said: Qunūt is not prescribed in any of the obligatory prayers whatsoever except specifically in the dawn prayer. Mālik said: “Before bowing.”

L7151 Al-Shafi’i said: After the rukūʿ.

[14] **Qur’an references (L7142):** Qur’an 3:128 (Ali ’Imran).

الْمُحَارَبَةِ؟ : وَاحْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ الْمُجَالِدِ عَنْ أَبِيهِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ، وَالْأَسْوَدِ قَالَا " مَا قَنَتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي شَيْءٍ مِنْ الصَّلَوَاتِ، إلَّا إذَا حَارَبَ، فَإِنَّهُ كَانَ يَقْنُتُ فِي الصَّلَوَاتِ كُلِّهِنَّ، وَلَا قَنَتَ أَبُو بَكْرٍ، وَلَا عُمَرُ، وَلَا عُثْمَانُ، حَتَّى مَاتُوا، وَلَا قَنَتَ عَلِيٌّ حَتَّى حَارَبَ أَهْلَ الشَّامِ، فَكَانَ يَقْنُتُ فِي الصَّلَوَاتِ كُلِّهِنَّ وَكَانَ مُعَاوِيَةُ يَقْنُتُ أَيْضًا، يَدْعُو كُلُّ وَاحِدٍ مِنْهُمَا عَلَى صَاحِبِهِ " قَالَ عَلِيٌّ: هَذَا لَا حُجَّةَ فِيهِ، لِأَنَّهُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ وَفِيهِ: عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ: أَنَّهُمْ لَمْ يَقْنُتُوا وَقَدْ صَحَّ عَنْهُمْ بِأَثْبَتَ مِنْ هَذَا الطَّرِيقِ: أَنَّهُمْ كَانُوا يَقْنُتُونَ

وَالْمُثْبِتُ الْعَالِمُ أَوْلَى مِنْ النَّافِي الَّذِي لَمْ يَعْلَمْ

أَوْ نَقُولُ: كِلَاهُمَا صَحِيحٌ، وَكِلَاهُمَا مُبَاحٌ؟ وَفِيهِ - لَوْ انْسَنَدَ - إثْبَاتُ الْقُنُوتِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَالِ الْمُحَارَبَةِ فِي جَمِيعِ الصَّلَوَاتِ؟ وَعَنْ عَلِيٍّ وَمُعَاوِيَةَ كَذَلِكَ، وَلَيْسَ فِيهِ نَهْيٌ فِي غَيْرِ حَالِ الْمُحَارَبَةِ، فَهُوَ حُجَّةٌ لَنَا - لَوْ ثَبَتَ - وَنَحْنُ غَانُونَ عَنْهُ بِالثَّابِتِ الَّذِي ذَكَرْنَا قَبْلُ، وَلِلَّهِ تَعَالَى الْحَمْدُ؟

وَأَمَّا أَبُو حَنِيفَةَ وَمَنْ قَلَّدَهُ فَقَالُوا: لَا يَقْنُتُ فِي شَيْءٍ مِنْ الصَّلَوَاتِ كُلِّهَا، إلَّا فِي الْوِتْرِ، فَإِنَّهُ يَقْنُتُ فِيهِ قَبْلَ الرُّكُوعِ: السَّنَةَ كُلَّهَا، فَمَنْ تَرَكَ الْقُنُوتَ فِيهِ فَلْيَسْجُدْ سَجْدَتَيْ السَّهْوِ؟ وَأَمَّا مَالِكٌ، وَالشَّافِعِيُّ فَإِنَّهُمَا قَالَا: لَا يَقْنُتُ فِي شَيْءٍ مِنْ الصَّلَوَاتِ الْمَفْرُوضَةِ كُلِّهَا إلَّا فِي الصُّبْحِ خَاصَّةً وَقَالَ مَالِكٌ: قَبْلَ الرُّكُوعِ

وَقَالَ الشَّافِعِيُّ: بَعْدَ الرُّكُوعِ

وَقَالَ الشَّافِعِيُّ: فَإِنْ نَزَلَتْ بِالْمُسْلِمِينَ نَازِلَةٌ قَنَتَ فِي جَمِيعِ الصَّلَوَاتِ، وَلَا يَقْنُتُ فِي الْوِتْرِ إِلَّا فِي لَيْلَةِ النِّصْفِ مِنْ رَمَضَانَ خَاصَّةً بَعْدَ الرُّكُوعِ؟ قَالَ عَلِيٌّ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ: فَمَا وَجَدْنَاهُ كَمَا هُوَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - نَعْنِي النَّهْيَ عَنْ الْقُنُوتِ فِي شَيْءٍ مِنْ الصَّلَوَاتِ حَاشَا الْوِتْرِ فَإِنَّهُ يُقْنَتُ فِيهِ، وَعَلَى مَنْ تَرَكَهُ سُجُودُ السَّهْوِ.

L7152 Ash-Shāfiʿī said: If a calamity befalls the Muslims, he should perform qunūt in all prayers, and qunūt is not performed in Witr except exclusively on the night of the middle of Ramadan after bowing. ʿAlī said: As for Abū Ḥanīfa's statement—we did not find it reported from any of the Companions, namely the prohibition of qunūt in any prayers except Witr, wherein qunūt is performed—whoever omits it must perform sujūd al-sahw.

وَكَذَلِكَ قَوْلُ مَالِكٍ فِي تَخْصِيصِهِ الصُّبْحَ خَاصَّةً بِالْقُنُوتِ، مَا وَجَدْنَاهُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ، وَلَا عَنْ أَحَدٍ مِنْ التَّابِعِينَ؟ وَكَذَلِكَ تَفْرِيقُ الشَّافِعِيِّ بَيْنَ الْقُنُوتِ فِي الصُّبْحِ وَبَيْنَ الْقُنُوتِ فِي سَائِرِ الصَّلَوَاتِ؟ وَهَذَا مِمَّا خَالَفُوا فِيهِ كُلَّ شَيْءٍ رُوِيَ فِي هَذَا الْبَابِ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، مَعَ تَشْنِيعِهِمْ عَلَى مَنْ خَالَفَ بَعْضَ الرِّوَايَةِ عَنْ صَاحِبٍ لِسُنَّةٍ صَحَّتْ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ قَالَ عَلِيٌّ: وَقَوْلُنَا هُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ؟ وَرُوِيَ عَنْ ابْنِ أَبِي لَيْلَى: مَا كُنْت لِأُصَلِّيَ خَلْفَ مَنْ لَا يَقْنُتُ، وَأَنَّهُ كَانَ يَقْنُتُ فِي صَلَاةِ الصُّبْحِ قَبْلَ الرُّكُوعِ

L7153 Similarly, Malik's specification of Qunut exclusively for Fajr—have we found this reported from any Companion—may Allah be pleased with them—or any Follower? Likewise, Al-Shafiʿi's distinction between Qunut in Fajr and Qunut in other prayers—is this not among matters wherein they opposed every narration transmitted in this topic from the Companions, despite their censure of those who contradict some reports from a companion associated with a Sunnah authentically established from Allah's Messenger—peace and blessings be upon him? Ali said: "Our view is the view of Sufyan al-Thawri." It is reported from Ibn Abi Layla: "I would not pray behind someone who does not perform Qunut"—and that he performed Qunut in Fajr prayer before bowing.

وَعَنْ اللَّيْثِ كَرَاهَةُ الْقُنُوتِ جُمْلَةً؟ وَرُوِيَ عَنْهُ أَيْضًا: أَنَّهُ كَانَ يَقْنُتُ فِي صَلَاةِ الصُّبْحِ؟ وَعَنْ أَشْهَبَ: تَرْكُ الْقُنُوتِ جُمْلَةً؟ قَالَ عَلِيٌّ: وَأَمَّا مَنْ رَأَى الْقُنُوتَ قَبْلَ الرُّكُوعِ فَإِنَّهُمْ ذَكَرُوا أَثَرًا رُوِّينَاهُ مِنْ طَرِيقِ يَزِيدَ بْنِ زُرَيْعٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ عَزْرَةَ عَنْ ابْنِ أَبْزَى؟

L7154 From al-Layth: The discouragement of qunut altogether? It is also narrated from him: that he used to perform qunut in the dawn prayer? From Ashhab: The complete abandonment of qunut? Ali said: As for those who hold that the qunut is before bowing, they mentioned a narration we transmitted via the path of Yazīd ibn Zuraiʿ from Saʿīd ibn Abī ʿArūbah from Qatādah from ʿAzrah from Ibn Abzāʾ?

قَالَ عَلِيٌّ: وَعَزْرَةُ لَيْسَ بِالْقَوِيِّ

L7155–7156 Ali said: And ʿUzrah is not strong.

وَبِأَثَرٍ آخَرَ فِي الْوِتْرِ مِنْ حَدِيثِ حَفْصِ بْنِ غِيَاثٍ، قِيلَ: إنَّهُ أَخْطَأَ فِيهِ، وَإِنَّمَا الثَّابِتُ بَعْدَ الرُّكُوعِ كَمَا ذَكَرْنَا؟ وَمَنْ قَنَتَ قَبْلَ الرُّكُوعِ فَلَمْ يَأْتِ بِالْمُخْتَارِ، وَلَمْ تَبْطُلْ صَلَاتُهُ؛

L7157 And another narration concerning the Witr prayer from the hadith of Hafs ibn Ghiyath: it is said that he erred in it, and the established practice is after the bowing as we mentioned. Whoever performs the Qunoot before bowing has not followed the preferred practice, but his prayer is not invalidated

because it is a remembrance of Allah, the Exalted. As for the Qunoot in the Witr prayer: Abdullah ibn Rabi‘ narrated to us, saying: ‘Umar ibn ‘Abd al-Malik narrated to us, Muhammad ibn Bakr narrated to us, Abu Dawud narrated to us, Qutaybah ibn Sa‘id and Ahmad ibn Jawwas al-Hanafi narrated to us, both of whom said: Abu al-Ahwas narrated to us from Abu Ishaq al-Sabi‘i from Burayd ibn Abi Maryam from Abu al-Hawra’—he is Rabi‘ah ibn Shayban al-Sa‘di—who said: Al-Hasan ibn ‘Ali said: The Messenger of Allah (peace and blessings be upon him) taught me words to say in the Witr prayer. Ibn Jawwas in his narration said: In the Qunoot of the Witr prayer. Then they both concurred: “O Allah, guide me among those You have guided, grant me well-being among those You have granted well-being, take me into Your charge among those You have taken into Your charge, bless me in what You have given me, and protect me from the evil of what You have decreed. Verily, You decree and none can decree over You. He whom You support is never humiliated. Blessed are You, our Lord, and Exalted are You.”[15]

L7158 Ali said: Qunut is the remembrance of Allah, the Exalted, and supplication; therefore, we cherish it.

L7159 And this *athar*, even if not considered authoritative in its own right, we have found no other narration on this matter from the Messenger of Allah—peace and blessings be upon him. Ahmad ibn Hanbal—may Allah have mercy on him—said: “A weak *ḥadīth* is more preferable to us than opinion.” ʿAlī said: “And is this our position?” And *qunūt* with wording other than this has been reported from ʿUmar—may Allah be pleased with him—and is the *musnad* more preferable to us? If it is objected: “Would ʿUmar have stated it unless he had received it from the Prophet—peace and blessings be upon him—?”

L7160–7161 We said to them: The narration decisively established in its chain as being from the Prophet - peace and blessings be upon him - holds greater authority than what is attributed to him - peace and blessings be upon him - based on the conjecture which Allah the Exalted and His Messenger - peace and blessings be upon him - have forbidden. If you say: “This is not conjecture,” then

[15]**Hadith references (L7157):** Sunan an-Nasai 1745.

لِأَنَّهُ ذِكْرٌ لِلَّهِ تَعَالَى؟ وَأَمَّا الْقُنُوتُ فِي الْوِتْرِ: فَإِنَّ عَبْدَ اللهِ بْنَ رَبِيعٍ حَدَّثَنَا قَالَ: ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا قُتَيْبَةُ بْنُ سَعِيدٍ، وَأَحْمَدُ بْنُ جَوَّاسٍ الْحَنَفِيُّ قَالَا: ثنا أَبُو الْأَحْوَصِ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ بُرَيْدِ بْنِ أَبِي مَرْيَمَ عَنْ أَبِي الْحَوْرَاءِ هُوَ رَبِيعَةُ بْنُ شَيْبَانَ السَّعْدِيُّ - قَالَ: «قَالَ الْحَسَنُ بْنُ عَلِيٍّ عَلَّمَنِي رَسُولُ اللهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَلِمَاتٍ أَقُولُهُنَّ فِي الْوِتْرِ - قَالَ ابْنُ جَوَّاسٍ فِي رِوَايَتِهِ: فِي قُنُوتِ الْوِتْرِ، ثُمَّ اتَّفَقَا: اللَّهُمَّ اهْدِنِي فِيمَنْ هَدَيْتَ، وَعَافِنِي فِيمَنْ عَافَيْتَ، وَتَوَلَّنِي فِيمَنْ تَوَلَّيْتَ، وَبَارِكْ لِي فِيمَا أَعْطَيْتَ، وَقِنِي شَرَّ مَا قَضَيْتَ، إِنَّكَ تَقْضِي وَلَا يُقْضَى عَلَيْكَ، وَإِنَّهُ لَا يَذِلُّ مَنْ وَالَيْتَ تَبَارَكْتَ رَبَّنَا وَتَعَالَيْتَ»

قَالَ عَلِيٌّ: الْقُنُوتُ ذِكْرُ اللَّهِ تَعَالَى وَدُعَاءٌ، فَنَحْنُ نُحِبُّهُ.

وَهَذَا الْأَثَرُ وَإِنْ لَمْ يَكُنْ مِمَّا يُحْتَجُّ بِمِثْلِهِ فَلَمْ نَجِدْ فِيهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَيْرَهُ، وَقَدْ قَالَ أَحْمَدُ بْنُ حَنْبَلٍ - رَحِمَهُ اللَّهُ -: ضَعِيفُ الْحَدِيثِ أَحَبُّ إِلَيْنَا مِنْ الرَّأْيِ، قَالَ عَلِيٌّ: وَبِهَذَا نَقُولُ؟ وَقَدْ جَاءَ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - الْقُنُوتُ بِغَيْرِ هَذَا وَالْمُسْنَدُ أَحَبُّ إِلَيْنَا؟ فَإِنْ قِيلَ: لَا يَقُولُهُ عُمَرُ إلَّا وَهُوَ عِنْدَهُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟

قُلْنَا لَهُمْ: الْمَقْطُوعُ فِي الرِّوَايَةِ عَلَى أَنَّهُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْلَى مِنْ الْمَنْسُوبِ إلَيْهِ - عَلَيْهِ السَّلَامُ - بِالظَّنِّ الَّذِي نَهَى اللَّهُ تَعَالَى عَنْهُ وَرَسُولُهُ - عَلَيْهِ السَّلَامُ - فَإِنْ قُلْتُمْ: لَيْسَ ظَنًّا، فَأَدْخِلُوا فِي حَدِيثِكُمْ أَنَّهُ مُسْنَدٌ، فَقُولُوا: عَنْ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنْ فَعَلْتُمْ كَذَبْتُمْ، وَإِنْ أَبَيْتُمْ حَقَّقْتُمْ أَنَّهُ مِنْكُمْ قَوْلٌ عَلَى رَسُولِ

incorporate into your narration an explicit chain by stating: “From ʻUmar from the Prophet - peace and blessings be upon him -.” If you do so, you lie; if you refuse, you confirm that this constitutes an assertion from yourselves against the Messenger of Allah - peace and blessings be upon him - founded on the conjecture about which Allah the Exalted said: *“Indeed, conjecture avails nothing against the truth”* (Quran 10:36). As for specifying names in supplication, we have mentioned that the Messenger of Allah - peace and blessings be upon him - did this, as narrated: ʻAbdullāh ibn Yūsuf narrated to us, Aḥmad ibn Fatḥ narrated to us, ʻAbd al-Wahhāb ibn ʻĪsā narrated to us, Aḥmad ibn Muḥammad narrated to us, Aḥmad ibn ʻAlī narrated to us, Muslim ibn al-Ḥajjāj narrated to us, Abū al-Ṭāhir and Ḥarmalah ibn Yaḥyā both said: Ibn Wahb informed us, Yūnus ibn Yazīd informed me from Ibn Shihāb, who informed me that Saʻīd ibn al-Musayyib and Abū Salamah ibn ʻAbd al-Raḥmān heard Abū Hurayrah say: “When the Messenger of Allah - peace and blessings be upon him - finished reciting in the dawn prayer, pronounced the Takbīr while raising his head, and said: ʻAllah hears those who praise Him; our Lord, to You is all praise,’ he would then supplicate while standing: ʻO Allah, rescue al-Walīd ibn al-Walīd, Salamah ibn Hishām, ʻAyyāsh ibn Abī Rabīʻah, and the oppressed among the believers. O Allah, intensify Your punishment against Muḍar, and inflict upon them years of famine like those of Yūsuf. O Allah, curse Liḥyān, Riʻl, Dhakwān, and ʻUṣayyah, who disobeyed Allah and His Messenger.’”[16]

L7162 We later learned that he abandoned that practice when Allah, the Exalted, revealed: {You have no part in the matter—whether He accepts their repentance or punishes them, for they are certainly wrongdoers} [Āl ʻImrān: 128].[17]

L7163–7165 In Ṣaḥīḥ Muslim: Muḥammad ibn Muḥammad ibn Mihrān al-Rāzī narrated to us, from al-Walīd ibn Muslim, from al-Awzāʻī, from Yaḥyā ibn Abī Kathīr, from Abū Salama ibn ʻAbd al-Raḥmān that Abū Hurayrah reported to them: “The Prophet—peace and blessings of Allah be upon him—performed qunūt after the rakʻah in prayer for a month. When he said, ’Allah hears those

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالظَّنِّ الَّذِي قَالَ اللَّهُ تَعَالَى فِيهِ: {إِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [يونس: ٣٦] وَأَمَّا تَسْمِيَةُ مَنْ يُدْعَى لَهُ، فَقَدْ ذَكَرْنَا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَعَلَ ذَلِكَ كَمَا: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو الطَّاهِرِ، وَحَرْمَلَةُ بْنُ يَحْيَى قَالَا: أَخْبَرَنَا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنِ ابْنِ شِهَابٍ أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيَّبِ وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ أَنَّهُمَا سَمِعَا أَبَا هُرَيْرَةَ يَقُولُ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ حِينَ يَفْرُغُ مِنْ صَلَاةِ الْفَجْرِ مِنَ الْقِرَاءَةِ وَيُكَبِّرُ وَيَرْفَعُ رَأْسَهُ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ، رَبَّنَا وَلَكَ الْحَمْدُ - ثُمَّ يَقُولُ وَهُوَ قَائِمٌ: اللَّهُمَّ أَنْجِ الْوَلِيدَ بْنَ الْوَلِيدِ، وَسَلَمَةَ بْنَ هِشَامٍ، وَعَيَّاشَ بْنَ أَبِي رَبِيعَةَ وَالْمُسْتَضْعَفِينَ مِنَ الْمُؤْمِنِينَ اللَّهُمَّ اشْدُدْ وَطْأَتَكَ عَلَى مُضَرَ، وَاجْعَلْهَا عَلَيْهِمْ سِنِينَ كَسِنِي يُوسُفَ، اللَّهُمَّ الْعَنْ لِحْيَانَ، وَرِعْلًا، وَذَكْوَانَ وَعُصَيَّةَ، عَصَتْ اللَّهَ وَرَسُولَهُ»

ثُمَّ بَلَغَنَا أَنَّهُ تَرَكَ ذَلِكَ لَمَّا أَنْزَلَ اللَّهُ تَعَالَى: {لَيْسَ لَكَ مِنَ الأَمْرِ شَيْءٌ أَوْ يَتُوبَ عَلَيْهِمْ أَوْ يُعَذِّبَهُمْ فَإِنَّهُمْ ظَالِمُونَ} [آل عمران: ١٢٨]

وَبِهِ إِلَى مُسْلِمٍ: ثنا مُحَمَّدُ بْنُ مُحَمَّدِ بْنِ مِهْرَانَ الرَّازِيّ ثنا الْوَلِيدُ بْنُ مُسْلِمٍ ثنا الْأَوْزَاعِيُّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ أَنَّ أَبَا هُرَيْرَةَ حَدَّثَهُمْ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَنَتَ بَعْدَ الرَّكْعَةِ فِي صَلَاةٍ شَهْرًا، إِذَا قَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ يَقُولُ فِي قُنُوتِهِ: اللَّهُمَّ نَجِّ الْوَلِيدَ بْنَ الْوَلِيدِ، اللَّهُمَّ نَجِّ سَلَمَةَ بْنَ هِشَامٍ، اللَّهُمَّ نَجِّ عَيَّاشَ بْنَ

[16] **Qur’an references (L7161):** Qur’an 10:36 (Yunus).
[17] **Qur’an references (L7162):** Qur’an 3:128 (Ali ’Imran).

who praise Him,' he would supplicate in his qunūt: 'O Allah, rescue al-Walīd ibn al-Walīd. O Allah, rescue Salama ibn Hishām. O Allah, rescue ʿAyyāsh ibn Abī Rabīʿah. O Allah, rescue the downtrodden among the believers. O Allah, intensify Your scourge upon Muḍar. O Allah, inflict upon them years like the years of Joseph?'" Abū Hurayrah said: "Then I saw the Messenger of Allah—peace and blessings of Allah be upon him—cease this supplication afterward. I said: 'I observe the Messenger...'" "Has Allah—may Allah bless him and grant him peace—ceased to supplicate?" It was said, "And what do you make of their arrival?"

أَبِي رَبِيعَةَ، اللَّهُمَّ نَجِّ الْمُسْتَضْعَفِينَ مِنْ الْمُؤْمِنِينَ، اللَّهُمَّ اُشْدُدْ وَطْأَتَكَ عَلَى مُضَرَ، اللَّهُمَّ اجْعَلْهَا عَلَيْهِمْ سِنِينَ كَسِنِي يُوسُفَ؟ قَالَ أَبُو هُرَيْرَةَ: ثُمَّ رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَرَكَ الدُّعَاءَ بَعْدُ، فَقُلْت: أَرَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ تَرَكَ الدُّعَاءَ؟ فَقِيلَ: وَمَا تَرَاهُمْ قَدِمُوا»

L7166 Ali said: "They abandoned supplication only because they arrived." He further said: "People differed regarding this matter. It was narrated from Ibn Masʿūd that he said: 'Carry your needs to the obligatory prayer.' From ʿAmr ibn Dīnār and other Tābiʿūn (successors) among the people of Makkah: 'No prayer in which I supplicate for my need is dearer to me than the obligatory prayer.' From al-Ḥasan al-Baṣrī: 'Supplicate in the obligatory prayer for whatever you wish.' From ʿUrwah ibn al-Zubayr: He used to say in his prostration: 'O Allah, forgive al-Zubayr ibn al-ʿAwwām and Asmāʾ bint Abī Bakr.' This opinion is also held by Ibn Jurayj, al-Shāfiʿī, Mālik, Dāwūd, and others. It has been reported from ʿAṭāʾ, Ṭāwūs, and Mujāhid that one should not supplicate in the obligatory prayer with anything at all. From ʿAṭāʾ: 'Whoever supplicates in his prayer for a person by explicitly naming him, his prayer is invalidated.'"

قَالَ عَلِيٌّ: إنَّمَا تَرَكَ الدُّعَاءَ؛ لِأَنَّهُمْ قَدِمُوا قَالَ عَلِيٌّ: وَاخْتَلَفَ النَّاسُ فِي هَذَا، فَرُوِيَ عَنْ ابْنِ مَسْعُودٍ أَنَّهُ قَالَ: احْمِلُوا حَوَائِجَكُمْ عَلَى الْمَكْتُوبَةِ؟ وَعَنْ عَمْرِو بْنِ دِينَارٍ وَغَيْرِهِ مِنْ تَابِعِي أَهْلِ مَكَّةَ مَا مِنْ صَلَاةٍ أَدْعُو فِيهَا بِحَاجَتِي أَحَبُّ إلَيَّ مِنْ الْمَكْتُوبَةِ؟ وَعَنْ الْحَسَنِ الْبَصْرِيِّ: اُدْعُ فِي الْفَرِيضَةِ بِمَا شِئْت؟ وَعَنْ عُرْوَةَ بْنِ الزُّبَيْرِ: أَنَّهُ كَانَ يَقُولُ: فِي سُجُودِهِ: اللَّهُمَّ اغْفِرْ لِلزُّبَيْرِ بْنِ الْعَوَّامِ، وَأَسْمَاءَ بِنْتِ أَبِي بَكْرٍ؟ وَبِهِ يَقُولُ ابْنُ جُرَيْجٍ، وَالشَّافِعِيُّ، وَمَالِكٌ، وَدَاوُد، وَغَيْرُهُمْ وَرُوِّينَا عَنْ عَطَاءٍ، وَطَاوُسٍ، وَمُجَاهِدٍ: أَنْ لَا يُدْعَى فِي الصَّلَاةِ الْمَكْتُوبَةِ بِشَيْءٍ أَصْلًا وَعَنْ عَطَاءٍ: مَنْ دَعَا فِي صَلَاتِهِ لِإِنْسَانٍ سَمَاهُ بِاسْمِهِ بَطَلَتْ صَلَاتُهُ

L7167–7169 And from Ibn Sīrīn: One should not supplicate in prayer except with what is in the Qur'ān. Abū Ḥanīfah held that if someone mentions a person by name in their prayer while supplicating for them, their prayer becomes invalid. He further extended this strictness by asserting: "If someone sneezes during prayer and says 'Praise be to Allah, Lord of the Worlds' while moving their tongue to utter it, their prayer is invalidated. Should supplication in prayer be limited only to phrases resembling Qur'ānic wording?"

Alī responded: "This contradicts the established Sunnah of Allah's Messenger—peace and blessings be upon him—who explicitly supplicated for certain named groups and against others by name. He never prohibited such practice, and whoever claims otherwise has uttered falsehood."

وَعَنْ ابْنِ سِيرِينَ: لَا يُدْعَى فِي الصَّلَاةِ إلَّا بِمَا فِي الْقُرْآنِ؟ وَذَهَبَ أَبُو حَنِيفَةَ إلَى أَنَّ مَنْ سَمَّى فِي صَلَاتِهِ إنْسَانًا يَدْعُو لَهُ بِاسْمِهِ بَطَلَتْ صَلَاتُهُ، ثُمَّ زَادَ غُلُوًّا فَقَالَ: مَنْ عَطَسَ فِي صَلَاتِهِ فَقَالَ " الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ " وَحَرَّكَ بِهِ لِسَانَهُ بَطَلَتْ صَلَاتُهُ، وَلَا يُدْعَى فِي الصَّلَاةِ إلَّا بِمَا يُشْبِهُ مَا فِي الْقُرْآنِ؟ قَالَ عَلِيٌّ: وَهَذَا خِلَافٌ لِمَا فِي سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ دَعَا لِقَوْمٍ سَمَاهُمْ وَعَلَى قَوْمٍ سَمَاهُمْ، وَمَا نَهَى قَطُّ عَنْ ذَلِكَ، وَمَنْ ادَّعَى ذَلِكَ فَقَدْ كَذَبَ؟ وَاحْتَجَّ فِي ذَلِكَ قَوْمٌ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «إنَّ

Some proponents argued using the Prophet's statement—peace and blessings be upon him: "Indeed, this prayer cannot accommodate any mundane human speech." Alī countered: "This provides no proof for their view, as the prohibition applies solely to a worshipper engaging in conversational speech with others." As for supplication, it is speech with Allah the Exalted - otherwise, recitation is the speech of people. Did the Prophet - peace be upon him - not authentically prohibit the worshiper from reciting the Quran while prostrating, and command supplication during prostration? Thus, the invalidity of Abu Hanifah's opinion has been confirmed, and it is established that supplicating during prostration with Quranic verses is impermissible if intended as recitation. The Prophet - peace be upon him - authentically said after the tashahhud: "Then let each of you choose whichever supplication he finds most pleasing and supplicate with it." This is one of the matters in which Abu Hanifah opposed Ibn Mas'ud, and we know of no opponent from the Companions - may Allah be pleased with them - to Ibn Mas'ud.[18]

A juristic issue: whether the worshiper points with his finger when seated for the Tashahhud and does not move it.

Issue 460: It is recommended that the worshiper point with his finger during the seated position of the *Tashahhud* and not move it.

His right hand is on his right thigh, and he places his left palm on his left thigh. Abdullah ibn Rabee'ah narrated to us: Muhammad ibn Ishaq ibn as-Sulaym narrated to us from Ibn al-A'rabi, from Abu Dawud, from al-Qa'nabi, from Malik, from Muslim ibn Abi Maryam, from Ali ibn Abdur-Rahman al-Ma'afiri, who said: Abdullah ibn Umar saw me fiddling with pebbles during prayer. When he concluded the prayer, he forbade me and said: "Do as the Messenger of Allah (peace be upon him) used to do. When he sat in prayer, he placed his right palm on his right thigh, closed all his fingers, pointed with his index finger, and placed his left palm on his left thigh."[19]

هَذِهِ الصَّلَاةَ لَا يَصْلُحُ فِيهَا شَيْءٌ مِنْ كَلَامِ النَّاسِ» ؟ قَالَ عَلِيٌّ: لَا حُجَّةَ لَهُمْ فِي هَذَا، لِأَنَّ هَذَا النَّهْيَ إنَّمَا هُوَ عَنْ أَنْ يُكَلِّمَ الْمُصَلِّي أَحَدًا مِنْ النَّاسِ؟ وَأَمَّا الدُّعَاءُ فَإِنَّمَا هُوَ كَلَامٌ مَعَ اللَّهِ تَعَالَى، وَإِلَّا فَالْقِرَاءَةُ كَلَامُ النَّاسِ، وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النَّهْيُ عَنْ أَنْ يَقْرَأَ الْمُصَلِّي الْقُرْآنَ سَاجِدًا، وَأَمَرَ بِالدُّعَاءِ فِي السُّجُودِ؟ فَصَحَّ بُطْلَانُ قَوْلِ أَبِي حَنِيفَةَ، وَثَبَتَ أَنَّهُ لَا يَحِلُّ الدُّعَاءُ فِي السُّجُودِ بِمَا فِي الْقُرْآنِ إذَا قَصَدَ بِهِ الْقِرَاءَةَ؟ وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ بَعْدَ التَّشَهُّدِ «ثُمَّ لِيَتَخَيَّرْ أَحَدُكُمْ مِنْ الدُّعَاءِ أَعْجَبَهُ إلَيْهِ فَلْيَدْعُ بِهِ» وَهَذَا مِمَّا خَالَفَ فِيهِ أَبُو حَنِيفَةَ: ابْنَ مَسْعُودٍ، وَلَا نَعْلَمُ لَهُ مُخَالِفًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -

[مَسْأَلَةٌ يُشِيرَ الْمُصَلِّي إذَا جَلَسَ لِلتَّشَهُّدِ بِأُصْبُعِهِ وَلَا يُحَرِّكَهَا]

٤٦٠ - مَسْأَلَةٌ: وَنَسْتَحِبُّ أَنْ يُشِيرَ الْمُصَلِّي إذَا جَلَسَ لِلتَّشَهُّدِ بِأُصْبُعِهِ وَلَا يُحَرِّكَهَا

وَيَدُهُ الْيُمْنَى عَلَى فَخِذِهِ الْيُمْنَى، وَيَضَعَ كَفَّهُ الْيُسْرَى عَلَى فَخِذِهِ الْيُسْرَى؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إسْحَاقَ بْنِ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا الْقَعْنَبِيُّ عَنْ مَالِكٍ عَنْ مُسْلِمِ بْنِ أَبِي مَرْيَمَ عَنْ عَلِيِّ بْنِ عَبْدِ الرَّحْمَنِ الْمَعَافِرِيِّ قَالَ: رَآنِي عَبْدُ اللَّهِ بْنُ عُمَرَ أَعْبَثُ بِالْحَصَى فِي الصَّلَاةِ، فَلَمَّا انْصَرَفَ نَهَانِي وَقَالَ: اصْنَعْ كَمَا كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَصْنَعُ «إذَا جَلَسَ فِي الصَّلَاةِ وَضَعَ كَفَّهُ الْيُمْنَى عَلَى فَخِذِهِ الْيُمْنَى، وَقَبَضَ أَصَابِعَهُ كُلَّهَا، وَأَشَارَ بِأُصْبُعِهِ الَّتِي تَلِي الْإِبْهَامَ، وَوَضَعَ كَفَّهُ الْيُسْرَى عَلَى فَخِذِهِ الْيُسْرَى»

[18] **Hadith references (L7167):** Sahih Muslim 537a; Mishkat al-Masabih 978.
[19] **Hadith references (L7172):** Sunan Abi Dawud 987; Sahih Muslim 580c.

L7173 **It is a juristic principle for every worshiper that their initiation of the takbīr (saying "Allāhu Akbar") must begin simultaneously with their initial descent for the purpose of bowing (rukūʿ).**

L7174 Question 461:

L7175 It is recommended for every worshiper that the utterance of the takbīr begin simultaneously with starting the descent into bowing, the descent into prostration, the rising from prostration, and the standing up after the two rakʿahs. The beginning of saying "Samiʿa Allāhu li-man ḥamidah" should coincide with the start of rising from bowing. It is entirely impermissible for the imam to lengthen the takbīr; rather, he must perform it swiftly. Thus, he must not bow, prostrate, stand, or sit until he has finished uttering the takbīr.

L7176–7178 Hammam narrated to us: Ibn Mufarrij → Ibn al-Aʿrabī → al-Dabarī → ʿAbd al-Razzāq → Maʿmar → ... Al-Zuhri reported from Abu Salama ibn ʿAbd al-Rahman ibn ʿAwf, who said: "Abu Huraira would pray and say the takbir when he stood up, when he bowed, when he was about to prostrate, when he prostrated after raising himself from prostration, when he sat, and when he intended to stand up after the two rak'ahs. When he concluded the prayer with the taslim, he would say: 'By the One in Whose Hand is my soul, I am indeed the most similar to the Messenger of Allah (peace and blessings of Allah be upon him) in prayer. This remained his prayer until he departed from this world.'"

L7179 It has been narrated to us from ʿAlī, Ibn al-Zubayr, and ʿImrān ibn al-Ḥuṣayn. As for ʿAlī and Ibn al-Zubayr, this is derived from their practice. From ʿImrān, it is transmitted through a connected chain to the Messenger of Allah (peace and blessings of Allah be upon him): ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid related to us, from Ibrāhīm ibn Aḥmad, from al-Firabrī, from al-Bukhārī, from Yaḥyā ibn Bukayr, from al-Layth (Ibn Saʿd), from ʿUqayl, from Ibn Shihāb, who informed me that Abū Bakr ibn ʿAbd al-Raḥmān heard Abū

[مَسْأَلَةٌ لِكُلِّ مُصَلٍّ أَنْ يَكُونَ أَخْذُهُ فِي التَّكْبِيرِ مَعَ ابْتِدَائِهِ لِلِانْحِدَارِ لِلرُّكُوعِ]

٤٦١ - مَسْأَلَةٌ:

وَنَسْتَحِبُّ لِكُلِّ مُصَلٍّ أَنْ يَكُونَ أَخْذُهُ فِي التَّكْبِيرِ مَعَ ابْتِدَائِهِ لِلِانْحِدَارِ لِلرُّكُوعِ، وَمَعَ ابْتِدَائِهِ لِلِانْحِدَارِ لِلسُّجُودِ، وَمَعَ ابْتِدَائِهِ لِلرَّفْعِ مِنْ السُّجُودِ، وَمَعَ ابْتِدَائِهِ لِلْقِيَامِ مِنْ الرَّكْعَتَيْنِ، وَيَكُونَ ابْتِدَاؤُهُ لِقَوْلِ " سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ " مَعَ ابْتِدَائِهِ فِي الرَّفْعِ مِنْ الرُّكُوعِ، وَلَا يَحِلُّ لِلْإِمَامِ أَلْبَتَّةَ أَنْ يُطِيلَ التَّكْبِيرَ، بَلْ يُسْرِعَ فِيهِ، فَلَا يَرْكَعُ وَلَا يَسْجُدُ وَلَا يَقُومُ وَلَا يَقْعُدُ إلَّا وَقَدْ أَتَمَّ التَّكْبِيرَ

حَدَّثَنَا حَمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ قَالَ: «كَانَ أَبُو هُرَيْرَةَ يُصَلِّي فَيُكَبِّرُ حِينَ يَقُومُ، وَحِينَ يَرْكَعُ، وَإِذَا أَرَادَ أَنْ يَسْجُدَ، وَإِذَا سَجَدَ بَعْدَمَا يَرْفَعُ مِنْ السُّجُودِ وَإِذَا جَلَسَ، وَإِذَا أَرَادَ أَنْ يَقُومَ مِنْ الرَّكْعَتَيْنِ كَبَّرَ، فَإِذَا سَلَّمَ قَالَ: وَالَّذِي نَفْسِي بِيَدِهِ إنِّي لَأَقْرَبُكُمْ شَبَهًا بِصَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا زَالَتْ هَذِهِ صَلَاتُهُ حَتَّى فَارَقَ الدُّنْيَا»

وَرُوِّينَا أَيْضًا عَنْ عَلِيٍّ، وَابْنِ الزُّبَيْرِ، وَعِمْرَانَ بْنَ الْحُصَيْنِ -: أَمَّا عَلِيٌّ، وَابْنُ الزُّبَيْرِ، فَمِنْ فِعْلِهِمَا وَعَنْ عِمْرَانَ مُسْنَدًا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا يَحْيَى بْنُ بُكَيْرٍ ثنا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ عُقَيْلٍ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي أَبُو بَكْرِ بْنُ عَبْدِ الرَّحْمَنِ أَنَّهُ

Hurayrah say: “When the Prophet (peace and blessings of Allah be upon him) stood for prayer, he would say ’Allāhu Akbar’ upon standing, then say ’Allāhu Akbar’ upon bowing. Then when raising his back from the bowing position, he would say: ’Allah hears those who praise Him.’ While standing upright, he would then say: ’All praise is due to You, our Lord.’” He mentioned the rest of the ḥadīth.

L7180 And with this say Abu Hanifah, Ahmad, Al-Shafi’i, Dawood, and their followers.

L7181 Malik held that position except regarding the *takbīr* for rising from the two *rakʿahs*, for he did not consider it valid unless one had stood upright—a view unsupported by the Quran, the Sunnah, consensus, analogy, or the statement of a Companion. This is among matters wherein they opposed a group of the Companions—how could there be no known opponent among them? As for our position obligating the imam to hasten the *takbīr* as a binding duty, it is based on the statement of the Messenger of Allah—peace and blessings be upon him: “The imam is appointed to be followed. When he says *Allāhu Akbar*, say *Allāhu Akbar*.” He—peace and blessings be upon him—thus made the *takbīr* obligatory upon the congregants as a duty necessarily immediately after the imam’s *takbīr*. If the imam prolongs the *takbīr*, this confuses the congregants, causing them to say *takbīr* with him and before he completes it, thus not performing the *takbīr* as they were commanded. Whoever does not say the *takbīr* invalidates their prayer, for they have not prayed as commanded. This corrupts people’s prayers and aids in sin and transgression. And with Allah, the Exalted, lies success.[20]

L7182 **A legal issue: Every occurrence that invalidates ritual purity, whether it occurs intentionally or out of forgetfulness, invalidates the prayer.**

L7183–7185 462 - Issue: Every event that inherently invalidates ritual purity—whether done intentionally or out of forgetfulness—if it occurs during prayer due to

[20] **Hadith references (L7181):** Sahih al-Bukhari 805; Sahih al-Bukhari 1114; Sahih al-Bukhari 733.

سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: «كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا قَامَ إِلَى الصَّلَاةِ يُكَبِّرُ حِينَ يَقُومُ، ثُمَّ يُكَبِّرُ حِينَ يَرْكَعُ، ثُمَّ يَقُولُ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ، حِينَ يَرْفَعُ صُلْبَهُ مِنْ الرَّكْعَةِ، ثُمَّ يَقُولُ وَهُوَ قَائِمٌ: رَبَّنَا وَلَكَ الْحَمْدُ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

وَبِهَذَا يَقُولُ أَبُو حَنِيفَةَ، وَأَحْمَدُ، وَالشَّافِعِيُّ، وَدَاوُد، وَأَصْحَابُهُمْ.

وَقَالَ مَالِكٌ بِذَلِكَ، إلَّا فِي التَّكْبِيرِ لِلْقِيَامِ مِنْ الرَّكْعَتَيْنِ، فَإِنَّهُ لَا يَرَاهُ إلَّا إذَا اسْتَوَى قَائِمًا - وَهَذَا قَوْلٌ لَا يُؤَيِّدُهُ قُرْآنٌ وَلَا سُنَّةٌ وَلَا إجْمَاعٌ وَلَا قِيَاسٌ وَلَا قَوْلُ صَاحِبٍ، وَهَذَا مِمَّا خَالَفُوا فِيهِ طَائِفَةً مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ؟ وَأَمَّا قَوْلُنَا بِإِيجَابِ تَعْجِيلِ التَّكْبِيرِ لِلْإِمَامِ فَرْضًا: فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا جُعِلَ الْإِمَامُ لِيُؤْتَمَّ بِهِ، فَإِذَا كَبَّرَ فَكَبِّرُوا» فَأَوْجَبَ - عَلَيْهِ السَّلَامُ - التَّكْبِيرَ عَلَى الْمَأْمُومِينَ فَرْضًا إثْرَ تَكْبِيرِ الْإِمَامِ وَبَعْدَهُ وَلَا بُدَّ، فَإِذَا مَدَّ الْإِمَامُ التَّكْبِيرَ أَشْكَلَ ذَلِكَ عَلَى الْمَأْمُومِينَ فَكَبَّرُوا مَعَهُ وَقَبْلَ تَمَامِ تَكْبِيرِهِ، فَلَمْ يُكَبِّرُوا كَمَا أُمِرُوا، وَمَنْ لَمْ يُكَبِّرْ فَلَا صَلَاةَ لَهُ، لِأَنَّهُ لَمْ يُصَلِّ كَمَا أُمِرَ، فَقَدْ أَفْسَدَ عَلَى النَّاسِ صَلَاتَهُمْ، وَأَعَانَ عَلَى الْإِثْمِ وَالْعُدْوَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ كُلُّ حَدَثٍ يَنْقُضُ الطَّهَارَةَ بِعَمْدٍ أَوْ نِسْيَانٍ يَنْقُضُ الصَّلَاةَ]

٤٦٢ - مَسْأَلَةٌ: كُلُّ حَدَثٍ يَنْقُضُ الطَّهَارَةَ - بِعَمْدٍ أَوْ نِسْيَانٍ - فَإِنَّهُ مَتَى وُجِدَ بِغَلَبَةٍ أَوْ بِإِكْرَاهٍ أَوْ بِنِسْيَانٍ فِي الصَّلَاةِ مَا بَيْنَ التَّكْبِيرِ لِلْإِحْرَامِ لَهَا إلَى أَنْ يَتِمَّ سَلَامُهُ مِنْهَا -: فَهُوَ يَنْقُضُ الطَّهَارَةَ وَالصَّلَاةَ مَعًا، وَيَلْزَمُهُ ابْتِدَاؤُهَا، وَلَا يَجُوزُ لَهُ الْبِنَاءُ فِيهَا، سَوَاءٌ كَانَ

an overpowering urge, coercion, or forgetfulness, from the opening takbīr initiating the prayer until the completion of its final salām: it invalidates both purity and the prayer simultaneously. The worshiper must recommence the prayer anew, and continuation within it is impermissible—whether he is an imam or... as a follower or individually, whether in an obligatory prayer or a voluntary one, except that he is not obligated to repeat it specifically in voluntary prayers.

إِمَامًا أَوْ مَأْمُومًا أَوْ مُنْفَرِدًا، فِي فَرْضٍ كَانَ أَوْ فِي تَطَوُّعٍ، إِلَّا أَنَّهُ لَا تَلْزَمُهُ الْإِعَادَةُ فِي التَّطَوُّعِ خَاصَّةً

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This is one of the two opinions of Al-Shāfiʿī. Abū Sulaymān, Abū Ḥanīfah, and their followers said: He may resume his prayer after performing ablution, except that Abū Ḥanīfah stated: "If one sleeps during prayer and experiences nocturnal emission, he must perform ritual bathing and restart the prayer without resuming it." We do not know their position if his ruling is dry ablution, for if they accounted for the time-consuming nature of ritual bathing, dry ablution is not comparable - since the ruling for the minor ritual impurity (muḥdith) and the major impurity (junub) in this matter is equal. They said: "If the Imam nullifies his state of purity through involuntary emission while prostrating - if he says 'Allāhu Akbar' and raises his head, his prayer and the prayers of those behind him become invalid. If he raises his head without saying 'Allāhu Akbar,' neither his prayer nor the prayers of those behind him are invalidated. If he appoints a successor for them or they appoint one before the Imam exits the mosque, neither the Imam's prayer nor the followers' prayers are invalidated. If he does not appoint a successor nor they [do so] until he exits the mosque, his prayer and their prayers become invalid." The most well-known opinion from Abū Ḥanīfah is: "The followers' prayers are invalidated while the Imam's prayer remains valid." If he exits and takes water from a water-skin using a vessel, performs ablution, he may return and resume his prayer. If he draws water from a well, his prayer becomes invalid. If he speaks - whether intentionally or unintentionally - his prayer is invalidated. ʿAlī said: "These are utterly corrupt, contradictory, and arbitrary rulings in the religion of Allah Almighty without evidence. Moreover, most of these were never stated by anyone before them. Our discussion concerns the invalidation or validation of resuming prayers." ʿAlī said: "Those who advocate resuming prayers cite two weak narrations

وَهُوَ أَحَدُ قَوْلَيْ الشَّافِعِيِّ؟ وَقَالَ أَبُو سُلَيْمَانَ، وَأَبُو حَنِيفَةَ وَأَصْحَابُهُمَا: يَبْنِي بَعْدَ أَنْ يَتَوَضَّأَ، إِلَّا أَنَّ أَبَا حَنِيفَةَ قَالَ: لَوْ نَامَ فِي صَلَاتِهِ فَاحْتَلَمَ فَإِنَّهُ يَغْتَسِلُ وَيَبْتَدِئُ وَلَا يَبْنِي، وَلَا نَدْرِي قَوْلَهُمْ فِيهِ إِنْ كَانَ حُكْمُهُ التَّيَمُّمَ، فَإِنَّهُمْ إِنْ كَانُوا رَاعُوا طُولَ الْعَمَلِ فِي الْغُسْلِ، فَلَيْسَ التَّيَمُّمُ كَذَلِكَ، لِأَنَّ حُكْمَ الْمُحْدِثِ، وَالْجُنُبِ فِيهِ سَوَاءٌ وَقَالُوا: إِنْ أَحْدَثَ الْإِمَامُ بِغَلَبَةٍ وَهُوَ سَاجِدٌ -: فَإِنْ كَبَّرَ وَرَفَعَ رَأْسَهُ: بَطَلَتْ صَلَاتُهُ وَصَلَاةُ مَنْ وَرَاءَهُ وَإِنْ رَفَعَ رَأْسَهُ وَلَمْ يُكَبِّرْ لَمْ تَبْطُلْ صَلَاتُهُ وَلَا صَلَاةُ مَنْ وَرَاءَهُ فَإِنْ اسْتَخْلَفَ عَلَيْهِمْ أَوْ اسْتَخْلَفُوا قَبْلَ خُرُوجِ الْإِمَامِ مِنْ الْمَسْجِدِ: لَمْ تَبْطُلْ صَلَاةُ الْإِمَامِ وَلَا صَلَاةُ الْمَأْمُومِينَ؟ فَإِنْ لَمْ يَسْتَخْلِفْ عَلَيْهِمْ وَلَا اسْتَخْلَفُوا حَتَّى خَرَجَ مِنْ الْمَسْجِدِ: بَطَلَتْ صَلَاتُهُ وَصَلَاتُهُمْ وَالْأَشْهَرُ عَنْ أَبِي حَنِيفَةَ: تَبْطُلُ صَلَاةُ الْمَأْمُومِينَ وَتَتِمُّ صَلَاةُ الْإِمَامِ؟ فَإِنْ خَرَجَ فَأَخَذَ الْمَاءَ مِنْ خَابِيَةٍ بِإِنَاءٍ فَتَوَضَّأَ: رَجَعَ وَبَنَى -: فَإِنْ اسْتَقَى الْمَاءَ مِنْ بِئْرٍ: بَطَلَتْ صَلَاتُهُ فَإِنْ تَكَلَّمَ سَهْوًا أَوْ عَمْدًا: بَطَلَتْ صَلَاتُهُ؟ قَالَ عَلِيٌّ: هَذِهِ أَقْوَالٌ فِي غَايَةِ الْفَسَادِ وَالتَّنَاقُضِ وَالتَّحَكُّمِ فِي دِينِ اللَّهِ تَعَالَى بِلَا دَلِيلٍ وَمَعَ ذَلِكَ فَأَكْثَرُهَا لَمْ يَقُلْهُ أَحَدٌ قَبْلَهُمْ، وَإِنَّمَا كَلَامُنَا فِي إبْطَالِ الْبِنَاءِ وَإِثْبَاتِهِ قَالَ عَلِيٌّ: احْتَجَّ مَنْ قَالَ بِالْبِنَاءِ بِأَثَرَيْنِ ضَعِيفَيْنِ -: أَحَدُهُمَا - مِنْ طَرِيقِ أَبِي الْجَهْمِ عَنْ أَبِي بَكْرٍ الْمُطَّوِّعِيِّ عَنْ دَاوُد بْنِ رُشَيْدٍ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ

- one through Abū al-Jahm from Abū Bakr al-Muṭawwiʿī from Dāwūd ibn Rushayd from Ismāʿīl ibn ʿAyyāsh from Ibn Jurayj from his father and Ibn Abī Mulaykah from ʿĀ'ishah from the Prophet (peace be upon him): 'When any of you vomits or retches, let him perform ablution and resume what he has prayed, provided he has not spoken.'" From the chain of Saʿīd ibn Manṣūr: Ismāʿīl ibn ʿAyyāsh narrated to us from Ibn Jurayj from his father and Ibn Abī Mulaykah, from ʿĀ'ishah that the Messenger of Allāh—peace and blessings of Allāh be upon him—said: "If one of you vomits during his prayer, has a nosebleed, or regurgitates, let him pause, perform ablution, and continue from where he left off."

عَنْ ابْنِ جُرَيْجٍ عَنْ أَبِيهِ، وَابْنِ أَبِي مُلَيْكَةَ عَنْ عَائِشَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا قَاءَ أَحَدُكُمْ أَوْ قَلَسَ فَلْيَتَوَضَّأْ وَلْيَبْنِ عَلَى مَا صَلَّى مَا لَمْ يَتَكَلَّمْ» وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ: ثنا إسْمَاعِيلُ بْنُ عَيَّاشٍ عَنْ ابْنِ جُرَيْجٍ عَنْ أَبِيهِ وَابْنُ أَبِي مُلَيْكَةَ عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنْ قَاءَ أَحَدُكُمْ فِي صَلَاتِهِ أَوْ رَعَفَ أَوْ قَلَسَ فَلْيَنْصَرِفْ وَيَتَوَضَّأْ وَلْيَبْنِ عَلَى مَا مَضَى مِنْ صَلَاتِهِ»

L7189 And through the chain of al-Ansari from Ibn Jurayj from his father in a mursal format, and the second: through the chain of ʿAbd al-Raḥmān ibn Ziyād ibn Anʿam.

وَمِنْ طَرِيقِ الْأَنْصَارِيِّ عَنْ ابْنِ جُرَيْجٍ عَنْ أَبِيهِ مُرْسَلًا وَالثَّانِي - مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ زِيَادِ بْنِ أَنْعُمٍ

L7190 Both of these carry no valid proof, for Ismāʿīl ibn ʿAyyāsh is weak—particularly in what he narrated from narrators of the Hijaz region—thus it is unanimously agreed that he is not a valid authority. As for ʿAbd al-Raḥmān ibn Ziyād, he is in the utmost degree of rejection. There is also a discarded narration transmitted through ʿUmar ibn Riyāḥ al-Baṣrī—who is rejected—from Ibn Ṭāwūs, from his father, from Ibn ʿAbbās: "When the Messenger of Allah—peace and blessings be upon him—experienced a nosebleed during prayer, he would perform ablution and resume his prayer from where he left off."

وَكِلَاهُمَا لَا حُجَّةَ فِيهِ، لِأَنَّ إسْمَاعِيلَ بْنَ عَيَّاشٍ ضَعِيفٌ، لَا سِيَّمَا فِيمَا رَوَى عَنْ الْحِجَازِيِّينَ فَمُتَّفَقٌ عَلَى أَنَّهُ لَيْسَ بِحُجَّةٍ - وَعَبْدُ الرَّحْمَنِ بْنُ زِيَادٍ فِي غَايَةِ السُّقُوطِ؟ وَأَثَرٌ سَاقِطٌ مِنْ طَرِيقِ عُمَرَ بْنِ رِيَاحٍ الْبَصْرِيِّ - وَهُوَ سَاقِطٌ - عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ إذَا رَعَفَ فِي الصَّلَاةِ تَوَضَّأَ وَبَنَى عَلَى مَا مَضَى مِنْ صَلَاتِهِ»

L7191 As for the Ḥanafīs, they contradicted themselves by applying analogy from what was mentioned in these two reports to all cases not mentioned in them.

وَأَمَّا الْحَنَفِيُّونَ فَإِنَّهُمْ تَنَاقَضُوا فَقَاسُوا عَلَى مَا ذُكِرَ فِي هَذَيْنِ الْخَبَرَيْنِ جَمِيعَ الْأَحْدَاثِ الَّتِي لَمْ تُذْكَرْ فِيهِمَا.

L7192 They did not analogize nocturnal emission to that, and this is an inconsistency. No narration—neither sound nor weak—has ever been transmitted concerning the validity of prayer due to ritual impurities such as urination, defecation, passing wind, or pre-ejaculatory fluid? As for our companions, they argued that since the prayer was validly performed, it cannot be nullified except by textual proof. Ali said: "This is a valid argument. Had there

وَلَمْ يَقِيسُوا الِاحْتِلَامَ عَلَى ذَلِكَ، وَهَذَا تَنَاقُضٌ وَمَا جَاءَ قَطُّ أَثَرٌ - صَحِيحٌ وَلَا سَقِيمٌ - فِي الْبِنَاءِ مِنْ الْأَحْدَاثِ، كَالْبَوْلِ وَالرَّجِيعِ وَالرِّيحِ وَالْمَذْيِ؟ وَأَمَّا أَصْحَابُنَا فَاحْتَجُّوا بِأَنَّهُ قَدْ صَحَّ مَا صَلَّى فَلَا يَجُوزُ إبْطَالُهُ إلَّا بِنَصٍّ قَالَ عَلِيٌّ: وَهَذَا احْتِجَاجٌ صَحِيحٌ، وَلَوْلَا النَّصُّ الْوَارِدُ بِإِبْطَالِ مَا مَضَى مِنْهَا مَا أَبْطَلْنَاهُ

not been a text nullifying what had already been performed of it, we would not have nullified it."

L7193 But the proof for the invalidity of his prayer is that ʿAbdullāh ibn Rabīʿ narrated to us, saying: Muḥammad ibn Isḥāq ibn al-Sulaym narrated to us, from Ibn al-Aʿrabī, from Abū Dāwūd, from Aḥmad ibn Muḥammad ibn Ḥanbal, from ʿAbd al-Razzāq, from Maʿmar, from Hammām ibn Munabbih, from Abū Hurayrah, who said: The Messenger of Allāh (peace and blessings be upon him) said: "Allāh does not accept the prayer of any one of you if he invalidates his ablution until he renews it."[21]

L7194–7198 Ali said: We have narrated it through various chains. Since it is established that Allah does not accept the prayer of one who invalidates ablution until he performs ablution anew—and this is confirmed without disagreement through explicit textual evidence that prayer is only valid when continuous, with no permissible interruption of its components by non-prayer acts—we question those who advocate continuation after invalidating ablution: Inform us about the person who invalidates ablution whom you command to continue prayer. From the moment he invalidates ablution—when he exits, walks, fetches water, washes his minor impurity or performs istinjāʾ, performs ablution, and returns to resume prayer—is he considered in prayer according to your view? Or outside prayer? They have no third option. If they claim, "He remains in prayer," the Messenger of Allah's statement—peace and blessings be upon him—proves them liars: "Allah does not accept the prayer of one who invalidates ablution until he renews it." Among the absurd and invalid claims is to regard a prayer as valid when we are certain Allah the Exalted does not accept it. Thus, it is established that the act of his previous prayer has ceased. As for his reward, it remains for him without doubt. However, he is now undoubtedly not in prayer, for he is in a state where Allah the Exalted does not accept prayer alongside it. If they say: "Rather, he is not in prayer?" We reply: "You have spoken truthfully." Since he is not in prayer, he must perform the prayer continuously—without allowing interruptions between its parts (by actions not belonging to the prayer) during the time he is [supposed to be] in prayer—while intending [to pray]. This is an

وَلَكِنَّ الْبُرْهَانَ عَلَى بُطْلَانِ مَا صَلَّى: أَنَّ عَبْدَ اللَّهِ بْنَ رَبِيعٍ حَدَّثَنَا قَالَ: ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ حَنْبَلٍ ثنا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَقْبَلُ اللَّهُ صَلَاةَ أَحَدِكُمْ إذَا أَحْدَثَ حَتَّى يَتَوَضَّأَ»

قَالَ عَلِيٌّ: وَرُوِّينَاهُ مِنْ طُرُقٍ، فَإِذْ صَحَّ أَنَّ الصَّلَاةَ مِمَّنْ أَحْدَثَ لَا يَقْبَلُهَا اللَّهُ حَتَّى يَتَوَضَّأَ، وَقَدْ صَحَّ بِلَا خِلَافٍ وَبِالنَّصِّ: أَنَّ الصَّلَاةَ لَا تُجْزِئُ إلَّا مُتَّصِلَةً، وَلَا يَجُوزُ أَنْ يُفَرَّقَ بَيْنَ أَجْزَائِهَا بِمَا لَيْسَ صَلَاةً: فَنَحْنُ نَسْأَلُ مَنْ يَرَى الْبِنَاءَ لِلْمُحْدِثِ فَنَقُولُ: أَخْبِرُونَا عَنْ الْمُحْدِثِ الَّذِي أَمَرْتُمُوهُ بِالْبِنَاءِ، مُذْ يُحْدِثُ فَيَخْرُجُ فَيَمْشِي فَيَأْخُذُ الْمَاءَ فَيَغْسِلُ حَدَثَهُ أَوْ يَسْتَنْجِي فَيَتَوَضَّأُ فَيَنْصَرِفُ إلَى أَنْ يَأْخُذَ فِي عَمَلِ الصَّلَاةِ، أَهُوَ عِنْدَكُمْ فِي صَلَاةٍ؟ أَمْ هُوَ فِي غَيْرِ صَلَاةٍ، وَلَا سَبِيلَ لَهُمْ إلَى قِسْمٍ ثَالِثٍ فَإِنْ قَالُوا: هُوَ فِي صَلَاةٍ أَكْذَبَهُمْ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ اللَّهَ لَا يَقْبَلُ صَلَاةَ مَنْ أَحْدَثَ حَتَّى يَتَوَضَّأَ» وَمِنْ الْمُحَالِ الْبَاطِلِ أَنْ يُعْتَدَّ لَهُ بِصَلَاةٍ قَدْ أَيْقَنَّا أَنَّ اللَّهَ تَعَالَى لَا يَقْبَلُهَا، فَصَحَّ أَنَّ عَمَلَ صَلَاتِهِ الَّذِي كَانَ قَبْلُ قَدْ انْقَطَعَ، وَأَمَّا أَجْرُهُ فَبَاقٍ لَهُ بِلَا شَكٍّ، إلَّا أَنَّهُ الْآنَ فِي غَيْرِ صَلَاةٍ بِلَا شَكٍّ، إذْ هُوَ فِي حَالٍ لَا يَقْبَلُ اللَّهُ تَعَالَى مَعَهَا صَلَاةً؟ وَإِنْ قَالُوا: بَلْ هُوَ فِي غَيْرِ صَلَاةٍ؟ قُلْنَا: صَدَقْتُمْ، فَإِذْ هُوَ فِي غَيْرِ صَلَاةٍ: فَعَلَيْهِ أَنْ يَأْتِيَ بِالصَّلَاةِ مُتَّصِلَةً، لَا يَحُولُ بَيْنَ أَجْزَائِهَا - وَهُوَ ذَاكِرٌ قَاصِدًا - بِمَا لَيْسَ مِنْ الصَّلَاةِ وَبِوَقْتٍ هُوَ فِيهِ فِي صَلَاةٍ، وَهَذَا بُرْهَانٌ لَا مُخَلِّصَ مِنْهُ؟ وَلَوْ أَرَدْنَا أَنْ نَحْتَجَّ مِنْ الْحَدِيثِ بِأَقْوَى مِمَّا

[21] **Hadith references (L7193):** Sahih al-Bukhari 6954; Sunan Abi Dawud 60.

irrefutable proof. Moreover, had we wished to present a stronger argument from the ḥadīth than what they cited, we would mention what ʿAbdullāh ibn Rabīʿ → ʿUmar ibn ʿAbd al-Malik → Muḥammad ibn Bakr → Abū Dāwūd → ʿUthmān ibn Abī Shaybah → Jarīr ibn ʿAbd al-Ḥamīd → ʿĀṣim al-Aḥwal → ʿĪsā ibn Ḥiṭṭān → Muslim ibn Salām → ʿAlī ibn Ṭalq reported: The Messenger of Allah (peace be upon him) said: "If one of you breaks wind during prayer, let him perform ablution and repeat the prayer." If they mention those among the Companions—may Allah be pleased with them—who performed prayer, it has been narrated to us from ʿAbdullāh ibn Aḥmad ibn Ḥanbal: My father narrated to us, ʿAbd al-Raḥmān ibn Mahdī narrated to me, from ʿAbdullāh ibn al-Mubārak, from Maʿmar, from al-Zuhrī: Al-Miswar ibn Makhramah would repeat his prayer if he experienced a nosebleed during it, and did not consider valid what had passed. The righteous predecessors differed regarding this matter. It has been narrated to us through Wakīʿ, from Ismāʿīl ibn Abī Khālid, from al-Shaʿbī, who said concerning one who breaks his ablution during prayer and then renews it: "He should complete the remainder of his prayer, even if he has spoken."

L7199 From the narration of Muḥammad ibn al-Muthannā from ʿAbd al-Raḥmān ibn Mahdī, who narrated to us from Sufyān al-Thawrī, from al-Mughīra ibn Miqsam, from Ibrāhīm al-Nakhaʿī, who said: For passing stool, urine, or wind, one must perform ablution and restart the prayer. For vomiting or nosebleed, one must perform ablution and resume his prayer as long as he has not spoken. From al-Muʿtamir ibn Sulaymān al-Taymī, from his father, from Ibn Sīrīn, regarding one who invalidates his ablution while praying before concluding with the salutation, he said: Has his prayer not been completed? From Maʿmar, from al-Zuhrī, regarding one who invalidates his ablution while praying before concluding with the salutation: He must restart the prayer. This is the opinion of Sufyān al-Thawrī, Mālik, Ibn Shubrumah, the latter of the two opinions of al-Shāfiʿī, and this is the opinion we adopt.

L7200 **Issue: The worshiper experienced a nosebleed during the prayer.**

L7201 463 - Issue: If any of those we mentioned experiences a nosebleed during

احْتَجُّوا بِهِ لَذَكَرْنَا مَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا عُثْمَانُ بْنُ أَبِي شَيْبَةَ ثنا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ عَاصِمٍ الْأَحْوَلِ عَنْ عِيسَى بْنِ حِطَّانَ عَنْ مُسْلِمِ بْنِ سَلَامٍ عَنْ عَلِيِّ بْنِ طَلْقٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا فَسَا أَحَدُكُمْ فِي الصَّلَاةِ فَلْيَتَوَضَّأْ وَلْيُعِدْ الصَّلَاةَ» فَإِنْ ذَكَرُوا مَنْ بَنَى مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَقَدْ رُوِّينَا عَنْ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ ثنا أَبِي ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ حَدَّثَنِي عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ: أَنَّ الْمِسْوَرَ بْنَ مَخْرَمَةَ كَانَ إذَا رَعَفَ فِي الصَّلَاةِ يُعِيدُهَا وَلَا يَعْتَدُّ بِمَا مَضَى؟ وَقَدْ اخْتَلَفَ السَّلَفُ الصَّالِحُ فِي هَذَا: فَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ: أَنَّهُ قَالَ - فِي الَّذِي يُحْدِثُ فِي صَلَاتِهِ ثُمَّ يَتَوَضَّأُ -: صَلِّ مَا بَقِيَ مِنْ صَلَاتِك وَإِنْ تَكَلَّمْت.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: فِي الْغَائِطِ وَالْبَوْلِ وَالرِّيحِ: يَتَوَضَّأُ وَيَسْتَقْبِلُ الصَّلَاةَ، وَفِي الْقَيْءِ وَالرُّعَافِ: يَتَوَضَّأُ وَيَبْنِي عَلَى صَلَاتِهِ مَا لَمْ يَتَكَلَّمْ؟ وَعَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَبِيهِ عَنْ ابْنِ سِيرِينَ فِيمَنْ أَحْدَثَ فِي صَلَاتِهِ قَبْلَ أَنْ يُسَلِّمَ، قَالَ: إنَّ صَلَاتَهُ لَمْ تَتِمَّ؟ وَعَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِيمَنْ أَحْدَثَ فِي صَلَاتِهِ قَبْلَ أَنْ يُسَلِّمَ: أَنَّهُ يُعِيدُ الصَّلَاةَ؟ وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَمَالِكٍ، وَابْنِ شُبْرُمَةَ، وَآخِرُ قَوْلَيْ الشَّافِعِيِّ، وَبِهِ نَأْخُذُ

[مَسْأَلَةُ رَعَفَ المصلي فِي الصَّلَاةِ]

prayer - as previously stated - and if he can pinch his nose while letting the blood drip in front of him without touching his garment or any external part of his body, he should do so, continue his prayer, and bears no liability.

٤٦٣ - مَسْأَلَةٌ: فَإِنْ رَعَفَ أَحَدٌ مِمَّنْ ذَكَرْنَا فِي صَلَاةٍ - كَمَا ذَكَرْنَا - فَإِنْ أَمْكَنَهُ أَنْ يَسُدَّ أَنْفَهُ وَأَنْ يَدَعَ الدَّمَ يَقْطُرُ عَلَى مَا بَيْنَ يَدَيْهِ، بِحَيْثُ لَا يَمَسُّ لَهُ ثَوْبًا وَلَا شَيْئًا مِنْ ظَاهِرِ جَسَدِهِ، فَعَلَ وَتَمَادَى عَلَى صَلَاتِهِ، وَلَا شَيْءَ عَلَيْهِ.

L7202–7204 The proof of this is that a nosebleed is not a ḥadath as we previously mentioned. Since it is not a ḥadath, and the blood has not touched his garment or the external part of his body, has anything occurred to his ritual purity or his prayer? If the blood touches any part of his body or garment, and he is able to wash it without turning his back to the Qiblah, then he must wash it. He is persisting in his prayer while his prayer remains complete. Does it matter whether he walks to water a short distance or a little? The proof for this is that washing filth and avoiding forbidden things constitute an obligation without dispute. Thus in his walking for that purpose and his action toward it, he is fulfilling an obligation. The prayer is not invalidated by performing within it what he was commanded to fulfill, for he has not contravened - rather, he prayed as he was commanded. Whoever does what he was commanded to do is among the good-doers, and the Almighty has said: *"There is no blame upon the good-doers"* [al-Tawbah 9:91].[22]

بُرْهَانُ ذَلِكَ -: أَنَّ الرُّعَافَ لَيْسَ حَدَثًا عَلَى مَا ذَكَرْنَا قَبْلُ، فَإِذْ لَيْسَ حَدَثًا، وَلَا مَسَّ لَهُ الدَّمُ ثَوْبًا، وَلَا ظَاهِرَ جَسَدٍ فَلَمْ يَعْرِضْ فِي طَهَارَتِهِ، وَلَا فِي صَلَاتِهِ شَيْءٌ؟ فَإِنْ مَسَّ الدَّمُ شَيْئًا مِنْ جَسَدِهِ أَوْ ثَوْبِهِ فَأَمْكَنَهُ غَسْلُ ذَلِكَ غَيْرَ مُسْتَدْبِرِ الْقِبْلَةَ فَلْيَغْسِلْهُ وَهُوَ مُتَمَادٍ فِي صَلَاتِهِ، وَصَلَاتُهُ تَامَّةٌ، وَسَوَاءٌ مَشَى إِلَى الْمَاءِ كَثِيرًا أَوْ قَلِيلًا؟ بُرْهَانُ ذَلِكَ - أَنَّ غَسْلَ النَّجَاسَةِ وَاجْتِنَابَ الْمُحَرَّمَاتِ فَرْضٌ بِلَا خِلَافٍ، فَهُوَ فِي مَشْيِهِ لِذَلِكَ وَفِي عَمَلِهِ لِذَلِكَ مُؤَدٍّ فَرْضٍ، وَلَا تَبْطُلُ الصَّلَاةُ بِأَنْ يُؤَدِّيَ فِيهَا مَا أُمِرَ بِأَدَائِهِ، لِأَنَّهُ لَمْ يُخَالِفْ، بَلْ صَلَّى كَمَا أُمِرَ، وَمَنْ فَعَلَ مَا أُمِرَ بِهِ فَهُوَ مُحْسِنٌ، وَقَدْ قَالَ تَعَالَى: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١]

L7205 If he is unable to do that, he prays as he is, and his prayer is complete, based on Allah's statement: *"Allah does not burden a soul beyond its capacity"* [Al-Baqarah: 286]. Thus, it is established that one is not burdened with what they cannot bear.[23]

فَإِنْ عَجَزَ عَنْ ذَلِكَ: صَلَّى كَمَا هُوَ، وَصَلَاتُهُ تَامَّةٌ، لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] فَثَبَتَ أَنَّهُ لَا يُكَلَّفُ مَا لَا يَسْتَطِيعُ

L7206 If one intentionally turns his back to the Qiblah for that reason, his prayer becomes invalid because he opposes what Allah the Exalted has prescribed upon him while intending to do so. Mālik said: If a nosebleed occurs before completing a rakʿah with its two prostrations, he should terminate his prayer and restart. If it occurs after completing a rakʿah with its two prostrations, he should exit, wash the blood, return, and continue from where he left off. ʿAlī said: This categorization is not supported by the Quran, nor the Sun-

فَإِنْ تَعَمَّدَ اسْتِدْبَارَ الْقِبْلَةِ لِذَلِكَ: بَطَلَتْ صَلَاتُهُ، لِأَنَّهُ مُخَالِفٌ مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ قَاصِدًا إِلَى ذَلِكَ؟ وَقَالَ مَالِكٌ: إِنْ أَصَابَهُ الرُّعَافُ قَبْلَ أَنْ يُتِمَّ رَكْعَةً بِسَجْدَتَيْهَا: قَطَعَ صَلَاتَهُ وَابْتَدَأَ، وَإِنْ أَصَابَهُ بَعْدَ أَنْ أَتَمَّ رَكْعَةً بِسَجْدَتَيْهَا: فَلْيَخْرُجْ فَلْيَغْسِلْ الدَّمَ وَيَرْجِعْ فَيَبْنِي؟ قَالَ عَلِيٌّ: وَهَذَا تَقْسِيمٌ لَمْ يَأْتِ بِهِ قُرْآنٌ وَلَا سُنَّةٌ، لَا صَحِيحَةٌ وَلَا سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ وَلَا قِيَاسٌ، وَمَا كَانَ كَذَلِكَ فَلَا مَعْنَى لِلِاشْتِغَالِ بِهِ

[22] **Qur'an references (L7202):** Qur'an 9:91 (At-Tawbah).
[23] **Qur'an references (L7205):** Qur'an 2:286 (Al-Baqarah).

nah—neither sound nor weak—nor a companion's statement, nor analogy. Whatever resembles this is not worth engaging with.

[مَسْأَلَةٌ زُوحِمَ حَتَّى فَاتَهُ الرُّكُوعُ أَوْ السُّجُودُ أَوْ رَكْعَةٌ أَوْ رَكَعَاتٌ]

L7207 **A scenario where someone is crowded [by others] and misses the bowing (rukūʿ), prostration (sujūd), one rakʿah, or multiple rakʿahs.**

L7208 464 – Question:

٤٦٤ - مَسْأَلَةٌ:

L7209–7211 And whoever is crowded until he misses the bowing, prostration, one rakʿah, or multiple rakʿahs—he should remain as he is. If he can perform what he missed, he must do so, then follow the imam in whatever state he catches him, and his prayer is complete—nothing further is incumbent upon him. If he cannot do this except after the imam's concluding salām—whether the period is short or long—he must likewise do so, and his prayer is complete. Are the Friday prayer and others equal in all that we have mentioned? If he catches one rakʿah with the imam, does he pray it and append it to what he had prayed, then complete his prayer—with nothing further incumbent upon him? Are the one who forgets out of heedlessness and the crowded person equal in all that we have mentioned? If he can prostrate upon the back of someone before him or upon his foot, let him do so—and this suffices him. The proof for this is Allah's statement: "Do not nullify your deeds" [Sūrat Muḥammad (33)]. For whoever validly enters the state of prayer, any additional acts he performs are valid as obligatory acts carried out as commanded. It is impermissible for him to nullify this without an explicit text from the Messenger of Allah—peace and blessings be upon him—regarding its nullification. And He, the Exalted, said: "Allah does not burden a soul except according to its capacity" [Al-Baqarah 2:286].[24]

وَمَنْ زُوحِمَ حَتَّى فَاتَهُ الرُّكُوعُ أَوْ السُّجُودُ أَوْ رَكْعَةٌ أَوْ رَكَعَاتٌ -: وَقَفَ كَمَا هُوَ، فَإِنْ أَمْكَنَهُ أَنْ يَأْتِيَ بِمَا فَاتَهُ فَعَلَ، ثُمَّ اتَّبَعَ الْإِمَامَ حَيْثُ يُدْرِكُهُ وَصَلَاتُهُ تَامَّةٌ، وَلَا شَيْءَ عَلَيْهِ غَيْرُ ذَلِكَ، فَإِنْ لَمْ يَقْدِرْ عَلَى ذَلِكَ إلَّا بَعْدَ سَلَامِ الْإِمَامِ بِمُدَّةٍ - قَصِيرَةٍ أَوْ طَوِيلَةٍ - فَعَلَ كَذَلِكَ أَيْضًا، وَصَلَاتُهُ تَامَّةٌ، وَالْجُمُعَةُ وَغَيْرُهَا سَوَاءٌ فِي كُلِّ مَا ذَكَرْنَا؟ فَلَوْ أَدْرَكَ مَعَ الْإِمَامِ رَكْعَةً صَلَّاهَا وَأَضَافَهَا إلَى مَا كَانَ صَلَّى، ثُمَّ أَتَمَّ صَلَاتَهُ، وَلَا شَيْءَ عَلَيْهِ غَيْرُ ذَلِكَ؟ وَالْغَافِلُ سَهْوًا وَالْمَزْحُومُ سَوَاءٌ فِي كُلِّ مَا ذَكَرْنَا؟ فَإِنْ قَدَرَ أَنْ يَسْجُدَ عَلَى ظَهْرِ أَحَدٍ مِمَّنْ بَيْنَ يَدَيْهِ أَوْ عَلَى رِجْلِهِ، فَلْيَفْعَلْ وَيُجْزِئُهُ؟ بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَلا تُبْطِلُوا أَعْمَالَكُمْ} [محمد: ٣٣] فَمَنْ صَحَّ لَهُ الْإِحْرَامُ فَمَا زَادَ فَقَدْ صَحَّ لَهُ عَمَلٌ مُفْتَرَضٌ أَدَاؤُهُ كَمَا أُمِرَ، فَلَا يَحِلُّ لَهُ إبْطَالُهُ بِغَيْرِ نَصٍّ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي إبْطَالِهِ وَقَالَ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦]

L7212 The Messenger of Allah (peace and blessings of Allah be upon him) said: "When I command you with a matter, do as much of it as you are able." Narrated by Abd al-Rahman ibn Abd Allah ibn Khalid → Ibrahim ibn Ahmad → al-Firbari → al-Bukhari → Adam → Ibn Abi Dhi'b → al-Zuhri, from Sa'id ibn al-Musayyib and Abu Salamah ibn Abd al-Rahman—both from Abu Hu-

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» ؟ حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفِرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا آدَم ثنا ابْنُ أَبِي ذِئْبٍ حَدَّثَنِي الزُّهْرِيُّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ وَأَبِي سَلَمَةَ بْنِ عَبْدِ

[24] **Qur'an references (L7209):** Qur'an 47:33 (Muhammad); Qur'an 2:286 (Al-Baqarah).

rayrah—from the Prophet (peace and blessings of Allah be upon him), who said: “When you hear the iqamah, proceed to the prayer while maintaining calmness and dignity. Do not rush. Pray whatever portion you reach [of the prayer], and complete what you have missed.”

الرَّحْمَنِ كِلَاهُمَا عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا سَمِعْتُمْ الْإِقَامَةَ فَامْشُوا إِلَى الصَّلَاةِ وَعَلَيْكُمْ السَّكِينَةُ وَالْوَقَارُ، وَلَا تُسْرِعُوا، فَمَا أَدْرَكْتُمْ فَصَلُّوا، وَمَا فَاتَكُمْ فَأَتِمُّوا»

L7213 Abdullah ibn Rabi‘ narrated to us: ‘Umar ibn ‘Abd al-Malik narrated to us, Muhammad ibn Bakr narrated to us, Abu Dawud narrated to us, Musaddad narrated to us, Yahya (Ibn Sa‘īd al-Qaṭṭān) from Ibn ‘Ajlān. Muhammad ibn Yahya ibn Ḥibbān narrated to me from Ibn Muḥayrīz from Mu‘āwiyah ibn Abī Sufyān, who said: The Messenger of Allah (peace be upon him) said: “Do not rush ahead of me in bowing or prostrating. No matter how much I precede you in bowing, you will catch up when I rise. I have indeed grown corpulent.”[25]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا مُسَدَّدٌ ثنا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ ابْنِ عَجْلَانَ حَدَّثَنِي مُحَمَّدُ بْنُ يَحْيَى بْنِ حِبَّانَ عَنْ ابْنِ مُحَيْرِيزٍ عَنْ مُعَاوِيَةَ بْنِ أَبِي سُفْيَانَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُبَادِرُونِي بِرُكُوعٍ وَلَا بِسُجُودٍ فَإِنَّهُ مَهْمَا أَسْبِقْكُمْ بِهِ إِذَا رَكَعْتُ تُدْرِكُونِي بِهِ إِذَا رَفَعْتُ، إِنِّي قَدْ بَدَّنْتُ»

L7214 He (peace be upon him) commanded one to pray what one has caught up with in the prayer, not to precede the imam in bowing or prostration, and that whatever bowing a follower misses, he may complete it after the imam rises. He did not distinguish (peace be upon him) between the first, second, third, or fourth rak’ah, and he commanded to make up for what was missed. He informed (peace be upon him) that error, forgetfulness, and acts performed under compulsion are pardoned for his community. This necessitates the certainty of our assertion: that one performs their prayer according to their capability, and whatever contradicts this is a corrupt opinion.

فَأَمَرَ - عَلَيْهِ السَّلَامُ - بِصَلَاةِ مَا أَدْرَكَ الْمَرْءُ، وَأَنْ لَا يَسْبِقَ الْإِمَامَ بِرُكُوعٍ وَلَا بِسُجُودٍ، وَأَنَّهُ مَهْمَا فَاتَ الْمَأْمُومَ مِنْ رُكُوعٍ أَدْرَكَهُ بَعْدَ رَفْعِ الْإِمَامِ، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - رَكْعَةً أُولَى مِنْ ثَانِيَةٍ، وَلَا ثَالِثَةٍ وَلَا رَابِعَةٍ، وَأَمَرَ بِقَضَاءِ مَا فَاتَهُ؟ وَقَدْ أَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّهُ رُفِعَ عَنْ أُمَّتِهِ الْخَطَأُ، وَالنِّسْيَانُ، وَمَا اُسْتُكْرِهُوا عَلَيْهِ - وَهَذَا يُوجِبُ يَقِينَ مَا قُلْنَا: مِنْ أَنْ يَأْتِيَ الْمَرْءُ بِصَلَاتِهِ حَسَبَ مَا يَسْتَطِيعُ وَمَا عَدَا هَذَا فَهُوَ قَوْلٌ فَاسِدٌ؟

[مَسْأَلَةٌ لَمْ يَمَسَّ بِالْمَاءِ مِمَّا أُمِرَ بِغَسْلِهِ فِي وُضُوئِهِ وَغُسْلِهِ وَلَوْ مِقْدَارَ شَعْرَةٍ]

A legal question concerning any part of what one is commanded to wash during wudu (ritual ablution) or ghusl (ritual bath) that was not touched by water, even an area equivalent to a single hair.

L7216 465 - Issue: Whoever does not touch with water—in their ablution or ritual bath—even an area equivalent to a single hair from what they were commanded to wash during the ritual bath or ablution, his prayer is invalid.

٤٦٥ - مَسْأَلَةٌ: وَمَنْ لَمْ يَمَسَّ بِالْمَاءِ - فِي وُضُوئِهِ وَغُسْلِهِ - وَلَوْ مِقْدَارَ شَعْرَةٍ مِمَّا أُمِرَ بِغَسْلِهِ فِي الْغُسْلِ أَوْ الْوُضُوءِ فَلَا صَلَاةَ لَهُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

[25] **Hadith references (L7213):** Sunan Abi Dawud 619.

This is due to the statement of Allah's Messenger—peace and blessings be upon him: "Allah does not accept the prayer of one who breaks his ablution until he performs ablution again." Such a person has not performed ablution yet, since he did not complete his ritual purity as commanded.

L7217 **A jurisprudential issue concerning the intentional attribution [of something] to the Quran.**

L7218 Issue 466: Whoever intentionally alters the Qur'ān has become a disbeliever, and there is no disagreement about this.

L7219–7220 If a person's language is other than Arabic, it is permissible for them to supplicate in it during their prayer, but it is not permissible for them to recite in it. If someone recites in a language other than Arabic, their prayer is invalid. Abū Ḥanīfah said: If someone recites in Persian during their prayer, their prayer is valid. ʿAlī said: The Messenger of Allah (peace and blessings be upon him) said: "There is no prayer for one who does not recite the Opening of the Qur'an." And Allah the Exalted said: "An Arabic Qur'an" [12:2].[26]

L7221 And He, the Exalted, said: "We have not sent any messenger except in the language of his people, so that he may make clear to them." [Surah Ibrāhīm (14:4)][27]

L7222 It has been established that Allah the Exalted did not send Muhammad—peace be upon him—with a non-Arabic revelation, nor did He reveal the Quran to him in any other language. Thus, whoever recites in a non-Arabic language has not recited what Allah the Exalted sent His Prophet—peace be upon him—with, nor has he recited the Quran. Rather, he has trifled with his prayer, so his prayer is invalid, because he did not pray as commanded.

L7223 If they were to mention the statement of Allah the Exalted: {And indeed, it is in the scriptures of the former peoples} [Ash-Shu'ara': 196], we would say: Yes, the mention of the Quran and the warning through it exist in the scriptures of the former peoples. As for the claim that Allah the Exalted

[26] **Qur'an references (L7220):** Qur'an 12:2 (Yusuf).
[27] **Qur'an references (L7221):** Qur'an 14:4 (Ibrahim).

«لَا يَقْبَلُ اللَّهُ صَلَاةَ مَنْ أَحْدَثَ حَتَّى يَتَوَضَّأَ» وَهَذَا لَمْ يَتَوَضَّأْ بَعْدُ، إِذْ لَمْ يُكْمِلْ طَهَارَتَهُ كَمَا أُمِرَ

[مَسْأَلَةٌ أَحَالَ الْقُرْآنَ مُتَعَمِّدًا]

٤٦٦ - مَسْأَلَةٌ: وَمَنْ أَحَالَ الْقُرْآنَ مُتَعَمِّدًا فَقَدْ كَفَرَ، وَهَذَا مَا لَا خِلَافَ فِيهِ؟

وَمَنْ كَانَتْ لُغَتُهُ غَيْرَ الْعَرَبِيَّةِ: جَازَ لَهُ أَنْ يَدْعُوَ بِهَا فِي صَلَاتِهِ وَلَا يَجُوزُ لَهُ أَنْ يَقْرَأَ بِهَا، وَمَنْ قَرَأَ بِغَيْرِ الْعَرَبِيَّةِ: فَلَا صَلَاةَ لَهُ؟ وَقَالَ أَبُو حَنِيفَةَ: مَنْ قَرَأَ بِالْفَارِسِيَّةِ فِي صَلَاتِهِ: جَازَتْ صَلَاتُهُ؟ قَالَ عَلِيٌّ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا صَلَاةَ لِمَنْ لَمْ يَقْرَأْ بِأُمِّ الْقُرْآنِ» وَقَالَ اللَّهُ تَعَالَى: {قُرْآنًا عَرَبِيًّا} [يوسف: ٢]

وَقَالَ تَعَالَى: {وَمَا أَرْسَلْنَا مِنْ رَسُولٍ إِلا بِلِسَانِ قَوْمِهِ لِيُبَيِّنَ لَهُمْ} [إبراهيم: ٤]

فَصَحَّ أَنَّ غَيْرَ الْعَرَبِيَّةِ لَمْ يُرْسِلْ بِهِ اللَّهُ تَعَالَى مُحَمَّدًا - عَلَيْهِ السَّلَامُ -، وَلَا أَنْزَلَ بِهِ عَلَيْهِ الْقُرْآنَ، فَمَنْ قَرَأَ بِغَيْرِ الْعَرَبِيَّةِ فَلَمْ يَقْرَأْ مَا أَرْسَلَ اللَّهُ تَعَالَى بِهِ نَبِيَّهُ - عَلَيْهِ السَّلَامُ -، وَلَا قَرَأَ الْقُرْآنَ، بَلْ لَعِبَ بِصَلَاتِهِ فَلَا صَلَاةَ لَهُ، إِذْ لَمْ يُصَلِّ كَمَا أُمِرَ

فَإِنْ ذَكَرُوا: قَوْلَ اللَّهِ تَعَالَى: {وَإِنَّهُ لَفِي زُبُرِ الأَوَّلِينَ} [الشعراء: ١٩٦] ؟ قُلْنَا: نَعَمْ، ذِكْرُ الْقُرْآنِ وَالْإِنْذَارُ بِهِ فِي زُبُرِ الْأَوَّلِينَ، وَأَمَّا أَنْ يَكُونَ اللَّهُ تَعَالَى أَنْزَلَ هَذَا الْقُرْآنَ عَلَى أَحَدٍ قَبْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَاطِلٌ وَكَذِبٌ مِمَّنْ ادَّعَى ذَلِكَ؟ وَلَوْ كَانَ هَذَا مَا كَانَ فَضِيلَةً لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا مُعْجِزَةً لَهُ وَمَا نَعْلَمُ أَحَدًا

revealed this Quran to anyone before the Messenger of Allah—peace be upon him—is it false and a lie from whoever asserts that? Had this been true, it would not have been a virtue for the Messenger of Allah—peace be upon him—nor a miraculous sign for him. We know of no one who made this claim before Abu Hanifah. Whoever fails to memorize Surah Al-Fatihah must pray to the best of his ability, while being obligated to learn it, based on Allah's declaration: {Allah does not burden any soul beyond its capacity} [Al-Baqarah: 286]. Thus, he is not obligated to bear what he cannot endure. If he memorizes any part of the Quran besides it, he is obligated by duty to pray with it and must learn Surah Al-Fatihah, in accordance with the Prophet's saying—peace be upon him: "There is no prayer without recitation."[28]

L7224 And due to the statement of Allah, the Most High: "Recite as much of the Qur'an as is manageable" [Al-Muzzammil 20].[29]

L7225–7226 [Prostration for Forgetfulness] [An Issue Concerning the Ruling on Actions Performed Out of Forgetfulness During Prayer]

L7227 Issue: Every action a person performs forgetfully during prayer – if such action would invalidate the prayer when done intentionally by one who is mindful – obligates the two prostrations for forgetfulness. This appears to align with Al-Shāfiʿī's doctrine, though he specifically applied it to forgetting the sitting posture after two rakʿahs, while the apparent position of his school holds this sitting is not obligatory. He stated: "Whoever omits any essential element of prayer forgetfully must perform the prostrations for forgetfulness." Abū Sulaymān and our companions maintained: "Prostrations for forgetfulness apply only in specific cases: when one erroneously performs the concluding salutation (taslīm), speaks, or walks during an obligatory prayer."

L7228–7230 Or one who stands after two rakʿahs in an obligatory prayer; or one who doubts and does not know how much he has prayed?; or one who adds a rakʿah or more in his prayer due to forgetfulness in an obligatory prayer.

[28] **Qur'an references (L7223):** Qur'an 26:196 (Ash-Shu'ara); Qur'an 2:286 (Al-Baqarah).
[29] **Qur'an references (L7224):** Qur'an 73:20 (Al-Muzzammil).

قَالَ هَذَا قَبْلَ أَبِي حَنِيفَةَ؟ وَمَنْ لَمْ يَحْفَظْ (أُمَّ الْقُرْآنِ) صَلَّى كَمَا هُوَ، وَعَلَيْهِ أَنْ يَتَعَلَّمَهَا، لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] فَهُوَ غَيْرُ مُكَلَّفٍ مَا لَا يَقْدِرُ عَلَيْهِ، فَإِنْ حَفِظَ شَيْئًا مِنْ الْقُرْآنِ غَيْرَهَا لَزِمَهُ فَرْضًا أَنْ يُصَلِّيَ بِهِ، وَيَتَعَلَّمَ (أُمَّ الْقُرْآنِ) : لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا صَلَاةَ إِلَّا بِقِرَاءَةٍ»

وَلِقَوْلِ اللَّهِ تَعَالَى: {فَاقْرَءُوا مَا تَيَسَّرَ مِنَ الْقُرْآنِ} [المزمل: ٢٠]

[سُجُودُ السَّهْوِ] [مَسْأَلَةٌ حُكْمُ مَا يَعْمَلُهُ الْمَرْءُ فِي صَلَاتِهِ سَهْوًا]

٤٦٧ - مَسْأَلَةٌ: كُلُّ عَمَلٍ يَعْمَلُهُ الْمَرْءُ فِي صَلَاتِهِ سَهْوًا وَكَانَ - ذَلِكَ الْعَمَلُ مِمَّا لَوْ تَعَمَّدَهُ ذَاكِرًا بَطَلَتْ صَلَاتُهُ -: فَإِنَّهُ يَلْزَمُهُ فِي السَّهْوِ سَجْدَتَا السَّهْوِ؟ وَيُشْبِهُ أَنْ يَكُونَ هَذَا مَذْهَبَ الشَّافِعِيِّ إِلَّا أَنَّهُ رَأَى السَّهْوَ فِي تَرْكِ الْجِلْسَةِ بَعْدَ الرَّكْعَتَيْنِ، وَظَاهِرُ مَذْهَبِهِ أَنَّهَا لَيْسَتْ فَرْضًا؟ وَقَالَ: مَنْ أَسْقَطَ شَيْئًا مِنْ صُلْبِ صَلَاتِهِ سَهْوًا فَعَلَيْهِ سُجُودُ السَّهْوِ؟ وَقَالَ أَبُو سُلَيْمَانَ وَأَصْحَابُنَا: لَا سُجُودَ سَهْوٍ إِلَّا فِي مَوَاضِعَ، وَهِيَ -: مَنْ سَلَّمَ أَوْ تَكَلَّمَ أَوْ مَشَى سَاهِيًا فِي الصَّلَاةِ الْمَفْرُوضَةِ.

أَوْ مَنْ قَامَ مِنْ اثْنَتَيْنِ فِي صَلَاةٍ مَفْرُوضَةٍ وَمَنْ شَكَّ فَلَمْ يَدْرِ كَمْ صَلَّى؟ أَوْ مَنْ زَادَ فِي صَلَاتِهِ رَكْعَةً فَمَا فَوْقَهَا سَاهِيًا فِي صَلَاةٍ مَفْرُوضَةٍ وَقَالَ أَبُو حَنِيفَةَ: لَا سُجُودَ سَهْوٍ إِلَّا فِي عَشَرَةِ أَوْجُهٍ -: إِمَّا قِيَامٌ مَكَانَ قُعُودٍ وَإِمَّا قُعُودٌ مَكَانَ قِيَامٍ - لِلْإِمَامِ أَوْ الْفَذِّ وَإِمَّا سَلَامٌ

قَبْلَ تَمَامِ الصَّلَاةِ لِلْإِمَامِ أَوْ الْفَذِّ أَوْ نِسْيَانُ تَكْبِيرِ صَلَاةِ الْعِيدِ خَاصَّةً لِلْإِمَامِ أَوْ الْفَذِّ أَوْ نِسْيَانُ الْقُنُوتِ فِي الْوِتْرِ لِلْإِمَامِ أَوْ الْفَذِّ أَوْ نِسْيَانُ التَّشَهُّدِ لِلْإِمَامِ أَوْ الْفَذِّ أَوْ نِسْيَانُ (أُمِّ الْقُرْآنِ) لِلْإِمَامِ أَوْ الْفَذِّ أَوْ تَأْخِيرُهَا بَعْدَ قِرَاءَةِ السُّورَةِ لِلْإِمَامِ أَوْ لِلْفَذِّ أَوْ مَنْ جَهَرَ فِي قِرَاءَةِ سِرٍّ أَوْ أَسَرَّ فِي قِرَاءَةِ جَهْرٍ لِلْإِمَامِ خَاصَّةً، فَقَطْ؟ قَالَ: فَإِنْ تَعَمَّدَ ذَلِكَ فَصَلَاتُهُ تَامَّةٌ وَلَا سُجُودَ سَهْوٍ عَلَيْهِ؟ قَالَ: فَإِنْ نَسِيَ سَجْدَةً أَوْ شَكَّ فَلَمْ يَدْرِ كَمْ صَلَّى؟ فَإِنْ كَانَ ذَلِكَ أَوَّلَ مَرَّةٍ: أَعَادَ الصَّلَاةَ؟ وَإِنْ كَانَ قَدْ عَرَضَ لَهُ ذَلِكَ وَلَوْ مَرَّةً: سَجَدَ لِلسَّهْوِ فَإِنْ لَمْ يَذْكُرْ ذَلِكَ إِلَّا بَعْدَ أَنْ خَرَجَ مِنْ الْمَسْجِدِ: بَطَلَتْ صَلَاتُهُ وَأَعَادَهَا.

Abū Ḥanīfah said: Prostration for forgetfulness is only required in ten cases - either standing in place of sitting or sitting in place of standing for the Imam or solitary worshipper; or uttering the salutation before completing the prayer for the Imam or solitary worshipper; or forgetting the takbīrs specific to the Eid prayer for the Imam or solitary worshipper; or forgetting the qunūt in the Witr prayer for the Imam or solitary worshipper; or forgetting the tashahhud for the Imam or solitary worshipper; or forgetting Umm al-Qur'ān for the Imam or solitary worshipper. Or delaying it after the recitation of the surah for the Imam or the one praying alone, or one who recites aloud in a prayer requiring silent recitation or silently in a prayer requiring audible recitation - exclusively for the Imam. He said: If he does that intentionally, his prayer is complete with no prostration of forgetfulness required. He said: If he forgets a prostration or doubts and cannot discern how much he prayed - if this occurs for the first time, he repeats the prayer. If this has happened to him before, even a single time, he performs the prostration of forgetfulness. If he does not recall this until after leaving the mosque, his prayer is nullified and he repeats it.

وَأَمَّا مَذْهَبُ مَالِكٍ فِي سُجُودِهِ لِسَهْوٍ فَغَيْرُ مُنْضَبِطٍ، لِأَنَّهُ رَأَى فِيمَنْ تَرَكَ ثَلَاثَ تَكْبِيرَاتٍ مِنْ الصَّلَاةِ فَصَاعِدًا غَيْرَ تَكْبِيرَةِ الْإِحْرَامِ -: أَنْ يَسْجُدَ لِلسَّهْوِ.

L7231 As for Mālik's position on prostration of forgetfulness, it is not well-defined, because he held that whoever omits three or more takbīrs in the prayer—excluding the opening takbīr—should perform the prostration of forgetfulness.

فَإِنْ لَمْ يَفْعَلْ حَتَّى انْتَقَضَ وُضُوءُهُ، أَوْ تَطَاوَلَ ذَلِكَ: بَطَلَتْ صَلَاتُهُ وَأَعَادَهَا.

L7232 If he does not do so before his ablution is invalidated or the delay becomes excessive, his prayer is invalidated, and he must repeat it.

وَرَأَى فِيمَنْ سَهَا عَنْ تَكْبِيرَتَيْنِ مِنْ الصَّلَاةِ كَذَلِكَ: أَنْ يَسْجُدَ لِلسَّهْوِ؟ فَإِنْ لَمْ يَفْعَلْ حَتَّى انْتَقَضَ وُضُوءُهُ أَوْ تَطَاوَلَ ذَلِكَ: فَلَا شَيْءَ عَلَيْهِ وَصَلَاتُهُ تَامَّةٌ، وَلَا سُجُودَ سَهْوٍ عَلَيْهِ.

L7233 He held the opinion regarding one who omits two takbīrs in prayer: Should they perform the prostration of forgetfulness? If they do not do so before their ablution becomes invalid or a prolonged time elapses, nothing is incumbent upon them; their prayer remains complete, and no prostration of forgetfulness is required.

وَرَأَى فِيمَنْ سَهَا عَنْ تَكْبِيرَةٍ وَاحِدَةٍ غَيْرِ تَكْبِيرَةِ الْإِحْرَامِ أَنْ لَا شَيْءَ عَلَيْهِ، لَا سُجُودَ سَهْوٍ وَلَا غَيْرَهُ.

L7234 He held the view that if someone inadvertently omits a single *takbir* other than the opening *takbir*, there is nothing required of him—neither a prostration for forgetfulness nor anything beyond that.

L7235 He held the opinion that whoever substitutes "Allāhu akbar" in place of

"Samiʿa Allāhu li-man ḥamidah" is required to perform the Prostration of Forgetfulness.

L7236 He was asked about one who recited audibly during a silent prayer or silently during an audible prayer: if this occurred slightly, nothing is required, but if much occurred, prostration for forgetfulness becomes obligatory. Ali said: Regarding one who neglected to recite the Opening Chapter (Al-Fatihah) in two units of prayer or more, his prayer becomes invalid.

L7237–7239 If he forgets it in a *rakʿah*—at one time he held the view of performing only the prostration of forgetfulness, and at another he held that one must perform a *rakʿah* and prostrate for forgetfulness? ʿAlī said: As for Abū Ḥanīfah's opinion, it is too corrupt to merit consideration, for it is not grounded in any Qurʾān, nor a sound or weak *Sunnah*, nor analogy, nor a companion's statement, nor sound reasoning—indeed, we have no knowledge of its basis. No one has said it before him. Similarly, Mālik's statement "equal, equal," with the additional point that no two Muslims differ concerning: every four-rak'ah obligatory prayer containing twenty-two takbīrs besides the opening takbīr; the Maghrib prayer containing sixteen takbīrs besides the opening takbīr; and every two-rak'ah obligatory prayer containing ten takbīrs besides the opening takbīr. Their equation of one who omitted three takbīrs with one who omitted two takbīrs, while differentiating between one who omitted two takbīrs and one who omitted a single takbīr—this ranks among the world's marvels. God suffices us, and He is the best disposer of affairs!

As for al-Shāfiʿī's view, its contradiction is evident: he mandates prostration of forgetfulness for omitting the first sitting—which he does not deem obligatory—yet rejects prostration for omitting all prayer takbīrs (except the opening takbīr) or for minor actions that would invalidate the prayer if performed excessively under his doctrine. He failed to establish any defining boundary between the minor action where he waived prostration and that which invalidates the prayer if done intentionally—while requiring prostration for its unintentional omission. This is profoundly invalid. Among the astonishing claims is his reference to "the backbone of prayer"—when people

وَرَأَى عَلَى مَنْ جَعَلَ " اللَّهُ أَكْبَرُ " مَكَانَ " سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ " سُجُودَ السَّهْوِ.

وَرَأَى عَلَى مَنْ جَهَرَ فِي قِرَاءَةِ سِرٍّ، أَوْ أَسَرَّ فِي قِرَاءَةِ جَهْرٍ، إِنْ كَانَ ذَلِكَ قَلِيلًا فَلَا شَيْءَ عَلَيْهِ، وَإِنْ كَانَ كَثِيرًا فَعَلَيْهِ سُجُودُ السَّهْوِ؟ قَالَ عَلِيٌّ: وَرَأَى فِيمَنْ سَهَا عَنْ قِرَاءَةِ (أُمِّ الْقُرْآنِ) فِي رَكْعَتَيْنِ مِنْ صَلَاتِهِ فَصَاعِدًا: أَنَّ صَلَاتَهُ تَبْطُلُ.

فَإِنْ سَهَا عَنْهَا فِي رَكْعَةٍ -: فَمَرَّةً رَأَى سُجُودَ السَّهْوِ فَقَطْ وَمَرَّةً رَأَى عَلَيْهِ أَنْ يَأْتِيَ بِرَكْعَةٍ وَيَسْجُدَ لِلسَّهْوِ؟ قَالَ عَلِيٌّ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَأَفْسَدُ مِنْ أَنْ يُشْتَغَلَ بِهِ فَإِنَّهُ لَمْ يَتَعَلَّقْ فِيهِ بِقُرْآنٍ وَلَا سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا بِقِيَاسٍ، وَلَا بِقَوْلِ صَاحِبٍ، وَلَا بِرَأْيٍ سَدِيدٍ بَلْ لَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ وَكَذَلِكَ قَوْلُ مَالِكٍ سَوَاءً سَوَاءً، وَزِيَادَةُ أَنَّهُ لَا يَخْتَلِفُ مُسْلِمَانِ فِي -: أَنَّ كُلَّ صَلَاةِ فَرْضٍ - تَكُونُ أَرْبَعَ رَكَعَاتٍ - فَإِنَّ فِيهَا اثْنَتَيْنِ وَعِشْرِينَ تَكْبِيرَةً سِوَى تَكْبِيرَةِ الْإِحْرَامِ؟ وَأَنَّ صَلَاةَ الْمَغْرِبِ فِيهَا سِتَّ عَشْرَةَ تَكْبِيرَةً سِوَى تَكْبِيرَةِ الْإِحْرَامِ؟ وَأَنَّ كُلَّ صَلَاةِ فَرْضٍ تَكُونُ رَكْعَتَيْنِ فَفِيهَا عَشْرُ تَكْبِيرَاتٍ سِوَى تَكْبِيرَةِ الْإِحْرَامِ؟ فَتَسْوِيَتُهُمْ بَيْنَ مَنْ سَهَا عَنْ ثَلَاثِ تَكْبِيرَاتٍ وَبَيْنَ مَنْ سَهَا عَنْ تَكْبِيرَتَيْنِ، وَتَفْرِيقُهُمْ بَيْنَ مَنْ سَهَا عَنْ تَكْبِيرَتَيْنِ، وَبَيْنَ مَنْ سَهَا عَنْ تَكْبِيرَةٍ وَاحِدَةٍ -: أَحَدُ عَجَائِبِ الدُّنْيَا وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ وَأَمَّا قَوْلُ الشَّافِعِيِّ فَظَاهِرُ التَّنَاقُضِ -: إِذْ رَأَى سُجُودَ السَّهْوِ فِي تَرْكِ الْجِلْسَةِ الْأُولَى، وَلَيْسَتْ عِنْدَهُ فَرْضًا وَلَمْ يَرَ سُجُودَ السَّهْوِ فِي تَرْكِ جَمِيعِ تَكْبِيرِ الصَّلَاةِ - حَاشَا تَكْبِيرَةَ الْإِحْرَامِ - وَلَا فِي الْعَمَلِ الْقَلِيلِ - الَّذِي تَفْسُدُ الصَّلَاةُ عِنْدَهُ بِكَثِيرِهِ وَلَمْ يَجِدْ فِي الْقَلِيلِ الَّذِي أَسْقَطَ فِيهِ السُّجُودَ حَدًّا يَفْصِلُهُ بِهِ مِمَّا تَبْطُلُ الصَّلَاةُ عِنْدَهُ بِتَعَمُّدِهِ، وَيَجِبُ سُجُودُ السَّهْوِ فِي سَهْوِهِ، وَهَذَا فَاسِدٌ جِدًّا وَمِنْ

know no backbone, belly, liver, or intestine for prayer! Such statements are self-evidently flawed, needing no forced refutation.

Regarding our companions' position: they assert prostration of forgetfulness applies only where God's Messenger (peace be upon him) performed it or commanded it—and he (peace be upon him) only prostrated in the cases we mentioned. ʿAlī said: "This is a sound position none may oppose, except that we have found an authentic narration confirming our view's validity. Yet they deem it contradictory to other narrations—this is invalid and impermissible. Rather, all narrations must be implemented; abandoning any of them is forbidden. If not, adopting the supplementary rulings within them becomes obligatory, for they constitute divine rulings from God Almighty—how then could abandoning them be permissible?"

L7240–7241 Ali said: The proof for the validity of our position is that the acts of prayer are divided into two categories - with absolute certainty, leaving no doubt - with absolutely no third alternative. Either it is an obligation, such that one who omits it commits disobedience, or it is non-obligatory, such that one who omits it incurs no disobedience. What is non-obligatory is permissible to perform or omit - even if some non-obligatory acts are recommended to perform, while omitting them is religiously discouraged.

L7242 As for what is permissible to abandon, how could it be valid to make binding a legal ruling regarding abandoning an act that Allah the Exalted permitted abandoning? Would this not render the one doing so a legislator without Allah's authorization? As for the farḍ – the second category – it invalidates the prayer if intentionally omitted, but does not invalidate it if forgotten in it, based on Allah's statement: {There is no blame upon you for what you err in unintentionally, but only for what your hearts deliberately intend} [Al-Aḥzāb: 5].[30]

L7243 Since the prayer is not invalidated by forgetfulness occurring within it, and forgetfulness has occurred, prostration of forgetfulness becomes obligatory—as nothing remains other than it. It is therefore impermissible to restrict

الْعَجَبِ قَوْلُهُ " صُلْبِ الصَّلَاةِ " وَمَا عَلِمَ النَّاسُ لِلصَّلَاةِ صُلْبًا وَلَا بَطْنًا وَلَا كَبِدًا وَلَا مَعْيًا وَمِثْلُ هَذَا قَدْ أَغْنَى ظَاهِرُ فَسَادِهِ عَنْ تَكَلُّفِ نَقْضِهِ وَأَمَّا قَوْلُ أَصْحَابِنَا فَإِنَّهُمْ قَالُوا: لَا سُجُودَ سَهْوٍ إلَّا حَيْثُ سَجَدَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ أَمَرَ بِسُجُودِهِ، وَلَمْ يَسْجُدْ - عَلَيْهِ السَّلَامُ - إلَّا حَيْثُ ذَكَرْنَا؟ قَالَ عَلِيٌّ: وَهَذَا قَوْلٌ صَحِيحٌ لَا يَحِلُّ خِلَافُهُ، إلَّا أَنَّا قَدْ وَجَدْنَا خَبَرًا صَحِيحًا يُوجِبُ صِحَّةَ قَوْلِنَا وَجَعَلُوهُ مُعَارِضًا لِغَيْرِهِ، وَهَذَا بَاطِلٌ لَا يَجُوزُ، بَلْ الْأَخْبَارُ كُلُّهَا تُسْتَعْمَلُ، وَلَا يَحِلُّ تَرْكُ شَيْءٍ مِنْهَا، فَإِنْ لَمْ يَكُنْ وَجَبَ الْأَخْذُ بِالشَّرْعِ الزَّائِدِ الْوَارِدِ فِيهَا، لِأَنَّهُ حُكْمٌ مِنْ اللَّهِ تَعَالَى، فَلَا يَحِلُّ تَرْكُهُ؟

قَالَ عَلِيٌّ: وَبُرْهَانُ صِحَّةِ قَوْلِنَا هُوَ أَنَّ أَعْمَالَ الصَّلَاةِ قِسْمَانِ - بِيَقِينٍ لَا شَكَّ فِيهِ - لَا ثَالِثَ لَهُمَا -: إمَّا فَرْضٌ، يَعْصِي مَنْ تَرَكَهُ، وَإِمَّا غَيْرُ فَرْضٍ، فَلَا يَعْصِي مَنْ تَرَكَهُ؟ فَمَا كَانَ غَيْرَ فَرْضٍ فَهُوَ مُبَاحٌ فِعْلُهُ، وَمُبَاحٌ تَرْكُهُ؟ وَإِنْ كَانَ بَعْضُهُ مَنْدُوبًا إلَيْهِ مَكْرُوهًا تَرْكُهُ.

فَمَا كَانَ مُبَاحًا تَرْكُهُ فَلَا يَجُوزُ أَنْ يَلْزَمَ حُكْمًا فِي تَرْكِ أَمْرٍ أَبَاحَ اللَّهُ تَعَالَى تَرْكَهُ، فَيَكُونَ فَاعِلُ ذَلِكَ شَارِعًا مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى؟ وَأَمَّا الْفَرْضُ - وَهُوَ الْقِسْمُ الثَّانِي - وَهُوَ الَّذِي تَبْطُلُ الصَّلَاةُ بِتَعَمُّدِ تَرْكِهِ وَلَا تَبْطُلُ بِالسَّهْوِ فِيهِ، لِقَوْلِ اللَّهِ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

فَإِذْ الصَّلَاةُ لَا تَبْطُلُ بِالسَّهْوِ فِيهِ وَكَانَ سَهْوًا، فَفِيهِ سُجُودُ السَّهْوِ، إذْ لَمْ يَبْقَ غَيْرُهُ، فَلَا يَجُوزُ أَنْ يُخَصَّ بَعْضُهُ بِالسُّجُودِ دُونَ بَعْضٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[30] **Qur'an references (L7242):** Qur'an 33:5 (Al-Ahzab).

prostration to certain instances of forgetfulness while omitting others. And by Allah, the Exalted, is success granted.

L7244 Ali said: “There has come an explicit text supporting our view, as narrated by Abdullah ibn Yusuf: Ahmad ibn Fath narrated to us, then Abdul Wahhab ibn Isa narrated to us, then Ahmad ibn Muhammad narrated to us, then Ahmad ibn Ali narrated to us, then Muslim ibn al-Hajjaj narrated to us, then al-Qasim ibn Zakariya narrated to us, from al-Husayn ibn Ali al-Ju’fi, from Za’ida, from al-A’mash, from Ibrahim, from Alqamah, from Abdullah ibn Mas’ud, who said: ”We prayed with the Messenger of Allah - peace and blessings be upon him - and he either added or reduced (Ibrahim expressed doubt). Ibn Mas’ud said: We asked, ”O Messenger of Allah, has something invalidating occurred in the prayer¿‘ He replied, ”No.“ We then informed him of what he did. He said, ”When a person adds or omits in prayer, let him perform two prostrations of forgetfulness.“”

L7245–7247 Narrated to us by ʿAbdullāh ibn Rabīʿ, narrated to us by Muḥammad ibn Muʿāwiyah, narrated to us by Aḥmad ibn Shuʿayb, narrated to us by Ismāʿīl ibn Masʿūd al-Jaḥdarī, narrated to us by Khālid ibn al-Ḥārith, narrated to us by Shuʿbah, who said: I recited [the ḥadīth] to Manṣūr and heard him narrate, and he wrote it to me from Ibrāhīm an-Nakhaʿī, from ʿAlqamah, from ʿAbdullāh ibn Masʿūd, that The Messenger of Allah - peace and blessings of Allah be upon him - said to them: “I am but a human. If I forget, remind me. If any of you falls into uncertainty during his prayer, let him strive to determine what is closest to correctness, then complete it upon that, and afterward perform two prostrations.” Ali said: “This is the explicit text of our position regarding the obligation of prostration for every addition, omission, or uncertainty in the prayer. It cannot be said of one who performs his prayer with all its obligatory acts as Allah the Exalted commanded him that he added to his prayer, omitted from it, or acted upon uncertainty in it. Rather, he has completed it as he was commanded. The one who adds to the prayer, omits from it, or acts on uncertainty is he who introduces elements not part of it, or omits what is essential for its proper completion due to uncertainty. And success is granted by Allah the Exalted.”

L7248 A group of the Salaf—may Allah be pleased with them—held our view. As

قَالَ عَلِيٌّ: وَقَدْ جَاءَ مَا قُلْنَا نَصًّا -: كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا الْقَاسِمُ بْنُ زَكَرِيَّا ثنا الْحُسَيْنُ بْنُ عَلِيٍّ الْجُعْفِيُّ عَنْ زَائِدَةَ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ عَنْ عَلْقَمَةَ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ «صَلَّيْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِمَّا زَادَ أَوْ نَقَصَ - شَكَّ إبْرَاهِيمُ قَالَ ابْنُ مَسْعُودٍ قُلْنَا: يَا رَسُولَ اللَّهِ، أَحَدَثَ فِي الصَّلَاةِ شَيْءٌ؟ قَالَ: لَا، فَقُلْنَا لَهُ الَّذِي صَنَعَ، فَقَالَ: إذَا زَادَ الرَّجُلُ أَوْ نَقَصَ فَلْيَسْجُدْ سَجْدَتَيْنِ»

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا إسْمَاعِيلُ بْنُ مَسْعُودٍ الْجَحْدَرِيُّ ثنا خَالِدُ بْنُ الْحَارِثِ ثنا شُعْبَةُ قَالَ: قَرَأْت عَلَى مَنْصُورٍ، وَسَمِعْته يُحَدِّثُ، وَكَتَبَ بِهِ إلَيَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُمْ: «إنَّمَا أَنَا بَشَرٌ، فَإِذَا نَسِيتُ فَذَكِّرُونِي، إذَا أَوْهَمَ أَحَدُكُمْ فِي صَلَاتِهِ فَلْيَتَحَرَّ أَقْرَبَ ذَلِكَ مِنْ الصَّوَابِ ثُمَّ لِيُتِمَّ عَلَيْهِ ثُمَّ لِيَسْجُدْ سَجْدَتَيْنِ» قَالَ عَلِيٌّ: فَهَذَا نَصُّ قَوْلِنَا فِي إيجَابِ السُّجُودِ فِي كُلِّ زِيَادَةٍ وَنَقْصٍ فِي الصَّلَاةِ، وَكُلِّ وَهْمٍ، وَلَا يُقَالُ لِمَنْ أَدَّى صَلَاتَهُ بِجَمِيعِ فَرَائِضِهَا كَمَا أَمَرَهُ اللَّهُ تَعَالَى: أَنَّهُ زَادَ فِي صَلَاتِهِ، وَلَا نَقَصَ مِنْهَا، وَلَا أَوْهَمَ فِيهَا، بَلْ قَدْ أَتَمَّهَا كَمَا أُمِرَ، وَإِنَّمَا الزَّائِدُ فِي الصَّلَاةِ، أَوْ النَّاقِصُ مِنْهَا، وَالْوَاهِمُ: مَنْ زَادَ فِيهَا مَا لَيْسَ مِنْهَا، أَوْ نَقَصَ مِنْهَا مَا لَا تَتِمُّ إلَّا بِهِ عَلَى سَبِيلِ الْوَهْمِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

narrated through Hammad ibn Salamah from Sa'id ibn Qatan: Abu Zayd al-Ansari said, "If any of you experiences doubt in his prayer, let him perform two prostrations of forgetfulness?" Through al-Hajjaj ibn al-Minhal from Abu 'Awanah from al-Mughirah ibn Miqsam from Ibrahim al-Nakha'i: "Doubt only applies to sitting, standing, addition, omission, or ending the prayer after two rak'ahs?" Through Ma'mar's chain from Qatadah from Anas: He forgot a rak'ah in an obligatory prayer and proceeded to voluntary prayer before remembering. He then completed the remaining portion of the obligatory prayer and performed two prostrations while seated. 'Ali said, "We know of no disagreement among the Companions—may Allah be pleased with them—regarding Anas's position." From Ibn Jurayj: I asked 'Ata', "If you become certain you prayed five rak'ahs?" He replied, "Do not repeat it—even if you prayed ten rak'ahs—but perform the two prostrations of forgetfulness?" From 'Abd al-Razzaq from Sufyan al-Thawri: "If you added or omitted, perform the two prostrations of forgetfulness."

وَقَدْ قَالَ بِقَوْلِنَا طَائِفَةٌ مِنْ السَّلَفِ - رَضِيَ اللَّهُ عَنْهُمْ -: - كَمَا رُوِّينَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ سَعِيدِ بْنِ قَطَنٍ: أَنَّ أَبَا زَيْدٍ الْأَنْصَارِيَّ قَالَ: إذَا أَوْهَمَ أَحَدُكُمْ فِي صَلَاتِهِ فَلْيَسْجُدْ سَجْدَتَيْ الْوَهْمِ؟ وَعَنْ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ أَبِي عَوَانَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَا وَهْمَ إلَّا فِي قُعُودٍ، أَوْ قِيَامٍ، أَوْ زِيَادَةٍ، أَوْ نُقْصَانٍ، أَوْ تَسْلِيمٍ فِي رَكْعَتَيْنِ؟ وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ أَنَسٍ: أَنَّهُ نَسِيَ رَكْعَةً مِنْ الْفَرِيضَةِ حَتَّى دَخَلَ فِي التَّطَوُّعِ، ثُمَّ ذَكَرَ، فَصَلَّى بَقِيَّةَ صَلَاةِ الْفَرِيضَةِ، ثُمَّ سَجَدَ سَجْدَتَيْنِ وَهُوَ جَالِسٌ؟ قَالَ عَلِيٌّ: مَا نَعْلَمُ لِأَنَسٍ فِي هَذَا مُخَالِفًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَعَنْ ابْنِ جُرَيْجٍ - قُلْت لِعَطَاءٍ: فَإِنْ اسْتَيْقَنْت أَنِّي صَلَّيْت خَمْسَ رَكَعَاتٍ؟ قَالَ: فَلَا تُعِدْ وَلَوْ صَلَّيْت عَشْرَ رَكَعَاتٍ، وَاسْجُدْ سَجْدَتَيْ السَّهْوِ؟ وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ إذَا زِدْت أَوْ نَقَصْت: فَاسْجُدْ سَجْدَتَيْ السَّهْوِ

An issue regarding action performed inadvertently during prayer, such as speaking or reciting poetry.

[مَسْأَلَةٌ مَا عَمِلَهُ الْمَرْءُ فِي صَلَاتِهِ سَهْوًا مِنْ كَلَامٍ أَوْ إنْشَادِ شَعْرٍ]

Issue 468: ʿAlī said: Every action a person performs during prayer unintentionally—whether speech, chanting poetry, walking, lying down, turning away from the qiblah, performing any deed, eating, drinking, adding one rakʿah or multiple rakʿahs, exiting to perform a voluntary prayer (whether such actions are frequent or scarce), or giving the salām before completing the prayer—then whenever one remembers (regardless of whether the elapsed time was long or short, provided one's ablution remains valid), one must merely complete what was omitted, then perform the two prostrations of forgetfulness. This excludes cases where ablution is nullified, for this invalidates the prayer as previously explained. The evidence for this is what we detailed in the preceding interconnected issue.

؟ ٤٦٨ - مَسْأَلَةٌ: قَالَ عَلِيٌّ: وَكُلُّ مَا عَمِلَهُ الْمَرْءُ فِي صَلَاتِهِ سَهْوًا مِنْ كَلَامٍ أَوْ إنْشَادِ شَعْرٍ، أَوْ مَشْيٍ أَوْ اضْطِجَاعٍ، أَوْ اسْتِدْبَارِ الْقِبْلَةِ أَوْ عَمَلِ أَيِّ عَمَلٍ كَانَ، أَوْ أَكْلٍ أَوْ شُرْبٍ، أَوْ زِيَادَةِ رَكْعَةٍ أَوْ رَكَعَاتٍ، أَوْ خُرُوجٍ إلَى تَطَوُّعٍ - كَثُرَ ذَلِكَ أَوْ قَلَّ - أَوْ تَسْلِيمٍ قَبْلَ تَمَامِهَا، فَإِنَّهُ مَتَى ذَكَرَ - طَالَ زَمَانُهُ أَوْ قَصُرَ، مَا لَمْ يَنْتَقِضْ وُضُوءُهُ -: فَإِنَّهُ يُتِمُّ مَا تَرَكَ فَقَطْ، ثُمَّ يَسْجُدُ سَجْدَتَيْ السَّهْوِ، إلَّا انْتِقَاضَ الْوُضُوءِ، فَإِنَّهُ تَبْطُلُ بِهِ الصَّلَاةُ، لِمَا ذَكَرْنَا قَبْلُ؟ بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَاهُ فِي الْمَسْأَلَةِ الَّتِي قَبْلَ هَذِهِ مُتَّصِلَةً بِهَا.

L7249

L7250

Abu Hanifah said: If someone speaks unintentionally during their prayer, their prayer is invalidated.

وَقَالَ أَبُو حَنِيفَةَ: مَنْ تَكَلَّمَ فِي صَلَاتِهِ سَاهِيًا: بَطَلَتْ صَلَاتُهُ.

L7251–7252

L7253 If he says the Taslim during the prayer unintentionally, his prayer is not nullified.

فَإِنْ سَلَّمَ مِنْهَا سَاهِيًا: لَمْ تَبْطُلْ صَلَاتُهُ.

L7254 If he eats forgetfully—or adds a *rak'ah* and had not sat for the duration of the *tashahhud* at its end—his prayer is invalidated. If he urinates or defecates due to an overwhelming need, his prayer is not invalidated.

فَإِنْ أَكَلَ سَاهِيًا - أَوْ زَادَ رَكْعَةً، وَلَمْ يَكُنْ جَلَسَ فِي آخِرِهَا مِقْدَارَ التَّشَهُّدِ: بَطَلَتْ صَلَاتُهُ - فَإِنْ بَالَ أَوْ تَغَوَّطَ بِغَلَبَةٍ: لَمْ تَبْطُلْ صَلَاتُهُ.

L7255 If he sneezes and says "Praise be to Allah" while moving his tongue with it, his prayer is invalidated.

فَإِنْ عَطَسَ فَقَالَ " الْحَمْدُ لِلَّهِ " مُحَرِّكًا بِهَا لِسَانَهُ: بَطَلَتْ صَلَاتُهُ

L7256–7260 Ali said: "This speech contains such confusion and ugliness—along with contradicting the Sunnah—that we ask Allah the Exalted for safety from anything similar to it. Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Abu Ja'far Muhammad ibn al-Sabbah and Abu Bakr ibn Abi Shaybah both said: Isma'il ibn Ibrahim—Ibn Ulayyah—narrated to us from al-Hajjaj al-Sawwaf from Yahya ibn Abi Kathir from Hilal ibn Abi Maymunah from 'Ata ibn Yasar from Mu'awiyah ibn al-Hakam al-Sulami, who said: 'While I was praying with the Messenger of Allah—peace and blessings be upon him—a man among the people sneezed, so I said: "May Allah have mercy on you." The people glared at me with their eyes, so I said: "May my mother be bereaved of me! What is your issue? Why are you staring at me¿' They began striking their hands on their thighs. When I saw them silencing me, I fell silent. When the Messenger of Allah—peace and blessings be upon him—concluded the prayer, by my father and mother, I never saw a teacher before him or after him better in instruction than him. By Allah, he did not reprimand me, strike me, or insult me. He said: "This prayer is not a place for any speech of people. It is only for tasbīḥ (glorification), takbīr (proclaiming Allah's greatness), and recitation of the Qur'an"—or as the Messenger of Allah—peace and blessings be upon him—said.'"

قَالَ عَلِيٌّ: وَهَذَا الْكَلَامُ فِيهِ مِنْ التَّخْلِيطِ وَالْقُبْحِ - مَعَ مُخَالَفَةِ السُّنَّةِ - مَا نَسْأَلُ اللَّهَ تَعَالَى السَّلَامَةَ مِنْ مِثْلِهِ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو جَعْفَرٍ مُحَمَّدُ بْنُ الصَّبَّاحِ وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ قَالَا: ثنا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ - عَنْ الْحَجَّاجِ الصَّوَّافِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ هِلَالِ بْنِ أَبِي مَيْمُونَةَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ مُعَاوِيَةَ بْنِ الْحَكَمِ السُّلَمِيِّ قَالَ «بَيْنَا أَنَا أُصَلِّي مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ عَطَسَ رَجُلٌ مِنْ الْقَوْمِ، فَقُلْتُ: يَرْحَمُك اللَّهُ، فَرَمَانِي الْقَوْمُ بِأَبْصَارِهِمْ، فَقُلْتُ: وَاثُكْلَ أُمِّيَاهْ مَا شَأْنُكُمْ تَنْظُرُونَ إلَيَّ؟ فَجَعَلُوا يَضْرِبُونَ بِأَيْدِيهِمْ عَلَى أَفْخَاذِهِمْ، فَلَمَّا رَأَيْتهمْ يُصَمِّتُونَنِي لَكِنِّي سَكَتُّ، فَلَمَّا صَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبِأَبِي هُوَ وَأُمِّي، مَا رَأَيْت مُعَلِّمًا قَبْلَهُ وَلَا بَعْدَهُ أَحْسَنَ تَعْلِيمًا مِنْهُ فَوَاَللَّهِ مَا كَهَرَنِي وَلَا ضَرَبَنِي وَلَا شَتَمَنِي، قَالَ: إنَّ هَذِهِ الصَّلَاةَ لَا يَصْلُحُ فِيهَا شَيْءٌ مِنْ كَلَامِ النَّاسِ، إنَّمَا هُوَ التَّسْبِيحُ وَالتَّكْبِيرُ وَقِرَاءَةُ الْقُرْآنِ، أَوْ كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» . حَدَّثَنَا حُمَامُ بْنُ أَحْمَدَ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ: قُرِئَ عَلَى أَبِي قِلَابَةَ وَأَنَا أَسْمَعُ: حَدَّثَكُمْ بِشْرُ بْنُ عُمَرَ الزَّهْرَانِيُّ حَدَّثَنِي رِفَاعَةُ بْنُ يَحْيَى إمَامُ مَسْجِدِ بَنِي زُرَيْقٍ قَالَ: سَمِعْت مُعَاذَ

Hammam ibn Ahmad narrated to us: 'Abbas ibn Asbagh narrated to us: Muhammad ibn 'Abd al-Malik ibn Ayman narrated to us: "It was recited to Abu Qilabah while I was listening: Bishr ibn 'Umar al-Zahrani narrated to you all: Rifa'ah ibn Yahya, the imam of the Banu Zurayq mosque, narrated

to me: I heard Mu‘adh ibn Rifa‘ah ibn Rafi‘ narrating from his father, who said: ”We prayed Maghrib with the Messenger of Allah—peace and blessings be upon him—and a man behind the Prophet—peace and blessings be upon him—sneezed and said: ”All praise is due to Allah, abundant, pure, blessed praise in the way that our Lord loves and is pleased with.“ When the Messenger of Allah—peace and blessings be upon him—concluded the prayer, he said: ”I saw thirty-some angels, all rushing to it, each competing to be the one to write it and ascend with it to heaven.“”” Here, the Messenger of Allah—peace and blessings be upon him—commended the one who praised Allah Almighty when sneezing loudly during prayer, yet did not require the one who spoke forgetfully to repeat it, as we previously mentioned in earlier sections of this treatise. Ali said: As for those who differentiate between few actions and many actions—invalidating prayer for the latter but not the former, or requiring prostration of forgetfulness for many actions but not few, or defining “many” as exiting the mosque and “few” as remaining within it—this constitutes deeply flawed reasoning. We ask them: What of one who intentionally throws a weaving shuttle once during prayer? Or intentionally takes a sesame seed while aware and eats it? Or intentionally utters a single word? According to their doctrine, would not both the minimal and excessive instances of such acts invalidate prayer? We further ask them: What of one who scratches their body extensively out of necessity throughout the prayer, or wears a loose garment requiring constant adjustment from beginning to end? Do they claim all this remains permissible in prayer? We respond: If you speak truthfully, then present a textual proof or consensus—not baseless assertions—that certain actions invalidate prayer when frequent but not when occasional. Then produce an unequivocal textual proof or verified consensus—not false claims—defining the distinction between few and many actions, though no such distinction can ever be established. Thus our position stands validated: Any action explicitly permitted in prayer by textual evidence—whether occasional or frequent—remains lawful. Conversely, any action not textually permitted invalidates prayer if done intentionally, regardless of quantity, and necessitates prostration of forgetfulness if done unintentionally. As for exiting the mosque, consider one whose mosque ex-

بْنَ رِفَاعَةَ بْنِ رَافِعٍ يُحَدِّثُ عَنْ أَبِيهِ قَالَ: «صَلَّيْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَغْرِبَ فَعَطَسَ رَجُلٌ خَلْفَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: الْحَمْدُ لِلَّهِ حَمْدًا كَثِيرًا طَيِّبًا مُبَارَكًا فِيهِ كَمَا يُحِبُّ رَبُّنَا وَيَرْضَى، فَلَمَّا انْصَرَفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: لَقَدْ رَأَيْتُ بِضْعَةً وَثَلَاثِينَ مَلَكًا كُلُّهُمْ يَبْتَدِرُونَهَا أَيُّهُمْ يَكْتُبُهَا وَيَصْعَدُ بِهَا إِلَى السَّمَاءِ» فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ غَبَطَ الَّذِي حَمِدَ اللَّهَ تَعَالَى إِذَا عَطَسَ فِي الصَّلَاةِ جَاهِرًا بِذَلِكَ، وَلَمْ يُلْزِمْ الَّذِي تَكَلَّمَ نَاسِيًا بِإِعَادَةٍ، عَلَى مَا ذَكَرْنَا فِيمَا خَلَا مِنْ هَذَا الدِّيوَانِ؟ . قَالَ عَلِيٌّ: وَأَمَّا مَنْ فَرَّقَ بَيْنَ قَلِيلِ الْعَمَلِ وَكَثِيرِهِ، فَأَبْطَلَ الصَّلَاةَ بِكَثِيرِهِ وَلَمْ يُبْطِلْهَا بِقَلِيلِهِ، أَوْ رَأَى سُجُودَ السَّهْوِ فِي كَثِيرِهِ وَلَمْ يَرَهُ فِي قَلِيلِهِ، أَوْ حَدَّ الْكَثِيرَ بِالْخُرُوجِ عَنْ الْمَسْجِدِ وَالْقَلِيلَ بِأَنْ لَا يَخْرُجَ عَنْهُ -: فَكَلَامٌ فِي غَايَةِ الْفَسَادِ وَنَسْأَلُهُمْ: عَمَّنْ رَمَى نَزْقًا لِنَسْجٍ مَرَّةً وَاحِدَةً عَامِدًا فِي الصَّلَاةِ. أَوْ أَخَذَ حَبَّةَ سِمْسِمَةٍ عَمْدًا ذَاكِرًا فَأَكَلَهَا. أَوْ تَكَلَّمَ بِكَلِمَةٍ وَاحِدَةٍ ذَاكِرًا. فَمِنْ قَوْلِهِمْ: إنَّ قَلِيلَ هَذَا وَكَثِيرَهُ يُبْطِلُ الصَّلَاةَ. فَنَسْأَلُهُمْ: عَمَّنْ كَثُرَ حَكُّهُ لِجَسَدِهِ مُحْتَاجًا إلَى ذَلِكَ مِنْ أَوَّلِ صَلَاتِهِ إلَى آخِرِهَا، وَكَانَ عَلَيْهِ كِسَاءٌ فَلُوتٌ فَاضْطُرَّ إلَى جَمْعِهِ عَلَى نَفْسِهِ مِنْ أَوَّلِ الصَّلَاةِ إلَى آخِرِهَا. فَمِنْ قَوْلِهِمْ: هَذَا كُلُّهُ مُبَاحٌ فِي الصَّلَاةِ؟ قُلْنَا: صَدَقْتُمْ، فَهَاتُوا نَصًّا أَوْ إجْمَاعًا - غَيْرَ مُدَّعًى بِلَا عِلْمٍ - عَلَى أَنَّ هَهُنَا أَعْمَالًا يُبْطِلُ الصَّلَاةَ كَثِيرُهَا وَلَا يُبْطِلُهَا قَلِيلُهَا. ثُمَّ هَاتُوا نَصًّا أَوْ إجْمَاعًا مُتَيَقَّنًا -: غَيْرَ مُدَّعًى بِالْكَذِبِ عَلَى تَحْدِيدِ الْقَلِيلِ مِنْ الْكَثِيرِ وَلَا سَبِيلَ إلَى ذَلِكَ أَبَدًا؟ فَصَحَّ مَا قُلْنَاهُ: مِنْ أَنَّ كُلَّ عَمَلٍ أُبِيحَ فِي الصَّلَاةِ بِالنَّصِّ -: فَقَلِيلُهُ وَكَثِيرُهُ مُبَاحٌ فِيهَا، وَكُلُّ عَمَلٍ لَمْ يُبَحْ بِالنَّصِّ فِي الصَّلَاةِ: فَقَلِيلُهُ وَكَثِيرُهُ يُبْطِلُ الصَّلَاةَ بِالْعَمْدِ، وَيُوجِبُ

tends over three hundred paces in length. And many a mosque from which one exits with a single step—and with Allah, the Exalted, is all success.[31]

L7261 The Messenger of Allah—peace and blessings of Allah be upon him—once concluded the prayer forgetfully, spoke, returned, exited the mosque, entered his home, then recognized his error. He went out again, rectified the remaining part of his prayer, and performed only two prostrations of forgetfulness. He—peace be upon him—also said, "Whoever turns away from my Sunnah is not of me."

L7262 This also refutes the view of those who claim "two prostrations are required for every instance of forgetfulness in prayer." As for those who argue: "If a prolonged period passes after omitting the prostrations of forgetfulness, one's prayer becomes invalid and must be repeated," and those who state: "If a prolonged period passes, the obligation for prostrations of forgetfulness is lifted and the prayer remains valid"—are these not two profoundly defective positions? The foremost reason is that both views lack any evidentiary basis, and whatever lacks proof is inherently invalid.

L7263 The second is that they must differentiate—based on an authentic text or an indubitable consensus not falsely asserted—between the prolongation of the period and its brevity, yet is there any means to achieve this? The truth in this matter is that whoever the Messenger of Allah—peace and blessings be upon him—commanded to perform the two prostrations of forgetfulness is obligated to fulfill what he was commanded. No jurist's opinion can nullify this duty, and he must perpetually act upon what he was commanded. Can this obligation be lifted except by the Messenger of Allah—peace and blessings be upon him—explicitly delimiting that act to a time whose end is defined? How strange it is of a people who adhered to the command of the Messenger of Allah—peace and blessings be upon him—regarding prayer within a time with fixed beginning and end, and fasting within a time with fixed beginning and end, affirming that their worship remains valid even after the time Allah the Exalted designated for them has passed—for He did

[31] **Hadith references (L7256):** Sahih Muslim 537a.

سُجُودَ السَّهْوِ إذَا كَانَ سَهْوًا. وَأَمَّا الْخُرُوجُ عَنْ الْمَسْجِدِ فَرُبَّ مَسْجِدٍ يَكُونُ طُولُهُ أَزِيدَ مِنْ ثَلَاثِمِائَةِ خُطْوَةٍ وَرُبَّ مَسْجِدٍ يَخْرُجُ مِنْهُ بِخُطْوَةٍ وَاحِدَةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

«وَقَدْ سَلَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَاهِيًا وَتَكَلَّمَ وَرَاجَعَ وَخَرَجَ عَنْ الْمَسْجِدِ وَدَخَلَ بَيْتَهُ ثُمَّ عَرَفَ فَخَرَجَ فَأَتَمَّ مَا بَقِيَ مِنْ صَلَاتِهِ وَسَجَدَ لِسَهْوِهِ سَجْدَتَيْنِ فَقَطْ» . وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ - «مَنْ رَغِبَ عَنْ سُنَّتِي فَلَيْسَ مِنِّي» .

وَبِهَذَا يَبْطُلُ أَيْضًا قَوْلُ مَنْ قَالَ " لِكُلِّ سَهْوٍ فِي الصَّلَاةِ سَجْدَتَانِ ". وَأَمَّا مَنْ قَالَ: إنْ تَطَاوَلَتْ الْمُدَّةُ عَلَى مَنْ تَرَكَ سُجُودَ السَّهْوِ بَطَلَتْ صَلَاتُهُ وَلَزِمَهُ إعَادَتُهَا، وَقَوْلُ مَنْ قَالَ: إنْ تَطَاوَلَتْ الْمُدَّةُ عَلَيْهِ سَقَطَ عَنْهُ سُجُودُ السَّهْوِ وَصَحَّتْ صَلَاتُهُ -: فَقَوْلَانِ فِي غَايَةِ الْفَسَادِ؟ وَأَوَّلُ ذَلِكَ -: أَنَّهُمَا قَوْلَانِ بِلَا بُرْهَانٍ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ؟

وَالثَّانِي: أَنَّهُ يَلْزَمُهُمْ الْفَرْقُ بَيْنَ تَطَاوُلِ الْمُدَّةِ وَبَيْنَ قِصَرِهَا بِنَصٍّ صَحِيحٍ أَوْ إجْمَاعٍ مُتَيَقَّنٍ غَيْرِ مُدَّعًى بِالْكَذِبِ، وَلَا سَبِيلَ إلَى ذَلِكَ؟ وَالْحَقُّ فِي هَذَا: هُوَ أَنَّ مَنْ أَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِسَجْدَتَيْ السَّهْوِ فَقَدْ لَزِمَهُ أَدَاءُ مَا أَمَرَهُ بِهِ، وَلَا يُسْقِطُهُ عَنْهُ رَأْيُ ذِي رَأْيٍ، وَعَلَيْهِ أَنْ يَفْعَلَ مَا أَمَرَهُ بِهِ أَبَدًا، وَلَا يُسْقِطُهُ عَنْهُ إلَّا تَحْدِيدُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ الْعَمَلَ بِوَقْتٍ مَحْدُودِ الْآخِرِ؟ وَالْعَجَبُ مِنْ قَوْمٍ أَتَوْا إلَى أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالصَّلَاةِ فِي وَقْتٍ مَحْدُودِ الطَّرَفَيْنِ، وَبِالصِّيَامِ فِي وَقْتٍ مَحْدُودِ الطَّرَفَيْنِ - فَقَالُوا: لَا يَسْقُطُ عَمَلُهُمَا؟ وَإِنْ بَطَلَ ذَلِكَ الْوَقْتَ الَّذِي جَعَلَهُ اللَّهُ تَعَالَى وَقْتًا لَهُمَا وَلَمْ يَجْعَلْ مَا عَدَا ذَلِكَ الْوَقْتِ وَقْتًا لَهُمَا ثُمَّ أَتَوْا إلَى سُجُودِ السَّهْوِ الَّذِي أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إصْلَاحًا لِمَا وُهِمَ فِيهِ

not make any time beyond that a valid time for them—yet when it comes to the prostrations of forgetfulness, which the Messenger of Allah—peace and blessings be upon him—commanded as a rectification for uncertainties in the obligations of prayer, issuing the command without restriction or temporal limitation, they invalidate it by imposing a time limit of their own invention! Our stance aligns with the opinion of Al-Awzāʿī, and Al-Shāfiʿī upheld it in the earlier of his two positions.

مِنْ فُرُوضِ الصَّلَاةِ، وَأَطْلَقَ بِالْأَمْرِ بِهِ وَلَمْ يُحَدَّهُ -: فَأَبْطَلُوهُ بِوَقْتٍ حَدُّوهُ مِنْ قِبَلِ أَنْفُسِهِمْ وَقَوْلُنَا هَذَا هُوَ قَوْلُ الْأَوْزَاعِيِّ، وَقَالَ بِهِ الشَّافِعِيُّ فِي أَوَّلِ قَوْلَيْهِ.

Case: The Imam forgot and performed the prostration of forgetfulness.

[مَسْأَلَةٌ سَهَا الْإِمَامُ فَسَجَدَ لِلسَّهْوِ]

L7264

469: Juridical Question:

٤٦٩ - مَسْأَلَةٌ:

L7265

If the Imam becomes forgetful and performs the prostration of forgetfulness, it is obligatory upon the followers to prostrate with him, except one who missed a *rakʿah* or more with the Imam. Such a person must stand to make up what he missed. When he completes it, he must perform the prostration of forgetfulness himself, unless the Imam performed the prostration of forgetfulness before the final *taslīm*. In that case, it remains obligatory upon the follower to perform both prostrations with him, even if he still needs to make up what he missed. He does not repeat the two prostrations after performing the *taslīm*, does he?

L7266

وَإِذَا سَهَا الْإِمَامُ فَسَجَدَ لِلسَّهْوِ: فَفَرْضٌ عَلَى الْمُؤْتَمِّينَ أَنْ يَسْجُدُوا مَعَهُ، إِلَّا مَنْ فَاتَتْهُ مَعَهُ رَكْعَةٌ فَصَاعِدًا، فَإِنَّهُ يَقُومُ إِلَى قَضَاءِ مَا عَلَيْهِ، فَإِذَا أَتَمَّهُ سَجَدَ هُوَ لِلسَّهْوِ، إِلَّا أَنْ يَكُونَ الْإِمَامُ سَجَدَ لِلسَّهْوِ قَبْلَ السَّلَامِ فَفَرْضٌ عَلَى الْمَأْمُومِ أَنْ يَسْجُدَهُمَا مَعَهُ، وَإِنْ كَانَ بَقِيَ عَلَيْهِ قَضَاءُ مَا فَاتَهُ، ثُمَّ لَا يُعِيدُ سُجُودَهُمَا إِذَا - سَلَّمَ؟

The proof for this is that the Messenger of Allah—peace and blessings be upon him—once became forgetful during prayer, so he prostrated, and the Muslims prostrated with him due to his awareness of that forgetfulness. As for one who must make up a rak'ah or more: when the Imam gives the salutation, he has exited his prayer, and the follower is obligated to complete what they missed, based on the statement of the Messenger of Allah—peace and blessings be upon him: "Pray what you have caught, and complete what you have missed." He—peace and blessings be upon him—also said: "Complete your prayer." Therefore, it is not permissible for the follower to engage in anything other than completing the prayer as commanded—connecting it to what they have already performed—since he has not yet completed his prayer. The prostration for inadvertence occurs exclusively at the conclusion of the prayer, following its completion, by the instruction of the Prophet—

L7267–7268

بُرْهَانُ ذَلِكَ -: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَهَا فَسَجَدَ وَسَجَدَ الْمُسْلِمُونَ مَعَهُ بِعِلْمِهِ بِذَلِكَ» ؟ وَأَمَّا مَنْ عَلَيْهِ قَضَاءُ رَكْعَةٍ فَصَاعِدًا: فَإِنَّ الْإِمَامَ إِذَا سَلَّمَ فَقَدْ خَرَجَ مِنْ صَلَاتِهِ، وَلَزِمَ الْمَأْمُومَ الْقَضَاءُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا أَدْرَكْتُمْ فَصَلُّوا، وَمَا فَاتَكُمْ فَاقْضُوا» . وَقَالَ - عَلَيْهِ السَّلَامُ - أَيْضًا: «فَأَتِمُّوا» فَلَا يَجُوزُ لَهُ الِاشْتِغَالُ بِغَيْرِ الْإِتْمَامِ الْمَأْمُورِ بِهِ مَوْصُولًا بِمَا أَدْرَكَ، فَلَمْ يُتِمَّ صَلَاتَهُ بَعْدُ، وَالسُّجُودُ لِلسَّهْوِ لَا يَكُونُ إِلَّا فِي آخِرِ الصَّلَاةِ وَبَعْدَ تَمَامِهَا، بِأَمْرِهِ - عَلَيْهِ السَّلَامُ - بِذَلِكَ كَمَا ذَكَرْنَا آنِفًا؟ وَأَمَّا إِذَا سَجَدَهُمَا الْإِمَامُ قَبْلَ أَنْ يُسَلِّمَ فَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

peace and blessings be upon him—as we mentioned earlier. If the Imam performs the two prostrations before giving the salutation, the Messenger of Allah—peace and blessings be upon him—said: "The Imam is appointed to be followed. When he prostrates, prostrate with him." It is thus obligatory for the follower to emulate the Imam in every action he performs in its proper place—even if that position differs for the follower—as applies to standing, sitting, and prostrating. And with Allah alone is success, the Exalted.

L7269 **A legal case: The congregant lapsed into forgetfulness [during prayer], but the imam did not.**

L7270 Issue 470 -

L7271 If the follower becomes forgetful while the imam does not, it is obligatory upon the follower to perform the two prostrations of forgetfulness, just as he would prostrate if praying alone or leading, with no distinction. This is because the Messenger of Allah (peace be upon him) commanded—as we previously mentioned—everyone who causes uncertainty in their prayer to perform the two prostrations of forgetfulness. He (peace be upon him) did not specify this ruling exclusively for an imam or someone praying alone over a follower. Thus, it is impermissible to restrict this ruling to them. Whoever claims that the imam invalidates responsibility for the follower's forgetfulness has spoken falsely without proof and opposed the aforementioned command of the Messenger of Allah (peace be upon him) through personal opinion. There is no disagreement between us and them regarding the ruling that if someone omits a rakʿah, prostration, or commits an invalidating act—whether all of that was inadvertent or deliberate—the imam does not invalidate responsibility for him. How then did they conclude that the imam invalidates responsibility for the remaining obligatory acts they forgot? This is truly astonishing. This opinion has been reported from Ibn Sirin and others.

L7272 And this is the opinion of Abū Sulaymān, and should we adopt it?

L7273 **Jurisprudential Issue: Having performed the two prostra-**

-: «إِنَّمَا جُعِلَ الْإِمَامُ لِيُؤْتَمَّ بِهِ فَإِذَا سَجَدَ فَاسْجُدُوا» فَفَرْضٌ عَلَيْهِ الِائْتِمَامُ بِهِ فِي كُلِّ مَا يَفْعَلُهُ الْإِمَامُ فِي مَوْضِعِهِ وَإِنْ كَانَ مَوْضِعُهُ لِلْمَأْمُومِ بِخِلَافِ ذَلِكَ، وَكَذَلِكَ يَفْعَلُ فِي الْقِيَامِ وَالْقُعُودِ وَالسُّجُودِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ سَهَا الْمَأْمُومُ وَلَمْ يَسْهُ الْإِمَامُ]

٤٧٠ - مَسْأَلَةٌ:

وَإِذَا سَهَا الْمَأْمُومُ وَلَمْ يَسْهُ الْإِمَامُ فَفَرْضٌ عَلَى الْمَأْمُومِ أَنْ يَسْجُدَ لِلسَّهْوِ، كَمَا كَانَ يَسْجُدُ لَوْ كَانَ مُنْفَرِدًا أَوْ إمَامًا وَلَا فَرْقَ؟ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ كَمَا أَوْرَدْنَا آنِفًا كُلَّ مَنْ أَوْهَمَ فِي صَلَاتِهِ بِسَجْدَتَيْ السَّهْوِ، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - بِذَلِكَ إمَامًا وَلَا مُنْفَرِدًا مِنْ مَأْمُومٍ، فَلَا يَحِلُّ تَخْصِيصُهُمْ فِي ذَلِكَ. وَمَنْ قَالَ: إنَّ الْإِمَامَ يَحْمِلُ السَّهْوَ عَنْ الْمَأْمُومِ -: فَقَدْ أَبْطَلَ، وَقَالَ مَا لَا بُرْهَانَ لَهُ بِهِ، وَخَالَفَ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَذْكُورَ بِرَأْيِهِ، وَلَا خِلَافَ مِنَّا وَمِنْهُمْ فِي أَنَّ مَنْ أَسْقَطَ رَكْعَةً أَوْ سَجْدَةً أَوْ أَحْدَثَ - سَهْوًا كَانَ كُلُّ ذَلِكَ أَوْ عَمْدًا - فَإِنَّ الْإِمَامَ لَا يَحْمِلُهُ عَنْهُ، فَمِنْ أَيْنَ وَقَعَ لَهُمْ أَنْ يَحْمِلَ عَنْهُ سَائِرَ مَا سَهَا فِيهِ مِنْ فَرْضٍ؟ إنَّ هَذَا لَعَجَبٌ. وَقَدْ رُوِيَ هَذَا الْقَوْلُ عَنْ ابْنِ سِيرِينَ وَغَيْرِهِ.

وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَبِهِ نَأْخُذُ؟

[مَسْأَلَةٌ سَجَدَ سَجْدَتَيْ السَّهْوِ عَلَى غَيْرِ طَهَارَةٍ]

tions of forgetfulness without ritual purity.

L7274 Issue 471: If a person performs the two prostrations of forgetfulness without being in a state of ritual purification, are they valid for him, and is this act considered disliked (makrūh)?

٤٧١ - مَسْأَلَةٌ: وَمَنْ سَجَدَ سَجْدَتَيْ السَّهْوِ عَلَى غَيْرِ طَهَارَةٍ أَجْزَأَتَا عَنْهُ وَنَكْرَهُ ذَلِكَ؟ .

L7275–7277 The proof of that is: what we have mentioned of what was narrated to us by Abdullah ibn Rabi‘, who narrated to us: Muhammad ibn Mu‘awiyah al-Marwani narrated to us. Ahmad ibn Shu’ayb narrated to us: Muhammad ibn Bashar narrated to us, [saying]: Muhammad ibn Ja‘far Ghundar and ‘Abd al-Rahman ibn Mahdi both said together: Shu‘bah narrated to us from Ya‘la ibn ‘Ata’ that he heard ‘Ali ibn ‘Abd Allah al-Azdi—who is al-Bariqi—narrate that he heard Ibn ‘Umar narrate that the Prophet—peace and blessings of Allah be upon him—said: “Prayers during the night and day are two by two.”

بُرْهَانُ ذَلِكَ -: مَا قَدْ ذَكَرْنَاهُ مِمَّا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ الْمَرْوَانِيُّ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ ثنا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ - وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ قَالَا جَمِيعًا: ثنا شُعْبَةُ عَنْ يَعْلَى بْنِ عَطَاءٍ أَنَّهُ سَمِعَ عَلِيَّ بْنَ عَبْدِ اللَّهِ الْأَزْدِيَّ هُوَ الْبَارِقِيُّ - أَنَّهُ سَمِعَ ابْنَ عُمَرَ يُحَدِّثُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «صَلَاةُ اللَّيْلِ وَالنَّهَارِ مَثْنَى مَثْنَى» .

L7278 Ali said: It is impermissible for any prayer to be performed except in two-unit sequences, except those which the Messenger of Allah, peace and blessings be upon him, specifically named as prayers not in pairs: such as the obligatory prayers consisting of four units each, Witr prayer, the four-unit prayer before Dhuhr and after Jumu’ah (Friday) without offering salutations between them, and the funeral prayer. Other than these, it is not considered a prayer. The Prophet, peace and blessings be upon him, did not designate the two prostrations of forgetfulness as a prayer. Ablution is only strictly required for prayer - as narrated to us through the chain: Abdullah ibn Yusuf → Ahmad ibn Fath → Abdul Wahhab ibn Isa → Ahmad ibn Muhammad → Ahmad ibn Ali → Muslim ibn al-Hajjaj → Muhammad ibn Amr ibn Abbad ibn Jabalah → Abu Asim → Ibn Jurayj → Sa’id ibn al-Huwayrith, who reported hearing Ibn Abbas state: “The Prophet, peace and blessings be upon him, answered the call of nature, then had food brought to him. He ate without performing ablution.”

Ibn Jurayj added through Amr ibn Dinar → Sa’id ibn al-Huwayrith: “When someone asked the Prophet, peace and blessings be upon him, ’Did you not perform ablution?’ he replied: ’I had no intention to pray, so I did not perform ablution.’” Amr inquired: “Did I hear this directly from Sa’id ibn al-Huwayrith?” We also narrated it from Sufyan ibn Uyaynah and Hammad

قَالَ عَلِيٌّ: فَلَا يَجُوزُ أَنْ تَكُونَ صَلَاةٌ غَيْرَ مَثْنَى، إلَّا مَا سَمَّاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَاةً وَهُوَ غَيْرُ مَثْنَى: كَالْفُرُوضِ الَّتِي هِيَ أَرْبَعُ أَرْبَعٌ، وَكَالْوِتْرِ وَكَالصَّلَاةِ قَبْلَ الظُّهْرِ وَبَعْدَ الْجُمُعَةِ أَرْبَعًا لَا تَسْلِيمَ بَيْنَهُنَّ، وَصَلَاةِ الْجَنَائِزِ. وَمَا عَدَا ذَلِكَ فَلَيْسَ صَلَاةً، وَلَمْ يُسَمِّ - عَلَيْهِ السَّلَامُ - سَجْدَتَيْ السَّهْوِ: صَلَاةً. وَلَا وُضُوءٌ يَجِبُ لَازِمًا إلَّا لِصَلَاةٍ -: كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ عَمْرِو بْنُ عَبَّادِ بْنُ جَبَلَةَ ثنا أَبُو عَاصِمٍ عَنْ ابْنِ جُرَيْجٍ ثنا سَعِيدُ بْنُ الْحُوَيْرِثِ أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ يَقُولُ: «إنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى حَاجَتَهُ مِنْ الْخَلَاءِ فَقُرِّبَ إلَيْهِ طَعَامٌ فَأَكَلَ فَلَمْ يَمَسَّ مَاءً» . قَالَ ابْنُ جُرَيْجٍ -: وَزَادَنِي عَمْرُو بْنُ دِينَارٍ عَنْ سَعِيدِ بْنِ الْحُوَيْرِثِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قِيلَ لَهُ: إنَّكَ لَمْ تَتَوَضَّأْ؟ قَالَ: مَا أَرَدْت صَلَاةً فَأَتَوَضَّأُ» قَالَ عَمْرٌو: سَمِعْته مِنْ سَعِيدِ بْنِ الْحُوَيْرِثِ؟ وَرُوِّينَاهُ أَيْضًا عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ وَحَمَّادِ بْنِ

ibn Zayd, both from Amr ibn Dinar → Sa'id ibn al-Huwayrith → Ibn Abbas → the Messenger of Allah, peace and blessings be upon him, who made a similar statement.

زَيْدٍ كِلَاهُمَا عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ سَعِيدِ بْنِ الْحُوَيْرِثِ عَنْ ابْنِ عَبَّاسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ نَحْوَ ذَلِكَ

L7279 **Issue: The most preferable practice is to utter *Allāhu Akbar* (Takbīr) for each of the two prostrations of forgetfulness and to recite the *Tashahhud* after both prostrations.**

[مَسْأَلَةٌ الْأَفْضَلُ أَنْ يُكَبِّرَ لِكُلِّ سَجْدَةٍ مِنْ سَجْدَتَيْ السَّهْوِ وَيَتَشَهَّدَ بَعْدَهُمَا]

L7280 Issue 472: The most preferable practice is to pronounce "Allāhu Akbar" for each prostration of the two prostrations of forgetfulness, recite the *Tashahhud* afterward, then conclude with the *Salām* after them. If one performs only the two prostrations without any of these acts, it is valid.

٤٧٢ - مَسْأَلَةٌ: وَالْأَفْضَلُ أَنْ يُكَبِّرَ لِكُلِّ سَجْدَةٍ مِنْ سَجْدَتَيْ السَّهْوِ وَيَتَشَهَّدَ بَعْدَهُمَا وَيُسَلِّمَ مِنْهُمَا، فَإِنْ اقْتَصَرَ عَلَى السَّجْدَتَيْنِ دُونَ شَيْءٍ مِنْ ذَلِكَ أَجْزَأَهُ

L7281–7283 Ali said: As for limiting oneself to the two prostrations in prayer alone, this ruling derives from the evidence we earlier cited from his command—peace be upon him—. For one who is uncertain in his prayer, adds to it, or omits from it, [the ruling is] two prostrations. Did he (peace be upon him) not command anything else besides that regarding them?

قَالَ عَلِيٌّ: أَمَّا الِاقْتِصَارُ عَلَى السَّجْدَتَيْنِ فَقَطْ، فَلِمَا أَوْرَدْنَاهُ آنِفًا مِنْ أَمْرِهِ - عَلَيْهِ السَّلَامُ - مَنْ أَوْهَمَ فِي صَلَاتِهِ أَوْ زَادَ أَوْ نَقَصَ: بِسَجْدَتَيْنِ، وَلَمْ يَأْمُرْ - عَلَيْهِ السَّلَامُ - فِيهِمَا بِغَيْرِ ذَلِكَ؟

L7284 As for our choice of the Takbīr for them two, the Tashahhud, and the Salām—it is based on what ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Isḥāq narrated to us: Ibn al-Aʿrābī narrated to us: Abū Dāwūd narrated to us: Muḥammad ibn ʿUbayd ibn Ḥisāb narrated to us: Ḥammād—that is, Ibn Zayd—narrated from Ayyūb al-Sakhtiyānī, from Muḥammad ibn Sīrīn, from Abū Hurayrah, who said: "Allah's Messenger—peace and blessings of Allah be upon him—led us in one of the two afternoon prayers—the Ẓuhr, he said, or the ʿAṣr. He prayed two rakʿahs with us, then said the Salām. Then he went to a wooden post at the front of the mosque, placed his hands on it—one over the other—with anger recognizable on his face. People hurried out saying: 'The prayer has been shortened! The prayer has been shortened!' Among them were Abū Bakr and ʿUmar, but both of them feared to address him. A man whom the Prophet called Dhū al-Yadayn stood up and said: 'O Messenger of Allah, did you forget or has the prayer been shortened?' He replied: 'Did I forget, or has the prayer been shortened?' The man said: 'Rather, you forgot, O Messenger of Allah!' The Prophet turned to the people and asked: 'Is Dhū al-Yadayn truthful?' They responded: 'Yes, indeed.'

وَأَمَّا اخْتِيَارُنَا التَّكْبِيرَ لَهُمَا وَالتَّشَهُّدَ وَالسَّلَامَ -: فَلِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُحَمَّدُ بْنُ عُبَيْدِ بْنِ حِسَابٍ ثنا حَمَّادٌ هُوَ ابْنُ زَيْدٍ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ قَالَ «صَلَّى بِنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إحْدَى صَلَاتَيْ الْعَشِيِّ، الظُّهْرَ قَالَ أَوْ الْعَصْرَ، فَصَلَّى بِنَا رَكْعَتَيْنِ، ثُمَّ سَلَّمَ، ثُمَّ قَامَ إلَى خَشَبَةٍ فِي مُقَدَّمِ الْمَسْجِدِ فَوَضَعَ يَدَيْهِ عَلَيْهَا، إحْدَاهُمَا عَلَى الْأُخْرَى، يُعْرَفُ فِي وَجْهِهِ الْغَضَبُ، ثُمَّ خَرَجَ سَرَعَانُ النَّاسِ وَهُمْ يَقُولُونَ: قَصُرَتْ الصَّلَاةُ، قَصُرَتْ الصَّلَاةُ، وَفِي النَّاسِ أَبُو بَكْرٍ وَعُمَرُ، فَهَابَاهُ أَنْ يُكَلِّمَاهُ، فَقَامَ رَجُلٌ كَانَ يُسَمِّيهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَا الْيَدَيْنِ، فَقَالَ: يَا رَسُولَ اللَّهِ أَنَسِيتَ أَمْ قَصُرَتْ الصَّلَاةُ؟ - قَالَ: لَمْ أَنْسَ وَلَمْ تَقْصُرْ الصَّلَاةُ؟ قَالَ: بَلْ نَسِيتَ يَا رَسُولَ

He returned to his position, prayed the remaining two rakʿahs, then said the Salām. Then he pronounced Takbīr, prostrated similarly to his prostration—or longer—then rose and pronounced Takbīr. Then he pronounced Takbīr again, prostrated similarly to his prostration—or longer—then rose and pronounced Takbīr." When Muḥammad ibn Sīrīn was asked: "Did he say the Salām in the forgetfulness [prostration]?" he answered: "I did not retain this from Abū Hurayrah, but I was informed that ʿImrān ibn al-Ḥuṣayn said: 'Then he said the Salām.'"

L7285 From him, it reaches Abū Dāwūd: Muḥammad ibn Yaḥyā ibn Fāris narrated to us; Muḥammad ibn ʿAbd Allāh ibn al-Muthannā narrated to us; Ashʿath—who is the son of ʿAbd al-Malik—related to me from Muḥammad ibn Sīrīn from Khālid al-Ḥadhdhā from Abu Qilābah from Abu al-Muhallab from ʿImrān ibn al-Ḥuṣayn: "That the Messenger of Allah (peace and blessings be upon him) became forgetful, so he prostrated twice, then recited the tashahhud, then gave the salām."

L7286–7287 Ali said, "These are actions, not commands. So is emulating them commendable?" It has been narrated to us from Ibn Jurayj, via ʿAṭāʾ, that he said: "There is no recitation, bowing, or tashahhud in the two prostrations of forgetfulness."

L7288 Al-Hajjaj ibn Al-Minhal narrated to us from Hammad ibn Salamah, from Qatadah, from Anas ibn Malik and Al-Hasan, that the two of them held the opinion that one does not recite the Tashahhud in the two prostrations of forgetfulness.

L7289 And from al-Ḥasan: "There is no Taslīm in them." ʿAlī said: "It is necessary in both to say 'Glory be to my Lord, the Most High,' based on the statement of Allah's Messenger (peace be upon him): 'Include it in your prostrations'—and does this not imply a general ruling applicable to all prostrations?"

L7290 **Issue: The entire prostration of forgetfulness is performed after the *salam*, except in two instances.**

L7291 473 - Issue: All prostration of forgetfulness (sajdah al-sahw) is performed

اللَّهِ فَأَقْبَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْقَوْمِ فَقَالَ: أَصَدَقَ ذُو الْيَدَيْنِ؟ فَأَوْمَئُوا إِلَيْهِ: أَيْ نَعَمْ فَرَجَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى مَقَامِهِ فَصَلَّى الرَّكْعَتَيْنِ الْبَاقِيَتَيْنِ، ثُمَّ سَلَّمَ، ثُمَّ كَبَّرَ وَسَجَدَ مِثْلَ سُجُودِهِ أَوْ أَطْوَلَ، ثُمَّ رَفَعَ وَكَبَّرَ، ثُمَّ كَبَّرَ وَسَجَدَ مِثْلَ سُجُودِهِ أَوْ أَطْوَلَ، ثُمَّ رَفَعَ وَكَبَّرَ» . فَقِيلَ لِمُحَمَّدِ بْنِ سِيرِينَ: سَلَّمَ فِي السَّهْوِ؟ قَالَ: لَمْ أَحْفَظْ مِنْ أَبِي هُرَيْرَةَ وَلَكِنْ نُبِّئْت أَنَّ عِمْرَانَ بْنَ الْحُصَيْنِ قَالَ: " ثُمَّ سَلَّمَ ".

وَبِهِ إلَى أَبِي دَاوُد: ثنا مُحَمَّدُ بْنُ يَحْيَى بْنِ فَارِسٍ ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُثَنَّى حَدَّثَنِي أَشْعَثُ هُوَ ابْنُ عَبْدِ الْمَلِكِ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَهَا فَسَجَدَ سَجْدَتَيْنِ ثُمَّ تَشَهَّدَ ثُمَّ سَلَّمَ» .

قَالَ عَلِيٌّ: وَهَذِهِ أَعْمَالٌ لَا أَوَامِرُ، فَالِائْتِسَاءُ فِيهَا حَسَنٌ؟ رُوِّينَا عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: لَيْسَ فِي سَجْدَتَيْ السَّهْوِ قِرَاءَةٌ، وَلَا رُكُوعٌ، وَلَا تَشَهُّدٌ.

وَعَنْ الْحَجَّاجِ بْنِ الْمِنْهَالِ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ عَنْ أَنَسِ بْنِ مَالِكٍ، وَالْحَسَنِ: أَنَّهُمَا لَا يَتَشَهَّدَانِ فِي سَجْدَتَيْ السَّهْوِ.

وَعَنْ الْحَسَنِ: لَيْسَ فِيهِمَا تَسْلِيمٌ -: قَالَ عَلِيٌّ: وَلَا بُدَّ لَهُ فِيهِمَا مِنْ أَنْ يَقُولَ " سُبْحَانَ رَبِّيَ الْأَعْلَى " لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «اجْعَلُوهَا فِي سُجُودِكُمْ» وَهَذَا عُمُومٌ لِكُلِّ سُجُودٍ؟ .

[مَسْأَلَةٌ سُجُودُ السَّهْوِ كُلُّهُ بَعْدَ السَّلَامِ إلَّا فِي مَوْضِعَيْنِ]

٤٧٣ - مَسْأَلَةٌ: وَسُجُودُ السَّهْوِ كُلُّهُ بَعْدَ السَّلَامِ إِلَّا فِي مَوْضِعَيْنِ، فَإِنَّ السَّاهِيَ فِيهِمَا مُخَيَّرٌ بَيْنَ أَنْ يَسْجُدَ سَجْدَتَيِ السَّهْوِ بَعْدَ السَّلَامِ وَإِنْ شَاءَ قَبْلَ السَّلَامِ؟ أَحَدُهُمَا: مَنْ سَهَا فَقَامَ مِنْ رَكْعَتَيْنِ وَلَمْ يَجْلِسْ وَيَتَشَهَّدْ، فَهَذَا سَوَاءٌ كَانَ إِمَامًا أَوْ فَذًّا فَإِنَّهُ إِذَا اسْتَوَى قَائِمًا فَلَا يَحِلُّ لَهُ الرُّجُوعُ إِلَى الْجُلُوسِ، فَإِنْ رَجَعَ وَهُوَ عَالِمٌ بِأَنَّ ذَلِكَ لَا يَجُوزُ ذَاكِرٌ لِذَلِكَ -: بَطَلَتْ صَلَاتُهُ، فَإِنْ فَعَلَ ذَلِكَ سَاهِيًا لَمْ تَبْطُلْ صَلَاتُهُ، وَهُوَ سَهْوٌ يُوجِبُ السُّجُودَ، لَكِنْ يَتَمَادَى فِي صَلَاتِهِ فَإِذَا أَتَمَّ التَّشَهُّدَ الْآخِرَ فَإِنْ شَاءَ سَجَدَ سَجْدَتَيْ السَّهْوِ ثُمَّ سَلَّمَ، وَإِنْ شَاءَ سَلَّمَ ثُمَّ سَجَدَ سَجْدَتَيْ السَّهْوِ؟ وَالْمَوْضِعُ الثَّانِي: أَنْ لَا يَدْرِي فِي كُلِّ صَلَاةٍ تَكُونُ رَكْعَتَيْنِ أَصَلَّى رَكْعَةً أَوْ رَكْعَتَيْنِ؟ وَفِي كُلِّ صَلَاةٍ تَكُونُ ثَلَاثًا أَصَلَّى رَكْعَةً أَوْ رَكْعَتَيْنِ أَوْ ثَلَاثًا؟ وَفِي كُلِّ صَلَاةٍ تَكُونُ أَرْبَعًا أَصَلَّى أَرْبَعًا أَمْ أَقَلَّ؟ فَهَذَا يَبْنِي عَلَى الْأَقَلِّ وَيُصَلِّي أَبَدًا حَتَّى يَكُونَ عَلَى يَقِينٍ مِنْ أَنَّهُ قَدْ أَتَمَّ رَكَعَاتِ صَلَاتِهِ وَشَكَّ فِي الزِّيَادَةِ.

فَإِذَا تَشَهَّدَ فِي آخِرِ صَلَاتِهِ فَهُوَ مُخَيَّرٌ إِنْ شَاءَ سَجَدَ سَجْدَتَيْ السَّهْوِ قَبْلَ السَّلَامِ، ثُمَّ يُسَلِّمُ، وَإِنْ شَاءَ سَلَّمَ ثُمَّ سَجَدَ سَجْدَتَيْ السَّهْوِ. وَإِنْ أَيْقَنَ مِنْ خِلَالِ ذَلِكَ أَنَّهُ كَانَ قَدْ أَتَمَّ جَلَسَ مِنْ حِينِهِ وَتَشَهَّدَ وَسَلَّمَ وَلَا بُدَّ، ثُمَّ سَجَدَ لِلسَّهْوِ وَإِنْ ذَكَرَ بَعْدَ أَنْ سَلَّمَ وَسَجَدَ أَنَّهُ زَادَ يَقِينًا فَلَا شَيْءَ عَلَيْهِ وَصَلَاتُهُ تَامَّةٌ. وَالسُّجُودُ فِي صَلَاةِ التَّطَوُّعِ وَاجِبٌ كَمَا هُوَ فِي صَلَاةِ الْفَرْضِ، وَلَا فَرْقَ فِي كُلِّ مَا ذَكَرْنَاهُ؟ وَقَالَ أَبُو حَنِيفَةَ: السُّجُودُ كُلُّهُ لِلسَّهْوِ بَعْدَ السَّلَامِ؟ وَقَالَ الشَّافِعِيُّ: هُوَ كُلُّهُ قَبْلَ السَّلَامِ؟ وَقَالَ مَالِكٌ: هُوَ فِي الزِّيَادَةِ بَعْدَ السَّلَامِ، وَفِي النُّقْصَانِ قَبْلَ السَّلَامِ قَالَ عَلِيٌّ: تَعَلَّقَ أَبُو حَنِيفَةَ بِبَعْضِ الْآثَارِ وَتَرَكَ بَعْضًا وَهَذَا لَا يَجُوزُ؟ وَكَذَلِكَ فَعَلَ الشَّافِعِيُّ وَزَادَ حُجَّةً نَظَرِيَّةً وَهِيَ: أَنَّهُ قَالَ: إِنَّ جَبْرَ الشَّيْءِ لَا يَكُونُ إِلَّا فِيهِ لَا بَائِنًا عَنْهُ قَالَ عَلِيٌّ: وَالنَّظَرُ لَا يَحِلُّ أَنْ يُعَارَضَ بِهِ كَلَامُ رَسُولِ اللَّهِ - صَلَّى

after concluding the prayer with salām except in two situations where the forgetful worshiper may choose to perform the two prostrations of forgetfulness either before or after salām.

The first situation occurs when one forgetfully rises from the two rakʿahs without sitting for the tashahhud. This applies equally to an imam or individual worshiper. Once fully upright, it is impermissible to return to sitting. If one deliberately returns while aware of this prohibition, their prayer is invalidated. If done forgetfully, the prayer remains valid but requires prostrations. They must continue the prayer, and upon completing the final tashahhud, may choose to perform the two prostrations of forgetfulness before salām or after it.

The second situation arises when one is uncertain: in a two-rakʿah prayer – "Did I pray one or two rakʿahs?" In a three-rakʿah prayer – "Did I pray one, two, or three rakʿahs?" In a four-rakʿah prayer – "Did I pray four or fewer?" Here, they must assume the lesser number and pray continuously until achieving certainty of having completed the required rakʿahs, even if they doubt having added extra rakʿahs.

L7292–7293 If he recites the Tashahhud at the conclusion of his prayer, he may choose: if he wishes, he may perform the two prostrations of forgetfulness before the salutation and then conclude with the salutation; or if he wishes, he may conclude with the salutation and then perform the two prostrations of forgetfulness. If he realizes during this process that he has indeed completed the prayer, he must immediately sit, recite the Tashahhud, conclude with the salutation without exception, then perform the prostrations of forgetfulness. If he recalls after concluding the salutation and prostrating that he had attained greater certainty, there is no obligation upon him, and his prayer remains valid. Prostrations of forgetfulness in voluntary prayers are obligatory, just as in obligatory prayers. Is there any distinction in all that we have mentioned? Imam Abu Hanifah said: All prostrations of forgetfulness occur after the salutation. Imam al-Shafiʿi said: They all occur before the salutation. Imam Malik said: They occur after the salutation for additions and before the salutation for omissions. ʿAli said: Abu Hanifah relied on some narrations while disregarding others, and this is impermissible. Similarly, al-Shafiʿi

اللَّهُ عَلَيْهِ وَسَلَّمَ -، وَلَيْتَ شِعْرِي مِنْ أَيْنَ لَهُمْ بِأَنَّ جَبْرَ الشَّيْءِ لَا يَكُونُ إلَّا فِيهِ لَا بَائِنًا عَنْهُ؟ وَهُمْ مُجْمِعُونَ عَلَى أَنَّ الْهَدْيَ، وَالصِّيَامَ: يَكُونَانِ جَبْرًا لِمَا نَقَصَ مِنْ الْحَجِّ، وَهُمَا بَعْدَ الْخُرُوجِ عَنْهُ وَأَنَّ عِتْقَ الرَّقَبَةِ أَوْ الصَّدَقَةَ، أَوْ صِيَامَ الشَّهْرَيْنِ جَبْرٌ لِنَقْصِ وَطْءِ التَّعَمُّدِ فِي نَهَارِ رَمَضَانَ وَبَعْضُ ذَلِكَ لَا يَجُوزُ إلَّا بَعْدَ تَمَامِهِ، وَسَائِرُ ذَلِكَ يَجُوزُ بَعْدَ تَمَامِهِ، وَهَذِهِ صِفَةُ الْآرَاءِ الْمُقْحَمَةِ فِي الدِّينِ بِلَا بُرْهَانٍ مِنْ اللَّهِ تَعَالَى، وَلَا مِنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

acted thus and added a theoretical argument, stating: "Compensation for an act can only occur within it, not separately." 'Ali said: It is impermissible to oppose the words of Allah's Messenger—peace and blessings be upon him—with speculative reasoning. Would that I knew from where they derived that compensation for an act cannot occur except within it, not separately? They unanimously agree that the sacrificial offering and fasting compensate for deficiencies in Hajj rituals, even though these compensations occur after departing from Hajj. Similarly, freeing a slave, giving charity, or fasting two months compensate for the deficiency caused by intentional intercourse during Ramadan's daytime—some of these compensations are only permissible after completing the act, while others are permissible thereafter. These are the traits of opinions unjustifiably imposed upon the religion without any evidence from Allah—the Exalted—or from His Messenger—peace and blessings be upon him.

وَأَمَّا قَوْلُ مَالِكٍ، فَرَأْيٌ مُجَرَّدٌ فَاسِدٌ بِلَا بُرْهَانٍ عَلَى صِحَّتِهِ، وَهُوَ أَيْضًا مُخَالِفٌ لِلثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَمْرِهِ بِسُجُودِ السَّهْوِ قَبْلَ السَّلَامِ مَنْ شَكَّ فَلَمْ يَدْرِ كَمْ صَلَّى؟ وَهُوَ سَهْوُ زِيَادَةٍ

L7294 As for the statement of Mālik, it is a mere opinion, invalid without any proof of its validity, and it also contradicts what is established from the Messenger of Allah, peace and blessings be upon him, regarding his command that whoever doubts and does not know how much he has prayed must perform the prostration of forgetfulness before the salutation. And it is the prostration for an unintentional addition [in prayer].

فَبَطَلَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L7295 Therefore, all these statements have been invalidated, and success is from Allah, the Exalted.

قَالَ عَلِيٌّ: وَبُرْهَانُ صِحَّةِ قَوْلِنَا -: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا الْحَسَنُ بْنُ إسْمَاعِيلَ بْنِ سُلَيْمَانَ ثنا الْفُضَيْلُ هُوَ ابْنُ عِيَاضٍ - عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ عَنْ ابْنِ مَسْعُودٍ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُمْ: «فَأَيُّكُمْ مَا نَسِيَ شَيْئًا فَلْيَتَحَرَّ الَّذِي يَرَى أَنَّهُ صَوَابٌ ثُمَّ يُسَلِّمُ ثُمَّ يَسْجُدُ سَجْدَتَيْ السَّهْوِ» حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا عُثْمَانُ بْنُ أَبِي شَيْبَةَ ثنا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ عَنْ عَلْقَمَةَ، قَالَ: قَالَ

L7296–7299 Ali said: The proof for the validity of our opinion lies in what Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Al-Hasan ibn Isma'il ibn Sulayman narrated to us: Al-Fudayl—that is, Ibn Iyad—narrated from Mansur ibn Al-Mu'tamir from Ibrahim Al-Nakha'i from Alqamah from Ibn Mas'ud: That the Messenger of Allah—peace be upon him—said to them: "Whoever among you forgets something, let him carefully determine what he deems correct, then conclude with the salutation, then perform two prostrations for forgetfulness." Abdullah ibn Rabi' narrated to us: Muhammad ibn Ishaq narrated to us: Ibn Al-A'rabi narrated to us: Abu Dawud narrated to us: Uthman ibn Abi Shaybah narrated to us: Jarir narrated from Mansur from Ibrahim from Alqamah,

who said: Abdullah—that is, Ibn Mas'ud—said: "The Messenger of Allah—peace be upon him—said to them in a hadith: 'If any of you doubts during his prayer, let him strive to ascertain what is correct, complete it, then conclude with the salutation, then perform two prostrations.'" Ali said: We have reported it through numerous reliable chains of the utmost excellence. Thus, if no other Sunnah besides this were reported, it would not be permissible to perform the prostration of forgetfulness except after the salutation. Yunus ibn Abdullah ibn Mughith narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Qutaybah ibn Sa'id narrated to us from Malik ibn Anas from Ibn Shihab from Al-A'raj from Abdullah ibn Buhaynah, who said: "The Messenger of Allah—peace be upon him—led us in two rak'ahs, then stood up without sitting, and the people stood with him. When he completed the prayer and we awaited his salutation, he said 'Allahu Akbar,' performed two prostrations while seated before the salutation, then concluded with the salutation." He—peace be upon him—did not return to the sitting position, and he—peace be upon him—said: "Pray as you see me pray." Abdullah ibn Rabi' narrated to us: Muhammad ibn Ishaq narrated to us: Ibn Al-A'rabi narrated to us: Abu Dawud narrated to us: Ubaydullah ibn Umar Al-Jushami narrated to us: Yazid ibn Harun narrated to us: Al-Mas'udi—that is, Abu Al-'Umays 'Utbah ibn... From Abdullah ibn Mas'ud, from Ziyad ibn 'Ilaqah, who said: "Al-Mughirah ibn Shu'bah led us in prayer and stood up after the two rak'ahs. We said, 'Subhanallah,' so he responded, 'Subhanallah,' and continued. When he completed his prayer and said the salam, he performed two prostrations of forgetfulness. After concluding, he said: 'I saw the Messenger of Allah (peace be upon him) do as I did.'"[32]

L7300 Ali said: Both reports are authentic—so is following either of them a Sunnah? Some followers of Abū Ḥanīfah said: Perhaps Ibn Buḥaynah did not hear the Messenger of Allah, peace and blessings be upon him, when he uttered the salām. Ali said: This is an excuse based on a baseless claim of falsehood and discarding the Prophetic traditions through a false assumption. It is impermissible to say regarding what a reliable narrator (how much more so a Companion) has reported: "Perhaps it is an error," except with definitive

[32]**Hadith references (L7297):** Sunan Abi Dawud 1020.

عَبْدُ اللَّهِ هُوَ ابْنُ مَسْعُودٍ -: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُمْ فِي حَدِيثٍ «إِذَا شَكَّ أَحَدُكُمْ فِي صَلَاتِهِ فَلْيَتَحَرَّ الصَّوَابَ فَلْيُتِمَّ عَلَيْهِ، ثُمَّ لِيُسَلِّمْ، ثُمَّ لِيَسْجُدْ سَجْدَتَيْنِ» قَالَ عَلِيٌّ: وَرُوِّينَاهُ مِنْ طُرُقٍ كَثِيرَةٍ جِيَادٍ غَايَةً فَلَوْ لَمْ يَرِدْ غَيْرُ هَذِهِ السُّنَّةِ لَمْ يَجُزْ سُجُودُ السَّهْوِ إِلَّا بَعْدَ السَّلَامِ -: حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ بْنِ مُغِيثٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا قُتَيْبَةُ بْنُ سَعِيدٍ عَنْ مَالِكِ بْنِ أَنَسٍ عَنِ ابْنِ شِهَابٍ عَنِ الْأَعْرَجِ عَنْ عَبْدِ اللَّهِ ابْنِ بُحَيْنَةَ قَالَ «صَلَّى بِنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَكْعَتَيْنِ، ثُمَّ قَامَ فَلَمْ يَجْلِسْ، فَقَامَ النَّاسُ مَعَهُ، فَلَمَّا قَضَى صَلَاتَهُ وَنَظَرْنَا تَسْلِيمَهُ كَبَّرَ فَسَجَدَ سَجْدَتَيْنِ وَهُوَ جَالِسٌ قَبْلَ التَّسْلِيمِ، ثُمَّ سَلَّمَ» . فَلَمْ يَرْجِعْ - عَلَيْهِ السَّلَامُ - إِلَى الْجُلُوسِ، وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «صَلُّوا كَمَا تَرَوْنِي أُصَلِّي» -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا عُبَيْدِ اللَّهِ بْنُ عُمَرَ الْجُشَمِيُّ ثنا يَزِيدُ بْنُ هَارُونَ أَنَا الْمَسْعُودِيُّ هُوَ أَبُو الْعُمَيْسِ عُتْبَةُ بْنُ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ - عَنْ زِيَادِ بْنِ عِلَاقَةَ قَالَ «صَلَّى بِنَا الْمُغِيرَةُ بْنُ شُعْبَةَ فَنَهَضَ فِي الرَّكْعَتَيْنِ، فَقُلْنَا: سُبْحَانَ اللَّهِ، فَقَالَ: سُبْحَانَ اللَّهِ، وَمَضَى، فَلَمَّا أَتَمَّ صَلَاتَهُ وَسَلَّمَ سَجَدَ سَجْدَتَيْ السَّهْوِ، فَلَمَّا انْصَرَفَ قَالَ: رَأَيْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَصْنَعُ كَمَا صَنَعْتُ» .

قَالَ عَلِيٌّ: وَكِلَا الْخَبَرَيْنِ صَحِيحٌ، فَكِلَاهُمَا الْأَخْذُ بِهِ سُنَّةٌ؟ وَقَدْ قَالَ بَعْضُ مُقَلِّدِي أَبِي حَنِيفَةَ: لَعَلَّ ابْنَ بُحَيْنَةَ لَمْ يَسْمَعْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ سَلَّمَ قَالَ عَلِيٌّ: وَهَذَا تَعَلُّلٌ بِدَعْوَى الْكَذِبِ، وَإِسْقَاطُ السُّنَنِ بِالظَّنِّ الْكَاذِبِ وَلَا يَحِلُّ أَنْ يُقَالَ فِيمَا رَوَاهُ الثِّقَةُ - فَكَيْفَ الصَّاحِبُ -: لَعَلَّهُ وَهْمٌ، إِلَّا بِيَقِينٍ وَارِدٍ بِأَنَّهُ وَهْمٌ، وَأَمَّا بِالظَّنِّ فَلَا.

proof establishing it as an error. As for basing this on mere assumption, it is not permissible.

L7301 He—peace be upon him—said: “Beware of suspicion, for suspicion is the most deceitful speech.” Among the falsehoods is the claim that Allah’s Messenger—peace and blessings be upon him—would conclude his prayer with the salutation while those praying behind him would neither respond to his salutation nor offer theirs in the same manner he did—and that Ibn Buḥaynah heard nothing of this. None would assert such except one lacking modesty, feeble in faith, and indifferent to falsehood. ʿAbdullāh ibn Yūsuf narrated to us from Aḥmad ibn Fatḥ, from ʿAbd al-Wahhāb ibn ʿĪsā, from Aḥmad ibn Muḥammad, from Aḥmad ibn ʿAlī, from Muslim ibn al-Ḥajjāj; Muḥammad ibn Aḥmad ibn Abī Khalaf narrated to me from Mūsā ibn Dāwūd, from Sulaymān ibn Bilāl, from Zayd ibn Aslam, from ʿAṭāʾ ibn Yasār, from Abi Saʿid al-Khudrī, who said: Allah’s Messenger—peace and blessings be upon him—said: “When any of you doubts during prayer, uncertain whether he has prayed three or four units, let him dismiss the doubt and build upon what is certain, then perform two prostrations (of forgetfulness) before giving the salutation.”

L7302–7304 Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Ishaq reported, from Ibn al-Aʿrabi, from Abu Dawud, from Muhammad ibn al-ʿAlaʾ (Abu Kuraib), from Abu Khalid al-Ahmar, from Muhammad ibn ʿAjlan, from Zayd ibn. Aslam reported from ‘Ata’ ibn Yasar from Abu Saʿid al-Khudri, who said: The Messenger of Allah—peace and blessings be upon him—said: “If any of you has doubt in his prayer, let him discard the doubt and act according to what he is certain of. When he is certain of completion, let him perform two prostrations. If his prayer was complete, the rakʿah and the two prostrations become voluntary. If it was deficient, the rakʿah completes his prayer, and the two prostrations become a means of vexing the devil.”

L7305 And it was narrated by us through Mālik’s transmission as a *mursal* narration.

L7306 This is the precise text of what we have stated and the explanation of the verification mentioned in the Hadith of Ibn Mas’ud.

قَالَ - عَلَيْهِ السَّلَامُ - «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» . وَمِنْ الْبَاطِلِ أَنْ يُسَلِّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ صَلَاتِهِ وَلَا يُسَلِّمَ الْمُؤْتَمُّونَ بِسَلَامِهِ، وَأَنْ يُسَلِّمُوا كَمَا سَلَّمَ - عَلَيْهِ السَّلَامُ - وَلَا يَسْمَعَ ابْنُ بُحَيْنَةَ شَيْئًا مِنْ ذَلِكَ فَلَا يَدَّعِي هَذَا إلَّا قَلِيلُ الْحَيَاءِ، رَقِيقُ الدِّينِ مُسْتَهِينٌ بِالْكَذِبِ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي مُحَمَّدُ بْنُ أَحْمَدَ بْنِ أَبِي خَلَفٍ ثنا مُوسَى بْنُ دَاوُد ثنا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا شَكَّ أَحَدُكُمْ فِي صَلَاتِهِ فَلَمْ يَدْرِ كَمْ صَلَّى، أَثَلَاثًا أَمْ أَرْبَعًا فَلْيَطْرَحْ الشَّكَّ وَلْيَبْنِ عَلَى مَا اسْتَيْقَنَ، ثُمَّ يَسْجُدُ سَجْدَتَيْنِ قَبْلَ أَنْ يُسَلِّمَ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُحَمَّدُ بْنُ الْعَلَاءِ أَبُو كُرَيْبٍ ثنا أَبُو خَالِدٍ هُوَ الْأَحْمَرُ - عَنْ مُحَمَّدِ بْنِ عَجْلَانَ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا شَكَّ أَحَدُكُمْ فِي صَلَاتِهِ فَلْيُلْغِ الشَّكَّ وَلْيَبْنِ عَلَى الْيَقِينِ، فَإِذَا اسْتَيْقَنَ التَّمَامَ سَجَدَ سَجْدَتَيْنِ، فَإِنْ كَانَتْ صَلَاتُهُ تَامَّةً كَانَتْ الرَّكْعَةُ نَافِلَةً وَالسَّجْدَتَانِ وَإِنْ كَانَتْ نَاقِصَةً كَانَتْ الرَّكْعَةُ تَمَامًا لِصَلَاتِهِ، وَكَانَتْ السَّجْدَتَانِ تَرْغِيمًا لِلشَّيْطَانِ» .

وَرُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ مُرْسَلًا.

فَهَذَا نَصُّ مَا قُلْنَا، وَهَذَا هُوَ بَيَانُ التَّحَرِّي الْمَذْكُورِ فِي حَدِيثِ ابْنِ مَسْعُودٍ.

وَفِي هَذَا بُطْلَانُ قَوْلِ أَبِي حَنِيفَةَ: إِنْ عَرَضَ لَهُ ذَلِكَ أَوَّلَ مَرَّةٍ أَعَادَ الصَّلَاةَ، وَأَمَّا بَعْدَ ذَلِكَ فَيَتَحَرَّى أَغْلَبَ ظَنِّهِ - مَعَ أَنَّ هَذَا التَّقْسِيمَ فَاسِدٌ، لِأَنَّهُ بِلَا بُرْهَانٍ؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا حَفْصُ بْنُ عُمَرَ هُوَ الْحَوْضِيُّ - وَمُسْلِمُ بْنُ إِبْرَاهِيمَ ثنا شُعْبَةُ عَنْ الْحَكَمِ هُوَ ابْنُ عُتَيْبَةَ - عَنْ إِبْرَاهِيمَ عَنْ عَلْقَمَةَ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: «صَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الظُّهْرَ خَمْسًا؟ فَقِيلَ لَهُ: أَزِيدَ فِي الصَّلَاةِ؟ قَالَ: وَمَا ذَلِكَ؟ قِيلَ: صَلَّيْت خَمْسًا، فَسَجَدَ سَجْدَتَيْنِ بَعْدَمَا سَلَّمَ» .

L7307 In this lies the refutation of Abū Ḥanīfah's opinion: if that occurs to him for the first time, he repeats the prayer, but after that he should strive to ascertain his strongest conviction - though this categorization is baseless, as it lacks evidence. ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Isḥāq narrated to us: Ibn al-Aʿrābī narrated to us: Abū Dāwūd narrated to us: Ḥafṣ ibn ʿUmar al-Hawḍī - and Muslim ibn Ibrāhīm narrated to us: Shuʿbah narrated from al-Ḥakam ibn ʿUtaybah - from Ibrāhīm - from ʿAlqamah - from ʿAbdullāh ibn Masʿūd, who said: "Allah's Messenger - peace and blessings be upon him - prayed Dhuhr as five [units]. Someone asked: 'Was the prayer lengthened?' He responded: 'What do you mean?' They said: 'You prayed five [units].' Thereupon he performed two prostrations after he had said the salām."

فَقَالَ أَبُو حَنِيفَةَ: مَنْ صَلَّى خَمْسًا سَاهِيًا فَصَلَاتُهُ بَاطِلٌ، إلَّا أَنْ يَكُونَ جَلَسَ فِي آخِرِ الرَّابِعَةِ مِقْدَارَ التَّشَهُّدِ.

L7308 Abu Hanifah said: Whoever prays five [rakʿahs] out of forgetfulness, his prayer is invalid, unless he has sat at the end of the fourth rakʿah for the duration of the *tashahhud*.

قَالَ عَلِيٌّ: وَهَذَا تَقْسِيمٌ مُخَالِفٌ لِلسُّنَّةِ، خَارِجٌ عَنْ الْقِيَاسِ، بَعِيدٌ عَنْ سَدَادِ الرَّأْيِ وَرُوِّينَا عَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانُ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِيهِ عَنْ الْحَارِثِ بْنِ شِبْلٍ عَنْ عَبْدِ اللَّهِ بْنِ شَدَّادٍ: أَنَّ ابْنَ عُمَرَ لَمْ يَجْلِسْ فِي الرَّكْعَتَيْنِ، فَمَضَى، فَلَمَّا سَلَّمَ فِي آخِرِ صَلَاتِهِ سَجَدَ سَجْدَتَيْنِ وَتَشَهَّدَ مَرَّتَيْنِ

L7309 Ali said: This division contradicts the Sunnah, lies outside the scope of qiyas, and is far removed from sound judgment. It was narrated to us through Yahya ibn Sa'id al-Qattan, from Sufyan al-Thawri, from his father, from al-Harith ibn Shibl, from Abdullah ibn Shaddad: Ibn Umar did not sit during the two rak'ahs, so he proceeded. When he concluded his prayer with the salutation, he performed two prostrations of forgetfulness and recited the tashahhud twice.

حَدَّثَنَا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ ثنا عَبْدُ الْوَارِثِ بْنُ سُفْيَانَ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ ثنا أَبِي ثنا أَبُو مُعَاوِيَةَ الضَّرِيرُ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ «أَنَّهُ نَهَضَ فِي الرَّكْعَتَيْنِ فَسَبَّحُوا لَهُ، فَاسْتَتَمَّ قَائِمًا، ثُمَّ سَجَدَ سَجْدَتَيْ السَّهْوِ حِينَ انْصَرَفَ ثُمَّ قَالَ: كُنْتُمْ تَرَوْنِي أَجْلِسُ إنِّي صَنَعْتُ كَمَا رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَنَعَ» .

L7310–7312 Yusuf ibn Abdallah al-Namari narrated to us, Abd al-Warith ibn Sufyan narrated to us, Qasim ibn Asbagh narrated to us, Ahmad ibn Zuhayr ibn Harb narrated to us, my father narrated to us, Abu Mu'awiyah al-Darir narrated to us from Ismail ibn Abi Khalid from Qays ibn Abi Hazim from Sa'd ibn Abi Waqqas: "He began to rise during the two rakʿahs, so they alerted him by saying Subḥān Allāh, and he settled back to properly conclude." He stood, then performed the two prostrations of forgetfulness after concluding the prayer, and said: "You saw me sitting; I did exactly as I saw the Messenger of Allah (peace and blessings be upon him) do."

L7313 Narrated by Sufyan al-Thawri from Abdullah ibn Dinar: I heard Ibn Umar

say, “If any of you doubts during his prayer, let him strive until he is certain he has completed it, then let him perform two prostrations of forgetfulness while sitting.”

Ibn ʻUmar interpreted careful investigation (al-taharri) as we have stated. If someone were to argue using what we narrated through the chain of ʻAbd al-Razzaq from Maʻmar and Sufyan ibn ʻUyaynah, both from Ayyub al-Sakhtiyānī from Ibn Sirin from ʻImran ibn al-Husayn from the Prophet—peace and blessings be upon him—that he said, “The salutation (taslim) is after the two prostrations of forgetfulness,” we would respond that Ibn Sirin did not hear from ʻImran ibn al-Husayn, so this chain is disconnected. Even if it were supported by a continuous chain, it would not contradict the command of the Prophet—peace be upon him—to perform the prostrations of forgetfulness after the salutation, but rather it would be an addition to it. It would only indicate that after the two prostrations, there is a salutation after them alone. Success is from Allah, the Exalted.

It has been reported to us from ʿAṭāʾ regarding the obligation of the prostration of forgetfulness in voluntary prayers, and the generality of the Prophet’s command—peace and blessings of Allāh be upon him—concerning whoever introduces doubt during prayer, necessitating the two prostrations of forgetfulness: voluntary prayer is included within this ruling. It is impermissible to exclude it through conjecture, and in Allāh the Exalted we place our reliance.

Issue: Being Compelled to Prostrate to an Idol or Cross

474 - Issue: If someone is compelled to prostrate to an idol, a cross, or a human being and fears being beaten, harmed, or killed - whether the harm is directed at themselves or another Muslim - if they do not comply, they should prostrate to God Almighty facing the idol, the cross, or the human. They need not care whether they prostrate toward the Qiblah or elsewhere. Some people have said: If the one they are ordered to prostrate to is situated in the direction of the Qiblah, then let them prostrate to God - otherwise, they should not.

Ali said: This is a flawed division, because deliberately and intentionally

وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ سَمِعْتُ ابْنَ عُمَرَ يَقُولُ: إذَا شَكَّ أَحَدُكُمْ فِي صَلَاتِهِ فَلْيَتَوَخَّ حَتَّى يَعْلَمَ أَنَّهُ قَدْ أَتَمَّ، ثُمَّ لِيَسْجُدْ سَجْدَتَيْنِ وَهُوَ جَالِسٌ.

فَفَسَّرَ ابْنُ عُمَرَ التَّحَرِّيَ كَمَا قُلْنَاهُ؟ فَإِنْ احْتَجَّ مُحْتَجٌّ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ وَسُفْيَانَ بْنِ عُيَيْنَةَ كِلَاهُمَا عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ سِيرِينَ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «التَّسْلِيمُ بَعْدَ سَجْدَتَيْ السَّهْوِ» ؟ قُلْنَا: لَمْ يَسْمَعْ ابْنُ سِيرِينَ مِنْ عِمْرَانَ بْنِ الْحُصَيْنِ، فَهَذَا مُنْقَطِعٌ، ثُمَّ لَوْ أُسْنِدَ لَمَا كَانَ مُعَارِضًا لِأَمْرِهِ - عَلَيْهِ السَّلَامُ - بِسُجُودِ السَّهْوِ بَعْدَ السَّلَامِ، بَلْ كَانَ يَكُونُ مُضَافًا إلَيْهِ، وَإِنَّمَا كَانَ يَكُونُ فِيهِ أَنَّ بَعْدَ السَّجْدَتَيْنِ تَسْلِيمًا مِنْهُمَا فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَرُوِّينَا عَنْ عَطَاءٍ إيجَابَ سُجُودِ السَّهْوِ فِي التَّطَوُّعِ، وَعُمُومُ أَمْرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ أَوْهَمَ فِي صَلَاةٍ بِسَجْدَتَيْ السَّهْوِ -: يَدْخُلُ فِيهِ التَّطَوُّعُ، وَلَا يَجُوزُ إخْرَاجُهُ مِنْهُ بِالظَّنِّ وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

[مَسْأَلَةٌ أُكْرِهَ عَلَى السُّجُودِ لِوَثَنٍ أَوْ صَلِيبٍ]

٤٧٤ - مَسْأَلَةٌ: وَمَنْ أُكْرِهَ عَلَى السُّجُودِ لِوَثَنٍ أَوْ لِصَلِيبٍ أَوْ لِإِنْسَانٍ وَخَشِيَ الضَّرْبَ أَوْ الْأَذَى أَوْ الْقَتْلَ عَلَى نَفْسِهِ أَوْ عَلَى مُسْلِمٍ غَيْرِهِ إنْ لَمْ يَفْعَلْ -: فَلْيَسْجُدْ لِلَّهِ تَعَالَى قِبَالَةَ الصَّنَمِ، أَوْ الصَّلِيبِ، أَوْ الْإِنْسَانِ، وَلَا يُبَالِي إلَى الْقِبْلَةِ يَسْجُدُ أَوْ إلَى غَيْرِهَا؟ وَقَدْ قَالَ بَعْضُ النَّاسِ: إنْ كَانَ الْمَأْمُورُ بِالسُّجُودِ لَهُ فِي الْقِبْلَةِ فَلْيَسْجُدْ لِلَّهِ وَإِلَّا فَلَا؟

preventing prostration to God Almighty in every direction did not result in an actual prohibition.

L7319–7320 Allah, the Exalted, said: “So wherever you turn, there is the Face of Allah.” [Al-Baqarah: 115][33]

L7321 Indeed, we have been commanded to face the Kaaba specifically in prayer, while prostration alone is not prayer. It is permissible without ritual purity, to face a direction other than the Qibla, and for menstruating women, because no text has come obligating that in it. And He, the Exalted, said: “Except those who are compelled while their hearts are firm in faith” (Surah An-Nahl 16:106).[34]

L7322 **An issue regarding inability to stand or concerning any of the obligations of his prayer.**

L7323 Issue 475: Whoever is unable to stand or perform any obligatory elements of their prayer shall perform it seated. If incapable even of this, then lying down with head gestures. He is excused from what he cannot perform; it suffices him, and no prostration of forgetfulness (sujūd al-sahw) is required in such cases. When lying down, he should position himself as possible - either on his side with his face toward the qibla, or on his back positioned such that if he could stand, he would face the qibla. If unable even for this, he should pray as he is able - whether facing the qibla or otherwise. Similarly, one blinded shall pray as he is able. Allah the Exalted said: “Allah does not burden any soul beyond its capacity” (2:286).[35]

L7324 And He, the Exalted, said: “He has already spelled out in detail what He has forbidden you, except what you are compelled to [do].” [Al-An‘ām 6:119][36]

L7325 The Messenger of Allah—peace be upon him—said: “When I instruct you to do something, fulfill from it to the best of your ability.”

قَالَ عَلِيٌّ: وَهَذَا تَقْسِيمٌ فَاسِدٌ، لِأَنَّ الْمَنْعَ مِنْ السُّجُودِ لِلَّهِ تَعَالَى إلَى كُلِّ جِهَةٍ عَمْدًا قَصْدًا لَمْ يَأْتِ مِنْهُ مَنْعٌ.

قَالَ تَعَالَى: {فَأَيْنَمَا تُوَلُّوا فَثَمَّ وَجْهُ اللَّهِ} [البقرة: ١١٥] .

وَإِنَّمَا أُمِرْنَا بِاسْتِقْبَالِ الْكَعْبَةِ فِي الصَّلَاةِ خَاصَّةً، وَالسُّجُودُ وَحْدَهُ لَيْسَ صَلَاةً، وَهُوَ جَائِزٌ بِلَا طَهَارَةٍ، وَإِلَى غَيْرِ الْقِبْلَةِ، وَلِلْحَائِضِ، لِأَنَّهُ لَمْ يَأْتِ نَصٌّ بِإِيجَابِ ذَلِكَ فِيهِ؟ وَقَالَ تَعَالَى: {إلا مَنْ أُكْرِهَ وَقَلْبُهُ مُطْمَئِنٌّ بِالإِيمَانِ} [النحل: ١٠٦] .

[مَسْأَلَةٌ عَجَزَ عَنْ الْقِيَامِ أَوْ عَنْ شَيْءٍ مِنْ فُرُوضِ صَلَاتِهِ]

٤٧٥ - مَسْأَلَةٌ: وَمَنْ عَجَزَ عَنْ الْقِيَامِ أَوْ عَنْ شَيْءٍ مِنْ فُرُوضِ صَلَاتِهِ -: أَدَّاهَا قَاعِدًا فَإِنْ لَمْ يَقْدِرْ فَمُضْطَجِعًا بِإِيمَاءٍ وَسَقَطَ عَنْهُ مَا لَا يَقْدِرُ عَلَيْهِ وَيُجْزِئُهُ وَلَا سُجُودَ سَهْوٍ فِي ذَلِكَ؟ وَيَكُونُ فِي اضْطِجَاعِهِ كَمَا يَقْدِرُ، إمَّا عَلَى جَنْبِهِ وَوَجْهُهُ إلَى الْقِبْلَةِ، وَإِمَّا عَلَى ظَهْرِهِ بِمِقْدَارِ مَا لَوْ قَامَ لَاسْتَقْبَلَ الْقِبْلَةَ، فَإِنْ عَجَزَ عَنْ ذَلِكَ فَلْيُصَلِّ - كَمَا يَقْدِرُ - إلَى الْقِبْلَةِ وَإِلَى غَيْرِهَا، وَكَذَلِكَ مَنْ قَدَحَ عَيْنَيْهِ فَإِنَّهُ يُصَلِّي كَمَا يَقْدِرُ قَالَ اللَّهُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إلا وُسْعَهَا} [البقرة: ٢٨٦] .

وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ»

[33] **Qur’an references (L7320):** Qur’an 2:115 (Al-Baqarah).
[34] **Qur’an references (L7321):** Qur’an 16:106 (An-Nahl).
[35] **Qur’an references (L7323):** Qur’an 2:286 (Al-Baqarah).
[36] **Qur’an references (L7324):** Qur’an 6:119 (Al-An’am).

وَأَمَرَ تَعَالَى عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالتَّدَاوِي؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا حَفْصُ بْنُ عُمَرَ هُوَ الْحَوْضِيُّ - ثنا شُعْبَةُ عَنْ زِيَادِ بْنِ عِلَاقَةَ عَنْ أُسَامَةَ بْنِ شَرِيكٍ قَالَ: «أَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَصْحَابُهُ كَأَنَّمَا عَلَى رُءُوسِهِمْ الطَّيْرُ، فَسَلَّمْتُ ثُمَّ قَعَدْتُ، فَجَاءَتْ الْأَعْرَابُ مِنْ هَهُنَا وَهَهُنَا، فَقَالُوا: يَا رَسُولَ اللَّهِ أَنَتَدَاوَى؟ قَالَ: تَدَاوَوْا فَإِنَّ اللَّهَ لَمْ يَضَعْ دَاءً إلَّا وَضَعَ لَهُ دَوَاءً غَيْرَ دَاءٍ وَاحِدٍ: الْهَرَمُ» . فَإِنْ ذَكَرُوا: أَنَّ عَائِشَةَ نَهَتْ ابْنَ عَبَّاسٍ عَنْ ذَلِكَ قُلْنَا: كَمْ قِصَّةٍ لَهَا - رَضِيَ اللَّهُ عَنْهَا - خَالَفْتُمُوهَا؟ حَيْثُ لَا يُعْلَمُ لَهَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَحَيْثُ لَمْ تَأْتِ سُنَّةٌ بِخِلَافِهَا -: كَأَمْرِهَا الْمُسْتَحَاضَةَ بِالْوُضُوءِ لِكُلِّ صَلَاةٍ إيجَابًا وَمَعَهَا فِي ذَلِكَ: عَلِيُّ بْنُ أَبِي طَالِبٍ، وَابْنُ عَبَّاسٍ، وَابْنُ الزُّبَيْرِ رَضِيَ اللَّهُ عَنْ جَمِيعِهِمْ، وَلَا مُخَالِفَ لَهُمْ فِي ذَلِكَ يُعْرَفُ مِنْ الصَّحَابَةِ، وَمَعَهَا السُّنَّةُ الصَّحِيحَةُ.

L7326–7328 The Almighty commanded through the words of His Messenger—peace and blessings be upon him—to seek treatment. Abdullah ibn Rabi‘ narrated to us: Muhammad ibn Ishaq narrated to us; Ibn al-A‘rabi narrated to us; Abu Dawud narrated to us; Hafs ibn ‘Umar (al-Ḥawḍī) narrated to us; Shu‘bah narrated from Ziyad ibn ‘Ilaqah from Usamah ibn Sharik, who said: “I came to the Messenger of Allah—peace and blessings be upon him—while his companions sat as motionless as if birds were perched on their heads. I offered greetings, then sat down. Bedouins came from every side and asked: ’O Messenger of Allah, should we seek treatment?’ He replied: ’Seek treatment, for Allah has not created any disease without creating its cure except one: old age.’” If they mention that ‘Aisha forbade Ibn ‘Abbas from seeking treatment. We said: How many rulings of hers—may Allah be pleased with her—have you opposed, where no opposing Companion is known—may Allah be pleased with them—and no Prophetic tradition comes contradicting her position? Such as her instruction to the mustahādah woman to perform ablution for every prayer as an obligation, wherein she was joined by Ali ibn Abi Talib, Ibn Abbas, and Ibn al-Zubayr—may Allah be pleased with them all—with no dissenting Companion recognized in this matter, while the authentic Sunnah supports her position.

وَكَإِمَامَتِهَا هِيَ، وَأُمِّ سَلَمَةَ - رَضِيَ اللَّهُ عَنْهُمَا -: النِّسَاءَ فِي الْفَرِيضَةِ، وَلَا مُخَالِفَ لَهُمَا فِي ذَلِكَ مِنْ الصَّحَابَةِ يُعْرَفُ.

L7329 And as for her leading the prayer, it is—along with Umm Salamah, may Allah be pleased with them both—[the ruling regarding] women in the obligatory prayer. No opposer to them both among the Companions is known concerning this.

وَمِثْلُ هَذَا كَثِيرٌ جِدًّا فَإِنْ كَانَ لَا يَحِلُّ خِلَافُهَا فِي مَكَان لَمْ يَحِلَّ فِي كُلِّ مَكَان، وَإِنْ كَانَ خِلَافُهَا لِلسُّنَّةِ مُبَاحًا فِي مَوْضِعٍ فَهُوَ وَاجِبٌ بِالسُّنَّةِ فِي كُلِّ مَوْضِعٍ

L7330 Similar cases are very numerous. If opposing it is not permissible in one situation, it is not permissible in all situations. And if opposing it in accordance with the Sunnah is permissible in a situation, it is obligatory by the Sunnah in every situation.

[مَسْأَلَةٌ ابْتَدَأَ الصَّلَاةَ مَرِيضًا مُومِئًا أَوْ قَاعِدًا أَوْ رَاكِبًا لِخَوْفٍ ثُمَّ أَفَاقَ أَوْ أَمِنَ]

A case: one who began prayer either while ill or [while] nodding (in lieu of bowing), sitting, or riding due to fear, then recovered or was no longer in fear.

L7331

L7332 Issue 476: If someone begins prayer while ill, or due to fear [by] gesturing,

sitting, or riding - then recovers or attains safety: the one who recovers must stand, and the one who attains safety must dismount. They both continue from what they have already performed of their prayer and complete what remains. Their prayer is complete, whether the portion already performed was its smallest part, only the opening takbīr, or nothing remained except the salutation and what is between them. Are all these cases equal?

٤٧٦ - مَسْأَلَةٌ: وَمَنْ ابْتَدَأَ الصَّلَاةَ مَرِيضًا مُومِئًا أَوْ قَاعِدًا أَوْ رَاكِبًا لِخَوْفٍ ثُمَّ أَفَاقَ أَوْ أَمِنَ -: قَامَ الْمُفِيقُ وَنَزَلَ الْآمِنُ، وَبَنَيَا عَلَى مَا مَضَى مِنْ صَلَاتِهِمَا، وَأَتَمَّا مَا بَقِيَ، وَصَلَاتُهُمَا تَامَّةٌ، سَوَاءٌ كَانَ مَا مَضَى مِنْهَا أَقَلَّهَا أَوْ لَمْ يَكُنْ إلَّا التَّكْبِيرُ، أَوْ لَمْ يَبْقَ مِنْهَا إلَّا السَّلَامُ فَمَا بَيْنَ ذَلِكَ، كُلُّ ذَلِكَ سَوَاءٌ؟ .

L7333 And whoever begins his prayer in a sound state – standing and facing the Qiblah – then is afflicted by an illness that compels him to sit, to gesture, or to face a direction other than the Qiblah, or fears [something] and is forced to ride, run, or ward off [harm], let him continue based on what he has already performed of his prayer and complete what remains, as we have stated, alike and without difference. This is based on what we cited from the statement of the Exalted: "Allah does not burden any soul beyond its capacity" [Al-Baqarah: 286].[37]

وَمَنْ ابْتَدَأَ صَلَاتَهُ صَحِيحًا قَائِمًا إلَى الْقِبْلَةِ، ثُمَّ مَرِضَ مَرَضًا أَصَارَهُ إلَى الْقُعُودِ، أَوْ إلَى الْإِيمَاءِ، أَوْ إلَى غَيْرِ الْقِبْلَةِ. أَوْ خَافَ فَاضْطُرَّ إلَى الرُّكُوبِ وَالرَّكْضِ وَالدِّفَاعِ -: فَلْيَبْنِ عَلَى مَا مَضَى مِنْ صَلَاتِهِ، وَلْيُتِمَّ مَا بَقِيَ، كَمَا ذَكَرْنَا سَوَاءٌ وَلَا فَرْقَ، لِمَا ذَكَرْنَا مِنْ قَوْلِهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

L7334 And due to the statement of Allah's Messenger—peace and blessings be upon him: "When I command you with a matter, fulfill it as much as you are able." This is the opinion of Mālik, Zufar, Abū Sulaymān, and others. Al-Shāfiʿī said: If security returns after fear, he dismounts, completes the prayer, and it is validly concluded. But if fear arises after security and he mounts, he begins the prayer anew. ʿAlī said: This is an invalid categorization and an arbitrary differentiation—based on his principle—between small and large amounts of action, and it is a principle that is utterly corrupt.

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ؟» . وَهُوَ قَوْلُ مَالِكٍ، وَزُفَرَ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ. وَقَالَ الشَّافِعِيُّ: إنْ أَمِنَ بَعْدَ الْخَوْفِ فَنَزَلَ بَنَى وَتَمَّتْ صَلَاتُهُ، وَإِنْ خَافَ بَعْدَ الْأَمْنِ فَرَكِبَ ابْتَدَأَ الصَّلَاةَ قَالَ عَلِيٌّ: وَهَذَا تَقْسِيمٌ فَاسِدٌ، وَتَفْرِيقٌ - عَلَى أَصْلِهِ - بَيْنَ قَلِيلِ الْعَمَلِ وَكَثِيرِهِ، وَهُوَ أَصْلٌ فِي غَايَةِ الْفَسَادِ.

L7335–7336 And He, the Exalted, said: *"But if you fear [danger], then [pray] on foot or mounted"* [Al-Baqarah 239].[38]

وَقَالَ تَعَالَى: {فَإِنْ خِفْتُمْ فَرِجَالا أَوْ رُكْبَانًا} [البقرة: ٢٣٩] .

L7337 Some of the Companions prayed while walking toward their enemy. Abū Ḥanīfah said: Whoever initiates prayer seated due to an illness affecting them and then becomes able to stand during it must continue [from their current position]; his ruling on this matter is unequivocal.

وَقَدْ صَلَّى بَعْضُ الصَّحَابَةِ مَاشِيًا إلَى عَدُوِّهِ. وَقَالَ أَبُو حَنِيفَةَ: مَنْ ابْتَدَأَ الصَّلَاةَ جَالِسًا لِمَرَضٍ بِهِ ثُمَّ صَحَّ فِي صَلَاتِهِ فَإِنَّهُ يَبْنِي، لَا يَخْتَلِفُ قَوْلُهُ فِي ذَلِكَ.

[37] **Qur'an references (L7333):** Qur'an 2:286 (Al-Baqarah).
[38] **Qur'an references (L7336):** Qur'an 2:239 (Al-Baqarah).

L7338 His rulings differed regarding one who begins prayer by gesturing due to illness then recovers during it, and regarding one who initiates prayer healthy and standing but is later afflicted by an illness that causes him to sit or gesture while lying down. At times he ruled: he continues the prayer, and at other times he ruled: he must restart it necessarily—whether this occurs after sitting for the duration of the Tashahhud but before the Taslīm or before sitting for the Tashahhud.

وَاخْتَلَفَ قَوْلُهُ فِي الَّذِي يَفْتَتِحُهَا مُومِئًا لِمَرَضٍ بِهِ ثُمَّ يَصِحُّ فِيهَا، وَفِي الَّذِي يَفْتَتِحُهَا صَحِيحًا قَائِمًا ثُمَّ يَمْرَضُ فِيهَا مَرَضًا يَنْقُلُهُ إِلَى الْقُعُودِ أَوْ إِلَى الْإِيمَاءِ مُضْطَجِعًا. فَمَرَّةً قَالَ: يَبْنِي، وَمَرَّةً قَالَ: يَبْتَدِئُهَا وَلَا بُدَّ، وَسَوَاءٌ أَصَابَهُ ذَلِكَ بَعْدَ أَنْ قَعَدَ مِقْدَارَ التَّشَهُّدِ وَقَبْلَ أَنْ يُسَلِّمَ، أَوْ أَصَابَهُ قَبْلَ ذَلِكَ

L7339 This narration is utterly corrupt and entails baseless division to the extent that it is inconceivable how a rational person's mind could conceive accepting it from anyone other than the Messenger of Allah (peace and blessings be upon him), who does not speak from personal desire. {It is nothing but a revelation revealed} [An-Najm: 4] from the Creator, {who is not questioned about what He does, but they will be questioned} [Al-Anbiyā': 23].[39]

وَهَذِهِ الرِّوَايَةُ فِي غَايَةِ الْفَسَادِ، وَالتَّفْرِيقِ بِالْبَاطِلِ الَّذِي لَا يُدْرَى كَيْفَ يَتَهَيَّأُ فِي عَقْلِ ذِي عَقْلٍ قَبُولُهُ مِنْ غَيْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي لَا يَنْطِقُ عَنْ الْهَوَى {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] مِنْ الْخَالِقِ الَّذِي {لا يُسْأَلُ عَمَّا يَفْعَلُ وَهُمْ يُسْأَلُونَ} [الأنبياء: ٢٣] .

L7340 Abū Yūsuf said: If one initiates prayer while healthy and standing, then falls ill and shifts to gesturing or sitting; or begins it while ill and seated then recovers - these individuals must resume their prayer from their current state provided their condition does not change before sitting long enough to recite the Tashahhud. He said: Whoever starts prayer while ill and gesturing, then recovers before sitting for the duration of the Tashahhud - must he necessarily restart the prayer? Muḥammad ibn al-Ḥasan said: Whoever begins prayer while ill - whether seated or gesturing - then recovers during it must restart the prayer without fail. As for one who starts prayer standing, then falls ill before sitting long enough to recite the Tashahhud and shifts to sitting or gesturing - must he continue? ʿAlī remarked: These are utterly invalid assertions without evidence. We have mentioned them only to demonstrate to the people of the Sunnah the extent of these individuals' juristic understanding and knowledge.

وَقَالَ أَبُو يُوسُفَ: إِنْ افْتَتَحَ صَحِيحًا قَائِمًا ثُمَّ مَرِضَ فَانْتَقَلَ إِلَى الْإِيمَاءِ أَوْ إِلَى الْجُلُوسِ، أَوْ افْتَتَحَهَا مَرِيضًا قَاعِدًا ثُمَّ صَحَّ -: فَإِنَّ هَؤُلَاءِ - مَا لَمْ يَنْتَقِلْ حَالُهُمْ قَبْلَ أَنْ يَقْعُدُوا مِقْدَارَ التَّشَهُّدِ -: فَإِنَّهُمْ يَبْنُونَ. قَالَ: وَمَنْ افْتَتَحَهَا مَرِيضًا مُومِئًا ثُمَّ صَحَّ فِيهَا - قَبْلَ أَنْ يَقْعُدَ مِقْدَارَ التَّشَهُّدِ: - فَإِنَّهُ يَبْتَدِئُ وَلَا بُدَّ؟ وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: مَنْ افْتَتَحَهَا مَرِيضًا قَاعِدًا، أَوْ مُومِئًا ثُمَّ صَحَّ فِيهَا فَإِنَّهُ يَبْتَدِئُ الصَّلَاةَ وَلَا بُدَّ. وَمَنْ افْتَتَحَهَا قَائِمًا ثُمَّ مَرِضَ فِيهَا قَبْلَ أَنْ يَقْعُدَ مِقْدَارَ التَّشَهُّدِ فَصَارَ إِلَى الْقُعُودِ أَوْ إِلَى الْإِيمَاءِ فَإِنَّهُ يَبْنِي؟ قَالَ عَلِيٌّ: وَهَذِهِ أَقْوَالٌ فِي غَايَةِ الْفَسَادِ بِلَا بُرْهَانٍ، وَإِنَّمَا ذَكَرْنَاهَا لِنُرِيَ أَهْلَ السُّنَّةِ مِقْدَارَ فِقْهِ هَؤُلَاءِ الْقَوْمِ وَعِلْمِهِمْ

Issue: If one's mind becomes preoccupied with something from worldly matters during the ritual prayer.

[مَسْأَلَةٌ اشْتَغَلَ بَالُهُ بِشَيْءٍ مِنْ أُمُورِ الدُّنْيَا فِي الصَّلَاةِ]

L7342–7344 Issue 477: If someone's mind is distracted by any worldly matter during

[39] **Qur'an references (L7339):** Qur'an 53:4 (An-Najm); Qur'an 21:23 (Al-Anbya).

prayer, we consider it disliked (makrūh), and he did not... Would his prayer be invalidated for that reason—with no prostration for forgetfulness in that case—if he knew how he prayed and omitted nothing from his prayer?

٤٧٧ - مَسْأَلَةٌ: وَمَنْ اشْتَغَلَ بَالُهُ بِشَيْءٍ مِنْ أُمُورِ الدُّنْيَا فِي الصَّلَاةِ كَرِهْنَاهُ، وَلَمْ تَبْطُلْ لِذَلِكَ صَلَاتُهُ، وَلَا سُجُودَ سَهْوٍ فِي ذَلِكَ، إذَا عَرَفَ مَا صَلَّى وَلَمْ يَسْهُ عَنْ شَيْءٍ مِنْ صَلَاتِهِ؟

L7345 The proof of this is what we have cited with its chain of transmission from the statement of the Messenger of Allah—may Allah bless him and grant him peace—: "Allah has forgiven my nation for what their hearts whisper to them, so long as they do not act on it or speak of it." This is exactly our position.

بُرْهَانُ ذَلِكَ -: مَا قَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ اللَّهَ تَجَاوَزَ لِأُمَّتِي عَمَّا حَدَّثَتْ بِهِ أَنْفُسَهَا مَا لَمْ تُخْرِجْهُ بِقَوْلٍ أَوْ عَمَلٍ» وَهَذَا نَفْسُ قَوْلِنَا.

L7346 If it is said: "You invalidate the prayer by intentionally intending during it to abandon the prayer entirely, to leave the leadership of the imam without a valid justification, to transition from an obligatory prayer to a supererogatory one, from a supererogatory prayer to an obligatory one, or from one prayer to another - if one deliberately does this while aware - and you mandate the prostration of forgetfulness for his inadvertence in such matters," then what is the ruling regarding forgetfulness causing the nullification of the obligations he performed during that state in his prayer?

فَإِنْ قِيلَ: فَإِنَّكُمْ تُبْطِلُونَ الصَّلَاةَ بِأَنْ يَنْوِيَ فِيهَا عَمْدًا الْخُرُوجَ عَنْ الصَّلَاةِ جُمْلَةً، أَوْ الْخُرُوجَ عَنْ إمَامَةِ الْإِمَامِ بِلَا سَبَبٍ يُوجِبُ ذَلِكَ عَلَيْهِ، أَوْ الْخُرُوجَ عَنْ فَرْضٍ إلَى تَطَوُّعٍ، أَوْ مِنْ تَطَوُّعٍ إلَى فَرْضٍ، أَوْ مِنْ صَلَاةٍ إلَى صَلَاةٍ أُخْرَى، إذَا عَمَدَ كُلَّ ذَلِكَ ذَاكِرًا وَيُوجِبُونَ فِي سَهْوِهِ بِكُلِّ ذَلِكَ سُجُودَ السَّهْوِ، وَحُكْمُ السَّهْوِ فِي إلْغَاءِ مَا عَمِلَ فِي تِلْكَ الْحَالِ مِنْ وَاجِبَاتِ صَلَاتِهِ؟ .

L7347 We said: Yes, because this person has manifested his inner resolve through action by willfully performing something in his prayer contrary to what was commanded, thereby invalidating his prayer. If he forgot due to that action, he must perform the prostration of forgetfulness. Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Muhammad ibn al-Muthanna narrated to us: Muadh ibn Hisham narrated to us: My father al-Dastuwa'i narrated to me from Yahya ibn Abi Kathir: Abu Salama ibn Abd al-Rahman narrated that Abu Hurairah reported to them that Allah's Messenger - peace and blessings be upon him - said: "When the call to prayer is proclaimed, Satan retreats while farting until he cannot hear it. When the call concludes, he returns. When the iqamah is proclaimed, he retreats again. When the iqamah concludes, he returns to whisper between a person and his soul, sug-

قُلْنَا: نَعَمْ، لِأَنَّ هَذَا قَدْ أَخْرَجَ مَا حَدَّثَ بِهِ نَفْسَهُ بِعَمَلٍ فَعَمِلَ شَيْئًا مَا، فِي صَلَاتِهِ عَمْدًا بِخِلَافِ مَا أُمِرَ بِهِ، فَبَطَلَتْ صَلَاتُهُ، أَوْ سَهَا بِذَلِكَ الْعَمَلِ، فَوَجَبَ عَلَيْهِ سُجُودُ السَّهْوِ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا مُعَاذُ بْنُ هِشَامٍ حَدَّثَنِي أَبِي هُوَ الدَّسْتُوَائِيُّ - عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ ثنا أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ أَنَّ أَبَا هُرَيْرَةَ حَدَّثَهُمْ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا نُودِيَ بِالْأَذَانِ أَدْبَرَ الشَّيْطَانُ لَهُ ضُرَاطٌ حَتَّى لَا يَسْمَعَ الْأَذَانَ، فَإِذَا قُضِيَ الْأَذَانُ أَقْبَلَ، فَإِذَا ثُوِّبَ بِهَا أَدْبَرَ، فَإِذَا قُضِيَ التَّثْوِيبُ أَقْبَلَ يَخْطِرُ بَيْنَ الْمَرْءِ وَنَفْسِهِ، يَقُولُ: اُذْكُرْ كَذَا وَكَذَا لِمَا لَمْ يَكُنْ يَذْكُرُ،

gesting: 'Remember such-and-such' - matters he had not recalled - until one becomes uncertain of how much he has prayed. If any of you becomes unaware of how much he has prayed, let him perform two prostrations (sajdah) of forgetfulness while seated."

L7348 He (peace be upon him) did not invalidate the prayer due to Satan's reminder of matters that distracted him from his worship, nor did he ordain prostration of forgetfulness for such instances. He (peace be upon him) prescribed prostration of forgetfulness solely for cases of uncertainty about the number of prayer units performed. Through the chain of Waki', from Hisham ibn 'Urwah, from his father: 'Umar ibn al-Khattab stated, "Indeed, I calculate Bahrain's jizyah tax during prayer."

L7349 **A jurisprudential issue concerning one who, during his prayer, remembered that he had forgotten [to perform] an obligatory prayer.**

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L7351–7353 And whoever, during their prayer (whatever prayer it may be), remembers that they forgot one obligatory prayer or multiple, or if they are in the dawn prayer and remember that they forgot the Witr prayer, should continue. In that prayer of his until he completes it. Then he must pray only the prayer he intended. It is not permissible for him to do otherwise, nor shall he repeat the prayer he mentioned in it.

L7354 Allah, the Exalted, said: "And do not invalidate your deeds" (Muhammad 47:33). Does this pertain to an act whose nullification is prohibited? Abū Ḥanīfah said: If one who mentioned five prayers [but intended] fewer, he must terminate the prayer he is performing and pray the specified prayer. He should invalidate the Dawn Prayer (Fajr), perform the Witr prayer, then repeat the invalidated prayer. If he feared the invalidation of the prayer he was engaged in, he should complete it first, then pray the specified prayer—with no additional [actions].[40]

حَتَّى يَظَلَّ الْمَرْءُ إِنْ يَدْرِي كَمْ صَلَّى؟ فَإِذَا لَمْ يَدْرِ أَحَدُكُمْ كَمْ صَلَّى؟ فَلْيَسْجُدْ سَجْدَتَيْنِ وَهُوَ جَالِسٌ؟» .

فَلَمْ يُبْطِلْ - عَلَيْهِ السَّلَامُ - الصَّلَاةَ بِتَذْكِيرِ الشَّيْطَانِ لَهُ مَا يَشْغَلُهُ بِهِ عَنْ صَلَاتِهِ، وَلَا جَعَلَ فِي ذَلِكَ سُجُودَ سَهْوٍ، وَجَعَلَ - عَلَيْهِ السَّلَامُ - سُجُودَ السَّهْوِ فِي جَهْلِهِ كَمْ صَلَّى فَقَطْ؟ وَمِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إِنِّي لَأَحْسِبُ جِزْيَةَ الْبَحْرَيْنِ فِي الصَّلَاةِ

[مَسْأَلَةٌ ذَكَرَ فِي صَلَاتِهِ أَنَّهُ نَسِيَ صَلَاةَ فَرْضٍ]

٤٧٨ - مَسْأَلَةٌ:

وَمَنْ ذَكَرَ فِي نَفْسِ صَلَاتِهِ - أَيَّ صَلَاةٍ كَانَتْ: أَنَّهُ نَسِيَ صَلَاةَ فَرْضٍ وَاحِدَةً أَوْ أَكْثَرَ مِنْ وَاحِدَةٍ، أَوْ كَانَ فِي صَلَاةِ الصُّبْحِ فَذَكَرَ أَنَّهُ نَسِيَ الْوِتْرَ -: تَمَادَى فِي صَلَاتِهِ تِلْكَ حَتَّى يُتِمَّهَا، ثُمَّ يُصَلِّي الَّتِي ذَكَرَ فَقَطْ، لَا يَجُوزُ لَهُ غَيْرُ ذَلِكَ، وَلَا يُعِيدُ الَّتِي ذَكَرَهَا فِيهَا.

قَالَ اللَّهُ تَعَالَى: {وَلا تُبْطِلُوا أَعْمَالَكُمْ} [محمد: ٣٣] فَهَذَا فِي عَمَلٍ قَدْ نُهِيَ عَنْ إِبْطَالِهِ؟ وَقَالَ أَبُو حَنِيفَةَ: إِنْ كَانَ الَّذِي ذَكَرَ خَمْسَ صَلَوَاتٍ فَأَقَلَّ: قَطَعَ الَّتِي هُوَ فِيهَا وَصَلَّى الَّتِي ذَكَرَ، وَقَطَعَ صَلَاةَ الصُّبْحِ، وَأَوْتَرَ، ثُمَّ صَلَّى الَّتِي قَطَعَ، فَإِنْ خَشِيَ فَوْتَ الَّتِي هُوَ فِيهَا تَمَادَى فِيهَا ثُمَّ صَلَّى الَّتِي ذَكَرَ وَلَا مَزِيدَ.

[40] **Qur'an references (L7354):** Qur'an 47:33 (Muhammad).

فَإِنْ كَانَتْ الَّتِي ذَكَرَ سِتَّ صَلَوَاتٍ فَصَاعِدًا تَمَادَى فِي صَلَاتِهِ الَّتِي هُوَ فِيهَا ثُمَّ قَضَى الَّتِي ذَكَرَ؟ وَقَالَ مَالِكٌ: إنْ كَانَتْ الَّتِي ذَكَرَ خَمْسَ صَلَوَاتٍ فَأَقَلَّ أَتَمَّ الَّتِي هُوَ فِيهَا ثُمَّ صَلَّى الَّتِي ذَكَرَ، ثُمَّ أَعَادَ الَّتِي ذَكَرَهَا فِيهَا.

L7355 If the prayer he mentioned is six prayers or more, he continues the prayer he is performing, then makes up the mentioned prayer. Mālik said: If the prayer he mentioned is five prayers or fewer, he completes the prayer he is performing, then prays the mentioned prayer, then repeats it within the same sequence.

وَإِنْ كَانَتْ سِتَّ صَلَوَاتٍ فَأَكْثَرَ أَتَمَّ الَّتِي هُوَ فِيهَا ثُمَّ قَضَى الَّتِي ذَكَرَهَا وَلَا يُعِيدُ الَّتِي ذَكَرَهَا فِيهَا؟

L7356 If there are six prayers or more, he should complete the one he is performing, then make up the one he mentioned, and he does not repeat the one he mentioned during it.

قَالَ عَلِيٌّ: وَهَذَانِ قَوْلَانِ فَاسِدَانِ -: أَوَّلُ ذَلِكَ: أَنَّهُ تَقْسِيمٌ بِلَا بُرْهَانٍ، وَلَا فَرْقَ بَيْنَ ذِكْرِ الْخَمْسِ وَذِكْرِ السِّتِّ، لَا بِقُرْآنٍ وَلَا بِسُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ وَلَا إجْمَاعٍ وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ وَلَا رَأْيٍ سَدِيدٍ.

L7357 Ali said: These are two defective opinions. The first is that it is a division without proof, with no distinction between mentioning five or six—neither by the Quran, nor by an authentic or weak Sunnah, nor consensus, nor the statement of a Companion, nor analogy, nor a sound opinion.

وَلَا فَرْقَ بَيْنَ وُجُوبِ التَّرْتِيبِ فِي صَلَاةِ يَوْمٍ وَلَيْلَةٍ وَبَيْنَ وُجُوبِهِ فِي تَرْتِيبِ صَلَاةِ أَمْسِ قَبْلَ صَلَاةِ الْيَوْمِ، وَصَلَاةِ أَوَّلِ أَمْسِ قَبْلَ صَلَاةِ أَمْسِ، وَهَكَذَا أَبَدًا؟ فَإِنْ ذَكَرُوا قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ نَسِيَ صَلَاةً فَلْيُصَلِّهَا إذَا ذَكَرَهَا، لَا كَفَّارَةَ لَهَا إلَّا ذَلِكَ» ؟ قُلْنَا: هَذَا حَقٌّ وَهُوَ - عَلَيْهِ السَّلَامُ - الْآمِرُ بِهَذَا قَدْ ذَكَرَ صَلَاةَ الصُّبْحِ إذْ انْتَبَهَ بَعْدَ طُلُوعِ الشَّمْسِ، فَأَمَرَ النَّاسَ بِالِاقْتِيَادِ، وَالْوُضُوءِ، وَالْأَذَانِ.

L7358 There is no distinction between the obligation to maintain the sequence of prayers within a day and night and the obligation to maintain the sequence of yesterday's prayers before today's prayers, the day before yesterday's prayers before yesterday's prayers, and so forth indefinitely. If they cite the statement of Allah's Messenger—peace be upon him—"Whoever forgets a prayer, let them pray it when they remember it, for there is no expiation for it except that prayer," we respond: This is correct, and he—peace be upon him—who commanded this has mentioned the dawn prayer when he awoke after sunrise, whereupon he instructed the people to form rows, perform ablution, and give the call to prayer.[41]

ثُمَّ صَلَّى هُوَ وَهُمْ رَكْعَتَيْ الْفَجْرِ، ثُمَّ صَلَّى الصُّبْحَ.

L7359 Then he prayed the two Sunnah rak'ahs of Fajr along with those with him, and afterward he led the obligatory Fajr prayer.

فَصَحَّ أَنَّ مَعْنَى قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «فَلْيُصَلِّهَا إذَا ذَكَرَهَا» كَمَا أُمِرَ، لَا كَمَا لَمْ يُؤْمَرْ مَنْ قَطَعَ صَلَاةً قَدْ أَمَرَهُ - عَلَيْهِ السَّلَامُ - بِالتَّمَادِي فِيهَا بِقَوْلِهِ: «فَمَا أَدْرَكْتُمْ فَصَلُّوا، وَمَا فَاتَكُمْ فَأَتِمُّوا» .

L7360–7362 Thus, it is confirmed that the meaning of his statement—peace be upon him—"Let him pray it when he remembers it" is to pray as he was commanded, not as he was not commanded. The Prophet (peace be upon him) commanded one who interrupts a prayer to persist in it by saying: "Pray what you have caught up with, and complete what you have missed."

[41] **Hadith references (L7358):** Sunan Abi Dawud 442; Sahih Muslim 684a.

L7363 And by his statement—peace be upon him—: “Verily, in prayer there is a profound preoccupation.”

وَبِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إنَّ فِي الصَّلَاةِ لَشُغْلًا» .

L7364 Then they are the first to contradict this report by distinguishing between counting five or fewer [prayers] and counting more than five, though where is there any explicit text or evidence in the report justifying this distinction? If they cite Ibn ‘Umar’s report: “Whoever counts one prayer during another prayer, it becomes nullified for him?” – we have already stated that no one’s statement apart from Allah’s Messenger – peace and blessings be upon him – holds as proof. Yet they themselves have contradicted Ibn ‘Umar’s report by distinguishing between five or fewer and more than five.

ثُمَّ هُمْ أَوَّلُ مُخَالِفٍ لِهَذَا الْخَبَرِ لِتَفْرِيقِهِمْ بَيْنَ ذِكْرِ خَمْسٍ فَأَقَلَّ، وَبَيْنَ ذِكْرِهِ أَكْثَرَ مِنْ خَمْسٍ، وَلَيْسَ فِي الْخَبَرِ نَصٌّ وَلَا دَلِيلٌ بِالْفَرْقِ بَيْنَ ذَلِكَ؟ فَإِنْ ذَكَرُوا خَبَرَ ابْنِ عُمَرَ: " مَنْ ذَكَرَ صَلَاةً فِي صَلَاةٍ " انْهَدَمَتْ عَلَيْهِ؟ فَقَدْ قُلْنَا: إنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، وَهُمْ قَدْ خَالَفُوا قَوْلَ ابْنِ عُمَرَ فِي تَفْرِيقِهِمْ بَيْنَ خَمْسٍ فَأَقَلَّ وَبَيْنَ أَكْثَرَ مِنْ خَمْسٍ.

L7365 If they claim a consensus in this matter, they lie against the Ummah, for they speak about them without knowledge and through impermissible conjecture. Their most false claim is that Ahmad ibn Hanbal and one of the two opinions of al-Shafi’i hold that one must begin with the missed prayers—even if they were prayers neglected over twenty years. This is especially so regarding Abu Hanifa’s command to nullify the dawn prayer—which is an obligation—for the Witr prayer—which is voluntary—and that one who abandons it incurs no sin.

فَإِنْ ادَّعَوْا إجْمَاعًا فِي ذَلِكَ كَانُوا كَاذِبِينَ عَلَى الْأُمَّةِ، لِقَوْلِهِمْ عَلَيْهِمْ بِغَيْرِ عِلْمٍ، وَبِالظَّنِّ الَّذِي لَا يَحِلُّ وَأَكْذَبُهُمْ: أَنَّ أَحْمَدَ بْنَ حَنْبَلٍ، وَأَحَدَ قَوْلَيْ الشَّافِعِيِّ -: أَنَّهُ يَبْدَأُ بِالْفَائِتَةِ، وَلَوْ أَنَّهَا صَلَاةُ عِشْرِينَ سَنَةً؟ لَا سِيَّمَا أَمْرَ أَبِي حَنِيفَةَ بِإِبْطَالِ الصُّبْحِ - وَهِيَ فَرِيضَةٌ - لِلْوِتْرِ - وَهِيَ تَطَوُّعٌ - وَلَا يَأْثَمُ مَنْ تَرَكَهُ.

L7366 And Mālik’s instruction to complete a prayer that is not valid for him, then to repeat it? This is truly astonishing—that he would command him to perform an act that is not considered valid. This directive to persist in his prayer must necessarily be either the prayer that Allāh, the Exalted, has commanded or a prayer that Allāh has not commanded him to perform. There is no possibility of a third category.

وَأَمْرُ مَالِكٍ بِأَنْ يُتِمَّ صَلَاةً لَا يَعْتَدُّ لَهُ بِهَا، ثُمَّ يُعِيدَهَا؟ وَهَذَا عَجَبٌ جِدًّا أَنْ يَأْمُرَهُ بِعَمَلٍ لَا يَعْتَدُّ لَهُ بِهِ وَلَا يَخْلُو هَذَا الْمَأْمُورُ بِالتَّمَادِي فِي صَلَاتِهِ مِنْ أَنْ تَكُونَ هِيَ الصَّلَاةُ الَّتِي أَمَرَ اللَّهُ تَعَالَى بِهَا أَمْ هِيَ صَلَاةٌ لَمْ يَأْمُرْهُ اللَّهُ تَعَالَى بِهَا؟ وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ.

L7367 If he commanded him to persist in continuing the prayer that Allah, the Exalted, has commanded, then his command to repeat it is invalid.

فَإِنْ كَانَ أَمَرَهُ بِالتَّمَادِي فِي الصَّلَاةِ الَّتِي أَمَرَهُ اللَّهُ تَعَالَى بِهَا فَأَمْرُهُ بِإِعَادَتِهَا بَاطِلٌ.

L7368 If he commanded him to persist in a prayer that Allah, the Most High, has not ordained, has he not thereby commanded him to do what is impermissible? Our position is the view of Tawus, al-Hasan, al-Shafi’i, Abu Thawr, Abu Sulayman, and others. There is no fundamental distinction, through juristic reasoning, between making up a prayer he forgot or slept through

وَإِنْ كَانَ أَمَرَهُ بِالتَّمَادِي فِي صَلَاةٍ لَمْ يَأْمُرْهُ اللَّهُ تَعَالَى بِهَا فَقَدْ أَمَرَهُ بِمَا لَا يَجُوزُ؟ وَقَوْلُنَا: هُوَ قَوْلُ طَاوُسٍ، وَالْحَسَنِ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ وَغَيْرِهِمْ، وَلَا فَرْقَ بَيْنَ

during another prayer, after concluding another prayer, or during the time of another prayer before commencing it. And success is from Allah, the Most High.

L7369 **A jurisprudential case where one mentioned a prayer while in the time of another.**

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L7371–7373 If he remembers a prayer while within the time of another prayer, and if there remains time in the latter prayer's period... He must begin with the prayer he remembered, whether it comprises one unit, five units, ten units, or more. He shall pray all of them in proper sequence, then pray the prayer currently within its time - whether in congregation or individually. He is necessarily required to pray that congregational prayer from those he had forgotten. If he fulfills it contrary to this procedure, it suffices. If he fears missing the prayer currently within its time, he must begin with it without exception - no alternative is valid, whether the prayer he recalled consists of one unit or multiple. When he completes the prayer whose time he is in, he shall pray the remembered prayer. Nothing else is incumbent upon him. If he begins with the remembered prayer and the time of the current prayer elapses, both prayers become invalid. He must pray the remembered prayer, but he cannot perform the prayer he intentionally neglected until its time has expired.

L7374 This is the opinion of Abū Ḥanīfa, al-Shāfiʿī, and Abū Sulaymān. Mālik said: If the prayers he specified are five or fewer, he should begin with those he mentioned even if the time of the prayer whose time has arrived has expired. If they exceed five, he should begin with the prayer whose time is current. ʿAlī said: This is an opinion with no evidence whatsoever for its validity—neither from the Quran, nor any Sunnah whether authentic or weak, nor consensus, nor analogy, nor a companion's statement, nor any rationally defensible view. Rather, he extended the reasoning of the preceding issue since Abū Ḥanīfa contradicted himself. The evidence for the validity of our position is: "That Allah's Messenger—peace and blessings be upon him—forgot the Ẓuhr and

ذِكْرِهِ الصَّلَاةَ الَّتِي نَسِيَ أَوْ نَامَ عَنْهَا فِي صَلَاةٍ أُخْرَى، أَوْ بَعْدَ أَنْ أَتَمَّ صَلَاةً أُخْرَى، أَوْ فِي وَقْتِ صَلَاةٍ أُخْرَى قَبْلَ أَنْ يَبْدَأَ بِهَا - مِنْ طَرِيقِ النَّظَرِ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ ذَكَرَ صَلَاةً وَهُوَ فِي وَقْتِ أُخْرَى]

٤٧٩ - مَسْأَلَةٌ:

فَإِنْ ذَكَرَ صَلَاةً وَهُوَ فِي وَقْتِ أُخْرَى، فَإِنْ كَانَ فِي الْوَقْتِ فُسْحَةٌ فَلْيَبْدَأْ بِالَّتِي ذَكَرَ، سَوَاءٌ كَانَتْ وَاحِدَةً أَوْ خَمْسًا أَوْ عَشْرًا أَوْ أَكْثَرَ، يُصَلِّي جَمِيعَهَا مُرَتَّبَةً ثُمَّ يُصَلِّي الَّتِي هُوَ فِي وَقْتِهَا سَوَاءٌ كَانَتْ فِي جَمَاعَةٍ أَوْ فَذًّا، وَحُكْمُهُ - وَلَا بُدَّ - أَنْ يُصَلِّيَ تِلْكَ الصَّلَاةَ مَعَ الْجَمَاعَةِ مِنْ الَّتِي نَسِيَ، فَإِنْ قَضَاهَا بِخِلَافِ ذَلِكَ أَجْزَأَهُ فَإِنْ كَانَ يَخْشَى فَوْتَ الَّتِي هُوَ فِي وَقْتِهَا بَدَأَ بِهَا وَلَا بُدَّ، لَا يُجْزِئُهُ غَيْرُ ذَلِكَ، سَوَاءٌ كَانَتْ الَّتِي ذَكَرَ وَاحِدَةً أَوْ أَكْثَرَ، فَإِذَا أَتَمَّ الَّتِي هُوَ فِي وَقْتِهَا صَلَّى الَّتِي ذَكَرَ، لَا شَيْءَ عَلَيْهِ غَيْرُ ذَلِكَ، فَإِنْ بَدَأَ بِالَّتِي ذَكَرَ وَفَاتَ وَقْتُ الَّتِي ذَكَرَهَا فِي وَقْتِهَا بَطَلَ كِلَاهُمَا، وَعَلَيْهِ أَنْ يُصَلِّيَ الَّتِي ذَكَرَ، وَلَا يَقْدِرُ عَلَى الَّتِي تَعَمَّدَ تَرْكَهَا حَتَّى خَرَجَ وَقْتُهَا.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ؟ وَقَالَ مَالِكٌ: إنْ كَانَتْ الَّتِي ذَكَرَ خَمْسَ صَلَوَاتٍ فَأَقَلَّ: بَدَأَ بِالَّتِي ذَكَرَ، وَإِنْ خَرَجَ وَقْتُ الَّتِي حَضَرَتْ، وَإِنْ كَانَتْ أَكْثَرَ مِنْ خَمْسٍ بَدَأَ بِالَّتِي حَضَرَ وَقْتُهَا؟ قَالَ عَلِيٌّ: وَهَذَا قَوْلٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ أَصْلًا، لَا مِنْ قُرْآنٍ وَلَا سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ وَلَا إجْمَاعٍ، وَلَا قِيَاسٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ، لَكِنَّهُ طَرَدَ الْمَسْأَلَةَ الَّتِي قَبْلَ هَذِهِ إذْ تَنَاقَضَ أَبُو حَنِيفَةَ؟ وَبُرْهَانُ صِحَّةِ قَوْلِنَا -:

ʿAṣr prayers during the Battle of the Trench until sunset. He then ordered the adhān and iqāmah, prayed Ẓuhr, then ordered the adhān and iqāmah again, prayed ʿAṣr, then ordered the adhān and iqāmah once more, and prayed Maghrib at its appointed time."

«أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَسِيَ الظُّهْرَ وَالْعَصْرَ يَوْمَ الْخَنْدَقِ حَتَّى غَرَبَتْ الشَّمْسُ، فَأَمَرَ بِالْأَذَانِ وَالْإِقَامَةِ ثُمَّ صَلَّى الظُّهْرَ، ثُمَّ أَمَرَ بِالْأَذَانِ وَالْإِقَامَةِ، ثُمَّ صَلَّى الْعَصْرَ، ثُمَّ أَمَرَ بِالْأَذَانِ وَالْإِقَامَةِ فَصَلَّى الْمَغْرِبَ فِي وَقْتِهَا» .

L7375 We did not render that obligatory because it pertains to a practical act, not a divine command.

وَإِنَّمَا لَمْ نَجْعَلْ ذَلِكَ وَاجِبًا؛ لِأَنَّهُ عَمَلٌ لَا أَمْرٌ.

L7376 As for if he misses the time of the current prayer, then those prayers he remembered—whose time has expired for anyone other than the forgetful person—the time remains perpetually extended for the forgetful person forever. They do not become missed for the remainder of his life. As for the prayer whose time he is in, it is only missed if he intentionally neglects it until its time expires while consciously remembering it. He is commanded to perform it, just as he is commanded to perform the prayer he forgot—there is no distinction.

وَأَمَّا إنْ فَاتَهُ وَقْتُ الْحَاضِرَةِ فَإِنَّ الَّتِي ذَكَرَ مِنْ اللَّوَاتِي خَرَجَ وَقْتُهَا لِغَيْرِ النَّاسِي مُتَمَادِيَةُ الْوَقْتِ لِلنَّاسِي أَبَدًا لَا تَفُوتُهُ بَاقِي عُمْرِهِ، وَالَّتِي هُوَ فِي وَقْتِهَا تَفُوتُهُ بِتَعَمُّدِهِ تَرْكَهَا حَتَّى يَخْرُجَ وَقْتُهَا وَهُوَ ذَاكِرٌ لَهَا، فَهُوَ مَأْمُورٌ بِصَلَاتِهَا، كَمَا هُوَ مَأْمُورٌ بِالَّتِي نَسِيَ وَلَا فَرْقَ.

L7377–7379 It is then forbidden for him to neglect a prayer he remembers until the time of another prayer enters or the current prayer's time expires, making this impermissible for him. If one relies on the Prophet's saying—peace be upon him—"Let him pray it when he remembers it," we reply: You are the first to contradict this ḥadīth by distinguishing between the five [obligatory prayers] and more than five. As for us, we have not opposed it, for one must necessarily pray one [prayer] he remembers before the other. The act which, if delayed, makes one disobedient to Allah (Exalted is He) is more obligatory than the act which does not make one disobedient to Him, the Exalted, if delayed. To this statement of ours concur Sa'id ibn al-Musayyab, al-Hasan, Sufyan al-Thawri, and others.

فَإِذًا حَرَامٌ عَلَيْهِ التَّفْرِيطُ فِي صَلَاةٍ يَذْكُرُهَا حَتَّى يَدْخُلَ وَقْتُ أُخْرَى أَوْ يَخْرُجَ وَقْتُ هَذِهِ فَلَا يَحِلُّ لَهُ ذَلِكَ؟ فَإِنْ تَعَلَّقَ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «فَلْيُصَلِّهَا إذَا ذَكَرَهَا» ؟ قُلْنَا: أَنْتُمْ أَوَّلُ مُخَالِفٍ لِهَذَا الْخَبَرِ، فِي تَفْرِيقِكُمْ بَيْنَ الْخَمْسِ وَبَيْنَ أَكْثَرَ مِنْ الْخَمْسِ، وَأَمَّا نَحْنُ فَمَا خَالَفْنَاهُ، لِأَنَّهُ لَا بُدَّ مِنْ أَنْ يُصَلِّيَ إحْدَى الَّتِي ذَكَرَ قَبْلَ الْأُخْرَى، فَالَّتِي يَكُونُ عَاصِيًا لِلَّهِ إنْ أَخَّرَهَا أَوْجَبُ مِنْ الَّتِي لَا يَكُونُ عَاصِيًا لَهُ تَعَالَى إنْ أَخَّرَهَا وَبِقَوْلِنَا هَذَا يَقُولُ سَعِيدُ بْنُ الْمُسَيِّبِ، وَالْحَسَنُ، وَسُفْيَانُ الثَّوْرِيُّ، وَغَيْرُهُمْ؟

A case wherein one is certain he has forgotten a prayer but does not know which prayer it is.

[مَسْأَلَةٌ أَيْقَنَ أَنَّهُ نَسِيَ صَلَاةً لَا يَدْرِي أَيُّ صَلَاةٍ هِيَ]

L7380

L7381 480 - Issue: If one is certain that he forgot a prayer but does not know which one it was—then Mālik, Abū Yūsuf, al-Shāfiʿī, and Abū Sulaymān said: Should he perform the prayers of a full day and night? By this opinion, if he does not know whether the prayer was forgotten during travel or residence, must he

٤٨٠ - مَسْأَلَةٌ: وَمَنْ أَيْقَنَ أَنَّهُ نَسِيَ صَلَاةً لَا يَدْرِي أَيُّ صَلَاةٍ هِيَ؟ فَإِنَّ مَالِكًا، وَأَبَا يُوسُفَ، وَالشَّافِعِيَّ، وَأَبَا سُلَيْمَانَ قَالُوا: يُصَلِّي صَلَاةَ يَوْمٍ وَلَيْلَةٍ؟ وَيَلْزَمُ عَلَى هَذَا الْقَوْلِ

perform eight prayers? Sufyān al-Thawrī and Muḥammad ibn al-Ḥasan said: He should perform three prayers—one of them being two rakʿahs, intending it to be the dawn prayer.

إِنْ لَمْ يَدْرِ أَمِنْ سَفَرٍ أَمْ مِنْ حَضَرٍ؟ أَنْ يُصَلِّيَ ثَمَانِيَ صَلَوَاتٍ؟ وَقَالَ سُفْيَانُ الثَّوْرِيُّ، وَمُحَمَّدُ بْنُ الْحَسَنِ: يُصَلِّي ثَلَاثَ صَلَوَاتٍ -: إِحْدَاهَا - رَكْعَتَانِ، يَنْوِي بِهَا الصُّبْحَ.

L7382 And the second: three with which one intends Maghrib.

وَالثَّانِيَةُ - ثَلَاثٌ يَنْوِي بِهَا الْمَغْرِبَ.

L7383 The third issue: Four rak'ahs intended for Dhuhr? Asr? Or the latter Isha? According to this opinion, if one does not know whether the prayer is during travel or residence, this entails praying only two rak'ahs and three rak'ahs. Zufar and al-Muzani said: He prays a single prayer of four rak'ahs, sits after the second rak'ah, then after the third, then after the fourth, then performs the prostration of forgetfulness.

وَالثَّالِثَةُ - أَرْبَعٌ يَنْوِي بِهَا الظُّهْرَ أَوْ الْعَصْرَ؟ أَوْ الْعِشَاءَ الْآخِرَةَ؟ وَيَلْزَمُ عَلَى هَذَا الْقَوْلِ إِنْ لَمْ يَدْرِ أَمِنْ سَفَرٍ هِيَ أَمْ مِنْ حَضَرٍ؟ أَنْ يُصَلِّيَ صَلَاتَيْنِ فَقَطْ -: إِحْدَاهُمَا رَكْعَتَانِ، وَالْأُخْرَى ثَلَاثُ رَكَعَاتٍ؟ وَقَالَ زُفَرُ، وَالْمُزَنِيُّ: يُصَلِّي صَلَاةً وَاحِدَةً أَرْبَعَ رَكَعَاتٍ، يَقْعُدُ فِي الثَّانِيَةِ، ثُمَّ فِي الثَّالِثَةِ، ثُمَّ فِي الرَّابِعَةِ، ثُمَّ يَسْجُدُ لِلسَّهْوِ.

L7384 Zufar said: after the taslim; al-Muzani said: before the taslim. Al-Awza'i said: He prays a single prayer of four rak'ahs only, sitting only in the second and fourth [units], then performs sujūd al-sahw (prostration for forgetfulness), intending at the beginning of the prayer that this is the one he missed in Allah's knowledge, the Exalted.

قَالَ زُفَرُ: بَعْدَ السَّلَامِ، وَقَالَ الْمُزَنِيّ: قَبْلَ السَّلَامِ وَقَالَ الْأَوْزَاعِيُّ: يُصَلِّي صَلَاةً وَاحِدَةً أَرْبَعَ رَكَعَاتٍ فَقَطْ، لَا يَقْعُدُ إِلَّا فِي الثَّانِيَةِ وَالرَّابِعَةِ، ثُمَّ يَسْجُدُ لِلسَّهْوِ يَنْوِي فِي ابْتِدَائِهِ إِيَّاهَا أَنَّهَا الَّتِي فَائِتَتُهُ فِي عِلْمِ اللَّهِ تَعَالَى.

L7385–7387 We adhere to this position. However, Al-Awzāʿī said: "The prostration for forgetfulness should be performed before the salutation," whereas we say: "After the salutation?" The proof validating our view is that when Allah, Exalted and Majestic, imposed upon him—with absolute certainty free from doubt and uncontested by any of them or us—a single prayer, which is the one he missed, then who commands him to pray five prayers, eight prayers, three prayers, or two prayers? For such a one has certainly commanded him to perform what Allah, Exalted, and His Messenger, peace and blessings be upon him, did not obligate. They have thus imposed upon him one prayer, two prayers, or prayers that are not Upon him, and this is invalid with certainty. Therefore, he should only be obligated to perform one prayer as it is, with no addition.

وَبِهَذَا نَأْخُذُ، إِلَّا أَنَّ الْأَوْزَاعِيَّ قَالَ: يَسْجُدُ لِلسَّهْوِ قَبْلَ السَّلَامِ، وَقُلْنَا نَحْنُ: بَعْدَ السَّلَامِ؟ بُرْهَانُ صِحَّةِ قَوْلِنَا -: أَنَّ اللَّهَ - عَزَّ وَجَلَّ - لَمَّا فَرَضَ عَلَيْهِ - بِيَقِينٍ مَقْطُوعٍ لَا شَكَّ فِيهِ، وَلَا خِلَافَ مِنْ أَحَدٍ مِنْهُمْ وَلَا مِنَّا -: صَلَاةً وَاحِدَةً، وَهِيَ الَّتِي فَائِتَتُهُ، فَمَنْ أَمَرَهُ بِخَمْسِ صَلَوَاتٍ، أَوْ ثَمَانِ صَلَوَاتٍ، أَوْ ثَلَاثِ صَلَوَاتٍ، أَوْ صَلَاتَيْنِ؟ فَقَدْ أَمَرَهُ - يَقِينًا - بِمَا لَمْ يَأْمُرْهُ اللَّهُ تَعَالَى بِهِ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفَرَضُوا عَلَيْهِ صَلَاةً أَوْ صَلَاتَيْنِ أَوْ صَلَوَاتٍ لَيْسَتْ عَلَيْهِ، وَهَذَا بَاطِلٌ بِيَقِينٍ، فَلَا يَجُوزُ أَنْ يُكَلَّفَ إِلَّا صَلَاةً وَاحِدَةً كَمَا هِيَ عَلَيْهِ وَلَا مَزِيدَ.

L7388 Thus, the opinions of all those we mentioned are rejected, except our opinion, the opinion of Zufar, and Al-Muzani? They countered, arguing: "Indeed,

فَسَقَطَ قَوْلُ كُلِّ مَنْ ذَكَرْنَا، حَاشَا قَوْلِنَا، وَقَوْلِ زُفَرَ، وَالْمُزَنِيِّ؟ فَاعْتَرَضُوا عَلَيْنَا بِأَنْ قَالُوا: إِنَّ النِّيَّةَ لِلصَّلَاةِ فَرْضٌ عِنْدَنَا وَعِنْدَكُمْ، وَأَنْتُمْ تَأْمُرُونَهُ بِنِيَّةٍ مُشْتَرَكَةٍ لَا تَدْرُونَ أَنَّهَا الْوَاجِبُ عَلَيْهِ، وَهَذَا الِاعْتِرَاضُ إِنَّمَا هُوَ لِلَّذِينَ أَمَرُوهُ بِالْخَمْسِ، أَوْ الثَّمَانِ فَقَطْ؟ قُلْنَا لَهُمْ: نَعَمْ إِنَّ النِّيَّةَ فَرْضٌ عِنْدَنَا وَعِنْدَكُمْ، وَأَنْتُمْ تَأْمُرُونَهُ لِكُلِّ صَلَاةٍ أَمَرْتُمُوهُ بِهَا بِنِيَّةٍ مَشْكُوكٍ فِيهَا أَوْ كَاذِبَةٍ بِيَقِينٍ وَلَا بُدَّ مِنْ أَحَدِهِمَا.

L7389 لِأَنَّكُمْ إِنْ أَمَرْتُمُوهُ أَنْ يَنْوِيَ لِكُلِّ صَلَاةٍ أَنَّهَا الَّتِي فَائِتَهُ قَطْعًا فَقَدْ أَوْجَبْتُمْ عَلَيْهِ الْبَاطِلَ وَالْكَذِبَ، وَهَذَا لَا يَحِلُّ، لِأَنَّهُ لَيْسَ عَلَى يَقِينٍ مِنْ أَنَّهَا الَّتِي فَائِتَهُ.

L7390 فَإِذَا لَمْ يَكُنْ عَلَى يَقِينٍ مِنْهَا وَنَوَاهَا قَطْعًا فَقَدْ نَوَى الْبَاطِلَ، وَهَذَا حَرَامٌ.

L7391 وَإِنْ أَمَرْتُمُوهُ أَنْ يَنْوِيَ فِي ابْتِدَاءِ كُلِّ صَلَاةٍ مِنْهَا أَنَّهَا الَّتِي عَلِمَ اللَّهُ أَنَّهَا فَائِتَهُ فَقَدْ أَمَرْتُمُوهُ بِمَا عِبْتُمْ عَلَيْنَا، سَوَاءً سَوَاءً، لَا بِمِثْلِهِ؟ وَنَحْنُ نَقُولُ: إِنَّ هَذِهِ الْمَلَامَةَ سَاقِطَةٌ عَنْهُ، لِأَنَّهُ لَا يَقْدِرُ عَلَى غَيْرِهَا أَصْلًا، وَقَدْ قَالَ اللَّهُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦]

L7392 وَقَالَ - عَلَيْهِ السَّلَامُ -: «إِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» ؟ فَقَدْ سَقَطَتْ عَنْهُ النِّيَّةُ الْمُعَيَّنَةُ، لِعَدَمِ قُدْرَتِهِ عَلَيْهَا، وَبَقِيَ عَلَيْهِ وُجُوبُ النِّيَّةِ الْمَرْجُوعِ فِيهَا إِلَى عِلْمِ اللَّهِ تَعَالَى، إِذْ هُوَ قَادِرٌ عَلَيْهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ، فَسَقَطَ ذَلِكَ الْقَوْلُ أَيْضًا؟ .

L7393–7395 ثُمَّ قُلْنَا لِزُفَرَ، وَالْمُزَنِيِّ: إِنَّكُمْ أَلْزَمْتُمُوهُ جِلْسَةً بَعْدَ الرَّكْعَةِ الثَّالِثَةِ لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِهَا قَطُّ، وَلَا يَجُوزُ أَنْ يُلْزَمَ أَحَدٌ إِلَّا مَا نَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ اللَّهَ تَعَالَى أَلْزَمَهُ إِيَّاهُ فَسَقَطَ أَيْضًا قَوْلُهُمَا، لِأَنَّهُمَا دَخَلَا فِي بَعْضِ مَا أَنْكَرَا عَلَى غَيْرِهِمَا؟ قَالَ عَلِيٌّ: وَبُرْهَانُ صِحَّةِ قَوْلِنَا

the intention for prayer is an obligation according to us and according to you, yet you command him to form a shared intention without knowing whether it is the one obligatory upon him." This objection is only directed at those who commanded him to pray five rak'ahs or eight rak'ahs exclusively? We said to them: "Yes, the intention is an obligation according to us and according to you, yet you command him, for every prayer you instruct him to perform, to form an intention that is either doubtful or knowingly false, and it necessarily must be one of the two."

L7389 For if you command him to intend for each prayer that it is undoubtedly the one he missed, you have obligated him to falsehood and lying, and this is impermissible, because he is not certain that it is the one he missed.

L7390 If he is not certain of it yet resolves it with definitive resolve, then he has certainly intended falsehood, and this is prohibited.

L7391 If you instruct him to make the intention at the beginning of each of those prayers that it is the one Allah knew had eluded him, you have indeed commanded him to do the very same thing you reproached us for—identical in every respect, not even its equivalent. We maintain that this reproach is invalid regarding him, for he is fundamentally incapable of any alternative whatsoever. Allah the Most High has said: "Allah does not burden any soul beyond its capacity" [Al-Baqarah: 286].[42]

L7392 And he—peace be upon him—said: "When I command you with something, do as much of it as you can." Thus, the specified intention is waived from him due to his inability to fulfill it, and the obligation to form the intention referred back in this matter to Allah's knowledge remains upon him, since Allah is capable of it—and divine success comes only from Allah, the Exalted. Therefore, that statement is also waived.

L7393–7395 Then we said to Zufar and Al-Muzani: "You have obligated upon him a sitting posture after the third rak'ah - something Allah the Exalted never commanded - and it is impermissible to obligate anyone except with that which we are certain Allah the Exalted has obligated upon him." Thus their

[42] **Qur'an references (L7391):** Qur'an 2:286 (Al-Baqarah).

opinion is also invalidated, for have they not engaged in the very practice they condemned in others?

‘Ali said: “The proof validating our position is that Allah the Exalted obligated upon him only one prayer. Since he does not know which prayer it is, he is utterly incapable of forming a specific intention for it. He must necessarily form an uncertain intention regarding which prayer it is? Intending thereby to perform the prayer he missed - the one known to Allah the Exalted.” He prays two rak’ahs, then sits and recites the tashahhud. Upon completing his tashahhud, he doubts: has he completed the prayer incumbent upon him—if it was Fajr or a shortened prayer during travel—or has he prayed only part of it as commanded, if it was a prayer performed in full while resident or Maghrib? In this state, he falls under those whom the Prophet—peace and blessings of Allah be upon him—commanded, when uncertain of the number of rak’ahs prayed, to pray until he is certain of completion and doubtful of addition. He must then rise without fail to a third rak’ah. When he raises his head from the second prostration of this rak’ah, he doubts: has he completed his obligatory prayer if it was Maghrib—so he should sit then—or does one rak’ah remain if it was Dhuhr, Asr, or Isha while resident? In this state, he falls under those whom the Messenger of Allah—peace and blessings of Allah be upon him—commanded, when uncertain of the number of rak’ahs prayed, to pray until he is certain of completion and doubtful of addition. He must then rise to a fourth rak’ah. When he completes it, sits for the final tashahhud, and attains certainty of completion without doubt but becomes doubtful of addition, he should then conclude with the salām and prostrate as Allah the Exalted has ordained through His Messenger—peace and blessings of Allah be upon him.

L7396–7398 This is the unequivocal truth decisively establishing its obligation—and praise be to Allah, Lord of all worlds. As for Zufar and al-Muzani’s position compelling him to adopt a sitting posture during the third rakʿah—they mandated isolating the intention in that sitting as being exclusively for Maghrib, but this is erroneous, for it constitutes applying certainty in a matter where no certainty exists. If one becomes certain that the prayer is due to travel, he prays a single prayer as we mentioned, sits after the second unit,

-: هُوَ أَنَّ اللَّهَ تَعَالَى إنَّمَا أَوْجَبَ عَلَيْهِ صَلَاةً وَاحِدَةً فَقَطْ، لَا يَدْرِي أَيُّ صَلَاةٍ هِيَ؟ فَلَا يَقْدِرُ أَلْبَتَّةَ عَلَى نِيَّةٍ لَهَا بِعَيْنِهَا، وَلَا بُدَّ لَهُ مِنْ نِيَّةٍ مَشْكُوكٍ فِيهَا أَيُّ صَلَاةٍ هِيَ؟ فَيَنْوِي أَنَّهُ يُؤَدِّي الصَّلَاةَ الَّتِي فَاتَتْهُ الَّتِي يَعْلَمُهَا اللَّهُ تَعَالَى، فَيُصَلِّي رَكْعَتَيْنِ، ثُمَّ يَجْلِسُ وَيَتَشَهَّدُ، فَإِذَا أَتَمَّ تَشَهُّدَهُ فَقَدْ شَكَّ: أَتَمَّ صَلَاتَهُ الَّتِي هِيَ عَلَيْهِ إنْ كَانَتْ الصُّبْحَ، أَوْ إنْ كَانَتْ صَلَاةً تُقْصَرُ فِي السَّفَرِ؟ أَمْ صَلَّى بَعْضَهَا كَمَا أُمِرَ وَلَمْ يُتِمَّهَا، إنْ كَانَتْ صَلَاةً تَتِمُّ فِي الْحَضَرِ؟ أَوْ كَانَتْ الْمَغْرِبَ؟ فَإِذَا كَانَ فِي هَذِهِ الْحَالِ فَقَدْ دَخَلَ فِي جُمْلَةِ مَنْ أَمَرَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا لَمْ يَدْرِ كَمْ صَلَّى؟ أَنْ يُصَلِّيَ حَتَّى يَكُونَ عَلَى يَقِينٍ مِنْ التَّمَامِ، وَعَلَى شَكٍّ مِنْ الزِّيَادَةِ فَيَقُومَ إلَى رَكْعَةٍ ثَالِثَةٍ وَلَا بُدَّ، فَإِذَا رَفَعَ رَأْسَهُ مِنْ السَّجْدَةِ الثَّانِيَةِ مِنْهَا فَقَدْ شَكَّ: هَلْ أَتَمَّ صَلَاتَهُ الَّتِي عَلَيْهِ - إنْ كَانَتْ الْمَغْرِبَ - فَيَقْعُدُ حِينَئِذٍ؟ أَمْ بَقِيَتْ عَلَيْهِ رَكْعَةٌ، إنْ كَانَتْ الظُّهْرَ، أَوْ الْعَصْرَ، أَوْ الْعَتَمَةَ، فِي حَضَرٍ؟ فَإِذَا صَارَ فِي هَذِهِ الْحَالِ فَقَدْ دَخَلَ فِي جُمْلَةِ مَنْ أَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا لَمْ يَدْرِ كَمْ صَلَّى؟ بِأَنْ يُصَلِّيَ حَتَّى يَكُونَ عَلَى يَقِينٍ مِنْ التَّمَامِ وَعَلَى شَكٍّ مِنْ الزِّيَادَةِ، فَعَلَيْهِ أَنْ يَقُومَ إلَى رَابِعَةٍ، فَإِذَا أَتَمَّهَا وَجَلَسَ فِي آخِرِهَا وَتَشَهَّدَ فَقَدْ أَيْقَنَ بِالتَّمَامِ بِلَا شَكٍّ، وَحَصَلَ فِي شَكٍّ مِنْ الزِّيَادَةِ، فَلْيُسَلِّمْ حِينَئِذٍ، وَلْيَسْجُدْ كَمَا أَمَرَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَهَذَا هُوَ الْحَقُّ الْمَقْطُوعُ عَلَى وُجُوبِهِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ؟ وَيَدْخُلُ عَلَى زُفَرَ، وَالْمُزَنِيِّ - فِي إلْزَامِهِمَا إيَّاهُ جِلْسَةً فِي الثَّالِثَةِ - أَنَّهُمَا أَلْزَمَاهُ إفْرَادَ النِّيَّةِ فِي تِلْكَ الْجِلْسَةِ أَنَّهَا لِلْمَغْرِبِ خَاصَّةً، وَهَذَا خَطَأٌ، لِأَنَّهُ إعْمَالُ يَقِينٍ فِيمَا لَا يَقِينَ فِيهِ؟ فَإِنْ أَيْقَنَ أَنَّهَا

then after the third unit, concludes with salām, and performs the prostration of forgetfulness. ʻAli said: If one forgets Dhuhr and ʻAsr without knowing whether they are from one day or two days, or knows only that he prayed them without worrying about which he performed first—this is because no obligation beyond this is established by any textual proof from the Sunnah, Quran, consensus, analogy, or Companion's opinion. This is the view of Abū Ḥanīfah, al-Shāfiʻī, and Abū Sulaymān. The Mālikīs said: If he does not know whether they belong to one day or two days, he must pray three prayers: either a Dhuhr prayer sandwiched between two ʻAsr prayers, or an ʻAsr prayer between two Dhuhr prayers. ʻAli said: This is sheer confusion. Sequential order remains obligatory only as long as the prayer times are still in effect. Arranged according to the order prescribed by Allah, the Exalted, for it. However, when certain times lapse, is it not [valid]? For no explicit Quranic text, Sunnah, or consensus supports this—and with Allah alone is success.

مِنْ سَفَرٍ صَلَّى صَلَاةً وَاحِدَةً كَمَا ذَكَرْنَا، يَقْعُدُ فِي الثَّانِيَةِ، ثُمَّ فِي الثَّالِثَةِ وَيُسَلِّمُ ثُمَّ يَسْجُدُ لِلسَّهْوِ؟ قَالَ عَلِيٌّ: فَإِنْ نَسِيَ ظُهْرًا وَعَصْرًا لَا يَدْرِي؟ أَمِنْ يَوْمٍ وَاحِدٍ أَمْ مِنْ يَوْمَيْنِ، أَوْ يَدْرِي صَلَّاهُمَا فَقَطْ، وَلَا يُبَالِي أَيَّهُمَا قَدَّمَ؟ لِأَنَّهُ لَمْ يُوجِبْ عَلَيْهِ غَيْرَ ذَلِكَ نَصُّ سُنَّةٍ وَلَا قُرْآنٍ وَلَا إجْمَاعٍ وَلَا قِيَاسٍ وَلَا قَوْلِ صَاحِبٍ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ؟ وَقَالَ الْمَالِكِيُّونَ: إنْ لَمْ يَدْرِ أَهِيَ مِنْ يَوْمٍ أَمْ مِنْ يَوْمَيْنِ؟ فَلْيُصَلِّ ثَلَاثَ صَلَوَاتٍ إمَّا ظُهْرًا بَيْنَ عَصْرَيْنِ، وَإِمَّا عَصْرًا بَيْنَ ظُهْرَيْنِ؟ قَالَ عَلِيٌّ: وَهَذَا تَخْلِيطٌ نَاهِيك بِهِ وَإِنَّمَا يَجِبُ التَّرْتِيبُ مَا دَامَتْ الْأَوْقَاتُ قَائِمَةً مُرَتَّبَةً بِتَرْتِيبِ اللَّهِ تَعَالَى لَهَا، وَأَمَّا عِنْدَ خُرُوجِ بَعْضِ الْأَوْقَاتِ فَلَا؟ إذْ لَمْ يَأْتِ بِذَلِكَ نَصُّ قُرْآنٍ وَلَا سُنَّةٍ وَلَا إجْمَاعٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَوْمٌ فِي سَفِينَةٍ لَا يُمْكِنُهُمْ الْخُرُوجُ إلَى الْبَرِّ إلَّا بِمَشَقَّةٍ أَوْ بِتَضْيِيعِ الصَّلَاةِ]

A jurisprudential case involving people aboard a ship who cannot disembark to land except with hardship or by neglecting the prayer.

٤٨١ - Issue:

٤٨١ - مَسْأَلَةٌ:

If people are aboard a ship and cannot disembark to land except with hardship or by risking the ship's loss, they must pray on the ship as they are able, with an imam, adhān, and iqāmah being obligatory. If they are unable to establish the prayer rows, to stand due to the ship's pitching, because some are below deck, or due to the ship's rolling, they must pray as they are able.

فَإِنْ كَانَ قَوْمٌ فِي سَفِينَةٍ لَا يُمْكِنُهُمْ الْخُرُوجُ إلَى الْبَرِّ إلَّا بِمَشَقَّةٍ أَوْ بِتَضْيِيعِهَا فَلْيُصَلُّوا فِيهَا كَمَا يَقْدِرُونَ، بِإِمَامٍ وَأَذَانٍ وَإِقَامَةٍ وَلَا بُدَّ، فَإِنْ عَجَزُوا عَنْ إقَامَةِ الصُّفُوفِ وَعَنْ الْقِيَامِ لِمَيْدٍ أَوْ لِكَوْنِ بَعْضِهِمْ تَحْتَ السَّطْحِ أَوْ لِتَرَجُّحِ السَّفِينَةِ -: صَلَّوْا كَمَا يَقْدِرُونَ.

It is equally permissible whether some or all of them are positioned in front of the Imam, with him, or behind him if they are unable to do more. Those incapable of standing may pray while sitting, but for those capable of standing, is anything other than standing valid? This is due to the statement

وَسَوَاءٌ كَانَ بَعْضُهُمْ أَوْ كُلُّهُمْ قُدَّامَ الْإِمَامِ أَوْ مَعَهُ أَوْ خَلْفَهُ، إذَا لَمْ يَقْدِرُوا عَلَى أَكْثَرَ، وَصَلَّى مَنْ عَجَزَ مِنْ الْقِيَامِ قَاعِدًا وَلَا يُجْزِئُ الْقَادِرُ عَلَى الْقِيَامِ إلَّا الْقِيَامُ؟ لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

of Allah, the Exalted: “Allah does not burden any soul beyond its capacity” (the Qur’an 2:286).[43]

L7403 And because of the saying of the Most High: “He has not imposed upon you any hardship whatsoever in religion” [Sūrah Al-Ḥajj 22:78].[44]

L7404 And due to the statement of Allah’s Messenger (peace be upon him): “When I command you with a matter, fulfill it to the best of your ability.”

L7405 Abu Hanifa said: One who is capable of standing [may still] pray while seated - this contradicts Allah’s command, the Most High, to stand during prayer.

L7406 And he cited as evidence that Anas prayed while sitting in a boat?

L7407 So we said: How do you know he was sitting while he was capable of standing? Allah forbid that one should presume about Anas - may Allah be pleased with him - that he prayed sitting while he was capable of standing.

L7408 **Issue: Prayer in synagogues, churches, fire temples (al-habbārāt), and a house among the houses of fires (buyūt al-nīrān).**

L7409–7411 482 - Issue: Prayer is permissible in synagogues, churches, hermitages, a house among fire temples, idol houses, and monasteries, provided one does not know of anything there that must be avoided such as blood, intoxicants, or what [must be avoided]. This resembles that, due to the statement of Allah’s Messenger (may Allah bless him and grant him peace): “The earth has been made for me as a place of prostration and a means of purification. Wherever the prayer overtakes you, pray there.”

L7412 **An issue regarding the limit of a person’s proximity to his sutrah during prayer.**

L7413 483 – Question:

وَلِقَوْلِهِ تَعَالَى: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨]

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ»

وَقَالَ أَبُو حَنِيفَةَ: يُصَلِّي قَاعِدًا مَنْ قَدَرَ عَلَى الْقِيَامِ - وَهَذَا خِلَافُ أَمْرِ اللَّهِ تَعَالَى بِالْقِيَامِ فِي الصَّلَاةِ.

وَاحْتَجَّ بِأَنَّ أَنَسًا صَلَّى فِي سَفِينَةٍ قَاعِدًا؟ .

فَقُلْنَا: وَمَا يَدْرِيكُمْ أَنَّهُ كَانَ قَاعِدًا وَهُوَ يَقْدِرُ عَلَى الْقِيَامِ؟ حَاشَا لِلَّهِ أَنْ يُظَنَّ بِأَنَسٍ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ صَلَّى قَاعِدًا، وَهُوَ قَادِرٌ عَلَى الْقِيَامِ

[مَسْأَلَةُ الصَّلَاةِ فِي الْبِيَعِ وَالْكَنَائِسِ وَالْهَبَّارَاتِ وَالْبَيْتِ مِنْ بُيُوتِ النِّيرَانِ]

٤٨٢ - مَسْأَلَةٌ: وَالصَّلَاةُ جَائِزَةٌ فِي الْبِيَعِ، وَالْكَنَائِسِ، وَالْهَبَّارَاتِ وَالْبَيْتِ مِنْ بُيُوتِ النِّيرَانِ، وَبُيُوتِ الْبُدِّ وَالدُّيُورِ: إِذَا لَمْ يَعْلَمْ هُنَالِكَ مَا يَجِبُ اجْتِنَابُهُ مِنْ دَمٍ، أَوْ خَمْرٍ أَوْ مَا أَشْبَهَ ذَلِكَ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَجُعِلَتْ لِي الْأَرْضُ مَسْجِدًا وَطَهُورًا، حَيْثُمَا أَدْرَكَتْكَ الصَّلَاةُ فَصَلِّ» .

[مَسْأَلَةُ حَدُّ دُنُوِّ الْمَرْءِ مِنْ سُتْرَتِهِ فِي الصَّلَاةِ]

٤٨٣ - مَسْأَلَةٌ:

[43] **Qur’an references (L7402):** Qur’an 2:286 (Al-Baqarah).
[44] **Qur’an references (L7403):** Qur’an 22:78 (Al-Hajj).

L7414 The closest limit for a person's proximity to their sutrah is the width of a sheep's passage, and the farthest limit is three cubits. It is impermissible for anyone to exceed this distance. If one intentionally moves beyond three cubits from their sutrah while intending it as their sutrah, their prayer is invalidated. If they did not intend it as their sutrah, their prayer remains valid.

وَحَدُّ دُنُوِّ الْمَرْءِ مِنْ سُتْرَتِهِ أَقْرَبُ ذَلِكَ قَدْرُ مَمَرِّ الشَّاةِ، وَأَبْعَدُهُ ثَلَاثَةُ أَذْرُعٍ لَا يَحِلُّ لِأَحَدٍ الزِّيَادَةُ عَلَى ذَلِكَ فَإِنْ بَعُدَ عَنْ سُتْرَتِهِ عَامِدًا أَكْثَرَ مِنْ ثَلَاثَةِ أَذْرُعٍ وَهُوَ يَنْوِي أَنَّهَا سُتْرَتُهُ بَطَلَتْ صَلَاتُهُ، فَإِنْ لَمْ يَنْوِ أَنَّهَا سُتْرَةٌ لَهُ فَصَلَاتُهُ تَامَّةٌ.

L7415 Any object that passes in front of a worshipper which invalidates the prayer, while there is a barrier (or its equivalent measure) between him and it—whether he intended that as a barrier or not—his prayer remains valid. It is the same whether that passes over the barrier or behind it. The defined measure of the barrier is a cubit's length, regardless of its thickness. If someone passes in front of a person praying while maintaining a distance greater than three cubits, there is no sin upon the passerby, and the one praying is not obligated to ward him off. However, if someone passes at a distance of three cubits or less, he commits a sin unless the worshipper's barrier measures less than three cubits. In that case, there is no blame on the passerby for passing behind it or over it.

وَكُلُّ مَا مَرَّ أَمَامَهُ مِمَّا يَقْطَعُ الصَّلَاةَ وَالسُّتْرَةُ بَيْنَهُ وَبَيْنَهُ أَوْ مِقْدَارُهَا - نَوَى ذَلِكَ سُتْرَةً أَوْ لَمْ يَنْوِ -: فَصَلَاتُهُ تَامَّةٌ، وَسَوَاءٌ مَرَّ ذَلِكَ عَلَى السُّتْرَةِ أَوْ خَلْفَهَا؟ وَحَدُّ مِقْدَارِ السُّتْرَةِ: ذِرَاعٌ فِي أَيِّ غِلَظٍ كَانَ وَمَنْ مَرَّ أَمَامَ الْمُصَلِّي وَجَعَلَ بَيْنَهُ وَبَيْنَهُ أَكْثَرَ مِنْ ثَلَاثَةِ أَذْرُعٍ فَلَا إِثْمَ عَلَى الْمَارِّ، وَلَيْسَ عَلَى الْمُصَلِّي دَفْعُهُ، فَإِنْ مَرَّ أَمَامَهُ عَلَى ثَلَاثَةِ أَذْرُعٍ فَأَقَلَّ فَهُوَ آثِمٌ إِلَّا أَنْ تَكُونَ سُتْرَةُ الْمُصَلِّي أَقَلَّ مِنْ ثَلَاثَةِ أَذْرُعٍ، فَلَا حَرَجَ عَلَى الْمَارِّ فِي الْمُرُورِ وَرَاءَهَا أَوْ عَلَيْهَا.

L7416 The evidence for that is what was narrated to us by Abdullah ibn Rabee', who narrated to us Muhammad ibn Mu'awiyah, who narrated to us Ahmad ibn Shu'ayb, from Ali ibn Hujr and Ishaq ibn Mansur, both of whom said: I was told by Sufyan ibn 'Uyaynah, from Safwan ibn Sulaym, from Nafi' ibn Jubayr ibn Mut'im, from Sahl ibn Abi Hathmah, who said: The Messenger of Allah (peace and blessings be upon him) said: "When any of you prays toward a *sutrah*, let him draw close to it, so that Satan does not disrupt his prayer."[45]

بُرْهَانُ ذَلِكَ -: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَلِيُّ بْنُ حُجْرٍ، وَإِسْحَاقُ بْنُ مَنْصُورٍ قَالَا: أَنَا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ صَفْوَانَ بْنِ سُلَيْمٍ عَنْ نَافِعِ بْنِ جُبَيْرِ بْنِ مُطْعِمٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ، قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا صَلَّى أَحَدُكُمْ إِلَى سُتْرَةٍ فَلْيَدْنُ مِنْهَا لَا يَقْطَعُ الشَّيْطَانُ عَلَيْهِ صَلَاتَهُ» .

L7417 ʿAlī (may Allah be pleased with him) said: "It became obligatory upon whoever prays toward a sutrah to draw near to it. As for one who does not draw near to it when praying toward it—has he not prayed in the manner he was commanded to, so is his prayer invalid? Since drawing near to it is obligatory, it is necessary to clarify the divinely prescribed measure of proximity

قَالَ عَلِيٌّ: فَصَارَ فَرْضًا عَلَى مَنْ صَلَّى إِلَى سُتْرَةٍ أَنْ يَدْنُوَ مِنْهَا، وَكَانَ مَنْ لَمْ يَدْنُ مِنْهَا - إِذَا صَلَّى إِلَيْهَا - غَيْرَ مُصَلٍّ كَمَا أُمِرَ، فَلَا صَلَاةَ لَهُ؟ فَإِذْ الدُّنُوُّ مِنْهَا فَرْضٌ فَلَا بُدَّ مِنْ بَيَانِ مِقْدَارِ الدُّنُوِّ الْمُفْتَرَضِ مِنْ خِلَافِهِ، إِذْ لَا يُمْكِنُ أَنْ يَأْمُرَنَا - عَلَيْهِ السَّلَامُ - بِأَمْرٍ

[45] **Hadith references (L7416):** Sunan an-Nasai 748; Sunan Abi Dawud 695; Mishkat al-Masabih 782.

and its contrary, for it is inconceivable that the Prophet (peace be upon him) would command us with a binding injunction incumbent upon us, then not clarify it to us. Allah the Exalted has enjoined him to make it clear to us and convey it to us, as He said, 'Convey what has been sent down to you from your Lord' [Al-Mā'idah 5:67]."[46]

يَلْزَمُنَا، ثُمَّ لَا يُبَيِّنُهُ عَلَيْنَا، وَاللَّهُ تَعَالَى قَدْ أَمَرَهُ بِالْبَيَانِ عَلَيْنَا، وَالتَّبْلِيغِ إِلَيْنَا، قَالَ تَعَالَى: {بَلِّغْ مَا أُنْزِلَ إِلَيْكَ مِنْ رَبِّكَ} [المائدة: ٦٧] .

L7418 And He, the Exalted, said: {to make clear to the people what has been revealed to them} [An-Nahl 16:44].[47]

وَقَالَ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] .

L7419–7420 We investigated that matter and found: Abdullah ibn Yusuf ibn Nami narrated to us, saying: from Ahmad ibn Fath, from Abdul Wahhab ibn Isa, from Ahmad ibn Muhammad, from Ahmad ibn Ali, from Muslim ibn al-Hajjaj, from Yaqub ibn Ibrahim al-Dawraqi, from Ibn Abi Hazim—who is Abdul Aziz—from his father, from Sahl ibn Sa'd al-Sa'idi, who said: "Between the prayer place of the Messenger of Allah—peace and blessings be upon him—and the wall was a space wide enough for a sheep to pass." This constituted the minimum permissible proximity, for anything less would prevent bowing and prostration unless one steps back. It is impermissible to require such effort except for one who is incapable of securing greater space.[48]

فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا -: عَبْدَ اللَّهِ بْنَ يُوسُفَ بْنِ نَامِي حَدَّثَنَا قَالَ: ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَعْقُوبُ بْنُ إِبْرَاهِيمَ الدَّوْرَقِيُّ ثنا ابْنُ أَبِي حَازِمٍ هُوَ عَبْدُ الْعَزِيزِ - ثنا أَبِي عَنْ سَهْلِ بْنِ سَعْدٍ السَّاعِدِيِّ قَالَ: «كَانَ بَيْنَ مُصَلَّى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبَيْنَ الْجِدَارِ مَمَرُّ الشَّاةِ» فَكَانَ هَذَا أَقَلَّ مَا يُمْكِنُ مِنَ الدُّنُوِّ، إِذْ مَا كَانَ أَقَلَّ مِنْ هَذَا فَمَانِعٌ مِنَ الرُّكُوعِ وَمِنَ السُّجُودِ إِلَّا بِتَقَهْقُرٍ، وَلَا يَجُوزُ تَكَلُّفُ ذَلِكَ إِلَّا لِمَنْ لَا يَقْدِرُ عَلَى أَكْثَرَ مِنْ ذَلِكَ.

L7421 We found Abdullah ibn Rabi' reporting to us, saying: Muhammad ibn Mu'awiyah narrated to us, saying: Ahmad ibn Shu'ayb narrated to us, saying: I [Ahmad] heard from Muhammad ibn Salamah, who narrated from ibn al-Qasim, who said: Malik narrated to me from Nafi' from ibn Umar, who said: "The Messenger of Allah (ﷺ) entered the Kaaba with Usamah ibn Zayd, Bilal, and Uthman ibn Talhah al-Hajabi, then closed it upon himself. When he [the Prophet] exited, I asked Bilal: 'What did the Messenger of Allah do?' He replied: 'He positioned himself with one pillar to his left, two pillars to his right, and three pillars behind him—the House at that time had six pillars—then he prayed, maintaining a distance of approximately three

وَقَدْ وَجَدْنَا عَبْدَ اللَّهِ بْنَ رَبِيعٍ حَدَّثَنَا، قَالَ: ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ سَلَمَةَ عَنِ ابْنِ الْقَاسِمِ حَدَّثَنِي مَالِكٌ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ، قَالَ: «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَخَلَ الْكَعْبَةَ، هُوَ وَأُسَامَةُ بْنُ زَيْدٍ، وَبِلَالٌ، وَعُثْمَانُ بْنُ طَلْحَةَ الْحَجَبِيُّ فَأَغْلَقَهَا عَلَيْهِ، فَسَأَلْتُ بِلَالًا حِينَ خَرَجَ: مَاذَا صَنَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: جَعَلَ عَمُودًا عَنْ يَسَارِهِ وَعَمُودَيْنِ عَنْ يَمِينِهِ، وَثَلَاثَةَ أَعْمِدَةٍ وَرَاءَهُ - وَكَانَ الْبَيْتُ يَوْمَئِذٍ عَلَى سِتَّةِ أَعْمِدَةٍ - ثُمَّ صَلَّى، وَجَعَلَ بَيْنَهُ وَبَيْنَ الْجِدَارِ نَحْوًا مِنْ ثَلَاثَةِ أَذْرُعٍ» . قَالَ عَلِيٌّ: لَمْ نَجِدْ فِي الْبُعْدِ عَنِ السُّتْرَةِ أَكْثَرَ مِنْ هَذَا، فَكَانَ هَذَا حَدَّ الْبَيَانِ

[46] **Qur'an references (L7417):** Qur'an 5:67 (Al-Ma'idah).
[47] **Qur'an references (L7418):** Qur'an 16:44 (An-Nahl).
[48] **Hadith references (L7420):** Sahih Muslim 508.

cubits between himself and the wall.'" Ali said: "We have not found a greater distance from the sutrah than this. Thus, this constitutes the definitive standard of clarification regarding the farthest obligatory limit of that—we have already presented the evidences in preceding sections of this book. All praise belongs to Allah the Exalted."

L7422 A group of the Salaf before us held this opinion. It has been narrated to us from Ibn Jurayj, from 'Aṭā', who said: "It is said that the minimum sufficient distance between you and the pillar is three cubits." And indeed, the Prophet (peace be upon him) prayed facing a spear, a javelin, and a camel. The stipulated measure for the height of the sutrah is the rear part of the camel saddle. We have narrated this from Abū Sa'īd, 'Aṭā', and others.

L7423–7424 And nothing valid has been established regarding the line [of reasoning], so it is impermissible to adopt this opinion - and success is from Allah, the Most High.

L7425 **Issue: If one wept during ṣalāh out of fear of Allah and could not restrain his weeping.**

L7426 484: Question

L7427 Whoever weeps during prayer out of fear of Allah the Exalted or due to overwhelming grief and cannot restrain his weeping bears no responsibility—neither prostrations for forgetfulness nor any other compensation. But if he intentionally weeps, his prayer becomes invalid. Abdullah ibn Rabee'ah narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Suwayd ibn Nasr informed us: Abdullah ibn Al-Mubarak reported from Hammad ibn Salamah, from Thabit Al-Bunani, from Mutarrif ibn Ash-Shikhkhīr, from his father, who said: "I came to the Messenger of Allah (peace be upon him) while he was praying, and his chest emitted a sound like the boiling of a pot—meaning he was weeping." Ali remarked: "Is this not explicitly stated in the hadith itself?" As for uncontrollable weeping,

فِي أَقْصَى الْوَاجِبِ مِنْ ذَلِكَ - وَقَدْ ذَكَرْنَا الْبَرَاهِينَ فِيمَا خَلَا مِنْ كِتَابِنَا هَذَا وَلِلَّهِ تَعَالَى الْحَمْدُ.

وَقَدْ قَالَ بِهَذَا قَبْلَنَا طَائِفَةٌ مِنْ السَّلَفِ -: رُوِّينَا عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: يُقَالُ: أَدْنَى مَا يَكْفِيك فِيمَا بَيْنَك وَبَيْنَ السَّارِيَةِ ثَلَاثَةُ أَذْرُعٍ. وَقَدْ «صَلَّى - عَلَيْهِ السَّلَامُ - إلَى الْحَرْبَةِ، وَالْعَنَزَةِ، وَالْبَعِيرِ، وَحَدُّ السُّتْرَةِ فِي ارْتِفَاعِهَا بِمُؤَخِّرَةِ الرَّحْلِ» ، وَرُوِّينَاهُ عَنْ أَبِي سَعِيدٍ وَعَطَاءٍ وَغَيْرِهِمْ.

وَلَمْ يَصِحَّ فِي الْخَطِّ شَيْءٌ، فَلَا يَجُوزُ الْقَوْلُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ بَكَى فِي الصَّلَاةِ مِنْ خَشْيَةِ اللَّهِ وَلَمْ يُمْكِنْهُ رَدُّ الْبُكَاءِ]

٤٨٤ - مَسْأَلَةٌ:

وَمَنْ بَكَى فِي الصَّلَاةِ مِنْ خَشْيَةِ اللَّهِ تَعَالَى أَوْ مِنْ هَمٍّ عَلَيْهِ وَلَمْ يُمْكِنْهُ رَدُّ الْبُكَاءِ فَلَا شَيْءَ عَلَيْهِ وَلَا سُجُودَ سَهْوٍ وَلَا غَيْرَهُ، فَلَوْ تَعَمَّدَ الْبُكَاءَ عَمْدًا بَطَلَتْ صَلَاتُهُ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا سُوَيْدُ بْنُ نَصْرٍ أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ مُطَرِّفٍ هُوَ ابْنُ الشِّخِّيرِ - عَنْ أَبِيهِ قَالَ: «أَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ يُصَلِّي، وَلِجَوْفِهِ أَزِيزٌ كَأَزِيزِ الْمِرْجَلِ، يَعْنِي يَبْكِي» . قَالَ عَلِيٌّ: هَكَذَا هُوَ التَّفْسِيرُ نَصًّا فِي نَفْسِ الْحَدِيثِ؟ وَأَمَّا غَلَبَةُ الْبُكَاءِ فَقَالَ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

Allah the Exalted said: “Allah does not burden any soul beyond its capacity” (al-Baqarah 2:286).[49]

L7428 And he (peace be upon him) said: “When I command you with something, do from it as much as you are able.”

L7429 As for intentional crying, is it an action for which no textual evidence has been provided? The Prophet—peace be upon him—said, “Indeed, in prayer there is preoccupation.”

L7430 Thus, it is established that every action is prohibited during prayer except an action whose permissibility is established by a text or consensus. And success is from Allah, the Most High.

Issue: On Congregational Prayer **Issue:** The prayer of a man who hears the *adhan* is not valid unless performed in the mosque

L7431–7432

L7433 Issue: No obligatory prayer is valid for any man—if he is within hearing range of the call to prayer—except when performed in the mosque with the Imam. If he intentionally neglects this without a valid excuse, his prayer is invalid. If he is beyond hearing range of the call, it is obligatory upon him to pray in congregation with at least one person, and this is required. If he fails to do so, his prayer is invalid unless he finds no one to pray with him, in which case his prayer suffices. For those with a valid excuse, abstaining from congregational prayer suffices him at that time. This obligation does not apply to women, though if they attend congregational prayer, they have done well—and is it not preferable for them? If free women or slave women seek their husbands’ or masters’ permission to attend prayer in the mosque, it is obligatory upon the husbands/masters to permit them—provided they go out only rarely, without applying perfume or adorning themselves. If they apply perfume or adorn themselves for this purpose, their prayer is invalid. Is preventing them then obligatory?

وَقَالَ - عَلَيْهِ السَّلَامُ -: «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» .

وَأَمَّا تَعَمُّدُ الْبُكَاءِ فَعَمَلٌ لَمْ يَأْتِ بِإِبَاحَتِهِ نَصٌّ؟ وَقَالَ - عَلَيْهِ السَّلَامُ -: «إنَّ فِي الصَّلَاةِ لَشُغْلًا» .

فَصَحَّ أَنَّ كُلَّ عَمَلٍ فَهُوَ مُحَرَّمٌ فِي الصَّلَاةِ، إلَّا عَمَلًا جَاءَ بِإِبَاحَتِهِ نَصٌّ، أَوْ إجْمَاعٌ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ صَلَاةُ الْجَمَاعَةِ] [مَسْأَلَةٌ لَا تُجْزِئُ صَلَاةُ أَحَدٍ مِنْ الرِّجَالِ يَسْمَعُ الْأَذَانَ إلَّا فِي الْمَسْجِدِ]

مَسْأَلَةٌ: وَلَا تُجْزِئُ صَلَاةُ فَرْضٍ أَحَدًا مِنْ الرِّجَالِ -: إذَا كَانَ بِحَيْثُ يَسْمَعُ الْأَذَانَ أَنْ يُصَلِّيَهَا إلَّا فِي الْمَسْجِدِ مَعَ الْإِمَامِ، فَإِنْ تَعَمَّدَ تَرْكَ ذَلِكَ بِغَيْرِ عُذْرٍ بَطَلَتْ صَلَاتُهُ، فَإِنْ كَانَ بِحَيْثُ لَا يَسْمَعُ الْأَذَانَ فَفَرْضٌ عَلَيْهِ أَنْ يُصَلِّيَ فِي جَمَاعَةٍ مَعَ وَاحِدٍ إلَيْهِ فَصَاعِدًا وَلَا بُدَّ، فَإِنْ لَمْ يَفْعَلْ فَلَا صَلَاةَ لَهُ إلَّا أَنْ لَا يَجِدَ أَحَدًا يُصَلِّيهَا مَعَهُ فَيُجْزِئُهُ حِينَئِذٍ، إلَّا مَنْ لَهُ عُذْرٌ فَيُجْزِئُهُ حِينَئِذٍ التَّخَلُّفُ عَنْ الْجَمَاعَةِ وَلَيْسَ ذَلِكَ فَرْضًا عَلَى النِّسَاءِ، فَإِنْ حَضَرْنَهَا حِينَئِذٍ فَقَدْ أَحْسَنَّ، وَهُوَ أَفْضَلُ لَهُنَّ؟ فَإِنْ اسْتَأْذَنَ الْحَرَائِرُ، أَوْ الْإِمَاءُ بُعُولَتَهُنَّ أَوْ سَادَاتِهِنَّ فِي حُضُورِ الصَّلَاةِ فِي الْمَسْجِدِ: فَفَرْضٌ عَلَيْهِمْ الْإِذْنُ لَهُنَّ - وَلَا يَخْرُجْنَ إلَّا تَفِلَاتٍ غَيْرَ مُتَطَيِّبَاتٍ وَلَا مُتَزَيِّنَاتٍ، فَإِنْ تَطَيَّبْنَ، أَوْ تَزَيَّنَّ لِذَلِكَ: فَلَا صَلَاةَ لَهُنَّ، وَمَنْعُهُنَّ حِينَئِذٍ فَرْضٌ؟ .

[49] **Qur’an references (L7427):** Qur’an 2:286 (Al-Baqarah).

L7434–7436 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Qutaybah ibn Sa'id, Ya'qub ibn Ibrahim al-Dawraqi, and Ishaq ibn Ibrahim—who is Ibn Rāhawayh—each of them narrated from Marwan ibn Mu'awiyah al-Fazari, from Ubayd Allah ibn al-Asamm, from Yazid ibn al-Asamm, from Abu Hurairah, who said: A blind man came to the Prophet—peace be upon him—and said, "O Messenger of Allah, I have no guide to lead me to the mosque." He asked the Messenger of Allah—peace be upon him—to grant him permission so he could pray in his home, and the Prophet permitted him. When the man began to leave, the Prophet called him back and asked, "Do you hear the call to prayer?" He replied, "Yes." The Messenger of Allah—peace be upon him—said, "Then respond to it." Abd al-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad al-Balkhi narrated to us: al-Farbari narrated to us. Al-Bukhārī narrated to us: Musaddad narrated to us: Yazīd ibn Zuraiʿ narrated to us: Khālid al-Ḥadhdhāʾ narrated from Abī Qilābah from Mālik ibn al-Ḥuwayrith al-Laythī, who said: The Messenger of Allah — peace be upon him — said to us: "When the prayer time arrives, let the two of you give the call to prayer (adhān) and the iqāmah [the second call], then let the elder of you two lead the prayer." And through him [the preceding narrator] to al-Bukhārī: Muḥammad ibn Yūsuf narrated to us: Sufyān narrated to us from Khālid al-Ḥadhdhāʾ from Abī Qilābah from Mālik ibn al-Ḥuwayrith: That the Prophet — peace be upon him — said to two men who came to him intending to travel: "When the two of you depart, give the call to prayer (adhān), then the iqāmah [the second call], then let the elder of you two lead the prayer."[50]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا قُتَيْبَةُ بْنُ سَعِيدٍ، وَيَعْقُوبُ بْنُ إِبْرَاهِيمَ الدَّوْرَقِيُّ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - كُلُّهُمْ عَنْ مَرْوَانَ بْنِ مُعَاوِيَةَ الْفَزَارِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ الْأَصَمِّ عَنْ يَزِيدَ بْنِ الْأَصَمِّ عَنْ أَبِي هُرَيْرَةَ قَالَ: «أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَجُلٌ أَعْمَى فَقَالَ: يَا رَسُولَ اللَّهِ، لَيْسَ لِي قَائِدٌ يَقُودُنِي إِلَى الْمَسْجِدِ، فَسَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُرَخِّصَ لَهُ، فَيُصَلِّيَ فِي بَيْتِهِ، فَرَخَّصَ لَهُ، فَلَمَّا وَلَّى دَعَاهُ وَقَالَ لَهُ: هَلْ تَسْمَعُ النِّدَاءَ بِالصَّلَاةِ؟ قَالَ: نَعَمْ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: فَأَجِبْ؟» حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيُّ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُسَدَّدٌ ثنا يَزِيدُ بْنُ زُرَيْعٍ ثنا خَالِدٌ الْحَذَّاءُ عَنْ أَبِي قِلَابَةَ عَنْ مَالِكِ بْنِ الْحُوَيْرِثِ اللَّيْثِيِّ قَالَ: قَالَ لَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا حَضَرَتْ الصَّلَاةُ فَأَذِّنَا وَأَقِيمَا ثُمَّ لِيَؤُمَّكُمَا أَكْبَرُكُمَا» ؟ وَبِهِ إِلَى الْبُخَارِيِّ -: حَدَّثَنَا مُحَمَّدُ بْنُ يُوسُفَ ثنا سُفْيَانُ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ عَنْ مَالِكِ بْنِ الْحُوَيْرِثِ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِرَجُلَيْنِ أَتَيَاهُ يُرِيدَانِ السَّفَرَ: «إِذَا خَرَجْتُمَا فَأَذِّنَا ثُمَّ أَقِيمَا ثُمَّ لِيَؤُمَّكُمَا أَكْبَرُكُمَا» ؟ .

L7437 And through him to Al-Bukhari: Mu'alla ibn Asad narrated to us: Wuhaib, who is ibn Khalid, narrated to us, from Ayyub, from Abu Qilabah, from Malik ibn al-Huwayrith, who said: "The Messenger of Allah—peace and blessings be upon him—said to us (and I had come to him with a group of my people): 'When the prayer time arrives, let one of you perform the Adhan, and let the eldest among you lead you in prayer.'"

وَبِهِ إِلَى الْبُخَارِيِّ -: حَدَّثَنَا مُعَلَّى بْنُ أَسَدٍ ثنا وُهَيْبٌ هُوَ ابْنُ خَالِدٍ - عَنْ أَيُّوبَ عَنْ أَبِي قِلَابَةَ عَنْ مَالِكِ بْنِ الْحُوَيْرِثِ قَالَ: «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَنَا - وَقَدْ أَتَيْتُهُ فِي نَفَرٍ مِنْ قَوْمِي -: إِذَا حَضَرَتْ الصَّلَاةُ. فَلْيُؤَذِّنْ لَكُمْ أَحَدُكُمْ، وَلْيَؤُمَّكُمْ أَكْبَرُكُمْ» .

[50] **Hadith references (L7434):** Sahih al-Bukhari 658.

L7438 Ahmad ibn Qasim narrated to us: My father Qasim ibn Muhammad ibn Qasim narrated to me: My grandfather Qasim ibn Asbagh narrated to me: Isma'il ibn Ishaq al-Qadi narrated to us: Sulayman ibn Harb narrated to us: Shu'bah narrated to us from Habib ibn Abi Thabit from Sa'id ibn Jubayr from Ibn Abbas: that the Prophet (peace and blessings of Allah be upon him) said, "Whoever hears the call and does not respond, his prayer is invalid unless he has a valid excuse."

حَدَّثَنَا أَحْمَدُ بْنُ قَاسِمٍ حَدَّثَنِي أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ حَدَّثَنِي جَدِّي قَاسِمُ بْنُ أَصْبَغَ ثنا إِسْمَاعِيلُ بْنُ إِسْحَاقَ الْقَاضِي ثنا سُلَيْمَانُ بْنُ حَرْبٍ ثنا شُعْبَةُ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ سَمِعَ النِّدَاءَ فَلَمْ يُجِبْ فَلَا صَلَاةَ لَهُ إِلَّا مِنْ عُذْرٍ» .

L7439–7440 Hammam ibn Ahmad narrated to us, Abbas ibn Asbagh narrated to us, Muhammad ibn Abdul-Malik ibn Ayman narrated to us, Ibrahim ibn Muhammad narrated to us, Ibn Bukayr narrated from Malik from Abu Az-Zinad from Al-A'raj from Abu Hurairah that the Messenger of Allah (may Allah bless him and grant him peace) said: "By the One in Whose Hand my soul lies, I resolved to command that firewood be gathered, then order the prayer to be proclaimed, then appoint a man to lead the people in prayer, then go to men and burn their houses over them. By the One in Whose Hand my soul lies, if any one of them knew he would find a fatty bone or two fine shanks, he would attend the Isha prayer."[51]

حَدَّثَنَا حُمَامُ بْنُ أَحْمَدَ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ ثنا ابْنُ بُكَيْرٍ عَنْ مَالِكٍ عَنْ أَبِي الزِّنَادِ عَنِ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «وَالَّذِي نَفْسِي بِيَدِهِ، لَقَدْ هَمَمْتُ أَنْ آمُرَ بِحَطَبٍ فَيُحْطَبَ، ثُمَّ آمُرَ بِالصَّلَاةِ فَيُؤَذَّنَ لَهَا، ثُمَّ آمُرَ رَجُلًا فَيَؤُمَّ النَّاسَ ثُمَّ أُخَالِفَ إِلَى رِجَالٍ فَأُحَرِّقَ عَلَيْهِمْ بُيُوتَهُمْ وَالَّذِي نَفْسِي بِيَدِهِ لَوْ يَعْلَمُ أَحَدُهُمْ أَنَّهُ يَجِدُ عَظْمًا سَمِينًا أَوْ مِرْمَاتَيْنِ حَسَنَتَيْنِ لَشَهِدَ الْعِشَاءَ» .

L7441 We have narrated it through the route of Sufyan ibn 'Uyaynah → Abu al-Zinad → al-A'raj → Abu Hurayrah, with a connected chain; and through the route of Shu'bah, 'Abdullah ibn Numayr, and Abu Mu'awiyah—all of them from al-A'mash → Abu Salih → Abu Hurayrah, with a connected chain.

وَقَدْ رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ، عَنْ أَبِي الزِّنَادِ عَنِ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ مُسْنَدًا - وَمِنْ طَرِيقِ شُعْبَةَ، وَعَبْدِ اللَّهِ بْنِ نُمَيْرٍ، وَأَبِي مُعَاوِيَةَ كُلُّهُمْ عَنِ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ مُسْنَدًا.

L7442 The mention of al-'Ishā' prayer in the latter part of the ḥadīth does not indicate that it is the sole prayer threatened with punishment for abandonment to the exclusion of others. Rather, these are two distinct matters.

وَلَيْسَ فِي ذِكْرِ الْعِشَاءِ فِي آخِرِ الْحَدِيثِ دَلِيلٌ عَلَى أَنَّهَا الْمُتَوَعَّدُ عَلَى تَرْكِهَا دُونَ غَيْرِهَا، بَلْ هِيَ قَضِيَّتَانِ مُتَغَايِرَتَانِ؟ .

L7443 Moreover, the opponent agrees with us that the ruling concerning the obligation to attend the Isha prayer is the same as that of all other prayers; there is no difference.

وَأَيْضًا فَالْمُخَالِفُ مُوَافِقٌ لَنَا عَلَى أَنَّ حُكْمَ صَلَاةِ الْعِشَاءِ فِي وُجُوبِ حُضُورِهَا كَسَائِرِ الصَّلَوَاتِ وَلَا فَرْقَ.

L7444 The Messenger of Allah (peace and blessings be upon him) does not intend

وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُهِمُّ بِبَاطِلٍ وَلَا يَتَوَعَّدُ إِلَّا بِحَقٍّ.

[51] **Hadith references (L7440):** Sunan an-Nasai 848.

falsehood, nor does he threaten except with truth.

L7445–7447 If it is asked, “Why did he not burn it?” the reply is: “Because they hastened to attend the congregational prayer; no alternative is permissible.” Abdullah ibn Rabīʿ narrated to us, Muḥammad ibn Isḥāq ibn As-Sulaym narrated to us, Ibn Al-Aʿrabī narrated to us, Abū Dāwūd narrated to us, An-Nufaylī (who is ʿAbdullāh ibn Muḥammad) narrated to us, Abū Al-Malīḥ (who is Al-Ḥasan ibn ʿUmar Ar-Raqqī) narrated to me, Yazīd ibn Yazīd (who is Ibn Jābir) narrated to me, Yazīd ibn Al-Aṣamm narrated to me: I heard Abū Hurayrah say: The Messenger of Allāh—peace and blessings of Allāh be upon him—said: “I resolved to order my young men to gather bundles of firewood, then go to people who pray in their homes without having a legitimate excuse, and burn their houses down around them.”

L7448 Yazid said: I said to Yazid ibn al-Aṣamm, “O Abu Awf, does he mean Friday prayer or another?” He replied, “May my ears be deafened if I have not heard Abu Hurairah from the Messenger of Allah (peace and blessings be upon him) - he did not mention Friday or anything else.” Ali said: Some people have ventured to lie about the Messenger of Allah (peace and blessings be upon him) openly, so he stated, “He only meant the hypocrites. Allah forbid that we lie about the Messenger of Allah (peace and blessings be upon him), and it is utterly impossible for him (peace be upon him) to intend the hypocrites without naming them, yet mention those who abandon prayer without intending them. If they cite the hadith of Abu Hurairah and Ibn Umar, both from the Messenger of Allah (peace and blessings be upon him) - ’Verily, congregational prayer surpasses individual prayer by twenty-seven degrees.”’

L7449 We said: These two are authentic reports, and the reports we presented have been authenticated. It has been established that there is no prayer for one who stays behind from the congregation unless he has an excuse. Therefore, it is obligatory to apply these two reports in accordance with what has been established there, not based on contradiction and inconsistency—which are far removed from the speech of the Messenger of Allah, peace and blessings of Allah be upon him.

فَإِنْ قِيلَ: فَلِمَ لَمْ يُحَرِّقْهَا؟ قِيلَ: لِأَنَّهُمْ بَادَرُوا وَحَضَرُوا الْجَمَاعَةَ، لَا يَجُوزُ غَيْرُ ذَلِكَ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا النُّفَيْلِيُّ هُوَ عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ - ثنا أَبُو الْمَلِيحِ هُوَ الْحَسَنُ بْنُ عُمَرَ الرَّقِّيُّ - حَدَّثَنِي يَزِيدُ بْنُ يَزِيدَ هُوَ ابْنُ جَابِرٍ - حَدَّثَنِي يَزِيدُ بْنُ الْأَصَمِّ قَالَ: سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَقَدْ هَمَمْتُ أَنْ آمُرَ فِتْيَتِي فَتَجْمَعَ حُزَمًا مِنْ حَطَبٍ، ثُمَّ آتِيَ قَوْمًا يُصَلُّونَ فِي بُيُوتِهِمْ لَيْسَتْ بِهِمْ عِلَّةٌ فَأُحَرِّقَهَا عَلَيْهِمْ» .

قَالَ يَزِيدُ: فَقُلْت لِيَزِيدَ بْنِ الْأَصَمِّ: يَا أَبَا عَوْفٍ، الْجُمُعَةَ عَنَى أَوْ غَيْرَهَا؟ قَالَ: صُمَّتَا أُذُنَايَ إنْ لَمْ أَكُنْ سَمِعْت أَبَا هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا ذَكَرَ جُمُعَةً وَلَا غَيْرَهَا ". قَالَ عَلِيٌّ: وَقَدْ أَقْدَمَ قَوْمٌ عَلَى الْكَذِبِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَهَارًا فَقَالَ: إنَّمَا عَنَى الْمُنَافِقِينَ وَمَعَاذَ اللَّهِ مِنْ الْكَذِبِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمِنْ الْمُحَالِ الْبَحْتِ أَنْ يَكُونَ - عَلَيْهِ السَّلَامُ - يُرِيدُ الْمُنَافِقِينَ فَلَا يَذْكُرُهُمْ وَيَذْكُرُ تَارِكِي الصَّلَاةِ وَهُوَ لَا يُرِيدُهُمْ فَإِنْ ذَكَرُوا حَدِيثَ أَبِي هُرَيْرَةَ، وَابْنِ عُمَرَ كِلَاهُمَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ صَلَاةَ الْجَمَاعَةِ تَزِيدُ عَلَى صَلَاةِ الْمُنْفَرِدِ سَبْعًا وَعِشْرِينَ دَرَجَةً» .

قُلْنَا: هَذَانِ خَبَرَانِ صَحِيحَانِ، وَقَدْ صَحَّتْ الْأَخْبَارُ الَّتِي صَدَّرْنَاهَا، وَثَبَتَ أَنَّهُ لَا صَلَاةَ لِمُتَخَلِّفٍ عَنْ الْجَمَاعَةِ إلَّا أَنْ يَكُونَ مَعْذُورًا، فَوَجَبَ اسْتِعْمَالُ هَذَيْنِ الْخَبَرَيْنِ عَلَى مَا قَدْ صَحَّ هُنَالِكَ، لَا عَلَى التَّعَارُضِ وَالتَّنَاقُضِ الْمُبْعَدَيْنِ عَنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L7450 Thus, it is established that this preferential distinction applies only to the prayer of one with a valid excuse—which is permissible and lesser in merit than congregational prayer—as the Prophet (peace be upon him) reported.

فَصَحَّ أَنَّ هَذَا التَّفَاضُلَ إِنَّمَا هُوَ عَلَى صَلَاةِ الْمَعْذُورِ الَّتِي تَجُوزُ، وَهِيَ دُونَ صَلَاةِ الْجَمَاعَةِ فِي الْفَضْلِ كَمَا أَخْبَرَ - عَلَيْهِ السَّلَامُ -.

L7451 Whoever interprets these two reports contrary to what we have mentioned will have incurred opposition to the Messenger of Allah (peace be upon him) in the other narrations, disbelieved his statement (peace be upon him) that "there is no prayer outside congregational prayer except with an excuse," treated his warning lightly, and disobeyed his command (peace be upon him) to respond to the call to prayer.

وَمَنْ حَمَلَ هَذَيْنِ الْخَبَرَيْنِ عَلَى غَيْرِ مَا ذَكَرْنَا حَصَلَ عَلَى خِلَافِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْأَحَادِيثِ الْأُخَرِ، وَعَلَى تَكْذِيبِهِ - عَلَيْهِ السَّلَامُ - فِي قَوْلِهِ: أَنْ لَا صَلَاةَ فِي غَيْرِ الْجَمَاعَةِ إِلَّا لِمَعْذُورٍ، وَاسْتَخَفَّ بِوَعِيدِهِ، وَعَصَى أَمْرَهُ - عَلَيْهِ السَّلَامُ - فِي إِجَابَةِ النِّدَاءِ.

L7452 Is it not an exceedingly grave matter that one of two or more individuals leads the prayer?

وَبِأَنْ يَؤُمَّ الِاثْنَيْنِ فَصَاعِدًا أَحَدُهُمَا، وَهَذَا عَظِيمٌ جِدًّا؟

L7453 And this which we have said is like the statement of Allah, the Exalted: "Not equal are the believers who remain behind - other than those with valid excuses - and those who strive in jihad in Allah's cause with their wealth and lives. Allah has elevated those who strive with their wealth and lives above those who remain behind by a degree. To each [group] Allah has promised the finest reward, and Allah has favored those who strive over those who remain behind with an immense reward - and ranks from Him" [An-Nisa 4:95-96].[52]

وَهَذَا الَّذِي قُلْنَا: هُوَ مِثْلُ قَوْلِ اللَّهِ تَعَالَى: {لا يَسْتَوِي الْقَاعِدُونَ مِنَ الْمُؤْمِنِينَ غَيْرُ أُولِي الضَّرَرِ وَالْمُجَاهِدُونَ فِي سَبِيلِ اللَّهِ بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ فَضَّلَ اللَّهُ الْمُجَاهِدِينَ بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ عَلَى الْقَاعِدِينَ دَرَجَةً وَكُلا وَعَدَ اللَّهُ الْحُسْنَى وَفَضَّلَ اللَّهُ الْمُجَاهِدِينَ عَلَى الْقَاعِدِينَ أَجْرًا عَظِيمًا} [النساء: ٩٥] {دَرَجَاتٍ مِنْهُ} [النساء: ٩٦] .

L7454–7455 The Exalted has explicitly decreed that whoever neglects to join jihad without valid excuse is condemned in the strongest terms, as emphasized in numerous Quranic verses. Among these is His declaration: {O you who believe! What ails you that when you are commanded to march forth in Allah's cause, you become sluggish towards the earth? Do you prefer the life of this world over the Hereafter? Yet the enjoyment of worldly life compared to the Hereafter is but insignificant} [9:38]. {If you do not march forth, He will inflict upon you a grievous punishment and replace you with another people} [9:39] - among many other verses.[53]

فَنَصَّ تَعَالَى عَلَى أَنَّ الْمُتَخَلِّفَ عَنِ الْجِهَادِ بِغَيْرِ عُذْرٍ مَذْمُومٌ أَشَدَّ الذَّمِّ فِي غَيْرِ مَا مَوْضِعٍ مِنَ الْقُرْآنِ -: مِنْهَا قَوْلُه تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا مَا لَكُمْ إِذَا قِيلَ لَكُمُ انْفِرُوا فِي سَبِيلِ اللَّهِ اثَّاقَلْتُمْ إِلَى الأَرْضِ أَرَضِيتُمْ بِالْحَيَاةِ الدُّنْيَا مِنَ الآخِرَةِ فَمَا مَتَاعُ الْحَيَاةِ الدُّنْيَا فِي الآخِرَةِ إِلا قَلِيلٌ} [التوبة: ٣٨] {إِلا تَنْفِرُوا يُعَذِّبْكُمْ عَذَابًا أَلِيمًا وَيَسْتَبْدِلْ قَوْمًا غَيْرَكُمْ} [التوبة: ٣٩] فِي آيَاتٍ كَثِيرَةٍ جِدًّا.

L7456–7458 Then Allah the Exalted clarified that the mujāhidīn are preferred over those

ثُمَّ بَيَّنَ اللَّهُ تَعَالَى أَنَّ الْمُجَاهِدِينَ مُفَضَّلُونَ عَلَى الْقَاعِدِينَ دَرَجَةً وَدَرَجَاتٍ، فَصَحَّ أَنَّهُ إِنَّمَا عَنَى الْقَاعِدِينَ الْمَعْذُورِينَ الَّذِينَ لَهُمْ نَصِيبٌ مِنْ وَعْدِ اللَّهِ الْحُسْنَى وَالْأَجْرُ، لَا الَّذِينَ

[52] **Qur'an references (L7453):** Qur'an 4:95 (An-Nisa); Qur'an 4:96 (An-Nisa).
[53] **Qur'an references (L7455):** Qur'an 9:38 (At-Tawbah); Qur'an 9:39 (At-Tawbah).

who remain behind by one degree and multiple degrees. Thus, it is established that He only meant the excused ones who remain behind—those entitled to a share of Allah's goodly promise and reward—not those threatened with punishment? And as the Prophet (peace be upon him) informed us that the prayer of one sitting is half the prayer of one standing, and there is no disagreement with us that one who prays sitting without an excuse has no reward or share in the prayer. Hence, it is confirmed that the mentioned ratio of virtue applies only to those permitted to pray sitting due to an excuse such as fear, illness, or in supererogatory prayers. If they intend to restrict this solely to supererogatory prayers, then we ask them for evidence of that—but do they have any basis for it except by falsely claiming that the excused person in obligatory prayers has their prayer equal to that of one standing? This is a false claim contradicting the general statement of the Prophet (peace be upon him): "The prayer of one sitting is half the prayer of one standing," without any specification from him (peace be upon him)? Additionally, Ḥummām ibn Aḥmad narrated to us, saying: ʿAbbās ibn Aṣbagh narrated to us, Muḥammad ibn ʿAbd al-Malik ibn Ayman narrated to us, Bakr ibn Ḥammād and Judge Aḥmad ibn Muḥammad al-Birtī—Judge al-Birtī said: Abū Maʿmar, who is ʿAbdullāh ibn ʿAmr al-Raqqī, narrated to us, ʿAbd al-Wārith—Bakr said: Musaddad narrated to us, Yaḥyā ibn Saʿīd al-Qaṭṭān and ʿAbd al-Wārith ibn Saʿīd al-Tannūrī. Then they both concurred in narration from al-Ḥusayn al-Muʿallim, from ʿAbdullāh ibn Buraydah, from ʿImrān ibn al-Ḥuṣayn. Al-Qāḍī al-Birtī narrated in his ḥadīth: Indeed ʿImrān ibn al-Ḥuṣayn—who suffered from hemorrhoids—reported to him that he asked the Messenger of Allāh, peace and blessings be upon him, about praying while sitting. The Prophet, peace be upon him, said: "Whoever prays standing, it is superior. Whoever prays sitting receives half the reward of one standing, and whoever prays lying down receives half the reward of one sitting." ʿAlī said: "Our opponents do not permit voluntary prayers through gestures for those who are healthy, thus their interpretation is entirely invalidated—and all praise belongs to Allāh the Exalted."[54]

تُوعَدُوا بِالْعَذَابِ؟ وَكَمَا أَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّ صَلَاةَ الْقَاعِدِ عَلَى النِّصْفِ مِنْ صَلَاةِ الْقَائِمِ، وَلَمْ يَخْتَلِفُوا مَعَنَا فِي أَنَّ الْمُصَلِّيَ قَاعِدًا بِغَيْرِ عُذْرٍ لَا أَجْرَ لَهُ، وَلَا نَصِيبَ مِنْ الصَّلَاةِ، فَصَحَّ أَنَّ النِّسْبَةَ الْمَذْكُورَةَ مِنْ الْفَضْلِ إنَّمَا هِيَ بَيْنَ الْمُبَاحِ لَهُ الصَّلَاةُ قَاعِدًا لِعُذْرٍ مِنْ خَوْفٍ أَوْ مَرَضٍ أَوْ فِي نَافِلَةٍ؟ فَإِنْ أَرَادُوا أَنْ يَخُصُّوا بِذَلِكَ النَّافِلَةَ فَقَطْ، سَأَلْنَاهُمْ الدَّلِيلَ عَلَى ذَلِكَ؟ وَلَا سَبِيلَ لَهُمْ إلَيْهِ، إلَّا بِدَعْوَى فِي أَنَّ الْمَعْذُورَ فِي الْفَرِيضَةِ صَلَاتُهُ كَصَلَاةِ الْقَائِمِ، وَهَذِهِ دَعْوَى كَاذِبَةٌ مُخَالِفَةٌ لِعُمُومِ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «صَلَاةُ الْقَاعِدِ عَلَى النِّصْفِ مِنْ صَلَاةِ الْقَائِمِ» دُونَ تَخْصِيصٍ مِنْهُ - عَلَيْهِ السَّلَامُ -؟ وَأَيْضًا - فَإِنَّ حُمَامَ بْنَ أَحْمَدَ حَدَّثَنَا قَالَ: ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا بَكْرُ بْنُ حَمَّادٍ، وَالْقَاضِي أَحْمَدُ بْنُ مُحَمَّدٍ الْبِرْتِيُّ -: قَالَ الْقَاضِي الْبِرْتِيُّ: ثنا أَبُو مَعْمَرٍ هُوَ عَبْدُ اللَّهِ بْنُ عَمْرٍو الرَّقِّيُّ ثنا عَبْدُ الْوَارِثِ -: وَقَالَ بَكْرٌ: ثنا مُسَدَّدٌ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ وَعَبْدُ الْوَارِثِ بْنُ سَعِيدٍ التَّنُّورِيُّ ثُمَّ اتَّفَقَا عَنْ الْحُسَيْنِ الْمُعَلِّمِ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ -: قَالَ الْقَاضِي الْبِرْتِيُّ فِي حَدِيثِهِ: إنَّ عِمْرَانَ بْنَ الْحُصَيْنِ حَدَّثَهُ - وَكَانَ رَجُلًا مَبْسُورًا: «أَنَّهُ سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ صَلَاةِ الرَّجُلِ وَهُوَ قَاعِدٌ، فَقَالَ - عَلَيْهِ السَّلَامُ -: مَنْ صَلَّى قَائِمًا فَهُوَ أَفْضَلُ، وَمَنْ صَلَّى قَاعِدًا فَلَهُ نِصْفُ أَجْرِ الْقَائِمِ، وَمَنْ صَلَّى نَائِمًا فَلَهُ نِصْفُ أَجْرِ الْقَاعِدِ» قَالَ عَلِيٌّ: وَخُصُومُنَا لَا يُجِيزُونَ التَّنَفُّلَ بِالْإِيمَاءِ لِلصَّحِيحِ، فَبَطَلَ تَأْوِيلُهُمْ جُمْلَةً - وَلِلَّهِ تَعَالَى الْحَمْدُ.

[54] **Hadith references (L7456):** Sahih al-Bukhari 1116; Sunan Ibn Majah 1231; Sunan an-Nasai 1660.

L7459 There is no doubt that one who performs good deeds is superior to another prevented by an excuse from doing so. This is explicitly stated in the narration where the poor said: “O Messenger of Allah, those with abundant wealth have taken the rewards!” Thereupon, the Messenger of Allah (peace and blessings of Allah be upon him) taught them the *dhikr* he had taught them. When the wealthy learned of it, they practiced it in addition to what they were already doing—freeing slaves and giving charity. The poor mentioned this to the Messenger of Allah (peace and blessings of Allah be upon him), and he said: “That is the bounty of Allah, which He grants to whom He wills.”[55]

وَلَا شَكَّ فِي أَنَّ مَنْ فَعَلَ الْخَيْرَ أَفْضَلُ مِنْ آخَرَ مَنَعَهُ الْعُذْرُ مِنْ فِعْلِهِ، وَهَذَا مَنْصُوصٌ عَلَيْهِ فِي الْخَبَرِ الَّذِي فِيهِ -: إنَّ الْفُقَرَاءَ قَالُوا: يَا رَسُولَ اللَّهِ، ذَهَبَ أَصْحَابُ الدُّثُورِ بِالْأُجُورِ، فَعَلَّمَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الذِّكْرَ الَّذِي عَلَّمَهُمْ، فَبَلَغَ الْأَغْنِيَاءَ فَفَعَلُوهُ زَائِدًا عَلَى مَا كَانُوا يَفْعَلُونَهُ مِنْ الْعِتْقِ وَالصَّدَقَةِ، فَذَكَرَ الْفُقَرَاءُ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: «ذَلِكَ فَضْلُ اللَّهِ يُؤْتِيهِ مَنْ يَشَاءُ» .

L7460 There is no disagreement that one who performs the pilgrimage is superior to one who does not - including those prevented by a valid excuse - and the same applies to all other acts of worship. Indeed, an authentic report states: “Whoever intends a good deed but does not act upon it, one good deed is recorded for him; and if he performs it, ten good deeds are recorded for him.”

وَلَا خِلَافَ فِي أَنَّ مَنْ حَجَّ أَفْضَلُ مِمَّنْ لَمْ يَحُجَّ مِمَّنْ أَقْعَدَهُ الْعُذْرُ، وَهَكَذَا فِي سَائِرِ الْأَعْمَالِ - وَقَدْ جَاءَ فِي الْأَثَرِ الصَّحِيحِ: «مَنْ هَمَّ بِحَسَنَةٍ فَلَمْ يَعْمَلْهَا كُتِبَتْ لَهُ حَسَنَةً، فَإِنْ عَمِلَهَا كُتِبَتْ لَهُ عَشْرًا» .

L7461–7463 Did he—peace be upon him—generalize [the ruling] to include one who did not perform it, whether with an excuse or without? If they cite the transmitted report regarding one who had a regular nightly devotion but was prevented by illness or sleep: “Is it recorded for him?” We reply: We do not deny the specification of whatever Allah the Exalted wills to specify when a textual evidence states so. We only reject specification through personal opinion, conjecture, or mere claim. His standing [in prayer] may indeed be recorded for him as in the hadith, and the reward of the one who prays is multiplied tenfold according to his standing. This is plausible and consistent with all scriptural texts—and success comes from Allah alone. If they cite: “The Messenger of Allah—peace and blessings be upon him—led people in prayer in his house while his foot was dislocated and in the house of Anas?” We respond: Yes, and he—peace be upon him—was excused due to his dislocated foot. Those with him cannot be free from either... They may all be the people of the mosque, so they prayed there, forming the congregation there.

فَعَمَّ - عَلَيْهِ السَّلَامُ - مَنْ لَمْ يَعْمَلْهَا بِعُذْرٍ أَوْ غَيْرِ عُذْرٍ؟ فَإِنْ ذَكَرُوا الْأَثَرَ الْوَارِدَ فِيمَنْ كَانَ لَهُ حِزْبٌ مِنْ اللَّيْلِ فَأَقْعَدَهُ عَنْهُ الْمَرَضُ أَوْ النَّوْمُ: كُتِبَ لَهُ؟ قُلْنَا: لَا نُنْكِرُ تَخْصِيصَ مَا شَاءَ اللَّهُ تَعَالَى تَخْصِيصَهُ إذَا وَرَدَ النَّصُّ بِذَلِكَ، وَإِنَّمَا نُنْكِرُهُ بِالرَّأْيِ وَالظَّنِّ وَالدَّعْوَى، وَقَدْ يُكْتَبُ لَهُ الْقِيَامُ كَمَا فِي الْحَدِيثِ، وَيُضَاعَفُ الْأَجْرُ لِلْقَائِمِ عَشَرَةَ أَمْثَالِ قِيَامِهِ، فَهَذَا مُمْكِنٌ مُوَافِقٌ لِسَائِرِ النُّصُوصِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. فَإِنْ ذَكَرُوا: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَّ النَّاسَ فِي بَيْتِهِ وَهُوَ مُنْفَكُّ الْقَدَمِ وَفِي مَنْزِلِ أَنَسٍ؟» قُلْنَا: نَعَمْ، وَهُوَ مَعْذُورٌ - عَلَيْهِ السَّلَامُ - بِانْفِكَاكِ قَدَمِهِ، وَلَا يَخْلُو الَّذِينَ مَعَهُ مِنْ أَنْ يَكُونُوا جَمِيعَ أَهْلِ الْمَسْجِدِ فَصَلَّوْا هُنَالِكَ، فَهُنَالِكَ كَانَتْ الْجَمَاعَةُ، وَهَذَا لَا نُنْكِرُهُ، أَوْ مِنْ أَنْ يَكُونُوا مِمَّنْ لَزِمَهُ الْكَوْنُ مَعَهُ - عَلَيْهِ السَّلَامُ - لِضَرُورَةٍ، فَهَذَا عُذْرٌ، وَتَكُونُ إمَامَتُهُ فِي مَنْزِلِ أَنَسٍ فِي غَيْرِ وَقْتِ صَلَاةِ فَرْضٍ، لَكِنْ تَطَوُّعًا؟ وَكُلُّ هَذَا لَا يُعَارَضُ بِهِ مَا ثَبَتَ

[55] **Qur’an references (L7459):** Qur’an 5:54 (Al-Ma’idah); Qur’an 57:21 (Al-Hadid); Qur’an 62:4 (Al-Jumu’ah).

مِنْ وُجُوبِ فَرْضِ الصَّلَاةِ فِي جَمَاعَةٍ، وَوُجُوبِ إِجَابَةِ دَاعِي اللَّهِ تَعَالَى فِي قَوْلِهِ: " حَيَّ عَلَى الصَّلَاةِ "؟ .

We do not deny this. Alternatively, they might be among those compelled by necessity to remain with him (peace be upon him)—this constitutes an excuse. Would his leading prayer in Anas's house outside the time of obligatory prayer count as voluntary prayer? None of this opposes the established obligation of prescribed prayer in congregation or the duty to respond to the caller proclaiming Allah's exalted message in the phrase: "Come to prayer."

وَقَالَ الشَّافِعِيُّ: هِيَ فَرْضٌ عَلَى الْكِفَايَةِ؟ قَالَ عَلِيٌّ: وَهَذِهِ دَعْوَى بِلَا بُرْهَانٍ، وَإِذْ أَقَرَّ بِأَنَّهَا فَرْضٌ، ثُمَّ ادَّعَى سُقُوطَ الْفَرْضِ لَمْ يُصَدَّقْ إِلَّا بِنَصٍّ وَقَدْ قَالَ: بِمِثْلِ هَذَا جَمَاعَةٌ مِنْ السَّلَفِ -: رُوِّينَا عَنْ أَبِي هُرَيْرَةَ أَنَّهُ رَأَى إِنْسَانًا خَرَجَ مِنْ الْمَسْجِدِ بَعْدَ النِّدَاءِ فَقَالَ " أَمَّا هَذَا فَقَدْ عَصَى أَبَا الْقَاسِمِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ".

L7464 Al-Shafi'i said: "Is it a collective obligation?" 'Ali replied: "This is an unsupported claim. Having acknowledged it as an obligation, then asserting its cessation, he cannot be deemed credible except through textual evidence." It is reported that a group of the Salaf upheld this position—as narrated from Abu Hurayrah, who saw a man leave the mosque after the prayer call and declared: "As for this one, he has disobeyed Abu al-Qasim—may Allah's peace and blessings be upon him."

وَرُوِّينَا عَنْ أَبِي الْأَحْوَصِ عَنْ ابْنِ مَسْعُودٍ أَنَّهُ قَالَ: " حَافِظُوا عَلَى هَذِهِ الصَّلَوَاتِ الْخَمْسِ حَيْثُ يُنَادَى بِهِنَّ، فَإِنَّهُنَّ مِنْ سُنَنِ الْهُدَى، وَلَقَدْ رَأَيْتُنَا وَمَا يَتَخَلَّفُ عَنْهُنَّ إِلَّا مُنَافِقٌ بَيِّنُ النِّفَاقِ، وَلَقَدْ رَأَيْتُنَا وَإِنَّ الرَّجُلَ يُهَادَى بَيْنَ الرَّجُلَيْنِ حَتَّى يُقَامَ فِي الصَّفِّ وَمَا مِنْكُمْ أَحَدٌ إِلَّا لَهُ مَسْجِدٌ فِي بَيْتِهِ، وَلَوْ صَلَّيْتُمْ فِي بُيُوتِكُمْ وَتَرَكْتُمْ مَسَاجِدَكُمْ تَرَكْتُمْ سُنَّةَ نَبِيِّكُمْ، وَلَوْ تَرَكْتُمْ سُنَّةَ نَبِيِّكُمْ لَكَفَرْتُمْ ".

L7465 It has been narrated to us from Abī al-Aḥwaṣ from Ibn Masʿūd that he said: "Preserve these five prayers **when** they are called, for they are among the **guided practices**. **Truly, I have seen us** when **no one stayed away** from them except a **clear hypocrite**. **Truly, I have seen us** when a man would be **supported** between two men until he **took his place** in the row. There is none among you except that he has a place of prayer in his house. If you were to pray in your homes and abandon your mosques, you would **abandon** the **Sunnah** of your Prophet. If you were to abandon the **Sunnah** of your Prophet, you would **disbelieve**."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ أَبِي حُصَيْنٍ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ قَالَ: مَنْ سَمِعَ الْمُنَادِيَ فَلَمْ يُجِبْ مِنْ غَيْرِ عُذْرٍ فَلَا صَلَاةَ لَهُ.

L7466 And through the narration of Wakiʿ from Misʿar ibn Kidām from Abū Ḥuṣayn from Abū Burdah ibn Abī Mūsā from Abū Mūsā al-Ashʿarī, who said: Whoever hears the caller to prayer and does not respond to the call without an excuse, there is no prayer for him.

وَعَنْ ابْنِ مَسْعُودٍ: مَنْ سَمِعَ الْمُنَادِيَ فَلَمْ يُجِبْ مِنْ غَيْرِ عُذْرٍ فَلَا صَلَاةَ لَهُ؟ وَعَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ صَلَّى رَكْعَتَيْنِ مِنْ الْمَكْتُوبَةِ فِي بَيْتِهِ فَسَمِعَ الْإِقَامَةَ فَخَرَجَ إِلَيْهَا؟ قَالَ عَلِيٌّ: لَوْ أَجْزَأَتْ ابْنَ عُمَرَ صَلَاتُهُ فِي مَنْزِلِهِ مَا قَطَعَهَا؟

L7467–7469 From Ibn Masʿūd: "Whoever hears the caller to prayer and does not respond without an excuse - there is no prayer for him." Narrated by Maʿmar from Ayyūb al-Sakhtiyānī from Nāfiʿ from Ibn ʿUmar: "That he prayed two rakʿahs of..." If he prayed the obligatory prayer in his house and heard the iqāmah, then went out to it? ʿAlī said: Had Ibn ʿUmar's prayer in his home been

valid, would he have abandoned it? From Abū Hurayrah: It would be better for a son of Adam to have his ears filled with molten lead than to hear the mu'adhdhin and not respond to him. From Sufyān al-Thawrī, from Manṣūr, from ʿAdī ibn Thābit al-Anṣārī, from ʿĀ'ishah, the Mother of the Believers, who said: Whoever hears the call and does not come to it neither intends good nor is good intended for him. From Yaḥyā ibn Saʿīd al-Qaṭṭān: Abū Ḥayyān Yaḥyā ibn Saʿīd al-Taymī reported to us: My father narrated to me from ʿAlī ibn Abī Ṭālib: There is no valid prayer for the neighbor of the mosque except in the mosque. He was asked: O Commander of the Faithful, who is the neighbor of the mosque? He replied: One who hears the adhān. A similar narration is transmitted via Sufyān ibn ʿUyaynah and Sufyān al-Thawrī, from the aforementioned Abū Ḥayyān, from his father, from ʿAlī.

وَعَنْ أَبِي هُرَيْرَةَ: لَأَنْ يُمْتَلِئَ أُذُنَا ابْنِ آدَمَ رَصَاصًا مُذَابًا خَيْرٌ لَهُ مِنْ أَنْ يَسْمَعَ الْمُنَادِيَ فَلَا يُجِيبُهُ؟ وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ عَدِيِّ بْنِ ثَابِتٍ الْأَنْصَارِيِّ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: مَنْ سَمِعَ النِّدَاءَ فَلَمْ يَأْتِهِ فَلَمْ يُرِدْ خَيْرًا وَلَمْ يُرَدْ بِهِ وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ: ثنا أَبُو حَيَّانَ يَحْيَى بْنُ سَعِيدٍ التَّيْمِيُّ حَدَّثَنِي أَبِي عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: لَا صَلَاةَ لِجَارِ الْمَسْجِدِ إِلَّا فِي الْمَسْجِدِ؟ فَقِيلَ لَهُ: يَا أَمِيرَ الْمُؤْمِنِينَ، وَمَنْ جَارُ الْمَسْجِدِ؟ قَالَ: مَنْ سَمِعَ الْأَذَانَ وَمِثْلُهُ مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ، وَسُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي حَيَّانَ الْمَذْكُورِ عَنْ أَبِيهِ عَنْ عَلِيٍّ.

L7470 And from Muhammad ibn Ja'far from Shu'bah from 'Adi ibn Thabit: I heard Sa'id ibn Jubayr narrating from Ibn 'Abbas that he said: Whoever hears the call to prayer and does not come [to join the congregation], his prayer is not valid except due to a valid excuse.

وَعَنْ مُحَمَّدِ بْنِ جَعْفَرٍ عَنْ شُعْبَةَ عَنْ عَدِيِّ بْنِ ثَابِتٍ سَمِعْت سَعِيدَ بْنَ جُبَيْرٍ يُحَدِّثُ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: مَنْ سَمِعَ النِّدَاءَ، ثُمَّ لَمْ يَأْتِ فَلَا صَلَاةَ لَهُ إِلَّا مِنْ عُذْرٍ.

L7471 There is no concession for any of Allah's creation in urban areas or villages who hear the adhan and the iqamah to abandon prayer. Ibn Jurayj said: I asked him, "Even if he is selling goods and fears they will be lost if he leaves them?" He replied, "No, there is no concession for him in that." I said, "What if he is ill, has eye inflammation that does not prevent him [from attending prayer], or suffers pain in his hand?" He said, "I prefer that he make the effort." I asked him, "What about someone from the village who does not hear the call, even if he is near the mosque?" He replied, "If he wishes, let him come; otherwise, let him stay."

وَعَنْ عَطَاءٍ: لَيْسَ لِأَحَدٍ مِنْ خَلْقِ اللَّهِ تَعَالَى فِي الْحَضَرِ وَالْقَرْيَةِ يَسْمَعُ النِّدَاءَ وَالْإِقَامَةَ -: رُخْصَةٌ فِي أَنْ يَدَعَ الصَّلَاةَ قَالَ ابْنُ جُرَيْجٍ: فَقُلْت لَهُ: وَإِنْ كَانَ عَلَى بَزٍّ يَبِيعُهُ يَفْرَقُ إِنْ قَامَ عَنْهُ أَنْ يَضِيعَ؟ قَالَ: لَا، لَا رُخْصَةَ لَهُ فِي ذَلِكَ؟ قُلْت: إِنْ كَانَ بِهِ مَرَضٌ أَوْ رَمَدٌ غَيْرُ حَابِسٍ أَوْ تَشْتَكِي يَدُهُ؟ قَالَ: أَحَبُّ إِلَيَّ أَنْ يَتَكَلَّفَ، قُلْت لَهُ: أَرَأَيْت مَنْ لَمْ يَسْمَعْ النِّدَاءَ مِنْ أَهْلِ الْقَرْيَةِ وَإِنْ كَانَ قَرِيبًا مِنْ الْمَسْجِدِ؟ قَالَ: إِنْ شَاءَ فَلْيَأْتِ، وَإِنْ شَاءَ فَلْيَجْلِسْ

L7472 From 'Aṭā': We used to hear that none would abstain from congregational prayer except a hypocrite. And from Ibrāhīm al-Nakha'ī: He did not grant a concession to abandon prayer in congregation except for one who is sick or fearful.

؟ وَعَنْ عَطَاءٍ: كُنَّا نَسْمَعُ أَنَّهُ لَا يَتَخَلَّفُ عَنْ الْجَمَاعَةِ إِلَّا مُنَافِقٌ وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّهُ كَانَ لَا يُرَخِّصُ فِي تَرْكِ الصَّلَاةِ فِي الْجَمَاعَةِ إِلَّا لِمَرِيضٍ أَوْ خَائِفٍ؟

L7473–7474 From Hisham ibn Hassan, from al-Hasan, who said: "When a man hears the call to prayer, he is accounted." From Sufyan ibn Uyaynah, who narrated:

Abd al-Rahman ibn Harmalah reported: “I was with Sa‘id ibn al-Musayyib when a man came to ask him about a matter. The caller proclaimed the prayer, and the man sought to leave. Sa‘id said: ’The prayer has been called.’ The man replied: ’My companions have departed, and my mount is at the door.’ Sa‘id said: ’Do not leave, for the Messenger of Allah—peace and blessings be upon him—said: ”None leaves this mosque after the call except a hypocrite, unless a man departs intending to return to the prayer.“’ The man insisted on leaving. Sa‘id said: ’Deal with this man.”’ He continued: “One day while I was with him, a man came and said: ’O Abu Muhammad, did you not see the man?’—meaning the one who had left—’He fell from his mount and broke his leg.’ Sa‘id said: ’I indeed suspected something would befall him.’ This is the view of Abu Sulayman and all our companions. As for women, there is no dispute that their attendance at congregational prayer is not obligatory. Authentic reports confirm that the Prophet’s wives—peace and blessings be upon him—remained in their chambers and did not go to the mosque. People differed regarding which is superior for them: praying in their homes or in mosques with congregations. The proof for our position—as we have mentioned—is the statement of the Messenger of Allah—peace and blessings be upon him: ’Congregational prayer exceeds individual prayer by twenty-seven degrees.”’

وَعَنْ هِشَامِ بْنِ حَسَّانٍ عَنْ الْحَسَنِ قَالَ: إذَا سَمِعَ الرَّجُلُ الْأَذَانَ فَقَدْ اُحْتُبِسَ؟ وَعَنْ سُفْيَانَ بْنِ عُيَيْنَةَ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ حَرْمَلَةَ قَالَ: كُنْت عِنْدَ سَعِيدِ بْنِ الْمُسَيِّبِ فَجَاءَهُ رَجُلٌ فَسَأَلَهُ عَنْ بَعْضِ الْأَمْرِ وَنَادَى الْمُنَادِي فَأَرَادَ أَنْ يَخْرُجَ فَقَالَ لَهُ سَعِيدٌ: قَدْ نُودِيَ بِالصَّلَاةِ، فَقَالَ لَهُ الرَّجُلُ: إنَّ أَصْحَابِي قَدْ مَضَوْا وَهَذِهِ رَاحِلَتِي بِالْبَابِ، فَقَالَ لَهُ سَعِيدٌ: لَا تَخْرُجْ، فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَخْرُجُ مِنْ هَذَا الْمَسْجِدِ بَعْدَ النِّدَاءِ إلَّا مُنَافِقٌ، إلَّا رَجُلٌ خَرَجَ وَهُوَ يُرِيدُ الرَّجْعَةَ إلَى الصَّلَاةِ» فَأَبَى الرَّجُلُ إلَّا الْخُرُوجَ، فَقَالَ سَعِيدٌ: دُونَكُمْ الرَّجُلُ، قَالَ: فَإِنِّي عِنْدَهُ ذَاتَ يَوْمٍ إذْ جَاءَهُ رَجُلٌ فَقَالَ: يَا أَبَا مُحَمَّدٍ أَلَمْ تَرَ الرَّجُلَ؟ - يَعْنِي ذَلِكَ الَّذِي خَرَجَ - وَقَعَ عَنْ رَاحِلَتِهِ فَانْكَسَرَتْ رِجْلُهُ قَالَ سَعِيدٌ: قَدْ ظَنَنْت أَنَّهُ سَيُصِيبُهُ أَمْرٌ؟ وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا؟ وَأَمَّا النِّسَاءُ فَلَا خِلَافَ فِي أَنَّ شُهُودَهُنَّ الْجَمَاعَةَ لَيْسَ فَرْضًا؟ وَقَدْ صَحَّ فِي الْآثَارِ كَوْنُ نِسَاءِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حُجَرِهِنَّ لَا يَخْرُجْنَ إلَى الْمَسْجِدِ؟ وَاخْتَلَفَ النَّاسُ فِي أَيِّ الْأَمْرَيْنِ أَفْضَلُ لَهُنَّ؟ أَصَلَاتُهُنَّ فِي بُيُوتِهِنَّ؟ أَمْ فِي الْمَسَاجِدِ فِي الْجَمَاعَاتِ -: وَبُرْهَانُ صِحَّةِ قَوْلِنَا -: هُوَ مَا قَدْ ذَكَرْنَا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ صَلَاةَ الْجَمَاعَةِ تَفْضُلُ صَلَاةَ الْمُنْفَرِدِ بِسَبْعٍ وَعِشْرِينَ دَرَجَةً» .

L7475 This is a general ruling from which it is impermissible to exclude women in favor of others besides them.

وَهَذَا عُمُومٌ لَا يَجُوزُ أَنْ يُخَصَّ مِنْهُ النِّسَاءُ مِنْ غَيْرِهِنَّ -

L7476 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul-Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: From Harmalah ibn Yahya, from Ibn Wahb, from Yunus ibn Yazid, from Ibn Shihab, from Salim ibn Abdullah ibn Umar that his father Abdullah ibn Umar said: I heard the Messenger of Allah, peace and blessings be upon him, say: “Do

: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ أَنَا حَرْمَلَةُ بْنُ يَحْيَى أَنَا ابْنُ وَهْبٍ أَنَا يُونُسُ هُوَ ابْنُ يَزِيدَ - عَنْ ابْنِ شِهَابٍ أَنَا سَالِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّ أَبَاهُ عَبْدَ اللَّهِ بْنَ عُمَرَ

not prevent your women from the mosques if they seek your permission to go to them."

قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا تَمْنَعُوا نِسَاءَكُمْ الْمَسَاجِدَ إذَا اسْتَأْذَنَّكُمْ إلَيْهَا» .

L7477 Bilal ibn Abdullah said, "By Allah, we will prevent them!" Then Abdullah ibn Umar turned to him and reviled him harshly—I had never heard him use such language before—saying, "I am telling you about the Messenger of Allah, peace and blessings be upon him, and you say, 'By Allah, we will prevent them'?"

فَقَالَ بِلَالُ بْنُ عَبْدِ اللَّهِ: وَاَللَّهِ لَنَمْنَعُهُنَّ، فَأَقْبَلَ عَلَيْهِ عَبْدُ اللَّهِ بْنُ عُمَرَ فَسَبَّهُ سَبًّا سَيِّئًا، مَا سَمِعْته سَبَّهُ مِثْلَهُ قَطُّ قَالَ: أُخْبِرُكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَقُولُ: وَاَللَّهِ لَنَمْنَعُهُنَّ

L7478–7480 And by the same chain to Muslim: It was narrated to us by 'Amr an-Nāqid and Zuhayr ibn Ḥarb, both from Sufyān ibn 'Uyaynah, from az-Zuhrī, who heard Sālim ibn 'Abd Allāh ibn 'Umar narrating from his father, attributing it to the Prophet (peace and blessings be upon him), who said: "When... If the wife of any one of you asks his permission to go to the mosque, he must not prevent her.[56]

وَبِهِ إلَى مُسْلِمٍ: حَدَّثَنَا عَمْرٌو النَّاقِدُ وَزُهَيْرُ بْنُ حَرْبٍ كِلَاهُمَا عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الزُّهْرِيِّ سَمِعَ سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ يُحَدِّثُ عَنْ أَبِيهِ يَبْلُغُ بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا اسْتَأْذَنَتْ أَحَدَكُمْ امْرَأَتُهُ إلَى الْمَسْجِدِ فَلَا يَمْنَعْهَا» .

L7481 And through him to Muslim: Muhammad ibn Abdullah ibn Numayr narrated to us: His father and Abdullah ibn Idris both said: Ubaydullah ibn Umar narrated to us from Nafi from Ibn Umar, who said: The Messenger of Allah (peace be upon him) said: "Do not prevent the female servants of Allah from Allah's mosques."

وَبِهِ إلَى مُسْلِمٍ: حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ ثنا أَبِي، وَعَبْدُ اللَّهِ بْنُ إدْرِيسَ قَالَا: ثنا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَمْنَعُوا إمَاءَ اللَّهِ مَسَاجِدَ اللَّهِ» .

L7482 And with his chain to Muslim: Abu Kurayb narrated to us; Abu Mu'awiyah narrated to us from al-A'mash from Mujahid from Ibn 'Umar, who said: The Messenger of Allah (peace be upon him) said: "Do not prevent women from going out to the mosques at night."[57]

وَبِهِ إلَى مُسْلِمٍ: حَدَّثَنَا أَبُو كُرَيْبٍ ثنا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ مُجَاهِدٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَمْنَعُوا النِّسَاءَ مِنْ الْخُرُوجِ إلَى الْمَسَاجِدِ بِاللَّيْلِ» .

L7483 And through him to Muslim: Abu Bakr ibn Abi Shaybah narrated to us; Yahya ibn Sa'id al-Qattan narrated to us from Muhammad ibn 'Ajlan; Bukayr ibn 'Abdullah ibn al-Ashajj narrated to us from Busr ibn Sa'id, from Zaynab - the wife of Abdullah ibn Mas'ud (Ibn Mas'ud) - who said: The Messenger of Allah (peace be upon him) told us: «If any one of you women is present at the mosque, she must not touch perfume.»

وَبِهِ إلَى مُسْلِمٍ: حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ مُحَمَّدِ بْنِ عَجْلَانَ ثنا بُكَيْرُ بْنُ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ بُسْرِ بْنِ سَعِيدٍ عَنْ زَيْنَبَ امْرَأَةِ ابْنِ مَسْعُودٍ قَالَتْ: قَالَ لَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا شَهِدَتْ إحْدَاكُنَّ الْمَسْجِدَ فَلَا تَمَسَّ طِيبًا» .

[56] **Hadith references (L7478):** Sahih Muslim 442a.
[57] **Hadith references (L7482):** Sahih Muslim 442e.

حَدَّثَنَا حُمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا مُحَمَّدُ بْنُ وَضَّاحٍ ثنا حَامِدٌ هُوَ ابْنُ يَحْيَى الْبَلْخِيُّ - ثنا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَلْقَمَةَ بْنِ وَقَّاصٍ اللَّيْثِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَمْنَعُوا إِمَاءَ اللَّهِ مَسَاجِدَ اللَّهِ، وَلَا يَخْرُجْنَ إِلَّا وَهُنَّ تَفِلَاتٌ» .

L7484 Ḥammām reported through the chain: ʿAbbās ibn Aṣbagh → Muḥammad ibn ʿAbd al-Malik ibn Ayman → Muḥammad ibn Waḍḍāḥ → Ḥāmid (Ibn Yaḥyā al-Balkhī) → Sufyān (Ibn ʿUyaynah) → Muḥammad ibn ʿAmr ibn ʿAlqamah ibn Waqqāṣ al-Laythī → Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf → Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said: “Do not prevent the believing women from Allah’s mosques, nor should they go out except when they are unadorned.”

قَالَ عَلِيٌّ: وَهَذَا نَفْسُ قَوْلِنَا، فَإِذَا خَرَجْنَ مُتَزَيِّنَاتٍ أَوْ مُتَطَيِّبَاتٍ فَهُنَّ عَاصِيَاتٌ لِلَّهِ تَعَالَى، خَارِجَاتٌ بِخِلَافِ مَا أُمِرْنَ، فَلَا يَحِلُّ إرْسَالُهُنَّ حِينَئِذٍ أَصْلًا.

L7485 Ali said: This is precisely our view. If they go out adorned or perfumed, they are disobeying Allah the Exalted by venturing contrary to what they were commanded. Thus, it is impermissible to permit their going out at all in that case.

وَالْآثَارُ فِي حُضُورِ النِّسَاءِ صَلَاةَ الْجَمَاعَةِ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُتَوَاتِرَةٌ فِي غَايَةِ الصِّحَّةِ، لَا يُنْكِرُ ذَلِكَ إلَّا جَاهِلٌ -: كَحَدِيثِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «إنْ كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَيُصَلِّي الصُّبْحَ فَيَنْصَرِفُ النِّسَاءُ مُتَلَفِّعَاتٌ بِمُرُوطِهِنَّ مَا يُعْرَفْنَ مِنْ الْغَلَسِ» .

L7486–7488 The reports regarding the presence of women at congregational prayers with the Messenger of Allah—peace and blessings be upon him—are *mutawātir*, meaning mass-transmitted, to the utmost degree. Regarding the validity [of covering oneself], none denies it except an ignorant person - as in the ḥadīth of ʿĀ’ishah the Mother of the Believers: “When the Messenger of Allah (peace and blessings be upon him) prayed the dawn prayer, the women would leave wrapped in their mantles, unrecognizable in the darkness.”[58]

وَحَدِيثِ أَبِي حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ: «لَقَدْ رَأَيْتُ الرِّجَالَ عَاقِدِي أُزُرِهِمْ فِي أَعْنَاقِهِمْ مِنْ ضِيقِ الْأُزُرِ خَلْفَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ قَائِلٌ: يَا مَعْشَرَ النِّسَاءِ، لَا تَرْفَعْنَ رُءُوسَكُنَّ حَتَّى يَرْفَعَ الرِّجَالُ» .

L7489 And the narration of Abū Ḥāzim from Sahl ibn Saʿd: “I indeed saw men tying their waist-wraps around their necks due to the shortness of the waist-wraps behind the Messenger of Allah - peace and blessings be upon him. Then a speaker said: ’O women, do not lift your heads [from prostration] until the men have lifted theirs.”’

وَقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إنِّي لَأَدْخُلُ فِي الصَّلَاةِ أُرِيدُ أَنْ أُطِيلَهَا فَأَسْمَعُ بُكَاءَ الصَّبِيِّ فَأَتَجَوَّزُ فِي صَلَاتِي خَشْيَةَ أَنْ تُفْتَنَ أُمُّهُ» .

L7490 And his statement—peace be upon him—: “Indeed, I enter prayer intending to prolong it, then when I hear a child’s cry, I curtail my prayer out of apprehension that his mother might face distress.”

وَالْخَبَرِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ ثنا حُسَيْنُ بْنُ عَلِيٍّ الْجُعْفِيُّ عَنْ زَائِدَةَ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ عَنْ جَابِرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L7491 The report we have narrated through the chain of Abū Bakr ibn Abī Shay-

[58] **Hadith references (L7486):** Sunan an-Nasai 545; Sunan Abi Dawud 423; Sahih Muslim 645c.

bah, who narrated to us from Ḥusayn ibn ʿAlī al-Juʿfī, from Zā'idah, from ʿAbdullāh ibn Muḥammad ibn ʿAqīl, from Jābir, from the Prophet—peace and blessings be upon him—that he said: "The best rows for men are the front, and the worst the last; the worst rows for women are the front, and the best the last." Then he said: "O assembly of women, when the men prostrate, lower your gaze lest you see men's private parts due to their tight lower garments." And the ḥadīth of Ayyūb, from Nāfiʿ, from Ibn ʿUmar, who said: The Messenger of Allah—peace and blessings be upon him—said: "If we were to leave this door for the women," so Ibn ʿUmar never entered through that door after that until his death.

أَنَّهُ قَالَ: «خَيْرُ صُفُوفِ الرِّجَالِ الْمُقَدَّمُ، وَشَرُّهَا الْمُؤَخَّرُ وَشَرُّ صُفُوفِ النِّسَاءِ الْمُقَدَّمُ، وَخَيْرُهَا الْمُؤَخَّرُ، ثُمَّ قَالَ: يَا مَعْشَرَ النِّسَاءِ، إِذَا سَجَدَ الرِّجَالُ فَاغْضُضْنَ أَبْصَارَكُنَّ، لَا تَرَيْنَ عَوْرَاتِ الرِّجَالِ مِنْ ضِيقِ الْأُزُرِ» وَحَدِيثِ أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَوْ تَرَكْنَا هَذَا الْبَابَ لِلنِّسَاءِ» فَمَا دَخَلَ مِنْ ذَلِكَ الْبَابِ ابْنُ عُمَرَ حَتَّى مَاتَ.

L7492 It is also reported that ʿUmar ibn al-Khaṭṭāb forbade entry through the women's door.

وَأَنَّ عُمَرَ بْنَ الْخَطَّابِ كَانَ يَنْهَى أَنْ يُدْخَلَ مِنْ بَابِ النِّسَاءِ

L7493 And the hadith of Asma' concerning the eclipse prayer, that she prayed in the mosque with the women behind the Messenger of Allah (peace and blessings be upon him).

وَحَدِيثِ أَسْمَاءَ فِي صَلَاةِ الْكُسُوفِ، وَأَنَّهَا صَلَّتْ فِي الْمَسْجِدِ مَعَ النِّسَاءِ خَلْفَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L7494 He—peace be upon him—would not have allowed them to burden themselves by going out at night and in predawn darkness, carrying their young children, nor would he have designated a separate door for them, commanded virgins and non-virgins to go out, or permitted those without a *jilbāb* to borrow one for reaching the prayer ground. He would not have left them to undertake such burdens that diminish their rewards while the greater merit lies with them in abandoning it. Only one devoid of reason would attribute such an act to a sincere advisor to the Muslims—how much less to the Messenger of Allah, peace and blessings be upon him—of whom the Almighty said: *"Distressing to him is what grieves you; ardently concerned for your welfare, kind and merciful to the believers"* [Quran 9:128].[59]

فَمَا كَانَ - عَلَيْهِ السَّلَامُ - لِيَدَعَهُنَّ يَتَكَلَّفْنَ الْخُرُوجَ فِي اللَّيْلِ وَالْغَلَسِ يَحْمِلْنَ صِغَارَهُنَّ وَيُفْرِدَ لَهُنَّ بَابًا وَيَأْمُرَ بِخُرُوجِ الْأَبْكَارِ وَغَيْرِ الْأَبْكَارِ وَمَنْ لَا جِلْبَابَ لَهَا فَتَسْتَعِيرُ جِلْبَابًا إِلَى الْمُصَلَّى، فَيَتْرُكُهُنَّ يَتَكَلَّفْنَ مِنْ ذَلِكَ مَا يَحُطُّ أُجُورَهُنَّ، وَيَكُونُ الْفَضْلُ لَهُنَّ فِي تَرْكِهِ، هَذَا لَا يَظُنُّهُ بِنَاصِحٍ لِلْمُسْلِمِينَ إِلَّا عَدِيمُ عَقْلٍ، فَكَيْفَ بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ الَّذِي أَخْبَرَ تَعَالَى أَنَّهُ {عَزِيزٌ عَلَيْهِ مَا عَنِتُّمْ حَرِيصٌ عَلَيْكُمْ بِالْمُؤْمِنِينَ رَءُوفٌ رَحِيمٌ} [التوبة: ١٢٨]

L7495–7497 Narrated to us by Abdullah ibn Yusuf, narrated to us by Ahmad ibn Fath, narrated to us by Abd al-Wahhab ibn Isa, narrated to us by Ahmad ibn... Muhammad narrated to us: Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to us; Ishaq ibn Ibrahim narrated to us; Jarir—he is the son of Abd al-Hamid—from al-A'mash, from Zayd ibn Wahb, from Abd al-Rahman

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا إِسْحَاقُ بْنُ إِبْرَاهِيمَ ثنا جَرِيرٌ هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنِ الْأَعْمَشِ عَنْ زَيْدِ بْنِ وَهْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ رَبِّ الْكَعْبَةِ: أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ عَمْرِو بْنِ العاص قَالَ: - اجْتَمَعْنَا إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

[59] **Qur'an references (L7494):** Qur'an 9:128 (At-Tawbah).

ibn Abd Rabb al-Ka'bah: that he heard Abdullah ibn Amr ibn al-As say: We gathered to the Messenger of Allah—peace and blessings be upon him—and he said: "There has been no prophet before me except that it was incumbent upon him to guide his ummah to the best of what he knew for them and to warn them against the worst of what he knew for them?" Ali said: Those who opposed the truth in this matter cited as evidence a fabricated report from Abd al-Hamid ibn al-Mundhir al-Ansari from his aunt or grandmother Umm Humayd: that the Prophet—peace and blessings be upon him—said: "Your prayer in your house is better than your prayer with me?" Ali said: Abd al-Hamid ibn al-Mundhir is unknown; no one knows him.[60]

فَقَالَ: «إِنَّهُ لَمْ يَكُنْ نَبِيٌّ قَبْلِي إِلَّا كَانَ حَقًّا عَلَيْهِ أَنْ يَدُلَّ أُمَّتَهُ عَلَى خَيْرِ مَا يَعْلَمُهُ لَهُمْ، وَيُنْذِرَهُمْ شَرَّ مَا يَعْلَمُهُ لَهُمْ» ؟ قَالَ عَلِيٌّ: وَاحْتَجَّ مَنْ خَالَفَ الْحَقَّ فِي هَذَا بِخَبَرٍ مَوْضُوعٍ عَنْ عَبْدِ الْحَمِيدِ بْنِ الْمُنْذِرِ الْأَنْصَارِيِّ عَنْ عَمَّتِهِ أَوْ جَدَّتِهِ أُمِّ حُمَيْدٍ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِنَّ صَلَاتَكِ فِي بَيْتِكِ أَفْضَلُ مِنْ صَلَاتِكِ مَعِي» ؟ قَالَ عَلِيٌّ: عَبْدُ الْحَمِيدِ بْنُ الْمُنْذِرِ مَجْهُولٌ لَا يَدْرِيهِ أَحَدٌ.

L7498–7500

They also mentioned - as we have narrated from 'Ā'ishah, may Allah be pleased with her - her statement: "Had the Messenger of Allah, peace and blessings of Allah be upon him, witnessed what women have introduced [of misdeeds], he would have prohibited them from going out, just as he prohibited the women of the Children of Israel." This holds no proof for eight reasons:

First: Allah the Exalted, who sent Muhammad, peace and blessings of Allah be upon him, with the truth, ordained His religion until the Day of Resurrection. He who inspired him not to prevent women - whether free or enslaved, married or unmarried - from mosques by night or day. He knew what women would introduce [of misdeeds], yet He neither established a prohibition for that nor commanded him: "If they introduce [such acts], prevent them!"

Second: Even if it were soundly established that he, peace and blessings of Allah be upon him, would have prohibited them had he witnessed their innovations, this would not justify prohibiting them. For he did not witness them and thus did not prohibit them. Therefore, prohibition is impermissible since he did not command it.

Third: Among the grave sins is abrogating a law he, peace and blessings of Allah be upon him, died without abrogating; indeed, this constitutes pure disbelief.

وَذَكَرُوا أَيْضًا - مَا رُوِّينَاهُ عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - مِنْ قَوْلِهَا: لَوْ أَدْرَكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا أَحْدَثَ النِّسَاءُ لَمَنَعَهُنَّ مِنْ الْخُرُوجِ كَمَا مَنَعَهُ نِسَاءَ بَنِي إسْرَائِيلَ؟ وَهَذَا لَا حُجَّةَ فِيهِ لِوُجُوهٍ ثَمَانِيَةٍ -: أَوَّلُهَا: أَنَّ اللَّهَ تَعَالَى بَاعِثُ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْحَقِّ مُوجِبٌ دِينَهُ إلَى يَوْمِ الْقِيَامَةِ الْمُوحِي إلَيْهِ بِأَنْ لَا يَمْنَعَ النِّسَاءَ - حَرَائِرَهُنَّ وَإِمَاءَهُنَّ، ذَوَاتِ الْأَزْوَاجِ وَغَيْرِهِنَّ - مِنْ الْمَسَاجِدِ لَيْلًا وَنَهَارًا - قَدْ عَلِمَ مَا يُحْدِثُ النِّسَاءُ، فَلَمْ يُحْدِثْ تَعَالَى لِذَلِكَ مَنْعًا لَهُنَّ، وَلَا قَالَ لَهُ: إذَا أَحْدَثْنَ فَامْنَعُوهُنَّ؟ وَالثَّانِي: أَنَّهُ - عَلَيْهِ السَّلَامُ -، لَوْ صَحَّ أَنَّهُ لَوْ أَدْرَكَ أَحْدَاثَهُنَّ لَمَنَعَهُنَّ - لَمَا كَانَ ذَلِكَ مُبِيحًا مَنَعَهُنَّ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُدْرِكْ فَلَمْ يَمْنَعْ، فَلَا يَحِلُّ الْمَنْعُ، إذْ لَمْ يَأْمُرْ بِهِ - عَلَيْهِ السَّلَامُ - وَالثَّالِثُ: أَنَّ مِنْ الْكَبَائِرِ نَسْخُ شَرِيعَةٍ مَاتَ - عَلَيْهِ السَّلَامُ - وَلَمْ يَنْسَخْهَا، بَلْ هُوَ كُفْرٌ مُجَرَّدٌ وَالرَّابِعُ: أَنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ بَعْدَهُ - عَلَيْهِ السَّلَامُ -؟ وَالْخَامِسُ: أَنَّ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - لَمْ تَقُلْ: إنَّ مَنَعَهُنَّ لَكُمْ مُبَاحٌ، بَلْ مَنَعَتْ مِنْهُ وَإِنَّمَا أَخْبَرَتْ ظَنًّا مِنْهَا بِأَمْرٍ لَمْ يَكُنْ وَلَا تَمَّ، فَهُمْ مُخَالِفُونَ لَهَا فِي ذَلِكَ؟ وَالسَّادِسُ: أَنَّهُ لَا حَدَثَ مِنْهُنَّ أَعْظَمُ مِنْ الزِّنَى، وَقَدْ كَانَ فِيهِنَّ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ

[60] **Hadith references (L7495):** Sahih Muslim 1844a; Riyad as-Salihin 667.

Fourth: There is no proof in any opinion after him, peace and blessings of Allah be upon him.

Fifth: ʻĀ'ishah, may Allah be pleased with her, did not state that prohibiting them is permissible for you. Rather, she prohibited others from that [attribution]. She merely related her assumption about something that did not occur or materialize. Thus, they contradict her in this matter.

Sixth: No act committed by them is graver than sexual immorality, which existed among women during the era of the Messenger... The Prophet (peace and blessings of Allah be upon him) - and indeed Allah the Exalted had forbidden women from immodest display of beauty, and from striking their feet "so that what they conceal of their adornments may become known" (24:31). He (peace be upon him) warned against women who are clothed yet naked, swaying and leading others astray, their heads resembling camel humps - they will not perceive Paradise's fragrance. Though he knew such women would emerge after him, why did he not prevent them for that reason?

The seventh: It is unlawful to punish those who commit no sin due to others' sins, for it is invalid to restrict the innocent because of the guilty. Allah the Exalted says: "No soul bears another's burden, and no burdened soul shall bear another's load" (6:164).

The eighth:[61]

عَلَيْهِ وَسَلَّمَ -، وَقَدْ نَهَاهُنَّ اللَّهُ تَعَالَى: عَنْ التَّبَرُّجِ، وَأَنْ يَضْرِبْنَ بِأَرْجُلِهِنَّ {لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ} [النور: ٣١] ، وَأَنْذَرَ - عَلَيْهِ السَّلَامُ - بِنِسَاءٍ كَاسِيَاتٍ عَارِيَاتٍ مَائِلَاتٍ مُمِيلَاتٍ رُءُوسِهِنَّ كَأَسْنِمَةِ الْبُخْتِ لَا يَرِحْنَ رَائِحَةَ الْجَنَّةِ، وَعَلِمَ أَنَّهُنَّ سَيَكُنَّ بَعْدَهُ، فَمَا مَنَعَهُنَّ مِنْ أَجْلِ ذَلِكَ؟ وَالسَّابِعُ: أَنَّهُ لَا يَحِلُّ عِقَابُ مَنْ لَمْ يُحْدِثْ مِنْ أَجْلِ مَنْ أَحْدَثَ، فَمِنْ الْبَاطِلِ أَنْ يُمْنَعَ مَنْ لَمْ يُحْدِثْ مِنْ أَجْلِ مَنْ أَحْدَثَ، وَاَللَّهُ تَعَالَى يَقُولُ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] . وَالثَّامِنُ:

[61] **Qur'an references (L7498):** Qur'an 6:164 (Al-An'am); Qur'an 24:31 (An-Nur).

L7501 They do not differ that it is impermissible to prevent women from visiting one another, engaging in transactions in markets, or going out for their needs. Nothing embodies misguidance and religious invalidity more than granting them unrestricted liberty in all such matters, for some among them have indeed introduced innovations. Yet their prayer in the mosque—the most virtuous deed after affirming divine oneness—is singled out for restriction. Allah is exalted far above such injustice! How could a rational person justify such arguments contradicting established, mass-transmitted traditions? Ali said: The sound position herein is what Abdullah ibn Rabīʿ narrated to us: Muhammad ibn Isḥāq ibn Sulaym narrated to us, from Ibn al-Aʿrābī, from Abū Dāwūd, from Muḥammad ibn al-Muthannā, that ʿAmr ibn ʿĀṣim al-Kilābī narrated to them, saying: Hammām—who is Ibn Yaḥyā—narrated from Qatādah, from Muwarriq al-ʿIjlī, from Abū al-Aḥwaṣ, from ʿAbdullāh ibn Masʿūd, from the Prophet—peace and blessings be upon him—who said: "A woman's prayer in her private chamber is better than her prayer in her house, and her prayer in the mosque is better than her prayer in her house."

أَنَّهُمْ لَا يَخْتَلِفُونَ فِي أَنَّهُ لَا يَحِلُّ مَنْعُهُنَّ مِنْ التَّزَاوُرِ، وَمِنْ الصَّفْقِ فِي الْأَسْوَاقِ، وَالْخُرُوجِ فِي حَاجَاتِهِنَّ، وَلَيْسَ فِي الضَّلَالِ وَالْبَاطِلِ أَكْثَرُ مِنْ إطْلَاقِهِنَّ عَلَى كُلِّ ذَلِكَ وَقَدْ أَحْدَثَ مِنْهُنَّ مَنْ أَحْدَثَ، وَتُخَصُّ صَلَاتُهُنَّ فِي الْمَسْجِدِ الَّذِي هُوَ أَفْضَلُ الْأَعْمَالِ بَعْدَ التَّوْحِيدِ بِالْمَنْعِ، حَاشَا لِلَّهِ مِنْ هَذَا، وَمَا نَدْرِي كَيْفَ يَنْطَلِقُ لِسَانُ مَنْ يَعْقِلُ بِالِاحْتِجَاجِ بِمِثْلِ هَذَا فِي خِلَافِ السُّنَنِ الثَّابِتَةِ الْمُتَوَاتِرَةِ. قَالَ عَلِيٌّ: وَالصَّحِيحُ مِنْ هَذَا - هُوَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السَّلِيمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَّ عَمْرَو بْنَ عَاصِمٍ الْكِلَابِيَّ حَدَّثَهُمْ قَالَ: ثنا هَمَّامٌ هُوَ ابْنُ يَحْيَى - عَنْ قَتَادَةَ عَنْ مُوَرِّقٍ الْعِجْلِيِّ عَنْ أَبِي الْأَحْوَصِ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «صَلَاةُ الْمَرْأَةِ فِي بَيْتِهَا أَفْضَلُ مِنْ صَلَاتِهَا فِي حُجْرَتِهَا، وَصَلَاتُهَا فِي مَسْجِدِهَا أَفْضَلُ مِنْ صَلَاتِهَا فِي بَيْتِهَا» .

L7502–7504 We have been narrated this report with another wording as related by Muhammad ibn Saʿīd ibn Nubāt, who narrated to us from ʿAbbās ibn Aṣbagh, who narrated to us from Muḥammad ibn Qāsim, who narrated to us from Muḥammad ibn ʿAbd al-Salām al-Khushanī, who narrated to us from Muḥammad ibn al-Muthannā, who narrated to us from ʿAmr ibn ʿĀṣim al-Kilābī, who narrated to us from Hammām, from Qatādah, from Muwarriq al-ʿIjlī, from Abī al-Aḥwaṣ, from ʿAbdullāh ibn Masʿūd, from the Prophet - peace and blessings be upon him - who said: "A woman is indeed ʿawrah. When she goes out, Satan beautifies her. The closest she is to the countenance of her Lord is when she is in the innermost part of her home. A woman's prayer in her innermost chamber is superior to her prayer in her house, and her prayer in her house is superior to her prayer in her room." ʿAlī said: "This version mentions the innermost chamber, with no reference to the mosque whatsoever. Even if it were soundly established therein that her prayer in her house is superior to her prayer in the mosque - and this is never found in any chain thereof." The better view—since it contains proof,

وَرُوِّينَا هَذَا الْخَبَرَ بِلَفْظٍ آخَرَ كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ قَاسِمٍ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا عَمْرُو بْنُ عَاصِمٍ الْكِلَابِيُّ ثنا هَمَّامٌ عَنْ قَتَادَةَ عَنْ مُوَرِّقٍ الْعِجْلِيِّ عَنْ أَبِي الْأَحْوَصِ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّمَا الْمَرْأَةُ عَوْرَةٌ فَإِذَا خَرَجَتْ اسْتَشْرَفَهَا الشَّيْطَانُ، وَأَقْرَبُ مَا تَكُونُ مِنْ وَجْهِ رَبِّهَا وَهِيَ فِي قَعْرِ بَيْتِهَا صَلَاةُ الْمَرْأَةِ فِي مَخْدَعِهَا أَفْضَلُ مِنْ صَلَاتِهَا فِي بَيْتِهَا، وَصَلَاتُهَا فِي بَيْتِهَا أَفْضَلُ مِنْ صَلَاتِهَا فِي حُجْرَتِهَا» قَالَ عَلِيٌّ: هَكَذَا بِذِكْرِ الْمَخْدَعِ لَيْسَ فِيهِ لِلْمَسْجِدِ ذِكْرٌ أَصْلًا، ثُمَّ لَوْ صَحَّ فِيهِ أَنَّ صَلَاتَهَا فِي بَيْتِهَا أَفْضَلُ مِنْ صَلَاتِهَا فِي مَسْجِدِهَا - وَهَذَا لَا يُوجَدُ أَبَدًا مِنْ طَرِيقٍ فِيهَا خَيْرٌ - لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّهُ كَانَ يَكُونُ مَنْسُوخًا بِلَا شَكٍّ، بِمَا ذَكَرْنَا مِنْ تَرْكِهِ - عَلَيْهِ السَّلَامُ

as it would have been abrogated without doubt due to his (peace be upon him) leaving them to exert effort in the twilight while the women were eager to pray in congregation with him until his death (peace be upon him)—thus this is undoubtedly the final ruling? Ali said: "Her mosque here is the mosque of her district and her people's mosque. It is impermissible to presume it was her house's mosque, for had that been the case, he (peace be upon him) would have said: 'Your prayer in your house is better than your prayer in your house.' This constitutes a flaw and incoherence—it is forbidden to attribute such to him (peace be upon him)." In our view, the Imams said: "It has been narrated to us from Ma'mar through al-Zuhri that 'Atikah bint Zayd ibn 'Amr ibn Nufayl, the wife of 'Umar ibn al-Khattab, used to attend prayers in the mosque. 'Umar would tell her: 'By God, you know I dislike this.' She responded: 'By God, I shall not stop unless you forbid me.' 'Umar said: 'Then I do not forbid you.'" He said: "Indeed, 'Umar was stabbed that day while she was in the mosque."

- لَهُنَّ يَتَكَلَّفْنَ التَّكَلُّفَ فِي الْغَبَشِ، رَاغِبَاتٍ فِي الصَّلَاةِ فِي الْجَمَاعَةِ مَعَهُ إلَى أَنْ مَاتَ - عَلَيْهِ السَّلَامُ -، فَهَذَا آخِرُ الْأَمْرِ بِلَا شَكٍّ؟ قَالَ عَلِيٌّ: مَسْجِدُهَا هَهُنَا هُوَ مَسْجِدُ مَحَلَّتِهَا وَمَسْجِدُ قَوْمِهَا، وَلَا يَجُوزُ أَنْ يُظَنَّ أَنَّهُ مَسْجِدُ بَيْتِهَا، إذْ لَوْ كَانَ ذَلِكَ لَكَانَ - عَلَيْهِ السَّلَامُ - قَائِلًا: صَلَاتُك فِي بَيْتِك أَفْضَلُ مِنْ صَلَاتِك فِي بَيْتِك، وَهَذِهِ لُكْنَةٌ وَعِيٌّ، حَرَامٌ أَنْ يُنْسَبَا إلَيْهِ - عَلَيْهِ السَّلَامُ - وَبِقَوْلِنَا: قَالَ الْأَئِمَّةُ -: رُوِّينَا عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ: أَنَّ عَاتِكَةَ بِنْتَ زَيْدِ بْنِ عَمْرِو بْنِ نُفَيْلٍ كَانَتْ تَحْتَ عُمَرَ بْنِ الْخَطَّابِ، وَكَانَتْ تَشْهَدُ الصَّلَاةَ فِي الْمَسْجِدِ، فَكَانَ عُمَرُ يَقُولُ لَهَا: وَاَللَّهِ إنَّك لَتَعْلَمِينَ مَا أُحِبُّ هَذَا، فَقَالَتْ: وَاَللَّهِ لَا أَنْتَهِي حَتَّى تَنْهَانِي، فَقَالَ عُمَرُ: فَإِنِّي لَا أَنْهَاك - قَالَ: فَلَقَدْ طُعِنَ عُمَرُ يَوْمَئِذٍ وَإِنَّهَا لَفِي الْمَسْجِدِ.

L7505 Ali said: Had Umar deemed her prayer at home superior, the least of his obligations would have been to compel her through that and say to her: "You abandon the superior and choose the inferior, especially since I dislike this for you." Yet he did not do so; rather, he merely informed her of his personal inclination which he could not divert. How invalid is it for her—being his wife—to choose [this], while he refrains from intervening, [thereby] burdening herself with angering her husband in a matter where a better alternative exists? Thus, it is confirmed that they both recognized the immense merit [of her prayer]—wherein compliance with the husband's approval, [the view of] the Commander of the Faithful, and [the stance of] the Companion of the Messenger of Allah (peace and blessings be upon him) is overridden—through her going to the mosque at dawn and other times. Is this not utterly clear to those who understand? It has been narrated to us through Hisham ibn Urwah's chain that Umar ibn al-Khattab ordered Sulayman ibn Abi Hathmah to lead the women in prayer at the rear of the mosque during Ramadan.

قَالَ عَلِيٌّ: وَلَوْ رَأَى عُمَرُ صَلَاتَهَا فِي بَيْتِهَا أَفْضَلَ لَكَانَ أَقَلُّ أَحْوَالِهِ أَنْ يَجْبُرَهَا بِذَلِكَ وَيَقُولَ لَهَا: إنَّك تَدَعِينَ الْأَفْضَلَ وَتَخْتَارِينَ الْأَدْنَى، لَا سِيَّمَا مَعَ أَنِّي لَا أُحِبُّ لَك ذَلِكَ، فَمَا فَعَلَ، بَلْ اقْتَصَرَ عَلَى إخْبَارِهَا بِهَوَاهُ الَّذِي لَا يَقْدِرُ عَلَى صَرْفِهِ، وَمِنْ الْبَاطِلِ أَنْ تَخْتَارَ - وَهِيَ صَاحِبَةٌ، وَيَدَعَهَا هُوَ - أَنْ تَتَكَلَّفَ إسْخَاطَ زَوْجِهَا فِيمَا غَيْرُهُ أَفْضَلُ مِنْهُ؟ فَصَحَّ أَنَّهُمَا رَأَيَا الْفَضْلَ الْعَظِيمَ الَّذِي يَسْقُطُ فِيهِ مُوَافَقَةُ رِضَا الزَّوْجِ، وَأَمِيرِ الْمُؤْمِنِينَ، وَصَاحِبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي خُرُوجِهَا إلَى الْمَسْجِدِ فِي الْغَلَسِ وَغَيْرِهِ، وَهَذَا فِي غَايَةِ الْوُضُوحِ لِمَنْ عَقَلَ؟ وَرُوِّينَا مِنْ طَرِيقِ هِشَامِ بْنِ عُرْوَةَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ أَمَرَ سُلَيْمَانَ بْنَ أَبِي حَثْمَةَ أَنْ يَؤُمَّ النِّسَاءَ فِي مُؤَخَّرِ الْمَسْجِدِ فِي شَهْرِ رَمَضَانَ.

L7506 From the narration of 'Arfaja: Ali ibn Abi Talib used to command people

to perform the standing prayers in Ramadan, appointing an imam for the men and an imam for the women. ʻArfaja said: "He instructed me, so I led the women in prayer," alongside what we previously noted concerning the intensity of Ibn ʻUmar's anger toward his son when he said: "He prevents women from going out to prayer?"

L7507–7508 These are the leaders of the Muslims in the presence of the Companions, then upon this has been the practice of Muslims throughout the regions of the earth, generation after generation—and success is through Allah, the Exalted.

L7509 **The issue of the excuse for men regarding failure to attend the congregation in the mosque.**

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L7511 Among the valid excuses for men to miss congregational prayers in the mosque are: illness; fear; rain; cold; fear of property loss; being occupied with eating; fear of neglecting a sick person or deceased; the Imam prolonging the prayer to the detriment of those behind him; and eating garlic, onions, or leeks while the odor persists. Consumers of such foods are forbidden from mosque attendance and must be expelled without exception. No one other than those mentioned may be barred from mosques—not even a leper, a person with offensive breath, a person with an impairment, or a woman accompanied by a small child. Regarding illness and fear as valid excuses, there is no disagreement, in accordance with Allah's decree: "Allah does not burden any soul beyond its capacity" (Quran 2:286).[1]

L7512 And the statement of the Almighty: "He has detailed for you what He has forbidden upon you, except what you are compelled to by necessity" [Al-An'am 6:119]. And the Almighty said: "Except one who is coerced" [An-Nahl 16:106]. Similarly, squandering wealth—and he (peace be upon him) forbade squandering wealth. Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad

[1] **Qur'an references (L7511):** Qur'an 2:286 (Al-Baqarah).

وَمِنْ طَرِيقِ عَرْفَجَةَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يَأْمُرُ النَّاسَ بِالْقِيَامِ فِي رَمَضَانَ، فَيَجْعَلُ لِلرِّجَالِ إِمَامًا، وَلِلنِّسَاءِ إِمَامًا، قَالَ عَرْفَجَةُ: فَأَمَرَنِي فَأَمَّمْت النِّسَاءَ مَعَ مَا ذَكَرْنَا مِنْ شِدَّةِ غَضَبِ ابْنُ عُمَرَ عَلَى ابْنِهِ إذْ قَالَ: إنَّهُ يَمْنَعُ النِّسَاءَ مِنْ الْخُرُوجِ إلَى الصَّلَاةِ؟ فَهَؤُلَاءِ أَئِمَّةُ الْمُسْلِمِينَ بِحَضْرَةِ الصَّحَابَةِ، ثُمَّ عَلَى هَذَا عَمَلُ الْمُسْلِمِينَ فِي أَقْطَارِ الْأَرْضِ جِيلًا بَعْدَ جِيلٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْعُذْرِ لِلرِّجَالِ فِي التَّخَلُّفِ عَنْ الْجَمَاعَةِ فِي الْمَسْجِدِ]

٤٨٦ - مَسْأَلَةٌ:

وَمِنْ الْعُذْرِ لِلرِّجَالِ فِي التَّخَلُّفِ عَنْ الْجَمَاعَةِ فِي الْمَسْجِدِ -: الْمَرَضُ، وَالْخَوْفُ، وَالْمَطَرُ، وَالْبَرْدُ، وَخَوْفُ ضَيَاعِ الْمَالِ، وَحُضُورُ الْأَكْلِ، وَخَوْفُ ضَيَاعِ الْمَرِيضِ، أَوْ الْمَيِّتِ، وَتَطْوِيلُ الْإِمَامِ حَتَّى يَضُرَّ بِمَنْ خَلْفَهُ، وَأَكْلُ الثُّومِ، أَوْ الْبَصَلِ، أَوْ الْكُرَّاثِ مَا دَامَتْ الرَّائِحَةُ بَاقِيَةً، وَيُمْنَعُ آكِلُوهَا مِنْ حُضُورِ الْمَسْجِدِ، وَيُؤْمَرُ بِإِخْرَاجِهِمْ مِنْهُ وَلَا بُدَّ، وَلَا يَجُوزُ أَنْ يُمْنَعَ مِنْ الْمَسَاجِدِ أَحَدٌ غَيْرُ هَؤُلَاءِ، لَا مَجْذُومٌ، وَلَا أَبْخَرُ، وَلَا ذُو عَاهَةٍ، وَلَا امْرَأَةٌ بِصَغِيرٍ مَعَهَا فَأَمَّا الْمَرَضُ وَالْخَوْفُ فَلَا خِلَافَ فِي ذَلِكَ، لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

وَقَوْله تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] وَقَالَ تَعَالَى: {إِلا مَنْ أُكْرِهَ} [النحل: ١٠٦] . وَكَذَلِكَ إضَاعَةُ الْمَالِ، وَنَهَى - عَلَيْهِ السَّلَامُ - عَنْ إضَاعَةِ الْمَالِ؟ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ عَبَّادٍ

narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn Al-Hajjaj narrated to us, Muhammad ibn Abbad narrated to us, Hatim—the son of Ismail—narrated from Yaqub ibn Mujahid Abi Hazrah, from Ibn Abi Atiq, that he testified Aisha, the Mother of the Believers, said: I heard the Messenger of Allah—peace and blessings be upon him—say: "There is no prayer in the presence of food, nor while one is resisting the two impurities."[2][3]

ثنا حَاتِمٌ هُوَ ابْنُ إِسْمَاعِيلَ - عَنْ يَعْقُوبَ بْنِ مُجَاهِدٍ أَبِي حَزْرَةَ عَنِ ابْنِ أَبِي عَتِيقٍ أَنَّهُ شَهِدَ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ قَالَتْ: إِنِّي سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا صَلَاةَ بِحَضْرَةِ طَعَامٍ، وَلَا وَهُوَ يُدَافِعُهُ الْأَخْبَثَانِ» .

L7513 Abdullah ibn Rabee' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: From Ishaq ibn Mansur, from Yahya—that is, Ibn Sa'eed al-Qattan—from Ibn Jurayj: 'Ata' narrated to us from Jabir ibn Abdullah, who said: The Messenger of Allah—peace and blessings be upon him—said: "Whoever eats from this plant"—he initially said "garlic," then he said "garlic, onions, and leeks"—"let them not approach us in our mosques, for the angels are disturbed by what disturbs humans."[4]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنِ ابْنِ جُرَيْجٍ ثنا عَطَاءٌ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَكَلَ مِنْ هَذِهِ الشَّجَرَةِ، قَالَ أَوَّلَ يَوْمٍ: الثُّومِ، ثُمَّ قَالَ: الثُّومِ وَالْبَصَلِ وَالْكُرَّاثِ فَلَا يَقْرَبَنَا فِي مَسَاجِدِنَا، فَإِنَّ الْمَلَائِكَةَ تَتَأَذَّى مِمَّا يَتَأَذَّى مِنْهُ الْإِنْسُ» .

L7514–7516 Abdullah ibn Rabi' narrated to us, Muhammad ibn Mu'awiyah narrated to us, Ahmad ibn Shu'ayb narrated to us, Muhammad ibn al-Muthanna narrated to us, Yahya ibn Sa'id al-Qattan narrated to us, Hisham—he is al-Dastuwa'i—narrated to us, Qatadah narrated to us from Salim ibn Abi al-Ja'd from Ma'dan ibn Abi Talhah: that Umar ibn al-Khattab said, "Indeed you, O people, eat..." From two trees—I do not consider them except foul-smelling: this onion and garlic. I saw the Prophet of Allah—peace and blessings be upon him—when he detected their odor from a man, he would order that he be taken out to Al-Baqi'. No one other than these are to be expelled, for if Allah Almighty had intended to prevent anyone besides them from the mosques, He would have clarified that, as He says: *{And your Lord is never forgetful}* [19:64]. If someone mentions the narration of Abu Hurairah from the Prophet—peace and blessings be upon him—"There is no contagion, no ill omen, and flee from the leper as you flee from a lion"—then its meaning is like Allah's saying: *{Do whatever you will}* [41:40]. That is, flee from

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ ثنا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ - ثنا قَتَادَةُ عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ عَنْ مَعْدَانَ بْنِ أَبِي طَلْحَةَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: «إِنَّكُمْ أَيُّهَا النَّاسُ تَأْكُلُونَ مِنْ شَجَرَتَيْنِ مَا أُرَاهُمَا إِلَّا خَبِيثَتَيْنِ: هَذَا الْبَصَلُ، وَالثُّومُ، لَقَدْ رَأَيْتُ نَبِيَّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا وَجَدَ رِيحَهُمَا مِنَ الرَّجُلِ أَمَرَ بِهِ فَأُخْرِجَ إِلَى الْبَقِيعِ» -: وَلَا يَخْرُجُ غَيْرُ هَؤُلَاءِ، لِأَنَّ اللَّهَ تَعَالَى: لَوْ أَرَادَ مَنْعَ أَحَدٍ غَيْرِهِمْ مِنَ الْمَسَاجِدِ لَبَيَّنَ ذَلِكَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] فَإِنْ ذَكَرَ ذَاكِرٌ حَدِيثَ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا عَدْوَى وَلَا طِيَرَةَ، وَفِرَّ مِنَ الْمَجْذُومِ فِرَارَكَ مِنَ الْأَسَدِ» ؟ فَإِنَّ مَعْنَاهُ كَقَوْلِ اللَّهِ تَعَالَى {اعْمَلُوا مَا شِئْتُمْ} [فصلت: ٤٠] أَيْ فِرَّ مِنَ الْمَجْذُومِ فِرَارَكَ مِنَ الْأَسَدِ، لَا عَدْوَى إِنَّهُ لَا يُعْدِيكَ، وَلَا يَنْفَعُكَ فِرَارُكَ مِمَّا قُدِّرَ عَلَيْكَ، وَلَوْ لَمْ يَكُنْ مَعْنَاهُ هَذَا لَكَانَ

[2] **Hadith references (L7512):** Riyad as-Salihin 1753.
[3] **Qur'an references (L7512):** Qur'an 6:119 (Al-An'am); Qur'an 16:106 (An-Nahl).
[4] **Hadith references (L7513):** Sunan an-Nasai 707.

the leper as you flee from a lion; there is no contagion—he does not infect you, nor does fleeing from what is decreed for you benefit you. If this were not its meaning, the end of the hadith would contradict its beginning, which is impossible. Additionally, if it were meant as literal fleeing, the command would be general, obligating his wife, children, and everyone to flee from him until he dies of hunger and hardship. Narrow alleys would have to be closed before him, as is done with lions—yet this is undeniably false. No one doubts that there were lepers during his time—peace be upon him—and no one fled from them.[5]

آخِرُ الْحَدِيثِ يَنْقُضُ أَوَّلَهُ، وَهَذَا مُحَالٌ وَأَيْضًا: فَلَوْ كَانَ عَلَى مَعْنَى الْفِرَارِ لَكَانَ الْأَمْرُ بِهِ عُمُومًا، فَوُجُوبُ أَنْ تَفِرَّ مِنْهُ امْرَأَتُهُ وَوَلَدُهُ وَكُلُّ أَحَدٍ حَتَّى يَمُوتَ جُوعًا وَجَهْدًا، وَلَوَجَبَ أَنْ تُقْفَلَ الْأَزِقَّةُ أَمَامَهُ، كَمَا يُفْعَلُ بِالْأَسَدِ وَهَذَا بَاطِلٌ بِيَقِينٍ، وَمَا يَشُكُّ أَحَدٌ أَنَّهُ قَدْ كَانَ فِي عَصْرِهِ - عَلَيْهِ السَّلَامُ - مَجْذُومُونَ فَمَا فَرَّ عَنْهُمْ أَحَدٌ.

L7517 It has been established that his intention—peace and blessings be upon him—is what we mentioned: Abd al-Rahman ibn Abd Allah al-Hamadani narrated to us; Ibrahim ibn Ahmad al-Balkhi narrated to us; al-Farbari narrated to us; al-Bukhari narrated to us; Sa'id ibn 'Ufayr narrated to me, saying: al-Layth narrated to me; 'Uqayl ibn Khalid narrated to me, citing Ibn Shihab, who reported that Mahmud ibn al-Rabi' al-Ansari informed him: "Itban ibn Malik—from among the Ansar who witnessed Badr—came to the Messenger of Allah—peace and blessings be upon him—and said: 'O Messenger of Allah, my eyesight has weakened, and I lead my people in prayer. When the rains fall, the valley between me and them flows with water, making me unable to reach the mosque. I wish, O Messenger of Allah, that you would come to me and pray in my house so I may take it as a place of prayer.' The Messenger of Allah—peace and blessings be upon him—said: 'I will do so, God willing.'"

فَصَحَّ أَنَّ مُرَادَهُ - عَلَيْهِ السَّلَامُ - مَا ذَكَرْنَاهُ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ الْهَمْدَانِيُّ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيُّ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا سَعِيدُ بْنُ عُفَيْرٍ حَدَّثَنِي اللَّيْثُ حَدَّثَنِي عُقَيْلُ بْنُ خَالِدٍ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي مَحْمُودُ بْنُ الرَّبِيعِ الْأَنْصَارِيُّ «أَنَّ عِتْبَانَ بْنَ مَالِكٍ - مِمَّنْ شَهِدَ بَدْرًا مِنْ الْأَنْصَارِ - أَتَى إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ، قَدْ أَنْكَرْتُ بَصَرِي، وَأَنَا أُصَلِّي لِقَوْمِي، فَإِذَا كَانَتْ الْأَمْطَارُ سَالَ الْوَادِي الَّذِي بَيْنِي وَبَيْنَهُمْ لَمْ أَسْتَطِعْ أَنْ آتِيَ الْمَسْجِدَ وَوَدِدْتُ يَا رَسُولَ اللَّهِ أَنَّكَ تَأْتِينِي فَتُصَلِّي فِي بَيْتِي فَأَتَّخِذُهُ مُصَلًّى؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: سَأَفْعَلُ إِنْ شَاءَ اللَّهُ» .

L7518–7520 Itban said: Then he went in the morning to the Messenger of Allah—peace and blessings of Allah be upon him—and mentioned the Hadith. And through him to Al-Bukhari: Musaddad narrated to us; Yahya narrated to us—who is Ibn Sa'id Al-Qattan—from 'Ubaydullah ibn 'Umar. Nafi narrated to me, saying: Ibn Umar permitted [people to pray at home] on a cold night in Dhajnan, then declared: "Pray in your dwellings," and informed us that "the Messenger of Allah (peace be upon him) would command a mu'adhin to give the adhan, then proclaim right after it: 'Pray in your dwellings.'" Hammam narrated to us, from Ibn Mufarrij, from Ibn al-A'rabi, from al-Dabari, from 'Abd

قَالَ عِتْبَانُ: فَغَدَا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَذَكَرَ الْحَدِيثَ؟ وَبِهِ إِلَى الْبُخَارِيِّ: ثنا مُسَدَّدٌ ثنا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ حَدَّثَنِي نَافِعٌ قَالَ: أَذِنَ ابْنُ عُمَرَ فِي لَيْلَةٍ بَارِدَةٍ بِضَجِنَانَ ثُمَّ قَالَ: أَلَا صَلُّوا فِي رِحَالِكُمْ، فَأَخْبَرَنَا «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَأْمُرُ مُؤَذِّنًا يُؤَذِّنُ، ثُمَّ يَقُولُ عَلَى إِثْرِهِ: أَلَا صَلُّوا فِي الرِّحَالِ» ؟ حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ

[5] **Qur'an references (L7514):** Qur'an 41:40 (Fussilat); Qur'an 19:64 (Maryam).

al-Razzaq, from Sufyan al-Thawri, from Khalid al-Hadhdha', from Abu Qilabah, from Abu al-Malih ibn Usamah, from his father—Usamah ibn Umayr al-Hudhali (who said): "I saw us [gathered] with the Messenger of Allah (peace be upon him) during al-Hudaybiyah. It rained, but the sky [i.e., rain] did not wet the soles of our sandals. The Prophet's announcer proclaimed: 'Pray in your dwellings.'"

الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْمَلِيحِ بْنِ أُسَامَةَ عَنْ أَبِيهِ هُوَ أُسَامَةُ بْنُ عُمَيْرٍ الْهُذَلِيُّ - أَنَّهُ قَالَ لَهُ «رَأَيْتُنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَمَنَ الْحُدَيْبِيَةِ، وَمُطِرْنَا مَطَرًا فَلَمْ تَبُلَّ السَّمَاءُ أَسْفَلَ نِعَالِنَا، فَنَادَى مُنَادِي النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنْ صَلُّوا فِي رِحَالِكُمْ» .

L7521 And through him to 'Abd al-Razzaq: Ibn Jurayj narrated to us from Nafi' from Ibn 'Umar from Nu'aym ibn al-Naḥḥām, who said: "The caller to prayer of the Messenger of Allah (peace be upon him) performed the call to prayer on a cold night while I was under the quilt. I wished that Allah would place on his tongue the words 'There is no blame,' and when he concluded, he said: 'There is no blame.'"

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ: ثنا ابْنُ جُرَيْجٍ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنْ نُعَيْمِ بْنِ النَّحَّامِ قَالَ «أَذَّنَ مُؤَذِّنُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَيْلَةً فِيهَا بَرْدٌ، وَأَنَا تَحْتَ اللِّحَافِ فَتَمَنَّيْتُ أَنْ يُلْقِيَ اللَّهُ عَلَى لِسَانِهِ وَلَا حَرَجَ، فَلَمَّا فَرَغَ قَالَ: وَلَا حَرَجَ» .

L7522 Abdullah ibn Rabī'ah narrated to us: Muḥammad ibn Isḥāq ibn as-Sulaym narrated to us: Ibn al-A'rābī narrated to us: Abū Dāwūd narrated to us: Musaddad narrated to us: Ismā'īl—that is Ibn 'Ulayyah—narrated to us: 'Abd al-Ḥamīd, the companion of al-Ziyādī, narrated to us: 'Abdullāh ibn al-Ḥārith, the cousin of Muḥammad ibn Sīrīn, narrated that Ibn 'Abbās said to his mu'adhdhin on a rainy day, "When you say, 'I bear witness that Muḥammad is the Messenger of Allah,' do not say, 'Come to prayer,' but say, 'Pray in your homes.'" Ibn 'Abbās added, "Someone superior to me did this. Indeed, the Friday prayer is a firm obligation, but I disliked forcing you to go out and walk through mud and rain."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُسَدَّدٌ ثنا إِسْمَاعِيلُ هُوَ ابْنُ عُلَيَّةَ - ثنا عَبْدُ الْحَمِيدِ صَاحِبُ الزِّيَادِيِّ ثنا عَبْدُ اللَّهِ بْنُ الْحَارِثِ ابْنُ عَمِّ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ ابْنَ عَبَّاسٍ قَالَ لِمُؤَذِّنِهِ فِي يَوْمٍ مَطِيرٍ: إِذَا قُلْت " أَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ " فَلَا تَقُلْ " حَيَّ عَلَى الصَّلَاةِ " قُلْ " صَلُّوا فِي بُيُوتِكُمْ " وَقَالَ ابْنُ عَبَّاسٍ: قَدْ فَعَلَ هَذَا مَنْ هُوَ خَيْرٌ مِنِّي، إِنَّ الْجُمُعَةَ عَزْمَةٌ، وَإِنِّي كَرِهْت أَنْ أُحْرِجَكُمْ فَتَمْشُونَ فِي الطِّينِ وَالْمَطَرِ.

L7523–7525 Narrated to us by Yusuf ibn Abdullah An-Namari; he narrated to us from Abdullah ibn Muhammad ibn Yusuf Al-Azdi, the judge. Isḥāq ibn Aḥmad narrated to us: Al-'Uqaylī narrated to us: Mūsā ibn Isḥāq—he is al-Anṣārī—narrated to us: Abū Bakr ibn Abī Shaybah narrated to us: Yaḥyā—he is Ibn Sa'īd al-Qaṭṭān—narrated to us from Sa'īd—he is Ibn Abī 'Arūbah—from Qatādah from Kathīr, the freed slave of Ibn Samurah, who said: I passed by 'Abd al-Raḥmān ibn Samurah while he was sitting at his door, and he said: "What is the matter with your leader?" I said: "Did you not join us?" He said: "This thick mud has prevented us." 'Alī said: "Here are Ibn

حَدَّثَنَا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ يُوسُفَ الْأَزْدِيُّ الْقَاضِي ثنا إِسْحَاقُ بْنُ أَحْمَدَ ثنا الْعُقَيْلِيُّ ثنا مُوسَى بْنُ إِسْحَاقَ هُوَ الْأَنْصَارِيُّ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ سَعِيدٍ هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ كَثِيرٍ مَوْلَى ابْنِ سَمُرَةَ قَالَ: مَرَرْت بِعَبْدِ الرَّحْمَنِ بْنِ سَمُرَةَ وَهُوَ عَلَى بَابِهِ جَالِسٌ، فَقَالَ: مَا خَطْبُ أَمِيرِكُمْ؟ قُلْت: أَمَا جَمَعْت مَعَنَا؟ قَالَ: مَنَعَنَا هَذَا الرَّدْغُ. قَالَ عَلِيٌّ: فَهَذَا ابْنُ عُمَرَ وَابْنُ

ʿUmar, Ibn ʿAbbās, and ʿAbd al-Raḥmān ibn Samurah in the presence of the Companions, missing the Friday prayer and others due to mud, and they instructed the mu'adhdhin to proclaim: 'Pray in your dwellings,' and we know of no opposing view from the Companions against them—may Allah, Exalted is He, be pleased with them all. As for prolonging the prayer, we have mentioned the ḥadīth of Muʿādh and the one who left his position as prayer leader (imam), and the Prophet—peace and blessings be upon him—did not disapprove of the one who left." ʿAbd Allāh ibn Yūsuf narrated to us: Aḥmad ibn Fatḥ narrated to us: ʿAbd al-Wahhāb ibn ʿĪsā narrated to us: Aḥmad ibn Muḥammad narrated to us: Aḥmad ibn ʿAlī narrated to us: Muslim ibn al-Ḥajjāj narrated to us: Yaḥyā narrated to us: Hushaym narrated to us from Ismāʿīl ibn Abī Khālid from Qays ibn Abī Ḥāzim from Abū Masʿūd al-Anṣārī, who said: "A man came to the Messenger of Allah—peace and blessings be upon him—and said: 'I delay the morning prayer because of a certain person, because he prolongs it for us.' I never saw the Messenger of Allah—peace and blessings be upon him—angrier during a sermon than he was that day. He said: 'O people, among you are those who drive others away. Whoever leads the people in prayer must be brief, for behind him are the elderly, the weak, and those with needs.'"[6]

عَبَّاسٍ وَعَبْدُ الرَّحْمَنِ بْنُ سَمُرَةَ بِحَضْرَةِ الصَّحَابَةِ يَتْرُكُونَ الْجُمُعَةَ وَغَيْرَهَا لِلطِّينِ، وَيَأْمُرُونَ الْمُؤَذِّنَ أَنْ يَقُولَ: «أَلَا صَلُّوا فِي الرِّحَالِ» وَلَا نَعْرِفُ لَهُمْ مُخَالِفًا مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمْ -؟ وَأَمَّا التَّطْوِيلُ فَقَدْ ذَكَرْنَا حَدِيثَ مُعَاذٍ وَالَّذِي خَرَجَ عَنْ إِمَامَتِهِ فَلَمْ يُنْكِرِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ عَلَى الْخَارِجِ وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى ثنا هُشَيْمٌ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ أَبِي مَسْعُودٍ الْأَنْصَارِيِّ قَالَ «جَاءَ رَجُلٌ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إِنِّي لَأَتَأَخَّرُ عَنْ صَلَاةِ الصُّبْحِ مِنْ أَجْلِ فُلَانٍ، مِمَّا يُطِيلُ بِنَا، فَمَا رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَضِبَ فِي مَوْعِظَةٍ قَطُّ أَشَدَّ مِمَّا غَضِبَ، فَقَالَ يَوْمَئِذٍ: يَا أَيُّهَا النَّاسُ، إِنَّ مِنْكُمْ مُنَفِّرِينَ، فَأَيُّكُمْ أَمَّ النَّاسَ فَلْيُوجِزْ، فَإِنَّ مِنْ وَرَائِهِ الْكَبِيرَ، وَالضَّعِيفَ، وَذَا الْحَاجَةِ» .

[6] **Hadith references (L7523):** Sahih Muslim 466a.

L7526 Did the Messenger of Allah (peace be upon him) disapprove of one's delaying the obligatory prayer due to the Imam's prolongation? As for the leper, the one with foul breath, the radish eater, and others—if barring them from the mosque had been permissible, the Messenger of Allah (peace be upon him) would not have overlooked it, {And your Lord is not forgetful} [Maryam: 64].[7]

فَلَمْ يُنْكِرْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَأَخُّرَهُ عَنْ صَلَاةِ الْفَرِيضَةِ مِنْ أَجْلِ إِطَالَةِ الْإِمَامِ؟ وَأَمَّا الْمَجْذُومُ، وَالْأَبْخَرُ، وَآكِلُ الْفُجْلِ وَغَيْرُهُمْ -: فَلَوْ جَازَ مَنْعُهُمُ الْمَسْجِدَ لَمَا أَغْفَلَ ذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

L7527 Issue: The best person to lead the congregation in prayer is the one among them most proficient in Quranic recitation.

[مَسْأَلَةُ الْأَفْضَلُ أَنْ يَؤُمَّ الْجَمَاعَةَ فِي الصَّلَاةِ أَقْرَؤُهُمْ لِلْقُرْآنِ]

L7528 Issue 487:

٤٨٧ - مَسْأَلَةٌ:

L7529 It is preferable for the one leading the congregational prayer to be the most

وَالْأَفْضَلُ أَنْ يَؤُمَّ الْجَمَاعَةَ فِي الصَّلَاةِ أَقْرَؤُهُمْ لِلْقُرْآنِ وَإِنْ كَانَ أَنْقَصَ فَضْلًا.

proficient in Quranic recitation, even if he is lesser in merit.

فَإِنْ اسْتَوَوْا فِي الْقِرَاءَةِ فَأَفْقَهُهُمْ.

L7530–7531 If they are equal in recitation, then the most knowledgeable in fiqh among them.

فَإِنْ اسْتَوَوْا فِي الْفِقْهِ وَالْقِرَاءَةِ فَأَقْدَمُهُمْ صَلَاحًا فَإِنْ حَضَرَ السُّلْطَانُ الْوَاجِبَةُ طَاعَتُهُ أَوْ أَمِيرُهُ عَلَى الصَّلَاةِ فَهُوَ أَحَقُّ بِالصَّلَاةِ عَلَى كُلِّ حَالٍ

L7532 If they are equal in jurisprudence and recitation, then the foremost in righteousness among them takes precedence. If the ruler whose obedience is legitimately obligatory is present, or his appointed commander over the prayer, then he is most deserving to lead the prayer in all circumstances.

فَإِنْ كَانُوا فِي مَنْزِلِ إِنْسَانٍ فَصَاحِبُ الْمَنْزِلِ أَحَقُّ بِالْإِمَامَةِ عَلَى كُلِّ حَالٍ إِلَّا مِنْ السُّلْطَانِ.

L7533 If they are in a person's home, the owner of the home has the greatest right to lead the prayer under all circumstances, except in the case of the Sultan.

وَإِنْ اسْتَوَوْا فِي كُلِّ مَا ذَكَرْنَا فَأَسَنُّهُمْ؟ فَإِنْ أَمَّ أَحَدٌ بِخِلَافِ مَا ذَكَرْنَا أَجْزَأَ ذَلِكَ، إِلَّا مَنْ تَقَدَّمَ بِغَيْرِ أَمْرِ السُّلْطَانِ عَلَى السُّلْطَانِ، أَوْ بِغَيْرِ أَمْرِ صَاحِبِ الْمَنْزِلِ عَلَى صَاحِبِ الْمَنْزِلِ، فَلَا يُجْزِئُ هَذَيْنِ وَلَا تُجْزِئُهُمْ؟ وَقَدْ ذَكَرْنَا حَدِيثَ مَالِكِ بْنِ الْحُوَيْرِثِ: «وَلْيَؤُمَّكُمَا أَكْبَرُكُمَا» وَكَانَا فِي الْقِرَاءَةِ وَالْفِقْهِ وَالْهِجْرَةِ سَوَاءً؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا يَحْيَى بْنُ سَعِيدٍ هُوَ الْقَطَّانُ - ثنا شُعْبَةُ عَنْ قَتَادَةَ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا كَانُوا ثَلَاثَةً فَلْيَؤُمَّهُمْ أَحَدُهُمْ، وَأَحَقُّهُمْ بِالْإِمَامَةِ أَقْرَؤُهُمْ» .

L7534 If they are equal in all that we have mentioned, then the oldest among them? If someone leads prayer contrary to what we have mentioned, that is valid, except for one who presumes leadership over the Sultan without the Sultan's authorization, or over the homeowner without the homeowner's authorization – the leading of these two is not valid, nor are their prayers valid. We have mentioned the ḥadīth of Mālik ibn al-Ḥuwayrith: "Let the eldest among you lead," even though they were equal in recitation, jurisprudence, and Hijrah? ʿAbdullāh ibn Yūsuf narrated to us: Aḥmad ibn Fatḥ narrated to us: ʿAbd al-Wahhāb ibn ʿĪsā narrated to us: Aḥmad ibn Muḥammad narrated to us: Aḥmad ibn ʿAlī narrated to us: Muslim ibn al-Ḥajjāj narrated to us: Muḥammad ibn Bashshār narrated to us: Yaḥyā ibn Saʿīd – al-Qaṭṭān – narrated to us: Shuʿbah narrated to us from Qatādah from Abū Naḍrah from Abū Saʿīd al-Khudrī that the Messenger of Allāh – peace and blessings be upon him – said: "When there are three, let one of them lead them, and the most deserving of leadership is the most proficient in recitation."[8]

وَرُوِّينَاهُ - أَيْضًا مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ الْجُرَيْرِيِّ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L7535 We have transmitted it – also via the chain of ʿAbdullāh ibn al-Mubārak from al-Jurayri from Abu Nadrah from Abu Sa'id al-Khudri from the Messenger of Allah – peace and blessings be upon him –

[7] **Qur'an references (L7526):** Qur'an 19:64 (Maryam).

[8] **Hadith references (L7534):** Sunan an-Nasai 840; Sahih Muslim 672a; Sunan an-Nasai 782.

L7536 And through his chain to Muslim's compilation: Abū Saʿīd al-Ashajj and Muḥammad ibn al-Muthannā narrated to us. Al-Ashajj said: From Abū Khālid al-Aḥmar, from al-Aʿmash. Ibn al-Muthannā said: Muḥammad ibn Jaʿfar narrated to us from Shuʿbah. Then Shuʿbah and al-Aʿmash concurred, narrating from Ismāʿīl ibn Rajāʾ from Aws ibn Ḍamʿaj from Abū Masʿūd.

L7537–7538 Shuʿbah said: I heard Aws ibn Damʿaj say: I heard Abū Masʿūd—he is al-Badrī—say: The Messenger of Allah (peace be upon him) said: "The people should be led in prayer by the most proficient among them in reciting the Book of Allah. If they are equal in recitation, then the most knowledgeable among them in the Sunnah. If they are equal in the Sunnah, then the earliest among them in Hijrah. If they are equal in Hijrah, then the earliest among them to embrace Islam. Let no man lead another in prayer within his authority, nor sit in his house upon his place of honor except with his permission."[9]

L7539–7541 Ali said: The Messenger of Allah—peace and blessings be upon him—explained the enduring Hijrah, as narrated to us by ʿAbd al-Raḥmān ibn ʿAbd Allāh al-Hamadānī, who narrated from Ibrāhīm ibn Aḥmad, who narrated from al-Farabrī, who narrated from al-Bukhārī, who narrated from Ādam, who narrated from Shuʿbah, on the authority of ʿAbd Allāh ibn Abī al-Safar and Ismāʿīl ibn Abī Khālid, on the authority of al-Shaʿbī, on the authority of ʿAbd Allāh ibn ʿAmr, on the authority of the Prophet—peace and blessings be upon him—who said: «A Muslim is one from whose tongue and hand the Muslims are safe, and a Muhājir is one who abandons what Allah has forbidden.»

Ali said: Mālik said, "The most virtuous leads the prayer, even if he is less proficient in recitation." This is erroneous, for it contradicts the command of the Messenger of Allah—peace and blessings be upon him—as narrated to us by Ḥumām, who narrated from Ibn Mufarrij, who narrated from Ibn al-Aʿrābī, who narrated from al-Dabarī, on the authority of ʿAbd al-Razzāq, on the authority of Ibn Jurayj, from Nāfiʿ, who heard Ibn ʿUmar say: "Sālim, the freed slave of Abī Ḥudhayfah, used to lead the first Muhājirīn—including

[9]**Hadith references (L7538):** Sahih Muslim 673a.

وَبِهِ إِلَى مُسْلِمٍ: ثنا أَبُو سَعِيدٍ الْأَشَجُّ، وَمُحَمَّدُ بْنُ الْمُثَنَّى. قَالَ الْأَشَجُّ: عَنْ أَبِي خَالِدٍ الْأَحْمَرِ عَنِ الْأَعْمَشِ. وَقَالَ ابْنُ الْمُثَنَّى: ثنا مُحَمَّدُ بْنُ جَعْفَرٍ عَنْ شُعْبَةَ. ثُمَّ اتَّفَقَ شُعْبَةُ وَالْأَعْمَشُ عَنْ إِسْمَاعِيلَ بْنِ رَجَاءٍ عَنْ أَوْسِ بْنِ ضَمْعَجٍ عَنْ أَبِي مَسْعُودٍ؟

قَالَ شُعْبَةُ: سَمِعْتُ أَوْسَ بْنَ ضَمْعَجٍ يَقُولُ: سَمِعْتُ أَبَا مَسْعُودٍ هُوَ الْبَدْرِيُّ - قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «يَؤُمُّ الْقَوْمَ أَقْرَؤُهُمْ لِكِتَابِ اللَّهِ، فَإِنْ كَانُوا فِي الْقِرَاءَةِ سَوَاءً فَأَعْلَمُهُمْ بِالسُّنَّةِ، فَإِنْ كَانُوا فِي السُّنَّةِ سَوَاءً فَأَقْدَمُهُمْ هِجْرَةً، فَإِنْ كَانُوا فِي الْهِجْرَةِ سَوَاءً فَأَقْدَمُهُمْ سِلْمًا، وَلَا يَؤُمَّنَّ الرَّجُلُ الرَّجُلَ فِي سُلْطَانِهِ، وَلَا يَقْعُدُ فِي بَيْتِهِ عَلَى تَكْرِمَتِهِ إِلَّا بِإِذْنِهِ» .

قَالَ عَلِيٌّ: وَقَدْ فَسَّرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْهِجْرَةَ الْبَاقِيَةَ أَبَدًا كَمَا حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ الْهَمْدَانِيُّ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا آدَمُ ثنا شُعْبَةُ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ وَإِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنِ الشَّعْبِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْمُسْلِمُ مَنْ سَلِمَ الْمُسْلِمُونَ مِنْ لِسَانِهِ وَيَدِهِ وَالْمُهَاجِرُ مَنْ هَجَرَ مَا نَهَى اللَّهُ عَنْهُ» قَالَ عَلِيٌّ: وَقَالَ مَالِكٌ: يَؤُمُّ الْأَفْضَلُ وَإِنْ كَانَ أَقَلَّ قِرَاءَةً - وَهَذَا خَطَأٌ، لِأَنَّهُ خِلَافُ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ عَنْ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَنَا نَافِعٌ أَنَّهُ سَمِعَ ابْنَ عُمَرَ يَقُولُ " كَانَ سَالِمٌ مَوْلَى أَبِي حُذَيْفَةَ يَؤُمُّ الْمُهَاجِرِينَ الْأَوَّلِينَ أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْأَنْصَارُ فِي مَسْجِدِ قُبَاءَ، فِيهِمْ: أَبُو بَكْرٍ، وَعُمَرُ، وَأَبُو سَلَمَةَ وَزَيْدُ بْنُ حَارِثَةَ، وَعَامِرُ بْنُ رَبِيعَةَ ". قَالَ عَلِيٌّ: وَحَدَّثَنَاهُ عَبْدُ الرَّحْمَنِ

Abū Bakr, ʿUmar, Abū Salamah, Zayd ibn Ḥārithah, and ʿĀmir ibn Rabīʿah—and the Anṣār in the mosque of Qubāʾ."

Ali said: This was also narrated to us by ʿAbd al-Raḥmān ibn ʿAbd Allāh, who narrated from Ibrāhīm ibn Aḥmad, who narrated from al-Farabrī, who narrated from al-Bukhārī, who narrated from Ibrāhīm ibn al-Mundhir, who narrated from Anas ibn ʿIyāḍ, on the authority of ʿUbayd Allāh ibn ʿUmar, on the authority of Nāfiʿ, on the authority of Ibn ʿUmar, who said: "When the first Muhājirīn arrived at al-ʿUṣbah—a location in Qubāʾ—before the arrival of the Messenger of Allah—peace and blessings be upon him—..." Salim, the freed slave of Abu Hudhayfah, used to lead them in prayer, being the most versed in Quran among them. Ali said: This was the practice of the Companions - may Allah be pleased with them - with the knowledge of the Messenger of Allah - peace be upon him - and none of the Companions opposed them in that matter.[10]

بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا إِبْرَاهِيمُ بْنُ الْمُنْذِرِ ثنا أَنَسُ بْنُ عِيَاضٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ " لَمَّا قَدِمَ الْمُهَاجِرُونَ الْأَوَّلُونَ الْعُصْبَةَ مَوْضِعًا بِقُبَاءَ قَبْلَ مَقْدِمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَؤُمُّهُمْ سَالِمٌ مَوْلَى أَبِي حُذَيْفَةَ وَكَانَ أَكْثَرَهُمْ قُرْآنًا ". قَالَ عَلِيٌّ: فَهَذَا فِعْلُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بِعِلْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا مُخَالِفَ لَهُمْ مِنَ الصَّحَابَةِ فِي ذَلِكَ.

L7542 If it is said: Did Umar appoint Suhayb? We say: Yes, and Suhayb became a leader appointed as a deputy by the Imam. Was he not the most deserving of the people at that time because he was the authority? Ali said: We have been narrated from Abu Salama ibn Abd al-Rahman and Sa'id ibn Jubayr. Abu Salama said: The Prophet—peace and blessings of Allah be upon him—said: "When three are on a journey, let the most proficient in Quran recitation among them lead them in prayer, even if he is the youngest. If he leads them in prayer, he becomes their leader."

فَإِنْ قِيلَ: إِنَّ عُمَرَ قَدَّمَ صُهَيْبًا؟ قُلْنَا: نَعَمْ، وَصَارَ صُهَيْبٌ أَمِيرًا مُسْتَخْلَفًا مِنْ قِبَلِ الْإِمَامِ، فَهُوَ أَحَقُّ النَّاسِ يَوْمَئِذٍ لِأَنَّهُ سُلْطَانٌ؟ قَالَ عَلِيٌّ: وَرُوِّينَا عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ وَسَعِيدِ بْنِ جُبَيْرٍ فَقَالَ أَبُو سَلَمَةَ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا كَانُوا ثَلَاثَةً فِي سَفَرٍ فَلْيَؤُمَّهُمْ أَقْرَؤُهُمْ، وَإِنْ كَانَ أَصْغَرَهُمْ سِنًّا، فَإِذَا أَمَّهُمْ فَهُوَ أَمِيرُهُمْ» .

L7543 Abu Salama said: That was a leader whom the Messenger of Allah—peace and blessings be upon him—appointed. We only deemed it permissible for someone to lead prayer contrary to that due to what Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us, Ahmad ibn Shu'ayb narrated to us from Muhammad ibn al-Muthanna, from Bakr ibn 'Isa, who said: I heard Shu'bah report from Nu'aym ibn Abi Hind, from Abi Wā'il, from Masrūq, from 'Ā'ishah, the Mother of the Believers, that Abu Bakr al-Siddiq led the people in prayer while the Messenger of Allah—peace and blessings be upon him—was in the row.

وَقَالَ أَبُو سَلَمَةَ: فَذَاكَ أَمِيرٌ أَمَّرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا أَجَزْنَا إِمَامَةَ مَنْ أَمَّ بِخِلَافِ ذَلِكَ -: لِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا بَكْرُ بْنُ عِيسَى قَالَ سَمِعْتُ شُعْبَةَ يَذْكُرُ عَنْ نُعَيْمِ بْنِ أَبِي هِنْدٍ عَنْ أَبِي وَائِلٍ عَنْ مَسْرُوقٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ صَلَّى لِلنَّاسِ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الصَّفِّ» .

[10] **Hadith references (L7539):** Sahih al-Bukhari 10; Sahih al-Bukhari 6484; Sunan an-Nasai 4996.

وَبِهِ إِلَى أَحْمَدَ بْنِ شُعَيْبٍ -: أَنَا عَلِيُّ بْنُ حُجْرٍ ثنا إِسْمَاعِيلُ هُوَ ابْنُ عُلَيَّةَ - ثنا حُمَيْدٍ عَنْ أَنَسٍ قَالَ «آخِرُ صَلاَةٍ صَلاَّهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعَ الْقَوْمِ: صَلَّى فِي ثَوْبٍ وَاحِدٍ مُتَوَشِّحًا بِهِ خَلْفَ أَبِي بَكْرٍ» .

L7544 And through him to Ahmad ibn Shu'ayb: I am 'Ali ibn Hujr—narrated to us Isma'il, that is Ibn 'Ulayyah—narrated to us Humayd from Anas, who said: "The final prayer the Messenger of Allah—peace and blessings be upon him—performed with the people: he prayed in a single garment, wrapped in it, behind Abu Bakr."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ رَافِعٍ وَحُسْنُ بْنُ عَلِيٍّ الْحُلْوَانِيُّ جَمِيعًا عَنْ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ حَدَّثَنِي ابْنُ شِهَابٍ عَنْ حَدِيثِ عَبَّادِ بْنِ زِيَادٍ أَنَّ عُرْوَةَ بْنَ الْمُغِيرَةِ بْنِ شُعْبَةَ أَخْبَرَهُ أَنَّ الْمُغِيرَةَ بْنَ شُعْبَةَ أَخْبَرَهُ - فَذَكَرَ حَدِيثًا وَفِيهِ قَالَ «فَأَقْبَلْتُ مَعَهُ - يَعْنِي رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى نَجِدَ النَّاسَ قَدْ قَدَّمُوا عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ فَصَلَّى لَهُمْ، فَأَدْرَكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِحْدَى الرَّكْعَتَيْنِ، فَصَلَّى - عَلَيْهِ السَّلاَمُ - مَعَ النَّاسِ الرَّكْعَةَ الآخِرَةَ، فَلَمَّا سَلَّمَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ قَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُتِمُّ صَلاَتَهُ فَأَفْزَعَ ذَلِكَ الْمُسْلِمِينَ، فَأَكْثَرُوا التَّسْبِيحَ، فَلَمَّا قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَقْبَلَ عَلَيْهِمْ فَقَالَ: أَحْسَنْتُمْ، أَوْ قَدْ أَصَبْتُمْ، يَغْبِطُهُمْ أَنْ صَلَّوْا الصَّلاَةَ لِوَقْتِهَا» .

L7545–7547 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Muhammad ibn Rafi' and Hasan ibn Ali al-Hulwani both narrated from Abd al-Razzaq. I am Ibn Jurayj: Ibn Shihab narrated to me from the ḥadīth of Abbad ibn Ziyad that Urwah ibn al-Mughirah ibn Shu'bah informed him that al-Mughirah ibn Shu'bah informed him - then he mentioned a ḥadīth, and within it... He said, "Then I accompanied him—meaning the Messenger of Allah, may the peace and blessings of Allah be upon him—until we found the people had appointed Abdur-Rahman ibn Awf as Imam to lead them in prayer. The Messenger of Allah, peace be upon him, joined them in one of the two rak'ahs, and he—peace be upon him—prayed the final rak'ah with the people. When Abdur-Rahman ibn Awf concluded the prayer with the salutation, the Messenger of Allah, peace be upon him, stood to complete his prayer. This alarmed the Muslims, and they increased their saying of SubḥānAllah (Glory be to Allah). When the Messenger of Allah, peace be upon him, finished his prayer, he turned to them and said: 'You have done well,' or 'You have acted correctly,' praising them for performing the prayer at its appointed time."

وَبِهَذَا الإِسْنَادِ إِلَى ابْنِ شِهَابٍ -: عَنْ إِسْمَاعِيلَ بْنِ مُحَمَّدِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ حَمْزَةَ بْنِ الْمُغِيرَةِ بْنِ شُعْبَةَ نَحْوُ هَذَا الْحَدِيثِ، وَفِيهِ قَالَ الْمُغِيرَةُ: «أَرَدْتُ تَأْخِيرَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَعْهُ» .

L7548 With this chain of transmission ending at Ibn Shihāb: from Ismāʿīl ibn Muḥammad ibn Saʿd ibn Abī Waqqāṣ, from Ḥamzah ibn al-Mughīrah ibn Shuʿbah: a similar narration of the same Hadith, in which al-Mughīrah said, "I intended to delay ʿAbd al-Raḥmān ibn ʿAwf, but the Messenger of Allah (peace be upon him) said, 'Let him be.'"

قَالَ عَلِيٌّ: فَبِهَذَيْنِ الْخَبَرَيْنِ عَلِمْنَا أَنَّ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يَؤُمُّ الْقَوْمَ أَقْرَؤُهُمْ، فَإِنْ اسْتَوَوْا فَأَفْقَهُهُمْ، فَإِنْ اسْتَوَوْا فَأَقْدَمُهُمْ هِجْرَةً، فَإِنْ اسْتَوَوْا، فَأَقْدَمُهُمْ سِنًّا»

L7549–7551 Ali said: Through these two narrations, we have understood that the Messenger of Allah's statement—peace and blessings be upon him—"Let the most Quranically proficient lead the people. If they are equal, then the most jurisprudentially learned. If equal, then

the oldest in age" constitutes a recommendation rather than an obligation. For was he not—peace be upon him—more proficient in recitation than Abu Bakr and Abd al-Rahman, more learned in jurisprudence than both, earlier in migration to Allah the Exalted than both, and older than both? Through these two narrations, prayer behind any Muslim becomes permissible—even one possessing extreme shortcomings—for every Muslim's standing in virtue and religious commitment relative to the finest Muslims after Allah's Messenger (peace and blessings be upon him) is closer in merit than the standing of Abu Bakr and Abd al-Rahman ibn Awf (may Allah be pleased with them), and they themselves are among the finest Muslims. In matters of excellence and religion pertaining to the Messenger of Allah (peace and blessings be upon him), has this ruling been established by its evidence? We found no trace of taking precedence over the ruler or the householder that would shift the obligations of both from compulsory to recommended. Thus, the ruling remains obligatory.

: نَدْبٌ لَا فَرْضٌ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - أَقْرَأُ مِنْ أَبِي بَكْرٍ، وَعَبْدِ الرَّحْمَنِ، وَأَفْقَهُ مِنْهُمَا، وَأَقْدَمُ هِجْرَةً، إلَى اللَّهِ تَعَالَى مِنْهُمَا وَأَسَنُّ مِنْهُمَا؟ وَبِهَذَيْنِ الْأَثَرَيْنِ جَازَتْ الصَّلَاةُ خَلْفَ كُلِّ مُسْلِمٍ، وَإِنْ كَانَ فِي غَايَةِ النُّقْصَانِ، لِأَنَّهُ لَا مُسْلِمَ إلَّا وَنِسْبَتُهُ فِي الْفَضْلِ وَالدِّينِ إلَى أَفْضَلِ الْمُسْلِمِينَ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَقْرَبُ مِنْ نِسْبَةِ أَبِي بَكْرٍ وَعَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - وَهُمَا مِنْ أَفْضَلِ الْمُسْلِمِينَ - رَضِيَ اللَّهُ عَنْهُمَا - فِي الْفَضْلِ وَالدِّينِ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، فَخَرَجَ هَذَا بِدَلِيلِهِ؟ وَلَمْ نَجِدْ فِي التَّقَدُّمِ عَلَى السُّلْطَانِ وَعَلَى صَاحِبِ الْمَنْزِلِ أَثَرًا يُخْرِجُهُمَا عَنْ الْوُجُوبِ إلَى النَّدْبِ، فَبَقِيَ عَلَى الْوُجُوبِ.

L7552 Rather, we found what reinforces the obligation of that: as narrated to us by Abdullah ibn Rabi', who narrated from Muhammad ibn Ishaq ibn Sulaym, who narrated from Ibn al-A'rabi, who narrated from Abu Dawud, who narrated from Abdullah ibn Muhammad al-Nufayli, who narrated from Muhammad ibn Salamah, from another Muhammad ibn Ishaq, who narrated to me from al-Zuhri, who narrated to me from Abd al-Malik ibn Abi Bakr ibn Abd al-Rahman ibn al-Harith ibn Hisham, from his father, from Abdullah ibn Zam'ah, who said: "When the illness grew severe upon the Messenger of Allah (صلى الله عليه وسلم) while I was among a group of Muslims with him, Bilal called him to prayer. He said: 'Have someone instruct the people to pray.' Abdullah ibn Zam'ah went out and found Umar with the people—Abu Bakr being absent. Abdullah ibn Zam'ah said: 'Rise, O Umar, and lead the people in prayer.' Umar stepped forward and proclaimed 'Allāhu Akbar' to commence prayer. When the Messenger of Allah (صلى الله عليه وسلم) heard his voice—Umar being a man with a powerful voice—he said: 'Where is Abu Bakr? Allah and the Muslims reject this.' The Prophet sent for Abu Bakr, who arrived after Umar had led that prayer, and he then led the people."

بَلْ وَجَدْنَا مَا يَشُدُّ وُجُوبَ ذَلِكَ -: كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ النُّفَيْلِيُّ ثنا مُحَمَّدُ بْنُ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ حَدَّثَنِي الزُّهْرِيُّ حَدَّثَنِي عَبْدُ الْمَلِكِ بْنُ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ زَمْعَةَ قَالَ: «لَمَّا اسْتَعَزَّ بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَا عِنْدَهُ فِي نَفَرٍ مِنْ الْمُسْلِمِينَ دَعَاهُ بِلَالٌ إلَى الصَّلَاةِ، فَقَالَ: مُرُوا مَنْ يُصَلِّي بِالنَّاسِ فَخَرَجَ عَبْدُ اللَّهِ بْنُ زَمْعَةَ فَإِذَا عُمَرُ فِي النَّاسِ، وَكَانَ أَبُو بَكْرٍ غَائِبًا، فَقَالَ: قُمْ يَا عُمَرُ فَصَلِّ بِالنَّاسِ، فَتَقَدَّمَ وَكَبَّرَ، فَلَمَّا سَمِعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَوْتَهُ - وَكَانَ عُمَرُ رَجُلًا مِجْهَرًا - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَيْنَ أَبُو بَكْرٍ؟ يَأْبَى اللَّهُ ذَلِكَ وَالْمُسْلِمُونَ، فَبَعَثَ إلَى أَبِي بَكْرٍ فَجَاءَ بَعْدَ أَنْ صَلَّى عُمَرُ تِلْكَ الصَّلَاةَ فَصَلَّى بِالنَّاسِ» .

L7553 Narrated by Abdullah ibn Rabee', Abdullah ibn Muhammad ibn Uthman, Ahmad ibn Khalid, Ali ibn Abdulaziz, Al-Hajjaj ibn Al-Minhal, Hammad ibn Salamah, Dawud ibn Abi Hind from Abu Nadhrah from Abu Sa'id, the client of Abu Usayd, who said: "I married a woman, and on my wedding night, a group of the companions of the Messenger of Allah—peace and blessings be upon him—were present with me. When the time for prayer commenced, Abu Dharr sought to step forward and lead the prayer, but Hudhayfah pulled him back and said: 'The master of the house has the greater right to lead the prayer.' He then asked Ibn Mas'ud: 'Is this so?' He replied: 'Yes.' Abu Sa'id said: 'Thus, I stepped forward and led them in prayer while I was a slave at that time.'" From Ibn Jurayj, from 'Ata'—regarding a group of people camping together, among them a Qurayshi, an Arab, a client, a Bedouin, and a slave, each having his own encampment. When one of them went to another's encampment and the time for prayer had commenced, he said: "The owner of the encampment leads them in prayer. It is his right to assign it to whomever he wishes."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عَبْدُ اللَّهَ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا حَمَّادُ بْنُ سَلَمَةَ ثنا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ مَوْلَى أَبِي أُسَيْدَ قَالَ: تَزَوَّجْت امْرَأَةً فَكَانَ عِنْدِي لَيْلَةَ زِفَافِ امْرَأَتِي نَفَرٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمَّا حَضَرَتْ الصَّلَاةُ أَرَادَ أَبُو ذَرٍّ أَنْ يَتَقَدَّمَ فَيُصَلِّيَ، فَجَذَبَهُ حُذَيْفَةُ وَقَالَ: رَبُّ الْبَيْتِ أَحَقُّ بِالصَّلَاةِ، فَقَالَ لِابْنِ مَسْعُودٍ: أَكَذَلِكَ؟ قَالَ: نَعَمْ قَالَ أَبُو سَعِيدٍ: فَتَقَدَّمْت فَصَلَّيْت بِهِمْ وَأَنَا يَوْمَئِذٍ عَبْدٌ؟ وَعَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ - فِي الْقَوْمِ يَتَنَازَلُونَ فِيهِمْ الْقُرَشِيُّ وَالْعَرَبِيُّ وَالْمَوْلَى وَالْأَعْرَابِيُّ وَالْعَبْدُ، لِكُلِّ امْرِئٍ مِنْهُمْ فُسْطَاطٌ، فَانْطَلَقَ أَحَدُهُمْ إلَى فُسْطَاطِ أَحَدِهِمْ فَحَانَتْ الصَّلَاةُ، قَالَ -: صَاحِبُ الرَّحْلِ يَؤُمُّهُمْ هُوَ، حَقُّهُ يُعْطِيه مَنْ يَشَاءُ.

The blind and the sighted, the slave and the free, are equal in leading prayers (imamate).

[مَسْأَلَةُ الْأَعْمَى وَالْبَصِيرُ وَالْعَبْدُ وَالْحُرُّ سَوَاءٌ فِي الْإِمَامَةِ فِي الصَّلَاةِ]

L7556 Issue: The blind, the sighted, the eunuch, the male, the slave, the free person, the illegitimate child, and the Qurashi are equal in leading prayers. All may validly serve as regular imams, with no distinction between them except in Qur'anic recitation, juristic knowledge, precedence in good deeds, and age alone. Mālik disliked an illegitimate child leading prayers and a slave serving as a regular imam – yet this opinion has no valid basis, as it is not supported by the Qur'an, nor by an authentic or weak Sunnah, nor consensus, analogy, or any Companion's statement. People's defects lie in their religious practice and moral character, not in their physical attributes or lineage.

مَسْأَلَةٌ: وَالْأَعْمَى، وَالْبَصِيرُ، وَالْخَصِيُّ، وَالْفَحْلُ، وَالْعَبْدُ، وَالْحُرُّ، وَوَلَدُ الزِّنَى، وَالْقُرَشِيُّ -: سَوَاءٌ فِي الْإِمَامَةِ فِي الصَّلَاةِ، وَكُلُّهُمْ جَائِزٌ أَنْ يَكُونَ إمَامًا رَاتِبًا، وَلَا تَفَاضُلَ بَيْنَهُمْ إلَّا بِالْقِرَاءَةِ، وَالْفِقْهِ، وَقِدَمِ الْخَيْرِ، وَالسِّنِّ، فَقَطْ؟ وَكَرِهَ مَالِكٌ إمَامَةَ وَلَدِ الزِّنَى، وَكَوْنَ الْعَبْدِ إمَامًا رَاتِبًا - وَلَا وَجْهَ لِهَذَا الْقَوْلِ، لِأَنَّهُ لَا يُوجِبُهُ قُرْآنٌ وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا سَقِيمَةٌ، وَلَا إجْمَاعٌ، وَلَا قِيَاسٌ، وَلَا قَوْلُ صَاحِبٍ، وَعُيُوبُ النَّاسِ فِي أَدْيَانِهِمْ وَأَخْلَاقِهِمْ، لَا فِي أَبْدَانِهِمْ وَلَا فِي أَعْرَاقِهِمْ.

L7557 Allah, the Almighty and Majestic, said: {Indeed, the most noble of you in the sight of Allah is the most righteous of you} [Al-Hujurat: 13].[11]

قَالَ اللَّهُ عَزَّ وَجَلَّ: {إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ} [الحجرات: ١٣] .

[11] **Qur'an references (L7557):** Qur'an 49:13 (Al-Hujurat).

وَاحْتَجَّ بَعْضُ الْمُقَلِّدِينَ لَهُ بِأَنْ قَالَ: يُفَكِّرُ مَنْ خَلْفَهُ فِيهِ فَيُلْهَى عَنْ صَلَاتِهِ قَالَ عَلِيٌّ: وَهَذَا فِي غَايَةِ الْغَثَاثَةِ وَالسُّقُوطِ وَلَا شَكَّ فِي أَنَّ فِكْرَةَ الْمَأْمُومِ فِي أَمْرِ الْخَلِيفَةِ إذَا صَلَّى بِالنَّاسِ، أَوْ الْأَحْدَبِ إذَا أَمَّهُمْ - أَكْثَرُ مِنْ فِكْرَتِهِ فِي وَلَدِ الزِّنَى، وَلَوْ كَانَ لِشَيْءٍ مِمَّا ذَكَرْنَا حُكْمٌ فِي الدِّينِ لَمَا أَغْفَلَهُ اللَّهُ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L7558 Some of his imitators argued by stating: "Those behind him would think about him, thus they are distracted from their prayer." Ali said: "This reaches the extreme of insipidity and degradation. Doubtlessly, a worshipper's thought about the caliph's affair when he leads prayer, or about a hunchbacked man when he leads them, exceeds his consideration for a child of illicit intercourse. Had there been any religious ruling for any of what we mentioned, God would not have omitted it through the words of His Messenger—may God's blessings and peace be upon him—as He said: {And your Lord is never forgetful} [19:64]."[12]

وَالْعَجَبُ كُلُّهُ فِي الْفَرْقِ بَيْنَ الْإِمَامِ الرَّاتِبِ وَغَيْرِ الرَّاتِبِ وَتَجُوزُ إمَامَةُ الْفَاسِقِ كَذَلِكَ وَنَكْرَهُهُ، إلَّا أَنْ يَكُونَ هُوَ الْأَقْرَأُ، وَالْأَفْقَهُ، فَهُوَ أَوْلَى حِينَئِذٍ مِنْ الْأَفْضَلِ، إذَا كَانَ أَنْقَصَ مِنْهُ فِي الْقِرَاءَةِ، أَوْ الْفِقْهِ، وَلَا أَحَدَ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا وَلَهُ ذُنُوبٌ.

L7559 The entire wonder lies in the distinction between the regular imam and the non-regular. Similarly, the imamate of a sinful person is permissible, though we dislike it—unless he is the most proficient in recitation and the most learned in jurisprudence. In that case, he becomes more entitled than the morally superior individual if the latter is inferior to him in recitation or jurisprudence. There is none after the Messenger of Allah (peace and blessings be upon him) except that he has sins.

قَالَ عَزَّ وَجَلَّ: {فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَإِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ} [الأحزاب: ٥] .

L7560 He, the Exalted and Majestic, said: "If you do not know their fathers, then they are your brothers in religion and your allies" [al-Aḥzāb: 5].[13]

وَقَالَ تَعَالَى: {وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] . فَنَصَّ تَعَالَى عَلَى أَنَّ مَنْ لَا يُعْرَفُ لَهُ أَبٌ: إخْوَانُنَا فِي الدِّينِ.

L7561 And the Exalted said: "And the righteous among your male slaves and female slaves" [An-Nur: 32]. Thus the Exalted specified that those without known fathers are our brothers in religion.[14]

وَأَخْبَرَ أَنَّ فِي الْعَبِيدِ وَالْإِمَاءِ صَالِحِينَ؟ -: حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ عَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ أَبِي مُلَيْكَةَ: أَنَّهُمْ كَانُوا يَأْتُونَ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ بِأَعْلَى الْوَادِي، هُوَ وَأَبُوهُ، وَعُبَيْدُ بْنُ عُمَيْرٍ، وَالْمِسْوَرُ بْنُ مَخْرَمَةَ وَنَاسٌ كَثِيرٌ، فَيَؤُمُّهُمْ أَبُو عَمْرٍو مَوْلَى عَائِشَةَ وَهُوَ غُلَامُهَا لَمْ يُعْتَقْ، فَكَانَ إمَامَ أَهْلِهَا بَنِي مُحَمَّدِ بْنِ أَبِي بَكْرٍ، وَعُرْوَةَ، وَأَهْلِهَا، إلَّا عَبْدَ اللَّهِ بْنَ عَبْدِ الرَّحْمَنِ كَانَ يَسْتَأْخِرُ عَنْهُ أَبُو عَمْرٍو فَقَالَتْ عَائِشَةُ - رَضِيَ اللَّهُ عَنْهَا -: إذَا غَيَّبَنِي أَبُو عَمْرٍو وَدَلَّانِي فِي حُفْرَتِي فَهُوَ حُرٌّ؟

L7562–7564 And he reported, "Are there righteous ones among male and female slaves?" Narrated to us by Ḥumām, who narrated to us Ibn Mufarrij, who narrated to us Ibn al-Aʿrabī, who narrated to us al-Dabarī from ʿAbd al-Razzāq from Ibn... Abdullah ibn Abi Mulaikah informed me that Juraij reported: They used to visit Aisha, the Mother of the Believers, at the upper valley - Abdullah and his father, Ubayd ibn Umayr, al-Miswar ibn Makhramah, and many others. Abu Amr - Aisha's slave who had not been emancipated - would lead them in prayer. He served as imam for her household members: the sons of

[12] **Qur'an references (L7558):** Qur'an 19:64 (Maryam).
[13] **Qur'an references (L7560):** Qur'an 33:5 (Al-Ahzab).
[14] **Qur'an references (L7561):** Qur'an 24:32 (An-Nur).

Muhammad ibn Abi Bakr, Urwah, and her family, except Abdullah ibn Abd al-Rahman, whom Abu Amr would make stand behind him. Aisha - may Allah be pleased with her - said: "If Abu Amr buries me and lowers me into my grave, is he then free?" From Ibrahim al-Nakha'i: "A slave leads free men in prayer." From Shu'bah, from al-Hakam ibn Utaybah: "A slave used to lead us in prayer in this mosque of ours - and Shurayh used to pray there."

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: يَؤُمُّ الْعَبْدُ الْأَحْرَارَ وَعَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: كَانَ يَؤُمُّنَا فِي مَسْجِدِنَا هَذَا عَبْدٌ، فَكَانَ شُرَيْحٌ يُصَلِّي فِيهِ؟

L7565 From Wakīʿ, via Sufyān al-Thawrī, via Yūnus, via al-Ḥasan al-Baṣrī, who said: "Is the child of fornication equal to others [in status]?" From Wakīʿ, via al-Rabīʿ ibn Ṣubayḥ, via al-Ḥasan, who said: "The child of fornication holds the status of any Muslim man; he may lead prayers as an imam, and his testimony is admissible if he is upright." From Wakīʿ, via Hishām ibn ʿUrwah, via his father, via ʿĀ'ishah, the Mother of the Believers, that when asked about the child of fornication, she replied: "He is not accountable for his parents' sin. *'No bearer of burdens will bear the burden of another'* (Quran 6:164)."[15]

وَعَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: وَلَدُ الزِّنَى وَغَيْرُهُ سَوَاءٌ؟ وَعَنْ وَكِيعٍ عَنْ الرَّبِيعِ بْنِ صُبَيْحٍ عَنْ الْحَسَنِ قَالَ: وَلَدُ الزِّنَى بِمَنْزِلَةِ رَجُلٍ مِنْ الْمُسْلِمِينَ، يَؤُمُّ، وَتَجُوزُ شَهَادَتُهُ إِذَا كَانَ عَدْلًا وَعَنْ وَكِيعٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا كَانَتْ إِذَا سُئِلَتْ عَنْ وَلَدِ الزِّنَى: قَالَتْ لَيْسَ عَلَيْهِ مِنْ خَطِيئَةِ أَبَوَيْهِ شَيْءٌ {وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

L7566 And from Wakīʿ, from Sufyān al-Thawrī, from Burd Abī al-ʿAlā', from al-Zuhrī, who said: "There were leaders from that." Wakīʿ said: "Meaning from zinā (adultery)."

وَعَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ بُرْدٍ أَبِي الْعَلَاءِ عَنْ الزُّهْرِيِّ قَالَ: كَانَ أَئِمَّةٌ مِنْ ذَلِكَ، قَالَ وَكِيعٌ: يَعْنِي مِنْ الزِّنَى.

L7567 From Sufyan al-Thawri, from Hammad ibn Abi Sulayman, who said: I asked Ibrahim about the illegitimate child, the Bedouin, the slave, and the blind person: Can they lead the prayer? He said: Yes, if they establish the prayer. From al-Sha'bi: Does the testimony of the illegitimate child hold, and may he lead? From Ma'mar, who said: I asked al-Zuhri about the illegitimate child: Can he lead the prayer? He said: Yes, and what is his status?

وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ قَالَ: سَأَلْت إِبْرَاهِيمَ عَنْ وَلَدِ الزِّنَى، وَالْأَعْرَابِيِّ، وَالْعَبْدِ، وَالْأَعْمَى: هَلْ يَؤُمُّونَ؟ قَالَ: نَعَمْ، إِذَا أَقَامُوا الصَّلَاةَ وَعَنْ الشَّعْبِيِّ: وَلَدُ الزِّنَى تَجُوزُ شَهَادَتُهُ وَيَؤُمُّ؟ وَعَنْ مَعْمَرٍ قَالَ سَأَلْت الزُّهْرِيَّ عَنْ وَلَدِ الزِّنَى: هَلْ يَؤُمُّ؟ قَالَ: نَعَمْ، وَمَا شَأْنُهُ؟

L7568–7569 And indeed, Abu Zaid—the companion of the Messenger of Allah, peace and blessings be upon him—would lead prayers while seated, with a missing leg. Talha had a paralyzed hand, and there was no disagreement over allowing

وَقَدْ كَانَ أَبُو زَيْدٍ صَاحِبُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَؤُمُّ وَهُوَ مُقْعَدٌ ذَاهِبُ الرِّجْلِ وَقَدْ كَانَ طَلْحَةُ أَشَلَّ الْيَدِ، وَمَا اُخْتُلِفَ فِي جَوَازِ إِمَامَتِهِ، وَقَدْ كَانَ فِي الشُّورَى.

[15] **Qur'an references (L7565):** Qur'an 6:164 (Al-An'am); Qur'an 17:15 (Al-Isra); Qur'an 35:18 (Fatir); Qur'an 39:7 (Az-Zumar).

him to lead prayers, and Talha was among the members of the consultative council.

L7570 From the chain of Az-Zuhri, from Humaid ibn Abdur-Rahman ibn Awf, from Ubaydullah ibn Adiyy ibn Al-Khiyar, that he entered upon Uthman—may Allah be pleased with him—while he was under siege. He said to him: "You are the leader of the entire community, and this calamity we witness has befallen you. An imam of fitnah leads us in prayer, and we feel uneasy." Uthman replied: "Prayer is the best of people's deeds. When people do good, do good with them, and when they do wrong, avoid their wrongdoing." Ibn Umar used to pray behind Al-Hajjaj and Najdah: one of them was a Kharijite, and the other was the most wicked of creation. Ibn Umar would say: "Prayer is a good deed; I do not care at all who shares it with me." From Ibn Juraij: I said to Ataa: "What if an imam delays the prayer until he performs it negligently?" He said: "Praying with the congregation is more beloved to me." I said: "Even if the sun turns yellow and touches the mountain peaks?" He said: "Yes, as long as it has not set." I said to Ataa: "If the imam does not complete the prayer properly, should I abstain from praying with him?" He said: "Rather pray with him and complete it as best as you can. The congregation is more beloved to me. If he raises his head from bowing without completing it properly, then you complete it. If he raises his head from prostration without completing it, then you complete it. If he stands and hastens the final sitting, do not hasten—complete it even if he stands." From Abdur-Razzaq, from Sufyan Ath-Thawri, from Uqbah, from Abu Wa'il: He used to pray with Al-Mukhtar al-Kadhdhāb (the Liar).

L7571–7573 And from Abu Al-Ash'ath, he said: The Khawarij emerged against us, so I asked Yahya ibn Abi Kathir, saying: "O Abu Nasr, what is your view on praying behind these people?" He replied: "The Quran is your imam. Pray with them as long as they perform the prayer." And from Ibrahim al-Nakha'i, he said: I said to Alqama, "Our imam does not complete the prayer." Alqama said: "But we complete it," meaning we pray with him and complete it. And from al-Hasan: A believer's prayer behind a hypocrite does not harm him, nor does a hypocrite's prayer behind a believer benefit him. And from Qatādah:

وَمِنْ طَرِيقِ الزُّهْرِيِّ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَدِيِّ بْنِ الْخِيَارِ أَنَّهُ دَخَلَ عَلَى عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - وَهُوَ مَحْصُورٌ، فَقَالَ لَهُ: إِنَّكَ إِمَامُ عَامَّةٍ، وَنَزَلَ بِكَ مَا نَرَى وَيُصَلِّي لَنَا إِمَامُ فِتْنَةٍ وَنَتَحَرَّجُ، فَقَالَ لَهُ عُثْمَانُ: إِنَّ الصَّلَاةَ أَحْسَنُ مَا يَعْمَلُ النَّاسُ فَإِذَا أَحْسَنَ النَّاسُ فَأَحْسِنْ مَعَهُمْ، وَإِذَا أَسَاءُوا فَاجْتَنِبْ إِسَاءَتَهُمْ؟ وَكَانَ ابْنُ عُمَرَ يُصَلِّي خَلْفَ الْحَجَّاجِ، وَنَجْدَةَ -: أَحَدُهُمَا خَارِجِيٌّ، وَالثَّانِي أَفْسَقُ الْبَرِيَّةِ وَكَانَ ابْنُ عُمَرَ يَقُولُ: الصَّلَاةُ حَسَنَةٌ مَا أُبَالِي مَنْ شَرِكَنِي فِيهَا؟ وَعَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: أَرَأَيْت إِمَامًا يُؤَخِّرُ الصَّلَاةَ حَتَّى يُصَلِّيَهَا مُفَرِّطًا فِيهَا؟ قَالَ: أُصَلِّي مَعَ الْجَمَاعَةِ أَحَبُّ إِلَيَّ، قُلْت: وَإِنْ اصْفَرَّتْ الشَّمْسُ وَلَحِقَتْ بِرُءُوسِ الْجِبَالِ؟ قَالَ: نَعَمْ، مَا لَمْ تَغِبْ، قُلْت لِعَطَاءٍ: فَالْإِمَامُ لَا يُوفِي الصَّلَاةَ، أَعْتَزِلُ الصَّلَاةَ مَعَهُ؟ قَالَ: بَلْ صَلِّ مَعَهُ، وَأَوْفِ مَا اسْتَطَعْت، الْجَمَاعَةُ أَحَبُّ إِلَيَّ، فَإِنْ رَفَعَ رَأْسَهُ مِنْ الرُّكُوعِ وَلَمْ يُوفِ الرَّكْعَةَ فَأَوْفِ أَنْتَ، فَإِنْ رَفَعَ رَأْسَهُ مِنْ السَّجْدَةِ وَلَمْ يُوفِ، فَأَوْفِ أَنْتَ، فَإِنْ قَامَ وَعَجَّلَ عَنْ التَّشَهُّدِ فَلَا تُعَجِّلْ أَنْتَ، وَأَوْفِ وَإِنْ قَامَ؟ وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عُقْبَةَ عَنْ أَبِي وَائِلٍ: أَنَّهُ كَانَ يَجْمَعُ مَعَ الْمُخْتَارِ الْكَذَّابِ.

وَعَنْ أَبِي الْأَشْعَثِ قَالَ: ظَهَرَتْ الْخَوَارِجُ عَلَيْنَا فَسَأَلْت يَحْيَى بْنَ أَبِي كَثِيرٍ، فَقُلْت: يَا أَبَا نَصْرٍ، كَيْفَ تَرَى فِي الصَّلَاةِ خَلْفَ هَؤُلَاءِ؟ قَالَ: الْقُرْآنُ إِمَامُك، صَلِّ مَعَهُمْ مَا صَلُّوهَا؟ وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ قُلْت لِعَلْقَمَةَ: إِمَامُنَا لَا يُتِمُّ الصَّلَاةَ؟ قَالَ عَلْقَمَةُ: لَكِنَّا نُتِمُّهَا، يَعْنِي نُصَلِّي مَعَهُ وَنُتِمُّهَا وَعَنْ الْحَسَنِ: لَا تَضُرُّ الْمُؤْمِنَ صَلَاتُهُ خَلْفَ الْمُنَافِقِ، وَلَا

I said to Sa'īd ibn al-Musayyab, "Should I pray behind al-Ḥajjāj?" He replied, "We indeed pray behind those who are worse than him." 'Alī said, "We do not know of any of the Companions, may Allah be pleased with them, who refused to pray behind al-Mukhtār, 'Abdullāh ibn Ziyād, or al-Ḥajjāj, nor any sinner more wicked than these."

L7574 And Allah, the Mighty and Majestic, has said: "Cooperate in matters of righteousness and piety, and do not cooperate in sin and transgression [Al-Ma'idah: 2]."[16]

L7575 There is no act of righteousness more virtuous than Salah and congregating in mosques. Thus, whoever calls others to these acts, it becomes obligatory to respond to him and assist him in the righteousness and piety to both of which he calls. There is no sin after the sin of disbelief more grievous than neglecting Salah in mosques. Therefore, it is forbidden for us to support such neglect. Similarly concerning fasting, Hajj, and jihad: whoever performs any of these acts, we perform it alongside him. But whoever invites us to sin, we neither respond to him nor assist him in it. Is all of this not the position of Abu Hanifa, Al-Shafi'i, and Abu Suleiman?

L7576–7577 **An issue: one who performed prayer while in a state of major impurity or without ablution, whether intentionally or forgetfully.**

L7578–7580 Issue: If someone prays while in a state of major impurity or without ablution—whether intentionally or forgetfully—the prayer of those following him is valid and complete, unless the follower knew this with certainty, in which case his prayer is invalid. This is because he is not praying. If he is not praying, then the one following someone who is not praying is acting foolishly, disobediently, and contrary to divine command. Whoever's prayer is characterized as such, his prayer is invalid. Abu Hanifah said: "The prayer of one who follows someone not in a state of ritual purity is invalid, whether the imam acted intentionally or forgetfully." Malik said: "If the imam was

تَنْفَعُ الْمُنَافِقَ صَلَاتُهُ خَلْفَ الْمُؤْمِنِ؟ وَعَنْ قَتَادَةَ قُلْت لِسَعِيدِ بْنِ الْمُسَيِّبِ: أَنُصَلِّي خَلْفَ الْحَجَّاجِ؟ قَالَ: إنَّا لَنُصَلِّي خَلْفَ مَنْ هُوَ شَرٌّ مِنْهُ قَالَ عَلِيٌّ: مَا نَعْلَمُ أَحَدًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - امْتَنَعَ مِنْ الصَّلَاةِ خَلْفَ الْمُخْتَارِ، وَعَبْدِ اللَّهِ بْنِ زِيَادٍ، وَالْحَجَّاجِ، وَلَا فَاسِقَ أَفْسَقُ مِنْ هَؤُلَاءِ.

وَقَدْ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

وَلَا بِرَّ أَبَرُّ مِنْ الصَّلَاةِ وَجَمْعِهَا فِي الْمَسَاجِدِ فَمَنْ دَعَا إلَيْهَا فَفَرْضٌ إجَابَتُهُ وَعَوْنُهُ عَلَى الْبِرِّ وَالتَّقْوَى الَّذِي دَعَا إلَيْهِمَا، وَلَا إثْمَ بَعْدَ الْكُفْرِ أَتَمُّ مِنْ تَعْطِيلِ الصَّلَوَاتِ فِي الْمَسَاجِدِ، فَحَرَامٌ عَلَيْنَا أَنْ نُعِينَ عَلَى ذَلِكَ؟ وَكَذَلِكَ الصِّيَامُ، وَالْحَجُّ، وَالْجِهَادُ، مَنْ عَمِلَ شَيْئًا مِنْ ذَلِكَ عَمِلْنَاهُ مَعَهُ، وَمَنْ دَعَانَا إلَى إثْمٍ لَمْ نُجِبْهُ، وَلَمْ نُعِنْهُ عَلَيْهِ وَكُلُّ هَذَا قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ؟

[مَسْأَلَةٌ صَلَّى جُنُبًا أَوْ عَلَى غَيْرِ وُضُوءٍ عَمْدًا أَوْ نِسْيَانًا]

مَسْأَلَةٌ: وَمَنْ صَلَّى جُنُبًا أَوْ عَلَى غَيْرِ وُضُوءٍ - عَمْدًا أَوْ نِسْيَانًا - فَصَلَاةُ مَنْ ائْتَمَّ بِهِ صَحِيحَةٌ تَامَّةٌ، إلَّا أَنْ يَكُونَ عَلِمَ ذَلِكَ يَقِينًا فَلَا صَلَاةَ لَهُ؛ لِأَنَّهُ لَيْسَ مُصَلِّيًا، فَإِذَا لَمْ يَكُنْ مُصَلِّيًا فَالْمُؤْتَمُّ بِمَنْ لَا يُصَلِّي عَابِثٌ عَاصٍ مُخَالِفٌ لِمَا أُمِرَ بِهِ، وَمَنْ هَذِهِ صِفَتُهُ فِي صَلَاتِهِ فَلَا صَلَاةَ لَهُ وَقَالَ أَبُو حَنِيفَةَ: لَا تُجْزِئُ صَلَاةُ مَنْ ائْتَمَّ بِمَنْ لَيْسَ عَلَى طَهَارَةٍ عَامِدًا كَانَ الْإِمَامُ أَوْ نَاسِيًا؟ وَقَالَ مَالِكٌ: إنْ كَانَ نَاسِيًا فَصَلَاةُ مَنْ خَلْفَهُ تَامَّةٌ، وَإِنْ كَانَ

[16] **Qur'an references (L7574):** Qur'an 5:2 (Al-Ma'idah).

forgetful, the prayer of those behind him is complete. But if he acted intentionally, the prayer of those behind him is invalid." Al-Shafi'i and Abu Sulayman held the same view as we stated. Ali said: "The proof for the correctness of our opinion is Allah's statement: *Allah does not burden a soul beyond its capacity* [Al-Baqarah 2:286]." Is it not within our capacity to know the unseen regarding his purity? Every imam behind whom prayer is conducted in the world could potentially be in a state of impurity—whether deliberate or out of forgetfulness. Thus, is it not correct that we are not tasked with knowing with certainty their purity? Each individual prays for themselves: the invalidity of the imam's prayer does not invalidate the follower's prayer—if valid—nor does the validity of the imam's prayer render valid the follower's prayer—if invalid.[17]

عَامِدًا فَلَا صَلَاةَ لِمَنْ خَلْفَهُ؟ وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، كَمَا قُلْنَا؟ قَالَ عَلِيٌّ: بُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَلَيْسَ فِي وُسْعِنَا عِلْمُ الْغَيْبِ مِنْ طَهَارَتِهِ؟ وَكُلُّ إِمَامٍ يُصَلَّى وَرَاءَهُ فِي الْعَالَمِ: فَفِي الْمُمْكِنِ أَنْ يَكُونَ عَلَى غَيْرِ طَهَارَةٍ عَامِدًا أَوْ نَاسِيًا، فَصَحَّ أَنَّا لَمْ نُكَلَّفْ عِلْمَ يَقِينِ طَهَارَتِهِمْ؟ وَكُلُّ أَحَدٍ يُصَلِّي لِنَفْسِهِ، وَلَا يُبْطِلُ صَلَاةَ الْمَأْمُومِ - إِنْ صَحَّتْ - بُطْلَانُ صَلَاةِ الْإِمَامِ، وَلَا يُصِحُّ صَلَاةَ الْمَأْمُومِ - إِنْ بَطَلَتْ - صِحَّةُ صَلَاةِ الْإِمَامِ.

L7581 Whoever transgresses this is in contradiction, for the Hanafis and Malikis do not differ—as we mean—that if the Imam experiences a hadath while overpowered—such as unconsciousness—his ritual purity is invalidated.

وَمَنْ تَعَدَّى هَذَا فَهُوَ مُنَاقِضٌ، لِأَنَّهُمْ لَا يَخْتَلِفُونَ - نَعْنِي الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ - فِي أَنَّ الْإِمَامَ إِنْ أَحْدَثَ مَغْلُوبًا فَإِنَّ طَهَارَتَهُ قَدْ انْتَقَضَتْ.

L7582 The Malikis said: And his prayer has also become invalid.

قَالَ الْمَالِكِيُّونَ: وَصَلَاتُهُ أَيْضًا قَدْ بَطَلَتْ.

L7583 Then they do not differ that the prayer of those behind him was not invalidated, nor was their ritual purity. Thus, the claim that the follower's prayer is contingent upon the Imam's prayer – or that it becomes invalid by its invalidation – is refuted, though they are proponents of analogical reasoning by their own assertion.

ثُمَّ لَا يَخْتَلِفُونَ: أَنَّ صَلَاةَ مَنْ خَلْفَهُ لَمْ تَنْتَقِضْ وَلَا طَهَارَتَهُمْ، فَبَطَلَ أَنْ تَكُونَ صَلَاةُ الْمَأْمُومِ مُتَعَلِّقَةً بِصَلَاةِ الْإِمَامِ، وَأَنْ تَفْسُدَ بِفَسَادِهَا، وَهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ.

L7584 They are in unanimous agreement: if the follower's prayer becomes invalid, the validity of the imam's prayer does not rectify it. Why then do they not apply their foundational principle consistently by asserting: "Similarly, if the follower's prayer is valid, the invalidity of the imam's prayer does not invalidate it"? If any analogy were ever valid, would this not be the most valid analogy on earth?

وَهُمْ لَا يَخْتَلِفُونَ: فِي أَنَّ صَلَاةَ الْمَأْمُومِ إِنْ فَسَدَتْ فَإِنَّهُ لَا يُصْلِحُهَا صَلَاحُ صَلَاةِ الْإِمَامِ، فَهَلَّا طَرَدُوا أَصْلَهُمْ فَقَالُوا: فَكَذَلِكَ إِنْ صَحَّتْ صَلَاةُ الْمَأْمُومِ لَمْ يُفْسِدْهَا فَسَادُ صَلَاةِ الْإِمَامِ؟ فَلَوْ صَحَّ قِيَاسٌ يَوْمًا، لَكَانَ هَذَا أَصَحَّ قِيَاسٍ فِي الْأَرْضِ؟

L7585–7587 Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us, al-Farbari narrated to us, al-Bukhari narrated to us, al-Fadl ibn Sahl narrated to us, al-Hasan ibn Musa al-Ash'yab narrated to us, Abd al-

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا الْفَضْلُ بْنُ سَهْلٍ ثنا الْحَسَنُ بْنُ مُوسَى الْأَشْيَبُ ثنا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ

[17] **Qur'an references (L7578):** Qur'an 2:286 (Al-Baqarah).

Rahman ibn Abd Allah ibn Dinar narrated from Zayd ibn Aslam from Ata ibn Yasar from Abu Hurairah: That the Messenger of Allah—peace and blessings be upon him—said: "They lead the prayer for you. If they are correct, it is for you, and if they err, it is for you and upon them." Ali said: "Our reliance in this is what Abdullah ibn Rabi' narrated to us: Muhammad ibn Ishaq ibn al-Sulaym narrated to us." Ibn al-A'rabi narrated: Abu Dawud al-Sijistani narrated: Uthman ibn Abi Shaybah narrated: Yazid ibn Harun narrated: from Hammad ibn Salamah from Ziyad al-A'lam from Abu Bakrah: "Allah's Messenger - peace be upon him - entered the Fajr prayer, pronounced the takbir, then motioned for them to remain where they were. He returned with water dripping from his head, led them in prayer, and upon completing it said: 'I am but a human like you - I had been in a state of janabah (major impurity).'" Ali remarked: "They considered their prayer valid behind him despite his being in janabah - peace be upon him." Ali added: "It was narrated to us through Hisham ibn Urwah from his father that Umar ibn al-Khattab led people in prayer while in janabah, so he repeated it, but we have not received reports that the people repeated it." From Ma'mar through al-Zuhri from Salim ibn Abdullah ibn Umar: "His father led people in Asr prayer without wudu (ablution), so he repeated it, but his companions did not repeat it." From Ibrahim al-Nakha'i, al-Hasan, and Sa'id ibn Jubayr regarding one who leads prayer without purification: "He must repeat it while they need not repeat," without distinguishing between forgetfulness and intentionality. Ata said: "They do not repeat prayers behind one lacking wudu, but must repeat behind one in janabah" - this is baseless. It was narrated to us from Ali ibn Abi Talib: "Does he repeat, and do they repeat?" No valid authority exists in anyone's opinion except that of the Messenger of Allah - peace be upon him - particularly when Umar and Ibn Umar contradicted this position. Even if this were authentically attributed to Ali—which it is not, due to the chain containing Abbad ibn Kathir (a rejected narrator) and Ghalib ibn Ubaydillah (an unknown narrator)—it would hold no weight.[18]

L7588–7590 And 'Ubayd Allāh ibn Zaḥr from 'Alī ibn Zayd—both of whom are weak.

دِينَارٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي هُرَيْرَةَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يُصَلُّونَ لَكُمْ، فَإِنْ أَصَابُوا فَلَكُمْ، وَإِنْ أَخْطَئُوا فَلَكُمْ وَعَلَيْهِمْ» . قَالَ عَلِيٌّ: وَعُمْدَتُنَا فِي هَذَا هُوَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السَّلِيمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد السِّجِسْتَانِيُّ ثنا عُثْمَانُ بْنُ أَبِي شَيْبَةَ ثنا يَزِيدُ بْنُ هَارُونَ أَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ زِيَادٍ الْأَعْلَمِ عَنْ أَبِي بَكْرَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَخَلَ فِي صَلَاةِ الْفَجْرِ فَكَبَّرَ فَأَوْمَأَ إلَيْهِمْ: أَنْ مَكَانَكُمْ ثُمَّ جَاءَ وَرَأْسُهُ يَقْطُرُ، فَصَلَّى بِهِمْ، فَلَمَّا قَضَى الصَّلَاةَ قَالَ: إنَّمَا أَنَا بَشَرٌ مِثْلُكُمْ، وَإِنِّي كُنْتُ جُنُبًا» . قَالَ عَلِيٌّ: فَقَدْ اعْتَدُّوا بِتَكْبِيرِهِمْ خَلْفَهُ وَهُوَ - عَلَيْهِ السَّلَامُ - جُنُبٌ قَالَ عَلِيٌّ: وَرُوِّينَا مِنْ طَرِيقِ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ صَلَّى بِالنَّاسِ وَهُوَ جُنُبٌ فَأَعَادَ، وَلَمْ يَبْلُغْنَا أَنَّ النَّاسَ أَعَادُوا؟ وَعَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ: أَنَّ أَبَاهُ صَلَّى بِالنَّاسِ صَلَاةَ الْعَصْرِ وَهُوَ عَلَى غَيْرِ وُضُوءٍ، فَأَعَادَ وَلَمْ يُعِدْ أَصْحَابُهُ؟ وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَالْحَسَنِ، وَسَعِيدِ بْنِ جُبَيْرٍ: فِيمَنْ أَمَّ قَوْمًا وَهُوَ عَلَى غَيْرِ طَهَارَةٍ؟ أَنَّهُ يُعِيدُ وَلَا يُعِيدُونَ، وَلَمْ يُفَرِّقُوا بَيْنَ نَاسٍ وَعَامِدٍ وَقَالَ عَطَاءٌ: لَا يُعِيدُونَ خَلْفَ غَيْرِ الْمُتَوَضِّئِ، وَيُعِيدُونَ خَلْفَ الْجُنُبِ - وَهَذَا لَا مَعْنَى لَهُ وَرُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: يُعِيدُ وَيُعِيدُونَ؟ وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ خَالَفَهُ عُمَرُ، وَابْنُ عُمَرَ، هَذَا لَوْ صَحَّ عَنْ عَلِيٍّ، فَكَيْفَ وَلَا يَصِحُّ، لِأَنَّ فِي الطَّرِيقِ إلَيْهِ عَبَّادَ بْنَ كَثِيرٍ، وَهُوَ مُطَّرَحٌ، وَغَالِبَ بْنَ عُبَيْدِ اللَّهِ وَهُوَ مَجْهُولٌ.

[18] **Hadith references (L7585):** Sahih al-Bukhari 694; Mishkat al-Masabih 1133.

وَعُبَيْدَ اللَّهِ بْنَ زَحْرٍ عَنْ عَلِيِّ بْنِ زَيْدٍ وَكِلَاهُمَا ضَعِيفٌ؟ وَرَوَى الْمُخَالِفُونَ عَنْ إبْرَاهِيمَ بْنِ مُحَمَّدِ بْنِ أَبِي يَحْيَى - وَهُوَ كَذَّابٌ - عَمَّنْ لَمْ يُسَمِّهِ وَهُوَ مَجْهُولٌ - عَنْ أَبِي جَابِرٍ الْبَيَاضِيِّ - وَهُوَ كَذَّابٌ - عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: فِي الْقَوْمِ يُصَلُّونَ خَلْفَ مَنْ لَيْسَ عَلَى طَهَارَةٍ نَاسِيًا -: أَنَّهُمْ يُعِيدُونَ. وَلَوْ صَحَّ لَكَانَ مُرْسَلًا لَا حُجَّةَ فِيهِ، فَكَيْفَ وَفِيهِ: كَذَّابَانِ وَمَجْهُولٌ فَحَصَلَتْ الرِّوَايَةُ عَنْ عُمَرَ وَابْنِ عُمَرَ، لَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافُهَا، وَهِيَ فِي غَايَةِ الصِّحَّةِ

The contradictory narrators reported from Ibrāhīm ibn Muḥammad ibn Abī Yaḥyā (who is a fabricator) from an unnamed individual (who is unknown) from Abū Jābir al-Bayāḍī (who is a fabricator) from Sa'īd ibn al-Musayyib regarding people praying behind someone who is not in a state of ritual purity due to his forgetfulness: "They must repeat." Even if this were authentic, it would be a mursal (a narration lacking a complete chain), carrying no authority. How could this be valid when the chain contains two fabricators and an unknown narrator? Thus, it is concluded. The narration from 'Umar and Ibn 'Umar—regarding which no valid disagreement from any of the Companions (may Allah be pleased with them) exists—is of the highest authenticity.

قَالَ عَلِيٌّ: وَأَمَّا الْأَلْثَغُ، وَالْأَلْكَنُ، وَالْأَعْجَمِيُّ اللِّسَانِ، وَاللَّحَّانُ: فَصَلَاةُ مَنْ ائْتَمَّ بِهِمْ جَائِزَةٌ.

L7591 Ali said: As for the one with a lisp, the stutterer, the non-Arabic speaker, and the one who frequently errs in recitation, the prayer of whoever follows them is valid.

لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦]

L7592 Because of Allah's statement, the Most High: "He does not burden a soul beyond what it can bear" [Al-Baqarah: 286][19]

فَلَمْ يُكَلَّفُوا إلَّا مَا يَقْدِرُونَ عَلَيْهِ، لَا مَا لَا يَقْدِرُونَ عَلَيْهِ، فَقَدْ أَدَّوْا صَلَاتَهُمْ كَمَا أُمِرُوا، وَمَنْ أَدَّى صَلَاتَهُ كَمَا أُمِرَ فَهُوَ مُحْسِنٌ.

L7593 They were only obligated to what they were capable of, not what they were incapable of. Thus, they fulfilled their prayer as they were commanded, and whoever fulfills his prayer as he was commanded is a doer of good.

قَالَ تَعَالَى: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] . وَالْعَجَبُ كُلُّ الْعَجَبِ مِمَّنْ يُجِيزُ صَلَاةَ الْأَلْثَغِ وَاللَّحَّانِ وَالْأَلْكَنِ لِنَفْسِهِ - وَيُبْطِلُ صَلَاةَ مَنْ ائْتَمَّ بِهِمْ فِي الصَّلَاةِ، وَهُمْ - مَعَ ذَلِكَ - يُبْطِلُونَ صَلَاةَ مَنْ صَلَّى وَهُوَ جُنُبٌ نَاسِيًا، وَيُجِيزُونَ صَلَاةَ مَنْ ائْتَمَّ بِهِ وَهُوَ لَا صَلَاةَ لَهُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L7594 He, the Exalted, said: *"There is no blame upon the doers of good"* [Quran 9:91]. It is utterly astonishing that those who permit the prayer of one with a lisp, one who habitually errs in pronunciation, or one with unclear speech when praying alone—yet invalidate the prayer of those who follow them as leaders. Moreover, they invalidate the prayer of one who prays while in a state of major ritual impurity due to forgetfulness, yet permit the prayer of one who follows him when he himself has no valid prayer. And success is from Allah, the Exalted.[20]

[مَسْأَلَةٌ إمَامَةُ مَنْ لَمْ يَبْلُغْ الْحُلُمَ]

A Jurisprudential Issue: Whether a Minor Can Lead

L7595

[19] **Qur'an references (L7592):** Qur'an 2:286 (Al-Baqarah).
[20] **Qur'an references (L7594):** Qur'an 9:91 (At-Tawbah).

Prayers

L7596 490. Issue: It is not permissible for one who has not reached puberty to lead prayer, whether in an obligatory or voluntary prayer, nor is their adhan permissible.

٤٩٠ - مَسْأَلَةٌ: وَلَا تَجُوزُ إمَامَةُ مَنْ لَمْ يَبْلُغْ الْحُلُمَ، لَا فِي فَرِيضَةٍ، وَلَا نَافِلَةٍ، وَلَا أَذَانُهُ؟ .

L7597 Al-Shāfiʿī said: It is permissible for him to lead in obligatory and voluntary prayers, and his Adhan is permissible. Mālik said: It is permissible for him to lead in voluntary prayers but not in obligatory prayers. ʿAlī said: Those who permitted his leading in prayer cited as evidence the narration reported to us by ʿAbdullāh ibn Rabīʿ, who narrated from ʿUmar ibn ʿAbd al-Malik, who narrated from Muḥammad ibn Bakr, who narrated from Abū Dāwūd, who narrated from Mūsā ibn Ismāʿīl, who narrated from Ḥammād—that is, ibn Salamah—from Ayyūb—that is, al-Sikhtiyānī—from ʿAmr ibn Salamah al-Jarmī, who said: We were in a settlement where people passed by us on their way to the Prophet (peace and blessings of Allah be upon him). When they returned, they would pass by us and inform us, saying: "The Messenger of Allah (peace and blessings of Allah be upon him) said such-and-such." I was a boy with a strong memory, so I memorized much Quran from this. Later, my father went as a delegate to the Messenger of Allah (peace and blessings of Allah be upon him) with a group of his people. He taught them the prayer and said: "Let the most proficient in Quran recitation among you lead you in prayer." I was the most proficient due to what I had memorized, so they appointed me to lead them. I wore a small cloak, and when I prostrated, it would ride up, exposing me. A woman among them said: "Cover the private parts of your reciter!" They bought me an Omani shirt, and I never rejoiced over anything after embracing Islam as much as I rejoiced over it. I led them in prayer when I was seven or eight years old.

وَقَالَ الشَّافِعِيُّ: تَجُوزُ إمَامَتُهُ فِي الْفَرِيضَةِ وَالنَّافِلَةِ، وَيَجُوزُ أَذَانُهُ؟ وَقَالَ مَالِكٌ: تَجُوزُ إمَامَتُهُ فِي النَّافِلَةِ وَلَا تَجُوزُ فِي الْفَرِيضَةِ قَالَ عَلِيٌّ: احْتَجَّ مَنْ أَجَازَ إمَامَتَهُ بِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا مُوسَى بْنُ إسْمَاعِيلَ ثنا حَمَّادٌ هُوَ ابْنُ سَلَمَةَ - أَنَا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ - عَنْ «عَمْرِو بْنِ سَلَمَةَ الْجَرْمِيِّ قَالَ: كُنَّا بِحَاضِرٍ يَمُرُّ بِنَا النَّاسُ إذَا أَتَوْا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَانُوا إذَا رَجَعُوا مَرُّوا بِنَا فَأَخْبَرُونَا: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ كَذَا وَقَالَ كَذَا، وَكُنْت غُلَامًا حَافِظًا، فَحَفِظْتُ مِنْ ذَلِكَ قُرْآنًا كَثِيرًا، فَانْطَلَقَ أَبِي وَافِدًا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي نَفَرٍ مِنْ قَوْمِهِ فَعَلَّمَهُمْ الصَّلَاةَ، وَقَالَ: يَؤُمُّكُمْ أَقْرَؤُكُمْ فَكُنْتُ أَقْرَأَهُمْ لِمَا كُنْتُ أَحْفَظُ، فَقَدَّمُونِي فَكُنْتُ أَؤُمُّهُمْ، وَعَلَيَّ بُرْدَةٌ لِي صَغِيرَةٌ، فَكُنْتُ إذَا سَجَدْتُ تَكَشَّفَتْ عَنِّي، فَقَالَتْ امْرَأَةٌ مِنْ النِّسَاءِ: وَارُوا عَنَّا عَوْرَةَ قَارِئِكُمْ؟ فَاشْتَرَوْا لِي قَمِيصًا عُمَانِيًّا، فَمَا فَرِحْتُ بِشَيْءٍ بَعْدَ الْإِسْلَامِ مَا فَرِحْتُ بِهِ فَكُنْتُ أَؤُمُّهُمْ وَأَنَا ابْنُ سَبْعِ سِنِينَ أَوْ ثَمَانِ سِنِينَ؟»

L7598–7599 Ali said: This was the action of ʿAmr ibn Salama and a group of the Companions with him, with no opposing Companion known against them—may Allah be pleased with them. So where are the Hanafis and Malikis: those who censure others for opposing a Companion when such opposition aligns with their own adherence? Yet they are the ones who abandon it the most.

قَالَ عَلِيٌّ: فَهَذَا فِعْلُ عَمْرِو بْنِ سَلَمَةَ، وَطَائِفَةٍ مِنْ الصَّحَابَةِ مَعَهُ، لَا يُعْرَفُ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، مُخَالِفٌ فَأَيْنَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ: الْمُشَنِّعُونَ بِخِلَافِ الصَّاحِبِ إذَا وَافَقَ تَقْلِيدَهُمْ؟ وَهُمْ أَتْرَكُ النَّاسِ لَهُ.

L7600 Especially those among them who said, "Verily, that in which no disagree-

ment is known constitutes consensus." We have found that 'Amr ibn Salama was a Companion of the Prophet—peace and blessings be upon him—and participated in a delegation to him alongside his father.

لَا سِيَّمَا مَنْ قَالَ مِنْهُمْ: إِنَّ مَا لَا يُعْرَفُ فِيهِ خِلَافٌ: فَهُوَ إِجْمَاعٌ، وَقَدْ وَجَدْنَا لِعَمْرِو بْنِ سَلَمَةَ هَذَا: صُحْبَةً، وَوِفَادَةً عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعَ أَبِيهِ.

L7601 Ali said: As for us, we have no need for anything beyond what the Messenger of Allah—peace and blessings of Allah be upon him—brought forth, whether through tacit approval, explicit statement, or practical example. Had we known that the Messenger of Allah—peace and blessings of Allah be upon him—recognized this matter and approved it, we would have adhered to it. But when no narrated precedent exists regarding it, the obligatory course when disputes arise is to refer our differences to what Allah has mandated we return to: the Quran and the Sunnah. We found that the Messenger of Allah—peace and blessings of Allah be upon him—said: "When prayer time arrives, let one of you give the call to prayer, and let the most Quranically knowledgeable among you lead you in prayer." Thus, the caller is commanded to give the call to prayer, and the imam is commanded to lead the prayer, by the explicit wording of this report.

قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَلَا حَاجَةَ عِنْدَنَا فِي غَيْرِ مَا جَاءَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ إقْرَارٍ، أَوْ قَوْلٍ، أَوْ عَمَلٍ، وَلَوْ عَلِمْنَا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَرَفَ هَذَا وَأَقَرَّهُ لَقُلْنَا بِهِ، فَأَمَّا إذَا لَمْ يَأْتِ بِذَلِكَ أَثَرٌ فَالْوَاجِبُ عِنْدَ التَّنَازُعِ أَنْ يُرَدَّ مَا اخْتَلَفْنَا فِيهِ إلَى مَا افْتَرَضَ اللَّهُ عَلَيْنَا الرَّدَّ إلَيْهِ مِنْ الْقُرْآنِ وَالسُّنَّةِ -: فَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ: «إذَا حَضَرَتْ الصَّلَاةُ فَلْيُؤَذِّنْ لَكُمْ أَحَدُكُمْ وَلْيَؤُمَّكُمْ أَقْرَؤُكُمْ» فَكَانَ الْمُؤَذِّنُ مَأْمُورًا بِالْأَذَانِ، وَالْإِمَامُ مَأْمُورًا بِالْإِمَامَةِ، بِنَصِّ هَذَا الْخَبَرِ.

L7602 We have established that the Prophet (peace be upon him) said: "The pen is lifted from the minor until he experiences a wet dream."

وَوَجَدْنَاهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ: «إنَّ الْقَلَمَ رُفِعَ عَنْ الصَّغِيرِ حَتَّى يَحْتَلِمَ» .

L7603 Thus, it is established that he is neither commanded nor obligated.

فَصَحَّ أَنَّهُ غَيْرُ مَأْمُورٍ وَلَا مُكَلَّفٍ.

L7604 If such is the case, then he is not the one commanded to perform the call to prayer (adhan) nor to lead the prayer. Since he is not commanded to do either, these two acts are only valid when performed by one who is commanded to perform them, not by someone not commanded. Whoever follows in prayer someone who is not commanded to be followed - while being aware of his condition - his prayer is invalid. If he does not know that the imam has not reached puberty and assumes him to be an adult, then the prayer of the one being followed is valid, like one who prays behind someone in a state of major impurity (junub) or a disbeliever (kāfir) without knowing about them - there is no difference between them. And success comes only from Allah. As for the distinction between a minor leading obligatory prayers and leading voluntary prayers - this is an utterly baseless assertion, for it is a claim without evidence.

فَإِذْ هُوَ كَذَلِكَ فَلَيْسَ هُوَ الْمَأْمُورُ بِالْأَذَانِ، وَلَا بِالْإِمَامَةِ، وَإِذْ لَيْسَ مَأْمُورًا بِهِمَا فَلَا يُجْزِئَانِ إلَّا مِنْ مَأْمُورٍ بِهِمَا، لَا مِمَّنْ لَمْ يُؤْمَرْ بِهِمَا، وَمَنْ ائْتَمَّ بِمَنْ لَمْ يُؤْمَرْ أَنْ يُؤْتَمَّ بِهِ - وَهُوَ عَالِمٌ بِحَالِهِ - فَصَلَاتُهُ بَاطِلٌ، فَإِنْ لَمْ يَعْلَمْ بِأَنَّهُ لَمْ يَبْلُغْ، وَظَنَّهُ رَجُلًا بَالِغًا -: فَصَلَاةُ الْمُؤْتَمِّ بِهِ تَامَّةٌ، كَمَنْ صَلَّى خَلْفَ جُنُبٍ، أَوْ كَافِرٍ - لَا يَعْلَمُ بِهِمَا - وَلَا فَرْقَ وَبِاَللَّهِ التَّوْفِيقُ؟ وَأَمَّا الْفَرْقُ بَيْنَ إمَامَةِ مَنْ لَمْ يَبْلُغْ فِي الْفَرِيضَةِ وَبَيْنَ إمَامَتِهِ فِي النَّافِلَةِ -: فَكَلَامٌ لَا وَجْهَ لَهُ أَصْلًا؛ لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ

The issue of the woman's prayer with women and men.

[مَسْأَلَةُ صَلَاةُ الْمَرْأَةِ بِالنِّسَاءِ وَالرِّجَال]

Issue 491:

٤٩١ - مَسْأَلَةٌ:

A woman leading women in prayer is permissible, but she may not lead men in prayer. This is the opinion of Abū Ḥanīfah and al-Shāfiʿī. However, Abū Ḥanīfah disliked it though he permitted it, while al-Shāfiʿī asserted: "Rather, it is the Sunnah." Did Mālik prohibit it?

وَصَلَاةُ الْمَرْأَةِ بِالنِّسَاءِ جَائِزَةٌ، وَلَا يَجُوزُ أَنْ تَؤُمَّ الرِّجَالَ؟ وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ - إِلَّا أَنَّ أَبَا حَنِيفَةَ كَرِهَ ذَلِكَ، وَأَجَازَ ذَلِكَ -: وَقَالَ الشَّافِعِيُّ: بَلْ هِيَ السُّنَّةُ - وَمَنَعَ مَالِكٌ مِنْ ذَلِكَ؟

Ali said: As for preventing women from leading men in prayer, it is because the Messenger of Allah—peace be upon him—stated that a woman invalidates a man's prayer and that her position in prayer is behind the men. The imam must stand in front of the followers or, if there is no one else with the imam, to the left of the follower.

قَالَ عَلِيٌّ: أَمَّا مَنْعُهُنَّ مِنْ إِمَامَةِ الرِّجَالِ: فَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخْبَرَ: أَنَّ الْمَرْأَةَ تَقْطَعُ صَلَاةَ الرَّجُلِ، وَأَنَّ مَوْقِفَهَا فِي الصَّلَاةِ خَلْفَ الرِّجَالِ، وَالْإِمَامُ لَا بُدَّ لَهُ مِنَ التَّقَدُّمِ أَمَامَ الْمُؤْتَمِّينَ، أَوْ مِنَ الْوُقُوفِ عَنْ يَسَارِ الْمَأْمُومِ إِذَا لَمْ يَكُنْ مَعَهُ غَيْرُهُ.

If a woman positions herself ahead of a man during prayer, it invalidates both his prayer and hers.

فَلَوْ تَقَدَّمَتِ الْمَرْأَةُ أَمَامَ الرَّجُلِ لَقَطَعَتْ صَلَاتَهُ، وَصَلَاتَهَا.

Similarly, if she prays beside him due to exceeding the place she was commanded to pray in, then she has prayed contrary to what she was commanded. As for her leading women in prayer: a woman does not invalidate another woman's prayer if she prays in front of her or beside her, for no Quranic verse or Sunnah prohibits this, and it is an act of goodness. Allah the Exalted has said: {And do good} [22: Al-Hajj: 77], which constitutes cooperation in righteousness and piety. Likewise, if women give the call to prayer and establish it, this is commendable for the reasons we stated.

وَكَذَلِكَ لَوْ صَلَّتْ إِلَى جَنْبِهِ، لِتَعَدِّيهَا الْمَكَانَ الَّذِي أُمِرَتْ بِهِ، فَقَدْ صَلَّتْ بِخِلَافِ مَا أُمِرَتْ؟ وَأَمَّا إِمَامَتُهَا النِّسَاءَ: فَإِنَّ الْمَرْأَةَ لَا تَقْطَعُ صَلَاةَ الْمَرْأَةِ إِذَا صَلَّتْ أَمَامَهَا أَوْ إِلَى جَنْبِهَا، وَلَمْ يَأْتِ بِالْمَنْعِ مِنْ ذَلِكَ قُرْآنٌ وَلَا سُنَّةٌ، وَهُوَ فِعْلُ خَيْرٍ؟ وَقَدْ قَالَ تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] وَهُوَ تَعَاوُنٌ عَلَى الْبِرِّ وَالتَّقْوَى. وَكَذَلِكَ: إِنْ أَذَّنَّ وَأَقَمْنَ فَهُوَ حَسَنٌ لِمَا ذَكَرْنَا؟ : حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ ثنا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَيْسَرَةَ بْنِ حَبِيبٍ النَّهْدِيِّ هُوَ أَبُو حَازِمٍ - عَنْ رَيْطَةَ الْحَنَفِيَّةِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَمَّتْهُنَّ فِي الْفَرِيضَةِ؟ : حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ ثنا أَحْمَدُ بْنُ

Narrated to us Muḥammad ibn Saʿīd ibn Nubāt: Narrated to us Aḥmad ibn ʿAbd al-Baṣīr: Narrated to us Qāsim ibn Aṣbagh: Narrated to us Muḥammad ibn ʿAbd al-Salām al-Khushanī: Narrated to us Muḥammad ibn al-Muthannā: Narrated to us ʿAbd al-Raḥmān ibn Mahdī via Sufyān al-Thawrī via Maysarah ibn Ḥabīb al-Nahdī (Abū Ḥāzim) via Rayṭah al-Ḥanafiyyah: ʿĀ'ishah, the Mother of the Believers, led them in the obligatory prayer.

عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ ثنا زِيَادُ بْنُ لَاحِقٍ عَنْ تَمِيمَةَ بِنْتِ سَلَمَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّهَا أَمَّتْ النِّسَاءَ فِي صَلَاةِ الْمَغْرِبِ فَقَامَتْ وَسَطَهُنَّ وَجَهَرَتْ بِالْقِرَاءَةِ وَبِهِ إِلَى يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ أَنَّ أُمَّ الْحَسَنِ بْنِ أَبِي الْحَسَنِ حَدَّثَتْهُمْ: أَنَّ أُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ كَانَتْ تَؤُمُّهُنَّ فِي رَمَضَانَ وَتَقُومُ مَعَهُنَّ فِي الصَّفِّ؟ قَالَ عَلِيٌّ: هِيَ خِيرَةُ ثِقَةِ الثِّقَاتِ، وَهَذَا إِسْنَادٌ كَالذَّهَبِ.

Narrated to us Yūnus ibn ʿAbd Allāh: Narrated to us Aḥmad ibn ʿAbd Allāh ibn ʿAbd al-Raḥīm: Narrated to us Aḥmad ibn Khālid: Narrated to us Muḥammad ibn ʿAbd al-Salām al-Khushanī: Narrated to us Muḥammad ibn Bashshār: Narrated to us Yaḥyā ibn Saʿīd al-Qaṭṭān: Narrated to us Ziyād ibn Lāḥiq via Tamīmah bint Salamah via ʿĀ'ishah, the Mother of the Believers: She led women in the *Maghrib* prayer, standing among them and reciting audibly.

And via this chain: Yaḥyā ibn Saʿīd al-Qaṭṭān from Saʿīd ibn Abī ʿArūbah from Qatādah: Umm al-Ḥasan, the mother of al-Ḥasan ibn Abī al-Ḥasan, narrated to them that Umm Salamah, the Mother of the Believers, used to lead them in Ramaḍān while standing with them in the row.

ʿAlī said: She is the best of the most trustworthy, and this chain is like gold.[21]

حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: تُقِيمُ الْمَرْأَةُ لِنَفْسِهَا؟ وَقَالَ طَاوُسٌ: كَانَتْ عَائِشَةُ أُمُّ الْمُؤْمِنِينَ تُؤَذِّنُ، وَتُقِيمُ؟ : وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمَّارٍ الدُّهْنِيِّ عَنْ حُجَيْرَةَ بِنْتِ حُصَيْنٍ قَالَتْ أَمَّتَنَا أُمُّ سَلَمَةَ أُمُّ الْمُؤْمِنِينَ فِي صَلَاةِ الْعَصْرِ، وَقَامَتْ بَيْنَنَا.

L7612–7614 Narrated by Hammam, from Ibn Mufarrij, from Ibn al-A'rabi, from al-Dabari, from Abd al-Razzaq, from Ibn Jurayj, from Ata, who said: "Can a woman establish the *iqamah* for herself?" And Tawus said: "Did Aisha, the Mother of the Believers, call the *adhan* and establish the *iqamah*?" And through him to ʿAbd al-Razzāq from Sufyān al-Thawrī from ʿAmmār al-Duhnī from Ḥujayrah bint Ḥuṣayn, who said: Umm Salamah, the Mother of the Believers, led us in the ʿAṣr prayer, and she stood before us.

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ بِإِسْنَادِهِ.

L7615 We have also transmitted it through the chain of Waki', who narrates from Sufyān, with its isnād.

وَعَنْ ابْنِ عَبَّاسٍ: تَؤُمُّ الْمَرْأَةُ النِّسَاءَ، وَتَقُومُ وَسَطَهُنَّ؟ وَعَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ يَأْمُرُ جَارِيَةً لَهُ تَؤُمُّ نِسَاءَهُ فِي رَمَضَانَ؟ وَعَنْ عَطَاءٍ، وَمُجَاهِدٍ، وَالْحَسَنِ، جَوَازُ إِمَامَةِ الْمَرْأَةِ لِلنِّسَاءِ فِي الْفَرِيضَةِ، وَالتَّطَوُّعِ - وَتَقُومُ وَسَطَهُنَّ فِي الصَّفِّ وَعَنْ النَّخَعِيِّ، وَالشَّعْبِيِّ: لَا بَأْسَ بِأَنْ تُصَلِّيَ الْمَرْأَةُ بِالنِّسَاءِ فِي رَمَضَانَ، وَتَقُومُ وَسَطَهُنَّ؟ قَالَ عَلِيٌّ: وَقَالَ الْأَوْزَاعِيُّ، وَسُفْيَانُ الثَّوْرِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ وَأَبُو ثَوْرٍ: يُسْتَحَبُّ أَنْ تَؤُمَّ الْمَرْأَةُ

L7616 From Ibn Abbas: A woman may lead women in prayer, standing in the middle of them. From Ibn Umar: He used to instruct a female servant of his to lead his women in prayer during Ramadan. From Ata', Mujahid, and Al-Hasan: The permissibility of a woman leading women in obligatory and supererogatory prayers, standing in the middle of them in the row. From Al-Nakhai and Al-Sha'bi: There is no harm in a woman leading women in prayer during Ramadan, standing in the middle of them. Ali said: Al-Awza'i, Sufyan Al-Thawri, Ahmad ibn Hanbal, Ishaq ibn Rahawayh, and Abu Thawr said: It is recommended for a woman to lead women in prayer, standing in the

[21] **Qur'an references (L7611):** Qur'an 22:77 (Al-Hajj).

middle of them. Ali said: We know of no valid argument whatsoever against preventing her from taking the forward position, and her ruling according to us is to stand ahead of the women. We know of no valid argument whatsoever for those who prohibited her from leading women in prayer.

L7617 Especially since it is the opinion of a group of the Companions - as we have mentioned - with no opponent known from the Companions (may Allah be pleased with them) whatsoever. They revere this when it aligns with their own desires, deeming it contrary to consensus, yet find it easy to oppose the Companions when it does not align with their desires. And success comes only from Allah, the Most High.

L7618 **Issue: If the Imam breaks his ablution or mentions that he is not ritually pure and then exits the prayer.**

L7619 492 – Issue:

L7620–7622 If the imam invalidates his ritual state or mentions being ritually impure and exits, appointing a deputy is commendable. If he does not appoint a deputy, one among them must step forward to complete the prayer with them—this is obligatory. If he signals to them to wait for him? Then it becomes incumbent upon them to wait until he returns to complete their prayer with them, after which he completes his own prayer. As for waiting for him, this is based on what we previously mentioned regarding the Messenger of Allah (peace and blessings be upon him) when he was in a state of major impurity: he exited, gestured for them to remain in place, then returned after performing ablution and led them in prayer. As for appointing deputies, this is based on our earlier mention of the Prophet (peace and blessings be upon him) departing for Quba, where the Muslims designated Abu Bakr to lead. When the Messenger of Allah (peace and blessings be upon him) arrived, Abu Bakr sensed his presence and stepped back, allowing the Prophet (peace and blessings be upon him) to come forward and lead the people in prayer. Since congregational prayer is obligatory for people as we established earlier, they must have an imam: either... Either by the Imam designating a deputy, by the congregation appointing one of their own, or by one of them assuming leadership. And Abu Hanifa said: If the Imam commits an invalidating act while prostrating,

النِّسَاءَ، وَتَقُومُ وَسَطَهُنَّ؟ قَالَ عَلِيٌّ: مَا نَعْلَمُ لِمَنْعِهَا مِنْ التَّقَدُّمِ حُجَّةً أَصْلًا، وَحُكْمُهَا عِنْدَنَا التَّقَدُّمُ أَمَامَ النِّسَاءِ، وَمَا نَعْلَمُ لِمَنْ مَنَعَ مِنْ إمَامَتِهَا النِّسَاءَ حُجَّةً أَصْلًا.

لَا سِيَّمَا وَهُوَ قَوْلُ جَمَاعَةٍ مِنْ الصَّحَابَةِ كَمَا أَوْرَدْنَا، لَا مُخَالِفَ لَهُمْ يُعْرَفُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَصْلًا، وَهُمْ يُعَظِّمُونَ هَذَا إذَا وَافَقَ أَهْوَاءَهُمْ، وَيَرَوْنَهُ خِلَافًا لِلْإِجْمَاعِ، وَهُوَ سَهْلٌ عَلَيْهِمْ خِلَافُهُمْ، إذَا لَمْ يُوَافِقْ أَهْوَاءَهُمْ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ أَحْدَثَ الْإِمَامُ أَوْ ذَكَرَ أَنَّهُ غَيْرُ طَاهِرٍ فَخَرَجَ]

٤٩٢ - مَسْأَلَةٌ:

وَإِذَا أَحْدَثَ الْإِمَامُ، أَوْ ذَكَرَ أَنَّهُ غَيْرُ طَاهِرٍ، فَخَرَجَ، فَاسْتَخْلَفَ: فَحَسَنٌ - فَإِنْ لَمْ يَسْتَخْلِفْ فَلْيَتَقَدَّمْ أَحَدُهُمْ يُتِمُّ بِهِمْ الصَّلَاةَ وَلَا بُدَّ، فَإِنْ أَشَارَ إلَيْهِمْ أَنْ يَنْتَظِرُوهُ؟ فَفَرْضٌ عَلَيْهِمْ انْتِظَارُهُ حَتَّى يَنْصَرِفَ فَيُتِمَّ بِهِمْ صَلَاتَهُمْ، ثُمَّ يُتِمَّ لِنَفْسِهِ؟ أَمَّا انْتِظَارُهُ: فَلِمَا ذَكَرْنَا آنِفًا مِنْ «ذِكْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ جُنُبَ فَخَرَجَ وَأَوْمَأَ إلَيْهِمْ أَنْ مَكَانَكُمْ ثُمَّ عَادَ، وَقَدْ اغْتَسَلَ فَصَلَّى بِهِمْ» ؟ وَأَمَّا اسْتِخْلَافُهُمْ: فَلِمَا ذَكَرْنَا قَبْلُ مِنْ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَضَى إلَى قُبَاءَ فَقَدَّمَ الْمُسْلِمُونَ أَبَا بَكْرٍ فَجَاءَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. فَلَمَّا أَحَسَّ أَبُو بَكْرٍ بِهِ تَأَخَّرَ وَتَقَدَّمَ - عَلَيْهِ السَّلَامُ - فَصَلَّى بِالنَّاسِ» ، وَلِأَنَّ فَرْضًا عَلَى النَّاسِ أَنْ يُصَلُّوا فِي جَمَاعَةٍ كَمَا قَدَّمْنَا، فَلَا بُدَّ لَهُمْ مِنْ إمَامٍ: إمَّا بِاسْتِخْلَافِ إمَامِهِمْ، وَإِمَّا بِاسْتِخْلَافِهِمْ أَحَدَهُمْ، وَإِمَّا بِتَقَدُّمِ أَحَدِهِمْ؟ وَقَالَ أَبُو حَنِيفَةَ: إنْ أَحْدَثَ الْإِمَامُ وَهُوَ سَاجِدٌ فَرَفَعَ رَأْسَهُ وَلَمْ يُكَبِّرْ وَاسْتَخْلَفَ: جَازَ ذَلِكَ.

then raises his head without saying *takbīr* (“Allahu Akbar”) and designates a deputy, this is valid.

وَصَلَاتُهُمْ كُلُّهُمْ تَامَّةٌ.

L7623 And their prayer—all of them—is complete.

فَلَوْ كَبَّرَ ثُمَّ اسْتَخْلَفَ بَطَلَتْ صَلَاةُ الْجَمِيعِ.

L7624 If he said the *takbīr* and then appointed a deputy, the prayer of the entire congregation is invalidated.

فَلَوْ خَرَجَ مِنْ الْمَسْجِدِ قَبْلَ أَنْ يَسْتَخْلِفَ بَطَلَتْ صَلَاةُ الْجَمِيعِ؟ قَالَ عَلِيٌّ: وَهَذِهِ أَقْوَالٌ فِي غَايَةِ الْفَسَادِ وَالتَّخْلِيطِ، وَلَيْسَ عَلَيْهَا مِنْ بَهْجَةِ الْحَقِّ أَثَرٌ؟ وَلَيْتَ شِعْرِي إذَا أَحْدَثَ سَاجِدًا فَرَفَعَ رَأْسَهُ وَلَمْ يُكَبِّرْ: فِي صَلَاةٍ هُوَ أَمْ فِي غَيْرِ صَلَاةٍ؟ وَهَلْ إمَامَتُهُ لَهُمْ بَاقِيَةٌ أَوْ لَا؟ وَلَا بُدَّ مِنْ أَحَدِ الْوَجْهَيْنِ -: فَإِنْ قَالُوا: هُوَ فِي صَلَاةٍ وَإِمَامَتُهُ بَاقِيَةٌ، جَعَلُوهُ مُصَلِّيًا بِلَا وُضُوءٍ، وَإِمَامًا بِلَا وُضُوءٍ، وَهَذَا خِلَافُ أَصْلِهِمْ الْآخَرِ الْفَاسِدِ فِي بُطْلَانِ صَلَاةِ مَنْ ائْتَمَّ بِإِمَامٍ هُوَ عَلَى غَيْرِ طَهَارَةٍ نَاسِيًا أَوْ ذَاكِرًا؟ ثُمَّ نَقُولُ لَهُمْ: إذْ هُوَ فِي صَلَاةٍ وَهُوَ بَعْدُ بَاقٍ عَلَى إمَامَتِهِ لَهُمْ؟ فَمَا ذَنْبُهُ إذْ كَبَّرَ فَأَبْطَلَ صَلَاةَ نَفْسِهِ وَصَلَاتَهُمْ؟ هَذِهِ عَدَاوَةٌ مِنْكُمْ لِذِكْرِ اللَّهِ تَعَالَى وَأَخِيَّةُ قَوْلِكُمْ: مَنْ عَطَسَ فِي صَلَاتِهِ فَقَالَ بِلِسَانِهِ “ الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ ” بَطَلَتْ صَلَاتُهُ؟ وَلَوْ قَعَدَ مِقْدَارَ التَّشَهُّدِ فَقَذَفَ مُحْصَنَةً، أَوْ ضَرَطَ عَامِدًا لَمْ تَبْطُلْ صَلَاتُهُ تَعَالَى اللَّهُ، مَا أَوْحَشَ هَذِهِ الْأَقْوَالَ الَّتِي لَا يَحِلُّ قَبُولُهَا؟ إلَّا لَوْ قَالَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحْدَهُ، الَّذِي لَمْ نَأْخُذْ الصَّلَاةَ، وَلَا الدِّينَ، وَلَا ذِكْرَ اللَّهِ تَعَالَى إلَّا عَنْهُ، فَلَا يَحِلُّ لَنَا إذَنْ شَيْءٌ مِنْ ذَلِكَ إلَّا كَمَا أَمَرَنَا وَإِنْ قَالُوا: بَلْ لَيْسَ فِي صَلَاةٍ، وَلَا هُمْ بَعْدُ فِي إمَامَتِهِ؟ قُلْنَا لَهُمْ: فَإِذْ قَدْ خَرَجَ بِالْحَدَثِ مِنْ إمَامَتِهِمْ وَعَنْ الطَّهَارَةِ الَّتِي لَا صَلَاةَ إلَّا بِهَا -: فَمَا الَّذِي وَلَّدَ عَلَيْهِ تَكْبِيرُهُ مِنْ الضَّرَرِ، حَتَّى أَحْدَثَ عَلَيْهِ قَوْلُهُ “ اللَّهُ أَكْبَرُ ”: بُطْلَانَ صَلَاتِهِ، وَكَذَلِكَ خُرُوجُهُ مِنْ الْمَسْجِدِ؟

L7625 If he exits the mosque before appointing a successor, does the prayer of all become invalid? Ali said: These are utterly corrupt and confused opinions bearing no trace of the splendor of truth. I wish I knew—if one invalidates his ablution while prostrating, then raises his head without saying “Allah is greatest”—is he in prayer or not? Does his imamate over them remain? It must be one of two scenarios. If they say he remains in prayer with his imamate intact, they make him pray and lead without ablution—contradicting their own corrupt principle that prayer behind an imam in a state of impurity (whether the follower is forgetful or aware) is invalid. We then ask: Since he remains in prayer as their imam, what is his fault if his subsequent “Allah is greatest” invalidates his prayer and theirs? This is hostility toward Allah’s remembrance and the essence of your claim that uttering “Praise be to Allah, Lord of the worlds” with his tongue during his prayer after sneezing invalidates it, while sitting through tashahhud to accuse a chaste woman or intentionally passing wind does not! Glory be to Allah! How repugnant are these statements which it is impermissible to accept—unless uttered solely by Allah’s Messenger, peace and blessings be upon him, from whom alone we take prayer, religion, and Allah’s remembrance? Nothing is lawful for us except as he commanded. If they say he is no longer in prayer nor their imam, we reply: Since his ritual impurity removed him from imamate and the ritual purity essential for prayer, what harm could his saying “Allah is greatest” possibly cause to invalidate his prayer and theirs? Similarly, what of his exit from the mosque?

L7626–7627

In this statement, there is no small measure of absurdity. The mosque of Bayt al-Maqdis measures eight hundred cubits in length and some more, while indeed there are mosques whose width is merely three cubits or so, with a similar length. We praise Allah for sparing us from such statements repugnant to sound intellect. ʿAlī said: If one appoints as successor someone who entered at that moment—whether they had not yet uttered the *takbīr*, had already uttered it, joined him at the start of his prayer, or if they designated someone of this description, or if he himself stepped forward—all this is permissible. For appointing an imam to complete the obligatory prayer with them, as we stated, is due to the obligation of congregational prayer incumbent upon them. If the successor missed even one *rakʿah* of the prayer and was appointed during the second *rakʿah*, he should begin by completing that *rakʿah* with them. When he prostrates the two prostrations of that *rakʿah*, he signals them to sit and rises for his second *rakʿah*. Upon completing it, he sits and recites the *Tashahhud*, then stands—and they stand with him—to complete the remaining two *rakʿahs* (or one *rakʿah* if it is Maghrib). If it is Fajr, the procedure is exactly the same. When he completes his *Tashahhud*, he recites the salutation, and they recite it with him. If he missed two *rakʿahs* and was appointed during the sitting posture, he utters the *takbīr*, and they stand with him after completing their *Tashahhud* as swiftly as possible. He performs the two remaining *rakʿahs* while they remain with him. Once they sit, he rises to complete his remaining prayer, then recites the *Tashahhud*, recites the salutation, and they recite it with him. If this occurs during the sitting posture of Fajr, the procedure is the same. If he missed three *rakʿahs* and was appointed at the start of the fourth, he prays it. Upon rising from the final prostration, he stands while they sit. He then performs one *rakʿah*, sits and recites the *Tashahhud*, stands to complete his remaining prayer, then sits, recites the *Tashahhud*, recites the salutation, and they recite it with him. In summary, he prays only his own prayer—not as he would if he were a congregant—for he is the imam. The imam does not follow anyone in his prayer but is followed. As for them, they follow him in actions they do not intend to perform, such as an extra standing or third prostration. Each individual prays for themselves,

وَفِي هَذَا الْقَوْلِ مِنْ السَّخَافَةِ غَيْرُ قَلِيلٍ وَهَذَا مَسْجِدُ بَيْتِ الْمَقْدِسِ طُولُهُ ثَمَانُمِائَةِ ذِرَاعٍ وَنَيِّفٍ، وَرُبَّ مَسْجِدٍ لَيْسَ عَرْضُهُ إلَّا ثَلَاثَةُ أَذْرُعٍ أَوْ نَحْوِهَا، وَطُولُهُ مِثْلُ ذَلِكَ فَقَطْ وَنَحْمَدُ اللَّهَ عَلَى تَسْلِيمِهِ إيَّانَا مِنْ مِثْلِ هَذِهِ الْأَقْوَالِ الْمُنَافِرَةِ لِصِحَّةِ الدِّمَاغِ؟ قَالَ عَلِيٌّ: فَإِنْ اسْتَخْلَفَ مَنْ دَخَلَ حِينَئِذٍ وَلَمْ يُكَبِّرْ بَعْدُ، أَوْ قَدْ كَبَّرَ، أَوْ مَنْ أَدْرَكَ مَعَهُ أَوَّلَ صَلَاتِهِ، أَوْ قَدَّمُوا لَهُمْ مَنْ هَذِهِ صِفَتُهُ، أَوْ تَقَدَّمَ هُوَ -: فَكُلُّ ذَلِكَ جَائِزٌ، إذْ اسْتِخْلَافُ إمَامٍ يُتِمُّ بِهِمْ فَرْضٌ كَمَا ذَكَرْنَا، لِوُجُوبِ الصَّلَاةِ فِي جَمَاعَةٍ عَلَيْهِمْ، فَلْيَبْدَأْ الْمُسْتَخْلَفُ - إنْ كَانَ لَمْ يُدْرِكْ مِنْ الصَّلَاةِ رَكْعَةً وَاحِدَةً وَاسْتُخْلِفَ فِي الثَّانِيَةِ: فَيُتِمَّ تِلْكَ الرَّكْعَةَ بِهِمْ، ثُمَّ إذَا سَجَدَ سَجْدَتَيْهَا أَشَارَ إلَيْهِمْ فَجَلَسُوا، وَقَامَ هُوَ إلَى ثَانِيَتِهِ، فَإِذَا أَتَمَّهَا جَلَسَ وَتَشَهَّدَ، ثُمَّ قَامَ وَقَامُوا مَعَهُ فَأَتَمَّ بِهِمْ الرَّكْعَتَيْنِ أَوْ الرَّكْعَةِ -: إنْ كَانَتْ الْمَغْرِبَ، فَإِنْ كَانَتْ الصُّبْحَ فَكَذَلِكَ سَوَاءً سَوَاءً، فَإِذَا أَتَمَّ تَشَهُّدَهُ سَلَّمَ وَسَلَّمُوا؟ فَإِنْ فَاتَتْهُ رَكْعَتَانِ وَاسْتُخْلِفَ فِي الْجُلُوسِ كَبَّرَ وَقَامُوا مَعَهُ بَعْدَ أَنْ يُتِمُّوا تَشَهُّدَهُمْ بِأَسْرَعَ مَا يُمْكِنُ، وَأَتَى بِالرَّكْعَتَيْنِ الْبَاقِيَتَيْنِ وَهُمْ مَعَهُ، فَإِذَا جَلَسُوا قَامَ إلَى بَاقِي صَلَاتِهِ فَأَتَمَّهَا ثُمَّ يَتَشَهَّدُ وَيُسَلِّمُ وَيُسَلِّمُونَ، فَإِنْ كَانَ ذَلِكَ فِي جُلُوسِ الصُّبْحِ فَكَذَلِكَ، ثُمَّ جَلَسَ وَتَشَهَّدَ وَسَلَّمَ وَسَلَّمُوا؟ فَإِنْ فَاتَتْهُ ثَلَاثُ رَكَعَاتٍ وَاسْتُخْلِفَ فِي أَوَّلِ الرَّابِعَةِ صَلَّاهَا، فَإِذَا رَفَعَ مِنْ آخِرِ سُجُودِهِ قَامَ وَجَلَسُوا، ثُمَّ أَتَى بِرَكْعَةٍ وَجَلَسَ وَتَشَهَّدَ، ثُمَّ قَامَ وَأَتَى بِبَاقِي صَلَاتِهِ، ثُمَّ جَلَسَ وَتَشَهَّدَ وَسَلَّمَ وَسَلَّمُوا؟ وَبِالْجُمْلَةِ فَلَا يُصَلِّي إلَّا صَلَاةَ نَفْسِهِ، لَا كَمَا كَانَ يُصَلِّي لَوْ كَانَ مَأْمُومًا، لِأَنَّهُ إمَامٌ وَالْإِمَامُ لَا يَتْبَعُ أَحَدًا فِي صَلَاتِهِ لَكِنْ يُتْبَعُ فِيهَا، وَأَمَّا هُمْ فَيَتْبَعُونَهُ فِيمَا لَا يُرِيدُونَ بِهِ فِي صَلَاتِهِمْ وُقُوفًا وَلَا سَجْدَةً ثَالِثَةً، وَكُلُّ أَحَدٍ يُصَلِّي لِنَفْسِهِ قَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤]

as Allah Almighty states: *“No soul bears the burden of another”* (Quran 6:164).[22]

L7628–7630 If the deputy imam is positioned at the rear of the rows, he is obligated to walk toward any direction within the first row while maintaining his orientation toward the Qiblah—even if moving sideways—until reaching the imam’s position. This is because the imam’s obligation, in the absence of necessity, is to stand ahead of the followers, who must remain behind him without exception. Thus, the deputy is required to walk to the position he has been commanded to occupy. He may not deviate from keeping his face directed toward the Qiblah’s direction. the Sacred Mosque, except in cases of unavoidable necessity when no alternative is available—and all success lies with Allah the Exalted.

فَإِنْ كَانَ الْمُسْتَخْلَفُ فِي مُؤَخَّرِ الصُّفُوفِ فَمَا بَيْنَ ذَلِكَ إِلَى أَحَدِ جِهَاتِ الصَّفِّ الْأَوَّلِ -: فَفَرْضٌ عَلَيْهِ الْمَشْيُ مُسْتَقْبِلًا لِلْقِبْلَةِ كَمَا هُوَ عَلَى أَحَدِ جَنْبَيْهِ إِلَى مَوْقِفِ الْإِمَامِ؛ لِأَنَّ فَرْضَ الْإِمَامِ - لِغَيْرِ الضَّرُورَةِ - أَنْ يَقِفَ أَمَامَ الْمَأْمُومِينَ وَهُمْ وَرَاءَهُ وَلَا بُدَّ، فَفَرْضٌ عَلَيْهِ الْمَشْيُ إِلَى مَا أُمِرَ بِهِ مِنْ ذَلِكَ، وَلَا يَجُوزُ لَهُ أَنْ يُخَالِفَ عَنْ كَوْنِ وَجْهِهِ إِلَى شَطْرِ الْمَسْجِدِ الْحَرَامِ، إِلَّا لِضَرُورَةٍ لَا يَقْدِرُ عَلَى غَيْرِ ذَلِكَ مَعَهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: It is impermissible for anyone to lead the prayer while looking at what he is reciting from in the Mus’haf.

[مَسْأَلَةٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يَؤُمَّ وَهُوَ يَنْظُرُ مَا يَقْرَأُ بِهِ فِي الْمُصْحَفِ]

L7631

L7632 493 – Issue:

٤٩٣ - مَسْأَلَةٌ:

L7633 It is not permissible for anyone to lead prayer while looking at what he recites from the Mushaf, neither in an obligatory prayer nor a voluntary one. If one does so knowing it is impermissible, his prayer is invalidated, and the prayer of whoever follows him is invalidated if the follower is aware of his state and knows this is impermissible. Ali said: “Whoever does not memorize the Quran, Allah the Exalted has not obligated him to recite what he does not memorize, for that is not within his capability.”

وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَؤُمَّ وَهُوَ يَنْظُرُ مَا يَقْرَأُ بِهِ فِي الْمُصْحَفِ، لَا فِي فَرِيضَةٍ وَلَا نَافِلَةٍ، فَإِنْ فَعَلَ عَالِمًا بِأَنَّ ذَلِكَ لَا يَجُوزُ بَطَلَتْ صَلَاتُهُ، وَصَلَاةُ مَنْ ائْتَمَّ بِهِ عَالِمًا بِحَالِهِ، عَالِمًا بِأَنَّ ذَلِكَ لَا يَجُوزُ؟ قَالَ عَلِيٌّ: مَنْ لَا يَحْفَظُ الْقُرْآنَ فَلَمْ يُكَلِّفْهُ اللَّهُ تَعَالَى قِرَاءَةَ مَا لَا يَحْفَظُ، لِأَنَّهُ لَيْسَ ذَلِكَ فِي وُسْعِهِ.

L7634 The Most High said: “Allah does not burden a soul beyond its capacity” [Al-Baqarah: 286].[23]

قَالَ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦]

L7635 If he is not legally obligated to do that, yet undertakes what he is exempt from, it is invalid. His looking into the muṣḥaf [Quranic codex] is an action for which no textual evidence exists permitting it during prayer.

فَإِذَا لَمْ يَكُنْ مُكَلَّفًا ذَلِكَ فَتَكَلَّفَهُ مَا سَقَطَ عَنْهُ: بَاطِلٌ، وَنَظَرُهُ فِي الْمُصْحَفِ عَمَلٌ لَمْ يَأْتِ بِإِبَاحَتِهِ فِي الصَّلَاةِ نَصٌّ.

L7636 And he (peace be upon him) said: “Verily, prayer entails [complete] preoc-

[22] **Qur’an references (L7627):** Qur’an 6:164 (Al-An’am).
[23] **Qur’an references (L7634):** Qur’an 2:286 (Al-Baqarah).

cupation." Similarly, the prayer of one who prays while leaning on a staff or against a wall due to weakness preventing him from standing remains valid, because such an act was not commanded. The ruling for one in this condition is that he should pray seated, and he must not introduce into his prayer any act not commanded by the Lawgiver.

L7637 If that were a merit, the Messenger of Allah—peace and blessings of Allah be upon him—would have been most deserving of it. Yet he did not do so; rather, he prayed sitting when unable to stand and instructed those incapable to do so. Therefore, praying while relying on support contradicts the command of the Messenger of Allah—peace and blessings of Allah be upon him.

L7638 And he (peace be upon him) said: "Whoever does a deed not in accordance with our command, it is rejected."

L7639 And this is the view of Saʿīd ibn al-Musayyab, al-Ḥasan, and others among them.

L7640 **Case: If someone forgets a prescribed prayer and finds an imam leading a different prayer in congregation.**

L7641 Issue 494:

L7642–7644 Whoever forgets an obligatory prayer - regardless of which prayer it is - and finds an imam praying another prayer - regardless of which prayer it is - in congregation: it becomes necessarily incumbent upon him to join and pray the missed prayer, which suffices him. We do not mind the difference in intention between the imam and the one following in prayer. It is permissible to pray an obligatory prayer behind someone performing voluntary worship, or voluntary prayers behind someone performing an obligatory prayer, or an obligatory prayer behind someone performing another obligatory prayer. Is all of this not commendable and in accordance with the Sunnah? If a person finds a congregation praying Tarāwīḥ in Ramadan while having not yet prayed the Isha prayer, let him pray his obligatory prayer with them by intending his obligation. When the imam concludes the prayer and he has not yet completed his own prayer, he should not conclude it but rather

وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «إنَّ فِي الصَّلَاةِ لَشُغْلًا» ؟ وَكَذَلِكَ صَلَاةُ مَنْ صَلَّى عَلَى عَصًا، أَوْ إلَى حَائِطٍ لِضَعْفِهِ عَنْ الْقِيَامِ؛ لِأَنَّهُ لَمْ يُؤْمَرْ بِذَلِكَ وَحُكْمُ مَنْ هَذِهِ صِفَتُهُ أَنْ يُصَلِّيَ جَالِسًا وَلَيْسَ لَهُ أَنْ يَعْمَلَ فِي صَلَاتِهِ مَا لَمْ يُؤْمَرْ بِهِ.

وَلَوْ كَانَ ذَلِكَ فَضْلًا لَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْلَى بِذَلِكَ، لَكِنَّهُ لَمْ يَفْعَلْهُ، بَلْ صَلَّى جَالِسًا إذْ عَجَزَ عَنْ الْقِيَامِ، وَأَمَرَ بِذَلِكَ مَنْ لَا يَسْتَطِيعُ، فَصَلَاةُ الْمُعْتَمِدِ: مُخَالِفَةٌ لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

وَهُوَ قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ، وَالْحَسَنِ، وَغَيْرِهِمَا

[مَسْأَلَةٌ نَسِيَ صَلَاةَ فَرْضٍ فَوَجَدَ إمَامًا يُصَلِّي صَلَاةً أُخْرَى فِي جَمَاعَةٍ]

٤٩٤ - مَسْأَلَةٌ:

وَمَنْ نَسِيَ صَلَاةَ فَرْضٍ - أَيَّ صَلَاةٍ كَانَتْ - فَوَجَدَ إمَامًا يُصَلِّي صَلَاةً أُخْرَى - أَيَّ صَلَاةٍ كَانَتْ - فِي جَمَاعَةٍ: فَفَرْضٌ عَلَيْهِ وَلَا بُدَّ أَنْ يَدْخُلَ فَيُصَلِّي الَّتِي فَاتَتْهُ، وَتُجْزِئُهُ، وَلَا نُبَالِي بِاخْتِلَافِ نِيَّةِ الْإِمَامِ وَالْمَأْمُومِ وَجَائِزٌ صَلَاةُ الْفَرْضِ خَلْفَ الْمُتَنَفِّلِ: وَالْمُتَنَفِّلِ خَلْفَ مَنْ يُصَلِّي الْفَرْضَ، وَصَلَاةُ فَرْضٍ خَلْفَ مَنْ يُصَلِّي صَلَاةَ فَرْضٍ أُخْرَى، كُلُّ ذَلِكَ حَسَنٌ، وَسُنَّةٌ؟ وَلَوْ وَجَدَ الْمَرْءُ جَمَاعَةً تُصَلِّي التَّرَاوِيحَ فِي رَمَضَانَ، وَلَمْ يَكُنْ صَلَّى الْعِشَاءَ الْآخِرَةَ، فَلْيُصَلِّهَا مَعَهُمْ، يَنْوِي فَرْضَهُ، فَإِذَا سَلَّمَ الْإِمَامُ وَلَمْ يَكُنْ هُوَ أَتَمَّ صَلَاتَهُ فَلَا يُسَلِّمُ، بَلْ يَقُومُ، فَإِنْ قَامَ الْإِمَامُ إلَى الرَّكْعَتَيْنِ: قَامَ هُوَ أَيْضًا فَائْتَمَّ بِهِ فِيهِمَا، ثُمَّ يُسَلِّمُ

remain standing. If the imam rises for two additional rak'ahs, he should likewise rise and follow him in them, then conclude with the same salutation as the imam. The Imam—and similarly, if he mentioned a missed prayer—may validly lead two or more congregations in dispersed mosques with one prayer that is obligatory for them. All these prayers are supererogatory for him except the first prayer he performed.

بِسَلَامِ الْإِمَامِ - وَكَذَلِكَ لَوْ ذَكَرَ صَلَاةً فَائِتَةً؟ وَجَائِزٌ أَنْ يُصَلِّيَ إِمَامٌ وَاحِدٌ بِجَمَاعَتَيْنِ فَصَاعِدًا فِي مَسَاجِدَ شَتَّى صَلَاةً وَاحِدَةً هِيَ لَهُمْ: فَرْضٌ، وَكُلُّهَا لَهُ: نَافِلَةٌ، سِوَى الَّتِي صَلَّى أَوَّلًا.

L7645 Similarly, if someone prays an obligatory prayer in congregation, it is permissible for them to lead another congregation for that same prayer—and one congregation after another. If someone misses Fajr and finds people praying Dhuhr, they should pray two rak'ahs with them intending Fajr, then conclude with salām. They then pray the remaining two rak'ahs with the intention of Dhuhr, then completed their Dhuhr. This procedure applies to every prayer according to what we have mentioned. This is the opinion of Al-Shāfiʿī and Abū Sulaymān.

وَكَذَلِكَ مَنْ صَلَّى صَلَاةَ فَرْضٍ فِي جَمَاعَةٍ فَجَائِزٌ لَهُ أَنْ يَؤُمَّ فِي تِلْكَ الصَّلَاةِ جَمَاعَةً أُخْرَى وَجَمَاعَةً بَعْدَ جَمَاعَةٍ.؟ وَمَنْ فَاتَتْهُ الصُّبْحُ فَوَجَدَ قَوْمًا يُصَلُّونَ الظُّهْرَ صَلَّى مَعَهُمْ رَكْعَتَيْنِ يَنْوِي بِهِمَا الصُّبْحَ، ثُمَّ سَلَّمَ، وَصَلَّى الْبَاقِيَتَيْنِ بِنِيَّةِ الظُّهْرِ، ثُمَّ أَتَمَّ ظُهْرَهُ، وَهَكَذَا يَعْمَلُ فِي كُلِّ صَلَاةٍ عَلَى حَسْبِ مَا ذَكَرْنَا: وَهَذَا قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L7646 Abu Hanifa and Malik said: It is not permissible for the intention of the Imam and the ma'moom to differ.

وَقَالَ أَبُو حَنِيفَةَ وَمَالِكٌ: لَا يَجُوزُ أَنْ تَخْتَلِفَ نِيَّةُ الْإِمَامِ وَالْمَأْمُومِ.

L7647 Ali said: How astonishing it is that the Ḥanafīs permit ablution for prayer and the ritual bath from major impurity without any intention, or with the intention of merely cooling off.

قَالَ عَلِيٌّ: إِنَّ مِنْ الْعَجَبِ أَنْ يَكُونَ الْحَنِيفِيُّونَ يُجِيزُونَ الْوُضُوءَ لِلصَّلَاةِ وَالْغُسْلَ مِنْ الْجَنَابَةِ بِغَيْرِ نِيَّةٍ، أَوْ بِنِيَّةِ التَّبَرُّدِ.

L7648 Among them are those who permit fasting Ramadan with the intention to break it and abandoning the fast entirely. All of them allow fasting with a voluntary intention that suffices for one's obligatory duty, and with an intention to break the fast until the sun passes its zenith. Thus, they invalidate intentions in matters where Allah the Exalted and His Messenger—peace and blessings of Allah be upon him—have mandated them, then require intentions here where neither Allah the Exalted nor His Messenger—peace and blessings of Allah be upon him—have obligated them.

وَفِيهِمْ مَنْ يُجِيزُ صَوْمَ رَمَضَانَ بِنِيَّةِ الْإِفْطَارِ، وَتَرْكَ الصَّوْمِ وَكُلُّهُمْ يُجِيزُهُ بِنِيَّةِ التَّطَوُّعِ وَيُجْزِئُهُ عَنْ فَرْضِهِ، وَبِنِيَّةِ الْفِطْرِ إلَى زَوَالِ الشَّمْسِ، فَيُبْطِلُونَ النِّيَّاتِ حَيْثُ أَوْجَبَهَا اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ يُوجِبُونَهَا هَهُنَا حَيْثُ لَمْ يُوجِبْهَا اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L7649 Among the Malikis are those who consider the Friday bath and entering the public bathhouse sufficient as substitutes for the ritual bath for major impurity (janabah), thereby omitting the intention where it is obligatory and imposing it where neither Allah the Exalted nor His Messenger—may Allah bless him and grant him peace—have made it obligatory.

وَفِي الْمَالِكِيِّينَ مَنْ يُجْزِئُ عِنْدَهُ غُسْلُ الْجُمُعَةِ، وَدُخُولُ الْحَمَّامِ مِنْ غُسْلِ الْجَنَابَةِ، فَيُسْقِطُونَ النِّيَّةَ حَيْثُ هِيَ فَرْضٌ، وَيُوجِبُونَهَا حَيْثُ لَمْ يُوجِبْهَا اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

قَالَ عَلِيٌّ: وَإِنَّمَا يَجِبُ الْكَلَامُ فِي وُجُوبِ اتِّفَاقِ نِيَّةِ الْإِمَامِ وَالْمَأْمُومِ، أَوْ فِي سُقُوطِ وُجُوبِهِ، فَإِذَا سَقَطَ وُجُوبُهُ صَحَّتْ الْمَسَائِلُ الَّتِي ذَكَرْنَا كُلُّهَا، لِأَنَّهَا مَبْنِيَّةٌ عَلَى هَذَا الْأَصْلِ، وَمُنْتَجَةٌ مِنْهُ؟ قَالَ عَلِيٌّ: فَنَقُولُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: إنَّهُ لَمْ يَأْتِ قَطُّ: قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، وَلَا قِيَاسٌ: يُوجِبُ اتِّفَاقَ نِيَّةِ الْإِمَامِ وَالْمَأْمُومِ، وَكُلُّ شَرِيعَةٍ لَمْ يُوجِبْهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، فَهِيَ غَيْرُ وَاجِبَةٍ، وَهَذِهِ شَرِيعَةٌ لَمْ يُوجِبْهَا شَيْءٌ مِمَّا ذَكَرْنَا، فَهِيَ بَاطِلٌ؟

L7650 Ali said: The discussion must address whether the alignment of intention between the imam and the follower is obligatory or whether this obligation is waived. If the obligation is waived, do all the issues we mentioned hold true, since they are derived from this foundational principle?

Ali said: We say, and success is from Allah, the Exalted: There has never been any Qur'an, Sunnah, consensus, or qiyas (analogical reasoning) that obligates alignment of intention between the imam and the follower. Every ruling not obligated by the Qur'an, Sunnah, or consensus is non-binding. Since this ruling is not obligated by any of these sources, is it invalid?

ثُمَّ الْبُرْهَانُ يَقُومُ عَلَى سُقُوطِ وُجُوبِ ذَلِكَ، وَقَدْ كَانَ يَكْفِي مِنْ سُقُوطِهِ عَدَمُ الْبُرْهَانِ عَلَى وُجُوبِهِ؟ قَالَ عَلِيٌّ: مِنْ الْمُحَالِ أَنْ يُكَلِّفَنَا اللَّهُ تَعَالَى مُوَافَقَةَ نِيَّةِ الْمَأْمُومِ مِنَّا لِنِيَّةِ الْإِمَامِ لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦]

L7651–7652 The evidence establishes that this obligation ceases, and is it not sufficient for its cessation that there is no evidence for its obligation? 'Alī said: It is impossible that Allah the Exalted would require us to match the intention of the follower from among us with the intention of the imam, based on Allah's statement: "Allah does not burden any soul beyond its capacity" (al-Baqarah 2:286).[24]

وَلَيْسَ فِي وُسْعِنَا عِلْمُ مَا غُيِّبَ عَنَّا مِنْ نِيَّةِ الْإِمَامِ حَتَّى نُوَافِقَهَا، وَإِنَّمَا عَلَيْنَا مَا يَسَعُنَا وَنَقْدِرُ عَلَيْهِ مِنْ الْقَصْدِ بِنِيَّاتِنَا تَأْدِيَةَ مَا أُمِرْنَا بِهِ كَمَا أُمِرْنَا، وَهَذَا بُرْهَانٌ ضَرُورِيٌّ سَمْعِيٌّ وَعَقْلِيٌّ وَبُرْهَانٌ آخَرُ: وَهُوَ قَوْلُ اللَّهِ تَعَالَى: {لا تُكَلَّفُ إِلا نَفْسَكَ} [النساء: ٨٤] وَهَذَا نَصٌّ جَلِيٌّ كَافٍ فِي إبْطَالِ قَوْلِهِمْ فَإِنْ قَالُوا: قَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا جُعِلَ الْإِمَامُ لِيُؤْتَمَّ بِهِ» ؟ قُلْنَا: نَعَمْ، وَقَدْ بَيَّنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي هَذَا الْخَبَرِ نَفْسِهِ - الْمَوَاضِعَ الَّتِي يَلْزَمُ الِائْتِمَامَ بِالْإِمَامِ فِيهَا، وَهِيَ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «فَإِذَا كَبَّرَ فَكَبِّرُوا، وَإِذَا رَكَعَ فَارْكَعُوا، وَإِذَا سَجَدَ فَاسْجُدُوا، وَإِذَا صَلَّى قَاعِدًا فَصَلُّوا قُعُودًا»

L7653 It is not within our capacity to know what is concealed from us regarding the Imam's intention to the extent that we might conform to it. Our obligation is limited to what we can undertake and are capable of—namely, directing our intentions to fulfill what we have been commanded, as we have been commanded. This constitutes a necessary textual and rational proof. Another proof is Allah's statement, the Exalted: *"No soul is burdened except with its own responsibility"* (Quran 4:84). This is a clear and sufficient textual evidence that explicitly invalidates their claim. If they argue: "Did the Messenger of Allah—peace and blessings be upon him—not say: *'The Imam is appointed to be followed'*?" We respond: Yes, and the Messenger of Allah—peace and blessings be upon him—himself clarified in this very narration the specific instances where following the Imam is obligatory, as he—peace and blessings be upon him—stated: *"When he says 'Allahu Akbar,' say

[24] **Qur'an references (L7652):** Qur'an 2:286 (Al-Baqarah).

'Allahu Akbar'; when he bows, bow; when he prostrates, prostrate; and if he prays seated, pray seated."*[25]

فَهَاهُنَا أَمَرَ - عَلَيْهِ السَّلَامُ - بِالِائْتِمَامِ فِيهِ، لَا فِي النِّيَّةِ الَّتِي لَا سَبِيلَ إِلَى مَعْرِفَتِهَا لِغَيْرِ اللَّهِ تَعَالَى، ثُمَّ لِنَاوِيهَا وَحْدَهُ؟ وَالْعَجَبُ كُلُّ الْعَجَبِ أَنَّ الْمُحْتَجِّينَ بِهَذَا الْخَبَرِ فِيمَا لَيْسَ فِيهِ مِنْهُ أَثَرٌ - مِنْ إِيجَابِ مُوَافَقَةِ نِيَّةِ الْمَأْمُومِ لِنِيَّةِ الْإِمَامِ -: أَوَّلُ عَاصِينَ لِهَذَا الْخَبَرِ -: فَيَقُولُونَ: لَا يَقْتَدِي الْمَأْمُومُ بِالْإِمَامِ فِي قَوْلِ " سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ " فَإِذَا قِيلَ لَهُمْ: هَذَا؟ قَالُوا: لَمْ يَذْكُرْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ؟ فَقِيلَ لَهُمْ: وَلَا نَهَى عَنْهُ، وَلَا ذَكَرَ - عَلَيْهِ السَّلَامُ - أَيْضًا مُوَافَقَةَ نِيَّةِ الْمَأْمُومِ لِلْإِمَامِ، لَا فِي هَذَا وَلَا فِي غَيْرِهِ.

L7654 Here, he—peace be upon him—commanded following the Imam in prayer, not concerning the intention, which none can know except Allah the Exalted, then the one who intends it alone. The utmost wonder is that those who cite this report to support what has no basis in it—the obligation of the follower's intention conforming to the Imam's intention—are the first to disobey this very report. They say: "The follower does not follow the Imam in saying 'Sami'a Allāhu li-man ḥamidah (Allah hears those who praise Him)'." When they are asked: "What about this?" They reply: "The Prophet—peace and blessings of Allah be upon him—did not mention that." It is then said to them: "Nor did he prohibit it, nor did he—peace be upon him—ever mention the conformity of the follower's intention to the Imam's intention, neither in this nor in any other matter."

ثُمَّ خَالَفَهُ الْمَالِكِيُّونَ فِي أَمْرِهِ بِأَنْ نُصَلِّيَ قُعُودًا إِذَا صَلَّى قَاعِدًا، فَأَيُّ عَجَبٍ أَعْجَبُ مِنْ احْتِجَاجِهِمْ بِخَبَرٍ يُخَالِفُونَ نَصَّ مَا فِيهِ وَيُوجِبُونَ بِهِ مَا لَيْسَ فِيهِ؟ نَعُوذُ بِاَللَّهِ مِنْ مِثْلِ هَذَا؟

L7655 Then the Malikis opposed him concerning his command that we pray seated if he prays seated. What astonishment could surpass their reliance on a narration whose explicit text they contradict, imposing through it obligations absent from its text? We seek refuge in Allah from such conduct!

وَقَالَ - عَلَيْهِ السَّلَامُ -: «إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ، وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى»

L7656–7657 The Prophet (peace be upon him) said: "Verily, deeds are judged by intentions, and verily to each person is only what they intended."

فَنَصَّ - عَلَيْهِ السَّلَامُ - نَصًّا جَلِيًّا عَلَى أَنَّ لِكُلِّ أَحَدٍ مَا نَوَى.

L7658 He (peace be upon him) explicitly declared with clarity that every person has what they intended.

فَصَحَّ يَقِينًا أَنَّ لِلْإِمَامِ نِيَّتَهُ، وَلِلْمَأْمُومِ نِيَّتَهُ، لَا تَعَلُّقَ لِإِحْدَاهُمَا بِالْأُخْرَى، وَمَا عَدَا هَذَا فَبَاطِلٌ بَحْتٌ لَا شَكَّ فِيهِ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ؟ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى أَنَا هُشَيْمٌ عَنْ مَنْصُورٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ

L7659 It is thus conclusively established that the Imam has his own intention and the follower has his own intention, with no connection between them. Whatever contradicts this is utterly null and void, without doubt—and in Allah the Exalted do we seek support?—It was narrated to us by Abdullah ibn Yusuf, who narrated from Ahmad ibn Fath, who narrated from Abdul Wahhab ibn Isa, who narrated from Ahmad ibn Muhammad, who narrated from Ahmad ibn Ali, who narrated from Muslim ibn al-Hajjaj, who narrated from Yahya ibn Yahya, who said: Hushaym narrated to us from Mansur, from Amr ibn

[25] **Qur'an references (L7653):** Qur'an 4:84 (An-Nisa).

Dinar, from Jabir ibn Abdullah, that "Mu'adh ibn Jabal would pray the latter Isha prayer with the Messenger of Allah (ﷺ), then return to his people and lead them in the same prayer."

مُعَاذَ بْنَ جَبَلٍ كَانَ يُصَلِّي مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِشَاءَ الْآخِرَةِ، ثُمَّ يَرْجِعُ إِلَى قَوْمِهِ فَيُصَلِّي بِهِمْ تِلْكَ الصَّلَاةَ»

L7660 And via his chain to Muslim in his Ṣaḥīḥ: Muḥammad ibn ʿAbbād narrated to us, Sufyān—that is, Ibn ʿUyaynah—narrated to us from ʿAmr ibn Dīnār from Jābir ibn ʿAbd Allāh: "Muʿādh ibn Jabal used to pray behind the Prophet (ﷺ), then return to lead his people in prayer. One night, he prayed ʿIshā' with the Prophet (ﷺ), then came to his people and led them. He commenced reciting Sūrah al-Baqarah, so a man withdrew, uttered the salām, prayed alone, and left. They said to him, 'Have you turned hypocrite, O so-and-so?' He replied, 'No, by Allah! I will certainly go to the Messenger of Allah (ﷺ).' He said, 'O Messenger of Allah, we are people who work with water-carrying camels by day. Muʿādh prayed ʿIshā' with you, then came and began reciting Sūrah al-Baqarah.' The Messenger of Allah (ﷺ) turned to Muʿādh and said, 'O Muʿādh, are you trying to cause hardship? Recite such-and-such and such-and-such.'"

وَبِهِ إِلَى مُسْلِمٍ: ثنا مُحَمَّدُ بْنُ عَبَّادٍ ثنا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ مُعَاذَ بْنَ جَبَلٍ كَانَ يُصَلِّي مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ يَأْتِي فَيَؤُمُّ قَوْمَهُ، فَصَلَّى لَيْلَةً مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْعِشَاءَ، ثُمَّ أَتَى قَوْمَهُ فَأَمَّهُمْ، فَافْتَتَحَ بِسُورَةِ الْبَقَرَةِ فَانْحَرَفَ رَجُلٌ فَسَلَّمَ ثُمَّ صَلَّى وَحْدَهُ وَانْصَرَفَ، فَقَالُوا لَهُ: أَنَافَقْتَ يَا فُلَانُ؟ قَالَ: لَا وَاللَّهِ، وَلَآتِيَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ، إِنَّا أَصْحَابُ نَوَاضِحَ نَعْمَلُ بِالنَّهَارِ، وَإِنَّ مُعَاذًا صَلَّى مَعَكَ الْعِشَاءَ ثُمَّ أَتَى فَافْتَتَحَ بِسُورَةِ الْبَقَرَةِ فَأَقْبَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مُعَاذٍ فَقَالَ: يَا مُعَاذُ، أَفَتَّانٌ أَنْتَ؟ اقْرَأْ بِكَذَا وَاقْرَأْ بِكَذَا» .

L7661 Is this not the Messenger of Allah (peace be upon him) who knew about the matter, acknowledged him in his state, and did not disapprove of it? Abdullah ibn Rabee' narrated to us: Muhammad ibn Ishaq narrated to us: Ibn al-A'rabi narrated to us: Abu Dawud narrated to us: Ubaydullah ibn Umar ibn Maysarah narrated to us: Yahya ibn Sa'eed—he is al-Qattan—from Muhammad ibn Ajlan: Ubaydullah ibn Miqsam narrated to us from Jabir ibn Abdullah: "Mu'adh ibn Jabal would pray with the Messenger of Allah (peace be upon him), then go to his people and lead them in prayer."

فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ عَلِمَ بِالْأَمْرِ وَأَقَرَّهُ عَلَى حَالِهِ وَلَمْ يُنْكِرْهَا؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا عُبَيْدُ اللَّهِ بْنُ عُمَرَ بْنُ مَيْسَرَةَ ثنا يَحْيَى بْنُ سَعِيدٍ هُوَ الْقَطَّانُ - عَنْ مُحَمَّدِ بْنِ عَجْلَانَ ثنا عُبَيْدُ اللَّهِ بْنُ مِقْسَمٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ مُعَاذَ بْنَ جَبَلٍ كَانَ يُصَلِّي مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ يَأْتِي قَوْمَهُ فَيُصَلِّي بِهِمْ تِلْكَ الصَّلَاةَ» .

L7662–7664 Ali said: We have only cited this narration because some of those not restrained by religion from lying said: "Did not..." [the statement is incomplete in the original]. Does anyone narrate this wording except 'Amr ibn Dīnār? We demonstrated to him that it was indeed narrated by 'Ubayd Allāh ibn Miqsam – unanimously recognized as trustworthy. Moreover, even if 'Amr alone narrated it, what then? No two Muslims disagree that 'Amr is the piercing star in reliability, precision, and exemplary leadership. Without doubt, he

قَالَ عَلِيٌّ: إِنَّمَا أَوْرَدْنَا هَذَا الْخَبَرَ، لِأَنَّ بَعْضَ مَنْ لَا يَرْدَعُهُ دِينٌ عَنْ الْكَذِبِ قَالَ: لَمْ يَرْوِ أَحَدٌ هَذِهِ اللَّفْظَةَ إِلَّا عَمْرُو بْنُ دِينَارٍ؟ فَأَرَيْنَاهُ: أَنَّهُ قَدْ رَوَاهَا عُبَيْدُ اللَّهِ بْنُ مِقْسَمٍ، وَهُوَ مُتَّفَقٌ عَلَى ثِقَتِهِ، ثُمَّ حَتَّى لَوْ انْفَرَدَ بِهَا عَمْرٌو فَكَانَ مَاذَا؟ مَا يَخْتَلِفُ مُسْلِمَانِ فِي أَنَّ

surpasses Abū Ḥanīfah and Mālik – who contradict these Sunnahs with their opinions in which they erred – for ʻAmr met the Companions and learned directly from them. The lowest of ʻAmr's ranks is that he is counted among the teachers of Mālik and Abū Ḥanīfah, such as al-Zuhrī, Nāfiʻ, Ḥammād ibn Abī Sulaymān, and others. Yet those who narrated from ʻAmr include greater figures than Mālik, Abū Ḥanīfah, and their peers like Ayyūb, Manṣūr, Shuʻbah, Ḥammād ibn Zayd, Sufyān, Ibn Jurayj, and others. How can this be, when what has been established here surpasses even the action of Muʻādh?

عَمْرًا هُوَ النَّجْمُ الثَّاقِبُ ثِقَةً وَحِفْظًا وَإِمَامَةً، وَبِلَا شَكٍّ فَهُوَ فَوْقَ أَبِي حَنِيفَةَ وَمَالِكٍ اللَّذَيْنِ يُعَارِضُ هَؤُلَاءِ السُّنَنَ بِرَأْيِهِمَا الَّذِي أَخْطَآ فِيهِ؛ لِأَنَّ عَمْرًا لَقِيَ الصَّحَابَةَ وَأَخَذَ عَنْهُمْ. وَأَقَلُّ مَرَاتِبِ عَمْرٍو: أَنْ يَكُونَ فِي نِصَابِ شُيُوخِ مَالِكٍ، وَأَبِي حَنِيفَةَ: كَالزُّهْرِيِّ، وَنَافِعٍ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ وَغَيْرِهِمْ. وَقَدْ رَوَى عَنْ عَمْرٍو مَنْ هُوَ أَجَلُّ مِنْ مَالِكٍ، وَأَبِي حَنِيفَةَ وَمِثْلِهِمَا: كَأَيُّوبَ، وَمَنْصُورٍ، وَشُعْبَةَ، وَحَمَّادِ بْنِ زَيْدٍ، وَسُفْيَانَ، وَابْنِ جُرَيْجٍ وَغَيْرِهِمْ. فَكَيْفَ وَقَدْ صَحَّ فِي هَذَا مَا هُوَ أَجَلُّ مِنْ فِعْلِ مُعَاذٍ؟

L7665 As narrated by Yunus ibn Abdullah from Ahmad ibn Abdullah ibn Abd al-Rahim, from Ahmad ibn Khalid, from Muhammad ibn Abd al-Salam al-Khushani, from Muhammad ibn Bashshar, from Yahya ibn Saʿīd al-Qaṭṭān, via al-Ashʿath ibn Abd al-Malik al-Ḥumrānī, from al-Ḥasan al-Baṣrī, from Abu Bakrah: He prayed the Prayer during Fear with the Messenger of Allah (peace be upon him). The Prophet (peace be upon him) led those behind him in two units, then those who arrived after the first two units had passed. Thus, the Prophet's prayer amounted to four units in total, while these latter worshippers completed two units.

كَمَا حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ ثنا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ الْأَشْعَثِ بْنِ عَبْدِ الْمَلِكِ الْحُمْرَانِيِّ عَنْ الْحَسَنِ الْبَصْرِيِّ «عَنْ أَبِي بَكْرَةَ أَنَّهُ صَلَّى مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَاةَ الْخَوْفِ، فَصَلَّى بِالَّذِينَ خَلْفَهُ رَكْعَتَيْنِ، وَالَّذِينَ جَاءُوا بَعْدَ رَكْعَتَيْنِ، فَكَانَتْ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرْبَعًا، وَلِهَؤُلَاءِ رَكْعَتَيْنِ»

L7666–7668 Abdullah ibn Rabee' narrated to us → Muhammad ibn Ishaq ibn As-Sulaym → Ibn Al-A'rabi → Abu Dawud → Ubaydullah ibn Mu'adh ibn Al-Anbari → his father → Al-Ashʿath (Ibn Abd Al-Malik) → Al-Hasan Al-Basri → Abu Bakrah, who said: "Allah's Messenger – peace and blessings be upon him – prayed the Dhuhr prayer in a state of fear. Some formed rows behind him while others faced the enemy. He prayed two rak'ahs, then said the salām. Those who had prayed with him departed to relieve their companions [guarding against the enemy]. Then the others came to form rows behind him, and he prayed two rak'ahs with them before saying the salām. Thus, Allah's Messenger – peace and blessings be upon him – prayed four rak'ahs, while his companions prayed two rak'ahs each group." Did Al-Hasan issue fatwas based on this?

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السَّلِيمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا عُبَيْدُ اللَّهِ بْنُ مُعَاذِ بْنِ الْعَنْبَرِيُّ ثنا أَبِي ثنا الْأَشْعَثُ هُوَ ابْنُ عَبْدِ الْمَلِكِ عَنْ الْحَسَنِ الْبَصْرِيِّ عَنْ أَبِي بَكْرَةَ قَالَ «صَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي خَوْفِ الظُّهْرِ، فَصَفَّ بَعْضَهُمْ خَلْفَهُ، وَبَعْضَهُمْ بِإِزَاءِ الْعَدُوِّ، فَصَلَّى رَكْعَتَيْنِ ثُمَّ سَلَّمَ، فَانْطَلَقَ الَّذِينَ صَلَّوْا مَعَهُ فَوَقَفُوا مَوْقِفَ أَصْحَابِهِمْ، ثُمَّ جَاءَ أُولَئِكَ فَصَفُّوا خَلْفَهُ، فَصَلَّى بِهِمْ رَكْعَتَيْنِ ثُمَّ سَلَّمَ، فَكَانَتْ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرْبَعًا وَلِأَصْحَابِهِ: رَكْعَتَيْنِ، رَكْعَتَيْنِ» وَبِهِ كَانَ يُفْتِي الْحَسَنُ؟ قَالَ عَلِيٌّ: وَقَدْ صَحَّ سَمَاعُ الْحَسَنِ مِنْ أَبِي بَكْرَةَ -: كَمَا قَدْ حَدَّثَنَا عَبْدُ

Ali said: “It is established that Al-Hasan directly heard from Abu Bakrah,” as Abdullah ibn Rabee’ → Muhammad ibn Mu’awiyah → Ahmad ibn Shu’ayb → Muhammad ibn Mansur → Sufyan (Ibn Uyaynah) → Abu Musa (Isrā’īl ibn Musa) reported: I heard Al-Hasan say: I heard Abu Bakrah say: “I indeed saw Allah’s Messenger – peace and blessings be upon him – upon...” “the pulpit, and Al-Hasan ibn Ali was with him”. He narrated the hadith.

اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَنْصُورٍ ثنا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ أَنَا أَبُو مُوسَى هُوَ إِسْرَائِيلُ بْنُ مُوسَى - قَالَ: سَمِعْتُ الْحَسَنَ يَقُول: سَمِعْتُ أَبَا بَكْرَةَ يَقُولُ: «لَقَدْ رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمِنْبَرِ، وَالْحَسَنُ بْنُ عَلِيٍّ مَعَهُ» وَذَكَرَ الْحَدِيثَ.

L7669–7671

This Abu Musa is trustworthy; Sufyan and al-Husayn ibn Ali al-Ju‘fi narrated from him. Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Abu Bakr ibn Abi Shaybah narrated to us: Affan - that is, Ibn Muslim - narrated to us: Aban - that is, Ibn Yazid al-Attar - narrated to us: Yahya ibn Abi Kathir narrated from Abu Salamah ibn Abd al-Rahman ibn Awf from Jabir, who said: “We advanced with the Messenger of Allah - peace be upon him - until we reached Dhat al-Riqa‘,” and he mentioned the hadith. He said: “Then the prayer was announced. He prayed two rak‘ahs with one group, then they withdrew, and he prayed two rak‘ahs with the other group. Jabir said: Thus, the Prophet - peace be upon him - prayed four rak‘ahs, while the people prayed two rak‘ahs.” Ali said: This is a hadith that Yahya heard from Abu Salamah, and Abu Salamah heard it from Jabir. We have transmitted it through multiple chains in this manner, contenting ourselves with this for brevity. This constitutes the final practice of the Messenger of Allah - peace be upon him - as Abu Bakrah witnessed it, his conversion to Islam having occurred during the campaign of al-Ta’if after the conquest of Mecca and the battle of Hunayn. Yet some have resorted to the stratagems employed by the disgraced fabricator who shows no fear of Allah in his speech, claiming: “Jabir’s narration does not mention that he - peace be upon him - uttered the Salam between the two rak‘ahs and the two rak‘ahs?” Ali said: Let it be said to him: “You speak falsely. We have transmitted through Qatadah’s chain from Sulayman al-Yashkuri from Jabir that he - peace be upon him - indeed pronounced the Salam between them.” They objected: “But Qutayba’s reception from Sulayman has been criticized?” We responded: You yourselves assert that a mursal narration holds the status of

وَأَبُو مُوسَى هَذَا: ثِقَةٌ رَوَى عَنْهُ سُفْيَانُ وَالْحُسَيْنُ بْنُ عَلِيٍّ الْجُعْفِيُّ؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا عَفَّانُ هُوَ ابْنُ مُسْلِمٍ - ثنا أَبَانُ هُوَ ابْنُ يَزِيدَ الْعَطَّارِ - ثنا يَحْيَى بْنُ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ جَابِرٍ قَالَ «أَقْبَلْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى إِذَا كُنَّا بِذَاتِ الرِّقَاعِ» وَذَكَرَ الْحَدِيثَ. قَالَ: «فَنُودِيَ بِالصَّلَاةِ، فَصَلَّى بِطَائِفَةٍ رَكْعَتَيْنِ ثُمَّ تَأَخَّرُوا، وَصَلَّى بِالطَّائِفَةِ الْأُخْرَى رَكْعَتَيْنِ. قَالَ جَابِرٌ: فَكَانَتْ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرْبَعُ رَكَعَاتٍ، وَلِلْقَوْمِ رَكْعَتَانِ» . قَالَ عَلِيٌّ: وَهَذَا حَدِيثٌ سَمِعَهُ يَحْيَى مِنْ أَبِي سَلَمَةَ وَسَمِعَهُ أَبُو سَلَمَةَ مِنْ جَابِرٍ، وَرُوِّينَاهُ كَذَلِكَ مِنْ طُرُقٍ، اكْتَفَيْنَا بِهَذَا طَلَبَ الِاخْتِصَارِ. فَهَذَا آخِرُ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّ أَبَا بَكْرَةَ شَهِدَهُ، وَإِنَّمَا كَانَ إِسْلَامُهُ يَوْمَ الطَّائِفِ بَعْدَ فَتْحِ مَكَّةَ وَبَعْدَ حُنَيْنٍ وَقَدْ لَجَأَ بَعْضُهُمْ إِلَى مَا يَلْجَأُ إِلَيْهِ الْمَفْضُوحُ الْمُبْلِحُ الَّذِي لَا يَتَّقِي اللَّهَ تَعَالَى فِيمَا يَتَكَلَّمُ بِهِ فَقَالَ: لَيْسَ فِي حَدِيثِ جَابِرٍ: أَنَّهُ سَلَّمَ - عَلَيْهِ السَّلَامُ - بَيْنَ الرَّكْعَتَيْنِ، وَالرَّكْعَتَيْنِ؟ قَالَ عَلِيٌّ: فَيُقَالُ لَهُ: كَذَبْتَ، قَدْ رُوِّينَا مِنْ طَرِيقِ قَتَادَةَ عَنْ سُلَيْمَانَ الْيَشْكُرِيِّ عَنْ جَابِرٍ «أَنَّهُ - عَلَيْهِ السَّلَامُ - سَلَّمَ بَيْنَهُمَا» . فَقَالُوا: قَدْ تُكُلِّمَ

فِي سَمَاعِ قُتَيْبَةَ مِنْ سُلَيْمَانَ؟ فَقُلْنَا: أَنْتُمْ تَقُولُونَ: الْمُرْسَلُ كَالْمُسْنَدِ، فَالْآنَ أَتَاكُمُ التَّعَلُّلُ بِالْبَاطِلِ فِي الْمُسْنَدِ بِأَنَّهُ قَدْ قِيلَ - وَلَمْ يَصِحَّ ذَلِكَ الْقَوْلُ -: أَنَّهُ مُرْسَلٌ، إِنَّ هَذَا لَعَجَبٌ لَا سِيَّمَا وَقَدْ بَيَّنَ أَبُو بَكْرَةَ فِي حَدِيثِهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - سَلَّمَ بَيْنَ الرَّكْعَتَيْنِ وَالرَّكْعَتَيْنِ، وَلَمْ يَرْوِ أَحَدٌ: أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُسَلِّمْ بَيْنَ الرَّكْعَتَيْنِ وَالرَّكْعَتَيْنِ؟ وَلَوْ صَحَّ: أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُسَلِّمْ بَيْنَ الرَّكْعَتَيْنِ وَالرَّكْعَتَيْنِ لَكَانَ ذَلِكَ أَشَدَّ عَلَى الْمُخَالِفِينَ،

a musnad, yet now you cling to invalid pretexts regarding this musnad by alleging - though this allegation lacks validity - that it is mursal. This is truly remarkable, particularly as Abu Bakrah explicitly clarified... In his narration, it is established that the Prophet (peace be upon him) uttered the tasleem between the two rak'ahs and the two rak'ahs. Has anyone ever narrated that he (peace be upon him) did not utter the tasleem between the two rak'ahs and the two rak'ahs? Had it been authenticated that he (peace be upon him) omitted the tasleem between the two rak'ahs and the two rak'ahs, this would have been far more damning for the opponents.[26]

لِأَنَّهُمْ إِنَّمَا هُمْ مُقَلِّدُو أَبِي حَنِيفَةَ، وَمَالِكٍ وَأَبُو حَنِيفَةَ يَرَى عَلَى مَنْ صَلَّى أَرْبَعًا وَهُوَ مُسَافِرٌ: أَنَّ صَلَاتَهُ فَاسِدَةٌ، إِلَّا أَنْ يَجْلِسَ فِي الِاثْنَتَيْنِ مِقْدَارَ التَّشَهُّدِ فَتَصِحُّ صَلَاتُهُ، وَتَكُونُ الرَّكْعَتَانِ اللَّتَانِ يَقُومُ إِلَيْهِمَا تَطَوُّعًا.

L7672 Because they are merely followers of Abū Ḥanīfa and Mālik. Abū Ḥanīfa holds the view that if someone prays four rak'ahs while traveling, his prayer is invalid unless he sits after two rak'ahs for the duration of the *tashahhud*, thereby validating his prayer. The two rak'ahs he stands to perform afterward are voluntary.

فَإِنْ كَانَ - عَلَيْهِ السَّلَامُ - لَمْ يَقْعُدْ بَيْنَ الرَّكْعَتَيْنِ مِقْدَارَ التَّشَهُّدِ فَصَلَاتُهُ عِنْدَهُمْ فَاسِدَةٌ، فَإِنْ أَقْدَمُوا عَلَى هَذَا الْقَوْلِ كَفَرُوا بِلَا مِرْيَةٍ.

L7673 If he (peace be upon him) did not sit between the two rak'ahs for the duration of the tashahhud, his prayer is invalid in their view. If they were to act upon this opinion, they would undoubtedly become disbelievers without any doubt.

وَإِنْ كَانَ - عَلَيْهِ السَّلَامُ - قَعَدَ بَيْنَ الرَّكْعَتَيْنِ مِقْدَارَ التَّشَهُّدِ، فَقَدْ صَارَتْ الطَّائِفَةُ الثَّانِيَةُ مُصَلِّيَةً فَرْضَهُمْ خَلْفَهُ، وَهُوَ - عَلَيْهِ السَّلَامُ - مُتَنَفِّلٌ، وَهَذَا قَوْلُنَا لَا قَوْلُهُمْ؟ وَأَمَّا الْمَالِكِيُّونَ فَإِنَّهُمْ يَقُولُونَ: إِنَّ الْمُسَافِرَ إِنْ صَلَّى أَرْبَعًا: فَقَدْ أَسَاءَ فِي صَلَاتِهِ وَعَلَيْهِ أَنْ يُعِيدَهَا فِي الْوَقْتِ. فَإِنْ قَالُوا: هَذَا فِي صَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَفَرُوا بِلَا مِرْيَةٍ، وَإِنْ قَالُوا: بَلْ سَلَّمَ بَيْنَ الرَّكْعَتَيْنِ وَالرَّكْعَتَيْنِ: أَقَرُّوا بِأَنَّ الطَّائِفَةَ الثَّانِيَةَ - رَضِيَ اللَّهُ عَنْهُمْ - صَلَّوْا فَرْضَهُمْ خَلْفَهُ - عَلَيْهِ السَّلَامُ - وَهُوَ مُتَنَفِّلٌ وَهَذَا إِجْمَاعٌ صَحِيحٌ مِنْ جَمِيعِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِمَّنْ حَضَرَ، وَلَا يَخْفَى مِثْلُ هَذَا عَلَى مَنْ غَابَ، وَكُلُّهُمْ مُسَلِّمٌ لِأَمْرِهِ - عَلَيْهِ السَّلَامُ -؟ وَقَدْ لَجَأَ بَعْضُ

L7674 If he—peace be upon him—sat between the two rak'ahs for the duration of the tashahhud, the second group had performed their obligatory prayer behind him while he was engaged in a voluntary prayer—and this is our position, not theirs. As for the Malikis, they assert that if a traveler prays four rak'ahs, he has erred in his prayer and must repeat it during the prayer's time. If they claim this applies to the prayer of the Messenger of Allah—peace and blessings of Allah be upon him—they have undoubtedly committed disbelief without doubt. If they say instead that he concluded the prayer after each set of two rak'ahs, they acknowledge that the second group—may Allah be pleased with them—performed their obligatory prayer behind him—peace be upon him—while he was engaged in a voluntary prayer. This constitutes a sound consensus among all the Companions—may Allah be pleased with them—who were present with the Prophet—peace and blessings of Allah be

[26] **Hadith references (L7669):** Sahih Muslim 843e; Sahih Muslim 843a.

upon him. Such a matter would not have been concealed from those absent, and all of them submitted to his command—peace be upon him. Some misguided followers of Malik resorted to claiming this was specific to the Messenger of Allah—peace and blessings of Allah be upon him—because in following him in voluntary prayer lies some blessing not found in following others in obligatory prayer. Ali said: "This wretched one fled from acknowledging the truth and resorted to lying against Allah the Exalted by claiming specificity for the Prophet—peace be upon him—in matters he never declared specific to himself."

الْمَفْتُونِينَ مِنْ مُقَلِّدِي مَالِكٍ إِلَى أَنْ قَالَ: هَذَا خَاصٌّ بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، لِأَنَّ فِي الِائْتِمَامِ بِهِ مِنْ الْبَرَكَةِ فِي النَّافِلَةِ مَا لَيْسَ فِي الِائْتِمَامِ بِغَيْرِهِ فِي الْفَرِيضَةِ؟ -: قَالَ عَلِيٌّ: فَرَّ هَذَا الْبَائِسُ مِنْ الْإِذْعَانِ لِلْحَقِّ إلَى الْكَذِبِ عَلَى اللَّهِ تَعَالَى فِي دَعْوَاهُ الْخُصُوصَ فِيمَا لَمْ يَقُلْ - عَلَيْهِ السَّلَامُ - قَطُّ: إنَّهُ خُصُوصٌ لَهُ.

L7675 Rather, it has been authentically reported from him—peace be upon him—through the chain of narration of Mālik ibn al-Ḥuwayrith that he said, "Pray as you see me pray."

بَلْ قَدْ صَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - مِنْ طَرِيقِ مَالِكِ بْنِ الْحُوَيْرِثِ أَنَّهُ قَالَ «صَلُّوا كَمَا تَرَوْنِي أُصَلِّي» .

L7676–7677 Exalted is He, who said: "There is certainly for you in the Messenger of Allah a perfect model" [Surah Al-Aḥzāb 21].[27]

وَقَالَ تَعَالَى: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] .

L7678 And never has anyone ever said that what is permissible with him—peace be upon him—in prayer is impermissible with others, except these predecessors, in support of their corrupt blind imitation.

وَمَا قَالَ قَطُّ أَحَدٌ: إنَّهُ يَجُوزُ مَعَهُ - عَلَيْهِ السَّلَامُ - فِي الصَّلَاةِ مَا لَا يَجُوزُ مَعَ غَيْرِهِ، إلَّا هَؤُلَاءِ الْمُقَدِّمُونَ، نَصْرًا لِتَقْلِيدِهِمْ الْفَاسِدِ

L7679 We seek refuge with Allah from being forsaken. Ali said: They raised objections regarding the narration of Mu'adh concerning things we will mention, though we are free from that need due to the narrations of Abu Bakrah and Jabir. Yet supporting the truth is a virtue, and suppressing falsehood is a means to Allah, the Exalted.

وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ. قَالَ عَلِيٌّ: وَاعْتَرَضُوا فِي حَدِيثِ مُعَاذٍ بِأَشْيَاءَ نَذْكُرُهَا، وَإِنْ كُنَّا غَانِينَ عَنْ ذَلِكَ بِحَدِيثِ أَبِي بَكْرَةَ وَجَابِرٍ، لَكِنَّ نَصْرَ الْحَقِّ فَضِيلَةٌ، وَقَمْعَ الْبَاطِلِ وَسِيلَةٌ إلَى اللَّهِ تَعَالَى

L7680 Some of them said: It is not permissible for the Imam's intention and the follower's intention to differ, based on what has been reported through the chain of Ibn Sakhbar al-Jurjānī from Abū Ṣāliḥ ʿAbdullāh ibn Ṣāliḥ, the scribe of al-Layth, from al-Layth, from ʿAbdullāh ibn ʿAyyāsh ibn ʿAbbās al-Qitbānī, from his father, from Abū Salama, from Abū Hurayra, from the Prophet (peace and blessings be upon him), who said: "When the iqāmah is called, there is no prayer except the one for which the iqāmah has been called." ʿAlī

-: قَالَ بَعْضُهُمْ: لَا يَجُوزُ اخْتِلَافُ نِيَّةِ الْإِمَامِ وَالْمَأْمُومِ لِمَا رَوَيْتُمُوهُ مِنْ طَرِيقِ ابْنِ سَخْبَرَ الْجُرْجَانِيِّ عَنْ أَبِي صَالِحٍ عَبْدِ اللَّهِ بْنِ صَالِحٍ كَاتِبِ اللَّيْثِ عَنْ اللَّيْثِ عَنْ عَبْدِ اللَّهِ بْنِ عَيَّاشِ بْنِ عَبَّاسٍ الْقِتْبَانِيِّ عَنْ أَبِيهِ عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا أُقِيمَتْ الصَّلَاةُ فَلَا صَلَاةَ إلَّا الَّتِي أُقِيمَتْ» : قَالَ عَلِيٌّ: وَهَذَا خَبَرٌ لَا يَصِحُّ؛ لِأَنَّ رَاوِيَهُ أَبُو صَالِحٍ وَهُوَ سَاقِطٌ.

[27] **Qur'an references (L7677):** Qur'an 33:21 (Al-Ahzab).

said: This is a report that is not authentic, because its narrator, Abū Ṣāliḥ, is discarded.

L7681 The authentic part of this report is what was narrated by Ayyub al-Sikhtiyānī, Ibn Jurayj ibn Salamah, Warqa' ibn 'Amr, and Zakariyya ibn Ishaq—all of them from 'Amr ibn Dinar, from 'Aṭā' ibn Yasār, from Abū Hurayrah, from the Prophet (peace be upon him), he said: "When the prayer is established, there is no prayer except the obligatory one."

L7682–7683 We have indeed mentioned it with its chain of transmission at the beginning of the Book of Prayer from this compendium of ours.

L7684 Moreover, if the wording of Ṣāliḥ were authentic, it would serve as evidence against them, not in their favor, because they contradict it. This is because the Mālikīs and Ḥanafīs unanimously agree that if the iqāmah for Fajr prayer has been called, whoever has neither performed Witr nor prayed the two rakʿahs of Fajr should pray them before joining the congregational prayer. Exalted is He who enabled them to cite unreliable narrations in invalidating what is authentically established of them.

L7685 Then there is no blame upon them for differing from what they themselves cited as evidence where such differing is impermissible? Moreover, they approve of the permissibility of performing voluntary prayers behind one praying the obligatory prayer during Dhuhr and Asr, yet they are the first to contradict their own authentication of baseless content from the hadith of Abu Salih? As for us, had this report been authentic, we would have adhered to it and utilized alongside it all that has been authenticated from other narrations—including the hadiths of Muʿadh, Jabir, Abu Bakrah, and Abu Dharr—without abandoning any of them for another consideration. Some of them mentioned a report—which we have narrated through the chain of 'Amr ibn Yahya al-Mazini from Muʿadh ibn Rifaʿah from a man of Banu Salamah among the Companions of the Messenger of Allah (peace be upon him) named Sulaym—that he came to the Prophet (peace be upon him) and said: "O Messenger of Allah, we are occupied with our work all day and return at dusk, yet Muʿadh prolongs the prayer for us?" Thereupon the

وَإِنَّمَا الصَّحِيحُ مِنْ هَذَا الْخَبَرِ -: فَهُوَ مَا رَوَاهُ أَيُّوبُ السِّخْتِيَانِيُّ وَابْنُ جُرَيْجِ بْنِ سَلَمَةَ وَوَرْقَاءُ بْنُ عَمْرٍو وَزَكَرِيَّا بْنُ إِسْحَاقَ كُلُّهُمْ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: قَالَ: «إذَا أُقِيمَتْ الصَّلَاةُ فَلَا صَلَاةَ إلَّا الْمَكْتُوبَةَ» .

وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِي صَدْرِ كِتَابِ الصَّلَاةِ مِنْ دِيوَانِنَا هَذَا.

ثُمَّ لَوْ صَحَّ لَفْظُ صَالِحٍ لَكَانَ حُجَّةً عَلَيْهِمْ لَا لَهُمْ؛ لِأَنَّهُمْ مُخَالِفُونَ لَهُ؛ لِأَنَّ الْمَالِكِيِّينَ، وَالْحَنَفِيِّينَ مَعًا مُتَّفِقُونَ -: عَلَى أَنَّ صَلَاةَ الصُّبْحِ إذَا أُقِيمَتْ فَإِنَّ مَنْ لَمْ يَكُنْ أَوْتَرَ، وَلَا رَكَعَ رَكْعَتَيْ الْفَجْرِ -: يُصَلِّيهِمَا قَبْلَ أَنْ يَدْخُلَ فِي الَّتِي أُقِيمَتْ فَسُبْحَانَ مَنْ يَسَّرَهُمْ لِلِاحْتِجَاجِ بِمَا لَا يَصِحُّ مِنْ الْأَخْبَارِ فِي إبْطَالِ مَا صَحَّ مِنْهَا

ثُمَّ لَا مُؤْنَةَ عَلَيْهِمْ مِنْ خِلَافِ مَا احْتَجُّوا بِهِ حَيْثُ لَا يَجُوزُ خِلَافُهُ؟ وَأَيْضًا: فَهُمْ مُصَفِّقُونَ عَلَى جَوَازِ التَّنَفُّلِ خَلْفَ مَنْ يُصَلِّي الْفَرِيضَةَ فِي الظُّهْرِ وَالْعَصْرِ، فَهُمْ أَوَّلُ مُخَالِفٍ لِمَا صَحَّحُوهُ مِنْ الْبَاطِلِ مِنْ حَدِيثِ أَبِي صَالِحٍ؟ وَأَمَّا نَحْنُ فَلَوْ صَحَّ هَذَا الْخَبَرُ لَقُلْنَا بِهِ، وَلَاسْتَعْمَلْنَا مَعَهُ مَا قَدْ صَحَّ مِنْ سَائِرِ الْأَخْبَارِ، مِنْ حَدِيثِ: مُعَاذٍ، وَجَابِرٍ، وَأَبِي بَكْرَةَ، وَأَبِي ذَرٍّ، وَلَمْ نَتْرُكْ مِنْهَا شَيْئًا لِشَيْءٍ آخَرَ وَذَكَرَ بَعْضُهُمْ خَبَرًا: - رُوِّينَاهُ مِنْ طَرِيقِ عَمْرِو بْنِ يَحْيَى الْمَازِنِيِّ عَنْ مُعَاذِ بْنِ رِفَاعَةَ عَنْ رَجُلٍ مِنْ بَنِي سَلَمَةَ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُقَالُ لَهُ سُلَيْمٌ «أَنَّهُ أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ، إنَّا نَظَلُّ فِي أَعْمَالِنَا فَنَأْتِي حِينَ نُمْسِي فَيَأْتِي مُعَاذٌ فَيُطَوِّلُ عَلَيْنَا؟ فَقَالَ

Messenger of Allah (peace be upon him) said: “O Muʿadh! Do not be a source of trial! Either shorten [the prayer] for your people or pray with me.”

L7686–7688 They claimed from this that Muʾadh used to deem the prayer he performed with the Prophet (peace and blessings of Allah be upon him) as a voluntary prayer? ʾAlī said: This is an interpretation upon which it is unlawful to uphold speech, for six reasons. First: It is a falsehood and a claim without evidence – something one is not incapable of fabricating if unrestrained by piety or shame. Second: This report is unsound because its chain is disconnected, for Muʾādh ibn Rifāʾah neither met the Prophet (peace and blessings of Allah be upon him) nor encountered the one who complained to Allah’s Messenger (peace and blessings of Allah be upon him) about Muʾādh. Aḥmad ibn Muḥammad al-Ṭalamankī narrated to us; Ibn Mufarrij narrated to us; Muḥammad ibn Ayyūb narrated to us; Aḥmad ibn... ʿAmr ibn ʿAbd al-Khāliq al-Bazzār narrated to us: Muḥammad ibn Maʿmar narrated to us: Abū Bakr—who is ʿAbd al-Kabīr ibn ʿAbd al-Majīd al-Ḥanafī—narrated from Usāmah ibn Zayd, who said: I heard Muʿādh ibn ʿAbd Allāh ibn Khubayb relate: I heard Jābir ibn ʿAbd Allāh say: Muʿādh [ibn Jabal]—and he narrated the ḥadīth—in which Sulaym said to the Messenger of Allāh (peace and blessings be upon him), “I am a man who works all day, and when evening comes, I am drowsy. Muʿādh would arrive late, delaying us, so when he was detained, I prayed [without waiting].” He continued the ḥadīth, which mentions: Was Sulaym, the one involved in this incident, killed during the Battle of Uḥud? The third point is that the Messenger of Allāh (peace and blessings be upon him) said: “Once the prayer has commenced, no prayer is valid except the obligatory one.”

L7689 Allah, the Exalted, says: “And hasten to forgiveness from your Lord” [Āl ʿImrān: 133].[28]

L7690 Then Muʿadh—who was among the most learned in this nation regarding religious matters—would squander his obligatory prayer that was explicitly required of him, neglecting to perform it and instead engaging in volun-

رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَا مُعَاذُ لَا تَكُنْ فَتَّانًا؟ إِمَّا أَنْ تُخَفِّفَ لِقَوْمِكَ، أَوْ تَجْعَلَ صَلَاتَكَ مَعِي» .

فَادَّعَوْا مِنْ هَذَا أَنَّ مُعَاذًا كَانَ يَجْعَلُ الَّتِي يُصَلِّي مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَافِلَةً؟ قَالَ عَلِيٌّ: وَهَذَا تَأْوِيلٌ لَا يَحِلُّ الْقَوْلُ بِهِ، لِوُجُوهٍ سِتَّةٍ -: أَحَدُهَا - أَنَّهُ كَذِبٌ وَدَعْوَى بِلَا دَلِيلٍ، وَهَذَا لَا يَعْجِزُ عَنْهُ مَنْ لَا يَحْجُزُهُ عَنْهُ تَقْوَى أَوْ حَيَاءٌ؟ وَالثَّانِي - أَنَّ هَذَا خَبَرٌ لَا يَصِحُّ، لِأَنَّهُ مُنْقَطِعٌ، لِأَنَّ مُعَاذَ بْنَ رِفَاعَةَ لَمْ يُدْرِكْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا أَدْرَكَ هَذَا الَّذِي شَكَا إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمُعَاذٍ؟ -: حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ ثنا ابْنُ مُفَرِّجٍ ثنا مُحَمَّدُ بْنُ أَيُّوبَ ثنا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ ثنا مُحَمَّدُ بْنُ مَعْمَرٍ ثنا أَبُو بَكْرٍ هُوَ عَبْدُ الْكَبِيرِ بْنُ عَبْدِ الْمَجِيدِ الْحَنَفِيُّ - عَنْ أُسَامَةَ بْنِ زَيْدٍ قَالَ: سَمِعْت مُعَاذَ بْنَ عَبْدِ اللَّهِ بْنِ خُبَيْبٍ قَالَ سَمِعْت جَابِرَ بْنَ عَبْدِ اللَّهِ قَالَ كَانَ مُعَاذٌ - فَذَكَرَ الْحَدِيثَ - وَفِيهِ: «أَنَّ سُلَيْمًا قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنِّي رَجُلٌ أَعْمَلُ نَهَارِي حَتَّى إذَا أَمْسَيْتُ أَمْسَيْتُ نَاعِسًا، فَيَأْتِينَا مُعَاذٌ وَقَدْ أَبْطَأَ عَلَيْنَا، فَلَمَّا احْتَبَسَ صَلَّيْتُ» وَذَكَرَ الْحَدِيثَ - وَفِيهِ: أَنَّ سُلَيْمًا صَاحِبَ هَذِهِ الْقِصَّةِ قُتِلَ يَوْمَ أُحُدٍ؟ وَالثَّالِثُ - أَنْ يَكُونَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إذَا أُقِيمَتْ الصَّلَاةُ فَلَا صَلَاةَ إلَّا الْمَكْتُوبَةَ» .

وَيَقُولُ اللَّهُ تَعَالَى: {وَسَارِعُوا إِلَى مَغْفِرَةٍ مِنْ رَبِّكُمْ} [آل عمران: ١٣٣]

[28] **Qur’an references (L7689):** Qur’an 3:133 (Ali ’Imran).

tary prayers, even after the obligatory prayer had commenced, to the extent that he missed it entirely—especially while being in the presence of Allah's Messenger, peace and blessings be upon him!

ثُمَّ يَكُونُ مُعَاذٌ - وَهُوَ مِنْ أَعْلَمِ هَذِهِ الْأُمَّةِ بِالدِّينِ - يُضَيِّعُ فَرْضَ صَلَاتِهِ الَّذِي قَدْ تَعَيَّنَ عَلَيْهِ، فَيَتْرُكُ أَدَاءَهُ، وَيَشْتَغِلُ بِالتَّنَفُّلِ، وَصَلَاةُ الْفَرْضِ قَدْ أُقِيمَتْ، حَتَّى لَا يُدْرِكَ مِنْهَا شَيْئًا، لَا سِيَّمَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L7691 If only I knew: To whom would Mu'adh delay his obligatory prayer until he could pray it with him, choosing to pray with him instead of the Messenger of Allah—peace and blessings be upon him—in adherence to the opinions of Abu Hanifa and Malik? Is this not clear misguidance? Allah the Exalted has absolved Mu'adh of such a notion in the judgment of every possessor of sound reason.

فَلَيْتَ شِعْرِي، إِلَى مَنْ كَانَ يُؤَخِّرُ مُعَاذٌ صَلَاةَ فَرْضِهِ حَتَّى يُصَلِّيَهَا مَعَهُ رَاغِبًا عَنْ أَنْ يُصَلِّيَهَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اتِّبَاعًا لِرَأْيِ أَبِي حَنِيفَةَ وَمَالِكٍ؟ أَلَّا إِنَّ هَذَا هُوَ الضَّلَالُ الْمُبِينُ، قَدْ نَزَّهَ اللَّهُ تَعَالَى مُعَاذًا عَنْهُ عِنْدَ كُلِّ ذِي مُسْكَةٍ عَقْلٍ؟

L7692 The fourth point is that this absurd interpretation—which they shamelessly attributed to Mu'ādh (may Allah be pleased with him)—is also invalid according to them. It entails a situation where the time for an obligatory prayer arrives, and some attendees who have not yet performed that prayer intend to perform it with the imam but intend it solely as a voluntary prayer. In any case, they ascribed to Mu'ādh what is invalid both in their view and in the view of others. This is a vile trial that obliterates reason and religion, and we seek refuge in Allah from abandonment. What comfort do they find in baselessly attributing to Mu'ādh what they themselves deem invalid?

وَالرَّابِعُ - أَنَّ هَذَا التَّأْوِيلَ السَّخِيفَ الَّذِي لَمْ يَسْتَحْيُوا مِنْ أَنْ يَنْسُبُوهُ إِلَى مُعَاذٍ - رَضِيَ اللَّهُ عَنْهُ -: لَا يَجُوزُ عِنْدَهُمْ أَيْضًا، وَهُوَ أَنْ تَحْضُرَ صَلَاةُ فَرْضٍ فَيَنْوِيَ بَعْضُ الْحَاضِرِينَ مِمَّنْ لَمْ يَكُنْ صَلَّى بَعْدُ تِلْكَ الصَّلَاةَ - أَنْ يُصَلِّيَهَا مَعَ الْإِمَامِ لَا يَنْوِي بِهَا إِلَّا التَّطَوُّعَ فَفِي كُلِّ حَالٍ قَدْ نَسَبُوا إِلَى مُعَاذٍ مَا لَا يَحِلُّ عِنْدَهُمْ وَلَا عِنْدَ غَيْرِهِمْ، وَهَذِهِ فِتْنَةُ سُوءٍ مُذْهِبَةٌ لِلْعَقْلِ وَالدِّينِ، وَنَعُوذُ بِاللَّهِ مِنْ الْخِذْلَانِ، فَأَيُّ رَاحَةٍ لَهُمْ فِي أَنْ يَنْسُبُوا إِلَى مُعَاذٍ مَا لَا يَحِلُّ عِنْدَهُمْ بِلَا مَعْنًى؟

L7693–7695 The fifth point is that it should be said to them: Since you permitted for Mu'adh what is not permissible in your view—that he pray a supererogatory prayer behind the Messenger of Allah (may Allah bless him and grant him peace) while Mu'adh had not yet performed that obligatory prayer, and the Prophet (peace be upon him) was performing his obligatory prayer—then what distinction exists in the divine law, or in reason, between praying a supererogatory prayer behind one performing an obligatory prayer and what you prohibited? From it is the obligatory prayer behind one praying voluntarily, and both cases involve a discrepancy between the Imam's intention and the follower's—is there no distinction? Why do they not analogize one to the other? Why do they not analogize the permissibility of perform-

وَالْخَامِسُ - أَنْ يُقَالَ لَهُمْ: إِذْ جَوَّزْتُمْ لِمُعَاذٍ مَا لَا يَجُوزُ عِنْدَكُمْ مِنْ أَنْ يُصَلِّيَ نَافِلَةً خَلْفَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمُعَاذٌ لَمْ يُصَلِّ ذَلِكَ الْفَرْضَ بَعْدُ، وَهُوَ - عَلَيْهِ السَّلَامُ - يُصَلِّي فَرْضَهُ -: فَأَيُّ فَرْقٍ فِي شَرِيعَةٍ، أَوْ فِي مَعْقُولٍ بَيْنَ صَلَاةِ نَافِلَةٍ خَلْفَ مُصَلٍّ فَرِيضَةً، وَبَيْنَ مَا مَنَعْتُمْ مِنْهُ مِنْ صَلَاةِ فَرْضٍ خَلْفَ الْمُصَلِّي نَافِلَةً، وَكِلَاهُمَا اخْتِلَافُ نِيَّةِ الْإِمَامِ مَعَ الْمَأْمُومِ، وَلَا فَرْقَ؟ فَهَلَّا قَاسُوا أَحَدَهُمَا عَلَى الْآخَرِ؟ وَهَلَّا قَاسُوا جَوَازَ صَلَاةِ الْفَرِيضَةِ خَلْفَ الْمُتَنَفِّلِ مِنْ الْأَئِمَّةِ عَلَى جَوَازِ حَجِّ الْفَرِيضَةِ خَلْفَ

ing obligatory prayer behind a voluntary prayer leader among the Imams to the permissibility of performing obligatory Hajj behind someone performing Hajj voluntarily among the Imams—standing where he stands, departing when he departs, and following him in his Hajj? If any analogy were valid, this would be among the best and soundest analogies, and they are the people of analogy as they claim. But is this the extent of their knowledge in what they have preoccupied themselves with, neglecting the Prophetic traditions? What then of their neglect in seeking the traditions and upholding them—praise be to Allah for His immense favor? Ali said: Some of them here have obscured the matter with statements resembling the words of the delirious, such as saying: The distinction between them is that some causes of voluntary acts are causes of obligatory acts, and that whoever begins a prayer without intending anything specific is included in a voluntary prayer. Ali said: This is speech that even its speaker does not comprehend, let alone the listener. The rightful place for its speaker is the maristan (asylum) and treatment for his mental condition. It should be said to him: Make this speech a proof for equating the two matters. Moreover, he has spoken falsehood and lies. Rather, whoever begins a prayer without intending anything specific is not praying and has nothing, according to the saying of the Messenger of Allah—peace and blessings be upon him: "Each person will have only what they intended."

الْحَاجّ تَطَوُّعًا مِنْ الْأَئِمَّةِ، يَقِفُ بِوُقُوفِهِ وَيَدْفَعُ بِدَفْعِهِ وَيأْتَمُّ بِهِ فِي حَجِّهِ؟ فَلَوْ كَانَ شَيْءٌ مِنْ الْقِيَاسِ حَقًّا لَكَانَ هَذَا مِنْ أَحْسَنِ الْقِيَاسِ وَأَصَحِّهِ، وَهُمْ أَهْلُ قِيَاسٍ بِزَعْمِهِمْ، وَلَكِنْ هَذَا مِقْدَارُ عِلْمِهِمْ فِيمَا شَغَلُوا بِهِ أَنْفُسَهُمْ وَتَرَكُوا السُّنَنَ؟ فَكَيْفَ بِمَا لَا يَشْتَغِلُونَ بِهِ مِنْ طَلَبِ السُّنَنِ وَالِاعْتِنَاءِ بِهَا - وَالْحَمْدُ لِلَّهِ عَلَى عَظِيمِ نِعْمَتِهِ؟ قَالَ عَلِيٌّ: وَمَوَّهَ بَعْضُهُمْ هُنَا بِكَلَامٍ يُشْبِهُ كَلَامَ الْمَمْرُورِينَ وَهُوَ أَنَّهُ قَالَ: الْفَرْقُ بَيْنَهُمَا: أَنَّ بَعْضَ سَبَبِ التَّطَوُّعِ سَبَبُ الْفَرِيضَةِ، وَأَنَّ مَنْ ابْتَدَأَ صَلَاةً لَا يَنْوِي بِهَا شَيْئًا كَانَ دَاخِلًا فِي نَافِلَةٍ؟ قَالَ عَلِيٌّ: هَذَا كَلَامٌ لَا يَفْهَمُهُ قَائِلُهُ فَكَيْفَ سَامِعُهُ وَحَقُّ قَائِلِهِ سُكْنَى الْمَارَسْتَانِ وَمُعَانَاةُ دِمَاغِهِ وَيُقَالُ لَهُ: اجْعَلْ هَذَا الْكَلَامَ حُجَّةً فِي الْمُسَاوَاةِ بَيْنَ الْأَمْرَيْنِ؟ وَأَيْضًا: فَقَدْ قَالَ الْبَاطِلَ وَالْكَذِبَ، بَلْ مَنْ ابْتَدَأَ صَلَاةً لَا يَنْوِي بِهَا شَيْئًا فَلَيْسَ مُصَلِّيًا وَلَا شَيْءَ لَهُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى» .

L7696 Therefore, we affirm that the speech of the Messenger of Allah (peace be upon him) is more deserving of being followed than the speech of this fraudulent one with his delirious ramblings.

فَنَحْنُ نَدِينُ بِأَنَّ كَلَامَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَحَقُّ بِالِاتِّبَاعِ مِنْ كَلَامِ هَذَا الْمُمَخْرِقِ بِالْهَذَيَانِ؟

L7697 Then, if this hadith they cited through Mu'adh ibn Rifa'ah's chain were authentic, they would have no valid grounds to rely on it, for its meaning is unequivocal. The Prophet's statement—peace be upon him—"Either you shorten the prayer for your people when leading them or confine your prayer to being with me," would mean: do not lead them in prayer unless you shorten it for them, and limit yourself to praying solely with me. Does this not convey the unequivocal meaning of the wording, leaving no room for alternative interpretations? Some have misleadingly conflated the matter with a report we narrated via Qatadah from 'Āmir al-Aḥwal from 'Amr ibn

ثُمَّ لَوْ صَحَّ هَذَا الْحَدِيثُ الَّذِي ذَكَرُوهُ مِنْ طَرِيقِ مُعَاذِ بْنِ رِفَاعَةَ لَمَا كَانَ لَهُمْ فِيهِ مُتَعَلَّقٌ أَصْلًا، لِأَنَّهُ وَاضِحُ الْمَعْنَى، وَكَانَ يَكُونُ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «إِمَّا أَنْ تُخَفِّفَ عَنْ قَوْمِكَ أَوْ اجْعَلْ صَلَاتَكَ مَعِي» أَيْ لَا تُصَلِّ بِهِمْ إِذَا لَمْ تُخَفِّفْ بِهِمْ، وَاقْتَصِرْ عَلَى أَنْ تَكُونَ صَلَاتُك مَعِي فَقَطْ، هَذَا مُقْتَضَى ذَلِكَ اللَّفْظِ الَّذِي لَا يَحْتَمِلُ سِوَاهُ؟ وَمَوَّهَ بَعْضُهُمْ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ قَتَادَةَ عَنْ عَامِرٍ الْأَحْوَلِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ خَالِدٍ

Shu'ayb from Khālid ibn Ayman al-Ma'āfirī, who said: "The residents of al-'Awālī would pray in their homes and later join the Prophet—peace be upon him—in prayer. The Prophet—peace be upon him—then forbade them from repeating the same prayer twice in one day."

بْنِ أَيْمَنَ الْمَعَافِرِيِّ قَالَ: «وَكَانَ أَهْلُ الْعَوَالِي يُصَلُّونَ فِي مَنَازِلِهِمْ وَيُصَلُّونَ مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَنَهَاهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُعِيدُوا الصَّلَاةَ فِي يَوْمٍ مَرَّتَيْنِ.»

L7698–7699 Another report regarding what he wrote to Abū Sulaymān Dāwūd ibn Shādh ibn Dāwūd al-Miṣrī, who said: "'Abd al-Ghanī ibn Sa'īd al-Azdī al-Ḥāfiẓ narrated to us; Hishām ibn Muḥammad ibn Qurrah al-Ru'aynī narrated to us; Abū Ja'far Aḥmad ibn Muḥammad ibn Salamah al-Ṭaḥāwī said: He said: Al-Ḥusayn ibn Naṣr narrated to us; he said: I heard Yazīd ibn Hārūn saying: I am [narrating] from al-Ḥusayn the teacher, from 'Amr ibn Shu'ayb, from Sulaymān ibn Yasār, who said: 'I came to Ibn 'Umar at the paved area while they were praying. I said: "Will you not pray with them¿' He replied: "I have already prayed in my dwelling. Verily, the Messenger of Allah—peace and blessings be upon him—forbade that an obligatory prayer be performed twice in a single day."'"

وَخَبَرٍ آخَرَ فِيمَا كَتَبَ بِهِ إِلَى أَبُو سُلَيْمَانَ دَاوُد بْنُ شَاذِ بْنُ دَاوُد الْمِصْرِيُّ قَالَ: ثنا عَبْدُ الْغَنِيِّ بْنُ سَعِيدِ الْأَزْدِيُّ الْحَافِظُ ثنا هِشَامُ بْنُ مُحَمَّدِ بْنِ قُرَّةَ الرُّعَيْنِيُّ ثنا أَبُو جَعْفَرٍ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ سَلَامَةَ الطَّحَاوِيُّ قَالَ: ثنا الْحُسَيْنُ بْنُ نَصْرٍ قَالَ: سَمِعْت يَزِيدَ بْنِ هَارُونَ يَقُولُ: أَنَا الْحُسَيْنُ الْمُعَلِّمُ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ «سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: أَتَيْتُ ابْنَ عُمَرَ عَلَى الْبَلَاطِ وَهُمْ يُصَلُّونَ، فَقُلْتُ: أَلَا تُصَلِّي مَعَهُمْ؟ قَالَ: قَدْ صَلَّيْتُ فِي رَحْلِي إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى أَنْ تُصَلَّى فَرِيضَةٌ فِي يَوْمٍ مَرَّتَيْنِ»

L7700 He said: "Was Mu'adh's prayer during the time when it was permissible to pray twice a day, then was that abrogated?"

قَالَ: فَكَانَتْ صَلَاةُ مُعَاذٍ إذْ كَانَ مُبَاحًا أَنْ تُصَلِّيَ الصَّلَاةَ مَرَّتَيْنِ فِي الْيَوْمِ، ثُمَّ نُسِخَ ذَلِكَ؟

L7701 Ali said: As for the ḥadīth of Ibn 'Umar, it is authentic. As for the ḥadīth of Khālid ibn Ayman, it is discarded because it is mursal. Then they have no valid proof in either of them: the first reason is that the one who narrated this has lied.

قَالَ عَلِيٌّ: أَمَّا حَدِيثُ ابْنِ عُمَرَ: فَصَحِيحٌ، وَأَمَّا حَدِيثُ خَالِدِ بْنِ أَيْمَنَ: فَسَاقِطٌ، لِأَنَّهُ مُرْسَلٌ. ثُمَّ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُمَا -: أَوَّلُ ذَلِكَ: أَنَّ قَائِلَ هَذَا قَدْ كَذَبَ،

L7702 It has never been permissible to count a single prayer as fulfilling two obligatory prayers, and there is no disagreement that Allah the Exalted ordained only five prayers on the Night of Ascension as obligations, except for the disagreement concerning Witr alone. It is authentically established that the Prophet (peace be upon him) reported that He said to him: "They are five and they are fifty: _'My word is not altered with Me'_ (Qaf 50:29)."[29]

وَمَا كَانَ قَطُّ مُبَاحًا أَنْ تُصَلِّيَ صَلَاةً وَاحِدَةً عَلَى أَنَّهَا فَرْضُ مَرَّتَيْنِ، وَلَا خِلَافَ فِي أَنَّ اللَّهَ تَعَالَى لَمْ يَفْرِضْ لَيْلَةَ الْإِسْرَاءِ إلَّا خَمْسَ صَلَوَاتٍ فَقَطْ، حَاشَا مَا اخْتَلَفُوا فِيهِ مِنْ الْوِتْرِ فَقَطْ، وَصَحَّ «أَنَّهُ - عَلَيْهِ السَّلَامُ - أَخْبَرَ أَنَّهُ قَالَ لَهُ: هُنَّ خَمْسٌ وَهُنَّ خَمْسُونَ {مَا يُبَدَّلُ الْقَوْلُ لَدَيَّ} [ق: ٢٩] »

[29] **Qur'an references (L7702):** Qur'an 50:29 (Qaf).

فَبَطَلَ كُلُّ مَا مَوَّهَ بِهِ هَذَا الْمُمَوِّهُ؟ وَوَجْهٌ آخَرُ: وَهُوَ أَنَّ مَعْنَى الْحَدِيثِ وَاحِدٌ، وَهُوَ حَقٌّ، وَمَا حَلَّ قَطُّ، وَلَا قُلْنَا نَحْنُ - وَمَعَاذَ اللَّهِ مِنْ ذَلِكَ: أَنْ تُصَلَّى صَلَاةٌ فِي يَوْمٍ مَرَّتَيْنِ -: وَإِنَّمَا قُلْنَا: أَنْ تُؤَدَّى الْفَرِيضَةُ خَلْفَ الْمُتَنَفِّلِ، كَمَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَصْحَابُهُ - رَضِيَ اللَّهُ عَنْهُمْ -، وَتُصَلَّى النَّافِلَةُ خَلْفَ مُصَلِّي الْفَرْضِ، كَمَا أَمَرَ - عَلَيْهِ السَّلَامُ -، وَكَمَا يُجِيزُونَ هُمْ أَيْضًا مَعَنَا.

L7703 Thus, all that which this obfuscator has obscured is invalidated. Another aspect—the meaning of the ḥadīth is unified and true. It has never been permissible, nor have we ever said—and we seek refuge in Allah from this—that a prayer is performed twice in one day. Rather, we have said: The obligatory prayer is performed behind one engaged in voluntary prayer, as the Messenger of Allah (peace be upon him) and his companions (may Allah be pleased with them) did. The voluntary prayer is performed behind one engaged in obligatory prayer, as the Messenger of Allah (peace be upon him) commanded, and as they likewise validate along with us.

وَتُؤَدَّى الْفَرِيضَةُ خَلْفَ مُؤَدِّي فَرِيضَةٍ أُخْرَى، كَمَا أَخْبَرَ - عَلَيْهِ السَّلَامُ -: بِأَنَّ «الْأَعْمَالَ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» ، وَلَمْ يَنْهَ - عَلَيْهِ السَّلَامُ - عَنْ ذَلِكَ قَطُّ وَلَا أَحَدٌ مِنْ أَصْحَابِهِ، حَتَّى حَدَثَ مَا حَدَثَ

L7704 The obligatory prayer is performed behind one performing another obligatory prayer, as he (peace be upon him) informed: "Actions are judged by intentions, and every person will have what he intended." Neither he (peace be upon him) nor any of his Companions ever forbade that, until the events that occurred took place.

وَإِنَّمَا الْمُجِيزُونَ أَنْ تُصَلَّى صَلَاةٌ فِي يَوْمٍ مَرَّتَيْنِ: فَالْمَالِكِيُّونَ الْقَائِلُونَ: بِإِعَادَةِ الصَّلَاةِ فِي الْوَقْتِ، وَبِأَنَّ مَنْ ذَكَرَ صَلَاةً فِي أُخْرَى: صَلَّى الَّتِي هُوَ فِيهَا ثُمَّ الَّتِي ذَكَرَ، ثُمَّ يُصَلِّي الَّتِي صَلَّى، وَأَمَّا نَحْنُ فَلَا؟ وَالْعَجَبُ مِنْ احْتِجَاجِهِمْ بِابْنِ عُمَرَ، وَهُمْ يُخَالِفُونَهُ فِي هَذِهِ الْمَسْأَلَةِ نَفْسِهَا؟ وَقَالَ بَعْضُهُمْ قَوْلًا يَجْرِي فِي الْقُبْحِ مَجْرَى مَا تَقَدَّمَ لَهُمْ وَيُرْبِي عَلَيْهِ، وَهُوَ أَنَّهُ قَالَ: إِنَّمَا كَانَ ذَلِكَ مِنْ مُعَاذٍ لِعَدَمِ مَنْ كَانَ يَحْفَظُ الْقُرْآنَ حِينَئِذٍ؟ قَالَ عَلِيٌّ: لَوْ اتَّقَى اللَّهَ قَائِلُ هَذَا الْهَوَسِ أَوْ اسْتَحْيَا مِنَ الْكَذِبِ، لَمْ يَنْصُرِ الْبَاطِلَ بِمَا هُوَ أَبْطَلُ مِنْهُ.

L7705–7707 As for those who permit a prayer to be performed twice in a day, they are the Malikis who assert: the repetition of prayer within the time, and that whoever remembers [having missed] a prayer during another [prayer] should perform the one he is currently in, then the one he remembered, then— "He prays what he prayed, but as for us, we do not? The astonishment lies in their citing Ibn ʿUmar while opposing him in this very issue. Some of them uttered words matching the ugliness of their previous statements—even surpassing them—by saying: 'This action of Muʿādh occurred only due to the absence of those who memorized the Quran at that time.' ʿAlī said: 'Had the speaker of this delusion feared Allah or felt shame over falsehood, he would not have supported falsehood with what is more false than it.'"

وَلَوْ عَرَفَ قَدْرَ الصَّحَابَةِ وَمَنْزِلَتَهُمْ فِي الْعِلْمِ: لَمْ يَقُلْ هَذَا، لِأَنَّنَا نَجِدُ، الزِّنْجِيَّ وَالتُّرْكِيَّ، وَالصَّقْلَبِيَّ وَالرُّومِيَّ وَالْيَهُودِيَّ: يُسْلِمُونَ، فَلَا تَمْضِي لَهُمْ جُمُعَةٌ إِلَّا وَقَدْ تَعَلَّمَتِ الْمَرْأَةُ مِنْهُمْ، وَالرَّجُلُ (أُمَّ الْقُرْآنِ) وَ (قُلْ هُوَ اللَّهُ أَحَدٌ) وَمَا يُقِيمُونَ بِهِ صَلَاتَهُمْ.

L7708 If he had recognized the status of the Companions and their rank in knowledge, he would not have said this, for we observe the Zanjī, the Turk, the Saqlabī, the Byzantine, and the Jew embracing Islam. No week elapses without a woman among them and a man having learned *Umm al-Qur'ān*, *Qul Huwa Allāhu Aḥad*, and what they need to perform their prayers.[30]

[30] **Qur'an references (L7708):** Qur'an 112:1 (Al-Ikhlas).

وَلَمْ يَسْتَحِ هَذَا الْجَاهِلُ الْوَقَّاحُ أَنْ يَنْسُبَ إِلَى حَيٍّ عَظِيمٍ مِنْ أَحْيَاءِ الْأَنْصَارِ، وَحَيٍّ آخَرَ صَغِيرٍ مِنْهُمْ، وَهُمْ بَنُو سَلَمَةَ، وَبَنُو أَدَى قَدْ أَسْلَمَ مِنْهُمْ - قَبْلَ الْهِجْرَةِ بِعَامَيْنِ وَأَشْهُرٍ - ثَلَاثَةُ رِجَالٍ، وَأَسْلَمَ جُمْهُورُهُمْ قَبْلَ الْهِجْرَةِ بِدَهْرٍ -: أَنَّهُمْ بَقُوا الْمُدَّةَ الطَّوِيلَةَ الَّتِي ذَكَرْنَا بَعْدَ إِسْلَامِهِمْ لَمْ يَهْتَبِلُوا بِصَلَاتِهِمْ، وَلَا تَعَلَّمُوا سُورَةً يُصَلُّونَ بِهَا، وَهُمْ أَهْلُ الْعَرَبِيَّةِ وَالْبَصَائِرِ فِي الدِّينِ: اللَّهُمَّ الْعَنْ مَنْ لَا يَسْتَحْيِي مِنَ الْمُجَاهَرَةِ بِالْبَاطِلِ وَالْكَذِبِ الْمَفْضُوحِ؟

L7709 This ignorant and shameless one felt no restraint in attributing to a great tribe among the Ansar and another smaller tribe among them—Banu Salama and Banu Adi, from whom three men had embraced Islam two years and months before the Hijrah, while the majority of them had converted to Islam long before the Hijrah—that they remained throughout the extended period we mentioned after their conversion neglecting their prayers, nor learning a surah to pray with, despite being masters of Arabic language and possessors of religious insight. O Allah, curse those who feel no shame in openly proclaiming falsehood and blatant lies!

فَلْيَعْلَمْ أَهْلُ الْجَهْلِ: أَنَّهُ كَانَ فِيمَنْ يُصَلِّي فِي مَسْجِدِ بَنِي سَلَمَةَ الَّذِي كَانَ يَؤُمُّ فِيهِ مُعَاذُ بْنُ جَبَلٍ - ثَلَاثُونَ عَقَبِيًّا، وَثَلَاثَةٌ وَأَرْبَعُونَ بَدْرِيًّا سِوَى غَيْرِهِمْ.

L7710 Let the people of ignorance know that among those who prayed in the mosque of Banī Salamah—where Muʿādh ibn Jabal led the prayers—were thirty participants of ʿAqabah and forty-three veterans of Badr, besides others.

أَفَمَا كَانَ فِي جَمِيعِ هَؤُلَاءِ الْفُضَلَاءِ أَحَدٌ يُحْسِنُ مِنَ الْقُرْآنِ مَا يُصَلِّي بِهِ؟ مَا شَاءَ اللَّهُ كَانَ.

L7711 Was there not among all these distinguished individuals a single person proficient in reciting from the Qur'an what suffices to lead prayer? What Allah wills, comes to pass.

وَكَانَ مِنْ جُمْلَتِهِمْ: جَابِرُ بْنُ عَبْدِ اللَّهِ وَوَالِدُهُ، وَكَعْبُ بْنُ مَالِكٍ، وَأَبُو الْيَسَرِ وَالْحُبَابُ بْنُ الْمُنْذِرِ، وَمُعَاذٌ، وَمُعَوِّذٌ، وَخَلَّادٌ بَنُو عَمْرِو بْنِ الْجَمُوحِ، وَعُقْبَةُ بْنُ عَامِرِ بْنِ نَابِئٍ وَبِشْرُ بْنُ الْبَرَاءِ بْنِ مَعْرُورٍ، وَجَبَّارُ بْنُ صَخْرٍ، وَغَيْرُهُمْ مِنْ أَهْلِ الْعِلْمِ وَالْفَضْلِ وَقَدْ رُوِّينَا مِنْ أَصَحِّ طَرِيقٍ عَنْ كَعْبِ بْنِ مَالِكٍ قَالَ: «مَا هَاجَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى حَفِظْتُ سُورًا مِنَ الْقُرْآنِ» ؟ ثُمَّ إِنَّ هَذِهِ الْكِذْبَةَ الَّتِي قَالَهَا هَذَا الْجَاهِلُ دَعْوَى افْتَرَاهَا لَمْ يَجِدْهَا قَطُّ فِي شَيْءٍ مِنَ الرِّوَايَاتِ السَّقِيمَةِ فَكَيْفَ الصَّحِيحَةِ؟ وَمَا كَانَ هَكَذَا فَلَا وَجْهَ لِلشُّغْلِ بِهَا إِلَّا فَضِيحَةُ قَائِلِهَا فَقَطْ، ثُمَّ تَحْذِيرُ الضُّعَفَاءِ مِنْهُ، وَالتَّقَرُّبُ إِلَى اللَّهِ تَعَالَى بِذَلِكَ؟

L7712–7714 Among their number were: Jabir ibn Abdullah and his father, Ka'b ibn Malik, Abu al-Yusr, al-Hubab ibn al-Mundhir, Mu'adh, Mu'awwadh, and Khallad, the sons of Amr ibn al-Jamuh, Uqbah ibn Amir ibn Nābi', Bishr ibn al-Bara' ibn Ma'rur, Jabbar ibn Sakhr, and others among the people of knowledge and virtue. It has been narrated to us through the most authentic chain from Kaʿb ibn Mālik, who said: "Did the Messenger of Allah—peace and blessings be upon him—not emigrate until I had memorized surahs from the Qur'an?" As for this lie uttered by this ignorant person, it is a fabricated claim he invented—he never found it in any of the weak narrations, so how much less in the authentic ones? Since this is the case, there is no reason to engage with it except to expose its speaker's disgrace alone, then warn the vulnerable against him, and seek nearness to Allah the Exalted through these actions.

L7715 The third point is: It should be said to him—"Suppose this lie were as you claim. Would this be permissible according to you? Is it lawful in your view that if a community embraces Islam with none among them reciting any

part of the Quran except one person, this single individual should pray with others and then lead them in that prayer?" If they answer: "No," then it is said to them: "What benefit do you derive from inferring a lie that provides no gain in patching the corruption of your imitation?" Then it is said to them: "Interpret it however you wish: Did not the Messenger of Allah (peace be upon him) teach him the ruling and endorse it? By what justification do you nullify the action and judgment of the Messenger of Allah (peace be upon him)?"

Some of them attempted to justify the narrations of Jabir and Abu Bakra with similar disgraceful acts, arguing: "Perhaps this occurred before prayers were shortened, or during a journey where prayer shortening was not required?" We responded: "This is ignorance and another falsehood. Abu Bakra, who embraced Islam late, never witnessed fear in Medina, nor the prayer of fear, nor anything resembling it. That incident"—as Jabir stated—"occurred at Nakhlah and Dhat al-Riqa', both locations being more than three days away from Medina."

وَالثَّالِثُ: أَنْ يُقَالَ لَهُ: هَبْكَ أَنَّ هَذِهِ الْكِذْبَةَ كَمَا ذَكَرْتَ، أَيَجُوزُ ذَلِكَ عِنْدَكُمْ؟ وَهَلْ يَحِلُّ لَدَيْكُمْ أَنْ تُسْلِمَ طَائِفَةٌ فَلَا يَكُونُ فِيهِمْ مَنْ يَقْرَأُ شَيْئًا مِنَ الْقُرْآنِ إِلَّا وَاحِدٌ فَيُصَلِّي ذَلِكَ الْوَاحِدُ مَعَ غَيْرِهِمْ ثُمَّ يَؤُمُّهُمْ فِي تِلْكَ الصَّلَاةِ؟ فَمِنْ قَوْلِهِمْ: لَا، فَيُقَالُ لَهُمْ: فَأَيُّ رَاحَةٍ لَكُمْ فِي اسْتِنْبَاطِ كَذِبٍ لَا تَنْتَفِعُونَ بِهِ فِي تَرْقِيعِ فَاسِدِ تَقْلِيدِكُمْ؟ ثُمَّ يُقَالُ لَهُمْ: احْمِلُوهُ عَلَى مَا شِئْتُمْ، أَلَيْسَ قَدْ عَلَّمَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَقَرَّهُ؟ فَبِأَيِّ وَجْهٍ تُبْطِلُونَ فِعْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحُكْمَهُ؟ وَقَدْ تَعَلَّلَ بَعْضُهُمْ فِي حَدِيثِ جَابِرٍ وَأَبِي بَكْرَةَ بِنَحْوِ هَذِهِ الْفَضَائِحِ فَقَالَ: لَعَلَّ هَذَا كَانَ قَبْلَ أَنْ تُقْصَرَ الصَّلَاةُ، أَوْ فِي سَفَرٍ لَا تُقْصَرُ الصَّلَاةُ فِي مِثْلِهِ؟ فَقُلْنَا: هَذَا جَهْلٌ وَكَذِبٌ آخَرُ، أَبُو بَكْرَةَ مُتَأَخِّرُ الْإِسْلَامِ، لَمْ يَشْهَدْ بِالْمَدِينَةِ قَطُّ خَوْفًا، وَلَا صَلَاةَ خَوْفٍ، وَلَا فِيمَا يَقْرُبُ مِنْهَا، وَإِنَّمَا كَانَ ذَلِكَ - قَالَ جَابِرٌ -: بِنَخْلٍ، وَبِذَاتِ الرِّقَاعِ، فَكِلَا الْمَوْضِعَيْنِ عَلَى أَزْيَدَ مِنْ ثَلَاثَةِ أَيَّامٍ مِنَ الْمَدِينَةِ.

L7716 It has been authentically established from Aisha—may Allah be pleased with her—that prayer was instituted in Mecca as two units at a time. When Allah's Messenger—peace and blessings be upon him—migrated, the resident prayers were perfected while the travel prayers remained unchanged. Thus, every disgraceful act they contrived to invalidate the truths of the unanimously agreed-upon Sunnah became void! This was moreover the practice of the Companions after Allah's Messenger—peace and blessings be upon him. We have been narrated through Hammad ibn Salamah's chain from Dawud ibn Abi Hind, from Ammar al-Anazi: A governor appointed by Umar ibn al-Khattab in Kaskar would lead people in two units of prayer, conclude with salutation, then pray another two units and conclude again. When Umar learned of this, the governor wrote: "I saw myself traveling away from my family without being in enemy territory, so I deemed it proper to lead people

وَقَدْ صَحَّ عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا -: أَنَّ الصَّلَاةَ أُنْزِلَتْ بِمَكَّةَ: رَكْعَتَيْنِ رَكْعَتَيْنِ، فَلَمَّا هَاجَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِمَّتْ صَلَاةُ الْحَضَرِ، وَأُقِرَّتْ صَلَاةُ السَّفَرِ؟ فَبَطَلَ كُلُّ عَارٍ أَتَوْا بِهِ فِي إِبْطَالِ الْحَقَائِقِ مِنَ السُّنَنِ الْمُجْتَمَعِ عَلَيْهَا؟ ثُمَّ هُوَ فِعْلُ الصَّحَابَةِ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد بْنِ أَبِي هِنْدٍ عَنْ عَمَّارٍ الْعَنَزِيِّ: أَنَّ عَامِلًا لِعُمَرَ بْنِ الْخَطَّابِ كَانَ بِكَسْكَرَ فَكَانَ يُصَلِّي بِالنَّاسِ رَكْعَتَيْنِ ثُمَّ يُسَلِّمُ، ثُمَّ يُصَلِّي رَكْعَتَيْنِ أُخْرَيَيْنِ ثُمَّ يُسَلِّمُ؟ فَبَلَغَ ذَلِكَ عُمَرَ، فَكَتَبَ إِلَى عُمَرَ

in two units, conclude, then pray another two units and conclude." Umar ibn al-Khattab wrote back: "You have acted rightly."

إِنِّي رَأَيْتِنِي شَاخِصًا عَنْ أَهْلِي وَلَمْ أَرَنِي بِحَضْرَةِ عَدُوٍّ فَرَأَيْت أَنْ أُصَلِّيَ بِالنَّاسِ رَكْعَتَيْنِ ثُمَّ أُسَلِّمَ ثُمَّ أُصَلِّي رَكْعَتَيْنِ ثُمَّ أُسَلِّمَ، فَكَتَبَ إِلَيْهِ عُمَرُ بْنُ الْخَطَّابِ: أَنْ قَدْ أَحْسَنْت؟

L7717–7718 From the narration of Humaid ibn Hilal: Abdullah ibn al-Samit reported to me, saying: We were with al-Hakam ibn Amr al-Ghifari—a companion of the Messenger of Allah, peace and blessings be upon him—on a military expedition. He led us in the dawn prayer with a short spear positioned in front of him. When a donkey passed before the rows, he made them repeat the prayer, stating: "I had something screening me"—referring to the spear—"but I made them repeat the prayer for those who lacked a screen before them." The narrator mentioned the hadith: "How could this companion of the Messenger of Allah, peace and blessings be upon him, lead a voluntary prayer for those performing an obligatory one?"

وَمِنْ طَرِيقِ حُمَيْدِ بْنِ هِلَالٍ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ الصَّامِتِ قَالَ: كُنَّا مَعَ الْحَكَمِ بْنِ عَمْرٍو الْغِفَارِيِّ - هُوَ صَاحِبُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي جَيْشٍ، وَهُوَ يُصَلِّي بِنَا صَلَاةَ الصُّبْحِ، وَبَيْنَ يَدَيْهِ عَنَزَةٌ، فَمَرَّ حِمَارٌ بَيْنَ يَدَيْ الصُّفُوفِ فَأَعَادَ بِهِمْ الصَّلَاةَ، وَقَالَ: قَدْ كَانَ بَيْنَ يَدَيَّ مَا يَسْتُرُنِي - يَعْنِي الْعَنَزَةَ - وَلَكِنِّي أَعَدْت لِمَنْ لَمْ يَكُنْ بَيْنَ يَدَيْهِ مَا يَسْتُرُهُ - وَذَكَرَ الْحَدِيثَ: فَهَذَا صَاحِبُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى نَافِلَةً بِمَنْ يُؤَدِّي فَرِيضَةً؟ وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد بْنِ أَبِي هِنْدٍ عَنْ عَطَاءٍ الْخُرَاسَانِيِّ: أَنَّ أَبَا الدَّرْدَاءِ أَتَى مَسْجِدَ دِمَشْقَ وَهُمْ يُصَلُّونَ الْعِشَاءَ وَهُوَ يُرِيدُ الْمَغْرِبَ، فَصَلَّى مَعَهُمْ فَلَمَّا قَضَى الصَّلَاةَ قَامَ فَصَلَّى رَكْعَةً، فَجَعَلَ ثَلَاثًا لِلْمَغْرِبِ وَرَكْعَتَيْنِ تَطَوُّعًا.

From Hammad ibn Salama, from Dawud ibn Abi Hind, from Ata al-Khurasani: Abu al-Darda entered the mosque of Damascus while the people were praying Isha, though he intended to pray Maghrib. He prayed Isha with them. After finishing Isha, he stood and prayed one rak'ah. He combined it with two more rak'ahs to complete the three required for Maghrib, followed by two voluntary rak'ahs.

L7719 This narration is transmitted through Qatādah's chain, and he added to it: "Then he prayed the ʿIshā' prayer?"

وَمِنْ طَرِيقِ قَتَادَةَ هَذَا الْخَبَرَ، وَزَادَ فِيهِ: ثُمَّ صَلَّى الْعِشَاءَ؟

L7720 From Ma'mar from Qatadah from Anas ibn Malik: Regarding someone who attends the Taraweeh prayers during Ramadan without having prayed Isha, when two rak'ahs remain for the congregation, he asked: "Should they be counted as part of the Isha prayer?"

وَعَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ أَنَسِ بْنِ مَالِكٍ: فِيمَنْ أَتَى التَّرَاوِيحَ فِي شَهْرِ رَمَضَانَ وَلَمْ يَكُنْ صَلَّى الْعِشَاءَ وَقَدْ بَقِيَ لِلنَّاسِ رَكْعَتَانِ قَالَ: اجْعَلْهُمَا مِنْ الْعِشَاءِ؟

L7721 It is reported from 'Aṭā' that he said: "Whoever prays with a group intending Dhuhr (ritually) while they aim for Asr - he has [validity for] what he intended, and they have [validity for] what they intended." And 'Aṭā' himself would act upon this ruling.

وَعَنْ عَطَاءٍ قَالَ: مَنْ صَلَّى مَعَ قَوْمٍ هُوَ يَنْوِي الظُّهْرَ وَهُمْ يُرِيدُونَ الْعَصْرَ، قَالَ: لَهُ مَا نَوَى، وَلَهُمْ مَا نَوَوْا، وَكَانَ يَفْعَلُ ذَلِكَ.

L7722 And is there a similar ruling from Ibrāhīm al-Nakhaʿī? And from Ṭāwūs: Whoever finds the people praying the Night Prayer (Qiyām) while he has

not prayed ʿIshā’, let him pray ʿIshā’ with them and count it as his obligatory prayer.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ مِثْلُ ذَلِكَ؟ وَعَنْ طَاوُسٍ: مِنْ وَجَدَ النَّاسَ يُصَلُّونَ الْقِيَامَ وَهُوَ لَمْ يُصَلِّ الْعِشَاءَ فَلْيُصَلِّهَا مَعَهُمْ، وَلْيَعْتَدَّهَا الْمَكْتُوبَةَ؟

L7723 Ibn Jurayj narrated it from ʿAṭā’, Ḥammād ibn Abī Sulaymān narrated it from Ibrāhīm, and ʿAbdullāh ibn Ṭāwūs narrated it from his father. And was it narrated by these trustworthy ones?

وَرَوَى ذَلِكَ ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ، وَعَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ، وَرَوَاهُ عَنْ هَؤُلَاءِ الثِّقَاتِ؟

L7724 Ali said: We do not know of any opposition at all against those of the Companions we have mentioned—may Allah be pleased with them—and they honor this when it conforms to their *taqlīd*. This statement of ours is the view of Al-Awzaʿī, Al-Shāfiʿī, Aḥmad ibn Ḥanbal, Abū Sulaymān, and the majority of hadith scholars. And success is by Allah, the Exalted.

قَالَ عَلِيٌّ: مَا نَعْلَمُ لِمَنْ ذَكَرْنَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفًا أَصْلًا، وَهُمْ يُعَظِّمُونَ هَذَا إذَا وَافَقَ تَقْلِيدَهُمْ وَقَوْلُنَا هَذَا: هُوَ قَوْلُ الْأَوْزَاعِيِّ، وَالشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي سُلَيْمَانَ، وَجُمْهُورِ أَصْحَابِ الْحَدِيثِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L7725 Issue: Someone arrived at a mosque where the obligatory congregational prayer, led by a permanent imam, had already been performed in it, and he had not prayed it.

[مَسْأَلَةٌ أَتَى مَسْجِدًا قَدْ صُلِّيَتْ بِهِ صَلَاةُ فَرْضٍ جَمَاعَةٌ بِإِمَامٍ رَاتِبٍ وَهُوَ لَمْ يَكُنْ صَلَّاهَا]

L7726 495. Issue:

٤٩٥ - مَسْأَلَةٌ:

L7727–7729 And whoever arrives at a mosque where an obligatory congregational prayer has already been performed with a regular imam - while he himself had not prayed it - should pray it in congregation. The *adhan* previously performed there suffices him, as does the *iqamah*. If they repeat the *adhan* and *iqamah*, it is commendable, for he is commanded to observe congregational prayer. As for the *adhan*... The *iqamah*: Does it apply to everyone who prays that prayer in that mosque—whether they witnessed both or came after them both? Is this the opinion of Ahmad ibn Hanbal, Abu Sulayman, and others? Malik said: No other congregation may pray there unless it has no designated imam.

وَمَنْ أَتَى مَسْجِدًا قَدْ صُلِّيَتْ بِهِ صَلَاةُ فَرْضٍ جَمَاعَةٌ بِإِمَامٍ رَاتِبٍ وَهُوَ لَمْ يَكُنْ صَلَّاهَا: فَلْيُصَلِّهَا فِي جَمَاعَةٍ، وَيُجْزِئُهُ الْأَذَانُ الَّذِي أُذِّنَ فِيهِ قَبْلُ، وَكَذَلِكَ الْإِقَامَةُ، وَلَوْ أَعَادُوا أَذَانًا وَإِقَامَةً: فَحَسَنٌ، لِأَنَّهُ مَأْمُورٌ بِصَلَاةِ الْجَمَاعَةِ، وَأَمَّا الْأَذَانُ وَالْإِقَامَةُ: فَإِنَّهُ لِكُلِّ مَنْ صَلَّى تِلْكَ الصَّلَاةَ فِي ذَلِكَ الْمَسْجِدِ مِمَّنْ شَهِدَهُمَا أَوْ مِمَّنْ جَاءَ بَعْدَهُمَا؟ وَهُوَ قَوْلُ أَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمَا؟ وَقَالَ مَالِكٌ: لَا تُصَلَّى فِيهِ جَمَاعَةٌ أُخْرَى إلَّا أَنْ لَا يَكُونَ لَهُ إمَامٌ رَاتِبٌ.

L7730 His followers argued in support of him by citing his statement: “Is this not undeniably sufficient to prevent the people of desires from acting thus?”

وَاحْتَجَّ لَهُ مُقَلِّدُوهُ بِأَنَّهُ قَالَ هَذَا قَطْعًا لِأَنْ يَفْعَلَ ذَلِكَ أَهْلُ الْأَهْوَاءِ؟

L7731 Ali said: “Whoever among the people of desires refuses to pray behind our

imams, they perform prayers in their homes and do not consider them [valid] in the mosque - whether initiated independently or in congregation - with an imam not from among them."

قَالَ عَلِيٌّ: وَمَنْ كَانَ مِنْ أَهْلِ الْأَهْوَاءِ لَا يَرَى الصَّلَاةَ خَلْفَ أَئِمَّتِنَا فَإِنَّهُمْ يُصَلُّونَهَا فِي مَنَازِلِهِمْ، وَلَا يَعْتَدُّونَ بِهَا فِي الْمَسْجِدِ مُبْتَدَأَةً أَوْ غَيْرَ مُبْتَدَأَةٍ مَعَ إِمَامٍ مِنْ غَيْرِهِمْ.

L7732 This precaution has no justification; rather, they only achieved hastily preventing what Allah the Exalted obligated—the performance of prayer in congregation—out of fear of a matter scarcely existing among those who care little for their own precautions. Indeed, Yunus ibn ʻAbdullah the judge informed me, saying: "When Muḥammad ibn Baqī ibn Zarb the judge entered a mosque whose regular imam had already led the prayer—while he himself had not yet prayed that prayer—he would lead those with him in congregation in a corner of the mosque." ʻAlī commented: "Intentionally going to a corner of the mosque for this purpose is another oddity."

فَهَذَا الِاحْتِيَاطُ لَا وَجْهَ لَهُ، بَلْ مَا حَصَلُوا إِلَّا عَلَى اسْتِعْجَالِ الْمَنْعِ مِمَّا أَوْجَبَهُ اللَّهُ تَعَالَى مِنْ أَدَاءِ الصَّلَاةِ فِي جَمَاعَةٍ خَوْفًا مِنْ أَمْرٍ لَا يَكَادُ يُوجَدُ مِمَّنْ لَا يُبَالِي بِاحْتِيَاطِهِمْ؟ وَلَقَدْ أَخْبَرَنِي يُونُسُ بْنُ عَبْدِ اللَّهِ الْقَاضِي قَالَ: كَانَ مُحَمَّدُ بْنُ بَقِيِّ بْنِ زَرْبٍ الْقَاضِي إِذَا دَخَلَ مَسْجِدًا قَدْ جَمَعَ فِيهِ إِمَامُهُ الرَّاتِبُ - وَهُوَ لَمْ يَكُنْ صَلَّى تِلْكَ الصَّلَاةَ بَعْدُ - جَمَعَ بِمَنْ مَعَهُ فِي نَاحِيَةِ الْمَسْجِدِ؟ قَالَ عَلِيٌّ: الْقَصْدُ إِلَى نَاحِيَةِ الْمَسْجِدِ بِذَلِكَ عَجَبٌ آخَرُ

L7733 Ali said: "As for us, whoever delays attending congregational prayer without a valid excuse—but due to heedlessness, personal desire, or enmity toward the Imam—we forbid him. If he desists, otherwise we destroy his house, as the Messenger of Allah (peace be upon him) stated."

قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَإِنَّ مَنْ تَأَخَّرَ عَنْ صَلَاةِ الْجَمَاعَةِ لِغَيْرِ عُذْرٍ، لَكِنْ قِلَّةَ اهْتِبَالٍ، أَوْ لِهَوًى، أَوْ لِعَدَاوَةٍ مَعَ الْإِمَامِ -: فَإِنَّنَا نَنْهَاهُ، فَإِنْ انْتَهَى وَإِلَّا أَحْرَقْنَا مَنْزِلَهُ، كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L7734 How astonishing that the Malikis say: "If they pray it in congregation in it, it suffices them." O Allah! O Muslims! What comfort do they find in preventing a congregational prayer that surpasses individual prayer by twenty-seven degrees? Yet according to their doctrine, it remains valid for those who prayed it. What choice could be more corrupt than this?

وَالْعَجَبُ أَنَّ الْمَالِكِيِّينَ يَقُولُونَ: فَإِنْ صَلَّوْهَا فِيهِ جَمَاعَةً أَجْزَأَتْهُمْ فَيَا لِلَّهِ وَيَا لِلْمُسْلِمِينَ أَيُّ رَاحَةٍ لَهُمْ فِي مَنْعِهِمْ مِنْ صَلَاةِ جَمَاعَةٍ تَفْضُلُ صَلَاةَ الْمُنْفَرِدِ بِسَبْعٍ وَعِشْرِينَ دَرَجَةً؟ وَهِيَ عِنْدَهُمْ جَائِزَةٌ عَمَّنْ صَلَّاهَا فَأَيُّ اخْتِيَارٍ أَفْسَدُ مِنْ هَذَا؟

L7735 It has been narrated to us from Sufyān al-Thawrī from Yūnus ibn ʻUbayd from al-Jaʻd Abu ʻUthmān who said: Anas ibn Mālik came to us at dawn when we had already prayed, so he performed the iqāmah and led his companions in prayer. It has also been narrated to us that he was with about ten of his companions, so he gave the adhān, performed the iqāmah, then led them in prayer.

وَرُوِّينَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْجَعْدِ أَبِي عُثْمَانَ قَالَ: جَاءَنَا أَنَسُ بْنُ مَالِكٍ عِنْدَ الْفَجْرِ وَقَدْ صَلَّيْنَا فَأَقَامَ وَأَمَّ أَصْحَابَهُ؟ وَرُوِّينَا أَيْضًا: أَنَّهُ كَانَ مَعَهُ نَحْوُ عَشْرَةٍ مِنْ أَصْحَابِهِ فَأَذَّنَ وَأَقَامَ ثُمَّ صَلَّى بِهِمْ.

L7736 It was also narrated to us through the chain of Maʿmar and Ḥammād ibn Salamah, from Abū ʿUthmān, from Anas - and Ḥammād named him - saying: "In the mosque of Banū Rifāʿah?"

وَرُوِّينَا أَيْضًا: مِنْ طَرِيقِ مَعْمَرٍ وَحَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي عُثْمَانَ عَنْ أَنَسٍ وَسَمَّاهُ حَمَّادٌ فَقَالَ: فِي مَسْجِدِ بَنِي رِفَاعَةَ؟

L7737–7738 From Ibn Jurayj: I asked ʿAṭāʾ, “If a group enters the Mosque of Makkah at times other than the [prescribed] prayers, whether at night or during the day, can one of them lead them in prayer?” He replied, “Yes, and what is wrong with that?”

وَعَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: نَفَرٌ دَخَلُوا مَسْجِدَ مَكَّةَ خِلَافَ الصَّلَاةِ لَيْلًا أَوْ نَهَارًا، أَيَؤُمُّهُمْ أَحَدُهُمْ؟ قَالَ: نَعَمْ، وَمَا بَأْسُ ذَلِكَ؟

L7739 From Sufyan al-Thawri, from Abdullah ibn Yazid: Ibrahim led me as an imam in prayer in a mosque where prayer had already been performed. He positioned me to his right without any adhan or iqamah. From Ma’mar: I accompanied Ayyub al-Sikhtiyani from Mecca to Basra. We came to a mosque of the people of water where prayer had already been performed. Ayyub gave the adhan and iqamah, then stepped forward and led us in prayer? From Hammad ibn Salama, from Uthman al-Batti, who said: I entered a mosque with al-Hasan al-Basri and Thabit al-Bunani where its residents had already prayed. Thabit gave the adhan and iqamah, and al-Hasan stepped forward and led us in prayer. I said, “O Abu Sa’id, is there no objection to this?” He replied, “What is the harm in it?”

وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ: أَمَّنِي إبْرَاهِيمُ فِي مَسْجِدٍ قَدْ صُلِّيَ فِيهِ، فَأَقَامَنِي عَنْ يَمِينِهِ بِغَيْرِ أَذَانٍ وَلَا إقَامَةٍ وَعَنْ مَعْمَرٍ صَحِبْت أَيُّوبَ السِّخْتِيَانِيَّ مِنْ مَكَّةَ إلَى الْبَصْرَةِ، فَأَتَيْنَا مَسْجِدَ أَهْلِ مَاءٍ قَدْ صُلِّيَ فِيهِ، فَأَذَّنَ أَيُّوبُ وَأَقَامَ ثُمَّ تَقَدَّمَ فَصَلَّى بِنَا؟ وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُثْمَانَ الْبَتِّيِّ قَالَ: دَخَلْت مَعَ الْحَسَنِ الْبَصْرِيِّ وَثَابِتٍ الْبُنَانِيِّ مَسْجِدًا قَدْ صَلَّى فِيهِ أَهْلُهُ، فَأَذَّنَ ثَابِتٌ وَأَقَامَ، وَتَقَدَّمَ الْحَسَنُ فَصَلَّى بِنَا، فَقُلْت: يَا أَبَا سَعِيدٍ: أَمَا يُكْرَهُ هَذَا؟ قَالَ: وَمَا بَأْسُهُ

L7740 Ali said, “This is among those matters in which no differing opinion from the Companions is known to be attributed to Anas—may Allah be pleased with them.”

قَالَ عَلِيٌّ هَذَا مِمَّا لَا يُعْرَفُ فِيهِ لِأَنَسٍ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -

L7741 It has been narrated to us through the chain of Abu Bakr ibn Abi Shaybah: Abdah ibn Sulayman narrated to us from Sa’id ibn Abi Arubah from Sulayman (who is Ibn al-Aswad al-Naji) from Abu al-Mutawakkil (who is Ali ibn Dawud al-Naji) from Abu Sa’id al-Khudri, who said: “A man arrived after the Messenger of Allah (peace be upon him) had prayed. He asked: ’Which of you will undertake this?’ A man stood and prayed with him.”[31]

وَرُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ: ثنا عَبْدَةُ بْنُ سُلَيْمَانَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ سُلَيْمَانَ هُوَ ابْنُ الْأَسْوَدِ النَّاجِي عَنْ أَبِي الْمُتَوَكِّلِ هُوَ عَلِيُّ بْنُ دَاوُد النَّاجِي عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «جَاءَ رَجُلٌ وَقَدْ صَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: أَيُّكُمْ يَتَّجِرُ عَلَى هَذَا، فَقَامَ رَجُلٌ فَصَلَّى مَعَهُ»

L7742 Ali said: Had they obtained something like this, they would have flown with it in every flight path.

قَالَ عَلِيٌّ: لَوْ ظَفِرُوا بِمِثْلِ هَذَا لَطَارُوا بِهِ كُلَّ مَطَارٍ

L7743 Issue: Two or more entered and found the Imam during part of his prayer.

[مَسْأَلَةٌ دَخَلَ اثْنَانِ فَصَاعِدًا فَوَجَدُوا الْإِمَامَ فِي بَعْضِ صَلَاتِهِ]

L7744 496. Issue:

٤٩٦ - مَسْأَلَةٌ:

[31] **Hadith references (L7741):** Jami at-Tirmidhi 220.

L7745 If two or more people enter and find the imam during part of the prayer, they should pray with him. When the imam concludes the prayer, it is preferable for those who need to complete what they missed to do so with an imam from among themselves leading them, because they are commanded to pray in congregation. Had there not been a textual ruling instructing them to make it up individually, that would not suffice. It was narrated to us from ʿAbd al-Razzāq, from Muʿtamir ibn Sulaymān al-Taymī, from Layth, who said: "I entered the mosque with Ibn Sābiṭ accompanied by a group of people while the imam was in prostration. Some of us prostrated, while others prepared themselves for prostration. When the imam concluded the prayer, Ibn Sābiṭ led his companions in prayer. I mentioned this to ʿAṭāʾ, and he said: 'That is how it should be.' I said: 'This is not practiced among us.' He replied: 'They must separate.'"

وَإِنْ دَخَلَ اثْنَانِ فَصَاعِدًا فَوَجَدُوا الْإِمَامَ فِي بَعْضِ صَلَاتِهِ فَإِنَّهُمْ يُصَلُّونَ مَعَهُ، فَإِذَا سَلَّمَ فَالْأَفْضَلُ لِلَّذِينَ يُتِمُّونَ مَا فَاتَهُمْ أَنْ يَقْضُوهُ بِإِمَامٍ يَؤُمُّهُمْ مِنْهُمْ، لِأَنَّهُمْ مَأْمُورُونَ بِالصَّلَاةِ جَمَاعَةً، وَلَوْلَا نَصٌّ وَرَدَ بِأَنْ يَقْضُوا فُرَادَى لَمَا أَجْزَأَ ذَلِكَ -: وَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ مُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ لَيْثٍ قَالَ: دَخَلْت مَعَ ابْنِ سَابِطٍ فِي أُنَاسٍ الْمَسْجِدَ وَالْإِمَامُ سَاجِدٌ فَسَجَدَ بَعْضُنَا وَتَهَيَّأَ بَعْضُنَا لِلسُّجُودِ، فَلَمَّا سَلَّمَ الْإِمَامُ قَامَ ابْنُ سَابِطٍ بِأَصْحَابِهِ، فَذَكَرْت ذَلِكَ لِعَطَاءٍ؟ فَقَالَ: كَذَلِكَ يَنْبَغِي، فَقُلْت: إنَّ هَذَا لَا يُفْعَلُ عِنْدَنَا. قَالَ: يَفْرُقُونَ.

Ali said: This clarifies that the people persisted in following the actions of the subsequent tyrannical rulers. Narrated by Ma'mar from Qatadah: What about a group that enters the mosque and catches up with one *rak'ah* alongside the imam? He said: They should rise and complete what remains incumbent upon them, with one of them leading the prayer while standing in the same row alongside them.

قَالَ عَلِيٌّ: هَذَا يُبَيِّنُ أَنَّ النَّاسَ مَضَوْا عَلَى أَعْمَالِ سَلَاطِينِ الْجَوْرِ الْمُتَأَخِّرِينَ وَعَنْ مَعْمَرٍ عَنْ قَتَادَةَ: فِي الْقَوْمِ يَدْخُلُونَ الْمَسْجِدَ فَيُدْرِكُونَ فِيهِ مَعَ الْإِمَامِ رَكْعَةً؟ قَالَ: يَقُومُونَ فَيَقْضُونَ مَا بَقِيَ عَلَيْهِمْ، يَؤُمُّهُمْ أَحَدُهُمْ وَهُوَ قَائِمٌ مَعَهُمْ فِي الصَّفِّ

[The Ruling on Mosques] [The Issue of the Prayer Niches in Mosques]

[حُكْمُ الْمَسَاجِدِ] [مَسْأَلَةٌ الْمَحَارِيبُ فِي الْمَسَاجِدِ]

Issue: The Ruling on Mosques

مَسْأَلَةٌ حُكْمُ الْمَسَاجِدِ:

The prayer niches in mosques are disliked, it is obligatory to sweep them, and it is recommended to perfume them with fragrance. It is recommended for those free from the need to earn or engage in worldly affairs to frequent the mosque. Ali said: "As for the prayer niches, they are an innovation, for indeed the Messenger of Allah (peace be upon him) used to stand alone, and the first row would form behind him." Abd al-Rahman al-Hamdani narrated to us: Ibrahim ibn Ahmad al-Balkhi narrated to us: al-Farbari narrated to us: al-Bukhari narrated to us: Saʿid ibn ʿUfair narrated to us: al-Layth, who is Ibn Saʿd, narrated to me: ʿUqayl narrated to me from Ibn Shihab: Anas ibn Malik

وَتُكْرَهُ الْمَحَارِيبُ فِي الْمَسَاجِدِ، وَوَاجِبٌ كَنْسُهَا، وَيُسْتَحَبُّ أَنْ تُطَيَّبَ بِالطِّيبِ -: وَيُسْتَحَبُّ مُلَازَمَةُ الْمَسْجِدِ لِمَنْ هُوَ فِي غِنًى عَنْ الْكَسْبِ وَالتَّصَرُّفِ؟ وَقَالَ عَلِيٌّ: أَمَّا الْمَحَارِيبُ فَمُحْدَثَةٌ، وَإِنَّمَا كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقِفُ وَحْدَهُ وَيَصُفُّ الصَّفُّ الْأَوَّلُ خَلْفَهُ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ الْهَمْدَانِيُّ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيُّ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا سَعِيدُ بْنُ عُفَيْرٍ ثنا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - حَدَّثَنِي عُقَيْلٌ عَنْ ابْنِ

reported to me: “While the Muslims were in the Fajr prayer on Monday, with Abu Bakr leading them, they were suddenly met with the Messenger of Allah (peace be upon him) lifting the curtain of ‘Aisha’s chamber. He looked at them as they stood in rows during the prayer and smiled. Abu Bakr stepped back on his heels to join the row, thinking that the Messenger of Allah (peace be upon him) intended to come out for the prayer. The Muslims were about to become distracted in their prayer out of joy at seeing the Messenger of Allah (peace be upon him). He gestured to them with his hand: ’Complete your prayer,’ then entered the chamber and lowered the curtain.”

شِهَابٍ أَخْبَرَنِي أَنَسُ بْنُ مَالِكٍ «أَنَّ الْمُسْلِمِينَ بَيْنَا هُمْ فِي صَلاَةِ الْفَجْرِ مِنْ يَوْمِ الاِثْنَيْنِ وَأَبُو بَكْرٍ يُصَلِّي بِهِمْ، لَمْ يَفْجَأْهُمْ إِلَّا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ كَشَفَ سَجْفَ حُجْرَةِ عَائِشَةَ فَنَظَرَ إِلَيْهِمْ وَهُمْ صُفُوفٌ فِي الصَّلاَةِ ثُمَّ تَبَسَّمَ، فَنَكَصَ أَبُو بَكْرٍ عَلَى عَقِبَيْهِ لِيَصِلَ الصَّفَّ، وَظَنَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُرِيدُ أَنْ يَخْرُجَ إِلَى الصَّلاَةِ، وَهَمَّ الْمُسْلِمُونَ أَنْ يَفْتَتِنُوا فِي صَلاَتِهِمْ فَرَحًا بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَشَارَ إِلَيْهِمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِيَدِهِ: أَنْ أَتِمُّوا صَلاَتَكُمْ، ثُمَّ دَخَلَ الْحُجْرَةَ وَأَرْخَى السِّتْرَ» .

L7752 Ali said: “If Abu Bakr had been in a prayer niche, he would not have seen the Messenger of Allah (peace and blessings be upon him) when he lifted the curtain—and this was on the day of his death (peace be upon him).”

قَالَ عَلِيٌّ: لَوْ كَانَ أَبُو بَكْرٍ فِي مِحْرَابٍ لَمَا رَأَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ كَشَفَ السِّتْرَ، وَكَانَ هَذَا يَوْمَ مَوْتِهِ - عَلَيْهِ السَّلاَمُ -؟

L7753–7754 It has been narrated to us from ʿAlī ibn Abī Ṭālib that he disliked the mihrab in the mosque. From Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm al-Nakhaʿī: he disliked praying in the imam’s niche. Sufyān said: “And we too dislike it.” From al-Muʿtamir ibn Sulaymān al-Taymī, from his father, who said: “I saw al-Ḥasan come to Thābit al-Bunānī. When the prayer time arrived, Thābit said: ’Lead us, O Abā Saʿīd.’ Al-Ḥasan replied: ’Rather, you are more deserving.’ Thābit said: ’By Allah, I will never precede you,’ so al-Ḥasan led the prayer but avoided praying in the niche.” Al-Muʿtamir said: “I saw my father and Layth ibn Abī Sulaym avoiding it.” From Wakīʿ: “There will be in later times people whose lives will be shortened. They will adorn their mosques and construct altars for them like the altars of the Christians. When they do this, calamity will be sent down upon them.” This is the opinion of Muḥammad ibn Jarīr al-Ṭabarī and others. As for sweeping mosques, Allah Almighty says: “In houses which Allah has ordered to be raised and in which His name is remembered. Therein glorify Him

وَرُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّهُ كَانَ يَكْرَهُ الْمِحْرَابَ فِي الْمَسْجِدِ؟ وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ كَانَ يَكْرَهُ أَنْ يُصَلَّى فِي طَاقِ الْإِمَامِ، قَالَ سُفْيَانُ وَنَحْنُ نَكْرَهُهُ؟ وَعَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَبِيهِ قَالَ: رَأَيْت الْحَسَنَ جَاءَ إلَى ثَابِتٍ الْبُنَانِيِّ فَحَضَرَتْ الصَّلَاةُ فَقَالَ ثَابِتٌ: تَقَدَّمْ يَا أَبَا سَعِيدٍ، قَالَ الْحَسَنُ: بَلْ أَنْتَ أَحَقُّ، قَالَ ثَابِتٌ: وَاَللَّهِ لَا أَتَقَدَّمُك أَبَدًا فَتَقَدَّمَ الْحَسَنُ فَاعْتَزَلَ الطَّاقَ أَنْ يُصَلِّيَ فِيهِ قَالَ مُعْتَمِرٌ: وَرَأَيْت أَبِي، وَلَيْثُ بْنُ أَبِي سُلَيْمٍ يَعْتَزِلَانِهِ؟ وَعَنْ وَكِيعٍ يَكُونُ فِي آخِرِ الزَّمَانِ قَوْمٌ تَنْقُصُ أَعْمَارُهُمْ، يُزَيِّنُونَ مَسَاجِدَهُمْ، وَيَتَّخِذُونَ لَهَا مَذَابِحَ كَمَذَابِحِ النَّصَارَى فَإِذَا فَعَلُوا ذَلِكَ صُبَّ عَلَيْهِمْ الْبَلَاءُ؟ [وَهُوَ قَوْلُ] مُحَمَّدِ بْنِ جَرِيرٍ الطَّبَرِيِّ وَغَيْرِهِ. وَأَمَّا كَنْسُ الْمَسَاجِدِ فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {فِي بُيُوتٍ أَذِنَ اللَّهُ أَنْ تُرْفَعَ وَيُذْكَرَ فِيهَا اسْمُهُ

morning and afternoon. Men whom neither trade nor sale distracts from the remembrance of Allah and the establishment of prayer...” (24:36-37).[32]

يُسَبِّحُ لَهُ فِيهَا بِالْغُدُوِّ وَالآصَالِ} [النور: ٣٦] {رِجَالٌ لا تُلْهِيهِمْ تِجَارَةٌ وَلا بَيْعٌ عَنْ ذِكْرِ اللَّهِ وَإِقَامِ الصَّلاةِ} [النور: ٣٧]

L7755 It is astonishing that one would permit coming to the mosque before sunset for the Maghrib prayer and after the sun passes its zenith for the Friday prayer, yet simultaneously deem it disliked to come early for other prayers before their prescribed times. It has been narrated to us by Abdullah ibn Rabīʿ on the authority of ʿUmar ibn ʿAbd al-Malik, from Muḥammad ibn Bakr, from Abū Dāwūd, from Muḥammad ibn al-ʿAlāʾ, from Ḥusayn ibn ʿAlī al-Juʿfī, from Zāʾidah, from Hishām ibn ʿUrwah, from his father, from ʿĀʾishah, the Mother of the Believers, who said: “The Messenger of Allah—peace and blessings be upon him—commanded that mosques be built in residential areas (al-dūr), purified and kept clean.” ʿAlī said: “Al-dūr refers to neighborhoods and suburbs. For example, one says: ‘The quarter of Banū ʿAbd al-Ashhal’ and ‘The quarter of Banū al-Najjār,’ meaning the residential area of each group among them.”

وَالْعَجَبُ مِمَّنْ يُجِيزُ الْمَجِيءَ إِلَى الْمَسْجِدِ قَبْلَ غُرُوبِ الشَّمْسِ لِصَلَاةِ الْمَغْرِبِ وَقَبْلَ الزَّوَالِ لِصَلَاةِ الْجُمُعَةِ - ثُمَّ يَكْرَهُ الْمَجِيءَ إِلَى سَائِرِ الصَّلَوَاتِ قَبْلَ أَوْقَاتِهَا -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا مُحَمَّدُ بْنُ الْعَلَاءِ حَدَّثَنَا حُسَيْنُ بْنُ عَلِيٍّ هُوَ الْجُعْفِيُّ عَنْ زَائِدَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِبِنَاءِ الْمَسَاجِدِ فِي الدُّورِ، وَأَنْ تُطَيَّبَ وَتُنَظَّفَ» قَالَ عَلِيٌّ: الدُّورُ هِيَ الْمَحَلَّاتُ، وَالْأَرْبَاضُ، تَقُولُ: دَارُ بَنِي عَبْدِ الْأَشْهَلِ، وَدَارُ بَنِي النَّجَّارِ تُرِيدُ: مَحَلَّةَ كُلِّ طَائِفَةٍ مِنْهُمْ.

L7756–7758 Abdullah ibn Rabīʿ narrated to us; Muḥammad ibn Muʿāwiyah narrated to us; Aḥmad ibn Shuʿayb narrated to us: I am Isḥāq ibn Ibrāhīm is the son of Rāhawayh—I am ʿĀʾidh ibn Ḥabīb; Ḥumayd al-Ṭawīl narrated to us from Anas, who said: “The Messenger of Allah (peace and blessings be upon him) saw phlegm on the qiblah wall of the mosque. He became so angry that his face reddened. A woman from the Anṣār stood up, scraped it off, and applied khalūq perfume in its place. The Messenger of Allah (peace and blessings be upon him) then said: ’How splendid this is!’”[33]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - أَنَا عَائِذُ بْنُ حَبِيبٍ ثنا حُمَيْدٍ الطَّوِيلُ عَنْ أَنَسٍ قَالَ: «رَأَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نُخَامَةً فِي قِبْلَةِ الْمَسْجِدِ، فَغَضِبَ حَتَّى احْمَرَّ وَجْهُهُ، فَقَامَتْ امْرَأَةٌ مِنَ الْأَنْصَارِ فَحَكَّتْهَا وَجَعَلَتْ مَكَانَهَا خَلُوقًا، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا أَحْسَنَ هَذَا»

Question: Speaking in the mosque about worldly matters that involve no sin.

[مَسْأَلَةُ التَّحَدُّثُ فِي الْمَسْجِدِ بِمَا لَا إِثْمَ فِيهِ مِنْ أُمُورِ الدُّنْيَا]

L7759

L7760 Issue 498: Conversing in the mosque about worldly matters that involve no sin is permissible, and the remembrance of Allah the Exalted is superior.

٤٩٨ - مَسْأَلَةٌ: وَالتَّحَدُّثُ فِي الْمَسْجِدِ بِمَا لَا إِثْمَ فِيهِ مِنْ أُمُورِ الدُّنْيَا، مُبَاحٌ، وَذِكْرُ اللَّهِ تَعَالَى أَفْضَلُ.

[32] **Qur’an references (L7754):** Qur’an 24:36 (An-Nur); Qur’an 24:37 (An-Nur).
[33] **Hadith references (L7756):** Sunan an-Nasai 728.

وَإِنْشَادُ الشِّعْرِ فِيهِ مُبَاحٌ، وَالتَّعَلُّمُ فِيهِ لِلصِّبْيَانِ وَغَيْرِهِمْ مُبَاحٌ، وَالسَّكَنُ فِيهِ وَالْمَبِيتُ مُبَاحٌ، مَا لَمْ يَضِقْ عَلَى الْمُصَلِّينَ، وَإِدْخَالُ الدَّابَّةِ فِيهِ مُبَاحٌ إِذَا كَانَ لِحَاجَةٍ، وَالْحُكْمُ فِيهِ وَالْخِصَامُ كُلُّ ذَلِكَ جَائِزٌ، وَالتَّطَرُّقُ فِيهِ جَائِزٌ، إِلَّا أَنَّ مَنْ خَطَرَ فِيهِ بِنَبْلٍ فَإِنَّهُ يَلْزَمُهُ أَنْ يُمْسِكَ بِحَدَائِدِهَا، فَإِنْ لَمْ يَفْعَلْ فَعَلَيْهِ الْقَوَدُ فِي كُلِّ مَا أَصَابَ مِنْهَا؟ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ الْهَمْدَانِيُّ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا زَكَرِيَّاءُ بْنُ يَحْيَى ثنا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ ثنا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ «أُصِيبَ سَعْدُ بْنُ مُعَاذٍ يَوْمَ الْخَنْدَقِ فِي الْأَكْحَلِ، فَضَرَبَ عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْمَةً فِي الْمَسْجِدِ لِيَعُودَهُ مِنْ قَرِيبٍ، فَلَمْ يَرُعْهُمْ - وَفِي الْمَسْجِدِ خَيْمَةٌ لِقَوْمٍ مِنْ بَنِي غِفَارٍ - إِلَّا الدَّمُ يَسِيلُ إِلَيْهِمْ، فَقَالُوا: يَا أَهْلَ الْخَيْمَةِ، مَا هَذَا الَّذِي يَأْتِينَا مِنْ قِبَلِكُمْ؟ فَإِذَا سَعْدٌ يَغْذُو جُرْحُهُ دَمًا، فَمَاتَ مِنْهَا» .

L7761 Reciting poetry in the mosque is permissible, and teaching children and others within it is permissible. Residing and spending the night there are permissible as long as it does not inconvenience the worshippers. Bringing an animal into it is permissible if necessary. Holding legal judgments and disputes within it – all such matters are permissible. Passing through it is permissible, except that whoever carries arrows in it must secure their metal tips. If they fail to do so, are they liable for retaliation for any harm caused by them?

Abdul Rahman ibn Abdullah Al-Hamdani narrated to us: Ibrahim ibn Ahmad narrated to us: Al-Farabri narrated to us: Al-Bukhari narrated to us: Zakariya ibn Yahya narrated to us: Abdullah ibn Numayr narrated to us: Hisham ibn Urwah narrated from his father, from Aisha, who said: "Sa'd ibn Mu'adh was wounded in the forearm vein during the Battle of the Trench. The Messenger of Allah (peace be upon him) set up a tent for him in the mosque to visit him from close by. Suddenly – while there was a tent in the mosque belonging to the Banu Ghifar – blood began flowing toward them. They exclaimed: 'O people of the tent, what is this coming from your direction?' They discovered Sa'd's wound gushing blood, and he died from it."

وَحَدِيثُ السَّوْدَاءِ الَّتِي كَانَتْ تَسْكُنُ فِي الْمَسْجِدِ مِنْ طَرِيقِ أَبِي أُسَامَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أَيْضًا.

L7762 The hadith of the black woman who resided in the mosque, transmitted through the chain of Abu Usamah from Hisham ibn Urwah, from his father, from Aisha as well.

وَأَهْلُ الصُّفَّةِ كَانُوا سُكَّانًا فِي الْمَسْجِدِ؟ وَبِهِ إِلَى الْبُخَارِيِّ: ثنا مُسَدَّدٌ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ أَخْبَرَنِي نَافِعٌ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ عُمَرَ: أَنَّهُ كَانَ يَنَامُ وَهُوَ شَابٌّ أَعْزَبُ فِي الْمَسْجِدِ.

L7763 And the People of the Bench (Ahl al-Suffah) were residents in the mosque? Reported by Al-Bukhari via Musaddad narrated to us, Yahya ibn Sa'id al-Qattan narrated to us, from Ubayd Allah ibn Umar, on the authority of Nafi', on the authority of Abdullah ibn Umar: "that he (Abdullah ibn Umar) used to sleep in the mosque as a young, unmarried man."

L7764–7766 Narrated from Mālik, from Muḥammad ibn ʿAbd al-Raḥmān ibn Nawfal, from ʿUrwah, from Zaynab bint... Abu Salamah narrated from Umm Salamah that she said: "I complained to the Messenger of Allah (peace be upon him) that I was unwell. He said: 'Perform Tawaf from behind the people while you are riding.'"

وَمِنْ طَرِيقِ مَالِكٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ نَوْفَلٍ عَنْ عُرْوَةَ عَنْ زَيْنَبَ بِنْتِ أَبِي سَلَمَةَ عَنْ «أُمِّ سَلَمَةَ قَالَتْ: شَكَوْتُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنِّي أَشْتَكِي، قَالَ: طُوفِي مِنْ وَرَاءِ النَّاسِ وَأَنْتِ رَاكِبَةٌ»

L7767 And through him to Al-Bukhari: ‘Abdullah ibn Muhammad narrated to us, ‘Uthman ibn ‘Umar narrated to us: Yunus narrated to me from Al-Zuhri, from ‘Abdullah ibn Ka’b ibn Malik from his father: He pressed Ibn Abi Al-Hadrad for settlement of a debt owed to him inside the mosque. Their voices rose until the Messenger of Allah (peace be upon him)—while he was in his house—heard them. He came out to them and called: “O Ka‘b, deduct from this debt of yours,” gesturing to him—indicating half. He replied: “I have done so, O Messenger of Allah.” He said: “Rise and settle it.”[34]

وَبِهِ إِلَى الْبُخَارِيِّ: ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ ثنا عُثْمَانُ بْنُ عُمَرَ أَنَا يُونُسُ عَنْ الزُّهْرِيِّ «عَنْ عَبْدِ اللَّهِ بْنِ كَعْبِ بْنِ مَالِكٍ عَنْ أَبِيهِ: أَنَّهُ تَقَاضَى ابْنَ أَبِي الْحَدْرَدِ دَيْنًا كَانَ لَهُ عَلَيْهِ فِي الْمَسْجِدِ، فَارْتَفَعَتْ أَصْوَاتُهُمَا حَتَّى سَمِعَهُمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ فِي بَيْتِهِ فَخَرَجَ إلَيْهِمَا فَنَادَى: يَا كَعْبُ ضَعْ مِنْ دَيْنِكَ هَذَا، وَأَوْمَأَ إلَيْهِ: أَيْ الشَّطْرَ، قَالَ: لَقَدْ فَعَلْتُ يَا رَسُولَ اللَّهِ، قَالَ: قُمْ فَاقْضِهِ» .

L7768 Abdullah ibn Yusuf narrated to us; Ahmad ibn Fath narrated to us; Abdul-Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to us; Amr an-Naqid and Ishaq ibn Ibrahim narrated to us, from Ibn Uyaynah, from az-Zuhri, from Sa‘id ibn al-Musayyib, from Abu Hurayrah: “Umar ibn al-Khattab passed by Hassan ibn Thabit while he was reciting poetry in the mosque. Umar glanced at him, and Hassan said: ’I used to recite in it when there was one better than you present.”’ He mentioned the hadith.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا عَمْرٌو النَّاقِدُ وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ عَنْ ابْنِ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ " أَنَّ عُمَرَ بْنَ الْخَطَّابِ مَرَّ بِحَسَّانَ بْنِ ثَابِتٍ وَهُوَ يُنْشِدُ الشِّعْرَ فِي الْمَسْجِدِ فَلَحَظَ إلَيْهِ فَقَالَ: قَدْ كُنْت أُنْشِدُ وَفِيهِ مَنْ هُوَ خَيْرٌ مِنْك " وَذَكَرَ الْحَدِيثَ.

L7769 Abd al-Rahman ibn Abdullah narrated to us: Ibrahim ibn Ahmad narrated to us, from al-Farbari, from al-Bukhari, from Ibrahim ibn Musa, from al-Walid (Ibn Muslim), from al-Awza‘i, from Yahya ibn Abi Kathir, from Abdullah ibn Qatadah, from his father, from the Prophet—peace and blessings be upon him—who said: “I rise for prayer intending to prolong it, then I hear a child’s cry, so I abbreviate my prayer out of reluctance to burden his mother.”[35]

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا إبْرَاهِيمُ بْنُ مُوسَى ثنا الْوَلِيدُ هُوَ ابْنُ مُسْلِمٍ ثنا الْأَوْزَاعِيُّ ثنا يَحْيَى بْنُ أَبِي كَثِيرٍ عَنْ عَبْدِ اللَّهِ بْنِ قَتَادَةَ عَنْ أَبِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنِّي لَأَقُومُ فِي الصَّلَاةِ أُرِيدُ أَنْ أُطَوِّلَ فِيهَا فَأَسْمَعُ بُكَاءَ الصَّبِيِّ فَأَتَجَوَّزُ فِي صَلَاتِي كَرَاهِيَةَ أَنْ أَشُقَّ عَلَى أُمِّهِ» .

[34] **Hadith references (L7767):** Sahih al-Bukhari 457.
[35] **Hadith references (L7769):** Sahih al-Bukhari 707.

It was also narrated by us via the chain of Qatādah, from Anas.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ قَتَادَةَ عَنْ أَنَسٍ.

And he (peace be upon him) "prayed while carrying Umamah, the daughter of Abi al-As ibn al-Rabi', and her mother was Zaynab, the daughter of the Messenger of Allah (peace be upon him)"? And with it to Al-Bukhari: Musa ibn Isma'il narrated to us, from 'Abd al-Wahid, from Abu Burdah—who is Burayd ibn 'Abdullah—that he heard Abu Burdah—who is Burayd's grandfather 'Amir ibn Abi Musa—from his father, from the Prophet (peace be upon him), who said: "Whoever walks through any of our mosques or markets carrying arrows should cover their tips with his palm, so as not to injure a Muslim."

وَقَدْ «صَلَّى - عَلَيْهِ السَّلَامُ - حَامِلًا أُمَامَةَ بِنْتَ أَبِي الْعَاصِ بْنِ الرَّبِيعِ وَأُمُّهَا زَيْنَبُ بِنْتُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» ؟ وَبِهِ إلَى الْبُخَارِيِّ ثنا مُوسَى بْنُ إِسْمَاعِيلَ ثنا عَبْدُ الْوَاحِدِ ثنا أَبُو بُرْدَةَ هُوَ بُرَيْدُ بْنُ عَبْدِ اللَّهِ - أَنَّهُ سَمِعَ أَبَا بُرْدَةَ هُوَ جَدُّهُ عَامِرُ بْنُ أَبِي مُوسَى - عَنْ أَبِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ مَرَّ فِي شَيْءٍ مِنْ مَسَاجِدِنَا أَوْ أَسْوَاقِنَا بِنَبْلٍ فَلْيَأْخُذْ عَلَى نِصَالِهَا بِكَفِّهِ لَا يَعْقِرْ مُسْلِمًا» .

Ali said: The hadith prohibiting the recitation of poetry is not authentic, as it is transmitted through the chain of ʿAmr ibn Shuʿayb from his father, from his grandfather, and this chain is from a manuscript.

قَالَ عَلِيٌّ: وَالْخَبَرُ الَّذِي فِيهِ النَّهْيُ عَنْ إنْشَادِ الشِّعْرِ لَا يَصِحُّ؛ لِأَنَّهُ مِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ "، وَهِيَ صَحِيفَةٌ.

It has been narrated to us from Ibn ʿUmar, Al-Ḥasan, and Al-Shaʿbī concerning the permissibility of passing through the mosque?

وَرُوِّينَا عَنْ ابْنِ عُمَرَ، وَالْحَسَنِ، وَالشَّعْبِيِّ: إبَاحَةَ التَّطَرُّقِ فِي الْمَسْجِدِ؟ .

[مَسْأَلَةٌ دُخُولُ الْمُشْرِكِينَ فِي جَمِيعِ الْمَسَاجِدِ حَاشَا حَرَمَ مَكَّةَ كُلَّهُ]

A legal issue: The permissibility of polytheists entering all other mosques, except for the Haram in Mecca in its entirety.

499 - Question:

٤٩٩ - مَسْأَلَةٌ:

The entry of polytheists into all mosques is permitted, except for the entirety of Mecca's Haram - the mosque and other areas - for it is entirely impermissible for a disbeliever to enter it.

وَدُخُولُ الْمُشْرِكِينَ فِي جَمِيعِ الْمَسَاجِدِ: جَائِزٌ، حَاشَا حَرَمَ مَكَّةَ كُلَّهُ - الْمَسْجِدَ وَغَيْرَهُ - فَلَا يَحِلُّ أَلْبَتَّةَ أَنْ يَدْخُلَهُ كَافِرٌ.

This is the opinion of Al-Shafi'i and Abu Sulayman. Abu Hanifa said: "There is no harm in a Jew or Christian entering it," but he forbade followers of other religions from entering mosques. Malik held it reprehensible for any disbeliever to enter any part of the mosques.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ وَقَالَ أَبُو حَنِيفَةَ: لَا بَأْسَ أَنْ يَدْخُلَهُ الْيَهُودِيُّ، وَالنَّصْرَانِيُّ، وَمَنَعَ مِنْهُ سَائِرَ الْأَدْيَانِ وَكَرِهَ مَالِكٌ دُخُولَ أَحَدٍ مِنْ الْكُفَّارِ فِي شَيْءٍ مِنْ الْمَسَاجِدِ.

Allah, the Exalted, said: "Indeed, the polytheists are impure; so let them

not approach the Sacred Mosque after this year of theirs." [Surah At-Tawbah (9:28)][36]

L7780 Ali ibn Abi Talib said: Allah specially designated the Sacred Mosque; thus, it is impermissible to extend it to other places without explicit textual evidence. The Haram precinct existed prior to the mosque's construction, and additions were later made to it.

L7781 The Messenger of Allah—peace and blessings be upon him—said: "The entire earth has been made a place of worship and a means of purification for me."

L7782–7784 Is it correct that the entire Ḥaram is the Sacred Mosque? ʿAbd al-Raḥmān ibn ʿAbd Allāh narrated to us: Ibrāhīm ibn Aḥmad narrated to us: al-Firabrī narrated to us: al-Bukhārī narrated to us: ʿAbd Allāh ibn Yūsuf narrated to us: al-Layth narrated to us: Saʿīd ibn Abī Saʿīd reported, having heard Abū Hurayrah say: "The Messenger of Allāh sent [text incomplete]." The Prophet of Allah—peace and blessings be upon him—sent horses toward Najd, which returned with a man from Banu Hanifah named Thumamah ibn Uthal. They tied him to a pillar of the mosque. The Messenger of Allah—peace and blessings be upon him—approached him and said, "What is your stance, O Thumamah?" He replied, "I have a proposition, O Muhammad. If you kill me, you will kill a man whose killing will lead to bloodshed. If you grant favor, you will favor a grateful man. If you seek wealth, demand whatever you wish." The narration continues. The Prophet—peace and blessings be upon him—ordered his release on the third day. Thumamah went to a nearby palm tree close to the mosque, performed ghusl, then entered the mosque and proclaimed, "I testify that there is no deity but Allah and that Muhammad is the Messenger of Allah. O Muhammad, by Allah, no face on earth was more detestable to me than yours, yet now your face has become the most beloved to me. By Allah, no religion was more hateful to me than yours, yet now your religion has become the most beloved to me." The narration continues. Does this not invalidate Malik's opinion?

[36] **Qur'an references (L7779):** Qur'an 9:28 (At-Tawbah).

قَالَ اللَّهُ تَعَالَى: {إِنَّمَا الْمُشْرِكُونَ نَجَسٌ فَلا يَقْرَبُوا الْمَسْجِدَ الْحَرَامَ بَعْدَ عَامِهِمْ هَذَا} [التوبة: ٢٨]

قَالَ عَلِيٌّ: خَصَّ اللَّهُ الْمَسْجِدَ الْحَرَامَ، فَلَا يَجُوزُ تَعَدِّيهِ إِلَى غَيْرِهِ بِغَيْرِ نَصٍّ، وَقَدْ كَانَ الْحَرَمُ قَبْلَ بُنْيَانِ الْمَسْجِدِ وَقَدْ زِيدَ فِيهِ.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «جُعِلَتْ لِي الْأَرْضُ مَسْجِدًا وَطَهُورًا» .

فَصَحَّ أَنَّ الْحَرَمَ كُلَّهُ هُوَ الْمَسْجِدُ الْحَرَامُ؟ حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا اللَّيْثُ ثنا سَعِيدُ بْنُ أَبِي سَعِيدٍ سَمِعَ أَبَا هُرَيْرَةَ قَالَ: «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْلًا قِبَلَ نَجْدٍ فَجَاءَتْ بِرَجُلٍ مِنْ بَنِي حَنِيفَةَ يُقَالُ لَهُ: ثُمَامَةُ بْنُ أُثَالٍ فَرَبَطُوهُ بِسَارِيَةٍ مِنْ سَوَارِي الْمَسْجِدِ، فَخَرَجَ إِلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: مَا عِنْدَكَ يَا ثُمَامَةُ؟ قَالَ: عِنْدِي خَيْرٌ، يَا مُحَمَّدُ إِنْ تَقْتُلْنِي تَقْتُلْ ذَا دَمٍ، وَإِنْ تُنْعِمْ تُنْعِمْ عَلَى شَاكِرٍ، وَإِنْ كُنْتَ تُرِيدُ الْمَالَ فَسَلْ مِنْهُ مَا شِئْتَ؟ وَذَكَرَ الْحَدِيثَ. وَأَنَّهُ - عَلَيْهِ السَّلَامُ - أَمَرَ بِإِطْلَاقِهِ فِي الْيَوْمِ الثَّالِثِ: فَانْطَلَقَ إِلَى نَخْلٍ قَرِيبٍ مِنْ الْمَسْجِدِ فَاغْتَسَلَ ثُمَّ دَخَلَ الْمَسْجِدَ، فَقَالَ: أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، يَا مُحَمَّدُ، وَاَللَّهِ: مَا كَانَ عَلَى وَجْهِ الْأَرْضِ وَجْهٌ أَبْغَضَ إِلَيَّ مِنْ وَجْهِكَ، فَقَدْ أَصْبَحَ وَجْهُكَ أَحَبَّ الْوُجُوهِ إِلَيَّ، وَاَللَّهِ مَا كَانَ مِنْ دِينٍ أَبْغَضَ إِلَيَّ مِنْ دِينِكَ، فَأَصْبَحَ دِينُكَ أَحَبَّ الدِّينِ إِلَيَّ» وَذَكَرَ الْحَدِيثَ فَبَطَلَ قَوْلُ مَالِكٍ؟

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَإِنَّهُ قَالَ: إِنَّ اللَّهَ تَعَالَى قَدْ فَرَّقَ بَيْنَ الْمُشْرِكِينَ وَبَيْنَ سَائِرِ الْكُفَّارِ -: فَقَالَ تَعَالَى: {لَمْ يَكُنِ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ وَالْمُشْرِكِينَ مُنْفَكِّينَ} [البينة: ١]

L7785 As for the statement of Abū Ḥanīfa, he said: "Indeed, Allah the Exalted has differentiated between the polytheists and the rest of the disbelievers," as Allah the Exalted said: "The disbelievers from the People of the Scripture and the polytheists would not desist..." [Al-Bayyinah: 1].[37]

وَقَالَ تَعَالَى: {إِنَّ الَّذِينَ آمَنُوا وَالَّذِينَ هَادُوا وَالصَّابِئِينَ وَالنَّصَارَى وَالْمَجُوسَ وَالَّذِينَ أَشْرَكُوا إِنَّ اللَّهَ يَفْصِلُ بَيْنَهُمْ} [الحج: ١٧]

L7786 And He, the Most High, said: "Indeed, those who believed, the Jews, the Sabians, the Christians, the Zoroastrians, and the polytheists—Allah will decisively distinguish between them" [Al-Hajj: 17].[38]

قَالَ: وَالْمُشْرِكُ: هُوَ مَنْ جَعَلَ لِلَّهِ شَرِيكًا، لَا مَنْ لَمْ يَجْعَلْ لَهُ شَرِيكًا؟ قَالَ عَلِيٌّ: لَا حُجَّةَ لَهُ غَيْرَ مَا ذَكَرْنَا فَأَمَّا تَعَلُّقُهُ بِالْآيَتَيْنِ فَلَا حُجَّةَ لَهُ فِيهِمَا، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {فِيهِمَا فَاكِهَةٌ وَنَخْلٌ وَرُمَّانٌ} [الرحمن: ٦٨] وَالرُّمَّانُ مِنْ الْفَاكِهَةِ.

L7787 He said: The polytheist is one who ascribes a partner to Allah, not one who does not ascribe a partner to Him? 'Ali said: There is no proof for him other than what we have mentioned. As for his reliance on the two verses, there is no proof for him in them, because Allah the Exalted said: "In both are fruits, date palms, and pomegranates" [Ar-Rahman: 68], and the pomegranate is among the fruits.[39]

وَقَالَ تَعَالَى: {مَنْ كَانَ عَدُوًّا لِلَّهِ وَمَلَائِكَتِهِ وَرُسُلِهِ وَجِبْرِيلَ وَمِيكَالَ} [البقرة: ٩٨] وَهُمَا مِنْ الْمَلَائِكَةِ؟

L7788 And He, the Exalted, said: "Whoever is an enemy to Allah, His angels, His messengers, Gabriel, and Michael" [Al-Baqarah:98]. Are these two not among the angels?[40]

وَقَالَ تَعَالَى: {وَإِذْ أَخَذْنَا مِنَ النَّبِيِّينَ مِيثَاقَهُمْ وَمِنْكَ وَمِنْ نُوحٍ وَإِبْرَاهِيمَ وَمُوسَى وَعِيسَى} [الأحزاب: ٧] وَهَؤُلَاءِ مِنْ النَّبِيِّينَ؟ إلَّا أَنَّهُ كَانَ يَكُونُ مَا احْتَجَّ بِهِ أَبُو حَنِيفَةَ حُجَّةً: إنْ لَمْ يَأْتِ بُرْهَانٌ بِأَنَّ الْيَهُودَ، وَالنَّصَارَى، وَالْمَجُوسَ، وَالصَّابِئِينَ: مُشْرِكُونَ، لِأَنَّهُ لَا يُحْمَلُ شَيْءٌ مَعْطُوفٌ عَلَى شَيْءٍ إلَّا أَنَّهُ غَيْرُهُ، حَتَّى يَأْتِيَ بُرْهَانٌ بِأَنَّهُ هُوَ أَوْ بَعْضُهُ فَنَقُولُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّ أَوَّلَ مُخَالِفٍ لِنَصِّ الْآيَتَيْنِ أَبُو حَنِيفَةَ، لِأَنَّ الْمَجُوسَ عِنْدَهُ: مُشْرِكُونَ، وَقَدْ فَرَّقَ اللَّهُ تَعَالَى فِي الذِّكْرِ بَيْنَ الْمَجُوسِ، وَبَيْنَ الْمُشْرِكِينَ - فَبَطَلَ تَعَلُّقُهُ بِعَطْفِ اللَّهِ تَعَالَى إحْدَى الطَّائِفَتَيْنِ عَلَى الْأُخْرَى؟ ثُمَّ وَجَدْنَا اللَّهَ تَعَالَى قَدْ قَالَ: {إِنَّ اللَّهَ لا يَغْفِرُ أَنْ يُشْرَكَ بِهِ وَيَغْفِرُ مَا دُونَ ذَلِكَ لِمَنْ يَشَاءُ} [النساء: ٤٨]

L7789–7790 And He, the Exalted, said: {And [remember] when We took from the prophets their covenant, and from you [O Muhammad], and from Noah, Abraham, Moses, and Jesus} [Al-Aḥzāb: 7]. Are these not among the prophets? However, Abū Ḥanīfah's evidence is only valid if no proof is established that the Jews, Christians, Zoroastrians, and Sabians are polytheists. This is because a conjoined element is not assumed to be the same as what it is conjoined to; rather, it is distinct unless evidence proves it is the same or part of it. Therefore, we say—and success comes only from Allah, the Exalted—the first to oppose the explicit text of these two verses is Abū Ḥanīfah. For he considers the Zoroastrians polytheists, while Allah, the Exalted, distinguishes in the Scripture between Zoroastrians and polytheists. Does this not invalidate his reliance on Allah's conjoining of one group to the other? Furthermore,

[37] **Qur'an references (L7785):** Qur'an 98:1 (Al-Bayyinah).
[38] **Qur'an references (L7786):** Qur'an 22:17 (Al-Hajj).
[39] **Qur'an references (L7787):** Qur'an 55:68 (Ar-Rahman).
[40] **Qur'an references (L7788):** Qur'an 2:98 (Al-Baqarah).

we affirm that Allah, the Exalted, has said: {Indeed, Allah does not forgive association with Him, but He forgives what is less than that for whom He wills} [An-Nisā': 48].[41]

فَلَوْ كَانَ هَاهُنَا كُفْرٌ لَيْسَ شِرْكًا لَكَانَ مَغْفُورًا لِمَنْ شَاءَ اللَّهُ تَعَالَى بِخِلَافِ الشِّرْكِ وَهَذَا لَا يَقُولُهُ مُسْلِمٌ؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا إِسْحَاقُ بْنُ رَاهْوَيْهِ عَنْ جَرِيرٍ هُوَ ابْنُ عَبْدِ الْحَمِيدِ عَنْ الْأَعْمَشِ عَنْ أَبِي وَائِلٍ عَنْ عَمْرِو بْنِ شُرَحْبِيلَ قَالَ: قَالَ عَبْدُ اللَّهُ بْنُ مَسْعُودٍ «قَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ، أَيُّ الذَّنْبِ أَكْبَرُ عِنْدَ اللَّهِ؟ قَالَ: أَنْ تَدْعُوَ لِلَّهِ نِدًّا، وَهُوَ خَلَقَكَ، قَالَ: ثُمَّ أَيٌّ؟ قَالَ: أَنْ تَقْتُلَ وَلَدَكَ مَخَافَةَ أَنْ يَطْعَمَ مَعَكَ» .

L7791 If there were here a disbelief that is not polytheism, it would be forgiven for whom Allah the Exalted wills—unlike polytheism. Would any Muslim say this? Abdullah ibn Yusuf narrated to us from Ahmad ibn Fath from Abdul Wahhab ibn Isa from Ahmad ibn Muhammad from Ahmad ibn Ali from Muslim ibn al-Hajjaj from Ishaq ibn Rahawayh from Jarir ibn Abdul Hamid from al-A'mash from Abu Wa'il from Amr ibn Shurahbil, who said: Abdullah ibn Mas'ud reported: A man asked, "O Messenger of Allah, which sin is greatest in Allah's sight?" He replied: "That you set up a rival to Allah while He created you." The man asked: "Then which?" He said: "That you kill your child for fear they would share your food."[42]

وَبِهِ إِلَى مُسْلِمٍ: أَنَا عَمْرُو بْنُ مُحَمَّدِ بْنِ بُكَيْرٍ النَّاقِدُ ثنا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ سَعِيدٍ الْجُرَيْرِيِّ ثنا عَبْدُ الرَّحْمَنِ بْنُ أَبِي بَكْرَةَ عَنْ أَبِيهِ قَالَ: كُنَّا عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: «أَلَا أُنَبِّئُكُمْ بِأَكْبَرِ الْكَبَائِرِ؟ ثَلَاثًا؟ الْإِشْرَاكُ بِاللَّهِ، وَعُقُوقُ الْوَالِدَيْنِ، وَشَهَادَةُ الزُّورِ أَوْ قَوْلُ الزُّورِ»

L7792–7794 And through him to Muslim: I am ʿAmr ibn Muḥammad ibn Bukayr al-Nāqid. Ismāʿīl ibn ʿUlayyah related to us from Saʿīd... Al-Jurayri narrated to us from Abd al-Rahman ibn Abi Bakrah from his father, who said: We were in the presence of the Messenger of Allah (peace and blessings be upon him) when he said, "Shall I not inform you of the gravest of major sins?"—repeating it three times—"[They are] associating partners with Allah, disobedience to parents, and bearing false witness or uttering falsehood."[43]

وَبِهِ إِلَى مُسْلِمٍ: حَدَّثَنِي هَارُونُ بْنُ سَعِيدٍ الْأَيْلِيُّ ثنا ابْنُ وَهْبٍ أَخْبَرَنِي سُلَيْمَانُ بْنُ بِلَالٍ عَنْ ثَوْرِ بْنِ زَيْدٍ عَنْ أَبِي الْغَيْثِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «اجْتَنِبُوا السَّبْعَ الْمُوبِقَاتِ، قِيلَ: يَا رَسُولَ اللَّهِ، وَمَا هُنَّ؟ قَالَ: الشِّرْكُ بِاللَّهِ، وَالسِّحْرُ، وَقَتْلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ، وَأَكْلُ مَالِ الْيَتِيمِ، وَأَكْلُ الرِّبَا وَالتَّوَلِّي يَوْمَ الزَّحْفِ، وَقَذْفُ الْمُحْصَنَاتِ الْغَافِلَاتِ الْمُؤْمِنَاتِ»

L7795 And by this chain to Muslim: Harun ibn Sa'id al-Ayli narrated to us, Ibn Wahb narrated to us, Sulayman ibn Bilal narrated to me from Thawr ibn Zayd from Abu al-Ghayth from Abu Hurayrah that the Messenger of Allah (peace and blessings of Allah be upon him) said: "Avoid the seven ruinous sins." They asked: "O Messenger of Allah, what are they?" He said: "Associating partners with Allah, sorcery, killing a soul Allah has forbidden except by right, consuming the property of an orphan, consuming usury, fleeing

[41] **Qur'an references (L7790):** Qur'an 33:7 (Al-Ahzab); Qur'an 4:48 (An-Nisa); Qur'an 4:116 (An-Nisa).

[42] **Hadith references (L7791):** Sahih Muslim 86b.

[43] **Hadith references (L7792):** Sahih Muslim 87.

from the battlefield, and falsely accusing chaste, unaware believing women of adultery."[4445]

L7796 Ali said: If there were here a form of disbelief that is not polytheism, then that disbelief would fall outside the major sins, and disobedience to parents and bearing false witness would be more severe than it. Yet no Muslim would ever say this!

قَالَ عَلِيٌّ: فَلَوْ كَانَ هَاهُنَا كُفْرٌ لَيْسَ شِرْكًا لَكَانَ ذَلِكَ الْكُفْرُ خَارِجًا عَنْ الْكَبَائِرِ، وَلَكَانَ عُقُوقُ الْوَالِدَيْنِ، وَشَهَادَةُ الزُّورِ، أَعْظَمُ مِنْهُ، وَهَذَا لَا يَقُولُهُ مُسْلِمٌ؟

L7797–7799 Thus, it is established that every disbelief constitutes polytheism, and every polytheism constitutes disbelief, and that these are two *sharʿī* terms which God Almighty has applied to a single meaning. As for his argument that a polytheist is only one who attributes partners to God, this is refuted on two counts: First, Christians attribute to God Almighty a partner who creates as He creates, yet he claims they are not polytheists - does this not constitute an evident contradiction? Second, Brahmins, those who assert the world's eternity and that it has one eternally pre-existent Creator, and those claiming prophethood for ʿAlī ibn Abī Ṭālib, al-Mughīrah, and Buzaygh - none of them attribute partners to God Almighty. as a partner (while they, according to Abū Ḥanīfah, are polytheists)—and is this not a clear contradiction?

فَصَحَّ أَنَّ كُلَّ كُفْرٍ شِرْكٌ، وَكُلَّ شِرْكٍ كُفْرٌ، وَأَنَّهُمَا اسْمَانِ شَرْعِيَّانِ أَوْقَعَهُمَا اللَّهُ تَعَالَى عَلَى مَعْنًى وَاحِدٍ؟ ؟ وَأَمَّا حُجَّتُهُ بِأَنَّ الْمُشْرِكَ هُوَ مَنْ جَعَلَ لِلَّهِ شَرِيكًا فَقَطْ: فَهِيَ مُنْتَقِضَةٌ عَلَيْهِ مِنْ وَجْهَيْنِ -: أَحَدُهُمَا: أَنَّ النَّصَارَى يَجْعَلُونَ لِلَّهِ تَعَالَى شَرِيكًا يَخْلُقُ كَخَلْقِهِ، وَهُوَ يَقُولُ: إنَّهُمْ لَيْسُوا مُشْرِكِينَ وَهَذَا تَنَاقُضٌ ظَاهِرٌ؟ وَالثَّانِي: أَنَّ الْبَرَاهِمَةَ، وَالْقَائِلِينَ بِأَنَّ الْعَالَمَ لَمْ يَزَلْ، وَأَنَّ لَهُ خَالِقًا وَاحِدًا لَمْ يَزَلْ، وَالْقَائِلِينَ بِنُبُوَّةِ عَلِيِّ بْنِ أَبِي طَالِبٍ وَالْمُغِيرَةِ وَبُزَيْغٍ كُلُّهُمْ لَا يَجْعَلُونَ لِلَّهِ تَعَالَى شَرِيكًا وَهُمْ عِنْدَ أَبِي حَنِيفَةَ مُشْرِكُونَ، وَهُوَ تَنَاقُضٌ ظَاهِرٌ؟

L7800 A third perspective is that if the polytheist were none other than one to whom the linguistic term "polytheism" applies—specifically, one who attributes only a partner to Allah the Exalted—then disbelief would necessarily be restricted to those who reject Allah the Exalted and deny Him in totality, not those who acknowledge Him without repudiation. This would entail that disbelievers could only be the atheists/naturalists [al-dahriyyah] alone, and that Jews, Christians, Magians, and Brahmins would not be disbelievers.

وَوَجْهٌ ثَالِثٌ: وَهُوَ أَنَّهُ لَمْ يَكُنْ الْمُشْرِكُ إلَّا مَا وَقَعَ عَلَيْهِ اسْمُ التَّشْرِيكِ فِي اللُّغَةِ -: وَهُوَ مَنْ جَعَلَ لِلَّهِ تَعَالَى شَرِيكًا فَقَطْ -: لَوَجَبَ أَنْ لَا يَكُونَ الْكُفْرُ إلَّا مَنْ كَفَرَ بِاَللَّهِ تَعَالَى وَأَنْكَرَهُ جُمْلَةً، لَا مَنْ أَقَرَّ بِهِ وَلَمْ يَجْحَدْهُ، فَيَلْزَمُ مِنْ هَذَا أَنْ لَا يَكُونَ الْكُفَّارُ إلَّا الدَّهْرِيَّةُ فَقَطْ، وَأَنْ لَا يَكُونَ الْيَهُودُ، وَلَا النَّصَارَى، وَلَا الْمَجُوسُ، وَلَا الْبَرَاهِمَةُ.

L7801 Disbelievers: because they all affirm Allah, the Most High, and he does not assert this, nor does any Muslim exist on the face of the earth.

كُفَّارًا؛ لِأَنَّهُمْ كُلَّهُمْ مُقِرُّونَ بِاَللَّهِ تَعَالَى، وَهُوَ لَا يَقُولُ بِهَذَا، وَلَا مُسْلِمٌ عَلَى ظَهْرِ الْأَرْضِ.

أَوْ كَانَ يَجِبُ أَنْ يَكُونَ كُلُّ مَنْ غَطَّى شَيْئًا: كَافِرًا، فَإِنَّ الْكُفْرَ فِي اللُّغَةِ: التَّغْطِيَةُ، فَإِذَا كُلُّ هَذَا بَاطِلٌ فَقَدْ صَحَّ أَنَّهُمَا اسْمَانِ نَقَلَهُمَا اللَّهُ تَعَالَى عَنْ مَوْضُوعِهِمَا فِي اللُّغَةِ إلَى كُلِّ

[44]**Hadith references (L7795):** Sahih Muslim 89.

[45]**Qur'an references (L7795):** Qur'an 6:151 (Al-An'am); Qur'an 17:33 (Al-Isra); Qur'an 25:68 (Al-Furqan).

مَنْ أَنْكَرَ شَيْئًا مِنْ دِينِ اللَّهِ الْإِسْلَامِ يَكُونُ بِإِنْكَارِهِ مُعَانِدًا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْدَ بُلُوغِ النِّذَارَةِ إِلَيْهِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

Or it must be that everyone who covers something is a disbeliever, for "disbelief" in the linguistic sense is "covering." Since all of this is invalid, it has been established that these two terms are names Allah the Exalted transferred from their linguistic meaning to designate anyone who denies any aspect of Allah's religion, which is Islam, such that their denial becomes an act of defiance toward the Messenger of Allah (peace and blessings be upon him) after the warning has reached them. And success is by Allah the Exalted alone.

[مَسْأَلَةُ اللَّعِبُ وَالزَّفْنُ مُبَاحَانِ فِي الْمَسْجِدِ]

Issue: Play and dancing are both permissible in the mosque.

٥٠٠ - مَسْأَلَةٌ:

500 - Legal Issue:

وَاللَّعِبُ، وَالزَّفْنُ مُبَاحَانِ فِي الْمَسْجِدِ

Playing and celebratory dancing are permissible in the mosque.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا زُهَيْرُ بْنُ حَرْبٍ ثنا جَرِيرٌ هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ «عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: جَاءَ حَبَشٌ يَزْفِنُونَ فِي الْمَسْجِدِ فِي يَوْمِ عِيدٍ فَدَعَانِي النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَضَعْتُ رَأْسِي عَلَى مَنْكِبِهِ، فَجَعَلْتُ أَنْظُرُ إِلَى لَعِبِهِمْ، حَتَّى كُنْتُ أَنَا الَّتِي انْصَرَفْتُ» .

Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Zuhayr ibn Harb narrated to us: Jarir ibn Abd al-Hamid from Hisham ibn Urwah from his father from Aisha, the Mother of the Believers, who said: "Abyssinians came dancing in the mosque on the day of Eid. The Prophet (peace be upon him) called me, so I rested my head on his shoulder and watched their dance until I was the one to leave first."

[مَسْأَلَةُ إِنْشَادُ الضَّوَالِّ فِي الْمَسَاجِدِ]

An issue concerning the announcement of lost items and stray animals in mosques.

٥٠١ - مَسْأَلَةٌ:

501–Issue:

وَلَا يَجُوزُ إِنْشَادُ الضَّوَالِّ فِي الْمَسَاجِدِ: " فَمَنْ نَشَدَهَا فِيهِ قِيلَ لَهُ: لَا وَجَدْت: لَا رَدَّهَا اللَّهُ عَلَيْك " -: حَدَّثَنَا حُمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا إِسْمَاعِيلُ بْنُ إِسْحَاقَ الْقَاضِي ثنا الْحِجِّيُّ ثنا عَبْدُ الْعَزِيزِ هُوَ الدَّرَاوَرْدِيُّ - حَدَّثَنِي يَزِيدُ بْنُ

It is not permissible to proclaim lost items in mosques: "Whoever announces them therein, say to him: 'May you never find it—may Allah not restore it to you.'" Narrated by Humam: He narrated to us Abbas ibn Asbagh: He narrated to us Muhammad ibn Abd al-Malik ibn Ayman: He narrated to us Isma'il ibn Ishaq al-Qadi: He narrated to us al-Hijji: He narrated to us

Abd al-Aziz—he is al-Darawardi—; narrated to me by Yazid ibn Khusayfah from Muhammad ibn Abd al-Rahman ibn Thawban from Abu Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said: "When you see a man proclaiming his lost item—meaning in the mosque—say: 'May Allah not restore it to you.'"

L7810–7811 And it has also been narrated to us: "He did not find."

A Question Regarding Urination in the Mosque

L7812

L7813 502 – Issue: It is impermissible to urinate in the mosque. If someone urinates in it, they must pour a bucketful of water over the affected area. It is also impermissible to spit. If someone spits in it, they must cover their spittle.

L7814 It is not permissible to build a mosque with gold or silver, except specifically the Sacred Mosque. ʿAbdullāh ibn Rabīʿ narrated from Muḥammad ibn Muʿāwiyah, from Aḥmad ibn Shuʿayb, from Qutaybah ibn Saʿīd, from Abū ʿAwānah, from Qatādah, from Anas, who said: The Messenger of Allah—peace be upon him—said: "Phlegm in the mosque is a misdeed, and its expiation is to bury it."

L7815 Is it reported that such a statement is attributed to Abu Ubaydah ibn al-Jarrah and Muʿawiyah? From ʿAbd al-Rahman ibn ʿAbd Allah, from Ibrahim ibn Ahmad, from al-Farbari, from al-Bukhari, from Abu al-Yaman, from Shuʿayb, from al-Zuhri, who informed me that ʿUbayd Allah ibn ʿAbd Allah ibn ʿUtbah reported: Abu Hurayrah said, "A Bedouin stood and urinated in the mosque, so the people moved toward him. The Prophet—peace and blessings of Allah be upon him—said to them: 'Leave him, and pour a bucket of water over his urine, or a large container of water. You were sent to ease, not to burden.'"

L7816–7818 Ali said: "The Prophet's command (peace and blessings be upon him) to clean the mosques and perfume them, as we previously mentioned, necessitates all that is encompassed by the terms 'cleaning' and 'perfuming.' Cleaning and

خُصَيْفَةَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا رَأَيْتُمْ الرَّجُلَ يَنْشُدُ ضَالَّتَهُ - يَعْنِي فِي الْمَسْجِدِ - فَقُولُوا: لَا رَدَّ اللَّهُ عَلَيْكَ.» .

وَقَدْ رُوِّينَا أَيْضًا " لَا وَجَدْت ".

[مَسْأَلَةُ الْبَوْلُ فِي الْمَسْجِدِ]

٥٠٢ - مَسْأَلَةٌ: وَلَا يَجُوزُ الْبَوْلُ فِي الْمَسْجِدِ فَمَنْ بَالَ فِيهِ صُبَّ عَلَى بَوْلِهِ ذَنُوبًا مِنْ مَاءٍ، وَلَا يَجُوزُ الْبُصَاقُ، فَمَنْ بَصَقَ فِيهِ فَلْيَدْفِنْ بَصْقَتَهُ.

وَلَا يَحِلُّ أَنْ يُبْنَى مَسْجِدٌ بِذَهَبٍ، وَلَا فِضَّةٍ، إلَّا الْمَسْجِدَ الْحَرَامَ خَاصَّةً؟ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ ثنا أَبُو عَوَانَةَ عَنْ قَتَادَةَ عَنْ أَنَسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْبُزَاقُ فِي الْمَسْجِدِ خَطِيئَةٌ وَكَفَّارَتُهَا دَفْنُهَا» .

وَرُوِّينَا الْقَوْلَ بِذَلِكَ عَنْ أَبِي عُبَيْدَةَ بْنِ الْجَرَّاحِ وَمُعَاوِيَةَ؟ حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَبُو الْيَمَانِ أَنَا شُعَيْبٌ عَنْ الزُّهْرِيِّ أَخْبَرَنِي عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ: أَنَّ أَبَا هُرَيْرَةَ قَالَ: «قَامَ أَعْرَابِيٌّ فَبَالَ فِي الْمَسْجِدِ، فَتَنَاوَلَهُ النَّاسُ فَقَالَ لَهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَعُوهُ وَأَهْرِيقُوا عَلَى بَوْلِهِ سَجْلًا مِنْ مَاءٍ، أَوْ ذَنُوبًا مِنْ مَاءٍ، فَإِنَّمَا بُعِثْتُمْ مُيَسِّرِينَ وَلَمْ تُبْعَثُوا مُعَسِّرِينَ»

perfuming require the removal of every religiously impure substance, every physical impurity, and every filth. It is therefore absolutely necessary to eliminate the actual urine and other such contaminants."

Abdullah ibn Rabīʿ narrated to us; Umar ibn Abd al-Malik narrated to us; Muhammad ibn Bakr narrated to us; Sulayman ibn al-Ashath narrated to us; Muhammad ibn al-Sabah ibn Sufyan narrated to us; Sufyan ibn Uyaynah narrated to us; from Sufyan al-Thawri; from Abu [...]. Narrated by Fazarah from Yazīd ibn Al-Aṣamm, from Ibn ʿAbbās, who said: The Messenger of Allah (peace and blessings be upon him) stated, "I have not commanded the elaborate raising of mosques." Ibn ʿAbbās remarked: "You will certainly adorn them with ornamentation, just as the Jews and Christians adorned theirs."

L7819 Abd al-Rahman ibn Abd Allah narrated to us: Ibrahim ibn Ahmad narrated to us: al-Firabrī narrated to us: al-Bukhari narrated to us: Amr ibn al-Abbas narrated to us: Abd al-Rahman—who is Ibn Mahdi—narrated to us: Sufyan al-Thawri narrated from Wasil from Abu Wa'il, who said: I sat with Shaybah—meaning Ibn Uthman ibn Abi Talhah al-Hajabi—who said: Umar sat with me in this council of yours and said, "I resolved not to leave any gold or silver in it except that I would distribute it among the Muslims." I said, "You will not do that." He asked, "Why?" I replied, "Your two predecessors in leadership did not do it." He said, "They are the two men to be followed."

L7820 It has been narrated from Abu al-Darda: "If you adorn your Qurans and embellish your mosques, then will destruction not befall you?" And from Ali ibn Abi Talib that he said: "When people decorate their mosques, their deeds become corrupted." He would pass by a plastered mosque belonging to Taym and say: "This is the place of worship of Taym." And from Umar ibn al-Khattab that he said to someone who intended to build a mosque: "Do not paint it red nor yellow."

L7821 **The issue of constructing a mosque upon a privately owned house that is not part of the mosque.**

قَالَ عَلِيٌّ: «أَمْرُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِتَنْظِيفِ الْمَسَاجِدِ وَتَطْيِيبِهَا» كَمَا أَوْرَدْنَا قَبْلُ يَقْتَضِي كُلَّ مَا وَقَعَ عَلَيْهِ اسْمُ تَنْظِيفٍ وَتَطْيِيبٍ، وَالتَّنْظِيفُ وَالتَّطْيِيبُ: يُوجِبَانِ إبْعَادَ كُلِّ مُحَرَّمٍ، وَكُلِّ قَذَرٍ، وَكُلِّ قُمَامَةٍ، فَلَا بُدَّ مِنْ إذْهَابِ عَيْنِ الْبَوْلِ وَغَيْرِهِ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا سُلَيْمَانُ بْنُ الْأَشْعَثِ ثنا مُحَمَّدُ بْنُ الصَّبَّاحِ بْنِ سُفْيَانَ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي فَزَارَةَ عَنْ يَزِيدَ بْنِ الْأَصَمِّ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا أُمِرْتُ بِتَشْيِيدِ الْمَسَاجِدِ» قَالَ ابْنُ عَبَّاسٍ: لَتُزَخْرِفُنَّهَا كَمَا زَخْرَفَتْ الْيَهُودُ وَالنَّصَارَى.

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَمْرُو بْنُ الْعَبَّاسِ ثنا عَبْدُ الرَّحْمَنِ هُوَ ابْنُ مَهْدِيٍّ - ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ وَاصِلٍ عَنْ أَبِي وَائِلٍ قَالَ: جَلَسْت إلَى شَيْبَةَ يَعْنِي ابْنَ عُثْمَانَ بْنَ أَبِي طَلْحَةَ الْحَجَبِيِّ - قَالَ: جَلَسَ إلَيَّ عُمَرُ فِي مَجْلِسِك هَذَا فَقَالَ: هَمَمْت أَنْ لَا أَدَعَ فِيهَا صَفْرَاءَ وَلَا بَيْضَاءَ إلَّا قَسَمْتهَا بَيْنَ الْمُسْلِمِينَ، قُلْت: مَا أَنْتَ بِفَاعِلٍ، قَالَ: لِمَ؟ قُلْت: لَمْ يَفْعَلْهُ صَاحِبَاك، قَالَ: هُمَا الْمَرْءَانِ يُقْتَدَى بِهِمَا ".

وَرُوِّينَا عَنْ أَبِي الدَّرْدَاءِ: إذَا حَلَّيْتُمْ مَصَاحِفَكُمْ، وَزَخْرَفْتُمْ مَسَاجِدَكُمْ: فَالدَّمَارُ عَلَيْكُمْ؟ وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ: إنَّ الْقَوْمَ إذَا زَيَّنُوا مَسَاجِدَهُمْ: فَسَدَتْ أَعْمَالُهُمْ، وَأَنَّهُ كَانَ يَمُرُّ عَلَى مَسْجِدٍ لِلتَّيْمِ مَشُوفٍ فَكَانَ يَقُولُ: هَذِهِ بِيعَةُ التَّيْمِ وَعَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ لِمَنْ أَرَادَ أَنْ يَبْنِيَ مَسْجِدًا: لَا تُحَمِّرْ، وَلَا تُصَفِّرْ؟

[مَسْأَلَةُ بِنَاءُ مَسْجِدٍ عَلَيْهِ بَيْتٌ مُتَمَلَّكٌ لَيْسَ مِنْ الْمَسْجِدِ]

L7822 Issue 503: It is impermissible to build a mosque above an owned house that is not part of the mosque, nor to build a mosque beneath an owned house that is separate from it. Whoever does this, none of it becomes a mosque, and it remains the property of its builder as it was [before]. The evidence for this is that air cannot be owned, as it cannot be confined or fixed in place. Allah the Exalted said: "And [know] that the mosques belong to Allah" (Al-Jinn 18). Thus, a mosque cannot exist unless it is free from the ownership of anyone except Allah the Exalted, who has no partner.[46]

٥٠٣ - مَسْأَلَةٌ: وَلَا يَحِلُّ بِنَاءُ مَسْجِدٍ عَلَيْهِ بَيْتٌ مُتَمَلَّكٌ لَيْسَ مِنْ الْمَسْجِدِ، وَلَا بِنَاءُ مَسْجِدٍ تَحْتَهُ بَيْتٌ مُتَمَلَّكٌ لَيْسَ مِنْهُ، فَمَنْ فَعَلَ ذَلِكَ فَلَيْسَ شَيْءٌ مِنْ ذَلِكَ مَسْجِدًا، وَهُوَ بَاقٍ عَلَى مِلْكِ بَانِيهِ كَمَا كَانَ؟ بُرْهَانُ ذَلِكَ -: أَنَّ الْهَوَاءَ لَا يُتَمَلَّكُ، لِأَنَّهُ لَا يُضْبَطُ وَلَا يَسْتَقِرُّ؟ وَقَالَ تَعَالَى: {وَأَنَّ الْمَسَاجِدَ لِلَّهِ} [الجن: ١٨] فَلَا يَكُونُ مَسْجِدًا إلَّا خَارِجًا عَنْ مِلْكِ كُلِّ أَحَدٍ دُونَ اللَّهِ تَعَالَى لَا شَرِيكَ لَهُ

L7823 Therefore, since this is the case, every house owned by a person grants him the right to elevate it as he wishes. He cannot be compelled to remove the air above his property from his ownership, and the rightful judgment pertaining to it belongs solely to him—not to any person nor anyone else.

فَإِذْ ذَلِكَ كَذَلِكَ فَكُلُّ بَيْتٍ مُتَمَلَّكٍ لِإِنْسَانٍ فَلَهُ أَنْ يُعَلِّيَهُ مَا شَاءَ، وَلَا يَقْدِرُ عَلَى إخْرَاجِ الْهَوَاءِ الَّذِي عَلَيْهِ عَنْ مِلْكِهِ، وَحُكْمُهُ الْوَاجِبُ لَهُ، لَا إلَى إنْسَانٍ وَلَا غَيْرِهِ.

L7824–7826 Similarly, if a mosque is built on land and the air/space is stipulated for his use to do therein as he wishes, then it is not... He cannot dispose of it from his ownership except by a void condition.

وَكَذَلِكَ إذَا بَنَى عَلَى الْأَرْضِ مَسْجِدًا وَشَرَطَ الْهَوَاءَ لَهُ يَعْمَلُ فِيهِ مَا شَاءَ: فَلَمْ يُخْرِجْهُ عَنْ مِلْكِهِ إلَّا بِشَرْطٍ فَاسِدٍ.

L7827 The Messenger of Allah (peace be upon him) said: "Every condition that is not in the Book of Allah is void."[47]

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» .

L7828 Moreover, if someone constructs a mosque on land while retaining the airspace for himself - if the roof belongs to him, then such a mosque has no roof, for a building cannot fundamentally exist without a roof by definition.

وَأَيْضًا: فَإِذَا عَمِلَ مَسْجِدًا عَلَى الْأَرْضِ وَأَبْقَى الْهَوَاءَ لِنَفْسِهِ: فَإِنْ كَانَ السَّقْفُ لَهُ؟ فَهَذَا مَسْجِدٌ لَا سَقْفَ لَهُ، وَلَا يَكُونُ بِنَاءٌ بِلَا سَقْفٍ أَصْلًا.

L7829 If the roof belongs to the mosque, it is not permissible for him to dispose of it by building upon it.

وَإِنْ كَانَ السَّقْفُ لِلْمَسْجِدِ؟ فَلَا يَحِلُّ لَهُ التَّصَرُّفُ عَلَيْهِ بِالْبِنَاءِ.

L7830 If the mosque is on an upper floor and its ceiling belongs to the mosque, then this is a mosque without land, and this is invalid.

وَإِنْ كَانَ الْمَسْجِدُ فِي الْعُلْوِ وَالسَّقْفُ لِلْمَسْجِدِ: - فَهَذَا مَسْجِدٌ لَا أَرْضَ لَهُ، وَهَذَا بَاطِلٌ.

L7831 If the property belongs to the mosque, he has no right to it, for he has merely kept for himself a house without a roof, and this is absurd. Additionally, if

[46] **Qur'an references (L7822):** Qur'an 72:18 (Al-Jinn).
[47] **Hadith references (L7827):** Sunan Ibn Majah 2521.

the mosque is on a lower level, it is impermissible for him to build anything atop its walls, and stipulating such a condition is invalid, as it is a condition not found in the Book of Allah.

If the mosque is elevated, he has the right to demolish its walls whenever he wishes, for this entails the demolition of the mosque and its cessation. It is impermissible to prevent him from doing so, as that constitutes preventing him from disposing of his property, and such prevention is unlawful.

An Issue Regarding Selling in the Mosques

504 – Issue: Selling is permissible in mosques. Allah, the Most High, said: “And Allah has permitted selling” [Quran 2:275]. No prohibition against this has been reported except through the chain of ʿAmr ibn Shuʿayb, from his father, from his grandfather – and this narration is found in the latter’s scroll.[48]

Issue Concerning the Middle Prayer

505 - Issue: What is the middle prayer? The middle prayer is the Asr prayer. People have differed regarding that matter - it has been authentically reported from Zayd ibn Thabit and Usamah ibn Zayd that it is the Zuhr prayer.

And it has also been narrated from Abū Saʿīd al-Khudrī.

It has also been narrated from Aisha, the Mother of the Believers, Abu Hurairah, and Ibn Umar, with differences in their narrations. It has also been narrated from a number of the Prophet’s Companions, peace and blessings be upon him.

From Abu Musa Al-Ash’ari: that it [the prayer time] is Fajr.

[48] **Qur’an references (L7834):** Qur’an 2:275 (Al-Baqarah).

فَإِنْ كَانَ لِلْمَسْجِدِ فَلَا حَقَّ لَهُ فِيهِ، فَإِنَّمَا أَبْقَى لِنَفْسِهِ بَيْتًا بِلَا سَقْفٍ، وَهَذَا مُحَالٌ؟ ؟ وَأَيْضًا: فَإِنْ كَانَ الْمَسْجِدُ سُفْلًا؟ فَلَا يَحِلُّ لَهُ أَنْ يَبْنِيَ عَلَى رُءُوسِ حِيطَانِهِ شَيْئًا، وَاشْتِرَاطُ ذَلِكَ بَاطِلٌ؛ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ.

وَإِنْ كَانَ الْمَسْجِدُ عُلْوًا، فَلَهُ هَدْمُ حِيطَانِهِ مَتَى شَاءَ، وَفِي ذَلِكَ هَدْمُ الْمَسْجِدِ وَانْكِفَاؤُهُ وَلَا يَحِلُّ مَنْعُهُ مِنْ ذَلِكَ؛ لِأَنَّهُ مَنْعٌ لَهُ مِنْ التَّصَرُّفِ فِي مَالِهِ، وَهَذَا لَا يَحِلُّ.

[مَسْأَلَةُ الْبَيْعُ فِي الْمَسَاجِدِ]

٥٠٤ - مَسْأَلَةٌ: وَالْبَيْعُ جَائِزٌ فِي الْمَسَاجِدِ قَالَ اللَّهُ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَلَمْ يَأْتِ نَهْيٌ عَنْ ذَلِكَ إلَّا مِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ، وَهِيَ صَحِيفَتُهُ.

[مَسْأَلَةُ الصَّلَاةُ الْوُسْطَى]

٥٠٥ - مَسْأَلَةٌ: الصَّلَاةُ الْوُسْطَى؟ وَالصَّلَاةُ الْوُسْطَى: هِيَ الْعَصْرُ، وَاخْتَلَفَ النَّاسُ فِي ذَلِكَ -: فَصَحَّ عَنْ زَيْدِ بْنِ ثَابِتٍ، وَأُسَامَةَ بْنِ زَيْدٍ: أَنَّهَا الظُّهْرُ.

وَرُوِيَ أَيْضًا عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ

وَرُوِيَ أَيْضًا عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَأَبِي هُرَيْرَةَ، وَابْنِ عُمَرَ بِاخْتِلَافٍ عَنْهُمْ؟ وَرُوِيَ أَيْضًا عَنْ جُمْلَةٍ مِنْ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَعَنْ أَبِي مُوسَى الْأَشْعَرِيِّ: أَنَّهَا الصُّبْحُ.

وَعَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ بِاخْتِلَافٍ عَنْهُمَا.

And from Ibn Abbas and Ibn Umar with a difference from them both.

وَعَنْ عَلِيٍّ وَلَمْ يَصِحَّ عَنْهُ؟

And from ʿAlī—but was it not authenticated from him?

وَهُوَ قَوْلُ: طَاوُسٍ، وَعَطَاءٍ وَمُجَاهِدٍ، وَعِكْرِمَةَ، وَهُوَ قَوْلُ مَالِكٍ.

And it is the opinion of Ṭāwus, ʿAṭāʾ, Mujāhid, and ʿIkrimah, and also of Mālik.

وَعَنْ بَعْضِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّهَا الْمَغْرِبُ.

It is narrated from some of the Companions—may Allah be pleased with them—that it is the Maghrib.

وَرُوِّينَاهُ مِنْ طَرِيقِ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ.

We have narrated it via the chain (ṭarīq) of Qatadah, from Saʿīd ibn al-Musayyib.

وَقَدْ ذَكَرَ بَعْضُ الْعُلَمَاءِ أَنَّهُ قَالَ: هِيَ الْعَتَمَةُ؟ وَذَهَبَ الْجُمْهُورُ إِلَى أَنَّهَا الْعَصْرُ؟ وَاحْتَجَّ مَنْ ذَهَبَ إِلَى أَنَّهَا الظُّهْرُ -: بِمَا رُوِّينَاهُ عَنْ زَيْدِ بْنِ ثَابِتٍ بِإِسْنَادٍ صَحِيحٍ قَالَ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي الظُّهْرَ بِالْهَاجِرَةِ، وَالنَّاسُ فِي قَائِلَتِهِمْ وَأَسْوَاقِهِمْ، وَلَمْ يَكُنْ يُصَلِّي وَرَاءَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا الصَّفُّ وَالصَّفَّانِ، فَأَنْزَلَ اللَّهُ تَعَالَى: {حَافِظُوا عَلَى الصَّلَوَاتِ وَالصَّلاةِ الْوُسْطَى} [البقرة: ٢٣٨] فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَيَنْتَهِيَنَّ أَقْوَامٌ أَوْ لَأُحَرِّقَنَّ بُيُوتَهُمْ» ؟ قَالَ زَيْدُ بْنُ ثَابِتٍ: قَبْلَهَا: صَلَاتَانِ وَبَعْدَهَا: صَلَاتَانِ.

Some scholars mentioned that it is the ʻAtamah (night prayer). The majority held the view that it is the ʻAsr (afternoon prayer). Those who maintained it to be Dhuhr (noon prayer) cited as evidence what we have narrated from Zayd ibn Thabit with an authentic chain of transmission, where he said: "The Messenger of Allah (peace and blessings be upon him) used to pray Dhuhr during the intense heat, while people were in their midday rest and in the markets. None prayed behind the Messenger of Allah (peace and blessings be upon him) except one or two rows. Then Allah the Exalted revealed: {Guard strictly the prayers, and the middle prayer} [Al-Baqarah 2:238]. Thereupon, the Messenger of Allah (peace and blessings be upon him) said: 'Let people stop, or I will burn their houses!'" Zayd ibn Thabit added: "Two prayers precede it, and two follow it."[49]

قَالَ عَلِيٌّ: لَيْسَ فِي هَذَا بَيَانٌ جَلِيٌّ بِأَنَّهَا الظُّهْرُ؟ وَاحْتَجَّ مَنْ ذَهَبَ إِلَى أَنَّهَا الْمَغْرِبُ بِأَنَّ أَوَّلَ الصَّلَوَاتِ فُرِضَتْ الظُّهْرُ، فَهِيَ الْأُولَى، وَبِذَلِكَ سُمِّيَتْ الْأُولَى، وَبَعْدَهَا الْعَصْرُ، صَلَاتَانِ لِلنَّهَارِ، فَالْمَغْرِبُ هِيَ الْوُسْطَى، وَبِأَنَّ بَعْضَ الْفُقَهَاءِ لَمْ يَجْعَلْ لَهَا إِلَّا وَقْتًا وَاحِدًا؟

Ali said: Is there not in this a clear indication that it refers to the Zuhr prayer? Those who held the view that it refers to Maghrib argued that the first prayer ordained was Zuhr, hence its name "the First." After it comes Asr—these two being the daytime prayers—so Maghrib is the middle prayer. They also argued that some jurists assigned it only a single time.

قَالَ عَلِيٌّ: وَلَيْسَ فِي هَذَا حُجَّةٌ لِأَنَّهُمْ أَبَدًا خَمْسٌ مِنْ أَيِّ وَجْهٍ عَدَدْتَهُمْ، فَالثَّالِثَةُ هِيَ الْوُسْطَى، وَ

Ali said: There is no valid argument in this, for they are perpetually five in number from whichever angle you count. The third is the middle prayer, and

[49] **Qur'an references (L7846):** Qur'an 2:238 (Al-Baqarah).

whoever assigns it a single time has erred, since the authentic text confirms it has two prayer times like all other prayers. We do not recognize any credible argument from those who claim it refers to "the late night prayer (*Isha*)" that we should give weight to. Those who argued it refers to the dawn prayer cited: "It is prayed during night's darkness intermingled with day's brightness." Ali said: This holds no merit, for the *Maghrib* prayer shares this characteristic. The mere existence of this shared quality does not indicate that either of them is the middle prayer.

قَالَ عَلِيٌّ: وَهَذَا لَا حُجَّةَ فِيهِ، لِأَنَّهَا خَمْسٌ أَبَدًا بِالْعَدَدِ مِنْ حَيْثُ شِئْت، فَالثَّالِثَةُ الْوُسْطَى، وَمَنْ جَعَلَ لَهَا وَقْتًا وَاحِدًا فَقَدْ أَخْطَأَ، إذْ قَدْ صَحَّ النَّصُّ بِأَنَّ لَهَا وَقْتَيْنِ كَسَائِرِ الصَّلَوَاتِ؟ وَمَا نَعْلَمُ لِمَنْ ذَهَبَ إلَى أَنَّهَا: " الْعَتَمَةُ " حُجَّةً نَشْتَغِلُ بِهَا؟ وَاحْتَجَّ مَنْ قَالَ: إنَّهَا الصُّبْحُ بِأَنْ قَالَ: إنَّهَا تُصَلَّى فِي سَوَادٍ مِنْ اللَّيْلِ وَبَيَاضٍ مِنْ النَّهَارِ قَالَ عَلِيٌّ: وَهَذَا لَا شَيْءَ، لِأَنَّ الْمَغْرِبَ تُشَارِكُهَا فِي هَذِهِ الصِّفَةِ، وَلَيْسَ فِي كَوْنِهَا كَذَلِكَ بَيَانٌ بِأَنَّ إحْدَاهُمَا الصَّلَاةُ الْوُسْطَى.

L7849–7850 They said: It has been authentically reported from the Messenger of Allah—may Allah's peace and blessings be upon him—that he said: "Whoever prays the dawn prayer in congregation, it is as if he stood in prayer the entire night; and whoever prays the Isha prayer in congregation, it is as if he stood in prayer half the night."

وَقَالُوا: قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «مَنْ صَلَّى الصُّبْحَ فِي جَمَاعَةٍ فَكَأَنَّمَا قَامَ لَيْلَةً، وَمَنْ صَلَّى الْعِشَاءَ الْآخِرَةَ فِي جَمَاعَةٍ فَكَأَنَّمَا قَامَ نِصْفَ لَيْلَةٍ»

L7851 Ali said: There is no preference in this for it over the noon prayer (Dhuhr), nor over the afternoon prayer (Asr), nor over the sunset prayer (Maghrib). Rather, it only indicates preference over the late evening prayer (Isha). This does not clarify that it is the middle prayer.

قَالَ عَلِيٌّ: لَيْسَ فِي هَذَا تَفْضِيلٌ لَهَا عَلَى الظُّهْرِ، وَلَا عَلَى الْعَصْرِ، وَلَا عَلَى الْمَغْرِبِ، وَإِنَّمَا فِيهِ تَفْضِيلُهَا عَلَى الْعَتَمَةِ فَقَطْ، وَلَيْسَ فِي هَذَا بَيَانٌ: أَنَّهَا الصَّلَاةُ الْوُسْطَى.

L7852 It has been authentically reported from the Prophet—may Allah's peace and blessings be upon him—: "Whoever misses the Asr Prayer, it is as though he has been robbed of his family and wealth."

وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ فَاتَهُ صَلَاةُ الْعَصْرِ فَكَأَنَّمَا وُتِرَ أَهْلَهُ وَمَالَهُ»

L7853 They mentioned the saying of the Messenger of Allah—may Allah's peace and blessings be upon him—"Angels take turns among you by night and angels by day. They gather during the Fajr Prayer and the Asr Prayer."

وَذَكَرُوا قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يَتَعَاقَبُ فِيكُمْ مَلَائِكَةٌ بِاللَّيْلِ وَمَلَائِكَةٌ بِالنَّهَارِ، يَجْتَمِعُونَ فِي صَلَاةِ الصُّبْحِ وَصَلَاةِ الْعَصْرِ»

L7854 Ali said: The Asr prayer has shared with it in this, and there is no explicit indication in this that one of the two is the middle prayer.

قَالَ عَلِيٌّ: قَدْ شَارَكَهَا فِي هَذَا صَلَاةُ الْعَصْرِ، وَلَيْسَ فِي هَذَا بَيَانٌ بِأَنَّ إحْدَاهُمَا هِيَ الصَّلَاةُ الْوُسْطَى.

L7855 The same applies to the Prophet's statement—peace be upon him—"If you

can avoid being prevented from observing the prayer before sunrise and the prayer before sunset, then do so."

وَكَذَلِكَ الْقَوْلُ فِي قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إِنْ اسْتَطَعْتُمْ أَنْ لَا تُغْلَبُوا عَلَى صَلَاةٍ قَبْلَ طُلُوعِ الشَّمْسِ وَصَلَاةٍ قَبْلَ غُرُوبِهَا فَافْعَلُوا» .

L7856 "Whoever prays the two prayers during the cool times—Fajr and Asr—will enter Paradise without fail."

«وَمَنْ صَلَّى الْبَرْدَيْنِ دَخَلَ الْجَنَّةَ» وَلَا فَرْقَ.

L7857–7858 They mentioned the words of Allah, the Most High: {And the dawn prayer. Indeed, the dawn prayer is witnessed} [Al-Isra: 78]. This contains no clarification that the prayer is the middle one, for He, the Most High, commanded in this verse prayers other than the dawn prayer, just as He commanded the dawn prayer itself. He, the Most High, said: {Establish prayer from the sun's decline until night's darkness and the dawn prayer. Indeed, the dawn prayer is witnessed} [Al-Isra: 78]. Thus, the command applies to all these prayers equally.[50]

وَذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {وَقُرْآنَ الْفَجْرِ إِنَّ قُرْآنَ الْفَجْرِ كَانَ مَشْهُودًا} [الإسراء: ٧٨] وَهَذَا لَا بَيَانَ فِيهِ بِأَنَّهَا الْوُسْطَى، لِأَنَّهُ تَعَالَى أَمَرَ فِي هَذِهِ الْآيَةِ بِغَيْرِ الصُّبْحِ كَمَا أَمَرَ بِصَلَاةِ الصُّبْحِ قَالَ تَعَالَى: {أَقِمِ الصَّلَاةَ لِدُلُوكِ الشَّمْسِ إِلَى غَسَقِ اللَّيْلِ وَقُرْآنَ الْفَجْرِ إِنَّ قُرْآنَ الْفَجْرِ كَانَ مَشْهُودًا} [الإسراء: ٧٨] فَالْأَمْرُ بِجَمِيعِهَا سَوَاءٌ.

L7859 It has been authentically established that the angels rotate in shifts during the Fajr and ʿAṣr prayers. Thus, the recitation in the ʿAṣr prayer is witnessed by angels, just as in the Fajr prayer, and there is no difference between them in this regard.

وَقَدْ صَحَّ أَنَّ الْمَلَائِكَةَ تَتَعَاقَبُ فِي الصُّبْحِ وَالْعَصْرِ، فَقُرْآنُ الْعَصْرِ مَشْهُودٌ كَقُرْآنِ الْفَجْرِ وَلَا فَرْقَ.

L7860 There is no indication in the statement of the Exalted: *"And the recitation of Fajr—indeed, the Fajr recitation is witnessed"* [17:78] that the recitation in prayers other than Fajr is not witnessed. Allah is far above such a claim! Rather, all prayers are undoubtedly witnessed.[51]

وَلَيْسَ فِي قَوْلِهِ تَعَالَى: {وَقُرْآنَ الْفَجْرِ إِنَّ قُرْآنَ الْفَجْرِ كَانَ مَشْهُودًا} [الإسراء: ٧٨] دَلِيلٌ أَنَّ قُرْآنَ غَيْرِ الْفَجْرِ مِنْ الصَّلَوَاتِ لَيْسَ مَشْهُودًا، حَاشَا لِلَّهِ مِنْ هَذَا بَلْ كُلُّهَا مَشْهُودٌ بِلَا شَكٍّ.

L7861 They argued that it is the most difficult of prayers for worshippers: in winter due to the cold, and in summer due to sleepiness and the shortness of nights.

وَاحْتَجُّوا بِأَنَّهَا أَصْعَبُ الصَّلَوَاتِ عَلَى الْمُصَلِّينَ، فِي الشِّتَاءِ: لِلْبَرْدِ، وَفِي الصَّيْفِ: لِلنَّوْمِ، وَقِصَرِ اللَّيَالِي.

L7862 Ali said: "There is absolutely no evidence in this to suggest it is the middle prayer. As for the Dhuhr prayer, the heat intensifies during it to the extent that it becomes the most difficult of prayers" - just as Zayd ibn Thabit had stated.

قَالَ عَلِيٌّ: وَهَذَا لَا دَلِيلَ فِيهِ أَصْلًا عَلَى أَنَّهَا الْوُسْطَى، وَالظُّهْرُ يَشْتَدُّ فِيهَا الْحَرُّ حَتَّى تَكُونَ أَصْعَبَ الصَّلَوَاتِ، كَمَا قَالَ زَيْدُ بْنُ ثَابِتٍ.

[50] **Qur'an references (L7858):** Qur'an 17:78 (Al-Isra).
[51] **Qur'an references (L7860):** Qur'an 17:78 (Al-Isra).

L7863 Ali said: This is all they have cited as evidence. There is no valid proof in any of it. Rather, these [claims] are false conjectures, for the Almighty has said: “They follow nothing but conjecture, and indeed conjecture cannot substitute for the truth in the slightest.” [An-Najm: 28][52]

L7864 And he (peace be upon him) said: “Beware of suspicion, for indeed suspicion is the falsest of speech.”

L7865 It is impermissible to inform about the intent of Allah, the Exalted, based on false conjecture; may Allah protect us from such a thing.

L7866 A group of people said: “Let us designate every prayer as the middle prayer.” Ali said: “This is impermissible, for Allah the Exalted has singled out this designation for one specific prayer. It is therefore unlawful to apply it to more than one prayer or to a prayer other than the one Allah the Exalted intended. Thus, whoever does this after conclusive evidence has been established against him will be attributing a falsehood to Allah the Exalted.”

L7867–7868 Ali said: Therefore, it became obligatory to seek the divine intent of Allah the Exalted concerning the middle prayer through the clarification of the Messenger of Allah (peace be upon him), not through others.

L7869 Allah, the Exalted, said: “So that you may clarify to the people what has been sent down to them” [Surah An-Nahl (16:44)][53]

L7870 So we looked into that—and found what was narrated to us by Abd al-Rahman ibn Abd Allah; he narrated to us Ibrahim ibn Ahmad; he narrated to us Al-Farbari; he narrated to us Al-Bukhari; he narrated to us Abdullah ibn Muhammad (he is Al-Musnadi); he narrated to us Abd al-Rahman; he narrated to us Yahya ibn Sa’id (he is Al-Qattan).

L7871 Al-Musnadi said: Yazid narrated to us, then Yazid and Yahya jointly narrated, saying: from Hisham, the son of Hassan, from Muḥammad ibn Sīrīn, from ʿUbaydah al-Salmānī, from ʿAlī, who said: “The Messenger of Allah (peace be upon him) said on the Day of the Trench: ’They distracted us from the

قَالَ عَلِيٌّ: هَذَا كُلُّ مَا احْتَجُّوا بِهِ، لَيْسَ فِي شَيْءٍ مِنْهُ حُجَّةٌ، وَإِنَّمَا هِيَ ظُنُونٌ كَاذِبَةٌ، وَقَدْ قَالَ تَعَالَى: {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨]

وَقَالَ - عَلَيْهِ السَّلَامُ -: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ»

وَلَا يَحِلُّ الْإِخْبَارُ عَنْ مُرَادِ اللَّهِ تَعَالَى بِالظَّنِّ الْكَاذِبِ، مَعَاذَ اللَّهِ مِنْ ذَلِكَ.

وَقَدْ قَالَ قَوْمٌ: نَجْعَلُ كُلَّ صَلَاةٍ هِيَ الْوُسْطَى قَالَ عَلِيٌّ: وَهَذَا لَا يَجُوزُ، لِأَنَّ اللَّهَ تَعَالَى خَصَّ بِهَذِهِ الصِّفَةِ صَلَاةً وَاحِدَةً، فَلَا يَحِلُّ حَمْلُهَا عَلَى أَكْثَرَ مِنْ وَاحِدَةٍ، وَلَا عَلَى غَيْرِ الَّتِي أَرَادَ اللَّهُ تَعَالَى بِهَا، فَيَكُونُ مَنْ فَعَلَ ذَلِكَ بَعْدَ قِيَامِ الْحُجَّةِ عَلَيْهِ كَاذِبًا عَلَى اللَّهِ تَعَالَى.

قَالَ عَلِيٌّ: فَوَجَبَ طَلَبُ مُرَادِ اللَّهِ تَعَالَى بِالصَّلَاةِ الْوُسْطَى مِنْ بَيَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا مِنْ غَيْرِهِ.

قَالَ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤]

فَنَظَرْنَا فِي ذَلِكَ -: فَوَجَدْنَا مَا حَدَّثَنَاهُ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ هُوَ الْمُسْنَدِيُّ وَعَبْدُ الرَّحْمَنِ ثنا يَحْيَى بْنُ سَعِيدٍ هُوَ الْقَطَّانُ.

وَقَالَ الْمُسْنَدِيُّ: ثنا يَزِيدُ، ثُمَّ اتَّفَقَ يَزِيدُ وَيَحْيَى قَالَا: أَنَا هِشَامُ هُوَ ابْنُ حَسَّانَ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبِيدَةَ السَّلْمَانِيِّ عَنْ عَلِيٍّ قَالَ: «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ الْخَنْدَقِ: شَغَلُونَا عَنْ الصَّلَاةِ الْوُسْطَى حَتَّى غَابَتْ الشَّمْسُ، مَلَأَ اللَّهُ قُبُورَهُمْ وَبُيُوتَهُمْ - أَوْ أَجْوَافَهُمْ - نَارًا» .

[52] **Qur’an references (L7863):** Qur’an 53:28 (An-Najm).
[53] **Qur’an references (L7869):** Qur’an 16:44 (An-Nahl).

middle prayer until the sun had set. May Allah fill their graves and their homes (or their bellies) with fire.”’

L7872 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us; Abdul Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to us; Muhammad ibn al-Muthanna narrated to us; Muhammad ibn Ja‘far and Ibn Abi Adi narrated to us. They both said: Shu‘bah narrated to us, saying: I heard Qatadah from Abu Hassan—he is Muslim al-Ajrad—from ʿAbīdah al-Salmānī from Ali, who said: “The Messenger of Allah (peace and blessings of Allah be upon him) said on the Day of the Trench: ’They distracted us from the Middle Prayer until the sun set. May Allah fill their homes and graves with fire.”’ This is the wording of Ibn Abi Adi. The wording of Muhammad ibn Ja‘far is: “their graves, their homes, or their bellies with fire.”

L7873–7875 Narrated to us Yahya ibn Abd al-Rahman ibn Mas’ud; Ahmad ibn Duhaym narrated to us; Ibrahim ibn Hammad narrated to us; Ismail ibn Ishaq narrated to us; Muhammad ibn Abi Bakr al-Muqaddami narrated to us; Yahya ibn Sa’id al-Qattan and Abd al-Rahman ibn Mahdi narrated to us from Sufyan al-Thawri, from Asim ibn Abi al-Najud, from Zirr ibn Hubaysh, who said: I said to ‘Ubaydah, “Ask ‘Ali about the middle prayer.” So he asked him, and he replied, “We used to consider it the Fajr Prayer until I heard the Messenger of Allah (peace and blessings of Allah be upon him) say on the Day of the Confederates: ‘They distracted us from the middle prayer, Asr. May Allah fill their hearts, bellies, or homes with fire.’”

L7876 Ali said: “And we have also transmitted it through the chain of Hammad ibn Zayd from ’Asim ibn Bahdala from Zirr from ’Ali ibn Abi Talib from the Prophet—peace and blessings of Allah be upon him. We have also transmitted it through the chain via Muslim from Abu Bakr ibn Abi Shaybah, Zuhayr ibn Harb, and Abu Kurayb, who said: Abu Mu’awiyah narrated to us from al-A’mash from Abu al-Duha from Shutayr ibn Shakl from ’Ali from the Prophet—peace and blessings of Allah be upon him. Shutayr is a trustworthy Tabi’i, and his father was one of the Companions. Shutayr heard this from ’Ali. We have also transmitted it through additional chains.”

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا مُحَمَّدُ بْنُ جَعْفَرٍ وَابْنُ أَبِي عَدِيٍّ قَالَا: ثنا شُعْبَةُ قَالَ: سَمِعْت قَتَادَةَ عَنْ أَبِي حَسَّانَ هُوَ مُسْلِمٌ الْأَجْرَدُ - عَنْ عَبِيدَةَ السَّلْمَانِيِّ عَنْ عَلِيٍّ قَالَ: «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ الْأَحْزَابِ: شَغَلُونَا عَنْ الصَّلَاةِ الْوُسْطَى حَتَّى آبَتْ الشَّمْسُ، مَلَأَ اللَّهُ بُيُوتَهُمْ وَقُبُورَهُمْ نَارًا» هَذَا لَفْظُ ابْنُ أَبِي عَدِيٍّ، وَلَفْظُ مُحَمَّدِ بْنِ جَعْفَرٍ «قُبُورَهُمْ أَوْ بُيُوتَهُمْ أَوْ بُطُونَهُمْ نَارًا» .

حَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ ثنا أَحْمَدُ بْنُ دُحَيْمٍ ثنا إبْرَاهِيمُ بْنُ حَمَّادٍ ثنا إسْمَاعِيلُ بْنُ إسْحَاقَ ثنا مُحَمَّدُ بْنُ أَبِي بَكْرٍ الْمُقَدَّمِيُّ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ ثنا سُفْيَانُ الثَّوْرِيُّ، عَنْ عَاصِمِ بْنِ أَبِي النَّجُودِ عَنْ «زِرِّ بْنِ حُبَيْشٍ قَالَ: قُلْتُ لِعُبَيْدَةَ: سَلْ عَلِيًّا عَنْ الصَّلَاةِ الْوُسْطَى فَسَأَلَهُ، فَقَالَ: كُنَّا نَرَاهَا صَلَاةَ الْفَجْرِ، حَتَّى سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ يَوْمَ الْأَحْزَابِ: شَغَلُونَا عَنْ الصَّلَاةِ الْوُسْطَى صَلَاةِ الْعَصْرِ، مَلَأَ اللَّهُ قُلُوبَهُمْ وَأَجْوَافَهُمْ أَوْ بُيُوتَهُمْ نَارًا» .

قَالَ عَلِيٌّ: وَقَدْ رُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ عَاصِمِ بْنِ بَهْدَلَةَ عَنْ زِرٍّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مُسْلِمٍ عَنْ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ وَزُهَيْرِ بْنِ حَرْبٍ وَأَبِي كُرَيْبٍ قَالُوا: ثنا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي الضُّحَى عَنْ شُتَيْرِ بْنِ شَكَلٍ عَنْ عَلِيٍّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَشُتَيْرٌ تَابِعِيٌّ ثِقَةٌ، وَأَبُوهُ أَحَدُ الصَّحَابَةِ، وَقَدْ سَمِعَهُ شُتَيْرٌ مِنْ عَلِيٍّ. وَرُوِّينَاهُ أَيْضًا مِنْ طُرُقٍ.

فَهَذِهِ آثَارٌ مُتَظَاهِرَةٌ لَا يَسَعُ الْخُرُوجُ عَنْهَا، وَهُوَ قَوْلُ جَمَاعَةٍ مِنْ السَّلَفِ، كَمَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى -: قَالَ عَلِيٌّ: فَتَعَلَّلَ بَعْضُ الْمُخَالِفِينَ بِأَنْ ذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ نَافِعٍ: أَنَّ حَفْصَةَ أُمَّ الْمُؤْمِنِينَ كَتَبَتْ بِخَطِّ يَدِهَا فِي مُصْحَفِهَا حَافِظُوا عَلَى الصَّلَوَاتِ وَالصَّلَاةِ الْوُسْطَى وَصَلَاةِ الْعَصْرِ - وَقُومُوا لِلَّهِ قَانِتِينَ

L7877 These are conspicuous narrations from which there is no room to depart, and this is the opinion of a group of the *Salaf*, as we will mention later, if Allah the Exalted wills. ʻAli said: Some opponents sought pretext by citing what we have narrated through the chain of Ibn Jurayj from Nāfiʻ: that Ḥafṣa, the Mother of the Believers, wrote in her own handwriting in her copy of the Qur'an: "Preserve the prayers, the middle prayer, and the ʻAṣr prayer, and stand devoutly before Allah."

وَبِمَا رُوِّينَاهُ عَنْ عَبْدِ الرَّزَّاقِ عَنْ دَاوُد بْنِ قَيْسٍ عَنْ عَبْدِ اللَّهِ بْنِ رَافِعٍ: أَنَّ أُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ أَمَرَتْهُ أَنْ يَنْسَخَ لَهَا مُصْحَفًا، وَأَمَرَتْهُ أَنْ يَكْتُبَ فِيهِ إذَا بَلَغَ إلَى هَذَا الْمَكَانِ حَافِظُوا عَلَى الصَّلَوَاتِ وَالصَّلَاةِ الْوُسْطَى وَصَلَاةِ الْعَصْرِ وَقُومُوا لِلَّهِ قَانِتِينَ.

L7878 And by what we have narrated from Abd al-Razzaq from Dawud ibn Qays from Abdullah ibn Rafi': that Umm Salamah, the Mother of the Believers, commanded him to copy a Mushaf for her, and she ordered him to write in it when he reached this place: "Guard strictly the prayers, the middle prayer, and the Asr prayer, and stand before Allah in devout obedience."

وَعَنْ مَالِكٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ الْقَعْقَاعِ بْنِ حَكِيمٍ عَنْ أَبِي يُونُسَ مَوْلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا أَمْلَتْ عَلَيْهِ فِي مُصْحَفٍ كَتَبَهُ لَهَا: حَافِظُوا عَلَى الصَّلَوَاتِ وَالصَّلَاةِ الْوُسْطَى وَصَلَاةِ الْعَصْرِ - وَقُومُوا لِلَّهِ قَانِتِينَ وَقَالَتْ: " سَمِعْتُهَا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ".

L7879–7881 From Malik, from Zayd ibn Aslam, from al-Qaʿqāʿ ibn Ḥakīm, from Abū Yūnus - the freed slave of ʿĀ'ishah, the Mother of the Believers - that she dictated to him in a Muṣḥaf which he transcribed for her: "Guard the prayers, and the middle prayer, and the ʿAṣr prayer; and stand before Allah in devout obedience." And she said: "I heard it from the Messenger of Allah—peace be upon him."

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ: «كَانَ فِي مُصْحَفِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: حَافِظُوا عَلَى الصَّلَوَاتِ وَالصَّلَاةِ الْوُسْطَى - وَصَلَاةِ الْعَصْرِ - وَقُومُوا لِلَّهِ قَانِتِينَ» .

L7882 From Hammad ibn Salamah from Hisham ibn Urwah from his father: "In the muṣḥaf of Aisha, the Mother of the Believers, it was written: 'Guard the prayers and the middle prayer (and the Asr prayer) and stand before Allah in humble obedience.'"[54]

وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ شُعْبَةَ عَنْ أَبِي إِسْحَاقَ عَنْ هُبَيْرَةَ بْنِ يَرِيمَ سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ: " حَافِظُوا عَلَى الصَّلَوَاتِ وَالصَّلَاةِ الْوُسْطَى وَصَلَاةِ الْعَصْرِ "

L7883 And from Yaḥyā ibn Saʿīd al-Qaṭṭān from Shuʿbah from Abū Isḥāq from Hubayrah ibn Yarīm, who said: "I heard Ibn ʿAbbās say: 'Preserve the prayers—the middle prayer and the ʿAṣr prayer.'"[55]

وَعَنْ إسْرَائِيلَ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى قَالَ: كَانَ أُبَيّ بْنُ كَعْبٍ يَقْرَؤُهَا: عَلَى الصَّلَوَاتِ وَالصَّلَاةِ الْوُسْطَى وَصَلَاةِ الْعَصْرِ.

L7884 From Isra'il, from ʻAbd al-Malik ibn ʻUmair, from ʻAbd al-Rahman ibn Abi Layla, who said: Ubayy ibn Kaʿb would recite it as: "Upon the prayers, the middle prayer, and the ʻAsr prayer."

[54] **Qur'an references (L7882):** Qur'an 2:238 (Al-Baqarah).
[55] **Qur'an references (L7883):** Qur'an 2:238 (Al-Baqarah).

L7885 They said, “Does this indicate that it is not the ʿAṣr Prayer?”

قَالُوا: فَدَلَّ هَذَا عَلَى أَنَّهَا لَيْسَتْ صَلَاةَ الْعَصْرِ؟

L7886 Ali said: This is an objection that is utterly invalid, for none of it originates from the Messenger of Allah—peace be upon him. Rather, it is attributed solely to Hafsa, Umm Salama, and Aisha—the Mothers of the Believers—as well as Ibn Abbas and Ubayy ibn Ka‘b, with the exception of Aisha’s report alone.

قَالَ عَلِيٌّ: هَذَا اعْتِرَاضٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ كُلَّهُ لَيْسَ مِنْهُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَيْءٌ، وَإِنَّمَا هُوَ مَوْقُوفٌ عَلَى حَفْصَةَ، وَأُمِّ سَلَمَةَ، وَعَائِشَةَ: أُمَّهَاتِ الْمُؤْمِنِينَ - وَابْنِ عَبَّاسٍ، وَأُبَيِّ بْنِ كَعْبٍ، حَاشَا رِوَايَةَ عَائِشَةَ فَقَطْ.

L7887 Is it impermissible to contradict the explicit text of the Messenger of Allah’s speech (peace be upon him) with the words of others?

وَلَا يَجُوزُ أَنْ يُعَارَضَ نَصُّ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِكَلَامِ غَيْرِهِ؟

L7888–7890 If they weaken those narrations, it is said to them: “These narrations are the weak ones, and all of this is impermissible.” Then we say to them: “Your reliance upon this addition - which you unanimously agree with us that none may recite it nor write it in their *mus’haf* - is astonishing. This demonstrates that these are narrations lacking evidentiary basis. Whatever comes from those below the rank of Allah’s Messenger - peace and blessings be upon him - contains no proof, for Allah the Exalted did not command...” Disputing by reverting to anything other than His Book and the Sunnah of His Messenger—may Allah’s peace and blessings be upon him—instead of them constitutes disobedience to Allah the Exalted and a violation of His command. This is a sufficient proof. Then another proof follows: that the narration has conflicted from these mentioned Companions. Assuming we grant you all that you desire in the meaning of this additional wording found in these narrations—namely, that we were narrated the report of Umm Salamah through the chain of Waki‘ from Dawud ibn Qays from ‘Abdullah ibn Rafi‘: that Umm Salamah, the Mother of the Believers, wrote a copy of the Qur’an and said, “Write ‘Guard the prayers and the middle prayer, the ‘Asr prayer’ like this without a ‘waw’?” As for the report of Ibn ‘Abbas, we were narrated it through the chain of Waki‘ from Shu‘bah from Abu Ishaq al-Sabi‘i from Hubayrah ibn Yarim, who said: I heard Ibn ‘Abbas say, “Guard the prayers and the middle prayer, the ‘Asr prayer”—like this without a ‘waw’?

فَإِنْ وَهَّنُوا تِلْكَ الرِّوَايَاتِ قِيلَ لَهُمْ: هَذِهِ الرِّوَايَاتُ هِيَ الْوَاهِيَةُ وَهَذَا كُلُّهُ لَا يَجُوزُ؟ ثُمَّ نَقُولُ لَهُمْ: مِنْ الْعَجَبِ احْتِجَاجُكُمْ بِهَذِهِ الزِّيَادَةِ الَّتِي أَنْتُمْ مُجْمِعُونَ مَعَنَا عَلَى أَنَّهَا لَا يَحِلُّ لِأَحَدٍ أَنْ يَقْرَأَ بِهَا، وَلَا أَنْ يَكْتُبَهَا فِي مُصْحَفِهِ، وَفِي هَذَا بَيَانٌ أَنَّهَا رِوَايَاتٌ لَا تَقُومُ بِهَا حُجَّةٌ وَكُلُّ مَا كَانَ عَمَّنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا حُجَّةَ فِيهِ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَأْمُرْ عِنْدَ التَّنَازُعِ بِالرَّدِّ إلَى أَحَدٍ غَيْرِ كِتَابِهِ وَسُنَّةِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا إلَى غَيْرِهِمَا فَقَدْ عَصَى اللَّهَ تَعَالَى، وَخَالَفَ أَمْرَهُ، فَهَذَا بُرْهَانٌ كَافٍ ثُمَّ آخَرُ، وَهُوَ: أَنَّ الرِّوَايَةَ قَدْ تَعَارَضَتْ عَنْ هَؤُلَاءِ الصَّحَابَةِ الْمَذْكُورِينَ -: عَلَى أَنْ نُسَلِّمَ لَكُمْ كُلَّ مَا تُرِيدُونَ فِي مَعْنَى هَذِهِ اللَّفْظَةِ الزَّائِدَةِ الَّتِي فِي هَذِهِ - الْآثَارِ - وَهِيَ أَنَّنَا رُوِّينَا خَبَرَ أُمِّ سَلَمَةَ مِنْ طَرِيقِ وَكِيعٍ عَنْ دَاوُد بْنِ قَيْسٍ عَنْ عَبْدِ اللَّهِ بْنِ رَافِعٍ: أَنَّ أُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ كَتَبَتْ مُصْحَفًا فَقَالَتْ: اُكْتُبْ " حَافِظُوا عَلَى الصَّلَوَاتِ وَالصَّلَاةِ الْوُسْطَى صَلَاةِ الْعَصْرِ هَكَذَا بِلَا وَاوٍ؟ وَأَمَّا خَبَرُ ابْنِ عَبَّاسٍ فَرُوِّيناهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ هُبَيْرَةَ بْنِ يَرِيمَ قَالَ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ: حَافِظُوا عَلَى

الصَّلَوَاتِ وَالصَّلَاةِ الْوُسْطَى صَلَاةِ الْعَصْرِ - هَكَذَا بِلَا وَاوٍ؟ فَاخْتَلَفَ وَكِيعٌ، وَعَبْدُ الرَّزَّاقِ عَلَى دَاوُد بْنِ قَيْسٍ فِي حَدِيثِ أُمِّ سَلَمَةَ.

Thus, Waki‘ and ‘Abd al-Razzaq differed regarding the narration of Umm Salamah from Dawud ibn Qays.[56]

وَاخْتَلَفَ وَكِيعٌ، وَيَحْيَى عَلَى شُعْبَةَ فِي حَدِيثِ ابْنِ عَبَّاسٍ، وَلَيْسَ وَكِيعٌ دُونَ يَحْيَى وَلَا دُونَ عَبْدِ الرَّزَّاقِ؟ وَأَمَّا خَبَرُ أُبَيِّ بْنِ كَعْبٍ فَرُوِّينَاهُ مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ أَبِي بَكْرٍ عَنْ مَجْلُوبٍ أَبِي جَعْفَرٍ عَنْ خَالِدٍ الْحَذَّاءَ عَنْ أَبِي قِلَابَةَ قَالَ: فِي قِرَاءَةِ أُبَيِّ بْنِ كَعْبٍ صَلَاةُ الْوُسْطَى صَلَاةُ الْعَصْرِ فَلَيْسَتْ هَذِهِ الرِّوَايَةُ دُونَ الْأُولَى، فَقَدْ اُخْتُلِفَ عَلَى أُبَيِّ بْنِ كَعْبٍ أَيْضًا؟

L7891 Waki‘ and Yaḥyā differed from Shu‘bah regarding the ḥadīth of Ibn ‘Abbās. Is Waki‘ inferior to Yaḥyā or to ‘Abd al-Razzāq? As for the report of Ubayy ibn Ka‘b, we have narrated it through the chain of Ismā‘īl ibn Isḥāq, from Muḥammad ibn Abī Bakr, from Majlūb Abī Ja‘far, from Khālid al-Ḥadhā’, from Abū Qilābah, who said: “In the recitation of Ubayy ibn Ka‘b, ‘the middle prayer is the ‘Aṣr prayer.’” This narration is not inferior to the first one. For disagreement has also arisen regarding Ubayy ibn Ka‘b’s report.

وَأَمَّا خَبَرُ عَائِشَةَ فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ أَبِي سَهْلٍ مُحَمَّدِ بْنِ عَمْرٍو الْأَنْصَارِيِّ عَنْ مُحَمَّدِ بْنِ أَبِي بَكْرٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: الصَّلَاةُ الْوُسْطَى صَلَاةُ الْعَصْرِ؟ فَهَذِهِ أَصَحُّ رِوَايَةٍ عَنْ عَائِشَةَ أَبُو سَهْلٍ مُحَمَّدُ بْنُ عَمْرٍو الْأَنْصَارِيُّ ثِقَةٌ - رَوَى عَنْهُ ابْنُ مَهْدِيٍّ، وَوَكِيعٌ، وَمَعْمَرٌ، وَعَبْدُ اللَّهِ بْنُ الْمُبَارَكِ، وَغَيْرُهُمْ.

L7892 As for the narration of Aisha, we have indeed received it through the chain of transmission of Abd al-Rahman ibn Mahdi from Abu Sahl Muhammad ibn Amr al-Ansari, from Muhammad ibn Abi Bakr, from Aisha, the Mother of the Believers, who said: “Is the middle prayer the Asr prayer?” This is the most authentic narration from Aisha—Abu Sahl Muhammad ibn Amr al-Ansari is trustworthy. Ibn Mahdi, Waki’, Ma’mar, Abdullah ibn al-Mubarak, and others narrated from him.

فَبَطَلَ التَّعَلُّقُ بِشَيْءٍ مِمَّا ذَكَرْنَا قَبْلُ، إِذْ لَيْسَ بَعْضُ مَا رُوِيَ عَنْ هَؤُلَاءِ الْمَذْكُورِينَ بِأُولَى مِنْ بَعْضٍ، وَالْوَاجِبُ الرُّجُوعُ إِلَى مَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ، وَقَدْ ذَكَرْنَا أَنَّهُ لَمْ يَصِحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - إِلَّا أَنَّ الصَّلَاةَ الْوُسْطَى: صَلَاةُ الْعَصْرِ؟ فَإِنْ قِيلَ: فَكَيْفَ تَصْنَعُونَ أَنْتُمْ فِي هَذِهِ الرِّوَايَاتِ الَّتِي أُورِدَتْ عَنْ حَفْصَةَ، وَعَائِشَةَ، وَأُمِّ سَلَمَةَ، وَأُبَيٍّ، وَابْنِ عَبَّاسٍ -: الَّتِي فِيهَا " وَصَلَاةُ الْعَصْرِ " وَالَّتِي فِيهَا " صَلَاةُ الْعَصْرِ " عَنْهُمْ " بِلَا وَاوٍ " حَاشَا حَفْصَةَ وَكَيْفَ تَقُولُونَ فِي الْقِرَاءَةِ بِهَذِهِ

L7893–7895 Thus, reliance on anything we have previously mentioned is invalidated, since some of what has been narrated from these cited scholars is not reliable. The preferable opinion among some is that the obligation lies in reverting to what has been authentically established from the Messenger of Allah—peace and blessings of Allah be upon him—regarding this matter. We have mentioned that nothing authentically established from him—peace be upon him—exists except that the middle prayer is the ‘Asr prayer? If it is asked: How do you deal with these narrations transmitted from Hafsah, ‘Ā’ishah, Umm Salamah, Ubayy, and Ibn ‘Abbās—those containing “and the ‘Asr prayer” and those stating “the ‘Asr prayer” from them without the conjunction “and”—except for Hafsah’s narration? And how do you justify recitation with this

[56] **Qur’an references (L7888):** Qur’an 2:238 (Al-Baqarah).

الزِّيَادَةِ، وَهِيَ لَا تَحِلُّ الْقِرَاءَةُ بِهَا الْيَوْمَ؟ فَجَوَابُنَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: أَنَّ الَّذِي يُظَنُّ مِنْ اخْتِلَافِ الرِّوَايَةِ فِي ذَلِكَ فَلَيْسَ اخْتِلَافًا، بَلْ الْمَعْنَى فِي ذَلِكَ مَعَ " الْوَاوِ " وَمَعَ إسْقَاطِهَا سَوَاءٌ، وَهُوَ أَنَّهَا تَعْطِفُ الصِّفَةَ عَلَى الصِّفَةِ، لَا يَجُوزُ غَيْرُ ذَلِكَ.

L7896 كَمَا قَالَ اللَّهُ تَعَالَى: {وَلَكِنْ رَسُولَ اللَّهِ وَخَاتَمَ النَّبِيِّينَ} [الأحزاب: ٤٠] فَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ خَاتَمُ النَّبِيِّينَ.

L7897 وَكَمَا تَقُولُ: أَكْرِمْ إخْوَانَك، وَأَبَا زَيْدٍ الْكَرِيمِ وَالْحَسِيبِ أَخَا مُحَمَّدٍ فَأَبُو زَيْدٍ هُوَ الْحَسِيبُ، وَهُوَ أَخُو مُحَمَّدٍ.

L7898 فَقَوْلُهُ " وَصَلَاةُ الْعَصْرِ " بَيَانٌ لِلصَّلَاةِ الْوُسْطَى فَهِيَ الْوُسْطَى وَهِيَ صَلَاةُ الْعَصْرِ.

L7899 وَأَمَّا قَوْلُهُ - عَلَيْهِ السَّلَامُ - «شَغَلُونَا عَنْ الصَّلَاةِ الْوُسْطَى صَلَاةِ الْعَصْرِ» فَلَا يَحْتَمِلُ تَأْوِيلًا أَصْلًا، فَوَجَبَ بِذَلِكَ حَمْلُ قَوْلِهِ - عَلَيْهِ السَّلَامُ - «وَالصَّلَاةِ الْوُسْطَى وَصَلَاةِ الْعَصْرِ» عَلَى أَنَّهَا عَطْفُ صِفَةٍ عَلَى صِفَةٍ وَلَا بُدَّ وَيُبَيِّنُ أَيْضًا صِحَّةَ هَذَا التَّأْوِيلِ عَنْهُمْ مَا قَدْ أَوْرَدْنَاهُ عَنْهُمْ أَنْفُسِهِمْ مِنْ قَوْلِهِمْ " وَالصَّلَاةُ الْوُسْطَى صَلَاةُ الْعَصْرِ ".

L7900 وَصَحَّتْ الرِّوَايَةُ عَنْ عَائِشَةَ بِأَنَّهَا الْعَصْرُ، وَهِيَ الَّتِي رَوَتْ نُزُولَ الْآيَةِ فِيهَا " وَصَلَاةُ الْعَصْرِ " فَصَحَّ أَنَّهَا عَرَفَتْ أَنَّهَا صِفَةٌ لِصَلَاةِ الْعَصْرِ، وَهِيَ سَمِعَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَتْلُوهَا كَذَلِكَ، وَبِهَذَا ارْتَفَعَ الِاضْطِرَابُ عَنْهُمْ، وَتَتَّفِقُ أَقْوَالُهُمْ، وَيَصِحُّ كُلُّ مَا رُوِيَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ، وَيَنْتَفِي عَنْهُ الِاخْتِلَافُ، وَحَاشَا لِلَّهِ أَنْ يَأْتِيَ اضْطِرَابٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

variant addition when it is not permissible to recite it today? Our response—and success comes only from Allah the Exalted—is that the perceived discrepancy in these narrations is not a true discrepancy. Rather, the meaning remains consistent whether the conjunction "and" is included or omitted, as it links one attribute to another. No other interpretation is permissible.

As Allah the Exalted said: {But [Muhammad is] the Messenger of Allah and the seal of the prophets} [Al-Ahzab: 40]. Thus, the Messenger of Allah (peace and blessings be upon him) is the Last of the Prophets.[57]

And just as you say: Honor your brothers and Abu Zayd, the generous and of noble lineage, the brother of Muhammad—for Abu Zayd is indeed of noble lineage and Muhammad's brother.

So his statement "and the Asr prayer" is an explanation of the middle prayer. Therefore, it is the middle prayer, and it is the Asr prayer.

As for his statement—peace be upon him—"They distracted us from the middle prayer, the Asr prayer," this does not admit any interpretation at all. It therefore necessitates understanding his statement—peace be upon him—"and the middle prayer and the Asr prayer" as a conjunction of one attribute to another, which is unavoidable. What further confirms the validity of this interpretation from their own statements is what we have cited from them directly: "And the middle prayer is the Asr prayer."

The authentic narration from 'Aisha establishes that the prayer in question is the 'Asr prayer. She herself reported the revelation of the verse concerning it: "and the 'Asr prayer." Thus, it was confirmed that she recognized this as an attribute specific to the 'Asr prayer, for she heard the Prophet—peace and blessings of Allah be upon him—recite it in this manner. Through this clarification, the inconsistency attributed to them was resolved, their statements became harmonized, and all narrations from Allah's Messenger—peace and blessings of Allah be upon him—on this matter were validated, with any contradiction being negated. Far be it from Allah that any inconsistency could

[57] **Qur'an references (L7896):** Qur'an 33:40 (Al-Ahzab).

emanate from the Messenger of Allah—peace and blessings of Allah be upon him.

L7901–7902 Whoever refuses this will not attain what he desires, and it becomes necessary to recognize inconsistency in the narrations transmitted from them, with none of that being more authoritative than another. Both narrations must be invalidated together, and what is authentically reported from the Prophet—peace and blessings of Allah be upon him—on that matter remains sound. Objections against it, based on narrations that caused confusion for their transmitters—whether through what is susceptible to interpretation as claimed by the opponent or through what is unambiguous yet conforms to our position—are invalidated. All praise is due to Allah.

L7903 As for reciting with this addition, it is impermissible. Allah forbid that the Mothers of the Believers, Ubayy, and Ibn Abbas would add to the Quran what is not in it. The ruling on this matter is that those words were originally revealed but their wording was abrogated—as narrated to us by Hammam, who narrated to us from Ibn Mufarrij, who narrated to us from Ibn al-A'rabi, from al-Dabari, from Abd al-Razzaq, from Ibn Jurayj, who reported: Abd al-Malik ibn Abd al-Rahman reported to me from his mother Umm Humayd bint Abd al-Rahman, who said: I asked Aisha, the Mother of the Believers, about the middle prayer. She replied: "We used to recite it in the first mode during the time of Allah's Messenger (peace and blessings be upon him): 'Guard strictly the prayers and the middle prayer and the Asr prayer, and stand before Allah in devout obedience.'"

L7904 Abdullah ibn Yusuf → Ahmad ibn Fath → Abdul Wahhab ibn Isa → Ahmad ibn Muhammad → Ahmad ibn Ali → Muslim ibn Al-Hajjaj → Ishaq ibn Ibrahim (Ibn Rāhawayh) → Yahya ibn Adam → Al-Fudayl ibn Marzuq → Shaqiq ibn Uqbah → Al-Bara' ibn Azib, who said: "This verse was revealed: 'Guard strictly the prayers and the Asr prayer.' We recited it as Allah willed, then Allah the Exalted abrogated it, and there was revealed: 'Guard strictly the prayers, and the middle prayer' [Quran 2:238]. A man sitting with his companion Shaqiq said: 'Then it is the Asr prayer.' Al-Bara' said: 'I have

وَمَنْ أَبَى مِنْ هَذَا لَمْ يَحْصُلْ عَلَى مَا يُرِيدُ، وَوَجَبَ الِاضْطِرَابُ فِي الرِّوَايَةِ عَنْهُمْ وَلَمْ يَكُنْ بَعْضُ ذَلِكَ أَوْلَى مِنْ بَعْضٍ، وَوَجَبَ سُقُوطُ الرِّوَايَتَيْنِ مَعًا، وَصَحَّ مَا جَاءَ فِي ذَلِكَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبَطَلَ الِاعْتِرَاضُ عَلَيْهِ بِرِوَايَاتٍ اضْطَرَبَ عَلَى أَصْحَابِهَا بِمَا يَحْتَمِلُ التَّأْوِيلَ مِمَّا يَدَّعِيهِ الْمُخَالِفُ، وَبِمَا لَا يَحْتَمِلُ التَّأْوِيلَ مِمَّا يُوَافِقُ قَوْلَنَا، وَلِلَّهِ الْحَمْدُ.

وَأَمَّا الْقِرَاءَةُ بِهَذِهِ الزِّيَادَةِ فَلَا تَحِلُّ، وَمَعَاذَ اللَّهِ أَنْ تَزِيدَ أُمَّهَاتُ الْمُؤْمِنِينَ، وَأُبَيٌّ، وَابْنُ عَبَّاسٍ فِي الْقُرْآنِ مَا لَيْسَ فِيهِ؟ وَالْقَوْلُ فِي هَذَا: هُوَ أَنَّ تِلْكَ اللَّفْظَةَ كَانَتْ مُنَزَّلَةً ثُمَّ نُسِخَ لَفْظُهَا -: كَمَا حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ ثنا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْمَلِكِ بْنُ عَبْدِ الرَّحْمَنِ عَنْ أُمِّهِ «أُمِّ حُمَيْدٍ بِنْتِ عَبْدِ الرَّحْمَنِ قَالَتْ: سَأَلْتُ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ عَنْ الصَّلَاةِ الْوُسْطَى؟ فَقَالَتْ: كُنَّا نَقْرَؤُهَا فِي الْحَرْفِ الْأَوَّلِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَافِظُوا عَلَى الصَّلَوَاتِ وَالصَّلَاةِ الْوُسْطَى - وَصَلَاةِ الْعَصْرِ وَقُومُوا لِلَّهِ قَانِتِينَ»

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا إِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - أَنَا يَحْيَى بْنُ آدَمَ ثنا الْفُضَيْلُ بْنُ مَرْزُوقٍ عَنْ شَقِيقِ بْنِ عُقْبَةَ عَنْ الْبَرَاءِ بْنِ عَازِبٍ قَالَ " نَزَلَتْ هَذِهِ الْآيَةُ: حَافِظُوا عَلَى الصَّلَوَاتِ وَصَلَاةِ الْعَصْرِ فَقَرَأْنَاهَا مَا شَاءَ اللَّهُ، ثُمَّ نَسَخَهَا اللَّهُ تَعَالَى فَنَزَلَتْ: {حَافِظُوا عَلَى الصَّلَوَاتِ وَالصَّلَاةِ الْوُسْطَى} [البقرة: ٢٣٨] فَقَالَ رَجُلٌ كَانَ

جَالِسًا عِنْدَ شَقِيقٍ لَهُ: هِيَ إِذَنْ صَلَاةُ الْعَصْرِ، فَقَالَ الْبَرَاءُ: قَدْ أَخْبَرْتُك كَيْفَ نَزَلَتْ؟ وَكَيْفَ نَسَخَهَا اللَّهُ؟ وَاَللَّهُ أَعْلَمُ "

قَالَ عَلِيٌّ: فَصَحَّ نَسْخُ هَذِهِ اللَّفْظَةِ، وَبَقِيَ حُكْمُهَا كَآيَةِ الرَّجْمِ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَدْ يُثْبِتُهَا مَنْ ذَكَرْنَا مِنْ أُمَّهَاتِ الْمُؤْمِنِينَ عَلَى مَعْنَى التَّفْسِيرِ وَاَللَّهُ أَعْلَمُ؟

قَالَ عَلِيٌّ: وَقَالَ بِهَذَا مِنْ السَّلَفِ طَائِفَةٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَبِي صَالِحٍ السَّمَّانِ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ: الصَّلَاةُ الْوُسْطَى صَلَاةُ الْعَصْرِ.

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ ثنا عَلِيُّ بْنُ عَبْدِ اللَّهِ هُوَ ابْنُ الْمَدِينِيِّ ثنا بِشْرُ بْنُ الْمُفَضَّلِ ثنا عَبْدُ اللَّهِ بْنُ عُثْمَانَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ نَافِعٍ: أَنَّ أَبَا هُرَيْرَةَ سُئِلَ عَنْ الصَّلَاةِ الْوُسْطَى فَقَالَ لِلَّذِي سَأَلَهُ: أَلَسْت تَقْرَأُ الْقُرْآنَ؟ قَالَ: بَلَى، قَالَ: فَإِنِّي سَأَقْرَأُ عَلَيْك بِهَذَا الْقُرْآنِ حَتَّى تَفْهَمَهَا، قَالَ اللَّهُ تَعَالَى: {أَقِمِ الصَّلاةَ لِدُلُوكِ الشَّمْسِ إِلَى غَسَقِ اللَّيْلِ} [الإسراء: ٧٨] الْمَغْرِبُ. وَقَالَ: {وَمِنْ بَعْدِ صَلاةِ الْعِشَاءِ} [النور: ٥٨] الْعَتَمَةُ. وَقَالَ: {وَقُرْآنَ الْفَجْرِ إِنَّ قُرْآنَ الْفَجْرِ كَانَ مَشْهُودًا} [الإسراء: ٧٨] الْغَدَاةُ. ثُمَّ قَالَ: {حَافِظُوا عَلَى الصَّلَوَاتِ وَالصَّلاةِ الْوُسْطَى} [البقرة: ٢٣٨] هِيَ الْعَصْرُ، هِيَ الْعَصْرُ.

وَعَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ: أَنَّهُ كَانَ يَرَى الصَّلَاةَ الْوُسْطَى: صَلَاةَ الْعَصْرِ.

already informed you how it was revealed and how Allah abrogated it. And Allah knows best.'"[58]

L7905 Ali said: So the abrogation of this wording was confirmed, and its ruling remained like that of the Stoning Verse. And success comes only from Allah, the Most High.

L7906 And is it possible that those we mentioned among the Mothers of the Believers affirmed it in the sense of exegetical interpretation? And Allah knows best?

L7907 Ali said: A group from the Salaf maintained this opinion—as we have narrated via Yahya ibn Sa'id al-Qattan from Sulayman al-Taymi from Abu Salih al-Samman from Abu Hurayrah—that he said: The middle prayer is the Asr prayer.

L7908–7909 From the narration chain of Isma'il ibn Ishaq: Ali ibn Abdullah—who is Ibn al-Madini—narrated to us, Bishr ibn al-Mufaddal narrated to us, Abdullah ibn Uthman narrated to us from Abd al-Rahman ibn Nafi': Abu Hurairah was asked about the middle prayer. He said to the one who asked him: "Do you not recite the Quran?" The man replied: "Yes, indeed." Abu Hurairah said: "Then I will recite to you from this Quran until you understand it. Allah the Exalted says: {Establish prayer at the decline of the sun until the darkness of the night} [17:78]—this is Maghrib. And He says: {And after the Isha prayer} [24:58]—this is Isha. And He says: {And the Quran at dawn—indeed, the Quran at dawn is witnessed} [17:78]—this is the dawn prayer." Then he said: {Guard the prayers and the middle prayer} [2:238]—this is Asr, this is Asr.[59]

L7910 From Az-Zuhri from Salim ibn Abdullah ibn Umar from his father Abdullah ibn Umar: that he maintained the intermediate prayer—the Asr prayer—was the middle prayer.

[58] **Qur'an references (L7904):** Qur'an 2:238 (Al-Baqarah).

[59] **Qur'an references (L7909):** Qur'an 17:78 (Al-Isra); Qur'an 24:58 (An-Nur); Qur'an 2:238 (Al-Baqarah).

L7911 From Yaḥyā ibn Saʿīd al-Qaṭṭān, from Sulaymān al-Taymī, from Qatādah, from Abū Ayyūb—he is Yaḥyā ibn Yazīd al-Marāghī—from ʿĀ'ishah, Mother of the Believers, who said: "The middle prayer is the ʿAṣr prayer."

وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سُلَيْمَانَ التَّيْمِيِّ عَنْ قَتَادَةَ عَنْ أَبِي أَيُّوبَ هُوَ يَحْيَى بْنُ يَزِيدَ الْمَرَاغِيُّ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: الصَّلَاةُ الْوُسْطَى صَلَاةُ الْعَصْرِ.

L7912 And from al-Qāsim ibn Muḥammad from ʿĀ'ishah—is it the same as that? And from Sufyān ibn ʿUyaynah from Misʿar ibn Kidām from Salama ibn Kuhayl from Abī al-Aḥwaṣ from ʿAlī ibn Abī Ṭālib regarding the middle prayer? He said: It is the prayer that the son of Dāwūd neglected: meaning the ʿAṣr prayer.

وَعَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْهَا مِثْلُ ذَلِكَ؟ وَعَنْ سُفْيَانَ بْنَ عُيَيْنَةَ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ سَلَمَةَ بْنَ كُهَيْلٍ عَنْ أَبِي الْأَحْوَصِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ فِي الصَّلَاةِ الْوُسْطَى؟ قَالَ: هِيَ الَّتِي فَرَّطَ فِيهَا ابْنُ دَاوُد يَعْنِي صَلَاةَ الْعَصْرِ.

L7913 From Yaḥyā ibn Saʿīd al-Qaṭṭān, from Abū Ḥayyān Yaḥyā ibn Saʿīd al-Taymī, who reported: My father narrated to me that a questioner asked ʿAlī, "O Commander of the Faithful, which prayer is the middle one?" while his caller announced the ʿAṣr prayer. He said, "It is this one?"

وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ أَبِي حَيَّانَ يَحْيَى بْنِ سَعِيدٍ التَّيْمِيِّ حَدَّثَنِي أَبِي: أَنَّ سَائِلًا سَأَلَ عَلِيًّا: أَيُّ الصَّلَوَاتِ يَا أَمِيرَ الْمُؤْمِنِينَ الْوُسْطَى؟ وَقَدْ نَادَى مُنَادِيهِ الْعَصْرَ، فَقَالَ: هِيَ هَذِهِ؟ .

L7914 Ali said: Nothing valid is reported from Ali or Aisha at all other than this.

قَالَ عَلِيٌّ: لَا يَصِحُّ عَنْ عَلِيٍّ وَلَا عَنْ عَائِشَةَ: غَيْرُ هَذَا أَصْلًا.

L7915 It was previously narrated to us from Umm Salamah, the Mother of the Believers; Ibn ʿAbbās; and Ubayy ibn Kaʿb.

وَقَدْ رُوِّينَا قَبْلُ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ، وَابْنِ عَبَّاسٍ، وَأُبَيِّ بْنِ كَعْبٍ

L7916 It has also been narrated from Abū Ayyūb al-Anṣārī.

وَرُوِيَ أَيْضًا عَنْ أَبِي أَيُّوبَ الْأَنْصَارِيِّ.

L7917–7918 From Yunus ibn ʻUbayd, from al-Ḥasan al-Baṣrī, who said: "The middle prayer: the ʻAṣr prayer?"

وَعَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: الصَّلَاةُ الْوُسْطَى: صَلَاةُ الْعَصْرِ؟

L7919 Abu Hilal narrated from Qatadah, who said, "The middle prayer is the _ʻAṣr_ prayer."

وَعَنْ أَبِي هِلَالٍ عَنْ قَتَادَةَ قَالَ: الصَّلَاةُ الْوُسْطَى: صَلَاةُ الْعَصْرِ

L7920 From Ma'mar, from al-Zuhri: "The middle prayer is the Asr prayer." From Ma'mar, from Ayyub al-Sikhtiyani, from Muhammad ibn Sirin, from Abidah al-Salmani: "The middle prayer is the Asr prayer." This is the opinion of Sufyan al-Thawri, Abu Hanifah, al-Shafi'i, Ahmad ibn Hanbal, Dawud, all their companions, Ishaq ibn Rahawayh, and the majority of the scholars of Hadith.

وَعَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: الصَّلَاةُ الْوُسْطَى: صَلَاةُ الْعَصْرِ وَعَنْ مَعْمَرٍ عَنْ أَيُّوبَ السَّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبِيدَةَ السَّلْمَانِيِّ قَالَ: الصَّلَاةُ الْوُسْطَى: صَلَاةُ الْعَصْرِ وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَدَاوُد، وَجَمِيعِ أَصْحَابِهِمْ، وَهُوَ قَوْلُ إِسْحَاقَ بْنِ رَاهْوَيْهِ وَجُمْهُورِ أَصْحَابِ الْحَدِيثِ.

We have narrated it as a musnad traced back to the Prophet (peace and blessings be upon him) through the chain of Ibn Masʿūd and Samurah.

وَقَدْ رُوِّينَاهُ أَيْضًا مُسْنَدًا إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ ابْنِ مَسْعُودٍ وَسَمُرَةَ.

The Issue of Raising the Voice With the *Takbīr* Immediately After Each Prayer

[مَسْأَلَةُ رَفْعُ الصَّوْتِ بِالتَّكْبِيرِ إِثْرَ كُلِّ صَلَاةٍ]

506 - Issue: Is raising the voice with takbīr after every prayer recommended? Abdullah ibn Yusuf narrated to us from Ahmad ibn Fath from Abdul Wahhab ibn Isa from Ahmad ibn Muhammad from Ahmad ibn Ali from Muslim ibn al-Hajjaj from Ibn Abī ʿUmar from Sufyan ibn Uyaynah, from Amr ibn Dinar from Abu Maʿbad - the freed slave of Ibn Abbas and grandfather of Amr - who said: I heard him narrate from Ibn Abbas, who said: "We would not recognize the conclusion of the Messenger of Allah's prayer - peace and blessings be upon him - except by the takbīr."

٥٠٦ - مَسْأَلَةٌ: وَرَفْعُ الصَّوْتِ بِالتَّكْبِيرِ إِثْرَ كُلِّ صَلَاةٍ: حَسَنٌ؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا ابْنُ أَبِي عُمَرَ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي مَعْبَدٍ مَوْلَى ابْنِ عَبَّاسٍ وَهُوَ جَدُّ عَمْرٍو - قَالَ سَمِعْته يُحَدِّثُ عَنْ ابْنِ عَبَّاسٍ قَالَ " مَا كُنَّا نَعْرِفُ انْقِضَاءَ صَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا بِالتَّكْبِيرِ "

Ali said: If it is said, "Did Abu Ma'bad forget this hadith and deny it?" We respond: So what of it? 'Amr is the most reliable of trustworthy narrators, and no human is exempt from forgetfulness. The conclusive evidence has been established through the narration of the trustworthy narrator.

قَالَ عَلِيٌّ: فَإِنْ قِيلَ: قَدْ نَسِيَ أَبُو مَعْبَدٍ هَذَا الْحَدِيثَ وَأَنْكَرَهُ؟ قُلْنَا: فَكَانَ مَاذَا؟ عَمْرٌو أَوْثَقُ الثِّقَاتِ، وَالنِّسْيَانُ لَا يَعْرَى مِنْهُ آدَمِيٌّ. وَالْحُجَّةُ قَدْ قَامَتْ بِرِوَايَةِ الثِّقَةِ

A juristic issue concerning the Imam remaining seated in his prayer spot after delivering his salām.

[مَسْأَلَةُ جُلُوسُ الْإِمَامِ فِي مُصَلَّاهُ بَعْدَ سَلَامِهِ]

507 – Issue. The Imam remaining in his prayer place after his concluding salutation is recommended, permissible, and not disliked. If he rises immediately upon giving the salutation, is it still considered recommended? – Abdullah ibn Yusuf narrated to us, from Ahmad ibn Fath, from Abd al-Wahhab ibn Isa, from Ahmad ibn Muhammad, from Ahmad ibn Ali, from Muslim ibn al-Hajjaj, from Abu Kamil Fudayl ibn Husayn al-Jahdari. From Abu Awanah from Hilal ibn Abi Humaid from Abd al-Rahman ibn Abi Layla from al-Bara' ibn Azib, who said: "I attentively observed the prayer with the Messenger of Allah (peace and blessings be upon him) and found his standing, his bowing, his straightening after bowing, his prostration, his sitting between the two prostrations, his prostration, his sitting, and his sitting

٥٠٧ - مَسْأَلَةٌ: وَجُلُوسُ الْإِمَامِ فِي مُصَلَّاهُ بَعْدَ سَلَامِهِ: حَسَنٌ مُبَاحٌ لَا يُكْرَهُ، وَإِنْ قَامَ سَاعَةَ يُسَلِّمُ: فَحَسَنٌ؟ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو كَامِلٍ فُضَيْلُ بْنُ حُسَيْنٍ الْجَحْدَرِيُّ عَنْ أَبِي عَوَانَةَ عَنْ هِلَالِ بْنِ أَبِي حُمَيْدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ «الْبَرَاءِ بْنِ عَازِبٍ قَالَ رَمَقْتُ الصَّلَاةَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَجَدْتُ قِيَامَهُ فَرَكْعَتَهُ فَاعْتِدَالَهُ بَعْدَ رُكُوعِهِ، فَسَجْدَتَهُ، فَجِلْسَتَهُ بَيْنَ السَّجْدَتَيْنِ، فَسَجْدَتَهُ، فَجِلْسَتَهُ،

between the *taslim* (salutation of peace) and departing to be nearly equal in length." Abdullah ibn Rabee narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Muhammad ibn Salamah narrated to us: Ibn Wahb narrated to us from Yunus ibn Zayd, who said: Ibn Shihab informed me: "Hind al-Firasiyyah informed me that Umm Salamah, the Mother of the Believers, informed her that when the women concluded the prayer with the *taslim*, they would stand up immediately, while the Messenger of Allah (peace and blessings be upon him) and the men who prayed remained seated for as long as Allah willed. When the Messenger of Allah (peace and blessings be upon him) rose, the men would then rise."

وَجِلْسَتُهُ مَا بَيْنَ التَّسْلِيمِ وَالِانْصِرَافِ قَرِيبًا مِنْ السَّوَاءِ.» حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ سَلَمَةَ ثنا ابْنُ وَهْبٍ عَنْ يُونُسَ بْنِ زَيْدٍ قَالَ ابْنُ شِهَابٍ: أَخْبَرَتْنِي هِنْدٌ الْفِرَاسِيَّةُ «أَنَّ أُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ أَخْبَرَتْهَا أَنَّ النِّسَاءَ كُنَّ إذَا سَلَّمْنَ مِنْ الصَّلَاةِ قُمْنَ، وَثَبَتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَنْ صَلَّى مِنْ الرِّجَالِ مَا شَاءَ اللَّهُ، فَإِذَا قَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَامَ الرِّجَالُ»

L7929 Numerous authenticated reports supported by chains of transmission indicate this, through the chain reaching Aḥmad ibn Shuʿayb: From Yaʿqūb ibn Ibrāhīm, who said: Yaḥyā ibn Saʿīd al-Qaṭṭān reported to us from Sufyān al-Thawrī; Yaʿlā ibn ʿAṭāʾ reported to me from Jābir ibn Yazīd ibn al-Aswad from his father: "He prayed the dawn prayer with the Messenger of Allah – may Allah bless him and grant him peace. When he prayed, he turned away."

وَقَدْ صَحَّتْ أَخْبَارٌ كَثِيرَةٌ مُسْنَدَةٌ تَدُلُّ عَلَى هَذَا وَبِهِ إلَى أَحْمَدَ بْنِ شُعَيْبٍ: أَنَا يَعْقُوبُ بْنُ إبْرَاهِيمَ ثنا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانِ عَنْ سُفْيَانَ الثَّوْرِيِّ حَدَّثَنِي يَعْلَى بْنُ عَطَاءٍ «عَنْ جَابِرِ بْنِ يَزِيدَ بْنِ الْأَسْوَدِ عَنْ أَبِيهِ أَنَّهُ صَلَّى مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الصُّبْحَ، فَلَمَّا صَلَّى انْحَرَفَ»

L7930 Ali said: Both practices are transmitted from the Salaf—it has been narrated to us that Abū Bakr al-Ṣiddīq (may Allah be pleased with him), when he concluded the salām, would behave as if he were standing on hot coals until he stood up. Contrary to that, it has been narrated from Ibn Masʿūd that he was asked about a man praying the obligatory prayer: "May he perform voluntary prayers in the same spot?" He replied, "Yes," and he made no distinction between an imam and a non-imam.

قَالَ عَلِيٌّ: وَكِلَا الْأَمْرَيْنِ مَأْثُورٌ عَنْ السَّلَفِ -: رُوِّينَا عَنْ أَبِي بَكْرٍ الصِّدِّيقِ - رَضِيَ اللَّهُ عَنْهُ -: أَنَّهُ كَانَ إذَا سَلَّمَ كَأَنَّهُ عَلَى الرَّضْفِ حَتَّى يَقُومَ وَرُوِّينَا خِلَافَ ذَلِكَ عَنْ ابْنِ مَسْعُودٍ: أَنَّهُ سُئِلَ عَنْ الرَّجُلِ يُصَلِّي الْمَكْتُوبَةَ: أَيَتَطَوَّعُ فِي مَكَانِهِ؟ قَالَ: نَعَمْ، وَلَمْ يُفَرِّقْ بَيْنَ إمَامٍ وَغَيْرِ إمَامٍ؟ .

L7931 And from Sufyan al-Thawri from 'Ubayd Allah ibn 'Umar from Nafi' from Ibn 'Umar that he would lead them in prayer, then perform supererogatory prayers in the same place.

وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ يَؤُمُّهُمْ ثُمَّ يَتَطَوَّعُ فِي مَكَانِهِ

L7932 From Ibn Jurayj, from ʿAṭāʾ, who said: "Was the Imam in the habit of sitting after he gave the salutation?" And from Ibrāhīm ibn Maysarah: Ṭāwūs was asked, "Should a man move from his place after performing the prescribed

وَعَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: قَدْ كَانَ يَجْلِسُ الْإِمَامُ بَعْدَمَا يُسَلِّمُ؟ وَعَنْ إبْرَاهِيمَ بْنِ مَيْسَرَةَ، قِيلَ لِطَاوُسٍ: أَيَتَحَوَّلُ الرَّجُلُ إذَا صَلَّى الْمَكْتُوبَةَ مِنْ مَكَانِهِ لِيَتَطَوَّعَ؟ فَقَالَ: {أَتُعَلِّمُونَ اللَّهَ بِدِينِكُمْ} [الحجرات: ١٦]

prayer to offer supererogatory prayers?" He replied, "Are you teaching Allah about your religion?" [al-Hujurat 49:16].[60]

L7933 **Issue: Someone found the imam sitting at the end of his prayer.**

L7934–7936 508 - Issue: Whoever finds the Imam sitting at the end of his prayer before uttering the *Taslim*, it is obligatory upon him to join him - whether he hopes to catch the prayer from its beginning in a different mosque or not. If he finds the Imam has already uttered the *Taslim*, then if he hopes to catch any portion of the congregational prayer in another mosque without hardship in... His intention being present, the obligation upon him is to undertake it.

L7937 And is it not permissible to hasten to prayer even if one knows it has already begun? Abd al-Rahman ibn Abd Allah ibn Khalid narrated from Ibrahim ibn Ahmad, who narrated from al-Farabri, who narrated from al-Bukhari, who narrated from Abu Nu'aym (al-Fadl ibn Dukayn), who narrated from Shayban, who narrated from Yahya (Ibn Abi Kathir), who narrated from Abdullah ibn Abi Qatadah, who narrated from his father, who said: "While we were praying with the Messenger of Allah (peace be upon him), he heard the commotion of people. When he concluded the prayer, he asked: 'What is your situation?' They replied: 'We hurried to join the prayer.' He said: 'Do not do so. When you come to prayer, you must remain calm. Pray what you catch up with and complete what you miss.'"

L7938 And from him to Al-Bukhari: Adam narrated to us, Ibn Abi Dhi'b narrated to us, Al-Zuhri narrated to me from Sa'id ibn Al-Musayyib from Abu Hurayrah from the Prophet (peace and blessings of Allah be upon him) who said: "When you hear the iqamah, walk to the prayer with calmness and dignity. Pray whatever you catch up with, and complete whatever you miss."

L7939 This is a general principle regarding whatever portion of the prayer one catches, whether little or much. These two narrations are additional to the report stating: "Whoever catches one rak'ah of the prayer with the Imam has

[60] **Qur'an references (L7932):** Qur'an 49:16 (Al-Hujurat).

[مَسْأَلَةٌ وَجَدَ الْإِمَامَ جَالِسًا فِي آخِرِ صَلَاتِهِ]

٥٠٨ - مَسْأَلَةٌ: وَمَنْ وَجَدَ الْإِمَامَ جَالِسًا فِي آخِرِ صَلَاتِهِ قَبْلَ أَنْ يُسَلِّمَ فَفَرْضٌ عَلَيْهِ أَنْ يَدْخُلَ مَعَهُ، سَوَاءٌ طَمِعَ بِإِدْرَاكِ الصَّلَاةِ مِنْ أَوَّلِهَا فِي مَسْجِدٍ آخَرَ أَوْ لَمْ يَطْمَعْ، فَإِنْ وَجَدَهُ قَدْ سَلَّمَ، فَإِنْ طَمِعَ بِإِدْرَاكِ شَيْءٍ مِنْ صَلَاةِ الْجَمَاعَةِ فِي مَسْجِدٍ آخَرَ لَا مَشَقَّةَ فِي قَصْدِهِ فَفَرْضٌ عَلَيْهِ النُّهُوضُ إلَيْهِ.

وَلَا يَجُوزُ الْإِسْرَاعُ إلَى الصَّلَاةِ وَإِنْ عَلِمَ أَنَّهَا قَدْ ابْتُدِئَتْ؟ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَبُو نُعَيْمٍ هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - ثنا شَيْبَانُ عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ عَنْ أَبِيهِ قَالَ: «بَيْنَمَا نَحْنُ نُصَلِّي مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ سَمِعَ جَلَبَةَ رِجَالٍ، فَلَمَّا صَلَّى قَالَ: مَا شَأْنُكُمْ؟ قَالُوا: اسْتَعْجَلْنَا إلَى الصَّلَاةِ قَالَ: فَلَا تَفْعَلُوا، إذَا أَتَيْتُمْ الصَّلَاةَ فَعَلَيْكُمْ السَّكِينَةُ فَمَا أَدْرَكْتُمْ فَصَلُّوا، وَمَا فَاتَكُمْ فَأَتِمُّوا» .

وَبِهِ إلَى الْبُخَارِيِّ: ثنا آدَم ثنا ابْنُ أَبِي ذِئْبٍ حَدَّثَنِي الزُّهْرِيُّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا سَمِعْتُمْ الْإِقَامَةَ فَامْشُوا إلَى الصَّلَاةِ وَعَلَيْكُمْ السَّكِينَةُ وَالْوَقَارُ فَمَا أَدْرَكْتُمْ فَصَلُّوا، وَمَا فَاتَكُمْ فَأَتِمُّوا»

indeed attained the prayer." It is impermissible to disregard acting upon the addition.

فَهَذَا عُمُومٌ لِمَا أَدْرَكَهُ الْمَرْءُ مِنْ الصَّلَاةِ، قَلَّ أَمْ كَثُرَ، وَهَذَانِ الْخَبَرَانِ زَائِدَانِ عَلَى الْخَبَرِ الَّذِي فِيهِ «مَنْ أَدْرَكَ مِنْ الصَّلَاةِ مَعَ الْإِمَامِ رَكْعَةً فَقَدْ أَدْرَكَ الصَّلَاةَ» وَلَا يَحِلُّ تَرْكُ الْأَخْذِ بِالزِّيَادَةِ.

L7940 It has been narrated from Ibn Mas'ud that he encountered a group sitting during the final part of their prayer, so he asked: "Have you caught up [with the prayer], if Allah wills?" From Shaqīq ibn Salamah: "Whoever catches the *Tashahhud* has caught the prayer." Al-Hasan said: "If one encounters them in prostration, he prostrates with them." From Ibn Jurayj: I asked 'Aṭā': "If someone hears the *iqāmah* or *adhān* while performing an obligatory prayer, should he stop his prayer to join the congregation?" He replied: "If he believes he can catch part of the obligatory prayer, then yes." From Sa'īd ibn Jubayr: He came to a people who had already prayed, then heard a *mu'adhin* and went out toward him.

وَرُوِّينَا عَنْ ابْنِ مَسْعُودٍ: أَنَّهُ أَدْرَكَ قَوْمًا جُلُوسًا فِي آخِرِ صَلَاتِهِمْ فَقَالَ: أَدْرَكْتُمْ إنْ شَاءَ اللَّهُ؟ وَعَنْ شَقِيقِ بْنِ سَلَمَةَ: مَنْ أَدْرَكَ التَّشَهُّدَ فَقَدْ أَدْرَكَ الصَّلَاةَ وَعَنْ الْحَسَنِ قَالَ: إذَا أَدْرَكَهُمْ سُجُودًا سَجَدَ مَعَهُمْ وَعَنْ ابْنِ جُرَيْجٍ، قُلْت لِعَطَاءٍ: إنْ سَمِعَ الْإِقَامَةَ أَوْ الْأَذَانَ وَهُوَ يُصَلِّي الْمَكْتُوبَةَ أَيَقْطَعُ صَلَاتَهُ وَيَأْتِي الْجَمَاعَةَ؟ قَالَ: إنْ ظَنَّ أَنَّهُ يُدْرِكُ مِنْ الْمَكْتُوبَةِ شَيْئًا فَنَعَمْ؟ وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ: أَنَّهُ جَاءَ قَوْمًا فَوَجَدَهُمْ قَدْ صَلَّوْا، فَسَمِعَ مُؤَذِّنًا فَخَرَجَ إلَيْهِ؟

L7941–7942 It has been narrated to us that Al-Aswad ibn Yazid also did the same. From Ibn Jurayj, from 'Ata', from Abu Hurayrah: "When one of you proceeds to prayer, let him walk with measured steps, for he is in a state of prayer. Whatever part of the prayer he catches, let him pray it, and whatever he misses, let him make it up afterward." 'Ata' said, "Indeed, I practice this myself." From Thabit al-Bunani, who said: "The prayer was called while Anas ibn Malik had his hand on my shoulder, walking with shortened strides. We reached the mosque having missed one rak'ah. We prayed with the Imam and made up what we had missed. Anas said to me, 'O Thabit, did my action distress you?' I replied, 'Yes.' He said, 'My brother Zayd ibn Thabit did the same to me.'" From Abu Dharr: "Whoever sets out to attend the prayer, and the iqamah is called while he is en route, let him neither rush nor go faster than his initial pace. Whatever part of the prayer he catches, let him pray with the Imam, and whatever he misses, let him make it up afterward."

وَرُوِّينَا: أَنَّ الْأَسْوَدَ بْنَ يَزِيدَ فَعَلَهُ أَيْضًا وَعَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ أَبِي هُرَيْرَةَ: إذَا كَانَ أَحَدُكُمْ مُقْبِلًا إلَى صَلَاةٍ فَلْيَمْشِ عَلَى رِسْلِهِ فَإِنَّهُ فِي صَلَاةٍ، فَمَا أَدْرَكَ فَلْيُصَلِّ، وَمَا فَاتَهُ فَلْيَقْضِهِ بَعْدُ، قَالَ عَطَاءٌ وَإِنِّي لَأَصْنَعُهُ وَعَنْ ثَابِتٍ الْبُنَانِيِّ قَالَ: أُقِيمَتْ الصَّلَاةُ وَأَنَسُ بْنُ مَالِكٍ وَاضِعٌ يَدَهُ عَلَيَّ فَجَعَلَ يُقَارِبُ بَيْنَ الْخُطَا، فَانْتَهَيْنَا إلَى الْمَسْجِدِ وَقَدْ سُبِقْنَا بِرَكْعَةٍ، فَصَلَّيْنَا مَعَ الْإِمَامِ وَقَضَيْنَا مَا فَاتَنَا، فَقَالَ لِي أَنَسٌ: يَا ثَابِتُ أَغَمَّك مَا صَنَعْتُ بِك؟ قُلْت: نَعَمْ، قَالَ: صَنَعَهُ بِي أَخِي زَيْدُ بْنُ ثَابِتٍ وَعَنْ أَبِي ذَرٍّ: مَنْ أَقْبَلَ لِيَشْهَدَ الصَّلَاةَ فَأُقِيمَتْ وَهُوَ فِي الطَّرِيقِ فَلَا يُسْرِعُ وَلَا يَزِدْ عَلَى مِشْيَتِهِ الْأُولَى، فَمَا أَدْرَكَ فَلْيُصَلِّ مَعَ الْإِمَامِ، وَمَا لَمْ يُدْرِكْ فَلْيُتِمَّهُ؟ .

L7943 Sufyan ibn Ziyad reported that Al-Zubayr encountered him while he was hastening to the mosque. Al-Zubayr said to him: "Moderate your pace, for you are engaged in prayer. Do you not take a single step except that Allah

elevates you thereby a degree or erases through it a sin?" Ali mentioned the narration of a man who arrived breathless from exertion and declared: "Allah is the Greatest in greatness."

وَعَنْ سُفْيَانَ بْنَ زِيَادٍ أَنَّ الزُّبَيْرَ أَدْرَكَهُ وَهُوَ يُعَجِّلُ إِلَى الْمَسْجِدِ، فَقَالَ لَهُ الزُّبَيْرُ: أَقْصِدْ، فَإِنَّك فِي صَلَاةٍ، لَا تَخْطُو خُطْوَةً إِلَّا رَفَعَك اللَّهُ بِهَا دَرَجَةً أَوْ حَطَّ عَنْك بِهَا خَطِيئَةً؟ قَالَ عَلِيٌّ: وَحَدِيثُ الَّذِي جَاءَ وَقَدْ حَفَزَهُ النَّفَسُ، فَقَالَ " اللَّهُ أَكْبَرُ كَبِيرًا ".

L7944 And the hadith of Abu Bakrah: Does it also contain the prohibition against rushing in both of them?

وَحَدِيثُ أَبِي بَكْرَةَ -: فِيهِمَا النَّهْيُ عَنْ الْإِسْرَاعِ أَيْضًا؟

[مَسْأَلَةٌ يُسْتَحَبُّ لِكُلِّ مُصَلٍّ أَنْ يَنْصَرِفَ عَنْ يَمِينِهِ]

L7945 **Issue: It is recommended for every worshiper to turn to their right.**

L7946 509 – Issue: It is recommended for every worshipper to turn to their right when concluding the prayer. If they turn to their left, it is permissible, with neither sin nor reprehensibility in that? ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid narrated to us: Ibrāhīm ibn Aḥmad narrated to us: al-Farbarī narrated to us: al-Bukhārī narrated to us: Ḥafṣ ibn ʿUmar narrated to us: Shuʿbah informed me, reporting that Ashʿath ibn Sulaym heard his father relay from Masrūq, from ʿĀ'ishah, who said: "Allah's Messenger (peace be upon him) liked starting with the right when donning his sandals, combing his hair, and in all his affairs."

٥٠٩ - مَسْأَلَةٌ: وَيُسْتَحَبُّ لِكُلِّ مُصَلٍّ أَنْ يَنْصَرِفَ عَنْ يَمِينِهِ فَإِنْ انْصَرَفَ عَنْ شِمَالِهِ: فَمُبَاحٌ، لَا حَرَجَ فِي ذَلِكَ وَلَا كَرَاهَةَ؟ حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ، ثنا الْبُخَارِيُّ ثنا حَفْصُ بْنُ عُمَرَ ثنا شُعْبَةُ أَخْبَرَنِي أَشْعَثُ بْنُ سُلَيْمٍ سَمِعْت أَبِي عَنْ مَسْرُوقٍ عَنْ عَائِشَةَ قَالَتْ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُعْجِبُهُ التَّيَمُّنُ فِي تَنَعُّلِهِ وَتَرَجُّلِهِ، وَفِي شَأْنِهِ كُلِّهِ» .

L7947–7949 And it has been narrated to us from Al-Ḥajjāj ibn al-Minhāl from Abū ʿAwānah that Al-Suddī reported: I asked Anas ibn Mālik, "How should I turn away when I finish praying?" He said, "As for me, I saw the Messenger of Allah – peace and blessings be upon him – turn away to his right." From Al-Hajjaj ibn Al-Minhal, from Abu Awanah, from Al-A'mash, from Umarah ibn Umayr, from Al-Aswad ibn Yazid, from Ibn Mas'ud: "I saw the Messenger of Allah—may Allah bless him and grant him peace—most often turn to depart from his left side." Umarah said: "I saw the chamber of the Messenger of Allah—may Allah bless him and grant him peace—to the left of the qiblah."

وَرُوِّينَا عَنْ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ أَبِي عَوَانَةَ عَنْ السُّدِّيِّ: سَأَلْت أَنَسَ بْنَ مَالِكٍ: كَيْفَ أَنْصَرِفُ إذَا صَلَّيْت؟ قَالَ: «أَمَّا أَنَا فَرَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْصَرِفُ عَلَى يَمِينِهِ» وَعَنْ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ أَبِي عَوَانَةَ عَنْ الْأَعْمَشِ عَنْ عُمَارَةَ بْنِ عُمَيْرٍ عَنْ الْأَسْوَدِ بْنِ يَزِيدَ «عَنْ ابْنِ مَسْعُودٍ رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَكْثَرَ مَا يَنْصَرِفُ عَنْ يَسَارِهِ، قَالَ عُمَارَةُ: فَرَأَيْتُ حِجْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ يَسَارِ الْقِبْلَةِ.»

[مَسْأَلَةٌ وَجَدَ الْإِمَامَ رَاكِعًا أَوْ سَاجِدًا]

L7950 **A case of finding the Imam in rukūʿ (bowing) or sujūd (prostrating).**

L7951 Issue 510: If someone finds the imam bowing, prostrating, or sitting, it is absolutely impermissible for them to pronounce the *takbīr* while standing. Instead, they must pronounce the *takbīr* without exception in the same posture in which they find their imam—two *takbīrs* are obligatory without exception: one for initiating the prayer, and the second for the posture in which they are present.

L7952 Based on the statement of the Messenger of Allah—may Allah bless him and grant him peace—"The imam is appointed solely to be followed."

L7953 And due to his saying - peace be upon him -: "Pray what you catch up with and complete what you miss." He (peace be upon him) commanded following the imam, and following him means that a person does not contradict him in all his actions. Whoever says the Takbīr while standing when the imam is not standing has failed to follow him, thus praying in a manner contrary to what was commanded. It is impermissible to make up missed standing or other acts except after the completion of the imam's prayer, not before that. Success is from Allah, the Exalted.

[The Prayer of the Traveler] [Issue: The Fajr prayer always consists of two rak'ahs, whether during travel or residence.]

L7954–7955

L7956 Issue: The Dawn Prayer [Fajr] consists of two rak'ahs during travel and when settled—always—and similarly in times of fear.

L7957 The Maghrib prayer remains three *rakʿahs* at all times—whether one is settled, traveling, or in a state of danger.

L7958 The number of rak'ahs does not differ except in Dhuhr, Asr, and Isha (al-ʿAtamah). Each consists of four rak'ahs when resident for the healthy and the sick. They are two rak'ahs during travel and one rak'ah in fearful circumstances.

L7959 All of this is a certain consensus, except that these prayers are one rakʿah in the state of fear, regarding which there is a difference of opinion.

L7960 512. Issue:

٥١٠ - مَسْأَلَةٌ: وَمَنْ وَجَدَ الْإِمَامَ رَاكِعًا أَوْ سَاجِدًا أَوْ جَالِسًا فَلَا يَجُوزُ أَلْبَتَّةَ أَنْ يُكَبِّرَ قَائِمًا، لَكِنْ يُكَبِّرُ وَهُوَ فِي الْحَالِ الَّتِي يَجِدُ إمَامَهُ عَلَيْهَا وَلَا بُدَّ، تَكْبِيرَتَيْنِ وَلَا بُدَّ، إحْدَاهُمَا لِلْإِحْرَامِ بِالصَّلَاةِ، وَالثَّانِيَةِ لِلْحَالِ الَّتِي هُوَ فِيهَا.

لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّمَا جُعِلَ الْإِمَامُ لِيُؤْتَمَّ بِهِ» .

وَلِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «مَا أَدْرَكْتُمْ فَصَلُّوا وَمَا فَاتَكُمْ فَأَتِمُّوا.» فَأَمَرَ - عَلَيْهِ السَّلَامُ - بِالِائْتِمَامِ بِالْإِمَامِ، وَالِائْتِمَامُ بِهِ: هُوَ أَنْ لَا يُخَالِفَهُ الْإِنْسَانُ فِي جَمِيعِ عَمَلِهِ، وَمَنْ كَبَّرَ قَائِمًا وَالْإِمَامُ غَيْرُ قَائِمٍ فَلَمْ يَأْتَمَّ بِهِ، فَقَدْ صَلَّى بِخِلَافِ مَا أُمِرَ وَلَا يَجُوزُ أَنْ يَقْضِيَ مَا فَاتَهُ مِنْ قِيَامٍ أَوْ غَيْرِهِ إلَّا بَعْدَ تَمَامِ صَلَاةِ الْإِمَامِ لَا قَبْلَ ذَلِكَ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[صَلَاةُ الْمُسَافِرِ] [مَسْأَلَةٌ صَلَاةُ الصُّبْحِ رَكْعَتَانِ فِي السَّفَرِ وَالْحَضَرِ أَبَدًا]

مَسْأَلَةٌ: صَلَاةُ الصُّبْحِ رَكْعَتَانِ فِي السَّفَرِ وَالْحَضَرِ أَبَدًا، وَفِي الْخَوْفِ كَذَلِكَ.

وَصَلَاةُ الْمَغْرِبِ ثَلَاثُ رَكَعَاتٍ فِي الْحَضَرِ، وَالسَّفَرِ، وَالْخَوْفِ أَبَدًا.

وَلَا يَخْتَلِفُ عَدَدُ الرَّكَعَاتِ إلَّا فِي الظُّهْرِ وَالْعَصْرِ وَالْعَتَمَةِ، فَإِنَّهَا أَرْبَعُ رَكَعَاتٍ فِي الْحَضَرِ لِلصَّحِيحِ، وَالْمَرِيضِ، وَرَكْعَتَانِ فِي السَّفَرِ، وَفِي الْخَوْفِ رَكْعَةٌ.

كُلُّ هَذَا إجْمَاعٌ مُتَيَقَّنٌ، إلَّا كَوْنُ هَذِهِ الصَّلَوَاتِ رَكْعَةً فِي الْخَوْفِ فَفِيهِ خِلَافٌ.

٥١٢ - مَسْأَلَةٌ:

وَكَوْنُ الصَّلَوَاتِ الْمَذْكُورَةِ فِي السَّفَرِ رَكْعَتَيْنِ فَرْضٌ - سَوَاءٌ كَانَ سَفَرَ طَاعَةٍ أَوْ مَعْصِيَةٍ، أَوْ لَا طَاعَةَ وَلَا مَعْصِيَةَ، أَمْنًا كَانَ أَوْ خَوْفًا - فَمَنْ أَتَمَّهَا أَرْبَعًا عَامِدًا، فَإِنْ كَانَ عَالِمًا بِأَنَّ ذَلِكَ لَا يَجُوزُ بَطَلَتْ صَلَاتُهُ، وَإِنْ كَانَ سَاهِيًا سَجَدَ لِلسَّهْوِ بَعْدَ السَّلَامِ فَقَطْ

L7961 The fact that the prescribed prayers during travel are shortened to two rak'ahs is an obligation—whether the journey is for obedience, disobedience, neither obedience nor disobedience, in security or in fear. Whoever intentionally prays them as four rak'ahs: if they are aware that this is impermissible, their prayer becomes invalid. If they did so forgetfully, they must perform the prostration for forgetfulness only after the salām.

وَأَمَّا قَصْرُ كُلِّ صَلَاةٍ مِنْ الصَّلَوَاتِ الْمَذْكُورَةِ إلَى رَكْعَةٍ فِي الْخَوْفِ فِي السَّفَرِ فَمُبَاحٌ، مَنْ صَلَّاهَا رَكْعَتَيْنِ: فَحَسَنٌ، وَمَنْ صَلَّاهَا رَكْعَةً: فَحَسَنٌ؟ وَقَالَ أَبُو حَنِيفَةَ: قَصْرُ الصَّلَاةِ فِي كُلِّ سَفَرِ طَاعَةٍ أَوْ مَعْصِيَةٍ فَرْضٌ، فَمَنْ أَتَمَّهَا فَإِنْ لَمْ يَقْعُدْ بَعْدَ الِاثْنَتَيْنِ مِقْدَارَ التَّشَهُّدِ بَطَلَتْ صَلَاتُهُ، وَأَعَادَ أَبَدًا؟ وَقَالَ مَالِكٌ: مَنْ أَتَمَّ فِي السَّفَرِ، فَعَلَيْهِ الْإِعَادَةُ فِي الْوَقْتِ؟ وَقَالَ الشَّافِعِيُّ: الْقَصْرُ مُبَاحٌ، وَمَنْ شَاءَ أَتَمَّ؟ وَلَا قَصْرَ عِنْدَ مَالِكٍ، وَالشَّافِعِيِّ إلَّا فِي سَفَرٍ مُبَاحٍ فَقَطْ وَلَمْ يَرَ أَبُو حَنِيفَةَ، وَلَا مَالِكٌ، وَلَا الشَّافِعِيُّ: الْقَصْرَ فِي الْخَوْفِ إلَى رَكْعَةٍ أَصْلًا، لَكِنْ رَكْعَتَانِ فَقَطْ؟ بُرْهَانُ صِحَّةِ قَوْلِنَا -: مَا حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُسَدَّدٌ ثنا يَزِيدُ بْنُ زُرَيْعٍ ثنا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ، قَالَتْ: «فُرِضَتْ الصَّلَاةُ رَكْعَتَيْنِ، ثُمَّ هَاجَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَفُرِضَتْ أَرْبَعًا، وَتُرِكَتْ صَلَاةُ السَّفَرِ عَلَى الْأُولَى» .

L7962–7964 As for shortening each prayer from the mentioned prayers to one rak'ah during travel in a state of fear, it is permissible. Whoever prays them as two rak'ahs, that is commendable, and whoever prays them as one rak'ah, that is also commendable. Abu Hanifa said: Shortening the prayer in every journey—whether for obedience or sin—is obligatory. Whoever completes them, if he does not sit after the two rak'ahs for the duration of the Tashahhud, his prayer is invalid, and he must repeat it perpetually. Malik said: Whoever completes the prayer during travel must repeat it within the prayer's designated time. Al-Shafi'i said: Shortening is permissible, and whoever wishes may complete the prayer. According to Malik and Al-Shafi'i, there is no shortening except only in permissible travel. Abu Hanifah, Malik, and al-Shafi'i did not hold the view of shortening prayer to a single rak'ah during times of fear whatsoever; rather, it remains strictly two rak'ahs. The evidence for the validity of our position is what was narrated to us by Abd al-Rahman ibn Abdullah—from Ibrahim ibn Ahmad, from al-Farbari, from al-Bukhari, from Musaddad, from Yazid ibn Zurai', from Ma'mar, from al-Zuhri, from Urwah, from Aisha, who said: "Prayer was initially prescribed as two rak'ahs. Then when the Messenger of Allah—peace and blessings be upon him—emigrated, it was prescribed as four rak'ahs, while the prayer during travel remained as originally established."

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ.

L7965 We have also narrated it through the chain of transmission of Sufyan ibn ʿUyaynah, from al-Zuhri, from ʿUrwah.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ صَالِحِ بْنِ كَيْسَانَ عَنْ عُرْوَةَ عَنْ عَائِشَةَ.

L7966 From the chain of Mālik, from Ṣāliḥ ibn Kaysan, from ʿUrwah, from ʿĀ'ishah.

L7967 And through the chain of Hishām ibn ʿUrwah from his father from her: ʿAbdullāh ibn Rabīʿ narrated to us, Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us, Muḥammad ibn Rāfiʿ narrated to us,

Muḥammad ibn Bishr narrated to us, Yazīd ibn Ziyād ibn Abī al-Jaʿd narrated to us from Zubayd al-Yāmī from ʿAbd al-Raḥmān ibn Abī Laylā from Kaʿb ibn ʿUjrah, who said: ʿUmar ibn al-Khaṭṭāb said, "The Eid al-Adhā prayer is two rakʿahs, the Eid al-Fiṭr prayer is two rakʿahs, the Friday prayer is two rakʿahs, and the traveler's prayer is two rakʿahs: complete, not shortened, as stated by your Prophet, peace and blessings be upon him. Whoever fabricates lies has surely failed."

وَمِنْ طَرِيقِ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْهَا -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا مُحَمَّدُ بْنُ رَافِعٍ ثنا مُحَمَّدُ بْنُ بِشْرٍ ثنا يَزِيدُ بْنُ زِيَادِ بْنِ أَبِي الْجَعْدِ عَنْ زُبَيْدٍ الْيَامِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ كَعْبِ بْنِ عُجْرَةَ، قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ «صَلَاةُ الْأَضْحَى رَكْعَتَانِ، وَصَلَاةُ الْفِطْرِ رَكْعَتَانِ، وَصَلَاةُ الْجُمُعَةِ رَكْعَتَانِ، وَصَلَاةُ الْمُسَافِرِ رَكْعَتَانِ، تَمَامٌ غَيْرُ قَصْرٍ، عَلَى لِسَانِ نَبِيِّكُمْ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ خَابَ مَنْ افْتَرَى» .

L7968 Hammam narrated to us, Abbas ibn Asbagh narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, Abu Yahya Zakariyya ibn Yahya an-Naqid narrated to us, Muhammad ibn al-Sabah al-Jarjaraʾi narrated to us, Abdullah ibn Rajaʾ narrated to us, Hisham ad-Dastuwaʾi narrated from Ayyub as-Sikhtiyani from Nafiʿ from Ibn Umar, who said: The Messenger of Allah (peace and blessings be upon him) said: "The prayer while traveling consists of two rakʿahs. Whoever abandons the Sunnah has rejected the Sunnah."

حَدَّثَنَا حُمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَبُو يَحْيَى زَكَرِيَّا بْنُ يَحْيَى النَّاقِدُ ثنا مُحَمَّدُ بْنُ الصَّبَّاحِ الْجَرْجَرَائِيُّ ثنا عَبْدُ اللَّهِ بْنُ رَجَاءٍ ثنا هِشَامُ الدَّسْتُوَائِيُّ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «صَلَاةُ السَّفَرِ رَكْعَتَانِ مَنْ تَرَكَ السُّنَّةَ فَقَدْ كَفَرَ» .

L7969–7970 This has also been narrated to us from the words of Ibn Umar.

وَقَدْ رُوِّينَا هَذَا أَيْضًا مِنْ كَلَامِ ابْنِ عُمَرَ.

L7971 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Abu Kurayb and Ishaq ibn Ibrahim narrated to us from Abdullah ibn Idris from Ibn Jurayj from Abdul Rahman ibn Abdullah ibn Abi Ammar from Abdullah ibn Babah from Ya'la ibn Umayyah: "I said to Umar ibn al-Khattab, 'There is no blame upon you if you shorten [part] from the prayer when you fear those who disbelieve may tempt you' [al-Nisa': 101], but now that people are secure?" He replied, "I was perplexed by the same matter as you, so I asked the Messenger of Allah, peace and blessings be upon him, about it. He said, 'It is a charity Allah has granted you, so accept His charity.'"[61]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو كُرَيْبٍ وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ عَنْ عَبْدِ اللَّهِ بْنِ إِدْرِيسَ عَنِ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي عَمَّارٍ عَنْ عَبْدِ اللَّهِ بْنِ بَابَاهُ عَنْ يَعْلَى بْنِ أُمَيَّةَ «قُلْتُ لِعُمَرَ بْنِ الْخَطَّابِ {فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَقْصُرُوا مِنَ الصَّلَاةِ إِنْ خِفْتُمْ أَنْ يَفْتِنَكُمُ الَّذِينَ كَفَرُوا} [النساء: ١٠١] فَقَدْ أَمِنَ النَّاسُ؟ ، قَالَ: عَجِبْتُ مِمَّا عَجِبْتَ مِنْهُ فَسَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ؟ فَقَالَ صَدَقَةٌ تَصَدَّقَ اللَّهُ بِهَا عَلَيْكُمْ فَاقْبَلُوا صَدَقَتَهُ» .

[61] **Qur'an references (L7971):** Qur'an 4:101 (An-Nisa).

قَالَ عَلِيٌّ: فَصَحَّ أَنَّ الصَّلَاةَ فَرَضَهَا اللَّهُ تَعَالَى رَكْعَتَيْنِ ثُمَّ بَلَغَهَا فِي الْحَضَرِ بَعْدَ الْهِجْرَةِ أَرْبَعًا، وَأَقَرَّ صَلَاةَ السَّفَرِ عَلَى رَكْعَتَيْنِ.

L7972 Ali said: It was established that Allah, Exalted is He, obligated the prayer as two rak'ahs. Then He extended it to four for residents after the Hijrah, and kept the prayer during travel as two rak'ahs.

وَصَحَّ أَنَّ صَلَاةَ السَّفَرِ: رَكْعَتَانِ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ -، فَإِذْ قَدْ صَحَّ هَذَا فَهِيَ رَكْعَتَانِ لَا يَجُوزُ أَنْ يَتَعَدَّى ذَلِكَ، وَمَنْ تَعَدَّاهُ فَلَمْ يُصَلِّ كَمَا أَمَرَ، فَلَا صَلَاةَ لَهُ، إذَا كَانَ عَالِمًا بِذَلِكَ.

L7973 It has been established that the traveler's prayer consists of two rak'ahs according to the Prophet's statement (peace be upon him). Since this is confirmed, the prayer is two rak'ahs. It is impermissible to exceed this. Whoever exceeds it and fails to pray as commanded - his prayer is invalid if he knowingly disregarded this ruling.

وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - سَفَرًا مِنْ سَفَرٍ، بَلْ عَمَّ، فَلَا يَجُوزُ لِأَحَدٍ تَخْصِيصُ ذَلِكَ، وَلَمْ يَجُزْ رَدُّ صَدَقَةِ اللَّهِ تَعَالَى الَّتِي أَمَرَ - عَلَيْهِ السَّلَامُ - بِقَبُولِهَا، فَيَكُونُ مَنْ لَا يَقْبَلُهَا عَاصِيًا

L7974 He (peace be upon him) did not specify one journey over another but spoke generally. Therefore, it is not permissible for anyone to specify that, nor is it permissible to reject the charity of Allah the Exalted - which he (peace be upon him) commanded to be accepted - thus making whoever refuses to accept it a transgressor.

وَاحْتَجَّ مَنْ خَصَّ بَعْضَ الْأَسْفَارِ بِذَلِكَ بِأَنَّ سَفَرَ الْمَعْصِيَةِ مُحَرَّمٌ، فَلَا حُكْمَ لَهُ؟ فَقُلْنَا: أَمَّا مُحَرَّمٌ فَنَعَمْ، هُوَ مُحَرَّمٌ، وَلَكِنَّهُ سَفَرٌ، فَلَهُ حُكْمُ السَّفَرِ، وَأَنْتُمْ تَقُولُونَ: إنَّهُ مُحَرَّمٌ، ثُمَّ تَجْعَلُونَ فِيهِ التَّيَمُّمَ عِنْدَ عَدَمِ الْمَاءِ، وَتُجِيزُونَ الصَّلَاةَ فِيهِ، وَتَرَوْنَهَا فَرْضًا، فَأَيُّ فَرْقٍ بَيْنَ مَا أَجَزْتُمْ - مِنْ الصَّلَاةِ وَالتَّيَمُّمِ لَهَا - وَبَيْنَ مَا مَنَعْتُمْ مِنْ تَأْدِيَتِهَا رَكْعَتَيْنِ كَمَا فَرَضَ اللَّهُ تَعَالَى فِي السَّفَرِ؟ وَلَا سَبِيلَ إلَى فَرْقٍ؟ وَكَذَلِكَ الزِّنَى مُحَرَّمٌ، وَفِيهِ مِنْ الْغُسْلِ كَالَّذِي فِي الْحَلَالِ، لِأَنَّهُ إجْنَابٌ. وَمُجَاوَزَةُ خِتَانٍ لِخِتَانٍ، فَوَجَبَ فِيهِ حُكْمُ عُمُومِ الْإِجْنَابِ وَمُجَاوَزَةِ الْخِتَانِ لِلْخِتَانِ؟ وَكَمَا قَالُوا فِيمَنْ قَاتَلَ فِي قَطْعِ الطَّرِيقِ فَجُرِحَ جِرَاحَاتٍ مَنَعَتْهُ مِنْ الْقِيَامِ، فَإِنَّ لَهُ مِنْ جَوَازِ الصَّلَاةِ جَالِسًا مَا لِمَنْ قَاتَلَ فِي سَبِيلِ اللَّهِ وَلَا فَرْقَ، لِعُمُومِ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «صَلُّوا قِيَامًا فَمَنْ لَمْ يَسْتَطِعْ فَقَاعِدًا» .

L7975–7977 Those who restrict certain journeys to this ruling argue that travel for sinful purposes is prohibited, thus it should have no legal consideration. We responded: As for it being prohibited, yes, it is prohibited, but it remains a journey, so the rulings of travel apply. You claim it is prohibited, yet you permit tayammum during such travel when water is unavailable, allow prayer therein, and consider it obligatory. What distinction can you draw between permitting prayer and tayammum for it, yet prohibiting its performance as two rak'ahs as Allah Almighty decreed for travel? There is no valid distinction! Similarly, adultery is prohibited, yet it requires the same ritual bathing as lawful intercourse, because it entails janāba. The same applies to exceeding [divinely ordained limits]... A circumcision for a circumcision—does this necessitate applying the ruling governing major ritual impurity and exceeding the limits of circumcision? As they opined regarding one who fought against highway robbery and sustained injuries preventing him from standing: he is granted the same concession to pray seated as one who fought in Allah's cause, with no distinction between them, due to the universal applicability of the Prophet's (peace be upon him) statement: "Pray standing, and whoever cannot, then seated."

L7978 If it is said to us: "You assert that whoever prays while not on the right

path—whether riding, fighting, or walking—has no valid prayer. What then distinguishes this case?" We reply: Indeed, those individuals performed impermissible actions within their prayers, thereby invalidating them. As for the worshiper who prays two units or one unit in their prayer, they did not perform any invalidating actions apart from them. But those you mentioned walked impermissible walks during prayer and fought impermissible fights within it. The utmost astonishment is directed at the Maliki scholars who, having invoked Allah's general rulings regarding travel and the general rulings of the Messenger of Allah—peace and blessings be upon him—regarding travel—{And your Lord is not forgetful} [19:64]—then restricted them with their own opinions, refusing to recognize the shortening of prayers during sinful travel. Yet they approached what Allah specifically designated, where He nullified the general ruling—such as His categorical prohibition of carrion, then stated: {But whoever is compelled by necessity, without willful disobedience or transgression, then your Lord is Forgiving, Merciful} [6:145].[62]

L7979 And His statement: {But whoever is compelled by extreme hunger—without intending to sin—then Allah is truly All-Forgiving, Most Merciful} [Al-Mā'idah: 3]. They claimed through their personal interpretations that consuming carrion and pork is permissible for the compelled person, even if he is actively intending to sin, acting aggressively, persistently transgressing, cutting off roads as a highway robber, lying in wait for groups of Muslims to raid their wealth and shed their blood—and this is truly astounding.[63]

L7980 Some of them cited as proof in this by saying: "It is forbidden for him to kill himself." So we said to them: "Why would he kill himself? Rather, he should now repent from his corrupt intention, and it becomes lawful for him to eat carrion from his time. Is repentance not obligatory for him and inevitable?" Abū Sulaymān and our companions said: "Prayers are not shortened except during Ḥajj, jihad, or ʿUmrah."

L7981–7983 And this is the statement of a group of the predecessors: As narrated to us through the chain of Muhammad ibn Abi Adiyy, from Shuʿbah, from al-

فَإِنْ قِيلَ لَنَا: فَإِنَّكُمْ تَقُولُونَ: مَنْ صَلَّى فِي غَيْرِ سَبِيلِ الْحَقِّ رَاكِبًا أَوْ مُقَاتِلًا أَوْ مَاشِيًا فَلَا صَلَاةَ لَهُ فَمَا الْفَرْقُ؟ قُلْنَا: نَعَمْ، إِنَّ هَؤُلَاءِ فَعَلُوا فِي صَلَاتِهِمْ حَرَكَاتٍ لَا يَحِلُّ لَهُمْ فِعْلُهَا، فَبِذَلِكَ بَطَلَتْ صَلَاتُهُمْ وَلَمْ يَفْعَلْ الْمُصَلِّي رَكْعَتَيْنِ أَوْ رَكْعَةً فِي صَلَاتِهِ شَيْئًا غَيْرَهَا، وَأَمَّا الَّذِينَ ذَكَرْتُمْ فَمَشَوْا مَشْيًا مُحَرَّمًا فِي الصَّلَاةِ، وَقَاتَلُوا فِيهَا قِتَالًا مُحَرَّمًا؟ وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ الْمَالِكِيِّينَ الَّذِينَ أَتَوْا إلَى عُمُومِ اللَّهِ تَعَالَى لِلسَّفَرِ، وَعُمُومِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلسَّفَرِ - {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]- فَخَصُّوهُ بِآرَائِهِمْ وَلَمْ يَرَوْا قَصْرَ الصَّلَاةِ فِي سَفَرِ مَعْصِيَةٍ ثُمَّ أَتَوْا إلَى مَا خَصَّهُ اللَّهُ تَعَالَى وَأَبْطَلَ فِيهِ الْعُمُومَ، مِنْ تَحْرِيمِهِ الْمَيْتَةَ جُمْلَةً، ثُمَّ قَالَ {فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَلا عَادٍ فَإِنَّ رَبَّكَ غَفُورٌ رَحِيمٌ} [الأنعام: ١٤٥] .

وَقَوْلُهُ: {فَمَنِ اضْطُرَّ فِي مَخْمَصَةٍ غَيْرَ مُتَجَانِفٍ لِإِثْمٍ فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ} [المائدة: ٣] : فَقَالُوا بِآرَائِهِمْ: إنَّ أَكْلَ الْمَيْتَةِ، وَالْخِنْزِيرِ: حَلَالٌ لِلْمُضْطَرِّ، وَإِنْ كَانَ مُتَجَانِفًا لِإِثْمٍ، وَبَاغِيًا عَادِيًا قَاطِعًا لِلسَّبِيلِ، مُنْتَظِرًا لِرِفَاقِ الْمُسْلِمِينَ يُغِيرُ عَلَى أَمْوَالِهِمْ وَيَسْفِكُ دِمَاءَهُمْ وَهَذَا عَجَبٌ جِدًّا.

وَاحْتَجَّ بَعْضُهُمْ فِي هَذَا بِأَنْ قَالُوا: حَرَامٌ عَلَيْهِ قَتْلُ نَفْسِهِ فَقُلْنَا لَهُمْ: وَلِمَ يَقْتُلُ نَفْسَهُ؟ بَلْ يَتُوبُ الْآنَ مِنْ نِيَّتِهِ الْفَاسِدَةِ، وَيَحِلُّ لَهُ أَكْلُ الْمَيْتَةِ مِنْ حِينِهِ، وَالتَّوْبَةُ فَرْضٌ عَلَيْهِ وَلَا بُدَّ؟ وَقَالَ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا: لَا تُقْصَرُ الصَّلَاةُ إلَّا فِي حَجٍّ أَوْ جِهَادٍ، أَوْ عُمْرَةٍ.

وَهُوَ قَوْلُ جَمَاعَةٍ مِنْ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ أَبِي عَدِيٍّ ثنا شُعْبَةُ عَنْ الْأَعْمَشِ عَنْ عُمَارَةَ بْنِ عُمَيْرٍ عَنْ الْأَسْوَدِ عَنْ ابْنِ مَسْعُودٍ قَالَ: لَا يَقْصُرُ الصَّلَاةَ إلَّا

[62] **Qur'an references (L7978):** Qur'an 19:64 (Maryam); Qur'an 6:145 (Al-An'am).
[63] **Qur'an references (L7979):** Qur'an 5:3 (Al-Ma'idah).

A‘mash, from ‘Umarah ibn ‘Umayr, from al-Aswad, from Ibn Mas‘ud, who said: “Does no one shorten the prayer except a pilgrim or one engaged in jihad?” From Tawus: He would inquire about shortening the prayer and say: “When we departed as Hajj pilgrims or those performing ‘Umrah, we prayed two rak‘ahs.” From Ibrahim al-Taymi: He held the view that shortening was only permissible during Hajj, ‘Umrah, or jihad. They cited as evidence the statement of Allah the Exalted: {When you travel through the land, there is no blame upon you for shortening the prayers if you fear that those who disbelieve may persecute you} [al-Nisā’ 4:101].[64]

حَاجٌّ، أَوْ مُجَاهِدٌ؟ وَعَنْ طَاوُسٍ: أَنَّهُ كَانَ يَسْأَلُ عَنْ قَصْرِ الصَّلَاةِ؟ فَيَقُولُ: إِذَا خَرَجْنَا حُجَّاجًا أَوْ عُمَّارًا صَلَّيْنَا رَكْعَتَيْنِ وَعَنْ إِبْرَاهِيمَ التَّيْمِيِّ: أَنَّهُ كَانَ لَا يَرَى الْقَصْرَ إِلَّا فِي: حَجٍّ، أَوْ عُمْرَةٍ، أَوْ جِهَادٍ وَاحْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {وَإِذَا ضَرَبْتُمْ فِي الأَرْضِ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَقْصُرُوا مِنَ الصَّلاةِ إِنْ خِفْتُمْ أَنْ يَفْتِنَكُمُ الَّذِينَ كَفَرُوا} [النساء: ١٠١] .

L7984 They said: He (peace and blessings be upon him) did not pray two rak’ahs except during Hajj, Umrah, or jihad. Ali said: If only this verse had been revealed and he (peace be upon him) had acted upon it, their statement would hold. But since it was conveyed through his own words (peace be upon him): “Two rak’ahs during travel,” and he commanded acceptance of Allah’s grant in this matter – does this not constitute an addition to what is in the verse and to his own practice (peace be upon him)? Is it impermissible to abandon adherence to the additional legislation? The Shafi’i scholars argued for their view that the traveler may choose between two or four rak’ahs using this verse, as it states “there is no blame” – phrasing that indicates permissibility rather than obligation. They also cited a narration we transmitted via the chain of Abd al-Rahman ibn al-Aswad: From Aisha that she performed Umrah with the Messenger of Allah (peace and blessings be upon him) from Medina to Mecca. When they arrived in Mecca, she said: “O Messenger of Allah, may my father and mother be ransomed for you! I shortened the prayers and completed them, and I broke my fast and fasted.” He replied: “You have done well, O Aisha.”

وَقَالُوا: لَمْ يُصَلِّ - عَلَيْهِ السَّلَامُ - رَكْعَتَيْنِ إِلَّا فِي: حَجٍّ، أَوْ عُمْرَةٍ أَوْ جِهَادٍ قَالَ عَلِيٌّ: لَوْ لَمْ يَرِدْ إِلَّا هَذِهِ الْآيَةُ وَفَعَلَهُ - عَلَيْهِ السَّلَامُ - لَكَانَ مَا قَالُوا، لَكِنْ لَمَّا وَرَدَ عَلَى لِسَانِهِ - عَلَيْهِ السَّلَامُ -: رَكْعَتَانِ فِي السَّفَرِ، وَأَمَرَ بِقَبُولِ صَدَقَةِ اللَّهِ تَعَالَى بِذَلِكَ -: كَانَ هَذَا زَائِدًا عَلَى مَا فِي الْآيَةِ وَعَلَى عَمَلِهِ - عَلَيْهِ السَّلَامُ -، وَلَا يَحِلُّ تَرْكُ الْأَخْذِ بِالشَّرْعِ الزَّائِدِ؟ وَاحْتَجَّ الشَّافِعِيُّونَ فِي قَوْلِهِمْ: إِنَّ الْمُسَافِرَ مُخَيَّرٌ بَيْنَ رَكْعَتَيْنِ أَوْ أَرْبَعِ رَكَعَاتٍ -: بِهَذِهِ الْآيَةِ، وَأَنَّهَا جَاءَتْ بِلَفْظِ لَا جُنَاحَ وَهَذَا يُوجِبُ الْإِبَاحَةَ لَا الْفَرْضَ؟ وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ «عَنْ عَائِشَةَ أَنَّهَا اعْتَمَرَتْ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ الْمَدِينَةِ إِلَى مَكَّةَ، فَلَمَّا قَدِمَتْ مَكَّةَ قَالَتْ: يَا رَسُولَ اللَّهِ، بِأَبِي أَنْتَ وَأُمِّي قَصَرْتُ وَأَتْمَمْتُ، وَأَفْطَرْتُ وَصُمْتُ قَالَ: أَحْسَنْتِ يَا عَائِشَةُ» .

L7985 And through the narration of ‘Aṭā’ from ‘Ā’ishah: “The Messenger of Allah—may Allah bless him and grant him peace—would travel and complete the prayer and shorten it.”

وَمِنْ طَرِيقِ عَطَاءٍ عَنْ عَائِشَةَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُسَافِرُ فَيُتِمُّ الصَّلَاةَ وَيَقْصُرُ» .

L7986 And that ‘Uthmān performed the complete prayer in Mina in the presence of all the Companions—may Allah be pleased with them—and they performed

وَبِأَنَّ عُثْمَانَ أَتَمَّ الصَّلَاةَ بِمِنًى بِحَضْرَةِ جَمِيعِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَأَتَمُّوهَا مَعَهُ؟ وَبِأَنَّ عَائِشَةَ - وَهِيَ رَوَتْ «فُرِضَتْ الصَّلَاةُ رَكْعَتَيْنِ رَكْعَتَيْنِ» كَانَتْ تُتِمُّ فِي السَّفَرِ.

[64]**Qur’an references (L7981):** Qur’an 4:101 (An-Nisa).

it completely with him. And that ʿĀʾishah—who narrated, "The prayer was ordained as two rakʿahs each"—used to perform the complete prayer during travel.

قَالَ عَلِيٌّ: هَذَا كُلُّ مَا احْتَجُّوا بِهِ، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ -: أَمَّا الْآيَةُ فَإِنَّهَا لَمْ تَنْزِلْ فِي الْقَصْرِ الْمَذْكُورِ، بَلْ فِي غَيْرِهِ عَلَى مَا نُبَيِّنُ بَعْدَ هَذَا، إِنْ شَاءَ اللَّهُ تَعَالَى.

L7987–7989 Ali said: This is all they have cited as evidence, and none of it constitutes proof for them. As for the verse, it was not revealed concerning the aforementioned shortened prayers, but rather concerning another matter, as we shall expound after this, if— Allah the Most High has willed.

وَأَمَّا الْحَدِيثَانِ فَلَا خَيْرَ فِيهِمَا -: أَمَّا الَّذِي مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ فَانْفَرَدَ بِهِ الْعَلَاءُ بْنُ زُهَيْرٍ الْأَزْدِيُّ، لَمْ يَرْوِهِ غَيْرُهُ، وَهُوَ مَجْهُولٌ.

L7990 As for the two ḥadīths, there is no good in them—as for the one transmitted through ʻAbd al-Raḥmān ibn al-Aswad, it was solely narrated by al-ʻAlā' ibn Zuhayr al-Azdī, with no other narrator reporting it, and he is unknown.

وَأَمَّا حَدِيثُ عَطَاءٍ فَانْفَرَدَ بِهِ الْمُغِيرَةُ بْنُ زِيَادٍ، لَمْ يَرْوِهِ غَيْرُهُ، وَقَالَ فِيهِ أَحْمَدُ بْنُ حَنْبَلٍ: هُوَ ضَعِيفٌ، كُلُّ حَدِيثٍ أَسْنَدَهُ فَهُوَ مُنْكَرٌ وَأَمَّا فِعْلُ عُثْمَانَ، وَعَائِشَةَ - رَضِيَ اللَّهُ عَنْهُمَا - فَإِنَّهُمَا تَأَوَّلَا تَأْوِيلًا خَالَفَهُمَا فِيهِ غَيْرُهُمَا مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L7991 As for the ḥadīth of ʻAṭā', it was uniquely narrated by al-Mughīrah ibn Ziyād—no one else transmitted it. Concerning him, Aḥmad ibn Ḥanbal said: "He is weak; every ḥadīth he narrated is rejected." As for the action of ʻUthmān and ʻĀ'ishah—may Allah be pleased with them—they offered an interpretation that other Companions—may Allah be pleased with them—opposed regarding that interpretation.

كَمَا حَدَّثَنَا أَحْمَدُ بْنُ عُمَرَ الْغَدْرِيُّ ثنا أَبُو ذَرٍّ الْهَرَوِيُّ ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَوَيْهِ السَّرَخْسِيُّ ثنا إِبْرَاهِيمُ بْنُ خُزَيْمٍ ثنا عَبْدُ بْنُ حُمَيْدٍ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ - فَذَكَرَ الْخَبَرَ، وَفِيهِ - قَالَ الزُّهْرِيُّ: فَقُلْت لِعُرْوَةَ: فَمَا كَانَ عَمَلُ عَائِشَةَ - فَذَكَرَ الْخَبَرَ، وَفِيهِ - قَالَ الزُّهْرِيُّ: فَقُلْت لِعُرْوَةَ: فَمَا كَانَ عَمَلُ عَائِشَةَ أَنْ تُتِمَّ فِي السَّفَرِ وَقَدْ عَلِمْت أَنَّ اللَّهَ تَعَالَى فَرَضَهَا رَكْعَتَيْنِ رَكْعَتَيْنِ.

L7992 As Ahmad ibn Umar al-Ghadiri narrated to us through Abu Dharr al-Harawi through Abdullah ibn Ahmad ibn Hamawayh al-Sarakhsi through Ibrahim ibn Khuzaym through Abd ibn Humaid through Abd al-Razzaq from Ma'mar from al-Zuhri from Urwah from Aisha - he mentioned the report, wherein al-Zuhri said: I said to Urwah, "What was Aisha's action in completing prayers during travel when you know Allah the Exalted has ordained them as two rak'ahs, two rak'ahs?" - and he mentioned the report, wherein al-Zuhri said: I said to Urwah, "What was Aisha's action in completing prayers during travel when you know Allah the Exalted has ordained them as two rak'ahs, two rak'ahs?"

قَالَ: تَأَوَّلَتْ مِنْ ذَلِكَ مَا تَأَوَّلَ عُثْمَانُ مِنْ إِتْمَامِ الصَّلَاةِ بِمِنًى وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ الزُّهْرِيِّ قَالَ: بَلَغَنِي أَنَّ عُثْمَانَ إِنَّمَا صَلَّاهَا أَرْبَعًا - يَعْنِي بِمِنًى - لِأَنَّهُ أَزْمَعَ أَنْ يُقِيمَ بَعْدَ الْحَجِّ.

L7993 She said: She interpreted it in the same way as ʻUthman did regarding completing the prayer in full at Mina. It was narrated to us through ʻAbd al-Razzāq's chain from al-Zuhrī, who said: It reached me that ʻUthman prayed it as four units (meaning in Mina) because he resolved to reside there after the Hajj.

L7994 Therefore, those among the Companions—may Allah be pleased with them—who used to complete with him did so because they stayed as he stayed. Yet some groups among the Companions opposed those two. As conveyed through the chain of ʻAbd al-Razzāq, from ʻAbd Allāh ibn ʻUmar, from Nāfiʻ, from Ibn ʻUmar: When he prayed four rak'ahs with the Imam in Mina, he would return to his residence, pray two rak'ahs there, and then repeat them. Through another chain of ʻAbd al-Razzāq, from Saʻīd ibn al-Sā'ib ibn Yasār: Dawūd ibn Abī ʻĀṣim reported to me, saying, "I asked Ibn ʻUmar about the traveler's prayer in Mina."

فَعَلَى هَذَا أَتَمَّ مَعَهُ مَنْ كَانَ يُتِمُّ مَعَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، لِأَنَّهُمْ أَقَامُوا بِإِقَامَتِهِ وَقَدْ خَالَفَهُمَا مِنْ الصَّحَابَةِ طَوَائِفُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ إذَا صَلَّى مَعَ الْإِمَامِ بِمِنًى أَرْبَعَ رَكَعَاتٍ انْصَرَفَ إلَى مَنْزِلِهِ فَصَلَّى فِيهِ رَكْعَتَيْنِ أَعَادَهَا وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سَعِيدِ بْنِ السَّائِبِ بْنِ يَسَارٍ حَدَّثَنِي دَاوُد بْنُ أَبِي عَاصِمٍ قَالَ: سَأَلْت ابْنَ عُمَرَ عَنْ صَلَاةِ السَّفَرِ بِمِنًى؟

L7995–7996 He said: "I heard that the Messenger of Allah—peace and blessings be upon him—used to pray two rak'ahs, two rak'ahs in Mina. So pray if you wish, or omit." From the chain of Abd al-Warith ibn Saʻid at-Tannuri: Abu at-Tayyah narrated to us from Muwarriq al-ʻIjli from Safwan ibn Muhriz: I said to Ibn Umar: "Tell me about the prayer during travel." He said: "Do you fear that you will lie about me?" I said: "No." He said: "Two rak'ahs. Whoever opposes the Sunnah has disbelieved." From the chain of Saʻid ibn Mansur: Marwan ibn Muʻawiyah—he is al-Fazari—narrated to us from Humayd ibn Ali al-ʻUqayli from ad-Dahhak ibn Muzahim, who said: Ibn Abbas said: "Whoever prays four rak'ahs during travel is like one who prays two rak'ahs while settled."

فَقَالَ: " سَمِعْت «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُصَلِّي بِمِنًى رَكْعَتَيْنِ رَكْعَتَيْنِ» فَصَلِّ إنْ شِئْت أَوْ دَعْ؟ وَمِنْ طَرِيقِ عَبْدِ الْوَارِثِ بْنِ سَعِيدٍ التَّنُّورِيِّ: ثنا أَبُو التَّيَّاحِ عَنْ مُوَرِّقٍ الْعِجْلِيِّ عَنْ صَفْوَانَ بْنِ مُحْرِزٍ قُلْت لِابْنِ عُمَرَ: حَدِّثْنِي عَنْ صَلَاةِ السَّفَرِ، قَالَ: أَتَخْشَى أَنْ تَكْذِبَ عَلَيَّ، قُلْت: لَا، قَالَ: رَكْعَتَانِ، مَنْ خَالَفَ السُّنَّةَ كَفَرَ؟ وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ: ثنا مَرْوَانُ بْنُ مُعَاوِيَةَ هُوَ الْفَزَارِيّ - ثنا حُمَيْدُ بْنُ عَلِيٍّ الْعُقَيْلِيُّ عَنْ الضَّحَّاكِ بْنِ مُزَاحِمٍ قَالَ: قَالَ ابْنُ عَبَّاسٍ: مَنْ صَلَّى فِي السَّفَرِ أَرْبَعًا كَمَنْ صَلَّى فِي الْحَضَرِ رَكْعَتَيْنِ.

L7997 From the narration of Sufyan ibn ʿUyaynah, from Jaʿfar ibn Muḥammad, from his father, who said: ʿUthman fell ill while in Mina, so ʿAli came to him, and it was said to him: "Lead the people in prayer?" He replied: "If you wish, I will lead you in the prayer of the Messenger of Allah—peace and blessings be upon him—meaning two *rakʿahs*." They said: "No, only the prayer of the Commander of the Believers"—referring to ʿUthman—"four *rakʿahs*." But ʿUthman refused their request.

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ قَالَ: اعْتَلَّ عُثْمَانُ وَهُوَ بِمِنًى فَأَتَى عَلِيٌّ فَقِيلَ لَهُ: صَلِّ بِالنَّاسِ؟ فَقَالَ: إنْ شِئْتُمْ صَلَّيْت لَكُمْ صَلَاةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَعْنِي رَكْعَتَيْنِ قَالُوا: لَا، إلَّا صَلَاةَ أَمِيرِ الْمُؤْمِنِينَ يَعْنُونَ عُثْمَانَ -: أَرْبَعًا فَأَبَى عُثْمَانُ.

L7998 And likewise from those after them: We have been narrated from ʿUmar ibn ʿAbd al-ʿAzīz—when the act of completing prayers during travel (for whoever

وَهَكَذَا عَمَّنْ بَعْدَهُمْ: رُوِّينَا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَقَدْ ذُكِرَ لَهُ الْإِتْمَامُ فِي السَّفَرِ لِمَنْ شَاءَ، فَقَالَ: لَا، الصَّلَاةُ فِي السَّفَرِ رَكْعَتَانِ حَتْمَانِ لَا يَصِحُّ غَيْرُهُمَا.

wishes to do so) was mentioned to him—he said: “No. Prayer during travel is two rakʿahs, two that are obligatory—nothing else is valid.”

L7999 When the Companions differed, the obligation is to refer their disputed matter back to the Quran and the Sunnah. As for the Malikis and the Hanafis, they have contradicted themselves here in the worst contradiction, for when they adhere to a Companion’s opinion while contradicting his narration, they assert: “He knows best what he narrated, and it is impermissible to presume that he contradicted the Messenger of Allah—peace and blessings be upon him—except due to knowledge he possessed, which he deemed more authoritative than what he narrated.”

فَإِذَا اخْتَلَفَ الصَّحَابَةُ فَالْوَاجِبُ رَدُّ مَا تَنَازَعُوا فِيهِ إِلَى الْقُرْآنِ وَالسُّنَّةِ؟ وَأَمَّا الْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ فَقَدْ تَنَاقَضُوا هَهُنَا أَقْبَحَ تَنَاقُضٍ، لِأَنَّهُمْ إِذَا تَعَلَّقُوا بِقَوْلِ صَاحِبٍ وَخَالَفُوا رِوَايَتَهُ قَالُوا: هُوَ أَعْلَمُ بِمَا رَوَى، وَلَا يَجُوزُ أَنْ يُظَنَّ بِهِ أَنَّهُ خَالَفَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا لِعِلْمٍ كَانَ عِنْدَهُ رَآهُ أَوْلَى مِمَّا رَوَى.

وَهَا هُنَا أَخَذُوا رِوَايَةَ عَائِشَةَ وَتَرَكُوا فِعْلَهَا، وَقَالُوا بِأَقْبَحِ مَا يُشَنِّعُونَ بِهِ عَلَى غَيْرِهِمْ، فَرَأَوْا أَنَّ عُثْمَانَ، وَعَائِشَةَ وَمَنْ مَعَهُمَا صَلَّوْا صَلَاةً فَاسِدَةً يَلْزَمُهُمْ إِعَادَتُهَا، إِمَّا أَبَدًا وَإِمَّا فِي الْوَقْتِ؟ قَالَ عَلِيٌّ: وَأَمَّا قَوْلُنَا فِي صَلَاةِ الْخَوْفِ رَكْعَةٌ فَلِمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى، وَسَعِيدُ بْنُ مَنْصُورٍ، وَأَبُو الرَّبِيعِ الزَّهْرَانِيُّ، وَقُتَيْبَةُ، كُلُّهُمْ عَنْ أَبِي عَوَانَةَ عَنْ بُكَيْرِ بْنِ الْأَخْنَسِ عَنْ مُجَاهِدٍ عَنِ ابْنِ عَبَّاسٍ قَالَ «فَرَضَ اللَّهُ الصَّلَاةَ عَلَى لِسَانِ نَبِيِّكُمْ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْحَضَرِ أَرْبَعًا، وَفِي السَّفَرِ رَكْعَتَيْنِ، وَفِي الْخَوْفِ رَكْعَةً» .

L8000 Here, they adopted the narration of ʻA'ishah while disregarding her practice, espousing the worst of what they condemn in others. They claimed that ʻUthman, ʻA'ishah, and their companions performed invalid prayers—do they have to repeat them perpetually or within the prayer time? ʻAli said: As for our view that the prayer during fear consists of one rakʻah, this is based on what ʻAbdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us; ʻAbd al-Wahhab ibn ʻIsa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn ʻAli narrated to us; Muslim ibn al-Hajjaj narrated to us; Yahya ibn Yahya, Saʻid ibn Mansur, Abu al-Rabiʻ al-Zahrani, and Qutaybah—all of them narrated from Abu ʻAwana, from Bukayr ibn al-Akhnas, from Mujahid, from Ibn ʻAbbas, who said: "Allah ordained prayer through your Prophet's tongue—peace and blessings be upon him—as four rakʻahs for residents, two rakʻahs during travel, and one rakʻah in times of fear."[1]

وَرُوِّينَاهُ أَيْضًا - مِنْ طَرِيقِ حُذَيْفَةَ، وَجَابِرٍ، وَزَيْدِ بْنِ ثَابِتٍ، وَأَبِي هُرَيْرَةَ وَابْنِ عُمَرَ، كُلِّهِمْ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَسَانِيدَ فِي غَايَةِ الصِّحَّةِ؟ وَقَالَ تَعَالَى: {وَإِذَا ضَرَبْتُمْ فِي الأَرْضِ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَقْصُرُوا مِنَ الصَّلاةِ إِنْ خِفْتُمْ أَنْ يَفْتِنَكُمُ الَّذِينَ كَفَرُوا} [النساء: ١٠١] .

L8001–8002 We have also narrated it through the chains of Ḥudhayfah, Jābir, Zayd ibn Thābit, Abū Hurayrah, and Ibn ʿUmar—all of them from the Messenger of Allāh, peace and blessings be upon him—with chains of transmission of the utmost authenticity. And Allāh the Exalted said: "When you travel through the land, there is no blame on you if you shorten the prayer, if you fear that the disbelievers may persecute you" [*An-Nisā'* 4:101].[2]

كَتَبَ إِلَى هِشَامِ بْنِ سَعِيدٍ الْخَيْرِ قَالَ: ثنا عَبْدُ الْجَبَّارِ بْنُ أَحْمَدَ الْمُقْرِئُ الطَّوِيلُ ثنا الْحَسَنُ بْنُ الْحُسَيْنِ بْنِ عَبْدَوَيْهِ النَّجِيرَمِيُّ ثنا جَعْفَرُ بْنُ مُحَمَّدِ بْنِ الْحَسَنِ الْأَصْفَهَانِيُّ ثنا أَبُو بِشْرٍ يُونُسُ بْنُ حَبِيبِ بْنِ عَبْدِ الْقَادِرِ ثنا أَبُو دَاوُد الطَّيَالِسِيُّ ثنا الْمَسْعُودِيُّ هُوَ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ - عَنْ يَزِيدَ الْفَقِيرِ هُوَ يَزِيدُ بْنُ صُهَيْبٍ - قَالَ: سَأَلْت جَابِرَ بْنَ عَبْدِ اللَّهِ عَنْ الرَّكْعَتَيْنِ فِي السَّفَرِ، أَقَصْرُهُمَا؟ قَالَ جَابِرٌ لَا: إنَّ الرَّكْعَتَيْنِ فِي السَّفَرِ لَيْسَتَا بِقَصْرٍ، إنَّمَا الْقَصْرُ رَكْعَةٌ عِنْدَ الْقِتَالِ قَالَ عَلِيٌّ: وَبِهَذِهِ الْآيَةِ قُلْنَا: إنَّ صَلَاةَ الْخَوْفِ فِي السَّفَرِ - إنْ شَاءَ - رَكْعَةٌ - وَإِنْ شَاءَ - رَكْعَتَانِ، لِأَنَّهُ جَاءَ فِي الْقُرْآنِ بِلَفْظَةِ لَا جُنَاحَ لَا بِلَفْظِ

L8003 He wrote to Hisham ibn Saʻid al-Khayr, who said: ʻAbd al-Jabbar ibn Ahmad al-Muqri al-Tawil narrated to us; al-Hasan ibn al-Husayn ibn ʻAbdawayh al-Najirami narrated to us; Jaʻfar ibn Muhammad ibn al-Hasan al-Asfahani narrated to us; Abu Bishr Yunus ibn Habib ibn ʻAbd al-Qadir narrated to us; Abu Dawud al-Tayalisi narrated to us; al-Masʻudi (he is ʻAbd al-Rahman ibn ʻAbd Allah) narrated to us from Yazid al-Faqir (he is Yazid ibn Suhayb), who said: I asked Jabir ibn ʻAbd Allah about the two rakʻahs during travel: "Are they shortened?" Jabir said: "No. The two rakʻahs during travel are not a shortening. Shortening is one rakʻah during battle." ʻAli said: "By this verse,

[1] **Hadith references (L8000):** Sunan an-Nasai 1532; Sahih Muslim 687a; Mishkat al-Masabih 1349.

[2] **Qur'an references (L8002):** Qur'an 4:101 (An-Nisa).

we hold that the prayer of fear in travel may be one rak'ah if one wishes, or two rak'ahs if preferred, for it is mentioned in the Quran with the wording 'there is no blame' rather than a command or obligation. People prayed these with the Messenger of Allah (peace and blessings be upon him) sometimes as one rak'ah and sometimes as two rak'ahs. Thus, this remains a matter of choice, as Jabir (may Allah be pleased with him) stated."

L8004 **Legal Case: He left his place of residence, walked a mile, and ascended further.**

L8005 513 - Issue: Whoever departs from the houses of their city, village, or place of residence and walks a mile or more must pray two Rak'ahs without fail upon reaching the mile. If they walk less than a mile, do they pray four Rak'ahs? 'Ali said: "People have differed regarding this"—as we have narrated via the chain of Hammād ibn Salamah from Ayyūb al-Sikhtiyānī from Abī Qilābah from Abī al-Muhallab: that 'Uthmān ibn 'Affān (may Allah be pleased with him) wrote: "It has reached me that some men set out—either for tax collection, trade, or conscription—and then do not complete the prayer. You must not do this, for only those who are journeying resolutely or in the presence of an enemy may shorten the prayer."

L8006–8008 And from the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān, from Saʿīd ibn Abī ʿArūbah, from Qatādah, from ʿAyyāsh ibn ʿAbdullāh ibn Abī Rabīʿah al-Makhzūmī: that ʿUthmān ibn ʿAffān wrote to his officials: Neither the traveler, nor the merchant, nor the procrastinator may pray the two rak'ahs: only those who have provisions and a waterskin may pray them.

L8009 Ali said: "The second: is he the owner of the estate?" Ali said: "This is how it is in my book, and its correct version according to me is: Abdullah ibn Ayyash ibn Abi Rabīʿah."

L8010 From the chain of Abu Bakr ibn Abi Shaybah, from Ali ibn Mushir, from Abu Ishaq al-Shaybani, from Qays ibn Muslim, from Tariq ibn Shihab, from Abdullah ibn Mas'ud, who said: "Let not this large number of yours in your prayer deceive you, for is it not from your city?" And from Abd al-Razzaq,

الْأَمْرِ وَالْإِيجَابِ، وَصَلَّاهُمَا النَّاسُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَرَّةً رَكْعَةً وَمَرَّةً رَكْعَتَيْنِ، فَكَانَ ذَلِكَ عَلَى الِاخْتِيَارِ كَمَا قَالَ جَابِرٌ - رَضِيَ اللَّهُ عَنْهُ -؟

[مَسْأَلَةٌ خَرَجَ عَنْ مَوْضِعِ سُكْنَاهُ فَمَشَى مِيلًا فَصَاعِدًا]

٥١٣ - مَسْأَلَةٌ: وَمَنْ خَرَجَ عَنْ بُيُوتِ مَدِينَتِهِ، أَوْ قَرْيَتِهِ، أَوْ مَوْضِعِ سُكْنَاهُ فَمَشَى مِيلًا فَصَاعِدًا: صَلَّى رَكْعَتَيْنِ وَلَا بُدَّ إِذَا بَلَغَ الْمِيلَ، فَإِنْ مَشَى أَقَلَّ مِنْ مِيلٍ: صَلَّى أَرْبَعًا؟ قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي هَذَا -: كَمَا رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُ - كَتَبَ: إِنَّهُ بَلَغَنِي أَنَّ رِجَالًا يَخْرُجُونَ: إِمَّا لِجِبَايَةٍ، وَإِمَّا لِتِجَارَةٍ، وَإِمَّا لِحَشْرٍ ثُمَّ لَا يُتِمُّونَ الصَّلَاةَ، فَلَا تَفْعَلُوا، فَإِنَّمَا يَقْصُرُ الصَّلَاةَ مَنْ كَانَ شَاخِصًا، أَوْ بِحَضْرَةِ عَدُوٍّ.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ عَيَّاشِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي رَبِيعَةَ الْمَخْزُومِيِّ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ كَتَبَ إِلَى عُمَّالِهِ -: لَا يُصَلِّي الرَّكْعَتَيْنِ: جَابٍ، وَلَا تَاجِرٌ، وَلَا تَانٍ، إِنَّمَا يُصَلِّي الرَّكْعَتَيْنِ مَنْ كَانَ مَعَهُ الزَّادُ وَالْمَزَادُ.

قَالَ عَلِيٌّ: الثَّانِي - هُوَ صَاحِبُ الضَّيْعَةِ؟ قَالَ عَلِيٌّ: هَكَذَا فِي كِتَابِي وَصَوَابُهُ عِنْدِي: عَبْدُ اللَّهِ بْنُ عَيَّاشِ بْنِ أَبِي رَبِيعَةَ.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ عَنْ عَلِيِّ بْنِ مُسْهِرٍ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: لَا يَغُرَّنَّكُمْ سَوَادُكُمْ هَذَا

from Ma'mar, from al-A'mash, from Ibrahim al-Taymi, from his father, who said: "I was with Hudhayfah in al-Mada'in and sought his permission to visit my family in Kufa. He permitted me but stipulated that I must not break my fast nor pray two rak'ahs until I returned to him, and between them were over sixty miles." These are chains of transmission of utmost soundness.

مِنْ صَلَاتِكُمْ، فَإِنَّهُ مِنْ مِصْرِكُمْ؟ وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ التَّيْمِيِّ عَنْ أَبِيهِ قَالَ: كُنْت مَعَ حُذَيْفَةَ بِالْمَدَائِنِ فَاسْتَأْذَنْته أَنْ آتِيَ أَهْلِي بِالْكُوفَةِ، فَأَذِنَ لِي وَشَرَطَ عَلَيَّ أَنْ لَا أُفْطِرَ وَلَا أُصَلِّيَ رَكْعَتَيْنِ حَتَّى أَرْجِعَ إلَيْهِ، وَبَيْنَهُمَا نَيِّفٌ وَسِتُّونَ مِيلًا؟ وَهَذِهِ أَسَانِيدُ فِي غَايَةِ الصِّحَّةِ

L8011 It is narrated from Hudhayfah that one should not shorten prayers toward Al-Sawad, and between Al-Kufah and Al-Sawad are seventy miles.

وَعَنْ حُذَيْفَةَ: أَنْ لَا يَقْصُرَ إلَى السَّوَادِ، وَبَيْنَ الْكُوفَةِ وَالسَّوَادِ: سَبْعُونَ مِيلًا.

L8012 From Mu'adh ibn Jabal and 'Uqbah ibn 'Amir: Let none of you tread with your livestock upon mountain ridges or valley floors while claiming, "We are travelers!" No, nor is it valid. The shortening of prayers applies only to one who stays overnight during travel, journeying from one horizon to another. Via the chain of Abu Bakr ibn Abi Shaybah, from Abu al-Ahwas, from 'Asim, from Ibn Sirin, who said: They would ask, "Is the travel in which prayers are shortened that which requires carrying provisions and waterskins?" From Abu Wa'il Shuqayq ibn Salamah: He was asked about shortening prayers from Kufa to Wasit. He replied, "Prayers are not shortened for that journey," and the distance between them is one hundred and fifty miles. Another opinion is narrated through Ibn Jurayj, who reported from Nafi': The shortest journey for which Ibn 'Umar shortened prayers was to his property in Khaybar—a three consecutive days' journey. He did not shorten prayers for any distance shorter than that.

وَعَنْ مُعَاذِ بْنِ جَبَلٍ، وَعُقْبَةَ بْنِ عَامِرٍ: لَا يَطَأُ أَحَدُكُمْ بِمَاشِيَتِهِ أَحْدَابَ الْجِبَالِ، وَبُطُونَ الْأَوْدِيَةِ، وَتَزْعُمُونَ أَنَّكُمْ سَفْرٌ، لَا وَلَا كَرَامَةَ، إنَّمَا التَّقْصِيرُ فِي السَّفَرِ الْبَاتِّ، مِنْ الْأُفُقِ إلَى الْأُفُقِ؟ وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ عَنْ أَبِي الْأَحْوَصِ عَنْ عَاصِمٍ عَنْ ابْنِ سِيرِينَ قَالَ: كَانُوا يَقُولُونَ: السَّفَرُ الَّذِي تُقْصَرُ فِيهِ الصَّلَاةُ: الَّذِي يُحْمَلُ فِيهِ الزَّادُ وَالْمَزَادُ؟ وَعَنْ أَبِي وَائِلٍ شُقَيْقِ بْنِ سَلَمَةَ: أَنَّهُ سُئِلَ عَنْ قَصْرِ الصَّلَاةِ مِنْ الْكُوفَةِ إلَى وَاسِطَ؟ فَقَالَ: لَا تُقْصَرُ الصَّلَاةُ فِي ذَلِكَ، وَبَيْنَهُمَا مِائَةُ مِيلٍ وَخَمْسُونَ مِيلًا؟ فَهُنَا قَوْلٌ -: وَرُوِّينَاهُ مِنْ طَرِيقِ ابْنِ جُرَيْجٍ: أَخْبَرَنِي نَافِعٌ: أَنَّ ابْنَ عُمَرَ كَانَ أَدْنَى مَا يُقْصِرُ الصَّلَاةَ إلَيْهِ: مَالٌ لَهُ بِخَيْبَرَ، وَهِيَ مَسِيرَةُ ثَلَاثٍ فَوَاصِلَ لَمْ يَكُنْ يُقْصِرُ فِيمَا دُونَهُ.

L8013 And through the chain of Ḥammād ibn Salamah from Ayyūb al-Sakhtiyānī and Ḥumayd - both from Nāfi' from Ibn 'Umar - that he would shorten prayers between Medina and Khaybar, a distance equivalent to that of Ahwāz from Basra. He did not shorten prayers for distances shorter than this.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، وَحُمَيْدٍ، كِلَاهُمَا عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ يُقْصِرُ الصَّلَاةَ فِيمَا بَيْنَ الْمَدِينَةِ، وَخَيْبَرَ، وَهِيَ كَقَدْرِ الْأَهْوَازِ مِنْ الْبَصْرَةِ، لَا يَقْصُرُ فِيمَا دُونَ ذَلِكَ؟

L8014–8015 Ali said: Between Medina and Khaybar is like between Basra and Ahwaz - it being a single hundred miles excluding four miles. This is among the matters disputed in opinions narrated from Ibn Umar, and later also via Nafi', who transmitted from Ibn Umar.

قَالَ عَلِيٌّ: بَيْنَ الْمَدِينَةِ، وَخَيْبَرَ كَمَا بَيْنَ الْبَصْرَةِ، وَالْأَهْوَازِ -: وَهُوَ مِائَةُ مِيلٍ وَاحِدَةٌ غَيْرُ أَرْبَعَةِ أَمْيَالٍ وَهَذَا مِمَّا اُخْتُلِفَ فِيهِ عَنْ ابْنِ عُمَرَ، ثُمَّ عَنْ نَافِعٍ أَيْضًا عَنْ ابْنِ عُمَرَ.

L8016 It has been transmitted to us from Al-Ḥasan ibn Ḥayy that he said: There is no shortening of prayer for a distance less than eighty-two Roman miles, as is the distance between Kufa and Baghdad.

وَرُوِّينَا عَنْ الْحَسَنِ بْنِ حَيٍّ: أَنَّهُ قَالَ: لَا قَصْرَ فِي أَقَلَّ مِنْ اثْنَيْنِ وَثَمَانِينَ مِيلًا، كَمَا بَيْنَ الْكُوفَةِ، وَبَغْدَادَ

L8017 From the narration of Waki’ from Sa’id ibn ’Ubayd al-Ta’i from ’Ali ibn Rabi’ah al-Walibi al-Asadi, who said: I asked Ibn ’Umar about shortening prayers. He said: “Are you a pilgrim, someone performing ’Umrah, or someone on a military expedition?” I said: “No, but one of us has an estate in al-Sawād.” He said: “Do you know al-Suwaydā?” I said: “I have heard of it but have not seen it.” He said: “It is three days and two nights and one night for someone hastening. When we set out to it, we shortened prayers.” ’Ali said: “From Medina to al-Suwaydā—: seventy-two miles, twenty-four farsakhs.” This is another narration.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سَعِيدِ بْنِ عُبَيْدٍ الطَّائِيِّ عَنْ عَلِيِّ بْنِ رَبِيعَةَ الْوَالِبِيِّ الْأَسَدِيِّ قَالَ: سَأَلْت ابْنَ عُمَرَ عَنْ تَقْصِيرِ الصَّلَاةِ؟ فَقَالَ: حَاجٌّ، أَوْ مُعْتَمِرٌ، أَوْ غَازٍ؟ قُلْت: لَا، وَلَكِنَّ أَحَدَنَا تَكُونُ لَهُ الضَّيْعَةُ بِالسَّوَادِ، فَقَالَ: تَعْرِفُ السُّوَيْدَاءَ؟ قُلْت: سَمِعْت بِهَا وَلَمْ أَرَهَا، قَالَ: فَإِنَّهَا ثَلَاثٌ وَلَيْلَتَانِ وَلَيْلَةٌ لِلْمُسْرِعِ، إذَا خَرَجْنَا إلَيْهَا قَصَرْنَا قَالَ عَلِيٌّ: مِنْ الْمَدِينَةِ إلَى السُّوَيْدَاءِ -: اثْنَانِ وَسَبْعُونَ مِيلًا، أَرْبَعَةٌ وَعِشْرُونَ فَرْسَخًا؟ فَهَذِهِ رِوَايَةٌ أُخْرَى عَنْ ابْنِ عُمَرَ.

L8018 From the chain of Abd al-Razzaq via Isra’il via Ibrahim ibn Abd al-A’la, who said: I heard Suwayd ibn Ghaflah say: “When you travel three days, shorten the prayer?” From Abd al-Razzaq via Abu Hanifah and Sufyan al-Thawri - both from Hammad from Abu Sulayman from Ibrahim al-Nakhaʿī - that he spoke regarding the shortening of prayers. Abu Hanifah stated in his narration: “Three days’ travel,” while Sufyan stated in his narration: “To the vicinity of al-Mada’in,” meaning from Kufah - being approximately over sixty miles, neither exceeding sixty-three nor falling below sixty-one? Abu Hanifah takes both these criteria together.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إسْرَائِيلَ عَنْ إبْرَاهِيمَ بْنِ عَبْدِ الْأَعْلَى يَقُولُ: سَمِعْت سُوَيْدَ بْنَ غَفَلَةَ يَقُولُ: إذَا سَافَرْت ثَلَاثًا فَاقْصُرْ الصَّلَاةَ؟ وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ أَبِي حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيِّ، كِلَاهُمَا عَنْ حَمَّادٍ عَنْ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ -: أَنَّهُ قَالَ فِي قَصْرِ الصَّلَاةِ، قَالَ أَبُو حَنِيفَةَ فِي رِوَايَتِهِ: مَسِيرَةَ ثَلَاثٍ وَقَالَ سُفْيَانُ فِي رِوَايَتِهِ: إلَى نَحْوِ الْمَدَائِنِ يَعْنِي مِنْ الْكُوفَةِ، وَهُوَ نَحْوُ نَيِّفٍ وَسِتِّينَ مِيلًا، لَا يَتَجَاوَزُ ثَلَاثَةً وَسِتِّينَ وَلَا يَنْقُصُ عَنْ وَاحِدٍ وَسِتِّينَ؟ وَبِهَذَيْنِ التَّحْدِيدَيْنِ جَمِيعًا يَأْخُذُ أَبُو حَنِيفَةَ.

L8019 And he explained the three as: the movement of feet, burdens, and camels. Sufyān al-Thawrī said: “There is no prayer shortening for less than a three-day journey,” and have we not found him specifying the three?

وَقَالَ فِي تَفْسِيرِ الثَّلَاثِ: سَيْرُ الْأَقْدَامِ وَالثِّقَلِ وَالْإِبِلِ وَقَالَ سُفْيَانُ الثَّوْرِيُّ: لَا قَصْرَ فِي أَقَلَّ مِنْ مَسِيرَةِ ثَلَاثٍ، وَلَمْ نَجِدْ عَنْهُ تَحْدِيدَ الثَّلَاثِ؟

L8020–8021 From Hammad ibn Abi Sulayman, from Sa’id ibn Jubayr regarding the shortening of prayers: [Is it valid] for a journey of three [units]? Through the chain of Al-Hajjaj ibn Al-Minhal: Yazid ibn Ibrahim narrated to us, saying: I heard Al-Hasan Al-Basri state: “The shortening of prayers does not apply for less

وَعَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ فِي قَصْرِ الصَّلَاةِ: فِي مَسِيرَةِ ثَلَاثٍ؟ وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ: ثنا يَزِيدُ بْنُ إبْرَاهِيمَ قَالَ: سَمِعْت الْحَسَنَ الْبَصْرِيَّ يَقُولُ: لَا

than a journey spanning two nights." Through the chain of Waki' from Ar-Rabi' ibn Subayh from Al-Hasan: "Prayers are not shortened except for two nights." But we found no specification from him regarding the two nights? From Ma'mar from Qatadah from Al-Hasan similarly. He said: This is the position Qatadah adopts. From Sufyan Ath-Thawri from Yunus ibn 'Ubayd from Al-Hasan likewise, except he stated: "A journey of two days?" We found no clarification of the two days from Qatadah or Az-Zuhri. From Waki' from Sufyan Ath-Thawri from Mansur ibn Al-Mu'tamir from Mujahid from Ibn Abbas, who said: "If you travel for a day until Isha time, perform the complete prayer. If you extend beyond that, shorten it." Through Al-Hajjaj ibn Al-Minhal: Abu 'Awanah narrated to us from Mansur—ibn Al-Mu'tamir—from Mujahid from Ibn Abbas, who said: "A traveler does not shorten prayers for a journey lasting a day until Isha time, unless the journey is longer than that."

L8022 This is among the matters subject to differing reports from Ibn ʿAbbās. From the narration of Wakīʿ on the authority of Hishām ibn al-Ghāzī Rabīʿah al-Jurashī on the authority of ʿAṭāʾ ibn Abī Rabāḥ: I said to Ibn ʿAbbās: "May I shorten prayers as far as ʿArafah?" He replied: "No, but to Ṭāʾif and ʿUsfān," which constitutes forty-eight Islamic miles. From Maʿmar: Ayyūb informed me on the authority of Nāfiʿ that Ibn ʿUmar used to shorten prayers when traveling four burd. This is among the matters subject to differing reports from Ibn ʿUmar, as previously mentioned. This is the position adopted by al-Layth and Mālik in the most well-known of Mālik's reports from him (Ibn ʿUmar).

L8023–8024 He said: If there is a land with no prescribed travel distance, then there is no shortening of prayers in less than a day and a night due to the hardship of travel. He said: This is the scenario I most prefer for shortening prayers.

L8025 He is reported to have said: "Prayer is not shortened except for a journey of forty-five miles or more." Another narration states: "Prayer is not shortened except for a journey of forty-two miles or more."

L8026 It is narrated from him: There is no shortening of prayers except for forty miles or more. It is also narrated from him by Ismāʿīl ibn Abī Uways: There

تُقْصَرُ الصَّلَاةُ فِي أَقَلَّ مِنْ مَسِيرَةِ لَيْلَتَيْنِ؟ وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الرَّبِيعِ بْنِ صُبَيْحٍ عَنْ الْحَسَنِ: لَا تُقْصَرُ الصَّلَاةُ إِلَّا فِي لَيْلَتَيْنِ، وَلَمْ نَجِدْ عَنْهُ تَحْدِيدَ اللَّيْلَتَيْنِ؟ وَعَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ الْحَسَنِ مِثْلُهُ، قَالَ: وَبِهِ يَأْخُذُ قَتَادَةُ وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ مِثْلُهُ، إِلَّا أَنَّهُ قَالَ: مَسِيرَةُ يَوْمَيْنِ؟ وَلَمْ نَجِدْ عَنْ قَتَادَةَ، وَلَا عَنْ الزُّهْرِيِّ: تَحْدِيدَ الْيَوْمَيْنِ وَعَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: إذَا سَافَرْت يَوْمًا إلَى الْعِشَاءِ فَأَتِمَّ، فَإِنْ زِدْت فَقَصْرٌ؟ وَعَنْ الْحَجَّاجِ بْنِ الْمِنْهَالِ: ثنا أَبُو عَوَانَةَ عَنْ مَنْصُورٍ هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا يَقْصُرُ الْمُسَافِرُ عَنْ مَسِيرَةِ يَوْمٍ إلَى الْعَتَمَةِ، إلَّا فِي أَكْثَرَ مِنْ ذَلِكَ.

وَهَذَا مِمَّا اُخْتُلِفَ فِيهِ عَنْ ابْنِ عَبَّاسٍ؟ وَمِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامِ بْنِ الْغَازِ رَبِيعَةَ الْجُرَشِيِّ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ: قُلْت لِابْنِ عَبَّاسٍ: أَقْصُرُ إلَى عَرَفَةَ؟ قَالَ: لَا، وَلَكِنْ إلَى الطَّائِفِ وَعُسْفَانَ، فَذَلِكَ ثَمَانِيَةٌ وَأَرْبَعُونَ مِيلًا وَعَنْ مَعْمَرٍ أَخْبَرَنِي أَيُّوبُ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ كَانَ يَقْصُرُ الصَّلَاةَ مَسِيرَةَ أَرْبَعَةِ بُرُدٍ؟ وَهَذَا مِمَّا اُخْتُلِفَ فِيهِ عَنْ ابْنِ عُمَرَ كَمَا ذَكَرْنَا؟ وَبِهَذَا يَأْخُذُ اللَّيْثُ، وَمَالِكٌ فِي أَشْهَرِ أَقْوَالِهِ عَنْهُ.

وَقَالَ: فَإِنْ كَانَتْ أَرْضٌ لَا أَمْيَالَ فِيهَا فَلَا - قَصْرَ فِي أَقَلَّ مِنْ يَوْمٍ وَلَيْلَةٍ لِلثِّقَلِ قَالَ: وَهَذَا أَحَبُّ مَا تُقْصَرُ فِيهِ الصَّلَاةُ إلَيَّ.

وَقَدْ ذُكِرَ عَنْهُ: لَا قَصْرَ إلَّا فِي خَمْسَةٍ وَأَرْبَعِينَ مِيلًا فَصَاعِدًا؟ وَرُوِيَ عَنْهُ: أَنَّهُ لَا قَصْرَ إلَّا فِي اثْنَيْنِ وَأَرْبَعِينَ مِيلًا فَصَاعِدًا.

is no shortening of prayers except for thirty-six miles or more. Ismāʿīl ibn Isḥāq al-Qāḍī mentioned these narrations from him in his renowned book *al-Mabsuṭ*.

وَرُوِيَ عَنْهُ: لَا قَصْرَ إِلَّا فِي أَرْبَعِينَ مِيلًا فَصَاعِدًا. وَرَوَى عَنْهُ إِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ: لَا قَصْرَ إِلَّا فِي سِتَّةٍ وَثَلَاثِينَ مِيلًا فَصَاعِدًا - ذَكَرَ هَذِهِ الرِّوَايَاتِ عَنْهُ: إِسْمَاعِيلُ بْنُ إِسْحَاقَ الْقَاضِي فِي كِتَابِهِ الْمَعْرُوفِ بِالْمَبْسُوطِ.

L8027 He ruled that the people of Mecca—specifically during Hajj—should shorten their prayers (qasr) when traveling to Mina and locations beyond it, a distance of four Islamic miles (approximately 6.4 kilometers).

وَرَأَى لِأَهْلِ مَكَّةَ خَاصَّةً فِي الْحَجِّ خَاصَّةً -: أَنْ يَقْصُرُوا الصَّلَاةَ إِلَى مِنًى فَمَا فَوْقَهَا، وَهِيَ أَرْبَعَةُ أَمْيَالٍ.

L8028 Ibn al-Qasim narrated from him concerning one who traveled three miles—like shepherds and others—and interpreted [the law], then broke the fast during Ramadan? The one from whom he narrated said: Nothing is obligatory upon him except fulfilling the compensatory fast alone.

وَرَوَى عَنْهُ ابْنُ الْقَاسِمِ: أَنَّهُ قَالَ فِيمَنْ خَرَجَ ثَلَاثَةَ أَمْيَالٍ - كَالرِّعَاءِ وَغَيْرِهِمْ - فَتَأَوَّلَ فَأَفْطَرَ فِي رَمَضَانَ؟ فَلَا شَيْءَ عَلَيْهِ إِلَّا الْقَضَاءُ فَقَطْ

L8029 It has been reported to us from al-Shāfiʿī: There is no shortening [of prayers] for less than forty-six miles by the Hashimi mile. Here are also other opinions: as we have been narrated through the chain of Wakīʿ from Shuʿbah from Shubayl from Abī Jamrah al-Ḍubaʿī, who said: I asked Ibn ʿAbbās, "May I shorten prayers when going to al-Ubullah?" He responded, "Do you depart and return within a day?" I said, "Yes." He said, "No, unless it is a day that allows [for travel]." And from Sufyān ibn ʿUyaynah from ʿAmr ibn Dīnār from ʿAṭāʾ: I asked Ibn ʿAbbās, "May I shorten prayers when traveling to Minā or ʿArafāt?" He said, "No, but [when traveling] to al-Ṭāʾif, Jeddah, or ʿUsfān. If you reach where your grazing livestock or family are situated, then perform the full prayer." ʿAlī said: From ʿUsfān to Mecca via the broken path of al-Ḥulafāʾ is thirty-two miles.

وَرُوِّينَا عَنْ الشَّافِعِيِّ: لَا قَصْرَ فِي أَقَلَّ مِنْ سِتَّةٍ وَأَرْبَعِينَ مِيلًا بِالْهَاشِمِيِّ وَهَهُنَا أَقْوَالٌ أُخَرُ أَيْضًا -: كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ شُبَيْلٍ عَنْ أَبِي جَمْرَةَ الضُّبَعِيِّ قَالَ: قُلْت لِابْنِ عَبَّاسٍ: أَقْصُرُ إلَى الْأُبُلَّةِ؟ قَالَ: تَذْهَبُ وَتَجِيءُ فِي يَوْمٍ؟ قُلْت: نَعَمْ، قَالَ: لَا، إلَّا يَوْمٌ مُتَاحٌ؟ وَعَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءٍ، قُلْت لِابْنِ عَبَّاسٍ: أَقْصُرُ إلَى مِنًى أَوْ عَرَفَةَ؟ قَالَ: لَا، وَلَكِنْ إلَى الطَّائِفِ، أَوْ جُدَّةَ، أَوْ عُسْفَانَ، فَإِذَا وَرَدْت عَلَى مَاشِيَةٍ لَك، أَوْ أَهْلٍ: فَأَتِمَّ الصَّلَاةَ قَالَ عَلِيٌّ: مِنْ عُسْفَانَ إلَى مَكَّةَ بِتَكْسِيرِ الْحُلُفَاءِ اثْنَانِ وَثَلَاثُونَ مِيلًا.

L8030 The trusted sources informed us that the distance from Jeddah to Makkah is forty miles.

وَأَخْبَرَنَا الثِّقَاتُ أَنَّ مِنْ جُدَّةَ إلَى مَكَّةَ: أَرْبَعِينَ مِيلًا.

L8031–8032 Narrated by Waki', on the authority of Hishām ibn al-Ghāzz, from Nāfi', from Ibn 'Umar: "Prayer is not shortened except on a complete day." Narrated by Mālik, from Ibn Shihāb, from Sālim ibn 'Abd Allāh ibn 'Umar, that he traveled to Raym and shortened the prayer. 'Abd al-Razzāq said: "It is thirty miles from Medina."

وَعَنْ وَكِيعٍ عَنْ هِشَامِ بْنِ الْغَازِ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: لَا تُقْصَرُ الصَّلَاةُ إلَّا فِي يَوْمٍ تَامٍّ؟ وَعَنْ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّهُ سَافَرَ إلَى رِيمٍ فَقَصَرَ الصَّلَاةَ. قَالَ عَبْدُ الرَّزَّاقِ: وَهِيَ عَلَى ثَلَاثِينَ مِيلًا مِنْ الْمَدِينَةِ.

وَعَنْ عِكْرِمَةَ: إِذَا خَرَجْتَ فَبِتَّ فِي غَيْرِ أَهْلِكَ فَاقْصُرْ، فَإِنْ أَتَيْتَ أَهْلَكَ فَأَتِمَّ؟ وَبِهِ يَقُولُ الْأَوْزَاعِيُّ: لَا قَصْرَ إِلَّا فِي يَوْمٍ تَامٍّ وَلَمْ نَجِدْ عَنْ هَؤُلَاءِ تَحْدِيدَ الْيَوْمِ وَمِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ: أَنَّهُ قَصَدَ إِلَى ذَاتِ النُّصْبِ، وَكُنْت أُسَافِرُ مَعَ ابْنِ عُمَرَ الْبَرِيدَ فَلَا يَقْصُرُ؟ قَالَ عَبْدُ الرَّزَّاقِ: ذَاتُ النُّصْبِ مِنْ الْمَدِينَةِ عَلَى ثَمَانِيَةَ عَشَرَ مِيلًا.

L8033 From ʻIkrimah: If you depart and spend the night away from your family, shorten the prayer. But if you reach your family, then complete the prayer. Al-Awzaʻi also holds this opinion, stating: There is no shortening except on a full day. We have not found any specification of the day from these authorities. Through Malik's chain from Nafiʻ from Ibn ʻUmar: He set out for Dhat al-Nusub. I used to travel the distance of a *barid* with Ibn ʻUmar, yet he would not shorten the prayer. ʻAbd al-Razzaq said: Dhat al-Nusub is eighteen miles from Medina.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ: ثنا شُعْبَةُ عَنْ خُبَيْبِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ حَفْصِ بْنِ عَاصِمِ بْنِ عُمَرَ بْنِ الْخَطَّابِ قَالَ: خَرَجْت مَعَ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ إلَى ذَاتِ النُّصْبِ - وَهِيَ مِنْ الْمَدِينَةِ عَلَى ثَمَانِيَةَ عَشَرَ مِيلًا - فَلَمَّا أَتَاهَا قَصَرَ الصَّلَاةَ؟

L8034 Through the narration of Muḥammad ibn Jaʻfar: Shuʻbah narrated to us from Khubayb ibn ʻAbd al-Raḥmān from Ḥafṣ ibn ʻĀṣim ibn ʻUmar ibn al-Khaṭṭāb, who said: I went out with ʻAbdullāh ibn ʻUmar ibn al-Khaṭṭāb to Dhāt al-Nuṣub—located eighteen miles from Medina—and when he arrived there, did he shorten the prayer?

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ: ثنا هُشَيْمٌ أَنَا جُوَيْبِرٌ عَنْ الضَّحَّاكِ عَنْ النَّزَّالِ بْنِ سَبْرَةَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ خَرَجَ إلَى النُّخَيْلَةِ فَصَلَّى بِهَا الظُّهْرَ رَكْعَتَيْنِ، وَالْعَصْرَ: رَكْعَتَيْنِ، ثُمَّ رَجَعَ مِنْ يَوْمِهِ، وَقَالَ: أَرَدْت أَنْ أُعَلِّمَكُمْ سُنَّةَ نَبِيِّكُمْ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L8035 From the narration of Abu Bakr ibn Abi Shaybah: Hushaym narrated to us, from Juwaybir, from Al-Dahhak, from Al-Nazzal ibn Sabrah: That Ali ibn Abi Talib went out to Al-Nukhaylah and prayed Dhuhr there as two rak'ahs, and Asr as two rak'ahs, then returned that very day, saying: "I wanted to teach you the Sunnah of your Prophet—may Allah bless him and grant him peace."

وَمِنْ طَرِيقِ وَكِيعٍ: ثنا حَمَّادُ بْنُ زَيْدٍ ثنا أَنَسُ بْنُ سِيرِينَ قَالَ: خَرَجْت مَعَ أَنَسِ بْنِ مَالِكٍ إلَى أَرْضِهِ بِبَذْقِ سِيرِينَ - وَهِيَ عَلَى رَأْسِ خَمْسَةِ فَرَاسِخَ - فَصَلَّى بِنَا الْعَصْرَ فِي سَفِينَةٍ، وَهِيَ تَجْرِي بِنَا فِي دَجْلَةَ قَاعِدًا عَلَى بِسَاطٍ رَكْعَتَيْنِ ثُمَّ سَلَّمَ، ثُمَّ صَلَّى بِنَا رَكْعَتَيْنِ ثُمَّ سَلَّمَ؟ وَمِنْ طَرِيقِ الْبَزَّازِ: ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ ثنا شُعْبَةُ عَنْ يَزِيدَ بْنِ خُمَيْرٍ عَنْ حَبِيبِ بْنِ عُبَيْدٍ عَنْ جُبَيْرِ بْنِ نُفَيْرٍ عَنْ ابْنِ السِّمْطِ هُوَ شُرَحْبِيلُ -: أَنَّهُ أَتَى أَرْضًا يُقَالُ لَهَا " دَوْمِينُ " - مِنْ حِمْصٍ عَلَى بِضْعَةَ عَشَرَ مِيلًا - فَصَلَّى رَكْعَتَيْنِ، فَقُلْت لَهُ: أَتُصَلِّي رَكْعَتَيْنِ؟ قَالَ: «رَأَيْتُ عُمَرَ يُصَلِّي بِذِي الْحُلَيْفَةِ رَكْعَتَيْنِ، وَقَالَ أَفْعَلُ كَمَا رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَفْعَلُ» ".

L8036–8038 From the narration of Waki': Ḥammād ibn Zayd narrated to us from Anas ibn Sīrīn, who said: I went out with Anas ibn Mālik to his land in Badhq Sīrīn - which lies at a distance of five leagues - where he led us in the ʻAṣr prayer aboard a ship moving with us along the Tigris River. Sitting on a mat, he prayed two rakʻahs with us, then concluded the prayer? Then he prayed another two rakʻahs with us and concluded the prayer. From the narration of Al-Bazzāz: Muḥammad ibn Al-Muthannā narrated to us from ʻAbdur-Raḥmān ibn Mahdī from Shuʻbah from Yazīd ibn Khumayr from Ḥabīb ibn ʻUbayd from Jubayr ibn Nufayr from Ibn As-Simṭ - he is Shuraḥbīl - that he He came to a land called "Dawmat"—located a dozen or so miles from Homs—and prayed two rak'ahs. I said to him, "Are you praying two rak'ahs?" He replied, "I saw 'Umar pray two rak'ahs at Dhu al-Hulayfah, and he said, 'I do as I saw the Messenger of Allah—peace be upon him—doing.'"

L8039 From Muhammad ibn Bashshar: Muhammad ibn Abi Adiy narrated to us, Shu‘bah narrated to us from Yazid ibn Khumayr from Habib ibn ‘Ubayd from Jubayr ibn Nufayr, who said: Ibn al-Simt—who is Shurahbil—went out to a land called “Dawmīn,” thirteen miles from Homs, and he would shorten the prayer. He said: “I saw ‘Umar ibn al-Khattab pray two rak‘ahs at Dhu al-Hulayfah, so I asked him. He replied: ’I do as I saw the Messenger of Allah (peace and blessings be upon him) do.”’ We also narrated it through Muslim’s chain reaching Shurahbil, who narrates from Ibn ‘Umar.

وَعَنْ مُحَمَّدِ بْنِ بَشَّارٍ: ثنا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ ثنا شُعْبَةُ عَنْ يَزِيدَ بْنِ خُمَيْرٍ عَنْ حَبِيبِ بْنِ عُبَيْدٍ عَنْ جُبَيْرِ بْنِ نُفَيْرٍ قَالَ: خَرَجَ ابْنُ السِّمْطِ هُوَ شُرَحْبِيلُ - إِلَى أَرْضٍ يُقَالُ لَهَا " دَوْمِينُ " - مِنْ حِمْصٍ عَلَى ثَلَاثَةَ عَشَرَ مِيلًا، فَكَانَ يَقْصُرُ الصَّلَاةَ، وَقَالَ: «رَأَيْتُ عُمَرَ بْنَ الْخَطَّابِ يُصَلِّي بِذِي الْحُلَيْفَةِ رَكْعَتَيْنِ فَسَأَلْتُهُ؟ فَقَالَ: أَفْعَلُ كَمَا رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَفْعَلُ» . وَرُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَيْضًا بِإِسْنَادِهِ إِلَى شُرَحْبِيلَ عَنْ ابْنِ عُمَرَ.

L8040 Ali said: If this were on the Hajj route, would he not have asked him—nor would I deny that?

قَالَ عَلِيٌّ: لَوْ كَانَ هَذَا فِي طَرِيقِ الْحَجِّ لَمْ يَسْأَلْهُ وَلَا أُنْكِرُ ذَلِكَ؟

L8041 And from the narration of Abū Bakr ibn Abī Shaybah: Ismā‘īl ibn ‘Ulayyah narrated to us from al-Jurayrī from Abū al-Ward ibn Thumāmah from al-Lajlāj, who said: We would travel with ‘Umar ibn al-Khaṭṭāb three miles, whereupon he would perform the prayer concisely, break the fast, and shorten the prayer.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ: ثنا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ الْجُرَيْرِيِّ عَنْ أَبِي الْوَرْدِ بْنِ ثُمَامَةَ عَنْ اللَّجْلَاجِ قَالَ: كُنَّا نُسَافِرُ مَعَ عُمَرَ بْنِ الْخَطَّابِ ثَلَاثَةَ أَمْيَالٍ فَيَتَجَوَّزُ فِي الصَّلَاةِ فَيُفْطِرُ وَيَقْصُرُ.

L8042 And through the chain of Muhammad ibn Bishar: Abu Amir al-Aqadi narrated to us, from Shubah, who said: I heard Muyassar ibn Imran ibn Umayr narrating from his father from his grandfather: that he went out with Abdullah ibn Masud—while riding behind him on his mule as a companion—on a journey of four farsakhs. He prayed the Dhuhr prayer as two rak’ahs and the Asr prayer as two rak’ahs.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ بَشَّارٍ: ثنا أَبُو عَامِرٍ الْعَقَدِيُّ ثنا شُعْبَةُ قَالَ: سَمِعْت مُيَسَّرَ بْنَ عِمْرَانَ بْنِ عُمَيْرٍ يُحَدِّثُ عَنْ أَبِيهِ عَنْ جَدِّهِ: أَنَّهُ خَرَجَ مَعَ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ - وَهُوَ رَدِيفُهُ عَلَى بَغْلَةٍ لَهُ - مَسِيرَةَ أَرْبَعَةِ فَرَاسِخَ، فَصَلَّى الظُّهْرَ رَكْعَتَيْنِ، وَالْعَصْرَ رَكْعَتَيْنِ.

L8043 Shu‘bah said: Muyassar ibn ‘Imrān informed me of this, and his father ‘Imrān ibn ‘Umayr was a witness. ‘Alī said: This ‘Umayr was the client of ‘Abdullāh ibn Mas‘ūd.

قَالَ شُعْبَةُ: أَخْبَرَنِي بِهَذَا مُيَسَّرُ بْنُ عِمْرَانَ، وَأَبُوهُ عِمْرَانُ بْنُ عُمَيْرٍ شَاهِدٌ قَالَ عَلِيٌّ: عُمَيْرٌ هَذَا مَوْلَى عَبْدِ اللَّهِ بْنِ مَسْعُودٍ.

L8044–8046 And through the chain of Abū Bakr ibn Abī Shaybah: Narrated to us ‘Alī ibn Mushir from Abū Isḥāq al-Shaybānī (he is Sulaymān ibn Fayrūz) from Muḥammad ibn Zayd ibn Khaldah from Ibn ‘Umar, who said: “The prayer is shortened (qasr) during...” A journey of three miles? Ali said: This is

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ: ثنا عَلِيُّ بْنُ مُسْهِرٍ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ هُوَ سُلَيْمَانُ بْنُ فَيْرُوزَ - عَنْ مُحَمَّدِ بْنِ زَيْدِ بْنِ خَلْدَةَ عَنْ ابْنِ عُمَرَ قَالَ: تُقْصَرُ الصَّلَاةُ فِي مَسِيرَةِ ثَلَاثَةِ

Muhammad ibn Zayd, a Tayyite, whom Ali ibn Abi Talib appointed as judge in Kufa - a well-known figure among the prominent Followers.

أَمْيَالٍ؟ قَالَ عَلِيٌّ: مُحَمَّدُ بْنُ زَيْدٍ هَذَا طَائِيٌّ وَلَّاهُ عَلِيُّ بْنُ أَبِي طَالِبٍ الْقَضَاءَ بِالْكُوفَةِ، مَشْهُورٌ مِنْ كِبَارِ التَّابِعِينَ.

L8047 From the chain of Abu Bakr ibn Abi Shaybah: Waki‘ narrated to us; Mis‘ar—he is Ibn Kidam—narrated to us, from Muharib ibn Dithar, who said: I heard Ibn ‘Umar say, “Indeed, I travel during a time of the day and shorten, meaning the prayer.”

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ: ثنا وَكِيعٌ ثنا مِسْعَرٌ هُوَ ابْنُ كِدَامٍ - عَنْ مُحَارِبِ بْنِ دِثَارٍ قَالَ: سَمِعْت ابْنَ عُمَرَ يَقُولُ: إنِّي لَأُسَافِرُ السَّاعَةَ مِنْ النَّهَارِ فَأَقْصُرُ، يَعْنِي الصَّلَاةَ.

L8048 Muḥārib al-Sudūsī, the judge of Kufa, among the senior Followers and one of the imams, and Mis‘ar, one of the imams.

مُحَارِبٌ هَذَا سُدُوسِيٌّ قَاضِي الْكُوفَةِ، مِنْ كِبَارِ التَّابِعِينَ، أَحَدُ الْأَئِمَّةِ، وَمِسْعَرٌ أَحَدُ الْأَئِمَّةِ.

L8049 And from the transmission route of Muḥammad ibn al-Muthannā: ʿAbd al-Raḥmān ibn Mahdī reported to us, who said: Sufyān al-Thawrī reported to us, who said: I heard Jabalah ibn Suḥaym say: I heard Ibn ʿUmar say: “If I were to travel a mile, would I shorten the prayer?” Jabalah ibn Suḥaym is a trustworthy, well-known Successor.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى: ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ قَالَ ثنا سُفْيَانُ الثَّوْرِيُّ قَالَ: سَمِعْت جَبَلَةَ بْنَ سُحَيْمٍ يَقُولُ: سَمِعْت ابْنَ عُمَرَ يَقُولُ: لَوْ خَرَجْتُ مِيلًا قَصَرْت الصَّلَاةَ؟ جَبَلَةُ بْنُ سُحَيْمٍ تَابِعٌ ثِقَةٌ مَشْهُورٌ.

L8050 Abdullah ibn Yusuf narrated to us through Ahmad ibn Fath, who narrated through Abdul Wahhab ibn Isa, who narrated through Ahmad ibn Muhammad, who narrated through Ahmad ibn Ali, who narrated through Muslim ibn al-Hajjaj, who narrated through Abu Bakr ibn Abi Shaybah and Muhammad ibn Bashar - both narrating from Ghundar, who is Muhammad ibn Ja‘far - from Shu‘bah, from Yahya ibn Yazid al-Huna’i, who said: I asked Anas ibn Malik about shortening prayers. He responded: “Whenever Allah’s Messenger - peace and blessings be upon him - traveled three miles or three farsakhs” - Shu‘bah was uncertain [about the exact unit] - “he would pray two rak‘ahs.”

وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَمُحَمَّدُ بْنُ بَشَّارٍ كِلَاهُمَا عَنْ غُنْدَرٍ هُوَ مُحَمَّدُ بْنُ جَعْفَرٍ - عَنْ شُعْبَةَ عَنْ يَحْيَى بْنِ يَزِيدَ الْهُنَائِيِّ قَالَ: سَأَلْت أَنَسَ بْنَ مَالِكٍ عَنْ قَصْرِ الصَّلَاةِ؟ فَقَالَ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا خَرَجَ مَسِيرَةَ ثَلَاثَةِ أَمْيَالٍ أَوْ ثَلَاثَةِ فَرَاسِخَ - شَكَّ شُعْبَةُ - صَلَّى رَكْعَتَيْنِ» .

L8051 Ali said: It is not permissible for Anas, when questioned, to answer except with what he himself holds. And through the chain of Abu Dawud al-Sijistani: That Dihyah ibn Khalifah al-Kalbi broke his fast during travel from Fustat to a village three miles distant from it.

قَالَ عَلِيٌّ: لَا يَجُوزُ أَنْ يُجِيبَ أَنَسٌ إذَا سُئِلَ إلَّا بِمَا يَقُولُ بِهِ؟ وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ: أَنَّ دِحْيَةَ بْنَ خَلِيفَةَ الْكَلْبِيَّ أَفْطَرَ فِي مَسِيرٍ لَهُ مِنْ الْفُسْطَاطِ إلَى قَرْيَةٍ عَلَى ثَلَاثَةِ أَمْيَالٍ مِنْهَا.

L8052 And through the chain of Muḥammad ibn Bashshār: Abū Dāwūd al-Ṭayālisī narrated to us, from Shuʿbah, from Qays ibn Muslim, from Saʿīd ibn Jubayr, who said: “I had land at a distance of two farsakhs, and I did not know whether to shorten the prayer to it or to complete it.”

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ بَشَّارٍ: ثنا أَبُو دَاوُد الطَّيَالِسِيُّ ثنا شُعْبَةُ عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: لَقَدْ كَانَتْ لِي أَرْضٌ عَلَى رَأْسِ فَرْسَخَيْنِ فَلَمْ أَدْرِ أَأَقْصُرُ الصَّلَاةَ إِلَيْهَا أَمْ أُتِمُّهَا؟

L8053–8054 And through the chain of Abu Bakr ibn Abi Shaybah: Hatim ibn Ismaʿil narrated to us from ʿAbd al-Rahman ibn Harmalah, who said: I asked Saʿid ibn al-Musayyib: “Do I shorten the prayer and break the fast within a day’s journey from Medina?” He said: “Yes,” and this chain is as luminous as the sun. And through the chain of Abu Bakr ibn Abi Shaybah: ʿAbd al-Rahman ibn Mahdi narrated to us from Zamʿah (he is ibn Salih) from ʿAmr ibn Dinar, from Abu al-Shaʿtha’ (he is Jabir ibn Zayd) who said: “Is the prayer shortened for a journey of six miles?” And through the chain of Abu Bakr ibn Abi Shaybah: Wakiʿ narrated to us from Zakariyya ibn Abi Za’idah that he heard al-Shaʿbi say: “If I were to go out to the Monastery of the Foxes, would I shorten the prayer?” And from al-Qasim ibn Muhammad and Salim: They instructed a Meccan man to shorten the prayer from Mecca to Mina, without distinguishing between Hajj and other than it, nor between a Meccan and a non-Meccan.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ: ثنا حَاتِمُ بْنُ إِسْمَاعِيلَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ حَرْمَلَةَ قَالَ: سَأَلْت سَعِيدَ بْنَ الْمُسَيِّبِ: أَأَقْصُرُ الصَّلَاةَ وَأُفْطِرُ فِي بَرِيدٍ مِنْ الْمَدِينَةِ؟ قَالَ: نَعَمْ، وَهَذَا إِسْنَادٌ كَالشَّمْسِ وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ زَمْعَةَ هُوَ ابْنُ صَالِحٍ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي الشَّعْثَاءِ هُوَ جَابِرُ بْنُ زَيْدٍ - قَالَ: يُقْصَرُ فِي مَسِيرَةِ سِتَّةِ أَمْيَالٍ؟ وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ: ثنا وَكِيعٌ عَنْ زَكَرِيَّاءَ بْنِ أَبِي زَائِدَةَ أَنَّهُ سَمِعَ الشَّعْبِيَّ يَقُولُ: لَوْ خَرَجْت إلَى دَيْرِ الثَّعَالِبِ لَقَصَرْت؟ وَعَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَسَالِمٍ: أَنَّهُمَا أَمَرَا رَجُلًا مَكِّيًّا بِالْقَصْرِ مِنْ مَكَّةَ إلَى مِنًى، وَلَمْ يَخُصَّا حَجًّا مِنْ غَيْرِهِ، وَلَا مَكِّيًّا مِنْ غَيْرِهِ.

L8055 It has been authentically reported from Kulthūm ibn Hāni’, ʿAbdullāh ibn Muḥayriz, and Qabīṣah ibn Dhu’ayb that shortening the four-rakʿah prayers is permissible for a distance of thirteen to nineteen miles.

وَصَحَّ عَنْ كُلْثُومِ بْنِ هَانِئٍ، وَعَبْدِ اللَّهِ بْنِ مُحَيْرِيزٍ، وَقَبِيصَةِ بْنِ ذُؤَيْبٍ: الْقَصْرُ فِي بِضْعَةَ عَشَرَ مِيلًا.

L8056 We affirm all this, and so do our companions regarding travel: if it is a mile or more for Hajj, Umrah, jihad, or breaking the fast in every journey. Ali said: He understood this from the Companions we have cited—Umar ibn al-Khattab, Ali ibn Abi Talib, Dihyah ibn Khalifah, Abdullah ibn Masʿud, Ibn Umar, Anas, and Shurahbil ibn as-Simt.

وَبِكُلِّ هَذَا نَقُولُ، وَبِهِ يَقُولُ أَصْحَابُنَا فِي السَّفَرِ: إذَا كَانَ عَلَى مِيلٍ فَصَاعِدًا فِي حَجٍّ، أَوْ عُمْرَةٍ، أَوْ جِهَادٍ، وَفِي الْفِطْرِ، فِي كُلِّ سَفَرٍ قَالَ عَلِيٌّ: فَهِمَ مِنْ الصَّحَابَةِ كَمَا أَوْرَدْنَا: عُمَرُ بْنُ الْخَطَّابِ، وَعَلِيُّ بْنُ أَبِي طَالِبٍ، وَدِحْيَةُ بْنُ خَلِيفَةَ، وَعَبْدُ اللَّهِ بْنُ مَسْعُودٍ، وَابْنُ عُمَرَ، وَأَنَسٌ، وَشُرَحْبِيلُ بْنُ السِّمْطِ.

L8057 And among the Followers, known as the Tabiʿīn: Saʿīd ibn al-Musayyib, Al-Shaʿbī, Jābir ibn Zayd, Al-Qāsim ibn Muḥammad, Sālim ibn ʿAbd Allāh ibn

ʿUmar, Qabīṣah ibn Dhuʾayb, ʿAbd Allāh ibn Muḥayriz, Kulthūm ibn Hāniʾ, Anas ibn Sīrīn, and others.

وَمِنْ التَّابِعِينَ: سَعِيدُ بْنُ الْمُسَيِّبِ، وَالشَّعْبِيُّ، وَجَابِرُ بْنُ زَيْدٍ، وَالْقَاسِمُ بْنُ مُحَمَّدٍ، وَسَالِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ، وَقَبِيصَةُ بْنُ ذُؤَيْبٍ، وَعَبْدُ اللَّهِ بْنُ مُحَيْرِيزٍ، وَكُلْثُومُ بْنُ هَانِئٍ، وَأَنَسُ بْنُ سِيرِينَ، وَغَيْرُهُمْ.

L8058–8060 Sa'id ibn Jubayr hesitated regarding that matter. Among those who held this view is Mālik in some of his positions—as we previously mentioned from him concerning one who breaks the fast through interpretive reasoning—and regarding the Meccan resident shortening prayers at Mina and Arafah. Ali remarked: "We meticulously scrutinized the narrations in these chapters because we observed the Mālikīs and Shāfiʿīs attempting to assert claims of consensus over their rulings." Rather, a prominent figure among these and another prominent figure among these have assailed that position.

وَتَوَقَّفَ فِي ذَلِكَ سَعِيدُ بْنُ جُبَيْرٍ، وَيَدْخُلُ فِيمَنْ قَالَ بِهَذَا: مَالِكٌ فِي بَعْضِ أَقْوَالِهِ، عَلَى مَا ذَكَرْنَا عَنْهُ فِي الْمُفْطِرِ مُتَأَوِّلًا، وَفِي الْمَكِّيِّ يَقْصُرُ بِمِنًى وَعَرَفَةَ؟ قَالَ عَلِيٌّ: وَإِنَّمَا تَقَصَّيْنَا الرِّوَايَاتِ فِي هَذِهِ الْأَبْوَابِ، لِأَنَّنَا وَجَدْنَا الْمَالِكِيِّينَ وَالشَّافِعِيِّينَ قَدْ أَخَذُوا يُجَرِّبُونَ أَنْفُسَهُمْ فِي دَعْوَى الْإِجْمَاعِ عَلَى قَوْلِهِمْ بَلْ قَدْ هَجَمَ عَلَى ذَلِكَ كَبِيرٌ مِنْ هَؤُلَاءِ وَكَبِيرٌ مِنْ هَؤُلَاءِ.

L8061 One of them said: "I have not found anyone who held a position less than shortening (qasr) in what we have stated. Thus, it constitutes consensus." The other said: "Our position aligns with the view of Ibn Abbas and Ibn Umar, with no dissent among the Companions. We sought reward by dispelling the falsehood attributed to them from those misled by it, citing only widely recognized narrations evident to scholars of transmission – those found in circulated books even among the youngest students of hadith. How then could it be obscure to established scholars? All praise belongs to Allah, Lord of the worlds."

فَقَالَ أَحَدُهُمَا: لَمْ أَجِدْ أَحَدًا قَالَ بِأَقَلَّ مِنْ - الْقَصْرِ فِيمَا قُلْنَا بِهِ، فَهُوَ إِجْمَاعٌ وَقَالَ الْآخَرُ: قَوْلُنَا هُوَ قَوْلُ ابْنِ عَبَّاسٍ وَابْنِ عُمَرَ، وَلَا مُخَالِفَ لَهُمَا مِنْ الصَّحَابَةِ فَاحْتَسَبْنَا الْأَجْرَ فِي إِزَالَةِ ظُلْمَةِ كَذِبِهِمَا عَنْ الْمُغْتَرِّ بِهِمَا، وَلَمْ نُورِدْ إِلَّا رِوَايَةً مَشْهُورَةً ظَاهِرَةً عِنْدَ الْعُلَمَاءِ بِالنَّقْلِ، وَفِي الْكُتُبِ الْمُتَدَاوَلَةِ عِنْدَ صِبْيَانِ الْمُحَدِّثِينَ، فَكَيْفَ أَهْلُ الْعِلْمِ؟ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L8062 Ali said: As for those who have specified the distance requiring prayer shortening during travel—whether measured as journeys between horizons, provisions carried with waterskins, or quantified as ninety-six miles, eighty-two miles, seventy-two miles, sixty-three miles, sixty-one miles, forty-eight miles, forty-five miles, forty miles, or thirty-six miles—they have no proof at all nor any basis, neither from the Quran, nor from an authentic or weak hadith, nor from consensus, analogy, sound reasoning, nor even from a Companion's opinion with none among them opposing him. Since this is so, such claims deserve no consideration. We then ask those who restrict prayer shortening and exemption from fasting to any of these measures: Which specific mile

قَالَ عَلِيٌّ: أَمَّا مَنْ قَالَ بِتَحْدِيدِ مَا يُقْصَرُ فِيهِ بِالسَّفَرِ، مِنْ أُفُقٍ إِلَى أُفُقٍ، وَحَيْثُ يُحْمَلُ الزَّادُ وَالْمَزَادُ وَفِي سِتَّةٍ وَتِسْعِينَ مِيلًا، وَفِي اثْنَيْنِ وَثَمَانِينَ مِيلًا، وَفِي اثْنَيْنِ وَسَبْعِينَ مِيلًا، وَفِي ثَلَاثَةٍ وَسِتِّينَ مِيلًا، أَوْ فِي أَحَدٍ وَسِتِّينَ مِيلًا، أَوْ ثَمَانِيَةٍ وَأَرْبَعِينَ مِيلًا، أَوْ خَمْسَةٍ وَأَرْبَعِينَ مِيلًا، أَوْ أَرْبَعِينَ مِيلًا، أَوْ سِتَّةٍ وَثَلَاثِينَ مِيلًا: فَمَا لَهُمْ حُجَّةٌ أَصْلًا وَلَا مُتَعَلَّقَ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا مِنْ إِجْمَاعٍ وَلَا مِنْ قِيَاسٍ، وَلَا رَأْيٍ

سَدِيدٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ لَا مُخَالِفَ لَهُ مِنْهُمْ - وَمَا كَانَ هَكَذَا فَلَا وَجْهَ لِلِاشْتِغَالِ بِهِ ثُمَّ نَسْأَلُ مَنْ حَدَّ مَا فِيهِ الْقَصْرُ، وَالْفِطْرُ بِشَيْءٍ مِنْ ذَلِكَ عَنْ أَيِّ مِيلٍ هُوَ؟ ثُمَّ نَحُطُّهُ مِنَ الْمِيلِ عَقْدًا أَوْ فَتْرًا أَوْ شِبْرًا، وَلَا نَزَالُ نَحُطُّهُ شَيْئًا فَشَيْئًا فَلَا بُدَّ لَهُ مِنَ التَّحَكُّمِ فِي الدِّينِ، أَوْ تَرْكِ مَا هُوَ عَلَيْهِ؟ فَسَقَطَتْ هَذِهِ الْأَقْوَالُ جُمْلَةً وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ؟

do they mean? We then progressively reduce this mile—by knots, intervals, or handspans—continually diminishing it. They must either impose arbitrary rulings in religion or abandon their position. Thus, all these assertions collapse entirely, and all praise belongs to Allah, Lord of the worlds?

وَلَا مُتَعَلَّقَ لَهُمْ بِابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ لِوُجُوهٍ -: أَحَدُهَا: أَنَّهُ قَدْ خَالَفَهُمْ غَيْرُهُمْ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L8063–8064 Nor do they have any valid basis for reliance on Ibn Abbas and Ibn Umar due to several considerations. One of these is that other Companions besides them—may Allah be pleased with them—disagreed with them.

وَالثَّانِي: أَنَّهُ لَيْسَ التَّحْدِيدُ بِالْأَمْيَالِ فِي ذَلِكَ مِنْ قَوْلِهِمَا، وَإِنَّمَا هُوَ مِنْ قَوْلِ مَنْ دُونَهُمَا.

L8065 The second is that the specification by miles in that matter is not from the opinion of the two of them, but rather from the opinion of others besides them.

وَالثَّالِثُ: أَنَّهُ قَدْ اُخْتُلِفَ عَنْهُمَا أَشَدُّ الِاخْتِلَافِ كَمَا أَوْرَدْنَا.

L8066 The third [point] is that the most severe degree of disagreement has arisen regarding them both, as we have presented.

فَرَوَى حَمَّادُ بْنُ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، وَحُمَيْدٍ كِلَاهُمَا عَنْ نَافِعٍ، وَوَافَقَهُمَا ابْنُ جُرَيْجٍ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ كَانَ لَا يَقْصُرُ فِي أَقَلَّ مِنْ سِتَّةٍ وَتِسْعِينَ مِيلًا وَرَوَى مَعْمَرٌ عَنْ أَيُّوبَ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ كَانَ يَقْصُرُ فِي أَرْبَعَةِ بُرُدٍ، وَلَمْ يَذْكُرْ أَنَّهُ مَنَعَ مِنْ الْقَصْرِ فِي أَقَلَّ؟ وَرَوَى هِشَامُ بْنُ الْغَازِ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ قَالَ: لَا يَقْصُرُ الصَّلَاةَ إلَّا فِي الْيَوْمِ التَّامِّ

L8067 Hammad ibn Salamah narrated from Ayyub al-Sakhtiyani and Humaid—both from Nafi‘—and Ibn Jurayj also narrated from Nafi‘, corroborating their account: that Ibn ‘Umar would not shorten prayers for less than ninety-six miles. Ma‘mar narrated from Ayyub from Nafi‘: that Ibn ‘Umar would shorten prayers in four burud, but did he mention prohibiting shortening for less? Hisham ibn al-Ghāzī narrated from Nafi‘: that Ibn ‘Umar said, “One should not shorten prayers except on a complete day.”

وَرَوَى مَالِكٌ عَنْ نَافِعٍ عَنْهُ: أَنَّهُ لَا يُقْصَرُ فِي الْبَرِيدِ.

L8068 Mālik reported from Nāfiʿ, who narrated from him [Ibn ʿUmar], that prayer is not shortened within the distance of a barīd.

وَقَالَ مَالِكٌ: ذَاتُ النُّصْبِ، وَرِيمٌ: كِلْتَاهُمَا مِنْ الْمَدِينَةِ عَلَى نَحْوِ أَرْبَعَةِ بُرُدٍ، وَرَوَى عَنْهُ عَلِيُّ بْنُ رَبِيعَةَ الْوَالِبِيُّ: لَا قَصْرَ فِي أَقَلَّ مِنْ اثْنَيْنِ وَسَبْعِينَ مِيلًا.

L8069 Mālik said: Dhāt al-Nuṣb and Rīm—both being located approximately four burud (a unit of distance) from Medina. ʿAlī ibn Rabīʿah al-Wālibī narrated from him that he said: There is no shortening of prayer for a journey less than seventy-two *mil* (Islamic miles).

وَرَوَى عَنْهُ ابْنُهُ سَالِمُ بْنُ عَبْدِ اللَّهِ - وَهُوَ أَجَلُّ مِنْ نَافِعٍ -: أَنَّهُ قَصَرَ إلَى ثَلَاثِينَ مِيلًا.

L8070 His son Salim ibn Abdullah—who is more eminent than Nafi‘—narrated

from him that he shortened the prayer for a journey of thirty miles.

L8071 And it was narrated from him by his nephew Hafs ibn ʾAsim—who is more eminent than Nafi' and more knowledgeable about him—that he shortened prayers up to eighteen miles. And it was narrated from him by Shurahbil ibn al-Simt, Muhammad ibn Zayd ibn Khalda, Muharib ibn Dithar, and Jabala ibn Suhaym—all of whom are imams—that he shortened prayers within four miles, within three miles, within one mile, and in a journey of an hour's duration.

وَرَوَى عَنْهُ ابْنُ أَخِيهِ حَفْصُ بْنُ عَاصِمٍ - وَهُوَ أَجَلُّ مِنْ نَافِعٍ وَأَعْلَمُ بِهِ: أَنَّهُ قَصَرَ إِلَى ثَمَانِيَةَ عَشَرَ مِيلًا؟ وَرَوَى عَنْهُ شُرَحْبِيلُ بْنُ السِّمْطِ، وَمُحَمَّدُ بْنُ زَيْدِ بْنِ خَلْدَةَ، وَمُحَارِبُ بْنُ دِثَارٍ، وَجَبَلَةُ بْنُ سُحَيْمٍ - وَكُلُّهُمْ أَئِمَّةٌ -: الْقَصْرَ فِي أَرْبَعَةِ أَمْيَالٍ، وَفِي ثَلَاثَةِ أَمْيَالٍ، وَفِي مِيلٍ وَاحِدٍ، وَفِي سَفَرِ سَاعَةٍ.

L8072 The maximum distance of an hour's journey is between two and three miles.

وَأَقْصَى مَا يَكُونُ سَفَرُ السَّاعَةِ مِنْ مِيلَيْنِ إِلَى ثَلَاثَةٍ.

L8073 As for Ibn Abbas, Ata narrated from him: The shortening of prayers is permitted when traveling to Usfan, which is thirty-two Roman miles. If you arrive where there are people or livestock, then complete the prayer, and do not shorten prayers while traveling to Arafah or Mina.

وَأَمَّا ابْنُ عَبَّاسٍ فَرَوَى عَنْهُ عَطَاءٌ: الْقَصْرَ إِلَى عُسْفَانَ، وَهِيَ اثْنَانِ وَثَلَاثُونَ مِيلًا، وَإِذَا وَرَدْت عَلَى أَهْلٍ أَوْ مَاشِيَةٍ فَأَتِمَّ، وَلَا تَقْصُرْ إِلَى عَرَفَةَ وَلَا مِنًى.

L8074–8075 Mujāhid narrated from him: There is no shortening [of prayers] on a day until the ʿAtamah prayer, but only in what exceeds that. Abū Jamrah al-Ḍubaʿī narrated from him: There is no shortening except on a day when travel is undertaken. Mālik contradicted him [the narrator] regarding his ruling that ʿAṭāʾ should not shorten prayers when traveling to Minā or ʿArafah, though ʿAṭāʾ was a Meccan. It is illogical for some of his statements to be considered authoritative while the majority of his opinions are not. Mālik and al-Shāfiʿī also opposed him in his ruling: If you arrive where your family or livestock reside, perform the prayer in full.

وَرَوَى عَنْهُ مُجَاهِدٌ: لَا قَصْرَ فِي يَوْمٍ إِلَى الْعَتَمَةِ، لَكِنْ فِيمَا زَادَ عَلَى ذَلِكَ وَرَوَى عَنْهُ أَبُو جَمْرَةَ الضُّبَعِيُّ: لَا قَصْرَ إِلَّا فِي يَوْمٍ مُتَاحٍ. وَقَدْ خَالَفَهُ مَالِكٌ فِي أَمْرِهِ عَطَاءً: أَنْ لَا يَقْصُرَ إِلَى مِنًى وَلَا إِلَى عَرَفَةَ، وَعَطَاءٌ مَكِّيٌّ، فَمِنْ الْبَاطِلِ أَنْ يَكُونَ بَعْضُ قَوْلِهِ حُجَّةً وَجُمْهُورُ قَوْلِهِ لَيْسَ حُجَّةً وَخَالَفَهُ أَيْضًا مَالِكٌ، وَالشَّافِعِيُّ فِي قَوْلِهِ: إذَا قَدِمْت عَلَى أَهْلٍ أَوْ مَاشِيَةٍ فَأَتِمَّ الصَّلَاةَ.

L8076 The opinions of Mālik and al-Shāfiʿī thus came to be outside the scope of definitively concluding that the specification originated from any of the Companions—may Allah be pleased with them—nor was there any clear evidence from any of the Successors that they defined what entails shortening in that manner.

فَحَصَلَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ: خَارِجًا عَنْ أَنْ يَقْطَعَ بِأَنَّهُ تَحْدِيدُ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا وُجِدَ بَيِّنًا عَنْ أَحَدٍ مِنْ التَّابِعِينَ أَنَّهُ حَدَّ مَا فِيهِ الْقَصْرُ بِذَلِكَ.

L8077 And perhaps the specification—mentioned in the ḥadīth of Ibn ʿAbbās—excludes ʿAṭāʾ, referring specifically to Hishām ibn Rabīʿah.

وَلَعَلَّ التَّحْدِيدَ - الَّذِي فِي حَدِيثِ ابْنِ عَبَّاسٍ - إنَّمَا هُوَ مِنْ دُونِ عَطَاءٍ، وَهُوَ هِشَامُ بْنُ رَبِيعَةَ.

L8078 The narration of Nāfiʿ from Ibn ʿUmar does not state that he prohibited

shortening prayers in less than four *burud* [a traditional distance unit of approximately 12-16 km]. Thus, the opinions of those who defined that limit using the specified miles are conclusively nullified, and success is with Allah, the Exalted.

وَلَيْسَ فِي حَدِيثِ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ مَنَعَ الْقَصْرَ فِي أَقَلَّ مِنْ أَرْبَعَةِ بُرُدٍ فَسَقَطَتْ أَقْوَالُ مَنْ حَدَّ ذَلِكَ بِالْأَمْيَالِ الْمَذْكُورَةِ سُقُوطًا مُتَيَقَّنًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L8079 Then we returned to the opinion of those who set the limit at three days except with a mahram, two days except with a mahram, a day with something extra except with a mahram, a complete day except with a mahram, or a day and a night except with a mahram. We found no foundational basis for those who set it at a day with an added portion, so this opinion was discarded. We then examined the remaining opinions and found no basis for them except the authentic hadith from the Messenger of Allah (peace and blessings be upon him) through narrations transmitted by Abū Saʿīd al-Khudrī, Abū Hurayrah, and Ibn ʿUmar regarding "the prohibition against a woman traveling." In some narrations it states three days except with a mahram, in others two nights except with a mahram, in others a day and a night except with a mahram, and in others a day except with a mahram.

ثُمَّ رَجَعْنَا إِلَى قَوْلِ مَنْ حَدَّ بِثَلَاثَةِ أَيَّامٍ، أَوْ يَوْمَيْنِ، أَوْ يَوْمٍ وَشَيْءٍ زَائِدٍ، أَوْ يَوْمٍ تَامٍّ، أَوْ يَوْمٍ وَلَيْلَةٍ -: فَلَمْ نَجِدْ لِمَنْ حَدَّ ذَلِكَ بِيَوْمٍ وَزِيَادَةِ شَيْءٍ مُتَعَلَّقًا أَصْلًا، فَسَقَطَ هَذَا الْقَوْلُ فَنَظَرْنَا فِي الْأَقْوَالِ الْبَاقِيَةِ فَلَمْ نَجِدْ لَهُمْ مُتَعَلَّقًا إِلَّا بِالْحَدِيثِ الَّذِي صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ أَبِي سَعِيدٍ الْخُدْرِيِّ، وَأَبِي هُرَيْرَةَ، وَابْنِ عُمَرَ فِي «نَهْيِ الْمَرْأَةِ عَنْ السَّفَرِ -: فِي بَعْضِهَا ثَلَاثَةَ أَيَّامٍ إِلَّا مَعَ ذِي مَحْرَمٍ وَفِي بَعْضِهَا لَيْلَتَيْنِ إِلَّا مَعَ ذِي مَحْرَمٍ وَفِي بَعْضِهَا يَوْمًا وَلَيْلَةً إِلَّا مَعَ ذِي مَحْرَمٍ وَفِي بَعْضِهَا يَوْمًا إِلَّا مَعَ ذِي مَحْرَمٍ» ".

L8080–8081 So, has every group we mentioned relied [on an opinion]? As for those who relied on two nights or a day and a night—they have no basis whatsoever because the hadith specifies one day and three days. Thus, there is no reason to rely on two days or a day and a night instead of these other two numbers [of days].

فَتَعَلَّقَتْ كُلُّ طَائِفَةٍ مِمَّا ذَكَرْنَا؟ فَأَمَّا مَنْ تَعَلَّقَ بِلَيْلَتَيْنِ، أَوْ بِيَوْمٍ وَلَيْلَةٍ: فَلَا مُتَعَلَّقَ لَهُمْ أَصْلًا؛ لِأَنَّهُ قَدْ جَاءَ ذَلِكَ الْحَدِيثُ بِيَوْمٍ، وَجَاءَ بِثَلَاثَةِ أَيَّامٍ، فَلَا مَعْنَى لِلتَّعَلُّقِ بِالْيَوْمَيْنِ، وَلَا بِالْيَوْمِ وَاللَّيْلَةِ، دُونَ هَذَيْنِ الْعَدَدَيْنِ الْآخَرَيْنِ أَصْلًا.

L8082–8084 The only possible dispute here would be to base an argument on the greater number mentioned in that hadith or the lesser number cited within it. As for relying on a quantity explicitly stated in the text as being either less or more than what is mentioned, there is absolutely no basis for this. Thus, these two opinions are also invalidated. We then considered the view of those who based their argument on three or the day. Now, among the arguments of those who based their position on the day was their statement: "It is the least amount mentioned in that hadith," thereby establishing it as the defining limit for travel, such that what falls below it differs from it. It is therefore obligatory that this be the limit for that which is shortened. They said: "Whoever adopted our limit has implemented the rulings for two

وَإِنَّمَا يُمْكِنُ أَنْ يُشْغَبَ هَاهُنَا بِالتَّعَلُّقِ بِالْأَكْثَرِ مِمَّا ذُكِرَ فِي ذَلِكَ الْحَدِيثِ، أَوْ بِالْأَقَلِّ مِمَّا ذُكِرَ فِيهِ - وَأَمَّا التَّعَلُّقُ بِعَدَدٍ قَدْ جَاءَ النَّصُّ بِأَقَلَّ مِنْهُ، أَوْ بِأَكْثَرَ مِنْهُ، فَلَا وَجْهَ لَهُ أَصْلًا، فَسَقَطَ هَذَانِ الْقَوْلَانِ أَيْضًا؟ فَنَظَرْنَا فِي قَوْلِ مَنْ تَعَلَّقَ بِالثَّلَاثِ، أَوْ بِالْيَوْمِ: فَكَانَ مِنْ شَغَبِ مَنْ تَعَلَّقَ بِالْيَوْمِ أَنْ قَالَ: هُوَ أَقَلُّ مَا ذُكِرَ فِي ذَلِكَ الْحَدِيثِ، فَكَانَ ذَلِكَ هُوَ حَدُّ السَّفَرِ الَّذِي مَا دُونَهُ بِخِلَافِهِ، فَوَجَبَ أَنْ يَكُونَ ذَلِكَ حَدًّا لِمَا يُقْصَرُ فِيهِ قَالُوا: وَكَانَ مَنْ أَخَذَ بِحَدِّنَا قَدْ اسْتَعْمَلَ حُكْمَ اللَّيْلَتَيْنِ وَالْيَوْمِ وَاللَّيْلَةِ وَالثَّلَاثِ، وَلَمْ

nights, a day, a night, and three days, without omitting anything from the legal provisions mentioned in that hadith. Is this not more valid than one who nullifies most of what is mentioned in that hadith?"

يَسْقُطْ مِنْ حُكْمِ مَا ذُكِرَ فِي ذَلِكَ الْحَدِيثِ شَيْئًا: وَهَذَا أَوْلَى مِمَّنْ أَسْقَطَ أَكْثَرَ مَا ذُكِرَ فِي ذَلِكَ الْحَدِيثِ؟

L8085 Ali said: So we said to them: Bring something. If your reliance is only on the day—because it is the shortest duration mentioned in the hadith—then it is not as you claimed, for you were either ignorant or acted deliberately. This hadith was narrated by Bishr ibn al-Mufaḍḍal from Suhayl ibn Abī Ṣāliḥ from his father from Abū Hurayrah, who said: The Messenger of Allah (peace be upon him) said: "It is not lawful for a woman who believes in Allah and the Last Day to travel a day and night's journey unless accompanied by her mahram."

قَالَ عَلِيٌّ: فَقُلْنَا لَهُمْ: تَأْتُوا بِشَيْءٍ فَإِنْ كُنْتُمْ إِنَّمَا تَعَلَّقْتُمْ بِالْيَوْمِ، لِأَنَّهُ أَقَلُّ مَا ذُكِرَ فِي الْحَدِيثِ -: فَلَيْسَ كَمَا قُلْتُمْ، وَقَدْ جَهِلْتُمْ أَوْ تَعَمَّدْتُمْ فَإِنَّ هَذَا الْحَدِيثَ رَوَاهُ بِشْرُ بْنُ الْمُفَضَّلِ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَحِلُّ لِامْرَأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ تُسَافِرَ يَوْمًا وَلَيْلَةً إِلَّا وَمَعَهَا ذُو مَحْرَمٍ مِنْهَا» ".

L8086 Mālik narrated it from Saʿīd ibn Abī Saʿīd al-Maqburī from his father from Abū Hurayrah that the Messenger of Allah (peace and blessings of Allah be upon him) said: "It is unlawful for a woman who believes in Allah and the Last Day to undertake a journey of a day and a night unless accompanied by a mahram."

وَرَوَاهُ مَالِكٌ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَحِلُّ لِامْرَأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ تُسَافِرُ يَوْمًا وَلَيْلَةً إِلَّا مَعَ ذِي مَحْرَمٍ مِنْهَا» ".

L8087 And it was narrated by Al-Layth ibn Sa'd from Saʿīd ibn Abī Saʿīd al-Maqburī from his father: that Abu Hurayrah said: The Messenger of Allah (peace be upon him) said: "It is not lawful for a Muslim woman to travel a night's journey unless she is accompanied by a mahram relative of hers."

وَرَوَاهُ اللَّيْثُ بْنُ سَعْدٍ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِيهِ: أَنَّ أَبَا هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَحِلُّ لِامْرَأَةٍ مُسْلِمَةٍ تُسَافِرُ لَيْلَةً إِلَّا وَمَعَهَا رَجُلٌ ذُو حُرْمَةٍ مِنْهَا» .

L8088 It was narrated by Ibn Abi Dhi'b from Sa'id ibn Abi Sa'id al-Maqburī from his father from Abū Hurayrah from the Prophet (peace and blessings of Allah be upon him): "It is not lawful for a woman who believes in Allah and the Last Day to travel a day's journey unless accompanied by a mahram."[3]

وَرَوَاهُ ابْنُ أَبِي ذِئْبٍ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَحِلُّ لِامْرَأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ تُسَافِرُ مَسِيرَةَ يَوْمٍ إِلَّا مَعَ ذِي مَحْرَمٍ» .

L8089 It was narrated by Jarīr ibn Ḥāzim from Suhayl ibn Abī Ṣāliḥ from Saʿīd ibn Abī Saʿīd al-Maqburī from Abū Hurayrah, who said: The Messenger of

وَرَوَاهُ جَرِيرُ بْنُ حَازِمٍ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ الْحَدِيثَ وَفِيهِ -: " أَنْ

[3] **Hadith references (L8088):** Sahih Muslim 1339b.

Allāh—peace and blessings of Allāh be upon him—mentioned the ḥadīth containing the phrase: "to travel a distance of one barīd (approximately twelve miles)." However, there is uncertainty whether Saʿīd actually met Abū Hurayrah and directly heard from him. The narrators disagreed regarding the chains of transmission from Abū Hurayrah, then from Saʿīd ibn Abī Saʿīd, and from Suhayl ibn Abī Ṣāliḥ, as we have cited.

L8090–8092 Ibn Abbas narrated this hadith without any inconsistency in it, nor was there disagreement from him - as Abdullah ibn Yusuf narrated to us, who heard from Ahmad ibn Fath, who heard from Abdul-Wahhab ibn Isa, who heard from... Ahmad ibn Muhammad narrated to us from Ahmad ibn Ali, from Muslim ibn al-Hajjaj, from Abu Bakr ibn Abi Shaybah and Zuhayr ibn Harb (both of whom narrated from Sufyan ibn Uyaynah), from Amr ibn Dinar, from Abu Maʿbad (the freed slave of Ibn Abbas), who said: "I heard Ibn Abbas say: I heard the Messenger of Allah (peace be upon him) say: 'A man must not seclude himself with a woman unless she has a mahram with her, and a woman must not travel except with a mahram.'"[4]

L8093 In his narration, Ibn Abbas encompassed every journey shorter than a day and shorter than a barīd, along with those exceeding both. Every journey, whether short or long, universally governs what is in all other hadiths, and all that exists in other hadiths forms a portion of what is contained in this narration of Ibn Abbas. Thus, it encompasses all of them and unifies them entirely. It is improper to extend beyond its rulings to other matters. Therefore, the argument of those who rely on the day is invalidated, and success is by Allah, the Exalted.

L8094 Then we examined the statement of those who defined that as three days and found them relying on the mention of three in this ḥadīth and on what is authentically reported from the Messenger of Allah—peace and blessings of Allah be upon him—regarding his statement about wiping: "For the traveler, three days including their nights, and for the non-traveler, a day and a night." We found they did not bolster their argument with anything else whatsoever.

تُسَافِرَ بَرِيدًا " وَسَعِيدٌ أَدْرَكَ أَبَا هُرَيْرَةَ وَسَمِعَ مِنْهُ؟ فَاخْتَلَفَ الرُّوَاةُ عَنْ أَبِي هُرَيْرَةَ، ثُمَّ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ، وَعَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ كَمَا أَوْرَدْنَا.

وَرَوَى هَذَا الْحَدِيثَ ابْنُ عَبَّاسٍ فَلَمْ يَضْطَرِبْ عَلَيْهِ وَلَا اُخْتُلِفَ عَنْهُ؟ كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَزُهَيْرُ بْنُ حَرْبٍ كِلَاهُمَا عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ ثنا عَمْرُو بْنُ دِينَارٍ عَنْ أَبِي مَعْبَدٍ، هُوَ مَوْلَى ابْنِ عَبَّاسٍ - قَالَ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا يَخْلُوَنَّ رَجُلٌ بِامْرَأَةٍ إلَّا وَمَعَهَا ذُو مَحْرَمٍ، وَلَا تُسَافِرُ الْمَرْأَةُ إلَّا مَعَ ذِي مَحْرَمٍ» .

فَعَمَّ ابْنُ عَبَّاسٍ فِي رِوَايَتِهِ كُلَّ سَفَرٍ دُونَ الْيَوْمِ وَدُونَ الْبَرِيدِ وَأَكْثَرَ مِنْهُمَا، وَكُلُّ سَفَرٍ قَلَّ أَوْ طَالَ فَهُوَ عَامٌّ لِمَا فِي سَائِرِ الْأَحَادِيثِ وَكُلُّ مَا فِي سَائِرِ الْأَحَادِيثِ فَهُوَ بَعْضُ مَا فِي حَدِيثِ ابْنِ عَبَّاسٍ هَذَا فَهُوَ الْمُحْتَوِي عَلَى جَمِيعِهَا، وَالْجَامِعُ لَهَا كُلِّهَا، وَلَا يَنْبَغِي أَنْ يَتَعَدَّى مَا فِيهِ إلَى غَيْرِهِ، فَسَقَطَ قَوْلُ مَنْ تَعَلَّقَ بِالْيَوْمِ أَيْضًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ حَدَّ ذَلِكَ بِالثَّلَاثِ فَوَجَدْنَاهُمْ يَتَعَلَّقُونَ بِذِكْرِ الثَّلَاثِ فِي هَذَا الْحَدِيثِ وَبِمَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ فِي الْمَسْحِ «لِلْمُسَافِرِ ثَلَاثًا بِلَيَالِيهِنَّ، وَلِلْمُقِيمِ يَوْمًا وَلَيْلَةً» لَمْ نَجِدْهُمْ مَوَّهُوا بِغَيْرِ هَذَا أَصْلًا

[4] **Hadith references (L8090):** Sahih Muslim 1341a; Bulugh al-Maram 718; Riyad as-Salihin 990.

L8095 Ali said: They said, “Whoever adheres to the three is certain of correctness, because if he (peace be upon him) mentioned his prohibition against her traveling for three days before prohibiting her traveling for a day or less, then the narration that mentions the day is the one to be followed, while his prohibition against her traveling for three days remains unabrogated; indeed, firmly established as it was.”

قَالَ عَلِيٌّ: وَقَالُوا: مَنْ تَعَلَّقَ بِالثَّلَاثِ كَانَ عَلَى يَقِينٍ مِنْ الصَّوَابِ، لِأَنَّهُ إنْ كَانَ - عَلَيْهِ السَّلَامُ - ذَكَرَ نَهْيَهُ عَنْ سَفَرِهَا ثَلَاثًا قَبْلَ نَهْيِهِ عَنْ سَفَرِهَا يَوْمًا أَوْ أَقَلَّ مِنْ يَوْمٍ -: فَالْخَبَرُ الَّذِي ذُكِرَ فِيهِ الْيَوْمُ هُوَ الْوَاجِبُ أَنْ يُعْمَلَ بِهِ، وَيَبْقَى نَهْيُهُ عَنْ سَفَرِهَا ثَلَاثًا غَيْرَ مَنْسُوخٍ، بَلْ ثَابِتٌ كَمَا كَانَ.

L8096–8098 If it is mentioned that he prohibited her from traveling for three days after prohibiting her from traveling for a day or less, then is his prohibition of traveling for three days the abrogating ruling that supersedes his prohibition of her traveling for less than three days? They said: We are certain of the validity of prohibiting her from traveling for three days unless she is with a *mahram*, but we doubt the validity of prohibiting her from traveling for less than three days. Thus, it is impermissible to abandon certainty for doubt. Ali said: This is specious reasoning – corrupt in three aspects: One of them is that a prohibition has been established against traveling for more than three days (and nights).

وَإِنْ كَانَ ذُكِرَ نَهْيُهُ عَنْ سَفَرِهَا ثَلَاثًا بَعْدَ نَهْيِهِ عَنْ سَفَرِهَا يَوْمًا أَوْ أَقَلَّ مِنْ يَوْمٍ -: فَنَهْيُهُ عَنْ السَّفَرِ ثَلَاثًا هُوَ النَّاسِخُ لِنَهْيِهِ إيَّاهَا عَنْ السَّفَرِ أَقَلَّ مِنْ ثَلَاثٍ؟ قَالُوا: فَنَحْنُ عَلَى يَقِينٍ مِنْ صِحَّةِ حُكْمِ النَّهْيِ عَنْ السَّفَرِ ثَلَاثًا إلَّا مَعَ ذِي مَحْرَمٍ وَعَلَى شَكٍّ مِنْ صِحَّةِ النَّهْيِ لَهَا عَمَّا دُونَ الثَّلَاثِ، فَلَا يَجُوزُ أَنْ يُتْرَكَ الْيَقِينُ لِلشَّكِّ قَالَ عَلِيٌّ: وَهَذَا تَمْوِيهٌ فَاسِدٌ مِنْ وُجُوهٍ ثَلَاثَةٍ -: أَحَدُهَا: أَنَّهُ قَدْ جَاءَ النَّهْيُ أَنْ تُسَافِرَ أَكْثَرَ مِنْ ثَلَاثٍ.

L8099 It has been narrated to us through numerous chains of the highest authenticity from Ubayd Allah ibn Umar, from Nāfi‘, from Ibn Umar, who reported: The Messenger of Allah - may Allah’s peace and blessings be upon him - said: “A woman shall not travel beyond three except accompanied by a mahram.”

رُوِّينَا ذَلِكَ مِنْ طُرُقٍ كَثِيرَةٍ فِي غَايَةِ الصِّحَّةِ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُسَافِرُ الْمَرْأَةُ فَوْقَ ثَلَاثٍ إلَّا وَمَعَهَا ذُو مَحْرَمٍ» .

L8100 Narrated by Qatadah from Qazaʿah from Abu Sa’id al-Khudri that the Messenger of Allah (peace be upon him) said: “A woman must not travel for more than three nights unless accompanied by a mahram.”

وَمِنْ طَرِيقِ قَتَادَةَ عَنْ قَزَعَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تُسَافِرُ الْمَرْأَةُ فَوْقَ ثَلَاثِ لَيَالٍ إلَّا مَعَ ذِي مَحْرَمٍ» .

L8101 Through the chain of Abu Mu’awiyah and Waki’, from al-A’mash, from Abu Salih al-Sammān, from Abu Sa’id al-Khudri, who said: The Messenger of Allah (peace and blessings be upon him) said: It is not permissible for a woman who believes in Allah and the Last Day to undertake a journey exceeding three days or more unless she is accompanied by her brother, father, husband, son, or a *mahram* from her relatives.

وَمِنْ طَرِيقِ أَبِي مُعَاوِيَةَ، وَوَكِيعٍ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ السَّمَّانِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَحِلُّ لِامْرَأَةٍ تُؤْمِنُ بِاَللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ تُسَافِرَ سَفَرًا فَوْقَ ثَلَاثَةِ أَيَّامٍ فَصَاعِدًا إلَّا وَمَعَهَا أَخُوهَا أَوْ أَبُوهَا أَوْ زَوْجُهَا أَوْ ابْنُهَا، أَوْ ذُو مَحْرَمٍ مِنْهَا» .

L8102 If the mention of three in some narrations excludes what is less than three—which has also been mentioned in some narrations regarding the ruling of three—then the mention of what exceeds three in these narrations would also exclude three, even if three is mentioned in some narrations concerning the ruling of what exceeds three. Otherwise, are the people merely playing games, arbitrarily enforcing invalid rulings? They would be obliged to claim they are certain of the validity of the ruling concerning what exceeds three and its remaining non-abrogated, while doubting the validity of maintaining the prohibition against three—just as they equated three and what is below it as utterly equivalent, with no distinction whatsoever. They said: "No one has ever distinguished between three and what exceeds three." It was then replied to them: "You have asserted something invalid. It is authentically established from ʿIkrimah that the travel limit a woman may undertake applies to more than three, not three."

L8103–8105 How could this be? For it is invalid to regard a statement—uttered by two Followers and two jurists from the major cities, about which there was disagreement concerning a position held by one Companion while other Companions opposed his view—as constituting a consensus unless... What of one who has neither religion nor shame? How then? Since it has been reported from Ibn Umar that he counted seventy-two miles to Al-Suwayda as a three-day journey, his stipulation—as narrated from him—that no shortening of prayers is permitted for journeys shorter than ninety-six miles implies that this exceeds three days. For there is a difference of twenty-four miles between the two numbers, and it is impossible for both these numbers to correspond to three equal days.

L8106 The second aspect is that this opinion is contradicted by the view of those who set the limit at one day. They argue: We are certain of the validity of our application of his prohibition—peace be upon him—against her traveling a day without a non-mahram and her prohibition from more than that. For whether the prohibition on her traveling three days was the first or the last, she is also prohibited from the day. Delaying the prohibition on her traveling three days does not abrogate his earlier prohibition—peace be upon him—against what is less than three days. You are certain of violating his

فَإِنْ كَانَ ذِكْرُ الثَّلَاثِ فِي بَعْضِ الرِّوَايَاتِ مُخْرِجًا لِمَا دُونَ الثَّلَاثِ، مِمَّا قَدْ ذُكِرَ أَيْضًا فِي بَعْضِ الرِّوَايَاتِ، عَنْ حُكْمِ الثَّلَاثِ -: فَإِنَّ ذِكْرَ مَا فَوْقَ الثَّلَاثِ فِي هَذِهِ الرِّوَايَاتِ مُخْرِجٌ لِلثَّلَاثِ أَيْضًا، وَإِنْ ذُكِرَتْ فِي بَعْضِ الرِّوَايَاتِ عَنْ حُكْمِ مَا فَوْقَ الثَّلَاثِ، وَإِلَّا فَالْقَوْمُ مُتَلَاعِبُونَ مُتَحَكِّمُونَ بِالْبَاطِلِ؟ وَيَلْزَمُهُمْ أَنْ يَقُولُوا: إِنَّهُمْ عَلَى يَقِينٍ مِنْ صِحَّةِ حُكْمِ مَا فَوْقَ الثَّلَاثِ وَبَقَائِهِ غَيْرَ مَنْسُوخٍ، وَعَلَى شَكٍّ مِنْ صِحَّةِ بَقَاءِ النَّهْيِ عَنْ الثَّلَاثِ، كَمَا قَالُوا فِي الثَّلَاثِ وَفِيمَا دُونَهَا سَوَاءٌ بِسَوَاءٍ وَلَا فَرْقَ فَقَالُوا: لَمْ يُفَرِّقْ أَحَدٌ بَيْنَ الثَّلَاثِ وَبَيْنَ مَا فَوْقَ الثَّلَاثِ؟ فَقِيلَ لَهُمْ: قُلْتُمْ بِالْبَاطِلِ، قَدْ صَحَّ عَنْ عِكْرِمَةَ أَنَّ حَدَّ مَا تُسَافِرُ الْمَرْأَةُ فِيهِ بِأَكْثَرَ مِنْ ثَلَاثٍ لَا بِثَلَاثٍ.

فَكَيْفَ؟ وَلَا يَجُوزُ أَنْ يَكُونَ قَوْلٌ قَالَهُ رَجُلَانِ مِنْ التَّابِعِينَ، وَرَجُلَانِ مِنْ فُقَهَاءِ الْأَمْصَارِ، وَاخْتُلِفَ فِيهِ عَنْ وَاحِدٍ مِنْ الصَّحَابَةِ قَدْ خَالَفَهُ غَيْرُهُ مِنْهُمْ فَمَا يَعُدُّهُ إِجْمَاعًا إِلَّا مَنْ لَا دِينَ لَهُ وَلَا حَيَاءَ فَكَيْفَ؟ وَإِذْ قَدْ جَاءَ عَنْ ابْنِ عُمَرَ أَنَّهُ عَدَّ اثْنَيْنِ وَسَبْعِينَ مِيلًا إِلَى السُّوَيْدَاءِ مَسِيرَةَ ثَلَاثٍ، فَإِنَّ تَحْدِيدَهُ الَّذِي رُوِيَ عَنْهُ: أَنْ لَا قَصْرَ فِيمَا دُونَهُ لِسِتَّةٍ وَتِسْعِينَ مِيلًا -: مُوجِبٌ أَنَّ هَذَا أَكْثَرُ مِنْ ثَلَاثٍ، لِأَنَّ بَيْنَ الْعَدَدَيْنِ أَرْبَعَةً وَعِشْرِينَ مِيلًا، وَمُحَالٌ كَوْنُ كُلِّ وَاحِدٍ مِنْ هَذَيْنِ الْعَدَدَيْنِ ثَلَاثًا مُسْتَوِيَةً

وَالْوَجْهُ الثَّانِي: أَنَّهُ قَدْ عَارَضَ هَذَا الْقَوْلَ قَوْلُ مَنْ حَدَّ بِالْيَوْمِ الْوَاحِدِ، وَقَوْلُهُمْ: نَحْنُ عَلَى يَقِينٍ مِنْ صِحَّةِ اسْتِعْمَالِنَا نَهْيَهُ - عَلَيْهِ السَّلَامُ - عَنْ سَفَرِهَا يَوْمًا وَاحِدًا مَعَ غَيْرِ ذِي مَحْرَمٍ وَنَهْيِهَا عَنْ أَكْثَرَ مِنْ ذَلِكَ، لِأَنَّهُ إِنْ كَانَ النَّهْيُ عَنْ سَفَرِهَا ثَلَاثًا هُوَ الْأَوَّلُ أَوْ هُوَ الْآخِرُ، فَإِنَّهَا مَنْهِيَّةٌ أَيْضًا عَنْ الْيَوْمِ، وَلَيْسَ تَأْخِيرُ نَهْيِهَا عَنْ الثَّلَاثِ بِنَاسِخٍ لِمَا تَقَدَّمَ مِنْ نَهْيِهِ - عَلَيْهِ السَّلَامُ - عَمَّا دُونَ الثَّلَاثِ، وَأَنْتُمْ عَلَى يَقِينٍ مِنْ مُخَالَفَتِكُمْ لِنَهْيِهِ - عَلَيْهِ

prohibition—peace be upon him—against her traveling less than three days, and opposing his command—peace be upon him—without certainty of abrogation is impermissible. Thus, the two opinions conflict. The third aspect is that the ḥadīth of Ibn ʿAbbās, which we mentioned, is decisive over all these narrations, and all of them are part of its content. Is it not impermissible to contradict what is in it fundamentally? For whoever acts upon it has acted upon all the mentioned narrations, and whoever acts upon any of those narrations—excluding the others—has opposed the prohibition of the Messenger of Allah—peace and blessings be upon him—and this is not permissible.

السَّلَامُ - لَهَا عَمَّا دُونَ الثَّلَاثِ، وَخِلَافُ أَمْرِهِ - عَلَيْهِ السَّلَامُ - بِغَيْرِ يَقِينٍ لِلنَّسْخِ لَا يَحِلُّ، فَتَعَارَضَ الْقَوْلَانِ وَالثَّالِثُ: أَنَّ حَدِيثَ ابْنِ عَبَّاسٍ الَّذِي ذَكَرْنَا: قَاضٍ عَلَى جَمِيعِ هَذِهِ الْأَحَادِيثِ، وَكُلُّهَا بَعْضُ مَا فِيهِ، فَلَا يَجُوزُ أَنْ يُخَالَفَ مَا فِيهِ أَصْلًا؟ لِأَنَّ مَنْ عَمِلَ بِهِ فَقَدْ عَمِلَ بِجَمِيعِ الْأَحَادِيثِ الْمَذْكُورَةِ، وَمَنْ عَمِلَ بِشَيْءٍ مِنْ تِلْكَ الْأَحَادِيثِ - دُونَ سَائِرِهَا - فَقَدْ خَالَفَ نَهْيَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، وَهَذَا لَا يَجُوزُ؟

L8107 Ali said: Then, even if the narrations do not conflict, there is nothing in the hadith prohibiting a woman from traveling for any duration except with a mahram, nor in the hadith concerning the duration for wiping over khuffs for travelers and residents—no mention exists at all, neither by explicit text nor by derived evidence—regarding the duration in which one shortens prayers and breaks the fast, nor does one shorten prayers or break the fast in a period shorter than that duration.

قَالَ عَلِيٌّ: ثُمَّ لَوْ لَمْ تَتَعَارَضْ الرِّوَايَاتُ فَإِنَّهُ لَيْسَ فِي الْحَدِيثِ الَّذِي فِيهِ نَهْيُ الْمَرْأَةِ عَنْ سَفَرِ مُدَّةٍ مَا إلَّا مَعَ ذِي مَحْرَمٍ، وَلَا فِي الْحَدِيثِ الَّذِي فِيهِ مُدَّةُ مَسْحِ الْمُسَافِرِ وَالْمُقِيمِ -: ذِكْرٌ أَصْلًا - لَا بِنَصٍّ وَلَا بِدَلِيلٍ - عَلَى الْمُدَّةِ الَّتِي يَقْصُرُ فِيهَا وَيُفْطِرُ، وَلَا يَقْصُرُ، وَلَا يُفْطِرُ فِي أَقَلَّ مِنْهَا.

L8108 It is remarkable that Allah, the Exalted, mentioned the shortening of prayers during travel in times of fear.

وَمِنْ الْعَجَبِ أَنَّ اللَّهَ تَعَالَى -: ذَكَرَ الْقَصْرَ فِي الضَّرْبِ فِي الْأَرْضِ مَعَ الْخَوْفِ.

L8109–8111 He mentioned breaking the fast during travel and illness, and dry ablution when water is unavailable during travel and illness: They made these rulings—the prohibition of a woman from traveling without a mahram and the ruling on the traveler's wiping during ablution—as evidence for matters requiring prayer shortening and fast-breaking, as opposed to what necessitates neither shortening nor breaking. Did they not consider this a basis to distinguish travel requiring tayammum from travel not requiring it? If they argue: "We analogized cases where prayer is shortened and where it is not to situations where a woman travels without a mahram versus with one, and to what a resident must wipe over versus what he need not," we counter: "Why this approach? What common legal cause (ʿillah) unites these two matters, or what resemblance exists between them? Why did you not analogize the duration which—if a traveler intends to reside for it—requires him to offer full prayers during it? Can anyone not arbitrarily analogize one ruling to an-

وَذَكَرَ الْفِطْرَ فِي السَّفَرِ وَالْمَرَضِ؟ وَذَكَرَ التَّيَمُّمَ عِنْدَ عَدَمِ الْمَاءِ فِي السَّفَرِ وَالْمَرَضِ -: فَجَعَلَ هَؤُلَاءِ حُكْمَ نَهْيِ الْمَرْأَةِ عَنْ السَّفَرِ إلَّا مَعَ ذِي مَحْرَمٍ، وَحُكْمُ مَسْحِ الْمُسَافِرِ -: دَلِيلٌ عَلَى مَا يَقْصُرُ فِيهِ وَيُفْطِرُ، دُونَ مَا لَا قَصْرَ فِيهِ وَلَا فِطْرَ، وَلَمْ يَجْعَلُوهُ دَلِيلًا عَلَى السَّفَرِ الَّذِي يَتَيَمَّمُ فِيهِ مِنْ السَّفَرِ الَّذِي لَا يُتَيَمَّمُ فِيهِ؟ فَإِنْ قَالُوا: قِسْنَا مَا تُقْصَرُ فِيهِ الصَّلَاةُ، وَمَا لَا تُقْصَرُ فِيهِ عَلَى مَا تُسَافِرُ فِيهِ الْمَرْأَةُ مَعَ غَيْرِ ذِي مَحْرَمٍ، وَمَا لَا تُسَافِرُهُ، وَعَلَى مَا يَمْسَحُ فِيهِ الْمُقِيمُ، وَمَا لَا يَمْسَحُ؟ قُلْنَا لَهُمْ: وَلِمَ فَعَلْتُمْ هَذَا؟ وَمَا الْعِلَّةُ الْجَامِعَةُ بَيْنَ الْأَمْرَيْنِ؟ أَوْ مَا الشَّبَهُ بَيْنَهُمَا؟ وَهَلَّا قِسْتُمْ الْمُدَّةَ الَّتِي إذَا نَوَى إقَامَتَهَا الْمُسَافِرُ أَتَمَّ عَلَى ذَلِكَ أَيْضًا؟ وَمَا يَعْجِزُ أَحَدٌ أَنْ يَقِيسَ بِرَأْيِهِ حُكْمًا عَلَى حُكْمٍ آخَرَ وَهَلَّا قِسْتُمْ مَا يَقْصُرُ فِيهِ

عَلَى مَا لَا يَتَيَمَّمُ فِيهِ؟ فَهُوَ أَوْلَى إِنْ كَانَ الْقِيَاسُ حَقًّا، أَوْ عَلَى مَا أَبَحْتُمْ فِيهِ لِلرَّاكِبِ التَّنَفُّلَ عَلَى دَابَّتِهِ.

other based on opinion? Why did you not analogize cases requiring prayer shortening to those not requiring tayammum? This would be more valid if analogy holds—or to your allowance for riders to perform voluntary (nafl) prayers atop their mounts?"

ثُمَّ نَقُولُ لَهُمْ: أَخْبِرُونَا عَنْ قَوْلِكُمْ: إِنْ سَافَرَ ثَلَاثَةَ أَيَّامٍ قَصَرَ وَأَفْطَرَ، وَإِنْ سَافَرَ أَقَلَّ لَمْ يَقْصُرْ وَلَمْ يُفْطِرْ -: مَا هَذِهِ الثَّلَاثَةُ الْأَيَّامُ؟ أَمِنْ أَيَّامِ حُزَيْرَانَ؟ أَمْ مِنْ أَيَّامِ كَانُونَ الْأَوَّلِ فَمَا بَيْنَهُمَا؟ وَهَذِهِ الْأَيَّامُ الَّتِي قُلْتُمْ، أَسَيْرُ الْعَسَاكِرِ؟ أَمْ سَيْرُ الرِّفَاقِ عَلَى الْإِبِلِ، أَوْ عَلَى الْحَمِيرِ، أَوْ عَلَى الْبِغَالِ، أَمْ سَيْرُ الرَّاكِبِ الْمُجِدِّ؟ أَمْ سَيْرُ الْبَرِيدِ؟ أَمْ مَشْيُ الرَّجَّالَةِ.

L8112 Then we say to them: Inform us about your statement that if one travels three days, he shortens prayers and breaks the fast, and if he travels less, he does not shorten prayers nor break the fast. What are these three days? Are they from the days of Huzayran, or the days of Kanun al-Awwal, or what lies between them? And these days you specified—are they the travel of armies, the travel of caravans on camels, donkeys, or mules, the travel of a diligent rider, the travel of couriers, or the walking of foot travelers?

وَقَدْ عَلِمْنَا يَقِينًا أَنَّ مَشْيَ الرَّاجِلِ الشَّيْخِ الضَّعِيفِ فِي وَحْلٍ وَوَعِرٍ، أَوْ فِي حَرٍّ شَدِيدٍ -: خِلَافُ مَشْيِ الرَّاكِبِ عَلَى الْبَغْلِ الْمُطِيقِ فِي الرَّبِيعِ فِي السَّهْلِ، وَأَنَّ هَذَا يَمْشِي فِي يَوْمٍ مَا لَا يَمْشِيهِ الْآخَرُ فِي عَشَرَةِ أَيَّامٍ؟ وَأَخْبِرُونَا عَنْ هَذِهِ الْأَيَّامِ: كَيْفَ هِيَ؟ أَمَشْيًا مِنْ أَوَّلِ النَّهَارِ إِلَى آخِرِهِ؟ أَمْ إِلَى وَقْتِ الْعَصْرِ، أَوْ بَعْدَ ذَلِكَ قَلِيلًا، أَوْ قَبْلَ ذَلِكَ قَلِيلًا؟ أَمْ النَّهَارُ وَاللَّيْلُ مَعًا؟ أَمْ كَيْفَ هَذَا وَأَخْبِرُونَا: كَيْفَ جَعَلْتُمْ هَذِهِ الْأَيَّامَ ثَلَاثًا وَسِتِّينَ مِيلًا عَلَى وَاحِدٍ وَعِشْرِينَ مِيلًا كُلَّ يَوْمٍ؟ وَلَمْ تَجْعَلُوهَا اثْنَيْنِ وَسَبْعِينَ مِيلًا عَلَى أَرْبَعَةٍ وَعِشْرِينَ مِيلًا كُلَّ يَوْمٍ؟ أَوْ اثْنَيْنِ وَثَلَاثِينَ مِيلًا كُلَّ يَوْمٍ؟ أَوْ عِشْرِينَ مِيلًا كُلَّ يَوْمٍ؟ أَوْ خَمْسَةً وَثَلَاثِينَ مِيلًا كُلَّ يَوْمٍ فَمَا بَيْنَ ذَلِكَ فَكُلُّ هَذِهِ الْمَسَافَاتِ تَمْشِيهَا الرِّفَاقُ، وَلَا سَبِيلَ لَهُمْ إِلَى تَحْدِيدِ شَيْءٍ مِمَّا ذَكَرْنَا - دُونَ سَائِرِهِ - إِلَّا بِرَأْيٍ فَاسِدٍ.

L8113–8115 We know with certainty that the walking of an elderly weak pedestrian through mud and rugged terrain, or in intense heat, differs from the riding of one mounted on a capable mule during spring on level ground, and that this one walks in one day what the other cannot walk in ten days. Inform us about these days: How are they? Is the walking from daybreak until nightfall? Or until the time of Asr, or slightly after that, or slightly before? Or does it encompass day and night together? Explain this to us. Inform us: How did you set these days as sixty-three miles with twenty-one miles each day? Why did you not set them as seventy-two miles with twenty-four miles each day? Or thirty-two miles each day? Or twenty miles each day? Or thirty-five miles each day? Or what is between that? Travelers traverse all these distances, and they cannot specify any part of what we have mentioned (to the exclusion of the rest) except through an invalid personal opinion.

وَهَكَذَا يُقَالُ لِمَنْ قَدَّرَ ذَلِكَ بِيَوْمٍ، أَوْ بِلَيْلَةٍ، أَوْ بِيَوْمٍ، أَوْ بِيَوْمَيْنِ، وَلَا فَرْقَ؟ فَإِنْ قَالُوا: هَذَا الِاعْتِرَاضُ يَلْزَمُكُمْ أَنْ تُدْخِلُوهُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَمْرِهِ الْمَرْأَةَ أَنْ لَا تُسَافِرَ ثَلَاثًا أَوْ لَيْلَتَيْنِ، أَوْ يَوْمًا وَلَيْلَةً أَوْ يَوْمًا إِلَّا مَعَ ذِي مَحْرَمٍ، وَفِي تَحْدِيدِهِ - عَلَيْهِ

L8116 And likewise, it is said to those who define this as a day, a night, a day, or two days—is there no distinction? If they argue: "Does this objection compel you to apply it to the Messenger of Allah—peace and blessings be upon him—regarding his ruling that a woman must not travel three days, two nights, a day and night, or a day except with a mahram, and his stipulation—peace be upon him—of the traveler's concession of wiping [over footwear] for three

days and the resident's [limit] for a day and night?" We reply—granting no honor to whoever among you asserts this—: "Rather, the difference between the stipulation of the Messenger of Allah—peace and blessings be upon him—and your stipulation is immense. This is because you have not linked the days you set as a limit for what necessitates prayer shortening or breaking the fast—or the day and night similarly, which some of you have designated as a limit—to the traveler's journey for which shortening prayers is ordained within that measure. Instead, every faction among you has set a territorial distance limit, with no reduction, for you unanimously agree that one who walks three days—each day covering eighteen or twenty miles—does not qualify for prayer shortening. Yet if someone walks thirty miles in a day and night, he is not obligated to shorten prayers."

السَّلَامُ - مَسْحَ الْمُسَافِرِ ثَلَاثًا وَالْمُقِيمِ يَوْمًا وَلَيْلَةً؟ قُلْنَا - وَلَا كَرَامَةَ لِقَائِلِ هَذَا مِنْكُمْ -: بَلْ بَيْنَ تَحْدِيدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَحْدِيدِكُمْ أَعْظَمُ الْفَرْقِ، وَهُوَ أَنَّكُمْ لَمْ تَكِلُوا الْأَيَّامَ الَّتِي جَعَلْتُمُوهَا - حَدًّا لِمَا يَقْصُرُ فِيهِ وَمَا يُفْطِرُ، أَوْ الْيَوْمُ وَاللَّيْلَةُ كَذَلِكَ، الَّتِي جَعَلَهَا مِنْكُمْ مَنْ جَعَلَهَا حَدًّا -: إلَى مَشْيِ الْمُسَافِرِ الْمَأْمُورِ بِالْقَصْرِ أَوْ الْفِطْرِ فِي ذَلِكَ الْمِقْدَارِ؟ بَلْ كُلُّ طَائِفَةٍ مِنْكُمْ جَعَلَتْ لِذَلِكَ حَدًّا مِنْ مَسَاحَةِ الْأَرْضِ لَا يَنْقُصُ مِنْهَا شَيْءٌ، لِأَنَّكُمْ مُجْمِعُونَ عَلَى أَنَّ مَنْ مَشَى ثَلَاثَةَ أَيَّامٍ كُلَّ يَوْمٍ ثَمَانِيَةَ عَشَرَ مِيلًا، أَوْ عِشْرِينَ مِيلًا لَا يَقْصُرُ، فَإِنْ مَشَى يَوْمًا وَلَيْلَةً ثَلَاثِينَ مِيلًا فَإِنَّهُ لَا يَقْصُرُ.

L8117 You have agreed that whoever walks three days, each day a barīd without any reason, or combines that walking into a single day, does not shorten the prayer? And you, O obfuscators who cite the three nights in the two ḥadīths, have agreed that if one walks sixty-three mīl within his day, he shortens the prayer and breaks the fast.

وَاتَّفَقْتُمْ أَنَّهُ مَنْ مَشَى ثَلَاثَةَ أَيَّامٍ كُلَّ يَوْمٍ بَرِيدًا غَيْرُ شَيْءٍ أَوْ جَمَعَ ذَلِكَ الْمَشْيَ فِي يَوْمٍ وَاحِدٍ أَنَّهُ لَا يَقْصُرُ؟ وَاتَّفَقْتُمْ مَعْشَرَ الْمُمَوِّهِينَ بِذِكْرِ الثَّلَاثِ لَيَالِي فِي الْحَدِيثَيْنِ عَلَى أَنَّهُ لَوْ مَشَى مِنْ يَوْمِهِ ثَلَاثًا وَسِتِّينَ مِيلًا فَإِنَّهُ يَقْصُرُ وَيُفْطِرُ.

L8118 Even if one does not travel except for part of a day – and this is very possible, indeed common among people – the command of the Messenger of Allah – peace be upon him – is not the same for a woman: she may not travel three days or a day unless accompanied by a _mahram_.

وَلَوْ لَمْ يَمْشِ إلَّا بَعْضَ يَوْمٍ وَهَذَا مُمْكِنٌ جِدًّا، كَثِيرٌ فِي النَّاسِ؟ وَلَيْسَ كَذَلِكَ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَرْأَةَ بِأَنْ لَا تُسَافِرَ ثَلَاثًا أَوْ يَوْمًا إلَّا مَعَ ذِي مَحْرَمٍ.

L8119 His command—peace be upon him—to the traveler is to wipe (masḥ) for three days including their nights, then to remove them, because these days are left to the circumstances of the traveler and female traveler, in accordance with the general scope of his statement—peace be upon him—for had he intended something else, he would have clarified it to his Ummah.

وَأَمْرُهُ - عَلَيْهِ السَّلَامُ - الْمُسَافِرَ ثَلَاثَةَ أَيَّامٍ بِلَيَالِيهِنَّ بِالْمَسْحِ ثُمَّ يَخْلَعُ، لِأَنَّ هَذِهِ الْأَيَّامَ مَوْكُولَةٌ إلَى حَالَةِ الْمُسَافِرِ وَالْمُسَافِرَةِ، عَلَى عُمُومِ قَوْلِهِ - عَلَيْهِ السَّلَامُ - الَّذِي لَوْ أَرَادَ غَيْرَهُ لَبَيَّنَهُ لِأُمَّتِهِ.

L8120 If a woman traveling intends to journey a mile or more, it would not be permissible for her to depart without a mahram, except in cases of necessity?

فَلَوْ أَنَّ مُسَافِرَةً خَرَجَتْ تُرِيدُ سَفَرَ مِيلٍ فَصَاعِدًا لَمْ يَجُزْ لَهَا أَنْ تَخْرُجَهُ إلَّا مَعَ ذِي مَحْرَمٍ إلَّا لِضَرُورَةٍ؟

L8121–8122 If a traveler were to undertake a journey of three miles, walking one mile

daily, would he be permitted to wipe? And if he traveled one day, stayed the next, and traveled a third day, he would be permitted to wipe for the three days as they are.

وَلَوْ أَنَّ مُسَافِرًا سَافَرَ سَفَرًا يَكُونُ ثَلَاثَةَ أَمْيَالٍ يَمْشِي فِي كُلِّ يَوْمٍ مِيلًا لَكَانَ لَهُ أَنْ يَمْسَحَ؟ وَلَوْ سَافَرَ يَوْمًا وَأَقَامَ آخَرَ وَسَافَرَ ثَالِثًا لَكَانَ لَهُ أَنْ يَمْسَحَ الْأَيَّامَ الثَّلَاثَةَ كَمَا هِيَ.

L8123 Even if nothing had been reported from him—peace be upon him—except the report of three alone, the ruling would remain that if a woman travels on a journey the measure of her capacity in it being that she cannot walk except two or three miles of her daytime, it would not be permissible for her except with a maḥram.

وَحَتَّى لَوْ لَمْ يَأْتِ عَنْهُ - عَلَيْهِ السَّلَامُ - إلَّا خَبَرُ الثَّلَاثِ فَقَطْ لَكَانَ الْقَوْلُ: أَنَّ الْمَرْأَةَ إنْ خَرَجَتْ فِي سَفَرٍ مِقْدَارَ قُوَّتِهَا فِيهِ أَنْ لَا تَمْشِيَ إلَّا مِيلَيْنِ مِنْ نَهَارِهَا أَوْ ثَلَاثَةً -: لَمَا حَلَّ، لَهَا إلَّا مَعَ ذِي مَحْرَمٍ.

L8124 If her strength allowed her to walk fifty miles (approximately 2 km each) every day, she would be permitted to travel a distance of one hundred miles with her *mahram* but not alone.

فَلَوْ كَانَ مِقْدَارُ قُوَّتِهَا أَنْ تَمْشِيَ خَمْسِينَ مِيلًا كُلَّ يَوْمٍ لَكَانَ لَهَا أَنْ تُسَافِرَ مَسَافَةَ مِائَةِ مِيلٍ مَعَ ذِي مَحْرَمٍ لَكِنْ وَحْدَهَا.

L8125 The definition established by him—peace be upon him—in these narrations is rational, comprehensible, and precise, not quantified by a confined land area, but by what inherently constitutes a three-day journey or a day's journey with no increase beyond that. What you have defined is entirely irrational, incomprehensible, and fundamentally imprecise by any measure, thus exposing the disparity between your claim and the statement of Allah's Messenger—peace and blessings be upon him—and conclusively demonstrating the invalidity of all these assertions without ambiguity. They possess no foundation—not in the Quran, nor in any authentic or defective Sunnah, nor in consensus, analogy, rational deduction, nor even in the statement of a Companion whose own position is not self-contradicted—how then could others among them not contradict him? Such assertions are undoubtedly false, for all narrations transmitted from Allah's Messenger—peace and blessings be upon him—are entirely true in their apparent meaning and implications. Whoever contradicts any part of them contradicts the truth—particularly Mālik's distinction between a Meccan departing to Minā or ʿArafah during Hajj (where he shortens prayers) and people from all other lands traveling the same distance without shortening prayers. This differentiation is unknown from any Companion or successor before him. Some of his adherents argued for it by stating: "This is solely because Allah's Messenger—peace and blessings

وَالَّذِي حَدَّهُ - عَلَيْهِ السَّلَامُ - فِي هَذِهِ الْأَخْبَارِ مَعْقُولٌ مَفْهُومٌ مَضْبُوطٌ غَيْرُ مُقَدَّرٍ بِمِسَاحَةٍ مِنْ الْأَرْضِ لَا تَتَعَدَّى، بَلْ بِمَا يَسْتَحِقُّ بِهِ اسْمَ سَفَرِ ثَلَاثٍ أَوْ سَفَرِ يَوْمٍ، وَلَا مَزِيدَ؟ وَالَّذِي حَدَّدْتُمُوهُ أَنْتُمْ غَيْرُ مَعْقُولٍ وَلَا مَفْهُومٍ وَلَا مَضْبُوطٍ أَصْلًا بِوَجْهٍ مِنْ الْوُجُوهِ فَظَهَرَ فَرْقُ مَا بَيْنَ قَوْلِكُمْ وَقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، وَتَبَيَّنَ فَسَادُ هَذِهِ الْأَقْوَالِ كُلِّهَا بِيَقِينٍ لَا إشْكَالَ فِيهِ، وَأَنَّهَا لَا مُتَعَلَّقَ لَهَا وَلَا لِشَيْءٍ مِنْهَا لَا بِقُرْآنٍ وَلَا بِسُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا بِإِجْمَاعٍ وَلَا بِقِيَاسٍ وَلَا بِمَعْقُولٍ، وَلَا بِقَوْلِ صَاحِبٍ لَمْ يُخْتَلَفْ عَلَيْهِ نَفْسِهِ، فَكَيْفَ أَنْ لَا يُخَالِفُهُ غَيْرُهُ مِنْهُمْ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ بِيَقِينٍ فَإِنَّ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْأَخْبَارِ الْمَأْثُورَةِ عَنْهُ حَقٌّ كُلُّهَا عَلَى ظَاهِرِهَا وَمُقْتَضَاهَا، مَنْ خَالَفَ شَيْئًا مِنْهَا خَالَفَ الْحَقَّ، لَا سِيَّمَا تَفْرِيقُ مَالِكٍ بَيْنَ خُرُوجِ الْمَكِّيِّ إلَى مِنًى وَإِلَى عَرَفَةَ فِي الْحَجِّ فَيَقْصُرُ -: وَبَيْنَ سَائِرِ جَمِيعِ بِلَادِ الْأَرْضِ يَخْرُجُونَ هَذَا الْمِقْدَارَ فَلَا يَقْصُرُونَ وَلَا يُعْرَفُ هَذَا التَّفْرِيقُ عَنْ صَاحِبٍ وَلَا

be upon him—said, 'O people of Mecca, complete your prayers, for we are travelers,' yet he did not say this regarding Minā."

L8126–8127 Ali said: This is not authentically established from the Messenger of Allah—peace and blessings be upon him—at all. Rather, is it not preserved from Umar—may Allah be pleased with him? Even if it were authentic, it would not constitute proof for them. For by excluding the ruling for Mecca's residents at Mina from the general rulings of travel based on their stated reasoning, they would be obligated to require Mina's residents to shorten prayers both in Mina and Mecca. This is because the Prophet—peace be upon him—did not command Mina's residents: "Perform complete prayers." If they argue: "It is established that residents do not shorten prayers," we respond: "You speak truth. It is equally established that journeys treated as residence require full prayers. If the distance between Mecca and Mina were considered one of the two mentioned types of travel, would not this distance then apply uniformly across all Allah's lands without distinction? For by textual and rational criteria, there exists only 'travel' or 'residence'—no third category." Some later scholars attempted to define this by hardship. Ali said: We reject this as invalid, for hardship varies. We find those for whom walking three miles is so arduous they can scarcely endure it—a very common case, nearly predominant. Conversely, others ride in springtime litters for a month or more—comfortably attended, experiencing no hardship. Thus this quantitative definition fails. Ali said: Let us now state—with Allah's help and empowerment—to clarify the travel permitting shortened prayers and broken fasts. We declare—success comes from Allah the Exalted—as Allah Almighty says: "When you travel through the land, there is no blame upon you for shortening the prayers if you fear persecution from those who disbelieve" [4:101].[5]

L8128 Umar, Aisha, and Ibn Abbas said: "Allah the Exalted ordained the prayer on the tongue of His Prophet—peace and blessings be upon him—as two rak'ahs

[5] **Qur'an references (L8127):** Qur'an 4:101 (An-Nisa).

تَابِعٍ قَبْلَهُ؟ وَاحْتَجَّ لَهُ بَعْضُ مُقَلِّدِيهِ بِأَنْ قَالَ: إِنَّمَا ذَلِكَ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يَا أَهْلَ مَكَّةَ أَتِمُّوا فَإِنَّا قَوْمٌ سَفْرٌ» وَلَمْ يَقُلْ ذَلِكَ: بِمِنًى.

قَالَ عَلِيٌّ: وَهَذَا لَا يَصِحُّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَصْلًا، وَإِنَّمَا هُوَ مَحْفُوظٌ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ -؟ ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ لَهُمْ، لِأَنَّهُ كَانَ يَلْزَمُهُمْ إِذْ أَخْرَجُوا حُكْمَ أَهْلِ مَكَّةَ بِمِنًى عَنْ حُكْمِ سَائِرِ الْأَسْفَارِ مِنْ أَجْلِ مَا ذَكَرُوا -: أَنْ يَقْصُرَ أَهْلُ مِنًى بِمِنًى وَبِمَكَّةَ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَقُلْ لِأَهْلِ مِنًى: أَتِمُّوا؟ فَإِنْ قَالُوا: قَدْ عُرِفَ أَنَّ الْحَاضِرَ لَا يَقْصُرُ؟ قِيلَ لَهُمْ: صَدَقْتُمْ، وَقَدْ عُرِفَ أَنَّ مَا كَانَ مِنْ الْأَسْفَارِ لَهُ حُكْمُ الْإِقَامَةِ فَإِنَّهُمْ لَا يَقْصُرُونَ فِيهَا، فَإِنْ كَانَ مَا بَيْنَ مَكَّةَ وَمِنًى مِنْ أَحَدِ السَّفَرَيْنِ الْمَذْكُورَيْنِ فَتِلْكَ الْمَسَافَةُ فِي جَمِيعِ بِلَادِ اللَّهِ تَعَالَى كَذَلِكَ وَلَا فَرْقَ، إِذْ لَيْسَ إِلَّا سَفَرٌ أَوْ إِقَامَةٌ بِالنَّصِّ وَالْمَعْقُولِ وَلَا فَرْقَ وَقَدْ حَدَّ بَعْضُ الْمُتَأَخِّرِينَ ذَلِكَ بِمَا فِيهِ الْمَشَقَّةُ؟ قَالَ عَلِيٌّ: فَقُلْنَا هَذَا بَاطِلٌ لِأَنَّ الْمَشَقَّةَ تَخْتَلِفُ، فَنَجِدُ مَنْ يَشُقُّ عَلَيْهِ مَشْيُ ثَلَاثَةِ أَمْيَالٍ حَتَّى لَا يَبْلُغَهَا إِلَّا بِشِقِّ النَّفْسِ، وَهَذَا كَثِيرٌ جِدًّا، يَكَادُ أَنْ يَكُونَ الْأَغْلَبَ، وَنَجِدُ مَنْ لَا يَشُقُّ عَلَيْهِ الرُّكُوبُ فِي عِمَارِيَّةٍ فِي أَيَّامِ الرَّبِيعِ مُرَفَّهًا مَخْدُومًا شَهْرًا وَأَقَلَّ وَأَكْثَرَ، فَبَطَلَ هَذَا التَّحْدِيدُ قَالَ عَلِيٌّ: فَلْنَقُلْ الْآنَ بِعَوْنِ اللَّهِ تَعَالَى وَقُوَّتِهِ عَلَى بَيَانِ السَّفَرِ الَّذِي يَقْصُرُ فِيهِ وَيُفْطِرُ فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَإِذَا ضَرَبْتُمْ فِي الأَرْضِ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَقْصُرُوا مِنَ الصَّلاةِ إِنْ خِفْتُمْ أَنْ يَفْتِنَكُمُ الَّذِينَ كَفَرُوا} [النساء: ١٠١] .

وَقَالَ عُمَرُ، وَعَائِشَةُ، وَابْنُ عَبَّاسٍ: «إِنَّ اللَّهَ تَعَالَى فَرَضَ الصَّلَاةَ عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي السَّفَرِ رَكْعَتَيْنِ» وَلَمْ يَخُصَّ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ

during journey." Neither Allah the Exalted, nor His Messenger—peace and blessings be upon him—nor all Muslims collectively specified any particular journey. Thus, no one may specify it except through scriptural evidence or an indisputable consensus. If it is said: "Rather, one neither shortens prayers nor breaks the fast except in a journey in which all Muslims have unanimously agreed to shorten and break the fast?"

L8129–8130 We said to them: "Do not shorten prayers nor break your fast except during pilgrimage, minor pilgrimage, or jihad," yet this is not your actual position. Had you asserted this, you would have restricted the Quran and the Sunnah without proof, thereby obligating yourselves in all other legal matters to derive nothing from them—neither by Quran nor by Sunnah—unless people unanimously agree upon what they have already agreed. This would dismantle all your juristic schools entirely. Rather, it constitutes rebellion against Islam and authorization to oppose Allah—Exalted is He—and His Messenger—peace be upon him—in the entirety of the religion, except until people unanimously agree on a matter. Yet this very stance is itself a departure from consensus. The truth lies in the obligation to adhere to the Quran and the Prophetic traditions until a valid text or consensus establishes that a specific aspect is specified or abrogated, at which point one adheres to what has been validated. For Allah—Exalted is He—sent His Prophet—peace be upon him—solely to be obeyed.

L8131 Allah the Exalted said: "We sent no messenger except to be obeyed by Allah's permission" [An-Nisā': 64]. Allah did not send him to be disobeyed until people unanimously obey him. Rather, obedience to him is obligatory before anyone obeys him.[6]

L8132 Before anyone opposed him—but when a ruling is issued—no Muslim would contradict this, until those who violated it did so. Travel (*safar*) is departing from one's place of residence, and similarly journeying through the land. No one among the people of the language—the one in which we are addressed and by which the Quran was revealed—contests this except him. Thus, it is impermissible to deviate from this ruling except where an authentic text

وَسَلَّمَ - وَلَا الْمُسْلِمُونَ بِأَجْمَعِهِمْ سَفَرًا مِنْ سَفَرٍ، فَلَيْسَ لِأَحَدٍ أَنْ يَخُصَّهُ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ مُتَيَقَّنٍ؟ فَإِنْ قِيلَ: بَلْ لَا يَقْصُرُ وَلَا يُفْطِرُ إلَّا فِي سَفَرٍ أَجْمَعَ الْمُسْلِمُونَ عَلَى الْقَصْرِ فِيهِ وَالْفِطْرِ؟

قُلْنَا لَهُمْ: فَلَا تَقْصُرُوا وَلَا تُفْطِرُوا إلَّا فِي حَجٍّ، أَوْ عُمْرَةٍ، أَوْ جِهَادٍ، وَلَيْسَ هَذَا قَوْلَكُمْ، وَلَوْ قُلْتُمُوهُ لَكُنْتُمْ قَدْ خَصَّصْتُمْ الْقُرْآنَ وَالسُّنَّةَ بِلَا بُرْهَانٍ، وَلَلَزِمَكُمْ فِي سَائِرِ الشَّرَائِعِ كُلِّهَا أَنْ لَا تَأْخُذَا فِي شَيْءٍ مِنْهَا لَا بِقُرْآنٍ، وَلَا بِسُنَّةٍ إلَّا حَتَّى يُجْمِعَ النَّاسُ عَلَى مَا أَجْمَعُوا عَلَيْهِ مِنْهَا، وَفِي هَذَا هَدْمُ مَذَاهِبِكُمْ كُلِّهَا، بَلْ فِيهِ الْخُرُوجُ عَلَى الْإِسْلَامِ، وَإِبَاحَةُ مُخَالَفَةِ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الدِّينِ كُلِّهِ، إلَّا حَتَّى يُجْمِعَ النَّاسُ عَلَى شَيْءٍ مِنْ ذَلِكَ، وَهَذَا نَفْسُهُ خُرُوجٌ عَنْ الْإِجْمَاعِ وَإِنَّمَا الْحَقُّ فِي وُجُوبِ اتِّبَاعِ الْقُرْآنِ وَالسُّنَنِ حَتَّى يَصِحَّ نَصٌّ أَوْ إجْمَاعٌ فِي شَيْءٍ مِنْهُمَا أَنَّهُ مَخْصُوصٌ أَوْ مَنْسُوخٌ، فَيُوقَفُ عِنْدَ مَا صَحَّ مِنْ ذَلِكَ، فَإِنَّمَا بَعَثَ اللَّهُ تَعَالَى نَبِيَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُطَاعَ.

قَالَ تَعَالَى: {وَمَا أَرْسَلْنَا مِنْ رَسُولٍ إلا لِيُطَاعَ بِإِذْنِ اللَّهِ} [النساء: ٦٤] وَلَمْ يَبْعَثْهُ اللَّهُ تَعَالَى لِيُعْصَى حَتَّى يُجْمِعَ النَّاسُ عَلَى طَاعَتِهِ، بَلْ طَاعَتُهُ وَاجِبَةٌ قَبْلَ أَنْ يُطِيعَهُ أَحَدٌ.

وَقَبْلَ أَنْ يُخَالِفَهُ أَحَدٌ، لَكِنْ سَاعَةَ يَأْمُرُ بِالْأَمْرِ، هَذَا مَا لَا يَقُولُ مُسْلِمٌ خِلَافَهُ، حَتَّى نَقَضَ مَنْ نَقَضَ وَالسَّفَرُ: هُوَ الْبُرُوزُ عَنْ مَحَلَّةِ الْإِقَامَةِ، وَكَذَلِكَ الضَّرْبُ فِي الْأَرْضِ، هَذَا الَّذِي لَا يَقُولُ أَحَدٌ مِنْ أَهْلِ اللُّغَةِ - الَّتِي بِهَا خُوطِبْنَا وَبِهَا نَزَلَ الْقُرْآنُ - سِوَاهُ، فَلَا يَجُوزُ أَنْ يَخْرُجَ عَنْ هَذَا الْحُكْمِ إلَّا مَا صَحَّ النَّصُّ بِإِخْرَاجِهِ؟ ثُمَّ وَجَدْنَا رَسُولَ اللَّهِ

[6] **Qur'an references (L8131):** Qur'an 4:64 (An-Nisa).

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ خَرَجَ إلَى الْبَقِيعِ لِدَفْنِ الْمَوْتَى، وَخَرَجَ إلَى الْفَضَاءِ لِلْغَائِطِ وَالنَّاسُ مَعَهُ فَلَمْ يَقْصُرُوا وَلَا أَفْطَرُوا، وَلَا أَفْطَرَ وَلَا قَصَرَ فَخَرَجَ هَذَا عَنْ أَنْ يُسَمَّى سَفَرًا، وَعَنْ أَنْ يَكُونَ لَهُ حُكْمُ السَّفَرِ، فَلَمْ يَجُزْ لَنَا أَنْ نُوقِعَ اسْمَ سَفَرٍ وَحُكْمَ سَفَرٍ إلَّا عَلَى مَنْ سَمَاهُ مَنْ هُوَ حُجَّةٌ فِي اللُّغَةِ سَفَرًا، فَلَمْ نَجِدْ ذَلِكَ فِي أَقَلَّ مِنْ مِيلٍ.

فَقَدْ رُوِّينَا عَنْ ابْنِ عُمَرَ أَنَّهُ قَالَ: لَوْ خَرَجْت مِيلًا لَقَصَرْت الصَّلَاةَ، فَأَوْقَعْنَا اسْمَ السَّفَرِ وَحُكْمَ السَّفَرِ فِي الْفِطْرِ وَالْقَصْرِ عَلَى الْمِيلِ فَصَاعِدًا، إذْ لَمْ نَجِدْ عَرَبِيًّا وَلَا شَرِيعِيًّا عَالِمًا أَوْقَعَ عَلَى أَقَلَّ مِنْهُ اسْمَ سَفَرٍ، وَهَذَا بُرْهَانٌ صَحِيحٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

فَإِنْ قِيلَ: فَهَلَّا جَعَلْتُمْ الثَّلَاثَةَ الْأَمْيَالَ - كَمَا بَيْنَ الْمَدِينَةِ وَذِي الْحُلَيْفَةِ - حَدًّا لِلْقَصْرِ وَالْفِطْرِ، إذْ لَمْ تَجِدُوا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَصَرَ وَلَا أَفْطَرَ فِي أَقَلَّ مِنْ ذَلِكَ؟

قُلْنَا: وَلَا وَجَدْنَا - عَلَيْهِ السَّلَامُ - مَنَعًا مِنْ الْفِطْرِ وَالْقَصْرِ فِي أَقَلَّ مِنْ ذَلِكَ، بَلْ وَجَدْنَاهُ - عَلَيْهِ السَّلَامُ - أَوْجَبَ عَنْ رَبِّهِ تَعَالَى الْفِطْرَ فِي السَّفَرِ مُطْلَقًا، وَجَعَلَ الصَّلَاةَ فِي السَّفَرِ رَكْعَتَيْنِ مُطْلَقًا، فَصَحَّ مَا قُلْنَاهُ - وَلِلَّهِ تَعَالَى الْحَمْدُ.

وَالْمِيلُ: هُوَ مَا سُمِّيَ عِنْدَ الْعَرَبِ مِيلًا، وَلَا يَقَعُ ذَلِكَ عَلَى أَقَلَّ مِنْ أَلْفَيْ ذِرَاعٍ؟ فَإِنْ قِيلَ: لَوْ كَانَ هَذَا مَا خَفِيَ عَلَى ابْنِ عَبَّاسٍ، وَلَا عَلَى عُثْمَانَ، وَلَا عَلَى مَنْ لَا يَعْرِفُ ذَلِكَ مِنْ التَّابِعِينَ وَالْفُقَهَاءِ، فَهُوَ مِمَّا تَعْظُمُ بِهِ الْبَلْوَى

explicitly exempts. Then we found the Messenger of Allah—peace and blessings be upon him—going out to Al-Baqīʿ to bury the dead, and going out to an open area to relieve himself while people were with him. They neither shortened their prayers nor broke their fasts, and neither did he. Thus, this act was excluded from being termed *safar* and from having the rulings of *safar*. Therefore, it is not permissible for us to apply the term *safar* or its rulings except to what those recognized as linguistic authorities have named as *safar*. We did not find this applicable to anything less than a mile.

L8133 It has been transmitted to us from Ibn ʿUmar that he said: "If I were to depart a mile, I would shorten the prayer." Therefore, we have established the term 'travel' and the ruling of travel pertaining to breaking the fast and shortening prayers to a distance of a mile and beyond, since we have not found any Arab linguist nor knowledgeable legal scholar who assigned the designation of 'travel' to anything less than this. This constitutes sound evidence—and success comes only from Allah, the Exalted.

L8134 If it is said: Why have you not established three miles—as [the distance] between Medina and Dhu'l-Hulayfah—as the limit for shortening prayers and breaking the fast, since you have found no evidence from the Messenger of Allah—peace and blessings be upon him—that he shortened prayers or broke the fast in less than that?

L8135–8136 We said: And we did not find the Prophet—peace be upon him—prohibiting breaking the fast or shortening prayers in less than that. Rather, we found him—peace be upon him—to have been obligated by his Lord, the Exalted, to break the fast absolutely during travel, and to have established prayer during travel as two rakʿahs without restriction. Thus, what we have stated is confirmed—and all praise belongs to Allah, the Exalted.

L8137 The mile is what the Arabs designated as a mile, and it cannot amount to less than two thousand cubits? If it is said: "Had this remained unknown to Ibn Abbas, to Uthman, and to those among the Followers and jurists who were unaware of it," then it is from those matters through which the trial intensifies.

L8138 We said: ʿUmar, Ibn ʿUmar, Anas, and others among the Companions—may

Allah be pleased with them—and the Successors knew it.

قُلْنَا: قَدْ عَرَفَهُ عُمَرُ، وَابْنُ عُمَرَ، وَأَنَسٌ وَغَيْرُهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَالتَّابِعِينَ.

L8139 Then we turn your argument back on you: We say to the Hanafis: Had your opinion in this matter been correct, it would not have been hidden from Uthmān, nor from Ibn Mas'ūd, nor from Ibn 'Abbās, nor from those who do not hold your opinion among the Companions, Followers, and jurists like Mālik, al-Layth, al-Awzā'ī, and others who do not acknowledge your view - especially regarding an issue involving such grave trial? And we say to the Malikis: Had your opinion been correct, it would not have been hidden from all those we mentioned among the Companions, Followers, and jurists - particularly concerning a matter of such grave trial? Yet this binding consequence applies to the mentioned schools, not to us, for they consider this consequence valid - and whoever establishes something becomes bound by it.

ثُمَّ نَعْكِسُ عَلَيْكُمْ قَوْلَكُمْ -: فَنَقُولُ لِلْحَنَفِيِّينَ: لَوْ كَانَ قَوْلُكُمْ فِي هَذِهِ الْمَسْأَلَةِ حَقًّا مَا خَفِيَ عَلَى عُثْمَانَ، وَلَا عَلَى ابْنِ مَسْعُودٍ، وَلَا عَلَى ابْنِ عَبَّاسٍ، وَلَا عَلَى مَنْ لَا يَعْرِفُ قَوْلَكُمْ، كَمَالِكٍ، وَاللَّيْثِ، وَالْأَوْزَاعِيِّ، وَغَيْرِهِمْ، مِمَّنْ لَا يَقُولُ بِهِ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ وَالْفُقَهَاءِ وَهُوَ مِمَّا تَعْظُمُ بِهِ الْبَلْوَى؟ وَنَقُولُ لِلْمَالِكِيِّينَ: لَوْ كَانَ قَوْلُكُمْ حَقًّا مَا خَفِيَ عَلَى كُلِّ مَنْ ذَكَرْنَا مِنْ الصَّحَابَةِ وَالتَّابِعِينَ وَالْفُقَهَاءِ، وَهُوَ مِمَّا تَعْظُمُ بِهِ الْبَلْوَى؟ إلَّا أَنَّ هَذَا الْإِلْزَامَ لَازِمٌ لِلطَّوَائِفِ الْمَذْكُورَةِ لَا لَنَا؛ لِأَنَّهُمْ يَرَوْنَ هَذَا الْإِلْزَامَ حَقًّا، وَمَنْ حَقَّقَ شَيْئًا لَزِمَهُ.

L8140 As for us, we do not validate this corrupt imposition; rather, in our view, it is whisperings and misguidance. It suffices us to follow what Allah, the Exalted, and His Messenger (peace be upon him) have said. Those who recognize it do so, and those who are ignorant of it remain so. There is no divine law disputed by people except that some of the Salaf knew it and affirmed it, while others were ignorant of it and did not affirm it. And success is from Allah, the Exalted.

وَأَمَّا نَحْنُ فَلَا نُحَقِّقُ هَذَا الْإِلْزَامَ الْفَاسِدَ بَلْ هُوَ عِنْدَنَا وَسْوَاسٌ وَضَلَالٌ، وَإِنَّمَا حَسْبُنَا اتِّبَاعُ مَا قَالَ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ السَّلَامُ -، عَرَفَهُ مَنْ عَرَفَهُ، وَجَهِلَهُ مَنْ جَهِلَهُ، وَمَا مِنْ شَرِيعَةٍ اخْتَلَفَ النَّاسُ فِيهَا إلَّا قَدْ عَلِمَهَا بَعْضُ السَّلَفِ وَقَالَ بِهَا، وَجَهِلَهَا بَعْضُهُمْ فَلَمْ يَقُلْ بِهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L8141 Ali said: And some of them have presented a deceptive argument by saying: "What is astonishing is that the Companions—may Allah be pleased with them—did not ask the Messenger of Allah—peace and blessings be upon him—about this significant ruling, which is the prescribed travel threshold wherein prayers are shortened and the fast is broken in Ramadan?"

قَالَ عَلِيٌّ: وَقَدْ مَوَّهَ بَعْضُهُمْ بِأَنْ قَالَ: إنَّ مِنْ الْعَجَبِ تَرْكَ سُؤَالِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ هَذِهِ الْعَظِيمَةِ، وَهِيَ حَدُّ السَّفَرِ الَّذِي تُقْصَرُ فِيهِ الصَّلَاةُ وَيُفْطَرُ فِيهِ فِي رَمَضَانَ؟

L8142–8143 We said: This is the greatest proof, the most supreme evidence, and the clearest argument for anyone with even the slightest understanding and discernment - that there exists absolutely no defined limit for that matter except what is linguistically termed as "safar" in the Arabic language with which he - peace be upon him - addressed them. For had there been a specific measure

فَقُلْنَا: هَذَا أَعْظَمُ بُرْهَانٍ، وَأَجَلُّ دَلِيلٍ، وَأَوْضَحُ حُجَّةٍ لِكُلِّ مَنْ لَهُ أَدْنَى فَهْمٍ وَتَمْيِيزٍ -: عَلَى أَنَّهُ لَا حَدَّ لِذَلِكَ أَصْلًا إلَّا مَا سُمِّيَ سَفَرًا فِي لُغَةِ الْعَرَبِ الَّتِي بِهَا خَاطَبَهُمْ - عَلَيْهِ

for travel other than what we mentioned, he - peace be upon him - would never have entirely neglected to clarify it, nor would they have neglected to ask him - peace be upon him - about it, nor would they have agreed to abandon conveying its precise definition to us. Thus, the ambiguity is wholly dispelled - praise be to Allah - and it becomes manifest through this that all of them were satisfied with the clear textual ruling, and that whoever defines a specific limit for this matter is merely pursuing a delusion in which he erred. Ali said: Both groups have agreed that when one departs from the houses of the village intending either three days or four burd, he may shorten the prayer.

السَّلَامُ -، إذْ لَوْ كَانَ لِمِقْدَارِ السَّفَرِ حَدٌّ غَيْرُ مَا ذَكَرْنَا لَمَا أَغْفَلَ - عَلَيْهِ السَّلَامُ - بَيَانَهُ أَلْبَتَّةَ، وَلَا أَغْفَلُوا هُمْ سُؤَالَهُ - عَلَيْهِ السَّلَامُ - عَنْهُ، وَلَا اتَّفَقُوا عَلَى تَرْكِ نَقْلِ تَحْدِيدِهِ فِي ذَلِكَ إلَيْنَا، فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً، وَلِلَّهِ الْحَمْدُ، وَلَاحَ بِذَلِكَ أَنَّ الْجَمِيعَ مِنْهُمْ قَنَعُوا بِالنَّصِّ الْجَلِيِّ، وَإِنَّ كُلَّ مَنْ حَدَّ فِي ذَلِكَ حَدًّا فَإِنَّمَا هُوَ وَهْمٌ أَخْطَأَ فِيهِ؟ قَالَ عَلِيٌّ: وَقَدْ اتَّفَقَ الْفَرِيقَانِ عَلَى أَنَّهُ إذَا فَارَقَ بُيُوتَ الْقَرْيَةِ وَهُوَ يُرِيدُ: إمَّا ثَلَاثَةَ أَيَّامٍ وَإِمَّا أَرْبَعَةَ بُرُدٍ -: أَنَّهُ يَقْصُرُ الصَّلَاةَ.

L8144 We ask them: Is he in a travel in which prayer is shortened, or is he not yet in a travel in which prayer is shortened, but rather intends to undertake a travel in which prayer will be shortened later, while uncertain whether he will reach it or not? This must necessarily be one of the two scenarios. If they say: He is not yet in a travel in which prayer is shortened, but intends to undertake it while uncertain whether he will reach it or not, they thereby acknowledge that they have permitted him to shorten prayers despite him not being in a travel in which prayer is shortened, due to his intention to undertake such a travel. Consequently, they become obligated to permit him to shorten prayers within his home and outside it between the houses of his village, due to his intention to undertake a travel in which prayer is shortened, with no distinction in this regard.

فَنَسْأَلُهُمْ: أَهُوَ فِي سَفَرٍ تُقْصَرُ فِيهِ الصَّلَاةُ؟ أَمْ لَيْسَ فِي سَفَرٍ تُقْصَرُ فِيهِ الصَّلَاةُ بَعْدُ، لَكِنَّهُ يُرِيدُ سَفَرًا تُقْصَرُ فِيهِ الصَّلَاةُ بَعْدُ، وَلَا يَدْرِي أَيَبْلُغُهُ أَمْ لَا؟ وَلَا بُدَّ مِنْ أَحَدِ الْأَمْرَيْنِ؟ فَإِنْ قَالُوا: لَيْسَ فِي سَفَرٍ تُقْصَرُ فِيهِ الصَّلَاةُ بَعْدُ، وَلَكِنَّهُ يُرِيدُهُ، وَلَا يَدْرِي أَيَبْلُغُهُ أَمْ لَا، أَقَرُّوا بِأَنَّهُمْ أَبَاحُوا لَهُ الْقَصْرَ، وَهُوَ فِي غَيْرِ سَفَرٍ تُقْصَرُ فِيهِ الصَّلَاةُ، مِنْ أَجْلِ نِيَّتِهِ فِي إرَادَتِهِ سَفَرًا تُقْصَرُ فِيهِ الصَّلَاةُ، وَلَزِمَهُمْ أَنْ يُبِيحُوا لَهُ الْقَصْرَ فِي مَنْزِلِهِ وَخَارِجِ مَنْزِلِهِ بَيْنَ بُيُوتِ قَرْيَتِهِ، مِنْ أَجْلِ نِيَّتِهِ فِي إرَادَتِهِ سَفَرًا تُقْصَرُ فِيهِ الصَّلَاةُ وَلَا فَرْقَ.

L8145 And this opinion was held by ʿAṭāʾ, Anas ibn Mālik, and others besides these two. However, these scholars acknowledge that he is not on a journey, then they command him to shorten the prayer, and this is not permissible at all.

وَقَدْ قَالَ بِهَذَا الْقَوْلِ: عَطَاءٌ، وَأَنَسُ بْنُ مَالِكٍ، وَغَيْرُهُمَا، إلَّا أَنَّ هَؤُلَاءِ يُقِرُّونَ أَنَّهُ لَيْسَ فِي سَفَرٍ، ثُمَّ يَأْمُرُونَهُ بِالْقَصْرِ، وَهَذَا لَا يَحِلُّ أَصْلًا

L8146 And if they say: “But he is on a journey wherein prayer is shortened?” they have demolished all they built, invalidated their principle and school of thought, and admitted that both short and long journeys require prayer shortening—since one might depart before reaching the distance they stipulate. As for us: whatever lies within less than a mile (as per the historical Islamic mile) from the last houses of his village retains the ruling of residence—prayer is not shortened nor is the fast broken therein. When he

وَإِنْ قَالُوا: بَلْ هُوَ فِي سَفَرٍ تُقْصَرُ فِيهِ الصَّلَاةُ؟ هَدَمُوا كُلَّ مَا بَنَوْا، وَأَبْطَلُوا أَصْلَهُمْ وَمَذْهَبَهُمْ، وَأَقَرُّوا بِأَنَّ قَلِيلَ السَّفَرِ وَكَثِيرَهُ: تُقْصَرُ فِيهِ الصَّلَاةُ، لِأَنَّهُ قَدْ يَنْصَرِفُ قَبْلَ أَنْ يَبْلُغَ الْمِقْدَارَ الَّذِي فِيهِ الْقَصْرُ عِنْدَهُمْ؟ وَأَمَّا نَحْنُ فَإِنَّ مَا دُونَ الْمِيلِ مِنْ آخِرِ بُيُوتِ

reaches the mile, he is then considered a traveler wherein prayer is shortened and fasting is broken. From that point onward, he shortens prayers and breaks the fast.

قَرْيَتِهِ لَهُ حُكْمُ الْحَضَرِ، فَلَا يُقْصَرُ فِيهِ وَلَا يُفْطَرُ، فَإِذَا بَلَغَ الْمِيلَ فَحِينَئِذٍ صَارَ فِي سَفَرٍ تُقْصَرُ فِيهِ الصَّلَاةُ وَيُفْطَرُ فِيهِ، فَمِنْ حِينَئِذٍ يَقْصُرُ وَيُفْطِرُ.

L8147–8149 Similarly, if he returns and is on less than a mile, he must complete the prayer, because he is no longer on a journey—in which shortening would still apply. Issue:

وَكَذَلِكَ إِذَا رَجَعَ فَكَانَ عَلَى أَقَلَّ مِنْ مِيلٍ فَإِنَّهُ يُتِمُّ، لِأَنَّهُ لَيْسَ فِي سَفَرٍ - يَقْصُرُ فِيهِ بَعْدُ مَسْأَلَةٌ:

L8150 It is the same whether one travels by land, sea, or river. All of that is as we have mentioned, because it is travel, and there is no difference.

وَسَوَاءٌ سَافَرَ فِي بَرٍّ، أَوْ بَحْرٍ، أَوْ نَهْرٍ، كُلُّ ذَلِكَ كَمَا ذَكَرْنَا، لِأَنَّهُ سَفَرٌ وَلَا فَرْقَ؟

L8151 **Issue: If someone travels and stays in one place for twenty days including their nights, should he perform shortened prayers?**

[مَسْأَلَةٌ سَافَرَ فَأَقَامَ فِي مَكَانٍ وَاحِدٍ عِشْرِينَ يَوْمًا بِلَيَالِيهَا هَلْ يَقْصُرُ الصَّلَاةَ]

L8152 515 - Issue: If a person travels for jihad, Hajj, Umrah, or other such journeys and resides in one place for twenty days including their nights, he shortens the prayers. If he stays longer, he must perform them in full—even if this applies to only a single prayer? Then, by the assistance of Allah the Exalted, we have firmly established that travel for jihad, Hajj, Umrah, acts of obedience, acts of disobedience, or travel that is neither for obedience nor disobedience—all such journeys are treated identically with regard to the ruling on shortening prayers.

٥١٥ - مَسْأَلَةٌ: فَإِنْ سَافَرَ الْمَرْءُ فِي جِهَادٍ، أَوْ حَجٍّ، أَوْ عُمْرَةٍ، أَوْ غَيْرِ ذَلِكَ مِنَ الْأَسْفَارِ -: فَأَقَامَ فِي مَكَانٍ وَاحِدٍ عِشْرِينَ يَوْمًا بِلَيَالِيهَا: قَصَرَ، وَإِنْ أَقَامَ أَكْثَرَ: أَتَمَّ - وَلَوْ فِي صَلَاةٍ وَاحِدَةٍ؟ ثُمَّ ثَبَتْنَا بِعَوْنِ اللَّهِ تَعَالَى عَلَى أَنَّ سَفَرَ الْجِهَادِ، وَسَفَرَ الْحَجِّ، وَسَفَرَ الْعُمْرَةِ، وَسَفَرَ الطَّاعَةِ، وَسَفَرَ الْمَعْصِيَةِ، وَسَفَرَ مَا لَيْسَ طَاعَةً وَلَا مَعْصِيَةً -: كُلُّ ذَلِكَ سَفَرٌ، حُكْمُهُ كُلُّهُ فِي الْقَصْرِ وَاحِدٌ.

L8153 Indeed, whoever stays in a location for twenty days with their nights or less must shorten the prayers without exception—whether he intended to reside there or not. If he extends his stay beyond that by even the duration of a single prayer or more, he must complete the prayers without exception. This applies specifically to prayers. As for fasting during Ramadan, it differs: if one stays a day and a night during a journey without traveling during that period, he is obligated to renew his intention to fast. Similarly, if he alights and intends to stay overnight and the following day, he is obligated to intend and observe the fast. If he arrives at his estate, livestock, or a house and settles there, he must complete the prayers. When he departs a mile or

وَإِنَّ مَنْ أَقَامَ فِي شَيْءٍ عِشْرِينَ يَوْمًا بِلَيَالِيهَا فَأَقَلَّ فَإِنَّهُ يَقْصُرُ وَلَا بُدَّ، سَوَاءٌ نَوَى إِقَامَتَهَا أَوْ لَمْ يَنْوِ إِقَامَتَهَا، فَإِنْ زَادَ عَلَى ذَلِكَ إِقَامَةَ مُدَّةِ صَلَاةٍ وَاحِدَةٍ فَأَكْثَرَ: أَتَمَّ وَلَا بُدَّ، هَذَا فِي الصَّلَاةِ خَاصَّةً وَأَمَّا فِي الصِّيَامِ فِي رَمَضَانَ فَبِخِلَافِ ذَلِكَ، بَلْ إِنْ أَقَامَ يَوْمًا وَلَيْلَةً فِي خِلَالِ السَّفَرِ لَمْ يُسَافِرْ فِيهِمَا -: فَفَرْضٌ عَلَيْهِ أَنْ يَنْوِيَ الصَّوْمَ فِيمَا يَسْتَأْنِفُ وَكَذَلِكَ إِنْ نَزَلَ وَنَوَى إِقَامَةَ لَيْلَةٍ وَالْغَدِ، فَفَرْضٌ عَلَيْهِ أَنْ يَنْوِيَ الصِّيَامَ وَيَصُومَ؟ فَإِنْ وَرَدَ عَلَى ضَيْعَةٍ لَهُ، أَوْ مَاشِيَةٍ، أَوْ دَارٍ، فَنَزَلَ هُنَالِكَ: أَتَمَّ، فَإِذَا رَحَلَ مِيلًا فَصَاعِدًا: قَصَرَ؟ قَالَ

more, he must shorten the prayers. Ali said: “People differed regarding this.” It has been narrated to us from Ibn Umar that if he resolved to stay fifteen days, he would complete the prayers.

عَلِيٌّ: وَاخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ إِذَا أَجْمَعَ عَلَى إِقَامَةِ خَمْسَةَ عَشَرَ يَوْمًا: أَتَمَّ الصَّلَاةَ.

L8154 We have also narrated it from Saʿīd ibn al-Musayyib, and Abū Ḥanīfah states this position, as do his companions.

وَرُوِّينَاهُ أَيْضًا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ.

L8155 And it has been narrated to us through the chain of Abū Dāwūd: narrated to us Muḥammad ibn al-ʿAlāʾ, narrated to us Ḥafṣ ibn Ghiyāth, narrated to us ʿĀṣim, narrated to us ʿIkrimah, narrated to us Ibn ʿAbbās: “The Messenger of Allāh (peace and blessings be upon him) stayed in Makkah for seventeen days, shortening the prayer.”

وَرُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد ثنا مُحَمَّدُ بْنُ الْعَلَاءِ ثنا حَفْصُ بْنُ غِيَاثٍ ثنا عَاصِمٌ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَقَامَ بِمَكَّةَ سَبْعَ عَشَرَةَ يَقْصُرُ الصَّلَاةَ» ".

L8156–8157 Ibn Abbas said: Whoever stays seventeen in Mecca must shorten the prayer, and whoever stays longer must complete it. It is reported from Al-Awza’i: If one resolves to stay thirteen nights, he must complete the prayer, but if he intends less, he must shorten it. Another statement is reported from Ibn Umar: If you resolve to stay twelve nights, then complete the prayer. It is reported from Ali ibn Abi Talib: If you stay ten, then complete the prayer.

قَالَ ابْنُ عَبَّاسٍ مَنْ أَقَامَ سَبْعَ عَشَرَةَ بِمَكَّةَ: قَصَرَ، وَمَنْ أَقَامَ فَزَادَ: أَتَمَّ؟ وَرُوِيَ عَنْ الْأَوْزَاعِيِّ: إذَا أَجْمَعَ إقَامَةَ ثَلَاثَ عَشْرَةَ لَيْلَةً: أَتَمَّ، فَإِنْ نَوَى أَقَلَّ: قَصَرَ؟ وَعَنْ ابْنِ عُمَرَ قَوْلٌ آخَرُ: أَنَّهُ كَانَ يَقُولُ: إذَا أَجْمَعْتَ إقَامَةَ ثِنْتَيْ عَشْرَةَ لَيْلَةً فَأَتِمَّ الصَّلَاةَ؟ وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: إذَا أَقَمْت عَشْرًا فَأَتِمَّ الصَّلَاةَ.

L8158 And by it hold Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, and Ḥumayd al-Ru’āsī, Sufyān al-Thawrī’s associate.

وَبِهِ يَأْخُذُ سُفْيَانُ الثَّوْرِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَحُمَيْدُ الرُّؤَاسِيُّ صَاحِبُهُ.

L8159 Another opinion from Saʿīd ibn al-Musayyab states: When you have established four, pray four.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَوْلٌ آخَرُ وَهُوَ: إذَا أَقَمْت أَرْبَعًا فَصَلِّ أَرْبَعًا.

L8160 This is the position held by Mālik, al-Shāfiʿī, and al-Layth, except that they stipulate one must intend to stay for four days. If he does not form this intention, he may shorten the prayer, even if he remains for a year?

وَبِهِ يَأْخُذُ مَالِكٌ، وَالشَّافِعِيُّ، وَاللَّيْثُ، إلَّا أَنَّهُمْ يَشْتَرِطُونَ أَنْ يَنْوِيَ إقَامَةَ أَرْبَعٍ، فَإِنْ لَمْ يَنْوِهَا: قَصَرَ، وَإِنْ بَقِيَ حَوْلًا؟

L8161 And from Sa’id ibn al-Musayyib is another opinion, which states: If you stay three days, then perform the prayer in full. Through the chain of Waki‘ from Shu‘bah from Abu Bishr (he is Ja‘far ibn Abi Waḥshiyyah) from Sa‘id ibn Jubayr: If one intends to stay for more than fifteen days, they must perform the prayer in full.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَوْلٌ آخَرُ وَهُوَ: إذَا أَقَمْت ثَلَاثًا فَأَتِمَّ؟ وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ أَبِي بِشْرٍ هُوَ جَعْفَرُ بْنُ أَبِي وَحْشِيَّةَ - عَنْ سَعِيدِ بْنِ جُبَيْرٍ: إذَا أَرَادَ أَنْ يُقِيمَ أَكْثَرَ مِنْ خَمْسَ عَشَرَةَ أَتَمَّ الصَّلَاةَ.

L8162–8164 Another opinion is narrated from Sa‘īd ibn Jubayr: “When you settle in

a land, complete the prayer?" From Maʿmar, from al-Aʿmash, from Abū Wāʾil, who said: "We were with Masrūq in Silsilah for two years while he was an official there, and he prayed with us two rakʿahs, two rakʿahs until he concluded?" From Wakīʿ, from Abū Shuʿbah, from Abū al-Tayyāḥ al-Ḍubaʿī, from Abū al-Minhāl al-ʿAnazī, who said: "I said to Ibn ʿAbbās, ʿI reside in Medina for a year without preparing for travel?' He said, 'Pray two rakʿahs.'" From Wakīʿ, from al-ʿUmarī, from Nāfiʿ, from Ibn ʿUmar: "He resided in Azerbaijan for six months and was stranded." Upon them was the snow—so would he pray two rakʿahs? ʿAlī said: The ruler does not intend departure before fifteen nights without doubt, and likewise one whom the snow has confined, becoming certain it will not melt until summer's onset. Ibn ʿAbbās instructed someone who informed him he was staying a year without intending travel to shorten prayers. From al-Ḥasan and Qatādah: The traveler shortens prayers unless returning to his home or entering one of the garrison towns of the Muslims. ʿAlī said: The followers of Abū Ḥanīfah argued that their statement represents the majority opinion, and that it is agreed upon that when a traveler intends to stay for such a duration, he must perform complete prayers, and he does not abandon the ruling of shortening except by consensus. ʿAlī said: This is false, for we have cited from Saʿīd ibn Jubayr that he would shorten prayers when intending to stay beyond fifteen days, while differing reports exist about Ibn ʿUmar himself.

L8165 Ibn Abbas and others opposed him as we mentioned, thus invalidating their argument, as it lacks proof. The followers of Malik and Al-Shafiʿi argued in their favor, citing the authentic report transmitted through Al-ʿAla' ibn Al-Hadrami that the Prophet—peace and blessings be upon him—said, "A Muhajir may stay three days after completing the pilgrimage rites." They argued that the Messenger of Allah—peace and blessings be upon him—disapproved of the Muhajirun residing in Makkah, which had been their homelands, for they were expelled from it for the sake of Allah's Face, the Mighty and Majestic, so they would meet their Lord as strangers distant from their homelands for the sake of His Face, the Mighty and Majestic. He then

وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ قَوْلٌ آخَرُ: إِذَا وَضَعْت رَحْلَك بِأَرْضٍ فَأَتِمَّ الصَّلَاةَ؟ وَعَنْ مَعْمَرٍ عَنْ الْأَعْمَشِ عَنْ أَبِي وَائِلٍ قَالَ: كُنَّا مَعَ مَسْرُوقٍ بِالسِّلْسِلَةِ سَنَتَيْنِ وَهُوَ عَامِلٌ عَلَيْهَا فَصَلَّى بِنَا رَكْعَتَيْنِ رَكْعَتَيْنِ حَتَّى انْصَرَفَ؟ وَعَنْ وَكِيعٍ عَنْ أَبِي شُعْبَةَ عَنْ أَبِي التَّيَّاحِ الضُّبَعِيِّ عَنْ أَبِي الْمِنْهَالِ الْعَنَزِيِّ قُلْت لِابْنِ عَبَّاسٍ: إنِّي أُقِيمُ بِالْمَدِينَةِ حَوْلًا لَا أَشَدُّ عَلَى سَيْرٍ؟ قَالَ: صَلِّ رَكْعَتَيْنِ وَعَنْ وَكِيعٍ عَنْ الْعُمَرِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ أَقَامَ بِأَذَرْبِيجَانَ سِتَّةَ أَشْهُرٍ أَرْتَجَ عَلَيْهِمْ الثَّلْجُ، فَكَانَ يُصَلِّي رَكْعَتَيْنِ؟ قَالَ عَلِيٌّ: الْوَالِي لَا يَنْوِي رَحِيلًا قَبْلَ خَمْسَ عَشْرَةَ لَيْلَةً بِلَا شَكٍّ، وَكَذَلِكَ مَنْ أَرْتَجَ عَلَيْهِ الثَّلْجُ فَقَدْ أَيْقَنَ أَنَّهُ لَا يَنْحَلُّ إلَى أَوَّلِ الصَّيْفِ؟ وَقَدْ أَمَرَ ابْنُ عَبَّاسٍ مَنْ أَخْبَرَهُ أَنَّهُ مُقِيمٌ سَنَةً لَا يَنْوِي سَيْرًا: بِالْقَصْرِ؟ وَعَنْ الْحَسَنِ وَقَتَادَةَ: يَقْصُرُ الْمُسَافِرُ مَا لَمْ يَرْجِعْ إلَى مَنْزِلِهِ، إلَّا أَنْ يَدْخُلَ مِصْرًا مِنْ أَمْصَارِ الْمُسْلِمِينَ قَالَ عَلِيٌّ: احْتَجَّ أَصْحَابُ أَبِي حَنِيفَةَ بِأَنَّ قَوْلَهُمْ أَكْثَرُ مَا قِيلَ، وَأَنَّهُ مُجْمَعٌ عَلَيْهِ أَنَّهُ إذَا نَوَى الْمُسَافِرُ إقَامَةَ ذَلِكَ الْمِقْدَارِ أَتَمَّ، وَلَا يَخْرُجُ عَنْ حُكْمِ الْقَصْرِ إلَّا بِإِجْمَاعٍ؟ قَالَ عَلِيٌّ: وَهَذَا بَاطِلٌ، قَدْ أَوْرَدْنَا عَنْ سَعِيدِ بْنِ جُبَيْرٍ أَنَّهُ يَقْصُرُ حِينَ يَنْوِي أَكْثَرَ مِنْ خَمْسَةَ عَشَرَ يَوْمًا، وَقَدْ اُخْتُلِفَ عَنْ ابْنِ عُمَرَ نَفْسِهِ.

وَخَالَفَهُ ابْنُ عَبَّاسٍ كَمَا أَوْرَدْنَا وَغَيْرُهُ فَبَطَلَ قَوْلُهُمْ عَنْ أَنْ يَكُونَ لَهُ حُجَّةٌ وَاحْتَجَّ لِمَالِكٍ، وَالشَّافِعِيِّ مُقَلِّدُوهُمَا بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ الْعَلَاءِ بْنِ الْحَضْرَمِيِّ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ «يَمْكُثُ الْمُهَاجِرُ بَعْدَ انْقِضَاءِ نُسُكِهِ ثَلَاثًا» . قَالُوا: فَكَرِهَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْمُهَاجِرِينَ الْإِقَامَةَ بِمَكَّةَ الَّتِي كَانَتْ

permitted them to stay there for three days after completing the pilgrimage rites.

أَوْطَانَهُمْ فَأُخْرِجُوا عَنْهَا فِي اللَّهِ تَعَالَى حَتَّى يَلْقَوْا رَبَّهُمْ عَزَّ وَجَلَّ غُرَبَاءَ عَنْ أَوْطَانِهِمْ لِوَجْهِهِ عَزَّ وَجَلَّ، ثُمَّ أَبَاحَ لَهُمْ الْمُقَامَ بِهَا ثَلَاثًا بَعْدَ تَمَامِ النُّسُكِ.

L8166–8168 They said: Thus, the three days were outside the scope of the reprehensible residence, while whatever exceeded them was included within the reprehensible residence? We know no argument whatsoever for their position, and this contains no proof for them, for neither an explicit textual ruling nor any indication in this report specifies the duration which, if… If the traveler performs prayer in full, he is in fact under the same ruling as the Muhajir. What then necessitates analogizing the traveler's stay to the Muhajir's stay? This would only hold if legal analogy were valid – but how can that be when it is entirely baseless? Moreover, the traveler is permitted to stay three days or longer without any dislike in any of that, whereas it is disliked for the Muhajir to remain in Mecca after completing his pilgrimage rites for more than three days. What relation exists between a disliked stay and a permissible one, if they were just to themselves? Furthermore, according to their view, exceeding three days for the Muhajir falls under the ruling of being a traveler, not a legal resident, while exceeding three days for the traveler constitutes a valid stay. This precludes analogizing one to the other. If such analogy were applied, the traveler would be obliged to shorten prayers beyond three days rather than complete them – contrary to their stated opinion. Additionally, even staying for the duration of one additional prayer beyond three days is considered disliked. Thus, by their logic – if they analogize the traveler to this ruling – he ought to perform prayers in full even if he intends to stay for the duration of one extra prayer beyond three days.

قَالُوا: فَكَانَتْ الثَّلَاثُ خَارِجَةً عَنْ الْإِقَامَةِ الْمَكْرُوهَةِ لَهُمْ، وَكَانَ مَا زَادَ عَنْهَا دَاخِلًا فِي الْإِقَامَةِ الْمَكْرُوهَةِ؟ مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا أَصْلًا وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ نَصٌّ وَلَا إشَارَةٌ إلَى الْمُدَّةِ الَّتِي إذَا أَقَامَهَا الْمُسَافِرُ أَتَمَّ، وَإِنَّمَا هُوَ فِي حُكْمِ الْمُهَاجِرِ، فَمَا الَّذِي أَوْجَبَ أَنْ يُقَاسَ الْمُسَافِرُ يُقِيمُ عَلَى الْمُهَاجِرِ يُقِيمُ؟ هَذَا لَوْ كَانَ الْقِيَاسُ حَقًّا، وَكَيْفَ وَكُلُّهُ بَاطِلٌ؟ وَأَيْضًا: فَإِنَّ الْمُسَافِرَ مُبَاحٌ لَهُ أَنْ يُقِيمَ ثَلَاثًا وَأَكْثَرَ مِنْ ثَلَاثٍ، لَا كَرَاهِيَةَ فِي شَيْءٍ مِنْ ذَلِكَ، وَأَمَّا الْمُهَاجِرُ فَمَكْرُوهٌ لَهُ أَنْ يُقِيمَ بِمَكَّةَ بَعْدَ انْقِضَاءِ نُسُكِهِ أَكْثَرَ مِنْ ثَلَاثٍ، فَأَيُّ نِسْبَةٍ بَيْنَ إقَامَةٍ مَكْرُوهَةٍ وَإِقَامَةٍ مُبَاحَةٍ لَوْ أَنْصَفُوا أَنْفُسَهُمْ؟ وَأَيْضًا: فَإِنَّ مَا زَادَ عَلَى الثَّلَاثَةِ الْأَيَّامِ لِلْمُهَاجِرِ دَاخِلٌ عِنْدَهُمْ فِي حُكْمِ أَنْ يَكُونَ مُسَافِرًا لَا مُقِيمًا، وَمَا زَادَ عَلَى الثَّلَاثَةِ لِلْمُسَافِرِ فَإِقَامَةٌ صَحِيحَةٌ، وَهَذَا مَانِعٌ مِنْ أَنْ يُقَاسَ أَحَدُهُمَا عَلَى الْآخَرِ، وَلَوْ قِيسَ أَحَدُهُمَا عَلَى الْآخَرِ لَوَجَبَ أَنْ يَقْصُرَ الْمُسَافِرُ فِيمَا زَادَ عَلَى الثَّلَاثِ، لَا أَنْ يُتِمَّ، بِخِلَافِ قَوْلِهِمْ؟ وَأَيْضًا: فَإِنَّ إقَامَةَ قَدْرِ صَلَاةٍ وَاحِدَةٍ زَائِدَةٍ عَلَى الثَّلَاثَةِ مَكْرُوهَةٌ، فَيَنْبَغِي عِنْدَهُمْ - إذَا قَاسُوا عَلَيْهِ الْمُسَافِرَ - أَنْ يُتِمَّ وَلَوْ نَوَى زِيَادَةَ صَلَاةٍ عَلَى الثَّلَاثَةِ الْأَيَّامِ.

L8169 And did Abu Thawr say this? Thus their claim stands invalidated in every circumstance, and all opinions are stripped bare of substantiation. Therefore, it is incumbent upon us to clarify the proof for the soundness of our position through the aid of Allah, the Most High, and His power.

وَهَكَذَا قَالَ أَبُو ثَوْرٍ؟ فَبَطَلَ قَوْلُهُمْ عَلَى كُلِّ حَالٍ، وَعَرِيَتْ الْأَقْوَالُ كُلُّهَا عَنْ حُجَّةٍ، فَوَجَبَ أَنْ نُبَيِّنَ الْبُرْهَانَ عَلَى صِحَّةِ قَوْلِنَا بِعَوْنِ اللَّهِ تَعَالَى وَقُوَّتِهِ؟

L8170 Ali said: As for residing during jihad, Hajj, or ʿUmrah, Allah the Exalted prescribed prayer shortening only with journeying through the land, and the

قَالَ عَلِيٌّ: أَمَّا الْإِقَامَةُ فِي الْجِهَادِ، وَالْحَجِّ، وَالْعُمْرَةِ، فَإِنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ الْقَصْرَ إلَّا مَعَ الضَّرْبِ فِي الْأَرْضِ، وَلَمْ يَجْعَلْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْقَصْرَ إلَّا مَعَ السَّفَرِ، لَا مَعَ الْإِقَامَةِ، وَبِالضَّرُورَةِ نَدْرِي أَنَّ حَالَ السَّفَرِ غَيْرُ حَالِ الْإِقَامَةِ، وَأَنَّ السَّفَرَ إنَّمَا هُوَ التَّنَقُّلُ فِي غَيْرِ دَارِ الْإِقَامَةِ وَأَنَّ الْإِقَامَةَ هِيَ السُّكُونُ وَتَرْكُ النُّقْلَةِ وَالتَّنَقُّلِ فِي دَارِ الْإِقَامَةِ، هَذَا حُكْمُ الشَّرِيعَةِ وَالطَّبِيعَةِ مَعًا. فَإِذْ ذَلِكَ كَذَلِكَ فَالْمُقِيمُ فِي مَكَانٍ وَاحِدٍ مُقِيمٌ غَيْرُ مُسَافِرٍ بِلَا شَكٍّ، فَلَا يَجُوزُ أَنْ يَخْرُجَ عَنْ حَالِ الْإِقَامَةِ وَحُكْمِهَا فِي الصِّيَامِ وَالْإِتْمَامِ إلَّا بِنَصٍّ.

Messenger of Allah—peace and blessings be upon him—prescribed shortening only during travel, not during residence. By necessity, we understand that the state of travel differs from the state of residence: travel entails moving outside one's abode of residence, while residence means settling and refraining from changing one's dwelling or moving about within the abode of residence. This is the ruling of both divine law and human nature. Since this is so, one staying in a single place is a resident without doubt, not a traveler. It is therefore impermissible to depart from the rulings governing residence in fasting and completing prayers except by an explicit scriptural text.

وَقَدْ صَحَّ بِإِجْمَاعِ أَهْلِ النَّقْلِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَزَلَ فِي حَالِ سَفَرِهِ فَأَقَامَ بَاقِيَ نَهَارِهِ وَلَيْلَتِهِ، ثُمَّ رَحَلَ فِي الْيَوْمِ الثَّانِي، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - قَصَرَ فِي بَاقِي يَوْمِهِ ذَلِكَ وَفِي لَيْلَتِهِ الَّتِي بَيْنَ يَوْمَيْ نُقْلَتِهِ، فَخَرَجَتْ هَذِهِ الْإِقَامَةُ عَنْ حُكْمِ الْإِقَامَةِ فِي الْإِتْمَامِ، وَالصِّيَامِ، وَلَوْلَا ذَلِكَ لَكَانَ مُقِيمُ سَاعَةٍ لَهُ حُكْمُ الْإِقَامَةِ؟ وَكَذَلِكَ مَنْ وَرَدَ عَلَى ضَيْعَةٍ لَهُ، أَوْ مَاشِيَةٍ، أَوْ عَقَارٍ فَنَزَلَ هُنَالِكَ فَهُوَ مُقِيمٌ، فَلَهُ حُكْمُ الْإِقَامَةِ كَمَا قَالَ ابْنُ عَبَّاسٍ، إذْ لَمْ نَجِدْ نَصًّا فِي مِثْلِ هَذِهِ الْحَالِ يَنْقُلُهَا عَنْ حُكْمِ الْإِقَامَةِ.

L8171–8173 It has been authentically established by the consensus of scholars of transmission that the Messenger of Allah—peace be upon him—halted during his travel and remained for the remainder of the daytime and the following night, then departed on the second day. It is also established that he—peace be upon him—shortened prayers during the remainder of that daytime and the night between the two days of his relocation. This stay was exempt from the rulings of residency requiring full prayers and fasting. Were it not for... In that case, would a resident for an hour have the ruling of residency? Similarly, whoever comes to his farm, livestock, or property and settles there is considered a resident, so the ruling of residency applies to him as stated by Ibn Abbas, since we have not found a text regarding such a situation that would transfer it away from the ruling of residency.

وَهُوَ أَيْضًا قَوْلُ الزُّهْرِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ.

L8174 This is likewise the view of al-Zuhri and Ahmad ibn Hanbal.

وَلَمْ نَجِدْ عَنْهُ - عَلَيْهِ السَّلَامُ - أَنَّهُ أَقَامَ يَوْمًا وَلَيْلَةً لَمْ يَرْحَلْ فِيهِمَا فَقَصَرَ وَأَفْطَرَ إلَّا فِي الْحَجِّ، وَالْعُمْرَةِ، وَالْجِهَادِ فَقَطْ، فَوَجَبَ بِذَلِكَ مَا ذَكَرْنَا مِنْ أَنَّ مَنْ أَقَامَ فِي خِلَالِ سَفَرِهِ يَوْمًا وَلَيْلَةً لَمْ يَظْعَنْ فِي أَحَدِهِمَا فَإِنَّهُ يُتِمُّ، وَيَصُومُ.

L8175 We have not found from him—peace be upon him—that he ever stayed a day and night during his journey without traveling in either the day or the night while shortening prayers and not fasting, except only in Hajj, Umrah, and Jihad. This necessitates our earlier conclusion: whoever stays during their journey for a day and night without departing in either period must perform complete prayers and fast.

L8176 Similarly, whoever begins traveling at night and halts during the day may shorten the remainder of his night and his day that lies between the two nights of his movement.

وَكَذَلِكَ مَنْ مَشَى لَيْلًا وَيَنْزِلُ نَهَارًا فَإِنَّهُ يَقْصُرُ بَاقِيَ لَيْلَتِهِ وَيَوْمِهِ الَّذِي بَيْنَ لَيْلَتَيْ حَرَكَتِهِ.

L8177 And this is an opinion that has been narrated from Rabiʿah.

وَهَذَا قَوْلٌ رُوِيَ عَنْ رَبِيعَةَ.

L8178 We ask those who reject this ruling concerning a traveler in a journey where prayer is shortened according to their scholars: If one intends to stay [beyond the period permitting shortened prayers] while traveling—without stopping or settling—but is compelled by extreme fear to pray his obligatory prayer either mounted and moving or to dismount for it, then resume traveling: must he perform the shortened prayer or complete it? Among their rulings is that he performs the shortened prayer. Thus, it is established that travel is defined by being in motion.

وَنَسْأَلُ مَنْ أَبَى هَذَا عَنْ مَاشٍ فِي سَفَرٍ تُقْصَرُ فِيهِ الصَّلَاةُ عِنْدَهُمْ نَوَى إِقَامَةً وَهُوَ سَائِرٌ لَا يَنْزِلُ وَلَا يَثْبُتُ -: اُضْطُرَّ لِشِدَّةِ الْخَوْفِ إِلَى أَنْ يُصَلِّيَ فَرْضَهُ رَاكِبًا نَاهِضًا أَوْ يَنْزِلَ لِصَلَاةِ فَرْضِهِ ثُمَّ يَرْجِعَ إِلَى الْمَشْيِ: أَيَقْصُرُ أَوْ يُتِمُّ؟ فَمِنْ قَوْلِهِمْ: يَقْصُرُ -: فَصَحَّ أَنَّ السَّفَرَ: هُوَ الْمَشْيُ.

L8179 Then we ask them about a traveler who intends to settle and is not relocating: should he perform complete prayers or shorten them? Among their opinions is that he should complete them, for it is established that settling entails remaining stationary, not moving between locations.

ثُمَّ نَسْأَلُهُمْ عَمَّنْ نَوَى إِقَامَةً وَهُوَ نَازِلٌ غَيْرُ مَاشٍ: أَيُتِمُّ أَمْ يَقْصُرُ؟ فَمِنْ قَوْلِهِمْ: يُتِمُّ، فَقَدْ صَحَّ أَنَّ الْإِقَامَةَ هِيَ السُّكُونُ لَا الْمَشْيُ مُتَنَقِّلًا.

L8180 And this is precisely our view—and all praise is due to Allah, the Exalted.

وَهَذَا نَفْسُ قَوْلِنَا - وَلِلَّهِ تَعَالَى الْحَمْدُ؟

L8181 As for jihad and Hajj: Abdullah ibn Rabiʿah said: Muhammad ibn Ishaq ibn Sulaym narrated to us, Ibn al-Aʿrābī narrated to us, Abu Dawud narrated to us, Ahmad ibn Hanbal narrated to us, Abdur-Razzaq narrated to us: Maʿmar narrated from Yahya ibn Abi Kathir, from Muhammad ibn Abdur-Rahman ibn Thawbān, from Jabir ibn Abdullah, who said: "The Messenger of Allah—ṣallā Allāhu ʿalayhi wa-sallam—stayed in Tabuk for twenty days while shortening the prayers."[7]

وَأَمَّا الْجِهَادُ، وَالْحَجُّ -: فَإِنَّ عَبْدَ اللَّهِ بْنَ رَبِيعٍ قَالَ: ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا أَحْمَدُ بْنُ حَنْبَلٍ ثنا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «أَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِتَبُوكَ عِشْرِينَ يَوْمًا يَقْصُرُ الصَّلَاةَ» .

L8182–8183 Ali said: Muhammad ibn Abd al-Rahman ibn Thawban is trustworthy, and the remaining narrators of this report are too renowned to be questioned about them? This is the most widely transmitted report from the Prophet (peace be upon him) concerning his stay in Tabuk. Thus this measure of residence exceeded all other periods through this report.

قَالَ عَلِيٌّ: مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ ثِقَةٌ، وَبَاقِي رُوَاةِ الْخَبَرِ أَشْهَرُ مِنْ أَنْ يُسْأَلَ عَنْهُمْ؟ وَهَذَا أَكْثَرُ مَا رُوِيَ عَنْهُ - عَلَيْهِ السَّلَامُ - فِي إِقَامَتِهِ بِتَبُوكَ، فَخَرَجَ هَذَا الْمِقْدَارُ مِنْ الْإِقَامَةِ عَنْ سَائِرِ الْأَوْقَاتِ بِهَذَا الْخَبَرِ.

[7] **Hadith references (L8181):** Sunan Abi Dawud 1235.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: يَقْصُرُ مَا دَامَ مُقِيمًا فِي دَارِ الْحَرْبِ.

L8184 Abu Hanifah and Malik said: One may shorten prayers as long as one resides in the abode of war (Dār al-Ḥarb).

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِمَا ذَكَرْنَا مِنْ أَنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - الصَّلَاةَ رَكْعَتَيْنِ إلَّا فِي السَّفَرِ، وَأَنَّ الْإِقَامَةَ خِلَافُ السَّفَرِ لِمَا ذَكَرْنَا.

L8185 Ali said: This is erroneous, for the reasons we have stated—that neither Allah, the Exalted, nor His Messenger (peace be upon him) has prescribed the prayer as two units except during travel, and that settling [in one place] is distinct from travel, as we have explained.

وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: كَقَوْلِنَا فِي الْجِهَادِ.

L8186 Al-Shafi'i and Abu Sulayman said: "As our stated position on jihad."

وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ مِثْلَ قَوْلِنَا نَصًّا إلَّا أَنَّهُ خَالَفَ فِي الْمُدَّةِ.

L8187 A statement corresponding to our opinion has been explicitly narrated to us from Ibn Abbas, except that he differed regarding the duration.

وَأَمَّا الْحَجُّ، وَالْعُمْرَةُ: فَلِمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى أَنَا هُشَيْمٌ عَنْ يَحْيَى بْنِ أَبِي إِسْحَاقَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ «خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ الْمَدِينَةِ إلَى مَكَّةَ فَصَلَّى رَكْعَتَيْنِ رَكْعَتَيْنِ حَتَّى رَجَعَ، قَالَ: كَمْ أَقَامَ بِمَكَّةَ؟ قَالَ: عَشْرًا» .

L8188 As for Hajj and Umrah: Abdullah ibn Yusuf narrated to us from Ahmad ibn Fath, who narrated to us from Abdul Wahhab ibn Isa, who narrated to us from Ahmad ibn Muhammad, who narrated to us from Ahmad ibn Ali, who narrated to us from Muslim ibn Al-Hajjaj, who narrated to us from Yahya ibn Yahya via Hushaym via Yahya ibn Abi Ishaq via Anas ibn Malik, who said: "We departed with the Messenger of Allah (peace and blessings be upon him) from Medina to Mecca, and he prayed two rak'ahs each time until he returned." Someone asked: "How long did he stay in Mecca?" Anas replied: "Ten days."

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُوسَى بْنُ إسْمَاعِيلَ قَالَ: ثنا وُهَيْبٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي الْعَالِيَةِ الْبَرَاءِ عَنْ ابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ: «قَدِمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَصْحَابُهُ لِصُبْحِ رَابِعَةٍ يُلَبُّونَ بِالْحَجِّ» وَذَكَرَ الْحَدِيثَ قَالَ عَلِيٌّ: فَإِذْ قَدِمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صُبْحَ رَابِعَةٍ مِنْ ذِي الْحِجَّةِ، فَبِالضَّرُورَةِ نَعْلَمُ: أَنَّهُ أَقَامَ بِمَكَّةَ ذَلِكَ الْيَوْمَ الرَّابِعَ مِنْ ذِي الْحِجَّةِ، وَالثَّانِي وَهُوَ الْخَامِسُ مِنْ ذِي الْحِجَّةِ، وَالثَّالِثُ وَهُوَ السَّادِسُ مِنْ ذِي الْحِجَّةِ، وَالرَّابِعُ وَهُوَ السَّابِعُ مِنْ ذِي الْحِجَّةِ.

L8189–8191 Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: al-Farbari narrated to us: al-Bukhari narrated to us: Musa ibn Ismail said: Wuhayb narrated to us from Ayyub al-Sakhtiyani from Abu al-Aliyah al-Barāʾ from Ibn Abbas (may Allah be pleased with them both) who said: "The Messenger of Allah (peace and blessings be upon him) and his companions arrived at the dawn of the fourth day, reciting the Talbiyah of Hajj," and he related the hadith. Ali said: When the Messenger of Allah—peace and blessings be upon him—arrived on the morning of the fourth of Dhu al-Hijjah, it necessarily follows that he remained in Mecca four days: that fourth day of Dhu al-Hijjah, the second day which was the fifth of Dhu al-Hijjah, the third day which was the sixth of Dhu al-Hijjah, and the fourth day which was the seventh of Dhu al-Hijjah.

L8192–8194 And that he—peace be upon him—set out to Mina on the eighth day of

Dhū al-Ḥijjah, before the Ẓuhr prayer. This is a matter uncontested among anyone in the Ummah. Thus, four days and four nights were fully completed for him (peace be upon him) in Mecca, as he resided there with the intention of establishing residency for this duration, unquestionably.

وَأَنَّهُ خَرَجَ - عَلَيْهِ السَّلَامُ - إلَى مِنًى قَبْلَ صَلَاةِ الظُّهْرِ مِنْ الْيَوْمِ الثَّامِنِ مِنْ ذِي الْحِجَّةِ، هَذَا مَا لَا خِلَافَ فِيهِ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ، فَتَمَّتْ لَهُ بِمَكَّةَ أَرْبَعَةُ أَيَّامٍ وَأَرْبَعُ لَيَالٍ كَمَلًا، أَقَامَهَا - عَلَيْهِ السَّلَامُ - نَاوِيًا لِلْإِقَامَةِ هَذِهِ الْمُدَّةَ بِهَا بِلَا شَكٍّ.

L8195 Then he went out to Mina on the eighth day of Dhū al-Ḥijjah, as we mentioned. This nullifies the claim of those who say: "If one intends to stay four days, one must complete it," for he - peace and blessings be upon him - undoubtedly intended to stay for this duration yet did not complete it.

ثُمَّ خَرَجَ إلَى مِنًى فِي الْيَوْمِ الثَّامِنِ مِنْ ذِي الْحِجَّةِ كَمَا ذَكَرْنَا؟ وَهَذَا يُبْطِلُ قَوْلَ مَنْ قَالَ: إنْ نَوَى إقَامَةَ أَرْبَعَةِ أَيَّامٍ أَتَمَّ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - نَوَى بِلَا شَكٍّ إقَامَةَ هَذِهِ الْمُدَّةِ وَلَمْ يُتِمَّ.

L8196 Then he (peace be upon him) was in Mina on the eighth day of Dhul-Hijjah and spent there the night of the Day of Arafah.

ثُمَّ كَانَ - عَلَيْهِ السَّلَامُ - بِمِنًى الْيَوْمَ الثَّامِنِ مِنْ ذِي الْحِجَّةِ، وَبَاتَ بِهَا لَيْلَةَ يَوْمِ عَرَفَةَ.

L8197 Then he arrived at Arafah undoubtedly on the ninth day of Dhul-Hijjah and remained there until the beginning of the tenth night. He then proceeded to Muzdalifah, where he spent the tenth night.

ثُمَّ أَتَى إلَى عَرَفَةَ بِلَا شَكٍّ فِي الْيَوْمِ التَّاسِعِ مِنْ ذِي الْحِجَّةِ، فَبَقِيَ هُنَالِكَ إلَى أَوَّلِ اللَّيْلَةِ الْعَاشِرَةِ، ثُمَّ نَهَضَ إلَى مُزْدَلِفَةَ فَبَاتَ بِهَا اللَّيْلَةَ الْعَاشِرَةَ.

L8198 Then, on the morning of the tenth day, he proceeded to Mina and remained there. Thereafter, he proceeded to Mecca to perform Tawaf al-Ifadah, either on the tenth day or during the night preceding the eleventh day, with no doubt that it is one of the two [options].

ثُمَّ نَهَضَ فِي صَبَاحِ الْيَوْمِ الْعَاشِرِ إلَى مِنًى، فَكَانَ بِهَا، وَنَهَضَ إلَى مَكَّةَ فَطَافَ طَوَافَ الْإِفَاضَةِ إمَّا فِي الْيَوْمِ الْعَاشِرِ وَإِمَّا فِي اللَّيْلَةِ الْحَادِيَةَ عَشْرَةَ، بِلَا شَكٍّ فِي أَحَدِ الْأَمْرَيْنِ.

L8199 Then he returned to Mina and stayed there for three days, departing on the fourth day after stoning the Jamarat following midday. His stay—peace be upon him—in Mina lasted four days excluding half a day.

ثُمَّ رَجَعَ إلَى مِنًى فَأَقَامَ بِهَا ثَلَاثَةَ أَيَّامٍ، وَدَفَعَ مِنْهَا فِي آخِرِ الْيَوْمِ الرَّابِعِ بَعْدَ رَمْيِ الْجِمَارِ بَعْدَ زَوَالِ الشَّمْسِ، وَكَانَتْ إقَامَتُهُ - عَلَيْهِ السَّلَامُ - بِمِنًى أَرْبَعَةَ أَيَّامٍ غَيْرَ نِصْفِ يَوْمٍ.

L8200 Then he came to Mecca and spent the fourteenth night at Abtah, performed the Farewell Tawaf there, then set out for Medina at the end of that night. Thus, he—peace be upon him—completed ten full nights across Mecca, Mina, ʿArafah, and Muzdalifah—as Anas stated—thereby confirming our position. Some of his companions were performing *Tamattuʿ* alongside him, while he himself—peace be upon him—was observing *Qirān*.

ثُمَّ أَتَى إلَى مَكَّةَ فَبَاتَ اللَّيْلَةَ الرَّابِعَةَ عَشْرَةَ بِالْأَبْطَحِ، وَطَافَ بِهَا طَوَافَ الْوَدَاعِ، ثُمَّ نَهَضَ فِي آخِرِ لَيْلَتِهِ تِلْكَ إلَى الْمَدِينَةِ، فَكَمُلَ لَهُ - عَلَيْهِ السَّلَامُ - بِمَكَّةَ، وَمِنًى، وَعَرَفَةَ، وَمُزْدَلِفَةَ: عَشْرُ لَيَالٍ كَمَلًا كَمَا قَالَ أَنَسٌ، فَصَحَّ قَوْلُنَا، وَكَانَ مَعَهُ - عَلَيْهِ السَّلَامُ - مُتَمَتِّعُونَ، وَكَانَ هُوَ - عَلَيْهِ السَّلَامُ - قَارِنًا.

L8201 Thus, what we have stated concerning Hajj and Umrah is correct, and all

فَصَحَّ مَا قُلْنَاهُ فِي الْحَجِّ وَالْعُمْرَةِ، وَلِلَّهِ الْحَمْدُ، فَخَرَجَتْ هَذِهِ الْإِقَامَةُ بِهَذَا الْأَثَرِ فِي الْحَجِّ وَالْعُمْرَةِ حَيْثُ أَقَامَ عَنْ حُكْمِ سَائِرِ الْإِقَامَاتِ، وَلِلَّهِ تَعَالَى الْحَمْدُ.

praise is due to Allah. This residency has emerged with this ruling in Hajj and Umrah because it has differed in legal status from all other types of residency, and all praise is due to Allah, the Exalted.

فَإِنْ قِيلَ: أَلَيْسَ قَدْ رَوَيْتُمْ مِنْ طَرِيقِ ابْنِ عَبَّاسٍ وَعِمْرَانَ بْنِ الْحُصَيْنِ رِوَايَاتٍ مُخْتَلِفَةً -: فِي بَعْضِهَا «أَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَكَّةَ تِسْعَ عَشْرَةَ وَفِي بَعْضِهَا ثَمَانِ عَشْرَةَ وَفِي بَعْضِهَا سَبْعَ عَشْرَةَ.

L8202 If it is said: Have you not narrated through the chain of Ibn Abbas and Imran ibn al-Husayn differing reports—in some of them, "The Messenger of Allah, peace be upon him, stayed in Makkah nineteen days," in others eighteen days, and in others seventeen days?

وَفِي بَعْضِهَا خَمْسَ عَشْرَةَ يَقْصُرُ الصَّلَاةَ؟» قُلْنَا: نَعَمْ، وَقَدْ بَيَّنَ ابْنُ عَبَّاسٍ أَنَّ هَذَا كَانَ فِي عَامِ الْفَتْحِ، وَكَانَ - عَلَيْهِ السَّلَامُ - فِي جِهَادٍ، وَفِي دَارِ حَرْبٍ، لِأَنَّ جَمَاعَةً مِنْ أَهْلِ مَكَّةَ -: كَصَفْوَانَ وَغَيْرِهِمْ لَهُمْ مُدَّةُ مُوَادَعَةٍ لَمْ تَنْقَضِ بَعْدُ.

L8203–8204 And in some instances fifteen days he would shorten the prayer¿' We said: Yes. Ibn Abbas clarified that this occurred during the year of the Conquest, and he (peace be upon him) was engaged in jihad in the abode of war, because a group from the people of Mecca: such as Ṣafwān and others, had a period of truce that had not yet expired.

وَمَالِكُ بْنُ عَوْفٍ فِي هَوَازِنَ قَدْ جُمِعَتْ لَهُ الْعَسَاكِرُ بِحُنَيْنٍ عَلَى بِضْعَةَ عَشَرَ مِيلًا.

L8205 And Malik ibn Awf in Hawazin—the armies had been gathered for him at Hunayn over a distance of about a dozen miles.

وَخَالِدُ بْنُ سُفْيَانَ الْهُذَلِيُّ عَلَى أَقَلَّ مِنْ ذَلِكَ يَجْمَعُ هُذَيْلًا لِحَرْبِهِ.

L8206 Khalid ibn Sufyan al-Hudhaliyy, with fewer than that, is rallying Hudhayl for his war.

وَالْكُفَّارُ مُحِيطُونَ بِهِ مُحَارِبُونَ لَهُ -: فَالْقَصْرُ وَاجِبٌ بَعْدُ فِي أَكْثَرَ مِنْ هَذِهِ الْإِقَامَةِ.

L8207 If disbelievers are surrounding him and waging war against him, shortening prayers remains obligatory even if the residence exceeds this period of stay.

وَهُوَ - عَلَيْهِ السَّلَامُ - يَتَرَدَّدُ مِنْ مَكَّةَ إلَى حُنَيْنٍ.

L8208 He, peace be upon him, would travel back and forth from Mecca to Ḥunayn.

ثُمَّ إلَى مَكَّةَ مُعْتَمِرًا، ثُمَّ إلَى الطَّائِفِ.

L8209 Then to Mecca for Umrah, then to Al-Taif.

وَهُوَ - عَلَيْهِ السَّلَامُ - يُوَجِّهُ السَّرَايَا إلَى مَنْ حَوْلَ مَكَّةَ مِنْ قَبَائِلِ الْعَرَبِ، كَبَنِي كِنَانَةَ، وَغَيْرِهِمْ.

L8210 He - peace be upon him - dispatched military expeditions to the Arab tribes surrounding Mecca, such as *Banu Kinanah*.

فَهَذَا قَوْلُنَا، وَمَا دَخَلَ - عَلَيْهِ السَّلَامُ - مَكَّةَ قَطُّ مِنْ حِينِ خَرَجَ عَنْهَا مُهَاجِرًا إلَّا فِي عُمْرَةِ الْقَضَاءِ، أَقَامَ بِهَا ثَلَاثَةَ أَيَّامٍ فَقَطْ.

L8211 This is our position, and he—peace be upon him—never at all entered Mecca since the time he emigrated from it except during the Compensatory Umrah (Umrah al-Qaḍāʾ), during which he stayed there for only three days.

وَلَمَّا أَخَذَهَا بِالْقَهْرِ - كَمَا ذَكَرْنَا - فِي

L8212 Then, when he seized it through rebellion—as we have mentioned—in the

capacity of a muḥārib (rebel).

ثُمَّ حِينَ فَتَحَهَا كَمَا ذَكَرْنَا مُحَارِبًا.

L8213 Then, during the Farewell Pilgrimage, he resided there as we have outlined, with no further additions.

ثُمَّ فِي حَجَّةِ الْوَدَاعِ: أَقَامَ بِهَا كَمَا وَصَفْنَا، وَلَا مَزِيدَ.

L8214 Ali said: As for our statement that this residing does not take effect except after entering the first territory of war and after assuming *ihram*—this is because one intending jihad, while remaining within the abode of Islam, is not actively engaged in jihad. Rather, he is merely intending jihad and aspiring to it. He is but a traveler like all travelers, except for the reward of his intention alone. Similarly, until he assumes *ihram*, he is not yet performing Hajj rites nor Umrah rites, but merely intends to perform Hajj or Umrah. Is there then no difference [between him] and other travelers?

قَالَ عَلِيٌّ: وَأَمَّا قَوْلُنَا: إِنَّ هَذِهِ الْإِقَامَةَ لَا تَكُونُ إِلَّا بَعْدَ الدُّخُولِ فِي أَوَّلِ دَارِ الْحَرْبِ وَبَعْدَ الْإِحْرَامِ -: فَلِأَنَّ الْقَاصِدَ إِلَى الْجِهَادِ مَا دَامَ فِي دَارِ الْإِسْلَامِ فَلَيْسَ فِي حَالِ جِهَادٍ، وَلَكِنَّهُ مُرِيدٌ لِلْجِهَادِ وَقَاصِدٌ إِلَيْهِ، وَإِنَّمَا هُوَ مُسَافِرٌ كَسَائِرِ الْمُسَافِرِينَ، إِلَّا أَجْرَ نِيَّتِهِ فَقَطْ، وَهُوَ مَا لَمْ يُحْرِمْ فَلَيْسَ بَعْدُ فِي عَمَلِ حَجٍّ وَلَا عَمَلِ عُمْرَةٍ، لَكِنَّهُ مُرِيدٌ لِأَنْ يَحُجَّ، أَوْ لِأَنْ يَعْتَمِرَ، فَهُوَ كَسَائِرِ مَنْ يُسَافِرُ وَلَا فَرْقَ؟

L8215–8219 Ali said: "All of this is no proof for them, because the Messenger of Allah (peace and blessings be upon him) did not say when he established." I was in Mecca for days: I only shortened [the prayers] from four units because I was on Hajj, not because I was in Mecca. Nor did he say, when he stayed in Tabuk for twenty days shortening the prayers, "I shortened them solely because I was engaged in jihad."

[قَالَ عَلِيٌّ: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقُلْ - إِذْ أَقَامَ بِمَكَّةَ أَيَّامًا: إِنِّي إِنَّمَا قَصَرْتُ أَرْبَعًا، لِأَنِّي فِي حَجٍّ، وَلَا لِأَنِّي فِي مَكَّةَ. وَلَا قَالَ - إِذْ أَقَامَ بِتَبُوكَ عِشْرِينَ يَوْمًا يَقْصُرُ: إِنِّي إِنَّمَا قَصَرْتُ لِأَنِّي فِي جِهَادٍ.

L8220 Whoever says any of this has attributed to him (peace be upon him) what he did not say, and this is not permissible.

فَمَنْ قَالَ: شَيْئًا مِنْ هَذَا فَقَدْ قَوَّلَهُ - عَلَيْهِ السَّلَامُ - مَا لَمْ يَقُلْ، وَهَذَا لَا يَحِلُّ.

L8221 Thus, it became definitively established that were it not for the Prophet—peace be upon him—staying in Tabuk for twenty days while shortening prayers, and in Mecca for fewer days while shortening prayers, then prayer shortening would only be permissible on days when one is traveling, and anyone residing for a day would be obligated to complete them.

فَصَحَّ يَقِينًا أَنَّهُ لَوْلَا مُقَامُ النَّبِيِّ - عَلَيْهِ السَّلَامُ - فِي تَبُوكَ عِشْرِينَ يَوْمًا يَقْصُرُ، وَبِمَكَّةَ دُونَ ذَلِكَ يَقْصُرُ -: لَكَانَ لَا يَجُوزُ الْقَصْرُ إِلَّا فِي يَوْمٍ يَكُونُ فِيهِ الْمَرْءُ مُسَافِرًا، وَلَكَانَ مُقِيمُ يَوْمٍ يَلْزَمُهُ الْإِتْمَامُ.

L8222 However, when he—peace be upon him—resided in Tabuk for twenty days and shortened the prayers, this confirmed that if a traveler stays twenty days, the rulings of travel apply during that period. If he stays longer or intends to stay longer, there is no proof whatsoever to exclude this from the rulings of residency. There is no distinction between those who restrict residency while engaged in jihad to twenty days with shortened prayers and those who specifically apply this ruling to Tabuk rather than other locations. All of this

لَكِنْ لَمَّا أَقَامَ - عَلَيْهِ السَّلَامُ - عِشْرِينَ يَوْمًا بِتَبُوكَ يَقْصُرُ صَحَّ بِذَلِكَ أَنَّ عِشْرِينَ يَوْمًا إِذَا أَقَامَهَا الْمُسَافِرُ فَلَهُ فِيهَا حُكْمُ السَّفَرِ، فَإِنْ أَقَامَ أَكْثَرَ أَوْ نَوَى إِقَامَةً أَكْثَرَ فَلَا بُرْهَانَ يُخْرِجُ ذَلِكَ عَنْ حُكْمِ الْإِقَامَةِ أَصْلًا وَلَا فَرْقَ بَيْنَ مَنْ خَصَّ الْإِقَامَةَ فِي الْجِهَادِ بِعِشْرِينَ

is invalid, and it is impermissible to adopt such a view, as it lacks support from any textual evidence in the Quran or Sunnah. And success comes only from Allah, the Most High.

يَوْمًا يَقْصُرُ فِيهَا، وَبَيْنَ مَنْ خَصَّ بِذَلِكَ بِتَبُوكَ دُونَ سَائِرِ الْأَمَاكِنِ، وَهَذَا كُلُّهُ بَاطِلٌ لَا يَجُوزُ الْقَوْلُ بِهِ، إذْ لَمْ يَأْتِ بِهِ نَصُّ قُرْآنٍ وَلَا سُنَّةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L8223 Fasting must differ from that ruling, as there is absolutely no textual basis for it, and analogical reasoning is impermissible. Thus, whoever intends to stay for a day during Ramadan must fast [and success is from Allah, the Most High].

وَوَجَبَ أَنْ يَكُونَ الصَّوْمُ بِخِلَافِ ذَلِكَ؛ لِأَنَّهُ لَمْ يَأْتِ فِيهِ نَصٌّ أَصْلًا، وَالْقِيَاسُ لَا يَجُوزُ، فَمَنْ نَوَى إقَامَةَ يَوْمٍ فِي رَمَضَانَ فَإِنَّهُ يَصُومُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ] .

L8224 Ali said: Abu Hanifah and Al-Shafi'i said: If one stays in a place while intending to depart tomorrow or today, he may shorten prayers and break the fast, even if he remains in that manner for years.

قَالَ عَلِيٌّ: وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: إنْ أَقَامَ فِي مَكَان يَنْوِي خُرُوجًا غَدًا أَوْ الْيَوْمَ فَإِنَّهُ يَقْصُرُ وَيُفْطِرُ وَلَوْ أَقَامَ كَذَلِكَ أَعْوَامًا.

L8225 Abu Hanifah said: Similarly, if one intends to depart on a journey extending to fifteen days or more, he must break the fast and shorten the prayers.

قَالَ أَبُو حَنِيفَةَ: وَكَذَلِكَ لَوْ نَوَى خُرُوجًا مَا بَيْنَهُ وَبَيْنَ خَمْسَةَ عَشَرَ يَوْمًا فَإِنَّهُ يُفْطِرُ وَيَقْصُرُ.

L8226 Mālik said: One may break the fast and shorten prayers even if intending to stay three days, for he then breaks the fast and shortens prayers. If he resolves, "I will depart today or tomorrow," he may shorten prayers - even if he remains in this state for years.

وَقَالَ مَالِكٌ: يَقْصُرُ وَيُفْطِرُ وَإِنْ نَوَى إقَامَةَ ثَلَاثَةِ أَيَّامٍ فَإِنَّهُ يُفْطِرُ وَيَقْصُرُ، وَإِنْ نَوَى: أَخْرُجُ الْيَوْمَ، أَخْرُجُ غَدًا: قَصَرَ، وَلَوْ بَقِيَ كَذَلِكَ أَعْوَامًا -؟

L8227–8229 Ali said: "Among the most astonishing wonders is Abu Hanifah's omission of the intention when Allah the Exalted obligated it in ablution for prayer, the ritual bath for major impurity, and menstruation, yet in Ramadan, he upholds the intention to break the fast until just before the sun passes its zenith." One permits all of that regarding the sun without intention. Then one obligates intention as an obligation in the iqāmah where neither Allah the Exalted nor His Messenger (peace be upon him) has imposed it, nor has any speculative reasoning necessitated it. ʿAlī said: "The proof validating our position [that the ruling applies to iqāmah for specific durations] we mentioned—whether intention for iqāmah existed there or not—is that intentions are only obligatory by divine requirement in acts Allah the Exalted has commanded. Thus they cannot be validly performed without intention. As for an act neither Allah nor His Messenger (peace be upon him) has obligated, intention holds no meaning in it, since no Quranic injunction, Prophetic precedent, analogical reasoning, or scholarly consensus (ijmāʿ) requires it there."

قَالَ عَلِيٌّ: وَمِنْ الْعَجَبِ الْعَجِيبِ إسْقَاطُ أَبِي حَنِيفَةَ النِّيَّةَ حِينَ افْتَرَضَهَا اللَّهُ تَعَالَى مِنْ الْوُضُوءِ لِلصَّلَاةِ، وَغُسْلِ الْجَنَابَةِ، وَالْحَيْضِ وَبَقَائِهِ فِي رَمَضَانَ يَنْوِي الْفِطْرَ إلَى قُبَيْلِ زَوَالِ الشَّمْسِ، وَيُجِيزُ كُلَّ ذَلِكَ بِلَا نِيَّةٍ -: ثُمَّ يُوجِبُ النِّيَّةَ فَرْضًا فِي الْإِقَامَةِ، حَيْثُ لَمْ يُوجِبْهَا اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا أَوْجَبَهَا بُرْهَانٌ نَظَرِيٌّ قَالَ عَلِيٌّ: وَبُرْهَانُ صِحَّةِ قَوْلِنَا -: أَنَّ الْحُكْمَ [لِلْإِقَامَةِ لِلْمُدَدِ] الَّتِي ذَكَرْنَا - كَانَتْ هُنَالِكَ نِيَّةٌ لِإِقَامَةٍ أَوْ لَمْ تَكُنْ - فَهُوَ أَنَّ النِّيَّاتِ إنَّمَا تَجِبُ فَرْضًا فِي الْأَعْمَالِ الَّتِي أَمَرَ اللَّهُ تَعَالَى بِهَا فَلَا يَجُوزُ أَنْ تُؤَدَّى بِلَا نِيَّةٍ وَأَمَّا عَمَلٌ لَمْ يُوجِبْهُ اللَّهُ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا مَعْنَى لِلنِّيَّةِ فِيهِ، إذْ لَمْ يُوجِبْهَا هُنَالِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا نَظَرٌ، وَلَا إجْمَاعٌ.

وَالْإِقَامَةُ لَيْسَتْ عَمَلًا مَأْمُورًا بِهِ، وَكَذَلِكَ السَّفَرُ، وَإِنَّمَا هُمَا حَالَانِ أَوْجَبَ اللَّهُ تَعَالَى فِيهِمَا الْعَمَلَ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ فِيهِمَا، فَذَلِكَ الْعَمَلُ هُوَ الْمُحْتَاجُ إِلَى النِّيَّةِ، لَا الْحَالُ.

L8230 Neither residence nor traveling is an action that is commanded. Rather, they are two states for which Allah, the Exalted, has made obligatory the actions He commanded within these states. Therefore, the action is what requires the intention, not the state itself.

وَهُمْ مُوَافِقُونَ لَنَا: أَنَّ السَّفَرَ لَا يَحْتَاجُ إِلَى نِيَّةٍ.

L8231 They are in agreement with us: travel does not require *niyyah*.

وَلَوْ أَنَّ امْرَأً خَرَجَ لَا يُرِيدُ سَفَرًا فَدَفَعَتْهُ ضَرُورَاتٌ لَمْ يَقْصِدْ لَهَا حَتَّى صَارَ مِنْ مَنْزِلِهِ عَلَى ثَلَاثِ لَيَالٍ، أَوْ سِيرَ بِهِ مَأْسُورًا أَوْ مُكْرَهًا مَحْمُولًا مُجْبَرًا فَإِنَّهُ يَقْصُرُ وَيُفْطِرُ.

L8232 If a person leaves without intending to travel, but necessities he did not intend arise until he becomes three nights away from his residence, or is taken captive, coerced, carried against his will, or forced, he may shorten prayers and break his fast.

وَكَذَلِكَ يَقُولُونَ فِيمَنْ أُقِيمَ بِهِ كُرْهًا فَطَالَتْ بِهِ مُدَّتُهُ فَإِنَّهُ يُتِمُّ وَيَصُومُ، وَكَذَلِكَ يَقُولُونَ فِيمَنْ اُضْطُرَّ لِلْخَوْفِ إِلَى الصَّلَاةِ رَاكِبًا أَوْ مَاشِيًا، فَذَلِكَ الْخَوْفُ وَتِلْكَ الضَّرُورَةُ لَا يُحْتَاجُ فِيهَا إِلَى نِيَّةٍ.

L8233 Similarly, they rule regarding someone subjected to coercion whose period is prolonged: he must complete [his prayers] and fast. Likewise, they rule regarding someone compelled by fear to pray while he is riding or walking: in that fear and that necessity, no intention is required for those acts.

وَكَذَلِكَ النَّوْمُ لَا يَحْتَاجُ إِلَى نِيَّةٍ، وَلَهُ حُكْمٌ فِي إِسْقَاطِ الْوُضُوءِ وَإِيجَابِ تَجْدِيدِهِ وَغَيْرِ ذَلِكَ.

L8234 Similarly, sleep does not require intention, and it has a ruling concerning the invalidation of ablution, the obligation to renew it, and other such matters.

وَكَذَلِكَ الْإِجْنَابُ لَا يَحْتَاجُ إِلَى نِيَّةٍ، وَهُوَ يُوجِبُ الْغُسْلَ.

L8235 Similarly, major ritual impurity does not require intention, but it obligates ghusl.

وَكَذَلِكَ الْحَدَثُ لَا يَحْتَاجُ إِلَى نِيَّةٍ، وَهُوَ يُوجِبُ حُكْمَ الْوُضُوءِ وَالِاسْتِنْجَاءِ، فَكُلُّ عَمَلٍ لَمْ يُؤْمَرْ بِهِ لَكِنْ أُمِرَ فِيهِ بِأَعْمَالٍ مَوْصُوفَةٍ فَهُوَ لَا يَحْتَاجُ إِلَى نِيَّةٍ.

L8236 Similarly, ritual impurity (ḥadath) does not require intention, yet it necessitates the ruling of ablution and istinjāʾ (cleansing after relieving oneself). Therefore, any act not commanded in itself, but in which specific actions are prescribed, does not require intention.

وَمِنْ جُمْلَةِ هَذِهِ الْأَعْمَالِ هِيَ الْإِقَامَةُ وَالسَّفَرُ، فَلَا يُحْتَاجُ فِيهِمَا إِلَى نِيَّةٍ أَصْلًا، لَكِنْ مَتَى وُجِدَا وَجَبَ لِكُلِّ وَاحِدٍ مِنْهُمَا الْحُكْمُ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ فِيهِ وَلَا مَزِيدَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L8237–8238 Among these categories of acts are residence and travel, for there is absolutely no need for intention in either. However, whenever they occur, the ruling ordained by Allah the Exalted for each becomes obligatory, and no addition—and success comes from Allah, the Exalted.

وَهَذَا قَوْلُ الشَّافِعِيِّ وَأَصْحَابِنَا.

L8239 This is the position of Al-Shafi'i and our companions.

[مَسْأَلَةٌ ابْتَدَأَ صَلَاةً وَهُوَ مُقِيمٌ ثُمَّ نَوَى فِيهَا السَّفَرَ]

٥١٦ - مَسْأَلَةٌ: وَمَنْ ابْتَدَأَ صَلَاةً وَهُوَ مُقِيمٌ ثُمَّ نَوَى فِيهَا السَّفَرَ، أَوْ ابْتَدَأَهَا وَهُوَ مُسَافِرٌ ثُمَّ نَوَى فِيهَا أَنْ يُقِيمَ -: أَتَمَّ فِي كِلَا الْحَالَيْنِ.

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَاهُ مِنْ أَنَّ الْإِقَامَةَ غَيْرُ السَّفَرِ وَأَنَّهُ لَا يَخْرُجُ عَنْ حُكْمِ الْإِقَامَةِ مِمَّا هُوَ إِقَامَةٌ إِلَّا مَا أَخْرَجَهُ نَصٌّ.

فَهُوَ إِذَا نَوَى فِي الصَّلَاةِ سَفَرًا فَلَمْ يُسَافِرْ بَعْدُ، بَلْ هُوَ مُقِيمٌ، فَلَهُ حُكْمُ الْإِقَامَةِ.

وَإِذَا افْتَتَحَهَا وَهُوَ مُسَافِرٌ فَنَوَى فِيهَا الْإِقَامَةَ فَهُوَ مُقِيمٌ بَعْدُ لَا مُسَافِرٌ، فَلَهُ أَيْضًا حُكْمُ الْإِقَامَةِ.

إِذْ إِنَّمَا كَانَ لَهُ حُكْمُ السَّفَرِ بِالنَّصِّ الْمُخْرِجِ لِتِلْكَ الْحَالِ عَنْ حُكْمِ الْإِقَامَةِ، فَإِذَا بَطَلَتْ تِلْكَ الْحَالُ بِبُطْلَانِ نِيَّتِهِ صَارَ فِي حَالِ الْإِقَامَةِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ ذَكَرَ وَهُوَ فِي سَفَرٍ صَلَاةً نَسِيَهَا أَوْ نَامَ عَنْهَا فِي إِقَامَتِهِ]

٥١٧ - مَسْأَلَةٌ: وَمَنْ ذَكَرَ وَهُوَ فِي سَفَرٍ صَلَاةً نَسِيَهَا أَوْ نَامَ عَنْهَا فِي إِقَامَتِهِ صَلَّاهَا رَكْعَتَيْنِ وَلَا بُدَّ، فَإِنْ ذَكَرَ فِي الْحَضَرِ صَلَاةً نَسِيَهَا فِي سَفَرٍ صَلَّاهَا أَرْبَعًا وَلَا بُدَّ.

وَقَالَ الشَّافِعِيُّ: يُصَلِّيهَا فِي كِلْتَا الْحَالَتَيْنِ: أَرْبَعًا؟ وَقَالَ مَالِكٌ: يُصَلِّيهَا إِذَا نَسِيَهَا فِي السَّفَرِ فَذَكَرَهَا فِي الْحَضَرِ: رَكْعَتَيْنِ

Issue: One begins a prayer while being a resident (non-traveler), then forms the intention to travel during it.

516 – Issue: If a person begins prayer in a state of residency and then forms the intention to travel during it, or begins prayer in a state of travel and then forms the intention to reside during it—they must complete the prayer in full in both cases.

The proof for this is what we have previously stated: that settled abode is distinct from travel, and that one does not cease to be governed by the rulings of settled abode in matters constituting settled abode, except what a legal text has explicitly excluded.

If he intended during the prayer to travel but has not yet traveled and remains settled, then the ruling applicable to residents applies to him.

If he initiates the prayer while traveling and then intends during the prayer to settle temporarily (iqāmah), he is thereafter considered a resident, not a traveler, and he is also subject to the rulings of residency.

For the ruling of travel applied to him only by the textual evidence that removes that situation from the ruling of residency. Thus, when that situation ceases due to the abandonment of his intention, he comes under the ruling of residency—and success is from Allah, the Most High.

A legal issue concerning someone who, while traveling, remembers a prayer he had forgotten or slept through during his settled state [i.e., prior to traveling].

517 – Issue: If a person remembers a prayer he forgot or slept through during travel while in residence, he must pray it as two rakʿahs obligatorily. If he remembers a prayer he forgot during travel while in residence, he must pray it as four rakʿahs obligatorily.

Al-Shāfiʿī said: He prays it in both states: four rakʿahs? Mālik said: When he forgets it during travel and remembers it while resident, he prays it as two rakʿahs.

L8249 And if he forgets it while resident and remembers it during travel, he prays it as four rak’ahs.

وَإِذَا نَسِيَهَا فِي الْحَضَرِ فَذَكَرَهَا فِي السَّفَرِ صَلَّاهَا: أَرْبَعًا.

L8250 The argument of al-Shāfiʿī: that the original ruling is completion, and shortening is merely a concession? ʿAlī said: This is an error and an unsupported claim. If we wished to counter him, we would say: Rather, the original ruling is shortening, as ʿĀ’ishah (may Allah be pleased with her) said: “The prayer was ordained as two units, then the resident prayer was extended while the travel prayer was kept in its original form.”

حُجَّةُ الشَّافِعِيِّ: أَنَّ - الْأَصْلَ الْإِتْمَامُ، وَإِنَّمَا الْقَصْرُ رُخْصَةٌ؟ قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، وَدَعْوَى بِلَا بُرْهَانٍ، وَلَوْ أَرَدْنَا مُعَارَضَتَهُ لَقُلْنَا: بَلْ الْأَصْلُ الْقَصْرُ، كَمَا قَالَتْ عَائِشَةُ - رَضِيَ اللَّهُ عَنْهَا - " فُرِضَتْ الصَّلَاةُ رَكْعَتَيْنِ فَزِيدَ فِي صَلَاةِ الْحَضَرِ وَأُقِرَّتْ صَلَاةُ السَّفَرِ عَلَى الْحَالَةِ الْأُولَى ".

L8251 But we do not condone disorder; rather, we assert: Indeed, the traveler’s prayer is a foundational principle, and the resident’s prayer is a foundational principle. Neither is a branch of the other. Thus, this view is invalidated.

وَلَكِنَّا لَا نَرْضَى بِالشَّغَبِ، بَلْ نَقُولُ: إنَّ صَلَاةَ السَّفَرِ أَصْلٌ، وَصَلَاةَ الْإِقَامَةِ أَصْلٌ، لَيْسَتْ إحْدَاهُمَا فَرْعًا لِلْأُخْرَى، فَبَطَلَ هَذَا الْقَوْلُ.

L8252–8253 Malik cited as evidence that the prayer, when missed, is to be performed only as it was obligated.

وَاحْتَجَّ مَالِكٌ بِأَنَّ الصَّلَاةَ إنَّمَا تُؤَدَّى كَمَا لَزِمَتْ إذَا فَاتَتْ.

L8254 Ali said: “This too is an unsubstantiated claim, for anything of this nature is erroneous. He is the foremost to violate this foundational principle and undermine it in every instance, except here where it is a contradiction. This is because he asserts: ’Whoever misses the Friday prayer should only pray it as four rakʿahs.’”

قَالَ عَلِيٌّ: وَهَذَا أَيْضًا دَعْوَى بِلَا بُرْهَانٍ، وَمَا كَانَ هَكَذَا فَهُوَ خَطَأٌ، وَهُوَ أَوَّلُ مَنْ يُخَالِفُ هَذَا الْأَصْلَ وَيَهْدِمُهُ فِي كُلِّ مَوْضِعٍ، إلَّا هُنَا فَإِنَّهُ تَنَاقُضٌ، وَذَلِكَ أَنَّهُ يَقُولُ: مَنْ فَاتَتْهُ صَلَاةُ الْجُمُعَةِ فَإِنَّهُ لَا يُصَلِّيهَا إلَّا أَرْبَعَ رَكَعَاتٍ.

L8255 Whoever missed prayers during their illness—prayers whose ruling, if performed during illness, obligates praying seated, lying down, or nodding—must pray them standing if remembered in a state of health.

وَمَنْ فَاتَتْهُ فِي حَالِ مَرَضِهِ صَلَوَاتٌ كَانَ حُكْمُهَا لَوْ صَلَّاهَا أَنْ يُصَلِّيَهَا قَاعِدًا أَوْ مُضْطَجِعًا أَوْ مُومِئًا فَذَكَرَهَا فِي صِحَّتِهِ -: فَإِنَّهُ لَا يُصَلِّيهَا إلَّا قَائِمًا.

L8256 Whoever, during the aforementioned illness, remembers a prayer he missed while healthy, the ruling is that he should pray it standing. For indeed, he should not pray it except sitting or lying down.

وَمَنْ ذَكَرَ فِي حَالِ الْمَرَضِ الْمَذْكُورِ صَلَاةً فَاتَتْهُ فِي صِحَّتِهِ كَانَ حُكْمُهَا أَنْ يُصَلِّيَهَا قَائِمًا فَإِنَّهُ لَا يُصَلِّيهَا إلَّا قَاعِدًا أَوْ مُضْطَجِعًا.

L8257 “Whoever, in a state of fear, prays a prayer he had forgotten to perform during a state of safety—whether riding or walking—must perform it riding or walking.”

وَمَنْ صَلَّى فِي حَالِ خَوْفٍ رَاكِبًا أَوْ مَاشِيًا صَلَاةً نَسِيَهَا فِي حَالِ الْأَمْنِ فَإِنَّهُ يُؤَدِّيهَا رَاكِبًا أَوْ مَاشِيًا.

L8258 Whoever remembers a prayer during safe circumstances that they had for-

gotten during circumstances of danger—where, had they prayed it at that time, they would have done so while riding or walking—must pray it dismounted and standing.

وَمَنْ ذَكَرَ فِي حَالِ الْأَمْنِ صَلَاةً نَسِيَهَا فِي حَالِ الْخَوْفِ حَيْثُ لَوْ صَلَّاهَا لَصَلَّاهَا رَاكِبًا أَوْ مَاشِيًا فَإِنَّهُ لَا يُصَلِّيهَا إِلَّا نَازِلًا قَائِمًا.

L8259 And whoever forgets a prayer that—had he prayed it during its prescribed time, he would not have prayed it except in a state of wuḍūʾ—then remembers it while in a state of tayammum: he must pray it in a state of tayammum.

وَمَنْ نَسِيَ صَلَاةً لَوْ صَلَّاهَا فِي وَقْتِهَا لَمْ يُصَلِّهَا إِلَّا مُتَوَضِّئًا فَذَكَرَهَا فِي حَالِ تَيَمُّمٍ: صَلَّاهَا مُتَيَمِّمًا.

L8260 If someone forgot a prayer that - had they prayed it during its prescribed time - they would only have performed it with tayammum (dry ablution), then remembered it with water available, they must not pray it except with wudu (ritual ablution).

وَلَوْ نَسِيَ صَلَاةً لَوْ صَلَّاهَا فِي وَقْتِهَا لَمْ يُصَلِّهَا إِلَّا مُتَيَمِّمًا فَذَكَرَهَا وَالْمَاءُ مَعَهُ فَإِنَّهُ لَا يُصَلِّيهَا إِلَّا مُتَوَضِّئًا.

L8261 The people, by their own claim, are proponents of qiyas [legal analogy], and this is the extent of their analogy.

وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَهَذَا مِقْدَارُ قِيَاسِهِمْ

L8262 As for us, our proof in this matter is the statement of Allah's Messenger—peace and blessings be upon him—: "Whoever forgets a prayer or sleeps through it, let him pray it when he remembers." He—peace be upon him—indeed designated its time as the moment of its performance, not the time when it was forgotten or slept through. Thus, is every prayer performed during travel necessarily a prayer in the state of travel, and every prayer performed in residency necessarily a prayer in the state of residency?

وَأَمَّا نَحْنُ فَإِنَّ حُجَّتَنَا فِي هَذَا إِنَّمَا هُوَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ نَسِيَ صَلَاةً أَوْ نَامَ عَنْهَا فَلْيُصَلِّهَا إِذَا ذَكَرَهَا» فَإِنَّمَا جَعَلَ - عَلَيْهِ السَّلَامُ - وَقْتَهَا وَقْتَ أَدَائِهَا لَا الْوَقْتَ الَّذِي نَسِيَهَا فِيهِ أَوْ نَامَ عَنْهَا، فَكُلُّ صَلَاةٍ تُؤَدَّى فِي سَفَرٍ فَهِيَ صَلَاةُ سَفَرٍ، وَكُلُّ صَلَاةٍ تُؤَدَّى فِي حَضَرٍ فَهِيَ صَلَاةُ حَضَرٍ وَلَا بُدَّ؟

L8263–8264 If it is said: "Indeed, in this narration there is: 'just as he used to pray it at its time,'" we respond: This is invalid, for this is a fabricated phrase that has never come through any chain of acceptable quality.

فَإِنْ قِيلَ: فَإِنَّ فِي هَذَا الْخَبَرِ «كَمَا كَانَ يُصَلِّيهَا لِوَقْتِهَا» . قُلْنَا: هَذَا بَاطِلٌ، وَهَذِهِ لَفْظَةٌ مَوْضُوعَةٌ لَمْ تَأْتِ قَطُّ مِنْ طَرِيقٍ فِيهَا خَيْرٌ

L8265 Ali said: As for our statement: If one forgets a prayer during travel and remembers it while resident, he must pray it only as four units—this is the position of Al-Awzaʿī, Al-Shāfiʿī, and others besides them.

قَالَ عَلِيٌّ: وَأَمَّا قَوْلُنَا: إِنْ نَسِيَ صَلَاةً فِي سَفَرٍ فَذَكَرَهَا فِي حَضَرٍ فَإِنَّهُ لَا يُصَلِّيهَا إِلَّا أَرْبَعًا -: فَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَالشَّافِعِيِّ، وَغَيْرِهِمَا.

L8266 As for our statement: If one forgets it while resident then remembers it during travel, he should perform it in the travel format—this is a view narrated from al-Ḥasan. And success is from Allah, the Exalted.

وَأَمَّا قَوْلُنَا: إِنْ نَسِيَهَا فِي حَضَرٍ فَذَكَرَهَا فِي سَفَرٍ فَإِنَّهُ يُصَلِّيهَا سَفَرِيَّةً -: فَهُوَ قَوْلٌ رُوِيَ عَنْ الْحَسَنِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L8267 Ash-Shāfiʿī said: No one should perform the shortened prayer except for

one who has formed the intention to shorten it at the time of the opening takbīr (takbīrat al-iḥrām).

وَقَالَ الشَّافِعِيُّ: لَا يَقْصُرُ إِلَّا مَنْ نَوَى الْقَصْرَ فِي تَكْبِيرَةِ الْإِحْرَامِ.

L8268 Ali said: This is incorrect because Al-Shafi'i contradicted himself by not requiring the intention for completing prayers. This follows his principle - whose error we have already clarified - that the default position in his view is completing full prayers, considering shortening as an extraneous addition? We have established that the traveler's prayer consists of two rak'ahs, requiring one to intend only Dhuhr, Asr, or Isha (Atamah).

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِأَنَّ الشَّافِعِيَّ قَدْ تَنَاقَضَ، فَلَمْ يَرَ النِّيَّةَ لِلْإِتْمَامِ، وَهَذَا عَلَى أَصْلِهِ الَّذِي قَدْ بَيَّنَّا خَطَأَهُ فِيهِ، مِنْ أَنَّ الْأَصْلَ عِنْدَهُ الْإِتْمَامُ، وَالْقَصْرُ دَخِيلٌ؟ وَقَدْ بَيَّنَّا أَنَّ صَلَاةَ السَّفَرِ رَكْعَتَانِ، فَلَا يَلْزَمُهُ إِلَّا أَنْ يَنْوِيَ الظُّهْرَ، أَوْ الْعَصْرَ، أَوْ الْعَتَمَةَ فَقَطْ.

L8269 Then, if he is settled, the prayer is four rak'ahs, and if he is a traveler, it is two rak'ahs, without fail.

ثُمَّ إِنْ كَانَ مُقِيمًا فَهِيَ أَرْبَعٌ، وَإِنْ كَانَ مُسَافِرًا فَهِيَ رَكْعَتَانِ وَلَا بُدَّ

L8270 It is invalid to impose the requirement of intention in one of the two juristic positions while excluding the other—and divine assistance comes solely from Allah, the Exalted.

وَمِنْ الْبَاطِلِ إِلْزَامُهُ النِّيَّةَ فِي أَحَدِ الْوَجْهَيْنِ دُونَ الْآخَرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L8271 Issue: A traveler prayed behind a resident imam.

[مَسْأَلَةٌ مُسَافِرٌ صَلَّى بِصَلَاةِ إمَامٍ مُقِيمٍ]

L8272 518 – Legal Ruling: If a traveler prays following a resident imam's prayer, he must shorten [his prayer] without exception. If a resident prays following a traveler's prayer, he must complete it without exception. Each individual prays for himself, and the leadership of either one over the other in prayer is permissible, there being no distinction.

٥١٨ - مَسْأَلَةٌ: فَإِنْ صَلَّى مُسَافِرٌ بِصَلَاةِ إمَامٍ مُقِيمٍ قَصَرَ وَلَا بُدَّ، وَإِنْ صَلَّى مُقِيمٌ بِصَلَاةِ مُسَافِرٍ أَتَمَّ وَلَا بُدَّ، وَكُلُّ أَحَدٍ يُصَلِّي لِنَفْسِهِ، وَإِمَامَةُ كُلِّ وَاحِدٍ مِنْهُمَا لِلْآخَرِ جَائِزَةٌ وَلَا فَرْقَ؟

L8273 It has been narrated to us through the chain of Abd al-Razzaq from Sa'id ibn al-Sa'ib from Dawud ibn Abi Asim, who said: "I asked Ibn Umar about prayer during travel. He replied: 'Two rak'ahs.' I said: 'What is your view while we are here in Mina?' He said: 'Woe to you! Have you heard from the Messenger of Allah (peace and blessings be upon him) and believed in him?' I said: 'Yes.' He said: 'He used to pray two rak'ahs, so pray two rak'ahs if you wish or omit them.'" This constitutes an explicit clarification of Ibn Umar's command that the traveler should pray only two rak'ahs behind the resident prayer leader.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سَعِيدِ بْنِ السَّائِبِ عَنْ دَاوُد بْنِ أَبِي عَاصِمٍ قَالَ: «سَأَلْتُ ابْنَ عُمَرَ عَنْ الصَّلَاةِ فِي السَّفَرِ؟ فَقَالَ: رَكْعَتَانِ؟ قُلْتُ: كَيْفَ تَرَى وَنَحْنُ هَهُنَا بِمِنًى؟ قَالَ: وَيْحَك سَمِعْتَ بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَآمَنْتَ بِهِ؟ قُلْتُ: نَعَمْ؟ قَالَ فَإِنَّهُ كَانَ يُصَلِّي رَكْعَتَيْنِ فَصَلِّ رَكْعَتَيْنِ إنْ شِئْت أَوْ دَعْ -» وَهَذَا بَيَانٌ جَلِيٌّ بِأَمْرِ ابْنِ عُمَرَ الْمُسَافِرَ أَنْ يُصَلِّيَ خَلْفَ الْمُقِيمِ رَكْعَتَيْنِ فَقَطْ

L8274 And via the narration of Shu'bah from al-Mughīrah ibn Miqsam from 'Abd al-Raḥmān ibn Tamīm ibn Ḥadhlam.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ تَمِيمِ بْنِ حَذْلَمٍ.

L8275–8276 He said: My father, when he caught one rakʿah of the resident's prayer as a traveler, would pray another one to it, and when he caught two rakʿahs, he deemed them sufficient? ʿAlī said: Tamīm ibn Ḥadhlam is among the senior companions of Ibn Masʿūd—may Allāh be pleased with him.

قَالَ: كَانَ أَبِي إِذَا أَدْرَكَ مِنْ صَلَاةِ الْمُقِيمِ رَكْعَةً - وَهُوَ مُسَافِرٌ - صَلَّى إِلَيْهَا أُخْرَى، وَإِذَا أَدْرَكَ رَكْعَتَيْنِ اجْتَزَأَ بِهِمَا؟ قَالَ عَلِيٌّ: تَمِيمُ بْنُ حَذْلَمٍ مِنْ كِبَارِ أَصْحَابِ ابْنِ مَسْعُودٍ - رَضِيَ اللَّهُ عَنْهُ -.

L8277 From Shuʿbah, from Maṭar ibn Fīl, from al-Shaʿbī, who said: If one is a traveler and catches two rakʿahs of the resident prayer, are they considered valid for him? From Shuʿbah, from Sulaymān al-Taymī, who said: I heard Ṭāwūs being asked about a traveler who catches two rakʿahs of the residents' prayer. He said: "They are sufficient for him." ʿAlī said: The evidence for the soundness of our view is what has been authentically reported from the Messenger of Allah (peace and blessings be upon him) - that Allah the Exalted ordained through his words the resident prayer as four rakʿahs and the traveler's prayer as two rakʿahs.

وَعَنْ شُعْبَةَ عَنْ مَطَرِ بْنِ فِيلٍ عَنْ الشَّعْبِيِّ قَالَ: إذَا كَانَ مُسَافِرًا فَأَدْرَكَ مِنْ صَلَاةِ الْمُقِيمِ رَكْعَتَيْنِ اعْتَدَّ بِهِمَا؟ وَعَنْ شُعْبَةَ عَنْ سُلَيْمَانَ التَّيْمِيِّ قَالَ: سَمِعْت طَاوُسًا وَسَأَلْته عَنْ مُسَافِرٍ أَدْرَكَ مِنْ صَلَاةِ الْمُقِيمِينَ رَكْعَتَيْنِ؟ قَالَ: تُجْزِيَانِهِ قَالَ عَلِيٌّ: بُرْهَانُ صِحَّةِ قَوْلِنَا مَا قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ «أَنَّ اللَّهَ تَعَالَى فَرَضَ عَلَى لِسَانِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَاةَ الْحَضَرِ أَرْبَعًا وَصَلَاةَ السَّفَرِ رَكْعَتَيْنِ» .

L8278 Abdullah ibn Rabee' narrated to us, Muhammad ibn Mu'awiyah narrated to us, Ahmad ibn Shu'ayb narrated to us, Abdah ibn Abdur-Raheem narrated to us from Muhammad ibn Shu'ayb: Al-Awza'i narrated to me from Yahya—he is Ibn Abi Kathir—from Abu Salamah ibn Abdur-Rahman ibn Awf, who said: Amr ibn Umayyah narrated to me that the Messenger of Allah—peace and blessings of Allah be upon him—said to him: "Allah has exempted the traveler from fasting and half of the prayer." He—peace be upon him—did not distinguish between a follower, a leader, and one praying alone. {And your Lord is not forgetful} [Maryam 19:64].[8]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا عَبْدَةُ بْنُ عَبْدِ الرَّحِيمِ عَنْ مُحَمَّدِ بْنِ شُعَيْبٍ أَنَا الْأَوْزَاعِيُّ عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ حَدَّثَنِي عَمْرُو بْنُ أُمَيَّةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: «إنَّ اللَّهَ قَدْ وَضَعَ عَنْ الْمُسَافِرِ الصِّيَامَ وَنِصْفَ الصَّلَاةِ» وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - مَأْمُومًا مِنْ إمَامٍ مِنْ مُنْفَرِدٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L8279 And He, the Exalted, said: "No soul earns except upon itself, and no bearer of burdens will bear the burden of another." [Al-An'ām 6:164][9]

وَقَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

L8280 Ali said: What is astonishing is the stance of the Malikis, Shafiʿis, and Ḥanafis who assert that a resident praying behind a traveler must complete the prayer and does not adopt the imam's ruling regarding shortening it, whereas indeed

قَالَ عَلِيٌّ: وَالْعَجَبُ مِنْ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، وَالْحَنَفِيِّينَ الْقَائِلِينَ: بِأَنَّ الْمُقِيمَ خَلْفَ الْمُسَافِرِ يُتِمُّ وَلَا يَنْتَقِلُ إلَى حُكْمِ إمَامِهِ فِي التَّقْصِيرِ، وَإِنَّ الْمُسَافِرَ خَلْفَ الْمُقِيمِ يَنْتَقِلُ إلَى حُكْمِ إمَامِهِ فِي الْإِتْمَامِ.

[8] **Qur'an references (L8278):** Qur'an 19:64 (Maryam).
[9] **Qur'an references (L8279):** Qur'an 6:164 (Al-An'am).

a traveler praying behind a resident must adopt the imam's ruling regarding completing it.

L8281–8283 They allege—according to their dubious claim—that they are the proponents of legal analogy (qiyās), though were any valid analogy to exist in existence, it would indeed be this one. The most valid analogy that exists, but this is among matters where they abandoned the Qur'an, the Sunnah, and analogy. I found no argument for them except that some of them said: "When a traveler intends to settle at the start of his prayer, he becomes obligated to complete it, while a resident who intends to travel at the start of his prayer does not shorten it." They said: "If one alters his intention toward completing prayers due to his imam's ruling, should he not instead adhere to it?" 'Ali responded: "This analogy is utterly invalid, for there is no connection or resemblance between shifting intention from travel to settlement and following a resident imam. Rather, equating these two matters is manifestly baseless." Some of them cited the Prophet's statement (peace be upon him): 'The imam is appointed only to be followed.' We countered: 'Then you should require residents following a traveling imam to follow him!' One of them argued: 'There is a report: "Complete your prayers, for we are travelers."' We replied: "If this were authentic, it would contradict your position, for it indicates travelers generally shorten prayers without distinguishing between imam and follower. Thus, the ruling here requires travelers to shorten prayers absolutely, and residents to complete them absolutely—neither considering their imam's status. Success comes only from Allah, the Exalted."

وَهُمْ يَدَّعُونَ أَنَّهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَلَوْ صَحَّ قِيَاسٌ فِي الْعَالَمِ لَكَانَ هَذَا أَصَحَّ قِيَاسٍ يُوجَدُ، وَلَكِنْ هَذَا مِمَّا تَرَكُوا فِيهِ الْقُرْآنَ وَالسُّنَنَ وَالْقِيَاسَ وَمَا وَجَدْت لَهُمْ حُجَّةً إلَّا أَنَّ بَعْضَهُمْ قَالَ: إنَّ الْمُسَافِرَ إذَا نَوَى فِي صَلَاتِهِ الْإِقَامَةَ لَزِمَهُ إتْمَامُهَا، وَالْمُقِيمُ إذَا نَوَى فِي صَلَاتِهِ السَّفَرَ لَمْ يَقْصُرْهَا، قَالَ: فَإِذَا خَرَجَ بِنِيَّتِهِ إلَى الْإِتْمَامِ فَأَحْرَى أَنْ يَخْرُجَ إلَى الْإِتْمَامِ بِحُكْمِ إمَامِهِ؟ قَالَ عَلِيٌّ: وَهَذَا قِيَاسٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ لَا نِسْبَةَ وَلَا شَبَهَ بَيْنَ صَرْفِ النِّيَّةِ مِنْ سَفَرٍ إلَى إقَامَةٍ وَبَيْنَ الِائْتِمَامِ بِإِمَامٍ مُقِيمٍ، بَلْ التَّشْبِيهُ بَيْنَهُمَا هَوَسٌ ظَاهِرٌ وَاحْتَجَّ بَعْضُهُمْ بِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا جُعِلَ الْإِمَامُ لِيُؤْتَمَّ بِهِ» ؟ فَقُلْنَا لَهُمْ: فَقُولُوا لِلْمُقِيمِ خَلْفَ الْمُسَافِرِ: أَنْ يَأْتَمَّ بِهِ إذَنْ؟ فَقَالَ قَائِلُهُمْ: قَدْ جَاءَ " أَتِمُّوا صَلَاتَكُمْ فَإِنَّا قَوْمٌ سَفْرٌ "؟ فَقُلْنَا: لَوْ صَحَّ هَذَا لَكَانَ عَلَيْكُمْ، لِأَنَّ فِيهِ أَنَّ الْمُسَافِرَ لَا يُتِمُّ، وَلَمْ يُفَرِّقْ بَيْنَ مَأْمُومٍ وَلَا إمَامٍ، فَالْوَاجِبُ عَلَى هَذَا أَنَّ الْمُسَافِرَ جُمْلَةً يَقْصُرُ، وَالْمُقِيمَ جُمْلَةً يُتِمُّ، وَلَا يُرَاعِي أَحَدٌ مِنْهُمَا حَالَ إمَامِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

Prayer of Fear

[صَلَاةُ الْخَوْفِ]

A case: If someone intends to pray and fear of an enemy arises, and they are three or more in number.

[مَسْأَلَةٌ أَرَادَ الصَّلَاةَ فَحَضَرَهُ خَوْفٌ مِنْ عَدُوٍّ وَهُمْ ثَلَاثَةٌ فَصَاعِدًا]

L8286–8288 519 - Issue: If someone is present amidst fear from an unjust disbelieving enemy, or a rebel from among the Muslims, or from a flood, fire, snake, predatory beast, or other such dangers—and they are three people or more—then their leader may choose between fourteen ways, all of which are authentically reported from the Messenger of Allah (peace be upon him). We have

٥١٩ - مَسْأَلَةٌ: مَنْ حَضَرَهُ خَوْفٌ مِنْ عَدُوٍّ ظَالِمٍ كَافِرٍ، أَوْ بَاغٍ مِنْ الْمُسْلِمِينَ، أَوْ مِنْ سَيْلٍ، أَوْ مِنْ نَارٍ، أَوْ مِنْ حَنَشٍ، أَوْ سَبُعٍ، أَوْ غَيْرِ ذَلِكَ وَهُمْ فِي ثَلَاثَةٍ فَصَاعِدًا -: فَأَمِيرُهُمْ مُخَيَّرٌ بَيْنَ أَرْبَعَةَ عَشَرَ وَجْهًا، كُلُّهَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ

elucidated these with utmost clarity and exhaustive detail in another book, and all praise is due to Allah, Lord of the worlds. We have composed this book for the layperson, the novice, and as a reminder for the scholar. Here, we shall mention some of those ways that are easier to memorize, simpler to comprehend, and are not difficult to implement—and with Allah alone is success. If they are traveling, then if he wills, he should pray two rakʿahs with one group, then conclude with salām and they conclude with salām. Thereafter, another group may come, and he prays two rakʿahs with them, then concludes with salām and they conclude with salām. If they are residents, he prays four rakʿahs with each group. For the Dawn Prayer, he prays two rakʿahs with each group. For the Sunset Prayer, he prays [...] A group prays three rak'ahs: the first is the imam's obligatory prayer, and the second his supererogatory prayer. If he wishes, even during travel, he may pray one rak'ah with each group. That group then performs the taslīm, which suffices for both. The imam may either say the taslīm himself or refrain. He then prays one rak'ah with the remaining group, after which he and they perform the taslīm, and this suffices for them all.

وَسَلَّمَ - قَدْ بَيَّنَّاهَا غَايَةَ الْبَيَانِ وَالتَّقَصِّي فِي غَيْرِ هَذَا الْكِتَابِ، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ؟ وَإِنَّمَا كَتَبْنَا كِتَابَنَا هَذَا لِلْعَامِّيِّ وَالْمُبْتَدِئِ وَتَذْكِرَةً لِلْعَالِمِ، فَنَذْكُرُ هَهُنَا بَعْضَ تِلْكَ الْوُجُوهِ، مِمَّا يَقْرُبُ حِفْظُهُ وَيَسْهُلُ فَهْمُهُ، وَلَا يَضْعُفُ فِعْلُهُ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ؟ فَإِنْ كَانَ فِي سَفَرٍ، فَإِنْ شَاءَ صَلَّى بِطَائِفَةٍ رَكْعَتَيْنِ ثُمَّ سَلَّمَ وَسَلَّمُوا، ثُمَّ تَأْتِي طَائِفَةٌ أُخْرَى فَيُصَلِّي بِهِمْ رَكْعَتَيْنِ ثُمَّ يُسَلِّمُ وَيُسَلِّمُونَ، وَإِنْ كَانَ فِي حَضَرٍ صَلَّى بِكُلِّ طَائِفَةٍ أَرْبَعَ رَكَعَاتٍ، وَإِنْ كَانَتْ الصُّبْحُ صَلَّى بِكُلِّ طَائِفَةٍ رَكْعَتَيْنِ، وَإِنْ كَانَتْ الْمَغْرِبُ صَلَّى بِكُلِّ طَائِفَةٍ ثَلَاثَ رَكَعَاتٍ، الْأُولَى فَرْضُ الْإِمَامِ، وَالثَّانِيَةُ تَطَوُّعٌ لَهُ وَإِنْ شَاءَ فِي السَّفَرِ أَيْضًا صَلَّى بِكُلِّ طَائِفَةٍ رَكْعَةً ثُمَّ تُسَلِّمُ تِلْكَ الطَّائِفَةُ وَيُجْزِئُهُمَا، وَإِنْ شَاءَ هُوَ سَلَّمَ، وَإِنْ شَاءَ لَمْ يُسَلِّمْ، وَيُصَلِّي بِالْأُخْرَى رَكْعَةً وَيُسَلِّمُ وَيُسَلِّمُونَ وَيُجْزِئُهُمْ.

If the group wishes to complete the *rakʿah* while the imam is standing, they may do so, then perform the second *rakʿah* in the same manner. If it is the Fajr prayer, he prays one *rakʿah* with the first group, then he must necessarily pause, and they complete one *rakʿah* and say the *salām*. Then the second group arrives, and he leads them in the second *rakʿah*. When he sits, they stand and complete one *rakʿah*, then he says the *salām*, and they say it after him. If it is the Maghrib prayer, he prays two *rakʿahs* with the first group. When he sits, they stand and complete one *rakʿah* and say the *salām*. Then the other group arrives, and he leads them in the remaining *rakʿah*. When he sits again, they pray one *rakʿah*, then sit and recite the *Tashahhud*, then pray the third *rakʿah*. Then he says the *salām*, and they say it after him. If one is alone during travel, he may choose between two *rakʿahs* or one *rakʿah*, which suffices him. As for Fajr, it must be two *rakʿahs* without exception; Maghrib must be three without exception; and while not traveling, it must be four without exception. This ruling applies equally whether the fear arises from a rightful pursuit or a wrongful one.

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وَإِنْ شَاءَتْ الطَّائِفَةُ أَنْ تَقْضِيَ الرَّكْعَةَ وَالْإِمَامُ وَاقِفٌ فَعَلَتْ، ثُمَّ تَفْعَلُ الثَّانِيَةُ أَيْضًا كَذَلِكَ؟ فَإِنْ كَانَتْ الصُّبْحُ صَلَّى بِالطَّائِفَةِ الْأُولَى رَكْعَةً ثُمَّ وَقَفَ وَلَا بُدَّ وَقَضَوْا رَكْعَةً ثُمَّ سَلَّمُوا، ثُمَّ تَأْتِي الثَّانِيَةُ فَيُصَلِّي بِهِمْ الرَّكْعَةَ الثَّانِيَةَ، فَإِذَا جَلَسَ قَامُوا فَقَضَوْا رَكْعَةً، ثُمَّ سَلَّمَ وَيُسَلِّمُونَ؟ فَإِنْ كَانَتْ الْمَغْرِبُ صَلَّى بِالطَّائِفَةِ الْأُولَى رَكْعَتَيْنِ، فَإِذَا جَلَسَ قَامُوا فَقَضَوْا رَكْعَةً وَسَلَّمُوا وَتَأْتِي الْأُخْرَى فَيُصَلِّي بِهِمْ الرَّكْعَةَ الْبَاقِيَةَ، فَإِذَا قَعَدَ صَلُّوا رَكْعَةً ثُمَّ جَلَسُوا وَتَشَهَّدُوا، ثُمَّ صَلَّوْا الثَّالِثَةَ ثُمَّ يُسَلِّمُ وَيُسَلِّمُونَ؟ فَإِنْ كَانَ وَحْدَهُ فَهُوَ مُخَيَّرٌ بَيْنَ رَكْعَتَيْنِ فِي السَّفَرِ، أَوْ رَكْعَةٍ وَاحِدَةٍ وَتُجْزِئُهُ وَأَمَّا الصُّبْحُ فَاثْنَتَانِ وَلَا بُدَّ، وَالْمَغْرِبُ ثَلَاثٌ وَلَا بُدَّ، وَفِي الْحَضَرِ أَرْبَعٌ وَلَا بُدَّ؟ سَوَاءٌ هَهُنَا الْخَائِفُ مِنْ طَلَبٍ بِحَقٍّ، أَوْ بِغَيْرِ حَقٍّ.

L8290 Allah, the Exalted, said: {When you travel through the land, there is no blame upon you for shortening the prayer if you fear persecution by those who disbelieve. Indeed, the disbelievers are ever your manifest enemies} [An-Nisā': 101]. {When you are among them and lead the prayer for them, let a group stand with you, taking their weapons. When they have prostrated, let them remain behind you, and let another group, who have not yet prayed, come forward to pray with you, taking their caution and weapons} [An-Nisā': 102].[10]

L8291 This verse, by its generality, entails the attributes we have explicitly stated. Then, whatever is authentically reported from the Messenger of Allah—peace and blessings be upon him—it is not permissible for anyone to turn away from any part of it. Allah the Exalted has commanded His Messenger—peace and blessings be upon him—to say: "Say, 'Indeed, my Lord has guided me to a straight path—a religion of uprightness, the way of Abraham, the hanif, who was not among the polytheists.'" [Al-An'am 6:161].[11]

L8292–8293 And He, the Exalted, said: "Who would turn away from the religion of Abraham except one who fools himself?" [Al-Baqarah: 130].[12]

L8294 Every thing done by the Messenger of Allah—peace and blessings be upon him—is part of his religious practice, and his religious practice is that of Abraham—peace be upon him. We mentioned briefly earlier in the chapter on one who forgets a prayer and finds a congregation praying—as narrated in the ḥadīth of Abū Bakra and Jābir—that he prays another prayer: "The Messenger of Allah—peace and blessings be upon him—led one group in two units during the prayer during fear, then concluded. He then led another group in two units and concluded."

L8295 We have mentioned those among the early predecessors who stated that, making its repetition unnecessary, and this was the final action of the Mes-

قَالَ اللَّهُ تَعَالَى: {وَإِذَا ضَرَبْتُمْ فِي الأَرْضِ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَقْصُرُوا مِنَ الصَّلاةِ إِنْ خِفْتُمْ أَنْ يَفْتِنَكُمُ الَّذِينَ كَفَرُوا إِنَّ الْكَافِرِينَ كَانُوا لَكُمْ عَدُوًّا مُبِينًا} [النساء: ١٠١] {وَإِذَا كُنْتَ فِيهِمْ فَأَقَمْتَ لَهُمُ الصَّلاةَ فَلْتَقُمْ طَائِفَةٌ مِنْهُمْ مَعَكَ وَلْيَأْخُذُوا أَسْلِحَتَهُمْ فَإِذَا سَجَدُوا فَلْيَكُونُوا مِنْ وَرَائِكُمْ وَلْتَأْتِ طَائِفَةٌ أُخْرَى لَمْ يُصَلُّوا فَلْيُصَلُّوا مَعَكَ وَلْيَأْخُذُوا حِذْرَهُمْ وَأَسْلِحَتَهُمْ} [النساء: ١٠٢] .

فَهَذِهِ الْآيَةُ تَقْتَضِي بِعُمُومِهَا الصِّفَاتِ الَّتِي قُلْنَا نَصًّا ثُمَّ كُلُّ مَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَرْغَبَ عَنْ شَيْءٍ مِنْهُ، قَالَ اللَّهُ تَعَالَى آمِرًا لِرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَقُولَ: {قُلْ إِنَّنِي هَدَانِي رَبِّي إِلَى صِرَاطٍ مُسْتَقِيمٍ دِينًا قِيَمًا مِلَّةَ إِبْرَاهِيمَ حَنِيفًا وَمَا كَانَ مِنَ الْمُشْرِكِينَ} [الأنعام: ١٦١] .

وَقَالَ تَعَالَى: {وَمَنْ يَرْغَبُ عَنْ مِلَّةِ إِبْرَاهِيمَ إِلا مَنْ سَفِهَ نَفْسَهُ} [البقرة: ١٣٠] .

وَكُلُّ شَيْءٍ فَعَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ مِنْ مِلَّتِهِ، وَمِلَّتُهُ هِيَ مِلَّةُ إِبْرَاهِيمَ - عَلَيْهِ السَّلَامُ - وَقَدْ ذَكَرْنَا قَبْلَ هَذَا بِيَسِيرٍ فِي بَابِ مَنْ نَسِيَ صَلَاةً فَوَجَدَ جَمَاعَةً يُصَلُّونَ يُصَلِّي صَلَاةً أُخْرَى فِي حَدِيثِ أَبِي بَكْرَةَ وَجَابِرٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى بِطَائِفَةٍ رَكْعَتَيْنِ فِي الْخَوْفِ ثُمَّ سَلَّمَ، وَبِطَائِفَةٍ أُخْرَى رَكْعَتَيْنِ ثُمَّ سَلَّمَ» .

وَذَكَرْنَا مَنْ قَالَ ذَلِكَ مِنَ السَّلَفِ، فَأَغْنَى عَنْ إِعَادَتِه، وَهَذَا آخِرُ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؛ لِأَنَّ أَبَا بَكْرَةَ شَهِدَهُ مَعَهُ وَلَمْ يُسْلِمْ إِلَّا يَوْمَ الطَّائِفِ، وَلَمْ يَغْزُ - عَلَيْهِ السَّلَامُ - بَعْدَ الطَّائِفِ غَيْرَ تَبُوكَ فَقَطْ.

[10] **Qur'an references (L8290):** Qur'an 4:101 (An-Nisa); Qur'an 4:102 (An-Nisa).
[11] **Qur'an references (L8291):** Qur'an 6:161 (Al-An'am).
[12] **Qur'an references (L8293):** Qur'an 2:130 (Al-Baqarah).

senger of Allah—peace and blessings of Allah be upon him—because Abu Bakrah witnessed it with him, and he only embraced Islam on the day of Ta'if. After Ta'if, the Prophet—peace be upon him—did not undertake any military expedition except Tabuk only.

L8296 Therefore, these are the finest descriptions of the fear prayer due to the reasons we have mentioned.

L8297 Al-Shafi'i and Ahmad ibn Hanbal held this opinion.

L8298 We have also mentioned the ḥadīth of Ibn ʻAbbās: "Allah prescribed prayer through your Prophet—peace and blessings of Allah be upon him—as four rakʻahs in settled residence, two rakʻahs during travel, and one rakʻah in times of fear." This was transmitted to us by ʻAbdullāh ibn Rabīʻ who narrated to us: Aḥmad ibn Muʻāwiyah narrated to us: Aḥmad ibn Shuʻayb stated: I am ʻAmr ibn ʻAlī who narrated to us: Yaḥyā ibn Saʻīd al-Qaṭṭān narrated to us: Sufyān al-Thawrī narrated to me: Ashʻath ibn Sulaym—who is Ibn Abī al-Shaʻthā'—narrated to me from al-Aswad ibn Hilāl from Thaʻlabah ibn Zuḥdam who said: "We were with Saʻīd ibn al-ʻĀṣ in Ṭabaristān when he asked: 'Which of you prayed the Fear Prayer with Allah's Messenger (peace and blessings of Allah be upon him)?' Ḥudhayfah responded: 'I did.' Ḥudhayfah then stood and arranged the people behind him in two rows—one row behind him and another row facing the enemy. He prayed one rakʻah with those directly behind him. Then the front row moved to the position of the rear row, and the rear row came forward. He prayed another rakʻah with them, and they did not make up [any remaining prayer]."

L8299 Sufyan said: Ar-Rukayn ibn ar-Rabīʻ narrated to me, on the authority of al-Qāsim ibn Ḥassān, on the authority of Zayd ibn Thābit, on the authority of the Prophet (peace be upon him) - similar to the prayer of Ḥudhayfah.

L8300 Ali said: Al-Aswad ibn Hilal is a trustworthy, well-known figure, and Tha'labah ibn Zuhdam is one of the Companions, a Hanzali. Tha'labah came as part of a delegation to the Messenger of Allah, peace and blessings of Allah be upon him, heard from him, and narrated from him.

L8301–8303 And this has also been authenticated as a Musnad through the chain of Yazīd

فَهَذِهِ أَفْضَلُ صِفَاتِ صَلَاةِ الْخَوْفِ لِمَا ذَكَرْنَا.

وَقَالَ بِهَذَا الشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ.

وَقَدْ ذَكَرْنَا أَيْضًا حَدِيثَ ابْنِ عَبَّاسٍ " فَرَضَ اللَّهُ الصَّلَاةَ عَلَى لِسَانِ نَبِيِّكُمْ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْحَضَرِ أَرْبَعًا، وَفِي السَّفَرِ رَكْعَتَيْنِ، وَفِي الْخَوْفِ رَكْعَةً " -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رُبَيِّعٍ ثنا أَحْمَدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ ثنا سُفْيَانُ الثَّوْرِيُّ حَدَّثَنِي أَشْعَثُ بْنُ سُلَيْمٍ هُوَ ابْنُ أَبِي الشَّعْثَاءِ - عَنْ الْأَسْوَدِ بْنِ هِلَالٍ عَنْ ثَعْلَبَةَ بْنِ زَهْدَمَ قَالَ: " كُنَّا مَعَ سَعِيدِ بْنِ الْعَاصِ بِطَبَرِسْتَانَ فَقَالَ: أَيُّكُمْ صَلَّى مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَاةَ الْخَوْفِ؟ فَقَالَ حُذَيْفَةُ: أَنَا، فَقَامَ حُذَيْفَةُ وَصَفَّ النَّاسَ خَلْفَهُ صَفَّيْنِ صَفًّا خَلْفَهُ وَصَفًّا مُوَازِيَ الْعَدُوِّ، فَصَلَّى بِالَّذِينَ خَلْفَهُ رَكْعَةً، وَانْصَرَفَ هَؤُلَاءِ إلَى مَكَانِ هَؤُلَاءِ، وَجَاءَ أُولَئِكَ، فَصَلَّى بِهِمْ رَكْعَةً وَلَمْ يَقْضُوا ".

قَالَ سُفْيَانُ: وَحَدَّثَنِي الرُّكَيْنُ بْنُ الرَّبِيعِ عَنْ الْقَاسِمِ بْنِ حَسَّانَ عَنْ زَيْدِ بْنِ ثَابِتٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلَ صَلَاةِ حُذَيْفَةَ.

قَالَ عَلِيٌّ: الْأَسْوَدُ بْنُ هِلَالٍ ثِقَةٌ مَشْهُورٌ، وَثَعْلَبَةُ بْنُ زَهْدَمٍ أَحَدُ الصَّحَابَةِ حَنْظَلِيٌّ وَفَدَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَسَمِعَ مِنْهُ وَرَوَى عَنْهُ.

ibn Zurayʿ and Abū Dāwūd al-Ṭayālisī, both of them from... Abd al-Rahman ibn Abd Allah al-Mas'udi reported from Yazid al-Faqir, from Jabir, from the Prophet (peace be upon him). Jabir further reported that the shortening [qasr] mentioned in the verse pertains to this fear, not the two-unit prayer during travel.

وَصَحَّ هَذَا أَيْضًا مُسْنَدًا مِنْ طَرِيقِ يَزِيدَ بْنِ زُرَيْعٍ، وَأَبِي دَاوُد الطَّيَالِسِيِّ كِلَاهُمَا عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ الْمَسْعُودِيِّ عَنْ يَزِيدَ الْفَقِيرِ عَنْ جَابِرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَخْبَرَ جَابِرٌ أَنَّ الْقَصْرَ الْمَذْكُورَ فِي الْآيَةِ عِنْدَ الْخَوْفِ هُوَ هَذَا؟ لَا كَوْنُ الصَّلَاةِ رَكْعَتَيْنِ فِي السَّفَرِ

L8304 It has also been authenticated—through the chain of al-Zuhri from ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah ibn Masʿūd from Ibn ʿAbbās from the Prophet, peace and blessings be upon him. It has also been narrated from Ibn ʿUmar.

وَصَحَّ أَيْضًا: مِنْ طَرِيقِ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرُوِيَ أَيْضًا عَنْ ابْنِ عُمَرَ.

L8305 Thus, these are mass-transmitted and mutually corroborating narrations, and the majority of the Salaf upheld this position.

فَهَذِهِ آثَارٌ مُتَظَاهِرَةٌ مُتَوَاتِرَةٌ، وَقَالَ بِهَذَا جُمْهُورٌ مِنْ السَّلَفِ.

L8306 It was narrated from Hudhayfah during the days of ʿUthmān—may Allah be pleased with him—and the Companions with him, with none rejecting this, and from Jābir and others. It was narrated to us from Abū Hurayrah that he led those with him in the Prayer of Fear, praying one rakʿah with each group, though he neither completed nor ordered its completion. From Ibn ʿAbbās: "Does one gesture symbolically for a single rakʿah during combat?" From al-Ḥasan: "Abū Mūsā al-Ashʿarī prayed one rakʿah in the Prayer of Fear." From Maʿmar, from ʿAbdullāh ibn Ṭāwūs, from his father, who said: "When engaged in close combat, is it merely a single rakʿah gestured symbolically in whatever direction one faces—whether mounted or on foot?"

كَمَا رُوِيَ عَنْ حُذَيْفَةَ أَيَّامَ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - وَمَنْ مَعَهُ مِنْ الصَّحَابَةِ، لَا يُنْكِرُ ذَلِكَ أَحَدٌ مِنْهُمْ، وَعَنْ جَابِرٍ، وَغَيْرِهِ؟ وَرُوِّينَا عَنْ أَبِي هُرَيْرَةَ أَنَّهُ صَلَّى بِمَنْ مَعَهُ صَلَاةَ الْخَوْفِ، فَصَلَّاهَا بِكُلِّ طَائِفَةٍ رَكْعَةً إلَّا أَنَّهُ لَمْ يَقْضِ وَلَا أَمَرَ بِالْقَضَاءِ؟ وَعَنْ ابْنِ عَبَّاسٍ: يُومِئُ بِرَكْعَةٍ عِنْدَ الْقِتَالِ؟ وَعَنْ الْحَسَنِ: أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ صَلَّى فِي الْخَوْفِ رَكْعَةً وَعَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: إذَا كَانَتْ الْمُسَايَفَةُ فَإِنَّمَا هِيَ رَكْعَةٌ يُومِئُ إيمَاءً حَيْثُ كَانَ وَجْهُهُ، رَاكِبًا كَانَ أَوْ مَاشِيًا؟

L8307 From Sufyan al-Thawri, through Yunus ibn ʿUbayd, from al-Hasan, who said regarding the prayer during pursuit: one rakʿah. Through the narration of Saʿid ibn ʿAbd al-ʿAziz, from Makhul, concerning the prayer in fear: If people cannot pray on the ground, they should pray two rakʿahs on the backs of mounts. If they cannot, then one rakʿah with its two prostrations. If they remain unable, should they delay [prayer] to a place where they are safe? ʿAli said: As for delaying it beyond its prescribed time, this is entirely impermissible, for neither Allah the Exalted nor His Messenger—peace and

وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ قَالَ فِي صَلَاةِ الْمُطَارَدَةِ: رَكْعَةٌ وَمِنْ طَرِيقِ سَعِيدِ بْنِ عَبْدِ الْعَزِيزِ عَنْ مَكْحُولٍ فِي صَلَاةِ الْخَوْفِ: إذَا لَمْ يَقْدِرْ الْقَوْمُ عَلَى أَنْ يُصَلُّوا عَلَى الْأَرْضِ صَلُّوا عَلَى ظُهُورِ الدَّوَابِّ رَكْعَتَيْنِ فَإِذَا لَمْ يَقْدِرُوا فَرَكْعَةٌ وَسَجْدَتَانِ، فَإِنْ لَمْ يَقْدِرُوا أَخَّرُوا حَيْثُ يَأْمَنُوا؟ قَالَ عَلِيٌّ: أَمَّا تَأْخِيرُهَا عَنْ وَقْتِهَا فَلَا

blessings be upon him—permitted its postponement. Allah the Exalted said: _“If you fear, then [pray] on foot or riding”_ [Al-Baqarah 2:239].[13]

يَحِلُّ أَلْبَتَّةَ؛ لِأَنَّهُ لَمْ يَسْمَحِ اللَّهُ تَعَالَى فِي تَأْخِيرِهَا وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. قَالَ اللَّهُ تَعَالَى: {فَإِنْ خِفْتُمْ فَرِجَالا أَوْ رُكْبَانًا} [البقرة: ٢٣٩] .

L8308–8310 Sufyan al-Thawri said: Salim ibn ’Ajlan al-Aftas narrated to me, saying: “I heard Sa’id ibn Jubayr.” He said: How can there be shortening [of prayer] when they pray two rak’ahs? Rather, it is each rak’ah individually, performing it with abbreviated gestures wherever one’s face is directed. From Shu‘bah, from Abī Maslamah—he being Sa‘īd ibn Yazīd—from Abī Naḍrah, from Jābir ibn Ghurāb: We were arrayed in battle formation against the enemy in Persia, our faces toward the east. Hārim ibn Ḥayyān said: Let each of you pray one rak’ah beneath his shield wherever his face is directed. From ‘Abd al-Raḥmān ibn Mahdī, from Shu‘bah, who said: I asked al-Ḥakam ibn ‘Utaybah, Ḥammād ibn Abī Sulaymān, and Qatādah about the prayer during armed engagement. They said: One rak’ah wherever one’s face is directed. From Wakī‘, from Shu‘bah, from al-Mughīrah ibn Miqsam, from Ibrāhīm—a statement similar to that of al-Ḥakam, Ḥammād, and Qatādah.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: حَدَّثَنِي سَالِمُ بْنُ عَجْلَانَ الْأَفْطَسُ سَمِعْت سَعِيدَ بْنَ جُبَيْرٍ يَقُولُ: كَيْف يَكُونُ قَصْرٌ وَهُمْ يُصَلُّونَ رَكْعَتَيْنِ؟ وَإِنَّمَا هُوَ رَكْعَةٌ رَكْعَةٌ، يُومِئُ بِهَا حَيْثُ كَانَ وَجْهُهُ؟ وَعَنْ شُعْبَةَ عَنْ أَبِي مَسْلَمَةَ هُوَ سَعِيدُ بْنُ يَزِيدَ - عَنْ أَبِي نَضْرَةَ عَنْ جَابِرِ بْنِ غُرَابٍ كُنَّا مَصَافِّي الْعَدُوِّ بِفَارِسَ، وَوُجُوهُنَا إلَى الْمَشْرِقِ، فَقَالَ هَرِمُ بْنُ حَيَّانَ: لِيَرْكَعْ كُلُّ إنْسَانٍ مِنْكُمْ رَكْعَةً تَحْتَ جُنَّتِهِ حَيْثُ كَانَ وَجْهُهُ وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ شُعْبَةَ قَالَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ، وَقَتَادَةَ عَنْ صَلَاةِ الْمُسَايَفَةِ؟ فَقَالُوا: رَكْعَةٌ حَيْثُ كَانَ وَجْهُهُ وَعَنْ وَكِيعٍ عَنْ شُعْبَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ مِثْلُ قَوْلِ الْحَكَمِ، وَحَمَّادٍ، وَقَتَادَةَ.

L8311 On the authority of Abu Awanah, on the authority of Abu Bishr, on the authority of Mujahid concerning Allah’s statement: “But if you fear, then [pray] on foot or riding” [Al-Baqarah 2:239], he said: In the presence of the enemy, one may pray while riding or on foot, gesturing in the direction he faces, and a single rak‘ah suffices him.[14]

وَعَنْ أَبِي عَوَانَةَ عَنْ أَبِي بِشْرٍ عَنْ مُجَاهِدٍ فِي قَوْلِ اللَّهِ تَعَالَى: {فَإِنْ خِفْتُمْ فَرِجَالا أَوْ رُكْبَانًا} [البقرة: ٢٣٩] قَالَ: فِي الْعَدُوِّ يُصَلِّي رَاكِبًا وَرَاجِلًا يُومِئُ حَيْثُ كَانَ وَجْهُهُ، وَالرَّكْعَةُ الْوَاحِدَةُ تُجْزِئُهُ.

L8312 And do Sufyān al-Thawrī and Isḥāq ibn Rāhawayh not say the same? ʿAlī said: “These two practices are the most beloved actions to us, without us turning away from the rest of what has been authentically reported from the Messenger of Allah (peace and blessings be upon him) regarding that matter. We seek refuge with Allah from this!”

وَبِهِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ؟ قَالَ عَلِيٌّ: وَهَذَانِ الْعَمَلَانِ أَحَبُّ الْعَمَلِ إلَيْنَا، مِنْ غَيْرِ أَنْ نَرْغَبَ عَنْ سَائِرِ مَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ، وَمَعَاذَ اللَّهِ مِنْ هَذَا.

L8313 However, we have inclined toward these two due to the ease for every layperson and scholar to act upon them, and due to the large number of

لَكِنْ مِلْنَا إلَى هَذَيْنِ لِسُهُولَةِ الْعَمَلِ فِيهِمَا عَلَى كُلِّ جَاهِلٍ، وَعَالِمٍ، وَلِكَثْرَةِ مَنْ رَوَاهُمَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[13] **Qur’an references (L8307):** Qur’an 2:239 (Al-Baqarah).
[14] **Qur’an references (L8311):** Qur’an 2:239 (Al-Baqarah).

narrators who transmitted them from the Prophet—peace and blessings be upon him.

L8314 And due to the multitude of those who upheld these two positions among the Companions and the Followers, and due to the mass transmission of the report concerning them from the Messenger of Allah—peace and blessings be upon him—and because they align with the Qur'an?

L8315–8316 Some of those who care not for lying—out of partisan zeal for their ruinous blind adherence—declared: "In our view, the matter is that they have passed judgment." ʿAlī said: "This is a total abandonment of modesty and an open pursuit of lying."

L8317 There is no distinction between one who made this statement and one who said: "According to our position, did they complete four rakʿahs?" or who declared: "We have not found in the foundational sources any prayer consisting of one rakʿah?" We responded to them: "Nor did you find in the foundational sources an Imam leading two parties in prayer, nor prayer directed away from the qiblah, nor prayer where the follower compensates for missed portions before his Imam completes the prayer, nor prayer where the follower stands idly—neither praying with his Imam nor completing his own prayer. Yet all this you deem permissible in the prayer of fear. Nor did you find anything of the religion except what Allah's Messenger—peace and blessings of Allah be upon him—conveyed from Allah the Exalted. Are the foundational sources anything other than the Qur'an and the Sunnah?"

L8318 If it is said: It has been reported through Hudhayfa's narration that he commanded making up a rakʿah, we respond: This was solely narrated by Al-Ḥajjāj ibn Arṭāʾah, who is rejected; it is impermissible to narrate from him. Furthermore, even if the report were authentic, it would not invalidate the narration of trustworthy ones that they did not make up the rakʿah. Rather, would all that not be permissible?

L8319 Some of them said: "It has been reported from Ḥudhayfa that the prayer of fear consists of two rakʿahs and four prostrations." We replied: "This is from the narration of Yaḥyā al-Ḥimmānī, who is weak, from Sharīk, who is

وَلِكَثْرَةِ مَنْ قَالَ بِهِمَا مِنْ الصَّحَابَةِ وَالتَّابِعِينَ. وَلِتَوَاتُرِ الْخَبَرِ بِهِمَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلِمُوَافَقَتِهِمَا الْقُرْآنَ؟

وَقَدْ قَالَ بَعْضُ مَنْ لَا يُبَالِي بِالْكَذِبِ، عَصَبِيَّةً لِتَقْلِيدِهِ الْمُهْلِكِ لَهُ -: الْأَمْرُ عِنْدَنَا عَلَى أَنَّهُمْ قَضَوْا قَالَ عَلِيٌّ: هَذَا انْسِلَاخٌ مِنْ الْحَيَاءِ جُمْلَةً، وَقَصْدٌ إلَى الْكَذِبِ جِهَارًا

وَلَا فَرْقَ بَيْنَ مَنْ قَالَ هَذَا الْقَوْلَ وَبَيْنَ مَنْ قَالَ: الْأَمْرُ عِنْدَنَا عَلَى أَنَّهُمْ أَتَمُّوا أَرْبَعًا؟ وَقَالَ: لَمْ نَجِدْ فِي الْأُصُولِ صَلَاةً مِنْ رَكْعَةٍ؟ وَقُلْنَا لَهُمْ: وَلَا وَجَدْتُمْ فِي الْأُصُولِ صَلَاةَ الْإِمَامِ بِطَائِفَتَيْنِ، وَلَا صَلَاةً إلَى غَيْرِ الْقِبْلَةِ، وَلَا صَلَاةً يَقْضِي فِيهَا الْمَأْمُومُ مَا فَاتَهُ قَبْلَ تَمَامِ صَلَاةِ إمَامِهِ، وَلَا صَلَاةً يَقِفُ الْمَأْمُومُ فِيهَا لَا هُوَ يُصَلِّي مَعَ إمَامِهِ وَلَا هُوَ يَقْضِي مَا بَقِيَ عَلَيْهِ مِنْ صَلَاتِهِ، وَهَذَا كُلُّهُ عِنْدَكُمْ جَائِزٌ فِي الْخَوْفِ، وَلَا وَجَدْتُمْ شَيْئًا مِنْ الدِّيَانَةِ حَتَّى جَاءَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ اللَّهِ تَعَالَى، وَالْأُصُولُ لَيْسَتْ شَيْئًا غَيْرَ الْقُرْآنِ وَالسُّنَنِ؟

فَإِنْ قِيلَ: قَدْ رُوِيَ مِنْ طَرِيقِ حُذَيْفَةَ: أَنَّهُ أَمَرَ بِقَضَاءِ رَكْعَةٍ قُلْنَا: هَذَا انْفَرَدَ بِهِ الْحَجَّاجُ بْنُ أَرْطَاةَ، وَهُوَ سَاقِطٌ لَا تَحِلُّ الرِّوَايَةُ عَنْهُ، ثُمَّ لَوْ صَحَّ لَمَا مُنِعَ مِنْ رِوَايَةِ الثِّقَاتِ أَنَّهُمْ لَمْ يَقْضُوا، بَلْ كَانَ يَكُونُ كُلُّ ذَلِكَ جَائِزًا؟

وَقَالَ بَعْضُهُمْ: قَدْ رُوِيَ عَنْ حُذَيْفَةَ صَلَاةُ الْخَوْفِ رَكْعَتَيْنِ وَأَرْبَعَ سَجَدَاتٍ؟ قُلْنَا: هَذَا مِنْ رِوَايَةِ يَحْيَى الْحِمَّانِيِّ وَهُوَ ضَعِيفٌ، عَنْ شَرِيكٍ، وَهُوَ مُدَلِّسٌ، وَخَدِيجٍ، وَهُوَ مَجْهُولٌ.

a mudallis, and Khudayj, who is unknown. Even if this were authentic, it would pertain to their imam leading them in prayer. The same applies to the narration of Sulaym ibn Sulayʿ al-Sulūlī, who is unknown."

ثُمَّ لَوْ صَحَّ ذَلِكَ لَكَانَ مَقْصُودًا بِهِ صَلَاةُ إِمَامِهِمْ بِهِمْ وَكَذَلِكَ الْقَوْلُ فِي رِوَايَةِ سُلَيْمِ بْنِ صُلَيْعٍ السَّلُولِيِّ - وَهُوَ مَجْهُولٌ

L8320 From Hudhayfah: He said to Saʿid, "Instruct a group of your companions to pray with you and another group to remain behind you. Then lead them in two rakʿahs and four prostrations, for this is how we describe the Imam's prayer with them."

- عَنْ حُذَيْفَةَ: أَنَّهُ قَالَ لِسَعِيدٍ: مُرْ طَائِفَةً مِنْ أَصْحَابِك فَيُصَلُّونَ مَعَكَ، وَطَائِفَةً خَلْفَكُمْ، فَتُصَلِّي بِهِمْ رَكْعَتَيْنِ وَأَرْبَعَ سَجَدَاتٍ؟ وَهَكَذَا نَقُولُ: فِي صَلَاةِ الْإِمَامِ بِهِمْ

L8321 Some of them asked: "Has it been authentically reported from the Prophet—peace and blessings be upon him—that 'prayers during the night and day are performed two by two?'" We replied: "Yes, except in cases where a textual proof specifies fewer than two units—such as the Witr Prayer and the Prayer in Times of Fear—or more than two units, like Dhuhr, ʿAṣr, and ʿIshāʾ."

وَقَالَ بَعْضُهُمْ: قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «صَلَاةُ اللَّيْلِ وَالنَّهَارِ مَثْنَى مَثْنَى» ؟ قُلْنَا: نَعَمْ، إلَّا مَا جَاءَ نَصٌّ فِيهِ أَنَّهُ أَقَلُّ مِنْ مَثْنَى، كَالْوِتْرِ، وَصَلَاةِ الْخَوْفِ أَوْ أَكْثَرُ مِنْ مَثْنَى، كَالظُّهْرِ، وَالْعَصْرِ، وَالْعِشَاءِ.

L8322 Some of them said: "Has Al-Butayrāʾ been prohibited?"

وَقَالَ بَعْضُهُمْ: قَدْ نُهِيَ عَنْ " الْبُتَيْرَاءِ "؟

L8323–8324 Ali said, "This is a lie and a fabricated report."

قَالَ عَلِيٌّ: وَهَذِهِ كِذْبَةٌ وَخَبَرٌ مَوْضُوعٌ.

L8325 We do not know of "the shortened prayer" in any matter of the religion—and all praise belongs to Allah. Some of them said: "You permit the Imam to pray with them one rak'ah and conclude with the salām if he wills, or connect it to another rak'ah by the second group if he wills. And we know with certainty that whatever a person may choose to perform or omit is a voluntary act, not an obligation. Since this is so, it is impossible to join his obligatory prayer with a voluntary one without separating them with a salām." Ali said: "What they mentioned only applies where there is no explicit text. When a text exists, all such reasoning becomes invalid—it is impermissible to use it to oppose Allah the Exalted and His Messenger—peace be upon him."

وَمَا نَدْرِي " الْبُتَيْرَاءَ " فِي شَيْءٍ مِنْ الدِّينِ - وَلِلَّهِ الْحَمْدُ وَقَالَ بَعْضُهُمْ: أَنْتُمْ تُجِيزُونَ لِلْإِمَامِ أَنْ يُصَلِّيَ بِهِمْ إنْ شَاءَ رَكْعَةً وَيُسَلِّمَ، وَإِنْ شَاءَ وَصَلَهَا بِأُخْرَى بِالطَّائِفَةِ الثَّانِيَةِ، وَبِيَقِينٍ نَدْرِي أَنَّ مَا كَانَ لِلْمَرْءِ فِعْلُهُ وَتَرْكُهُ فَهُوَ تَطَوُّعٌ لَا فَرْضٌ، وَإِذْ ذَلِكَ كَذَلِكَ فَمُحَالٌ أَنْ يَصِلَ فَرْضَهُ بِتَطَوُّعٍ لَا يَفْصِلُ بَيْنَهُمَا سَلَامٌ؟ قَالَ عَلِيٌّ: إنَّمَا يَكُونُ مَا ذَكَرُوا فِيمَا لَمْ يَأْتِ بِهِ نَصٌّ، وَأَمَّا إذَا جَاءَ النَّصُّ فَالنَّظَرُ كُلُّهُ بَاطِلٌ، لَا يَحِلُّ بِهِ مُعَارِضَةُ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L8326 Then we say to them: According to both your view and ours, is not one performing the obligatory prayer—whether as an imām or individually—given the choice to recite a surah alongside Umm al-Qur'ān (al-Fātiḥah), whether a long surah if he wishes or a short one if he wishes, or to limit himself to Umm al-Qur'ān alone if he wishes, or to recite one tasbīḥ each in

ثُمَّ نَقُولُ لَهُمْ: أَلَيْسَ مُصَلِّي الْفَرْضِ مِنْ إمَامٍ أَوْ مُنْفَرِدٍ - عِنْدَكُمْ وَعِنْدَنَا - مُخَيَّرًا بَيْنَ أَنْ يَقْرَأَ مَعَ " أُمِّ الْقُرْآنِ " سُورَةً إنْ شَاءَ طَوِيلَةً وَإِنْ شَاءَ قَصِيرَةً وَإِنْ شَاءَ اقْتَصَرَ عَلَى "

his bowing and prostration if he wishes, or to prolong them? They answer: Yes.

أُمِّ الْقُرْآنِ " فَقَطْ وَإِنْ شَاءَ سَبَّحَ فِي رُكُوعِهِ وَسُجُودِهِ تَسْبِيحَةً تَسْبِيحَةً وَإِنْ شَاءَ طَوَّلَهُمَا؟ فَمِنْ قَوْلِهِمْ: نَعَمْ.

L8327 So we said to them: Have you permitted here what you yourselves deem invalid and illogical—that one's obligation is fulfilled through what you consider voluntary, which he may choose to perform or abandon? ʿAlī said: It is not as they claimed. Rather, all of this is good which contains righteousness. If one prolongs [the prayer], it is an obligation he has fulfilled; if one does not prolong it, it is an obligation he has fulfilled. If one prays a single rakʿah in the prayer of fear, that is his obligation, and if he prays two rakʿahs, those are his obligations.

فَقُلْنَا لَهُمْ: فَقَدْ أَبَحْتُمْ هَهُنَا مَا قَدْ حَكَمْتُمْ بِأَنَّهُ بَاطِلٌ وَمُحَالٌ مَنْ صِلَتُهُ فَرِيضَةٌ بِمَا هُوَ عِنْدَكُمْ تَطَوُّعٌ إِنْ شَاءَ فَعَلَهُ وَإِنْ شَاءَ تَرَكَهُ؟ قَالَ عَلِيٌّ: وَلَيْسَ كَمَا قَالُوا، بَلْ كُلُّ هَذَا خَيْرٌ فِيهِ الْبِرُّ، فَإِنَّ طَوَّلَ فَفَرْضٌ أَدَّاهُ، وَإِنْ لَمْ يُطَوِّلْ فَفَرْضٌ أَدَّاهُ، وَإِنْ كَانَ صَلَّى رَكْعَةً فِي الْخَوْفِ فَهِيَ فَرْضُهُ، وَإِنْ صَلَّى رَكْعَتَيْنِ فَهُمَا فَرْضُهُ.

L8328 As he did—peace be upon him—and as he commanded: "He does not speak from [his own] desire" (53:3); "It is nothing but a revelation inspired" (53:4); "He is not questioned about what He does, and they are questioned" (21:23).[15]

كَمَا فَعَلَ - عَلَيْهِ السَّلَامُ - وَكَمَا أَمَرَ {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] {لا يُسْأَلُ عَمَّا يَفْعَلُ وَهُمْ يُسْأَلُونَ} [الأنبياء: ٢٣]

L8329 Ali said, "Regarding the other valid juristic viewpoints not mentioned, Ali ibn Abi Talib (may Allah be pleased with him) adopted some of them, along with Abu Musa al-Ash'ari, Ibn Umar, and a group of the Followers and jurists (may Allah be pleased with them)."

قَالَ عَلِيٌّ وَسَائِرُ الْوُجُوهِ الصِّحَاحِ الَّتِي لَمْ تُذْكَرْ أَخَذَ بِبَعْضِهَا عَلِيُّ بْنُ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - وَأَبُو مُوسَى الْأَشْعَرِيُّ، وَابْنُ عُمَرَ، وَجَمَاعَةٌ مِنَ التَّابِعِينَ وَالْفُقَهَاءِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L8330 In this matter are statements that have neither been authentically established from nor narrated at all from the Messenger of Allah—peace and blessings of Allah be upon him—but were narrated from those below the Messenger of Allah—peace and blessings of Allah be upon him. From the Companions—may Allah be pleased with them—: ʿAbd al-Raḥmān ibn Samurah ibn Ḥabīb ibn ʿAbd Shams and al-Ḥakam ibn ʿAmr al-Ghifārī.

وَهَهُنَا أَقْوَالٌ لَمْ تَصِحَّ قَطُّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ تُرْوَ عَنْهُ أَصْلًا، وَلَكِنْ رُوِيَتْ عَمَّنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: عَبْدُ الرَّحْمَنِ بْنُ سَمُرَةَ بْنِ حَبِيبِ بْنِ عَبْدِ شَمْسٍ، وَالْحَكَمُ بْنُ عَمْرٍو الْغِفَارِيُّ.

L8331–8332 And from the Tabi'in: Masrūq, and from the jurists: Al-Ḥasan ibn Ḥayy, and his companion Humaid ar-Ru'āsī.

وَمِنَ التَّابِعِينَ -: مَسْرُوقٌ، وَمِنَ الْفُقَهَاءِ -: الْحَسَنُ بْنُ حَيٍّ، وَحُمَيْدُ الرُّؤَاسِيُّ صَاحِبُهُ.

L8333 Among these is a statement we narrated from Sahl ibn Abi Hathmah—to

وَمِنْ جُمْلَتِهَا قَوْلٌ رُوِّينَاهُ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ، رَجَعَ مَالِكٌ إِلَى الْقَوْلِ بِهِ، بَعْدَ أَنْ كَانَ يَقُولُ بِبَعْضِ الْوُجُوهِ الَّتِي صَحَّتْ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ: أَنْ يَصُفَّ

[15] **Qur'an references (L8328):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 21:23 (Al-Anbya).

which Mālik reverted after previously holding some of the opinions authentically reported from the Messenger of Allah (peace and blessings be upon him)—which states: The Imam arranges his companions into two contingents—one behind him and the other facing the enemy. The Imam prays one rak'ah with the contingent accompanying him, including its two prostrations. When he rises for the second rak'ah, he remains standing while this contingent completes the remaining rak'ah for themselves. They then say the taslīm, rise, and stand positioned opposite the enemy, while the Imam remains standing in the second rak'ah throughout. The second contingent—which has not yet prayed—then comes to form rows behind the Imam and pronounces the takbīr. He prays the second rak'ah with them, including its two prostrations—this being their first rak'ah and his second. The Imam then sits for the tashahhud and says the taslīm. When he completes the taslīm, this second contingent rises to fulfill the rak'ah remaining for them.

الْإِمَامُ أَصْحَابَهُ طَائِفَتَيْنِ، إِحْدَاهُمَا خَلْفَهُ، وَالثَّانِيَةُ مُوَاجِهَةُ الْعَدُوِّ، فَيُصَلِّي الْإِمَامُ بِالطَّائِفَةِ الَّتِي مَعَهُ رَكْعَةً بِسَجْدَتَيْهَا، فَإِذَا قَامَ إِلَى الرَّكْعَةِ الثَّانِيَةِ ثَبَتَ وَاقِفًا وَأَتَمَّتْ هَذِهِ الطَّائِفَةُ لِأَنْفُسِهَا الرَّكْعَةَ الَّتِي بَقِيَتْ عَلَيْهَا، ثُمَّ سَلَّمَتْ وَنَهَضَتْ فَوَقَفَتْ بِإِزَاءِ الْعَدُوِّ، وَالْإِمَامُ فِي كُلِّ ذَلِكَ وَاقِفٌ فِي الرَّكْعَةِ الثَّانِيَةِ، وَتَأْتِي الطَّائِفَةُ الثَّانِيَةُ الَّتِي لَمْ تُصَلِّ فَتَصُفَّ خَلْفَ الْإِمَامِ وَتُكَبِّرُ، فَيُصَلِّي بِهِمْ الرَّكْعَةَ الثَّانِيَةَ بِسَجْدَتَيْهَا، هِيَ لَهُمْ أُولَى، وَهِيَ لِلْإِمَامِ ثَانِيَةٌ، ثُمَّ يَجْلِسُ الْإِمَامُ وَيَتَشَهَّدُ وَيُسَلِّمُ، فَإِذَا سَلَّمَ قَامَتْ هَذِهِ الطَّائِفَةُ الثَّانِيَةُ فَقَضَتْ الرَّكْعَةَ الَّتِي لَهَا؟

L8334 Ali said: This aforementioned practice—the concurrent performance of the first group's makeup prayer while the Imam remains standing, and the second group's makeup prayer after the Imam has concluded the prayer with Taslīm—has never occurred in this form whatsoever in any authentic narration originating from the Messenger of Allah, peace and blessings be upon him.

قَالَ عَلِيٌّ: وَهَذَا الْعَمَلُ الْمَذْكُورُ - قَضَاءُ الطَّائِفَةِ الْأُولَى وَالْإِمَامُ وَاقِفٌ، وَقَضَاءُ الطَّائِفَةِ الثَّانِيَةِ بَعْدَ أَنْ يُسَلِّمَ الْإِمَامُ - لَمْ يَأْتِ قَطُّ جَمْعُ هَذَيْنِ الْقَضَاءَيْنِ عَلَى هَذِهِ الصِّفَةِ فِي شَيْءٍ مِمَّا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَصْلًا.

L8335 This contradicts the apparent meaning of the Qur'an, for Allah the Exalted said: **"Then let another group who have not yet prayed come forward and pray with you"** [al-Nisā': 102], since the group did not pray part of their prayer with him. Whatever contradicts the apparent meaning of the Qur'an without an explicit textual statement from the Prophet's clarification (peace be upon him) is impermissible to adopt, and this opinion is supported by neither analogy nor rational consideration. And following Sahl ibn Abī Ḥathmah (may Allah be pleased with him) holds no greater validity than following those Companions who opposed him—whom we have already mentioned—such as ʿAmr, Ibn ʿAmr, Abū Mūsā, Jābir, Ibn ʿAbbās, al-Ḥakam ibn ʿAmr, Ḥudhayfah, Thaʿlabah ibn Zahdam, Anas, ʿAbd al-Raḥmān ibn Samurah, and others.[16]

وَهُوَ خِلَافُ ظَاهِرِ الْقُرْآنِ، لِأَنَّهُ تَعَالَى قَالَ: {وَلْتَأْتِ طَائِفَةٌ أُخْرَى لَمْ يُصَلُّوا فَلْيُصَلُّوا مَعَكَ} [النساء: ١٠٢] وَلِأَنَّ الطَّائِفَةَ لَمْ تُصَلِّ بَعْضَ صَلَاتِهَا مَعَهُ، وَمَا كَانَ خِلَافًا لِظَاهِرِ الْقُرْآنِ دُونَ نَصٍّ مِنْ بَيَانِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: " فَلَا يَجُوزُ الْقَوْلُ بِهِ، وَلَيْسَ يُوجِبُ هَذَا الْقَوْلَ قِيَاسٌ، وَلَا نَظَرٌ ". وَلَيْسَ تَقْلِيدُ سَهْلِ بْنِ أَبِي حَثْمَةَ - رَضِيَ اللَّهُ عَنْهُ - بِأَوْلَى مِنْ تَقْلِيدِ مَنْ خَالَفَهُ مِنْ الصَّحَابَةِ، مِمَّنْ قَدْ ذَكَرْنَاهُ -: كَعَمْرٍو، وَابْنِ عُمَرَ، وَأَبِي مُوسَى، وَجَابِرٍ، وَابْنِ عَبَّاسٍ، وَالْحَكَمِ بْنِ عَمْرٍو، وَحُذَيْفَةَ، وَثَعْلَبَةَ بْنِ زَهْدَمٍ، وَأَنَسٍ، وَعَبْدِ الرَّحْمَنِ بْنِ سَمُرَةَ، وَغَيْرِهِمْ.

[16] **Qur'an references (L8335):** Qur'an 4:102 (An-Nisa).

فَإِنْ قِيلَ: إِنَّ سَهْلَ بْنَ أَبِي حَثْمَةَ رَوَى بَعْضَ تِلْكَ الْأَعْمَالِ وَخَالَفَهُ.

L8336 If it is said, “Indeed, Sahl ibn Abī Ḥathma narrated some of those practices, and he contradicted him,”...

وَلَا يَجُوزُ أَنْ يُظَنَّ بِهِ أَنَّهُ خَالَفَ مَا حَضَرَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا لِأَمْرٍ عَلِمَهُ هُوَ نَاسِخٌ لِمَا رَوَاهُ؟ قُلْنَا: هَذَا بَاطِلٌ، وَحُكْمٌ بِالظَّنِّ، وَتَرْكٌ لِلْيَقِينِ، وَإِضَافَةٌ إِلَى الصَّاحِبِ - رَضِيَ اللَّهُ عَنْهُ - مَا لَا يَحِلُّ أَنْ يُظَنَّ بِهِ، مِنْ أَنَّهُ رَوَى لَنَا الْمَنْسُوخَ وَكَتَمَ النَّاسِخَ.

L8337–8339 Is it permissible to presume that he contradicted what he witnessed with the Messenger of Allah—peace and blessings of Allah be upon him—except for a matter that abrogates what he narrated, which he was aware of? We said: This is invalid—a ruling based on conjecture, an abandonment of certainty, and an attribution to the Companion, may Allah be pleased with him. That which it is not permissible to suspect him of is that he narrated the abrogated text to us while concealing the abrogating one.

وَلَا فَرْقَ بَيْنَ قَوْلِكُمْ هَذَا وَبَيْنَ مَنْ قَالَ: لَا يَصِحُّ عَنْهُ أَنَّهُ يُخَالِفُ مَا رَوَى، فَالدَّاخِلَةُ إِنَّمَا هِيَ فِيمَا رُوِيَ مِنْهُ مَا أُضِيفَ إِلَيْهِ، لَا فِيمَا رَوَاهُ هُوَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاسْتَدَلَّ عَلَى ذَلِكَ بِأَنَّهُ لَا يَجُوزُ أَنْ يُخَالِفَ حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L8340 There is no difference between your statement and that of one who says: “It is not valid about him that he contradicts what he narrated.” The consideration applies only to what is narrated from him (what is attributed to him), not to what he himself reported from the Prophet - peace and blessings of Allah be upon him. He adduced evidence that it is impermissible to contradict the ruling of the Messenger of Allah - peace and blessings of Allah be upon him.

قَالَ عَلِيٌّ: وَلَسْنَا نَقُولُ: بِشَيْءٍ مِنْ هَذَيْنِ الْقَوْلَيْنِ، بَلْ نَقُولُ: إِنَّ الْحَقَّ أَخْذُ رِوَايَةِ الرَّاوِي، لَا أَخْذُ رَأْيِهِ، إِذْ قَدْ يَتَأَوَّلُ فِيهِمْ، وَقَدْ يَنْسَى، وَلَا يَجُوزُ أَلْبَتَّةَ أَنْ يَكْتُمَ النَّاسِخَ وَيَرْوِي الْمَنْسُوخَ؟ وَلَا يَجُوزُ لَهُمْ أَنْ يُوهِمُوا هَهُنَا بِعَمَلِ أَهْلِ الْمَدِينَةِ؛ لِأَنَّ ابْنَ عُمَرَ، وَعُبَيْدَ اللَّهِ بْنَ عَبْدِ اللَّهِ بْنِ عُتْبَةَ، وَالزُّهْرِيَّ: مُخَالِفُونَ لِاخْتِيَارِ مَالِكٍ، وَمَا وَجَدْنَا مَا اخْتَارَهُ مَالِكٌ عَنْ أَحَدٍ قَبْلَهُ إِلَّا عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ وَحْدَهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ -: وَمِنْهَا قَوْلٌ رُوِّينَاهُ عَنْ عُبَيْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ وَإِبْرَاهِيمَ النَّخَعِيِّ، أَخَذَ بِهِ أَبُو حَنِيفَةَ وَأَصْحَابُهُ إِلَّا أَنَّ أَبَا يُوسُفَ رَجَعَ عَنْهُ -: وَهُوَ أَنْ يُصَفِّهِمُ الْإِمَامُ صَفَّيْنِ: طَائِفَةٌ خَلْفَهُ، وَطَائِفَةٌ بِإِزَاءِ الْعَدُوِّ -: فَيُصَلِّي بِالَّتِي خَلْفَهُ رَكْعَةً بِسَجْدَتَيْهَا، فَإِذَا قَامَ إِلَى الرَّكْعَةِ الثَّانِيَةِ وَقَفَ، وَنَهَضَتْ الطَّائِفَةُ الَّتِي صَلَّتْ مَعَهُ فَوَقَفُوا بِإِزَاءِ الْعَدُوِّ، وَهُمْ فِي صَلَاتِهِمْ بَعْدُ.

L8341 Ali said: We do not hold either of these two opinions. Rather, we affirm that the truth lies in accepting the narrator’s transmission, not his personal opinion, for he might interpret among them or forget. Is it entirely impermissible for him to conceal the abrogating ruling and narrate the abrogated one? Nor should they be deluded into following the practice of the people of Medina here, for Ibn Umar, Ubayd Allah ibn Abd Allah ibn Utbah, and al-Zuhri opposed Malik’s preference. We have not found what Malik chose from anyone before him except Sahl ibn Abi Hathmah alone—and success is from Allah, the Exalted. Among them is an opinion we have transmitted from Ubayd Allah ibn Utbah ibn Mas‘ud and Ibrahim al-Nakha‘i, which Abu Hanifah and his followers adopted, though Abu Yusuf later retracted from it. It holds that the Imam should arrange them in two rows: one group behind him and another group facing the enemy. He prays one rak‘ah with its two prostrations with the group behind him. When he stands for the second rak‘ah and pauses, the group that prayed with him rises and takes position facing the enemy while still in prayer.

ثُمَّ تَأْتِي الطَّائِفَةُ الَّتِي كَانَتْ بِإِزَاءِ الْعَدُوِّ فَتُكَبِّرُ خَلْفَ الْإِمَامِ، وَيُصَلِّي بِهِمْ الْإِمَامُ الرَّكْعَةَ الثَّانِيَةَ لَهُ وَهِيَ لَهُمْ الْأُولَى، فَإِذَا جَلَسَ وَتَشَهَّدَ: سَلَّمَ، وَتَنْهَضُ الطَّائِفَةُ الثَّانِيَةُ الَّتِي صَلَّتْ مَعَهُ الرَّكْعَةَ الثَّانِيَةَ، وَهُمْ فِي صَلَاتِهِمْ، فَتَقِفُ بِإِزَاءِ الْعَدُوِّ.

L8342 Then the group that had been facing the enemy arrives and recites the Takbīr behind the Imam. The Imam leads them in his second Rakʿah (which is their first). When he sits and recites the Tashahhud, he performs the Taslīm. The second group - who prayed the second Rakʿah with him while in their prayer - then rises to stand facing the enemy.

وَتَأْتِي الطَّائِفَةُ الَّتِي كَانَتْ صَلَّتْ مَعَ الْإِمَامِ الرَّكْعَةَ الْأُولَى فَتَرْجِعُ إِلَى الْمَكَانِ الَّذِي صَلَّتْ فِيهِ مَعَ الْإِمَامِ، فَتَقْضِي فِيهِ الرَّكْعَةَ الَّتِي بَقِيَتْ لَهَا، وَتُسَلِّمُ، ثُمَّ تَأْتِي فَتَقِفُ بِإِزَاءِ الْعَدُوِّ.

L8343 Then the group that had prayed the first rak’ah with the Imam came, returned to the place where they had prayed with him, completed the remaining rak’ah there, gave the salutation, and then came to stand positioned opposite the enemy.

وَتَرْجِعُ الطَّائِفَةُ الثَّانِيَةُ إِلَى الْمَكَانِ الَّذِي صَلَّتْ فِيهِ مَعَ الْإِمَامِ، فَتَقْضِي فِيهِ الرَّكْعَةَ الَّتِي بَقِيَتْ لَهَا.

L8344 The second group returns to the place where they prayed with the Imam and makes up the remaining *rak’ah* that had been left for them there.

إِلَّا أَنَّ أَبَا حَنِيفَةَ زَادَ مِنْ قِبَلِ رَأْيِهِ زِيَادَةً لَا تُعْرَفُ مِنْ أَحَدٍ مِنْ الْأُمَّةِ قَبْلَهُ -: وَهِيَ أَنَّهُ قَالَ: تَقْضِي الطَّائِفَةُ الْأُولَى الرَّكْعَةَ الَّتِي بَقِيَتْ عَلَيْهَا بِلَا قِرَاءَةِ شَيْءٍ مِنْ الْقُرْآنِ فِيهَا.

L8345–8347 Except that Abū Ḥanīfah added, based on his own opinion, an addition unknown to anyone in the *Ummah* before him—and it is that he... He said: The first group completes the remaining rakʿah they owe, without reciting anything from the Quran during it.

وَتَقْضِي الطَّائِفَةُ الثَّانِيَةُ الرَّكْعَةَ الَّتِي بَقِيَتْ عَلَيْهَا بِقِرَاءَةِ الْقُرْآنِ فِيهَا وَلَا بُدَّ قَالَ عَلِيٌّ: وَهَذَا عَمَلٌ لَمْ يَأْتِ قَطُّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَذَلِكَ أَنَّ فِيهِ مِمَّا قَدْ يُخَالِفُ كُلَّ أَثَرٍ جَاءَ فِي صَلَاةِ الْخَوْفِ، تَأْخِيرُ الطَّائِفَتَيْنِ مَعًا إتْمَامَ الرَّكْعَةِ الْبَاقِيَةِ لَهُمَا إلَى أَنْ يُسَلِّمَ الْإِمَامُ، فَتَبْتَدِئُ أُولَاهُمَا بِالْقَضَاءِ، ثُمَّ لَا تَقْضِي الثَّانِيَةُ إلَّا حَتَّى تُسَلِّمَ الْأُولَى.

L8348 The second group must complete the remaining rakʿah incumbent upon them by reciting the Qur’an within it—this is necessary. ʿAlī said that this is an action never reported from the Messenger of Allah (peace and blessings be upon him) nor from any of the Companions (may Allah be pleased with them), for it contains that which may contradict every narration concerning the prayer of fear (ṣalāt al-khawf): delaying both groups from completing their remaining rakʿah until the Imam says the salām. The first group then begins making it up; then the second group does not make it up until the first has said the salām.

وَفِيهِ أَيْضًا مِمَّا يُخَالِفُ كُلَّ أَثَرٍ رُوِيَ فِي صَلَاةِ الْخَوْفِ -: مَجِيءُ كُلِّ طَائِفَةٍ لِلْقَضَاءِ خَاصَّةً إلَى الْمَوْضِعِ الَّذِي صَلَّتْ فِيهِ مَعَ الْإِمَامِ بَعْدَ أَنْ زَالَتْ عَنْهُ إلَى مُوَاجِهَةِ الْعَدُوِّ

L8349 And in it, among the matters that contradict all transmitted reports concerning the prayer during combat is: each group’s return specifically to the place where they prayed with the Imam—after having moved from it to confront the enemy—in order to perform the second rakʿah.

L8350 If it is said: “Has anything similar been narrated from Ibn Masʿūd?” We re-

ply: You have uttered falsehood and false claims. What is transmitted from Ibn Mas‘ūd—through a weak chain—is a report stating both groups initiated prayer together with the Imam simultaneously, and that the group which prayed last commenced their compensatory prayer before the other group. This is not found in Abū Ḥanīfah’s opinion, yet you magnify disagreement with a Companion—especially when no opposing view is narrated from any other Companion. If they argue: “We chose sequential prayer initiation by groups in compliance with the verse,” we counter: You have opposed the verse by obligating each group to pray their remaining obligations after the Imam completes his prayer, when Allah says: “Let them pray with you” [Quran 4:102]. Thus you oppose the Quran, all Prophetic narrations—both sound and weak—and all Companions’ positions without consideration or analogy. Some cited a rare opinion claiming: “The Imam must maintain justice between them. Just as the first group prayed first, they should compensate first.” ‘Alī said: “This is invalid—it constitutes injustice and partiality. True justice and equalization is that if one group prayed first, the subsequent group compensates first, allowing each their due share of precedence and deferment.” Others remarked: “We have never witnessed a follower initiating compensatory prayer before his Imam concludes prayer.”[17]

فَإِنْ قِيلَ: قَدْ رُوِيَ نَحْوُ هَذَا عَنْ ابْنِ مَسْعُودٍ؟ قُلْنَا: قُلْتُمْ الْبَاطِلَ وَالْكَذِبَ، إنَّمَا جَاءَ عَنْ ابْنِ مَسْعُودٍ - مِنْ طَرِيقٍ وَاهِيَةٍ - خَبَرٌ فِيهِ ابْتِدَاءُ الطَّائِفَتَيْنِ مَعًا بِالصَّلَاةِ مَعًا مَعَ الْإِمَامِ، وَأَنَّ الطَّائِفَةَ الَّتِي صَلَّتْ آخِرًا هِيَ بَدَأَتْ بِالْقَضَاءِ قَبْلَ الثَّانِيَةِ، وَلَيْسَ هَذَا فِي قَوْلِ أَبِي حَنِيفَةَ، وَأَنْتُمْ تُعَظِّمُونَ خِلَافَ الصَّاحِبِ، لَا سِيَّمَا إذَا لَمْ يُرْوَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ خِلَافُهُ؟ فَإِنْ قَالُوا: إنَّمَا تَخَيَّرْنَا ابْتِدَاءَ طَائِفَةٍ بَعْدَ طَائِفَةٍ اتِّبَاعًا لِلْآيَةِ؟ قُلْنَا: فَقَدْ خَالَفْتُمْ الْآيَةَ فِي إيجَابِكُمْ صَلَاةَ كُلِّ طَائِفَةٍ مَا بَقِيَ عَلَيْهَا بَعْدَ تَمَامِ صَلَاةِ الْإِمَامِ، وَإِنَّمَا قَالَ تَعَالَى: {فَلْيُصَلُّوا مَعَكَ} [النساء: ١٠٢] فَخَالَفْتُمْ الْقُرْآنَ، وَجَمِيعَ الْآثَارِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَحِيحِهَا وَسَقِيمِهَا، وَجَمِيعَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بِلَا نَظَرٍ وَلَا قِيَاسٍ وَاحْتَجَّ بَعْضُهُمْ بِنَادِرَةٍ، وَهِيَ: أَنَّهُ قَالَ: يَلْزَمُ الْإِمَامُ الْعَدْلَ بَيْنَهُمْ، فَكَمَا صَلَّتْ الطَّائِفَةُ الْوَاحِدَةُ أَوَّلًا فَكَذَلِكَ تَقْضِي أَوَّلًا؟ قَالَ عَلِيٌّ: وَهَذَا بَاطِلٌ، بَلْ هُوَ الْجَوْرُ وَالْمُحَابَاةُ، بَلْ الْعَدْلُ وَالتَّسْوِيَةُ هُوَ أَنَّهُ إذَا صَلَّتْ الْوَاحِدَةُ أَوَّلًا أَنْ تَقْضِيَ الثَّانِيَةُ أَوَّلًا، فَتَأْخُذَ كُلُّ طَائِفَةٍ بِحَظِّهَا مِنْ التَّقَدُّمِ وَبِحَظِّهَا مِنْ التَّأَخُّرِ وَقَالَ بَعْضُهُمْ: لَمْ نَرَ قَطُّ مَأْمُومًا بَدَأَ بِالْقَضَاءِ قَبْلَ تَمَامِ صَلَاةِ إمَامِهِ؟

L8351–8352 They were told: Have you not seen a follower abandoning his imam’s prayer, proceeding to his work and remaining standing for a long duration after his imam’s prayer is completed without making up what he missed—while you assert this without textual proof or sound analogy, yet condemn those who followed the Quran and the Sunnah? Is this not clear misguidance—particularly Abu Hanifa’s division regarding the makeup prayer of two groups, one with recitation and the other without? This was never known from anyone before him, nor supported by sound opinion or analogy. Among these is the view held by Abu Yusuf in the latter of his two positions, which is

فَقِيلَ لَهُمْ: وَلَا رَأَيْتُمْ قَطُّ مَأْمُومًا يَتْرُكُ صَلَاةَ إمَامِهِ وَيَمْضِي إلَى شُغْلِهِ وَيَقِفُ بُرْهَةً طَوِيلَةً بَعْدَ تَمَامِ صَلَاةِ إمَامِهِ لَا يَقْضِي مَا فَاتَهُ مِنْهَا، وَأَنْتُمْ تَقُولُونَ: بِهَذَا بِغَيْرِ نَصٍّ وَلَا قِيَاسٍ، ثُمَّ تَعِيبُونَ مِنْ اتَّبَعَ الْقُرْآنَ وَالسُّنَنَ أَلَا ذَلِكَ هُوَ الضَّلَالُ الْمُبِينُ لَا سِيَّمَا تَقْسِيمُ أَبِي حَنِيفَةَ فِي قَضَاءِ الطَّائِفَتَيْنِ، إحْدَاهُمَا بِقِرَاءَةٍ وَالْأُخْرَى بِغَيْرِ قِرَاءَةٍ، فَمَا عُرِفَ هَذَا عَنْ أَحَدٍ قَبْلَهُ، وَلَا يُؤَيِّدُهُ رَأْيٌ سَدِيدٌ، وَلَا قِيَاسٌ؟ وَمِنْهَا قَوْلٌ ذَهَبَ إلَيْهِ أَبُو يُوسُفَ

[17] **Qur’an references (L8350):** Qur’an 4:102 (An-Nisa).

also the opinion of Hasan al-Lu'lu'ī: that the prayer of fear is not performed after the Messenger of Allah—peace and blessings be upon him.

فِي آخِرِ قَوْلَيْهِ، وَهُوَ قَوْلُ الْحَسَنِ اللُّؤْلُؤِيِّ، وَهُوَ: أَنْ لَا تُصَلَّى صَلَاةُ الْخَوْفِ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L8353 Ali said: "This contradicts the words of Allah the Exalted: 'There has certainly been for you in the Messenger of Allah an excellent example' [Al-Ahzab: 21]."[18]

قَالَ عَلِيٌّ: وَهَذَا خِلَافُ قَوْلِ اللَّهِ تَعَالَى: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١].

L8354 Ali said: But except that one who says the validity of marriage by [reciting] a surah from the Qur'an is specifically for the Prophet (may Allah bless him and grant him peace), and that prayer while seated is likewise—how can he disapprove of Abu Yusuf's statement here? Among these opinions is a view we transmitted from al-Ḍaḥḥāk ibn Muzāḥim, Mujāhid, al-Ḥakam ibn ʿUtbah, and Isḥāq ibn Rāhawayh: that only two takbīrs suffice in the prayer of fear. It was also transmitted to us from al-Ḥakam and Mujāhid that a single takbīr suffices in the prayer of fear.

قَالَ عَلِيٌّ: إِلَّا أَنَّ مَنْ قَالَ: إِنَّ النِّكَاحَ بِسُورَةٍ مِنْ الْقُرْآنِ خَاصٌّ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالصَّلَاةَ جَالِسًا كَذَلِكَ -: لَا يَقْدِرُ أَنْ يُنْكِرَ عَلَى أَبِي يُوسُفَ قَوْلَهُ هَهُنَا؟ وَمِنْهَا قَوْلٌ رُوِّينَاهُ عَنْ الضَّحَّاكِ بْنِ مُزَاحِمٍ، وَمُجَاهِدٍ، وَالْحَكَمِ بْنِ عُتْبَةَ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَهُوَ: أَنَّ تَكْبِيرَتَيْنِ فَقَطْ تُجْزِئَانِ فِي صَلَاةِ الْخَوْفِ وَرُوِّينَا أَيْضًا عَنْ الْحَكَمِ، وَمُجَاهِدٍ: تَكْبِيرَةٌ وَاحِدَةٌ تُجْزِئُ فِي صَلَاةِ الْخَوْفِ

L8355–8357 This is an error because there is no textual evidence to support it—and success comes only from Allah, the Exalted. If someone asks: How can you affirm all these forms of the Prayer of Fear when you narrate from Zayd ibn Thabit that "Allah's Messenger (peace and blessings be upon him) prayed the Prayer of Fear once without leading us in prayer before or after it"? We respond: Even if this report were authentic, it would weigh more heavily against you. For you would be challenged: What evidence do you possess that the specific form you chose aligns with the actual practice performed by Allah's Messenger (peace and blessings be upon him) during that prayer—especially so if the objector is a Hanafi or Maliki? The preferred rulings of these two groups have never been transmitted from Allah's Messenger. How can this hold water when the hadith itself is rejected? It is solely narrated by Yahya al-Himmani—a weak narrator—from Sharik al-Qadi, who engaged in tadlis (intentional omission of a weak narrator in the chain) and does not... His narration is cited as evidence. How could a person of faith permit himself to oppose the hadiths of all the Companions—may Allah be pleased

وَهَذَا خَطَأٌ، لِأَنَّهُ لَمْ يَأْتِ بِهِ نَصٌّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. فَإِنْ قَالَ قَائِلٌ: كَيْفَ تَقُولُونَ بِصَلَاةِ الْخَوْفِ عَلَى جَمِيعِ هَذِهِ الْوُجُوهِ، وَقَدْ رَوَيْتُمْ عَنْ زَيْدِ بْنِ ثَابِتٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى صَلَاةَ الْخَوْفِ مَرَّةً، لَمْ يُصَلِّ بِنَا قَبْلَهَا وَلَا بَعْدَهَا» ؟ قُلْنَا: هَذَا لَوْ صَحَّ لَكَانَ أَشَدَّ عَلَيْكُمْ، لِأَنَّهُ يُقَالُ لَكُمْ: مِنْ أَيْنَ كَانَ لَكُمْ بِأَنَّ الْوَجْهَ الَّذِي اخْتَرْتُمُوهُ هُوَ الْعَمَلُ الَّذِي عَمِلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ صَلَّاهَا؟ لَا سِيَّمَا إنْ كَانَ الْمُعْتَرِضُ بِهَذَا حَنَفِيًّا أَوْ مَالِكِيًّا؟ لِأَنَّ اخْتِيَارَ هَاتَيْنِ الْفِرْقَتَيْنِ لَمْ يَأْتِ قَطُّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَيْفَ وَهَذَا حَدِيثٌ سَاقِطٌ؟ لَمْ يَرْوِهِ إلَّا يَحْيَى الْحِمَّانِيُّ، وَهُوَ ضَعِيفٌ، عَنْ شَرِيكٍ الْقَاضِي، وَهُوَ مُدَلِّسٌ لَا يُحْتَجُّ بِحَدِيثِهِ، فَكَيْفَ يَسْتَحِلُّ ذُو دِينٍ أَنْ يُعَارِضَ بِهَذِهِ السَّوْءَةِ أَحَادِيثَ الْكَوَافِّ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَجْمَعِينَ: إنَّهُمْ شَهِدُوا صَلَاةَ الْخَوْفِ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

[18] **Qur'an references (L8353):** Qur'an 33:21 (Al-Ahzab).

with them—through such a disgraceful act? They witnessed the Prayer of Fear with the Messenger of Allah, peace and blessings be upon him, on multiple occasions: once at Dhī Qarad, once at Dhāt al-Riqāʿ, once in Najd, once between Ḍajanān and ʿUsfān, once in the land of Juhaynah, once at Nakhl, once at ʿUsfān, once on the day of Muḥārib and Thaʿlabah, and once either at Ṭāʾif or Tabūk.

L8358 It is possible to pray them twice in a day for Dhuhr and Asr, and was this not reported from the Companions by the senior Successors and the trustworthy, firmly established ones? And do we not seek refuge in Allah from abandonment? Ali said: "We said: 'The prayer in every state of fear is with a single rakʿah,' based on the generality of Ibn ʿAbbas's hadith: 'Prayer was ordained by the tongue of your Prophet—peace and blessings of Allah be upon him—as four rakʿahs when resident, two when traveling, and one in fear.' It is not permissible to specify his ruling—peace be upon him—with baseless assumptions. And success is from Allah, the Exalted."

L8359 **Issue: One who fears a claimant with a valid right against him is not permitted to perform the prayer of fear.**

L8360 520 - Issue: Is it not permissible for one fearing a claimant demanding rightful dues to pray the prayer of fear with two groups, nor to pray at all with three groups or more? This is because praying it with two groups entails each group performing an action in their prayer that is prohibited for them if they are a rebel group.

L8361 Whoever performs in his prayer an act he was not commanded to do has no prayer, for did he not pray as he was commanded? Similarly, one who prays while riding, walking, engaged in combat, facing away from the qiblah, or sitting out of fear of a rightful claimant—since in all these cases he performed an act prohibited in his prayer. But if he is wrongfully pursued and performs such acts in his prayer, is that permitted? The Prophet (peace be upon him) never prayed with three groups, and had he not prayed with two groups, it would not have been permissible—because he performed an action during prayer. No act is permissible during prayer except what the text permits, according to the Messenger of Allah (peace be upon him): "Verily prayer

مَرَّاتٍ: مَرَّةً بِذِي قَرَدٍ، وَمَرَّةً بِذَاتِ الرِّقَاعِ، وَمَرَّةً بِنَجْدٍ، وَمَرَّةً بَيْنَ ضَجْنَانَ وَعُسْفَانَ، وَمَرَّةً بِأَرْضِ جُهَيْنَةَ، وَمَرَّةً بِنَخْلٍ، وَمَرَّةً بِعُسْفَانَ، وَمَرَّةً يَوْمَ مُحَارِبٍ وَثَعْلَبَةَ، وَمَرَّةً إمَّا بِالطَّائِفِ وَإِمَّا بِتَبُوكَ.

وَقَدْ يُمْكِنُ أَنْ يُصَلِّيَهَا فِي يَوْمٍ مَرَّتَيْنِ لِلظُّهْرِ وَالْعَصْرِ، وَرَوَى ذَلِكَ عَنْ الصَّحَابَةِ أَكَابِرُ التَّابِعِينَ وَالثِّقَاتُ الْأَثْبَاتُ؟ وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ؟ قَالَ عَلِيٌّ: وَإِنَّمَا قُلْنَا: بِالصَّلَاةِ رَكْعَةً وَاحِدَةً فِي كُلِّ خَوْفٍ لِعُمُومِ حَدِيثِ ابْنِ عَبَّاسٍ " فُرِضَتْ الصَّلَاةُ عَلَى لِسَانِ نَبِيِّكُمْ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْحَضَرِ أَرْبَعًا، وَفِي السَّفَرِ رَكْعَتَيْنِ، وَفِي الْخَوْفِ رَكْعَةً " وَلَا يَجُوزُ تَخْصِيصُ حُكْمِهِ - عَلَيْهِ السَّلَامُ - بِالظُّنُونِ الْكَاذِبَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَنْ خَافَ مِنْ طَالِبٍ لَهُ بِحَقٍّ لَا يَجُوزُ لَهُ أَنْ يُصَلِّيَ صَلَاةَ الْخَوْفِ]

٥٢٠ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُصَلِّيَ صَلَاةَ الْخَوْفِ بِطَائِفَتَيْنِ مَنْ خَافَ مِنْ طَالِبٍ لَهُ بِحَقٍّ، وَلَا أَنْ يُصَلِّيَ أَصْلًا بِثَلَاثِ طَوَائِفَ فَصَاعِدًا؟ لِأَنَّ فِي صَلَاتِهَا بِطَائِفَتَيْنِ عَمَلًا لِكُلِّ طَائِفَةٍ فِي صَلَاتِهَا هِيَ مَنْهِيَّةٌ عَنْهُ إنْ كَانَتْ بَاغِيَةً

وَمَنْ عَمِلَ فِي صَلَاتِهِ مَا لَمْ يُؤْمَرْ بِهِ فَلَا صَلَاةَ لَهُ، إذْ لَمْ يُصَلِّ كَمَا أُمِرَ؟ وَكَذَلِكَ مَنْ صَلَّى رَاكِبًا، أَوْ مَاشِيًا، أَوْ مُحَارِبًا، أَوْ لِغَيْرِ الْقِبْلَةِ، أَوْ قَاعِدًا خَوْفَ طَالِبٍ لَهُ بِحَقٍّ؛ لِأَنَّهُ فِي كُلِّ ذَلِكَ عَمِلَ عَمَلًا قَدْ نُهِيَ عَنْهُ فِي صَلَاتِهِ، وَهُوَ فِي كَوْنِهِ مَطْلُوبًا بِبَاطِلٍ عَامِلٌ مِنْ كُلِّ ذَلِكَ عَمَلًا أُبِيحَ لَهُ فِي صَلَاتِهِ تِلْكَ؟ وَلَمْ يُصَلِّ - عَلَيْهِ السَّلَامُ - قَطُّ بِثَلَاثِ طَوَائِفَ، وَلَوْلَا صَلَاتُهُ - عَلَيْهِ السَّلَامُ - بِطَائِفَتَيْنِ لَمَا جَازَ ذَلِكَ، لِأَنَّهُ عَمِلَ فِي الصَّلَاةِ،

demands full attention." A single person with the imam constitutes a group and congregational prayer. Whoever prays as we described while fleeing from a disbeliever or rebel invalidates his prayer, unless his walking during prayer is intended for combat maneuvering or joining a faction—in which case his prayer is valid.

وَلَا يَجُوزُ عَمَلٌ فِي الصَّلَاةِ، إِلَّا مَا أَبَاحَهُ النَّصُّ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ فِي الصَّلَاةِ لَشُغْلًا» . وَالْوَاحِدُ مَعَ الْإِمَامِ طَائِفَةٌ وَصَلَاةُ جَمَاعَةٍ وَمَنْ صَلَّى كَمَا ذَكَرْنَا هَارِبًا عَنْ كَافِرٍ أَوْ عَنْ بَاغٍ بَطَلَتْ صَلَاتُهُ أَيْضًا، إِلَّا أَنْ يَنْوِيَ فِي مَشْيِهِ ذَلِكَ تَحَرُّفًا لِقِتَالٍ أَوْ تَحَيُّزًا إِلَى فِئَةٍ فَتُجْزِئُهُ صَلَاتُهُ حِينَئِذٍ.

L8362–8363 Because Allah the Exalted has said: "When you encounter the disbelievers advancing in battle, do not turn your backs to them" [Al-Anfāl 8:15], "And whoever turns his back to them on that day, unless strategically repositioning for combat or withdrawing to join another contingent, has indeed drawn upon himself wrath from Allah" [Al-Anfāl 8:16]. Thus, whoever turns his back to the disbelievers and the unjust aggressors whom it is obligatory to fight, without intending to regroup with a contingent or tactically adjust his position, has committed a forbidden act in his battle conduct and thereby failed to fulfill the command as ordained. And with Allah the Exalted lies all success.[19]

لِأَنَّ اللَّهَ تَعَالَى قَالَ: {إِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا زَحْفًا فَلا تُوَلُّوهُمُ الأَدْبَارَ} [الأنفال: ١٥] {وَمَنْ يُوَلِّهِمْ يَوْمَئِذٍ دُبُرَهُ إِلا مُتَحَرِّفًا لِقِتَالٍ أَوْ مُتَحَيِّزًا إِلَى فِئَةٍ فَقَدْ بَاءَ بِغَضَبٍ مِنَ اللَّهِ} [الأنفال: ١٦] فَمَنْ وَلِيَ الْكُفَّارَ ظَهْرَهُ وَالْبُغَاةَ الْمُفْتَرَضُ قِتَالُهُمْ لَا يَنْوِي تَحَيُّزًا وَلَا تَحَرُّفًا -: فَقَدْ عَمِلَ فِي صَلَاتِهِ عَمَلًا مُحَرَّمًا عَلَيْهِ، فَلَمْ يُصَلِّ كَمَا أُمِرَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L8364 As for one fleeing from predators, fire, snakes, the insane, aggressive animals, floods, fear of thirst, fear of missing the group, loss of provisions, or straying from the path—his prayer remains complete, for he has done nothing in such circumstances except what he was commanded to do. And with Allah, the Exalted, lies all success.

وَأَمَّا الْفَارُّ عَنْ السِّبَاعِ، وَالنَّارِ، وَالْحَنَشِ، وَالْمَجْنُونِ، وَالْحَيَوَانِ الْعَادِي، وَالسَّيْلِ وَخَوْفِ عَطَشٍ، وَخَوْفِ فَوْتِ الرُّفْقَةِ، أَوْ فَوْتِ مَتَاعِهِ، أَوْ ضَلَالِ الطَّرِيقِ -: فَصَلَاتُهُ تَامَّةٌ، لِأَنَّهُ لَمْ يَفْعَلْ فِي ذَلِكَ إِلَّا مَا أُمِرَ بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L8365 ## The Friday Prayer (Jumuʿah)

[صَلَاة الْجُمُعَة]

L8366 ## A question on the time of Friday.

[مَسْأَلَةٌ وَقْت الْجُمُعَة]

L8367 521 – Issue: The Friday Prayer is the Dhuhr of Friday. It is impermissible to pray it except after zawāl, and its latest permissible time is the end of the Dhuhr prayer's time on other days.

٥٢١ - مَسْأَلَةٌ: الْجُمُعَةُ، هِيَ ظُهْرُ يَوْمِ الْجُمُعَةِ، وَلَا يَجُوزُ أَنْ تُصَلَّى إِلَّا بَعْدَ الزَّوَالِ، وَآخِرُ وَقْتِهَا: آخِرُ وَقْتِ الظُّهْرِ فِي سَائِرِ الْأَيَّامِ.

L8368 It was narrated to us from ʿAbdullāh ibn Sīlān, who said: I attended the

[19] **Qur'an references (L8363):** Qur'an 8:15 (Al-Anfal); Qur'an 8:16 (Al-Anfal).

Friday prayer with Abū Bakr al-Ṣiddīq, and he performed his prayer and delivered his sermon before midday. Then I attended the Friday prayer with ʿUmar ibn al-Khaṭṭāb, and he performed his prayer and delivered his sermon when the sun began to decline.

وَرُوِّينَا عَنْ عَبْدِ اللَّهِ بْنِ سِيلَانَ قَالَ: شَهِدْت الْجُمُعَةَ مَعَ أَبِي بَكْرٍ الصِّدِّيقِ فَقَضَى صَلَاتَهُ وَخُطْبَتَهُ قَبْلَ نِصْفِ النَّهَارِ ثُمَّ شَهِدْت الْجُمُعَةَ مَعَ عُمَرَ بْنِ الْخَطَّابِ فَقَضَى صَلَاتَهُ وَخُطْبَتَهُ مَعَ زَوَالِ الشَّمْسِ.

L8369–8371 From Waki‘, from Shu‘bah, from ‘Amr ibn Murrah, from ‘Abdullah ibn Salamah, who said: Ibn Mas‘ud led us in the Friday prayer during forenoon, stating: “Did I hasten the prayer for you out of fear of the heat affecting you?” Through another narration in Malik ibn Anas’s *Muwatta*, from his uncle Abu Suhayl ibn Malik, from his father, who said: “I would see the decorated carpet of ‘Aqil ibn Abi Talib laid against the mosque’s western wall. When the wall’s shadow had completely covered the entire carpet, ‘Umar ibn al-Khattab would emerge and pray. After the Friday prayer, should we then take the forenoon rest?” ‘Ali remarked: “This indicates that ‘Umar’s Friday prayer (may Allah be pleased with him) occurred before midday, for as long as any part of the shadow remained on the western side, it was before midday. Once the sun passed its zenith, the shadow inevitably shifted to the eastern side.” From Malik, from ‘Amr ibn Yahya al-Mazini, from Ibn Abi Salit: that ‘Uthman ibn ‘Affan... He prayed the Friday prayer in Medina and the Asr prayer in Malal. Ibn Abī Salīṭ said: “We would pray the Friday prayer with Uthman and depart while there was no shadow on the wall.” Ali said: “Between Medina and Malal are twenty-two miles. It is absolutely impermissible for the sun to decline, after which one delivers the sermon, prays the Friday prayer, and then walks this distance before the sun turns yellow, except for one who treads the path of military expeditions or rushes like a timed courier. Is it not more appropriate for this to be the case?” This has also been narrated to us from Ibn al-Zubayr.

وَعَنْ وَكِيعٍ عَنْ شُعْبَةَ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ عَبْدِ اللَّهِ بْنِ سَلَمَةَ قَالَ: صَلَّى بِنَا ابْنُ مَسْعُودٍ الْجُمُعَةَ ضُحًى، وَقَالَ: إنَّمَا عَجَّلْت بِكُمْ خَشْيَةَ الْحَرِّ عَلَيْكُمْ؟ وَمِنْ طَرِيقِ مَالِكِ بْنِ أَنَسٍ فِي مُوَطَّئِهِ عَنْ عَمِّهِ أَبِي سُهَيْلِ بْنِ مَالِكٍ عَنْ أَبِيهِ قَالَ: كُنْت أَرَى طُنْفُسَةً لِعَقِيلِ بْنِ أَبِي طَالِبٍ تُطْرَحُ إلَى جِدَارِ الْمَسْجِدِ الْغَرْبِيِّ، فَإِذَا غَشَّى الطُّنْفُسَةَ كُلَّهَا ظِلُّ الْجِدَارِ خَرَجَ عُمَرُ بْنُ الْخَطَّابِ فَصَلَّى، ثُمَّ نَرْجِعُ بَعْدَ صَلَاةِ الْجُمُعَةِ فَنَقِيلُ قَائِلَةَ الضُّحَى؟ قَالَ عَلِيٌّ: هَذَا يُوجِبُ أَنَّ صَلَاةَ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - الْجُمُعَةَ كَانَتْ قَبْلَ الزَّوَالِ، لِأَنَّ ظِلَّ الْجِدَارِ مَا دَامَ فِي الْغَرْبِ مِنْهُ شَيْءٌ فَهُوَ قَبْلَ الزَّوَالِ، فَإِذَا زَالَتْ الشَّمْسُ صَارَ الظِّلُّ فِي الْجَانِبِ الشَّرْقِيِّ وَلَا بُدَّ. وَعَنْ مَالِكٍ عَنْ عَمْرِو بْنِ يَحْيَى الْمَازِنِيِّ عَنْ ابْنِ أَبِي سَلِيطٍ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ صَلَّى الْجُمُعَةَ بِالْمَدِينَةِ وَصَلَّى الْعَصْرَ بِمَلَلٍ قَالَ ابْنُ أَبِي سَلِيطٍ: وَكُنَّا نُصَلِّي الْجُمُعَةَ مَعَ عُثْمَانَ وَنَنْصَرِفُ وَمَا لِلْجِدَارِ ظِلٌّ؟ قَالَ عَلِيٌّ: بَيْنَ الْمَدِينَةِ، وَمَلَلٍ: اثْنَانِ وَعِشْرُونَ مِيلًا، وَلَا يَجُوزُ أَلْبَتَّةَ أَنْ تَزُولَ الشَّمْسُ ثُمَّ يَخْطُبَ وَيُصَلِّيَ الْجُمُعَةَ ثُمَّ يَمْشِيَ هَذِهِ الْمَسَافَةَ قَبْلَ اصْفِرَارِ الشَّمْسِ إلَّا مَنْ طَرَقَ طَرْقَ السَّرَايَا أَوْ رَكَضَ رَكْضَ الْبَرِيدِ الْمُؤَجَّلِ وَبِالْحَرِيِّ أَنْ يَكُونَ هَذَا؟ وَقَدْ رُوِّينَا أَيْضًا هَذَا عَنْ ابْنِ الزُّبَيْرِ.

L8372 Narrated from Ibn Jurayj, from Ata, who said: Every Eid occurs when the forenoon is well advanced: Friday, Eid al-Adha, and Eid al-Fitr—as it has reached us? And from Waki‘, from Shu‘bah, from al-Hakam ibn ‘Utaybah, from Mujahid, who said: Every Eid is at midday.

وَعَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: كُلُّ عِيدٍ حِينَ يَمْتَدُّ الضُّحَى: الْجُمُعَةُ، وَالْأَضْحَى، وَالْفِطْرُ، كَذَلِكَ بَلَغَنَا؟ وَعَنْ وَكِيعٍ عَنْ شُعْبَةَ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ مُجَاهِدٍ قَالَ: كُلُّ عِيدٍ فَهُوَ نِصْفُ النَّهَارِ.

L8373 قَالَ عَلِيٌّ: أَيْنَ الْمُمَوِّهُونَ إِنَّهُمْ مُتَّبِعُونَ عَمَلَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَجْمَعِينَ؟ الْمُشَنِّعُونَ بِخِلَافِ الصَّاحِبِ إِذَا خَالَفَ تَقْلِيدَهُمْ؟ وَهَذَا عَمَلُ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَابْنِ مَسْعُودٍ، وَابْنِ الزُّبَيْرِ، وَطَائِفَةٍ مِنَ التَّابِعِينَ وَلَكِنَّ الْقَوْمَ لَا يُبَالُونَ مَا قَالُوا فِي نَصْرِ تَقْلِيدِهِمْ وَأَمَّا نَحْنُ فَالْحُجَّةُ عِنْدَنَا فِيمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى أَنَا وَكِيعٌ عَنْ يَعْلَى بْنِ الْحَارِثِ الْمُحَارِبِيِّ عَنْ إِيَاسِ بْنِ سَلَمَةَ بْنِ الْأَكْوَعِ عَنْ أَبِيهِ قَالَ «كُنَّا نُجَمِّعُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا زَالَتْ الشَّمْسُ ثُمَّ نَرْجِعُ نَتَتَبَّعُ الْفَيْءَ» .

L8374–8376 حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رُبَيْعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا هَارُونُ بْنُ عَبْدِ اللَّهِ ثنا يَحْيَى بْنُ آدَمَ ثنا حَسَنُ بْنُ عَيَّاشٍ ثنا جَعْفَرُ بْنُ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ «كُنَّا نُصَلِّي مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْجُمُعَةَ ثُمَّ نَرْجِعُ فَنُرِيحُ نَوَاضِحَنَا، قُلْتُ: أَيُّ سَاعَةٍ؟ قَالَ: زَوَالَ الشَّمْسِ» .

L8377 وَبِهِ إِلَى أَحْمَدَ بْنِ شُعَيْبٍ: ثنا قُتَيْبَةُ بْنُ سَعِيدٍ عَنْ مَالِكٍ عَنْ سُمَيٍّ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ اغْتَسَلَ يَوْمَ الْجُمُعَةِ غُسْلَ الْجَنَابَةِ وَرَاحَ فَكَأَنَّمَا قَرَّبَ بَدَنَةً، وَمَنْ رَاحَ فِي السَّاعَةِ الثَّانِيَةِ فَكَأَنَّمَا قَرَّبَ بَقَرَةً، وَمَنْ

L8373 Ali said: Where are the hypocrites? They claim to follow the practice of the Companions - may Allah be pleased with them all - yet they become condemners of the Companion when he opposes their emulation? This was the practice of Abu Bakr, Umar, Uthman, Ibn Mas'ud, Ibn al-Zubayr, and a group of the Followers. But these people do not care what they say in defending their emulation. As for us, our evidence lies in what Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Yahya ibn Yahya reported: Waki' narrated to us from Ya'la ibn al-Harith al-Muharibi, from Iyas ibn Salama ibn al-Akwa', from his father, who said: "We used to pray the Friday prayer with the Messenger of Allah - peace and blessings be upon him - when the sun passed its zenith, then we would return tracing the shade."[20]

L8374–8376 Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shuʿayb narrated to us: I, Harun ibn Abdullah, narrated to us: Yahya ibn Adam narrated to us: Hasan ibn ʿAyyash narrated to us: Jaʿfar ibn Muhammad narrated to us: from his father: from... Jabir ibn Abdullah said, "We used to pray the Friday prayer with the Messenger of Allah—may Allah bless him and grant him peace—then return to water our camels." I asked, "At what time?" The Prophet replied, "At the sun's zenith."

L8377 And through him to Ahmad ibn Shu'ayb: Qutaybah ibn Sa'eed narrated to us from Malik from Sumayy from Abu Salih from Abu Hurairah that the Messenger of Allah—peace and blessings be upon him—said: "Whoever performs the major ablution on Friday and goes early, it is as though he has sacrificed a she-camel. Whoever goes early in the second period, it is as

[20] **Hadith references (L8373):** Sahih Muslim 860a.

though he has sacrificed a cow. Whoever goes early in the third period, it is as though he has sacrificed a ram. Whoever goes early in the fourth period, it is as though he has sacrificed a hen. Whoever goes early in the fifth period, it is as though he has sacrificed an egg. When the Imam emerges, the angels are present to listen to the sermon."

رَاحَ فِي السَّاعَةِ الثَّالِثَةِ فَكَأَنَّمَا قَرَّبَ كَبْشًا، وَمَنْ رَاحَ فِي السَّاعَةِ الرَّابِعَةِ فَكَأَنَّمَا قَرَّبَ دَجَاجَةً، وَمَنْ رَاحَ فِي السَّاعَةِ الْخَامِسَةِ فَكَأَنَّمَا قَرَّبَ بَيْضَةً، فَإِذَا خَرَجَ الْإِمَامُ حَضَرَتْ الْمَلَائِكَةُ يَسْتَمِعُونَ الذِّكْرَ» .

L8378 Yunus ibn Abdullah narrated to us: Ahmad ibn Abdullah ibn Abdur-Rahim narrated to us: Ahmad ibn Khalid narrated to us: Muhammad ibn Abdus-Salam al-Khushani narrated to us: Muhammad ibn Bashshar narrated to us: Safwan ibn Isa narrated to us: Muhammad ibn Ajlan narrated from his father from Abu Hurairah, who said: The Messenger of Allah (peace and blessings be upon him) said: "The likeness of one who goes early to Friday prayer is as one who offers a camel, then as one who offers a cow, then as one who offers a sheep, then as one who offers a chicken, then as one who offers a sparrow, then as one who offers an egg. When the Imam comes forth and sits down, the scrolls of deeds are rolled up."

حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ ثنا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا صَفْوَانُ بْنُ عِيسَى ثنا مُحَمَّدُ بْنُ عَجْلَانَ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَثَلُ الْمُهَجِّرِ إِلَى الْجُمُعَةِ كَمَثَلِ مَنْ يُهْدِي بَدَنَةً، ثُمَّ كَمَنْ يُهْدِي بَقَرَةً، ثُمَّ مَثَلُ مَنْ يُهْدِي شَاةً، ثُمَّ مَثَلُ مَنْ يُهْدِي دَجَاجَةً، ثُمَّ كَمَثَلِ مَنْ يُهْدِي عُصْفُورًا، ثُمَّ كَمَثَلِ مَنْ يُهْدِي بَيْضَةً، فَإِذَا خَرَجَ الْإِمَامُ جَلَسَ طُوِيَتْ الصُّحُفُ» .

L8379 And it has been narrated to us similarly through the chain of al-Layth ibn Sa'd, from Sumayy, from Abū Ṣāliḥ, from Abū Hurairah, from the Prophet—may Allah bless him and grant him peace.

وَرُوِّينَا نَحْوَهُ مِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ سُمَيٍّ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L8380 Ali said: In these two hadiths lies the merit of arriving early to the mosque at the day's beginning (before noon) to await Friday prayer, and the invalidation of those who prohibit this. They claim: "All these merits pertain to a single hour." This is false, for the Messenger of Allah—peace and blessings be upon him—designated them as distinct hours: the second, the third, the fourth, and the fifth. Thus, it is impermissible for anyone to assert: "It is one hour." Moreover—the levels of merit cease with the Imam's departure, which occurs solely before the prayer call. Yet they allege: "That hour coincides with the call to prayer." Hasn't the falsity of their claim thereby become evident?

قَالَ عَلِيٌّ: فَفِي هَذَيْنِ الْحَدِيثَيْنِ -: فَضْلُ التَّبْكِيرِ فِي أَوَّلِ النَّهَارِ إلَى الْمَسْجِدِ لِانْتِظَارِ الْجُمُعَةِ؟ وَبُطْلَانُ قَوْلِ مَنْ مَنَعَ مِنْ ذَلِكَ، وَقَالَ: إنَّ هَذِهِ الْفَضَائِلَ كُلَّهَا إنَّمَا هِيَ لِسَاعَةٍ وَاحِدَةٍ، وَهَذَا بَاطِلٌ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَهَا سَاعَاتٍ مُتَغَايِرَاتٍ ثَانِيَةً، وَثَالِثَةً، وَرَابِعَةً، وَخَامِسَةً، فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَقُولَ: إنَّهَا سَاعَةٌ وَاحِدَةٌ؟ وَأَيْضًا - فَإِنَّ دَرَجَ الْفَضْلِ يَنْقَطِعُ بِخُرُوجِ الْإِمَامِ، وَخُرُوجُهُ إنَّمَا هُوَ قَبْلَ النِّدَاءِ، وَهُمْ يَقُولُونَ: إنَّ تِلْكَ السَّاعَةَ مَعَ النِّدَاءِ، فَظَهَرَ فَسَادُ قَوْلِهِمْ؟

L8381–8382 In both sources, it is stated that the Friday prayer is after zawal (when the sun begins to decline), because Imam Mālik, citing Sumayy, mentioned five liturgical periods.

وَفِيهِمَا -: أَنَّ الْجُمُعَةَ بَعْدَ الزَّوَالِ، لِأَنَّ مَالِكًا عَنْ سُمَيٍّ ذَكَرَ خَمْسَ سَاعَاتٍ.

L8383–8385 Muḥammad ibn al-ʻAjlān added from his father from Abū Hurayrah, and al-Layth from Sumayy from Abī Ṣāliḥ from Abū Hurayrah: “the sixth hour,” and he mentioned that the scrolls are rolled up [by divine command] upon the Imam’s departure. Thus, it is confirmed that his departure occurs after the sixth hour, which is the beginning of the sun’s decline and the time of Ẓuhr prayer. If it is said: «You have narrated from Salamah ibn al-Akwaʻ: ‹We used to pray Jumuʻah with the Messenger of Allah—peace and blessings be upon him—then return and find no shade from the walls to shelter us›?» We reply: Yes, but Salamah did not negate the existence of shade entirely; he only negated shade they could shelter in. This indicates the brevity of the sermon and the prayer being conducted promptly at the start of the sun’s decline. Similarly, the statement of Sahl ibn Saʻd: «We would not nap nor eat lunch except after the Jumuʻah prayer»—does this not indicate that it occurred before the sun’s decline? We have also narrated from Ibn ʻAbbās: «ʻUmar came out to us when the sun had declined»—and delivered the sermon, meaning for Jumuʻah. From Abū Isḥāq al-Sabīʻī: «I witnessed ʻAlī ibn Abī Ṭālib praying Jumuʻah when the sun had declined?» Mālik differentiated between the end time of Jumuʻah and the end time of Ẓuhr prayer, holding that it aligns with our view in [text incomplete]. That the first time of Dhuhr is the beginning of the time of Dhuhr, and this is an opinion for which there is no evidence of its validity. Since it is the midday prayer of the day, it is not permissible to differentiate between the end of its time due to differences in the days—and success is from Allah, the Most High.

L8386 **Issue: The Friday prayer, when two or more perform it, consists of two rak’ahs with audible recitation.**

L8387 522 – Issue: The Friday prayer, when performed by two or more people, consists of two rakʻahs, with the imam reciting audibly during them.

L8388 And whoever prays the two by himself must pray them as four rak’ahs, reciting silently in all of them, because this prayer is the Dhuhr prayer.

L8389 We have mentioned in the chapter on the obligation to shorten prayers in our book the narration of Umar: “The Friday prayer is two units, and the

وَزَادَ مُحَمَّدُ بْنُ عَجْلَانَ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ، وَاللَّيْثُ عَنْ سُمَيٍّ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ -: سَاعَةً سَادِسَةً وَقَدْ ذَكَرَ أَنَّ بِخُرُوجِ الْإِمَامِ تُطْوَى الصُّحُفُ، فَصَحَّ أَنَّ خُرُوجَهُ بَعْدَ السَّاعَةِ السَّادِسَةِ، وَهُوَ أَوَّلُ الزَّوَالِ، وَوَقْتُ الظُّهْرِ؟ فَإِنْ قِيلَ: “ قَدْ رَوَيْتُمْ عَنْ سَلَمَةَ بْنِ الْأَكْوَعِ «كُنَّا نُجَمِّعُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَنَرْجِعُ وَمَا نَجِدُ لِلْحِيطَانِ ظِلًّا نَسْتَظِلُّ بِهِ» ؟ قُلْنَا: نَعَمْ، وَلَمْ يَنْفِ سَلَمَةُ الظِّلَّ جُمْلَةً، إِنَّمَا نَفَى ظِلًّا يَسْتَظِلُّونَ بِهِ، وَهَذَا إِنَّمَا يَدُلُّ عَلَى قِصَرِ الْخُطْبَةِ، وَتَعْجِيلُ الصَّلَاةِ فِي أَوَّلِ الزَّوَالِ؟ وَكَذَلِكَ قَوْلُ سَهْلِ بْنِ سَعْدٍ ” وَمَا كُنَّا نُقِيلُ وَلَا نَتَغَدَّى إِلَّا بَعْدَ صَلَاةِ الْجُمُعَةِ “ لَيْسَ، فِيهِ بَيَانٌ أَنَّ ذَلِكَ كَانَ قَبْلَ الزَّوَالِ؟ وَقَدْ رُوِّينَا عَنْ ابْنِ عَبَّاسٍ: خَرَجَ عَلَيْنَا عُمَرُ حِينَ زَالَتْ الشَّمْسُ فَخَطَبَ يَعْنِي، لِلْجُمُعَةِ؟ وَعَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ: شَهِدْت عَلِيَّ بْنَ أَبِي طَالِبٍ يُصَلِّي الْجُمُعَةَ إِذَا زَالَتْ، الشَّمْسُ؟ وَفَرَّقَ مَالِكٌ بَيْنَ آخِرِ وَقْتِ الْجُمُعَةِ وَبَيْنَ آخِرِ وَقْتِ الظُّهْرِ، عَلَى أَنَّهُ مُوَافِقٌ لَنَا فِي أَنَّ أَوَّلَ وَقْتِهَا هُوَ أَوَّلُ وَقْتِ الظُّهْرِ، وَهَذَا قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ، وَإِذْ هِيَ ظُهْرُ الْيَوْمِ فَلَا يَجُوزُ التَّفْرِيقُ بَيْنَ آخِرِ وَقْتِهَا مِنْ أَجْلِ اخْتِلَافِ الْأَيَّامِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْجُمُعَةُ إذَا صَلَّاهَا اثْنَانِ فَصَاعِدًا رَكْعَتَانِ يَجْهَرُ فِيهِمَا]

٥٢٢ - مَسْأَلَةٌ: وَالْجُمُعَةُ إذَا صَلَّاهَا اثْنَانِ فَصَاعِدًا رَكْعَتَانِ يَجْهَرُ فِيهِمَا بِالْقِرَاءَةِ.

وَمَنْ صَلَّاهُمَا وَحْدَهُ صَلَّاهُمَا أَرْبَعَ رَكَعَاتٍ يُسِرُّ فِيهَا كُلِّهَا، لِأَنَّهَا الظُّهْرُ.

وَقَدْ ذَكَرْنَا فِي بَابِ وُجُوبِ قَصْرِ الصَّلَاةِ مِنْ كِتَابِنَا حَدِيثَ عُمَرَ «صَلَاةُ الْجُمُعَةِ رَكْعَتَانِ، وَصَلَاةُ الْمُسَافِرِ رَكْعَتَانِ، تَمَامٌ غَيْرُ قَصْرٍ، عَلَى لِسَانِ نَبِيِّكُمْ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

traveler's prayer is two units—complete, not shortened—as conveyed by your Prophet (peace be upon him)."

قَالَ أَبُو مُحَمَّدٍ: وَذَهَبَ بَعْضُ النَّاسِ إِلَى أَنَّهَا رَكْعَتَانِ لِلْفَذِّ وَلِلْجَمَاعَةِ بِهَذَا الْخَبَرِ قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِأَنَّهُ الْجُمُعَةُ: اسْمٌ إِسْلَامِيٌّ لِلْيَوْمِ، لَمْ يَكُنْ فِي الْجَاهِلِيَّةِ، إِنَّمَا كَانَ يَوْمُ الْجُمُعَةِ يُسَمَّى فِي الْجَاهِلِيَّةِ " الْعُرُوبَةُ " فَسُمِّيَ فِي الْإِسْلَامِ " يَوْمَ الْجُمُعَةِ "، لِأَنَّهُ يُجْتَمَعُ فِيهِ لِلصَّلَاةِ اسْمًا مَأْخُوذًا مِنْ الْجَمْعِ، فَلَا تَكُونُ صَلَاةُ الْجُمُعَةِ إِلَّا فِي جَمَاعَةٍ وَإِلَّا فَلَيْسَتْ صَلَاةَ جُمُعَةٍ، إِنَّمَا هُمَا ظُهْرٌ، وَالظُّهْرُ أَرْبَعٌ كَمَا قَدَّمْنَا.

L8390 Abū Muḥammad said: Some people have held the view that it is two rakʿahs for the solitary worshiper and the congregation based on this narration. ʿAlī said: This is erroneous, because "al-Jumuʿah" is an Islamic name for the day, which did not exist in the pre-Islamic period. The day of Jumuʿah was called "al-ʿUrūbah" in the pre-Islamic period. It was named "the day of Jumuʿah" in Islam because gathering occurs in it for prayer—a name taken from the gathering. Therefore, the Friday prayer does not occur except in congregation; otherwise, it is not a Friday prayer. They [the two rakʿahs] are but Ẓuhr, and Ẓuhr is four [rakʿahs], as we have previously established.

وَقَدْ ثَبَتَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ كَانَ يَجْهَرُ فِيهَا، وَهُوَ عَمَلُ أَهْلِ الْإِسْلَامِ، نَقْلُ كَوَافٍ مِنْ عَهْدِهِ - عَلَيْهِ السَّلَامُ - إِلَى الْيَوْمِ فِي شَرْقِ الْأَرْضِ وَغَرْبِهَا؟ وَأَمَّا الْعَدَدُ الَّذِي يُصَلِّيهِ الْإِمَامُ فِيهِ جُمُعَةَ رَكْعَتَيْنِ كَمَا ذَكَرْنَا -: فَقَدْ اُخْتُلِفَ فِيهِ -: فَرُوِّينَا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: الْجُمُعَةُ تَكُونُ بِخَمْسِينَ رَجُلًا فَصَاعِدًا.

L8391 It has been established from the Messenger of Allah—peace be upon him—that he would recite aloud in them, and this is the practice of the people of Islam, transmitted by sufficient numbers from his era—peace be upon him—until today in the east and west of the earth. As for the number [of attendees] required for the Imam to lead the Friday prayer in which it comprises two rakʿahs, as we mentioned—there has been disagreement concerning it. It has been narrated to us from ʿUmar ibn ʿAbd al-ʿAzīz: "The Friday prayer is valid with fifty men or more."

وَقَالَ الشَّافِعِيُّ: لَا جُمُعَةَ إِلَّا بِأَرْبَعِينَ رَجُلًا: أَحْرَارًا، مُقِيمِينَ، عُقَلَاءَ، بَالِغِينَ - فَصَاعِدًا.

L8392 Al-Shafi'i said: There is no Friday prayer except with at least forty men: free, resident, sane, and adult.

وَرُوِّينَا عَنْ بَعْضِ النَّاسِ: ثَلَاثِينَ رَجُلًا.

L8393 And it has been narrated to us through multiple sources from certain individuals: thirty male narrators.

وَعَنْ غَيْرِهِ: عِشْرِينَ رَجُلًا.

L8394 And from other narrators besides him, twenty men.

وَعَنْ عِكْرِمَةَ: سَبْعَةَ رِجَالٍ لَا أَقَلَّ.

L8395 And from Ikrimah: No fewer than seven men.

وَعَنْ أَبِي حَنِيفَةَ، وَاللَّيْثِ بْنِ سَعْدٍ، وَزُفَرَ، وَمُحَمَّدِ بْنِ الْحَسَنِ: إِذَا كَانَ ثَلَاثَةُ رِجَالٍ وَالْإِمَامُ رَابِعُهُمْ صَلَّوْا الْجُمُعَةَ بِخُطْبَةِ رَكْعَتَيْنِ، وَلَا تَكُونُ بِأَقَلَّ؟ وَعَنْ الْحَسَنِ الْبَصْرِيِّ: إِذَا كَانَ رَجُلَانِ وَالْإِمَامُ ثَالِثُهُمَا صَلَّوْا الْجُمُعَةَ بِخُطْبَةِ رَكْعَتَيْنِ

L8396–8398 And from Abū Ḥanīfa, al-Layth ibn Saʿd, Zufar, and Muḥammad ibn al-Ḥasan: If there are three… If there are three men, with the Imam as their fourth, they prayed the Friday prayer with a sermon and two rakʿahs. Can it not be performed with fewer [participants]? From al-Ḥasan al-Baṣrī: If there

are two men, with the Imam as their third, they prayed the Friday prayer with a sermon and two rakʿahs.

L8399 It is one of the two positions of Sufyān al-Thawrī on this matter, the opinion of Abū Yūsuf, and the opinion of Abū Thawr. It is narrated from Ibrāhīm al-Nakhaʿī—if one person is present with the Imam, they perform the Friday prayer with a sermon followed by two *rakʿahs*.

وَهُوَ أَحَدُ قَوْلَيْ سُفْيَانَ الثَّوْرِيِّ وَقَوْلِ أَبِي يُوسُفَ، وَأَبِي ثَوْرٍ وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ: إِذَا كَانَ وَاحِدٌ مَعَ الْإِمَامِ صَلَّيَا الْجُمُعَةَ بِخُطْبَةِ رَكْعَتَيْنِ.

L8400 This is the opinion of al-Hasan ibn Hayy, Abu Sulayman, and all our companions, and this is the view we adopt. Ali said: As for those who set the number at fifty, they cited a hadith stating: "Friday prayer is obligatory for fifty people if they have an imam leading them." However, this report is unreliable because it is transmitted through al-Qasim ibn Abd al-Rahman from Abu Umamah, and this al-Qasim is a weak narrator.

وَهُوَ قَوْلُ الْحَسَنِ بْنِ حَيٍّ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا، وَبِهِ نَقُولُ؟ قَالَ عَلِيٌّ: فَأَمَّا مَنْ حَدَّ خَمْسِينَ فَإِنَّهُمْ ذَكَرُوا حَدِيثًا فِيهِ «عَلَى الْخَمْسِينَ جُمُعَةٌ إِذَا كَانَ عَلَيْهِمْ إِمَامٌ» . وَهَذَا خَبَرٌ لَا يَصِحُّ؛ لِأَنَّهُ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي أُمَامَةَ، وَالْقَاسِمُ هَذَا ضَعِيفٌ.

L8401 As for those who stipulated thirty, they cited a *mursal* report via the chain of Abū Muḥammad al-Azdī—who is unknown—: "If thirty men gather, they should appoint one man to lead them in the *Jumuʿah* prayer."

وَأَمَّا مَنْ حَدَّ بِثَلَاثِينَ فَإِنَّهُمْ ذَكَرُوا خَبَرًا مُرْسَلًا مِنْ طَرِيقِ أَبِي مُحَمَّدٍ الْأَزْدِيِّ - وَهُوَ مَجْهُولٌ - «إِذَا اجْتَمَعَ ثَلَاثُونَ رَجُلًا فَلْيُؤَمِّرُوا رَجُلًا يُصَلِّي بِهِمْ الْجُمُعَةَ» .

L8402 As for those who adhere to the opinion of Abū Ḥanīfa and al-Layth, they cited a ḥadīth narrated via Muʿāwiyah ibn Yaḥyā from Muʿāwiyah ibn Saʿīd from al-Zuhrī from Umm ʿAbdullāh al-Dawsīyah—who met the Prophet (peace be upon him)—that he said: "The Friday prayer is obligatory in every village, even if there are only four people in it?" This cannot be used as proof, for Muʿāwiyah ibn Yaḥyā and Muʿāwiyah ibn Saʿīd are unknown narrators.

وَأَمَّا مَنْ قَالَ بِقَوْلِ أَبِي حَنِيفَةَ، وَاللَّيْثِ: فَذَكَرُوا حَدِيثًا مِنْ طَرِيقِ مُعَاوِيَةَ بْنِ يَحْيَى عَنْ مُعَاوِيَةَ بْنِ سَعِيدٍ عَنْ الزُّهْرِيِّ عَنْ أُمِّ عَبْدِ اللَّهِ الدَّوْسِيَّةِ وَقَدْ أَدْرَكَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «الْجُمُعَةُ وَاجِبَةٌ فِي كُلِّ قَرْيَةٍ وَإِنْ لَمْ يَكُنْ فِيهِمْ إلَّا أَرْبَعَةٌ؟» . وَهَذَا لَا يَجُوزُ الِاحْتِجَاجُ بِهِ؛ لِأَنَّ مُعَاوِيَةَ بْنَ يَحْيَى، ومُعَاوِيَةَ بْنَ سَعِيدٍ: مَجْهُولَانِ

L8403–8405 Moreover, Abu Hanifa is the first to contradict this report, as he does not hold Friday prayers in villages, but only in cities. All these narrations are inauthentic, and even if authenticated, none would constitute valid evidence, because is there any mention in them of dispensing with Friday prayer for fewer than the stipulated number? A weak narration is reported from Rūḥ ibn Ghutayf—who is unknown—stating: "When they reached two hundred, the Prophet—peace and blessings be upon him—led them in Friday prayer." If they adhere to the larger number, this narration specifies the larger number, but if they adopt the smaller, we shall mention—God, the Exalted, willing—a narration citing a lesser number. As for al-Shāfiʿī: he cited a sound narration

وَأَيْضًا -: فَإِنَّ أَبَا حَنِيفَةَ أَوَّلُ مَنْ يُخَالِفُ هَذَا الْخَبَرَ، لِأَنَّهُ لَا يَرَى الْجُمُعَةَ فِي الْقُرَى، لَكِنْ فِي الْأَمْصَارِ فَقَطْ فَكُلُّ هَذِهِ آثَارٌ لَا تَصِحُّ، ثُمَّ لَوْ صَحَّتْ لَمَا كَانَ فِي شَيْءٍ مِنْهَا حُجَّةٌ، لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْهَا إسْقَاطُ الْجُمُعَةِ عَنْ أَقَلَّ مِنْ الْعَدَدِ الْمَذْكُورِ؟ وَقَدْ رُوِيَ حَدِيثٌ سَاقِطٌ عَنْ رَوْحِ بْنِ غُطَيْفٍ - وَهُوَ مَجْهُولٌ «لَمَّا بَلَغُوا مِائَتَيْنِ جَمَّعَ بِهِمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» فَإِنْ أَخَذُوا بِالْأَكْثَرِ فَهَذَا الْخَبَرُ هُوَ الْأَكْثَرُ، وَإِنْ أَخَذُوا بِالْأَقَلِّ

reported via al-Zuhrī from Ibn Kaʿb ibn Mālik from his father: that whenever he heard the Friday call, he would pray for mercy upon Abū Umāmah Asʿad ibn Zurārah. His son questioned him about this, so he replied: "He was the first to lead us in Friday prayer at Hazm of the volcanic field of Banī Bayāḍah, in a depression known as the Depression of al-Khaḍimāt, when we numbered forty men."

فَسَنَذْكُرُ إِنْ شَاءَ اللَّهُ تَعَالَى حَدِيثًا فِيهِ أَقَلُّ وَأَمَّا الشَّافِعِيُّ: فَإِنَّهُ احْتَجَّ بِخَبَرٍ صَحِيحٍ رُوِّينَاهُ مِنْ طَرِيقِ الزُّهْرِيِّ عَنْ ابْنِ كَعْبِ بْنِ مَالِكٍ عَنْ أَبِيهِ: أَنَّهُ إِذَا سَمِعَ نِدَاءَ الْجُمُعَةِ تَرَحَّمَ عَلَى أَبِي أُمَامَةَ أَسْعَدَ بْنِ زُرَارَةَ، فَسَأَلَهُ ابْنُهُ عَنْ ذَلِكَ؟ فَقَالَ: إِنَّهُ أَوَّلُ مَنْ جَمَعَ بِنَا فِي هَزْمِ حُرَّةِ بَنِي بَيَاضَةَ، فِي نَقِيعٍ يُعْرَفُ بِنَقِيعِ الْخَضِمَاتِ وَنَحْنُ يَوْمَئِذٍ أَرْبَعُونَ رَجُلًا.

L8406 Ali said: There is no valid argument for him in this, because the Messenger of God—peace and blessings be upon him—did not say **that** "Friday prayer is not permissible with fewer than this number." But then, is Friday prayer obligatory with forty men, more than forty, or fewer than forty? Those who upheld the opinion of Abu Yusuf argued based on what Abdullah ibn Rubayʿ narrated to us: Muhammad ibn Muʿawiyah narrated to us, Ahmad ibn Shuʿayb narrated to us: I, ʿUbaydullah ibn Saʿid, narrated from Yahya (who is al-Qattan) from Hisham (who is al-Dastuwa'i) from Qatadah from Abu Nadhrah from Abu Saʿid al-Khudri from the Prophet—peace and blessings be upon him—who said: "When there are three people, let one of them lead them in prayer. The most deserving of leading them is the most proficient in Quranic recitation." This is an authentic report.[21]

قَالَ عَلِيٌّ: وَلَا حُجَّةَ لَهُ فِي هَذَا، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقُلْ: إِنَّهُ لَا تَجُوزُ الْجُمُعَةُ بِأَقَلَّ مِنْ هَذَا الْعَدَدِ، نَعَمْ وَالْجُمُعَةُ وَاجِبَةٌ بِأَرْبَعِينَ رَجُلًا وَبِأَكْثَرَ مِنْ أَرْبَعِينَ وَبِأَقَلَّ مِنْ أَرْبَعِينَ؟ وَاحْتَجَّ مَنْ قَالَ: بِقَوْلِ أَبِي يُوسُفَ بِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رُبَيْعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عُبَيْدُ اللَّهِ بْنُ سَعِيدٍ عَنْ يَحْيَى هُوَ الْقَطَّانِ - عَنْ هِشَامٍ هُوَ الدَّسْتُوَائِيُّ - ثنا قَتَادَةُ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا كَانُوا ثَلَاثَةً فَلْيَؤُمَّهُمْ أَحَدُهُمْ، وَأَحَقُّهُمْ بِالْإِمَامَةِ أَقْرَؤُهُمْ» . وَهَذَا خَبَرٌ صَحِيحٌ

L8407 However, they have no proof for that, because the Messenger of Allah—peace be upon him—did not say: "There is no congregational prayer or Friday prayer with fewer than three people?"

، إِلَّا أَنَّهُ لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقُلْ: إِنَّهُ لَا تَكُونُ جَمَاعَةٌ وَلَا جُمُعَةٌ بِأَقَلَّ مِنْ ثَلَاثَةٍ؟

L8408–8409 As for our evidence, it is what we previously mentioned from the narration of Mālik ibn al-Ḥuwayrith that the Messenger of Allah—peace be upon him—said to him: "When you two travel, give the call to prayer and establish it, and let the oldest of you two lead the prayer." Thus, the Prophet—peace be upon him—established for two individuals the ruling of congregational prayer in prayer. If someone were to say: "When two people have no third with them, the ruling for the imam is that the congregant stands to the right of the

وَأَمَّا حُجَّتُنَا فَهِيَ مَا قَدْ ذَكَرْنَاهُ قَبْلُ مِنْ حَدِيثِ مَالِكِ بْنِ الْحُوَيْرِثِ أَنَّ رَسُولَ اللَّهِ: قَالَ لَهُ: «إِذَا سَافَرْتُمَا فَأَذِّنَا وَأَقِيمَا، وَلْيَؤُمَّكُمَا أَكْبَرُكُمَا» فَجَعَلَ - عَلَيْهِ السَّلَامُ - لِلِاثْنَيْنِ حُكْمَ الْجَمَاعَةِ فِي الصَّلَاةِ؟ فَإِنْ قَالَ قَائِلٌ: إِنَّ الِاثْنَيْنِ إِذَا لَمْ يَكُنْ لَهُمَا ثَالِثٌ فَإِنَّ حُكْمَ الْإِمَامِ أَنْ يَقِفَ الْمَأْمُومُ عَلَى يَمِينِ الْإِمَامِ، فَإِذَا كَانُوا ثَلَاثَةً فَقَدْ قِيلَ: يَقِفَانِ عَنْ يَمِينِ الْإِمَامِ وَيَسَارِهِ؟ وَقَدْ قِيلَ: بَلْ خَلْفَ الْإِمَامِ، وَلَمْ يَخْتَلِفُوا فِي الْأَرْبَعَةِ: أَنَّ الثَّلَاثَةَ يَقِفُونَ خَلْفَ

[21] **Hadith references (L8406):** Sunan an-Nasai 840; Sahih Muslim 672a; Sunan an-Nasai 782.

imam. If they are three, it is said: 'The two stand to the right and left of the imam,'" and it has been said: "Rather, behind the imam," while there is no disagreement regarding four: that the three stand behind the imam—so we found the ruling for four differs from that of two? We respond: What follows from this? Yes, it is as you say regarding the positions of standing, except that the obligation of congregational prayer applies to them both by your own admission. The ruling concerning the difference in the congregant's position provides no evidence at all regarding the ruling of the Friday prayer. Allah the Exalted has decreed on the tongue of His Messenger—peace and blessings be upon him—that the Friday prayer consists of two rakʿahs.

الْإِمَامِ، فَوَجَدْنَا حُكْمَ الْأَرْبَعَةِ غَيْرَ حُكْمِ الِاثْنَيْنِ؟ قُلْنَا: فَكَانَ مَاذَا؟ نَعَمْ، هُوَ كَمَا تَقُولُونَ: فِي مَوَاضِعِ الْوُقُوفِ، إِلَّا أَنَّ حُكْمَ الْجَمَاعَةِ وَاجِبٌ لَهُمَا بِإِقْرَارِكُمْ، وَلَيْسَ فِي حُكْمِ اخْتِلَافِ مَوْقِفِ الْمَأْمُومِ دَلِيلٌ عَلَى حُكْمِ الْجُمُعَةِ أَصْلًا؟ وَقَدْ حَكَمَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ صَلَاةَ الْجُمُعَةِ رَكْعَتَانِ.

L8410 The Almighty, Glorified and Exalted, said: _"O you who have believed, when the call is made for the prayer on the day of Jumu'ah, hasten to the remembrance of Allah and abandon trade"_ [Al-Jumu'ah 9]. Therefore, it is impermissible for anyone to deviate from this command and ruling except one for whom there exists a clear text or an indisputable consensus affirming his exemption from it. This applies solely to the individual alone—and success is attained only through Allah, the Exalted.[22]

وَقَالَ عَزَّ وَجَلَّ: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ} [الجمعة: ٩] . فَلَا يَجُوزُ أَنْ يَخْرُجَ عَنْ هَذَا الْأَمْرِ وَعَنْ هَذَا الْحُكْمِ أَحَدٌ إِلَّا مَنْ جَاءَ نَصٌّ جَلِيٌّ أَوْ إِجْمَاعٌ مُتَيَقَّنٌ عَلَى خُرُوجِهِ عَنْهُ، وَلَيْسَ ذَلِكَ إِلَّا الْفَذَّ وَحْدَهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L8411 If a person begins the prayer alone with none beside him, then another or more join him—whether they come immediately after his *takbīr* or at any point between that and his bowing in the first *rakʿah*—he must establish it as the Friday prayer and perform two *rakʿahs*. For it has now become the Friday prayer, whose rightful form is to be two *rakʿahs*. He is capable of rendering it two *rakʿahs* by intending it as the Friday prayer, and it is the Dhuhr of his day.

فَإِنْ ابْتَدَأَهَا إِنْسَانٌ وَلَا أَحَدَ مَعَهُ ثُمَّ أَتَاهُ آخَرُ أَوْ أَكْثَرُ، فَسَوَاءٌ أَتَوْهُ إِثْرَ تَكْبِيرِهِ فَمَا بَيْنَ ذَلِكَ إِلَى أَنْ يَرْكَعَ مِنَ الرَّكْعَةِ الْأُولَى -: يَجْعَلُهَا جُمُعَةً وَيُصَلِّيهَا رَكْعَتَيْنِ، لِأَنَّهَا قَدْ صَارَتْ صَلَاةَ جُمُعَةٍ، فَحَقُّهَا أَنْ تَكُونَ رَكْعَتَيْنِ، وَهُوَ قَادِرٌ عَلَى أَنْ يَجْعَلَهَا رَكْعَتَيْنِ بِنِيَّةِ الْجُمُعَةِ، وَهِيَ ظُهْرُ يَوْمِهِ.

L8412 If he arrived after he had bowed, then between that moment until he concludes with the salutation, he must discontinue the prayer and restart it as the Friday prayer consisting of two units. This is necessary because the Friday prayer has become incumbent upon him, and there is no means for him to fulfill what has become incumbent upon him of that except by terminating his current prayer, whose validity has been nullified. And with Allah, the Exalted, lies success.

فَإِنْ جَاءَهُ بَعْدَ أَنْ رَكَعَ فَمَا بَيْنَ ذَلِكَ إِلَى أَنْ يُسَلِّمَ -: فَيَقْطَعُ الصَّلَاةَ وَيَبْتَدِئُهَا صَلَاةَ جُمُعَةٍ، لَا بُدَّ مِنْ ذَلِكَ، لِأَنَّهُ قَدْ لَزِمَتْهُ الْجُمُعَةُ رَكْعَتَيْنِ، وَلَا سَبِيلَ لَهُ إِلَى أَدَاءِ مَا لَزِمَهُ مِنْ ذَلِكَ إِلَّا بِقَطْعِ صَلَاتِهِ الَّتِي قَدْ بَطَلَ حُكْمُهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[22] **Qur'an references (L8410):** Qur'an 62:9 (Al-Jumu'ah).

L8413–8414 **The traveler during his travel, the resident, the slave, and the free person are equally obligated to perform the Friday prayer.**

L8415 Issue: The obligation of Friday prayer is equally incumbent upon the cases we mentioned: the traveler during his journey, the slave, the free person, and the resident. All those we mentioned may lead it as imams, whether a regular [imam] or a non-regular one. Prisoners and those in hiding perform it as two rakʿahs in congregational prayer with a sermon, like all other people. It is performed in every village, whether small or large, regardless of whether governmental authority exists there or not. Is it permissible to conduct Friday prayer in two or more mosques within the same village? Abū Ḥanīfah, Mālik, and al-Shāfiʿī held that Friday prayer is not obligatory for a slave or a traveler.

L8416–8418 Those who imitated them in that matter cited weak narrations as evidence—unreliable ones: one is mursal [disconnected], the second contains Huraym who is unknown, and the third includes al-Ḥakam ibn ʿAmr and Ḍirār ibn ʿAmr, both of whom are unknown. Is it permissible to cite such [narrations] as evidence? Had we wished, we could have countered them with what we narrated via the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: "It reached me that the Messenger of Allah—peace and blessings be upon him—gathered his companions during a journey and delivered a sermon while leaning on a staff." But to Allah belongs all praise—we are sufficiently provided by sound narrations over unsound ones. They argued that "the Messenger of Allah—peace and blessings be upon him—did not recite aloud during the Ẓuhr prayer at ʿArafah, though it was a Friday." ʿAlī said: This is a grave presumption. No one has ever reported that he—peace be upon him—did not recite aloud in it. Whoever asserts this conclusively is lying against Allah the Exalted and His Messenger—peace and blessings be upon him—for pursuing matters beyond his knowledge? ʿAṭāʾ and others said: If the Day of ʿArafah coincides with Friday, should the Imam recite aloud? ʿAlī said: There is no dispute that he—peace be upon him—delivered the sermon and prayed two rakʿahs, which constitute the Jumuʿah prayer. Even if their claim that

[مَسْأَلَةٌ الْمُسَافِرُ وَالْمُقِيمُ وَالْعَبْدُ وَالْحُرُّ سَوَاءٌ فِي وُجُوبِ الْجُمُعَةِ فِي سَفَرِهِ]

مَسْأَلَةٌ: وَسَوَاءٌ فِيمَا ذَكَرْنَا - مِنْ وُجُوبِ الْجُمُعَةِ - الْمُسَافِرُ فِي سَفَرِهِ، وَالْعَبْدُ، وَالْحُرُّ، وَالْمُقِيمُ، وَكُلُّ مَنْ ذَكَرْنَا يَكُونُ إمَامًا فِيهَا، رَاتِبًا وَغَيْرَ رَاتِبٍ، وَيُصَلِّيهَا الْمَسْجُونُونَ، وَالْمُخْتَفُونَ رَكْعَتَيْنِ فِي جَمَاعَةٍ بِخُطْبَةٍ كَسَائِرِ النَّاسِ، وَتُصَلَّى فِي كُلِّ قَرْيَةٍ صَغُرَتْ أَمْ كَبُرَتْ، كَانَ هُنَالِكَ سُلْطَانٌ أَوْ لَمْ يَكُنْ، وَإِنْ صُلِّيَتْ الْجُمُعَةُ فِي مَسْجِدَيْنِ فِي الْقَرْيَةِ فَصَاعِدًا: جَازَ ذَلِكَ؟ وَرَأَى أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: أَنْ لَا جُمُعَةَ عَلَى عَبْدٍ، وَلَا مُسَافِرٍ.

وَاحْتَجَّ لَهُمْ مَنْ قَلَّدَهُمْ فِي ذَلِكَ بِآثَارٍ وَاهِيَةٍ لَا تَصِحُّ: أَحَدُهَا مُرْسَلٌ، وَالثَّانِي فِيهِ هُرَيْمٌ وَهُوَ مَجْهُولٌ وَالثَّالِثُ فِيهِ الْحَكَمُ بْنُ عَمْرٍو، وَضِرَارُ بْنُ عَمْرٍو، وَهُمَا مَجْهُولَانِ وَلَا يَحِلُّ الِاحْتِجَاجُ بِمِثْلِ هَذَا؟ وَلَوْ شِئْنَا لَعَارَضْنَاهُمْ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ «بَلَغَنِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَمَعَ بِأَصْحَابِهِ فِي سَفَرٍ، وَخَطَبَهُمْ يَتَوَكَّأُ عَلَى عَصًا» وَلَكِنَّنَا وَلِلَّهِ الْحَمْدُ فِي غِنًى بِالصَّحِيحِ عَمَّا لَا يَصِحُّ؟ وَاحْتَجُّوا بِأَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَجْهَرْ فِي صَلَاةِ الظُّهْرِ بِعَرَفَةَ، وَكَانَ يَوْمُ جُمُعَةٍ» قَالَ عَلِيٌّ: وَهَذِهِ جُرْأَةٌ عَظِيمَةٌ وَمَا رَوَى قَطُّ أَحَدٌ: أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَجْهَرْ فِيهَا، وَالْقَاطِعُ بِذَلِكَ كَاذِبٌ عَلَى اللَّهِ تَعَالَى وَعَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَفَا مَا لَا عِلْمَ بِهِ؟ وَقَدْ قَالَ عَطَاءٌ وَغَيْرُهُ: إنْ وَافَقَ يَوْمَ عَرَفَةَ يَوْمُ جُمُعَةٍ جَهَرَ الْإِمَامُ؟ قَالَ عَلِيٌّ: وَلَا خِلَافَ فِي أَنَّهُ - عَلَيْهِ السَّلَامُ - خَطَبَ وَصَلَّى رَكْعَتَيْنِ وَهَذِهِ صَلَاةُ

he—peace be upon him—did not recite aloud were valid, it would still lack evidential weight whatsoever. Because audible recitation is not obligatory, whoever recites silently in a prayer requiring audible recitation or audibly in a prayer requiring silent recitation, their prayer remains complete, as we have previously explained. Some of them have resorted to claiming consensus on this matter, yet this is a matter where lying comes easily to those who assert it.

الْجُمُعَةِ، وَحَتَّى لَوْ صَحَّ لَهُمْ أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَجْهَرْ لَمَا كَانَ لَهُمْ فِي ذَلِكَ حُجَّةٌ أَصْلًا، لِأَنَّ الْجَهْرَ لَيْسَ فَرْضًا، وَمَنْ أَسَرَّ فِي صَلَاةِ جَهْرٍ، أَوْ جَهَرَ فِي صَلَاةِ سِرٍّ، فَصَلَاتُهُ تَامَّةٌ، لِمَا قَدْ ذَكَرْنَا قَبْلُ؟ وَلَجَأَ بَعْضُهُمْ إِلَى دَعْوَى الْإِجْمَاعِ عَلَى ذَلِكَ وَهَذَا مَكَانٌ هَانَ فِيهِ الْكَذِبُ عَلَى مُدَّعِيهِ.

L8419 It has been narrated to us from Aḥmad ibn Ḥanbal—may Allah have mercy on him—that he said: "Whoever claims consensus has lied." Muḥammad ibn Saʿīd ibn Nabāt narrated to us, Aḥmad ibn ʿAbd al-Baṣīr narrated to us, Qāsim ibn Aṣbagh narrated to us, Muḥammad ibn Waḍḍāḥ and Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us. Ibn Waḍḍāḥ said: Mūsā ibn Muʿāwiyah narrated to us, Wakīʿ narrated to us. Muḥammad ibn ʿAbd al-Salām al-Khushanī said: Muḥammad ibn al-Muthannā narrated to us, ʿAbd al-Raḥmān ibn Mahdī narrated to us. Then both Wakīʿ and ʿAbd al-Raḥmān concurred—each transmitting from Shuʿbah, from ʿAṭāʾ ibn Abī Maymūnah, from Abū Rāfiʿ, from Abū Hurayrah—that they wrote to ʿUmar ibn al-Khaṭṭāb asking him about the Friday Prayer while they were in Bahrain? He wrote to them: "Perform the Friday Prayer wherever you are." Wakīʿ said: "Indeed, he wrote."

وَرُوِّينَا عَنْ أَحْمَدَ بْنِ حَنْبَلٍ - رَحِمَهُ اللَّهُ - أَنَّهُ قَالَ: مَنْ ادَّعَى الْإِجْمَاعَ كَذَبَ -: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ وَضَّاحٍ، وَمُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ -: قَالَ ابْنُ وَضَّاحٍ: ثنا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعٌ -: وَقَالَ مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ: ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ -: ثُمَّ اتَّفَقَ وَكِيعٌ، وَعَبْدُ الرَّحْمَنِ كِلَاهُمَا عَنْ شُعْبَةَ عَنْ عَطَاءِ بْنِ أَبِي مَيْمُونَةَ عَنْ أَبِي رَافِعٍ عَنْ أَبِي هُرَيْرَةَ: أَنَّهُمْ كَتَبُوا إِلَى عُمَرَ بْنِ الْخَطَّابِ يَسْأَلُونَهُ عَنْ الْجُمُعَةِ وَهُمْ بِالْبَحْرَيْنِ؟ فَكَتَبَ إِلَيْهِمْ: أَنْ جَمِّعُوا حَيْثُمَا كُنْتُمْ؟ وَقَالَ وَكِيعٌ: إِنَّهُ كَتَبَ.

L8420–8422 On the authority of Abū Bakr ibn Abī Shaybah: Abū Khālid al-Aḥmar narrated to us from ʿAbdullāh ibn Yazīd who said: I asked Sa'id ibn al-Musayyib: "Upon whom is the Friday prayer obligatory?" He said: "Whoever hears the adhan."

وَعَنْ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ: ثنا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ قَالَ: سَأَلْت سَعِيدَ بْنَ الْمُسَيِّبِ: عَلَى مَنْ تَجِبُ الْجُمُعَةُ؟ قَالَ: عَلَى مَنْ سَمِعَ النِّدَاءَ

L8423 From Al-Qa'nabi, from Dawud ibn Qays: I heard Amr ibn Shu'ayb, and he was asked, "O Abu Ibrahim, upon whom is the Friday prayer obligatory?" He replied, "Upon whoever hears the call to prayer." Sa'id and Amr applied it generally, stating, "Everyone who hears the call to prayer," and did not exclude slaves or travelers, unlike others besides them.

وَعَنْ الْقَعْنَبِيِّ عَنْ دَاوُد بْنِ قَيْسٍ سَمِعْت عَمْرَو بْنَ شُعَيْبٍ وَقِيلَ لَهُ: يَا أَبَا إبْرَاهِيمَ، عَلَى مَنْ تَجِبُ الْجُمُعَةُ؟ قَالَ: عَلَى مَنْ سَمِعَ النِّدَاءَ فَعَمَّمَ سَعِيدٌ، وَعَمْرٌو: كُلُّ مَنْ سَمِعَ النِّدَاءَ، وَلَمْ يَخُصَّا عَبْدًا، وَلَا مُسَافِرًا، مِنْ غَيْرِهِمَا.

L8424 From Abd al-Razzaq, from Sa'id ibn al-Sa'ib ibn Yasar: Salih ibn Sa'd al-Makki narrated to us that he was with Umar ibn Abd al-Aziz while staying in al-Suwayda during his governorship over al-Hijaz. When Friday arrived, they prepared a seating platform for him on al-Batha. Then the muezzin

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سَعِيدِ بْنِ السَّائِبِ بْنِ يَسَارٍ ثنا صَالِحُ بْنُ سَعْدٍ الْمَكِّيُّ أَنَّهُ كَانَ مَعَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَهُوَ مُتَبَدٍّ بِالسُّوَيْدَاءِ فِي إمَارَتِهِ عَلَى الْحِجَازِ، فَحَضَرَتْ الْجُمُعَةُ، فَهَيَّئُوا لَهُ

performed the adhan for the prayer. Umar ibn Abd al-Aziz came out to them and sat upon that platform. They then performed another adhan, after which he delivered the sermon. The iqama was called, and he led them in two rak'ahs, reciting the Quran aloud in both. He then said to them: "The Imam leads the congregation wherever he is."

مَجْلِسًا مِنْ الْبَطْحَاءِ، ثُمَّ أَذَّنَ الْمُؤَذِّنُ بِالصَّلَاةِ، فَخَرَجَ إِلَيْهِمْ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ، فَجَلَسَ عَلَى ذَلِكَ الْمَجْلِسِ، ثُمَّ أَذَّنُوا أَذَانًا آخَرَ، ثُمَّ خَطَبَهُمْ، ثُمَّ أُقِيمَتْ الصَّلَاةُ، فَصَلَّى بِهِمْ رَكْعَتَيْنِ وَأَعْلَنَ فِيهِمَا بِالْقِرَاءَةِ، ثُمَّ قَالَ لَهُمْ: إِنَّ الْإِمَامَ يَجْمَعُ حَيْثُمَا كَانَ.

L8425 A similar report is narrated from Al-Zuhri. He said: If a traveler is asked about entering a village on Friday and alighting in it, [the answer is]: If he hears the adhān, he should attend the Jumuʿah prayer.

وَعَنْ الزُّهْرِيِّ مِثْلُ ذَلِكَ، وَقَالَ، إِذَا سُئِلَ عَنْ الْمُسَافِرِ يَدْخُلُ قَرْيَةً يَوْمَ الْجُمُعَةِ فَيَنْزِلُ فِيهَا؟ قَالَ: إِذَا سَمِعَ الْأَذَانَ فَلْيَشْهَدْ الْجُمُعَةَ

L8426–8428 From the chain of Ḥammād ibn Salamah, from Abū Makīn, from ʿIkrimah, who said: If seven travelers gather [for prayer], Allah is praised, He is extolled, and a sermon is delivered for Jumuʿah, Eid al-Adha, and Eid al-Fitr. From the chain of Abd al-Razzaq, from Ma'mar, from Qatadah: Any slave who was paying the land tax must attend Friday prayer. If there was no land tax upon him or his master's work prevented him, there is no Friday upon him.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي مَكِينٍ عَنْ عِكْرِمَةَ قَالَ: إِذَا كَانُوا سَبْعَةً فِي سَفَرٍ فَجَمَعُوا - يُحْمَدُ اللَّهُ وَيُثْنَى عَلَيْهِ وَيُخْطَبُ فِي الْجُمُعَةِ، وَالْأَضْحَى وَالْفِطْرِ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ: أَيُّمَا عَبْدٍ كَانَ يُؤَدِّي الْخَرَاجَ فَعَلَيْهِ أَنْ يَشْهَدَ الْجُمُعَةَ، فَإِنْ لَمْ يَكُنْ عَلَيْهِ خَرَاجٌ أَوْ شَغَلَهُ عَمَلُ سَيِّدِهِ فَلَا جُمُعَةَ عَلَيْهِ.

L8429 Ali said: The alleged distinction between a slave subject to _kharaj_ and one who is not is merely a claim without proof. Their lie in the claim of _ijmaʿ_ has indeed become evident.

قَالَ عَلِيٌّ: الْفَرْقُ بَيْنَ عَبْدٍ عَلَيْهِ الْخَرَاجُ، وَبَيْنَ عَبْدٍ لَا خَرَاجَ عَلَيْهِ: دَعْوَى بِلَا بُرْهَانٍ فَقَدْ ظَهَرَ كَذِبُهُمْ فِي دَعْوَى الْإِجْمَاعِ

L8430 They resorted to saying: "It was reported from ʿAlī ibn Abī Ṭālib that Friday prayer is not obligatory for a traveler," and from Anas that "he remained in Nīsābūr for a year or two and would not perform Friday prayer."

فَلَجَئُوا إِلَى أَنْ قَالُوا: رُوِيَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: لَا جُمُعَةَ عَلَى مُسَافِرٍ وَعَنْ أَنَسٍ: أَنَّهُ كَانَ بِنِيسَابُورَ سَنَةً أَوْ سَنَتَيْنِ فَكَانَ لَا يَجْمَعُ.

L8431 And from ʿAbd al-Raḥmān ibn Samurah: that he stayed in Kabul for one or two winters and did not combine prayers.

وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ سَمُرَةَ: أَنَّهُ كَانَ بِكَابُلَ شِتْوَةً أَوْ شِتْوَتَيْنِ فَكَانَ لَا يَجْمَعُ.

L8432 Ali said: We have established three authorities from the assertion of consensus whom you have also contradicted, for ʿAbd al-Raḥmān and Anas—may Allah be pleased with them—did not combine prayers, whereas these people assert: A traveler may combine prayers with the congregation, and it suffices for him.

قَالَ عَلِيٌّ: حَصَلْنَا مِنْ دَعْوَى الْإِجْمَاعِ عَلَى ثَلَاثَةٍ قَدْ خَالَفْتُمُوهُمْ أَيْضًا؛ لِأَنَّ عَبْدَ الرَّحْمَنِ، وَأَنَسًا - رَضِيَ اللَّهُ عَنْهُمَا - كَانَا لَا يَجْمَعَانِ، وَهَؤُلَاءِ يَقُولُونَ: يَجْمَعُ الْمُسَافِرُ مَعَ النَّاسِ وَيُجْزِئُهُ.

L8433 Ali held the opinion to appoint a deputy who would lead the Eid prayer in

the mosque as four rak'ahs for the weak among them, while they themselves did not hold this opinion.

وَرَأَى عَلِيٌّ أَنْ يَسْتَخْلِفَ بِالنَّاسِ مَنْ يُصَلِّي بِضُعَفَائِهِمْ صَلَاةَ الْعِيدِ فِي الْمَسْجِدِ أَرْبَعَ رَكَعَاتٍ، وَهُمْ لَا يَقُولُونَ: بِهَذَا.

L8434 And this is Umar ibn al-Khattab regarding the Friday prayer in general. Ali said, "Allah the Exalted said: {O you who believe, when the call is made for prayer on the day of Friday, hasten to the remembrance of Allah and leave off trade} [Al-Jumu'ah: 9]." Ali said: "This address makes it impermissible to exclude a traveler or a slave without an explicit text from the Messenger of Allah, peace and blessings be upon him. Similarly, concerning the statement of the Messenger of Allah, peace and blessings be upon him, his ruling, and his practice: is the prayer during times of fear one rak'ah? As for a traveler or a slave leading the Friday prayer, Abu Hanifah, Al-Shafi'i, Abu Sulayman, and their companions ruled it permissible, while Malik prohibited it—and this is erroneous."[23]

وَهَذَا عُمَرُ بْنُ الْخَطَّابِ يَرَى الْجُمُعَةَ عُمُومًا قَالَ عَلِيٌّ: قَالَ اللَّهُ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ} [الجمعة: ٩]-: قَالَ عَلِيٌّ: فَهَذَا خِطَابٌ لَا يَجُوزُ أَنْ يَخْرُجَ مِنْهُ مُسَافِرٌ وَلَا عَبْدٌ بِغَيْرِ نَصٍّ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَذَلِكَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحُكْمُهُ وَفِعْلُهُ أَنَّ صَلَاةَ الْخَوْفِ رَكْعَةٌ؟ وَأَمَّا إِمَامَةُ الْمُسَافِرِ، وَالْعَبْدِ فِي الْجُمُعَةِ -: فَإِنَّ أَبَا حَنِيفَةَ، وَالشَّافِعِيَّ، وَأَبَا سُلَيْمَانَ، وَأَصْحَابَهُمْ قَالُوا: يَجُوزُ ذَلِكَ، وَمَنَعَ مَالِكٌ مِنْ ذَلِكَ -: وَهُوَ خَطَأٌ.

L8435–8437 The first point is his statement: "Indeed, if a traveler and a slave attend the Friday prayer, it counts as a Friday prayer for them. What then distinguishes this from permitting their leading of it, given the Prophet's (peace be upon him) saying: 'Let the eldest among you lead you' and 'The most Quranic among them should lead the people'? He (peace be upon him) did not specify Friday prayer as distinct from other prayers, nor a traveler compared to a resident, nor a slave compared to a free resident. No report from any Companion ever indicates prohibiting a slave from leading prayer in Friday and regular prayers. Rather, it is authentically established that a black owned slave of Uthman (may Allah be pleased with him) was appointed as his governor over al-Rabadhah, and Abū Dharr (may Allah be pleased with him) would pray behind him." Others besides him among the Companions upheld Friday prayer and other prayers, since Friday prayer was held in Rabadhah. As for our statement: "Whether there was a political authority present or not"—those present among our opponents concur with us in this except Abu Hanifah, and is this not a long-standing disagreement? We have stated: It is

أَوَّلُ ذَلِكَ - قَوْلُهُ: إِنَّ الْمُسَافِرَ وَالْعَبْدَ إِذَا حَضَرَا الْجُمُعَةَ كَانَتْ لَهُمَا جُمُعَةً فَمَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ جَوَازِ إِمَامَتِهِمَا فِيهَا مَعَ قَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَلْيَؤُمَّكُمْ أَكْبَرُكُمْ» وَ «يَؤُمُّ الْقَوْمَ أَقْرَؤُهُمْ» ؟ فَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - جُمُعَةً مِنْ غَيْرِهَا، وَلَا مُسَافِرًا، وَلَا عَبْدًا مِنْ حُرٍّ مُقِيمٍ، وَلَا جَاءَ قَطُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ مَنْعُ الْعَبْدِ مِنْ الْإِمَامَةِ فِيهِمَا، بَلْ قَدْ صَحَّ أَنَّهُ كَانَ عَبْدٌ لِعُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - أَسْوَدُ مَمْلُوكٌ أَمِيرًا لَهُ عَلَى الرَّبَذَةِ يُصَلِّي خَلْفَهُ أَبُو ذَرٍّ - رَضِيَ اللَّهُ عَنْهُ - وَغَيْرُهُ مِنْ الصَّحَابَةِ الْجُمُعَةَ وَغَيْرَهَا؛ لِأَنَّ الرَّبَذَةَ بِهَا جُمُعَةٌ؟ وَأَمَّا قَوْلُنَا: كَانَ هُنَالِكَ سُلْطَانٌ أَوْ لَمْ يَكُنْ -: فَالْحَاضِرُونَ مِنْ مُخَالِفِينَا مُوَافِقُونَ لَنَا فِي ذَلِكَ إلَّا أَبَا حَنِيفَةَ، وَفِي هَذَا خِلَافٌ قَدِيمٌ؟ وَقَدْ قُلْنَا: لَا يَجُوزُ تَخْصِيصُ عُمُومِ أَمْرِ اللَّهِ تَعَالَى بِالتَّجْمِيعِ بِغَيْرِ نَصٍّ جَلِيٍّ وَلَا فَرْقَ بَيْنَ الْإِمَامِ فِي الْجُمُعَةِ وَالْجَمَاعَةِ فِيهَا وَبَيْنَ الْإِمَامِ فِي سَائِرِ الصَّلَوَاتِ وَالْجَمَاعَةِ فِيهَا، فَمِنْ أَيْنَ وَقَعَ لَهُمْ رَدُّ

[23] **Qur'an references (L8434):** Qur'an 62:9 (Al-Jumu'ah).

impermissible to particularize the generality of Allah's command regarding congregational prayer without an explicit text, and there is no distinction between the Imam leading Friday prayer and its congregation, and the Imam leading other prayers and their congregations. From where then did they derive attributing Friday prayer specifically to the political authority, excluding others? As for our assertion: "Friday prayer is valid in any village, small or large"—it is authentically reported from Ali (may Allah be pleased with him): "There is no Friday prayer nor observance of Tashreeq days except in a central city with a Friday mosque (jāmiʿ)." We have mentioned Umar's divergence from this view and their disagreements with Ali in multiple instances.

الْجُمُعَةِ خَاصَّةً إلَى السُّلْطَانِ دُونَ غَيْرِهَا؟ وَأَمَّا قَوْلُنَا: تُصَلَّى الْجُمُعَةُ فِي أَيِّ قَرْيَةٍ صَغُرَتْ أَمْ كَبُرَتْ -: فَقَدْ صَحَّ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ -: لَا جُمُعَةَ وَلَا تَشْرِيقَ إلَّا فِي مِصْرٍ جَامِعٍ، وَقَدْ ذَكَرْنَا خِلَافَ عُمَرَ لِذَلِكَ، وَخِلَافَهُمْ لِعَلِيٍّ فِي غَيْرِ مَا قِصَّةٍ.

L8438 Malik said: "The Friday prayer is only held in a village with contiguous buildings?" Ali remarked: "This is an unsupported specification, and it is also invalid, for three households constitute a village with contiguous buildings. Otherwise, he would have to specify the minimum number below which the term 'village' does not apply—and this is impossible to determine."

وَقَالَ مَالِكٌ: لَا تَكُونُ الْجُمُعَةُ إلَّا فِي قَرْيَةٍ مُتَّصِلَةِ الْبُنْيَانِ؟ قَالَ عَلِيٌّ: هَذَا تَحْدِيدٌ لَا دَلِيلَ عَلَيْهِ، وَهُوَ أَيْضًا فَاسِدٌ، لِأَنَّ ثَلَاثَةَ دُورٍ قَرْيَةٌ مُتَّصِلَةُ الْبُنْيَانِ، وَإِلَّا فَلَا بُدَّ لَهُ مِنْ تَحْدِيدِ الْعَدَدِ الَّذِي لَا يَقَعُ اسْمُ قَرْيَةٍ عَلَى أَقَلَّ مِنْهُ، وَهَذَا مَا لَا سَبِيلَ إلَيْهِ.

L8439 Some Hanafis said: "If that were the case, would the transmission have been continuous?" It is replied to them: "Yes, it indeed was, until blind adherents severed it by deviating from the truth. We witnessed in the island of *Majorca* that people gathered in its villages, until some blind adherents of Malik severed it, thereby incurring the sin of forbidding Friday prayer."

وَقَالَ بَعْضُ الْحَنَفِيِّينَ: لَوْ كَانَ ذَلِكَ لَكَانَ النَّقْلُ بِهِ مُتَّصِلًا؟ فَيُقَالُ لَهُ: نَعَمْ قَدْ كَانَ ذَلِكَ، حَتَّى قَطَعَهُ الْمُقَلِّدُونَ بِضَلَالِهِمْ عَنْ الْحَقِّ، وَقَدْ شَاهَدْنَا جَزِيرَةَ " مَيُورْقَةَ " يَجْمَعُونَ فِي قُرَاهَا، حَتَّى قَطَعَ ذَلِكَ بَعْضُ الْمُقَلِّدِينَ لِمَالِكٍ، وَبَاءَ بِإِثْمِ النَّهْيِ عَنْ صَلَاةِ الْجُمُعَةِ.

L8440 It has been narrated to us that Ibn ʿUmar would pass by the people of the water sources while they were collecting water, so he did not forbid them from doing so.

وَرُوِّينَا أَنَّ ابْنَ عُمَرَ كَانَ يَمُرُّ عَلَى أَهْلِ الْمِيَاهِ وَهُمْ يَجْمَعُونَ فَلَا يَنْهَاهُمْ عَنْ ذَلِكَ.

L8441–8443 It is reported that ʿUmar ibn ʿAbd al-ʿAzīz ordered those responsible for water sources to gather and ordered the people of every... A village whose inhabitants do not relocate by having an amir appointed over them to unite them. It is said to them: Had your claim been true and correct, it would have come through mutawātir transmission. It would not have been acceptable for Ibn Umar to be ignorant of it, nor his father Umar before him, nor az-Zuhri and others. There is no proof in the statement of anyone apart from the Messenger of Allah (peace be upon him).

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ كَانَ يَأْمُرُ أَهْلَ الْمِيَاهِ أَنْ يَجْمَعُوا، وَيَأْمُرُ أَهْلَ كُلِّ قَرْيَةٍ لَا يَنْتَقِلُونَ بِأَنْ يُؤَمِّرَ عَلَيْهِمْ أَمِيرٌ يَجْمَعُ بِهِمْ؟ وَيُقَالُ لَهُمْ: لَوْ كَانَ قَوْلُكُمْ حَقًّا وَصَوَابًا لَجَاءَ بِهِ النَّقْلُ الْمُتَوَاتِرُ، وَلَمَا جَازَ أَنْ يَجْهَلَهُ ابْنُ عُمَرَ، وَقَبْلَهُ أَبُوهُ عُمَرُ، وَالزُّهْرِيُّ وَغَيْرُهُ، وَلَا حُجَّةَ فِي قَوْلِ قَائِلٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L8444 As for our statement: “Friday prayer is permissible in two or more mosques within a village”—the companions of Abū Ḥanīfah ruled according to Abū Yūsuf’s opinion that Friday prayer is not valid except in one location within the town, unless there are two banks separated by a river, in which case it becomes permissible to hold Friday prayer on each bank.

وَأَمَّا قَوْلُنَا: إِنَّ الْجُمُعَةَ جَائِزَةٌ فِي مَسْجِدَيْنِ فَصَاعِدًا فِي الْقَرْيَةِ -: فَإِنَّ أَصْحَابَ أَبِي حَنِيفَةَ حَكَمُوا عَنْ أَبِي يُوسُفَ: أَنَّهَا لَا تُجْزِئُ الْجُمُعَةُ إِلَّا فِي مَوْضِعٍ وَاحِدٍ مِنَ الْمِصْرِ، إِلَّا أَنْ يَكُونَ جَانِبَانِ بَيْنَهُمَا نَهْرٌ، فَيُجْزِئُ أَنْ يَجْمَعَ فِي كُلِّ جَانِبٍ مِنْهُمَا.

L8445 They narrated from Abū Ḥanīfah, Muḥammad ibn al-Ḥasan, and Abū Yūsuf also that the Friday prayer suffices in two locations within the city but does not suffice in three locations. Both these doctrinal positions are absurd because their absurdity has no end, for they lack corroboration from the Quran, the Sunnah, a Companion’s statement, consensus, or analogical reasoning. They also narrated from Muḥammad ibn al-Ḥasan that the Friday prayer suffices in three locations within the city.

وَرَوَوْا عَنْ أَبِي حَنِيفَةَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَأَبِي يُوسُفَ أَيْضًا: أَنَّ الْجُمُعَةَ تُجْزِئُ فِي مَوْضِعَيْنِ فِي الْمِصْرِ، وَلَا تُجْزِئُ فِي ثَلَاثَةِ مَوَاضِعَ؟ وَكِلَا هَذَيْنِ الْمَذْهَبَيْنِ مِنَ السُّخْفِ حَيْثُ لَا نِهَايَةَ لَهُ لِأَنَّهُ لَا يُعَضِّدُهُمَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا إِجْمَاعٌ وَلَا قِيَاسٌ وَقَدْ رَوَوْا عَنْ مُحَمَّدِ بْنِ الْحَسَنِ: أَنَّهَا تُجْزِئُ فِي ثَلَاثَةِ مَوَاضِعَ مِنَ الْمِصْرِ.

L8446 If they say: “Ali prayed the Eid prayer in the *musalla* and appointed someone as his deputy to lead the prayer for the weak in the mosque, thus there are two locations—can this be called a valid opinion?” We respond to them: Then you should say: Indeed, the Jumuʿah prayer is not valid except in the *musalla*.

فَإِنْ قَالُوا: صَلَّى عَلِيٌّ الْعِيدَ فِي الْمُصَلَّى وَاسْتَخْلَفَ مَنْ صَلَّى بِالضُّعَفَاءِ فِي الْمَسْجِدِ، فَهُمَا مَوْضِعَانِ وَهَذَا لَا يُقَالُ: رَأْيًا؟ قُلْنَا لَهُمْ: فَقُولُوا: إِنَّهُ لَا تُجْزِئُ الْجُمُعَةُ إِلَّا فِي الْمُصَلَّى.

L8447 And in the congregational mosque only; otherwise, you have opposed it, just as you opposed it in this very report, since he - may Allah be pleased with him - ordered the one he appointed as his successor to lead them in the Eid prayer with four units. So you said: “This is irregular.” Then it is said to you: “Rather, the irregularity is what you have permitted, and the established practice is what you have rejected.” Allah the Exalted has not made your opinions a measure for the Ummah nor a standard in His religion. Why did you not say regarding this report, as you say regarding the report of the withheld-milk sheep (musarrah) and others: “This is contrary to the verse,” because Allah the Exalted generalized the obligation of hastening to Friday prayer for all believers? Thus, specifying it would be an inconsistency with the Quran by an irregular, weakly transmitted report which claims this obligation applies only in a town with a congregational mosque?

وَفِي الْجَامِعِ فَقَطْ، وَإِلَّا فَقَدْ خَالَفْتُمُوهُ، كَمَا خَالَفْتُمُوهُ فِي هَذَا الْخَبَرِ نَفْسِهِ، إِذْ أَمَرَ - رَضِيَ اللَّهُ عَنْهُ - الَّذِي اسْتَخْلَفَ أَنْ يُصَلِّيَ بِهِمُ الْعِيدَ أَرْبَعًا -: فَقُلْتُمْ: هَذَا شَاذٌّ فَيُقَالُ لَكُمْ: بَلِ الشَّاذُّ هُوَ الَّذِي أَجَزْتُمْ، وَالْمَعْرُوفُ هُوَ الَّذِي أَنْكَرْتُمْ وَمَا جَعَلَ اللَّهُ تَعَالَى آرَاءَكُمْ قِيَاسًا عَلَى الْأُمَّةِ، وَلَا عِيَارًا فِي دِينِهِ وَهَلَّا قُلْتُمْ، فِي هَذَا الْخَبَرِ كَمَا تَقُولُونَ فِي خَبَرِ الْمُصَرَّاةِ وَغَيْرِهِ: هَذَا اعْتِرَاضٌ عَلَى الْآيَةِ؛ لِأَنَّ اللَّهَ تَعَالَى عَمَّ الَّذِينَ آمَنُوا بِافْتِرَاضِ السَّعْيِ إِلَى الْجُمُعَةِ، فَصَارَ تَخْصِيصُهُ اعْتِرَاضًا عَلَى الْقُرْآنِ بِخَبَرٍ شَاذٍّ غَيْرِ قَوِيِّ النَّقْلِ فِي أَنَّ ذَلِكَ لَا يَجِبُ إِلَّا فِي مِصْرٍ جَامِعٍ؟

L8448 Mālik and al-Shāfiʿī prohibited combining prayers at two separate locations within the city.

وَمَنَعَ مَالِكٌ، وَالشَّافِعِيُّ: مِنَ التَّجْمِيعِ فِي مَوْضِعَيْنِ فِي الْمِصْرِ.

L8449–8451 We have observed the Mālikīs stipulating that the distance between congregational mosques must not be less than three miles—and this is truly astonishing. We do not know where this limitation originated, nor how it entered into their rulings. Could the intellect of one endowed with reason ever be made into a religion? We seek refuge in Allah from being forsaken.

وَرَأَيْنَا الْمُنْتَسِبِينَ إِلَى مَالِكٍ يَحُدُّونَ فِي أَنْ لَا يَكُونَ بَيْنَ الْجَامِعِينَ أَقَلُّ مِنْ ثَلَاثَةِ أَمْيَالٍ وَهَذَا عَجَبٌ عَجِيبٌ، وَلَا نَدْرِي مِنْ أَيْنَ جَاءَ هَذَا التَّحْدِيدُ؟ وَلَا كَيْفَ دَخَلَ فِي عَقْلِ ذِي عَقْلٍ حَتَّى يَجْعَلَهُ دِينًا؟ نَعُوذُ بِاللَّهِ مِنْ الْخِذْلَانِ.

L8452 Allah the Exalted said: {When the call is made for the prayer on the day of Jumu'ah, proceed to the remembrance of Allah and leave off trade. That is best for you} [Al-Jumu'ah: 9]. He, the Mighty and Majestic, did not specify "one location," "two locations," "the lesser," or "the greater." {And your Lord is not forgetful} [Maryam: 64].[24]

قَالَ اللَّهُ تَعَالَى: {إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ ذَلِكُمْ خَيْرٌ لَكُمْ} [الجمعة: ٩] فَلَمْ يَقُلْ عَزَّ وَجَلَّ: فِي مَوْضِعٍ وَلَا مَوْضِعَيْنِ وَلَا أَقَلَّ، وَلَا أَكْثَرَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L8453 "If they say, 'The people of al-ʿAwālī would attend the Friday prayer with the Prophet, peace and blessings be upon him.'"

فَإِنْ قَالُوا: قَدْ كَانَ أَهْلُ الْعَوَالِي يَشْهَدُونَ مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْجُمُعَةَ.

L8454 We said: Yes, and indeed the people of Dhul-Hulayfa used to gather with him (peace be upon him) as well. This was narrated to us through Al-Zuhri's narration, though this is not obligatory according to your view. They used to attend all prayers with him (peace be upon him), yet this does not indicate that the rest of their people did not perform congregational prayers in their mosques. No textual evidence ever stated they refrained from gathering their entire community in their mosques, nor do they ever restrict this? Among the decisive proofs validating our position is that Allah the Exalted only obligated in the Quran the hastening to Friday prayer when its call is made, not before. By necessity, one situated approximately half a mile or two-thirds of a mile away would not catch the prayer at all if departing at the time Allah commanded them to go.

قُلْنَا: نَعَمْ وَقَدْ كَانَ أَهْلُ ذِي الْحُلَيْفَةِ يَجْمَعُونَ مَعَهُ أَيْضًا - عَلَيْهِ السَّلَامُ -، رُوِّينَا ذَلِكَ مِنْ طَرِيقِ الزُّهْرِيِّ، وَلَا يَلْزَمُ هَذَا عِنْدَكُمْ، وَقَدْ كَانُوا يَشْهَدُونَ مَعَهُ - عَلَيْهِ السَّلَامُ - سَائِرَ الصَّلَوَاتِ، وَلَمْ يَكُنْ ذَلِكَ دَلِيلًا عَلَى أَنَّ سَائِرَ قَوْمِهِمْ لَا يُصَلُّونَ الْجَمَاعَاتِ فِي مَسَاجِدِهِمْ، وَلَمْ يَأْتِ قَطُّ نَصٌّ بِأَنَّهُمْ كَانُوا لَا يَجْمَعُونَ سَائِرَ قَوْمِهِمْ فِي مَسَاجِدِهِمْ، وَلَا يَحُدُّونَ هَذَا أَبَدًا؟ وَمِنْ الْبُرْهَانِ الْقَاطِعِ عَلَى صِحَّةِ قَوْلِنَا: أَنَّ اللَّهَ تَعَالَى إنَّمَا افْتَرَضَ فِي الْقُرْآنِ السَّعْيَ إلَى صَلَاةِ الْجُمُعَةِ إذَا نُودِيَ لَهَا، لَا قَبْلَ ذَلِكَ، وَبِالضَّرُورَةِ أَنَّ مَنْ كَانَ عَلَى نَحْوِ نِصْفِ مِيلٍ، أَوْ ثُلُثَيْ مِيلٍ لَا يُدْرِكُ الصَّلَاةَ أَصْلًا إذَا رَاحَ إلَيْهَا فِي الْوَقْتِ الَّذِي أَمَرَهُ اللَّهُ تَعَالَى بِالرَّوَاحِ إلَيْهَا.

L8455 It is necessarily established that every group must have a mosque where they gather when they go to it at the time they were commanded to go, so they may catch the sermon and prayer. Whoever says otherwise has made going obligatory at a time when it is not obligatory, and this is a contradiction and an obligation of what they do not deem obligatory.

فَصَحَّ ضَرُورَةً أَنَّهُ لَا بُدَّ لِكُلِّ طَائِفَةٍ مِنْ مَسْجِدٍ يَجْمَعُونَ فِيهِ إذَا رَاحُوا إلَيْهِ فِي الْوَقْتِ الَّذِي أُمِرُوا بِالرَّوَاحِ إلَيْهِ فِيهِ أَدْرَكُوا الْخُطْبَةَ وَالصَّلَاةَ، وَمَنْ قَالَ غَيْرَ هَذَا فَقَدْ أَوْجَبَ الرَّوَاحَ حِينَ لَيْسَ بِوَاجِبٍ، وَهَذَا تَنَاقُضٌ وَإِيجَابُ مَا لَيْسَ عِنْدَهُمْ وَاجِبًا.

[24] **Qur'an references (L8452):** Qur'an 62:9 (Al-Jumu'ah); Qur'an 19:64 (Maryam).

وَمِنْ أَعْظَمِ الْبُرْهَانِ عَلَيْهِمْ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَتَى الْمَدِينَةَ وَإِنَّمَا هِيَ قُرًى صِغَارٌ مُفَرَّقَةٌ، بَنُو مَالِكِ بْنِ النَّجَّارِ فِي قَرْيَتِهِمْ حَوَالِي دُورِهِمْ أَمْوَالُهُمْ وَنَخْلُهُمْ، وَبَنُو عَدِيِّ بْنِ النَّجَّارِ فِي دَارِهِمْ كَذَلِكَ، وَبَنُو مَازِنِ بْنِ النَّجَّارِ كَذَلِكَ، وَبَنُو سَالِمٍ كَذَلِكَ، وَبَنُو سَاعِدَةَ كَذَلِكَ، وَبَنُو الْحَارِثِ بْنِ الْخَزْرَجِ كَذَلِكَ، وَبَنُو عَمْرِو بْنِ عَوْفٍ كَذَلِكَ، وَبَنُو عَبْدِ الْأَشْهَلِ كَذَلِكَ، وَسَائِرِ بُطُونِ الْأَنْصَارِ كَذَلِكَ، فَبَنَى مَسْجِدَهُ فِي بَنِي مَالِكِ بْنِ النَّجَّارِ، وَجَمَعَ فِيهِ فِي قَرْيَةٍ لَيْسَتْ بِالْكَبِيرَةِ، وَلَا مِصْرَ هُنَالِكَ.

L8456 Among the greatest proofs against them is that when the Messenger of Allah—peace be upon him—came to Medina, it was nothing but small, scattered villages. The Banu Malik ibn al-Najjar were in their village with their properties and palm groves around their dwellings. The same applied to the Banu Adiyy ibn al-Najjar in their dwellings, the Banu Mazin ibn al-Najjar, the Banu Salim, the Banu Sa'idah, the Banu al-Harith ibn al-Khazraj, the Banu Amr ibn Awf, the Banu Abd al-Ashhal, and the rest of the clans of the Ansar. He built his mosque among the Banu Malik ibn al-Najjar and assembled people in it within a village that was neither large nor a city there.

فَبَطَلَ قَوْلُ مَنْ ادَّعَى أَنْ لَا جُمُعَةَ إِلَّا فِي مِصْرٍ، وَهَذَا أَمْرٌ لَا يَجْهَلُهُ أَحَدٌ لَا مُؤْمِنٌ وَلَا كَافِرٌ، بَلْ هُوَ نَقْلُ الْكَوَافِّ مِنْ شَرْقِ الْأَرْضِ إِلَى غَرْبِهَا، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L8457 The claim that there is no Friday prayer except in a major city is invalidated, for this is a matter none are ignorant of—neither believer nor disbeliever. Rather, it is the universal transmission from the east of the earth to its west, and success is from Allah, the Exalted.

وَقَوْلُ عُمَرَ بْنِ الْخَطَّابِ، " حَيْثُمَا كُنْتُمْ " إِبَاحَةٌ لِلتَّجْمِيعِ فِي جَمِيعِ الْمَسَاجِدِ؟ وَرُوِّينَا عَنْ عَمْرِو بْنِ دِينَارٍ أَنَّهُ قَالَ: إِذَا كَانَ الْمَسْجِدُ تُجْمَعُ فِيهِ لِلصَّلَاةِ فَلْتُصَلَّ فِيهِ الْجُمُعَةَ.

L8458–8459 Does the statement of Umar ibn al-Khattab ("Wherever you are") indicate the permissibility of combining prayers in all mosques? We have been narrated from Amr ibn Dinar that he said: If a mosque is designated for prayer gatherings, perform Jumu'ah prayer there.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: قُلْت لِعَطَاءِ بْنِ أَبِي رَبَاحٍ: أَرَأَيْت أَهْلَ الْبَصْرَةِ لَا يَسَعُهُمْ الْمَسْجِدُ الْأَكْبَرُ كَيْفَ يَصْنَعُونَ؟ قَالَ: لِكُلِّ قَوْمٍ مَسْجِدٌ يَجْمَعُونَ فِيهِ ثُمَّ يُجْزِئُ ذَلِكَ عَنْهُمْ.

L8460 And from the narration of Abd al-Razzaq via Ibn Jurayj: I asked Ata ibn Abi Rabah, "What do you think about the people of Basra when the main mosque cannot accommodate them - what do they do?" He replied, "Every community has a mosque where they gather, and that suffices for them."

وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَبِهِ نَأْخُذُ؟

L8461 This is the view of Abū Sulaymān; do we adopt it?

[مَسْأَلَةٌ لَيْسَ لِلسَّيِّدِ مَنْعُ عَبْدِهِ مِنْ حُضُورِ الْجُمُعَةِ]

Issue: The master does not have the right to prevent his slave from attending the Friday congregational prayer (Jumu'ah).

٥٢٤ - مَسْأَلَةٌ: وَلَيْسَ لِلسَّيِّدِ مَنْعُ عَبْدِهِ مِنْ حُضُورِ الْجُمُعَةِ، لِأَنَّهُ إذْ قَدْ ثَبَتَ أَنَّهُ مَدْعُوٌّ إلَيْهَا فَسَعْيُهُ إلَيْهَا فَرْضٌ، كَمَا أَنَّ الصَّلَاةَ فَرْضٌ وَلَا فَرْقَ.

L8463 Issue 524: A master may not prevent his slave from attending the Friday prayer, because it is established that the slave is summoned to it, making

his effort to attend obligatory - just as prayer itself is obligatory, with no difference.

L8464 It is not permissible for him to prevent [her] from any of her obligatory acts. Allah, the Exalted, said: "Behold! The curse of Allah is upon the wrongdoers [Hud: 18] who hinder [others] from the path of Allah" [Hud: 19].[25]

L8465 The Messenger of Allah—peace and blessings be upon him—said: "There is no obedience [to anyone] in sin; obedience is only [owed] in what is right."

L8466 **Issue: There is no obligation of Friday prayer upon one excused due to illness.**

L8467 525 - Issue: Friday prayer is not obligatory upon someone excused due to illness or other valid reasons, nor upon women. If those who are excused or women attend, they should pray it as two rak'ahs.

L8468 The Friday prayer, like all other prayers, is obligatory upon those obligated to perform other congregational prayers. Valid excuses that nullify the obligation are the same as those nullifying obligations for other prayers, with no distinction. If a person with a valid excuse attends it, the excuse is invalidated, thereby making them one of those required to perform it. It is two units, as the Messenger of Allah (peace be upon him) stated. Even if a man with a valid excuse prays it alongside his wife, he prays two units. Similarly, if women pray it in congregation, they pray two units.

L8469 **A Question Regarding Attendance at Jumuʿah Prayer.**

L8470 526 - Issue: Attendance at the Friday congregational prayer (Ṣalāt al-Jumuʿah) is obligatory for one who resides within such a distance that if the sun declines from its zenith and he has performed ablution beforehand, he enters the road immediately after the sun begins to decline and walks at a normal pace, thereby arriving in time to catch even the Salām - whether

[25] **Qur'an references (L8464):** Qur'an 11:18 (Hud); Qur'an 7:45 (Al-A'raf); Qur'an 11:19 (Hud).

وَلَا يَحِلُّ لَهُ مَنْعُهُ مِنْ شَيْءٍ مِنْ فَرَائِضِهِ، قَالَ تَعَالَى: {أَلا لَعْنَةُ اللَّهِ عَلَى الظَّالِمِينَ} [هود: ١٨] {الَّذِينَ يَصُدُّونَ عَنْ سَبِيلِ اللَّهِ} [هود: ١٩] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا طَاعَةَ فِي مَعْصِيَةٍ إِنَّمَا الطَّاعَةُ فِي الطَّاعَةِ» .

[مَسْأَلَةٌ لَا جُمُعَةَ عَلَى مَعْذُورٍ بِمَرَضٍ]

٥٢٥ - مَسْأَلَةٌ: وَلَا جُمُعَةَ عَلَى مَعْذُورٍ بِمَرَضٍ، أَوْ غَيْرِ ذَلِكَ مِنْ الْأَعْذَارِ، وَلَا عَلَى النِّسَاءِ، فَإِنْ حَضَرَ هَؤُلَاءِ صَلُّوهَا رَكْعَتَيْنِ.

لِأَنَّ الْجُمُعَةَ كَسَائِرِ الصَّلَوَاتِ تَجِبُ عَلَى مَنْ وَجَبَتْ عَلَيْهِ سَائِرُ الصَّلَوَاتِ فِي الْجَمَاعَاتِ - وَيُسْقِطُ الْإِجَابَةَ مِنْ الْأَعْذَارِ مَا يُسْقِطُ الْإِجَابَةَ إلَى غَيْرِهَا وَلَا فَرْقَ فَإِنْ حَضَرَهَا الْمَعْذُورُ فَقَدْ سَقَطَ الْعُذْرُ، فَصَارَ مِنْ أَهْلِهَا وَهِيَ رَكْعَتَانِ كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَوْ صَلَّاهَا الرَّجُلُ الْمَعْذُورُ بِامْرَأَتِهِ صَلَّاهَا رَكْعَتَيْنِ، وَكَذَلِكَ لَوْ صَلَّاهَا النِّسَاءُ فِي جَمَاعَةٍ.

[مَسْأَلَةُ الْمَجِيءُ إلَى الْجُمُعَةِ]

٥٢٦ - مَسْأَلَةٌ: وَيَلْزَمُ الْمَجِيءُ إلَى الْجُمُعَةِ مَنْ كَانَ مِنْهَا بِحَيْثُ إذَا زَالَتْ الشَّمْسُ وَقَدْ تَوَضَّأَ قَبْلَ ذَلِكَ دَخَلَ الطَّرِيقَ إثْرَ أَوَّلِ الزَّوَالِ وَمَشَى مُتَرَسِّلًا وَيُدْرِكُ مِنْهَا وَلَوْ السَّلَامَ، سَوَاءٌ سَمِعَ النِّدَاءَ أَوْ لَمْ يَسْمَعْ، فَمَنْ كَانَ بِحَيْثُ إنْ فَعَلَ مَا ذَكَرْنَا لَمْ يُدْرِكْ مِنْهَا وَلَا السَّلَامَ لَمْ يَلْزَمْهُ الْمَجِيءُ إلَيْهَا، سَمِعَ النِّدَاءَ أَوْ لَمْ يَسْمَعْ، وَهُوَ قَوْلُ رَبِيعَةَ.

he heard the call to prayer or not. As for one who resides at such a distance that even if he acts as we have described, he would not reach any part of the prayer, not even the Salām, then it is not incumbent upon him to attend - whether he heard the call or not. This is the opinion of Rabīʿah.

وَالْعُذْرُ فِي التَّخَلُّفِ عَنْهَا كَالْعُذْرِ فِي التَّخَلُّفِ عَنْ سَائِرِ صَلَوَاتِ الْفَرْضِ، كَمَا ذَكَرْنَا قَبْلُ، وَاخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا عَنِ ابْنِ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى: أَنَّ مُعَاوِيَةَ كَانَ يَأْمُرُ عَلَى الْمِنْبَرِ فِي خُطْبَتِهِ أَهْلَ فَاءَيْنِ فَمَنْ دُونَهَا بِحُضُورِ الْجُمُعَةِ، وَهُمْ عَلَى أَرْبَعَةٍ وَعِشْرِينَ مِيلًا مِنْ دِمَشْقَ.

L8471–8473 The excuse for missing the Friday prayer is the same as the excuse for missing the rest of the obligatory prayers, as previously stated. Previously, people differed regarding this matter. We have received reports from Ibn Jurayj via Sulaymān ibn Mūsā that Muʿāwiyah, during his sermon from the pulpit, would command those within two *faʾ*s to attend the Friday prayer—and they were twenty-four miles from Damascus.

وَعَنْ مُعَاذِ بْنِ جَبَلٍ: أَنَّهُ كَانَ يَأْمُرُ مَنْ كَانَ عَلَى خَمْسَةَ عَشَرَ مِيلًا بِحُضُورِ الْجُمُعَةِ، وَعَنِ الزُّهْرِيِّ وَقَتَادَةَ: تَجِبُ الْجُمُعَةُ عَلَى كُلِّ مَنْ كَانَ مِنَ الْجَامِعِ بِمِقْدَارِ ذِي الْحُلَيْفَةِ مِنَ الْمَدِينَةِ، وَقَالَ إِبْرَاهِيمُ النَّخَعِيُّ: تُؤْتَى الْجُمُعَةُ مِنْ فَرْسَخَيْنِ وَعَنْ أَبِي هُرَيْرَةَ، وَأَنَسٍ، وَابْنِ عُمَرَ، وَنَافِعٍ، وَعِكْرِمَةَ، وَالْحَكَمِ، وَعَطَاءٍ، وَعَنِ الْحَسَنِ، وَقَتَادَةَ، وَأَبِي ثَوْرٍ: تُؤْتَى الْجُمُعَةُ مِنْ حَيْثُ إِذَا صَلَّاهَا ثُمَّ خَرَجَ أَدْرَكَهُ اللَّيْلُ فِي مَنْزِلِهِ، وَهُوَ قَوْلُ الْأَوْزَاعِيِّ.

L8474 From Mu’adh ibn Jabal: He would command those within fifteen miles to attend Friday prayer. From al-Zuhri and Qatadah: Friday prayer is obligatory for everyone within a distance from the mosque equal to that of Dhul-Hulaifah from Medina. Ibrahim al-Nakha’i said: Friday prayer is to be attended from two parasangs. From Abu Hurairah, Anas, Ibn Umar, Nafi’, Ikrimah, al-Hakam, and ’Ata’; and from al-Hasan, Qatadah, and Abu Thawr: Friday prayer is to be attended from a distance such that if one prays it and departs, nightfall would overtake him at his home. This is the opinion of al-Awza’i.

وَرُوِيَ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ، وَعَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، وَعَمْرِو بْنِ شُعَيْبٍ: تَجِبُ الْجُمُعَةُ عَلَى مَنْ سَمِعَ النِّدَاءَ، وَأَنَّ عَبْدَ اللَّهِ بْنَ عَمْرٍو كَانَ يَكُونُ مِنَ الطَّائِفِ عَلَى ثَلَاثَةِ أَمْيَالٍ فَلَا يَأْتِي الْجُمُعَةَ.

L8475 It has been narrated from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ, from Saʿīd ibn al-Musayyib, and from ʿAmr ibn Shuʿayb that the Friday prayer is obligatory upon whoever hears the call to prayer, and that ʿAbdullāh ibn ʿAmr would be three miles from Ṭāʾif, so he would not attend the Friday prayer.

وَبِهِ يَقُولُ أَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ.

L8476 And by this, Aḥmad ibn Ḥanbal and Isḥāq ibn Rāhawayh hold this view.

وَعَنِ ابْنِ الْمُنْكَدِرِ: تُؤْتَى الْجُمُعَةُ عَلَى أَرْبَعَةِ أَمْيَالٍ؟ وَقَالَ مَالِكٌ، وَاللَّيْثُ: تَجِبُ الْجُمُعَةُ عَلَى مَنْ كَانَ مِنَ الْمِصْرِ عَلَى ثَلَاثَةِ أَمْيَالٍ، وَلَا تَجِبُ عَلَى مَنْ كَانَ عَلَى أَكْثَرَ مِنْ ذَلِكَ؟ وَقَالَ الشَّافِعِيُّ: تَجِبُ عَلَى أَهْلِ الْمِصْرِ وَإِنْ عَظُمَ، وَأَمَّا مَنْ كَانَ خَارِجَ الْمِصْرِ، فَمَنْ كَانَ

L8477 From Ibn al-Munkadir: “Is Friday prayer to be attended within four miles?” Malik and al-Layth said: “Friday prayer is obligatory upon whoever is from the town within three miles, and it is not obligatory upon whoever is beyond that distance.” Al-Shāfiʿī said: “It is obligatory upon the residents of the town even if it is large. As for those outside the town, whoever is within

hearing range of the call to prayer must respond, while whoever is beyond hearing range is not obligated to attend Friday prayer." Abū Ḥanīfa and his companions said: "Friday prayer is binding upon all residents of the town—whether they hear the call or not—and it does not bind those outside the town, whether they hear the call or not."

بِحَيْثُ يَسْمَعُ النِّدَاءَ فَعَلَيْهِ أَنْ يُجِيبَ وَمَنْ كَانَ بِحَيْثُ لَا يَسْمَعُ النِّدَاءَ لَمْ تَلْزَمْهُ الْجُمُعَةُ؟ وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: تَلْزَمُ الْجُمُعَةُ جَمِيعَ أَهْلِ الْمِصْرِ - سَمِعُوا النِّدَاءَ أَوْ لَمْ يَسْمَعُوا - وَلَا تَلْزَمُ مَنْ كَانَ خَارِجَ الْمِصْرِ، سَمِعَ النِّدَاءَ أَوْ لَمْ يَسْمَعْ؟

L8478–8479 Ali said: None of these assertions have any valid evidence—neither from the Quran, nor from a Sunnah (whether sound or weak), nor from an un-opposed statement of a Companion, nor from *Ijmaʿ* (consensus), nor from *Qiyas* (analogical reasoning), let alone the statement of Abū Ḥanīfah and his companions.

قَالَ عَلِيٌّ: كُلُّ هَذِهِ الْأَقْوَالِ لَا حُجَّةَ لِقَائِلِهَا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ لَا مُخَالِفَ لَهُ، وَلَا إجْمَاعٍ، وَلَا قِيَاسٍ لَا سِيَّمَا قَوْلُ أَبِي حَنِيفَةَ وَأَصْحَابِهِ.

L8480 If it is argued that this distance is limited to three miles based on the fact that the inhabitants of al-ʿAwālī used to perform Jumuʿah prayer with the Messenger of Allah (peace be upon him), we respond: It has been narrated that the people of Dhū al-Ḥulayfah—which lies beyond three miles—attended Jumuʿah prayer with him (peace be upon him). This provides no evidence that he (peace be upon him) imposed this as an obligation upon them. Rather, it has been reported that they were permitted not to pray it with him.

فَإِنْ تَعَلَّقَ مِنْ يَحُدُّ ذَلِكَ بِثَلَاثَةِ أَمْيَالٍ بِأَنَّ أَهْلَ الْعَوَالِي كَانُوا يُجَمِّعُونَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ قُلْنَا: وَقَدْ رُوِيَ أَنَّ أَهْلَ ذِي الْحُلَيْفَةِ كَانُوا يُجَمِّعُونَ مَعَهُ - عَلَيْهِ السَّلَامُ -، وَهِيَ عَلَى أَكْثَرَ مِنْ ثَلَاثَةِ أَمْيَالٍ، وَلَيْسَ فِي ذَلِكَ دَلِيلٌ عَلَى أَنَّهُ - عَلَيْهِ السَّلَامُ - أَوْجَبَ ذَلِكَ عَلَيْهِمْ فَرْضًا، بَلْ قَدْ رُوِيَ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَذِنَ لَهُمْ فِي أَنْ لَا يُصَلُّوهَا مَعَهُ.

L8481 This has been authentically reported from Uthmān—may Allah be pleased with him—as narrated through the chain of Mālik from al-Zuhrī from Abū ʿUbayd, the client of Ibn Azhar, who said: "I attended Eid with Uthmān ibn ʿAffān. He prayed, then delivered the sermon and said: 'Two Eids have coincided for you on this day. Whoever among the people of Al-ʿĀliyah wishes to wait for Friday prayer, let him wait. Whoever wishes to return, let him return—for I have permitted him.'" ʿAlī remarked: "Had he considered this an obligation upon them, he would not have permitted them to abandon it."

وَقَدْ صَحَّ ذَلِكَ عَنْ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي عُبَيْدٍ مَوْلَى ابْنِ أَزْهَرَ قَالَ: شَهِدْت الْعِيدَ مَعَ عُثْمَانَ بْنِ عَفَّانَ فَصَلَّى ثُمَّ خَطَبَ فَقَالَ: إنَّهُ قَدْ اجْتَمَعَ لَكُمْ فِي يَوْمِكُمْ هَذَا عِيدَانِ، فَمَنْ أَحَبَّ مِنْ أَهْلِ الْعَالِيَةِ أَنْ يَنْتَظِرَ الْجُمُعَةَ فَلْيَنْتَظِرْهَا، وَمَنْ أَحَبَّ أَنْ يَرْجِعَ فَلْيَرْجِعْ، فَقَدْ أَذِنْت لَهُ؟ قَالَ عَلِيٌّ: لَوْ كَانَ ذَلِكَ عِنْدَهُ فَرْضًا عَلَيْهِمْ لَمَا أَذِنَ لَهُمْ فِي تَرْكِهَا.

L8482–8484 As for those who say it is obligatory upon whoever hears the call - the call may indeed not be heard due to the faintness of the muezzin's voice, the wind carrying it to another direction, or an elevated barrier rising between him and one who is extremely close. Yet it may be heard across many miles when the muezzin is in a minaret, the village lies on a mountain, the muezzin is

وَأَمَّا مَنْ قَالَ: تَجِبُ عَلَى مَنْ سَمِعَ النِّدَاءَ -: فَإِنَّ النِّدَاءَ قَدْ لَا يَسْمَعُهُ لِخَفَاءِ صَوْتِ الْمُؤَذِّنِ - أَوْ لِحَمْلِ الرِّيحِ لَهُ إلَى جِهَةٍ أُخْرَى، أَوْ لِحَوَالَةِ رَابِيَةٍ مِنْ الْأَرْضِ دُونَهُ مَنْ كَانَ

strong-voiced, and the wind carries his sound. We necessarily know that the Messenger of Allah's statement - peace and blessings be upon him: "Do you hear the call?" He said: "Yes." He said: "Respond" - refers to commanding him to answer only for the prayer to which he is called, not one who is certain he will not catch any part of it. This is something known with certainty, and this clarifies his report—peace be upon him—that he was on the verge of burning the homes of those who stayed away from congregational prayer without an excuse.

قَرِيبًا جِدًّا، وَقَدْ يَسْمَعُ عَلَى أَمْيَالٍ كَثِيرَةٍ إِذَا كَانَ الْمُؤَذِّنُ فِي الْمَنَارِ وَالْقَرْيَةُ فِي جَبَلٍ، وَالْمُؤَذِّنُ صَيِّتًا وَالرِّيحُ تَحْمِلُ صَوْتَهُ؟ وَبِالضَّرُورَةِ نَدْرِي أَنَّ «قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَتَسْمَعُ النِّدَاءَ؟ قَالَ: نَعَمْ، قَالَ: أَجِبْ» أَنَّهُ إِنَّمَا أَمَرَهُ بِالْإِجَابَةِ لِحُضُورِ الصَّلَاةِ الْمَدْعُوِّ إِلَيْهَا، لَا مَنْ يُوقِنُ أَنَّهُ لَا يُدْرِكُ مِنْهَا شَيْئًا، هَذَا مَعْلُومٌ يَقِينًا وَيُبَيِّنُ ذَلِكَ إخْبَارُهُ - عَلَيْهِ السَّلَامُ - بِأَنَّهُ يَهُمُّ بِإِحْرَاقِ مَنَازِلِ الْمُتَخَلِّفِينَ عَنْ الصَّلَاةِ فِي الْجَمَاعَةِ لِغَيْرِ عُذْرٍ.

L8485 Since they have differed in this manner, the authority to which one must refer is what Allah has obligated in the Quran and Sunnah: We find that Allah, the Exalted, has said: {O you who believe, when the call is made for prayer on Friday, hasten to the remembrance of Allah and abandon trade} [al-Jumuʿah: 9].[26]

فَإِذْ قَدْ اخْتَلَفُوا هَذَا الِاخْتِلَافَ فَالْمَرْجُوعُ إلَيْهِ مَا افْتَرَضَ اللَّهُ الرُّجُوعَ إلَيْهِ مِنْ الْقُرْآنِ وَالسُّنَّةِ؟ -: فَوَجَدْنَا اللَّهَ تَعَالَى قَدْ قَالَ: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ} [الجمعة: ٩] .

L8486 Allah the Exalted obligated proceeding to it [the prayer] when the call to commence it is made, not before that. He did not stipulate [the obligation] for those who heard the call versus those who did not hear it. The call to commence it occurs only when the sun has passed its zenith. Whoever commands people to depart before that as an obligation has thus obligated what Allah the Exalted did not prescribe in the Verse, nor did His Messenger (peace and blessings be upon him).

فَافْتَرَضَ اللَّهُ تَعَالَى السَّعْيَ إلَيْهَا إذَا نُودِيَ لَهَا، لَا قَبْلَ ذَلِكَ، وَلَمْ يَشْتَرِطْ تَعَالَى مَنْ سَمِعَ النِّدَاءَ مِمَّنْ لَمْ يَسْمَعْهُ، وَالنِّدَاءُ لَهَا إنَّمَا هُوَ إذَا زَالَتْ الشَّمْسُ، فَمَنْ أَمَرَ بِالرَّوَاحِ قَبْلَ ذَلِكَ فَرْضًا فَقَدْ افْتَرَضَ مَا لَمْ يَفْتَرِضْهُ اللَّهُ تَعَالَى فِي الْآيَةِ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L8487 It is conclusively established that He, the Exalted, commanded going to it [the prayer] after the sun's zenith, not before. Thus, it is confirmed that before that time, it is a virtuous act, not an obligation—like one who sacrificed a camel, a cow, a ram, or what has been mentioned alongside them. It is confirmed that the Prophet's instruction—may Allah's blessings and peace be upon him—is for whoever walks to the prayer with calmness and dignity, and that the hastening mentioned in the Quran refers to walking, not running.

فَصَحَّ يَقِينًا أَنَّهُ تَعَالَى أَمَرَ بِالرَّوَاحِ إلَيْهَا إثْرَ زَوَالِ الشَّمْسِ، لَا قَبْلَ ذَلِكَ، فَصَحَّ أَنَّهُ قَبْلَ ذَلِكَ فَضِيلَةٌ لَا فَرِيضَةٌ، كَمَنْ قَرَّبَ بَدَنَةً، أَوْ بَقَرَةً، أَوْ كَبْشًا، أَوْ مَا ذُكِرَ مَعَهَا وَقَدْ صَحَّ أَمْرُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ مَشَى إلَى الصَّلَاةِ بِالسَّكِينَةِ وَالْوَقَارِ، وَالسَّعْيِ الْمَذْكُورِ فِي الْقُرْآنِ إنَّمَا هُوَ الْمَشْيُ لَا الْجَرْيُ.

L8488 It has been authentically established that the enjoined striving is solely to

[26] **Qur'an references (L8485):** Qur'an 62:9 (Al-Jumu'ah).

catch the prayer in its time, not for exertion that does not result in catching it. The Prophet (peace be upon him) said: “Pray what you catch, and make up what you miss.”

L8489 Thus, our statement is correct with unwavering certainty—and divine enablement is by Allah, the Most High.

L8490 **Issue: The Imam begins the khutbah on the day of Jumu‘ah after the adhan has concluded.**

L8491 527 – Issue: After the call to prayer and its completion, does the Imam commence with the sermon, delivering two sermons while standing and sitting between them for a sitting? The sermon is not obligatory. If an Imam leads the prayer without delivering a sermon, he must perform two rak’ahs recited aloud without fail.

L8492–8494 We recommend that he deliver both sermons from the highest point of the pulpit, facing the people directly, praising Allah the Exalted, sending blessings upon His Messenger (peace and blessings be upon him), reminding them of the Hereafter, and instructing them in what is incumbent upon them in their religion. Whatever he delivers that qualifies as a sermon has sufficed him, even if he were to deliver a sermon with a chapter of the Quran that he recites, for that is commendable. If he did not greet the people upon entering, he should greet them when standing on the pulpit. It has been reported to us from Abu Bakr and Umar that they used to greet when seated on the pulpit. Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Ahmad ibn Al-Hajjaj narrated to us, Abu Kamil Al-Jaḥdarī narrated to us, Khalid ibn Al-Harith narrated to us, Ubaydullah ibn Umar narrated to us from Nafi’ from Ibn Umar, who said: “Allah’s Messenger - peace be upon him - would deliver the Friday sermon standing, then sit, then stand again, as people do today.”

L8495 It has been narrated to us from ‘Uthmān and Mu‘āwiyah that they both delivered sermons while seated together.

L8496 Abū Muḥammad said: Allāh the Exalted stated: “There has certainly been

وَقَدْ صَحَّ أَنَّ السَّعْيَ الْمَأْمُورَ بِهِ إنَّمَا هُوَ لِإِدْرَاكِ الصَّلَاةِ لَا لِلْعَنَاءِ دُونَ إدْرَاكِهَا، وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «فَمَا أَدْرَكْتُمْ فَصَلُّوا وَمَا فَاتَكُمْ فَأَتِمُّوا» .

فَصَحَّ قَوْلُنَا بِيَقِينٍ لَا مِرْيَةَ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ يَبْتَدِئُ الْإِمَامُ بَعْدَ الْأَذَانِ وَتَمَامِهِ بِالْخُطْبَةِ يَوْمَ الْجُمُعَةِ]

٥٢٧ - مَسْأَلَةٌ: وَيَبْتَدِئُ الْإِمَامُ - بَعْدَ الْأَذَانِ وَتَمَامِهِ - بِالْخُطْبَةِ فَيَخْطُبُ وَاقِفًا خُطْبَتَيْنِ يَجْلِسُ بَيْنَهُمَا جِلْسَةً؟ وَلَيْسَتْ الْخُطْبَةُ فَرْضًا، فَلَوْ صَلَّاهَا إمَامٌ دُونَ خُطْبَةٍ صَلَّاهَا رَكْعَتَيْنِ جَهْرًا وَلَا بُدَّ

وَنَسْتَحِبُّ لَهُ أَنْ يَخْطُبَهُمَا عَلَى أَعْلَى الْمِنْبَرِ مُقْبِلًا عَلَى النَّاسِ بِوَجْهِهِ، يَحْمَدُ اللَّهَ تَعَالَى، وَيُصَلِّي عَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَيُذَكِّرُ النَّاسَ بِالْآخِرَةِ، وَيَأْمُرُهُمْ بِمَا يَلْزَمُهُمْ فِي دِينِهِمْ؟ وَمَا خَطَبَ بِهِ مِمَّا يَقَعُ عَلَيْهِ اسْمُ خُطْبَةٍ أَجْزَأَهُ، وَلَوْ خَطَبَ بِسُورَةٍ يَقْرَؤُهَا: فَحَسَنٌ فَإِنْ كَانَ لَمْ يُسَلِّمْ عَلَى النَّاسِ إذْ دَخَلَ - فَلْيُسَلِّمْ عَلَيْهِمْ إذَا قَامَ عَلَى الْمِنْبَرِ؟ رُوِّينَا عَنْ أَبِي بَكْرٍ، وَعُمَرَ: أَنَّهُمَا كَانَا يُسَلِّمَانِ إذَا قَعَدَا عَلَى الْمِنْبَرِ؟ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا أَحْمَدُ بْنُ الْحَجَّاجِ ثنا أَبُو كَامِلٍ الْجَحْدَرِيُّ ثنا خَالِدُ بْنُ الْحَارِثِ ثنا عُبَيْدُ اللَّهِ هُوَ ابْنُ عُمَرَ - عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَخْطُبُ يَوْمَ الْجُمُعَةِ قَائِمًا ثُمَّ يَجْلِسُ، ثُمَّ يَقُومُ، كَمَا يَفْعَلُونَ الْيَوْمَ» .

وَقَدْ رُوِّينَا عَنْ عُثْمَانَ، وَمُعَاوِيَةَ، أَنَّهُمَا كَانَا يَخْطُبَانِ جَالِسَيْنِ.

for you in the Messenger of Allāh an excellent example" [al-Aḥzāb:21]. Thus, emulation of his actions (peace be upon him) serves as an example for us, but is his action not considered an obligation? As for Abū Ḥanīfah and Mālik, they asserted: The sermon is obligatory, and the Friday prayer is not valid without it. Standing during the sermon is also obligatory. They cited as evidence the practice of the Messenger of Allāh (peace be upon him).[27]

L8497 The two contradicted each other, stating: If he delivers the sermon while sitting, it suffices him; and if he delivers only one sermon, it suffices him; and if he does not deliver a sermon, it does not suffice him. It is authentically established from Jābir that he said: "Whoever claims to you that the Messenger of Allah (peace and blessings be upon him) delivered a sermon while sitting has certainly lied."

L8498 Abu Muhammad said: It is invalid that some of his actions (peace be upon him) are obligatory (farḍ) while others are not.

L8499 Al-Shafi'i said: If he delivers only one sermon, his prayer is invalid.

قَالَ أَبُو مُحَمَّد: قَالَ اللَّهُ تَعَالَى: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] فَإِنَّمَا لَنَا الِائْتِسَاءُ بِفِعْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَيْسَ فِعْلُهُ فَرْضًا؟ فَأَمَّا أَبُو حَنِيفَةَ، وَمَالِكٌ فَقَالَا: الْخُطْبَةُ فَرْضٌ لَا تُجْزِئُ صَلَاةُ الْجُمُعَةِ إلَّا بِهَا، وَالْوُقُوفُ فِي الْخُطْبَةِ فَرْضٌ، وَاحْتَجَّا بِفِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

ثُمَّ تَنَاقَضَا فَقَالَا: إنْ خَطَبَ جَالِسًا أَجْزَأَهُ، وَإِنْ خَطَبَ خُطْبَةً وَاحِدَةً أَجْزَأَهُ، وَإِنْ لَمْ يَخْطُبْ لَمْ يُجْزِهِ، وَقَدْ صَحَّ عَنْ جَابِرٍ أَنَّهُ قَالَ " مَنْ أَخْبَرَك أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَطَبَ جَالِسًا فَقَدْ كَذَبَ ".

قَالَ أَبُو مُحَمَّدٍ: مِنْ الْبَاطِلِ أَنْ يَكُونَ بَعْضُ فِعْلِهِ - عَلَيْهِ السَّلَامُ - فَرْضًا وَبَعْضُهُ غَيْرَ فَرْضٍ.

وَقَالَ الشَّافِعِيُّ: إنْ خَطَبَ خُطْبَةً وَاحِدَةً لَمْ تُجْزِهِ الصَّلَاةُ.

[27] **Qur'an references (L8496):** Qur'an 33:21 (Al-Ahzab).

L8500 He then contradicted himself by permitting Friday prayer for anyone who delivers the sermon while seated. The criticism against him in this matter parallels the criticism against Abū Ḥanīfah and Mālik regarding their permission of Friday prayer with one sermon - is there no difference?

ثُمَّ تَنَاقَضَ فَأَجَازَ الْجُمُعَةَ لِمَنْ خَطَبَ قَاعِدًا، وَالْقَوْلُ عَلَيْهِ فِي ذَلِكَ كَالْقَوْلِ عَلَى أَبِي حَنِيفَةَ، وَمَالِكٍ فِي إِجَازَتِهِمَا الْجُمُعَةَ بِخُطْبَةٍ وَاحِدَةٍ وَلَا فَرْقَ؟

L8501–8503 Aṭāʾ, Ṭāwūs, and Mujāhid ruled: Whoever fails to attend the Friday sermon has not validly performed the [Friday] prayer except... four, because the sermon substitutes for the two rak'ahs.

وَقَالَ عَطَاءٌ، وَطَاوُسٌ، وَمُجَاهِدٌ: مَنْ لَمْ يُدْرِكْ الْخُطْبَةَ يَوْمَ الْجُمُعَةِ لَمْ يُصَلِّهَا إِلَّا أَرْبَعًا، لِأَنَّ الْخُطْبَةَ أُقِيمَتْ مَقَامَ الرَّكْعَتَيْنِ.

L8504 It has been narrated to us through the chain of Al-Khushanī: Muḥammad ibn Al-Muthannā narrated from Abū ʿĀṣim Aḍ-Ḍaḥḥāk ibn Makhlad, who narrated from Ḥanẓalah ibn Abī Sufyān Al-Jumaḥī Al-Makkī, who said: I heard Ṭāwus and ʿAṭāʾ saying, "Whoever does not catch the sermon should pray four *rakʿahs*."

And from the chain of Muḥammad ibn Al-Muthannā: Yaḥyā ibn Saʿīd Al-Qaṭṭān narrated from Abū Yūnus Al-Ḥasan ibn Yazīd, who said: I heard Mujāhid saying, "If you do not catch the Friday sermon, pray four *rakʿahs*."

رُوِّينَا مِنْ طَرِيقِ الْخُشَنِيِّ: ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا أَبُو عَاصِمٍ الضَّحَّاكُ بْنُ مَخْلَدٍ عَنْ حَنْظَلَةَ بْنِ أَبِي سُفْيَانَ الْجُمَحِيِّ الْمَكِّيِّ قَالَ: سَمِعْت طَاوُسًا، وَعَطَاءً يَقُولَانِ: مَنْ لَمْ يُدْرِكْ الْخُطْبَةَ صَلَّى أَرْبَعًا وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى: ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانِ عَنْ أَبِي يُونُسَ الْحَسَنِ بْنِ يَزِيدَ سَمِعْت مُجَاهِدًا يَقُولُ: إذَا لَمْ تُدْرِكْ الْخُطْبَةَ يَوْمَ الْجُمُعَةِ فَصَلِّ أَرْبَعًا.

L8505 It has been narrated to us through the chain of ʿAbd al-Razzāq from al-Awzāʿī from ʿAmr ibn Shuʿayb: that ʿUmar ibn al-Khaṭṭāb said, "The sermon takes the place of the two rakʿahs. Thus whoever misses the sermon must pray four rakʿahs?" Abū Muḥammad said: The Ḥanafīs and Mālikīs assert, "A *mursal* report is equivalent to an authenticated (*musnad*) report and even stronger." Consequently, they are bound to accept ʿUmar's position here; otherwise, have they not contradicted themselves? Abū Muḥammad said: Whoever argues for the obligation of the sermon by claiming it was instituted in lieu of the two rakʿahs must necessarily adopt the opinion of these scholars, otherwise he has indeed contradicted himself. Some of them argued for the obligation of the sermon by citing Allah's statement: {When they see commerce or amusement, they scatter toward it and leave you standing} [al-Jumuʿah 62:11].[1]

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْأَوْزَاعِيِّ عَنْ عَمْرِو بْنِ شُعَيْبٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: الْخُطْبَةُ مَوْضِعُ الرَّكْعَتَيْنِ، فَمَنْ فَاتَتْهُ الْخُطْبَةُ صَلَّى أَرْبَعًا؟ قَالَ أَبُو مُحَمَّدٍ: الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ يَقُولُونَ: الْمُرْسَلُ كَالْمُسْنَدِ وَأَقْوَى، فَيَلْزَمُهُمْ الْأَخْذُ بِقَوْلِ عُمَرَ هَهُنَا، وَإِلَّا فَقَدْ تَنَاقَضُوا؟ قَالَ أَبُو مُحَمَّدٍ: مَنْ احْتَجَّ فِي إيجَابِ فَرْضِ الْخُطْبَةِ بِأَنَّهَا جُعِلَتْ بَدَلًا عَنْ الرَّكْعَتَيْنِ لَزِمَهُ أَنْ يَقُولَ بِقَوْلِ هَؤُلَاءِ، وَإِلَّا فَقَدْ تَنَاقَضَ وَاحْتَجَّ بَعْضُهُمْ فِي إيجَابِ الْخُطْبَةِ بِقَوْلِ اللَّهِ تَعَالَى: {وَإِذَا رَأَوْا تِجَارَةً أَوْ لَهْوًا انْفَضُّوا إِلَيْهَا وَتَرَكُوكَ قَائِمًا} [الجمعة: ١١].

L8506 Abū Muḥammad said: This argument of theirs holds no benefit in validating their opinion. It merely indicates that they left him standing, and this is our

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا الِاحْتِجَاجُ لَا مَنْفَعَةَ لَهُمْ فِيهِ فِي تَصْوِيبِ قَوْلِهِمْ، وَإِنَّمَا فِيهِ أَنَّهُمْ تَرَكُوهُ قَائِمًا، وَهَكَذَا نَقُولُ، وَإِنَّمَا هُوَ رَدٌّ عَلَى مَنْ قَالَ: إنَّهُمْ تَرَكُوهُ - عَلَيْهِ السَّلَامُ -

[1] **Qur'an references (L8505):** Qur'an 62:11 (Al-Jumu'ah).

position. It serves as a rebuttal against those who claim they left him—peace be upon him—sitting, a claim no one actually makes. Does Allah's condemnation of their abandoning His Prophet—peace be upon him—while he was standing establish an obligation to stand during the sermon or an obligation for the sermon itself? If, as they claim, this were the case, it would necessitate that whoever delivers the sermon sitting invalidates the Friday prayer for himself and his congregation. Yet none of them assert this, thus demonstrating that their citation of the verse undermines their stance and invalidates their claims—if it were truly about obligating standing. The verse contains no indication whatsoever of obligating the sermon itself; it merely states that the sermon is to be delivered standing. Should they claim consensus, let what we have narrated from Saʿīd ibn Abī ʿArūbah, from Qatādah, from al-Ḥasan al-Baṣrī, be expedited: "Whoever does not deliver the sermon on Friday prays two rakʿahs regardless of circumstances."

قَاعِدًا، وَهَذَا لَا يَقُولُهُ أَحَدٌ، وَلَيْسَ فِي إِنْكَارِ اللَّهِ تَعَالَى لِتَرْكِهِمْ لِنَبِيِّهِ - عَلَيْهِ السَّلَامُ - قَائِمًا -: إِيجَابٌ لِفَرْضِ الْقِيَامِ فِي الْخُطْبَةِ، وَلَا لِفَرْضِ الْخُطْبَةِ؟ فَإِنْ كَانَ ذَلِكَ عِنْدَهُمْ كَمَا يَقُولُونَ فَيَلْزَمُهُمْ أَنَّ مَنْ خَطَبَ قَاعِدًا فَلَا جُمُعَةَ لَهُ وَلَا لَهُمْ، وَهَذَا لَا يَقُولُهُ أَحَدٌ مِنْهُمْ، فَظَهَرَ أَنَّ احْتِجَاجَهُمْ بِالْآيَةِ عَلَيْهِمْ، وَأَنَّهَا مُبْطِلَةٌ لِأَقْوَالِهِمْ فِي ذَلِكَ لَوْ كَانَتْ عَلَى إِيجَابِ الْقِيَامِ، وَلَيْسَ فِيهَا أَثَرٌ بِوَجْهٍ مِنَ الْوُجُوهِ عَلَى إِيجَابِ الْخُطْبَةِ، إِنَّمَا فِيهَا أَنَّ الْخُطْبَةَ تَكُونُ قِيَامًا فَقَطْ؟ فَإِنِ ادَّعَوْا إِجْمَاعًا تُعْجَلُ مَا رُوِّينَاهُ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنِ الْحَسَنِ الْبَصْرِيِّ: مَنْ لَمْ يَخْطُبْ يَوْمَ الْجُمُعَةِ صَلَّى رَكْعَتَيْنِ عَلَى كُلِّ حَالٍ.

L8507–8508 Ibn Sīrīn also said: Some of them—in line with their habitual practice of lying against Allah, the Exalted—dared to claim that Allah's statement, {So proceed to the remembrance of Allah} [62:9], refers solely to the sermon, citing this as evidence to confirm its obligatory nature. Abū Muḥammad responded: Who is this audacious person to assert that Allah, the Exalted, intended the "remembrance" mentioned here to mean the sermon? Rather, the beginning and end of the verse refute his false supposition, for Allah, the Exalted, explicitly states: {When the call is made for prayer on the Day of Jumuʿah, then proceed to the remembrance of Allah} [62:9].[2]

وَقَدْ قَالَهُ أَيْضًا ابْنُ سِيرِينَ: وَقَدْ أَقْدَمَ بَعْضُهُمْ - بِجَارِي عَادَتِهِمْ فِي الْكَذِبِ عَلَى اللَّهِ تَعَالَى - فَقَالَ: إِنَّ قَوْلَ اللَّهِ تَعَالَى: {فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ} [الجمعة: ٩] إِنَّمَا مُرَادُهُ إِلَى الْخُطْبَةِ وَجَعَلَ هَذَا حُجَّةً فِي إِيجَابِ فَرْضِهَا؟ قَالَ أَبُو مُحَمَّدٍ: وَمَنْ لِهَذَا الْمُقْدِمِ أَنَّ اللَّهَ تَعَالَى أَرَادَ بِالذِّكْرِ الْمَذْكُورِ فِيهَا الْخُطْبَةَ؟ بَلْ أَوَّلُ الْآيَةِ وَآخِرُهَا يُكَذِّبَانِ ظَنَّهُ الْفَاسِدَ، لِأَنَّ اللَّهَ تَعَالَى إِنَّمَا قَالَ: {إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ} [الجمعة: ٩] .

L8509 Then He, may He be exalted and glorified, said: "When the prayer is concluded, go forth throughout the land and seek the bounty of Allah, and remember Allah abundantly." [Surah Al-Jumu'ah 10][3]

ثُمَّ قَالَ عَزَّ وَجَلَّ: {فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ وَاذْكُرُوا اللَّهَ كَثِيرًا} [الجمعة: ١٠] .

L8510 Thus, it is confirmed that Allah obligated hastening to prayer only when the call for it is made, commanded dispersal once it is concluded, and mentioned it frequently.

فَصَحَّ أَنَّ اللَّهَ إِنَّمَا افْتَرَضَ السَّعْيَ إِلَى الصَّلَاةِ إِذَا نُودِيَ لَهَا، وَأَمَرَ إِذَا قُضِيَتْ بِالِانْتِشَارِ وَذَكَرَهُ كَثِيرًا.

L8511 It has thus been confirmed with certainty that the remembrance commanded

[2] **Qur'an references (L8508):** Qur'an 62:9 (Al-Jumu'ah).
[3] **Qur'an references (L8509):** Qur'an 62:10 (Al-Jumu'ah).

to be sought through prescribed striving is the prayer itself, and the remembrance of Allah the Exalted within it through takbīr, tasbīḥ, glorification, recitation, and tashahhud—nothing besides this? Had the claim of this ignorant person been valid, then one who missed the sermon entirely yet attended the prayer would not have fulfilled the prescribed striving Allah the Exalted obligated upon him—yet they themselves do not uphold this position. Indeed, a more righteous scholar among them has affirmed this truth. Let them not repeat their falsehood in asserting consensus while misleading the weak—and success comes solely from Allah, the Exalted.

فَصَحَّ يَقِينًا أَنَّ الذِّكْرَ الْمَأْمُورَ بِالسَّعْيِ لَهُ هُوَ الصَّلَاةُ، وَذِكْرُ اللَّهِ تَعَالَى فِيهَا بِالتَّكْبِيرِ، وَالتَّسْبِيحِ وَالتَّمْجِيدِ، وَالْقِرَاءَةِ، وَالتَّشَهُّدِ لَا غَيْرِ ذَلِكَ؟ وَلَوْ كَانَ مَا قَالَهُ هَذَا الْجَاهِلُ لَكَانَ مَنْ لَمْ يُدْرِكْ الْخُطْبَةَ وَلَا شَيْئًا مِنْهَا وَأَدْرَكَ الصَّلَاةَ غَيْرَ مُؤَدٍّ لِمَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ مِنْ السَّعْيِ، وَهُمْ لَا يَقُولُونَ هَذَا، وَقَدْ قَالَهُ مَنْ هُوَ خَيْرٌ مِنْهُمْ، فَلَا يَكْذِبُونَ ثَانِيَةً فِي دَعْوَى الْإِجْمَاعِ مُمَوِّهِينَ عَلَى الضُّعَفَاءِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L8512 If they say: “He (peace be upon him) never performed the prayer except with one sermon?” We respond: “Nor did he (peace be upon him) ever perform it except with two sermons, standing to deliver them and sitting between them. Therefore, consider all of this obligatory, for the Friday prayer is invalid without them. Nor did he (peace be upon him) ever pray except by raising his hands during the first _takbīr_. Thus, you must invalidate the prayer by omitting that.”

فَإِنْ قَالُوا: لَمْ يُصَلِّهَا - عَلَيْهِ السَّلَامُ - قَطُّ إلَّا بِخُطْبَةٍ؟ قُلْنَا: وَلَا صَلَّاهَا - عَلَيْهِ السَّلَامُ - قَطُّ إلَّا بِخُطْبَتَيْنِ قَائِمًا يَجْلِسُ بَيْنَهُمَا، فَاجْعَلُوا كُلَّ ذَلِكَ فَرْضًا لَا تَصِحُّ الْجُمُعَةُ إلَّا بِهِ، وَلَا صَلَّى - عَلَيْهِ السَّلَامُ - قَطُّ إلَّا رَفَعَ يَدَيْهِ فِي التَّكْبِيرَةِ الْأُولَى، فَأَبْطِلُوا الصَّلَاةَ بِتَرْكِ ذَلِكَ

L8513 As for our statement—that anything designated as a sermon is an emulation of the outward action of the Messenger of Allah (may Allah bless him and grant him peace)—...

وَأَمَّا قَوْلُنَا: مَا وَقَعَ عَلَيْهِ اسْمُ خُطْبَةٍ فَاقْتِدَاءٌ بِظَاهِرِ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L8514 Abu Hanifah said: A *takbīrah* suffices. This constitutes an abrogation on his part, given his ruling that the sermon is obligatory (*farḍ*), for a *takbīrah* is not termed a sermon. It is said to them: If this is permissible according to your view, why does the *takbīrat al-ihrām* not suffice in place of the sermon, since it is a form of *dhikr*?

وَقَالَ أَبُو حَنِيفَةَ: تُجْزِئُ تَكْبِيرَةٌ، وَهَذَا نَقْضٌ مِنْهُ لِإِيجَابِهِ الْخُطْبَةَ فَرْضًا، لِأَنَّ التَّكْبِيرَةَ لَا تُسَمَّى خُطْبَةً، وَيُقَالُ لَهُمْ: إذَا جَازَ هَذَا عِنْدَكُمْ فَلِمَ لَا أَجْزَأَتْ عَنْ الْخُطْبَةِ تَكْبِيرَةُ الْإِحْرَامِ فَهِيَ ذِكْرٌ؟

L8515–8516 Malik said: “The sermon is any significant speech.” Abu Muhammad said: This is not a definition of the sermon, though he considers it obligatory. Whoever imposes an obligation must define it precisely so their followers may know it without ambiguity; otherwise, they have neglected their obligation. As for delivering the Friday sermon atop the pulpit, this is how the Messenger of Allah—peace and blessings be upon him—acted, as authenticated by mass-transmitted (mutawatir) narrations. They must also make this practice obligatory, because since the pulpit was established, did the

وَقَالَ مَالِكٌ -: الْخُطْبَةُ: كُلُّ كَلَامٍ ذِي بَالٍ؟ قَالَ أَبُو مُحَمَّدٍ: لَيْسَ هَذَا حَدًّا لِلْخُطْبَةِ، وَهُوَ يَرَاهَا فَرْضًا، وَمَنْ أَوْجَبَ فَرْضًا فَوَاجِبٌ عَلَيْهِ تَحْدِيدُهُ، حَتَّى يَعْلَمَهُ مُتَّبِعُوهُ عِلْمًا لَا إشْكَالَ فِيهِ، وَإِلَّا فَقَدْ جَهِلُوا فَرْضَهُمْ وَأَمَّا خُطْبَتُهَا عَلَى أَعْلَى الْمِنْبَرِ فَهَكَذَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَحَّتْ بِذَلِكَ الْآثَارُ الْمُتَوَاتِرَةُ وَكَانَ يَلْزَمُهُمْ أَنْ يَجْعَلُوا هَذَا

Prophet—peace and blessings be upon him—ever deliver the Friday sermon except upon it? As for our statement, "If he delivers the sermon with a recited surah," this is commendable.

L8517 We have been narrated through the chain of Imam Muslim: Muhammad ibn Bishār related to me; Muhammad ibn Ja'far narrated to us; Shu'bah narrated to us from Khubayb ibn 'Abd al-Raḥmān from 'Abdullāh ibn Muḥammad ibn Mu'āwiyah from the daughter of Ḥārithah ibn al-Nu'mān, who said: "I did not memorize Surah Qāf except from the mouth of the Messenger of Allah (peace and blessings of Allah be upon him) as he would recite it in his sermons every Friday. Our oven and the oven of the Messenger of Allah (peace and blessings of Allah be upon him) were one and the same."

L8518 ## An Issue Concerning Prolonging the Friday Sermon

L8519 528 - Issue: It is not permissible to prolong the sermon. If one recites a surah with a prostration verse or a verse requiring prostration during it, it is recommended for him to step down [from the pulpit] and prostrate along with the people. If he does not do so, there is no harm. It has been narrated to us via the chain of Muslim ibn al-Hajjaj: Shurayh ibn Yunus narrated to me, from Abd al-Rahman ibn Abd al-Malik ibn Abjar, from his father, from Wasil ibn Hayyan, who said: Abu Wa'il said: Ammar ibn Yasir delivered a sermon to us, making it concise and eloquent. When he stepped down, we said: "O Abu al-Yaqẓān, you have been eloquent and concise. If only you had paused [to elaborate]!" He replied: "I heard the Messenger of Allah (peace and blessings be upon him) say: 'The length of a man's prayer and the brevity of his sermon are a sign of his religious understanding. Therefore, prolong the prayer and shorten the sermon, for indeed some eloquence is akin to magic.'"[4]

L8520 Through the chain of Waki' from Ismā'īl ibn Abī Khālid from Qays ibn Abī Ḥāzim, who said: Ibn Mas'ūd said: "Perfect this prayer and shorten these sermons."

أَيْضًا فَرْضًا، لِأَنَّهُ مُذْ عُمِلَ الْمِنْبَرُ لَمْ يَخْطُبْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْجُمُعَةِ إلَّا عَلَيْهِ؟ وَأَمَّا قَوْلُنَا: إنْ خَطَبَ بِسُورَةٍ يَقْرَؤُهَا: فَحَسَنٌ.

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي مُحَمَّدُ بْنُ بَشَّارٍ ثنا مُحَمَّدُ بْنُ جَعْفَرٍ ثنا شُعْبَةُ عَنْ خُبَيْبِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ مُعَاوِيَةَ عَنْ ابْنَةٍ لِحَارِثَةَ بْنِ النُّعْمَانِ قَالَتْ " مَا حَفِظْت (ق) إلَّا مِنْ فِي رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَخْطُبُ بِهَا كُلَّ جُمُعَةٍ، وَكَانَ تَنُّورُنَا وَتَنُّورُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاحِدًا ".

[مَسْأَلَةٌ إطَالَةُ خُطْبَةِ الْجُمُعَةِ]

٥٢٨ - مَسْأَلَةٌ: وَلَا تَجُوزُ إطَالَةُ الْخُطْبَةِ، فَإِنْ قَرَأَ فِيهَا بِسُورَةٍ فِيهَا سَجْدَةٌ أَوْ آيَةٍ فِيهَا سَجْدَةٌ فَنَسْتَحِبُّ لَهُ أَنْ يَنْزِلَ فَيَسْجُدَ وَالنَّاسُ، فَإِنْ لَمْ يَفْعَلْ فَلَا حَرَجَ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ حَدَّثَنِي شُرَيْحُ بْنُ يُونُسَ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ الْمَلِكِ بْنِ أَبْجَرَ عَنْ أَبِيهِ عَنْ وَاصِلِ بْنِ حَيَّانَ قَالَ: قَالَ أَبُو وَائِلٍ: خَطَبَنَا عَمَّارُ بْنُ يَاسِرٍ فَأَوْجَزَ وَأَبْلَغَ، فَلَمَّا نَزَلَ قُلْنَا: يَا أَبَا الْيَقْظَانِ، لَقَدْ أَبْلَغْت وَأَوْجَزْت فَلَوْ كُنْت تَنَفَّسْت؟ فَقَالَ إنِّي سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إنَّ طُولَ صَلَاةِ الرَّجُلِ وَقِصَرَ خُطْبَتِهِ مَئِنَّةٌ مِنْ فِقْهِهِ، فَأَطِيلُوا الصَّلَاةَ وَاقْصُرُوا الْخُطْبَةَ، فَإِنَّ مِنْ الْبَيَانِ سِحْرًا» .

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ قَالَ: قَالَ ابْنُ مَسْعُودٍ: أَحْسِنُوا هَذِهِ الصَّلَاةَ وَاقْصُرُوا هَذِهِ الْخُطَبَ.

[4] **Hadith references (L8519):** Riyad as-Salihin 699.

L8521–8522 Abu Muhammad said: I witnessed Ibn Ma‘dan in the Great Mosque of Cordoba. He prolonged the sermon so extensively that some dignitaries informed me he had urinated in his garments.

قَالَ أَبُو مُحَمَّد: شَهِدْت ابْنَ مَعْدَان فِي جَامِعِ قُرْطُبَةَ قَدْ أَطَالَ الْخُطْبَةَ، حَتَّى أَخْبَرَنِي بَعْضُ وُجُوهِ النَّاسِ أَنَّهُ بَالَ فِي ثِيَابِهِ.

L8523 And it had become stuck in the maqsurah? Abdullah ibn Rubay narrated to us: Ibn al-Salim the judge narrated to us: Ibn al-A’rabi narrated to us: Abu Dawud narrated to us: Ahmad ibn Salih narrated to us: Ibn Wahb narrated to us: Amr ibn al-Harith informed me from Sa’id ibn Abi Hilal from Iyad ibn Abdullah ibn Sa’d ibn Abi Sarh from Abu Sa’id al-Khudri, who said: “The Messenger of Allah—peace and blessings be upon him—recited Surah Ṣād on the pulpit. When he reached the prostration verse, he descended and prostrated, and the people prostrated with him.”

وَكَانَ قَدْ نَشِبَ فِي الْمَقْصُورَةِ؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رُبَيِّعٍ ثنا ابْنُ السَّلِيمِ الْقَاضِي ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا أَحْمَدُ بْنُ صَالِحٍ ثنا ابْنُ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ سَعِيدِ بْنِ أَبِي هِلَالٍ عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ بْنِ سَعْدِ بْنِ أَبِي سَرْحٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «قَرَأَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمِنْبَرِ ص فَلَمَّا بَلَغَ السَّجْدَةَ نَزَلَ فَسَجَدَ وَسَجَدَ النَّاسُ مَعَهُ» .

L8524 And via the narration of Ḥammād ibn Salamah, from ʿAlī ibn Zayd, from Ṣafwān ibn Muḥriz: that Abū Mūsā al-Ashʿarī recited Sūrah al-Ḥajj on the minbar in Basra and prostrated with the people in two sajdahs.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَلِيِّ بْنِ زَيْدٍ عَنْ صَفْوَانَ بْنِ مُحْرِزٍ: أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ قَرَأَ سُورَةَ الْحَجِّ عَلَى الْمِنْبَرِ بِالْبَصْرَةِ فَسَجَدَ بِالنَّاسِ سَجْدَتَيْنِ.

L8525 Through the chain of Malik, from Hisham ibn Urwah, from his father: That Umar ibn al-Khattab recited the prostration verse while on the pulpit on Friday, then descended and prostrated, and they prostrated with him. Then he recited it on the following Friday, and they prepared to prostrate. Umar said: “Be at ease! Has Allah not ordained it upon us unless we choose to?”

وَمِنْ طَرِيقِ مَالِكٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَرَأَ السَّجْدَةَ وَهُوَ عَلَى الْمِنْبَرِ يَوْمَ الْجُمُعَةِ، ثُمَّ نَزَلَ فَسَجَدَ فَسَجَدُوا مَعَهُ، ثُمَّ قَرَأَهَا يَوْمَ الْجُمُعَةِ الْأُخْرَى فَتَهَيَّئُوا لِلسُّجُودِ، فَقَالَ عُمَرُ: عَلَى رِسْلِكُمْ، إِنَّ اللَّهَ لَمْ يَكْتُبْهَا عَلَيْنَا إِلَّا أَنْ نَشَاءَ؟

L8526 And through the chain of Al-Bukhari: Ibrāhīm ibn Mūsá narrated to us: I [Hishām ibn Yūsuf] relate that Ibn Jurayj informed them, saying: “Abū Bakr ibn Abī Mulaykah informed me, from ’Uthmān ibn ’Abd al-Raḥmān al-Taymī, from Rabī’ah ibn ’Abd Allāh ibn al-Hudayr - and he was among the best of people - that he witnessed ’Umar ibn al-Khaṭṭāb recite Sūrah al-Naḥl from the pulpit during Friday prayer. When he reached the prostration verse, he descended and prostrated, and the people prostrated with him. When the following Friday came, he recited it again. Upon reaching the prostration verse, he declared: ’O people, we are merely passing by the prostration (verse). Whoever prostrates has done rightly, and whoever does not prostrate incurs no blame.’ Thus, ’Umar did not prostrate.”

وَمِنْ طَرِيقِ الْبُخَارِيِّ: ثنا إِبْرَاهِيمُ بْنُ مُوسَى أَنَا هِشَامُ بْنُ يُوسُفَ أَنَّ ابْنَ جُرَيْجٍ أَخْبَرَهُمْ قَالَ أَخْبَرَنِي أَبُو بَكْرِ بْنُ أَبِي مُلَيْكَةَ عَنْ عُثْمَانَ بْنِ عَبْدِ الرَّحْمَنِ التَّيْمِيِّ عَنْ رَبِيعَةَ بْنِ عَبْدِ اللَّهِ بْنِ الْهُدَيْرِ - وَكَانَ مِنْ خِيَارِ النَّاسِ - أَنَّهُ شَهِدَ عُمَرُ بْنُ الْخَطَّابِ قَرَأَ يَوْمَ الْجُمُعَةِ عَلَى الْمِنْبَرِ سُورَةَ النَّحْلِ، حَتَّى إِذَا جَاءَ السَّجْدَةَ نَزَلَ فَسَجَدَ وَسَجَدَ النَّاسُ مَعَهُ، حَتَّى إِذَا كَانَتْ الْجُمُعَةُ الْقَابِلَةُ قَرَأَ بِهَا، حَتَّى إِذَا جَاءَ السَّجْدَةَ قَالَ: يَا أَيُّهَا النَّاسُ، إِنَّمَا نَمُرُّ بِالسُّجُودِ، فَمَنْ سَجَدَ فَقَدْ أَصَابَ، وَمَنْ لَمْ يَسْجُدْ فَلَا حَرَجَ عَلَيْهِ فَلَمْ يَسْجُدْ عُمَرُ.

L8527 And through the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Asim

ibn Abi al-Najud, from Zirr ibn Hubaysh, that Ammar ibn Yasir recited on Friday on the pulpit “When the sky is split apart” [Al-Inshiqaq: 1], then he descended and performed the prostration of recitation (sujūd al-tilāwah).[5]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَاصِمِ بْنِ أَبِي النَّجُودِ عَنْ زِرِّ بْنِ حُبَيْشٍ أَنَّ عَمَّارَ بْنَ يَاسِرٍ قَرَأَ يَوْمَ الْجُمُعَةِ عَلَى الْمِنْبَرِ {إِذَا السَّمَاءُ انْشَقَّتْ} [الانشقاق: ١] ثُمَّ نَزَلَ فَسَجَدَ.

L8528–8529 From the narration through the chain of Shu’bah from Abū Isḥāq al-Sabīʿī: Al-Ḍaḥḥāk ibn Qays would deliver sermons and recite Sūrah Ṣād in the presence of the Companions. None in Medina, Basra, or Kufa rejected this practice. No disagreement is recorded from the Companions—may Allah be pleased with them—regarding this matter. Moreover, the Messenger of Allah—peace and blessings be upon him—performed prostration during the well-known Quranic prostrations. Then where is their claim to be following the practice of the Companions?

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ: أَنَّ الضَّحَّاكَ بْنَ قَيْسٍ كَانَ يَخْطُبُ فَقَرَأَ “ ص وَذَلِكَ بِحَضْرَةِ الصَّحَابَةِ، لَا يُنْكِرُ ذَلِكَ أَحَدٌ بِالْمَدِينَةِ، وَالْبَصْرَةِ، وَالْكُوفَةِ، وَلَا يُعْرَفُ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ، وَقَدْ سَجَدَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَجَدَاتِ الْقُرْآنِ الْمَشْهُورَةِ، فَأَيْنَ دَعْوَاهُمْ اتِّبَاعَ عَمَلِ الصَّحَابَةِ؟

An Issue Regarding Speech and the Imam Delivering the Friday Khutbah.

[مَسْأَلَةٌ الْكَلَام وَالْإِمَام يخطب يَوْم الْجُمُعَة]

L8530

L8531 529. Issue: It is obligatory upon everyone attending the Friday prayer—whether they heard the sermon or not—to refrain entirely from speaking during the Imam’s sermon, except for the following: offering the greeting of peace if entering at that time; returning the greeting to one who offers it upon entering; praising Allah the Exalted if sneezing; saying “Yarḥamuk Allāh” to one who sneezes if they praise Allah; replying to the one who says “Yarḥamuk Allāh” with “Yahdīkum Allāh wa yuṣliḥa bālakum”; sending blessings upon the Prophet (peace be upon him) when the Imam instructs to do so; saying “Āmīn” to his supplication; initiating communication with the Imam concerning a pressing need; and responding to the Imam only if he has initiated speech with someone regarding a specific matter.

٥٢٩ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى كُلِّ مَنْ حَضَرَ الْجُمُعَةَ - سَمِعَ الْخُطْبَةَ أَوْ لَمْ يَسْمَعْ - أَنْ لَا يَتَكَلَّمَ مُدَّةَ خُطْبَةِ الْإِمَامِ بِشَيْءٍ أَلْبَتَّةَ، إلَّا التَّسْلِيمَ إنْ دَخَلَ حِينَئِذٍ، وَرَدَّ السَّلَامَ عَلَى مَنْ سَلَّمَ مِمَّنْ دَخَلَ حِينَئِذٍ، وَحَمِدَ اللَّهَ تَعَالَى إنْ عَطَسَ، وَتَشْمِيتَ الْعَاطِسِ إنْ حَمِدَ اللَّهَ، وَالرَّدَّ عَلَى الْمُشَمِّتِ، وَالصَّلَاةَ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا أَمَرَ الْخَطِيبُ بِالصَّلَاةِ عَلَيْهِ، وَالتَّأْمِينَ عَلَى دُعَائِهِ، وَابْتِدَاءَ مُخَاطَبَةِ الْإِمَامِ فِي الْحَاجَةِ تَعِنُّ، وَمُجَاوَبَةَ الْإِمَامِ مِمَّنْ ابْتَدَأَهُ الْإِمَامُ بِالْكَلَامِ فِي أَمْرٍ مَا فَقَطْ؟

L8532 It is not permissible for anyone to say to a person speaking at that time: “Be silent,” but one may gesture to him, wink at him, or throw pebbles at him. Whoever speaks with other than what we have mentioned, being mindful and aware of the prohibition, has no valid Friday prayer. If the preacher includes in his sermon anything other than the remembrance of Allah the Exalted or

وَلَا يَحِلُّ أَنْ يَقُولَ أَحَدٌ حِينَئِذٍ لِمَنْ يَتَكَلَّمُ -: انْصِتْ، وَلَكِنْ يُشِيرُ إلَيْهِ أَوْ يَغْمِزُهُ، أَوْ يَحْصِبُهُ؟ وَمَنْ تَكَلَّمَ بِغَيْرِ مَا ذَكَرْنَا ذَاكِرًا عَالِمًا بِالنَّهْيِ فَلَا جُمُعَةَ لَهُ؟ فَإِنْ أَدْخَلَ الْخَطِيبُ فِي خُطْبَتِهِ مَا لَيْسَ مِنْ ذِكْرِ اللَّهِ تَعَالَى وَلَا مِنْ الدُّعَاءِ الْمَأْمُورِ بِهِ فَالْكَلَامُ مُبَاحٌ حِينَئِذٍ،

[5] **Qur’an references (L8527):** Qur’an 84:1 (Al-Inshiqaq).

the prescribed supplication, speech becomes permissible at that time. Similarly, if the imam sits between the two sermons, speech is permissible then, as well as between the sermon and the commencement of prayer. Touching pebbles during the sermon is impermissible. Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated: Aḥmad ibn Shuʿayb narrated: Isḥāq ibn Rāhawayh informed us: Jarīr—that is, Ibn ʿAbd al-Ḥamīd—from Manṣūr ibn al-Muʿtamir from Abū Maʿshar Ziyād ibn Kulaib from Ibrāhīm al-Nakhaʿī from ʿAlqamah from al-Qarthāʾ al-Ḍabbī—who was among the early Qurʾān reciters—from Salmān al-Fārisī, who said: The Messenger of Allah—peace and blessings be upon him—said: "No man purifies himself on Friday as commanded, then proceeds to the Friday prayer and remains silent until he completes his prayer, except that it will be an expiation for the sins committed since the previous Friday."

وَكَذَلِكَ إِذَا جَلَسَ الْإِمَامُ بَيْنَ الْخُطْبَتَيْنِ فَالْكَلَامُ حِينَئِذٍ مُبَاحٌ، وَبَيْنَ الْخُطْبَةِ وَابْتِدَاءِ الصَّلَاةِ أَيْضًا، وَلَا يَجُوزُ الْمَسُّ لِلْحَصَى مُدَّةَ الْخُطْبَةِ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رُبَيْعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ رَاهْوَيْهِ أَنَا جَرِيرٌ هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ أَبِي مَعْشَرٍ زِيَادِ بْنِ كُلَيْبٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ عَنِ الْقَرْثَعِ الضَّبِّيِّ - وَكَانَ مِنَ الْقُرَّاءِ الْأَوَّلِينَ - عَنْ سَلْمَانَ الْفَارِسِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا مِنْ رَجُلٍ يَتَطَهَّرُ يَوْمَ الْجُمُعَةِ كَمَا أُمِرَ ثُمَّ يَخْرُجُ إِلَى الْجُمُعَةِ فَيُنْصِتُ حَتَّى يَقْضِيَ صَلَاتَهُ إِلَّا كَانَ كَفَّارَةً لِمَا كَانَ قَبْلَهُ مِنَ الْجُمُعَةِ» .

L8533–8534 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Abu Kuraib narrated to us: Abu Muawiyah reported on the authority of al-A'mash, on the authority of Abu Salih, on the authority of Abu Hurairah, who said: The Messenger of Allah - peace and blessings be upon him - said: "Whoever performs ablution and perfects it, then attends the Friday prayer, then listens attentively and remains silent, will be forgiven for what occurred between him and the [next] Friday with an addition of three days. Whoever touches pebbles has acted frivolously."[6]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو كُرَيْبٍ ثنا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ تَوَضَّأَ فَأَحْسَنَ الْوُضُوءَ ثُمَّ أَتَى الْجُمُعَةَ فَاسْتَمَعَ وَأَنْصَتَ غُفِرَ لَهُ مَا بَيْنَهُ وَبَيْنَ الْجُمُعَةِ وَزِيَادَةُ ثَلَاثَةِ أَيَّامٍ، وَمَنْ مَسَّ الْحَصَا فَقَدْ لَغَا»

L8535 Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: al-Farbari narrated to us: al-Bukhari narrated to us: Yahya ibn Bukayr narrated to us: al-Laith narrated from Uqayl, from Ibn Shihab, who narrated to me: Sa'id ibn al-Musayyab narrated that Abu Hurayrah narrated to him that the Messenger of Allah—peace and blessings of Allah be upon him—said: "If you say to your companion on Friday, 'Be silent,' while the Imam is delivering the sermon, you have uttered idle speech."[7]

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا يَحْيَى بْنُ بُكَيْرٍ ثنا اللَّيْثُ عَنْ عُقَيْلٍ عَنِ ابْنِ شِهَابٍ أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيِّبِ أَنَّ أَبَا هُرَيْرَةَ أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا قُلْتَ لِصَاحِبِكَ يَوْمَ الْجُمُعَةِ: أَنْصِتْ وَالْإِمَامُ يَخْطُبُ فَقَدْ لَغَوْتَ» .

L8536 Abu Muḥammad said: Allah, the Exalted, said: {And when they pass by vain

قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ تَعَالَى: {وَإِذَا مَرُّوا بِاللَّغْوِ مَرُّوا كِرَامًا} [الفرقان: ٧٢] .

[6] **Hadith references (L8534):** Riyad as-Salihin 128.

[7] **Hadith references (L8535):** Sahih al-Bukhari 934; Mishkat al-Masabih 1385.

talk, they pass by with dignity} [Al-Furqān 25:72].[8]

L8537 Abdullah ibn Rubay‘ narrated to us: Abdullah ibn Muhammad ibn Uthman narrated to us: Ahmad ibn Khalid narrated to us: Ali ibn Abd al-Aziz narrated to us: Al-Hajjaj ibn Al-Minhal narrated to us: Hammad ibn Salamah narrated to us from Muhammad ibn Amr ibn Abi Salamah ibn Abd al-Rahman ibn Awf from Abu Hurairah: “The Messenger of Allah—peace and blessings be upon him—was reciting a chapter on the pulpit? Abu Dharr said to Ubayy ibn Ka’b: ’When was this chapter revealed?’ Ubayy turned away from him. When he concluded his prayer, Ubayy ibn Ka’b said to Abu Dharr: ’You have gained nothing from your prayer except the vain speech you engaged in.’ Abu Dharr went to the Messenger of Allah—peace and blessings be upon him—and informed him of this? He said: ’Ubayy ibn Ka’b has spoken truthfully.’”

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رُبَيْعٍ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَقْرَأُ سُورَةً عَلَى الْمِنْبَرِ؟ فَقَالَ أَبُو ذَرٍّ لِأُبَيِّ بْنِ كَعْبٍ: مَتَى نَزَلَتْ هَذِهِ السُّورَةُ؟ فَأَعْرَضَ عَنْهُ أُبَيٌّ، فَلَمَّا قَضَى صَلَاتَهُ قَالَ أُبَيُّ بْنُ كَعْبٍ لِأَبِي ذَرٍّ: مَا لَكَ مِنْ صَلَاتِكَ إِلَّا مَا لَغَوْتَ، فَدَخَلَ أَبُو ذَرٍّ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَهُ بِذَلِكَ؟ فَقَالَ: صَدَقَ أُبَيُّ بْنُ كَعْبٍ» .

L8538–8540 And through him to Hammad, from Humaid, from Bakr ibn Abdullah al-Muzani, that Alqamah ibn Abdullah al-Muzani narrated. He was in Mecca when Kuraib arrived while the Imam was delivering the Friday sermon. He said to him: “You have held back the people - they have departed.” He replied: “Do not rush until we disperse.” When he completed his prayer, Ibn Umar said to him: “As for your companion, he is a donkey. And as for you - do you think your Friday prayer counts?”

وَبِهِ إِلَى حَمَّادٍ عَنْ حُمَيْدٍ عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيِّ: أَنَّ عَلْقَمَةَ بْنَ عَبْدِ اللَّهِ الْمُزَنِيَّ كَانَ بِمَكَّةَ فَجَاءَ كريب وَالْإِمَامُ يَخْطُبُ يَوْمَ الْجُمُعَةِ، فَقَالَ لَهُ: حَبَسْتَ الْقَوْمَ قَدْ ارْتَحَلُوا، فَقَالَ لَهُ: لَا تَعْجَلْ حَتَّى نَنْصَرِفَ، فَلَمَّا قَضَى صَلَاتَهُ قَالَ لَهُ ابْنُ عُمَرَ: أَمَّا صَاحِبُكَ فَحِمَارٌ، وَأَمَّا أَنْتَ فَلَا جُمُعَةَ لَكَ؟

L8541 From the path of Waki‘ through his father, from Ibrāhīm ibn Muhājir, from Ibrāhīm al-Nakha‘ī: A man asked ʿAbdullāh ibn Masʿūd to recite a verse while the Imam was delivering the khutbah. When the prayer concluded, he said, “Is this the share you gained from your prayer?” Abū Muḥammad said: These are three Companions—with no opposing view known from the other Companions (may Allah be pleased with them)—and all of them invalidate the prayer of whoever speaks intentionally during the khutbah.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ أَبِيهِ عَنْ إِبْرَاهِيمَ بْنِ مُهَاجِرٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ: أَنَّ رَجُلًا اسْتَفْتَحَ عَبْدَ اللَّهِ بْنَ مَسْعُودٍ آيَةً وَالْإِمَامُ يَخْطُبُ، فَلَمَّا صَلَّى قَالَ: هَذَا حَظُّكَ مِنْ صَلَاتِكَ؟ قَالَ أَبُو مُحَمَّدٍ: فَهَؤُلَاءِ ثَلَاثَةٌ مِنَ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ، كُلُّهُمْ يُبْطِلُ صَلَاةَ مَنْ تَكَلَّمَ عَامِدًا فِي الْخُطْبَةِ.

L8542 By this we say, and it is incumbent upon him to repeat it within the prescribed time, for he did not pray it. It is surprising that one would claim: “The meaning of this is that his reward has been invalidated!” Abu Muham-

وَبِهِ نَقُولُ، وَعَلَيْهِ إِعَادَتُهَا فِي الْوَقْتِ، لِأَنَّهُ لَمْ يُصَلِّهَا وَالْعَجَبُ مِمَّنْ قَالَ: مَعْنَى هَذَا أَنَّهُ بَطَلَ أَجْرُهُ قَالَ أَبُو مُحَمَّدٍ: وَإِذَا بَطَلَ أَجْرُهُ فَقَدْ بَطَلَ عَمَلُهُ بِلَا شَكٍّ؟

[8] **Qur’an references (L8536):** Qur’an 25:72 (Al-Furqan).

mad said: “If his reward is invalidated, is his deed not invalidated without doubt?”

L8543 From Maʿmar, from Ayyūb al-Sakhtiyānī, from Nāfiʿ: Ibn ʿUmar pelted two men who were speaking on Friday with pebbles. He saw a beggar soliciting alms on Friday and pelted him, and would gesture to a man on Friday, indicating: “Be silent!” As for when the imam includes in his sermon praise of someone whom Muslims have no need to praise, a supplication containing transgression and superfluous speech, or condemnation of the undeserving—this is not part of the sermon. Therefore, it is impermissible to heed this; rather, changing it becomes obligatory if possible.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ حَصَبَ رَجُلَيْنِ كَانَا يَتَكَلَّمَانِ يَوْمَ الْجُمُعَةِ، وَأَنَّهُ رَأَى سَائِلًا يَسْأَلُ يَوْمَ الْجُمُعَةِ فَحَصَبَهُ، وَأَنَّهُ كَانَ يُومِئُ إِلَى الرَّجُلِ يَوْمَ الْجُمُعَةِ: أَنْ اُسْكُتْ؟ وَأَمَّا إِذَا أَدْخَلَ الْإِمَامُ فِي خُطْبَتِهِ مَدْحَ مَنْ لَا حَاجَةَ بِالْمُسْلِمِينَ إِلَى مَدْحِهِ، أَوْ دُعَاءً فِيهِ بَغْيٌ وَفُضُولٌ مِنَ الْقَوْلِ، أَوْ ذَمَّ مَنْ لَا يَسْتَحِقُّ -: فَلَيْسَ هَذَا مِنَ الْخُطْبَةِ، فَلَا يَجُوزُ الْإِنْصَاتُ لِذَلِكَ، بَلْ تَغْيِيرُهُ وَاجِبٌ إِنْ أَمْكَنَ

L8544 It has been narrated to us through the chain of Sufyan al-Thawri from Mujalid, who said: I saw al-Shaʿbi and Abu Burdah ibn Abi Musa al-Ashʿari speaking while al-Hajjaj was delivering the sermon when he said, “May Allah curse, may Allah curse!” I asked: “Are you two speaking during the sermon?” They replied: “We were not ordered to remain silent for such a thing.” From al-Muʿtamir ibn Sulayman al-Taymi, from Ismaʿil ibn Abi Khalid, who said: I saw Ibrahim al-Nakhaʿi speaking while the Imam was delivering the sermon during the time of al-Hajjaj.

رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ مُجَالِدٍ قَالَ: رَأَيْت الشَّعْبِيَّ، وَأَبَا بُرْدَةَ بْنَ أَبِي مُوسَى الْأَشْعَرِيَّ يَتَكَلَّمَانِ وَالْحَجَّاجُ يَخْطُبُ حِينَ قَالَ: لَعَنَ اللَّهُ وَلَعَنَ اللَّهُ، فَقُلْت: أَتَتَكَلَّمَانِ فِي الْخُطْبَةِ؟ فَقَالَا: لَمْ نُؤْمَرْ بِأَنْ نُنْصِتَ لِهَذَا؟ وَعَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ قَالَ: رَأَيْت إبْرَاهِيمَ النَّخَعِيَّ يَتَكَلَّمُ وَالْإِمَامُ يَخْطُبُ زَمَنَ الْحَجَّاجِ؟

L8545–8546 Abu Muhammad said: Al-Hajjaj and his orators used to curse Ali and Ibn al-Zubayr (may Allah be pleased with them), and their cursers were themselves cursed.

قَالَ أَبُو مُحَمَّدٍ: كَانَ الْحَجَّاجُ وَخُطَبَاؤُهُ يَلْعَنُونَ عَلِيًّا، وَابْنَ الزُّبَيْرِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلُعِنَ لَاعِنُهُمْ.

L8547 Abū Muḥammad said: “We have received a differing narration from some of the Salaf—which we do not adopt?—: It was transmitted to us through the chain of Wakīʿ, from Ibn Nāʾil, from Ismāʿīl ibn Umayyah, from ʿUrwah ibn al-Zubayr, that he saw no harm in speaking if one did not hear the sermon.”

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ رُوِّينَا خِلَافًا عَنْ بَعْضِ السَّلَفِ لَا نَقُولُ بِهِ؟ -: رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ ابْنِ نَائِلٍ عَنْ إسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِالْكَلَامِ إذَا لَمْ يَسْمَعْ الْخُطْبَةَ.

L8548 Regarding the initiation of the Salām and its response, Abdullāh ibn Rubayʿ narrated to us, saying: From ʿUmar ibn ʿAbd al-Malik, from Muḥammad ibn Bakr, from Abū Dāwūd, from Aḥmad ibn Ḥanbal, from Bishr, who is Ibn al-Mufaḍḍal, from Muḥammad ibn ʿAjlān, from al-Maqburī (Saʿīd ibn Abī Saʿīd), from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings

وَأَمَّا ابْتِدَاءُ السَّلَامِ وَرَدُّهُ فَإِنَّ عَبْدَ اللَّهِ بْنَ رُبَيْعٍ حَدَّثَنَا قَالَ: ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا أَحْمَدُ بْنُ حَنْبَلٍ ثنا بِشْرٌ هُوَ ابْنُ الْمُفَضَّلِ - عَنْ مُحَمَّدِ بْنِ

of Allah be upon him—said, “When one of you arrives at a gathering, let him offer Salām, and when he intends to rise, let him likewise offer Salām. For the first is no more deserving than the last.” Allah the Exalted said, “When you are greeted with a salutation, respond with one better than it or return it [at least] in kind” (Quran 4:86).[9][10]

عَجْلَانَ عَنْ الْمَقْبُرِيِّ هُوَ سَعِيدُ بْنُ أَبِي سَعِيدٍ - عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا انْتَهَى أَحَدُكُمْ إِلَى الْمَجْلِسِ فَلْيُسَلِّمْ، فَإِذَا أَرَادَ أَنْ يَقُومَ فَلْيُسَلِّمْ، فَلَيْسَتْ الْأُولَى بِأَحَقَّ مِنْ الْآخِرَةِ» وَقَالَ عَزَّ وَجَلَّ {وَإِذَا حُيِّيتُمْ بِتَحِيَّةٍ فَحَيُّوا بِأَحْسَنَ مِنْهَا أَوْ رُدُّوهَا} [النساء: ٨٦] .

L8549 As for praising the sneezer and responding to him, Abdullah ibn Rubay‘ narrated to us: from Umar ibn Abd al-Malik, from Muhammad ibn Bakr, from Abu Dawud, from Uthman ibn Abi Shaybah, from Jarir, from Mansur, from Hilal ibn Yasaf, from Salim ibn Ubayd, who said: He heard the Messenger of Allah (peace and blessings be upon him) say: “When one of you sneezes, let him praise Allah. Those near him should say: ’May Allah have mercy on you,’ and let him respond to them: ’May Allah forgive us and you.”’

وَأَمَّا حَمْدُ الْعَاطِسِ وَتَشْمِيتُهُ فَإِنَّ عَبْدَ اللَّهِ بْنَ رُبَيِّعٍ حَدَّثَنَا قَالَ: ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا عُثْمَانُ بْنُ أَبِي شَيْبَةَ ثنا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ هِلَالِ بْنِ يَسَافٍ عَنْ سَالِمِ بْنِ عُبَيْدٍ قَالَ: إنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا عَطَسَ أَحَدُكُمْ فَلْيَحْمَدْ اللَّهَ، وَلْيَقُلْ لَهُ مَنْ عِنْدَهُ: يَرْحَمُكَ اللَّهُ، وَلْيَرُدَّ عَلَيْهِمْ: يَغْفِرُ اللَّهُ لَنَا وَلَكُمْ» .

L8550 It has been said that between Hilāl ibn Yasāf and Sālim ibn ʿUbayd: Khālid ibn ʿArfajah.

وَقَدْ قِيلَ: إنَّ بَيْنَ هِلَالِ بْنِ يَسَافٍ وَبَيْنَ سَالِمِ بْنِ عُبَيْدٍ: خَالِدَ بْنَ عَرْفَجَةَ

L8551 In his narration to Abu Dawud: Musa ibn Isma‘il narrated to us. ‘Abd al-‘Aziz (the son of ‘Abd Allah ibn Abi Salamah) narrated from ‘Abd Allah ibn Dinar from Abu Salih from Abu Hurayrah from the Prophet (peace be upon him), who said: “When one of you sneezes, let him say: All praise is due to Allah in every situation. Let his brother or companion say: May Allah have mercy on you. He should then respond: May Allah guide you all and rectify your affairs.”[11]

وَبِهِ إلَى أَبِي دَاوُد: ثنا مُوسَى بْنُ إسْمَاعِيلَ قَالَ عَبْدُ الْعَزِيزِ هُوَ ابْنُ عَبْدِ اللَّهِ بْنِ أَبِي سَلَمَةَ - عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا عَطَسَ أَحَدُكُمْ فَلْيَقُلْ: الْحَمْدُ لِلَّهِ عَلَى كُلِّ حَالٍ، وَلْيَقُلْ أَخُوهُ أَوْ صَاحِبُهُ: يَرْحَمُكَ اللَّهُ، وَيَقُولُ هُوَ: يَهْدِيكُمْ اللَّهُ وَيُصْلِحُ بَالَكُمْ» .

L8552–8553 Abu Muhammad said: If it is said: The prohibition against speaking and the command to maintain silence during the sermon have been established, as have the injunction to offer greetings, respond to them, say “Praise be to Allah” (Alhamdulillah) when sneezing, respond with “May Allah have mercy on you” (Yarhamuk-Allah) to that, and the reply—yet some say: except dur-

قَالَ أَبُو مُحَمَّد: فَإِنْ قِيلَ: قَدْ صَحَّ النَّهْيُ عَنْ الْكَلَامِ وَالْأَمْرُ بِالْإِنْصَاتِ فِي الْخُطْبَةِ، وَصَحَّ الْأَمْرُ بِالسَّلَامِ وَرَدِّهِ، وَبِحَمْدِ اللَّهِ تَعَالَى عِنْدَ الْعُطَاسِ وَتَشْمِيتِهِ عِنْدَ ذَلِكَ وَرَدِّهِ، فَقَالَ قَوْمٌ: إلَّا فِي الْخُطْبَةِ، وَقُلْتُمْ أَنْتُمْ: بِالْإِنْصَاتِ فِي الْخُطْبَةِ إلَّا عَنْ السَّلَامِ وَرَدِّهِ وَالْحَمْدِ وَالتَّشْمِيتِ وَالرَّدِّ، فَمَنْ لَكُمْ بِتَرْجِيحِ اسْتِثْنَائِكُمْ وَتَغْلِيبِ اسْتِعْمَالِكُمْ لِلْأَخْبَارِ عَلَى

[9] **Hadith references (L8548):** Sunan Abi Dawud 5208; Riyad as-Salihin 869.
[10] **Qur’an references (L8548):** Qur’an 4:86 (An-Nisa).
[11] **Hadith references (L8551):** Sunan Abi Dawud 5033.

ing the sermon—while you hold that silence is required during the sermon except for offering greetings, responding to them, praising Allah, responding to sneezes, and their replies—then how do you justify prioritizing your exceptions and favoring your application of prophetic narrations over the exceptions of others and their application of the same narrations? This is especially so since you have agreed with us that all such acts are impermissible during prayer.

اسْتِثْنَاءِ غَيْرِكُمْ وَاسْتِعْمَالِهِ لِلْأَخْبَارِ، لَا سِيَّمَا وَقَدْ أَجْمَعْتُمْ مَعَنَا عَلَى أَنَّ كُلَّ ذَلِكَ لَا يَجُوزُ فِي الصَّلَاةِ؟

L8554 We said—and divine enablement is solely from Allah, the Exalted—that it has been narrated from the Messenger of Allah—peace and blessings be upon him—regarding prayer: "No human speech is permissible during it." Analogizing the sermon to prayer is invalid, since it is not mandated by the Qur'an, the Sunnah, nor by Ijma (consensus).

قُلْنَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: قَدْ جَاءَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الصَّلَاةِ أَنَّهُ «لَا يَصْلُحُ فِيهَا شَيْءٌ مِنْ كَلَامِ النَّاسِ» وَالْقِيَاسُ لِلْخُطْبَةِ عَلَى الصَّلَاةِ بَاطِلٌ، إذْ لَمْ يُوجِبْهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ.

L8555 We examined this matter and found that in the sermon, it is permissible for the preacher to initiate speech and receive responses, and for the one petitioning Allah to initiate conversation with the preacher's response to him, as we shall explain later. None of this is obligatory but rather permissible.

فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا الْخُطْبَةَ يَجُوزُ فِيهَا ابْتِدَاءُ الْخَطِيبِ بِالْكَلَامِ وَمُجَاوَبَتِهِ، وَابْتِدَاءُ ذِي الْحَاجَةِ لِلَّهِ بِالْمُكَالَمَةِ وَجَوَابِ الْخَطِيبِ لَهُ، عَلَى مَا نَذْكُرُ بَعْدَ هَذَا، وَكُلُّ هَذَا لَيْسَ هُوَ فَرْضًا، بَلْ هُوَ مُبَاحٌ.

L8556 It is permissible for someone entering a mosque to begin a supererogatory prayer there.

وَيَجُوزُ فِيهَا ابْتِدَاءُ الدَّاخِلِ بِالصَّلَاةِ تَطَوُّعًا.

L8557–8559 It is validated that the commanded speech takes precedence over silence during it, for it is among the impossible and inconceivable matters—utterly impermissible—that permissible speech would be allowed while neglecting the obligatory speech which it is unlawful to omit. Through Allah the Exalted we seek strength.

فَصَحَّ أَنَّ الْكَلَامَ الْمَأْمُورَ بِهِ مُغَلَّبٌ عَلَى الْإِنْصَاتِ فِيهَا، لِأَنَّهُ مِنْ الْمُحَالِ الْمُمْتَنِعِ الَّذِي لَا يُمْكِنُ أَلْبَتَّةَ جَوَازُهُ -: أَنْ يَكُونَ الْكَلَامُ الْمُبَاحُ جَائِزًا فِيهَا وَيَكُونُ الْكَلَامُ الْفَرْضُ الْمَأْمُورُ بِهِ الَّذِي لَا يَحِلُّ تَرْكُهُ فِيهَا - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا إبْرَاهِيمُ بْنُ الْمُنْذِرِ ثنا الْوَلِيدُ بْنُ مُسْلِمٍ ثنا أَبُو عَمْرٍو هُوَ الْأَوْزَاعِيُّ - حَدَّثَنِي إسْحَاقُ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ «بَيْنَمَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَخْطُبُ فِي يَوْمِ جُمُعَةٍ قَامَ

Abd al-Raḥmān ibn ʿAbd Allāh ibn Khālid narrated to us: Ibrāhīm ibn Aḥmad narrated to us: al-Farabrī narrated to us: al-Bukhārī narrated to us: Ibrāhīm ibn al-Mundhir narrated to us: al-Walīd ibn Muslim narrated to us: Abū ʿAmr (al-Awzāʿī) narrated to us: Isḥāq ibn ʿAbd Allāh ibn Abī Ṭalḥah narrated to me from Anas ibn Mālik, who said: "While the Prophet—peace and blessings of Allah be upon him—was delivering the Friday sermon, a Bedouin stood and said: 'O Messenger of Allah, the livestock has perished and our children are starving. Pray to Allah for us.' He raised..." The Messenger of Allah (may

Allah bless him and grant him peace) his hands, and we saw no patches of clouds in the sky." He narrated the remainder of the hadith.

أَعْرَابِيٌّ فَقَالَ: يَا رَسُولَ اللَّهِ، هَلَكَ الْمَالُ، وَجَاعَ الْعِيَالُ، فَادْعُ اللَّهَ لَنَا، فَرَفَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَدَيْهِ، وَمَا نَرَى فِي السَّمَاءِ قَزَعَةً» وَذَكَرَ بَاقِيَ الْحَدِيثِ.

L8560 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn Al-Hajjaj narrated to us, Shayban ibn Farrukh narrated to us, Sulayman ibn Al-Mughirah narrated to us, Humaid ibn Hilal said: Abu Rifa'ah said: "I approached the Messenger of Allah (peace and blessings be upon him) while he was delivering a sermon. I said: 'O Messenger of Allah, a stranger has come to ask about his religion, for he does not know what his religion is.' The Messenger of Allah (peace and blessings be upon him) turned to me, interrupted his sermon, and came to me. A chair was brought—I noticed its legs were made of iron—and the Messenger of Allah (peace and blessings be upon him) sat upon it. He then began teaching me from what Allah (the Almighty and Majestic) had taught him. Afterward, he returned to his sermon and completed it."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا شَيْبَانُ بْنُ فَرُّوخَ ثنا سُلَيْمَانُ بْنُ الْمُغِيرَةِ ثنا حُمَيْدُ بْنُ هِلَالٍ قَالَ: «قَالَ أَبُو رِفَاعَةَ: انْتَهَيْتُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ يَخْطُبُ، فَقُلْتُ: يَا رَسُولَ اللَّهِ، رَجُلٌ غَرِيبٌ جَاءَ يَسْأَلُ عَنْ دِينِهِ، لَا يَدْرِي مَا دِينُهُ، فَأَقْبَلَ عَلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَرَكَ خُطْبَتَهُ حَتَّى انْتَهَى إِلَيَّ، وَأُتِيَ بِكُرْسِيٍّ حَسِبْتُ قَوَائِمَهُ حَدِيدًا، فَقَعَدَ عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَجَعَلَ يُعَلِّمُنِي مِمَّا عَلَّمَهُ اللَّهُ - عَزَّ وَجَلَّ - ثُمَّ أَتَى إِلَى خُطْبَتِهِ فَأَتَمَّ آخِرَهَا» .

قَالَ أَبُو مُحَمَّدٍ: أَبُو رِفَاعَةَ هَذَا تَمِيمُ الْعَدَوِيُّ لَهُ صُحْبَةٌ

L8561 Abū Muḥammad said: This Abū Rifāʿah is Tamīm al-ʿAdawī; he was a Companion.

وَقَدْ ذَكَرْنَا قَبْلَ هَذَا الْبَابِ فِي الْمُتَّصِلِ بِهِ كَلَامَ عُمَرَ مَعَ النَّاسِ عَلَى الْمِنْبَرِ فِي أَنَّ السُّجُودَ لَيْسَ فَرْضًا.

L8562 We have previously mentioned before this chapter, in the one connected to it, Umar's speech with the people on the pulpit concerning that prostration is not an obligation.

وَذَكَرْنَا قَبْلُ كَلَامَ عُمَرَ مَعَ عُثْمَانَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَكَلَامَ عُثْمَانَ مَعَهُ وَعُمَرُ يَخْطُبُ فِي أَمْرِ غُسْلِ الْجُمُعَةِ وَإِنْكَارِ تَرْكِهِ، لَا يُنْكِرُ الْكَلَامَ فِي كُلِّ ذَلِكَ أَحَدٌ مِنْ الصَّحَابَةِ، حَتَّى نَشَأَ مَنْ لَا يَعْتَدُّ بِهِ مَعَ مَنْ ذَكَرْنَا.

L8563 We previously mentioned the conversation between Umar and Uthman in the presence of the Companions—may Allah be pleased with them—and Uthman's remarks to him during Umar's sermon regarding the obligation of the Friday ritual bath and the rejection of neglecting it. None of the Companions disputed the validity of that entire discourse, until there arose those who were not deemed authoritative, in contrast to those we have mentioned.

وَالْعَجِيبُ أَنَّ بَعْضَهُمْ - مِمَّنْ يَنْتَسِبُ إِلَى الْعِلْمِ بِزَعْمِهِمْ - قَالَ: لَعَلَّ هَذَا قَبْلَ نَسْخِ الْكَلَامِ فِي الصَّلَاةِ أَوْ قَالَ: فِي الْخُطْبَةِ

L8564 What is strange is that some of them—among those who falsely assert affiliation with scholarly knowledge—said: "Perhaps this was before the abrogation of speech during prayer or during the sermon."

L8565 I wish I knew where he found the copy of the speech we mentioned in the

sermon.

فَلَيْتَ شِعْرِي أَيْنَ وَجَدَ نَسْخَ الْكَلَامِ الَّذِي ذَكَرْنَا فِي الْخُطْبَةِ؟

L8566 What is it that introduced prayer into the sermon? It has no role in the sermon's rulings.

وَمَا الَّذِي أَدْخَلَ الصَّلَاةَ فِي الْخُطْبَةِ؟ وَلَيْسَ لَهَا شَيْءٌ فِي أَحْكَامِهَا.

L8567–8569 If the preacher were to deliver the sermon without ablution, that would not harm his sermon, and he delivers it towards a direction other than the qiblah. How much more significant is prayer than the sermon, if only they understood? We seek refuge in Allah from misguidance—and religion is not based on "perhaps." Through the narration of Waki' from Al-Faḍl ibn Dalham from Al-Ḥasan, who said: He should offer the Salam, respond to the Salam, and say "Yarḥamuka Allāh (May Allah have mercy on you)" to one who sneezes, while the Imam is delivering the sermon.

وَلَوْ خَطَبَ الْخَطِيبُ عَلَى غَيْرِ وُضُوءٍ لَمَا ضَرَّ ذَلِكَ خُطْبَتَهُ، وَهُوَ يَخْطُبُهَا إِلَى غَيْرِ الْقِبْلَةِ، فَأَيْنَ الصَّلَاةُ مِنْ الْخُطْبَةِ لَوْ عَقَلُوا؟ وَنَعُوذُ بِاللَّهِ مِنْ الضَّلَالِ - وَالدِّينُ لَا يُؤْخَذُ بِ " لَعَلَّ " وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الْفَضْلِ بْنِ دَلْهَمٍ عَنْ الْحَسَنِ قَالَ يُسَلِّمُ، وَيَرُدُّ السَّلَامَ، وَيُشَمِّتُ الْعَاطِسَ - وَالْإِمَامُ يَخْطُبُ.

L8570 From Waki', via Sufyān al-Thawrī, via al-Mughīrah ibn Miqsam, via Ibrāhīm al-Nakha'ī: the same chain as the previous one.

وَعَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ مِثْلُهُ.

L8571 From Al-Sha'bi and Salim ibn 'Abdullah ibn 'Umar, they both said: Respond to the greeting of peace during Friday prayer and listen attentively.

وَعَنْ الشَّعْبِيِّ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَا: رُدَّ السَّلَامَ يَوْمَ الْجُمُعَةِ وَاسْمَعْ.

L8572 Al-Qasim ibn Muhammad and Muhammad ibn Ali said: He must revoke within himself.

وَقَالَ الْقَاسِمُ بْنُ مُحَمَّدٍ، وَمُحَمَّدُ بْنُ عَلِيٍّ: يَرُدُّ فِي نَفْسِهِ.

L8573 Shu'bah narrated: I asked Ḥammād ibn Abī Sulaymān and al-Ḥakam ibn 'Utaybah about a man who arrives on Friday after the Imam has emerged [to lead the prayer]. They both said: He should greet [others], they respond to him, and if he sneezes, they say *yarḥamukallāh* to him, and he responds with *yahdīkumullāh*.

وَمِنْ طَرِيقِ شُعْبَةَ قَالَ: سَأَلْت حَمَّادَ بْنَ أَبِي سُلَيْمَانَ، وَالْحَكَمَ بْنَ عُتَيْبَةَ عَنْ رَجُلٍ جَاءَ يَوْمَ الْجُمُعَةِ، وَقَدْ خَرَجَ الْإِمَامُ؟ فَقَالَا جَمِيعًا: يُسَلِّمُ وَيَرُدُّونَ عَلَيْهِ، وَإِنْ عَطَسَ شَمَّتُوهُ، وَيَرُدُّ عَلَيْهِمْ؟

L8574 From Abd al-Razzaq, from Ibn Jurayj, from Ata, who said: If a man sneezes during the Friday sermon while the Imam is delivering it and praises Allah the Exalted, or if he says the salām while you hear him and simultaneously hear the sermon, then say "Yarhamuk Allah" silently within yourself and respond to him inwardly. But if you cannot hear the sermon, say "Yarhamuk Allah" aloud and respond to him audibly so he can hear. From Ma'mar, from al-Hasan al-Basri and Qatadah, both of whom said regarding a man who says the salām while hearing the sermon: He should respond and make his reply audible.

وَعِنْدَ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: إذَا عَطَسَ الرَّجُلُ يَوْمَ الْجُمُعَةِ وَالْإِمَامُ يَخْطُبُ فَحَمِدَ اللَّهَ تَعَالَى، أَوْ سَلَّمَ وَأَنْت تَسْمَعُهُ وَتَسْمَعُ الْخُطْبَةَ فَشَمِّتْهُ فِي نَفْسِك، وَرُدَّ عَلَيْهِ فِي نَفْسِك، فَإِنْ كُنْت لَا تَسْمَعُ الْخُطْبَةَ فَشَمِّتْهُ وَأَسْمِعْهُ، وَرُدَّ عَلَيْهِ، وَأَسْمِعْهُ؟ وَعَنْ مَعْمَرٍ عَنْ الْحَسَنِ الْبَصْرِيِّ وَقَتَادَةَ قَالَا جَمِيعًا فِي الرَّجُلِ يُسَلِّمُ وَهُوَ يَسْمَعُ الْخُطْبَةَ: أَنَّهُ يَرُدُّ وَيُسْمِعُهُ.

From Ḥammād ibn Salamah, from Ziyād al-Aʿlam, from al-Ḥasan: He did not deem it objectionable for a man to offer the greeting (*Salam*) or respond to the greeting while the Imam is delivering the sermon.

This is the opinion of al-Shāfiʿī, ʿAbd al-Razzāq, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhawayh, Abū Sulaymān, and their companions.

Sitting with knees drawn to the chest and arms wrapped around them on Friday while the Imam is delivering the khutbah.

Issue 530: It is permissible to sit with knees drawn up during the Friday prayer while the Imam delivers the sermon, and to drink water, and give charity, and hand one's fellow Muslim what he needs, for all these are good deeds and no prohibition has been reported regarding any of them.

And He, the Exalted, said: "And do good" [Al-Hajj: 77]. If it had been disliked or forbidden, He would certainly have made that clear. Allah, the Most High, said through His Prophet—peace and blessings of Allah be upon him—: "And your Lord is not forgetful" [Maryam: 64].[12]

The prohibition against sitting in the posture of iḥtibāʾ (with legs drawn up and wrapped in a garment) while the Imam is delivering the sermon has been transmitted through the chain of Abu Marḥūm ʿAbd al-Raḥīm ibn Maymūn from Sahl ibn Muʿādh ibn Anas al-Juhanī.

This Abu Marhum is unknown; no one we know of transmitted from him except Saʿīd ibn Abī Ayyūb.

It has been narrated to us from Ibn ʿUmar that he would sit in iḥtibā (a posture with arms wrapped around the knees) on Friday while the Imam was delivering the sermon. Likewise, Anas ibn Mālik, Shurayḥ, Ṣaʿṣaʿah ibn Ṣuḥān, Saʿīd ibn al-Musayyib, Ibrāhīm al-Nakhaʿī, Makhūl, Ismāʿīl ibn Muḥammad ibn Saʿd ibn Abī Waqqāṣ, and Nuʿaym ibn Salāmah did the same. No dis-

[12] **Qur'an references (L8579):** Qur'an 19:64 (Maryam); Qur'an 22:77 (Al-Hajj).

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ زِيَادٍ الْأَعْلَمِ عَنْ الْحَسَنِ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يُسَلِّمَ الرَّجُلُ وَيَرُدَّ السَّلَامَ وَالْإِمَامُ يَخْطُبُ.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَعَبْدِ الرَّزَّاقِ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي سُلَيْمَانَ وَأَصْحَابِهِمْ.

[الِاحْتِبَاءُ يَوْمَ الْجُمُعَةِ وَالْإِمَامُ يَخْطُبُ]

٥٣٠ - مَسْأَلَةٌ: وَالِاحْتِبَاءُ جَائِزٌ يَوْمَ الْجُمُعَةِ وَالْإِمَامُ يَخْطُبُ، وَكَذَلِكَ شُرْبُ الْمَاءِ، وَإِعْطَاءُ الصَّدَقَةِ، وَمُنَاوَلَةُ الْمَرْءِ أَخَاهُ حَاجَتَهُ، لِأَنَّ كُلَّ هَذَا أَفْعَالُ خَيْرٍ لَمْ يَأْتِ عَنْ شَيْءٍ مِنْهَا نَهْيٌ.

وَقَالَ تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] وَلَوْ كُرِهَتْ أَوْ حَرُمَتْ لَبَيَّنَ ذَلِكَ تَعَالَى عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَقَدْ جَاءَ النَّهْيُ عَنْ الِاحْتِبَاءِ وَالْإِمَامُ يَخْطُبُ مِنْ طَرِيقِ أَبِي مَرْحُومٍ عَبْدِ الرَّحِيمِ بْنِ مَيْمُونٍ عَنْ سَهْلِ بْنِ مُعَاذِ بْنِ أَنَسٍ الْجُهَنِيِّ.

وَأَبُو مَرْحُومٍ هَذَا مَجْهُولٌ لَمْ يَرْوِ عَنْهُ أَحَدٌ نَعْلَمُهُ إلَّا سَعِيدَ بْنَ أَبِي أَيُّوبَ.

رُوِّينَا عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ يَحْتَبِي يَوْمَ الْجُمُعَةِ وَالْإِمَامُ يَخْطُبُ، وَكَذَلِكَ أَنَسُ بْنُ مَالِكٍ وَشُرَيْحٌ، وَصَعْصَعَةُ بْنُ صُوحَانَ، وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَإِبْرَاهِيمُ النَّخَعِيُّ، وَمَكْحُولٌ، وَإِسْمَاعِيلُ بْنُ مُحَمَّدِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ، وَنُعَيْمُ بْنُ سَلَامَةَ، وَلَمْ يَبْلُغْنَا عَنْ أَحَدٍ

approval reached us from any of the Followers except ʿUbādah ibn Nusayy alone. No disapproval of this practice was narrated from any of the Companions—may Allah be pleased with them—was it?

مِنْ التَّابِعِينَ أَنَّهُ كَرَّهَهُ، إلَّا عُبَادَةَ بْنَ نُسَيٍّ وَحْدَهُ، وَلَمْ تُرْوَ كَرَاهَةُ ذَلِكَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؟

L8585 It has been reported to us from Ṭāwus that it is permissible to drink water on Friday while the imam is delivering the sermon.

وَرُوِّينَا عَنْ طَاوُسٍ إبَاحَةَ شُرْبِ الْمَاءِ يَوْمَ الْجُمُعَةِ وَالْإِمَامُ يَخْطُبُ.

L8586 And this is the opinion of Mujāhid, Al-Shāfiʿī, and Abū Sulaymān.

وَهُوَ قَوْلُ مُجَاهِدٍ وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L8587 Al-Awzāʿī said: If one drinks water, his Friday prayer is invalidated - and with Allah, the Most High, lies the divine facilitation.

وَقَالَ الْأَوْزَاعِيُّ: إنْ شَرِبَ الْمَاءَ فَسَدَتْ جُمُعَتُهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L8588 A jurisprudential issue: One enters on Friday while the Imam is delivering the sermon.

[مَسْأَلَةٌ دَخَلَ يَوْمَ الْجُمُعَةِ وَالْإِمَامُ يَخْطُبُ]

L8589 531 – Issue: Whoever enters [the mosque] on the day of Jumuʿah while the Imam is delivering the sermon must pray two rakʿatayn (units of prayer) before sitting.

٥٣١ - مَسْأَلَةٌ: وَمَنْ دَخَلَ يَوْمَ الْجُمُعَةِ وَالْإِمَامُ يَخْطُبُ فَلْيُصَلِّ رَكْعَتَيْنِ قَبْلَ أَنْ يَجْلِسَ.

L8590 Abdur-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: Al-Farbari narrated to us: Al-Bukhari narrated to us: Adam narrated to us: Shu'bah narrated to us: Amr ibn Dinar said: I heard Jabir ibn Abdullah say: The Messenger of Allah—peace be upon him—said: "When one of you arrives while the Imam is delivering the sermon or has come out, he should pray two rakʿahs."[13]

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا آدَم ثنا شُعْبَةُ ثنا عَمْرُو بْنُ دِينَارٍ قَالَ سَمِعْت جَابِرَ بْنَ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا جَاءَ أَحَدُكُمْ وَالْإِمَامُ يَخْطُبُ أَوْ قَدْ خَرَجَ فَلْيُصَلِّ رَكْعَتَيْنِ» .

L8591–8593 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, Abd al-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us. Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Muhammad ibn Bashshar narrated to us, Muhammad ibn Jaʿfar narrated to us, Shuʿbah narrated from ʿAmr ibn Dīnār, who said: I heard Jābir ibn ʿAbdullāh say: The Prophet—peace and blessings of Allah be upon him—delivered a sermon and said, "When one of you comes on Friday and the Imam has come out, let him perform two rakʿahs."[14]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا مُحَمَّدُ بْنُ جَعْفَرٍ ثنا شُعْبَةُ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ سَمِعْت جَابِرَ بْنَ عَبْدِ اللَّهِ قَالَ: إنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَطَبَ فَقَالَ: «إذَا جَاءَ أَحَدُكُمْ يَوْمَ الْجُمُعَةِ، وَقَدْ خَرَجَ الْإِمَامُ فَلْيُصَلِّ رَكْعَتَيْنِ» .

[13] **Hadith references (L8590):** Sahih al-Bukhari 1170.
[14] **Hadith references (L8591):** Sahih Muslim 875e.

L8594 Abū Muḥammad said: This is a matter in which no stratagem is available to the deceiver, and all praise is due to Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: هَذَا أَمْرٌ لَا حِيلَةَ لِمُمَوِّهٍ فِيهِ وَلِلَّهِ تَعَالَى الْحَمْدُ.

L8595 And through him to Muslim: Qutaybah and Ishaq ibn Ibrahim – he is Ibn Rāhawayh – both narrated to us from Sufyan ibn Uyaynah from Amr ibn Dinar, who heard Jabir ibn Abdullah say: "A man entered the mosque while the Messenger of Allah (peace be upon him) was delivering the sermon on Friday. The Messenger of Allah (peace be upon him) said to him: 'Did you pray?' He replied: 'No.' He said: 'Stand and pray two rak'ahs.'"

وَبِهِ إِلَى مُسْلِمٍ: ثنا قُتَيْبَةُ وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - كِلَاهُمَا عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ «دَخَلَ رَجُلٌ الْمَسْجِدَ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَخْطُبُ يَوْمَ الْجُمُعَةِ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَصَلَّيْتَ؟ قَالَ: لَا، قَالَ: قُمْ فَصَلِّ الرَّكْعَتَيْنِ» .

L8596 This is the wording of Ishaq.

هَذَا لَفْظُ إِسْحَاقَ.

L8597 And Qutaybah said in his ḥadīth: "two rakʿahs."

وَقَالَ قُتَيْبَةُ فِي حَدِيثِهِ " رَكْعَتَيْنِ ".

L8598 And likewise, we have transmitted it through the chain of Ḥammād ibn Zayd, Ayyūb al-Sakhtiyānī, and Ibn Jurayj—all of them from ʿAmr from Jābir from the Prophet (PBUH)—and through the chain of al-Layth from Abī al-Zubayr from Jābir from the Prophet (PBUH). ʿAbdullāh ibn Rubayʿ narrated to us: Muḥammad ibn Isḥāq ibn al-Sulaym narrated to us: Ibn al-A'rabī narrated to us: Abū Dāwud Muḥammad ibn Maḥbūb and Ismāʿīl ibn Ibrāhīm both said: Ḥafṣ ibn Ghiyāth narrated to us from al-Aʿmash from Abū Ṣāliḥ from Abū Hurayrah, who said: "Sulayk al-Ghaṭafānī came while the Messenger of Allah (PBUH) was delivering the sermon. He (peace be upon him) asked him: 'Did you pray anything?' He replied: 'No.' He said: 'Pray two rakʿahs and make them brief.'"

وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ وَأَيُّوبَ السِّخْتِيَانِيِّ وَابْنِ جُرَيْجٍ كُلُّهُمْ عَنْ عَمْرٍو عَنْ جَابِرٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمِنْ طَرِيقِ اللَّيْثِ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رُبَيِّعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد مُحَمَّدُ بْنُ مَحْبُوبٍ وَإِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ قَالَا: ثنا حَفْصُ بْنُ غِيَاثٍ عَنِ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: «جَاءَ سُلَيْكٌ الْغَطَفَانِيُّ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَخْطُبُ، فَقَالَ لَهُ - عَلَيْهِ السَّلَامُ -: أَصَلَّيْتَ شَيْئًا؟ قَالَ: لَا، قَالَ: صَلِّ الرَّكْعَتَيْنِ تَجَوَّزْ فِيهِمَا» .

L8599–8601 Aḥmad ibn Muḥammad al-Ṭalamankī narrated to us: Ibn Mufarrij narrated to us: Ibrāhīm ibn Aḥmad ibn Firās al-ʿAbqasī narrated to us: Aḥmad ibn Muḥammad ibn Sālim al-Nīsābūrī narrated to us: Isḥāq ibn Rāhwayh narrated to us from Sufyān ibn ʿUyaynah. From Muhammad ibn ʿAjlan from ʿIyad ibn ʿAbd Allah ibn Saʿd ibn Abi Sarh from Abu Saʿid al-Khudri: "He came while Marwan was delivering the Friday sermon, so he stood and prayed two rakʿahs. They compelled him to sit, but he refused, saying: 'Is it

وَحَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ ثنا ابْنُ مُفَرِّجٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ فِرَاسٍ الْعَبْقَسِيُّ ثنا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ سَالِمٍ النَّيْسَابُورِيُّ ثنا إِسْحَاقُ بْنُ رَاهْوَيْهِ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ مُحَمَّدِ بْنِ عَجْلَانَ عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ بْنِ سَعْدِ بْنِ أَبِي سَرْحٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ " أَنَّهُ جَاءَ وَمَرْوَانُ يَخْطُبُ يَوْمَ الْجُمُعَةِ، فَقَامَ فَصَلَّى الرَّكْعَتَيْنِ، فَأَجْلَسُوهُ، فَأَبَى، وَقَالَ: أَبَعْدَ

after you prayed them with the Messenger of Allah—peace and blessings be upon him—?"' These are mutually supporting, successively transmitted narrations from a group of the Companions—may Allah be pleased with them—through the most authentic chains, compelling definitive certainty regarding the command of the Prophet—peace and blessings be upon him—that whoever comes on Friday while the Imam is delivering the sermon should pray two rak'ahs. Abu Sa'id prayed them with the Prophet—peace and blessings be upon him—and after him in the presence of the Companions, with no known opposition or denial from them except from Marwan's security forces, who uttered falsehood and acted falsely during the sermon, manifesting innovation and seeking to abolish a Sunnah and suppress a right. Who is more astonishing in circumstance than one who follows them while abandoning the Companions? People have narrated through Malik and others from 'Amir ibn 'Abd Allah ibn al-Zubayr from 'Amr ibn Sulaym al-Zuraqi from Abu Qatadah from the Messenger of Allah—peace and blessings be upon him—who said: "When one of you enters the mosque, let him perform two rak'ahs before sitting."[15]

مَا صَلَّيْتُمُوهَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ " فَهَذِهِ آثَارٌ مُتَظَاهِرَةٌ مُتَوَاتِرَةٌ عَنْ جَمَاعَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بِأَصَحِّ أَسَانِيدَ تُوجِبُ الْعِلْمَ بِأَمْرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ جَاءَ يَوْمَ الْجُمُعَةِ وَالْإِمَامُ يَخْطُبُ بِأَنْ يُصَلِّيَ رَكْعَتَيْنِ، وَصَلَّاهُمَا أَبُو سَعِيدٍ مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبَعْدَهُ بِحَضْرَةِ الصَّحَابَةِ لَا يُعْرَفُ لَهُ مِنْهُمْ مُخَالِفٌ، وَلَا عَلَيْهِ مُنْكِرٌ، إلَّا شُرَطَ مَرْوَانَ الَّذِينَ تَكَلَّمُوا بِالْبَاطِلِ وَعَمِلُوا الْبَاطِلَ فِي الْخُطْبَةِ، فَأَظْهَرُوا بِدْعَةً وَرَامُوا إمَاتَةَ سُنَّةٍ وَإِطْفَاءَ حَقٍّ، فَمَنْ أَعْجَبُ شَأْنًا مِمَّنْ يَقْتَدِي بِهِمْ وَيَدَعُ الصَّحَابَةَ؟ وَقَدْ رَوَى النَّاسُ مِنْ طَرِيقِ مَالِكٍ وَغَيْرِهِ عَنْ عَامِرِ بْنِ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ عَنْ عَمْرِو بْنِ سُلَيْمٍ الزُّرَقِيِّ عَنْ أَبِي قَتَادَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا دَخَلَ أَحَدُكُمْ الْمَسْجِدَ فَلْيَرْكَعْ رَكْعَتَيْنِ قَبْلَ أَنْ يَجْلِسَ» .

L8602 He (peace and blessings be upon him) spoke generally without restriction, so none may restrict except what the Prophet (peace and blessings be upon him) specified regarding those who find the Imam establishing the obligatory prayer or having entered it. Is this not the case? Glory to Him who facilitated these people in reversing truths, for they said: "Whoever arrives while the Imam is delivering the sermon should not perform rak'ah, and whoever arrives while the Imam is praying the obligatory prayer without having performed Witr or the two Fajr rak'ahs should abandon the obligatory prayer and occupy himself with voluntary prayer." Thus they entirely inverted the command of Allah's Messenger (peace and blessings be upon him).

فَعَمَّ - عَلَيْهِ السَّلَامُ - وَلَمْ يَخُصَّ فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَخُصَّ إلَّا مَا خَصَّهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِمَّنْ يَجِدُ الْإِمَامَ يُقِيمُ لِصَلَاةِ الْفَرْضِ، أَوْ قَدْ دَخَلَ فِيهَا؟ وَسُبْحَانَ مَنْ يَسَّرَ هَؤُلَاءِ لِعَكْسِ الْحَقَائِقِ، فَقَالُوا: مَنْ جَاءَ وَالْإِمَامُ يَخْطُبُ فَلَا يَرْكَعْ، وَمَنْ جَاءَ وَالْإِمَامُ يُصَلِّي الْفَرْضَ وَلَمْ يَكُنْ أَوْتَرَ وَلَا رَكَعَ رَكْعَتَيْ الْفَجْرِ فَلْيَتْرُكْ الْفَرِيضَةَ وَلْيَشْتَغِلْ بِالنَّافِلَةِ فَعَكَسُوا أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَكْسًا.

L8603 Were it not for the proof we previously mentioned—that there is no obligation except the five [prayers]—these two rak'ahs would have been obligatory. However, they are of the utmost emphasis, for no Sunnahs are more empha-

وَلَوْلَا الْبُرْهَانُ الَّذِي قَدْ ذَكَرْنَا قَبْلُ بِأَنْ لَا فَرْضَ إلَّا الْخَمْسُ لَكَانَتْ هَاتَانِ الرَّكْعَتَانِ فَرْضًا، وَلَكِنَّهُمَا فِي غَايَةِ التَّأْكِيدِ، لَا شَيْءَ مِنْ السُّنَنِ أَوْكَدُ مِنْهُمَا، لِتَرَدُّدِ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهِمَا.

[15] **Hadith references (L8599):** Sahih al-Bukhari 444; Sunan an-Nasai 730; Sahih Muslim 714a.

sized than them, due to the repeated injunctions of the Messenger of Allah—peace and blessings be upon him—regarding them.

L8604–8606 And it was narrated to us through the chain of ʿAbd al-Raḥmān ibn Mahdī: Sufyān al-Thawrī narrated to us from Abū Nahīk from Simāk ibn Salamah said: A man asked Ibn ʿAbbās, “What about praying while the Imam is delivering the sermon?” He replied, “Would it not be good if people were to do it?” From Abū Nuʿaym al-Faḍl ibn Dukayn: Buraid ibn ʿAbdullāh ibn Abī Burdah ibn Abī Mūsā al-Ashʿarī narrated to us: “I saw al-Ḥasan al-Baṣrī enter on Friday while Ibn Hubayrah was delivering the sermon. He performed two rakʿahs at the rear of the mosque, then sat down.”

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ: ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي نَهِيكٍ عَنْ سِمَاكِ بْنِ سَلَمَةَ قَالَ: سَأَلَ رَجُلٌ ابْنَ عَبَّاسٍ عَنْ الصَّلَاةِ وَالْإِمَامُ يَخْطُبُ؟ فَقَالَ: لَوْ أَنَّ النَّاسَ فَعَلُوهُ كَانَ حَسَنًا؟ وَعَنْ أَبِي نُعَيْمٍ الْفَضْلِ بْنِ دُكَيْنٍ: ثنا بَرِيدُ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيُّ قَالَ: رَأَيْت الْحَسَنَ الْبَصْرِيَّ دَخَلَ يَوْمَ الْجُمُعَةِ وَابْنُ هُبَيْرَةَ يَخْطُبُ، فَصَلَّى رَكْعَتَيْنِ فِي مُؤَخَّرِ الْمَسْجِدِ ثُمَّ جَلَسَ.

L8607 From Wakiʿ, from ʿImrān ibn Ḥudayr, from Abī Mijlaz, who said: “If you come for Friday prayer when the Imam has already emerged, then you may pray two rakʿahs if you wish.” This is the position of Sufyān ibn ʿUyaynah, Maḥūl, ʿAbdullāh ibn Yazīd al-Muqriʾ, al-Ḥumaydī, Abī Thawr, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhawayh, and the majority of Hadith scholars.

وَعَنْ وَكِيعٍ عَنْ عِمْرَانَ بْنِ حُدَيْرٍ عَنْ أَبِي مِجْلَزٍ قَالَ: إذَا جِئْت يَوْمَ الْجُمُعَةِ وَقَدْ خَرَجَ الْإِمَامُ فَإِنْ شِئْت صَلَّيْت رَكْعَتَيْنِ؟ وَهُوَ قَوْلُ سُفْيَانَ بْنِ عُيَيْنَةَ، وَمَكْحُولٍ، وَعَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِئِ، وَالْحُمَيْدِيِّ، وَأَبِي ثَوْرٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَجُمْهُورِ أَصْحَابِ الْحَدِيثِ.

L8608 And it is the opinion of Al-Shafi’i, Abu Sulayman, and the followers of both.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا

L8609 Al-Awzāʿī said: If he prays the two Sunnah rakʿahs in his home, he remains seated; but if he does not pray them in his home, he performs their rakʿahs in the mosque while the Imam is delivering the sermon.

وَقَالَ الْأَوْزَاعِيُّ: إنْ كَانَ صَلَّاهُمَا فِي بَيْتِهِ جَلَسَ، وَإِنْ كَانَ لَمْ يُصَلِّهِمَا فِي بَيْتِهِ رَكَعَهُمَا فِي الْمَسْجِدِ وَالْإِمَامُ يَخْطُبُ.

L8610 Abu Hanifah and Malik said: He does not perform the two rak’ahs. Malik said: If he begins them, he must complete them. Abu Muhammad said: If the two are right, why should he not initiate them? For one should hasten to do good. But if they are erroneous and not permissible, then it is impermissible to persist in error, and this suffices as an answer.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَا يُصَلِّ، قَالَ مَالِكٌ فَإِنْ شَرَعَ فِيهِمَا فَلْيُتِمَّهُمَا؟ قَالَ أَبُو مُحَمَّدٍ: إنْ كَانَتَا حَقًّا فَلِمَ لَا يَبْتَدِئُ بِهِمَا؟ فَالْخَيْرُ يَنْبَغِي الْبِدَارُ إلَيْهِ وَإِنْ كَانَتَا خَطَأً وَغَيْرَ جَائِزَتَيْنِ فَمَا يَجُوزُ التَّمَادِي عَلَى الْخَطَأِ وَفِي هَذَا كِفَايَةٌ.

L8611 Someone who heard from both of them cited a weak Ḥadīth as evidence—we narrated it through the chain of Mu’awiyah ibn Salih from Abu al-Zahriyyah, who said: “We were with Abdullah ibn Busr, the companion of the Messenger

وَاحْتَجَّ مَنْ سَمِعَ مِنْهُمَا بِخَبَرٍ ضَعِيفٍ -: رُوِّينَاهُ مِنْ طَرِيقِ مُعَاوِيَةَ بْنِ صَالِحٍ عَنْ أَبِي الزَّاهِرِيَّةِ قَالَ: كُنَّا مَعَ عَبْدِ اللَّهِ بْنِ بُسْرٍ صَاحِبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

of Allah (peace be upon him), and he said: ’A man came stepping over people on Friday while the Prophet (peace be upon him) was delivering the sermon. The Messenger of Allah (peace be upon him) said to him: ”Sit down, for you have disturbed.“”

فَقَالَ: «جَاءَ رَجُلٌ يَتَخَطَّى رِقَابَ النَّاسِ يَوْمَ الْجُمُعَةِ وَالنَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَخْطُبُ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اجْلِسْ فَقَدْ آذَيْتَ» .

L8612–8613 Abu Muhammad said: There is no valid proof for them in this matter due to four reasons: First, it is unreliable as it is transmitted solely through Muʿāwiyah ibn Ṣāliḥ - with no other transmitter - and he is weak. Second, even if the ḥadīth were authentic, it contains no explicit statement that he did not perform the two rakʿahs. It is plausible that he performed them then stepped over [the rows], and equally plausible that he did not perform them. Since the report neither confirms that he performed them nor confirms that he did not perform them, there is no argument either for them or against them in it.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِوُجُوهٍ أَرْبَعَةٍ -: أَحَدُهَا: أَنَّهُ لَا يَصِحُّ، لِأَنَّهُ مِنْ طَرِيقِ مُعَاوِيَةَ بْنِ صَالِحٍ لَمْ يَرْوِهِ غَيْرُهُ، وَهُوَ ضَعِيفٌ؟ وَالثَّانِي: أَنَّهُ لَيْسَ فِي الْحَدِيثِ - لَوْ صَحَّ - أَنَّهُ لَمْ يَكُنْ رَكَعَهُمَا، وَقَدْ يُمْكِنُ أَنْ يَكُونَ رَكَعَهُمَا ثُمَّ تَخَطَّى، وَيُمْكِنُ أَنْ لَا يَكُونَ رَكَعَهُمَا، فَإِذْ لَيْسَ فِي الْخَبَرِ لَا أَنَّهُ رَكَعَ، وَلَا أَنَّهُ لَمْ يَرْكَعْ -: فَلَا حُجَّةَ لَهُمْ فِيهِ وَلَا عَلَيْهِمْ.

L8614 It is impermissible to introduce falsely into the report what is not contained within it, for would not one who does so be among the liars? Third: Even if the report were authentic and stated that he did not bow, it could have occurred either before the Prophet’s command—peace and blessings be upon him—to those arriving while the Imam is in the act of bowing during the sermon, or after it. Since it does not clarify either of the two interpretations, is there any valid proof in it for them or against them? Fourth: Even if the report were authentic and confirmed in it that he did not bow.

وَلَا يَجُوزُ أَنْ يُقِيمَ فِي الْخَبَرِ مَا لَيْسَ فِيهِ فَيَكُونُ مَنْ فَعَلَ ذَلِكَ أَحَدَ الْكَذَّابِينَ؟ وَالثَّالِثُ: أَنَّهُ حَتَّى لَوْ صَحَّ الْخَبَرُ، وَكَانَ فِيهِ أَنَّهُ لَمْ يَكُنْ رَكَعَ -: لَكَانَ مُمْكِنًا أَنْ يَكُونَ قَبْلَ أَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ جَاءَ وَالْإِمَامُ يَخْطُبُ بِالرُّكُوعِ، وَمُمْكِنًا أَنْ يَكُونَ بَعْدَهُ، فَإِذْ لَيْسَ فِيهِ بَيَانٌ بِأَحَدِ الْوَجْهَيْنِ فَلَا حُجَّةَ فِيهِ لَهُمْ وَلَا عَلَيْهِمْ؟ وَالرَّابِعُ: أَنَّهُ لَوْ صَحَّ الْخَبَرُ وَصَحَّ فِيهِ أَنَّهُ لَمْ يَكُنْ رَكَعَ.

L8615 It has been established that this occurred after his command—peace be upon him—that whoever arrives while the Imam is delivering the sermon should perform a rak’ah, and none of those actions are valid on his part. This is due to their having an argument in the matter, for we did not state these two rak’ahs to be obligatory, but rather affirmed them as a recommended practice whose omission is disliked—with no prohibition against performing them. Thus their reliance on this invalid report becomes entirely void—success comes only through Allah, the Exalted—while his command—peace be upon him—to pray them remains uncontested. Some sought justification through a narration we transmitted through the chain of Yahya ibn Sa’id al-Qattan, from Muhammad ibn ’Ajlan, from ’Iyad ibn ’Abdullah ibn Sa’d ibn Abi

وَصَحَّ أَنَّ ذَلِكَ كَانَ بَعْدَ أَمْرِهِ - عَلَيْهِ السَّلَامُ - مَنْ جَاءَ وَالْإِمَامُ يَخْطُبُ بِأَنْ يَرْكَعَ، وَكُلُّ ذَلِكَ لَا يَصِحُّ مِنْهُ شَيْءٌ -: لِمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّا لَمْ نَقُلْ: إِنَّهُمَا فَرْضٌ، وَإِنَّمَا قُلْنَا: إِنَّهُمَا سُنَّةٌ يُكْرَهُ تَرْكُهَا، وَلَيْسَ فِيهِ نَهْيٌ عَنْ صَلَاتِهِمَا؟ فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ الْفَاسِدِ جُمْلَةً - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ، وَبَقِيَ أَمْرُهُ - عَلَيْهِ السَّلَامُ - بِصَلَاتِهِمَا لَا مُعَارِضَ لَهُ؟ وَتَعَلَّلَ بَعْضُهُمْ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ مُحَمَّدِ بْنِ

Sarh, from Abu Sa'id al-Khudri: "A man entered the mosque"—whereupon he related the hadith.

عَجْلَانَ عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ بْنِ سَعْدِ بْنِ أَبِي سَرْحٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ " أَنَّ رَجُلًا دَخَلَ الْمَسْجِدَ " فَذَكَرَ الْحَدِيثَ.

L8616–8618 And in it (the narration): "The Messenger of Allah (peace and blessings be upon him) instructed him to pray two rak'ahs, then said: 'This man entered the mosque in shabby attire, so I instructed him to pray two rak'ahs while hoping someone would take notice of him so that charity might be given to him.'" They said: "The Messenger of Allah (peace and blessings be upon him) only instructed him to pray the two rak'ahs so he would be noticed and charity would be given to him." Abu Muhammad said: This hadith stands as one of the greatest evidences against them, for it contains the command of the Messenger of Allah (peace be upon him) concerning the two prayers. In any case, no valid criticism can be raised against the hadith of Jabir that we have mentioned.

وَفِيهِ -: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَهُ أَنْ يُصَلِّيَ رَكْعَتَيْنِ، ثُمَّ قَالَ: إِنَّ هَذَا دَخَلَ الْمَسْجِدَ فِي هَيْئَةٍ بَذَّةٍ فَأَمَرْتُهُ أَنْ يُصَلِّيَ رَكْعَتَيْنِ وَأَنَا أَرْجُو أَنْ يَفْطُنَ لَهُ رَجُلٌ فَيَتَصَدَّقَ عَلَيْهِ» ؟ قَالُوا: فَإِنَّمَا أَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالرَّكْعَتَيْنِ لِيُفْطَنَ فَيُتَصَدَّقَ عَلَيْهِ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا الْحَدِيثُ مِنْ أَعْظَمِ الْحُجَجِ عَلَيْهِمْ، لِأَنَّ فِيهِ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِصَلَاتِهِمَا، وَعَلَى كُلِّ حَالٍ فَلَيْسَ اعْتِرَاضٌ عَلَى حَدِيثِ جَابِرٍ الَّذِي ذَكَرْنَاهُ.

L8619 In it is his saying (peace be upon him): "Whoever comes on the day of Friday while the Imam is delivering the sermon or has come out, let him perform two *rakʿahs*."

وَفِيهِ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «مَنْ جَاءَ يَوْمَ الْجُمُعَةِ وَالْإِمَامُ يَخْطُبُ أَوْ قَدْ خَرَجَ فَلْيَرْكَعْ رَكْعَتَيْنِ» .

L8620 Then we say to them: Tell us, did the Messenger of Allah (peace be upon him) command him concerning that matter based on truth or falsehood? If they say: "Based on falsehood," then they have committed disbelief.

ثُمَّ نَقُولُ لَهُمْ: قُولُوا لَنَا: هَلْ أَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ ذَلِكَ بِحَقٍّ أَمْ بِبَاطِلٍ؟ فَإِنْ قَالُوا: بِبَاطِلٍ، كَفَرُوا.

L8621 And if they say, "By truth," they invalidate their own school of thought, and they are obligated to uphold the truth which the Messenger of Allah—peace be upon him—commanded. It is confirmed that their assertion and the command are true in all circumstances, since he—peace be upon him—does not enjoin any matter except with truth.

وَإِنْ قَالُوا: بِحَقٍّ أَبْطَلُوا مَذْهَبَهُمْ، وَلَزِمَهُمْ الْأَمْرُ بِالْحَقِّ الَّذِي أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَصَحَّ أَنَّهُمَا حَقٌّ عَلَى كُلِّ حَالٍ، إذْ لَا يَأْمُرُ - عَلَيْهِ السَّلَامُ - بِوَجْهٍ مِنْ الْوُجُوهِ إلَّا بِحَقٍّ.

L8622 Then we say to them: Since you have made this assertion, do you yourselves adhere to it by commanding one who enters in humble attire while the Imam delivers the Friday sermon to perform two rak'ahs so he may be noticed and thus have charity bestowed upon him? Or do you not maintain this position? If they say, "We command him to do so," they have forsaken their doctrine.

ثُمَّ نَقُولُ لَهُمْ: إذْ قُلْتُمْ هَذَا فَتَقُولُونَ أَنْتُمْ بِهِ فَتَأْمُرُونَ مَنْ دَخَلَ بِهَيْئَةٍ بَذَّةٍ وَالْإِمَامُ يَخْطُبُ يَوْمَ الْجُمُعَةِ بِأَنْ يَرْكَعَ رَكْعَتَيْنِ لِيُفْطَنَ لَهُ فَيُتَصَدَّقَ عَلَيْهِ؟ أَمْ لَا تَرَوْنَ ذَلِكَ؟ إنْ قَالُوا: نَأْمُرُهُ بِذَلِكَ تَرَكُوا مَذْهَبَهُمْ.

L8623 If they say, “We do not instruct him to do that,” it is said to them: “What comfort do you find in directing the established narration toward interpretations you oppose, while you are contravening the narration in any case? Is this not merely misleading the weak, the deluded, and the deprived—leading them to imagine you have nullified the ruling of the narration and thereby validated your own claim? The matter is contrary to this; rather, it condemns you—and Allah suffices us, for He is the Best Trustee.” Some of them said: “Since initiating voluntary prayers is impermissible for one already in the mosque, it is likewise impermissible for one who enters it.”

وَإِنْ قَالُوا: لَسْنَا نَأْمُرُهُ بِذَلِكَ؟ قِيلَ لَهُمْ: فَأَيُّ رَاحَةٍ لَكُمْ فِي تَوْجِيهِكُمْ لِلْخَبَرِ الثَّابِتِ وُجُوهًا أَنْتُمْ مُخَالِفُونَ لَهَا، وَعَاصُونَ لِلْخَبَرِ عَلَى كُلِّ حَالٍ؟ وَهَلْ هَهُنَا إِلَّا إِيهَامُ الضُّعَفَاءِ الْمُغْتَرِّينَ الْمَحْرُومِينَ أَنَّكُمْ أَبْطَلْتُمْ حُكْمَ الْخَبَرِ وَصَحَّحْتُمْ بِذَلِكَ قَوْلَكُمْ؟ وَالْأَمْرُ فِي ذَلِكَ بِالضِّدِّ، بَلْ هُوَ عَلَيْكُمْ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ وَقَالَ بَعْضُهُمْ: لَمَّا لَمْ يَجُزْ ابْتِدَاءُ التَّطَوُّعِ لِمَنْ كَانَ فِي الْمَسْجِدِ لَمْ يَجُزْ لِمَنْ دَخَلَ الْمَسْجِدَ.

L8624 Abu Muhammad said: This is a corrupt claim which Allah the Exalted did not permit, nor did His Messenger—peace be upon him—decree it. Rather, he indeed differentiated between them by instructing those present to remain silent and listen, and instructing the one entering to pray. Thus, whoever opposes this opposes Allah and His Messenger—peace be upon him. Therefore, is voluntary prayer permissible for those in the mosque before the Imam begins the sermon, and for the one entering before the iqamah (call to commence prayer) is proclaimed?

قَالَ أَبُو مُحَمَّد: وَهَذِهِ دَعْوَى فَاسِدَةٌ لَمْ يَأْذَنْ اللَّهُ تَعَالَى بِهَا، وَلَا قَضَاهَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -، بَلْ قَدْ فَرَّقَ - عَلَيْهِ السَّلَامُ - بَيْنَهُمَا، بِأَنْ أَمَرَ مَنْ حَضَرَ بِالْإِنْصَاتِ وَالِاسْتِمَاعِ، وَأَمَرَ الدَّاخِلَ بِالصَّلَاةِ، فَالْمُعْتَرِضُ عَلَى هَذَا مُخَالِفٌ لِلَّهِ وَلِرَسُولِهِ - عَلَيْهِ السَّلَامُ -، فَالْمُتَطَوِّعُ جَائِزٌ لِمَنْ فِي الْمَسْجِدِ مَا لَمْ يَبْدَأْ الْإِمَامُ بِالْخُطْبَةِ وَلِمَنْ دَخَلَ مَا لَمْ تُقَمْ الْإِقَامَةُ لِلصَّلَاةِ؟

L8625–8626 A legal issue concerning speaking on Friday and after the khutbah, and the mu’adhdhin’s call to prayer (Adhan) on Friday and after the khutbah.

[مَسْأَلَةٌ الْكَلَامُ وَالْمُؤَذِّنُ يُؤَذِّنُ يَوْمَ الْجُمُعَةِ وَبَعْدَ الْخُطْبَةِ]

L8627 Issue: Speaking is permissible for everyone during the Friday adhan, until the khatib begins the sermon.

مَسْأَلَةٌ: وَالْكَلَامُ مُبَاحٌ لِكُلِّ أَحَدٍ مَا دَامَ الْمُؤَذِّنُ يُؤَذِّنُ يَوْمَ الْجُمُعَةِ مَا لَمْ يَبْدَأْ الْخَطِيبُ بِالْخُطْبَةِ.

L8628 Speaking is permissible after the sermon until the Imam utters the Takbir (Allahu Akbar) to commence the prayer.

وَالْكَلَامُ جَائِزٌ بَعْدَ الْخُطْبَةِ إلَى أَنْ يُكَبِّرَ الْإِمَامُ.

L8629 Speech is permissible during the imam’s sitting between the two sermons, for speaking of permissible matters is allowed unless prohibited by textual evidence. The textual evidence only prohibits speech during the imam’s sermon, as we mentioned previously. It was narrated to us by Muḥammad ibn Saʿīd ibn Nabāt, who narrated to us: ʿAbdullāh ibn Naṣr narrated to us, Qāsim ibn Aṣbagh narrated to us, Ibn Waḍḍāḥ narrated to us, Mūsā ibn

وَالْكَلَامُ جَائِزٌ فِي جِلْسَةِ الْإِمَامِ بَيْنَ الْخُطْبَتَيْنِ، لِأَنَّ الْكَلَامَ بِالْمُبَاحِ مُبَاحٌ إلَّا حَيْثُ مَنَعَ مِنْهُ النَّصُّ، وَلَمْ يَمْنَعْ النَّصُّ إلَّا مِنْ الْكَلَامِ فِي خُطْبَةِ الْإِمَامِ كَمَا أَوْرَدْنَا قَبْلُ؟ -: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ

Muʿāwiyah narrated to us, Wakīʿ narrated to us, from Jarīr ibn Ḥāzim, from Thābit ibn Aslam al-Bunānī, from Anas ibn Mālik, who said: “The Messenger of Allah (peace be upon him) would descend from the pulpit on Friday, and a man would speak to him about a need. He would speak to him, then proceed to the musalla and pray.”

ثنا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعٌ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ ثَابِتِ بْنِ أَسْلَمَ الْبُنَانِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْزِلُ مِنَ الْمِنْبَرِ يَوْمَ الْجُمُعَةِ فَيُكَلِّمُهُ الرَّجُلُ فِي الْحَاجَةِ، فَيُكَلِّمُهُ ثُمَّ يَتَقَدَّمُ إِلَى الْمُصَلَّى فَيُصَلِّي» .

L8630 From the chain of Hammad ibn Salamah: I, Ali ibn Zayd, from Sa’id ibn al-Musayyib, that when Abu Bakr al-Siddiq sat on the pulpit on Friday, Bilal said to him: “O Abu Bakr?” He replied: “At your service.” Bilal said: “Did you free me for Allah’s sake or for yourself?” Abu Bakr said: “Rather, for Allah the Exalted.” Bilal said: “Then grant me permission to strive in the path of Allah the Exalted.” He permitted him, so he went to Syria and died there, may Allah be pleased with him.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا عَلِيُّ بْنُ زَيْدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ لَمَّا قَعَدَ عَلَى الْمِنْبَرِ يَوْمَ الْجُمُعَةِ قَالَ لَهُ بِلَالٌ: يَا أَبَا بَكْرٍ؟ قَالَ: لَبَّيْكَ، قَالَ: أَعْتَقْتَنِي لِلَّهِ أَمْ لِنَفْسِكَ؟ قَالَ أَبُو بَكْرٍ: بَلْ لِلَّهِ تَعَالَى، قَالَ: فَأْذَنْ لِي أُجَاهِدُ فِي سَبِيلِ اللَّهِ تَعَالَى، فَأَذِنَ لَهُ، فَذَهَبَ إِلَى الشَّامِ فَمَاتَ بِهَا - رَضِيَ اللَّهُ عَنْهُ -.

L8631 From the narration of Ḥammād ibn Salamah from Burd from Abī al-ʿAlāʾ from al-Zuhrī: that ʿUmar ibn al-Khaṭṭāb said, “The Imam’s speech cuts off [other] speech.” Did ʿUmar not hold that speech is not cut off except by the Imam’s speech? From Sufyān ibn ʿUyaynah from Misʿar ibn Kidām from ʿImrān ibn Mūsā from Abū al-Ṣaʿbah, who said: ʿUmar ibn al-Khaṭṭāb said to a man on Friday while ʿUmar was on the pulpit, “Did you purchase for us? Did you bring us this?”—meaning the grain?

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ بُرْدٍ أَبِي الْعَلَاءِ عَنِ الزُّهْرِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: كَلَامُ الْإِمَامِ يَقْطَعُ الْكَلَامَ -: فَلَمْ يَرَ عُمَرُ الْكَلَامَ يَقْطَعُهُ إِلَّا كَلَامُ الْإِمَامِ؟ وَعَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ عِمْرَانَ بْنِ مُوسَى عَنْ أَبِي الصَّعْبَةِ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ لِرَجُلٍ يَوْمَ الْجُمُعَةِ وَعُمَرُ عَلَى الْمِنْبَرِ: هَلْ اشْتَرَيْتَ لَنَا؟ وَهَلْ أَتَيْتَنَا بِهَذَا؟ يَعْنِي الْحَبَّ؟

L8632–8633 And from Hushaym ibn Bashir, who narrated that Muḥammad ibn Qays informed him: I heard Mūsā ibn Ṭalḥah ibn ʿUbaydillāh say: I saw ʿUthmān ibn ʿAffān sitting on the minbar on Friday while the muʾadhdhin was calling the adhān, and he was asking the people about their prices and news.

وَعَنْ هُشَيْمِ بْنِ بَشِيرٍ أَخْبَرَنِي مُحَمَّدُ بْنُ قَيْسٍ أَنَّهُ سَمِعَ مُوسَى بْنَ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ يَقُولُ: رَأَيْتُ عُثْمَانَ بْنَ عَفَّانَ جَالِسًا يَوْمَ الْجُمُعَةِ عَلَى الْمِنْبَرِ وَالْمُؤَذِّنُ يُؤَذِّنُ وَعُثْمَانُ يَسْأَلُ النَّاسَ عَنْ أَسْعَارِهِمْ وَأَخْبَارِهِمْ.

L8634 From the narration of Sufyan ibn ʾUyaynah through al-Zuhri from Sa’id ibn al-Musayyab: “Does the Imam’s speech prohibit conversation?” From Abdullah ibn ʾAwn: Hammad ibn Abi Sulayman said to me in the mosque after the Imam had stepped down from the pulpit during Friday prayers: “How are you?” From ʾAta and Ibrahim al-Nakha’i: “There is no harm in

وَعَنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: كَلَامُ الْإِمَامِ يَقْطَعُ الْكَلَامَ؟ وَعَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ: قَالَ لِي حَمَّادُ بْنُ أَبِي سُلَيْمَانَ فِي الْمَسْجِدِ بَعْدَ أَنْ خَرَجَ

speaking during Friday prayers before the Imam delivers the sermon while on the pulpit and after he concludes it."

And from Qatādah, from Bakr ibn ʿAbdullāh al-Muzanī, similar to it.

And from Ḥammād ibn Salamah, from Iyās ibn Muʿāwiyah: the same.

Al-Hasan said: There is no harm in speaking during the imam's sitting between the two sermons.

A ruling on someone who had a nosebleed while the Imam was delivering the sermon and needed to leave.

Issue 533: If someone suffers a nosebleed while the Imam is delivering the sermon and needs to leave, they should exit. The same applies to anyone who experiences something that necessitates departure.

There is no meaning in seeking the Imam's permission, as Allah, Exalted and Majestic, said: "He has not imposed any hardship on you in religion" [Al-Ḥajj: 78].[16]

And He, the Exalted, said: "Allah desires ease for you, not hardship" [Al-Baqarah: 185].[17]

And has there not come a definitive text obligating the seeking of the imam's permission in that matter?

To those who deem this obligatory, it is said: If the imam does not permit him, do you suppose he would remain without ablution? Or would he defile the mosque with blood? Or would he neglect what he is not permitted to neglect regarding himself, his wealth, or his family? Far be it from God that this should occur!

A legal issue: When someone mentioned during the Fri-

[16] **Qur'an references (L8640):** Qur'an 22:78 (Al-Hajj).

[17] **Qur'an references (L8641):** Qur'an 2:185 (Al-Baqarah).

الْإِمَامُ يَوْمَ الْجُمُعَةِ: كَيْفَ أَصْبَحْت؟ وَعَنْ عَطَاءٍ وَإِبْرَاهِيمَ النَّخَعِيِّ: لَا بَأْسَ بِالْكَلَامِ يَوْمَ الْجُمُعَةِ قَبْلَ أَنْ يَخْطُبَ الْإِمَامُ وَهُوَ عَلَى الْمِنْبَرِ وَبَعْدَ أَنْ يَفْرُغَ.

وَعَنْ قَتَادَةَ عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيِّ مِثْلُهُ.

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ إِيَاسِ بْنِ مُعَاوِيَةَ مِثْلُهُ.

وَعَنْ الْحَسَنِ: لَا بَأْسَ بِالْكَلَامِ فِي جُلُوسِ الْإِمَامِ بَيْنَ الْخُطْبَتَيْنِ.

[مَسْأَلَةٌ رَعَفَ وَالْإِمَامُ يَخْطُبُ وَاحْتَاجَ إلَى الْخُرُوجِ]

٥٣٣ - مَسْأَلَةٌ: وَمَنْ رَعَفَ وَالْإِمَامُ يَخْطُبُ وَاحْتَاجَ إلَى الْخُرُوجِ فَلْيَخْرُجْ وَكَذَلِكَ مَنْ عَرَضَ لَهُ مَا يَدْعُوهُ إلَى الْخُرُوجِ.

وَلَا مَعْنَى لِاسْتِئْذَانِ الْإِمَامِ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] .

وَقَالَ تَعَالَى: {يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلا يُرِيدُ بِكُمُ الْعُسْرَ} [البقرة: ١٨٥] .

وَلَمْ يَأْتِ نَصٌّ بِإِيجَابِ اسْتِئْذَانِ الْإِمَامِ فِي ذَلِكَ؟

وَيُقَالُ لِمَنْ أَوْجَبَ ذَلِكَ: فَإِنْ لَمْ يَأْذَنْ لَهُ الْإِمَامُ، أَتَرَاهُ يَبْقَى بِلَا وُضُوءٍ؟ أَوْ هُوَ يُلَوِّثُ الْمَسْجِدَ بِالدَّمِ؟ أَوْ يُضَيِّعُ مَا لَا يَجُوزُ لَهُ تَضْيِيعُهُ مِنْ نَفْسِهِ أَوْ مَالِهِ أَوْ أَهْلِهِ؟ وَمَعَاذَ اللَّهِ مِنْ هَذَا؟

[مَسْأَلَةٌ ذَكَرَ فِي الْخُطْبَةِ صَلَاةَ فَرْضٍ نَسِيَهَا أَوْ نَامَ عَنْهَا]

day sermon an obligatory prayer he had forgotten or slept through.

L8645–8647 534 - Issue: Whoever remembers during the sermon an obligatory prayer he had forgotten or slept through, let him stand and pray it, whether he is a jurist or not, due to the statement of the Messenger of Allah - peace and blessings be upon him -: "Whoever sleeps through a prayer or forgets it, let him pray it when he remembers it." We have indeed mentioned it with its chain of transmission (isnād) earlier.

L8648 Some people have distinguished in this matter between the jurist and others—yet this is an error not required by the Quran, the Sunnah, deductive reasoning, or rational principle. Rather, the evidence is even more binding upon the jurist to ensure he does not neglect his religion through it in relation to others.

L8649 If it is said: "An ignorant person sees it and assumes the prayer is a permissible voluntary prayer at that time?" We said: We are not surprised by one who chooses to contravene the command of Allah's Messenger (peace and blessings be upon him) and neglect his obligatory duty out of fear that others might err. Perhaps others may or may not assume that. Indeed, Allah the Exalted has said: {No soul is burdened except with its own} [an-Nisā': 84].[18]

L8650 And He, the Exalted, said: "Your responsibility is yourselves. Those who have strayed will not harm you when you are guided" (Surah Al-Mā'idah 5:105).[19]

L8651 **A case where one did not attain from the Friday prayer except one rak'ah or only the sitting.**

L8652 535 – Issue: Whoever does not catch with the Imam during the Friday prayer except one rak'ah or only the sitting, he should join the Imam and complete it by adding another rak'ah. If he catches one rak'ah with the Imam, he must complete the prayer; but if he only catches the sitting, he should pray two rak'ahs instead.

٥٣٤ - مَسْأَلَةٌ: وَمَنْ ذَكَرَ فِي الْخُطْبَةِ صَلَاةَ فَرْضٍ نَسِيَهَا أَوْ نَامَ عَنْهَا فَلْيَقُمْ وَلْيُصَلِّهَا، سَوَاءٌ كَانَ فَقِيهًا أَوْ غَيْرَ فَقِيهٍ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ نَامَ عَنْ صَلَاةٍ أَوْ نَسِيَهَا فَلْيُصَلِّهَا إِذَا ذَكَرَهَا» وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ قَبْلُ.

وَقَدْ فَرَّقَ قَوْمٌ فِي ذَلِكَ بَيْنَ الْفَقِيهِ وَغَيْرِهِ - وَهَذَا خَطَأٌ لَمْ يُوجِبْهُ قُرْآنٌ وَلَا سُنَّةٌ، وَلَا نَظَرٌ، وَلَا مَعْقُولٌ، بَلْ الْحُجَّةُ أَلْزَمُ لِلْفَقِيهِ فِي أَنْ لَا يُضَيِّعَ دِينَهُ مِنْهَا لِغَيْرِهِ.

فَإِنْ قِيلَ: يَرَاهُ الْجَاهِلُ فَيَظُنُّ الصَّلَاةَ تَطَوُّعًا جَائِزَةً حِينَئِذٍ؟ قُلْنَا: لَا أَعْجَبُ مِمَّنْ يَسْتَعْمِلُ لِنَفْسِهِ مُخَالَفَةَ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَضْيِيعَ فَرْضِهِ خَوْفَ أَنْ يُخْطِئَ غَيْرُهُ وَلَعَلَّ غَيْرَهُ لَا يَظُنُّ ذَلِكَ أَوْ يَظُنُّ، فَقَدْ قَالَ تَعَالَى: {لا تُكَلَّفُ إِلا نَفْسَكَ} [النساء: ٨٤] .

وَقَالَ تَعَالَى: {عَلَيْكُمْ أَنْفُسَكُمْ لا يَضُرُّكُمْ مَنْ ضَلَّ إِذَا اهْتَدَيْتُمْ} [المائدة: ١٠٥] .

[مَسْأَلَةٌ لَمْ يُدْرِكْ مِنْ صَلَاةِ الْجُمُعَةِ إِلَّا رَكْعَةً أَوْ الْجُلُوسَ فَقَطْ]

٥٣٥ - مَسْأَلَةٌ: وَمَنْ لَمْ يُدْرِكْ مَعَ الْإِمَامِ مِنْ صَلَاةِ الْجُمُعَةِ إِلَّا رَكْعَةً وَاحِدَةً، أَوْ الْجُلُوسَ فَقَطْ فَلْيَدْخُلْ مَعَهُ وَلْيَقْضِ إِذَا أَدْرَكَ رَكْعَةً وَاحِدَةً وَإِنْ لَمْ يُدْرِكْ إِلَّا الْجُلُوسَ صَلَّى رَكْعَتَيْنِ فَقَطْ.

[18] **Qur'an references (L8649):** Qur'an 4:84 (An-Nisa).
[19] **Qur'an references (L8650):** Qur'an 5:105 (Al-Ma'idah).

L8653 And according to it, Abū Ḥanīfah and Abū Sulaymān said.

وَبِهِ قَالَ أَبُو حَنِيفَةَ، وَأَبُو سُلَيْمَانَ.

L8654 Malik and Al-Shāfiʿī said: If one catches a rakʿah, he must make up another rakʿah to it. But if he catches only the rising from the bowing position in the rakʿah or what comes after it, he must pray the full four rakʿahs.

وَقَالَ مَالِكٌ وَالشَّافِعِيُّ: إِنْ أَدْرَكَ رَكْعَةً قَضَى إِلَيْهَا أُخْرَى، فَإِنْ لَمْ يُدْرِكْ إِلَّا رَفْعَ الرَّأْسِ مِنْ الرَّكْعَةِ فَمَا بَعْدَهُ صَلَّى أَرْبَعًا.

L8655 Atā, Tāwus, and Mujāhid said—and it is also narrated from ʿUmar ibn al-Khaṭṭāb—that whoever does not catch any part of the sermon should pray four [rakʿahs].

وَقَالَ عَطَاءٌ، وَطَاوُسٌ، وَمُجَاهِدٌ - وَرُوِّينَاهُ أَيْضًا عَنْ عُمَرَ بْنِ الْخَطَّابِ: مَنْ لَمْ يُدْرِكْ شَيْئًا مِنْ الْخُطْبَةِ صَلَّى أَرْبَعًا.

L8656 Those who upheld this opinion argued that the *khutbah* is deemed equivalent to the two rakʿahs. Consequently, this would necessitate that whoever misses the first *khutbah* but attends the second *khutbah* must make up one rakʿah—despite this position lacking any textual basis in the Qur'an or Sunnah?

وَاحْتَجَّ مَنْ ذَهَبَ إِلَى هَذَا بِأَنَّ الْخُطْبَةَ جُعِلَتْ بِإِزَاءِ الرَّكْعَتَيْنِ، فَيَلْزَمُ مَنْ قَالَ بِهَذَا: أَنَّ مَنْ فَاتَتْهُ الْخُطْبَةُ الْأُولَى وَأَدْرَكَ الثَّانِيَةَ أَنْ يَقْضِيَ رَكْعَةً وَاحِدَةً، مَعَ أَنَّ هَذَا الْقَوْلَ لَمْ يَأْتِ بِهِ نَصُّ قُرْآنٍ وَلَا سُنَّةٍ؟

L8657 Malik and Al-Shāfiʿī cited as evidence the statement of Allah's Messenger—peace and blessings be upon him—: "Whoever joins the Imam in one *rakʿah* has indeed successfully caught up with the prayer."

وَاحْتَجَّ مَالِكٌ، وَالشَّافِعِيُّ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَدْرَكَ مَعَ الْإِمَامِ رَكْعَةً وَاحِدَةً فَقَدْ أَدْرَكَ الصَّلَاةَ» .

L8658–8659 Abu Muhammad said: This is an authentic report, and does it not contain [the statement] that whoever catches less than a rak'ah has not joined the prayer?

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَبَرٌ صَحِيحٌ، وَلَيْسَ فِيهِ: أَنَّ مَنْ أَدْرَكَ أَقَلَّ مِنْ رَكْعَةٍ لَمْ يُدْرِكْ الصَّلَاةَ؟

L8660 Rather, it has been authentically established from the Messenger of Allah—peace and blessings be upon him—as narrated to us by Muḥammad ibn Saʿīd ibn Nabāt, who narrated to us from Isḥāq ibn Ismāʿīl al-Naḍrī, who narrated to us from ʿĪsā ibn Ḥabīb, who narrated to us from ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Muḥammad ibn ʿAbd Allāh ibn Yazīd al-Muqriʾ, who narrated to us from his grandfather Muḥammad ibn ʿAbd Allāh, who narrated to us from Sufyān ibn ʿUyaynah, from al-Zuhrī, from Saʿīd ibn al-Musayyib, from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said: "When you come to prayer, do not come hurrying; come to it walking. Upon you is tranquility. Pray whatever part of the prayer you reach, and complete what you miss."

بَلْ قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا حَدَّثَنَاهُ مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا إِسْحَاقُ بْنُ إِسْمَاعِيلَ النَّضْرِيُّ ثنا عِيسَى بْنُ حَبِيبٍ ثنا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِئُ ثنا جَدِّي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا أَتَيْتُمْ الصَّلَاةَ فَلَا تَأْتُوهَا وَأَنْتُمْ تَسْعَوْنَ، وَأْتُوهَا وَأَنْتُمْ تَمْشُونَ، عَلَيْكُمْ السَّكِينَةُ، فَمَا أَدْرَكْتُمْ فَصَلُّوا وَمَا فَاتَكُمْ فَاقْضُوا» .

L8661 Narrated by Abd al-Rahman ibn Abdullah, Ibrahim ibn Ahmad al-Balkhi, al-Farbarī, al-Bukhari, Abu Nu'aym, Shayban from Yahya—Ibn Abi Kathir—from Abdullah ibn Abi Qatadah from his father, who said: "While we were praying with the Messenger of Allah—peace and blessings of Allah be upon him—he heard the clamor of approaching men. When he finished praying, he said: 'What is your situation?' They replied: 'We hurried to reach the prayer.' He said: 'Do not do that. When you come to prayer, maintain calmness. Pray whatever portion you catch up with, and make up what you have missed.'"

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيُّ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَبُو نُعَيْمٍ ثنا شَيْبَانُ عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ عَنْ أَبِيهِ قَالَ: «بَيْنَمَا نَحْنُ نُصَلِّي مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ سَمِعَ جَلَبَةَ رِجَالٍ فَلَمَّا صَلَّى قَالَ: مَا شَأْنُكُمْ؟ قَالُوا: اسْتَعْجَلْنَا إِلَى الصَّلَاةِ، قَالَ: فَلَا تَفْعَلُوا إِذَا أَتَيْتُمْ الصَّلَاةَ فَعَلَيْكُمْ السَّكِينَةَ، فَمَا أَدْرَكْتُمْ فَصَلُّوا وَمَا فَاتَكُمْ فَأَتِمُّوا» .

L8662 The Messenger of Allah (peace be upon him) instructed him to pray with the imam whatever portion of the prayer he caught up with, and he (peace be upon him) applied the ruling universally without exception, designating him as "one who has attained" regarding the part of the prayer he joined. Thus, whoever finds the imam seated or prostrating must align with him in that state and adhere to his leadership, thereby unquestionably entering the congregational prayer. He must make up what he missed and complete that prayer, as only two rak'ahs had eluded him. Since the Friday prayer consists of two rak'ahs, it is performed solely as two.

فَأَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ يُصَلِّيَ مَعَ الْإِمَامِ مَا أَدْرَكَ، وَعَمَّ - عَلَيْهِ السَّلَامُ - وَلَمْ يَخُصَّ، وَسَمَّاهُ مُدْرِكًا لِمَا أَدْرَكَ مِنْ الصَّلَاةِ، فَمَنْ وَجَدَ الْإِمَامَ جَالِسًا، أَوْ سَاجِدًا، فَإِنَّ عَلَيْهِ أَنْ يَصِيرَ مَعَهُ فِي تِلْكَ الْحَالِ وَيَلْتَزِمَ إمَامَتَهُ، وَيَكُونَ بِذَلِكَ بِلَا شَكٍّ دَاخِلًا فِي صَلَاةِ الْجَمَاعَةِ، فَإِنَّمَا يَقْضِي مَا فَاتَهُ وَيُتِمُّ تِلْكَ الصَّلَاةَ، وَلَمْ تَفُتْهُ إلَّا رَكْعَتَانِ، وَصَلَاةُ الْجُمُعَةِ رَكْعَتَانِ فَلَا تُصَلَّى إلَّا رَكْعَتَيْنِ.

L8663 These two reports are additional to the one stating "Whoever catches a rak'ah," and the additional reports must not be disregarded. And success is from Allah, the Exalted.

وَهَذَانِ الْخَبَرَانِ زَائِدَانِ عَلَى الَّذِي فِيهِ " مَنْ أَدْرَكَ رَكْعَةً " وَالزِّيَادَةُ لَا يَجُوزُ تَرْكُهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L8664–8666 It has been narrated to us via Shu'bah, who said: I asked al-Ḥakam ibn 'Utaybah about a man who joins the imam on Friday while the congregation is seated. He replied: "He should pray two rak'ahs." Shu'bah said: So we said to him: "He did not transmit this ruling from Ibrāhīm [al-Nakha'ī]." Except Ḥammād? Al-Ḥakam said: "And who is like Ḥammād?" From Ma'mar, from Ḥammād ibn Abī Sulaymān, who said: "If one finds them sitting during the final part of the Friday prayer, he prays two rak'ahs." Abū Muḥammad said: "Except that the Ḥanafīs have contradicted themselves here, for among their principles—which they made into a religion—is that the opinion of a Companion recognized as such from among the Companions (may Allah be pleased with them), if there is a contrary opinion, is it not impermissible to oppose him? Yet it has been narrated to us from Ma'mar; from Ayyūb

رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ قَالَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ عَنْ الرَّجُلِ يُدْرِكُ الْإِمَامَ يَوْمَ الْجُمُعَةِ وَهُمْ جُلُوسٌ؟ قَالَ: يُصَلِّي رَكْعَتَيْنِ، قَالَ شُعْبَةُ: فَقُلْنَا لَهُ: مَا قَالَ هَذَا عَنْ إبْرَاهِيمَ إلَّا حَمَّادٌ؟ قَالَ الْحَكَمُ: وَمَنْ مِثْلُ حَمَّادٍ؟ وَعَنْ مَعْمَرٍ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ قَالَ: إنْ أَدْرَكَهُمْ جُلُوسًا فِي آخِرِ الصَّلَاةِ يَوْمَ الْجُمُعَةِ صَلَّى رَكْعَتَيْنِ؟ قَالَ أَبُو مُحَمَّدٍ: إلَّا أَنَّ الْحَنَفِيِّينَ قَدْ تَنَاقَضُوا هَهُنَا، لِأَنَّ مِنْ أُصُولِهِمْ - الَّتِي جَعَلُوهَا دِينًا - أَنَّ قَوْلَ الصَّاحِبِ الَّذِي يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ فَإِنَّهُ لَا يَحِلُّ خِلَافُهُ؟ وَقَدْ رُوِّينَا عَنْ

مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: إِذَا أَدْرَكَ الرَّجُلُ رَكْعَةً يَوْمَ الْجُمُعَةِ صَلَّى إِلَيْهَا أُخْرَى، وَإِنْ وَجَدَ الْقَوْمَ جُلُوسًا صَلَّى أَرْبَعًا؟ وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ عَنْ أَبِي الْأَحْوَصِ عَنْ ابْنِ مَسْعُودٍ: مَنْ أَدْرَكَ الرَّكْعَةَ فَقَدْ أَدْرَكَ الْجُمُعَةَ، وَمَنْ لَمْ يُدْرِكْ الرَّكْعَةَ فَلْيُصَلِّ أَرْبَعًا.

al-Sikhtiyānī; from Nāfiʿ; from Ibn ʿUmar, who said: ’If a man catches one rakʿah of the Friday prayer, he adds another to it. But if he finds the people sitting, he prays four rakʿahs.’” From Sufyān al-Thawrī; from Abū Isḥāq; from Abū al-Aḥwaṣ; from Ibn Masʿūd: “Whoever catches the rakʿah has caught the Friday prayer, and whoever does not catch the rakʿah should pray four rakʿahs.”

وَلَا يُعْرَفُ لَهُمَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ.

L8667 No opposition to the two of them is recorded from the Companions—may Allah be pleased with them—.

نَعَمْ، وَقَدْ رُوِيَتْ فِيهِ آثَارٌ - لَيْسَتْ بِأَضْعَفَ مِنْ حَدِيثِ الْوُضُوءِ بِالنَّبِيذِ، وَالْوُضُوءِ مِنْ الْقَهْقَهَةِ فِي الصَّلَاةِ، وَالْوُضُوءِ وَالْبِنَاءِ مِنْ الرُّعَافِ وَالْقَيْءِ، فَخَالَفُوهَا إذْ خَالَفَهَا أَبُو حَنِيفَةَ - مِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ مِنْ طَرِيقِ ابْنِ عُمَرَ، وَمِنْ طَرِيقٍ غَيْرِهِ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ مُسْنَدَيْنِ وَهَذَا مِمَّا تَنَاقَضُوا فِيهِ؟

L8668 Yes, and narrations (āthār) have been transmitted concerning it—no weaker than the narration about ablution with nabīdh, ablution [invalidated] by loud laughter during prayer, and ablution and resuming [prayer] after a nose-bleed or vomiting—yet they opposed them when Abū Ḥanīfah opposed them. These come through al-Ḥajjāj ibn Arṭāʾs chain from Ibn ʿUmar, and through another chain: al-Zuhrī → Abū Salama → Abū Hurayrah, both being musnad. Is this not among the matters in which they contradicted themselves?

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَوْ صَحَّ فِي هَذَا أَثَرٌ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَقُلْنَا بِهِ وَلَمْ نَتَعَدَّهُ

L8669 Abū Muḥammad said: As for us, we recognize no proof in anyone besides the Messenger of Allah (peace be upon him). Had there been a sound narration from the Prophet (peace be upon him) regarding this matter, we would have affirmed it and not deviated from it.

[مَسْأَلَةُ الْغُسْلُ يَوْمَ الْجُمُعَةِ]

A Jurisprudential Question: The Ritual Bath on Friday.

٥٣٦ - مَسْأَلَةٌ: وَالْغُسْلُ وَاجِبٌ يَوْمَ الْجُمُعَةِ لِلْيَوْمِ لَا لِلصَّلَاةِ وَكَذَلِكَ الطِّيبُ، وَالسِّوَاكُ، وَقَدْ ذَكَرْنَا كُلَّ ذَلِكَ فَأَغْنَى عَنْ تَرْدَادِهِ، إذْ قَدْ تَقَصَّيْنَاهُ فِي كِتَابِ الطَّهَارَةِ، مِنْ دِيوَانِنَا هَذَا وَلِلَّهِ الْحَمْدُ وَلَا يَتَطَيَّبُ لَهَا الْمُحْرِمُ وَلَا الْمَرْأَةُ، لِمَا ذَكَرْنَا فِي كِتَابِنَا هَذَا فِي النِّسَاءِ يَحْضُرُونَ صَلَاةَ الْجَمَاعَةِ، وَلِأَنَّ الْمُحْرِمَ مَنْهِيٌّ عَنْ إحْدَاثِ التَّطَيُّبِ، عَلَى مَا نَذْكُرُ فِي كِتَابِ الْحَجِّ إنْ شَاءَ اللَّهُ تَعَالَى.

536 - Issue: Bathing is obligatory on Friday for the day itself, not for the prayer. Similarly, [the rulings] apply to perfume and the siwak. We have already mentioned all of this, rendering repetition unnecessary, as we have detailed it in the Book of Purification within this compilation of ours—all praise is due to Allah. Neither one in iḥrām nor a woman may apply perfume for it, due to what we have mentioned in this book regarding women attending congregational prayers, and because the one in iḥrām is prohibited from [initiating actions restricted during consecration]. Perfuming, as we shall mention in the Book of Hajj if Allah, the Exalted, wills.

L8671–8673

L8674 The ghusl and siwak obligate the one in a state of ritual consecration and

the woman, just as they obligate the man. Whoever is unable to use water must perform tayammum, as we have mentioned regarding tayammum from this treatise of ours—and all praise belongs to Allah, the Exalted.

وَيَلْزَمُ الْغُسْلُ، وَالسِّوَاكُ: الْمُحْرِمَ، وَالْمَرْأَةَ كَمَا يَلْزَمُ الرَّجُلَ، فَمَنْ عَجَزَ عَنْ الْمَاءِ تَيَمَّمَ، لِمَا قَدْ ذَكَرْنَاهُ فِي التَّيَمُّمِ مِنْ دِيوَانِنَا هَذَا - وَلِلَّهِ تَعَالَى الْحَمْدُ

Issue: The mosque became overcrowded, and the congregational rows became connected on Friday.

[مَسْأَلَةٌ ضَاقَ الْمَسْجِدُ وَاتَّصَلَتْ الصُّفُوفُ يَوْمَ الْجُمُعَةِ]

L8675

L8676

537 – Issue: If the mosque becomes overcrowded, the courtyards fill completely, and the prayer rows become continuous, Friday prayer and other congregational prayers may be performed in adjacent houses, shops connected to the rows, and upon the mosque's roof—provided these locations are directly opposite the rows behind the Imam, not opposite the Imam himself or those before him in the slightest. If a great or small river, trench, or wall stands as a barrier between a worshiper and either the Imam or the prayer rows, this causes no harm; he may pray Friday prayer with the Imam's prayer.

٥٣٧ - مَسْأَلَةٌ: فَإِنْ ضَاقَ الْمَسْجِدُ أَوْ امْتَلَأَتْ الرِّحَابُ وَاتَّصَلَتْ الصُّفُوفُ صُلِّيَتْ الْجُمُعَةُ وَغَيْرُهَا فِي الدُّورِ، وَالْبُيُوتِ، وَالدَّكَاكِينِ الْمُتَّصِلَةِ بِالصُّفُوفِ، وَعَلَى ظَهْرِ الْمَسْجِدِ، بِحَيْثُ يَكُونُ مُسَامِتًا لِمَا خَلْفَ الْإِمَامِ، لَا لِلْإِمَامِ وَلَا لِمَا أَمَامَ الْإِمَامِ أَصْلًا وَمَنْ حَالَ بَيْنَهُ وَبَيْنَ الْإِمَامِ وَالصُّفُوفِ نَهْرٌ عَظِيمٌ أَوْ صَغِيرٌ أَوْ خَنْدَقٌ أَوْ حَائِطٌ لَمْ يَضُرَّهُ شَيْءٌ، وَصَلَّى الْجُمُعَةَ بِصَلَاةِ الْإِمَامِ؟ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُحَمَّدٌ هُوَ ابْنُ سَلَّامٍ - ثنا عَبْدَةُ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ عَمْرَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي مِنْ اللَّيْلِ فِي حُجْرَتِهِ، وَجِدَارُ الْحُجْرَةِ قَصِيرٌ، فَرَأَى النَّاسُ شَخْصَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَامَ أُنَاسٌ يُصَلُّونَ بِصَلَاتِهِ» وَذَكَرَ بَاقِيَ الْحَدِيثِ.

Narration: ʻAbd al-Raḥmān ibn ʻAbd Allāh narrated to us: Ibrāhīm ibn Aḥmad narrated to us: Al-Farbarī narrated to us: Al-Bukhārī narrated to us: Muḥammad—that is, Ibn Sallām—narrated to us: ʻAbdah narrated from Yaḥyā ibn Saʻīd al-Anṣārī from ʻAmrah from ʻĀ'ishah, the Mother of the Believers, who said: "The Messenger of Allāh (peace and blessings of Allāh be upon him) would pray at night in his chamber. The chamber's wall was low, so people saw the Prophet's silhouette (peace and blessings of Allāh be upon him). Some stood to pray in alignment with his prayer." He mentioned the remainder of the ḥadīth.

L8677

Abū Muḥammad said: The ruling regarding prayer leadership is the same for Friday prayer and other prayers, voluntary and obligatory, for neither the Qur'ān nor the Sunnah has established any distinction between the conditions of imamate in this matter, nor has any text prohibited following the imam when the rows are properly connected. It is therefore impermissible to prohibit this practice based on invalid reasoning. It is authentically reported from the Prophet—peace and blessings of Allah be upon him—that he said: "The earth has been made a place of prostration and a means of purification for me. So wherever the time for prayer finds you, pray there."

قَالَ أَبُو مُحَمَّدٍ: حُكْمُ الْإِمَامَةِ سَوَاءٌ فِي الْجُمُعَةِ وَغَيْرِهَا، وَالنَّافِلَةِ وَالْفَرِيضَةِ، لِأَنَّهُ لَمْ يَأْتِ قُرْآنٌ وَلَا سُنَّةٌ بِالْفَرْقِ بَيْنَ أَحْوَالِ الْإِمَامَةِ فِي ذَلِكَ، وَلَا جَاءَ نَصٌّ بِالْمَنْعِ مِنْ الِائْتِمَامِ بِالْإِمَامِ إذَا اتَّصَلَتْ الصُّفُوفُ، فَلَا يَجُوزُ الْمَنْعُ مِنْ ذَلِكَ بِالرَّأْيِ الْفَاسِدِ؟ وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «جُعِلَتْ لِي الْأَرْضُ مَسْجِدًا وَطَهُورًا، فَحَيْثُمَا أَدْرَكَتْكَ الصَّلَاةُ فَصَلِّ»

L8678 It is not permissible to prevent anyone from praying in any place, except a place where the text stipulates a prohibition against prayer therein, thereby making it an exception to this general ruling.

فَلَا يَحِلُّ أَنْ يُمْنَعَ أَحَدٌ مِنْ الصَّلَاةِ فِي مَوْضِعٍ إلَّا مَوْضِعًا جَاءَ النَّصُّ بِالْمَنْعِ مِنْ الصَّلَاةِ فِيهِ، فَيَكُونُ مُسْتَثْنًى مِنْ هَذِهِ الْجُمْلَةِ.

L8679 It has been reported to us from al-Qāsim ibn Muḥammad from ʿĀ’ishah, the Mother of the Believers—may Allah the Exalted be pleased with her—that she used to pray in her home in conjunction with the imam’s prayer while he was in the mosque.

رُوِّينَا عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ تَعَالَى عَنْهَا -: أَنَّهَا كَانَتْ تُصَلِّي فِي بَيْتِهَا بِصَلَاةِ الْإِمَامِ وَهُوَ فِي الْمَسْجِدِ؟

L8680–8681 This has been clarified in the eclipse prayer, as a woman prayed in her home following the Prophet’s prayer while he led the people. Through the chain of Hammad ibn Salamah, Jabalah ibn Abi Sulayman al-Shaqari reported: I saw Anas ibn Malik praying in the house of Abu Abdullah at the small gate overlooking the mosque, from where he observed their bowing and prostration? From al-Mu’tamir ibn Sulayman, from his father, from Abu Mijlaz, who said: A woman may pray following the imam’s prayer even if there is a street or a wall between them, after she hears the takbir.

وَقَدْ جَاءَ ذَلِكَ مُبَيَّنًا فِي صَلَاةِ الْكُسُوفِ، إذْ صَلَّتْ فِي بَيْتِهَا بِصَلَاةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالنَّاسِ؟ وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَخْبَرَنِي جَبَلَةُ بْنُ أَبِي سُلَيْمَانَ الشَّقَرِيُّ قَالَ: رَأَيْت أَنَسَ بْنَ مَالِكٍ يُصَلِّي فِي دَارِ أَبِي عَبْدِ اللَّهِ فِي الْبَابِ الصَّغِيرِ الَّذِي يُشْرِفُ عَلَى الْمَسْجِدِ يَرَى رُكُوعَهُمْ وَسُجُودَهُمْ؟ وَعَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ عَنْ أَبِيهِ عَنْ أَبِي مِجْلَزٍ قَالَ: تُصَلِّي الْمَرْأَةُ بِصَلَاةِ الْإِمَامِ وَإِنْ كَانَ بَيْنَهُمَا طَرِيقٌ أَوْ جِدَارٌ بَعْدَ أَنْ تَسْمَعَ التَّكْبِيرَ.

L8682 From Hammad ibn Salamah, from Hisham ibn Urwah, from his father: He came to the mosque on Friday when it was full, so he entered the house of Humaid ibn Abd al-Rahman ibn Awf. The pathway existed between him and the mosque, and he prayed with them while seeing their bowing and prostration.

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ: أَنَّهُ جَاءَ يَوْمَ الْجُمُعَةِ إلَى الْمَسْجِدِ وَقَدْ امْتَلَأَ فَدَخَلَ دَارَ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَالطَّرِيقُ بَيْنَهُ وَبَيْنَ الْمَسْجِدِ، فَصَلَّى مَعَهُمْ وَهُوَ يَرَى رُكُوعَهُمْ وَسُجُودَهُمْ.

L8683 From Al-Naḍr ibn Anas that he prayed the Friday prayer in the tailor’s shop on Friday, in the public square where tents are sold.

وَعَنْ النَّضْرِ بْنِ أَنَسٍ أَنَّهُ صَلَّى فِي بَيْتِ الْخَيَّاطِ يَوْمَ الْجُمُعَةِ فِي الرَّحْبَةِ الَّتِي تُبَاعُ فِيهَا الْقِبَابُ.

L8684 From Hammad ibn Salama, from Thabit al-Bunani, who said: “I came, and Al-Hasan al-Basri on Friday while people were [gathered] on the walls and edges [of the mosque]. I said to him: ’O Abu Sa‘id, do you hope for these people?’ He replied: ’I hope they will be equal in reward.”’ Malik said: “The Friday prayer specifically should not be held in a partitioned area during the Imam’s prayer in the mosque. As for the remaining obligatory prayers, there is no harm in that for them.”

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ قَالَ: جِئْت أَنَا وَالْحَسَنُ الْبَصْرِيُّ يَوْمَ الْجُمُعَةِ وَالنَّاسُ عَلَى الْجُدُرِ وَالْكَنَفِ، فَقُلْت لَهُ: أَبَا سَعِيدٍ، أَتَرْجُو لِهَؤُلَاءِ؟ قَالَ: أَرْجُو أَنْ يَكُونُوا فِي الْأَجْرِ سَوَاءً؟ وَقَالَ مَالِكٌ: لَا تُصَلَّى الْجُمُعَةُ خَاصَّةً فِي مَكَانٍ مَحْجُورٍ بِصَلَاةِ الْإِمَامِ فِي الْمَسْجِدِ، وَأَمَّا سَائِرُ صَلَوَاتِ الْفَرْضِ فَلَا بَأْسَ بِذَلِكَ فِيهَا.

وَهَذَا لَا نَعْلَمُهُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ، وَلَا يُعَضِّدُ هَذَا الْقَوْلَ قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا سَقِيمَةٌ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ سَدِيدٌ وَقَالَ أَبُو حَنِيفَةَ: إنْ كَانَ بَيْنَ الْإِمَامِ وَالْمَأْمُومِ نَهْرٌ صَغِيرٌ أَجْزَأَتْهُ صَلَاتُهُ، فَإِنْ كَانَ كَبِيرًا لَمْ تُجْزِهِ.

L8685 We do not know of this from any of the Companions, nor is this opinion supported by the Qur'an, nor any sound or weak Sunnah, nor analogy, nor sound opinion. Abū Ḥanīfah said: If there is a small river between the imam and the congregant, his prayer is valid, but if it is a large river, his prayer is not valid.

وَهَذَا كَلَامٌ سَاقِطٌ، لَا يُعَضِّدُهُ قُرْآنٌ وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا رَأْيٌ سَدِيدٌ؟ وَحَدُّ النَّهْرِ الْكَبِيرِ بِمَا يُمْكِنُ أَنْ تَجْرِيَ فِيهِ السُّفُنُ

L8686–8688 This is baseless speech, supported neither by the Quran, nor a sound Sunnah, nor a weak Sunnah, nor the statement of a Companion. Nor any sound judgment? And the definition of a major river is that in which ships can sail.

قَالَ أَبُو مُحَمَّدٍ: لَيْتَ شِعْرِي أَيُّ السُّفُنِ؟ وَفِي السُّفُنِ مَا يَحْمِلُ أَلْفَ وَسْقٍ، وَفِيهَا زُوَيْرِقٌ صَغِيرٌ يَحْمِلُ ثَلَاثَةً أَوْ أَرْبَعَةً فَقَطْ.

L8689 Abu Muhammad said: If only I knew—that is, the ships? For among the ships are those that carry a thousand wasq, and among them is a small zuwayriq that carries only three or four.

وَرُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ: مَنْ صَلَّى بِصَلَاةِ الْإِمَامِ وَبَيْنَهُمَا طَرِيقٌ أَوْ جُدُرٌ أَوْ نَهْرٌ فَلَا يَأْتَمُّ بِهِ - فَلَمْ يُفَرِّقْ بَيْنَ نَهْرٍ صَغِيرٍ وَكَبِيرٍ

L8690 We have been narrated from ʿUmar ibn al-Khaṭṭāb that he said: "Whoever prays following the imam's prayer with a road, structural barriers, or a river between them should not follow him in prayer." He made no distinction between a small river and a large one.

وَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ: ثنا قَتَادَةُ قَالَ: قَالَ لِي زُرَارَةُ بْنُ أَوْفَى سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: لَا جُمُعَةَ لِمَنْ صَلَّى فِي الرَّحْبَةِ - وَبِهِ يَقُولُ زُرَارَةُ.

L8691 And it was conveyed to us via Shuʿbah's transmission: Qatādah narrated to us, stating: Zurārah ibn Awfā said to me, "I heard Abū Hurayrah declare: There is no validity to the Friday prayer for anyone who prays in the public square." Zurārah also upholds this opinion.

قَالَ أَبُو مُحَمَّدٍ: لَوْ كَانَ تَقْلِيدًا لَكَانَ هَذَا - لِصِحَّةِ إسْنَادِهِ - أَوْلَى مِنْ تَقْلِيدِ مَالِكٍ، وَأَبِي حَنِيفَةَ، وَعَنْ عُقْبَةَ بْنِ صَهْبَانَ عَنْ أَبِي بَكْرَةَ: أَنَّهُ رَأَى قَوْمًا يُصَلُّونَ فِي رَحْبَةِ الْمَسْجِدِ يَوْمَ الْجُمُعَةِ، فَقَالَ: لَا جُمُعَةَ لَهُمْ، قُلْت: لِمَ؟ قَالَ: لِأَنَّهُمْ يَقْدِرُونَ عَلَى أَنْ يَدْخُلُوا فَلَا يَفْعَلُونَ.

L8692 Abū Muḥammad said: If this were following a school, then—due to the soundness of its chain of transmission—this would hold greater validity than following Mālik and Abū Ḥanīfah. And from ʿUqbah ibn Ṣahbān, from Abū Bakrah: he saw people praying in the open area of the mosque on Friday and declared, "They have no valid Friday prayer." I asked, "Why?" He replied, "Because they are capable of entering [the congregation] yet refrain from doing so."

قَالَ أَبُو مُحَمَّدٍ: هَذَا كَمَا قَالَ لِمَنْ قَدَرَ عَلَى أَنْ يَصِلَ الصَّفَّ فَلَمْ يَفْعَلْ

L8693 Abu Muhammad said: This is just as he stated concerning one who was capable of properly aligning with the prayer row but failed to do so.

L8694 Indeed, all amazement is directed at those who permit prayer in places where the Messenger of Allah (peace and blessings of Allah be upon him) established

a prohibition—such as graveyards, camel resting places, and bathhouses—yet forbid prayer in locations where no textual prohibition exists, such as a restricted area or where there is a large river between them. All of this is as you can observe, and success is by Allah, the Exalted.

وَإِنَّ الْعَجَبَ كُلَّهُ مِمَّنْ يُجِيزُ الصَّلَاةَ حَيْثُ صَحَّ نَهْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الصَّلَاةِ فِيهِ كَالْمَقْبَرَةِ، وَمَعْطِنِ الْإِبِلِ، وَالْحَمَّامِ، ثُمَّ يَمْنَعُ مِنْهَا حَيْثُ لَا نَصَّ فِي الْمَنْعِ مِنْهَا، كَالْمَوْضِعِ الْمَحْجُورِ، أَوْ بَيْنَهَا نَهْرٌ كَبِيرٌ وَكُلُّ هَذَا كَمَا تَرَى وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

A jurisprudential issue concerning one who was jostled on Friday.

[مَسْأَلَةٌ مِنْ زُوحِمَ يَوْمَ الْجُمُعَةِ]

538 - Issue: If someone is pressed tightly on Friday or other days, if he can prostrate however possible—even with a gesture—and similarly bow with a gesture, it suffices. If he is entirely unable, he remains standing as he is. When the crowding subsides, he prays two rakʿahs, and this is sufficient for him.

٥٣٨ - مَسْأَلَةٌ: وَمَنْ زُوحِمَ يَوْمَ الْجُمُعَةِ أَوْ غَيْرِهِ فَإِنْ قَدَرَ عَلَى السُّجُودِ كَيْفَ أَمْكَنَهُ وَلَوْ إيمَاءً وَعَلَى الرُّكُوعِ كَذَلِكَ -: أَجْزَأَهُ، فَإِنْ لَمْ يَقْدِرْ أَصْلًا وَقَفَ كَمَا هُوَ، فَإِذَا خَفَّ الْأَمْرُ صَلَّى رَكْعَتَيْنِ وَأَجْزَأَهُ.

In reference to the statement of the Messenger of Allah (peace be upon him): "When I command you regarding a matter, then do from it what you are able to."

لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» .

And due to the saying of Allah, the Exalted: {Allah does not burden a soul beyond its capacity} [Al-Baqarah: 286]. There is no distinction between inability to perform bowing and prostration due to illness, fear, or being prevented by overcrowding. The Salaf performed the Friday prayer with gestures in the mosque since the Banu Umayyah would delay the prayer until near sunset.[20]

وَلِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَلَا فَرْقَ بَيْنَ الْعَجْزِ عَنْ الرُّكُوعِ وَالسُّجُودِ بِمَرَضٍ أَوْ بِخَوْفٍ أَوْ بِمَنْعِ زِحَامٍ وَقَدْ صَلَّى السَّلَفُ الْجُمُعَةَ إيمَاءً فِي الْمَسْجِدِ، إذْ كَانَ بَنُو أُمَيَّةَ يُؤَخِّرُونَ الصَّلَاةَ إلَى قُرْبِ غُرُوبِ الشَّمْسِ

A case in which two or more arrive and the Friday prayer has been missed.

[مَسْأَلَةٌ جَاءَ اثْنَانِ فَصَاعِدًا وَقَدْ فَاتَتْ الْجُمُعَةُ]

Issue: If two or more [people] arrive and the Friday prayer has been missed, they should pray it as a Friday prayer, because of what we stated: that it is two rakʿahs in congregation.

مَسْأَلَةٌ: وَإِنْ جَاءَ اثْنَانِ فَصَاعِدًا وَقَدْ فَاتَتْ الْجُمُعَةُ صَلَّوْهَا جُمُعَةً، لِمَا ذَكَرْنَا مِنْ أَنَّهَا رَكْعَتَانِ فِي الْجَمَاعَةِ

A legal issue: If he was in the city and went to Friday Prayer from the beginning of the day...

[مَسْأَلَةٌ كَانَ بِالْمِصْرِ فَرَاحَ إلَى الْجُمُعَةِ مِنْ أَوَّلِ النَّهَارِ]

[20] **Qur'an references (L8698):** Qur'an 2:286 (Al-Baqarah).

L8703 540. Issue: For one who is within the city and goes to the Friday prayer from the beginning of the day, this is commendable as we previously mentioned. Similarly, for one situated outside the city or village at less than a mile, if at a mile or beyond, he must pray in his place. It is not permissible for him to come to the mosque except specifically the Sacred Mosque (Mecca), the Mosque of Medina, and the Mosque of Bayt al-Maqdis. Traveling to these despite distance is a virtuous act, based on what Ahmad ibn Muḥammad al-Ṭalamankī narrated to us: Ibn Mufarrij narrated to us, Muḥammad ibn Ayyūb al-Ṣamūt narrated to us, Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār narrated to us, Muḥammad ibn Maʿmar narrated to us, Rūḥ - that is Ibn ʿUbādah - narrated to us, Muḥammad ibn Abī Ḥafṣah narrated from al-Zuhrī, from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, from Abū Hurayrah, that Allah's Messenger - peace and blessings be upon him - said: "Journeying is only to three mosques: the Sacred Mosque, the Mosque of Medina, and the Mosque of Ilyā'."

L8704 Abū Muḥammad said: A journey is travel. We have previously clarified that travel is one mīl or more, and with Allah, the Exalted, is success.

The Issue of Prayer in the Prayer Chamber

L8705–8706

L8707 Issue: Prayer within the prayer enclosure (maqsurah) is permissible, and the sin lies upon the one who prevents entry—not upon the one granted unrestricted access to it. Rather, it is obligatory for whoever is able to enter it to connect the prayer rows therein, for completing the rows is an obligation as we previously established. Thus, whoever grants unrestricted permission regarding this matter—their right is upheld, and no rightful claim incumbent upon them is denied. But whoever is prevented—their right is withheld, and the one who obstructs this right is unjust. No sin burdens the prevented person, in accordance with Allah's declaration: "Allah does not charge a soul except [with that within] its capacity" (Al-Baqarah 2:286).[21]

[21] **Qur'an references (L8707):** Qur'an 2:286 (Al-Baqarah).

٥٤٠ - مَسْأَلَةٌ: وَمَنْ كَانَ بِالْمِصْرِ فَرَاحَ إِلَى الْجُمُعَةِ مِنْ أَوَّلِ النَّهَارِ فَحَسَنٌ، لِمَا ذَكَرْنَا قَبْلُ، وَكَذَلِكَ مَنْ كَانَ خَارِجَ الْمِصْرِ أَوِ الْقَرْيَةِ عَلَى أَقَلَّ مِنْ مِيلٍ، فَإِنْ كَانَ عَلَى مِيلٍ فَصَاعِدًا صَلَّى فِي مَوْضِعِهِ، وَلَمْ يَجُزْ لَهُ الْمَجِيءُ إِلَى الْمَسْجِدِ إِلَّا مَسْجِدَ مَكَّةَ، وَمَسْجِدَ الْمَدِينَةِ، وَمَسْجِدَ بَيْتِ الْمَقْدِسِ خَاصَّةً، فَالْمَجِيءُ إِلَيْهَا عَلَى بُعْدٍ: فَضِيلَةٌ -: لِمَا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ ثنا ابْنُ مُفَرِّجٍ ثنا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ ثنا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ ثنا مُحَمَّدُ بْنُ مَعْمَرٍ ثنا رَوْحٌ هُوَ ابْنُ عُبَادَةَ - ثنا مُحَمَّدُ بْنُ أَبِي حَفْصَةَ عَنِ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِنَّمَا الرِّحْلَةُ إِلَى ثَلَاثَةِ مَسَاجِدَ: مَسْجِدِ الْحَرَامِ، وَمَسْجِدِ الْمَدِينَةِ، وَمَسْجِدِ إِيلْيَاءَ» .

قَالَ أَبُو مُحَمَّدٍ: الرِّحْلَةُ هِيَ السَّفَرُ، وَقَدْ بَيَّنَّا قَبْلُ أَنَّ السَّفَرَ مِيلٌ فَصَاعِدًا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ الصَّلَاةُ فِي الْمَقْصُورَةِ]

مَسْأَلَةٌ: وَالصَّلَاةُ فِي الْمَقْصُورَةِ جَائِزَةٌ، وَالْإِثْمُ عَلَى الْمَانِعِ لَا عَلَى الْمُطْلَقِ لَهُ دُخُولُهَا، بَلْ الْفَرْضُ عَلَى مَنْ أَمْكَنَهُ دُخُولُهَا أَنْ يَصِلَ الصُّفُوفَ فِيهَا، لِأَنَّ إِكْمَالَ الصُّفُوفِ فَرْضٌ كَمَا قَدَّمْنَا فَمَنْ أَطْلَقَ عَلَى ذَلِكَ فَحَقُّهُ أَطْلَقَ لَهُ، وَحَقٌّ عَلَيْهِ لَمْ يُمْنَعْ مِنْهُ، وَمَنْ مُنِعَ فَحَقُّهُ مُنِعَ مِنْهُ وَالْمَانِعُ مِنَ الْحَقِّ ظَالِمٌ، وَلَا إِثْمَ عَلَى الْمَمْنُوعِ، لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦]

Issue: The Sale During the Time of Friday Prayer

[مَسْأَلَةُ الْبَيْعُ وَقْت صَلَاة الْجُمُعَةِ]

L8708

L8709 It is impermissible to engage in selling from the moment the sun reaches its zenith and begins its westward decline and inclination until the Friday prayer is concluded.

٥٤٢ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْبَيْعُ مِنْ أَثَرِ اسْتِوَاءِ الشَّمْسِ، وَمِنْ أَوَّلِ أَخْذِهَا فِي الزَّوَالِ وَالْمَيْلِ إِلَى أَنْ تُقْضَى صَلَاةُ الْجُمُعَةِ

L8710 If a village's people are prevented from Friday prayer, or if one resides among disbelievers with no Muslim with him, then the timeframe is until he prays the Dhuhr of his day, or they pray it—all of them or some. If he does not pray, then until the beginning of the time for Asr enters.

فَإِنْ كَانَتْ قَرْيَةٌ قَدْ مُنِعَ أَهْلُهَا الْجُمُعَةَ أَوْ كَانَ سَاكِنًا بَيْنَ الْكُفَّارِ، وَلَا مُسْلِمَ مَعَهُ: فَإِلَى أَنْ يُصَلِّيَ ظُهْرَ يَوْمِهِ، أَوْ يُصَلُّوا ذَلِكَ كُلُّهُمْ أَوْ بَعْضُهُمْ، فَإِنْ لَمْ يُصَلِّ: فَإِلَى أَنْ يَدْخُلَ أَوَّلُ وَقْتِ الْعَصْرِ.

L8711 If the sale occurs, it is permanently annulled at that time, and the expiry of the time period does not validate it, whether the transaction was between Muslims, a Muslim and a non-Muslim, or non-Muslims.

وَيُفْسَخُ الْبَيْعُ حِينَئِذٍ أَبَدًا إِنْ وَقَعَ وَلَا يُصَحِّحُهُ خُرُوجُ الْوَقْتِ، سَوَاءٌ كَانَ التَّبَايُعُ مِنْ مُسْلِمِينَ، أَوْ مِنْ مُسْلِمٍ وَكَافِرٍ، أَوْ مِنْ كَافِرِينَ.

L8712 Are the following not prohibited at that time: marriage, agency contracts, salam contracts, or transactions not constituting sales? Did Mālik similarly state this regarding sales involving a Muslim, marriage, lease contracts, and salam contracts, while permitting gifts, loans, and charitable giving? Abū Ḥanīfah and Al-Shāfiʿī said: Sales, marriage, leasing, and salam contracts—all of these are permissible during the aforementioned time.

وَلَا يَحْرُمُ حِينَئِذٍ: نِكَاحٌ، وَلَا إِجَارَةٌ، وَلَا سَلَمٌ، وَلَا مَا لَيْسَ بَيْعًا؟ وَقَالَ مَالِكٌ كَذَلِكَ فِي الْبَيْعِ الَّذِي فِيهِ مُسْلِمٌ، وَفِي النِّكَاحِ، وَعَقْدِ الْإِجَارَةِ، وَالسَّلَمِ، وَأَبَاحَ الْهِبَةَ، وَالْقَرْضَ، وَالصَّدَقَةَ؟ وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: الْبَيْعُ، وَالنِّكَاحُ، وَالْإِجَارَةُ، وَالسَّلَمُ: جَائِزٌ كُلُّ ذَلِكَ فِي الْوَقْتِ الْمَذْكُورِ.

L8713 Allah the Exalted said: *O you who have believed, when the call to prayer is made on the Day of Jumu'ah, hasten to the remembrance of Allah and leave off business transactions. That is better for you, if you know.* [Al-Jumu'ah: 9] *When the prayer is concluded, go forth into the land and seek from the bounty of Allah.* [Al-Jumu'ah: 10][22]

قَالَ اللَّهُ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ ذَلِكُمْ خَيْرٌ لَكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ} [الجمعة: ٩] {فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ} [الجمعة: ١٠]

L8714–8716 The time of the call to prayer is the start of the sun's decline. Thus, Allah, the Exalted, has forbidden trade until the prayer concludes and permitted it afterward. This aligns with the declaration of Allah, the Mighty and Majestic. He, the Exalted, has not prohibited marriage, rental contracts, salam con-

وَوَقْتُ النِّدَاءِ: هُوَ أَوَّلُ الزَّوَالِ، فَحَرَّمَ اللَّهُ تَعَالَى الْبَيْعَ إِلَى انْقِضَاءِ الصَّلَاةِ وَأَبَاحَهُ بَعْدَهَا، فَهُوَ كَمَا قَالَ عَزَّ وَجَلَّ، وَلَمْ يُحَرِّمْ تَعَالَى نِكَاحًا، وَلَا إِجَارَةً، وَلَا سَلَمًا، وَلَا مَا لَيْسَ

[22] **Qur'an references (L8713):** Qur'an 62:9 (Al-Jumu'ah); Qur'an 62:10 (Al-Jumu'ah).

tracts, nor what is not... A sale: {And never is your Lord forgetful} [Maryam: 64]. And {These are the boundaries of Allah, so do not transgress them} [al-Baqarah: 229].[23]

L8717 All these actions we have mentioned are permissible even while one is proceeding to prayer without being preoccupied with it, for they do not hinder proceeding to prayer.

L8718 The contradiction in Mālik's statement and its invalidity thus became apparent. If he attributed the cause of all that to preoccupation, we would ask them about one who was not preoccupied—rather, one who sold, gave in marriage, or leased while proceeding to Friday prayer or while in the mosque awaiting the prayer. Given their assertion that "it is annulled," their attribution of cause to preoccupation collapses. If they do not base it on preoccupation, they have analogized without a legal cause—invalid according to proponents of analogy, let alone its opponents! Should he claim, "Marriage is a sale," we respond: This is invalid, for neither Allah the Exalted nor His Messenger—peace be upon him—has ever at any point called it a sale.

L8719 We ask them about someone who swore an oath not to sell—if he then marries or rents out property, does he break his oath? According to their school, he does not break his oath. However, Abū Ḥanīfah and Al-Shāfiʿī reasoned that the prohibition of such acts is solely to avoid distraction from attending the Friday Prayer.

L8720 Abu Muhammad said: This is a false claim and a statement about Allah, the Exalted, without knowledge. It is not permissible for anyone to assert Allah's intent unless He, the Exalted, or His Messenger (peace be upon him) has explicitly conveyed it.

L8721 If Allah the Exalted had willed that, He would have clarified it and not left us dependent on the error of Abū Ḥanīfah's speculative opinion and assumption. Indeed, the Messenger of Allah—peace be upon him—said: "Beware of assumption, for verily assumption is the falsest of speech."

بَيْعًا {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] . وَ {تِلْكَ حُدُودُ اللَّهِ فَلا تَعْتَدُوهَا} [البقرة: ٢٢٩] .

وَكُلُّ مَا ذَكَرْنَا فَجَائِزٌ أَنْ يَكُونَ وَهُوَ نَاهِضٌ إلَى الصَّلَاةِ غَيْرَ مُتَشَاغِلٍ بِهَا فَجَازَ كُلُّ ذَلِكَ، لِأَنَّهُ لَيْسَ مَانِعًا مِنْ السَّعْيِ إلَى الصَّلَاةِ.

فَظَهَرَ تَنَاقُضُ قَوْلِ مَالِكٍ وَفَسَادُهُ فَإِنْ كَانَ جَعَلَ عِلَّةَ كُلِّ ذَلِكَ: التَّشَاغُلَ، سَأَلْنَاهُمْ عَمَّنْ لَمْ يَتَشَاغَلْ؟ بَلْ بَاعَ أَوْ أَنْكَحَ، أَوْ أَجَرَ وَهُوَ نَاهِضٌ إلَى الْجُمُعَةِ، أَوْ هُوَ فِي الْمَسْجِدِ يَنْتَظِرُ الصَّلَاةَ؟ فَمِنْ قَوْلِهِمْ: يُفْسَخُ، فَبَطَلَ تَعْلِيلُهُمْ بِالتَّشَاغُلِ، فَإِنْ لَمْ يُعَلِّلُوا بِالتَّشَاغُلِ فَقَدْ قَاسُوا عَلَى غَيْرِ عِلَّةٍ، وَهُوَ بَاطِلٌ عِنْدَ مَنْ يَقُولُ: بِالْقِيَاسِ، فَكَيْفَ عِنْدَ مَنْ لَا يَقُولُ بِهِ؟ فَإِنْ قَالَ: النِّكَاحُ بَيْعٌ، قُلْنَا: هَذَا بَاطِلٌ مَا سَمَّاهُ اللَّهُ تَعَالَى قَطُّ بَيْعًا وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَنَسْأَلُهُمْ عَمَّنْ حَلَفَ أَنْ لَا يَبِيعَ: فَنَكَحَ أَوْ أَجَرَ؟ فَمِنْ قَوْلِهِمْ: لَا يَحْنَثُ وَاعْتَلَّ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: بِأَنَّ النَّهْيَ عَنْ ذَلِكَ إنَّمَا هُوَ لِلتَّشَاغُلِ عَنْ الْجُمُعَةِ فَقَطْ

قَالَ أَبُو مُحَمَّد: وَهَذِهِ دَعْوَى كَاذِبَةٌ، وَقَوْلٌ عَلَى اللَّهِ تَعَالَى بِغَيْرِ عِلْمٍ، وَهَذَا لَا يَحِلُّ لِأَحَدٍ أَنْ يُخْبِرَ عَنْ مُرَادِ اللَّهِ تَعَالَى بِغَيْرِ أَنْ يُخْبِرَ بِذَلِكَ اللَّهُ تَعَالَى أَوْ رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَلَوْ أَرَادَ اللَّهُ تَعَالَى ذَلِكَ لَبَيَّنَهُ وَلَمْ يَكِلْنَا إلَى خَطَأِ رَأْيِ أَبِي حَنِيفَةَ وَظَنِّهِ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إيَّاكُمْ وَالظَّنَّ، فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ»

[23] **Qur'an references (L8714):** Qur'an 19:64 (Maryam); Qur'an 2:229 (Al-Baqarah).

L8722 And He, the Exalted, said: “And that you associate partners with Allah [in] what He has not sent down any authority, and that you say against Allah what you do not know.” [Al-A’raf: 33][24]

وَقَالَ تَعَالَى: {وَأَنْ تُشْرِكُوا بِاللَّهِ مَا لَمْ يُنَزِّلْ بِهِ سُلْطَانًا وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لا تَعْلَمُونَ} [الأعراف: ٣٣] .

L8723–8725 If they say, “We have known that,” we respond, “How did you come to know this?” If you were to claim it is a necessity, you would be lying, for we are not compelled by necessity to know it, and the innate nature is one. If they claim a proof, they should be asked for it—they have no means to do so, leaving only conjecture. They said, “We are prohibited from selling during prayer. If a man were to sell during his prayer, would the sale be valid?” We replied, “A sale is not permissible at all during prayer, for if it is done intentionally...” If he invalidates his prayer, he is no longer in prayer at that moment. If he is not in prayer, his sale is valid. Moreover, if he erroneously believed he was not in prayer and sold [something], married [someone], contracted a marriage for another, or performed acts that invalidate prayer, all such acts are invalid because the state of prayer he is in—a legally confirmed state—prohibits them. Thus, anything conflicting with this state is invalid.

فَإِنْ قَالُوا: قَدْ عَلِمْنَا ذَلِكَ؟ قُلْنَا: وَمِنْ أَيْنَ عَلِمْتُمُوهُ؟ فَإِنْ ادَّعَيْتُمْ ضَرُورَةً كَذَبْتُمْ، لِأَنَّنَا غَيْرُ مُضْطَرِّينَ إِلَى عِلْمِ ذَلِكَ، وَالطَّبِيعَةُ وَاحِدَةٌ، وَإِنْ ادَّعَوْا دَلِيلًا سُئِلُوهُ، وَلَا سَبِيلَ لَهُمْ إِلَيْهِ، فَلَمْ يَبْقَ إِلَّا الظَّنُّ وَقَالُوا: نَحْنُ مَنْهِيُّونَ عَنْ الْبَيْعِ فِي الصَّلَاةِ، وَلَوْ بَاعَ امْرُؤٌ فِي صَلَاتِهِ: نَفَذَ الْبَيْعُ؟ فَقُلْنَا لَهُمْ: إنَّ الْبَيْعَ لَا يَجُوزُ أَنْ يَكُونَ فِي الصَّلَاةِ أَصْلًا؛ لِأَنَّهُ إذَا وَقَعَ عَمْدًا أَبْطَلَهَا، فَلَيْسَ حِينَئِذٍ فِي صَلَاةٍ، وَإِذَا لَمْ يَكُنْ فِي صَلَاةٍ فَبَيْعُهُ جَائِزٌ، وَإِنْ ظَنَّ أَنَّهُ لَيْسَ فِي صَلَاةٍ فَبَاعَ، أَوْ نَكَحَ، أَوْ أَنْكَحَ، أَوْ عَمِلَ مَا لَا يَجُوزُ فِي الصَّلَاةِ فَهُوَ كُلُّهُ بَاطِلٌ؛ لِأَنَّ الْحَالَ الَّتِي هُوَ فِيهَا مَانِعَةٌ مِنْ ذَلِكَ، وَهِيَ حَالٌ ثَابِتَةٌ، فَمَا ضَادَّهَا فَبَاطِلٌ.

L8726 Similarly, if someone sells, marries, divorces, or manumits [a slave] when only the time required to commence prayer with the takbīr remains—and he is mindful of this—then all such acts are invalid, because they are prohibited.

وَكَذَلِكَ مَنْ بَاعَ، أَوْ نَكَحَ، أَوْ طَلَّقَ، أَوْ أَعْتَقَ، وَلَمْ يَبْقَ عَلَيْهِ مِنْ الْوَقْتِ إلَّا مِقْدَارُ إحْرَامِهِ بِالتَّكْبِيرِ - وَهُوَ ذَاكِرٌ لِذَلِكَ - فَهُوَ كُلُّهُ بَاطِلٌ، لِأَنَّهُ مَنْهِيٌّ عَنْ كُلِّ ذَلِكَ.

L8727 And he (peace and blessings of Allah be upon him) said: “Whoever performs an act not in accordance with our command, it is rejected.” Thus, anyone who performs an action contrary to what he has been commanded, then it is rejected by the explicit juridical ruling of the Messenger of Allah (peace and blessings of Allah be upon him).[25]

وَقَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» فَكُلُّ مَنْ عَمِلَ أَمْرًا بِخِلَافِ مَا أُمِرَ بِهِ فَهُوَ مَرْدُودٌ بِنَصِّ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L8728 It has been narrated to us via ʿIkrimah from Ibn ʿAbbās: “Transactions are impermissible on the day of Jumuʿah when the prayer is announced to commence. Once the prayer has concluded, you may buy and sell.”

رُوِّينَا مِنْ طَرِيقِ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ " لَا يَصْلُحُ الْبَيْعُ يَوْمَ الْجُمُعَةِ حِينَ يُنَادَى بِالصَّلَاةِ فَإِذَا قُضِيَتْ الصَّلَاةُ فَاشْتَرِ وَبِعْ ".

[24] **Qur’an references (L8722):** Qur’an 7:33 (Al-A’raf).

[25] **Hadith references (L8727):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

L8729 From Al-Qāsim ibn Muḥammad: Did he rescind a sale that occurred during the aforementioned time? Abū Muḥammad said: This is where the Shāfiʿīs and Ḥanafīs contradicted themselves, for they do not permit opposing the position of a Companion when no opposing Companion is known—yet this is a situation where no opposition to Ibn ʿAbbās from the Companions (may Allah be pleased with them) is recognized? The Mālikīs also contradicted themselves, for they interpreted Allah's command "And abandon trade" [62:9] as a prohibition, yet did not interpret His command to provide for divorced women as obligatory.[26]

L8730 They said, "The term *dhar* (leave) is only used to denote prohibition." We replied, "This is false, for He, the Exalted, has said: *Then leave them in their vain discourse, playing* [Quran 6:91]. In this instance, it serves as a warning, not a prohibition."[27]

L8731 As for our preventing the disbelievers from engaging in trade at that time, it is due to the statement of the Exalted: "And fight them until there is no religious discord and religion is wholly for Allah" [Al-Anfal: 39]. Thus, it is necessarily obligatory to judge between the disbelievers according to the rulings applicable to the people of Islam.[28]

L8732 And He, the Exalted, said: "Judge between them by what Allah has revealed" [Al-Māʾidah 5:49].[29]

[The Prayer of the Two Eids] [The Ruling on Work and Selling During the Two Eids]

L8733–8734

L8735 543 - Issue: The two Eids are Eid al-Fitr following Ramadan, which is the first day of Shawwāl, and Eid al-Adḥā, which is the tenth day of Dhū al-Ḥijjah. Muslims have no other Eid besides these two. However, Friday is also [a distinct day], along with the three days following Eid al-Adḥā. This is because Allah the Exalted has not designated any Eid for them other than

[26] **Qur'an references (L8729):** Qur'an 62:9 (Al-Jumu'ah).
[27] **Qur'an references (L8730):** Qur'an 6:91 (Al-An'am).
[28] **Qur'an references (L8731):** Qur'an 8:39 (Al-Anfal).
[29] **Qur'an references (L8732):** Qur'an 5:49 (Al-Ma'idah).

وَعَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ: أَنَّهُ فَسَخَ بَيْعًا وَقَعَ فِي الْوَقْتِ الْمَذْكُورِ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا مِمَّا تَنَاقَضَ فِيهِ الشَّافِعِيُّونَ، وَالْحَنَفِيُّونَ، لِأَنَّهُمْ لَا يُجِيزُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، وَهَذَا مَكَانٌ لَا يُعْرَفُ لِابْنِ عَبَّاسٍ فِيهِ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؟ وَتَنَاقَضَ الْمَالِكِيُّونَ أَيْضًا، لِأَنَّهُمْ حَمَلُوا قَوْله تَعَالَى: {وَذَرُوا الْبَيْعَ} [الجمعة: ٩] : عَلَى التَّحْرِيمِ، وَلَمْ يَحْمِلُوا أَمْرَهُ تَعَالَى بِتَمْتِيعِ الْمُطَلَّقَةِ عَلَى الْإِيجَابِ

وَقَالُوا: لَفْظَةُ " ذَرْ " لَا تَكُونُ إلَّا لِلتَّحْرِيمِ؟ فَقُلْنَا: هَذَا بَاطِلٌ، وَقَدْ قَالَ تَعَالَى: {ثُمَّ ذَرْهُمْ فِي خَوْضِهِمْ يَلْعَبُونَ} [الأنعام: ٩١] فَهَذِهِ لِلْوَعِيدِ لَا لِلتَّحْرِيمِ

وَأَمَّا مَنْعُنَا أَهْلَ الْكُفْرِ مِنْ الْبَيْعِ حِينَئِذٍ: فَلِقَوْلِهِ تَعَالَى: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] فَوَجَبَ الْحُكْمُ بَيْنَ أَهْلِ الْكُفْرِ بِحُكْمِ أَهْلِ الْإِسْلَامِ وَلَا بُدَّ.

وَقَالَ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩]

[صَلَاةُ الْعِيدَيْنِ] [مَسْأَلَةٌ الْعَمَلُ وَالْبَيْعُ فِي الْعِيدَيْنِ]

٥٤٣ - مَسْأَلَةٌ: هُمَا عِيدُ الْفِطْرِ مِنْ رَمَضَانَ، وَهُوَ: أَوَّلُ يَوْمٍ مِنْ شَوَّالٍ، وَيَوْمُ الْأَضْحَى: وَهُوَ الْيَوْمُ الْعَاشِرُ مِنْ ذِي الْحِجَّةِ، لَيْسَ لِلْمُسْلِمِينَ عِيدٌ غَيْرُهُمَا، إلَّا يَوْمَ الْجُمُعَةِ. وَثَلَاثَةُ أَيَّامٍ بَعْدَ يَوْمِ الْأَضْحَى؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ لَهُمْ عِيدًا غَيْرَ مَا ذَكَرْنَا، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

what we have mentioned, nor did His Messenger—peace be upon him—designate any.

وَلَا خِلَافَ بَيْنَ أَهْلِ الْإِسْلَامِ فِي ذَلِكَ، وَلَا يَحْرُمُ الْعَمَلُ، وَلَا الْبَيْعُ فِي شَيْءٍ مِنْ هَذِهِ الْأَيَّامِ: لِأَنَّ اللَّهَ تَعَالَى لَمْ يَمْنَعْ مِنْ ذَلِكَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا خِلَافَ أَيْضًا بَيْنَ أَهْلِ الْإِسْلَامِ فِي هَذَا؟ وَسُنَّةُ صَلَاةِ الْعِيدَيْنِ: أَنْ يَبْرُزَ أَهْلُ كُلِّ قَرْيَةٍ أَوْ مَدِينَةٍ إلَى فَضَاءٍ وَاسِعٍ بِحَضْرَةِ مَنَازِلِهِمْ ضَحْوَةً إثْرَ ابْيِضَاضِ الشَّمْسِ، وَحِينَ ابْتِدَاءِ جَوَازِ التَّطَوُّعِ.

L8736 There is no disagreement among the people of Islam regarding that, nor is work or trade prohibited on any of these days, because Allah the Exalted has not forbidden it, nor has His Messenger—may Allah bless him and grant him peace—nor is there any disagreement among the people of Islam regarding this as well. The Sunnah of the prayers for the two Eids is that the people of every village or city proceed to a spacious open area in the vicinity of their dwellings in the forenoon after the sun has whitened [risen sufficiently], and at the time when voluntary prayers first become permissible.

وَيَأْتِي الْإِمَامُ فَيَتَقَدَّمُ بِلَا أَذَانٍ وَلَا إقَامَةٍ، فَيُصَلِّي بِالنَّاسِ رَكْعَتَيْنِ يَجْهَرُ فِيهِمَا بِالْقِرَاءَةِ، وَفِي كُلِّ رَكْعَةٍ " أُمُّ الْقُرْآنِ " وَسُورَةٌ، وَتُسْتَحَبُّ أَنْ تَكُونَ السُّورَةُ فِي الْأُولَى " ق ".

وَفِي الثَّانِيَةِ " اقْتَرَبَتْ السَّاعَةُ " أَوْ " سَبِّحْ اسْمَ رَبِّكَ الْأَعْلَى ".

وَ " هَلْ أَتَاكَ حَدِيثُ الْغَاشِيَةِ ".

L8737 The Imam arrives and proceeds forward without the adhan or iqamah. He leads the people in two rak'ahs, reciting aloud in both. In each rak'ah, he recites Al-Fatihah (the Opening) and a surah. It is recommended to recite Surah Qaf in the first rak'ah.

L8738 And in the second rak'ah, 'The Hour has drawn near' or 'Glorify the name of your Lord, the Most High.'

L8739 Have you heard the tidings of the Overwhelming Event?

وَمَا قَرَأَ مِنْ الْقُرْآنِ مَعَ (أُمِّ الْقُرْآنِ) أَجْزَأَهُ.

L8740 And whatever portion of the Qur'an one recites along with (Umm al-Qur'an, Al-Fatihah) suffices him.

وَيُكَبِّرُ فِي الرَّكْعَةِ الْأُولَى إثْرَ تَكْبِيرَةِ الْإِحْرَامِ: سَبْعَ تَكْبِيرَاتٍ مُتَّصِلَةٍ قَبْلَ قِرَاءَةِ الْقُرْآنِ (أُمِّ الْقُرْآنِ) وَيُكَبِّرُ فِي أَوَّلِ الثَّانِيَةِ إثْرَ تَكْبِيرَةِ الْقِيَامِ: خَمْسَ تَكْبِيرَاتٍ.

L8741 In the first *rakʿah*, after the *Takbīrat al-Iḥrām*, one utters seven consecutive *Takbīrs* before reciting the Qurʾān (*Umm al-Qurʾān*). In the second *rakʿah*, after the *Takbīr* of rising, one utters five *Takbīrs*.

يَجْهَرُ بِجَمِيعِهِنَّ قَبْلَ قِرَاءَتِهِ (أُمَّ الْقُرْآنِ) .

L8742 He should recite all of them aloud before reciting Umm al-Qur'an (the Mother of the Quran).

وَلَا يَرْفَعُ - يَدَيْهِ فِي شَيْءٍ مِنْهَا إلَّا حَيْثُ يَرْفَعُ فِي سَائِرِ الصَّلَوَاتِ فَقَطْ.

L8743 He does not raise his hands during any part of it except in the specific instances where they are raised in other prayers.

وَلَا يُكَبِّرُ بَعْدَ الْقِرَاءَةِ إلَّا تَكْبِيرَةَ الرُّكُوعِ فَقَطْ.

L8744 And one does not recite the *takbīr* after the recitation except the *takbīr* of bowing alone.

L8745 When the Imam concludes the prayer with the salutation, he rises to deliver

two Khutbahs to the people, sitting briefly between them. When he completes both, the congregation disperses.

فَإِذَا سَلَّمَ الْإِمَامُ قَامَ فَخَطَبَ النَّاسَ خُطْبَتَيْنِ يَجْلِسُ بَيْنَهُمَا جِلْسَةً، فَإِذَا أَتَمَّهُمَا افْتَرَقَ النَّاسُ.

L8746–8748 If he delivers the sermon before the prayer, it is not valid as a sermon, nor is it obligatory to listen to him attentively. There is no disagreement on this except in specific cases we shall mention—if God the Exalted wills—: Among them: what is recited along with the Mother of the Quran and in the manner of saying "Allahu Akbar" (Takbir).

فَإِنْ خَطَبَ قَبْلَ الصَّلَاةِ فَلَيْسَتْ خُطْبَةً، وَلَا يَجِبُ الْإِنْصَاتُ لَهُ، كُلُّ هَذَا لَا خِلَافَ فِيهِ إِلَّا فِي مَوَاضِعَ نَذْكُرُهَا إِنْ شَاءَ اللَّهُ تَعَالَى؟ -: مِنْهَا -: مَا يُقْرَأُ مَعَ (أُمِّ الْقُرْآنِ) وَفِي صِفَةِ التَّكْبِيرِ

L8749 The Umayyads introduced delaying the departure to the Eid prayer, advancing the sermon before the prayer, and initiating the *adhan* and *iqāmah*. As for what is recited alongside the Opening of the Quran (*Sūrah Al-Fātiḥah*), Abū Ḥanīfah said: "I dislike restricting oneself to a specific *sūrah*."

وَأَحْدَثَ بَنُو أُمَيَّةَ: تَأْخِيرَ الْخُرُوجِ إِلَى الْعِيدِ، وَتَقْدِيمَ الْخُطْبَةِ قَبْلَ الصَّلَاةِ وَالْأَذَانِ وَالْإِقَامَةِ فَأَمَّا الَّذِي يُقْرَأُ مَعَ " أُمِّ الْقُرْآنِ ": فَإِنَّ أَبَا حَنِيفَةَ قَالَ: أَكْرَهُ أَنْ يَقْتَصِرَ عَلَى سُورَةٍ بِعَيْنِهَا.

L8750 We have observed that the Malikis do not recite anything alongside Umm al-Qur'ān except "By the sun and its brightness" and "Exalt the name of your Lord, the Most High." These two opinions are invalid: even though prayers performed in this manner remain permissible.

وَشَاهَدْنَا الْمَالِكِيِّينَ لَا يَقْرَءُونَ مَعَ " أُمِّ الْقُرْآنِ " " إِلَّا " " وَالشَّمْسِ وَضُحَاهَا "، وَ " سَبِّحْ اسْمَ رَبِّكَ الْأَعْلَى ". وَهَذَانِ الِاخْتِيَارَانِ: فَاسِدَانِ، وَإِنْ كَانَتْ الصَّلَاةُ كَذَلِكَ جَائِزَةً.

L8751 We only disapprove of choosing that because it contradicts what has been authentically established from the Messenger of Allah—may the peace and blessings of Allah be upon him.

وَإِنَّمَا نُنْكِرُ اخْتِيَارَ ذَلِكَ، لِأَنَّهُمَا خِلَافُ مَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L8752 Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abd al-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Yahya ibn Yahya narrated to us: "I recited to Malik, from Damrah ibn Sa'id al-Mazini, from Ubaydullah ibn Abdullah ibn Utbah ibn Mas'ud: 'Umar ibn al-Khattab asked Abu Waqid al-Laythi: "What did the Messenger of Allah—peace and blessings be upon him—recite during Eid al-Fitr and Eid al-Adha?" He replied: "He would recite _Qāf. By the Glorious Quran_ and _The Hour has drawn near_."'"

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى قَرَأْت عَلَى مَالِك عَنْ ضَمْرَةَ بْنِ سَعِيدٍ الْمَازِنِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ: «أَنَّ عُمَرَ بْنَ الْخَطَّابِ سَأَلَ أَبَا وَاقِدٍ اللَّيْثِيَّ مَا كَانَ يَقْرَأُ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْفِطْرِ، وَالْأَضْحَى؟ فَقَالَ: كَانَ يَقْرَأُ فِيهِمَا بِق وَالْقُرْآنِ الْمَجِيدِ وَاقْتَرَبَتْ السَّاعَةُ» .

L8753 Abu Muhammad said: 'Ubaydullah met Abu Waqid al-Laythi and heard from

him. His name was al-Harith ibn ʻAwf. Is there nothing else authentically established from the Messenger of Allah (peace and blessings be upon him) besides this? What was narrated to us by ʻAbdullah ibn Rabiʻ: Muhammad ibn Muʻawiyah narrated to us; Ahmad ibn Shuʻayb narrated to us; Mahmud ibn Ghilan narrated to us; Wakiʻ narrated to us; Misʻar ibn Kidam and Sufyan (al-Thawri)—both of them reported from Maʻbad ibn Khalid, from Zayd ibn ʻUqbah, from Samurah ibn Jundub: "That he (peace be upon him) would recite in the Eid prayer: 'Glorify the name of your Lord, the Most High' and 'Has there come to you the report of the Overwhelming?'"[30]

قَالَ أَبُو مُحَمَّد: عُبَيْدُ اللَّهِ أَدْرَكَ أَبَا وَاقِدٍ اللَّيْثِيَّ وَسَمِعَ مِنْهُ، وَاسْمُهُ الْحَارِثُ بْنُ عَوْفٍ، وَلَمْ يَصِحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَيْءٌ غَيْرُ هَذَا؟ وَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مَحْمُودُ بْنُ غِيلَانَ ثنا وَكِيعٌ ثنا مِسْعَرُ بْنُ كِدَامٍ، وَسُفْيَانُ هُوَ الثَّوْرِيُّ - كِلَاهُمَا عَنْ مَعْبَدِ بْنِ خَالِدٍ عَنْ زَيْدِ بْنِ عُقْبَةَ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ «أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يَقْرَأُ فِي الْعِيدِ: سَبِّحِ اسْمَ رَبِّكَ الْأَعْلَى وَهَلْ أَتَاكَ حَدِيثُ الْغَاشِيَةِ» .

L8754 Our choice is the choice of Al-Shafi'i and Abu Sulayman.

وَاخْتِيَارُنَا هُوَ اخْتِيَارُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L8755 It has been narrated from Abū Ḥanīfah that he mentioned some of that. Among them is the *takbīr*, for Abū Ḥanīfah said: He utters the *takbīr* for initiating prayer, then seeks refuge, then pronounces three *takbīrs* audibly and raises his hands with each *takbīr*, then recites, then bows. When he rises after prostration to begin the second *rakʿah*, he utters the *takbīr* when rising, then recites. When he completes the *sūrah* after *Umm al-Qur'ān*, he pronounces three *takbīrs* audibly and raises his hands with each *takbīr*, then utters the *takbīr* to enter *rukūʿ*.

وَقَدْ رُوِيَ عَنْ أَبِي حَنِيفَةَ أَنَّهُ ذَكَرَ بَعْضَ ذَلِكَ؟ وَمِنْهَا - التَّكْبِيرُ، فَإِنَّ أَبَا حَنِيفَةَ قَالَ: يُكَبِّرُ لِلْإِحْرَامِ ثُمَّ يَتَعَوَّذُ ثُمَّ يُكَبِّرُ ثَلَاثَ تَكْبِيرَاتٍ يَجْهَرُ بِهَا، وَيَرْفَعُ يَدَيْهِ مَعَ كُلِّ تَكْبِيرَةٍ، ثُمَّ يَقْرَأُ ثُمَّ يَرْكَعُ، فَإِذَا قَامَ بَعْدَ السُّجُودِ إِلَى الرَّكْعَةِ الثَّانِيَةِ كَبَّرَ لِلْإِحْرَامِ ثُمَّ قَرَأَ، فَإِذَا أَتَمَّ السُّورَةَ مَعَ (أُمِّ الْقُرْآنِ) كَبَّرَ ثَلَاثَ تَكْبِيرَاتٍ جَهْرًا، يَرْفَعُ مَعَ كُلِّ تَكْبِيرَةٍ يَدَيْهِ، ثُمَّ يُكَبِّرُ لِلرُّكُوعِ.

L8756–8758 And Malik said: seven takbirs in the first rak'ah including the takbirat al-ihram, and five in the second rak'ah excluding its takbir. The standing during prayer, and there is disagreement reported regarding this among the Salaf - may Allah be pleased with them. It has been reported to us that Ali - may Allah be pleased with him - would recite the takbīr in the prayers of Eid al-Fitr, Eid al-Adha, and the prayer for rain: seven times in the first rak'ah and five times in the second rak'ah. He would perform the prayer before the sermon and recite audibly.

وَقَالَ مَالِكٌ: سَبْعًا فِي الْأُولَى بِتَكْبِيرَةِ الْإِحْرَامِ، وَخَمْسًا فِي الثَّانِيَةِ سِوَى تَكْبِيرَةِ الْقِيَامِ وَاخْتَلَفَ فِي ذَلِكَ عَنْ السَّلَفِ - رَضِيَ اللَّهُ عَنْهُمْ -: فَرُوِّينَا عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ -: أَنَّهُ كَانَ يُكَبِّرُ فِي الْفِطْرِ، وَالْأَضْحَى، وَالِاسْتِسْقَاءِ سَبْعًا فِي الْأُولَى، وَخَمْسًا فِي الْآخِرَةِ، وَيُصَلِّي قَبْلَ الْخُطْبَةِ، وَيَجْهَرُ بِالْقِرَاءَةِ.

L8759 It is reported that Abu Bakr, Umar, and Uthman used to do this. However, the chain includes Ibrahim ibn Abi Yahya, whose transmission is interrupted.

وَأَنَّ أَبَا بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ: كَانُوا يَفْعَلُونَ ذَلِكَ، إلَّا أَنَّ فِي الطَّرِيقِ إبْرَاهِيمَ بْنَ أَبِي يَحْيَى، وَهُوَ أَيْضًا مُنْقَطِعٌ، عَنْ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ: أَنَّ عَلِيًّا؟ وَرُوِّينَا مِنْ طَرِيقِ

[30] **Qur'an references (L8753):** Qur'an 87:1 (Al-A'la).

مَالِكٍ، وَأَيُّوبَ السِّخْتِيَانِيِّ كِلَاهُمَا عَنْ نَافِعٍ قَالَ: شَهِدْت الْعِيدَ مَعَ أَبِي هُرَيْرَةَ فَكَبَّرَ فِي الْأُولَى سَبْعًا، وَفِي الْأُخْرَى خَمْسًا قَبْلَ الْقِرَاءَةِ.

From Muhammad ibn Ali ibn al-Husayn: that it was from Ali [?]. And it was narrated to us through the chain of Malik and Ayyub al-Sakhtiyani, both from Nafiʿ, who said: "I attended the Eid prayer with Abu Hurayrah. He pronounced the takbir seven times in the first [rakʿah] and five times in the second before the recitation."

وَهَذَا سَنَدٌ كَالشَّمْسِ وَرُوِّينَا مِنْ طَرِيقِ مَعْمَرٍ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ الْأَسْوَدِ بْنِ يَزِيدَ قَالَ: كَانَ ابْنُ مَسْعُودٍ جَالِسًا وَعِنْدَهُ حُذَيْفَةُ، وَأَبُو مُوسَى الْأَشْعَرِيُّ، فَسَأَلَهُمْ سَعِيدُ بْنُ الْعَاصِ عَنْ التَّكْبِيرِ فِي الصَّلَاةِ يَوْمَ الْفِطْرِ، وَالْأَضْحَى؟ فَقَالَ ابْنُ مَسْعُودٍ يُكَبِّرُ أَرْبَعًا ثُمَّ يَقْرَأُ، ثُمَّ يُكَبِّرُ فَيَرْكَعُ، ثُمَّ يَقُومُ فِي الثَّانِيَةِ فَيَقْرَأُ ثُمَّ يُكَبِّرُ أَرْبَعًا بَعْدَ الْقِرَاءَةِ؟ وَمِنْ طَرِيقِ شُعْبَةَ عَنْ خَالِدٍ الْحَذَّاءِ، وَقَتَادَةَ كِلَاهُمَا عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ هُوَ ابْنُ نَوْفَلٍ - قَالَ: كَبَّرَ ابْنُ عَبَّاسٍ يَوْمَ الْعِيدِ فِي الرَّكْعَةِ الْأُولَى أَرْبَعَ تَكْبِيرَاتٍ ثُمَّ قَرَأَ ثُمَّ رَكَعَ، ثُمَّ قَامَ فَقَرَأَ ثُمَّ كَبَّرَ ثَلَاثَ تَكْبِيرَاتٍ سِوَى تَكْبِيرَةِ الصَّلَاةِ وَهَذَانِ إسْنَادَانِ فِي غَايَةِ الصِّحَّةِ، وَبِهَذَا تَعَلَّقَ أَبُو حَنِيفَةَ، قَالَ أَبُو مُحَمَّدٍ: أَيْنَ وُجِدَ لِهَؤُلَاءِ - رَضِيَ اللَّهُ عَنْهُمْ - أَوْ لِغَيْرِهِمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مَا قَالَهُ مِنْ أَنْ يَتَعَوَّذَ إثْرَ الْأُولَى ثُمَّ يُكَبِّرُ ثَلَاثًا، وَأَنَّهُ يَرْفَعُ يَدَيْهِ مَعَهُنَّ؟ فَبَطَلَ عَنْ أَنْ يَكُونَ لَهُ مُتَعَلَّقٌ بِصَاحِبٍ.

L8760 This is a chain of narration like the sun. It has been narrated to us through the path of Maʿmar from Abū Isḥāq al-Sabīʿī from al-Aswad ibn Yazīd, who said: Ibn Masʿūd was sitting while Ḥudhayfah and Abū Mūsā al-Ashʿarī were with him. Saʿīd ibn al-ʿĀṣ asked them about the Takbīr during the prayer on Eid al-Fiṭr and Eid al-Aḍḥā. Ibn Masʿūd replied: "He pronounces the Takbīr four times, then recites, then pronounces the Takbīr and bows. Then he rises for the second unit, recites, then pronounces the Takbīr four times after the recitation." Through another chain from Shuʿbah from Khālid al-Ḥadhdhā' and Qatādah, both from ʿAbdullāh ibn al-Ḥārith—who is Ibn Nawfal—he said: "Ibn ʿAbbās pronounced the Takbīr on Eid day in the first unit four times, then recited, then bowed. Then he stood, recited, then pronounced three Takbīrs apart from the opening Takbīr (Takbīrat al-Iḥrām) of the prayer." These are two chains of the utmost authenticity, and this is what Abū Ḥanīfah upheld. Abū Muḥammad said: "Where is it established that these companions (may Allah be pleased with them) or any other companions (may Allah be pleased with them) stated what he claimed—to seek refuge after the first unit, then pronounce three Takbīrs, while raising his hands with them?" Thus, it is invalidated that this has any basis connected to a companion.

وَأَطْرَفُ ذَلِكَ أَمْرُهُ بِرَفْعِ الْأَيْدِي فِي التَّكْبِيرِ، الَّذِي لَمْ يَصِحَّ قَطُّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَفَعَ فِيهِ يَدَيْهِ، وَنَهْيُهُ عَنْ رَفْعِ الْأَيْدِي فِي التَّكْبِيرِ فِي الصَّلَاةِ حَيْثُ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَرْفَعُ يَدَيْهِ وَهَكَذَا فَلْيَكُنْ عَكْسَ الْحَقَائِقِ، وَخِلَافَ السُّنَنِ؟ وَرُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ فِي التَّكْبِيرِ فِي الْعِيدَيْنِ؟ قَالَ: يُكَبِّرُ تِسْعًا أَوْ

L8761–8762 The most egregious aspect of this is his command to raise the hands during the *Takbīr*—since it has never been authentically established that the Messenger of Allah (peace and blessings of Allah be upon him) raised his hands in this context—and his prohibition against raising hands during the *Takbīr* in prayer where it is established that the Messenger of Allah (peace and blessings of Allah be upon him) did raise his hands. Thus, this is nothing but contrary to the truths and opposed to the established Sunnah. It has been narrated to us through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān, from Saʿīd ibn Abī ʿArūbah, from Qatādah, from ʿIkrimah, from Ibn ʿAbbās regarding

the *Takbīr* during the two Eid prayers. He said: “He would perform nine, eleven, or thirteen *Takbīrs*”—and this chain is of the highest authenticity. From Jābir ibn ʿAbdullāh, it is reported: “The *Takbīr* on Eid day is four times in the first *rakʿah* and three times in the last, totaling seven *Takbīrs* apart from the *Takbīr* of prayer”—except that the chain includes Ibrāhīm ibn Yazīd, who is deemed weak.

إِحْدَى عَشْرَةَ، أَوْ ثَلَاثَ عَشْرَةَ - وَهَذَا سَنَدٌ فِي غَايَةِ الصِّحَّةِ؟ وَعَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: التَّكْبِيرُ فِي يَوْمِ الْعِيدِ فِي الرَّكْعَةِ الْأُولَى أَرْبَعًا، وَفِي الْآخِرَةِ ثَلَاثًا، وَالتَّكْبِيرُ سَبْعٌ سِوَى تَكْبِيرِ الصَّلَاةِ - إِلَّا أَنَّ فِي الطَّرِيقِ إِبْرَاهِيمَ بْنَ يَزِيدَ وَلَيْسَ بِشَيْءٍ

L8763 Abu Muhammad said: In this, there are narrations from the Messenger of Allah—peace and blessings of Allah be upon him—but none of them are authentic. Among them is a report transmitted through the chain of Ibn Lahiʿah from ʿUqayl ibn Khālid from Ibn Shihāb from ʿUrwah from ʿĀʾishah: “The Messenger of Allah—peace and blessings of Allah be upon him—would say Allāhu Akbar during Eid al-Fitr and Eid al-Adha: seven takbīrāt in the first, and five takbīrāt in the second.”

قَالَ أَبُو مُحَمَّدٍ: وَفِي هَذَا آثَارٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَصِحُّ شَيْءٌ مِنْهَا -: مِنْهَا - مِنْ طَرِيقِ ابْنِ لَهِيعَةَ عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُكَبِّرُ فِي الْفِطْرِ، وَالْأَضْحَى، فِي الْأُولَى: سَبْعَ تَكْبِيرَاتٍ، وَفِي الثَّانِيَةِ: خَمْسَ تَكْبِيرَاتٍ» .

L8764 From the path of ʾAmr ibn Shuʿayb, from his father, from ʾAbdullah ibn ʾAmr ibn al-ʾAs, from the Messenger of Allah - peace and blessings be upon him - that he said: “The takbir during Eid al-Fitr is seven times in the first rak’ah and five times in the second rak’ah, and the recitation follows both sets of takbirs.”

وَمِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «التَّكْبِيرُ فِي الْفِطْرِ سَبْعٌ فِي الْأُولَى وَخَمْسٌ فِي الْآخِرَةِ، وَالْقِرَاءَةُ بَعْدَهُمَا كِلْتَاهُمَا» .

L8765–8767 All of this is invalid, and God forbid that we should cite what is invalid like one who cites Ibn Lahīʿah. As for Amr ibn Shuʿayb—when the two [narrations] align with his desire, as he did regarding zakat on camels and other matters, yet he rejects their narrations when they contradict his desire—this is the behavior of one who has no religion, who cares not that he strays in the religion of Allah the Exalted and causes others to stray.

وَهَذَا كُلُّهُ لَا يَصِحُّ، وَمَعَاذَ اللَّهِ أَنْ نَحْتَجَّ بِمَا لَا يَصِحُّ كَمَنْ يَحْتَجُّ بِابْنِ لَهِيعَةَ وَعَمْرِو بْنِ شُعَيْبٍ إِذَا وَافَقَا هَوَاهُ، كَفِعْلِهِ فِي زَكَاةِ الْإِبِلِ وَغَيْرِ ذَلِكَ، وَيَرُدُّ رِوَايَتَهُمَا إِذَا خَالَفَا هَوَاهُ هَذَا فِعْلُ مَنْ لَا دِينَ لَهُ، وَلَا يُبَالِي بِأَنْ يَضِلَّ فِي دِينِ اللَّهِ تَعَالَى وَيُضِلَّ

L8768 Among them is a report through the chain of Zayd ibn al-Ḥubāb from ʿAbd al-Raḥmān ibn Thawbān, from his father, from Makḥūl: Abū Aʾishah, the close associate of Abū Hurayrah, informed me that Saʿīd ibn al-ʿĀṣ was present and asked Abū Mūsā al-Ashʿarī and Ḥudhayfah ibn al-Yamān, “How did the Messenger of Allah—peace and blessings be upon him—recite the Takbīr during Eid al-Aḍḥā and Eid al-Fiṭr?” Abū Mūsā replied, “He would recite the Takbīr four times, similar to his practice during funeral prayers.”

وَمِنْهَا - خَبَرٌ مِنْ طَرِيقِ زَيْدِ بْنِ الْحُبَابِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ عَنْ أَبِيهِ عَنْ مَكْحُولٍ أَخْبَرَنِي أَبُو عَائِشَةَ جَلِيسُ أَبِي هُرَيْرَةَ أَنَّهُ حَضَرَ سَعِيدُ بْنُ الْعَاصِ «سَأَلَ أَبَا مُوسَى الْأَشْعَرِيَّ، وَحُذَيْفَةَ بْنَ الْيَمَانِ كَيْفَ كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُكَبِّرُ فِي الْأَضْحَى، وَالْفِطْرِ؟ فَقَالَ أَبُو مُوسَى كَانَ يُكَبِّرُ أَرْبَعًا، تَكْبِيرُهُ عَلَى الْجَنَائِزِ، قَالَ حُذَيْفَةُ: صَدَقَ، قَالَ أَبُو مُوسَى كَذَلِكَ كُنْتُ أُكَبِّرُ بِالْبَصْرَةِ حَيْثُ كُنْتُ عَلَيْهِمْ» .

Ḥudhayfah said, “He spoke the truth.” Abū Mūsā added, “Likewise, I used to recite the Takbīr in Basra when I was over them.”

قَالَ أَبُو مُحَمَّد: عَبْدُ الرَّحْمَنِ بْنُ ثَوْبَانَ ضَعِيفٌ وَأَبُو عَائِشَةَ مَجْهُولٌ، لَا يُدْرَى مَنْ هُوَ وَلَا يَعْرِفُهُ أَحَدٌ وَلَا تَصِحُّ رِوَايَةٌ عَنْهُ لِأَحَدٍ، وَلَوْ صَحَّ لَمَا كَانَ فِيهِ لِلْحَنَفِيِّينَ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ مَا يَقُولُونَ مِنْ أَرْبَعِ تَكْبِيرَاتٍ فِي الْأُولَى بِتَكْبِيرَةِ الْإِحْرَامِ، وَأَرْبَعٌ فِي الثَّانِيَةِ بِتَكْبِيرَةِ الرُّكُوعِ، وَلَا أَنَّ الْأُولَى يُكَبِّرُ فِيهَا قَبْلَ الْقِرَاءَةِ، وَفِي الثَّانِيَةِ بَعْدَ الْقِرَاءَةِ، بَلْ ظَاهِرُهُ أَرْبَعٌ فِي كِلْتَا الرَّكْعَتَيْنِ فِي الصَّلَاةِ كُلِّهَا، كَمَا فِي صَلَاةِ الْجَنَازَةِ.

L8769 Abu Muhammad said: ‘Abd al-Rahman ibn Thawban is weak, and Abu A’ishah is unknown—no one knows who he is or recognizes him, and no narration from him is considered reliable by anyone. Even if it were authentic, it would not constitute evidence for the Hanafis, because it does not mention what they claim: four takbirs in the first rakʿah including the opening takbir, and four in the second rakʿah including the takbir for bowing. Nor does it state that the takbirs in the first rakʿah are before the recitation and in the second rakʿah after the recitation. Rather, its apparent meaning is four takbirs in both rakʿahs throughout the entire prayer, as in the funeral prayer.

وَهَذَا قِيَاسٌ عَلَيْهِمْ لَا لَهُمْ، لِأَنَّ تَكْبِيرَ الْجِنَازَةِ أَرْبَعٌ فَقَطْ، وَهُمْ يَقُولُونَ: بِسِتٍّ فِي كِلْتَا الرَّكْعَتَيْنِ دُونَ تَكْبِيرَتَيْ الْإِحْرَامِ وَالرُّكُوعِ وَالْقِيَامِ، أَوْ بِعَشْرِ تَكْبِيرَاتٍ إِنْ عَدُّوا فِيهَا تَكْبِيرَةَ الْإِحْرَامِ، وَالْقِيَامِ، وَالرُّكُوعِ، وَلَيْسَ فِيهِ رَفْعُ الْأَيْدِي كَمَا زَعَمُوا، فَظَهَرَ تَمْوِيهُهُمْ جُمْلَةً - وَلِلَّهِ تَعَالَى الْحَمْدُ.

L8770 This is an analogical reasoning against them, not for them, because the funeral prayer’s Takbirs are only four, while they assert there are six in total across both Rak’ahs, excluding the Takbirs for Ihram, Ruku’, and Qiyam, or ten Takbirs if they count within them the Takbirs of Ihram, Qiyam, and Ruku’. There is no raising of the hands in it as they falsely claimed, thus their deception has been entirely exposed—and all praise is due to Allah, the Exalted.

قَالَ عَلِيٌّ: وَأَمَّا مَالِكٌ فَإِنَّهُ جَعَلَ فِي الْأُولَى سَبْعًا بِتَكْبِيرَةِ الْإِحْرَامِ، وَخَمْسًا فِي الثَّانِيَةِ دُونَ تَكْبِيرَةِ الْقِيَامِ، وَهَذَا غَيْرُ مَحْفُوظٍ عَنْ أَحَدٍ مِنْ السَّلَفِ.

L8771 Ali said: As for Malik, he held seven takbirs in the first rakʿah including the opening takbir (takbirat al-ihram), and five in the second rakʿah excluding the takbir for rising (takbīrat al-qiyām). This is not reported from any of the Salaf.

وَإِنَّمَا اخْتَرْنَا مَا اخْتَرْنَا، لِأَنَّهُ أَكْثَرُ مَا قِيلَ، وَالتَّكْبِيرُ خَيْرٌ، وَلِكُلِّ تَكْبِيرَةٍ عَشْرُ حَسَنَاتٍ، فَلَا يُحَقِّرُهَا إِلَّا مَحْرُومٌ، وَلَوْ وَجَدْنَا مَنْ يَقُولُ: بِأَكْثَرَ لَقُلْنَا بِهِ، لِقَوْلِ اللَّهِ تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] وَالتَّكْبِيرُ خَيْرٌ بِلَا شَكٍّ.

L8772–8774 We have chosen what we have chosen because it constitutes the majority of what has been stated, and the Takbīr [saying “Allāhu Akbar”] is superior, with ten good deeds for each takbīrah (utterance). No one disparages it except one deprived of [Allah’s favor]. If we had found anyone who advocated a greater number, we would have affirmed it, based on Allah the Exalted’s statement: “And do good” [Al-Hajj: 77], and the *Takbir* is undoubtedly good.[31]

وَاخْتِيَارُنَا هُوَ اخْتِيَارُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ

L8775 Our choice is the choice of Ash-Shāfiʿī and Abū Sulaymān.

[31] **Qur’an references (L8772):** Qur’an 22:77 (Al-Hajj).

وَمِنْهَا - مَا أَحْدَثَ بَنُو أُمَيَّةَ مِنْ تَأْخِيرِ الصَّلَاةِ، وَإِحْدَاثِ الْأَذَانِ وَالْإِقَامَةِ، وَتَقْدِيمِ الْخُطْبَةِ قَبْلَ الصَّلَاةِ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ عَنْ أَبِي عَاصِمٍ، وَيَعْقُوبَ بْنِ إِبْرَاهِيمَ.

L8776 Among these are what the Umayyads introduced: delaying prayers, initiating innovations in the adhan and iqamah, and delivering the sermon before the prayer. Abdur-Rahman ibn Abdullah narrated to us, Ibrahim ibn Ahmad narrated to us, al-Farbari narrated to us, al-Bukhari narrated from Abu ʻAsim and Yaʻqub ibn Ibrahim.

قَالَ أَبُو عَاصِمٍ: أَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي الْحَسَنُ بْنُ مُسْلِمٍ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ.

L8777 Abu ʻAsim said: "I am Ibn Jurayj; Al-Hasan ibn Muslim informed me, from Tawus, from Ibn ʻAbbas."

وَقَالَ يَعْقُوبُ: ثنا أَبُو أُسَامَةَ هُوَ حَمَّادُ بْنُ أُسَامَةَ - ثنا عُبَيْدُ اللَّهِ هُوَ ابْنُ عُمَرَ - عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ.

L8778 Ya'qub said: Abu Usama—he is Hammad ibn Usama—narrated to us; Ubayd Allah—he is Ibn Umar—from Nafi', from Ibn Umar.

ثُمَّ اتَّفَقَ ابْنُ عَبَّاسٍ، وَابْنُ عُمَرَ كِلَاهُمَا يَقُولُ «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبَا بَكْرٍ، وَعُمَرَ كَانُوا يُصَلُّونَ الْعِيدَيْنِ قَبْلَ الْخُطْبَةِ قَالَ ابْنُ عَبَّاسٍ وَعُثْمَانُ» .

L8779 Then Ibn Abbas and Ibn Umar both agreed, saying, "Indeed, the Messenger of Allah (peace and blessings be upon him), Abu Bakr, and Umar used to pray the two Eid prayers before the sermon." Ibn Abbas added, "and Uthman as well."

وَمِنْ طَرِيقِ مَالِكٍ عَنِ ابْنِ شِهَابٍ عَنْ أَبِي عُبَيْدٍ مَوْلَى ابْنِ أَزْهَرَ قَالَ: شَهِدْت الْعِيدَ مَعَ عُمَرَ بْنِ الْخَطَّابِ، وَعُثْمَانَ بْنِ عَفَّانَ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، كُلُّهُمْ يُصَلِّي ثُمَّ يَخْطُبُ.

L8780 And through the chain of Mālik from Ibn Shihāb from Abī ʿUbayd, the client of Ibn Azhar, who said: I attended the Eid prayer with ʿUmar ibn al-Khaṭṭāb, ʿUthmān ibn ʿAffān, and ʿAlī ibn Abī Ṭālib. All of them would pray first and then deliver the sermon.

وَبِالسَّنَدِ الْمَذْكُورِ إِلَى الْبُخَارِيِّ: ثنا إِبْرَاهِيمُ بْنُ مُوسَى ثنا هِشَامٌ أَنَّ ابْنَ جُرَيْجٍ أَخْبَرَهُمْ قَالَ: أَخْبَرَنِي عَطَاءٌ عَنِ ابْنِ عَبَّاسٍ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ قَالَا جَمِيعًا: لَمْ يَكُنْ يُؤَذَّنُ يَوْمَ الْفِطْرِ، وَلَا يَوْمَ الْأَضْحَى؟

L8781 With the aforementioned chain of transmission to al-Bukhārī: Ibrāhīm ibn Mūsā narrated to us from Hishām, who said that Ibn Jurayj informed them, saying: "'Aṭā' informed me from Ibn ʿAbbās and Jābir ibn ʿAbd Allāh - they both said: 'The call to prayer was not made on Eid al-Fitr nor on Eid al-Adha.'"

قَالَ عَلِيٌّ: لَا أَذَانَ وَلَا إِقَامَةَ لِغَيْرِ الْفَرِيضَةِ، وَالْأَذَانُ وَالْإِقَامَةُ فِيهِمَا الدُّعَاءُ إلَى الصَّلَاةِ، فَلَوْ أُمِرَ - عَلَيْهِ السَّلَامُ - بِذَلِكَ لَصَارَتْ تِلْكَ الصَّلَاةُ فَرِيضَةً بِدُعَائِهِ إلَيْهَا؟

L8782–8783 Ali said: "There is no *adhan* nor *iqamah* for prayers other than the obligatory one, for the *adhan* and *iqamah* involve the call to prayer. If the Prophet (peace be upon him) had been commanded to perform them for other prayers, would those prayers have become obligatory by his calling to them?"

وَاعْتَلُّوا: بِأَنَّ النَّاسَ كَانُوا إذَا صَلُّوا تَرَكُوهُمْ وَلَمْ يَشْهَدُوا الْخُطْبَةَ، وَذَلِكَ لِأَنَّهُمْ كَانُوا يَلْعَنُونَ عَلِيَّ بْنَ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ -، فَكَانَ الْمُسْلِمُونَ يَفِرُّونَ، وَحُقَّ لَهُمْ،

L8784 And they argued that people, when they prayed, would leave the imam and congregation rather than attend the sermon – this being because they [the preachers] used to curse Ali ibn Abi Talib (may Allah be pleased with him).

Thus the Muslims would rightfully withdraw, as was their due. How much more so when sitting for the sermon is not obligatory? Hammam ibn Ahmad narrated to us, who narrated from Abbas ibn Asbagh, who narrated from Muhammad ibn Abd al-Malik ibn Ayman, who narrated from Ahmad ibn Zuhayr ibn Harb, who narrated from Abdullah ibn Ahmad al-Kirmānī, who narrated from al-Fadl ibn Musa al-Sinānī, from Ibn Jurayj, from Ata ibn Abi Rabah, from Abdullah ibn al-Sa'ib, who said: "I attended the Eid prayer with the Messenger of Allah (peace and blessings be upon him). He prayed, then said (peace be upon him): 'We have completed the prayer. Whoever wishes to sit for the sermon may sit, and whoever wishes to leave may leave.'"[32]

L8785 Abu Muhammad said: If it is said, "Did Muhammad ibn al-Sabbah transmit it as *mursal* from al-Fadl ibn Musa?" We respond: Yes, then what? The *musnid* possesses additional knowledge not present with the *mursil*. How, when most of our opponents say: "The *mursal* and the *musnad* are equivalent"?

L8786–8787 It has been narrated to us through the chain of Ibn Jurayj from ʿAṭāʾ, who said: Attending the sermon is not an obligation upon the people—meaning during the two Eids—and the narrations on this matter are exceedingly numerous.

L8788 **A question regarding the Eid prayers for slaves, free individuals, non-travelers, travelers, and women.**

L8789 Issue 544: Both Eid prayers are to be performed by the enslaved and the free, the resident and the traveler, those praying alone, women and groups of women - in every settlement, whether small or large, as we mentioned. However, one praying alone does not deliver the sermon. If going to the prayer ground causes them hardship, they should pray in congregation at the congregational mosque. This is because the Messenger of Allah - peace and blessings be upon him - (as we mentioned in our discussion about prayer shortening during travel and Friday prayer) established that Eid prayer consists of two units. This constitutes a general ruling that cannot be restricted

[32]**Hadith references (L8784):** Sunan Ibn Majah 1290.

فَكَيْفَ وَلَيْسَ الْجُلُوسُ لِلْخُطْبَةِ وَاجِبًا؟ حَدَّثَنَا حَمَامُ بْنُ أَحْمَدَ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ الْكَرْمَانِيُّ ثنا الْفَضْلُ بْنُ مُوسَى السِّينَانِيُّ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ هُوَ ابْنُ أَبِي رَبَاحٍ - عَنْ «عَبْدِ اللَّهِ بْنِ السَّائِبِ قَالَ شَهِدْتُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْعِيدَ فَصَلَّى، ثُمَّ قَالَ - عَلَيْهِ السَّلَامُ -: قَدْ قَضَيْنَا الصَّلَاةَ فَمَنْ أَحَبَّ أَنْ يَجْلِسَ لِلْخُطْبَةِ فَلْيَجْلِسْ، وَمَنْ أَحَبَّ أَنْ يَذْهَبَ فَلْيَذْهَبْ» .

قَالَ أَبُو مُحَمَّدٍ: إنْ قِيلَ: إنَّ مُحَمَّدَ بْنَ الصَّبَّاحِ أَرْسَلَهُ عَنِ الْفَضْلِ بْنِ مُوسَى؟ قُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ الْمُسْنِدُ زَائِدٌ عِلْمًا لَمْ يَكُنْ عِنْدَ الْمُرْسِلِ، فَكَيْفَ وَخُصُومُنَا أَكْثَرُهُمْ يَقُولُ: إنَّ الْمُرْسَلَ وَالْمُسْنَدَ سَوَاءٌ؟

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ، قَالَ: لَيْسَ حَقًّا عَلَى النَّاسِ حُضُورُ الْخُطْبَةِ، يَعْنِي فِي الْعِيدَيْنِ وَالْآثَارُ فِي هَذَا كَثِيرَةٌ جِدًّا

[مَسْأَلَةُ صَلَاةِ الْعِيدَيْنِ لِلْعَبْدِ وَالْحُرِّ وَالْحَاضِرِ وَالْمُسَافِرِ وَالْمَرْأَةِ]

٥٤٤ ؟ - مَسْأَلَةٌ: وَيُصَلِّيهِمَا، الْعَبْدُ، وَالْحُرُّ، وَالْحَاضِرُ، وَالْمُسَافِرُ، وَالْمُنْفَرِدُ، وَالْمَرْأَةُ وَالنِّسَاءُ: وَفِي كُلِّ قَرْيَةٍ، صَغُرَتْ أَمْ كَبُرَتْ، كَمَا ذَكَرْنَا، إلَّا أَنَّ الْمُنْفَرِدَ لَا يَخْطُبُ وَإِنْ كَانَ عَلَيْهِمْ مَشَقَّةٌ فِي الْبُرُوزِ إلَى الْمُصَلَّى صَلَّوْا جَمَاعَةً فِي الْجَامِعِ؟ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ ذَكَرْنَا عَنْهُ - فِي كَلَامِنَا فِي الْقَصْرِ فِي صَلَاةِ السَّفَرِ وَصَلَاةِ الْجُمُعَةِ - أَنَّ صَلَاةَ الْعِيدِ رَكْعَتَانِ، فَكَانَ هَذَا عُمُومًا، لَا يَجُوزُ تَخْصِيصُهُ بِغَيْرِ نَصٍّ، وَقَالَ تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] وَالصَّلَاةُ خَيْرٌ -: وَلَا نَعْلَمُ فِي هَذَا خِلَافًا، إلَّا قَوْلَ

without explicit textual evidence. Allah the Exalted says: "And do good" (22:77), and prayer is inherently good. We know of no disagreement on this matter except Abū Ḥanīfah's opinion that the two Eid prayers are only performed in a city with a congregational mosque. Their evidence holds no validity except for something we reported through ʿAlī: "There is no Friday prayer nor Tashrīq prayers except in a city with a congregational mosque."[33]

L8790 We have previously stated that there is no binding authority in anyone other than the Messenger of Allah—may Allah bless him and grant him peace.

L8791–8793 If the statement of ʿAlī—may Allah be pleased with him—constitutes authoritative evidence in this matter, then it has indeed been transmitted to us through the chain of... From Abd al-Rahman ibn Mahdi, who reported from Shuʿbah; Muhammad ibn al-Nuʿman narrated to us from Abu Qays, from Huzayl ibn Shurahbil: Did Ali ibn Abi Talib command a man to lead the weak people in praying four rakʿahs in the mosque on the day of Eid? If they weaken this narration, respond to them: It is stronger than the narration you have relied upon from him or of similar strength, and there is no difference. All of them are in consensus that the prayers of the two Eids are performed where the *Jumuʿah* prayer is performed.

L8794 We have mentioned the ruling of the Friday prayer, and there is no difference between the two Eid prayers and [Friday prayer] in their locations. It has been narrated to us from ʿUmar and ʿUthmān—may Allah be pleased with them—that they performed the Eid prayer with the people in the mosque due to rain that fell on Eid day. The Messenger of Allah—peace be upon him—would go out to the prayer ground for the two Eid prayers, and this is preferable. However, praying elsewhere suffices, as it is based on practice rather than obligation. And success is from Allah, the Most High.

L8795 **The issue of women going out to the Eid prayer ground during the two Eids.**

L8796 545 - Issue: Women, even young unmarried women, menstruating and non-menstruating women, should go out to the prayer area. Menstruating

[33] **Qur'an references (L8789):** Qur'an 22:77 (Al-Hajj).

أَبِي حَنِيفَةَ: إنَّ صَلَاةَ الْعِيدَيْنِ لَا تُصَلَّى إلَّا فِي مِصْرٍ جَامِعٍ، وَلَا حُجَّةَ لَهُمْ إلَّا شَيْئًا رُوِّينَاهُ مِنْ طَرِيقِ عَلِيٍّ: لَا جُمُعَةَ وَلَا تَشْرِيقَ إلَّا فِي مِصْرٍ جَامِعٍ.

وَقَدْ قَدَّمْنَا أَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

فَإِنْ كَانَ قَوْلُ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - حُجَّةً فِي هَذَا فَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ شُعْبَةَ ثنا مُحَمَّدُ بْنُ النُّعْمَانِ عَنْ أَبِي قَيْسٍ عَنْ هُزَيْلِ بْنِ شُرَحْبِيلَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أَمَرَ رَجُلًا أَنْ يُصَلِّيَ بِضَعَفَةِ النَّاسِ أَرْبَعَ رَكَعَاتٍ فِي الْمَسْجِدِ يَوْمَ الْعِيدِ؟ فَإِنْ ضَعَّفُوا هَذِهِ الرِّوَايَةَ؟ قِيلَ لَهُمْ: هِيَ أَقْوَى مِنْ الَّتِي تَعَلَّقْتُمْ بِهَا عَنْهُ أَوْ مِثْلُهَا، وَلَا فَرْقَ، وَكُلُّهُمْ مُجْمِعٌ عَلَى أَنَّ صَلَاةَ الْعِيدَيْنِ تُصَلَّى حَيْثُ تُصَلَّى الْجُمُعَةُ.

وَقَدْ ذَكَرْنَا - حُكْمَ الْجُمُعَةِ وَلَا فَرْقَ بَيْنَ صَلَاةِ الْعِيدَيْنِ وَصَلَاتِهَا فِي الْمَوَاطِنِ وَقَدْ رُوِّينَا عَنْ عُمَرَ، وَعُثْمَانَ - رَضِيَ اللَّهُ عَنْهُمَا -: أَنَّهُمَا صَلَّيَا الْعِيدَ بِالنَّاسِ فِي الْمَسْجِدِ لِمَطَرٍ وَقَعَ يَوْمَ الْعِيدِ، وَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَبْرُزُ إلَى الْمُصَلَّى لِصَلَاةِ الْعِيدَيْنِ، فَهَذَا أَفْضَلُ، وَغَيْرُهُ يُجْزِئُ، لِأَنَّهُ فِعْلٌ لَا أَمْرٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةُ خُرُوجُ النِّسَاءِ إلَى الْمُصَلَّى فِي الْعِيدَيْنِ]

٥٤٥ - مَسْأَلَةٌ: وَيَخْرُجُ إلَى الْمُصَلَّى: النِّسَاءُ حَتَّى الْأَبْكَارُ، وَالْحُيَّضُ وَغَيْرُ الْحُيَّضِ، وَيَعْتَزِلُ الْحُيَّضُ الْمُصَلَّى، وَأَمَّا الطَّوَاهِرُ فَيُصَلِّينَ مَعَ النَّاسِ، وَمَنْ لَا جِلْبَابَ لَهَا فَلْتَسْتَعِرْ

women should stay away from the prayer area, while those in a state of purity should pray with the people. Whoever does not have a jilbab should borrow one and go out. When the imam finishes the sermon, we prefer that he come to them to admonish them and encourage them to give charity. It is recommended for them to give charity on that day with whatever is easy.

Abd al-Rahman ibn Abdullah narrated to us: Ibrahim ibn Ahmad narrated to us: al-Farbari narrated to us: al-Bukhari narrated to us: Abu Ma'mar—who is Abdullah ibn Amr al-Raqqi—narrated to us: Abd al-Warith—who is Ibn Sa'id al-Tannuri—narrated to us: Ayyub al-Sikhtiyani narrated from Hafsa bint Sirin, who said: "We used to prevent our young girls from going out on Eid. When Umm 'Atiyya arrived, I went to her and asked her: She said, 'From the Messenger of Allah—peace and blessings be upon him—that he said: Let adolescent girls who are secluded (or he said: and those who are secluded)'"—Ayyub was uncertain—"'and menstruating women go out. Menstruating women should stay away from the prayer area, and let them witness the good and the supplication of the believers.'"

L8797–8799 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us; Abdul Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn Al-Hajjaj narrated to us; ʿAmr al-Naqid narrated to us; Isa ibn Yunus narrated to us; Hisham—he is the son of Ḥassān—narrated from Hafsah bint Sirin, from Umm ʿAṭiyyah, who said: "The Messenger of Allah (peace and blessings be upon him) commanded us." That we bring them out on Eid al-Fitr and Eid al-Adha: adolescent girls, menstruating women, and women of screened chambers. As for the menstruating women, they should abstain from prayer but participate in the communal good and the Muslims' invocation. I said, "O Messenger of Allah, what if one of us has no cloak?" He said, "Let her sister clothe her from her own cloak."[34]

L8800 With the aforementioned chain to Al-Bukhari: Isḥāq ibn Ibrāhīm ibn Naṣr narrated to us – from ʿAbd al-Razzāq – from Ibn Jurayj – from ʿAṭāʾ, who said: I heard Jābir ibn ʿAbd Allāh say: "The Prophet (peace be upon him)

[34] **Hadith references (L8797):** Sahih Muslim 890c.

جِلْبَابًا وَلْتَخْرُجْ، فَإِذَا أَتَمَّ الْإِمَامُ الْخُطْبَةَ فَنَخْتَارُ لَهُ أَنْ يَأْتِيَهُنَّ يَعِظُهُنَّ وَيَأْمُرُهُنَّ بِالصَّدَقَةِ، وَتُسْتَحَبُّ لَهُنَّ الصَّدَقَةُ يَوْمَئِذٍ بِمَا تَيَسَّرَ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَبُو مَعْمَرٍ هُوَ عَبْدُ اللَّهِ بْنُ عَمْرٍو الرَّقِّيُّ - ثنا عَبْدُ الْوَارِثِ هُوَ ابْنُ سَعِيدٍ التَّنُّورِيُّ - ثنا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ «حَفْصَةَ بِنْتِ سِيرِينَ قَالَتْ: كُنَّا نَمْنَعُ جَوَارِينَا أَنْ يَخْرُجْنَ يَوْمَ الْعِيدِ، فَلَمَّا قَدِمَتْ أُمُّ عَطِيَّةَ أَتَيْتُهَا فَسَأَلْتُهَا؟ فَقَالَتْ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: لِتَخْرُجْ الْعَوَاتِقُ ذَوَاتُ الْخُدُورِ - أَوْ قَالَ: وَذَوَاتُ الْخُدُورِ» - شَكَّ أَيُّوبُ - «وَالْحُيَّضُ، فَيَعْتَزِلُ الْحُيَّضُ الْمُصَلَّى، وَلْيَشْهَدْنَ الْخَيْرَ وَدَعْوَةَ الْمُؤْمِنِينَ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا عَمْرٌو النَّاقِدُ ثنا عِيسَى بْنُ يُونُسَ ثنا هِشَامٌ هُوَ ابْنُ حَسَّانَ - عَنْ حَفْصَةَ بِنْتِ سِيرِينَ عَنْ «أُمِّ عَطِيَّةَ قَالَتْ أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نُخْرِجَهُنَّ فِي الْفِطْرِ، وَالْأَضْحَى: الْعَوَاتِقَ وَالْحُيَّضَ، وَذَوَاتَ الْخُدُورِ، فَأَمَّا الْحُيَّضُ فَيَعْتَزِلْنَ الصَّلَاةَ، وَيَشْهَدْنَ الْخَيْرَ وَدَعْوَةَ الْمُسْلِمِينَ، قُلْتُ: يَا رَسُولَ اللَّهِ، إِحْدَانَا لَا يَكُونُ لَهَا جِلْبَابٌ؟ قَالَ: لِتُلْبِسْهَا أُخْتُهَا مِنْ جِلْبَابِهَا» .

وَبِالسَّنَدِ الْمَذْكُورِ إِلَى الْبُخَارِيِّ: ثنا إِسْحَاقُ هُوَ ابْنُ إِبْرَاهِيمَ بْنِ نَصْرٍ - ثنا عَبْدُ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَطَاءٌ قَالَ سَمِعْت جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ «قَامَ النَّبِيُّ - صَلَّى اللَّهُ

rose on the Day of Eid al-Fiṭr and prayed, beginning with the prayer. Then he delivered the sermon. When he concluded, he descended and went to the women to remind them, leaning on Bilāl's arm while Bilāl was spreading out his garment, and the women are placing their charity into it."

L8801 I said to 'Ata', "Do you truly consider it an obligation upon the Imam to go to them and remind them?" He replied, "It is indeed an obligation upon them, and why should they not do it?" With the aforementioned chain to Muslim: Muhammad ibn Rafi' and 'Abd ibn Humaid both narrated to me from 'Abd al-Razzaq: I am Ibn Jurayj [who says]: al-Hasan ibn Muslim informed me from Tawus, from Ibn 'Abbas, who said: "I attended the Eid al-Fitr prayer with the Prophet of Allah (peace and blessings of Allah be upon him), Abu Bakr, 'Umar, and 'Uthman. All of them performed the prayer before the sermon and then delivered the sermon. The Prophet of Allah (peace and blessings of Allah be upon him) descended, and it is as if I am looking at him when the men sat by his hand. Then he turned and made his way through them until he came to the women, accompanied by Bilal. He recited: 'O Prophet, when believing women come to you pledging not to associate anything with Allah…' [Al-Mumtahanah 60:12]. Then he asked: 'Are you committed to this?' A single woman among them—none else answered him—replied: 'Yes, O Prophet of Allah.' He said: 'Then give in charity.' Bilal spread out his garment and said: 'Come forth, may my parents be your ransom!' They began casting their anklets and rings into Bilal's garment."[35]

L8802–8803 These are mass-transmitted reports from the Prophet (peace be upon him) through chains including Jābir, Ibn ʿAbbās, and others, confirming that he (peace be upon him) approved women's presence at the prayer ground and commanded it. Therefore, there is no validity to the statement of anyone opposing him, nor does the opponent have any basis except a narration from Ibn ʿUmar stating that he prohibited them - though contradictory reports are narrated from Ibn ʿUmar himself. It is impermissible to assume anything about Ibn ʿUmar except that when he prohibited them, the command of Allah's Messenger (peace be upon him) had not reached him. When it reached him, he reverted to the truth, as he did when he severely rebuked his son

عَلَيْهِ وَسَلَّمَ - يَوْمَ الْفِطْرِ فَصَلَّى، فَبَدَأَ بِالصَّلَاةِ، ثُمَّ خَطَبَ، فَلَمَّا فَرَغَ نَزَلَ فَأَتَى النِّسَاءَ فَذَكَّرَهُنَّ، وَهُوَ يَتَوَكَّأُ عَلَى يَدِ بِلَالٍ وَبِلَالٌ بَاسِطٌ ثَوْبَهُ، تُلْقِي فِيهِ النِّسَاءُ صَدَقَةً» .

وَقُلْت لِعَطَاءٍ: أَتَرَى حَقًّا عَلَى الْإِمَامِ ذَلِكَ، يَأْتِيهِنَّ وَيُذَكِّرَهُنَّ؟ قَالَ: إنَّهُ لَحَقٌّ عَلَيْهِمْ، وَمَا لَهُمْ لَا يَفْعَلُونَهُ؟ وَبِالسَّنَدِ الْمَذْكُورِ إلَى مُسْلِمٍ حَدَّثَنِي مُحَمَّدُ بْنُ رَافِعٍ وَعَبْدُ بْنُ حُمَيْدٍ كِلَاهُمَا عَنْ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي الْحَسَنُ بْنُ مُسْلِمٍ عَنْ طَاوُسٍ عَنْ «ابْنِ عَبَّاسٍ قَالَ: شَهِدْتُ صَلَاةَ الْفِطْرِ مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبِي بَكْرٍ وَعُمَرَ وَعُثْمَانَ، فَكُلُّهُمْ يُصَلِّيهَا قَبْلَ الْخُطْبَةِ ثُمَّ يَخْطُبُ، فَنَزَلَ نَبِيُّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَأَنِّي أَنْظُرُ إلَيْهِ حِينَ يَجْلِسُ الرِّجَالُ بِيَدِهِ، ثُمَّ أَقْبَلَ يَشُقُّهُمْ، حَتَّى جَاءَ النِّسَاءَ وَمَعَهُ بِلَالٌ فَقَالَ {يَا أَيُّهَا النَّبِيُّ إِذَا جَاءَكَ الْمُؤْمِنَاتُ يُبَايِعْنَكَ عَلَى أَنْ لا يُشْرِكْنَ بِاللَّهِ شَيْئًا} [الممتحنة: ١٢] فَتَلَا هَذِهِ الْآيَةَ، ثُمَّ قَالَ: أَنْتُنَّ عَلَى ذَلِكَ؟ فَقَالَتْ امْرَأَةٌ وَاحِدَةٌ مِنْهُنَّ - لَمْ يُجِبْهُ غَيْرُهَا مِنْهُنَّ -: نَعَمْ يَا نَبِيَّ اللَّهِ، قَالَ: فَتَصَدَّقْنَ، فَبَسَطَ بِلَالٌ ثَوْبَهُ، ثُمَّ قَالَ: هَلُمَّ فِدًى لَكُنَّ أَبِي وَأُمِّي، فَجَعَلْنَ يُلْقِينَ الْفَتَخَ وَالْخَوَاتِمَ فِي ثَوْبِ بِلَالٍ» .

فَهَذِهِ آثَارٌ مُتَوَاتِرَةٌ عَنْهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ جَابِرٍ، وَابْنِ عَبَّاسٍ وَغَيْرِهِمَا بِأَنَّهُ - عَلَيْهِ السَّلَامُ - رَأَى حُضُورَ النِّسَاءِ الْمُصَلَّى، وَأَمَرَ بِهِ، فَلَا وَجْهَ لِقَوْلِ غَيْرِهِ إذَا خَالَفَهُ وَلَا مُتَعَلَّقَ لِلْمُخَالِفِ إلَّا رِوَايَةً عَنْ ابْنِ عُمَرَ أَنَّهُ مَنَعَهُنَّ، وَقَدْ جَاءَ عَنْ ابْنِ عُمَرَ خِلَافُهَا، وَلَا يَجُوزُ أَنْ يُظَنَّ بِابْنِ عُمَرَ إلَّا أَنَّهُ إذْ مَنَعَهُنَّ لَمْ يَكُنْ بَلَغَهُ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِذَا بَلَغَهُ رَجَعَ إلَى الْحَقِّ كَمَا فَعَلَ إذْ سَبَّ ابْنَهُ أَشَدَّ السَّبِّ إذْ سَمِعَهُ يَقُولُ: نَمْنَعُ النِّسَاءَ الْمَسَاجِدَ لَيْلًا؟

[35] **Qur'an references (L8801):** Qur'an 60:12 (Al-Mumtahanah).

upon hearing him say: “Do we prevent women from going to mosques at night?”

L8804 There is no valid argument for anyone against the Messenger of Allah—peace and blessings be upon him. Even if one were to assert a consensus on the permissibility of women going out to the two Eids and that it is unlawful to prevent them, they would be believed. For we have no doubt that every Companion who witnessed this—may Allah be pleased with them—or learned of it through reports from those who were not present, submitted, consented, and obeyed. Whoever prohibits this opposes both the consensus and the Sunnah.

L8805 **A juristic point on Eid etiquette: changing one’s route [after prayers].**

L8806 Issue 546: It is recommended to travel to the Eid prayer via one route and return by another. If this is not feasible, there is no harm, as this practice has been reported from the Messenger of Allah (peace and blessings be upon him), though the narration concerning it is not strong.

L8807 **An issue: Eid coincided on the day of Friday.**

L8808 547 - Issue: When Eid coincides on a Friday, the Eid prayer must be performed first, then the Friday prayer without exception. There is no valid report contradicting this, for its narrators include Isra’il and ’Abd al-Humayd ibn Ja’far, who are not strong [narrators]. There is no burden upon our opponents to cite them as evidence if their narration aligns with their adherence, but here they contradict their own reports. As for Isra’il’s narration, he reported from ’Uthman ibn al-Mughirah from Iyas ibn Abi Ramlah: “I heard Mu’awiyah ask Zayd ibn Arqam: ’Did you witness Eid and Friday [coinciding] with Allah’s Messenger—peace and blessings be upon him?’ He replied: ’Yes. He prayed the Eid prayer early in the day, then granted concession regarding the Friday prayer.”’

L8809–8810 Abd al-Humayd ibn Ja‘far narrated: Wahb ibn Kaysān reported to me, saying:

وَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَوْ ادَّعَى امْرُؤٌ الْإِجْمَاعَ عَلَى صِحَّةِ خُرُوجِ النِّسَاءِ إلَى الْعِيدَيْنِ، وَأَنَّهُ لَا يَحِلُّ مَنْعُهُنَّ -: لَصُدِّقَ، لِأَنَّنَا لَا نَشُكُّ فِي أَنَّ كُلَّ مَنْ حَضَرَ ذَلِكَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَوْ بَلَغَهُ مِمَّنْ لَمْ يَحْضُرْ -: فَقَدْ سَلَّمَ وَرَضِيَ وَأَطَاعَ، وَالْمَانِعُ مِنْ هَذَا مُخَالِفٌ لِلْإِجْمَاعِ وَلِلسُّنَّةِ

[مَسْأَلَةٌ مِنْ آدَاب الْعِيد مُخَالَفَةَ الطَّرِيق]

٥٤٦ ؟ - مَسْأَلَةٌ: وَيُسْتَحَبُّ السَّيْرُ إلَى الْعِيدِ عَلَى طَرِيقٍ وَالرُّجُوعَ عَلَى آخَرَ، فَإِنْ لَمْ يَكُنْ ذَلِكَ فَلَا حَرَجَ، لِأَنَّهُ قَدْ رُوِيَ ذَلِكَ مِنْ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَيْسَتْ الرِّوَايَةُ فِيهِ بِالْقَوِيَّةِ؟

[مَسْأَلَةٌ اجْتَمَعَ عِيدٌ فِي يَوْمِ جُمُعَةٍ]

٥٤٧ - مَسْأَلَةٌ: وَإِذَا اجْتَمَعَ عِيدٌ فِي يَوْمِ جُمُعَةٍ: صُلِّيَ لِلْعِيدِ، ثُمَّ لِلْجُمُعَةِ وَلَا بُدَّ، وَلَا يَصِحُّ أَثَرٌ بِخِلَافِ ذَلِكَ؟ لِأَنَّ فِي رُوَاتِهِ: إسْرَائِيلَ، وَعَبْدَ الْحَمِيدِ بْنَ جَعْفَرٍ، وَلَيْسَا بِالْقَوِيَّيْنِ، وَلَا مُؤْنَةَ عَلَى خُصُومِنَا مِنْ الِاحْتِجَاجِ بِهِمَا إذَا وَافَقَ مَا رَوَيَاهُ تَقْلِيدَهُمَا، وَهُنَا خَالَفَا رِوَايَتَهُمَا فَأَمَّا رِوَايَةُ إسْرَائِيلَ، فَإِنَّهُ رَوَى عَنْ عُثْمَانَ بْنِ الْمُغِيرَةِ «عَنْ إيَاسِ بْنِ أَبِي رَمْلَةَ: سَمِعْتُ مُعَاوِيَةَ سَأَلَ زَيْدَ بْنَ أَرْقَمَ: أَشَهِدْتَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِيدَيْنِ؟ قَالَ: نَعَمْ صَلَّى الْعِيدَ أَوَّلَ النَّهَارِ، ثُمَّ رَخَّصَ فِي الْجُمُعَةِ» .

"Two Eids coincided during the reign of Ibn al-Zubayr. He delayed his departure until the day had advanced, then went out, delivered a sermon and prolonged it. Thereafter, he came down and prayed two rak'ahs, but he did not lead the people in the Friday prayer that day." Ibn 'Abbās remarked: "He correctly observed the Sunnah."

Abu Muhammad said: The Friday prayer is obligatory and the Eid prayer is voluntary, and the voluntary prayer does not absolve one from the obligatory prayer.

[The issue of the takbīr of the night of Eid al-Fiṭr]

Issue 548: The *takbīr* during the night of Eid al-Fiṭr is obligatory, whereas during the night of Eid al-Aḍḥā, it is meritorious.

And He had mentioned the fasting of Ramadan, [saying]: "So that you may complete the prescribed period and glorify Allah for having guided you" [Al-Baqarah: 185].[36]

Upon completing the number of fasting days in Ramadan, it becomes obligatory to recite Takbīr, and a single Takbīr suffices for this obligation.

As for the night preceding Eid al-Adḥā and its day, and the day of Eid al-Fiṭr: no command has been issued regarding it, but the Takbīr is an act of goodness and earns reward.

An issue regarding eating on the day of Eid al-Fitr before the morning departure to the prayer place.

549 - Issue: It is recommended to eat on the day of Eid al-Fitr before proceeding to the prayer ground. If one does not do so, there is no blame provided he does not disregard the Sunnah in this matter. If one eats on the day of Eid al-Adha before proceeding to the prayer ground, there is no harm. If he delays eating until partaking of his sacrificial offering, that is preferable. Fasting on these two days is fundamentally impermissible. Abd al-Rahman ibn Abdullah narrated to us; Ibrahim ibn Ahmad narrated to us; al-Farbari

[36] **Qur'an references (L8814):** Qur'an 2:185 (Al-Baqarah).

وَرَوَى عَبْدُ الْحُمَيْدِ بْنُ جَعْفَرٍ: حَدَّثَنِي وَهْبُ بْنُ كَيْسَانَ قَالَ " اجْتَمَعَ عِيدَانِ عَلَى عَهْدِ ابْنِ الزُّبَيْرِ، فَأَخَّرَ الْخُرُوجَ حَتَّى تَعَالَى النَّهَارُ، ثُمَّ خَرَجَ فَخَطَبَ فَأَطَالَ، ثُمَّ نَزَلَ فَصَلَّى رَكْعَتَيْنِ، وَلَمْ يُصَلِّ لِلنَّاسِ يَوْمَئِذٍ الْجُمُعَةَ، فَقَالَ ابْنُ عَبَّاسٍ: أَصَابَ السُّنَّةَ ".

قَالَ أَبُو مُحَمَّدٍ: الْجُمُعَةُ فَرْضٌ وَالْعِيدُ تَطَوُّعٌ، وَالتَّطَوُّعُ لَا يُسْقِطُ الْفَرْضَ.

[مَسْأَلَةٌ التَّكْبِيرُ لَيْلَةَ عِيدِ الْفِطْرِ]

٥٤٨ - مَسْأَلَةٌ: وَالتَّكْبِيرُ لَيْلَةَ عِيدِ الْفِطْرِ: فَرْضٌ، وَهُوَ فِي لَيْلَةِ عِيدِ الْأَضْحَى: حَسَنٌ.

قَالَ تَعَالَى وَقَدْ ذَكَرَ صَوْمَ رَمَضَانَ: {وَلِتُكْمِلُوا الْعِدَّةَ وَلِتُكَبِّرُوا اللَّهَ عَلَى مَا هَدَاكُمْ} [البقرة: ١٨٥].

فَبِإِكْمَالِ عِدَّةِ صَوْمِ رَمَضَانَ وَجَبَ التَّكْبِيرُ، وَيُجْزِئُ مِنْ ذَلِكَ تَكْبِيرَةٌ.

وَأَمَّا لَيْلَةُ الْأَضْحَى وَيَوْمُهُ، وَيَوْمُ الْفِطْرِ: فَلَمْ يَأْتِ بِهِ أَمْرٌ، لَكِنَّ التَّكْبِيرَ فِعْلُ خَيْرٍ وَأَجْرٍ

[مَسْأَلَةٌ الْأَكْلُ يَوْمَ الْفِطْرِ قَبْلَ الْغُدُوِّ إِلَى الْمُصَلَّى]

٥٤٩ - مَسْأَلَةٌ: وَيُسْتَحَبُّ الْأَكْلُ يَوْمَ الْفِطْرِ قَبْلَ الْغُدُوِّ إِلَى الْمُصَلَّى، فَإِنْ لَمْ يَفْعَلْ فَلَا حَرَجَ، مَا لَمْ يَرْغَبْ عَنْ السُّنَّةِ فِي ذَلِكَ، وَإِنْ أَكَلَ يَوْمَ الْأَضْحَى قَبْلَ غُدُوِّهِ إِلَى الْمُصَلَّى فَلَا بَأْسَ، وَإِنْ لَمْ يَأْكُلْ حَتَّى يَأْكُلَ مِنْ أُضْحِيَّتِهِ فَحَسَنٌ، وَلَا يَحِلُّ صِيَامُهَا أَصْلًا -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُحَمَّدُ بْنُ

narrated to us; al-Bukhari narrated to us; Muhammad ibn Abd al-Rahim said: Sa'id ibn Sulayman informed us; Hushaym informed us; Ubaydullah ibn Abi Bakr ibn Anas informed us. Anas reported: "The Messenger of Allah (peace be upon him) would not go out in the morning on Eid al-Fitr until he had eaten dates."[37]

L8821 Abu Muhammad said: It becomes incumbent on whoever obligates this to obligate dates, to the exclusion of anything else.

L8822 It was narrated to us through the chain of Abd al-Razzaq from Ma'mar from Ayyub al-Sikhtiyani from Nafi', who said: "Ibn Umar would go out early from the mosque on Eid al-Fitr, and I do not know that he ate anything."

L8823 From Ibrāhīm al-Nakhaʿī, from ʿAlqamah and al-Aswad: That Ibn Masʿūd said, "Do not eat before going out on the day of al-Fiṭr, if you wish?" And from Sufyān al-Thawrī, from Manṣūr, from Ibrāhīm al-Nakhaʿī, who said, "If he wishes, he may eat on the day of al-Fiṭr and al-Aḍḥā; if he wishes, he may abstain?"

L8824 [An Issue Regarding the Voluntary Prayer in the Prayer Area Before the Eid Prayer and After It]

L8825 550 – Issue: Voluntary prayer performed in the musalla [prayer area] before the two [obligatory] prayers is commendable. If one does not do so, there is no sin, for voluntary prayer is an act of righteousness.

L8826 If it is said: It has been established that the Messenger of Allah—peace and blessings be upon him—did not pray before the two Eids or after them? We respond: Yes, because he—peace and blessings be upon him—was the Imam, and his coming coincided directly with the Takbīr for the Eid prayer without any interval. He—peace and blessings be upon him—never prohibited praying in the prayer area before or after Eid prayer—neither through obligation nor through declaring them discouraged. Had they been disliked, he—peace and blessings be upon him—would have clarified them.

عَبْدِ الرَّحِيمِ أَنَا سَعِيدُ بْنُ سُلَيْمَانَ أَخْبَرَنَا هُشَيْمٌ أَنَا عُبَيْدُ اللَّهِ بْنُ أَبِي بَكْرِ بْنِ أَنَسٍ عَنْ أَنَسٍ قَالَ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَغْدُو يَوْمَ الْفِطْرِ حَتَّى يَأْكُلَ تَمَرَاتٍ»

قَالَ أَبُو مُحَمَّدٍ: يَلْزَمُ مَنْ أَوْجَبَ ذَلِكَ أَنْ يُوجِبَ: التَّمْرَ، دُونَ غَيْرِهِ.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ قَالَ: كَانَ ابْنُ عُمَرَ يَغْدُو يَوْمَ الْفِطْرِ مِنْ الْمَسْجِدِ، وَلَا أَعْلَمُهُ أَكَلَ شَيْئًا.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ، وَالْأَسْوَدِ: أَنَّ ابْنَ مَسْعُودٍ قَالَ: لَا تَأْكُلُوا قَبْلَ أَنْ تَخْرُجُوا يَوْمَ الْفِطْرِ إنْ شِئْتُمْ؟ وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إنْ شَاءَ طَعِمَ يَوْمَ الْفِطْرِ، وَالْأَضْحَى، وَإِنْ شَاءَ لَمْ يَطْعَمْ؟

[مَسْأَلَةُ التَّنَفُّلِ فِي الْمُصَلَّى قَبْلَ صَلَاةِ الْعِيدِ وَبَعْدَهَا]

٥٥٠ - مَسْأَلَةٌ: وَالتَّنَفُّلُ قَبْلَهُمَا فِي الْمُصَلَّى حَسَنٌ، فَإِنْ لَمْ يَفْعَلْ فَلَا حَرَجَ، لِأَنَّ التَّنَفُّلَ فِعْلُ خَيْرٍ.

فَإِنْ قِيلَ: قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُصَلِّ قَبْلَهُمَا، وَلَا بَعْدَهُمَا؟ قُلْنَا: نَعَمْ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ الْإِمَامَ، وَكَانَ مَجِيئُهُ إلَى التَّكْبِيرِ لِصَلَاةِ الْعِيدِ بِلَا فَصْلٍ، وَلَمْ يَنْهَ - عَلَيْهِ السَّلَامُ - قَطُّ - لَا بِإِيجَابٍ وَلَا بِكَرَاهَةٍ - عَنْ التَّنَفُّلِ فِي الْمُصَلَّى قَبْلَ صَلَاةِ الْعِيدِ وَبَعْدَهَا، وَلَوْ كَانَتْ مَكْرُوهَةً لَبَيَّنَهَا - عَلَيْهِ السَّلَامُ -.

[37] **Hadith references (L8818):** Mishkat al-Masabih 1433.

وَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَزِدْ قَطُّ فِي لَيْلَةٍ عَلَى ثَلَاثَ عَشْرَةَ رَكْعَةً، أَفَتَكْرَهُونَ الزِّيَادَةَ أَوْ تَمْنَعُونَ مِنْهَا؟ فَمِنْ قَوْلِهِمْ: لَا، فَيُقَالُ لَهُمْ: فُرِّقُوا وَلَا سَبِيلَ إِلَى فَرْقٍ

L8827 It has been authentically established that the Messenger of Allah—may peace and blessings be upon him—never performed more than thirteen rakʿahs (prayer units) in a single night. Do you then consider this increase disliked or prohibit it? If they say, “No,” it is said to them: “Be divided! But there is no way to achieve such division.”

وَرُوِّينَا عَنْ قَتَادَةَ: كَانَ أَبُو هُرَيْرَةَ، وَأَنَسُ بْنُ مَالِكٍ، وَالْحَسَنُ، وَأَخُوهُ سَعِيدٌ، وَجَابِرُ بْنُ زَيْدٍ يُصَلُّونَ قَبْلَ خُرُوجِ الْإِمَامِ وَبَعْدَهُ: يَعْنِي فِي الْعِيدَيْنِ؟ وَعَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ قَالَ: رَأَيْت أَنَسَ بْنَ مَالِكٍ وَالْحَسَنَ يُصَلِّيَانِ قَبْلَ صَلَاةِ الْعِيدِ.

L8828 It was narrated to us from Qatādah that Abū Hurayrah, Anas ibn Mālik, al-Ḥasan, his brother Saʿīd, and Jābir ibn Zayd used to pray before the Imam comes out to lead and after he had done so—meaning during the two Eids? And from Maʿmar, from Ayyūb al-Sakhtiyānī, who said: I saw Anas ibn Mālik and al-Ḥasan praying before the Eid prayer.

وَعَنْ مُعْتَمِرِ بْنِ سُلَيْمَانَ عَنْ أَبِيهِ قَالَ: رَأَيْت أَنَسَ بْنَ مَالِكٍ، وَالْحَسَنَ، وَأَخَاهُ سَعِيدًا، وَأَبَا الشَّعْثَاءِ جَابِرَ بْنَ زَيْدٍ: يُصَلُّونَ يَوْمَ الْعِيدِ قَبْلَ خُرُوجِ الْإِمَامِ.

L8829–8831 And from Mu’tamir ibn Sulayman, from his father, who said: I saw Anas ibn Malik, al-Hasan, and his [al-Hasan’s] brother. Sa‘īd and Abā al-Sha‘thā’ Jābir ibn Zayd: They pray on the Day of Eid before the Imam emerges.

وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّهُ أَتَى الْمُصَلَّى فَرَأَى النَّاسَ يُصَلُّونَ، فَقِيلَ لَهُ فِي ذَلِكَ فَقَالَ: لَا أَكُونُ الَّذِي يَنْهَى عَبْدًا إذَا صَلَّى

L8832 From Ali ibn Abi Talib: He came to the outdoor prayer ground and saw the people praying. When he was asked about this, he said: “I will not be the one to forbid a servant when he prays.”

[مَسْأَلَةُ التَّكْبِيرُ فِي الْأَضْحَى وَأَيَّامِ التَّشْرِيقِ وَيَوْمِ عَرَفَةَ]

A Juristic Question: The Takbīr in Eid al-Adhā, the Days of Tashrīq, and the Day of ʿArafah

٥٥١ - مَسْأَلَةٌ: وَالتَّكْبِيرُ إثْرَ كُلِّ صَلَاةٍ، وَفِي الْأَضْحَى، وَفِي أَيَّامِ التَّشْرِيقِ، وَيَوْمِ عَرَفَةَ -: حَسَنٌ كُلُّهُ؛ لِأَنَّ التَّكْبِيرَ فِعْلُ خَيْرٍ، وَلَيْسَ هَهُنَا أَثَرٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِتَخْصِيصِ الْأَيَّامِ الْمَذْكُورَةِ دُونَ غَيْرِهَا.

L8833–8834 Issue 551: The recitation of takbīr after every prayer, during Eid al-Adhā, on the Days of Tashrīq [11th–13th of Dhū al-Ḥijjah], and on the Day of ʿArafah—all of this is commendable, for takbīr constitutes a virtuous act. There exists no authenticated report from the Messenger of Allah—peace and blessings be upon him—that specifically designates these mentioned days for this practice to the exclusion of others.

وَرُوِّينَا عَنْ الزُّهْرِيِّ، وَأَبِي وَائِلٍ، وَأَبِي يُوسُفَ، وَمُحَمَّدٍ: اسْتِحْبَابَ التَّكْبِيرِ غَدَاةَ عَرَفَةَ إلَى آخِرِ أَيَّامِ التَّشْرِيقِ عِنْدَ الْعَصْرِ.

L8835 It is reported from Az-Zuhri, Abu Wa’il, Abu Yusuf, and Muhammad that it is recommended to recite Takbīr daily at the time of ʿAṣr, starting from the morning of the Day of ʿArafah until the end of the Days of Tashrīq.

L8836 From Yaḥyā ibn Saʿīd al-Qaṭṭān and ʿAbd al-Raḥmān ibn Mahdī, both from Sufyān al-Thawrī, from Abu Isḥāq al-Sabīʿī, from al-Aswad and the com-

panions of Ibn Masʿūd, they said: Ibn Masʿūd would pronounce the takbīr starting at the Fajr prayer on the day of ʿArafah until the ʿAṣr prayer on the Day of Sacrifice.

وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ، وَعَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ كِلَاهُمَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ الْأَسْوَدِ وَأَصْحَابِ ابْنِ مَسْعُودٍ قَالَ: كَانَ ابْنُ مَسْعُودٍ يُكَبِّرُ صَلَاةَ الصُّبْحِ يَوْمَ عَرَفَةَ إِلَى صَلَاةِ الْعَصْرِ يَوْمَ النَّحْرِ.

L8837 Abd al-Rahman said in his narration: "God is the Greatest (Allahu Akbar), God is the Greatest (Allahu Akbar), There is no deity but God (La ilaha illa Allah), God is the Greatest (Allahu Akbar), God is the Greatest (Allahu Akbar), Praise be to God (Alhamdulillah)."

قَالَ عَبْدُ الرَّحْمَنِ فِي رِوَايَتِهِ: اللَّهُ أَكْبَرُ، اللَّهُ أَكْبَرُ، لَا إِلَهَ إِلَّا اللَّهُ، اللَّهُ أَكْبَرُ، اللَّهُ أَكْبَرُ، الْحَمْدُ لِلَّهِ.

L8838 A similar opinion is reported from Alqamah, and this is the view of Abū Ḥanīfah. And from Ibn Umar: It extends from the Day of Sacrifice until the dawn prayer on the final day of the Days of al-Tashrīq.

وَعَنْ عَلْقَمَةَ مِثْلُ هَذَا، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَعَنْ ابْنِ عُمَرَ: مِنْ يَوْمِ النَّحْرِ إِلَى صَلَاةِ الصُّبْحِ آخِرِ أَيَّامِ التَّشْرِيقِ.

L8839 Abū Muḥammad said: Whoever analogizes the takbīr of the days of Minā to that [of pilgrims] has erred, for he has analogized non-pilgrims to pilgrims. Scholars unanimously agree that they do not analogize non-pilgrims to pilgrims in the talbiyah; therefore, the same must apply to them regarding the takbīr.

قَالَ أَبُو مُحَمَّدٍ: مَنْ قَاسَ ذَلِكَ عَلَى تَكْبِيرِ أَيَّامِ مِنًى فَقَدْ أَخْطَأَ، لِأَنَّهُ قَاسَ مَنْ لَيْسَ بِحَاجٍّ عَلَى الْحَاجِّ، وَلَمْ يَخْتَلِفُوا أَنَّهُمْ لَا يَقِيسُونَهُمْ عَلَيْهِمْ فِي التَّلْبِيَةِ، فَيَلْزَمُهُمْ مِثْلُ ذَلِكَ فِي التَّكْبِيرِ.

L8840 There is no validity to the claim that this applies exclusively to the appointed days, due to Allah's statement: "And let them mention the name of Allah on appointed days" [Al-Hajj: 28].[38]

وَلَا مَعْنَى لِمَنْ قَالَ: إِنَّمَا ذَلِكَ فِي الْأَيَّامِ الْمَعْلُومَاتِ، لِقَوْلِ اللَّهِ تَعَالَى {وَيَذْكُرُوا اسْمَ اللَّهِ فِي أَيَّامٍ مَعْلُومَاتٍ} [الحج: ٢٨] .

L8841–8843 He said: Indeed, the Day of Sacrifice is unanimously agreed upon as among the well-known matters, while what follows it is disputed because... An invalid claim. Has Allah the Exalted ever prohibited His remembrance on any day? There is no validity in restricting the prescribed rites to the Day of Slaughter (Yawm al-Naḥr), for the Qur'anic text explicitly prohibits this, as stated by Him the Exalted: {from what He has provided them of grazing livestock} [Al-Ḥajj 22:28].[39]

وَقَالَ: إِنَّ يَوْمَ النَّحْرِ مُجْمَعٌ عَلَيْهِ أَنَّهُ مِنْ الْمَعْلُومَاتِ وَمَا بَعْدَهُ مُخْتَلَفٌ فِيهِ، لِأَنَّهُ دَعْوَى فَاسِدَةٌ، وَمَا حَجَرَ اللَّهُ تَعَالَى قَطُّ ذِكْرَهُ فِي شَيْءٍ مِنْ الْأَيَّامِ؟ وَلَا مَعْنَى لِمَنْ اقْتَصَرَ بِالْمَعْلُومَاتِ عَلَى يَوْمِ النَّحْرِ، لِأَنَّ النَّصَّ يَمْنَعُ مِنْ ذَلِكَ، بِقَوْلِهِ تَعَالَى: {عَلَى مَا رَزَقَهُمْ مِنْ بَهِيمَةِ الْأَنْعَامِ} [الحج: ٢٨]

L8844 It has been authentically established that the Day of Arafah is not among the

وَقَدْ صَحَّ أَنَّ يَوْمَ عَرَفَةَ لَيْسَ مِنْ أَيَّامِ النَّحْرِ، وَأَنَّ مَا بَعْدَ يَوْمِ النَّحْرِ هُوَ مِنْ أَيَّامِ النَّحْرِ، فَبَطَلَ هَذَا الْقَوْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[38] **Qur'an references (L8840):** Qur'an 22:28 (Al-Hajj).
[39] **Qur'an references (L8841):** Qur'an 22:28 (Al-Hajj); Qur'an 22:34 (Al-Hajj).

Days of Sacrifice, and that what follows the Day of Sacrifice is from the Days of Sacrifice. Thus, this assertion has been voided. And success is through Allah, the Most High.

L8845 **Issue: It is an issue if one does not go out on the day of Eid al-Fitr or Eid al-Adha for the two Eid prayers.**

L8846 Issue 552: Whoever does not go out on the day of Eid al-Fitr or the day of Eid al-Adha for the prayers of the two Eids should go out to perform their prayers the following day. If they do not go out in the morning, they may do so before the sun reaches its zenith, for this is an act of goodness. Allah the Exalted said: "And do good..." [Al-Hajj: 77].[40]

L8847 Abdullah ibn Rabee' narrated to us: Umar ibn Abd al-Malik narrated to us: Muhammad ibn Bakr narrated to us: Abu Dawud narrated to us: Hafs ibn Umar, who is al-Ḥawḍī, narrated to us: Shu'bah narrated from Jaʿfar ibn Abī Waḥshiyyah from Abū ʿUmayr ibn Anas ibn Mālik from his uncles among the companions of the Prophet (peace and blessings of Allah be upon him) that a traveling party came to the Messenger of Allah bearing witness that they had sighted the crescent moon the previous day. He commanded them to break their fast, and when morning came, to proceed at dawn to their musalla.

L8848 Abu Muhammad said: This is an authentic chain of transmission, and it is conclusively established regarding Abu 'Umayr that he is fully aware of distinguishing those of his uncles whose companionship with the Prophet was valid from those whose companionship was not valid. This would only constitute a defect (*ʿillah*) for someone who might plausibly be unaware of such distinctions. All the Companions are reliable transmitters (*ʿudūl*)—may Allah be pleased with them—by virtue of Allah the Exalted's commendation of them.

L8849 This is the opinion of Abū Ḥanīfah and Al-Shāfiʿī. If one did not slaughter on the second day of Eid al-Adḥā but slaughtered on the third day, then they

[40]**Qur'an references (L8846):** Qur'an 22:77 (Al-Hajj).

[مَسْأَلَةٌ لَمْ يَخْرُجْ يَوْمَ الْفِطْرِ وَلَا يَوْمَ الْأَضْحَى لِصَلَاةِ الْعِيدَيْنِ]

٥٥٢ - مَسْأَلَةٌ: وَمَنْ لَمْ يَخْرُجْ يَوْمَ الْفِطْرِ، وَلَا يَوْمَ الْأَضْحَى لِصَلَاةِ الْعِيدَيْنِ: خَرَجَ لِصَلَاتِهِمَا فِي الْيَوْمِ الثَّانِي، وَإِنْ لَمْ يَخْرُجْ غُدْوَةً خَرَجَ مَا لَمْ تَزُلْ الشَّمْسُ، لِأَنَّهُ فِعْلُ خَيْرٍ، وَقَالَ تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا حَفْصُ بْنُ عُمَرَ هُوَ الْحَوْضِيُّ - ثنا شُعْبَةُ عَنْ جَعْفَرِ بْنِ أَبِي وَحْشِيَّةَ عَنْ أَبِي عُمَيْرِ بْنِ أَنَسِ بْنِ مَالِكٍ عَنْ عُمُومَةٍ لَهُ مِنْ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّ رَكْبًا جَاءُوا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَشْهَدُونَ أَنَّهُمْ رَأَوْا الْهِلَالَ بِالْأَمْسِ، فَأَمَرَهُمْ أَنْ يُفْطِرُوا وَإِذَا أَصْبَحُوا يَغْدُوا إلَى مُصَلَّاهُمْ» .

قَالَ أَبُو مُحَمَّد: هَذَا مُسْنَدٌ صَحِيحٌ، وَأَبُو عُمَيْرٍ مَقْطُوعٌ عَلَى أَنَّهُ لَا يَخْفَى عَلَيْهِ مِنْ أَعْمَامِهِ مَنْ صَحَّتْ صُحْبَتُهُ مِمَّنْ لَمْ تَصِحَّ صُحْبَتُهُ وَإِنَّمَا يَكُونُ هَذَا عِلَّةً مِمَّنْ يُمْكِنُ أَنْ يَخْفَى عَلَيْهِ هَذَا، وَالصَّحَابَةُ كُلُّهُمْ عُدُولٌ - رَضِيَ اللَّهُ عَنْهُمْ -، لِثَنَاءِ اللَّهِ تَعَالَى عَلَيْهِمْ.

وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ فَلَوْ لَمْ يَخْرُجْ فِي الثَّانِي مِنْ الْأَضْحَى وَخَرَجَ فِي الثَّالِثِ فَقَدْ قَالَ بِهِ أَبُو حَنِيفَةَ، وَهُوَ فِعْلُ خَيْرٍ لَمْ يَأْتِ عَنْهُ نَهْيٌ؟

held this view, and it is a virtuous act about which no prohibition has been reported?

A jurisprudential issue regarding singing, games, and dancing during the two Eid festivals.

Issue 553: Singing, playing, and dancing during the days of the two Eids are permissible in the mosque and elsewhere.

Narrated to us ʿAbd al-Raḥmān ibn ʿAbd Allāh, who narrated to us Ibrāhīm ibn Aḥmad, who narrated to us al-Farabrī, who narrated to us al-Bukhārī, who narrated to us [...] Ahmad ibn Salih narrated to us from Ibn Wahb—and I am Amr, he is Ibn al-Harith—that Muhammad ibn Abd al-Rahman, the orphan under the guardianship of Urwah, reported from Aisha, who said: "I entered the presence of Allah's Messenger—peace be upon him—while two young girls with me were singing songs of Bu'ath. He lay on his bed, turning his face aside. When Abu Bakr entered, he scolded me, saying: 'The little flute of Satan near Allah's Messenger!' The Prophet turned to him and said: 'Let them be.' When he became distracted, I gestured to the girls, and they left. It was the Eid day, and Ethiopians were performing with shields and spears. Perhaps I asked the Prophet, or perhaps he said: 'Would you like to watch?' I replied: 'Yes.' He positioned me behind him, with my cheek against his cheek, saying: 'Continue, O sons of Arfida (a term referring to Ethiopians)!' When I grew weary, he asked: 'Had enough?' I said: 'Yes.' He then said: 'Go now.'"

Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to me: Harun ibn Sa'id al-Ayli narrated to me: Ibn Wahb narrated to me: Amr ibn al-Harith reported that Ibn Shihab narrated to him from Urwah, from Aisha: That Abu Bakr entered upon her while she had two servant girls with her during the days of Mina, singing and beating a drum. The Messenger of Allah (peace and blessings be upon him) was lying covered with his garment. Abu Bakr rebuked them, but the Messenger of Allah (peace and blessings be upon him)

[مَسْأَلَةٌ الْغِنَاءُ وَاللَّعِبُ وَالزَّفْنُ فِي أَيَّامِ الْعِيدَيْنِ]

٥٥٣ - مَسْأَلَةٌ: وَالْغِنَاءُ وَاللَّعِبُ وَالزَّفْنُ فِي أَيَّامِ الْعِيدَيْنِ حَسَنٌ فِي الْمَسْجِدِ وَغَيْرِهِ.

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَحْمَدُ بْنُ صَالِحٍ ثنا ابْنُ وَهْبٍ وَأَنَا عَمْرٌو هُوَ ابْنُ الْحَارِثِ - أَنَّ مُحَمَّدَ بْنَ عَبْدِ الرَّحْمَنِ هُوَ يَتِيمُ عُرْوَةَ عَنْ «عَائِشَةَ قَالَتْ: دَخَلْتُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعِنْدِي جَارِيَتَانِ تُغَنِّيَانِ بِغِنَاءِ بُعَاثٍ فَاضْطَجَعَ عَلَى الْفِرَاشِ وَحَوَّلَ وَجْهَهُ فَدَخَلَ أَبُو بَكْرٍ فَانْتَهَرَنِي وَقَالَ: مِزْمَارَةُ الشَّيْطَانِ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَقْبَلَ عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: دَعْهَا فَلَمَّا غَفَلَ غَمَزْتُهُمَا فَخَرَجَتَا، وَكَانَ يَوْمَ عِيدٍ، يَلْعَبُ السُّودَانُ بِالدَّرَقِ وَالْحِرَابِ، فَإِمَّا سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِمَّا قَالَ: تَشْتَهِينَ تَنْظُرِينَ؟ فَقُلْتُ: نَعَمْ، فَأَقَامَنِي وَرَاءَهُ، خَدِّي عَلَى خَدِّهِ، وَهُوَ يَقُولُ: دُونَكُمْ يَا بَنِي أَرْفِدَةَ حَتَّى إِذَا مَلِلْتُ قَالَ: حَسْبُكِ؟ قُلْتُ: نَعَمْ، قَالَ: فَاذْهَبِي» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي هَارُونُ بْنُ سَعِيدٍ الْأَيْلِيُّ حَدَّثَنِي ابْنُ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ أَنَّ ابْنَ شِهَابٍ حَدَّثَهُ عَنْ عُرْوَةَ «عَنْ عَائِشَةَ: أَنَّ أَبَا بَكْرٍ دَخَلَ عَلَيْهَا وَعِنْدَهَا جَارِيَتَانِ فِي أَيَّامِ مِنًى تُغَنِّيَانِ وَتَضْرِبَانِ، وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُسَجًّى بِثَوْبِهِ، فَانْتَهَرَهُمَا أَبُو بَكْرٍ، فَكَشَفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهُ وَقَالَ: دَعْهُمَا يَا أَبَا بَكْرٍ فَإِنَّهَا أَيَّامُ عِيدٍ» .

uncovered himself and said: “Let them be, O Abu Bakr, for these are the days of Eid.”[41]

L8856 And through him to Imam Muslim: Zuhayr ibn Harb narrated to us; Jarir ibn Abd al-Majid narrated to us; from Hisham ibn Urwah; from his father; from Aisha, who said: “Abyssinians came performing spear dances in the mosque on the day of Eid. The Prophet (peace and blessings be upon him) called me, so I placed my head upon his shoulder. I kept watching their performance until I was the one who departed.”

وَبِهِ إِلَى مُسْلِمٍ: ثنا زُهَيْرُ بْنُ حَرْبٍ ثنا جَرِيرٌ هُوَ ابْنُ عَبْدِ الْمَجِيدِ - عَنْ هِشَامٍ هُوَ ابْنُ عُرْوَةَ - عَنْ أَبِيهِ «عَنْ عَائِشَةَ قَالَتْ: جَاءَ حَبَشٌ يَزْفِنُونَ فِي يَوْمِ عِيدٍ فِي الْمَسْجِدِ، فَدَعَانِي النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَضَعْتُ رَأْسِي عَلَى مَنْكِبِهِ، فَجَعَلْتُ أَنْظُرُ إِلَى لَعِبِهِمْ، حَتَّى كُنْتُ أَنَا الَّتِي انْصَرَفْتُ» .

L8857–8859 As reported in Muslim’s collection: Muḥammad ibn Rāfiʿ and ʿAbdullāh ibn Ḥumayd both narrated to me from ʿAbd al-Razzāq, who narrated from Maʿmar: I, Maʿmar, narrate from al-Zuhrī, from Saʿīd ibn al-Musayyib, from Abū Hurayrah, who said: «While the Ethiopians were playing...» They were with their spears in the presence of the Messenger of Allah—peace and blessings of Allah be upon him—when Umar ibn al-Khattab entered. He lunged toward them to pelt them with pebbles, but the Messenger of Allah—peace and blessings of Allah be upon him—said: “Leave them, O Umar.”

وَبِهِ إِلَى مُسْلِمٍ: حَدَّثَنِي مُحَمَّدُ بْنُ رَافِعٍ وَعَبْدُ بْنُ حُمَيْدٍ كِلَاهُمَا عَنْ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ: «بَيْنَمَا الْحَبَشَةُ يَلْعَبُونَ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِحِرَابِهِمْ إِذْ دَخَلَ عُمَرُ بْنُ الْخَطَّابِ، فَأَهْوَى إِلَيْهِمْ لِيَحْصِبَهُمْ بِالْحَصْبَاءِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَعْهُمْ يَا عُمَرُ»

L8860 Abu Muhammad said: Where does the denial of those who denied stand compared to the denial of the two masters of this nation after its Prophet—Abu Bakr and Umar (may God be pleased with them)—when the Prophet (peace be upon him) disapproved of their denial, so they retracted their opinion and adhered to his statement?

قَالَ أَبُو مُحَمَّدٍ: أَيْنَ يَقَعُ إنْكَارُ مَنْ أَنْكَرَ مِنْ إنْكَارِ سَيِّدَيْ هَذِهِ الْأُمَّةِ بَعْدَ نَبِيِّهَا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبِي بَكْرٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا -؟ وَقَدْ أَنْكَرَ - عَلَيْهِ السَّلَامُ - عَلَيْهِمَا إنْكَارَهُمَا، فَرَجَعَا عَنْ رَأْيِهِمَا إلَى قَوْلِهِ - عَلَيْهِ السَّلَامُ -

L8861 ## Salat al-Istisqa (Prayer for Rain)

[صَلَاةُ الِاسْتِسْقَاءِ]

L8862 ## A legal issue: drought afflicted the people, or the rain intensified to the point of causing harm.

[مَسْأَلَةٌ قَحَطَ النَّاسُ أَوْ اشْتَدَّ الْمَطَرُ حَتَّى يُؤْذِيَ]

L8863 The Prayer for Seeking Rain 554 – Issue: Abu Muhammad said: If people face drought or rainfall intensifies to the point of harm, Muslims should supplicate at the conclusion of their prayers, during their prostrations in

صَلَاةُ الِاسْتِسْقَاءِ ٥٥٤ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: إنْ قَحَطَ النَّاسُ أَوْ اشْتَدَّ الْمَطَرُ حَتَّى يُؤْذِيَ فَلْيَدْعُ الْمُسْلِمُونَ فِي إدْبَارِ صَلَوَاتِهِمْ وَسُجُودِهِمْ وَعَلَى كُلِّ حَالٍ، وَيَدْعُو الْإِمَامُ فِي خُطْبَةِ الْجُمُعَةِ.

[41] **Hadith references (L8855):** Sahih Muslim 892c.

prayer, and in all circumstances. The Imam should also supplicate during the Friday sermon.

L8864 Allah, the Exalted and Majestic, said: "And your Lord said, 'Call upon Me; I will respond to you'" (Al-Ghāfir 40:60).[42]

L8865 He, the Exalted, said: "Why did they not humble themselves when Our punishment came to them? But their hearts hardened" [Al-An'am: 43].[43]

L8866 If the Imam intends to go out specifically for the prayer for rain—not for other occasions—he should proceed humbly dressed and with humility to the designated prayer ground, accompanied by the people. He should begin by delivering a sermon to them, abundantly seeking forgiveness throughout it, and supplicating Allah, the Exalted and Glorious.

L8867 Then he turns his face toward the qiblah and his back toward the people, supplicating to Allah the Exalted while raising his hands with their backs toward the sky. He then turns his cloak or garment inside out—making the inner side outward and the upper part downward—and transfers what is on one shoulder to the other. The people likewise do this.

L8868 Then he leads them in two *rakʿahs*, just as we mentioned regarding the Eid Prayer, exactly the same, without an *adhan* or *iqamah*. However, in the prayer for rain (*istisqa*), the *minbar* is brought out to the *musalla*, whereas it is not brought out during the two Eids. When he concludes with the salutation, he departs, followed by the people.

L8869–8870 Abd al-Rahman ibn Abdullah narrated to us from Ibrahim ibn Ahmad from al-Farbari from al-Bukhari from Adam from Ibn Abi Dhi'b, who narrated from al-Zuhri from Abbad ibn Tamim from his uncle—Abdullah ibn Zayd al-Ansari—who said: "I saw the Messenger of Allah—peace and blessings of Allah be upon him—on the day he went out to perform the istisqa prayer. He turned his back to the people and faced the direction of prayer while supplicating. Then he turned his cloak inside out and prayed two units of prayer with us, reciting aloud in them."[44]

قَالَ عَزَّ وَجَلَّ: {وَقَالَ رَبُّكُمُ ادْعُونِي أَسْتَجِبْ لَكُمْ} [غافر: ٦٠] .

قَالَ تَعَالَى: {فَلَوْلا إِذْ جَاءَهُمْ بَأْسُنَا تَضَرَّعُوا وَلَكِنْ قَسَتْ قُلُوبُهُمْ} [الأنعام: ٤٣] .

فَإِنْ أَرَادَ الْإِمَامُ الْبُرُوزَ فِي الِاسْتِسْقَاءِ خَاصَّةً - لَا فِيمَا سِوَاهُ - فَلْيَخْرُجْ مُتَبَذِّلًا مُتَوَاضِعًا إِلَى مَوْضِعِ الْمُصَلَّى وَالنَّاسُ مَعَهُ، فَيَبْدَأُ فَيَخْطُبُ بِهِمْ خُطْبَةً يُكْثِرُ فِيهَا مِنَ الِاسْتِغْفَارِ، وَيَدْعُو اللَّهَ عَزَّ وَجَلَّ.

ثُمَّ يُحَوِّلُ وَجْهَهُ إِلَى الْقِبْلَةِ وَظَهْرَهُ إِلَى النَّاسِ، فَيَدْعُو اللَّهَ تَعَالَى رَافِعًا يَدَيْهِ، ظُهُورُهُمَا إِلَى السَّمَاءِ، ثُمَّ يَقْلِبُ رِدَاءَهُ أَوْ ثَوْبَهُ الَّذِي يَتَغَطَّاهُ، فَيَجْعَلُ بَاطِنَهُ ظَاهِرَهُ، وَأَعْلَاهُ أَسْفَلَهُ، وَمَا عَلَى مَنْكِبٍ مِنْ مَنْكِبَيْهِ عَلَى الْمَنْكِبِ الْآخَرِ، وَيَفْعَلُ النَّاسُ كَذَلِكَ.

ثُمَّ يُصَلِّي بِهِمْ رَكْعَتَيْنِ، كَمَا قُلْنَا فِي صَلَاةِ الْعِيدِ سَوَاءً بِسَوَاءٍ، بِلَا أَذَانٍ وَلَا إِقَامَةٍ، إِلَّا أَنَّ صَلَاةَ الِاسْتِسْقَاءِ يَخْرُجُ فِيهَا الْمِنْبَرُ إِلَى الْمُصَلَّى، وَلَا يَخْرُجُ فِي الْعِيدَيْنِ، فَإِذَا سَلَّمَ انْصَرَفَ وَانْصَرَفَ النَّاسُ؟ .

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا آدَمُ ثنا ابْنُ أَبِي ذِئْبٍ عَنِ الزُّهْرِيِّ عَنْ عَبَّادِ بْنِ تَمِيمٍ عَنْ عَمِّهِ - هُوَ عَبْدُ اللَّهِ بْنُ زَيْدٍ الْأَنْصَارِيُّ - قَالَ: «رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ خَرَجَ يَسْتَسْقِي فَحَوَّلَ إِلَى النَّاسِ ظَهْرَهُ وَاسْتَقْبَلَ الْقِبْلَةَ يَدْعُو، ثُمَّ حَوَّلَ رِدَاءَهُ، ثُمَّ صَلَّى لَنَا رَكْعَتَيْنِ جَهَرَ فِيهِمَا بِالْقِرَاءَةِ» .

[42] **Qur'an references (L8864):** Qur'an 40:60 (Ghafir).
[43] **Qur'an references (L8865):** Qur'an 6:43 (Al-An'am).
[44] **Hadith references (L8870):** Sahih al-Bukhari 1025.

L8871 Abdullah ibn Rabi’ narrated to us: Muhammad ibn Mu’awiyah narrated to us: Ahmad ibn Shu’ayb narrated to us: I, Muhammad ibn ‘Ubayd, narrated to you: Hatim ibn Isma’il narrated from Hisham ibn Ishaq ibn Abdullah ibn Abi Kinanah, from his father, who said: “I asked Ibn Abbas about the Messenger of Allah’s prayer during the prayer for rain. He replied: ’The Messenger of Allah, may Allah’s peace and blessings be upon him, went out wearing simple clothes, humble and supplicating. He sat on the pulpit but did not deliver a sermon like these current sermons of yours. Instead, he remained ceaselessly engaged in humble entreaty, supplication, and proclaiming Allah’s greatness. He then prayed two units of prayer as he would pray on Eid.’”

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عُبَيْدٍ ثنا حَاتِمُ بْنُ إِسْمَاعِيلَ عَنْ هِشَامِ بْنِ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي كِنَانَةَ عَنْ أَبِيهِ قَالَ: «سَأَلْتُ ابْنَ عَبَّاسٍ عَنْ صَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الِاسْتِسْقَاءِ؟ فَقَالَ: خَرَجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُتَبَذِّلًا مُتَوَاضِعًا مُتَضَرِّعًا، فَجَلَسَ عَلَى الْمِنْبَرِ فَلَمْ يَخْطُبْ خُطْبَتَكُمْ هَذِهِ، لَكِنْ لَمْ يَزَلْ فِي التَّضَرُّعِ، وَالدُّعَاءِ، وَالتَّكْبِيرِ، وَصَلَّى رَكْعَتَيْنِ كَمَا كَانَ يُصَلِّي فِي الْعِيدِ» .

L8872 Abu Muhammad said: As for seeking forgiveness, it is based on the words of Allah, the Exalted: “Seek forgiveness from your Lord; indeed, He is the Abundantly Forgiving” [Nuh 71:10], “He will send the heavens pouring rain upon you” [Nuh 71:11], “And grant you wealth and children, and provide you with gardens and rivers” [Nuh 71:12].[45]

قَالَ أَبُو مُحَمَّدٍ: أَمَّا الِاسْتِغْفَارُ فَلِقَوْلِ اللَّهِ تَعَالَى: {اسْتَغْفِرُوا رَبَّكُمْ إِنَّهُ كَانَ غَفَّارًا} [نوح: ١٠] {يُرْسِلِ السَّمَاءَ عَلَيْكُمْ مِدْرَارًا} [نوح: ١١] {وَيُمْدِدْكُمْ بِأَمْوَالٍ وَبَنِينَ وَيَجْعَلْ لَكُمْ جَنَّاتٍ وَيَجْعَلْ لَكُمْ أَنْهَارًا} [نوح: ١٢] .

L8873 The adjustment of the garment necessitates what we have mentioned—and this is entirely the position of our companions.

وَتَحْوِيلُ الرِّدَاءِ يَقْتَضِي مَا قُلْنَاهُ - وَهَذَا كُلُّهُ قَوْلُ أَصْحَابِنَا.

L8874 Mālik said: “Is advancing the sermon [before the prayer] permissible?” Al-Shāfiʿī said: “Is the prayer for rain like the Eid prayer?” It has been narrated to us from the Salaf contrary to this, and no one’s argument holds weight against the Messenger of Allah—peace and blessings of Allah be upon him.

وَقَالَ مَالِكٌ: بِتَقْدِيمِ الْخُطْبَةِ؟ وَقَالَ الشَّافِعِيُّ: صَلَاةُ الِاسْتِسْقَاءِ كَصَلَاةِ الْعِيدِ؟ وَقَدْ رُوِّينَا عَنْ السَّلَفِ خِلَافَ هَذَا، وَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L8875 Narrated via the chain of ʿAbd al-Raḥmān ibn Mahdī from Sufyān al-Thawrī from Abū Isḥāq al-Sabīʿī: Ibn al-Zubayr sent to ʿAbdullāh ibn Yazīd—al-Khiṭmī—to lead the people in istisqāʾ. He went out and performed istisqāʾ on their behalf, and among them were al-Barāʾ ibn ʿĀzib and Zayd ibn Arqam. He prayed, then delivered the sermon.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ: أَنَّ ابْنَ الزُّبَيْرِ بَعَثَ إلَى عَبْدِ اللَّهِ بْنِ يَزِيدَ هُوَ الْخِطْمِيُّ - أَنْ يَسْتَسْقِيَ بِالنَّاسِ، فَخَرَجَ فَاسْتَسْقَى بِالنَّاسِ، وَفِيهِمْ: الْبَرَاءُ بْنُ عَازِبٍ، وَزَيْدُ بْنُ أَرْقَمَ، فَصَلَّى ثُمَّ خَطَبَ.

L8876 Abu Muhammad said: For Abdullah ibn Yazid, this is companionship with the Prophet—may Allah bless him and grant him peace—and he reports from Abu Bakr, Umar, Uthman, and Ali: that they would utter the Takbir during

قَالَ أَبُو مُحَمَّدٍ: لِعَبْدِ اللَّهِ بْنِ يَزِيدَ هَذَا صُحْبَةٌ بِالنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ: أَنَّهُمْ كَانُوا يُكَبِّرُونَ فِي الِاسْتِسْقَاءِ، وَالْفِطْرِ، وَالْأَضْحَى سَبْعًا فِي

[45] **Qur’an references (L8872):** Qur’an 71:10 (Nuh); Qur’an 11:52 (Hud); Qur’an 71:11 (Nuh); Qur’an 71:12 (Nuh).

prayers for rain, Eid al-Fitr, and Eid al-Adha seven times in the first unit and five times in the second unit, pray before the sermon, and recite aloud. However, in the chain of transmission is Ibrahim ibn Abi Yahya, and the chain is also disconnected.

L8877 It has been narrated to us that ʿUmar went out to the muṣallā (prayer ground), supplicated for rain, then departed without praying (ṣalāt).

L8878–8880 Abu Muhammad said: Jews, Zoroastrians, or Christians are not to be prevented from going out to... The prayer for rain (istisqā') is restricted exclusively to supplicatory acts, and it is not permissible to ring a church bell nor anything that contradicts the religion of Islam. Success comes from Allah alone, the Most High.

L8881 ## The Solar Eclipse Prayer

L8882 555 - Issue: The eclipse prayer is observed in different forms. One of them is to perform two units of prayer (rak'ahs) like other voluntary prayers - this applies to the solar eclipse and also to the lunar eclipse. It was narrated to us by Abd al-Rahman ibn Abdullah, who narrated from Ibrahim ibn Ahmad, who narrated from al-Farbari, who narrated from al-Bukhari, who narrated from Abu Ma'mar, who narrated from Abd al-Warith ibn Sa'id al-Tannuri, who narrated from Yunus ibn Ubayd, from al-Hasan, from Abu Bakrah, who said: "A solar eclipse occurred during the time of Allah's Messenger (peace be upon him). He rushed out dragging his cloak until he reached the mosque. The people gathered, and he led them in two units of prayer. Then the eclipse cleared. He said: 'The sun and moon are two signs among Allah's signs. They do not eclipse for anyone's death. When this occurs, pray and supplicate until what afflicts you is removed.' This happened when a son of the Prophet (peace be upon him) named Ibrahim had died, and some people spoke about that."

L8883–8885 Abdullah ibn Rabee' narrated to us; Muhammad ibn Mu'awiyah narrated to us; Ahmad ibn Shu'ayb narrated to us; Amr ibn Ali narrated to us; Yazid—that is, Ibn Zurāʿ—narrated to us; Yunus—that is, Ibn ʿUbayd—narrated from Al-

الْأُولَى، وَخَمْسًا فِي الثَّانِيَةِ، وَيُصَلُّونَ قَبْلَ الْخُطْبَةِ وَيَجْهَرُونَ بِالْقِرَاءَةِ، وَلَكِنْ فِي الطَّرِيقِ إِبْرَاهِيمُ بْنُ أَبِي يَحْيَى، وَهُوَ أَيْضًا مُنْقَطِعٌ.

وَرُوِّينَا: أَنَّ عُمَرَ خَرَجَ إِلَى الْمُصَلَّى فَدَعَا فِي الِاسْتِسْقَاءِ، ثُمَّ انْصَرَفَ وَلَمْ يُصَلِّ.

قَالَ أَبُو مُحَمَّد: وَلَا يُمْنَعُ الْيَهُودُ، وَلَا الْمَجُوسُ، وَلَا النَّصَارَى: مِنْ الْخُرُوجِ إلَى الِاسْتِسْقَاءِ لِلدُّعَاءِ فَقَطْ، وَلَا يُبَاحُ لَهُمْ إخْرَاجُ نَاقُوسٍ وَلَا شَيْءَ يُخَالِفُ دِينَ الْإِسْلَامِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[صَلَاةُ الْكُسُوفِ]

٥٥٥ - مَسْأَلَةٌ: صَلَاةُ الْكُسُوفِ عَلَى وُجُوهٍ -: أَحَدُهَا - أَنْ تُصَلِّيَ رَكْعَتَيْنِ كَسَائِرِ التَّطَوُّعِ، وَهَذَا فِي كُسُوفِ الشَّمْسِ، وَفِي كُسُوفِ الْقَمَرِ أَيْضًا -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَبُو مَعْمَرٍ ثنا عَبْدُ الْوَارِثِ هُوَ ابْنُ سَعِيدٍ التَّنُّورِيُّ - ثنا يُونُسُ هُوَ ابْنُ عُبَيْدٍ - عَنْ الْحَسَنِ عَنْ أَبِي بَكْرَةَ قَالَ: «خَسَفَتْ الشَّمْسُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَخَرَجَ يَجُرُّ رِدَاءَهُ، حَتَّى انْتَهَى إلَى الْمَسْجِدِ، فَثَابَ النَّاسُ فَصَلَّى بِهِمْ رَكْعَتَيْنِ، فَانْجَلَتْ الشَّمْسُ، فَقَالَ: إنَّ الشَّمْسَ وَالْقَمَرَ آيَتَانِ مِنْ آيَاتِ اللَّهِ، وَإِنَّهُمَا لَا يُخْسَفَانِ لِمَوْتِ أَحَدٍ، وَإِذَا كَانَ ذَلِكَ فَصَلُّوا وَادْعُوا حَتَّى يُكْشَفَ مَا بِكُمْ، وَذَلِكَ أَنَّ ابْنًا لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَاتَ، يُقَالُ لَهُ: إبْرَاهِيمُ، فَقَالَ نَاسٌ فِي ذَلِكَ»

Hasan, from Abu Bakrah: "We were with the Messenger of Allah—peace be upon him—when the sun was eclipsed. He rushed to the mosque, hurriedly dragging his cloak, and the people followed him. He prayed two rak'ahs in the manner they pray. When the eclipse ended, he delivered a sermon to us, saying: 'The sun and the moon are two signs among Allah's signs, through which Allah instills fear in His servants. They do not eclipse due to the death of anyone nor for anyone's life.'" So when you see the eclipse of one of the two (the sun or the moon), pray the eclipse prayer until it clears.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ ثنا يَزِيدُ هُوَ ابْنُ زُرَيْعٍ ثنا يُونُسُ هُوَ ابْنُ عُبَيْدٍ - عَنْ الْحَسَنِ عَنْ أَبِي بَكْرَةَ «كُنَّا عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَانْكَسَفَتْ الشَّمْسُ، فَقَامَ إلَى الْمَسْجِدِ يَجُرُّ رِدَاءَهُ مِنْ الْعَجَلَةِ، فَقَامَ إلَيْهِ النَّاسُ، فَصَلَّى رَكْعَتَيْنِ كَمَا يُصَلُّونَ، فَلَمَّا انْجَلَتْ خَطَبَنَا، فَقَالَ: إنَّ الشَّمْسَ وَالْقَمَرَ آيَتَانِ مِنْ آيَاتِ اللَّهِ يُخَوِّفُ اللَّهُ بِهِمَا عِبَادَهُ وَإِنَّهُمَا لَا يَنْكَسِفَانِ لِمَوْتِ أَحَدٍ وَلَا لِحَيَاتِهِ فَإِذَا رَأَيْتُمْ كُسُوفَ أَحَدِهِمَا فَصَلُّوا حَتَّى يَنْجَلِيَ» .

L8886 And it has also been narrated to us similarly from Abdullah ibn Amr ibn al-Aas on the day when Ibrahim, the son of the Messenger of Allah (peace and blessings be upon him), died, except that the narration mentions a prolongation of bowing, prostration, and standing.

وَرُوِّينَا نَحْوَ هَذَا أَيْضًا عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ يَوْمَ مَاتَ إبْرَاهِيمُ ابْنُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا أَنَّ فِيهِ تَطْوِيلَ الرُّكُوعِ وَالسُّجُودِ وَالْقِيَامِ.

L8887 A group of the Salaf followed this practice, including Abdullah ibn al-Zubayr who prayed two rak'ahs during the solar eclipse like regular prayers. If it is asked: "Did his brother Urwa deem him mistaken?"

فَأَخَذَ بِهَذَا طَائِفَةٌ مِنْ السَّلَفِ -: مِنْهُمْ عَبْدُ اللَّهِ بْنُ الزُّبَيْرِ: صَلَّى فِي الْكُسُوفِ رَكْعَتَيْنِ كَسَائِرِ الصَّلَوَاتِ: فَإِنْ قِيلَ: قَدْ خَطَّأَهُ أَخُوهُ عُرْوَةُ؟

L8888 We said: Urwah is more deserving of being in error because Abdullah is a Companion while Urwah is not a Companion. Abdullah acted with knowledge, whereas Urwah rejected what he did not know.

قُلْنَا: عُرْوَةُ أَحَقُّ بِالْخَطَأِ، لِأَنَّ عَبْدَ اللَّهِ صَاحِبٌ، وَعُرْوَةَ لَيْسَ بِصَاحِبٍ وَعَبْدُ اللَّهِ عَمِلَ بِعِلْمٍ، وَأَنْكَرَ عُرْوَةُ مَا لَمْ يَعْلَمْ.

L8889 This is the position upheld by Abu Hanifa.

وَبِهَذَا يَقُولُ أَبُو حَنِيفَةَ.

L8890 Abū Muḥammad said: This method entails praying in congregation for both solar and lunar eclipses. If one were to perform this prayer at every sign that appears—such as an earthquake or similar event—it would be commendable, for it is a righteous deed. If he wishes, he may pray two rak'ahs and give the salutation, then pray another two rak'ahs and give the salutation, continuing thus until the eclipse of the sun and moon clears, along with the signs as we mentioned. ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Isḥāq ibn as-Salīm narrated to us: Ibn al-Aʿrābī narrated to us: Abū Dāwūd narrated to us: Aḥmad ibn Abī Shuʿayb al-Ḥarrānī narrated to us: al-Ḥārith

قَالَ أَبُو مُحَمَّد: وَهَذَا الْوَجْهُ يُصَلَّى لِكُسُوفِ الشَّمْسِ، وَلِكُسُوفِ الْقَمَرِ فِي جَمَاعَةٍ، وَلَوْ صَلَّى ذَلِكَ عِنْدَ كُلِّ آيَةٍ تَظْهَرُ - مِنْ زَلْزَلَةٍ أَوْ نَحْوِهَا - لَكَانَ حَسَنًا، لِأَنَّهُ فِعْلُ خَيْرٍ وَإِنْ شَاءَ صَلَّى رَكْعَتَيْنِ وَيُسَلِّمُ، ثُمَّ رَكْعَتَيْنِ وَيُسَلِّمُ، هَكَذَا حَتَّى يَنْجَلِيَ الْكُسُوفُ فِي الشَّمْسِ وَالْقَمَرِ، وَالْآيَاتُ كَمَا ذَكَرْنَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إسْحَاقَ بْنِ السَّلِيمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا أَحْمَدُ بْنُ أَبِي شُعَيْبٍ الْحَرَّانِيُّ ثنا الْحَارِثُ بْنُ عُمَيْرٍ الْبَصْرِيُّ

ibn ʿUmayr al-Baṣrī narrated from Ayyūb as-Sikhtiyānī from Abī Qilābah from an-Nuʿmān ibn Bashīr who said: “The sun eclipsed during the time of Allah’s Messenger—peace and blessings be upon him—so he began praying two rak’ahs each time and inquiring about it until it cleared.”[46]

عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ النُّعْمَانِ بْنِ بَشِيرٍ قَالَ: «كَسَفَتْ الشَّمْسُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَعَلَ يُصَلِّي رَكْعَتَيْنِ رَكْعَتَيْنِ وَيَسْأَلُ عَنْهَا حَتَّى انْجَلَتْ» .

L8891 It has also been narrated to us that he (peace be upon him) said, “Pray until the sun rises,” from Abu Bakrah, as we mentioned previously.

وَرُوِّينَا أَيْضًا قَوْلَهُ - عَلَيْهِ السَّلَامُ - «فَصَلُّوا حَتَّى تَنْجَلِيَ» عَنْ أَبِي بَكْرَةَ، كَمَا ذَكَرْنَا آنِفًا.

L8892 From Al-Mughīrah ibn Shuʿbah, Ibn ʿUmar, and Abū Masʿūd—with chains of transmission in the highest degree of authenticity—and this wording entails what we have mentioned.

وَعَنْ الْمُغِيرَةِ بْنِ شُعْبَةَ، وَعَنْ ابْنِ عُمَرَ، وَأَبِي مَسْعُودٍ، بِأَسَانِيدَ فِي غَايَةِ الصِّحَّةِ، وَهَذَا اللَّفْظُ يَقْتَضِي مَا ذَكَرْنَا.

L8893 This is the statement of a group from the Salaf — it was reported to us through the chain of Wakiʿ, from Sufyān al-Thawrī and al-Rabīʿ ibn Ṣubayḥ.

وَهَذَا قَوْلُ طَائِفَةٍ مِنْ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ وَالرَّبِيعِ بْنِ صُبَيْحٍ.

L8894–8896 And Sufyān said: from Al-Mughirah from Ibrahim An-Nakha’i, and Ar-Rabi’ said: From Al-Hasan. Then Al-Hasan and Ibrahim concurred, both stating regarding the eclipse prayer: “He prayed two sets of two rak’ahs each. If he wishes, he may remember Allah the Exalted and supplicate after saying Allahu Akbar to initiate the prayer while standing. When the eclipse recedes, he recites two surahs and prays two rak’ahs”—this applies to solar eclipses, lunar eclipses, and other celestial signs. Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath, Abdul-Wahhab ibn Isa, Ahmad ibn Muhammad, Ahmad ibn Ali, Muslim ibn Al-Hajjaj, Abu Bakr ibn Abi Shaybah, Abdul-A’la ibn Abdul-A’la, Al-Jurayri, Hayyan ibn Umayr Abu Al-Ala, from Abdur-Rahman ibn Samurah—a companion of the Messenger of Allah, peace and blessings be upon him—who said: “I was practicing archery with my arrows in Medina during the lifetime of the Messenger of Allah, peace and blessings be upon him, when the sun eclipsed. I cast them aside and vowed: ’By Allah, I shall observe what the Messenger of Allah, peace and blessings be upon him, does during this eclipse.’ I found him standing in prayer, raising his hands. He continued glorifying, praising, declaring Allah’s oneness, proclaiming Allahu

وَقَالَ سُفْيَانُ: عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ وَقَالَ الرَّبِيعُ: عَنْ الْحَسَنِ ثُمَّ اتَّفَقَ الْحَسَنُ وَإِبْرَاهِيمُ قَالَا جَمِيعًا فِي الْكُسُوفِ: صَلَّى رَكْعَتَيْنِ رَكْعَتَيْنِ، وَإِنْ شَاءَ ذَكَرَ اللَّهَ تَعَالَى وَدَعَا بَعْدَ أَنْ يُكَبِّرَ قَائِمًا، فَإِذَا انْجَلَى الْكُسُوفُ قَرَأَ وَرَكَعَ رَكْعَتَيْنِ - هَذَا فِي الشَّمْسِ وَالْقَمَرِ وَالْآيَاتِ أَيْضًا -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا عَبْدُ الْأَعْلَى بْنُ عَبْدِ الْأَعْلَى عَنْ الْجُرَيْرِيِّ عَنْ حَيَّانَ بْنِ عُمَيْرٍ أَبِي الْعَلَاءِ «عَنْ عَبْدِ الرَّحْمَنِ بْنِ سَمُرَةَ - وَكَانَ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: كُنْتُ أَرْمِي بِأَسْهُمٍ لِي فِي الْمَدِينَةِ فِي حَيَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ كَسَفَتْ الشَّمْسُ، فَنَبَذْتُهَا، وَقُلْتُ: وَاَللَّهِ لَأَنْظُرَنَّ إلَى مَا حَدَثَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي كُسُوفِ الشَّمْسِ، قَالَ: فَأَتَيْتُهُ وَهُوَ قَائِمٌ فِي الصَّلَاةِ رَافِعٌ يَدَيْهِ، فَجَعَلَ

[46] **Hadith references (L8890):** Sunan Abi Dawud 1193; Mishkat al-Masabih 1493.

Akbar, and supplicating until the eclipse receded. When it cleared, he recited two surahs and prayed two rak'ahs."

يُسَبِّحُ وَيَحْمَدُ وَيُهَلِّلُ، وَيُكَبِّرُ، وَيَدْعُو حَتَّى حُسِرَ عَنْهَا، فَلَمَّا حُسِرَ عَنْهَا قَرَأَ سُورَتَيْنِ وَصَلَّى رَكْعَتَيْنِ» .

L8897 If it is the case specifically for a solar eclipse—if it is eclipsed after the Fajr prayer until the time of Dhuhr prayer—he is to pray two rak'ahs as we have previously mentioned.

وَإِنْ شَاءَ لِكُسُوفِ الشَّمْسِ خَاصَّةً إِنْ كُسِفَتْ بَعْدَ صَلَاةِ الْفَجْرِ إِلَى أَنْ يُصَلِّيَ الظُّهْرَ -: صَلَّى رَكْعَتَيْنِ كَمَا قَدَّمْنَا.

L8898 If a solar eclipse occurs from after the Zuhr prayer until the sun begins to set, one should pray four rak'ahs, like the Zuhr or Asr prayer. For a lunar eclipse exclusively: if it occurs after the Maghrib prayer until you perform the last Isha prayer, one should pray three rak'ahs, equivalent to the rak'ahs of Maghrib prayer.

وَإِنْ كُسِفَتْ مِنْ بَعْدِ صَلَاةِ الظُّهْرِ إِلَى أَخْذِهَا فِي الْغُرُوبِ: صَلَّى أَرْبَعَ رَكَعَاتٍ، كَصَلَاةِ الظُّهْرِ، أَوْ الْعَصْرِ وَفِي كُسُوفِ الْقَمَرِ خَاصَّةً: إِنْ كُسِفَ بَعْدَ صَلَاةِ الْمَغْرِبِ إِلَى أَنْ تُصَلِّيَ الْعِشَاءَ الْآخِرَةَ: صَلَّى ثَلَاثَ رَكَعَاتٍ كَصَلَاةِ الْمَغْرِبِ.

L8899–8900 And if the eclipse occurs after the Night Prayer until dawn, one should pray four units similar to the Night Prayer. Abdullah ibn Rabi' narrated to us, Muhammad ibn Mu'awiyah narrated to us, Ahmad ibn Shu'ayb narrated to us, Muhammad ibn Bashshar informed us, Abdul-Wahhab—that is, Ibn Abdul-Majid al-Thaqafi—narrated to us, Khalid—that is, al-Khaddā—narrated from Abu Qilabah from al-Nu'man ibn Bashir, who said: "The sun was eclipsed during the time of Allah's Messenger—peace and blessings be upon him—so he rushed out dragging his garment in alarmed haste until he reached the mosque. He continued praying with us until the eclipse cleared. When it cleared, he said: 'Some people claim the sun and moon are eclipsed only for the death of a great one among the great ones, but this is not so. The sun and moon are not eclipsed for the death or life of anyone, but they are two signs among Allah's signs. When Allah manifests His majesty to anything of His creation, it humbles itself before Him. So when you witness this, pray as you would perform the most recent obligatory prayer.'"

وَإِنْ كُسِفَ بَعْدَ صَلَاةِ الْعَتَمَةِ إِلَى الصُّبْحِ: صَلَّى أَرْبَعًا: كَصَلَاةِ الْعَتَمَةِ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ ثنا عَبْدُ الْوَهَّابِ هُوَ ابْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ - ثنا خَالِدٌ هُوَ الْحَذَّاءُ عَنْ أَبِي قِلَابَةَ عَنْ النُّعْمَانِ بْنِ بَشِيرٍ قَالَ: «انْكَسَفَتْ الشَّمْسُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَخَرَجَ يَجُرُّ ثَوْبَهُ فَزِعًا، حَتَّى أَتَى الْمَسْجِدَ، فَلَمْ يَزَلْ يُصَلِّي بِنَا حَتَّى انْجَلَتْ فَلَمَّا انْجَلَتْ قَالَ: إِنَّ نَاسًا يَزْعُمُونَ أَنَّ الشَّمْسَ وَالْقَمَرَ لَا يَنْكَسِفَانِ إِلَّا لِمَوْتِ عَظِيمٍ مِنْ الْعُظَمَاءِ، وَلَيْسَ كَذَلِكَ، إِنَّ الشَّمْسَ وَالْقَمَرَ لَا يَنْكَسِفَانِ لِمَوْتِ أَحَدٍ وَلَا لِحَيَاتِهِ، وَلَكِنَّهُمَا آيَتَانِ مِنْ آيَاتِ اللَّهِ تَعَالَى، وَإِنَّ اللَّهَ إِذَا تَجَلَّى لِشَيْءٍ مِنْ خَلْقِهِ خَشَعَ لَهُ فَإِذَا رَأَيْتُمْ ذَلِكَ فَصَلُّوا كَأَحْدَثِ صَلَاةٍ صَلَّيْتُمُوهَا مِنْ الْمَكْتُوبَةِ» .

L8901 If it is said: "Abū Qilābah narrated this ḥadīth from a man [who narrated it] from Qabīṣah al-ʿĀmirī?" We respond: "Yes—and what is the issue?" For Abū Qilābah met al-Nuʿmān and transmitted this narration from him.

فَإِنْ قِيلَ: إِنَّ أَبَا قِلَابَةَ قَدْ رَوَى هَذَا الْحَدِيثَ عَنْ رَجُلٍ عَنْ قَبِيصَةَ الْعَامِرِيِّ؟ قُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ وَأَبُو قِلَابَةَ قَدْ أَدْرَكَ النُّعْمَانَ فَرَوَى هَذَا الْخَبَرَ عَنْهُ.

وَرَوَاهُ أَيْضًا عَنْ آخَرَ فَحَدَّثَ بِكِلْتَا رِوَايَتَيْهِ، وَلَا وَجْهَ لِلتَّعَلُّلِ بِمِثْلِ هَذَا أَصْلًا وَلَا مَعْنًى لَهُ؟ وَإِنْ شَاءَ فِي كُسُوفِ الشَّمْسِ خَاصَّةً: صَلَّى رَكْعَتَيْنِ، فِي كُلِّ رَكْعَةٍ رَكْعَتَانِ، يَقْرَأُ ثُمَّ يَرْكَعُ ثُمَّ يَرْفَعُ، فَيَقْرَأُ.

L8902 He also narrated it from another source, thus relating both versions. Is there any valid basis for such a pretext whatsoever, or does it carry any meaning? If one wishes [to pray] specifically during a solar eclipse: he prays two rakʿahs. In each rakʿah, he performs two bowings: he recites, then bows, then rises, then recites again.

ثُمَّ يَرْكَعُ ثُمَّ يَرْفَعُ فَيَقُولُ: " سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ " ثُمَّ يَسْجُدُ سَجْدَتَيْنِ. ثُمَّ يَقُومُ فَيَرْكَعُ أُخْرَى، فِي كُلِّ رَكْعَةٍ رَكْعَتَانِ، كَمَا وَصَفْنَا، ثُمَّ يَسْجُدُ سَجْدَتَيْنِ، ثُمَّ يَجْلِسُ وَيَتَشَهَّدُ وَيُسَلِّمُ.

L8903 Then he bows, then he rises and says, "Allah hears the one who praises Him," then he prostrates twice. Then he stands and bows again, with two bowings in every rak'ah as we have described, then he prostrates twice. Then he sits and recites the Tashahhud and performs the taslīm.

وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي ثَوْرٍ؟ حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَبْدِ اللَّهِ بْنِ مَسْلَمَةَ عَنْ مَالِكِ بْنِ زَيْدِ بْنِ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ عَبْدِ اللَّهِ بْنِ عَبَّاسٍ قَالَ: «انْخَسَفَتْ الشَّمْسُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَصَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَامَ قِيَامًا طَوِيلًا نَحْوًا مِنْ قِرَاءَةِ سُورَةِ الْبَقَرَةِ، ثُمَّ رَكَعَ رُكُوعًا طَوِيلًا، ثُمَّ رَفَعَ فَقَامَ قِيَامًا طَوِيلًا وَهُوَ دُونَ الْقِيَامِ الْأَوَّلِ، ثُمَّ رَكَعَ رُكُوعًا طَوِيلًا وَهُوَ دُونَ الرُّكُوعِ الْأَوَّلِ، ثُمَّ سَجَدَ ثُمَّ قَامَ قِيَامًا طَوِيلًا وَهُوَ دُونَ الْقِيَامِ الْأَوَّلِ، ثُمَّ رَكَعَ رُكُوعًا طَوِيلًا وَهُوَ دُونَ الرُّكُوعِ الْأَوَّلِ ثُمَّ رَفَعَ فَقَامَ قِيَامًا طَوِيلًا وَهُوَ دُونَ الْقِيَامِ الْأَوَّلِ، ثُمَّ رَكَعَ رُكُوعًا طَوِيلًا وَهُوَ دُونَ الرُّكُوعِ الْأَوَّلِ، ثُمَّ سَجَدَ ثُمَّ انْصَرَفَ» .

L8904–8906 This is the opinion of Mālik, al-Shāfiʿī, Aḥmad, and Abū Thawr. ʿAbd al-Raḥmān ibn ʿAbd Allāh narrated to us; Ibrāhīm ibn Aḥmad narrated to us; al-Firabrī narrated to us; al-Bukhārī narrated to us; ʿAbd Allāh ibn Maslamah narrated to us, from Mālik ibn Zayd ibn Aslam, from ʿAṭāʾ ibn Yasār, on the authority of ʿAbd Allāh ibn ʿAbbās, who said: A solar eclipse occurred during the time of Allah's Messenger (peace be upon him). He prayed, standing for a prolonged duration comparable to reciting Surah al-Baqarah. Then he bowed a prolonged bowing. Then he rose and stood again for a prolonged duration - shorter than the first standing. Then he bowed another prolonged bowing - shorter than the first bowing. Then he prostrated.

He then stood again for a prolonged duration - shorter than the first standing. Then he bowed another prolonged bowing - shorter than the first bowing. Then he rose and stood again for a prolonged duration - shorter than the preceding standing. Then he bowed another prolonged bowing - shorter than the preceding bowing. Then he prostrated, then he concluded the prayer.

وَذَكَرَ بَاقِيَ الْخَبَرِ؟

L8907 Did he mention the rest of the report?

وَرُوِّينَا أَيْضًا مِثْلَهُ عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - وَإِنْ شَاءَ صَلَّى فِي كُسُوفِ الشَّمْسِ خَاصَّةً رَكْعَتَيْنِ فِي كُلِّ رَكْعَةٍ ثَلَاثُ رَكَعَاتٍ، يَقْرَأُ ثُمَّ يَرْكَعُ ثُمَّ يَرْفَعُ فَيَقْرَأُ ثُمَّ يَرْكَعُ، ثُمَّ

L8908 We have also been narrated a similar account from ʻĀʾishah—may Allah be pleased with her. If one wishes, he may pray during a solar eclipse specifically two *rakʿahs*, with each *rakʿah* containing three bowings: he recites, then bows, rises to recite again, then bows again, rises to recite once more,

then bows, rises and says, "*Samiʿa Allāhu li-man ḥamidah*" ("Allah hears those who praise Him"), then performs two prostrations. He then stands and performs another *rakʻah* containing three bowings as described, rises again, prostrates, sits to recite the *Tashahhud*, and gives the *Tasleem* salutation?

يَرْفَعُ فَيَقْرَأُ ثُمَّ يَرْكَعُ، ثُمَّ يَرْفَعُ فَيَقُولُ: " سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ " ثُمَّ يَسْجُدُ سَجْدَتَيْنِ: ثُمَّ يَقُومُ فَيَرْكَعُ أَيْضًا رَكْعَةً فِيهَا ثَلَاثُ رَكَعَاتٍ كَمَا ذَكَرْنَا، ثُمَّ يَرْفَعُ ثُمَّ يَسْجُدُ، ثُمَّ يَجْلِسُ وَيَتَشَهَّدُ وَيُسَلِّمُ ؟ .

L8909 It has been narrated to us what is presumed to involve this act from Ibn Abbas - narrated through the chain of Hammad ibn Salamah: "I [Hammad] from Qatadah, from Abdullah ibn al-Harith, from Ibn Abbas: that he led the people in prayer during an earthquake in Basra. He stood with them, uttered *takbir* four times, then recited [Qur'an], then uttered *takbir* and bowed. Then he raised his head and uttered *takbir* four times, then recited as much as Allah willed him to recite, then uttered *takbir* and bowed."

وَقَدْ رُوِّينَا مَا يُظَنُّ فِيهِ هَذَا الْفِعْلُ عَنْ ابْنِ عَبَّاسٍ -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ: أَنَا قَتَادَةُ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ صَلَّى فِي زَلْزَلَةٍ بِالْبَصْرَةِ، قَامَ بِالنَّاسِ فَكَبَّرَ أَرْبَعًا ثُمَّ قَرَأَ ثُمَّ كَبَّرَ وَرَكَعَ، ثُمَّ رَفَعَ رَأْسَهُ فَكَبَّرَ أَرْبَعًا، ثُمَّ قَرَأَ مَا شَاءَ اللَّهُ أَنْ يَقْرَأَ، ثُمَّ كَبَّرَ فَرَكَعَ.

L8910 And through the chain of Ma'mar from Qatadah and Asim al-Ahwal, both from Abdullah ibn al-Harith from Ibn Abbas, that he prayed in Basra during the earthquake and prolonged the qunoot, then bowed, then raised his head and prolonged the qunoot, then bowed, then raised his head and prolonged the qunoot, then bowed, then he prostrated, then prayed the second rak'ah likewise. Thus, it became three bowings in four prostrations. He said: "Is this how the Prayer of the Signs is performed?"

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ قَتَادَةَ وَعَاصِمٍ الْأَحْوَلِ كِلَاهُمَا عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ صَلَّى بِالْبَصْرَةِ فِي الزَّلْزَلَةِ فَأَطَالَ الْقُنُوتَ، ثُمَّ رَكَعَ ثُمَّ رَفَعَ رَأْسَهُ فَأَطَالَ الْقُنُوتَ، ثُمَّ رَكَعَ ثُمَّ رَفَعَ رَأْسَهُ فَأَطَالَ الْقُنُوتَ، ثُمَّ رَكَعَ، ثُمَّ سَجَدَ، ثُمَّ صَلَّى الثَّانِيَةَ كَذَلِكَ، فَصَارَ ثَلَاثَ رَكَعَاتٍ فِي أَرْبَعِ سَجَدَاتٍ. وَقَالَ: هَكَذَا صَلَاةُ الْآيَاتِ؟

L8911 Qatādah said: Ḥudhayfah prayed the Prayer of the Signs (Ṣalāt al-Āyāt) in Al-Madā'in with his companions, like Ibn ʿAbbās's prayer for the signs—three rak'ahs followed by two prostrations. Did he do the same in the other rak'ah?

قَالَ قَتَادَةُ: صَلَّى حُذَيْفَةُ بِالْمَدَائِنِ بِأَصْحَابِهِ مِثْلَ صَلَاةِ ابْنِ عَبَّاسٍ فِي الْآيَاتِ ثَلَاثَ رَكَعَاتٍ ثُمَّ سَجَدَ سَجْدَتَيْنِ، وَفَعَلَ فِي الْأُخْرَى مِثْلَ ذَلِكَ؟

L8912–8913 From the narration of Waki' through Hisham al-Dastuwa'i, from Qatadah, from 'Ata', from 'Ubayd ibn 'Umayr, from 'Aishah, the Mother of the Believers, who said: The Prayer of the Signs consists of six rak'ahs within four prostrations. If one wishes to pray specifically during a solar eclipse, he may perform two rak'ahs, with four bowings in each rak'ah: he recites, then bows, then rises and recites, then bows, then rises and recites, then bows, then rises and recites, then bows, then rises and says, "Allah hears those who praise Him," then prostrates twice. He then performs the second rak'ah in the

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ قَتَادَةَ عَنْ عَطَاءٍ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: صَلَاةُ الْآيَاتِ سِتُّ رَكَعَاتٍ فِي أَرْبَعِ سَجَدَاتٍ وَإِنْ شَاءَ صَلَّى فِي كُسُوفِ الشَّمْسِ خَاصَّةً رَكْعَتَيْنِ فِي كُلِّ رَكْعَةٍ أَرْبَعُ رَكَعَاتٍ، يَقْرَأُ ثُمَّ يَرْكَعُ، ثُمَّ يَرْفَعُ فَيَقْرَأُ ثُمَّ يَرْكَعُ، ثُمَّ يَرْفَعُ فَيَقْرَأُ ثُمَّ يَرْكَعُ، ثُمَّ يَرْفَعُ فَيَقُولُ: "

same manner, exactly alike, then sits to recite the Tashahhud and concludes with the Salam.

سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ " ثُمَّ يَسْجُدُ سَجْدَتَيْنِ، ثُمَّ يَفْعَلُ فِي الثَّانِيَةِ كَذَلِكَ أَيْضًا سَوَاءً بِسَوَاءٍ، ثُمَّ يَجْلِسُ وَيَتَشَهَّدُ وَيُسَلِّمُ

L8914 Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Abu Bakr ibn Abi Shaybah narrated to us, Isma'il ibn Ulayyah narrated to us, from Sufyan al-Thawri, from Habib - who is Ibn Abi Thabit - from Tawus, from Ibn Abbas, who said: "The Messenger of Allah (peace and blessings be upon him) prayed eight rak'ahs in four prostrations when the sun was eclipsed." A similar report is narrated from Ali (may Allah be pleased with him).

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَبِيبٍ هُوَ ابْنُ أَبِي ثَابِتٍ - عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: «صَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَ كَسَفَتْ الشَّمْسُ ثَمَانِيَ رَكَعَاتٍ فِي أَرْبَعِ سَجَدَاتٍ» وَعَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - مِثْلُ ذَلِكَ

L8915 By his chain to Muslim: Muhammad ibn al-Muthanna narrated to us, Yahya ibn Sa'id al-Qattan narrated to us from Sufyan al-Thawri, who narrated to us from Habib (the son of Abi Thabit) from Tawus, from Ibn Abbas, from the Prophet (peace and blessings of Allah be upon him), that he prayed during an eclipse, reciting then bowing, then reciting then bowing, then reciting then bowing, then reciting then bowing, then prostrating. He said: "The second rak'ah was performed the same way."[47]

وَبِهِ إلَى مُسْلِمٍ: ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ سُفْيَانَ الثَّوْرِيِّ ثنا حَبِيبٌ هُوَ ابْنُ أَبِي ثَابِتٍ - عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ صَلَّى فِي كُسُوفٍ، قَرَأَ ثُمَّ رَكَعَ، ثُمَّ قَرَأَ ثُمَّ رَكَعَ، ثُمَّ قَرَأَ ثُمَّ رَكَعَ، ثُمَّ قَرَأَ ثُمَّ رَكَعَ، ثُمَّ سَجَدَ، قَالَ: وَالْأُخْرَى مِثْلُهَا» .

L8916 This is the statement of ʿAlī, as we have mentioned. Indeed, Ibn ʿAbbās and Ḥabīb ibn Abī Thābit also performed it. We have been narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj that Sulaymān al-Aḥwal informed him that Tawus informed him - that Ibn ʿAbbās prayed two rakʿahs when the sun was eclipsed upon the platform of Zamzam, performing four rakʿahs in each rakʿah.

وَهُوَ قَوْلُ عَلِيٍّ كَمَا ذَكَرْنَا؟ وَقَدْ فَعَلَهُ أَيْضًا ابْنُ عَبَّاسٍ، وَحَبِيبُ بْنُ أَبِي ثَابِتٍ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَنَّ سُلَيْمَانَ الْأَحْوَلَ أَخْبَرَهُ أَنَّ طَاوُسًا أَخْبَرَهُ - أَنَّ ابْنَ عَبَّاسٍ: صَلَّى إذْ كَسَفَتْ الشَّمْسُ - عَلَى ظَهْرِ صِفَةِ زَمْزَمَ - رَكْعَتَيْنِ فِي كُلِّ رَكْعَةٍ أَرْبَعُ رَكَعَاتٍ.

L8917 From Sufyan al-Thawri, from Habib ibn Abi Thabit: He prayed two rak'ahs during the solar eclipse, with four bowings in each rak'ah, as narrated.

وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ: أَنَّهُ صَلَّى فِي كُسُوفِ الشَّمْسِ رَكْعَتَيْنِ، فِي كُلِّ رَكْعَةٍ أَرْبَعُ رَكَعَاتٍ، كَمَا رَوَى.

L8918–8920 And if he wishes, he may pray two rakʿahs exclusively for the solar eclipse,

[47] **Hadith references (L8915):** Sahih Muslim 909.

with five bowings in each rakʿah. He recites, then bows, then rises and recites, then bows, then rises and recites, then bows, then rises and recites, then bows, then rises and recites, then bows, then rises and prostrates twice. Then the second rakʿah is performed in the same manner, then he sits. Does he recite the *Tashahhud* and perform the *Taslim*?

وَإِنْ شَاءَ صَلَّى فِي كُسُوفِ الشَّمْسِ خَاصَّةً رَكْعَتَيْنِ، فِي كُلِّ رَكْعَةٍ خَمْسَ رَكَعَاتٍ، يَقْرَأُ ثُمَّ يَرْكَعُ، ثُمَّ يَرْفَعُ فَيَقْرَأُ ثُمَّ يَرْكَعُ، ثُمَّ يَرْفَعُ فَيَقْرَأُ ثُمَّ يَرْكَعُ، ثُمَّ يَرْفَعُ فَيَقْرَأُ ثُمَّ يَرْكَعُ، ثُمَّ يَرْفَعُ فَيَقْرَأُ ثُمَّ يَرْكَعُ، ثُمَّ يَرْفَعُ ثُمَّ يَسْجُدُ سَجْدَتَيْنِ ثُمَّ الثَّانِيَةُ كَذَلِكَ أَيْضًا ثُمَّ يَجْلِسُ وَيَتَشَهَّدُ وَيُسَلِّمُ؟

L8921 Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: Isḥāq ibn Ibrāhīm—known as Ibn Rāhawayh—narrated to us: Muʿādh ibn Hishām al-Dastawāʾī narrated to us, saying: My father narrated to me from Qatādah regarding the Prayer for Cosmic Phenomena, from ʿAṭāʾ ibn Abī Rabāḥ, from ʿUbayd ibn ʿUmayr, from ʿĀʾishah, the Mother of the Believers, that "the Prophet (peace and blessings of Allah be upon him) prayed six rakʿahs structured into four sets of prostrations."[48]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - ثنا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ حَدَّثَنِي أَبِي عَنْ قَتَادَةَ فِي صَلَاةِ الْآيَاتِ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى سِتَّ رَكَعَاتٍ فِي أَرْبَعِ سَجَدَاتٍ» .

L8922 We have also narrated it, clarified in the rulings of the solar eclipse in the same manner of action, through the narration of Ubayy ibn Kaʿb.

وَرُوِّينَاهُ أَيْضًا مُبَيَّنًا فِي كُسُوفِ الشَّمْسِ بِصِفَةِ الْعَمَلِ كَذَلِكَ مِنْ طَرِيقِ أُبَيِّ بْنِ كَعْبٍ.

L8923 Through the narration of Waki' from al-Mubārak ibn Fuḍāla from al-Ḥasan al-Baṣrī: that ʿAlī ibn Abī Ṭālib prayed during an eclipse with ten rakʿahs accompanied by four prostrations. Abū Muḥammad said: All of this is of the highest authenticity from the Messenger of Allah—peace and blessings of Allah be upon him—and from those who acted upon it among the Companions or the Followers. It is reported from al-ʿAlāʾ ibn Ziyād al-ʿAdawī—who was among the senior Followers—that the manner of the eclipse prayer is to recite, then bow; if the eclipse does not clear, he bows again, then rises and recites, repeating this process until the eclipse clears. When it clears, he prostrates, then performs the second rakʿah.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الْمُبَارَكِ بْنِ فُضَالَةَ عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ صَلَّى فِي كُسُوفٍ عَشْرَ رَكَعَاتٍ فِي أَرْبَعِ سَجَدَاتٍ؟ قَالَ أَبُو مُحَمَّدٍ: كُلُّ هَذَا فِي غَايَةِ الصِّحَّةِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَمَّنْ عَمِلَ بِهِ مِنْ صَاحِبٍ أَوْ تَابِعٍ؟ وَرُوِيَ عَنْ الْعَلَاءِ بْنِ زِيَادٍ الْعَدَوِيِّ - وَهُوَ مِنْ كِبَارِ التَّابِعِينَ أَنَّ صِفَةَ صَلَاةِ الْكُسُوفِ: أَنْ يَقْرَأَ ثُمَّ يَرْكَعَ فَإِنْ لَمْ تَنْجَلِ رَكَعَ ثُمَّ رَفَعَ، فَقَرَأَ هَكَذَا أَبَدًا حَتَّى تَنْجَلِيَ، فَإِذَا انْجَلَتْ سَجَدَ ثُمَّ رَكَعَ الثَّانِيَةَ.

L8924 And from Isḥāq ibn Rāhawayh something similar to this? Abū Muḥammad said: It is impermissible to restrict oneself to some of these narrations while excluding others, for they all constitute *Sunnan*. Nor is it permissible to prohibit anything from the *Sunnan*.

وَعَنْ إِسْحَاقَ بْنِ رَاهْوَيْهِ نَحْوَ هَذَا؟ قَالَ أَبُو مُحَمَّدٍ: لَا يَحِلُّ الِاقْتِصَارُ عَلَى بَعْضِ هَذِهِ الْآثَارِ دُونَ بَعْضٍ؛ لِأَنَّهَا كُلَّهَا سُنَنٌ، وَلَا يَحِلُّ النَّهْيُ عَنْ شَيْءٍ مِنْ السُّنَنِ؟

[48] **Hadith references (L8921):** Sunan an-Nasai 1471.

فَأَمَّا مَالِكٌ: فَإِنَّهُ فِي اخْتِيَارِهِ بَعْضِ مَا رُوِيَ مِنْ طَرِيقِ ابْنِ عَبَّاسٍ، وَعَائِشَةَ - رَضِيَ اللَّهُ عَنْهُمَا - وَتَقْلِيدُ أَصْحَابِهِ لَهُ فِي ذَلِكَ -: هَادِمُونَ أَصْلًا لَهُمْ كَبِيرًا، وَهُوَ أَنَّ الثَّابِتَ عَنْ عَائِشَةَ، وَابْنِ عَبَّاسٍ خِلَافُ مَا رَوَيَا مِمَّا اخْتَارَهُ مَالِكٌ كَمَا أَوْرَدْنَا آنِفًا.

L8925 As for Mālik: regarding his selection of certain narrations transmitted through Ibn ʿAbbās and ʿĀ'ishah—may Allah be pleased with them—and his followers' adherence to him in this matter, they are destroying a great foundational principle of their own school. This principle asserts that the established positions of ʿĀ'ishah and Ibn ʿAbbās contradict the very reports they themselves narrated, which Mālik nonetheless selected, as we cited earlier.

وَمِنْ أَصْلِهِمْ أَنَّ الصَّاحِبَ إِذَا صَحَّ عَنْهُ خِلَافَ مَا رَوَى كَانَ ذَلِكَ دَلِيلًا عَلَى نَسْخِهِ؛ لِأَنَّهُ لَا يَتْرُكُ مَا رَوَى إِلَّا لِأَنَّ عِنْدَهُ عِلْمًا بِسُنَّةٍ هِيَ أَوْلَى مِنْ الَّتِي تَرَكَ، وَهَذَا مِمَّا تَنَاقَضُوا فِيهِ؟ وَأَمَّا أَبُو حَنِيفَةَ وَمَنْ قَلَّدَهُ: فَإِنَّهُمْ عَارَضُوا سَائِرَ مَا رُوِيَ بِأَنْ قَالُوا: لَمْ نَجِدْ فِي الْأُصُولِ صِفَةَ شَيْءٍ مِنْ هَذِهِ الْأَعْمَالِ؟ قَالَ أَبُو مُحَمَّد: وَهَذَا ضَلَالٌ يُؤَدِّي إِلَى الِانْسِلَاخِ مِنْ الْإِسْلَامِ؟ لِأَنَّهُمْ مُصَرِّحُونَ بِأَنْ لَا يُؤْخَذَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُنَّةٌ، وَلَا يُطَاعَ لَهُ أَمْرٌ -: إِلَّا حَتَّى يُوجَدَ فِي سَائِرِ الدِّيَانَةِ حُكْمٌ آخَرُ مِثْلُ هَذَا الَّذِي خَالَفُوا، وَمَعَ هَذَا فَهُوَ حُمْقٌ مِنْ الْقَوْلِ.

L8926–8927 Among their foundational principles is that if a Companion is authentically reported to have acted contrary to what he narrated, this serves as evidence of its abrogation—for he would not abandon what he narrated except due to possessing knowledge of a Sunnah more authoritative than the one he abandoned. Yet is this not among the matters in which they contradicted themselves? As for Abū Ḥanīfa and those who emulated him, they opposed all that was narrated by claiming: "We have not found in the foundational sources the specifics of any of these acts?" Abū Muḥammad said: "This is a misguidance leading to apostasy from Islam, for they explicitly declare that no Sunnah of the Messenger of Allah—peace and blessings be upon him—is to be followed, nor is any command of his to be obeyed, unless another ruling similar to this which they opposed is found in the rest of the religion. Moreover, this is sheer stupidity in speech."

وَلَيْتَ شِعْرِي مِنْ أَيْنَ وَجَبَ أَنْ لَا تُؤْخَذَ لِلَّهِ شَرِيعَةٌ إِلَّا حَتَّى تُوجَدَ أُخْرَى مِثْلُهَا وَإِلَّا فَلَا؟ وَمَا نَدْرِي هَذَا يَجِبُ، لَا بِدِينٍ وَلَا بِعَقْلٍ، وَلَا بِرَأْيٍ سَدِيدٍ، وَلَا بِقَوْلٍ مُتَقَدِّمٍ، وَمَا هُمْ بِأَوْلَى مِنْ آخَرَ، قَالَ: بَلْ لَا آخُذُ بِهَا حَتَّى أَجِدَ لَهَا نَظِيرَيْنِ أَوْ مِنْ ثَالِثٍ قَالَ: لَا حَتَّى أَجِدَ لَهَا ثَلَاثَ نَظَائِرَ؟ وَالزِّيَادَةُ مُمْكِنَةٌ لِمَنْ لَا دِينَ لَهُ وَلَا عَقْلَ وَلَا حَيَاءَ ثُمَّ نَقَضُوا هَذَا فَجَوَّزُوا صَلَاةَ الْخَوْفِ كَمَا جَوَّزُوهَا، وَلَمْ يَجِدُوا لَهَا فِي الْأُصُولِ نَظِيرًا، فِي أَنْ يَقِفَ الْمَأْمُومُ فِي الصَّلَاةِ بَعْدَ دُخُولِهِ فِيهَا مُخْتَارًا لِلْوُقُوفِ، لَا يُصَلِّي بِصَلَاةِ إِمَامِهِ، وَلَا يُتِمُّ مَا بَقِيَ عَلَيْهِ؟ وَجَوَّزُوا الْبِنَاءَ فِي الْحَدَثِ، وَلَمْ يَجِدُوا فِي الْأُصُولِ لَهَا نَظِيرًا، أَنْ يَكُونَ فِي صَلَاتِهِ بِلَا طَهَارَةٍ، ثُمَّ لَا يَعْمَلُ عَمَلَ صَلَاتِهِ، وَلَا هُوَ خَارِجٌ عَنْهَا، وَالْقَوْمُ

L8928 I wish I knew from where it became obligatory that no divine legislation for Allah may be adopted unless another like it is found—otherwise not? We do not know this being obligatory—not by religion, reason, sound opinion, nor prior statement. They have no greater right than others. One said: "Rather, I will not adopt it until I find two parallels for it," while a third said: "No, until I find three parallels?" Such additions are possible only for those without religion, intellect, or shame. Then they invalidated this by permitting the prayer of fear as they sanctioned it, though finding no precedent in foundational principles for a follower to voluntarily pause in prayer after entering it—not praying in accordance with his imam's prayer nor completing what remains upon him. They permitted resuming prayer after ritual impurity without finding any analogy in foundational principles for one remaining in prayer without purification—neither performing its acts nor exiting it. Do these people not care about what they have said?

Abu Hanifa and Malik stated: “One does not recite aloud during the eclipse prayer.” Those arguing for them claimed: “Had Allah’s Messenger—peace and blessings be upon him—recited aloud, what he recited would have been known.” Abu Muhammad said: “This argument is invalid, for what he recited is indeed known.”

لَا يُبَالُونَ بِمَا قَالُوا؟ وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَا يَجْهَرُ فِي صَلَاةِ الْكُسُوفِ وَقَالَ مَنْ احْتَجَّ لَهُمْ: لَوْ جَهَرَ فِيهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَعُرِفَ بِمَا قَرَأَ؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا احْتِجَاجٌ فَاسِدٌ، وَقَدْ عُرِفَ مَا قَرَأَ؟

L8929 Abd al-Rahman ibn Abdullah narrated to us: Ibrahim ibn Ahmad, al-Farbarī, al-Bukhari, Muhammad ibn Mihran—he is al-Razi—, al-Walid ibn Muslim, Ibn Nimr Abd al-Rahman, who heard Ibn Shihab from Urwah from Aisha, who said: “The Messenger of Allah (peace be upon him) recited aloud in his recitation during the eclipse prayer.”

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُحَمَّدُ بْنُ مِهْرَانَ هُوَ الرَّازِيّ - ثنا الْوَلِيدُ بْنُ مُسْلِمٍ ثنا ابْنُ نَمِرٍ عَبْدُ الرَّحْمَنِ - سَمِعَ ابْنُ شِهَابٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ قَالَتْ: «جَهَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي صَلَاةِ الْكُسُوفِ بِقِرَاءَتِهِ» .

L8930–8931 Abdullah ibn Rabīʿ narrated to us, Muḥammad ibn Isḥāq ibn as-Salīm narrated to us, ibn al-Aʿrabī narrated to us, Abū Dāwūd narrated to us, al-ʿAbbās ibn al-Walīd ibn Yazīd informed me, my father informed me, al-Awzāʿī narrated to us, ʿUrwah ibn al-Zubayr narrated from ʿĀʾishah, the Mother of the Faithful: “The Messenger of Allah (peace and blessings be upon him) recited an extended recitation and proclaimed it aloud” in the description of the eclipse prayer?[49]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السَّلِيمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا الْعَبَّاسُ بْنُ الْوَلِيدِ بْنُ يَزِيدَ أَخْبَرَنِي أَبِي ثنا الْأَوْزَاعِيُّ أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَرَأَ قِرَاءَةً طَوِيلَةً فَجَهَرَ بِهَا» فِي صِفَتِهَا لِصَلَاةِ الْكُسُوفِ؟

L8932 Abu Muhammad said: The definitive position of Aisha, Urwah, Al-Zuhri, and Al-Awzaʿi that he—peace be upon him—recited aloud during it is more valid than these false conjectures.

قَالَ أَبُو مُحَمَّدٍ: قَطْعُ عَائِشَةَ، وَعُرْوَةَ، وَالزُّهْرِيِّ، وَالْأَوْزَاعِيِّ بِأَنَّهُ - عَلَيْهِ السَّلَامُ - جَهَرَ فِيهَا -: أَوْلَى مِنْ ظُنُونِ هَؤُلَاءِ الْكَاذِبَةِ.

L8933 It has been narrated to us via the chain of Ubayy ibn Kaʿb that the Messenger of Allah (may Allah’s peace and blessings be upon him) recited one of the long surahs in the first rakʿah of the eclipse prayer.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ أُبَيِّ بْنِ كَعْبٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَرَأَ فِي أَوَّلِ رَكْعَةٍ مِنْ صَلَاةِ الْكُسُوفِ سُورَةً مِنْ الطُّوَلِ» .

L8934 If it is said: “Verily, Samurah narrated, stating, ‘Verily, he (peace be upon him) prayed during the eclipse—we did not hear him raise his voice’”?

فَإِنْ قِيلَ: إنَّ سَمُرَةَ رَوَى فَقَالَ: «إنَّهُ - عَلَيْهِ السَّلَامُ - صَلَّى فِي الْكُسُوفِ لَا نَسْمَعُ لَهُ صَوْتًا» ؟

L8935–8936 We said: This is invalid because it was only narrated by Thaʿlabah ibn ʿAbbād

[49] **Hadith references (L8931):** Sunan Abi Dawud 1188.

al-ʻAbdī, who is unknown (majhūl). Furthermore, even if it were authentic, they would have no argument in it, for it does not state that the Prophet—peace be upon him—did not recite audibly. Rather, it states: "We do not hear his voice." Samurah was truthful in not hearing it, for if he had been positioned to hear it, he would have heard it, just as ʻĀ'ishah—may Allah be pleased with her—heard it, as she was near the Qiblah in her room. Both of them are truthful.

قُلْنَا: هَذَا لَا يَصِحُّ، لِأَنَّهُ لَمْ يَرْوِهِ إِلَّا ثَعْلَبَةُ بْنُ عَبَّادٍ الْعَبْدِيُّ، وَهُوَ مَجْهُولٌ، ثُمَّ لَوْ صَحَّ لَمْ تَكُنْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَجْهَرْ وَإِنَّمَا فِيهِ «لَا نَسْمَعُ لَهُ صَوْتًا» وَصَدَقَ سَمُرَةُ فِي أَنَّهُ لَمْ يَسْمَعْهُ، وَلَوْ كَانَ بِحَيْثُ يَسْمَعُهُ لَسَمِعَهُ كَمَا سَمِعَتْهُ عَائِشَةُ - رَضِيَ اللَّهُ عَنْهَا - الَّتِي كَانَتْ قَرِيبًا مِنْ الْقِبْلَةِ فِي حُجْرَتِهَا، وَكِلَاهُمَا صَادِقٌ

Furthermore, if it had contained "did not recite aloud," the narration of ʻĀ'ishah would have constituted an addition to what is in the narration of Samurah, and the addition takes precedence, or both cases would have been permissible without either invalidating the other. How, then, [is it] when there is nothing of this in it?

L8937

ثُمَّ لَوْ كَانَ فِيهِ " لَمْ يَجْهَرْ " لَكَانَ خَبَرُ عَائِشَةَ زَائِدًا عَلَى مَا فِي خَبَرِ سَمُرَةَ، وَالزَّائِدُ أَوْلَى، أَوْ لَكَانَ كِلَا الْأَمْرَيْنِ جَائِزًا لَا يُبْطِلُ أَحَدُهُمَا الْآخَرَ، فَكَيْفَ وَلَيْسَ فِيهِ شَيْءٌ مِنْ هَذَا؟

Abu Muhammad said: We do not know whether the Malikis' preferred ruling is supported by a practice reported from any Companion—may Allah be pleased with them—with explicit evidence that he [the Prophet] restricted himself to that practice. If it is said: How can all these practices be authentic when he—peace be upon him—only performed it once at Ibrahim's death? We reply: This is falsehood and an assertion rooted in ignorance—Abdullah ibn Rabiʻ narrated to us, Muhammad ibn Muʻawiyah narrated to us, Ahmad ibn Shuʻayb narrated to us, Abdah ibn Abd al-Rahim narrated to us, Sufyan ibn Uyaynah narrated to us, from Yahya ibn Saʻid al-Ansari, from Amrah, from Aishah: "The Messenger of Allah—peace and blessings be upon him—prayed during an eclipse in the vicinity of Zamzam with four rakʻahs and four prostrations." This was an eclipse prayer in Mecca, distinct from the one in Medina. They never reported from anyone "that the Messenger of Allah—peace and blessings be upon him—performed the eclipse prayer only once."

L8938

قَالَ أَبُو مُحَمَّد: وَلَا نَعْلَمُ اخْتِيَارَ الْمَالِكِيِّينَ رُوِيَ عَمَلُهُ عَنْ أَحَد مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بِبَيَانِ اقْتِصَارِهِ عَلَى ذَلِكَ الْعَمَلِ؟ فَإِنْ قِيلَ: كَيْفَ تَكُونُ هَذِهِ الْأَعْمَالُ صِحَاحًا كُلُّهَا وَإِنَّمَا صَلَّاهَا - عَلَيْهِ السَّلَامُ - مَرَّةً وَاحِدَةً إذْ مَاتَ إبْرَاهِيمُ؟ قُلْنَا: هَذَا هُوَ الْكَذِبُ وَالْقَوْلُ بِالْجَهْلِ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَبْدَةُ بْنُ عَبْدِ الرَّحِيمِ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ عَمْرَةَ عَنْ عَائِشَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى فِي كُسُوفٍ - فِي صِفَةِ زَمْزَمَ - أَرْبَعَ رَكَعَاتٍ وَأَرْبَعَ سَجَدَاتٍ» . فَهَذِهِ صَلَاةُ كُسُوفٍ كَانَتْ بِمَكَّةَ سِوَى الَّتِي كَانَتْ بِالْمَدِينَةِ، وَمَا رَوَوْا قَطُّ عَنْ أَحَدٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُصَلِّ الْكُسُوفَ إلَّا مَرَّةً ".

Solar eclipses occur repeatedly, with five lunar months between every two eclipses. What denial could there be of him (PBUH) performing prayer during them tens of times throughout his prophethood? This is demonstrated by the recorded patterns of astronomical observatories regarding solar eclipses. As for our limitation to what we have described concerning the lunar eclipse

L8939–8942

وَكُسُوفُ الشَّمْسِ يَكُونُ مُتَوَاتِرًا، بَيْنَ كُلِّ كُسُوفَيْنِ خَمْسَةُ أَشْهُرٍ قَمَرِيَّةٍ، فَأَيُّ نَكِرَةٍ فِي أَنْ يُصَلِّيَ - عَلَيْهِ السَّلَامُ - فِيهِ عَشَرَاتٍ مِنْ الْمَرَّاتِ فِي نُبُوَّتِهِ؟ صُورَةُ الْمَرَاصِدِ الْفَلَكِيَّةِ لِكُسُوفِ الشَّمْسِ وَأَمَّا اقْتِصَارُنَا عَلَى مَا وَصَفْنَا فِي صَلَاةِ كُسُوفِ الْقَمَرِ لِقَوْلِ رَسُولِ

prayer, it is due to the statement of Allah's Messenger - peace and blessings of Allah be upon him - "Prayers of the night and day are two by two." Thus, no prayer may validly consist of other than two by two units, except when an explicit authentic text specifies fewer or more than two rak'ahs, as mentioned regarding the solar eclipse. Here we adhere strictly to that, and legal rulings are not pitted against one another, for are they not all truths? We maintain that the lunar eclipse prayer and other signs are performed in congregation based on the Prophet's declaration - peace and blessings of Allah be upon him - "Congregational prayer surpasses individual prayer by twenty-seven degrees." Women, solitary worshippers, and travelers may perform it, as we previously detailed. Success is from Allah, the Exalted.

L8943 **Prostration of the Quran**

L8944 **An issue in the Quran: fourteen prostrations.**

L8945–8947 Prostrations in the Quran 556 – A ruling regarding fourteen prostrations in the Quran: the first being at the end of the conclusion of Sūrat al-Aʿrāf – followed by al-Raʿd. Then in Surah An-Nahl – then in "Subhana" – then in "Kaf Ha Ya 'Ayn Sad" – then in the first prostration of Surah Al-Hajj, not the one near its end – then in Surah Al-Furqan – then in Surah An-Naml – then in "Alif Lam Meem Tanzil" – then in Surah Sad – then in Surah Fussilat at "Ha Meem" – then in Surah An-Najm at its end – then in "Idha As-Sama'u Inshaqqat" at His saying, the Exalted: {they do not prostrate} [Al-Inshiqaq: 21] – then in "Iqra' Bismi Rabbika" at its conclusion. This prostration is not obligatory but recommended. It may be performed during obligatory prayers and voluntary prayers, and outside prayer at any time – during sunrise, sunset, or midday, facing the qiblah or otherwise, in a state of purity or without it.[50]

L8948 As for the consecutive prostration verses up to "Alif Lām Mīm, Tanzīl," there is no disagreement concerning them, nor regarding the positions of

[50] **Qur'an references (L8945):** Qur'an 84:21 (Al-Inshiqaq).

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «صَلاَةُ اللَّيْلِ وَالنَّهَارِ مَثْنَى مَثْنَى» فَلَا يَجُوزُ أَنْ تَكُونَ صَلَاةً إِلَّا مَثْنَى مَثْنَى، إِلَّا صَلَاةٌ جَاءَ نَصٌّ جَلِيٌّ صَحِيحٌ بِأَنَّهَا أَقَلُّ مِنْ مَثْنَى أَوْ أَكْثَرُ مِنْ مَثْنَى، كَمَا جَاءَ فِي كُسُوفِ الشَّمْسِ، فَيُوقَفُ عِنْدَ ذَلِكَ وَلَا تُضْرَبُ الشَّرَائِعُ بَعْضُهَا بِبَعْضٍ، بَلْ كُلُّهَا حَقٌّ؟ وَإِنَّمَا قُلْنَا بِصَلَاةِ الْكُسُوفِ الْقَمَرِيِّ، وَالْآيَاتِ فِي جَمَاعَةٍ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «صَلَاةُ الْجَمَاعَةِ تَفْضُلُ صَلَاةَ الْمُنْفَرِدِ بِسَبْعٍ وَعِشْرِينَ» . وَيُصَلِّيهَا: النِّسَاءُ، وَالْمُنْفَرِدُ، وَالْمُسَافِرُونَ، كَمَا ذَكَرْنَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ

[سُجُودُ الْقُرْآنِ]

[مَسْأَلَةٌ فِي الْقُرْآنِ أَرْبَعَ عَشْرَةَ سَجْدَةً]

سُجُودُ الْقُرْآنِ ٥٥٦ - مَسْأَلَةٌ فِي الْقُرْآنِ أَرْبَعَ عَشْرَةَ سَجْدَةً - أَوَّلُهَا -: - فِي آخِرِ خَاتِمَةِ سُورَةِ الْأَعْرَافِ - ثُمَّ فِي الرَّعْدِ ثُمَّ فِي النَّحْلِ - ثُمَّ فِي " سُبْحَانَ " - ثُمَّ فِي " كهيعص " - ثُمَّ فِي الْحَجِّ فِي الْأُولَى - وَلَيْسَ قُرْبَ آخِرِهَا - سَجْدَةٌ - ثُمَّ فِي الْفُرْقَانِ - ثُمَّ فِي النَّمْلِ - ثُمَّ فِي " الم تَنْزِيلُ " - ثُمَّ فِي " ص " ثُمَّ فِي " حم " فُصِّلَتْ - ثُمَّ فِي " وَالنَّجْمِ " فِي آخِرِهَا. - ثُمَّ فِي " إِذَا السَّمَاءُ انْشَقَّتْ " عِنْدَ قَوْلِهِ تَعَالَى {لا يَسْجُدُونَ} [الانشقاق: ٢١] ثُمَّ فِي " اقْرَأْ بِاسْمِ رَبِّكَ " فِي آخِرِهَا. وَلَيْسَ السُّجُودُ فَرْضًا لَكِنَّهُ فَضْلٌ وَيَسْجُدُ لَهَا فِي الصَّلَاةِ الْفَرِيضَةِ وَالتَّطَوُّعِ، وَفِي غَيْرِ الصَّلَاةِ فِي كُلِّ وَقْتٍ، وَعِنْدَ طُلُوعِ الشَّمْسِ وَغُرُوبِهَا وَاسْتِوَائِهَا إِلَى الْقِبْلَةِ وَإِلَى غَيْرِ الْقِبْلَةِ وَعَلَى طَهَارَةٍ وَعَلَى غَيْرِ طَهَارَةٍ.

فَأَمَّا السَّجَدَاتُ الْمُتَّصِلَةُ إِلَى " الم تَنْزِيلُ " فَلَا خِلَافَ فِيهَا، وَلَا فِي مَوَاضِعِ السُّجُودِ مِنْهَا، إِلَّا فِي سُورَةِ النَّمْلِ، فَإِنَّ كَثِيرًا مِنْ النَّاسِ قَالُوا: مَوْضِعُ السَّجْدَةِ فِيهَا عِنْدَ تَمَامِ قِرَاءَتِك {رَبُّ الْعَرْشِ الْعَظِيمِ} [النمل: ٢٦] .

prostration within them, except in Surah An-Naml. Many people have said that the place of prostration in it occurs upon completing the recitation of "Lord of the Mighty Throne" [An-Naml: 26].[51]

وَقَالَ بَعْضُ الْفُقَهَاءِ، بَلْ فِي تَمَامِ قِرَاءَتِك {وَمَا تُعْلِنُونَ} [النمل: ٢٥]

L8949 And some jurists said, rather, in the completion of your recitation—"And what you declare openly" (An-Naml 27:25).[52]

وَبِهَذَا نَقُولُ، لِأَنَّهُ أَقْرَبُ إلَى مَوْضِعِ ذِكْرِ السُّجُودِ وَالْأَمْرِ بِهِ، وَالْمُبَادَرَةُ إلَى فِعْلِ الْخَيْرِ أَوْلَى.

L8950 And this is our view, because it aligns more closely with the context where prostration is mentioned and the command thereof, and hastening to do good takes precedence.

قَالَ تَعَالَى: {وَسَارِعُوا إِلَى مَغْفِرَةٍ مِنْ رَبِّكُمْ} [آل عمران: ١٣٣] .

L8951 He, the Exalted, said: "And strive eagerly for forgiveness from your Lord" [Āl ʿImrān 3:133].[53]

وَقَالَتْ طَائِفَةٌ: فِي الْحَجِّ سَجْدَةٌ ثَانِيَةٌ قُرْبَ آخِرِهَا، عِنْدَ قَوْلِهِ تَعَالَى: {وَافْعَلُوا الْخَيْرَ لَعَلَّكُمْ تُفْلِحُونَ} [الحج: ٧٧] وَلَا نَقُولُ بِهَذَا فِي الصَّلَاةِ أَلْبَتَّةَ، لِأَنَّهُ لَا يَجُوزُ أَنْ يُزَادَ فِي الصَّلَاةِ سُجُودٌ لَمْ يَصِحَّ بِهِ نَصٌّ، وَالصَّلَاةُ تَبْطُلُ بِذَلِكَ، وَأَمَّا فِي غَيْرِ الصَّلَاةِ فَهُوَ حَسَنٌ، لِأَنَّهُ فِعْلُ خَيْرٍ؟

L8952 A group has said that in Hajj there is a second prostration near its end, at the mention of His statement, the Exalted: {And do good that you may succeed} [Al-Hajj: 77]. However, we absolutely do not affirm this view in prayer, because it is impermissible to add a prostration in prayer without valid textual evidence, and the prayer becomes invalid due to that. As for outside of prayer, it is commendable because it is an act of good.[54]

وَإِنَّمَا لَمْ نُجِزْهُ فِي الصَّلَاةِ؛ لِأَنَّهُ لَمْ يَصِحَّ فِيهَا سُنَّةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا أَجْمَعَ عَلَيْهَا، وَإِنَّمَا جَاءَ فِيهَا أَثَرٌ مُرْسَلٌ.

L8953–8954 We did not permit it in the prayer because there is no authenticated Sunnah from the Messenger of Allah—peace be upon him—regarding it, nor have the scholars reached consensus on it. Only a mursal report has been transmitted concerning it.

وَصَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ وَابْنِهِ عَبْدِ اللَّهِ، وَأَبِي الدَّرْدَاءِ: السُّجُودُ فِيهَا - وَرُوِيَ أَيْضًا عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ: ثنا شُعْبَةُ عَنْ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ سَمِعْت عَبْدَ اللَّهِ بْنَ ثَعْلَبَةَ يَقُولُ: صَلَّيْت خَلْفَ عُمَرَ بْنِ الْخَطَّابِ فَسَجَدَ فِي الْحَجِّ سَجْدَتَيْنِ.

L8955 It is authentically reported from Umar ibn al-Khattab, his son Abdullah, and Abu al-Darda' that they performed prostration in the Surah. It was also narrated from Abu Musa al-Ash'ari. The narration reached us through the chain of Abd al-Rahman ibn Mahdi: Shu'bah narrated from Sa'd ibn Ibrahim ibn Abd al-Rahman ibn Awf, who said: I heard Abdullah ibn Tha'labah state:

[51] **Qur'an references (L8948):** Qur'an 9:129 (At-Tawbah); Qur'an 27:26 (An-Naml).
[52] **Qur'an references (L8949):** Qur'an 27:25 (An-Naml).
[53] **Qur'an references (L8951):** Qur'an 3:133 (Ali 'Imran).
[54] **Qur'an references (L8952):** Qur'an 22:77 (Al-Hajj).

"I prayed behind Umar ibn al-Khattab, and he performed two prostrations in Surah Al-Hajj."

وَعَنْ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ: رَأَيْت عَبْدَ اللَّهِ بْنَ عُمَرَ سَجَدَ فِي الْحَجِّ سَجْدَتَيْنِ.

L8956 Narrated by Malik on the authority of ʿAbdullāh ibn Dīnār: I saw ʿAbdullāh ibn ʿUmar perform two sajdahs in prayer during the Hajj.

وَعَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ وَأَبَاهُ عُمَرَ كَانَا يَسْجُدَانِ فِي الْحَجِّ سَجْدَتَيْنِ. وَقَالَ ابْنُ عُمَرَ: لَوْ سَجَدْت فِيهَا وَاحِدَةً لَكَانَتْ السَّجْدَةُ فِي الْآخِرَةِ أَحَبَّ إلَيَّ؟ وَقَالَ عُمَرُ: إنَّهَا فُضِّلَتْ بِسَجْدَتَيْنِ.

L8957 From Maʿmar, from Ayyūb, from Nāfiʿ, from Ibn ʿUmar: He and his father ʿUmar would perform two prostrations in Sūrat al-Ḥajj. Ibn ʿUmar said, "If I were to perform a single prostration in it, the reward for prostration in the Hereafter would be dearer to me." ʿUmar said, "It has been favored with two prostrations."

وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ شُعْبَةَ عَنْ يَزِيدَ بْنِ خُمَيْرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ جُبَيْرِ بْنِ نُفَيْرٍ عَنْ أَبِيهِ: أَنَّ أَبَا الدَّرْدَاءِ سَجَدَ فِي الْحَجِّ سَجْدَتَيْنِ.

L8958 From ʿAbd al-Raḥmān ibn Mahdī, from Shuʿbah, from Yazīd ibn Khumayr, from ʿAbd al-Raḥmān ibn Jubayr ibn Nufayr, from his father, that Abū al-Dardāʾ performed two prayer units (rakʿahs) during Hajj.

وَرُوِيَ أَيْضًا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَأَبِي مُوسَى، وَعَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ.

L8959 And it has also been narrated from Ali ibn Abi Talib, Abu Musa, and Abdullah ibn Amr ibn al-As.

قَالَ أَبُو مُحَمَّد: أَيْنَ الْمُهَوِّلُونَ مِنْ أَصْحَابِ مَالِكٍ، وَأَبِي حَنِيفَةَ بِتَعْظِيمِ خِلَافِ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ؟

L8960 Abu Muhammad said: Where are the alarmists among the followers of Mālik and Abū Ḥanīfa who exaggerate the significance of a Companion's disagreement when no opposing view is attested from the Companions themselves?

وَقَدْ خَالَفُوا هَهُنَا فِعْلَ عُمَرَ بِحَضْرَةِ الصَّحَابَةِ لَا يُعْرَفُ لَهُ مِنْهُمْ مُخَالِفٌ، وَمَعَهُ طَوَائِفُ مِمَّنْ ذَكَرْنَا، وَمَعَهُمْ حَدِيثٌ مُرْسَلٌ بِمِثْلِ ذَلِكَ، وَطَوَائِفُ مِنْ التَّابِعِينَ وَمِنْ بَعْدِهِمْ؟ وَبِهِ يَقُولُ الشَّافِعِيُّ.

L8961–8963 And here they have opposed the action of Umar in the presence of the Companions, with no dissenter among them known to exist. With him are groups from those we mentioned, a mursal hadith similar to that, and groups from the Successors and... After them? This is the opinion upheld by Al-Shāfiʿī.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا إلَّا فِيمَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنْ قَالُوا: قَدْ جَاءَ عَنْ ابْنِ عَبَّاسٍ فِي هَذَا خِلَافٌ؟ قُلْنَا: لَيْسَ كَمَا تَقُولُونَ، إنَّمَا جَاءَ عَنْ ابْنِ عَبَّاسٍ: السُّجُودُ عَشْرٌ، وَقَدْ جَاءَ عَنْهُ: لَيْسَ فِي " ص " سَجْدَةٌ فَبَطَلَ أَنْ يَصِحَّ عَنْهُ خِلَافٌ فِي هَذَا.

L8964 As for us, we have no valid proof except what is authentically established from the Messenger of Allah—peace be upon him. If they say: "There is a differing opinion reported from Ibn Abbas regarding this," we respond: "It is not as you claim. What is reported from Ibn Abbas is that there are ten prostrations [in Quranic recitation], and it is also reported from him that there is no prostration in *Surah Ṣād*. Thus, the existence of an authentic differing opinion from him in this matter is invalid."

L8965 Rather, it has indeed been authentically reported from him (the Prophet)

that there are two prostrations in Surah Al-Hajj—as has been narrated to us through the chain of Shu'bah from 'Āṣim al-Aḥwal from Abū al-'Āliyah from Ibn 'Abbās, who said: "Was Surah Al-Hajj favored over the Quran by two prostrations?" There was disagreement: does Surah Ṣād contain a prostration or not? We only ruled based on the prostration in it because it has been authentically reported from the Messenger of Allah—peace and blessings be upon him—that he prostrated in it. We had previously mentioned this in the context of the preacher's prostration on Friday when he recites the prostration verse.

L8966 There was disagreement concerning the prostration in the Ḥā-Mīm chapters.

L8967 A group maintained: The prostration of recitation is to be performed upon reaching the conclusion of the Exalted's words, *"If it is Him alone you worship"* (41:37), and this is the position we adhere to.[55]

L8968 And a group said: Rather, at His saying: {And they do not grow weary} [Fussilat: 38].[56]

L8969–8971 We have chosen what we have chosen for two considerations: First, the verse requiring prostration precedes the other, and hastening to obedience is superior. Second, [one is] commanded to prostrate, and compliance with the command is more obligatory? Some of those not guided to correctness said: "We found prostration in the Quran occurs only in narrative contexts, not prescriptive ones?" Abu Muhammad said: "He is the first to have opposed this." Because he and all Muslims prostrate in the Criterion regarding the words of the Most High: {When it is said to them, "Prostrate to the Most Merciful," they say, "What is the Most Merciful? Should we prostrate to what you command us?"—and it increases their aversion} [25:60]. This is a command, not a declarative statement. In the recitation of Al-Kisā'ī – one of the canonical readings – {Should they not prostrate to Allah who brings forth the hidden in the heavens and the earth} [27:25] to the end of the verse, with

[55] **Qur'an references (L8967):** Qur'an 2:172 (Al-Baqarah); Qur'an 16:114 (An-Nahl); Qur'an 41:37 (Fussilat).

[56] **Qur'an references (L8968):** Qur'an 41:38 (Fussilat).

بَلْ قَدْ صَحَّ عَنْهُ السُّجُودُ فِي الْحَجِّ سَجْدَتَيْنِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ عَاصِمٍ الْأَحْوَلِ عَنْ أَبِي الْعَالِيَةِ عَنْ ابْنِ عَبَّاسٍ قَالَ: فُضِّلَتْ سُورَةُ الْحَجِّ عَلَى الْقُرْآنِ بِسَجْدَتَيْنِ؟ وَاخْتُلِفَ: أَفِي " ص " سَجْدَةٌ أَمْ لَا؟ وَإِنَّمَا قُلْنَا: بِالسُّجُودِ فِيهَا؛ لِأَنَّهُ قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - السُّجُودُ فِيهَا، وَقَدْ ذَكَرْنَاهُ قَبْلَ هَذَا فِي سُجُودِ الْخَطِيبِ يَوْمَ الْجُمُعَةِ يَقْرَأُ السَّجْدَةَ.

وَاخْتُلِفَ فِي السُّجُودِ فِي " حم ".

فَقَالَتْ طَائِفَةٌ: السَّجْدَةُ عِنْدَ تَمَامِ قَوْلِه تَعَالَى: {إِنْ كُنْتُمْ إِيَّاهُ تَعْبُدُونَ} [فصلت: ٣٧] وَبِهِ نَأْخُذُ.

وَقَالَتْ طَائِفَةٌ: بَلْ عِنْدَ قَوْلِهِ: {وَهُمْ لا يَسْأَمُونَ} [فصلت: ٣٨]

وَإِنَّمَا اخْتَرْنَا مَا اخْتَرْنَا لِوَجْهَيْنِ -: أَحَدُهُمَا: أَنَّ الْآيَةَ الَّتِي يَسْجُدُ عِنْدَهَا قَبْلَ الْأُخْرَى، وَالْمُسَارَعَةُ إِلَى الطَّاعَةِ أَفْضَلُ، وَالثَّانِي: أَنَّهُ أُمِرَ بِالسُّجُودِ وَاتِّبَاعُ الْأَمْرِ أَوْلَى؟ وَقَالَ بَعْضُ مَنْ لَمْ يُوَفَّقْ لِلصَّوَابِ: وَجَدْنَا السُّجُودَ فِي الْقُرْآنِ إِنَّمَا هُوَ فِي مَوْضِعِ الْخَبَرِ لَا فِي مَوْضِعِ الْأَمْرِ؟ ؟ قَالَ أَبُو مُحَمَّد: وَهَذَا هُوَ أَوَّلُ مَنْ خَالَفَهُ لِأَنَّهُ وَسَائِرَ الْمُسْلِمِينَ يَسْجُدُونَ فِي الْفُرْقَانِ فِي قَوْلِه تَعَالَى: {وَإِذَا قِيلَ لَهُمُ اسْجُدُوا لِلرَّحْمَنِ قَالُوا وَمَا الرَّحْمَنُ أَنَسْجُدُ لِمَا تَأْمُرُنَا وَزَادَهُمْ نُفُورًا} [الفرقان: ٦٠] وَهَذَا أَمْرٌ لَا خَبَرٌ؟ وَفِي قِرَاءَةِ الْكِسَائِيِّ وَهِيَ إِحْدَى الْقِرَاءَاتِ الثَّابِتَةِ: {أَلا يَسْجُدُوا لِلَّهِ الَّذِي يُخْرِجُ الْخَبْءَ فِي السَّمَاوَاتِ وَالأَرْضِ} [النمل: ٢٥] إِلَى آخِرِ الْآيَةِ، بِتَخْفِيفِ " أَلَّا " بِمَعْنَى: أَلَا يَا قَوْمُ اسْجُدُوا، وَهَذَا أَمْرٌ؟

the lightened pronunciation of "أَلَّا" (allā) meaning: "O people, prostrate!" – is this not a command?[57]

L8972 In Surah Al-Nahl, in the verse where the Exalted says: {And they do as they are ordained} [Al-Nahl: 50].[58]

L8973 We have found mention of prostration in the context of good, but no prostration in it is recognized by anyone. This is the saying of the Most High in Āl ʿImrān: "They are not all alike; among the People of the Scripture is an upright community reciting the verses of Allah during the hours of the night while prostrating" [Āl ʿImrān: 113].[59]

L8974 And in His statement, the Most High: {And those who spend the night in prostration and standing before their Lord} [Al-Furqān 25:64].[60]

L8975 It is established that the people are in confusion—they do not grasp what they say. It has been narrated to us via Wakiʿ, via his father, via Abū Isḥāq al-Sabiʿī, via ʿAbd al-Raḥmān ibn al-Aswad, who said: The companions of Ibn Masʿūd would prostrate at the first of the two verses.

L8976 And likewise from Abī ʿAbd al-Raḥmān al-Sulamī.

L8977 This is the opinion of Mālik and Abū Sulaymān. It has been authentically reported from Ibn Masʿūd and ʿAlī that they did not consider the obligatory prostrations among the aforementioned except for "Alif Lām Mīm" and "Ḥā Mīm," and they viewed these two as more emphatic than the others. Mālik said: There is no prostration in any part of the Mufaṣṣal.

L8978–8980 This has been narrated from Ibn Abbas and Zayd ibn Thabit. Others among the Companions disagreed with them, as we shall mention if Allah the Exalted wills, after stating: The prostration in them has been authentically reported from the Messenger of Allah (peace be upon him). No conclusive

وَفِي النَّحْلِ عِنْدَ قَوْله تَعَالَى: {وَيَفْعَلُونَ مَا يُؤْمَرُونَ} [النحل: ٥٠] .

وَقَدْ وَجَدْنَا ذِكْرَ السُّجُودِ بِالْخَيْرِ لَا سُجُودَ فِيهِ عِنْدَ أَحَدٍ. وَهُوَ قَوْله تَعَالَى فِي آلِ عِمْرَانَ {لَيْسُوا سَوَاءً مِنْ أَهْلِ الْكِتَابِ أُمَّةٌ قَائِمَةٌ يَتْلُونَ آيَاتِ اللَّهِ آنَاءَ اللَّيْلِ وَهُمْ يَسْجُدُونَ} [آل عمران: ١١٣] .

وَفِي قَوْله تَعَالَى: {وَالَّذِينَ يَبِيتُونَ لِرَبِّهِمْ سُجَّدًا وَقِيَامًا} [الفرقان: ٦٤]

فَصَحَّ أَنَّ الْقَوْمَ فِي تَخْلِيطٍ لَا يُحَصِّلُونَ مَا يَقُولُونَ -: وَرُوِّينَا عَنْ وَكِيعٍ عَنْ أَبِيهِ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ قَالَ: كَانَ أَصْحَابُ ابْنِ مَسْعُودٍ يَسْجُدُونَ بِالْأُولَى مِنْ الْآيَتَيْنِ.

وَكَذَلِكَ عَنْ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ.

وَهُوَ قَوْلُ مَالِكٍ، وَأَبِي سُلَيْمَانَ؟ وَصَحَّ عَنْ ابْنِ مَسْعُودٍ، وَعَلِيٍّ: أَنَّهُمَا كَانَا لَا يَرَيَانِ عَزَائِمَ السُّجُودِ مِنْ هَذِهِ الْمَذْكُورَاتِ إلَّا " الم " وَ " حم " وَكَانَا يَرَيَانِهِمَا أَوْكَدُ مِنْ سِوَاهُمَا؟ وَقَالَ مَالِكٌ: لَا سُجُودَ فِي شَيْءٍ مِنْ الْمُفَصَّلِ.

وَرُوِيَ ذَلِكَ عَنْ ابْنِ عَبَّاسٍ، وَزَيْدِ بْنِ ثَابِتٍ -: وَخَالَفَهُمَا آخَرُونَ مِنْ الصَّحَابَةِ، كَمَا نَذْكُرُ إنْ شَاءَ اللَّهُ تَعَالَى، بَعْدَ أَنْ نَقُولَ: صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - السُّجُودُ فِيهَا، وَلَا حُجَّةَ فِي أَحَدٍ دُونَهُ وَلَا مَعَهُ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا

[57] **Qur'an references (L8969):** Qur'an 25:60 (Al-Furqan); Qur'an 27:25 (An-Naml).
[58] **Qur'an references (L8972):** Qur'an 16:50 (An-Nahl); Qur'an 66:6 (At-Tahrim).
[59] **Qur'an references (L8973):** Qur'an 3:113 (Ali 'Imran).
[60] **Qur'an references (L8974):** Qur'an 25:64 (Al-Furqan).

authority resides in anyone apart from him or alongside him. Abdullah ibn Yusuf reported to us: Ahmad ibn Fath reported to us: Abd al-Wahhab ibn Isa reported to us: Ahmad ibn Muhammad reported to us. Ahmad ibn Ali narrated to us from Muslim ibn al-Hajjaj, from Muhammad ibn al-Muthanna, from Muhammad ibn Ja'far, from Shu'bah, from Abū Isḥāq al-Sabī'ī, who said: I heard al-Aswad ibn Zayd narrate from Ibn Mas'ūd that the Messenger of Allah - peace and blessings be upon him - recited "By the star" and prostrated therein.

مُحَمَّدُ بْنُ الْمُثَنَّى ثنا مُحَمَّدُ بْنُ جَعْفَرٍ ثنا شُعْبَةُ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ قَالَ سَمِعْت الْأَسْوَدَ بْنَ زَيْدٍ عَنْ ابْنِ مَسْعُودٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَرَأَ: وَالنَّجْمِ فَسَجَدَ فِيهَا» .

L8981 Hammam ibn Ahmad narrated to us, Abbas ibn Asbagh narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, Ahmad ibn Muhammad al-Birti the Judge narrated to us, Musaddad narrated to us, Yahya—who is Ibn Sa'id al-Qattan—from Sufyan al-Thawri, from Ayyub ibn Musa, from Ata' ibn Minā', from Abu Hurayrah, who said: "We prostrated alongside the Messenger of Allah—peace and blessings be upon him—during Surah An-Najm and Surah Al-Alaq."

حَدَّثَنَا حُمَامُ بْنُ أَحْمَدَ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَحْمَدُ بْنُ مُحَمَّدٍ الْبِرْتِيُّ الْقَاضِي ثنا مُسَدَّدٌ ثنا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ عَطَاءِ بْنِ مِينَاءٍ عَنْ «أَبِي هُرَيْرَةَ قَالَ: سَجَدْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي: وَالنَّجْمِ وَاقْرَأْ بِاسْمِ رَبِّكَ» .

L8982 Is this the position followed by the majority of the Salaf? It has been narrated to us through Mālik from ʿAbd al-Raḥmān al-Aʿraj from Abū Hurayrah: that ʿUmar ibn al-Khaṭṭāb recited to them "By the star when it descends" and prostrated during it. Then he proceeded to recite another surah. Did he do this during the prayer with the Muslims?

وَبِهِ يَأْخُذُ جُمْهُورُ السَّلَفِ؟ وَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ الرَّحْمَنِ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَرَأَ لَهُمْ " وَالنَّجْمِ إِذَا هَوَى " فَسَجَدَ فِيهَا، ثُمَّ قَامَ فَقَرَأَ بِسُورَةٍ أُخْرَى، وَأَنَّهُ فَعَلَ ذَلِكَ فِي الصَّلَاةِ بِالْمُسْلِمِينَ؟

L8983 It is narrated from Abu Uthman al-Nahdi that Uthman ibn Affan recited "By the star" in the Isha prayer and prostrated at its end. Then he stood and recited "By the fig and the olive," bowed and prostrated. He thus recited two surahs in one rak'ah.

وَعَنْ أَبِي عُثْمَانَ النَّهْدِيِّ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ قَرَأَ فِي صَلَاةِ الْعِشَاءِ بِ " وَالنَّجْمِ " فَسَجَدَ فِي آخِرِهَا، ثُمَّ قَامَ فَقَرَأَ بِ " وَالتِّينِ وَالزَّيْتُونِ " فَرَكَعَ وَسَجَدَ، فَقَرَأَ سُورَتَيْنِ فِي رَكْعَةٍ.

L8984 From the narration of Sufyan al-Thawri, from Asim ibn Abi al-Najud, from Zirr ibn Hubaysh, from Ali ibn Abi Talib, who said: The surahs requiring obligatory prostration are four: As-Sajdah (Alif-Lam-Meem Tanzeel), Fussilat (Ha Meem As-Sajdah), An-Najm, and Al-Alaq (Iqra bismi rabbika).

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ عَاصِمِ بْنِ أَبِي النَّجُودِ عَنْ زِرِّ بْنِ حُبَيْشٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: الْعَزَائِمُ أَرْبَعٌ -: " الم تَنْزِيلُ " " وحم السَّجْدَةُ " " وَالنَّجْمُ " " وَاقْرَأْ بِاسْمِ رَبِّكَ "

L8985 From Shuʿbah, from ʿĀṣim ibn Abī al-Najūd, from Zirr ibn Ḥubaysh, from

Ibn Masʿūd, who said: The prescribed prostrations are four: “Alif-Lām-Mīm Tanzīl,” “Ḥā-Mīm,” “al-Najm,” and “Iqra’ bismi rabbika.”

وَعَنْ شُعْبَةَ عَنْ عَاصِمِ بْنِ أَبِي النَّجُودِ، عَنْ زِرِّ بْنِ حُبَيْشٍ عَنْ ابْنِ مَسْعُودٍ قَالَ: عَزَائِمُ السُّجُودِ أَرْبَعٌ: (الم تَنْزِيلُ) " وَحُمَّ " " وَالنَّجْمُ " " وَاقْرَأْ بِاسْمِ رَبِّكَ "

L8986 From Sulaymān ibn Mūsā and Ayyūb al-Sakhtiyānī, both of whom from Nāfiʿ, the freed slave of Ibn ʿUmar, who said: “Indeed, Ibn ʿUmar would prostrate when he recited al-Najm.”

وَعَنْ سُلَيْمَانَ بْنِ مُوسَى، وَأَيُّوبَ السِّخْتِيَانِيِّ كِلَاهُمَا عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ قَالَ: إِنَّ ابْنَ عُمَرَ كَانَ إِذَا قَرَأَ بِ (النَّجْمِ) سَجَدَ.

L8987 Al-Muṭṭalib ibn Abī Wadaʿah said: The Messenger of Allah (peace be upon him) prostrated in the Star, but I did not prostrate—for I was a polytheist at that time.

وَعَنْ «الْمُطَّلِبِ بْنِ أَبِي وَدَاعَةَ قَالَ: سَجَدَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي النَّجْمِ وَلَمْ أَسْجُدْ - وَكَانَ مُشْرِكًا حِينَئِذٍ -.

L8988–8989 He said, “I will never cease to prostrate therein, ever.” Al-Muṭṭalib embraced Islam on the Day of the Conquest of Mecca.

قَالَ: فَلَنْ أَدَعَ السُّجُودَ فِيهَا أَبَدًا» أَسْلَمَ الْمُطَّلِبُ يَوْمَ الْفَتْحِ.

L8990 So here are Umar, Uthman, and Ali, in the presence of the Companions (may Allah be pleased with them), while they were condemning actions even lesser than this.

فَهَذَا عُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ، بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهُمْ يُشَنِّعُونَ أَقَلَّ مِنْ هَذَا.

L8991 And regarding prostration therein, the following have stated: ʿAbd al-Raḥmān ibn Abī Laylā, Sufyān, Abū Ḥanīfah, al-Shāfiʿī, Aḥmad, Dāwūd, and others.

وَبِالسُّجُودِ فِيهَا يَقُولُ: عَبْدُ الرَّحْمَنِ بْنُ أَبِي لَيْلَى، وَسُفْيَانُ، وَأَبُو حَنِيفَةَ وَالشَّافِعِيُّ، وَأَحْمَدُ، وَدَاوُد، وَغَيْرُهُمْ.

L8992 Abu Muhammad said: The adherents of Malik argued using a report—we have narrated it through the chain of transmission of Yazid ibn Abdullah ibn Qusayṭ from Ata ibn Yasar from Zayd ibn Thabit, who said: “I recited Surah An-Najm to the Messenger of Allah, may Allah bless him and grant him peace, and he did not perform the prostration of recitation in it.”[61]

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ الْمُقَلِّدُونَ لِمَالِكٍ بِخَبَرٍ -: رُوِّينَاهُ مِنْ طَرِيقِ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ «زَيْدِ بْنِ ثَابِتٍ قَالَ: قَرَأْتُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالنَّجْمِ فَلَمْ يَسْجُدْ فِيهَا» .

L8993 Abu Muhammad said: There is no proof for them in this, for the Prophet - peace and blessings of Allah be upon him - did not say: “There is no prostration in it.” Rather, this report contains proof against those who claimed prostration is solely an obligation.

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ لَهُمْ فِي هَذَا، فَإِنَّهُ لَمْ يَقُلْ: إِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: لَا سُجُودَ فِيهَا، وَإِنَّمَا فِي هَذَا الْخَبَرِ حُجَّةٌ عَلَى مَنْ قَالَ: إِنَّ السُّجُودَ فَرْضٌ فَقَطْ.

L8994 And thus we say: Prostration is not obligatory, but if one prostrates, it is

[61] **Hadith references (L8992):** Mishkat al-Masabih 1026.

superior, and if one omits it, there is no blame—so long as one does not turn away from the Sunnah. Moreover, the narrator of this report—Ibn Qusayt—is authentically established from Mālik as one whose narrations he did not rely upon. How then can his narration now become a proof for invalidating the Sunnah, when it contains nothing of what they allege? They further attempted to justify their position with another report—which we narrated through the chain of Ḥammād ibn Salama, from Ḥumayd, from Bakr ibn ʿAbdullāh al-Muzanī—that Abū Saʿīd al-Khudrī said: "Allah's Messenger (peace and blessings be upon him) used to prostrate for Surah al-Najm in Mecca. When he arrived in Medina, Abū Saʿīd saw in a dream vision as if he were writing Surah Ṣād. Upon reaching the prostration verse, the inkwell, the pen, the trees, and everything around him prostrated. He said: 'I informed Allah's Messenger (peace and blessings be upon him), so he prostrated in response to it and abandoned prostration in Surah al-Najm.'"

وَهَكَذَا نَقُولُ: إِنَّ السُّجُودَ لَيْسَ فَرْضًا، لَكِنْ إِنْ سَجَدَ فَهُوَ أَفْضَلُ، وَإِنْ تَرَكَ فَلَا حَرَجَ، مَا لَمْ يَرْغَبْ عَنْ السُّنَّةِ؟ وَأَيْضًا: فَإِنَّ رَاوِيَ هَذَا الْخَبَرِ قَدْ صَحَّ عَنْ مَالِكٍ أَنَّهُ لَا يَعْتَمِدُ عَلَى رِوَايَتِهِ - وَهُوَ ابْنُ قُسَيْطٍ - فَالْآنَ صَارَتْ رِوَايَتُهُ حُجَّةً فِي إبْطَالِ السُّنَنِ؟ عَلَى أَنَّهُ لَيْسَ فِيهَا شَيْءٌ مِمَّا يَدَّعُونَهُ؟ وَمَوَّهُوا أَيْضًا بِخَبَرٍ -: رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ بَكْرٍ هُوَ ابْنُ عَبْدِ اللَّهِ الْمُزَنِيّ - أَنَّ أَبَا سَعِيدٍ الْخُدْرِيّ قَالَ: «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَسْجُدُ بِمَكَّةَ بِالنَّجْمِ فَلَمَّا قَدِمَ الْمَدِينَةَ رَأَى أَبُو سَعِيدٍ فِيمَا يَرَى النَّائِمُ كَأَنَّهُ يَكْتُبُ سُورَةَ ص، فَلَمَّا أَتَى عَلَى السَّجْدَةِ: سَجَدَتْ الدَّوَاةُ، وَالْقَلَمُ، وَالشَّجَرُ، وَمَا حَوْلَهُ مِنْ شَيْءٍ. قَالَ: فَأَخْبَرْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَجَدَ فِيهَا، وَتَرَكَ النَّجْمَ»

L8995–8997 This report is not authentic because Bakr did not hear it from Abu Sa'id, and Allah knows best who he heard it from, except... The invalidity of this report has been confirmed without doubt due to what we previously narrated from the statement of Abū Hurayrah: "Indeed, the Messenger of Allah—upon him be peace—prostrated with them in *Sūrat al-Najm*." Abū Hurayrah embraced Islam late, only after the conquest of Khaybar, and this report asserts that the abandonment of prostration in it occurred after his arrival in Medina—upon him be peace—and this is invalid.

فَهَذَا خَبَرٌ لَا يَصِحُّ؛ لِأَنَّ بَكْرًا لَمْ يَسْمَعْهُ مِنْ أَبِي سَعِيدٍ، وَاَللَّهُ أَعْلَمُ مِمَّنْ سَمِعَهُ، إلَّا أَنَّهُ قَدْ صَحَّ بُطْلَانُ هَذَا الْخَبَرِ بِلَا شَكٍّ لِمَا رُوِّينَاهُ آنِفًا مِنْ قَوْلِ أَبِي هُرَيْرَةَ «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَجَدَ بِهِمْ فِي النَّجْمِ» وَأَبُو هُرَيْرَةَ مُتَأَخِّرُ الْإِسْلَامِ، وَإِنَّمَا أَسْلَمَ بَعْدَ فَتْحِ خَيْبَرَ، وَفِي هَذَا الْخَبَرِ أَنَّ تَرْكَ السُّجُودِ فِيهَا كَانَ إثْرَ قُدُومِهِ - عَلَيْهِ السَّلَامُ - الْمَدِينَةَ، وَهَذَا بَاطِلٌ

L8998 They sought to obscure the matter by citing a report we narrated through the chain of Matar al-Warraq, who relates it from Ibn Abbas: "The Messenger of Allah (peace and blessings be upon him) did not perform prostration in al-Mufassal since arriving in Medina."

وَمَوَّهُوا بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ مَطَرٍ الْوَرَّاقِ يَذْكُرُهُ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَسْجُدْ فِي الْمُفَصَّلِ مُذْ قَدِمَ الْمَدِينَةَ» .

L8999 This is sheer invalidity due to what we have mentioned in the ḥadīth of Abū Hurayrah and what we will subsequently mention, if Allah the Exalted wills: the ʿillah (hidden flaw) of this report is that [the narrator] Muṭarr is weak in memory.

وَهَذَا بَاطِلٌ بَحْتٌ، لِمَا ذَكَرْنَا مِنْ حَدِيثِ أَبِي هُرَيْرَةَ، وَلِمَا نَذْكُرُهُ إثْرَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى: وَعِلَّةُ هَذَا الْخَبَرِ هُوَ أَنَّ مَطَرًا سَيِّئُ الْحِفْظِ.

ثُمَّ لَوْ صَحَّ لَكَانَ الْمُثْبِتُ أَوْلَى مِنْ النَّافِي، وَلَا عَمَلَ أَقْوَى مِنْ عَمَلِ عُمَرَ، وَعُثْمَانَ بِحَضْرَةِ الصَّحَابَةِ بِالْمَدِينَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L9000 Then, if it were valid, the affirmer would take precedence over the denier, and no practice holds greater authority than that established by Umar and Uthman in the presence of the Companions at Medina. And success is granted solely by Allah, the Most High.

وَذَكَرُوا أَحَادِيثَ مُرْسَلَةً سَاقِطَةً، لَا وَجْهَ لِلِاشْتِغَالِ بِهَا لِمَا ذَكَرْنَا؟ وَأَمَّا إذَا السَّمَاءُ انْشَقَّتْ وَاقْرَأْ بِاسْمِ رَبِّك فَإِنَّ عَبْدَ الرَّحْمَنِ بْنَ عَبْدِ اللَّهِ حَدَّثَنَا قَالَ: ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُسْلِمُ بْنُ إبْرَاهِيمَ، وَمُعَاذُ بْنُ فَضَالَةَ قَالَا: ثنا هِشَامُ الدَّسْتُوَائِيُّ عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ أَبِي سَلَمَةَ عَنْ «عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ قَالَ: رَأَيْتُ أَبَا هُرَيْرَةَ سَجَدَ فِي إذَا السَّمَاءُ انْشَقَّتْ، فَقُلْتُ: يَا أَبَا هُرَيْرَةَ، أَلَمْ أَرَكَ تَسْجُدُ؟ قَالَ: لَوْ لَمْ أَرَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَجَدَ لَمْ أَسْجُدْ بِهَا» .

L9001 They cited mursal and rejected narrations that hold no valid basis for engagement due to our prior explanation. Regarding the verse “When the sky is split apart” and “Read in the name of your Lord,” ʻAbd al-Raḥmān ibn ʻAbd Allāh narrated to us through Ibrāhīm ibn Aḥmad → al-Farbarī → al-Bukhārī → Muslim ibn Ibrāhīm and Muʻādh ibn Faḍālah, who both reported: Hishām al-Dastuwāʾī narrated to us from Yaḥyā (Ibn Abī Kathīr) → Abū Salamah → ʻAbd al-Raḥmān ibn ʻAwf, who said: “I witnessed Abū Hurayrah prostrating during [the recitation of] ’When the sky is split apart.’ I asked: ’O Abū Hurayrah, did I not see you prostrating?’ He replied: ’Had I not seen the Prophet—peace and blessings of Allah be upon him—prostrate, I would never have prostrated for this verse.’”[1]

وَمِنْ طَرِيقِ مَالِكٍ أَيْضًا عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ بِمِثْلِهِ.

L9002 And also through Mālik’s chain, from ʿAbdullāh ibn Yazīd, from Abū Salama ibn ʿAbd al-Raḥmān, from Abū Hurairah, with a similar narration.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَعَمْرٌو النَّاقِدُ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ عَطَاءِ بْنِ مِينَاءَ عَنْ «أَبِي هُرَيْرَةَ قَالَ: سَجَدْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي: إذَا السَّمَاءُ انْشَقَّتْ وَاقْرَأْ بِاسْمِ رَبِّكَ» .

L9003 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Abu Bakr ibn Abi Shaybah and Amr an-Nāqid narrated to us: Sufyan ibn Uyaynah narrated to us from Ayyub ibn Musa from Ata ibn Mīnā’ from Abu Hurairah, who said: “We prostrated with the Messenger of Allah—peace and blessings be upon him—during the recitation of the verse When the sky is split apart (84:1) and the verse Read in the name of your Lord (96:1).”[2]

قَالَ أَبُو مُحَمَّدٍ: هَذَا يُكَذِّبُ رِوَايَةَ مَطَرٍ الَّتِي احْتَجُّوا بِهَا؟

L9004 Abu Muhammad said: Does this contradict the narration of Maṭar that they relied upon as proof?

L9005–9006 From the narration of Al-Layth ibn Saʻd, from Yazīd ibn Abī Ḥabīb, from Ṣafwān ibn Sulaym, from ʻAbd al-Raḥmān al-Aʻraj, from Abū Hurayrah: “The

[1] **Qur’an references (L9001):** Qur’an 84:1 (Al-Inshiqaq).
[2] **Qur’an references (L9003):** Qur’an 84:1 (Al-Inshiqaq).

Messenger of Allah (peace and blessings be upon him) prostrated at the verse 'When the sky is split apart' (Sūrah al-Inshiqāq) and 'Read in the name of your Lord' (Sūrah al-'Alaq)."[3]

وَمِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ صَفْوَانَ بْنِ سُلَيْمٍ عَنْ عَبْدِ الرَّحْمَنِ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ: «سَجَدَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي إِذَا السَّمَاءُ انْشَقَّتْ وَاقْرَأْ بِاسْمِ رَبِّكَ»

L9007 We have narrated it through numerous, mass-transmitted (mutawatir) chains as undeniable as the sun; we have deemed this sufficient from them.

وَرُوِّينَاهُ مِنْ طُرُقٍ كَثِيرَةٍ مُتَوَاتِرَةٍ كَالشَّمْسِ، اكْتَفَيْنَا مِنْهَا بِهَذَا.

L9008 And with this, the majority of the Salaf hold: It has been narrated to us through the chains of Yaḥyā ibn Saʿīd al-Qaṭṭān, ʿAbd al-Raḥmān ibn Mahdī, and al-Muʿtamir ibn Sulaymān - all of whom said: Qurrah, who is Ibn Khālid, narrated to us from Muḥammad ibn Sīrīn, from Abū Hurayrah, who said: "Abū Bakr and ʿUmar prostrated during 'When the sky is split apart,' and during 'and the one who is better than both of them.'" ʿAbd al-Raḥmān and al-Muʿtamir added: "and during 'Read in the name of your Lord.'"[4]

وَبِهَذَا يَأْخُذُ عَامَّةُ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ، وَعَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ، وَالْمُعْتَمِرِ بْنِ سُلَيْمَانَ كُلُّهُمْ قَالَ: ثنا قُرَّةُ هُوَ ابْنُ خَالِدٍ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ قَالَ: " سَجَدَ: أَبُو بَكْرٍ، وَعُمَرُ فِي: " إِذَا السَّمَاءُ انْشَقَّتْ " وَمَنْ هُوَ خَيْرٌ مِنْهُمَا " زَادَ عَبْدُ الرَّحْمَنِ، وَالْمُعْتَمِرُ " وَ: (اقْرَأْ بِاسْمِ رَبِّكَ)

L9009 And this report is as clear as the sun in its authenticity.

وَهَذَا أَثَرٌ كَالشَّمْسِ صِحَّةً.

L9010 As previously cited from ʿAlī and Ibn Masʿūd, the obligatory prostrations of recitation (sajdah al-tilāwah) are in "Alif-Lām-Mīm," "Ḥā-Mīm," "an-Najm," and "Iqra' bi-smi rabbika."

وَقَدْ ذَكَرْنَا عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ آنِفًا: عَزَائِمُ السُّجُودِ -: " الم " " وَحُمَّ " " وَالنَّجْمُ " " وَاقْرَأْ بِاسْمِ رَبِّكَ ".

L9011 And from the narration of Shuʿbah from ʿĀṣim ibn Abī al-Najūd from Abū Razīn: "'Ammār ibn Yāsir recited 'When the sky is split open' while delivering a sermon, then he descended and prostrated."

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ عَاصِمِ بْنِ أَبِي النَّجُودِ عَنْ أَبِي رَزِينٍ: قَرَأَ عَمَّارُ بْنُ يَاسِرٍ: " إِذَا السَّمَاءُ انْشَقَّتْ " وَهُوَ يَخْطُبُ، فَنَزَلَ فَسَجَدَ

L9012 From the trustworthy authorities: Ayyub, Ubayd Allah ibn Umar, and Sulayman ibn Musa, from Nafi' that Ibn Umar used to prostrate during "When the sky is split apart" and "Read in the name of your Lord."

وَعَنْ الثِّقَاتِ: أَيُّوبَ، وَعُبَيْدِ اللَّهِ بْنِ عُمَرَ، وَسُلَيْمَانَ بْنِ مُوسَى عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ كَانَ يَسْجُدُ فِي: " إِذَا السَّمَاءُ انْشَقَّتْ "، " وَاقْرَأْ بِاسْمِ رَبِّكَ ".

L9013 This is the opinion of the companions of Ibn Masʿūd, Shurayḥ, al-Shaʿbī, and ʿUmar ibn ʿAbd al-ʿAzīz—he commanded the people to do that—al-Shaʿbī,

وَهُوَ قَوْلُ أَصْحَابِ ابْنِ مَسْعُودٍ، وَشُرَيْحٍ، وَالشَّعْبِيِّ وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ أَمَرَ النَّاسَ بِذَلِكَ وَالشَّعْبِيِّ وَأَبِي حَنِيفَةَ، وَالْأَوْزَاعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ، وَدَاوُد، وَأَصْحَابِهِمْ، وَأَصْحَابِ الْحَدِيثِ؟

[3] **Qur'an references (L9006):** Qur'an 84:1 (Al-Inshiqaq).
[4] **Qur'an references (L9008):** Qur'an 96:1 (Al-'Alaq).

Abū Ḥanīfah, al-Awzāʿī, Sufyān al-Thawrī, al-Shāfiʿī, Aḥmad, Isḥāq, Dāwūd, their companions, and the Ahl al-Ḥadīth.

L9014–9016 As for her prostration without ablution and not facing the Qiblah however possible, this is because it is not a prayer. The Prophet (peace be upon him) said: "The prayer of night and day is two by two." Thus, anything less than two rakʿahs cannot be a prayer unless there comes an explicit text stating it is a prayer, such as the Fear Prayer, the Witr Prayer, and the Funeral Prayer. And there is no text regarding... Is the prostration of recitation considered a prayer? It has been narrated from Uthman—may Allah the Exalted be pleased with him—and Saʿid ibn al-Musayyab: "Does a menstruating woman gesture with the prostration?" Saʿid said: "And she should say: 'My Lord, to You I prostrated.'" And from al-Shaʿbi: "Its permissibility toward other than the qiblah."

Prostration of Gratitude

L9017

L9018 Issue 557: The prostration of gratitude is a recommended act. When a blessing from Allah, the Exalted, comes to a person, it is recommended for him to perform prostration, as prostration constitutes an act of righteousness. Allah, the Exalted, has stated: "And do righteous deeds" [Al-Ḥajj 22:77].[5]

L9019 And no prohibition against the Prophet (peace be upon him) has been reported from him.

L9020 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us; Abdul-Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to us; Zuhayr ibn Harb narrated to us; al-Walid ibn Muslim narrated to us, saying: I heard al-Awzaʿī say: Al-Walid ibn Hisham al-Muʿaytī narrated to us: "Maʿdan ibn Abi Talhah al-Yaʿmurī narrated to us, saying: I met Thawban, the freed slave of Allah's Messenger—peace and blessings be upon him—and asked him: 'Inform me of a deed that will make Allah admit me to Paradise,' or I said: 'What deed is most beloved to Allah the Exalted?' He replied: 'I asked Allah's Messenger—peace and blessings be upon him—just as you asked me, and he said:

[5] **Qur'an references (L9018):** Qur'an 22:77 (Al-Hajj).

وَأَمَّا سُجُودُهَا عَلَى غَيْرِ وُضُوءٍ، وَإِلَى غَيْرِ الْقِبْلَةِ كَيْفَ مَا يُمْكِنُ؟ فَلِأَنَّهَا لَيْسَتْ صَلَاةً، وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «صَلَاةُ اللَّيْلِ وَالنَّهَارِ مَثْنَى مَثْنَى» فَمَا كَانَ أَقَلَّ مِنْ رَكْعَتَيْنِ فَلَيْسَ إلَّا أَنْ يَأْتِيَ نَصٌّ بِأَنَّهُ صَلَاةٌ، كَرَكْعَةِ الْخَوْفِ، وَالْوِتْرِ، وَصَلَاةِ الْجَنَازَةِ، وَلَا نَصَّ فِي أَنَّ سَجْدَةَ التِّلَاوَةِ: صَلَاةٌ؟ وَقَدْ رُوِيَ عَنْ عُثْمَانَ - رَضِيَ اللَّهُ تَعَالَى عَنْهُ -، وَسَعِيدِ بْنِ الْمُسَيِّبِ: تُومِئُ الْحَائِضُ بِالسُّجُودِ؟ قَالَ سَعِيدٌ: وَتَقُولُ: رَبِّ لَك سَجَدْت. وَعَنْ الشَّعْبِيِّ: جَوَازُهَا إلَى غَيْرِ الْقِبْلَةِ

[سُجُودُ الشُّكْرِ]

٥٥٧ - مَسْأَلَةٌ: سُجُودُ الشُّكْرِ حَسَنٌ، إذَا وَرَدَتْ لِلَّهِ تَعَالَى عَلَى الْمَرْءِ نِعْمَةٌ فَيُسْتَحَبُّ لَهُ السُّجُودُ، لِأَنَّ السُّجُودَ فِعْلُ خَيْرٍ، وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] .

وَلَمْ يَأْتِ عَنْهُ نَهْيٌ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

بَلْ قَدْ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا زُهَيْرُ بْنُ حَرْبٍ ثنا الْوَلِيدُ بْنُ مُسْلِمٍ سَمِعْت الْأَوْزَاعِيَّ قَالَ: ثنا الْوَلِيدُ بْنُ هِشَامٍ الْمُعَيْطِيُّ ثنا «مَعْدَانُ بْنُ أَبِي طَلْحَةَ الْيَعْمُرِيُّ قَالَ: لَقِيتُ ثَوْبَانَ مَوْلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْتُ لَهُ: أَخْبِرْنِي بِعَمَلٍ يُدْخِلُنِي اللَّهُ بِهِ الْجَنَّةَ، أَوْ قُلْتُ: مَا أَحَبُّ الْأَعْمَالِ إلَى اللَّهِ تَعَالَى؟ فَقَالَ: سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا سَأَلْتَنِي فَقَالَ عَلَيْكَ بِكَثْرَةِ السُّجُودِ لِلَّهِ تَعَالَى، فَإِنَّكَ لَا

"You must perform frequent prostrations to Allah the Exalted, for you never prostrate to Allah with a single prostration except that He—the Majestic and Glorious—elevates you by it one degree and removes from you one sin.'" Maʿdan said: 'Then I met Abu al-Darda' and asked him. He replied with the same words Thawban had told me.'"

L9021–9023 Abu Muhammad said: Al-Walid ibn Hisham was among the senior companions of Umar ibn Abd al-Aziz due to his excellence. And his action, and the rest of the chain's narrators—are they not too well-known to require inquiry? None may assert: "This prostration is indeed only the prostration of prayer specifically." Whoever dares to do this has falsely attributed to the Messenger of Allah—may Allah bless him and grant peace—what he did not say. Rather, he has lied against him, for he declared his intent through the unseen and false conjecture.

L9024 It has been narrated to us from Abū Bakr al-Ṣiddīq that when news of the conquest of Yamāmah reached him, he prostrated. From ʿAlī ibn Abī Ṭālib: when Dhū al-Thudayyah was found among the slain, he prostrated upon recognizing that [Dhū al-Thudayyah] belonged to the faction of falsehood and that [the believers] were the ones upholding the truth. It is authentically reported from Kaʿb ibn Mālik in the account of his failure to join the expedition to Tabūk that when his repentance was accepted, he prostrated. There was no dissent whatsoever among the Companions regarding these acts, nor any flaw in the report concerning Kaʿb at all.

تَسْجُدُ لِلَّهِ سَجْدَةً إِلَّا رَفَعَكَ اللَّهُ - عَزَّ وَجَلَّ بِهَا - دَرَجَةً، وَحَطَّ عَنْكَ بِهَا خَطِيئَةً قَالَ مَعْدَانُ: ثُمَّ لَقِيتُ أَبَا الدَّرْدَاءِ فَسَأَلْتُهُ؟ فَقَالَ مِثْلَ مَا قَالَ لِي ثَوْبَانُ» .

قَالَ أَبُو مُحَمَّدٍ: الْوَلِيدُ بْنُ هِشَامٍ مِنْ كِبَارِ أَصْحَابِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ لِفَضْلِهِ وَعَمَلِهِ، وَبَاقِي الْإِسْنَادِ أَشْهَرُ مِنْ أَنْ يُسْأَلَ عَنْهُمْ؟ وَلَيْسَ لِأَحَدٍ أَنْ يَقُولَ: إِنَّ هَذَا السُّجُودَ إِنَّمَا هُوَ سُجُودُ الصَّلَاةِ خَاصَّةً، وَمَنْ أَقْدَمَ عَلَى هَذَا فَقَدْ قَالَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْهُ، بَلْ كَذَبَ عَلَيْهِ، إِذْ أَخْبَرَ عَنْ مُرَادِهِ بِالْغَيْبِ وَالظَّنِّ الْكَاذِبِ.

وَقَدْ رُوِّينَا عَنْ أَبِي بَكْرٍ الصِّدِّيقِ: أَنَّهُ لَمَّا جَاءَهُ فَتْحُ الْيَمَامَةِ: سَجَدَ؟ وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّهُ لَمَّا وَجَدَ ذُو الثُّدْيَةِ فِي الْقَتْلَى: سَجَدَ، إِذْ عَرَفَ أَنَّهُ فِي الْحِزْبِ الْمُبْطِلِ، وَأَنَّهُ هُوَ الْمُحِقُّ؟ وَصَحَّ عَنْ كَعْبِ بْنِ مَالِكٍ فِي حَدِيثِ تَخَلُّفِهِ عَنْ تَبُوكَ: أَنَّهُ لَمَّا تِيبَ عَلَيْهِ: سَجَدَ؟ وَلَا مُخَالِفَ لِهَؤُلَاءِ مِنَ الصَّحَابَةِ أَصْلًا، وَلَا مَغْمَزَ فِي خَبَرِ كَعْبٍ أَلْبَتَّةَ؟ .

AL-MUHALLA

كِتَابُ الْجَنَائِزِ صَلَاةُ الْجَنَائِزِ وَحُكْمُ الْمَوْتَى

The Book of Funerals

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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L9025–9026 **The Book of Funerals: The Funeral Prayer and the Rulings Concerning the Deceased Chapter: The Washing of the Muslim Male and Female and Their Shrouding**

L9027 558 - Ruling: Washing the deceased Muslim male and female and shrouding them is obligatory. The shroud must be of good quality according to one's capability, and similarly the prayer over the deceased. Abd al-Raḥmān ibn ʿAbd Allāh narrated to us: Ibrāhīm ibn Aḥmad narrated to us; al-Farbarī narrated to us; al-Bukhārī narrated to us; Ismāʿīl, the son of Abi Uways, narrated to us; Mālik narrated from Ayyūb al-Sikhtiyānī from Muḥammad ibn Sīrīn, from Umm ʿAṭiyyah al-Anṣāriyyah, who said: "Allah's Messenger (peace be upon him) came to us when his daughter died and said: 'Wash her three times, five times, or more if you see fit.'" And he [Ibn Sīrīn] mentioned the remainder of the ḥadīth.

L9028 He, peace be upon him, commanded her to perform the ritual bath, and his command is obligatory unless another scriptural text nullifies its obligation.

L9029–9031 There is no disagreement that the ruling for men and women in this matter is equal. The obligation of ritual washing - this being the opinion of al-Shāfiʿī and Dāwūd - How strange of those who do not deem the ritual washing of the deceased obligatory, when it is the practice of Allah's Messenger (peace and blessings be upon him), his command, and the practice of the Muslim community from its inception until now. ʿAbdullāh ibn Yūsuf narrated from Aḥmad ibn Fatḥ, who narrated from ʿAbd al-Wahhāb ibn ʿĪsā, who narrated from Aḥmad ibn Muḥammad, who narrated from Aḥmad ibn ʿAlī, who narrated from Muslim ibn al-Ḥajjāj, who narrated from Hārūn ibn ʿAbdullāh, who narrated from Ḥajjāj ibn Muḥammad al-Aʿwar, who said: Ibn Jurayj said: I am Abū al-Zubayr, who heard Jābir ibn ʿAbdullāh relating: "That..." The Prophet—peace and blessings of Allah be upon him—delivered a sermon one day and mentioned a man from his companions who had died and been shrouded in a garment that was not long enough. He then said, "When any of you shrouds his brother (in faith), let him ensure the shroud is proper."

L9032 It has been narrated to us from Ibn Masʿūd that he instructed to be shrouded

[كِتَابُ الْجَنَائِزِ صَلَاةُ الْجَنَائِزِ وَحُكْمُ الْمَوْتَى] [مَسْأَلَةٌ غُسْلُ الْمُسْلِمِ الذَّكَرِ وَالْأُنْثَى وَتَكْفِينُهُمَا]

٥٥٨ - مَسْأَلَةٌ: غُسْلُ الْمُسْلِمِ الذَّكَرِ وَالْأُنْثَى وَتَكْفِينُهُمَا: فَرْضٌ، وَلَا يَجُوزُ أَنْ يَكُونَ الْكَفَنُ إِلَّا حَسَنًا عَلَى قَدْرِ الطَّاقَةِ، وَكَذَلِكَ الصَّلَاةُ عَلَيْهِ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا إِسْمَاعِيلُ هُوَ ابْنُ أَبِي أُوَيْسٍ - ثنا مَالِكٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ «عَنْ أُمِّ عَطِيَّةَ الْأَنْصَارِيَّةِ قَالَتْ: دَخَلَ عَلَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَ تُوُفِّيَتْ ابْنَتُهُ، فَقَالَ: اغْسِلْنَهَا ثَلَاثًا أَوْ خَمْسًا أَوْ أَكْثَرَ مِنْ ذَلِكَ، إِنْ رَأَيْتُنَّ ذَلِكَ» وَذَكَرَ الْحَدِيثَ.

فَأَمَرَ - عَلَيْهِ السَّلَامُ - بِغُسْلِهَا، وَأَمْرُهُ فَرْضٌ، مَا لَمْ يُخْرِجْهُ عَنْ الْفَرْضِ نَصٌّ آخَرُ.

وَلَا خِلَافَ فِي أَنَّ حُكْمَ الرَّجُلِ وَالْمَرْأَةِ فِي ذَلِكَ سَوَاءٌ، وَإِيجَابُ الْغُسْلِ: هُوَ قَوْلُ الشَّافِعِيِّ، وَدَاوُد -: وَالْعَجَبُ مِمَّنْ لَا يَرَى غُسْلَ الْمَيِّتِ فَرْضًا وَهُوَ عَمَلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَمْرُهُ، وَعَمَلُ أَهْلِ الْإِسْلَامِ مُذْ أَوَّلِهِ إِلَى الْآنَ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا هَارُونُ بْنُ عَبْدِ اللَّهِ ثنا حَجَّاجُ بْنُ مُحَمَّدٍ الْأَعْوَرُ قَالَ: قَالَ ابْنُ جُرَيْجٍ أَنَا أَبُو الزُّبَيْرِ: أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يُحَدِّثُ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَطَبَ يَوْمًا فَذَكَرَ رَجُلًا مِنْ أَصْحَابِهِ قُبِضَ فَكُفِّنَ فِي كَفَنٍ غَيْرِ طَائِلٍ، فَقَالَ: إِذَا كَفَّنَ أَحَدُكُمْ أَخَاهُ فَلْيُحْسِنْ كَفَنَهُ» .

in a garment worth two hundred dirhams. From Ibn Sīrīn, it is related that it used to be said: "Whoever assumes responsibility for his brother's burial should ensure a good shroud for him, for they will visit one another in their shrouds in the hereafter."

L9033 From Hudhayfah: Do not be extravagant in the shroud; buy two clean garments for me.

L9034 Abu Muhammad said: This is an embellishment for the shroud; he only disapproved of extravagance. It is narrated from Abu Sa'id al-Khudri that he instructed Anas, Ibn Umar, and other Companions of the Prophet (peace be upon him): "Carry me upon a Byzantine cloak, apply an ounce of incense from a censer over me, shroud me in the garments I pray in, and in the Coptic tunic from the house along with them."

L9035 As for what was narrated from Abu Bakr—may Allah the Exalted be pleased with him—regarding the garment he was wearing being washed and shrouding him in it along with two other garments: an improvement of the shroud. Even if there were disagreement, it would be obligatory to refer back to the Messenger of Allah—peace and blessings be upon him.

L9036 **An issue: He was not washed and not shrouded until he was buried.**

L9037–9039 559 - Issue: If someone is neither washed nor shrouded before burial, it is obligatory to remove him so that he can be washed and shrouded without fail. ʿAbd al-Raḥmān ibn ʿAbd Allāh narrated to us; Ibrāhīm ibn Aḥmad narrated to us; al-Farbarī narrated to us; al-Bukhārī narrated to us; ʿAlī ibn ʿAbd Allāh narrated to us; Sufyān—that is, Ibn ʿUyaynah—narrated to us. ʿAmr ibn Dīnār said: I heard Jābir ibn ʿAbd Allāh say: "The Messenger of Allāh—peace and blessings be upon him—came to ʿAbd Allāh ibn Ubayy after he had been placed in his burial pit. He ordered that he be brought out; so he was removed." He placed him on his knee, blew upon him with his saliva, and dressed him in a shirt.

وَرُوِّينَا عَنْ ابْنِ مَسْعُودٍ: أَنَّهُ أَوْصَى أَنْ يُكَفَّنَ فِي حُلَّةٍ بِمِائَتَيْ دِرْهَمٍ، وَعَنْ ابْنِ سِيرِينَ: كَانَ يُقَالُ: مَنْ وَلِيَ أَخَاهُ فَلْيُحْسِنْ كَفَنَهُ، فَإِنَّهُمْ يَتَزَاوَرُونَ فِي أَكْفَانِهِمْ.

وَعَنْ حُذَيْفَةَ: لَا تُغَالُوا فِي الْكَفَنِ، اشْتَرُوا لِي ثَوْبَيْنِ نَقِيَّيْنِ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا تَحْسِينٌ لِلْكَفَنِ: وَإِنَّمَا كَرِهَ الْمُغَالَاةَ فَقَطْ، وَعَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ: أَنَّهُ قَالَ لِأَنَسٍ، وَابْنِ عُمَرَ وَلِغَيْرِهِمَا مِنْ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - احْمِلُونِي عَلَى قَطِيفَةٍ قَيْصُرَانِيَّةٍ، وَأَجْمِرُوا عَلَيَّ أُوقِيَّةَ مِجْمَرٍ وَكَفِّنُونِي فِي ثِيَابِي الَّتِي أُصَلِّي فِيهَا، وَفِي قُبْطِيَّةٍ فِي الْبَيْتِ مَعَهَا؟

وَالَّذِي رُوِيَ عَنْ أَبِي بَكْرٍ - رَضِيَ اللَّهُ تَعَالَى عَنْهُ - فِي أَنْ يُغْسَلَ الثَّوْبُ الَّذِي عَلَيْهِ وَيُكَفَّنَ فِيهِ وَفِي ثَوْبَيْنِ آخَرَيْنِ -: تَحْسِينٌ لِلْكَفَنِ، وَحَتَّى لَوْ كَانَ خِلَافٌ لَوَجَبَ الرَّدُّ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَةٌ لَمْ يُغَسَّلْ وَلَمْ يُكَفَّنْ حَتَّى دُفِنَ]

٥٥٩ - مَسْأَلَةٌ: وَمَنْ لَمْ يُغَسَّلْ وَلَا كُفِّنَ حَتَّى دُفِنَ: وَجَبَ إخْرَاجُهُ حَتَّى يُغَسَّلَ وَيُكَفَّنَ وَلَا بُدَّ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَلِيُّ بْنُ عَبْدِ اللَّهِ ثنا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - قَالَ عَمْرُو بْنُ دِينَارٍ سَمِعْت جَابِرَ بْنَ عَبْدِ اللَّهِ قَالَ: «أَتَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَبْدَ اللَّهِ بْنَ أُبَيٍّ بَعْدَمَا أُدْخِلَ فِي حُفْرَتِهِ، فَأَمَرَ بِهِ فَأُخْرِجَ، فَوَضَعَهُ عَلَى رُكْبَتِهِ، وَنَفَثَ عَلَيْهِ مِنْ رِيقِهِ، وَأَلْبَسَهُ قَمِيصًا» .

L9040 Abu Muhammad said: The Prophet's command—may Allah's peace and blessings be upon him—to wash and shroud the deceased is not bound by time; it remains a perpetual obligation even if the body is fragmented. There is no distinction between fragmentation due to decay and fragmentation caused by injuries and smallpox. None of these things prevent washing and shrouding him.

قَالَ أَبُو مُحَمَّد: أَمْرُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْغُسْلِ وَالْكَفَنِ لَيْسَ مَحْدُودًا بِوَقْتٍ، فَهُوَ فَرْضٌ أَبَدًا، وَإِنْ تَقَطَّعَ الْمَيِّتُ، وَلَا فَرْقَ بَيْنَ تَقَطُّعِهِ بِالْبِلَى وَبَيْنَ تَقَطُّعِهِ بِالْجِرَاحِ، وَالْجُدَرِيِّ، لَا يَمْنَعُ شَيْءٌ مِنْ ذَلِكَ مِنْ غُسْلِهِ وَتَكْفِينِهِ؟

L9041 **Issue on the Burial at Night**

[مَسْأَلَةُ الدّفن لَيْلًا]

L9042 560 - Issue: It is not permissible to bury anyone at night except out of necessity, nor at sunrise until it has fully risen, nor when the sun is at its zenith until it begins to decline, nor when it begins to set, nor during the night until the emergence of the second dawn (true dawn). The funeral prayer is permissible over the deceased during all these times. Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Muʿawiyah narrated to us: Ahmad ibn Shuʿayb narrated to us: Yusuf ibn Saʿīd narrated to us: Hajjāj ibn Muhammad al-Aʿwar narrated to us from Ibn Jurayj, who informed me that Abū al-Zubayr heard Jābir ibn ʿAbdullāh say: "The Messenger of Allah (peace be upon him) delivered a sermon and forbade the burial of a person at night unless compelled by necessity."

٥٦٠ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُدْفَنَ أَحَدٌ لَيْلًا إِلَّا عَنْ ضَرُورَةٍ وَلَا عِنْدَ طُلُوعِ الشَّمْسِ حَتَّى تَرْتَفِعَ، وَلَا حِينَ اسْتِوَاءِ الشَّمْسِ حَتَّى تَأْخُذَ فِي الزَّوَالِ، وَلَا حِينَ ابْتِدَاءِ أَخْذِهَا فِي الْغُرُوبِ، وَيَتَّصِلُ ذَلِكَ بِاللَّيْلِ إِلَى طُلُوعِ الْفَجْرِ الثَّانِي، وَالصَّلَاةُ جَائِزَةٌ عَلَيْهِ فِي هَذِهِ الْأَوْقَاتِ كُلِّهَا -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا يُوسُفُ بْنُ سَعِيدٍ ثنا حَجَّاجُ بْنُ مُحَمَّدٍ الْأَعْوَرُ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «خَطَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَزَجَرَ أَنْ يُقْبَرَ إِنْسَانٌ لَيْلًا إِلَّا أَنْ يُضْطَرَّ إِلَى ذَلِكَ» ؟ .

L9043 Abu Muhammad said: All those from him (peace be upon him), his wives, and his companions (may Allah be pleased with them) who were buried at night:

قَالَ أَبُو مُحَمَّد: كُلُّ مَنْ دُفِنَ لَيْلًا مِنْهُ - عَلَيْهِ السَّلَامُ -، وَمِنْ أَزْوَاجِهِ، وَمِنْ أَصْحَابِهِ - رَضِيَ اللَّهُ عَنْهُمْ -:

L9044 This is solely due to a necessity that necessitated it.

فَإِنَّمَا ذَلِكَ لِضَرُورَةٍ أَوْجَبَتْ ذَلِكَ

L9045–9047 Due to fear of overcrowding, fear of heat harming those present—for the heat of Medina is severe—or fear of decay or other valid reasons permitting burial at night, is it not impermissible for anyone to assume that the Companions—may Allah be pleased with them—acted contrary to this? We were narrated through the chain of Yahya ibn Sa'id al-Qattan: Hisham al-Dastuwa'i narrated to us from Qatadah, from Sa'id ibn al-Musayyib, that he disapproved of burial at night. Abdullah ibn Yusuf narrated to us; Ahmad ibn Fath narrated to us;

، مِنْ خَوْفِ زِحَامٍ، أَوْ خَوْفِ الْحَرِّ عَلَى مَنْ حَضَرَ، وَحَرُّ الْمَدِينَةِ شَدِيدٌ، أَوْ خَوْفِ تَغَيُّرٍ أَوْ غَيْرِ ذَلِكَ مِمَّا يُبِيحُ الدَّفْنَ لَيْلًا، لَا يَحِلُّ لِأَحَدٍ أَنْ يَظُنَّ بِهِمْ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافَ ذَلِكَ؟ -: رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ ثنا هِشَامٌ الدَّسْتُوَائِيُّ عَنْ

Abdul-Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to us; Yahya ibn Yahya narrated to us; Abdullah ibn Wahb narrated from Musa ibn Ali ibn Rabah, from his father: I heard Uqbah ibn Amir say, "Three times were..." The Messenger of Allah - peace and blessings of Allah be upon him - forbade us to pray in them or bury our dead in them: when the sun rises brightly until it rises high, when the sun stands at its zenith until it declines, and when the sun inclines toward setting until it sets.

قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّهُ كَرِهَ الدَّفْنَ لَيْلًا؟ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى ثنا عَبْدُ اللَّهِ بْنُ وَهْبٍ عَنْ مُوسَى بْنِ عَلِيِّ بْنِ رَبَاحٍ عَنْ أَبِيهِ سَمِعْتُ عُقْبَةَ بْنَ عَامِرٍ يَقُولُ: «ثَلَاثُ سَاعَاتٍ كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْهَى أَنْ نُصَلِّيَ فِيهَا أَوْ أَنْ نَقْبُرَ فِيهِنَّ مَوْتَانَا: حِينَ تَطْلُعُ الشَّمْسُ بَازِغَةً حَتَّى تَرْتَفِعَ، وَحِينَ يَقُومُ قَائِمُ الظَّهِيرَةِ حَتَّى تَمِيلَ الشَّمْسُ، وَحِينَ تُضَيِّفُ لِلْغُرُوبِ حَتَّى تَغْرُبَ» .

L9048 Abu Muhammad said: We have previously clarified that the prayer prohibited during these times is specifically the deliberate voluntary prayer, whose initiation is undertaken with focused intent.

قَالَ أَبُو مُحَمَّد: قَدْ بَيَّنَّا قَبْلُ أَنَّ الصَّلَاةَ الْمَنْهِيَّ عَنْهَا فِي هَذِهِ الْأَوْقَاتِ إنَّمَا هِيَ التَّطَوُّعُ الْمُتَعَمَّدُ ابْتِدَاؤُهُ قَصْدًا إلَيْهِ.

L9049 Similarly, this ruling applies to every obligatory prayer that was intentionally neglected until the time of its remembrance—and only then—not to every prayer that is obligatory or recommended. And success is from Allah, the Most High.

وَكَذَلِكَ كُلُّ صَلَاةِ فَرْضٍ مَقْضِيَّةٍ تَعَمَّدَ تَرْكَهَا إلَى ذَلِكَ الْوَقْتِ وَهُوَ يَذْكُرُهَا فَقَطْ، لَا كُلُّ صَلَاةٍ مَأْمُورٍ بِهَا أَوْ مَنْدُوبٍ إلَيْهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The Ruling on the Funeral Prayer for Deceased Muslims.

[مَسْأَلَةٌ الصَّلَاةُ عَلَى مَوْتَى الْمُسْلِمِينَ]

L9051 Issue 561: Prayer over deceased Muslims is an obligation—Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: Maḥmūd ibn Ghaylān said: Abū Dāwūd—that is, al-Ṭayālisī—narrated to us: Shuʿbah narrated from ʿUthmān ibn ʿAbdillāh ibn Mawhab: "I heard ʿAbdullāh ibn Abī Qatādah report from his father: 'The Messenger of Allah (peace and blessings be upon him) was brought a man from the Anṣār to pray over him. He (peace and blessings be upon him) said: "Pray over your companion, for he owes a debt"—but did he mention the entire ḥadīth?'" This constitutes a general command to pray over him.

٥٦١ - مَسْأَلَةٌ: وَالصَّلَاةُ عَلَى مَوْتَى الْمُسْلِمِينَ: فَرْضٌ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مَحْمُودُ بْنُ غَيْلَانَ أَنَا أَبُو دَاوُد هُوَ الطَّيَالِسِيُّ - ثنا شُعْبَةُ عَنْ عُثْمَانَ بْنِ عَبْدِ اللَّهِ بْنِ مَوْهَبٍ سَمِعْتُ عَبْدَ اللَّهِ بْنَ أَبِي قَتَادَةَ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِرَجُلٍ مِنْ الْأَنْصَارِ لِيُصَلِّيَ عَلَيْهِ، فَقَالَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: صَلُّوا عَلَى صَاحِبِكُمْ، فَإِنَّ عَلَيْهِ دَيْنًا» وَذَكَرَ الْحَدِيثَ؟ فَهَذَا أَمْرٌ بِالصَّلَاةِ عَلَيْهِ عُمُومًا.

L9052 A similar ruling has also been reported concerning the embezzler of war spoils. 562 - Issue: Exempted is one killed by the hands of polytheists

specifically in the cause of Allah (the Mighty and Majestic) on the battlefield specifically. He is neither washed nor shrouded but buried with his blood and garments—only his weapons are removed. Whether prayer is performed over him or not, both are permissible. If he is carried away from the battlefield alive and later dies, he is washed, shrouded, and prayed over.

Abd al-Rahman ibn Abdullah → Ibrahim ibn Ahmad → al-Farbari → al-Bukhari → Abdullah ibn Yusuf → al-Layth—that is, Ibn Sa'd—narrated to me: Ibn Shihab narrated to me from Abd al-Rahman ibn Ka'b ibn Malik from Jabir ibn Abdullah, who mentioned the martyrs of Uhud and said: "The Messenger of Allah (peace and blessings be upon him) commanded their burial in their blood. They were neither washed nor prayed over."

وَرُوِيَ مِثْلُ ذَلِكَ أَيْضًا فِي الْغَالِّ؟ ٥٦٢ - مَسْأَلَةٌ: حَاشَا الْمَقْتُولِ بِأَيْدِي الْمُشْرِكِينَ خَاصَّةً فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ فِي الْمَعْرَكَةِ خَاصَّةً، فَإِنَّهُ لَا يُغَسَّلُ وَلَا يُكَفَّنُ، لَكِنْ يُدْفَنُ بِدَمِهِ وَثِيَابِهِ، إِلَّا أَنَّهُ يُنْزَعُ عَنْهُ السِّلَاحُ فَقَطْ، وَإِنْ صُلِّيَ عَلَيْهِ: فَحَسَنٌ، وَإِنْ لَمْ يُصَلَّ عَلَيْهِ: فَحَسَنٌ، فَإِنْ حُمِلَ عَنْ الْمَعْرَكَةِ وَهُوَ حَيٌّ فَمَاتَ: غُسِّلَ وَكُفِّنَ وَصُلِّيَ عَلَيْهِ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - حَدَّثَنِي ابْنُ شِهَابٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ كَعْبِ بْنِ مَالِكٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ: أَنَّهُ ذَكَرَ قَتْلَى أُحُدٍ وَقَالَ: «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِدَفْنِهِمْ فِي دِمَائِهِمْ، وَلَمْ يُغَسَّلُوا وَلَمْ يُصَلَّ عَلَيْهِمْ» .

L9053–9055 And through him also to Al-Layth ibn Sa'd: Yazīd ibn Abī Ḥabīb narrated to me, on the authority of Abū al-Khayr, on the authority of 'Uqbah ibn 'Āmir al-Juhanī, that the Messenger of Allah - peace and blessings of Allah be upon him - went out one day and performed the funeral prayer for the people of Uḥud in the manner of his prayer over... The deceased—then he turned to the pulpit" and he mentioned the hadith. Abu Muhammad said: These individuals deviated from the Prophet's command (peace be upon him) concerning shrouding, washing, and prayer. The remaining cases are all others killed by a Muslim, a rebel, a belligerent, or those removed alive from the battlefield—they remain subject to the rulings governing ordinary deceased persons. Abu Hanifah held that prayer should be offered over them. Abu Muhammad said: It is invalid to discard either of the two mentioned precedents for the other. Both constitute valid and permissible rulings. This is not a case for abrogation, as their concurrent application is possible under differing circumstances.[1]

وَبِهِ أَيْضًا إِلَى اللَّيْثِ بْنِ سَعْدٍ: حَدَّثَنِي يَزِيدُ بْنُ أَبِي حَبِيبٍ عَنْ أَبِي الْخَيْرِ عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَرَجَ يَوْمًا فَصَلَّى عَلَى أَهْلِ أُحُدٍ صَلَاتَهُ عَلَى الْمَيِّتِ، ثُمَّ انْصَرَفَ إِلَى الْمِنْبَرِ» وَذَكَرَ الْحَدِيثَ -: قَالَ أَبُو مُحَمَّدٍ: فَخَرَجَ هَؤُلَاءِ عَنْ أَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْكَفَنِ، وَالْغُسْلِ، وَالصَّلَاةِ - وَبَقِيَ سَائِرُ مَنْ قَتَلَهُ مُسْلِمٌ، أَوْ بَاغٍ، أَوْ مُحَارِبٌ، أَوْ رُفِعَ عَنْ الْمَعْرَكَةِ حَيًّا - عَلَى حُكْمِ سَائِرِ الْمَوْتَى، وَذَهَبَ أَبُو حَنِيفَةَ إِلَى أَنْ يُصَلَّى عَلَيْهِمْ -: قَالَ أَبُو مُحَمَّدٍ: لَيْسَ يَجُوزُ أَنْ يُتْرَكَ أَحَدُ الْأَثَرَيْنِ الْمَذْكُورَيْنِ لِلْآخَرِ، بَلْ كِلَاهُمَا حَقٌّ مُبَاحٌ، وَلَيْسَ هَذَا مَكَانَ نَسْخٍ؛ لِأَنَّ اسْتِعْمَالَهُمَا مَعًا مُمْكِنٌ فِي أَحْوَالٍ مُخْتَلِفَةٍ.

L9056 It has been authentically reported from the Prophet (peace and blessings of Allah be upon him) that those who die of intestinal disease, the plague-

[1] **Hadith references (L9053):** Sunan an-Nasai 1954; Sahih Muslim 2296a.

stricken, the drowned, those who perish by burning, the one afflicted with pleurisy, the one crushed by a collapsing structure, and the woman who dies in childbirth: all of them are martyrs.

وَقَدْ صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّ الْمَبْطُونَ، وَالْمَطْعُونَ، وَالْغَرِيقَ، وَالْحَرِيقَ، وَصَاحِبَ ذَاتِ الْجَنْبِ، وَصَاحِبَ الْهَدَمِ، وَالْمَرْأَةَ تَمُوتُ بِجُمْعٍ -: شُهَدَاءُ كُلُّهُمْ».

L9057 There is no disagreement that he—peace be upon him—shrouded others during his lifetime and ritually washed those among them who died. Success comes solely from Allah, the Exalted.

وَلَا خِلَافَ فِي أَنَّهُ - عَلَيْهِ السَّلَامُ - كَفَّنَ فِي حَيَاتِهِ، وَغَسَّلَ مَنْ مَاتَ فِيهِمْ مِنْ هَؤُلَاءِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L9058 Were ʻUmar, ʻUthman, and ʻAli—may Allah be pleased with them—martyrs, so they were washed, shrouded, and prayed over? And is there no valid evidence for not leaving marks on the whipped person, since its narrator is ʻAli ibn ʻĀṣim, who is deemed unreliable?

وَقَدْ كَانَ عُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ - رَضِيَ اللَّهُ عَنْهُمْ -: شُهَدَاءَ، فَغُسِّلُوا، وَكُفِّنُوا وَصُلِّيَ عَلَيْهِمْ؟ وَلَا يَصِحُّ فِي تَرْكِ الْمَجْلُودِ أَثَرٌ؛ لِأَنَّ رَاوِيهِ عَلِيُّ بْنُ عَاصِمٍ، وَلَيْسَ بِشَيْءٍ؟

Issue: Deepening the Grave's Digging

[مَسْأَلَةُ إِعْمَاقُ حَفِيرِ الْقَبْرِ]

L9060 Issue 563: It is obligatory to deepen the grave. Burying a Muslim is obligatory, and it is permissible to bury two or three individuals in a single grave, with precedence given to the one who has memorized the most Quran.

٥٦٣ - مَسْأَلَةٌ: وَإِعْمَاقُ حَفِيرِ الْقَبْرِ: فَرْضٌ، وَدَفْنُ الْمُسْلِمِ: فَرْضٌ وَجَائِزٌ دَفْنُ الِاثْنَيْنِ، وَالثَّلَاثَةِ فِي قَبْرٍ وَاحِدٍ، وَيُقَدَّمُ أَكْثَرُهُمْ قُرْآنًا؟

L9061–9063 Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: from Muhammad ibn Ma'mar, who narrated to us: Wahb ibn Jarir ibn Hazim narrated to us: My father said: I heard Humayd—who is ibn Hilal—from Sa'd ibn Hisham ibn ʻAmir from his father, who said: "On the day of Uhud, those who were struck among the Muslims were struck down, and the people suffered injuries. The Messenger of Allah—peace and blessings be upon him—said: 'Dig and widen, bury two or three in a grave, and place the one who had memorized the most Quran first.'" And by him to Aḥmad ibn Shuʿayb: I am Muḥammad ibn Bashshār, narrated to us Isḥāq ibn Yūsuf, narrated to us Sufyān—he is al-Thawrī—from Ayyūb al-Sakhtiyānī, from Ḥumayd ibn Hilāl, from Hishām ibn ʿĀmir, who said: "We complained to the Messenger of Allah—peace be upon him—on the day of Uḥud, saying: 'O Messenger of Allah, is digging a grave for each person too arduous?' The Messenger of Allah—peace be upon him—

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَعْمَرٍ ثنا وَهْبُ بْنُ جَرِيرِ بْنِ حَازِمٍ ثنا أَبِي قَالَ: سَمِعْت حُمَيْدًا هُوَ ابْنُ هِلَالٍ - عَنْ سَعْدِ بْنِ هِشَامِ بْنِ عَامِرٍ عَنْ أَبِيهِ قَالَ «لَمَّا كَانَ يَوْمُ أُحُدٍ أُصِيبَ مَنْ أُصِيبَ مِنْ الْمُسْلِمِينَ، فَأَصَابَ النَّاسَ جِرَاحَاتٌ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - احْفِرُوا وَأَوْسِعُوا، وَادْفِنُوا الِاثْنَيْنِ، وَالثَّلَاثَةَ فِي الْقَبْرِ، وَقَدِّمُوا أَكْثَرَهُمْ قُرْآنًا» وَبِهِ إلَى أَحْمَدَ بْنِ شُعَيْبٍ: أَنَا مُحَمَّدُ بْنُ بَشَّارٍ ثنا إِسْحَاقُ بْنُ يُوسُفَ ثنا سُفْيَانُ هُوَ الثَّوْرِيُّ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ حُمَيْدِ بْنِ هِلَالٍ عَنْ هِشَامِ بْنِ عَامِرٍ قَالَ «شَكَوْنَا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ أُحُدٍ، فَقُلْنَا: يَا رَسُولَ اللَّهِ، الْحَفْرُ عَلَيْنَا لِكُلِّ إنْسَانٍ: شَدِيدٌ؟ فَقَالَ رَسُولُ اللَّهِ -

responded: 'Dig deeply, make them well, and bury two or three together in a single grave. Place the one who had memorized the most Quran first.'" He—peace be upon him—did not excuse them from deepening the graves. Narrated to us ʿAbd al-Raḥmān ibn ʿAbdillāh, narrated to us Ibrāhīm ibn Aḥmad, narrated to us al-Farbarī, narrated to us al-Bukhārī, narrated to us ʿAbdullāh ibn Yūsuf, narrated to us al-Layth—he is Ibn Saʿd—narrated to me Ibn Shihāb from ʿAbd al-Raḥmān ibn Kaʿb ibn Mālik, from Jābir ibn ʿAbdillāh, who said: "The Prophet—peace be upon him—would wrap two men from the slain of Uḥud in a single shroud, then ask: 'Which of them had memorized more Quran?' When one was indicated to him, he would place that man first in the grave niche."

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - احْفِرُوا وَأَعْمِقُوا وَأَحْسِنُوا وَادْفِنُوا الِاثْنَيْنِ وَالثَّلَاثَةَ فِي قَبْرٍ وَاحِدٍ وَقَدِّمُوا أَكْثَرَهُمْ قُرْآنًا» فَلَمْ يَعْذُرْهُمْ - عَلَيْهِ السَّلَامُ - فِي الْإِعْمَاقِ فِي الْحَفْرِ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - حَدَّثَنِي ابْنُ شِهَابٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ كَعْبِ بْنِ مَالِكٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَجْمَعُ بَيْنَ الرَّجُلَيْنِ مِنْ قَتْلَى أُحُدٍ فِي الثَّوْبِ الْوَاحِدِ، ثُمَّ يَقُولُ: أَيُّهُمْ أَكْثَرُ أَخْذًا لِلْقُرْآنِ؟ فَإِذَا أُشِيرَ لَهُ إِلَى أَحَدِهِمَا قَدَّمَهُ فِي اللَّحْدِ»

The Issue of Burying the Disbeliever

[مَسْأَلَةُ دَفْنُ الْكَافِرِ]

L9064

L9065 Issue 564: The burial of a belligerent disbeliever and others is obligatory. Abd al-Rahman ibn Abdullah narrated to us, Ibrahim ibn Ahmad narrated to us, al-Farbari narrated to us, al-Bukhari narrated to us, Abdullah ibn Muhammad reported hearing Rawh ibn Ubada narrate from Saʿid ibn Abi Arubah, who reported from Qatadah that he said: "Anas ibn Malik informed us that the Messenger of Allah - peace and blessings of Allah be upon him - commanded on the day of Badr that twenty-four men from the chieftains of Quraysh be cast into a foul and defiling well among the wells of Badr." The Prophet's prohibition against mutilation (peace be upon him) has been authentically established.

٥٦٤ - مَسْأَلَةٌ: وَدَفْنُ الْكَافِرِ الْحَرْبِيِّ وَغَيْرِهِ: فَرْضٌ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ سَمِعَ رَوْحَ بْنَ عُبَادَةَ ثنا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ قَالَ: ذَكَرَ لَنَا أَنَسُ بْنُ مَالِكٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ يَوْمَ بَدْرٍ بِأَرْبَعَةٍ وَعِشْرِينَ رَجُلًا مِنْ صَنَادِيدِ قُرَيْشٍ فَقُذِفُوا فِي طَوِيٍّ مِنْ أَطْوَاءِ بَدْرٍ خَبِيثٍ مُخْبِثٍ» . وَقَدْ صَحَّ نَهْيُهُ - عَلَيْهِ السَّلَامُ - عَنْ الْمُثْلَةِ.

L9066 Leaving a human unburied is mutilation.

وَتَرْكُ الْإِنْسَانِ لَا يُدْفَنُ: مُثْلَةٌ.

L9067–9069 It has been authentically reported that "the Messenger of Allah (peace be upon him) commanded, when he ordered the killing of Banu Qurayẓah, that trenches be dug and they be cast into them." From ʿAbdullāh ibn Rabīʿ → Muḥammad ibn Muʿāwiyah → Aḥmad ibn Shuʿayb → ʿAbdullāh ibn Saʿīd: Yaḥyā—that is, Ibn al-Qaṭṭān—narrated to us from Sufyān al-Thawrī from Abū Isḥāq al-Sabīʿī from Nājiyah ibn Kaʿb from ʿAlī ibn Abī Ṭālib, who said:

وَصَحَّ أَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ إِذْ قَتَلَ بَنِي قُرَيْظَةَ بِأَنْ تُحْفَرَ خَنَادِقُ وَيُلْقَوْا فِيهَا» -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ ثنا يَحْيَى هُوَ ابْنُ الْقَطَّانِ - عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ

"I said to the Prophet (peace be upon him): 'Your misguided uncle has died—who will bury him?' He replied: 'Go and bury your father.'" He then mentioned the remainder of the ḥadīth. Narrated by ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Abū Sinān ʿAbdullāh ibn Sinān, from Saʿīd ibn Jubayr, who said: I said to Ibn ʿAbbās, "A man among us died as a Christian and left his son." He replied: "He should accompany him and bury him." Sufyān stated: I heard Ḥammād ibn Abī Sufyān narrate from al-Shaʿbī that the mother of al-Ḥārith ibn Abī Rabīʿah died as a Christian, and the Companions of the Prophet (peace be upon him) escorted her funeral procession.

عَنْ نَاجِيَةَ بْنِ كَعْبٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ «قُلْتُ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِنَّ عَمَّكَ الضَّالَّ قَدْ مَاتَ فَمَنْ يُوَارِيهِ؟ قَالَ: اذْهَبْ فَوَارِ أَبَاكَ» وَذَكَرَ بَاقِيَ الْحَدِيثِ - وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي سِنَانٍ عَبْدِ اللَّهِ بْنِ سِنَانٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: قُلْت لِابْنِ عَبَّاسٍ: رَجُلٌ فِينَا مَاتَ نَصْرَانِيًّا وَتَرَكَ ابْنَهُ؟ قَالَ: يَنْبَغِي أَنْ يَمْشِيَ مَعَهُ وَيَدْفِنَهُ قَالَ سُفْيَانُ: وَسَمِعْت حَمَّادَ بْنَ أَبِي سُفْيَانَ يُحَدِّثُ عَنْ الشَّعْبِيِّ: أَنَّ أُمَّ الْحَارِثِ بْنِ أَبِي رَبِيعَةَ مَاتَتْ وَهِيَ نَصْرَانِيَّةٌ، فَشَيَّعَهَا أَصْحَابُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

Issue: The Best Burial Shroud (Kafan) for a Muslim

[مَسْأَلَةٌ أَفْضَلُ الْكَفَنِ لِلْمُسْلِمِ]

565 – Issue: The best shroud for a Muslim is three white garments for the man, in which he is wrapped. There should be no shirt, turban, trousers, or cotton in them. The woman is the same, with two additional garments.

٥٦٥ - مَسْأَلَةٌ: وَأَفْضَلُ الْكَفَنِ لِلْمُسْلِمِ: ثَلَاثَةُ أَثْوَابٍ بِيضٍ لِلرَّجُلِ، يُلَفُّ فِيهَا، لَا يَكُونُ فِيهَا قَمِيصٌ، وَلَا عِمَامَةٌ، وَلَا سَرَاوِيلُ، وَلَا قُطْنٌ. وَالْمَرْأَةُ كَذَلِكَ، وَثَوْبَانِ زَائِدَانِ.

But if he cannot acquire more than one garment, it suffices him.

فَإِنْ لَمْ يَقْدِرْ لَهُ عَلَى أَكْثَرَ مِنْ ثَوْبٍ وَاحِدٍ أَجْزَأَهُ.

If no garment is found for the two except a single one: they are both to be wrapped together in it.

فَإِنْ لَمْ يُوجَدْ لِلِاثْنَيْنِ إِلَّا ثَوْبٌ وَاحِدٌ: أُدْرِجَا فِيهِ جَمِيعًا.

If a man and a woman are shrouded with fewer or more [wrappings], there is no blame. Abd al-Rahman ibn Abdullah narrated to us through Ibrahim ibn Ahmad through al-Farbari through al-Bukhari through Ismail ibn Abi Uways through Malik through Hisham ibn Urwah through his father through Aisha, who said: "The Prophet (peace be upon him) was shrouded in three white Suhuli cloths, containing neither a shirt nor a turban." Abu Muhammad said: "Allah the Exalted did not choose for His Prophet except the best of conditions." Through the same chain of transmission to al-Bukhari: Musaddad narrated to us through Yahya ibn Sa'id al-Qattan through Ubaydullah - the son of Umar - who said: "Nafi narrated to me from Ibn Umar, who said: 'When Abdullah ibn Ubayy died, his son came to the Prophet (peace be upon

وَإِنْ كُفِّنَ الرَّجُلُ، وَالْمَرْأَةُ بِأَقَلَّ أَوْ أَكْثَرَ فَلَا حَرَجَ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا إسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ عَنْ مَالِكٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ، «كُفِّنَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ثَلَاثَةِ أَثْوَابٍ بِيضٍ سُحُولِيَّةٍ لَيْسَ فِيهَا قَمِيصٌ وَلَا عِمَامَةٌ» -: قَالَ أَبُو مُحَمَّد: مَا تَخَيَّرَ اللَّهُ تَعَالَى لِنَبِيِّهِ إلَّا أَفْضَلَ الْأَحْوَالِ؟ وَبِهِ إلَى الْبُخَارِيِّ: ثنا مُسَدَّدٌ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ عُبَيْدِ اللَّهِ هُوَ ابْنُ عُمَرَ - حَدَّثَنِي نَافِعٌ عَنْ ابْنِ عُمَرَ قَالَ «إنَّ عَبْدَ اللَّهِ بْنَ أُبَيٍّ لَمَّا

him) and said: 'Give me your shirt to shroud him in, pray over him, and seek forgiveness for him.' He gave him his shirt and said: 'Notify me when you are ready for me to pray over him,'" and he mentioned the rest of the hadith. Through the same chain of transmission to al-Bukhari: Umar ibn Hafs ibn Ghiyath narrated to us through his father through al-Aʿmash through Shaqiq through Khabbab, who said: "We emigrated with the Messenger of Allah (peace be upon him) seeking Allah's countenance, thus our reward became incumbent upon Allah. Among us were those who died without having consumed any portion of their reward, such as Musʿab ibn Umayr who was killed on the day of Uhud. We found nothing to shroud him in except a cloak." Except for a cloak: when we covered his head, his feet were exposed, and when we covered his feet, his head was exposed. So the Prophet, peace be upon him, commanded us to cover his head and to place some *idhkhir* over his feet.

L9077 Abu Muhammad said: Is it obligatory in this case to shroud someone for whom only a single garment is found that does not cover his entire body? Abu Muhammad said: Here is a hadith in which its narrator made an inadvertent error - we have narrated it via Ahmad ibn Hanbal from al-Hasan ibn Musa al-Ashyab from Hammad ibn Salama from Abdullah ibn Muhammad ibn Aqil ibn Abi Talib from Muhammad ibn Ali ibn Abi Talib - he is Ibn al-Hanafiyya - from his father: "The Prophet (peace and blessings of Allah be upon him) was shrouded in seven sheets."[2]

L9078 The uncertainty here is from al-Ḥasan ibn Mūsā or ʿAbdullāh ibn Muḥammad ibn ʿAqīl. Should someone mention the report we transmitted via Yaḥyā ibn Saʿīd al-Qaṭṭān, who said: I heard Saʿīd ibn Abī ʿArūbah narrating from Ayyūb, from Abū Qilābah, from Abū al-Muhallab, from Samurah ibn Jundub, from the Prophet—peace and blessings be upon him—who said: "Wear white garments from among your clothes, for they are purer and cleaner. Shroud your dead in it."

تُوُفِّيَ جَاءَ ابْنُهُ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: أَعْطِنِي قَمِيصَكَ أُكَفِّنْهُ فِيهِ؟ وَصَلِّ عَلَيْهِ وَاسْتَغْفِرْ لَهُ، فَأَعْطَاهُ قَمِيصَهُ، وَقَالَ لَهُ: آذِنِّي أُصَلِّ عَلَيْهِ» وَذَكَرَ الْحَدِيثَ. وَبِهِ إِلَى الْبُخَارِيِّ: ثنا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ ثنا أَبِي عَنِ الْأَعْمَشِ ثنا شَقِيقٌ ثنا خَبَّابٌ قَالَ «هَاجَرْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَلْتَمِسُ وَجْهَ اللَّهِ، فَوَقَعَ أَجْرُنَا عَلَى اللَّهِ، فَمِنَّا مَنْ مَاتَ لَمْ يَأْكُلْ مِنْ أَجْرِهِ شَيْئًا، مِنْهُمْ: مُصْعَبُ بْنُ عُمَيْرٍ، قُتِلَ يَوْمَ أُحُدٍ، فَلَمْ نَجِدْ مَا نُكَفِّنُهُ إِلَّا بُرْدَةً، إِذَا غَطَّيْنَا بِهَا رَأْسَهُ خَرَجَتْ رِجْلَاهُ، وَإِذَا غَطَّيْنَا رِجْلَيْهِ خَرَجَ رَأْسُهُ، فَأَمَرَنَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نُغَطِّيَ رَأْسَهُ، وَأَنْ نَجْعَلَ عَلَى رِجْلَيْهِ مِنَ الْإِذْخِرِ» .

قَالَ أَبُو مُحَمَّدٍ: هَكَذَا يَجِبُ أَنْ يُكَفَّنَ مَنْ لَمْ يُوجَدْ لَهُ إِلَّا ثَوْبٌ وَاحِدٌ لَا يَعُمُّهُ كُلَّهُ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَهُنَا حَدِيثٌ وَهَمَ فِيهِ رَاوِيهِ -: رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ عَنِ الْحَسَنِ بْنِ مُوسَى الْأَشْيَبِ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلِ بْنِ أَبِي طَالِبٍ عَنْ مُحَمَّدِ بْنِ عَلِيِّ بْنِ أَبِي طَالِبٍ هُوَ ابْنُ الْحَنَفِيَّةِ - عَنْ أَبِيهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُفِّنَ فِي سَبْعَةِ أَثْوَابٍ» .

وَالْوَهْمُ فِيهِ مِنَ الْحَسَنِ بْنِ مُوسَى، أَوْ مِنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ -: فَإِنْ ذَكَرَ ذَاكِرٌ الْخَبَرَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ قَالَ: سَمِعْتُ سَعِيدَ بْنَ أَبِي عَرُوبَةَ يُحَدِّثُ عَنْ أَيُّوبَ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْبَسُوا مِنْ ثِيَابِكُمُ الْبَيَاضَ، فَإِنَّهَا أَطْهَرُ وَأَطْيَبُ، وَكَفِّنُوا فِيهِ مَوْتَاكُمْ» .

[2] **Hadith references (L9077):** Musnad Ahmad 801.

قُلْنَا: هَذَا لَيْسَ فَرْضًا، لِأَنَّهُ قَدْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - لَبِسَ حُلَّةً حَمْرَاءَ وَشَمْلَةً سَوْدَاءَ -: وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا الْقَعْنَبِيُّ عَنْ عَبْدِ الْعَزِيزِ بْنِ مُحَمَّدٍ هُوَ الدَّرَاوَرْدِيُّ - عَنْ زَيْدٍ هُوَ ابْنُ أَسْلَمَ - أَنَّ ابْنَ عُمَرَ قِيلَ لَهُ «لِمَ تَصْبُغُ بِالصُّفْرَةِ؟ قَالَ: إنِّي رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَصْبُغُ بِهَا، وَلَمْ يَكُنْ شَيْءٌ أَحَبَّ إلَيْهِ مِنْهَا، وَكَانَ يَصْبُغُ بِهَا ثِيَابَهُ كُلَّهَا حَتَّى عِمَامَتَهُ» . حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَمْرُو بْنُ عَاصِمٍ ثنا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ قَالَ «قُلْتُ لِأَنَسِ بْنِ مَالِكٍ أَيُّ الثِّيَابِ كَانَ أَحَبَّ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ قَالَ الْحِبَرَةُ» .

L9079 We said: This is not an obligation, for it is authentically established that he—peace be upon him—wore a red two-piece garment and a black cloak. Abdullāh ibn Rabīʿ narrated to us, who narrated to us from ʿUmar ibn ʿAbd al-Malik, who narrated to us from Muḥammad ibn Bakr, who narrated to us from Abū Dāwūd, who narrated to us from al-Qaʿnabī, from ʿAbd al-ʿAzīz ibn Muḥammad—he is al-Darāwardī—from Zayd—who is the son of Aslam—that Ibn ʿUmar was asked: "Why do you dye with yellow?" He replied: "I saw the Messenger of Allah—peace and blessings be upon him—dye with it. Nothing was more beloved to him than it, and he would dye all his garments with it, even his turban ʿimāmah." ʿAbd al-Raḥmān ibn ʿAbdullāh narrated to us, who narrated to us from Ibrāhīm ibn Aḥmad, who narrated to us from al-Farbarī, who narrated to us from al-Bukhārī, who narrated to us from ʿAmr ibn ʿĀṣim, who narrated to us from Hammām ibn Yaḥyā, from Qatādah, who said: "I asked Anas ibn Mālik: 'Which clothing was most beloved to the Messenger of Allah—peace and blessings be upon him?' He answered: 'al-ḥibarah (a type of striped Yemeni cloth)'."

قَالَ أَبُو مُحَمَّد: لَا يَحِلُّ أَنْ يُتْرَكَ حَدِيثٌ لِحَدِيثٍ، بَلْ كُلُّهَا حَقٌّ، فَصَحَّ أَنَّ الْأَمْرَ بِالْبَيَاضِ نَدْبٌ؟ وَبِاخْتِيَارِنَا هَذَا يَقُولُ جُمْهُورُ السَّلَفِ: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ: أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ قَالَ لَهَا فِي حَدِيثٍ " فِيمَ كَفَّنْتُمُوهُ؟ - يَعْنِي النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَتْ فِي ثَلَاثَةِ أَثْوَابٍ بِيضٍ سُحُولٍ لَيْسَ فِيهَا قَمِيصٌ وَلَا عِمَامَةٌ، فَقَالَ أَبُو بَكْرٍ: انْظُرُوا ثَوْبِي هَذَا فَاغْسِلُوهُ، وَبِهِ رَدْعٌ مِنْ زَعْفَرَانٍ أَوْ مِشْقٍ وَاجْعَلُوا مَعَهُ ثَوْبَيْنِ آخَرَيْنِ ".

L9080–9081 Abu Muhammad said: It is not permissible to abandon one hadith for another, for all of them are truth. Thus, it is established that the directive regarding white garments is a recommended act. According to this position we have chosen, the majority of the Salaf state - as narrated to us through Hammad ibn Salamah's chain from Hisham ibn Urwah from his father from Aisha - that Abu Bakr al-Siddiq asked her: "In what did you shroud him?" meaning the Prophet, peace be upon him. She replied: "In three white Suhuli garments, in which there was no shirt or turban." Abu Bakr then said: "Look at this garment of mine. Wash it, and it has a dye of saffron or mishq [a plant-based dye], and add two other garments with it."

وَمِنْ طَرِيقِ ابْنِ عُمَرَ قَالَ: كُفِّنَ عُمَرُ بْنُ الْخَطَّابِ فِي ثَلَاثَةِ أَثْوَابٍ: ثَوْبَيْنِ سُحُولِيَّيْنِ، وَثَوْبٍ كَانَ يَلْبَسُهُ

L9082 From the narration of Ibn Umar, he said: Umar ibn al-Khattab was shrouded in three garments: two Sahuli garments and one he used to wear.

L9083 Narrated by Abu Hurairah that he said to his family upon his death: "Do not clothe me in a shirt nor place a turban on me, for indeed the Messenger

of Allah (peace be upon him) was not clothed in a shirt nor was a turban placed on him."

«وَعَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ لِأَهْلِهِ عِنْدَ مَوْتِهِ لَا تُقَمِّصُونِي وَلَا تُعَمِّمُونِي فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُقَمَّصْ وَلَمْ يُعَمَّمْ» .

L9084 From Ibn Jurayj, from ʿAṭāʾ: The deceased should not be turbaned, nor wrapped with an izār (lower garment), nor draped with a ridāʾ (upper garment), but rather enveloped in the shrouds plainly.

وَعَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: لَا يُعَمَّمُ الْمَيِّتُ وَلَا يُؤَزَّرُ وَلَا يُرَدَّى لَكِنْ يُلَفُّ فِيهَا لَفًّا.

L9085 Ibn Jurayj said: Ibn Tāwus informed me from his father that he would shroud a man from his family in three garments, none of which was a turban.

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي ابْنُ طَاوُسٍ عَنْ أَبِيهِ: أَنَّهُ كَانَ يُكَفِّنُ الرَّجُلَ مِنْ أَهْلِهِ فِي ثَلَاثَةِ أَثْوَابٍ لَيْسَ فِيهَا عِمَامَةٌ.

L9086 And this is the preferred opinion of Al-Shāfiʿī, Abū Sulaymān, Aḥmad ibn Ḥanbal, and their followers.

وَهُوَ اخْتِيَارُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَصْحَابِهِمْ.

L9087–9089 In this manner, Baqī ibn Makhlad and Qāsim ibn Muḥammad were shrouded. Did al-Khushanī and others present issue a fatwa on that? As for the shroud of a woman, ʻAbd al-Raḥmān ibn ʻAbd Allāh narrated to us, saying: Ibrāhīm ibn Aḥmad narrated to us, al-Farabrī narrated to us, al-Bukhārī narrated to us, Ḥāmid ibn ʻUmar narrated to us, Ḥammād ibn Zayd narrated to us, from Ayyūb al-Sakhtiyānī, from Muḥammad ibn Sīrīn, from Umm ʻAṭiyyah, who said: "One of the daughters of the Prophet—may God's prayers and peace be upon him—died. He came to us and said: 'Wash her three times, five times, or more if you (women) deem necessary, with water and lote leaves. Place in the final wash...'" Camphor or a portion of camphor. When you [women] have finished, notify me." She said: When the women finished, they notified him. He then handed us his waist-wrapper and said: "Shroud her with it."[3]

وَهَكَذَا كُفِّنَ بَقِيُّ بْنُ مَخْلَدٍ، وَقَاسِمُ بْنُ مُحَمَّدٍ: أَفْتَى بِذَلِكَ الْخُشَنِيُّ، وَغَيْرُهُ مِمَّنْ حَضَرَ؟ وَأَمَّا كَفَنُ الْمَرْأَةِ فَإِنَّ عَبْدَ الرَّحْمَنِ بْنَ عَبْدِ اللَّهِ حَدَّثَنَا قَالَ: ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا حَامِدُ بْنُ عُمَرَ ثنا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أُمِّ عَطِيَّةَ قَالَتْ: «تُوُفِّيَتْ إِحْدَى بَنَاتِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَخَرَجَ فَقَالَ: اغْسِلْنَهَا ثَلَاثًا أَوْ خَمْسًا أَوْ أَكْثَرَ مِنْ ذَلِكَ إِنْ رَأَيْتُنَّ بِمَاءٍ وَسِدْرٍ، وَاجْعَلْنَ فِي الْآخِرَةِ كَافُورًا أَوْ شَيْئًا مِنْ كَافُورٍ، فَإِذَا فَرَغْتُنَّ فَآذِنَّنِي؟ قَالَتْ فَلَمَّا فَرَغْنَ آذَنَّاهُ فَأَلْقَى إِلَيْنَا حِقْوَهُ وَقَالَ: أَشْعِرْنَهَا إِيَّاهُ» .

L9090 It is narrated from Al-Ḥasan: "A woman is shrouded in five garments: a tunic, a veil, and three winding sheets." From al-Nakhaʿī: "A woman is shrouded in five garments: a tunic, a veil, a winding sheet, a waist-wrapper, and a cloak."

وَرُوِّينَا عَنْ الْحَسَنِ قَالَ: تُكَفَّنُ الْمَرْأَةُ فِي خَمْسَةِ أَثْوَابٍ: دِرْعٍ، وَخِمَارٍ، وَثَلَاثِ لَفَائِفَ وَعَنْ النَّخَعِيِّ: تُكَفَّنُ الْمَرْأَةُ فِي خَمْسَةِ أَثْوَابٍ: دِرْعٍ، وَخِمَارٍ، وَلِفَافَةٍ، وَمِنْطَقَةٍ، وَرِدَاءٍ

L9091 From Ibn Sīrīn: A woman is shrouded in five garments: a chemise, a head

وَعَنْ ابْنِ سِيرِينَ: تُكَفَّنُ الْمَرْأَةُ فِي خَمْسَةِ أَثْوَابٍ: دِرْعٍ، وَخِمَارٍ، وَلِفَافَتَيْنِ وَخِرْقَةٍ؟ وَعَنْ الشَّعْبِيِّ تُكَفَّنُ الْمَرْأَةُ فِي خَمْسَةِ أَثْوَابٍ، وَالرَّجُلُ فِي ثَلَاثَةٍ؟

[3] **Hadith references (L9087):** Sunan an-Nasai 1887; Sunan an-Nasai 1893.

covering, two winding sheets, and a cloth? From al-Shaʿbī: A woman is shrouded in five garments, and a man in three?

Issue: A man died owing a debt that exhausts all his estate.

566 - Issue: If someone dies while owing a debt that exhausts all they left behind, everything they left belongs to the creditors. The creditors are not obligated to provide his burial shroud; this duty falls upon the rest of the Muslims present. This is because Allah, the Exalted, has not designated inheritance or bequest except for what a person leaves after their debt. Thus, it is established that debt takes precedence, and the deceased has no right to retain the amount owed as debt from what remains of his estate. Therefore, if he left nothing, the duty to shroud him falls upon everyone present, whether a creditor or a non-creditor.

Based on the statement of Allah, the Most High: "Indeed, the believers are brothers" [Al-Hujurat: 10].[4]

The statement of the Messenger of Allah—may Allah bless him and grant him peace—, "Whoever takes charge of his brother, let him prepare an excellent burial shroud."

And we have indeed mentioned it earlier, along with its *isnād*.

Every guardian of the deceased is commanded to provide a proper shroud for him, and it is impermissible to restrict this obligation exclusively to creditors while excluding others.

Is this the opinion of Abū Sulaymān and his companions? If anything remains after settling the debt, the burial shroud takes priority from that remainder before the execution of the will and distribution of inheritance. This is because of what we mentioned earlier: "that the Messenger of Allah (peace be upon him) shrouded Muṣʿab ibn ʿUmayr (may Allah be pleased with him) in the Prophet's own cloak when he left nothing else behind, and thus did not give it to his heir."

[مَسْأَلَةٌ مَاتَ وَعَلَيْهِ دَيْنٌ يَسْتَغْرِقُ كُلَّ مَا تَرَكَ]

٥٦٦ - مَسْأَلَةٌ: وَمَنْ مَاتَ وَعَلَيْهِ دَيْنٌ يَسْتَغْرِقُ كُلَّ مَا تَرَكَ: فَكُلُّ مَا تَرَكَ لِلْغُرَمَاءِ، وَلَا يَلْزَمُهُمْ كَفَنُهُ دُونَ سَائِرِ مَنْ حَضَرَ مِنْ الْمُسْلِمِينَ؟ لِأَنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ مِيرَاثًا وَلَا وَصِيَّةً إلَّا فِيمَا يُخَلِّفُهُ الْمَرْءُ بَعْدَ دَيْنِهِ، فَصَحَّ أَنَّ الدَّيْنَ مُقَدَّمٌ، وَأَنَّهُ لَا حَقَّ لَهُ فِي مِقْدَارِ دَيْنِهِ مِمَّا يَتَخَلَّفُهُ، فَإِذْ هُوَ كَذَلِكَ فَحَقُّ تَكْفِينِهِ - إذَا لَمْ يَتْرُكْ شَيْئًا - وَاجِبٌ عَلَى كُلِّ مَنْ حَضَرَ مِنْ غَرِيمٍ، أَوْ غَيْرِ غَرِيمٍ.

لِقَوْلِ اللَّهِ تَعَالَى: {إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ} [الحجرات: ١٠]

وَقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ وَلِيَ أَخَاهُ فَلْيُحْسِنْ كَفَنَهُ» .

وَقَدْ ذَكَرْنَاهُ قَبْلُ بِإِسْنَادِهِ.

فَكُلُّ مَنْ وَلِيَهُ فَهُوَ مَأْمُورٌ بِإِحْسَانِ كَفَنِهِ، وَلَا يَحِلُّ أَنْ يُخَصَّ بِذَلِكَ الْغُرَمَاءُ دُونَ غَيْرِهِمْ.

وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ وَأَصْحَابِهِ؟ فَإِنْ فَضَلَ عَنْ الدَّيْنِ شَيْءٌ فَالْكَفَنُ مُقَدَّمٌ فِيهِ قَبْلَ الْوَصِيَّةِ وَالْمِيرَاثِ -: لِمَا ذَكَرْنَا قَبْلُ مِنْ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَفَّنَ مُصْعَبَ بْنَ عُمَيْرٍ - رَضِيَ اللَّهُ عَنْهُ - فِي بُرْدَةٍ لَهُ لَمْ يَتْرُكْ شَيْئًا غَيْرَهَا، فَلَمْ يَجْعَلْهَا لِوَارِثِهِ»

[4] **Qur'an references (L9094):** Qur'an 49:10 (Al-Hujurat).

٥٦٧ - مَسْأَلَةٌ: وَكُلُّ مَا ذَكَرْنَا أَنَّهُ فَرْضٌ عَلَى الْكِفَايَةِ فَمَنْ قَامَ بِهِ سَقَطَ عَنْ سَائِرِ النَّاسِ، كَغُسْلِ الْمَيِّتِ وَتَكْفِينِهِ وَدَفْنِهِ وَالصَّلَاةِ عَلَيْهِ.

وَهَذَا لَا خِلَافَ فِيهِ، وَلِأَنَّ تَكْلِيفَ مَا عَدَا هَذَا دَاخِلٌ فِي الْحَرَجِ وَالْمُمْتَنِعِ، قَالَ تَعَالَى: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨]

L9100 567 – Legal Ruling: Everything we have mentioned as being a collective obligation (farḍ al-kifāyah) - such as washing the deceased, shrouding him, burying him, and praying over him - becomes lifted from the rest of the people if someone fulfills it.

L9101 There is no disagreement regarding this, and because imposing obligations beyond this entails constriction and the impossible. Allah, the Most High, said: “He has not placed upon you in the religion any hardship” [Al-Hajj: 78].[5]

[مَسْأَلَةٌ صِفَةُ غُسْلِ الْمَيِّتِ]

L9102 **Issue: The Description of Washing the Deceased**

٥٦٨ - مَسْأَلَةٌ: وَصِفَةُ الْغُسْلِ أَنْ يَغْسِلَ جَمِيعَ جَسَدِ الْمَيِّتِ وَرَأْسَهُ بِمَاءٍ قَدْ رُمِيَ فِيهِ شَيْءٌ مِنْ سِدْرٍ وَلَا بُدَّ، إنْ وُجِدَ، فَإِنْ لَمْ يُوجَدْ فَبِالْمَاءِ وَحْدَهُ -: ثَلَاثَ مَرَّاتٍ وَلَا بُدَّ، يُبْتَدَأُ بِالْمَيَامِنِ، وَيُوَضَّأُ -: فَإِنْ أَحَبُّوا الزِّيَادَةَ فَعَلَى الْوِتْرِ أَبَدًا: إمَّا ثَلَاثُ مَرَّاتٍ، وَإِمَّا خَمْسُ مَرَّاتٍ، وَإِمَّا سَبْعُ مَرَّاتٍ وَيَجْعَلُ فِي آخِرِ غَسَلَاتِهِ - إنْ غُسِّلَ أَكْثَرَ مِنْ مَرَّةٍ - شَيْئًا مِنْ كَافُورٍ وَلَا بُدَّ فَرْضًا، فَإِنْ لَمْ يُوجَدْ فَلَا حَرَجَ، لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ كُلِّهِ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى أَنَا يَزِيدُ بْنُ زُرَيْعٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أُمِّ عَطِيَّةَ قَالَتْ «دَخَلَ عَلَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنَحْنُ نُغَسِّلُ ابْنَتَهُ فَقَالَ: اغْسِلْنَهَا ثَلَاثًا، أَوْ خَمْسًا، أَوْ أَكْثَرَ مِنْ ذَلِكَ، إنْ رَأَيْتُنَّ ذَلِكَ بِمَاءٍ وَسِدْرٍ، وَاجْعَلْنَ فِي الْآخِرَةِ كَافُورًا أَوْ شَيْئًا مِنْ كَافُورٍ» .

L9103 568. Issue: The method of ghusl is to wash the entire body of the deceased and their head with water containing some sidr leaves – if available; otherwise, with plain water. This must be done three times in all cases. Begin with the right side and perform ablution (wudu). If they wish to increase the washings, it must always be in odd increments: three, five, or seven times. In the final washing – if washed more than once – some camphor must be added as an obligatory requirement if available. If unavailable, there is no blame, in accordance with the command of Allah’s Messenger (peace be upon him) in all these matters.

Narrated by ‘Abdullāh ibn Yūsuf, Aḥmad ibn Fatḥ, ‘Abd al-Wahhāb ibn ‘Īsā, Aḥmad ibn Muḥammad, Aḥmad ibn ‘Alī, Muslim ibn al-Ḥajjāj, Yaḥyā ibn Yaḥyā, Yazīd ibn Zurai‘, Ayyūb al-Sakhtiyānī, Muḥammad ibn Sīrīn, from Umm ‘Aṭiyyah, who said: “Allah’s Messenger (peace be upon him) entered upon us while we were washing his daughter. He said: ’Wash her three times, five times, or more if you see fit – with water and sidr. Place camphor or a portion thereof in the final wash.’”[6]

L9104–9105 Abdur-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad

[5] **Qur’an references (L9101):** Qur’an 22:78 (Al-Hajj).

[6] **Hadith references (L9103):** Sunan an-Nasai 1886; Mishkat al-Masabih 1634.

narrated to us, Al-Farbari narrated to us, Al-Bukhari narrated to us, Yahya ibn Musa narrated to us, Waki' narrated to us from Sufyan Ath-Thawri from Khalid Al-Hadhdha' from Hafsah bint Sirin from Umm 'Atiyyah, who said: "When we washed the daughter of the Messenger of Allah (peace and blessings be upon him), he instructed us: 'Begin on her right side and the areas of ablution.'"

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا يَحْيَى بْنُ مُوسَى ثنا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ حَفْصَةَ بِنْتِ سِيرِينَ عَنْ «أُمِّ عَطِيَّةَ قَالَتْ لَمَّا غَسَّلْنَا بِنْتَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَنَا: ابْدَأْنَ بِمَيَامِنِهَا وَمَوَاضِعِ الْوُضُوءِ» .

L9106 Allah, the Exalted, said: {Allah does not burden a soul beyond its capacity} [Al-Baqarah: 286].[7]

وَقَالَ اللَّهُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

L9107 And He, the Exalted, said: "Allah does not burden a soul except with what He has endowed it." [At-Talaq: 7][8]

وَقَالَ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا مَا آتَاهَا} [الطلاق: ٧]

L9108 It has been established that whoever Allah, the Exalted, has not granted lote tree leaves or camphor, He has not obligated him regarding those two. It has been narrated to us from Ibn Jurayj, from ʿAṭāʾ: "The deceased is washed three, five, or seven times, all of these washings with water and lote tree leaves. In each washing, his head and body are washed." Ibn Jurayj said: "I asked him: 'If lote tree leaves are not found, should marshmallow plant be used?' He replied: 'No, lote tree leaves will be found.'"

فَصَحَّ أَنَّ مَنْ لَمْ يُؤْتِهِ اللَّهُ تَعَالَى سِدْرًا وَلَا كَافُورًا فَلَمْ يُكَلِّفْهُ إِيَّاهُمَا -: رُوِّينَا عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: يُغَسَّلُ الْمَيِّتُ ثَلَاثًا أَوْ خَمْسًا أَوْ سَبْعًا، كُلُّهُنَّ بِمَاءٍ وَسِدْرٍ، فِي كُلِّهِنَّ يُغْسَلُ رَأْسُهُ وَجَسَدُهُ قَالَ ابْنُ جُرَيْجٍ: فَقُلْت لَهُ: فَإِنْ لَمْ يُوجَدْ سِدْرٌ خَطْمِيٌّ؟ قَالَ: لَا، سَيُوجَدُ السِّدْرُ.

L9109 He held that a single instance suffices—and is this an opinion from him? From Sulaymān ibn Mūsā and Ibrāhīm: The ritual washing (ghusl) of the deceased is three times.

وَرَأَى الْوَاحِدَةَ تُجْزِئُ، وَهَذَا رَأْيٌ مِنْهُ؟ وَعَنْ سُلَيْمَانَ بْنِ مُوسَى، وَإِبْرَاهِيمَ: غُسْلُ الْمَيِّتِ ثَلَاثُ مَرَّاتٍ.

L9110 It is reported from Muḥammad ibn Sīrīn and Ibrāhīm [al-Nakhaʿī] that the deceased is washed an odd number of times.

وَعَنْ مُحَمَّدِ بْنِ سِيرِينَ، وَإِبْرَاهِيمَ: يُغَسَّلُ الْمَيِّتُ وِتْرًا.

L9111 From Ibn Sīrīn: The deceased is washed twice with water and lote leaves (sidr), and the third time with water containing camphor. And a woman is also treated similarly.

وَعَنْ ابْنِ سِيرِينَ: يُغَسَّلُ مَرَّتَيْنِ بِمَاءٍ وَسِدْرٍ، وَالثَّالِثَةَ بِمَاءٍ فِيهِ كَافُورٌ. وَالْمَرْأَةُ أَيْضًا كَذَلِكَ.

L9112 From Qatadah, from Sa'id ibn al-Musayyib: The deceased is washed first with plain water, then with water mixed with sidr (lote tree) leaves, and finally with water and camphor.

وَعَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: الْمَيِّتُ يُغَسَّلُ بِمَاءٍ، ثُمَّ بِمَاءٍ وَسِدْرٍ، ثُمَّ بِمَاءٍ وَكَافُورٍ.

[7] **Qur'an references (L9106):** Qur'an 2:286 (Al-Baqarah).
[8] **Qur'an references (L9107):** Qur'an 65:7 (At-Talaq).

From Ibn Sīrīn: The deceased is given ghusl as the living are given wudu, commencing with their right side.

وَعَنْ ابْنِ سِيرِينَ: الْمَيِّتُ يُوَضَّأُ كَمَا يُوَضَّأُ الْحَيُّ يُبْدَأُ بِمَيَامِنِهِ.

From Qatādah: The ritual washing begins with the right limbs of the deceased, i.e., during the washing?

وَعَنْ قَتَادَةَ يُبْدَأُ بِمَيَامِنِ الْمَيِّتِ، يَعْنِي فِي الْغُسْلِ؟

A jurisprudential issue concerning the unavailability of water when intending to wash the deceased.

[مَسْأَلَةٌ عُدِمَ الْمَاءُ عِنْد إرَادَة غَسَلَ الْمَيِّت]

Ruling: If water is unavailable, tayammum must necessarily be performed on the deceased, as the Messenger of Allah (peace and blessings be upon him) said: "The earth has been made for me a place of prostration and a means of purification when water is not found."

مَسْأَلَةٌ: فَإِنْ عُدِمَ الْمَاءُ يُمِّمَ الْمَيِّتُ وَلَا بُدَّ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «جُعِلَتْ لِي الْأَرْضُ مَسْجِدًا وَطَهُورًا إذَا لَمْ نَجِدْ الْمَاءَ» .

A Juristic Issue: The Adequacy of a Man's Clothing in Impermissible Contexts

[مَسْأَلَةٌ تَكْفِينُ الرَّجُلِ فِيمَا لَا يَحِلُّ لِبَاسُهُ]

Issue 570: It is forbidden to shroud a man in materials unlawful for him to wear, such as silk, gold-embroidered, or saffron-dyed cloth. However, it is permissible to shroud a woman in all such materials, as mentioned in the Chapter on Prayer regarding the Messenger of Allah's (peace and blessings be upon him) ruling: "Silk and gold are forbidden for the men of my Ummah but permissible for their women."

٥٧٠ - مَسْأَلَةٌ: وَلَا يَحِلُّ تَكْفِينُ الرَّجُلِ فِيمَا لَا يَحِلُّ لِبَاسُهُ، مِنْ حَرِيرٍ، أَوْ مُذَهَّبٍ، أَوْ مُعَصْفَرٍ. وَجَائِزٌ تَكْفِينُ الْمَرْأَةِ فِي كُلِّ ذَلِكَ، لِمَا قَدْ ذَكَرْنَاهُ فِي كِتَابِ الصَّلَاةِ مِنْ «قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْحَرِيرِ، وَالذَّهَبِ إنَّهُمَا حَرَامٌ عَلَى ذُكُورِ أُمَّتِي حِلٌّ لِإِنَاثِهَا» .

And similarly, he said regarding safflower-dyed material: Did he not, peace be upon him, prohibit men from it?

وَكَذَلِكَ قَالَ فِي الْمُعَصْفَرِ: إذْ نَهَى - عَلَيْهِ السَّلَامُ - الرِّجَالَ عَنْهُ؟

The shrouding of a woman and the digging of her grave are from her estate.

[مَسْأَلَةٌ كَفَنُ الْمَرْأَةِ وَحَفْرُ قَبْرِهَا مِنْ رَأْسِ مَالِهَا]

Issue 571: The shroud of a woman and the digging of her grave are to be funded from her own estate, and her husband bears no obligation in this matter. This is because Muslims' wealth remains protected unless explicitly mandated by a Quranic injunction or Sunnah-based ruling. The Messenger of Allah (peace be upon him) said: "Verily, your blood and your wealth are inviolable for you."

٥٧١ - مَسْأَلَةٌ: وَكَفَنُ الْمَرْأَةِ وَحَفْرُ قَبْرِهَا مِنْ رَأْسِ مَالِهَا، وَلَا يَلْزَمُ ذَلِكَ زَوْجَهَا، لِأَنَّ أَمْوَالَ الْمُسْلِمِينَ مَحْظُورَةٌ إلَّا بِنَصِّ قُرْآنٍ أَوْ سُنَّةٍ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L9123 Indeed, Allah the Exalted has obligated upon the husband financial maintenance, garments, and lodging. Yet in the language Allah has used to address us, the shroud is not termed “garments,” nor is the grave called a “dwelling.”

L9124 ## The Legal Issue Pertaining to the Prayer over the Deceased

L9125 572. Issue: The funeral prayer is performed with an Imam standing and facing the Qiblah, the people in rows behind him. The Imam stands at the head of a man and at the mid-section of a woman.

L9126 Abd al-Rahman ibn Abd Allah narrated to us from Ibrahim ibn Ahmad from al-Farbari from al-Bukhari from Musaddad from Abu Awanah from Qatadah from Ata’ from Jabir ibn Abd Allah, who said: “The Messenger of Allah—peace and blessings be upon him—prayed over the Najashi, and I was in the second row, or the third.”

L9127 Is there no disagreement that it is a standing prayer, with no bowing, prostration, sitting, or tashahhud?

L9128–9130 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath → Abdul-Wahhab ibn Isa → Ahmad ibn Muhammad → Ahmad ibn Ali → Muslim ibn al-Hajjaj → Yahya ibn Yahya, who said: “I [narrate] from Abdul-Warith ibn Sa‘id → Husayn ibn Dhakwan. Abdullah ibn Buraidah narrated to me from Samurah ibn Jundub, who said: ’I prayed behind the Messenger of Allah—peace and blessings be upon him—and he led prayers for Umm Ka‘b, who died during her postpartum bleeding. The Messenger of Allah—peace and blessings be upon him—stood in...” The prayer over it is its midpoint [i.e., the middle prayer (ʿAṣr)].

L9131 It was also narrated to us via the chain of al-Bukhārī from Musaddad, who narrated to us: Yazīd ibn Zurayʿ, from al-Ḥusayn ibn Dhakwān, through his chain of transmission.

L9132 And it was also transmitted by Yazīd ibn Hārūn, al-Faḍl ibn Mūsā, and ʿAbdullāh ibn al-Mubārak—all of them narrating from al-Ḥusayn ibn Dhakwān with his chain of transmission.

وَإِنَّمَا أَوْجَبَ تَعَالَى عَلَى الزَّوْجِ النَّفَقَةَ، وَالْكِسْوَةَ، وَالْإِسْكَانَ، وَلَا يُسَمَّى فِي اللُّغَةِ الَّتِي خَاطَبَنَا اللَّهُ تَعَالَى بِهَا الْكَفَنُ: كِسْوَةً، وَلَا الْقَبْرُ: إِسْكَانًا

[مَسْأَلَةُ الصَّلَاةِ عَلَى الْمَيِّتِ]

٥٧٢ - مَسْأَلَةٌ: وَيُصَلَّى عَلَى الْمَيِّتِ بِإِمَامٍ يَقِفُ وَيَسْتَقْبِلُ الْقِبْلَةَ، وَالنَّاسُ وَرَاءَهُ صُفُوفٌ، وَيَقِفُ مِنَ الرَّجُلِ عِنْدَ رَأْسِهِ، وَمِنَ الْمَرْأَةِ عِنْدَ وَسَطِهَا.

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُسَدَّدٌ عَنْ أَبِي عَوَانَةَ عَنْ قَتَادَةَ عَنْ عَطَاءٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ «صَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى النَّجَاشِيِّ فَكُنْتُ فِي الصَّفِّ الثَّانِي، أَوْ الثَّالِثِ» .

وَلَا خِلَافَ فِي أَنَّهَا صَلَاةُ قِيَامٍ، لَا رُكُوعَ فِيهَا، وَلَا سُجُودَ، وَلَا قُعُودَ، وَلَا تَشَهُّدَ؟

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى أَنَا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ عَنْ حُسَيْنِ بْنِ ذَكْوَانَ حَدَّثَنِي عَبْدُ اللَّهِ بْنُ بُرَيْدَةَ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ قَالَ «صَلَّيْتُ خَلْفَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَصَلَّى عَلَى أُمِّ كَعْبٍ، مَاتَتْ فِي نِفَاسِهَا، فَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الصَّلَاةِ عَلَيْهَا وَسَطَهَا» .

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ مُسَدَّدٍ ثنا يَزِيدُ بْنُ زُرَيْعٍ عَنِ الْحُسَيْنِ بْنِ ذَكْوَانَ بِإِسْنَادِهِ.

وَرَوَاهُ أَيْضًا يَزِيدُ بْنُ هَارُونَ، وَالْفَضْلُ بْنُ مُوسَى، وَعَبْدُ اللَّهِ بْنُ الْمُبَارَكِ كُلُّهُمْ عَنِ الْحُسَيْنِ بْنِ ذَكْوَانَ بِإِسْنَادِهِ.

L9133 Abdullah ibn Rabee' narrated to us: Muhammad ibn Ishaq narrated to us: Ibn al-A'rabi narrated to us: Abu Dawud narrated to us: Dawud ibn Mu'adh narrated to us: Abdul-Warith ibn Sa'eed narrated from Nafi' Abu Ghalib that he said: I performed the funeral prayer for Abdullah ibn Umayr, with Anas ibn Malik leading us in prayer over him while I stood behind him. He stood at his head, uttered four takbirs without prolonging or hastening them, then moved to sit down. They said: "O Abu Hamzah, what about the Ansari woman?" They brought her forward on a green bier. He stood at her hips and prayed over her in the same manner as he prayed over the man. When he sat down, al-Ala' ibn Ziyad asked him: "O Abu Hamzah, did the Messenger of Allah (peace be upon him) pray over the deceased as you did—uttering four takbirs, standing at the man's head and the woman's hips?" He replied: "Yes."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا دَاوُد بْنُ مُعَاذ ثنا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ «عَنْ نَافِعٍ أَبِي غَالِبٍ أَنَّهُ قَالَ: صَلَّيْتُ عَلَى جِنَازَةِ عَبْدِ اللَّهِ بْنِ عُمَيْرٍ، وَصَلَّى عَلَيْهِ بِنَا أَنَسُ بْنُ مَالِكٍ وَأَنَا خَلْفَهُ، فَقَامَ عِنْدَ رَأْسِهِ، فَكَبَّرَ أَرْبَعَ تَكْبِيرَاتٍ، لَمْ يُطِلْ وَلَمْ يُسْرِعْ، ثُمَّ ذَهَبَ يَقْعُدُ فَقَالُوا: يَا أَبَا حَمْزَةَ، الْمَرْأَةُ الْأَنْصَارِيَّةُ؟ فَقَرَّبُوهَا وَعَلَيْهَا نَعْشٌ أَخْضَرُ، فَقَامَ عِنْدَ عَجِيزَتِهَا، فَصَلَّى عَلَيْهَا نَحْوَ صَلَاتِهِ عَلَى الرَّجُلِ، ثُمَّ جَلَسَ، فَقَالَ لَهُ الْعَلَاءُ بْنُ زِيَادٍ: يَا أَبَا حَمْزَةَ، هَكَذَا كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي عَلَى الْجِنَازَةِ كَصَلَاتِكَ، يُكَبِّرُ عَلَيْهَا أَرْبَعًا، وَيَقُومُ عِنْدَ رَأْسِ الرَّجُلِ، وَعَجِيزَةِ الْمَرْأَةِ؟ قَالَ: نَعَمْ» .

L9134 Abdullah ibn Rabīʿ narrated to us: Abdullah ibn Muḥammad ibn ʿUthmān narrated to us: Aḥmad ibn Khālid narrated to us: ʿAlī ibn ʿAbd al-ʿAzīz narrated to us: al-Ḥajjāj ibn al-Minhāl narrated to us: Hammām ibn Yaḥyā narrated from Abū Ghālib, who mentioned this ḥadīth of Anas. At the end of it: al-ʿAlāʾ ibn Ziyād turned his face toward the people and said, "Memorize?" This indicated that all those present agreed with him, and they all complied.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا هَمَّامُ بْنُ يَحْيَى عَنْ أَبِي غَالِبٍ، فَذَكَرَ حَدِيثَ أَنَسٍ هَذَا، وَفِي آخِرِهِ -: أَنَّ الْعَلَاءَ بْنَ زِيَادٍ أَقْبَلَ عَلَى النَّاسِ بِوَجْهِهِ فَقَالَ: احْفَظُوا؟ فَدَلَّ هَذَا عَلَى مُوَافَقَةِ كُلِّ مَنْ حَضَرَ لَهُ، وَهُمْ تَابِعُونَ كُلُّهُمْ.

L9135–9137 This position is held by Al-Shafi'i, Ahmad, Dawud, their companions, and the scholars of Hadith. Abu Hanifah and Malik disagreed, and we know of no valid argument for them except a corrupt claim - that this practice existed when biers were not used. This is a falsehood from whoever asserted it, for did Anas not pray in such a manner while the woman was in a green bier? Some argued: "Just as the Imam stands aligned with the middle of the prayer row before him, so too should he stand aligned with the middle of the funeral bier?" The response is: This is invalid and a corrupt analogy, for he is the Imam of the prayer row - not the Imam of the funeral bier nor a follower in it. The precedent we follow in his standing opposite the middle of the prayer row is the same as that for his standing opposite the middle of... The position of the woman is aligned with the head of the man—referring to

وَبِهَذَا يَأْخُذُ الشَّافِعِيُّ، وَأَحْمَدُ، وَدَاوُد، وَأَصْحَابُهُمْ، وَأَصْحَابُ الْحَدِيثِ. وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، بِخِلَافِ هَذَا، وَمَا نَعْلَمُ لَهُمْ حُجَّةً إِلَّا دَعْوَى فَاسِدَةً، وَأَنَّ ذَلِكَ كَانَ إِذْ لَمْ تَكُنْ النُّعُوشُ وَهَذَا كَذِبٌ مِمَّنْ قَالَهُ، لِأَنَّ أَنَسًا صَلَّى كَذَلِكَ وَالْمَرْأَةُ فِي نَعْشٍ أَخْضَرَ؟ وَقَالَ بَعْضُهُمْ: كَمَا يَقُومُ الْإِمَامُ مُوَازِ وَسَطَ الصَّفِّ خَلْفَهُ كَذَلِكَ يَقُومُ مُوَازِ وَسَطَ الْجِنَازَةِ؟ فَيُقَالُ لَهُ: هَذَا بَاطِلٌ، وَقِيَاسٌ فَاسِدٌ، لِأَنَّهُ إِمَامُ الصَّفِّ، وَلَيْسَ إِمَامًا لِلْجِنَازَةِ، وَلَا مَأْمُومًا لَهَا، وَالَّذِي اقْتَدَيْنَا بِهِ فِي وُقُوفِهِ إِزَاءَ وَسَطِ الصَّفِّ هُوَ الَّذِي اقْتَدَيْنَا بِهِ إِزَاءَ

the Prophet (peace be upon him), whose ruling must not be opposed—and success is from Allah, the Most High.

The issue of uttering the takbīr [Allāhu Akbar] regarding the funeral.

L9138

L9139 Issue 573: The Imam and those praying behind him pronounce takbīr by following the Imam's takbīr during funeral prayers - five takbīrs with no increase. If they pronounce four takbīrs, this is acceptable. There shall be no fewer. Hands are raised only during the first takbīr. When the prescribed takbīrs conclude, the Imam offers two salutations of peace, and the congregants likewise offer peace. If he pronounces seven takbīrs, we disliked it yet followed him. Similarly, if he pronounces three, we followed him. If he exceeds this number, we do not follow him. If he pronounces fewer than three, we do not conclude with his salutation but complete the prescribed takbīr.

Narrated to us by ʿAbdullāh ibn Yūsuf, from Aḥmad ibn Yūsuf, from Aḥmad ibn Fatḥ, from ʿAbd al-Wahhāb ibn ʿĪsā, from Aḥmad ibn Muḥammad, from Aḥmad ibn ʿAlī, from Muslim ibn al-Ḥajjāj, from Abū Bakr ibn Abī Shaybah and Muḥammad ibn al-Muthannā, both of whom said: Narrated to us by Muḥammad ibn Jaʿfar from Shuʿbah from ʿAmr ibn Murrah from ʿAbd al-Raḥmān ibn Abī Laylā, who said: "Zayd ibn Arqam would pronounce four takbīrs over our deceased. Once he pronounced five takbīrs over a funeral, so I questioned him. He replied: 'The Messenger of Allāh—peace and blessings of Allāh upon him—used to pronounce them.'"[9]

L9140 It has been authentically reported from the Prophet—peace and blessings of Allah be upon him—that he also performed four takbirs, as we will mention after this, if Allah the Exalted wills—Abu Muhammad said: Those who prohibited performing more than four takbirs cited a report we have narrated through the chain of Waki' from Sufyan al-Thawri from 'Amir ibn Shaqiq from Abu Wa'il, who said: "Umar ibn al-Khattab gathered the people and consulted them regarding the takbirs in the funeral prayer. They said: The

[9] **Hadith references (L9139):** Sunan Ibn Majah 1505; Bulugh al-Maram 561.

وَسَطِ الْمَرْأَةِ، وَإِزَاءَ رَأْسِ الرَّجُلِ، وَهُوَ النَّبِيُّ - عَلَيْهِ السَّلَامُ -، الَّذِي لَا يَحِلُّ خِلَافُ حُكْمِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ التَّكْبِيرِ عَلَى الْجِنَازَةِ]

٥٧٣ - مَسْأَلَةٌ: وَيُكَبِّرُ الْإِمَامُ وَالْمَأْمُومُونَ بِتَكْبِيرِ الْإِمَامِ عَلَى الْجِنَازَةِ خَمْسَ تَكْبِيرَاتٍ، لَا أَكْثَرَ، فَإِنْ كَبَّرُوا أَرْبَعًا فَحَسَنٌ، وَلَا أَقَلَّ، وَلَا تُرْفَعُ الْأَيْدِي إِلَّا فِي أَوَّلِ تَكْبِيرَةٍ فَقَطْ، فَإِذَا انْقَضَى التَّكْبِيرُ الْمَذْكُورُ سَلَّمَ تَسْلِيمَتَيْنِ وَسَلَّمُوا كَذَلِكَ، فَإِنْ كَبَّرَ سَبْعًا كَرِهْنَاهُ وَاتَّبَعْنَاهُ، وَكَذَلِكَ إِنْ كَبَّرَ ثَلَاثًا، فَإِنْ كَبَّرَ أَكْثَرَ لَمْ نَتَّبِعْهُ، وَإِنْ كَبَّرَ أَقَلَّ مِنْ ثَلَاثٍ لَمْ نُسَلِّمْ بِسَلَامِهِ، بَلْ أَكْمَلْنَا التَّكْبِيرَ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَمُحَمَّدُ بْنُ الْمُثَنَّى قَالَا: ثنا مُحَمَّدُ بْنُ جَعْفَرٍ عَنْ شُعْبَةَ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ «عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى قَالَ كَانَ زَيْدُ بْنُ أَرْقَمَ يُكَبِّرُ عَلَى جَنَائِزِنَا أَرْبَعًا، وَأَنَّهُ كَبَّرَ عَلَى جِنَازَةٍ خَمْسًا، فَسَأَلْتُهُ؟ فَقَالَ: كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُكَبِّرُهَا» .

وَصَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ كَبَّرَ أَيْضًا أَرْبَعًا، كَمَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى -: قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ مَنْ مَنَعَ مِنْ أَكْثَرَ مِنْ أَرْبَعٍ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَامِرِ بْنِ شَقِيقٍ عَنْ أَبِي وَائِلٍ قَالَ " «جَمَعَ عُمَرُ بْنُ الْخَطَّابِ النَّاسَ فَاسْتَشَارَهُمْ فِي التَّكْبِيرِ عَلَى الْجِنَازَةِ، فَقَالُوا: كَبَّرَ النَّبِيُّ - صَلَّى اللَّهُ

Prophet—peace and blessings of Allah be upon him—pronounced seven, five, and four takbirs. So Umar united them upon four takbirs, like the longest prayer."

عَلَيْهِ وَسَلَّمَ - سَبْعًا وَخَمْسًا وَأَرْبَعًا، فَجَمَعَهُمْ عُمَرُ عَلَى أَرْبَعِ تَكْبِيرَاتٍ كَأَطْوَلِ الصَّلَاةِ»

L9141 And it was also narrated to us via ʿAbd al-Razzāq from Sufyān al-Thawrī from ʿUmar ibn Shaqīq from Abī Wāʾil - and he mentioned it.

وَرُوِّينَا أَيْضًا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عُمَرَ بْنِ شَقِيقٍ عَنْ أَبِي وَائِلٍ فَذَكَرَهُ.

L9142 They said: "So this is consensus, and thus it is impermissible to oppose it?" Abū Muḥammad replied: "This is utterly invalid. The first reason is that the narration is unauthentic, for it comes from ʿĀmir ibn Shaqīq, who is weak."

قَالُوا: فَهَذَا إجْمَاعٌ، فَلَا يَجُوزُ خِلَافُهُ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا فِي غَايَةِ الْفَسَادِ، أَوَّلُ ذَلِكَ -: أَنَّ الْخَبَرَ لَا يَصِحُّ؛ لِأَنَّهُ عَنْ عَامِرِ بْنِ شَقِيقٍ وَهُوَ ضَعِيفٌ.

L9143–9144 As for ʿUmar ibn Shaqīq, none in the world knows who he is. Allah forbid that ʿUmar—may Allah be pleased with him—would ever consider introducing an obligation contrary to what Allah's Messenger—peace and blessings be upon him—practiced, or prohibiting something the Prophet—peace be upon him—performed that remained permissible during his lifetime, only for ʿUmar to prohibit it afterward. Would anyone attribute this to ʿUmar except one ignorant of his standing in the religion and Islam, or a slanderer of the Salaf—may Allah be pleased with them? They also mentioned what Ḥummām narrated to us: ʿAbbās ibn Aṣbagh narrated to us, Ibn Ayman narrated to us, Aḥmad ibn Zuhayr narrated to us, ʿAlī ibn al-Jaʿd narrated to us, Shuʿbah narrated to us from ʿAmr ibn Murrah: I heard Saʿīd ibn al-Musayyib narrate from Ibn ʿUmar, who said: "All of that had occurred—four or five [takbīrs]—but we agreed upon four," meaning the number of takbīrs in the funeral prayer.

وَأَمَّا عُمَرُ بْنُ شَقِيقٍ فَلَا يُدْرَى فِي الْعَالَمِ مَنْ هُوَ وَمَعَاذَ اللَّهِ أَنْ يَسْتَشِيرَ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - فِي إحْدَاثِ فَرِيضَةٍ بِخِلَافِ مَا فَعَلَ فِيهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ لِلْمَنْعِ مِنْ بَعْضِ مَا فَعَلَهُ - عَلَيْهِ السَّلَامُ -، وَمَاتَ وَهُوَ مُبَاحٌ، فَيُحَرِّمُ بَعْدَهُ، لَا يَظُنُّ هَذَا بِعُمَرَ إلَّا جَاهِلٌ بِمَحَلِّ عُمَرَ مِنْ الدِّينِ وَالْإِسْلَامِ، طَاعِنٌ عَلَى السَّلَفِ - رَضِيَ اللَّهُ عَنْهُمْ -؟ وَذَكَرُوا أَيْضًا مَا حَدَّثَنَاهُ حُمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا ابْنُ أَيْمَنَ ثنا أَحْمَدُ بْنُ زُهَيْرٍ ثنا عَلِيُّ بْنُ الْجَعْدِ ثنا شُعْبَةُ عَنْ عَمْرِو بْنِ مُرَّةَ سَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ يُحَدِّثُ عَنْ ابْنِ عُمَرَ قَالَ: كُلُّ ذَلِكَ قَدْ كَانَ، أَرْبَعًا وَخَمْسًا، فَاجْتَمَعْنَا عَلَى أَرْبَعٍ، يَعْنِي التَّكْبِيرَ عَلَى الْجِنَازَةِ؟

L9145 And through him to Shuʿbah from al-Mughīrah from Ibrāhīm al-Nakhaʿī, who said: A man from the Companions of Muʿādh ibn Jabal came and prayed over a funeral, performing five takbīrs over it. They laughed at him, so Ibn Masʿūd said: "Did we not use to perform four, five, six, and seven takbīrs, then we agreed upon four?"

وَبِهِ إلَى شُعْبَةَ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: جَاءَ رَجُلٌ مِنْ أَصْحَابِ مُعَاذِ بْنِ جَبَلٍ، فَصَلَّى عَلَى جِنَازَةٍ، فَكَبَّرَ عَلَيْهَا خَمْسًا، فَضَحِكُوا مِنْهُ، فَقَالَ ابْنُ مَسْعُودٍ، قَدْ كُنَّا نُكَبِّرُ أَرْبَعًا، وَخَمْسًا، وَسِتًّا، وَسَبْعًا، فَاجْتَمَعْنَا عَلَى أَرْبَعٍ؟

L9146 We have also narrated it through the chain of al-Ḥajjāj ibn al-Minhāl from Abū ʿAwānah from al-Mughīrah from Ibrāhīm al-Nakhaʿī in a similar manner.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ أَبِي عَوَانَةَ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ نَحْوَهُ -: وَمِنْ طَرِيقِ غُنْدَرٍ عَنْ شُعْبَةَ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ قَالَ عُمَرُ بْنُ الْخَطَّابِ: كُلُّ ذَلِكَ قَدْ كَانَ: أَرْبَعٌ، وَخَمْسٌ يَعْنِي التَّكْبِيرَ عَلَى الْجِنَازَةِ. قَالَ سَعِيدٌ: فَأَمَرَ عُمَرُ النَّاسَ بِأَرْبَعٍ؟ قَالُوا: فَهَذَا إجْمَاعٌ؟ -: قَالَ أَبُو مُحَمَّد: هَذَا الْكَذِبُ؟ لِأَنَّ إبْرَاهِيمَ لَمْ يُدْرِكْ ابْنَ مَسْعُودٍ. وَعَلِيُّ بْنُ الْجَعْدِ لَيْسَ بِالْقَوِيِّ وَسَعِيدٌ لَمْ يَحْفَظْ مِنْ عُمَرَ إلَّا نَعْيَهُ النُّعْمَانَ بْنَ مُقَرِّنٍ عَلَى الْمِنْبَرِ فَقَطْ، فَكُلُّ ذَلِكَ مُنْقَطِعٌ أَوْ ضَعِيفٌ؟

And through the chain of Ghundar from Shu‘bah from ‘Amr ibn Murrah from Sa‘īd ibn al-Musayyib, who said: ‘Umar ibn al-Khaṭṭāb declared: “All of this has occurred: four and five,” meaning the Takbīr in the funeral prayer. Sa‘īd said: “Did ‘Umar then instruct people to perform four?” They said: “Is this consensus?” Abū Muḥammad responded: “Is this not falsehood? For Ibrāhīm did not meet Ibn Mas‘ūd, ‘Alī ibn al-Ja‘d is not reliable, and Sa‘īd did not reliably preserve from ‘Umar except his announcement of al-Nu‘mān ibn Muqarrin’s death from the pulpit alone. Thus, are all these chains either interrupted or weak?”

L9147–9148

وَلَوْ صَحَّ، لَكَانَ مَا رَوَوْهُ مِنْ ذَلِكَ مُكَذِّبًا لِدَعْوَاهُمْ فِي الْإِجْمَاعِ؛ لِأَنَّ صَاحِبَ مُعَاذٍ الْمَذْكُورَ كَبَّرَ خَمْسًا، وَلَمْ يُنْكِرْ ذَلِكَ عَلَيْهِ ابْنُ مَسْعُودٍ.

If it were valid, what they reported about it would have refuted their claim of consensus, because the aforementioned associate of Mu‘ādh performed the takbīr five times, and Ibn Mas‘ūd did not object to it.

L9149

وَقَدْ ذَكَرْنَا عَنْ زَيْدِ بْنِ أَرْقَمَ أَنَّهُ كَبَّرَ بَعْدَ عُمَرَ خَمْسًا -: حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ حَدَّثَنِي عَبْدُ اللَّهِ بْنُ مُغَفَّلٍ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ صَلَّى عَلَى سَهْلِ بْنِ حُنَيْفٍ فَكَبَّرَ عَلَيْهِ سِتًّا، ثُمَّ الْتَفَتَ إلَيْنَا فَقَالَ: إنَّهُ بَدْرِيٌّ؟ قَالَ الشَّعْبِيُّ: وَقَدِمَ عَلْقَمَةُ مِنْ الشَّامِ فَقَالَ لِابْنِ مَسْعُودٍ: إنَّ إخْوَانَك بِالشَّامِ يُكَبِّرُونَ عَلَى جَنَائِزِهِمْ خَمْسًا، فَلَوْ وَقَّتُّمْ لَنَا وَقْتًا نُتَابِعُكُمْ عَلَيْهِ؟ فَأَطْرَقَ عَبْدُ اللَّهِ سَاعَةً ثُمَّ قَالَ: انْظُرُوا جَنَائِزَكُمْ، فَكَبِّرُوا عَلَيْهَا مَا كَبَّرَ أَئِمَّتُكُمْ، لَا وَقْتَ وَلَا عَدَدَ -: قَالَ أَبُو مُحَمَّد: ابْنُ مَسْعُودٍ مَاتَ فِي حَيَاةِ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُمَا -، فَإِنَّمَا ذَكَرَ لَهُ عَلْقَمَةُ مَا ذَكَرَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - الَّذِينَ بِالشَّامِ، وَهَذَا إسْنَادٌ فِي غَايَةِ الصِّحَّةِ، لِأَنَّ الشَّعْبِيَّ أَدْرَكَ عَلْقَمَةَ وَأَخَذَ عَنْهُ وَسَمِعَ مِنْهُ -: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا أَحْمَدُ بْنُ عَوْنِ اللَّهِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ

We have mentioned from Zayd ibn Arqam that he pronounced the takbir five times after Umar. Hammam narrated to us: Ibn Mufarrij narrated to us: Ibn al-A’rabi narrated to us: al-Dabari narrated to us: Abd al-Razzaq narrated from Sufyan ibn Uyaynah from Isma’il ibn Abi Khalid from al-Sha’bi: Abdullah ibn Mughaffal narrated to me: Ali ibn Abi Talib prayed over Sahl ibn Hunayf and pronounced the takbir over him six times, then turned to us and said, “Was he not a veteran of Badr?” Al-Sha’bi said: Alqamah came from Syria and said to Ibn Mas’ud, “Your brothers in Syria pronounce the takbir five times over their deceased. Would you set a specified practice for us to follow you in?” Abdullah remained silent for a moment and then said, “Observe your deceased and pronounce the takbir over them as your imams do—no time or number.” Abu Muhammad said: Ibn Mas’ud died during Uthman’s lifetime—may Allah be pleased with them both. Alqamah only reported to him what he narrated from the Companions—may Allah be pleased with them—in Syria. This is a chain of transmission of utmost authenticity, for al-Sha’bi met Alqamah, learned from him, and heard from him. Muhammad ibn Sa’id ibn Nabat narrated to us: Ahmad ibn Awn Allah narrated to us: Qasim ibn Asbagh narrated to us: Muhammad ibn Abd al-Salam al-Khushani narrated to us: Muhammad ibn Bashshar narrated to

us: Muhammad ibn Ja’far narrated from Shu’bah from al-Minhal ibn Amr from Zirr ibn Hubaysh, who said: I saw Ibn Mas’ud pray over a man from Bal’adan—a branch of Banu Asad—and pronounce the takbir five times over him. Via the same chain: Abd al-Razzaq from Ma’mar from Hammad ibn Abi Sulayman from Ibrahim al-Nakha’i: Ali pronounced the takbir five times over a funeral. Via the same chain: Abd al-Razzaq from Sufyan ibn Uyaynah from Amr ibn Dinar from Abi Ma’bad from Ibn Abbas: He used to pronounce the takbir three times over the deceased.

عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ بَشَّارٍ ثنا مُحَمَّدُ بْنُ جَعْفَرٍ عَنْ شُعْبَةَ عَنْ الْمِنْهَالِ بْنِ عَمْرٍو عَنْ زِرِّ بْنِ حُبَيْشٍ قَالَ: رَأَيْت ابْنَ مَسْعُودٍ صَلَّى عَلَى رَجُلٍ مِنْ بَلْعَدَانَ - نَخْذٌ مِنْ بَنِي أَسَدٍ - فَكَبَّرَ عَلَيْهِ خَمْسًا؟ وَبِالسَّنَدِ الْمَذْكُورِ إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّ عَلِيًّا كَبَّرَ عَلَى جِنَازَةٍ خَمْسًا؟ وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي مَعْبَدٍ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ كَانَ يُكَبِّرُ عَلَى الْجِنَازَةِ ثَلَاثًا.

L9150 It is also narrated through Muḥammad ibn Jaʿfar, from Shuʿbah, from ʿAmr ibn Dīnār, who said: I heard Abū Maʿbad say: Ibn ʿAbbās used to recite three takbīrs during the funeral prayer.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ عَنْ شُعْبَةَ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: سَمِعْت أَبَا مَعْبَدٍ يَقُولُ: كَانَ ابْنُ عَبَّاسٍ يُكَبِّرُ عَلَى الْجِنَازَةِ ثَلَاثًا.

L9151–9155 And this is a chain of narration of the utmost authenticity. From the path of Hammad ibn Salamah: Shaybah ibn Ayman informed me that Anas ibn Malik prayed over a funeral and performed three takbīrs. And through him to Hammad, from Yahya ibn Abi Ishaq: It was said to Anas, “So-and-so performed three takbīrs over a funeral?” Anas replied, “Is the takbīr anything but three?” Muhammad ibn Sirin said, “Was the takbīr not originally three, then they added one—meaning over the funeral?” From the path of Muslim ibn Ibrahim, from Shuʿbah, from Zurarah ibn Abi al-Halal al-ʿAtaki: Jabir ibn Zayd Abu al-Shaʿtha’ commanded Yazid ibn al-Muhallab to perform three takbīrs over the funeral.

وَهَذَا إسْنَادٌ فِي غَايَةِ الصِّحَّةِ وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَخْبَرَنِي شَيْبَةُ بْنُ أَيْمَنَ أَنَّ أَنَسَ بْنَ مَالِكٍ صَلَّى عَلَى جِنَازَةٍ فَكَبَّرَ ثَلَاثًا؟ وَبِهِ إلَى حَمَّادٍ عَنْ يَحْيَى بْنِ أَبِي إسْحَاقَ: أَنَّهُ قِيلَ لِأَنَسٍ: إنَّ فُلَانًا كَبَّرَ ثَلَاثًا، يَعْنِي عَلَى جِنَازَةٍ؟ فَقَالَ أَنَسٌ: وَهَلْ التَّكْبِيرُ إلَّا ثَلَاثًا؟ وَقَالَ مُحَمَّدُ بْنُ سِيرِينَ: إنَّمَا كَانَ التَّكْبِيرُ ثَلَاثًا فَزَادُوا وَاحِدَةً يَعْنِي عَلَى الْجِنَازَةِ؟ وَمِنْ طَرِيقِ مُسْلِمِ بْنِ إبْرَاهِيمَ عَنْ شُعْبَةَ عَنْ زُرَارَةَ بْنِ أَبِي الْحَلَالِ الْعَتَكِيِّ أَنَّ جَابِرَ بْنَ زَيْدٍ أَبَا الشَّعْثَاءِ أَمَرَ يَزِيدَ بْنَ الْمُهَلَّبِ أَنْ يُكَبِّرَ عَلَى الْجِنَازَةِ ثَلَاثًا؟ قَالَ أَبُو مُحَمَّدٍ: أُفٍّ لِكُلِّ إجْمَاعٍ يُخْرَجُ عَنْهُ: عَلِيُّ بْنُ أَبِي طَالِبٍ وَعَبْدُ اللَّهِ بْنُ مَسْعُودٍ وَأَنَسُ بْنُ مَالِكٍ، وَابْنُ عَبَّاسٍ، وَالصَّحَابَةُ بِالشَّامِ - رَضِيَ اللَّهُ عَنْهُمْ -، ثُمَّ التَّابِعُونَ بِالشَّامِ، وَابْنُ سِيرِينَ وَجَابِرُ بْنُ زَيْدٍ وَغَيْرُهُمْ بِأَسَانِيدَ فِي غَايَةِ الصِّحَّةِ، وَيَدَّعِي الْإِجْمَاعَ بِخِلَافِ هَؤُلَاءِ بِأَسَانِيدَ وَاهِيَةٍ، فَمَنْ أَجْهَلُ مِمَّنْ هَذِهِ سَبِيلُهُ؟ فَمَنْ أَخْسَرُ صَفْقَةً مِمَّنْ يَدْخُلُ فِي عَقْلِهِ أَنَّ إجْمَاعًا عَرَفَهُ

Abu Muhammad said: Uff! For every consensus claimed while excluding ʿAli ibn Abi Talib, ʿAbdullah ibn Masʿud, Anas ibn Malik, Ibn ʿAbbas, and the Companions in Syria—may Allah be pleased with them—then the Successors in Syria, Ibn Sirin, Jabir ibn Zayd, and others with chains of the highest authenticity, while asserting consensus contrary to these with feeble chains—who is more ignorant than one whose path is this? Who suffers a worse bargain than one who accepts that a consensus known to Abu Hanifah, Malik, and al-Shafiʿi remained hidden from ʿAli, Ibn Masʿud, Zayd ibn Arqam, Anas ibn Malik, and Ibn ʿAbbas, so that they opposed the consensus? Allah is

far above this! They have no basis for what we have narrated: that ʻUmar performed four takbīrs, ʻAli performed four over Ibn al-Mukaffiʻ, Zayd ibn Thabit performed four over his mother, ʻAbdullah ibn Abi Awfa performed four over his daughter, Zayd ibn Arqam performed four, and Anas performed four. All this is true and correct. None of these individuals has any authentic report rejecting five takbīrs at all. Even if it were found, it would oppose the statement of those who permitted it, and it would then become obligatory to revert to what Allah the Exalted has prescribed as the recourse in times of dispute—the Quran and the Sunnah. It has been authentically established that he (peace be upon him) pronounced the Takbir five times and four times. Therefore, it is impermissible to abandon either of his two practices for the other.

-: أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَخَفِيَ عِلْمُهُ عَلَى -: عَلِيٍّ، وَابْنِ مَسْعُودٍ، وَزَيْدِ بْنِ أَرْقَمَ، وَأَنَسِ بْنِ مَالِكٍ، وَابْنِ عَبَّاسٍ، حَتَّى خَالَفُوا الْإِجْمَاعَ؟ حَاشَا لِلَّهِ مِنْ هَذَا؟ وَلَا مُتَعَلَّقَ لَهُمْ بِمَا رُوِّينَاهُ مِنْ أَنَّ عُمَرَ كَبَّرَ أَرْبَعًا، وَعَلِيًّا كَبَّرَ عَلَى ابْنِ الْمُكَفِّفِ أَرْبَعًا، وَزَيْدَ بْنَ ثَابِتٍ كَبَّرَ عَلَى أُمِّهِ أَرْبَعًا، وَعَبْدَ اللَّهِ بْنَ أَبِي أَوْفَى كَبَّرَ عَلَى ابْنَتِهِ أَرْبَعًا، وَزَيْدَ بْنَ أَرْقَمَ كَبَّرَ أَرْبَعًا، وَأَنَسًا كَبَّرَ أَرْبَعًا -: فَكُلُّ هَذَا حَقٌّ وَصَوَابٌ، وَلَيْسَ مِنْ هَؤُلَاءِ أَحَدٌ صَحَّ عَنْهُ إنْكَارُ تَكْبِيرِ خَمْسٍ أَصْلًا، وَحَتَّى لَوْ وُجِدَ لَكَانَ مُعَارِضًا لَهُ قَوْلُ مَنْ أَجَازَهَا، وَوَجَبَ الرُّجُوعُ حِينَئِذٍ إلَى مَا افْتَرَضَ اللَّهُ تَعَالَى الرَّدَّ إلَيْهِ عِنْدَ التَّنَازُعِ، مِنْ الْقُرْآنِ وَالسُّنَّةِ، وَقَدْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - كَبَّرَ خَمْسًا وَأَرْبَعًا، فَلَا يَجُوزُ تَرْكُ أَحَدِ عَمَلَيْهِ لِلْآخَرِ

L9156 We have not found from any of the Imams a practice of performing more than seven takbīrs or fewer than three. Whoever adds beyond five and reaches six or seven has done an act never authentically established from the Prophet—peace and blessings be upon him. Thus we disliked it for that reason, but since he—peace be upon him—did not forbid it, we did not declare it prohibited. Similarly, what is the ruling regarding one who performs three takbīrs?

وَلَمْ نَجِدْ عَنْ أَحَدٍ مِنْ الْأَئِمَّةِ تَكْبِيرًا أَكْثَرَ مِنْ سَبْعٍ، وَلَا أَقَلَّ مِنْ ثَلَاثٍ، فَمَنْ زَادَ عَلَى خَمْسٍ وَبَلَغَ سِتًّا أَوْ سَبْعًا فَقَدْ عَمِلَ عَمَلًا لَمْ يَصِحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ، فَكَرِهْنَاهُ لِذَلِكَ، وَلَمْ يَنْهَ - عَلَيْهِ السَّلَامُ - عَنْهُ فَلَمْ نَقُلْ: بِتَحْرِيمِهِ لِذَلِكَ، وَكَذَلِكَ الْقَوْلُ: فِيمَنْ كَبَّرَ ثَلَاثًا؟

L9157 As for fewer than three or more than seven, the Prophet—peace and blessings of Allah be upon him—did not perform it, nor do we know of anyone who held this view. It is a contrivance, and we have been forbidden to be among those who contrive—except for a baseless ḥadīth that we must bring attention to, to prevent anyone from being deceived by it: "The Messenger of Allah—peace and blessings of Allah be upon him—performed seventy prayers over Ḥamza—may Allah be pleased with him—on the day of Uḥud." This is undoubtedly false, and Allah alone grants success.

وَأَمَّا مَا دُونَ الثَّلَاثِ وَفَوْقَ السَّبْعِ فَلَمْ يَفْعَلْهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا عَلِمْنَا أَحَدًا قَالَ بِهِ، فَهُوَ تَكَلُّفٌ، وَقَدْ نُهِينَا أَنْ نَكُونَ مِنْ الْمُتَكَلِّفِينَ، إلَّا حَدِيثًا سَاقِطًا وَجَبَ أَنْ نُنَبِّهَ عَلَيْهِ لِئَلَّا يُغْتَرَّ بِهِ، وَهُوَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى عَلَى حَمْزَةَ - رَضِيَ اللَّهُ عَنْهُ - يَوْمَ أُحُدٍ سَبْعِينَ صَلَاةً» وَهَذَا بَاطِلٌ بِلَا شَكٍّ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

L9158 As for raising the hands, there is no report from the Prophet (peace and blessings of Allah be upon him) that he raised his hands during any of the

funeral prayer's Takbīrs except in the first Takbīr alone. Therefore, it is impermissible to do so, as it constitutes an act within the prayer unsupported by textual evidence. Rather, it is reported from him (peace be upon him) that he raised his hands with every lowering and raising (in prayer) – but is there no raising or lowering in it (the funeral prayer)? It is astonishing that Abū Ḥanīfah opines raising the hands in every Takbīr of the funeral prayer, despite there being no report from the Prophet (peace and blessings of Allah be upon him) supporting this, while he prohibits raising the hands with every lowering and raising in other prayers – and it has been authentically established from the Prophet (peace and blessings of Allah be upon him).

وَأَمَّا رَفْعُ الْأَيْدِي فَإِنَّهُ لَمْ يَأْتِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ رَفَعَ فِي شَيْءٍ مِنْ تَكْبِيرِ الْجَنَازَةِ إلَّا فِي أَوَّلِ تَكْبِيرَةٍ فَقَطْ، فَلَا يَجُوزُ فِعْلُ ذَلِكَ، لِأَنَّهُ عَمَلٌ فِي الصَّلَاةِ لَمْ يَأْتِ بِهِ نَصٌّ، وَإِنَّمَا جَاءَ عَنْهُ - عَلَيْهِ السَّلَامُ -: أَنَّهُ كَبَّرَ وَرَفَعَ يَدَيْهِ فِي كُلِّ خَفْضٍ وَرَفْعٍ، وَلَيْسَ فِيهَا رَفْعٌ وَلَا خَفْضٌ؟ وَالْعَجَبُ مِنْ قَوْلِ أَبِي حَنِيفَةَ: بِرَفْعِ الْأَيْدِي فِي كُلِّ تَكْبِيرَةٍ فِي صَلَاةِ الْجَنَازَةِ وَلَمْ يَأْتِ قَطُّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَنْعِهِ مِنْ رَفْعِ الْأَيْدِي فِي كُلِّ خَفْضٍ وَرَفْعٍ فِي سَائِرِ الصَّلَوَاتِ، وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L9159 As for the two taslims, they pertain to the prayer. The conclusion of the prayer is the taslim, and the second taslim is an act of remembrance (dhikr) and a good deed—and success comes from Allah, the Most High.

وَأَمَّا التَّسْلِيمَتَانِ فَهِيَ صَلَاةٌ، وَتَحْلِيلُ الصَّلَاةِ: التَّسْلِيمُ، وَالتَّسْلِيمَةُ الثَّانِيَةُ ذِكْرٌ وَفِعْلُ خَيْرٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L9160 574. Issue:

٥٧٤ - مَسْأَلَةٌ:

L9161 When he utters the first Takbīr, he must necessarily recite Umm al-Qur'ān (the Opening of the Quran) and send blessings upon the Messenger of Allah—may peace and blessings be upon him. If he supplicates for the Muslims, it is commendable. Should he continue supplicating for the deceased throughout the remainder of the prayer? As for the recitation of Umm al-Qur'ān, this is because the Messenger of Allah—may peace and blessings be upon him—called it the prayer when he said, "Pray for your companion."

فَإِذَا كَبَّرَ الْأُولَى قَرَأَ (أُمَّ الْقُرْآنِ) وَلَا بُدَّ، وَصَلَّى عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنْ دَعَا لِلْمُسْلِمِينَ فَحَسَنٌ، ثُمَّ يَدْعُو لِلْمَيِّتِ فِي بَاقِي الصَّلَاةِ؟ أَمَّا قِرَاءَةُ (أُمِّ الْقُرْآنِ) فَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَمَّاهَا صَلَاةً بِقَوْلِهِ «صَلُّوا عَلَى صَاحِبِكُمْ» .

L9162–9163 And he—peace be upon him—said: "There is no prayer for one who does not recite the Fātiḥah." Narrated by ʻAbd al-Raḥmān ibn ʻAbd Allāh, narrated by Ibrāhīm ibn Aḥmad, narrated by al-Farbarī, narrated by al-Bukhārī, narrated by Muḥammad ibn Kathīr, narrated by Sufyān—that is, al-Thawrī—from Saʻd—that is, Ibn Ibrāhīm ibn ʻAbd al-Raḥmān ibn ʻAwf—from Ṭalḥa ibn ʻAbd Allāh ibn ʻAwf, who said: "I prayed behind Ibn ʻAbbās, at a funeral, and he recited the Fātiḥah. He said: 'So that you may know it is a sunnah.'"

وَقَالَ - عَلَيْهِ السَّلَامُ - «لَا صَلَاةَ لِمَنْ لَمْ يَقْرَأْ بِأُمِّ الْقُرْآنِ» ؟ حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُحَمَّدُ بْنُ كَثِيرٍ ثنا سُفْيَانُ هُوَ الثَّوْرِيُّ - عَنْ سَعْدٍ هُوَ ابْنُ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - عَنْ طَلْحَةَ بْنِ عَبْدِ اللَّهِ

بْنِ عَوْفٍ قَالَ " صَلَّيْت خَلْفَ ابْنِ عَبَّاسٍ عَلَى جِنَازَةٍ، فَقَرَأَ بِفَاتِحَةِ الْكِتَابِ قَالَ: لِتَعْلَمُوا أَنَّهَا سُنَّةٌ ".

L9164 It has also been narrated to us through the chain of Shu'bah and Ibrāhīm ibn Sa'd, both of whom [are] from Sa'd ibn Ibrāhīm, from Ṭalḥah ibn 'Abd Allāh, from Ibn 'Abbās.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ شُعْبَةَ وَإِبْرَاهِيمَ بْنِ سَعْدٍ كِلَاهُمَا عَنْ سَعْدِ بْنِ إبْرَاهِيمَ عَنْ طَلْحَةَ بْنِ عَبْدِ اللَّهِ عَنْ ابْنِ عَبَّاسٍ.

L9165 Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Qutaybah ibn Sa'id said: I heard from Al-Layth ibn Sa'd, from Ibn Shihab, from Abu Umamah ibn Sahl ibn Hunayf and Muhammad ibn Suwayd al-Dimashqi, from al-Dahhak ibn Qays. Al-Dahhak and Abu Umamah said: The Sunnah for the funeral prayer is to recite quietly during the Takbir, then say the next Takbir, and the Taslim is given after the final one.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ أَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي أُمَامَةَ بْنِ سَهْلِ بْنِ حُنَيْفٍ وَمُحَمَّدِ بْنِ سُوَيْدٍ الدِّمَشْقِيِّ عَنْ الضَّحَّاكِ بْنِ قَيْسٍ، قَالَ الضَّحَّاكُ، وَأَبُو أُمَامَةَ: السُّنَّةُ فِي الصَّلَاةِ عَلَى الْجِنَازَةِ أَنْ يَقْرَأَ فِي التَّكْبِيرِ مُخَافَتَةً، ثُمَّ يُكَبِّرَ، وَالتَّسْلِيمُ عِنْدَ الْآخِرَةِ.

L9166 And from Ibn Mas'ud: that he would recite the Opening of the Book during the funeral prayer. Through the chain of Waki' from Salamah ibn Nubayt from al-Dahhak ibn Qays, who said: "He recites the Opening of the Book between the first two takbirs." From Hammad ibn Salamah from Muhammad ibn Ishaq from Muhammad ibn Ibrahim al-Taymi from Muhammad ibn 'Amr ibn 'Ata': that al-Miswar ibn Makhramah performed the funeral prayer and recited the Opening of the Book and a short surah during the first takbira, raising his voice with them. When he concluded, he said: "I know well this prayer is silent, but I intended to teach you that recitation is part of it."

وَعَنْ ابْنِ مَسْعُودٍ: أَنَّهُ كَانَ يَقْرَأُ عَلَى الْجِنَازَةِ بِ أُمِّ الْكِتَابِ وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سَلَمَةَ بْنِ نُبَيْطٍ عَنْ الضَّحَّاكِ بْنِ قَيْسٍ قَالَ: يَقْرَأُ مَا بَيْنَ التَّكْبِيرَتَيْنِ الْأُولَيَيْنِ: فَاتِحَةَ الْكِتَابِ وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إسْحَاقَ عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ التَّيْمِيِّ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَطَاءٍ: أَنَّ الْمِسْوَرَ بْنَ مَخْرَمَةَ صَلَّى عَلَى الْجِنَازَةِ فَقَرَأَ فِي التَّكْبِيرَةِ الْأُولَى فَاتِحَةَ الْكِتَابِ وَسُورَةً قَصِيرَةً، رَفَعَ بِهِمَا صَوْتَهُ، فَلَمَّا فَرَغَ قَالَ: لَا أَجْهَلُ أَنْ تَكُونَ هَذِهِ الصَّلَاةُ عَجْمَاءَ، وَلَكِنِّي أَرَدْت أَنْ أُعَلِّمَكُمْ أَنَّ فِيهَا قِرَاءَةً.

L9167 Abu Muhammad said: Ibn Abbas and al-Miswar held that whispered recitation is not obligatory. It is reported from Abu Hurayrah, Abu al-Dardā', Ibn Mas'ud, and Anas ibn Malik that they would recite Al-Fatihah (the Opening, also known as Umm al-Qur'ān), supplicate, and seek forgiveness after each of the three takbīrāt (reflecting a minority opinion in the funeral prayer). Then they would utter takbīr, conclude the prayer, and refrain from further recitation.

قَالَ أَبُو مُحَمَّدٍ: فَرَأَى ابْنُ عَبَّاسٍ، وَالْمِسْوَرُ: الْمُخَافَتَةَ لَيْسَتْ فَرْضًا. وَعَنْ أَبِي هُرَيْرَةَ، وَأَبِي الدَّرْدَاءِ، وَابْنِ مَسْعُودٍ، وَأَنَسِ بْنِ مَالِكٍ: أَنَّهُمْ كَانُوا يَقْرَءُونَ بِأُمِّ الْقُرْآنِ وَيَدْعُونَ وَيَسْتَغْفِرُونَ بَعْدَ كُلِّ تَكْبِيرَةٍ مِنْ الثَّلَاثِ فِي الْجِنَازَةِ، ثُمَّ يُكَبِّرُونَ وَيَنْصَرِفُونَ وَلَا يَقْرَءُونَ.

L9168–9170 And from Maʿmar from al-Zuhrī: I heard Abā Umāmah ibn Sahl ibn Ḥunayf narrate. Sa’id ibn al-Musayyib said: The Sunnah in the funeral prayer is that you say the Takbir, then recite the Opening Chapter (Al-Fatihah), then pray upon the Prophet - peace and blessings of Allah be upon him - then sincerely supplicate solely for the deceased. You do not recite except in the first Takbir, then he concludes by silently saying the Salam to his right side only.

وَعَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ: سَمِعْت أَبَا أُمَامَةَ بْنَ سَهْلِ بْنِ حُنَيْفٍ يُحَدِّثُ سَعِيدَ بْنَ الْمُسَيِّبِ قَالَ: السُّنَّةُ فِي الصَّلَاةِ عَلَى الْجَنَائِزِ أَنْ تُكَبِّرَ، ثُمَّ تَقْرَأَ بِأُمِّ الْقُرْآنِ ثُمَّ تُصَلِّيَ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ تُخْلِصَ الدُّعَاءَ لِلْمَيِّتِ، وَلَا تَقْرَأُ إلَّا فِي التَّكْبِيرَةِ الْأُولَى، ثُمَّ يُسَلِّمُ فِي نَفْسِهِ عَنْ يَمِينِهِ.

L9171 Narrated on the authority of Ibn Jurayj: Ibn Shihab said to me, “Is recitation [of the Qur’an] over the deceased performed during the first *takbir* of the prayer?”

وَعَنْ ابْنِ جُرَيْجٍ: قَالَ لِي ابْنُ شِهَابٍ: الْقِرَاءَةُ عَلَى الْمَيِّتِ فِي الصَّلَاةِ فِي التَّكْبِيرَةِ الْأُولَى؟

L9172 From Ibn Jurayj, who reported from Mujāhid concerning the prayer over the deceased: He says “Allāhu Akbar,” then recites the Mother of the Quran (i.e., Al-Fātiḥah), then invokes blessings upon the Prophet (peace and blessings be upon him), then Ibn Jurayj mentioned a supplication.

وَعَنْ ابْنِ جُرَيْجٍ عَنْ مُجَاهِدٍ فِي الصَّلَاةِ عَلَى الْجَنَازَةِ: يُكَبِّرُ ثُمَّ يَقْرَأُ بِأُمِّ الْقُرْآنِ ثُمَّ يُصَلِّي عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ ذَكَرَ دُعَاءً.

L9173 From Sufyān al-Thawrī, from Yūnus ibn ʿUbayd, from al-Ḥasan: that he used to recite the Opening of the Book (Al-Fātiḥah) in every Takbīr during the funeral prayer. This is the opinion of al-Shāfiʿī, Abū Sulaymān, and their companions.

وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ: أَنَّهُ كَانَ يَقْرَأُ بِفَاتِحَةِ الْكِتَابِ فِي كُلِّ تَكْبِيرَةٍ فِي صَلَاةِ الْجَنَازَةِ؟ وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

L9174 Abu Muhammad said: Those who prohibited reciting the Quran during it argued by saying: It was reported from the Prophet (peace be upon him): “Dedicate your supplication sincerely to Him.”

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ مَنْ مَنَعَ مِنْ قِرَاءَةِ الْقُرْآنِ فِيهَا بِأَنْ قَالُوا: رُوِيَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَخْلِصُوا لَهُ الدُّعَاءَ» .

L9175 Abū Muḥammad said: This is a weak ḥadīth, never transmitted through any reliable chain. Even if it were authentic, it would not prohibit recitation, for dedicating supplication to the deceased does not entail a prohibition against Quranic recitation. Do we not sincerely dedicate supplication for him and recite as we were commanded? They said: It is narrated from Abū Hurayrah that he was asked about the funeral prayer, and he mentioned supplication but did not mention Quranic recitation. From Fuḍāla ibn ʿUbayd: When asked, “Does one recite anything from the Qur’an during the funeral prayer?” he replied, “No.”

قَالَ أَبُو مُحَمَّدٍ: هَذَا حَدِيثٌ سَاقِطٌ، مَا رُوِيَ قَطُّ مِنْ طَرِيقٍ يُشْتَغَلُ بِهَا ثُمَّ لَوْ صَحَّ لَمَا مَنَعَ مِنْ الْقِرَاءَةِ، لِأَنَّهُ لَيْسَ فِي إخْلَاصِ الدُّعَاءِ لِلْمَيِّتِ نَهْيٌ عَنْ الْقِرَاءَةِ، وَنَحْنُ نُخْلِصُ لَهُ الدُّعَاءَ وَنَقْرَأُ كَمَا أُمِرْنَا؟ وَقَالُوا: قَدْ رُوِيَ عَنْ أَبِي هُرَيْرَةَ: أَنَّهُ سُئِلَ عَنْ الصَّلَاةِ عَلَى الْجَنَازَةِ؟ فَذَكَرَ دُعَاءً وَلَمْ يَذْكُرْ قِرَاءَةً وَعَنْ فُضَالَةَ بْنِ عُبَيْدٍ: أَنَّهُ سُئِلَ: أَيَقْرَأُ فِي الْجَنَازَةِ بِشَيْءٍ مِنْ الْقُرْآنِ؟ قَالَ: لَا.

L9176 It is reported from Ibn ‘Umar that he would not recite during the Janazah

prayer.

وَعَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ لَا يَقْرَأُ فِي صَلَاةِ الْجَنَازَةِ.

L9177–9179 Abu Muhammad said: We said that none of them had said that one does not recite the Mother of the Quran (Al-Fatihah) in it. Yes, we say: Nothing from the Quran is recited in it except the Mother of the Quran (Al-Fatihah).

قَالَ أَبُو مُحَمَّدٍ: فَقُلْنَا - لَيْسَ عَنْ وَاحِدٍ مِنْ هَؤُلَاءِ أَنَّهُ قَالَ: لَا يَقْرَأُ فِيهَا بِأُمِّ الْقُرْآنِ وَنَعَمْ، نَحْنُ نَقُولُ: لَا يُقْرَأُ فِيهَا بِشَيْءٍ مِنْ الْقُرْآنِ إلَّا بِأُمِّ الْقُرْآنِ

L9180 There is no valid disagreement between these [individuals] and those Companions—may Allah be pleased with them—who explicitly affirmed the recitation of the Quran, such as Ibn Abbas, Al-Miswar, Ad-Dahhak ibn Qays, Abu Hurairah, Abu al-Darda', Ibn Mas'ud, and Anas, especially since Abu Hurairah did not mention the *Takbir* or the *Taslim*.

فَلَا يَصِحُّ خِلَافٌ بَيْنَ هَؤُلَاءِ وَبَيْنَ مَنْ صَرَّحَ بِقِرَاءَةِ الْقُرْآنِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، كَابْنِ عَبَّاسٍ، وَالْمِسْوَرِ، وَالضَّحَّاكِ بْنِ قَيْسٍ، وَأَبِي هُرَيْرَةَ، وَأَبِي الدَّرْدَاءِ، وَابْنِ مَسْعُودٍ، وَأَنَسٍ، لَا سِيَّمَا وَأَبُو هُرَيْرَةَ لَمْ يَذْكُرْ تَكْبِيرًا وَلَا تَسْلِيمًا.

L9181 Thus, their attachment to it was nullified.

فَبَطَلَ أَنْ يَكُونَ لَهُمْ بِهِ مُتَعَلَّقٌ.

L9182 It has been narrated from him that the Quran was recited during funerals. How then, even if an authentic disagreement were reported from them regarding that matter, would it be obligatory to refer—when they dispute—to what Allah the Exalted has commanded to return to: what is from the Quran and the Sunnah.

وَقَدْ رُوِيَ عَنْهُ قِرَاءَةُ الْقُرْآنِ فِي الْجَنَازَةِ، فَكَيْفَ وَلَوْ صَحَّ عَنْهُمْ فِي ذَلِكَ خِلَافٌ؟ لَوَجَبَ الرَّدُّ عِنْدَ تَنَازُعِهِمْ إلَى مَا أَمَرَ اللَّهُ تَعَالَى بِالرَّدِّ إلَيْهِ مِنْ الْقُرْآنِ وَالسُّنَّةِ.

L9183 He (peace be upon him) said, "There is no prayer for one who does not recite the Mother of the Quran." And they said: Perhaps they recited it on the basis that it is a supplication.

وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ - «لَا صَلَاةَ لِمَنْ لَمْ يَقْرَأْ بِأُمِّ الْقُرْآنِ» وَقَالُوا: لَعَلَّ هَؤُلَاءِ قَرَءُوهَا عَلَى أَنَّهُ دُعَاءٌ

L9184 So we said: This is invalid because the command to recite it was established from them, and that it constitutes their *sunnah*. Thus, the claim of those who say, "Perhaps they recited it considering it a supplication"—this is pure falsehood. Moreover, we do not know what compelled them to prohibit its recitation, driving them to plunge into falsehood through such feeble rationales? How strange that they uphold analogical reasoning while acknowledging it as prayer—mandating in it the *takbīr*, facing the *qiblah*, male imamate, purification, and the *salām*—yet they omit recitation!

فَقُلْنَا: هَذَا بَاطِلٌ؛ لِأَنَّهُمْ ثَبَتَ عَنْهُمْ الْأَمْرُ بِقِرَاءَتِهَا، وَأَنَّهَا سُنَّتُهَا، فَقَوْلُ مَنْ قَالَ: لَعَلَّهُمْ قَرَءُوهَا عَلَى أَنَّهَا دُعَاءٌ -: كَذِبٌ بَحْتٌ؟ ثُمَّ لَا نَدْرِي مَا الَّذِي حَمَلَهُمْ عَلَى الْمَنْعِ مِنْ قِرَاءَتِهَا حَتَّى يَتَقَحَّمُوا فِي الْكَذِبِ بِمِثْلِ هَذِهِ الْوُجُوهِ الضَّعِيفَةِ؟ وَالْعَجَبُ أَنَّهُمْ أَصْحَابُ قِيَاسٍ، وَهُمْ يَرَوْنَ أَنَّهَا صَلَاةٌ، وَيُوجِبُونَ فِيهَا: التَّكْبِيرَ، وَاسْتِقْبَالَ الْقِبْلَةِ، وَالْإِمَامَةَ لِلرِّجَالِ، وَالطَّهَارَةَ، وَالسَّلَامَ، ثُمَّ يُسْقِطُونَ الْقِرَاءَةَ

L9185 If they say: Since bowing, prostration, and sitting have been omitted, does recitation become omitted? We reply: On what basis is this analogy obliga-

tory rather than analogizing recitation to the *takbīr* and *taslīm*? Indeed, if analogy were valid, analogizing recitation to the *takbīr* and *taslīm*—since all these are verbal remembrance—would take precedence over analogizing recitation to bodily actions. But is this their understanding of analogy and the Sunnah? Yet they magnify opposition to the practice of Medina, even though we have shown them the practice of the Companions, Saʿīd ibn al-Musayyib, Abū Umāmah, and al-Zuhrī—the scholars among the people of Medina—yet they opposed them. And all success is from Allah, the Exalted.

فَإِنْ قَالُوا: لَمَّا سَقَطَ الرُّكُوعُ وَالسُّجُودُ وَالْجُلُوسُ: سَقَطَتْ الْقِرَاءَةُ؟ قُلْنَا: وَمِنْ أَيْنَ يُوجَبُ هَذَا الْقِيَاسُ دُونَ قِيَاسِ الْقِرَاءَةِ عَلَى التَّكْبِيرِ وَالتَّسْلِيمِ؟ بَلْ لَوْ صَحَّ الْقِيَاسُ لَكَانَ قِيَاسُ الْقِرَاءَةِ عَلَى التَّكْبِيرِ وَالتَّسْلِيمِ - لِأَنَّ كُلَّ ذَلِكَ ذِكْرٌ بِاللِّسَانِ - أَوْلَى مِنْ قِيَاسِ الْقِرَاءَةِ عَلَى عَمَلِ الْجَسَدِ، وَلَكِنْ هَذَا عِلْمُهُمْ بِالْقِيَاسِ وَالسُّنَنِ؟ وَهُمْ يُعَظِّمُونَ خِلَافَ الْعَمَلِ بِالْمَدِينَةِ، وَهَهُنَا أَرَيْنَاهُمْ عَمَلَ الصَّحَابَةِ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَأَبِي أُمَامَةَ، وَالزُّهْرِيِّ، عُلَمَاءِ أَهْلِ الْمَدِينَةِ، وَخَالَفُوهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L9186–9187

The Issue of the Supplication Upon the Funeral Procession.

[مَسْأَلَةُ الدُّعَاء عَلَى الْجِنَازَةِ]

L9188

Issue: The most beloved supplication to us during the funeral prayer is that which was transmitted by Abdullah ibn Yusuf from Ahmad ibn Fath, from Abdul Wahhab ibn Isa, from Ahmad ibn Muhammad, from Ahmad ibn Ali, from Muslim ibn al-Hajjaj, who said: Abu Tahir reported to me from Ibn Wahb, who was informed by Amr ibn al-Harith from Abu Hamzah ibn Sulaim, from Abdul Rahman ibn Jubayr ibn Nufayr, from his father, from Awf ibn Malik al-Ashja'i, who said: I heard Allah's Messenger - peace and blessings be upon him - pray over a deceased person, saying: "O Allah, forgive him, have mercy upon him, pardon him, grant him well-being, honor his lodging in Paradise, widen his resting place, cleanse him with water, snow, and hail, purify him from sins as a white garment is cleansed of impurities, replace his home with a better home, his family with a better family, his spouse with a better spouse, and shield him from the trial and punishment of the grave, and from the punishment of the Fire."

مَسْأَلَةٌ: وَأَحَبُّ الدُّعَاءِ إلَيْنَا عَلَى الْجِنَازَةِ هُوَ مَا -: حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي أَبُو الطَّاهِرِ ثنا ابْنُ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ أَبِي حَمْزَةَ بْنِ سُلَيْمٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ جُبَيْرِ بْنِ نَفِيرٍ عَنْ أَبِيهِ عَنْ «عَوْفِ بْنِ مَالِكٍ الْأَشْجَعِيِّ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَصَلَّى عَلَى جِنَازَةٍ يَقُولُ: اللَّهُمَّ اغْفِرْ لَهُ وَارْحَمْهُ، وَاعْفُ عَنْهُ وَعَافِهِ، وَأَكْرِمْ نُزُلَهُ، وَوَسِّعْ مُدْخَلَهُ، وَاغْسِلْهُ بِمَاءٍ، وَثَلْجٍ، وَبَرَدٍ، وَنَقِّهِ مِنْ الْخَطَايَا كَمَا يُنَقَّى الثَّوْبُ الْأَبْيَضُ مِنْ الدَّنَسِ، وَأَبْدِلْهُ دَارًا خَيْرًا مِنْ دَارِهِ، وَأَهْلًا خَيْرًا مِنْ أَهْلِهِ، وَزَوْجًا خَيْرًا مِنْ زَوْجِهِ، وَقِهِ فِتْنَةَ الْقَبْرِ، وَعَذَابَ الْقَبْرِ وَعَذَابَ النَّارِ» .

L9189

Abdullah ibn Rabi' narrated to us, Umar ibn Abd al-Malik narrated to us, Muhammad ibn Bakr narrated to us, Abu Dawud narrated to us, Musa ibn Harun al-Raqqi narrated to us, Shu'ayb—meaning ibn Ishaq—narrated to us from al-Awza'i, from Yahya ibn Abi Kathir, from Abu Salama ibn Abd al-Rahman ibn ʿAwf, from Abu Hurayrah, who said: "The Messenger of Allah—peace and blessings of Allah be upon him—prayed over a funeral and said:

وَمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا مُوسَى بْنُ هَارُونَ الرَّقِّيُّ ثنا شُعَيْبٌ يَعْنِي ابْنَ إِسْحَاقَ - عَنْ الْأَوْزَاعِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: «صَلَّى رَسُولُ اللَّهِ -

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى جِنَازَةٍ فَقَالَ: اللَّهُمَّ اغْفِرْ لِحَيِّنَا، وَمَيِّتِنَا، وَصَغِيرِنَا، وَكَبِيرِنَا، وَذَكَرِنَا، وَأُنْثَانَا، وَشَاهِدِنَا، وَغَائِبِنَا، اللَّهُمَّ مَنْ أَحْيَيْتَهُ مِنَّا فَأَحْيِهِ عَلَى الْإِيمَانِ، وَمَنْ تَوَفَّيْتَهُ مِنَّا فَتَوَفَّهُ عَلَى الْإِسْلَامِ اللَّهُمَّ لَا تَحْرِمْنَا أَجْرَهُ، وَلَا تُضِلَّنَا بَعْدَهُ» .

'O Allah, forgive our living and our dead, our young and our old, our males and our females, our present and our absent. O Allah, whoever among us You keep alive, keep him alive in faith, and whoever among us You cause to die, cause him to die upon Islam. O Allah, do not deprive us of his reward, and do not let us go astray after him.'"[10]

فَإِنْ كَانَ صَغِيرًا فَلْيَقُلْ " اللَّهُمَّ أَلْحِقْهُ بِإِبْرَاهِيمَ خَلِيلِكَ " لِلْأَثَرِ الَّذِي صَحَّ أَنَّ الصِّغَارَ مَعَ إِبْرَاهِيمَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي رَوْضَةٍ خَضْرَاءَ.

L9190 If he is a minor, he should say: "O Allah, join him with Ibrahim, Your intimate friend," due to the authentic narration that young children are with Ibrahim (peace be upon him) in a verdant garden.

وَمَا دَعَا بِهِ فَحَسَنٌ؟

L9191 Is everything he prays for good?

[مَسْأَلَةُ اللَّحْدِ]

The Issue of the Lahd

٥٧٦ - مَسْأَلَةٌ: وَنَسْتَحِبُّ اللَّحْدَ، وَهُوَ الشَّقُّ فِي أَحَدِ جَانِبَيِ الْقَبْرِ، وَهُوَ أَحَبُّ إِلَيْنَا مِنَ الضَّرِيحِ، وَهُوَ الشَّقُّ فِي وَسَطِ الْقَبْرِ. وَنَسْتَحِبُّ اللَّبِنَ أَنْ تُوضَعَ عَلَى فَتْحِ اللَّحْدِ، وَنَكْرَهُ الْخَشَبَ، وَالْقَصَبَ، وَالْحِجَارَةَ. وَكُلُّ ذَلِكَ جَائِزٌ؟ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى أَنَا عَبْدُ اللَّهِ بْنُ جَعْفَرٍ الْمَسْوَرِيُّ عَنْ إِسْمَاعِيلَ بْنِ مُحَمَّدِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ عَمِّهِ عَامِرِ بْنِ سَعْدٍ: أَنَّ أَبَاهُ سَعْدَ بْنَ أَبِي وَقَّاصٍ قَالَ فِي مَرَضِهِ الَّذِي هَلَكَ فِيهِ " أَلْحِدُوا لِي لَحْدًا، وَانْصِبُوا عَلَيَّ اللَّبِنَ نَصْبًا، كَمَا صُنِعَ بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - "

576 – Question: We recommend the laḥd (an excavation on one side of the grave), preferring it to the darīḥ (an excavation in the grave's center). We recommend placing mud bricks over the laḥd's opening and disapprove of using wood, reeds, or stones. Is all of that permissible? -: Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Yahya ibn Yahya narrated to us: Abdullah ibn Ja'far al-Miswari informed us from Ismail ibn Muhammad ibn Sa'd ibn Abi Waqqas, from his uncle Amir ibn Sa'd: That his father Sa'd ibn Abi Waqqas said during the illness from which he died, "Dig a lahd for me, lay the bricks over me securely, exactly as was done for the Messenger of Allah—may Allah bless him and grant him peace."

L9193–9195

[مَسْأَلَةُ بِنَاءُ الْقَبْرِ وَتَجْصِيصُهُ]

An Issue Regarding the Building of the Grave and Its Plastering.

٥٧٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُبْنَى الْقَبْرُ، وَلَا أَنْ يُجَصَّصَ، وَلَا أَنْ يُزَادَ عَلَيْهِ شَيْءٌ

577 – Issue: It is impermissible to build the grave, plaster it, or add anything

L9196

L9197

[10] **Hadith references (L9189):** Sunan Abi Dawud 3201.

to its soil. All of that is to be demolished. If a house or a standing structure is erected over it, there is no disapproval of that.

٥٧٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَنْ يُبْنَى الْقَبْرُ، وَلَا أَنْ يُجَصَّصَ، وَلَا أَنْ يُزَادَ عَلَى تُرَابِهِ شَيْءٌ، وَيُهْدَمُ كُلُّ ذَلِكَ، فَإِنْ بُنِيَ عَلَيْهِ بَيْتٌ أَوْ قَائِمٌ: لَمْ يَكْرَهْ ذَلِكَ.

L9198 Similarly, if one were to engrave his name upon a stone—do we not disapprove of that? It was narrated to us through the aforementioned chain to Muslim: Hārūn ibn Saʿīd al-Aylī narrated to us, Ibn Wahb narrated to us, ʿAmr ibn al-Ḥārith narrated to me that Thumāmah ibn Shufayy narrated to him, saying: "We were with Fuḍālah ibn ʿUbayd in Byzantine territory at Rhodes when a companion of ours died. Fuḍālah ordered his grave to be leveled and said: 'I heard the Messenger of Allah—peace and blessings of Allah be upon him—commanding the leveling of graves.'" Through the same chain to Muslim: Yaḥyā ibn Yaḥyā narrated to us, I am Wakīʿ, from Sufyān al-Thawrī, from Ḥabīb ibn Abī Thābit, from Abū Wāʾil, from Abū al-Hayyāj al-Asadī, who said: ʿAlī ibn Abī Ṭālib told me: "Shall I not send you for the same purpose the Messenger of Allah—peace and blessings of Allah be upon him—sent me? Leave no statue without erasing it, and no elevated grave without leveling it."[11]

وَكَذَلِكَ لَوْ نَقَشَ اسْمَهُ فِي حَجَرٍ: لَمْ نَكْرَهْ ذَلِكَ؟ -: رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى مُسْلِمٍ: حَدَّثَنِي هَارُونُ بْنُ سَعِيدٍ الْأَيْلِيُّ ثنا ابْنُ وَهْبٍ حَدَّثَنِي عَمْرُو بْنُ الْحَارِثِ أَنَّ ثُمَامَةَ بْنَ شُفَيٍّ حَدَّثَهُ قَالَ: «كُنَّا مَعَ فُضَالَةَ بْنِ عُبَيْدٍ بِأَرْضِ الرُّومِ بِرُودِسَ، فَتُوُفِّيَ صَاحِبٌ لَنَا، فَأَمَرَ فُضَالَةُ بِقَبْرِهِ فَسُوِّيَ، وَقَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُ بِتَسْوِيَتِهَا» -: وَبِهِ إِلَى مُسْلِمٍ: ثنا يَحْيَى بْنُ يَحْيَى أَنَا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ أَبِي وَائِلٍ عَنْ أَبِي الْهَيَّاجِ الْأَسَدِيِّ قَالَ: قَالَ لِي عَلِيُّ بْنُ أَبِي طَالِبٍ «أَلَا أَبْعَثُكَ عَلَى مَا بَعَثَنِي عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ أَنْ لَا تَدَعَ تِمْثَالًا إِلَّا طَمَسْتَهُ، وَلَا قَبْرًا مُشْرِفًا إِلَّا سَوَّيْتَهُ» .

L9199 And through him to Muslim: Muḥammad ibn Rāfiʿ narrated to me [narrated to us by ʿAbd al-Razzāq] from Ibn Jurayj, who informed me that Abū al-Zubayr reported hearing Jābir ibn ʿAbdullāh say: "I heard the Messenger of Allah - peace be upon him - forbid plastering graves, that they be sat upon, or that structures be built over them."

وَبِهِ إِلَى مُسْلِمٍ: حَدَّثَنِي مُحَمَّدُ بْنُ رَافِعٍ [ثنا عَبْدُ الرَّزَّاقِ] عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْهَى عَنْ أَنْ تُجَصَّصَ الْقُبُورُ، وَأَنْ يُقْعَدَ عَلَيْهَا، وَأَنْ يُبْنَى عَلَيْهَا» .

L9200–9201 Abu Muhammad said: He (peace be upon him) warned about the location of his grave through his statement, "Between my grave and my pulpit lies a garden from the gardens of Paradise," and he informed that it is within his house.

قَالَ أَبُو مُحَمَّدٍ: قَدْ أَنْذَرَ - عَلَيْهِ السَّلَامُ - بِمَوْضِعِ قَبْرِهِ بِقَوْلِهِ «مَا بَيْنَ قَبْرِي وَمِنْبَرِي رَوْضَةٌ مِنْ رِيَاضِ الْجَنَّةِ» وَأَعْلَمَ أَنَّهُ فِي بَيْتِهِ بِذَلِكَ.

L9202 He (peace be upon him) did not disapprove of the grave being located within a house, nor did he forbid an existing structure. Rather, he prohibited building over the grave: only a dome.

وَلَمْ يُنْكِرْ - عَلَيْهِ السَّلَامُ - كَوْنَ الْقَبْرِ فِي بَيْتٍ، وَلَا نَهَى عَنْ بِنَاءٍ قَائِمٍ، وَإِنَّمَا نَهَى عَنْ بِنَاءٍ عَلَى الْقَبْرِ: قُبَّةٍ فَقَطْ

[11] **Hadith references (L9198):** Mishkat al-Masabih 1696.

L9203–9205 And from Waki‘, from al-Rabee‘, from al-Hasan: He disliked that graves be plastered with gypsum, coated with clay, or have anything added to them from soil other than their own excavated earth. And from Waki‘, from ‘Imrān ibn Ḥudayr, from Abi Mijlaz, who said: Leveling graves is part of the Sunnah. And from ‘Uthmān, the Commander of the Believers, may Allah be pleased with him, that he ordered graves to be leveled and raised from the ground by a handspan. And from ‘Abd al-Razzāq, from Ma‘mar, from Ayyūb al-Sikhtiyānī, from... Abd al-Rahman ibn al-Qasim ibn Muhammad said: The wall around the Prophet’s grave (peace be upon him) collapsed, so it was covered and then rebuilt. I said to the one covering it: “Lift the edge of the covering so I may look at it.” When I looked, I saw upon it coarse fabrics and sand, as if it were sand from al-ʿArṣah?

L9206 Hammam narrated to us: Abbas ibn Asbagh narrated to us: Muhammad ibn Abd al-Malik ibn Ayman narrated to us: Muhammad ibn Waddah narrated to us: Yaqub ibn Ka’b narrated to us: Ibn Abi Fudayk informed me from Amr ibn Uthman ibn Hani’ from al-Qasim ibn Muhammad, who said: “I entered upon Aisha and said: ’O Mother, uncover for me the grave of the Messenger of Allah (peace and blessings of Allah be upon him) and his two companions.’ She uncovered three graves for me—neither sunken nor elevated—leveled with the reddish gravel of the courtyard. I saw the Messenger of Allah (peace and blessings of Allah be upon him) positioned foremost, Abu Bakr at his head with his feet between the shoulders of the Prophet (peace and blessings of Allah be upon him), and I saw Umar at the feet of Abu Bakr—may Allah be pleased with both of them.”

L9207 ## The Ruling on Sitting on Graves

L9208 578 - Issue: It is not permissible for anyone to sit on a grave. If he cannot find a place to sit, he should stand until he relieves himself. Even if he squats without sitting, this does not establish that he is in hardship.

L9209 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ah-

وَعَنْ وَكِيعٍ عَنْ الرَّبِيعِ عَنْ الْحَسَنِ: كَانَ يَكْرَهُ أَنْ تُجَصَّصَ الْقُبُورُ أَوْ تُطَيَّنَ أَوْ يُزَادَ عَلَيْهَا مِنْ غَيْرِ حَفِيرِهَا؟ وَعَنْ وَكِيعٍ عَنْ عِمْرَانَ بْنِ حُدَيْرٍ عَنْ أَبِي مِجْلَزٍ قَالَ: تَسْوِيَةُ الْقُبُورِ مِنْ السُّنَّةِ؟ وَعَنْ عُثْمَانَ أَمِيرِ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ أَمَرَ بِتَسْوِيَةِ الْقُبُورِ، وَأَنْ تُرْفَعَ مِنْ الْأَرْضِ شِبْرًا. وَعَنْ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ قَالَ: سَقَطَ الْحَائِطُ الَّذِي عَلَى قَبْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسُتِرَ، ثُمَّ بُنِيَ، فَقُلْت لِلَّذِي سَتَرَهُ: ارْفَعْ نَاحِيَةَ السِّتْرِ حَتَّى أَنْظُرَ إلَيْهِ، فَنَظَرْت إلَيْهِ، فَإِذَا عَلَيْهِ جَبُوبٌ وَرَمْلٌ، كَأَنَّهُ مِنْ رَمْلِ الْعَرْصَةِ؟

حَدَّثَنَا حُمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا مُحَمَّدُ بْنُ وَضَّاحٍ ثنا يَعْقُوبُ بْنُ كَعْبٍ ثنا ابْنُ أَبِي فُدَيْكٍ أَخْبَرَنِي عَمْرُو بْنُ عُثْمَانَ بْنِ هَانِئٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ قَالَ: دَخَلْت عَلَى عَائِشَةَ فَقُلْت: يَا أُمَّهْ، اكْشِفِي لِي عَنْ قَبْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَصَاحِبَيْهِ فَكَشَفَتْ لِي عَنْ ثَلَاثَةِ قُبُورٍ، لَا لَاطِئَةٍ وَلَا مُشْرِفَةٍ، مَبْطُوحَةً بِبَطْحَاءِ الْعَرْصَةِ الْحَمْرَاءِ، فَرَأَيْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُقَدَّمًا، وَأَبُو بَكْرٍ عِنْدَ رَأْسِهِ، وَرِجْلَاهُ بَيْنَ كَتِفَيْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرَأَيْت عُمَرَ عِنْدَ رِجْلَيْ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُمَا -.

[مَسْأَلَةُ الْجُلُوسِ عَلَى الْقَبْرِ]

٥٧٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَجْلِسَ عَلَى قَبْرٍ، فَإِنْ لَمْ يَجِدْ أَيْنَ يَجْلِسُ: فَلْيَقِفْ حَتَّى يَقْضِيَ حَاجَتَهُ، وَلَوْ اسْتَوْفَزَ وَلَمْ يَقْعُدْ لَمْ يَبْنِ أَنَّهُ يُحْرَجُ.

mad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to me: Zuhayr ibn Harb narrated to us: Jarir—that is, Ibn Abdul-Hamid—narrated to us from Suhayl ibn Abi Salih, from his father, from Abu Hurairah, who said: The Messenger of Allah—peace and blessings be upon him—said: "For one of you to sit on a burning ember that scorches his garments and penetrates to his skin is better for him than to sit upon a grave."[12]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ ثنا جَرِيرٌ هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَأَنْ يَجْلِسَ أَحَدُكُمْ عَلَى جَمْرَةٍ فَتَحْرِقَ ثِيَابَهُ فَتَخْلُصَ إِلَى جِلْدِهِ خَيْرٌ لَهُ مِنْ أَنْ يَجْلِسَ عَلَى قَبْرٍ» .

L9210 And likewise, we have narrated it through the chain of transmission of Sufyān al-Thawrī and ʿAbd al-ʿAzīz al-Darāwardī, both of whom narrated from Suhayl from his father from Abū Hurayrah from the Messenger of Allah - peace and blessings of Allah be upon him.

وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ، وَعَبْدِ الْعَزِيزِ الدَّرَاوَرْدِيِّ، كِلَاهُمَا: عَنْ سُهَيْلٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L9211 It has also been narrated to us through the chain of Jābir ibn ʿAbd Allāh from the Prophet—may God bless him and grant him peace—regarding the prohibition against sitting on graves. We have indeed mentioned this shortly before. It has also been narrated to us through the chain of Wāthilah ibn al-Asqaʿ from Abū Marthad al-Ghanī from the Messenger of God—may God bless him and grant him peace—"Do not sit on graves nor pray toward them."

وَرُوِّينَا أَيْضًا مِنْ طَرِيقِ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النَّهْيَ عَنْ الْقُعُودِ عَلَى الْقَبْرِ: وَقَدْ ذَكَرْنَاهُ قَبْلَ هَذَا بِيَسِيرٍ؟ وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ وَاثِلَةَ بْنِ الْأَسْقَعِ عَنْ أَبِي مَرْثَدٍ الْغَنَوِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تَجْلِسُوا عَلَى الْقُبُورِ وَلَا تُصَلُّوا إلَيْهَا» .

L9212–9213 Therefore, these are *mutawātir* narrations of the highest soundness.

فَهَذِهِ آثَارٌ مُتَوَاتِرَةٌ فِي غَايَةِ الصِّحَّةِ

L9214 This is the statement of a group of the Salaf—may Allah be pleased with them—among them are Abu Hurairah. Through the chain of Waki', from Ismāʿīl ibn Abī Khālid, from Sālim al-Barrād, from Ibn 'Umar, who said: "Indeed, to tread upon heated stones is more beloved to me than to tread upon a grave."

وَهُوَ قَوْلُ جَمَاعَةٍ مِنْ السَّلَفِ - رَضِيَ اللَّهُ عَنْهُمْ -، مِنْهُمْ أَبُو هُرَيْرَةَ؟ وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ سَالِمٍ الْبَرَّادِ عَنْ ابْنِ عُمَرَ قَالَ: لَأَنْ أَطَأَ عَلَى رَضْفٍ أَحَبُّ إلَيَّ مِنْ أَنْ أَطَأَ عَلَى قَبْرٍ

L9215 Ibn Masʿud said: "I would rather step on an ember until it cools down than intentionally tread upon a grave when I have a valid excuse to avoid it."

وَعَنْ ابْنِ مَسْعُودٍ: لَأَنْ أَطَأَ عَلَى جَمْرَةٍ حَتَّى تَبْرُدَ أَحَبُّ إلَيَّ مِنْ أَنْ أَتَعَمَّدَ وَطْءَ قَبْرٍ لِي عَنْهُ مَنْدُوحَةٌ.

[12] **Hadith references (L9209):** Sahih Muslim 971a; Mishkat al-Masabih 1699.

L9216 On the authority of Sa'īd ibn Jubayr: "I would prefer to tread upon a hot coal until it cools down rather than tread upon a grave" (and this is the saying of Abū Sulaymān).

L9217 Some claimed the permissibility of that act, arguing that the prohibited sitting under threat referred exclusively to defecation. This is entirely baseless for several reasons: First, it constitutes an unsupported assertion and a distortion of the Messenger of Allah's—peace and blessings be upon him—words away from their evident meaning, and this is gravely serious.

L9218 The second is that the wording of the report categorically prohibits this, as stated by him—peace be upon him—: "For one of you to sit on an ember so that it burns his clothes and reaches his skin is better for him than sitting on a grave."

L9219 By necessity, every being of sound senses knows that sitting to relieve oneself is never done in this manner whatsoever. Have we ever witnessed anyone sit upon their garments for defecation except one whose brain lacks soundness?

L9220 The third is that the narrators of this report did not extend its meaning beyond the conventional understanding of sitting. We have never known in the Arabic language—ever—that the phrase "someone sat" meant "he defecated." Thus, the invalidity of this claim becomes evident—and all praise is due to Allah, the Exalted.

L9221 We have mentioned the prohibition of prayer toward the grave or upon it in the Book of Prayer. And is Allah, the Exalted, Praiseworthy?

L9222 ## Issue of Walking Between Graves

L9223–9225 579. Issue: It is impermissible for anyone to walk between graves wearing Sibtiyyatayn sandals, which are the two that have no hair in them. If they have hair, is that permissible? If one has hair and the other does not, is walking in both of them permissible? Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb informed us: From Muhammad ibn Abdullah ibn al-Mubarak, who narrated from Waki'

وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ: لَأَنْ أَطَأَ عَلَى جَمْرَةٍ حَتَّى تَبْرُدَ أَحَبُّ إِلَيَّ مِنْ أَنْ أَطَأَ عَلَى قَبْرٍ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ.

فَقَالَ قَائِلُونَ بِإِبَاحَةِ ذَلِكَ، وَحَمَلُوا الْجُلُوسَ الْمُتَوَعَّدَ عَلَيْهِ إِنَّمَا هُوَ لِلْغَائِطِ خَاصَّةً؟ وَهَذَا بَاطِلٌ بَحْتٌ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّهُ دَعْوَى بِلَا بُرْهَانٍ، وَصَرْفٌ لِكَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ وَجْهِهِ، وَهَذَا عَظِيمٌ جِدًّا

وَثَانِيهَا - أَنَّ لَفْظَ الْخَبَرِ مَانِعٌ مِنْ ذَلِكَ قَطْعًا، بِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «لَأَنْ يَجْلِسَ أَحَدُكُمْ عَلَى جَمْرَةٍ فَتَحْرِقَ ثِيَابَهُ فَتَخْلُصَ إِلَى جِلْدِهِ: خَيْرٌ لَهُ مِنْ أَنْ يَجْلِسَ عَلَى قَبْرٍ» .

وَبِالضَّرُورَةِ يَدْرِي كُلُّ ذِي حِسٍّ سَلِيمٍ: أَنَّ الْقُعُودَ لِلْغَائِطِ لَا يَكُونُ هَكَذَا أَلْبَتَّةَ، وَمَا عَهِدْنَا قَطُّ أَحَدًا يَقْعُدُ عَلَى ثِيَابِهِ لِلْغَائِطِ إِلَّا مَنْ لَا صِحَّةَ لِدِمَاغِهِ؟

وَثَالِثُهَا - أَنَّ الرُّوَاةَ لِهَذَا الْخَبَرِ لَمْ يَتَعَدَّوْا بِهِ وَجْهَهُ مِنْ الْجُلُوسِ الْمَعْهُودِ، وَمَا عَلِمْنَا قَطُّ فِي اللُّغَةِ - جَلَسَ فُلَانٌ - بِمَعْنَى تَغَوَّطَ، فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ - وَلِلَّهِ تَعَالَى الْحَمْدُ؟

وَقَدْ ذَكَرْنَا تَحْرِيمَ الصَّلَاةِ إِلَى الْقَبْرِ وَعَلَيْهِ فِي كِتَابِ الصَّلَاةِ وَاَللَّهُ تَعَالَى مَحْمُودٌ؟

[مَسْأَلَةٌ الْمَشْيِ بَيْنَ الْقُبُورِ]

٥٧٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَمْشِيَ بَيْنَ الْقُبُورِ بِنَعْلَيْنِ سِبْتِيَّتَيْنِ وَهُمَا اللَّتَانِ لَا شَعْرَ فِيهِمَا، فَإِنْ كَانَ فِيهِمَا شَعْرٌ: جَازَ ذَلِكَ؟ فَإِنْ كَانَتْ إِحْدَاهُمَا بِشَعْرٍ، وَالْأُخْرَى بِلَا شَعْرٍ: جَازَ الْمَشْيُ فِيهِمَا؟ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ

from al-Aswad ibn Sha'ban - who was trustworthy - from Khalid ibn Samir from Bashir ibn Nahik from Bashir of the Messenger of Allah - peace and blessings be upon him - who was the son of al-Khaṣāṣiyyah. He said: "I was walking with the Messenger of Allah when he saw a man walking among the graves wearing his sandals. He said: 'O wearer of the two Sibtiyyatayn, cast them off?'"

أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ ثنا وَكِيعٌ عَنْ الْأَسْوَدِ بْنِ شَعْبَانَ - وَكَانَ ثِقَةً - عَنْ خَالِدِ بْنِ سَمِيرٍ عَنْ بَشِيرِ بْنِ نَهِيكٍ «عَنْ بَشِيرٍ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ ابْنُ الْخَصَاصِيَةِ - قَالَ كُنْتُ أَمْشِي مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَأَى رَجُلًا يَمْشِي بَيْنَ الْقُبُورِ فِي نَعْلَيْهِ، فَقَالَ: يَا صَاحِبَ السِّبْتِيَّتَيْنِ أَلْقِهِمَا» ؟

L9226 Hammam narrated to us: Abbas ibn Asbagh narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, Muhammad ibn Sulaiman al-Basri narrated to us, Sulaiman ibn Harb narrated to us, al-Aswad ibn Shayban narrated: Khalid ibn Samir related to me—Bashir ibn Nahik informed me—Bashir ibn al-Khaṣāṣiyyah informed me (his name in the pre-Islamic era was Zahm, but Allah's Messenger—peace and blessings be upon him—named him Bashir). He said: "While I was walking among the graves, wearing two leather sandals, Allah's Messenger—peace and blessings be upon him—called out to me: 'O wearer of the two leather sandals! O wearer of the two leather sandals! If you find yourself in such a place, remove your sandals.' So I removed them."

وَحَدَّثَنَاهُ حُمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا مُحَمَّدُ بْنُ سُلَيْمَانَ الْبَصْرِيُّ ثنا سُلَيْمَانُ بْنُ حَرْبٍ ثنا الْأَسْوَدُ بْنُ شَيْبَانَ حَدَّثَنِي خَالِدُ بْنُ سَمِيرٍ أَخْبَرَنِي بَشِيرُ بْنُ نَهِيكٍ أَخْبَرَنِي بَشِيرُ بْنُ الْخَصَاصِيَةِ - وَكَانَ اسْمُهُ فِي الْجَاهِلِيَّةِ زَحْمٌ، فَسَمَّاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَشِيرًا - قَالَ: «بَيْنَا أَنَا أَمْشِي بَيْنَ الْمَقَابِرِ وَعَلَيَّ نَعْلَانِ، إِذْ نَادَانِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَا صَاحِبَ السِّبْتِيَّتَيْنِ، يَا صَاحِبَ السِّبْتِيَّتَيْنِ، إِذَا كُنْت فِي مِثْلِ هَذَا الْمَكَانِ فَاخْلَعْ نَعْلَيْكَ، قَالَ: فَخَلَعْتُهُمَا» ؟ .

L9227 Abu Muhammad said: If it is asked, "Why do you not prohibit all sandals, given the generality of his statement—peace be upon him—'Remove your two sandals'?" We reply: The prohibition is based on two aspects. The first is that he—peace be upon him—specifically addressed the wearer of two soft leather sandals, in accordance with the explicit textual wording of his instruction, and then commanded him to remove his two sandals.

قَالَ أَبُو مُحَمَّد: فَإِنْ قِيلَ - فَهَلَّا مَنَعْتُمْ مِنْ كُلِّ نَعْلٍ، لِعُمُومِ قَوْلِهِ - عَلَيْهِ السَّلَامُ - «فَاخْلَعْ نَعْلَيْكَ» ؟ قُلْنَا: مَنَعَ مِن ذَلِكَ وَجْهَانِ -: أَحَدُهُمَا: أَنَّه - عَلَيْهِ السَّلَامُ - إنَّمَا دَعَا صَاحِبَ سِبْتِيَّتَيْنِ، بِنَصِّ كَلَامِهِ، ثُمَّ أَمَرَهُ بِخَلْعِ نَعْلَيْهِ؟

L9228 The second narration is what was conveyed to us by 'Abdullāh ibn Rabī', who narrated to us Muḥammad ibn Mu'āwiyah, who narrated to us Aḥmad ibn Shu'ayb, who narrated to us Ibrāhīm ibn Ya'qūb ibn Isḥāq al-Juzjānī, who narrated to us Yūnus ibn Muḥammad, who narrated to us Shaybān, reporting from Qatādah, who narrated from Anas ibn Mālik, who said: The Prophet of Allāh, peace and blessings be upon him, said, "Indeed, when the servant

وَالثَّانِي مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا إبْرَاهِيمُ بْنُ يَعْقُوبَ بْنِ إِسْحَاقَ الْجُوزَجَانِيُّ ثنا يُونُسُ بْنُ مُحَمَّدٍ ثنا شَيْبَانُ عَنْ قَتَادَةَ ثنا أَنَسُ بْنُ مَالِكٍ قَالَ: قَالَ نَبِيُّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ الْعَبْدَ إذَا وُضِعَ فِي قَبْرِهِ وَتَوَلَّى عَنْهُ أَصْحَابُهُ إنَّهُ لَيَسْمَعُ قَرْعَ نِعَالِهِمْ» وَذَكَرَ الْحَدِيثَ.

is placed in his grave and those who accompanied him turn away, he hears the clatter of their sandals," and he mentioned the ḥadīth.[13]

L9229–9230 Abū Muḥammad said: This is a narration from him (peace be upon him) regarding what will occur after him—that Muslims will wear sandals in cemeteries until the Day of Resurrection, based on the general scope of his notification (peace be upon him) about this matter, though he did not prohibit it. And narrations are not subject to abrogation at all.

L9231 Is the permissibility of wearing sandals in cemeteries established, necessitating the exclusion of Sibtiyyah sandals due to the explicit statement of the Prophet (peace be upon him) regarding them? Abu Muhammad said: Some who speak carelessly with their tongues said: "Perhaps those two sandals contained impurities?"

L9232 Abu Muhammad said: Whoever asserts decisively on this matter has lied against the Messenger of Allah—may Allah bless him and grant him peace—by attributing to him what he did not say. Whoever refrains from decisive judgment has ruled based on conjecture and followed what he has no knowledge of. Are not both steps of collapse? We seek refuge in Allah from them!

L9233 Then it is said to him: Suppose that were the case? Would you say: "Is this your position?" Would you then prohibit walking between graves wearing shoes soiled with filth? So when they say: "No," it is said to them: What comfort is there for you in advancing a false claim? Even if it were valid, why would you adhere to it, remaining opposed to the report in any case? It is also said to him: Perhaps the ruling regarding nosebleeds applies only to black blood due to its resemblance to menstrual blood, and perhaps the invalidation of a man's prayer next to a woman occurs only if she is youthful, out of fear of temptation. Such instances are numerous.

L9234 **An Issue Concerning the Prayer Over Parts of the Deceased**

[13] **Hadith references (L9228):** Sunan Abi Dawud 3231; Sunan an-Nasai 2049; Sunan Abi Dawud 4752.

قَالَ أَبُو مُحَمَّد: فَهَذَا إِخْبَارٌ مِنْهُ - عَلَيْهِ السَّلَامُ - بِمَا يَكُونُ بَعْدَهُ، وَأَنَّ النَّاسَ مِنْ الْمُسْلِمِينَ سَيَلْبَسُونَ النِّعَالَ فِي مَدَافِنِ الْمَوْتَى إِلَى يَوْمِ الْقِيَامَةِ، عَلَى عُمُومِ إِنْذَارِهِ - عَلَيْهِ السَّلَامُ - بِذَلِكَ، وَلَمْ يَنْهَ عَنْهُ، وَالْأَخْبَارُ لَا تُنْسَخُ أَصْلًا.

فَصَحَّ إِبَاحَةُ لِبَاسِ النِّعَالِ فِي الْمَقَابِرِ، وَوَجَبَ اسْتِثْنَاءُ السِّبْتِيَّةِ مِنْهَا، لِنَصِّهِ - عَلَيْهِ السَّلَامُ - عَلَيْهَا؟ قَالَ أَبُو مُحَمَّد: وَقَالَ بَعْضُ مَنْ لَا يُبَالِي بِمَا أَطْلَقَ بِهِ لِسَانَهُ فَقَالَ: لَعَلَّ تِيْنِكَ النَّعْلَيْنِ كَانَ فِيهِمَا قَذَرٌ؟

قَالَ أَبُو مُحَمَّد: مَنْ قَطَعَ بِهَذَا فَقَدْ كَذَبَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ قَوَّلَهُ مَا لَمْ يَقُلْ، وَمَنْ لَمْ يَقْطَعْ بِذَلِكَ فَقَدْ حَكَمَ بِالظَّنِّ، وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَكِلَاهُمَا خُطَّتَا خَسْفٍ نَعُوذُ بِاَللَّهِ مِنْهُمَا؟

ثُمَّ يُقَالُ لَهُ: فَهَبْكَ ذَلِكَ كَذَلِكَ؟ أَتَقُولُونَ: بِهَذَا أَنْتُمْ؟ فَتَمْنَعُونَ مِنْ الْمَشْيِ، بَيْنَ الْقُبُورِ بِنَعْلَيْنِ فِيهِمَا قَذَرٌ؟ فَمِنْ قَوْلِهِمْ: لَا؟ فَيُقَالُ لَهُمْ: فَأَيُّ رَاحَةٍ لَكُمْ فِي دَعْوَى كَاذِبَةٍ؟ ثُمَّ لَوْ صَحَّتْ لِمَ تَقُولُوا بِهَا، وَلَبَقِيتُمْ مُخَالِفِينَ لِلْخَبَرِ بِكُلِّ حَالٍ؟ وَيُقَالُ لَهُ أَيْضًا: وَلَعَلَّ الْبِنَاءَ فِي الرُّعَافِ إِنَّمَا هُوَ فِي الدَّمِ الْأَسْوَدِ لِشَبَهِهِ بِدَمِ الْحَيْضِ، وَلَعَلَّ فَسَادَ صَلَاةِ الرَّجُلِ إِلَى جَنْبِ الْمَرْأَةِ إِنَّمَا هُوَ إِذَا كَانَتْ شَابَّةً خَوْفَ الْفِتْنَةِ، وَمِثْلُ هَذَا كَثِيرٌ

[مَسْأَلَةٌ الصَّلَاة عَلَى أجزاء الْمَيِّت]

L9235 Question 580: The funeral prayer is to be performed over whatever remains found of a deceased Muslim, even if it is a nail, a hair, or anything more significant than that. The deceased is to be washed and shrouded, except in the case of a martyr – who is not washed but wrapped and buried. The funeral prayer is also performed for a Muslim even if their body is absent or unrecoverable.

٥٨٠ - مَسْأَلَةٌ: وَيُصَلَّى عَلَى مَا وُجِدَ مِنْ الْمَيِّتِ الْمُسْلِمِ، وَلَوْ أَنَّهُ ظُفْرٌ أَوْ شَعْرٌ فَمَا فَوْقَ ذَلِكَ، وَيُغَسَّلُ وَيُكَفَّنُ، إلَّا أَنْ يَكُونَ مِنْ شَهِيدٍ فَلَا يُغَسَّلُ، لَكِنْ يُلَفُّ وَيُدْفَنُ؟ وَيُصَلَّى عَلَى الْمَيِّتِ الْمُسْلِمِ وَإِنْ كَانَ غَائِبًا لَا يُوجَدُ مِنْهُ شَيْءٌ.

L9236 If another limb of the deceased is found after that also, it is washed again, shrouded, buried, and there is no objection to praying over him a second time - does this process continue perpetually in this manner?

فَإِنْ وُجِدَ مِنْ الْمَيِّتِ عُضْوٌ آخَرُ بَعْدَ ذَلِكَ أَيْضًا غُسِّلَ أَيْضًا، وَكُفِّنَ، وَدُفِنَ، وَلَا بَأْسَ بِالصَّلَاةِ عَلَيْهِ ثَانِيَةً، وَهَكَذَا أَبَدًا؟

L9237–9238 The proof of that—we have previously mentioned the obligation of washing the deceased, shrouding him, burying him, and performing the funeral prayer over him. Thus, it is validated that washing all his body parts—whether minor or major—and shrouding and burying them with the burial shroud are obligatory. Therefore, there is no doubt that each of these obligations applies to every part of him.

بُرْهَانُ ذَلِكَ -: أَنَّا قَدْ ذَكَرْنَا قَبْلُ وُجُوبَ غُسْلِ الْمَيِّتِ وَتَكْفِينِهِ وَدَفْنِهِ وَالصَّلَاةِ عَلَيْهِ، فَصَحَّ بِذَلِكَ غُسْلُ جَمِيعِ أَعْضَائِهِ - قَلِيلِهَا وَكَثِيرِهَا - وَسَتْرُ جَمِيعِهَا بِالْكَفَنِ وَالدَّفْنِ، فَذَلِكَ بِلَا شَكٍّ وَاجِبٌ فِي كُلِّ جُزْءٍ مِنْهُ.

L9239 Since this is the case, it is obligatory to perform it in whatever can be performed with existence whenever it is ascertained, and it is impermissible for this obligation to be waived regarding scattered body parts without established evidence.

فَإِذْ هُوَ كَذَلِكَ فَوَاجِبٌ عَمَلُهُ فِيمَا أَمْكَنَ عَمَلُهُ فِيهِ، بِالْوُجُودِ مَتَى وُجِدَ، وَلَا يَجُوزُ أَنْ يَسْقُطَ ذَلِكَ فِي الْأَعْضَاءِ الْمُفَرَّقَةِ بِلَا بُرْهَانٍ

L9240 Does the intention in praying over whatever part of the deceased is found extend to the entirety of the deceased—its body and soul? Abū Ḥanīfa and his companions stated: If half of the deceased containing the head is found, or more than half even without the head, it is obligatory to wash, shroud, and pray over it. If the half lacking the head is found, or less than the half containing the head, it is not permissible to wash, shroud, or pray over it.

وَيَنْوِي بِالصَّلَاةِ عَلَى مَا وُجِدَ مِنْهُ الصَّلَاةُ عَلَى جَمِيعِهِ: جَسَدِهِ، وَرُوحِهِ؟ وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: إنْ وُجِدَ نِصْفُ الْمَيِّتِ الَّذِي فِيهِ الرَّأْسُ، أَوْ أَكْثَرُ مِنْ نِصْفِهِ وَإِنْ لَمْ يَكُنْ فِيهِ الرَّأْسُ -: غُسِّلَ وَكُفِّنَ وَصُلِّيَ عَلَيْهِ؟ وَإِنْ وُجِدَ النِّصْفُ الَّذِي لَيْسَ فِيهِ الرَّأْسُ، أَوْ أَقَلَّ مِنْ النِّصْفِ الَّذِي فِيهِ الرَّأْسُ -: لَمْ يُغَسَّلْ، وَلَا كُفِّنَ، وَلَا صُلِّيَ عَلَيْهِ

L9241 Abu Muhammad said: And this is confusion; let this suffice you concerning it.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَخْلِيطٌ نَاهِيكَ بِهِ

L9242 They were asked: From where do you derive that covering most of it during prayer is obligatory, while covering half of it is not? You have ruled that a quarter—regarding what becomes exposed of the free woman's belly and hair—holds the legal weight of the whole, and you have also ruled in some

وَقِيلَ لَهُمْ: مِنْ أَيْنَ لَكُمْ أَنَّ الصَّلَاةَ عَلَى أَكْثَرِهِ وَاجِبَةٌ، وَعَلَى نِصْفِهِ غَيْرُ وَاجِبَةٍ؟ وَأَنْتُمْ قَدْ جَعَلْتُمْ الرُّبُعَ - فِيمَا أَنْكَشَفَ مِنْ بَطْنِ الْحُرَّةِ وَشَعْرِهَا - كَثِيرًا فِي حُكْمِ الْكُلِّ، وَجَعَلْتُمْ

of your juristic cases that a tenth holds the legal weight of the whole? This applies to shaving a tenth of one's head or beard for those in iḥrām according to Muḥammad ibn al-Ḥasan's opinion. From what source do these religious rulings originate without authorization from Allah the Exalted for them?

الْعُشْرَ - فِي بَعْضِ مَسَائِلِكُمْ أَيْضًا - فِي حُكْمِ الْكُلِّ؟ وَهُوَ مِنْ حَلْقِ عُشْرِ رَأْسِهِ، أَوْ عُشْرِ لِحْيَتِهِ مِنْ الْمُحْرِمِينَ فِي قَوْلِ مُحَمَّدِ بْنِ الْحَسَنِ، فَمِنْ أَيْنَ هَذِهِ الْأَحْكَامُ فِي الدِّينِ بِغَيْرِ إِذْنٍ مِنْ اللَّهِ تَعَالَى بِهَا؟

L9243 And it has been narrated to us from Abū Ayyūb al-Anṣārī and Abū Mūsā al-Ashʿarī—may Allāh be pleased with them both—that they prayed over the leg—of a person? This is the view of Abū Sulaymān and our companions.

وَقَدْ رُوِّينَا عَنْ أَبِي أَيُّوبَ الْأَنْصَارِيِّ وَأَبِي مُوسَى الْأَشْعَرِيِّ - رَضِيَ اللَّهُ عَنْهُمَا -: أَنَّهُمَا صَلَّيَا عَلَى رِجْلٍ، إنْسَانٍ؟ وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L9244–9246 It has been narrated from ʻUmar that he prayed over bones, and from Abu Ubaydah that he prayed over a head. As for the prayer over an absent person, there has come a decisive text concerning it, rendering speculation unnecessary, even if such speculation [were possible]. The prayer over him is obligatory because the statement of the Messenger of Allah—may Allah bless him and grant him peace—"Pray over your deceased" constitutes a general ruling encompassing both the absent and present. It is impermissible to restrict this obligation to either group. Rather, it becomes an obligation concerning every Muslim buried without prayer that those Muslims who become aware of this must pray over him, as it is a communal obligation. For those who perform the prayer over him, it is a recommended act.

وَرُوِيَ عَنْ عُمَرَ، أَنَّهُ صَلَّى عَلَى عِظَامٍ وَعَنْ أَبِي عُبَيْدَةَ: أَنَّهُ صَلَّى عَلَى رَأْسٍ وَأَمَّا الصَّلَاةُ عَلَى الْغَائِبِ فَقَدْ جَاءَ بِهِ نَصٌّ قَاطِعٌ، أَغْنَى عَنْ النَّظَرِ، وَإِنْ كَانَ النَّظَرُ تَجِبُ بِهِ الصَّلَاةُ عَلَيْهِ، لِأَنَّ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «صَلُّوا عَلَى صَاحِبِكُمْ» عُمُومٌ يَدْخُلُ فِيهِ الْغَائِبُ وَالْحَاضِرُ، وَلَا يَجُوزُ أَنْ يُخَصَّ بِهِ أَحَدُهُمَا، بَلْ فَرْضٌ فِي كُلِّ مُسْلِمٍ دُفِنَ بِغَيْرِ صَلَاةٍ أَنْ يُصَلِّيَ عَلَيْهِ مَنْ بَلَغَهُ ذَلِكَ مِنْ الْمُسْلِمِينَ، لِأَنَّهَا فَرْضٌ عَلَى الْكِفَايَةِ، وَهِيَ فِيمَنْ صَلَّى عَلَيْهِ نَدْبٌ.

L9247 Narrated by Abdur-Rahman ibn Abdullah from Ibrahim ibn Ahmad from Al-Farbari from Al-Bukhari from Ismail ibn Abi Uwais: Malik narrated to me from Ibn Shihab from Sa'id ibn Al-Musayyib from Abu Hurairah that the Messenger of Allah—peace and blessings of Allah be upon him—announced the death of An-Najashi on the day he died. He went out to the prayer ground, lined them up in rows, and performed four *takbīrāt*.[14]

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا إسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ حَدَّثَنِي مَالِكٌ عَنْ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَعَى النَّجَاشِيَّ فِي الْيَوْمِ الَّذِي مَاتَ فِيهِ؟ خَرَجَ إلَى الْمُصَلَّى فَصَفَّ بِهِمْ وَكَبَّرَ أَرْبَعًا» .

L9248 Through him to Al-Bukhari: Ibrāhīm ibn Mūsā narrated to us, Hishām ibn Yūsuf narrated to us, that Ibn Jurayj informed them, saying: ʿAṭāʾ informed me that he heard Jābir ibn ʿAbd Allāh saying, "The Prophet (peace be upon him) said: 'A righteous man from Abyssinia has died today. Come, pray over

وَبِهِ إلَى الْبُخَارِيِّ: ثنا إبْرَاهِيمُ بْنُ مُوسَى ثنا هِشَامُ بْنُ يُوسُفَ أَنَّ ابْنَ جُرَيْجٍ أَخْبَرَهُمْ قَالَ: أَخْبَرَنِي عَطَاءٌ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ " قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

[14] **Hadith references (L9247):** Sahih al-Bukhari 1245.

him.' We formed rows, and the Prophet (peace be upon him) prayed while we [prayed]."

«قَدْ تُوُفِّيَ الْيَوْمَ رَجُلٌ صَالِحٌ مِنْ الْحَبَشِ، فَهَلُمَّ فَصَلُّوا عَلَيْهِ، فَصَفَفْنَا، فَصَلَّى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنَحْنُ» .

L9249 And through him to Al-Bukhari: Narrated to us Musaddad from Abū ʿAwānah from Qatādah from ʿAṭāʾ from Jābir ibn ʿAbdullāh: "The Messenger of Allah - peace and blessings of Allah be upon him - performed the funeral prayer for al-Najāshī. Jābir said: I was in the second row or the third row."

وَبِهِ إلَى الْبُخَارِيِّ: ثنا مُسَدَّدٌ عَنْ أَبِي عَوَانَةَ عَنْ قَتَادَةَ عَنْ عَطَاءٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى عَلَى النَّجَاشِيِّ. قَالَ جَابِرٌ: فَكُنْتُ فِي الصَّفِّ الثَّانِي أَوْ الثَّالِثِ» .

L9250 We have also narrated it through a robust chain from Imrān ibn al-Ḥuṣayn from the Prophet (peace and blessings of Allah be upon him). This is the command of the Messenger of Allah (peace and blessings of Allah be upon him), his practice, and the practice of all his Companions. Thus, there is no consensus more sound than this, and multiply-transmitted reports from a group of the Companions (may Allah be pleased with them) as we have cited.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقٍ قَوِيَّةٍ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. فَهَذَا أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَمَلُهُ وَعَمَلُ جَمِيعِ أَصْحَابِهِ، فَلَا إجْمَاعَ أَصَحُّ مِنْ هَذَا، وَآثَارٌ مُتَوَاتِرَةٌ عَنْ جَمَاعَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - كَمَا أَوْرَدْنَا؟

L9251 Malik and Abu Hanifah prohibited this, and their adherents asserted this ruling was exclusive to the Negus. This is a false claim without evidence—and success is from Allah, the Exalted.

وَمَنَعَ مِنْ هَذَا: مَالِكٌ، وَأَبُو حَنِيفَةَ، وَادَّعَى أَصْحَابُهُمَا الْخُصُوصَ لِلنَّجَاشِيِّ، وَهَذِهِ دَعْوَى كَاذِبَةٌ بِلَا بُرْهَانٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L9252 If they say: "Did any of the Companions do this after the Messenger of Allah (peace be upon him)?" We said to them: "Has it ever been narrated that any of the Companions forbade this or rejected it?" Then they are told: "There is no proof in anyone other than the Messenger of Allah (peace be upon him)." Allah the Exalted said: {So that mankind would have no proof against Allah after the messengers} [An-Nisa' 4:165].[15]

فَإِنْ قَالُوا: هَلْ فَعَلَ هَذَا أَحَدٌ مِنْ الصَّحَابَةِ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ قُلْنَا لَهُمْ: وَهَلْ جَاءَ قَطُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ أَنَّهُ زَجَرَ عَنْ هَذَا أَوْ أَنْكَرَهُ؟ ثُمَّ يُقَالُ لَهُمْ: لَا حُجَّةَ فِي أَحَدٍ غَيْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. قَالَ تَعَالَى: {لِئَلا يَكُونَ لِلنَّاسِ عَلَى اللَّهِ حُجَّةٌ بَعْدَ الرُّسُلِ} [النساء: ١٦٥]

Legal Question: Prayer at the Grave

L9253–9254

[مَسْأَلَةُ الصَّلَاةُ عَلَى الْقَبْرِ]

L9255 Issue: It is permissible to perform the funeral prayer over a grave, even if the funeral prayer has already been offered for the deceased buried there.

مَسْأَلَةٌ: وَالصَّلَاةُ جَائِزَةٌ عَلَى الْقَبْرِ، وَإِنْ كَانَ قَدْ صُلِّيَ عَلَى الْمَدْفُونِ فِيهِ

L9256 Abu Hanifah said: If one is buried without the funeral prayer, the prayer

[15] **Qur'an references (L9252):** Qur'an 4:165 (An-Nisa).

is performed over the grave from the time of burial up to three days, and no prayer is performed after that. If he is buried after the prayer has been performed over him, no one may pray over his grave.

وَقَالَ أَبُو حَنِيفَةَ: إِنْ دُفِنَ بِلَا صَلَاةٍ: صُلِّيَ عَلَى الْقَبْرِ مَا بَيْنَ دَفْنِهِ إِلَى ثَلَاثَةِ أَيَّامٍ، وَلَا يُصَلَّى عَلَيْهِ بَعْدَ ذَلِكَ، وَإِنْ دُفِنَ بَعْدَ أَنْ صُلِّيَ عَلَيْهِ لَمْ يُصَلِّ أَحَدٌ عَلَى قَبْرِهِ؟

L9257 Malik said: Prayer should not be performed over a grave, and he narrated that from Ibrahim al-Nakha'i?

وَقَالَ مَالِكٌ: لَا يُصَلَّى عَلَى قَبْرٍ، وَرَوَى ذَلِكَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ؟

L9258 Al-Shafi'i, Al-Awza'i, and Abu Sulayman said: Prayer is offered at the grave even if the deceased buried in it has already been prayed over, and this has been reported from Ibn Sirin? Ahmad ibn Hanbal said: Prayer is offered over him for a month; is prayer not offered over him after that?

وَقَالَ الشَّافِعِيُّ، وَالْأَوْزَاعِيُّ، وَأَبُو سُلَيْمَانَ: يُصَلَّى عَلَى الْقَبْرِ وَإِنْ كَانَ قَدْ صُلِّيَ عَلَى الْمَدْفُونِ فِيهِ، وَقَدْ رُوِيَ هَذَا عَنِ ابْنِ سِيرِينَ؟ وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: يُصَلَّى عَلَيْهِ إِلَى شَهْرٍ، وَلَا يُصَلَّى عَلَيْهِ بَعْدَ ذَلِكَ؟

L9259 Ishaq said: May an absent person pray over the grave up to a month, and a present person pray over it up to three days? — Abdullah ibn Yusuf narrated to us from Ahmad ibn Fath from Abdul Wahhab ibn Isa from Ahmad ibn Muhammad from Ahmad ibn Ali from Muslim ibn al-Hajjaj from Abu Kamil Fudayl ibn Husayn al-Jahdarī from Hammad ibn Zayd from Thabit al-Bunani from Abu Rafi' from Abu Hurayrah: "A black woman [or a youth] who used to sweep the mosque. The Messenger of Allah (peace be upon him) noticed his absence and inquired about him. They said: 'He died.' He said: 'Why did you not inform me?' It was as if they belittled his significance. He said: 'Direct me to his grave.' They directed him, and he prayed over him. Then he said: 'These graves are filled with darkness upon their inhabitants, and Allah the Exalted illuminates them through my prayer over them.'"[16]

وَقَالَ إِسْحَاقُ: يُصَلِّي الْغَائِبُ عَلَى الْقَبْرِ إِلَى شَهْرٍ، وَيُصَلِّي عَلَيْهِ الْحَاضِرُ إِلَى ثَلَاثٍ؟ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو كَامِلٍ فُضَيْلُ بْنُ حُسَيْنٍ الْجَحْدَرِيُّ ثنا حَمَّادُ بْنُ زَيْدٍ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَبِي رَافِعٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ امْرَأَةً سَوْدَاءَ كَانَتْ تَقُمُّ الْمَسْجِدَ أَوْ شَابًّا، فَفَقَدَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَأَلَ عَنْهَا أَوْ عَنْهُ، فَقَالُوا: مَاتَ، فَقَالَ: أَفَلَا كُنْتُمْ آذَنْتُمُونِي؟ قَالَ: فَكَأَنَّهُمْ صَغَّرُوا أَمْرَهَا أَوْ أَمْرَهُ، فَقَالَ: دُلُّونِي عَلَى قَبْرِهِ، فَدَلُّوهُ، فَصَلَّى عَلَيْهَا، ثُمَّ قَالَ: إِنَّ هَذِهِ الْقُبُورَ مَمْلُوءَةٌ ظُلْمَةً عَلَى أَهْلِهَا، وَإِنَّ اللَّهَ تَعَالَى يُنَوِّرُهَا لَهُمْ بِصَلَاتِي عَلَيْهِمْ» .

L9260 A group of people claimed that this statement of his—peace be upon him—is evidence that this is specific to him?

فَادَّعَى قَوْمٌ أَنَّ هَذَا الْكَلَامَ مِنْهُ - عَلَيْهِ السَّلَامُ - دَلِيلٌ عَلَى أَنَّهُ خُصُوصٌ لَهُ؟

L9261–9263 Abu Muhammad said: It is not as they claimed. Rather, this statement concerns solely the blessing of his prayer (peace be upon him) and its superiority over the prayers of others. There is absolutely no prohibition here against others praying at the grave; rather, indeed... Allah, the Exalted, said: "There

قَالَ أَبُو مُحَمَّدٍ: وَلَيْسَ كَمَا قَالُوا، وَإِنَّمَا فِي هَذَا الْكَلَامِ بَرَكَةُ صَلَاتِهِ - عَلَيْهِ السَّلَامُ - وَفَضِيلَتُهَا عَلَى صَلَاةِ غَيْرِهِ فَقَطْ، وَلَيْسَ فِيهِ نَهْيُ غَيْرِهِ عَنِ الصَّلَاةِ عَلَى الْقَبْرِ أَصْلًا، بَلْ قَدْ قَالَ اللَّهُ تَعَالَى: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١]

[16] **Hadith references (L9259):** Riyad as-Salihin 256.

has certainly been for you in the Messenger of Allah an excellent example" [Al-Ahzab 33:21].[17]

L9264 Among the evidence invalidating the claim of specificity here is what we transmitted through the aforementioned chain to Muslim: Muḥammad ibn ʿAbd Allāh ibn Numayr narrated to us, Muḥammad ibn Idrīs narrated to us from al-Shaybānī, who is Abū Isḥāq, from al-Shaʿbī, from someone who narrated to him, who said: "We arrived with the Messenger of Allāh—peace and blessings be upon him—at a fresh grave. He prayed over it, they lined up in rows behind him, and he uttered four takbīrs."

وَمِمَّا يَدُلُّ عَلَى بُطْلَانِ دَعْوَى الْخُصُوصِ هَهُنَا مَا رُوِّينَاهُ بِالسَّنَدِ الْمَذْكُورِ إِلَى مُسْلِمٍ: ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ ثنا مُحَمَّدُ بْنُ إِدْرِيسَ عَنْ الشَّيْبَانِيِّ هُوَ أَبُو إِسْحَاقَ - عَنْ الشَّعْبِيِّ عَمَّنْ حَدَّثَهُ قَالَ «انْتَهَيْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى قَبْرٍ رَطْبٍ، فَصَلَّى عَلَيْهِ، وَصَفُّوا خَلْفَهُ، وَكَبَّرَ أَرْبَعًا»

L9265 Ash-Shaybani said: I asked Amir al-Sha'bi, "Who narrated to you?" He replied, "The trustworthy one who witnessed it - Ibn Abbas."

قَالَ الشَّيْبَانِيُّ: قُلْت لِعَامِرٍ الشَّعْبِيِّ: مَنْ حَدَّثَك؟ قَالَ: الثِّقَةُ، مَنْ شَهِدَهُ، ابْنُ عَبَّاسٍ.

L9266 This invalidates the claim of specificity, for his companions (peace be upon him, and upon them be Allah's pleasure) prayed with him at the grave, thus invalidating the claim.

فَهَذَا أَبْطَلَ الْخُصُوصَ، لِأَنَّ أَصْحَابَهُ - عَلَيْهِ السَّلَامُ -، وَعَلَيْهِمْ رِضْوَانُ اللَّهِ صَلَّوْا مَعَهُ عَلَى الْقَبْرِ، فَبَطَلَتْ دَعْوَى الْخُصُوصِ

L9267 And by the same chain to Muslim: Ibrāhīm ibn Muḥammad ibn ʿUrʿura al-Sāmī narrated to me: Ghundar narrated to us: Shuʿbah narrated from Ḥabīb ibn al-Shahīd [from Thābit] from Anas: "That the Prophet - peace and blessings of Allah be upon him - prayed over a grave."[18]

وَبِهِ إلَى مُسْلِمٍ حَدَّثَنِي إبْرَاهِيمُ بْنُ مُحَمَّدِ بْنِ عُرْعُرَةَ السَّامِيِّ ثنا غُنْدَرٌ ثنا شُعْبَةُ عَنْ حَبِيبِ بْنِ الشَّهِيدِ [عَنْ ثَابِتٍ] عَنْ أَنَسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى عَلَى قَبْرٍ» .

L9268 Abu Muhammad said: So these are mass-transmitted traditions; there is no room to deviate from them.

قَالَ أَبُو مُحَمَّدٍ: فَهَذِهِ آثَارٌ مُتَوَاتِرَةٌ لَا يَسَعُ الْخُرُوجُ عَنْهَا

L9269 Some of them argued: "The Muslims did not perform prayer at the grave of Allah's Messenger—peace and blessings be upon him." Abu Muhammad said: "We do not know of any Companion—may Allah be pleased with them—who forbade performing prayer at the grave of Allah's Messenger—peace and blessings be upon him. Neither Allah the Exalted nor His Messenger—peace and blessings be upon him—prohibited it. Therefore, prohibition of this is invalid, and sending blessings upon him constitutes a righteous deed. A claim is invalid unless supported by evidence." Some of them said: "The

وَاحْتَجَّ بَعْضُهُمْ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُصَلِّ الْمُسْلِمُونَ عَلَى قَبْرِهِ؟ قَالَ أَبُو مُحَمَّدٍ: مَا عَلِمْنَا أَحَدًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - نَهَى عَنْ الصَّلَاةِ عَلَى قَبْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَا نَهَى اللَّهُ تَعَالَى عَنْهُ، وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -، فَالْمَنْعُ مِنْ ذَلِكَ بَاطِلٌ، وَالصَّلَاةُ عَلَيْهِ فِعْلُ خَيْرٍ، وَالدَّعْوَى بَاطِلٌ إلَّا بِبُرْهَانٍ؟ وَقَالَ بَعْضُهُمْ: نَهْيُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الصَّلَاةِ إلَى الْقَبْرِ وَعَلَى الْقَبْرِ مَانِعٌ مِنْ هَذَا

[17] **Qur'an references (L9261):** Qur'an 33:21 (Al-Ahzab).

[18] **Hadith references (L9267):** Sahih Muslim 955; Sunan Ibn Majah 1531; Sunan an-Nasai 2025.

Prophet's prohibition—peace and blessings be upon him—against praying facing graves or praying over graves prevents this."

L9270 Abu Muhammad said: This is astonishing—nothing like it has ever been seen! For whoever cites this as evidence has completely inverted the truth, because it is established from the Prophet (peace be upon him) that he prohibited praying over the grave or toward it.

L9271 Or in the cemetery, or regarding sitting on a grave, this speaker said: All of this is permissible.

L9272–9274 It is authentically reported that the Prophet—may Allah's peace and blessings be upon him—prayed the funeral prayer over a grave as he would over the deceased. Yet this speaker deemed it impermissible, arguing that the absolute prohibition against prayer in general extends to forbidding the funeral prayer over the grave. He cited the report about prayer over graves as evidence for permitting the forbidden prayers performed in cemeteries, directed toward graves, or upon them. "Allah is sufficient for us, and what an excellent Trustee!" Some said: "Did Ibn Umar not pray over graves?" We responded: "Yes—he would not perform regular prayers over graves, yet he would always offer the funeral prayer over graves without exception." Abu Muhammad remarked: "Even if this were authentic, it would conflict with established contrary evidence—specifically that he (may Allah be pleased with him) did offer funeral prayers over graves. Furthermore, even if this were not narrated from him, it would still oppose what is authentically reported from the Companions on this matter. How could it stand when no conclusive proof rests with anyone other than the Messenger of Allah (peace and blessings be upon him)?"

L9275 No authentic report is transmitted from Ibn Umar except what we have mentioned. It was narrated to us from Ma'mar, from Ayyub al-Sakhtiyānī, from Ibn Abi Mulaykah: Abd al-Rahman ibn Abi Bakr died six miles from Mecca, so we carried him and transported him to Mecca, where we buried him. Then Aisha, the Mother of the Believers, came to us and said, "Where is my brother's grave?" We showed her his grave, and she positioned her litter near his grave, then prayed over him. From Hammad ibn Salama, from Ayyub

قَالَ أَبُو مُحَمَّد: وَهَذَا عَجَبٌ مَا مِثْلُهُ عَجَبٌ وَهُوَ أَنَّ الْمُحْتَجَّ بِهَذَا عَكَسَ الْحَقَّ عَكْسًا، لِأَنَّهُ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النَّهْيُ عَنْ الصَّلَاةِ عَلَى الْقَبْرِ، أَوْ إلَيْهِ.

أَوْ فِي الْمَقْبَرَةِ، وَعَنْ الْجُلُوسِ عَلَى الْقَبْرِ، فَقَالَ هَذَا الْقَائِلُ: كُلُّ هَذَا مُبَاحٌ

وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ صَلَّى عَلَى قَبْرٍ صَلَاتَهُ عَلَى الْمَيِّتِ، فَقَالَ هَذَا الْقَائِلُ: لَا يَجُوزُ ذَلِكَ وَاحْتَجَّ بِالنَّهْيِ عَنْ الصَّلَاةِ مُطْلَقًا فِي مَنْعِهِ مِنْ صَلَاةِ الْجَنَازَةِ عَلَى الْقَبْرِ، وَاحْتَجَّ بِخَبَرِ الصَّلَاةِ عَلَى الْقَبْرِ فِي إبَاحَتِهِ الْحَرَامَ مِنْ الصَّلَوَاتِ فِي الْمَقْبَرَةِ، وَإِلَى الْقَبْرِ، وَعَلَيْهِ؟ وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ؟ وَقَالَ بَعْضُهُمْ: كَانَ ابْنُ عُمَرَ لَا يُصَلِّي عَلَى الْقَبْرِ؟ قُلْنَا: نَعَمْ، كَانَ لَا يُصَلِّي سَائِرَ الصَّلَوَاتِ عَلَى الْقَبْرِ، وَيُصَلِّي صَلَاةَ الْجَنَازَةِ عَلَى الْقَبْرِ أَبَدًا؟ قَالَ أَبُو مُحَمَّد: وَهَذَا لَوْ صَحَّ لَكَانَ قَدْ صَحَّ مَا يُعَارِضُهُ، وَهُوَ أَنَّهُ - رَضِيَ اللَّهُ عَنْهُ - صَلَّى صَلَاةَ الْجَنَازَةِ عَلَى الْقَبْرِ، ثُمَّ لَوْ لَمْ يَأْتِ هَذَا عَنْهُ لَكَانَ قَدْ عَارَضَهُ مَا صَحَّ عَنْ الصَّحَابَةِ فِي ذَلِكَ، فَكَيْفَ وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَلَا يَصِحُّ عَنْ ابْنِ عُمَرَ إلَّا مَا ذَكَرْنَاهُ وَرُوِّينَا عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ أَبِي مُلَيْكَةَ: مَاتَ عَبْدُ الرَّحْمَنِ بْنُ أَبِي بَكْرٍ عَلَى سِتَّةِ أَمْيَالٍ مِنْ مَكَّةَ، فَحَمَلْنَاهُ فَجِئْنَا بِهِ مَكَّةَ فَدَفَنَّاهُ، فَقَدِمَتْ عَلَيْنَا عَائِشَةُ أُمُّ الْمُؤْمِنِينَ فَقَالَتْ: أَيْنَ قَبْرُ أَخِي؟ فَدَلَلْنَاهَا عَلَيْهِ، فَوَضَعَتْ فِي هَوْدَجِهَا عِنْدَ قَبْرِهِ فَصَلَّتْ عَلَيْهِ وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ

عَنْ ابْنِ عُمَرَ: أَنَّهُ قَدِمَ وَقَدْ مَاتَ أَخُوهُ عَاصِمٌ، فَقَالَ: أَيْنَ قَبْرُ أَخِي؟ فَدُلَّ عَلَيْهِ، فَصَلَّى عَلَيْهِ وَدَعَا لَهُ. قَالَ أَبُو مُحَمَّدٍ: هَذَا يُبَيِّنُ أَنَّهَا صَلَاةُ الْجِنَازَةِ، لَا الدُّعَاءُ فَقَطْ

al-Sakhtiyānī, from Nafi‘, from Ibn Umar: When he arrived and his brother Asim had died, he said, “Where is my brother’s grave?” He was directed to it, then he prayed over him and supplicated for him. Abu Muhammad said: This clarifies that it was the funeral prayer, not merely supplication.

وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّهُ أَمَرَ قَرَظَةَ بْنَ كَعْبٍ الْأَنْصَارِيَّ أَنْ يُصَلِّيَ عَلَى قَبْرِ سَهْلِ بْنِ حُنَيْفٍ بِقَوْمٍ جَاءُوا بَعْدَمَا دُفِنَ وَصُلِّيَ عَلَيْهِ؟ وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَيْضًا: أَنَّهُ صَلَّى عَلَى جِنَازَةٍ بَعْدَمَا صُلِّيَ عَلَيْهَا؟ وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ ثنا أَبَانُ بْنُ يَزِيدَ الْعَطَّارُ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ: أَنَّ أَنَسَ بْنَ مَالِكٍ صَلَّى عَلَى جِنَازَةٍ بَعْدَمَا صُلِّيَ عَلَيْهَا وَعَنِ ابْنِ مَسْعُودٍ نَحْوُ ذَلِكَ.

L9276 From Ali ibn Abi Talib: that he commanded Qarazah ibn Ka‘b al-Ansari to lead the prayer over the grave of Sahl ibn Hunayf with a group that arrived after he was buried and the prayer had been performed. Also from Ali ibn Abi Talib: that he performed the prayer over the deceased after it had already been performed. From Yahya ibn Sa‘id al-Qattan: Aban ibn Yazid al-‘Attar narrated from Yahya ibn Abi Kathir: that Anas ibn Malik performed the prayer over the deceased after it had already been performed. From Ibn Mas‘ud is something similar.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ إِبَاحَةُ ذَلِكَ.

L9277 And the permissibility of that is narrated from Sa‘īd ibn al-Musayyib.

وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ خَالِدِ بْنِ الْوَلِيدِ: أَنَّهُ صَلَّى عَلَى جِنَازَةٍ بَعْدَمَا صُلِّيَ عَلَيْهَا وَعَنْ قَتَادَةَ: أَنَّهُ كَانَ إِذَا فَاتَتْهُ الصَّلَاةُ عَلَى الْجِنَازَةِ صَلَّى عَلَيْهَا.

L9278–9280 From Abd al-Rahman ibn Khalid ibn al-Walid: that he prayed over a funeral after it had already been prayed over. It is narrated from Qatādah that whenever he missed the prayer over the bier, he would pray over it.

فَهَذِهِ طَوَائِفُ مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ؟ وَأَمَّا أَمْرُ تَحْدِيدِ الصَّلَاةِ بِشَهْرٍ أَوْ ثَلَاثَةِ أَيَّامٍ فَخَطَأٌ لَا يُشْكِلُ، لِأَنَّهُ تَحْدِيدٌ بِلَا دَلِيلٍ، وَلَا فَرْقَ بَيْنَ مَنْ حَدَّ بِهَذَا، أَوْ مَنْ حَدَّ بِغَيْرِ ذَلِكَ.

L9281 These are groups among the Companions; no dissenter from them is known. As for restricting [the duration of] prayer to a month or three days, it is an unambiguous error, for it constitutes a restriction without textual evidence. There is no distinction between one who restricts it to this and one who restricts it to something else.

[مَسْأَلَةٌ تَزَوَّجَ مُسْلِمٌ كَافِرَةً فَحَمَلَتْ مِنْهُ وَمَاتَتْ حَامِلًا]

A jurisprudential case: A Muslim man married a non-Muslim woman, impregnated her, and she died while pregnant.

٥٨٢ - مَسْأَلَةٌ: وَمَنْ تَزَوَّجَ كَافِرَةً فَحَمَلَتْ مِنْهُ وَهُوَ مُسْلِمٌ وَمَاتَتْ حَامِلًا -: فَإِنْ كَانَتْ قَبْلَ أَرْبَعَةِ أَشْهُرٍ وَلَمْ يُنْفَخْ فِيهِ الرُّوحُ بَعْدُ: دُفِنَتْ مَعَ أَهْلِ دِينِهَا، وَإِنْ كَانَ بَعْدَ أَرْبَعَةِ

L9282 L9283 582 - Issue: If whoever marries a disbelieving woman while being Muslim, she conceives from him, and dies pregnant: If she dies before four months when the soul has not yet been breathed into the fetus, she is buried with her religious community. If she dies after four months when the soul has been breathed into the fetus, she is buried at the edge of the Muslims’ cemetery,

for the practice of Muslims since the time of Allah's Messenger (peace and blessings of Allah be upon him) is that no Muslim is buried with a polytheist. Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: Muḥammad ibn ʿAbdillāh ibn al-Mubārak narrated to us: Wakīʿ narrated from al-Aswad ibn Shaybān – who was reliable – from Khālid ibn Samīr, from Bashīr ibn Nahīk, from Bashīr ibn al-Khaṣāṣiyyah, a Companion of the Messenger of Allah (peace and blessings of Allah be upon him), who said: "I was walking with the Messenger of Allah (peace and blessings of Allah be upon him) when he passed by the graves of Muslims and said: 'These have preceded much evil.' Then he passed by the graves of polytheists and said: 'These have preceded much good.'"[19]

L9284 Thus, the separation of Muslim graves from those of polytheists was validated by this.

L9285–9287 The fetus before the soul is breathed into it is merely a part of its mother's body and among the contents of her abdomen. She must be buried among the disbelievers, for when the soul is breathed into it, it becomes another creation, as Allah the Exalted said: "Then We clothed the bones with flesh, then We brought it forth as another creation" [Al-Mu'minun:14]. At that point, it becomes a living human being distinct from his mother. Rather, he may be male while she is female, and he is the son of a Muslim, thus subject to the rulings of Islam. Therefore, it is impermissible to bury him in the cemeteries of the disbelievers. Since she is a disbeliever, she cannot be buried in the cemeteries of the Muslims. Consequently, she must be buried in a separate area for this reason. It has been narrated to us from Sulaymān ibn Mūsā that Wāthilah ibn al-Asqaʿ, the Companion of the Messenger of Allah (peace and blessings be upon him), buried a Christian woman who died pregnant from a Muslim in a cemetery that was neither the Christians' cemetery nor the Muslims' cemetery, between them.[20]

L9288 It was narrated to us from ʿUmar ibn al-Khaṭṭāb that she should be buried

أَشْهُرٍ وَالرُّوحُ قَدْ نُفِخَ فِيهِ: دُفِنَتْ فِي طَرَفِ مَقْبَرَةِ الْمُسْلِمِينَ، لِأَنَّ عَمَلَ أَهْلِ الْإِسْلَامِ مِنْ عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ لَا يُدْفَنَ مُسْلِمٌ مَعَ مُشْرِكٍ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ ثنا وَكِيعٌ عَنِ الْأَسْوَدِ بْنِ شَيْبَانَ - وَكَانَ ثِقَةً - عَنْ خَالِدِ بْنِ سَمِيرٍ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ بَشِيرٍ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ ابْنُ الْخَصَاصِيَةِ قَالَ: «كُنْتُ أَمْشِي مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَرَّ عَلَى قُبُورِ الْمُسْلِمِينَ، فَقَالَ: لَقَدْ سَبَقَ هَؤُلَاءِ شَرًّا كَثِيرًا، ثُمَّ مَرَّ عَلَى قُبُورِ الْمُشْرِكِينَ فَقَالَ: لَقَدْ سَبَقَ هَؤُلَاءِ خَيْرًا كَثِيرًا» .

فَصَحَّ بِهَذَا تَفْرِيقُ قُبُورِ الْمُسْلِمِينَ عَنْ قُبُورِ الْمُشْرِكِينَ.

وَالْحَمْلُ مَا لَمْ يُنْفَخْ فِيهِ الرُّوحُ فَإِنَّمَا هُوَ بَعْضُ جِسْمِ أُمِّهِ، وَمِنْ حَشْوَةِ بَطْنِهَا، وَهِيَ مَدْفُونَةٌ مَعَ الْمُشْرِكِينَ، فَإِذَا نُفِخَ فِيهِ الرُّوحُ فَهُوَ خَلْقٌ آخَرُ، كَمَا قَالَ تَعَالَى: {فَكَسَوْنَا الْعِظَامَ لَحْمًا ثُمَّ أَنْشَأْنَاهُ خَلْقًا آخَرَ} [المؤمنون: ١٤] ، فَهُوَ حِينَئِذٍ إِنْسَانٌ حَيٌّ غَيْرُ أُمِّهِ، بَلْ قَدْ يَكُونُ ذَكَرًا وَهِيَ أُنْثَى، وَهُوَ ابْنُ مُسْلِمٍ فَلَهُ حُكْمُ الْإِسْلَامِ، فَلَا يَجُوزُ أَنْ يُدْفَنَ فِي مَقَابِرِ الْمُشْرِكِينَ، وَهِيَ كَافِرَةٌ، فَلَا تُدْفَنُ فِي مَقَابِرِ الْمُسْلِمِينَ، فَوَجَبَ أَنْ تُدْفَنَ بِنَاحِيَةٍ لِأَجْلِ ذَلِكَ رُوِّينَا عَنْ سُلَيْمَانَ بْنِ مُوسَى: أَنَّ وَاثِلَةَ بْنَ الْأَسْقَعِ صَاحِبَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَفَنَ امْرَأَةً نَصْرَانِيَّةً مَاتَتْ حُبْلَى مِنْ مُسْلِمٍ -: فِي مَقْبَرَةٍ لَيْسَتْ بِمَقْبَرَةِ النَّصَارَى، وَلَا بِمَقْبَرَةِ الْمُسْلِمِينَ بَيْنَ ذَلِكَ.

وَرُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ: أَنَّهَا تُدْفَنُ مَعَ الْمُسْلِمِينَ مِنْ أَجْلِ وَلَدِهَا

[19] **Hadith references (L9283):** Sunan an-Nasai 2048.
[20] **Qur'an references (L9285):** Qur'an 23:14 (Al-Mu'minun).

with the Muslims for the sake of her child.

L9289 **Issue: A minor is taken captive—whether with both parents, with one parent, or without them—and subsequently dies.**

L9290 583. Issue: If a minor is captured along with both parents, one of them, or without them, and then dies, he is to be buried with the Muslims and the funeral prayer is to be performed for him. Allah the Exalted said: "The natural disposition of Allah, upon which He created mankind. There is no altering Allah's creation. That is the upright religion" (30:30). Thus, it is established that every newborn is a Muslim, except those whom Allah the Exalted has confirmed in disbelief—specifically, those born to two disbelieving dhimmi parents or two disbelieving parents from enemy territory, who were not captured until reaching adulthood. Are those outside these two categories not Muslims?[21]

L9291 **Issue: The person most deserving to lead the prayer over the deceased.**

L9292 584 - Issue: The most entitled individuals to perform the funeral prayer over a deceased male or female are the closest relatives—namely: the father and his paternal forebears, the son and his sons, followed by the full brothers, then the paternal half-brothers, then their sons, then the paternal uncles and maternal uncles, then the paternal uncles alone, then their sons, then all mahram relatives—unless the deceased instructed a specific person to lead their prayer, in which case that person holds priority.

L9293 Then the spouse, then the ruler or judge. If someone other than those we mentioned leads the prayer, it suffices. The proof for this is the verse of Allah, the Most High: {And blood relatives are more entitled to one another in the decree of Allah} [Al-Anfal: 75]. This is a general principle that may not be restricted. The statement of Allah's Messenger, peace and blessings be upon him – "A man must not lead prayer among his family" – includes

[21] **Qur'an references (L9290):** Qur'an 30:30 (Ar-Rum).

[مَسْأَلَةٌ الصَّغِيرُ يُسْبَى مَعَ أَبَوَيْهِ أَوْ أَحَدِهِمَا أَوْ دُونَهُمَا فَيَمُوتُ]

٥٨٣ - مَسْأَلَةٌ: وَالصَّغِيرُ يُسْبَى مَعَ أَبَوَيْهِ أَوْ أَحَدِهِمَا أَوْ دُونَهُمَا فَيَمُوتُ -: فَإِنَّهُ يُدْفَنُ مَعَ الْمُسْلِمِينَ وَيُصَلَّى عَلَيْهِ، قَالَ تَعَالَى: {فِطْرَتَ اللَّهِ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا لا تَبْدِيلَ لِخَلْقِ اللَّهِ ذَلِكَ الدِّينُ الْقَيِّمُ} [الروم: ٣٠] فَصَحَّ أَنَّ كُلَّ مَوْلُودٍ فَهُوَ مُسْلِمٌ، إِلَّا مَنْ أَقَرَّهُ اللَّهُ تَعَالَى عَلَى الْكُفْرِ، وَلَيْسَ إِلَّا مَنْ وُلِدَ بَيْنَ ذِمِّيَّيْنِ كَافِرَيْنِ، أَوْ حَرْبِيَّيْنِ كَافِرَيْنِ، وَلَمْ يُسْبَ حَتَّى بَلَغَ، وَمَا عَدَا هَذَيْنِ فَمُسْلِمٌ؟

[مَسْأَلَةٌ أَحَقُّ النَّاسِ بِالصَّلَاةِ عَلَى الْمَيِّتِ]

٥٨٤ - مَسْأَلَةٌ: وَأَحَقُّ النَّاسِ بِالصَّلَاةِ عَلَى الْمَيِّتِ وَالْمَيِّتَةِ: الْأَوْلِيَاءُ -: وَهُمْ: الْأَبُ وَآبَاؤُهُ، وَالِابْنُ وَأَبْنَاؤُهُ، ثُمَّ الْإِخْوَةُ الْأَشِقَّاءُ، ثُمَّ الَّذِينَ لِلْأَبِ، ثُمَّ بَنُوهُمْ، ثُمَّ الْأَعْمَامُ لِلْأَبِ وَالْأُمِّ، ثُمَّ لِلْأَبِ ثُمَّ بَنُوهُمْ، ثُمَّ كُلُّ ذِي رَحِمٍ مَحْرَمَةٍ، إِلَّا أَنْ يُوصِيَ الْمَيِّتُ أَنْ يُصَلِّيَ عَلَيْهِ إِنْسَانٌ، فَهُوَ أَوْلَى.

ثُمَّ الزَّوْجُ، ثُمَّ الْأَمِيرُ أَوْ الْقَاضِي، فَإِنْ صَلَّى غَيْرُ مَنْ ذَكَرْنَا أَجْزَأَ -: بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَأُولُو الأَرْحَامِ بَعْضُهُمْ أَوْلَى بِبَعْضٍ فِي كِتَابِ اللَّهِ} [الأنفال: ٧٥] وَهَذَا عُمُومٌ لَا يَجُوزُ تَخْصِيصُهُ، وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يُؤَمَّنَّ الرَّجُلُ فِي

the blood relative and the spouse. If both are present, they are equal under the hadith's ruling, so it is impermissible to prioritize one over the other. The blood relative holds precedence by virtue of the verse, then the spouse holds precedence over others by virtue of the hadith?[22]

أَهْلِهِ» يَدْخُلُ فِيهِ: ذُو الرَّحِمِ، وَالزَّوْجُ، فَإِذَا اجْتَمَعَا فَهُمَا سَوَاءٌ فِي الْحَدِيثِ، فَلَا يَجُوزُ تَقْدِيمُ أَحَدِهِمَا عَلَى الْآخَرِ وَذُو الرَّحِمِ أَوْلَى بِالْآيَةِ، ثُمَّ الزَّوْجُ أَوْلَى مِنْ غَيْرِهِ بِالْحَدِيثِ؟

L9294–9296 We have narrated it from Qatādah from Saʿīd ibn al-Musayyib that he said concerning the funeral prayer for a woman: a father, or… Is a son or brother more entitled to the funeral prayer over her than the husband? Via the chain of Waki' from Sufyān al-Thawrī from Layth from Zayd ibn Abī Sulaymān: that 'Umar ibn al-Khaṭṭāb said regarding the funeral prayer over a woman when she dies: "The guardian [walī] instead of the husband?" From Shu'bah from al-Ḥakam ibn 'Utaybah regarding the funeral prayer over a woman when she dies: "The brother has greater right than the husband."

رُوِّينَاهُ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّهُ قَالَ فِي الصَّلَاةِ عَلَى الْمَرْأَةِ: أَبٌ، أَوْ ابْنٌ، أَوْ أَخٌ: أَحَقُّ بِالصَّلَاةِ عَلَيْهَا مِنْ الزَّوْجِ؟ وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ لَيْثٍ عَنْ زَيْدِ بْنِ أَبِي سُلَيْمَانَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي الصَّلَاةِ عَلَى الْمَرْأَةِ إذَا مَاتَتْ -: الْوَلِيُّ دُونَ الزَّوْجِ؟ وَعَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ فِي الصَّلَاةِ عَلَى الْمَرْأَةِ إذَا مَاتَتْ: الْأَخُ أَحَقُّ مِنْ الزَّوْجِ.

L9297 From the narration of Waki' via al-Rabi' via al-Hasan: They would prioritize the prayer leaders (Imams) in leading their funeral prayers. If there is a dispute, the guardian takes precedence, followed by the husband.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الرَّبِيعِ عَنْ الْحَسَنِ: كَانُوا يُقَدِّمُونَ الْأَئِمَّةَ عَلَى جَنَائِزِهِمْ، فَإِنْ تَدَارَءُوا فَالْوَلِيُّ، ثُمَّ الزَّوْجُ.

L9298 If it is said: Al-Ḥusayn ibn ʿAlī—may Allāh be pleased with him—appointed Saʿīd ibn al-ʿĀṣ over his guardian and stated: "Were it not for this being the Sunnah, I would not have appointed you." And Abū Bakra said to his wife's brothers: "I have greater right than you." We responded: We did not claim consensus for you, yet you oppose us with this. However, when leaders disagree, it becomes obligatory to refer back to the Qurʾān and Sunnah. In the Qurʾān and Sunnah is what we have presented, for Allāh the Exalted has not permitted resolving disputes by referring to anything other than His speech and the ruling of His Prophet—peace and blessings of Allāh be upon him.

فَإِنْ قِيلَ: قَدْ قَدَّمَ الْحُسَيْنُ بْنُ عَلِيٍّ -: سَعِيدَ بْنَ الْعَاصِ عَلَى وَلِيِّ لَهُ وَقَالَ: لَوْلَا أَنَّهَا سُنَّةٌ مَا قَدَّمْتُك؟ وَقَالَ أَبُو بَكْرَةَ لِإِخْوَةِ زَوْجَتِهِ: أَنَا أَحَقُّ مِنْكُمْ قُلْنَا: لَمْ نَدَّعِ لَكُمْ إجْمَاعًا فَتُعَارِضُونَا بِهَذَا، وَلَكِنْ إذَا تَنَازَعَ الْأَئِمَّةُ وَجَبَ الرَّدُّ إلَى الْقُرْآنِ وَالسُّنَّةِ، وَفِي الْقُرْآنِ وَالسُّنَّةِ مَا أَوْرَدْنَا، وَلَمْ يُبِحْ اللَّهُ تَعَالَى الرَّدَّ فِي التَّنَازُعِ إلَى غَيْرِ كَلَامِهِ وَحُكْمِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L9299 Abu Hanifah, Malik, al-Shafi'i, and al-Awzaʿī—the latter in one of his two opinions—stated: The male guardians are more entitled to pray over her than the husband. However, Abu Hanifah said: If her child is the son of her present husband, then the husband (who is the child's father) is more entitled. This is baseless, as it constitutes an unsupported claim.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَالْأَوْزَاعِيُّ فِي أَحَدِ قَوْلَيْهِ: الْأَوْلِيَاءُ أَحَقُّ بِالصَّلَاةِ عَلَيْهَا مِنْ الزَّوْجِ، إلَّا أَنَّ أَبَا حَنِيفَةَ قَالَ: إنْ كَانَ وَلَدُهَا ابْنَ زَوْجِهَا الْحَاضِرُ فَالزَّوْجُ أَبُو الْوَلَدِ أَحَقُّ - وَهَذَا لَا مَعْنَى لَهُ، لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ

[22] **Qur'an references (L9293):** Qur'an 8:75 (Al-Anfal); Qur'an 33:6 (Al-Ahzab).

[مَسْأَلَةٌ أَحَقُّ النَّاسِ بِإِنْزَالِ الْمَرْأَةِ فِي قَبْرِهَا]

٥٨٥ - مَسْأَلَةٌ: وَأَحَقُّ النَّاسِ بِإِنْزَالِ الْمَرْأَةِ فِي قَبْرِهَا مَنْ لَمْ يَطَأْ تِلْكَ اللَّيْلَةَ، وَإِنْ كَانَ أَجْنَبِيًّا، حَضَرَ زَوْجُهَا أَوْ أَوْلِيَاؤُهَا أَوْ لَمْ يَحْضُرُوا، وَأَحَقُّهُمْ بِإِنْزَالِ الرَّجُلِ أَوْلِيَاؤُهُ؟

أَمَّا الرَّجُلُ فَلِقَوْلِ اللَّهِ تَعَالَى: {وَأُولُو الأَرْحَامِ بَعْضُهُمْ أَوْلَى بِبَعْضٍ} [الأنفال: ٧٥] وَهَذَا عُمُومٌ، لَا يَجُوزُ تَخْصِيصُهُ إِلَّا بِنَصٍّ.

وَأَمَّا الْمَرْأَةُ فَإِنَّ عَبْدَ الرَّحْمَنِ بْنَ عَبْدِ اللَّهِ بْنِ خَالِدٍ حَدَّثَنَا قَالَ: ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ هُوَ الْمُسْنَدِيُّ - ثنا أَبُو عَامِرٍ هُوَ الْعَقَدِيُّ - ثنا فُلَيْحُ بْنُ سُلَيْمَانَ عَنْ هِلَالِ بْنِ عَلِيٍّ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ «شَهِدْنَا بِنْتًا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَالِسٌ عَلَى الْقَبْرِ، فَرَأَيْت عَيْنَيْهِ تَدْمَعَانِ، فَقَالَ: هَلْ مِنْكُمْ رَجُلٌ لَمْ يُقَارِفْ اللَّيْلَةَ؟ فَقَالَ أَبُو طَلْحَةَ: أَنَا، قَالَ: فَانْزِلْ؟ فَنَزَلَ فِي قَبْرِهَا» .

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ ثنا ابْنُ مُفَرِّجٍ ثنا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ ثنا أَحْمَدُ بْنُ عَمْرٍو الْبَزَّارُ ثنا مُحَمَّدُ بْنُ مَعْمَرٍ ثنا رَوْحُ بْنُ أَسْلَمَ أَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: لَمَّا مَاتَتْ رُقَيَّةُ ابْنَتُهُ - رَضِيَ اللَّهُ عَنْهَا -: لَا يَدْخُلْ الْقَبْرَ رَجُلٌ قَارَفَ اللَّيْلَةَ، فَلَمْ يَدْخُلْ عُثْمَانُ»

قَالَ أَبُو مُحَمَّدٍ: الْمُقَارَفَةُ الْوَطْءُ، لَا مُقَارَفَةُ الذَّنْبِ.

L9300 **Legal Issue: Who among the people is most entitled to lower a woman into her grave?**

L9301 585 – Issue: The most deserving person to place a woman into her grave is one who has not engaged in sexual intercourse the preceding night, even if he is an unrelated male—regardless of whether her husband or guardians are present. As for a man, are his guardians the most deserving to place him [into the grave]?

L9302 As for the man, it is based on the statement of Allah, the Most High: "And blood relatives are more entitled to one another" [Al-Anfāl: 75]. This constitutes a general ruling, and it is impermissible to restrict it except through scriptural evidence.[23]

L9303–9305 As for the woman, ʻAbd al-Raḥmān ibn ʻAbd Allāh ibn Khālid narrated to us: Ibrāhīm ibn Aḥmad narrated to us, al-Farabrī narrated to us, al-Bukhārī narrated to us, ʻAbd Allāh ibn Muḥammad—al-Musnadī—narrated to us, and Abū ʻĀmir—al-ʻAqadī—narrated to us. Fulayh ibn Sulayman narrated to us from Hilal ibn Ali from Anas ibn Malik, who said: "We attended a daughter of the Messenger of Allah (peace be upon him) while the Messenger of Allah (peace be upon him) was sitting by the grave. I saw his eyes shedding tears. He said: 'Is there among you a man who did not have sexual relations last night?' Abu Talhah said: 'I am.' He said: 'Then descend!' So he entered her grave."

L9306 Aḥmad ibn Muḥammad al-Ṭalamankī narrated to us: Ibn Mufarrij narrated to us: Muḥammad ibn Ayyūb al-Ṣamūt narrated to us: Aḥmad ibn ʿAmr al-Bazzār narrated to us: Muḥammad ibn Maʿmar narrated to us: Rawḥ ibn Aslam narrated to us from Ḥammād ibn Salamah from Thābit al-Bunānī from Anas that when Ruqayyah—may Allah be pleased with her—the daughter of the Messenger of Allah (peace and blessings be upon him) died, he said: "No man who has engaged in sexual intercourse this night may enter the grave." So ʻUthmān did not enter.

L9307 Abu Muhammad said: Al-Muqārafah refers to sexual intercourse, not to the

[23] **Qur'an references (L9302):** Qur'an 8:75 (Al-Anfal); Qur'an 33:6 (Al-Ahzab).

commission of sin.

L9308 Allah forbid that Abu Talhah would claim purity in the presence of the Prophet—peace and blessings of Allah be upon him—by asserting that he did not commit any sin.

L9309 Thus, is it established that one who did not engage in intercourse that night has a stronger right than the father, the spouse, and others beyond them?

L9310 **A legal question regarding a bequest stipulating that someone other than the guardian or the husband perform the prayer over the testator.**

L9311 586 – Remainder of the prior issue that precedes this one: Abu Muhammad said: We supplemented the will by stipulating that someone other than the guardian or husband should perform the funeral prayer over the testator. This is because Allah the Exalted – having mentioned the dying person's will – states: "Whoever alters it after hearing it, the sin thereof is only upon those who alter it" [Al-Baqarah 2:181].[24]

L9312 It has been narrated to us through the chain of Wakiʿ from Sufyān al-Thawrī from Muḥārib ibn Dithār: that Umm Salamah, the Mother of the Believers—may Allah the Exalted be pleased with her—requested that Saʿīd ibn Zayd should lead her funeral prayer, even though he was neither a leader, a close relative from her mahram kin, nor a member of her tribe, and this occurred in the presence of the Companions—may Allah the Exalted be pleased with them. And via the same chain extending to Sufyān from Abū Isḥāq al-Sabīʿī: that Abū Maysarah requested that Shurayḥ should lead his funeral prayer, though he was not from his tribe.

L9313–9314 Narrated through Waki', from Misʿar ibn Kidam, from Abu Husayn, that ʿAbīdah al-Salmani instructed that al-Aswad ibn Yazid al-Nakhaʿi lead the funeral prayer for him.

L9315 **An issue regarding kissing the deceased.**

[24] **Qur'an references (L9311):** Qur'an 2:181 (Al-Baqarah).

وَمَعَاذَ اللَّهِ أَنْ يَتَزَكَّى أَبُو طَلْحَةَ بِحَضْرَةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّهُ لَمْ يُقَارِفْ ذَنْبًا.

فَصَحَّ أَنَّ مَنْ لَمْ يَطَأْ تِلْكَ اللَّيْلَةَ أَوْلَى مِنْ الْأَبِ وَالزَّوْجِ وَغَيْرِهِمَا؟

[مَسْأَلَةٌ الْوَصِيَّةَ بِأَنْ يُصَلِّيَ عَلَى الْمُوصِي غَيْرُ الْوَلِيِّ وَغَيْرُ الزَّوْجِ]

٥٨٦ - بَقِيَّةٌ مِنْ الْمَسْأَلَةِ: الَّتِي قَبْلَ هَذِهِ: قَالَ أَبُو مُحَمَّدٍ: وَاسْتَدْرَكْنَا الْوَصِيَّةَ بِأَنْ يُصَلِّيَ عَلَى الْمُوصِي غَيْرُ الْوَلِيِّ وَغَيْرُ الزَّوْجِ، وَهُوَ أَنَّ اللَّهَ تَعَالَى - وَقَدْ ذَكَرَ وَصِيَّةَ الْمُحْتَضَرِ - قَالَ {فَمَنْ بَدَّلَهُ بَعْدَمَا سَمِعَهُ فَإِنَّمَا إِثْمُهُ عَلَى الَّذِينَ يُبَدِّلُونَهُ} [البقرة: ١٨١]

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُحَارِبِ بْنِ دِثَارٍ: أَنَّ أُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ تَعَالَى عَنْهَا - أَوْصَتْ أَنْ يُصَلِّيَ عَلَيْهَا سَعِيدُ بْنُ زَيْدٍ وَهُوَ غَيْرُ أَمِيرٍ وَلَا وَلِيٍّ مِنْ ذَوِي مَحَارِمِهَا وَلَا مِنْ قَوْمِهَا، وَذَلِكَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمْ - وَبِهِ إلَى سُفْيَانَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ: أَنَّ أَبَا مَيْسَرَةَ أَوْصَى أَنْ يُصَلِّيَ عَلَيْهِ شُرَيْحٌ وَلَيْسَ مِنْ قَوْمِهِ.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ أَبِي حُصَيْنٍ: أَنَّ عَبِيدَةَ السَّلْمَانِيَّ أَوْصَى أَنْ يُصَلِّيَ عَلَيْهِ الْأَسْوَدُ بْنُ يَزِيدَ النَّخَعِيُّ.

[مَسْأَلَةٌ تَقْبِيلُ الْمَيِّتِ]

L9316 587 - Issue: Kissing the deceased is permissible. Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: al-Farbari narrated to us: al-Bukhari narrated to us: From Bishr ibn Muhammad: I heard from Abd Allah ibn al-Mubarak, who informed me: Ma'mar and Yunus informed me from al-Zuhri: Abu Salama—the son of Abd al-Rahman ibn Awf—informed me that Aisha, the wife of the Prophet—peace and blessings be upon him—reported that Abu Bakr entered upon the Messenger of Allah—peace and blessings be upon him—while he was shrouded in a striped cloak—meaning, she meant, after his death. She said: He uncovered his face, then leaned over him, kissed him, wept, and said: "By my father and mother, O Messenger of Allah!" And Abu Salama related the hadith in full.

٥٨٧ - مَسْأَلَةٌ: وَتَقْبِيلُ الْمَيِّتِ جَائِزٌ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ أَنَا بِشْرُ بْنُ مُحَمَّدٍ أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ أَخْبَرَنِي مَعْمَرٌ وَيُونُسُ عَنْ الزُّهْرِيِّ أَخْبَرَنِي أَبُو سَلَمَةَ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، - أَنَّ عَائِشَةَ زَوْجَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخْبَرَتْهُ " أَنَّ أَبَا بَكْرٍ دَخَلَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ مُسَجًّى بِبُرْدِ حِبَرَةٍ - تَعْنِي إذْ مَاتَ - عَلَيْهِ السَّلَامُ - قَالَتْ: فَكَشَفَ عَنْ وَجْهِهِ، ثُمَّ أَكَبَّ عَلَيْهِ فَقَبَّلَهُ، ثُمَّ بَكَى وَقَالَ: بِأَبِي أَنْتَ وَأُمِّي يَا رَسُولَ اللَّهِ ". وَذَكَرَ الْحَدِيثَ.

The deceased should be shrouded in a shroud, and an object should be placed on his stomach to prevent swelling.

[مَسْأَلَةٌ يُسَجَّى الْمَيِّتُ بِثَوْبٍ وَيُجْعَلُ عَلَى بَطْنِهِ مَا يَمْنَعُ انْتِفَاخَهُ]

L9318 588: Issue: The deceased should be shrouded with a garment, and something should be placed on his abdomen to prevent swelling. As for the shrouding, this is done because of what we mentioned concerning the Messenger of Allah (peace be upon him), and all that was done regarding him (peace be upon him) is the rightful way, due to the saying of Allah, the Most High: "And Allah will protect you from the people" (Quran 5:67).[25]

٥٨٨ - مَسْأَلَةٌ: وَيُسَجَّى الْمَيِّتُ بِثَوْبٍ وَيُجْعَلُ عَلَى بَطْنِهِ مَا يَمْنَعُ انْتِفَاخَهُ -: أَمَّا التَّسْجِيَةُ - فَلِمَا ذَكَرْنَاهُ فِي رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكُلُّ مَا فُعِلَ فِيهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ حَقٌّ، لِقَوْلِهِ تَعَالَى: {وَاللَّهُ يَعْصِمُكَ مِنَ النَّاسِ} [المائدة: ٦٧]

L9319 This is a general principle, and it may not be particularized except through textual evidence.

وَهَذَا عُمُومٌ، لَا يَجُوزُ تَخْصِيصُهُ إلَّا بِنَصٍّ؟

L9320 As for our statement, "He is laid on his stomach," this is based on Allah's injunction: "Cooperate in righteousness and piety" [Al-Mā'idah: 2]. Does not every act that entails kindness toward a Muslim and averts mutilation of his body constitute righteousness and piety?[26]

وَأَمَّا قَوْلُنَا: يُوضَعُ عَلَى بَطْنِهِ فَلِقَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢] وَكُلُّ مَا فِيهِ رِفْقٌ بِالْمُسْلِمِ وَدَفْعٌ لِلْمُثْلَةِ عَنْهُ، فَهُوَ بِرٌّ وَتَقْوَى؟

A jurisprudential issue regarding wailing, beating the face and chest, and plucking the hair or shaving it for the deceased.

[مَسْأَلَةُ الصِّيَاحِ وَضَرْبِ الْوَجْهِ وَالصَّدْرِ وَنَتْفِ الشَّعْرِ وَحَلْقُهُ لِلْمَيِّتِ]

[25] **Qur'an references (L9318):** Qur'an 5:67 (Al-Ma'idah).
[26] **Qur'an references (L9320):** Qur'an 5:2 (Al-Ma'idah).

L9322–9324 589 - Issue: Patience is obligatory, and weeping is permissible provided it does not involve wailing, for wailing is forbidden. Shouting, scratching faces, striking them, beating the chest, plucking hair, or shaving it in mourning for the deceased—all of that is forbidden; similarly disliked is reprehensible speech expressing discontent with the decrees of Allah Almighty, and tearing garments. Narrated by ʿAbd al-Raḥmān ibn ʿAbd Allāh → Ibrāhīm ibn Aḥmad → al-Farbarī → al-Bukhārī → Ādam → Shuʿbah → Thābit al-Bunānī → Anas ibn Mālik, who said: "The Prophet—peace and blessings of Allah be upon him—passed by a woman weeping at a grave." He said, "Fear Allah and be patient."[27]

٥٨٩ - مَسْأَلَةٌ: وَالصَّبْرُ وَاجِبٌ، وَالْبُكَاءُ مُبَاحٌ، مَا لَمْ يَكُنْ نَوْحٌ، فَإِنَّ النَّوْحَ حَرَامٌ، وَالصِّيَاحَ، وَخَمْشَ الْوُجُوهِ وَضَرْبَهَا، وَضَرْبَ الصَّدْرِ، وَنَتْفَ الشَّعْرِ وَحَلْقَهُ لِلْمَيِّتِ -: كُلُّ ذَلِكَ حَرَامٌ، وَكَذَلِكَ الْكَلَامُ الْمَكْرُوهُ الَّذِي هُوَ تَسَخُّطٌ لِأَقْدَارِ اللَّهِ تَعَالَى، وَشَقُّ الثِّيَابِ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا آدَم ثنا شُعْبَةُ ثنا ثَابِتٌ الْبُنَانِيُّ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ «مَرَّ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِامْرَأَةٍ تَبْكِي عِنْدَ قَبْرٍ، فَقَالَ: اتَّقِي اللَّهَ وَاصْبِرِي؟» .

L9325 And with his chain to Al-Bukhari: Muḥammad ibn Bishār narrated to us: Ghundar narrated to us from Shuʿbah from Thābit al-Bunānī, who said: I heard Anas ibn Mālik report from the Prophet (peace and blessings of Allah be upon him) that he said: "Patience is only at the first shock."

وَبِهِ إِلَى الْبُخَارِيِّ: نا مُحَمَّدُ بْنُ بَشَّارٍ نا غُنْدَرٌ عَنْ شُعْبَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ قَالَ: سَمِعْت أَنَسَ بْنَ مَالِكٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إنَّمَا الصَّبْرُ عِنْدَ الصَّدْمَةِ الْأُولَى» .

L9326 And through him to al-Bukhari: Al-Hasan ibn Abdul Aziz narrated to us, Yahya ibn Hassan narrated to us, Quraysh—he is Ibn Hayyan—narrated to me from Thabit al-Bunani from Anas, who said: "We entered with the Messenger of Allah (peace and blessings be upon him) to visit Ibrahim—he is the son of the Messenger of Allah (peace and blessings be upon him)—as he was breathing his last. Both eyes of the Messenger of Allah began to overflow with tears. Abdur Rahman ibn Awf said to him: 'And you, O Messenger of Allah?' He replied: 'O Ibn Awf, it is mercy. The eye sheds tears, the heart grieves, and we say nothing except what pleases our Lord. Are we not indeed saddened by your separation, O Ibrahim?'"

وَبِهِ إِلَى الْبُخَارِيِّ: ثنا الْحَسَنُ بْنُ عَبْدِ الْعَزِيزِ نا يَحْيَى بْنُ حَسَّانَ حَدَّثَنِي قُرَيْشٌ هُوَ ابْنُ حَيَّانَ - عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسٍ قَالَ «دَخَلْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى إبْرَاهِيمَ - هُوَ ابْنُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ يَجُودُ بِنَفْسِهِ، فَجَعَلَتْ عَيْنَا رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَذْرِفَانِ، فَقَالَ لَهُ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ: وَأَنْتَ يَا رَسُولَ اللَّهِ؟ فَقَالَ: يَا ابْنَ عَوْفٍ، إنَّهَا رَحْمَةٌ، الْعَيْنُ تَدْمَعُ، وَالْقَلْبُ يَحْزَنُ، وَلَا نَقُولُ إلَّا مَا يُرْضِي رَبَّنَا، وَإِنَّا بِفِرَاقِك يَا إبْرَاهِيمُ لَمَحْزُونُونَ؟» .

L9327 This refers to the permissibility of grief that no one can ward off, for {Allah does not burden any soul beyond its capacity} (Al-Baqarah 2:286). This ruling also permits weeping and prohibits speech that displeases Allah, the Exalted.[28]

فَهَذَا إبَاحَةُ الْحُزْنِ الَّذِي لَا يَقْدِرُ أَحَدٌ عَلَى دَفْعِهِ، وَ {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَفِيهِ إبَاحَةُ الْبُكَاءِ، وَتَحْرِيمُ الْكَلَامِ بِمَا لَا يُرْضِي اللَّهَ تَعَالَى

[27] **Hadith references (L9322):** Mishkat al-Masabih 1728; Riyad as-Salihin 31.
[28] **Qur'an references (L9327):** Qur'an 2:286 (Al-Baqarah).

وَبِهِ إِلَى الْبُخَارِيِّ: نا مُحَمَّدُ بْنُ بَشَّارٍ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ عَنْ الْأَعْمَشِ عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةَ عَنْ مَسْرُوقٍ عَنْ ابْنِ مَسْعُودٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَيْسَ مِنَّا مَنْ ضَرَبَ الْخُدُودَ وَشَقَّ الْجُيُوبَ وَدَعَا بِدَعْوَى الْجَاهِلِيَّةِ» .

L9328 And through him to al-Bukhārī: Muḥammad ibn Bashshār narrated to us: ʿAbd al-Raḥmān ibn Mahdī narrated to us: Sufyān narrated to us from al-Aʿmash from ʿAbd Allāh ibn Murrah from Masrūq from Ibn Masʿūd from the Prophet—peace and blessings be upon him—who said: "Whoever strikes the cheeks, rends the garments, or calls with the call of pre-Islamic ignorance is not one of us."[29]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا حِبَّانُ بْنُ هِلَالٍ نا أَبَانُ هُوَ ابْنُ يَزِيدَ الْعَطَّارُ - نا يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - أَنَّ زَيْدًا حَدَّثَهُ أَنَّ أَبَا سَلَامٍ حَدَّثَهُ أَنَّ أَبَا مَالِكٍ الْأَشْعَرِيَّ حَدَّثَهُ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَرْبَعٌ فِي أُمَّتِي مِنْ أَمْرِ الْجَاهِلِيَّةِ لَا يَتْرُكُونَهُنَّ: الْفَخْرُ فِي الْأَحْسَابِ، وَالطَّعْنُ فِي الْأَنْسَابِ، وَالِاسْتِسْقَاءُ بِالنُّجُومِ، وَالنِّيَاحَةُ، النَّائِحَةُ إِذَا مَاتَتْ وَلَمْ تَتُبْ قَبْلَ مَوْتِهَا تُقَامُ يَوْمَ الْقِيَامَةِ وَعَلَيْهَا سِرْبَالٌ مِنْ قَطِرَانٍ، وَدِرْعٌ مِنْ جَرَبٍ» .

L9329–9330 Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Ishaq ibn Mansur narrated to us, Hibban ibn Hilal narrated to us, Aban—Ibn Yazid al-Attar—narrated to us, Yahya—Ibn Abi Kathir—narrated that Zayd reported to him that Abu Salam reported to him that Abu Malik al-Ashʿarī reported to him that the Prophet—peace and blessings be upon him—said: "Four practices from the ways of pre-Islamic ignorance persist among my ummah, which they will not abandon: boasting of noble ancestry, disparaging lineages, seeking rain through stars, and wailing. The wailing woman who dies without repenting before her death will be made to stand on the Day of Resurrection clad in a garment of molten pitch and armor of festering sores."[30]

وَبِهِ إِلَى مُسْلِمٍ: نا عَبْدُ اللَّهِ بْنُ حُمَيْدٍ، وَإِسْحَاقُ بْنُ مَنْصُورٍ قَالَا: أرنا جَعْفَرُ بْنُ عَوْنٍ أَنَا أَبُو عُمَيْسٍ قَالَ: سَمِعْت أَبَا صَخْرَةَ يَذْكُرُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ وَأَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ قَالَا (جَمِيعًا) : أُغْمِيَ عَلَى أَبِي مُوسَى فَأَقْبَلَتْ امْرَأَتُهُ أُمُّ عَبْدِ اللَّهِ تَصِيحُ بِرَنَّةٍ، فَأَفَاقَ قَالَ: أَلَمْ تَعْلَمِي - وَكَانَ يُحَدِّثُهَا - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَنَا بَرِيءٌ مِمَّنْ حَلَقَ وَسَلَقَ وَخَرَقَ»

L9331 And with this chain to Muslim: ʿAbdullāh ibn Ḥumayd and Isḥāq ibn Manṣūr narrated to us, both saying: Jaʿfar ibn ʿAwn informed us, from Abū ʿUmayṣ, who said: I heard Abū Ṣakhrah narrate from ʿAbd al-Raḥmān ibn Yazīd and Abū Burdah ibn Abī Mūsā al-Ashʿarī—they both said in unison: Abū Mūsā lost consciousness, and his wife Umm ʿAbdullāh came forward wailing with a prolonged cry. When he regained consciousness, he said—and he would often remind her—"Did you not know that the Messenger of Allah, peace be upon him, said: 'I dissociate myself from those who shave [their heads], wail loudly, and tear [their garments]'?"

وَمِنْ طَرِيقِ الْبُخَارِيِّ: نَا أَصْبَغُ نا ابْنُ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ سَعِيدِ بْنِ الْحَارِثِ الْأَنْصَارِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: «اشْتَكَى سَعْدُ بْنُ عُبَادَةَ فَعَادَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَسَعْدِ بْنِ أَبِي وَقَّاصٍ، وَابْنِ مَسْعُودٍ،

L9332–9334 Through the transmission of Al-Bukhari: Asbagh informed us, from Ibn Wahb, who reported to me through ʿAmr ibn al-Harith, from Saʿīd ibn al-Harith al-Ansārī, from ʿAbdullāh ibn ʿUmar, who said: "Saʿd ibn ʿUbādah fell

[29] **Hadith references (L9328):** Sahih al-Bukhari 1297; Sahih al-Bukhari 1298; Sahih al-Bukhari 3519.

[30] **Hadith references (L9330):** Sahih Muslim 934; Mishkat al-Masabih 1727.

ill, so the Prophet—peace and blessings be upon him—visited him accompanied by ʻAbd al-Raḥmān ibn ʻAwf, Saʻd ibn Abī Waqqāṣ, and Ibn Masʻūd. When he entered and found him beneath his covering, the Prophet—peace and blessings be upon him—wept. When the people saw the Prophet's weeping—peace and blessings be upon him—they too wept. He then said: 'Behold!..." "Do you not hear? Indeed, Allah does not punish for the tears of the eye nor the grief of the heart, but He punishes by this [pointing to his tongue] or grants mercy. And verily, the deceased is punished for the weeping of his family over him."[31]

فَلَمَّا دَخَلَ عَلَيْهِ وَجَدَهُ فِي غَاشِيَتِهِ فَبَكَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمَّا رَأَى الْقَوْمُ بُكَاءَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَكَوْا، فَقَالَ: أَلَا تَسْمَعُونَ؟ إِنَّ اللَّهَ لَا يُعَذِّبُ بِدَمْعِ الْعَيْنِ وَلَا بِحُزْنِ الْقَلْبِ، وَلَكِنْ يُعَذِّبُ بِهَذَا - وَأَشَارَ إِلَى لِسَانِهِ - أَوْ يَرْحَمُ، وَإِنَّ الْمَيِّتَ يُعَذَّبُ بِبُكَاءِ أَهْلِهِ عَلَيْهِ» .

L9335 Abu Muhammad said: This complete narration clarifies the meaning of what many people have misunderstood regarding his statement - upon him be peace - "Indeed the deceased is tormented by his family's weeping over him."

قَالَ أَبُو مُحَمَّدٍ هَذَا الْخَبَرُ بِتَمَامِهِ يُبَيِّنُ مَعْنَى مَا وَهَلَ فِيهِ كَثِيرٌ مِنْ النَّاسِ مِنْ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إِنَّ الْمَيِّتَ يُعَذَّبُ بِبُكَاءِ أَهْلِهِ عَلَيْهِ» .

L9336 It is evident from this that the wailing for which the deceased is tormented is not the same as acts that do not incur punishment, such as tears of the eye and sorrow of the heart.

وَلَاحَ بِهَذَا أَنَّ هَذَا الْبُكَاءَ الَّذِي يُعَذَّبُ بِهِ الْمَيِّتُ لَيْسَ هُوَ الَّذِي لَا يُعَذَّبُ بِهِ مِنْ دَمْعِ الْعَيْنِ، وَحُزْنِ الْقَلْبِ.

L9337 Thus, it is confirmed that weeping is expressed through lamentation, as he is punished for his leadership in which he transgressed and thus incurred punishment, for his bravery—for which he is punished—since he used his bravery in opposition to the obedience of Allah the Exalted, and for his generosity whereby he acquired what he gave through unlawful means and spent it on illegitimate purposes. Thus, his family weeps for him over these prided virtues, while he is tormented by those very same traits. This is the clear meaning of the ḥadīth for those who impose interpretations on the apparent report that are not inherent to it. And with Allah the Exalted lies all success. It has been narrated to us from Ibn ʻAbbās that he condemned those who denounced weeping over the deceased, saying: "Did Allah not create laughter and tears?"

فَصَحَّ أَنَّهُ الْبُكَاءُ بِاللِّسَانِ، إذْ يُعَذِّبُونَهُ بِرِيَاسَتِهِ الَّتِي جَارَ فِيهَا فَعُذِّبَ عَلَيْهَا، وَشَجَاعَتِهِ الَّتِي يُعَذَّبُ عَلَيْهَا، إذْ صَرَفَهَا فِي غَيْرِ طَاعَةِ اللَّهِ تَعَالَى، وَبِجُودِهِ الَّذِي أَخَذَ مَا جَادَ بِهِ مِنْ غَيْرِ حِلِّهِ، وَوَضَعَهُ فِي غَيْرِ حَقِّهِ فَأَهْلُهُ يَبْكُونَهُ بِهَذِهِ الْمَفَاخِرِ، وَهُوَ يُعَذَّبُ بِهَا بِعَيْنِهَا، وَهُوَ ظَاهِرُ الْحَدِيثِ لِمَنْ يَتَكَلَّفُ فِي ظَاهِرِ الْخَبَرِ مَا لَيْسَ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: وَقَدْ رُوِّينَا عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ أَنْكَرَ عَلَى مَنْ أَنْكَرَ الْبُكَاءَ عَلَى الْمَيِّتِ، وَقَالَ: اللَّهُ أَضْحَكَ وَأَبْكَى؟

L9338 **A juristic scenario: A pilgrim in the state of iḥrām died before sunrise on the Day of Sacrifice.**

[مَسْأَلَةٌ مَاتَ الْمُحْرِمُ بَعْد الْإِحْرَام وَقَبْل طُلُوع شَمْس يَوْمِ النَّحْرِ]

[31] **Hadith references (L9332):** Sahih al-Bukhari 1304; Sahih Muslim 924; Riyad as-Salihin 1663.

L9339 590 – Issue: If a person in the state of iḥrām dies between entering iḥrām and sunrise on the Day of Sacrifice (Yawm al-Nahr) – if he was a Hajj pilgrim – or until completing his ṭawāf and saʿy – if he was an ʿUmrah pilgrim –, the obligation is to have the body washed with water and sidr leaves only, if sidr leaves are available.

٥٩٠ - مَسْأَلَةٌ: وَإِذَا مَاتَ الْمُحْرِمُ مَا بَيْنَ أَنْ يُحْرِمَ إِلَى أَنْ تَطْلُعَ الشَّمْسُ مِنْ يَوْمِ النَّحْرِ إِنْ كَانَ حَاجًّا، أَوْ أَنْ يُتِمَّ طَوَافَهُ وَسَعْيَهُ، إِنْ كَانَ مُعْتَمِرًا -: فَإِنَّ الْفَرْضَ أَنْ يُغَسَّلَ بِمَاءٍ وَسِدْرٍ فَقَطْ - إِنْ وُجِدَ السِّدْرُ -.

L9340 Should he not have camphor or scented substances applied to him, nor should his face nor his head be covered? He should be shrouded only in his Ihram garments or in two garments other than his Ihram garments.

وَلَا يُمَسُّ بِكَافُورٍ وَلَا بِطِيبٍ، وَلَا يُغَطَّى وَجْهُهُ، وَلَا رَأْسُهُ؟ وَلَا يُكَفَّنُ إِلَّا فِي ثِيَابِ إِحْرَامِهِ فَقَطْ، أَوْ فِي ثَوْبَيْنِ غَيْرِ ثِيَابِ إِحْرَامِهِ.

L9341 And if it is a woman, the same applies, except her head is covered while her face remains uncovered. Even if a garment is draped over her from above her head, there is no harm provided she is not fully veiled. As for a male or female pilgrim in *ihram* who dies after sunrise on the Day of Sacrifice: are they to be treated like all other deceased individuals, whether they had stoned the jamarat or not?

وَإِنْ كَانَتْ امْرَأَةً فَكَذَلِكَ، إِلَّا أَنَّ رَأْسَهَا تُغَطَّى وَيُكْشَفُ وَجْهُهَا، وَلَوْ أُسْدِلَ عَلَيْهِ مِنْ فَوْقِ رَأْسِهَا فَلَا بَأْسَ مِنْ غَيْرِ أَنْ تُقَنَّعَ؟ فَمَنْ مَاتَ مِنْ مُحْرِمٍ، أَوْ مُحْرِمَةٍ بَعْدَ طُلُوعِ الشَّمْسِ مِنْ يَوْمِ النَّحْرِ فَكَسَائِرِ الْمَوْتَى، رَمَى الْجِمَارَ أَوْ لَمْ يَرْمِهَا؟

L9342–9344 Abū Ḥanīfah and Mālik said: They are like the rest of the deceased in all of that. The evidence for our statement is what we have narrated through the chain of Ahmad ibn Shu'ayb: Muhammad ibn Bashshar narrated to us, Muhammad ibn Ja'far narrated to us, Shu'bah narrated to us, saying: I heard Abu Bishr (who is Ja'far ibn Abi Wahshiyyah) narrate from Sa'id ibn Jubayr, from Ibn Abbas: "A man fell from his mount and his skull was fractured. The Messenger of Allah—peace and blessings of Allah be upon him—instructed: 'Wash him with water and sidr (lote-tree leaves), shroud him in two garments, leaving his head and face uncovered, for he will be resurrected on the Day of Judgment reciting the talbiyah (pilgrimage chant).'" Another narration through the chain of Ahmad ibn Shu'ayb: Abdah ibn Abdullah al-Basri narrated to us, Abu Dawud (al-Hafri) narrated to us, from Sufyan (al-Thawri), from Amr ibn Dinar, from Sa'id ibn Jubayr, from Ibn Abbas: "A man died, and the Messenger of Allah—peace and blessings of Allah be upon him—said: 'Wash him with water and sidr (lote-tree leaves), shroud him in his own garments, and do not cover his face or head, for he will be resurrected on the Day of Judgment reciting the talbiyah (pilgrimage chant).'"

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: هُمَا كَسَائِرِ الْمَوْتَى فِي كُلِّ ذَلِكَ -: بُرْهَانُ قَوْلِنَا -: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ سَمِعْت أَبَا بِشْرٍ هُوَ جَعْفَرُ بْنُ أَبِي وَحْشِيَّةَ - عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَجُلًا وَقَعَ عَنْ رَاحِلَتِهِ فَأَقْصَعَتْهُ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اغْسِلُوهُ بِمَاءٍ وَسِدْرٍ، وَيُكَفَّنُ فِي ثَوْبَيْنِ، خَارِجَ رَأْسِهِ وَوَجْهِهِ، فَإِنَّهُ يُبْعَثُ يَوْمَ الْقِيَامَةِ يُلَبِّي» وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَبْدَةُ بْنُ عَبْدِ اللَّهِ الْبَصْرِيُّ أَنَا أَبُو دَاوُد هُوَ الْحَفَرِيُّ - عَنْ سُفْيَانَ هُوَ الثَّوْرِيُّ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ «مَاتَ رَجُلٌ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَسِّلُوهُ بِمَاءٍ وَسِدْرٍ، وَكَفِّنُوهُ فِي ثِيَابِهِ، وَلَا تُخَمِّرُوا وَجْهَهُ وَلَا رَأْسَهُ، فَإِنَّهُ يُبْعَثُ يَوْمَ الْقِيَامَةِ يُلَبِّي» .

L9345 From the chain of Al-Bukhari: Qutaybah narrated to us, Hammad ibn Zayd

narrated to us from Ayyub al-Sikhtiyani from Sa‘id ibn Jubayr from Ibn Abbas, who said: “While a man was standing with the Messenger of Allah (peace be upon him) at Arafat, he suddenly fell from his riding animal. The Messenger of Allah (peace be upon him) said: ‘Wash him with water and lote-tree leaves, shroud him in two garments, do not embalm him, and do not cover his head, for he will be resurrected on the Day of Judgment reciting the talbiyah.’”[32]

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا قُتَيْبَةُ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ «بَيْنَمَا رَجُلٌ وَاقِفٌ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِعَرَفَةَ، إِذْ وَقَعَ مِنْ رَاحِلَتِهِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اغْسِلُوهُ بِمَاءٍ وَسِدْرٍ، وَكَفِّنُوهُ فِي ثَوْبَيْنِ، وَلَا تُحَنِّطُوهُ، وَلَا تُخَمِّرُوا رَأْسَهُ، فَإِنَّهُ يُبْعَثُ يَوْمَ الْقِيَامَةِ مُلَبِّيًا» .

L9346 Through the chain of Al-Bukharī: Abū an-Nu‘mān—who is Muḥammad ibn al-Faḍl ‘Ārim—narrated to us from Abū ‘Awāna, from Abū Bishr, from Sa‘īd ibn Jubayr, from Ibn ‘Abbās: “A man’s camel caused him to fall while we were with the Messenger of Allah—peace be upon him—and he was in a state of iḥrām. The Prophet—peace be upon him—said: ’Wash him with water and sidr (lote leaves), shroud him in two garments, do not apply perfume to him, and do not cover his head, for indeed Allah will resurrect him on the Day of Judgment with matted hair.’”[33]

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو النُّعْمَانِ هُوَ مُحَمَّدُ بْنُ الْفَضْلِ عَارِمٌ - نا أَبُو عَوَانَةَ عَنْ أَبِي بِشْرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَجُلًا وَقَصَهُ بَعِيرُهُ وَنَحْنُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ مُحْرِمٌ، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: اغْسِلُوهُ بِمَاءٍ وَسِدْرٍ، وَكَفِّنُوهُ فِي ثَوْبَيْنِ، وَلَا تَمَسُّوهُ طِيبًا، وَلَا تُخَمِّرُوا رَأْسَهُ، فَإِنَّ اللَّهَ يَبْعَثُهُ يَوْمَ الْقِيَامَةِ مُلَبِّدًا» .

L9347–9348 From the chain of Abū Dāwūd al-Sijistānī: ʿUthmān ibn Abī Shaybah narrated to us; Jarīr—Ibn ʿAbd al-Ḥamīd—narrated to us from Manṣūr—Ibn al-Muʿtamir—from al-Ḥakam—Ibn ʿUyaynah—from Sa‘īd ibn Jubayr, from Ibn ʿAbbās, who said: “His she-camel threw him off and killed him while he was in a state of iḥrām. He was brought to the Messenger of Allāh—peace and blessings of Allāh be upon him—who said: ’Wash him, shroud him, do not cover his head, and do not bring perfume near him, for he will be resurrected proclaiming the _Talbiyah_.’”[34]

وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا جَرِيرٌ هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ مَنْصُورٍ هُوَ ابْنُ الْمُعْتَمِرِ - عَنِ الْحَكَمِ هُوَ ابْنُ عُيَيْنَةَ - عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ قَالَ «وَقَصَتْ بِرَجُلٍ مُحْرِمٍ نَاقَتُهُ فَقَتَلَتْهُ، فَأُتِيَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: اغْسِلُوهُ وَكَفِّنُوهُ وَلَا تُغَطُّوا رَأْسَهُ وَلَا تُقَرِّبُوهُ طِيبًا، فَإِنَّهُ يُبْعَثُ يُهِلُّ» .

L9349 This is such that no one is permitted to oppose it, for it is as the sun in authenticity. It was narrated by Shu‘bah, Sufyān, Abū ‘Awānah, Manṣūr, and Ḥammād ibn Zayd. It was also narrated prior to them by Abū Bishr, ‘Amr ibn Dīnār, al-Ḥakam, Ayyūb, and all the imams of the Muslims—from Sa‘īd ibn Jubayr, from Ibn ‘Abbās: that he witnessed the incident during the Farewell Pilgrimage in the final days of the Messenger of Allah’s life (peace

فَهَذَا لَا يَسَعُ أَحَدًا خِلَافُهُ، لِأَنَّهُ كَالشَّمْسِ صِحَّةً، رَوَاهُ شُعْبَةُ، وَسُفْيَانُ، وَأَبُو عَوَانَةَ، وَمَنْصُورٌ، وَحَمَّادُ بْنُ زَيْدٍ. وَرَوَاهُ قَبْلَهُمْ أَبُو بِشْرٍ، وَعَمْرُو بْنُ دِينَارٍ، وَالْحَكَمُ، وَأَيُّوبُ، وَأَئِمَّةُ الْمُسْلِمِينَ كُلُّهُمْ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ: أَنَّهُ شَهِدَ الْقِصَّةَ فِي حَجَّةِ الْوَدَاعِ، آخِرَ حَيَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَصَحَّتْ أَلْفَاظُ هَذَا الْخَبَرِ كُلُّهَا، فَلَا يَحِلُّ تَرْكُ شَيْءٍ مِنْهَا

[32] **Hadith references (L9345):** Sahih al-Bukhari 1265; Sahih al-Bukhari 1268.
[33] **Hadith references (L9346):** Sahih al-Bukhari 1267.
[34] **Hadith references (L9348):** Sunan Abi Dawud 3241.

and blessings be upon him). All the wordings of this report are verified as authentic. Therefore, it is not permissible to disregard any part of them.

، وَأَمَرَ - عَلَيْهِ السَّلَامُ - بِذَلِكَ فِي مُحْرِمٍ سُئِلَ عَنْهُ، وَالْمُحْرِمُ يَعُمُّ الرَّجُلَ وَالْمَرْأَةَ، وَالْبَعْثُ وَالتَّلْبِيَةُ يَجْمَعُهُمَا، وَبِهِمَا جَاءَ الْأَثَرُ، وَالسَّبَبُ الْمَنْصُوصُ عَلَيْهِ فِي الْحُكْمِ.

L9350 And he (peace be upon him) commanded this regarding a *Muhrim* about whom a question was posed, as the term *Muhrim* encompasses both men and women. The *Talbiyah* and the ritual departure apply to both, as narrated in the tradition with these two acts, and the cause textually specified in the ruling.

فَإِنْ قِيلَ: إِنَّكُمْ تُجِيزُونَ لِلْمُحْرِمِ الْحَيِّ أَنْ يُغَطِّيَ وَجْهَهُ، وَتَمْنَعُونَ ذَلِكَ الْمَيِّتَ؟ قُلْنَا: نَعَمْ، لِلنُّصُوصِ الْوَارِدَةِ فِي ذَلِكَ، وَلَا يَحِلُّ الِاعْتِرَاضُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمْ يَأْمُرْ الْمُحْرِمَ الْحَيَّ بِكَشْفِ وَجْهِهِ، وَأَمَرَ بِذَلِكَ فِي الْمَيِّتِ، فَوَقَفْنَا عِنْدَ أَمْرِهِ - عَلَيْهِ السَّلَامُ -، {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤]

L9351 If it is said: "You permit the pilgrim in iḥrām to cover his face, yet prohibit this for the deceased?" We respond: Yes, due to the transmitted texts regarding that matter. One may not object to the Messenger of Allah (peace and blessings of Allah be upon him), for he did not command the living pilgrim to uncover his face, yet he commanded it for the deceased. Thus we restrict ourselves to his directive (peace be upon him), as stated: {Nor does he speak from desire. It is but a revelation revealed} [53:3-4].[35]

وَمَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ أَنْ لَا يُفَرِّقَ اللَّهُ تَعَالَى بَيْنَ حُكْمِ الْمُحْرِمِ الْحَيِّ وَالْمُحْرِمِ الْمَيِّتِ؟ أَمْ فِي أَيِّ سُنَّةٍ وَجَدُوا ذَلِكَ أَمْ فِي أَيِّ دَلِيلِ عَقْلٍ؟

L9352 And we do not know from where it occurred to them that Allah the Exalted does not differentiate between the rulings for a living muḥrim and a deceased muḥrim. Or in which Sunnah did they find that, or in which rational evidence?

ثُمَّ هُمْ أَوَّلُ قَائِلِينَ بِهَذَا نَفْسِهِ، فَيُفَرِّقُونَ بَيْنَ حُكْمِ الْمُحْرِمِ الْحَيِّ وَالْمُحْرِمِ الْمَيِّتِ بِآرَائِهِمْ الْفَاسِدَةِ، وَيُنْكِرُونَ ذَلِكَ عَلَى اللَّهِ تَعَالَى وَعَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L9353 Then, they are the first to assert this very claim themselves, so they differentiate between the legal ruling for a living Muḥrim (one in ritual consecration) and a deceased Muḥrim based on their corrupt opinions, denying this to Allah the Exalted and His Messenger (may the peace and blessings of Allah be upon him).

وَقَالَ بَعْضُهُمْ هَذَا: خُصُوصٌ لِذَلِكَ الْمُحْرِمِ. فَقُلْنَا: هَذَا الْكَذِبُ مِنْكُمْ؛ لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا أَفْتَى بِذَلِكَ فِي الْمُحْرِمِ يَمُوتُ إذْ سُئِلَ عَنْهُ، كَمَا أَفْتَى فِي الْمُسْتَحَاضَةِ، وَكَمَا أَفْتَى أُمَّ سَلَمَةَ فِي أَنْ لَا تَحِلَّ ضَفْرَ رَأْسِهَا فِي غُسْلِ الْجَنَابَةِ وَسَائِرِ مَا اُسْتُفْتِيَ فِيهِ - عَلَيْهِ السَّلَامُ -؟ فَأَفْتَى فِيهِ فَكَانَ عُمُومًا؟ .

L9354–9356 Some of them said this, "These are specific rulings for that muḥrim." We responded, "This is a lie from you, because the Prophet (peace and blessings of Allah be upon him) only issued a fatwa concerning the muḥrim who dies when [text cut off]." He was asked about it, as he issued a ruling concerning the mustahādah, and as he issued for Umm Salamah that she should not undo the braid of her head during the ritual bath for major impurity, and all other

[35] **Qur'an references (L9351):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).

matters he was consulted about—peace be upon him—he issued a ruling on it, and it became a general ruling?

L9357 Among the wonders of this world is their approach to his statement—peace be upon him—"He will be resurrected with matted hair," and "[uttering the pilgrimage invocation (*talbiyah*)]" and "[proclaiming God's greatness (*takbīr*)]"—yet they did not apply these rulings universally, limiting them to a specific person. They extended his rulings—peace be upon him—concerning wheat, barley, dates, salt, gold, and silver to matters he never legislated, becoming fixated on contradicting the explicitly stated commands. Yet some of them asserted: "It is authentically reported from 'Ā'ishah, Mother of the Believers, and Ibn 'Umar: embalming [with camphor] a deceased person in the state of *iḥrām*, perfuming him, and covering his head?"

L9358 We said: Authentic reports from Uthman and others contradict this—as we have transmitted through Abd al-Razzaq's chain from Ma'mar via al-Zuhri, who said: Abdullah ibn al-Walid set out for Umrah with Uthman ibn Affan and died at al-Suqya while in ihram. Uthman did not cover his head nor apply perfume to him, and the people adopted this practice. Through Abd al-Razzaq's chain: my father narrated: Ubayd ibn Yazid died at al-Muzdalifah while in ihram, and al-Mughira ibn Hakim did not cover his head within the bier. Through Hammad ibn Salamah's chain from al-Hajjaj ibn Artah via Abu Ishaq al-Sabi'i via al-Harith via Ali ibn Abi Talib, who said regarding the one in ihram: "His head is washed with water and sidr, his head is not covered, and he is not touched with perfume?" This is the view of al-Shafi'i, Ahmad ibn Hanbal, Abu Sulayman, and others. How remarkable that al-Zuhri states "the people adopted this practice" while they claim consensus on lesser matters, such as their assertion regarding the legal punishment for wine consumption being eighty lashes, and other cases. If it is said: "Ibn Umar later opposed Uthman in this, thus invalidating the claim of consensus?"

L9359 We said: Indeed, Uthmān, ʿAlī, al-Ḥasan, and ʿAbdullāh ibn Jaʿfar differed regarding the punishment for wine after ʿUmar, so it became invalid for it

وَمِنْ عَجَائِبِ الدُّنْيَا أَنَّهُمْ أَتَوْا إِلَى قَوْلِهِ - عَلَيْهِ السَّلَامُ - «فَإِنَّهُ يُبْعَثُ مُلَبِّدًا» وَيُلَبِّي " " وَيُهِلُّ " فَلَمْ يَسْتَعْمِلُوهُ، وَأَوْقَفُوهُ عَلَى إنْسَانٍ بِعَيْنِهِ، وَأَتَوْا إلَى مَا خَصَّهُ - عَلَيْهِ السَّلَامُ - مِنْ الْبُرِّ، وَالشَّعِيرِ وَالتَّمْرِ، وَالْمِلْحِ، وَالذَّهَبِ، وَالْفِضَّةِ -: فَتَعَدَّوْا بِحُكْمِهَا إلَى مَا لَمْ يَحْكُمْ - عَلَيْهِ السَّلَامُ - قَطُّ بِهَذَا الْحُكْمِ فِيهِ فَإِنَّمَا أَوْلَعُوا بِمُخَالَفَةِ الْأَوَامِرِ الْمَنْصُوصِ عَلَيْهَا؟ وَقَالَ بَعْضُهُمْ: قَدْ صَحَّ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَابْنِ عُمَرَ: تَحْنِيطُ الْمُحْرِمِ إذَا مَاتَ، وَتَطْيِيبُهُ، وَتَخْمِيرُ رَأْسِهِ؟

قُلْنَا: وَقَدْ صَحَّ عَنْ عُثْمَانَ، وَغَيْرِهِ خِلَافُ ذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ قَالَ: خَرَجَ عَبْدُ اللَّهِ بْنُ الْوَلِيدِ مُعْتَمِرًا مَعَ عُثْمَانَ بْنِ عَفَّانَ، فَمَاتَ بِالسُّقْيَا وَهُوَ مُحْرِمٌ، فَلَمْ يُغَيِّبْ عُثْمَانُ رَأْسَهُ، وَلَمْ يُمِسَّهُ طِيبًا، فَأَخَذَ النَّاسُ بِذَلِكَ -: وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا أَبِي قَالَ: تُوُفِّيَ عُبَيْدُ بْنُ يَزِيدَ بِالْمُزْدَلِفَةِ وَهُوَ مُحْرِمٌ فَلَمْ يُغَيِّبْ الْمُغِيرَةُ بْنُ حَكِيمٍ رَأْسَهُ فِي النَّعْشِ -: وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ الْحَارِثِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ فِي الْمُحْرِمِ، يُغْسَلُ رَأْسُهُ بِالْمَاءِ وَالسِّدْرِ، وَلَا يُغَطَّى رَأْسُهُ، وَلَا يَمَسُّ طِيبًا؟ وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ وَالْعَجَبُ أَنَّ الزُّهْرِيَّ يَقُولُ: فَأَخَذَ النَّاسُ بِذَلِكَ، وَهُمْ يَدَّعُونَ الْإِجْمَاعَ فِي أَقَلَّ مِنْ هَذَا كَدَعْوَاهُمْ فِي الْحَدِّ فِي الْخَمْرِ: ثَمَانِينَ، وَغَيْرَ ذَلِكَ فَإِنْ قِيلَ: قَدْ خَالَفَ ابْنُ عُمَرَ عُثْمَانَ بَعْدَ ذَلِكَ، فَبَطَلَ أَنْ يَكُونَ إجْمَاعًا؟

to be a consensus. When the Salaf disagree, is the obligation not upon us to return what they disputed to the Quran and Sunnah, rather than to the opinion of anyone apart from these two?

قُلْنَا: وَقَدْ خَالَفَ: عُثْمَانُ، وَعَلِيٌّ، وَالْحَسَنُ، وَعَبْدُ اللَّهِ بْنُ جَعْفَرٍ: فِي حَدِّ الْخَمْرِ بَعْدَ عُمَرَ، فَبَطَلَ أَنْ يَكُونَ إجْمَاعًا؟ وَإِذَا تَنَازَعَ السَّلَفُ فَالْفَرْضُ عَلَيْنَا رَدُّ مَا تَنَازَعُوا فِيهِ إلَى الْقُرْآنِ وَالسُّنَّةِ لَا إلَى قَوْلِ أَحَدٍ دُونَهُمَا؟

L9360–9361 Among the peculiarities of worldly life is their argument in this matter by citing what we have narrated via the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ: that the Messenger of Allah—peace and blessings be upon him—said, "Cover their faces, and do not resemble the Jews."

وَمِنْ طَرَائِفِ الدُّنْيَا احْتِجَاجُهُمْ فِي هَذَا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «خَمِّرُوا وُجُوهَهُمْ، وَلَا تَشَبَّهُوا بِالْيَهُودِ» .

L9362 This is invalid for several reasons: First—it is *mursal* (a hadith with an incomplete chain), and is there any proof in a *mursal*? Second—even if authentic, it contains no explicit text or evidence indicating it pertains to the *muhrim* (one in *ihram*) at all; rather, would it not have applied to all deceased individuals? Third—it is fundamentally impermissible to attribute such a statement to him (peace be upon him), for he (peace be upon him) only speaks the truth, whereas the Jews do not uncover the faces of their deceased.

وَهَذَا بَاطِلٌ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّهُ مُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ؟ وَالثَّانِي - أَنَّهُ لَيْسَ فِيهِ نَصٌّ وَلَا دَلِيلٌ - لَوْ صَحَّ - عَلَى أَنَّهُ فِي الْمُحْرِمِ أَصْلًا، بَلْ كَانَ يَكُونُ فِي سَائِرِ الْمَوْتَى؟ وَثَالِثُهَا - أَنَّهُ لَا يَجُوزُ أَنْ يَقُولَهُ - عَلَيْهِ السَّلَامُ - أَصْلًا؛ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يَقُولُ إلَّا الْحَقَّ، وَالْيَهُودُ لَا تَكْشِفُ وُجُوهَ مَوْتَاهَا.

L9363 Thus, it was established that it is invalid. 'Aṭā' heard it from someone of no merit or from someone who erred. Fourthly: Even if it were authentically transmitted regarding those in iḥrām, it would contain no valid proof, for Ibn 'Abbās's report is undoubtedly the other [authoritative one]. It is inconceivable that the Prophet—peace be upon him—would describe a practice he commanded as resembling Jewish customs. It is plausible that he first prohibited emulating Jews before receiving Revelation, then later commanded a similar act—not as imitation of them—just as he—peace be upon him—spoke about the Jewish woman's statement regarding grave punishment, then the Revelation came to him confirming the validity of grave punishment.

فَصَحَّ أَنَّهُ بَاطِلٌ، سَمِعَهُ عَطَاءٌ مِمَّنْ لَا خَيْرَ فِيهِ أَوْ مِمَّنْ وَهَمَ وَالرَّابِعُ -: أَنَّهُ لَوْ صَحَّ مُسْنَدًا فِي الْمُحْرِمِينَ لَمَا كَانَتْ فِيهِ حُجَّةٌ؛ لِأَنَّ خَبَرَ ابْنِ عَبَّاسٍ هُوَ الْآخَرُ بِلَا شَكٍّ، وَمِنْ الْمُحَالِ أَنْ يَقُولَ - عَلَيْهِ السَّلَامُ - فِي أَمْرٍ أَمَرَ بِهِ أَنَّهُ تَشَبُّهٌ بِالْيَهُودِ، وَجَائِزٌ أَنْ يَنْهَى عَنْ التَّشَبُّهِ بِالْيَهُودِ قَبْلَ أَنْ يَنْزِلَ عَلَيْهِ الْوَحْيُ، ثُمَّ يَأْمُرَ بِمِثْلِ ذَلِكَ الْفِعْلِ، لَا تَشَبُّهًا بِهِمْ كَمَا قَالَ - عَلَيْهِ السَّلَامُ - فِي قَوْلِ الْيَهُودِيَّةِ فِي عَذَابِ الْقَبْرِ، ثُمَّ أَتَاهُ الْوَحْيُ بِصِحَّةِ عَذَابِ الْقَبْرِ

L9364 Some of them cited as evidence in this matter the authentic hadith: "When the deceased dies, their deeds cease except for three: ongoing charity, knowledge they taught, and a righteous child who prays for them."

وَاحْتَجَّ بَعْضُهُمْ فِي هَذَا بِالْخَبَرِ الثَّابِتِ «إذَا مَاتَ الْمَيِّتُ انْقَطَعَ عَمَلُهُ إلَّا مِنْ ثَلَاثٍ: صَدَقَةٌ جَارِيَةٌ، وَعِلْمٌ عَلَّمَهُ، وَوَلَدٌ صَالِحٌ يَدْعُو لَهُ» .

L9365–9367 In this, there is absolutely no evidence for them whatsoever, because it merely contains that his actions have ceased—and thus we say—but it does not indicate that the actions of others related to him cease. Rather, others are commanded to perform obligatory acts concerning him: ritual washing, funeral prayer (ṣalāt al-janāzah), burial, and other such duties. This action is not the deed of the deceased *muḥrim*; it is the action of the living. Thus, their confusion and distortion become evident. Some of them have cited as evidence the words of Allah, the Exalted: And that there is not for man except what he strives for (Quran 53:39).[36]

وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا؛ لِأَنَّهُ إِنَّمَا فِيهِ أَنَّهُ انْقَطَعَ عَمَلُهُ، وَهَكَذَا نَقُولُ، وَلَيْسَ فِيهِ أَنَّهُ يَنْقَطِعُ عَمَلُ غَيْرِهِ فِيهِ، بَلْ غَيْرُهُ مَأْمُورٌ فِيهِ بِأَعْمَالٍ مُفْتَرَضَةٍ، مِنْ غُسْلٍ، وَصَلَاةٍ، وَدَفْنٍ، وَغَيْرِ ذَلِكَ، وَهَذَا الْعَمَلُ لَيْسَ هُوَ عَمَلَ الْمُحْرِمِ الْمَيِّتِ، إِنَّمَا هُوَ عَمَلُ الْأَحْيَاءِ - فَظَهَرَ تَخْلِيطُهُمْ وَتَمْوِيهُهُمْ وَاحْتَجَّ بَعْضُهُمْ بِقَوْلِ اللَّهِ تَعَالَى: {وَأَنْ لَيْسَ لِلإِنْسَانِ إِلا مَا سَعَى} [النجم: ٣٩]

L9368 This is their attribution of words away from their proper contexts, and we have never stated that this stems from the deceased's own striving. Rather, it is the striving of the living which is commanded regarding the deceased, just as we are commanded not to wash the martyr, nor shroud him, and to bury him in his garments. This is neither the martyr's action nor his striving, but rather our action regarding him and our striving for ourselves - that which we have been commanded to undertake concerning him. Is there any difference?

وَهَذِهِ إِحَالَةٌ مِنْهُمْ لِلْكَلِمِ عَنْ مَوَاضِعِهِ، وَلَمْ نَقُلْ قَطُّ: إِنَّ هَذَا مِنْ سَعْيِ الْمَيِّتِ، وَلَكِنَّهُ مِنْ سَعْيِ الْأَحْيَاءِ الْمَأْمُورِ بِهِ فِي الْمَيِّتِ كَمَا أُمِرْنَا بِأَنْ لَا نُغَسِّلَ الشَّهِيدَ وَلَا نُكَفِّنَهُ، وَأَنْ نَدْفِنَهُ فِي ثِيَابِهِ، وَلَيْسَ هُوَ عَمَلَ الشَّهِيدِ وَلَا سَعْيُهُ، لَكِنَّهُ عَمَلُنَا فِيهِ وَسَعْيُنَا لِأَنْفُسِنَا الَّذِي أُمِرْنَا بِهِ فِيهِ وَلَا فَرْقَ؟

L9369 The statement: "They arbitrarily impose corrupt opinions, leaving nothing remaining except if they hover around using all this to object to the Prophet's saying (peace be upon him): 'He will be resurrected مُلَبِّدًا'—meaning proclaiming the talbiyah and entering the state of ihram. Is this apostasy?"

وَالْقَوْلُ مُتَحَكِّمُونَ بِالْآرَاءِ الْفَاسِدَةِ وَلَا مَزِيدَ إِلَّا إِنْ كَانُوا يَحُومُونَ حَوْلَ أَنْ يَعْتَرِضُوا بِهَذَا كُلِّهِ عَلَى قَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَإِنَّهُ يُبْعَثُ مُلَبِّدًا» يُلَبِّي " " وَيُهِلُّ " فَهَذَا رِدَّةٌ؟

L9370 There is no distinction between his statement—peace be upon him—"Verily, the muḥrim will be raised on the Day of Judgment reciting the talbiyah and tahleel—with matted hair," and his statement—peace be upon him—"Verily, whoever is wounded in Allah's cause will come on the Day of Judgment gushing blood—its color is the color of blood, and its fragrance is the fragrance of musk."

وَلَا فَرْقَ بَيْنَ قَوْلِهِ - عَلَيْهِ السَّلَامُ - «إِنَّ الْمُحْرِمَ يُبْعَثُ يَوْمَ الْقِيَامَةِ يُلَبِّي وَيُهِلُّ وَمُلَبِّدًا» وَبَيْنَ قَوْلِهِ - عَلَيْهِ السَّلَامُ - «إِنَّ مَنْ يُكْلَمُ فِي سَبِيلِ اللَّهِ يَأْتِي يَوْمَ الْقِيَامَةِ يَثْعَبُ دَمًا، اللَّوْنُ لَوْنُ الدَّمِ، وَالرِّيحُ رِيحُ الْمِسْكِ» .

L9371 All these are merits that are neither abrogated nor invalidated. Yet these people, who claim to be advocates of juristic analogy (qiyās), why do they not argue: "Someone killed in Allah's cause and someone who dies in iḥrām—

وَكُلُّ هَذِهِ فَضَائِلُ لَا تُنْسَخُ وَلَا تُرَدُّ، وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، فَهَلَّا قَالُوا: الْمَقْتُولُ فِي سَبِيلِ اللَّهِ، وَالْمَيِّتُ مُحْرِمًا: كِلَاهُمَا مَاتَ فِي سَبِيلِ اللَّهِ تَعَالَى، وَحُكْمُ أَحَدِهِمَا خِلَافُ حُكْمِ الْمَوْتَى، فَكَذَلِكَ الْآخَرُ؟

[36] **Qur'an references (L9365):** Qur'an 53:39 (An-Najm).

both died in the path of Allah Almighty. The ruling for one of them differs from those applicable to ordinary deceased persons; should the same not apply to the other?"

L9372 But they neither follow the revealed texts nor are they proficient in legal analogy. There is no doubt that the juristic similarity between jihad, and Hajj is closer than that between theft, and marriage.

L9373 **A legal ruling: Standing up for the funeral when one sees it.**

L9374 Issue 591: It is recommended to stand for the funeral procession when one sees it - even if it is a disbeliever's funeral - until it is placed down or passes by. If one does not stand, there is no sin.

L9375 From what has been narrated to us through al-Bukhārī's chain: Qutaybah narrated to us, al-Layth - that is, Ibn Saʿd - narrated to us, from Nāfiʿ, from Ibn ʿUmar, from ʿĀmir ibn Rabīʿah, from the Prophet - peace and blessings be upon him - who said: "When one of you sees a funeral procession, if he is not walking with it, let him stand until it has passed him by, or until he remains behind it, or until it is set down before passing him."

L9376–9377 It has also been narrated through the chains of Ayyūb, Ibn Jurayj, ʿUbayd Allāh ibn ʿUmar, and ʿAbd Allāh ibn ʿAwn—all of them transmitting from Nāfiʿ, from Ibn ʿUmar, as a musnad narration. And through the chain of al-Zuhrī: from Sālim, from his father, as a musnad.

L9378 From the chain of al-Bukhārī: Muslim ibn Ibrāhīm narrated to us; Hishām al-Dastawā'ī narrated to us; Yaḥyā ibn Abī Kathīr narrated to us from Abū Salama ibn ʿAbd al-Raḥmān from Abū Saʿīd al-Khudrī from the Prophet—peace be upon him—who said: "When you see the funeral procession, stand up. Whoever follows it must not sit until it is placed."[37]

L9379 From the chain of al-Bukhārī: Muʿādh ibn Fuḍālah narrated to us from Hishām - who is al-Dasṭuwā'ī - from Yaḥyā - who is Ibn Abī Kathīr - from

[37] **Hadith references (L9378):** Sahih al-Bukhari 1310; Sunan an-Nasai 1917; Mishkat al-Masabih 1648.

وَلَكِنَّهُمْ لَا النُّصُوصَ يَتَّبِعُونَ، وَلَا الْقِيَاسَ يُحْسِنُونَ، وَلَا شَكَّ فِي أَنَّ الشَّبَهَ بَيْنَ الْجِهَادِ، وَالْحَجِّ أَقْرَبُ مِنْ الشَّبَهِ بَيْنَ السَّرِقَةِ، وَالنِّكَاحِ

[مَسْأَلَةُ الْقِيَامُ لِلْجِنَازَةِ إِذَا رَآهَا الْمَرْءُ]

؟ ٥٩١ - مَسْأَلَةٌ: وَنَسْتَحِبُّ الْقِيَامَ لِلْجِنَازَةِ إِذَا رَآهَا الْمَرْءُ - وَإِنْ كَانَتْ جِنَازَةَ كَافِرٍ - حَتَّى تُوضَعَ أَوْ تَخْلُفَهُ، فَإِنْ لَمْ يَقُمْ فَلَا حَرَجَ

لِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا قُتَيْبَةُ نَا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ عَامِرِ بْنِ رَبِيعَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا رَأَى أَحَدُكُمْ الْجِنَازَةَ فَإِنْ لَمْ يَكُنْ مَاشِيًا مَعَهَا فَلْيَقُمْ حَتَّى يَخْلُفَهَا أَوْ تَخْلُفَهُ أَوْ تُوضَعَ مِنْ قَبْلِ أَنْ تَخْلُفَهُ» .

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ أَيُّوبَ، وَابْنِ جُرَيْجٍ، وَعُبَيْدِ اللَّهِ بْنِ عُمَرَ، وَعَبْدِ اللَّهِ بْنِ عَوْنٍ، كُلِّهِمْ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ مُسْنَدًا. وَمِنْ طَرِيقِ الزُّهْرِيِّ عَنْ سَالِمٍ عَنْ أَبِيهِ مُسْنَدًا.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا مُسْلِمٌ هُوَ ابْنُ إبْرَاهِيمَ - نَا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ - نا يَحْيَى بْنُ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا رَأَيْتُمْ الْجِنَازَةَ فَقُومُوا، فَمَنْ تَبِعَهَا فَلَا يَقْعُدْ حَتَّى تُوضَعَ» .

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا مُعَاذُ بْنُ فُضَالَةَ نا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ - عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ عَنْ عُبَيْدِ اللَّهِ بْنِ مِقْسَمٍ عَنْ «جَابِرٍ قَالَ مَرَّ بِنَا جِنَازَةٌ، فَقَامَ لَهَا النَّبِيُّ - صَلَّى اللَّهُ

ʿUbayd Allāh ibn Miqsam, from Jābir, who said: “A funeral procession passed by us, so the Prophet—peace and blessings be upon him—stood up out of respect, and we followed his example. We asked: ’O Messenger of Allāh, is this the funeral of a Jew?’ He said: ’When you see a funeral procession, stand up.’”

عَلَيْهِ وَسَلَّمَ - وَقُمْنَا بِهِ فَقُلْنَا: يَا رَسُولَ اللَّهِ، إِنَّهَا جِنَازَةُ يَهُودِيٍّ؟ قَالَ: فَإِذَا رَأَيْتُمْ الْجِنَازَةَ فَقُومُوا»

L9380 And by it do Abu Saʿid—who considers it obligatory—, Ibn ʿUmar, Sahl ibn Hunayf, Qays ibn Saʿd, Abu Musa al-Ashʿari, Abu Masʿud al-Badri, al-Hasan ibn ʿAli, al-Miswar ibn Makhramah, Qatadah, Ibn Sirin, al-Nakhaʿi, al-Shaʿbi, and Salim ibn ʿAbdullah hold this opinion?

وَبِهِ يَأْخُذُ أَبُو سَعِيدٍ - وَيَرَاهُ وَاجِبًا - وَابْنُ عُمَرَ، وَسَهْلُ بْنُ حُنَيْفٍ، وَقَيْسُ بْنُ سَعْدٍ، وَأَبُو مُوسَى الْأَشْعَرِيُّ، وَأَبُو مَسْعُودٍ الْبَدْرِيُّ، وَالْحَسَنُ بْنُ عَلِيٍّ، وَالْمِسْوَرُ بْنُ مَخْرَمَةَ، وَقَتَادَةُ، وَابْنُ سِيرِينَ، وَالنَّخَعِيُّ، وَالشَّعْبِيُّ، وَسَالِمُ بْنُ عَبْدِ اللَّهِ؟

L9381 From the transmission of Muslim: Muḥammad ibn Rumḥ ibn al-Muhājir narrated to us; al-Layth (Ibn Saʿd) narrated to us from Yaḥyā ibn Saʿīd (al-Anṣārī) from Wāqid ibn ʿAmr ibn Saʿd ibn Muʿādh, that Nāfiʿ ibn Jubayr ibn Muṭʿim informed him that Masʿūd ibn al-Ḥakam related to him from ʿAlī ibn Abī Ṭālib, who said: “Allāh’s Messenger (ṣallallāhu ʿalayhi wa-sallam) stood up, then sat down” - referring to [his posture] for the funeral. The Prophet’s sitting (ṣallallāhu ʿalayhi wa-sallam) after instructing others to stand demonstrates this was a recommended injunction rather than an obligation. It cannot be validly claimed this constitutes abrogation, for one may not abandon a firmly established sunnah except through definitive proof of abrogation. Abrogation only occurs either through explicit prohibition or abandonment coupled with prohibition.

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رُمْحِ بْنِ الْمُهَاجِرِ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ يَحْيَى بْنِ سَعِيدٍ هُوَ الْأَنْصَارِيُّ - عَنْ وَاقِدِ بْنِ عَمْرِو بْنِ سَعْدِ بْنِ مُعَاذٍ أَنَّ نَافِعَ بْنَ جُبَيْرِ بْنِ مُطْعِمٍ أَخْبَرَهُ أَنَّ مَسْعُودَ بْنَ الْحَكَمِ حَدَّثَهُ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ: «قَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ قَعَدَ يَعْنِي لِلْجِنَازَةِ» فَكَانَ قُعُودُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْدَ أَمْرِهِ بِالْقِيَامِ مُبَيِّنًا أَنَّهُ أَمْرُ نَدْبٍ، وَلَيْسَ يَجُوزُ أَنْ يَكُونَ هَذَا نَسْخًا، لِأَنَّهُ لَا يَجُوزُ تَرْكُ سُنَّةٍ مُتَيَقَّنَةٍ إِلَّا بِيَقِينِ نَسْخٍ، وَالنَّسْخُ لَا يَكُونُ إِلَّا بِالنَّهْيِ، أَوْ بِتَرْكٍ مَعَهُ نَهْيٌ؟

L9382–9383 If it is said: You have narrated through the chain of Ḥammād ibn Salama from Muḥammad ibn ʿAmr from Wāqid ibn ʿAmr ibn Saʿd ibn Muʿādh, who said: “I stood next to Nāfiʿ ibn Jubayr at a funeral, and he said to me: Masʿūd ibn al-Ḥakam narrated to me from ʿAlī ibn Abī Ṭālib, who said: ’The Messenger of Allah (peace be upon him) commanded us to stand, then commanded us to sit.’” Why, then, did you not definitively conclude abrogation based on this narration?

فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ وَاقِدِ بْنِ عَمْرِو بْنِ سَعْدِ بْنِ مُعَاذٍ قَالَ: قُمْت إِلَى جَنْبِ نَافِعِ بْنِ جُبَيْرٍ فِي جِنَازَةٍ، فَقَالَ لِي: حَدَّثَنِي مَسْعُودُ بْنُ الْحَكَمِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقِيَامِ. ثُمَّ أَمَرَنَا بِالْجُلُوسِ» فَهَلَّا قَطَعْتُمْ بِالنَّسْخِ بِهَذَا الْخَبَرِ؟

L9384 We said, “We used to do that, had it not been for what was narrated to us through the chain of Aḥmad ibn Shuʿayb—Yūsuf ibn Saʿīd reported to us—Ḥajjāj ibn Muḥammad, the one-eyed, narrated from Ibn Jurayj, from Ibn ʿA-

قُلْنَا: كُنَّا نَفْعَلُ ذَلِكَ، لَوْلَا مَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا يُوسُفُ بْنُ سَعِيدٍ نا حَجَّاجُ بْنُ مُحَمَّدٍ هُوَ الْأَعْوَرُ - عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ عَجْلَانَ عَنْ سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي

jlān, from Saʿīd al-Maqburī, from Abū Hurayrah and Abū Saʿīd al-Khudrī, both of whom said: 'We never saw the Messenger of Allah—peace and blessings of Allah be upon him—attend a funeral and sit until the deceased was placed in the grave.'"[38]

L9385 This was his consistent practice — peace be upon him — and Abū Hurayrah and Abū Saʿīd never left him — peace be upon him — until his passing. Thus, it was confirmed that his instruction to sit denotes permissibility and leniency, while his exhortation to stand and his act of standing are recommended.

L9386 Among those who would sit were Ibn Abbas, Abu Hurayrah, and Saʿīd ibn al-Musayyib.

L9387 ## Issue: Hastening the Funeral

L9388 592 – Issue: It is obligatory to hasten the funeral procession, and it is recommended that those who have prayed over it do not depart until the deceased is buried. If one leaves before burial, there is no sin, and what is the point of awaiting the permission of the funeral's guardian?

L9389–9391 As for the obligation of hastening, it is due to what we have reported through the chain of Muslim: Abu al-Tahir narrated to us, Ibn Wahb narrated to us: Yunus ibn Zayd informed me from Ibn Shihab, who narrated to me: Abu Umamah ibn Sahl ibn Hunayf narrated from Abu Hurayrah, who said: I heard the Messenger of Allah—peace and blessings be upon him—say: "Hasten with the funeral procession, for if the deceased was righteous, you bring it closer to goodness, and if not, it is an evil you cast off from your necks." This was the established practice of the Companions, as we have reported through the chain of Ahmad ibn Shu'ayb: Ali ibn Hajar narrated to us from Isma'il ibn 'Ulayyah and Hushaym, both of whom narrated from 'Uyaynah ibn 'Abd al-Rahman from Abu Bakrah, who said: "Verily, I have..." I observed that we, while with the Messenger of Allah (peace be upon him), almost began to walk briskly alongside the funeral procession.[39]

[38] **Hadith references (L9384):** Sunan an-Nasai 1918.

[39] **Hadith references (L9389):** Sahih Muslim 944c.

هُرَيْرَةَ، وَأَبِي سَعِيدٍ الْخُدْرِيِّ قَالَا جَمِيعًا: «مَا رَأَيْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَهِدَ جِنَازَةً قَطُّ فَجَلَسَ حَتَّى تُوضَعَ» .

فَهَذَا عَمَلُهُ - عَلَيْهِ السَّلَامُ - الْمُدَاوِمُ، وَأَبُو هُرَيْرَةَ وَأَبُو سَعِيدٍ مَا فَارَقَاهُ - عَلَيْهِ السَّلَامُ - حَتَّى مَاتَ، فَصَحَّ أَنَّ أَمْرَهُ بِالْجُلُوسِ إبَاحَةٌ وَتَخْفِيفٌ، وَأَمْرَهُ بِالْقِيَامِ وَقِيَامَهُ نَدْبٌ

وَمِمَّنْ كَانَ يَجْلِسُ: ابْنُ عَبَّاسٍ، وَأَبُو هُرَيْرَةَ، وَسَعِيدُ بْنُ الْمُسَيِّبِ.

[مَسْأَلَةُ الْإِسْرَاعُ بِالْجِنَازَةِ]

٥٩٢ - مَسْأَلَةٌ: وَيَجِبُ الْإِسْرَاعُ بِالْجِنَازَةِ، وَنَسْتَحِبُّ أَنْ لَا يَزُولَ عَنْهَا مَنْ صَلَّى عَلَيْهَا حَتَّى تُدْفَنَ، فَإِنْ انْصَرَفَ قَبْلَ الدَّفْنِ فَلَا حَرَجَ، وَلَا مَعْنَى لِانْتِظَارِ إذْنِ وَلِيِّ الْجِنَازَةِ؟

أَمَّا وُجُوبُ الْإِسْرَاعِ، فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو الطَّاهِرِ نا ابْنُ وَهْبٍ: أَخْبَرَنِي يُونُسُ بْنُ زَيْدٍ عَنْ ابْنِ شِهَابٍ حَدَّثَنِي أَبُو أُمَامَةَ بْنُ سَهْلِ بْنِ حُنَيْفٍ عَنْ أَبِي هُرَيْرَةَ سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «أَسْرِعُوا بِالْجَنَازَةِ، فَإِنْ كَانَتْ صَالِحَةً قَرَّبْتُمُوهَا إلَى الْخَيْرِ، وَإِنْ كَانَتْ غَيْرَ ذَلِكَ كَانَ شَرًّا تَضَعُونَهُ عَنْ رِقَابِكُمْ» . وَهُوَ عَمَلُ الصَّحَابَةِ، كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَلِيُّ بْنُ حَجَرٍ عَنْ إسْمَاعِيلَ ابْنِ عُلَيَّةَ وَهُشَيْمٍ كِلَاهُمَا عَنْ عُيَيْنَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ «أَبِي بَكْرَةَ قَالَ: لَقَدْ رَأَيْتُنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّا لَنَكَادُ نَرْمُلُ بِالْجَنَازَةِ رَمَلًا» .

L9392 And through the chain of Muslim: Muḥammad ibn Bashshār narrated to us, Yaḥyā ibn Saʿīd al-Qaṭṭān narrated to us, Shuʿbah narrated to us from Qatādah, who narrated from Sālim ibn Abī al-Jaʿd, who narrated from Maʿdān ibn Abī Ṭalḥah al-Yaʿmurī, who narrated from Thawbān, the freed slave of the Messenger of Allah—peace and blessings be upon him—that the Messenger of Allah—peace and blessings be upon him—said: "Whoever prays over a funeral will have a qīrāṭ, and if he witnesses its burial, he will have two qīrāṭs. The qīrāṭ is like Mount Uḥud."[40]

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا شُعْبَةُ حَدَّثَنَا قَتَادَةُ عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ عَنْ مَعْدَانَ بْنِ أَبِي طَلْحَةَ الْيَعْمُرِيِّ عَنْ ثَوْبَانَ مَوْلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ صَلَّى عَلَى جِنَازَةٍ فَلَهُ قِيرَاطٌ، فَإِنْ شَهِدَ دَفْنَهَا فَلَهُ قِيرَاطَانِ - الْقِيرَاطُ مِثْلُ أُحُدٍ» .

L9393 We have also transmitted it through the chain of Ibn Mughaffal and Abū Hurayrah as a sound, musnad report. Abū Muḥammad said: Hastening with it is obligatory, while the latter is recommended. The Prophet's (peace be upon him) permission for one who prays over the deceased to abstain from attending the burial—while being granted a _qirat_ of reward equivalent to Mount Uḥud—provides explicit clarification that the guardian's permission is meaningless. Have we not transmitted through the chain of ʿAbd al-Razzāq, from Maʿmar, from Abū Isḥāq al-Sabīʿī, that Ibn Masʿūd said: "When you pray over the deceased, you have fulfilled your duty. Leave them and their people," and that he would depart without seeking their permission? Through the same chain to Maʿmar, from Hishām ibn ʿUrwah, from his father, from Zayd ibn Thābit: He would depart without awaiting their permission—referring to the funeral. And by this is the position Maʿmar adopts.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ ابْنِ مُغَفَّلٍ وَأَبِي هُرَيْرَةَ مُسْنَدًا صَحِيحًا؟ قَالَ أَبُو مُحَمَّدٍ: الْإِسْرَاعُ بِهَا أَمْرٌ، وَهَذَا الْآخَرُ نَدْبٌ، وَفِي إبَاحَتِهِ - عَلَيْهِ السَّلَامُ - لِمَنْ صَلَّى عَلَى الْجَنَازَةِ أَنْ لَا يَشْهَدَ دَفْنَهَا وَجُعِلَ لَهُ مَعَ ذَلِكَ قِيرَاطُ أَجْرٍ مِثْلُ جَبَلِ أُحُدٍ -: بَيَانٌ جَلِيٌّ بِأَنَّهُ لَا مَعْنَى لِإِذْنِ صَاحِبِ الْجَنَازَةِ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ أَنَّ ابْنَ مَسْعُودٍ قَالَ: إذَا صَلَّيْت عَلَى الْجَنَازَةِ فَقَدْ قَضَيْت الَّذِي عَلَيْك، فَخَلِّهَا وَأَهْلَهَا، وَكَانَ يَنْصَرِفُ وَلَا يَسْتَأْذِنُهُمْ؟ وَبِهِ إلَى مَعْمَرٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ زَيْدِ بْنِ ثَابِتٍ: أَنَّهُ كَانَ يَنْصَرِفُ وَلَا يَنْتَظِرُ إذْنَهُمْ، يَعْنِي فِي الْجَنَازَةِ وَبِهِ يَأْخُذُ مَعْمَرٌ.

L9394 Ma'mar said: This is the view of Al-Ḥasan and Qatāda.

قَالَ مَعْمَرٌ: وَهُوَ قَوْلُ الْحَسَنِ، وَقَتَادَةَ.

L9395 It has been authentically reported from al-Qasim and Salim; it has been reported from Umar ibn Abd al-Aziz.

وَصَحَّ عَنْ الْقَاسِمِ، وَسَالِمٍ، وَرُوِيَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ

L9396 ## The Issue of the Imam's Position in the Funeral Prayer

[مَسْأَلَةٌ مَوْقِفُ الْإِمَامِ فِي صَلَاةِ الْجَنَازَةِ]

L9397–9399 593 - Issue: The Imam stands—when praying over the deceased—opposite the head of a man and opposite the middle of a woman. Malik said: He stands opposite the middle of a man, and Abu Hanifah: at the shoulder of a woman. It is also narrated from Abu Hanifah: He stands opposite the chest

٥٩٣ - مَسْأَلَةٌ: وَيَقِفُ الْإِمَامُ - إذَا صَلَّى عَلَى الْجَنَازَةِ - قُبَالَةَ رَأْسِهِ وَمِنْ الْمَرْأَةِ قُبَالَةَ وَسَطِهَا -: قَالَ مَالِكٌ، وَأَبُو حَنِيفَةَ يَقِفُ مِنْ الرَّجُلِ قُبَالَةَ وَسَطِهِ، وَمِنْ الْمَرْأَةِ عِنْدَ مَنْكِبَيْهَا. وَرُوِيَ عَنْ أَبِي حَنِيفَةَ أَيْضًا: يَقِفُ قُبَالَةَ الصَّدْرِ مِنْ كِلَيْهِمَا؟ بُرْهَانُ صِحَّةِ قَوْلِنَا

[40] **Hadith references (L9392):** Sahih Muslim 946a.

of both. The evidence for the validity of our opinion is what we narrated through the chain of Abu Dawud: Narrated by Dawud ibn Mu'adh, narrated by Abd al-Warith. Narrated Abu Ghalib Nafi': "I attended the funeral of Abdullah ibn Umayr, and Anas ibn Malik led the prayer over him while I stood behind him. He positioned himself at the head of the deceased and said four Takbirs. Then they said, 'O Abu Hamzah, the Ansari woman is here,' so they brought her forward on a green bier. He stood at the level of her hips and prayed over her in the same way he prayed over the man. Al-Ala' ibn Ziyad asked him, 'O Abu Hamzah, did the Messenger of Allah—peace and blessings be upon him—pray the funeral prayer as you did, saying four Takbirs, standing at the head of the man and the hips of the woman?' He replied, 'Yes.'"

مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد: نا دَاوُد بْنُ مُعَاذٍ نا عَبْدُ الْوَارِثِ عَنْ أَبِي غَالِبٍ نَافِعٍ قَالَ «شَهِدْت جِنَازَةَ عَبْدِ اللَّهِ بْنِ عُمَيْرٍ، فَصَلَّى عَلَيْهَا أَنَسُ بْنُ مَالِكٍ وَأَنَا خَلْفَهُ، فَقَامَ عِنْدَ رَأْسِهِ فَكَبَّرَ أَرْبَعَ تَكْبِيرَاتٍ، ثُمَّ قَالُوا: يَا أَبَا حَمْزَةَ، الْمَرْأَةُ الْأَنْصَارِيَّةُ فَقَرَّبُوهَا وَعَلَيْهَا نَعْشٌ أَخْضَرُ، فَقَامَ عَلَيْهَا عِنْدَ عَجِيزَتِهَا، فَصَلَّى عَلَيْهَا نَحْوَ صَلَاتِهِ عَلَى الرَّجُلِ فَقَالَ لَهُ الْعَلَاءُ بْنُ زِيَادٍ: يَا أَبَا حَمْزَةَ، هَكَذَا كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي عَلَى الْجِنَازَةِ كَصَلَاتِكَ، يُكَبِّرُ عَلَيْهَا أَرْبَعًا، وَيَقُومُ عِنْدَ رَأْسِ الرَّجُلِ وَعَجِيزَةِ الْمَرْأَةِ؟ قَالَ: نَعَمْ»

L9400 We have narrated it through the chain of Al-Hajjaj ibn Minhal, from Hammam ibn Yahya, from Nafi' Abu Ghalib, who mentioned this hadith of Anas. At its end: Al-'Ala' ibn Ziyad turned to the people and said, "Preserve this." Abu Muhammad said: This is an issue in which the Hanafis and Malikis have contradicted their own principles, for they censure others for opposing a Companion who has no known opponent among the Companions, yet here is a Companion with no known opponent among the Companions, and they have opposed him. Our opinion here is that of Al-Shafi'i, Ahmad, Abu Sulayman, and to this Abu Yusuf reverted. We know of no valid argument for those who say, "He should stand in the middle of both," except their claim that they analogized this to the Imam standing opposite the middle of the row behind him. This is the most absurd analogy in the world, for the deceased is not a follower of the Imam in prayer to stand at his middle. The argument of those who say, "He should stand at the chest," is that they claimed: This was before the use of biers, to conceal the woman from the people. This is invalid—a false claim without proof—and it is an exceedingly grave matter. We seek refuge in Allah from it.

وَرُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هَمَّامُ بْنُ يَحْيَى عَنْ نَافِعٍ أَبِي غَالِبٍ فَذَكَرَ حَدِيثَ أَنَسٍ هَذَا، وَفِي آخِرِهِ: فَأَقْبَلَ الْعَلَاءُ بْنُ زِيَادٍ عَلَى النَّاسِ فَقَالَ: احْفَظُوا؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا مَكَانٌ خَالَفَ فِيهِ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ أُصُولَهُمْ؛ لِأَنَّهُمْ يُشَنِّعُونَ بِخِلَافِ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ، وَهَذَا صَاحِبٌ لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، وَقَدْ خَالَفُوهُ؟ وَقَوْلُنَا هَذَا هُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ، وَإِلَيْهِ رَجَعَ أَبُو يُوسُفَ؟ وَلَا نَعْلَمُ لِمَنْ قَالَ: يَقِفُ فِي كِلَيْهِمَا عِنْدَ الْوَسَطِ -: حُجَّةً، إلَّا أَنَّهُمْ قَالُوا: قِسْنَا ذَلِكَ عَلَى وُقُوفِ الْإِمَامِ مُقَابِلَ وَسَطِ الصَّفِّ خَلْفَهُ، وَهَذَا أَسْخَفُ قِيَاسٍ فِي الْعَالَمِ؛ لِأَنَّ الْمَيِّتَ لَيْسَ مَأْمُومًا لِلْإِمَامِ فَيَقِفُ وَسَطَهُ وَحُجَّةُ مَنْ قَالَ: يَقِفُ عِنْدَ الصَّدْرِ أَنَّهُمْ قَالُوا: كَانَ ذَلِكَ قَبْلَ اتِّخَاذِ النُّعُوشِ، فَيَسْتُرُ الْمَرْأَةَ مِنْ النَّاسِ وَهَذَا بَاطِلٌ، وَدَعْوَى كَاذِبَةٌ بِلَا بُرْهَانٍ، وَهَذَا عَظِيمٌ جِدًّا نَعُوذُ بِاَللَّهِ مِنْهُ.

L9401 Moreover, his lie is cold and null, for even if he conceals the woman's shameful flaws from others, he does not conceal them from himself—and are he and others not equal in that?

ثُمَّ مَعَ كَذِبِهِ بَارِدٌ بَاطِلٌ، لِأَنَّهُ وَإِنْ سَتَرَ عَجِيزَتَهَا عَنْ النَّاسِ لَمْ يَسْتُرْهَا عَنْ نَفْسِهِ، وَهُوَ وَالنَّاسُ سَوَاءٌ فِي ذَلِكَ؟

Issue: Insulting the Dead

[مَسْأَلَةُ سَبِّ الْأَمْوَاتِ]

594 – Issue: It is impermissible to insult the dead with the intent of causing harm. However, warning against disbelief, blameworthy innovation, or corrupt practices is permissible. As for cursing disbelievers: is it permissible?

٥٩٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ سَبُّ الْأَمْوَاتِ عَلَى الْقَصْدِ بِالْأَذَى، وَأَمَّا تَحْذِيرٌ مِنْ كُفْرٍ أَوْ بِدْعَةٍ أَوْ مِنْ عَمَلٍ فَاسِدٍ: فَمُبَاحٌ، وَلَعْنُ الْكُفَّارِ: مُبَاحٌ؟

From what has been narrated to us through the chain of al-Bukhārī: From Adam, from Shu'bah, from al-A'mash, from Mujāhid, from 'Ā'ishah, the Mother of the Believers, who said: The Prophet (peace be upon him) said, "Do not insult the dead, for they have met what they forwarded."[41]

لِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ: نا آدَم نا شُعْبَةُ عَنْ الْأَعْمَشِ عَنْ مُجَاهِدٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَسُبُّوا الْأَمْوَاتَ فَإِنَّهُمْ قَدْ أَفْضَوْا إلَى مَا قَدَّمُوا» .

Allah, the Exalted, indeed reviled Abu Lahab and Pharaoh as a warning against their disbelief.

وَقَدْ سَبَّ اللَّهُ تَعَالَى: أَبَا لَهَبٍ، وَفِرْعَوْنَ، تَحْذِيرًا مِنْ كُفْرِهِمَا

And the Exalted said: "Cursed were those who disbelieved among the Children of Israel" (Surah Al-Mā'idah 5:78).[42]

وَقَالَ تَعَالَى: {لُعِنَ الَّذِينَ كَفَرُوا مِنْ بَنِي إِسْرَائِيلَ} [المائدة: ٧٨]

Allah the Exalted said: "Indeed, the curse of Allah is upon the wrongdoers" [Hud: 18]. And the Prophet - peace be upon him - informed that "the garment that Mid'am misappropriated from war booty will become a blazing fire upon him, and that is after his death."[43]

وَقَالَ تَعَالَى: {أَلا لَعْنَةُ اللَّهِ عَلَى الظَّالِمِينَ} [هود: ١٨] وَأَخْبَرَ - عَلَيْهِ السَّلَامُ - «أَنَّ الشَّمْلَةَ الَّتِي غَلَّهَا مِدْعَمٌ تَشْتَعِلُ عَلَيْهِ نَارًا» ، وَذَلِكَ بَعْدَ مَوْتِهِ

Issue: Instructing the dying to affirm the Shahada (declaration of faith).

[مَسْأَلَةُ تَلْقِينُ الْمَيِّتِ شَهَادَةَ الْإِسْلَامِ]

595 - Issue: It is obligatory to instruct the dying person who is mentally present while passing away - whether their tongue is mobile or immobile - to utter the testimony of Islam, which is: "There is no god but Allah, Muhammad is the Messenger of Allah."

٥٩٥ - مَسْأَلَةٌ: وَيَجِبُ تَلْقِينُ الْمَيِّتِ الَّذِي يَمُوتُ فِي ذِهْنِهِ وَلِسَانُهُ مُنْطَلِقٌ - أَوْ غَيْرُ مُنْطَلِقٍ - شَهَادَةَ الْإِسْلَامِ، وَهِيَ " لَا إلَهَ إلَّا اللَّهُ مُحَمَّدٌ رَسُولُ اللَّهِ ".

From what has been narrated to us through the transmission chain of Imam Muslim: Amr al-Naqid reported to us, on the authority of Abu Khalid al-

لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا عَمْرٌو النَّاقِدُ نا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ يَزِيدَ بْنِ كَيْسَانَ عَنْ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَقِّنُوا مَوْتَاكُمْ لَا إلَهَ إلَّا اللَّهُ» .

[41] **Hadith references (L9405):** Sahih al-Bukhari 1393; Sahih al-Bukhari 6516; Sunan an-Nasai 1936.

[42] **Qur'an references (L9407):** Qur'an 5:78 (Al-Ma'idah).

[43] **Qur'an references (L9408):** Qur'an 11:18 (Hud).

Ahmar, who reported from Yazid ibn Kaysan, from Abu Hazim, from Abu Hurayrah, who said: The Messenger of Allah (peace be upon him) said: "Instruct your dying ones to affirm: There is no deity but Allah."

This has also been authentically reported from the Mother of the Believers, and is narrated from ʿUmar ibn al-Khaṭṭāb. It is reported from Ibrāhīm, on the authority of ʿAlqamah, that he said: "Prompt me with 'There is no god but Allah,' and hasten me to my grave." As for one who is not in his right mind, it is not possible to prompt him, as he is unresponsive. As for one who is prevented from speaking, he should say it inwardly. We ask Allah for the best in that station.

A jurisprudential issue regarding closing the deceased's eyes.

596. Issue: It is recommended to close the eyes of the deceased when he has passed away. This is derived from what we have narrated through the chain in Muslim's compilation: Zuhayr ibn Harb narrated to us from Muʿawiyah ibn ʿAmr, from Abu Ishaq al-Fazari, from Khalid al-Ḥadhāʾ, from Abu Qilabah, from Qabisah ibn Dhuʾayb, from Umm Salamah, the Mother of the Believers (may Allah be pleased with her), who said: "The Messenger of Allah (peace be upon him) entered upon Abu Salamah when his eyes were wide open (in death), so he closed them."[44]

We were narrated from ʿUmar ibn al-Khaṭṭāb that he ordered that the eyes of the deceased be closed.

Question: The afflicted one says, "Verily, we belong to Allah, and to Him we shall return."

597 – Issue

It is recommended that the afflicted person say, "Indeed, we belong to Allah, and indeed to Him we will return. O Allah, reward me in my affliction and replace it for me with something better than it."

[44] **Hadith references (L9414):** Sunan Ibn Majah 1454; Sahih Muslim 920a; Sunan Abi Dawud 3118.

وَصَحَّ هَذَا أَيْضًا عَنْ أُمِّ الْمُؤْمِنِينَ، وَرُوِيَ عَنْ عُمَرَ بْنِ الْخَطَّابِ؟ وَعَنْ إِبْرَاهِيمَ عَنْ عَلْقَمَةَ قَالَ: لَقِّنُونِي لَا إِلَهَ إِلَّا اللَّهُ وَأَسْرِعُوا بِي إِلَى حُفْرَتِي وَأَمَّا مَنْ لَيْسَ فِي ذِهْنِه فَلَا يُمْكِنُ تَلْقِينُهُ، لِأَنَّهُ لَا يَتَلَقَّنُ؟ وَأَمَّا مَنْ مُنِعَ الْكَلَامَ فَيَقُولُهَا فِي نَفْسِهِ، نَسْأَلُ اللَّهَ خَيْرَ ذَلِكَ الْمَقَامِ

[مَسْأَلَةٌ تَغْمِيضُ عَيْنَيْ الْمَيِّتِ]

٥٩٦ - مَسْأَلَةٌ: وَيُسْتَحَبُّ تَغْمِيضُ عَيْنَيْ الْمَيِّتِ إذَا قَضَى؟ لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ: حَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ نا مُعَاوِيَةُ بْنُ عَمْرٍو نا أَبُو إِسْحَاقَ الْفَزَارِيّ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «دَخَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَبِي سَلَمَةَ وَقَدْ شَقَّ بَصَرُهُ فَأَغْمَضَهُ» .

وَرُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ: أَنَّهُ أَمَرَ بِتَغْمِيضِ أَعْيُنِ الْمَوْتَى

[مَسْأَلَةٌ يَقُول الْمُصَابُ إنَّا لِلَّهِ وَإِنَّا إلَيْهِ رَاجِعُونَ]

٥٩٧ - مَسْأَلَةٌ

وَيُسْتَحَبُّ أَنْ يَقُولَ الْمُصَابُ " إنَّا لِلَّهِ وَإِنَّا إلَيْهِ رَاجِعُونَ اللَّهُمَّ آجِرْنِي فِي مُصِيبَتِي وَأَخْلِفْ لِي خَيْرًا مِنْهَا ".

L9420 As for what has been transmitted to us through the chain of Muslim: Abū Bakr ibn Abī Shaybah narrated to us, Abū Usāmah narrated from Saʿd ibn Saʿīd, who narrated that ʿUmar ibn Kathīr ibn Aflaḥ reported: "I heard Ibn Safīnah narrate that he heard Umm Salamah say: I heard Allah's Messenger - peace and blessings be upon him - declare: 'There is no servant struck by a calamity who says: 'Indeed we belong to Allah and to Him we shall return. O Allah, grant me reward in my affliction and replace it for me with something better," but that Allah rewards him in his affliction and replaces it for him with something better than it.'"[45][46]

L9421 **The jurisprudential ruling on performing the funeral prayer for a newborn who is born alive [and survives] and then dies.**

L9422 598. Issue: It is recommended to perform the funeral prayer over a newborn who is born alive and then dies—whether the infant cried [or showed signs of life] or not. The prayer over the child is not obligatory unless the child has attained puberty.

L9423 As for prayer concerning him, it is indeed a righteous act about which no prohibition has been reported.

L9424 As for not performing the funeral prayer over him, this is due to what was narrated to us through Abu Dawud's chain: Muhammad ibn Yahya ibn Faris narrated to us via Yaʿqub ibn Saʿd, who narrated via ʿAbdullah ibn Abi Bakr ibn Muhammad ibn ʿAmr ibn Hazm, from ʿAmrah bint ʿAbd al-Rahman, from ʿA'ishah, the Mother of the Believers, who said: "Ibrahim, the son of Allah's Messenger (peace be upon him), passed away when he was eighteen months old, and Allah's Messenger (peace be upon him) did not perform the funeral prayer over him."

L9425 This is a sound narration, but it only mentions the omission of prayer [over the deceased], and contains no prohibition against it. Two disconnected (Mursal) reports have come stating that he—peace be upon him—did pray

لَمَّا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ: نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا أَبُو أُسَامَةَ عَنْ سَعْدِ بْنِ سَعِيدٍ أَخْبَرَنِي عُمَرُ بْنُ كَثِيرِ بْنِ أَفْلَحَ سَمِعْتُ ابْنَ سَفِينَةَ يُحَدِّثُ أَنَّهُ سَمِعَ أُمَّ سَلَمَةَ تَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَا مِنْ عَبْدٍ تُصِيبُهُ مُصِيبَةٌ فَيَقُولُ: إنَّا لِلَّهِ وَإِنَّا إلَيْهِ رَاجِعُونَ، اللَّهُمَّ آجِرْنِي فِي مُصِيبَتِي وَأَخْلِفْ لِي خَيْرًا مِنْهَا إلَّا آجَرَهُ اللَّهُ فِي مُصِيبَتِهِ وَأَخْلَفَ لَهُ خَيْرًا مِنْهَا» .

[مَسْأَلَةُ الصَّلَاةِ عَلَى الْمَوْلُودِ يُولَدُ حَيًّا ثُمَّ يَمُوتُ]

٥٩٨ - مَسْأَلَةٌ وَنَسْتَحِبُّ الصَّلَاةَ عَلَى الْمَوْلُودِ يُولَدُ حَيًّا ثُمَّ يَمُوتُ - اسْتَهَلَّ أَوْ لَمْ يَسْتَهِلَّ - وَلَيْسَ الصَّلَاةُ عَلَيْهِ فَرْضًا مَا لَمْ يَبْلُغْ؟

أَمَّا الصَّلَاةُ عَلَيْهِ فَإِنَّهَا فِعْلُ خَيْرٍ لَمْ يَأْتِ عَنْهُ نَهْيٌ

أَمَّا تَرْكُ الصَّلَاةِ عَلَيْهِ فَلِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد: نا مُحَمَّدُ بْنُ يَحْيَى بْنِ فَارِسٍ نا يَعْقُوبُ بْنُ سَعْدٍ حَدَّثَنِي عَبْدُ اللَّهِ بْنُ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «مَاتَ إبْرَاهِيمُ بْنُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ ابْنُ ثَمَانِيَةَ عَشَرَ شَهْرًا، فَلَمْ يُصَلِّ عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

هَذَا خَبَرٌ صَحِيحٌ وَلَكِنْ إنَّمَا فِيهِ تَرْكُ الصَّلَاةِ، وَلَيْسَ فِيهِ نَهْيٌ عَنْهَا، وَقَدْ جَاءَ أَثَرَانِ مُرْسَلَانِ بِأَنَّهُ - عَلَيْهِ السَّلَامُ - صَلَّى عَلَيْهِ، وَالْمُرْسَلُ لَا حُجَّةَ فِيهِ؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إسْمَاعِيلُ بْنُ مَسْعُودٍ أَنَا خَالِدُ بْنُ الْحَارِثِ

[45] **Hadith references (L9420):** Sahih Muslim 918b.
[46] **Qur'an references (L9420):** Qur'an 2:156 (Al-Baqarah).

over him, though Mursal reports cannot serve as definitive evidence, can they? Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: Ismāʿīl ibn Masʿūd narrated to us: Khālid ibn al-Ḥārith narrated to us: Saʿīd ibn ʿUbaydillāh al-Thaqafī reported: I heard Ziyād ibn Jubayr ibn Ḥayyah narrating from his father from al-Mughīrah ibn Shuʿbah that he mentioned the Messenger of Allah—peace and blessings of Allah be upon him—said: "The rider is behind the funeral procession, the pedestrian may walk wherever he wishes within it, and the child should be prayed over."[47]

نا سَعِيدُ بْنُ عُبَيْدِ اللَّهِ الثَّقَفِيُّ سَمِعْتُ زِيَادَ بْنَ جُبَيْرِ بْنِ حَيَّةَ يُحَدِّثُ عَنْ أَبِيهِ عَنْ الْمُغِيرَةِ بْنِ شُعْبَةَ أَنَّهُ ذَكَرَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الرَّاكِبُ خَلْفَ الْجِنَازَةِ، وَالْمَاشِي حَيْثُ شَاءَ مِنْهَا، وَالطِّفْلُ يُصَلَّى عَلَيْهِ» .

L9426–9428 And with this, the majority of the Companions adopt. It has been narrated to us through the chain of al-Ḥajjāj ibn al-Minhāl, from Abū ʿAwānah, from Qatādah, from Saʿīd ibn al-Musayyib, that Abū Bakr al-Ṣiddīq said: "Our children are the most deserving of those for whom we should perform the funeral prayer." And through the chain of Ḥammād ibn Zayd, from Yaḥyā ibn Saʿīd al-Anṣārī, from Saʿīd ibn al-Musayyib, from Abū Hurayrah, that he prayed over a newborn - if he had ever committed any sin - saying, "O Allah, protect him from the punishment of the grave."

وَبِهَذَا يَأْخُذُ جُمْهُورُ الصَّحَابَةِ رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ أَبِي عَوَانَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ قَالَ: أَحَقُّ مَنْ صَلَّيْنَا عَلَيْهِ أَطْفَالُنَا -: وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ ابْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ صَلَّى عَلَى مَنْفُوسٍ إنْ عَمِلَ خَطِيئَةً قَطُّ قَالَ: اللَّهُمَّ أَعِذْهُ مِنْ عَذَابِ الْقَبْرِ

L9429 From the narration of Hammad ibn Salamah, from Muhammad ibn Ishaq, from Ata ibn Abi Rabah, from Jabir ibn Abdullah, who said: If a child cries out at birth, is the funeral prayer performed for him, and does he inherit?

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إسْحَاقَ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ - إذَا اسْتَهَلَّ الصَّبِيُّ صُلِّيَ عَلَيْهِ وَوَرِثَ؟

L9430 And via the chain of Ḥammād ibn Salamah, from Ayyūb al-Sakhtiyānī, from Nāfiʿ, from Ibn ʿUmar, that he said: When his creation is perfected, he cries out: "Prayers are offered for him, and he is inherited." And via the chain of Shuʿbah: ʿAmr ibn Murrah narrated to us, saying: ʿAbd al-Raḥmān ibn Abī Laylā said to me: "I encountered surviving members of the Ansar who would pray over the child when he died."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ قَالَ: إذَا تَمَّ خَلْقُهُ فَصَاحَ: صُلِّيَ عَلَيْهِ وَوَرِثَ وَمِنْ طَرِيقِ شُعْبَةَ: نا عَمْرُو بْنُ مُرَّةَ قَالَ: قَالَ لِي عَبْدُ الرَّحْمَنِ بْنُ أَبِي لَيْلَى: أَدْرَكْت بَقَايَا الْأَنْصَارِ يُصَلُّونَ عَلَى الصَّبِيِّ إذَا مَاتَ

L9431 And through the chains of Yaḥyā ibn Saʿīd al-Qaṭṭān and ʿAbd al-Razzāq: Yaḥyā said: From ʿUbayd Allāh—he is Ibn ʿUmar—while ʿAbd al-Razzāq said: From Maʿmar from Ayyūb. Then ʿUbayd Allāh and Ayyūb agreed in their narration from Nāfiʿ, who said: ʿAbd Allāh ibn ʿUmar prayed over a miscar-

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ، وَعَبْدِ الرَّزَّاقِ قَالَ يَحْيَى: نا عُبَيْدُ اللَّهِ هُوَ ابْنُ عُمَرَ - وَقَالَ عَبْدُ الرَّزَّاقِ: نا مَعْمَرٌ عَنْ أَيُّوبَ، ثُمَّ اتَّفَقَ عُبَيْدُ اللَّهِ، وَأَيُّوبُ كِلَاهُمَا عَنْ نَافِعٍ

[47] **Hadith references (L9425):** Sunan an-Nasai 1943; Sunan an-Nasai 1942; Sunan an-Nasai 1948.

قَالَ: صَلَّى عَبْدُ اللَّهِ بْنُ عُمَرَ عَلَى سِقْطٍ لَهُ لَا أَدْرِي اسْتَهَلَّ أَمْ لَا؟ هَذَا لَفْظُ أَيُّوبَ، وَقَالَ عُبَيْدُ اللَّهِ: " مَوْلُودٍ " مَكَانَ " سِقْطٍ ".

ried fetus of his (I do not know whether it had cried out or not?). This is the wording of Ayyūb. ʿUbayd Allāh, however, used "newborn" instead of "miscarried fetus."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ زِيَادِ بْنِ جُبَيْرٍ عَنْ أَبِيهِ عَنْ الْمُغِيرَةِ بْنِ شُعْبَةَ قَالَ: السِّقْطُ يُصَلَّى عَلَيْهِ وَيُدْعَى لِأَبَوَيْهِ بِالْعَافِيَةِ وَالرَّحْمَةِ؟

L9432 From the chain of Abd al-Razzaq from Sufyan al-Thawri from Yunus ibn Ubayd from Ziyad ibn Jubayr from his father from al-Mughirah ibn Shu'bah, who said: Is the miscarried fetus prayed over, and are supplications made for its parents for well-being and mercy?

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّهُ كَانَ يُعْجِبُهُ إذَا تَمَّ خَلْقُهُ أَنْ يُصَلَّى عَلَيْهِ -: وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ «عَنْ ابْنِ سِيرِينَ أَنَّهُ كَانَ يَدْعُو عَلَى الصَّغِيرِ كَمَا يَدْعُو عَلَى الْكَبِيرِ، فَقِيلَ لَهُ: هَذَا لَيْسَ لَهُ ذَنْبٌ؟ فَقَالَ: وَالنَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ غُفِرَ لَهُ مَا تَقَدَّمَ مِنْ ذَنْبِهِ وَمَا تَأَخَّرَ، وَأَمَرَنَا أَنْ نُصَلِّيَ عَلَيْهِ؟»

L9433–9435 From the narration of Hammad ibn Salamah from Ayyub from Muhammad ibn Sirin: that he deemed it appropriate to pray over him when his creation was complete. And from the narration of Hammad ibn Zayd from Ayyub al-Sakhtiyani from Ibn Sirin: that he would supplicate against the small child just as he would supplicate against the adult. It was said to him, "Does this one not have any fault?" He replied, "And the Prophet—peace be upon him—had been forgiven." "All his past and future sins—and has He commanded us to send blessings upon him?"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ وَأَيُّوبَ، قَالَ قَتَادَةُ: عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ وَقَالَ أَيُّوبُ: عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَا جَمِيعًا: إذَا تَمَّ خَلْقُهُ وَنُفِخَ فِيهِ الرُّوحُ: صُلِّيَ عَلَيْهِ وَإِنْ لَمْ يَسْتَهِلَّ وَرُوِّينَا عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي السِّقْطِ لِأَرْبَعَةِ أَشْهُرٍ يُصَلَّى عَلَيْهِ؟ قَالَ قَتَادَةُ: وَيُسَمَّى، فَإِنَّهُ يُبْعَثُ أَوْ يُدْعَى يَوْمَ الْقِيَامَةِ بِاسْمِهِ. وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو الْيَمَانِ أَنَا شُعَيْبٌ هُوَ ابْنُ أَبِي حَمْزَةَ - قَالَ ابْنُ شِهَابٍ: يُصَلَّى عَلَى كُلِّ مَوْلُودٍ مُتَوَفًّى، وَإِنْ كَانَ لِغَيَّةٍ مِنْ أَجْلِ أَنَّهُ وُلِدَ عَلَى فِطْرَةِ الْإِسْلَامِ - ثُمَّ ذَكَرَ حَدِيثَ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا مِنْ مَوْلُودٍ إلَّا يُولَدُ عَلَى الْفِطْرَةِ» .

L9436 Through the narration of ʿAbd al-Razzāq from Maʿmar, from Qatādah and Ayyūb: Qatādah reported from Saʿīd ibn al-Musayyab while Ayyūb reported from Muḥammad ibn Sīrīn. They both said: "When his creation is completed and the soul is breathed into him, the funeral prayer is performed over him even if he did not utter a cry." It has been narrated to us from Qatādah, from Saʿīd ibn al-Musayyab regarding a miscarried fetus at four months: "Is the prayer performed over him?" Qatādah said: "He is to be named, for he will be resurrected or summoned by his name on the Day of Judgment." Through the chain of al-Bukhārī: Abū al-Yamān narrated to us from Shuʿayb—who was the son of Abū Ḥamzah—Ibn Shihāb said: "The funeral prayer is performed over every deceased newborn, even if born illegitimately, because he was born upon the primordial nature of Islam." He then mentioned the ḥadīth of Abū Hurayrah from the Prophet—peace be upon him (PBUH): "No child is born except upon the primordial nature."

L9437 Al-Ḥasan and Ibrāhīm said: The funeral prayer is offered over the newborn

if it emits a birth cry. Abū Muḥammad said: The birth cry has no legal significance, as it is not mandated by any textual evidence or consensus.

وَقَالَ الْحَسَنُ، وَإِبْرَاهِيمُ: يُصَلَّى عَلَيْهِ إِذَا اسْتَهَلَّ قَالَ أَبُو مُحَمَّدٍ: لَا مَعْنَى لِلِاسْتِهْلَالِ، لِأَنَّهُ لَمْ يُوجِبْهُ نَصٌّ وَلَا إِجْمَاعٌ

L9438 Hammād said: If a male child from the war captives dies and there are no parents among them, is the prayer to be performed for him?

وَقَالَ حَمَّادٌ: إِذَا مَاتَ الصَّبِيُّ مِنْ السَّبْيِ لَيْسَ بَيْنَ أَبَوَيْهِ صُلِّيَ عَلَيْهِ؟

L9439 It was narrated from Az-Zubayr ibn al-Awwām that his son ʻUmar—who had indeed played with boys, reached physical maturity, but had not yet attained puberty—died, and he did not perform the funeral prayer over him.

وَرُوِيَ عَنْ الزُّبَيْرِ بْنِ الْعَوَّامِ: أَنَّهُ مَاتَ لَهُ ابْنٌ قَدْ لَعِبَ مَعَ الصِّبْيَانِ وَاشْتَدَّ وَلَمْ يَبْلُغْ الْحُلُمَ، اسْمُهُ عُمَرُ فَلَمْ يُصَلِّ عَلَيْهِ

L9440 And from the narration of Shuʻbah from ʻAmr ibn Murrah from Saʻīd ibn Jubayr, who said: “Is the funeral prayer not to be performed for a child?”

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: لَا يُصَلَّى عَلَى الصَّبِيِّ؟

L9441 We also transmitted it from Suwayd ibn Ghafala.

وَرُوِّينَاهُ أَيْضًا عَنْ سُوَيْدِ بْنِ غَفَلَةَ

L9442 **The Ruling on Women Accompanying the Funeral Procession**

[مَسْأَلَةٌ اتِّبَاعِ النِّسَاءِ الْجِنَازَةَ]

L9443 599. Issue: We do not deem it discouraged for women to follow funeral processions, nor do we prohibit them from doing so. There are narrations that prohibit this, but none are authentic, as they are either *mursal*, narrated by unknown individuals, or transmitted from unreliable authorities.

٥٩٩ - مَسْأَلَةٌ وَلَا نَكْرَهُ اتِّبَاعَ النِّسَاءِ الْجِنَازَةَ، وَلَا نَمْنَعُهُنَّ مِنْ ذَلِكَ؟ جَاءَتْ فِي النَّهْيِ عَنْ ذَلِكَ آثَارٌ لَيْسَ مِنْهَا شَيْءٌ يَصِحُّ، لِأَنَّهَا: إمَّا مُرْسَلَةٌ، وَإِمَّا عَنْ مَجْهُولٍ، وَإِمَّا عَمَّنْ لَا يُحْتَجُّ بِهِ

L9444 The most analogous example in this regard is what we have narrated via Muslim’s narration: Isḥāq ibn Rāhawayh narrated to us; ʿĪsā ibn Yūnus from Hishām, from Ḥafṣah, from Umm ʿAṭiyyah, who said: “We were prohibited from accompanying biers, but it was not strictly enforced as an obligation.”

وَأَشْبَهُ مَا فِيهِ مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ: نا إِسْحَاقُ بْنُ رَاهْوَيْهِ نا عِيسَى بْنُ يُونُسَ عَنْ هِشَامٍ عَنْ حَفْصَةَ عَنْ أُمِّ عَطِيَّةَ قَالَتْ «نُهِينَا عَنْ اتِّبَاعِ الْجَنَائِزِ، وَلَمْ يُعْزَمْ عَلَيْنَا» .

L9445–9446 This is not a musnad report, as we do not know who this prohibitor is. He may have been some of the Companions. Moreover, even if it were authenticated as a musnad, there would be no conclusive evidence in it; rather, it would merely indicate reprehensibility, karāhah.

وَهَذَا غَيْرُ مُسْنَدٍ، لِأَنَّنَا لَا نَدْرِي مَنْ هَذَا النَّاهِي؟ وَلَعَلَّهُ بَعْضُ الصَّحَابَةِ ثُمَّ لَوْ صَحَّ مُسْنَدًا لَمْ يَكُنْ فِيهِ حُجَّةٌ، بَلْ كَانَ يَكُونُ كَرَاهَةً فَقَطْ.

L9447 On the contrary, its opposite has been authentically established, as reported to us through the chain of Ibn Abī Shaybah: Wakīʿ narrated to us from Hishām ibn ʿUrwah from Wahb ibn Kaysān from Muḥammad ibn ʿAmr ibn

بَلْ قَدْ صَحَّ خِلَافُهُ كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: نا وَكِيعٌ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ وَهْبِ بْنِ كَيْسَانَ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَطَاءٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ -

ʿAṭāʾ from Abū Hurayrah: “The Messenger of Allah (peace and blessings of Allah be upon him) was at a funeral when ʿUmar saw a woman and shouted at her. The Messenger of Allah (peace and blessings of Allah be upon him) said to him: ’Leave her, O ʿUmar, for the eye is tearful, the soul is afflicted, and the time [since the loss] is recent.”’ Is it not authentically reported from Ibn ʿAbbās that he did not dislike it?

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ فِي جِنَازَةٍ فَرَأَى عُمَرُ امْرَأَةً، فَصَاحَ بِهَا فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَعْهَا يَا عُمَرُ فَإِنَّ الْعَيْنَ دَامِعَةٌ، وَالنَّفْسَ مُصَابَةٌ، وَالْعَهْدَ قَرِيبٌ» . وَقَدْ صَحَّ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ لَمْ يَكْرَهْ ذَلِكَ؟

The Issue of Visiting Graves

L9448

L9449 Issue 600: We recommend visiting graves, and it is an obligation even if performed once. There is no harm in a Muslim visiting the grave of a close polytheist relative. Are men and women equal in this matter? As evidenced by what we have narrated through Muslim: Abu Bakr ibn Abi Shaybah narrated from Muhammad ibn Fudayl from Abu Sinan - who is Ḍirār ibn Murrah - from Muḥārib ibn Dithār from Ibn Buraidah from his father, who said: The Messenger of Allah - peace and blessings be upon him - said: “I forbade you from visiting graves, so visit them.”

[مَسْأَلَةُ زِيَارَةِ الْقُبُورِ]

٦٠٠ - مَسْأَلَةٌ وَنَسْتَحِبُّ زِيَارَةَ الْقُبُورِ، وَهُوَ فَرْضٌ وَلَوْ مَرَّةً وَلَا بَأْسَ بِأَنْ يَزُورَ الْمُسْلِمُ قَبْرَ حَمِيمِهِ الْمُشْرِكِ، وَالرِّجَالُ وَالنِّسَاءُ سَوَاءٌ؟ لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ: نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ أَبِي سِنَانٍ هُوَ ضِرَارُ بْنُ مُرَّةَ، عَنْ مُحَارِبِ بْنِ دِثَارٍ عَنِ ابْنِ بُرَيْدَةَ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «نَهَيْتُكُمْ عَنْ زِيَارَةِ الْقُبُورِ فَزُورُوهَا» .

L9450–9452 As reported in Muslim’s compilation: Abu Bakr ibn Abi Shaybah narrated to us, from Muhammad ibn ‘Ubayd, from Yazid ibn Kaysan, from Abu Hazim, from Abu Hurayrah, who said: “The Prophet (peace and blessings be upon him) visited his mother’s grave and wept, making those around him weep. He said: ’I sought my Lord’s permission to seek forgiveness for her, but it was not granted. Then I sought permission to visit her grave, and it was granted. Therefore, visit graves, for they remind of death.”’ It has been authentically established from the Mother of the Believers, Ibn ‘Umar, and others besides them both concerning visiting graves. A prohibition against this was narrated from ‘Umar, but the narration is not authentic.[48]

وَمِنْ طَرِيقِ مُسْلِمٍ: نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ عُبَيْدٍ عَنْ يَزِيدَ بْنِ كَيْسَانَ عَنْ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ قَالَ «زَارَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَبْرَ أُمِّهِ فَبَكَى وَأَبْكَى مَنْ حَوْلَهُ، فَقَالَ: اسْتَأْذَنْتُ رَبِّي فِي أَنْ أَسْتَغْفِرَ لَهَا فَلَمْ يُؤْذَنْ لِي، وَاسْتَأْذَنْتُهُ فِي أَنْ أَزُورَ قَبْرَهَا فَأُذِنَ لِي، فَزُورُوا الْقُبُورَ فَإِنَّهَا تُذَكِّرُ الْمَوْتَ» وَقَدْ صَحَّ عَنْ أُمِّ الْمُؤْمِنِينَ، وَابْنِ عُمَرَ، وَغَيْرِهِمَا: زِيَارَةُ الْقُبُورِ؟ وَرُوِيَ عَنْ عُمَرَ النَّهْيُ مِنْ ذَلِكَ، وَلَمْ يَصِحَّ

Issue: What Should Be Said by One Who Is Present at Graves

L9453

L9454 601 - Question: We recommend that whoever is present at the graves should recite what we have narrated through the chain reported in Sahīh Muslim:

[مَسْأَلَةُ مَا يَقُولُهُ مَنْ حَضَرَ عَلَى الْقُبُورِ]

٦٠١ - مَسْأَلَةٌ وَنَسْتَحِبُّ لِمَنْ حَضَرَ عَلَى الْقُبُورِ أَنْ يَقُولَ مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ: نَا زُهَيْرُ بْنُ حَرْبٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْأَسَدِيُّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَلْقَمَةَ بْنِ مَرْثَدٍ

[48] **Hadith references (L9450):** Sahih Muslim 976b.

Zuhayr ibn Harb narrated to us, Muḥammad ibn ʿAbdullāh al-Asadī narrated to us, from Sufyān al-Thawrī, from ʿAlqamah ibn Marthad, from Sulaymān ibn Buraydah, from his father, who said: "The Messenger of Allah - peace and blessings of Allah be upon him - would teach them when they went to the cemeteries. The speaker among them would say: 'Peace be upon you, O people of the graves from among the believers and the Muslims. We will surely join you, if Allah wills. I ask Allah to grant safety for us and for you.'"

عَنْ سُلَيْمَانَ بْنِ بُرَيْدَةَ عَنْ أَبِيهِ قَالَ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُعَلِّمُهُمْ إِذَا خَرَجُوا إِلَى الْمَقَابِرِ، فَكَانَ قَائِلُهُمْ يَقُولُ: السَّلَامُ عَلَيْكُمْ أَهْلَ الدِّيَارِ مِنْ الْمُؤْمِنِينَ وَالْمُسْلِمِينَ، وَإِنَّا إِنْ شَاءَ اللَّهُ بِكُمْ لَاحِقُونَ أَسْأَلُ اللَّهَ لَنَا وَلَكُمْ الْعَافِيَةَ» .

Issue: A hundred or more pray the funeral prayer over the deceased.

[مَسْأَلَةٌ يُصَلِّي عَلَى الْمَيِّتِ مِائَةٌ فَصَاعِدًا]

602 - Issue: It is recommended that a hundred or more Muslims perform the funeral prayer over the deceased. This is based on what we have narrated through the chain reported in Ṣaḥīḥ Muslim: al-Ḥasan ibn ʿĪsā reported to us, Ibn al-Mubārak reported to us, Salām ibn Abī Muṭīʿ reported to us from Ayyūb al-Sikhtiyānī from Abu Qilabah from ʿAbdullāh ibn Yazīd, the milk-sibling of ʿĀ'ishah, the Mother of the Believers, from ʿĀ'ishah, from the Prophet, peace and blessings be upon him, who said: "There is no deceased person over whom a group of Muslims, numbering one hundred, all interceding for him, performs the funeral prayer, except that their intercession is accepted."[49]

٦٠٢ - مَسْأَلَةٌ وَنَسْتَحِبُّ أَنْ يُصَلِّيَ عَلَى الْمَيِّتِ مِائَةٌ مِنْ الْمُسْلِمِينَ فَصَاعِدًا؟ لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ: نا الْحَسَنُ بْنُ عِيسَى نا ابْنُ الْمُبَارَكِ أَنَا سَلَّامُ بْنُ أَبِي مُطِيعٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ رَضِيعِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَا مِنْ مَيِّتٍ يُصَلِّي عَلَيْهِ أُمَّةٌ مِنْ الْمُسْلِمِينَ يَبْلُغُونَ مِائَةً كُلُّهُمْ يَشْفَعُونَ لَهُ: إلَّا شُفِّعُوا فِيهِ» .

He said: I narrated it to Shu'ayb ibn al-Habhab, and he said: Anas ibn Malik related it to me from the Prophet, peace and blessings of Allah be upon him.

قَالَ: فَحَدَّثْت بِهِ شُعَيْبَ بْنَ الْحَبْحَابِ فَقَالَ: حَدَّثَنِي بِهِ أَنَسُ بْنُ مَالِكٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

Abū Muḥammad said, "The narration which states, 'Forty people perform the funeral prayer over him,' was narrated by Shurayk ibn ʿAbd Allāh ibn Abī Namir, and he is weak?"

قَالَ أَبُو مُحَمَّدٍ: الْخَبَرُ الَّذِي فِيهِ «يُصَلِّي عَلَيْهِ أَرْبَعُونَ» رَوَاهُ شُرَيْكُ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي نَمِرٍ، وَهُوَ ضَعِيفٌ؟

Abu Muhammad said: Intercession occurs after the punishment, except that it serves to mitigate that which Allah the Exalted has decreed. Were it not for intercession, He would not have mitigated [the punishment]. The intercession of the Messenger of Allah—may Allah bless him and grant him peace—which

قَالَ أَبُو مُحَمَّدٍ: الشَّفِيعُ يَكُونُ بَعْدَ الْعِقَابِ، إلَّا أَنَّهُ مُخَفِّفٌ مَا قَدْ قَضَى اللَّهُ تَعَالَى أَنَّهُ لَوْلَا الشَّفَاعَةُ لَمْ يُخَفِّفْ، وَشَفَاعَةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّتِي هِيَ أَكْبَرُ

[49] **Hadith references (L9456):** Sahih Muslim 947; Riyad as-Salihin 932.

is the greatest of intercessions, occurs both before entering Hellfire and after entering it, as the narrations have come. We seek refuge with Allah from Hellfire.

The Ruling on Placing the Deceased in Mosques and Performing the Funeral Prayer over Them

Issue 603: Bringing deceased persons into mosques and offering the Funeral Prayer for them is wholly commendable. The best place for the Funeral Prayer to be performed for the deceased is inside mosques.

This is the view of al-Shāfiʿī and Abū Sulaymān. Did Mālik not hold this opinion? The proof supporting the validity of our position is what we have transmitted through Muslim ibn al-Ḥajjāj's chain: Muḥammad ibn Ḥātim informed us, Bahz – who is Ibn Asad – informed us, Wuhaib – who is Ibn Khālid – informed us, Mūsā ibn ʿUqbah reported from ʿAbd al-Wāḥid – who is Ibn Ḥamzah – from ʿAbbād ibn ʿAbd Allāh ibn al-Zubayr from ʿĀ'ishah, the Mother of the Believers, that when Saʿd ibn Abī Waqqāṣ died, the wives of the Prophet – peace and blessings be upon him – sent word that his funeral procession be passed through the mosque so they could pray over him. This was done, and his body was paused by their chambers while they prayed over him. Then it was taken out through the funeral door near the benches. They later learned that people had criticized this, saying: "Were funerals ever brought into the mosque?" ʿĀ'ishah responded: "How quick people are to criticize what they know nothing about! They fault us for passing a funeral through the mosque, yet did not the Messenger of Allāh – peace and blessings be upon him – pray over Suhayl ibn Bayḍā' except within the mosque itself?"

And through the chain of Muslim: Muḥammad ibn Rāfiʿ narrated to us, Ibn Abī Fudayk narrated to us, al-Ḍaḥḥāk ibn ʿUthmān narrated to us, from Abū al-Naḍr—client of ʿUmar ibn ʿUbayd Allāh—from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, from ʿĀ'ishah, Mother of the Believers, who said: "By Allah, the Messenger of Allah—peace and blessings be upon him—certainly prayed over the two sons of al-Bayḍā'—Suhayl and his brother—in the mosque."

الشَّفَاعَاتِ تَكُونُ قَبْلَ دُخُولِ النَّارِ وَبَعْدَ دُخُولِ النَّارِ كَمَا جَاءَتْ - الْآثَارُ، نَعُوذُ بِاللَّهِ مِنْ النَّارِ

[مَسْأَلَةُ إدْخَالُ الْمَوْتَى فِي الْمَسَاجِدِ وَالصَّلَاةُ عَلَيْهِمْ]

٦٠٣ - مَسْأَلَةٌ وَإِدْخَالُ الْمَوْتَى فِي الْمَسَاجِدِ وَالصَّلَاةُ عَلَيْهِمْ حَسَنٌ كُلُّهُ، وَأَفْضَلُ مَكَانٍ صُلِّيَ فِيهِ عَلَى الْمَوْتَى فِي دَاخِلِ الْمَسَاجِدِ.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَلَمْ يَرَ ذَلِكَ مَالِكٌ؟ بُرْهَانُ صِحَّةِ قَوْلِنَا -: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ: نا مُحَمَّدُ بْنُ حَاتِمٍ نا بَهْزٌ هُوَ ابْنُ أَسَدٍ - نا وُهَيْبٌ هُوَ ابْنُ خَالِدٍ - نَا مُوسَى بْنُ عُقْبَةَ عَنْ عَبْدِ الْوَاحِدِ هُوَ ابْنُ حَمْزَةَ - عَنْ عَبَّادِ بْنِ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهُ «لَمَّا تُوُفِّيَ سَعْدُ بْنُ أَبِي وَقَّاصٍ أَرْسَلَ أَزْوَاجُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَمُرُّوا بِجِنَازَتِهِ فِي الْمَسْجِدِ فَيُصَلِّينَ عَلَيْهِ، فَفَعَلُوا، فَوُقِفَ بِهِ عَلَى حُجَرِهِنَّ يُصَلِّينَ عَلَيْهِ ثُمَّ أُخْرِجَ بِهِ مِنْ بَابِ الْجَنَائِزِ الَّذِي كَانَ عَلَى الْمَقَاعِدِ فَبَلَغَهُنَّ أَنَّ النَّاسَ عَابُوا ذَلِكَ، وَقَالُوا: مَا كَانَتْ الْجَنَائِزُ يُدْخَلُ بِهَا الْمَسْجِدَ؟ فَقَالَتْ عَائِشَةُ: مَا أَسْرَعَ النَّاسَ إلَى أَنْ يَعِيبُوا مَا لَا عِلْمَ لَهُمْ بِهِ؟ عَابُوا عَلَيْنَا أَنْ يُمَرَّ بِالْجَنَازَةِ فِي الْمَسْجِدِ، وَمَا صَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى سُهَيْلِ بْنِ بَيْضَاءَ إلَّا فِي جَوْفِ الْمَسْجِدِ» ؟

وَمِنْ طَرِيقِ مُسْلِمٍ: نا مُحَمَّدُ بْنُ رَافِعٍ نا ابْنُ أَبِي فُدَيْكٍ أَنَا الضَّحَّاكُ بْنُ عُثْمَانَ عَنْ أَبِي النَّضْرِ مَوْلَى عُمَرَ بْنِ عُبَيْدِ اللَّهِ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَا عَائِشَةُ أُمُّ الْمُؤْمِنِينَ قَالَتْ: «وَاَللَّهِ لَقَدْ صَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى ابْنَيْ بَيْضَاءَ - سُهَيْلٍ، وَأَخِيهِ - فِي الْمَسْجِدِ» .

L9465–9467 And through the chain of Abd al-Razzaq from Ma’mar and Sufyan al-Thawri, both of whom narrate from Hisham ibn Urwah. From his father: That he saw people leaving the mosque to perform the funeral prayer, so he said: What are these people doing? The funeral prayer for Abu Bakr al-Siddiq was not performed except in the mosque.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَسُفْيَانَ الثَّوْرِيِّ، كِلَاهُمَا عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ: أَنَّهُ رَأَى النَّاسَ يَخْرُجُونَ مِنْ الْمَسْجِدِ لِيُصَلُّوا عَلَى جِنَازَةٍ، فَقَالَ: مَا يَصْنَعُ هَؤُلَاءِ؟ مَا صُلِّيَ عَلَى أَبِي بَكْرٍ الصِّدِّيقِ إلَّا فِي الْمَسْجِدِ

L9468 And through the chain of Ibn Abī Shaybah: Al-Faḍl ibn Dukayn narrated to us from Mālik ibn Anas from Nāfiʿ from Ibn ʿUmar: that ʿUmar was prayed over in the mosque. These are asānīd of the utmost authenticity. As for the actions of the Messenger of Allah—peace and blessings of Allah be upon him—his wives, and his Companions, is there any authentic report from a single Companion that fundamentally contradicts this?

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: نَا الْفَضْلُ بْنُ دُكَيْنٍ عَنْ مَالِكِ بْنِ أَنَسٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّ عُمَرَ صُلِّيَ عَلَيْهِ فِي الْمَسْجِدِ فَهَذِهِ أَسَانِيدُ فِي غَايَةِ الصِّحَّةِ، وَفِعْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَزْوَاجِهِ وَأَصْحَابِهِ، لَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ خِلَافُ هَذَا أَصْلًا؟

L9469 Ali said: “The most virtuous of the Ummah witnessed the funeral prayer and did not disapprove of it. So where is the one who finds fault with the practice of the people of Medina?” Those who emulated Malik in this matter cited as evidence what we reported through Ibn Abi Shaybah’s chain: Hafs ibn Ghiyath narrated from Ibn Abi Dhi’b from the client of al-Taw’ama, from Abu Hurairah, who said: The Messenger of Allah (peace be upon him) stated, “Whoever prays over a deceased person in the mosque, his prayer is invalid.”

قَالَ عَلِيٌّ: وَقَدْ شَهِدَ الصَّلَاةَ عَلَيْهَا خِيَارُ الْأُمَّةِ، فَلَمْ يُنْكِرُوا ذَلِكَ، فَأَيْنَ الْمُشَنِّعُ بِعَمَلِ أَهْلِ الْمَدِينَةِ -؟ : وَاحْتَجَّ مَنْ قَلَّدَ مَالِكًا فِي ذَلِكَ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: نَا حَفْصُ بْنُ غِيَاثٍ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ مَوْلَى التَّوْأَمَةِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ صَلَّى عَلَى جِنَازَةٍ فِي الْمَسْجِدِ فَلَا صَلَاةَ لَهُ» .

L9470 He said: When the space became too constricted for them, the Companions of the Messenger of Allah—peace and blessings of Allah be upon him—would return without praying. Via the chain of transmission of Waki‘ from Ibn Abi Dhi’b from Sa‘id ibn Ayman from Kathir ibn ‘Abbas, who said: “Will I not certainly know that I did not pray over a funeral in the mosque?” Some of them said: “The deceased is a corpse—should corpses not be kept away from mosques?” We know of no justification they have used for this except that, and all of it amounts to nothing.

قَالَ: وَكَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا تَضَايَقَ بِهِمْ الْمَكَانُ رَجَعُوا وَلَمْ يُصَلُّوا؟ وَمِنْ طَرِيقِ وَكِيعٍ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ سَعِيدِ بْنِ أَيْمَنَ عَنْ كَثِيرِ بْنِ عَبَّاسٍ قَالَ: لَأَعْرِفَنَّ مَا صَلَّيْت عَلَى جِنَازَةٍ فِي الْمَسْجِدِ؟ وَقَالَ بَعْضُهُمْ: الْمَيِّتُ جِيفَةٌ، وَيَنْبَغِي تَجْنِيبُ الْجِيَفِ الْمَسَاجِدَ؟ مَا نَعْلَمُ لَهُ شَيْئًا مَوَّهُوا بِهِ غَيْرَ هَذَا، وَهُوَ كُلُّهُ لَا شَيْءَ

L9471 As for the report concerning the Prophet—may Allah bless him and grant him peace—and his Companions, did anyone narrate it except Ṣāliḥ, the freed slave of al-Taw’amah—and is he rejected?

أَمَّا الْخَبَرُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَصْحَابِهِ فَلَمْ يَرْوِهِ أَحَدٌ إلَّا صَالِحٌ مَوْلَى التَّوْأَمَةِ، وَهُوَ سَاقِطٌ؟

L9472–9474 Among the wonders of the world is the Malikis’ blind imitation of Malik in their religion. When his authoritative testimony - which cannot lawfully be

rejected due to his reliability - comes forth, they discard it and pay no heed. What contradictions! We have narrated this through the transmission chain of Muslim ibn al-Hajjaj, who said: "He informed us..." Abu Ja'far al-Darimi, who is Ahmad ibn Sa'id ibn Sakhr, narrated to us through Bishr ibn 'Umar—identified as al-Zahrani—who said: "I asked Malik ibn Anas about Salih, the client of al-Taw'ama. He replied: 'He is not trustworthy.'"

L9475 They accused Malik of falsely discrediting Ṣāliḥ and argued using Ṣāliḥ's narration to reject the established Sunnahs and the consensus of the Companions. As for those who denied Sa'd's entry into the mosque, the report only demonstrates their ignorance - that they rejected what they had no knowledge of. Thus, it is confirmed they were undoubtedly either ignorant common people or similarly ignorant Bedouins.

L9476 The companionship of Kathīr ibn ʿAbbās is not valid. As for the statement of those who say, "The deceased is a carcass," their claim is rejected. Rather, should one persist in this assertion without contradicting himself, he may apostatize, for this would necessarily apply to the prophets (peace be upon them).

L9477 It has been authentically reported from the Prophet (peace be upon him) that he said: "A believer is not ritually impure." Thus, the claim of this ignorant one is nullified.

L9478 It is established that the believer is pure and wholesome, alive and dead. And all praise is due to Allah, Lord of the worlds.

L9479 **A juristic matter: A burial garment is spread inside the grave beneath the deceased's body.**

L9480 604 – Question. Is there any harm in spreading a cloth beneath the deceased in the grave? This is supported by what has been narrated to us via the chain of narrators in *Sahih Muslim*: Muhammad ibn al-Muthanna narrated to us from Yahya ibn Sa'id al-Qattan, who narrated from Shu'bah, who narrated from Abu Jamrah, on the authority of Ibn Abbas, who said: "A red velvet

وَمِنْ عَجَائِبِ الدُّنْيَا تَقْلِيدُ الْمَالِكِيِّينَ مَالِكًا دِينَهُمْ، فَإِذَا جَاءَتْ شَهَادَتُهُ الَّتِي لَا يَحِلُّ رَدُّهَا - لِثِقَتِهِ - اطَّرَحُوهَا وَلَمْ يَلْتَفِتُوا إِلَيْهَا فَوَاخِلَافَاهُ رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ قَالَ: نا أَبُو جَعْفَرٍ الدَّارِمِيُّ هُوَ أَحْمَدُ بْنُ سَعِيدِ بْنِ صَخْرٍ - نا بِشْرُ بْنُ عُمَرَ هُوَ الزَّهْرَانِيُّ قَالَ: سَأَلْتُ مَالِكَ بْنَ أَنَسٍ عَنْ صَالِحٍ مَوْلَى التَّوْأَمَةِ؟ فَقَالَ: لَيْسَ بِثِقَةٍ.

فَكَذَّبُوا مَالِكًا فِي تَجْرِيحِهِ صَالِحًا وَاحْتَجُّوا بِرِوَايَةِ صَالِحٍ فِي رَدِّ السُّنَنِ الثَّابِتَةِ وَإِجْمَاعِ الصَّحَابَةِ؟ وَأَمَّا الْمُنْكِرُونَ إِدْخَالَ سَعْدٍ فِي الْمَسْجِدِ فَلَيْسَ فِي الْخَبَرِ إِلَّا تَجْهِيلُهُمْ، وَأَنَّهُمْ أَنْكَرُوا مَا لَا عِلْمَ لَهُمْ بِهِ، فَصَحَّ أَنَّهُمْ عَامَّةٌ جُهَّالٌ أَوْ أَعْرَابٌ كَذَلِكَ بِلَا شَكٍّ

وَلَا يَصِحُّ لِكَثِيرِ بْنِ عَبَّاسٍ صُحْبَةٌ؟ وَأَمَّا قَوْلُ مَنْ قَالَ: الْمَيِّتُ جِيفَةٌ، فَقَوْلٌ مَرْغُوبٌ عَنْهُ، بَلْ لَعَلَّهُ إِنْ تَمَادَى عَلَيْهِ وَلَمْ يَتَنَاقَضْ خَرَجَ إِلَى الْكُفْرِ، لِأَنَّهُ يَلْزَمُهُ ذَلِكَ فِي الْأَنْبِيَاءِ - عَلَيْهِمُ السَّلَامُ -.

وَقَدْ صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «الْمُؤْمِنُ لَا يَنْجُسُ» فَبَطَلَ قَوْلُ هَذَا الْجَاهِلِ.

وَصَحَّ أَنَّ الْمُؤْمِنَ: طَاهِرٌ طَيِّبٌ حَيًّا وَمَيِّتًا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[مَسْأَلَةٌ يُبْسَط فِي الْقَبْرِ تَحْتَ الْمَيِّتِ ثَوْبٌ]

٦٠٤ - مَسْأَلَةٌ - وَلَا بَأْسَ بِأَنْ يُبْسَطَ فِي الْقَبْرِ تَحْتَ الْمَيِّتِ ثَوْبٌ؟ لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ: نا مُحَمَّدُ بْنُ الْمُثَنَّى نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا شُعْبَةُ نا أَبُو جَمْرَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: «بُسِطَ فِي قَبْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطِيفَةٌ حَمْرَاءُ» .

cloth was spread in the grave of the Messenger of Allah, peace and blessings be upon him."

L9481 And likewise, it was also narrated by Waki', Muḥammad ibn Ja'far, and Yazīd ibn Zuray'—all of them transmitting from Shu'bah through his chain of narration.

وَرَوَاهُ أَيْضًا كَذَلِكَ وَكِيعٌ، وَمُحَمَّدُ بْنُ جَعْفَرٍ، وَيَزِيدُ بْنُ زُرَيْعٍ، كُلُّهُمْ عَنْ شُعْبَةَ بِإِسْنَادِهِ؟

L9482 And this is among the category of garments the deceased is clothed in for burial. Allah the Exalted omitted this practice in the burial of His infallible Messenger from among people.

وَهَذَا مِنْ جُمْلَةِ مَا يُكْسَاهُ الْمَيِّتُ فِي كَفَنِهِ، وَقَدْ تَرَكَ اللَّهُ تَعَالَى هَذَا الْعَمَلَ فِي دَفْنِ رَسُولِهِ الْمَعْصُومِ مِنْ النَّاسِ.

L9483 He did not prevent it, and the select among the people of the earth at that time did it by their consensus, with none of them rejecting it.

وَلَمْ يَمْنَعْ مِنْهُ، وَفَعَلَهُ خِيرَةُ أَهْلِ الْأَرْضِ فِي ذَلِكَ الْوَقْتِ بِإِجْمَاعٍ مِنْهُمْ، لَمْ يُنْكِرْهُ أَحَدٌ مِنْهُمْ.

L9484–9485 The Malikis did not intend that, though they abandon the practice of the people of Medina in matters less than this, they have abandoned their practice here, and in praying over the deceased in the mosque. In the hadith of Sakhr: that it is their practice, and "Sufficient for us is Allah, and what an excellent Trustee!"

وَلَمْ يُرِدْ ذَلِكَ الْمَالِكِيُّونَ، وَهُمْ يَدَعُونَ فِي أَقَلِّ مِنْ هَذَا عَمَلَ أَهْلِ الْمَدِينَةِ وَقَدْ تَرَكُوا عَمَلَهُمْ هُنَا، وَفِي الصَّلَاةِ عَلَى الْمَيِّتِ فِي الْمَسْجِدِ، وَفِي حَدِيثِ صَخْرٍ: أَنَّهُ عَمَلُهُمْ وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ

An Issue of Participating in the Funeral Procession

[مَسْأَلَةُ تَشْيِيعِ الْجِنَازَةِ]

L9486

L9487 605 - Issue: The ruling concerning accompanying the funeral procession is that riders should be behind it, while those walking may be wherever they wish—to its right, left, front, or back. The most preferable position according to us is behind it. The proof for this is what we previously narrated in the chapter on praying over a child from the statement of Allah's Messenger—peace and blessings be upon him: "The rider should be behind the bier, and those walking may be wherever they wish around it."

٦٠٥ - مَسْأَلَةٌ وَحُكْمُ تَشْيِيعِ الْجِنَازَةِ أَنْ يَكُونَ الرُّكْبَانُ خَلْفَهَا، وَأَنْ يَكُونَ الْمَاشِي حَيْثُ شَاءَ، عَنْ يَمِينِهَا أَوْ شِمَالِهَا أَوْ أَمَامِهَا أَوْ خَلْفِهَا، وَأَحَبُّ ذَلِكَ إلَيْنَا خَلْفُهَا؟ بُرْهَانُ ذَلِكَ -: مَا رُوِّينَا آنِفًا فِي بَابِ الصَّلَاةِ عَلَى الطِّفْلِ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الرَّاكِبُ خَلْفَ الْجِنَازَةِ، وَالْمَاشِي حَيْثُ شَاءَ مِنْهَا» .

L9488 And what we have narrated through the chain of Al-Bukhārī: Abū al-Walīd - who is Al-Ṭayālisī - narrated to us, from Shu'bah, from Al-Ash'ath ibn Abī al-Sha'thā', who said: I heard Mu'āwiyah ibn Suwayd ibn Muqarrin on the authority of Al-Barā' ibn 'Āzib, who said: "The Messenger of Allah (peace and blessings of Allah be upon him) commanded us to follow funeral processions."

وَمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ: نا أَبُو الْوَلِيدِ هُوَ الطَّيَالِسِيُّ - نا شُعْبَةُ عَنْ الْأَشْعَثِ بْنِ أَبِي الشَّعْثَاءِ قَالَ: سَمِعْت مُعَاوِيَةَ بْنَ سُوَيْدِ بْنِ مُقَرِّنٍ عَنْ الْبَرَاءِ بْنِ عَازِبٍ قَالَ: «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِاتِّبَاعِ الْجَنَائِزِ» .

L9489 Abu Muhammad said: The term “following” applies exclusively to the one coming after, and the predecessor cannot be called a follower; rather, he is the followed. Had it not been for the narration we previously mentioned and the narration transmitted through Ahmad ibn Shu’ayb’s chain—wherein Muhammad ibn Abdullah ibn Yazid al-Muqri states: “My father narrated to us, from Hammam ibn Yahya, who narrated from Sufyan, Mansur, and Ziyad”—each of whom mentioned that he heard al-Zuhri narrate that Salim ibn Abdullah ibn Umar informed him that his father reported: “He saw the Prophet—peace and blessings be upon him—Abu Bakr, Umar, and Uthman walking ahead of the funeral procession,” it would have been obligatory to walk behind it as a binding duty permitting no alternative, based on the command to follow it. However, these two narrations demonstrate that walking behind it is recommended.[50]

قَالَ أَبُو مُحَمَّد: فَلَفْظُ الِاتِّبَاعِ لَا يَقَعُ إِلَّا عَلَى التَّالِي، وَلَا يُسَمَّى الْمُتَقَدِّمُ تَابِعًا، بَلْ هُوَ مَتْبُوعٌ، فَلَوْلَا الْخَبَرُ الَّذِي ذَكَرْنَا آنِفًا، وَالْخَبَرُ الَّذِي رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي نا أَبِي نا هَمَّامٌ هُوَ ابْنُ يَحْيَى - نا سُفْيَانُ وَمَنْصُورٌ وَزِيَادٌ كُلُّهُمْ ذَكَرَ أَنَّهُ سَمِعَ الزُّهْرِيَّ يُحَدِّثُ أَنَّ سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ أَخْبَرَهُ أَنَّ أَبَاهُ أَخْبَرَهُ «أَنَّهُ رَأَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبَا بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ يَمْشُونَ بَيْنَ يَدَيْ الْجِنَازَةِ» : لَوَجَبَ أَنْ يَكُونَ الْمَشْيُ خَلْفَهَا فَرْضًا لَا يُجْزِي غَيْرُهُ، لِلْأَمْرِ الْوَارِدِ بِاتِّبَاعِهَا، وَلَكِنْ هَذَانِ الْخَبَرَانِ بَيَّنَّا أَنَّ الْمَشْيَ خَلْفَهَا نَدْبٌ.

L9490 It is not permissible to assert decisively on any aspect of this through abrogation, as the validity of all such matters remains possible.

وَلَا يَجُوزُ أَنْ يُقْطَعَ فِي شَيْءٍ مِنْ هَذَا بِنَسْخٍ، لِأَنَّ اسْتِعْمَالَ كُلِّ ذَلِكَ مُمْكِنٌ.

L9491–9492 The statement of the majority of hadith scholars has not escaped us—that this report of Hammām is erroneous. However, we do not disregard claims of error in the narration of a trustworthy narrator except with indubitable evidence. We have narrated via Ibn Abī Shaybah’s chain: Jarīr ibn ʿAbd al-Ḥamīd reported from Suhayl ibn Abī Ṣāliḥ, from his father, who said: “Were the Companions of the Messenger of Allah (peace be upon him) walking in front of the funeral procession?”

وَلَمْ يَخْفَ عَلَيْنَا قَوْلُ جُمْهُورِ أَصْحَابِ الْحَدِيثِ: أَنَّ خَبَرَ هَمَّامٍ هَذَا خَطَأٌ، وَلَكِنَّا لَا نَلْتَفِتُ إلَى دَعْوَى الْخَطَأِ فِي رِوَايَةِ الثِّقَةِ إلَّا بِبَيَانٍ لَا يُشَكُّ فِيهِ؟ وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرُ بْنُ عَبْدِ الْحُمَيْدِ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ قَالَ: كَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَمْشُونَ أَمَامَ الْجِنَازَةِ؟

L9493 And indeed, narrations have come indicating the obligation of walking behind her; none of them is authentic, for they include Abū Mājid al-Ḥanafī, al-Muṭarriḥ, and ʿUbayd Allāh ibn Zuḥar, all of whom are weak narrators.

وَقَدْ جَاءَتْ آثَارٌ فِيهَا إيجَابُ الْمَشْيِ خَلْفَهَا، لَا يَصِحُّ شَيْءٌ مِنْهَا، لِأَنَّ فِيهَا أَبَا مَاجِدٍ الْحَنَفِيَّ، وَالْمُطَرِّحَ وَعُبَيْدَ اللَّهِ بْنَ زُحْرٍ وَكُلُّهُمْ ضُعَفَاءُ.

L9494 In the Ṣaḥīḥ we cited there is sufficiency, and concerning all of that, the Salaf said.

وَفِي الصَّحِيحِ الَّذِي أَوْرَدْنَا كِفَايَةٌ، وَبِكُلِّ ذَلِكَ قَالَ السَّلَفُ.

L9495 It has been narrated to us through the chain of ʻAbd al-Razzāq from Sufyān al-Thawrī from ʻUrwah ibn al-Ḥārith from Zā’idah ibn Aws al-Kindī from Saʻīd ibn ʻAbd al-Raḥmān ibn Abzā from his father, who said: I was with

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عُرْوَةَ بْنِ الْحَارِثِ عَنْ زَائِدَةَ بْنِ أَوْسٍ الْكِنْدِيِّ عَنْ سَعِيدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبْزَى عَنْ أَبِيهِ قَالَ: كُنْت مَعَ عَلِيٍّ

[50] **Hadith references (L9489):** Sunan an-Nasai 1945.

‘Alī ibn Abī Ṭālib at a funeral, and ‘Alī was holding my hand while we were behind the bier, while Abū Bakr and ‘Umar were in front of it. ‘Alī said: “The merit of walking behind it over walking before it is like the merit of congregational prayer over solitary prayer. They are as aware of this as I am, but they both make matters easier for the people.”

L9496 This is also stated by Sufyān and Abū Ḥanīfa.

L9497 From the transmission of Abd al-Razzaq, from Abu Ja’far al-Razi, from Humaid al-Tawil, who said: I heard Anas ibn Malik when he was asked about walking ahead of the funeral procession. He replied: “Are you not an escort? Then walk if you wish in front of it, if you wish behind it, if you wish to its right, or if you wish to its left?”

L9498 And from the chain of Abd al-Razzaq, from Ibn Jurayj: I asked Ataa, “Is walking behind the funeral procession more virtuous or in front of it?” He replied, “I do not know.”

L9499–9501 Abu Muhammad said: Malik said, “Walking ahead is more virtuous,” and his companions cited the action of Abu Bakr as proof. Someone had reported about them [Umar and Ali] something contrary to that, so they considered Malik’s conjecture more truthful than Ali’s report.

بْنِ أَبِي طَالِبٍ فِي جِنَازَةٍ، وَعَلِيٌّ آخِذٌ بِيَدِي، وَنَحْنُ خَلْفَهَا، وَأَبُو بَكْرٍ وَعُمَرُ أَمَامَهَا، فَقَالَ عَلِيٌّ: إِنَّ فَضْلَ الْمَاشِي خَلْفَهَا عَلَى الَّذِي يَمْشِي أَمَامَهَا كَفَضْلِ صَلَاةِ الْجَمَاعَةِ عَلَى صَلَاةِ الْفَذِّ، وَإِنَّهُمَا لَيَعْلَمَانِ مِنْ ذَلِكَ مَا أَعْلَمُ، وَلَكِنَّهُمَا يُسَهِّلَانِ عَلَى النَّاسِ

وَبِهَذَا يَقُولُ سُفْيَانُ، وَأَبُو حَنِيفَةَ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي جَعْفَرٍ الرَّازِيِّ عَنْ حُمَيْدٍ الطَّوِيلِ قَالَ: سَمِعْت أَنَسَ بْنَ مَالِكٍ وَقَدْ سُئِلَ عَنْ الْمَشْيِ أَمَامَ الْجَنَازَةِ فَقَالَ: إنَّمَا أَنْتَ مُشَيِّعٌ، فَامْشِ إنْ شِئْت أَمَامَهَا، وَإِنْ شِئْت خَلْفَهَا، وَإِنْ شِئْت عَنْ يَمِينِهَا وَإِنْ شِئْت عَنْ يَسَارِهَا؟

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: الْمَشْيُ وَرَاءَ الْجِنَازَةِ خَيْرٌ أَمْ أَمَامَهَا؟ قَالَ: لَا أَدْرِي.

قَالَ أَبُو مُحَمَّدٍ: قَالَ مَالِكٌ: الْمَشْيُ أَمَامُ أَفْضَلُ، وَاحْتَجَّ أَصْحَابُهُ بِفِعْلِ أَبِي بَكْرٍ، وَعُمَرَ -: وَعَلِيٌّ، قَدْ أَخْبَرَ عَنْهُمَا بِغَيْرِ ذَلِكَ، فَجَعَلُوا ظَنَّ مَالِكٍ أَصْدَقَ مِنْ خَبَرِ عَلِيٍّ

[مَسْأَلَةُ الْمَيِّتِ بَلَعَ دِرْهَمًا أَوْ دِينَارًا أَوْ لُؤْلُؤَةً]

٦٠٦ - مَسْأَلَةٌ وَمَنْ بَلَعَ دِرْهَمًا أَوْ دِينَارًا أَوْ لُؤْلُؤَةً: شُقَّ بَطْنُهُ عَنْهَا، لِصِحَّةِ نَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ.

وَلَا يَجُوزُ أَنْ يُجْبَرَ صَاحِبُ الْمَالِ عَلَى أَخْذِ غَيْرِ عَيْنِ مَالِهِ، مَا دَامَ عَيْنُ مَالِهِ مُمْكِنًا، لِأَنَّ كُلَّ ذِي حَقٍّ أَوْلَى بِحَقِّهِ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَلَوْ بَلَعَهُ وَهُوَ حَيٌّ حُبِسَ حَتَّى يَرْمِيَهُ، فَإِنْ رَمَاهُ نَاقِصًا ضَمِنَ مَا نَقَصَ، فَإِنْ لَمْ يَرْمِهِ: ضَمِنَ مَا بَلَعَ؟ وَلَا يَجُوزُ شَقُّ بَطْنِ الْحَيِّ، لِأَنَّ فِيهِ قَتْلَهُ، وَلَا ضَرَرَ فِي ذَلِكَ عَلَى الْمَيِّتِ - وَلَا يَحِلُّ شَقُّ بَطْنِ الْمَيِّتِ بِلَا مَعْنًى، لِأَنَّهُ تَعَدٍّ، وَقَدْ قَالَ تَعَالَى: {وَلا تَعْتَدُوا} [البقرة: ١٩٠] .

فَإِنْ قِيلَ: قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كَسْرُ عَظْمِ الْمَيِّتِ كَكَسْرِهِ حَيًّا» .

قُلْنَا: نَعَمْ، وَلَمْ نَكْسِرْ لَهُ عَظْمًا، وَالْقِيَاسُ بَاطِلٌ، وَمِنْ الْمُحَالِ أَنْ يُرِيدَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النَّهْيَ عَنْ غَيْرِ كَسْرِ الْعَظْمِ فَلَا يَذْكُرُ ذَلِكَ وَيَذْكُرُ كَسْرَ الْعَظْمِ، وَلَوْ أَنَّ امْرَأً شَهِدَ عَلَى مَنْ شَقَّ بَطْنَ آخَرَ بِأَنَّهُ كَسَرَ عَظْمَهُ لَكَانَ شَاهِدَ زُورٍ، وَهُمْ أَوَّلُ مُخَالِفٍ لِهَذَا الِاحْتِجَاجِ، وَلِهَذَا الْقِيَاسِ، فَلَا يَرَوْنَ الْقَوَدَ، وَلَا الْأَرْشَ: عَلَى كَاسِرِ عَظْمِ الْمَيِّتِ؟ بِخِلَافِ قَوْلِهِمْ فِي عَظْمِ الْحَيِّ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A jurisprudential matter: The deceased swallowed a dirham, a dinar, or a pearl.

Issue 606: If someone swallows a dirham, a dinar, or a pearl, their stomach is to be cut open to remove the object(s), owing to the validity of the prohibition by the Messenger of Allah—peace and blessings be upon him—against squandering wealth.

It is not permissible for the owner of wealth to be compelled to accept anything other than his physical asset, as long as the physical asset is feasible to retain, for every right-holder is more entitled to their right. The Messenger of Allah - peace and blessings be upon him - said: "Verily, your blood and your wealth are inviolable to you."

If he swallows it while alive, he must be detained until he expels it. If he expels it incompletely, he is liable for the missing amount. If he fails to expel it, is he liable for what he swallowed? It is impermissible to cut open the abdomen of a living person, as this would kill them, and this does not harm the deceased. It is impermissible to cut open the abdomen of a deceased person without a valid purpose, for this constitutes transgression. Allah, the Most High, said: "And do not transgress" [Al-Baqarah 2:190].[1]

If it is said: It has been authentically reported from the Messenger of Allah—peace be upon him—that "breaking the bone of a deceased person is like breaking it when he was alive."

We said: Yes, and we did not break any bone of his. The analogy is invalid, for it is inconceivable that the Messenger of Allah—peace and blessings of Allah be upon him—would prohibit actions besides bone-breaking yet not mention that while explicitly mentioning bone-breaking. If a man were to testify against someone who slit another's abdomen by claiming he broke his bone, he would be a false witness. They are the foremost in opposing this argument and analogy, for they reject both retribution and blood-money for one who breaks the bone of a deceased person—contrary to their ruling

[1] **Qur'an references (L9505):** Qur'an 2:190 (Al-Baqarah).

regarding the bone of a living being. Success is by Allah's guidance, the Exalted.

L9508 **An issue: A pregnant woman died, and the child was alive and moving, having exceeded six months of gestation.**

L9509–9511 607 – Issue: If a pregnant woman dies while the child is alive and moving, having passed six months, her abdomen is to be split lengthwise to extract the child, based on the statement of Allah, the Exalted, "Whoever revives it, it is as though he has revived all of mankind" [Al-Mā'idah 5:32]. And whoever intentionally abandons a dependent, thereby causing their death, is considered a murderer.[2]

L9512 There is no validity to the statement of Aḥmad—may Allah have mercy on him—that "the midwife inserts her hand to extract him," for two reasons: First, it is impossible and cannot occur, for if that were done, the fetus would certainly die before being delivered. Were it not for the natural pushing intrinsic to his created and endowed nature—granted to him—and he is pulled to exit, he would undoubtedly perish without doubt.

L9513 The second is that touching her private parts without a valid excuse is prohibited.

L9514 **The Issue of Yearning for Death**

L9515 608 - Issue: It is not permissible for anyone to wish for death due to an affliction that has befallen him. We were narrated through the chain of Ahmad ibn Shu'ayb: I am Qutaybah ibn Sa'īd, I narrate from Yazīd ibn Zurai', from Ḥumayd, from Anas ibn Mālik, that the Prophet—peace be upon him—said: "Let none of you wish for death due to an affliction that has befallen him in this worldly life. Rather, let him say: O Allah, grant me life as long as life is good for me, and cause me to die when death is good for me."[3]

L9516 We have also narrated it through authentic chains of transmission via Abu

[2]**Qur'an references (L9509):** Qur'an 5:32 (Al-Ma'idah).
[3]**Hadith references (L9515):** Sahih al-Bukhari 5671.

[مَسْأَلَةٌ مَاتَتْ حَامِلٌ وَالْوَلَدُ حَيٌّ يَتَحَرَّكُ قَدْ تَجَاوَزَ سِتَّةَ أَشْهُرٍ]

٦٠٧ - مَسْأَلَةٌ وَلَوْ مَاتَتْ امْرَأَةٌ حَامِلٌ وَالْوَلَدُ حَيٌّ يَتَحَرَّكُ قَدْ تَجَاوَزَ سِتَّةَ أَشْهُرٍ فَإِنَّهُ يُشَقُّ بَطْنُهَا طُولًا وَيُخْرَجُ الْوَلَدُ، لِقَوْلِ اللَّهِ تَعَالَى: {وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا} [المائدة: ٣٢] وَمَنْ تَرَكَهُ عَمْدًا حَتَّى يَمُوتَ فَهُوَ قَاتِلُ نَفْسٍ.

وَلَا مَعْنَى لِقَوْلِ أَحْمَدَ - رَحِمَهُ اللَّهُ -: تُدْخِلُ الْقَابِلَةُ يَدَهَا فَتُخْرِجُهُ، لِوَجْهَيْنِ -: أَحَدُهُمَا - أَنَّهُ مُحَالٌ لَا يُمْكِنُ، وَلَوْ فُعِلَ ذَلِكَ لَمَاتَ الْجَنِينُ بِيَقِينٍ قَبْلَ أَنْ يَخْرُجَ، وَلَوْلَا دَفْعُ الطَّبِيعَةِ الْمَخْلُوقَةِ الْمَقْدُورَةِ لَهُ وَجُرَّ لِيَخْرُجَ لَهَلَكَ بِلَا شَكٍّ.

وَالثَّانِي - أَنَّ مَسَّ فَرْجِهَا لِغَيْرِ ضَرُورَةٍ حَرَامٌ.

[مَسْأَلَةٌ تَمَنِّي الْمَوْتِ]

٦٠٨ - مَسْأَلَةٌ وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَتَمَنَّى الْمَوْتَ لِضُرٍّ نَزَلَ بِهِ رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ: أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ أَنَا يَزِيدُ بْنُ زُرَيْعٍ عَنْ حُمَيْدٍ عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَتَمَنَّيَنَّ أَحَدُكُمْ الْمَوْتَ لِضُرٍّ نَزَلَ بِهِ فِي الدُّنْيَا لَكِنْ لِيَقُلْ: اللَّهُمَّ أَحْيِنِي مَا كَانَتْ الْحَيَاةُ خَيْرًا لِي وَتَوَفَّنِي إذَا كَانَتْ الْوَفَاةُ خَيْرًا لِي» .

وَرُوِّينَاهُ أَيْضًا بِأَسَانِيدَ صِحَاحٍ مِنْ طَرِيقِ أَبِي هُرَيْرَةَ، وَخَبَّابٍ؟ فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى عَنْ يُوسُفَ - عَلَيْهِ السَّلَامُ -: {تَوَفَّنِي مُسْلِمًا وَأَلْحِقْنِي بِالصَّالِحِينَ} [يوسف: ١٠١] فَلَيْسَ

Hurairah and Khabbab. If they mention Allah's statement, the Exalted, concerning Yusuf—peace be upon him—"Take me in death as a Muslim and join me with the righteous" [Yusuf: 101], this is not an instance of hastening death, which is prohibited, but rather a supplication that when He takes him in death, Allah does so only as a Muslim. This is the apparent meaning of the verse, with no addition to it.[4]

هَذَا عَلَى اسْتِعْجَالِ الْمَوْتِ الْمَنْهِيِّ عَنْهُ، لَكِنْ عَلَى الدُّعَاءِ بِأَنْ لَا يَتَوَفَّاهُ اللَّهُ تَعَالَى إِذَا تَوَفَّاهُ إِلَّا مُسْلِمًا، وَهَذَا ظَاهِرُ الْآيَةِ الَّذِي لَا تَزَيُّدَ فِيهِ

The issue of carrying the bier.

[مَسْأَلَةُ حَمْلُ النَّعْشِ]

L9517

L9518 609 – Question: The bier is carried according to the carrier's preference. Is it to be carried by one of its legs or between the two poles? This is the opinion of Mālik, al-Shāfiʿī, and Abū Sulaymān.

٦٠٩ - مَسْأَلَةٌ وَيُحْمَلُ النَّعْشُ كَمَا يَشَاءُ الْحَامِلُ، إِنْ شَاءَ مِنْ أَحَدِ قَوَائِمِهِ، وَإِنْ شَاءَ بَيْنَ الْعَمُودَيْنِ؟ وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L9519 Abu Hanifah said: It is carried by its four legs.

وَقَالَ أَبُو حَنِيفَةَ: يَحْمِلُهُ مِنْ قَوَائِمِهِ الْأَرْبَعِ.

L9520 He cited as evidence the narration reported to us via Ibn Abi Shaybah's chain: Hushaym narrated to us from Yaʿla ibn ʿAṭāʾ from ʿAli al-Azdi, who said: "I saw Ibn ʿUmar at a funeral; he carried the four sides of the bier, then stepped aside."

وَاحْتَجَّ بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: نا هُشَيْمٌ عَنْ يَعْلَى بْنِ عَطَاءٍ عَنْ عَلِيٍّ الْأَزْدِيِّ قَالَ: رَأَيْت ابْنَ عُمَرَ فِي جِنَازَةٍ فَحَمَلَ بِجَوَانِبِ السَّرِيرِ الْأَرْبَعِ، ثُمَّ تَنَحَّى؟ ؟

L9521–9522 And from the chain of Ibn Abī Shaybah: Ḥumayd narrated to us from Mundal from Jaʿfar ibn Abī al-Mughīrah from Saʿīd ibn Jubayr from Ibn ʿAbbās, who said: "If you are able, begin with the bedpost adjacent to his right hand, then walk around the bed; otherwise, remain near it?"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: نَا حُمَيْدٍ عَنْ مِنْدَلٍ عَنْ جَعْفَرِ بْنِ أَبِي الْمُغِيرَةِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: إنْ اسْتَطَعْت فَابْدَأْ بِالْقَائِمَةِ الَّتِي تَلِي يَدَهُ الْيُمْنَى، ثُمَّ أَطِفْ بِالسَّرِيرِ، وَإِلَّا فَكُنْ قَرِيبًا مِنْهَا؟

L9523 From the narration of Sa'īd ibn Manṣūr, from 'Ubayd ibn Nisṭās, from Abī 'Ubaydah—who is the son of 'Abdullāh ibn Mas'ūd—who said: 'Abdullāh—meaning his father—said: Whoever accompanies a funeral procession should hold all sides of the bier, for this is from the Sunnah. Then afterward, he may perform a voluntary prayer if he wishes, or he may refrain from doing so.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ عُبَيْدِ بْنِ نِسْطَاسَ عَنْ أَبِي عُبَيْدَةَ هُوَ ابْنُ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ - قَالَ: قَالَ عَبْدُ اللَّهِ - يَعْنِي أَبَاهُ -: مَنْ تَبِعَ جِنَازَةً فَلْيَحْمِلْ بِجَوَانِبِ السَّرِيرِ كُلِّهَا، فَإِنَّهُ مِنْ السُّنَّةِ ثُمَّ يَتَطَوَّعُ بَعْدُ إِنْ شَاءَ أَوْ لِيَدَعْ.

L9524 And via the chain of Saʿīd ibn Manṣūr: Ḥabbān ibn ʿAlī narrated to us: Ḥamzah al-Zayyāt narrated to me from some of his companions: ʿAbdullāh

[4] **Qur'an references (L9516):** Qur'an 12:101 (Yusuf).

ibn Masʿūd would begin by placing the right parts of the bier on his right shoulder, starting from the front, then the right foot, then the left foot, then the left hand.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ: نا حِبَّانُ بْنُ عَلِيٍّ حَدَّثَنِي حَمْزَةُ الزَّيَّاتُ عَنْ بَعْضِ أَصْحَابِهِ: كَانَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ يَبْدَأُ بِمَيَامِنِ السَّرِيرِ عَلَى عَاتِقِهِ الْيُمْنَى مِنْ مُقَدَّمِهِ، ثُمَّ الرِّجْلِ الْيُمْنَى، ثُمَّ الرِّجْلِ الْيُسْرَى، ثُمَّ الْيَدِ الْيُسْرَى؟

L9525 From the chain of Ibn Abi Shaybah, from Yahya ibn Sa'id—he is Al-Qattan—from Thawr, from 'Amir ibn Jushayb and others among the people of al-Sham (the Levant), who said: Abu Darda said, "To complete the reward for the funeral rites is that the deceased's family accompanies it, that it be carried by its four corners, and that soil be cast into the grave."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ هُوَ الْقَطَّانُ - عَنْ ثَوْرٍ عَنْ عَامِرِ بْنِ جُشَيْبٍ وَغَيْرِهِ مِنْ أَهْلِ الشَّامِ قَالُوا: قَالَ أَبُو الدَّرْدَاءِ مِنْ تَمَامِ أَجْرِ الْجِنَازَةِ أَنْ يُشَيِّعَهَا مِنْ أَهْلِهَا، وَأَنْ يَحْمِلَهَا بِأَرْكَانِهَا الْأَرْبَعِ، وَأَنْ يَحْثُوا فِي الْقَبْرِ؟

L9526 And it has also been reported to us from al-Ḥasan. They said: Ibn Masʿūd and Abū al-Dardā' said, "Indeed, this is from the Sunnah. And is this [statement] made except based on *tawqīf*?"

وَرُوِّينَا أَيْضًا ذَلِكَ عَنْ الْحَسَنِ. قَالُوا: فَقَالَ ابْنُ مَسْعُودٍ، وَأَبُو الدَّرْدَاءِ: إنَّهُ مِنْ السُّنَّةِ، وَلَا يُقَالُ: هَذَا إلَّا عَنْ تَوْقِيفٍ؟

L9527 Abu Muhammad said: As for this statement, it is invalid, for among the marvels of the world is that they attribute a saying not authentically established from Ibn Mas'ud and Abu al-Darda', yet feel no shame in decisively lying against the Messenger of Allah (peace be upon him) in similar fashion. Then they do not turn to Ibn Abbas' well-established statement regarding the recitation of the Mother of the Quran in funeral prayer - that it is Sunnah.

قَالَ أَبُو مُحَمَّد: أَمَّا هَذَا الْقَوْلُ فَفَاسِدٌ، لِأَنَّ مِنْ عَجَائِبِ الدُّنْيَا أَنْ يَأْتُوا إلَى قَوْلٍ لَمْ يَصِحَّ عَنْ ابْنِ مَسْعُودٍ، وَأَبِي الدَّرْدَاءِ، فَلَا يَسْتَحْيُونَ مِنْ الْقَطْعِ بِالْكَذِبِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِهِ، ثُمَّ لَا يَلْتَفِتُونَ إلَى قَوْلِ ابْنِ عَبَّاسٍ الثَّابِتِ عَنْهُ فِي قِرَاءَةِ أُمِّ الْقُرْآنِ فِي صَلَاةِ الْجِنَازَةِ إنَّهَا السُّنَّةُ.

L9528–9530 It has been authentically reported from the Prophet—may Allah's peace and blessings be upon him—that he confirmed Ibn Abbas's statement through his own words—peace be upon him—when he said: "Do not..." There is no prayer for one who does not recite the Mother of the Quran, and it is not permissible for anyone to attribute a statement to the Messenger of Allah, peace and blessings be upon him, by mere conjecture, thereby taking his seat in the Fire.

وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَصْدِيقُ قَوْلِ ابْنِ عَبَّاسٍ هَذَا، بِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «لَا صَلَاةَ لِمَنْ لَمْ يَقْرَأْ بِأُمِّ الْقُرْآنِ» وَلَا يَحِلُّ لِأَحَدٍ أَنْ يُضِيفَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَوْلًا بِالظَّنِّ فَيَتَبَوَّأَ مَقْعَدَهُ مِنْ النَّارِ.

L9531 None of these narrations are valid except those from Ibn Umar.

وَكُلُّ هَذِهِ الرِّوَايَاتِ لَا يَصِحُّ مِنْهَا شَيْءٌ إلَّا عَنْ ابْنِ عُمَرَ

L9532 As for the narration of Ibn Abbas, it is transmitted from Mindal, and he is weak.

وَأَمَّا رِوَايَةُ ابْنِ عَبَّاسٍ فَعَنْ مِنْدَلٍ وَهُوَ ضَعِيفٌ؟

L9533 As for the two narrations of Ibn Masʿūd, they are disconnected; because Abū ʿUbaydah does not mention anything from his father, and ʿĀmir ibn Jushayb is obscure. Is it not authentically established from Ibn ʿUmar and others that they opposed this?

وَأَمَّا خَبَرَا ابْنِ مَسْعُودٍ فَمُنْقَطِعَانِ، لِأَنَّ أَبَا عُبَيْدَةَ لَا يَذْكُرُ مِنْ أَبِيهِ شَيْئًا، وَعَامِرُ بْنُ جُشَيْبٍ غَيْرُ مَشْهُورٍ وَقَدْ صَحَّ عَنْ ابْنِ عُمَرَ، وَغَيْرِهِ: خِلَافُ هَذَا؟

L9534 It was narrated to us through the chain of Saʿīd ibn Manṣūr: from Abū ʿAwāna, from Abī Bishr, from Yūsuf ibn Māhik, who said: "I went out with the funeral procession of ʿAbd al-Raḥmān ibn Abī Bakr. I saw Ibn ʿUmar come and stand between the two legs at the front of the bier, placing the bier on his shoulder. When it was set down for the funeral prayer to be held, he let go of it."

كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ: نَا أَبُو عَوَانَةَ عَنْ أَبِي بِشْرٍ عَنْ يُوسُفَ بْنِ مَاهِكَ قَالَ: خَرَجْت مَعَ جِنَازَةِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ فَرَأَيْت ابْنَ عُمَرَ جَاءَ فَقَامَ بَيْنَ الرِّجْلَيْنِ فِي مُقَدَّمِ السَّرِيرِ، فَوَضَعَ السَّرِيرَ عَلَى كَاهِلِهِ، فَلَمَّا وُضِعَ لِيُصَلَّى عَلَيْهِ خَلَّى عَنْهُ.

L9535 Reported by Ibn Abi Shaybah from Waki' from 'Abbad ibn Mansur from Abi al-Mihzam from Abu Hurayrah, who said: "Whoever carries the funeral bier on three occasions has fulfilled his obligation."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ عَبَّادِ بْنِ مَنْصُورٍ عَنْ أَبِي الْمِهْزَمِ عَنْ أَبِي هُرَيْرَةَ قَالَ: مَنْ حَمَلَ الْجِنَازَةَ ثَلَاثًا فَقَدْ قَضَى مَا عَلَيْهِ.

L9536–9538 Since there is no definitive text from the Messenger of Allah (may Allah bless him and grant him peace) regarding how it is carried, there is no choice in the matter, and in any case... The bearer carries it, and it suffices him.

فَإِذْ لَيْسَ فِي حَمْلِهَا نَصٌّ ثَابِتٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا اخْتِيَارَ فِي ذَلِكَ. وَكَيْفَمَا حَمَلَهَا الْحَامِلُ أَجْزَأَهُ.

L9539 The Juridical Issue of the Funeral Prayer in Absentia

[مَسْأَلَةُ صَلَاةِ الْغَائِبِ]

L9540 610 – Issue: The funeral prayer is performed for an absent deceased person, led by an imam and attended by a congregation.

٦١٠ - مَسْأَلَةٌ وَيُصَلَّى عَلَى الْمَيِّتِ الْغَائِبِ بِإِمَامٍ وَجَمَاعَةٍ.

L9541 "The Messenger of Allah—may Allah bless him and grant him peace—indeed performed the funeral prayer for the Negus—may Allah be pleased with him—who died in the land of Abyssinia, and his Companions prayed with him over him in rows." Is this not their consensus, which cannot be transgressed?

قَدْ «صَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى النَّجَاشِيِّ - رَضِيَ اللَّهُ عَنْهُ - وَمَاتَ بِأَرْضِ الْحَبَشَةِ - وَصَلَّى مَعَهُ أَصْحَابُهُ عَلَيْهِ صُفُوفًا» ، وَهَذَا إجْمَاعٌ مِنْهُمْ لَا يَجُوزُ تَعَدِّيهِ؟

L9542 The ruling: The funeral prayer should be performed for every Muslim, whether righteous or sinful.

[مَسْأَلَةٌ يُصَلَّى عَلَى كُلِّ مُسْلِمٍ بَرٍّ أَوْ فَاجِرٍ]

L9543 611 - Issue: Funeral prayers should be offered for every Muslim—whether righteous or sinful, those killed in legal punishment, banditry, or rebellion. The Imam and others should pray over them, even if the deceased was the

worst person on earth, if he died as a Muslim. This is based on the general application of the Prophet's command—peace and blessings be upon him—"Pray over your companion," for a Muslim is our companion. Allah the Exalted says, *"Indeed, the believers are brothers"* (Al-Hujurat 49:10).[5]

٦١١ - مَسْأَلَةٌ وَيُصَلَّى عَلَى كُلِّ مُسْلِمٍ، بَرٍّ، أَوْ فَاجِرٍ، مَقْتُولٍ فِي حَدٍّ، أَوْ فِي حِرَابَةٍ، أَوْ فِي بَغْيٍ، وَيُصَلِّي عَلَيْهِمْ الْإِمَامُ، وَغَيْرُهُ - وَلَوْ أَنَّهُ شَرُّ مَنْ عَلَى ظَهْرِ الْأَرْضِ، إذَا مَاتَ مُسْلِمًا لِعُمُومِ أَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَوْلِهِ «صَلُّوا عَلَى صَاحِبِكُمْ» وَالْمُسْلِمُ صَاحِبٌ لَنَا. قَالَ تَعَالَى: {إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ} [الحجرات: ١٠] .

L9544 And He, the Exalted, has said: "Believing men and women are allies to one another [Surah At-Tawbah 9:71]."[6]

وَقَالَ تَعَالَى: {وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [التوبة: ٧١] .

L9545 Whoever forbids offering prayer over a Muslim has indeed uttered a grave statement - is the transgressor not in greater need of the supplication of his believing brothers than the virtuous one who has been granted mercy?

فَمَنْ مَنَعَ مِنْ الصَّلَاةِ عَلَى مُسْلِمٍ فَقَدْ قَالَ قَوْلًا عَظِيمًا، وَإِنَّ الْفَاسِقَ لَأَحْوَجُ إلَى دُعَاءِ إخْوَانِهِ الْمُؤْمِنِينَ مِنْ الْفَاضِلِ الْمَرْحُومِ؟

L9546–9548 Some opponents said: "Did the Messenger of Allah—peace and blessings be upon him—not pray over 'Ma'iz'?" We responded: "Yes, but we did not say it is obligatory upon the Imam to pray over one who has been stoned. Rather, we said: He may pray over him like the rest of the deceased, and he may leave him, as with the rest of the deceased, and there is no distinction. Indeed, he—peace be upon him—commanded them to pray over the deceased and did not distinguish between those he had stoned and those he had not stoned." It has been narrated to us via the chain of Ahmad ibn Shu'ayb: "'Ubaydullāh ibn Sa'īd narrated to us: Yahyā—that is, Ibn Sa'īd al-Qaṭṭān—from Yahyā ibn Sa'īd al-Anṣārī, from Muḥammad ibn Yaḥyā ibn Ḥibbān, from Abī 'Amrah, from Zayd ibn Khālid al-Juhanī, who said: 'A man died in Khaybar. The Messenger of Allah—peace and blessings be upon him—said: 'Pray'". Concerning your companion, he has indeed embezzled war spoils in the cause of Allah. He said, "We searched his belongings and found beads of the Jews, not equal to two silver dirhams."

وَقَالَ بَعْضُ الْمُخَالِفِينَ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُصَلِّ عَلَى " مَاعِزٍ "؟ قُلْنَا: نَعَمْ، وَلَمْ نَقُلْ إنَّ فَرْضًا عَلَى الْإِمَامِ أَنْ يُصَلِّيَ عَلَى مَنْ رُجِمَ، إنَّمَا قُلْنَا: لَهُ أَنْ يُصَلِّيَ عَلَيْهِ كَسَائِرِ الْمَوْتَى، وَلَهُ أَنْ يَتْرُكَ كَسَائِرِ الْمَوْتَى، وَلَا فَرْقَ - وَقَدْ أَمَرَهُمْ - عَلَيْهِ السَّلَامُ - بِالصَّلَاةِ عَلَيْهِ، وَلَمْ يَخُصَّ بِذَلِكَ مَنْ لَمْ يَرْجُمْهُ مِمَّنْ رَجَمَهُ وَقَدْ رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ: أَنَا عُبَيْدُ اللَّهِ بْنُ سَعِيدٍ نا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ مُحَمَّدِ بْنِ يَحْيَى بْنِ حِبَّانَ عَنْ أَبِي عَمْرَةَ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ، قَالَ «مَاتَ رَجُلٌ بِخَيْبَرَ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: صَلُّوا عَلَى صَاحِبِكُمْ، إنَّهُ قَدْ غَلَّ فِي سَبِيلِ اللَّهِ، قَالَ: فَفَتَّشْنَا مَتَاعَهُ، فَوَجَدْنَا خَرَزًا مِنْ خَرَزِ يَهُودَ، لَا يُسَاوِي دِرْهَمَيْنِ» .

L9549 Abū Muḥammad said: These Ḥanafī and Mālikī scholars—who oppose us in this matter—do not consider the Prophet's refusal (peace be upon him)

قَالَ أَبُو مُحَمَّدٍ: وَهَؤُلَاءِ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ - الْمُخَالِفُونَ لَنَا فِي هَذَا الْمَكَانِ - لَا يَرَوْنَ امْتِنَاعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ الصَّلَاةِ عَلَى الْغَالِّ حُجَّةً فِي الْمَنْعِ مِنْ أَنْ يُصَلِّيَ

[5] **Qur'an references (L9543):** Qur'an 49:10 (Al-Hujurat).
[6] **Qur'an references (L9544):** Qur'an 9:71 (At-Tawbah).

to pray over the one who stole from war booty as evidence prohibiting an imam from praying over such a thief. How then does his refusal (peace be upon him) to pray over Māʿiz become binding evidence for them that an imam may not pray over the stoned offender? Both instances are mere refusals! This is truly perplexing, especially when authentic reports confirm that Allah's Messenger (peace be upon him) did pray over a stoned person—as conveyed through the chain of Aḥmad ibn Shuʿayb: Ismāʿīl ibn Masʿūd narrated to us from Khālid ibn al-Ḥārith, from Hishām al-Dastuwā'ī, from Yaḥyā ibn Abī Kathīr, from Abū Qilābah, from Abū al-Muhallab, from ʿImrān ibn al-Ḥuṣayn: "A woman from Juhaynah, who was pregnant, came to Allah's Messenger (peace be upon him) and confessed to adultery. He entrusted her to her guardian, instructing: 'Treat her kindly. Bring her to me after she delivers.' When she gave birth, he ordered her garments to be secured around her, then she was stoned. He prayed over her, prompting ʿUmar to ask: 'You pray for her though she committed adultery?' He replied: 'She repented with such sincerity that if divided among seventy inhabitants of Medina, it would suffice them all. What greater act could she have performed than to surrender her life?'"

L9550 He (peace be upon him) prayed over someone who had been stoned. If it is argued, "But she [the stoned woman] repented!" we respond, "Maʿiz ibn Mālik also repented, and there is no distinction [between their cases]."

L9551 It is utterly astonishing that they prevent the Imam from praying over the one he ordered to be stoned, yet do not prevent those who carried out the stoning from praying over him. Where then is analogy, if they understood what analogy is?

L9552–9553 It has been narrated to us from Ali ibn Abi Talib that when he stoned Shurahah al-Hamdaniyyah, he said to her guardians: "Treat her as you treat your deceased?" It is authentically established from Atā' that the funeral prayer is offered for the child of adultery, his mother, the two parties involved in mutual oath-swearing [liʿān], the one against whom qisas is enforced, the stoned person, and the one who flees battle and is killed. Atā' said: "I do not withhold prayer from anyone who says 'There is no deity but Allah.'" Allah the Exalted said: {After it became clear to them that they are companions of

الْإِمَامُ عَلَى الْغَالِّ، فَمِنْ أَيْنَ وَجَبَ عِنْدَهُمْ أَنْ يَكُونَ تَرْكُهُ - عَلَيْهِ السَّلَامُ - أَنْ يُصَلِّيَ عَلَى " مَاعِزٍ " حُجَّةً فِي الْمَنْعِ مِنْ أَنْ يُصَلِّيَ عَلَى الْمَرْجُومِ الْإِمَامُ؟ وَكِلَاهُمَا تَرْكٌ وَتَرْكٌ إِنَّ هَذَا لَعَجَبٌ فَكَيْفَ وَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى عَلَى مَنْ رُجِمَ؟ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ: أَنَا إِسْمَاعِيلُ بْنُ مَسْعُودٍ نا خَالِدُ هُوَ ابْنُ الْحَارِثِ - نا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ - عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ «أَنَّ امْرَأَةً مِنْ جُهَيْنَةَ أَتَتْ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: إِنِّي زَنَيْتُ - وَهِيَ حُبْلَى - فَدَفَعَهَا إِلَى وَلِيِّهَا، وَقَالَ لَهُ: أَحْسِنْ إِلَيْهَا، فَإِذَا وَضَعَتْ فَأْتِنِي بِهَا، فَأَمَرَ بِهَا فَشُكَّتْ عَلَيْهَا ثِيَابُهَا، ثُمَّ رَجَمَهَا، ثُمَّ صَلَّى عَلَيْهَا، فَقَالَ لَهُ عُمَرُ: تُصَلِّي عَلَيْهَا وَقَدْ زَنَتْ؟ قَالَ: لَقَدْ تَابَتْ تَوْبَةً لَوْ قُسِّمَتْ بَيْنَ سَبْعِينَ مِنْ أَهْلِ الْمَدِينَةِ لَوَسِعَتْهُمْ، وَهَلْ وَجَدَتْ أَفْضَلَ مِنْ أَنْ جَادَتْ بِنَفْسِهَا» .

فَقَدْ صَلَّى - عَلَيْهِ السَّلَامُ - عَلَى مَنْ رُجِمَ فَإِنْ قِيلَ: تَابَتْ؟ قُلْنَا: وَ " مَاعِزٌ " تَابَ أَيْضًا وَلَا فَرْقَ

وَالْعَجَبُ كُلُّهُ مِنْ مَنْعِهِمْ الْإِمَامَ مِنْ الصَّلَاةِ عَلَى مَنْ أَمَرَ بِرَجْمِهِ، وَلَا يَمْنَعُونَ الْمُتَوَلِّينَ لِلرَّجْمِ مِنْ الصَّلَاةِ عَلَيْهِ: فَأَيْنَ الْقِيَاسُ لَوْ دَرَوْا مَا الْقِيَاسُ؟

وَرُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّهُ إذْ رَجَمَ شُرَاحَةَ الْهَمْدَانِيَّةَ قَالَ لِأَوْلِيَائِهَا: اصْنَعُوا بِهَا كَمَا تَصْنَعُونَ بِمَوْتَاكُمْ؟ وَصَحَّ عَنْ عَطَاءٍ أَنَّهُ يُصَلَّى عَلَى وَلَدِ الزِّنَى، وَعَلَى أُمِّهِ، وَعَلَى الْمُتَلَاعِنَيْنِ، وَعَلَى الَّذِي يُقَادُ مِنْهُ، وَعَلَى الْمَرْجُومِ، وَالَّذِي يَفِرُّ مِنْ الزَّحْفِ فَيُقْتَلُ. قَالَ عَطَاءٌ: لَا أَدَعُ الصَّلَاةَ عَلَى مَنْ قَالَ لَا إلَهَ إلَّا اللَّهُ. قَالَ تَعَالَى: {مِنْ بَعْدِ مَا تَبَيَّنَ لَهُمْ

the Blazing Fire} [At-Tawbah 9:113]. Atā' said: "Who could know these are among the companions of the Blazing Fire?" Ibn Jurayj said: "I asked Amr ibn Dinar, and he responded with the same statement as Atā'."[7]

أَنَّهُمْ أَصْحَابُ الْجَحِيمِ} [التوبة: ١١٣] قَالَ عَطَاءٌ: فَمَنْ يَعْلَمُ أَنَّ هَؤُلَاءِ مِنْ أَصْحَابِ الْجَحِيمِ؟ قَالَ ابْنُ جُرَيْجٍ: فَسَأَلْت عَمْرَو بْنَ دِينَارٍ فَقَالَ: مِثْلَ قَوْلِ عَطَاءٍ

L9554 It has been authentically reported from Ibrāhīm al-Nakhaʿī that he said: They did not deny the funeral prayer to any of the people of the Qiblah, and the funeral prayer is performed for one who commits suicide. He also said: It is Sunnah to perform the funeral prayer for one who has been stoned.

وَصَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ: لَمْ يَكُونُوا يَحْجُبُونَ الصَّلَاةَ عَنْ أَحَدٍ مِنْ أَهْلِ الْقِبْلَةِ، وَالَّذِي قَتَلَ نَفْسَهُ يُصَلَّى عَلَيْهِ. وَأَنَّهُ قَالَ: السُّنَّةُ أَنْ يُصَلَّى عَلَى الْمَرْجُومِ.

L9555 Then why single out an individual to the exclusion of others? It is authentically reported from Qatadah: "Pray for whoever says: There is no god but Allah, but if he is a deeply wicked man, then say: O Allah, forgive the Muslim men, Muslim women, believing men, and believing women." I do not know of any people of knowledge who abstained from praying for those who said: There is no god but Allah?

فَلِمَ يَخُصُّ إمَامًا مِنْ غَيْرِهِ؟ وَصَحَّ عَنْ قَتَادَةَ: صَلِّ عَلَى مَنْ قَالَ: لَا إلَهَ إلَّا اللَّهُ، فَإِنْ كَانَ رَجُلَ سَوْءٍ جِدًّا فَقُلْ: اللَّهُمَّ اغْفِرْ لِلْمُسْلِمِينَ، وَالْمُسْلِمَاتِ، وَالْمُؤْمِنِينَ، وَالْمُؤْمِنَاتِ - مَا أَعْلَمُ أَحَدًا مِنْ أَهْلِ الْعِلْمِ اجْتَنَبَ الصَّلَاةَ عَلَى مَنْ قَالَ: لَا إلَهَ إلَّا اللَّهُ؟

L9556 It has been authentically reported from Ibn Sīrīn: I never met anyone who deemed it sinful to refrain from praying for a member of the people of the Qiblah.

وَصَحَّ عَنْ ابْنِ سِيرِينَ: مَا أَدْرَكْت أَحَدًا يَتَأَثَّمُ مِنْ الصَّلَاةِ عَلَى أَحَدٍ مِنْ أَهْلِ الْقِبْلَةِ.

L9557 It has been authentically reported from Al-Ḥasan that he said: "The prayer should be offered for whoever says, 'There is no deity but Allah' and performs [daily] prayer facing the Qiblah. It is merely an intercession?"

وَصَحَّ عَنْ الْحَسَنِ أَنَّهُ قَالَ: يُصَلَّى عَلَى مَنْ قَالَ لَا إلَهَ إلَّا اللَّهُ وَصَلَّى إلَى الْقِبْلَةِ، إنَّمَا هِيَ شَفَاعَةٌ؟

L9558 From the chain of Wakīʿ via Abū Hilāl via Abū Ghālib: I asked Abū Umāmah al-Bāhilī: "Should the funeral prayer be offered for a man who drinks wine?" He replied: "Yes—perhaps he had once lain on his bed and declared 'There is no god but Allah,' so he was forgiven?"

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ أَبِي هِلَالٍ عَنْ أَبِي غَالِبٍ قُلْت لِأَبِي أُمَامَةَ الْبَاهِلِيِّ: الرَّجُلُ يَشْرَبُ الْخَمْرَ، أَيُصَلَّى عَلَيْهِ؟ قَالَ: نَعَمْ، لَعَلَّهُ اضْطَجَعَ مَرَّةً عَلَى فِرَاشِهِ فَقَالَ: لَا إلَهَ إلَّا اللَّهُ، فَغُفِرَ لَهُ؟

L9559 On the authority of Ibn Masʿūd: He was asked about a man who killed himself—should prayer be performed upon him?

وَعَنْ ابْنِ مَسْعُودٍ: أَنَّهُ سُئِلَ عَنْ رَجُلٍ قَتَلَ نَفْسَهُ: أَيُصَلَّى عَلَيْهِ؟

L9560–9561 He said: Had he used reason, he would not have killed himself.

فَقَالَ: لَوْ كَانَ يَعْقِلُ مَا قَتَلَ نَفْسَهُ

L9562 It has been authentically reported from al-Sha'bi that he said regarding a man who committed suicide: "Has there died among you since such-and-

وَصَحَّ عَنْ الشَّعْبِيِّ: أَنَّهُ قَالَ فِي رَجُلٍ قَتَلَ نَفْسَهُ: مَا مَاتَ فِيكُمْ مُذْ كَذَا وَكَذَا أَحْوَجُ إلَى اسْتِغْفَارِكُمْ مِنْهُ؟ وَقَدْ رُوِّينَا فِي هَذَا خِلَافًا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي مَعْشَرٍ

[7] **Qur'an references (L9553):** Qur'an 9:113 (At-Tawbah).

such a time anyone more in need of your forgiveness than him?" A differing opinion has been narrated to us through the chain of Abd al-Razzaq from Abu Ma'shar from Muhammad ibn Ka'b from Maymun ibn Mihran, who witnessed Ibn Umar praying over an illegitimate child. It was said to him: "Abu Hurairah did not pray over him and said: 'He is the worst of the three.'" Ibn Umar responded: "He is the best of the three."

عَنْ مُحَمَّدِ بْنِ كَعْبٍ عَنْ مَيْمُونِ بْنِ مِهْرَانَ، أَنَّهُ شَهِدَ ابْنَ عُمَرَ صَلَّى عَلَى وَلَدِ زِنًى، فَقِيلَ لَهُ: إِنَّ أَبَا هُرَيْرَةَ لَمْ يُصَلِّ عَلَيْهِ، وَقَالَ: هُوَ شَرُّ الثَّلَاثَةِ؟ فَقَالَ ابْنُ عُمَرَ: هُوَ خَيْرُ الثَّلَاثَةِ

L9563 It has been narrated to us through the chain of Waki' from al-Fuḍayl ibn Ghazwān from Nāfi' from Ibn 'Umar that he would not perform the funeral prayer over a child born of illicit sexual intercourse, whether young or old.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ الْفُضَيْلِ بْنِ غَزْوَانَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ لَا يُصَلِّي عَلَى وَلَدِ زِنًى، صَغِيرٍ وَلَا كَبِيرٍ

L9564 Via the chain of Abd al-Razzaq, from Ma'mar, from al-Zuhri, who said to him: "The funeral prayer is not performed for one executed by stoning (rajm), but it is performed for one subjected to retaliation (qisas), except for one from whom retaliation is exacted as part of stoning." Al-Zuhri did not differentiate between a ruling authority and others in this ruling.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ أَنَّهُ قَالَ لَهُ: لَا يُصَلَّى عَلَى الْمَرْجُومِ، وَيُصَلَّى عَلَى الَّذِي يُقَادُ مِنْهُ، إلَّا مَنْ أُقِيدَ مِنْهُ فِي رَجْمٍ - فَلَمْ يَخُصَّ الزُّهْرِيُّ إمَامًا مِنْ غَيْرِهِ

L9565 As for praying over those who commit sins, we do not know of any early predecessor—whether a Companion or a Follower—who prohibited this.

وَأَمَّا الصَّلَاةُ عَلَى أَهْلِ الْمَعَاصِي فَمَا نَعْلَمُ لِمَنْ مَنَعَ مِنْ ذَلِكَ سَلَفًا مِنْ صَاحِبٍ، أَوْ تَابِعٍ فِي هَذَا الْقَوْلِ؟

L9566 Our statement is the statement of Sufyan, Ibn Abi Layla, Abu Hanifa, Al-Shafi'i, and Abu Sulayman. Abu Muhammad said: Allah the Exalted has instilled in us such hope for pardon and Paradise that we say, "We have attained salvation!"

وَقَوْلُنَا هَذَا هُوَ قَوْلُ سُفْيَانَ، وَابْنِ أَبِي لَيْلَى، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ؟ قَالَ أَبُو مُحَمَّدٍ: لَقَدْ رَجَّانَا اللَّهُ تَعَالَى فِي الْعَفْوِ وَالْجَنَّةِ حَتَّى نَقُولَ قَدْ فُزْنَا.

L9567 Certainly, He, the Almighty, has instilled such fear in us that we say, "We are surely ruined," except that we are certain no Muslim will remain eternally in the Fire—even if he has never done any good other than bearing witness to the Shahada with his heart and tongue, nor has he ever refrained from any evil except disbelief. It may be that one with this description repented before his death, thereby surpassing even the mujtahidun, or perhaps he has good deeds we are unaware of that overwhelm his sins.

وَلَقَدْ خَوَّفَنَا عَزَّ وَجَلَّ حَتَّى نَقُولَ: قَدْ هَلَكْنَا، إلَّا أَنَّنَا عَلَى يَقِينٍ مِنْ أَنْ لَا خُلُودَ عَلَى مُسْلِمٍ فِي النَّارِ - وَإِنْ لَمْ يَفْعَلْ خَيْرًا قَطُّ غَيْرَ شَهَادَةِ الْإِسْلَامِ بِقَلْبِهِ وَلِسَانِهِ، وَلَا امْتَنَعَ مِنْ شَرٍّ قَطُّ غَيْرَ الْكُفْرِ، وَلَعَلَّهُ قَدْ تَابَ مَنْ هَذِهِ صِفَتُهُ قَبْلَ مَوْتِهِ، فَسَبَقَ الْمُجْتَهِدِينَ، أَوْ لَعَلَّ لَهُ حَسَنَاتٍ لَا نَعْلَمُهَا تَغْمُرُ سَيِّئَاتِهِ

L9568 Whoever prays for someone of whom this is their attribute, or for an oppressor of the Muslims who is actively oppressing them, or for someone against whom he has unresolved rights that he does not wish to forgive - let

him supplicate for him as he supplicates for others, intending for him the forgiveness and mercy that follow after just retribution (qisas), and let him say: "O Allah, secure my right from him."

The Jurisprudential Matter of Visiting Muslim Patients

L9569

L9570–9572 Issue 612: Visiting sick Muslims is an obligation - even once - upon the neighbor who does not... Visiting him is a hardship upon him, and we do not exclude any illness—it has been narrated to us via the transmission path of al-Bukhārī: Muḥammad ibn Yaḥyā al-Dhuhlī narrated to us; ʿAmr ibn Abī Salamah narrated to us from al-Awzāʿī, who informed me through Ibn Shihāb, who informed me that Saʿīd ibn al-Musayyab reported: Abū Hurayrah said, "I heard the Messenger of Allah—peace and blessings be upon him—say: 'The Muslim has five rights over another Muslim: returning the greeting of peace, visiting the sick, accompanying funeral processions, accepting invitations, and responding to the sneezer with 'May Allah have mercy on you.'"'[8]

L9573 And from the chain of Abī Dāwūd: Narrated by ʿAbdullāh ibn Muḥammad al-Nufaylī, from Ḥajjāj ibn Muḥammad, from Yūnus ibn Abī Isḥāq, from his father, from Zayd ibn Arqam, who said: "The Messenger of Allāh—peace and blessings be upon him—visited me because of an eye pain I had."[9]

L9574 "And indeed, the Messenger of Allah—May Allah bless him and grant him peace—visited his uncle Abu Talib."

L9575 From the narration of Abū Dāwūd: Sulaymān ibn Ḥarb reported to us, Ḥammād—(i.e., Ibn Salamah)—reported to us from Thābit al-Bunānī from Anas: "A Jewish boy fell ill, so the Prophet—peace and blessings of Allah be upon him—came to visit him. He sat down near his head and said: 'Embrace

[8] **Hadith references (L9570):** Sahih al-Bukhari 1240; Mishkat al-Masabih 1524; Riyad as-Salihin 895.

[9] **Hadith references (L9573):** Sunan Abi Dawud 3102.

فَمَنْ صَلَّى عَلَى مَنْ هَذِهِ صِفَتُهُ، أَوْ عَلَى ظَالِمٍ لِلْمُسْلِمِينَ مُتَبَلِّغٍ فِيهِمْ، أَوْ عَلَى مَنْ لَهُ قِبَلَهُ مَظَالِمُ لَا يُرِيدُ أَنْ يَغْفِرَهَا لَهُ -: فَلْيَدْعُ لَهُ كَمَا يَدْعُو لِغَيْرِهِ، وَهُوَ يُرِيدُ بِالْمَغْفِرَةِ وَالرَّحْمَةِ مَا يَئُولُ إِلَيْهِ أَمْرُهُ بَعْدَ الْقِصَاصِ، وَلْيَقُلْ: اللَّهُمَّ خُذْ لِي بِحَقِّي مِنْهُ

[مَسْأَلَةُ عِيَادَةُ مَرْضَى الْمُسْلِمِينَ]

٦١٢ - مَسْأَلَةٌ وَعِيَادَةُ مَرْضَى الْمُسْلِمِينَ فَرْضٌ - وَلَوْ مَرَّةً - عَلَى الْجَارِ الَّذِي لَا يَشُقُّ عَلَيْهِ عِيَادَتُهُ، وَلَا نَخُصُّ مَرَضًا مِنْ مَرَضٍ -: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ: نا مُحَمَّدٌ هُوَ ابْنُ يَحْيَى الذُّهْلِيُّ - نا عَمْرُو بْنُ أَبِي سَلَمَةَ عَنْ الْأَوْزَاعِيِّ أَخْبَرَنِي ابْنُ شِهَابٍ أَخْبَرَنِي، سَعِيدُ بْنُ الْمُسَيَّبِ أَنَّ أَبَا هُرَيْرَةَ قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «حَقُّ الْمُسْلِمِ عَلَى الْمُسْلِمِ خَمْسٌ: رَدُّ السَّلَامِ، وَعِيَادَةُ الْمَرِيضِ، وَاتِّبَاعُ الْجَنَائِزِ، وَإِجَابَةُ الدَّعْوَةِ، وَتَشْمِيتُ الْعَاطِسِ» .

وَمِنْ طَرِيقِ أَبِي دَاوُد: نا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ النُّفَيْلِيُّ نا حَجَّاجُ بْنُ مُحَمَّدٍ عَنْ يُونُسَ بْنِ أَبِي إِسْحَاقَ عَنْ أَبِيهِ عَنْ زَيْدِ بْنِ أَرْقَمَ قَالَ: «عَادَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ وَجَعٍ كَانَ بِعَيْنِي»

وَقَدْ «عَادَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَمَّهُ أَبَا طَالِبٍ» .

وَمِنْ طَرِيقِ أَبِي دَاوُد: نا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادٌ هُوَ ابْنُ سَلَمَةَ - عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسٍ «أَنَّ غُلَامًا مِنْ الْيَهُودِ مَرِضَ فَأَتَاهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَعُودُهُ، فَقَعَدَ عِنْدَ رَأْسِهِ، فَقَالَ لَهُ: أَسْلِمْ، فَنَظَرَ إلَى أَبِيهِ وَهُوَ عِنْدَ رَأْسِهِ فَقَالَ: أَطِعْ أَبَا الْقَاسِمِ؟

Islam.' The boy looked at his father, who was at his head, and he said: 'Obey Abū al-Qāsim [the Prophet].' So he embraced Islam. The Prophet—peace and blessings of Allah be upon him—stood up, saying: 'Praise be to Allah who saved him from the Fire.'" Is visiting a disbeliever a virtuous act?

The Jurisprudential Issue of the Plague When It Occurs in a Land

Issue 613: Is it impermissible for one to flee from plague when it occurs in a land where they reside? And it remains permissible for them to depart for a journey they would have undertaken if the plague had not existed.

It is impermissible for one who is outside an afflicted land to enter it while plague persists until it subsides. The plague refers to death that becomes widespread at certain times beyond customary levels—as narrated through Mālik from Ibn Shihāb, from ʿAbd al-Ḥamīd ibn ʿAbd al-Raḥmān ibn Zayd ibn al-Khaṭṭāb, from ʿAbd Allāh ibn ʿAbd Allāh ibn al-Ḥārith ibn Nawfal, from ʿAbd Allāh ibn ʿAbbās, who narrated that ʿAbd al-Raḥmān ibn ʿAwf said: I heard the Messenger of Allāh, peace and blessings be upon him, say: "When you hear of it in a land, do not..." "Do not advance toward it, and when it breaks out in a land while you are present there, do not flee from it."

Abu Muhammad said: Did he—peace be upon him—prohibit leaving unless solely intending to flee from him? It has been narrated to us from Aisha—may Allah be pleased with her—the permissibility of fleeing from him, and no one's argument holds weight alongside the Messenger of Allah—peace and blessings of Allah be upon him.

A Jurisprudential Question Regarding the Postponement of Burial.

Issue 614: We consider it preferable to delay burial—even up to a day and a night—provided there is no fear of the deceased's decomposition, particularly for one suspected to have lost consciousness.

فَأَسْلَمَ، فَقَامَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ يَقُولُ: الْحَمْدُ لِلَّهِ الَّذِي أَنْقَذَهُ مِنْ النَّارِ» . فَعِيَادَةُ الْكَافِرِ فِعْلٌ حَسَنٌ؟

[مَسْأَلَةُ الطَّاعُونِ إذَا وَقَعَ فِي بَلَدٍ]

٦١٣ - مَسْأَلَةٌ وَلَا يَحِلُّ أَنْ يَهْرُبَ أَحَدٌ عَنْ الطَّاعُونِ إذَا وَقَعَ فِي بَلَدٍ هُوَ فِيهِ؟ وَمُبَاحٌ لَهُ الْخُرُوجُ لِسَفَرِهِ الَّذِي كَانَ يَخْرُجُ فِيهِ لَوْ لَمْ يَكُنْ الطَّاعُونُ

وَلَا يَحِلُّ الدُّخُولُ إلَى بِلَادٍ فِيهِ الطَّاعُونُ لِمَنْ كَانَ خَارِجًا عَنْهُ حَتَّى يَزُولَ؟ وَالطَّاعُونُ هُوَ الْمَوْتُ الَّذِي كَثُرَ فِي بَعْضِ الْأَوْقَاتِ كَثْرَةً خَارِجَةً عَنْ الْمَعْهُودِ -: لِمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ عَبْدِ الْحَمِيدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ زَيْدِ بْنِ الْخَطَّابِ عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ الْحَارِثِ بْنِ نَوْفَلٍ عَنْ عَبْدِ اللَّهِ بْنِ عَبَّاسٍ قَالَ: قَالَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «إذَا سَمِعْتُمْ بِهِ بِأَرْضٍ فَلَا تَقْدَمُوا عَلَيْهِ، وَإِذَا وَقَعَ فِي أَرْضٍ وَأَنْتُمْ فِيهَا فَلَا تَخْرُجُوا فِرَارًا مِنْهُ» .

قَالَ أَبُو مُحَمَّدٍ: فَلَمْ يَنْهَ - عَلَيْهِ السَّلَامُ - عَنْ الْخُرُوجِ إلَّا بِنِيَّةِ الْفِرَارِ مِنْهُ فَقَطْ؟ وَقَدْ رُوِّينَا عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - إبَاحَةَ الْفِرَارِ عَنْهُ، وَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَةُ تَأْخِيرِ الدَّفْنِ]

٦١٤ - مَسْأَلَةٌ وَنَسْتَحِبُّ تَأْخِيرَ الدَّفْنِ وَلَوْ يَوْمًا وَلَيْلَةً، مَا لَمْ يُخَفْ عَلَى الْمَيِّتِ التَّغْيِيرُ، لَا سِيَّمَا مَنْ تَوَقَّعَ أَنْ يُغْمَى عَلَيْهِ.

L9584 The Messenger of Allah—may Allah's peace and blessings be upon him—died on Monday forenoon and was buried during the middle of the night of Wednesday. It has been narrated to us via Waki' from Sufyan from Salim al-Khayyat from al-Hasan, who said: "Three days should be awaited for the one struck by sudden calamity."

L9585 **An issue concerning positioning the deceased in his grave on his right side.**

L9586 615 - Issue: The deceased is placed in his grave on his right side, facing the Qiblah, with his head aligned toward the Qiblah and his feet positioned away from it. This has been the ongoing practice of Muslims from the time of the Messenger of Allah (peace and blessings be upon him) to this day, and such is every cemetery on the face of the earth.

L9587–9588 **A Jurisprudential Issue on Directing the Deceased Toward the Qiblah**

L9589 Issue: Directing the deceased toward the qiblah is meritorious. If he is not directed, there is no blame. Allah the Exalted said: {So wherever you turn, there is the Face of Allah} [Surah al-Baqarah 2:115].[10]

L9590 No text has been conveyed directing the deceased to face the qibla. It has been narrated to us via the chain of 'Abd al-Razzāq from Sufyān al-Thawrī from Jābir, who said: I asked al-Sha'bī about orienting the deceased toward the qibla. He responded: "If you wish, direct the deceased; if not, then do not. Instead, position the grave toward the qibla. Are not the graves of Allah's Messenger—peace be upon him—Abū Bakr, and 'Umar oriented toward the qibla?"

L9591 And from the chain of Abd al-Razzaq from Sufyan al-Thawri, and from Ibn Jurayj from Isma'il ibn Umayyah: A man entered upon Sa'id ibn al-Musayyib—Ibn Jurayj said, "when death was approaching the man as he lay on his back"—and said: "Direct the man toward the qibla." Sa'id became angry and said: "Am I not facing the qibla?"

[10] **Qur'an references (L9589):** Qur'an 2:115 (Al-Baqarah).

وَقَدْ مَاتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ الاِثْنَيْنِ ضَحْوَةً، وَدُفِنَ فِي جَوْفِ اللَّيْلِ مِنْ لَيْلَةِ الْأَرْبِعَاءِ؟ وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ سَالِمٍ الْخَيَّاطِ عَنْ الْحَسَنِ قَالَ: يُنْتَظَرُ بِالْمَصْعُوقِ ثَلَاثًا؟ .

[مَسْأَلَةٌ جَعَلُ الْمَيِّتِ فِي قَبْرِهِ عَلَى جَنْبِهِ الْيَمِينِ]

٦١٥ - مَسْأَلَةٌ وَيُجْعَلُ الْمَيِّتُ فِي قَبْرِهِ عَلَى جَنْبِهِ الْيَمِينِ، وَوَجْهُهُ قُبَالَةَ الْقِبْلَةِ، وَرَأْسُهُ وَرِجْلَاهُ إلَى يَمِينِ الْقِبْلَةِ، وَيَسَارِهَا، عَلَى هَذَا جَرَى عَمَلُ أَهْلِ الْإِسْلَامِ مِنْ عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى يَوْمِنَا هَذَا، وَهَكَذَا كُلُّ مَقْبَرَةٍ عَلَى ظَهْرِ الْأَرْضِ؟

[مَسْأَلَةٌ تَوْجِيهُ الْمَيِّتِ إلَى الْقِبْلَةِ]

مَسْأَلَةٌ وَتَوْجِيهُ الْمَيِّتِ إلَى الْقِبْلَةِ حَسَنٌ، فَإِنْ لَمْ يُوَجَّهْ فَلَا حَرَجَ. قَالَ اللَّهُ تَعَالَى: {فَأَيْنَمَا تُوَلُّوا فَثَمَّ وَجْهُ اللَّهِ} [البقرة: ١١٥] .

وَلَمْ يَأْتِ نَصٌّ بِتَوْجِيهِهِ إلَى الْقِبْلَةِ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ قَالَ: سَأَلْت الشَّعْبِيَّ، عَنْ الْمَيِّتِ يُوَجَّهُ إلَى الْقِبْلَةِ؟ فَقَالَ: إنْ شِئْت فَوَجِّهْهُ، وَإِنْ شِئْت فَلَا تُوَجِّهْهُ، وَلَكِنْ اجْعَلْ الْقَبْرَ إلَى الْقِبْلَةِ، قَبْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَبْرُ أَبِي بَكْرٍ، وَقَبْرُ عُمَرَ إلَى الْقِبْلَةِ؟

-: وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَابْنِ جُرَيْجٍ عَنْ إسْمَاعِيلَ بْنِ أُمَيَّةَ: أَنَّ رَجُلًا دَخَلَ عَلَى سَعِيدِ بْنِ الْمُسَيِّبِ، قَالَ ابْنُ جُرَيْجٍ: حِينَ حَضَرَهُ الْمَوْتُ وَهُوَ مُسْتَلْقٍ - فَقَالَ: وَجِّهُوهُ إلَى الْقِبْلَةِ، فَغَضِبَ سَعِيدٌ وَقَالَ: أَلَسْت إلَى الْقِبْلَةِ؟

[مَسْأَلَةٌ تَغْسِيلُ الْمَرْأَةِ زَوْجَهَا]

٦١٧ - مَسْأَلَةٌ وَجَائِزٌ أَنْ تُغَسِّلَ الْمَرْأَةُ زَوْجَهَا، وَأُمُّ الْوَلَدِ سَيِّدَهَا، وَإِنْ انْقَضَتْ الْعِدَّةُ بِالْوِلَادَةِ، مَا لَمْ تُنْكَحَا، فَإِنْ نُكِحَتَا لَمْ يَحِلَّ لَهُمَا غُسْلُهُ إِلَّا كَالْأَجْنَبِيَّاتِ

A jurisprudential case concerning a woman's ritual washing of her husband.

Issue: It is permissible for a woman to wash her husband, and for an umm al-walad (a slave woman who bore her master a child) to wash her master, even if the waiting period (ʿiddah) has ended due to childbirth, provided they have not married another. If they do marry another, it is not lawful for them to wash him except as permissible for non-mahram women.

وَجَائِزٌ لِلرَّجُلِ أَنْ يُغَسِّلَ امْرَأَتَهُ، وَأُمَّ وَلَدِهِ، وَأَمَتَهُ، مَا لَمْ يَتَزَوَّجْ حَرِيمَتَهَا، أَوْ يَسْتَحِلَّ حَرِيمَتَهَا بِالْمِلْكِ، فَإِنْ فَعَلَ لَمْ يَحِلَّ لَهُ غَسْلُهَا؟ وَلَيْسَ لِلْأَمَةِ أَنْ تُغَسِّلَ سَيِّدَهَا أَصْلًا، لِأَنَّ مِلْكَهَا بِمَوْتِهِ انْتَقَلَ إلَى غَيْرِهِ. بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ} [النساء: ١٢] : فَسَمَّاهَا زَوْجَةً بَعْدَ مَوْتِهَا وَهِيَ - إنْ كَانَا مُسْلِمَيْنِ - امْرَأَتُهُ فِي الْجَنَّةِ، وَكَذَلِكَ أُمُّ وَلَدِهِ، وَأَمَتُهُ، وَكَانَ حَلَالًا لَهُ رُؤْيَةُ أَبْدَانِهِنَّ فِي الْحَيَاةِ وَتَقْبِيلُهُنَّ وَمَسُّهُنَّ، فَكُلُّ ذَلِكَ بَاقٍ عَلَى التَّحْلِيلِ فَمَنْ ادَّعَى تَحْرِيمَ ذَلِكَ بِالْمَوْتِ فَقَوْلٌ بَاطِلٌ إلَّا بِنَصٍّ، وَلَا سَبِيلَ لَهُ إلَيْهِ

It is permissible for a man to wash his wife, his umm walad, or his female slave, provided he has not married her mahram relative or lawfully permitted her mahram through ownership. If he does so, it becomes impermissible for him to wash her. A female slave may not wash her master under any circumstance, because her ownership transfers to others upon his death. The proof of this is Allah's statement: "You are entitled to half of what your wives leave behind" (4:12). Here, He refers to her as a wife even after her death, and if both were Muslims, she remains his wife in Paradise. The same applies to his umm walad and female slave, since it was permissible for him during their lifetimes to see their bodies, kiss them, and touch them. All these rulings remain permissible unless explicitly prohibited by textual evidence. Anyone who claims such acts are forbidden after death without specific textual proof asserts a falsehood, for there is no basis for it.[11]

وَأَمَّا إذَا تَزَوَّجَ حَرِيمَتَهَا، أَوْ تَمَلَّكَهَا، أَوْ تَزَوَّجَتْ هِيَ -: فَحَرَامٌ عَلَيْهِ الِاطِّلَاعُ عَلَى بَدَنَيْهِمَا مَعًا، لِأَنَّهُ جَمَعَ بَيْنَهُمَا.

If he marries her close female relative; acquires her as a slave; or she marries - it is forbidden for him to look at the private areas of both women together, because he has joined them in union.

وَكَذَلِكَ حَرَامٌ عَلَى الْمَرْأَةِ التَّلَذُّذُ بِرُؤْيَةِ بَدَنِ رَجُلَيْنِ مَعًا؟

Similarly, is it forbidden for a woman to derive pleasure from viewing the bodies of two men together?

وَقَوْلُنَا هُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ؟ وَقَالَ أَبُو حَنِيفَةَ: تُغَسِّلُ الْمَرْأَةُ زَوْجَهَا، لِأَنَّهَا فِي عِدَّةٍ مِنْهُ، وَلَا يُغَسِّلُهَا هُوَ

Our opinion is the same as that of Malik, al-Shafi'i, and Abu Sulayman. Abu Hanifah said: A woman may wash her husband because she is observing the waiting period (ʿiddah) due to him, but he may not wash her.

We have been narrated through the path of Ibn Abī Shaybah from Maʿmar

[11] **Qur'an references (L9594):** Qur'an 4:12 (An-Nisa).

ibn Sulaymān al-Raqqī, from Ḥajjāj, from Dāwūd. Ibn al-Husayn reported from ʻIkrimah, from Ibn ʻAbbās, who said: "A man has the most right to wash his wife." Through the chain of Ḥammād ibn Salamah, from al-Ḥajjāj ibn Arṭāh, from ʻAbd al-Raḥmān ibn al-Aswad, who said: "I myself wash my wives and interpose between them and their mothers, daughters, and sisters."

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ مَعْمَرِ بْنِ سُلَيْمَانَ الرَّقِّيِّ عَنْ حَجَّاجٍ عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: الرَّجُلُ أَحَقُّ بِغُسْلِ امْرَأَتِهِ وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ قَالَ: إِنِّي لَأُغَسِّلُ نِسَائِي، وَأَحُولُ بَيْنَهُنَّ وَبَيْنَ أُمَّهَاتِهِنَّ وَبَنَاتِهِنَّ وَأَخَوَاتِهِنَّ

L9601 From the chain of Abd al-Razzaq via Sufyan al-Thawri, who heard Hammad ibn Abi Sulayman say: "If a woman dies among the group, then does the wife wash her husband, and the husband wash his wife?" From the chain of Abd al-Razzaq via Sufyan ibn Uyayna via Amr ibn Dinar via Abu al-Sha'tha - being Jabir ibn Zayd - who said: "Is the man more entitled to wash his wife than her brother?" From the chain of Waki' via Sufyan al-Thawri via Abd al-Karim via Ata ibn Abi Rabah, who said: "Her husband washes her if he cannot find someone to wash her."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ سَمِعْت حَمَّادَ بْنَ أَبِي سُلَيْمَانَ يَقُولُ: إذَا مَاتَتْ الْمَرْأَةُ مَعَ الْقَوْمِ فَالْمَرْأَةُ تُغَسِّلُ زَوْجَهَا، وَالرَّجُلُ امْرَأَتَهُ؟ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي الشَّعْثَاءِ هُوَ جَابِرُ بْنُ زَيْدٍ قَالَ: الرَّجُلُ أَحَقُّ أَنْ يُغَسِّلَ امْرَأَتَهُ مِنْ أَخِيهَا؟ وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الْكَرِيمِ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: يُغَسِّلُهَا زَوْجُهَا إذَا لَمْ يَجِدْ مَنْ يُغَسِّلُهَا

L9602 And through the chain of Waki' from Sufyan al-Thawri from ʻAmr ibn ʻUbayd from al-Hasan al-Basri, who said: Each spouse performs the ritual washing (ghusl) for the other—meaning the husband and wife—after death.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمْرِو بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: يُغَسِّلُ كُلُّ صَاحِبِهُ - يَعْنِي الزَّوْجَ، وَالزَّوْجَةَ - بَعْدَ الْمَوْتِ؟

L9603 From the chain of Waki' from al-Rabi' from al-Hasan, who said: "There is no harm if a man washes his *umm walad*." From the chain of Ibn Abi Shaybah: Abu Usamah narrated to us from Awf—Ibn Abi Jamilah—that he was present with Qasamah Ibn Zuhayr and elders who had lived during the time of Umar Ibn al-Khattab, when a man came to them and informed them that his wife had died and had instructed him that only he should wash her. So he washed her, and none of them disapproved of that.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الرَّبِيعِ عَنْ الْحَسَنِ قَالَ: لَا بَأْسَ أَنْ يُغَسِّلَ الرَّجُلُ أُمَّ وَلَدِهِ؟ وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: نا أَبُو أُسَامَةَ عَنْ عَوْفٍ هُوَ ابْنُ أَبِي جَمِيلَةَ -: أَنَّهُ شَهِدَ قَسَامَةَ بْنَ زُهَيْرٍ وَأَشْيَاخًا أَدْرَكُوا عُمَرَ بْنَ الْخَطَّابِ وَقَدْ أَتَاهُمْ رَجُلٌ فَأَخْبَرَهُمْ أَنَّ امْرَأَتَهُ مَاتَتْ فَأَمَرَتْهُ أَنْ لَا يُغَسِّلَهَا غَيْرُهُ؟ فَغَسَّلَهَا، فَمَا مِنْهُمْ أَحَدٌ أَنْكَرَ ذَلِكَ؟

L9604 It was also narrated to us through the chain of Sulaymān ibn Mūsā that he said: "A man may perform the funeral washing for his wife." From Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf: If a woman dies among men where no woman is present, should her husband perform the funeral washing for her?

وَرُوِّينَا أَيْضًا مِنْ طَرِيقِ سُلَيْمَانَ بْنِ مُوسَى أَنَّهُ قَالَ: يُغَسِّلُ الرَّجُلُ امْرَأَتَهُ وَعَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: إذَا مَاتَتْ الْمَرْأَةُ مَعَ رِجَالٍ لَيْسَ فِيهِمْ امْرَأَةٌ فَإِنَّ زَوْجَهَا يُغَسِّلُهَا؟

L9605 The Hanafis highly regard the differing opinion of a Companion when no opposing opinion is known from them. This is a narration reported from Ibn Abbas, for whom no opposing opinion is known among the Companions, yet they [the Hanafis] have opposed his opinion.

وَالْحَنَفِيُّونَ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مِنْهُمْ مُخَالِفٌ، وَهَذِهِ رِوَايَةٌ عَنْ ابْنِ عَبَّاسٍ لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، وَقَدْ خَالَفُوهُ

L9606 It has also been reported from Ali that he washed Fatimah with Asma bint Umays. They objected to this with a weak narration: that she - may Allah be pleased with her - performed ghusl before her death and instructed that she not be moved, so she was buried with that ghusl.

وَقَدْ رُوِيَ أَيْضًا عَنْ عَلِيٍّ: أَنَّهُ غَسَّلَ فَاطِمَةَ مَعَ أَسْمَاءَ بِنْتِ عُمَيْسٍ؟ فَاعْتَرَضُوا عَلَى ذَلِكَ بِرِوَايَةٍ لَا تَصِحُّ: أَنَّهَا - رَضِيَ اللَّهُ عَنْهَا - اغْتَسَلَتْ قَبْلَ مَوْتِهَا وَأَوْصَتْ أَلَّا تُحَرَّكَ، فَدُفِنَتْ بِذَلِكَ الْغُسْلِ.

L9607–9608 And this is upon them, not for them; because they have also contradicted Ali and Fatimah in this, in the presence of the Companions?

وَهَذَا عَلَيْهِمْ لَا لَهُمْ؛ لِأَنَّهُمْ قَدْ خَالَفُوا فِي هَذَا أَيْضًا عَلِيًّا، وَفَاطِمَةَ، بِحَضْرَةِ الصَّحَابَةِ؟

L9609 If they cite the narration transmitted through Ibn Abī Shaybah's chain from Ḥafṣ ibn Ghiyāth, from Layth, from Yazīd ibn Abī Sulaymān, from Masrūq, who said: "A wife of Umar died, so he said: 'I had the greatest right to her when she was alive. But now, you are more entitled to her?'" - then this contains no proof for their position. For he only addressed her guardians with this statement regarding placing her in the grave and praying over her. There is no disagreement that guardians may not wash her. The evidence for this is his use of masculine address - had he addressed women, he would have said: "You [feminine] are more entitled to her." Would Umar err in speech?

فَإِنْ ذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ حَفْصِ بْنِ غِيَاثٍ عَنْ لَيْثٍ عَنْ يَزِيدَ بْنِ أَبِي سُلَيْمَانَ عَنْ مَسْرُوقٍ قَالَ: مَاتَتْ امْرَأَةٌ لِعُمَرَ، فَقَالَ: أَنَا كُنْت أَوْلَى بِهَا إذْ كَانَتْ حَيَّةً، فَأَمَّا الْآنَ فَأَنْتُمْ أَوْلَى بِهَا؟ فَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ إنَّمَا خَاطَبَ بِذَلِكَ، أَوْلِيَاءَهَا فِي إدْخَالِهَا الْقَبْرَ وَالصَّلَاةِ عَلَيْهَا، وَلَا خِلَافَ فِي أَنَّ الْأَوْلِيَاءَ لَا يَجُوزُ لَهُمْ غَسْلُهَا، وَدَلِيلُ ذَلِكَ أَنَّهُ بِلَفْظِ خِطَابِ الْمُذَكَّرِ، وَلَوْ خَاطَبَ النِّسَاءَ لَقَالَ: أَنْتُنَّ أَوْلَى بِهَا، وَعُمَرُ لَا يَلْحَنُ؟

[مَسْأَلَةٌ مَاتَ بَيْنَ نِسَاءٍ لَا رَجُلَ مَعَهُنَّ]

A juridical case: A man died while surrounded by women, with no man present among them.

L9610

L9611 618 - Issue: If a man dies among women with no man present, or a woman dies among men with no women present - the women should wash the man, and the men should wash the woman over a thick cloth, by pouring water over the entire body without direct hand contact. This is because the washing is an obligatory act as established earlier, and it is possible as noted without direct contact. Therefore, it is impermissible to neglect it, and there is absolutely no blame in pouring water itself - and success comes only from Allah, the Most High.

٦١٨ - مَسْأَلَةٌ فَلَوْ مَاتَ رَجُلٌ بَيْنَ نِسَاءٍ لَا رَجُلَ مَعَهُنَّ، أَوْ مَاتَتْ امْرَأَةٌ بَيْنَ رِجَالٍ لَا نِسَاءَ مَعَهُمْ -: غَسَّلَ النِّسَاءُ الرَّجُلَ وَغَسَّلَ الرِّجَالُ الْمَرْأَةَ عَلَى ثَوْبٍ كَثِيفٍ، يُصَبُّ الْمَاءُ عَلَى جَمِيعِ الْجَسَدِ دُونَ مُبَاشَرَةِ الْيَدِ، لِأَنَّ الْغُسْلَ فَرْضٌ كَمَا قَدَّمْنَا، وَهُوَ مُمْكِنٌ كَمَا ذَكَرْنَا بِلَا مُبَاشَرَةٍ، فَلَا يَحِلُّ تَرْكُهُ، وَلَا كَرَاهَةَ فِي صَبِّ الْمَاءِ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَلَا يَجُوزُ أَنْ يُعَوِّضَ التَّيَمُّمَ مِنْ الْغُسْلِ إلَّا عِنْدَ عَدَمِ الْمَاءِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L9612 It is not permissible to substitute dry ablution (tayammum) for the ritual bath (ghusl) except in the absence of water. And with Allah, the Most High, is success.

وَرُوِّينَا أَثَرًا فِيهِ أَبُو بَكْرِ بْنُ عَيَّاشٍ عَنْ مَكْحُولٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: يُيَمَّمَانِ» وَهَذَا مُرْسَلٌ، وَأَبُو بَكْرِ بْنُ عَيَّاشٍ ضَعِيفٌ، فَهُوَ سَاقِطٌ

L9613 We have been transmitted a report in which Abu Bakr ibn ʿAyyash narrates on the authority of Makhul that the Messenger of Allah—peace and blessings be upon him—said: "The two of them are to perform tayammum (dry ablution)." This is a mursal narration, and Abu Bakr ibn ʿAyyash is a weak narrator; therefore, it is discarded.

وَمِمَّنْ قَالَ بِقَوْلِنَا هَذَا طَائِفَةٌ مِنْ الْعُلَمَاءِ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ، وَقَتَادَةَ قَالَا جَمِيعًا: تُغَسَّلُ وَعَلَيْهَا الثِّيَابُ، يَعْنِيَانِ فِي الْمَرْأَةِ تَمُوتُ بَيْنَ رِجَالٍ لَا امْرَأَةَ مَعَهُمْ

L9614 Among those who have adopted this opinion of ours is a group of scholars. It has been narrated to us through the chain of Abd al-Razzaq from Ma'mar from al-Zuhri and Qatadah—both of whom said together: "She is washed while wearing her clothes"—they [both] mean in the case of a woman who dies among men with no woman with them.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ، وَزِيَادٍ الْأَعْلَمِ، وَالْحَجَّاجِ: قَالَ حُمَيْدٌ، وَزِيَادٌ: عَنْ الْحَسَنِ، وَقَالَ الْحَجَّاجُ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، قَالَا جَمِيعًا - فِي الْمَرْأَةِ تَمُوتُ مَعَ رِجَالٍ لَيْسَ مَعَهُمْ امْرَأَةٌ -: أَنَّهَا يُصَبُّ عَلَيْهَا الْمَاءُ مِنْ وَرَاءِ الثِّيَابِ وَالْعَجَبُ أَنَّ الْقَائِلِينَ أَنَّهَا تُيَمَّمُ: فَرُّوا مِنْ الْمُبَاشَرَةِ خَلْفَ ثَوْبٍ وَأَبَاحُوهَا عَلَى الْبَشَرَةِ وَهَذَا جَهْلٌ شَدِيدٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L9615–9617 From the narration of Ḥammād ibn Salamah through Ḥumayd, Ziyād al-Aʿlam, and al-Ḥajjāj: Ḥumayd and Ziyād reported from al-Ḥasan, while al-Ḥajjāj reported from al-Ḥakam ibn ʿUtaybah. Both unanimously stated regarding a woman who dies among men with no woman present: water is poured over her through her garments. It is perplexing that those who assert she should receive dry ablution (tayammum) avoid direct contact by using a garment as a barrier, yet they permit such contact directly on her skin. And this is severe ignorance—and with Allah, the Exalted, lies all divine success.

[مَسْأَلَةٌ رَفْعُ الْيَدَيْنِ فِي الصَّلَاةِ عَلَى الْجِنَازَةِ]

L9618 **A jurisprudential question regarding raising the hands during the funeral prayer.**

٦١٩ - مَسْأَلَةٌ وَلَا تُرْفَعُ الْيَدَانِ فِي الصَّلَاةِ عَلَى الْجِنَازَةِ إلَّا فِي أَوَّلِ تَكْبِيرَةٍ فَقَطْ؛ لِأَنَّهُ لَمْ يَأْتِ بِرَفْعِ الْأَيْدِي فِيمَا عَدَا ذَلِكَ نَصٌّ؟

L9619 Issue 619: One should not raise the hands during the funeral prayer except in the first Takbir (opening supplication), because no explicit textual evidence has been transmitted regarding raising the hands in other instances.

L9620 A similar opinion to this one of ours has been narrated from Ibn Masʿūd and Ibn ʿAbbās. This is the opinion of Abū Ḥanīfah and Sufyān. It has been authentically reported from Ibn ʿUmar that he raised his hands for every

takbir. Indeed, it is incumbent upon those who adhere to qiyas to raise them in every takbir by analogy to the first takbir.

وَرُوِيَ مِثْلُ قَوْلِنَا هَذَا عَنْ ابْنِ مَسْعُودٍ، وَابْنِ عَبَّاسٍ وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ؟ وَصَحَّ عَنْ ابْنِ عُمَرَ رَفْعُ الْأَيْدِي لِكُلِّ تَكْبِيرَةٍ، وَلَقَدْ كَانَ يَلْزَمُ مَنْ قَالَ بِالْقِيَاسِ أَنْ يَرْفَعَهَا فِي كُلِّ تَكْبِيرَةٍ قِيَاسًا عَلَى التَّكْبِيرَةِ الْأُولَى.

A case where the deceased had excessive nails, an overgrown mustache, or excessive pubic hair.

[مَسْأَلَةٌ كَانَتْ أَظْفَارُ الْمَيِّتِ وَافِرَةً أَوْ شَارِبُهُ وَافِيًا أَوْ عَانَتُهُ]

620 - Issue: If the deceased's nails are overgrown, or his mustache is overgrown, or his pubic hair is overgrown, all of that must be removed. This is because sound textual evidence exists stating that all such matters pertain to the fitrah. Thus, it is impermissible to prepare him to meet his Lord, Exalted is He, except in accordance with the natural state he was in at death.

٦٢٠ - مَسْأَلَةٌ وَإِنْ كَانَتْ أَظْفَارُ الْمَيِّتِ وَافِرَةً، أَوْ شَارِبُهُ وَافِيًا، أَوْ عَانَتُهُ: أَخَذَ كُلَّ ذَلِكَ، لِأَنَّ النَّصَّ قَدْ وَرَدَ وَصَحَّ بِأَنَّ كُلَّ ذَلِكَ مِنَ الْفِطْرَةِ، فَلَا يَجُوزُ أَنْ يُجَهَّزَ إِلَى رَبِّهِ تَعَالَى إِلَّا عَلَى الْفِطْرَةِ الَّتِي مَاتَ عَلَيْهَا

It was reported to us by Abd al-Razzaq, from Sufyan al-Thawri, from Khalid al-Ḥadhdhā', from Abu Qilabah: that Sa'd ibn Abi Waqqās shaved the pubic area of a deceased person.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ: أَنَّ سَعْدَ بْنَ أَبِي وَقَّاصٍ حَلَقَ عَانَةَ مَيِّتٍ

They magnify the contradiction of the Companion for whom no dissent is known among the Companions - may Allah be pleased with them - and is this a Companion with no dissenters among them? From 'Abd al-Razzāq, from Ma'mar, from al-Ḥasan: Regarding the hair of the deceased's pubic region, if it was abundant, he said: A portion is to be removed. Some scholars cited as evidence by asking: "If he was uncircumcised, would he be circumcised?" We replied: Yes. So what then? Circumcision is part of the fitrah.

وَهُمْ يُعَظِّمُونَ مُخَالَفَةَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهَذَا صَاحِبٌ لَا يُعْرَفُ لَهُ مِنْهُمْ مُخَالِفٌ؟ وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الْحَسَنِ: فِي شَعْرِ عَانَةِ الْمَيِّتِ إِنْ كَانَ وَافِرًا، قَالَ: يُؤْخَذُ مِنْهُ وَاحْتَجَّ بَعْضُهُمْ بِأَنْ قَالَ: فَإِنْ كَانَ أَقْلَفَ أَيُخْتَنُ؟ قُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ وَالْخِتَانُ مِنَ الْفِطْرَةِ

If it is asked: You do not maintain that purification should be performed for _janabah_ (major ritual impurity) if one dies in that state, nor for menstruation if a woman dies while menstruating, nor for Friday if one dies on Friday—what then is the distinction?

فَإِنْ قِيلَ: فَأَنْتُمْ لَا تَرَوْنَ أَنْ يُطَهَّرَ لِلْجَنَابَةِ إِنْ مَاتَ مُجْنِبًا، وَلَا لِلْحَيْضِ إِنْ مَاتَتْ حَائِضًا، وَلَا لِيَوْمِ الْجُمُعَةِ إِنْ مَاتَ يَوْمَ الْجُمُعَةِ، فَمَا الْفَرْقُ؟

We said: The distinction is that these ritual ablutions are commanded for every individual to perform upon themselves, and they are not binding on those not subject to legal accountability, such as the insane, the unconscious, and the minor.

قُلْنَا: الْفَرْقُ أَنَّ هَذِهِ الْأَغْسَالَ مَأْمُورٌ بِهَا كُلُّ أَحَدٍ فِي نَفْسِهِ، وَلَا تَلْزَمُ مَنْ لَا يُخَاطَبُ: كَالْمَجْنُونِ، وَالْمُغْمَى عَلَيْهِ، وَالصَّغِيرِ.

L9628 The legal directive has ceased to apply to the deceased. As for trimming the mustache, shaving pubic hair, armpit hair, and circumcision: the textual evidence has reached us indicating these are aspects of the innate disposition (fitrah). The individual is not commanded to perform them as a personal obligation; rather, all people are commanded regarding them. Should all these acts be carried out upon the insane, the unconscious, and the minor?

وَقَدْ سَقَطَ الْخِطَابُ عَنْ الْمَيِّتِ وَأَمَّا قَصُّ الشَّارِبِ، وَحَلْقُ الْعَانَةِ، وَالْإِبْطِ، وَالْخِتَانِ: فَالنَّصُّ جَاءَنَا بِأَنَّهَا مِنْ الْفِطْرَةِ، وَلَمْ يُؤْمَرْ بِهَا الْمَرْءُ فِي نَفْسِهِ، بَلْ الْكُلُّ مَأْمُورُونَ بِهَا، فَيَعْمَلُ ذَلِكَ كُلُّهُ بِالْمَجْنُونِ، وَالْمُغْمَى عَلَيْهِ، وَالصَّغِيرِ؟

An issue concerning placing the deceased into the grave.

[مَسْأَلَةُ إدْخَالُ الْمَيِّتِ الْقَبْرَ]

L9630 621 – Issue: The deceased is placed into the grave in whichever way possible, whether from the direction of the qibla, its opposite direction, the direction of the head, or the direction of the feet, as there exists no explicit scriptural text addressing any aspect of this matter.

٦٢١ - مَسْأَلَةٌ وَيُدْخَلُ الْمَيِّتُ الْقَبْرَ كَيْفَ أَمْكَنَ، إمَّا مِنْ الْقِبْلَةِ، أَوْ مِنْ دُبُرِ الْقِبْلَةِ، أَوْ مِنْ قِبَلِ رَأْسِهِ أَوْ مِنْ قِبَلِ رِجْلَيْهِ، إذْ لَا نَصَّ فِي شَيْءٍ مِنْ ذَلِكَ.

L9631 It has been authentically reported from Ali that he admitted Yazid ibn al-Mukaffaf from the direction of the qibla.

وَقَدْ صَحَّ عَنْ عَلِيٍّ أَنَّهُ أَدْخَلَ يَزِيدَ بْنَ الْمُكَفَّفِ مِنْ قِبَلِ الْقِبْلَةِ.

L9632 And from Ibn al-Ḥanafiyyah: that he brought Ibn ʿAbbās in from the direction of the Qiblah.

وَعَنْ ابْنِ الْحَنَفِيَّةِ: أَنَّهُ أَدْخَلَ ابْنَ عَبَّاسٍ مِنْ قِبَلِ الْقِبْلَةِ.

L9633 It has been authentically reported from Abdullah ibn Zayd al-Ansari, the Companion of the Messenger of Allah—peace and blessings be upon him—that he had al-Harith al-Kharifi enter from the feet side of the grave.

وَصَحَّ عَنْ عَبْدِ اللَّهِ بْنِ زَيْدٍ الْأَنْصَارِيِّ صَاحِبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَدْخَلَ الْحَارِثَ الْخَارِفِيَّ مِنْ قِبَلِ رِجْلَيْ الْقَبْرِ.

L9634 A group transmitted Mursal reports—deemed inauthentic—concerning how the Prophet (peace and blessings be upon him) was placed. It is narrated from Ibrāhīm al-Nakhaʿī: "He (peace be upon him) was brought in from the direction of the qiblah."

وَرَوَى قَوْمٌ مُرْسَلَاتٍ لَا تَصِحُّ فِي إدْخَالِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: فَعَنْ إبْرَاهِيمَ النَّخَعِيِّ: «أَنَّهُ - عَلَيْهِ السَّلَامُ - أُدْخِلَ مِنْ قِبَلِ الْقِبْلَةِ» .

L9635 It is narrated from Rabīʿah, Yaḥyā ibn Saʿīd, Abū al-Zinād, and Mūsā ibn ʿUqbah that he (peace be upon him) was placed through the two legs.

وَعَنْ رَبِيعَةَ، وَيَحْيَى بْنِ سَعِيدٍ، وَأَبِي الزِّنَادِ، وَمُوسَى بْنِ عُقْبَةَ: «أَنَّهُ - عَلَيْهِ السَّلَامُ - أُدْخِلَ مِنْ قِبَلِ الرِّجْلَيْنِ» .

L9636 All of this, even if it were valid, would not stand as proof for obligatoriness. How then, when it is not even valid? For it contains no prevention of other possibilities.

وَكُلُّ هَذَا لَوْ صَحَّ لَمْ تَقُمْ بِهِ حُجَّةٌ فِي الْوُجُوبِ، فَكَيْفَ وَهُوَ لَا يَصِحُّ؟ لِأَنَّهُ لَيْسَ فِيهِ مَنْعٌ مِمَّا سِوَاهُ.

The Juristic Ruling on Crowding Over the Funeral Bier

Issue 622: It is not permissible to jostle or crowd around the funeral bier, as this is an innovation that did not exist previously, and indeed, the Messenger of Allah, peace and blessings be upon him, commanded kindness.

It was narrated to us via the chain of Muslim: Muḥammad ibn al-Muthannā → Yaḥyā ibn Saʿīd al-Qaṭṭān → Sufyān al-Thawrī → Manṣūr ibn al-Muʿtamir → Tamīm ibn Salamah → ʿAbd al-Raḥmān ibn Hilāl → ... Jarir ibn Abdullah reported that the Prophet, peace and blessings be upon him, said: "Whoever is deprived of kindness will be deprived of all good."

From the chain of Waki' from Al-Rabi' from Al-Hasan: that he disliked crowding around the funeral bier, and when he saw them crowding, he would say, "Those are the devils."

From the narration of Waki' through Hammām through Qatādah: He said: I attended a funeral at which Abu al-Siwar—who was Ḥurayth ibn Hassān al-'Adawi—was present. They crowded around the bier, so Abu al-Siwar said: "Do you consider these people better or the companions of Muhammad (peace and blessings be upon him)? A man among them would carry a funeral bier if he saw it, and if not, he would withdraw and not harm anyone."

A legal issue pertaining to the omission of some takbīrs in the funeral prayer.

623 - Issue

Whoever misses some of the takbirs in the funeral prayer should perform them immediately upon arriving and must not wait for the Imam's takbir. When the Imam concludes the prayer, the individual should complete the remaining takbirs, supplicating between each takbir just as he did with the Imam. This is based on the statement of the Messenger of Allah—peace and blessings be upon him—regarding one who comes to prayer: that he should

[مَسْأَلَةُ التَّزَاحُمِ عَلَى النَّعْشِ]

٦٢٢ - مَسْأَلَةٌ وَلَا يَجُوزُ التَّزَاحُمُ عَلَى النَّعْشِ، لِأَنَّهُ بِدْعَةٌ لَمْ تَكُنْ قَبْلُ، وَقَدْ «أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالرِّفْقِ» .

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ: نا مُحَمَّدُ بْنُ الْمُثَنَّى نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ سُفْيَانَ الثَّوْرِيِّ نا مَنْصُورُ بْنُ الْمُعْتَمِرِ عَنْ تَمِيمِ بْنِ سَلَمَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ هِلَالٍ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ يُحْرَمْ الرِّفْقَ يُحْرَمْ الْخَيْرَ» .

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الرَّبِيعِ عَنْ الْحَسَنِ: أَنَّهُ كَرِهَ الزِّحَامَ عَلَى السَّرِيرِ، وَكَانَ إذَا رَآهُمْ يَزْدَحِمُونَ قَالَ: أُولَئِكَ الشَّيَاطِينُ.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ هَمَّامٍ عَنْ قَتَادَةَ: أَنَّهُ قَالَ: شَهِدْت جِنَازَةً فِيهَا أَبُو السِّوَارِ هُوَ حُرَيْثُ بْنُ حَسَّانَ الْعَدَوِيُّ فَازْدَحَمُوا عَلَى السَّرِيرِ، فَقَالَ أَبُو السِّوَارِ: أَتَرَوْنَ هَؤُلَاءِ أَفْضَلَ أَوْ أَصْحَابَ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ كَانَ الرَّجُلُ مِنْهُمْ إذَا رَأَى مُحْمَلًا حَمَلَ، وَإِلَّا اعْتَزَلَ وَلَمْ يُؤْذِ أَحَدًا.

[مَسْأَلَةٌ فَوَاتُ بَعْضِ التَّكْبِيرَاتِ عَلَى الْجِنَازَةِ]

٦٢٣ - مَسْأَلَةٌ

وَمَنْ فَاتَهُ بَعْضُ التَّكْبِيرَاتِ عَلَى الْجِنَازَةِ كَبَّرَ سَاعَةَ يَأْتِي، وَلَا يَنْتَظِرُ تَكْبِيرَ الْإِمَامِ، فَإِذَا سَلَّمَ الْإِمَامُ أَتَمَّ هُوَ مَا بَقِيَ مِنْ التَّكْبِيرِ، يَدْعُو بَيْنَ تَكْبِيرَةٍ وَتَكْبِيرَةٍ كَمَا كَانَ يَفْعَلُ مَعَ الْإِمَامِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَنْ أَتَى إلَى الصَّلَاةِ أَنْ يُصَلِّيَ مَا

pray what he caught and complete what he missed. And this is a prayer. Any opinion contrary to this is corrupt, with no evidence for its correctness—neither from a scriptural text, nor analogy, nor a Companion's statement. And with Allah Almighty is success.

أَدْرَكَ وَيُتِمَّ مَا فَاتَهُ، وَهَذِهِ صَلَاةٌ، وَمَا عَدَا هَذَا فَقَوْلٌ فَاسِدٌ لَا دَلِيلَ عَلَى صِحَّتِهِ، لَا مِنْ نَصٍّ وَلَا قِيَاسٍ وَلَا قَوْلِ صَاحِبٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

AL-MUHALLA

كِتَابُ الِاعْتِكَافِ

The Book of Devotional Retreat (Itikaf)

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الِاعْتِكَافِ] [مَسْأَلَةٌ اعْتِكَافُ يَوْمٍ دُونَ لَيْلَةٍ وَلَيْلَةٍ دُونَ يَوْمٍ]

الِاعْتِكَافُ: هُوَ الْإِقَامَةُ فِي الْمَسْجِدِ بِنِيَّةِ التَّقَرُّبِ إِلَى اللَّهِ عَزَّ وَجَلَّ سَاعَةً فَمَا فَوْقَهَا، لَيْلًا، أَوْ نَهَارًا؟ ٦٢٤ - مَسْأَلَةٌ وَيَجُوزُ اعْتِكَافُ يَوْمٍ دُونَ لَيْلَةٍ، وَلَيْلَةٍ دُونَ يَوْمٍ، وَمَا أَحَبَّ الرَّجُلُ، أَوْ الْمَرْأَةُ؟ بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَلا تُبَاشِرُوهُنَّ وَأَنْتُمْ عَاكِفُونَ فِي الْمَسَاجِدِ} [البقرة: ١٨٧] . وَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ الْهَادِ عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ بْنِ الْحَارِثِ التَّيْمِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَعْتَكِفُ الْعَشْرَ الْأَوْسَطَ مِنْ رَمَضَانَ، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: مَنْ كَانَ اعْتَكَفَ مَعِي فَلْيَعْتَكِفْ الْعَشْرَ الْأَوَاخِرَ» . فَالْقُرْآنُ نَزَلَ بِلِسَانٍ عَرَبِيٍّ مُبِينٍ، وَبِالْعَرَبِيَّةِ خَاطَبَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَالِاعْتِكَافُ فِي لُغَةِ الْعَرَبِ: الْإِقَامَةُ، قَالَ تَعَالَى: {مَا هَذِهِ التَّمَاثِيلُ الَّتِي أَنْتُمْ لَهَا عَاكِفُونَ} [الأنبياء: ٥٢] بِمَعْنَى مُقِيمُونَ مُتَعَبِّدُونَ لَهَا. فَإِذْ لَا شَكَّ فِي هَذَا، فَكُلُّ إقَامَةٍ فِي مَسْجِدٍ لِلَّهِ تَعَالَى بِنِيَّةِ التَّقَرُّبِ إلَيْهِ: اعْتِكَافٌ، وَعُكُوفٌ؟ فَإِذْ لَا شَكَّ فِي هَذَا، فَالِاعْتِكَافُ يَقَعُ عَلَى مَا ذَكَرْنَا مِمَّا قَلَّ مِنْ الْأَزْمَانِ أَوْ كَثُرَ، إذْ لَمْ يَخُصَّ الْقُرْآنَ وَالسُّنَّةَ عَدَدًا مِنْ عَدَدٍ، وَلَا وَقْتًا مِنْ وَقْتٍ، وَمُدَّعِي ذَلِكَ مُخْطِئٌ؛ لِأَنَّهُ قَائِلٌ بِلَا بُرْهَانٍ

وَالِاعْتِكَافُ: فِعْلٌ حَسَنٌ، قَدْ اعْتَكَفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَزْوَاجُهُ وَأَصْحَابُهُ - رَضِيَ اللَّهُ عَنْهُمْ - بَعْدَهُ وَالتَّابِعُونَ؟ وَمِمَّنْ قَالَ بِمِثْلِ هَذَا طَائِفَةٌ مِنْ السَّلَفِ -: كَمَا أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدٍ الْبُصَيْرِيُّ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ زَائِدَةَ عَنْ عِمْرَانَ

L9647–9648 **The Book of I'tikaf: A Question of Observing I'tikaf for a Day Excluding Its Night or a Night Excluding Its Day.**

L9649–9651 I'tikaf is residing in the mosque with the intention of seeking nearness to Allah, the Almighty, for an hour or more, whether at night or during the day. 624 - Question: It is permissible to observe I'tikaf for a day without a night, or a night without a day, according to what a man or woman prefers. The proof for this is Allah's statement, the Exalted: {And do not have intercourse with them while you are observing I'tikaf in the mosques} [Al-Baqarah: 187]. It has been narrated to us through Malik's chain from Yazīd ibn ʿAbdillāh ibn al-Hādi, from Muḥammad ibn Ibrāhīm ibn al-Ḥārith al-Taymī, from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, from Abū Saʿīd al-Khudrī: "The Messenger of Allah—peace and blessings be upon him—used to observe I'tikaf during the middle ten days of Ramadan. He—peace and blessings be upon him—said: 'Whoever observed I'tikaf with me, let him observe the last ten days.'" The Quran was revealed in clear Arabic, and the Messenger of Allah—peace and blessings be upon him—spoke to us in the same language. In the Arabic language, "I'tikaf" means residing, as Allah, the Exalted, said: {What are these statues to which you are devoted?} [Al-Anbiyā': 52], meaning residing and worshipping them. Since there is no doubt in this, any residence in a mosque for the sake of Allah, the Exalted, with the intention of seeking nearness to Him constitutes I'tikaf and continuous devotion. Therefore, since there is no doubt in this, I'tikaf applies to what we have mentioned—whether the duration is short or long—since. The Qur'an and the Sunnah did not specify a number from among numbers, nor a time from among times. Whoever claims that is mistaken, for he is asserting without proof.[1]

L9652 I'tikaf is a virtuous act. The Messenger of Allah (peace be upon him), his wives, his companions (may Allah be pleased with them), and the Followers after him observed it. Among those who held this view is a group from the Salaf. Muhammad ibn Sa'īd ibn Nabāt reported via Ahmad ibn 'Abd al-Buṣayrī via Qāsim ibn Aṣbagh via Muhammad ibn 'Abd al-Salām al-Khushanī via Muhammad ibn al-Muthannā via 'Abd al-Raḥmān ibn Mahdī

[1] **Qur'an references (L9649):** Qur'an 2:187 (Al-Baqarah); Qur'an 21:52 (Al-Anbya).

from Zā'idah from 'Imrān ibn Abī Muslim from Suwayd ibn Ghaflah, who said: "Whoever sits in the mosque while in a state of purity is observing i'tikaf therein, as long as he does not invalidate his state of purity." Through another chain via 'Abd al-Razzāq from Ibn Jurayj, who said: I heard 'Aṭā ibn Abī Rabāḥ narrate from Ya'lā ibn Umayyah, who said: "I remain in the mosque for an hour, and I remain only to observe i'tikaf."

L9653 'Aṭā' said: "Did you suppose that Ṣafwān ibn Ya'lā informed me of it?" 'Aṭā' said: "It is I'tikāf for whatever time one remains in it. If he sits in the mosque seeking the reward of goodness, he is in I'tikāf; otherwise, is he not?"

L9654 Abu Muhammad said: Ya'lā is a Companion, while Suwayd is among the senior Followers. Ya'lā issued legal rulings during the era of 'Umar ibn al-Khaṭṭāb, and no disagreement with Ya'lā on this matter is known from any of the Companions. If it is objected: Reports exist from 'Ā'isha, Ibn 'Abbās, and Ibn 'Umar stating, "There is no i'tikāf except with fasting," and this contradicts Ya'lā's position—we respond: This is not as you assert, for there is no report whatsoever from those you mentioned stating that i'tikāf must be at least a full day. Rather, what is reported from them is that fasting is obligatory only during the state of i'tikāf. There is no prohibition against a person performing i'tikāf on this basis for an hour of a day in which they are fasting.

L9655 This is the opinion of Muhammad ibn al-Hasan, thereby invalidating what you have implied. And His statement, the Exalted: {And you are observing i'tikaf in the mosques} [Al-Baqarah: 187] - He, the Exalted, did not specify one period over another. {And your Lord is not forgetful} [Maryam: 64].[2]

L9656–9657 And through the chain of Muslim: Zuhayr ibn Harb narrated to us, who narrated from Yahya ibn Sa'id al-Qattan, from 'Ubayd Allah - he being the son of 'Umar - who said: "Nafi' informed me from Ibn 'Umar, who said: 'Umar said: 'O Messenger of Allah, I vowed during the pre-Islamic period of ignorance to observe i'tikaf for one night in the Sacred Mosque.' He said: 'Discharge your vow.'"

بْنِ أَبِي مُسْلِمٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ قَالَ: مَنْ جَلَسَ فِي الْمَسْجِدِ وَهُوَ طَاهِرٌ فَهُوَ عَاكِفٌ فِيهِ، مَا لَمْ يُحْدِثْ -: وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: سَمِعْت عَطَاءَ بْنَ أَبِي رَبَاحٍ يُخْبِرُ عَنْ يَعْلَى بْنِ أُمَيَّةَ قَالَ: إِنِّي لَأَمْكُثُ فِي الْمَسْجِدِ سَاعَةً وَمَا أَمْكُثُ إِلَّا لِأَعْتَكِفَ.

قَالَ عَطَاءٌ: حَسِبْت أَنَّ صَفْوَانَ بْنَ يَعْلَى أَخْبَرَنِيهِ؟ قَالَ عَطَاءٌ: هُوَ اعْتِكَافٌ مَا مَكَثَ فِيهِ، وَإِنْ جَلَسَ فِي الْمَسْجِدِ احْتِسَابَ الْخَيْرِ فَهُوَ مُعْتَكِفٌ، وَإِلَّا فَلَا؟

قَالَ أَبُو مُحَمَّدٍ: يَعْلَى صَاحِبٌ، وَسُوَيْدٌ مِنْ كِبَارِ التَّابِعِينَ، أَفْتَى أَيَّامَ عُمَرَ بْنِ الْخَطَّابِ، لَا يُعْرَفُ لِيَعْلَى فِي هَذَا مُخَالِفٌ مِنَ الصَّحَابَةِ فَإِنْ قِيلَ: قَدْ جَاءَ عَنْ عَائِشَةَ، وَابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ: لَا اعْتِكَافَ إِلَّا بِصَوْمٍ، وَهَذَا خِلَافٌ لِقَوْلِ يَعْلَى؟ قُلْنَا: لَيْسَ كَمَا تَقُولُ، لِأَنَّهُ لَمْ يَأْتِ قَطُّ عَمَّنْ ذَكَرْت: لَا اعْتِكَافَ أَقَلَّ مِنْ يَوْمٍ كَامِلٍ، إِنَّمَا جَاءَ عَنْهُمْ: أَنَّ الصَّوْمَ وَاجِبٌ فِي حَالِ الِاعْتِكَافِ فَقَطْ، وَلَا يَمْتَنِعُ أَنْ يَعْتَكِفَ الْمَرْءُ عَلَى هَذَا سَاعَةً فِي يَوْمٍ هُوَ فِيهِ صَائِمٌ.

وَهُوَ قَوْلُ مُحَمَّدِ بْنِ الْحَسَنِ، فَبَطَلَ مَا أَوْهَمْتُمْ بِهِ وَقَوْله تَعَالَى: {وَأَنْتُمْ عَاكِفُونَ فِي الْمَسَاجِدِ} [البقرة: ١٨٧] فَلَمْ يَخُصَّ تَعَالَى مُدَّةً مِنْ مُدَّةٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَمِنْ طَرِيقِ مُسْلِمٍ: نا زُهَيْرُ بْنُ حَرْبٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ عُبَيْدِ اللَّهِ هُوَ ابْنُ عُمَرَ - قَالَ أَخْبَرَنِي نَافِعٌ عَنِ ابْنِ عُمَرَ قَالَ: «قَالَ عُمَرُ: يَا رَسُولَ اللَّهِ، إِنِّي نَذَرْتُ فِي الْجَاهِلِيَّةِ أَنْ أَعْتَكِفَ لَيْلَةً فِي الْمَسْجِدِ الْحَرَامِ؟ قَالَ: فَأَوْفِ بِنَذْرِكَ» .

[2] **Qur'an references (L9655):** Qur'an 2:187 (Al-Baqarah); Qur'an 19:64 (Maryam).

فَهَذَا عُمُومٌ مِنْهُ - عَلَيْهِ السَّلَامُ - بِالْأَمْرِ بِالْوَفَاءِ بِالنَّذْرِ فِي الِاعْتِكَافِ، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - مُدَّةً مِنْ مُدَّةٍ، فَبَطَلَ قَوْلُ خَالَفَ قَوْلَنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ؟

L9658 This is a general ruling from him—peace be upon him—commanding the fulfillment of vows in iʿtikāf, and he did not specify a specific duration over another. Thus, any opinion contradicting our position is null and void—and all praise is due to Allah, Lord of the worlds.

وَقُلْنَا: هَذَا هُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L9659 And we said: This is the opinion of al-Shāfiʿī and Abū Sulaymān.

وَقَالَ أَبُو حَنِيفَةَ: لَا يَجُوزُ الِاعْتِكَافُ أَقَلَّ مِنْ يَوْمٍ وَقَالَ مَالِكٌ: لَا اعْتِكَافَ أَقَلَّ مِنْ يَوْمٍ وَلَيْلَةٍ. ثُمَّ رَجَعَ وَقَالَ: لَا اعْتِكَافَ أَقَلَّ مِنْ عَشْرِ لَيَالٍ.

L9660 Abu Hanifah said: It is not permissible to observe i'tikaf for less than a day. Malik said: There is no i'tikaf for less than a daytime and a nighttime. Then he retracted and said: There is no i'tikaf for less than ten nights.

وَلَهُ قَوْلٌ: لَا اعْتِكَافَ أَقَلَّ مِنْ سَبْعِ لَيَالٍ، مِنْ الْجُمُعَةِ إلَى الْجُمُعَةِ.

L9661 He also holds the opinion: There is no i'tikaf shorter than seven nights, from one Friday to the next.

وَكُلُّ هَذَا قَوْلٌ بِلَا دَلِيلٍ. فَإِنْ قِيلَ: لَمْ يَعْتَكِفْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَقَلَّ مِنْ عَشْرِ لَيَالٍ؟ قُلْنَا: نَعَمْ، وَلَمْ يَمْنَعْ مِنْ أَقَلَّ مِنْ ذَلِكَ، وَكَذَلِكَ أَيْضًا لَمْ يَعْتَكِفْ قَطُّ فِي غَيْرِ مَسْجِدِ الْمَدِينَةِ، فَلَا تُجِيزُوا الِاعْتِكَافَ فِي غَيْرِ مَسْجِدِهِ - عَلَيْهِ السَّلَامُ -، وَلَا اعْتَكَفَ قَطُّ إلَّا فِي رَمَضَانَ، وَشَوَّالٍ، فَلَا تُجِيزُوا الِاعْتِكَافَ فِي غَيْرِ هَذَيْنِ الشَّهْرَيْنِ؟

L9662 All of this is a statement without evidence. If it is said: Did the Messenger of Allah—peace and blessings be upon him—not perform iʿtikāf for less than ten nights? We respond: Yes, he did not prohibit less than that. Similarly, he never performed iʿtikāf in any mosque other than the Mosque of Medina—peace be upon him—so do not permit iʿtikāf in any mosque other than the Mosque of Medina. Nor did he ever perform iʿtikāf except in Ramadan and Shawwāl, so do not permit iʿtikāf outside of these two months.

وَالِاعْتِكَافُ فِي فِعْلِ خَيْرٍ، فَلَا يَجُوزُ الْمَنْعُ مِنْهُ إلَّا بِنَصٍّ وَارِدٍ بِالْمَنْعِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. فَإِنْ قَالُوا: قِسْنَا عَلَى مَسْجِدِهِ - عَلَيْهِ السَّلَامُ - سَائِرَ الْمَسَاجِدِ؟ قِيلَ لَهُمْ: فَقِيسُوا عَلَى اعْتِكَافِهِ عَشْرًا، أَوْ عِشْرِينَ: مَا دُونَ الْعَشْرِ. وَمَا فَوْقَ الْعِشْرِينَ، إذْ لَيْسَ مِنْهَا سَاعَةٌ وَلَا يَوْمٌ إلَّا وَهُوَ فِيهِ مُعْتَكِفٌ

L9663 I'tikaf is an act of righteousness, and it is impermissible to prohibit it except through a scriptural text explicitly prohibiting it - and with Allah, the Exalted, lies success. If they say: "Do we analogize other mosques to his mosque - peace be upon him?" respond to them: "Then analogize [all cases] to his I'tikaf: ten days, twenty days, durations shorter than ten days, and durations exceeding twenty days. For there was not a single hour or day within these spans except that he was observing I'tikaf."

[مَسْأَلَةٌ صَوْمُ الْمُعْتَكِفِ]

A ruling on fasting during iʿtikāf.

٦٢٥ - مَسْأَلَةٌ وَلَيْسَ الصَّوْمُ مِنْ شُرُوطِ الِاعْتِكَافِ، لَكِنْ إنْ شَاءَ الْمُعْتَكِفُ صَامَ وَإِنْ شَاءَ لَمْ يَصُمْ.

L9664

Issue 625: Fasting is not among the conditions for I'tikaf. However, the one observing I'tikaf may fast if he wishes, or not fast if he wishes.

L9665

وَاعْتِكَافُ: يَوْمِ الْفِطْرِ وَيَوْمِ الْأَضْحَى، وَأَيَّامِ التَّشْرِيقِ: حَسَنٌ.

L9666 Performing iʿtikāf on Eid al-Fitr, Eid al-Adḥā, and the Days of Tashrīq is good.

وَكَذَلِكَ اعْتِكَافُ: لَيْلَةٍ بِلَا يَوْمٍ، وَيَوْمٍ بِلَا لَيْلَةٍ.

L9667 Similarly, the observance of iʿtikāf is: a night without a day, or a day without a night.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي سُلَيْمَانَ.

L9668 This is the opinion of Al-Shafi'i, Ahmad ibn Hanbal, and Abu Sulayman.

وَهُوَ قَوْلُ طَائِفَةٍ مِنْ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ: نَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ هُوَ الدَّرَاوَرْدِيُّ - عَنْ أَبِي سُهَيْلِ بْنِ مَالِكٍ قَالَ: كَانَ عَلَى امْرَأَةٍ مِنْ أَهْلِي اعْتِكَافٌ، فَسَأَلْت عُمَرَ بْنَ عَبْدِ الْعَزِيزِ؟ فَقَالَ: لَيْسَ عَلَيْهَا صِيَامٌ إلَّا أَنْ تَجْعَلَهُ عَلَى نَفْسِهَا. فَقَالَ الزُّهْرِيُّ: لَا اعْتِكَافَ إلَّا بِصَوْمٍ. فَقَالَ لَهُ عُمَرُ: عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ قَالَ: لَا، قَالَ: فَعَنْ أَبِي بَكْرٍ؟ قَالَ: لَا، قَالَ: فَعَنْ عُمَرَ؟ قَالَ: لَا، قَالَ: فَأَظُنُّهُ قَالَ: فَعَنْ عُثْمَانَ؟ قَالَ: لَا. قَالَ أَبُو سُهَيْلٍ: لَقِيت طَاوُسًا، وَعَطَاءً، فَسَأَلْتهمَا؟ فَقَالَ طَاوُسٍ: كَانَ فُلَانٌ لَا يَرَى عَلَيْهَا صِيَامًا إلَّا أَنْ تَجْعَلَهُ عَلَى نَفْسِهَا، وَقَالَ عَطَاءٌ: لَيْسَ عَلَيْهَا صِيَامٌ إلَّا أَنْ تَجْعَلَهُ عَلَى نَفْسِهَا

L9669–9670 This is the opinion of a group of the Salaf. We have been narrated through the chain of Saʿīd ibn Manṣūr: From ʿAbd al-ʿAzīz ibn Muḥammad, al-Darāwardī, from Abū Suhayl ibn Mālik, who said: "A woman from my family owed iʿtikāf. I asked ʿUmar ibn ʿAbd al-ʿAzīz?" He said: "She is not required to fast unless she imposes it upon herself." Al-Zuhrī then said: "There is no iʿtikāf without fasting." ʿUmar asked him: "Is this from the Prophet—peace and blessings be upon him?" He replied: "No." He asked: "From Abū Bakr?" He said: "No." He asked: "From ʿUmar?" He said: "No." I believe he then asked: "From ʿUthmān?" He said: "No." Abū Suhayl said: "I met Ṭāwūs and ʿAṭāʾ and asked them. Ṭāwūs said: 'Fulān held that she is not required to fast unless she imposes it upon herself,' and ʿAṭāʾ said: 'She is not required to fast unless she imposes it upon herself.'"

وَبِهِ إلَى سَعِيدٍ: نا حِبَّانُ بْنُ عَلِيٍّ نا لَيْثٌ عَنْ الْحَكَمِ عَنْ مِقْسَمٍ: أَنَّ عَلِيًّا، وَابْنَ مَسْعُودٍ قَالَا جَمِيعًا: الْمُعْتَكِفُ لَيْسَ عَلَيْهِ صَوْمٌ إلَّا أَنْ يَشْتَرِطَ ذَلِكَ عَلَى نَفْسِهِ؟

L9671 And through him to Saʿīd: Hibban ibn ʿAlī narrated to us, Layth narrated to us from al-Ḥakam from Miqsam: that ʿAlī and Ibn Masʿūd both said: "The *muʿtakif* is not obligated to fast unless he stipulates it upon himself."

وَاخْتُلِفَ فِي ذَلِكَ عَنْ ابْنِ عَبَّاسٍ، كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ عُمَرَ مُحَمَّدٌ الْقَلَعِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ الصَّوَّافُ نا بِشْرُ بْنُ مُوسَى بْنِ صَالِحِ بْنِ عُمَيْرَةَ نا أَبُو بَكْرٍ الْحُمَيْدِيُّ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ نا أَبُو سُهَيْلِ بْنُ مَالِكٍ قَالَ: اجْتَمَعْت أَنَا وَابْنُ شِهَابٍ عِنْدَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَكَانَ عَلَى امْرَأَتِي اعْتِكَافُ ثَلَاثٍ فِي الْمَسْجِدِ الْحَرَامِ.

L9672 Differences of opinion have been reported concerning that from Ibn Abbas, as narrated to us by Muhammad ibn Sa'id ibn Nabat, who narrated to us via Abdullah ibn Umar and Muhammad al-Qala'i, who narrated to us via Muhammad ibn Ahmad al-Sawwaf, who narrated to us via Bishr ibn Musa ibn Salih ibn Umayrah, who narrated to us via Abu Bakr al-Humaydi, who narrated to us via Abdul Aziz ibn Muhammad al-Darawardi, who narrated to us via Abu Suhayl ibn Malik, who said: "I and Ibn Shihab gathered at Umar ibn Abd al-Aziz's presence, while there was upon my wife a three-day i'tikaf in the Sacred Mosque. Ibn Shihab said: 'There is no i'tikaf except

with fasting.’ Umar ibn Abd al-Aziz asked him: ’Is this from the Messenger of Allah—peace be upon him?’ He replied: ’No.’ He asked: ’From Abu Bakr?’ He said: ’No.’ He asked: ’From Umar?’ He said: ’No.’ He asked: ’From Uthman?’ He said: ’No.’ Abu Suhayl said: ’I left and met Tawus and Ata, so I asked them about this. Tawus said: ”Ibn Abbas did not consider fasting obligatory upon one observing i’tikaf unless they imposed it upon themselves.“ Ata said: ”Is that my opinion¿‘“

فَقَالَ ابْنُ شِهَابٍ: لَا يَكُونُ اعْتِكَافٌ إِلَّا بِصَوْمٍ. فَقَالَ لَهُ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَمِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ قَالَ: لَا. قَالَ: فَمِنْ أَبِي بَكْرٍ؟ قَالَ: لَا، قَالَ: فَمِنْ عُمَرَ؟ قَالَ: لَا، قَالَ: فَمِنْ عُثْمَانَ؟ قَالَ: لَا. قَالَ أَبُو سُهَيْلٍ: فَانْصَرَفْت فَلَقِيت طَاوُسًا، وَعَطَاءً، فَسَأَلْتهمَا عَنْ ذَلِكَ. فَقَالَ طَاوُسٍ: كَانَ ابْنُ عَبَّاسٍ لَا يَرَى عَلَى الْمُعْتَكِفِ صِيَامًا إِلَّا أَنْ يَجْعَلَهُ عَلَى نَفْسِهِ. قَالَ عَطَاءٌ: ذَلِكَ رَأْيِي؟

L9673–9674 And through the chain of Waki‘ from Shu‘bah from al-Ḥakam ibn ‘Utaybah from Ibrāhīm al-Nakha‘i, who said: “If a person observing i‘tikāf wished, he did not have to fast.”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: الْمُعْتَكِفُ إنْ شَاءَ لَمْ يَصُمْ

L9675 Via the chain of Ibn Abi Shaybah: He narrated to us from ‘Abdah from Sa‘id ibn Abi ‘Arubah from Qatadah from al-Hasan, who said: There is no fasting obligation upon the person observing i‘tikaf unless he imposes it upon himself.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: نَا عَبْدَةُ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ قَالَ: لَيْسَ عَلَى الْمُعْتَكِفِ صَوْمٌ لَا أَنْ يُوجِبَ ذَلِكَ عَلَى نَفْسِهِ؟

L9676 Abu Hanifa, Sufyan, Al-Ḥasan ibn Ṣāliḥ, Malik, and Al-Layth said: There is no valid *i‘tikāf* without fasting.

وَقَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ، وَالْحَسَنُ بْنُ حَيٍّ، وَمَالِكٌ، وَاللَّيْثُ: لَا اعْتِكَافَ إلَّا بِصَوْمٍ.

L9677 It has been authentically reported from Urwah ibn al-Zubayr and al-Zuhri, and there are differing reports from Tawus and Ibn Abbas regarding it; are both matters authentically reported from both of them?

وَصَحَّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ، وَالزُّهْرِيِّ وَقَدْ اخْتَلَفَ فِيهِ عَنْ طَاوُسٍ وَعَنْ ابْنِ عَبَّاسٍ، وَصَحَّ عَنْهُمَا كِلَا الْأَمْرَيْنِ؟

L9678 He wrote to Dāwūd ibn Bābshādh ibn Dāwūd al-Miṣrī, stating: Narrated to us ʿAbd al-Ghanī ibn Saʿīd al-Ḥāfiẓ from Hishām ibn Muḥammad ibn Qurrah al-Ruʿaynī from Abū Jaʿfar al-Ṭaḥāwī from al-Rabīʿ ibn Sulaymān al-Muʾadhdhin from Ibn Wahb from Ibn Jurayj from ʿAṭāʾ from Ibn ʿAbbās and Ibn ʿUmar, who both said together: “There is no iʿtikāf except with fasting.”

كَتَبَ إلَى دَاوُد بْنِ بَابْشَاذَ بْنِ دَاوُد الْمَصْرِيِّ قَالَ: نا عَبْدُ الْغَنِيِّ بْنُ سَعِيدٍ الْحَافِظُ نا هِشَامُ بْنُ مُحَمَّدِ بْنِ قُرَّةَ الرُّعَيْنِيُّ نا أَبُو جَعْفَرٍ الطَّحَاوِيُّ نا الرَّبِيعُ بْنُ سُلَيْمَانَ الْمُؤَذِّنُ نا ابْنُ وَهْبٍ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ قَالَا جَمِيعًا: لَا اعْتِكَافَ إلَّا بِصَوْمٍ

L9679 It has been narrated from ʿĀ’ishah: “Is there no iʿtikāf except with fasting?”

وَرُوِيَ عَنْ عَائِشَةَ: لَا اعْتِكَافَ إلَّا بِصَوْمٍ؟

L9680 On the authority of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Ḥabīb ibn

Abī Thābit, from ʿAṭāʾ, from ʿĀʾisha, the Mother of the Believers, who said: "Whoever performs iʿtikāf must fast."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ عَطَاءٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: مَنْ اعْتَكَفَ فَعَلَيْهِ الصَّوْمُ.

L9681 Abū Muḥammad said: Those who uncritically adopted the opinion of those who asserted that there is no iʿtikāf except with fasting clamored by arguing: Allāh the Exalted said: "So now go in unto them and seek what Allāh has ordained for you, and eat and drink until the white thread of dawn becomes distinct to you from the black thread, then complete the fast until nightfall. And do not go in unto them while you are in iʿtikāf in the mosques" [al-Baqarah 2:187].[3]

قَالَ أَبُو مُحَمَّدٍ: شَغِبَ مَنْ قَلَّدَ الْقَائِلِينَ بِأَنَّهُ لَا اعْتِكَافَ إِلَّا بِصَوْمٍ بِأَنْ قَالُوا: قَالَ اللَّهُ تَعَالَى: {فَالآنَ بَاشِرُوهُنَّ وَابْتَغُوا مَا كَتَبَ اللَّهُ لَكُمْ وَكُلُوا وَاشْرَبُوا حَتَّى يَتَبَيَّنَ لَكُمُ الْخَيْطُ الأَبْيَضُ مِنَ الْخَيْطِ الأَسْوَدِ مِنَ الْفَجْرِ ثُمَّ أَتِمُّوا الصِّيَامَ إِلَى اللَّيْلِ وَلا تُبَاشِرُوهُنَّ وَأَنْتُمْ عَاكِفُونَ فِي الْمَسَاجِدِ} [البقرة: ١٨٧] .

L9682 They said: Since Allah, the Exalted, mentioned iʿtikāf after His mention of fasting, is it obligatory that iʿtikāf is only valid when accompanied by fasting?

قَالُوا: فَذَكَرَ اللَّهُ تَعَالَى الِاعْتِكَافَ إِثْرَ ذِكْرِهِ لِلصَّوْمِ، فَوَجَبَ أَنْ لَا يَكُونَ الِاعْتِكَافُ إِلَّا بِصَوْمٍ؟

L9683 Abu Muhammad said: Nothing more heinous than this distortion of the speech of Allah the Exalted has ever been heard, nor the insertion into it of what is not in it. No discerning person has ever known that Allah the Exalted's mention of one law immediately after another of His laws makes obligatory the binding of one of them to the other.

قَالَ أَبُو مُحَمَّدٍ: مَا سُمِعَ بِأَقْبَحَ مِنْ هَذَا التَّحْرِيفِ لِكَلَامِ اللَّهِ تَعَالَى، وَالْإِقْحَامِ فِيهِ مَا لَيْسَ فِيهِ وَمَا عَلِمَ قَطُّ ذُو تَمْيِيزٍ: أَنَّ ذِكْرَ اللَّهِ تَعَالَى شَرِيعَةً إِثْرَ ذِكْرِهِ أُخْرَى مُوجِبَةٌ عَقْدَ إِحْدَاهُمَا بِالْأُخْرَى.

L9684–9685 There is no difference between this opinion and the claim that since fasting was mentioned followed by iʿtikāf, it became obligatory that no fasting suffices except with iʿtikāf.

وَلَا فَرْقَ بَيْنَ هَذَا الْقَوْلِ وَبَيْنَ مَنْ قَالَ: بَلْ لَمَّا ذَكَرَ الصَّوْمَ ثُمَّ الِاعْتِكَافَ: وَجَبَ أَنْ لَا يُجْزِئَ صَوْمٌ إِلَّا بِاعْتِكَافٍ؟

L9686 If they say, "No one has ever said this," we respond: You have thereby acknowledged the validity of the consensus rejecting your argument, and that citing one divine law alongside another does not require the validity of one to depend on the other.

فَإِنْ قَالُوا: لَمْ يَقُلْ هَذَا أَحَدٌ قُلْنَا: فَقَدْ أَقْرَرْتُمْ بِصِحَّةِ الْإِجْمَاعِ عَلَى بُطْلَانِ حُجَّتِكُمْ، وَعَلَى أَنَّ ذِكْرَ شَرِيعَةٍ مَعَ ذِكْرِ أُخْرَى لَا يُوجِبُ أَنْ لَا تَصِحَّ إِحْدَاهُمَا إِلَّا بِالْأُخْرَى.

L9687 Moreover, those who disagree with us unanimously agree that the person observing i'tikaf remains in i'tikaf during the night just as during the day, and he is exempt from fasting at night.

وَأَيْضًا: فَإِنَّ خُصُومَنَا مُجْمِعُونَ عَلَى أَنَّ الْمُعْتَكِفَ: هُوَ بِاللَّيْلِ مُعْتَكِفٌ كَمَا هُوَ بِالنَّهَارِ، وَهُوَ بِاللَّيْلِ غَيْرُ صَائِمٍ.

[3] **Qur'an references (L9681):** Qur'an 2:187 (Al-Baqarah).

فَلَوْ صَحَّ لَهُمْ هَذَا الِاسْتِدْلَال لَوَجَبَ أَنْ لَا يُجْزِئَ الِاعْتِكَافُ إِلَّا بِالنَّهَارِ الَّذِي لَا يَكُونُ الصَّوْمُ إِلَّا فِيهِ - فَبَطَلَ تَمْوِيهُهُمْ بِإِيرَادِ هَذِهِ الْآيَةِ، حَيْثُ لَيْسَ فِيهَا شَيْءٌ مِمَّا مَوَّهُوا بِهِ، لَا بِنَصٍّ وَلَا بِدَلِيلٍ وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد قَالَ: نا أَحْمَدُ بْنُ إِبْرَاهِيم نا أَبُو دَاوُد هُوَ الطَّيَالِسِيُّ - نا عَبْدُ اللَّهِ بْنُ بُدَيْلٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ ابْنِ عُمَرَ قَالَ: «إِنَّ عُمَرَ جَعَلَ عَلَيْهِ فِي الْجَاهِلِيَّةِ أَنْ يَعْتَكِفَ لَيْلَةً أَوْ يَوْمًا عِنْدَ الْكَعْبَةِ، فَسَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: اعْتَكِفْ وَصُمْ» .

L9688 If their reasoning were valid, it would necessitate that devotional seclusion (iʿtikāf) would not be valid except during the daytime in which fasting is exclusively observed. Thus their deceptive use of this verse is refuted, for it contains none of what they misleadingly claimed - neither explicit textual proof nor inferential evidence. They cited the narration transmitted to us through Abū Dāwūd's chain: Aḥmad ibn Ibrāhīm narrated to us, from Abū Dāwūd al-Ṭayālisī, from ʿAbdullāh ibn Budayl, from ʿAmr ibn Dīnār, from Ibn ʿUmar, who said: "'Umar had pledged during the pre-Islamic era to observe seclusion a night or a day near the Kaʿbah. He consulted the Prophet - peace and blessings be upon him - who responded: 'Observe the seclusion and fast.'"

قَالَ أَبُو مُحَمَّد: هَذَا خَبَرٌ لَا يَصِحُّ، لِأَنَّ عَبْدَ اللَّهِ بْنَ بُدَيْلٍ مَجْهُولٌ وَلَا يُعْرَفُ هَذَا الْخَبَرُ مِنْ مُسْنَدِ عَمْرِو بْنِ دِينَارٍ أَصْلًا، وَمَا نَعْرِفُ لِعَمْرِو بْنِ دِينَارٍ عَنْ ابْنِ عُمَرَ حَدِيثًا مُسْنَدًا إِلَّا ثَلَاثَةً، لَيْسَ، هَذَا مِنْهَا -: أَحَدُهَا: فِي الْعُمْرَةِ {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] . وَالثَّانِي: فِي صِفَةِ الْحَجِّ. وَالثَّالِثُ: «لَا تَمْنَعُوا إِمَاءَ اللَّهِ مَسَاجِدَ اللَّهِ» .

L9689 Abū Muḥammad said: This narration is unsound, for ʿAbd Allāh ibn Budayl is unknown, and this report is not recognized at all within the Musnad of ʿAmr ibn Dīnār. We know of no musnad ḥadith from ʿAmr ibn Dīnār originating from Ibn ʿUmar except three—this not being among them: The first concerns ʿUmrah: *"There has certainly been for you in the Messenger of Allah an excellent example"* [al-Aḥzāb 33:21]. The second relates to the description of Ḥajj. The third: "Do not prevent Allah's female worshippers from Allah's mosques."[4]

فَسَقَطَ عَنَّا هَذَا الْخَبَرُ، لِبُطْلَانِ سَنَدِهِ؟

L9690–9691 Has this report, therefore, been dismissed by us due to the invalidity of its chain of transmission?

ثُمَّ الطَّامَّةُ الْكُبْرَى احْتِجَاجُهُمْ بِهِ فِي إِيجَابِ الصَّوْمِ فِي الِاعْتِكَافِ وَمُخَالَفَتُهُمْ إِيَّاهُ فِي إِيجَابِ الْوَفَاءِ بِمَا نَذَرَهُ الْمَرْءُ فِي الْجَاهِلِيَّةِ، فَهَذِهِ عَظِيمَةٌ لَا يَرْضَى بِهَا ذُو دِينٍ

L9692 Furthermore, the gravest calamity is their use of the Prophet's precedent as proof to obligate fasting during iʿtikāf (spiritual retreat) while opposing him in obligating the fulfillment of vows made during pre-Islamic ignorance. This is a grave transgression no person of faith would ever condone.

فَإِنْ قَالُوا: مَعْنَى قَوْلِهِ " فِي الْجَاهِلِيَّةِ " أَيْ أَيَّامِ ظُهُورِ الْجَاهِلِيَّةِ بَعْدَ إِسْلَامِهِ؟ قُلْنَا لِمَنْ قَالَ هَذَا: إِنْ كُنْت تَقُولُ هَذَا قَاطِعًا بِهِ فَأَنْتَ أَحَدُ الْكَذَّابِينَ، لِقَطْعِك بِمَا لَا دَلِيلَ لَك عَلَيْهِ، وَلَا وَجَدْت قَطُّ فِي شَيْءٍ مِنْ الْأَخْبَارِ، وَإِنْ كُنْت تَقُولُهُ ظَنًّا، فَإِنَّ الْحَقَائِقَ لَا تُتْرَكُ بِالظُّنُونِ.

L9693 If they say: "The meaning of his statement 'in the pre-Islamic ignorance' refers to the days when pre-Islamic ignorance manifested after embracing Islam?" We respond to whoever says this: If you assert this decisively, you are among the liars, for you conclusively state what you have no evidence for, nor have you ever found it in any of the narrations. If you say this

[4]**Qur'an references (L9689):** Qur'an 33:21 (Al-Ahzab).

as conjecture, then established truths cannot be discarded based on mere conjectures.

وَقَدْ قَالَ اللَّهُ تَعَالَى: {إِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [يونس: ٣٦] . وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» . فَكَيْفَ وَقَدْ صَحَّ كَذِبُ هَذَا الْقَوْلِ، كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: نا حَفْصُ بْنُ غِيَاثٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنْ عُمَرَ قَالَ «نَذَرْتُ نَذْرًا فِي الْجَاهِلِيَّةِ فَسَأَلْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْدَمَا أَسْلَمْتُ، فَأَمَرَنِي أَنْ أُوفِيَ بِنَذْرِي» .

L9694 Allah the Exalted has said: {Indeed, suspicion avails nothing against the truth} [Yūnus 10:36]. The Messenger of Allah - peace and blessings be upon him - said: «Beware of suspicion, for suspicion is the most false of speech.» How then, when the falseness of this statement has been confirmed, as narrated by Ibn Abī Shaybah via Ḥafṣ ibn Ghiyāth, from ʻUbayd Allāh ibn ʻUmar, from Nāfiʻ, from Ibn ʻUmar, from ʻUmar, who said: «I vowed a vow during the Age of Ignorance, so I asked the Prophet - peace and blessings be upon him - after embracing Islam, and he commanded me to fulfill my vow.»[5]

وَهَذَا فِي غَايَةِ الصِّحَّةِ، لَا كَحَدِيثِ عَبْدِ اللَّهِ بْنِ بُدَيْلٍ الذَّاهِبِ فِي الرِّيَاحِ؟ فَهَلْ سَمِعَ بِأَعْجَبَ مِنْ هَؤُلَاءِ الْقَوْمِ لَا يَزَالُونَ يَأْتُونَ بِالْخَبَرِ يَحْتَجُّونَ بِهِ عَلَى مَنْ لَا يُصَحِّحُهُ فِيمَا وَافَقَ تَقْلِيدَهُمْ، وَهُمْ أَوَّلُ مُخَالِفِينَ لِذَلِكَ الْخَبَرِ نَفْسِهِ فِيمَا خَالَفَ تَقْلِيدَهُمْ -: فَكَيْفَ يَصْعَدُ مَعَ هَذَا عَمَلٌ؟ وَنَعُوذُ بِاللَّهِ مِنَ الضَّلَالِ، فَعَادَ خَبَرُهُمْ حُجَّةً عَلَيْهِمْ لَا عَلَيْنَا، وَلَوْ صَحَّ، وَرَأَيْنَاهُ حُجَّةً لَقُلْنَا: بِهِ

L9695 This is of the utmost authenticity, unlike the hadith of ʿAbdullāh ibn Budayl, scattered by the winds? Has anyone heard of anything more astonishing than these people? They persistently cite reports as evidence against those who do not validate them when they align with their *taqlīd*, yet they are the foremost to oppose that very report itself when it contradicts their *taqlīd* - so how can any deed ascend [to acceptance] under such circumstances? We seek refuge in Allah from misguidance. Thus, their report becomes evidence against them, not us. Even if it were authentic and we deemed it evidence, we would say: “By it.”

وَمَوَّهُوا بِأَنَّ هَذَا رُوِيَ عَنْ أُمِّ الْمُؤْمِنِينَ، وَابْنِ عَبَّاسٍ وَابْنِ عُمَرَ. قَالُوا: وَمِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ.

L9696 They obscured the matter by claiming this was narrated from the Mother of the Believers, Ibn Abbas, and Ibn Umar, and said: “Such a matter cannot be based on personal opinion.”

فَقُلْنَا: أَمَّا ابْنُ عَبَّاسٍ فَقَدْ اُخْتُلِفَ عَنْهُ فِي ذَلِكَ، فَصَحَّ عَنْهُ مِثْلُ قَوْلِنَا.

L9697 So we said: As for Ibn Abbas, there has been disagreement regarding what is narrated from him on that matter, and an authentic report transmitted from him matches our statement.

وَقَدْ رُوِّينَا عَنْهُ مِنْ طَرِيقِ: عَبْدِ الرَّزَّاقِ أَنَا ابْنُ عُيَيْنَةَ عَنْ عَبْدِ الْكَرِيمِ بْنِ أَبِي أُمَيَّةَ سَمِعْتُ عُبَيْدَ اللَّهِ بْنَ عَبْدِ اللَّهِ بْنِ عُتْبَةَ يَقُولُ: إِنَّ أُمَّنَا مَاتَتْ وَعَلَيْهَا اعْتِكَافٌ، فَسَأَلْتُ ابْنَ عَبَّاسٍ؟ فَقَالَ: اعْتَكِفْ عَنْهَا وَصُمْ

L9698–9700 It was narrated to us from him via Abd al-Razzaq, from Ibn Uyaynah, from Abd al-Karim ibn Abi Umayyah, who said: I heard Ubayd Allah ibn Abdullah ibn Utbah say: “Our mother died while *iʿtikāf* was incumbent upon her, so I asked...” Ibn Abbas? He said: Observe *iʿtikāf* from her and fast.

[5] **Qur’an references (L9694):** Qur’an 10:36 (Yunus).

L9701 How did Ibn Abbas become a binding proof for obliging fasting upon the person observing iʿtikāf—when an authentic report from him contradicts this—yet not become a binding proof for obliging the guardian to fulfill the missed iʿtikāf on behalf of the deceased?

فَمِنْ أَيْنَ صَارَ ابْنُ عَبَّاسٍ حُجَّةً فِي إِيجَابِ الصَّوْمِ عَلَى الْمُعْتَكِفِ - وَقَدْ صَحَّ عَنْهُ خِلَافُ ذَلِكَ -. وَلَمْ يَصِرْ حُجَّةً فِي إِيجَابِهِ عَلَى الْوَلِيِّ قَضَاءُ الِاعْتِكَافِ عَنْ الْمَيِّتِ؟

L9702 Why did you not say here: “Such a thing is not said through independent personal opinion”? We have observed them stating: “Had this been soundly established with so-and-so, he would not have abandoned it,” or they would say: “He would not have left what he upheld regarding that matter except for what he deemed more authentic”?

وَهَلَّا قُلْتُمْ هَاهُنَا: مِثْلُ هَذَا لَا يُقَالُ: بِالرَّأْيِ وَعَهِدْنَاهُمْ يَقُولُونَ: لَوْ كَانَ هَذَا عِنْدَ فُلَانٍ صَحِيحًا مَا تَرَكَهُ. أَوْ يَقُولُونَ: لَمْ يَتْرُكْ مَا عِنْدَهُ مِنْ ذَلِكَ إلَّا لِمَا هُوَ أَصَحُّ عِنْدَهُ؟

L9703 We have previously mentioned from ʿAṭāʾ that he did not consider fasting necessary for the muʿtakif, and he heard Ṭāwus mentioning this as transmitted from Ibn ʿAbbās without objecting to him regarding it.

وَقَدْ ذَكَرْنَا عَنْ عَطَاءٍ آنِفًا أَنَّهُ لَمْ يَرَ الصَّوْمَ عَلَى الْمُعْتَكِفِ، وَسَمِعَ طَاوُسًا يَذْكُرُ ذَلِكَ عَنْ ابْنِ عَبَّاسٍ فَلَمْ يُنْكِرْ ذَلِكَ عَلَيْهِ.

L9704 Why did they not say: “Aṭā did not omit any narration reported from Ibn ʿAbbās and Ibn ʿUmar except for what he possessed that was stronger than it, but those people are frivolous’?

فَهَلَّا قَالُوا: لَمْ يَتْرُكْ عَطَاءٌ مَا رُوِيَ عَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ إلَّا لِمَا هُوَ عِنْدَهُ أَقْوَى مِنْهُ، وَلَكِنَّ الْقَوْمَ مُتَلَاعِبُونَ

L9705 As for the Mother of the Believers, we have been narrated from her through Abū Dāwūd: Wahb ibn Baqiyyah narrated to us from Khālid, from ʿAbd al-Raḥmān—that is, ibn Isḥāq—from al-Zuhrī, from ʿUrwah, from ʿĀ’ishah, the Mother of the Believers, that she said: “The Sunnah for one observing *iʿtikāf* is that he must not visit a sick person, nor attend a funeral, nor touch a woman nor have intercourse with her, nor leave for any need except what is unavoidable. There is no *iʿtikāf* except with fasting, and no *iʿtikāf* except in a congregational mosque?”

وَأَمَّا أُمُّ الْمُؤْمِنِينَ فَقَدْ رُوِّينَا عَنْهَا مِنْ طَرِيقِ أَبِي دَاوُد -: نا وَهْبُ بْنُ بَقِيَّةَ أَنَا خَالِدٌ عَنْ عَبْدِ الرَّحْمَنِ يَعْنِي ابْنَ إِسْحَاقَ - عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا " قَالَتْ: السُّنَّةُ عَلَى الْمُعْتَكِفِ لَا يَعُودُ مَرِيضًا، وَلَا يَشْهَدُ جِنَازَةً، وَلَا يَمَسُّ امْرَأَةً وَلَا يُبَاشِرُهَا، وَلَا يَخْرُجُ لِحَاجَةٍ إلَّا لِمَا لَا بُدَّ مِنْهُ وَلَا اعْتِكَافَ إلَّا بِصَوْمٍ، وَلَا اعْتِكَافَ إلَّا فِي مَسْجِدِ جَامِعٍ؟

L9706 Why is her statement regarding the obligation of iʿtikāf considered proof, while her declaration “There is no iʿtikāf except in a congregational mosque” not considered proof? It has been narrated to us from her through ʿAbd al-Razzāq, who reported from Ibn Jurayj and Maʿmar. Ibn Jurayj said: Aṭāʾ informed me that ʿĀ’ishah vowed to observe consecration in the valley of Thabir adjacent to Mina.

فَمِنْ أَيْنَ صَارَ قَوْلُهَا فِي إِيجَابِ الِاعْتِكَافِ حُجَّةً، وَلَمْ يَصِرْ قَوْلُهَا " لَا اعْتِكَافَ إلَّا فِي مَسْجِدِ جَامِعٍ " حُجَّةً وَرُوِّينَا عَنْهَا عَنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ، وَمَعْمَرٍ -: قَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي عَطَاءٌ: أَنَّ عَائِشَةَ نَذَرَتْ جِوَارًا فِي جُودِ ثَبِيرٍ مِمَّا يَلِي مِنًى.

L9707–9708 Ma’mar reported from Ayyub al-Sikhtiyani from Ibn Abi Mulaykah, who

said: Aisha, the Mother of the Believers, observed *iʿtikāf* between [Mount] Ḥirā’ and [Mount] Thabīr, and we would visit her there.

وَقَالَ مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنِ ابْنِ أَبِي مُلَيْكَةَ قَالَ: اعْتَكَفَتْ عَائِشَةُ أُمُّ الْمُؤْمِنِينَ بَيْنَ حِرَاءَ، وَثَبِيرٍ، فَكُنَّا نَأْتِيهَا هُنَالِكَ.

L9709 They opposed Aisha in this matter as well, and this is perplexing. As for Ibn Umar—Yunus ibn Abd Allah narrated to us, Ahmad ibn Abd Allah ibn Abd al-Rahim narrated to us, Ahmad ibn Khalid narrated to us, Muhammad ibn Khalid narrated to us, Muhammad ibn Abd al-Salam al-Khushani narrated to us, Muhammad ibn Bashshar narrated to us, Yahya ibn Saʿid al-Qattan narrated to us, from Abd al-Malik ibn Abi Sulayman, from Ata ibn Abi Rabah: When Ibn Umar performed iʿtikaf, he would pitch a tent or a shelter to relieve his bodily needs within it—would no roof of a house shade him?

فَخَالَفُوا عَائِشَةَ فِي هَذَا أَيْضًا، وَهَذَا عَجَبٌ وَأَمَّا ابْنُ عُمَرَ فَحَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا عَبْدُ الْمَلِكِ بْنُ أَبِي سُلَيْمَانَ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ: أَنَّ ابْنَ عُمَرَ كَانَ إِذَا اعْتَكَفَ ضَرَبَ فُسْطَاطًا، أَوْ خِبَاءً يَقْضِي فِيهِ حَاجَتَهُ، وَلَا يُظِلُّهُ سَقْفُ بَيْتٍ؟

L9710 Ibn ʿUmar was deemed authoritative proof regarding the ruling narrated from him that “there is no valid iʿtikāf without fasting,” so why was he not considered proof for his practice of never sheltering under a man-made roof during iʿtikāf?

فَكَانَ ابْنُ عُمَرَ حُجَّةً فِيمَا رُوِيَ عَنْهُ: أَنَّهُ لَا اعْتِكَافَ إِلَّا بِصَوْمٍ، وَلَمْ يَكُنْ حُجَّةً فِي أَنَّهُ كَانَ إِذَا اعْتَكَفَ لَا يُظِلُّهُ سَقْفُ بَيْتٍ؟

L9711 It has thus become evident that this group creates a misleading impression by citing Companions whose authority they invoke, for they disregard any disagreement with those Companions whose statements contradict the opinions of Imām Abū Ḥanīfa and Imām Mālik. Indeed, they do not regard the Companions’ statements as valid evidence unless they conform strictly to the opinions of Imām Abū Ḥanīfa and Imām Mālik alone - and herein lies the inherent flaw.

فَصَحَّ أَنَّ الْقَوْمَ إِنَّمَا يُمَوِّهُونَ بِذِكْرِ مَنْ يَحْتَجُّ بِهِ مِنَ الصَّحَابَةِ إِيهَامًا، لِأَنَّهُمْ لَا مُؤْنَةَ عَلَيْهِمْ مِنْ خِلَافِهِمْ فِيمَا لَمْ يُوَافِقْ مِنْ أَقْوَالِهِمْ رَأْيَ أَبِي حَنِيفَةَ، وَمَالِكٍ وَأَنَّهُمْ لَا يَرَوْنَ أَقْوَالَ الصَّحَابَةِ حُجَّةً إِلَّا إِذَا وَافَقَتْ رَأْيَ أَبِي حَنِيفَةَ، وَمَالِكٍ فَقَطْ، وَفِي هَذَا مَا فِيهِ.

L9712 Their statement is invalidated due to its lack of proof, being counted among the mundane matters of the world, and the irrationality of their claim: Since iʿtikāf entails remaining in one place, it resembles standing at ʿArafah. Yet standing at ʿArafah is valid only in a state of ritual consecration (iḥrām). Therefore, iʿtikāf is valid only through another condition—namely, fasting.

فَبَطَلَ قَوْلُهُمْ، لِتَعَرِّيهِ مِنَ الْبُرْهَانِ وَمِنْ عَجَائِبِ الدُّنْيَا، وَمِنَ الْهَوَسِ قَوْلُهُمْ: لَمَّا كَانَ الِاعْتِكَافُ لُبْثًا فِي مَوْضِعٍ: أَشْبَهَ الْوُقُوفَ بِعَرَفَةَ، وَالْوُقُوفُ بِعَرَفَةَ لَا يَصِحُّ إِلَّا مُحْرِمًا، فَوَجَبَ أَنْ لَا يَصِحَّ الِاعْتِكَافُ إِلَّا بِمَعْنًى آخَرَ، وَهُوَ الصَّوْمُ.

L9713–9715 They were asked: Since remaining in Arafat does not necessitate fasting, should it not follow that i’tikaf likewise does not require fasting? Abū Muḥammad said: Among the proofs validating our position is the Prophet’s (peace be upon him) observance of i’tikaf during Ramadan. His fasting can-

فَقِيلَ لَهُمْ: لَمَّا كَانَ اللُّبْثُ بِعَرَفَةَ لَا يَقْتَضِي وُجُوبَ الصَّوْمِ وَجَبَ أَنْ يَكُونَ الِاعْتِكَافُ لَا يَقْتَضِي وُجُوبَ الصَّوْمِ؟ قَالَ أَبُو مُحَمَّدٍ: مِنَ الْبُرْهَانِ عَلَى صِحَّةِ قَوْلِنَا اعْتِكَافُ النَّبِيِّ -

not be anything other than exclusively for Ramadan - as is established - thus the i'tikaf was performed independently of any fast constituting its condition. If i'tikaf does not require a fast intended for it, then fasting is nullified as a condition of i'tikaf, and it is confirmed that i'tikaf is permissible without fasting. This is the proof of what they were able to establish. His objection consists of nothing but irrational insinuations.

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي رَمَضَانَ، فَلَا يَخْلُو صَوْمُهُ مِنْ أَنْ يَكُونَ لِرَمَضَانَ خَالِصًا - وَكَذَلِكَ هُوَ - فَصَلَ الِاعْتِكَافُ مُجَرَّدًا عَنْ صَوْمٍ يَكُونُ مِنْ شَرْطِهِ، وَإِذَا لَمْ يَحْتَجْ الِاعْتِكَافُ إلَى صَوْمٍ يَنْوِي بِهِ الِاعْتِكَافَ فَقَدْ بَطَلَ أَنْ يَكُونَ الصَّوْمُ مِنْ شُرُوطِ الِاعْتِكَافِ وَصَحَّ أَنَّهُ جَائِزٌ بِلَا صَوْمٍ، وَهَذَا بُرْهَانُ مَا قَدَرُوا عَلَى اعْتِرَاضِهِ إلَّا بِوَسَاوِسَ لَا تُعْقَلُ.

L9716 Had they said: "Indeed he—peace be upon him—fasted for iʿtikāf rather than Ramadan," or "for Ramadan and iʿtikāf"—they would not be far from shedding Islam entirely. Furthermore, iʿtikāf is observed during the night just as it is during the day, and there is no fasting at night. Thus, it stands confirmed that iʿtikāf requires no fasting.

وَلَوْ قَالُوا: إنَّهُ - عَلَيْهِ السَّلَامُ - صَامَ لِلِاعْتِكَافِ لَا لِرَمَضَانَ، أَوْ لِرَمَضَانَ، وَالِاعْتِكَافِ - لَمْ يَبْعُدُوا عَنْ الِانْسِلَاخِ مِنْ الْإِسْلَامِ وَأَيْضًا: فَإِنَّ الِاعْتِكَافَ هُوَ بِاللَّيْلِ كَهُوَ بِالنَّهَارِ، وَلَا صَوْمَ بِاللَّيْلِ، فَصَحَّ أَنَّ الِاعْتِكَافَ لَا يَحْتَاجُ إلَى صَوْمٍ.

L9717 Those who cause their destruction here argued: "Was devotional seclusion only observed at night as an extension of the day?" We replied: "You lie! There is no distinction between this statement and one who says: 'Rather, it was observed by day as an extension of the night.' Both assertions are invalid."

فَقَالَ مُهْلِكُوهُمْ هَهُنَا: إنَّمَا كَانَ الِاعْتِكَافُ بِاللَّيْلِ تَبَعًا لِلنَّهَارِ؟ فَقُلْنَا: كَذَبْتُمْ وَلَا فَرْقَ بَيْنَ هَذَا الْقَوْلِ وَبَيْنَ مَنْ قَالَ: بَلْ إنَّمَا كَانَ بِالنَّهَارِ تَبَعًا لِلَّيْلِ، وَكِلَا الْقَوْلَيْنِ فَاسِدٌ.

L9718 They said: "We only stated that i'tikāf necessitates being in a state of fasting." We replied: "You have lied, for the Messenger of Allah—peace and blessings of Allah be upon him—said: 'Actions are by intentions, and every person will have what they intended.' Since i'tikāf, according to both our positions, does not require fasting intended specifically for it, it is necessarily established that fasting is neither a condition, an inherent quality, nor a juristic requirement for i'tikāf. Has there not come an authentic text supporting our view?"

فَقَالُوا: إنَّمَا قُلْنَا: إنَّ الِاعْتِكَافَ يَقْتَضِي أَنْ يَكُونَ فِي حَالِ صَوْمٍ. فَقُلْنَا: كَذَبْتُمْ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» فَلَمَّا كَانَ الِاعْتِكَافُ عِنْدَنَا وَعِنْدَكُمْ لَا يَقْتَضِي أَنْ يَكُونَ مَعَهُ صَوْمٌ يَنْوِي بِهِ الِاعْتِكَافَ صَحَّ ضَرُورَةً أَنَّ الِاعْتِكَافَ لَيْسَ مِنْ شُرُوطِهِ، وَلَا مِنْ صِفَاتِهِ، وَلَا مِنْ حُكْمِهِ أَنْ يَكُونَ مَعَهُ صَوْمٌ، وَقَدْ جَاءَ نَصٌّ صَحِيحٌ بِقَوْلِنَا؟

L9719 It is as though we were narrated through the path of Abū Dāwūd: 'Uthmān ibn Abī Shaybah narrated to us, Abū Muʿāwiyah and Yaʿlā ibn 'Ubayd—both of them—from Yaḥyā ibn Saʿīd al-Anṣārī from 'Amrah bint 'Abd al-Raḥmān from 'Ā'ishah, the Mother of the Believers, who said: "Whenever the Messenger of Allah—peace and blessings be upon him—intended to observe iʿtikāf,

كَأَنْ رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد: نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا أَبُو مُعَاوِيَةَ وَيَعْلَى بْنُ عُبَيْدٍ كِلَاهُمَا عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا أَرَادَ أَنْ يَعْتَكِفَ

he would pray Fajr and then enter his place of seclusion." She said: "Once he intended to observe iʿtikāf during the last ten nights of Ramadan. He ordered his structure to be set up, so it was erected. When I saw this, I ordered my structure to be set up, and it was erected. The other wives of the Prophet—peace and blessings be upon him—also ordered their structures erected. When he prayed Fajr, he looked at the structures and said: 'What is this? Is it righteousness you intend?' He then commanded his structure to be dismantled and ordered his wives to dismantle theirs. He thereafter postponed the iʿtikāf to the first ten, meaning those from Shawwāl."

L9720–9722 Abu Muhammad said: So here is the Messenger of Allah (peace be upon him) who observed iʿtikāf during the first ten days of Shawwal, and within them is the day. the breaking of the fast, and there is no fasting during it.

L9723 Malik said: The muʿtakif may not leave his iʿtikāf during the last ten days of Ramadan except to proceed to the musalla.

L9724 So we ask them: Is he in i'tikaf despite not having gone to the prayer area, or is he not in i'tikaf? If they say he is in i'tikaf, they contradict themselves and permit i'tikaf without fasting for a period from the day of Eid al-Fitr.

L9725 And if they said, "He is not observing *iʿtikāf*," we said, "Then why did you prevent him from leaving?"

L9726 **An issue concerning physical intimacy with one's wife during iʿtikāf.**

L9727 Issue 626: It is unlawful for a man to have physical contact with a woman, nor for a woman to have physical contact with a man during iʿtikāf with any part of the body, except exclusively when a woman combs the hair of the person observing iʿtikāf – this is permissible. He may extend his head out of the mosque for hair combing, based on Allah's statement: "And do not have

صَلَّى الْفَجْرَ ثُمَّ دَخَلَ مُعْتَكَفَهُ، قَالَتْ: وَإِنَّهُ أَرَادَ مَرَّةً أَنْ يَعْتَكِفَ فِي الْعَشْرِ الْأَوَاخِرِ مِنْ رَمَضَانَ، قَالَتْ: فَأَمَرَ بِبِنَائِهِ فَضُرِبَ فَلَمَّا رَأَيْتُ ذَلِكَ أَمَرْتُ بِبِنَائِي فَضُرِبَ، وَأَمَرَ غَيْرِي مِنْ أَزْوَاجِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِبِنَائِهِنَّ فَضُرِبَ، فَلَمَّا صَلَّى الْفَجْرَ نَظَرَ إِلَى الْأَبْنِيَةِ، فَقَالَ: مَا هَذَا؟ آلْبِرَّ تُرِدْنَ؟ فَأَمَرَ بِبِنَائِهِ فَقُوِّضَ، وَأَمَرَ أَزْوَاجَهُ بِأَبْنِيَتِهِنَّ فَقُوِّضْنَ ثُمَّ أَخَّرَ الِاعْتِكَافَ إِلَى الْعَشْرِ الْأُوَلِ، يَعْنِي مِنْ شَوَّالٍ»

قَالَ أَبُو مُحَمَّد: فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ اعْتَكَفَ الْعَشْرَ الْأُوَلَ مِنْ شَوَّالٍ وَفِيهَا يَوْمُ الْفِطْرِ، وَلَا صَوْمَ فِيهِ

وَمَالِكٌ يَقُولُ: لَا يَخْرُجُ الْمُعْتَكِفُ فِي الْعَشْرِ الْأَوَاخِرِ مِنْ رَمَضَانَ مِنْ اعْتِكَافِهِ إِلَّا حَتَّى يَنْهَضَ إِلَى الْمُصَلَّى.

فَنَسْأَلُهُمْ: أَمُعْتَكِفٌ هُوَ مَا لَمْ يَنْهَضْ إِلَى الْمُصَلَّى، أَمْ غَيْرُ مُعْتَكِفٍ؟ فَإِنْ قَالُوا: هُوَ مُعْتَكِفٌ، تَنَاقَضُوا، وَأَجَازُوا الِاعْتِكَافَ بِلَا صَوْمٍ بُرْهَةً مِنْ يَوْمِ الْفِطْرِ.

وَإِنْ قَالُوا: لَيْسَ مُعْتَكِفًا قُلْنَا: فَلِمَ مَنَعْتُمُوهُ الْخُرُوجَ إِذَنْ؟

[مَسْأَلَةٌ مُبَاشَرَةُ الْمَرْأَةِ حَال اعتكافه]

٦٢٦ - مَسْأَلَةٌ وَلَا يَحِلُّ لِلرَّجُلِ مُبَاشَرَةُ الْمَرْأَةِ، وَلَا لِلْمَرْأَةِ مُبَاشَرَةُ الرَّجُلِ فِي حَالِ الِاعْتِكَافِ بِشَيْءٍ مِنْ الْجِسْمِ، إِلَّا فِي تَرْجِيلِ الْمَرْأَةِ لِلْمُعْتَكِفِ خَاصَّةً، فَهُوَ مُبَاحٌ، وَلَهُ إِخْرَاجُ رَأْسِهِ مِنْ الْمَسْجِدِ لِلتَّرْجِيلِ؟ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تُبَاشِرُوهُنَّ وَأَنْتُمْ عَاكِفُونَ فِي الْمَسَاجِدِ} [البقرة: ١٨٧] .

physical contact with them while you are observing iʿtikāf in the mosques" [Al-Baqarah 2:187].[6]

L9728 Thus, it is established that whoever intentionally engages in prohibited acts from the general acts of physical contact—while being mindful of his *Itikaf*—and thus fails to observe *Itikaf* as commanded, his *Itikaf* is invalidated. If it was a vowed *Itikaf* (*nadhr*), he must make up for it; otherwise, he bears no responsibility.

L9729 And His statement, the Exalted: {While you are observing *iʿtikāf* in the mosques} [Al-Baqarah: 187] addresses everyone, men and women, and thus prohibits sexual intercourse between the two genders.[7]

L9730 From the transmission route of Al-Bukhārī: Muḥammad ibn Yūsuf narrated to us from Sufyān al-Thawrī from Manṣūr ibn al-Muʿtamir from Ibrāhīm al-Nakhaʿī from al-Aswad from ʿĀ'isha, the Mother of the Believers, who said: "Allah's Messenger (peace and blessings be upon him) would extend his head from the mosque while in *iʿtikāf*, and I would groom his hair while menstruating." This type of physical contact is thereby excluded from the general scope of Allah the Almighty's prohibition - and with Allah lies all success.

L9731 **The legal question regarding a person in *i'tikāf* who stipulates a permissible condition.**

L9732–9734 It is permissible for one observing spiritual retreat (i'tikāf) to stipulate any permissible actions he wishes and to exit for them, because he... By that, he only obligated himself to iʿtikāf during the period he specified, and this is permissible for him: to observe iʿtikāf when he wishes and abandon it when he wishes, because iʿtikāf is a devotional act, and abandoning it is permissible. If he obeys, he will be rewarded; if he abandons it, is he not required to make it up? Indeed, the astonishment greatly increases at those who do not permit this condition.

L9735 All texts from the Quran and Sunnah necessitate what we have mentioned.

[6] **Qur'an references (L9727):** Qur'an 2:187 (Al-Baqarah).
[7] **Qur'an references (L9729):** Qur'an 2:187 (Al-Baqarah).

فَصَحَّ أَنَّ مَنْ تَعَمَّدَ مَا نُهِيَ عَنْهُ مِنْ عُمُومِ الْمُبَاشَرَةِ - ذَاكِرًا لِاعْتِكَافِهِ - فَلَمْ يَعْتَكِفْ كَمَا أُمِرَ، فَلَا اعْتِكَافَ لَهُ، فَإِنْ كَانَ نَذْرًا قَضَاهُ، وَإِلَّا فَلَا شَيْءَ عَلَيْهِ.

وقَوْله تَعَالَى: {وَأَنْتُمْ عَاكِفُونَ فِي الْمَسَاجِدِ} [البقرة: ١٨٧] خِطَابٌ لِلْجَمِيعِ مِنْ الرِّجَالِ وَالنِّسَاءِ، فَحُرِّمَتْ الْمُبَاشَرَةُ بَيْنَ الصِّنْفَيْنِ.

وَمِنْ طَرِيقِ الْبُخَارِيِّ: نا مُحَمَّدُ بْنُ يُوسُفَ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ الْأَسْوَدِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُخْرِجُ رَأْسَهُ مِنْ الْمَسْجِدِ وَهُوَ مُعْتَكِفٌ، فَأُرَجِّلُهُ وَأَنَا حَائِضٌ» . فَخَرَجَ هَذَا النَّوْعُ مِنْ الْمُبَاشَرَةِ مِنْ عُمُومِ نَهْيِ اللَّهِ عَزَّ وَجَلَّ - وَبِاَللَّهِ التَّوْفِيقُ.

[مَسْأَلَةُ الْمُعْتَكِفِ إذَا اشْتَرَطَ مُبَاحًا]

٦٢٧ - مَسْأَلَةٌ وَجَائِزٌ لِلْمُعْتَكِفِ أَنْ يَشْتَرِطَ مَا شَاءَ مِنْ الْمُبَاحِ وَالْخُرُوجِ لَهُ، لِأَنَّهُ بِذَلِكَ إنَّمَا الْتَزَمَ الِاعْتِكَافَ فِي خِلَالِ مَا اسْتَثْنَاهُ، وَهَذَا مُبَاحٌ لَهُ، أَنْ يَعْتَكِفَ إذَا شَاءَ، وَيَتْرُكَ إذَا شَاءَ، لِأَنَّ الِاعْتِكَافَ طَاعَةٌ، وَتَرْكُهُ مُبَاحٌ، فَإِنْ أَطَاعَ أُجِرَ، وَإِنْ تَرَكَ لَمْ يَقْضِ؟ وَإِنَّ الْعَجَبَ لَيَكْثُرُ مِمَّنْ لَا يُجِيزُ هَذَا الشَّرْطَ

وَالنُّصُوصُ كُلُّهَا مِنْ الْقُرْآنِ وَالسُّنَّةِ مُوجِبَةٌ لِمَا ذَكَرْنَا، ثُمَّ يَقُولُ: بِلُزُومِ الشُّرُوطِ الَّتِي أَبْطَلَهَا الْقُرْآنُ وَالسُّنَنُ، مِنْ اشْتِرَاطِ الرَّجُلِ لِلْمَرْأَةِ إنْ تَزَوَّجَ عَلَيْهَا، أَوْ تَسَرَّى فَأَمْرُهَا

Then he states—by upholding conditions that the Quran and Sunnah have nullified, such as a man stipulating to a woman that if he marries another over her or takes a concubine, she retains autonomy; a woman entering marriage being divorced; or a concubine becoming free. These are stipulations of Satan—prohibiting what Allah the Mighty and Majestic has permitted. Allah the Most High has rejected this in the Quran.

L9736 **Issue: For every obligatory act required of a Muslim, itikāf does not preclude its fulfillment.**

L9737 628 - Issue: For any obligation incumbent upon a Muslim, seclusion does not prevent him from fulfilling it. He must go out to discharge such obligations, and this does not harm his seclusion. Similarly, he may leave for essential human needs: urination, defecation, washing off impurities, the ritual bath for seminal emission, the Friday bath, the bath for menstruation - if he wishes to perform it in a bathhouse or elsewhere. He must not repeatedly return beyond completing his bath or relieving himself. If he does so, his seclusion becomes invalid.

L9738 Similarly, he may leave to purchase necessities for himself and his family, such as food and clothing, and he must not linger upon anything beyond that. If he lingers without necessity, his iʿtikāf is invalidated. He may escort his family to their home.

L9739 Is iʿtikāf invalidated solely by leaving for what is not obligatory upon him?

L9740 Allah the Exalted has ordained upon Muslims—as transmitted through Al-Bukhārī's narration: Muḥammad narrated from ʿAmr ibn Abī Salamah, who reported from Al-Awzāʿī, who said: I am Ibn Shihāb; Saʿīd ibn Al-Musayyib informed me that Abū Hurayrah said: I heard Allah's Messenger (peace be upon him) say: "The right of a Muslim upon another Muslim is five: returning the greeting, caring for the sick, accompanying funeral processions, accepting invitations, and responding to the sneezer."[8]

[8] **Hadith references (L9740):** Sahih al-Bukhari 1240; Mishkat al-Masabih 1524; Riyad as-Salihin 895.

بِيَدِهَا، وَالدَّاخِلَةُ بِنِكَاحٍ طَالِقٌ، وَالسَّرِيَّةُ حُرَّةٌ، وَهَذِهِ شُرُوطُ الشَّيْطَانِ، وَتَحْرِيمُ مَا أَحَلَّ اللَّهُ عَزَّ وَجَلَّ، وَقَدْ أَنْكَرَ اللَّهُ تَعَالَى ذَلِكَ فِي الْقُرْآنِ

[مَسْأَلَةٌ كُلُّ فَرْضٍ عَلَى الْمُسْلِمِ فَإِنَّ الِاعْتِكَافَ لَا يَمْنَعُ مِنْهُ]

٦٢٨ - مَسْأَلَةٌ وَكُلُّ فَرْضٍ عَلَى الْمُسْلِمِ فَإِنَّ الِاعْتِكَافَ لَا يَمْنَعُ مِنْهُ، وَعَلَيْهِ أَنْ يَخْرُجَ إِلَيْهِ، وَلَا يَضُرُّ ذَلِكَ بِاعْتِكَافِهِ، وَكَذَلِكَ يَخْرُجُ لِحَاجَةِ الْإِنْسَانِ، مِنَ الْبَوْلِ وَالْغَائِطِ وَغَسْلِ النَّجَاسَةِ، وَغُسْلِ الِاحْتِلَامِ، وَغُسْلِ الْجُمُعَةِ، وَمِنَ الْحَيْضِ، إِنْ شَاءَ فِي حَمَّامٍ أَوْ فِي غَيْرِ حَمَّامٍ. وَلَا يَتَرَدَّدُ عَلَى أَكْثَرَ مِنْ تَمَامِ غُسْلِهِ، وَقَضَاءِ حَاجَتِهِ، فَإِنْ فَعَلَ بَطَلَ اعْتِكَافُهُ

وَكَذَلِكَ يَخْرُجُ لِابْتِيَاعِ مَا لَا بُدَّ لَهُ وَلِأَهْلِهِ مِنْهُ، مِنَ الْأَكْلِ وَاللِّبَاسِ، وَلَا يَتَرَدَّدُ عَلَى غَيْرِ ذَلِكَ، فَإِنْ تَرَدَّدَ بِلَا ضَرُورَةٍ: بَطَلَ اعْتِكَافُهُ، وَلَهُ أَنْ يُشَيِّعَ أَهْلَهُ إِلَى مَنْزِلِهَا.

وَإِنَّمَا يُبْطِلُ الِاعْتِكَافَ: خُرُوجُهُ لِمَا لَيْسَ فَرْضًا عَلَيْهِ؟

وَقَدْ افْتَرَضَ اللَّهُ تَعَالَى عَلَى الْمُسْلِمِ مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ: ثنا مُحَمَّدٌ ثنا عَمْرُو بْنُ أَبِي سَلَمَةَ عَنِ الْأَوْزَاعِيِّ أَنَا ابْنُ شِهَابٍ أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيَّبِ أَنَّ أَبَا هُرَيْرَةَ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «حَقُّ الْمُسْلِمِ عَلَى الْمُسْلِمِ خَمْسٌ: رَدُّ السَّلَامِ، وَعِيَادَةُ الْمَرِيضِ، وَاتِّبَاعُ الْجَنَائِزِ، وَإِجَابَةُ الدَّعْوَةِ، وَتَشْمِيتُ الْعَاطِسِ» .

L9741 And he—peace be upon him—commanded that whoever is invited, if not fasting, should eat, and if fasting, should pray—meaning that he should supplicate for them.

وَأَمَرَ - عَلَيْهِ السَّلَامُ - مَنْ دُعِيَ - إِنْ كَانَ مُفْطِرًا -: فَلْيَأْكُلْ وَإِنْ كَانَ صَائِمًا فَلْيُصَلِّ، بِمَعْنَى أَنْ يَدْعُوَ لَهُمْ؟

L9742–9743 He, the Exalted, said: "When the call is made for the Prayer on Friday, hasten to the remembrance of Allah and abandon business" [Al-Jumu'ah: 9]. And He, the Exalted, said: "Do not let the witnesses refuse when they are called" [Al-Baqarah: 282].[9]

وَقَالَ تَعَالَى: {إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ} [الجمعة: ٩] وَقَالَ تَعَالَى: {وَلَا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا} [البقرة: ٢٨٢] .

L9744 *The Most High said: "Go forth, whether lightly or heavily equipped" [Quran 9:41].*[10]

وَقَالَ تَعَالَى: {انْفِرُوا خِفَافًا وَثِقَالًا} [التوبة: ٤١] .

L9745 Thus, these are obligations that it is not permissible to abandon for the sake of iʿtikāf, and without doubt, in the estimation of every Muslim, whoever fulfills what Allah, the Exalted, has made obligatory upon him is a doer of good.

فَهَذِهِ فَرَائِضُ لَا يَحِلُّ تَرْكُهَا لِلِاعْتِكَافِ، وَبِلَا شَكٍّ عِنْدَ كُلِّ مُسْلِمٍ أَنَّ كُلَّ مَنْ أَدَّى مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ فَهُوَ مُحْسِنٌ.

L9746 Allah the Exalted said: "There is no blame on the doers of good" [Surah At-Tawbah: 91].[11]

قَالَ اللَّهُ تَعَالَى: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] .

L9747 It is obligated upon the muʿtakif to exit once to visit a sick person, inquiring about their condition while standing and departing. For what exceeds this is not part of the obligatory act but constitutes prolongation—does that invalidate the iʿtikāf?

فَفَرَضَ عَلَى الْمُعْتَكِفِ أَنْ يَخْرُجَ لِعِيَادَةِ الْمَرِيضِ مَرَّةً وَاحِدَةً، يَسْأَلُ عَنْ حَالِهِ وَاقِفًا وَيَنْصَرِفُ لِأَنَّ مَا زَادَ عَنْ هَذَا فَلَيْسَ مِنَ الْفَرْضِ، وَإِنَّمَا هُوَ تَطْوِيلٌ، فَهُوَ يُبْطِلُ الِاعْتِكَافَ؟

L9748 Similarly, he must leave to attend a funeral. When he prays over it, he must depart, for he has fulfilled the obligation, and anything beyond this is not obligatory. Does this nullify his i'tikaf? It is obligatory for him to leave if summoned. If fasting, he must go to the summoner's home, supplicate, depart, and must he not exceed that?

وَكَذَلِكَ يَخْرُجُ لِشُهُودِ الْجِنَازَةِ، فَإِذَا صَلَّى عَلَيْهَا انْصَرَفَ، لِأَنَّهُ قَدْ أَدَّى الْفَرْضَ، وَمَا زَادَ فَلَيْسَ فَرْضًا، وَهُوَ بِهِ خَارِجٌ عَنِ الِاعْتِكَافِ؟ وَفَرْضٌ عَلَيْهِ: أَنْ يَخْرُجَ إِذَا دُعِيَ، فَإِنْ كَانَ صَائِمًا بَلَغَ إِلَى دَارِ الدَّاعِي وَدَعَا وَانْصَرَفَ، وَلَا يَزِدْ عَلَى ذَلِكَ؟

L9749 It is obligatory upon him to depart for the Friday congregational prayer early enough to attend the sermon's commencement. After offering the salutation, he must return immediately. If he prolongs beyond this, he exits the

وَفَرْضٌ عَلَيْهِ: أَنْ يَخْرُجَ إِلَى الْجُمُعَةِ بِمِقْدَارِ مَا يُدْرِكُ أَوَّلَ الْخُطْبَةِ، فَإِذَا سَلَّمَ رَجَعَ، فَإِنْ زَادَ عَلَى ذَلِكَ خَرَجَ مِنَ الِاعْتِكَافِ، فَإِنْ خَرَجَ كَمَا ذَكَرْنَا ثُمَّ رَأَى أَنَّ فِي الْوَقْتِ فُسْحَةً فَإِنْ عَلِمَ أَنَّهُ إِنْ رَجَعَ إِلَى مُعْتَكَفِهِ ثُمَّ خَرَجَ أَدْرَكَ الْخُطْبَةَ فَعَلَيْهِ أَنْ يَرْجِعَ، وَإِلَّا فَلْيَتَمَادَ،

[9] **Qur'an references (L9743):** Qur'an 62:9 (Al-Jumu'ah); Qur'an 2:282 (Al-Baqarah).
[10] **Qur'an references (L9744):** Qur'an 9:41 (At-Tawbah).
[11] **Qur'an references (L9746):** Qur'an 9:91 (At-Tawbah).

seclusion. If he departs as prescribed and perceives sufficient time remaining—knowing that if he returns to his seclusion and departs again he will catch the sermon—he must return; otherwise, he should proceed. Similarly, if returning would cause him hardship, in accordance with Allah's statement: "He has not placed upon you in the religion any hardship" [Al-Ḥajj: 78].[12]

وَكَذَلِكَ إِنْ كَانَ عَلَيْهِ فِي الرُّجُوعِ حَرَجٌ، لِقَوْلِ اللَّهِ تَعَالَى: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] .

L9750 Similarly, he must leave to testify when summoned, whether he accepts or not, because Allah the Exalted has commanded witnesses not to refuse when called, and He did not make a distinction between one who accepts and one who refuses. {And your Lord is not forgetful} [Quran 19:64]. Once he has testified, he must return to his iʿtikāf without delay. If he hesitates, his iʿtikāf is invalidated.[13]

وَكَذَلِكَ يَخْرُجُ لِلشَّهَادَةِ إِذَا دُعِيَ سَوَاءٌ قَبِلَ أَوْ لَمْ يَقْبَلْ، لِأَنَّ اللَّهَ تَعَالَى أَمَرَ الشُّهَدَاءَ بِأَنْ لَا يَأْبَوْا إِذَا دُعُوا، وَلَمْ يَشْتَرِطْ مَنْ يَقْبَلُ مِمَّا لَا يَقْبَلُ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] إِذَا أَدَّاهَا رَجَعَ إِلَى مُعْتَكَفِهِ وَلَا يَتَرَدَّدُ، فَإِنْ تَرَدَّدَ: بَطَلَ اعْتِكَافُهُ؟

L9751 "And is it entirely the opinion of Abū Sulaymān and our companions?"

وَهُوَ كُلُّهُ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا؟

L9752–9754 And it has been narrated to us via the chain of Saʿīd ibn Manṣūr: from Abū al-Aḥwaṣ, from Abū Isḥāq—who is al-Sabīʿī—from ʿĀṣim ibn Ḍamurah, who reported that ʿAlī ibn Abī Ṭālib said: "When a man observes iʿtikāf, he must be present." He should attend the Friday prayer, attend the funeral, visit the sick, come to his family to command them concerning his needs while he is standing?

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ: أَنَا أَبُو الْأَحْوَصِ أَنَا أَبُو إِسْحَاقَ هُوَ السَّبِيعِيّ - عَنْ عَاصِمِ بْنِ ضَمُرَةَ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: إِذَا اعْتَكَفَ الرَّجُلُ فَلْيَشْهَدْ الْجُمُعَةَ وَلْيَحْضُرْ الْجِنَازَةَ وَلْيَعُدْ الْمَرِيضَ وَلْيَأْتِ أَهْلَهُ يَأْمُرُهُمْ بِحَاجَتِهِ وَهُوَ قَائِمٌ؟

L9755 And through him to Sa'id: Narrated to us by Sufyan—he is the son of 'Uyaynah—from 'Ammar ibn 'Abdullah ibn Yasar, from his father: That 'Ali ibn Abi Talib assisted his sister's son Ja'dah ibn Hubayrah with seven hundred dirhams from his stipend to purchase a servant. Ja'dah said: "I was observing i'tikāf." 'Ali replied: "What harm is there if you were to go out to the market and buy?"

وَبِهِ إِلَى سَعِيدٍ: نا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمَّارِ بْنِ عَبْدِ اللَّهِ بْنِ يَسَارٍ عَنْ أَبِيهِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أَعَانَ ابْنَ أُخْتِهِ جَعْدَةَ بْنَ هُبَيْرَةَ بِسَبْعِمِائَةِ دِرْهَمٍ مِنْ عَطَائِهِ أَنْ يَشْتَرِيَ بِهَا خَادِمًا، فَقَالَ: إِنِّي كُنْت مُعْتَكِفًا، فَقَالَ لَهُ عَلِيٌّ: وَمَا عَلَيْك لَوْ خَرَجْتَ إِلَى السُّوقِ فَابْتَعْت؟

L9756 And via him to Sufyān: Hushaym narrated to us from al-Zuhrī from ʿAmrah bint ʿAbd al-Raḥmān from ʿĀ'ishah, the Mother of the Believers, that she would not visit an ailing member of her household while observing iʿtikāf except while she was passing by.

وَبِهِ إِلَى سُفْيَانَ: نا هُشَيْمٌ عَنْ الزُّهْرِيِّ عَنْ عَمْرَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّهَا كَانَتْ لَا تَعُودُ الْمَرِيضَ مِنْ أَهْلِهَا إِذَا كَانَتْ مُعْتَكِفَةً إِلَّا وَهِيَ مَارَّةٌ؟

[12] **Qur'an references (L9749):** Qur'an 22:78 (Al-Hajj).
[13] **Qur'an references (L9750):** Qur'an 19:64 (Maryam).

وَبِهِ إِلَى سَعِيدٍ: نا هُشَيْمٌ أَنَا مُغِيرَةُ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانُوا يَسْتَحِبُّونَ لِلْمُعْتَكِفِ أَنْ يَشْتَرِطَ هَذِهِ الْخِصَالَ - وَهُنَّ لَهُ وَإِنْ لَمْ يَشْتَرِطْ -: عِيَادَةَ الْمَرِيضِ، وَلَا يَدْخُلُ سَقْفًا، وَيَأْتِي الْجُمُعَةَ، وَيَشْهَدُ الْجِنَازَةَ، وَيَخْرُجُ إِلَى الْحَاجَةِ؟ قَالَ إِبْرَاهِيمُ: وَلَا يَدْخُلُ الْمُعْتَكِفُ سَقِيفَةً إِلَّا لِحَاجَةٍ؟

L9757 And through him to Sa’id: Hushaym narrated to us that Mughirah reported from Ibrāhīm al-Nakhaʿī, who said: They recommended that the person observing iʿtikāf stipulate these conditions—visiting the sick, not entering a covered structure, attending the Friday Prayer, attending the Funeral Prayer, and going out for a necessity—though these [actions] are permissible for him even if he does not stipulate them. Ibrāhīm said: Is the one in iʿtikāf not allowed to enter a small covered structure except for a necessity?

وَبِهِ إِلَى هُشَيْمٍ: أَنَا أَبُو إِسْحَاقَ الشَّيْبَانِيُّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: الْمُعْتَكِفُ يَعُودُ الْمَرِيضَ، وَيَشْهَدُ الْجِنَازَةَ، وَيُجِيبُ الْإِمَامَ؟

L9758 And through him to Hushaym: I am Abū Isḥāq al-Shaybānī, reporting from Saʿīd ibn Jubayr, who said: Does the one observing iʿtikāf visit the sick, attend funerals, and respond to the Imam?

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ أَنَّهُ كَانَ يُرَخِّصُ لِلْمُعْتَكِفِ: أَنْ يَتْبَعَ الْجِنَازَةَ، وَيَعُودَ الْمَرِيضَ وَلَا يَجْلِسَ.

L9759 And via the chain of ʿAbd al-Razzāq from Maʿmar from Qatādah: He would permit the one observing iʿtikāf to attend funerals and visit the sick, provided they do not sit.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَّهُ قَالَ: الْمُعْتَكِفُ يَدْخُلُ الْبَابَ فَيُسَلِّمُ وَلَا يَقْعُدُ، يَعُودُ الْمَرِيضَ؟ وَكَانَ لَا يَرَى بَأْسًا إِذَا خَرَجَ الْمُعْتَكِفُ لِحَاجَتِهِ فَلَقِيَهُ رَجُلٌ فَسَأَلَهُ أَنْ يَقِفَ عَلَيْهِ فَيُسَائِلُهُ

L9760 From the chain of ʿAbd al-Razzāq, from Maʿmar, from Yaḥyā ibn Abī Kathīr, from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf, who said: “The one in *iʿtikāf* enters [the mosque], greets with *salām*, and does not sit down. Should he visit the sick?” He saw no issue if a person in *iʿtikāf* left for his necessity, encountered a man who requested him to attend to his need, and then inquired of him.

قَالَ أَبُو مُحَمَّد: إِنْ اُضْطُرَّ إِلَى ذَلِكَ، أَوْ سَأَلَهُ عَنْ سُنَّةٍ مِنْ الدِّينِ، وَإِلَّا فَلَا؟ وَمِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: لِلْمُعْتَكِفِ أَنْ يَعُودَ الْمَرِيضَ، وَيَتْبَعَ الْجِنَازَةَ، وَيَأْتِيَ إِلَى الْجُمُعَةِ، وَيُجِيبَ الدَّاعِيَ؟

L9761–9763 Abū Muḥammad said: If one is compelled to do so, or asked about a Sunnah of the religion—otherwise, is it not [permitted]? Via the chain of Shuʿbah from Abū Isḥāq al-Shaybānī from Saʿīd ibn Jubayr, who said: The one observing Iʿtikāf may... Should one visit the sick, accompany a funeral procession, attend Friday Prayer, and accept the invitation?

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: إِنْ نَذَرَ جِوَارًا أَيَنْوِي فِي نَفْسِهِ أَنْ لَا يَصُومَ، وَأَنَّهُ يَبِيعُ وَيَبْتَاعُ، وَيَأْتِي الْأَسْوَاقَ، وَيَعُودُ الْمَرِيضَ، وَيَتْبَعُ الْجِنَازَةَ وَإِنْ كَانَ مَطَرٌ: فَإِنِّي أَسْتَكِنُ فِي الْبَيْتِ. وَإِنِّي أُجَاوِرُ جِوَارًا مُنْقَطِعًا، أَوْ أَنْ يَعْتَكِفَ النَّهَارَ وَيَأْتِيَ الْبَيْتَ بِاللَّيْلِ؟ قَالَ عَطَاءٌ: ذَلِكَ عَلَى نِيَّتِهِ مَا كَانَتْ، ذَلِكَ لَهُ؟

L9764 From the narration of Abd al-Razzaq via Ibn Jurayj: I asked Ata: If someone vows a residential retreat while intending not to fast—if he engages in trade, frequents markets, tends to the sick, attends funerals, or remains indoors when it rains—or if he vows a discontinuous retreat, or secludes by day but returns home at night—what applies? Ata replied: That depends on his intention, whatever it was. Is that permissible for him?

Is this also the opinion of Qatādah?

وَهُوَ قَوْلُ قَتَادَةَ أَيْضًا؟

It has been narrated to us from Sufyān al-Thawrī that he said: “The one in iʿtikāf may visit the sick, go out to attend the Friday prayer, and attend funerals”—is this the view of al-Ḥasan ibn Ḥayyin?

وَرُوِّينَا عَنْ سُفْيَانَ الثَّوْرِيِّ أَنَّهُ قَالَ: الْمُعْتَكِفُ يَعُودُ الْمَرْضَى وَيَخْرُجُ إِلَى الْجُمُعَةِ، وَيَشْهَدُ الْجَنَائِزَ - وَهُوَ قَوْلُ الْحَسَنِ بْنِ حَيٍّ؟

It has been transmitted to us from Mujāhid, ʿAṭāʾ, ʿUrwah, and al-Zuhrī that one observing iʿtikāf must not visit the sick or attend funerals. This is the view of Mālik and al-Layth.

وَرُوِّينَا عَنْ مُجَاهِدٍ، وَعَطَاءٍ، وَعُرْوَةَ، وَالزُّهْرِيِّ: لَا يَعُودُ الْمُعْتَكِفُ مَرِيضًا، وَلَا يَشْهَدُ الْجِنَازَةَ - وَهُوَ قَوْلُ مَالِكٍ، وَاللَّيْثِ.

Malik said: “Is he not to go out for the Friday prayer?”

قَالَ مَالِكٌ: لَا يَخْرُجُ إِلَى الْجُمُعَةِ؟

Abu Muhammad said: This is a case in which what we have reported has been authentically established from Ali and Aisha, and no opponent to them both is known among the Companions. They would regard such a matter gravely when it contradicted their adherence to precedent.

قَالَ أَبُو مُحَمَّدٍ: هَذَا مَكَانٌ صَحَّ فِيهِ عَنْ عَلِيٍّ وَعَائِشَةَ مَا أَوْرَدْنَا، وَلَا مُخَالِفَ لَهُمَا يُعْرَفُ مِنْ الصَّحَابَةِ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا خَالَفَ تَقْلِيدَهُمْ

It has been reported to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from ʿAlī ibn al-Ḥusayn from Ṣafiyyah, the Mother of the Believers, who said: “The Messenger of Allah—peace and blessings be upon him—was observing *iʿtikāf*, so I came to visit him at night. I conversed with him, then I rose to return. He stood to accompany me back, as she resided in Usāmah’s house.” And he mentioned the rest of the report.[14]

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ صَفِيَّةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُعْتَكِفًا فَأَتَيْتُهُ أَزُورُهُ لَيْلًا، فَحَدَّثْتُهُ، ثُمَّ قُمْتُ فَانْقَلَبْتُ، فَقَامَ مَعِي لِيَقْلِبَنِي وَكَانَ مَسْكَنُهَا فِي دَارِ أُسَامَةَ» وَذَكَرَ بَاقِيَ الْخَبَرِ؟

Abu Muhammad said: This suffices. We know of no valid proof for those who prohibit [others] from all that we have mentioned—not from the Quran, nor the Sunnah, nor the statement of a Companion, nor analogical reasoning.

قَالَ أَبُو مُحَمَّدٍ: فِي هَذَا كِفَايَةٌ، وَمَا نَعْلَمُ لِمَنْ مَنَعَ مِنْ كُلِّ مَا ذَكَرْنَا حُجَّةً، لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ.

And we ask them: What is the difference between what they have permitted him of leaving to relieve himself and purchasing what is necessary? from him and between his departure for what Allah, the Exalted and Majestic, has ordained upon him?

وَنَسْأَلُهُمْ: مَا الْفَرْقُ بَيْنَ مَا أَبَاحُوا لَهُ مِنْ الْخُرُوجِ لِقَضَاءِ الْحَاجَةِ وَابْتِيَاعِ مَا لَا بُدَّ مِنْهُ، وَبَيْنَ خُرُوجِهِ لِمَا افْتَرَضَهُ اللَّهُ عَزَّ وَجَلَّ عَلَيْهِ؟

Abū Ḥanīfah said: He is not permitted to visit the sick nor attend a funeral.

[14] **Hadith references (L9770):** Sunan Abi Dawud 2470.

He may go out to attend Friday prayer for the duration required to pray six rakʿahs before the sermon, and he may remain in the mosque after Friday prayer for the duration required to pray six rakʿahs. If he stays longer or goes out for a longer period, it does not invalidate his iʿtikāf. But if he goes out to attend a funeral or visit a sick person, his iʿtikāf is invalidated. Abū Yūsuf and Muḥammad ibn al-Ḥasan said: He may go out for all such purposes. If his absence for such reasons lasts half a day or less, it does not invalidate his iʿtikāf. But if it exceeds half a day, his iʿtikāf is invalidated. Abū Muḥammad said: There is indeed wonder at these restrictions! We do not comprehend how any rational person could sanction prescribing these corrupt laws in Allah's religion, thereby becoming one who prohibits, permits, and obligates without Allah Almighty's authority.

وَقَالَ أَبُو حَنِيفَةَ: لَيْسَ لَهُ أَنْ يَعُودَ الْمَرِيضَ، وَلَا أَنْ يَشْهَدَ الْجَنَازَةَ، وَلَهُ أَنْ يَخْرُجَ إِلَى الْجُمُعَةِ بِمِقْدَارِ مَا يُصَلِّي سِتَّ رَكَعَاتٍ قَبْلَ الْخُطْبَةِ، وَلَهُ أَنْ يَبْقَى فِي الْجَامِعِ بَعْدَ صَلَاةِ الْجُمُعَةِ مِقْدَارَ مَا يُصَلِّي سِتَّ رَكَعَاتٍ، فَإِنْ بَقِيَ أَكْثَرَ، أَوْ خَرَجَ لِأَكْثَرَ لَمْ يَضُرَّهُ شَيْءٌ، فَإِنْ خَرَجَ لِجَنَازَةٍ، أَوْ لِعِيَادَةِ مَرِيضٍ: بَطَلَ اعْتِكَافُهُ؟ وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: لَهُ أَنْ يَخْرُجَ لِكُلِّ ذَلِكَ، فَإِنْ كَانَ مِقْدَارُ لُبْثِهِ فِي خُرُوجِهِ لِذَلِكَ نِصْفَ يَوْمٍ فَأَقَلَّ لَمْ يَضُرَّ اعْتِكَافَهُ ذَلِكَ، فَإِنْ كَانَ أَكْثَرَ مِنْ نِصْفِ يَوْمٍ: بَطَلَ اعْتِكَافُهُ؟ قَالَ أَبُو مُحَمَّدٍ: إِنَّ فِي هَذِهِ التَّحْدِيدَاتِ لَعَجَبًا وَمَا نَدْرِي كَيْفَ يَسْمَحُ ذُو عَقْلٍ أَنْ يُشَرِّعَ فِي دِينِ اللَّهِ هَذِهِ الشَّرَائِعَ الْفَاسِدَةَ فَيَصِيرُ مُحَرِّمًا مُحَلِّلًا مُوجِبًا دُونَ اللَّهِ تَعَالَى؟

L9776 Only what the text specifies as permissible is permitted, whether its duration is brief or extensive.

وَمَا هُوَ إِلَّا مَا جَاءَ النَّصُّ بِإِبَاحَتِهِ فَهُوَ مُبَاحٌ، قَلَّ أَمَدُهُ أَوْ كَثُرَ

L9777 Or whatever the text explicitly prohibits is forbidden, whether its duration is short or long.

أَوْ مَا جَاءَ النَّصُّ بِتَحْرِيمِهِ فَهُوَ حَرَامٌ قَلَّ أَمَدُهُ أَوْ كَثُرَ

L9778 Or whatever the text establishes as obligatory remains obligatory, unless another text comes specifying something particular within that framework - then [it demands] attentive compliance and obedience.

أَوْ مَا جَاءَ النَّصُّ بِإِيجَابِهِ فَهُوَ وَاجِبٌ إِلَّا أَنْ يَأْتِيَ نَصٌّ بِتَحْدِيدٍ فِي شَيْءٍ مِنْ ذَلِكَ، فَسَمْعًا وَطَاعَةً؟

L9779 **Issue: A person in iʿtikāf (ritual seclusion) may perform any act permitted to him within the mosque.**

[مَسْأَلَةٌ يَعْمَلُ الْمُعْتَكِفُ فِي الْمَسْجِدِ كُلَّ مَا أُبِيحَ لَهُ]

L9780 629 - Issue: The person observing i'tikaf may perform all permissible acts within the mosque, such as conversing about lawful matters, seeking knowledge of any kind, sewing, disputing over a rightful matter, transcribing texts, buying and selling, marrying, and other such matters. He must not avoid anything, for i'tikaf is residing [in the mosque] as we have stated. Thus, if he performs these acts within the mosque, he has not abandoned his i'tikaf.

٦٢٩ - مَسْأَلَةٌ وَيَعْمَلُ الْمُعْتَكِفُ فِي الْمَسْجِدِ كُلَّ مَا أُبِيحَ لَهُ مِنْ مُحَادَثَةٍ فِيمَا لَا يَحْرُمُ، وَمِنْ طَلَبِ الْعِلْمِ أَيِّ عِلْمٍ كَانَ، وَمِنْ خِيَاطَةٍ، وَخِصَامٍ فِي حَقٍّ، وَنَسْخٍ، وَبَيْعٍ وَشِرَاءٍ، وَتَزَوُّجٍ وَغَيْرِ ذَلِكَ لَا يَتَحَاشَ شَيْئًا، لِأَنَّ الِاعْتِكَافَ: هُوَ الْإِقَامَةُ كَمَا ذَكَرْنَا، فَهُوَ إِذَا فَعَلَ ذَلِكَ فِي الْمَسْجِدِ فَلَمْ يَتْرُكْ الِاعْتِكَافَ

L9781 Is this the opinion of Abū Ḥanīfa, al-Shāfiʿī, and Abū Sulaymān? Mālik did

not hold that view, and we know of no valid proof for him in this matter—not from the Quran, nor from the Sunnah whether sound or weak, nor from a Companion's statement, nor from a predecessor among the Tābiʿīn, nor from analogical reasoning, nor any opinion with a discernible basis?

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ؟ وَلَمْ يَرَ ذَلِكَ مَالِكٌ، وَمَا نَعْلَمُ لَهُ حُجَّةً فِي ذَلِكَ، لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ لَا صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قَوْلِ مُتَقَدِّمٍ مِنْ التَّابِعِينَ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ؟

L9782–9783 More astonishing than that is his prohibition of seeking knowledge in the mosque, as we previously mentioned: "Aisha (may Allah be pleased with her) would comb the blessed hair of the Messenger of Allah (peace and blessings be upon him) while he was in the mosque." Is everything Allah the Exalted has permitted not a sin? Rather, is it either an act of obedience or [an act of] safety [from sin]?

وَأَعْجَبُ مِنْ ذَلِكَ مَنْعُهُ طَلَبَ الْعِلْمِ فِي الْمَسْجِدِ وَقَدْ ذَكَرْنَا قَبْلُ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَتْ عَائِشَةُ - رَضِيَ اللَّهُ عَنْهَا - تُرَجِّلُ شَعْرَهُ الْمُقَدَّسَ وَهُوَ فِي الْمَسْجِدِ» ، وَكُلُّ مَا أَبَاحَهُ اللَّهُ تَعَالَى فَلَيْسَ مَعْصِيَةً، لَكِنَّهُ إمَّا طَاعَةٌ وَإِمَّا سَلَامَةٌ؟

[مَسْأَلَةٌ خُرُوجُ الْمُعْتَكِفِ عَنْ الْمَسْجِدِ لِغَيْرِ حَاجَةٍ]

L9784 **Issue: A person performing *iʿtikāf* leaving the mosque without a valid reason.**

٦٣٠ - مَسْأَلَةٌ وَلَا يُبْطِلُ الِاعْتِكَافَ شَيْءٌ إلَّا خُرُوجُهُ عَنْ الْمَسْجِدِ لِغَيْرِ حَاجَةٍ عَامِدًا ذَاكِرًا، لِأَنَّهُ قَدْ فَارَقَ الْعُكُوفَ وَتَرَكَهُ، وَمُبَاشَرَةُ الْمَرْأَةِ فِي غَيْرِ التَّرْجِيلِ، لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تُبَاشِرُوهُنَّ وَأَنْتُمْ عَاكِفُونَ فِي الْمَسَاجِدِ} [البقرة: ١٨٧] .

L9785 630 - Issue: Nothing invalidates iʿtikāf except leaving the mosque without a need intentionally and consciously, for this constitutes abandoning the act of devotion, or engaging in sexual relations with a woman beyond permissible spousal grooming, in accordance with Allah's statement: {And do not have sexual relations with them while you are observing iʿtikāf in the mosques} [Al-Baqarah: 187].[15]

وَتَعَمُّدُ مَعْصِيَةِ اللَّهِ تَعَالَى - أَيِّ مَعْصِيَةٍ كَانَتْ، لِأَنَّ الْعُكُوفَ الَّذِي نَدَبَ اللَّهُ تَعَالَى إلَيْهِ هُوَ الَّذِي لَا يَكُونُ عَلَى مَعْصِيَةٍ، وَلَا شَكَّ عِنْدَ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ فِي أَنَّ اللَّهَ تَعَالَى حَرَّمَ الْعُكُوفَ عَلَى الْمَعْصِيَةِ فَمَنْ عَكَفَ فِي الْمَسْجِدِ عَلَى مَعْصِيَةٍ فَقَدْ تَرَكَ الْعُكُوفَ عَلَى الطَّاعَةِ فَبَطَلَ عُكُوفُهُ

L9786 Deliberate disobedience to Allah the Exalted—whatever disobedience it may be—is prohibited, because the devotional stay Allah the Exalted has exhorted toward is that which is not dedicated to disobedience. No Muslim disputes that Allah the Exalted has forbidden undertaking a devotional stay for the sake of disobedience. Thus, whoever undertakes a devotional stay in the mosque for the purpose of disobedience has abandoned the devotional stay dedicated to obedience, and their devotional stay is thereby nullified.

وَهَذَا كُلُّهُ قَوْلُ أَبِي سُلَيْمَانَ، وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ؟ وَقَالَ مَالِكٌ: الْقُبْلَةُ تُبْطِلُ الِاعْتِكَافَ

L9787 All of this is the opinion of Abū Sulaymān and one of the two opinions of al-Shāfiʿī? Mālik said: A kiss invalidates the iʿtikāf (ritual seclusion).

وَقَالَ أَبُو حَنِيفَةَ: لَا يُبْطِلُ الِاعْتِكَافَ مُبَاشَرَةٌ وَلَا قُبْلَةٌ إلَّا أَنْ يُنْزِلَ، وَهَذَا تَحْدِيدٌ فَاسِدٌ، قِيَاسٌ لِلْبَاطِلِ عَلَى الْبَاطِلِ، وَقَوْلٌ بِلَا بُرْهَانٍ؟

L9788 Abu Hanifah said: Sexual contact or a kiss does not invalidate the *iʿtikaf*

[15] **Qur'an references (L9785):** Qur'an 2:187 (Al-Baqarah).

unless he ejaculates. This is an invalid restriction—a false analogy upon falsehood, an assertion without evidence?

[مَسْأَلَةٌ الْمُعْتَكِف إذَا عَصَى نَاسِيًا أَوْ خَرَجَ مِنْ الْمَسْجِد نَاسِيًا]

A legal question regarding a person observing iʿtikāf who violates forgetfully or exits the mosque forgetfully.

٦٣١ - مَسْأَلَةٌ وَمَنْ عَصَى نَاسِيًا، أَوْ خَرَجَ نَاسِيًا، أَوْ مُكْرَهًا، أَوْ بَاشَرَ، أَوْ جَامَعَ نَاسِيًا، أَوْ مُكْرَهًا -: فَالِاعْتِكَافُ تَامٌّ لَا يَكْدَحُ كُلُّ ذَلِكَ فِيهِ شَيْئًا، لِأَنَّهُ لَمْ يَعْمِدْ إبْطَالَ اعْتِكَافِهِ وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَصَحْبِهِ وَسَلَّمَ - «رُفِعَ عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» .

Issue 631: Whoever disobeys forgetfully, exits the mosque forgetfully, is compelled, engages in foreplay, or has sexual intercourse forgetfully or under compulsion—the i'tikaf remains complete. None of these impair it in the slightest, for he did not intend to invalidate his i'tikaf. This is confirmed by the authentic narration from the Prophet, peace be upon him, his family, and companions: "There has been lifted from my Ummah [the consequences of] errors, forgetfulness, and what they are compelled to do."

٦٣٢ - مَسْأَلَةٌ وَيُؤَذِّنُ فِي الْمِئْذَنَةِ إنْ كَانَ بَابُهَا فِي الْمَسْجِدِ أَوْ فِي صَحْنِهِ، وَيَصْعَدُ عَلَى ظَهْرِ الْمَسْجِدِ، لِأَنَّ كُلَّ ذَلِكَ مِنْ الْمَسْجِدِ، فَإِنْ كَانَ بَابُ الْمِئْذَنَةِ خَارِجَ الْمَسْجِدِ بَطَلَ اعْتِكَافُهُ إنْ تَعَمَّدَ ذَلِكَ؟

632 – Question: He should perform the adhan in the minaret if its door is within the mosque or its courtyard, and he may ascend to the roof of the mosque, since all of that is considered part of the mosque. If the minaret's door is outside the mosque, is his i'tikaf invalidated if he did that intentionally?

وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

This represents the opinion of Mālik, al-Shāfiʿī, and Abū Sulaymān.

وَقَالَ أَبُو حَنِيفَةَ: لَا يَبْطُلُ؟

Abu Hanifah said: It is not invalidated.

وَهَذَا خَطَأٌ، لِأَنَّ الْخُرُوجَ عَنْ الْمَسْجِدِ - قَلَّ أَوْ كَثُرَ - مُفَارَقَةٌ لِلْعُكُوفِ وَتَرْكٌ لَهُ، وَالتَّحْدِيدُ فِي ذَلِكَ بِغَيْرِ نَصٍّ بَاطِلٌ، وَلَا فَرْقَ بَيْنَ خُطْوَةٍ وَخُطْوَتَيْنِ إلَى مِائَةِ أَلْفِ خُطْوَةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

This is erroneous, because exiting the mosque, whether minimally or extensively, constitutes separation from i'tikāf and abandoning it. Specifying a quantitative limit for this without textual evidence is invalid, and there is no distinction between one step, two steps, up to a hundred thousand steps—and with Allah, the Exalted, lies success.

[مَسْأَلَةٌ الِاعْتِكَافُ جَائِزٌ فِي كُلِّ مَسْجِدٍ]

Issue: Iʿtikāf (ritual seclusion) is permissible in every mosque.

٦٣٣ - مَسْأَلَةٌ وَالِاعْتِكَافُ جَائِزٌ فِي كُلِّ مَسْجِدٍ جُمِعَتْ فِيهِ الْجُمُعَةُ أَوْ لَمْ تُجْمَعْ، سَوَاءٌ كَانَ مُسْقَفًا أَوْ مَكْشُوفًا، فَإِنْ كَانَ لَا يُصَلَّى فِيهِ جَمَاعَةً وَلَا لَهُ إمَامٌ: لَزِمَهُ فَرْضًا الْخُرُوجُ

Issue 633: I'tikāf is permissible in any mosque—whether Friday prayer is held there or not, and whether it is roofed or open. If congregational prayer is not held in it nor does it have an imam, it becomes obligatory for him

to leave for every prayer to a mosque where congregational prayer is held—unless the mosque is at a distance that causes him hardship, in which case it is not obligatory.

L9798 As for the woman who is not obligated to attend congregational prayers—does she observe *iʿtikāf* in the mosque? It is not permissible to observe *iʿtikāf* in the mosque's courtyard unless it is part of it.

L9799 It is not permissible for a woman or a man—or one of them—to perform i'tikaf in the prayer area of their home.

L9800 The proof of this is the statement of Allah, the Exalted: {while you are observing iʿtikāf in the mosques} [Al-Baqarah: 187]. Thus, Allah, the Exalted, generalized the ruling and did not restrict it. If it is said: Has it not been authentically established from the Messenger of Allah—peace and blessings be upon him—that "The earth has been made for me a place of prostration and pure"?[16]

L9801 We said: Yes, in the sense that prayer is permissible in it, and otherwise, there is textual evidence and consensus that urination and defecation are permissible everywhere except in the mosque.

L9802 Thus, it is established that what is other than the mosque does not share the ruling pertaining to the mosque.

L9803 Therefore, it is correct that there is no obedience to [an authority] in establishing [something] outside the mosque.

L9804 Thus, it is valid that there is no iʿtikāf except in a mosque, and does this necessitate our position? Indeed, people have differed regarding this: A group has said, "There is no iʿtikāf except in the Mosque of the Prophet (peace be upon him)."

L9805 As reported to us through the chain of ʿAbd al-Razzāq from Maʿmar from Qatāda—I think—from Saʿīd ibn al-Musayyab, who said: There is no iʿtikāf except in the Mosque of the Prophet—may Allah's peace and blessings be upon him.

لِكُلِّ صَلَاةٍ إِلَى الْمَسْجِدِ تُصَلَّى فِيهِ جَمَاعَةً إِلَّا أَنْ يَبْعُدَ مِنْهُ بُعْدًا يَكُونُ عَلَيْهِ فِيهِ حَرَجٌ فَلَا يَلْزَمُهُ.

وَأَمَّا الْمَرْأَةُ الَّتِي لَا يَلْزَمُهَا فَرْضُ الْجَمَاعَةِ فَتَعْتَكِفُ فِيهِ؟ وَلَا يَجُوزُ الِاعْتِكَافُ فِي رَحْبَةِ الْمَسْجِدِ إِلَّا أَنْ تَكُونَ مِنْهُ.

وَلَا يَجُوزُ لِلْمَرْأَةِ، وَلَا لِلرَّجُلِ: أَنْ يَعْتَكِفَا - أَوْ أَحَدُهُمَا - فِي مَسْجِدِ دَارِهِ؟

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَأَنْتُمْ عَاكِفُونَ فِي الْمَسَاجِدِ} [البقرة: ١٨٧] فَعَمَّ اللَّهُ تَعَالَى وَلَمْ يَخُصَّ -: فَإِنْ قِيلَ: قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «جُعِلَتْ لِي الْأَرْضُ مَسْجِدًا وَطَهُورًا» ؟

قُلْنَا: نَعَمْ، بِمَعْنَى أَنَّهُ تَجُوزُ الصَّلَاةُ فِيهِ، وَإِلَّا فَقَدْ جَاءَ النَّصُّ وَالْإِجْمَاعُ بِأَنَّ الْبَوْلَ وَالْغَائِطَ جَائِزٌ فِيمَا عَدَا الْمَسْجِدَ.

فَصَحَّ أَنَّهُ لَيْسَ لِمَا عَدَا الْمَسْجِدِ حُكْمُ الْمَسْجِدِ.

فَصَحَّ أَنْ لَا طَاعَةَ فِي إِقَامَةٍ فِي غَيْرِ الْمَسْجِدِ.

فَصَحَّ أَنْ لَا اعْتِكَافَ إِلَّا فِي مَسْجِدٍ، وَهَذَا يُوجِبُ مَا قُلْنَا؟ وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَتْ طَائِفَةٌ: لَا اعْتِكَافَ إِلَّا فِي مَسْجِدِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، أَحْسِبُهُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: لَا اعْتِكَافَ إِلَّا فِي مَسْجِدِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[16] **Qur'an references (L9800):** Qur'an 2:187 (Al-Baqarah).

L9806–9807 Abū Muḥammad said: If it is not the statement of Saʿīd, then it is the statement of Qatādah; there is no doubt that it is one of the two.

قَالَ أَبُو مُحَمَّدٍ: إِنْ لَمْ يَكُنْ قَوْلَ سَعِيدٍ فَهُوَ قَوْلُ قَتَادَةَ، لَا شَكَّ فِي أَحَدِهِمَا.

L9808 A group said: There is no i'tikaf except in the mosque of Mecca and the mosque of Medina.

وَقَالَتْ طَائِفَةٌ: لَا اعْتِكَافَ إِلَّا فِي مَسْجِدِ مَكَّةَ وَمَسْجِدِ الْمَدِينَةِ فَقَطْ.

L9809 As it has been narrated to us through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ, who said: "There is no seeking refuge (jiwār) except in the Mosque of Mecca and the Mosque of Medina." I said to him: "What about the Mosque of Iliyā?" He replied: "Do you not seek refuge except in the Mosque of Mecca and the Mosque of Medina?"

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: لَا جِوَارَ إِلَّا فِي مَسْجِدِ مَكَّةَ، وَمَسْجِدِ الْمَدِينَةِ، قُلْت لَهُ: فَمَسْجِدُ إِيلِيَا؟ قَالَ: لَا تُجَاوِرُ إِلَّا فِي مَسْجِدِ مَكَّةَ، وَمَسْجِدِ الْمَدِينَةِ؟

L9810 It has been authentically reported from ʿAṭāʾ that jiwār is iʿtikāf.

وَقَدْ صَحَّ عَنْ عَطَاءٍ: أَنَّ الْجِوَارَ هُوَ الِاعْتِكَافُ.

L9811 A group has said: There is no *i'tikaf* except in the mosque of Mecca, the mosque of Medina, or the mosque of Bayt al-Maqdis.

وَقَالَتْ طَائِفَةٌ: لَا اعْتِكَافَ إِلَّا فِي مَسْجِدِ مَكَّةَ، أَوْ مَسْجِدِ الْمَدِينَةِ، أَوْ مَسْجِدِ بَيْتِ الْمَقْدِسِ.

L9812 As we have been narrated through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from Wāṣil al-Aḥdab from Ibrāhīm al-Nakhaʿī, who said: Ḥudhayfah came to ʿAbd Allāh ibn Masʿūd and said to him: "Are you not astonished by people performing iʿtikāf between your residence and that of al-Ashʿarī?" ʿAbd Allāh replied: "Perhaps they were correct and you were mistaken." Ḥudhayfah said: "I care not. Should I perform iʿtikāf there or in this market of yours? Verily, iʿtikāf is only in these three mosques: the Sacred Mosque, the Prophet's Mosque, and al-Aqsa Mosque." Ibrāhīm said: "Those who performed iʿtikāf—and Ḥudhayfah criticized them—were in the Great Mosque of Kūfah?"

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ وَاصِلٍ الْأَحْدَبِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: جَاءَ حُذَيْفَةُ إِلَى عَبْدِ اللَّهِ بْنِ مَسْعُودٍ فَقَالَ لَهُ: أَلَا أَعْجَبُك مِنْ نَاسٍ عُكُوفٍ بَيْنَ دَارِك وَدَارِ الْأَشْعَرِيِّ؟ فَقَالَ لَهُ عَبْدُ اللَّهِ: فَلَعَلَّهُمْ أَصَابُوا وَأَخْطَأْت، فَقَالَ لَهُ حُذَيْفَةُ: مَا أُبَالِي، أَفِيهِ أَعْتَكِفُ، أَوْ فِي سُوقِكُمْ هَذِهِ، إنَّمَا الِاعْتِكَافُ فِي هَذِهِ الْمَسَاجِدِ الثَّلَاثَةِ: مَسْجِدِ الْحَرَامِ، وَمَسْجِدِ الْمَدِينَةِ، وَالْمَسْجِدِ الْأَقْصَى؟ قَالَ إبْرَاهِيمُ: وَكَانَ الَّذِينَ اعْتَكَفُوا فَعَابَ عَلَيْهِمْ حُذَيْفَةُ -: فِي مَسْجِدِ الْكُوفَةِ الْأَكْبَرِ؟

L9813 We have also narrated it through the chain of Abd al-Razzaq from Ibn Uyaynah from Jami' ibn Abi Rashid, who said: I heard Abu Wa'il say: Hudhayfah said to Abdullah ibn Mas'ud: "A group of people are secluding themselves between your house and the house of Abu Musa; will you not forbid them?" Abdullah replied to him: "Perhaps they are correct and you are mistaken, and they have retained [the correct practice] while you have forgotten." Hudhayfah then said: "Is there no i'tikaf except in these three mosques: the Mosque

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ عُيَيْنَةَ عَنْ جَامِعِ بْنِ أَبِي رَاشِدٍ قَالَ: سَمِعْت أَبَا وَائِلٍ يَقُولُ: قَالَ حُذَيْفَةُ لِعَبْدِ اللَّهِ بْنِ مَسْعُودٍ: قَوْمٌ عُكُوفٌ بَيْنَ دَارِك وَدَارِ أَبِي مُوسَى، أَلَّا تَنْهَاهُمْ؟ فَقَالَ لَهُ عَبْدُ اللَّهِ: فَلَعَلَّهُمْ أَصَابُوا وَأَخْطَأْت، وَحَفِظُوا وَنَسِيت،

of Medina (Masjid al-Nabawi), the Mosque of Mecca (Masjid al-Haram), and the Mosque of Jerusalem (Al-Aqsa)?"

فَقَالَ أَبُو حُذَيْفَةَ: لَا اعْتِكَافَ إِلَّا فِي هَذِهِ الْمَسَاجِدِ الثَّلَاثَةِ: مَسْجِدِ الْمَدِينَةِ، وَمَسْجِدِ مَكَّةَ، وَمَسْجِدِ إِيلْيَاءَ؟

L9814 A group of scholars maintained: "There is no iʿtikāf except in a congregational mosque?"

وَقَالَتْ طَائِفَةٌ: لَا اعْتِكَافَ إِلَّا فِي مَسْجِدٍ جَامِعٍ؟

L9815 This was narrated to us through the chain of Abd al-Razzaq, from Ibn Jurayj, from Ata. Is this the first of Ata's two statements?

رُوِّينَا هَذَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ، وَهُوَ أَوَّلُ قَوْلَيْهِ؟

L9816 A group said: "There is no iʿtikāf except in a congregational city?"

وَقَالَتْ طَائِفَةٌ: لَا اعْتِكَافَ إِلَّا فِي مِصْرٍ جَامِعٍ؟

L9817–9818 It has been narrated to us via Ibn Abi Shaybah, from Wakiʿ, from Sufyan al-Thawri, from Abu Ishaq, from al-Harith, from Ali, who said: "Itikaf is only valid in an urban center with a congregational mosque."

كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ عَنْ الْحَارِثِ عَنْ عَلِيٍّ قَالَ: لَا اعْتِكَافَ إِلَّا فِي مِصْرٍ جَامِعٍ

L9819 A group said: "There is no *iʿtikāf* except in a prophet's mosque," as we have been narrated through the chain of Ibn al-Jahm: ʿAbdullāh ibn Aḥmad ibn Ḥanbal narrated to us, ʿUbaydullāh ibn ʿUmar (al-Qawārīrī) narrated to us, Muʿādh ibn Hishām al-Dastuwā'ī narrated to us, [saying]: My father narrated to us from Qatādah from Saʿīd ibn al-Musayyab, who said: "There is no *iʿtikāf* except in a prophet's mosque."

وَقَالَتْ طَائِفَةٌ: لَا اعْتِكَافَ إِلَّا فِي مَسْجِدِ نَبِيٍّ؟ كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ الْجَهْمِ: ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ ثنا عُبَيْدُ اللَّهِ بْنُ عُمَرَ وَهُوَ الْقَوَارِيرِيُّ - ثنا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ ثنا أَبِي عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: لَا اعْتِكَافَ إِلَّا فِي مَسْجِدِ نَبِيٍّ

L9820 A group posed the question: "Is there no i'tikaf except in a mosque designated for congregational prayers?"

وَقَالَتْ طَائِفَةٌ: لَا اعْتِكَافَ إِلَّا فِي مَسْجِدِ جَمَاعَةٍ؟

L9821 As we have been narrated through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī and Maʿmar: Sufyān said, from Jābir al-Juʿfī from Saʿd ibn ʿUbaydah from Abū ʿAbd al-Raḥmān al-Sulamī from ʿAlī ibn Abī Ṭālib. Maʿmar said: from Hishām ibn ʿUrwah, Yaḥyā ibn Abī Kathīr, and a man. Hishām said: from his father; Yaḥyā said: from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf; and the man said: from al-Ḥasan. They all said: "Is there no valid iʿtikāf except in a congregational mosque?" It is authentically reported from Ibrāhīm, Saʿīd ibn Jubayr, and Abū Qilābah regarding the permissibility of iʿtikāf in mosques where Friday prayer is not held, and this is our opin-

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ، قَالَ سُفْيَانُ: عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ سَعْدِ بْنِ عُبَيْدَةَ عَنْ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَقَالَ مَعْمَرٌ: عَنْ هِشَامِ بْنِ عُرْوَةَ وَيَحْيَى بْنِ أَبِي كَثِيرٍ، وَرَجُلٍ، قَالَ هِشَامٌ: عَنْ أَبِيهِ، وَقَالَ يَحْيَى: عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَقَالَ الرَّجُلُ: عَنْ الْحَسَنِ، قَالُوا كُلُّهُمْ: لَا اعْتِكَافَ إِلَّا فِي مَسْجِدِ جَمَاعَةٍ؟ وَصَحَّ عَنْ إِبْرَاهِيمَ وَسَعِيدِ بْنِ جُبَيْرٍ وَأَبِي قِلَابَةَ: إِبَاحَةُ

ion, because any mosque constructed for prayer - since the establishment of prayer therein is permissible - so is it a congregational mosque?

الِاعْتِكَافِ فِي الْمَسَاجِدِ الَّتِي لَا تُصَلَّى فِيهَا الْجُمُعَةُ، وَهُوَ قَوْلُنَا، لِأَنَّ كُلَّ مَسْجِدٍ بُنِيَ لِلصَّلَاةِ فَإِقَامَةُ الصَّلَاةِ فِيهِ جَائِزَةٌ فَهُوَ مَسْجِدُ جَمَاعَةٍ؟

L9822 A school of thought holds that *iʿtikāf* is permissible in every mosque, and a man may observe *iʿtikāf* in the mosque of his home.

وَقَالَتْ طَائِفَةٌ: الِاعْتِكَافُ جَائِزٌ فِي كُلِّ مَسْجِدٍ، وَيَعْتَكِفُ الرَّجُلُ فِي مَسْجِدِ بَيْتِهِ

L9823 It was narrated to us from ʿAbd al-Razzāq, from Isrāʾīl, from a man, from al-Shaʿbī, who said: "There is no harm in a man performing iʿtikāf in the mosque of his home."

رُوِّينَا ذَلِكَ عَنْ عَبْدِ الرَّزَّاقِ عَنْ إِسْرَائِيلَ عَنْ رَجُلٍ عَنْ الشَّعْبِيِّ قَالَ: لَا بَأْسَ أَنْ يَعْتَكِفَ الرَّجُلُ فِي مَسْجِدِ بَيْتِهِ

L9824 Ibrāhīm and Abū Ḥanīfa said, 'Can a woman perform iʿtikāf in the designated prayer space of her home?'

وَقَالَ إِبْرَاهِيمُ، وَأَبُو حَنِيفَةَ: تَعْتَكِفُ الْمَرْأَةُ فِي مَسْجِدِ بَيْتِهَا؟

L9825–9827 Abu Muhammad said: As for those who define the boundaries of the Mosque of Medina alone, or the Mosque of Mecca and the Mosque of Medina, or the Three Sacred Mosques, or the Congregational Mosque—these are statements lacking evidence to substantiate their validity; thus, they are not valid. Its meaning is the specification of Allah the Exalted's statement: "And you are performing iʿtikāf in the mosques" [Al-Baqarah 2:187].[17]

وَقَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ حَدَّ مَسْجِدَ الْمَدِينَةِ وَحْدَهُ، أَوْ مَسْجِدَ مَكَّةَ وَمَسْجِدَ الْمَدِينَةِ، أَوْ الْمَسَاجِدَ الثَّلَاثَةَ، أَوْ الْمَسْجِدَ الْجَامِعَ فَأَقْوَالٌ لَا دَلِيلَ عَلَى صِحَّتِهَا فَلَا مَعْنَى لَهَا هُوَ تَخْصِيصٌ لِقَوْلِ اللَّهِ تَعَالَى: {وَأَنْتُمْ عَاكِفُونَ فِي الْمَسَاجِدِ} [البقرة: ١٨٧] .

L9828 If it is said: How do you reconcile what you have narrated through the chain of Saʿīd ibn Manṣūr—Sufyān, that is Ibn ʿUyaynah, narrated to us from Jāmiʿ ibn Abī Rāshid from Shaqīq ibn Salamah, who said: Ḥudhayfah said to ʿAbdullāh ibn Masʿūd, "You surely know that the Messenger of Allah (peace be upon him) said, 'There is no iʿtikāf except in the three mosques'—or he said, 'a mosque where congregational prayers are held'?" We replied: This is a doubt originating from Ḥudhayfah or those below him in the chain, and one cannot decisively attribute a statement to the Messenger of Allah (peace be upon him) based on doubt. If he (peace be upon him) had indeed said, "There is no iʿtikāf except in the three mosques," Allah the Exalted would have preserved it for us and would not have allowed any doubt to enter into it.

فَإِنْ قِيلَ: فَأَيْنَ أَنْتُمْ عَمَّا رَوَيْتُمُوهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ: نا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ جَامِعِ بْنِ أَبِي رَاشِدٍ عَنْ شَقِيقِ بْنِ سَلَمَةَ قَالَ: قَالَ حُذَيْفَةُ لِعَبْدِ اللَّهِ بْنِ مَسْعُودٍ: قَدْ عَلِمْت أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا اعْتِكَافَ إلَّا فِي الْمَسَاجِدِ الثَّلَاثَةِ أَوْ قَالَ مَسْجِدِ جَمَاعَةٍ» ؟ قُلْنَا: هَذَا شَكٌّ مِنْ حُذَيْفَةَ أَوْ مِمَّنْ دُونَهُ، وَلَا يُقْطَعُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِشَكٍّ، وَلَوْ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: " لَا اعْتِكَافَ إلَّا فِي الْمَسَاجِدِ الثَّلَاثَةِ " لَحَفِظَهُ اللَّهُ تَعَالَى عَلَيْنَا، وَلَمْ يُدْخِلْ فِيهِ شَكًّا.

L9829 So it was confirmed with certainty that he (peace be upon him) never at all said it.

فَصَحَّ يَقِينًا أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَقُلْهُ قَطُّ

[17] **Qur'an references (L9825):** Qur'an 2:187 (Al-Baqarah).

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ: نَا هُشَيْمٌ أَنَا جُوَيْبِرٌ عَنْ الضَّحَّاكِ عَنْ حُذَيْفَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ مَسْجِدٍ فِيهِ إمَامٌ وَمُؤَذِّنٌ فَالِاعْتِكَافُ فِيهِ يَصْلُحُ» .

L9830 If it is said: Indeed, you have narrated through the chain of Saʿīd ibn Manṣūr—Hushaym reported to us from Juwaybir from al-Ḍaḥḥāk from Ḥudhayfah, who said: The Messenger of Allah (peace be upon him) said, "Every mosque in which there is an imam and a muezzin—then iʿtikāf therein is valid."

قُلْنَا: هَذِهِ سَوْأَةٌ لَا يَشْتَغِلُ بِهَا ذُو فَهْمٍ، جُوَيْبِرٌ هَالِكٌ، وَالضَّحَّاكُ ضَعِيفٌ وَلَمْ يُدْرِكْ حُذَيْفَةَ.

L9831 We said: This is a shameful matter that no person of understanding would occupy themselves with. Juwaybir is discredited, al-Dahhāk is weak, and al-Dahhāk did not meet Ḥudhayfah.

وَأَمَّا قَوْلُ إبْرَاهِيمَ، وَأَبِي حَنِيفَةَ، فَخَطَأٌ، لِأَنَّ مَسْجِدَ الْبَيْتِ لَا يُطْلَقُ عَلَيْهِ اسْمُ مَسْجِدٍ، وَلَا خِلَافَ فِي جَوَازِ بَيْعِهِ، وَفِي أَنْ يُجْعَلَ كَنِيفًا؟

L9832 As for the statement of Ibrāhīm and Abū Ḥanīfah, it is incorrect because the mosque of the House is not termed a mosque, and there is no disagreement regarding the permissibility of selling it - and what of it being made into a latrine?

وَقَدْ صَحَّ أَنَّ أَزْوَاجَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اعْتَكَفْنَ فِي الْمَسْجِدِ، وَهُمْ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ، وَلَا مُخَالِفَ لَهُنَّ مِنْ الصَّحَابَةِ؟

L9833 It has been authentically established that the wives of the Prophet—peace and blessings of Allah be upon him—observed I'tikāf in the mosque while respecting the difference of opinion with a Companion. Was there none among the Companions who opposed them?

فَقَالَ بَعْضُهُمْ: إنَّمَا كَانَ ذَلِكَ لِأَنَّهُنَّ كُنَّ مَعَهُ - عَلَيْهِ السَّلَامُ -؟

L9834 Some of them said: "Was that solely because the women were with him, peace be upon him?"

فَقُلْنَا: كَذِبَ مَنْ قَالَ هَذَا وَافْتَرَى بِغَيْرِ عِلْمٍ، وَأَثِمَ؟

L9835 So we said: "Has the one who said this lied, fabricated without knowledge, and sinned?"

وَاحْتَجَّ أَيْضًا بِقَوْلِ عَائِشَةَ: لَوْ أَدْرَكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا صَنَعَ النِّسَاءُ لَمَنَعَهُنَّ الْمَسَاجِدَ.

L9836–9837 He also cited the statement of ʿĀ'ishah: "Had the Messenger of Allah (peace and blessings be upon him) lived to see what the women have done, he would have prevented them from the mosques."

وَقَدْ ذَكَرْنَا فِي كِتَابِ الصَّلَاةِ بُطْلَانَ التَّعَلُّقِ بِهَذَا الْخَبَرِ، وَأُقَرِّبُ ذَلِكَ بِأَنَّهُ لَا يَحِلُّ تَرْكُ مَا لَمْ يَتْرُكْهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا الْمَنْعُ مِمَّا لَمْ يَمْنَعْ مِنْهُ - عَلَيْهِ السَّلَامُ -: لِظَنِّ أَنَّهُ لَوْ عَاشَ لَتَرَكَهُ وَمَنَعَ مِنْهُ، وَهَذَا إحْدَاثُ شَرِيعَةٍ فِي الدِّينِ، وَأُمُّ الْمُؤْمِنِينَ الْقَائِلَةُ هَذَا لَمْ تَرَ قَطُّ مَنْعَ النِّسَاءِ مِنْ الْمَسَاجِدِ فَظَهَرَ فَسَادُ قَوْلِهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L9838 We have mentioned in the Book of Prayer the invalidity of relying on this report. I clarify this by stating that it is not permissible to abandon what the Prophet (peace be upon him) did not abandon, nor to prohibit what he (peace be upon him) did not prohibit, based on the assumption that had he lived, he would have abandoned it or prohibited it. This constitutes introducing new legislation into the religion. The Mother of the Believers who made this statement never witnessed the prohibition of women from mosques, thus the

corruption of their claim becomes evident—and success is from Allah, the Most High.

The Issue of Menstruation of the Woman Observing *Iʿtikāf*

634 - Issue: If the woman in iʿtikāf menstruates, she remains in the mosque as she is, remembering Allah the Exalted. The same applies if she gives birth. If she is compelled to leave, may she do so and then return when she is able? Based on what we clarified earlier that a menstruating woman may enter the mosque, and it is impermissible to prevent her from it since neither textual evidence nor consensus exists to prohibit her – and this is the opinion of Abū Sulaymān?

It has been narrated to us through the chain of Al-Bukhari: Narrated by Qutaybah from Yazīd ibn Zuraiʿ, from Khālid al-Ḥadhdhāʾ, from ʿIkrimah, from ʿĀʾishah, the Mother of the Believers, who said: "A woman from the wives of the Messenger of Allah—peace and blessings of Allah be upon him—who was experiencing irregular bleeding observed *iʿtikāf* with him. She would see redness and yellowish discharge, and sometimes she would place a basin beneath her while she was praying."

Issue: If a person dies while owing a vow of iʿtikāf.

Issue 635: If someone dies while owing a vowed obligation of i'tikaf, must their legal guardian fulfill it on their behalf, or must someone be hired from their estate to discharge it? This necessity is established by Allah's decree: "from after any bequest he bequeaths or debt" [Qur'an 4:11].[18]

And due to the statement of the Messenger of Allah—peace and blessings be upon him—: "If your mother owed a debt, would you repay it for her? Then Allah's due is far more worthy of fulfillment."

[18] **Qur'an references (L9843):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

[مَسْأَلَةُ حَيْضِ الْمُعْتَكِفَةِ]

٦٣٤ - مَسْأَلَةٌ وَإِذَا حَاضَتْ الْمُعْتَكِفَةُ أَقَامَتْ فِي الْمَسْجِدِ كَمَا هِيَ تَذْكُرُ اللَّهَ تَعَالَى، وَكَذَلِكَ إذَا وَلَدَتْ، فَإِنَّهَا إنْ اُضْطُرَّتْ إلَى الْخُرُوجِ خَرَجَتْ ثُمَّ رَجَعَتْ إذَا قَدَرَتْ؟ لِمَا قَدْ بَيَّنَّا قَبْلُ مِنْ أَنَّ الْحَائِضَ تَدْخُلُ الْمَسْجِدَ، وَلَا يَجُوزُ مَنْعُهَا مِنْهُ إذْ لَمْ يَأْتِ بِالْمَنْعِ لَهَا مِنْهُ نَصٌّ وَلَا إجْمَاعٌ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ؟

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ: نا قُتَيْبَةُ نا يَزِيدُ بْنُ زُرَيْعٍ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ عِكْرِمَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «اعْتَكَفَتْ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - امْرَأَةٌ مِنْ أَزْوَاجِهِ مُسْتَحَاضَةٌ، فَكَانَتْ تَرَى الْحُمْرَةَ وَالصُّفْرَةَ، فَرُبَّمَا وَضَعَتْ الطَّسْتَ تَحْتَهَا وَهِيَ تُصَلِّي» .

[مَسْأَلَةُ مَاتَ وَعَلَيْهِ نَذْرُ اعْتِكَافٍ]

٦٣٥ - مَسْأَلَةٌ وَمَنْ مَاتَ وَعَلَيْهِ نَذْرُ اعْتِكَافٍ: قَضَاهُ عَنْهُ وَلِيُّهُ، أَوْ اُسْتُؤْجِرَ مِنْ رَأْسِ مَالِهِ مَنْ يَقْضِيهِ عَنْهُ، لَا بُدَّ مِنْ ذَلِكَ؟ لِقَوْلِ اللَّهِ تَعَالَى: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] .

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَوْ كَانَ عَلَى أُمِّكَ دَيْنٌ أَكُنْتَ قَاضِيَهُ عَنْهَا؟ فَدَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى» .

وَلِمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ عَبْدِ اللَّهِ بْنِ عَبَّاسٍ «أَنَّ سَعْدَ بْنَ عُبَادَةَ اسْتَفْتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إنَّ أُمِّي مَاتَتْ وَعَلَيْهَا نَذْرٌ لَمْ تَقْضِهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: اقْضِهِ عَنْهَا» وَهَذَا عُمُومٌ لِكُلِّ نَذْرِ طَاعَةٍ، فَلَا يَحِلُّ لِأَحَدٍ خِلَافُهُ.

L9845–9846 And according to what has been narrated to us through the chain of Mālik, from Ibn Shihāb, from ʿUbaydullāh ibn ʿAbdullāh ibn ʿUtbah ibn Masʿūd, from ʿAbdullāh ibn ʿAbbās: “Saʿd ibn ʿUbādah sought a legal verdict from the Messenger of Allah (peace and blessings of Allah be upon him), saying: ’My mother died with a vow upon her that she had not fulfilled.’ The Messenger of Allah (peace and blessings of Allah be upon him) replied: ’Discharge it on her behalf.’” This applies generally to all vows involving acts of devotion, and it is not permissible for anyone to contravene it.[19]

وَقَدْ ذَكَرْنَا فِي بَابِ هَلْ عَلَى الْمُعْتَكِفِ صِيَامٌ أَمْ لَا، قَبْلَ فُتْيَا ابْنِ عَبَّاسٍ بِقَضَاءِ نَذْرِ الِاعْتِكَافِ.

L9847 We have mentioned in the chapter on whether fasting is obligatory for one observing *iʿtikāf* or not. This was before Ibn Abbas’s fatwa regarding the fulfillment of the vow of *iʿtikāf*.

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ: نا أَبُو الْأَحْوَصِ نا إِبْرَاهِيمُ بْنُ مُهَاجِرٍ عَنْ عَامِرِ بْنِ مُصْعَبٍ قَالَ: " اعْتَكَفَتْ عَائِشَةُ أُمُّ الْمُؤْمِنِينَ عَنْ أَخِيهَا بَعْدَ مَا مَاتَ "؟ وَقَالَ الْحَسَنُ بْنُ حَيٍّ: مَنْ مَاتَ وَعَلَيْهِ اعْتِكَافٌ: اعْتَكَفَ عَنْهُ وَلِيُّهُ

L9848 It was narrated to us through the chain of Saʿīd ibn Manṣūr: Abū al-Aḥwaṣ narrated to us, Ibrāhīm ibn Muhājir narrated to us from ʿĀmir ibn Muṣʿab, who said: “Did ʿĀ’ishah, the Mother of the Believers, observe iʿtikāf on behalf of her brother after his death?” Al-Ḥasan ibn Ḥayy said: “Whoever dies while owing iʿtikāf - his guardian must perform it on his behalf.”

وَقَالَ الْأَوْزَاعِيُّ: يَعْتَكِفُ عَنْهُ وَلِيُّهُ إذَا لَمْ يَجِدْ مَا يُطْعِمُ قَالَ: وَمَنْ نَذَرَ صَلَاةً فَمَاتَ: صَلَّاهَا عَنْهُ وَلِيُّهُ؟ قَالَ إِسْحَاقُ بْنُ رَاهْوَيْهِ: يَعْتَكِفُ عَنْهُ وَلِيُّهُ وَيُصَلِّي عَنْهُ وَلِيُّهُ إذَا نَذَرَ صَلَاةً أَوْ اعْتِكَافًا ثُمَّ مَاتَ قَبْلَ أَنْ يَقْضِيَ ذَلِكَ.

L9849 Al-Awzaʿī said: His guardian should perform iʿtikāf on his behalf if the deceased could not find food to provide. He said: If someone vows prayer and dies, should his guardian pray it on his behalf? Isḥāq ibn Rāhwayh said: His guardian should perform iʿtikāf on his behalf and pray on his behalf if he vowed [to perform] prayer or iʿtikāf then died before fulfilling that.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: الْإِطْعَامُ عَنْهُ أَحَبُّ إلَيَّ مِنْ أَنْ يَعْتَكِفَ عَنْهُ؟ قَالَ أَبُو حَنِيفَةَ: وَمَالِكٌ، وَالشَّافِعِيُّ: يُطْعَمُ عَنْهُ لِكُلِّ يَوْمٍ مِسْكِينٌ؟

L9850 Sufyan al-Thawri said: “Is feeding on his behalf more preferable to me than performing iʿtikāf on his behalf?” Abū Ḥanīfah said, and Mālik and al-Shāfiʿī said: “A poor person should be fed on his behalf for each day - one poor person per day.”

وَقَالَ أَبُو مُحَمَّدٍ: هَذَا قَوْلٌ ظَاهِرُ الْفَسَادِ، وَمَا لِلْإِطْعَامِ مَدْخَلٌ فِي الِاعْتِكَافِ

L9851 Abū Muḥammad said: This is a clearly flawed statement, for providing food has no relevance to iʿtikāf.

وَهُمْ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ إذَا وَافَقَ تَقْلِيدَهُمْ، وَقَدْ خَالَفُوا هَهُنَا عَائِشَةَ، وَابْنَ عَبَّاسٍ، وَلَا يُعْرَفُ لَهُمَا فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمْ -

L9852 They magnify the significance of a Companion’s disagreement when it aligns with their taqlīd, yet here they have opposed ʿĀ’ishah and Ibn ʿAbbās, and

[19] **Hadith references (L9846):** Sunan Abi Dawud 3307.

no opposing opinion from the Companions is known regarding the stance of those two on that matter—may Allah be pleased with them.

وَقَوْلُهُمْ فِي هَذَا قَوْلٌ لَمْ يَأْتِ بِهِ قُرْآنٌ وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ وَلَا قِيَاسٌ، بَلْ هُوَ مُخَالِفٌ لِكُلِّ ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L9853–9855 Their statement concerning this is a claim not brought by the Quran, nor by any Sunnah—whether authentic or weak—nor by any authoritative opinion. There is neither a Companion nor analogy; rather, it contradicts all of that—and success is by Allah, the Exalted.

وَمِنْ عَجَائِبِ الدُّنْيَا قَوْلُ أَبِي حَنِيفَةَ: مَنْ نَذَرَ اعْتِكَافَ شَهْرٍ وَهُوَ مَرِيضٌ فَلَمْ يَصِحَّ فَلَا شَيْءَ عَلَيْهِ. فَلَوْ نَذَرَ اعْتِكَافَ شَهْرٍ وَهُوَ صَحِيحٌ فَلَمْ يَعِشْ إِثْرَ نَذْرِهِ إِلَّا عَشَرَةَ أَيَّامٍ وَمَاتَ؟ فَإِنَّهُ يُطْعَمُ عَنْهُ ثَلَاثُونَ مِسْكِينًا، وَقَدْ لَزِمَهُ اعْتِكَافُ شَهْرٍ.

L9856 Among the wonders of the world is Abū Ḥanīfah's ruling: If one vows to observe seclusion for a month while ill and does not recover, nothing is required. But if one vows seclusion for a month while healthy, then lives only ten days after the vow and dies, thirty needy people must be fed on his behalf, and the obligation of a month's seclusion has become binding upon him.

قَالَ: فَإِنْ نَذَرَ اعْتِكَافًا؟ لَزِمَهُ يَوْمٌ بِلَا لَيْلَةٍ.

L9857 He said: What if one vows to observe iʿtikāf? Then it becomes incumbent upon him to observe a day without a night.

فَإِنْ قَالَ عَلِيٌّ اعْتِكَافُ يَوْمَيْنِ لَزِمَهُ يَوْمَانِ وَمَعَهُمَا لَيْلَتَانِ.

L9858 If ʿAlī says, "A two-day iʿtikāf," he must observe two days along with their two nights.

وَقَالَ أَبُو يُوسُفَ: إِنْ نَذَرَ اعْتِكَافَ لَيْلَتَيْنِ؟ فَلَيْسَ عَلَيْهِ إِلَّا يَوْمَانِ وَلَيْلَةٌ وَاحِدَةٌ، كَمَا لَوْ نَذَرَ اعْتِكَافَ يَوْمَيْنِ وَلَا فَرْقَ.

L9859 Abū Yūsuf said: If one vows to perform iʿtikāf for two nights, he is only required two days and one night, just as if he had vowed to perform iʿtikāf for two days, with no difference.

فَهَلْ فِي التَّخْلِيطِ أَكْثَرُ مِنْ هَذَا؟ وَنَسْأَلُ اللَّهَ الْعَافِيَةَ؟

L9860 Is there any greater mixing than this? And we ask Allah for well-being.

[مَسْأَلَةٌ نَذَرَ اعْتِكَافَ يَوْمٍ أَوْ أَيَّامٍ مُسَمَّاةٍ أَوْ أَرَادَ ذَلِكَ تَطَوُّعًا]

A case: If someone vowed to perform iʿtikāf for a day or specified days, or intended to do so voluntarily as a supererogatory act.

٦٣٦ - مَسْأَلَةٌ وَمَنْ نَذَرَ اعْتِكَافَ يَوْمٍ أَوْ أَيَّامٍ مُسَمَّاةٍ، أَوْ أَرَادَ ذَلِكَ تَطَوُّعًا -: فَإِنَّهُ يَدْخُلُ فِي اعْتِكَافِهِ قَبْلَ أَنْ يَتَبَيَّنَ لَهُ طُلُوعُ الْفَجْرِ، وَيَخْرُجُ إِذَا غَابَ جَمِيعُ قُرْصِ الشَّمْسِ، سَوَاءٌ كَانَ ذَلِكَ فِي رَمَضَانَ أَوْ غَيْرِهِ؟

L9862 Issue 636: If one vows to observe *iʿtikāf* for a specified day or days, or intends to do so voluntarily, they must enter their *iʿtikāf* before dawn becomes discernible and exit once the sun has completely set. Does this ruling apply equally during Ramadan and other times?

L9863 Whoever vows to observe iʿtikāf for a specified night or nights or intends to

do so as a supererogatory act must enter before the entire disc of the sun has fully set and exit when dawn becomes apparent to them. This is because the night begins immediately after sunset and ends at the appearance of dawn, while the day begins at the appearance of dawn and ends when the sun has fully set. Is anyone bound except by what they have pledged or intended?

وَمَنْ نَذَرَ اعْتِكَافَ لَيْلَةٍ أَوْ لَيَالٍ مُسَمَّاةٍ أَوْ أَرَادَ ذَلِكَ تَطَوُّعًا -: فَإِنَّهُ يَدْخُلُ قَبْلَ أَنْ يَتِمَّ غُرُوبُ جَمِيعِ قُرْصِ الشَّمْسِ، وَيَخْرُجُ إِذَا تَبَيَّنَ لَهُ طُلُوعُ الْفَجْرِ، لِأَنَّ مَبْدَأَ اللَّيْلِ إِثْرَ غُرُوبِ الشَّمْسِ، وَتَمَامُهُ بِطُلُوعِ الْفَجْرِ، وَمَبْدَأُ الْيَوْمِ بِطُلُوعِ الْفَجْرِ، وَتَمَامُهُ بِغُرُوبِ الشَّمْسِ كُلِّهَا، وَلَيْسَ عَلَى أَحَدٍ إِلَّا مَا الْتَزَمَ أَوْ مَا نَوَى؟

L9864 If one vows to observe iʿtikāf for a month or intends to do so voluntarily, the month begins from its first night. One must enter [the mosque] before the entire sun disk has fully set and depart after the sun has completely disappeared on the final day of the month - this ruling applies equally to Ramadan and other months.

فَإِنْ نَذَرَ اعْتِكَافَ شَهْرٍ أَوْ أَرَادَهُ تَطَوُّعًا -: فَمَبْدَأُ الشَّهْرِ مِنْ أَوَّلِ لَيْلَةٍ مِنْهُ فَيَدْخُلُ قَبْلَ أَنْ يَتِمَّ غُرُوبُ جَمِيعِ قُرْصِ الشَّمْسِ، وَيَخْرُجُ إِذَا غَابَتْ الشَّمْسُ كُلُّهَا مِنْ آخِرِ الشَّهْرِ، سَوَاءٌ رَمَضَانُ وَغَيْرُهُ.

L9865 Because the newly commenced night is not part of the month in which he vowed or intended his *iʿtikāf*.

لِأَنَّ اللَّيْلَةَ الْمُسْتَأْنَفَةَ لَيْسَتْ مِنْ ذَلِكَ الشَّهْرِ الَّذِي نَذَرَ اعْتِكَافَهُ أَوْ نَوَى اعْتِكَافَهُ.

L9866–9867 If one vows to observe iʿtikāf during the last ten days of Ramadan, one must enter before sunset on the nineteenth day.

فَإِنْ نَذَرَ اعْتِكَافَ الْعَشْرِ الْأَوَاخِرِ مِنْ رَمَضَانَ: دَخَلَ قَبْلَ غُرُوبِ الشَّمْسِ مِنْ الْيَوْمِ التَّاسِعِ عَشَرَ.

L9868 Because the month may consist of twenty-nine nights, his seclusion during the last ten nights is only valid as we stated. Otherwise, he has secluded for merely nine nights. If the month is thirty [nights], he knows he has secluded for an extra night and must complete seclusion on the final night to fulfill his vow—except for one who knows of the moon's phase change, in which case he enters seclusion according to what he knows will fulfill his vow.

لِأَنَّ الشَّهْرَ قَدْ يَكُونُ مِنْ تِسْعٍ وَعِشْرِينَ لَيْلَةً، فَلَا يَصِحُّ لَهُ اعْتِكَافُ الْعَشْرِ الْأَوَاخِرِ إِلَّا كَمَا قُلْنَا، وَإِلَّا فَإِنَّمَا اعْتَكَفَ تِسْعَ لَيَالٍ فَقَطْ، فَإِنْ كَانَ الشَّهْرُ ثَلَاثِينَ؟ عَلِمَ أَنَّهُ اعْتَكَفَ لَيْلَةً زَائِدَةً، وَعَلَيْهِ أَنْ يُتِمَّ اعْتِكَافَ اللَّيْلَةِ الْآخِرَةِ لِيَفِيَ بِنَذْرِهِ، إِلَّا مَنْ عَلِمَ بِانْتِقَالِ الْقَمَرِ، فَيَدْخُلُ بِقَدْرِ مَا يَدْرِي أَنَّهُ يَفِي بِنَذْرِهِ.

L9869 And what we said—from the time of entry and exit—is the statement of Al-Shafi'i and Abu Sulayman.

وَالَّذِي قُلْنَا - مِنْ وَقْتِ الدُّخُولِ وَالْخُرُوجِ - هُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L9870 And it has been narrated to us through the chain of Al-Bukhārī: ʿAbdullāh ibn Munīr narrated to us, having heard directly from Hārūn ibn Ismāʿīl, who narrated from ʿAlī ibn al-Mubārak, who narrated from Yaḥyā ibn Abī Kathīr, who heard directly from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf, that Abū Saʿīd al-Khudrī said to him: "We observed iʿtikāf with the Messenger of Allah

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ: نا عَبْدُ اللَّهِ بْنُ مُنِيرٍ سَمِعَ هَارُونَ بْنَ إِسْمَاعِيلَ ثنا عَلِيُّ بْنُ الْمُبَارَكِ ثنا يَحْيَى بْنُ أَبِي كَثِيرٍ سَمِعَ أَبَا سَلَمَةَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَّ أَبَا سَعِيدٍ

(peace be upon him) during the middle ten days of Ramadan, and we left on the morning of the twentieth."

الْخُدْرِيِّ قَالَ لَهُ «اعْتَكَفْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْعَشْرَ الْأَوْسَطَ مِنْ رَمَضَانَ، فَخَرَجْنَا صَبِيحَةَ عِشْرِينَ» .

L9871 This is the text of our statement: Through the chain of al-Bukhārī: Narrated **to us** by Ibrāhīm ibn Ḥamzah, who is al-Zubaydī — narrated by Ibn Abī Ḥāzim and al-Darāwardī, both of them from Yazīd, who is Ibn ʿAbd Allāh ibn al-Hād — from Muḥammad ibn Ibrāhīm from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf from Abū Saʿīd al-Khudrī, who said: "The Messenger of Allāh — peace and blessings be upon him — used to observe Iʿtikāf during Ramadan in the middle ten days. When the evening of the twentieth night arrived and the twenty-first night approached, he would return to his **residence**, and those who observed Iʿtikāf with him would also return."

وَهَذَا نَصُّ قَوْلِنَا -: وَمِنْ طَرِيقِ الْبُخَارِيِّ: نا إبْرَاهِيمُ بْنُ حَمْزَةَ هُوَ الزُّبَيْدِيُّ - حَدَّثَنِي ابْنُ أَبِي حَازِمٍ، والدَّراوَرْدِيُّ، كِلَاهُمَا عَنْ يَزِيدَ هُوَ ابْنُ عَبْدِ اللَّهِ بْنِ الْهَادِ - عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُجَاوِرُ فِي رَمَضَانَ الْعَشْرَ الَّتِي فِي وَسَطِ الشَّهْرِ، فَإِذَا كَانَ حِينَ يُمْسِي مِنْ عِشْرِينَ لَيْلَةً وَيَسْتَقْبِلُ إحْدَى وَعِشْرِينَ رَجَعَ إلَى مَسْكَنِهِ، وَرَجَعَ مَنْ كَانَ يُجَاوِرُ مَعَهُ» .

L9872–9874 And this is the text of our position, except that it contains that he - peace be upon him - would remain through his day until evening. This is derived according to one of two aspects: It is a voluntary act performed by him—peace be upon him.

وَهَذَا نَصُّ قَوْلِنَا، إلَّا أَنَّ فِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يَبْقَى يَوْمَهُ إلَى أَنْ يُمْسِيَ وَهَذَا يُخَرَّجُ عَلَى أَحَدِ وَجْهَيْنِ -: إمَّا أَنَّهُ تَنَفُّلٌ مِنْهُ - عَلَيْهِ السَّلَامُ -.

L9875 Or is it that he - peace be upon him - intended to observe I'tikaf for the ten nights along with their ten days?

وَإِمَّا أَنَّهُ - عَلَيْهِ السَّلَامُ - نَوَى أَنْ يَعْتَكِفَ الْعَشْرَ اللَّيَالِيَ بِعَشْرَةِ أَيَّامِهَا؟

L9876 This is a hadith narrated by Malik from Yazīd ibn ʿAbd Allāh ibn al-Hād from Muḥammad ibn Ibrāhīm, wherein some confusion and ambiguity occurred in its wording – neither of which occurred in the narrations of ʿAbd al-ʿAzīz ibn Abī Ḥāzim and ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī – though it agrees with them in meaning. We have been narrated this same report from Malik from Yazīd ibn ʿAbd Allāh ibn al-Hād from Muḥammad ibn Ibrāhīm ibn al-Ḥārith at-Taymī from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf from Abū Saʿīd al-Khudrī: "The Messenger of Allāh – peace and blessings be upon him – used to observe iʿtikāf during the middle ten days of Ramaḍān. That year, he continued his iʿtikāf until the night of the twenty-first – the night he would exit his seclusion at dawn. He said: 'Whoever observed iʿtikāf with me should observe it during the last ten days, for I was shown this night but then made to forget it. I saw myself prostrating in water and mud on

وَهَذَا حَدِيثٌ رَوَاهُ مَالِكٌ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ الْهَادِ عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ، فَوَقَعَ فِي لَفْظِهِ تَخْلِيطٌ وَإِشْكَالٌ لَمْ يَقَعَا فِي رِوَايَةِ عَبْدِ الْعَزِيزِ بْنِ أَبِي حَازِمٍ وَعَبْدِ الْعَزِيزِ بْنِ مُحَمَّدٍ الدَّرَاوَرْدِيِّ إلَّا أَنَّهُ مُوَافِقٌ لَهُمَا فِي الْمَعْنَى؟ وَهُوَ أَنَّنَا رُوِّينَا هَذَا الْخَبَرَ نَفْسَهُ عَنْ مَالِكٍ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ الْهَادِ عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ بْنِ الْحَارِثِ التَّيْمِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَعْتَكِفُ الْعَشْرَ الْأَوْسَطَ مِنْ رَمَضَانَ، فَاعْتَكَفَ عَامًا حَتَّى إذَا كَانَ لَيْلَةَ إحْدَى وَعِشْرِينَ - وَهِيَ اللَّيْلَةُ الَّتِي يَخْرُجُ مِنْ صَبِيحَتِهَا مِنْ اعْتِكَافِهِ - قَالَ: مَنْ كَانَ

its morning. So seek it in the last ten days! Seek it on every odd-numbered night!' It rained that night, and the mosque had a roof of palm fronds. My own eyes saw the Messenger of Allāh – peace and blessings be upon him – with traces of water and mud on his forehead from the morning of the twenty-first."

اعْتَكَفَ مَعِي فَلْيَعْتَكِفْ الْعَشْرَ الْأَوَاخِرَ، فَقَدْ رَأَيْتُ هَذِهِ اللَّيْلَةَ ثُمَّ أُنْسِيتُهَا، وَقَدْ رَأَيْتُنِي أَسْجُدُ فِي مَاءٍ وَطِينٍ مِنْ صَبِيحَتِهَا، فَالْتَمِسُوهَا فِي الْعَشْرِ الْأَوَاخِرِ، وَالْتَمِسُوهَا فِي كُلِّ وِتْرٍ، فَمَطَرَتْ السَّمَاءُ تِلْكَ اللَّيْلَةَ، وَكَانَ الْمَسْجِدُ عَلَى عَرِيشٍ، فَبَصُرَتْ عَيْنَايَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى جَبْهَتِهِ أَثَرُ الْمَاءِ وَالطِّينِ مِنْ صُبْحِ إِحْدَى وَعِشْرِينَ» .

L9877–9879 Abū Muḥammad said: It is utterly impossible that he—peace be upon him—would utter this statement after the twenty-first night had passed, while declaring his prostration in water and mud regarding renewed actions, and yet have this refer to the night of the twenty-first that had already elapsed. Thus, it is established that the narrator's phrase "until it was the night of the twenty-first" refers to the anticipation of the night of the twenty-first's arrival. Thereby, the narration of Yaḥyā ibn Abī Kathīr harmonizes with the narration of Muḥammad ibn Ibrāhīm. Both of them narrate from Abū Salamah, along with the narrations of al-Dārawardī, Ibn Abī Ḥāzim, and Mālik—all of them transmitting from Yazīd ibn ʿAbd Allāh ibn al-Hād from Muḥammad ibn Ibrāhīm al-Taymī. It was narrated to us through the chain of al-Bukhārī: from Abū al-Nuʿmān—he is Muḥammad ibn al-Faḍl—from Ḥammād ibn Zayd, from Yaḥyā—i.e., Ibn Saʿīd al-Anṣārī—from ʿAmrah bint ʿAbd al-Raḥmān, from ʿĀ'ishah, the Mother of the Believers, who said: "The Prophet (peace be upon him) would observe iʿtikāf during the last ten nights of Ramadan. I would set up a tent for him; he would pray the dawn prayer and then enter it."

قَالَ أَبُو مُحَمَّدٍ: مِنْ الْمُحَالِ الْمُمْتَنِعِ أَنْ يَكُونَ - عَلَيْهِ السَّلَامُ - يَقُولُ هَذَا الْقَوْلَ بَعْدَ انْقِضَاءِ لَيْلَةِ إِحْدَى وَعِشْرِينَ، وَيُنْذِرُ بِسُجُودِهِ فِي مَاءٍ وَطِينٍ فِيمَا يَسْتَأْنِفُ، وَيَكُونَ ذَلِكَ لَيْلَةَ إِحْدَى وَعِشْرِينَ الَّتِي مَضَتْ، فَصَحَّ أَنَّ مَعْنَى قَوْلِ الرَّاوِي، " حَتَّى إِذَا كَانَ لَيْلَةَ إِحْدَى وَعِشْرِينَ " أَرَادَ اسْتِقْبَالَ لَيْلَةِ إِحْدَى وَعِشْرِينَ، وَبِهَذَا تَتَّفِقُ رِوَايَةُ يَحْيَى بْنِ أَبِي كَثِيرٍ مَعَ رِوَايَةِ مُحَمَّدِ بْنِ إِبْرَاهِيمَ، كِلَاهُمَا عَنْ أَبِي سَلَمَةَ، وَرِوَايَةُ الدَّرَاوَرْدِيِّ، وَابْنِ أَبِي حَازِمٍ، وَمَالِكٍ، كُلُّهُمْ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ الْهَادِ عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ التَّيْمِيِّ -: وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ: نا أَبُو النُّعْمَانِ هُوَ مُحَمَّدُ بْنُ الْفَضْلِ - نا حَمَّادُ بْنُ زَيْدٍ نا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْأَنْصَارِيُّ - عَنْ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَعْتَكِفُ فِي الْعَشْرِ الْأَوَاخِرِ مِنْ رَمَضَانَ، فَكُنْتُ أَضْرِبُ لَهُ خِبَاءً فَيُصَلِّي الصُّبْحَ ثُمَّ يَدْخُلُهُ» .

L9880 Abu Muhammad said: This is a voluntary act from him—peace be upon him—and not a command from him, and whoever increases in righteousness increases in goodness.

قَالَ أَبُو مُحَمَّدٍ: هَذَا تَطَوُّعٌ مِنْهُ - عَلَيْهِ السَّلَامُ -، وَلَيْسَ أَمْرًا مِنْهُ وَمَنْ زَادَ فِي الْبِرِّ زَادَ خَيْرًا.

L9881 It is recommended for men and women observing iʿtikaf that each have a tent in the courtyard of the mosque, following the example of the Prophet (peace be upon him), though this is not obligatory, and success comes only from Allah, the Exalted.

وَيُسْتَحَبُّ لِلْمُعْتَكِفِ وَالْمُعْتَكِفَةِ أَنْ يَكُونَ لِكُلِّ أَحَدٍ خِبَاءٌ فِي صَحْنِ الْمَسْجِدِ، اقْتِدَاءً بِالنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَيْسَ ذَلِكَ وَاجِبًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.



AL-MUHALLA

كِتَابُ الزَّكَاةِ

The Book of Zakah

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[The Book of Zakāh] [An Issue Concerning the Ruling on Zakāh]

In the name of Allah, the Most Gracious, the Most Merciful. The Book of Zakāt: Issue 637 – Zakāt is an obligation like prayer. This is an indisputable consensus. Allah the Exalted said: *"If they repent, establish prayer, and give Zakāt, then grant them passage"* [Qur'an 9:5]. Thus, Allah the Exalted does not permit anyone to go free until they affirm faith in Allah the Exalted, repent from disbelief, establish prayer, and give Zakāt.[1]

Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, Abdul-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Abu Ghassan Malik ibn Abdul-Wahid al-Misma'i narrated to us, Abdul-Malik ibn as-Sabbah narrated to us, from Shu'bah, from Waqid ibn Muhammad ibn Zayd ibn Abdullah ibn Umar ibn al-Khattab, from his father, from Abdullah ibn Umar, who said: The Messenger of Allah—peace and blessings of Allah be upon him—declared: "I have been commanded to fight people until they testify that there is no deity but Allah, affirm that Muhammad is the Messenger of Allah, establish the prayer, and pay the zakah. Once they fulfill this, they have safeguarded their blood and wealth from me, and their reckoning is with Allah."

Abu Muhammad remarked: Allah the Exalted has specified through His Messenger—peace and blessings of Allah be upon him—the precise measure of the zakah, the categories of wealth from which it is taken, the time when it becomes due, those authorized to collect it, and where it is to be distributed.

An Issue Regarding Those Upon Whom Zakat Is Obligatory.

638 – Issue: Zakat is an obligation upon free men among them, free women, male slaves, female slaves, adults, minors, the sane, and the mentally incapacitated from the Muslims. It is not levied on non-Muslims.

[1] **Qur'an references (L9884):** Qur'an 9:5 (At-Tawbah).

[كِتَابُ الزَّكَاةِ] [مَسْأَلَةٌ حُكْمِ الزَّكَاة]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الزَّكَاةِ ٦٣٧ - مَسْأَلَةٌ: الزَّكَاةُ فَرْضٌ كَالصَّلَاةِ، هَذَا إِجْمَاعٌ مُتَيَقَّنٌ، وَقَالَ اللَّهُ تَعَالَى: {فَإِنْ تَابُوا وَأَقَامُوا الصَّلاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ} [التوبة: ٥] فَلَمْ يُبِحْ اللَّهُ تَعَالَى سَبِيلَ أَحَدٍ حَتَّى يُؤْمِنَ بِاللَّهِ تَعَالَى، وَيَتُوبَ عَنْ الْكُفْرِ، وَيُقِيمَ الصَّلَاةَ، وَيُؤْتِيَ الزَّكَاةَ.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو غَسَّانَ مَالِكُ بْنُ عَبْدِ الْوَاحِدِ الْمِسْمَعِيُّ ثنا عَبْدُ الْمَلِكِ بْنُ الصَّبَّاحِ عَنْ شُعْبَةَ عَنْ وَاقِدِ بْنِ مُحَمَّدِ بْنِ زَيْدِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، وَيُقِيمُوا الصَّلَاةَ، وَيُؤْتُوا الزَّكَاةَ، فَإِذَا فَعَلُوهُ عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ وَحِسَابُهُمْ عَلَى اللَّهِ» قَالَ أَبُو مُحَمَّد: وَبَيَّنَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِقْدَارَ الزَّكَاةِ، وَمِنْ أَيِّ الْأَمْوَالِ تُؤْخَذُ، وَفِي أَيِّ وَقْتٍ تُؤْخَذُ، وَمَنْ يَأْخُذُهَا، وَأَيْنَ تُوضَعُ؟

[مَسْأَلَةٌ عَلَى مِنْ تجب الزَّكَاة]

٦٣٨ - مَسْأَلَةٌ: وَالزَّكَاةُ فَرْضٌ عَلَى الرِّجَالِ وَالنِّسَاءِ الْأَحْرَارِ مِنْهُمْ وَالْحَرَائِرُ وَالْعَبِيدُ، وَالْإِمَاءُ، وَالْكِبَارُ وَالصِّغَارِ، وَالْعُقَلَاءُ، وَالْمَجَانِينُ مِنْ الْمُسْلِمِينَ، وَلَا تُؤْخَذُ مِنْ كَافِرٍ.

L9888–9889 Allah, the Exalted and Majestic, has said: “Establish Ṣalāh and give Zakāh.” [Al-Baqarah: 43][2]

قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَأَقِيمُوا الصَّلاةَ وَآتُوا الزَّكَاةَ} [البقرة: ٤٣]

L9890 This is an address from Him, the Exalted, to every adult of sound mind—whether free or enslaved, male or female—for they are all among those who have believed.

فَهَذَا خِطَابٌ مِنْهُ تَعَالَى لِكُلِّ بَالِـغٍ عَاقِلٍ، مِنْ حُرٍّ، أَوْ عَبْدٍ، ذَكَرٍ أَوْ أُنْثَى: لِأَنَّهُمْ كُلَّهُمْ مِنْ الَّذِينَ آمَنُوا.

L9891 Allah the Exalted said: {Take from their wealth a purification [sadaqah] to cleanse them and purify them thereby} [Quran 9:103]. This is a general ruling applicable to every minor and adult, sane and insane, free and enslaved, for they all require the purification of Allah the Exalted for them and His sanctification of them, and all are among those who believe. It was narrated to us by ʿAbd al-Raḥmān ibn ʿAbd Allāh al-Hamadānī, who narrated to us Ibrāhīm ibn Aḥmad, who narrated to us al-Farbarī, who narrated to us al-Bukhārī, who narrated to us Abū ʿĀṣim al-Ḍaḥḥāk ibn Makhlad from Zakariyyāʾ ibn Isḥāq from Yaḥyā ibn ʿAbd Allāh ibn Ṣayfī from Abū Maʿbad from Ibn ʿAbbās: “The Prophet—peace and blessings of Allah be upon him—sent Muʿādh to Yemen and said: ’Invite them to testify that there is no deity but Allah and that I am the Messenger of Allah. If they obey in that, then inform them that Allah has ordained upon them five prayers each day and night. If they obey in that, then inform them that Allah has ordained a purification [sadaqah] upon their wealth—taken from the wealthy among them and distributed to the poor among them.’”[3]

وَقَالَ تَعَالَى: {خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا} [التوبة: ١٠٣] فَهَذَا عُمُومٌ لِكُلِّ صَغِيرٍ وَكَبِيرٍ، وَعَاقِلٍ وَمَجْنُونٍ، وَحُرٍّ وَعَبْدٍ، لِأَنَّهُمْ كُلَّهُمْ مُحْتَاجُونَ إلَى طُهْرَةِ اللَّهِ تَعَالَى لَهُمْ وَتَزْكِيَتِهِ إيَّاهُمْ، وَكُلُّهُمْ مِنْ الَّذِينَ آمَنُوا: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ الْهَمْدَانِيُّ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَبُو عَاصِمٍ الضَّحَّاكُ بْنُ مَخْلَدٍ عَنْ زَكَرِيَّاءَ بْنِ إسْحَاقَ عَنْ يَحْيَى بْنِ عَبْدِ اللَّهِ بْنِ صَيْفِي عَنْ أَبِي مَعْبَدٍ عَنْ ابْنِ عَبَّاسٍ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ مُعَاذًا إلَى الْيَمَنِ فَقَالَ: ادْعُهُمْ إلَى شَهَادَةِ أَنْ لَا إلَهَ إلَّا اللَّهُ وَأَنِّي رَسُولُ اللَّهِ، فَإِنْ هُمْ أَطَاعُوا لِذَلِكَ، فَأَعْلِمْهُمْ أَنَّ اللَّهَ قَدْ افْتَرَضَ عَلَيْهِمْ خَمْسَ صَلَوَاتٍ فِي كُلِّ يَوْمٍ وَلَيْلَةٍ فَإِنْ هُمْ أَطَاعُوا لِذَلِكَ، فَأَعْلِمْهُمْ بِأَنَّ اللَّهَ افْتَرَضَ عَلَيْهِمْ صَدَقَةً فِي أَمْوَالِهِمْ، تُؤْخَذُ مِنْ أَغْنِيَائِهِمْ، وَتُرَدُّ فِي فُقَرَائِهِمْ» .

L9892 This is a universal ruling for all wealthy Muslims, applying to minors, adults, the insane, male enslaved individuals, and female enslaved individuals, provided they are wealthy.

فَهَذَا عُمُومٌ لِكُلِّ غَنِيٍّ مِنْ الْمُسْلِمِينَ، وَهَذَا يَدْخُلُ فِيهِ الصَّغِيرُ وَالْكَبِيرُ وَالْمَجْنُونُ وَالْعَبْدُ وَالْأَمَةُ إذَا كَانُوا أَغْنِيَاءَ.

L9893–9895 Scholars have differed regarding this matter. As for Abu Hanifah and Al-Shafi‘i, they said: The zakat due on the slave’s wealth falls upon his master, because the slave’s wealth belongs to his master, and the slave does not own it. Abu Muhammad said: As for these two, they have agreed with the adherents of the correct position regarding the obligation of zakat on the slave’s wealth.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَأَمَّا أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ فَقَالَا: زَكَاةُ مَالِ الْعَبْدِ عَلَى سَيِّدِهِ؛ لِأَنَّ مَالَ الْعَبْدِ لِسَيِّدِهِ، وَلَا يَمْلِكُهُ الْعَبْدُ. قَالَ أَبُو مُحَمَّدٍ: أَمَّا هَذَانِ فَقَدْ وَافَقَا أَهْلَ الْحَقِّ فِي وُجُوبِ الزَّكَاةِ فِي مَالِ الْعَبْدِ، وَإِنَّمَا الْخِلَافُ بَيْنَنَا وَبَيْنَهُمْ فِي: هَلْ يَمْلِكُ الْعَبْدُ مَالَهُ أَمْ لَا؟ وَلَيْسَ هَذَا مَكَانَ الْكَلَامِ فِي هَذِهِ الْمَسْأَلَةِ؛ وَحَسْبُنَا أَنَّهُمَا مُتَّفِقَانِ

[2]**Qur’an references (L9889):** Qur’an 2:43 (Al-Baqarah).
[3]**Qur’an references (L9891):** Qur’an 9:103 (At-Tawbah).

مَعَنَا فِي أَنَّ الزَّكَاةَ وَاجِبَةٌ فِي مَالِ الْعَبْدِ. وَقَالَ مَالِكٌ: لَا تَجِبُ الزَّكَاةُ فِي مَالِ الْعَبْدِ، لَا عَلَيْهِ وَلَا عَلَى سَيِّدِهِ. وَهَذَا قَوْلٌ فَاسِدٌ جِدًّا، لِخِلَافِهِ الْقُرْآنَ وَالسُّنَنَ، وَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا، إِلَّا أَنَّ بَعْضَهُمْ قَالَ: الْعَبْدُ لَيْسَ بِتَامِّ الْمِلْكِ. فَقُلْنَا: أَمَّا تَامُّ الْمِلْكِ فَكَلَامٌ لَا يُعْقَلُ. لَكِنَّ مَالَ الْعَبْدِ لَا يَخْلُو مِنْ أَحَدِ أَوْجُهٍ ثَلَاثَةٍ لَا رَابِعَ لَهَا -:

The disagreement between us and them is only concerning whether the slave owns his wealth or not. This is not the place to discuss this matter. This issue: it suffices us that both agree with us that zakah is obligatory in the property of an enslaved person. Mālik said: "Zakah is not obligatory in the property of an enslaved person - neither upon him nor his master." This is a profoundly corrupt opinion, for contradicting the Qur'an and the Sunnahs. We know of no argument whatsoever for their position, except that some of them said: "The enslaved person does not have complete ownership." We said: As for 'complete ownership,' this is an unintelligible statement. Rather, the property of an enslaved person cannot escape one of three aspects - there is no fourth:

L9896 إِمَّا أَنْ يَكُونَ لِلْعَبْدِ، وَهَذَا قَوْلُنَا، وَإِذَا كَانَ لَهُ فَهُوَ مَالِكُهُ، وَهُوَ مُسْلِمٌ، فَالزَّكَاةُ عَلَيْهِ كَسَائِرِ الْمُسْلِمِينَ وَلَا فَرْقَ.

Either that the property belongs to the slave—and this is our position—in which case he is its owner, and he is Muslim. Consequently, zakāh is obligatory upon him as with all other Muslims, without any distinction.

L9897 وَإِمَّا أَنْ يَكُونَ لِسَيِّدِهِ كَمَا قَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، فَيُزَكِّيهِ سَيِّدُهُ، لِأَنَّهُ مُسْلِمٌ، وَكَذَلِكَ إِنْ كَانَ لَهُمَا مَعًا.

Or that it may belong to his master, as stated by Abū Ḥanīfah and al-Shāfiʿī, in which case his master pays Zakāt for him because he is a Muslim; and likewise if they both own him jointly.

L9898 وَإِمَّا أَنْ يَكُونَ لَا لِلْعَبْدِ وَلَا لِلسَّيِّدِ، فَإِنْ كَانَ ذَلِكَ. فَهُوَ حَرَامٌ عَلَى الْعَبْدِ وَعَلَى السَّيِّدِ، وَيَنْبَغِي أَنْ يَأْخُذَهُ الْإِمَامُ، فَيَضَعُهُ حَيْثُ يَضَعُ كُلَّ مَالٍ لَا يُعْرَفُ لَهُ رَبٌّ. وَهَذَا لَا يَقُولُونَ بِهِ، لَا سِيَّمَا مَعَ تَنَاقُضِهِمْ فِي إِبَاحَتِهِمْ لِلْعَبْدِ أَنْ يَتَسَرَّى بِإِذْنِ سَيِّدِهِ، فَلَوْلَا أَنَّهُ عِنْدَهُمْ مَالِكٌ لِمَالِهِ لَمَا حَلَّ لَهُ وَطْءُ فَرْجٍ لَا يَمْلِكُهُ أَصْلًا، وَلَكَانَ زَانِيًا، قَالَ اللَّهُ تَعَالَى: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إِلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] {فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧]

If the property belongs neither to the slave nor to the master—should this be the case—then it is forbidden for both. The governing authority must take it and allocate it as he allocates any ownerless property. Yet these scholars do not uphold this ruling, particularly given their contradiction in permitting the slave to take a concubine with his master's consent. If they did not consider the slave the owner of his property, it would not be lawful for him to approach private parts he does not own at all, and he would thereby commit adultery. Allah the Exalted said: "And those who guard their chastity (23:5) except from their spouses or those their right hands possess—then indeed, they are free from blame (23:6) but whoever seeks beyond that, it is they who are the transgressors" (23:7).[4]

[4]**Qur'an references (L9898):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun); Qur'an 70:31 (Al-Ma'arij).

فَلَوْ لَمْ يَكُنْ الْعَبْدُ مَالِكًا مِلْكَ يَمِينِهِ لَكَانَ عَادِيًا إِذَا تَسَرَّى.

L9899 If the slave were not an owner by right hand, he would be considered a transgressor for taking a concubine.

وَهُمْ يَرَوْنَ الزَّكَاةَ عَلَى: السَّفِيهِ، وَالْمَجْنُونِ، وَلَا يَنْفُذُ أَمْرُهُمَا فِي أَمْوَالِهِمَا؛ فَمَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ مَالِ الْعَبْدِ. وَمَوَّهَ بَعْضُهُمْ بِأَنَّهُ صَحَّ الْإِجْمَاعُ عَلَى أَنَّهُ لَا زَكَاةَ فِي مَالِ الْمُكَاتَبِ. فَقُلْنَا: هَذَا الْبَاطِلُ، وَمَا رُوِيَ إِسْقَاطُ الزَّكَاةِ عَنْ مَالِ الْمُكَاتَبِ إِلَّا عَنْ أَقَلَّ مِنْ عَشَرَةٍ مِنْ بَيْنِ صَاحِبٍ وَتَابِعٍ؛ وَقَدْ صَحَّ عَنْ كَثِيرٍ مِنْ السَّلَفِ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ - رَضِيَ اللَّهُ عَنْهُمْ -: أَنَّ الْمُكَاتَبَ: عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ.

L9900 They hold that zakah is obligatory upon the foolish and the insane, yet their decisions regarding their wealth are not legally valid. What then distinguishes this from the case of a slave's wealth? Some obfuscated by claiming consensus has been validly established that there is no zakah on a mukatab's wealth. We replied: This is invalid, for the exemption of zakah on a mukatab's wealth has only been narrated by fewer than ten individuals—not even a single Companion or Follower. It is authentically established from many of the pious predecessors among the Companions and Followers—may Allah be pleased with them—that the mukatab remains a slave so long as he owes even one dirham.

وَصَحَّ إيجَابُ الزَّكَاةِ فِي مَالِ الْعَبْدِ عَنْ بَعْضِ الصَّحَابَةِ؛ فَالزَّكَاةُ عَلَى هَذَا الْقَوْلِ وَاجِبَةٌ فِي مَالِ الْمُكَاتَبِ.

L9901 The obligation of zakāh on a slave's wealth is affirmed by some Companions; thus, according to this view, zakāh is obligatory on the wealth of a mukātab.

وَهَذَا مَكَانٌ تَنَاقَضَ فِيهِ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، فَقَالَا: لَا زَكَاةَ فِي مَالِ الْمُكَاتَبِ. وَاحْتَجَّا بِأَنَّهُ لَمْ يَسْتَقِرَّ عَلَيْهِ مِلْكٌ بَعْدُ -: قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ؛ لِأَنَّهُمَا مُجْمِعَانِ مَعَ سَائِرِ الْمُسْلِمِينَ عَلَى أَنَّهُ لَا يَحِلُّ لِأَحَدٍ أَنْ يَأْخُذَ مِنْ مَالِ الْمُكَاتَبِ فَلْسًا بِغَيْرِ إذْنِهِ، أَوْ بِغَيْرِ حَقٍّ وَاجِبٍ؛ وَأَنَّ مَالَهُ بِيَدِهِ يَتَصَرَّفُ فِيهِ بِالْمَعْرُوفِ، مِنْ نَفَقَةٍ عَلَى نَفْسِهِ، وَكِسْوَةٍ، وَبَيْعٍ وَابْتِيَاعٍ، تَصَرُّفَ ذِي الْمِلْكِ فِي مِلْكِهِ؛ فَلَوْلَا أَنَّهُ مَالُهُ وَمِلْكُهُ مَا حَلَّ لَهُ شَيْءٌ مِنْ هَذَا كُلِّهِ فِيهِ. وَهُمْ كَثِيرًا يُعَارِضُونَ السُّنَنَ بِأَنَّهَا خِلَافُ الْأُصُولِ، كَقَوْلِهِمْ فِي حَدِيثِ الْمُصَرَّاةِ وَحَدِيثِ الْعِتْقِ فِي السِّتَّةِ الْأَعْبُدِ بِالْقُرْعَةِ وَحَدِيثِ الْيَمِينِ مَعَ الشَّاهِدِ، وَغَيْرِ ذَلِكَ، فَلَيْتَ شِعْرِي. فِي أَيِّ الْأُصُولِ وَجَدُوا مَالًا مَحْكُومًا بِهِ لِإِنْسَانٍ مَمْنُوعًا مِنْهُ كُلُّ أَحَدٍ سِوَاهُ مُطْلَقَةً عَلَيْهِ يَدُهُ فِي بَيْعٍ وَابْتِيَاعٍ وَنَفَقَةٍ وَكِسْوَةٍ وَسُكْنَى -؛ وَهُوَ لَيْسَ

L9902–9903 This is an instance where Abu Hanifah and Al-Shafi'i contradicted each other, as they both said: "There is no *zakah* due on the property of a *mukatab*." They argued that ownership of the property had not yet been fully established for him—Abu Muhammad said: "This is false, for they both agree—along with all other Muslims—that it is impermissible for anyone to take even a single *fals* from the *mukatab*'s property without his consent or without a legally obligated right. His property is under his control, and he may dispose of it in recognized proper ways, such as spending on himself, clothing, buying, and selling—the actions of an owner over his property. If it were not truly his property and ownership, none of this would be permissible for him. They frequently oppose the *Sunnah* by claiming it contradicts jurisprudential principles, as in their rejection of the *ḥadīth* on the milk-withheld udder, the *ḥadīth* on freeing six male slaves by lottery, the *ḥadīth* on the oath alongside a witness, and others. I wonder! In which jurisprudential principles did they find property legally recognized as belonging to a person—protected from others, with absolute control over its sale, purchase, maintenance, clothing, and housing—while claiming it is not his? In which *Sunnah* did they find this? In which Quranic verse?

Or outside of *qiyas*?" Among those who held that *zakah* applies to the property of a *mukatab* are Abu Thawr and others. It is astonishing that Abu Hanifah and Al-Shafiʿi agree the *mukatab* remains a slave as long as a single *dirham* of his contract remains unpaid. How then did they exempt his property from *zakah*, when they do not exempt the property of other slaves?

L9904 Moreover, how did it occur to them to differentiate between the wealth of the mukātab and the wealth of the slave? It must inevitably be one of two matters: either the mukātab is emancipated—in which case his wealth belongs to him and his zakāh obligation rests upon him—or he fails to gain freedom—in which case his wealth, both before and after, belongs to his master in both scenarios, and thus the zakāh obligation falls upon the master. Some of them disputed by citing narrations transmitted from ʿUmar ibn al-Khaṭṭāb, his son, and Jābir ibn ʿAbd Allāh—may Allah be pleased with them—stating: "There is no zakāh on the wealth of the slave or the mukātab." Abū Muḥammad said: As for the Ḥanafīs and Shāfiʿīs, they opposed these narrations by maintaining that zakāh applies to the wealth of the slave. It is invalid to consider some statements of those we mentioned as authoritative proofs while deeming others erroneous, for this constitutes arbitrary judgment in the religion of Allah Almighty based on falsehood.

L9905–9906 As for the Mālikīs, it is said to them: Those we mentioned have opposed what is more authentic than those narrations. ʿAbdullāh ibn Rabīʿ narrated to us: ʿAbdullāh ibn Muḥammad ibn ʿUthmān narrated to us: Aḥmad ibn Khālid narrated to us: ʿAlī ibn ʿAbd al-ʿAzīz narrated to us: al-Ḥajjāj ibn al-Minhāl narrated to us: Yazīd ibn Ibrāhīm al-Tustarī narrated to us: Muḥammad ibn Sīrīn narrated to us: Jābir al-Ḥadhdhāʾ said: "I asked Ibn ʿUmar, saying: 'Is there zakāh upon a slave?' He replied: 'Is he not a Muslim?' I said: 'Yes.' He said: 'Then upon him is five [dirhams] for every two hundred, and whatever exceeds that is calculated accordingly.'" Yūsuf ibn ʿAbdullāh narrated to us: Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Qāsim ibn Aṣbagh narrated to us: Muṭarrif ibn Qays narrated to us: Yaḥyā ibn Bukayr narrated to us: Mālik narrated to us from Nāfiʿ from Ibn ʿUmar:

لَهُ. أَمْ فِي أَيِّ سَنَةٍ وَجَدُوا هَذَا. أَمْ فِي أَيِّ الْقُرْآنِ. أَمْ فِي غَيْرِ قِيَاسٍ؟ وَمِمَّنْ رَأَى الزَّكَاةَ فِي مَالِ الْمُكَاتَبِ: أَبُو ثَوْرٍ، وَغَيْرُهُ. وَالْعَجَبُ أَنَّ أَبَا حَنِيفَةَ، وَالشَّافِعِيَّ: مُجْمِعَانِ عَلَى أَنَّ الْمُكَاتَبَ، عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ؛ فَمِنْ أَيْنَ أَسْقَطَا الزَّكَاةَ عَنْ مَالِهِ دُونَ مَالِ غَيْرِهِ مِنَ الْعَبِيدِ.

وَأَيْضًا - فَمِنْ أَيْنَ وَقَعَ لَهُمْ أَنْ يُفَرِّقُوا بَيْنَ مَالِ الْمُكَاتَبِ، وَمَالِ الْعَبْدِ؟ وَلَا بُدَّ مِنْ أَحَدِ أَمْرَيْنِ -: إمَّا أَنْ يَعْتِقَ الْمُكَاتَبُ، فَمَالُهُ لَهُ وَزَكَاتُهُ عَلَيْهِ، وَإِمَّا أَنْ يَرِقَّ، فَمَالُهُ - قَبْلُ وَبَعْدُ - كَانَ عِنْدَهُمَا لِسَيِّدِهِ، فَزَكَاتُهُ عَلَى السَّيِّدِ وَشَغَبَ بَعْضُهُمْ بِرِوَايَاتٍ رُوِيَتْ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِهِ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ - رَضِيَ اللَّهُ عَنْهُمْ -: لَا زَكَاةَ فِي مَالِ الْعَبْدِ، وَالْمُكَاتَبُ. قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْحَنَفِيُّونَ وَالشَّافِعِيُّونَ فَقَدْ خَالَفُوا هَذِهِ الرِّوَايَاتِ، فَرَأَوْا الزَّكَاةَ فِي مَالِ الْعَبْدِ - وَمِنَ الْبَاطِلِ أَنْ يَكُونَ قَوْلُ مَنْ ذَكَرْنَا بَعْضُهُ حُجَّةٌ وَبَعْضُهُ خَطَأٌ؛ فَهَذَا هُوَ التَّحَكُّمُ فِي دِينِ اللَّهِ تَعَالَى بِالْبَاطِلِ.

وَأَمَّا الْمَالِكِيُّونَ فَيُقَالُ لَهُمْ: قَدْ خَالَفَ مَنْ ذَكَرْنَا مَا هُوَ أَصَحُّ مِنْ تِلْكَ الرِّوَايَاتِ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا يَزِيدُ بْنُ إبْرَاهِيمَ هُوَ التُّسْتَرِيُّ - ثنا مُحَمَّدُ بْنُ سِيرِينَ حَدَّثَنِي جَابِرٌ الْحَذَّاءُ قَالَ: سَأَلْت ابْنَ عُمَرَ قُلْت: عَلَى الْمَمْلُوكِ زَكَاةٌ. قَالَ: أَلَيْسَ مُسْلِمًا. قُلْت: بَلَى، قَالَ: فَإِنَّ عَلَيْهِ فِي كُلِّ مِائَتَيْنِ خَمْسَةً فَمَا زَادَ فَبِحِسَابِ ذَلِكَ -: حَدَّثَنَا يُوسُفُ بْنُ عَبْدِ اللَّهِ ثنا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُطَرِّفُ بْنُ قَيْسٍ ثنا يَحْيَى

"That he used to say: 'The mukātab is a slave as long as a single dirham remains owed by him.'"

بْنُ بُكَيْرٍ ثنا مَالِكٌ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ يَقُولُ: الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ.

L9907 As for zakah, according to the statement of Ibn Umar, it is obligatory upon the mukatab. It has been authentically reported from Abu Bakr al-Siddiq that he said: "I will surely fight those who separate between prayer and zakah, for is zakah not the rightful claim on wealth?" Abu Muhammad said: "The scholars are unanimously agreed that prayer is obligatory upon the slave and the mukatab. The scriptural text includes both [obligations] for every believer, in accordance with what the text has mandated for both:"

فَالزَّكَاةُ فِي قَوْلِ ابْنِ عُمَرَ عَلَى الْمُكَاتَبِ. وَقَدْ صَحَّ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ أَنَّهُ قَالَ: لَأُقَاتِلَنَّ مَنْ فَرَّقَ بَيْنَ الصَّلَاةِ وَالزَّكَاةِ، فَإِنَّ الزَّكَاةَ حَقُّ الْمَالِ؟ قَالَ أَبُو مُحَمَّدٍ: وَهُمْ مُجْمِعُونَ عَلَى أَنَّ الصَّلَاةَ وَاجِبَةٌ عَلَى الْعَبْدِ وَالْمُكَاتَبِ. وَالنَّصُّ قَدْ جَاءَ بِالْجَمْعِ بَيْنَهُمَا عَلَى كُلِّ مُؤْمِنٍ عَلَى مَا أَوْجَبَهُمَا النَّصُّ -:

L9908 Abdullah ibn Rabi'ah narrated to us: Abdullah ibn Muhammad ibn Uthman narrated to us: Ahmad ibn Khalid narrated to us: Ali ibn Abd al-Aziz narrated to us: Al-Hajjaj ibn Al-Minhal narrated to us: Hammad ibn Salamah narrated to us from Yunus ibn Ubayd from Al-Hasan Al-Basri: That he said concerning the wealth of a slave, stating: "The slave must pay its Zakat."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّهُ قَالَ: فِي مَالِ الْعَبْدِ، قَالَ: يُزَكِّيهِ الْعَبْدُ.

L9909 And through him to Hammad ibn Salamah from Qays, the son of Saʿd, from ʿAtaʾ ibn Abi Rabah: He said regarding the zakah on a slave's wealth: The enslaved person must pay zakah on his wealth.

وَبِهِ إلَى حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسٍ هُوَ ابْنُ سَعْدٍ - عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ: أَنَّهُ قَالَ فِي زَكَاةِ مَالِ الْعَبْدِ، قَالَ: يُزَكِّيهِ الْمَمْلُوكُ.

L9910–9912 Hummam narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrabī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq narrated to us from Ibn Jurayj: Ibn Ḥujayr reported to me that Ṭāwūs would say: "Zakāt is due on a slave's wealth." Hummam narrated to us: ʿAbd Allāh ibn Muḥammad ibn ʿAlī al-Bājiyy narrated to us: ʿAbd Allāh ibn Yūnus al-Murādī narrated to us: narrated to us. Baqiyy ibn Makhlad narrated to us: Abu Bakr ibn Abi Shaybah narrated to us: Abdur-Rahman ibn Mahdi narrated from Zam'ah from Abdullah ibn Tawus from his father, who said: "Is there Zakat due on the wealth of a slave?" Via the same chain to Abu Bakr ibn Abi Shaybah: Ghundar narrated to us, Uthman ibn Ghiyath narrated from Ikrimah that he was asked: "Is Zakat due on a slave?" He responded: "Is prayer incumbent upon him?" We have similarly narrated this position from Salim ibn Abdullah

حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ حُجَيْرٍ: أَنَّ طَاوُسًا كَانَ يَقُولُ: فِي مَالِ الْعَبْدِ زَكَاةٌ -: حَدَّثَنَا حُمَامٌ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ ثنا عَبْدُ اللَّهِ بْنُ يُونُسَ الْمُرَادِيُّ ثنا بَقِيُّ بْنُ مَخْلَدٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ زَمْعَةَ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: فِي مَالِ الْعَبْدِ زَكَاةٌ؟ وَبِهِ إلَى أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ: ثنا غُنْدَرٌ عَنْ عُثْمَانَ بْنِ غِيَاثٍ عَنْ عِكْرِمَةَ أَنَّهُ سُئِلَ عَنْ الْعَبْدِ هَلْ عَلَيْهِ زَكَاةٌ؟ قَالَ: هَلْ عَلَيْهِ صَلَاةٌ؟ : وَقَدْ رُوِّينَا نَحْوَ هَذَا

ibn Umar ibn al-Khattab and Ibn Abi Dhi'b. Is this the position of Abu Sulayman and our companions?

عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ أَبِي ذِئْبٍ؛ وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ وَأَصْحَابِنَا؟

L9913 Abu Muhammad said: How many rulings did they oppose Umar ibn al-Khattab and Jabir ibn Abdullah in? Such as their shared opinion regarding the alms of Fitr: two mudds of wheat or one ṣāʿ of barley. And there are many other such disagreements.

قَالَ أَبُو مُحَمَّدٍ: وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا عُمَرَ بْنَ الْخَطَّابِ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ، كَقَوْلِهِمَا جَمِيعًا فِي صَدَقَةِ الْفِطْرِ: مُدَّانِ مِنْ قَمْحٍ أَوْ صَاعٍ مِنْ شَعِيرٍ. وَغَيْرُ ذَلِكَ كَثِيرٌ.

L9914 As for the property of minors and the insane: Did Mālik and al-Shāfiʿī hold our opinion? This is the position of ʿUmar ibn al-Khaṭṭāb, his son ʿAbdullāh, the Mother of the Believers ʿĀ'ishah, Jābir, Ibn Masʿūd, ʿAṭāʾ, and others.

وَأَمَّا مَالُ الصَّغِيرِ، وَالْمَجْنُونِ، فَإِنَّ مَالِكًا، وَالشَّافِعِيَّ قَالَا بِقَوْلِنَا؟ وَهُوَ قَوْلُ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِهِ عَبْدِ اللَّهِ وَأُمِّ الْمُؤْمِنِينَ عَائِشَةَ، وَجَابِرٍ وَابْنِ مَسْعُودٍ، وَعَطَاءٍ وَغَيْرِهِ.

L9915 Abu Hanifah said: There is no zakah due on the wealth of these two categories—young camels and cattle—specifically, but zakah is obligatory on their fruits and crops. We do not know of anyone before him who formulated this categorization.

وَقَالَ أَبُو حَنِيفَةَ: لَا زَكَاةَ فِي أَمْوَالِهِمَا مِنَ النَّاضِّ وَالْمَاشِيَةِ خَاصَّةً، وَالزَّكَاةُ وَاجِبَةٌ فِي ثِمَارِهِمَا وَزُرُوعِهِمَا؟ وَلَا نَعْلَمُ أَحَدًا تَقَدَّمَهُ إِلَى هَذَا التَّقْسِيمِ.

L9916 Al-Ḥasan al-Baṣrī and Ibn Shubrumah said: There is no zakah due on one's gold and silver specifically—but as for fruits, crops, and livestock, they are subject to zakah. As for Ibrāhīm al-Nakhaʿī and Shurayḥ, they said: There is no zakah due on one's wealth in general.

وَقَالَ الْحَسَنُ الْبَصْرِيُّ، وَابْنُ شُبْرُمَةَ: لَا زَكَاةَ فِي ذَهَبِهِ وَفِضَّتِهِ خَاصَّةً - وَأَمَّا الثِّمَارُ وَالزُّرُوعُ وَالْمَوَاشِي فَفِيهَا الزَّكَاةُ؟ وَأَمَّا إِبْرَاهِيمُ النَّخَعِيُّ، وَشُرَيْحٌ، فَقَالَا: لَا زَكَاةَ فِي مَالِهِ جُمْلَةً.

L9917 Abu Muhammad said: "Is Abu Hanifah's statement more invalid and baser speech? I wonder: What is the difference between the zakah on crops and fruits and the zakah on livestock, gold, and silver? If someone were to contradict their opinion, obligating zakah on their two gold, silver, and livestock while exempting it from their crops and fruits—would there be any difference in corruption between the two arbitrary rulings?"

قَالَ أَبُو مُحَمَّدٍ: وَقَوْلُ أَبِي حَنِيفَةَ أَسْقَطُ كَلَامٍ وَأَغَثُّهُ؟ لَيْتَ شِعْرِي مَا الْفَرْقُ بَيْنَ زَكَاةِ الزَّرْعِ وَالثِّمَارِ وَبَيْنَ زَكَاةِ الْمَاشِيَةِ وَالذَّهَبِ وَالْفِضَّةِ؟ فَلَوْ أَنَّ عَاكِسًا عَكَسَ قَوْلَهُمْ، فَأَوْجَبَ الزَّكَاةَ فِي ذَهَبِهِمَا وَفِضَّتِهِمَا وَمَاشِيَتِهِمَا وَأَسْقَطَهَا عَنْ زَرْعِهِمَا وَثَمَرَتِهِمَا، أَكَانَ يَكُونُ بَيْنَ التَّحَكُّمَيْنِ فَرْقٌ فِي الْفَسَادِ؟

L9918 Abu Muhammad said: What if a fabricator among them deceptively asserts that there is no obligation to perform the funeral prayer for both of them?

قَالَ أَبُو مُحَمَّدٍ: إِنْ مَوَّهَ مُمَوِّهٌ مِنْهُمْ بِأَنَّهُ لَا صَلَاةَ عَلَيْهِمَا؟

L9919–9920 It was said to him: "Does Zakat cease to be obligatory for one without wealth while prayer remains obligatory?" Prayer and Zakat are obligatory only upon a mentally competent adult who possesses wealth subject to Zakat. If the

قِيلَ لَهُ: قَدْ تَسْقُطُ الزَّكَاةُ عَمَّنْ لَا مَالَ لَهُ وَلَا تَسْقُطُ عَنْهُ الصَّلَاةُ؟ وَإِنَّمَا تَجِبُ الصَّلَاةُ وَالزَّكَاةُ عَلَى الْعَاقِلِ الْبَالِغِ ذِي الْمَالِ الَّذِي فِيهِ الزَّكَاةُ، فَإِنْ سَقَطَ الْمَالُ: سَقَطَتْ

wealth is lost, Zakat is no longer required, but prayer remains obligatory. If mental competence or adulthood is lost, prayer is no longer required, while Zakat does not cease to be obligatory. This is because no obligation ordained by Allah the Exalted or His Messenger (peace and blessings be upon him) is waived except where Allah or His Messenger has exempted it.

الزَّكَاةُ، وَلَمْ تَسْقُطْ الصَّلَاةُ، وَإِنْ سَقَطَ الْعَقْلُ أَوْ الْبُلُوغُ: سَقَطَتْ الصَّلَاةُ وَلَمْ تَسْقُطْ الزَّكَاةُ، لِأَنَّهُ لَا يَسْقُطُ فَرْضٌ أَوْجَبَهُ اللَّهُ تَعَالَى أَوْ رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا حَيْثُ أَسْقَطَهُ اللَّهُ تَعَالَى أَوْ رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L9921 Nor does an obligation cease to be obligatory because another obligation has been dropped through corrupt opinion, absent a text from the Qur'an or Sunnah.

وَلَا يَسْقُطُ فَرْضٌ مِنْ أَجْلِ سُقُوطِ فَرْضٍ آخَرَ بِالرَّأْيِ الْفَاسِدِ، بِلَا نَصِّ قُرْآنٍ وَلَا سُنَّةٍ.

L9922 Moreover, if they exempt the wealth of minors and the insane from Zakat due to the non-obligation of prayer upon them and because they do not require ritual purification, then by this very rationale the two of them must exempt Zakat from their crops and fruits as well, with no distinction. The two of them must also exempt Zakat al-Fitr from them using this argument. If they counter that the textual ruling obligates Zakat al-Fitr upon minors, we reply that the text similarly obligates it upon slaves, yet you have exempted slaves held for trade based on your opinions. This represents a rejection of analogical reasoning, as they failed to extend Zakat rulings on livestock and cash to those on crops and al-Fitr. Alternatively, they should obligate it upon the Mukatab, a slave earning freedom, since prayer is obligatory upon him, with no valid distinction. Some have claimed that Zakat on crops and fruits constitutes an obligatory right in the land, becoming obligatory upon their initial emergence. Abu Muhammad said: This claimant has lied. There is no difference between the obligation of Allah's right in Zakat on gold, silver, and livestock from the time of acquisition until the completion of the annual cycle, and its obligation on crops and fruits from their emergence until the appointed time for Zakat. Zakat is nullified if any of these assets exit their owner's possession before the annual cycle concludes or before Zakat becomes due for crops and fruits.

وَأَيْضًا: فَإِنْ أَسْقَطُوا الزَّكَاةَ عَنْ مَالِ الصَّغِيرِ وَالْمَجْنُونِ، لِسُقُوطِ الصَّلَاةِ عَنْهُمَا، وَلِأَنَّهُمَا لَا يَحْتَاجَانِ إلَى طَهَارَةٍ فَلْيُسْقِطَاهَا بِهَذِهِ الْعِلَّةِ نَفْسِهَا مِنْ زَرْعِهِمَا وَثِمَارِهِمَا وَلَا فَرْقَ؛ وَلْيُسْقِطَا أَيْضًا عَنْهُمَا زَكَاةَ الْفِطْرِ بِهَذِهِ الْحُجَّةِ، فَإِنْ قَالُوا: النَّصُّ جَاءَ بِزَكَاةِ الْفِطْرِ عَلَى الصَّغِيرِ؟ قُلْنَا: وَالنَّصُّ جَاءَ بِهَا عَلَى الْعَبْدِ، فَأَسْقَطْتُمُوهَا عَنْ رَقِيقِ التِّجَارَةِ بِآرَائِكُمْ، وَهَذَا مِمَّا تَرَكُوا فِيهِ الْقِيَاسَ، إذْ لَمْ يَقِيسُوا زَكَاةَ الْمَاشِيَةِ وَالنَّاضِّ عَلَى زَكَاةِ الزَّرْعِ، وَالْفِطْرِ أَوْ فَلْيُوجِبُوهَا عَلَى الْمُكَاتَبِ، لِوُجُوبِ الصَّلَاةِ عَلَيْهِ، وَلَا فَرْقَ -: وَقَدْ قَالَ بَعْضُهُمْ: زَكَاةُ الزَّرْعِ وَالثَّمَرَةِ حَقٌّ وَاجِبٌ فِي الْأَرْضِ، يَجِبُ بِأَوَّلِ خُرُوجِهِمَا -: قَالَ أَبُو مُحَمَّد: وَقَدْ كَذَبَ هَذَا الْقَائِلُ وَلَا فَرْقَ بَيْنَ وُجُوبِ حَقِّ اللَّهِ تَعَالَى فِي الزَّكَاةِ فِي الذَّهَبِ وَالْفِضَّةِ وَالْمَوَاشِي مِنْ حِينِ اكْتِسَابِهَا إلَى تَمَامِ الْحَوْلِ وَبَيْنَ وُجُوبِهِ فِي الزَّرْعِ وَالثِّمَارِ مِنْ حِينِ ظُهُورِهَا إلَى حُلُولِ وَقْتِ الزَّكَاةِ فِيهَا، وَالزَّكَاةُ سَاقِطَةٌ بِخُرُوجِ كُلِّ ذَلِكَ عَنْ يَدِ مَالِكِهِ قَبْلَ الْحَوْلِ، وَقَبْلَ حُلُولِ وَقْتِ الزَّكَاةِ فِي الزَّرْعِ وَالثِّمَارِ.

L9923 The obligation lies solely upon the landowner, not upon the land itself, and no divine law applies to the land whatsoever—it applies exclusively to the landowner. Allah the Exalted said, "We offered the Trust to the heavens, the earth, and the mountains, but they refused to bear it and were apprehensive

وَإِنَّمَا الْحَقُّ عَلَى صَاحِبِ الْأَرْضِ لَا عَلَى الْأَرْضِ، وَلَا شَرِيعَةَ عَلَى أَرْضٍ أَصْلًا، إنَّمَا هِيَ عَلَى صَاحِبِ الْأَرْضِ. قَالَ اللَّهُ تَعَالَى: {إنَّا عَرَضْنَا الْأَمَانَةَ عَلَى السَّمَاوَاتِ

of it. Yet man undertook it—he was truly unjust and ignorant" (Al-Ahzab 72). Thus, the falsehood of this speaker and the corruption of his statement became evident.[5]

L9924–9926 Moreover, if zakah were obligatory on the land rather than on the owner of the land, it would be obligatory to collect it in... The wealth of the disbeliever derives from his crops and fruits; thus, the invalidity of their argument became evident. And success is from Allah, the Exalted.

L9927 There is no difference of opinion regarding the obligation of *Zakat* upon women, just as it is for men.

L9928 They acknowledge that there may be numerous lands subject to neither zakāh nor kharāj obligations, such as a Muslim's land designated for sugarcane cultivation—though yielding abundant wealth—or left uncultivated, or the land of a dhimmī who agreed solely to pay jizyāh per head. Sufyān al-Thawrī, al-Ḥasan al-Baṣrī, Ashhab, and al-Shāfiʿī stated: If a non-Muslim subject to kharāj purchases ʿushr land from a Muslim, neither kharāj nor ʿushr applies to it.

L9929 It has been authentically established that the Jews, Christians, and Magians in Ḥijāz, Yemen, and Bahrain possessed lands during the lifetime of the Prophet (peace be upon him), and there is no disagreement among the Ummah that he (peace be upon him) did not impose the tithe (ʿushr) or land tax (kharāj) upon them. Should they cite the Messenger of Allah's (peace be upon him) statement, "The pen is lifted from three: a child until he reaches puberty, and an insane person until he recovers," we reply: By this argument, they would waive from them the zakah on crops and fruits, and the blood-money for criminal offenses - which are undoubtedly waived through it - yet the lifting of the pen does not abolish financial rights. It only signifies the removal of blame and the exemption from physical acts of worship. Success comes solely from Allah, the Exalted.

L9930 If they say, "An insane person or one who has not reached puberty has no intention, and obligatory acts are not valid except with intention?"

وَالأَرْضِ وَالْجِبَالِ فَأَبَيْنَ أَنْ يَحْمِلْنَهَا وَأَشْفَقْنَ مِنْهَا وَحَمَلَهَا الإِنْسَانُ إِنَّهُ كَانَ ظَلُومًا جَهُولا} [الأحزاب: ٧٢] فَظَهَرَ كَذِبُ هَذَا الْقَائِلِ وَفَسَادُ قَوْلِهِ.

وَأَيْضًا: فَلَوْ كَانَتْ الزَّكَاةُ عَلَى الْأَرْضِ لَا عَلَى صَاحِبِ الْأَرْضِ لَوَجَبَ أَخْذُهَا فِي مَالِ الْكَافِرِ مِنْ زَرْعِهِ وَثِمَارِهِ، فَظَهَرَ فَسَادُ قَوْلِهِمْ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَلَا خِلَافَ فِي وُجُوبِ الزَّكَاةِ عَلَى النِّسَاءِ كَهِيَ عَلَى الرِّجَالِ.

وَهُمْ مُقِرُّونَ بِأَنَّهَا قَدْ تَكُونُ أَرَضُونَ كَثِيرَةٌ لَا حَقَّ فِيهَا مِنْ زَكَاةٍ وَلَا مِنْ خَرَاجٍ كَأَرْضِ مُسْلِمٍ جَعَلَهَا قَصَبًا وَهِيَ تُغِلُّ الْمَالَ الْكَثِيرَ، أَوْ تَرَكَهَا لَمْ يَجْعَلْ فِيهَا شَيْئًا، وَكَأَرْضِ ذِمِّيٍّ صَالَحَ عَلَى جِزْيَةٍ رَأْسِهِ فَقَطْ؟ وَقَدْ قَالَ سُفْيَانُ الثَّوْرِيِّ، وَالْحَسَنُ الْبَصْرِيُّ، وَأَشْهَبُ، وَالشَّافِعِيُّ: إنَّ الْخَرَاجِيَّ الْكَافِرَ إذَا ابْتَاعَ أَرْضَ عُشْرٍ مِنْ مُسْلِمٍ فَلَا خَرَاجَ فِيهَا وَلَا عُشْرَ.

وَقَدْ صَحَّ أَنَّ الْيَهُودَ وَالنَّصَارَى وَالْمَجُوسَ بِالْحِجَازِ وَالْيَمَنِ وَالْبَحْرَيْنِ كَانَتْ لَهُمَا أَرَضُونَ فِي حَيَاةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّهُ لَمْ يَجْعَلْ - عَلَيْهِ السَّلَامُ - فِيهَا عُشْرًا وَلَا خَرَاجًا. فَإِنْ ذَكَرُوا قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ فَذَكَرَ الصَّبِيَّ حَتَّى يَبْلُغَ، وَالْمَجْنُونَ حَتَّى يُفِيقَ» ؟ قُلْنَا: فَأَسْقَطُوا عَنْهُمَا بِهَذِهِ الْحُجَّةِ زَكَاةَ الزَّرْعِ وَالثِّمَارِ، وَأُرُوشَ الْجِنَايَاتِ، الَّتِي هِيَ سَاقِطَةٌ بِهَا بِلَا شَكٍّ، وَلَيْسَ فِي سُقُوطِ الْقَلَمِ سُقُوطُ حُقُوقِ الْأَمْوَالِ، وَإِنَّمَا فِيهِ سُقُوطُ الْمَلَامَةِ، وَسُقُوطُ فَرَائِضِ الْأَبْدَانِ فَقَطْ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَإِنْ قَالُوا لَا نِيَّةَ لِمَجْنُونٍ، وَلَا لِمَنْ لَمْ يَبْلُغْ، وَالْفَرَائِضُ لَا تُجْزِئُ إلَّا بِنِيَّةٍ؟

[5] **Qur'an references (L9923):** Qur'an 33:72 (Al-Ahzab).

L9931–9933 We said: Yes, and indeed the Imam and the Muslims are commanded to collect it, based on the Exalted's statement: "Take [O Prophet] from their wealth as Zakāh" [At-Tawbah: 103]. When those entrusted with its collection take it with the intention that it is Zakāh, it suffices for the absent, the unconscious, the insane, the minor, and those who have no intention? What is remarkable is that the established position transmitted from the Companions (may Allah be pleased with them) is the obligation of Zakāh on an orphan's wealth. It has been narrated to us through the chain of Ahmad ibn Hanbal: Sufyan—that is, Ibn Uyaynah—narrated to us from Abd al-Rahman ibn al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq, Ayyub al-Sikhtiyani, and Yahya ibn Sa'id al-Ansari, that all of them heard al-Qasim, son of Abu Bakr al-Siddiq, say: "Aisha used to pay Zakat on our wealth while we were orphans under her guardianship." Yahya added: "And he was indeed trading with our wealth by sea."[6]

قُلْنَا: نَعَمْ، وَإِنَّمَا أُمِرَ بِأَخْذِهَا الْإِمَامُ وَالْمُسْلِمُونَ، بِقَوْلِهِ تَعَالَى: {خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً} [التوبة: ١٠٣] فَإِذَا أَخَذَهَا مَنْ أُمِرَ بِأَخْذِهَا بِنِيَّةِ أَنَّهَا الصَّدَقَةُ أَجْزَأَتْ عَنْ الْغَائِبِ، وَالْمُغْمَى عَلَيْهِ وَالْمَجْنُونِ وَالصَّغِيرِ، وَمَنْ لَا نِيَّةَ لَهُ؟ وَالْعَجَبُ أَنَّ الْمَحْفُوظَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمْ - إيجَابُ الزَّكَاةِ فِي مَالِ الْيَتِيمِ -: رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ: ثنا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ، وَأَيُّوبَ السِّخْتِيَانِيِّ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّهُمْ كُلَّهُمْ سَمِعُوا الْقَاسِمَ بْنَ أَبِي بَكْرٍ الصِّدِّيقِ يَقُولُ: كَانَتْ عَائِشَةُ تُزَكِّي أَمْوَالَنَا وَنَحْنُ أَيْتَامٌ فِي حِجْرِهَا، زَادَ يَحْيَى: وَإِنَّهُ لِيَتَّجِرَ بِهَا فِي الْبَحْرِ.

L9934 From the narration of Aḥmad ibn Ḥanbal: Wakiʿ related to us, al-Qāsim ibn al-Faḍl - he is al-Ḥuddānī - related to us, from Muʿāwiyah ibn Qurrah, from al-Ḥakam ibn Abī al-ʿĀṣ al-Thaqafī, who said: ʿUmar ibn al-Khaṭṭāb said to me, "I hold the wealth of an orphan, and the charity has nearly begun to consume it."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ: ثنا وَكِيعٌ ثنا الْقَاسِمُ بْنُ الْفَضْلِ هُوَ الْحُدَّانِيُّ عَنْ مُعَاوِيَةَ بْنِ قُرَّةَ عَنْ الْحَكَمِ بْنِ أَبِي الْعَاصِ الثَّقَفِيِّ قَالَ قَالَ لِي عُمَرُ بْنُ الْخَطَّابِ: إنَّ عِنْدِي مَالَ يَتِيمٍ قَدْ كَادَتْ الصَّدَقَةُ أَنْ تَأْتِيَ عَلَيْهِ

L9935 And through the chain of Abd al-Razzaq and Muhammad ibn Bakr, they said: Ibn Jurayj reported to us, Abu al-Zubayr reported to me that he heard Jabir ibn Abdullah say concerning a man managing an orphan's wealth: "He gives its zakat."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ وَمُحَمَّدِ بْنِ بَكْرٍ قَالَا: أَخْبَرَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ فِي الرَّجُلِ يَلِي مَالَ الْيَتِيمِ، قَالَ: يُعْطِي زَكَاتَهُ

L9936 From the chain of Sufyan al-Thawri, from Habib ibn Abi Thabit, from Ubaydullah ibn Abi Rafi', who said: Ali ibn Abi Talib sold a land belonging to us for eighty thousand, while we were orphans under his guardianship. When we received our wealth, it had diminished. He said: "I used to pay zakat on it."

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي رَافِعٍ قَالَ: بَاعَ عَلِيُّ بْنُ أَبِي طَالِبٍ أَرْضًا لَنَا بِثَمَانِينَ أَلْفًا، وَكُنَّا يَتَامَى فِي حِجْرِهِ، فَلَمَّا قَبَضْنَا أَمْوَالَنَا نَقَصَتْ. فَقَالَ: إنِّي كُنْت أُزَكِّيهِ

L9937 From Ibn Mas'ud, he said: "Calculate the Zakat in the orphan's wealth. When he reaches maturity, if you perceive sound judgment in him, inform

وَعَنْ ابْنِ مَسْعُودٍ قَالَ: احْصِ مَا فِي مَالِ الْيَتِيمِ مِنْ زَكَاةٍ، فَإِذَا بَلَغَ، فَإِنْ آنَسْت مِنْهُ رُشْدًا فَأَخْبِرْهُ، فَإِنْ شَاءَ زَكَّى وَإِنْ شَاءَ تَرَكَ؟ وَهُوَ قَوْلُ عَطَاءٍ، وَجَابِرِ بْنِ زَيْدٍ، وَطَاوُسٍ،

[6] **Qur'an references (L9931):** Qur'an 9:103 (At-Tawbah).

him. If he wishes, he may pay it; if he wishes, he may abstain." This is the opinion of 'Ata', Jabir ibn Zayd, Tawus, Mujahid, al-Zuhri, and others. We know of no disagreement among the Companions except for a weakly transmitted report from Ibn Abbas, which includes Ibn Lahiʿah in its chain.

L9938–9940 Hammam narrated to us from Ibn Mufarrij from Ibn al-A'rabī from al-Dabarī from ʿAbd al-Razzāq from Ibn Jurayj, who said: Yūsuf ibn Māhak said: The Messenger of Allah (peace and blessings of Allah be upon him) said, "Seek profit in the orphan's wealth so that Zakāt does not consume it." The Ḥanafīs state that the *mursal* is like the *musnad*, yet in this matter they have opposed the *mursal* and the majority of the Companions—may Allah be pleased with them.

L9941 ## An issue regarding taking Zakah from a disbeliever.

L9942 Issue 639: It is impermissible to accept Zakat from a disbeliever. Abū Muḥammad said: It remains obligatory upon him, and he is punished for withholding it. However, it does not suffice for him unless he embraces Islam. The same applies to prayer, and there is no distinction between them. If he embraces Islam, the Almighty and Majestic has mercifully absolved all that he owed from these obligations in the past.

L9943 Allah the Exalted said: {Except the companions of the Right Hand} [74:39] {In gardens, they will ask one another} [74:40] {About the guilty} [74:41] {What has driven you into Saqar?} [74:42] {They will say: We were not among those who performed the prayer} [74:43] {Nor did we feed the needy} [74:44] {And we engaged in vain talk with those who did so} [74:45] {And we denied the Day of Judgment} [74:46] {Until the Certainty came to us} [74:47][7]

L9944 And He, the Almighty and Majestic, said: {Woe to the polytheists} [Fussilat:

[7] **Qur'an references (L9943):** Qur'an 74:39 (Al-Muddaththir); Qur'an 74:40 (Al-Muddaththir); Qur'an 74:41 (Al-Muddaththir); Qur'an 74:42 (Al-Muddaththir); Qur'an 74:43 (Al-Muddaththir); Qur'an 74:44 (Al-Muddaththir); Qur'an 74:45 (Al-Muddaththir); Qur'an 74:46 (Al-Muddaththir); Qur'an 74:47 (Al-Muddaththir).

وَمُجَاهِدٍ، وَالزُّهْرِيِّ، وَغَيْرِهِمْ، وَمَا نَعْلَمُ لِمَنْ ذَكَرْنَا مُخَالِفًا مِنْ الصَّحَابَةِ إِلَّا رِوَايَةً ضَعِيفَةً عَنْ ابْنِ عَبَّاسٍ، فِيهَا ابْنُ لَهِيعَةَ

وَقَدْ حَدَّثَنَا حُمَامٌ عَنْ ابْنِ مُفَرِّجٍ عَنْ ابْنِ الْأَعْرَابِيِّ عَنْ الدَّبَرِيِّ عَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ قَالَ يُوسُفُ بْنُ مَاهَكَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «ابْتَغُوا فِي مَالِ الْيَتِيمِ لَا تَأْكُلُهُ الزَّكَاةُ» وَالْحَنَفِيُّونَ يَقُولُونَ: الْمُرْسَلُ كَالْمُسْنَدِ، وَقَدْ خَالَفُوا هَاهُنَا الْمُرْسَلَ وَجُمْهُورَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -

[مَسْأَلَةٌ أَخْذُ الزَّكَاةِ مِنْ كَافِرٍ]

٦٣٩ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَخْذُ الزَّكَاةِ مِنْ كَافِرٍ؟ قَالَ أَبُو مُحَمَّدٍ: هِيَ وَاجِبَةٌ عَلَيْهِ، وَهُوَ مُعَذَّبٌ عَلَى مَنْعِهَا، إلَّا أَنَّهَا لَا تُجْزِئُ عَنْهُ إلَّا أَنْ يُسْلِمَ، وَكَذَلِكَ الصَّلَاةُ وَلَا فَرْقَ، فَإِذَا أَسْلَمَ فَقَدْ تَفَضَّلَ عَزَّ وَجَلَّ بِإِسْقَاطِ مَا سَلَفَ عَنْهُ مِنْ كُلِّ ذَلِكَ.

قَالَ اللَّهُ تَعَالَى: {إِلا أَصْحَابَ الْيَمِينِ} [المدثر: ٣٩] {فِي جَنَّاتٍ يَتَسَاءَلُونَ} [المدثر: ٤٠] {عَنِ الْمُجْرِمِينَ} [المدثر: ٤١] {مَا سَلَكَكُمْ فِي سَقَرَ} [المدثر: ٤٢] {قَالُوا لَمْ نَكُ مِنَ الْمُصَلِّينَ} [المدثر: ٤٣] {وَلَمْ نَكُ نُطْعِمُ الْمِسْكِينَ} [المدثر: ٤٤] {وَكُنَّا نَخُوضُ مَعَ الْخَائِضِينَ} [المدثر: ٤٥] {وَكُنَّا نُكَذِّبُ بِيَوْمِ الدِّينِ} [المدثر: ٤٦] {حَتَّى أَتَانَا الْيَقِينُ} [المدثر: ٤٧]

وَقَالَ عَزَّ وَجَلَّ {وَوَيْلٌ لِلْمُشْرِكِينَ} [فصلت: ٦] {الَّذِينَ لا يُؤْتُونَ الزَّكَاةَ وَهُمْ بِالآخِرَةِ هُمْ كَافِرُونَ} [فصلت: ٧]

6], {those who do not uphold purification and deny the Hereafter} [Fussilat: 7].[8]

L9945 And the Exalted said: "Say to those who disbelieve: If they cease, they will be forgiven what has already passed" (Surah Al-Anfal 8:38).[9]

L9946 Abu Muhammad said: There is no disagreement in all of this, except concerning the obligation of religious laws upon the disbelievers. For indeed, a group has stubbornly opposed the Quran and the Sunnahs: they have differed on that.

L9947 **Issue: Zakat is obligatory only on eight categories of wealth.**

L9948 Issue 640: Zakat is obligatory only on eight categories of wealth: gold, silver, wheat, barley, dates, camels, cows, and sheep and goats—and nothing else.

L9949 Abu Muhammad said: There is no disagreement among any Muslims regarding the obligation of Zakāt in these types, and the Sunnah has addressed them, as we will mention after this if Allah the Exalted wills. They have differed regarding certain matters other than these.

L9950–9952 641 – Issue: There is no Zakah on any fruits, crops, or minerals except what we have mentioned, nor on horses, slaves, honey, trade goods, or on [text incomplete]. An administrator or someone else? Abu Muhammad said: The Salaf disagreed regarding much of what we have mentioned; some obligated zakat in it, while others did not. They agreed that in categories other than this one, no zakat is due.

L9953 They have unanimously agreed that zakāt is not due on anything acquired for personal use rather than trade—including jewels, rubies, bedding, covers, garments, utensils of copper, iron, lead, tin, weaponry, timber, shields, estates, mules, wool, silk, and all else, excluding nothing.

وَقَالَ تَعَالَى: {قُلْ لِلَّذِينَ كَفَرُوا إِنْ يَنْتَهُوا يُغْفَرْ لَهُمْ مَا قَدْ سَلَفَ} [الأنفال: ٣٨]

قَالَ أَبُو مُحَمَّدٍ: وَلَا خِلَافَ فِي كُلِّ هَذَا، إِلَّا فِي وُجُوبِ الشَّرَائِعِ عَلَى الْكُفَّارِ، فَإِنْ طَائِفَةً عَنَدَتْ عَنْ الْقُرْآنِ وَالسُّنَنِ: خَالَفُوا فِي ذَلِكَ

[مَسْأَلَةٌ لَا تَجِبُ الزَّكَاةُ إِلَّا فِي ثَمَانِيَةِ أَصْنَافٍ مِنْ الْأَمْوَالِ]

٦٤٠ - مَسْأَلَةٌ: وَلَا تَجِبُ الزَّكَاةُ إِلَّا فِي ثَمَانِيَةِ أَصْنَافٍ مِنْ الْأَمْوَالِ فَقَطْ وَهِيَ: الذَّهَبُ، وَالْفِضَّةُ، وَالْقَمْحُ، وَالشَّعِيرُ، وَالتَّمْرُ، وَالْإِبِلُ، وَالْبَقَرُ، وَالْغَنَمُ ضَأْنُهَا وَمَاعِزُهَا فَقَطْ.

قَالَ أَبُو مُحَمَّدٍ: لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ فِي وُجُوبِ الزَّكَاةِ فِي هَذِهِ الْأَنْوَاعِ، وَفِيهَا جَاءَتْ السُّنَّةُ، عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى؛ وَاخْتَلَفُوا فِي أَشْيَاءَ مِمَّا عَدَاهَا.

٦٤١ - مَسْأَلَةٌ: وَلَا زَكَاةَ فِي شَيْءٍ مِنْ الثِّمَارِ، وَلَا مِنْ الزَّرْعِ، وَلَا فِي شَيْءٍ مِنْ الْمَعَادِنِ غَيْرُ مَا ذَكَرْنَا؟ وَلَا فِي الْخَيْلِ، وَلَا فِي الرَّقِيقِ، وَلَا فِي الْعَسَلِ، وَلَا فِي عُرُوضِ التِّجَارَةِ، لَا عَلَى مُدِيرٍ وَلَا غَيْرِهِ؟ قَالَ أَبُو مُحَمَّدٍ: اخْتَلَفَ السَّلَفُ فِي كَثِيرٍ مِمَّا ذَكَرْنَا؛ فَأَوْجَبَ بَعْضُهُمْ الزَّكَاةَ فِيهَا، وَلَمْ يُوجِبْهَا بَعْضُهُمْ وَاتَّفَقُوا فِي أَصْنَافٍ سِوَى هَذِهِ أَنَّهُ لَا زَكَاةَ فِيهَا.

فَمِمَّا اتَّفَقُوا عَلَى أَنَّهُ لَا زَكَاةَ فِيهِ كُلُّ مَا اُكْتُسِبَ لِلْقُنْيَةِ لَا لِلتِّجَارَةِ، مِنْ جَوْهَرٍ، وَيَاقُوتٍ، وَوِطَاءٍ، وَغِطَاءٍ، وَثِيَابٍ، وَآنِيَةِ نُحَاسٍ، أَوْ حَدِيدٍ، أَوْ رَصَاصٍ، أَوْ قَزْدِيرٍ، وَسِلَاحٍ، وَخَشَبٍ، وَدُرُوعٍ وَضِيَاعٍ، وَبِغَالٍ، وَصُوفٍ، وَحَرِيرٍ، وَغَيْرِ ذَلِكَ كُلِّهِ لَا تَحَاشَ شَيْئًا.

[8] **Qur'an references (L9944):** Qur'an 41:7 (Fussilat); Qur'an 41:6 (Fussilat).
[9] **Qur'an references (L9945):** Qur'an 8:38 (Al-Anfal).

وَقَالَتْ طَائِفَةٌ: كُلُّ مَا عُمِلَ مِنْهُ خُبْزٌ أَوْ عَصِيدَةٌ: فَفِيهِ الزَّكَاةُ، وَمَا لَمْ يُؤْكَلْ إِلَّا تَفَكُّهًا فَلَا زَكَاةَ فِيهِ - وَهُوَ قَوْلُ الشَّافِعِيِّ.

L9954 A sect maintained that anything from which bread or ʿaṣīdah (thickened gruel) is made is liable for zakāt, whereas what is consumed merely for enjoyment incurs no zakāt—this is the doctrine of al-Shāfiʿī.

وَقَالَ مَالِكٌ: الزَّكَاةُ وَاجِبَةٌ فِي الْقَمْحِ، وَالشَّعِيرِ، وَالسُّلْتِ وَهِيَ كُلُّهَا صِنْفٌ وَاحِدٌ. قَالَ: وَفِي الْعَلْسِ وَهُوَ صِنْفٌ مُنْفَرِدٌ. وَقَالَ مَرَّةً أُخْرَى: إِنَّهُ يُضَمُّ إِلَى الْقَمْحِ، وَالشَّعِيرِ، وَالسُّلْتِ.

L9955 Malik said: Zakat is obligatory on wheat, barley, and sult (hulled barley), all of which constitute a single category. He said: Zakat also applies to als (bitter vetch), which is a separate category. On another occasion, he stated that als is combined with wheat, barley, and sult.

قَالَ: وَفِي الدُّخْنِ، وَهُوَ صِنْفٌ مُنْفَرِدٌ، وَفِي السِّمْسِمِ وَالْأُرْزِ، وَالذُّرَةِ، وَكُلِّ صِنْفٍ مِنْهَا مُنْفَرِدٌ لَا يُضَمُّ إِلَى غَيْرِهِ. وَفِي الْفُولِ وَالْحِمَّصِ وَاللُّوبِيَا، وَالْعَدَسِ وَالْجُلُبَّانِ وَالْبَسِيلِ وَالتُّرْمُسِ، وَسَائِرِ الْقُطْنِيَّةِ. وَكُلِّ مَا ذَكَرْنَا فَهُوَ صِنْفٌ وَاحِدٌ يُضَمُّ بَعْضُهُ إِلَى بَعْضٍ فِي الزَّكَاةِ.

L9956 He said: Regarding millet—it is a distinct category. Regarding sesame, rice, sorghum, and each of these—each is a distinct category and cannot be combined with others. Regarding broad beans, chickpeas, cowpeas, lentils, colocynth, lablab bean, lupines, and all other legumes—all these we have mentioned form a single category, where they are aggregated together for Zakāt.

قَالَ: وَأَمَّا فِي الْبُيُوعِ فَكُلُّ صِنْفٍ مِنْهَا عَلَى حِيَالِهِ، إِلَّا الْحِمَّصَ، وَاللُّوبِيَا، فَإِنَّهُمَا صِنْفٌ وَاحِدٌ؟ وَمَرَّةً رَأَى الزَّكَاةَ فِي حَبِّ الْعُصْفُرِ، وَمَرَّةً لَمْ يَرَهَا فِيهِ؟ وَأَوْجَبَ الزَّكَاةَ فِي زَيْتِ الْفُجْلِ. وَلَمْ يَرَ الزَّكَاةَ فِي زَرِيعَةِ الْكَتَّانِ وَلَا فِي زَيْتِهَا وَلَا فِي الْكَتَّانِ، وَلَا فِي الْكِرْسِنَّةِ.

L9957–9958 He said: As for sales, each type is considered separately, except for chickpeas and cowpeas, which are treated as a single type. He sometimes ruled that zakah applied to safflower seeds, while at other times did not consider zakah due on them. He obligated zakah on radish oil. He did not consider zakah due on flax cultivation, their oil, flax itself, or garden cress.

وَلَا فِي الْخُضَرِ كُلِّهَا وَلَا فِي اللُّفْتِ.

L9959 Nor in all vegetables or in turnips.

وَرَأَى الزَّكَاةَ فِي زَيْتِ الزَّيْتُونِ لَا فِي حَبِّهِ.

L9960 He held the opinion that zakāt applies to olive oil but not to the olives themselves.

وَلَمْ يَرَهَا فِي شَيْءٍ مِنَ الثِّمَارِ، لَا فِي تِينٍ وَلَا بَلُّوطٍ، وَلَا قَسْطَلٍ، وَلَا رُمَّانٍ، وَلَا جَوْزِ الْهِنْدِ، وَلَا جَوْزٍ، وَلَا لَوْزٍ. وَلَا غَيْرَ غَيْرِ ذَلِكَ أَصْلًا.

L9961 He did not consider it applicable to any fruits: not figs, acorns, chestnuts, pomegranates, coconuts, walnuts, almonds, nor anything else at all.

L9962 Abu Hanifah said: Zakat applies to everything the earth produces - grains,

وَقَالَ أَبُو حَنِيفَةَ: الزَّكَاةُ فِي كُلِّ مَا أَنْبَتَتْ الْأَرْضُ مِنْ حُبُوبٍ أَوْ ثِمَارٍ أَوْ نُوَّارٍ لَا تَحَاشَ شَيْئًا حَتَّى الْوَرْدُ وَالسَّوْسَنُ وَغَيْرُ ذَلِكَ حَاشَا ثَلَاثَةَ أَشْيَاءَ فَقَطْ، وَهِيَ: الْحَطَبُ، وَالْقَصَبُ، وَالْحَشِيشُ فَلَا زَكَاةَ فِيهَا؟ وَاخْتَلَفَ قَوْلُهُ فِي قَصَبِ الذَّرِيرَةِ فَمَرَّةً رَأَى فِيهَا الزَّكَاةَ، وَمَرَّةً لَمْ يَرَهَا فِيهَا.

fruits, blossoms, and the like - excluding nothing, even roses, lilies, and similar plants, except three things only: firewood, cane, and grass. There is no zakat on these. His opinion differed regarding fodder cane - at times he considered zakat applicable to it, and at other times he did not.

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: لَا زَكَاةَ فِي الْخُضَرِ كُلِّهَا، وَلَا فِي الْفَوَاكِهِ؟ وَأَوْجَبَا الزَّكَاةَ فِي الْجَوْزِ، وَاللَّوْزِ، وَالتِّينِ، وَحَبِّ الزَّيْتُونِ، وَالْجُلَّوْزِ وَالصَّنَوْبَرِ، وَالْفُسْتُقِ، وَالْكَمُّونِ، وَالْكَرْوِيَا وَالْخَرْدَلِ، وَالْعُنَّابِ، وَحَبِّ الْبَسْبَاسِ. وَفِي الْكَتَّانِ، وَفِي زَرِيعَتِهِ أَيْضًا، وَفِي حَبِّ الْعُصْفُرِ، وَفِي نُوَّارِهِ، وَفِي حَبِّ الْقُنَّبِ لَا فِي كَتَّانِهِ، وَفِي الْفُوَّهِ إذَا بَلَغَ كُلُّ صِنْفٍ مِمَّا ذَكَرْنَا خَمْسَةَ أَوْسُقٍ، وَإِلَّا فَلَا؟ وَأَوْجَبَا الزَّكَاةَ فِي الزَّعْفَرَانِ، وَفِي الْقُطْنِ، وَالْوَرْسِ؟ ثُمَّ اخْتَلَفَا -: فَقَالَ أَبُو يُوسُفَ: إذَا بَلَغَ مَا يُصَابُ مِنْ أَحَدِ هَذِهِ الثَّلَاثَةِ مَا يُسَاوِي خَمْسَةَ أَوْسُقٍ مِنْ قَمْحٍ، أَوْ شَعِيرٍ، أَوْ مِنْ ذُرَةٍ، أَوْ مِنْ تَمْرٍ، أَوْ مِنْ زَبِيبٍ - أَحَدَ هَذِهِ الْخَمْسَةِ فَقَطْ، لَا مِنْ شَيْءٍ غَيْرِهَا -: فَفِيهِ الزَّكَاةُ وَإِنْ نَقَصَ عَنْ قِيمَةِ خَمْسَةِ أَوْسُقٍ مِنْ أَحَدِ مَا ذَكَرْنَا فَلَا زَكَاةَ فِيهِ.

L9963–9965 Abu Yusuf and Muhammad ibn al-Hasan said: There is no zakah on any vegetables or fruits. However, they ruled that zakah is obligatory on walnuts, almonds, figs, olive seeds, hazelnuts, pine nuts, pistachios, cumin, caraway, mustard seeds, jujube, basil seeds, flax and its crop, safflower seeds and their flowers, and the seeds of... Zakat is not obligatory on hemp or flax, nor on al-fuwwah unless each type of the mentioned crops reaches five wasqs; otherwise, no zakat is due. The two scholars ruled that zakat is obligatory on saffron, cotton, and wars (dye-plant). Then they differed: Abu Yusuf said: "If the produce obtained from any of these three equals five wasqs in value - whether wheat, barley, millet, dates, or raisins - exclusively one of these five and no other, then zakat is due. If its value falls short of five wasqs of any mentioned crop, no zakat is owed."

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: إنْ بَلَغَ مَا يُرْفَعُ مِنْ الزَّعْفَرَانِ: خَمْسَةَ أَمْنَانٍ وَهِيَ عَشَرَةُ أَرْطَالٍ فَفِيهِ الزَّكَاةُ، وَإِلَّا فَلَا، وَكَذَلِكَ الْوَرْسُ.

L9966 Muhammad ibn al-Hasan said: If the amount of saffron harvested reaches five *amnan*—which are ten *artals*—then *zakāt* is due on it; otherwise, it is not. The same ruling applies to *wars*.

وَإِنْ بَلَغَ الْقُطْنُ خَمْسَةَ أَحْمَالٍ وَهِيَ ثَلَاثَةُ آلَافِ رِطْلٍ فُلْفُلِيَّةٍ فَفِيهِ الزَّكَاةُ، وَإِلَّا فَلَا.

L9967 If the cotton reaches five loads, which are three thousand Fulfuliyyah ratls, then zakah is due on it; otherwise, it is not.

وَاتَّفَقَا عَلَى أَنَّ حَبَّ الْعُصْفُرِ إنْ بَلَغَ خَمْسَةَ أَوْسُقٍ زُكِّيَ هُوَ وَنُوَّارُهُ، وَإِنْ نَقَصَ عَنْ ذَلِكَ لَمْ يُزَكَّ لَا حَبُّهُ وَلَا نُوَّارُهُ.

L9968 They both agreed that if safflower seeds amount to five awsuq, Zakat is due on it and its flowers. If they are less than that, no Zakat is due—neither on the seeds nor the flowers.

L9969–9971 They differed regarding plums, onions, garlic, and henna - at times obligating

Zakat on them and at others exempting them. They exempted from Zakat hemp threads, cotton seeds, acorns, chestnuts, sidr berries, apples, pears, apricots, myrobalan, cucumbers, turnips, and mulberries. And carob, rue, fenugreek, black seed, and leek. Abu Sulayman Dawud ibn Ali, and the majority of the scholars of our school said: Zakat is due on everything the earth produces, on every fruit, on fodder and other things, without exception.

وَاخْتَلَفَا فِي الْإِجَّاصِ وَالْبَصَلِ وَالثُّومِ وَالْحِنَّاءِ، فَمَرَّةً أَوْجَبَا فِيهَا الزَّكَاةَ وَمَرَّةً أَسْقَطَاهَا؟ وَأَسْقَطَا الزَّكَاةَ عَنْ خُيُوطِ الْقُنَّبِ، وَعَنْ حَبِّ الْقُطْنِ، وَعَنْ الْبَلُّوطِ، وَالْقَسْطَلِ، وَالنَّبْقِ وَالتُّفَّاحِ، وَالْكُمَّثْرَى، وَالْمِشْمِشِ، وَالْهَلِيلِجِ وَالْقِثَّاءِ، وَاللُّفْتِ، وَالتُّوتِ، وَالْخَرُّوبِ، وَالْحُرْفِ وَالْحُلْبَةِ، وَالشُّونِيزِ وَالْكُرَّاثِ. وَقَالَ أَبُو سُلَيْمَانَ دَاوُد بْنُ عَلِيٍّ، وَجُمْهُورُ أَصْحَابِنَا: الزَّكَاةُ فِي كُلِّ مَا أَنْبَتَتْ الْأَرْضُ، وَفِي كُلِّ ثَمَرَةٍ، وَفِي الْحَشِيشِ وَغَيْرِ ذَلِكَ، لَا تَحَاشَ شَيْئًا.

L9972 They said: As for that which can be measured by volume, no zakah is due on it until a single category of it reaches five wasqs or more. As for that which cannot be measured, zakah is due on its small and large amounts.

قَالُوا: فَمَا كَانَ مِنْ ذَلِكَ يَحْتَمِلُ الْكَيْلَ لَمْ تَجِبْ فِيهِ زَكَاةٌ حَتَّى يَبْلُغَ الصِّنْفُ الْوَاحِدُ مِنْهُ خَمْسَةَ أَوْسُقٍ فَصَاعِدًا، وَمَا كَانَ لَا يَحْتَمِلُ فَفِي قَلِيلِهِ وَكَثِيرِهِ الزَّكَاةُ.

L9973 Has it been reported to us that statements from the earliest predecessors exist? It has been reported from Ibn Abbas that he used to collect zakāh from leeks.

وَرُوِّينَا أَيْضًا عَنْ السَّلَفِ الْأَوَّلِ أَقْوَالًا؟ -: فَرُوِيَ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ كَانَ يَأْخُذُ الزَّكَاةَ مِنْ الْكُرَّاثِ.

L9974 From Ibn Umar: that he considered zakah obligatory on barley. From Mujahid, Hammad ibn Abi Sulayman, Umar ibn Abd al-Aziz, and Ibrahim al-Nakha'i: the mandating of zakah on everything the earth produces, whether the yield is small or abundant. This is transmitted from Umar ibn Abd al-Aziz through Ma'mar from Simak ibn al-Fadl from him. It is narrated from Ibrahim by Waki' through Sufyan al-Thawri from Mansur, and that he said: "For every ten dastajas of crops, one dastaja is due as zakah."

وَعَنْ ابْنِ عُمَرَ: أَنَّهُ رَأَى الزَّكَاةَ فِي السُّلْتِ؟ وَعَنْ مُجَاهِدٍ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَإِبْرَاهِيمَ النَّخَعِيِّ إيجَابُ الزَّكَاةِ فِي كُلِّ مَا أَخْرَجَتْ الْأَرْضُ، قَلَّ أَوْ كَثُرَ، وَهُوَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ مَعْمَرٍ عَنْ سِمَاكِ بْنِ الْفَضْلِ عَنْهُ. وَرَوَاهُ عَنْ إبْرَاهِيمَ وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْهُ، وَأَنَّهُ قَالَ: فِي عَشْرِ دَسْتَجَاتٍ بَقْلٍ دَسْتَجَةٌ.

L9975–9977 It was narrated by Shu'bah from Hammad ibn Abi Sulayman, and we have received narrations from al-Zuhri and 'Umar ibn 'Abd al-'Azīz affirming the universal obligation of Zakāt on agricultural produce without excluding any specific types. It is narrated from al-Zuhri that Zakāt applies to spices and saffron, amounting to one-tenth of their harvested yield. From Abū Burdah ibn Abī Mūsā is narrated the obligation of Zakāt on garden crops.

وَرَوَاهُ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ شُعْبَةُ وَرُوِّينَا عَنْ الزُّهْرِيِّ وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ إيجَابَ الزَّكَاةِ فِي الثِّمَارِ عُمُومًا، دُونَ تَخْصِيصِ بَعْضِهَا مِنْ بَعْضٍ. وَعَنْ الزُّهْرِيِّ إيجَابُ الزَّكَاةِ فِي التَّوَابِلِ وَالزَّعْفَرَانِ: عُشْرُ مَا يُصَابُ مِنْهَا. وَعَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى إيجَابُ الزَّكَاةِ

فِي الْبُقُولِ. قَالَ أَبُو مُحَمَّد: أَمَّا مَا رُوِيَ عَنْ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - مِنْ إيجَابِ الزَّكَاةِ فِي السُّلْتِ فَإِنَّهُ قَدَّرَ أَنَّهُ نَوْعٌ مِنْ الْقَمْحِ، وَلَيْسَ كَذَلِكَ، وَإِنْ كَانَ الْقَمْحُ يَسْتَحِيلُ فِي بَعْضِ الْأَرَضِينَ سُلْتًا؛ فَإِنَّ اسْمَهُمَا عِنْدَ الْعَرَبِ مُخْتَلِفٌ، وَحَدُّهُمَا فِي الْمُشَاهَدَةِ مُخْتَلِفٌ، فَهُمَا صِنْفَانِ بِلَا شَكٍّ وَقَدْ يَسْتَحِيلُ الْعَصِيرُ خَمْرًا، وَيَسْتَحِيلُ الْخَمْرُ خَلًّا، وَهِيَ أَصْنَافٌ مُخْتَلِفَةٌ بِلَا خِلَافٍ، وَلَمْ يَأْتِ قَطُّ بُرْهَانٌ مِنْ نَصٍّ وَلَا مِنْ إجْمَاعٍ وَلَا مِنْ مَعْقُولٍ عَلَى أَنَّ مَا اسْتَحَالَ إلَى شَيْءٍ آخَرَ، فَهُمَا نَوْعٌ وَاحِدٌ، وَلَكِنْ إذَا اخْتَلَفَتْ الْأَسْمَاءُ لَمْ يَجُزْ أَنْ يُوقَعَ حُكْمٌ وَرَدَ فِي اسْمِ صِنْفٍ مَا عَلَى مَا لَا يَقَعُ عَلَيْهِ ذَلِكَ الِاسْمُ، لِقَوْلِ اللَّهِ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] . وَلَوْ كَانَ ذَلِكَ لَوَجَبَ أَنْ يُوقَعَ عَلَى غَيْرِ السَّارِقِ حُكْمُ السَّارِقِ، وَعَلَى غَيْرِ الْغُنْمِ حُكْمُ الْغَنَمِ. وَهَكَذَا فِي كُلِّ شَيْءٍ وَرُوِّينَا فِي ذَلِكَ أَثَرًا لَا يَصِحُّ، مِنْ طَرِيقِ ابْنِ لَهِيعَةَ، وَهُوَ سَاقِطٌ، عَنْ عُمَارَةَ بْنِ غَزِيَّةَ وَهُوَ ضَعِيفٌ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ عَمْرِو بْنِ حَزْمٍ «إنَّ هَذَا كِتَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِعَمْرِو بْنِ حَزْمٍ: فِي النَّخْلِ وَالزَّرْعِ قَمْحُهُ وَسُلْتُهُ وَشَعِيرُهُ فِيمَا سُقِيَ مِنْ ذَلِكَ بِالرِّشَاءِ نِصْفُ الْعُشْرِ» . وَذَكَرَ الْحَدِيثَ.

Abū Muḥammad said: As for what is reported from Ibn ʻUmar - may Allah be pleased with him - concerning the obligation of Zakāt on sult, he assumed it to be a variety of wheat, but this is incorrect. Even if wheat sometimes transforms into sult in certain soils, their names in Arabic are distinct, and their observable characteristics differ. Thus, they are two distinct entities. Two categories are without doubt: grape juice transforms into wine, and wine transforms into vinegar—distinct categories with no disagreement. No evidence—whether derived from text, consensus, or reason—has ever demonstrated that substances transformed into other substances remain a single type. However, when names differ, it is impermissible to apply a ruling designated for one named category to what does not bear that name, based on Allah's decree: *"Whoever transgresses the limits of Allah has certainly wronged himself"* [al-Ṭalāq 65:1]. If this were permitted, it would necessitate applying the ruling for thieves to non-thieves, or the ruling for spoils to sheep, and this principle applies universally. An unsound report has been narrated to us through Ibn Lahiʿah (a discarded transmitter) from ʿUmarah ibn Ghaziyyah (a weak narrator) via ʿAbdullāh ibn Abī Bakr ibn ʿAmr ibn Ḥazm: *"This is the document of the Messenger of Allah (peace and blessings be upon him) to ʿAmr ibn Ḥazm: Regarding palm trees and crops—their wheat, hulled barley, and barley—for what is irrigated by bucket, half of the ʿushr (one-tenth, i.e., five percent) is due."* And he cited the ḥadīth in full.[10]

وَهَذِهِ صَحِيفَةٌ لَا تُسْنَدُ، وَقَدْ خَالَفَ خُصُومُنَا أَكْثَرَ مَا فِي هَذِهِ الصَّحِيفَةِ.

L9978 This is a document that is not supported by an *isnād* (chain of narrators), and our opponents have contradicted most of what is in it.

وَأَمَّا قَوْلُ الشَّافِعِيِّ، فَإِنَّهُ حَدَّ حَدًّا فَاسِدًا لَا بُرْهَانَ عَلَى صِحَّتِهِ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ إجْمَاعٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا مِنْ قِيَاسٍ وَمَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ؛ وَمَا كَانَ هَكَذَا فَهُوَ سَاقِطٌ لَا يَحِلُّ الْقَوْلُ بِهِ.

L9979 As for the statement of al-Shāfiʿī, he established an invalid ḥadd punishment lacking any definitive proof for its validity—neither from the Qur'an, the Sunnah, consensus, the authoritative opinion of a Companion, nor analogical reasoning. We know of no one who asserted it before him. A ruling such as this is null and void, and it is impermissible to uphold it.

وَعَجَبًا لَهُ كَيْفَ قَاسَ الْحِنْطَةَ وَالشَّعِيرَ عَلَى كُلِّ شَيْءٍ

L9980–9982 It is astonishing that he applied qiyās to wheat and barley for everything

[10] **Qur'an references (L9975):** Qur'an 65:1 (At-Talaq).

made into bread or porridge, yet did not apply qiyās to dates and raisins for all fruits consumed as staple foods. Indeed, acorns, figs, chestnuts, and coconuts are unquestionably more substantial and commonly consumed as staples than raisins. We know of no region where raisins alone constitute the people's staple food, yet there are lands where chestnuts, coconuts, and figs alone form their staple. Similarly... As for the acorn—indeed, bread and porridge are made from it—the invalidity of this claim becomes apparent. As for Mālik's argument, it is more severe and evident in its invalidity, because if the rationale is sustenance, then chestnuts, acorns, figs, Indian walnuts [coconuts], and turnips are undoubtedly more substantial for sustenance than oil, olives, chickpeas, lentils, or lupini beans.

وَالْعَجَبُ أَنَّهُ قَاسَ عَلَى الْبُرِّ، وَالشَّعِيرِ كُلَّ مَا يُعْمَلُ مِنْهُ خُبْزٌ أَوْ عَصِيدَةٌ، وَلَمْ يَقِسْ عَلَى التَّمْرِ وَالزَّبِيبِ كُلَّ مَا يَتَقَوَّتُ مِنْ الثِّمَارِ، فَإِنَّ الْبَلُّوطَ وَالتِّينَ وَالْقَسْطَلَ وَجَوْزَ الْهِنْدِ أَقْوَى وَأَشْهَرَ فِي التَّقَوُّتِ مِنْ الزَّبِيبِ بِلَا شَكٍّ، فَمَا عَلِمْنَا بَلَدًا يَكُونُ قُوتُ أَهْلِهِ الزَّبِيبُ صِرْفًا، وَنَعْلَمُ بِلَادًا لَيْسَ قُوتُهَا إلَّا الْقَسْطَلَ، وَجَوْزَ الْهِنْدِ وَالتِّينَ صِرْفًا، وَكَذَلِكَ الْبَلُّوطُ، وَقَدْ يُعْمَلُ مِنْهُ الْخُبْزُ وَالْعَصِيدَةُ، فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ. وَأَمَّا قَوْلُ مَالِكٍ فَأَشَدُّ وَأَبْيَنُ فِي الْفَسَادِ، لِأَنَّهُ إنْ كَانَتْ عِلَّتُهُ التَّقَوُّتَ فَإِنَّ الْقَسْطَلَ، وَالْبَلُّوطَ، وَالتِّينَ، وَجَوْزَ الْهِنْدِ، وَاللُّفْتَ، بِلَا شَكٍّ أَقْوَى فِي التَّقَوُّتِ مِنْ الزَّيْتِ وَمِنْ الزَّيْتُونِ وَمِنْ الْحِمَّصِ وَمِنْ الْعَدَسِ وَمِنْ اللُّوبْيَاءِ.

L9983 Utterly astonishing is his obligation of Zakāt upon radish oil, which is not consumed as food but is reserved solely for fuel. It is not known except in the land of Egypt alone.

وَالْعَجَبُ كُلُّهُ إيجَابُهُ الزَّكَاةَ فِي زَيْتِ الْفُجْلِ. وَهُوَ لَا يُؤْكَلُ، وَإِنَّمَا هُوَ لِلْوَقِيدِ خَاصَّةً، وَلَا يُعْرَفُ إلَّا بِأَرْضِ مِصْرَ فَقَطْ.

L9984 A reliable narrator in his transmission and discernment informed me that what is referred to in Egypt as *fujl*—from which oil is produced and on which Mālik ruled that *zakāt* is obligatory—is the plant known among us in Andalusia as *al-bashtar*, a desert plant that is not intentionally cultivated.

وَأَخْبَرَنِي ثِقَةٌ فِي نَقْلِهِ وَتَمْيِيزِهِ أَنَّ الْمُسَمَّى بِمِصْرَ فُجْلًا يُعْمَلُ مِنْهُ الزَّيْتُ الَّذِي رَأَى مَالِكٌ فِيهِ الزَّكَاةَ، هُوَ النَّبَاتُ الْمُسَمَّى عِنْدَنَا بِالْأَنْدَلُسِ " اللبشتر " وَهُوَ نَبَاتٌ صَحْرَاوِيٌّ لَا يُغْتَرَسُ أَصْلًا.

L9985 He did not consider zakah obligatory on oil from cultivated flaxseed, nor on sesame oil, walnut oil, harkan oil, ẓanbūj oil, or ḍarw oil—these being edible oils used for lighting, originating from Khurasan, Iraq, the land of the Masmuda, and Sicily. There is no basis for his opinion in the Quran, nor in any authentic Sunnah, nor in any weak narration, nor through evidence of consensus, nor from the statement of a Companion, nor by analogy, nor through the practice of Medina's people—since most of what he considered zakatable was unknown in Medina. We know of no one before him who held this opinion, thus the falsity of this view becomes entirely evident—and success is attained only through Allah, the Exalted.

وَلَمْ يَرَ الزَّكَاةَ فِي زَيْتِ زَرِيعَةِ الْكَتَّانِ، وَلَا فِي زَيْتِ السِّمْسِمِ، وَزَيْتِ الْجَوْزِ، وَزَيْتِ الهركان، وَزَيْتِ الزنبوج وَزَيْتِ الضَّرْوِ وَهَذِهِ تُؤْكَلُ وَيُوقَدُ بِهَا، وَهِيَ زُيُوتُ خُرَاسَانَ، وَالْعِرَاقِ، وَأَرْضِ الْمُصَامَدَةِ، وَصِقِلِّيَّةَ؟ وَلَا مُتَعَلَّقَ لِقَوْلِهِ فِي قُرْآنٍ، وَلَا فِي سُنَّةٍ صَحِيحَةٍ وَلَا فِي رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ دَلِيلِ إجْمَاعٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ عَمَلِ أَهْلِ الْمَدِينَةِ، لِأَنَّ أَكْثَرَ مَا رَأَى فِيهِ الزَّكَاةَ لَيْسَ يُعْرَفُ بِالْمَدِينَةِ؟ وَمَا نَعْرِفُ هَذَا الْقَوْلَ عَنْ أَحَدٍ قَبْلَهُ: فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L9986 What is utterly astonishing is that Mālik and Al-Shāfiʿī explicitly stated by them: “Indeed, the words of Allah the Exalted: {And He is the One Who created gardens, trellised and untrellised, and palm trees and crops differing in their fruits, and olives and pomegranates, similar and dissimilar. Eat of its fruit when it yields and give its due on the day of its harvest} [Al-Anʿām 6:141]—they specifically intended by this only the obligatory Zakāt.”[11]

وَالْعَجَبُ كُلُّ الْعَجَبِ أَنَّ مَالِكًا وَالشَّافِعِيَّ قَالَا نَصًّا عَنْهُمَا: إِنَّ قَوْلَ اللَّهِ تَعَالَى: {وَهُوَ الَّذِي أَنْشَأَ جَنَّاتٍ مَعْرُوشَاتٍ وَغَيْرَ مَعْرُوشَاتٍ وَالنَّخْلَ وَالزَّرْعَ مُخْتَلِفًا أُكُلُهُ وَالزَّيْتُونَ وَالرُّمَّانَ مُتَشَابِهًا وَغَيْرَ مُتَشَابِهٍ كُلُوا مِنْ ثَمَرِهِ إِذَا أَثْمَرَ وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ} [الأنعام: ١٤١] إِنَّمَا أَرَادَ بِهِ الزَّكَاةَ الْوَاجِبَةَ.

L9987–9989 Abu Muhammad said: So how can this verse, which Allah the Exalted revealed concerning zakah according to both of them, then, The two of them exempt from zakat most of what Allah the Exalted has mentioned by His name therein - such as pomegranates and the rest of what exists in the gardens. This is a truly remarkable and unparalleled matter.

قَالَ أَبُو مُحَمَّد: فَكَيْفَ تَكُونُ هَذِهِ الْآيَةُ أَنْزَلَهَا اللَّهُ تَعَالَى فِي الزَّكَاةِ عِنْدَهُمَا، ثُمَّ يُسْقِطَانِ الزَّكَاةَ عَنْ أَكْثَرِ مَا ذَكَرَ اللَّهُ تَعَالَى فِيهَا بِاسْمِهِ مِنْ الرُّمَّانِ، وَسَائِرِ مَا يَكُونُ فِي الْجَنَّاتِ، وَهَذَا عَجَبٌ لَا نَظِيرَ لَهُ.

L9990 Some of them argued that God the Exalted made zakāh obligatory only on what is harvested. Thus, the Mālikīs were asked: “From where do you derive obligating zakāh on olives, when you consider them unharvested?” The Shāfiʿīs were challenged: “What is your proof that ’harvesting’ is not applied to anything other than crops?” God the Exalted mentioned the dwellings of the disbelievers in His saying: “Among them are those still standing and others leveled” [Hud 11:100]. The Messenger of God—peace and blessings be upon him—said during the Conquest: “Mow them down completely.”[12]

وَاحْتَجَّ بَعْضُهُمْ بِأَنَّهُ إِنَّمَا أَوْجَبَ اللَّهُ تَعَالَى الزَّكَاةَ فِيهَا فِيمَا يُحْصَدُ. فَقِيلَ لِلْمَالِكِيِّينَ: فَمِنْ أَيْنَ أَوْجَبْتُمْ الزَّكَاةَ فِي الزَّيْتُونِ، وَهُوَ عِنْدَكُمْ لَا يُحْصَدُ. وَيُقَالُ لِلشَّافِعِيِّينَ: مَنْ لَكُمْ بِأَنَّ الْحَصَادَ لَا يُطْلَقُ عَلَى غَيْرِ الزَّرْعِ. وَاَللَّهُ تَعَالَى ذَكَرَ مَنَازِلَ الْكُفَّارِ فَقَالَ: {مِنْهَا قَائِمٌ وَحَصِيدٌ} [هود: ١٠٠] . «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ الْفَتْحِ: اُحْصُدُوهُمْ حَصْدًا» .

L9991 As for the statements of Abū Yūsuf and Muḥammad: they invalidate all these opinions—the most contradictory ones—because they did not commit to specifying by what is used for sustenance, nor by what is measured, nor by what is eaten, nor by what dries, nor by what is stored. They brought forth opinions that were deeply flawed.

وَأَمَّا قَوْلُ أَبِي يُوسُفَ، وَمُحَمَّد: فَأَسْقَطُ هَذِهِ الْأَقْوَالِ كُلِّهَا وَأَشَدُّهَا تَنَاقُضًا؛ لِأَنَّهُمَا لَمْ يَلْتَزِمَا التَّحْدِيدَ بِمَا يُتَقَوَّتُ، وَلَا بِمَا يُكَالُ، وَلَا بِمَا يُؤْكَلُ وَلَا بِمَا يَيْبَسُ، وَلَا بِمَا يُدَّخَرُ، وَأَتَيَا بِأَقْوَالٍ فِي غَايَةِ الْفَسَادِ.

L9992 The two jurists ruled zakat was obligatory on walnuts, almonds, hazelnuts, and pine nuts. They exempted zakat on acorns, chestnuts, and turnips. They ruled zakat was obligatory on fenugreek and exempted it from nigella seeds, for they were the two jurists.

فَأَوْجَبَا الزَّكَاةَ فِي الْجَوْزِ وَاللَّوْزِ، وَالْجُلَّوْزِ، وَالصَّنَوْبَرِ. وَأَسْقَطَاهَا عَنْ الْبَلُّوطِ، وَالْقَسْطَلِ، وَاللُّفْتِ. وَأَوْجَبَاهَا فِي الْبَسْبَاسِ، وَأَسْقَطَاهَا عَنْ الشُّونِيزِ، وَهُمَا أَخَوَانِ.

[11] **Qur’an references (L9986):** Qur’an 6:141 (Al-An’am).
[12] **Qur’an references (L9990):** Qur’an 11:100 (Hud).

L9993 They both ruled (in some opinions) that it is obligatory for garlic and onions, waived it for leek, and also applied it to flax threads and their grain.

وَأَوْجَبَاهَا - فِي بَعْضِ الْأَقْوَالِ - فِي الثُّومِ وَالْبَصَلِ، وَأَسْقَطَاهَا عَنْ الْكُرَّاثِ. وَأَوْجَبَاهَا فِي خُيُوطِ الْكَتَّانِ وَحَبِّهِ.

L9994 The two scholars ruled it obligatory on safflower seeds and blossoms.

وَأَوْجَبَاهَا فِي حَبِّ الْعُصْفُرِ وَنُوَّارِهِ.

L9995 They both ruled it obligatory for cotton fibers but not for its seeds.

وَأَوْجَبَاهَا فِي خُيُوطِ الْقُطْنِ دُونَ حَبِّهِ.

L9996 They both imposed it on hemp threads and exempted it from his threads.

وَأَوْجَبَاهَا فِي خُيُوطِ الْقِنَّبِ، وَأَسْقَطَاهَا عَنْ خُيُوطِهِ.

L9997 They obligated it on mustard and exempted it for crafts.

وَأَوْجَبَاهَا فِي الْخَرْدَلِ، وَأَسْقَطَاهَا عَنْ الْحُرْفِ.

L9998 The two scholars, who were brothers, imposed the obligation on jujube (al-ʿunnāb) and exempted it from nabq (fruit of the Christ's thorn tree).

وَأَوْجَبَاهَا فِي الْعُنَّابِ، وَأَسْقَطَاهَا عَنْ النَّبْقِ وَهُمَا أَخَوَانِ.

L9999 They both ruled that Zakah is obligatory on pomegranates but exempted apples and quinces from it, even though they are equivalent.

وَأَوْجَبَاهَا فِي الرُّمَّانِ، وَأَسْقَطَاهَا عَنْ التُّفَّاحِ وَالسَّفَرْجَلِ وَهِيَ سَوَاءٌ.

L10000 If it is said: “Pomegranates are mentioned in the verse,” it is answered: “Crops are mentioned in the verse.” Yet the rulings have exempted zakāh from most cultivated produce.

فَإِنْ قِيلَ: الرُّمَّانُ مَذْكُورٌ فِي الْآيَةِ. قِيلَ: وَالزَّرْعُ مَذْكُورٌ فِي الْآيَةِ. وَقَدْ أَسْقَطَا الزَّكَاةَ عَنْ أَكْثَرِ مَا يُزْرَعُ.

L10001–10003 And these are insinuations resembling what one afflicted by persistent whispers produces. These two matters have no foundation tied to them—neither from the Quran, nor the Sunnah, nor a weak ḥadīth, nor the statement of a Companion, nor analogy, nor sound opinion—and we know of no one who upholds them. He had stated that before both of them, thus this baseless claim was also entirely invalidated.

وَهَذِهِ وَسَاوِسُ تُشْبِهُ مَا يَأْتِي بِهِ الْمَمْرُورُ. وَمَا لَهُمَا مُتَعَلَّقٌ لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ ضَعِيفَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ وَلَا رَأْيٍ سَدِيدٍ، وَمَا نَعْلَمُ أَحَدًا قَالَ بِذَلِكَ قَبْلَهُمَا، فَسَقَطَ هَذَا الْقَوْلُ الْفَاسِدُ أَيْضًا جُمْلَةً.

L10004 As for the statement of Abū Ḥanīfah, it has no connection to the Quran nor to the saying of the Messenger of Allah (peace and blessings be upon him)—“For what is watered by the sky, a tenth is due”—because he excluded from the generality of that ruling reeds, grass, and all foliage of fruit trees. This constitutes a specification of the evidence he cited without substantiation from any textual proof, consensus, analogy, or any opinion with a rationally defensible basis, while contradicting the Sunnah.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ: فَلَا مُتَعَلَّقَ لَهُ بِالْقُرْآنِ، وَلَا بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فِيمَا سَقَتْ السَّمَاءُ الْعُشْرُ» لِأَنَّهُ قَدْ أَخْرَجَ مِنْ جُمْلَةِ ذَلِكَ الْقَصَبَ، وَالْحَشِيشَ وَوَرَقَ الثِّمَارِ كُلِّهَا، وَهَذَا تَخْصِيصٌ لِمَا احْتَجَّ بِهِ، بِلَا بُرْهَانٍ مِنْ نَصٍّ وَلَا مِنْ إجْمَاعٍ، وَلَا مِنْ قِيَاسٍ وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ يُعْقَلُ، مَعَ خِلَافِهِ لِلسُّنَّةِ.

L10005 Thus, this opinion, too, falls outside the bounds of permissibility, and success is from Allah, the Exalted.

فَخَرَجَ أَيْضًا هَذَا الْقَوْلُ عَنْ الْجَوَازِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L10006 Abu Muhammad said: Only the opinion of our companions and our own opinion remained. We examined this matter and found our companions citing as proof the aforementioned verse and the authenticated reports from the Messenger of Allah (peace be upon him) in his saying, “For what is irrigated by rainwater, one-tenth (is due).” They have no evidence apart from these two scriptural texts.

قَالَ أَبُو مُحَمَّد: فَلَمْ يَبْقَ إلَّا قَوْلُ أَصْحَابِنَا وَقَوْلُنَا، فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَا أَصْحَابَنَا يَحْتَجُّونَ بِالْآيَةِ الْمَذْكُورَةِ وَبِالثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ «فِيمَا سَقَتْ السَّمَاءُ الْعُشْرُ» لَا حُجَّةَ لَهُمْ غَيْرُ هَذَيْنِ النَّصَّيْنِ.

L10007 We found the verse has no basis for them to rely upon for several reasons:

فَوَجَدْنَا الْآيَةَ لَا مُتَعَلَّقَ لَهُمْ بِهَا لِوُجُوهٍ -:

L10008 One is that the surah is Meccan while zakah is Medinan, without disagreement from any of the scholars. Thus it is invalid that it was revealed concerning zakah. Some opposing scholars said: “Yes, it is Meccan—except this verse alone, for it is Medinan.”

أَحَدُهَا: أَنَّ السُّورَةَ مَكِّيَّةٌ، وَالزَّكَاةُ مَدَنِيَّةٌ، بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ الْعُلَمَاءِ، فَبَطَلَ أَنْ تَكُونَ أُنْزِلَتْ فِي الزَّكَاةِ. وَقَالَ بَعْضُ الْمُخَالِفِينَ: نَعَمْ هِيَ مَكِّيَّةٌ، إلَّا هَذِهِ الْآيَةَ وَحْدَهَا، فَإِنَّهَا مَدَنِيَّةٌ.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ دَعْوَى بِلَا بُرْهَانٍ عَلَى صِحَّتِهَا، وَتَخْصِيصٍ بِلَا دَلِيلٍ، ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِي ذَلِكَ حُجَّةٌ. لِأَنَّ قَائِلَ هَذَا الْقَوْلِ زَعَمَ أَنَّهَا أُنْزِلَتْ فِي شَأْنِ ثَابِتِ بْنِ قَيْسِ بْنِ الشَّمَّاسِ - رَضِيَ اللَّهُ عَنْهُ -؛ إِذْ جَذَّ ثَمَرَتَهُ فَتَصَدَّقَ مِنْهَا حَتَّى لَمْ يَبْقَ لَهُ مِنْهَا شَيْءٌ. فَبَطَلَ أَنْ يَكُونَ أُرِيدَ بِهَا الزَّكَاةُ.

L10009 Abu Muhammad said: This is a claim without proof of its validity and a specification without evidence. Then even if it were valid, they would have no argument in that matter. For the proponent of this view claimed that it was revealed regarding Thabit ibn Qays ibn al-Shammas - may Allah be pleased with him - when he harvested his fruit crop and gave charity from it until nothing remained for him. Thus, it is invalidated that the verse was intended to refer to Zakat.

وَالثَّانِي: قَوْله تَعَالَى فِيهَا: {وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ} [الأنعام: ١٤١] .

L10010 The second is the statement of the Most High therein: {And give its due on the day of its harvest} [Al-An'ām 6:141].[1]

وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ الزَّكَاةَ لَا يَجُوزُ إيتَاؤُهَا يَوْمَ الْحَصَادِ، لَكِنْ فِي الزَّرْعِ بَعْدَ الْحَصَادِ، وَالدَّرْسِ وَالذَّرْوِ وَالْكَيْلِ، وَفِي الثِّمَارِ بَعْدَ الْيُبْسِ وَالتَّصْفِيَةِ وَالْكَيْلِ. فَبَطَلَ أَنْ يَكُونَ ذَلِكَ الْحَقُّ الْمَأْمُورُ بِهِ هُوَ الزَّكَاةُ الَّتِي لَا تَجِبُ إلَّا بَعْدَمَا ذَكَرْنَا.

L10011 There is no disagreement among any of the Ummah that it is impermissible to deliver Zakāh on the day of harvest. Rather, it is due on crops after harvesting, threshing, winnowing, and measuring by volume; and on fruits after drying, purification, and measuring by volume. Thus, it is invalid to equate that prescribed due with Zakāh, for Zakāh only becomes obligatory after the conditions we have mentioned.

وَالثَّالِثُ: قَوْله تَعَالَى فِي الْآيَةِ نَفْسِهَا: {وَلا تُسْرِفُوا} [الأنعام: ١٤١] وَلَا سَرَفَ فِي الزَّكَاةِ لِأَنَّهَا مَحْدُودَةٌ، وَلَا يَحِلُّ أَنْ يُنْقَصَ مِنْهَا حَبَّةٌ وَلَا تُزَادُ أُخْرَى.

L10012 The third is the statement of Allah, the Exalted, in the same verse: "And do not exceed the limits" [An'ām 6:141]. There is no excess in zakāh, as it is a fixed obligation. It is impermissible to reduce even a single grain from it or to add another.[2]

فَإِنْ قِيلَ: فَمَا هَذَا الْحَقُّ الْمُفْتَرَضُ فِي الْآيَةِ. قُلْنَا: نَعَمْ، هُوَ حَقٌّ غَيْرُ الزَّكَاةِ، وَهُوَ أَنْ يُعْطِيَ الْحَاصِدُ حِينَ الْحَصْدِ مَا طَابَتْ بِهِ نَفْسُهُ وَلَا بُدَّ، لَا حَدَّ فِي ذَلِكَ، هَذَا ظَاهِرُ الْآيَةِ.

L10013–10014 If it is asked: "What is this obligatory right in the verse?" We respond: "Indeed, it is a right distinct from Zakāh. It is that the harvester gives at the time of harvest what he willingly chooses—and it is required—with no specified amount. This is the apparent meaning of the verse."

وَهُوَ قَوْلُ طَائِفَةٍ مِنْ السَّلَفِ، كَمَا حَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ ثنا أَحْمَدُ بْنُ دُحَيْمٍ ثنا إبْرَاهِيمُ بْنُ حَمَّادٍ ثنا إسْمَاعِيلُ بْنُ إسْحَاقَ الْقَاضِي ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا عَبْدُ الرَّحِيمِ بْنُ سُلَيْمَانَ عَنْ أَشْعَثَ هُوَ ابْنُ عَبْدِ الْمَلِكِ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ، وَعَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ فِي قَوْله تَعَالَى: {وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ} [الأنعام: ١٤١] قَالَ: كَانُوا يُعْطُونَ مَنْ اعْتَرَّ بِهِمْ شَيْئًا سِوَى الصَّدَقَةِ.

L10015 This is the statement of a group of the predecessors, as Yahya ibn Abd al-Rahman ibn Masud narrated to us: Ahmad ibn Duhaym narrated to us, Ibrahim ibn Hammad narrated to us, Isma'il ibn Ishaq al-Qadi narrated to us, Abu Bakr ibn Abi Shaybah narrated to us, Abd al-Rahim ibn Sulayman narrated from Ash'ath—who is the son of Abd al-Malik—from Muhammad ibn Sirin, and from Nafi' (who narrated) from Ibn Umar regarding the verse

[1] **Qur'an references (L10010):** Qur'an 6:141 (Al-An'am).
[2] **Qur'an references (L10012):** Qur'an 6:141 (Al-An'am).

of the Almighty: “And give its due on the day of its harvest” [Al-An’am: 141]. He said: They used to give something to those who came upon them besides the charity.[3]

L10016 And through him to Ismāʿīl ibn Isḥāq, who said: “Muḥammad ibn Abī Bakr—he is al-Muqaddamī—narrated to us.”

L10017 Yahya, that is, Ibn Saʿīd al-Qaṭṭān, narrated to us from Sufyān al-Thawrī, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī regarding the Almighty’s statement: “And give its due on the day of its harvest” [Al-Anʿām 6:141]. He explained: “One should give something like a handful.”[4]

L10018–10020 And through the chain of Jarīr from Manṣūr from Mujāhid regarding the statement of the Almighty: {And give its due on the day of its harvest} [Al-Anʿām: 141], he said: When you harvest and the poor are present, you set aside a portion for them from it. When you process it, you set aside a portion for them from it. When you clean it and start measuring, scoop out a portion for them. When you ascertain its measure, you separate its zakāh. When you begin harvesting dates, set aside for them from the separated harvest remnants and dates. When you begin measuring it, scoop generously for them from it. And when you ascertain its measure, set aside its Zakat.[5]

L10021 And also from Mujāhid: This is obligatory when the crop is harvested.

L10022 And from Abu al-ʿĀliyah regarding the statement of the Almighty: {And give its due obligation on the day of its harvest} [Al-Anʿām 6:141], he said: They would give something other than the prescribed charity (ṣadaqah).[6]

L10023 And from Saʿīd ibn Jubayr regarding the words of the Almighty: {And give its due on the day of its harvest} [al-Anʿām 6:141], he said: The weak and the needy come to it, and he gives him until he ascertains what will be.[7]

وَبِهِ إِلَى إِسْمَاعِيلَ بْنِ إِسْحَاقَ قَالَ: ثنا مُحَمَّدُ بْنُ أَبِي بَكْرٍ هُوَ الْمُقَدَّمِيُّ.

ثنا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي قَوْلِهِ تَعَالَى: {وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ} [الأنعام: ١٤١] قَالَ: يُعْطِي نَحْوًا مِنَ الضِّغْثِ.

وَمِنْ طَرِيقِ جَرِيرٍ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ فِي قَوْلِهِ تَعَالَى: {وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ} [الأنعام: ١٤١] قَالَ: إِذَا حَصَدْتَ وَحَضَرَكَ الْمَسَاكِينُ: طَرَحْتَ لَهُمْ مِنْهُ. وَإِذَا طَيَّبْتَ: طَرَحْتَ لَهُمْ مِنْهُ. وَإِذَا نَقَّيْتَهُ وَأَخَذْتَ فِي كَيْلِهِ: حَثَوْتَ لَهُمْ مِنْهُ. وَإِذَا عَلِمْتَ كَيْلَهُ: عَزَلْتَ زَكَاتَهُ. وَإِذَا أَخَذْتَ فِي جِدَادِ النَّخْلِ طَرَحْتَ لَهُمْ مِنَ التَّفَارِيقِ وَالتَّمْرِ وَإِذَا أَخَذْتَ فِي كَيْلِهِ: حَثَوْتَ لَهُمْ مِنْهُ. وَإِذَا عَلِمْتَ كَيْلَهُ: عَزَلْتَ زَكَاتَهُ.

وَعَنْ مُجَاهِدٍ أَيْضًا: هَذَا وَاجِبٌ حِينَ يُصْرِمُ.

وَعَنْ أَبِي الْعَالِيَةِ فِي قَوْلِهِ تَعَالَى: {وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ} [الأنعام: ١٤١] وَقَالَ: كَانُوا يُعْطُونَ شَيْئًا غَيْرَ الصَّدَقَةِ.

وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ فِي قَوْلِهِ تَعَالَى: {وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ} [الأنعام: ١٤١] قَالَ: يَمُرُّ بِهِ الضَّعِيفُ وَالْمِسْكِينُ فَيُعْطِيهِ حَتَّى يَعْلَمَ مَا يَكُونُ.

[3] **Qur’an references (L10015):** Qur’an 6:141 (Al-An’am).
[4] **Qur’an references (L10017):** Qur’an 6:141 (Al-An’am).
[5] **Qur’an references (L10018):** Qur’an 6:141 (Al-An’am).
[6] **Qur’an references (L10022):** Qur’an 6:141 (Al-An’am).
[7] **Qur’an references (L10023):** Qur’an 6:141 (Al-An’am).

L10024 From Ja’far ibn Muhammad ibn Ali ibn al-Husayn, from his father, from his grandfather, regarding the verse “And give its due on the day of its harvest” [6:141]. He said: After the obligatory ṣadaqah incumbent upon him, one should give a handful of the crop and a portion.[8]

وَعَنْ جَعْفَرِ بْنِ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ أَبِيهِ عَنْ جَدِّهِ {وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ} [الأنعام: ١٤١] . قَالَ: بَعْدَ الَّذِي يَجِبُ عَلَيْهِ مِنْ الصَّدَقَةِ، يُعْطِي الضِّغْثَ وَالشَّيْءَ.

L10025 And from Rabīʿ ibn Anas: {And give its due on the day of its harvest} [Al-An’am: 141]. He said: “The gleaning of the ears of grain.”[9]

وَعَنْ الرَّبِيعِ بْنِ أَنَسٍ: {وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ} [الأنعام: ١٤١] . قَالَ: لُقَاطِ السُّنْبُلِ.

L10026 And from ‘Aṭā’ concerning the statement of the Most High: “And give its due on the day of its harvest” [Al-An‘ām 6:141], he said: “A minor portion besides the prescribed Zakat.”[10]

وَعَنْ عَطَاءٍ فِي قَوْلِه تَعَالَى: {وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ} [الأنعام: ١٤١] قَالَ: شَيْءٌ يَسِيرٌ سِوَى الزَّكَاةِ الْمَفْرُوضَةِ.

L10027 It is not authentically reported from Ibn Abbas that the verse was revealed concerning Zakat, for this claim derives from al-Ḥajjāj ibn Arṭāh—a discredited transmitter—and through Miqsam’s chain—a weak narrator.

وَلَا يَصِحُّ عَنْ ابْنِ عَبَّاسٍ أَنَّهَا نَزَلَتْ فِي الزَّكَاةِ، لِأَنَّهُ مِنْ رِوَايَةِ الْحَجَّاجِ بْنِ أَرْطَاةَ، وَهُوَ سَاقِطٌ، وَمِنْ طَرِيقِ مِقْسَمٍ، وَهُوَ ضَعِيفٌ.

L10028 And whoever claims that something has been abrogated will not have their claim accepted except through an unbroken textual transmission traced back to the Messenger of Allah—peace be upon him. Otherwise, anyone could arbitrarily assert abrogation for any verse or hadith they wish. To claim abrogation is to invalidate obedience to Allah Almighty in what He has commanded **from** that text, and this is impermissible except with a sound, textually-attested transmission supported by an authenticated chain.

وَمَنْ ادَّعَى أَنَّهُ نُسِخَ لَمْ يُصَدَّقْ إِلَّا بِنَصٍّ مُتَّصِلٍ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِلَّا فَمَا يَعْجَزُ أَحَدٌ عَنْ أَنْ يَدَّعِيَ فِي أَيِّ آيَةٍ شَاءَ، وَفِي أَيِّ حَدِيثٍ شَاءَ: أَنَّهُ مَنْسُوخٌ. وَدَعْوَى النَّسْخِ إِسْقَاطٌ لِطَاعَةِ اللَّهِ تَعَالَى فِيمَا أَمَرَ بِهِ مِنْ ذَلِكَ النَّصِّ، وَهَذَا لَا يَجُوزُ إِلَّا بِنَصٍّ مُسْنَدٍ صَحِيحٍ.

L10029 As for the statement of the Messenger of Allah—peace be upon him—“For what is watered by rain, one-tenth is due, and for what is irrigated by a bucket or a waterwheel, half a tenth is due,” it is a sound narration. Had nothing particularizing it come, none would have been permitted to oppose it.

وَأَمَّا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فِيمَا سَقَتْ السَّمَاءُ الْعُشْرُ وَفِيمَا سُقِيَ بِنَضْحٍ أَوْ دَالِيَةٍ نِصْفُ الْعُشْرِ» فَهُوَ خَبَرٌ صَحِيحٌ، لَوْ لَمْ يَأْتِ مَا يَخُصُّهُ لَمْ يَجُزْ خِلَافُهُ لِأَحَدٍ.

L10030–10031 But we found what ʿAbdullāh ibn Yūsuf and Aḥmad ibn Muḥammad al-Ṭalamankī narrated to us. ʿAbdullāh said: Aḥmad ibn Fatḥ narrated to us, ʿAbd al-Wahhāb ibn ʿĪsā narrated to us, Aḥmad ibn Muḥammad narrated to

لَكِنْ وَجَدْنَا مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ وَأَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ، قَالَ عَبْدُ اللَّهِ: ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَعَمْرٌو النَّاقِدُ، وَزُهَيْرُ بْنُ حَرْبٍ، قَالُوا كُلُّهُمْ: ثنا وَكِيعٌ:

[8] **Qur’an references (L10024):** Qur’an 6:141 (Al-An’am).
[9] **Qur’an references (L10025):** Qur’an 6:141 (Al-An’am).
[10] **Qur’an references (L10026):** Qur’an 6:141 (Al-An’am).

وَقَالَ الطَّلَمَنْكِيُّ: ثنا ابْنُ مُفَرِّجٍ ثنا مُحَمَّدُ بْنُ أَيُّوبَ الرَّقِّيُّ ثنا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ ثنا أَحْمَدُ بْنُ الْوَلِيدِ الْعَدَنِيُّ ثنا يَحْيَى بْنُ آدَمَ -: ثُمَّ اتَّفَقَ وَكِيعٌ، وَيَحْيَى، كِلَاهُمَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إِسْمَاعِيلَ بْنَ أُمَيَّةَ عَنْ مُحَمَّدِ بْنِ يَحْيَى بْنِ حِبَّانَ عَنْ يَحْيَى بْنِ عُمَارَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَيْسَ فِيمَا دُونَ خَمْسَةِ أَوْسَاقٍ تَمْرٍ وَلَا حَبٍّ صَدَقَةٌ» . قَالَ وَكِيعٌ فِي رِوَايَتِهِ " مِنْ تَمْرٍ " وَاتَّفَقَا فِيمَا عَدَا ذَلِكَ. قَالَ أَبُو مُحَمَّد: وَهَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ، فَنَفَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الصَّدَقَةَ عَنْ كُلِّ مَا دُونَ خَمْسَةِ أَوْسَاقٍ مِنْ حَبٍّ أَوْ تَمْرٍ. وَلَفْظَةُ " دُونَ " فِي اللُّغَةِ الْعَرَبِيَّةِ تَقَعُ عَلَى مَعْنَيَيْنِ وُقُوعًا مُسْتَوِيًا، لَيْسَ أَحَدُهُمَا أَوْلَى مِنْ الْآخَرِ، وَهُمَا بِمَعْنَى: أَقَلُّ، وَبِمَعْنَى: غَيْرُ، قَالَ عَزَّ وَجَلَّ: {أَلا تَتَّخِذُوا مِنْ دُونِي وَكِيلا} [الإسراء: ٢] أَيْ مِنْ غَيْرِي.

وَقَالَ عَزَّ وَجَلَّ: {وَآخَرِينَ مِنْ دُونِهِمْ لا تَعْلَمُونَهُمُ} [الأنفال: ٦٠] أَيْ مِنْ غَيْرِهِمْ.

وَحَيْثُمَا وَقَعَتْ لَفْظَةُ " دُونَ " فِي الْقُرْآنِ فَهِيَ بِمَعْنَى: غَيْرُ؛ فَلَا يَجُوزُ لِأَحَدٍ أَنْ يَقْتَصِرَ بِلَفْظَةِ " دُونَ " فِي هَذَا الْخَبَرِ عَلَى مَعْنَى: أَقَلُّ دُونَ مَعْنَى: غَيْرُ وَنَحْنُ إذَا حَمَلْنَا " دُونَ " هَاهُنَا عَلَى مَعْنَى: غَيْرُ دَخَلَ فِيهِ: أَقَلُّ؛ وَتَخْصِيصُ اللَّفْظِ بِلَا بُرْهَانٍ مِنْ نَصٍّ لَا يَحِلُّ. فَصَحَّ يَقِينًا أَنَّهُ لَا زَكَاةَ فِي غَيْرِ خَمْسَةِ أَوْسُقٍ مِنْ حَبٍّ أَوْ تَمْرٍ، وَوَجَبَتْ الزَّكَاةُ فِيمَا زَادَ عَلَى خَمْسَةِ أَوْسُقٍ بِنَصِّ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِالْإِجْمَاعِ الْمُتَيَقَّنِ عَلَى ذَلِكَ.

us, Aḥmad ibn ʿAlī narrated to us, Muslim ibn al-Ḥajjāj narrated to us, Abū Bakr ibn Abī Shaybah, ʿAmr al-Nāqidi, and Zuhayr ibn Ḥarb all said: Wakīʿ narrated to us. Al-Ṭalamankī said: Ibn Mufarrij narrated to us, Muḥammad ibn Ayyūb al-Raqqī narrated to us, Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār narrated to us, Aḥmad ibn al-Walīd al-ʿAdanī narrated to us, Yaḥyā ibn Ādam narrated to us. Then their chains converge through Sufyān al-Thawrī, from Ismāʿīl ibn Umayyah, from Muḥammad ibn Yaḥyā ibn Ḥibbān, from Yaḥyā ibn ʿUmārah, from Abū Saʿīd al-Khudrī, who said: The Messenger of Allāh—peace and blessings of Allāh upon him—said, "There is no obligatory alms (Zakāt) on dates nor grain below five wasaqs." Wakīʿ specified in his narration, "of dates," and they concurred on the rest of the wording. Abū Muḥammad said, "This is a chain of the highest authenticity. Thus, the Messenger of Allāh—peace and blessings of Allāh upon him—exempted from obligatory alms anything below five wasaqs of grain or dates. The term 'below' in the Arabic language carries two meanings occurring with equal validity—one signifying 'lesser in quantity' and the other 'other than.' Allāh the Exalted said: *{Do not take besides Me any protector}* [17:2], meaning 'other than Me.'"[11]

L10032 And He, the Almighty and Majestic, said: *And others besides them whom you do not know* (Quran 8:60), meaning others apart from them.[12]

L10033–10035 Wherever the word *dūn* appears in the Qur'an, it signifies "other than." Consequently, it is impermissible to confine the term *dūn* in this context solely to the meaning of "less than" to the exclusion of its meaning as "other than." And when we interpret "dūna" here as meaning "other than," it follows that the lesser amount is not included; to restrict the wording's meaning without textual evidence is impermissible. Thus, it is correctly and certainly established that there is no zakah due on anything other than five awsuq of grains or dates, while zakah becomes obligatory on what exceeds five awsuq by the explicit textual statement of the Messenger of Allah—peace and blessings be upon him—and by the definitive consensus established regarding this ruling.

[11] **Qur'an references (L10031):** Qur'an 17:2 (Al-Isra).
[12] **Qur'an references (L10032):** Qur'an 8:60 (Al-Anfal).

L10036 And similarly, this applies to camels, cattle, sheep and goats, gold, and silver, by the definitive consensus and the textual evidence as well.

L10037–10039 Zakat is waived for anything other than that which is subject to disagreement and lacks an explicit textual ruling, based on the Prophet's—peace and blessings of Allah be upon him—negation of zakat for anything other than five wasqs of grain or dates. It then becomes obligatory to examine what the term "grain" (ḥabb) denotes in the language with which the Messenger of Allah—peace and blessings of Allah be upon him—addressed us. We found what Muḥammad ibn Saʿīd ibn Nabāt narrated to us: Aḥmad ibn ʿAbd al-Baṣīr narrated to us, Qāsim ibn Aṣbagh narrated to us, Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us, Muḥammad ibn al-Muthannā narrated to us, ʿAbd al-ʿAzīz ibn ʿAbd al-Ṣamad al-ʿAmmī narrated to us from ʿAṭāʾ ibn al-Sāʾib, from his father, from Saʿīd ibn Jubayr, from Ibn ʿAbbās concerning Allah's words: {grain} [80:27], {and grape, and fresh herbage} [80:28], {and olive and palm trees} [80:29]. Ibn ʿAbbās said: "Al-ḥabb is wheat, and al-qaḍb is clover." Thus, Ibn ʿAbbās—the definitive proof in the Arabic language—restricted "grain" (ḥabb) to wheat. Abū Ḥanīfah Aḥmad ibn Dāwūd al-Dīnawarī, the linguist, mentioned in his botanical work under the chapter titled "Cultivation, Farming, Names of Grains and Legumes, and Their Descriptions": Abū ʿAmr al-Shaybānī stated: "All plant seeds are termed 'al-ḥibbah' (with a kasrah [i.e., a short 'i' vowel] on the ḥāʾ)." Abū Muḥammad cited what is authentically established from the Messenger of Allah—peace and blessings of Allah be upon him—in his saying: "They will sprout as the grain sprouts in the silt of a flood." Abū Ḥanīfah al-Dīnawarī stated in the aforementioned chapter: Al-Kisāʾī said: "The singular form of ḥabb [grain] is ḥabbah [a single grain]." With the ḥāʾ pronounced with a fathah: As for "al-ḥabb," it refers exclusively to wheat and barley, their singular being "ḥabbah" with the ḥāʾ pronounced with a fathah - they differ only in their plural forms. Then Abū Ḥanīfah mentioned after this section - following remarks he presented to Abū Naṣr, the companion of Al-Aṣmaʿī, with a text stating: "Similarly other grains like rice and millet" - to which ʿAlī said: "These are three collective terms: *al-ḥabb* (for wheat), *al-shaʿīr* (specifically barley), and *al-ḥibbah* - with the ḥāʾ pronounced with a kasrah and the feminine

وَكَذَلِكَ فِي الْإِبِلِ، وَالْبَقَرِ وَالْغَنَمِ وَالذَّهَبِ وَالْفِضَّةِ، وَبِالْإِجْمَاعِ الْمُتَيَقَّنِ وَالنَّصِّ أَيْضًا.

وَسَقَطَتْ الزَّكَاةُ عَمَّا عَدَا ذَلِكَ مِمَّا اُخْتُلِفَ فِيهِ وَلَا نَصَّ فِيهِ، بِنَفْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الزَّكَاةَ عَنْ كُلِّ مَا هُوَ غَيْرُ خَمْسَةِ أَوْسُقٍ مِنْ حَبٍّ أَوْ تَمْرٍ ثُمَّ وَجَبَ أَنْ نَنْظُرَ مَا يَقَعُ عَلَيْهِ اسْمُ " حَبٍّ " فِي اللُّغَةِ الَّتِي بِهَا خَاطَبَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: فَوَجَدْنَا مَا حَدَّثَنَاهُ مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ الصَّمَدِ الْعَمِّيُّ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِيهِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ فِي قَوْلِهِ تَعَالَى: {حَبًّا} [عبس: ٢٧] {وَعِنَبًا وَقَضْبًا} [عبس: ٢٨] {وَزَيْتُونًا وَنَخْلًا} [عبس: ٢٩] قَالَ ابْنُ عَبَّاسٍ: الْحَبُّ: الْبُرُّ، وَالْقَضْبُ: الْفِصْفِصَةُ، فَاقْتَصَرَ ابْنُ عَبَّاسٍ - وَهُوَ الْحُجَّةُ فِي اللُّغَةِ - بِالْحَبِّ عَلَى الْبُرِّ. وَذَكَرَ أَبُو حَنِيفَةَ أَحْمَدُ بْنُ دَاوُد الدِّينَوَرِيُّ اللُّغَوِيُّ فِي كِتَابِهِ فِي النَّبَاتِ فِي بَابِ تَرْجَمَتِهِ " بَابُ الزَّرْعِ وَالْحَرْثِ وَأَسْمَاءِ الْحَبِّ وَالْقَطَانِيِّ وَأَوْصَافِهَا " فَقَالَ -: قَالَ أَبُو عَمْرٍو وَهُوَ الشَّيْبَانِيُّ - جَمِيعُ بُزُورِ النَّبَاتِ يُقَالُ لَهَا " الْحَبَّةُ " بِكَسْرِ الْحَاءِ. قَالَ أَبُو مُحَمَّدٍ كَمَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ: «فَيَنْبُتُونَ كَمَا تَنْبُتُ الْحَبَّةُ فِي حَمِيلِ السَّيْلِ» : قَالَ أَبُو حَنِيفَةَ الدِّينَوَرِيُّ فِي الْبَابِ الْمَذْكُورِ: وَقَالَ الْكِسَائِيُّ: وَاحِدُ الْحَبَّةِ: حَبَّةٌ، بِفَتْحِ الْحَاءِ، فَأَمَّا الْحَبُّ فَلَيْسَ إلَّا الْحِنْطَةَ، وَالشَّعِيرَ، وَاحِدُهَا حَبَّةٌ، بِفَتْحِ الْحَاءِ، وَإِنَّمَا افْتَرَقَتَا فِي الْجَمْعِ. ثُمَّ ذَكَرَ أَبُو حَنِيفَةَ بَعْدَ هَذَا الْفَصْلِ - إثْرَ كَلَامٍ ذَكَرَهُ لِأَبِي نَصْرٍ صَاحِبِ الْأَصْمَعِيِّ كَلَامًا نَصُّهُ: وَكَذَلِكَ غَيْرُهُ مِنْ الْحُبُوبِ كَالْأُرْزِ، وَالدُّخْنِ، قَالَ عَلِيٌّ: فَهَذِهِ ثَلَاثَةُ جُمُوعٍ -: الْحَبُّ لِلْحِنْطَةِ، وَالشَّعِيرُ خَاصَّةً، وَالْحِبَّةُ - بِكَسْرِ الْحَاءِ وَزِيَادَةِ

ending (-ah) - which applies specifically to all seeds beyond these two, while *al-ḥubūb* encompasses wheat, barley, and all other seeds." Al-Kisāʾī was an authority in linguistics, religious matters, and trustworthiness. Since it is confirmed that "al-ḥabb" in Arabic applies solely to wheat and barley, and the Messenger of Allah - peace and blessings be upon him - explicitly negated zakāh for anything besides these two and dates, stating: "There is no zakāh on any crops except these two and dates."[13]

الْهَاءِ فِي آخِرِهَا - لِكُلِّ مَا عَدَاهُمَا مِنْ الْبُزُورِ خَاصَّةً، وَالْحُبُوبُ لِلْحِنْطَةِ وَالشَّعِيرِ وَسَائِرِ الْبُزُورِ. وَالْكِسَائِيُّ إمَامٌ فِي اللُّغَةِ، وَفِي الدِّينِ، وَالْعَدَالَةِ. فَإِذْ قَدْ صَحَّ أَنَّ الْحَبَّ لَا يَقَعُ إلَّا عَلَى الْحِنْطَةِ وَالشَّعِيرِ فِي لُغَةِ الْعَرَبِ، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَصًّا بِنَفْيِ الزَّكَاةِ عَنْ غَيْرِهِمَا وَغَيْرِ التَّمْرِ -: فَلَا زَكَاةَ فِي شَيْءٍ مِنْ النَّبَاتِ غَيْرِهِمَا وَغَيْرِ التَّمْرِ.

L10040 It has been narrated by one who is not deemed reliable, from another who is not deemed reliable—and one of them is unknown—from yet another who is not deemed reliable, regarding the obligation of zakāh on grains: ʿAbd al-Malik ibn Ḥabīb al-Andalusī from al-Ṭalḥī from ʿAbd al-Raḥmān ibn Zayd ibn Aslam—and this chain is also disconnected.

وَقَدْ رَوَى مَنْ لَا يُوثَقُ بِهِ، عَمَّنْ لَا يُوثَقُ بِهِ، وَلَا يُدْرَى مَنْ هُوَ، عَمَّنْ لَا يُوثَقُ بِهِ إيجَابَ الزَّكَاةِ فِي الْحُبُوبِ - وَهُوَ عَبْدُ الْمَلِكِ بْنُ حَبِيبٍ الْأَنْدَلُسِيُّ عَنْ الطَّلْحِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ زَيْدِ بْنِ أَسْلَمَ، وَهُوَ أَيْضًا مُنْقَطِعٌ.

L10041 Abu Muhammad said: A group of the Salaf held this opinion, adding raisins to these three. As narrated to us by Muhammad ibn Saʿid ibn Nabaat, on the authority of ʿAbdullah ibn Nasr, on the authority of Qasim ibn Asbagh, on the authority of Ibn Waddāḥ, on the authority of Musa ibn Muʿawiyah, on the authority of Waki', from both ʿAmr ibn ʿUthman and Talhah ibn Yahya ibn Talhah ibn ʿUbaydullah. ʿAmr reported from Musa ibn Talhah ibn ʿUbaydullah: "When Muʿadh arrived in Yemen, he collected obligatory charity only from wheat, barley, dates, and raisins."

قَالَ أَبُو مُحَمَّد: وَقَالَ قَوْمٌ مِنْ السَّلَفِ بِمِثْلِ هَذَا، وَزَادُوا إلَى هَذِهِ الثَّلَاثَةِ: الزَّبِيبَ. كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ ثنا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعٌ عَنْ عَمْرِو بْنِ عُثْمَانَ، وَطَلْحَةَ بْنِ يَحْيَى بْنِ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ -: قَالَ عَمْرٌو عَنْ مُوسَى بْنِ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ: «أَنَّ مُعَاذًا لَمَّا قَدِمَ الْيَمَنَ لَمْ يَأْخُذْ الصَّدَقَةَ إلَّا مِنْ الْحِنْطَةِ، وَالشَّعِيرِ، وَالتَّمْرِ، وَالزَّبِيبِ» .

L10042 Talhah ibn Yahya narrated from Abu Burdah ibn Abi Musa al-Ashʿari, from his father, that he did not take it except from wheat, barley, dates, and raisins.

وَقَالَ طَلْحَةُ بْنُ يَحْيَى عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ أَنَّهُ لَمْ يَأْخُذْهَا إلَّا مِنْ الْحِنْطَةِ وَالشَّعِيرِ وَالتَّمْرِ وَالزَّبِيبِ.

L10043 Aḥmad ibn Muḥammad al-Jasūr narrated to us: Muḥammad ibn ʿĪsā ibn Rifāʿah narrated to us: ʿAlī ibn ʿAbd al-ʿAzīz narrated to us: Abū ʿUbayd al-Qāsim ibn Sallām narrated to us: Ḥajjāj—he is Ibn Muḥammad al-Aʿwar—from Ibn Jurayj, who informed me: Mūsā ibn ʿUqbah informed me from Nāfiʿ from Ibn ʿUmar regarding the Zakat obligation on fruits and crops. He said: "Whatever is from date palms, grapes, wheat, or barley."

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّد الْجَسُورِ ثنا مُحَمَّدُ بْنُ عِيسَى بْنِ رِفَاعَةَ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا أَبُو عُبَيْدٍ الْقَاسِمُ بْنُ سَلَّامٍ ثنا حَجَّاجٌ هُوَ ابْنُ مُحَمَّدٍ الْأَعْوَرُ - عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي مُوسَى بْنُ عُقْبَةَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ فِي صَدَقَةِ الثِّمَارِ وَالزَّرْعِ، قَالَ: مَا كَانَ مِنْ نَخْلٍ، أَوْ عِنَبٍ، أَوْ حِنْطَةٍ، أَوْ شَعِيرٍ.

[13] **Qur'an references (L10037):** Qur'an 80:28 ('Abasa); Qur'an 80:29 ('Abasa); Qur'an 80:27 ('Abasa).

L10044–10045 And through him to Abū ʿUbayd: Yazīd narrated from Hishām—who is Ibn Ḥassān—from al-Ḥasan al-Baṣrī that he held the tithe (ʿushr) applied only to wheat, barley, dates, and raisins. Abū ʿUbayd said: Yaḥyā ibn Saʿīd—who is al-Qaṭṭān—narrated from Ashʿath—who is Ibn ʿAbd al-Malik al-Ḥumrānī—from al-Ḥasan and Muḥammad ibn Sīrīn that they both said: Zakat applies to nine items—gold, silver, camels, cattle, sheep and goats, wheat, barley, dates, and raisins.

وَبِهِ إِلَى أَبِي عُبَيْدٍ: ثنا يَزِيدُ عَنْ هِشَامٍ هُوَ ابْنُ حَسَّانَ - عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّهُ كَانَ لَا يَرَى الْعُشْرَ إِلَّا فِي الْحِنْطَةِ، وَالشَّعِيرِ، وَالتَّمْرِ، وَالزَّبِيبِ. قَالَ أَبُو عُبَيْدٍ: وَقَالَ يَحْيَى بْنُ سَعِيدٍ هُوَ الْقَطَّانُ - عَنْ أَشْعَثَ هُوَ ابْنُ عَبْدِ الْمَلِكِ الْحُمْرَانِيُّ - عَنْ الْحَسَنِ، وَمُحَمَّدِ بْنِ سِيرِينَ أَنَّهُمَا قَالَا: الصَّدَقَةُ فِي تِسْعَةِ أَشْيَاءَ -: الذَّهَبِ، وَالْوَرِقِ، وَالْإِبِلِ، وَالْبَقَرِ، وَالْغَنَمِ، وَالْحِنْطَةِ، وَالشَّعِيرِ، وَالتَّمْرِ، وَالزَّبِيبِ.

L10046 Abū ʿUbayd said: This is the opinion of Ibn Abī Laylā and Sufyān al-Thawrī. Ḥammām narrated to us: ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bājī narrated to us: ʿAbdullāh ibn Yūnus narrated to us: Baqī ibn Makhlad narrated to us: Abū Bakr ibn Abī Shaybah narrated to us: Ḥumayd ibn ʿAbd al-Raḥmān narrated to us from al-Ḥasan—he is Ibn Ḥayy—from Muṭarrif, who said: Al-Ḥakam ibn ʿUtaybah said to me when I asked him about cottons and sesames: "Is there zakah due on them?" He replied: "We have not preserved from our predecessors that they ever stated there is anything [obligatory] in any of these, except in wheat, barley, dates, and raisins." Abū Muḥammad said: Al-Ḥakam met the senior Successors and some Companions. Through this chain to Abū Bakr ibn Abī Shaybah: Wakīʿ narrated to us from Ṭalḥah ibn Yaḥyā ibn Ṭalḥah ibn ʿUbaydillāh, who said: ʿAbd al-Ḥumayd asked Mūsā ibn Ṭalḥah ibn ʿUbaydillāh about zakah. Mūsā replied: "Zakah is only obligatory on wheat, barley, dates, and raisins."

قَالَ أَبُو عُبَيْدٍ: وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَسُفْيَانَ الثَّوْرِيِّ. حَدَّثَنَا حُمَامٌ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ ثنا عَبْدُ اللَّهِ بْنُ يُونُسَ ثنا بَقِيُّ بْنُ مَخْلَدٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ الْحَسَنِ هُوَ ابْنُ حَيٍّ - عَنْ مُطَرِّفٍ - قَالَ قَالَ لِي الْحَكَمُ بْنُ عُتَيْبَةَ وَقَدْ سَأَلْته عَنْ الْأَقْطَانِ، وَالسَّمَاسِمِ: أَفِيهَا صَدَقَةٌ. قَالَ: مَا حَفِظْنَا عَنْ أَصْحَابِنَا أَنَّهُمْ كَانُوا يَقُولُونَ: لَيْسَ فِي شَيْءٍ مِنْ هَذَا شَيْءٌ، إِلَّا فِي الْحِنْطَةِ، وَالشَّعِيرِ، وَالتَّمْرِ، وَالزَّبِيبِ. قَالَ أَبُو مُحَمَّدٍ: الْحَكَمُ أَدْرَكَ كِبَارَ التَّابِعِينَ وَبَعْضَ الصَّحَابَةِ. وَبِهِ إِلَى أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ ثنا وَكِيعٌ عَنْ طَلْحَةَ بْنِ يَحْيَى بْنِ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ قَالَ: سَأَلَ عَبْدُ الْحُمَيْدِ مُوسَى بْنَ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ عَنْ الصَّدَقَةِ. فَقَالَ مُوسَى: إِنَّمَا الصَّدَقَةُ فِي: الْحِنْطَةِ، وَالشَّعِيرِ، وَالتَّمْرِ، وَالزَّبِيبِ.

L10047 And through him to Abu Bakr ibn Abi Shaybah: Muhammad ibn Bakr narrated to us from Ibn Jurayj, who said: "'Aṭā' and ʿAmr ibn Dīnār told me: 'There is no sadaqah except on [the produce of] palm trees, grapevines, or grains.'"

وَبِهِ إِلَى أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ: ثنا مُحَمَّدُ بْنُ بَكْرٍ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ لِي عَطَاءٌ، وَعَمْرُو بْنُ دِينَارٍ: لَا صَدَقَةَ إِلَّا فِي نَخْلٍ، أَوْ عِنَبٍ، أَوْ حَبٍّ.

L10048 And something similar to this has been reported from Ali ibn Abi Talib. Abu Muhammad said: This was the view of Al-Hasan ibn Ḥayy, Abdullah ibn al-Mubarak, Abu Ubayd, and others.

وَقَدْ رُوِيَ نَحْوُ هَذَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ -: قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ الْحَسَنِ بْنِ حَيٍّ، وَعَبْدِ اللَّهِ بْنِ الْمُبَارَكِ، وَأَبِي عُبَيْدٍ وَغَيْرِهِمْ.

L10049 Abu Muhammad said: Those who held this opinion claimed that the obligation of zakah on raisins is established by consensus, and they cited narrations, none of which are sound.

قَالَ أَبُو مُحَمَّدٍ: وَادَّعَى مَنْ ذَهَبَ إِلَى هَذَا أَنَّ إِيجَابَ الزَّكَاةِ فِي الزَّبِيبِ إِجْمَاعٌ، وَذَكَرَ آثَارًا لَيْسَ مِنْهَا شَيْءٌ يَصِحُّ.

L10050–10051 One of them—narrated through Mūsā ibn Ṭalḥah: "We possess the written record of Muʿādh from the Prophet (may Allah bless him and grant him peace) stating that he only collected zakāt from dates, raisins, wheat, and barley." Abū Muḥammad said: This chain is interrupted, for Mūsā ibn Ṭalḥah did not meet Muʿādh at an age of intellectual maturity.

أَحَدُهَا - مِنْ طَرِيقِ مُوسَى بْنِ طَلْحَةَ: عِنْدَنَا «كِتَابُ مُعَاذٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ إنَّمَا أَخَذَ الصَّدَقَةَ مِنْ: التَّمْرِ، وَالزَّبِيبِ، وَالْحِنْطَةِ، وَالشَّعِيرِ» . قَالَ أَبُو مُحَمَّدٍ: هَذَا مُنْقَطِعٌ، لِأَنَّ مُوسَى بْنَ طَلْحَةَ لَمْ يُدْرِكْ مُعَاذًا بِعَقْلِهِ.

L10052 And another – via the transmission of Muhammad ibn Abi Layla, who is poor in memory, from ʿAbd al-Karim, from ʿAmr ibn Shuʿayb, from his father, from his grandfather, and it is a written document, from the Prophet, peace be upon him: "The tenth (ʿushr) is in dates, raisins, wheat, and barley."

وَآخَرُ - مِنْ طَرِيقِ مُحَمَّدِ بْنِ أَبِي لَيْلَى، وَهُوَ سَيِّئُ الْحِفْظِ، عَنْ عَبْدِ الْكَرِيمِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ، وَهِيَ صَحِيفَةٌ، عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْعُشْرُ فِي: التَّمْرِ، وَالزَّبِيبِ، وَالْحِنْطَةِ، وَالشَّعِيرِ» .

L10053 Our opponents oppose many parts of the document of ʿAmr ibn Shuʿayb and do not regard it as proof. Another chain—through the transmission of ʿAbd al-Raḥmān ibn Isḥāq and ʿAbd Allāh ibn Nāfiʿ, both of whom are extremely weak; through the chain of Muḥammad ibn Muslim al-Ṭāʾifī, who is also extremely weak; and through the chain of ʿAbd al-Malik ibn Ḥabīb al-Andalusī from Asad ibn Mūsā—who is denounced in ḥadīth transmission—from Naṣr ibn Ṭarīf, known as Abū Juzʾ, who is wholly discarded as a narrator—all of them report from Saʿīd ibn al-Musayyib that ʿAttāb ibn Usayd ordered the estimation of grape yields. Yet Saʿīd was not born until two years after ʿAttāb's death. Moreover, the Prophet—peace and blessings of Allah be upon him—appointed ʿAttāb as governor only over Mecca, which had no cultivated fields or vineyards. Thus, all their contentious arguments are invalidated. Had any of these reports been authentic, we would have acted upon it, and it would not have been permissible for us to oppose it, just as it is impermissible to base rulings in Allah's religion upon an unverified report.

وَخُصُومُنَا يُخَالِفُونَ كَثِيرًا مِنْ صَحِيفَةِ عَمْرِو بْنِ شُعَيْبٍ، وَلَا يَرَوْنَهُ حُجَّةً. وَآخَرُ - مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ إِسْحَاقَ، وَعَبْدِ اللَّهِ بْنِ نَافِعٍ، وَكِلَاهُمَا فِي غَايَةِ الضَّعْفِ. وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ مُسْلِمٍ الطَّائِفِيِّ، وَهُوَ فِي غَايَةِ الضَّعْفِ. وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ عَنْ أَسَدِ بْنِ مُوسَى - وَهُوَ مُنْكَرُ الْحَدِيثِ، عَنْ نَصْرِ بْنِ طَرِيفٍ وَهُوَ أَبُو جُزْءٍ، وَهُوَ سَاقِطٌ أَلْبَتَّةَ؛ كُلُّهُمْ يَذْكُرُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عَتَّابِ بْنِ أُسَيْدٍ أَنَّهُ أَمَرَ بِخَرْصِ الْعِنَبِ. وَسَعِيدٌ لَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ عَتَّابٍ بِسَنَتَيْنِ. وَعَتَّابٌ لَمْ يُوَلِّهِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا مَكَّةَ وَلَا زَرْعَ بِهَا، وَلَا عِنَبَ. فَسَقَطَ كُلُّ مَا شَغَبُوا بِهِ، وَلَوْ صَحَّ شَيْءٌ مِنْ هَذِهِ الْآثَارِ لَأَخَذْنَا بِهِ، وَلَمَا حَلَّ لَنَا خِلَافُهُ، كَمَا لَا يَحِلُّ الْأَخْذُ فِي دِينِ اللَّهِ تَعَالَى بِخَبَرٍ لَا يَصِحُّ.

L10054 As for the claim of consensus, it is invalid. As narrated to us by Aḥmad ibn Muḥammad ibn al-Jasūr, citing Muḥammad ibn ʿĪsā, who cited ʿAlī ibn ʿAbd

al-ʿAzīz, who cited Abū ʿUbayd al-Qāsim ibn Sallām, who cited ʿAbbād ibn al-ʿAwwām, via Sufyān ibn Ḥusayn, via al-Ḥakam ibn ʿUtaybah, via Shurayḥ, who said: "Zakāh is taken from wheat, barley, and dates." He did not hold that Zakāh is due on grapes.

وَأَمَّا دَعْوَى الْإِجْمَاعِ فَبَاطِلٌ -: كَمَا حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا مُحَمَّدُ بْنُ عِيسَى ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا أَبُو عُبَيْدٍ الْقَاسِمُ بْنُ سَلَّامٍ ثنا عَبَّادُ بْنُ الْعَوَّامِ عَنْ سُفْيَانَ بْنِ حُسَيْنٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ شُرَيْحٍ قَالَ: تُؤْخَذُ الصَّدَقَةُ مِنْ: الْحِنْطَةِ، وَالشَّعِيرِ، وَالتَّمْرِ كَانَ لَا يَرَى فِي الْعِنَبِ صَدَقَةً.

L10055–10057 From him to Abū ʿUbayd: Hushaym narrated to us from al-Ajlaḥ from al-Shaʿbī, who said: "Sadaqah is due on wheat, barley, and dates." Muḥammad ibn Saʿīd ibn Nabāt narrated to us, Aḥmad ibn ʿAwnillāh narrated to us, Qāsim ibn Aṣbagh narrated to us, Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us. Muhammad ibn Bishar Bundar narrated to us: Ghundar narrated to us, Shu'bah narrated to us from al-Hakam ibn 'Utaybah, who said: "There is no Zakat on horses, nor is there Zakat on working camels, and there is nothing due on raisins as Zakat." These individuals—Shurayh, al-Sha'bi, and al-Hakam ibn 'Utaybah—do not consider Zakat applicable to raisins.

وَبِهِ إِلَى أَبِي عُبَيْدٍ: ثنا هُشَيْمٌ عَنْ الْأَجْلَحِ عَنْ الشَّعْبِيِّ قَالَ: الصَّدَقَةُ فِي: الْبُرِّ، وَالشَّعِيرِ، وَالتَّمْرِ. حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا أَحْمَدُ بْنُ عَوْنِ اللَّهِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ بَشَّارٍ بُنْدَارٌ ثنا غُنْدَرٌ ثنا شُعْبَةُ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: لَيْسَ فِي الْخَيْلِ زَكَاةٌ، وَلَا فِي الْإِبِلِ الْعَوَامِلِ زَكَاةٌ، وَلَيْسَ فِي الزَّبِيبِ: شَيْءٌ. فَهَؤُلَاءِ: شُرَيْحٌ، وَالشَّعْبِيُّ، وَالْحَكَمُ بْنُ عُتَيْبَةَ، لَا يَرَوْنَ فِي الزَّبِيبِ زَكَاةً.

L10058 Abu Muhammad said: There is no valid opinion except that of those who obligate zakah on all that the earth produces, based on the general application of the authentic report "In rain-watered crops, one-tenth is due," or our position - which holds that zakah only applies to what the Messenger of Allah (peace and blessings be upon him) explicitly designated by name in revelation, in accordance with his verified statement (peace be upon him): "There is no obligatory charity on less than five awsuq of grains or dates."

قَالَ أَبُو مُحَمَّدٍ: وَلَيْسَ إلَّا قَوْلُ مَنْ قَالَ بِإِيجَابِ الزَّكَاةِ فِي كُلِّ مَا أَنْبَتَتْهُ الْأَرْضُ، عَلَى عُمُومِ الْخَبَرِ الثَّابِتِ «فِيمَا سَقَتْ السَّمَاءُ الْعُشْرُ» أَوْ قَوْلُنَا، وَهُوَ لَا زَكَاةَ إلَّا فِيمَا أَوْجَبَهَا فِيهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِاسْمِهِ، عَلَى مَا صَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - مِنْ أَنَّهُ قَالَ: «لَيْسَ فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ مِنْ حَبٍّ وَلَا تَمْرٍ صَدَقَةٌ» .

L10059 As for those who omitted from that narration what its generality necessitates and added to this narration what is not in it: they did not rely on the Quran, nor an authentic Sunnah, nor a weak narration, nor the statement of a Companion with no opposing opinion among them, nor analogy, nor uniform legal reasoning. Rather, they opposed all of that because if they considered sustenance, they exempted zakat on many types of sustenance such as figs, chestnuts, milk, and others, yet obligated it on what is not sustenance, such as olive oil, chickpeas, and other items not used as sustenance except out of necessity during famine.

وَأَمَّا مَنْ أَسْقَطَ مِنْ ذَلِكَ الْخَبَرِ مَا يَقْتَضِيهِ عُمُومُهُ، وَزَادَ فِي هَذَا الْخَبَرِ مَا لَيْسَ فِيهِ -: فَلَمْ يَتَعَلَّقُوا بِقُرْآنٍ وَلَا بِسُنَّةٍ صَحِيحَةٍ، وَلَا بِرِوَايَةٍ ضَعِيفَةٍ، وَلَا بِقَوْلِ صَاحِبٍ لَا مُخَالِفَ لَهُ مِنْهُمْ، وَلَا بِقِيَاسٍ وَلَا بِتَعْلِيلٍ مُطَّرِدٍ؛ بَلْ خَالَفُوا كُلَّ ذَلِكَ؛ لِأَنَّهُمْ إنْ رَاعَوْا الْقُوتَ، فَقَدْ أَسْقَطُوا الزَّكَاةَ عَنْ كَثِيرٍ مِنْ الْأَقْوَاتِ: كَالتِّينِ، وَالْقَسْطَلِ، وَاللَّبَنِ، وَغَيْرِ ذَلِكَ،

وَأَوْجَبُوهُ فِيمَا لَيْسَ قُوتًا: كَالزَّيْتِ وَالْحِمَّصِ، وَغَيْرِ ذَلِكَ مِمَّا لَا يُتَقَوَّتُ إِلَّا لِضَرُورَةِ مَجَاعَةٍ.

L10060 If they based [the ruling] on edibility, they waived the obligation for many edible substances, while some scholars imposed it on inedible matters like mustard oil, cottonseed oil, and other such things.

وَإِنْ رَاعَوْا الْأَكْلَ فَقَدْ أَسْقَطُوهَا عَنْ كَثِيرٍ مِمَّا يُؤْكَلُ، وَأَوْجَبَهَا بَعْضُهُمْ فِيمَا لَا يُؤْكَلُ: كَزَيْتِ الْفُجْلِ وَالْقُطْنِ، وَغَيْرِ ذَلِكَ.

L10061 And if they considered what is measured by the *wasq*, they have indeed waived the obligation for a significant portion of what is measured by it.

وَإِنْ رَاعَوْا مَا يُوسَقُ، فَقَدْ أَسْقَطُوهَا عَنْ كَثِيرٍ مِمَّا يُوسَقُ.

L10062 Moreover, had they considered any of these meanings and discarded their foundational principle, they would have been asserting without proof—but with a baseless claim and false conjecture. And Allah the Most High says: “Indeed, conjecture avails nothing against the truth.” [Yunus: 36][14]

ثُمَّ أَيْضًا - لَوْ رَاعَوْا شَيْئًا مِنْ هَذِهِ الْمَعَانِي وَطَرَدُوا أَصْلَهُمْ لَكَانُوا قَائِلِينَ بِلَا بُرْهَانٍ، لَكِنْ بِدَعْوَى فَاسِدَةٍ وَظَنٍّ كَاذِبٍ، وَاَللَّهُ تَعَالَى يَقُولُ: {إِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [يونس: ٣٦] .

L10063 The Messenger of Allah, peace be upon him, said: “Beware of suspicion, for indeed suspicion is the most false of statements.”

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» .

L10064 If only one of these two aforementioned opinions remains valid, then the view that obliges zakāh on all agricultural produce imposes severe constraint, hardship on the people, and unbearable difficulty.

فَإِنْ لَمْ يَبْقَ إِلَّا أَحَدُ هَذَيْنِ الْقَوْلَيْنِ الْمَذْكُورَيْنِ، فَإِنَّ قَوْلَ مَنْ أَوْجَبَ الزَّكَاةَ فِي كُلِّ مَا أَنْبَتَتْ الْأَرْضُ حَرَجٌ شَدِيدٌ، وَشِقُّ الْأَنْفُسِ، وَعُسْرٌ لَا يُطَاقُ.

L10065–10067 Adhering to that report imposes an obligation beyond one’s capacity—something impossible that cannot be at all—for it would necessitate that if any vegetation were to grow in someone’s home or on a piece of their land, even a single leaf, a narcissus, a bean plant, a sprig of rue, a spice plant, or one fig, a tenth of each would become obligatory. That, or half of a tenth of it.

وَالْأَخْذُ بِذَلِكَ الْخَبَرِ تَكْلِيفُ مَا لَيْسَ فِي الْوُسْعِ، وَمُمْتَنِعٌ لَا يُمْكِنُ أَلْبَتَّةَ؛ لِأَنَّهُ يُوجِبُ أَنْ لَا يَنْبُتَ فِي دَارِ أَحَدٍ، أَوْ فِي قِطْعَةِ أَرْضٍ لَهُ: عُشْبٌ، وَلَوْ أَنَّهُ وَرَقَةٌ وَاحِدَةٌ، أَوْ نَرْجِسَةٌ، أَوْ فُولٌ، أَوْ غُصْنُ حُرْفٍ أَوْ بَهَارَةٌ أَوْ تِينَةٌ وَاحِدَةٌ إِلَّا وَجَبَ عَلَيْهِ عُشْرُ كُلِّ ذَلِكَ، أَوْ نِصْفُ عُشْرِهِ.

L10068 Similarly, the leaves of trees and straw—even the straw of broad beans—and flax stalks; yes. The roots of the trees themselves are included, because all these are watered by water; and this is entirely impossible.

وَكَذَلِكَ وَرَقُ الشَّجَرِ وَالتِّبْنُ، حَتَّى تِبْنُ الْفُولِ، وَقَصَبُ الْكَتَّانِ، نَعَمْ. وَأُصُولُ الشَّجَرِ نَفْسُهَا؛ لِأَنَّ كُلَّ ذَلِكَ مِمَّا يَسْقِيهِ الْمَاءُ، وَهَذَا مَا لَا يُمْكِنُ أَلْبَتَّةَ.

وَقَدْ قَالَ تَعَالَى: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨]

[14] **Qur’an references (L10062):** Qur’an 10:36 (Yunus).

L10069 And He, the Exalted, has said: {He has not imposed any constriction upon you in [matters of] faith} [Al-Ḥajj: 78].[15]

L10070 And He, the Exalted, said: “Allah intends ease for you and does not intend difficulty for you” [al-Baqarah 2:185].[16]

L10071 And He, the Exalted, said: “Allah does not burden any soul beyond its capacity” [Al-Baqarah: 286][17]

L10072 And He, the Exalted, has bestowed favor upon us when He answered our supplication—the supplication He, the Exalted, commanded us to supplicate with—so that we may say: Our Lord, do not burden us as You burdened those before us. Our Lord, and do not burden us with what we have no ability to bear [Al-Baqarah: 286].[18]

L10073 The Messenger of Allah (peace be upon him) said, “Make things easy and do not make them difficult.”

L10074 If it is said: *In such a case, what applies to two partners should be applied here.* We respond: This is not permissible, because while one partner selling to another is permitted, and dissolving their partnership is allowed, selling voluntary charity (ṣadaqah) before taking possession is impermissible, nor is dissolving it permissible at all. Thus, it is definitively established that this textual evidence is not universally applicable. Since this is the case, we cannot determine what is excepted from it except through clarification provided by another explicit text. Therefore, it is confirmed that zakāh is only obligatory for what is mandated by a separate textual proof or a definitively established consensus—and no such text or consensus exists except for wheat, barley, and dates.

L10075 Whoever transgresses this is merely prescribing rulings by his own opinion and restricting the *athar* through his false conjecture—and this is forbidden—. And success is from Allah, the Most High.

وَقَالَ تَعَالَى: {يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلا يُرِيدُ بِكُمُ الْعُسْرَ} [البقرة: ١٨٥] .

وَقَالَ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦]

وَامْتَنَّ تَعَالَى عَلَيْنَا إِذْ أَجَابَنَا فِي دُعَائِنَا الَّذِي أَمَرَنَا تَعَالَى أَنْ نَدْعُوَ بِهِ فَنَقُولَ {رَبَّنَا وَلا تَحْمِلْ عَلَيْنَا إِصْرًا كَمَا حَمَلْتَهُ عَلَى الَّذِينَ مِنْ قَبْلِنَا رَبَّنَا وَلا تُحَمِّلْنَا مَا لا طَاقَةَ لَنَا بِهِ} [البقرة: ٢٨٦]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يَسِّرُوا وَلَا تُعَسِّرُوا» .

فَإِنْ قِيلَ: يُفْعَلُ فِي ذَلِكَ مَا يُفْعَلُ الشَّرِيكَانِ فِيهِ. قُلْنَا: هَذَا لَا يَجُوزُ؛ لِأَنَّ بَيْعَ أَحَدِ الشَّرِيكَيْنِ مِنْ صَاحِبِهِ مُبَاحٌ، وَتَحْلِيلُهُ لَهُ جَائِزٌ، وَلَا يَجُوزُ بَيْعُ الصَّدَقَةِ قَبْلَ قَبْضِهَا، وَلَا التَّحْلِيلُ مِنْهَا أَصْلًا. فَصَحَّ يَقِينًا أَنَّ ذَلِكَ الْخَبَرَ لَيْسَ عَلَى عُمُومِهِ، فَإِذْ ذَلِكَ كَذَلِكَ فَلَا نَدْرِي مَا يَخْرُجُ مِنْهُ إِلَّا بِبَيَانِ نَصٍّ آخَرَ. فَصَحَّ أَنْ لَا زَكَاةَ إِلَّا فِيمَا أَوْجَبَهُ بَيَانُ نَصٍّ غَيْرِ ذَلِكَ النَّصِّ، أَوْ إِجْمَاعٌ مُتَيَقَّنٌ، وَلَا نَصَّ وَلَا إِجْمَاعَ إِلَّا فِي الْبُرِّ وَالشَّعِيرِ وَالتَّمْرِ فَقَطْ.

وَمَنْ تَعَدَّى هَذَا فَإِنَّمَا يُشَرِّعُ بِرَأْيِهِ، وَيُخَصِّصُ الْأَثَرَ بِظَنِّهِ الْكَاذِبِ - وَهَذَا حَرَامٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا الْمَعَادِنُ: فَإِنَّ الْأُمَّةَ مُجْمِعَةٌ بِلَا خِلَافٍ مِنْ أَحَدٍ عَلَى أَنَّ الصُّفْرَ، وَالْحَدِيدَ، وَالرَّصَاصَ، وَالْقَزْدِيرَ: لَا زَكَاةَ فِي أَعْيَانِهَا، وَإِنْ كَثُرَتْ.

[15] **Qur’an references (L10069):** Qur’an 22:78 (Al-Hajj).
[16] **Qur’an references (L10070):** Qur’an 2:185 (Al-Baqarah).
[17] **Qur’an references (L10071):** Qur’an 2:286 (Al-Baqarah).
[18] **Qur’an references (L10072):** Qur’an 2:286 (Al-Baqarah).

L10076 As for minerals, the ummah is in unanimous consensus—with no dissent from anyone—that no zakāt is due on the substances of copper, iron, lead, or tin, even if they are abundant.

L10077–10079 Then they differed when items subject to zakah were combined with: dinars, dirhams, and precious-metal jewelry. A group maintained that those dinars and dirhams must be purified by their weight. Abu Muhammad said: This is an egregious error, for the Messenger of Allah—peace and blessings be upon him—explicitly nullified zakah regarding what falls below... Five ūqiyyahs of silver, and in gold below that amount. He did not obligate—without any disagreement—zakāh on any of the aforementioned mineral substances. Thus, whoever obligates zakāh on dinars and dirhams alloyed with copper, iron, lead, or tin has opposed the Messenger of Allah (peace be upon him) twice.

ثُمَّ اخْتَلَفُوا إذَا مُزِجَ شَيْءٌ مِنْهَا فِي: الدَّنَانِيرِ، وَالدَّرَاهِمِ، وَالْحُلِيِّ. فَقَالَتْ طَائِفَةٌ: تُزَكَّى تِلْكَ الدَّنَانِيرُ، وَالدَّرَاهِمُ: بِوَزْنِهَا. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ فَاحِشٌ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَسْقَطَ الزَّكَاةَ نَصًّا فِيمَا دُونَ خَمْسِ أَوَاقٍ مِنْ الْوَرِقِ، وَفِيمَا دُونَ مِقْدَارِهَا مِنْ الذَّهَبِ، وَلَمْ يُوجِبْ - بِلَا خِلَافٍ - زَكَاةً فِي شَيْءٍ مِنْ أَعْيَانِ الْمَعَادِنِ الْمَذْكُورَةِ، فَمَنْ أَوْجَبَ الزَّكَاةَ فِي الدَّنَانِيرِ، وَالدَّرَاهِمِ الْمَمْزُوجَةِ بِالنُّحَاسِ، أَوْ الْحَدِيدِ، أَوْ الرَّصَاصِ، أَوْ الْقَزْدِيرِ، فَقَدْ خَالَفَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَرَّتَيْنِ -:

L10080 One of them: regarding his ruling that zakāt is obligatory for [holding] less than five awāq of silver.

إحْدَاهُمَا - فِي إيجَابِهِ الزَّكَاةَ فِي أَقَلَّ مِنْ خَمْسِ أَوَاقٍ مِنْ الرَّقَّةِ.

L10081 The second issue concerns the obligation of Zakāt on the substances of the aforementioned minerals. Moreover, they contradicted themselves by imposing Zakāt on brass, lead, tin, and iron when any of these is alloyed with silver or gold, yet exempting them from Zakāt if they are unalloyed. This constitutes an impermissible arbitrary imposition.

وَالثَّانِيَةُ - فِي إيجَابِهِ الزَّكَاةَ فِي أَعْيَانِ الْمَعَادِنِ الْمَذْكُورَةِ. وَأَيْضًا: فَإِنَّهُمْ تَنَاقَضُوا إذْ أَوْجَبُوا الزَّكَاةَ فِي: الصُّفْرِ، وَالرَّصَاصِ، وَالْقَزْدِيرِ، وَالْحَدِيدِ، إذَا مُزِجَ شَيْءٌ مِنْهَا بِفِضَّةٍ، أَوْ ذَهَبٍ، وَأَسْقَطُوا الزَّكَاةَ عَنْهَا إذَا كَانَتْ صِرْفًا وَهَذَا تَحَكُّمٌ لَا يَحِلُّ.

L10082 Moreover, we ask them about some of these metals alloyed with silver or gold, where the alloyed portion is greater than the gold or the silver individually. Then we keep pressing them further until we ask them about two hundred dirhams, each containing only a single fals of silver with the remainder being copper. If they impose Zakāh on these, they would have committed a grave excess. If they exempt them, we ask them about the threshold at which they mandate Zakāh and the threshold below which they exempt it. If they were to define a specific threshold in this matter, they would be increasing their arbitrary rulings based on falsehood. If they do not define a threshold, they would have mixed what they prohibit with what

وَأَيْضًا: فَنَسْأَلُهُمْ عَنْ شَيْءٍ مِنْ هَذِهِ الْمَعَادِنِ مُزِجَ بِفِضَّةٍ، أَوْ ذَهَبٍ، فَكَانَ الْمَمْزُوجُ مِنْهَا أَكْثَرَ مِنْ الذَّهَبِ، وَمِنْ الْفِضَّةِ. ثُمَّ لَا نَزَالُ نَزِيدُهُمْ إلَى أَنْ نَسْأَلَهُمْ عَنْ مِائَتَيْ دِرْهَمٍ فِي كُلِّ دِرْهَمٍ فَلْسُ فِضَّةٍ فَقَطْ وَسَائِرُهَا نُحَاسٌ. فَإِنْ جَعَلُوا فِيهَا الزَّكَاةَ أَفْحَشُوا جِدًّا، وَإِنْ أَسْقَطُوهَا سَأَلْنَاهُمْ عَنْ الْحَدِّ الَّذِي يُوجِبُونَ فِيهِ الزَّكَاةَ وَالَّذِي يُسْقِطُونَهَا فِيهِ. فَإِنْ حَدُّوا فِي ذَلِكَ حَدًّا زَادُوا فِي التَّحَكُّمِ بِالْبَاطِلِ، وَإِنْ لَمْ يَحُدُّوا حَدًّا كَانُوا قَدْ خَلَطُوا مَا

they permit, failing to clarify for themselves or their followers the forbidden, so they may avoid it, and the lawful, so they may practice it.

يُحَرِّمُونَ بِمَا يُحِلُّونَ، وَلَمْ يُبَيِّنُوا لِأَنْفُسِهِمْ وَلَا لِمَنْ اتَّبَعَهُمْ الْحَرَامَ فَيَجْتَنِبُوه، مِنْ الْحَلَالِ فَيَأْتُوه.

L10083–10085 Abū Muḥammad said: The truth concerning this is that names in language and religious law are assigned to designated things based on inherent attributes within them. Silver has its attributes such that when they exist in something, that thing is called silver. The same applies to the name of gold, the name of copper, and the name of every designated thing in the world. Juridical rulings in religious law are predicated upon the names: silver has its ruling, gold has its ruling, And similarly, every name in the world.

قَالَ أَبُو مُحَمَّد: وَالْحَقُّ مِنْ هَذَا، هُوَ أَنَّ الْأَسْمَاءَ فِي اللُّغَةِ وَالدِّيَانَةِ وَاقِعَةٌ عَلَى الْمُسَمَّيَاتِ بِصِفَاتٍ مَحْمُولَةٍ فِيهَا، فَلِلْفِضَّةِ صِفَاتُهَا الَّتِي إذَا وُجِدَتْ فِي شَيْءٍ سُمِّيَ ذَلِكَ الشَّيْءُ فِضَّةً، وَكَذَلِكَ الْقَوْلُ فِي اسْمِ الذَّهَبِ وَاسْمِ النُّحَاسِ وَاسْمِ كُلِّ مُسَمًّى فِي الْعَالَمِ. وَأَحْكَامُ الدِّيَانَةِ إنَّمَا جَاءَتْ عَلَى الْأَسْمَاءِ، فَلِلْفِضَّةِ حُكْمُهَا، وَلِلذَّهَبِ حُكْمُهُ، وَكَذَلِكَ كُلُّ اسْمٍ فِي الْعَالَمِ.

L10086 If the legal term upon which the scriptural text specified a ruling ceases to apply, that ruling is nullified, and the designated entity transfers to the ruling in the text corresponding to the newly assigned name - such as grape juice and wine, vinegar, water, blood, milk, meat, vessels, dinars, and all existing entities in creation.

فَإِذَا سَقَطَ الِاسْمُ الَّذِي عَلَيْهِ جَاءَ النَّصُّ بِالْحُكْمِ سَقَطَ ذَلِكَ الْحُكْمُ، وَانْتَقَلَ الْمُسَمَّى إلَى الْحُكْمِ الَّذِي جَاءَ فِي النَّصِّ عَلَى الِاسْمِ الَّذِي وَقَعَ عَلَيْهِ، كَالْعَصِيرِ وَالْخَمْرِ، وَالْخَلِّ، وَالْمَاءِ، وَالدَّمِ، وَاللَّبَنِ، وَاللَّحْمِ، وَالْآنِيَةِ، وَالدَّنَانِيرِ، وَكُلِّ مَا فِي الْعَالَمِ.

L10087 If the mixing of silver or gold does not alter their inherent properties—those which, as long as they remain, cause them to be called silver and gold—then they retain their status as silver and gold, and Zakât is obligatory on them. But if the mixing of silver or gold alters their properties, such that the names “silver” and “gold” no longer apply to the dinars (gold coins) and dirhams (silver coins) due to the evident mixing within them, then it is considered silver combined with gold or silver combined with copper. In this case, Zakât is obligatory only on the quantity of silver in those dirhams, and there is no Zakât on the copper whose effect is apparent in them. The same ruling applies to gold mixed with other substances. If the dinars contain gold whose quantity requires Zakât, while the silver in them does not require Zakât, Zakât is due only on the gold portion, not the silver. Conversely, if the silver in them requires Zakât, while the gold does not, Zakât is due only on the silver portion, not the gold. If both the silver and gold in them individually

فَإِنْ كَانَ الْمَزْجُ فِي الْفِضَّةِ أَوْ الذَّهَبِ لَا يُغَيِّرُ صِفَاتِهِمَا الَّتِي مَا دَامَتْ فِيهَا سُمِّيَا فِضَّةً، وَذَهَبًا فَهِيَ فِضَّةٌ وَذَهَبٌ، فَالزَّكَاةُ فِيهِمَا. وَإِنْ كَانَ الْمَزْجُ فِي الْفِضَّةِ، أَوْ الذَّهَبِ قَدْ غَيَّرَ صِفَاتِهِمَا - وَسَقَطَ عَنْ الدَّنَانِيرِ وَالدَّرَاهِمِ اسْمُ فِضَّةٍ وَاسْمُ ذَهَبٍ لِظُهُورِ الْمَزْجِ فِيهِمَا - فَهُوَ حِينَئِذٍ: فِضَّةٌ مَعَ ذَهَبٍ، أَوْ فِضَّةٌ مَعَ نُحَاسٍ، فَالْوَاجِبُ أَنَّ فِي مِقْدَارِ الْفِضَّةِ الَّتِي فِي تِلْكَ الدَّرَاهِمِ تَجِبُ الزَّكَاةُ فِيهَا خَاصَّةً، وَلَا زَكَاةَ فِي النُّحَاسِ الظَّاهِرِ فِيهَا أَثَرُهُ - وَكَذَلِكَ الْقَوْلُ فِي الذَّهَبِ مَعَ مَا مُزِجَ بِهِ. فَإِنْ كَانَ فِي الدَّنَانِيرِ ذَهَبٌ تَجِبُ فِي مِقْدَارِهِ الزَّكَاةُ، وَفِضَّةٌ لَا تَجِبُ فِيهَا الزَّكَاةُ، فَالزَّكَاةُ فِيمَا فِيهَا مِنْ الذَّهَبِ دُونَ مَا فِيهَا مِنْ الْفِضَّةِ. وَإِنْ كَانَ مَا فِيهَا مِنْ الْفِضَّةِ تَجِبُ فِيهِ الزَّكَاةُ، وَمَا فِيهَا مِنْ الذَّهَبِ لَا تَجِبُ

require Zakât, each is subject to Zakât according to its own ruling, as if it were separate.

فِيهِ الزَّكَاةُ، فَالزَّكَاةُ فِيمَا فِيهَا مِنْ الْفِضَّةِ دُونَ مَا فِيهَا مِنْ الذَّهَبِ. وَإِنْ كَانَ فِيهَا مِنْ الْفِضَّةِ وَمِنْ الذَّهَبِ مَا تَجِبُ فِي كُلِّ وَاحِدٍ مِنْهُمَا الزَّكَاةُ، زُكِّيَ كُلُّ وَاحِدٍ مِنْهُمَا كَحُكْمِهِ وَلَوْ كَانَ مُنْفَرِدًا.

L10088 If the gold or silver contained within them would not require Zakat if it were separate, then no Zakat is due at all in that case.

وَإِنْ كَانَ مَا فِيهِمَا مِنْ الذَّهَبِ وَمِنْ الْفِضَّةِ لَا تَجِبُ فِيهِ الزَّكَاةُ لَوْ انْفَرَدَ، فَلَا زَكَاةَ هُنَاكَ أَصْلًا.

L10089 If the alloying process intensifies to the extent that neither silver nor gold retains its inherent properties, then those substances contain no silver or gold at all; thus, no Zakat is due on them at all, in accordance with the scriptural text—and success is from Allah, the Most High.

فَإِنْ زَادَ الْمَزْجُ حَتَّى لَا يَكُونَ لِلْفِضَّةِ وَلَا لِلذَّهَبِ هُنَاكَ صِفَةٌ فَلَيْسَ فِي تِلْكَ الْأَعْيَانِ فِضَّةٌ أَصْلًا وَلَا ذَهَبٌ، فَلَا زَكَاةَ فِيهَا أَصْلًا، اتِّبَاعًا لِلنَّصِّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L10090 The Ruling on Sadaqah for Horses and Enslaved People

[مَسْأَلَةُ صَدَقَةُ الْخَيْلِ وَالرَّقِيقِ]

L10091–10093 As for horses and slaves—Abdullah ibn Rabīʿ narrated to us: Abdullah ibn Muḥammad ibn ʿUthmān narrated to us, Aḥmad ibn Khālid narrated to us, ʿAlī ibn ʿAbd al-ʿAzīz narrated to us, al-Ḥajjāj ibn al-Minhāl narrated to us, Ḥammād ibn Salamah narrated to us from Qatādah from Anas ibn Mālik: that ʿUmar ibn al-Khaṭṭāb used to take ten from the head and from the horse. Ten for the enslaved, and five for pack horses—meaning ten dirhams per head of the enslaved and five dirhams per pack horse.

وَأَمَّا الْخَيْلُ، وَالرَّقِيقُ - فَقَدْ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ عَنْ أَنَسِ بْنِ مَالِكٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَانَ يَأْخُذُ مِنْ الرَّأْسِ عَشَرَةً وَمِنْ الْفَرَسِ عَشَرَةً، وَمِنْ الْبَرَاذِينِ خَمْسَةً - يَعْنِي رَأْسَ الرَّقِيقِ وَعَشَرَةَ دَرَاهِمَ، وَخَمْسَةَ دَرَاهِمَ.

L10094 Hummam narrated to us: Ibn Mufarrij narrated to us: Ibn al-A’rabi narrated to us: al-Dabari narrated to us: Abd al-Razzaq on the authority of Ibn Jurayj, who informed me that Amr—that is, Ibn Dinar—said: Hayy ibn Ya’la informed him that he heard Ya’la ibn Umayya say: Abd al-Rahman ibn Umayya, the brother of Ya’la ibn Umayya, purchased a mare for one hundred five-year-old she-camels. The seller regretted the sale, so he pursued Umar and said, “Ya’la and his brother have seized my horse unjustly.” Umar wrote to Ya’la: “Come to me immediately.” He came and informed him of the matter. Umar said, “Do horses truly reach such value among you?” Ya’la replied, “I have never known a horse to reach such a price before this.” Umar said, “We take one sheep from every forty sheep, but we do not take anything from

حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرٌو هُوَ ابْنُ دِينَارٍ - قَالَ: إنَّ حَيَّ بْنَ يَعْلَى أَخْبَرَهُ أَنَّهُ سَمِعَ يَعْلَى بْنَ أُمَيَّةَ يَقُولُ: ابْتَاعَ عَبْدُ الرَّحْمَنِ بْنُ أُمَيَّةَ أَخُو يَعْلَى بْنِ أُمَيَّةَ فَرَسًا أُنْثَى بِمِائَةِ قَلُوصٍ، فَنَدِمَ الْبَائِعُ، فَلَحِقَ بِعُمَرَ، فَقَالَ: غَصَبَنِي يَعْلَى وَأَخُوهُ فَرَسًا لِي. فَكَتَبَ عُمَرُ إلَى يَعْلَى: أَنْ الْحَقْ بِي فَأَتَاهُ فَأَخْبَرَهُ الْخَبَرَ، فَقَالَ عُمَرُ: إنَّ الْخَيْلَ لَتَبْلُغُ عِنْدَكُمْ هَذَا؟ فَقَالَ يَعْلَى: مَا عَلِمْت

horses; take one dinar from every horse." He said: He said: So he imposed one dinar upon every horse.

فَرَسًا بَلَغَ هَذَا قَبْلَ هَذَا. فَقَالَ عُمَرُ: فَنَأْخُذُ مِنْ أَرْبَعِينَ شَاةً شَاةً وَلَا نَأْخُذُ مِنَ الْخَيْلِ شَيْئًا خُذْ مِنْ كُلِّ فَرَسٍ دِينَارًا قَالَ: قَالَ: فَضَرَبَ عَلَى الْخَيْلِ دِينَارًا دِينَارًا.

L10095 Hammām narrated to us: ʿAbd Allāh ibn Muḥammad al-Bājiyy narrated to us: ʿAbd Allāh ibn Yūnus narrated to us: Baqī ibn Makhlad narrated to us: Abū Bakr ibn Abī Shaybah narrated to us: Muḥammad ibn Bakr reported on the authority of Ibn Jurayj, who said: ʿAbd Allāh ibn Abī Ḥusayn informed me that Ibn Shihāb informed him that al-Sā'ib, the nephew of Nimr, informed him that he used to deliver the zakāt for horses to ʿUmar ibn al-Khaṭṭāb. Ibn Shihāb added: ʿUthmān ibn ʿAffān would pay the zakāt for horses.

حَدَّثَنَا حُمَامٌ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الْبَاجِيَّ ثنا عَبْدُ اللَّهِ بْنُ يُونُسَ ثنا بَقِيُّ بْنُ مَخْلَدٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا مُحَمَّدُ بْنُ بَكْرٍ عَنِ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ أَبِي حُسَيْنٍ أَنَّ ابْنَ شِهَابٍ أَخْبَرَهُ أَنَّ السَّائِبَ ابْنَ أُخْتِ نَمِرٍ أَخْبَرَهُ أَنَّهُ كَانَ يَأْتِي عُمَرَ بْنَ الْخَطَّابِ بِصَدَقَاتِ الْخَيْلِ، قَالَ ابْنُ شِهَابٍ: وَكَانَ عُثْمَانُ بْنُ عَفَّانَ يُصْدِقُ الْخَيْلَ.

L10096 From the chain of Hammad ibn Salamah via Yunus ibn ʻUbayd from al-Hasan al-Basri: Marwan sent to Abu Saʻid al-Khudri, saying, "Send me the zakāh due on your dependents." He replied to the messenger, "Marwan does not realize we are only obligated to give a *ṣāʿ* of dates or half a *ṣāʿ* of wheat for every individual at the time of each Eid al-Fitr." From the chain of Muhammad ibn Jaʻfar via Shuʻbah from Hammad ibn Abi Sulayman, who said: "Zakat is obligatory on horses." Abu Hanifah and those who follow his legal school held that zakāh is due on horses, citing these narrations as evidence, along with Allah's statement: {Take from their wealth *ṣadaqah* (charity)} [At-Tawbah: 103].[19]

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنِ الْحَسَنِ الْبَصْرِيِّ: أَنَّ مَرْوَانَ بَعَثَ إِلَى أَبِي سَعِيدٍ الْخُدْرِيِّ: أَنْ ابْعَثْ إِلَيَّ بِزَكَاةِ رَقِيقِكَ. فَقَالَ لِلرَّسُولِ: إِنَّ مَرْوَانَ لَا يَعْلَمُ إِنَّمَا عَلَيْنَا أَنْ نُطْعِمَ عَنْ كُلِّ رَأْسٍ عِنْدَ كُلِّ فِطْرٍ صَاعَ تَمْرٍ أَوْ نِصْفَ صَاعِ بُرٍّ؛ وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ عَنْ شُعْبَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ قَالَ: وَفِي الْخَيْلِ الزَّكَاةُ. فَذَهَبَ أَبُو حَنِيفَةَ وَمَنْ قَلَّدَهُ إِلَى أَنَّ فِي الْخَيْلِ الزَّكَاةَ - وَاحْتَجُّوا بِهَذِهِ الْآثَارِ، وَبِقَوْلِ اللَّهِ تَعَالَى {خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً} [التوبة: ١٠٣] .

L10097 They said: "Horses are zakatable assets; therefore, the zakat concerning them is explicitly stipulated in the Quran."

وَقَالُوا: وَالْخَيْلُ أَمْوَالٌ، فَالصَّدَقَةُ فِيهَا بِنَصِّ الْقُرْآنِ.

L10098 And by the saying of the Messenger of Allah—peace and blessings of Allah be upon him—authentically narrated from him through the chain of Mālik, from Zayd ibn Aslam, from Abū Ṣāliḥ al-Sammān, from Abū Hurayrah, from the Prophet—peace and blessings of Allah be upon him—: "Horses are a source of reward for one man and a protection for another." Then he mentioned the ḥadīth, in which it states: "And a man who ties them for self-sufficiency

وَبِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الثَّابِتِ عَنْهُ مِنْ طَرِيقِ مَالِكٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ أَبِي صَالِحٍ السَّمَّانِ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْخَيْلُ لِرَجُلٍ أَجْرٌ، وَلِرَجُلٍ سِتْرٌ» فَذَكَرَ الْحَدِيثَ، وَفِيهِ «وَرَجُلٌ رَبَطَهَا تَغَنِّيًا وَتَعَفُّفًا، وَلَمْ يَنْسَ حَقَّ اللَّهِ فِي رِقَابِهَا، وَلَا ظُهُورِهَا، فَهِيَ لَهُ سِتْرٌ» .

[19] **Qur'an references (L10096):** Qur'an 9:103 (At-Tawbah).

and abstention from begging, and does not neglect the right of Allah in their necks and their backs—so they are a protection for him."[20]

L10099–10100 Abū Muḥammad said: This is what the Hanafīs have deceptively framed as evidence from the Qur'an, the Sunnah, and the practice of the Companions—while they oppose all of it. As for the verse, it does not state that every category of wealth entails alms. Rather, it says: *"Take from their wealth"* [9:103]. Had this text stood alone, a single *fals* would suffice for all a Muslim's wealth, since it constitutes alms taken from their possessions. Even if the verse had claimed—though it contains no such statement, neither by explicit text nor by indicative proof—that every category of wealth entails alms, they would still have no proof from it, for it specifies neither the quantity to be taken, the threshold of wealth subject to it, nor the timing for collecting such alms.[21]

L10101 In matters like these, it is impermissible to act upon anyone's opinion except that of the Messenger of Allah (peace and blessings be upon him) - who was commanded to clarify. Allah the Exalted said: {to make clear to mankind what has been sent down to them} [An-Nahl: 44].[22]

L10102 As for the hadith, there is nothing in it except that Allah the Exalted has a right over their necks and backs—neither specified nor quantified; and by consensus from us and them, there is no basis for zakah on the backs of horses.

L10103 Thus, it is established that this right is valid solely according to the outward meaning of the hadith, restricted to what one's soul willingly consents to of it in the cause of Allah, the Exalted, along with the free lending of its means of transport to those in dire need.

L10104 As for the actions of ʿUmar and ʿUthmān—may Allah be pleased with them—they differed from them. This is because Abū Ḥanīfah's position states there

قَالَ أَبُو مُحَمَّد: هَذَا مَا مَوَّهَ بِهِ الْحَنَفِيُّونَ مِنْ الِاحْتِجَاجِ بِالْقُرْآنِ وَالسُّنَّةِ وَفِعْلِ الصَّحَابَةِ، وَهُمْ مُخَالِفُونَ لِكُلِّ ذَلِكَ -: أَمَّا الْآيَةُ فَلَيْسَ فِيهَا أَنَّ كُلَّ صِنْفٍ مِنْ أَصْنَافِ الْأَمْوَالِ صَدَقَةٌ، وَإِنَّمَا فِيهَا {خُذْ مِنْ أَمْوَالِهِمْ} [التوبة: ١٠٣] فَلَوْ لَمْ يَرِدْ إلَّا هَذَا النَّصُّ وَحْدَهُ لَأَجْزَأَ فَلْسٌ وَاحِدٌ عَنْ جَمِيعِ أَمْوَالِ الْمُسْلِمِ، لِأَنَّهُ صَدَقَةٌ أُخِذَتْ مِنْ أَمْوَالِهِ. ثُمَّ لَوْ كَانَ فِي الْآيَةِ أَنَّ فِي كُلِّ صِنْفٍ مِنْ أَصْنَافِ الْأَمْوَالِ صَدَقَةً وَلَيْسَ ذَلِكَ فِيهَا لَا بِنَصٍّ وَلَا بِدَلِيلٍ لَمَا كَانَتْ لَهُمْ فِيهَا حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهَا مِقْدَارُ الْمَالِ الْمَأْخُوذِ، وَلَا مِقْدَارُ الْمَالِ الْمَأْخُوذِ مِنْهُ، وَلَا مَتَى تُؤْخَذُ تِلْكَ الصَّدَقَةُ.

وَمِثْلُ هَذَا لَا يَجُوزُ الْعَمَلُ فِيهِ بِقَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَأْمُورِ بِالْبَيَانِ، قَالَ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤]

وَأَمَّا الْحَدِيثُ فَلَيْسَ فِيهِ إلَّا أَنَّ لِلَّهِ تَعَالَى حَقًّا فِي رِقَابِهَا وَظُهُورِهَا، غَيْرَ مُعَيَّنٍ وَلَا مُبَيَّنَ الْمِقْدَارِ، وَلَا مَدْخَلَ لِلزَّكَاةِ فِي ظُهُورِ الْخَيْلِ بِإِجْمَاعٍ مِنَّا وَمِنْهُمْ.

فَصَحَّ أَنَّ هَذَا الْحَقَّ إنَّمَا هُوَ عَلَى ظَاهِرِ الْحَدِيثِ، وَهُوَ حُمِلَ عَلَى مَا طَابَتْ نَفْسُهُ مِنْهَا فِي سَبِيلِ اللَّهِ تَعَالَى، وَعَارِيَّةُ ظُهُورِهَا لِلْمُضْطَرِّ.

وَأَمَّا فِعْلُ عُمَرَ وَعُثْمَانَ - رَضِيَ اللَّهُ عَنْهُمَا - فَقَدْ خَالَفُوهُمَا، وَذَلِكَ أَنَّ قَوْلَ أَبِي حَنِيفَةَ: إنَّهُ لَا زَكَاةَ فِي الْخَيْلِ الذُّكُورِ وَلَوْ كَثُرَتْ وَبَلَغَتْ أَلْفَ فَرَسٍ فَإِنْ كَانَتْ إنَاثًا، أَوْ إنَاثًا وَذُكُورًا، سَائِمَةً غَيْرَ مَعْلُوفَةٍ فَحِينَئِذٍ تَجِبُ فِيهَا الزَّكَاةُ، وَصِفَةُ تِلْكَ الزَّكَاةِ أَنَّ صَاحِبَ

[20] **Hadith references (L10098):** Sahih al-Bukhari 7356; Sahih al-Bukhari 4962.
[21] **Qur'an references (L10100):** Qur'an 9:103 (At-Tawbah).
[22] **Qur'an references (L10101):** Qur'an 16:44 (An-Nahl).

is no *zakah* on male horses, even if they are numerous and reach a thousand horses. If they are female, or a mix of female and male, pastured and not stall-fed, then *zakah* becomes obligatory. The manner of that *zakah* is that the owner of the horses may choose: if he wishes, he may give one dinar or ten dirhams per horse, or if he wishes, he may assess their value and give five dirhams for every two hundred dirhams.

الْخَيْلِ مُخَيَّرٌ، إِنْ شَاءَ أَعْطَى عَنْ كُلِّ فَرَسٍ مِنْهَا دِينَارًا أَوْ عَشَرَةَ دَرَاهِمَ، وَإِنْ شَاءَ قَوَّمَهَا فَأَعْطَى مِنْ كُلِّ مِائَتَيْ دِرْهَمٍ خَمْسَةَ دَرَاهِمَ.

L10105 Abū Muḥammad said: This contradicts ʿUmar's practice. Moreover, they have opposed ʿUmar's practice in his collection of Zakat from slaves—ten dirhams per head. How can it be permissible for a rational and devout person to consider some of ʿUmar's actions as proof and others not?

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خِلَافُ فِعْلِ عُمَرَ. وَأَيْضًا فَقَدْ خَالَفُوا فِعْلَ عُمَرَ فِي أَخْذِهِ الزَّكَاةَ مِنْ الرَّقِيقِ عَشَرَةَ دَرَاهِمَ مِنْ كُلِّ رَأْسٍ، فَكَيْفَ يَجُوزُ لِذِي عَقْلٍ وَدِينٍ أَنْ يَجْعَلَ بَعْضَ فِعْلِ عُمَرَ حُجَّةً وَبَعْضَهُ لَيْسَ بِحُجَّةٍ.

L10106 They opposed ʿAlī regarding the total abolition of zakat on horses and advanced a ruling about its zakat conditions that—to our knowledge—no one had ever endorsed before them. Thus, the corruption of their position became evident in its entirety.

وَخَالَفُوا عَلِيًّا فِي إسْقَاطِ زَكَاةِ الْخَيْلِ جُمْلَةً، وَأَتَوْا بِقَوْلٍ فِي صِفَةِ زَكَاتِهَا لَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُمْ؛ فَظَهَرَ فَسَادُ قَوْلِهِمْ جُمْلَةً.

L10107–10108 The majority of scholars hold that there is no obligatory alms due on horses whatsoever. Narrated to us Hammām, narrated to us Ibn Mufarrij from Ibn al-Aʿrabī, from al-Dabarī, from ʿAbd al-Razzāq, from Maʿmar, from Abū Isḥāq, from ʿĀṣim ibn Ḍamrah, from ʿAlī, who said: "I have exempted the sadaqah on horses and slaves."

وَذَهَبَ جُمْهُورُ النَّاسِ إلَى أَنْ لَا زَكَاةَ فِي الْخَيْلِ أَصْلًا. حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ عَنْ ابْنِ الْأَعْرَابِيِّ عَنْ الدَّبَرِيِّ عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ قَالَ: قَدْ عَفَوْت عَنْ صَدَقَةِ الْخَيْلِ وَالرَّقِيقِ.

L10109 It has been authentically established that Umar only took it as voluntary charity from them, not as an obligation. Hammam narrated to us: Abdullah ibn Muhammad ibn Ali al-Baji narrated to us: Abdullah ibn Yunus narrated to us: Baqi ibn Makhlad narrated to us: Abu Bakr ibn Abi Shaybah narrated to us: Abd al-Rahim ibn Sulayman narrated from Ibn Abi Khalid, from Shubayl ibn Awf—who had witnessed the pre-Islamic era—who said: "Umar ibn al-Khattab ordered people to give charity. They said: 'O Commander of the Faithful, we have horses and slaves—impose upon us a tenth portion for every ten.' Umar replied: 'As for me, I will not impose that obligation upon you.'" Hammam narrated to us: Abbas ibn Asbagh narrated to us: Muhammad ibn Abd al-Malik ibn Ayman narrated to us: Abdullah ibn Ahmad ibn Hanbal said: "I read to my father, from Yahya ibn Saʿid al-Qattan, from Zuhayr—

وَقَدْ صَحَّ أَنَّ عُمَرَ إنَّمَا أَخَذَهَا عَلَى أَنَّهَا صَدَقَةُ تَطَوُّعٍ مِنْهُمْ لَا وَاجِبَةٌ. حَدَّثَنَا حُمَامٌ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ ثنا عَبْدُ اللَّهِ بْنُ يُونُسَ ثنا بَقِيُّ بْنُ مَخْلَدٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا عَبْدُ الرَّحِيمِ بْنُ سُلَيْمَانَ عَنْ ابْنِ أَبِي خَالِدٍ عَنْ شُبَيْلِ بْنِ عَوْفٍ وَكَانَ قَدْ أَدْرَكَ الْجَاهِلِيَّةَ قَالَ: أَمَرَ عُمَرُ بْنُ الْخَطَّابِ النَّاسَ بِالصَّدَقَةِ، فَقَالَ النَّاسُ: يَا أَمِيرَ الْمُؤْمِنِينَ، خَيْلٌ لَنَا وَرَقِيقٌ افْرِضْ عَلَيْنَا عَشَرَةً عَشَرَةً. فَقَالَ عُمَرُ: أَمَّا أَنَا فَلَا أَفْرِضُ ذَلِكَ عَلَيْكُمْ. حَدَّثَنَا حُمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ

he is ibn Mu'awiyah—from Abu Ishaq—he is al-Sabi'i—from Harithah—he is ibn Mudarrib—who said: 'I performed Hajj with Umar ibn al-Khattab. The nobles of Syria came to him and said: "O Commander of the Faithful, we have acquired slaves and livestock—take charity from our wealth to purify us and establish it as zakah." He replied: "This is something the two before me did not do."" Abu Muhammad said: "These are chains of the highest authenticity. The isnād (chain of transmission) establishes that the Messenger of Allah—peace be upon him—did not take charity from horses, nor did Abu Bakr after him; that Umar did not impose that [obligation]; and that Ali after him did not take it [from horses]."

بْنِ حَنْبَلٍ قَرَأْت عَلَى أَبِي عَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ زُهَيْرٍ هُوَ ابْنُ مُعَاوِيَةَ - ثنا أَبُو إِسْحَاقَ هُوَ السَّبِيعِيّ - عَنْ حَارِثَةَ هُوَ ابْنُ مُضَرِّبٍ - قَالَ: «حَجَجْتُ مَعَ عُمَرَ بْنِ الْخَطَّابِ فَأَتَاهُ أَشْرَافُ أَهْلِ الشَّامِ فَقَالُوا: يَا أَمِيرَ الْمُؤْمِنِينَ، إِنَّا أَصَبْنَا رَقِيقًا وَدَوَابَّ فَخُذْ مِنْ أَمْوَالِنَا صَدَقَةً تُطَهِّرُنَا وَتَكُونُ لَنَا زَكَاةً. فَقَالَ: هَذَا شَيْءٌ لَمْ يَفْعَلْهُ اللَّذَانِ كَانَا قَبْلِي» .

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ أَسَانِيدُ فِي غَايَةِ الصِّحَّةِ، وَالْإِسْنَادُ فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَأْخُذْ مِنْ الْخَيْلِ صَدَقَةً، وَلَا أَبُو بَكْرٍ بَعْدَهُ، وَأَنَّ عُمَرَ لَمْ يَفْرِضْ ذَلِكَ. وَأَنَّ عَلِيًّا بَعْدَهُ لَمْ يَأْخُذْهَا.

L10110 Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Mahmud ibn Ghaylan narrated to us: Abu Usamah, who is Hammad ibn Usamah, narrated to us: Sufyan al-Thawri narrated from Abu Ishaq al-Sabi'i from 'Asim ibn Ḍamrah from 'Ali ibn Abi Talib, who said: The Messenger of Allah (peace and blessings be upon him) said: "I have exempted horses, so pay the zakah due on your wealth: five dirhams for every two hundred dirhams."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مَحْمُودُ بْنُ غَيْلَانَ ثنا أَبُو أُسَامَةَ هُوَ حَمَّادُ بْنُ أُسَامَةَ - ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «قَدْ عَفَوْتُ عَنْ الْخَيْلِ، فَأَدُّوا صَدَقَةَ أَمْوَالِكُمْ مِنْ كُلِّ مِائَتَيْنِ خَمْسَةٌ» .

L10111–10112 It has been authentically reported from the Messenger of Allah - peace and blessings be upon him: "There is no Zakat required of a Muslim for his slave or his horse, except the Sadaqat al-Fitr for the slaves."

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَيْسَ عَلَى الْمُسْلِمِ فِي عَبْدِهِ وَلَا فِي فَرَسِهِ صَدَقَةٌ إلَّا صَدَقَةُ الْفِطْرِ فِي الرَّقِيقِ» .

L10113 The horse and the slave are a term encompassing the entire category. If there were any zakat due on any of them, he—peace be upon him—would not have neglected to clarify its amount and the threshold from which it is taken. And success is from Allah, the Most High.

وَالْفَرَسُ وَالْعَبْدُ اسْمٌ لِلْجِنْسِ كُلِّهِ، وَلَوْ كَانَ فِي شَيْءٍ مِنْ ذَلِكَ صَدَقَةٌ لَمَا أَغْفَلَ - عَلَيْهِ السَّلَامُ - بَيَانَ مِقْدَارِهَا وَمِقْدَارِ مَا تُؤْخَذُ مِنْهُ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L10114 This is the opinion of Umar ibn Abd al-Aziz, Sa'id ibn al-Musayyib, 'Ata', Makhūl, al-Sha'bi, al-Hasan, and al-Hakam ibn 'Utaybah. This was the practice of Abu Bakr, Umar, and Ali, as mentioned previously. It is also the opinion of Malik, al-Shafi'i, and our companions.

وَهُوَ قَوْلُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَعَطَاءٍ، وَمَكْحُولٍ، وَالشَّعْبِيِّ، وَالْحَسَنِ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَهُوَ فِعْلُ أَبِي بَكْرٍ، وَعُمَرَ، وَعَلِيٍّ كَمَا ذَكَرْنَا، وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَصْحَابِنَا.

L10115 As for donkeys, we do not know of anyone who obligated zakah on them, except for a report narrated via the chain: Humām → ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bājī → ʿAbdullāh ibn Yūnus → Baqī ibn Makhlad → Abū Bakr ibn Abī Shaybah → Jarīr → Manṣūr → Ibrāhīm al-Nakhaʿī. Manṣūr said: "I asked him about donkeys—is there zakah on them?" Ibrāhīm replied: "As for me, I liken them to cows, but we do not know anything regarding them." Abū Muḥammad said: "Anything regarding which the Prophet—peace and blessings of Allāh be upon him—did not command a quantified and specified zakah, then there is no zakah in it."

L10116–10118 Indeed, it would have been obligatory upon those who hold the view that zakah is due on horses based on the generality of Allah's statement, "Take ṣadaqah from their wealth" [At-Tawbah: 103], to also take it from donkeys, since they are wealth. Similarly, it would be necessary for whoever analogizes the dowry to the items for which the hand is severed to extend the analogy to camels and cows, as they are four-legged animals like those items, even if they differ. In other respects, the dower likewise differs from theft in more ways than that.[23]

The Ruling on Zakat in Honey

L10119

L10120 As for honey: Mālik, al-Shāfiʿī, Abū Sulaymān, and their followers did not consider there to be any zakāh due on it. Abū Ḥanīfah said: If the bees are in land subject to *ʿushr*, then zakāh is due on it, being a tenth of what is collected from it—whether it is little or much—and if they are in *kharāj* land, there is no zakāh due on it—whether it is little or much.

L10121 He held that *zakāt* applies to livestock, whether it was in *ʿushr* land or in *kharāj* land.

L10122 Abū Yūsuf said: When honey reaches ten ratls, one ratl is due as zakāh; likewise, for any surplus beyond that amount, the tithe is obligatory. The ratl referred to here is the Fulfulī ratl [a standardized measure].

L10123 Muhammad ibn al-Ḥasan said: When honey reaches five farqs, the ʿushr is

[23] **Qur'an references (L10116):** Qur'an 9:103 (At-Tawbah).

وَأَمَّا الْحَمِيرُ فَمَا نَعْلَمُ أَحَدًا أَوْجَبَ فِيهَا الزَّكَاةَ، إِلَّا شَيْئًا حَدَّثَنَاهُ حُمَامٌ قَالَ: ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ ثنا عَبْدُ اللَّهِ بْنُ يُونُسَ ثنا بَقِيُّ بْنُ مَخْلَدٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ مَنْصُورٌ: سَأَلْته عَنْ الْحَمِيرِ أَفِيهَا زَكَاةٌ. فَقَالَ إِبْرَاهِيمُ: أَمَّا أَنَا فَأُشَبِّهُهَا بِالْبَقَرِ، وَلَا نَعْلَمُ فِيهَا شَيْئًا. قَالَ أَبُو مُحَمَّدٍ: كُلُّ مَا لَمْ يَأْمُرْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيهِ بِزَكَاةٍ مَحْدُودَةٍ مَوْصُوفَةٍ فَلَا زَكَاةَ فِيهِ.

وَلَقَدْ كَانَ يَجِبُ عَلَى مَنْ رَأَى الزَّكَاةَ فِي الْخَيْلِ بِعُمُومِ قَوْلِ اللَّهِ تَعَالَى: {خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً} [التوبة: ١٠٣] أَنْ يَأْخُذَهَا مِنْ الْحَمِيرِ، لِأَنَّهَا أَمْوَالٌ، وَكَانَ يَلْزَمُ مَنْ قَاسَ الصَّدَاقَ عَلَى مَا تُقْطَعُ فِيهِ الْيَدُ أَنْ يَقِيسَهَا عَلَى الْإِبِلِ، وَالْبَقَرِ، لِأَنَّهَا ذَاتُ أَرْبَعٍ مِثْلُهَا، وَإِنْ افْتَرَقَتْ فِي غَيْرِ ذَلِكَ، فَكَذَلِكَ الصَّدَاقُ يُخَالِفُ السَّرِقَةَ فِي أَكْثَرَ مِنْ ذَلِكَ.

[مَسْأَلَةُ الزَّكَاةَ فِي الْعَسَلِ]

وَأَمَّا الْعَسَلُ: فَإِنَّ مَالِكًا وَالشَّافِعِيَّ وَأَبَا سُلَيْمَانَ، وَأَصْحَابَهُمْ: لَمْ يَرَوْا فِيهِ زَكَاةً. وَقَالَ أَبُو حَنِيفَةَ: إنْ كَانَ النَّحْلُ فِي أَرْضِ الْعُشْرِ فَفِيهِ الزَّكَاةُ، وَهُوَ عُشْرُ مَا أُصِيبَ مِنْهُ - قَلَّ أَوْ كَثُرَ - وَإِنْ كَانَ فِي أَرْضِ خَرَاجٍ فَلَا زَكَاةَ فِيهِ - قَلَّ أَوْ كَثُرَ.

وَرَأَى فِي الْمَوَاشِي الزَّكَاةَ، سَوَاءٌ كَانَتْ فِي أَرْضِ عُشْرٍ أَوْ فِي أَرْضِ خَرَاجٍ.

وَقَالَ أَبُو يُوسُفَ: إذْ بَلَغَ الْعَسَلُ عَشَرَةَ أَرْطَالٍ فَفِيهِ رَطْلٌ وَاحِدٌ، وَهَكَذَا مَا زَادَ فَفِيهِ الْعُشْرُ، وَالرَّطْلُ هُوَ الْفُلْفُلِيُّ.

due; otherwise, no zakāh is obligated. A farq equals thirty-six Baghdadi raṭls, and the five farqs amount to one hundred and eighty raṭls (one hundred plus eighty raṭls) by the Baghdadi measure. He stated: The same ruling applies to sugar.

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: إِذَا بَلَغَ الْعَسَلُ خَمْسَةَ أَفْرَاقٍ فَفِيهِ الْعُشْرُ، وَإِلَّا فَلَا - وَالْفَرْقُ: سِتَّةٌ وَثَلَاثُونَ رَطْلًا فُلْفُلِيَّةً، وَالْخَمْسَةُ الْأَفْرَاقِ: مِائَةُ رَطْلٍ وَثَمَانُونَ رَطْلًا فُلْفُلِيَّةً، قَالَ: وَالسُّكَّرُ كَذَلِكَ.

L10124 Abu Muhammad said: As for Abu Hanifa's contradiction and his ruling obligating Zakat on honey - even if it is a drop - provided it is not in kharaj land, this is manifestly clear with no obscurity whatsoever.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا مُنَاقَضَةُ أَبِي حَنِيفَةَ وَإِيجَابُهُ الزَّكَاةَ فِي الْعَسَلِ وَلَوْ أَنَّهُ قَطْرَةٌ إِذَا لَمْ يَكُنْ فِي أَرْضِ الْخَرَاجِ فَظَاهِرَةٌ لَا خَفَاءَ بِهَا.

L10125 As for specifying its two companions, it is at the height of corruption, randomness, and disarray—closer to jest than seriousness. However, there exists an ancient disagreement concerning honey: as we have narrated through the chain of ʿAṭāʾ al-Khurāsānī that ʿUmar ibn al-Khaṭṭāb decreed to the people of Yemen regarding honey: "It is obligatory upon you to pay one *farq* [a unit of measurement] for every ten *farqs*."

وَأَمَّا تَحْدِيدُ صَاحِبَيْهِ فَفِي غَايَةِ الْفَسَادِ وَالْخَبْطِ وَالتَّخْلِيطِ. وَهُوَ إِلَى الْهَزْلِ أَقْرَبُ مِنْهُ إِلَى الْجِدِّ. لَكِنَّ فِي الْعَسَلِ خِلَافٌ قَدِيمٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَطَاءٍ الْخُرَاسَانِيِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ لِأَهْلِ الْيَمَنِ فِي الْعَسَلِ: إِنَّ عَلَيْكُمْ فِي كُلِّ عَشَرَةِ أَفْرَاقٍ فَرْقًا.

L10126–10128 And through the chain of Al-Ḥārith ibn ʿAbd al-Raḥmān, from Munīr ibn ʿAbd Allāh, from his father, from Saʿd ibn Abī Dhubbāb—who had companionship [with the Prophet, i.e., was a Companion]—that he took the tithe (one-tenth) of honey from his people and brought it to ʿUmar. ʿUmar placed it into the Muslims' alms. He said: "I came to the Messenger of Allāh—May Allah bless him and grant him peace—and embraced Islam. He put me in charge of my people, and Abū Bakr kept me in that position after him, then ʿUmar did likewise after him. I said to my people, 'In honey...'" "Zakah, for there is no good in wealth from which zakah is not paid." They said, "What do you recommend?" I said, "A tenth (ʿushr)." So I collected it and brought it to ʿUmar."

وَمِنْ طَرِيقِ الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ مُنِيرِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِ عَنْ سَعْدِ بْنِ أَبِي ذُبَابٍ وَكَانَتْ لَهُ صُحْبَةٌ أَنَّهُ أَخَذَ عُشْرَ الْعَسَلِ مِنْ قَوْمِهِ وَأَتَى بِهِ عُمَرُ، فَجَعَلَهُ عُمَرُ فِي صَدَقَاتِ الْمُسْلِمِينَ، قَالَ: «وَقَدِمْت عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَسْلَمْتُ وَاسْتَعْمَلَنِي عَلَى قَوْمِي، وَاسْتَعْمَلَنِي أَبُو بَكْرٍ بَعْدَهُ، ثُمَّ اسْتَعْمَلَنِي عُمَرُ مِنْ بَعْدِهِ فَقُلْت لِقَوْمِي: فِي الْعَسَلِ زَكَاةٌ، فَإِنَّهُ لَا خَيْرَ فِي مَالٍ لَا يُزَكَّى فَقَالُوا: كَمْ تَرَى. فَقُلْت: الْعُشْرُ، فَأَخَذْتُهُ وَأَتَيْتُ بِهِ عُمَرَ» .

L10129 Via Nu'aym ibn Hammad from Baqiyyah from Muhammad ibn al-Walid al-Zubaydi from 'Amr ibn Shu'ayb from Hilal ibn Murrah: that 'Umar ibn al-Khattab said concerning the tithes on honey: For honey produced in the flatlands, a tenth is due; and for that from the mountains, half of the tenth is due.

وَمِنْ طَرِيقِ نُعَيْمِ بْنِ حَمَّادٍ عَنْ بَقِيَّةَ عَنْ مُحَمَّدِ بْنِ الْوَلِيدِ الزُّبَيْدِيِّ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ هِلَالِ بْنِ مُرَّةَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي عُشُورِ الْعَسَلِ: مَا كَانَ مِنْهُ فِي السَّهْلِ فَفِيهِ الْعُشْرُ، وَمَا كَانَ مِنْهُ فِي الْجَبَلِ فَفِيهِ نِصْفُ الْعُشْرِ.

L10130 It has been authentically reported from Makhūl and Al-Zuhrī: that in every

ten jars of honey, one jar is due. We have narrated it through a sound chain from Al-Awzāʿī from Al-Zuhrī.

وَصَحَّ عَنْ مَكْحُولٍ، وَالزُّهْرِيِّ: أَنَّ فِي كُلِّ عَشْرَةِ أَزْقَاقٍ مِنْ الْعَسَلِ زِقًّا رُوِّينَاهُ مِنْ طَرِيقٍ ثَابِتَةٍ عَنْ الْأَوْزَاعِيِّ عَنْ الزُّهْرِيِّ.

L10131 From Saʿīd ibn ʿAbd al-ʿAzīz, from Sulaymān ibn Mūsā: For every ten azqāq [containers] of honey, one ziqq [container]. He said: The ziqq holds two raṭls.

وَعَنْ سَعِيدِ بْنِ عَبْدِ الْعَزِيزِ عَنْ سُلَيْمَانَ بْنِ مُوسَى: فِي كُلِّ عَشَرَةِ أَزْقَاقٍ مِنْ عَسَلٍ زِقٌّ، قَالَ: وَالزِّقُّ يَسَعُ رَطْلَيْنِ.

L10132 It has also been reported through an unreliable chain from ʾUmar ibn ʾAbd al-ʾAzīz - and this is the position of Rabīʾah, Yaḥyā ibn Saʾīd al-Anṣārī, and Ibn Wahb. The proponents of this view cited as evidence what we narrated through the chain of ʾAmr ibn Shuʾayb from his father from his grandfather, who said: "Hilāl came to the Messenger of Allah (peace be upon him) with the tenth from his bees, requesting him to designate a valley called Salabah as a protected reserve for him, so he protected it for him."

وَرُوِيَ أَيْضًا مِنْ طَرِيقٍ لَا تَصِحُّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَهُوَ قَوْلُ رَبِيعَةَ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَابْنِ وَهْبٍ، وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ: «جَاءَ هِلَالٌ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِعُشُورِ نَحْلٍ لَهُ وَسَأَلَهُ أَنْ يَحْمِيَ لَهُ وَادِيًا يُقَالُ لَهُ: سَلَبَةُ، فَحَمَاهُ لَهُ»

L10133 And by what we have narrated through ʿAbdullāh ibn Muḥarrir from al-Zuhrī from Abū Salamah from Abū Hurayrah: "that the Messenger of Allah (ﷺ) wrote to the people of Yemen that tithes should be taken from honey."

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ مُحَرِّرٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَبَ إلَى أَهْلِ الْيَمَنِ: أَنْ يُؤْخَذَ مِنْ الْعَسَلِ الْعُشُورُ» .

L10134 And from the narration of Saʾīd ibn ʾAbd al-ʾAzīz, from Sulaymān ibn Mūsā: "Abū Sayyāra al-Muta'iyy said to the Prophet—may Allah bless him and grant him peace—'I have bees.' He said: 'Then pay one-tenth from it.'"

وَمِنْ طَرِيقِ سَعِيدِ بْنِ عَبْدِ الْعَزِيزِ عَنْ سُلَيْمَانَ بْنِ مُوسَى «أَنَّ أَبَا سَيَّارَةَ الْمُتَعِيَّ قَالَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ لِي نَحْلًا. قَالَ: فَأَدِّ مِنْهُ الْعُشْرَ»

L10135–10137 And through the chain of Ibn Jurayj, he said: I wrote to Ibrahim ibn Maysarah inquiring about the Zakat on honey. He mentioned his response, and in it, he said: "One whom I do not suspect among my family members informed me that Urwah ibn Muhammad al-Saʿdī..." He said to him: Indeed, he wrote to Umar Ibn Abd al-Aziz inquiring about the Zakāh on honey. Umar replied to him: We have found the clarification regarding the Zakāh on honey in the land of Ta'if; so collect the tithe from it. Abu Muhammad said: All of this contains no evidence for their position.

وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ قَالَ كَتَبْت إلَى إبْرَاهِيمَ بْنِ مَيْسَرَةَ أَسْأَلُهُ عَنْ زَكَاةِ الْعَسَلِ. فَذَكَرَ جَوَابَهُ، وَفِيهِ: أَنَّهُ قَالَ: ذَكَرَ لِي مَنْ لَا أَتَّهِمُ مِنْ أَهْلِي: أَنَّ عُرْوَةَ بْنَ مُحَمَّدٍ السَّعْدِيَّ قَالَ لَهُ: إنَّهُ كَتَبَ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ يَسْأَلُهُ عَنْ صَدَقَةِ الْعَسَلِ. فَرَدَّ إلَيْهِ عُمَرُ: قَدْ وَجَدْنَا بَيَانَ صَدَقَةِ الْعَسَلِ بِأَرْضِ الطَّائِفِ، فَخُذْ مِنْهُ الْعُشُورَ قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ.

L10138 As for the ḥadīth of ʿAmr ibn Shuʿayb from his father from his grandfather, it is a written document that is not authentic. They have abandoned it where it contradicts their juristic tradition, as we have mentioned in more than one place.

أَمَّا حَدِيثُ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ: فَصَحِيفَةٌ لَا تَصِحُّ، وَقَدْ تَرَكُوهَا حَيْثُ لَا تُوَافِقُ تَقْلِيدَهُمْ مِمَّا قَدْ ذَكَرْنَاهُ فِي غَيْرِ مَا مَوْضِعٍ.

L10139 As for the ḥadīth of Abū Hurayrah, it is narrated by ʿAbdullāh ibn Muḥarrar—the most discredited of all rejected narrators—with consensus established to discard him.

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ فَمِنْ رِوَايَةِ عَبْدِ اللَّهِ بْنِ مُحَرَّرٍ وَهُوَ أَسْقَطُ مِنْ كُلِّ سَاقِطٍ مُتَّفَقٌ عَلَى اطِّرَاحِهِ.

L10140 As for the ḥadīth of Abū Sayyārah al-Mutaʾī: it is disconnected because Sulaymān ibn Mūsā is not known to have directly met any of the Companions (may Allah be pleased with them).

وَأَمَّا حَدِيثُ أَبِي سَيَّارَةَ الْمُتَعِيِّ: فَمُنْقَطِعٌ لِأَنَّ سُلَيْمَانَ بْنَ مُوسَى لَا يُعْرَفُ لَهُ لِقَاءُ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L10141 As for the ḥadīth of ʿUmar ibn ʿAbd al-ʿAzīz, it is interrupted because it is narrated via an unnamed transmitter.

وَأَمَّا حَدِيثُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَمُنْقَطِعٌ، لِأَنَّهُ عَمَّنْ لَمْ يُسَمَّ.

L10142 As for the report attributed to Umar ibn al-Khattab: it is not authentic because it is narrated through Ata' al-Khurasani from him, though Ata' did not meet Umar. It is also narrated through Munir ibn Abdullah from his father—both of whom are unknown. Some narrators mention Mutayn ibn Abdullah, whose identity is uncertain. Then it is narrated through Baqiyya, who is weak, then through Hilal ibn Murrah, who is unknown. Thus, it becomes invalid to affirm any authentic report in this matter from the Messenger of Allah (peace be upon him), Umar, or any of the Companions (may Allah be pleased with them).

وَأَمَّا خَبَرُ عُمَرَ بْنِ الْخَطَّابِ: فَلَا يَصِحُّ؛ لِأَنَّهُ عَنْ عَطَاءٍ الْخُرَاسَانِيِّ عَنْهُ، وَلَمْ يُدْرِكْهُ عَطَاءٌ، وَعَنْ مُنِيرِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِ، وَكِلَاهُمَا مَجْهُولٌ، وَبَعْضُ رُوَاتِهِ يَقُولُ: مُتَيْنُ بْنُ عَبْدِ اللَّهِ وَلَا يُدْرَى مَنْ هُوَ، وَعَنْ بَقِيَّةَ، وَهُوَ ضَعِيفٌ، ثُمَّ عَنْ هِلَالِ بْنِ مُرَّةَ، وَلَا يُدْرَى مَنْ هُوَ. فَبَطَلَ أَنْ يَصِحَّ فِي هَذَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَيْءٌ، أَوْ عَنْ عُمَرَ، أَوْ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L10143 Abū Muḥammad said: All these rulings are contradicted by a mursal report as well, as Ḥumām narrated to us: ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bājī narrated to us: ʿAbdullāh ibn Yūnus narrated to us: Baqī ibn Makhlad narrated to us: Abū Bakr ibn Abī Shaybah narrated to us: Wakīʿ narrated from Sufyān, from Ibrāhīm ibn Maysarah, from Ṭāwūs: "When Muʿādh ibn Jabal came to Yemen, honey and quantities below the zakah threshold of sheep were brought to him. He said: 'I was not commanded regarding these.'"

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ عَارَضَ ذَلِكَ كُلَّهُ خَبَرٌ مُرْسَلٌ أَيْضًا كَمَا حَدَّثَنَا حُمَامٌ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ ثنا عَبْدُ اللَّهِ بْنُ يُونُسَ ثنا بَقِيُّ بْنُ مَخْلَدٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا وَكِيعٌ عَنْ سُفْيَانَ عَنْ إبْرَاهِيمَ بْنِ مَيْسَرَةَ عَنْ طَاوُسٍ: «أَنَّ مُعَاذَ بْنَ جَبَلٍ لَمَّا أَتَى الْيَمَنَ أُتِيَ بِالْعَسَلِ وَأَوْقَاصِ الْغَنَمِ، فَقَالَ: لَمْ أُؤْمَرْ فِيهَا بِشَيْءٍ.»

L10144–10145 However, we do not permit using a mursal report in argumentation because it lacks authoritative evidence.

وَلَكِنَّا لَا نَسْتَحِلُّ الْحِجَاجَ بِمُرْسَلٍ؛ لِأَنَّهُ لَا حُجَّةَ فِيهِ.

L10146 And through him to Waki‘ from Sufyan al-Thawri from ‘Ubayd Allah ibn ‘Umar from Nafi‘, who said: ‘Umar ibn ‘Abd al-‘Aziz sent me to Yemen, and I intended to collect the tithe from honey. Al-Mughira ibn Hakim al-San‘ani said: “Nothing is due on it.” So I wrote to him, and he replied: “He is correct; this is a valid and acceptable ruling.” Abu Muhammad said: The opinion that no Zakat is levied on honey is held by Malik, Sufyan al-Thawri, al-Ḥasan ibn Ḥayy, al-Shafi‘i, Abu Sulayman, and their disciples.

وَبِهِ إِلَى وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ قَالَ: بَعَثَنِي عُمَرُ بْنُ عَبْدِ الْعَزِيزِ إِلَى الْيَمَنِ، فَأَرَدْت، أَنْ آخُذَ مِنْ الْعَسَلِ الْعُشْرَ. فَقَالَ الْمُغِيرَةُ بْنُ حَكِيمٍ الصَّنْعَانِيُّ: لَيْسَ فِيهِ شَيْءٌ فَكَتَبْت إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ. فَقَالَ: صَدَقَ، هُوَ عَدْلٌ رَضِيٌّ. قَالَ أَبُو مُحَمَّد: وَبِأَنْ لَا زَكَاةَ فِي الْعَسَلِ يَقُولُ مَالِكٌ، وَسُفْيَانُ الثَّوْرِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L10147 Ali said: We have said: Indeed, Allah the Exalted has said: “And do not devour your wealth among yourselves unjustly” [Al-Baqarah 2:188].[24]

قَالَ عَلِيٌّ: قَدْ قُلْنَا: إنَّ اللَّهَ تَعَالَى قَالَ: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨]

L10148 The Messenger of Allah—peace and blessings be upon him—said: “Verily, your lives and your wealth are inviolable to one another.”

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L10149 It is not permissible to impose the obligation of zakah on wealth regarding which no authentic ruling from the Messenger of Allah (peace be upon him) establishes its obligation. If they argue based on the generality of Allah’s statement, “Take from their wealth a sadaqah” [Quran 9:103].[25]

فَلَا يَجُوزُ إيجَابُ فَرْضِ زَكَاةٍ فِي مَالٍ لَمْ يَصِحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيهِ إيجَابُهَا. فَإِنْ احْتَجُّوا بِعُمُومِ قَوْلِ اللَّهِ تَعَالَى {خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً} [التوبة: ١٠٣] .

L10150 They were told: “Impose it on what is extracted from gold and silver mines, on cane, and on male horses - since all these constitute wealth belonging to Muslims.” Yet they imposed it where Allah the Exalted did not prescribe it, while exempting it from what grows from palm trees, wheat, and barley in *kharaj* land and leased land.

قِيلَ لَهُمْ: فَأَوْجِبُوهَا فِيمَا خَرَجَ مِنْ مَعَادِنِ الذَّهَبِ وَالْفِضَّةِ، وَفِي الْقَصَبِ، وَفِي ذُكُورِ الْخَيْلِ، فَكُلُّ ذَلِكَ أَمْوَالٌ لِلْمُسْلِمِينَ، بَلْ أَوْجَبُوهَا حَيْثُ لَمْ يُوجِبْهَا اللَّهُ تَعَالَى، وَأَسْقَطُوهَا مِمَّا خَرَجَ مِنْ النَّخْلِ وَالْبُرِّ وَالشَّعِيرِ، فِي أَرْضِ الْخَرَاجِ، وَفِي الْأَرْضِ الْمُسْتَأْجَرَةِ.

L10151 But they are an ignorant people.

وَلَكِنَّهُمْ قَوْمٌ يَجْهَلُونَ

L10152 Chapter on Zakat of Commercial Assets for the Trade

[مَسْأَلَةٌ زَكَاة عُرُوضِ التِّجَارَةِ]

L10153 As for commercial goods: Abu Hanifah, Malik, and Al-Shafi‘i—in one of his

وَأَمَّا عُرُوضُ التِّجَارَةِ: فَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ فِي أَحَدِ قَوْلَيْهِ بِإِيجَابِ الزَّكَاةِ فِي الْعُرُوضِ الْمُتَّخَذَةِ لِلتِّجَارَةِ. وَاحْتَجُّوا فِي ذَلِكَ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ سُلَيْمَانَ

[24] **Qur’an references (L10147):** Qur’an 2:188 (Al-Baqarah).
[25] **Qur’an references (L10149):** Qur’an 9:103 (At-Tawbah).

two opinions—held that Zakat is obligatory on goods designated for trade. They argued for this with a narration we have reported through the chain of Sulayman ibn Musa from Ja'far ibn Sa'd ibn Samurah ibn Jundab from Khubayb ibn Sulayman ibn Jundab from his father from his grandfather Samurah: "To proceed, the Messenger of Allah—peace be upon him—used to command us to pay charity from what we set aside for sale."[26]

L10154–10155 And with an authentic narration from ʿAbd al-Raḥmān ibn ʿAbd al-Qārī, who said: I was in charge of the treasury during the era of ʿUmar ibn al-Khaṭṭāb. When the stipend was disbursed, he would gather the merchants' funds, calculate them—distinguishing between absent and present portions—then collect zakāt from the present wealth on behalf of both the absent and present [portions].

L10156 We relate a report through Abu Qilabah's narration: Umar's tax officials said, "O Commander of the Faithful, the traders have complained about the harshness of the tax assessment." Umar responded, "Ah, ah! Lighten it."

L10157 In a narration transmitted via the chain of Yahya ibn Sa'id from Abdullah ibn Abi Salama from Abi Amr ibn Hamaas from his father, who said: Umar ibn al-Khattab passed by me and said, "O Hamaas, pay the Zakat of your wealth." I replied, "I possess no wealth except sacks and tanned hides." He said, "Evaluate them at their market value then pay their Zakat."

L10158 We have transmitted an authentic report from Ibn Abbas, who used to say: "There is no harm in waiting until [the owner] sells, and *zakāt* is obligatory in that context."

L10159 And in an authentic report from Ibn Umar: "There is no Zakat on merchandise unless it is intended for trade." Some scholars said: "Zakat is obligated on wealth that grows." We know of no basis for their position other than this, and all of this contains no valid proof for them.

L10160 As for the ḥadīth of Samurah, it is invalid because all its narrators between

بْنِ مُوسَى عَنْ جَعْفَرِ بْنِ سَعْدِ بْنِ سَمُرَةَ بْنِ جُنْدَبٍ عَنْ خُبَيْبِ بْنِ سُلَيْمَانَ بْنِ جُنْدَبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ سَمُرَةَ «أَمَّا بَعْدُ، فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَأْمُرُنَا أَنْ نُخْرِجَ الصَّدَقَةَ مِنْ الَّذِي نَعُدُّ لِلْبَيْعِ» .

وَبِخَبَرٍ صَحِيحٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدٍ الْقَارِيِّ قَالَ: كُنْت عَلَى بَيْتِ الْمَالِ زَمَانَ عُمَرَ بْنِ الْخَطَّابِ، فَكَانَ إذَا خَرَجَ الْعَطَاءُ جَمَعَ أَمْوَالَ التُّجَّارِ ثُمَّ حَسَبَهَا، غَائِبَهَا وَشَاهِدَهَا، ثُمَّ أَخَذَ الزَّكَاةَ مِنْ شَاهِدِ الْمَالِ عَنْ الْغَائِبِ وَالشَّاهِدِ.

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي قِلَابَةَ: إنَّ عُمَّالَ عُمَرَ قَالُوا: يَا أَمِيرَ الْمُؤْمِنِينَ، إنَّ التُّجَّارَ شَكَوْا شِدَّةَ التَّقْوِيمِ، فَقَالَ عُمَرُ: هَاهْ هَاهْ خَفِّفُوا.

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي سَلَمَةَ عَنْ أَبِي عَمْرِو بْنِ حَمَاسٍ عَنْ أَبِيهِ قَالَ: مَرَّ بِي عُمَرُ بْنُ الْخَطَّابِ فَقَالَ: يَا حَمَاسُ، أَدِّ زَكَاةَ مَالِك. فَقُلْت: مَا لِي مَالٌ إلَّا جِعَابٌ وَأَدَمٌ. فَقَالَ: قَوِّمْهَا قِيمَةً ثُمَّ أَدِّ زَكَاتَهَا.

وَبِخَبَرٍ صَحِيحٍ رُوِّينَاهُ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ يَقُولُ: لَا بَأْسَ بِالتَّرَبُّصِ حَتَّى يَبِيعَ، وَالزَّكَاةُ وَاجِبَةٌ فِيهِ.

وَبِخَبَرٍ صَحِيحٍ عَنْ ابْنِ عُمَرَ: لَيْسَ فِي الْعُرُوضِ زَكَاةٌ إلَّا أَنْ تَكُونَ لِتِجَارَةٍ. وَقَالَ بَعْضُهُمْ: الزَّكَاةُ مَوْضُوعٌ فِيمَا يَنْمِي مِنْ الْأَمْوَالِ. مَا نَعْلَمُ لَهُمْ مُتَعَلَّقًا غَيْرَ هَذَا، وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ.

[26] **Hadith references (L10153):** Sunan Abi Dawud 1562.

Sulaymān ibn Mūsā and Samurah—may Allah be pleased with him—are unknown, their identities are not known. Moreover, even if it were authentic, it would not constitute a proof for them, for it does not specify that this ṣadaqah refers to the obligatory Zakāh. Had the Prophet—peace be upon him—intended it as the obligatory Zakāh, he would have clarified its timing, quantity, and method of collection: Is it to be taken from the commodities themselves or through valuation? By what standard is it to be valued? It is inconceivable that the Prophet—peace be upon him—would impose upon us a Zakāh without defining its amount or how it is to be collected. Had this ṣadaqah been authentic, it would have been entrusted to the discretion of the owners of those commodities.

أَمَّا حَدِيثُ سَمُرَةَ فَسَاقِطٌ؛ لِأَنَّ جَمِيعَ رُوَاتِهِ مَا بَيْنَ سُلَيْمَانَ بْنِ مُوسَى، وَسَمُرَةَ - رَضِيَ اللَّهُ عَنْهُ - مَجْهُولُونَ لَا يُعْرَفُ مَنْ هُمْ، ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ: أَنَّ تِلْكَ الصَّدَقَةَ هِيَ الزَّكَاةُ الْمَفْرُوضَةُ؛ بَلْ لَوْ أَرَادَ - عَلَيْهِ السَّلَامُ - بِهَا الزَّكَاةَ الْمَفْرُوضَةَ لَبَيَّنَ وَقْتَهَا وَمِقْدَارَهَا وَكَيْفَ تُخْرَجُ، أَمِنْ أَعْيَانِهَا، أَمْ بِتَقْوِيمٍ، وَبِمَاذَا تُقَوَّمُ؟ وَمِنَ الْمُحَالِ أَنْ يَكُونَ - عَلَيْهِ السَّلَامُ - يُوجِبُ عَلَيْنَا زَكَاةً لَا يُبَيِّنُ كَمْ هِيَ. وَلَا كَيْفَ تُؤْخَذُ. وَهَذِهِ الصَّدَقَةُ لَوْ صَحَّتْ لَكَانَتْ مَوْكُولَةً إِلَى أَصْحَابِ تِلْكَ السِّلَعِ.

L10161–10163 Just as Abdullah ibn Rabi narrated to us, Umar ibn Abd al-Malik narrated to us, Muhammad ibn Bakr narrated to us, Abu Dawood narrated to us, Musaddad narrated to us, Mu'awiyah narrated to us from al-A'mash, from Abu Wa'il, from Qays ibn Abi Gharzah, who said: "Passed by us..." The Messenger of Allah—peace and blessings be upon him—said: "O merchants, indeed, selling is attended by frivolous speech and swearing; so mix it with charity."

كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا مُسَدَّدٌ ثنا مُعَاوِيَةُ عَنْ الْأَعْمَشِ عَنْ أَبِي وَائِلٍ عَنْ «قَيْسِ بْنِ أَبِي غَرْزَةَ قَالَ: مَرَّ بِنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا مَعْشَرَ التُّجَّارِ، إنَّ الْبَيْعَ يَحْضُرُهُ اللَّغْوُ وَالْحَلِفُ، فَشُوبُوهُ بِالصَّدَقَةِ» .

L10164 This is a prescribed charity, not fixed in quantity, but whatever their souls willingly offer. It serves as an expiation for what taints the sale from invalid elements, such as idle talk and oaths.

فَهَذِهِ صَدَقَةٌ مَفْرُوضَةٌ غَيْرُ مَحْدُودَةٍ، لَكِنْ مَا طَابَتْ بِهِ أَنْفُسُهُمْ، وَتَكُونُ كَفَّارَةً لِمَا يَشُوبُ الْبَيْعَ مِمَّا لَا يَصِحُّ مِنْ لَغْوٍ وَحَلِفٍ.

L10165 As for the ḥadīth of ʿUmar, it is not authentic because it is narrated from Abū ʿAmr ibn Ḥamās from his father, and both of them are unknown.

وَأَمَّا حَدِيثُ عُمَرَ؛ فَلَا يَصِحُّ، لِأَنَّهُ عَنْ أَبِي عَمْرِو بْنِ حَمَاسٍ عَنْ أَبِيهِ، وَهُمَا مَجْهُولَانِ.

L10166 It was narrated to us through the chain of ʿAbdullāh ibn Aḥmad ibn Ḥanbal, who said: ʿĀrim ibn al-Faḍl narrated to us, saying: I heard Abū al-Aswad – he being Ḥumayd ibn al-Aswad – state: I mentioned to Mālik ibn Anas the ḥadīth of Ibn Ḥamās concerning merchandise subject to zakāh, narrated from Yaḥyā ibn Saʿīd. Mālik responded: "Yaḥyā is a qammāsh (gatherer of rubbish)." Abū Muḥammad commented: This signifies that he collects qumāsh – meaning refuse – that is, he transmits from individuals of no standing or merit.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ قَالَ: ثنا عَارِمُ بْنُ الْفَضْلِ قَالَ: سَمِعْت أَبَا الْأَسْوَدِ هُوَ حُمَيْدُ بْنُ الْأَسْوَدِ - يَقُولُ: ذَكَرْت لِمَالِكِ بْنِ أَنَسٍ حَدِيثَ ابْنِ حَمَاسٍ فِي الْمَتَاعِ يُزَكَّى، عَنْ يَحْيَى بْنِ سَعِيدٍ. فَقَالَ مَالِكٌ: يَحْيَى قَمَّاشٌ. قَالَ أَبُو مُحَمَّدٍ: مَعْنَاهُ أَنَّهُ يَجْمَعُ الْقُمَاشَ، وَهُوَ الْكُنَاسَةُ: أَيْ يَرْوِي عَمَّنْ لَا قَدْرَ لَهُ وَلَا يَسْتَحِقُّ.

L10167 As for the narration of Abū Qilābah, it is *mursal* because he neither met

ʿUmar due to his mental maturity (at the time) nor by age.

وَأَمَّا حَدِيثُ أَبِي قِلَابَةَ فَمُرْسَلٌ؛ لِأَنَّهُ لَمْ يُدْرِكْ عُمَرَ بِعَقْلِهِ وَلَا بِسِنِّهِ.

L10168 As for the ḥadīth of ʿAbd al-Raḥmān ibn ʿAbd al-Qārī, it contains no proof for their position, because it does not mention that those assets were commercial merchandise. Traders did possess wealth subject to zakāt – including silver, gold, and other such things – and it is impermissible to add to the ḥadīth what is not stated within it, for such an act leads to lying.

وَأَمَّا حَدِيثُ عَبْدِ الرَّحْمَنِ بْنِ عَبْدٍ الْقَارِيِّ فَلَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّهُ لَيْسَ فِيهِ: أَنَّ تِلْكَ الْأَمْوَالَ كَانَتْ عُرُوضًا لِلتِّجَارَةِ وَقَدْ كَانَتْ لِلتُّجَّارِ أَمْوَالٌ تَجِبُ فِيهَا الزَّكَاةُ، مِنْ فِضَّةٍ وَذَهَبٍ وَغَيْرِ ذَلِكَ، وَلَا يَحِلُّ أَنْ يُزَادَ فِي الْخَبَرِ مَا لَيْسَ فِيهِ، فَيَحْصُلُ مِنْ فِعْلِ ذَلِكَ عَلَى الْكَذِبِ.

L10169 As for the narration of Ibn ʿAbbās, it is likewise, and there is no evidence within it to establish the obligation of zakāh on commercial goods. This deviates from his well-known doctrine, which held that zakāh is obligatory on the growth of gold, silver, and livestock at the time of acquisition, and he deemed zakāh due on the price received upon its sale.

وَأَمَّا حَدِيثُ ابْنِ عَبَّاسٍ فَكَذَلِكَ أَيْضًا، وَلَا دَلِيلَ فِيهِ عَلَى إِيجَابِ الزَّكَاةِ فِي عُرُوضِ التِّجَارَةِ، وَهُوَ خَارِجٌ عَلَى مَذْهَبِ ابْنِ عَبَّاسٍ الْمَشْهُورِ عَنْهُ فِي أَنَّهُ كَانَ يَرَى الزَّكَاةَ وَاجِبَةً فِي فَائِدَةِ الذَّهَبِ، وَالْفِضَّةِ، وَالْمَاشِيَةِ حِينَ تُسْتَفَادُ، فَرَأَى الزَّكَاةَ فِي الثَّمَنِ إِذَا بَاعُوهُ.

L10170–10171 Yahya ibn Abd al-Rahman ibn Masʿud narrated to us; Ahmad ibn Saʿid ibn Hazm narrated to us; Muhammad ibn Abd al-Malik ibn Ayman narrated to us; Abdullah ibn Ahmad ibn Hanbal narrated to us, saying: My father narrated from Abd al-Samad al-Tannuri from Hammad from Qatadah from Jabir ibn Zayd Abu al-Shaʿtha' from Ibn Abbas that he said regarding newly acquired wealth: "One must purify it when acquiring it." Ibn Umar said: "Until a full lunar year has elapsed."

حَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ ثنا أَحْمَدُ بْنُ سَعِيدِ بْنِ حَزْمٍ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ ثنا أَبِي عَنْ عَبْدِ الصَّمَدِ التَّنُّورِيِّ ثنا حَمَّادٌ ثنا قَتَادَةُ عَنْ جَابِرِ بْنِ زَيْدٍ أَبِي الشَّعْثَاءِ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ قَالَ فِي الْمَالِ الْمُسْتَفَادِ: يُزَكِّيهِ حِينَ يَسْتَفِيدُهُ، وَقَالَ ابْنُ عُمَرَ: حَتَّى يَحُولَ عَلَيْهِ الْحَوْلُ.

L10172 This has been clarified by Ata—he being the foremost among his companions—as we will mention after this, God Almighty willing. As for the narration of Ibn Umar, it is authentic; however, no authoritative evidence can be derived from anyone's statement except the Messenger of God—peace and blessings be upon him. How many rulings have they disagreed with Umar and his son on! Among these are the Maliki transmitted ruling on zakah of honey and the Hanafi ruling on zakah of slaves, along with many other such instances. It is inconceivable that Umar and his son should be an authoritative proof in one matter but not in another.

وَقَدْ بَيَّنَ هَذَا عَطَاءٌ: وَهُوَ أَكْبَرُ أَصْحَابِهِ، عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى. وَأَمَّا خَبَرُ ابْنِ عُمَرَ: فَصَحِيحٌ، إِلَّا أَنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَمْ قَضِيَّةٍ خَالَفُوا فِيهَا عُمَرَ، وَابْنَهُ. مِنْهَا لِلْمَالِكِيِّينَ الرِّوَايَةُ فِي زَكَاةِ الْعَسَلِ، وَلِلْحَنَفِيِّينَ حُكْمُهُ فِي زَكَاةِ الرَّقِيقِ، وَغَيْرِ ذَلِكَ كَثِيرٌ جِدًّا - وَمِنَ الْمُحَالِ أَنْ يَكُونَ عُمَرُ وَابْنُهُ حُجَّةً فِي مَوْضِعٍ دُونَ آخَرَ.

L10173 Moreover, the Hanafis, Malikis, and Shafi'is disagreed with what was reported from Umar and Ibn Umar regarding this very issue. Malik differ-

entiated between the active trader and others, exempting from Zakat those who exchanged one commodity for another so long as no dirham accrued to them. This does not appear in the reports from Umar and his son.

L10174 Al-Shāfiʿī holds that zakāt is not due on profit combined with the principal capital except specifically for money changers, and this opinion is not attributed to ʿUmar or Ibn ʿUmar. All scholars agree that if one inherits trade goods or purchases them for personal use then later intends to trade them, no zakāt is owed on them—even if kept for years—nor on their sale price. However, a new lunar year cycle must commence. This contradicts the positions of ʿUmar and Ibn ʿUmar, thereby invalidating the argument of those who cited them as evidence—may Allah be pleased with both. A conflicting opinion to what is narrated from ʿUmar and Ibn ʿUmar has also been transmitted from other Companions—may Allah be pleased with them.

Ḥammām narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrābī narrated to us: al-Dabarī narrated from ʿAbd al-Razzāq from Ibn Jurayj, who reported: Nāfiʿ al-Khūzī said, "I was seated with ʿAbd al-Raḥmān ibn Nāfiʿ when Ziyād the Gatekeeper approached him and said, 'The Commander of the Faithful—meaning Ibn al-Zubayr—instructs: "Dispatch the zakāt of your wealth."' He rose, produced one hundred dirhams, and said, 'Convey my greetings and tell him: Zakāt applies only to liquid assets.'" Nāfiʿ said, "I later met Ziyād and asked, 'Did you inform him?' He replied, 'Yes.' I inquired, 'What did Ibn al-Zubayr say?' He answered, 'He said: He spoke truthfully.'"

L10175–10176 Ibn Jurayj reported: "Amr ibn Dinar told me: 'I maintain that Zakat is only obligatory on tangible assets.'"

L10177 Ahmad ibn Muhammad ibn al-Jasur narrated to us: Muhammad ibn Isa ibn Rifaʿah narrated to us; Ali ibn Abd al-Aziz narrated to us; Abu Ubayd narrated to us from Ismail ibn Ibrahim, who narrated from Qatan, who said: I passed through Wasit during the time of Umar ibn Abd al-Aziz, and they said: A letter from the Commander of the Faithful was read to us, stating:

وَأَيْضًا: فَإِنَّ الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ: خَالَفُوا مَا رُوِيَ عَنْ عُمَرَ، وَابْنِ عُمَرَ فِي هَذِهِ الْمَسْأَلَةِ نَفْسِهَا؛ فَمَالِكٌ فَرَّقَ بَيْنَ الْمُدِيرِ وَغَيْرِ الْمُدِيرِ، وَأَسْقَطَ الزَّكَاةَ عَمَّنْ بَاعَ عَرَضًا بِعَرَضٍ، مَا لَمْ يَنِضَّ لَهُ دِرْهَمٌ، وَلَيْسَ هَذَا فِيمَا رُوِيَ عَنْ عُمَرَ، وَابْنِهِ.

وَالشَّافِعِيُّ: يَرَى أَنْ لَا يُزَكِّيَ الرِّبْحَ مَعَ رَأْسِ الْمَالِ إِلَّا الصَّيَارِفَةُ خَاصَّةً، وَلَيْسَ هَذَا عَنْ عُمَرَ، وَلَا عَنِ ابْنِ عُمَرَ. وَكُلُّهُمْ يَرَى فِيمَنْ وَرِثَ عُرُوضًا أَوْ ابْتَاعَهَا لِلْقُنْيَةِ ثُمَّ نَوَى بِهَا التِّجَارَةَ: أَنَّهَا لَا زَكَاةَ فِيهَا، وَلَوْ بَقِيَتْ عِنْدَهُ سِنِينَ، وَلَا فِي ثَمَنِهَا إِذَا بَاعَهَا، لَكِنْ يَسْتَأْنِفُ حَوْلًا؛ وَهَذَا خِلَافُ عُمَرَ، وَابْنِ عُمَرَ؛ فَبَطَلَ احْتِجَاجُهُمْ بِهِمَا - رَضِيَ اللَّهُ عَنْهُمَا -. وَقَدْ جَاءَ خِلَافُ مَا رُوِيَ عَنْ عُمَرَ، وَابْنِ عُمَرَ عَنْ غَيْرِهِمَا مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ عَنْ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي نَافِعٌ الْخُوزِيُّ قَالَ: كُنْتُ جَالِسًا عِنْدَ عَبْدِ الرَّحْمَنِ بْنِ نَافِعٍ إِذْ جَاءَهُ زِيَادٌ الْبَوَّابُ فَقَالَ لَهُ: إِنَّ أَمِيرَ الْمُؤْمِنِينَ - يَعْنِي ابْنَ الزُّبَيْرِ - يَقُولُ: أَرْسِلْ زَكَاةَ مَالِكَ. فَقَامَ فَأَخْرَجَ مِائَةَ دِرْهَمٍ، وَقَالَ لَهُ: اقْرَأْ عَلَيْهِ السَّلَامَ، وَقُلْ لَهُ: إِنَّمَا الزَّكَاةُ فِي النَّاضِّ. قَالَ نَافِعٌ: فَلَقِيتُ زِيَادًا فَقُلْتُ لَهُ: أَبَلَغْتَه. قَالَ: نَعَمْ، قُلْتُ: فَمَاذَا قَالَ ابْنُ الزُّبَيْرِ. فَقَالَ: قَالَ: صَدَقَ.

قَالَ ابْنُ جُرَيْجٍ: وَقَالَ لِي عَمْرُو بْنُ دِينَارٍ: مَا أَرَى الزَّكَاةَ إِلَّا فِي الْعَيْنِ.

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا مُحَمَّدُ بْنُ عِيسَى بْنِ رِفَاعَةَ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا أَبُو عُبَيْدٍ ثنا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ عَنْ قَطَنٍ قَالَ: مَرَرْتُ بِوَاسِطَ زَمَنَ عُمَرَ بْنِ عَبْدِ

الْعَزِيزِ، فَقَالُوا: قُرِئَ عَلَيْنَا كِتَابُ أَمِيرِ الْمُؤْمِنِينَ: أَنْ لَا تَأْخُذُوا مِنْ أَرْبَاحِ التُّجَّارِ شَيْئًا حَتَّى يَحُولَ عَلَيْهَا الْحَوْلُ.

قَالَ أَبُو عُبَيْدٍ: ثنا مُعَاذٌ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ قَالَ: أَتَيْت الْمَسْجِدَ وَقَدْ قُرِئَ الْكِتَابُ، فَقَالَ صَاحِبٌ لِي: لَوْ شَهِدْت كِتَابَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي أَرْبَاحِ التُّجَّارِ أَنْ لَا يُعْرَضَ لَهَا حَتَّى يَحُولَ عَلَيْهَا الْحَوْلُ. فَهَذَا ابْنُ الزُّبَيْرِ، وَعَبْدُ الرَّحْمَنِ بْنُ نَافِعٍ وَعَمْرُو بْنُ دِينَارٍ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ، وَقَدْ رُوِيَ أَيْضًا عَنْ عَائِشَةَ.

وَذَكَرَهُ الشَّافِعِيَّ عَنْ ابْنِ عَبَّاسٍ، وَهُوَ أَحَدُ قَوْلَيْ الشَّافِعِيِّ. قَالَ أَبُو مُحَمَّد: وَحَتَّى لَوْ لَمْ يَأْتِ خِلَافٌ فِي ذَلِكَ لَمَا وَجَبَتْ شَرِيعَةٌ بِغَيْرِ نَصِّ قُرْآنٍ أَوْ سُنَّةٍ ثَابِتَةٍ أَوْ إجْمَاعٍ مُتَيَقَّنٍ لَا يُشَكُّ فِي أَنَّهُ قَالَ بِهِ جَمِيعُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -. وَقَدْ أَسْقَطَ الْحَنَفِيُّونَ الزَّكَاةَ عَنْ الْإِبِلِ الْمَعْلُوفَةِ وَالْبَقَرِ الْمَعْلُوفَةِ، وَأَمْوَالِ الصِّغَارِ كُلِّهَا إلَّا مَا أَخْرَجَتْ أَرْضُهُمْ. وَأَسْقَطَ الْمَالِكِيُّونَ الزَّكَاةَ عَنْ أَمْوَالِ الْعَبِيدِ، وَالْحُلِيِّ. وَأَسْقَطَهَا الشَّافِعِيُّونَ عَنْ الْحُلِيِّ، وَعَنْ الْمَوَاشِي الْمُسْتَعْمَلَةِ. وَكُلُّ هَذَا خِلَافٌ لِلسُّنَنِ الثَّابِتَةِ بِلَا بُرْهَانٍ.

وَذَكَرُوا الْخَبَرَ الَّذِي مِنْ طَرِيقِ أَبِي هُرَيْرَةَ: «أَنَّ عُمَرَ بَعَثَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُصَدِّقًا فَقَالَ: مَنَعَ الْعَبَّاسُ، وَخَالِدُ بْنُ الْوَلِيدِ، وَابْنُ جَمِيلٍ. فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إنَّكُمْ تَظْلِمُونَ خَالِدًا، إنَّ خَالِدًا قَدْ احْتَبَسَ أَدْرَاعَهُ وَأَعْتُدَهُ فِي سَبِيلِ اللَّهِ» .

قَالُوا: فَدَلَّ هَذَا عَلَى أَنَّ الزَّكَاةَ طُلِبَتْ مِنْهُ فِي دُرُوعِهِ، وَأَعْبُدِهِ، وَلَا زَكَاةَ فِيهَا إلَّا أَنْ تَكُونَ لِتِجَارَةٍ. قَالَ أَبُو مُحَمَّدٍ: وَلَيْسَ فِي الْخَبَرِ لَا نَصٌّ وَلَا دَلِيلٌ وَلَا إشَارَةٌ عَلَى شَيْءٍ مِمَّا

Do not take anything from the traders' profits until a year has passed over them.

L10178 Abu Ubayd said: Mu'adh narrated to us from Abdullah ibn Awn, who said: I came to the mosque after the decree had already been recited. A friend of mine remarked: If you had witnessed the decree of Umar ibn Abd al-Aziz regarding merchants' profits—that they should not be levied until a lunar year has passed over them—[you would know] this is Ibn al-Zubayr, Abd al-Rahman ibn Nafi', Amr ibn Dinar, and Umar ibn Abd al-Aziz. It has also been narrated from Aisha.

L10179 Al-Shafi'i attributed this opinion to Ibn 'Abbas, and it is one of the two positions held by Al-Shafi'i. Abu Muhammad said: Even if there were no disagreement on this matter, no legal ruling could be established except through a Qur'anic text, an authenticated Sunnah, or a consensus that is certain and beyond doubt—one in which all the Companions unanimously concurred, may Allah be pleased with them. The Hanafis exempted stall-fed camels, stall-fed cows, and all property owned by minors from zakah, except what their land produced. The Malikis exempted property owned by slaves and jewelry from zakah. The Shafi'is exempted jewelry and livestock used for labor from zakah. All of this contradicts the established Sunnah without any evidence.

L10180 They mentioned the narration transmitted through Abu Hurairah: "The Messenger of Allah (peace and blessings be upon him) sent 'Umar as a charity collector. 'Umar said: 'Al-Abbas, Khalid ibn al-Walid, and Ibn Jamil withheld [their dues].' The Messenger of Allah (peace and blessings be upon him) responded: 'You are wronging Khalid, for Khalid has indeed set aside his armor and equipment for the cause of Allah.'"

L10181–10182 They said: This indicates that Zakāt was demanded from him regarding his armors and slaves; yet there is no Zakāt due on them unless they are intended for trade. Abū Muḥammad said: The report contains neither an explicit text, nor evidence, nor any indication of what they have claimed. It only states that they wronged Khālid by accusing him of withholding Zakāt

when he had merely dedicated his armors and slaves exclusively for the cause of God. He (peace be upon him) spoke truthfully, for it is inconceivable that a sensible, religious man would spend substantial wealth in voluntary acts yet withhold the lesser amount in obligatory Zakāt. This is the ruling of the ḥadīth. As for applying false assumptions to the Messenger of God (peace and blessings be upon him), it is invalid.

ادَّعَوْهُ، وَإِنَّمَا فِيهِ أَنَّهُمْ ظَلَمُوا خَالِدًا إِذْ نَسَبُوا إِلَيْهِ مَنْعَ الزَّكَاةِ وَهُوَ قَدْ احْتَبَسَ أَدْرَاعَهُ وَأَعْبُدَهُ فِي سَبِيلِ اللَّهِ فَقَطْ، صَدَقَ - عَلَيْهِ السَّلَامُ -، إِذْ مِنَ الْمُحَالِ أَنْ يَكُونَ رَجُلٌ عَاقِلٌ ذُو دِينٍ يُنْفِقُ النَّفَقَةَ الْعَظِيمَةَ فِي التَّطَوُّعِ ثُمَّ يَمْنَعُ الْيَسِيرَ فِي الزَّكَاةِ الْمَفْرُوضَةِ، هَذَا حُكْمُ الْحَدِيثِ، وَأَمَّا إِعْمَالُ الظَّنِّ الْكَاذِبِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَاطِلٌ.

L10183 It has been authentically reported from the Messenger of Allah—may Allah's peace and blessings be upon him—evidence indicating that no zakah is due on trade goods. This is based on the authentic narration from the Prophet, may Allah's peace and blessings be upon him, who said: "There is no zakah due on less than five awaq of silver, nor on fewer than five head of camels."

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا يَدُلُّ عَلَى أَنْ لَا زَكَاةَ فِي عُرُوضِ التِّجَارَةِ، وَهُوَ أَنَّهُ قَدْ صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَيْسَ فِيمَا دُونَ خَمْسِ أَوَاقٍ مِنَ الْوَرِقِ صَدَقَةٌ وَلَا فِيمَا دُونَ خَمْسِ ذَوْدٍ مِنَ الْإِبِلِ صَدَقَةٌ» .

L10184 And that he (peace be upon him) exempted zakāh on fewer than forty sheep, and on less than five wasqs of dates and grains. Thus, whoever mandates zakāh on trade goods effectively extends it to all items he (peace be upon him) exempted from what we have mentioned. It is authentically reported from him (peace be upon him): "A Muslim owes no sadaqah on his slave or horse except sadaqat al-Fiṭr." And that he (peace be upon him) said: "I have exempted sadaqah on horses."

وَأَنَّهُ أَسْقَطَ الزَّكَاةَ عَمَّا دُونَ الْأَرْبَعِينَ مِنَ الْغَنَمِ، وَعَمَّا دُونَ خَمْسَةِ أَوْسُقٍ مِنَ التَّمْرِ وَالْحَبِّ، فَمَنْ أَوْجَبَ زَكَاةً فِي عُرُوضِ التِّجَارَةِ فَإِنَّهُ يُوجِبُهَا فِي كُلِّ مَا نُفِيَ عَنْهُ - عَلَيْهِ السَّلَامُ - الزَّكَاةُ مِمَّا ذَكَرْنَا. وَصَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - «لَيْسَ عَلَى الْمُسْلِمِ فِي: عَبْدِهِ، وَلَا فَرَسِهِ، صَدَقَةٌ إِلَّا صَدَقَةَ الْفِطْرِ» وَأَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: «قَدْ عَفَوْتُ عَنْ صَدَقَةِ الْخَيْلِ» .

L10185 And that he (peace be upon him) mentioned the right of Allah, the Exalted, concerning camels, cattle, sheep, and unpaid treasure. He was then asked about horses, and he said: "Horses are three: for one, a reward; for another, a protection; and for another, a burden of sin."

وَأَنَّهُ - عَلَيْهِ السَّلَامُ - ذَكَرَ حَقَّ اللَّهِ تَعَالَى فِي: الْإِبِلِ، وَالْبَقَرِ، وَالْغَنَمِ، وَالْكَنْزِ «فَسُئِلَ عَنِ الْخَيْلِ، فَقَالَ: الْخَيْلُ ثَلَاثَةٌ: هِيَ لِرَجُلٍ أَجْرٌ، وَلِرَجُلٍ سِتْرٌ، وَعَلَى رَجُلٍ وِزْرٌ» .

L10186 He was asked about donkeys, and he replied: "Nothing has been revealed to me regarding them except this unparalleled, comprehensive verse: 'Whoever does a speck's weight of good shall see it' [Az-Zalzalah: 7]."[27]

«فَسُئِلَ عَنِ الْحُمُرِ فَقَالَ: مَا أُنْزِلَ عَلَيَّ فِيهَا شَيْءٌ إِلَّا هَذِهِ الْآيَةَ الْفَاذَّةَ الْجَامِعَةَ: {فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ} [الزلزلة: ٧] »

L10187–10189 Whoever obligates zakat on trade goods must also obligate it on horses,

[27] **Qur'an references (L10186):** Qur'an 99:7 (Az-Zalzalah).

donkeys, and slaves. The Messenger of Allah—peace be upon him—decisively ruled that there is no zakāt due on any of these except the Fitr charity on slaves. If zakāt had been obligatory on merchandise or any of the mentioned items when intended for trade, he—peace be upon him—would have clarified this without doubt. Since he—peace be upon him—did not clarify it, there is no zakāt due on such goods at all. It is definitively established by consensus that the ruling for all merchandise aligns with the rulings for horses, donkeys, slaves, livestock below the nisāb, and monetary assets below the nisāb.

فَمَنْ أَوْجَبَ الزَّكَاةَ فِي عُرُوضِ التِّجَارَةِ فَإِنَّهُ يُوجِبُهَا فِي الْخَيْلِ، وَالْحَمِيرِ، وَالْعَبِيدِ، وَقَدْ قَطَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ لَا زَكَاةَ فِي شَيْءٍ مِنْهَا إِلَّا صَدَقَةُ الْفِطْرِ فِي الرَّقِيقِ؛ فَلَوْ كَانَتْ فِي عُرُوضِ التِّجَارَةِ، أَوْ فِي شَيْءٍ مِمَّا ذُكِرَ - عَلَيْهِ السَّلَامُ - زَكَاةٌ إِذَا كَانَ لِتِجَارَةٍ -: لَبَيَّنَ ذَلِكَ بِلَا شَكٍّ؛ فَإِذْ لَمْ يُبَيِّنْهُ - عَلَيْهِ السَّلَامُ - فَلَا زَكَاةَ فِيهَا أَصْلًا. وَقَدْ صَحَّ الْإِجْمَاعُ الْمُتَيَقَّنُ عَلَى أَنَّ حُكْمَ كُلِّ عَرْضٍ كَحُكْمِ الْخَيْلِ، وَالْحَمِيرِ، وَالرَّقِيقِ، وَمَا دُونَ النِّصَابِ مِنْ الْمَاشِيَةِ، وَالْعَيْنِ.

L10190 Then people differed: some obligated zakat on all such items if intended for trade, while others exempted zakat on all such items, whether for trade or non-trade purposes.

ثُمَّ اخْتَلَفَ النَّاسُ فَمِنْ مُوجِبِ الزَّكَاةِ فِي كُلِّ ذَلِكَ إِذَا كَانَ لِلتِّجَارَةِ، وَمِنْ مَسْقِطٍ لِلزَّكَاةِ فِي كُلِّ ذَلِكَ لِتِجَارَةٍ كَانَتْ أَوْ لِغَيْرِ تِجَارَةٍ.

L10191 It has been established by textual evidence that there is no Zakāt obligation on horses, slaves, donkeys, livestock below the *Nisab* threshold, or gold and silver currency below the *Nisab* threshold. Consensus has been unanimously affirmed that the ruling for every trade commodity corresponds to the ruling for these categories. Thus, the aforementioned consensus confirms that no Zakāt is due on trade commodities. Additionally, consensus holds that there is no Zakāt obligation on trade commodities.

وَصَحَّ بِالنَّصِّ أَنْ لَا زَكَاةَ فِي الْخَيْلِ، وَلَا فِي الرَّقِيقِ، وَلَا فِي الْحَمِيرِ، وَلَا فِيمَا دُونَ النِّصَابِ مِنْ الْمَاشِيَةِ وَالْعَيْنِ؛ وَصَحَّ الْإِجْمَاعُ مِنْ كُلِّ أَحَدٍ عَلَى أَنَّ حُكْمَ كُلِّ عَرَضٍ فِي التِّجَارَةِ كَحُكْمِ هَذِهِ. فَصَحَّ مِنْ ذَلِكَ أَنْ لَا زَكَاةَ فِي عُرُوضِ التِّجَارَةِ بِالْإِجْمَاعِ الْمَذْكُورِ. وَقَدْ صَحَّ الْإِجْمَاعُ أَيْضًا عَلَى أَنَّهُ لَا زَكَاةَ فِي الْعُرُوضِ.

L10192 Then a group of people claimed that if it is for trade, there is zakat in it; this is a claim without evidence.

ثُمَّ ادَّعَى قَوْمٌ أَنَّهَا إِذَا كَانَتْ لِلتِّجَارَةِ فَفِيهَا زَكَاةٌ؛ وَهَذِهِ دَعْوَى بِلَا بُرْهَانٍ.

L10193 The Hanafis, Malikis, and Shafi'is unanimously agreed that one who purchases goods for personal use and later intends to trade them is not obligated to pay zakāh on them. This arbitrary imposition in their ruling—that zakāh becomes obligatory on the proceeds if the goods are sold and the money is then used for trade—lacks any proof.

وَأَجْمَعَ الْحَنَفِيُّونَ وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: عَلَى أَنَّ مَنْ اشْتَرَى سِلَعًا لِلْقُنْيَةِ ثُمَّ نَوَى بِهَا التِّجَارَةَ فَلَا زَكَاةَ فِيهَا - وَهَذَا تَحَكُّمٌ فِي إيجَابِهِمْ الزَّكَاةَ فِي أَثْمَانِهَا إذَا بِيعَتْ ثُمَّ اُتُّجِرَ بِهَا بِلَا بُرْهَانٍ.

L10194 As for their claim that zakāh applies solely to what appreciates, this is a baseless and self-contradictory assertion, for personal-use goods appreciate in value like trade goods, with no distinction. If they argue that trade goods inherently involve growth, we counter that they equally involve loss. Like-

وَأَمَّا قَوْلُهُمْ: إنَّ الزَّكَاةَ فِيمَا يَنْمِي، فَدَعْوَى كَاذِبَةٌ مُتَنَاقِضَةٌ؛ لِأَنَّ عُرُوضَ الْقُنْيَةِ تَنْمِي قِيمَتُهَا كَعُرُوضِ التِّجَارَةِ وَلَا فَرْقَ. فَإِنْ قَالُوا: الْعُرُوض لِلتِّجَارَةِ فِيهَا النَّمَاءُ. قُلْنَا: وَفِيهَا

wise, donkeys appreciate yet no zakāh is due on them by their own doctrine. Horses appreciate yet the Shāfiʿīs and Mālikīs impose no zakāh on them. Working camels appreciate yet the Ḥanafīs and Shāfiʿīs exempt them from zakāh. Produce from kharāj land appreciates yet the Ḥanafīs deny zakāh on it. Slave holdings appreciate yet the Mālikīs assign no zakāh to them.

أَيْضًا الْحَسَارَةُ، وَكَذَلِكَ الْحَمِيرُ تَنْمَى، وَلَا زَكَاةَ فِيهَا عِنْدَهُمْ، وَالْخَيْلُ تَنْمَى، وَلَا زَكَاةَ فِيهَا عِنْدَ الشَّافِعِيِّينَ، وَالْمَالِكِيِّينَ، وَالْإِبِلُ الْعَوَامِلُ تَنْمَى وَلَا زَكَاةَ فِيهَا عِنْدَ الْحَنَفِيِّينَ، وَالشَّافِعِيِّينَ، وَمَا أُصِيبَ فِي أَرْضِ الْخَرَاجِ يَنْمَى، وَلَا زَكَاةَ فِيهَا عِنْدَ الْحَنَفِيِّينَ، وَأَمْوَالُ الْعَبِيدِ تَنْمَى، وَلَا زَكَاةَ فِيهَا عِنْدَ الْمَالِكِيِّينَ.

L10195–10197 Abu Muhammad said: Their statements and contradictions concerning this issue itself constitute an irrefutable proof that it... It is not from Allah, the Exalted.

قَالَ أَبُو مُحَمَّد: وَأَقْوَالُهُمْ وَاضْطِرَابُهُمْ فِي هَذِهِ الْمَسْأَلَةِ نَفْسِهَا بُرْهَانٌ قَاطِعٌ عَلَى أَنَّهَا لَيْسَتْ مِنْ عِنْدِ اللَّهِ تَعَالَى.

L10198 A group among them stated: "Zakat is due on trade goods as per their intrinsic types." This is the opinion of al-Muzani. Another group said: "No, we evaluate them." Then they differed: Abū Ḥanīfah said: "We evaluate them according to the most cautious approach for the benefit of the poor." Al-Shāfiʿī said: "Rather, one might purchase them using the prevailing currency. If he acquired a commodity in exchange for a commodity, he evaluates it by the currency most commonly used in the region." Mālik said: "Whoever perpetually trades commodities for commodities owes no zakat until he sells them, even for a dirham. When the sale is finalized for him, even for a dirham, he then evaluates his trade goods and pays zakat on them."

فَإِنَّ طَائِفَةً مِنْهُمْ قَالَتْ: تُزَكَّى عُرُوضُ التِّجَارَةِ مِنْ أَعْيَانِهَا. وَهُوَ قَوْلُ الْمُزَنِيِّ. وَطَائِفَةً قَالَتْ: بَلْ نُقَوِّمُهَا ثُمَّ اخْتَلَفُوا: فَقَالَ أَبُو حَنِيفَةَ: نُقَوِّمُهَا بِالْأَحْوَطِ لِلْمَسَاكِينِ. وَقَالَ الشَّافِعِيُّ: بَلْ رُبَّمَا اشْتَرَاهَا بِهِ، فَإِنْ كَانَ اشْتَرَى عَرَضًا بِعَرَضٍ قَوَّمَهُ بِمَا هُوَ الْأَغْلَبُ مِنْ نَقْدِ الْبَلَدِ. وَقَالَ مَالِكٌ: مَنْ بَاعَ عَرْضًا بِعَرْضٍ أَبَدًا فَلَا زَكَاةَ عَلَيْهِ إلَّا حَتَّى يَبِيعَ وَلَوْ بِدِرْهَمٍ، فَإِذَا نَضَّ لَهُ وَلَوْ دِرْهَمٌ قَوَّمَ حِينَئِذٍ عُرُوضَهُ وَزَكَّاهَا.

L10199 If only I knew what the matter with the dirham here is. Truly, this is astonishing.

فَلَيْتَ شِعْرِي مَا شَأْنُ الدِّرْهَمِ هَاهُنَا، إنَّ هَذَا لَعَجَبٌ.

L10200 What if he has nothing but half a dirham, a grain of silver, or a *fals*? How should he act?

فَكَيْفَ إنْ لَمْ يَنِضَّ لَهُ إلَّا نِصْفُ دِرْهَمٍ، أَوْ حَبَّةُ فِضَّةٍ، أَوْ فَلْسٌ؛ كَيْفَ يَصْنَعُ.

L10201 Abu Hanifah and al-Shafiʿi said: He must assess the value and pay Zakat even if he does not possess a dirham that has reached the nisab.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: يُقَوِّمُ وَيُزَكِّي وَإِنْ لَمْ يَنِضَّ لَهُ دِرْهَمٌ.

L10202 Malik said: The manager who buys and sells must evaluate his goods annually and pay zakah. As for the hoarder, no zakah is due on him—even if he withholds his merchandise for years—until he sells it. When he sells it, he must then pay zakah for one year at that time. This is very strange.

وَقَالَ مَالِكٌ: الْمُدِيرُ الَّذِي يَبِيعُ وَيَشْتَرِي يُقَوِّمُ كُلَّ سَنَةٍ وَيُزَكِّي، وَأَمَّا الْمُحْتَكِرُ فَلَا زَكَاةَ عَلَيْهِ - وَلَوْ حَبَسَ عُرُوضَهُ سِنِينَ - إلَّا حَتَّى يَبِيعَ، فَإِذَا بَاعَ زَكَّى حِينَئِذٍ لِسَنَةٍ وَاحِدَةٍ - وَهَذَا عَجَبٌ جِدًّا.

L10203 Abu Hanifa and Al-Shafi'i said: Both are the same; they both assess [their

wealth] every year and discharge Zakat.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: كِلَاهُمَا سَوَاءٌ، يُقَوَّمَانِ كُلَّ سَنَةٍ وَيُزَكِّيَانِ.

L10204 Narrated to us by Hammam, from Abdullah ibn Muhammad ibn Ali, from Abdullah ibn Yunus, from Baqi ibn Makhlad, from Abu Bakr ibn Abi Shaybah, from Muhammad ibn Bakr, from Ibn Jurayj, who said: Ata' said to me: "There is no Zakat on pearls, emeralds, rubies, set gemstones, commercial inventory, or anything not traded."

حَدَّثَنَا حُمَامٌ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ ثنا عَبْدُ اللَّهِ بْنُ يُونُسَ ثنا بَقِيُّ بْنُ مَخْلَدٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا مُحَمَّدُ بْنُ بَكْرٍ عَنِ ابْنِ جُرَيْجٍ قَالَ: قَالَ لِي عَطَاءٌ: لَا صَدَقَةَ فِي لُؤْلُؤٍ، وَلَا فِي زَبَرْجَدٍ، وَلَا يَاقُوتٍ، وَلَا فُصُوصٍ وَلَا عَرَضٍ وَلَا شَيْءٍ لَا يُدَارُ.

L10205 If any of that is circulated in trade, then zakah is due on its price at the time of sale — and this contradicts the view of the scholars cited earlier.

فَإِنْ كَانَ شَيْءٌ مِنْ ذَلِكَ يُدَارُ فَفِيهِ الصَّدَقَةُ فِي ثَمَنِهِ حِينَ يُبَاعُ - وَهَذَا خِلَافُ قَوْلِ مَنْ ذَكَرْنَا.

L10206 And Ash-Shāfiʿī said: "No one adds profit to the capital except currency exchangers, and this is very astonishing."

وَقَالَ الشَّافِعِيُّ: لَا يُضِيفُ الرِّبْحَ إِلَى رَأْسِ الْمَالِ إِلَّا الصَّيَارِفَةُ، وَهَذَا عَجَبٌ جِدًّا.

L10207 Abū Ḥanīfah and Mālik said: Rather, he adds the profit to the principal, even if it was not earned except at that moment, and this too was astonishing.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: بَلْ يُضِيفُ الرِّبْحَ إِلَى رَأْسِ الْمَالِ وَلَوْ لَمْ يَرْبَحْهُ إِلَّا فِي تِلْكَ السَّاعَةِ فَكَانَ هَذَا أَيْضًا عَجَبًا.

L10208–10210 Their statements on this matter are remarkably novel, and there is no evidence in the Quran or Sunnah to establish the validity of any of them. There is neither a sound narration, nor a corrupt narration, nor any statement of a Companion at all. Moreover, most of that has no known proponent before the one who stated it from among them. Allah the Exalted says: *"If you disagree about something, refer it to Allah and the Messenger, if you believe in Allah and the Last Day"* [An-Nisā': 59].[28]

وَأَقْوَالُهُمْ فِي هَذِهِ الْمَسْأَلَةِ طَرِيفَةٌ جِدًّا لَا يَدُلُّ عَلَى صِحَّةِ شَيْءٍ مِنْهَا قُرْآنٌ وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا رِوَايَةٌ فَاسِدَةٌ وَلَا قَوْلُ صَاحِبٍ أَصْلًا، وَأَكْثَرُ ذَلِكَ لَا يُعْرَفُ لَهُ قَائِلٌ قَبْلَ مَنْ قَالَهُ مِنْهُمْ، وَاللَّهُ تَعَالَى يَقُولُ {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [النساء: ٥٩] .

L10211 I wish I knew whether these people traced this disagreement back to the words of Allah the Exalted and the words of His Messenger—may Allah bless him and grant him peace. Have they found in the Quran or the Sunnah any explicit text or evidence supporting these invalid opinions? They all assert: "Whoever buys a commodity for personal use and subsequently intends trade with it incurs no Zakat. If one buys it for trade and then intends personal use, Zakat ceases to be due on it." Thus they sought to ensure the nullification of the Zakat they had imposed due to their ignorance.

فَلَيْتَ شِعْرِي هَلْ رَدَّ هَؤُلَاءِ هَذَا الِاخْتِلَافَ إِلَى كَلَامِ اللَّهِ تَعَالَى وَكَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَهَلْ وَجَدُوا فِي الْقُرْآنِ وَالسُّنَنِ نَصًّا أَوْ دَلِيلًا عَلَى شَيْءٍ مِنْ هَذِهِ الْأَقْوَالِ الْفَاسِدَةِ. وَكُلُّهُمْ يَقُولُ: مَنِ اشْتَرَى سِلْعَةً لِلْقُنْيَةِ فَنَوَى بِهَا التِّجَارَةَ فَلَا زَكَاةَ فِيهَا، فَإِنِ اشْتَرَاهَا لِلتِّجَارَةِ فَنَوَى بِهَا الْقُنْيَةَ سَقَطَتِ الزَّكَاةُ عَنْهَا؛ فَاحْتَاطُوا لِإِسْقَاطِ الزَّكَاةِ الَّتِي أَوْجَبُوهَا بِجَهْلِهِمْ.

[28] **Qur'an references (L10208):** Qur'an 4:59 (An-Nisa).

L10212 They all said: “Whoever purchases livestock for trade, or cultivates crops for trade, the Zakat on trade goods is waived, and he is liable for the obligatory Zakat. This would have sufficed had they upheld justice upon themselves. Had the Zakat on trade goods been a right ordained by Allah the Exalted, the obligatory Zakat would not have waived it. But Truth prevails over Falsehood.”

وَقَالُوا كُلُّهُمْ: مَنْ اشْتَرَى مَاشِيَةً لِلتِّجَارَةِ، أَوْ زَرَعَ لِلتِّجَارَةِ، فَإِنَّ زَكَاةَ التِّجَارَةِ تَسْقُطُ وَتَلْزَمُهُ الزَّكَاةُ الْمَفْرُوضَةُ، وَكَانَ فِي هَذَا كِفَايَةٌ لَوْ أَنْصَفُوا أَنْفُسَهُمْ، وَلَوْ كَانَتْ زَكَاةُ التِّجَارَةِ حَقًّا مِنْ عِنْدِ اللَّهِ تَعَالَى مَا أَسْقَطَتْهَا الزَّكَاةُ الْمَفْرُوضَةُ، وَلَكِنَّ الْحَقَّ يَغْلِبُ الْبَاطِلَ.

L10213 If they say, “Two zakat obligations cannot apply to the same property,” we reply: “What prevents that? I wish I knew - if Allah, the Exalted, has obligated both, or His Messenger (peace be upon him) [by His command]!”

فَإِنْ قَالُوا: لَا تَجْتَمِعُ زَكَاتَانِ فِي مَالٍ وَاحِدٍ. قُلْنَا: فَمَا الْمَانِعُ مِنْ ذَلِكَ لَيْتَ شِعْرِي إِذَا كَانَ اللَّهُ تَعَالَى قَدْ أَوْجَبَهُمَا جَمِيعًا أَوْ رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L10214 [Issue: Zakat on Dates, Wheat, and Barley]

[مَسْأَلَةُ زَكَاةُ التَّمْرِ وَالْبُرِّ وَالشَّعِيرِ]

L10215 642 – Issue: There is no zakah due on dates, nor wheat, nor barley until the amount a single person owns of a single type among them reaches five awsuq. A wasq is sixty sa‘s, and a sa‘ is four mudds by the measure of the Prophet, peace be upon him.

٦٤٢ - مَسْأَلَةٌ: وَلَا زَكَاةَ فِي تَمْرٍ، وَلَا بُرٍّ، وَلَا شَعِيرٍ: حَتَّى يَبْلُغَ مَا يُصِيبُهُ الْمَرْءُ الْوَاحِدُ مِنْ الصِّنْفِ الْوَاحِدِ مِنْهَا خَمْسَةَ أَوْسُقٍ، وَالْوَسْقُ سِتُّونَ صَاعًا، وَالصَّاعُ أَرْبَعَةُ أَمْدَادٍ بِمُدِّ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L10216 The mudd ranges from one and a half ratls to one and a quarter ratls, depending on the density or looseness of the measured substance. The ruling applies equally whether one cultivates the crop on their own land or another’s land - whether through usurpation, a legally valid transaction, or a legally invalid transaction - provided the yield itself is not usurped. This equivalence holds whether the land is kharāj land or ʿushr land.

وَالْمُدُّ مِنْ رَطْلٍ وَنِصْفٍ إلَى رَطْلٍ وَرُبُعٍ عَلَى قَدْرِ رَزَانَةِ الْمُدِّ وَخِفَّتِهِ، وَسَوَاءٌ زَرَعَهُ فِي أَرْضٍ لَهُ أَوْ فِي أَرْضٍ لِغَيْرِهِ بِغَصْبٍ أَوْ بِمُعَامَلَةٍ جَائِزَةٍ، أَوْ غَيْرِ جَائِزَةٍ، إذَا كَانَ النَّذْرُ غَيْرَ مَغْصُوبٍ، سَوَاءٌ أَرْضَ خَرَاجٍ كَانَتْ أَوْ أَرْضَ عُشْرٍ.

L10217–10219 This is the opinion of the majority of scholars, and it is the view held by Mālik, al-Shāfiʿī, Aḥmad, and Abū Sulaymān. Abū Ḥanīfah said: “Zakāh must be paid on produce whether small or large in quantity. If the crop comes from land subject to *kharāj* tax, no Zakāh is due on its yield. If the land is leased, Zakāh becomes the obligation of the landowner, not the cultivator. If the crop is from usurped land, and the landowner is awarded compensation for the damage to the land caused by cultivation, then Zakāh is incumbent upon [text incomplete].” If no obligation is imposed on the landowner, zakat falls upon the cultivator. He said: “A *mudd* equals two *rotl*.” These

وَهَذَا قَوْلُ جُمْهُورِ النَّاسِ، وَبِهِ يَقُولُ: مَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَبُو سُلَيْمَانَ وَقَالَ أَبُو حَنِيفَةَ: يُزَكَّى مَا قَلَّ مِنْ ذَلِكَ وَمَا كَثُرَ، فَإِنْ كَانَ فِي أَرْضِ خَرَاجٍ فَلَا زَكَاةَ فِيمَا أُصِيبَ فِيهَا، فَإِنْ كَانَتْ الْأَرْضُ مُسْتَأْجَرَةً فَالزَّكَاةُ عَلَى رَبِّ الْأَرْضِ لَا عَلَى الزَّارِعِ، فَإِنْ كَانَ فِي أَرْضٍ مَغْصُوبَةٍ، فَإِنْ قُضِيَ لِصَاحِبِ الْأَرْضِ بِمَا نَقَصَهَا الزَّرْعَ فَالزَّكَاةُ عَلَى صَاحِبِ الْأَرْضِ، وَإِنْ لَمْ يُقْضَ لَهُ بِشَيْءٍ فَالزَّكَاةُ عَلَى الزَّارِعِ - قَالَ: وَالْمُدُّ رَطْلَانِ.

are five points wherein he deviated from the truth in this matter. We have already mentioned the statement of Allah's Messenger (peace and blessings be upon him): "No sadaqah is due on grains or fruits amounting to less than five *awsaq*." Abu Hanifah relied on the statement of Allah's Messenger (peace and blessings be upon him): "For crops irrigated by rainwater, one-tenth is owed."

فَهَذِهِ خَمْسَةُ مَوَاضِعَ خَالَفَ فِيهَا الْحَقَّ فِي هَذِهِ الْمَسْأَلَةِ وَقَدْ ذَكَرْنَا قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَيْسَ فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ مِنْ حَبٍّ أَوْ ثَمَرٍ صَدَقَةٌ» . وَتَعَلَّقَ أَبُو حَنِيفَةَ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فِيمَا سَقَتْ السَّمَاءُ الْعُشْرُ» .

L10220 He erred in this, for he applied this narration and disobeyed the other, and this is impermissible. We have obeyed what is in both narrations in their entirety, while he also contradicted this narration by specifying exceptions, based on his own opinion, to what is watered abundantly by rain—such as sugarcane, firewood, grass, tree leaves—and what is obtained from taxed (kharaj) land, though he did not deem it appropriate to base this exception on the words of Allah's Messenger (peace be upon him).

وَأَخْطَأَ فِي هَذَا، لِأَنَّهُ اسْتَعْمَلَ هَذَا الْخَبَرَ وَعَصَى الْآخَرَ وَهَذَا لَا يَحِلُّ، وَنَحْنُ أَطَعْنَا مَا فِي الْخَبَرَيْنِ جَمِيعًا، وَهُوَ قَدْ خَالَفَ هَذَا الْخَبَرَ أَيْضًا، إذْ خَصَّ مِمَّا سَقَتْ السَّمَاءُ كَثِيرًا بِرَأْيِهِ، كَالْقَصَبِ، وَالْحَطَبِ، وَالْحَشِيشِ، وَوَرَقِ الشَّجَرِ وَمَا أُصِيبَ فِي أَرْضِ الْخَرَاجِ، وَلَمْ يَرَ أَنْ يَخُصَّهُ بِكَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L10221 Moreover, he has been tasked with what is untenable, as we previously mentioned, and he singled out (through his own opinion) those matters that were affected in the courtyards of the houses. These are confusions without parallel.

وَأَيْضًا فَإِنَّهُ كَلَّفَ مِنْ ذَلِكَ مَا لَا يُطَاقُ كَمَا قَدَّمْنَا وَخَصَّ مِنْ ذَلِكَ بِرَأْيِهِ مَا أُصِيبَ فِي عَرَصَاتِ الدُّورِ، وَهَذِهِ تَخَالِيطُ لَا نَظِيرَ لَهَا.

L10222 As for Abū Sulaymān, he said: Whatever can be measured by wasq does not require zakāh until it reaches five wasqs, but whatever cannot be measured by wasq requires zakāh in both small and large quantities. We have previously mentioned the invalidity of this opinion. It is astonishing that Abū Ḥanīfah claims to be a proponent of analogy, yet he does not recognize any item subject to zakāh where it applies to both minor and substantial amounts. Why did he not analogize crops to livestock and gold and silver? Thus, he neither followed the revealed text nor applied analogy consistently.

وَأَمَّا أَبُو سُلَيْمَانَ فَقَالَ: مَا كَانَ يَحْتَمِلُ التَّوْسِيقَ فَلَا زَكَاةَ فِيهِ حَتَّى يَبْلُغَ خَمْسَةَ أَوْسُقٍ، وَمَا كَانَ لَا يَحْتَمِلُ التَّوْسِيقَ فَالزَّكَاةُ فِي قَلِيلِهِ وَكَثِيرِهِ، وَقَدْ ذَكَرْنَا فَسَادَ هَذَا الْقَوْلِ قَبْلُ. وَالْعَجَبُ أَنَّ أَبَا حَنِيفَةَ يَزْعُمُ أَنَّهُ صَاحِبُ قِيَاسٍ، وَهُوَ لَمْ يَرَ فِيمَا يُزَكَّى شَيْئًا قَلِيلُهُ وَكَثِيرُهُ فَهَلَّا قَاسَ الزَّرْعَ عَلَى الْمَاشِيَةِ وَالْعَيْنِ. فَلَا النَّصَّ اتَّبَعَ، وَلَا الْقِيَاسَ طَرَدَ.

L10223 As for the *mudd*, Abū Ḥanīfah and his companions argued this position based on what we have transmitted through the chain of Sharīk ibn ʿAbdullāh the Judge (al-Qāḍī) from ʿAbdullāh ibn ʿĪsā from ʿAbdullāh ibn Jabr from Anas ibn Mālik from the Messenger of Allāh—peace and blessings be upon him: "Two *ratls* suffice for ablution," alongside the authentic report stating that "he—peace and blessings be upon him—performed ablution with a *mudd*." This holds no valid evidence because Sharīk is rejected, being notorious for

وَأَمَّا الْمُدُّ فَإِنَّ أَبَا حَنِيفَةَ وَأَصْحَابَهُ احْتَجُّوا فِي ذَلِكَ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ شَرِيكِ بْنِ عَبْدِ اللَّهِ الْقَاضِي عَنْ عَبْدِ اللَّهِ بْنِ عِيسَى عَنْ عَبْدِ اللَّهِ بْنِ جَبْرٍ عَنْ أَنَسِ بْنِ مَالِكٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَيُجْزِئُ فِي الْوُضُوءِ رَطْلَانِ» ، مَعَ الْأَثَرِ الصَّحِيحِ فِي «أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يَتَوَضَّأُ بِالْمُدِّ» . وَهَذَا لَا حُجَّةَ فِيهِ، لِأَنَّ شَرِيكًا

concealing rejected narrations by attributing them to reliable sources. Both Imams ʿAbdullāh ibn al-Mubārak and Yaḥyā ibn Saʿīd al-Qaṭṭān discarded his narrations. By Allāh, may the one against whom they both testified with discreditation never succeed!

مُطَّرِحٌ، مَشْهُورٌ بِتَدْلِيسِ الْمُنْكَرَاتِ إِلَى الثِّقَاتِ، وَقَدْ أَسْقَطَ حَدِيثَهُ الْإِمَامَانِ: عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ وَيَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ، وَتَاللَّهِ لَا أَفْلَحَ مَنْ شَهِدَا عَلَيْهِ بِالْجُرْحَةِ.

L10224–10226 Moreover, if it were valid, their argument would hold no weight, because this does not prove that the *mudd* equals two *ratls*. It has been authenticated that the Messenger of Allah—peace and blessings be upon him—performed ablution with two-thirds of a *mudd*, and there is no disagreement that he—peace be upon him—did not specify a measure of water for it. For ablution with a measured quantity like measured oil—neither increased nor decreased. Furthermore, if this position were valid, there would be nothing in his statement—peace and blessings of Allah be upon him—"Two ratls suffice for ablution" to prevent a lesser amount from sufficing. They themselves are the first to agree with us here, for if someone performs ablution according to them with half a ratl, it suffices—thus invalidating their reliance on this report. They argued using a narration we transmitted through Mūsā al-Juhanī's chain: "I was with Mujāhid when a vessel that holds eight ratls, nine ratls, or ten ratls was brought. He said: ʿĀ'ishah stated, 'Allah's Messenger—peace and blessings of Allah be upon him—used to perform ghusl with an amount like this,'" alongside the established report that "he—peace be upon him—performed ghusl with a ṣāʿ." Abū Muḥammad said: This holds no proof, for Mūsā expressed doubt about whether that vessel held eight to ten ratls, and they do not claim the ṣāʿ exceeds eight ratls by even a fals.

ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَا يَدُلُّ ذَلِكَ عَلَى أَنَّ الْمُدَّ رَطْلَانِ، وَقَدْ صَحَّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَوَضَّأَ بِثُلُثَيْ الْمُدِّ» ، وَلَا خِلَافَ فِي أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَكُنْ يُعَيِّرُ لَهُ الْمَاءَ لِلْوُضُوءِ بِكَيْلٍ كَكَيْلِ الزَّيْتِ لَا يَزِيدُ وَلَا يَنْقُصُ. أَيْضًا - فَلَوْ صَحَّ لَمَا كَانَ فِي قَوْلِهِ - عَلَيْهِ السَّلَامُ - «يُجْزِئُ فِي الْوُضُوءِ رَطْلَانِ» مَانِعٌ مِنْ أَنْ يُجْزِئَ أَقَلُّ، وَهُمْ أَوَّلُ مُوَافِقٍ لَنَا فِي هَذَا، فَمَنْ تَوَضَّأَ عِنْدَهُمْ بِنِصْفِ رِطْلٍ أَجْزَأَهُ، فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْأَثَرِ. وَاحْتَجُّوا بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ مُوسَى الْجُهَنِيِّ: كُنْت عِنْدَ مُجَاهِدٍ فَأُتِيَ بِإِنَاءٍ يَسَعُ ثَمَانِيَةَ أَرْطَالٍ تِسْعَةَ أَرْطَالٍ، عَشَرَةَ أَرْطَالٍ، فَقَالَ: قَالَتْ عَائِشَةُ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَغْتَسِلُ بِمِثْلِ هَذَا» مَعَ الْأَثَرِ الثَّابِتِ «أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يَغْتَسِلُ بِالصَّاعِ.» قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا حُجَّةَ فِيهِ، لِأَنَّ مُوسَى قَدْ شَكَّ فِي ذَلِكَ الْإِنَاءِ مِنْ ثَمَانِيَةِ أَرْطَالٍ إلَى عَشَرَةٍ، وَهُمْ لَا يَقُولُونَ: إنَّ الصَّاعَ يَزِيدُ عَلَى ثَمَانِيَةِ أَرْطَالٍ وَلَا فَلْسًا.

L10227 Furthermore, it has been authentically established that he (peace be upon him) and ʿĀ'ishah (may Allah be pleased with her) both performed ritual bathing using a vessel containing three *mudds*; also using a vessel that was **the** *farq*—the *farq* being twelve *mudds*—also with five *mudds*, and also with five *makkūkiyy*.

وَأَيْضًا - فَقَدْ صَحَّ «أَنَّهُ - عَلَيْهِ السَّلَامُ - اغْتَسَلَ هُوَ وَعَائِشَةُ - رَضِيَ اللَّهُ عَنْهَا - جَمِيعًا مِنْ إنَاءٍ يَسَعُ ثَلَاثَةَ أَمْدَادٍ» ، وَأَيْضًا مِنْ إنَاءٍ هُوَ الْفَرْقُ، وَالْفَرْقُ: اثْنَا عَشَرَ مُدًّا، وَأَيْضًا - بِخَمْسَةِ أَمْدَادٍ، وَأَيْضًا - بِخَمْسَةِ مَكَاكِيَّ.

L10228 All of these narrations are of the utmost authenticity, with a strong, firmly established, and unbroken chain of transmission. The five Makkan *mudd* are equivalent to fifty *mudd*.

وَكُلُّ هَذِهِ الْآثَارِ فِي غَايَةِ الصِّحَّةِ، وَالْإِسْنَادِ الْوَثِيقِ الثَّابِتِ الْمُتَّصِلِ، وَالْخَمْسَةُ مَكَاكِيَّ: خَمْسُونَ مُدًّا.

وَلَا خِلَافَ فِي أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُعَيِّرْ لَهُ الْمَاءَ لِلْغُسْلِ بِكَيْلٍ كَكَيْلِ الزَّيْتِ، وَلَا تَوَضَّأَ وَاغْتَسَلَ بِإِنَاءَيْنِ مَخْصُوصَيْنِ بَلْ قَدْ تَوَضَّأَ فِي الْحَضَرِ وَالسَّفَرِ بِلَا مُرَاعَاةٍ لِمِقْدَارِ الْمَاءِ.

L10229 There is no disagreement that he—peace be upon him—did not designate a measured amount of water for ghusl, as one would measure oil, nor did he use two specific vessels for ablution or ghusl. Rather, he performed ablution while settled or traveling without regard to the quantity of water.

هُمْ أَوَّلُ مُخَالِفٍ لِهَذَا التَّحْدِيدِ فَلَا يَخْتَلِفُونَ فِي أَنَّ امْرَأً لَوْ اغْتَسَلَ نِصْفَ صَاعٍ لَأَجْزَأَهُ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْآثَارِ الْوَاهِيَةِ.

L10230 They are the first to oppose this specification, for they do not differ that if a person were to perform *ghusl* with half a *ṣāʿ*, it would suffice him. Thus, their reliance on these weak narrations is invalidated.

وَاحْتَجُّوا بِرِوَايَتَيْنِ وَاهِيَتَيْنِ -: إحْدَاهُمَا - مِنْ طَرِيقِ أَحْمَدَ بْنِ يُونُسَ عَنْ زُهَيْرِ بْنِ مُعَاوِيَةَ عَنْ أَبِي إِسْحَاقَ عَنْ رَجُلٍ عَنْ مُوسَى بْنِ طَلْحَةَ: أَنَّ الْقَفِيزَ الْحَجَّاجِيَّ قَفِيزُ عُمَرَ، أَوْ صَاعُ عُمَرَ.

L10231–10233 They cited two tenuous narrations: One of them is narrated through the chain of Ahmad ibn Yunus from Zuhayr ibn Muʿawiyah, from Abu Ishaq, from a man, from Musa ibn Talhah: that Hajjaj's qafiz is Umar's qafiz or Umar's saʿ.

وَالْأُخْرَى - مِنْ طَرِيقِ مُجَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: الْقَفِيزُ الْحَجَّاجِيُّ - صَاعُ عُمَرَ.

L10234 And the other [narration]—via Mujālid's chain from al-Shaʿbī, who said: "Al-Ḥajjāj's qafīz is ʿUmar's standardized ṣāʿ."

وَبِرِوَايَةٍ عَنْ إبْرَاهِيمَ: عَيَّرْنَا صَاعَ عُمَرَ فَوَجَدْنَاهُ حَجَّاجِيًّا.

L10235 And in a narration from Ibrāhīm: We compared the ṣāʿ of ʿUmar and found that it matched the Ḥajjājī standard (the measure standardized by al-Ḥajjāj ibn Yūsuf).

وَبِرِوَايَةٍ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ الْحَكَمِ عَنْ إبْرَاهِيمَ «كَانَ صَاعُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَمَانِيَةَ أَرْطَالٍ، وَمُدُّهُ رَطْلَيْنِ» .

L10236 In a narration from Al-Ḥajjāj ibn Arṭāh, from Al-Ḥakam, from Ibrāhīm: "The *ṣāʿ* of the Messenger of Allah (peace be upon him) was eight ratls, and his *mudd* was two ratls."

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّهُ سَوَاءٌ، وُجُودُهُ وَعَدَمُهُ. أَمَّا حَدِيثُ مُوسَى بْنِ طَلْحَةَ فَبَيْنَ أَبِي إِسْحَاقَ وَبَيْنَهُ مَنْ لَا يُدْرَى مَنْ هُوَ، وَمُجَالِدٌ ضَعِيفٌ، أَوَّلُ مَنْ ضَعَّفَهُ أَبُو حَنِيفَةَ، وَإِبْرَاهِيمُ لَمْ يُدْرِكْ عُمَرَ. ثُمَّ لَوْ صَحَّ كُلُّ ذَلِكَ لَمَا انْتَفَعُوا بِهِ؛ لِأَنَّنَا لَمْ نُنَازِعْهُمْ فِي صَاعِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَلَا فِي قَفِيزِهِ، إنَّمَا نَازَعْنَاهُمْ فِي صَاعِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَسْنَا نَدْفَعُ أَنْ يَكُونَ لِعُمَرَ: صَاعٌ، وَقَفِيزٌ، وَمُدٌّ. رَتَّبَهُ لِأَهْلِ الْعِرَاقِ لِنَفَقَاتِهِمْ وَأَرْزَاقِهِمْ،

L10237 Abū Muḥammad said: All of this is the same, whether existing or non-existent. As for the ḥadīth of Mūsā ibn Ṭalḥah, there is an unidentified narrator between Abū Isḥāq and him. Mujālid is weak—Abū Ḥanīfah was the first to criticize him—and Ibrāhīm did not meet ʿUmar. Even if all that were sound, it would not benefit them, for we do not contest them regarding ʿUmar's (may Allah be pleased with him) ṣāʿ nor his qafīz. We only dispute them regarding the Prophet's ṣāʿ (peace and blessings of Allah be upon him), and we do not reject the possibility that ʿUmar could have had a ṣāʿ, a qafīz, and a mudd. He organized it for the people of Iraq for their expenditures and livelihoods, as in Egypt with the wiba and irdab, and in the Levant with

the mudd. Similarly, Marwān had a mudd he devised in Medina, and Hishām ibn Ismāʿīl had a mudd he devised. None of that constitutes valid evidence for anything.

كَمَا بِمِصْرَ الْوَيْبَةُ وَالْإِرْدَبُّ، وَبِالشَّامِ الْمُدُّ وَكَمَا كَانَ لِمَرْوَانَ بِالْمَدِينَةِ مُدٌّ اخْتَرَعَهُ، وَلِهِشَامِ بْنِ إِسْمَاعِيلَ مُدٌّ اخْتَرَعَهُ، وَلَا حُجَّةَ فِي شَيْءٍ مِنْ ذَلِكَ.

L10238 As for Ibrāhīm's statement regarding the Prophet's *ṣāʿ* and *mudd*—may Allah bless him and grant him peace—the statement of Ibrāhīm and that of Abū Ḥanīfah are equivalent in status: they are rejected when they contradict the sound ruling.

وَأَمَّا قَوْلُ إِبْرَاهِيمَ فِي صَاعِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمُدِّهِ: فَقَوْلُ إِبْرَاهِيمَ، وَقَوْلُ أَبِي حَنِيفَةَ سَوَاءٌ فِي الرَّغْبَةِ عَنْهُمَا إِذَا خَالَفَا الصَّوَابَ.

L10239–10241 It has been narrated to us through the chain of transmission via al-Bukhārī: ʿUthmān ibn Abī Shaybah narrated to us, al-Qāsim ibn Mālik al-Muzanī narrated to us, al-Juʿayd ibn ʿAbd al-Raḥmān narrated to us from al-Sā'ib ibn Yazīd, who said: "The ṣāʿ during the time of the Messenger of Allah (peace and blessings be upon him) was equivalent to one mudd plus a third according to your present-day mudd. It was then increased in it during the era of ʿUmar ibn ʿAbd al-ʿAzīz." It has also been narrated to us from Mālik that he stated concerning the measurement of Zakāt al-Fiṭr using the lesser mudd—the mudd of the Messenger of Allah (peace and blessings be upon him). And from him also regarding the zakah of grains and olives with the first sa'—the sa' of the Messenger of Allah, peace and blessings be upon him. From Malik's narration via Nafi', he said: Ibn 'Umar used to give the zakah al-fitr from Ramadan using the first mudd—the mudd of the Messenger of Allah. Thus, it was established that in Medina there existed a sa' and a mudd distinct from the Prophet's sa' and mudd. If the sa' of 'Umar ibn al-Khattab had been the same as the Prophet's sa', it would not have been attributed to 'Umar at all, instead of being attributed to Abu Bakr, nor would it have been attributed to Abu Bakr instead of being traced back to the Messenger of Allah. Thus, it is conclusively established that Hisham's mudd was standardized by Hisham, and that 'Umar's sa' was standardized by 'Umar.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ: ثنا عُثْمَانُ بْنُ أَبِي شَيْبَةَ ثنا الْقَاسِمُ بْنُ مَالِكٍ الْمُزَنِيّ ثنا الْجُعَيْدُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ السَّائِبِ بْنِ يَزِيدَ قَالَ «كَانَ الصَّاعُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُدًّا وَثُلُثًا بِمُدِّكُمْ الْيَوْمَ، فَزِيدَ فِيهِ فِي زَمَنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ» وَرُوِّينَا عَنْ مَالِكٍ أَنَّهُ قَالَ فِي مَكِيلَةِ زَكَاةِ الْفِطْرِ بِالْمُدِّ الْأَصْغَرِ مُدُّ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَنْهُ أَيْضًا فِي زَكَاةِ الْحُبُوبِ وَالزَّيْتُونِ بِالصَّاعِ الْأَوَّلِ صَاعِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَمِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ قَالَ: كَانَ ابْنُ عُمَرَ يُعْطِي زَكَاةَ الْفِطْرِ مِنْ رَمَضَانَ بِمُدِّ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُدِّ الْأَوَّلِ فَصَحَّ أَنَّ بِالْمَدِينَةِ صَاعًا، وَمُدًّا غَيْرَ مُدِّ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَلَوْ كَانَ صَاعُ عُمَرَ بْنِ الْخَطَّابِ هُوَ صَاعُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَا نُسِبَ إلَى عُمَرَ أَصْلًا دُونَ أَنْ يُنْسَبَ إلَى أَبِي بَكْرٍ، وَلَا إلَى أَبِي بَكْرٍ أَيْضًا دُونَ أَنْ يُضَافَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَصَحَّ بِلَا شَكٍّ أَنَّ مُدَّ هِشَامٍ إنَّمَا رَتَّبَهُ هِشَامٌ، وَأَنَّ صَاعَ عُمَرَ إنَّمَا رَتَّبَهُ عُمَرُ.

L10242 This is the case if it is confirmed that there was a ṣāʿ there called "the ṣāʿ of 'Umar," for indeed the ṣāʿ and the mudd of the Messenger of Allah—peace and blessings be upon him—are ascribed to him and not to others, remaining in accordance with his original measure.

هَذَا إنْ صَحَّ أَنَّهُ كَانَ هُنَالِكَ صَاعٌ يُقَالُ لَهُ " صَاعُ عُمَرَ " فَإِنَّ صَاعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمُدَّهُ مَنْسُوبَانِ إلَيْهِ لَا إلَى غَيْرِهِ، بَاقِيَانِ بِحَسَبِهِمَا.

L10243 As for the true nature of the Ḥajjājī ṣāʿ upon which they relied, we have transmitted through the chain of Ismāʿīl ibn Isḥāq from Musaddad from al-Muʿtamir ibn Sulaymān from al-Ḥajjāj ibn Arṭāh, who said: "One who heard al-Ḥajjāj ibn Yūsuf related to me that he said: 'This ṣāʿ of mine is the ṣāʿ of ʿUmar. An elderly woman in Medina gave it to me.'" If they argue using the narration of al-Ḥajjāj ibn Arṭāh from Ibrāhīm, then this very narration of his is proof against them. This constitutes the foundational basis of al-Ḥajjāj's ṣāʿ. Therefore, may no abundance be granted, no goodness exist, nor blessing be bestowed upon al-Ḥajjāj or his ṣāʿ.

وَأَمَّا حَقِيقَةُ الصَّاعِ الْحَجَّاجِيِّ الَّذِي عَوَّلُوا عَلَيْهِ فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ عَنْ مُسَدَّدٍ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ قَالَ: حَدَّثَنِي مَنْ سَمِعَ الْحَجَّاجَ بْنَ يُوسُفَ يَقُولُ: صَاعِي هَذَا صَاعُ عُمَرَ أَعْطَتْنِيهِ عَجُوزٌ بِالْمَدِينَةِ. فَإِنْ احْتَجُّوا بِرِوَايَةِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ إبْرَاهِيمَ فَرِوَايَتُهُ هَذِهِ حُجَّةٌ عَلَيْهِمْ، وَهَذَا أَصْلُ صَاعِ الْحَجَّاجِ، فَلَا كَثُرَ وَلَا طِيبَ وَلَا بُورِكَ فِي الْحَجَّاجِ وَلَا فِي صَاعِهِ.

L10244 We have been narrated through the chain of Abū Bakr ibn Abī Shaybah: He narrated to us Jarīr—that is, Ibn ʿAbd al-Ḥumayd—from Yazīd—that is, Ibn Ziyād—from ʿAbd al-Raḥmān ibn Abī Laylā, who said: "The ṣāʿ exceeds the measure instituted by al-Ḥajjāj by one mikyāl. Thus, the false pretense they disguised is nullified, and it is incumbent to revert to what has been authentically established from the Prophet—peace and blessings of Allah be upon him."

وَرُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ: ثنا جَرِيرٌ هُوَ ابْنُ عَبْدِ الْحُمَيْدِ - عَنْ يَزِيدَ هُوَ ابْنُ زِيَادٍ - عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى قَالَ: الصَّاعُ يَزِيدُ عَلَى الْحَجَّاجِيِّ مِكْيَالًا. فَبَطَلَ مَا مَوَّهُوا بِهِ مِنْ الْبَاطِلِ وَوَجَبَ الرُّجُوعُ إلَى مَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L10245–10247 Just as ʿAbdullāh ibn Rabīʿ narrated to us, Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us: I am Isḥāq—he is Ibn Rāhwayh—and Muḥammad ibn Ismāʿīl ibn ʿUlayyah. Isḥāq said from al-Mulāʾī, while Ibn ʿUlayyah said: Abū Nuʿaym—that is al-Faḍl ibn Dukayn—narrated to us. Both Isḥāq and Ibn ʿUlayyah narrated from Sufyān al-Thawrī, from Ḥanẓalah ibn Abī Sufyān al-Jumaḥī, from Ṭāwūs, from Ibn ʿUmar, who said: The Messenger of Allāh (peace and blessings of Allāh be upon him) said: "The measuring standard follows the measure of the people of..." "Medina, and the [legal] measure conforms to the standard used by the people of Makkah."[29]

كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ هُوَ ابْنُ رَاهْوَيْهِ - وَمُحَمَّدُ بْنُ إسْمَاعِيلَ بْنِ عُلَيَّةَ، قَالَ إِسْحَاقُ عَنْ الْمُلَائِيِّ وَقَالَ ابْنُ عُلَيَّةَ: ثنا أَبُو نُعَيْمٍ هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - كِلَاهُمَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَنْظَلَةَ بْنِ أَبِي سُفْيَانَ الْجُمَحِيِّ عَنْ طَاوُسٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْمِكْيَالُ عَلَى مِكْيَالِ أَهْلِ الْمَدِينَةِ، وَالْوَزْنُ عَلَى وَزْنِ أَهْلِ مَكَّةَ» .

L10248 It was not possible for anyone to deviate from the measure of the people of Medina and its quantity according to them, nor from the weights of the people of Mecca. We found the people of Medina unanimous—"no two among them disagree"—that the *mudd* of the Messenger of Allah (peace and blessings be upon him), by which alms are given, is no more than one and a half *ratl* and no less than one and a quarter *ratl*.

فَلَمْ يَسَعْ أَحَدًا الْخُرُوجُ عَنْ مِكْيَالِ أَهْلِ الْمَدِينَةِ وَمِقْدَارِهِ عِنْدَهُمْ، وَلَا عَنْ مَوَازِينِ أَهْلِ مَكَّةَ، وَوَجَدْنَا أَهْلَ الْمَدِينَةِ " لَا يَخْتَلِفُ مِنْهُمْ اثْنَانِ فِي أَنَّ مُدَّ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي بِهِ تُؤَدَّى الصَّدَقَاتُ لَيْسَ أَكْثَرَ مِنْ رَطْلٍ وَنِصْفٍ، وَلَا أَقَلَّ مِنْ رَطْلٍ وَرُبْعٍ ".

[29] **Hadith references (L10245):** Sunan an-Nasai 4594.

وَقَالَ بَعْضُهُمْ: رَطْلٌ وَثُلُثٌ، وَلَيْسَ هَذَا اخْتِلَافًا، لَكِنَّهُ عَلَى حَسَبِ رَزَانَةِ الْمَكِيلِ مِنْ الْبُرِّ، وَالتَّمْرِ، وَالشَّعِيرِ -: حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ عَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ هِشَامِ بْنِ عُرْوَةَ «أَنَّ مُدَّ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي كَانَ يَأْخُذُ بِهِ الصَّدَقَاتِ: رَطْلٌ وَنِصْفٌ» .

L10249 Some of them said: a *ratl* and a third, and this is not a difference; rather, it is based on the weight of the measured quantities of wheat, dates, and barley. Hammam narrated to us from Ibn Mufarrij from Ibn al-Aʿrabī from al-Dabarī from ʿAbd al-Razzāq from Ibn Jurayj from Hishām ibn ʿUrwah: “Indeed, the *mudd* of the Prophet—may Allah bless him and grant him peace—by which he used to collect the alms was a *ratl* and a half.”

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد عَنْ أَحْمَدَ بْنِ حَنْبَلٍ قَالَ: صَاعُ ابْنِ أَبِي ذِئْبٍ خَمْسَةُ أَرْطَالٍ وَثُلُثٌ.

L10250 Abdullah ibn Rabiʿ narrated to us; Muhammad ibn Ishaq ibn as-Sulaimi narrated to us; Ibn al-Aʿrābī narrated to us; Abu Dawud reported from Ahmad ibn Hanbal, who said: The *ṣāʿ* of Ibn Abi Dhiʾb is five *arṭāl* and a third.

قَالَ أَبُو دَاوُد: وَهُوَ صَاعُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L10251 Abu Dawud said: And it is the ṣaʿ of the Messenger of Allah—peace be upon him—.

حَدَّثَنَا حُمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ قَالَ: ذَكَرَ أَبِي أَنَّهُ عَيَّرَ مُدَّ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْحِنْطَةِ فَوَجَدَهَا رَطْلًا وَثُلُثًا فِي الْبُرِّ، قَالَ: وَلَا يَبْلُغُ مِنْ التَّمْرِ هَذَا الْمِقْدَارُ -: حَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ ثنا أَحْمَدُ بْنُ دُحَيْمٍ ثنا إِبْرَاهِيمُ بْنُ حَمَّادٍ ثنا إِسْمَاعِيلُ بْنُ إِسْحَاقَ قَالَ: دَفَعَ إِلَيْنَا إِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ الْمُدَّ، وَقَالَ هَذَا مُدُّ مَالِكٍ، وَهُوَ عَلَى مِثَالِ مُدِّ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَهَبْت بِهِ إِلَى السُّوقِ، وَخُرِطَ لِي عَلَيْهِ مُدٌّ وَحَمَلْته مَعِي إِلَى الْبَصْرَةِ، فَوَجَدْته نِصْفَ كَيْلَجَةٍ بِكَيْلَجَةِ الْبَصْرَةِ، يَزِيدُ عَلَى كَيْلَجَةِ الْبَصْرَةِ شَيْئًا يَسِيرًا خَفِيفًا، إِنَّمَا هُوَ شَبِيهٌ بِالرُّجْحَانِ الَّذِي لَا يَقَعُ عَلَيْهِ جُزْءٌ مِنْ الْأَجْزَاءِ، وَنِصْفُ كَيْلَجَةِ الْبَصْرَةِ هُوَ رُبْعُ كَيْلَجَةِ بَغْدَادَ - فَالْمُدُّ: رُبْعُ الصَّاعِ، وَالصَّاعُ مِقْدَارُ كَيْلَجَةٍ بَغْدَادِيَّةٍ يَزِيدُ الصَّاعُ عَلَيْهَا شَيْئًا يَسِيرًا.

L10252–10254 Hummam narrated to us: Abbas ibn Asbagh narrated to us: Muhammad ibn Abd al-Malik ibn Ayman narrated to us: Abdullah ibn Ahmad ibn Hanbal said: My father mentioned that he measured the Prophet’s *mudd* (peace be upon him) with wheat and found it equivalent to one *ratl* and a third in wheat. He said: “This measure does not attain the same quantity when used for dates.”

Yahya ibn Abd al-Rahman ibn Masʿud narrated to us: Ahmad ibn Duhaym narrated to us: Ibrahim ibn Hammad narrated to us: Ismaʿil ibn Ishaq said: Ismaʿil ibn Abi Uways handed us the *mudd* and said: “This is Malik’s *mudd*, corresponding to the *mudd* of the Prophet (peace be upon him).” I took it to the market, had a *mudd* portioned out for me, and carried it to Basra. There I found it equal to half of Basra’s *kaylajah* by their standard measurement, though it slightly exceeded their actual *kaylajah* in quantity. Slight; it is merely akin to an evidentiary preponderance to which no part applies. Half of Basra’s kaylajah equals a quarter of Baghdad’s kaylajah. Hence, the mudd is a quarter of the saʿ, and the saʿ corresponds to a Baghdad kaylajah but exceeds it by a small amount.

L10255 Abu Muhammad said: A mudd was calibrated for me according to the verified inherited measurement preserved by the household of Abdullah ibn Ali

al-Baji. It remains with the eldest among them, never leaves their residence. I bring it to my trusted associate whom I entrusted with this task: Ali ibn Abdullah ibn Ahmad ibn Abdullah ibn Ali, the aforementioned, who mentioned that this was the mudd of his father, grandfather, and great-grandfather. He took it and calibrated it against the mudd of Ahmad ibn Khalid. Ahmad ibn Khalid informed him that he had calibrated it against the mudd of Yahya ibn Yahya, which Yahya's son Ubaydullah ibn Yahya had given him. Yahya had calibrated it according to Malik's mudd. I do not doubt that Ahmad ibn Khalid also verified it against the mudd of Muhammad ibn Waddah, which Muhammad ibn Waddah himself had certified in Medina.

قَالَ أَبُو مُحَمَّدٍ: وَخُرِطَ لِي مُدٌّ عَلَى تَحْقِيقِ الْمُدِّ الْمُتَوَارَثِ عِنْدَ آلِ عَبْدِ اللَّهِ بْنِ عَلِيٍّ الْبَاجِيِّ، وَهُوَ عِنْدَ أَكْبَرِهِمْ لَا يُفَارِقُ دَارِهِ، أُخْرِجُهُ إِلَى ثِقَتِي الَّذِي كَلَّفْته ذَلِكَ: عَلِيُّ بْنُ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ عَبْدِ اللَّهِ بْنِ عَلِيٍّ الْمَذْكُورِ وَذَكَرَ أَنَّهُ مُدُّ أَبِيهِ وَجَدِّهِ وَأَبِي جَدِّهِ أَخَذَهُ وَخَرَطَهُ عَلَى مُدِّ أَحْمَدَ بْنِ خَالِدٍ، وَأَخْبَرَهُ أَحْمَدُ بْنُ خَالِدٍ أَنَّهُ خَرَطَهُ عَلَى مُدِّ يَحْيَى بْنِ يَحْيَى، الَّذِي أَعْطَاهُ إِيَّاهُ ابْنُهُ عُبَيْدُ اللَّهِ بْنُ يَحْيَى بْنِ يَحْيَى، وَخَرَطَهُ يَحْيَى عَلَى مُدِّ مَالِكٍ، وَلَا أَشُكُّ أَنَّ أَحْمَدَ بْنَ خَالِدٍ صَحَّحَهُ أَيْضًا عَلَى مُدِّ مُحَمَّدِ بْنِ وَضَّاحٍ الَّذِي صَحَّحَهُ ابْنُ وَضَّاحٍ بِالْمَدِينَةِ.

L10256 Abu Muhammad said: Then I measured it with good wheat and weighed it, and she found it to be one and a half *ratl*s by the *fulfuli*, not even a single grain more. I measured it against barley – though it was not good – and I found it to be one *ratl* plus half an *uqiyyah*.

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ كِلْته بِالْقَمْحِ الطَّيِّبِ، ثُمَّ وَزَنْته فَوَجَدْتُهُ رَطْلًا وَاحِدًا وَنِصْفَ رَطْلٍ بِالْفُلْفُلِيِّ، لَا يَزِيدُ حَبَّةً، وَكِلْته بِالشَّعِيرِ، إِلَّا أَنَّهُ لَمْ يَكُنْ بِالطَّيِّبِ، فَوَجَدْتُهُ رَطْلًا وَاحِدًا وَنِصْفَ أُوقِيَّةً.

L10257 Abū Muḥammad said: This is a matter widely recognized in Medina, transmitted collectively by all—their young and old, the righteous and the corrupt, the knowledgeable and the ignorant, free women and enslaved women—just as the people of Mecca transmitted the location of al-Ṣafā and al-Marwah. To challenge the people of Medina regarding their ṣāʿ and mudd is like challenging the people of Mecca regarding the location of al-Ṣafā and al-Marwah, with no distinction. It resembles one who challenges the people of Medina regarding the grave, the pulpit, and al-Baqīʿ. This constitutes a departure from religious integrity and rationality.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا أَمْرٌ مَشْهُورٌ بِالْمَدِينَةِ مَنْقُولٌ نَقْلَ الْكَافَّةِ صَغِيرِهِمْ وَكَبِيرِهِمْ، وَصَالِحِهِمْ وَطَالِحِهِمْ، وَعَالِمِهِمْ وَجَاهِلِهِمْ، وَحَرَائِرِهِمْ وَإِمَائِهِمْ، كَمَا نَقَلَ أَهْلُ مَكَّةَ مَوْضِعَ الصَّفَا، وَالْمَرْوَةِ، وَالِاعْتِرَاضُ عَلَى أَهْلِ الْمَدِينَةِ فِي صَاعِهِمْ وَمُدِّهِمْ كَالْمُعْتَرِضِ عَلَى أَهْلِ مَكَّةَ فِي مَوْضِعِ الصَّفَا وَالْمَرْوَةِ وَلَا فَرْقَ، وَكَمَنْ يَعْتَرِضُ عَلَى أَهْلِ الْمَدِينَةِ فِي الْقَبْرِ وَالْمِنْبَرِ وَالْبَقِيعِ، وَهَذَا خُرُوجٌ عَنْ الدِّيَانَةِ وَالْمَعْقُولِ.

L10258 Abū Muḥammad said: I consulted all those I trusted for their expertise, and all unanimously agreed that the weight of a gold dinar in Mecca is eighty-two grains and three-tenths of a grain measured by unrestricted barley grains. The dirham equals seven-tenths of a mithqāl. Thus, the Meccan dirham weighs fifty-seven grains and six-tenths and one-tenth of a grain measured by unrestricted barley grains. Therefore, the raṭl amounts to one hundred twenty-eight dirhams according to the aforementioned dirham.

قَالَ أَبُو مُحَمَّدٍ: وَبَحَثْت أَنَا غَايَةَ الْبَحْثِ عِنْدَ كُلِّ مَنْ وَثِقْت بِتَمْيِيزِهِ، فَكُلٌّ اتَّفَقَ لِي عَلَى أَنَّ دِينَارَ الذَّهَبِ بِمَكَّةَ وَزْنُهُ: اثْنَانِ وَثَمَانُونَ حَبَّةً وَثَلَاثَةُ أَعْشَارِ حَبَّةٍ بِالْحَبِّ مِنْ الشَّعِيرِ الْمُطْلَقِ، وَالدِّرْهَمَ سَبْعَةُ أَعْشَارِ الْمِثْقَالِ، فَوَزْنُ الدِّرْهَمِ الْمَكِّيِّ سَبْعٌ وَخَمْسُونَ حَبَّةً وَسِتَّةُ

أَعْشَارِ حَبَّةٍ وَعُشْرُ حَبَّةٍ، فَالرَّطْلُ مِائَةُ دِرْهَمٍ وَاحِدَةٍ وَثَمَانِيَةٌ وَعِشْرُونَ دِرْهَمًا بِالدِّرْهَمِ الْمَذْكُورِ.

L10259 And indeed, Abū Yūsuf returned to the truth on this issue when he entered Medina and ascertained the provisions of its people.

وَقَدْ رَجَعَ أَبُو يُوسُفَ إِلَى الْحَقِّ فِي هَذِهِ الْمَسْأَلَةِ إِذْ دَخَلَ الْمَدِينَةَ وَوَقَفَ عَلَى أَمْدَادِ أَهْلِهَا.

L10260–10261 Some of them have misrepresented by asserting that the term al-wasq was so named solely because it derives etymologically from the camel's load.

وَقَدْ مَوَّهَ بَعْضُهُمْ بِأَنَّهُ إِنَّمَا سُمِّيَ الْوَسْقُ، لِأَنَّهُ مِنْ وَسْقِ الْبَعِيرِ.

L10262 Abu Muhammad said: This is utterly bizarre in its absurdity, and I wish I knew who could possibly do such a thing. Why did he not say: because it is the wasq of a donkey? Furthermore, the wasq he referred to is, according to their view, sixteen quarters (rub') by al-Qurtubi's measure, while a camel's load exceeds this amount by nearly half again.

قَالَ أَبُو مُحَمَّد: وَهَذَا طَرِيفٌ فِي الْهُوجِ جِدًّا وَلَيْتَ شِعْرِي مَنْ لَهُ بِذَلِكَ وَهَلَّا قَالَ: لِأَنَّهُ وَسْقُ الْحِمَارِ، ثُمَّ أَيْضًا - فَإِنَّ الْوِسْقَ الَّذِي أَشَارَ إِلَيْهِ هُوَ عِنْدَهُمْ: سِتَّةَ عَشَرَ رُبْعًا بِالْقُرْطُبِيِّ، وَحِمْلُ الْبَعِيرِ أَكْثَرُ مِنْ هَذَا الْمِقْدَارِ بِنَحْوِ نِصْفِهِ.

L10263 As for their exemption of zakat from wheat, dates, and barley harvested from kharaj land, this constitutes a deeply reprehensible and gravely untenable assertion.

وَأَمَّا إِسْقَاطُهُمْ الزَّكَاةَ عَمَّا أُصِيبَ فِي أَرْضِ الْخَرَاجِ مِنْ بُرٍّ، وَتَمْرٍ، وَشَعِيرٍ؛ فَفَاحِشٌ جِدًّا، وَعَظِيمٌ مِنْ الْقَوْلِ.

L10264 And the abolition of the prescribed zakāh. They confused the matter with baseless claims, among them: One of their proponents said: "Umar did not collect zakāh from kharaj land." Abū Muḥammad said: This is feeble deception, for Umar—may Allah be pleased with him—only imposed kharaj upon the people of disbelief, and no zakāh is taken from them. If anyone claims that Umar did not collect zakāh from those who embraced Islam among the owners of kharaj land, they have lied flagrantly—he will never find evidence for this. Whoever claims that Umar abolished zakāh from them is like one claiming he abolished prayer from them, with no distinction. Some obscured the issue by citing what is authentically reported from Allah's Messenger—peace and blessings be upon him—regarding his saying: "Iraq withheld its qafīz and dirham, Syria withheld its mudd and dinar, Egypt withheld its ird-abb and dinar, and you have reverted to your initial state." Abū Hurayrah's very flesh and blood bore witness to this. They argued: "He—peace and blessings be upon him—informed us of what is due in these lands without

وَاسْقَاطٌ لِلزَّكَاةِ الْمُفْتَرَضَةِ. وَمَوَّهُوا فِي هَذَا بِطَوَامَّ، مِنْهَا: أَنْ قَالَ قَائِلُهُمْ: - إِنَّ عُمَرَ لَمْ يَأْخُذْ الزَّكَاةَ مِنْ أَرْضِ الْخَرَاجِ. قَالَ أَبُو مُحَمَّد: وَهَذَا تَمْوِيهٌ بَارِدٌ، لِأَنَّ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - إِنَّمَا ضَرَبَ الْخَرَاجَ عَلَى أَهْلِ الْكُفْرِ، وَلَا زَكَاةَ تُؤْخَذُ مِنْهُمْ. فَإِنْ ادَّعَى: أَنَّ عُمَرَ لَمْ يَأْخُذْ الزَّكَاةَ مِمَّنْ أَسْلَمَ مِنْ أَصْحَابِ أَرْضِ الْخَرَاجِ فَقَدْ كَذَبَ جِدًّا، وَلَا يَجِدُ هَذَا أَبَدًا؛ وَمَنْ ادَّعَى أَنَّ - عُمَرَ أَسْقَطَ الزَّكَاةَ عَنْهُمْ كَمَنْ ادَّعَى أَنَّهُ أَسْقَطَ الصَّلَاةَ عَنْهُمْ وَلَا فَرْقَ. وَمَوَّهَ بَعْضُهُمْ بِأَنَّ ذِكْرَ مَا قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ: «مَنَعَتْ الْعِرَاقُ قَفِيزَهَا وَدِرْهَمَهَا، وَمَنَعَتْ الشَّامُ مُدَّيْهَا وَدِينَارَهَا، وَمَنَعَتْ مِصْرُ إِرْدَبَّهَا وَدِينَارَهَا، وَعُدْتُمْ مِنْ حَيْثُ بَدَأْتُمْ» شَهِدَ عَلَى ذَلِكَ لَحْمُ أَبِي هُرَيْرَةَ وَدَمُهُ، قَالُوا:

فَأَخْبَرَ - عَلَيْهِ السَّلَامُ - بِمَا يَجِبُ فِي هَذِهِ الْأَرَضِينَ، وَلَمْ يُخْبِرْ أَنَّ فِيهَا زَكَاةً؛ وَلَوْ كَانَ فِيهَا زَكَاةٌ لَأَخْبَرَ بِهَا. قَالَ أَبُو مُحَمَّدٍ: مِثْلُ هَذَا لَيْسَ لِإِيرَادِهِ وَجْهٌ؛ إلَّا لِيَحْمَدَ اللَّهَ تَعَالَى مَنْ سَمِعَهُ عَلَى خَلَاصِهِ مِنْ عَظِيمِ مَا ابْتُلُوا بِهِ مِنْ الْمُجَاهَرَةِ بِالْبَاطِلِ، وَمُعَارَضَةِ الْحَقِّ بِأَغَثِّ مَا يَكُونُ مِنْ الْكَلَامِ.

mentioning zakāh. Had zakāh been applicable, he would have declared it." Abū Muḥammad retorted: Such an argument has no valid basis—it only serves to make those who hear it praise Allah the Exalted for being spared the grave affliction of brazenly upholding falsehood and countering truth with the flimsiest arguments.

L10265–10266 وَلَيْتَ شِعْرِي فِي أَيِّ مَعْقُولٍ وَجَدُوا أَنَّ كُلَّ شَرِيعَةٍ لَمْ تُذْكَرْ فِي هَذَا الْحَدِيثِ فَهِيَ سَاقِطَةٌ. وَهَلْ يَقُولُ هَذَا مَنْ لَهُ نَصِيبٌ مِنْ التَّمْيِيزِ. وَهَلْ بَيْنَ مَنْ أَسْقَطَ الزَّكَاةَ - لِأَنَّهَا لَمْ تُذْكَرْ فِي هَذَا الْخَبَرِ - فَرْقٌ، وَبَيْنَ مَنْ أَسْقَطَ الصَّلَاةَ وَالْحَجَّ لِأَنَّهُمَا لَمْ يُذْكَرَا فِي هَذَا الْخَبَرِ. وَحَتَّى لَوْ صَحَّ لَهُمْ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَصَدَ بِهَذَا الْخَبَرِ ذِكْرَ مَا يَجِبُ فِي هَذِهِ الْأَرَضِينَ - وَمَعَاذَ اللَّهِ مِنْ أَنْ يَصِحَّ هَذَا فَهُوَ الْكَذِبُ الْبَحْتُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَا كَانَ فِي ذَلِكَ إسْقَاطُ سَائِرِ حُقُوقِ اللَّهِ تَعَالَى عَنْ أَهْلِهَا.

I wish I knew through what rational basis they found that every religious law not mentioned in this ḥadīth is nullified. Would anyone possessing a share of discernment say this? What difference exists between one who nullifies Zakāh because it was not mentioned in this report, and one who nullifies prayer and Hajj because they were not mentioned in it? Even if their claim were valid - Allah forbid that this be valid, for it is a sheer lie against the Messenger of Allah, peace and blessings be upon him - that the Prophet, peace and blessings be upon him, intended by this report to mention what is obligatory regarding these lands, this would still entail the nullification of all other rights of Allah, the Exalted, incumbent upon their people.

L10267 وَلَيْسَ فِي الدُّنْيَا حَدِيثٌ انْتَظَمَ ذِكْرَ جَمِيعِ الشَّرَائِعِ أَوَّلِهَا عَنْ آخِرِهَا، نَعَمْ، وَلَا سُورَةٌ أَيْضًا.

There is no ḥadīth in this world that comprehensively covers all divine laws from start to finish—no, nor even a surah.

L10268 وَإِنَّمَا قَصَدَ - عَلَيْهِ السَّلَامُ - فِي هَذَا الْحَدِيثِ الْإِنْذَارَ بِخَلَاءِ أَيْدِي الْمُفْتَتِحِينَ لِهَذِهِ الْبِلَادِ مِنْ أَخْذِ طَعَامِهَا وَدَرَاهِمِهَا وَدَنَانِيرِهَا فَقَطْ؛ وَقَدْ ظَهَرَ مَا أَنْذَرَ بِهِ - عَلَيْهِ السَّلَامُ -.

Indeed, he (peace be upon him) intended in this ḥadīth to warn that the hands of the conquerors of these lands would be empty of taking its food, dirhams, and dinars specifically. What he warned about has indeed come to pass.

L10269 وَمِنْ الْبَاطِلِ الْمُمْتَنِعِ أَنْ يُرِيدَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا زَعَمُوا؛ لِأَنَّهُ لَوْ كَانَ ذَلِكَ، وَكَانَ أَرْبَابُ أَرَاضِي الشَّامِ، وَمِصْرَ، وَالْعِرَاقِ مُسْلِمِينَ؛ فَمَنْ هُمْ الْمُخَاطَبُونَ بِأَنَّهُمْ يَعُودُونَ كَمَا بَدَءُوا وَمِنْ الْمَانِعِ مَا ذَكَرَ مَنْعَهُ.

Among the precluded invalid assertions is that the Messenger of Allah—may Allah bless him and grant him peace—intended what they claimed. For had that been so, while the landowners of Syria, Misr, and Iraq were Muslims, then who are those being addressed by the statement that they will return to their original state? Among the preventing factors is what he mentioned of its prevention.

هَذَا تَخْصِيصٌ مِنْهُمْ بِالْبَاطِلِ وَبِمَا لَيْسَ فِي الْخَبَرِ مِنْهُ نَصٌّ وَلَا دَلِيلٌ، وَلَوْ قِيلَ لَهُمْ: بَلْ فِي قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «فِيمَا سَقَتْ السَّمَاءُ الْعُشْرُ» دَلِيلٌ عَلَى سُقُوطِ الْخَرَاجِ وَبُطْلَانِهِ، إذْ لَوْ كَانَ فِيهَا خَرَاجٌ لَذَكَرَهُ - عَلَيْهِ السَّلَامُ -. وَالْعَجَبُ أَيْضًا إسْقَاطُهُمْ الْجِزْيَةَ بِهَذَا الْخَبَرِ عَنْ أَهْلِ الْخَرَاجِ فَأَسْقَطُوا فَرْضَيْنِ مِنْ فَرَائِضِ الْإِسْلَامِ بِرَأْيِ صَاحِبٍ، وَهَذَا عَجَبٌ جِدًّا.

L10270 This is their unwarranted specification based on falsehood and what lacks explicit textual or evidentiary support from the report itself. Were it said to them: Rather, in his statement—peace be upon him—"On what is watered by the sky, one-tenth is due," there lies proof for the annulment and invalidity of the land tax, for had it applied, he—peace be upon him—would have mentioned it. Strangely, they also used this report to abolish the jizya from those subject to the land tax, thereby abolishing two obligations from Islam's prescribed duties based on a single scholar's opinion—and this is very astonishing.

وَخَالَفُوا ذَلِكَ الصَّاحِبَ فِي هَذِهِ الْقَضِيَّةِ نَفْسِهَا، لِأَنَّهُ قَدْ صَحَّ عَنْهُ إيجَابُ الْجِزْيَةِ مَعَ الْخَرَاجِ، فَمَرَّةً يَكُونُ فِعْلُهُ حُجَّةً يُخَالِفُ بِهَا الْقُرْآنَ، وَهُمْ مَعَ ذَلِكَ كَاذِبُونَ عَلَيْهِ، فَمَا رُوِيَ عَنْهُ قَطُّ إسْقَاطُ الزَّكَاةِ عَمَّا أُصِيبَ فِي أَرْضِ الْخَرَاجِ، وَمَرَّةً لَا يَرَوْنَهُ حُجَّةً أَصْلًا وَمَعَهُ الْحَقُّ. فَإِنْ قَالُوا: إنَّ الصَّحَابَةَ أَجْمَعُوا عَلَى أَخْذِ الْخَرَاجِ قِيلَ لَهُمْ: وَالصَّحَابَةُ أَجْمَعُوا عَلَى أَخْذِ الزَّكَاةِ قَبْلَ إجْمَاعِهِمْ عَلَى الْخَرَاجِ وَمَعَهُ وَبَعْدَهُ بِلَا شَكٍّ، وَلَا عَجَبَ أَعْجَبُ مِنْ إيجَابِ مُحَمَّدِ بْنِ الْحَسَنِ الْخَرَاجَ عَلَى الْمُسْلِمِ فِي أَرْضِ الْخَرَاجِ إذَا مَلَكَهَا، وَإِسْقَاطُ الزَّكَاةِ عَنْهُ، وَإِيجَابُهُ الزَّكَاةَ عَلَى الْيَهُودِيِّ وَالنَّصْرَانِيِّ إذَا مَلَكَا أَرْضَ الْعُشْرِ، وَإِسْقَاطُ الْخَرَاجِ عَنْهُمَا وَفَاعِلُ هَذَا مُتَّهَمٌ عَلَى الْإِسْلَامِ وَأَهْلِهِ.

L10271 They opposed that Companion in this very issue, for it has been authentically established from him that he imposed jizyah alongside kharaj. At times, they treat his action as a proof to contradict the Quran, while they—in doing so—falsely attribute it to him; for nothing was ever narrated from him regarding exempting zakat on what is obtained in kharaj land. At other times, they do not consider his action a proof at all, though he is correct. If they argue that the Companions unanimously agreed to collect kharaj, it is replied: The Companions unanimously agreed to collect zakat before their agreement on kharaj, alongside it, and after it, without doubt. Nothing is more astonishing than Muhammad ibn al-Hasan's imposition of kharaj on a Muslim who owns kharaj land while exempting him from zakat, and his imposition of zakat on a Jew or Christian who owns land subject to ushr (tithe) while exempting them from kharaj. The one who does this is suspect against Islam and its people.

وَقَالُوا: لَا يَجْتَمِعُ حَقَّانِ فِي مَالٍ وَاحِدٍ. قَالَ أَبُو مُحَمَّدٍ: كَذَبُوا وَأَفِكُوا بَلْ تَجْتَمِعُ حُقُوقٌ لِلَّهِ تَعَالَى فِي مَالٍ وَاحِدٍ، وَلَوْ أَنَّهَا أَلْفُ حَقٍّ، وَمَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ أَنَّهُ لَا يَجْتَمِعُ حَقَّانِ فِي مَالٍ وَاحِدٍ، وَهُمْ يُوجِبُونَ الْخُمُسَ فِي مَعَادِنِ الذَّهَبِ وَالْفِضَّةِ وَالزَّكَاةَ أَيْضًا، إمَّا عِنْدَ الْحَوْلِ، وَإِمَّا فِي ذَلِكَ الْوَقْتِ إنْ كَانَ بَلَغَ حَوْلَ مَا عِنْدَهُ مِنْ الذَّهَبِ وَالْفِضَّةِ، وَيُوجِبُونَ أَيْضًا الْخَرَاجَ فِي أَرْضِ الْمَعْدِنِ إنْ كَانَتْ أَرْضَ خَرَاجٍ.

L10272–10273 They said: Two rights cannot coexist in a single property. Abū Muḥammad responded: They have lied and spoken falsehood. Rather, rights belonging to Allāh the Exalted do coexist in a single property - even a thousand distinct rights. We do not know from where they derived the notion that two rights cannot coexist in a single property, while they themselves uphold the obligation of khums (one-fifth levy) on gold and silver mines alongside zakāh (obligatory alms) - either at the completion of the hawl (annual cycle) or immediately if the gold and silver in one's possession have reached the hawl. They also impose kharāj (land tax) on the mine's land if it is subject to kharāj.

L10274 Among the wonders of this world is their prioritization of land tax (kharāj) over Zakah, thereby nullifying it. Then they prioritized Zakah on wheat, barley, dates, and livestock over Zakah on trade, superseding the latter. Next, they prioritized Zakah on trade in slaves over Zakah al-Fitr, overriding it. At times, they deemed the Zakah of trade more binding than the prescribed Zakah, and at other times, they considered the prescribed Zakah of higher priority than the Zakah of trade.

وَمِنْ عَجَائِبِ الدُّنْيَا تَغْلِيبُهُمْ الْخَرَاجَ عَلَى الزَّكَاةِ فَأَسْقَطُوهَا بِهِ، ثُمَّ غَلَّبُوا زَكَاةَ الْبُرِّ وَالشَّعِيرِ وَالتَّمْرِ وَالْمَاشِيَةِ عَلَى زَكَاةِ التِّجَارَةِ، فَأَسْقَطُوهَا بِهَا، ثُمَّ غَلَّبُوا زَكَاةَ التِّجَارَةِ فِي الرَّقِيقِ عَلَى زَكَاةِ الْفِطْرِ، فَأَسْقَطُوهَا بِهَا، فَمَرَّةً رَأَوْا زَكَاةَ التِّجَارَةِ أَوْكَدَ مِنْ الزَّكَاةِ الْمَفْرُوضَةِ، وَمَرَّةً رَأَوْا الزَّكَاةَ الْمَفْرُوضَةَ أَوْلَى مِنْ زَكَاةِ التِّجَارَةِ.

L10275 Al-Ḥasan ibn Ḥayy maintains that crops cultivated for trade should be subject to trade zakāh rather than the prescribed zakāh. We mentioned this to prevent any assertion of consensus on the matter, as this constitutes the least burdensome position for them. The contradiction of the Mālikīs and Shāfiʿīs is evident in their exemption of trade goods from the prescribed zakāh while retaining it alongside the zakāh al-fiṭr in the case of slaves.

وَالْحَسَنُ بْنُ حَيٍّ: يَرَى أَنْ يُزَكَّى مَا زُرِعَ لِلتِّجَارَةِ زَكَاةَ التِّجَارَةِ لَا الزَّكَاةَ الْمَفْرُوضَةَ. وَذَكَرْنَا هَذَا لِئَلَّا يَدَّعُوا فِي ذَلِكَ إجْمَاعًا، فَهَذَا أَخَفُّ شَيْءٍ عَلَيْهِمْ. وَإِنَّ تَنَاقُضَ الْمَالِكِيِّينَ وَالشَّافِعِيِّينَ لَظَاهِرٍ فِي إسْقَاطِهِمْ الزَّكَاةَ عَنْ عُرُوضِ التِّجَارَةِ لِلزَّكَاةِ الْمَفْرُوضَةِ وَإِبْقَائِهِمْ إيَّاهَا مَعَ زَكَاةِ الْفِطْرِ فِي الرَّقِيقِ.

L10276 Similarly, the Hanafis also contradicted themselves when they affirmed both Ijarah and Zakāt in a single land.

وَكَذَلِكَ أَيْضًا - تَنَاقَضَ الْحَنِيفِيُّونَ إذْ أَثْبَتُوا الْإِجَارَةَ وَالزَّكَاةَ فِي أَرْضٍ وَاحِدَةٍ.

L10277 Among those from whom it is authentically reported that they affirmed the obligation of zakāh on the produce from kharaj land are ʿUmar ibn ʿAbd al-ʿAzīz, Ibn Abī Laylā, Ibn Shubruma, Shurayk, and al-Ḥasan ibn Ḥayy. Sufyān and Aḥmad said: If there remains a surplus of five awsāq or above after the kharaj, then zakāh is due on it. No statement resembling Abū Ḥanīfa's opinion on this matter is preserved from any of the Salaf.

وَمِمَّنْ صَحَّ عَنْهُ إيجَابُ الزَّكَاةِ فِي الْخَارِجِ مِنْ أَرْضِ الْخَرَاجِ: عُمَرُ بْنُ عَبْدِ الْعَزِيزِ، وَابْنُ أَبِي لَيْلَى، وَابْنُ شُبْرُمَةَ، وَشُرَيْكٌ، وَالْحَسَنُ بْنُ حَيٍّ. وَقَالَ سُفْيَانُ، وَأَحْمَدُ: إنْ فَضَلَ بَعْدَ الْخَرَاجِ خَمْسَةُ أَوْسُقٍ فَصَاعِدًا فَفِيهِ الزَّكَاةُ. وَلَا يُحْفَظُ عَنْ أَحَدٍ مِنْ السَّلَفِ مِثْلُ قَوْلِ أَبِي حَنِيفَةَ فِي ذَلِكَ.

L10278 The entire astonishment lies in their obfuscation of what is established from ʿUmar—may Allah be pleased with him—in his statement when the female village head of the King's River embraced Islam: "If she chooses to retain her land or pays what is owed on her land, leave her and her land as they are; otherwise, leave the Muslims and their land as they are." A similar ruling is reported from ʿAlī.

وَالْعَجَبُ كُلُّهُ مِنْ تَمْوِيهِهِمْ بِالثَّابِتِ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - مِنْ قَوْلِهِ إذْ أَسْلَمَتْ دِهْقَانَةُ نَهَرِ الْمَلِكِ إنْ اخْتَارَتْ أَرْضَهَا أَوْ أَدَّتْ مَا عَلَى أَرْضِهَا فَخَلُّوا بَيْنَهَا وَبَيْنَ أَرْضِهَا، وَإِلَّا فَخَلُّوا بَيْنَ الْمُسْلِمِينَ وَأَرْضِهِمْ - وَعَنْ عَلِيٍّ نَحْوُ هَذَا.

L10279–10280 It is reported from Ibn Umar that a Muslim is prohibited from entering the land subject to kharaj.

وَعَنْ ابْنِ عُمَرَ إنْكَارُ الدُّخُولِ فِي أَرْضِ الْخَرَاجِ لِلْمُسْلِمِ.

L10281 If only I knew, has any person of intellect ever reasoned that any of this

entails exempting Zakat on what the earth yields? This is a situation that can only be met with bewilderment. Allah suffices us, and what an excellent Trustee! Sufficient regarding this is the statement of Allah's Messenger—peace be upon him: "In what is watered by the sky is one-tenth." He spoke in general terms without specifying exceptions.

وَلَيْتَ شِعْرِي هَلْ عَقَلَ ذُو عَقْلٍ قَطُّ أَنَّ فِي شَيْءٍ مِنْ هَذَا إسْقَاطَ الزَّكَاةِ عَمَّا أَخْرَجَتْ الْأَرْضُ. وَهَذَا مَكَانٌ لَا يُقَابَلُ إلَّا بِالتَّعَجُّبِ، وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ. وَيَكْفِي مِنْ هَذَا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فِيمَا سَقَتْ السَّمَاءُ الْعُشْرُ» فَعَمَّ وَلَمْ يَخُصَّ.

L10282 Furthermore, among the proofs that zakat is an obligation upon the cultivator rather than the land is the consensus of the Muslim community that if one wishes to give the one-tenth from sources other than what the land yielded, this is permissible for them. It is not valid to compel them to give from the actual produce of the land. Thus, it is confirmed that zakat is an obligation incumbent on the Muslim who cultivates, not on the land itself.

وَأَيْضًا فَإِنَّ مِنْ الْبُرْهَانِ عَلَى أَنَّ الزَّكَاةَ عَلَى الرَّافِعِ لَا عَلَى الْأَرْضِ إجْمَاعُ الْأُمَّةِ عَلَى أَنَّهُ إنْ أَرَادَ أَنْ يُعْطِيَ الْعُشْرَ مِنْ غَيْرِ الَّذِي أَصَابَ فِي تِلْكَ الْأَرْضِ لَكَانَ ذَلِكَ لَهُ، وَلَمْ يَجُزْ إجْبَارُهُ عَلَى أَنْ يُعْطِيَ مِنْ عَيْنِ مَا أَخْرَجَتْ الْأَرْضُ فَصَحَّ أَنَّ الزَّكَاةَ فِي ذِمَّةِ الْمُسْلِمِ الرَّافِعِ، لَا فِي الْأَرْضِ

A juristic issue concerning the zakah of what is acquired in the usurped land.

[مَسْأَلَةُ زَكَاةِ مَا أُصِيبَ فِي الْأَرْضِ الْمَغْصُوبَةِ]

L10283

L10284 Issue 643: Similarly, whatever is produced in usurped land - if the seeds belong to the usurper - is his property, for his usurpation of the land does not invalidate his ownership of his seeds. Thus, if the seeds are his, whatever grows from them belongs to him. He is only liable for the land's due. Therefore, zakat applies to his share of it, and it is lawful for him and constitutes valid ownership.

٦٤٣ - مَسْأَلَةٌ: وَكَذَلِكَ مَا أُصِيبَ فِي الْأَرْضِ الْمَغْصُوبَةِ إذَا كَانَ الْبَذْرُ لِلْغَاصِبِ؛ لِأَنَّ غَصْبَهُ الْأَرْضَ لَا يُبْطِلُ مِلْكَهُ عَنْ بَذْرِهِ، فَالْبَذْرُ إذَا كَانَ لَهُ فَمَا تَوَلَّدَ عَنْهُ فَلَهُ، وَإِنَّمَا عَلَيْهِ حَقُّ الْأَرْضِ فَقَطْ، فَفِي حِصَّتِهِ مِنْهُ الزَّكَاةُ، وَهِيَ لَهُ حَلَالٌ وَمِلْكٌ صَحِيحٌ.

L10285 "Similarly, land leased under an invalid contract, taken in exchange for a portion of its produce, or granted based on the general applicability of his statement—peace be upon him—'For what is irrigated by rainwater, a tenth is due.'"

وَكَذَلِكَ الْأَرْضُ الْمُسْتَأْجَرَةُ بِعَقْدٍ فَاسِدٍ، أَوْ الْمَأْخُوذَةُ بِبَعْضِ مَا يَخْرُجُ مِنْهَا، أَوْ الْمَمْنُوحَةُ لِعُمُومِ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «فِيمَا سَقَتْ السَّمَاءُ الْعُشْرُ» .

L10286 As for if the seed was wrongfully seized, the usurper has no right, and no ownership right applies to anything Allah, the Exalted, has caused to grow from it, whether it grew in his own land or another's land. All of it belongs to the original owner of the seed, as Allah, the Exalted, states: "And do not consume your wealth among yourselves unjustly" [Al-Baqarah: 188].[30]

وَأَمَّا إنْ كَانَ الْبَذْرُ مَغْصُوبًا فَلَا حَقَّ لَهُ، وَلَا حُكْمَ فِي شَيْءٍ مِمَّا أَنْبَتَ اللَّهُ تَعَالَى مِنْهُ، سَوَاءٌ كَانَ فِي أَرْضِهِ نَفْسِهِ أَمْ فِي غَيْرِهَا، وَهُوَ كُلُّهُ لِصَاحِبِ الْبَذْرِ، لِقَوْلِ اللَّهِ تَعَالَى: {وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨]

[30] **Qur'an references (L10286):** Qur'an 2:188 (Al-Baqarah).

وَلَا يَخْتَلِفُ اثْنَانِ فِي أَنَّ غَاصِبَ الْبَذْرِ إنَّمَا أَخَذَهُ بِالْبَاطِلِ، وَكَذَلِكَ كُلُّ بَذْرٍ أُخِذَ بِغَيْرِ حَقٍّ فَمُحَرَّمٌ عَلَيْهِ بِنَصِّ الْقُرْآنِ أَكْلُهُ، وَكُلُّ مَا تَوَلَّدَ مِنْ شَيْءٍ فَهُوَ لِصَاحِبِ مَا تَوَلَّدَ مِنْهُ بِلَا خِلَافٍ، وَلَيْسَ وُجُوبُ الضَّمَانِ بِمُبِيحٍ لَهُ مَا حَرَّمَ اللَّهُ تَعَالَى عَلَيْهِ، فَإِنْ مَوَّهُوا بِمَا رُوِيَ مِنْ أَنَّ «الْخَرَاجَ بِالضَّمَانِ» . فَلَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ -:

L10287 No two disagree that the usurper of the seed took it wrongfully. Likewise, every seed taken without right is forbidden for him to eat by the text of the Quran. Whatever is generated from something belongs indisputably to the owner of that which generated it. The obligation of liability does not permit what God Almighty has prohibited to him. If they obscure matters with the reported principle "The yield is in exchange for the liability," their argument holds no validity for several reasons—

أَوَّلُهَا: أَنَّهُ خَبَرٌ لَا يَصِحُّ، لِأَنَّ رَاوِيَهُ مَخْلَدُ بْنُ خَفَّافٍ وَهُوَ مَجْهُولٌ.

L10288 The first is that it is a report that is not authentic, because its narrator is Makhlad ibn Khaffāf, who is unknown.

وَالثَّانِي: أَنَّهُ لَوْ صَحَّ لَكَانَ وَرَدَ فِي عَبْدٍ بِيعَ بَيْعًا صَحِيحًا ثُمَّ وُجِدَ فِيهِ عَيْبٌ، وَمِنْ الْبَاطِلِ أَنْ يُقَاسَ الْحَرَامُ عَلَى الْحَلَالِ، لَوْ كَانَ الْقِيَاسُ حَقًّا، فَكَيْفَ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ. وَالثَّالِثُ: أَنَّهُمْ يَلْزَمُهُمْ أَنْ يَجْعَلُوا أَوْلَادَ الْمَغْصُوبَةِ مِنْ الْإِمَاءِ وَالْحَيَوَانِ لِلْغَاصِبِ بِهَذَا الْخَبَرِ، وَهُمْ لَا يَقُولُونَ بِذَلِكَ.

L10289–10290 The second: that if it were valid, it would have addressed the case of a slave sold through a valid sale where a defect was later discovered. It is invalid to analogize the prohibited to the permissible—even if analogy were valid. How so when all analogy is invalid? The third: they would be compelled by this report to assign ownership of offspring born to usurped females among slave women and animals to the usurper, yet they themselves do not uphold this ruling.

[مَسْأَلَةُ زَكَاةِ الْبُرِّ إذَا بَلَغَ خَمْسَةَ أَوْسُقٍ]

Issue: Zakah is due on wheat when it reaches five *awsuq*.

٦٤٤ - مَسْأَلَةٌ: فَإِذَا بَلَغَ الصِّنْفُ الْوَاحِدُ - مِنْ الْبُرِّ، أَوْ التَّمْرِ، أَوْ الشَّعِيرِ - خَمْسَةَ أَوْسُقٍ كَمَا ذَكَرْنَا فَصَاعِدًا، فَإِنْ كَانَ مِمَّا يُسْقَى بِسَاقِيَةٍ مِنْ نَهْرٍ، أَوْ عَيْنٍ، أَوْ كَانَ بَعْلًا فَفِيهِ الْعُشْرُ.

L10291 644 – Issue: If a single type—such as wheat, dates, or barley—reaches five *awsuq* or more, as previously stated, then if it is irrigated by an irrigation channel from a river or spring, or is rain-fed, a tenth is obligatory.

وَإِنْ كَانَ يُسْقَى بِسَاقِيَةٍ، أَوْ نَاعُورَةٍ، أَوْ دَلْوٍ فَفِيهِ نِصْفُ الْعُشْرِ، فَإِنْ نَقَصَ عَنْ الْخَمْسَةِ الْأَوْسُقِ - مَا قَلَّ أَوْ كَثُرَ - فَلَا زَكَاةَ فِيهِ.

L10292 If it is irrigated by a canal, a noria (a type of waterwheel), or a bucket, then half of one-tenth (5%) is due as zakah. If the yield falls short of five wasqs—no matter how little or much—then no zakah is due on it.

وَهَذَا قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَصْحَابِنَا وَقَالَ أَبُو حَنِيفَةَ: فِي قَلِيلِهِ وَكَثِيرِهِ الْعُشْرُ، أَوْ نِصْفُ الْعُشْرِ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ

L10293 If it is irrigated by a canal, a noria (a type of waterwheel), or a bucket, then half of one-tenth (5%) is due as zakah. If the yield falls short of five wasqs—no matter how little or much—then no zakah is due on it.

L10294 This is the opinion of Mālik, al-Shāfiʿī, and our school's scholars. Abū Ḥanīfah said: For both small and large quantities, a tenth or half of a tenth is due. ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid narrated to us from Ibrāhīm ibn Aḥmad from al-Farbarī from al-Bukhārī from Saʿīd ibn Abī Maryam from ʿAbd Allāh ibn Wahb, who reported to me from Yūnus ibn Yazīd from Ibn

Shihāb from Sālim ibn ʿAbd Allāh from his father that the Prophet—peace and blessings be upon him—said: “On crops watered by rain, springs, or naturally saturated land, a tenth is due. On what is irrigated by laborious means, half of a tenth is due.”[31]

L10295 We have mentioned before his statement—peace be upon him—“There is no zakāh on less than five wasqs of staple crops or dates.”

L10296 Thus, it is established that any amount less than five awsaq—whether the deficiency is little or much—is exempt from zakah.

L10297–10299 It is astonishing that Abū Ḥanīfah gave precedence to the report “For what is watered by the sky, the tenth is due” over the ḥadīth of... The five awsaq, and he prioritized the saying of the Prophet (peace be upon him): “There is no Zakāh due on less than five awāqī of silver coins, nor on less than five camels,” over his other sayings (peace be upon him): “On silver coins, a quarter of one-tenth is due,” and (peace be upon him): “There is no owner of camels who fails to fulfill their due right.” This is an apparent contradiction—and with Allah, the Exalted, lies success.

L10300 An issue: Wheat is not to be combined with barley, nor dates in Zakat.

L10301 645: Issue

L10302 Wheat is not combined with barley, nor are dates added to the two of them.

L10303 This is the position of Sufyan al-Thawri, Muhammad ibn al-Hasan, al-Shafi’i, Abu Sulayman, and our companions.

L10304 Al-Layth ibn Sa‘d and Abū Yūsuf said: All that the earth produces is combined - such as wheat, barley, rice, corn, millet, and all legumes - each category combined with others. If the total of all these reaches five wasqs, zakat

[31] **Hadith references (L10294):** Sahih al-Bukhari 1483; Mishkat al-Masabih 1797.

ثنا الْبُخَارِيُّ ثنا سَعِيدُ بْنُ أَبِي مَرْيَمَ ثنا عَبْدُ اللَّهِ بْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ ابْنِ شِهَابٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «فِيمَا سَقَتْ السَّمَاءُ وَالْعُيُونُ أَوْ كَانَ عَثَرِيًّا الْعُشْرُ، وَمَا سُقِيَ بِالنَّضْحِ نِصْفُ الْعُشْرِ» .

وَقَدْ ذَكَرْنَا قَبْلَ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «وَلَيْسَ فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ، مِنْ حَبٍّ وَلَا تَمْرٍ صَدَقَةٌ» .

فَصَحَّ أَنَّ مَا نَقَصَ عَنْ الْخَمْسَةِ الْأَوْسُقِ نُقْصَانًا - قَلَّ أَوْ كَثُرَ - فَلَا زَكَاةَ فِيهِ.

وَالْعَجَبُ مِنْ تَغْلِيبِ أَبِي حَنِيفَةَ الْخَبَرَ «فِيمَا سَقَتْ السَّمَاءُ الْعُشْرُ» عَلَى حَدِيثِ الْأَوْسُقِ الْخَمْسَةِ، وَغَلَّبَ قَوْلَهُ - عَلَيْهِ السَّلَامُ -: «لَيْسَ فِيمَا دُونَ خَمْسِ أَوَاقٍيَّ مِنْ الْوَرِقِ صَدَقَةٌ، وَلَا فِيمَا دُونَ خَمْسِ ذَوْدٍ مِنْ الْإِبِلِ صَدَقَةٌ» عَلَى قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «فِي الرِّقَّةِ رُبْعُ الْعُشْرِ» وَعَلَى قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «مَا مِنْ صَاحِبِ إبِلٍ لَا يُؤَدِّي حَقَّهَا» وَهَذَا تَنَاقُضٌ ظَاهِرٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يُضَمُّ قَمْحٌ إلَى شَعِيرٍ وَلَا تَمْرٌ فِي الزَّكَاةِ]

٦٤٥ - مَسْأَلَةٌ:

لَا يُضَمُّ قَمْحٌ إلَى شَعِيرٍ، وَلَا تَمْرٌ إلَيْهِمَا.

وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَمُحَمَّدِ بْنِ الْحَسَنِ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ، وَأَبُو يُوسُفَ: يُضَمُّ كُلُّ مَا أَخْرَجَتْ الْأَرْضُ: مِنْ الْقَمْحِ، وَالشَّعِيرِ وَالْأُرْزِ، وَالذُّرَةِ، وَالدُّخْنِ، وَجَمِيعِ الْقَطَانِيِّ، بَعْضُ ذَلِكَ إلَى بَعْضٍ، فَإِذَا اجْتَمَعَ مِنْ

is due as we mentioned; otherwise, no zakat is due. Mālik said: Wheat, barley, and hull-less barley constitute a single category; they are combined with one another for zakat. If the total of all these reaches five wasqs, zakat is due; otherwise, it is not. Chickpeas, fava beans, cowpeas, lentils, lupins, and vetch are combined with one another.

كُلِّ ذَلِكَ خَمْسَةُ أَوْسُقٍ فَفِيهِ الزَّكَاةُ كَمَا ذَكَرْنَا، وَإِلَّا فَلَا؟ وَقَالَ مَالِكٌ: الْقَمْحُ، وَالشَّعِيرُ، وَالسُّلْتُ: صِنْفٌ وَاحِدٌ، يُضَمُّ بَعْضُهَا إِلَى بَعْضٍ فِي الزَّكَاةِ، فَإِذَا اجْتَمَعَ مِنْ جَمِيعِهَا خَمْسَةُ أَوْسُقٍ فَفِيهَا الزَّكَاةُ، وَإِلَّا فَلَا؛ وَيُجْمَعُ الْحِمَّصُ، وَالْفُولُ، وَاللُّوبِيَا، وَالْعَدَسُ، وَالْجُلُّبَانُ وَالْبَسِيلَةُ، بَعْضُهَا إِلَى بَعْضٍ.

L10305 And it is not combined with wheat, nor with barley, nor with hull-less barley.

وَلَا يُضَمُّ إِلَى الْقَمْحِ، وَلَا إِلَى الشَّعِيرِ وَلَا إِلَى السُّلْتِ.

L10306–10308 He said: As for rice, sorghum, and sesame, they are distinct types; none of them may be combined with anything whatsoever? His ruling regarding millet differed: at times he ruled it should be combined with wheat and barley; and at others, he ruled it is not combined with anything at all. In commercial transactions, he regarded legumes as distinct types, except for lupin beans and chickpeas, which he classified as a single type. Abu Muhammad said: As for Malik's statement, it is manifestly erroneous in its entirety, its invalidation requiring nothing more than citing it. We know of no one on earth who ever formulated such a division, devised such a combination, or established such a distinction—neither before his time, nor during it, nor after—except those who imitated him. It lacks any foundation: not from the Quran, nor authentic Sunnah, nor weak narrations, nor the opinion of any Companion or Successor, nor analogical reasoning, nor any opinion with a recognizable basis, nor precaution at all. As for those who maintain the inclusion of wheat and other crops in zakah obligations, they can rely on the general implication of the Prophet's statement (peace be upon him): "There is no zakah due on less than five *wasqs*."

قَالَ: وَأَمَّا الْأُرْزُ، وَالذُّرَةُ، وَالسِّمْسِمُ، فَهِيَ أَصْنَافٌ مُخْتَلِفَةٌ، لَا يُضَمُّ كُلُّ وَاحِدٍ مِنْهَا إِلَيَّ شَيْءٍ أَصْلًا؟ وَاخْتَلَفَ قَوْلُهُ فِي الْعَلَسِ، فَمَرَّةً قَالَ: يُضَمُّ إِلَى الْقَمْحِ، وَالشَّعِيرِ؛ وَمَرَّةً قَالَ: لَا يُضَمُّ إِلَى شَيْءٍ أَصْلًا وَرَأَى الْقَطَانِيَّ فِي الْبُيُوعِ أَصْنَافًا مُخْتَلِفَةً، حَاشَا اللُّوبِيَا، وَالْحِمَّصِ؛ فَإِنَّهُ رَآهُمَا فِي الْبُيُوعِ صِنْفًا وَاحِدًا قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مَالِكٍ؛ فَظَاهِرُ الْخَطَأِ جُمْلَةً، لَا يَحْتَاجُ مِنْ إبْطَالِهِ إلَى أَكْثَرَ مِنْ إيرَادِهِ وَمَا نَعْلَمُ أَحَدًا عَلَى ظَهْرِ الْأَرْضِ قَسَّمَ هَذَا التَّقْسِيمَ، وَلَا جَمَعَ هَذَا الْجَمْعَ، وَلَا فَرَّقَ هَذَا التَّفْرِيقَ قَبْلَهُ وَلَا مَعَهُ وَلَا بَعْدَهُ، إلَّا مَنْ قَلَّدَهُ، وَمَا لَهُ مُتَعَلَّقٌ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ، وَلَا مِنْ رِوَايَةٍ فَاسِدَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ وَلَا تَابِعٍ، وَلَا مِنْ قِيَاسٍ وَلَا مِنْ رَأْيٍ يُعْرَفُ لَهُ وَجْهٌ، وَلَا مِنْ احْتِيَاطٍ أَصْلًا وَأَمَّا مَنْ رَأَى جَمْعَ الْبُرِّ وَغَيْرِهِ فِي الزَّكَاةِ فَيُمْكِنُ أَنْ يَتَعَلَّقُوا بِعُمُومِ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «لَيْسَ فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ صَدَقَةٌ» .

L10309 Abu Muhammad said: If there had been no narration except this one, this would be the position admitting no alternative.

قَالَ أَبُو مُحَمَّدٍ: وَلَوْ لَمْ يَأْتِ إلَّا هَذَا الْخَبَرُ لَكَانَ هَذَا هُوَ الْقَوْلُ الَّذِي لَا يَجُوزُ غَيْرُهُ.

L10310 However, it has been specifically transmitted through the narration of Abdullah ibn Rabi', who narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Isma'il ibn Mas'ud, al-Jahdari, nar-

rated to us: Yazid ibn Zurai‘ narrated to us: Rawh ibn al-Qasim narrated to me: ‘Amr ibn Yahya ibn ‘Umarah narrated from his father, from Abu Sa‘id al-Khudri, that the Messenger of Allah (may Allah’s peace and blessings be upon him) said: “Zakat is not obligatory on wheat and dates until they reach five wasqs, nor is Zakat obligatory on silver until it reaches five awqiyat, nor is Zakat obligatory on camels until they reach five camels.”

لَكِنْ قَدْ خَصَّهُ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنِ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْمَاعِيلُ بْنُ مَسْعُودٍ هُوَ الْجَحْدَرِيُّ - ثنا يَزِيدُ بْنُ زُرَيْعٍ ثنا رَوْحُ بْنُ الْقَاسِمِ حَدَّثَنِي عَمْرُو بْنُ يَحْيَى بْنِ عُمَارَةَ عَنْ أَبِيهِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَحِلُّ فِي الْبُرِّ وَالتَّمْرِ زَكَاةٌ حَتَّى يَبْلُغَ خَمْسَةَ أَوْسُقٍ، وَلَا يَحِلُّ فِي الْوَرِقِ زَكَاةٌ حَتَّى يَبْلُغَ خَمْسَ أَوَاقٍ وَلَا يَحِلُّ فِي الْإِبِلِ زَكَاةٌ حَتَّى تَبْلُغَ خَمْسَ ذَوْدٍ» .

L10311 The Messenger of Allah—peace and blessings be upon him—exempted zakah from wheat that does not reach five wasqs. By this, the validity of imposing zakah on it in all circumstances is nullified—whether the wheat is combined with barley or not combined at all.

فَنَفَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الزَّكَاةَ عَمَّا لَمْ يَبْلُغْ خَمْسَةَ أَوْسُقٍ مِنْ الْبُرِّ، فَبَطَلَ بِهَذَا إيجَابُ الزَّكَاةِ فِيهِ عَلَى كُلِّ حَالٍ، مَجْمُوعًا إلَى شَعِيرٍ أَوْ غَيْرَ مَجْمُوعٍ.

L10312 Abu Muhammad said: All of them unanimously agree that dates should not be combined with raisins, for the proportion of one to the other is no different than that of wheat to barley. They neither adhered to the explicit textual ruling nor applied analogy. Is there any disagreement among those who hold that zakah is obligatory on five awsuq or more—not on less—regarding the prohibition of combining dates with wheat or barley?

قَالَ أَبُو مُحَمَّدٍ: وَكُلُّهُمْ مُتَّفِقٌ عَلَى أَنْ لَا يُجْمَعَ التَّمْرُ إلَى الزَّبِيبِ، وَمَا نِسْبَةُ أَحَدِهِمَا مِنْ الْآخَرِ إلَّا كَنِسْبَةِ الْبُرِّ مِنْ الشَّعِيرِ، فَلَا النَّصَّ اتَّبَعُوا، وَلَا الْقِيَاسَ طَرَدُوا، وَلَا خِلَافَ بَيْنَ كُلِّ مَنْ يَرَى الزَّكَاةَ فِي الْخَمْسَةِ الْأَوْسُقِ فَصَاعِدًا - لَا فِي أَقَلَّ - فِي أَنَّهُ لَا يُجْمَعُ التَّمْرُ إلَى الْبُرِّ، وَلَا إلَى الشَّعِيرِ؟ .

L10313 646 - Issue: As for the varieties of wheat, they are combined with one another; likewise the varieties of barley are combined with one another; similarly the varieties of dates are combined with one another: the ’Ajwah, Barnī, Ṣayḥānī, and all other varieties.

٦٤٦ - مَسْأَلَةٌ: وَأَمَّا أَصْنَافُ الْقَمْحِ فَيُضَمُّ بَعْضُهَا إلَى بَعْضٍ، وَكَذَلِكَ تُضَمُّ أَصْنَافُ الشَّعِيرِ بَعْضُهَا إلَى بَعْضٍ، وَكَذَلِكَ أَصْنَافُ التَّمْرِ بَعْضُهَا إلَى بَعْضٍ الْعَجْوَةُ، وَالْبَرْنِيُّ، وَالصَّيْحَانِيُّ وَسَائِرُ أَصْنَافِهِ.

L10314–10315 There is no disagreement among anyone regarding this, because the term “wheat” encompasses all its varieties, the term “dates” encompasses all their varieties, and the term “barley” encompasses all its varieties—and with Allah, the Exalted, is success.

وَهَذَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ، لِأَنَّ اسْمَ بُرٍّ يَجْمَعُ أَصْنَافَ الْبُرِّ، وَاسْمَ تَمْرٍ يَجْمَعُ أَصْنَافَ التَّمْرِ، وَاسْمَ شَعِيرٍ يَجْمَعُ أَصْنَافَ الشَّعِيرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L10316 647–Issue:

٦٤٧ - مَسْأَلَةٌ:

L10317 If a person has scattered lands in a single village, or in various villages within

the jurisdiction of one city, or in different jurisdictions—even if one of his two lands is in the farthest reaches of China and the other in the farthest reaches of Andalusia—he must combine all the wheat harvested from all of them together and all the barley harvested from all of them together, then pay the zakāt. This is because he is obligated to pay zakāt on the crops themselves, as ordained by the explicit texts of the Quran and the Sunnah in his responsibility and wealth. Neither Allah the Exalted nor His Messenger—peace and blessings be upon him—specified that this obligation applies only to crops within a single ṭassūj or rustāq, from those in two ṭassūjayn or two rustāqayn. To restrict the Quran and Sunnah based on flawed opinions is invalid and decisively rejected—and with Allah the Exalted is success.

L10318 **Issue: Zakāh for one who gleans ears of grain, such that he accumulates five awsuq of whole wheat.**

L10319 Issue 648: If someone gathers ears of wheat until they accumulate five wasqs or more of wheat, or similarly five wasqs or more of barley, zakat becomes obligatory: one-tenth for crops irrigated by rain, rivers, springs, or canals, and half of one-tenth for crops irrigated by water drawn by animals. There is no zakat on one who gleans five wasqs of dates. Does Abu Hanifah say this regarding the obligation of zakat in that? The proof of that is that the Messenger of Allah—peace and blessings be upon him—obligated zakat on the owner whose grain separates from the ears while in their possession, reaching the stage where measurement becomes possible. He—peace and blessings be upon him—made no distinction between produce obtained from one's own cultivation or other sources. The owner of the crop from which this was gleaned owes nothing, as it left their ownership before reaching the measurable quantity that establishes the zakat obligation. This differs from gleaned dates, for zakat on dates is obligatory on the one in whose possession the dates reached the taxable stage of ripening, unlike wheat and barley. And in Allah the Exalted we place our trust.

L10320 **An Issue: Zakāt is obligatory upon whoever possesses**

وَمَنْ كَانَتْ لَهُ أَرْضُونَ شَتَّى فِي قَرْيَةٍ وَاحِدَةٍ، أَوْ فِي قُرًى شَتَّى فِي عَمَلِ مَدِينَةٍ وَاحِدَةٍ أَوْ فِي أَعْمَالٍ شَتَّى - وَلَوْ أَنَّ إِحْدَى أَرْضَيْهِ فِي أَقْصَى الصِّينِ، وَالْأُخْرَى إِلَى أَقْصَى الْأَنْدَلُسِ -: فَإِنَّهُ يَضُمُّ كُلَّ قَمْحٍ أَصَابَ فِي جَمِيعِهَا بَعْضَهَا إِلَى بَعْضٍ، وَكُلَّ شَعِيرٍ أَصَابَهُ فِي جَمِيعِهَا بَعْضِهِ إِلَى بَعْضٍ، فَيُزَكِّيهِ؛ لِأَنَّهُ مُخَاطَبٌ بِالزَّكَاةِ فِي ذَاتِهِ، مُرَتَّبَةٌ بِنَصِّ الْقُرْآنِ وَالسُّنَنِ فِي ذِمَّتِهِ وَمَالِهِ، دُونَ أَنْ يَخُصَّ اللَّهَ تَعَالَى، أَوْ رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ مَا كَانَ فِي طُسُوجٍ وَاحِدًا، أَوْ رُسْتَاقٍ وَاحِدٍ -: مِمَّا فِي طُسُّوجَيْنِ، أَوْ رُسْتَاقَيْنِ؛ وَتَخْصِيصُ الْقُرْآنِ وَالسُّنَّةِ بِالْآرَاءِ الْفَاسِدَةِ: بَاطِلٌ مَقْطُوعٌ بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الزَّكَاةِ لِمَنْ لَقَطَ السُّنْبُلَ فَاجْتَمَعَ لَهُ مِنْ الْبُرِّ خَمْسَةُ أَوْسُقٍ]

٦٤٨ - مَسْأَلَةٌ: وَمَنْ لَقَطَ السُّنْبُلَ فَاجْتَمَعَ لَهُ مِنْ الْبُرِّ خَمْسَةُ أَوْسُقٍ فَصَاعِدًا، وَمِنْ الشَّعِيرِ كَذَلِكَ -: فَعَلَيْهِ الزَّكَاةُ فِيهَا، الْعُشْرُ فِيمَا سُقِيَ بِالسَّمَاءِ، أَوْ بِالنَّهْرِ أَوْ بِالْعَيْنِ، أَوْ بِالسَّاقِيَةِ، وَنِصْفُ الْعُشْرِ فِيمَا سُقِيَ بِالنَّضْحِ؛ وَلَا زَكَاةَ عَلَى مَنْ الْتَقَطَ مِنْ التَّمْرِ خَمْسَةَ أَوْسُقٍ - وَبِإِيجَابِ الزَّكَاةِ فِي ذَلِكَ يَقُولُ أَبُو حَنِيفَةَ؟ بُرْهَانُ ذَلِكَ -: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْجَبَهَا عَلَى مَالِكِهَا الَّذِي يَخْرُجُ فِي مِلْكِهِ الْحَبُّ مِنْ سُنْبُلِهِ إِلَى إِمْكَانِ كَيْلِهِ؛ وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - مَنْ أَصَابَهُ مِنْ حَرْثِهِ أَوْ مِنْ غَيْرِ حَرْثِهِ؛ وَلَا شَيْءَ فِي ذَلِكَ عَلَى صَاحِبِ الزَّرْعِ الَّذِي الْتَقَطَ هَذَا مِنْهُ؛ لِأَنَّهُ خَرَجَ مِنْ مِلْكِهِ قَبْلَ إِمْكَانِ الْكَيْلِ فِيهِ الَّذِي بِهِ تَجِبُ الزَّكَاةُ، وَلَيْسَ كَذَلِكَ مَا الْتَقَطَ مِنْ التَّمْرِ؛ لِأَنَّ الزَّكَاةَ فِيهِ وَاجِبَةٌ عَلَى مَنْ أَزْهَى التَّمْرُ فِي مِلْكِهِ؛ بِخِلَافِ الْبُرِّ وَالشَّعِيرِ - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

[مَسْأَلَةُ الزَّكَاةُ عَلَى مَنْ أَزْهَى التَّمْرُ فِي مِلْكِهِ]

dates that have ripened to the assessable stage in their ownership.

L10321 649: Issue:

L10322–10324 Zakāt is obligatory upon one whose dates have reddened in his possession—reddening being the coloration of its fruits—and upon one who owns wheat and barley before their threshing and when it is possible to purify them from... Straw and its measurement by the wasq standard—regardless of how ownership was acquired, whether through inheritance, gift, purchase, charity, dowry, or other means—there is no zakāh on one whose ownership of dates was transferred before pollination, nor on one who acquired ownership after pollination. There is no zakāh on one whose ownership of wheat and barley was transferred before their threshing and the possibility of winnowing and measuring them by the wasq standard, nor on one who acquires ownership after they can be winnowed and measured by the wasq standard. The conclusive proof of this is the statement of Allah's Messenger—peace and blessings be upon him: "There is no charity due on less than five wasqs of grains or dates." The Prophet—peace and blessings be upon him—did not obligate charity on grains except after they could be measured by the wasq standard, for their owner is then commanded to measure them and pay their zakāh. Delaying the measurement—when possible—does not negate the obligation to fulfill Allah's right therein. There is fundamentally no means to measure by the wasq standard—which triggers zakāh's obligation—before threshing. Thus, there is no zakāh on them before threshing, since Allah the Exalted did not ordain it, nor did His Messenger—peace and blessings be upon him.

L10325 As for anyone whose ownership ceases before threshing—whether through sale, gift, dower, death, calamity, fire, flood, or usurpation—and he is unable to discharge his Zakah at the time it becomes obligatory, nor was Zakah incumbent upon him during his ownership.

L10326 And whoever is capable of measuring by volume [the grain] while it is in their ownership is the one commanded to pay its Zakāt. As for whoever acquires ownership of it after that, they have acquired it after the Zakāt obligation was

٦٤٩ - مَسْأَلَةٌ:

وَالزَّكَاةُ وَاجِبَةٌ عَلَى مَنْ أَزْهَى التَّمْرُ فِي مِلْكِهِ - وَالْإِزْهَاءُ: هُوَ احْمِرَارُهُ فِي ثِمَارِهِ - وَعَلَى مَنْ مَلَكَ الْبُرَّ، وَالشَّعِيرَ قَبْلَ دِرَاسِهِمَا، وَإِمْكَانِ تَصْفِيَتِهِمَا مِنْ التِّبْنِ وَكَيْلِهِمَا بِأَيِّ وَجْهٍ مَلَكَ ذَلِكَ، مِنْ مِيرَاثٍ، أَوْ هِبَةٍ، أَوْ ابْتِيَاعٍ، أَوْ صَدَقَةٍ، أَوْ إصْدَاقٍ، أَوْ غَيْرِ ذَلِكَ؟ وَلَا زَكَاةَ عَلَى مَنْ انْتَقَلَ مِلْكُهُ عَنْ التَّمْرِ قَبْلَ الْإِزْهَاءِ، وَلَا عَلَى مَنْ مَلَكَهَا بَعْدَ الْإِزْهَاءِ، وَلَا عَلَى مَنْ انْتَقَلَ مِلْكُهُ عَنْ الْبُرِّ، وَالشَّعِيرِ، قَبْلَ دِرَاسِهِمَا وَإِمْكَانِ تَصْفِيَتِهِمَا وَكَيْلِهِمَا، وَلَا عَلَى مَنْ مَلَكَهُمَا بَعْدَ إمْكَانِ تَصْفِيَتِهِمَا وَكَيْلِهِمَا؟ بُرْهَانُ ذَلِكَ -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَيْسَ فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ مِنْ حَبٍّ وَلَا تَمْرٍ صَدَقَةٌ» فَلَمْ يُوجِبْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْحَبِّ صَدَقَةً إلَّا بَعْدَ إمْكَانِ تَوْسِيقِهِ، فَإِنَّ صَاحِبَهُ حِينَئِذٍ مَأْمُورٌ بِكَيْلِهِ وَإِخْرَاجِ صَدَقَتِهِ، فَلَيْسَ تَأْخِيرُهُ الْكَيْلَ - وَهُوَ لَهُ مُمْكِنٌ - بِمُسْقِطٍ حَقَّ اللَّهِ تَعَالَى فِيهِ، وَلَا سَبِيلَ إلَى التَّوْسِيقِ الَّذِي بِهِ تَجِبُ الزَّكَاةُ قَبْلَ الدِّرَاسِ أَصْلًا، فَلَا زَكَاةَ فِيهِ قَبْلَ الدِّرَاسِ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْهَا وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

فَمَنْ سَقَطَ مُلْكُهُ عَنْهُ قَبْلَ الدِّرَاسِ - بِبَيْعٍ أَوْ هِبَةٍ، أَوْ إصْدَاقٍ: أَوْ مَوْتٍ، أَوْ جَائِحَةٍ، أَوْ نَارٍ، أَوْ غَرَقٍ، أَوْ غَصْبٍ - فَلَمْ يُمْكِنْهُ إخْرَاجُ زَكَاتِهِ فِي وَقْتِ وُجُوبِهَا، وَلَا وَجَبَتْ الزَّكَاةُ عَلَيْهِ وَهُوَ فِي مِلْكِهِ.

already incumbent upon another party. Dates are not treated in this manner, for the textual ruling stipulates that Zakāt becomes obligatory on them once their ripening is apparent, as we will mention later, if Allah the Exalted wills. Those who oppose our opinion hold that Zakāt is due on wheat and barley when they dry and no longer depend on irrigation.

L10327–10329 We asked him about the evidence for this claim of his, but he had no means to substantiate it. We opposed him with the opinion of Abū Ḥanīfah, who maintains that if one sells green crops freshly cut which the buyer then separated and fed to his animal before any grain appeared in them, the zakah obligation rests upon the seller: one-tenth. One-eighth or half of its tenth, and neither can prioritize one opinion over the other? If the view of those who consider zakah obligatory before threshing were valid—it would necessitate that discharging the tenth from it while still in the ear suffices as fulfillment. Yet this is not something they assert.

L10330 **A ruling on zakāh for date palms.**

L10331 650 - Issue: As for palm trees, when they blossom, they are estimated (khurisa) and Zakat becomes obligatory as we mentioned. The owner retains full authority over them to dispose of them as he sees fit, while the Zakat remains a liability upon him. Abdullah ibn Rabi‘ narrated to us: Muhammad ibn Mu‘awiyah narrated to us: Ahmad ibn Shu‘ayb narrated to us: Muhammad ibn Bashshar narrated to us: Yahya – that is, Ibn Sa‘id al-Qattan – and Muhammad ibn Ja‘far Ghundar narrated to us via Shu‘bah, who said: I heard Khubayb ibn ‘Abd al-Rahman narrating from ‘Abd al-Rahman ibn Mas‘ud ibn Niyar, who said: Sahl ibn Abi Hathmah came to us and said: The Messenger of Allah – peace and blessings be upon him – said: “When you estimate [the yield], take? or leave? a third. If you do not take? leave a quarter.” Shu‘bah expressed doubt regarding the wording of “take?” and “leave?” Hammam narrated to us: Ibn Mufarrij narrated to us: Ibn al-A‘rabi narrated to us: al-Dabari narrated to us: ‘Abd al-Razzaq narrated from Ibn Jurayj from al-Zuhri from ‘Urwah ibn al-Zubayr from ‘A’ishah.

وَمَنْ أَمْكَنَهُ الْكَيْلُ وَهُوَ فِي مِلْكِهِ فَهُوَ الَّذِي خُوطِبَ بِزَكَاتِهِ، فَمَنْ مَلَكَهُ بَعْدَ ذَلِكَ فَإِنَّمَا مَلَكَهُ بَعْدَ وُجُوبِ الزَّكَاةِ عَلَى غَيْرِهِ؟ وَلَيْسَ التَّمْرُ كَذَلِكَ، لِأَنَّ النَّصَّ جَاءَ بِإِيجَابِ الزَّكَاةِ فِيهِ إِذَا بَدَا طِيبُهُ، كَمَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى؟ وَمَنْ خَالَفَنَا فِي هَذَا وَرَأَى الزَّكَاةَ فِي الْبُرِّ، وَالشَّعِيرِ إِذَا يَبِسَا وَاسْتَغْنَيَا عَنْ الْمَاءِ.

سَأَلْنَاهُ عَنْ الدَّلِيلِ عَلَى دَعْوَاهُ هَذِهِ؟ وَلَا سَبِيلَ لَهُ إِلَى ذَلِكَ وَعَارَضْنَاهُ بِقَوْلِ أَبِي حَنِيفَةَ الَّذِي يَرَى عَلَى مَنْ بَاعَ زَرْعًا أَخْضَرَ قَصِيلًا فَفَصَلَهُ الْمُشْتَرِي وَأَطْعَمَهُ دَابَّتَهُ قَبْلَ أَنْ يَظْهَرَ فِيهِ شَيْءٌ مِنْ الْحَبِّ -: أَنَّ الزَّكَاةَ عَلَى الْبَائِعِ، عُشْرُ الثَّمَنِ أَوْ نِصْفُ عُشْرِهِ، وَلَا سَبِيلَ لِأَحَدِهِمَا إِلَى تَرْجِيحِ قَوْلٍ عَلَى الْآخَرِ؟ وَلَوْ صَحَّ قَوْلُ مَنْ رَأَى الزَّكَاةَ وَاجِبَةً فِيهِ قَبْلَ دِرَاسِهِ -: لَكَانَ وَاجِبًا إِذَا أَدَّى الْعُشْرَ مِنْهُ كَمَا هُوَ فِي سُنْبُلِهِ أَنْ يُجْزِئَهُ، وَهَذَا مَا لَا يَقُولُونَهُ

[مَسْأَلَةُ زَكَاةِ النَّخْلِ]

٦٥٠ - مَسْأَلَةٌ: وَأَمَّا النَّخْلُ فَإِنَّهُ إِذَا أَزْهَى خُرِصَ وَأُلْزِمَ الزَّكَاةَ كَمَا ذَكَرْنَا، وَأُطْلِقَتْ يَدُهُ عَلَيْهِ يَفْعَلُ بِهِ مَا شَاءَ، وَالزَّكَاةُ فِي ذِمَّتِهِ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ ثنا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانِ - وَمُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ ثنا شُعْبَةُ قَالَ: سَمِعْتُ خُبَيْبَ بْنَ عَبْدِ الرَّحْمَنِ يُحَدِّثُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودِ بْنِ نِيَارٍ قَالَ: أَتَانَا سَهْلُ بْنُ أَبِي حَثْمَةَ فَقَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا خَرَصْتُمْ فَخُذُوا أَوْ دَعُوا الثُّلُثَ، فَإِنْ لَمْ تَأْخُذُوا فَدَعُوا الرُّبُعَ» شَكَّ شُعْبَةُ فِي لَفْظَةِ تَأْخُذُوا وَ " تَدَعُوا "؟ حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ.

وَهِيَ تَذْكُرُ شَأْنَ خَيْبَرَ قَالَتْ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَبْعَثُ عَبْدَ اللَّهِ بْنَ رَوَاحَةَ إِلَى الْيَهُودِ فَيَخْرُصُ النَّخْلَ حِينَ يَطِيبُ أَوَّلُ الثَّمَرِ قَبْلَ أَنْ يُؤْكَلَ، ثُمَّ يُخَيِّرُونَ الْيَهُودَ بَيْنَ أَنْ يَأْخُذُوهَا بِذَلِكَ الْخَرْصِ أَوْ يَدْفَعُوهَا إِلَيْهِمْ بِذَلِكَ» وَإِنَّمَا كَانَ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْخَرْصِ لِكَيْ تُحْصَى الزَّكَاةُ قَبْلَ أَنْ تُؤْكَلَ الثِّمَارُ وَتَفْتَرِقُ.

L10332 She mentioned the affair of Khaybar, saying: “Allah’s Messenger (peace and blessings be upon him) would send Abdullah ibn Rawaha to the Jews. He would estimate the date palms’ yield when the first fruits ripened before they were consumed, then they [the authorities] would let the Jews choose between keeping the fruits based on that estimate or surrendering them as tax according to that assessment.” The Messenger of Allah (peace and blessings be upon him) commanded this estimation solely to ensure the tax calculation occurred before the fruits were consumed or harvested and before their dispersal.

٦٥١ - مَسْأَلَةٌ:

L10333 651—Issue:

فَإِذَا خُرِصَ كَمَا ذَكَرْنَا فَسَوَاءٌ بَاعَ الثَّمَرَةَ صَاحِبُهَا أَوْ وَهَبَهَا أَوْ تَصَدَّقَ بِهَا أَوْ أَطْعَمَهَا أَوْ أَجِيحَ فِيهَا -: كُلُّ ذَلِكَ لَا يُسْقِطُ الزَّكَاةَ عَنْهُ؛ لِأَنَّهَا قَدْ وَجَبَتْ، وَأَطْلَقَ عَلَى الثَّمَرَةِ وَأَمْكَنَهُ التَّصَرُّفُ فِيهَا بِالْبَيْعِ وَغَيْرِهِ، كَمَا لَوْ وَجَدَهَا، وَلَا فَرْقَ؟

L10334 When the estimation is made as we mentioned, it makes no difference whether the owner sells the fruit, donates it, gives it in charity, uses it for food, or it is squandered—none of these actions nullify the Zakāt obligation upon him, because it has already become obligatory. The obligation is applied to the fruit, and he is enabled to dispose of it through sale or other means, just as if he had found it—is there any distinction?

مَسْأَلَةٌ: فَإِذَا غَلِطَ الْخَارِصُ أَوْ ظَلَمَ - فَزَادَ أَوْ نَقَصَ -: رَدَّ الْوَاجِبَ إِلَى الْحَقِّ، فَأُعْطِيَ مَا زِيدَ عَلَيْهِ وَأَخَذَ مِنْهُ مَا نَقَصَ؟ لِقَوْلِ اللَّهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] وَالزِّيَادَةُ مِنْ الْخَارِصِ ظُلْمٌ لِصَاحِبِ الثَّمَرَةِ بِلَا شَكٍّ، وَقَدْ قَالَ تَعَالَى: {وَلا تَعْتَدُوا} [البقرة: ١٩٠] فَلَمْ يُوجِبْ اللَّهُ تَعَالَى عَلَى صَاحِبِ الثَّمَرَةِ إلَّا الْعُشْرَ، لَا أَقَلَّ وَلَا أَكْثَرَ، أَوْ نِصْفَ الْعُشْرِ، لَا أَقَلَّ وَلَا أَكْثَرَ، وَنُقْصَانُ الْخَارِصِ ظُلْمٌ لِأَهْلِ الصَّدَقَاتِ وَإِسْقَاطٌ لِحَقِّهِمْ، وَكُلُّ ذَلِكَ إثْمٌ وَعُدْوَانٌ.

L10335–10336 Issue: If the estimator errs or acts unjustly—by overestimating or underestimating—must the obligatory amount be adjusted to the correct amount? Should what was overestimated be returned and what was underestimated be reclaimed? This is derived from Allah’s statement: “Be upholders of justice” [An-Nisa’ 4:135]. Overestimation by the estimator is undoubtedly an injustice to the fruit owner, as Allah says: “And do not transgress” [Al-Baqarah 2:190]. Allah has obligated the fruit owner to pay only a tenth, neither less nor more, or half a tenth, neither less nor more. Underestimation is an injustice to the recipients of alms and a deprivation of their right. All such acts are sinful and oppressive.[32]

٦٥٣ - مَسْأَلَةٌ:

L10337 653: Question

L10338 If the claimant alleges that the estimator wronged him or erred, his claim is not accepted except with clear proof—if the estimator is just and knowl-

[32] **Qur’an references (L10336):** Qur’an 4:135 (An-Nisa); Qur’an 2:190 (Al-Baqarah).

edgeable. If the estimator is ignorant or unjust, his ruling is rejected, for if he is unjust, he is a sinner, and thus his testimony is rejected.

فَإِنْ ادَّعَى أَنَّ الْخَارِصَ ظَلَمَهُ أَوْ أَخْطَأَ؟ لَمْ يُصَدَّقْ إِلَّا بِبَيِّنَةٍ إِنْ كَانَ الْخَارِصُ عَدْلًا عَالِمًا، فَإِنْ كَانَ جَاهِلًا أَوْ جَائِرًا فَحُكْمُهُ مَرْدُودٌ؟ لِأَنَّهُ إِنْ كَانَ جَائِرًا فَهُوَ فَاسِقٌ فَخَبَرُهُ مَرْدُودٌ.

L10339 Due to the statement of Allah, the Most High: "If a transgressor brings you a report, verify it thoroughly—lest you harm people in ignorance and become remorseful for what you have done" [Sūrat al-Ḥujurāt (49:6)].[33]

لِقَوْلِ اللَّهِ تَعَالَى: {إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَإٍ فَتَبَيَّنُوا أَنْ تُصِيبُوا قَوْمًا بِجَهَالَةٍ فَتُصْبِحُوا عَلَى مَا فَعَلْتُمْ نَادِمِينَ} [الحجرات: ٦] .

L10340 If he is ignorant, then an ignorant person presuming to judge matters of people's wealth **in matters he does not understand** is an act of harm. At the very least, this means it is impermissible to appoint him. Since this is the case, his appointment is null and void, in accordance with the statement of Allah's Messenger—peace and blessings be upon him: "Whoever performs an act not in accordance with our command, it is invalidated."[34]

وَإِنْ كَانَ جَاهِلًا فَتَعَرُّضُ الْجَاهِلِ لِلْحُكْمِ فِي أَمْوَالِ النَّاسِ بِمَا لَا يَدْرِي جُرْحَةٌ، وَأَقَلُّ ذَلِكَ أَنَّهُ لَا يَحِلُّ تَوْلِيَتُهُ، فَإِذْ هُوَ كَذَلِكَ فَتَوْلِيَتُهُ بَاطِلٌ مَرْدُودٌ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

[مَسْأَلَةُ خَرْصُ الزَّرْعِ]

L10341 **The issue of crop appraisal.**

٦٥٤ - مَسْأَلَةٌ:

L10342 654 – Jurisprudential Issue:

وَلَا يَجُوزُ خَرْصُ الزَّرْعِ أَصْلًا، لَكِنْ إِذَا حُصِدَ، وَدُرِسَ، فَإِنْ جَاءَ الَّذِي يَقْبِضُ الزَّكَاةَ حِينَئِذٍ فَقَعَدَ عَلَى الدُّرُوسِ وَالتَّصْفِيَةِ وَالْكَيْلِ فَلَهُ ذَلِكَ، وَلَا نَفَقَةَ لَهُ عَلَى صَاحِبِ الزَّرْعِ؟ لِأَنَّهُ لَمْ يَأْتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ خَرَصَ الزَّرْعَ، فَلَا يَجُوزُ خَرْصُهُ، لِأَنَّهُ إِحْدَاثُ حُكْمٍ لَمْ يَأْتِ بِهِ نَصٌّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L10343 Estimating the crop is fundamentally impermissible. However, when it is harvested and threshed, if the zakat collector arrives at that time and oversees the threshing, winnowing, and volumetric measuring, he is entitled to do so. The crop owner is not obligated to cover any expenses for him, as there is no report from the Messenger of Allah—peace and blessings be upon him—that he estimated crops. Thus, estimating them is impermissible, for it constitutes introducing a ruling without explicit textual evidence. Success comes from Allah, the Exalted.

وَأَمَّا النَّفَقَةُ فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

L10344 As for expenditure, Allah the Exalted says: "And do not consume your wealth among yourselves wrongfully" [Al-Baqarah: 188].[35]

[33] **Qur'an references (L10339):** Qur'an 49:6 (Al-Hujurat).

[34] **Hadith references (L10340):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[35] **Qur'an references (L10344):** Qur'an 2:188 (Al-Baqarah).

An issue: When harvesting crops, one should give from it to those among the poor who are present.

655 – Issue:

It was made obligatory upon everyone who has crops to give from their harvest at the time of reaping to those present. Among the poor are those whose soul is contented. We have mentioned this before in the chapter on what zakah is obligatory upon, when we cited the words of Allah the Exalted: {And give its due on the day of its harvest} [al-Anʿām 6:141]. And with Allah the Exalted is the success.[36]

A legal question: If one enters into a musaqat agreement with the cultivator of his land for a portion of what comes out of it, upon whom is the zakat obligation?

665 - Issue:

Whoever enters into a musāqāh contract for a date palm grove or cultivates his land in exchange for a share of its produce: if the portion allocated to either party reaches five wasqs or more of dates, or similarly five wasqs of wheat or barley, is Zakat obligatory upon him? Otherwise, it is not. Likewise, whoever has a partner or more in a crop or in the produce of date palms through detention, purchase, or any other means—all such cases are treated equally, with no difference in ruling. If the produce is designated for the poor, the blind, those afflicted with leprosy, for use in the path, or similar purposes where its beneficiaries are not specified—such as for a mosque or the like—then no Zakat is due on any of it. For Allah the Exalted has not obligated Zakat on less than five wasqs of the crops we mentioned, nor has He imposed it on a partner due to combining his crop with his partner's crop. He the Exalted said: **"No soul bears the burden of another, and no bearer of burdens will bear the burden of another"** [al-Anʿām 6:164].[37]

[مَسْأَلَةٌ عِنْدَ حَصَادِ الزَّرْعِ يُعْطِي مِنْهُ مَنْ حَضَرَ مِنْ الْمَسَاكِينِ]

٦٥٥ - مَسْأَلَةٌ:

وَفُرِضَ عَلَى كُلِّ مَنْ لَهُ زَرْعٌ عِنْدَ حَصَادِهِ أَنْ يُعْطِيَ مِنْهُ مَنْ حَضَرَ مِنْ الْمَسَاكِينِ مَا طَابَتْ بِهِ نَفْسُهُ، وَقَدْ ذَكَرْنَا ذَلِكَ قَبْلُ فِي بَابِ مَا تَجِبُ فِيهِ الزَّكَاةُ عِنْدَ ذِكْرِنَا قَوْلَ اللَّهِ تَعَالَى: {وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ} [الأنعام: ١٤١] وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ سَاقَى زَارِعَ أَرْضِهِ بِجُزْءٍ مِمَّا يَخْرُجُ مِنْهَا فَعَلَى مَنْ تَكُون الزَّكَاة]

٦٥٦ - مَسْأَلَةٌ:

وَمَنْ سَاقَى حَائِطَ نَخْلٍ أَوْ زَارِعَ أَرْضِهِ بِجُزْءٍ مِمَّا يَخْرُجُ مِنْهَا فَأَيُّهُمَا وَقَعَ فِي سَهْمِهِ خَمْسَةُ أَوْسُقٍ فَصَاعِدًا مِنْ تَمْرٍ، أَوْ خَمْسَةُ أَوْسُقٍ كَذَلِكَ مِنْ بُرٍّ، أَوْ شَعِيرٍ: فَعَلَيْهِ الزَّكَاةُ، وَإِلَّا فَلَا؟ وَكَذَلِكَ مَنْ كَانَ لَهُ شَرِيكٌ فَصَاعِدًا فِي زَرْعٍ أَوْ فِي ثَمَرَةِ نَخْلٍ بِحَبْسٍ، أَوْ ابْتِيَاعٍ، أَوْ بِغَيْرِ ذَلِكَ مِنْ الْوُجُوهِ كُلِّهَا وَلَا فَرْقَ؟ فَإِنْ كَانَتْ عَلَى الْمَسَاكِينِ، أَوْ الْعُمْيَانِ، أَوْ الْمَجْذُومِينَ، أَوْ فِي السَّبِيلِ، أَوْ مَا أَشْبَهَ ذَلِكَ - مِمَّا لَا يَتَعَيَّنُ بِأَهْلِهِ - أَوْ عَلَى مَسْجِدٍ، أَوْ نَحْوِ ذَلِكَ: فَلَا زَكَاةَ فِي شَيْءٍ مِنْ ذَلِكَ كُلِّهِ؟ لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ الزَّكَاةَ فِي أَقَلَّ مِنْ خَمْسَةِ أَوْسُقٍ مِمَّا ذَكَرْنَا، وَلَمْ يُوجِبْهَا عَلَى شَرِيكٍ مِنْ أَجْلِ ضَمِّ زَرْعِهِ إلَى زَرْعِ شَرِيكِهِ، قَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤].

[36] **Qur'an references (L10347):** Qur'an 6:141 (Al-An'am).
[37] **Qur'an references (L10352):** Qur'an 6:164 (Al-An'am).

L10353 As for those not specified, it is invalid to claim that five awsuq applies to any of them. There is no zakat except upon a Muslim who attains five awsuq from what he acquires? Abu Hanifah maintained regarding all that zakat applies. This is erroneous due to our earlier clarification that divine legislation does not apply to land itself, but rather to people and jinn. Were their position valid, zakat would be obligatory on the produce of disbelievers' lands. Should they counter: "The kharaj substitutes for it," we reply: During the Prophet's era (peace be upon him), no kharaj was imposed upon them, yet according to their argument, zakat should have applied to what their land produced. This is invalid by consensus of scholars of transmitted knowledge and by their consensus along with the rest of the Muslims.

وَأَمَّا مَنْ لَا يَتَعَيَّنُ فَلَيْسَ يَصِحُّ أَنَّهُ يَقَعُ لِأَحَدِهِمْ خَمْسَةُ أَوْسُقٍ، وَلَا زَكَاةَ إِلَّا عَلَى مُسْلِمٍ يَقَعُ لَهُ مِمَّا يُصِيبُ خَمْسَةَ أَوْسُقٍ؟ وَقَالَ أَبُو حَنِيفَةَ فِي كُلِّ ذَلِكَ الزَّكَاةُ؟ وَهَذَا خَطَأٌ، لِمَا قَدْ ذَكَرْنَا مِنْ أَنَّهُ لَا شَرِيعَةَ عَلَى أَرْضٍ، وَإِنَّمَا الشَّرِيعَةُ عَلَى النَّاسِ، وَالْجِنِّ، وَلَوْ كَانَ مَا قَالُوا لَوَجَبَتْ الزَّكَاةُ فِي أَرَاضِي الْكُفَّارِ فَإِنْ قَالُوا: الْخَرَاجُ نَابَ عَنْهَا؟ قُلْنَا: كَانُوا فِي عَصْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا خَرَاجَ عَلَيْهِمْ، فَكَانَ يَجِبُ عَلَى قَوْلِكُمْ أَنْ تَكُونَ الزَّكَاةُ فِيمَا أَخْرَجَتْ أَرْضُهُمْ، وَهَذَا بَاطِلٌ بِإِجْمَاعٍ مِنْ أَهْلِ النَّقْلِ، وَبِإِجْمَاعِهِمْ مَعَ سَائِرِ الْمُسْلِمِينَ.

L10354–10355 Al-Shāfiʿī said: If all the co-owners collectively possess five *awsuq*, then *zakāt* is obligatory upon them - and we will refute this opinion (if Allah, the Exalted, wills) in the section on *zakāt* for livestock partners. The essence of the rebuttal against him is that it imposes a Sharʿī obligation without any foundational evidence whatsoever - and success comes only from Allah, the Exalted.

وَقَالَ الشَّافِعِيُّ: إذَا اجْتَمَعَ لِلشُّرَكَاءِ كُلِّهِمْ خَمْسَةُ أَوْسُقٍ فَعَلَيْهِمْ الزَّكَاةُ - وَسَنَذْكُرُ بُطْلَانَ هَذَا الْقَوْلِ - إنْ شَاءَ اللَّهُ تَعَالَى - فِي زَكَاةِ الْخُلَطَاءِ فِي الْمَاشِيَةِ، وَجُمْلَةُ الرَّدِّ عَلَيْهِ أَنَّهُ إيجَابُ شَرْعٍ بِلَا بُرْهَانٍ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ عَدَّ الزَّارِعُ مَا أَنْفَقَ فِي حَرْثٍ أَوْ حَصَادٍ فَأَسْقَطَهُ مِنْ الزَّكَاةِ]

Issue: A farmer accounted for his expenses on plowing or harvesting and deducted them from [his harvest] when calculating Zakat.

L10357 657 – Issue:

٦٥٧ - مَسْأَلَةٌ:

L10358 It is not permissible for the owner of crops or dates to deduct what he spent on plowing, harvesting, gathering, threshing, transporting, pruning, digging, or other similar activities from the Zakat owed - regardless of whether he incurred debt for these activities or not, and regardless of whether the expenses consumed the entire value of the crop or dates or not. This is a point over which the early predecessors differed. Hammam narrated to us from ʻAbdullāh ibn Muḥammad ibn ʻAlī from ʻAbdullāh ibn Yūnus from Baqī ibn Makhlad from Abū Bakr ibn Abī Shaybah from Wakīʻ from Abū ʻAwānah from Abū Bishr - who is Jaʻfar ibn Abī Waḥshiyyah - from ʻAmr ibn Harim

وَلَا يَجُوزُ أَنْ يَعُدَّ الَّذِي لَهُ الزَّرْعُ أَوْ التَّمْرُ مَا أَنْفَقَ فِي حَرْثٍ أَوْ حَصَادٍ، أَوْ جَمْعٍ، أَوْ دَرْسٍ، أَوْ تَزْبِيلٍ أَوْ جِدَادٍ أَوْ حَفْرٍ أَوْ غَيْرِ ذَلِكَ -: فَيُسْقِطُهُ مِنْ الزَّكَاةِ وَسَوَاءٌ تَدَايَنَ فِي ذَلِكَ أَوْ لَمْ يَتَدَايَنْ، أَتَتْ النَّفَقَةُ عَلَى جَمِيعِ قِيمَةِ الزَّرْعِ أَوْ التَّمْرِ أَوْ لَمْ تَأْتِ، وَهَذَا مَكَانٌ قَدْ اخْتَلَفَ السَّلَفُ فِيهِ؟ -: حَدَّثَنَا حُمَامٌ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ ثنا عَبْدُ اللَّهِ بْنُ يُونُسَ ثنا بَقِيُّ بْنُ مَخْلَدٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا وَكِيعٌ عَنْ أَبِي عَوَانَةَ عَنْ أَبِي بِشْرٍ

from Jābir ibn Zayd from Ibn ʻAbbās and Ibn ʻUmar regarding a man who spends on his fruit. One of them said: "He must give Zakat on it," while the other said: "He deducts the expenses and gives Zakat on what remains."

هُوَ جَعْفَرُ بْنُ أَبِي وَحْشِيَّةَ - عَنْ عَمْرِو بْنِ هَرِمٍ عَنْ جَابِرِ بْنِ زَيْدٍ عَنِ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ، فِي الرَّجُلِ يُنْفِقُ عَلَى ثَمَرَتِهِ، قَالَ أَحَدُهُمَا: يُزَكِّيهَا، وَقَالَ الْآخَرُ: يَرْفَعُ النَّفَقَةَ وَيُزَكِّي مَا بَقِيَ.

L10359 From ʻAta': The zakat obligation is waived from expenses incurred. If the remainder reaches the taxable amount, he pays zakat; otherwise, he does not. Abu Muhammad said: The Messenger of Allah—peace and blessings be upon him—obligated zakat in totality on dates, wheat, and barley when a single type among them reaches five wasqs or more. He did not exempt zakat from that due to the cultivator's or date palm owner's expenses. Thus, is it permissible to waive a right Allah the Exalted has ordained without a Quranic text or established Sunnah? This is the view of Mālik, Al-Shāfiʻī, Abū Ḥanīfah, and our companions. However, Mālik, Abū Ḥanīfah, and Al-Shāfiʻī—in one of his two opinions—were inconsistent, exempting zakat from wealth for which Allah had ordained it when the owner owed a debt that consumes all or part of it, waiving zakat on the amount consumed by the debt.

وَعَنْ عَطَاءٍ: أَنَّهُ يَسْقُطُ مِمَّا أَصَابَ النَّفَقَةَ، فَإِنْ بَقِيَ مِقْدَارُ مَا فِيهِ الزَّكَاةُ زَكَّى، وَإِلَّا فَلَا؟ قَالَ أَبُو مُحَمَّد: أَوْجَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي التَّمْرِ وَالْبُرِّ وَالشَّعِيرِ: الزَّكَاةُ جُمْلَةً إذَا بَلَغَ الصِّنْفُ مِنْهَا خَمْسَةَ أَوْسُقٍ فَصَاعِدًا، وَلَمْ يُسْقِطْ الزَّكَاةَ عَنْ ذَلِكَ بِنَفَقَةِ الزَّارِعِ وَصَاحِبِ النَّخْلِ، فَلَا يَجُوزُ إسْقَاطُ حَقٍّ أَوْجَبَهُ اللَّهُ تَعَالَى بِغَيْرِ نَصِّ قُرْآنٍ وَلَا سُنَّةٍ ثَابِتَةٍ؟ وَهَذَا قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِنَا، إلَّا أَنَّ مَالِكًا، وَأَبَا حَنِيفَةَ، وَالشَّافِعِيَّ فِي أَحَدِ قَوْلَيْهِ تَنَاقَضُوا وَأَسْقَطُوا الزَّكَاةَ عَنْ الْأَمْوَالِ الَّتِي أَوْجَبَهَا اللَّهُ تَعَالَى فِيهَا إذَا كَانَ عَلَى صَاحِبِهَا دَيْنٌ يَسْتَغْرِقُهَا أَوْ يَسْتَغْرِقُ بَعْضَهَا، فَأَسْقَطُوهَا عَنْ مِقْدَارِ مَا اسْتَغْرَقَ الدَّيْنُ مِنْهَا.

An issue: What the cultivator and his household consume is not counted toward Zakat.

[مَسْأَلَةٌ لَا يُعَدُّ عَلَى صَاحِبِ الزَّرْعِ فِي الزَّكَاةِ مَا أَكَلَ هُوَ وَأَهْلُهُ]

L10361 Issue 658:

٦٥٨ - مَسْأَلَةٌ:

L10362 It is not permissible to count against the crop owner for zakah what he and his household consume as parched grain or flour—whether little or much—nor the ears that fall and are eaten by birds or livestock, nor what the needy take, nor what he donates during harvest. Rather, is zakah only obligatory on what remains after purification? The evidence for this—as we previously stated—is that zakah becomes obligatory only when measuring becomes possible. Whatever leaves his possession before this occurs has exited before the obligation of zakah took effect.

وَلَا يَجُوزُ أَنْ يُعَدَّ عَلَى صَاحِبِ الزَّرْعِ فِي الزَّكَاةِ مَا أَكَلَ هُوَ وَأَهْلُهُ فَرِيكًا أَوْ سَوِيقًا - قَلَّ أَوْ كَثُرَ - وَلَا السُّنْبُلَ الَّذِي يَسْقُطُ فَيَأْكُلُهُ الطَّيْرُ أَوْ الْمَاشِيَةُ أَوْ يَأْخُذُهُ الضُّعَفَاءُ، وَلَا مَا تَصَدَّقَ بِهِ حِينَ الْحَصَادِ، لَكِنْ مَا صُفِّيَ فَزَكَاتُهُ عَلَيْهِ؟ بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَا قَبْلُ أَنَّ الزَّكَاةَ لَا تَجِبُ إلَّا حِينَ إمْكَانِ الْكَيْلِ، فَمَا خَرَجَ عَنْ يَدِهِ قَبْلَ ذَلِكَ فَقَدْ خَرَجَ قَبْلَ وُجُوبِ الصَّدَقَةِ فِيهِ.

L10363–10364 Al-Shafi'i said: And Al-Layth similarly held.

وَقَالَ الشَّافِعِيُّ: وَاللَّيْثُ، كَذَلِكَ.

وَقَالَ مَالِكٌ، وَأَبُو حَنِيفَةَ: يُعَدُّ عَلَيْهِ كُلُّ ذَلِكَ.

قَالَ أَبُو مُحَمَّد: هَذَا تَكْلِيفُ مَا لَا يُطَاقُ، وَقَدْ يَسْقُطُ مِنْ السُّنْبُلِ مَا لَوْ بَقِيَ لَأَتَمَّ خَمْسَةَ أَوْسُقٍ، وَهَذَا لَا يُمْكِنُ ضَبْطُهُ وَلَا الْمَنْعُ مِنْهُ أَصْلًا.

وَاَللَّهُ تَعَالَى يَقُولُ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

[مَسْأَلَةٌ مَا أَكَلَ هُوَ وَأَهْلُهُ رُطَبًا لَا يُكَلَّفُ عَنْهُ زَكَاةٌ]

٦٥٩ - مَسْأَلَةٌ:

وَأَمَّا التَّمْرُ: فَفَرْضٌ عَلَى الْخَارِصِ أَنْ يَتْرُكَ لَهُ مَا يَأْكُلُ هُوَ وَأَهْلُهُ رُطَبًا عَلَى السَّعَةِ، لَا يُكَلَّفُ عَنْهُ زَكَاةً.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَاللَّيْثِ بْنِ سَعْد. وَقَالَ مَالِكٌ، وَأَبُو حَنِيفَةَ: لَا يَتْرُكُ لَهُ شَيْئًا؟ بُرْهَانُ صِحَّةِ قَوْلِنَا حَدِيثُ سَهْلِ بْنِ أَبِي حَثْمَةَ الَّذِي ذَكَرْنَا قَبْلُ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا خَرَصْتُمْ فَخُذُوا أَوْ دَعُوا الثُّلُثَ أَوْ الرُّبُعَ» وَلَا يَخْتَلِفُ الْقَائِلُونَ بِهَذَا الْخَبَرِ - وَهُمْ أَهْلُ الْحَقِّ الَّذِينَ إجْمَاعُهُمْ الْإِجْمَاعُ الْمُتَّبَعُ - فِي أَنَّ هَذَا عَلَى قَدْرِ حَاجَتِهِمْ إلَى الْأَكْلِ رُطَبًا -: حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا مُحَمَّدُ بْنُ عِيسَى بْنِ رِفَاعَةَ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا أَبُو عُبَيْدٍ ثنا هُشَيْمٌ، وَزَيْدٌ كِلَاهُمَا: عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ بَشِيرِ بْنِ يَسَارٍ قَالَ: بَعَثَ عُمَرُ بْنُ الْخَطَّابِ أَبَا حَثْمَةَ الْأَنْصَارِيَّ عَلَى خَرْصِ أَمْوَالِ الْمُسْلِمِينَ، فَقَالَ: إذَا وَجَدْت الْقَوْمَ فِي نَخْلِهِمْ قَدْ خَرَفُوا فَدَعْ لَهُمْ مَا يَأْكُلُونَ، لَا تَخْرُصْهُ عَلَيْهِمْ.

L10365 And Mālik and Abū Ḥanīfah said: All of that is counted against him.

L10366 Abu Muhammad said: This is an obligation beyond one's capacity, for grains may fall from the ears which, had they remained, would have completed five *wasqs*. This cannot be precisely regulated nor prevented at all.

L10367 And Allah, the Exalted, says: "Allah does not burden any soul beyond its capacity" [Al-Baqarah 2:286].[38]

L10368 **A jurisprudential issue: What he and his household consume as ripe dates is not subject to zakah.**

L10369 659 - Question:

L10370 As for dates: it is obligatory upon the Zakat assessor to leave the owner an abundant amount of fresh dates for him and his family to consume, and no Zakat is levied on this portion.

L10371 This is the opinion of Al-Shāfiʿī and Al-Layth ibn Saʿd. Mālik and Abū Ḥanīfah said: "Should he not leave anything for him?" The proof for the validity of our position is the ḥadīth of Sahl ibn Abī Ḥathmah we previously mentioned from the Messenger of Allah—peace and blessings be upon him: "When you estimate [the crop], either take the third or the quarter, or leave those portions." Those who uphold this report (being the upholders of truth whose consensus constitutes authoritative precedent) do not disagree that this [allowance] corresponds to the extent of their need to consume fresh dates.

Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Muḥammad ibn ʿĪsā ibn Rifāʿah narrated to us: ʿAlī ibn ʿAbd al-ʿAzīz narrated to us: Abū ʿUbayd narrated to us: Hushaym and Zayd—both of them—narrated from Yaḥyā ibn Saʿīd al-Anṣārī from Bashīr ibn Yasār, who said: ʿUmar ibn al-Khaṭṭāb appointed Abū Ḥathmah al-Anṣārī to estimate Muslims' agricultural yields.

[38] **Qur'an references (L10367):** Qur'an 2:286 (Al-Baqarah).

He instructed: “If you find people when their dates are ripe for harvest, leave for them what they consume—do not include what they consume in your taxable estimation.”

L10372 And through him to Abū ʾUbayd from Yazīd from Yaḥyā ibn Saʿīd al-Anṣārī from Muḥammad ibn Muḥammad ibn Yaḥyā ibn Ḥibbān that Abū Maymūnah informed him from Sahl ibn Abī Ḥathmah: that Marwān sent him as an estimator for date palms, so he assessed the date harvest of Saʿd ibn Abī Waqqāṣ as seven hundred *wasqs*, and he said: “If I had not found forty date-drying sheds in it, I would have assessed it as nine hundred *wasqs*; but I left them an amount equivalent to what they would consume.”

L10373–10374 Abu Muhammad said: This is the action of Umar ibn al-Khattab, Abu Hathmah, and Sahl - three Companions - in the presence of the Companions (may Allah be pleased with them), with no known opponent from among them. They would censure others for such acts when it suited them - and with Allah, the Exalted, lies all success.

L10375 Abū Yūsuf and Muḥammad said: “He must pay Zakat on what remains after he eats”—this is confused reasoning and contradicts all transmitted texts.

L10376 [A question regarding Zakat on crops irrigated part of the year by a waterwheel and part by bucket irrigation.]

L10377 660 - Legal Question:

L10378 If there is a crop or palm trees irrigated part of the year by a spring, a canal from a river, or rainwater, and part of the year by manual drawing, a pulley system, a counterweighted bucket system, or a bucket, then if the manual drawing significantly increased the yield and enhanced the crop, its zakat is only half of a tenth; but if it did not result in any increase or improvement, its zakat is a tenth.

L10379 Abū Muḥammad said: Abū Ḥanīfah and his companions held that zakāh is assessed according to the predominant irrigation method thereof. This is an

وَبِهِ إِلَى أَبِي عُبَيْدٍ عَنْ يَزِيدَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ مُحَمَّدِ بْنِ مُحَمَّدِ بْنِ يَحْيَى بْنِ حِبَّانَ أَنَّ أَبَا مَيْمُونَةَ أَخْبَرَهُ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ: أَنَّ مَرْوَانَ بَعَثَهُ خَارِصًا لِلنَّخْلِ، فَخَرَصَ مَال سَعْدِ بْنِ أَبِي وَقَّاصٍ سَبْعمِائَةِ وَسْقٍ، وَقَالَ: لَوْلَا أَنِّي وَجَدْت فِيهِ أَرْبَعِينَ عَرِيشًا لَخَرَصْته تِسْعمِائَةِ وَسْقٍ، وَلَكِنِّي تَرَكْت لَهُمْ قَدْرَ مَا يَأْكُلُونَ.

قَالَ أَبُو مُحَمَّد: هَذَا فِعْلُ عُمَرَ بْنِ الْخَطَّابِ، وَأَبِي حَثْمَةَ، وَسَهْلٍ، ثَلَاثَةٌ مِنْ الصَّحَابَةِ، بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، لَا مُخَالِفَ لَهُمْ يُعْرَفُ مِنْهُمْ، وَهُمْ يُشَنِّعُونَ بِمِثْلِ ذَلِكَ إذَا وَافَقَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدٌ: يُزَكِّي مَا بَقِيَ بَعْدَمَا يَأْكُلُ - وَهَذَا تَخْلِيطٌ وَمُخَالَفَةٌ لِلنُّصُوصِ كُلِّهَا.

[مَسْأَلَةٌ الزَّكَاة فِي زَرْع يُسْقَى بَعْض الْعَام بِسَاقِيَةٍ وَبَعْض الْعَام بِنَضْحٍ]

٦٦٠ - مَسْأَلَةٌ:

وَإِنْ كَانَ زَرْعٌ، أَوْ نَخْلٌ يُسْقَى بَعْض الْعَام بِعَيْنٍ، أَوْ سَاقِيَةٍ مِنْ نَهْرٍ أَوْ بِمَاءِ السَّمَاءِ، وَبَعْض الْعَام بِنَضْحٍ، أَوْ سَانِيَةٍ، أَوْ خَطَّارَةٍ، أَوْ دَلْوٍ، فَإِنْ كَانَ النَّضْحُ زَادَ فِي ذَلِكَ زِيَادَةً ظَاهِرَةً وَأَصْلَحَهُ: فَزَكَاتُهُ نِصْفُ الْعُشْرِ فَقَطْ، وَإِنْ كَانَ لَمْ يَزِدْ فِيهِ شَيْئًا وَلَا أَصْلَحَ فَزَكَاتُهُ الْعُشْرُ.

opinion we have transmitted from some of the pious predecessors. Ḥammām narrated to us from Abū Muḥammad al-Bājī from ʿAbdullāh ibn Yūnus from Baqī from Abū Bakr ibn Abī Shaybah from Muḥammad ibn Bakr from Ibn Jurayj, who said: I asked ʿAṭāʾ, "What is the ruling for crops irrigated by natural water sources or rain-dependent cultivation for most of their growth period, but necessitating irrigation from a well?" He replied: "If irrigated by natural water sources or rain-dependent cultivation more than by manual irrigation, the full one-tenth is due. If irrigated by manual irrigation more than by rain-dependent cultivation, half of one-tenth is due." Abū al-Zubayr said: I heard Jābir ibn ʿAbdillāh and ʿUbayd ibn ʿUmayr both articulating this precise ruling.

قَالَ أَبُو مُحَمَّدٍ: وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: يُزَكِّي عَلَى الْأَغْلَبِ مِنْ ذَلِكَ، وَهُوَ قَوْلٌ رُوِّينَاهُ عَنْ بَعْضِ السَّلَفِ -: حَدَّثَنَا حُمَامٌ ثنا أَبُو مُحَمَّدٍ الْبَاجِيَّ ثنا عَبْدُ اللَّهِ بْنُ يُونُسَ ثنا بَقِيٌّ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا مُحَمَّدُ بْنُ بَكْرٍ عَنْ ابْنِ جُرَيْجٍ قَالَ قُلْت لِعَطَاءٍ: فِي الْمَالِ يَكُونُ عَلَى الْعَيْنِ أَوْ بَعْلًا عَامَّةَ الزَّمَانِ، ثُمَّ يَحْتَاجُ إلَى الْبِئْرِ يُسْقَى بِهَا؟ فَقَالَ: إنْ كَانَ يُسْقَى بِالْعَيْنِ أَوْ الْبَعْلِ أَكْثَرُ مِمَّا يُسْقَى بِالدَّلْوِ: فَفِيهِ الْعُشْرُ، وَإِنْ كَانَ يُسْقَى بِالدَّلْوِ أَكْثَرُ مِمَّا يُسْقَى بِالْبَعْلِ: فَفِيهِ نِصْفُ الْعُشْرِ قَالَ أَبُو الزُّبَيْرِ: سَمِعْت جَابِرَ بْنَ عَبْدِ اللَّهِ، وَعُبَيْدَ بْنَ عُمَيْرٍ يَقُولَانِ هَذَا الْقَوْلَ.

L10380 Malik once said: "The zakat on it [the crop] is determined by that which irrigated it and brought it to completion. It does not matter to me which method of watering was used more - thus, its zakat obligation applies accordingly." He said another time: "Half of its zakat is one-tenth (10%) and the other half is half of one-tenth (5%)." Al-Shāfiʿī also stated it in this manner.

وَقَالَ مَالِكٌ مَرَّةً: إنَّ زَكَاتَهُ بِالَّذِي غَذَّاهُ بِهِ وَتَمَّ بِهِ، لَا أُبَالِي بِأَيِّ ذَلِكَ كَانَ أَكْثَرَ سَقْيِهِ فَزَكَاتُهُ عَلَيْهِ - وَقَالَ مَرَّةً أُخْرَى: يُعْطِي نِصْفَ زَكَاتِهِ الْعُشْرُ وَنِصْفُهَا نِصْفُ الْعُشْرِ، وَهَكَذَا قَالَ الشَّافِعِيُّ.

L10381 Abū Muḥammad said: The Prophet—peace and blessings of Allah be upon him—ruled regarding what is irrigated by bucket-drawn water that its zakāh is half of one-tenth. Without doubt, the sky waters it, and rainwater nourishes it. Indeed, we have observed that most irrigation methods dependent on springs or bucket irrigation, if rainwater does not fall upon them, inevitably deteriorate. Thus, he—peace be upon him—did not establish a ruling for that. It is therefore confirmed that when bucket irrigation adequately sustains crops or palm trees, its zakāh is only half of one-tenth. This is among the matters where the Shāfiʿīs left the ruling unattributed to a specific authority within the school, with no known dissenter among them.

قَالَ أَبُو مُحَمَّدٍ: قَدْ حَكَمَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَا سُقِيَ بِالنَّضْحِ بِنِصْفِ الْعُشْرِ، وَبِلَا شَكٍّ أَنَّ السَّمَاءَ تَسْقِيهِ وَيُصْلِحُهُ مَاءُ السَّمَاءِ، بَلْ قَدْ شَاهَدْنَا جُمْهُورَ السَّقَاءِ بِالْعَيْنِ وَالنَّضْحِ إنْ لَمْ يَقَعْ عَلَيْهِ مَاءُ السَّمَاءِ تَغَيَّرَ وَلَا بُدَّ، فَلَمْ يَجْعَلْ - عَلَيْهِ السَّلَامُ - لِذَلِكَ حُكْمًا، فَصَحَّ أَنَّ النَّضْحَ إذَا كَانَ مُصْلِحًا لِلزَّرْعِ أَوْ النَّخْلِ فَزَكَاتُهُ نِصْفُ الْعُشْرِ فَقَطْ: وَهَذَا مِمَّا تَرَكَ الشَّافِعِيُّونَ فِيهِ صَاحِبًا لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْهُمْ.

[مَسْأَلَةٌ الزَّكَاة عَلَى مَنْ زَرَعَ قَمْحًا مَرَّتَيْنِ فِي الْعَامِ]

L10382–10383 **The ruling on zakat for someone who grows wheat twice a year.**

مَسْأَلَةٌ:

L10384 Issue:

L10385 Whoever plants wheat or barley twice or more in a year, or a palm tree bears two crops in a year, he does not combine the second wheat, the second barley, or the second dates with the first. If one of them does not reach five awsuq, he does not give zakāt on it. If each of them individually does not reach five awsuq, he does not give zakāt on either.

وَمَنْ زَرَعَ قَمْحًا أَوْ شَعِيرًا مَرَّتَيْنِ فِي الْعَامِ أَوْ أَكْثَرَ، أَوْ حَمَلَتْ نَخْلَةٌ بَطْنَيْنِ فِي السَّنَةِ فَإِنَّهُ لَا يَضُمُّ الْبُرَّ الثَّانِي وَلَا الشَّعِيرَ الثَّانِي وَلَا التَّمْرَ الثَّانِي إلَى الْأَوَّلِ، وَإِنْ كَانَ أَحَدُهُمَا لَيْسَ فِيهِ خَمْسَةُ أَوْسُقٍ لَمْ يُزَكِّهِ، وَإِنْ كَانَ كُلُّ وَاحِدٍ مِنْهُمَا لَيْسَ فِيهِ خَمْسَةُ أَوْسُقٍ بِانْفِرَادِهِ لَمْ يُزَكِّهِمَا.

L10386 Ali said: This is because if they were combined, it would necessitate combining the two crops and the two dates—even if there were two years or more between them—and this is invalid without dispute. Since the authenticity of the Messenger of Allah's—may Allah bless him and grant him peace—negation of zakah on less than five wasqs is established, it follows that he considered the aggregated total, not a new crop whose existence is uncertain (whether it will occur or not). And with Allah alone is success, the Most High.

قَالَ عَلِيٌّ: وَذَلِكَ أَنَّهُ لَوْ جَمَعَا لَوَجَبَ أَنْ يَجْمَعَ بَيْنَ الزَّرْعَيْنِ وَالتَّمْرَتَيْنِ وَلَوْ كَانَ بَيْنَهُمَا عَامَانِ أَوْ أَكْثَرُ، وَهَذَا بَاطِلٌ بِلَا خِلَافٍ، وَإِذْ صَحَّ نَفْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الزَّكَاةَ عَمَّا دُونَ خَمْسَةِ أَوْسُقٍ فَقَدْ صَحَّ أَنَّهُ رَاعَى الْمُجْتَمَعَ، لَا زَرْعًا مُسْتَأْنَفًا لَا يُدْرَى أَيَكُونُ أَمْ لَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L10387 662 - Issue:

٦٦٢ - مَسْأَلَةٌ:

L10388 If there is early wheat, early barley, or early dates, along with another delayed planting of the same type, then if the delayed planting dries or forms ears or ripens before the completion of the early crop's harvest and reaping time, they are considered a single crop and single dates. They are combined, and Zakat is levied on them together. If the delayed planting neither dries nor forms ears nor ripens until after the early crop's harvest and reaping time has ended, they are two crops and two dates. One is combined with the other, and each follows its own ruling.

وَإِنْ كَانَ قَمْحٌ بِكِيرٍ أَوْ شَعِيرُ بِكِيرٍ أَوْ تَمْرُ بِكِيرٍ وَآخَرُ مِنْ جِنْسِ كُلِّ وَاحِدٍ مِنْهَا مُؤَخَّرٌ، فَإِنْ يَبِسَ الْمُؤَخَّرُ أَوْ أَزْهَى قَبْلَ تَمَامِ وَقْتِ حَصَادِ الْبَكِيرِ وَجِدَادِهِ فَهُوَ كُلُّهُ زَرْعٌ وَاحِدٌ وَتَمْرٌ وَاحِدٌ، يَضُمُّ بَعْضَهُ إلَى بَعْضٍ، وَتُزَكَّى مَعًا؛ إنْ لَمْ يَيْبَسْ الْمُؤَخَّرُ وَلَا أَزْهَى إلَّا بَعْدَ انْقِضَاءِ وَقْتِ حَصَادِ الْبَكِيرِ فَهُمَا زَرْعَانِ وَتَمْرَانِ، يَضُمُّ أَحَدَهُمَا إلَى الْآخَرِ وَلِكُلِّ وَاحِدٍ مِنْهُمَا حُكْمُهُ.

L10389 The proof of this is that every crop and all dates—some precede others in drying and blossoming stages. For instance, what is planted in Tishrin al-Awwal begins to dry before what is planted in Shubat dries, yet the harvesting period of the former does not end until the latter is harvested, as they belong to a single summer season. Similarly, regarding dates, if their harvest times do not coincide and their blossoming periods do not follow consecutively,

بُرْهَانُ ذَلِكَ -: أَنَّ كُلَّ زَرْعٍ وَكُلَّ تَمْرٍ فَإِنَّ بَعْضَهُ يَتَقَدَّمُ بَعْضًا فِي الْيُبْسِ وَالْإِزْهَاءِ، وَإِنَّ مَا زُرِعَ فِي تَشْرِينَ الْأَوَّلِ يَبْدَأُ يُبْسُهُ قَبْلَ أَنْ يَيْبَسَ مَا زُرِعَ فِي شُبَاطَ، إلَّا أَنَّهُ لَا يَنْقَضِي وَقْتُ حَصَادِ الْأَوَّلِ حَتَّى يُسْتَحْصَدَ الثَّانِي؛ لِأَنَّهَا صِيفَةٌ وَاحِدَةٌ، وَكَذَلِكَ

they are two distinct seasons, as we have explained earlier. And with Allah, the Exalted, is success.

L10390–10392 The earliest time confirmed with certainty in our view is that cultivation begins to be sown in the wilderness of Shant Barriyyah - a region within the district of the city of Salim in Al-Andalus. They sow barley at the end of Aylul (which is September) due to the prevalence of snow in their land, to the extent that it prevents them from sowing it unless they start early as... We have mentioned. The planting continues thereafter for a period of six months and a few extra days, as we have observed over the years that wheat and barley are planted at the beginning of March (corresponding to the Coptic month of Baramhat).

L10393 The earliest [time] authentically established according to our school for harvesting is such-and-such "from the operation of *tadmīr* (crop management)," for they begin harvesting in the remaining days of Nisan (April), and the harvest continues for four months until the onset of Aylul (September), which is Aghusht (August). These all constitute a single summer and one continuous harvest period.

L10394 663: Issue

L10395 If wheat or barley is harvested and another crop grows again in its roots, it counts as a new crop and is not aggregated with the first one, for the reason we stated earlier—and success is by Allah, the Most High.

L10396 The ruling: Zakat is an obligation incumbent on the owner of the wealth, not on the wealth itself.

L10397 664—Question:

L10398 Zakat is a personal obligation binding upon the wealth owner, not on the tangible wealth itself. Abu Muhammad said: The positions of the opposing scholars are inconsistent regarding this matter.

L10399 The proof for the validity of our position is this: There exists no disagree-

التَّمْرُ - وَأَمَّا إِذَا كَانَ لَا يَجْتَمِعُ وَقْتُ حَصَادِهِمَا وَلَا يَتَّصِلُ وَقْتُ إِزْهَائِهِمَا فَهُمَا زَمَنَانِ اثْنَانِ كَمَا قَدَّمْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَبْكَرُ مَا صَحَّ عِنْدَنَا يَقِينًا: أَنَّهُ يَبْدَأُ بِأَنْ يُزْرَعَ فِي بِلَادٍ مِنْ شِنْتَ بَرِيَّةَ، وَهِيَ مِنْ عَمَلِ مَدِينَةِ سَالِمٍ بِالْأَنْدَلُسِ، فَإِنَّهُمْ يَزْرَعُونَ الشَّعِيرَ فِي آخِرِ أَيْلُولَ وَهُوَ " شتنبر " لِغَلَبَةِ الثَّلْجِ عَلَى بِلَادِهِمْ، حَتَّى يَمْنَعُهُمْ مِنْ زَرْعِهَا إِنْ لَمْ يُبَكِّرُوا بِهِ كَمَا ذَكَرْنَا؛ وَيَتَّصِلُ الزَّرْعُ بَعْدَ ذَلِكَ مُدَّةَ سِتَّةِ أَشْهُرٍ وَزِيَادَةُ أَيَّامٍ، فَقَدْ شَاهَدْنَا فِي الْأَعْوَامِ زَرِيعَةَ الْقَمْحِ وَالشَّعِيرِ فِي صَدْرِ " آذَارِ " وَهُوَ " مُرْسٍ ".

وَأَبْكَرُ مَا صَحَّ عِنْدَنَا حَصَادُهُ فألش " مِنْ عَمَلِ " تَدْمِيرَ " فَإِنَّهُمْ يَبْدَءُونَ بِالْحَصَادِ فِي أَيَّامٍ بَاقِيَةٍ مِنْ " نَيْسَانَ " وَهُوَ " أَبِرِيلُ " وَيَتَّصِلُ الْحَصَادُ أَرْبَعَةُ أَشْهُرٍ إِلَى صَدْرِ زَمَنِ " أَيْلُولَ " وَهُوَ " أُغِشْتْ " وَهِيَ كُلُّهَا صِيفَةٌ وَاحِدَةٌ، وَاسْتِحْصَادٌ وَاحِدٌ مُتَّصِلٌ.

٦٦٣ - مَسْأَلَةٌ:

فَلَوْ حُصِدَ قَمْحٌ أَوْ شَعِيرٌ ثُمَّ أُخْلِفَ فِي أُصُولِهِ زَرْعٌ فَهُوَ زَرْعٌ آخَرُ، لَا يُضَمُّ إِلَى الْأَوَّلِ؛ لِمَا ذَكَرْنَا قَبْلُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الزَّكَاةُ وَاجِبَةٌ فِي ذِمَّةِ صَاحِبِ الْمَالِ لَا فِي عَيْنِ الْمَالِ]

٦٦٤ - مَسْأَلَةٌ:

وَالزَّكَاةُ وَاجِبَةٌ فِي ذِمَّةِ صَاحِبِ الْمَالِ لَا فِي عَيْنِ الْمَالِ؛ قَالَ أَبُو مُحَمَّدٍ: وَقَدْ اضْطَرَبَتْ أَقْوَالُ الْمُخَالِفِينَ فِي هَذَا.

ment among any member of the Ummah—from our time to the time of Allah's Messenger (peace be upon him)—regarding the ruling that if one upon whom *zakat* is due for wheat, barley, dates, silver, gold, camels, cattle, or sheep pays their obligatory *zakat* from other than that specific crop, other than those dates, other than that gold, other than that silver, other than those camels, other than those cattle, or other than those sheep, he is neither prohibited nor discouraged from doing so. Rather, it is equally valid whether he pays from the specific asset itself, from other assets in his possession, from purchased goods, gifted items, or borrowed means. This conclusively establishes that *zakat* is an obligation attached to the *dhimma* (moral accountability), not to the specific asset. For if it were tied to the asset itself, it would never be permissible to pay from other than it, just as co-owners of any such asset are prohibited from settling their partner's share with anything other than the jointly owned asset itself, except through mutual consent and as per the rules of sale.

Furthermore, if *zakat* were inherently tied to the asset itself, it could only be in one of two aspects without a third possibility: either it would apply to every single portion of that asset, or it would apply to a portion of it without being tied to the asset itself.

وَبُرْهَانُ صِحَّةِ قَوْلِنَا -: هُوَ أَنْ لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ - مِنْ زَمَنِنَا إلَى زَمَنِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَنَّ مَنْ وَجَبَتْ عَلَيْهِ زَكَاةُ بُرٍّ أَوْ شَعِيرٍ أَوْ تَمْرٍ أَوْ فِضَّةٍ أَوْ ذَهَبٍ أَوْ إبِلٍ أَوْ بَقَرٍ أَوْ غَنَمٍ فَأَعْطَى زَكَاتَهُ الْوَاجِبَةَ عَلَيْهِ مِنْ غَيْرِ ذَلِكَ الزَّرْعِ وَمِنْ غَيْرِ ذَلِكَ التَّمْرِ وَمِنْ غَيْرِ ذَلِكَ الذَّهَبِ وَمِنْ غَيْرِ تِلْكَ الْفِضَّةِ وَمِنْ غَيْرِ تِلْكَ الْإِبِلِ وَمِنْ غَيْرِ تِلْكَ الْبَقَرِ وَمِنْ غَيْرِ تِلْكَ الْغَنَمِ -: فَإِنَّهُ لَا يُمْنَعُ مِنْ ذَلِكَ، وَلَا يُكْرَهُ ذَلِكَ لَهُ، بَلْ سَوَاءٌ أَعْطَى مِنْ تِلْكَ الْعَيْنِ، أَوْ مِمَّا عِنْدَهُ مِنْ غَيْرِهَا، أَوْ مِمَّا يَشْتَرِي، أَوْ مِمَّا يُوهَبُ، أَوْ مِمَّا يُسْتَقْرَضُ، فَصَحَّ يَقِينًا أَنَّ الزَّكَاةَ فِي الذِّمَّةِ لَا فِي الْعَيْنِ إذْ لَوْ كَانَتْ فِي الْعَيْنِ لَمْ يَحِلَّ لَهُ الْبَتَّةَ أَنْ يُعْطِيَ مِنْ غَيْرِهَا، وَلَوَجَبَ مَنْعُهُ مِنْ ذَلِكَ، كَمَا يُمْنَعُ مَنْ لَهُ شَرِيكٌ فِي شَيْءٍ مِنْ كُلِّ ذَلِكَ أَنْ يُعْطِيَ شَرِيكَهُ مِنْ غَيْرِ الْعَيْنِ الَّتِي هُمْ فِيهَا شُرَكَاءُ إلَّا بِتَرَاضِيهِمَا، وَعَلَى حُكْمِ الْبَيْعِ؟ وَأَيْضًا - فَلَوْ كَانَتْ الزَّكَاةُ فِي عَيْنِ الْمَالِ لَكَانَتْ لَا تَخْلُو مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا -: إمَّا أَنْ تَكُونَ فِي كُلِّ جُزْءٍ مِنْ أَجْزَاءِ ذَلِكَ الْمَالِ، أَوْ تَكُونَ فِي شَيْءٍ مِنْهُ بِغَيْرِ عَيْنِهِ.

L10400–10401 If zakah were obligatory on every part of the crop, it would be impermissible for him to sell even a single head or grain or anything beyond that, because the zakah recipients are partners in that portion. It would also be impermissible for him to consume any of it for the reason we stated. This is invalid without any disagreement.

فَلَوْ كَانَتْ فِي كُلِّ جُزْءٍ مِنْهُ لَحَرُمَ عَلَيْهِ أَنْ يَبِيعَ مِنْهُ رَأْسًا أَوْ حَبَّةً فَمَا فَوْقَهَا؛ لِأَنَّ لِأَهْلِ الصَّدَقَاتِ فِي ذَلِكَ الْجُزْءِ شَرِيكًا، وَلَحَرُمَ عَلَيْهِ أَنْ يَأْكُلَ مِنْهَا شَيْئًا لِمَا ذَكَرْنَا، وَهَذَا بَاطِلٌ بِلَا خِلَافٍ.

L10402 It would also be incumbent upon him not to discharge the sheep except at a validly assessed value from the remaining assets, as is necessarily done in partnerships. And if zakat is due on any part of it in a form other than its actual form (in kind), then this is null and void.

وَلَلَزِمَهُ أَيْضًا: أَنْ لَا يُخْرِجَ الشَّاةَ إلَّا بِقِيمَةٍ مُصَحَّحَةٍ مِمَّا بَقِيَ، كَمَا يُفْعَلُ فِي الشَّرِكَاتِ وَلَا بُدَّ، وَإِنْ كَانَتْ الزَّكَاةُ فِي شَيْءٍ مِنْهُ بِغَيْرِ عَيْنِهِ؛ فَهَذَا بَاطِلٌ.

L10403 It was equally obligatory in exactly the same manner, because he did not know whether he might sell or consume what rightfully belongs to the eligible recipients of Zakat.

وَكَانَ يَلْزَمُ أَيْضًا: مِثْلُ ذَلِكَ سَوَاءً سَوَاءً؛ لِأَنَّهُ كَانَ لَا يَدْرِي لَعَلَّهُ يَبِيعُ أَوْ يَأْكُلُ الَّذِي هُوَ حَقُّ أَهْلِ الصَّدَقَةِ.

L10404 Thus, what we have said is certainly correct - and with Allah, the Most High, lies divine success.

فَصَحَّ مَا قُلْنَا يَقِينًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَا أُتْلِفَ بَعْدَ وُجُوبِ الزَّكَاةِ فِيهِ]

L10405 **An issue concerning that which is destroyed after Zakāt becomes obligatory upon it.**

L10406 655 – Question:

٦٦٥ - مَسْأَلَةٌ:

L10407 For every type of wealth subject to Zakāh among the categories we mentioned—whether the entirety of such wealth or any portion of it (whether large or small) perishes after the possibility of paying Zakāh from it arises, following the obligation's inception (whether little or much time has passed since the obligation took effect, whether through default or otherwise)—the entire Zakāh remains a binding obligation upon the owner's liability as if no loss occurred, with no distinction. This is because, as we stated earlier, Zakāh is an obligation tied to one's liability, not the physical asset itself. We specified "after the possibility of paying Zakāh from it arises" because if one intends to pay Zakāh from assets other than the specific wealth obligated for it, they cannot be compelled otherwise. Camels and other categories are equivalent in this ruling, except when Zakāh for a particular asset is payable with sheep and one possesses available sheep. In such a case, Zakāh must be paid from the available sheep. It is impermissible to delay Zakāh until selling those camels, as Allah says: "And hasten toward forgiveness from your Lord" [Āl ʿImrān 3:133].[39]

فَكُلُّ مَالٍ وَجَبَتْ فِيهِ زَكَاةٌ مِنْ الْأَمْوَالِ الَّتِي ذَكَرْنَا، فَسَوَاءٌ تَلِفَ ذَلِكَ أَوْ بَعْضُهُ - أَكْثَرُهُ أَوْ أَقَلُّهُ - إثْرَ إمْكَانِ إخْرَاجِ الزَّكَاةِ مِنْهُ، إثْرَ وُجُوبِ الزَّكَاةِ بِمَا قَلَّ مِنْ الزَّمَنِ أَوْ كَثُرَ، بِتَفْرِيطٍ تَلِفَ أَوْ بِغَيْرِ تَفْرِيطٍ -: فَالزَّكَاةُ كُلُّهَا وَاجِبَةٌ فِي ذِمَّةِ صَاحِبِهِ كَمَا كَانَتْ لَوْ لَمْ يَتْلَفْ، وَلَا فَرْقَ؛ لِمَا ذَكَرْنَا مِنْ أَنَّ الزَّكَاةَ فِي الذِّمَّةِ لَا فِي عَيْنِ الْمَالِ؟ وَإِنَّمَا قُلْنَا: إثْرَ إمْكَانِ إخْرَاجِ الزَّكَاةِ مِنْهُ لِأَنَّهُ إنْ أَرَادَ إخْرَاجَ الزَّكَاةِ مِنْ غَيْرِ عَيْنِ الْمَالِ الْوَاجِبَةِ فِيهِ لَمْ يُجْبَرْ عَلَى غَيْرِ ذَلِكَ، وَالْإِبِلُ وَغَيْرُهَا فِي ذَلِكَ سَوَاءٌ، إلَّا أَنْ تَكُونَ مِمَّا يُزَكَّى بِالْغَنَمِ وَلَهُ غَنَمٌ حَاضِرَةٌ فَهَذَا تَلْزَمُهُ الزَّكَاةُ مِنْ الْغَنَمِ الْحَاضِرَةِ، وَلَيْسَ لَهُ أَنْ يُمْطِلَ بِالزَّكَاةِ حَتَّى يَبِيعَ مِنْ تِلْكَ الْإِبِلِ، لِقَوْلِ اللَّهِ تَعَالَى: {وَسَارِعُوا إِلَى مَغْفِرَةٍ مِنْ رَبِّكُمْ} [آل عمران: ١٣٣].

[مَسْأَلَةٌ أَخْرَجَ الزَّكَاةَ وَعَزَلَهَا لِيَدْفَعَهَا إلَى الْمُصَدِّقِ فَضَاعَتْ]

L10408 **Case: He took out the zakat and set it aside to give to the zakat collector, but it was lost.**

L10409 666 – Issue:

٦٦٦ - مَسْأَلَةٌ:

L10410 Similarly, if one separates the Zakāh and sets it aside to deliver it to the collector or to those eligible for Zakāh, and all or part of it is lost, he is inevitably obligated to reissue all of it. This is due to the rationale we previously stated and because it remains a liability upon him until he delivers it

وَكَذَلِكَ لَوْ أَخْرَجَ الزَّكَاةَ وَعَزَلَهَا لِيَدْفَعَهَا إلَى الْمُصَدِّقِ أَوْ إلَى أَهْلِ الصَّدَقَاتِ فَضَاعَتْ الزَّكَاةُ كُلُّهَا أَوْ بَعْضُهَا فَعَلَيْهِ إعَادَتُهَا كُلِّهَا وَلَا بُدَّ، لِمَا ذَكَرْنَا، وَلِأَنَّهُ فِي ذِمَّتِهِ حَتَّى يُوَصِّلَهَا إلَى مَنْ أَمَرَهُ اللَّهُ تَعَالَى بِإِيصَالِهَا إلَيْهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[39] **Qur'an references (L10407):** Qur'an 3:133 (Ali 'Imran).

to those whom Allah, the Most High, has commanded him to deliver it to—and success is granted by Allah, the Most High.

وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَظَاهِرُ قَوْلِ الشَّافِعِيِّ فِي بَعْضِ أَقْوَالِهِ؟ وَقَالَ أَبُو حَنِيفَةَ: إِنْ هَلَكَ الْمَالُ بَعْدَ الْحَوْلِ - وَلَمْ يَحُدَّ لِذَلِكَ مُدَّةً - فَلَا زَكَاةَ عَلَيْهِ بِأَيِّ وَجْهٍ هَلَكَ، فَلَوْ هَلَكَ بَعْضُهُ فَعَلَيْهِ زَكَاةُ مَا بَقِيَ فَقَطْ، قَلَّ أَوْ كَثُرَ، وَلَا زَكَاةَ عَلَيْهِ فِيمَا تَلَفَ، فَإِنْ كَانَ هُوَ اسْتَهْلَكَهُ فَعَلَيْهِ زَكَاتُهُ؟ .

L10411 This is the opinion of Al-Awzāʿī and the apparent position in some of Al-Shāfiʿī's statements. Abū Ḥanīfa said: If the wealth perishes after the _ḥawl_ - without stipulating a period for it - then there is no Zakāh obligation on him regardless of how it perished. If part of it perishes, he is only obligated to pay Zakāh on what remains, whether little or much, with no Zakāh due on the perished portion. But if he himself expended it, he must pay Zakāh for it.

قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ، لِمَا ذَكَرْنَا قَبْلُ، فَإِنْ لَجَأَ إِلَى أَنَّ الزَّكَاةَ فِي عَيْنِ الْمَالِ، قُلْنَا لَهُ: هَذَا بَاطِلٌ بِمَا قَدَّمْنَا آنِفًا، ثُمَّ هَبْكَ لَوْ كَانَ ذَلِكَ كَمَا تَقُولُ لَمَا وَجَبَ عَلَيْهِ زَكَاةُ مَا بَقِيَ مِنْ الْمَالِ إِذَا كَانَ الْبَاقِي لَيْسَ مِمَّا يَجِبُ فِي مِقْدَارِهِ الزَّكَاةُ لَوْ لَمْ يَكُنْ مَعَهُ غَيْرُهُ، لِأَنَّ التَّالِفَ عِنْدَكُمْ لَا زَكَاةَ فِيهِ لِتَلَفِهِ، وَالْبَاقِي لَيْسَ نِصَابًا، فَإِنْ كَانَ الْبَاقِي فِيهِ الزَّكَاةُ وَاجِبَةٌ؟ فَالتَّالِفُ فِيهِ الزَّكَاةُ وَاجِبَةٌ وَلَا فَرْقَ.

L10412–10413 Abū Muḥammad said: This is erroneous due to what we previously mentioned. If one resorts to claiming that zakāh applies to the asset itself, we respond: This is invalid based on what we recently presented. Even if we were to concede your position hypothetically, zakāh would not be obligatory on the remaining assets if their quantity - when nothing else accompanies them - does not reach the threshold requiring zakāh. This follows your view that destroyed assets incur no zakāh due to their destruction, while the remainder fails to meet the niṣāb. If you nevertheless hold the remainder subject to obligatory zakāh, then the destroyed assets would also necessarily incur zakāh without distinction.

وَقَدْ قَدَّمْنَا، أَنَّ الزَّكَاةَ لَيْسَتْ مُشَاعَةً فِي الْمَالِ فِي كُلِّ جُزْءٍ مِنْهُ كَالشَّرِكَةِ، إِذْ لَوْ كَانَ ذَلِكَ لَمَا جَازَ إِخْرَاجُهَا إِلَّا بِقِيمَةٍ مُحَقَّقَةٍ مَنْسُوبَةٍ مِمَّا بَقِيَ.

L10414 We have previously established that zakah is not subject to shared ownership in the wealth in every part thereof, as is the case with a partnership. For if this were so, it would not be permissible to discharge it except through a verified proportional amount from what has remained.

وَقَدْ قَالَ الشَّافِعِيُّ بِهَذَا فِي زَكَاةِ الْإِبِلِ، وَقَالَ بِهِ أَصْحَابُ أَبِي حَنِيفَةَ فِي الطَّعَامِ يَخْرُجُ عَنْ الطَّعَامِ مِنْ صِنْفِهِ أَوْ مِنْ غَيْرِ صِنْفِهِ، فَظَهَرَ تَنَاقُضُهُمْ؟ وَقَالَ مَالِكٌ: إِنْ تَلَفَ النَّاضُّ بَعْدَ الْحَوْلِ وَلَمْ يُفَرِّطْ فِي أَدَاءِ زَكَاتِهِ فَرَجَعَ إِلَى مَا لَا زَكَاةَ فِيهِ فَلَا زَكَاةَ عَلَيْهِ فِيهِ، وَكَذَلِكَ لَوْ عَزَلَ زَكَاةَ الطَّعَامِ فَتَلِفَتْ فَلَا شَيْءَ عَلَيْهِ غَيْرُهَا، لَا عَنْ الْكُلِّ وَلَا عَمَّا بَقِيَ، فَلَوْ لَمْ يَفْعَلْ وَأَدْخَلَهُ بَيْتَهُ فَتَلِفَ فَعَلَيْهِ ضَمَانُ زَكَاتِهِ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ، لِأَنَّ

L10415 Al-Shāfiʿī held this view regarding the Zakāh of camels, and the followers of Abū Ḥanīfah maintained it concerning food—that Zakāh on food must be given from the same type or another type. Does this not expose their contradiction? Mālik said: If produce subject to Zakāh perishes after the lunar year without negligence in fulfilling its Zakāh, and the remaining quantity falls below the Zakāh threshold, no Zakāh is due. Similarly, if one sets aside Zakāh for food and it perishes, nothing else is owed—neither from the entire amount nor the remainder. But if one fails to do so, stores it in his house, and it perishes, he becomes liable to compensate for its Zakāh. Abū Muḥammad said: This is erroneous, for the obligatory Zakāh due to

the rightful recipients is neither a specific entity—without any disagreement from the Ummah—nor a shared portion in every part of the wealth.

الزَّكَاةَ الْوَاجِبَةَ لِأَهْلِ الصَّدَقَاتِ لَيْسَتْ عَيْنًا مُعِينَةً، بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ الْأُمَّةِ وَلَا جُزْءًا مُشَاعًا فِي كُلِّ جُزْءٍ مِنْ الْمَالِ.

L10416 These two aspects are those wherein whoever is rightfully entrusted bears no liability for what perishes without their transgression. Since Zakat, as we have mentioned, is an obligatory duty incumbent upon him until he delivers it to the Zakat collector or to those for whom Allah the Exalted has designated it, it constitutes a debt upon him—not a trust under his custodianship—and a debt must be paid in all cases. And success is from Allah, the Most High.

وَهَذَانِ الْوَجْهَانِ هُمَا اللَّذَانِ يَكُونُ مَنْ كَانَ عِنْدَهُ بِحَقٍّ مُؤْتَمَنًا عَلَيْهِ فَلَا ضَمَانَ عَلَيْهِ فِيمَا تَلَفَ مِنْ غَيْرِ تَعَدِّيهِ، فَإِذْ الزَّكَاةُ كَمَا ذَكَرْنَا وَإِنَّمَا هِيَ حَقٌّ مُفْتَرَضٌ عَلَيْهِ فِي ذِمَّتِهِ حَتَّى يُؤَدِّيَهُ إلَى الْمُصَدِّقِ، أَوْ إلَى مَنْ جَعَلَهَا اللَّهُ تَعَالَى لَهُ -: فَهِيَ دَيْنٌ عَلَيْهِ لَا أَمَانَةٌ عِنْدَهُ وَالدَّيْنُ مُؤَدًّى عَلَى كُلِّ حَالٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L10417 It has been narrated to us through the chain of Ibn Abī Shaybah from Ḥafṣ ibn Ghiyāth, Jarīr, al-Muʿtamir ibn Sulaymān al-Taymī, Zayd ibn al-Ḥubāb, and ʿAbd al-Wahhāb ibn ʿAṭāʾ. Ḥafṣ reported from Hishām ibn Ḥassān from al-Ḥasan al-Baṣrī; Jarīr reported from al-Mughīrah from his companions; al-Muʿtamir reported from Maʿmar from Ḥammād; Zayd reported from Shuʿbah from al-Ḥakam; and ʿAbd al-Wahhāb reported from Ibn Abī ʿArūbah from Ḥammād from Ibrāhīm al-Nakhaʿī. Then they all agreed concerning one who paid the Zakāh of his wealth and it was lost: that it does not suffice for him, and he must pay it again. It has also been narrated to us from ʿAṭāʾ: that it does suffice for him.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ حَفْصِ بْنِ غِيَاثٍ، وَجَرِيرٍ، وَالْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ، وَزَيْدِ بْنِ الْحُبَابِ، وَعَبْدِ الْوَهَّابِ بْنِ عَطَاءٍ، قَالَ حَفْصٌ عَنْ هِشَامِ بْنِ حَسَّانٍ عَنْ الْحَسَنِ الْبَصْرِيِّ، وقَالَ جَرِيرٌ عَنْ الْمُغِيرَةِ عَنْ أَصْحَابِهِ، وَقَالَ الْمُعْتَمِرُ عَنْ مَعْمَرٍ عَنْ حَمَّادٍ، وَقَالَ زَيْدٌ عَنْ شُعْبَةَ عَنْ الْحَكَمِ، وَقَالَ عَبْدُ الْوَهَّابِ عَنْ ابْنِ أَبِي عَرُوبَةَ عَنْ حَمَّادٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، ثُمَّ اتَّفَقُوا كُلُّهُمْ: فِيمَنْ أَخْرَجَ زَكَاةَ مَالِهِ فَضَاعَتْ: أَنَّهَا لَا تُجْزِي عَنْهُ وَعَلَيْهِ إخْرَاجُهَا ثَانِيَةً؟ وَرُوِّينَا عَنْ عَطَاءٍ: أَنَّهَا تُجْزِئُ عَنْهُ؟

A question regarding the *zakah* on barley: What amount suffices from it?

[مَسْأَلَةٌ زَكَاة الْبُرّ مَا يُجْزِئ مِنْهُ]

L10418–10419

L10420 Issue: Any wheat or barley he gives—whether of lower grade than what he harvested or higher—suffices for his Zakāt, provided it is not spoiled by mold or decay, for such cannot replace sound grain or what was inferior. The evidence for this is that the obligation, by textual ruling, requires paying a tenth or half-tenth of the measured quantity he harvested if it reaches five awsaq or more. If grain of lesser attributes than the harvested crop were invalid, then superior attributes would likewise be invalid—yet this is not the position of the scholars. Since the obligation is not textually tied to the specific type he harvested, whoever claims that only grain matching the exact

مَسْأَلَةٌ: وَأَيُّ بُرٍّ أَعْطَى، أَوْ أَيُّ شَعِيرٍ: فِي زَكَاتِهِ كَانَ أَدْنَى مِمَّا أَصَابَ أَوْ أَعْلَى -: أَجْزَأَهُ، مَا لَمْ يَكُنْ فَاسِدًا بِعَفَنٍ، أَوْ تَآكُلٍ، فَلَا يُجْزِئُ عَنْ صَحِيحٍ، أَوْ مَا كَانَ رَدِيئًا بُرْهَانُ ذَلِكَ -: أَنَّهُ إنَّمَا عَلَيْهِ بِالنَّصِّ عُشْرُ مَكِيلَةِ مَا أَصَابَ أَوْ نِصْفُ عُشْرِهَا إذَا كَانَتْ خَمْسَةُ أَوْسُقٍ فَصَاعِدًا، وَلَوْ كَانَ لَا يُجْزِئُهُ أَدْنَى مِنْ صِفَةِ مَا أَصَابَ لَكَانَ لَا يُجْزِئُهُ أَعْلَى مِنْ

description of what he harvested suffices must furnish proof; otherwise, their assertion is rejected.

تِلْكَ الصِّفَةِ، وَهَذَا لَا يَقُولُونَهُ، فَإِذَا لَمْ يَلْزَمْهُ بِالنَّصِّ مِنَ الْعَيْنِ الَّتِي أَصَابَ، فَمَنْ ادَّعَى أَنْ لَا يُجْزِئُهُ إِلَّا مِثْلَ صِفَةِ الَّتِي أَصَابَ لَمْ يُقْبَلْ قَوْلُهُ إِلَّا بِبُرْهَانٍ.

L10421 As for our statement: except when what was given is corrupt from being sound—this is because the measured quantity is incumbent upon him by textual ruling, by consensus, and through clear observation. We know that rot and deterioration have reduced the measured quantity so severely that he cannot possibly fulfill it at all, and nothing suffices him except the measured quantity in full. And with Allah the Exalted lies all success.

وَأَمَّا قَوْلُنَا -: إِلَّا أَنْ يَكُونَ الَّذِي أَعْطَى فَاسِدًا عَنْ صَحِيحٍ فَلِأَنَّ الْمَكِيلَةَ عَلَيْهِ بِالنَّصِّ وَبِالْإِجْمَاعِ، وَبِالْعِيَانِ نَدْرِي أَنَّ الْعَفَنَ وَالْمُتَآكِلَ قَدْ نَقَصَا مِنَ الْمَكِيلَةِ مَا لَا يَقْدِرُ عَلَى إِيفَائِهِ أَصْلًا، وَلَا يُجْزِئُهُ إِلَّا الْمَكِيلَةُ تَامَّةً - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of Zakat on Dates

[مَسْأَلَةُ زَكَاةِ التَّمْرِ]

L10422

668 - Issue:

٦٦٨ - مَسْأَلَةٌ:

L10423

The same ruling applies to the zakah of dates: any date given fulfills the obligation, whether from the same type as his dates or another type—whether of lower or higher quality—provided it is not rotten, infected, worm-eaten, moldy, or discolored, as we mentioned. It is not permissible to give any of these under any circumstances. This applies whether all his dates are of these two types or others. He must provide sound dates that are neither rotten nor of these two types.

L10424

وَكَذَلِكَ الْقَوْلُ فِي زَكَاةِ التَّمْرِ، أَيِّ تَمْرٍ أَخْرَجَ أَجْزَأَهُ، سَوَاءٌ مِنْ جِنْسِ تَمْرِهِ، أَوْ مِنْ غَيْرِ جِنْسِهِ، أَدْنَى مِنْ تَمْرِهِ أَوْ أَعْلَى، مَا لَمْ يَكُنْ رَدِيًّا كَمَا ذَكَرْنَا، أَوْ مَعْفُونًا أَوْ مُتَآكِلًا، أَوْ الْجُعْرُورَ، أَوْ لَوْنَ الْحُبَيْقِ فَلَا يُجْزِئُ إِخْرَاجُ شَيْءٍ مِنْ ذَلِكَ أَصْلًا، وَسَوَاءٌ كَانَ تَمْرُهُ كُلُّهُ مِنْ هَذَيْنِ النَّوْعَيْنِ أَوْ مِنْ غَيْرِهِمَا، وَعَلَيْهِ أَنْ يَأْتِيَ بِتَمْرٍ سَالِمٍ غَيْرِ رَدِيءٍ، وَلَا مِنْ هَذَيْنِ اللَّوْنَيْنِ.

L10425 The proof for that is the words of Allah, the Most High: “Do not choose the inferior from what you spend - which you would not accept unless you close your eyes to it.” [Al-Baqarah: 267][40]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَلا تَيَمَّمُوا الْخَبِيثَ مِنْهُ تُنْفِقُونَ وَلَسْتُمْ بِآخِذِيهِ إِلا أَنْ تُغْمِضُوا فِيهِ} [البقرة: ٢٦٧] .

L10426–10428 Hammam narrated to us, Abbas ibn Asbagh narrated to us, Muhammad ibn Abdul-Malik ibn Ayman narrated to us, Isma’il ibn Ishaq the Judge narrated to us, Abu al-Walid al-Ṭayālisī narrated to us, Sulayman ibn Kathir narrated to us, al-Zuhri narrated from Abu Umamah ibn Sahl ibn Hunayf from his father: “The Messenger of Allah—peace and blessings of Allah be upon him—prohibited two types of dates: al-Juʿrūr and the al-Ḥubayq variety. People

حَدَّثَنَا حُمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا إِسْمَاعِيلُ بْنُ إِسْحَاقَ الْقَاضِي ثنا أَبُو الْوَلِيدِ الطَّيَالِسِيُّ ثنا سُلَيْمَانُ بْنُ كَثِيرٍ ثنا الزُّهْرِيُّ عَنْ أَبِي أُمَامَةَ بْنِ سَهْلِ بْنِ حُنَيْفٍ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ لَوْنَيْنِ مِنَ التَّمْرِ:

[40] **Qur’an references (L10425):** Qur’an 2:267 (Al-Baqarah).

used to seek out the worst of their dates and give them as Zakat, so they were forbidden from..." "That," and the verse was revealed: {Do not intentionally seek out the inferior portions of your wealth to spend [in charity]} [Al-Baqarah 267].[41]

الْجُعْرُورُ، وَلَوْنُ الْحُبَيْقِ، وَكَانَ النَّاسُ يَتَيَمَّمُونَ شِرَارَ ثِمَارِهِمْ فَيُخْرِجُونَهَا فِي الصَّدَقَةِ، فَنُهُوا عَنْ ذَلِكَ» ، وَنَزَلَتْ {وَلا تَيَمَّمُوا الْخَبِيثَ مِنْهُ تُنْفِقُونَ} [البقرة: ٢٦٧] .

L10429 Muhammad ibn Sa'id ibn Nabat narrated to us, Ahmad ibn 'Abd al-Basir narrated to us, Qasim ibn Asbagh narrated to us, Muhammad ibn 'Abd al-Salam al-Khushani narrated to us, Muhammad ibn al-Muthanna narrated to us, Mu'ammal ibn Isma'il al-Himyari narrated to us, Sufyan al-Thawri narrated to us, Isma'il al-Suddi narrated from Abu Malik from al-Bara' ibn 'Azib, who said: "They used to bring inferior portions of their food and inferior dates for charity. Then the verse was revealed: 'O you who believe, spend from the wholesome things you have earned and from what We have produced for you from the earth. Do not aim to give the inferior of it - which you would not accept except while closing your eyes to it.'" [Al-Baqarah: 267][42]

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلامِ الْخُشَنِيِّ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا مُؤَمَّلُ بْنُ إِسْمَاعِيلَ الْحِمْيَرِيِّ ثنا سُفْيَانُ الثَّوْرِيُّ ثنا إِسْمَاعِيلُ السُّدِّيُّ عَنْ أَبِي مَالِكٍ عَنْ الْبَرَاءِ بْنِ عَازِبٍ قَالَ كَانُوا يَجِيئُونَ فِي الصَّدَقَةِ بِأَدْنَى طَعَامِهِمْ، وَأَدْنَى تَمْرِهِمْ، فَنَزَلَتْ: {يَا أَيُّهَا الَّذِينَ آمَنُوا أَنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أَخْرَجْنَا لَكُمْ مِنَ الأَرْضِ وَلا تَيَمَّمُوا الْخَبِيثَ مِنْهُ تُنْفِقُونَ وَلَسْتُمْ بِآخِذِيهِ إِلا أَنْ تُغْمِضُوا فِيهِ} [البقرة: ٢٦٧] .

L10430 If someone were to say: "Is the impure not inherently forbidden?" We would respond: Yes, and what is prohibited from being given as obligatory alms is forbidden within that context—thus being impure therein, not in other circumstances. There is no contradiction in a thing being an act of obedience in one regard and a transgression in another. For instance, the fasting person's eating at sunset is an act of obedience to God Almighty, considered pure and lawful. Yet if one were to eat during the Maghrib prayer, he would be consuming something forbidden and impure in that state. Similarly, carrion and pork are forbidden and impure for those not compelled by necessity, but for the compelled who do not incline toward sin, they become lawful and pure, not impure. This applies to most rulings in religious laws.

فَإِنْ قَالَ قَائِلٌ: الْخَبِيثُ لَا يَكُونُ إِلَّا حَرَامًا؟ قُلْنَا: نَعَمْ، وَهَذَا الْمَنْهِيُّ عَنْ إِخْرَاجِهِ فِي الصَّدَقَةِ هُوَ حَرَامٌ فِيهَا، فَهُوَ خَبِيثٌ فِيهَا لَا فِي غَيْرِهَا، وَلَا يُنْكَرُ كَوْنُ الشَّيْءِ طَاعَةً فِي وَجْهٍ مَعْصِيَةً فِي وَجْهٍ آخَرَ، كَالْأَكْلِ لِلصَّائِمِ عِنْدَ غُرُوبِ الشَّمْسِ، هُوَ طَاعَةُ اللَّهِ تَعَالَى طَيِّبٌ حَلَالٌ، وَلَوْ أَكَلَهُ فِي صَلَاةِ الْمَغْرِبِ لَأَكَلَ حَرَامًا عَلَيْهِ خَبِيثًا فِي تِلْكَ الْحَالِ، وَكَذَلِكَ الْمَيْتَةُ وَلَحْمُ الْخِنْزِيرِ، هُمَا حَرَامَانِ خَبِيثَانِ لِغَيْرِ الْمُضْطَرِّ، وَهُمَا لِلْمُضْطَرِّ غَيْرِ الْمُتَجَانِفِ لِإِثْمٍ حَلَالَانِ طَيِّبَانِ غَيْرُ خَبِيثَيْنِ، وَهَكَذَا أَكْثَرُ الْأَشْيَاءِ فِي الشَّرَائِعِ.

L10431–10432 Abdullah ibn Rabee' narrated to us: Umar ibn Abd al-Malik narrated to us: Muhammad ibn Bakr narrated to us: Abu Dawud narrated to us: Muhammad ibn Yahya ibn Faris narrated to us: Sa'id ibn Sulayman narrated to us: Abbad narrated from Sufyan ibn Husayn from al-Zuhri from Abu Umamah ibn Sahl

حَدَّثَنَا عَبْدُ اللَّهِ بْنِ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا مُحَمَّدُ بْنُ يَحْيَى بْنِ فَارِسٍ ثنا سَعِيدُ بْنُ سُلَيْمَانَ ثنا عَبَّادٌ عَنْ سُفْيَانَ بْنِ حُسَيْنٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي أُمَامَةَ بْنِ سَهْلِ بْنِ حُنَيْفٍ عَنْ أَبِيهِ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

[41] **Qur'an references (L10426):** Qur'an 2:267 (Al-Baqarah).
[42] **Qur'an references (L10429):** Qur'an 2:267 (Al-Baqarah).

ibn Hunayf from his father, who said: “The Messenger of Allah—peace be upon him—prohibited the al-Ju‘ruur date and the type of Ibn Ḥubayq from being taken in the ṣadaqah.” Al-Zuhri said: “Two varieties of Madinah dates?”

- عَنْ الْجُعْرُورِ، وَلَوْنِ ابْنِ حُبَيْقٍ أَنْ يُؤْخَذَا فِي الصَّدَقَةِ» قَالَ الزُّهْرِيُّ: لَوْنَيْنِ مِنْ تَمْرِ الْمَدِينَةِ؟

Zakat on Sheep and Goats

[زَكَاةُ الْغَنَمِ]

Issue 669: In the language the Messenger of Allah—may Allah bless him and grant him peace—used to address us, “ghanam” is a term that applies to sheep and goats. They are grouped together, some with others, for zakat purposes.

٦٦٩ - مَسْأَلَةٌ: الْغَنَمُ فِي اللُّغَةِ الَّتِي بِهَا خَاطَبَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْمٌ يَقَعُ عَلَى الضَّأْنِ وَالْمَاعِزِ، فَهِيَ مَجْمُوعٌ بَعْضُهَا إلَى بَعْضٍ فِي الزَّكَاةِ.

Similarly, the breeds of goats and sheep include the sheep of _Bilād al-Sūdān_ (the Sudan region), the goats of Basra, the _Nafad_ breed, the _Banāt Ḥadhaf_ breed, and others.

وَكَذَلِكَ أَصْنَافُ الْمَاعِزِ وَالضَّأْنِ، كَضَأْنِ بِلَادِ السُّودَانِ وَمَاعِزِ الْبَصْرَةِ وَالنَّفَدِ وَبَنَاتِ حَذَفٍ وَغَيْرِهَا.

Similarly, the hybrid (of a goat and sheep) that is half goat in form and half sheep in form, because all such animals are classified as small livestock. Males and females are the same.

وَكَذَلِكَ الْمَقْرُونُ الَّذِي نِصْفُهُ خِلْقَةُ مَاعِزٍ، وَنِصْفُهُ ضَأْنٍ، لِأَنَّ كُلَّ ذَلِكَ مِنْ الْغَنَمِ، وَالذُّكُورِ وَالْإِنَاثِ سَوَاءٌ.

The name Al-Shaa’ also applies to goats and sheep, as we mentioned in the language.

وَاسْمُ الشَّاءِ أَيْضًا -: وَاقِعٌ عَلَى الْمَعْزِ وَالضَّأْنِ كَمَا ذَكَرْنَا فِي اللُّغَةِ.

There is no singular term for *ghanam* (sheep and goats) derived from the word itself. Rather, the singular is referred to as: a sheep or goat (*shaah*), a she-goat (*māʿizah*), a ewe (*ḍāniyah*), a ram (*kabsh*), or a he-goat (*tays*). This is what is undisputed among linguists—and success comes from Allah, the Exalted.

وَلَا وَاحِدَ لِلْغَنَمِ مِنْ لَفْظِهِ، إنَّمَا يُقَالُ لِلْوَاحِدِ: شَاةٌ، أَوْ مَاعِزَةٌ، أَوْ ضَانِيَةٌ، أَوْ كَبْشٌ، أَوْ تَيْسٌ: هَذَا مَا لَا خِلَافَ فِيهِ بَيْنَ أَهْلِ اللُّغَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

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٦٧٠ - مَسْأَلَةٌ:

There is no zakat due on sheep and goats until a single Muslim owns forty head of them for a full, uninterrupted Arab lunar year.

وَلَا زَكَاةَ فِي الْغَنَمِ حَتَّى يَمْلِكَ الْمُسْلِمُ الْوَاحِدُ مِنْهَا أَرْبَعِينَ رَأْسًا حَوْلًا كَامِلًا مُتَّصِلًا عَرَبِيًّا قَمَرِيًّا.

The early scholars differed regarding this matter, and we will mention this difference in the section on zakah of surplus, God Almighty willing. It suffices here that the Messenger of Allah (peace and blessings be upon him) obligated

وَقَدْ اخْتَلَفَ السَّلَفُ فِي هَذَا، وَسَنَذْكُرُهُ فِي زَكَاةِ الْفَوَائِدِ، إنْ شَاءَ اللَّهُ تَعَالَى: وَيَكْفِي مِنْ هَذَا أَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْجَبَ الزَّكَاةَ فِي الْمَاشِيَةِ، وَلَمْ يَحُدَّ

zakah on livestock without specifying a timeframe. We cannot ascertain from this generality when zakah becomes due, except that he (peace be upon him) did not mandate it daily, nor... Neither in every month, nor twice in the solar year or more than that. This is transmitted by consensus traced back to him - peace be upon him. Since there is no doubt that it occurs once annually, no obligation is established except through a sound transmission reaching the Messenger of Allah - peace be upon him.

وَقْتًا» وَلَا نَدْرِي مِنْ هَذَا الْعُمُومِ مَتَى تَجِبُ الزَّكَاةُ، إلَّا أَنَّهُ لَمْ يُوجِبْهَا - عَلَيْهِ السَّلَامُ - فِي كُلِّ يَوْمٍ، وَلَا فِي كُلِّ شَهْرٍ، وَلَا مَرَّتَيْنِ فِي الْعَامِ فَصَاعِدًا، هَذَا مَنْقُولٌ بِإِجْمَاعٍ إلَيْهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِذْ لَا شَكَّ فِي أَنَّهَا مَرَّةٌ فِي الْحَوْلِ، فَلَا يَجِبُ فَرْضٌ إلَّا بِنَقْلٍ صَحِيحٍ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L10444 We found those who deemed Zakāh obligatory at the beginning of the lunar year or before its completion—this ruling was not transmitted from the Messenger of Allah (peace be upon him) through single reports, mass-transmitted narrations, or consensus. Conversely, we found that those who deemed it obligatory upon the completion of the lunar year have its obligation confirmed by consensus based on transmissions from the Prophet (peace be upon him) at that time without doubt. Thus, it becomes obligatory then, not before. If one argues by citing Allah's statement: "And hasten to forgiveness from your Lord" [Āl ʿImrān 3:133]—as a general exhortation to hasten toward good deeds—[43]

وَوَجَدْنَا مَنْ أَوْجَبَ الزَّكَاةَ فِي أَوَّلِ الْحَوْلِ، أَوْ قَبْلَ تَمَامِ الْحَوْلِ لَمْ يُنْقَلْ ذَلِكَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا بِنَقْلِ آحَادٍ وَلَا بِنَقْلِ تَوَاتُرٍ وَلَا بِنَقْلِ إجْمَاعٍ، وَوَجَدْنَا مَنْ أَوْجَبَهَا بِانْقِضَاءِ الْحَوْلِ قَدْ صَحَّ وُجُوبُهَا بِنَقْلِ الْإِجْمَاعِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَئِذٍ بِلَا شَكٍّ، فَالْآنَ وَجَبَتْ، لَا قَبْلَ ذَلِكَ فَإِنْ احْتَجَّ بِقَوْلِ اللَّهِ تَعَالَى: {وَسَارِعُوا إِلَى مَغْفِرَةٍ مِنْ رَبِّكُمْ} [آل عمران: ١٣٣] .

L10445 We said: Hastening to fulfill the obligation is only required after it becomes obligatory, not before. Our discussion regarding this matter and its sister cases concerns specifically the time when the obligation takes effect. Once the obligation is validly established, hastening to fulfill it becomes required at that point, not prior to it - without any disagreement. Regarding our statement that the lunar year must follow the Arabic calendar, there is no disagreement among any scholars of the Ummah that the lunar year consists of twelve months. Allah the Exalted said: "Indeed, the number of months with Allah is twelve months in the Book of Allah from the day He created the heavens and the earth; of these, four are sacred" (Quran 9:36). The sacred months only occur within the Arabic months.[44]

قُلْنَا: إنَّمَا تَجِبُ الْمُسَارَعَةُ إلَى الْفَرْضِ بَعْدَ وُجُوبِهِ لَا قَبْلَ وُجُوبِهِ، وَكَلَامُنَا فِي هَذِهِ الْمَسْأَلَةِ وَفِي أَخَوَاتِهَا إنَّمَا هُوَ فِي وَقْتِ الْوُجُوبِ، فَإِذَا صَحَّ وُجُوبُ الْفَرْضِ فَحِينَئِذٍ تَجِبُ الْمُسَارَعَةُ إلَى أَدَائِهِ لَا قَبْلَ ذَلِكَ، بِلَا خِلَافٍ وَأَمَّا قَوْلُنَا: أَنْ يَكُونَ الْحَوْلُ عَرَبِيًّا فَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ الْحَوْلَ اثْنَا عَشَرَ شَهْرًا، وَقَالَ اللَّهُ تَعَالَى: {إِنَّ عِدَّةَ الشُّهُورِ عِنْدَ اللَّهِ اثْنَا عَشَرَ شَهْرًا فِي كِتَابِ اللَّهِ يَوْمَ خَلَقَ السَّمَاوَاتِ وَالأَرْضَ مِنْهَا أَرْبَعَةٌ حُرُمٌ} [التوبة: ٣٦] . وَالْأَشْهُرُ الْحُرُمُ لَا تَكُونُ إلَّا فِي الشُّهُورِ الْعَرَبِيَّةِ.

L10446 And He, the Exalted, said: "They ask you about the new moons. Say: 'They are fixed times for mankind and for Hajj'" [Al-Baqarah: 189].[45]

وَقَالَ تَعَالَى: {يَسْأَلُونَكَ عَنِ الأَهِلَّةِ قُلْ هِيَ مَوَاقِيتُ لِلنَّاسِ وَالْحَجِّ} [البقرة: ١٨٩] .

[43] **Qur'an references (L10444):** Qur'an 3:133 (Ali 'Imran).
[44] **Qur'an references (L10445):** Qur'an 9:36 (At-Tawbah).
[45] **Qur'an references (L10446):** Qur'an 2:189 (Al-Baqarah).

وَقَالَ تَعَالَى: {لِتَعْلَمُوا عَدَدَ السِّنِينَ وَالْحِسَابَ} [يونس: ٥] .

وَلَا يُعَدُّ بِالْأَهِلَّةِ إِلَّا الْعَامُ الْعَرَبِيُّ؛ فَصَحَّ أَنَّهُ لَا تَجِبُ شَرِيعَةٌ مُؤَقَّتَةٌ بِالشُّهُورِ أَوْ بِالْحَوْلِ إِلَّا بِشُهُورِ الْعَرَبِ، وَالْحَوْلِ الْعَرَبِيِّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ؟ .

٦٧١ - مَسْأَلَةٌ: فَإِذَا تَمَّتْ فِي مِلْكِهِ عَامًا كَمَا ذَكَرْنَا، سَوَاءٌ كَانَتْ كُلُّهَا مَاعِزًا، أَوْ بَعْضُهَا - أَكْثَرُهَا أَوْ أَقَلُّهَا - ضَأْنًا، وَسَائِرُهَا كَذَلِكَ مِعْزَى -: فَفِيهَا شَاةٌ وَاحِدَةٌ لَا نُبَالِي ضَانِيَةً كَانَتْ أَوْ مَاعِزَةً، كَبْشًا ذَكَرًا أَوْ أُنْثَى مِنْ كِلَيْهِمَا، كُلُّ رَأْسٍ تُجْزِئُ مِنْهُمَا عَنْ الضَّأْنِ، وَعَنْ الْمَاعِزِ؛ وَهَكَذَا مَا زَادَتْ حَتَّى تَتِمَّ مِائَةً وَعِشْرِينَ كَمَا ذَكَرْنَا؟ فَإِذَا أَتَمَّتْهَا وَزَادَتْ لَوْ بَعْضَ شَاةٍ كَذَلِكَ عَامًا كَامِلًا كَمَا ذَكَرْنَا -: فَفِيهَا شَاتَانِ كَمَا قُلْنَا، إلَى أَنْ تَتِمَّ مِائَتَيْ شَاةٍ؟

فَإِذَا أَتَمَّتْهَا وَزَادَتْ وَلَوْ بَعْضَ شَاةٍ كَذَلِكَ عَامًا كَامِلًا وَصَفْنَا فَفِيهَا ثَلَاثُ شِيَاهٍ كَمَا حَدَّدْنَا، وَهَكَذَا إلَى أَنْ تَتِمَّ أَرْبَعمِائَةِ شَاةٍ كَمَا وَصَفْنَا فَإِذَا أَتَمَّتْهَا كَذَلِكَ عَامًا كَامِلًا كَمَا ذَكَرْنَا فَفِي كُلِّ مِائَةِ شَاةٍ شَاةٌ.

وَأَيَّ شَاةٍ أَعْطَى صَاحِبُ الْغَنَمِ فَلَيْسَ لِلْمُصَدِّقِ وَلَا لِأَهْلِ الصَّدَقَاتِ رَدُّهَا، مِنْ غَنَمِهِ كَانَتْ أَوْ مِنْ غَيْرِ غَنَمِهِ، مَا لَمْ تَكُنْ هَرِمَةً أَوْ مَعِيبَةً، فَإِنْ أَعْطَاهُ هَرِمَةً، أَوْ مَعِيبَةً فَالْمُصَدِّقُ مُخَيَّرٌ، إنْ شَاءَ أَخَذَهَا وَأَجْزَأَتْ عَنْهُ، وَإِنْ شَاءَ رَدَّهَا وَكَلَّفَهُ فَتِيَّةً سَلِيمَةً، وَلَا نُبَالِي كَانَتْ تُجْزِئُ فِي الْأَضَاحِيِّ أَوْ لَا تُجْزِئُ؟ وَالْمُصَدِّقُ هُوَ الَّذِي يَبْعَثُهُ الْإِمَامُ - الْوَاجِبَةُ طَاعَتُهُ - أَوْ أَمِيرُهُ فِي قَبْضِ الصَّدَقَاتِ؟ وَلَا يَجُوزُ لِلْمُصَدِّقِ أَنْ يَأْخُذَ تَيْسًا ذَكَرًا إلَّا أَنْ يَرْضَى صَاحِبُ الْغَنَمِ؛ فَيَجُوزُ لَهُ حِينَئِذٍ، وَلَا يَجُوزُ لِلْمُصَدِّقِ أَنْ يَأْخُذَ أَفْضَلَ

L10447 And He, the Exalted, said, “That you may know the number of years and the calculation” (Yunus 5).[46]

L10448 The Arab year is not reckoned except by the crescent moons. Thus, it is valid that no time-bound Sharia ruling based on months or a year is obligatory unless aligned with the Arab months and the Arab year—and success is from Allah, the Exalted.

L10449 Issue: If they complete a full year in his possession as we mentioned—whether all are goats, or some (whether most or few) are sheep while the remainder are goats—then one sheep or goat is due. We do not distinguish whether it is a ewe or female goat, a male sheep (ram) or male goat, or a female from either sheep or goats, for any head from these suffices for both sheep and goats. This same rule applies to increases until they reach one hundred and twenty, as we mentioned. If they complete this number and increase further—even by part of a sheep or goat—while completing another full year as we mentioned, then two sheep or goats are due as we stated, until they reach two hundred sheep or goats.

L10450–10451 When one completes [the required number] and it increases—even by a portion of a sheep—in that same manner for a complete year as we have described, then three sheep are due from it, as we have specified. This continues until the total reaches four hundred sheep, as we have described. When completed in this manner for a complete year as we have mentioned, one sheep is due for every hundred sheep.

L10452 Whatever sheep the owner of the flock gives, neither the zakāh collector nor those eligible for charity may reject it—whether from his own flock or from sheep not belonging to his flock—provided it is neither aged nor defective. If he gives an aged or defective sheep, the zakāh collector may choose: if he wishes, he may accept it and it suffices, or if he wishes, he may reject it and require the owner to provide a young and sound one. We disregard whether the sheep is valid for sacrificial rites (udhiyah) or not. The zakāh collector refers to one appointed by the Imam—whose obedience is obligatory—or his governor to collect zakāh. The zakāh collector may not take a male goat

[46] **Qur’an references (L10447):** Qur’an 10:5 (Yunus).

unless the flock owner consents, in which case it becomes permissible. The zakāh collector may not take the finest sheep. If the sheep raised for breeding or fattened are not among the finest, taking them is permissible. If all sheep are superior, he may take from them if the owner gives them, regardless of the owner's presence or absence—as long as the collector takes what we have mentioned, is it valid?

The proof lies in what ʻAbd al-Raḥmān ibn ʻAbd Allāh ibn Khālid narrated to us, who narrated to us from Ibrāhīm ibn Aḥmad, who narrated to us from al-Farabrī, who narrated to us from al-Bukhārī, who narrated to us from Muḥammad ibn ʻAbd Allāh ibn al-Muthannā al-Anṣārī, who narrated to us from his father, who narrated to us from Thumāmah ibn ʻAbd Allāh ibn Anas ibn Mālik—that Anas ibn Mālik reported: Abū Bakr al-Ṣiddīq wrote this document for him when dispatching him to Bahrain: "This is the zakāh obligation prescribed by Allah's Messenger (peace and blessings be upon him) for Muslims. Whoever demands it rightfully from Muslims must be given it, but whoever demands more must not be given." The ḥadīth continues: "For grazing sheep numbering forty to one hundred twenty: one sheep. Exceeding one hundred twenty to two hundred: two sheep. Exceeding two hundred to three hundred: three sheep. Beyond three hundred: one sheep per hundred. If one's grazing flock numbers below forty, no zakāh is due unless the owner volunteers. No aged, defective, or male goat may be given as zakāh except what the zakāh collector chooses."

L10453–10454 Abdullah ibn Rabee' narrated to us: Muhammad ibn Ishaq ibn As-Saleem narrated to us: Ibn Al-A'rabi narrated to us: Abu Dawood narrated to us: Abdullah ibn Muhammad An-Nufayli narrated to us: Abbad ibn Al-Awwam narrated from Sufyan ibn Husayn from Az-Zuhri from Salim ibn Abdullah ibn Umar from his father, who said: "The Messenger of Allah - peace and blessings be upon him - wrote a decree on obligatory charity but did not dispatch it to his collectors before his passing, peace be upon him. Abu Bakr then implemented it until his death, followed by Umar until his death. It contained the prescribed obligations: For sheep - one sheep is due on every forty sheep up to one hundred and twenty. If the flock increases by one

الْغَنَمِ، فَإِنْ كَانَتِ الَّتِي تَرْبَى أَوْ السَّمِينَةُ لَيْسَتْ مِنْ أَفْضَلِ الْغَنَمِ جَازَ أَخْذُهَا، فَإِنْ كَانَتْ كُلُّهَا فَاضِلَةً أَخَذَ مِنْهَا إِنْ أَعْطَاهُ صَاحِبُهَا، سَوَاءٌ فِيمَا ذَكَرْنَا كَانَ صَاحِبُهَا حَاضِرًا أَوْ غَائِبًا إِذَا أَخَذَ الْمُصَدِّقُ مَا ذَكَرْنَا أَجْزَأَ؟ بُرْهَانُ ذَلِكَ -: مَا حَدَّثَنَاهُ عَبْدُ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُثَنَّى الْأَنْصَارِيُّ ثنا أَبِي ثنا ثُمَامَةُ بْنُ عَبْدِ اللَّهِ بْنِ أَنَسِ بْنِ مَالِكٍ (أَنَّ أَنَسَ بْنَ مَالِكٍ) حَدَّثَهُ: أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ كَتَبَ لَهُ هَذَا الْكِتَابَ لَمَّا وَجَّهَهُ إِلَى الْبَحْرَيْنِ " هَذِهِ فَرِيضَةُ الصَّدَقَةِ الَّتِي فَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمُسْلِمِينَ، فَمَنْ سَأَلَهَا مِنْ الْمُسْلِمِينَ عَلَى وَجْهِهَا فَلْيُعْطِهَا، وَمَنْ سَأَلَ فَوْقَهَا فَلَا يُعْطَ ". ثُمَّ ذَكَرَ الْحَدِيثَ وَفِيهِ -: «فِي صَدَقَةِ الْغَنَمِ فِي سَائِمَتِهَا إِذَا كَانَتْ أَرْبَعِينَ إِلَى عِشْرِينَ وَمِائَةِ شَاةٌ» فَإِذَا زَادَتْ عَلَى عِشْرِينَ وَمِائَةٍ إِلَى مِائَتَيْنِ فَشَاتَانِ، فَإِذَا زَادَتْ عَلَى مِائَتَيْنِ إِلَى ثَلَثِمِائَةٍ فَفِيهَا ثَلَاثُ شِيَاهٍ، فَإِذَا زَادَتْ عَلَى ثَلَاثِمِائَةٍ فَفِي كُلِّ مِائَةٍ شَاةٌ فَإِذَا كَانَتْ سَائِمَةُ الرَّجُلِ نَاقِصَةً مِنْ أَرْبَعِينَ شَاةً وَاحِدَةً فَلَيْسَ فِيهَا صَدَقَةٌ إِلَّا أَنْ يَشَاءَ رَبُّهَا، وَلَا يُخْرِجُ فِي الصَّدَقَةِ هَرِمَةً، وَلَا ذَاتُ عَوَارٍ، وَلَا تَيْسٌ إِلَّا مَا شَاءَ الْمُصَدِّقُ.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السَّلِيمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ النُّفَيْلِيُّ ثنا عَبَّادُ بْنُ الْعَوَّامِ عَنْ سُفْيَانَ بْنِ حُسَيْنٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: «كَتَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كِتَابَ الصَّدَقَةِ فَلَمْ يُخْرِجْهُ إِلَى عُمَّالِهِ حَتَّى قُبِضَ - عَلَيْهِ السَّلَامُ -، فَعَمِلَ بِهِ أَبُو بَكْرٍ حَتَّى قُبِضَ، ثُمَّ عَمِلَ بِهِ عُمَرُ حَتَّى قُبِضَ، فَكَانَ فِيهِ - ذِكْرُ الْفَرَائِضِ -: وَفِي الْغَنَمِ فِي كُلِّ أَرْبَعِينَ شَاةً شَاةٌ، إِلَى عِشْرِينَ وَمِائَةٍ، فَإِنْ زَادَتْ وَاحِدَةً فَشَاتَانِ إِلَى مِائَتَيْنِ، فَإِنْ

sheep, two sheep are due up to two hundred. If it increases by one sheep above two hundred, three sheep are due up to three hundred. If the flock exceeds this, one sheep is due for every hundred sheep beyond three hundred. No zakât is due on them until they reach a hundred."

زَادَتْ وَاحِدَةٌ عَلَى الْمِائَتَيْنِ فَفِيهَا ثَلَاثُ شِيَاهٍ إِلَى ثَلَثِمِائَةٍ، فَإِنْ كَانَتْ الْغَنَمُ أَكْثَرَ مِنْ ذَلِكَ فَفِي كُلِّ مِائَةِ شَاةٍ شَاةٌ، وَلَيْسَ فِيهَا شَيْءٌ حَتَّى تَبْلُغَ الْمِائَةَ» .

L10455 Abdur-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: Al-Farabri narrated to us: Al-Bukhari narrated to us: Muhammad—he is Ibn Muqatil—said: "I, Abdullah ibn Al-Mubarak, narrated to us: Zakariyya ibn Ishaq narrated to us from Yahya ibn Abdullah ibn Sayfi from Abu Ma'bad, the freed slave of Ibn Abbas, from Ibn Abbas, who said: 'The Messenger of Allah—peace and blessings be upon him—said to Mu'adh ibn Jabal when sending him to Yemen'—and he mentioned the hadith containing—'Inform them that Allah the Exalted has ordained zakah to be taken from their wealthy and returned to their poor. If they obey this, then beware of taking their prime wealth. Fear the supplication of the oppressed, for there is no barrier between it and Allah.'"

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُحَمَّدٌ هُوَ ابْنُ مُقَاتِلٍ - أَنَا عَبْدُ اللَّهِ بْنِ الْمُبَارَكِ ثنا زَكَرِيَّا بْنُ إِسْحَاقَ عَنْ يَحْيَى بْنِ عَبْدِ اللَّهِ بْنِ صَيْفِيٍّ عَنْ أَبِي مَعْبَدٍ مَوْلَى ابْنِ عَبَّاسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِمُعَاذِ بْنِ جَبَلٍ حِينَ بَعَثَهُ إِلَى الْيَمَنِ - فَذَكَرَ الْحَدِيثَ وَفِيهِ -: فَأَخْبِرْهُمْ أَنَّ اللَّهَ تَعَالَى قَدْ فَرَضَ عَلَيْهِمْ صَدَقَةً تُؤْخَذُ مِنْ أَغْنِيَائِهِمْ فَتُرَدُّ عَلَى فُقَرَائِهِمْ، فَإِنْ هُمْ أَطَاعُوا بِذَلِكَ فَإِيَّاكَ وَكَرَائِمَ أَمْوَالِهِمْ، وَاتَّقِ دَعْوَةَ الْمَظْلُومِ، فَإِنَّهُ لَيْسَ بَيْنَهَا وَبَيْنَ اللَّهِ حِجَابٌ» .

L10456 In these narrations is the explicit text of all that we have mentioned, and in some of that there is disagreement.

فَفِي هَذِهِ الْأَخْبَارِ نَصُّ كُلِّ مَا ذَكَرْنَا - وَفِي بَعْضِ ذَلِكَ خِلَافٌ.

L10457 Among these is that some people said: "Nothing is taken from sheep except a sheep that has reached one year, and from goats except a goat that has reached two years. If the two types are mixed, zakat is taken from the predominant type."

فَمِنْ ذَلِكَ -: أَنَّ قَوْمًا قَالُوا: لَا يُؤْخَذُ مِنْ الضَّأْنِ إلَّا ضَانِيَةٌ، وَمِنْ الْمَعْزِ إلَّا مَاعِزَةٌ فَإِنْ كَانَا خَلِيطَيْنِ أُخِذَ مِنْ الْأَكْثَرِ.

L10458–10460 Abu Muhammad said: This is a statement without proof—neither from the Quran, nor an authentic Sunnah, nor a weak narration, nor the saying of a Companion, nor analogy. Rather, what they mentioned contradicts the aforementioned Sunnahs. They have agreed upon combining goats with sheep, that the term "ghanam" encompasses them, and that the term "sheep" applies to... One (from among goats or sheep). If the Messenger of Allah—may Allah bless him and grant him peace—had recognized a distinction in their rulings, he would have clarified it, just as he explicitly mentioned the male goat. Even if the term "male goat" (tays) in common usage applies to

قَالَ أَبُو مُحَمَّد: وَهَذَا قَوْلٌ بِلَا بُرْهَانٍ، لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ وَلَا قِيَاسٍ، بَلْ الَّذِي ذَكَرُوا خِلَافٌ لِلسُّنَنِ الْمَذْكُورَةِ، وَقَدْ اتَّفَقُوا عَلَى جَمْعِ الْمَعْزَى مَعَ الضَّأْنِ، وَعَلَى أَنَّ اسْمَ غَنَمٍ يَعُمُّهَا، وَأَنَّ اسْمَ الشَّاةِ يَقَعُ عَلَى الْوَاحِدِ مِنْ الْمَاعِزِ، وَمِنْ الضَّأْنِ، وَلَوْ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلِمَ فِي حُكْمِهَا

the ram, it is not permissible to take it as zakat unless the zakat collector consents.

فَرْقًا لَبَيَّنَهُ، كَمَا خَصَّ التَّيْسَ، وَإِنْ وُجِدَ فِي اللُّغَةِ اسْمُ التَّيْسِ يَقَعُ عَلَى الْكَبْشِ وَجَبَ أَنْ لَا يُؤْخَذَ فِي الصَّدَقَةِ إِلَّا بِرِضَا الْمُصَدِّقِ.

L10461 It is astonishing that one who prohibits taking goats in exchange for sheep permits taking gold for silver and silver for gold, though he considers them two distinct categories, permitting their exchange with a differential in amount. Another disagreement exists in a separate matter: some hold that if one owns one hundred sheep, twenty sheep, and part of a sheep, only one sheep is obligatory until the total in his possession reaches one hundred and twenty-one. Similarly, if one owns two hundred sheep and part of a sheep, only two sheep are obligatory until the total in his possession reaches two hundred and one.

وَالْعَجَبُ أَنَّ الْمَانِعَ مِنْ أَخْذِ الْمَاعِزَةِ عَنْ الضَّأْنِ أَجَازَ أَخْذَ الذَّهَبِ عَنْ الْفِضَّةِ وَالْفِضَّةَ عَنْ الذَّهَبِ وَهُمَا عِنْدَهُ صِنْفَانِ، يَجُوزُ بَيْعُ بَعْضِهِمَا بِبَعْضٍ مُتَفَاضِلًا وَالْخِلَافُ أَيْضًا فِي مَكَانٍ آخَرَ: وَهُوَ أَنَّ قَوْمًا قَالُوا: إنْ مَلَكَ مِائَةَ شَاةٍ وَعِشْرِينَ شَاةً وَبَعْضَ شَاةٍ فَلَيْسَ عَلَيْهِ إلَّا شَاةٌ وَاحِدَةٌ حَتَّى يَتِمَّ فِي مِلْكِهِ مِائَةٌ وَإِحْدَى وَعِشْرُونَ، وَمَنْ مَلَكَ مِائَتَيْ شَاةٍ وَبَعْضَ شَاةٍ فَلَيْسَ عَلَيْهِ إلَّا شَاتَانِ حَتَّى يَتِمَّ فِي مِلْكِهِ مِائَتَا شَاةٍ وَشَاةٌ.

L10462 They argued based on what is in the hadith of Ibn Umar "if there is an increase of one" as we have cited it. Abu Muhammad said: In the hadith of Ibn Umar as they mentioned, and in the hadith of Abu Bakr that we cited "if there is an increase" without stating "one," we found both reports fully agreeing that if the number increases by one sheep beyond 120 sheep or beyond two hundred sheep, the obligation shifts.

وَاحْتَجُّوا بِمَا فِي حَدِيثِ ابْنِ عُمَرَ " فَإِنْ زَادَتْ وَاحِدَةٌ " كَمَا أَوْرَدْنَاهُ قَالَ أَبُو مُحَمَّد: فِي حَدِيثِ ابْنِ عُمَرَ كَمَا ذَكَرُوا، وَفِي حَدِيثِ أَبِي بَكْرٍ الَّذِي أَوْرَدْنَا " فَإِنْ زَادَتْ " وَلَمْ يَقُلْ " وَاحِدَةٌ " فَوَجَدْنَا الْخَبَرَيْنِ جَمِيعًا مُتَّفِقَيْنِ عَلَى أَنَّهَا إنْ زَادَتْ وَاحِدَةٌ عَلَى مِائَةٍ وَعِشْرِينَ شَاةً أَوْ عَلَى مِائَتَيْ شَاةٍ فَقَدْ انْتَقَلَتْ الْفَرِيضَةُ.

L10463 We found the hadith narrated by Abu Bakr obligating the transfer of the prescribed share upon exceeding one hundred and twenty or upon exceeding two hundred. This thereby establishes a general ruling applicable to all increases, while the hadith of Ibn Umar contains no foundational prohibition whatsoever. Thus, those who uphold our opinion have adhered to both hadiths without contradicting either, while those who oppose it have contradicted the hadith of Abu Bakr by particularizing it without proof—and with Allah alone is success.

وَوَجَدْنَا حَدِيثَ أَبِي بَكْرٍ يُوجِبُ انْتِقَالَ الْفَرِيضَةِ بِالزِّيَادَةِ عَلَى الْمِائَةِ وَعِشْرِينَ وَعَلَى الْمِائَتَيْنِ، فَكَانَ هَذَا عُمُومًا لِكُلِّ زِيَادَةٍ، وَلَيْسَ فِي حَدِيثِ ابْنِ عُمَرَ الْمَنْعُ مِنْ ذَلِكَ أَصْلًا، فَصَارَ مَنْ قَالَ بِقَوْلِنَا قَدْ أَخَذَ بِالْحَدِيثَيْنِ، فَلَمْ يُخَالِفْ وَاحِدًا مِنْهُمَا، وَصَارَ مَنْ قَالَ بِخِلَافِ ذَلِكَ مُخَالِفًا لِحَدِيثِ أَبِي بَكْرٍ، مُخَصِّصًا لَهُ بِلَا بُرْهَانٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L10464–10468 Here too is another disagreement: what we have reported through the chain of Wakiʿ from Sufyān al-Thawrī and through the chain of Muḥammad ibn Jaʿfar from Shuʿbah—then both Shuʿbah and Sufyān concurred, each narrating from Manṣūr ibn al-Muʿtamir from Ibrāhīm al-Nakhaʿī—that he said: "If sheep exceed three hundred by one, four sheep are due until they reach

وَهَاهُنَا أَيْضًا خِلَافٌ آخَرُ: وَهُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ عَنْ شُعْبَةَ، ثُمَّ اتَّفَقَ شُعْبَةُ، وَسُفْيَانُ كِلَاهُمَا عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ: إذَا زَادَتْ الْغَنَمُ وَاحِدَةً عَلَى ثَلَثِمِائَةٍ فَفِيهَا أَرْبَعُ

شِيَاهٍ إِلَى أَرْبَعِمِائَةٍ، فَكُلُّ مَا زَادَتْ وَاحِدَةٌ فَهُوَ كَذَلِكَ؟ قَالَ أَبُو مُحَمَّد: وَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَقَدْ يَلْزَمُ الْقَائِلِينَ بِالْقِيَاسِ - لَا سِيَّمَا الْمَالِكِيِّينَ الْقَائِلِينَ بِأَنَّ الْقِيَاسَ أَقْوَى مِنْ خَبَرِ الْوَاحِدِ، وَالْحَنَفِيِّينَ الْقَائِلِينَ بِأَنَّ مَا عَظُمَتْ بِهِ الْبَلْوَى لَا يُقْبَلُ فِيهِ خَبَرُ الْوَاحِدِ -: أَنْ يَقُولُوا بِقَوْلِ إبْرَاهِيمَ؛ لِأَنَّهُمْ قَدْ أَجْمَعُوا عَلَى أَنَّ الْمِائَتَيْ شَاةٍ إذَا زَادَتْ وَاحِدَةً فَإِنَّ الْفَرِيضَةَ تَنْتَقِلُ وَيَجِبُ فِيهَا ثَلَاثُ شِيَاهٍ، فَكَذَلِكَ إذَا زَادَتْ عَلَى الثَّلَاثمِائَةِ وَاحِدَةٌ أَيْضًا، فَيَجِبُ أَنْ تَنْتَقِلَ الْفَرِيضَةُ، وَلَا سِيَّمَا وَالْحَنَفِيُّونَ قَدْ قَلَّدُوا إبْرَاهِيمَ فِي أَخْذِ الزَّكَاةِ مِنْ الْبَقَرَةِ الْوَاحِدَةِ تَزِيدُ عَلَى أَرْبَعِينَ بَقَرَةً، وَاحْتَجُّوا بِأَنَّهُمْ لَمْ يَجِدُوا فِي الْبَقَرِ وَقْصًا مِنْ تِسْعَةَ عَشَرَ أَنْ يُقَلِّدُوهُ هَاهُنَا وَيَقُولُوا: لَمْ نَجِدْ فِي الْغَنَمِ وَقْصًا مِنْ مِائَةٍ وَثَمَانٍ وَتِسْعِينَ شَاةً، لَا سِيَّمَا وَمَعَهُمْ هَاهُنَا فِي الْغَنَمِ قِيَاسٌ مُطَّرِدٌ، وَلَيْسَ مَعَهُمْ فِي الْبَقَرِ قِيَاسٌ أَصْلًا، وَكُلُّ مَا مَوَّهُوا بِهِ فِي الْبَقَرِ فَهُوَ لَازِمٌ لَهُمْ فِيمَا زَادَ عَلَى الثَّلَاثمِائَةِ مِنْ الْغَنَمِ مِنْ قَوْلِهِ تَعَالَى: {خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً} [التوبة: ١٠٣] وَنَحْوُ ذَلِكَ - وَهَلَّا قَالُوا: هَذَا مِمَّا تَعْظُمُ بِهِ الْبَلْوَى فَلَوْ كَانَ ذَلِكَ مَا جَهِلَهُ إبْرَاهِيمُ؟ فَإِنْ قَالُوا: إنَّ خِلَافَ قَوْلِ إبْرَاهِيمَ قَدْ جَاءَ فِي حَدِيثِ أَبِي بَكْرٍ، وَخَبَرِ ابْنِ عُمَرَ، وَعَنْ عَلِيٍّ، وَعَنْ صَحِيفَةِ ابْنِ حَزْمٍ؟ قُلْنَا: لَيْسَ شَيْءٌ مِنْ هَذِهِ الْأَخْبَارِ إلَّا وَقَدْ خَالَفْتُمُوهَا، فَلَمْ تَكُنْ حُجَّةً فِيمَا خَالَفْتُمُوهُ فِيهِ، وَكَانَ حُجَّةً عِنْدَكُمْ فِيمَا اشْتَهَيْتُمْ، وَهَذَا عَجَبٌ جِدًّا قَالَ أَبُو مُحَمَّد: كُلُّهُ خَبْطٌ لَا مَعْنَى لَهُ وَإِنَّمَا نُرِيهِمْ تَنَاقُضَهُمْ وَتَحَكُّمَهُمْ فِي الدِّينِ بِتَرْكِ الْقِيَاسِ لِلسُّنَنِ إذَا وَافَقَتْ تَقْلِيدَهُمْ، وَبِتَرْكِ السُّنَنِ لِلْقِيَاسِ كَذَلِكَ، وَبِتَرْكِهِمَا جَمِيعًا كَذَلِكَ وَأَمَّا مَنْ رَاعَى فِي الشَّاةِ الْمَأْخُوذَةِ مَا تُجْزِئُ مِنْ الْأُضْحِيَّةِ - وَهُوَ أَبُو حَنِيفَةَ - فَقَدْ أَخْطَأَ، لِأَنَّهُ لَمْ يَأْتِ بِمَا قَالَ نَصٌّ، وَلَا إجْمَاعٌ، فَكَيْفَ وَقَدْ أَجْمَعُوا عَلَى أَخْذِ الْجَذَعَةِ فَمَا دُونَهَا

four hundred. Then for every single one that increases beyond that, is it the same?" Abū Muḥammad said: No argument holds for anyone against the Messenger of Allah—peace and blessings be upon him. It necessarily obligates those who uphold analogy—particularly the Mālikīs who assert analogy is stronger than a solitary report, and the Ḥanafīs who hold that solitary reports are not accepted in matters of frequent occurrence—to adopt Ibrāhīm's opinion. Because they have unanimously agreed that if two hundred sheep increase by one, the obligatory rate shifts and three sheep become due. Similarly, if they exceed three hundred by one, the obligatory rate must likewise shift—all the more so since the Ḥanafīs have adopted Ibrāhīm's ruling of taking zakāh from a single cow when exceeding forty by one. They argued that they found no fixed deduction rate of nineteen in cattle to justify following him here, nor could they claim, "We found no deduction rate for one hundred and ninety-eight sheep"—particularly when they apply a universally valid analogy to sheep here, while having no analogy whatsoever for cattle. Every equivocation they employ regarding cattle inevitably applies to them concerning what exceeds three hundred sheep, based on His Exalted's words: *"Take from their wealth an obligatory charity [zakāh]"* [9:103] and similar verses. Why do they not argue: "This is a matter of pervasive practical concern, so had it been valid, would Ibrāhīm have been ignorant of it?" If they retort: "Disagreement with Ibrāhīm's view is supported by Abū Bakr's ḥadīth, Ibn ʿUmar's report, ʿAlī's opinion, and Ṣaḥīfa ibn Ḥazm's narration," we reply: "There is none of these reports except that you have contradicted them. Thus, they cannot be proof where you oppose them, yet you cite them as proof for your desired rulings. This is profoundly contradictory." Abū Muḥammad remarked: "All this is incoherent nonsense. We merely expose their contradictions and arbitrary rulings in religion—abandoning analogy for the Sunnah when it aligns with their imitation, abandoning the Sunnah for analogy when it suits them, and abandoning both altogether otherwise." As for those who require the taken sheep to meet sacrificial standards—like Abū Ḥanīfah—they erred, for his view lacks textual proof or consensus. How can this be, when they unanimously accept taking a jadhʿa (young camel) in camel zakāh though it is invalid for sacrifice? The Prophet (peace upon him) told Abū Burdah: *"A jadhʿa will never suffice for anyone after

you”*—referring to sacrifice, as Abū Burdah had inquired about it. This is authenticated in the Sunnah, yet they contradict it. The text stipulating the obligation of a *jadhaʿa* (one-year-old she-camel) in the zakāt of camels establishes with certainty that he (peace be upon him) referred exclusively to the *uḍḥiya* (sacrificial offering), and with Allah, the Most High, is success.[47]

فِي زَكَاةِ الْإِبِلِ، وَلَا تُجْزِئُ فِي الْأُضْحِيَّةِ، وَإِنَّمَا «قَالَ - عَلَيْهِ السَّلَامُ - لِأَبِي بُرْدَةَ وَلَنْ تُجْزِئَ جَذَعَةٌ لِأَحَدٍ بَعْدَكَ» يَعْنِي فِي الْأُضْحِيَّةِ؛ لِأَنَّهُ عَنْهَا سَأَلَهُ، وَقَدْ صَحَّ النَّصُّ بِإِيجَابِ الْجَذَعَةِ فِي زَكَاةِ الْإِبِلِ؛ فَصَحَّ يَقِينًا أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَعْنِ إلَّا الْأُضْحِيَّةَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L10469 As for our statement that if all the sheep are choice livestock, one takes from them with the owner’s consent, this is because the Messenger of Allah—peace and blessings be upon him—prohibited taking choice sheep. In the Arabic language, this linguistically implies that there must inevitably be among the sheep some that are not choice. However, if all of them are choice livestock, it is not permissible to say of any of them, “These are the choice ones of these sheep,” but rather one should say, “This is a choice one from these choice sheep.”

وَأَمَّا قَوْلُنَا إنْ كَانَتْ الْغَنَمُ كُلُّهَا كَرَائِمُ أَخَذَ مِنْهَا بِرِضَا صَاحِبِهَا؛ فَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «نَهَى عَنْ كَرَائِمِ الْغَنَمِ» ؛ وَهَذَا فِي لُغَةِ الْعَرَبِ يَقْتَضِي أَنْ يَكُونَ فِي الْغَنَمِ - وَلَا بُدَّ - مَا لَيْسَ بِكَرَائِمَ، وَأَمَّا إذَا كَانَتْ كُلُّهَا كَرَائِمُ فَلَا يَجُوزُ أَنْ يُقَالَ فِي شَيْءٍ مِنْهَا: هَذِهِ كَرَائِمُ هَذِهِ الْغَنَمِ، لَكِنْ يُقَالُ هَذِهِ كَرِيمَةٌ مِنْ هَذِهِ الْغَنَمِ الْكَرَائِمِ.

L10470 It has been transmitted to us from Ibrāhīm al-Nakhaʿī that he said: The zakāh assessor is commanded to split the sheep into two divisions, whereupon the sheep owner selects the better division, and the assessor takes from the other. It has likewise been reported from al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq that he said: The assessor divides the sheep into thirds—a third of superior quality, a third of inferior quality, and a third of medium quality; then the zakāh obligation falls upon the medium third.

وَقَدْ رُوِّينَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ: يُؤْمَرُ الْمُصَدِّقُ أَنْ يَصْدَعَ الْغَنَمَ صَدْعَيْنِ فَيَخْتَارُ صَاحِبُ الْغَنَمِ خَيْرَ الصَّدْعَيْنِ وَيَأْخُذُ الْمُصَدِّقُ مِنْ الْآخَرِ؟ وَعَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ أَنَّهُ قَالَ: يُفَرِّقُ الْغَنَمَ أَثْلَاثًا، ثُلُثُ خِيَارٍ، وَثُلُثُ رُذَالٍ، وَثُلُثُ وَسَطٍ، ثُمَّ تَكُونُ الصَّدَقَةُ فِي الْوَسَطِ.

L10471 Abu Muhammad said: There is no explicit text on this matter. However, it has been narrated to us through Waki‘ from Sufyan al-Thawri, from Abu Ishaq, from ‘Asim ibn Damrah, from ‘Ali ibn Abi Talib, who said: The sadaqah collector must not take a decrepit female animal, an animal with defects, or a male goat.

قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا نَصَّ فِيهِ، وَلَكِنْ رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: لَا يَأْخُذُ الْمُصَدِّقُ هَرِمَةً وَلَا ذَاتَ عَوَارٍ وَلَا تَيْسًا.

L10472–10474 And through the narration of Al-Bukhārī from Shu‘ayb ibn Abī Ḥamzah from Al-Zuhrī from ‘Ubayd Allāh ibn ‘Abd Allāh ibn ‘Utbah ibn Mas‘ūd, that Abū Hurayrah said: Abū Bakr Al-Ṣiddīq declared: “By Allah, if they were to withhold from me a young she-goat they used to deliver to the Messenger of

وَمِنْ طَرِيقِ الْبُخَارِيِّ عَنْ شُعَيْبِ بْنِ أَبِي حَمْزَةَ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ أَنَّ أَبَا هُرَيْرَةَ قَالَ: قَالَ أَبُو بَكْرٍ الصِّدِّيقُ: وَاَللَّهِ لَوْ مَنَعُونِي عَنَاقًا كَانُوا يُؤَدُّونَهَا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَقَاتَلْتهمْ عَلَيْهَا؟ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ:

[47] **Qur’an references (L10464):** Qur’an 9:103 (At-Tawbah).

Allah—peace and blessings be upon him—I would fight them over it." And through the narration of ʻAbd al-Razzāq: Bishr ibn ʻĀṣim ibn Sufyān ibn ʻAbd Allāh informed me that his father [narrated]... He narrated—through Sufyan's father, who narrated to him—that Umar ibn al-Khattab said to him: "Tell them: I do not take the fattened sheep, nor the breeding ram, nor the ewe in late pregnancy, nor the ewe in labor. Rather, I take the young female goat, the one-year-old sheep, and the two-year-old sheep. And is that not fairness between the nourishment of the livestock and their choicest?" Through the narration of al-Awzaʻi, from Salim ibn Abdullah al-Muharibi: that Umar appointed him as a Zakat collector and ordered him to take the one-year-old sheep and the two-year-old sheep.

أَخْبَرَنِي بِشْرُ بْنُ عَاصِمِ بْنِ سُفْيَانَ بْنِ عَبْدِ اللَّهِ أَنَّ أَبَاهُ حَدَّثَهُ (أَنَّ سُفْيَانَ أَبَاهُ حَدَّثَهُ) أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ لَهُ: قُلْ لَهُمْ: إِنِّي لَا آخُذُ الشَّاةَ الْأَكُولَةَ وَلَا فَحْلَ الْغَنَمِ، وَلَا الرُّبَى وَلَا الْمَاخِضَ، وَلَكِنِّي آخُذُ الْعَنَاقَ وَالْجَذَعَةَ، وَالثَّنِيَّةَ وَذَلِكَ عَدْلٌ بَيْنَ غِذَاءِ الْمَالِ وَخِيَارِهِ؟ وَمِنْ طَرِيقِ الْأَوْزَاعِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ الْمُحَارِبِيِّ أَنَّ عُمَرَ بَعَثَهُ مُصْدِقًا وَأَمَرَهُ أَنْ يَأْخُذَ الْجَذَعَةَ، وَالثَّنِيَّةَ.

Issue: Zakat on sheep that have completed a year.

[مَسْأَلَةُ الزَّكَاةِ فِي الْغَنَمِ مِمَّا أَتَمَّ سَنَةٍ]

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That which is too small to be called a sheep—being referred to as a lamb, kid, or suckling—may not be included in obligatory alms (zakat), nor counted among the assets from which zakat is taken unless it completes a full year. When it completes a year, is it then counted, and is zakat taken from it? Abū Muḥammad said: This is a point on which people have differed.

وَمَا صَغُرَ عَنْ أَنْ يُسَمَّى: شَاةً، لَكِنْ يُسَمَّى خَرُوفًا، أَوْ جَدْيًا، أَوْ سَخْلَةً: لَمْ يَجُزْ أَنْ يُؤْخَذَ فِي الصَّدَقَةِ الْوَاجِبَةِ، وَلَا أَنْ يُعَدَّ فِيمَا تُؤْخَذُ مِنْهُ الصَّدَقَةُ، إِلَّا أَنْ يُتِمَّ سَنَةً، فَإِذَا أَتَمَّهَا عُدَّ، وَأُخِذَتْ الزَّكَاةُ مِنْهُ؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ.

Abu Hanifah said: All growths—whether gold, silver, or livestock—are combined with the wealth in the owner's possession, and zakat is due on the entire amount, even if he acquired them merely an hour before the completion of the ḥawl [lunar year].

فَقَالَ أَبُو حَنِيفَةَ: تُضَمُّ الْفَوَائِدُ كُلُّهَا مِنْ الذَّهَبِ، وَالْفِضَّةِ، وَالْمَوَاشِي، إلَى مَا عِنْدَ صَاحِبِ الْمَالِ فَتُزَكَّى مَعَ مَا كَانَ عِنْدَهُ، وَلَوْ لَمْ يَفِدْهَا إلَّا قَبْلَ تَمَامِ الْحَوْلِ بِسَاعَةٍ.

This applies if the one possessing livestock has the amount subject to zakat; otherwise, it does not. The ruling depends on possessing the nisab at the start and end of the lunar year, regardless of decreases below the nisab during the year. He asked: If all the ewes he owned died, leaving more than forty lambs among the offspring—is there no zakat due on them? Similarly, if he owned thirty or more bovine calves, or five or more weaned camel calves, for a full year without there being even a single one-year-old she-camel among them—is there no zakat due on them?

هَذَا إذَا كَانَ الَّذِي عِنْدَهُ تَجِبُ فِي مِقْدَارِ مَا مَعَهُ الزَّكَاةُ، وَإِلَّا فَلَا، وَإِنَّمَا يُرَاعَى فِي ذَلِكَ أَنْ يَكُونَ عِنْدَهُ نِصَابٌ فِي أَوَّلِ الْحَوْلِ وَآخِرِهِ، وَلَا يُبَالِي أَنْقَصَ فِي دَاخِلِ الْحَوْلِ عَنْ النِّصَابِ أَمْ لَا؟ قَالَ: فَإِنْ مَاتَتْ الَّتِي كَانَتْ عِنْدَهُ كُلُّهَا وَبَقِيَ مِنْ عَدَدِ الْخِرْفَانِ أَكْثَرُ مِنْ أَرْبَعِينَ: فَلَا زَكَاةَ فِيهَا؟ وَكَذَلِكَ لَوْ مَلَكَ ثَلَاثِينَ عِجْلًا فَصَاعِدًا، أَوْ خَمْسًا مِنْ

الْفُصْلَانِ فَصَاعِدًا، عَامًا كَامِلًا دُونَ أَنْ يَكُونَ فِيهَا مُسِنَّةٌ وَاحِدَةٌ فَمَا فَوْقَهَا -: فَلَا زَكَاةَ عَلَيْهِ فِيهَا؟

L10480–10481 Malik said: The profits of gold and silver are not combined with what a Muslim already possesses of them; rather, each asset is subject to zakah based on its own annual cycle, except for profit from wealth and all offspring of livestock. These are combined with one's existing holdings, and the total is subject to zakah based on the annual cycle of what was already possessed - even if acquired an hour before the cycle ends. However, he distinguished between profits from gold and silver and gains from livestock through means other than reproduction. He ruled that such gains should not be added to one's existing holdings of all these types unless the amount already possessed constitutes a quantity of the same type that obligates zakah. If not, they remain separate.

وَقَالَ مَالِكٌ: لَا تُضَمُّ فَوَائِدُ الذَّهَبِ، وَالْفِضَّةِ، إِلَى مَا عِنْدَ الْمُسْلِمِ مِنْهَا؛ بَلْ يُزَكَّى كُلُّ مَالٍ بِحَوْلِهِ، حَاشَا رِبْحَ الْمَالِ وَفَوَائِدَ الْمَوَاشِي كُلِّهَا؛ فَإِنَّهَا تُضَمُّ إِلَى مَا عِنْدَهُ وَيُزَكَّى الْجَمِيعُ بِحَوْلِ مَا كَانَ عِنْدَهُ، وَلَوْ لَمْ يُفِدْهَا إِلَّا قَبْلَ الْحَوْلِ بِسَاعَةٍ، إِلَّا أَنَّهُ فَرَّقَ بَيْنَ فَائِدَةِ الذَّهَبِ، وَالْفِضَّةِ، وَالْمَاشِيَةِ، مِنْ غَيْرِ الْوِلَادَةِ، فَلَمْ يَرَ أَنْ يُضَمَّ إِلَى مَا عِنْدَ الْمَرْءِ مِنْ ذَلِكَ كُلِّهِ إِلَّا إِذَا كَانَ الَّذِي عِنْدَهُ مِنْهَا مِقْدَارًا تَجِبُ فِي مِثْلِهِ الزَّكَاةُ وَإِلَّا فَلَا.

L10482 He held the view that the offspring of livestock should specifically be aggregated with the livestock one already owns, whether the existing amount reaches the nisab threshold for zakat or not.

وَرَأَى أَنْ تُضَمَّ وِلَادَةُ الْمَاشِيَةِ خَاصَّةً إِلَى مَا عِنْدَهُ مِنْهَا، سَوَاءٌ كَانَ الَّذِي عِنْدَهُ مِنْهَا تَجِبُ فِي مِقْدَارِهِ الزَّكَاةُ أَوْ لَا تَجِبُ فِي مِقْدَارِهِ الزَّكَاةُ.

L10483 Al-Shāfiʿī said: Progeny is not aggregated at all with existing possessions, except solely the offspring of livestock, for they are aggregated with their mothers. This applies even if the number mandating zakat is not completed except one hour before the end of the lunar year—provided the mothers themselves reach the nisab threshold that mandates zakat; otherwise, it does not. If they fall below the nisab during any part of the lunar year, is there then no zakat due on them? Abu Muḥammad said: As for the contradictions in Mālik's and Al-Shāfiʿī's positions and their arbitrary divisions—this is evident, for they formulated divisions without any proof of their validity.

وَقَالَ الشَّافِعِيُّ: لَا تُضَمُّ فَائِدَةٌ أَصْلًا إِلَى مَا عِنْدَهُ، إِلَّا أَوْلَادَ الْمَاشِيَةِ فَقَطْ، فَإِنَّهَا تُعَدُّ مَعَ أُمَّاتِهَا، وَلَوْ لَمْ يَتِمَّ الْعَدَدُ الْمَأْخُوذُ مِنْهُ الزَّكَاةُ بِهَا إِلَّا قَبْلَ الْحَوْلِ بِسَاعَةٍ، هَذَا إِذَا كَانَتْ الْأُمَّهَاتُ نِصَابًا تَجِبُ فِيهِ الزَّكَاةُ وَإِلَّا فَلَا، فَإِنْ نَقَصَتْ فِي بَعْضِ الْحَوْلِ عَنْ النِّصَابِ: فَلَا زَكَاةَ فِيهَا؟ قَالَ أَبُو مُحَمَّد: أَمَّا تَنَاقُضُ مَالِكٍ، وَالشَّافِعِيِّ وَتَقْسِيمِهِمَا فَلَا خَفَاءَ بِهِ، لِأَنَّهُمَا قَسَّمَا تَقْسِيمًا لَا بُرْهَانَ عَلَى صِحَّتِهِ.

L10484 As for Abū Ḥanīfah, he too exhibits here a contradiction more egregious than that of Mālik and al-Shāfiʿī. He held that only the beginning and end of the year should be considered, without regard to the intervening period. He also ruled that livestock offspring should be counted with their mothers even if the mother gave birth to them merely an hour before the Zakat collector's arrival. Furthermore, he held that if there are forty young lambs

وَأَمَّا أَبُو حَنِيفَةَ فَلَهُ هَاهُنَا أَيْضًا تَنَاقُضٌ أَشْنَعُ مِنْ تَنَاقُضِ مَالِكٍ، وَالشَّافِعِيِّ، وَهُوَ أَنَّهُ رَأَى أَنْ يُرَاعَى أَوَّلُ الْحَوْلِ وَآخِرِهِ دُونَ وَسَطٍ، وَرَأَى أَنْ تُعَدَّ أَوْلَادُ الْمَاشِيَةِ مَعَ أُمَّاتِهَا وَلَوْ لَمْ تَضَعْهَا إِلَّا قَبْلَ مَجِيءِ السَّاعِي بِسَاعَةٍ، ثُمَّ رَأَى فِي أَرْبَعِينَ خَرُوفًا صِغَارًا وَمَعَهَا

alongside one mature sheep, the Zakat is due solely on that mature sheep. If no mature sheep is present, no Zakat is obligatory. Likewise, if there are a hundred lambs and twenty young lambs—all of them—alongside one mature sheep, the Zakat is due only on that mature sheep.

شَاةٌ وَاحِدَةٌ مُسِنَّةٌ أَنَّ فِيهَا الزَّكَاةَ، وَهِيَ تِلْكَ الْمُسِنَّةُ فَقَطْ، فَإِنْ لَمْ يَكُنْ مَعَهَا مُسِنَّةٌ فَلَا زَكَاةَ فِيهَا، فَإِنْ كَانَتْ مَعَهُ مِائَةُ خَرُوفٍ وَعِشْرُونَ خَرُوفًا صِغَارًا كُلَّهَا وَمَعَهَا مُسِنَّةٌ وَاحِدَةٌ.

L10485 He said: If there are two aged females among them, their zakah consists of those two aged females together. If there is only one aged female with them both, then only that aged female alone is due. If there is no aged female with it, then nothing at all is due.

قَالَ: إِنْ كَانَ فِيهَا مُسِنَّتَانِ فَصَدَقَتُهَا تَانِكَ الْمُسِنَّتَانِ مَعًا، وَإِنْ كَانَ لَيْسَ مَعَهُمَا إِلَّا مُسِنَّةٌ وَاحِدَةٌ فَلَيْسَ فِيهَا إِلَّا تِلْكَ الْمُسِنَّةِ وَحْدَهَا فَقَطْ، فَإِنْ لَمْ يَكُنْ مَعَهَا مُسِنَّةٌ فَلَيْسَ فِيهَا شَيْءٌ أَصْلًا.

L10486–10488 And likewise, he ruled regarding young camels (al-ʻajājīl) and the two legal determinations (al-fuṣlayn), even if he were to own them for a year or longer. Abū Muḥammad said: This is the legislation of Iblīs, not the legislation of Allah the Exalted and His Messenger Muḥammad—may Allah bless him and grant him peace. We mean his statement: "If there are one hundred sheep with a lamb, one year-old sheep is due. If there are twenty sheep with a lamb, two additional year-old sheep are taken as zakāh for the lambs—both are taken. If there is only one year-old sheep with them, it is taken alone as zakāh for the lambs with no increase." This ruling has never been established by the Qur'an, a sound Sunnah, a weak narration, the statement of any Companion, any Successor, anyone known before Abū Ḥanīfah, valid analogy, or sound reasoning.

وَهَكَذَا قَالَ فِي الْعَجَاجِيلِ وَالْفُصْلَانِ أَيْضًا، وَلَوْ مَلَكَهَا سَنَةً فَأَكْثَرَ قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ شَرِيعَةُ إِبْلِيسَ لَا شَرِيعَةُ اللَّهِ تَعَالَى وَرَسُولِهِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَعْنِي قَوْلَهُ: إِنْ كَانَ مَعَ الْمِائَةِ خَرُوفٌ وَالْعِشْرُونَ خَرُوفًا: مُسِنَّتَانِ زَائِدَتَانِ أُخِذَتَا عَنْ زَكَاةِ الْخِرْفَانِ كِلْتَاهُمَا، فَإِنْ لَمْ يَكُنْ مَعَهَا إِلَّا مُسِنَّةٌ وَاحِدَةٌ: أُخِذَتْ وَحْدُهَا عَنْ زَكَاةِ الْخِرْفَانِ وَلَا مَزِيدَ وَمَا جَاءَ بِهَذَا قَطُّ قُرْآنٌ وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ أَحَدٍ مِنْ الصَّحَابَةِ وَلَا مِنْ التَّابِعِينَ، وَلَا أَحَدٌ نَعْلَمُهُ قَبْلَ أَبِي حَنِيفَةَ، وَلَا قِيَاسٌ وَلَا رَأْيٌ سَدِيدٌ.

L10489 It has been narrated from him that he once said concerning forty lambs: a mature sheep is taken as their zakah, and this is the opinion adopted by Zufar. Then he revised his stance and said: rather, a lamb from them is taken as their zakah, and this is the opinion adopted by Abu Yusuf. Then he changed his position and said: there is no zakah due on them, and this is the opinion adopted by al-Hasan ibn Ziyad.

وَقَدْ رُوِيَ عَنْهُ أَنَّهُ قَالَ مَرَّةً فِي أَرْبَعِينَ خَرُوفًا: يُؤْخَذُ عَنْ زَكَاتِهَا شَاةٌ مُسِنَّةٌ، وَبِهِ يَأْخُذُ زُفَرُ، ثُمَّ رَجَعَ إِلَى أَنْ قَالَ: بَلْ يُؤْخَذُ عَنْ زَكَاتِهَا خَرُوفٌ مِنْهَا، وَبِهِ يَأْخُذُ أَبُو يُوسُفَ، ثُمَّ رَجَعَ إِلَى أَنْ قَالَ: لَا زَكَاةَ فِيهَا، وَبِهِ يَأْخُذُ الْحَسَنُ بْنُ زِيَادٍ.

L10490 Malik maintained the same view as Zufar. Al-Awzaʻī and Al-Shāfiʻī upheld the same position as Abū Yūsuf. Al-Shaʻbī, Sufyān al-Thawrī, and Abū Sulaymān endorsed the same opinion as al-Ḥasan ibn Ziyād.

وَقَالَ مَالِكٌ كَقَوْلِ زُفَرَ، وَقَالَ الْأَوْزَاعِيُّ، وَالشَّافِعِيُّ، كَقَوْلِ أَبِي يُوسُفَ، وَقَالَ الشَّعْبِيُّ، وَسُفْيَانُ الثَّوْرِيُّ، وَأَبُو سُلَيْمَانَ كَقَوْلِ الْحَسَنِ بْنِ زِيَادٍ.

L10491 Abu Muhammad said: Those who held that year-old lambs should be counted with their mothers cited our narration from ʻAbd al-Razzāq's chain via Bishr ibn ʻĀṣim ibn Sufyān ibn ʻAbdullāh al-Thaqafī, from his father, from his grandfather: that he served as a zakah collector in the districts of Ta'if. The livestock owners complained to him about assessing fodder, saying: "If you are counting fodder, take its due from it." ʻUmar instructed: "Say to them: We account for all fodder—even that for the newborn lamb carried by the shepherd in his arms. And say: I do not take sheep kept for consumption, nor breeding rams, nor nursing ewes, nor pregnant sheep. Rather, I take ewe lambs, one-year-old sheep, and three-year-old sheep. This establishes equity between the livestock's maintenance costs and its choice animals."

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ رَأَى أَنْ تُعَدَّ الْخِرْفَانُ مَعَ أُمَّهَاتِهَا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ بِشْرِ بْنِ عَاصِمِ بْنِ سُفْيَانَ بْنِ عَبْدِ اللَّهِ الثَّقَفِيِّ عَنْ أَبِيهِ عَنْ جَدِّهِ: أَنَّهُ كَانَ مُصَدِّقًا فِي مَخَالِيفِ الطَّائِفِ، فَشَكَا إلَيْهِ أَهْلُ الْمَاشِيَةِ تَصْدِيقَ الْغِذَاءِ، وَقَالُوا: إنْ كُنْت مُعْتَدًّا بِالْغِذَاءِ فَخُذْ مِنْهُ صَدَقَتَهُ. قَالَ عُمَرُ: فَقُلْ لَهُمْ: إنَّا نَعْتَدُّ بِالْغِذَاءِ كُلِّهَا حَتَّى السَّخْلَةُ يَرُوحُ بِهَا الرَّاعِي عَلَى يَدِهِ؛ وَقُلْ لَهُمْ: إنِّي لَا آخُذُ الشَّاةَ الْأَكُولَةَ؛ وَلَا فَحْلَ الْغَنَمِ، وَلَا الرُّبَى، وَلَا الْمَاخِضَ؛ وَلَكِنِّي آخُذُ الْعَنَاقَ، وَالْجَذَعَةَ، وَالثَّنِيَّةَ: وَذَلِكَ عَدْلٌ بَيْنَ غِذَاءِ الْمَالِ، وَخِيَارِهِ.

L10492 This has also been narrated to us through the route of Mālik from Thawr ibn Zayd from Ibn ʿAbd Allāh ibn Sufyān, and through the route of Ayyūb from ʿIkrimah ibn Khālid from Sufyān.

وَرُوِّينَا هَذَا أَيْضًا مِنْ طَرِيقِ مَالِكٍ عَنْ ثَوْرِ بْنِ زَيْدٍ عَنْ ابْنِ عَبْدِ اللَّهِ بْنِ سُفْيَانَ وَمِنْ طَرِيقِ أَيُّوبَ عَنْ عِكْرِمَةَ بْنِ خَالِدٍ عَنْ سُفْيَانَ.

L10493 Do we not know of any proof for them besides this?

مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا؟

L10494–10495 Abu Muhammad said: And this contains no proof for them in it, due to several aspects:

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ:

L10496 The first of them is that it is not from the statement of the Messenger of Allah—peace and blessings of Allah be upon him—nor is there proof in the saying of anyone other than him.

أَوَّلُهَا - أَنَّهُ لَيْسَ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَهُ.

L10497 The second—

وَالثَّانِي -

L10498 That ʻUmar—may Allāh be pleased with him—differed from other Companions of the Messenger of Allāh—peace and blessings of Allāh be upon him—in this matter, as narrated to us by Ḥammām from Ibn Mufarrij from Ibn al-Aʿrabī from al-Dabarī from ʿAbd al-Razzāq from Mālik from Muḥammad ibn ʿUqbah from al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq: that Abū Bakr al-Ṣiddīq would not take Zakat from any Zakat-eligible wealth until a full year had passed over it.

أَنَّهُ قَدْ خَالَفَ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - فِي هَذَا غَيْرَهُ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَالِكٍ عَنْ مُحَمَّدِ بْنِ عُقْبَةَ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ: أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ كَانَ لَا يَأْخُذُ مِنْ مَالِ زَكَاةٍ حَتَّى يَحُولَ عَلَيْهِ الْحَوْلُ -: حَدَّثَنَا مُحَمَّدُ بْنُ

Narrated to us by Muḥammad ibn Saʿīd ibn Nabāt from ʿAbdullāh ibn Naṣr from Qāsim ibn Aṣbagh from Muḥammad ibn Waḍḍāḥ from Mūsā ibn Muʿāwiyah from Wakīʿ from Sufyān al-Thawrī from Ḥārithah ibn Abī al-Rijāl from ʿAmrah bint ʿAbd al-Raḥmān from ʿĀ'ishah, the Mother of the Believers, who said: "No Zakat is due until a full year has passed over it" (referring to acquired wealth).

By the same chain up to Sufyān from Abū Isḥāq al-Sabīʿī from ʿĀṣim ibn Ḍamrah from ʿAlī ibn Abī Ṭālib, who said: "Whoever acquires wealth owes no Zakat on it until a full year has passed over it."

L10499 And through him to Sufyan from Ayyub al-Sikhtiyani from Nafi' from Ibn Umar, who said: Whoever gains wealth, there is no Zakat in it until a full year has passed upon it.

سَعِيدِ بْنِ نَبَاتٍ ثنا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ وَضَّاحٍ ثنا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَارِثَةَ بْنِ أَبِي الرِّجَالِ عَنْ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: لَا يُزَكَّى حَتَّى يَحُولَ عَلَيْهِ الْحَوْلُ: تَعْنِي الْمَالَ الْمُسْتَفَادَ -: وَبِهِ إِلَى سُفْيَانَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: مَنْ اسْتَفَادَ مَالًا فَلَا زَكَاةَ فِيهِ حَتَّى يَحُولَ عَلَيْهِ الْحَوْلُ.

وَبِهِ إِلَى سُفْيَانَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: مَنْ اسْتَفَادَ مَالًا فَلَا زَكَاةَ فِيهِ حَتَّى يَحُولَ عَلَيْهِ الْحَوْلُ.

فَهَذَا عُمُومٌ مِنْ أَبِي بَكْرٍ، وَعَائِشَةَ، وَعَلِيٍّ، وَابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمْ -، لَمْ يَخُصُّوا فَائِدَةَ مَاشِيَةٍ بِوِلَادَةٍ مِنْ سَائِرِ مَا يُسْتَفَادُ، وَلَيْسَ لِأَحَدٍ أَنْ يَقُولَ إِنَّهُمْ لَمْ يُرِيدُوا بِذَلِكَ أَوْلَادَ الْمَاشِيَةِ إِلَّا كَانَ كَاذِبًا عَلَيْهِمْ، وَقَائِلًا بِالْبَاطِلِ الَّذِي لَمْ يَقُولُوهُ قَطُّ؟ وَأَيْضًا - فَإِنَّ الَّذِينَ حَكَى عَنْهُمْ سُفْيَانُ بْنُ عَبْدِ اللَّهِ أَنَّهُمْ أَنْكَرُوا أَنْ يُعَدَّ عَلَيْهِمْ أَوْلَادَ الْمَاشِيَةِ مَعَ أُمَّهَاتِهَا -: قَدْ كَانَ فِيهِمْ بِلَا شَكٍّ جَمَاعَةٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّ سُفْيَانَ ذَكَرَ أَنَّ ذَلِكَ كَانَ أَيَّامَ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَلِيَ الْأَمْرَ بَعْدَ مَوْتِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِسَنَتَيْنِ وَنِصْفٍ، وَبَقِيَ عَشْرَ سِنِينَ، وَمَاتَ بَعْدَ مَوْتِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِثَلَاثَ عَشْرَةَ سَنَةً، وَكَانُوا بِالطَّائِفِ، وَأَهْلُ الطَّائِفِ أَسْلَمُوا قَبْلَ مَوْتِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِنَحْوِ عَامٍ وَنِصْفٍ وَرَأَوْهُ عَلَيْهِ فَقَدْ صَحَّ الْخِلَافُ فِي هَذَا مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بِلَا شَكٍّ، وَإِذَا كَانَ ذَلِكَ فَلَيْسَ قَوْلُ بَعْضِهِمْ أَوْلَى مِنْ قَوْلِ بَعْضٍ؛ وَالْوَاجِبُ فِي ذَلِكَ مَا افْتَرَضَهُ اللَّهُ تَعَالَى إِذْ يَقُولُ: {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ} [النساء: ٥٩] .

L10500–10502 This is a general ruling from Abū Bakr, ʻĀ'ishah, ʻAlī, and Ibn ʻUmar—may Allah be pleased with them—who did not exclude the progeny of livestock from any category of acquired gains. None can claim they excluded livestock offspring without falsely attributing lies to them and asserting a baseless claim they never uttered. Furthermore, those whom Sufyān ibn ʻAbdullāh reported as rejecting the inclusion of livestock offspring with their mothers for zakāh liability undoubtedly included companions of Allah's Messenger—peace and blessings be upon him. Sufyān stated this occurred during ʻUmar's caliphate—may Allah be pleased with him—who assumed authority two and a half years after the Prophet's death, ruled ten years, and died thirteen years after the Prophet's passing. They resided in Ṭā'if, whose people embraced Islam approximately a year and a half before the death of Allah's Messenger—peace and blessings be upon him—and had seen him, peace and blessings be upon him. Indeed, disagreement on this matter among the Companions—may Allah be pleased with them—has been unequivocally established. When this is the case, the opinion of some is not more entitled or preferable than that of others. The obligation herein is what Allah the Exalted has ordained, as He says: "If you disagree over something, refer it to Allah and His Messenger, if you believe in Allah and the Last Day" [An-Nisa: 59].[1]

وَالثَّالِثُ - أَنَّهُ لَمْ يُرْوَ هَذَا عَنْ عُمَرَ مِنْ طَرِيقٍ مُتَّصِلَةٍ إِلَّا مِنْ طَرِيقَيْنِ:

L10503 The third—that this was not reported from ʻUmar through an uninterrupted chain except via two transmission paths.

إِحْدَاهُمَا: مِنْ طَرِيقِ بِشْرِ بْنِ عَاصِمِ بْنِ سُفْيَانَ عَنْ أَبِيهِ، وَكِلَاهُمَا غَيْرُ مَعْرُوفٍ أَوْ مِنْ طَرِيقِ ابْنٍ لِعَبْدِ اللَّهِ بْنِ سُفْيَانَ لَمْ يُسَمَّ.

L10504 One of them is through the chain of Bishr ibn ʿĀṣim ibn Sufyān from his father, and both of them are unknown; or through the chain of a son of ʿAbdullāh ibn Sufyān whose name is not mentioned.

وَالثَّانِيَةُ -

L10505 And the second—

مِنْ طَرِيقِ عِكْرِمَةَ بْنِ خَالِدٍ، وَهُوَ ضَعِيفٌ.

L10506 From the chain of transmission of ʿIkrimah ibn Khālid, and he is weak.

[1] **Qur'an references (L10500):** Qur'an 4:59 (An-Nisa).

L10507 And the fourth –

وَالرَّابِعُ -

L10508 The Hanafis and Shafiʿis opposed ʿUmar's opinion on this very issue, stating: "What the livestock produces is not counted unless the mothers—excluding the offspring—reach the number obligating zakah. Otherwise, the offspring are not counted against them." This is not mentioned in ʿUmar's ḥadīth.

أَنَّ الْحَنَفِيِّينَ، وَالشَّافِعِيِّينَ: خَالَفُوا قَوْلَ عُمَرَ فِي هَذِهِ الْمَسْأَلَةِ نَفْسِهَا، فَقَالُوا: لَا يُعْتَدُّ بِمَا وَلَدَتْ الْمَاشِيَةُ إلَّا أَنْ تَكُونَ الْأُمَّهَاتُ - دُونَ الْأَوْلَادِ - عَدَدًا تَجِبُ فِيهِ الزَّكَاةُ وَإِلَّا فَلَا تُعَدُّ عَلَيْهِمْ الْأَوْلَادُ، وَلَيْسَ هَذَا فِي حَدِيثِ عُمَرَ.

L10509 The fifth [point] is that they disregard what has been authentically established from ʿUmar—may Allah be pleased with him—through chains of transmission stronger than this specific chain, [such as] matters in which no opposition to him from the Companions—may Allah be pleased with them—is known, when [his position] contradicts the opinions of Mālik, Abū Ḥanīfah, and Al-Shāfiʿī—such as the Ḥanafīs and Shāfiʿīs rejecting ʿUmar's statement: "Water is not rendered impure by anything."

وَالْخَامِسُ - أَنَّهُمْ لَا يَلْتَفِتُونَ مَا قَدْ صَحَّ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - بِأَصَحَّ مِنْ هَذَا الْإِسْنَادِ، أَشْيَاءَ لَا يُعْرَفُ لَهُ فِيهَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، إذَا خَالَفَ رَأْيَ مَالِكٍ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ -: كَتَرْكِ الْحَنَفِيِّينَ، وَالشَّافِعِيِّينَ قَوْلَ عُمَرَ: الْمَاءُ لَا يُنَجِّسُهُ شَيْءٌ.

L10510 The Hanafis, Malikis, and Shafi'is rejected Umar's practice of collecting zakat from slaves not kept for trade and his method of collecting zakat from horses.

وَتَرْكِ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ: أَخْذَ عُمَرَ الزَّكَاةَ مِنْ الرَّقِيقِ لِغَيْرِ التِّجَارَةِ، وَصِفَةِ أَخْذِهِ الزَّكَاةَ مِنْ الْخَيْلِ.

L10511 The Hanafis' rejection of Umar's imposition of zakat on the orphan's wealth, and no valid disagreement with this ruling is established from any of the Companions, may Allah be pleased with them.

وَتَرْكِ الْحَنَفِيِّينَ إيجَابَ عُمَرَ الزَّكَاةَ فِي مَالِ الْيَتِيمِ، وَلَا يَصِحُّ خِلَافُهُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L10512–10514 The abandonment by the Hanafis and Malikis of the directive of Umar the tax assessor to leave the owners of palm trees what... They consume it without him assessing it for them—and how much more besides this? Thus, it has become evident that their reliance on ʿUmar's opinion occurs only where it conforms to their desires, not where authentic reports of ʿUmar's words or actions exist. This is exceedingly grave in matters of religion. Abū Muḥammad said: The reference in cases of dispute is the Quran and the Sunnah of Allah's Messenger—peace be upon him. We examined this matter and found that Allah's Messenger—peace be upon him—only obligated zakat on forty sheep and above, as we have described. He obligated therein one

وَتَرْكِ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ: أَمْرَ عُمَرَ الْخَارِصَ بِأَنْ يَتْرُكَ لِأَصْحَابِ النَّخْلِ مَا يَأْكُلُونَهُ لَا يَخْرُصُهُ عَلَيْهِمْ، وَغَيْرِ هَذَا كَثِيرٌ جِدًّا؟ فَقَدْ وَضَحَ أَنَّ احْتِجَاجَهُمْ بِعُمَرَ إنَّمَا هُوَ حَيْثُ وَافَقَ شَهَوَاتِهِمْ لَا حَيْثُ صَحَّ عَنْ عُمَرَ مِنْ قَوْلٍ أَوْ عَمَلٍ وَهَذَا عَظِيمٌ فِي الدِّينِ جِدًّا قَالَ أَبُو مُحَمَّد: الْمَرْجُوعُ إلَيْهِ عِنْدَ التَّنَازُعِ هُوَ الْقُرْآنُ، وَسُنَّةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا أَوْجَبَ الزَّكَاةَ فِي

sheep or two; and for every hundred sheep, one sheep. He exempted zakat from anything beyond that.

أَرْبَعِينَ شَاةٍ فَصَاعِدًا كَمَا وَصَفْنَا، وَأَوْجَبَ فِيهَا شَاةً أَوْ شَاتَيْنِ أَوْ فِي كُلِّ مِائَةِ شَاةٍ شَاةً، وَأَسْقَطَهَا عَمَّا عَدَا ذَلِكَ.

L10515 We found that lambs and kids are not referred to by the term "a sheep" (شَاة) nor the term "sheep" (شَاء) in the language through which Allah, the Exalted, has ordained His religion for us upon the tongue of the Messenger of Allah (peace be upon him).

وَوَجَدْنَا الْخِرْفَانَ وَالْجِدْيَانَ لَا يَقَعُ عَلَيْهَا اسْمُ شَاةٍ وَلَا اسْمُ شَاءٍ فِي اللُّغَةِ الَّتِي أَوْجَبَ اللَّهُ تَعَالَى عَلَيْنَا بِهَا دِينَهُ عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L10516 The one-year-old lambs and kids were excluded from the obligation of zakah.

فَخَرَجَتْ الْخِرْفَانُ، وَالْجِدْيَانُ عَنْ أَنْ تَجِبَ فِيهَا زَكَاةٌ.

L10517 Moreover, they have unanimously agreed that neither a lamb nor a young goat may be taken as zakat from sheep. They thereby acknowledged that it is not called a sheep nor does it fall under the legal rulings applicable to sheep. Thus, it is impossible for zakat to be taken from it, and it is impermissible to include it in zakat without an explicit text specifying that.

وَأَيْضًا - فَقَدْ أَجْمَعُوا عَلَى أَنْ لَا يُؤْخَذَ خَرُوفٌ وَلَا جَدْيٌ فِي الْوَاجِبِ فِي الزَّكَاةِ عَنْ الشَّاءِ فَأَقَرُّوا بِأَنَّهُ لَا يُسَمَّى شَاةً وَلَا لَهُ حُكْمُ الشَّاءِ، فَمِنْ الْمُحَالِ أَنْ يُؤْخَذَ مِنْهَا زَكَاةٌ، فَلَا تَجُوزُ هِيَ فِي الزَّكَاةِ بِغَيْرِ نَصٍّ فِي ذَلِكَ.

L10518 Moreover, is Zakat obligatory on livestock that has not reached its annual cycle (ḥawl), since there is no evidence in the Qur'an, Sunnah, or Ijmaʿ mandating it? As for one who owns lambs, calves, or weaned camels for an entire year, Zakat is obligatory upon the completion of the year, for all these are classified as sheep, cattle, and camels.

وَأَيْضًا - فَإِنَّ زَكَاةَ مَاشِيَةٍ لَمْ يَحُلْ عَلَيْهَا حَوْلٌ لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ؟ وَأَمَّا مَنْ مَلَكَ خِرْفَانًا أَوْ عُجُولًا أَوْ فُصْلَانًا سَنَةً كَامِلَةً فَالزَّكَاةُ فِيهَا وَاجِبَةٌ عِنْدَ تَمَامِ الْعَامِ، لِأَنَّ كُلَّ ذَلِكَ يُسَمَّى غَنَمًا، وَبَقَرًا وَإِبِلًا.

L10519 ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: Hannād ibn al-Sarī narrated from Hushaym, from Hilāl ibn Khabbāb, from Maysarah Abī Ṣāliḥ, from Suwayd ibn Ghaflah, who said: "The charity collector of the Messenger of Allah—peace and blessings be upon him—came to us. I sat near him and heard him say: 'In my covenant is that we do not take from the milk of a nursing mother.'"

حَدَّثَنَا عَبْدُ اللَّهِ بْنِ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ ثنا هَنَّادُ بْنُ السَّرِيِّ عَنْ هُشَيْمٍ عَنْ هِلَالِ بْنِ خَبَّابٍ عَنْ مَيْسَرَةَ أَبِي صَالِحٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ قَالَ «أَتَانَا مُصَدِّقُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَلَسْتُ إلَيْهِ، فَسَمِعْتُهُ يَقُولُ: إنَّ فِي عَهْدِي أَنْ لَا نَأْخُذَ مِنْ رَاضِعِ لَبَنٍ» .

L10520–10521 Abu Muhammad said: If he had intended that he himself not be subject to zakat, he would have said, "Let us not take [zakat] from the nursing infant." However, since taking zakat from the nursing infant—a term denoting the category—was prohibited, it is thereby established that nursing infants are not included among those from whom zakat is taken.

قَالَ أَبُو مُحَمَّد: لَوْ أَرَادَ أَنْ لَا يُؤْخَذَ هُوَ فِي الزَّكَاةِ لَقَالَ " أَنْ لَا نَأْخُذَ رَاضِعَ لَبَنٍ " لَكِنْ لَمَّا مُنِعَ مِنْ أَخْذِ الزَّكَاةِ مِنْ رَاضِعِ لَبَنٍ - وَرَاضِعُ لَبَنٍ اسْمٌ لِلْجِنْسِ - صَحَّ بِذَلِكَ أَنْ لَا تُعَدَّ الرَّوَاضِعُ فِيمَا تُؤْخَذُ مِنْهُ الزَّكَاةُ.

L10522 وَمَا نَعْلَمُ أَحَدًا عَابَ هِلَالَ بْنَ خَبَّابٍ، إلَّا أَنَّ يَحْيَى بْنَ سَعِيدٍ الْقَطَّانِ قَالَ: لَقِيته وَقَدْ تَغَيَّرَ، وَهَذَا لَيْسَ جُرْحَةً، لِأَنَّ هُشَيْمًا أَسَنُّ مِنْ يَحْيَى بِنَحْوِ عِشْرِينَ سَنَةً، فَكَانَ لِقَاءُ هُشَيْمٍ لِهِلَالٍ قَبْلَ تَغَيُّرِهِ بِلَا شَكٍّ.

L10523 وَأَمَّا سُوَيْدٌ فَأَدْرَكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَتَى إلَى الْمَدِينَةِ بَعْدَ وَفَاتِهِ - عَلَيْهِ السَّلَامُ - بِنَحْوِ خَمْسِ لَيَالٍ، وَأَفْتَى أَيَّامَ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ -: قَالَ أَبُو مُحَمَّد: وَأَمَّا الشَّافِعِيُّ، وَأَبُو يُوسُفَ فَطَرَدَا قَوْلَهُمَا، إذْ أَوْجَبَا أَخْذَ خَرُوفٍ صَغِيرٍ فِي الزَّكَاةِ عَنْ أَرْبَعِينَ خَرُوفًا فَصَاعِدًا، وُلِدَتْ قَبْلَ الْحَوْلِ أَوْ مَاتَتْ أُمَّهَاتُهَا؟ وَأَخْذُ مِثْلِ هَذَا فِي الزَّكَاةِ عَجَبٌ جِدًّا وَأَمَّا إذَا أَتَمَّتْ سَنَةً فَاسْمُ شَاةٍ يَقَعُ عَلَيْهَا فَهِيَ مَعْدُودَةٌ وَمَأْخُوذَةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L10524–10526 وَحَصَلُوا كُلُّهُمْ عَلَى أَنْ ادَّعَوْا أَنَّهُمْ قَلَّدُوا عُمَرَ - رَضِيَ اللَّهُ عَنْهُ -؛ وَهُمْ قَدْ خَالَفُوهُ فِي هَذِهِ الْمَسْأَلَةِ نَفْسِهَا، فَلَمْ يَرَ أَبُو حَنِيفَةَ، وَالشَّافِعِيّ أَنْ تُعَدَّ الْأَوْلَادُ مَعَ الْأُمَّهَاتِ إلَّا إذَا كَانَتْ الْأُمَّهَاتُ نِصَابًا؛ وَلَمْ يَقُلْ عُمَرُ كَذَلِكَ؟ وَحَصَلَ مَالِكٌ عَلَى قِيَاسٍ فَاسِدٍ مُتَنَاقِضٍ؛ لِأَنَّهُ قَاسَ فَائِدَةَ الْمَاشِيَةِ خَاصَّةً - دُونَ سَائِرِ الْفَوَائِدِ - عَلَى مَا فِي حَدِيثِ عُمَرَ مِنْ عَدِّ أَوْلَادِهَا مَعَهَا، ثُمَّ نَقَضَ قِيَاسَهُ فَرَأَى أَنْ لَا تُضَمَّ فَائِدَةُ الْمَاشِيَةِ بِهِبَةٍ، أَوْ مِيرَاثٍ، أَوْ شِرَاءٍ إلَى مَا عِنْدَهُ مِنْهَا إلَّا إنْ كَانَ مَا عِنْدَهُ نِصَابًا تَجِبُ فِي مِثْلِهِ الزَّكَاةُ

We do not know of anyone who criticized Hilāl ibn Khabbāb except Yaḥyā ibn Saʿīd al-Qaṭṭān, who said: “I met him after he had undergone a change.” This, however, does not constitute discreditation, for Hushaym was roughly twenty years older than Yaḥyā. Thus, Hushaym’s meeting with Hilāl undoubtedly occurred before Hilāl’s change.

As for Suwayd, he lived during the time of the Prophet—peace and blessings of Allah be upon him—and arrived in Medina approximately five nights after his death—peace be upon him. He issued legal rulings during the era of Umar—may Allah be pleased with him. Abu Muhammad said: As for al-Shāfiʿī and Abu Yusuf, their opinion was dismissed, for they mandated taking a small lamb as zakāh on forty lambs or more—even if the lambs were born before the completion of the annual cycle or their mothers died. Requiring such a lamb for zakāh is very astonishing. However, if it completes a full year, the term “sheep” applies to it, making it countable and subject to being taken [as zakāh]. Success is from Allah, the Most High.

All of them claimed that they followed the opinion of ʿUmar—may Allah be pleased with him—while they themselves had opposed him in this very issue. Therefore, Abū Ḥanīfah and al-Shāfiʿī did not hold that the children should be counted alongside the mothers except when such was the case. The mothers themselves constitute a nisab, yet did Umar not state this? Malik adopted a flawed and self-contradictory analogy, for he restricted his comparison of livestock offspring—excluding other types of yields—to what is mentioned in Umar’s hadith regarding counting their young with them. He then invalidated his own analogy by ruling that livestock offspring should not be combined through gift, inheritance, or purchase with existing holdings unless those holdings already meet the nisab threshold obligating zakat. Yet

paradoxically, he held that their offspring must be added to them even if the mothers do not constitute a zakat-eligible nisab? These categorizations are unheard of before them; no predecessor is known to have endorsed them. They neither followed Umar's position, nor applied the analogy systematically, nor adhered to the explicit rulings of the Sunnah in this matter.

Zakat on Cows

A legal ruling: Water buffaloes are a type of bovine, grouped among themselves.

Zakat on Cows

673 - Question:

Buffaloes are a type of cattle; some are grouped with others.

Then people differed: A group stated there is no Zakat on fewer than fifty head of cattle, whether males alone, females alone, or a combination of males and females. When fifty head of cattle are reached and remain in their owner's possession for an uninterrupted lunar year as we previously stipulated, one cow is due. This applies until the number reaches one hundred head of cattle. When it reaches one hundred and completes a lunar year under the same conditions, two cows are due. This applies perpetually: for every fifty head of cattle, one cow is due. No additional Zakat is due on incremental increases until they reach fifty. Any cattle that have not completed a full lunar year, as mentioned, are not counted.

A group has said: For five cows, a sheep; for ten cows, two sheep; for fifteen cows, three sheep; for twenty cows, four sheep; and for twenty-five cows, a cow.

Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us; Muḥammad ibn ʿĪsā ibn Rifāʿah narrated to us; ʿAlī ibn ʿAbd al-ʿAzīz narrated to us; Abū ʿUbayd al-Qāsim ibn Salām narrated to us: Yazīd narrated from Ḥabīb ibn Abī Ḥabīb

وَإِلَّا فَلَا - وَرَأَى أَنْ تُضَمَّ أَوْلَادُهَا إِلَيْهَا وَإِنْ لَمْ تَكُنْ الْأُمَّهَاتُ نِصَابًا تَجِبُ فِي الزَّكَاةِ؟ وَهَذِهِ تَقَاسِيمُ لَا يُعْرَفُ أَحَدٌ قَالَ بِهَا قَبْلَهُمْ، وَلَا هُمْ اتَّبَعُوا عُمَرَ، وَلَا طَرَدُوا الْقِيَاسَ، وَلَا اتَّبَعُوا نَصَّ السُّنَّةِ فِي ذَلِكَ.

[زَكَاةُ الْبَقَرِ]

[مَسْأَلَةٌ الْجَوَامِيسُ صِنْفٌ مِنْ الْبَقَرِ يُضَمُّ بَعْضُهَا إلَى بَعْضٍ]

زَكَاةُ الْبَقَرِ

٦٧٣ - مَسْأَلَةٌ:

الْجَوَامِيسُ صِنْفٌ مِنْ الْبَقَرِ يُضَمُّ بَعْضُهَا إلَى بَعْضٍ.

ثُمَّ اخْتَلَفَ النَّاسُ: فَقَالَتْ طَائِفَةٌ: لَا زَكَاةَ فِي أَقَلَّ مِنْ خَمْسِينَ مِنْ الْبَقَرِ ذُكُورًا أَوْ إنَاثًا، أَوْ ذُكُورًا، وَإِنَاثًا، فَإِذَا تَمَّتْ خَمْسُونَ رَأْسًا مِنْ الْبَقَرِ وَأَتَمَّتْ فِي مِلْكِ صَاحِبِهَا عَامًا قَمَرِيًّا مُتَّصِلًا كَمَا قَدَّمْنَا -: فَفِيهَا بَقَرَةٌ، إلَى أَنْ تَبْلُغَ مِائَةً مِنْ الْبَقَرِ، فَإِذَا بَلَغَتْهَا وَأَتَمَّتْ كَذَلِكَ عَامًا قَمَرِيًّا فَفِيهَا بَقَرَتَانِ، وَهَكَذَا أَبَدًا، فِي كُلِّ خَمْسِينَ مِنْ الْبَقَرِ بَقَرَةٌ، وَلَا شَيْءَ زَائِدٌ فِي الزِّيَادَةِ حَتَّى تَبْلُغَ خَمْسِينَ، وَلَا يُعَدُّ فِيهَا مَا لَمْ يُتِمَّ حَوْلًا كَمَا ذَكَرْنَا.

وَقَالَتْ طَائِفَةٌ: فِي خَمْسٍ مِنْ الْبَقَرِ شَاةٌ، وَفِي عَشْرٍ شَاتَانِ، وَفِي خَمْسِ عَشَرَةَ ثَلَاثُ شِيَاهٍ: وَفِي عِشْرِينَ أَرْبَعُ شِيَاهٍ، وَفِي خَمْسٍ وَعِشْرِينَ مِنْ الْبَقَرِ بَقَرَةٌ.

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا مُحَمَّدُ بْنُ عِيسَى بْنِ رِفَاعَةَ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا أَبُو عُبَيْدٍ الْقَاسِمُ بْنُ سَلَامٍ ثنا يَزِيدُ عَنْ حَبِيبِ بْنِ أَبِي حَبِيبٍ عَنْ عَمْرِو بْنِ هَرِمٍ عَنْ

from ʿAmr ibn Hārim from Muḥammad ibn ʿAbd al-Raḥmān, who said: In the book of ʿUmar ibn al-Khaṭṭāb, it is stated that cattle are taken. Among them is what is taken from camels, referring to Zakat. He said: Were others besides them asked about it? They replied: In it is what applies to camels.

مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: فِي كِتَابِ عُمَرَ بْنِ الْخَطَّابِ أَنَّ الْبَقَرَ يُؤْخَذُ مِنْهَا مَا يُؤْخَذُ مِنْ الْإِبِلِ، يَعْنِي فِي الزَّكَاةِ، قَالَ: وَقَدْ سُئِلَ عَنْهَا غَيْرُهُمْ؟ فَقَالُوا: فِيهَا مَا فِي الْإِبِلِ.

L10537 Yazid—this is Yazid, the son of Hārūn or Zuraiʿ.

يَزِيدُ هَذَا هُوَ يَزِيدُ بْنُ هَارُونَ أَوْ ابْنُ زُرَيْعٍ.

L10538 Ibn Mufarrij narrated to us, Ibn al-Aʿrabī narrated to us, al-Dabarī narrated to us, Abd al-Razzāq narrated to us from Maʿmar from al-Zuhrī and Qatādah, both of whom narrated from Jābir ibn ʿAbd Allāh al-Anṣārī, who said: "For every five head of cattle, a sheep is due; for ten, two sheep are due; for fifteen, three sheep are due; and for twenty, four sheep are due."

حَدَّثَنَا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ وَقَتَادَةَ كِلَاهُمَا عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ الْأَنْصَارِيِّ قَالَ: فِي كُلِّ خَمْسٍ مِنْ الْبَقَرِ شَاةٌ، وَفِي عَشْرٍ شَاتَانِ، وَفِي خَمْسَ عَشَرَةَ ثَلَاثُ شِيَاهٍ، وَفِي عِشْرِينَ أَرْبَعُ شِيَاهٍ.

L10539 Al-Zuhri said: The prescribed zakat rates for cattle are like those for camels, except for the age determination based on teeth. When the cattle number twenty-five, one cow is due up to and including seventy-five. If they exceed seventy-five, two cows are due up to one hundred and twenty. If they exceed one hundred and twenty, one cow is due for every forty cattle.

قَالَ الزُّهْرِيُّ: فَرَائِضُ الْبَقَرِ مِثْلُ فَرَائِضِ الْإِبِلِ، غَيْرَ الْأَسْنَانِ فِيهَا، فَإِذَا كَانَتْ الْبَقَرُ خَمْسًا وَعِشْرِينَ فَفِيهَا بَقَرَةٌ إِلَى خَمْسٍ وَسَبْعِينَ، فَإِذَا زَادَتْ عَلَى خَمْسٍ وَسَبْعِينَ فَفِيهَا بَقَرَتَانِ إِلَى مِائَةٍ وَعِشْرِينَ فَإِذَا زَادَتْ عَلَى مِائَةٍ وَعِشْرِينَ فَفِي كُلِّ أَرْبَعِينَ بَقَرَةٌ.

L10540–10542 Az-Zuhri said: It has reached us that their statement, "The Prophet—peace and blessings of Allah be upon him—said: 'For every thirty cattle, a male calf in its first year; and for every forty cattle, a cow that has entered its third year,'" was a concessionary ruling for the people of Yemen. This ruling was no longer transmitted afterward. Hammam narrated to us: ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bājī narrated to us; ʿAbdullāh ibn Yūnus narrated to us; Baqī ibn Makhlad narrated to us; Abū Bakr ibn Abī Shaybah narrated to us; ʿAbd al-Aʿlā narrated from Dāwūd from ʿIkrimah ibn Khālid, who said: I was appointed over the obligatory alms of the region of ʿAkk. I met scholars among those who had paid obligatory alms during the time of Allah's Messenger—peace and blessings of Allah be upon him—and they differed in my presence. Some said: "Set it equivalent to the obligatory alms for camels." Others said: "For thirty cattle, a male calf in its first year," while others said: "For forty cattle, a cow that has entered its third year." ʿAbdullāh ibn Rabīʿ narrated to us: ʿAbdullāh ibn Muḥammad ibn ʿUthmān narrated to us; Aḥmad ibn Khālid narrated to us; ʿAlī ibn ʿAbd al-ʿAzīz narrated to us; al-Ḥajjāj ibn

قَالَ الزُّهْرِيُّ: وَبَلَغَنَا أَنَّ قَوْلَهُمْ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فِي كُلِّ ثَلَاثِينَ تَبِيعٌ، وَفِي كُلِّ أَرْبَعِينَ بَقَرَةٌ» أَنَّ ذَلِكَ كَانَ تَخْفِيفًا لِأَهْلِ الْيَمَنِ، ثُمَّ كَانَ هَذَا بَعْدَ ذَلِكَ لَا يُرْوَى -: حَدَّثَنَا حُمَامٌ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ ثنا عَبْدُ اللَّهِ بْنُ يُونُسَ ثنا بَقِيُّ بْنُ مَخْلَدٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا عَبْدُ الْأَعْلَى عَنْ دَاوُد عَنْ عِكْرِمَةَ بْنِ خَالِدٍ قَالَ: اُسْتُعْمِلْت عَلَى صَدَقَاتِ عَكَّ، فَلَقِيت أَشْيَاخًا مِمَّنْ صَدَقَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاخْتَلَفُوا عَلَيَّ، فَمِنْهُمْ مَنْ قَالَ: اجْعَلْهَا مِثْلَ صَدَقَةِ الْإِبِلِ، وَمِنْهُمْ مَنْ قَالَ: فِي ثَلَاثِينَ تَبِيعٌ، وَمِنْهُمْ مَنْ قَالَ: فِي أَرْبَعِينَ بَقَرَةٌ مُسِنَّةٌ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَأَبِي قِلَابَةَ وَآخَرُ قَالُوا:

صَدَقَاتُ الْبَقَرِ كَنَحْوِ صَدَقَاتِ الْإِبِلِ، فِي كُلِّ خَمْسٍ شَاةٌ، وَفِي كُلِّ عَشْرٍ شَاتَانِ، وَفِي خَمْسَ عَشَرَةَ ثَلَاثُ شِيَاهٍ، وَفِي عِشْرِينَ أَرْبَعُ شِيَاهٍ، وَفِي خَمْسٍ وَعِشْرِينَ بَقَرَةٌ مُسِنَّةٌ إِلَى خَمْسٍ وَسَبْعِينَ، فَإِنْ زَادَتْ فَبَقَرَتَانِ مُسِنَّتَانِ إِلَى عِشْرِينَ وَمِائَةٍ، فَإِذْ زَادَتْ فَفِي كُلِّ أَرْبَعِينَ بَقَرَةً بَقَرَةٌ مُسِنَّةٌ -: وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى عَنْ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ كَمَا ذَكَرْنَا سَوَاءً سَوَاءً -: حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا مُحَمَّدُ بْنُ عِيسَى بْنِ رِفَاعَةَ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا أَبُو عُبَيْدٍ ثنا عَبْدُ اللَّهِ بْنُ صَالِحٍ عَنِ اللَّيْثِ بْنِ سَعْدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ خَالِدٍ الْفَهْمِيِّ عَنِ الزُّهْرِيِّ عَنْ عُمَرَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ خَلْدَةَ الْأَنْصَارِيِّ أَنَّ صَدَقَةَ الْبَقَرِ صَدَقَةُ الْإِبِلِ، غَيْرَ أَنَّهُ لَا أَسْنَانَ فِيهَا.

فَهَؤُلَاءِ كُتَّابُ عُمَرَ بْنِ الْخَطَّابِ، وَجَابِرُ بْنُ عَبْدِ اللَّهِ، وَجَمَاعَةٌ أَدَّوْا الصَّدَقَاتِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمِنْ التَّابِعِينَ: سَعِيدُ بْنُ الْمُسَيِّبِ، وَعُمَرُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ خَلْدَةَ، وَالزُّهْرِيُّ، وَأَبُو قِلَابَةَ، وَغَيْرُهُمْ؟ وَاحْتَجَّ هَؤُلَاءِ بِمَا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا مُحَمَّدُ بْنُ عِيسَى بْنِ رِفَاعَةَ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا أَبُو عُبَيْدٍ الْقَاسِمُ بْنُ سَلَامٍ ثنا يَزِيدُ عَنْ حَبِيبِ بْنِ أَبِي حَبِيبٍ عَنْ عَمْرِو بْنِ هَرِمٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: «إِنَّ فِي كِتَابِ صَدَقَةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي كِتَابِ عُمَرَ بْنِ الْخَطَّابِ: أَنَّ الْبَقَرَ يُؤْخَذُ مِنْهَا مِثْلُ مَا يُؤْخَذُ مِنْ الْإِبِلِ» -: وَبِمَا حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ ثنا مَعْمَرٌ قَالَ: «أَعْطَانِي سِمَاكُ بْنُ الْفَضْلِ كِتَابًا مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى مَالِكِ بْنِ كُفْلَانِسَ الْمُصْعَبِيِّينَ فَقَرَأْتُهُ فَإِذَا فِيهِ

al-Minhāl narrated to us; Hammām ibn Yaḥyā narrated from Qatādah from Saʿīd ibn al-Musayyib, Abū Qilābah, and another, who said: The obligatory alms for cows resemble those for camels: for every five, one sheep; for every ten, two sheep; for fifteen, three sheep; for twenty, four sheep; and in... For every twenty-five to seventy-five cows, one mature cow is due as Zakat. If they exceed that, two mature cows are due up to one hundred and twenty. If they increase further, then one mature cow is due for every forty cows. We also narrated it through the chain of Muhammad ibn al-Muthannā from Muḥammad ibn ʿAbdillāh al-Anṣārī from Saʿīd ibn Abī ʿArūbah from Qatādah from Saʿīd ibn al-Musayyib exactly as we mentioned, word for word. Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us; Muḥammad ibn ʿĪsā ibn Rifāʿah narrated to us; ʿAlī ibn ʿAbd al-ʿAzīz narrated to us; Abū ʿUbayd narrated to us; ʿAbdullāh ibn Ṣāliḥ narrated from al-Layth ibn Saʿd from ʿAbd al-Raḥmān ibn Khālid al-Fahmī from al-Zuhrī from ʿUmar ibn ʿAbd al-Raḥmān ibn Khaladah al-Anṣārī that the Zakat for cows follows the Zakat for camels, except that cows are not assessed by dental age categories.

L10543–10545 These are the writings of Umar ibn al-Khattab, Jabir ibn Abdullah, and a group who administered the alms during the era of the Messenger of Allah (peace and blessings be upon him). Among the successors were Saʿid ibn al-Musayyib, Umar ibn Abd al-Rahman ibn Khaldah, al-Zuhri, Abu Qilabah, and others? These individuals cited as evidence what was narrated to us by Ahmad ibn Muhammad ibn al-Jasur, who narrated from Muhammad ibn Isa ibn Rifaʿah, who narrated from Ali ibn Abd al-Aziz, who narrated from Abu Ubayd al-Qasim ibn Salam, who narrated from Yazid on the authority of Habib ibn Abi Habib on the authority of Amr ibn Harim on the authority of Muhammad ibn Abd al-Rahman, who said: “In the book of the Prophet’s alms (peace and blessings be upon him) and in the book of Umar ibn al-Khattab, it is stated that the same is taken from cattle as is taken from camels.” They also cited what was narrated to us by Hammam, who narrated from Ibn Mufarrij, who narrated from Ibn al-Aʿrabi, who narrated from al-Dabari, who narrated from Abd al-Razzaq, who narrated from Maʿmar, who said: “Simak ibn al-Fadl gave me a letter from the Prophet (peace and blessings be upon him) to Malik ibn Kuflānis al-Muṣʿabī. I read it, and in it was stated: ’For crops

فِيمَا سَقَتْ السَّمَاءُ وَالْأَنْهَارُ الْعُشْرُ، وَفِيمَا سُقِيَ بِالسَّنَا نِصْفُ الْعُشْرِ، وَفِي الْبَقَرِ مِثْلُ الْإِبِلِ» .

irrigated by rain or rivers, one-tenth is due, and for crops irrigated by labor, half of one-tenth is due.'" The ruling for cows is the same as that for camels.

وَبِمَا ذَكَرْنَا آنِفًا عَنْ الزُّهْرِيِّ: أَنَّ هَذَا هُوَ آخِرُ الْأَمْرِ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّ الْأَمْرَ بِالتَّبِيعِ: نُسِخَ بِهَذَا.

L10546 And by what we mentioned earlier from al-Zuhrī: that this is the final matter from the Messenger of Allah - peace and blessings be upon him - and that the command regarding conditional sales was abrogated by this.

وَاحْتَجُّوا بِعُمُومِ الْخَبَرِ «مَا مِنْ صَاحِبِ بَقَرٍ لَا يُؤَدِّي حَقَّهَا إلَّا بُطِحَ لَهَا يَوْمَ الْقِيَامَةِ» قَالُوا: فَهَذَا عُمُومٌ لِكُلِّ بَقَرٍ إلَّا مَا خَصَّهُ نَصٌّ أَوْ إجْمَاعٌ.

L10547 They argued based on the generality of the narration: "There is no owner of cattle who does not fulfill its due obligation except that he will be trampled for it on the Day of Resurrection." They said: This is a general ruling applying to all cattle, except what is specified by a scriptural text or scholarly consensus.

وَقَالُوا: مَنْ عَمِلَ مِثْلَ قَوْلِنَا كَانَ عَلَى يَقِينٍ بِأَنَّهُ قَدْ أَدَّى فَرْضَهُ، وَمَنْ خَالَفَهُ لَمْ يَكُنْ عَلَى يَقِينٍ مِنْ ذَلِكَ.

L10548 They said: Whoever acts in accordance with our statement is certain that he has fulfilled his religious obligation, and whoever opposes it is not certain thereof.

فَإِنَّ مَا وَجَبَ بِيَقِينٍ لَمْ يَسْقُطْ إلَّا بِمِثْلِهِ؟ وَقَالُوا: قَدْ وَافَقْنَا أَكْثَرَ خُصُومِنَا عَلَى أَنَّ الْبَقَرَ تُجْزِئُ عَنْ سَبْعَةٍ كَالْبَدَنَةِ، وَأَنَّهَا تُعَوَّضُ مِنْ الْبَدَنَةِ، وَأَنَّهَا لَا يُجْزِئُ فِي الْأُضْحِيَّةِ وَالْهَدْيِ مِنْ هَذِهِ إلَّا مَا يُجْزِئُ مِنْ تِلْكَ، وَأَنَّهَا تُشْعَرُ إذَا كَانَتْ لَهَا أَسْنِمَةٌ كَالْبُدْنِ، فَوَجَبَ قِيَاسُ صَدَقَتِهَا عَلَى صَدَقَتِهَا.

L10549 For what is established with certainty is not waived except by its equivalent. They said: We have concurred with most of our opponents that a cow suffices for seven like a sacrificial camel; that it is substituted from the sacrificial camel; that in the Udhiyah (sacrifice) and Hady (ritual offering) for this one, only what suffices for that suffices for this one; that it is ritually marked if it has humps, as with sacrificial camels; thus, the cow's ruling must be analogized to the camel's.

وَقَالُوا: لَمْ نَجِدْ فِي الْأُصُولِ فِي شَيْءٍ مِنْ الْمَاشِيَةِ نِصَابًا مَبْدَؤُهُ ثَلَاثُونَ، لَكِنْ إمَّا خَمْسَةٌ كَالْإِبِلِ، وَالْأَوَاقِي، وَالْأَوْسَاقِ، وَإِمَّا أَرْبَعُونَ كَالْغَنَمِ، فَكَانَ حَمْلُ الْبَقَرِ عَلَى الْأَكْثَرِ - وَهُوَ الْخَمْسَةُ - أَوْلَى.

L10550 They said: We did not find in the foundational sources regarding any livestock a nisab whose starting point is thirty. However, it is either five - as with camels, awqiyah, and awsāq - or forty - as with sheep and goats. Thus, applying the predominant ruling for cattle, which is five, is more appropriate.

وَقَالُوا: إنْ احْتَجُّوا بِالْخَبَرِ الَّذِي فِيهِ «فِي كُلِّ ثَلَاثِينَ تَبِيعٌ، وَفِي كُلِّ أَرْبَعِينَ مُسِنَّةٌ» فَنَعَمْ، نَحْنُ نَقُولُ: بِهَذَا، أَوْ لَيْسَ فِي ذَلِكَ الْخَبَرِ إسْقَاطُ الزَّكَاةِ عَمَّا دُونَ ثَلَاثِينَ مِنْ الْبَقَرِ، لَا بِنَصٍّ وَلَا بِدَلِيلٍ.

L10551 And they said: If they cite as evidence the report stating, "For every thirty cows, a tabīʿ (one-year-old calf) is due, and for every forty, a musinnah (two-year-old cow) is due," then indeed, we affirm this. However, that report does not waive zakah for fewer than thirty cows—neither by textual nor inferential evidence.

قَالَ: وَهَذَا قَوْلُ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - وَحُكْمُهُ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ الْأَنْصَارِيِّ، وَعُمَرَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ خَلْدَةَ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَالزُّهْرِيِّ، وَهَؤُلَاءِ فُقَهَاءُ أَهْلِ الْمَدِينَةِ، فَيَلْزَمُ الْمَالِكِيِّينَ اتِّبَاعُهُمْ عَلَى أَصْلِهِمْ فِي عَمَلِ أَهْلِ الْمَدِينَةِ، وَإِلَّا فَقَدْ تَنَاقَضُوا وَقَالَتْ طَائِفَةٌ: لَيْسَ فِيمَا دُونَ الثَّلَاثِينَ مِنْ الْبَقَرِ شَيْءٌ، فَإِذَا بَلَغَتْهَا فَفِيهَا تَبِيعٌ أَوْ تَبِيعَةٌ، وَهُوَ الَّذِي لَهُ سَنَتَانِ، ثُمَّ لَا شَيْءَ فِيهَا حَتَّى تَبْلُغَ أَرْبَعِينَ، فَإِذَا بَلَغَتْهَا فَفِيهَا بَقَرَةٌ مُسِنَّةٌ، لَهَا أَرْبَعُ سِنِينَ، ثُمَّ لَا شَيْءَ فِيهَا حَتَّى تَبْلُغَ سِتِّينَ فَإِذَا بَلَغَتْهَا فَفِيهَا تَبِيعَتَانِ، ثُمَّ لَا شَيْءَ فِيهَا حَتَّى تَبْلُغَ سَبْعِينَ فَإِذَا بَلَغَتْهَا فَفِيهَا مُسِنَّةٌ وَتَبِيعٌ، ثُمَّ هَكَذَا أَبَدًا، لَا شَيْءَ فِيهَا حَتَّى تَبْلُغَ عَشْرًا زَائِدَةً، فَإِذَا بَلَغَتْهَا فَفِي كُلِّ ثَلَاثِينَ مِنْ ذَلِكَ الْعَدَدِ تَبِيعٌ، وَفِي كُلِّ أَرْبَعِينَ مُسِنَّةٌ؟

L10552–10554 He said: This is the opinion and legal ruling of Umar ibn al-Khattab (may Allah be pleased with him), Jabir ibn Abdullah al-Ansari, Umar ibn Abd al-Rahman ibn Khaldah, Sa'id ibn al-Musayyib, and al-Zuhri. These are the jurists of Medina's community. The Malikis are therefore obligated to follow them according to their principle concerning the practice of Medina's people; otherwise, they would be in contradiction. A faction stated: There is nothing due on fewer than thirty cows, but when they reach that number, a one-year-old calf (tabi') or... A Tabee'ah is a two-year-old male calf. There is nothing due until the total reaches forty. When it reaches forty, a Musinnah (a four-year-old cow) is due. Then there is nothing due until the total reaches sixty. When it reaches sixty, two Tabee'ahs are due. Then there is nothing due until the total reaches seventy. When it reaches seventy, a Musinnah and a Tabee'ah are due. This continues indefinitely: there is nothing due until the total increases by an additional ten. When it reaches that, for every thirty in the total a Tabee'ah is due, and for every forty a Musinnah is due.

وَهَذَا قَوْلٌ صَحَّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - مِنْ طَرِيقِ، أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ.

L10555 This is an authentic statement narrated from Ali ibn Abi Talib—may Allah be pleased with him—through the chain of Abu Ishaq from Asim ibn Ḍamrah from Ali (ibn Abi Talib).

وَرُوِّينَاهُ مِنْ طَرِيقِ نَافِعٍ عَنْ مُعَاذِ بْنِ جَبَلٍ -: وَمِنْ طَرِيقِ عِكْرِمَةَ بْنِ خَالِدٍ عَنْ قَوْمٍ صَدَّقُوا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: وَمِنْ طَرِيقِ ابْنِ أَبِي لَيْلَى عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ أَبِي الْبَخْتَرِيِّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ لَيْسَ فِيمَا دُونَ الثَّلَاثِينَ مِنْ الْبَقَرِ شَيْءٌ -: وَهُوَ قَوْلُ الشَّعْبِيِّ، وَشَهْرِ بْنِ حَوْشَبٍ، وَطَاوُسٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَسُلَيْمَانَ بْنِ مُوسَى، وَالْحَسَنِ الْبَصْرِيِّ، وَذَكَرَهُ الزُّهْرِيُّ عَنْ أَهْلِ الشَّامِ، وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي سُلَيْمَانَ وَرِوَايَةٌ غَيْرُ مَشْهُورَةٍ عَنْ أَبِي حَنِيفَةَ؟ وَاحْتَجَّ هَؤُلَاءِ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ إبْرَاهِيمَ، وَأَبِي وَائِلٍ كِلَاهُمَا عَنْ مَسْرُوقٍ عَنْ مُعَاذٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَهُ إلَى الْيَمَنِ وَأَمَرَهُ أَنْ يَأْخُذَ

L10556–10558 We have transmitted it through the chain of Nāfi' from Mu'ādh ibn Jabal; through the chain of 'Ikrimah ibn Khālid from a group who attested during the era of Allah's Messenger - peace and blessings of Allah be upon him; and through the chain of Ibn Abī Laylā from 'Amr ibn Murrah from Abī al-Bakhtarī from Abī Sa'īd al-Khudrī: "There is nothing due on fewer than thirty cattle." This is the position of al-Sha'bī, Shahr ibn Ḥawshab, Ṭāwūs, 'Umar ibn 'Abd al-'Azīz, al-Ḥakam ibn 'Utaybah, Sulaymān ibn Mūsā, al-Ḥasan al-Baṣrī - with al-Zuhrī attributing it to the people of Syria - and the view of Mālik, al-Shāfi'ī, Aḥmad ibn Ḥanbal, Abī Sulaymān, and a lesser-known narration from Abū Ḥanīfah. These scholars adduced as proof what we transmitted through the chains of Ibrāhīm and Abū Wā'il - both from Masrūq from Mu'ādh: "Allah's Messenger - peace and blessings of Allah be upon him - sent him to Yemen, commanding him to take from every thirty cattle a yearling male (tabī'), and from every forty cattle a mature cow

(musinnah)." Some of them stated: "a two-year-old (thaniyyah)." And through the chain of Tāwūs from Muʿādh comes a similar narration, stating that the Messenger of Allah - may Allah bless him and grant him peace - did not instruct him concerning anything less than that? From Ibn Abī Laylā and Al-Ḥakam ibn ʿUtaybah, narrating from Muʿādh: "He asked the Prophet - may Allah bless him and grant him peace - about shortfalls below the Zakāt threshold between thirty and forty, and between forty and fifty. He replied: 'There is nothing in them'?" Through the chain of Al-Shaʿbī, it is narrated: "The Messenger of Allah - may Allah bless him and grant him peace - wrote to the people of Yemen: For every thirty cows, a one-year-old calf (whose horns have begun to straighten); and for every forty cows, a cow that has completed two years."

مِنْ كُلِّ ثَلَاثِينَ مِنْ الْبَقَرِ تَبِيعًا، وَمِنْ كُلِّ أَرْبَعِينَ بَقَرَةً مُسِنَّةً» وَقَالَ بَعْضُهُمْ: ثَنِيَّةٌ وَمِنْ طَرِيقِ طَاوُسٍ عَنْ مُعَاذٍ مِثْلُهُ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَأْمُرْهُ فِيمَا دُونَ ذَلِكَ بِشَيْءٍ؟ وَعَنْ ابْنِ أَبِي لَيْلَى وَالْحَكَمِ بْنِ عُتَيْبَةَ عَنْ مُعَاذٍ: «أَنَّهُ سَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْأَوْقَاصِ، مَا بَيْنَ الثَّلَاثِينَ إلَى الْأَرْبَعِينَ، وَمَا بَيْنَ الْأَرْبَعِينَ إلَى الْخَمْسِينَ؟ قَالَ: لَيْسَ فِيهَا شَيْءٌ» ؟ وَمِنْ طَرِيقِ الشَّعْبِيِّ قَالَ: «كَتَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى أَهْلِ الْيَمَنِ: فِي كُلِّ ثَلَاثِينَ بَقَرَةً تَبِيعٌ جَذَعٌ قَدْ اسْتَوَى قَرْنَاهُ وَفِي كُلِّ أَرْبَعِينَ بَقَرَةً بَقَرَةٌ مُسِنَّةٌ» .

L10559 From the path of Ibn Wahb, from Ibn Lahīʿah, from ʿUmarah ibn Ghaziyyah, from ʿAbdullāh ibn Abī Bakr, who informed him that this is the book of the Messenger of Allah—peace and blessings be upon him—to ʿAmr ibn Ḥazm: "The obligations regarding cows: there is no zakāh due on fewer than thirty cows. When they reach thirty, a healthy male weaned calf is due, up to forty. When they reach forty, an aged cow is due, up to seventy. When they reach seventy, a cow and a weaned calf are due. When they reach eighty, two aged cows are due, continuing in this proportion." And as we have narrated through the path of Sulaymān ibn Dāwūd al-Jazarī, from al-Zuhrī, from Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm, from his father, from his grandfather: "The Messenger of Allah—peace and blessings be upon him—wrote to the people of Yemen a document containing the obligations and traditions, and sent it with ʿAmr ibn Ḥazm. This is its transcript, and in it: For every thirty yearling cows, a healthy weaned male or female calf is due, and for every forty yearling cows, an aged cow is due."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ عُمَارَةَ بْنِ غَزِيَّةَ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ أَخْبَرَهُ أَنَّ هَذَا كِتَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِعَمْرِو بْنِ حَزْمٍ «فَرَائِضُ الْبَقَرِ لَيْسَ فِيمَا دُونَ الثَّلَاثِينَ مِنْ الْبَقَرِ صَدَقَةٌ، فَإِذَا بَلَغَتْ ثَلَاثِينَ فَفِيهَا عِجْلٌ رَائِعٌ جَذَعٌ، إلَى أَنْ تَبْلُغَ أَرْبَعِينَ، فَإِذَا بَلَغَتْ أَرْبَعِينَ فَفِيهَا بَقَرَةٌ مُسِنَّةٌ، إلَى أَنْ تَبْلُغَ سَبْعِينَ، فَإِذَا بَلَغَتْ سَبْعِينَ فَإِنَّ فِيهَا بَقَرَةً وَعِجْلًا جَذَعًا، فَإِذَا بَلَغَتْ ثَمَانِينَ فَفِيهَا مُسِنَّتَانِ، ثُمَّ عَلَى هَذَا الْحِسَابِ» -: وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ سُلَيْمَانَ بْنِ دَاوُد الْجَزَرِيِّ عَنْ الزُّهْرِيِّ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَبَ إلَى أَهْلِ الْيَمَنِ كِتَابًا فِيهِ الْفَرَائِضُ وَالسُّنَنُ، وَبَعَثَهُ مَعَ عَمْرِو بْنِ حَزْمٍ، وَهَذِهِ نُسْخَتُهُ وَفِيهِ فِي كُلِّ ثَلَاثِينَ بَاقُورَةً تَبِيعٌ جَذَعٌ أَوْ جَذَعَةٌ، وَفِي كُلِّ أَرْبَعِينَ بَاقُورَةً بَقَرَةٌ» .

L10560–10562 And by what Ahmad ibn Muhammad al-Talamanki narrated to us: Ibn Mufarrij narrated to us, Muhammad ibn Ayyub al-Raqqi narrated to us. Ahmad ibn Amr al-Bazzar narrated to us: Abdullah ibn Ahmad ibn Shabbawayh al-Marwazi narrated to us: Haywah ibn Shurayh narrated to us: Baqiyyah

وَبِمَا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيّ ثنا ابْنُ مُفَرِّجٍ ثنا مُحَمَّدُ بْنُ أَيُّوبَ الرَّقِّيُّ ثنا أَحْمَدُ بْنُ عَمْرٍو الْبَزَّارُ ثنا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ شَبَّوَيْهِ الْمَرْوَزِيّ ثنا حَيْوَةُ بْنُ شُرَيْحٍ ثنا بَقِيَّةُ عَنْ

narrated from al-Mas'udi from al-Hakam ibn 'Utaybah from Tawus from Ibn Abbas, who said: "When the Messenger of Allah—peace be upon him—sent Mu'adh to Yemen, he commanded him to take from every thirty cattle a one-year-old bull or heifer, and from every forty cattle a cow that has reached two years." They asked: "What about amounts between thirty and forty?" He said: "The Messenger of Allah—peace be upon him—did not command me regarding them." When Mu'adh came to the Messenger of Allah—peace be upon him—he asked him, and he replied: "There is nothing due on them."

الْمَسْعُودِيِّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: «لَمَّا بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُعَاذًا إلَى الْيَمَنِ أَمَرَهُ أَنْ يَأْخُذَ مِنْ كُلِّ ثَلَاثِينَ مِنْ الْبَقَرِ تَبِيعًا أَوْ تَبِيعَةً جَذَعًا أَوْ جَذَعَةً، وَمِنْ كُلِّ أَرْبَعِينَ بَقَرَةً بَقَرَةً مُسِنَّةً، قَالُوا: فَالْأَوْقَاصُ؟ قَالَ: مَا أَمَرَنِي فِيهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِشَيْءٍ؛ فَلَمَّا قَدِمَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَأَلَهُ، فَقَالَ: لَيْسَ فِيهَا شَيْءٌ» .

L10563 Abu Muhammad said: "This is all they have adduced as evidence. We have scrutinized it for them more thoroughly—as we know—than they have scrutinized it for themselves."

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا احْتَجُّوا بِهِ، فَقَدْ تَقَصَّيْنَاهُ لَهُمْ بِأَكْثَرَ مِمَّا - نَعْلَمُ - تَقَصَّوْهُ لِأَنْفُسِهِمْ.

L10564–10566 A group said: There is nothing due for fewer than thirty cattle. When cattle reach thirty, a year-old calf is due. Then nothing is due until they reach forty. When they reach forty, a two-year-old cow is due. Then nothing is due until they reach fifty. When they reach fifty, a cow and a quarter (of a cow) are due. Then nothing is due until they reach seventy. When they reach seventy, a year-old calf and a two-year-old cow are due. We have narrated this through the chain of Al-Ḥajjāj ibn al-Minhāl from Ḥammād ibn Salamah and from Ḥammād ibn Abī Sulaymān from Ibrāhīm, who mentioned it as we have cited. This is also an uncommon narration attributed to Abū Ḥanīfah? These individuals might conflate this with the report we previously cited through the chain of al-Ḥakam from Mu'ādh from the Prophet - peace and blessings be upon him - "Between forty and fifty, there is nothing due from cattle." Another group said: There is nothing due for fewer than thirty cattle. When they reach thirty, a year-old calf is due. Then nothing is due until they reach forty. When they reach forty, a two-year-old cow is due. If one more is added, a cow and a fortieth part (of a cow) are due. This applies similarly for each additional animal, requiring another fortieth part. For every increment beyond forty from a cow, continuing thus up to sixty. When it reaches sixty, then two male calves one year old are due; thereafter, no obligation is due unless there is an increment of ten, as we mentioned before. This is the well-known narration from Abū Ḥanīfah.

وَقَالَتْ طَائِفَةٌ: لَيْسَ فِيمَا دُونَ ثَلَاثِينَ شَيْءٌ، فَإِذَا بَلَغَتْ الْبَقَرُ ثَلَاثِينَ فَفِيهَا تَبِيعٌ، ثُمَّ لَا شَيْءَ فِيهَا حَتَّى تَبْلُغَ أَرْبَعِينَ، فَإِذَا بَلَغَتْهَا فَفِيهَا بَقَرَةٌ، ثُمَّ لَا شَيْءَ فِيهَا حَتَّى تَبْلُغَ خَمْسِينَ فَإِذَا بَلَغَتْهَا فَفِيهَا بَقَرَةٌ وَرُبْعٌ، ثُمَّ لَا شَيْءَ فِيهَا حَتَّى تَبْلُغَ سَبْعِينَ، فَإِذَا بَلَغَتْ سَبْعِينَ فَفِيهَا تَبِيعٌ وَمُسِنَّةٌ -: وَرُوِّينَا هَذَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ حَمَّادِ بْنِ سَلَمَةَ وَعَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ فَذَكَرَهُ كَمَا أَوْرَدْنَا، وَهِيَ رِوَايَةٌ غَيْرُ مَشْهُورَةٍ أَيْضًا عَنْ أَبِي حَنِيفَةَ؟ وَيُمْكِنُ أَنْ يُمَوِّهَ هَؤُلَاءِ بِالْخَبَرِ الَّذِي أَوْرَدْنَاهُ آنِفًا مِنْ طَرِيقِ الْحَكَمِ عَنْ مُعَاذٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فِيمَا بَيْنَ الْأَرْبَعِينَ وَالْخَمْسِينَ لَيْسَ فِيهَا شَيْءٌ يَعْنِي مِنْ الْبَقَرِ» وَقَالَتْ طَائِفَةٌ: لَيْسَ فِيمَا دُونَ الثَّلَاثِينَ مِنْ الْبَقَرِ شَيْءٌ، فَإِذَا بَلَغَتْ ثَلَاثِينَ فَفِيهَا تَبِيعٌ، ثُمَّ لَا شَيْءَ فِيهَا حَتَّى تَبْلُغَ أَرْبَعِينَ، فَإِذَا بَلَغَتْهَا فَفِيهَا بَقَرَةٌ مُسِنَّةٌ، فَإِنْ زَادَتْ وَاحِدَةٌ فَفِيهَا بَقَرَةٌ وَجُزْءٌ مِنْ أَرْبَعِينَ مِنْ بَقَرَةٍ، وَهَكَذَا فِي كُلِّ وَاحِدَةٍ تَزِيدُ فَفِيهَا جُزْءٌ آخَرُ زَائِدٌ مِنْ أَرْبَعِينَ جُزْءًا مِنْ بَقَرَةٍ، هَكَذَا إلَى السِّتِّينَ، فَإِذَا بَلَغَتْهَا فَفِيهَا تَبِيعَانِ، ثُمَّ

لَا شَيْءَ فِيهَا إِلَّا فِي كُلِّ عَشْرَةٍ زَائِدَةٍ كَمَا ذَكَرْنَا قَبْلُ، وَهِيَ الرِّوَايَةُ الْمَشْهُورَةُ عَنْ أَبِي حَنِيفَةَ.

L10567 It has been narrated to us through Shu'bah's narration that he said: "I asked Hammad—he is the son of Abī Sulaymān—'If there are fifty cows?'" He replied: "According to that calculation."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ قَالَ: سَأَلْت حَمَّادًا هُوَ ابْنُ أَبِي سُلَيْمَانَ - فَقُلْت إنْ كَانَتْ خَمْسِينَ بَقَرَةً؟ فَقَالَ: بِحِسَابِ ذَلِكَ.

L10568 From the chain of Abū Bakr ibn Abī Shaybah: Ibn al-Mubārak narrated to us from al-Ḥajjāj [Ibn Arṭāʾah] from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakhaʿī, who said: The owner of cattle will be held accountable for what exceeds the obligatory portion.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنُ أَبِي شَيْبَةَ: ثنا ابْنُ الْمُبَارَكِ عَنْ الْحَجَّاجِ هُوَ ابْنُ أَرْطَاةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: يُحَاسَبُ صَاحِبُ الْبَقَرِ بِمَا فَوْقَ الْفَرِيضَةِ.

L10569 And from the chain of Ibn Abi Shaybah: Zayd ibn al-Ḥubāb al-'Uklī narrated to us from Mu'āwiyah ibn Ṣāliḥ from al-'Alā' ibn al-Ḥārith from Makhūl that he said regarding zakah on cows: "The excess is calculated." Abū Muḥammad said: This is the general position of Ibrāhīm, Ḥammād, and Makhūl. Its apparent meaning is that for every unit exceeding thirty up to forty, and exceeding forty up to sixty, a share of a cow is due for each additional unit beyond the threshold.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: ثنا زَيْدُ بْنُ الْحُبَابِ الْعُكْلِيُّ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ عَنْ الْعَلَاءِ بْنِ الْحَارِثِ عَنْ مَكْحُولٍ أَنَّهُ قَالَ فِي صَدَقَةِ الْبَقَرِ: مَا زَادَ فَبِالْحِسَابِ؟ قَالَ أَبُو مُحَمَّد: هَذَا عُمُومُ إبْرَاهِيمَ، وَحَمَّادٍ، وَمَكْحُولٍ، وَظَاهِرُهُ أَنَّ كُلَّ مَا زَادَ عَلَى الثَّلَاثِينَ إلَى الْأَرْبَعِينَ وَعَلَى الْأَرْبَعِينَ إلَى السِّتِّينَ فَفِي كُلِّ وَاحِدَةٍ زَائِدَةٌ جُزْءٌ مِنْ بَقَرَةٍ.

L10570 We have reported from 'Ikrimah ibn Khalid that some elders during the time of the Messenger of Allah—may Allah bless him and grant him peace—had confirmed, stating: "For every forty cows, one cow is due," opposing those who imposed [something] on fewer than forty cows.

وَقَدْ ذَكَرْنَاهُ عَنْ عِكْرِمَةَ بْنِ خَالِدٍ أَنَّ بَعْضَ شُيُوخٍ كَانُوا قَدْ صَدَّقُوا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالُوا: فِي كُلِّ أَرْبَعِينَ بَقَرَةً بَقَرَةٌ، مُخَالِفِينَ لِمَنْ جَعَلَ فِي أَقَلَّ مِنْ الْأَرْبَعِينَ شَيْئًا.

L10571 A group held the opinion that there is no obligation for anything below fifty or above that, and that the sadaqah for cows is only one cow for every fifty perpetually thus. As Humam narrated to us from Ibn Mufarrij from Ibn al-A'rabi from al-Dabari from 'Abd al-Razzaq from Ibn Jurayj, who said: 'Amr ibn Dinar informed me, stating: The agents of Ibn al-Zubayr, Ibn 'Awf, and Ibn 'Awf's officials would collect one cow for every fifty cows and two cows for every hundred. When they increased, they took one cow for every fifty cows.

وَذَهَبَتْ طَائِفَةٌ إلَى أَنَّهُ لَيْسَ فِيمَا دُونَ الْخَمْسِينَ وَلَا مَا فَوْقَهَا شَيْءٌ، وَأَنَّ صَدَقَةَ الْبَقَرِ إنَّمَا هِيَ فِي كُلِّ خَمْسِينَ بَقَرَةً بَقَرَةٌ فَقَطْ هَكَذَا أَبَدًا كَمَا حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ قَالَ: كَانَ عُمَّالُ ابْنِ الزُّبَيْرِ، وَابْنِ عَوْفٍ وَعُمَّالِهِ، يَأْخُذُونَ مِنْ كُلِّ خَمْسِينَ بَقَرَةً بَقَرَةً؛ وَمِنْ كُلِّ مِائَةٍ بَقَرَتَيْنِ، فَإِذَا كَثُرَتْ فَفِي كُلِّ خَمْسِينَ بَقَرَةً بَقَرَةٌ.

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّ مَا حَضَرْنَا ذِكْرُهُ مِمَّا رُوِّينَاهُ مِنْ اخْتِلَافِ النَّاسِ فِي زَكَاةِ الْبَقَرِ، وَكُلُّ أَثَرٍ رُوِّينَاهُ فِيهَا وَوَجَبَ النَّظَرُ لِلْمَرْءِ لِنَفْسِهِ فِيمَا يَدِينُ بِهِ رَبَّهُ تَعَالَى فِي دِينِهِ -: فَأَوَّلُ ذَلِكَ أَنَّ الزَّكَاةَ فَرْضٌ وَاجِبٌ فِي الْبَقَرِ -: كَمَا حَدَّثَنَا عَنْ عَبْدِ اللَّهِ بْنِ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنِ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا وَكِيعٌ ثنا الْأَعْمَشُ عَنْ الْمَعْرُورِ بْنِ سُوَيْدٍ عَنْ أَبِي ذَرٍّ قَالَ " انْتَهَيْت إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ فِي ظِلِّ الْكَعْبَةِ فَذَكَرَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ «مَا مِنْ صَاحِبِ إبِلٍ وَلَا بَقَرٍ وَلَا غَنَمٍ لَا يُؤَدِّي زَكَاتَهَا إلَّا جَاءَتْ يَوْمَ الْقِيَامَةِ أَعْظَمَ مَا كَانَتْ وَأَسْمَنَهُ، تَنْطَحُهُ بِقُرُونِهَا، وَتَطَؤُهُ بِأَظْلَافِهَا، كُلَّمَا نَفِدَتْ أُخْرَاهَا عَادَتْ عَلَيْهِ أُولَاهَا حَتَّى يُقْضَى بَيْنَ النَّاسِ؟» حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَا مِنْ صَاحِبِ إبِلٍ لَا يَفْعَلُ فِيهَا حَقَّهَا إلَّا جَاءَتْ يَوْمَ الْقِيَامَةِ أَكْثَرَ مَا كَانَتْ قَطُّ، وَأُقْعِدَ لَهَا بِقَاعٍ قَرْقَرٍ تَسِيرُ عَلَيْهِ بِقَوَائِمِهَا وَأَخْفَافِهَا، وَلَا صَاحِبِ بَقَرٍ لَا يَفْعَلُ فِيهَا حَقَّهَا إلَّا جَاءَتْ يَوْمَ الْقِيَامَةِ أَكْثَرَ مَا كَانَتْ، وَأُقْعِدَ لَهَا بِقَاعٍ قَرْقَرٍ تَنْطَحُهُ بِقُرُونِهَا وَتَطَؤُهُ بِقَوَائِمِهَا» وَذَكَرَ بَاقِيَ الْخَبَرِ.

L10572–10574 Abu Muhammad said: This encompasses all we have presented from the narrations we reported regarding people's disagreements about zakah in cattle, and every transmitted report concerning it. One must personally examine what he upholds before his Lord, the Exalted, in matters of faith. The first principle in this is that zakah constitutes an obligatory duty in cattle: As narrated to us by Abdullah ibn Yusuf, narrated to us Ahmad ibn Fath, narrated to us Abdul Wahhab ibn Isa, narrated to us Ahmad ibn Muhammad, narrated to us Ahmad ibn Ali, narrated to us Muslim ibn Al-Hajjaj, narrated to us Abu Bakr ibn Abi Shaybah, narrated to us Waki', narrated to us Al-A'mash, from Al-Ma'rur ibn Suwayd, from Abu Dharr, who said: "I came to the Messenger of Allah—peace and blessings be upon him—while he was in the shade of the Kaaba. He mentioned that the Messenger of Allah—peace and blessings be upon him—said to him: 'There is no owner of camels, cattle, or sheep who fails to pay their zakah except that they will come to him on the Day of Resurrection as the largest and fattest they ever were. They will gore him with their horns and trample him with their hooves. Whenever the last of them finishes, the first returns to him—until judgment is passed among the people?'"

Narrated to us by Humam, narrated to us Ibn Mufarrij, narrated to us Ibn Al-A'rabi, narrated to us Ad-Dabari, narrated to us Abdur-Razzaq, from Ibn Jurayj, who said: Abu Az-Zubayr informed me that he heard Jabir ibn Abdullah say: "I heard the Messenger of Allah—peace and blessings be upon him—say: 'There is no owner of camels who neglects their due right except that they will come to him on the Day of Resurrection as the most numerous they ever were. A hard, resonant ground will be spread for them to walk upon him with their limbs and hooves. Nor any owner of cattle who neglects their due right except that they will come to him on the Day of Resurrection as the most numerous they ever were. A hard, resonant ground will be spread for them to gore him with their horns and trample him with their limbs.'" He then mentioned the remainder of the report.[2]

قَالَ أَبُو مُحَمَّد: فَوَجَبَ فَرْضًا طَلَبُ ذَلِكَ الْحَدِّ الَّذِي حَدَّهُ اللَّهُ تَعَالَى مِنْهَا، حَتَّى لَا يَتَعَدَّى قَالَ عَزَّ وَجَلَّ: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

L10575 Abu Muhammad said: It has become an obligatory duty to seek the limit that Allah, the Exalted, has ordained, so as not to transgress. He, the Almighty and

[2] **Hadith references (L10572):** Sahih Muslim 990a.

Majestic, said: “And whoever transgresses the limits of Allah has certainly wronged himself” [at-Talaq: 1].[3]

فَنَظَرْنَا الْقَوْلَ الْأَوَّلَ فَوَجَدْنَا الْآثَارَ الْوَارِدَةَ فِيهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُنْقَطِعَةً وَالْحُجَّةُ لَا تَجِبُ إِلَّا بِمُتَّصِلٍ، إِلَّا أَنَّهُ يَلْزَمُ الْقَائِلِينَ بِالْمُرْسَلِ وَالْمُنْقَطِعِ - مِنَ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ - أَنْ يَقُولُوا: بِهَا، وَإِلَّا فَقَدْ تَنَاقَضُوا فِي أُصُولِهِمْ وَتَحَكَّمُوا بِالْبَاطِلِ، لَا سِيَّمَا مَعَ قَوْلِ.

L10576 We examined the first opinion and found the narrations attributed to the Prophet (peace and blessings be upon him) therein to be discontinuous (munqatiʿ), while valid proof is only established through continuous chains. Yet this obliges those who uphold interrupted and incomplete narrations—among the Ḥanafīs and Mālikīs—to affirm such transmissions, otherwise they would contradict their own juridical principles and wrongfully impose invalid rulings, particularly when considering the statement...

الزُّهْرِيِّ: إِنَّ هَذِهِ الْأَخْبَارَ بِهَا نَسْخُ إِيجَابِ التَّبِيعِ، وَالْمُسِنَّةِ: فِي الثَّلَاثِينَ وَالْأَرْبَعِينَ، فَلَوْ قُبِلَ مُرْسَلُ أَحَدٍ لَكَانَ الزُّهْرِيُّ أَحَقَّ بِذَلِكَ لِعِلْمِهِ بِالْحَدِيثِ، وَلِأَنَّهُ قَدْ أَدْرَكَ طَائِفَةً مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L10577–10578 Al-Zuhri: These reports indeed contain the abrogation of the obligation regarding the one-year-old camel (tabīʿ) and the musinnah (those at thirty and forty months). If the mursal narration (where a Successor omits the Companion in the chain) of any transmitter were accepted, Al-Zuhri would be the most qualified for this acceptance due to his profound knowledge of hadith and his having met a multitude of the Companions - may Allah be pleased with them.

وَلَمْ يَحْكِ الْقَوْلَ فِي الثَّلَاثِينَ بِالتَّبِيعِ، وَفِي الْأَرْبَعِينَ بِالْمُسِنَّةِ إِلَّا عَنْ أَهْلِ الشَّامِ، لَا عَنْ أَهْلِ الْمَدِينَةِ، وَوَافَقَ الزُّهْرِيَّ عَلَى ذَلِكَ سَعِيدُ بْنُ الْمُسَيَّبِ وَغَيْرُهُ مِنْ فُقَهَاءِ الْمَدِينَةِ، فَهَذَا كُلُّهُ يُوجِبُ عَلَى الْمَالِكِيِّينَ الْقَوْلَ بِهَذَا أَوْ إِفْسَادَ أُصُولِهِمْ، وَأَمَّا نَحْنُ فَلَوْ صَحَّ - وَأُسْنِدَ - مَا خَالَفْنَاهُ أَصْلًا - وَأَمَّا احْتِجَاجُهُمْ بِعُمُومِ الْخَبَرِ «مَا مِنْ صَاحِبِ بَقَرٍ لَا يُؤَدِّي زَكَاتَهَا وَلَا يَفْعَلُ فِيهَا حَقَّهَا» وَقَوْلُهُمْ: إِنَّ هَذَا عُمُومٌ لِكُلِّ بَقَرٍ -: فَإِنَّ هَذَا لَازِمٌ لِلْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، الْمُحْتَجِّينَ بِإِيجَابِ الزَّكَاةِ فِي الْعُرُوضِ بِعُمُومِ قَوْلِ اللَّهِ تَعَالَى: {خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً} [التوبة: ١٠٣] الْآيَةَ وَالْمُحْتَجِّينَ بِهَذَا فِي وُجُوبِ الزَّكَاةِ فِي الْعَسَلِ وَسَائِرِ مَا احْتَجُّوا فِيهِ بِمِثْلِ هَذَا، لَا مُخَلِّصَ لَهُمْ مِنْهُ أَصْلًا؟ وَأَمَّا نَحْنُ فَلَا حُجَّةَ عَلَيْنَا بِهَذَا، لِأَنَّنَا - وَإِنْ كُنَّا لَا يَحِلُّ عِنْدَنَا مُفَارِقَةُ الْعُمُومِ إِلَّا لِنَصٍّ آخَرَ - فَإِنَّهُ لَا يَحِلُّ

L10579 The opinion regarding thirty requiring a tabīʿ (one-year-old calf) and forty requiring a musinnah (two-year-old cow) was narrated solely from the people of Syria, not the people of Medina. Saʿīd ibn al-Musayyib and other Medinan jurists concurred with al-Zuhrī on this matter. All this obliges the Mālikīs to either adopt this opinion or corrupt their foundational principles. As for us, even if it were authenticated and reliably transmitted, we would fundamentally oppose it.

Concerning their argument based on the generality of the narration, “There is no owner of cattle who neglects their zakāh or fails to fulfill their due right,” and their assertion that this applies universally to all cattle: this necessarily applies to the Ḥanafīs and Mālikīs—who argue for zakāh on trade goods using the generality of Allah’s verse, “Take from their wealth a charity” (Quran 9:103), and those who apply this to honey and other items. They have no escape from it whatsoever.

[3] **Qur’an references (L10575):** Qur’an 65:1 (At-Talaq).

As for us, there is no valid argument against us here. While we maintain that departing from a general ruling is impermissible unless another explicit text exists—for no legal ruling is valid without a sound textual basis—we acknowledge and testify that zakāh on cattle is an obligation ordained by Allah. He will severely punish those who neglect it unless He forgives them due to their good deeds outweighing or equaling their sins. However, this narration specifies neither the amount of zakāh due, the threshold number of cattle obligating it, nor its timing. Clarification in matters of faith is not entrusted to personal opinions or whims but to the Messenger of Allah (peace be upon him), to whom his Lord said: "To clarify to people what has been sent down to them" (Quran 16:44).[4]

L10580–10582 No authentic report from the Prophet—peace and blessings be upon him—supports what they prescribed as obligatory regarding five or more cows. A definitively confirmed consensus has established that zakat is not required for every specified number of cows. It is therefore obligatory to refrain from imposing this duty on some numbers to the exclusion of others without an explicit text from the Messenger of Allah—peace and blessings be upon him. Thus, their appeal to general principles here is invalid, for had there been an applicable general principle, we would not have opposed it. As for their claim that whoever pays zakat on cows—as they assert—is certain of having fulfilled his obligatory duty, while whoever fails to pay it—as they assert—lacks certainty of fulfilling his obligation, and that which is authentically established... An obligation established with certainty does not cease except with another certainty. This binds those who assert: "Whoever washes thoroughly in Ghusl is certain of having fulfilled his duty," and since Ghusl is obligatory with certainty, it does not cease except with another certainty like it. Similarly, those who mandate wiping the entire head in Wudu using this very proof itself—they have very many such cases. As for us, this does not apply in our view, for obligations are only established through a textual source or consensus.

L10583 Whoever adopts this method of deriving rulings seeks to impose obligations and establish religious laws through differences unsupported by textual evi-

[4]**Qur'an references (L10579):** Qur'an 9:103 (At-Tawbah); Qur'an 16:44 (An-Nahl).

شَرْعُ شَرِيعَةٍ إِلَّا بِنَصٍّ صَحِيحٍ، وَنَحْنُ نُقِرُّ وَنَشْهَدُ أَنَّ فِي الْبَقَرِ زَكَاةً مَفْرُوضَةً يُعَذِّبُ اللَّهُ تَعَالَى مَنْ لَمْ يُؤَدِّهَا الْعَذَابَ الشَّدِيدَ، مَا لَمْ يَغْفِرْ لَهُ بِرُجُوحِ حَسَنَاتِهِ أَوْ مُسَاوَاتِهَا لِسَيِّئَاتِهِ، إِلَّا أَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ بَيَانُ الْمِقْدَارِ الْوَاجِبِ فِي الزَّكَاةِ مِنْهَا، وَلَا بَيَانَ الْعَدَدِ الَّذِي تَجِبُ فِيهِ الزَّكَاةُ مِنْهَا، وَلَا مَتَى تُؤَدَّى؛ وَلَيْسَ الْبَيَانُ لِلدِّيَانَةِ مَوْكُولًا إِلَى الْآرَاءِ وَالْأَهْوَاءِ؛ بَلْ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي قَالَ لَهُ رَبُّهُ وَبَاعِثُهُ {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] .

وَلَمْ يَصِحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا أَوْجَبُوهُ فِي الْخَمْسِ فَصَاعِدًا مِنْ الْبَقَرِ، وَقَدْ صَحَّ الْإِجْمَاعُ الْمُتَيَقَّنُ بِأَنَّهُ لَيْسَ فِي كُلِّ عَدَدٍ مِنْ الْبَقَرِ زَكَاةٌ؛ فَوَجَبَ التَّوَقُّفُ عَنْ إيجَابِ فَرْضِ ذَلِكَ فِي عَدَدٍ دُونَ عَدَدٍ بِغَيْرِ نَصٍّ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؛ فَسَقَطَ تَعَلُّقُهُمْ بِالْعُمُومِ هَاهُنَا، وَلَوْ كَانَ عُمُومًا يُمْكِنُ اسْتِعْمَالُهُ لَمَا خَالَفْنَاهُ؟ وَأَمَّا قَوْلُهُمْ: إنَّ مَنْ زَكَّى الْبَقَرَ - كَمَا قَالُوا - فَهُوَ عَلَى يَقِينٍ مِنْ أَنَّهُ قَدْ أَدَّى فَرْضَهُ الْوَاجِبَ عَلَيْهِ وَمَنْ لَمْ يُزَكِّهَا - كَمَا قَالُوا - فَلَيْسَ عَلَى يَقِينٍ مِنْ أَنَّهُ أَدَّى فَرْضَهُ؛ وَأَنَّ مَا صَحَّ بِيَقِينٍ وُجُوبُهُ لَمْ يَسْقُطْ إلَّا بِيَقِينٍ آخَرَ -: فَهَذَا لَازِمٌ لِمَنْ قَالَ: إنَّ مَنْ تَدَلَّكَ فِي الْغُسْلِ فَهُوَ عَلَى يَقِينٍ مِنْ أَنَّهُ قَدْ أَدَّى فَرْضَهُ؛ وَالْغُسْلُ وَاجِبٌ بِيَقِينٍ؛ فَلَا يَسْقُطُ إلَّا بِيَقِينٍ مِثْلِهِ؛ وَلِمَنْ أَوْجَبَ مَسْحَ جَمِيعِ الرَّأْسِ فِي الْوُضُوءِ بِهَذِهِ الْحُجَّةِ نَفْسِهَا؛ وَمِثْلُ هَذَا لَهُمْ كَثِيرٌ جِدًّا وَأَمَّا نَحْنُ فَإِنَّ هَذَا لَا يَلْزَمُ عِنْدَنَا؛ لِأَنَّ الْفَرَائِضَ لَا تَجِبُ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ.

وَمَنْ سَلَكَ هَذِهِ الطَّرِيقَ فِي الِاسْتِدْلَالِ فَإِنَّهُ يُرِيدُ إيجَابَ الْفَرَائِضِ وَشَرْعَ الشَّرَائِعِ بِاخْتِلَافٍ؛ لَا نَصَّ فِيهِ، وَهَذَا بَاطِلٌ؛ وَلَمْ يَتَّفِقْ قَطُّ عَلَى وُجُوبِ إيعَابِ جَمِيعِ الرَّأْسِ

dence, and this is invalid. There has never been consensus on the obligation of fully encompassing the entire head in ablution, nor on scrubbing during the ritual bath, nor on imposing zakah from five cows upwards to fifty. Their method of derivation would only be valid if we first agreed with them on the obligation of all these rulings and then abolished their obligation without evidence; yet we will never agree with them on the obligation of a bath involving scrubbing, nor on wiping the entire head, nor on imposing zakah from five cows upwards. Rather, we agree with them on the obligation of the bath without scrubbing, on wiping part of the head—not all of it—and on imposing zakah for a certain number of cows, not every number. They have added, without textual evidence or consensus, the obligation of scrubbing, wiping the entire head, and zakah from five cows upwards. This constitutes legislation without textual evidence or consensus, and this is not permissible. This distinction must be clearly defined to prevent those who obscure truth from confusing the matter by falsely claiming consensus where none exists, establishing religious laws without evidence, and contradicting definitively established consensus. And success is from Allah, the Most High.

فِي الْوُضُوءِ وَلَا عَلَى التَّدَلُّكِ فِي الْغُسْلِ، وَلَا عَلَى إيجَابِ الزَّكَاةِ فِي خَمْسٍ مِنْ الْبَقَرِ فَصَاعِدًا إلَى الْخَمْسِينَ وَإِنَّمَا كَانَ يَكُونُ اسْتِدْلَالُهُمْ هَذَا صَحِيحًا لَوْ وَافَقْنَاهُمْ عَلَى وُجُوبِ كُلِّ ذَلِكَ ثُمَّ أَسْقَطْنَا وُجُوبَهُ بِلَا بُرْهَانٍ، وَنَحْنُ لَنْ نُوَافِقَهُمْ قَطُّ عَلَى وُجُوبِ غُسْلٍ فِيهِ تَدَلُّكٌ، وَلَا عَلَى إيجَابِ مَسْحِ جَمِيعِ الرَّأْسِ، وَلَا عَلَى إيجَابِ زَكَاةٍ فِي خَمْسٍ مِنْ الْبَقَرِ فَصَاعِدًا، وَإِنَّمَا وَافَقْنَاهُمْ عَلَى إيجَابِ الْغُسْلِ دُونَ تَدَلُّكٍ، وَعَلَى إيجَابِ مَسْحِ بَعْضِ الرَّأْسِ لَا كُلِّهِ، وَعَلَى وُجُوبِ الزَّكَاةِ فِي عَدَدٍ مَا مِنْ الْبَقَرِ لَا فِي كُلِّ عَدَدٍ مِنْهَا، فَزَادُوا هُمْ - بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ - إيجَابَ التَّدَلُّكِ، وَمَسْحَ جَمِيعِ الرَّأْسِ، وَالزَّكَاةَ فِي خَمْسٍ مِنْ الْبَقَرِ فَصَاعِدًا، وَهَذَا شَرْعٌ بِلَا نَصٍّ وَلَا إجْمَاعٍ، وَهَذَا لَا يَجُوزُ، فَهَذَا يَلْزَمُ ضَبْطُهُ، لِئَلَّا يُمَوِّهَ فِيهِ أَهْلُ التَّمْوِيهِ بِالْبَاطِلِ، فَيَدَّعُوا إجْمَاعًا حَيْثُ لَا إجْمَاعَ، وَيُشَرِّعُوا الشَّرَائِعَ بِغَيْرِ بُرْهَانٍ، وَيُخَالِفُوا الْإِجْمَاعَ الْمُتَيَقَّنَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L10584 As for their argument by applying analogy from camels to cows concerning zakat, it constitutes a bindingly necessary consequence for the adherents of analogy—an inescapable necessity. Were any analogy to be valid, this would indeed be a valid instance of it. We know of no difference in the ruling between camels and cows established by consensus.

وَأَمَّا احْتِجَاجُهُمْ بِقِيَاسِ الْبَقَرِ عَلَى الْإِبِلِ فِي الزَّكَاةِ فَلَازِمٌ لِأَصْحَابِ الْقِيَاسِ لُزُومًا لَا انْفِكَاكَ لَهُ، فَلَوْ صَحَّ شَيْءٌ مِنْ الْقِيَاسِ لَكَانَ هَذَا مِنْهُ صَحِيحًا وَمَا نَعْلَمُ فِي الْحُكْمِ بَيْنَ الْإِبِلِ، وَالْبَقَرِ فَرْقًا مُجْمَعًا عَلَيْهِ.

L10585–10587 Indeed, it would logically compel anyone who analogizes the dowry (mahr) that legitimizes a Muslim woman's marital relations in marriage to the amount for which a thief's hand is amputated; who analogizes the punishment for drinking wine to the punishment for false accusation of zinā; who analogizes scammony to wheat and dates; who analogizes iron, lead, and copper to gold and silver; who analogizes gypsum to wheat and dates in riba; who analogizes walnuts to wheat in riba—along with all such absurd analogies and those spurious, flimsy justifications—to analogize cows to camels in zakat. Otherwise, he would have... They have governed by falsehood. As for us, all analogy is invalid in our view. Regarding their statement: "We found

وَلَقَدْ كَانَ يَلْزَمُ مَنْ يَقِيسُ مَا يَسْتَحِلُّ بِهِ فَرْجَ الْمَرْأَةِ الْمُسْلِمَةِ فِي النِّكَاحِ مِنْ الصَّدَاقِ عَلَى مَا تُقْطَعُ فِيهِ يَدُ السَّارِقِ، وَمَنْ يَقِيسُ حَدَّ الشَّارِبِ عَلَى حَدِّ الْقَاذِفِ، وَمَنْ يَقِيسُ السَّقَمُونْيَا عَلَى الْقَمْحِ وَالتَّمْرِ، وَيَقِيسُ الْحَدِيدَ، وَالرَّصَاصَ وَالصُّفْرَ: عَلَى الذَّهَبِ، وَالْفِضَّةِ، وَيَقِيسُ الْجِصَّ عَلَى الْبُرِّ وَالتَّمْرِ، فِي الرِّبَا، وَيَقِيسُ الْجَوْزَ عَلَى الْقَمْحِ فِي الرِّبَا، وَسَائِرِ تِلْكَ الْمَقَايِيسِ السَّخِيفَةِ وَتِلْكَ الْعِلَلِ الْمُفْتَرَاةِ الْغَثَّةِ -: أَنْ يَقِيسَ الْبَقَرَ عَلَى الْإِبِلِ

no specification in the foundational texts requiring nineteen," this constitutes confusion and obsession in our perspective. Yet this consequence is most rigorously necessary for those who argued - falsely justifying their position on obligating zakah between forty and sixty cattle - by claiming: "We found no specification in the foundational texts requiring thirty." But these people impose arbitrary rulings. Thus all their arguments against us collapse, and this necessary consequence becomes evident for Hanafis, Malikis, and Shafiʿis - particularly those who uphold the renowned opinion attributed to Abu Hanifah regarding cattle zakah, in which he did not rely on any foundational basis whatsoever. Then we examined the position of those who obligate a two-year-old male calf for thirty cattle and a three-year-old cow for forty, while requiring nothing between these numbers or beyond forty up to sixty. We found all the narrations they cited as evidence from Muʿadh and others to be transmissions with interrupted chains, except Baqiyya's hadith. However, Masruq never met Muʿadh, and Baqiyya is weak - his transmissions cannot constitute proof. Wakiʿ and others dismissed him. Juridical proof is only established through authenticated narrations transmitted by reliable authorities.

L10588 If it is said: "Masruq—though he did not meet Mu'adh—was present in Yemen during Mu'adh's residence there and witnessed his rulings," then this knowledge he holds from Mu'adh is through collective transmission.

L10589 We said: If Masruq—the trustworthy, unblemished imam—had claimed that all of them informed him of this from Muʿadh, it would have constituted decisive proof. However, he never stated this at all, and it is impermissible to falsely attribute to Masruq—may Allah have mercy on him—what he did not say, thus lying against him. Yet since it is superficially possible that Masruq held this report through mass transmission, a reliable narrator, or someone unworthy of being cited, it becomes invalid to assert definitive rulings in Allah's religion or about His Messenger—peace be upon him—based on conjecture, which is the falsest of reports. We firmly hold that had this report reached Masruq through a trustworthy source, he would not have concealed it. Had it been authentic from the Messenger of Allah—peace be upon him—Allah the Exalted, the Guarantor of preserving the revelation sent to His

فِي الزَّكَاةِ، وَإِلَّا فَقَدْ تَحَكَّمُوا بِالْبَاطِلِ، وَأَمَّا نَحْنُ فَالْقِيَاسُ كُلُّهُ عِنْدَنَا بَاطِلٌ وَأَمَّا قَوْلُهُمْ: لَمْ نَجِدْ فِي الْأُصُولِ مَا يَكُونُ وَقْصُهُ ثَلَاثِينَ، فَإِنَّهُ عِنْدَنَا تَخْلِيطٌ وَهَوَسٌ لَكِنَّهُ لَازِمٌ أَصَحُّ لُزُومٍ لِمَنْ قَالَ - مُحْتَجًّا لِبَاطِلٍ قَوْلُهُ فِي إِيجَابِ الزَّكَاةِ مَا بَيْنَ الْأَرْبَعِينَ وَالسِّتِّينَ مِنْ الْبَقَرِ -: إِنَّنَا لَمْ نَجِدْ فِي الْأُصُولِ مَا يَكُونُ وَقْصُهُ تِسْعَةَ عَشَرَ، وَلَكِنَّ الْقَوْمَ مُتَحَكِّمُونَ؟ فَسَقَطَ كُلُّ مَا احْتَجُّوا بِهِ عَنَّا، وَظَهَرَ لُزُومُهُ لِلْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، لَا سِيَّمَا لِمَنْ قَالَ: بِالْقَوْلِ الْمَشْهُورِ عَنْ أَبِي حَنِيفَةَ فِي زَكَاةِ الْبَقَرِ، الَّذِي لَمْ يَتَعَلَّقْ فِيهِ بِشَيْءٍ أَصْلًا ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ أَوْجَبَ فِي الثَّلَاثِينَ تَبِيعًا، وَفِي الْأَرْبَعِينَ مُسِنَّةً، وَلَمْ يُوجِبْ بَيْنَ ذَلِكَ وَلَا بَعْدَ الْأَرْبَعِينَ إِلَى السِّتِّينَ شَيْئًا -: فَوَجَدْنَا الْآثَارَ الَّتِي احْتَجُّوا بِهَا عَنْ مُعَاذٍ وَغَيْرِهِ مُرْسَلَةً كُلَّهَا، إِلَّا حَدِيثَ بَقِيَّةَ؛ لِأَنَّ مَسْرُوقًا لَمْ يَلْقَ مُعَاذًا، وَبَقِيَّةَ ضَعِيفٌ لَا يُحْتَجُّ بِنَقْلِهِ، أَسْقَطَهُ وَكِيعٌ وَغَيْرُهُ، وَالْحُجَّةُ لَا تَجِبُ إِلَّا بِالْمُسْنَدِ مِنْ نَقْلِ الثِّقَاتِ.

فَإِنْ قِيلَ: إِنَّ مَسْرُوقًا وَإِنْ كَانَ لَمْ يَلْقَ مُعَاذًا فَقَدْ كَانَ بِالْيَمَنِ رَجُلًا أَيَّامَ كَوْنِ مُعَاذٍ هُنَالِكَ، وَشَاهَدَ أَحْكَامَهُ، فَهَذَا عِنْدَهُ عَنْ مُعَاذٍ بِنَقْلِ الْكَافَّةِ.

قُلْنَا: لَوْ أَنَّ مَسْرُوقًا ذَكَرَ أَنَّ الْكَافَّةَ أَخْبَرَتْهُ بِذَلِكَ عَنْ مُعَاذٍ لَقَامَتْ الْحُجَّةُ بِذَلِكَ، فَمَسْرُوقٌ هُوَ الثِّقَةُ الْإِمَامُ غَيْرُ الْمُتَّهَمِ: لَكِنَّهُ لَمْ يَقُلْ قَطُّ هَذَا، وَلَا يَحِلُّ أَنْ يُقَوَّلَ مَسْرُوقٌ - رَحِمَهُ اللَّهُ - مَا لَمْ يَقُلْ فَيُكْذَبُ عَلَيْهِ، وَلَكِنْ لَمَّا أَمْكَنَ فِي ظَاهِرِ الْأَمْرِ أَنْ يَكُونَ عِنْدَ مَسْرُوقٍ هَذَا الْخَبَرُ عَنْ تَوَاتُرٍ، أَوْ عَنْ ثِقَةٍ، أَوْ عَمَّنْ لَا تَجُوزُ الرِّوَايَةُ عَنْهُ -: لَمْ يَجُزْ الْقَطْعُ فِي دِينِ اللَّهِ تَعَالَى وَلَا عَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالظَّنِّ الَّذِي هُوَ أَكْذَبُ الْحَدِيثِ، وَنَحْنُ نَقْطَعُ أَنَّ هَذَا الْخَبَرَ لَوْ كَانَ عِنْدَ مَسْرُوقٍ عَنْ ثِقَةٍ لَمَا كَتَمَهُ، وَلَوْ كَانَ صَحِيحًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا طَمَسَهُ اللَّهُ تَعَالَى الْمُتَكَفِّلُ

Prophet—peace be upon him—and the Completer of His religion, would not have obliterated it for us, leaving it to be transmitted solely through weak chains—praise be to Allah, Lord of the worlds. Moreover, even if they stubbornly insist, arguing, “It constitutes proof, and the *mursal* (disconnected) narration here is equivalent to the *musnad* (supported by a chain).”

L10590–10591 We said to them: You are not obligated; follow this precise chain of narration as transmitted by Humaam ibn Ahmad who said: ʻAbdullah ibn Muhammad ibn ʻAli al-Baajī narrated to us, from Ahmad ibn Khalid, from ʻUbayd ibn Muhammad al-Kishwārī, from Muhammad ibn Yusuf al-Ḥudhāfī, from ʻAbd al-Razzaq who said: “I am Maʻmar,” from al-Aʻmash, from Shaqiq ibn Salamah (Abu Waʼil), from Masruq ibn al-Ajdaʻ, who said: “The Messenger of Allah (peace be upon him) sent Muʻadh ibn Jabal to Yemen and commanded him to take from every adult male and female a dinar or its equivalent value in Maʻāfiri.”

L10592 Ahmad ibn Muhammad al-Jasur narrated to us: Muhammad ibn Isa ibn Rifaʻah narrated to us: Ali ibn Abd al-Aziz narrated to us: Abu Ubayd al-Qasim ibn Salam narrated to us: Jarir—that is, Ibn Abd al-Hamid—narrated from Mansur—that is, Ibn al-Muʻtamir—from al-Hakam ibn ʻUtaybah, who said: “The Messenger of Allah—peace and blessings be upon him—wrote to Muʻadh while he was in Yemen: ʼFor what is watered by the sky or irrigated by natural streams, the tenth is due. For what is irrigated by the waterwheel, half of the tenth is due. And for the pubescent male and female, a dinar or its equivalent in Muʻafiri garments is due.”’

L10593 And through him to Abū ʿUbayd: ʿUthmān ibn Ṣāliḥ narrated to us from Ibn Lahiʿah from Abū al-Aswad from ʿUrwah ibn al-Zubayr, who said: “The Messenger of Allāh—peace and blessings of Allāh be upon him—wrote to the people of Yemen: ʼWhoever adheres to Judaism or Christianity shall not be compelled to abandon it. Upon them is the jizyah: one full dinar or its equivalent in Maʿāfiri cloth for every pubescent male or female—slave or female slave. Whoever pays this to my messengers shall have the covenant of Allāh and the covenant of His Messenger. But whoever withholds it among you is an enemy of Allāh the Exalted, His Messenger, and the believers.”’

بِحِفْظِ الذِّكْرِ الْمُنَزَّلِ عَلَى نَبِيِّهِ - عَلَيْهِ السَّلَامُ - الْمُتِمِّ لِدِينِهِ -: لَنَا هَذَا الطَّمْسُ حَتَّى لَا يَأْتِيَ إِلَّا مِنْ طَرِيقٍ وَاهِيَةٍ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ وَأَيْضًا: فَإِنْ زَمُّوا أَيْدِيَهُمْ وَقَالُوا: هُوَ حُجَّةٌ، وَالْمُرْسَلُ هَاهُنَا وَالْمُسْنَدُ سَوَاءٌ.

قُلْنَا لَهُمْ: فَلَا عَلَيْكُمْ، خُذُوا مِنْ هَذِهِ الطَّرِيقِ بِعَيْنِهَا مَا حَدَّثَنَاهُ حُمَامُ بْنُ أَحْمَدَ قَالَ: ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عُبَيْدُ بْنُ مُحَمَّدٍ الْكَشْوَرُ ثنا مُحَمَّدُ بْنُ يُوسُفَ الْحُذَافِيُّ ثنا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنِ الْأَعْمَشِ عَنْ شَقِيقِ بْنِ سَلَمَةَ هُوَ أَبُو وَائِلٍ - عَنْ مَسْرُوقِ بْنِ الْأَجْدَعِ قَالَ «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُعَاذَ بْنَ جَبَلٍ إِلَى الْيَمَنِ فَأَمَرَهُ أَنْ يَأْخُذَ مِنْ كُلِّ حَالِمٍ وَحَالِمَةٍ دِينَارًا أَوْ قِيمَتَهُ مِنَ الْمَعَافِرِيِّ» .

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الْجَسُورُ ثنا مُحَمَّدُ بْنُ عِيسَى بْنِ رِفَاعَةَ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا أَبُو عُبَيْدٍ الْقَاسِمُ بْنُ سَلَّامٍ ثنا جَرِيرٌ هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ مَنْصُورٍ هُوَ ابْنُ الْمُعْتَمِرِ - عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ «كَتَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى مُعَاذٍ وَهُوَ بِالْيَمَنِ: أَنَّ فِيمَا سَقَتْ السَّمَاءُ أَوْ سُقِيَ غِيلًا الْعُشْرُ، وَفِيمَا سُقِيَ بِالْغَرْبِ نِصْفُ الْعُشْرِ، وَفِي الْحَالِمِ وَالْحَالِمَةِ دِينَارٌ أَوْ عِدْلُهُ مِنَ الْمَعَافِرِ» .

وَبِهِ إِلَى أَبِي عُبَيْدٍ: ثنا عُثْمَانُ بْنُ صَالِحٍ عَنِ ابْنِ لَهِيعَةَ عَنْ أَبِي الْأَسْوَدِ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ «كَتَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى أَهْلِ الْيَمَنِ: أَنَّهُ مَنْ كَانَ عَلَى يَهُودِيَّةٍ أَوْ نَصْرَانِيَّةٍ فَإِنَّهُ لَا يُفْتَنُ عَنْهَا، وَعَلَيْهِ الْجِزْيَةُ، عَلَى كُلِّ حَالِمٍ ذَكَرٍ أَوْ أُنْثَى - عَبْدٍ أَوْ أَمَةٍ - دِينَارٌ وَافٍ أَوْ عِدْلُهُ مِنَ الْمَعَافِرِ، فَمَنْ أَدَّى ذَلِكَ إِلَى رُسُلِي فَإِنَّ لَهُ ذِمَّةَ اللَّهِ وَذِمَّةَ رَسُولِهِ، وَمَنْ مَنَعَهُ مِنْكُمْ فَإِنَّهُ عَدُوٌّ لِلَّهِ تَعَالَى وَلِرَسُولِهِ وَلِلْمُؤْمِنِينَ» .

فَهَذِهِ رِوَايَةُ مَسْرُوقٍ عَنْ مُعَاذٍ، وَهُوَ حَدِيثُ زَكَاةِ الْبَقَرِ بِعَيْنِهِ، وَمُرْسَلٌ مِنْ طَرِيقِ الْحَكَمِ، وَآخَرُ مِنْ طَرِيقِ ابْنِ لَهِيعَةَ، فَإِنْ كَانَتْ مُرْسَلَاتُهُمْ فِي زَكَاةِ الْبَقَرِ صَحِيحَةً وَاجِبًا أَخْذُهَا فَمُرْسَلَاتُهُمْ هَذِهِ صَحِيحَةٌ وَاجِبٌ أَخْذُهَا، وَإِنْ كَانَتْ مُرْسَلَاتُهُمْ هَذِهِ لَا تَقُومُ بِهَا حُجَّةً فَمُرْسَلَاتُهُمْ تِلْكَ لَا تَقُومُ بِهَا حُجَّةً؟ فَإِنْ قِيلَ: فَإِنَّكُمْ تَقُولُونَ بِمَا فِي هَذِهِ الْمُرْسَلَاتِ وَلَا تَقُولُونَ: بِتِلْكَ، فَكَيْفَ هَذَا؟ قُلْنَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: مَا قُلْنَا بِهَذِهِ وَلَا بِتِلْكَ، وَمَعَاذَ اللَّهِ مِنْ أَنْ نَقُولَ بِمُرْسَلٍ لَكِنَّا أَوْجَبْنَا الْجِزْيَةَ عَلَى كُلِّ كِتَابِيٍّ بِنَصِّ الْقُرْآنِ، وَلَمْ نَخُصَّ مِنْهُ امْرَأَةً وَلَا عَبْدًا، وَأَمَّا بِهَذِهِ الْآثَارِ فَلَا؟ قَالَ أَبُو مُحَمَّدٍ: لَا سِيَّمَا الْحَنَفِيِّينَ فَإِنَّهُمْ خَالَفُوا مُرْسَلَاتِ مُعَاذٍ تِلْكَ فِي إسْقَاطِ الزَّكَاةِ عَنْ الْأَوْقَاصِ وَالْعَسَلِ -: كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ إبْرَاهِيمَ بْنِ مَيْسَرَةَ عَنْ طَاوُسٍ «أَنَّ مُعَاذَ بْنَ جَبَلٍ أُتِيَ بِوَقْصِ الْبَقَرِ وَالْعَسَلِ فَلَمْ يَأْخُذْهُ، فَقَالَ: كِلَاهُمَا لَمْ يَأْمُرْنِي فِيهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِشَيْءٍ» فَمِنْ الْبَاطِلِ أَنْ يَكُونَ حَدِيثُ مُعَاذٍ حُجَّةً إذَا وَافَقَ هَوَى الْحَنَفِيِّينَ وَرَأْيَ أَبِي حَنِيفَةَ؟ وَلَا يَكُونُ حُجَّةً إذَا لَمْ يُوَافِقْهُمَا، مَا نَدْرِي أَيُّ دِينٍ يَبْقَى مَعَ هَذَا الْعَمَلِ؟ وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ وَالضَّلَالِ وَمِنْ أَنْ يُزِيغَ قُلُوبَنَا بَعْدَ إذْ هَدَانَا فَإِنْ احْتَجُّوا بِصَحِيفَةِ عَمْرِو بْنِ حَزْمٍ قُلْنَا: هِيَ مُنْقَطِعَةٌ أَيْضًا لَا تَقُومُ بِهَا حُجَّةٌ، وَسُلَيْمَانُ بْنُ دَاوُد الْجَزَرِيُّ - الَّذِي رَوَاهَا - مُتَّفَقٌ عَلَى تَرْكِهِ وَأَنَّهُ لَا يُحْتَجُّ بِهِ.

L10594–10596 This is the narration of Masruq from Muʿādh—and it is the very *ḥadīth* concerning *zakāh* on cattle. It is a *mursal* report transmitted via al-Ḥakam's chain and another via Ibn Lahīʿah's chain. If their *mursal* narrations regarding *zakāh* on cattle are sound and obligatory, [then the ruling applies]. Taking them, these mursal reports of theirs are sound and obligatory to accept. If their mursal reports here do not constitute valid evidence, then do those mursal reports of theirs not constitute valid evidence? If it is said: "You uphold what is in these mursal reports but reject those, how is this?" We respond – and by Allah's grace we are guided: We have not upheld these nor those. We seek refuge in Allah from ever upholding any mursal report. Rather, we obligated jizyah upon every Scripturist by the Quran's explicit text, excluding neither woman nor slave. As for through these narrations, then no?

Abū Muḥammad said: This applies particularly to the Ḥanafīs, for they opposed Muʿādh's mursal reports regarding the exemption of zakāh from quantities below the threshold and honey – as narrated to us by ʿAbdullāh ibn Rabīʿ, narrated to us by ʿAbdullāh ibn Muḥammad ibn ʿUthmān, narrated to us by Aḥmad ibn Khālid, narrated to us by ʿAlī ibn ʿAbd al-ʿAzīz, narrated to us by al-Ḥajjāj ibn al-Minhāl, narrated to us by Sufyān ibn ʿUyaynah from Ibrāhīm ibn Maysarah from Ṭāwūs: "When Muʿādh ibn Jabal was presented with cattle below the zakāh threshold and honey, he refrained from collecting zakāh, stating: 'The Messenger of Allah – peace and blessings be upon him – gave me no instruction regarding either.'"

Is it not falsehood to deem Muʿādh's narration authoritative when it aligns with the Ḥanafīs' inclinations and Abū Ḥanīfah's opinion, yet dismiss it as non-authoritative when contradicting them? We do not know what religion could remain with such practice. We seek refuge in Allah from abandonment, misguidance, and hearts deviating after receiving guidance.

Should they cite the scroll of ʿAmr ibn Ḥazm, we respond: It is likewise disconnected and inadmissible as evidence. Sulaymān ibn Dāwūd al-Jazarī – its transmitter – is unanimously deemed unreliable and unqualified for evidential citation.

L10597–10599 If you refuse, persist, and presume you have seized something from it, then take it—as narrated to us by Humām ibn Aḥmad: ʿAbbās ibn Aṣbagh narrated to us from Muḥammad ibn ʿAbd al-Malik ibn Ayman from Aḥmad ibn Zuhayr ibn Ḥarb from al-Ḥakam ibn Mūsā from Yaḥyā ibn Ḥamzah from... Sulayman ibn Dawud al-Jazari narrated to us: Al-Zuhri narrated to us from Abu Bakr ibn Muhammad ibn Amr ibn Hazm, from his father, from his grandfather: "The Messenger of Allah—peace and blessings be upon him—wrote to the people of Yemen in a letter containing the fixed shares of inheritance, Sunnahs, and blood compensations. He sent it with Amr ibn Hazm, and this is a copy of it." He then cited the letter's contents, which included: "For every thirty cows, a one-year-old male or female calf; for every forty cows, a cow." It also stated: "For every five awqiyyah of silver, five dirhams. For amounts exceeding that, one dirham is due per forty dirhams, and one dinar per forty dinars."

فَإِنْ أَبَيْتُمْ وَلَجَجْتُمْ وَظَنَنْتُمْ أَنَّكُمْ شَدَدْتُمْ أَيْدِيكُمْ مِنْهَا عَلَى شَيْءٍ فَدُونَكُمُوهَا -: كَمَا حَدَّثَنَا حُمَامُ بْنُ أَحْمَدَ قَالَ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ ثنا الْحَكَمُ بْنُ مُوسَى ثنا يَحْيَى بْنُ حَمْزَةَ عَنْ سُلَيْمَانَ بْنِ دَاوُد الْجَزَرِيِّ ثنا الزُّهْرِيُّ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَبَ إِلَى أَهْلِ الْيَمَنِ بِكِتَابٍ فِيهِ الْفَرَائِضُ وَالسُّنَنُ وَالدِّيَاتُ، وَبَعَثَ بِهِ مَعَ عَمْرِو بْنِ حَزْمٍ، وَهَذِهِ نُسْخَتُهُ فَذَكَرَ الْكِتَابَ. وَفِيهِ وَفِي كُلِّ ثَلَاثِينَ بَاقُورَةً تَبِيعٌ، جَذَعٌ أَوْ جَذَعَةٌ، وَفِي كُلِّ أَرْبَعِينَ بَاقُورَةً بَقَرَةٌ، وَفِيهِ أَيْضًا وَفِي كُلِّ خَمْسِ أَوَاقٍّ مِنْ الْوَرِقِ خَمْسَةُ دَرَاهِمَ، فَمَا زَادَ فَفِي كُلِّ أَرْبَعِينَ دِرْهَمًا دِرْهَمٌ وَفِي كُلِّ أَرْبَعِينَ دِينَارًا دِينَارٌ» .

L10600 Humam narrated to us, saying: Abbas ibn Asbagh narrated to us, Muhammad ibn Abdul-Malik ibn Ayman narrated to us, Abu Abdullah Al-Kabuli in Baghdad narrated to us, Ismail ibn Abi Uways narrated to us, saying: My father narrated to me from Abdullah and Muhammad ibn Abi Bakr ibn Muhammad ibn Amr ibn Hazm from their father from their grandfather, from the Messenger of Allah (peace be upon him) that he wrote this letter to Amr ibn Hazm when he appointed him as governor of Yemen. In it was the ruling on zakah: there is no zakah due until silver reaches two hundred dirhams, at which point five dirhams are due. For every forty dirhams, one dirham is owed, and no zakah is required on amounts below forty dirhams. When gold attains a value equivalent to two hundred dirhams, then one dirham is due for every forty dirhams' worth of its value. Once the gold reaches forty dinars, one dinar is owed as zakah.

حَدَّثَنَا حُمَامٌ قَالَ: ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَبُو عَبْدِ اللَّهِ الْكَابُلِّيُّ بِبَغْدَادَ ثنا إِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ حَدَّثَنِي أَبِي عَنْ عَبْدِ اللَّهِ، وَمُحَمَّدِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِمَا عَنْ جَدِّهِمَا «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ كَتَبَ هَذَا الْكِتَابَ لِعَمْرِو بْنِ حَزْمٍ حِينَ أَمَّرَهُ عَلَى الْيَمَنِ وَفِيهِ الزَّكَاةُ لَيْسَ فِيهَا صَدَقَةٌ حَتَّى تَبْلُغَ مِائَتَيْ دِرْهَمٍ فَفِيهَا خَمْسَةُ دَرَاهِمَ، وَفِي كُلِّ أَرْبَعِينَ دِرْهَمًا دِرْهَمٌ، وَلَيْسَ فِيمَا دُونَ الْأَرْبَعِينَ صَدَقَةٌ، فَإِذَا بَلَغَتْ الذَّهَبَ قِيمَةَ مِائَتَيْ دِرْهَمٍ فَفِي قِيمَةِ كُلِّ أَرْبَعِينَ دِرْهَمًا دِرْهَمٌ، حَتَّى تَبْلُغَ أَرْبَعِينَ دِينَارًا، فَإِذَا بَلَغَتْ أَرْبَعِينَ دِينَارًا فَفِيهَا دِينَارٌ» .

L10601 Abu Uways said: This is also from the two sons of Hazm: "The prescribed rulings for the zakah on cows are: there is no zakah due on fewer than thirty. When they reach thirty, a one-year-old bull is due until they reach

forty. When they reach forty, a two-year-old cow is due until they reach sixty. When they reach sixty, two one-year-old bull calves are due."

قَالَ أَبُو أُوَيْسٍ: وَهَذَا عَنْ ابْنَيْ حَزْمٍ أَيْضًا «فَرَائِضُ صَدَقَةِ الْبَقَرِ لَيْسَ فِيمَا دُونَ ثَلَاثِينَ صَدَقَةٌ فَإِذَا بَلَغَتْ الثَّلَاثِينَ فَفِيهَا فَحْلٌ جَذَعٌ، إلَى أَنْ تَبْلُغَ أَرْبَعِينَ، فَإِذَا بَلَغَتْ أَرْبَعِينَ فَفِيهَا بَقَرَةٌ مُسِنَّةٌ إلَى أَنْ تَبْلُغَ سِتِّينَ، فَإِذَا بَلَغَتْ سِتِّينَ فَفِيهَا تَبِيعَانِ» .

L10602 Abu Muhammad said: Abu Uways is weak, and the chain is interrupted in addition to that—and by Allah, if anything from this were sound, we would not hesitate to act upon it.

قَالَ أَبُو مُحَمَّدٍ: أَبُو أُوَيْسٍ ضَعِيفٌ وَهِيَ مُنْقَطِعَةٌ مَعَ ذَلِكَ - وَوَاَللَّهِ لَوْ صَحَّ شَيْءٌ مِنْ هَذَا مَا تَرَدَّدْنَا فِي الْأَخْذِ بِهِ.

L10603–10607 Ali observed: We find that the resolve of the Malikis, Shafiʿis, and Hanafis has dissolved regarding their adherence to the aforementioned ḥadīth of Muʿādh and the scroll of Ibn Ḥazm. They have no alternative but this course—or to adopt the position that there is no [...] The zakāh on gold that does not reach forty dinars is only calculated by its equivalent value in silver, and this is the opinion of ʿAṭāʾ, al-Zuhrī, Sulaymān ibn Ḥarb, and others. The Mālikīs and Shāfiʿīs adopt the obligation of fractions below the nisāb in dirhams and the imposition of jizyah upon women and slaves among the People of the Book, or dictating religious rulings falsely—taking what they desire and abandoning what they desire. By Allah, this is more disgraceful in this worldly life and the Hereafter, more binding, and more regretful. The Ḥanafīs say: When a narrator abandons what he narrated, this indicates the invalidity of his narration. Yet al-Zuhrī himself narrated Ibn Ḥazm's scroll concerning zakāh on cattle then abandoned it. Why did they not abandon it? Instead, they claim: "He did not abandon it due to possessing superior knowledge." Had Muʿādh's Ḥadīth been authentic according to them, the earlier reports we mentioned—that zakāh on cattle parallels zakāh on camels—would have equivalent chains of transmission and would entail additional rulings impermissible to disregard. In such a case, those who adhere to those rulings would be bound to adhere to these, while adhering to these without those would constitute disobedience to the latter. Thus, are all their arguments based on textual evidences entirely invalidated? If they cling to ʿAlī, Muʿādh, and Abū Saʿīd—may Allah be pleased with them—we respond: The narration from Muʿādh is interrupted, while the narration from Abū Saʿīd is only

قَالَ عَلِيٌّ: مَا نَرَى الْمَالِكِيِّينَ وَالشَّافِعِيِّينَ، وَالْحَنَفِيِّينَ إلَّا قَدْ انْحَلَّتْ عَزَائِمُهُمْ فِي الْأَخْذِ بِحَدِيثِ مُعَاذٍ الْمَذْكُورِ وَبِصَحِيفَةِ ابْنِ حَزْمٍ، وَلَا بُدَّ لَهُمْ مِنْ ذَلِكَ، أَوْ الْأَخْذِ بِأَنْ لَا صَدَقَةَ فِي ذَهَبٍ لَمْ يَبْلُغْ أَرْبَعِينَ دِينَارًا إلَّا بِالْقِيمَةِ بِالْفِضَّةِ وَهُوَ قَوْلُ عَطَاءٍ، وَالزُّهْرِيِّ، وَسُلَيْمَانَ بْنِ حَرْبٍ وَغَيْرِهِمْ، وَأَنْ يَأْخُذَ الْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ بِوُجُوبِ الْأَوْقَاصِ فِي الدَّرَاهِمِ وَبِإِيجَابِ الْجِزْيَةِ عَلَى النِّسَاءِ وَالْعَبِيدِ مِنْ أَهْلِ الْكِتَابِ، أَوْ التَّحَكُّمِ فِي الدِّينِ بِالْبَاطِلِ فَيَأْخُذُوا مَا اشْتَهَوْا وَيَتْرُكُوا مَا اشْتَهَوْا، وَهَذِهِ وَاَللَّهِ أَخْزَى فِي الْعَاجِلَةِ وَالْآجِلَةِ وَأَلْزَمُ وَأَنْدَمُ، وَالْحَنَفِيُّونَ يَقُولُونَ: إنَّ الرَّاوِيَ إذَا تَرَكَ مَا رَوَى دَلَّ ذَلِكَ عَلَى سُقُوطِ رِوَايَتِهِ، وَالزُّهْرِيُّ هُوَ رَوَى صَحِيفَةَ ابْنِ حَزْمٍ فِي زَكَاةِ الْبَقَرِ وَتَرَكَهَا؟ فَهَلَّا تَرَكُوهَا وَقَالُوا: لَمْ يَتْرُكْهَا لَا لِفَضْلِ عِلْمٍ كَانَ عِنْدَهُ ثُمَّ لَوْ صَحَّ لَهُمْ حَدِيثُ مُعَاذٍ لَكَانَ مَا ذَكَرْنَا قَبْلُ مِنْ الْأَخْبَارِ بِأَنَّ فِي زَكَاةِ الْبَقَرِ كَزَكَاةِ الْإِبِلِ مِثْلُهَا فِي الْإِسْنَادِ وَوَارِدَةً بِحُكْمٍ زَائِدٍ لَا يَجُوزُ تَرْكُهُ، وَكَانَ الْآخِذُ بِتِلْكَ آخِذًا بِهَذِهِ، وَكَانَ الْآخِذُ بِهَذِهِ، دُونَ تِلْكَ عَاصِيًا لِتِلْكَ؟ فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ مِنْ طَرِيقِ الْآثَارِ جُمْلَةً؟ فَإِنْ تَعَلَّقُوا بِعَلِيٍّ، وَمُعَاذٍ، وَأَبِي سَعِيدٍ - رَضِيَ اللَّهُ عَنْهُمْ - قُلْنَا لَهُمْ: الْخَبَرُ عَنْ مُعَاذٍ مُنْقَطِعٌ، وَعَنْ أَبِي سَعِيدٍ لَمْ يَرْوِهِ إلَّا

reported by Muḥammad ibn Abī Laylā—who is weak. As for the narration from ʿAlī, it is authentic, yet this opinion is not authentically attributed to any other Companion besides him. We have previously transmitted narrations from ʿUmar ibn al-Khaṭṭāb and Jābir ibn ʿAbdullāh contradicting this. There is no valid proof in the opinion of one Companion when opposed by another. If you persist in clinging to ʿAlī here, then hear ʿAlī's statement through this very chain: Ḥammām narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrābī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq narrated from Maʿmar from Abū Isḥāq from ʿĀṣim ibn Ḍamrah from ʿAlī ibn Abī Ṭālib, who said: For five camels, one sheep; for ten, two sheep; for fifteen, three sheep; for twenty, four sheep; for twenty-five, five sheep; for twenty-six, a one-year-old she-camel (bint makhāḍ). If there is no bint makhāḍ, then a two-year-old male camel (ibn labūn) until they reach thirty-five. If they increase by one, a two-year-old she-camel (bint labūn) is due until they reach forty-five. If they increase by one, a three-year-old she-camel (ḥiqqah) that has been covered by a stud is due until they reach sixty. If they increase by one, a four-year-old she-camel (jadʿah) is due until they reach seventy-five. If they increase by one, then two two-year-old she-camels are due. A she-camel in her second year (labun) is due until the total reaches ninety. If they exceed ninety by one, two three-year-old she-camels (hiqqatan) mated by the male are due until the total reaches one hundred twenty. If the total increases by one beyond that, one three-year-old she-camel (hiqqah) is due for every fifty camels, and one three-year-old she-camel (bint labun) for every forty. For cows: one yearling male calf (tabi') is due for every thirty cows, and one three-year-old cow (musinnah) for every forty.

L10608 Muhammad ibn Sa'id ibn Nabat narrated to us: Ahmad ibn 'Abd al-Basir narrated to us: Qasim ibn Asbagh narrated to us: Muhammad ibn 'Abd al-Salam al-Khushani narrated to us: Muhammad ibn al-Muthanna narrated to us: 'Abd al-Rahman ibn Mahdi narrated to us: Shu'bah narrated from Abu Ishaq al-Sabi'i from 'Asim ibn Damrah from 'Ali ibn Abi Talib, who said: "If the Zakat collector takes an animal of an age above the stipulated age, he must return ten dirhams or two goats."

ابْنُ أَبِي لَيْلَى مُحَمَّدٌ - وَهُوَ ضَعِيفٌ - وَأَمَّا عَنْ عَلِيٍّ فَهُوَ صَحِيحٌ وَلَا يَصِحُّ هَذَا الْقَوْلُ مِنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - سِوَاهُ؟ وَقَدْ رُوِّينَا قَبْلُ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ خِلَافَ ذَلِكَ - وَلَا حُجَّةَ فِي قَوْلِ صَاحِبٍ إذَا خَالَفَهُ صَاحِبٌ آخَرُ ثُمَّ إنْ لَجَجْتُمْ فِي التَّعَلُّقِ بِعَلِيٍّ هَاهُنَا فَاسْمَعُوا قَوْلَ عَلِيٍّ مِنْ هَذِهِ الطَّرِيقِ نَفْسِهَا -: حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: فِي خَمْسٍ مِنْ الْإِبِلِ شَاةٌ وَفِي عَشْرٍ شَاتَانِ - وَفِي خَمْسَ عَشَرَةَ ثَلَاثُ شِيَاهٍ، وَفِي عِشْرِينَ أَرْبَعُ شِيَاهٍ، وَفِي خَمْسٍ وَعِشْرِينَ خَمْسُ شِيَاهٍ، وَفِي سِتٍّ وَعِشْرِينَ بِنْتُ مَخَاضٍ، فَإِنْ لَمْ تَكُنْ بِنْتُ مَخَاضٍ فَابْنُ لَبُونٍ ذَكَرٌ، حَتَّى تَبْلُغَ خَمْسًا وَثَلَاثِينَ، فَإِنْ زَادَتْ وَاحِدَةٌ فَفِيهَا بِنْتُ لَبُونٍ، حَتَّى تَبْلُغَ خَمْسًا وَأَرْبَعِينَ، فَإِذَا زَادَتْ وَاحِدَةٌ فَفِيهَا حِقَّةٌ طَرُوقَةُ الْفَحْلِ - أَوْ قَالَ: الْجَمَلُ - حَتَّى تَبْلُغَ سِتِّينَ فَإِذَا زَادَتْ وَاحِدَةٌ فَفِيهَا جَذَعَةٌ، حَتَّى تَبْلُغَ خَمْسًا وَسَبْعِينَ، فَإِذَا زَادَتْ وَاحِدَةٌ فَفِيهَا ابْنَتَا لَبُونٍ، حَتَّى تَبْلُغَ تِسْعِينَ، فَإِذَا زَادَتْ وَاحِدَةٌ فَفِيهَا حِقَّتَانِ طَرُوقَتَا الْفَحْلِ إلَى عِشْرِينَ وَمِائَةٍ، فَإِنْ زَادَتْ وَاحِدَةٌ فَفِي كُلِّ خَمْسِينَ حِقَّةٌ، وَفِي كُلِّ أَرْبَعِينَ بِنْتُ لَبُونٍ، وَفِي الْبَقَرِ فِي كُلِّ ثَلَاثِينَ بَقَرَةً تَبِيعٌ حَوْلِيٌّ، وَفِي كُلِّ أَرْبَعِينَ مُسِنَّةٌ.

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيِّ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا عَبْدُ الرَّحْمَنِ بْنِ مَهْدِيٍّ ثنا شُعْبَةُ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إذَا أَخَذَ الْمُصَدِّقُ سِنًّا فَوْقَ سِنٍّ رَدَّ عَشَرَةَ دَرَاهِمَ أَوْ شَاتَيْنِ.

L10609 Abu Muhammad said: We do not see the Hanafis, Malikis, and Shafi'is except that their enthusiasm has cooled in invoking the statement of 'Ali—may Allah be pleased with him—regarding the zakah on cattle. They must inevitably adhere to everything narrated from 'Ali in this very report—including what they opposed and what others among the salaf adhered to—or abandon invoking what is not authentically established from the Prophet—peace and blessings of Allah be upon him—or cease trifling with the Sunnah, jesting in matters of religion by taking what they desire and leaving what they desire. This is especially so since some of them exaggerated the gravity of this ḥadīth of 'Ali by claiming it is *musnad*. Let their opposition to it disgrace them if it is *musnad*! Had it been *musnad*, we would not have permitted opposing it. And with Allah—Exalted is He—lies success.

قَالَ أَبُو مُحَمَّد: مَا نَرَى الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ إِلَّا قَدْ بَرُدَ نَشَاطُهُمْ فِي الِاحْتِجَاجِ بِقَوْلِ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - فِي زَكَاةِ الْبَقَرِ، وَلَا بُدَّ لَهُمْ مِنْ الْأَخْذِ بِكُلِّ مَا رُوِيَ عَنْ عَلِيٍّ فِي هَذَا الْخَبَرِ نَفْسِهِ، مِمَّا خَالَفُوهُ وَأَخَذَ بِهِ غَيْرُهُمْ مِنْ السَّلَفِ، أَوْ تَرْكِ الِاحْتِجَاجِ بِمَا لَمْ يَصِحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ التَّلَاعُبِ بِالسُّنَنِ وَالْهَزْلِ فِي الدِّينِ أَنْ يَأْخُذُوا مَا أَحَبُّوا وَيَتْرُكُوا مَا أَحَبُّوا؟ لَا سِيَّمَا وَبَعْضُهُمْ هَوَّلَ فِي حَدِيثِ عَلِيٍّ هَذَا بِأَنَّهُ مُسْنَدٌ فَلَيْتَهُمْ خِلَافُهُ إنْ كَانَ مُسْنَدًا، وَلَوْ كَانَ مُسْنَدًا مَا اسْتَحْلَلْنَا خِلَافَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L10610 Therefore, no argument whatsoever remains for those who assert that only the male calf and the aged cow apply in the case of cows, nor is there any analogical reasoning supporting them in that matter. Thus, their claim is undoubtedly entirely invalid—and all praise is due to Allah, the Lord of the worlds.[5]

فَلَمْ يَبْقَ لِمَنْ قَالَ بِالتَّبِيعِ وَالْمُسِنَّةِ فَقَطْ فِي الْبَقَرِ حُجَّةٌ أَصْلًا، وَلَا قِيَاسَ مَعَهُمْ فِي ذَلِكَ فَبَطَلَ قَوْلُهُمْ جُمْلَةً بِلَا شَكٍّ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L10611 As for the statement transmitted from Abū Ḥanīfah, it lies at the pinnacle of corruption: there is no Quran to substantiate it, no sound Sunnah to uphold it, no defective narration to reinforce it, no companion's opinion to strengthen it, no analogy to obscure it, and no view supported by sound reasoning to direct it.

أُمَّا الْقَوْلُ الْمَأْثُورُ عَنْ أَبِي حَنِيفَةَ فَفِي غَايَةِ الْفَسَادِ لَا قُرْآنٌ يُعَضِّدُهُ وَلَا سُنَّةٌ صَحِيحَةٌ تَنْصُرُهُ، وَلَا رِوَايَةٌ فَاسِدَةٌ تُؤَيِّدُهُ، وَلَا قَوْلُ صَاحِبٍ يَشُدُّهُ، وَلَا قِيَاسٌ يُمَوِّهُهُ، وَلَا رَأْيٌ لَهُ وَجْهٌ يُسَدِّدُهُ.

L10612 Except that some of them said: We did not find any livestock subject to a zakat threshold below nineteen.

إلَّا أَنَّ بَعْضَهُمْ قَالَ: لَمْ نَجِدْ فِي شَيْءٍ مِنْ الْمَاشِيَةِ وَقْصًا مِنْ تِسْعَةَ عَشَرَ.

L10613 So it was said to them: "Did you not find in any aspect of zakāh on livestock a portion from a single head?"

فَقِيلَ لَهُمْ: وَلَا وَجَدْتُمْ فِي شَيْءٍ مِنْ زَكَاةِ الْمَوَاشِي جُزْءًا مِنْ رَأْسٍ وَاحِدٍ.

L10614 If they say: The evidence made it obligatory.

فَإِنْ قَالُوا: أَوْجَبَهُ الدَّلِيلُ.

L10615–10617 They were told: "You have lied; no evidence has ever necessitated that, and Allah the Exalted has not made the opinion of al-Nakhaʿī alone a proof in His religion. Indeed, we have found that the zakat thresholds vary: some-

قِيلَ لَهُمْ: كَذَبْتُمْ مَا أَوْجَبَهُ دَلِيلٌ قَطُّ، وَمَا جَعَلَ اللَّهُ تَعَالَى رَأْيَ النَّخَعِيِّ وَحْدَهُ دَلِيلًا فِي دِينِهِ: وَقَدْ وَجَدْنَا الْأَوْقَاصَ تَخْتَلِفُ، فَمَرَّةً هُوَ فِي الْإِبِلِ أَرْبَعٌ، وَمَرَّةً عَشْرَةٌ، وَمَرَّةً

[5] **Qur'an references (L10610):** Qur'an 37:182 (As-Saffat).

times four camels, sometimes ten, and sometimes...” Nine, in one instance fourteen, in another eleven, in another twenty-nine, in another eighty sheep, in another seventy-nine, in another one hundred and ninety-eight, in another ninety-nine. What indefiniteness is there in it being nineteen if valid evidence supports it? Were it not for personal desires and ignorance, there would remain nothing except what we have transmitted from the practice of Ibn al-Zubayr’s administrators and the practice of Talḥa ibn ʿAbd Allāh ibn ʿAwf—who was the son of ʿAbd al-Raḥmān ibn ʿAwf’s brother and among the foremost Successors in Medina under the Companions’ observation—and they did not object to it. We examined this matter and found no authentic report from the Messenger of Allah—peace and blessings be upon him—regarding this issue, neither through solitary reports nor mass transmission, as we previously established. Nor is there any report from the Companions—may Allah be pleased with them—uncontradicted by others. It is impermissible to derive legislation except from Allah the Exalted, whether through the Quran or through verified transmission from the Messenger of Allah—peace and blessings be upon him—via solitary or mass transmission pertaining to zakah on cattle. We found the certain, definitive consensus—unquestionably agreed upon by all Muslims past and present, upheld by the Companions and those after them—confirming that one cow is due for every fifty cows. This is an incontrovertible truth established as part of Allah’s judgment and the ruling of His Messenger—peace and blessings be upon him. Therefore, its affirmation becomes obligatory. Whatever falls short of this remains disputed, with no authoritative text requiring it, rendering its assertion impermissible.

L10618 And Allah, the Most High, has said: “Do not consume your wealth among yourselves wrongfully” [Al-Baqarah: 188].[6]

L10619 The Messenger of Allah - peace and blessings be upon him - said: “Your blood and your wealth are inviolable to you.” Therefore, it is not permissible to take a Muslim’s property, nor to obligate a Shariah injunction through a prescribed zakat without certainty from an authentic text from Allah the Exalted or His Messenger - peace and blessings be upon him.

تِسْعَةٌ، وَمَرَّةً أَرْبَعَةَ عَشَرَ، وَمَرَّةً أَحَدَ عَشَرَ، وَمَرَّةً تِسْعَةً وَعِشْرِينَ، وَمَرَّةً هُوَ فِي الْغَنَمِ ثَمَانُونَ، وَمَرَّةً تِسْعَةٌ وَسَبْعُونَ، وَمَرَّةً مِائَةٌ وَثَمَانِيَةٌ وَتِسْعُونَ، وَمَرَّةً تِسْعَةٌ وَتِسْعُونَ فَأَيُّ نَكِرَةٍ فِي أَنْ تَكُونَ تِسْعَةَ عَشَرَ إذَا صَحَّ بِذَلِكَ دَلِيلٌ؟ لَوْلَا الْهَوَى وَالْجَهْلُ فَلَمْ يَبْقَ إلَّا مَا رُوِّينَاهُ مِنْ عَمَلِ عُمَّالِ ابْنِ الزُّبَيْرِ، وَعَمَلِ طَلْحَةَ بْنِ عَبْدِ اللَّهِ بْنِ عَوْفٍ وَهُوَ ابْنُ أَخِي عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَمِنْ كِبَارِ التَّابِعِينَ جِدًّا - بِالْمَدِينَةِ بِحَضْرَةِ الصَّحَابَةِ فَلَمْ يُنْكِرُوهُ؟ فَنَظَرْنَا فِي ذَلِكَ -: فَوَجَدْنَا لَا يَصِحُّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي هَذَا مِنْ طَرِيقِ إسْنَادِ الْآحَادِ وَلَا مِنْ طَرِيقِ التَّوَاتُرِ شَيْءٌ كَمَا قَدَّمْنَا، وَلَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعَارِضُهُ غَيْرُهُ، وَلَا يَحِلُّ أَنْ تُؤْخَذَ شَرِيعَةٌ إلَّا عَنْ اللَّهِ تَعَالَى إمَّا مِنْ الْقُرْآنِ، وَإِمَّا مِنْ نَقْلٍ ثَابِتٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ الْآحَادِ وَالتَّوَاتُرِ بَيَانُ زَكَاةِ الْبَقَرِ، وَوَجَدْنَا الْإِجْمَاعَ - الْمُتَيَقَّنَ الْمَقْطُوعَ بِهِ، الَّذِي لَا خِلَافَ فِي أَنَّ كُلَّ مُسْلِمٍ قَدِيمًا وَحَدِيثًا قَالَ بِهِ، وَحَكَمَ بِهِ مِنْ الصَّحَابَةِ فَمَنْ دُونَهُمْ - قَدْ صَحَّ عَلَى أَنَّ فِي كُلِّ خَمْسِينَ بَقَرَةً: بَقَرَةٌ؛ فَكَانَ هَذَا حَقًّا مَقْطُوعًا بِهِ عَلَى أَنَّهُ مِنْ حُكْمِ اللَّهِ تَعَالَى وَحُكْمِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؛ فَوَجَبَ الْقَوْلُ بِهِ، وَكَانَ مَا دُونَ ذَلِكَ مُخْتَلَفًا فِيهِ، وَلَا نَصَّ فِي إيجَابِهِ؛ فَلَمْ يَجُزْ الْقَوْلُ بِهِ.

وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَمْ يَحِلَّ، أَخْذُ مَالِ مُسْلِمٍ، وَلَا إيجَابُ شَرِيعَةِ بِزَكَاةٍ مَفْرُوضَةٍ بِغَيْرِ يَقِينٍ، مِنْ نَصٍّ صَحِيحٍ عَنْ اللَّهِ تَعَالَى أَوْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[6] **Qur’an references (L10618):** Qur’an 2:188 (Al-Baqarah).

L10620 Let no deluded soul be deluded by their claim that acting upon their opinion was widespread, for this is false. This view was nothing but obscure during the era of the Companions—may Allah be pleased with them—and is only taken from fewer than ten of the Followers, despite disagreement among them as well. And success is from Allah.

وَلَا يَغْتَرَّنَّ مُغْتَرٌّ بِدَعْوَاهُمْ: أَنَّ الْعَمَلَ بِقَوْلِهِمْ كَانَ مَشْهُورًا؛ فَهَذَا بَاطِلٌ، وَمَا كَانَ هَذَا الْقَوْلُ إِلَّا خَامِلًا فِي عَصْرِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا يُؤْخَذُ إِلَّا عَنْ أَقَلَّ مِنْ عَشْرَةٍ مِنَ التَّابِعِينَ، بِاخْتِلَافٍ مِنْهُمْ أَيْضًا - وَبِاللَّهِ التَّوْفِيقُ.

L10621 Ali said: Then we re-examined and found that Masruq's hadith only mentioned Mu'adh's action in Yemen regarding the zakat on cattle. He undoubtedly met Mu'adh and witnessed his famous, widespread judicial ruling and practice. Thus, his transmission of this matter—along with its being a transmission from the era of Allah's Messenger (peace be upon him) through the entire community from Mu'adh without doubt—made it obligatory to adhere to it.

قَالَ عَلِيٌّ: ثُمَّ اسْتَدْرَكْنَا فَوَجَدْنَا حَدِيثَ مَسْرُوقٍ إِنَّمَا ذَكَرَ فِيهِ فِعْلَ مُعَاذٍ بِالْيَمَنِ فِي زَكَاةِ الْبَقَرِ، وَهُوَ بِلَا شَكٍّ قَدْ أَدْرَكَ مُعَاذًا وَشَهِدَ حُكْمَهُ وَعَمَلَهُ الْمَشْهُورَ الْمُنْتَشِرَ، فَصَارَ نَقْلُهُ لِذَلِكَ، وَلِأَنَّهُ عَنْ عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَقْلًا عَنِ الْكَافَّةِ عَنْ مُعَاذٍ بِلَا شَكٍّ، فَوَجَبَ الْقَوْلُ بِهِ.

[زَكَاةُ الْإِبِلِ] [مَسْأَلَةٌ الْبُخْتُ والأعرابية وَالنُّجُبُ وَالْمَهَارِيُّ يُضَمُّ بَعْضُهَا إِلَى بَعْضٍ فِي الزَّكَاةِ]

Zakat on Camels (Issue): *Al-Bukht*, *al-Aʿrabiyya*, *al-Nujub*, and *al-Mahāriyy* are combined with one another for Zakat purposes.

L10622–10623

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ زَكَاةُ الْإِبِلِ ٦٧٤ - مَسْأَلَةٌ:

L10624 In the name of Allah, the Most Gracious, the Most Merciful. Zakat on Camels: Issue 674:

الْبُخْتُ، وَالْأَعْرَابِيَّةُ، وَالنُّجُبُ، وَالْمَهَارِيُّ وَغَيْرُهَا مِنْ أَصْنَافِ الْإِبِلِ: كُلُّهَا إِبِلٌ، يُضَمُّ بَعْضُهَا إِلَى بَعْضٍ فِي الزَّكَاةِ، وَهَذَا لَا خِلَافَ فِيهِ؟ وَلَا زَكَاةَ فِي أَقَلَّ مِنْ خَمْسَةٍ مِنَ الْإِبِلِ، ذُكُورٍ أَوْ إِنَاثٍ.

L10625 Al-Bukht, Bedouin camels, noble camels, Mahari camels, and other varieties of camels: all are considered camels. They are combined when calculating zakah, with no disagreement on this matter. No zakah is due on fewer than five camels, whether male or female.

أَوْ ذُكُورٍ وَإِنَاثٍ، فَإِذَا أَتَمَّتْ كَذَلِكَ فِي مِلْكِ الْمُسْلِمِ حَوْلًا عَرَبِيًّا مُتَّصِلًا - كَمَا قَدَّمْنَا - فَالْوَاجِبُ فِي زَكَاتِهَا شَاةٌ وَاحِدَةٌ ضَانِيَّةٌ أَوْ مَاعِزَةٌ، وَكَذَلِكَ أَيْضًا فِيمَا زَادَ عَلَى الْخَمْسِ، إِلَى أَنْ تَتِمَّ عَشَرَةً كَمَا قَدَّمْنَا، فَإِذَا بَلَغَتْهَا وَأَتَمَّتْهَا وَأَتَمَّتْ حَوْلًا كَمَا قَدَّمْنَا فَفِيهَا شَاتَانِ كَمَا

L10626 Whether male or female, when they complete [the year] as such under Muslim ownership for an uninterrupted Arabic lunar year—as we presented earlier—the obligatory Zakat is one sheep, either a ewe or a female goat. This ruling similarly applies to what exceeds five until they reach ten, as we presented earlier. When they reach ten and complete it along with completing a year as we presented, two sheep are due, as we mentioned. Likewise, this applies to what exceeds [ten] until they reach fifteen. When they complete

ذَكَرْنَا، وَكَذَلِكَ فِيمَا زَادَ حَتَّى تُتِمَّ خَمْسَةَ عَشَرَ، فَإِذَا أَتَمَّتْهَا وَأَتَمَّتْ كَذَلِكَ حَوْلًا عَرَبِيًّا فَفِيهَا ثَلَاثُ شِيَاهٍ كَمَا ذَكَرْنَا.

fifteen and complete an uninterrupted Arabic lunar year accordingly, three sheep are due, as we mentioned.

وَكَذَلِكَ فِيمَا زَادَ حَتَّى تُتِمَّ عِشْرِينَ، فَإِذَا أَتَمَّتْهَا وَأَتَمَّتْ كَذَلِكَ، حَوْلًا كَمَا ذُكِرَ فَفِيهَا أَرْبَعُ شِيَاهٍ كَمَا ذَكَرْنَا.

L10627 And likewise for what exceeds until the amount completes twenty [units]. When it completes them and a full lunar year in the same manner, as mentioned, then four sheep are due for it, as previously stated.

وَكَذَلِكَ فِيمَا زَادَ عَلَى الْعِشْرِينَ إِلَى أَنْ تُتِمَّ خَمْسَةً وَعِشْرِينَ، فَإِذَا أَتَمَّتْهَا وَأَتَمَّتْ كَذَلِكَ حَوْلًا قَمَرِيًّا بِنْتُ مَخَاضٍ مِنَ الْإِبِلِ أُنْثَى وَلَا بُدَّ، فَإِنْ لَمْ يَجِدْهَا فَابْنُ لَبُونٍ ذَكَرٌ مِنَ الْإِبِلِ، وَكَذَلِكَ فِيمَا زَادَ حَتَّى تُتِمَّ سِتَّةً وَثَلَاثِينَ.

L10628 Similarly, for what exceeds twenty up to twenty-five, when it reaches twenty-five and similarly completes a lunar year, a *bint makhāḍ* (female camel in its second year) is obligatory. If one cannot find it, then a *ibn labūn* (male camel in its third year) must be given. The same ruling applies for what exceeds this until it reaches thirty-six.

فَإِذَا أَتَمَّتْهَا وَأَتَمَّتْ كَذَلِكَ حَوْلًا قَمَرِيًّا فَفِيهَا بِنْتُ لَبُونٍ مِنَ الْإِبِلِ أُنْثَى وَلَا بُدَّ، ثُمَّ كَذَلِكَ فِيمَا زَادَ حَتَّى تُتِمَّ سِتَّةً وَأَرْبَعِينَ، فَإِذَا أَتَمَّتْهَا وَأَتَمَّتْ كَذَلِكَ سَنَةً قَمَرِيَّةً فَفِيهَا حِقَّةٌ مِنَ الْإِبِلِ أُنْثَى وَلَا بُدَّ.

L10629–10631 When she completes them and likewise completes a lunar year, a female camel that has entered its third year (bint labūn) is obligatory. Thereafter, the same ruling applies to any additional amount until she completes forty-six lunar years. Then when... She completed it and likewise completed a lunar year; therefore, in it (the lunar year), a three-year-old female camel (ḥiqqah) is obligatory, without exception.

ثُمَّ كَذَلِكَ فِيمَا زَادَ فَإِذَا أَتَمَّتْ إِحْدَى وَسِتِّينَ وَأَتَمَّتْ كَذَلِكَ سَنَةً قَمَرِيَّةً فَفِيهَا جَذَعَةٌ مِنَ الْإِبِلِ أُنْثَى وَلَا بُدَّ، ثُمَّ كَذَلِكَ فِيمَا زَادَ حَتَّى تُتِمَّ سِتَّةً وَسَبْعِينَ فَإِذَا أَتَمَّتْهَا وَأَتَمَّتْ كَذَلِكَ عَامًا قَمَرِيًّا فَفِيهَا ابْنَتَا لَبُونٍ، ثُمَّ كَذَلِكَ فِيمَا زَادَ حَتَّى تُتِمَّ إِحْدَى وَتِسْعِينَ فَإِذَا أَتَمَّتْهَا وَأَتَمَّتْ كَذَلِكَ عَامًا قَمَرِيًّا فَفِيهَا حِقَّتَانِ.

L10632 Then likewise for each additional year. When she completes sixty-one and completes a lunar year in this manner, there must be a jadhaʿah—a one-year-old female camel. The same rule applies for each subsequent year until she completes seventy-six. When she completes this and finishes a lunar year accordingly, there are two female camels that have borne calves. The same rule applies for each subsequent year until she completes ninety-one. When she completes this and finishes a lunar year accordingly, there are two four-year-old female camels.

وَكَذَلِكَ فِيمَا زَادَ حَتَّى تُتِمَّ مِائَةً وَعِشْرِينَ، فَإِذَا أَتَمَّتْهَا وَزَادَتْ عَلَيْهَا - وَلَوْ بَعْضَ نَاقَةٍ أَوْ جَمَلٍ - وَأَتَمَّتْ كَذَلِكَ عَامًا قَمَرِيًّا فَفِيهَا ثَلَاثُ بَنَاتِ لَبُونٍ، ثُمَّ كَذَلِكَ حَتَّى تُتِمَّ مِائَةً وَثَلَاثِينَ، فَإِذَا أَتَمَّتْهَا أَوْ زَادَتْ وَأَتَمَّتْ كَذَلِكَ عَامًا قَمَرِيًّا فَفِي كُلِّ خَمْسِينَ حِقَّةٌ، وَفِي

L10633 Similarly, this applies to any increase until the total reaches 120. When it reaches 120 and exceeds it—even by a fraction of a she-camel or camel—and completes a full lunar year in that condition, three three-year-old she-camels (Banāt Labūn) are due. This rule continues until the total reaches 130. When it reaches 130 or exceeds it and completes a full lunar year in that condition, for every 50 camels, one four-year-old she-camel (Hiqqa) is

كُلِّ أَرْبَعِينَ بِنْتُ لَبُونٍ، وَفِي كُلِّ ثَلَاثِينَ وَمِائَةٍ فَمَا زَادَ حِقَّةٌ وَبِنْتَا لَبُونٍ، وَفِي أَرْبَعِينَ وَمِائَةٍ فَمَا زَادَ حِقَّتَانِ وَبِنْتُ لَبُونٍ، وَفِي خَمْسِينَ وَمِائَةٍ فَمَا زَادَ ثَلَاثُ حِقَاقٍ، وَفِي سِتِّينَ وَمِائَةٍ فَمَا زَادَ أَرْبَعُ بَنَاتِ لَبُونٍ، وَهَكَذَا الْعَمَلُ فِيمَا زَادَ.

due; for every 40 camels, one three-year-old she-camel (Bint Labūn) is due. For 130 camels and any excess, one four-year-old she-camel (Hiqqa) and two three-year-old she-camels (Bintā Labūn) are due. For 140 camels and any excess, two four-year-old she-camels (Hiqqatān) and one three-year-old she-camel (Bint Labūn) are due. For 150 camels and any excess, three four-year-old she-camels (Hiqqa) are due. For 160 camels and any excess, four three-year-old she-camels (Banāt Labūn) are due. This procedure applies to all subsequent increases.

فَإِنْ وَجَبَ عَلَى صَاحِبِ الْمَالِ جَذَعَةٌ فَلَمْ تَكُنْ عِنْدَهُ وَكَانَتْ عِنْدَهُ حِقَّةٌ، أَوْ لَزِمَتْهُ حِقَّةٌ فَلَمْ تَكُنْ عِنْدَهُ وَكَانَتْ عِنْدَهُ بِنْتُ لَبُونٍ، أَوْ لَزِمَتْهُ بِنْتُ لَبُونٍ فَلَمْ تَكُنْ عِنْدَهُ وَكَانَتْ عِنْدَهُ بِنْتُ مَخَاضٍ -: فَإِنَّ الْمُصَدِّقَ يَقْبَلُ مَا عِنْدَهُ مِنْ ذَلِكَ وَيُلْزِمُهُ مَعَهَا غَرَامَةَ عِشْرِينَ دِرْهَمًا أَوْ شَاتَيْنِ، أَيَّ ذَلِكَ شَاءَ صَاحِبُ الْمَالِ فَوَاجِبٌ عَلَى الْمُصَدِّقِ قَبُولُهُ وَلَا بُدَّ؟ وَإِنْ وَجَبَتْ عَلَى صَاحِبِ الْمَالِ بِنْتُ مَخَاضٍ فَلَمْ تَكُنْ عِنْدَهُ وَلَا كَانَ عِنْدَهُ ابْنُ لَبُونٍ ذَكَرٌ وَكَانَتْ عِنْدَهُ بِنْتُ لَبُونٍ، أَوْ وَجَبَتْ عَلَيْهِ بِنْتُ لَبُونٍ فَلَمْ تَكُنْ عِنْدَهُ وَكَانَتْ عِنْدَهُ جَذَعَةٌ -: فَإِنَّ الْمُصَدِّقَ يَأْخُذُ مِنْهُ مَا عِنْدَهُ مِنْ ذَلِكَ وَيَرُدُّ الْمُصَدِّقُ إِلَى صَاحِبِ الْمَالِ عِشْرِينَ دِرْهَمًا أَوْ شَاتَيْنِ، أَيَّ ذَلِكَ أَعْطَاهُ الْمُصَدِّقُ فَوَاجِبٌ عَلَى صَاحِبِ الْمَالِ قَبُولُهُ وَلَا بُدَّ؟

L10634 If a jadhaʿah (three-year-old she-camel) is obligatory upon the wealth owner but he does not possess it and has a ḥiqqah (four-year-old she-camel), or if a ḥiqqah becomes obligatory but he does not possess it and has a bint labūn (three-year-old she-camel), or if a bint labūn becomes obligatory but he does not possess it and has a bint makhāḍ (one-year-old she-camel) – then the zakat collector accepts what he possesses from these and obliges him to pay a compensation of twenty dirhams or two ewes, whichever the wealth owner chooses; the zakat collector must accept this without objection. If a bint makhāḍ becomes obligatory upon the wealth owner but he does not possess it nor a male ibn labūn (three-year-old male camel), and instead has a bint labūn, or if a bint labūn becomes obligatory but he does not possess it and has a jadhaʿah – then the zakat collector takes from him what he possesses and gives to the wealth owner twenty dirhams or two ewes, whichever the zakat collector provides; the wealth owner must accept this without objection.

وَهَكَذَا لَوْ وَجَبَتْ اثْنَتَانِ أَوْ أَكْثَرُ مِنَ الْأَسْنَانِ الَّتِي ذَكَرْنَا فَلَمْ يَجِدْهَا أَوْ وَجَدَ بَعْضَهَا وَلَمْ يَجِدْ تَمَامَهَا، فَإِنَّهُ يُعْطِي مَا عِنْدَهُ مِنَ الْأَسْنَانِ الَّتِي ذَكَرْنَا؛ فَإِنْ كَانَتْ أَعْلَى مِنَ الَّتِي وَجَبَتْ عَلَيْهِ رَدَّ عَلَيْهِ الْمُصَدِّقُ لِكُلِّ وَاحِدَةٍ شَاتَيْنِ أَوْ عِشْرِينَ دِرْهَمًا، وَإِنْ كَانَتْ أَدْنَى مِنَ الَّتِي وَجَبَتْ عَلَيْهِ أَعْطَى مَعَهَا مَعَ كُلِّ وَاحِدَةٍ شَاتَيْنِ أَوْ عِشْرِينَ دِرْهَمًا؟ فَإِنْ وَجَبَتْ عَلَيْهِ بِنْتُ مَخَاضٍ فَلَمْ يَجِدْهَا وَلَا وَجَدَ ابْنَ لَبُونٍ وَلَا بِنْتَ لَبُونٍ، لَكِنْ وَجَدَ حِقَّةً أَوْ

L10635–10640 Similarly, if two or more of the specified camel age categories we mentioned become obligatory and he cannot find them, or finds some but not the complete obligation, he must give what he possesses from the defined categories. If what he offers is superior to the required category, the zakāt collector must return two sheep or twenty dirhams for each one. If it is inferior, he must add two sheep or twenty dirhams with each one. If a *bint makhad* (she-camel having entered its second year) is obligatory and he cannot find it, nor a *ibn labun* (male camel having entered its third year) or *bint labun* (female camel having entered its third year), but finds a *hiqqah* (she-camel having entered its fourth year) or *jadhaʿah* (she-camel having entered its

fifth year), these are not accepted. He is obligated to present the exact obligatory category or the immediately succeeding category without exception, along with returning the sheep or dirhams. If a *jadhaʿah* is obligatory and he cannot find it nor a *hiqqah*, but possesses a *bint labun* or *bint makhad*, these are not accepted at all unless he provides the *jadhaʿah* or a *hiqqah* accompanied by two sheep or twenty dirhams. If a *hiqqah* is obligatory and he cannot find it, nor a *jadhaʿah* or *bint labun*, but has a *bint makhad*, it is not accepted. He must present the *hiqqah* or *bint labun* without exception and return two sheep or twenty dirhams. Monetary substitutes or alternatives are not accepted under any circumstance in any form of zakāt. The proof for this is the narration transmitted by ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid: Ibrāhīm ibn Aḥmad reported to us, al-Farabrī reported to us, al-Bukhārī reported to us, Muḥammad ibn ʿAbd Allāh ibn al-Muthannā ibn ʿAbd Allāh ibn Anas ibn Mālik reported to us: My father reported to us, Thumāmah ibn ʿAbd Allāh ibn Anas ibn Mālik reported that Anas ibn Mālik narrated to him: Abū Bakr al-Ṣiddīq wrote this decree to him: “In the name of Allah, the Most Gracious, the Most Merciful. This is the ordinance of zakāt prescribed by Allah’s Messenger—peace and blessings be upon him—for Muslims, which Allah, the Mighty and Majestic, commanded His Messenger. Whoever is rightfully asked for it must give it, and whoever is asked beyond this must refuse. For twenty-four camels or fewer, one sheep is due from the flock for every five. When they reach twenty-five to thirty-five camels, a *bint makhad* is obligatory. If no *bint makhad* is available, then a *ibn labun* (male camel of the succeeding category) is given. When they reach thirty-six to forty-five camels...” For forty camels, a two-year-old female she-camel (bint labūn) is due. When they reach forty-six to sixty, a three-year-old she-camel (ḥiqqah) that has been mated by a male camel is due. When they reach sixty-one to seventy-five, a four-year-old she-camel (jadhʿah) is due. When they reach seventy-six to ninety, two two-year-old female she-camels (ibnatā labūn) are due. When they reach ninety-one to one hundred twenty, two three-year-old she-camels (ḥiqqatān) that have been mated by a male camel are due. When they exceed one hundred twenty, a two-year-old female she-camel (bint labūn) is due for every forty camels, and a three-year-old she-camel (ḥiqqah) for every fifty. Who-

جَذَعَةً، أَوْ وَجَبَتْ عَلَيْهِ بِنْتُ لَبُونٍ فَلَمْ تَكُنْ عِنْدَهُ وَلَا كَانَ عِنْدَهُ بِنْتُ مَخَاضٍ وَلَا حِقَّةٌ، وَكَانَتْ عِنْدَهُ جَذَعَةٌ - لَمْ تُقْبَلْ مِنْهُ، وَكُلِّفَ إِحْضَارَ مَا وَجَبَ عَلَيْهِ وَلَا بُدَّ، أَوْ إِحْضَارَ السِّنِّ الَّتِي تَلِيهَا وَلَا بُدَّ مَعَ رَدِّ الدَّرَاهِمِ أَوْ الْغَنَمِ؟ وَإِنْ لَزِمَتْهُ جَذَعَةٌ فَلَمْ يَجِدْهَا وَلَا وَجَدَ حِقَّةً، وَوَجَدَ بِنْتَ لَبُونٍ أَوْ بِنْتَ مَخَاضٍ -: لَمْ تُقْبَلْ مِنْهُ أَصْلًا إِلَّا الْجَذَعَةُ أَوْ حِقَّةٌ مَعَهَا شَاتَانِ أَوْ عِشْرُونَ دِرْهَمًا؟ وَإِنْ لَزِمَتْهُ حِقَّةٌ وَلَمْ يَجِدْهَا وَلَا وَجَدَ جَذَعَةً وَلَا ابْنَةَ لَبُونٍ، وَوَجَدَ بِنْتَ مَخَاضٍ -: لَمْ تُؤْخَذْ مِنْهُ، وَأُجْبِرَ عَلَى إِحْضَارِ الْحِقَّةِ أَوْ بِنْتِ لَبُونٍ وَيُرَدُّ شَاتَيْنِ أَوْ عِشْرِينَ دِرْهَمًا؟ وَلَا تُجْزِئُ قِيمَةٌ وَلَا بَدَلٌ أَصْلًا، وَلَا فِي شَيْءٍ مِنْ الزَّكَوَاتِ كُلِّهَا أَصْلًا -: بُرْهَانُ ذَلِكَ -: مَا حَدَّثَنَاهُ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُثَنَّى بْنِ عَبْدِ اللَّهِ بْنِ أَنَسِ بْنِ مَالِكٍ ثنا أَبِي ثنا ثُمَامَةُ بْنُ عَبْدِ اللَّهِ بْنِ أَنَسِ بْنِ مَالِكٍ أَنَّ أَنَسَ بْنَ مَالِكٍ حَدَّثَهُ: أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ كَتَبَ لَهُ هَذَا الْكِتَابَ -: «بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ: هَذِهِ فَرِيضَةُ الصَّدَقَةِ الَّتِي فَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمُسْلِمِينَ، وَالَّتِي أَمَرَ اللَّهُ - عَزَّ وَجَلَّ - بِهَا رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَنْ سُئِلَهَا مِنْ الْمُسْلِمِينَ عَلَى وَجْهِهَا فَلْيُعْطِهَا، وَمَنْ سُئِلَ فَوْقَهَا فَلَا يُعْطِ. فِي أَرْبَعٍ وَعِشْرِينَ مِنْ الْإِبِلِ فَمَا دُونَهَا مِنْ الْغَنَمِ فِي كُلِّ خَمْسٍ شَاةٌ، فَإِذَا بَلَغَتْ خَمْسًا وَعِشْرِينَ إِلَى خَمْسٍ وَثَلَاثِينَ فَفِيهَا ابْنَةُ مَخَاضٍ أُنْثَى فَإِنْ لَمْ يَكُنْ فِيهَا ابْنُ مَخَاضٍ فَابْنُ لَبُونٍ ذَكَرٌ فَإِذَا بَلَغَتْ سِتًّا وَثَلَاثِينَ إِلَى خَمْسٍ وَأَرْبَعِينَ فَفِيهَا ابْنَةُ لَبُونٍ أُنْثَى، فَإِذَا بَلَغَتْ سِتًّا وَأَرْبَعِينَ إِلَى سِتِّينَ فَفِيهَا حِقَّةٌ طَرُوقَةُ الْجَمَلِ، فَإِذَا بَلَغَتْ وَاحِدَةً وَسِتِّينَ إِلَى خَمْسٍ وَسَبْعِينَ فَفِيهَا جَذَعَةٌ، فَإِذَا بَلَغَتْ يَعْنِي سِتًّا وَسَبْعِينَ إِلَى تِسْعِينَ فَفِيهَا ابْنَتَا لَبُونٍ، فَإِذَا بَلَغَتْ إِحْدَى وَتِسْعِينَ إِلَى عِشْرِينَ وَمِائَةٍ فَفِيهَا

ever possesses only four camels owes no Zakāt unless the owner voluntarily gives it. When they reach five camels, a sheep is due as Zakāt. For one whose camels reach the number requiring a four-year-old she-camel (jadhʿah) as Zakāt but lacks it... If someone liable for a hiqqah (three-year-old she-camel) possesses a jadhaʿah (two-year-old she-camel), the hiqqah shall be accepted from him provided he adds two goats or twenty dirhams if readily available. If someone is liable for a hiqqah but possesses only a jadhaʿah, the jadhaʿah shall be accepted from him, and the zakat collector shall compensate him with twenty dirhams or two goats. If someone is liable for a hiqqah but possesses only an ibnatu labun (two-year-old she-camel), the ibnatu labun shall be accepted from him provided he adds two goats or twenty dirhams. If someone liable for an ibnatu labun possesses a hiqqah, the hiqqah shall be accepted from him, and the zakat collector shall compensate him with twenty dirhams or two goats. If someone is liable for an ibnatu labun but possesses only an ibnatu makhad (one-year-old she-camel), the ibnatu makhad shall be accepted from him provided he adds twenty dirhams or two goats. If someone liable for an ibnatu makhad possesses an ibnatu labun, the ibnatu labun shall be accepted from him, and the zakat collector shall compensate him with twenty dirhams or two goats. If he does not possess an ibnatu makhad as required but possesses an ibnu labun (two-year-old male camel), it shall be accepted from him without requiring any supplement." He then mentioned the remainder of the hadith? This hadith was transmitted to us by Yūsuf ibn ʿAbdullāh ibn ʿAbd al-Barr al-Namarī, from ʿAbd al-Wārith ibn Sufyān ibn Ḥayrūn, from Qāsim ibn Aṣbagh, from Aḥmad ibn Abī Khaythamah, from Shurayḥ ibn al-Nuʿmān and Zuhayr ibn Ḥarb.[7]

حِقَّتَانِ طَرُوقَتَا الْجَمَلِ، فَإِذَا زَادَتْ عَلَى عِشْرِينَ وَمِائَةٍ فَفِي كُلِّ أَرْبَعِينَ بِنْتُ لَبُونٍ وَفِي كُلِّ خَمْسِينَ حِقَّةٌ، وَمَنْ لَمْ يَكُنْ مَعَهُ إِلَّا أَرْبَعٌ مِنَ الْإِبِلِ فَلَيْسَ فِيهَا صَدَقَةٌ، إِلَّا أَنْ يَشَاءَ رَبُّهَا، فَإِذَا بَلَغَتْ خَمْسًا مِنَ الْإِبِلِ فَفِيهَا شَاةٌ - وَمَنْ بَلَغَتْ عِنْدَهُ مِنَ الْإِبِلِ صَدَقَةُ الْجَذَعَةِ وَلَيْسَتْ عِنْدَهُ جَذَعَةٌ وَعِنْدَهُ حِقَّةٌ فَإِنَّهَا تُقْبَلُ مِنْهُ الْحِقَّةُ وَيَجْعَلُ مَعَهَا شَاتَيْنِ إِنِ اسْتَيْسَرَتَا لَهُ أَوْ عِشْرِينَ دِرْهَمًا، وَمَنْ بَلَغَتْ عِنْدَهُ صَدَقَةُ الْحِقَّةِ وَلَيْسَتْ عِنْدَهُ الْحِقَّةُ وَعِنْدَهُ الْجَذَعَةُ فَإِنَّهَا تُقْبَلُ مِنْهُ الْجَذَعَةُ وَيُعْطِيهِ الْمُصَدِّقُ عِشْرِينَ دِرْهَمًا أَوْ شَاتَيْنِ، وَمَنْ بَلَغَتْ عِنْدَهُ صَدَقَةُ الْحِقَّةِ وَلَيْسَتْ عِنْدَهُ إِلَّا ابْنَةُ لَبُونٍ فَإِنَّهَا تُقْبَلُ مِنْهُ ابْنَةُ لَبُونٍ وَيُعْطِي شَاتَيْنِ أَوْ عِشْرِينَ دِرْهَمًا، وَمَنْ بَلَغَتْ صَدَقَتُهُ ابْنَةَ لَبُونٍ وَعِنْدَهُ حِقَّةٌ فَإِنَّهَا تُقْبَلُ مِنْهُ الْحِقَّةُ وَيُعْطِيهِ الْمُصَدِّقُ عِشْرِينَ دِرْهَمًا أَوْ شَاتَيْنِ، وَمَنْ بَلَغَتْ صَدَقَتُهُ ابْنَةَ لَبُونٍ وَلَيْسَتْ عِنْدَهُ وَعِنْدَهُ ابْنَةُ مَخَاضٍ فَإِنَّهَا تُقْبَلُ مِنْهُ ابْنَةُ مَخَاضٍ وَيُعْطِي مَعَهَا عِشْرِينَ دِرْهَمًا أَوْ شَاتَيْنِ، وَمَنْ بَلَغَتْ صَدَقَتُهُ ابْنَةَ مَخَاضٍ لَيْسَتْ عِنْدَهُ وَعِنْدَهُ ابْنَةُ لَبُونٍ فَإِنَّهَا تُقْبَلُ مِنْهُ وَيُعْطِيهِ الْمُصَدِّقُ عِشْرِينَ دِرْهَمًا أَوْ شَاتَيْنِ، فَإِنْ لَمْ تَكُنْ عِنْدَهُ ابْنَةُ مَخَاضٍ عَلَى وَجْهِهَا وَعِنْدَهُ ابْنُ لَبُونٍ فَإِنَّهُ يُقْبَلُ مِنْهُ وَلَيْسَ مَعَهُ شَيْءٌ» وَذَكَرَ بَاقِيَ الْحَدِيثِ؟ وَهَذَا حَدِيثٌ حَدَّثَنَاهُ أَيْضًا يُوسُفُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَرِّ النَّمَرِيُّ ثنا عَبْدُ الْوَارِثِ بْنُ سُفْيَانَ بْنِ حَيْرُونٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا أَحْمَدُ بْنُ أَبِي خَيْثَمَةَ ثنا شُرَيْحُ بْنُ النُّعْمَانِ، وَزُهَيْرُ بْنُ حَرْبٍ.

L10641–10643 Zuhayr said: Yunus ibn Muhammad → Hammad ibn Salama → Thumamah ibn Abdullah ibn Anas ibn Malik → Anas ibn Malik. Shurayh ibn al-Nu'man said: Hammad ibn Salama → Thumamah ibn Abdullah ibn Anas → Anas ibn Malik – then their narrations concurred – that Abu Bakr al-Siddiq wrote

قَالَ زُهَيْرٌ: ثنا يُونُسُ بْنُ مُحَمَّدٍ ثنا حَمَّادُ بْنُ سَلَمَةَ قَالَ: أَخَذْتُ هَذَا الْكِتَابَ عَنْ ثُمَامَةَ بْنِ عَبْدِ اللَّهِ بْنِ أَنَسِ بْنِ مَالِكٍ عَنْ أَنَسِ بْنِ مَالِكٍ، وَقَالَ شُرَيْحُ بْنُ النُّعْمَانِ: ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ ثُمَامَةَ بْنِ عَبْدِ اللَّهِ بْنِ أَنَسٍ عَنْ أَنَسِ بْنِ مَالِكٍ - ثُمَّ اتَّفَقَا - أَنَّ أَبَا بَكْرٍ

[7] **Qur'an references (L10636):** Qur'an 1:1 (Al-Fatihah).

for him: “These are the obligatory charities prescribed by Allah’s Messenger (peace be upon him) upon the Muslims, which Allah the Exalted commanded His Messenger (peace be upon him).” Then he mentioned the hadith precisely as we have quoted it verbatim, and they did not differ in any part of it. And it was also narrated to us by Abdullah ibn Rabee’, who said: Muhammad ibn Ishaq ibn As-Sulaym narrated to us, who said: Ibn Al-A’rabi narrated to us, who said: Abu Dawud As-Sijistani narrated to us, who said: Musa ibn Ismail narrated to us, who said: Hammad ibn Salamah said: I took this document from Thumamah ibn Abdullah ibn Anas from Anas. Then he mentioned it verbatim as we have cited it. And it was also narrated to us by Abdullah ibn Rabee’, who said: Muhammad ibn Mu’awiyah narrated to us, who said: Ahmad ibn Shu’ayb narrated to us, who said: Muhammad ibn Abdullah ibn Al-Mubarak narrated to us, who said: Al-Muzaffar ibn Mudrik narrated to us, who said: Hammad ibn Salamah said: I took this document from Thumamah ibn Abdullah ibn Anas from Anas: that Abu Bakr wrote for them, “Verily, these are the obligations of alms which the Messenger of Allah—may the peace and blessings of Allah be upon him—ordained upon the Muslims, which Allah the Exalted commanded His Messenger.” Then he mentioned it verbatim as we have cited it. And it was also narrated to us by Humam ibn Ahmad, who said: Abbas ibn Asbagh narrated to us, who said: Muhammad ibn Abdul-Malik ibn Ayman narrated to us, who said: I am Abu Qilabah, and Isma’il ibn Ishaq Al-Qadi and I both narrated jointly: Muhammad ibn Abdullah Al-Ansari narrated to us, who said: My father, Abdullah ibn Al-Muthanna, narrated to me, who said: Thumamah—he is the son of Abdullah ibn Anas—narrated to me, who said: Anas ibn Malik narrated to me: that Abu Bakr As-Siddiq wrote this document for him when he dispatched him to Bahrain: “In the name of Allah, the Most Gracious, the Most Merciful. This is the obligation of alms which the Messenger of Allah—may the peace and blessings of Allah be upon him—ordained upon the Muslims, which Allah the Exalted commanded His Messenger—may the peace and blessings of Allah be upon him.” Then he mentioned it verbatim

الصِّدِّيقَ كَتَبَ لَهُ «إِنَّ هَذِهِ فَرَائِضُ الصَّدَقَةِ الَّتِي فَرَضَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمُسْلِمِينَ، الَّتِي أَمَرَ اللَّهُ تَعَالَى بِهَا رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» ثُمَّ ذَكَرَ الْحَدِيثَ كَمَا ذَكَرْنَاهُ نَصًّا، لَمْ يَخْتَلِفُوا فِي شَيْءٍ مِنْهُ وَحَدَّثَنَاهُ أَيْضًا عَبْدُ اللَّهِ بْنُ رَبِيعٍ قَالَ: ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد السِّجِسْتَانِيُّ ثنا مُوسَى بْنُ إِسْمَاعِيلَ ثنا حَمَّادُ بْنُ سَلَمَةَ قَالَ: أَخَذْت هَذَا الْكِتَابَ مِنْ ثُمَامَةَ بْنِ عَبْدِ اللَّهِ بْنِ أَنَسٍ عَنْ أَنَسٍ ثُمَّ ذَكَرَهُ نَصًّا كَمَا أَوْرَدْنَاهُ؟ وَحَدَّثَنَاهُ أَيْضًا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ ثنا الْمُظَفَّرُ بْنُ مُدْرِكٍ ثنا حَمَّادُ بْنُ سَلَمَةَ قَالَ: أَخَذْت هَذَا الْكِتَابَ مِنْ ثُمَامَةَ بْنِ عَبْدِ اللَّهِ بْنِ أَنَسٍ عَنْ أَنَسٍ: أَنَّ أَبَا بَكْرٍ كَتَبَ لَهُمْ «إِنَّ هَذِهِ فَرَائِضُ الصَّدَقَةِ الَّتِي فَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمُسْلِمِينَ، الَّتِي أَمَرَ اللَّهُ تَعَالَى بِهَا رَسُولَهُ» ثُمَّ ذَكَرَهُ نَصًّا كَمَا أَوْرَدْنَاهُ؟ وَحَدَّثَنَاهُ أَيْضًا حُمَامُ بْنُ أَحْمَدَ قَالَ: ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا أَبُو قِلَابَةَ وَإِسْمَاعِيلُ بْنُ إِسْحَاقَ الْقَاضِي قَالَا جَمِيعًا: ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْأَنْصَارِيُّ ثنا أَبِي عَبْدِ اللَّهِ بْنِ الْمُثَنَّى حَدَّثَنِي ثُمَامَةُ هُوَ ابْنُ عَبْدِ اللَّهِ بْنِ أَنَسٍ - قَالَ: حَدَّثَنِي أَنَسُ بْنُ مَالِكٍ: أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ كَتَبَ لَهُ هَذَا الْكِتَابَ حِينَ وَجَّهَهُ إِلَى الْبَحْرَيْنِ -: «بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ هَذِهِ فَرِيضَةُ الصَّدَقَةِ الَّتِي فَرَضَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمُسْلِمِينَ الَّتِي أَمَرَ اللَّهُ تَعَالَى بِهَا رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» ثُمَّ ذَكَرَهُ نَصًّا كَمَا ذَكَرْنَاهُ؟ فَهَذَا الْحَدِيثُ هُوَ نَصُّ مَا قُلْنَا حُكْمًا وَحَرْفًا حَرْفًا.

as we have cited it. Thus, this hadith is the exact text of what we have stated, ruling by ruling and letter by letter.[8]

L10644–10646 And nothing else is valid regarding ṣadaqāt on livestock except it, save only the report of Ibn ʻUmar—which is not entirely sound in this matter. This ḥadīth is of the utmost soundness. Abū Bakr al-Ṣiddīq acted upon it in the presence of all the Companions, with no opponent known among them whatsoever. Yet with less than this, our opponents claim consensus and condemn divergence from it. It was narrated from Abū Bakr: Anas—and he is a Companion—narrated it. Thumāmah ibn ʿAbd Allāh ibn Anas—a trustworthy narrator—heard it from Anas and transmitted it. Ḥammād ibn Salamah and ʿAbd Allāh ibn al-Muthannā—both trustworthy imams—narrated it from Thumāmah. The judge Muḥammad, son of Ibn al-Muthannā—a renowned, trustworthy figure who served as judge of Basra—narrated it from his father. Muḥammad ibn Ismāʿīl al-Bukhārī (compiler of the *Ṣaḥīḥ*), Abū Qilābah, Ismāʿīl ibn Isḥāq the Judge, and others narrated it from Muḥammad ibn ʿAbd Allāh. Yūnus ibn Muḥammad, Shurayḥ ibn al-Nuʿmān, Mūsā ibn Ismāʿīl al-Tabūdhakī, Abū Kāmil al-Muẓaffar ibn Mudrik, and others narrated it from Ḥammād ibn Salamah. All these narrators are imams of renowned trustworthiness. It is astonishing that anyone would challenge this report by citing Yaḥyā ibn Maʿīn's weakening of Ḥammād ibn Salamah's narration, for every transmitter we have mentioned from Ḥammād surpasses Yaḥyā ibn Maʿīn in eminence and reliability. Are the critiques of Yaḥyā ibn Maʿīn and others only taken into account when they discredit narrators not established as upright? As for their claims that narrations transmitted by trustworthy authorities are weak, or their assertions of error without citing concealment of flaws in the chain of transmission (tadlīs), such claims are invalid and rejected, being baseless allegations. Allāh the Exalted says: *"Produce your proof, if you are truthful."* [Al-Baqarah 2:111][9]

وَلَا يَصِحُّ فِي الصَّدَقَاتِ فِي الْمَاشِيَةِ غَيْرُهُ، إِلَّا خَبَرَ ابْنِ عُمَرَ فَقَطْ، وَلَيْسَ بِتَمَامٍ هَذَا، وَهَذَا الْحَدِيثُ فِي نِهَايَةِ الصِّحَّةِ، وَعَمِلَ أَبِي بَكْرٍ الصِّدِّيقِ بِحَضْرَةِ جَمِيعِ الصَّحَابَةِ، لَا يُعْرَفُ لَهُ مِنْهُمْ مُخَالِفٌ أَصْلًا، وَبِأَقَلَّ مِنْ هَذَا يَدَّعِي مُخَالِفُونَا الْإِجْمَاعَ، وَيُشَنِّعُونَ خِلَافَهُ، رَوَاهُ عَنْ أَبِي بَكْرٍ: أَنَسٌ - وَهُوَ صَاحِبٌ - وَرَوَاهُ عَنْ أَنَسٍ ثُمَامَةُ بْنُ عَبْدِ اللَّهِ بْنِ أَنَسٍ - وَهُوَ ثِقَةٌ - سَمِعَهُ مِنْ أَنَسٍ، وَرَوَاهُ عَنْ ثُمَامَةَ حَمَّادُ بْنُ سَلَمَةَ، وَعَبْدُ اللَّهِ بْنُ الْمُثَنَّى، وَكِلَاهُمَا ثِقَةٌ وَإِمَامٌ، وَرَوَاهُ عَنِ ابْنِ الْمُثَنَّى ابْنُهُ الْقَاضِي مُحَمَّدٌ، وَهُوَ مَشْهُورٌ ثِقَةٌ وَلِيَ قَضَاءَ الْبَصْرَةِ، وَرَوَاهُ عَنْ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ: مُحَمَّدُ بْنُ إِسْمَاعِيلَ الْبُخَارِيُّ جَامِعُ الصَّحِيحِ، وَأَبُو قِلَابَةَ، وَإِسْمَاعِيلُ بْنُ إِسْحَاقَ الْقَاضِي، وَالنَّاسُ، وَرَوَاهُ عَنْ حَمَّادِ بْنِ سَلَمَةَ يُونُسُ بْنُ مُحَمَّدٍ، وَشُرَيْحُ بْنُ النُّعْمَانِ، وَمُوسَى بْنُ إِسْمَاعِيلَ التَّبُوذَكِيُّ، وَأَبُو كَامِلٍ الْمُظَفَّرُ بْنُ مُدْرِكٍ، وَغَيْرُهُمْ، وَكُلُّ هَؤُلَاءِ إِمَامٌ ثِقَةٌ مَشْهُورٌ؟ وَالْعَجَبُ مِمَّنْ يَعْتَرِضُ فِي هَذَا الْخَبَرِ بِتَضْعِيفِ يَحْيَى بْنِ مَعِينٍ لِحَدِيثِ حَمَّادِ بْنِ سَلَمَةَ هَذَا وَلَيْسَ فِي كُلِّ مَنْ رَوَاهُ عَنْ حَمَّادِ بْنِ سَلَمَةَ - مِمَّنْ ذَكَرْنَا - أَحَدٌ إِلَّا وَهُوَ أَجَلُّ وَأَوْثَقُ مِنْ يَحْيَى بْنِ مَعِينٍ وَإِنَّمَا يُؤْخَذُ كَلَامُ يَحْيَى بْنِ مَعِينٍ وَغَيْرُهُ إِذَا ضَعَّفُوا غَيْرَ مَشْهُورٍ بِالْعَدَالَةِ؟ وَأَمَّا دَعْوَى ابْنِ مَعِينٍ أَوْ غَيْرِهِ ضَعْفَ حَدِيثٍ رَوَاهُ الثِّقَاتُ، أَوْ ادَّعَوْا فِيهِ أَنَّهُ خَطَأٌ مِنْ غَيْرِ أَنْ يَذْكُرُوا فِيهِ تَدْلِيسًا فَكَلَامُهُمْ مَطْرُوحٌ مَرْدُودٌ؛ لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ، وَقَدْ قَالَ اللَّهُ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] .

[8] **Qur'an references (L10641):** Qur'an 1:1 (Al-Fatihah).

[9] **Qur'an references (L10644):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

وَلَا مَغْمَزَ لِأَحَدٍ فِي أَحَدٍ مِنْ رُوَاةِ هَذَا الْحَدِيثِ؛ فَمَنْ عَانَدَهُ فَقَدْ عَانَدَ الْحَقَّ، وَأَمْرَ اللَّهِ تَعَالَى، وَأَمْرَ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا سِيَّمَا مَنْ يُحْتَجُّ فِي دِينِهِ بِالْمُرْسَلَاتِ، وَبِرِوَايَةِ ابْنِ لَهِيعَةَ. وَرِوَايَةِ جَابِرٍ الْجُعْفِيِّ الْكَذَّابِ الْمُتَّهَمِ فِي دِينِهِ " لَا يُؤَمَّنَّ أَحَدٌ بَعْدِي جَالِسًا "؟ وَرِوَايَةِ حَرَامِ بْنِ عُثْمَانَ - الَّذِي لَا تَحِلُّ الرِّوَايَةُ عَنْهُ - فِي إِسْقَاطِ الصَّلَاةِ عَنْ الْمُسْتَحَاضَةِ بَعْدَ طُهْرِهَا ثَلَاثَةَ أَيَّامٍ وَرِوَايَةِ أَبِي زَيْدٍ مَوْلَى عَمْرِو بْنِ حَدِيثٍ فِي إبَاحَةِ الْوُضُوءِ لِلصَّلَاةِ بِالْخَمْرِ وَبِكُلِّ نَطِيحَةٍ، أَوْ مُتَرَدِّيَةٍ، وَمَا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ -: فِي مُخَالَفَةِ الْقُرْآنِ وَالسُّنَنِ الثَّابِتَةِ، ثُمَّ يَتَعَلَّلُ فِي السُّنَنِ الثَّابِتَةِ الَّتِي لَمْ يَأْتِ مَا يُعَارِضُهَا؛ بَلْ عَمِلَ بِهَا الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - وَمَنْ بَعْدَهُمْ؟ وَبِهَذَا الْحَدِيثِ يَأْخُذُ: الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا؟ وَقَدْ خَالَفَهُ قَوْمٌ فِي مَوَاضِعَ -: فَمِنْهَا: إذَا بَلَغَتْ الْإِبِلُ خَمْسًا وَعِشْرِينَ كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ ثنا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: فِي خَمْسٍ مِنْ الْإِبِلِ شَاةٌ، وَفِي عَشْرٍ شَاتَانِ، وَفِي خَمْسَ عَشْرَةَ ثَلَاثُ شِيَاهٍ، وَفِي عِشْرِينَ أَرْبَعُ شِيَاهٍ، وَفِي خَمْسٍ وَعِشْرِينَ خَمْسُ شِيَاهٍ، فَإِذَا زَادَتْ وَاحِدَةً فَفِيهَا ابْنَةُ مَخَاضٍ، فَإِنْ لَمْ تَكُنْ ابْنَةُ مَخَاضٍ فَابْنُ لَبُونٍ ذَكَرٌ وَهَكَذَا أَيْضًا: رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي الْأَحْوَصِ عَنْ أَبِي إِسْحَاقَ. قَالَ عَلِيٌّ: وَقَدْ أَسْنَدَهُ زُهَيْرُ بْنُ مُعَاوِيَةَ مِنْ طَرِيقِ الْحَارِثِ الْأَعْوَرِ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ -.

L10647–10648 There is no valid criticism of any narrator of this hadith. Whoever defies it has defied the truth, the command of Allah Almighty, and the command of His Messenger—peace and blessings be upon him—particularly those who cite in religious matters: mursal narrations; the narration of Ibn Lahi'ah; the narration of Jabir al-Ju'fi (the liar accused of religious deviation) regarding "No seated person shall lead prayer after me"; the narration of Haram ibn 'Uthman (from whom narration is impermissible) concerning omitting prayer for the mustahāḍah after her three-day purity period; and the narration of Abu Zayd, freed slave of 'Amr ibn Hadith, permitting ablution for prayer using wine, animals killed by goring, falling, or slaughtered for other than Allah—contradicting the Quran and established Sunnah. Yet he makes pretexts against the established Sunnah, which have no contradictory evidence and were practiced by the Companions (may Allah be pleased with them) and their successors. This hadith is upheld by al-Shafi'i, Abu Sulayman, and their followers. Some have opposed it in specific instances, such as when camels reach twenty-five. As narrated by Muhammad ibn Sa'id ibn Nabaat: 'Abdullah ibn Nasr narrated to us, Qasim ibn Asbagh narrated to us, Ibn Waddah narrated to us, Musa ibn Mu'awiyah narrated to us, Waki' narrated from Sufyan al-Thawri from Abu Ishaq al-Sabi'i from 'Asim ibn Damrah from 'Ali ibn Abi Talib, who said: "For five camels, one ewe is due; for ten, two ewes; for fifteen, three ewes; for twenty, four ewes; and for twenty-five, five ewes. If they exceed by one, a female camel entering its second year is due. If unavailable, a male camel entering its third year is substituted." This is similarly narrated through Ibn Abi Shaybah from Abu al-Ahwas from Abu Ishaq. 'Ali stated: "Zuhayr ibn Mu'awiyah also transmitted it via al-Harith al-A'war from 'Ali—may Allah be pleased with him."

قَالَ أَبُو مُحَمَّدٍ: الْحَارِثُ كَذَّابٌ، وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L10649–10650 Abu Muhammad said: Al-Harith is a liar, and there is no authoritative evidence in the statement of anyone apart from the Messenger of Allah, may Allah bless him and grant him peace.

وَقَالَ الشَّافِعِيُّ: وَأَبُو يُوسُفَ: إذَا كَانَتْ خَمْسٌ مِنْ الْإِبِلِ ضِعَافٌ لَا تُسَاوِي شَاةً أَعْطَى بَعِيرًا مِنْهَا وَأَجْزَأَهُ؟ قَالُوا: لِأَنَّ الزَّكَاةَ إنَّمَا هِيَ فِيمَا أُبْقِي مِنْ الْمَالِ فَضْلًا، لَا فِيمَا أَجَاحَ الْمَالَ وَقَدْ نُهِيَ عَنْ أَخْذِ كَرَائِمِ الْمَالِ فَكَيْفَ عَنْ اجْتِيَاحِهِ؟ قَالَ أَبُو مُحَمَّد: وَقَالَ مَالِكٌ، وَأَبُو سُلَيْمَانَ، وَغَيْرُهُمَا: لَا يُجْزِئُهُ إلَّا شَاةٌ؟ قَالَ أَبُو مُحَمَّد: هَذَا هُوَ الْحَقُّ، وَالْقَوْلُ الْأَوَّلُ بَاطِلٌ وَلَيْسَتْ الزَّكَاةُ كَمَا ادَّعَوْا مِنْ حِيَاطَةِ الْأَمْوَالِ وَهُمْ يَقُولُونَ: مَنْ كَانَتْ عِنْدَهُ خَمْسٌ مِنْ الْإِبِلِ وَلَهُ عَشَرَةٌ مِنْ الْعِيَالِ وَلَا مَالَ لَهُ غَيْرُهَا، فَإِنَّهُ يُكَلَّفُ الزَّكَاةَ أَحَبَّ أَمْ كَرِهَ، وَكَذَلِكَ مَنْ لَهُ مِائَتَا دِرْهَمٍ فِي سَنَةِ مَجَاعَةٍ وَمَعَهُ عَشَرَةٌ مِنْ الْعِيَالِ وَلَا شَيْءَ مَعَهُ غَيْرُهَا [فَإِنَّهُ يُكَلَّفُ الزَّكَاةَ] وَرَأَوْا فِيمَنْ مَعَهُ مِنْ الْجَوَاهِرِ، وَالْوِطَاءِ، وَالْغِطَاءِ، وَالدُّورِ، وَالرَّقِيقِ وَالْبَسَاتِينِ بِقِيمَةِ أَلْفِ أَلْفِ دِينَارٍ أَوْ أَكْثَرَ، أَنَّهُ لَا زَكَاةَ عَلَيْهِ؟

L10651 Al-Shāfiʿī said: And Abū Yūsuf said: If five weak camels do not equal the value of a sheep, does giving one camel suffice as Zakāh? They argued: Zakāh applies only to surplus wealth remaining after sustenance, not to what depletes one's capital. Moreover, taking prime assets is prohibited—how then could total depletion be permitted? Abū Muḥammad said: Mālik, Abū Sulaymān, and others stated: Is nothing sufficient except a sheep? Abū Muḥammad said: This is the correct view, while the first opinion is invalid. Zakāh is not—as they falsely claim—a means of safeguarding wealth, though they assert that one owning five camels with ten dependents and no other property must pay Zakāh whether he wishes to or not. Similarly, one possessing two hundred dirhams during a famine year with ten dependents and no other wealth [must pay Zakāh]. Yet they hold that one possessing jewels, furnishings, bedding, houses, slaves, or gardens worth one million dīnārs or more owes no Zakāh?

وَقَالُوا فِيمَنْ لَهُ مِائَتَا شَاةٍ وَشَاةٌ: أَنَّهُ يُؤَدِّي مِنْهَا كَمَا يُؤَدِّي مَنْ لَهُ ثَلَثُمِائَةِ شَاةٍ وَتِسْعٌ وَتِسْعُونَ شَاةً؟ فَإِنَّمَا نَقِفُ فِي النَّهْيِ وَالْأَمْرِ عِنْدَمَا صَحَّ بِهِ نَصٌّ فَقَطْ وَهُمْ يَقُولُونَ فِي عَبْدٍ يُسَاوِي أَلْفَ دِينَارٍ لِيَتِيمٍ لَيْسَ لَهُ غَيْرُهُ سَرَقَ دِينَارًا، أَنَّهُ تُقْطَعُ يَدُهُ فَتَتْلَفُ قِيمَةٌ عَظِيمَةٌ فِي قِيمَةٍ يَسِيرَةٍ وَيُجَاحُ الْيَتِيمُ الْفَقِيرُ فِيمَا لَا ضَرَرَ فِيهِ عَلَى الْغَنِيِّ؟ وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ - إلَّا رِوَايَةً خَامِلَةً عَنْ أَبِي يُوسُفَ -: إنَّ مَنْ لَزِمَتْهُ بِنْتُ مَخَاضٍ فَلَمْ تَكُنْ عِنْدَهُ فَإِنَّهُ يُؤَدِّي قِيمَتَهَا، وَلَا يُؤَدِّي ابْنَ لَبُونٍ ذَكَرًا؟ وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: يُؤَدِّي ابْنَ لَبُونٍ ذَكَرًا؟ وَهَذَا هُوَ الْحَقُّ، وَقَوْلُ أَبِي حَنِيفَةَ خِلَافٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَصْحَابِهِ - رَضِيَ اللَّهُ عَنْهُمْ - وَمِنْ عَجَائِبِ الدُّنْيَا قَوْلُهُمْ: إنَّ «أَمْرَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَخْذِ ابْنِ لَبُونٍ مَكَانَ ابْنَةِ الْمَخَاضِ» إنَّمَا أَرَادَ بِالْقِيمَةِ، فَيَا

L10652–10653 They said regarding one who has two hundred and one sheep: must he give the same amount as one who has three hundred and ninety-nine sheep? We only adhere to prohibitions and commands when substantiated by textual evidence alone. They argue concerning a slave valued at a thousand dinars owned by a destitute orphan with no other property, who steals a single dinar: his hand is amputated, thereby destroying immense worth for a trivial sum, and the impoverished orphan's claim is contested in a matter causing no loss to the wealthy? Abu Hanifa and his followers stated—except for a weak narration from Abu Yusuf—that one obligated to give a she-camel in its second year (bint makhāḍ) who lacks it must pay its monetary value rather than provide a two-year-old male camel (ibn labun). Malik, Al-Shafi'i, and Abu Sulayman ruled: must he give a two-year-old male camel? This is the correct position, while Abu Hanifa's view contradicts the Messenger of Allah—peace and blessings be upon him—and his Companions—may Allah be pleased with them. Among the wonders of the world is their assertion that "the Prophet's injunction—peace and blessings be upon him—to take a two-year-old male camel instead of a she-camel in its second year" referred to its

equivalent value. How brazenly they fabricate lies against the Messenger of Allah—peace and blessings be upon him—openly and publicly! The suspicion of disgrace looms over these people. No Arabic speaker has ever understood the Prophet's declaration—peace and blessings be upon him—"in it is a she-camel in its second year" as denoting monetary value.

لِسُهُولَةِ الْكَذِبِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جِهَارًا عَلَانِيَةً فَرِيبُ الْفَضِيحَةِ عَلَى هَؤُلَاءِ الْقَوْمِ وَمَا فَهِمَ قَطُّ مَنْ يَدْرِي الْعَرَبِيَّةَ أَنْ قَوْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَفِيهَا ابْنَةُ مَخَاضٍ.

L10654 If one does not possess a daughter-of-a-camel-that-has-completed-one-year (ibnat makhāḍ) meeting the required criteria but has a two-year-old male camel (ibn labūn), it is accepted from him. There is nothing that can be substituted with monetary value—a matter profoundly shameful and far removed from modesty and religion. As for their disagreement with the Companions regarding this: Ḥumām ibn Aḥmad narrated from Ibn Mufarrij, who narrated from Ibn al-Aʿrābī, who narrated from al-Dabarī, who narrated from ʿAbd al-Razzāq, from Sufyān al-Thawrī, from ʿUbayd Allāh ibn ʿUmar, from ʿĀṣim and Mūsā ibn ʿUqbah—both from Nāfiʿ, from Ibn ʿUmar, from his father ʿUmar, who said: For camels, one sheep is due for five, two for ten, three for fifteen, four for twenty, and a daughter-of-a-camel-that-has-completed-one-year for twenty-five. If unavailable, a two-year-old male camel suffices. We previously mentioned this from ʿAlī.

فَإِنْ لَمْ تَكُنْ عِنْدَهُ ابْنَةُ مَخَاضٍ عَلَى وَجْهِهَا وَعِنْدَهُ ابْنُ لَبُونٍ فَإِنَّهُ يُقْبَلُ مِنْهُ وَلَيْسَ شَيْءٌ " يُمْكِنُ أَنْ يُرِيدَ بِهِ بِالْقِيمَةِ وَهَذَا أَمْرٌ مُخْجِلٌ جِدًّا، وَبُعْدٌ عَنْ الْحَيَاءِ وَالدِّينِ وَأَمَّا خِلَافُهُمْ الصَّحَابَةَ فِي ذَلِكَ -: فَإِنَّ حُمَامَ بْنَ أَحْمَدَ ثنا قَالَ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ عَاصِمٍ، وَمُوسَى بْنُ عُقْبَةَ كِلَاهُمَا عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ أَبِيهِ عُمَرَ قَالَ: فِي الْإِبِلِ فِي خَمْسٍ شَاةٌ، وَفِي عَشْرٍ شَاتَانِ، وَفِي خَمْسَ عَشَرَةَ ثَلَاثُ شِيَاهٍ وَفِي عِشْرِينَ أَرْبَعُ شِيَاهٍ وَفِي خَمْسٍ وَعِشْرِينَ ابْنَةُ مَخَاضٍ، فَإِنْ لَمْ تَكُنْ ابْنَةُ مَخَاضٍ فَابْنُ لَبُونٍ ذَكَرٌ، وَقَدْ ذَكَرْنَاهُ آنِفًا عَنْ عَلِيٍّ؟

L10655–10656 They differed from Abu Bakr, Umar, Ali, Anas ibn Malik, and ibn Umar.

فَخَالَفُوا أَبَا بَكْرٍ، وَعُمَرَ، وَعَلِيًّا، وَأَنَسَ بْنَ مَالِكٍ، وَابْنَ عُمَرَ.

L10657 And all those in their presence from the Companions—may Allah be pleased with them—: due to their erroneous opinions, opposed even Umar ibn Abd al-Aziz.

وَكُلَّ مَنْ بِحَضْرَتِهِمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: بِآرَائِهِمْ الْفَاسِدَةِ، وَخَالَفُوا عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَيْضًا.

L10658 And by our statement in this matter, the following scholars hold the view: Sufyan al-Thawri, Malik, al-Awza'i, al-Layth, Ahmad ibn Hanbal, Abu Sulayman, and the majority of people - except Abu Hanifah and those who emulate his juristic doctrine, for we know of no precedent for their position in this matter at all. They also differed regarding the Messenger of Allah's command - peace and blessings be upon him - to compensate a tooth with one below or above it when the obligatory tooth is absent, and providing twenty dirhams or two sheep in such cases. Abu Hanifah and his compan-

وَبِقَوْلِنَا فِي هَذَا يَقُولُ: سُفْيَانُ الثَّوْرِيُّ، وَمَالِكٌ، وَالْأَوْزَاعِيُّ، وَاللَّيْثُ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَبُو سُلَيْمَانَ، وَجُمْهُورُ النَّاسِ، إلَّا أَبَا حَنِيفَةَ وَمَنْ قَلَّدَ دِينَهُ وَمَا نَعْلَمُ لَهُمْ فِي هَذَا سَلَفًا أَصْلًا وَاخْتَلَفُوا أَيْضًا فِيمَا أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ تَعْوِيضِ سِنٍّ مِنْ سِنٍّ دُونِهَا أَوْ فَوْقَهَا عِنْدَ عَدَمِ السِّنِّ الْوَاجِبَةِ وَرَدِّ عِشْرِينَ دِرْهَمًا أَوْ شَاتَيْنِ فِي

ions said: “None of that is permissible except by paying its monetary value,” and he permitted giving equivalent value through tradeable assets or other forms as a substitute for the obligatory zakat, even when the item mandated for zakat is available. Malik said: “One may only give what is obligated.”

ذَلِكَ؟ فَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا يَجُوزُ شَيْءٌ مِنْ ذَلِكَ إِلَّا بِالْقِيمَةِ، وَأَجَازَ إِعْطَاءَ الْقِيمَةِ مِنَ الْعُرُوضِ وَغَيْرِهَا بَدَلَ الزَّكَاةِ الْوَاجِبَةِ، وَإِنْ كَانَ الْمَأْمُورُ بِأَخْذِهِ فِيهَا مُمْكِنًا؟ وَقَالَ مَالِكٌ: لَا يُعْطِي إِلَّا مَا عَلَيْهِ.

L10659 It is not permissible to substitute one age category for another by returning two sheep or twenty dirhams. Al-Shāfiʿī ruled according to the explicit text transmitted from the Messenger of Allah - peace and blessings be upon him - on this matter, except he stated: If the obligatory age category, the one immediately below it, and the one immediately above it are unavailable, but the third downward degree is found, then one must give it while the collector returns forty dirhams or four sheep to him. Similarly, if only the category one degree below is found, one must give it along with forty dirhams or four sheep. If one owes a she-camel that has entered its second year (bint makhāḍ) but only finds a she-camel that has completed two years (jadhʿah), he must give it while the collector returns sixty dirhams or six sheep to him. Conversely, if one owes a jadhʿah but only finds a bint makhāḍ, he must give it along with sixty dirhams or six sheep. All scholars deemed permissible offering a superior age category to the obligatory one if done voluntarily. We relate from ʿAlī ibn Abī Ṭālib - may Allah be pleased with him - through the chain narrated by Muḥammad ibn Saʿīd ibn Nabāt, narrated by Aḥmad ibn ʿAbd al-Baṣīr, narrated by Qāsim ibn Aṣbagh, narrated by Muḥammad ibn ʿAbd al-Salām al-Khushanī, narrated by Muḥammad ibn al-Muthannā, narrated by ʿAbd al-Raḥmān ibn Mahdī, narrated by Shuʿbah, narrated by Abū Isḥāq al-Sabīʿī, narrated by ʿĀṣim ibn Ḍamrah, narrated by ʿAlī ibn Abī Ṭālib, who said: “When the collector takes an age category higher than required, he must return ten dirhams or two sheep.” A similar ruling is also narrated from ʿUmar, as we shall mention hereafter, Allah the Exalted willing.

وَلَمْ يَجُزْ إِعْطَاءَ سِنٍّ مَكَانَ سِنٍّ بِرَدِّ شَاتَيْنِ أَوْ عِشْرِينَ دِرْهَمًا؟ وَقَالَ الشَّافِعِيُّ بِمَا جَاءَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ نَصًّا، إِلَّا أَنَّهُ قَالَ: إِنْ عُدِمَتْ السِّنُّ الْوَاجِبَةُ، وَالَّتِي تَحْتَهَا، وَالَّتِي فَوْقَهَا، وَوُجِدَتْ الدَّرَجَةُ الثَّالِثَةُ، فَإِنَّهُ يُعْطِيهَا وَيَرُدُّ إِلَيْهِ السَّاعِي أَرْبَعِينَ دِرْهَمًا، أَوْ أَرْبَعَ شِيَاهٍ، وَكَذَلِكَ إِنْ لَمْ يَجِدْ إِلَّا الَّتِي تَحْتَهَا بِدَرَجَةٍ فَإِنَّهُ يُعْطِيهَا وَيُعْطِي مَعَهَا أَرْبَعِينَ دِرْهَمًا أَوْ أَرْبَعَ شِيَاهٍ، فَإِذَا كَانَتْ عَلَيْهِ بِنْتُ مَخَاضٍ وَلَمْ يَجِدْ إِلَّا جَذَعَةً فَإِنَّهُ يُعْطِيهَا وَيَرُدُّ عَلَيْهِ السَّاعِي سِتِّينَ دِرْهَمًا أَوْ سِتَّ شِيَاهٍ، فَإِنْ كَانَتْ عَلَيْهِ جَذَعَةٌ فَلَمْ يَجِدْ إِلَّا بِنْتَ مَخَاضٍ أَعْطَاهَا وَأَعْطَى مَعَهَا سِتِّينَ دِرْهَمًا أَوْ سِتَّ شِيَاهٍ؟ وَأَجَازُوا كُلُّهُمْ إِعْطَاءَ أَفْضَلَ مِمَّا لَزِمَهُ مِنَ الْأَسْنَانِ، إِذَا تَطَوَّعَ بِذَلِكَ وَرُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - فِي ذَلِكَ مَا حَدَّثَنَاهُ مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ ثنا شُعْبَةُ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إِذَا أَخَذَ الْمُصَدِّقُ سِنًّا فَوْقَ سِنٍّ رَدَّ عَشَرَةَ دَرَاهِمَ أَوْ شَاتَيْنِ؟ وَرُوِيَ أَيْضًا عَنْ عُمَرَ كَمَا نَذْكُرُهُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى؟

L10660–10661 Abu Muhammad said: As for the statements of Ali and Umar, there is no valid proof in the declaration of anyone apart from the Messenger of Allah - peace and blessings be upon him. It was indeed incumbent upon the Hanafis - those who assert such positions when they align with their desires

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ عَلِيٍّ، وَعُمَرَ، فَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ - الْقَائِلِينَ فِي مِثْلِ هَذَا إِذَا وَافَقَ أَهْوَاءَهُمْ: مِثْلُ

while claiming “this cannot be established by personal opinion” - to adopt this view. As for Al-Shafi’i’s statement: He analogized to the ruling of the Prophet - peace and blessings be upon him - what does not fall under it, and analogy is null and void. By this analogy, he would be obliged - since he holds that the *diyah* applies to the eyes, the *diyah* to hearing, and the *diyah* to the hands - to maintain that the destruction of a life necessitates *diyat* for every limb in the body, since they become invalidated by the invalidation of the soul. Similarly, he would be compelled - given his ruling of two prostrations for an instance of forgetfulness (*sahw*) - to require four prostrations for two instances of forgetfulness in prayer, and six prostrations for three instances. Closer to this principle would be the view that if one lacks a yearling (*tabīʿ*), they should estimate compensation using a mature animal (*musinnah*). Yet he does not uphold this, thereby contradicting his own analogy.

As for the statements of Abu Hanifa and Malik, they constitute sheer opposition to the declaration of the Messenger of Allah - peace and blessings be upon him - and to the Companions. We know of no valid proof for them except their claim: “This is a sale of what has not been taken possession of.” Abu Muhammad said: This is a falsehood from those who assert it and an error for several reasons:

First: It is not a sale at all, but rather a ruling from the Messenger of Allah - peace and blessings be upon him - mandating compensation of a yearling alongside two sheep or twenty dirhams for another yearling, just as Allah the Exalted and His Messenger - peace and blessings be upon him - ordained feeding sixty indigent persons as compensation for emancipating a slave in cases of *dhihar*, or the expiation for intentionally engaging in intercourse during the daytime of Ramadan. Let them then declare here: “This is a sale of the slave before taking possession!”

Second: They permitted the sale of what has not been taken possession of in reality where it is not permissible, such as Abu Hanifa’s endorsement of accepting monetary value for obligatory *zakāt*. His followers thus accepted falsehood against themselves while rejecting the truth against the Messenger of Allah - peace and blessings be upon him. Is this not manifest misguidance?

هَذَا لَا يُقَالُ بِالرَّأْيِ -: أَنْ يَقُولُوا بِهِ؟ وَأَمَّا قَوْلُ الشَّافِعِيِّ: فَإِنَّهُ قَاسَ عَلَى حُكْمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَيْسَ فِيهِ، وَالْقِيَاسُ بَاطِلٌ، وَكَانَ يَلْزَمُهُ عَلَى قِيَاسِهِ هَذَا - إذَا رَأَى فِي الْعَيْنَيْنِ الدِّيَةَ، وَفِي السَّمْعِ الدِّيَةَ، وَفِي الْيَدَيْنِ الدِّيَةَ -: أَنْ يَكُونَ عِنْدَهُ فِي إتْلَافِ النَّفْسِ دِيَاتُ كُلُّ مَا فِي الْجِسْمِ مِنْ الْأَعْضَاءِ، لِأَنَّهَا بَطَلَتْ بِبُطْلَانِ النَّفْسِ، وَكَانَ يَلْزَمُهُ إذْ رَأَى فِي السَّهْوِ سَجْدَتَيْنِ - أَنْ يَرَى فِي سَهْوَيْنِ فِي الصَّلَاةِ أَرْبَعَ سَجَدَاتٍ وَفِي ثَلَاثَةِ أَسْهَاءٍ سِتَّ سَجَدَاتٍ؟ وَأَقْرَبُ مِنْ هَذَا أَنْ يَقُولَ، إذَا عَدِمَ التَّبِيعَ وَجَدَ الْمُسِنَّةَ أَنْ يُقَدِّرَ فِي ذَلِكَ تَقْدِيرًا، وَلَكِنَّهُ لَا يَقُولُ بِهَذَا، فَقَدْ نَاقَضَ قِيَاسَهُ وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، فَخِلَافٌ مُجَرَّدٌ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلِلصَّحَابَةِ، وَمَا نَعْلَمُ لَهُمْ حُجَّةً، إلَّا أَنَّهُمْ قَالُوا: هَذَا بَيْعُ مَا لَمْ يُقْبَضْ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كَذِبٌ مِمَّنْ قَالَهُ وَخَطَأٌ لِوُجُوهٍ -: أَحَدُهَا: أَنَّهُ لَيْسَ بَيْعًا أَصْلًا وَلَكِنَّهُ حُكْمٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِتَعْوِيضِ سِنٍّ، مَعَهَا شَاتَانِ أَوْ عِشْرُونَ دِرْهَمًا مِنْ سِنٍّ أُخْرَى، كَمَا عَوَّضَ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إطْعَامَ سِتِّينَ مِسْكِينًا مِنْ رَقَبَةٍ تُعْتَقُ فِي الظِّهَارِ، وَكَفَّارَةِ الْوَاطِئِ عَمْدًا فِي نَهَارِ رَمَضَانَ فَلْيَقُولُوا هَاهُنَا: إنَّ هَذَا بَيْعٌ لِلرَّقَبَةِ قَبْلَ قَبْضِهَا وَالثَّانِي: أَنَّهُمْ أَجَازُوا بَيْعَ مَا لَمْ يُقْبَضْ عَلَى الْحَقِيقَةِ حَيْثُ لَا يَحِلُّ وَهُوَ تَجْوِيزُ أَبِي حَنِيفَةَ أَخْذَ الْقِيمَةِ عَنْ الزَّكَاةِ الْوَاجِبَةِ، فَلَمْ يُنْكِرْ أَصْحَابُهُ الْبَاطِلَ عَلَى أَنْفُسِهِمْ وَأَنْكَرُوا الْحَقَّ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَلَا ذَلِكَ هُوَ الضَّلَالُ الْمُبِينُ وَالثَّالِثُ: أَنَّ النَّهْيَ عَنْ بَيْعِ مَا لَمْ يُقْبَضْ لَمْ يَصِحَّ قَطُّ إلَّا فِي الطَّعَامِ، لَا فِيمَا سِوَاهُ؟ وَهَذَا مِمَّا خَالَفُوا فِيهِ السُّنَنَ وَالصَّحَابَةَ - رَضِيَ اللَّهُ عَنْهُمْ -؟

Third: The prohibition against selling what has not been taken possession of has only been authentically established for food, not for other items. Yet in this matter, they opposed the Sunnah and the Companions - may Allah be pleased with them.

L10662–10663 As for the Companions; we have indeed mentioned it from Abū Bakr al-Ṣiddīq.

L10664 It has also been authentically established from Ali - as we mentioned - that compensation applies. This was also narrated from Umar as narrated to us by Humam, who narrated to us from Ibn Mufarrij, who narrated to us from Ibn al-A'rabi, who narrated to us from al-Dabari, from Abd al-Razzaq, from Ibn Jurayj, who said: Amr ibn Shu'ayb told me that Umar ibn al-Khattab said: "If the age [determined by teeth] below the required one is unavailable, the older age is taken, and the livestock owner must give back two sheep or ten dirhams."

L10665 No dissenting opinion is recorded from the Companions we mentioned, though they would vehemently criticize even lesser discrepancies than this if they occurred in matters they had already ruled upon. Our position in this matter follows the view of Ibrāhīm al-Nakhaʿī, as narrated to us by Ḥumām—who narrated to us from Ibn Mufarrij, who narrated to us from Ibn al-Aʿrābī, who narrated to us from al-Dabarī, who narrated from ʿAbd al-Razzāq—who reported from both Maʿmar and Sufyān al-Thawrī, each of whom reported from Manṣūr, from Ibrāhīm al-Nakhaʿī, who said: "When the zakāh collector encounters an animal younger than the stipulated age or older than it, the difference in value between them shall be twenty dirhams or two female goats."

L10666 Sufyan said: This applies only to camels— Muhammad ibn Saʿīd ibn Thābit narrated to us from Qāsim ibn Aṣbagh from Muḥammad ibn Waḍḍāḥ from Mūsā ibn Muʿāwiyah from Wakīʿ from Sufyān al-Thawrī from Manṣūr from Ibrāhīm, who said: If the collector takes an animal older than the stipulated age, he must return two sheep or twenty dirhams; and if he takes an animal younger than the stipulated age, he is to receive two sheep or twenty dirhams.

فَأَمَّا الصَّحَابَةُ، فَقَدْ ذَكَرْنَاهُ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ.

وَصَحَّ أَيْضًا عَنْ عَلِيٍّ - كَمَا ذَكَرْنَا - تَعْوِيضٌ، وَرُوِيَ أَيْضًا عَنْ عُمَرَ كَمَا حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ عَنْ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: قَالَ لِي عَمْرُو بْنُ شُعَيْبٍ قَالَ عُمَرُ بْنُ الْخَطَّابِ: فَإِنْ لَمْ تُوجَدِ السِّنُّ الَّتِي دُونَهَا أُخِذَتِ الَّتِي فَوْقَهَا، وَرَدَّ صَاحِبُ الْمَاشِيَةِ شَاتَيْنِ أَوْ عَشْرَ دَرَاهِمَ.

وَلَا يُعْرَفُ لِمَنْ ذَكَرْنَا مِنَ الصَّحَابَةِ مُخَالِفٌ، وَهُمْ يُشَنِّعُونَ بِأَقَلَّ مِنْ هَذَا إِذَا وَافَقَهُمْ وَقَوْلُنَا فِي هَذَا هُوَ قَوْلُ إِبْرَاهِيمَ النَّخَعِيِّ كَمَا حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ وَسُفْيَانَ الثَّوْرِيِّ كِلَيْهِمَا عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: إِذَا وَجَدَ الْمُصَدِّقُ سِنًّا دُونَ سِنٍّ أَوْ فَوْقَ سِنٍّ كَانَ فَضْلُ مَا بَيْنَهُمَا عِشْرِينَ دِرْهَمًا أَوْ شَاتَيْنِ.

قَالَ سُفْيَانُ: وَلَيْسَ هَذَا إِلَّا فِي الْإِبِلِ -: وَحَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ ثَابِتٍ قَالَ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ وَضَّاحٍ ثنا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعٌ ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ قَالَ: إِنْ أَخَذَ الْمُصَدِّقُ سِنًّا فَوْقَ سِنٍّ رَدَّ شَاتَيْنِ أَوْ عِشْرِينَ دِرْهَمًا، وَإِنْ أَخَذَ سِنًّا دُونَ سِنٍّ أَخَذَ شَاتَيْنِ أَوْ عِشْرِينَ دِرْهَمًا.

قَالَ أَبُو مُحَمَّد: وَأَمَّا إجَازَتُهُمْ الْقِيمَةَ أَوْ أَخْذَ سِنٍّ أَفْضَلَ مِمَّا عَلَيْهِ فَإِنَّهُمْ احْتَجُّوا فِي ذَلِكَ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ طَاوُسٍ: أَنَّ مُعَاذًا قَالَ لِأَهْلِ الْيَمَنِ: ائْتُونِي بِعَرْضٍ آخُذُهُ مِنْكُمْ مَكَانَ الذُّرَةِ وَالشَّعِيرِ، فَإِنَّهُ أَهْوَنُ عَلَيْكُمْ وَخَيْرٌ لِأَهْلِ الْمَدِينَةِ.

L10667 Abu Muhammad said: As for their permitting the monetary equivalent or taking a better age than required, they cited as evidence a report we narrated through the chain of transmission from Tawus: that Mu'adh said to the people of Yemen, "Bring me goods, and I will take them from you instead of millet and barley, for it is less burdensome for you and better for the people of Medina."

قَالَ عَلِيٌّ: وَهَذَا لَا تَقُومُ بِهِ حُجَّةٌ لِوُجُوهٍ -: أَوَّلُهَا: أَنَّهُ مُرْسَلٌ، لِأَنَّ طَاوُسًا لَمْ يُدْرِكْ مُعَاذًا وَلَا وُلِدَ إلَّا بَعْدَ مَوْتِ مُعَاذٍ؟ وَالثَّانِي: أَنَّهُ لَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا حُجَّةَ إلَّا فِيمَا جَاءَ عَنْهُ - عَلَيْهِ السَّلَامُ -.

L10668–10670 Ali said: This does not constitute valid proof due to several reasons: The first is that it is *mursal*, as Ṭāwus did not meet Muʿādh, nor was he born except after Muʿādh's death? The second is that even if it were sound, it would not serve as proof, as it is not from the Messenger of Allah—peace and blessings be upon him—and there is no proof except in what is transmitted from him—peace be upon him.

وَالثَّالِثُ: أَنَّهُ لَيْسَ فِيهِ أَنَّهُ قَالَ ذَلِكَ فِي الزَّكَاةِ، فَالْكَذِبُ لَا يَجُوزُ، وَقَدْ يُمْكِنُ - لَوْ صَحَّ - أَنْ يَكُونَ قَالَهُ لِأَهْلِ الْجِزْيَةِ، وَكَانَ يَأْخُذُ مِنْهُمْ: الذُّرَةَ، وَالشَّعِيرَ، وَالْعَرْضَ: مَكَانَ الْجِزْيَةِ.

L10671 The third [point] is that there is no indication he said that concerning zakāh; thus, lying is impermissible. It is possible—if it were sound—that the Prophet said it to the people liable for jizyah, and he would take from them: millet, barley, and commodities in lieu of jizyah.

وَالرَّابِعُ: أَنَّ الدَّلِيلَ عَلَى بُطْلَانِ هَذَا الْخَبَرِ مَا فِيهِ مِنْ قَوْلِ مُعَاذٍ " خَيْرٌ لِأَهْلِ الْمَدِينَةِ " وَحَاشَا لِلَّهِ أَنْ يَقُولَ مُعَاذٌ هَذَا، فَيَجْعَلُ مَا لَمْ يُوجِبْهُ اللَّهُ تَعَالَى خَيْرًا مِمَّا أَوْجَبَهُ وَذَكَرُوا أَيْضًا: مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أُخْبِرْت عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ الْأَنْصَارِيِّ: أَنَّ عُمَرَ كَتَبَ إلَى بَعْضِ عُمَّالِهِ: أَنْ لَا يَأْخُذَ مِنْ رَجُلٍ لَمْ يَجِدْ فِي إبِلِهِ السِّنَّ الَّتِي عَلَيْهِ إلَّا تِلْكَ السِّنَّ مِنْ شَرْوَى إبِلِهِ، أَوْ قِيمَةَ عَدْلٍ؟ قَالَ أَبُو مُحَمَّد: هَذَا فِي غَايَةِ السُّقُوطِ لِوُجُوهٍ -: أَحَدُهَا: أَنَّهُ مُنْقَطِعٌ، لِأَنَّ ابْنَ جُرَيْجٍ لَمْ يُسَمِّ مَنْ بَيْنَهُ وَبَيْنَ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ.

L10672 The fourth: The evidence for the invalidity of this report is the inclusion of Mu'adh's statement: "Better for the people of Madinah." Allah forbid that Mu'adh would say this, thereby elevating what Allah the Exalted has not obligated above what He has obligated. They also mentioned what we have narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj: I was informed from ʿAbdullāh ibn ʿAbd al-Raḥmān al-Anṣārī that ʿUmar wrote to one of his tax officials: "Do not take from a man who does not find in his camels the age due except that specific age from the choicest of his camels, or the value of a fair equivalent." Abū Muḥammad said: This is extremely weak for several reasons, one of which is that it is disconnected, for Ibn Jurayj did not name those between him and ʿAbdullāh ibn ʿAbd al-Raḥmān.

وَالثَّانِي: أَنَّ عَبْدَ اللَّهِ بْنَ عَبْدِ الرَّحْمَنِ الْأَنْصَارِيَّ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ؟ وَالثَّالِثُ: أَنَّهُ لَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا

L10673–10676 The second: That ʿAbdullāh ibn ʿAbd al-Raḥmān al-Anṣārī is unknown—who is he? The third: That even if it were authentic, it would hold no proof, for it is not from the Messenger of Allah (peace be upon him), and no valid

evidence exists in rulings derived from those other than the Prophet. We have cited to them a similar report from ʿUmar concerning the taking of two sheep or ten dirhams. Let them follow it if ʿUmar's statement constitutes proof; otherwise, is capricious ruling not impermissible? The fourth: That ʿUmar's statement—if authentically attributed to him—"or a fair value" may refer to what he clarified elsewhere regarding compensation with two sheep or dirhams. Thus, his statement should be understood as consistent, not contradictory.

They cited a ḥadīth with an interrupted chain through Ayyūb al-Sakhtiyānī: The Messenger of Allah (peace be upon him) said, "Take the fanged predator, the aged animal, and the blemished animal." ʿAlī said: This contains no proof for two reasons. First: It is *mursal* (a ḥadīth with a missing link in the chain), and no evidence is valid in a *mursal* report. Second: Its conclusion states, "I do not know of it except that the prescribed shares were established afterward." Thus, even if authentic, it would be abrogated. By transmitting a narration containing it, they mentioned what we have narrated through the chain of Muḥammad ibn Isḥāq from ʿAbdullāh ibn Abī Bakr from Yaḥyā ibn ʿAbdullāh ibn ʿAbd al-Raḥmān ibn Saʿd ibn Zurārah from ʿUmārah ibn ʿAmr ibn Ḥazm from Ubayy ibn Kaʿb, who said: "The Messenger of Allah—peace and blessings of Allah be upon him—sent me as a Zakāh collector. I passed by a man who gathered his livestock for me. I said to him: 'Give a one-year-old she-camel, for it is your obligatory Zakāh.' He replied: 'That [animal] has neither milk nor capacity for bearing loads. But here is a young, large, well-fed she-camel—take it.' I said: 'I will not take what I have not been commanded to take. The Messenger of Allah is near you; approach him.'

The man then went to the Messenger of Allah and recounted this, saying: 'I offered your Zakāh collector a young, large she-camel to take, but he refused. Here it is—I have brought it to you, O Messenger of Allah!' The Messenger of Allah responded: 'That [initial offering] was your obligation. If you voluntarily give something better, Allah will reward you, and we will accept it from you.' He then ordered it to be taken and invoked blessings for him."

حُجَّةَ فِيمَا جَاءَ عَمَّنْ دُونَهُ، وَقَدْ أَتَيْنَاهُمْ عَنْ عُمَرَ بِمِثْلِ هَذَا فِي أَخْذِ الشَّاتَيْنِ أَوْ الْعَشَرَةِ دَرَاهِمَ، فَلْيَقُولُوا بِهِ إِنْ كَانَ قَوْلُ عُمَرَ حُجَّةً، وَإِلَّا فَالتَّحَكُّمُ لَا يَجُوزُ؟ وَالرَّابِعُ: أَنَّهُ قَدْ يُحْتَمَلُ أَنْ يَكُونَ قَوْلُ عُمَرَ - لَوْ صَحَّ عَنْهُ - " أَوْ قِيمَةَ عَدْلٍ " هُوَ مَا بَيَّنَهُ فِي مَكَانٍ آخَرَ مِنْ تَعْوِيضِ الشَّاتَيْنِ أَوْ الدَّرَاهِمِ، فَيُحْمَلُ قَوْلُهُ عَلَى الْمُوَافَقَةِ لَا عَلَى التَّضَادِّ وَذَكَرُوا حَدِيثًا مُنْقَطِعًا مِنْ طَرِيقِ أَيُّوبَ السِّخْتِيَانِيِّ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «خُذْ النَّابَ، وَالشَّارِفَ وَالْعَوَارِيَّ» . قَالَ عَلِيٌّ: وَهَذَا لَا حُجَّةَ فِيهِ لِوَجْهَيْنِ -: أَحَدُهُمَا: أَنَّهُ مُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ؟ وَالثَّانِي: أَنَّ فِي آخِرِهِ " وَلَا أَعْلَمُهُ إلَّا كَانَتْ الْفَرَائِضُ بَعْدُ " فَلَوْ صَحَّ لَكَانَ مَنْسُوخًا بِنَقْلِ رِوَايَةٍ فِيهِ وَذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ عَنْ يَحْيَى بْنِ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ سَعْدِ بْنِ زُرَارَةَ، عَنْ عُمَارَةَ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أُبَيِّ بْنِ كَعْبٍ قَالَ: «بَعَثَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُصَدِّقًا، فَمَرَرْتُ بِرَجُلٍ فَجَمَعَ لِي مَالَهُ، فَقُلْت لَهُ: أَدِّ ابْنَةَ مَخَاضٍ، فَإِنَّهَا صَدَقَتُكَ، قَالَ: ذَلِكَ مَا لَا لَبَنَ فِيهِ وَلَا ظَهْرَ، وَلَكِنْ هَذِهِ نَاقَةٌ فَتِيَّةٌ عَظِيمَةٌ سَمِينَةٌ، فَخُذْهَا، فَقُلْتُ: مَا أَنَا بِآخِذٍ مَا لَمْ أُؤْمَرْ بِهِ، وَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَرِيبٌ مِنْكَ، فَأَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ لَهُ ذَلِكَ وَقَالَ: عَرَضْتُ عَلَى مُصَدِّقِكَ نَاقَةً فَتِيَّةً عَظِيمَةً يَأْخُذُهَا، فَأَبَى عَلَيَّ، وَهَا هِيَ ذِهِ، قَدْ جِئْتُكَ بِهَا يَا رَسُولَ اللَّهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ الَّذِي عَلَيْكَ، فَإِنْ تَطَوَّعْتَ بِخَيْرٍ أَجَرَكَ اللَّهُ وَقَبِلْنَاهُ مِنْكَ، وَأَمَرَ - عَلَيْهِ السَّلَامُ - بِقَبْضِهَا، وَدَعَا لَهُ بِالْبَرَكَةِ» . قَالَ أَبُو مُحَمَّدٍ: وَلَا حُجَّةَ فِيهِ لِوُجُوهٍ -: أَوَّلُهَا: أَنَّهُ لَا يَصِحُّ؛ لِأَنَّ يَحْيَى بْنَ عَبْدِ اللَّهِ مَجْهُولٌ،

Abū Muḥammad said: “This narration holds no legal proof for several reasons: First, it is unsound because Yaḥyā ibn ʿAbdullāh is unknown, and ʿUmārah ibn ʿAmr ibn Ḥazm is unrecognized. The recognized figure is Umrah ibn Ḥazm, the brother of ʿAmr—may Allah be pleased with them both.”

L10677–10679 The second point is that if it were valid, it would stand as evidence against them, for it shows Ubayy ibn Kaʿb did not deem it permissible to take a large young she-camel in place of a she-camel in its second year, considering this contrary to the command of the Messenger of Allah—peace and blessings of Allah be upon him. He did not approve of what these people hold—their attempts to critique the Messenger of Allah—peace and blessings of Allah be upon him—through their personal opinions and rationalizations. The Messenger of Allah—peace and blessings of Allah be upon him—knew this yet did not rebuke him, thus establishing it as the truth. Indeed, the scenario would have entailed taking a large she-camel in place of a she-camel in its second year. Only, as for permitting monetary substitution, there is no basis at all.

L10680 They cited two reports as evidence: one of them was narrated by us via the transmission of al-Ḥasan.

L10681–10683 The second: through the chain of ʿAṭāʾ—both reports are “from the Messenger of Allāh (peace and blessings of Allāh be upon him) that he said to the zakat collector: ‘Inform him of the obligation due upon him. If he voluntarily offers anything beyond that, accept it from him.’” These two are interrupted (mursal) narrations. Even if they were authentic, they would not constitute evidence, for they contain no explicit text permitting the collection of non-obligatory amounts nor the acceptance of monetary equivalents. We do not deny that one may give the best of what he owns from livestock of the obligatory age.

They cited as evidence a report we transmitted through Yaḥyā ibn Saʿīd al-Qaṭṭān from ʿAbd al-Malik al-ʿArzamī from ʿAṭāʾ ibn Abī Rabāḥ: “When the Messenger of Allāh (peace and blessings of Allāh be upon him) sent ʿAlī as a zakat collector, they said: ‘We will only give Allāh the best of our wealth.’ He replied: ‘I will not impose the [zakat] practice on you again.’ The Messenger

وَعُمَارَةَ بْنَ عَمْرِو بْنِ حَزْمٍ غَيْرُ مَعْرُوفٍ، وَإِنَّمَا الْمَعْرُوفُ عُمَارَةُ بْنُ حَزْمٍ أَخُو عَمْرٍو - رَضِيَ اللَّهُ عَنْهُمَا -.

وَالثَّانِي: أَنَّهُ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ، لِأَنَّ فِيهِ أَنَّ أُبَيَّ بْنَ كَعْبٍ لَمْ يَسْتَجِزْ أَخْذَ نَاقَةٍ فَتِيَّةٍ عَظِيمَةٍ مَكَانَ ابْنَةِ مَخَاضٍ، وَرَأَى ذَلِكَ خِلَافًا لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَرَ مَا يَرَاهُ هَؤُلَاءِ مِنْ التَّعَقُّبِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِآرَائِهِمْ وَنَظَرِهِمْ، وَعَلِمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ فَلَمْ يُنْكِرْهُ عَلَيْهِ؛ فَصَحَّ أَنَّهُ الْحَقُّ، وَإِنَّمَا كَانَ يَكُونُ فِيهِ أَخْذُ نَاقَةٍ عَظِيمَةٍ مَكَانَ ابْنَةِ مَخَاضٍ فَقَطْ، وَأَمَّا إجَازَةُ الْقِيمَةِ فَلَا أَصْلًا.

وَاحْتَجُّوا بِخَبَرَيْنِ -: أَحَدُهُمَا: رُوِّينَاهُ مِنْ طَرِيقِ الْحَسَنِ.

وَالْآخَرُ: مِنْ طَرِيقِ عَطَاءٍ، كِلَاهُمَا «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ لِلْمُصَدِّقِ أَعْلِمْهُ الَّذِي عَلَيْهِ مِنْ الْحَقِّ، فَإِنْ تَطَوَّعَ بِشَيْءٍ فَاقْبَلْهُ مِنْهُ» . وَهَذَانِ مُرْسَلَانِ، ثُمَّ لَوْ صَحَّا لَمْ يَكُنْ فِيهِمَا حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ نَصٌّ بِأَخْذِ غَيْرِ الْوَاجِبِ وَلَا يَأْخُذُ قِيمَةً، وَنَحْنُ لَا نُنْكِرُ أَنْ يُعْطِيَ أَفْضَلَ مَا عِنْدَهُ مِنْ السِّنِّ الْوَاجِبَةِ عَلَيْهِ؟ وَاحْتَجُّوا بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ عَبْدِ الْمَلِكِ العرزمي عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا بَعَثَ عَلِيًّا سَاعِيًا قَالُوا: لَا نُخْرِجُ لِلَّهِ إلَّا خَيْرَ أَمْوَالِنَا، فَقَالَ: مَا أَنَا بِعَادِي عَلَيْكُمْ السُّنَّةَ. وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: ارْجِعْ إلَيْهِمْ فَبَيِّنْ لَهُمْ مَا عَلَيْهِمْ فِي أَمْوَالِهِمْ، فَمَنْ طَابَتْ نَفْسُهُ بَعْدَ ذَلِكَ

of Allāh (peace and blessings of Allāh be upon him) instructed him: ‘Return to them and clarify their obligations regarding their wealth. Then, if anyone willingly offers surplus after that, take it from him.’”

Abū Muḥammad said: This contains no evidence for two reasons. First: It is inauthentic as it is interrupted (mursal), and its narrator ʿAbd al-Malik al-ʿArzamī is abandoned. Moreover, its claim that ʿAlī was sent as a zakat collector is false—the Messenger of Allāh (peace and blessings of Allāh be upon him) never dispatched any member of Banū Hāshim as a zakat collector. Al-Faḍl ibn ʿAbbās, a member of Banū Hāshim, once sought this role but was prohibited. Even if authentic, it would still provide them no evidence whatsoever, for it states they sought to give the best of their wealth. They are chosen, and this is not to prevent it if the giver of zakah is content to offer the most noble sheep he owns and the best of what he possesses from that obligatory age requirement incumbent upon him. There is absolutely no substitution of one age category for another in principle, nor any indication of value whatsoever. They argued with the hadith of Wā’il ibn Ḥujr regarding “the one who gave in charity from his wealth a defective camel with a split ear, so Allah’s Messenger—peace and blessings be upon him—said: ‘May Allah not bless him nor his camels.’ When this reached the man, he brought a she-camel, describing its beauty and excellence, and said: ‘I repent to Allah and to His Prophet.’ The Prophet—peace and blessings be upon him—then said: ‘O Allah, bless him and his camels.’”

L10684 Abu Muhammad said: This is an authentic report containing no valid argument for them, because a young camel (faseel) undoubtedly does not suffice for any form of Zakat. A beautiful she-camel may be a four-year-old (jadha‘ah) or five-year-old (hiqqah). Thus he fulfilled his obligation with the best-quality camel as determined. There is neither explicit text nor indication requiring giving other than the obligatory age specification, nor any basis for monetary valuation whatsoever. They cited as evidence the authenticated report from Allah’s Messenger - peace and blessings be upon him - through Malik’s transmission from Zayd ibn Aslam, from ’Ata’ ibn Yasar, from Abu Rafi’, who said: “Allah’s Messenger - peace and blessings be upon him - borrowed a young male camel. When Zakat camels arrived, he commanded

بِفَضْلٍ نَخُذْهُ مِنْهُ؟» قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ فِيهِ لِوَجْهَيْنِ -: أَحَدُهُمَا: أَنَّهُ لَا يَصِحُّ لِأَنَّهُ مُرْسَلٌ، ثُمَّ إِنَّ رَاوِيهِ عَبْدَ الْمَلِكِ الْعَرْزَمِيَّ، وَهُوَ مَتْرُوكٌ ثُمَّ إِنَّ فِيهِ أَنَّ عَلِيًّا بَعَثَ سَاعِيًا وَهَذَا بَاطِلٌ، مَا بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ أَحَدًا مِنْ بَنِي هَاشِمٍ سَاعِيًا، وَقَدْ طَلَبَ ذَلِكَ الْفَضْلُ بْنُ عَبَّاسٍ فَمَنَعَهُ وَلَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ أَصْلًا؛ لِأَنَّ فِيهِ أَنَّهُمْ أَرَادُوا إعْطَاءَ أَفْضَلَ أَمْوَالِهِمْ مُخْتَارِينَ، وَهَذَا لَا لِمَنْعِهِ إذَا طَابَتْ نَفْسُ الْمُزَكِّي بِإِعْطَاءِ أَكْرَمَ شَاةٍ عِنْدَهُ وَأَفْضَلَ مَا عِنْدَهُ مِنْ تِلْكَ السِّنِّ الْوَاجِبَةِ عَلَيْهِ، وَلَيْسَ فِيهِ إعْطَاءُ سِنٍّ مَكَانَ غَيْرِهَا أَصْلًا، وَلَا دَلِيلَ عَلَى قِيمَةٍ أَلْبَتَّةَ؟ وَاحْتَجُّوا بِحَدِيثِ وَائِلِ بْنِ حُجْرٍ فِي «الَّذِي أَعْطَى فِي صَدَقَةِ مَالِهِ فَصِيلًا مَخْلُولًا فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا بَارَكَ اللَّهُ لَهُ، وَلَا فِي إبِلِهِ فَبَلَغَ ذَلِكَ الرَّجُلَ، فَجَاءَ بِنَاقَةٍ فَذَكَرَ مِنْ جَمَالِهَا وَحُسْنِهَا، وَقَالَ: أَتُوبُ إلَى اللَّهِ وَإِلَى نَبِيِّهِ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: اللَّهُمَّ بَارِكْ فِيهِ وَفِي إبِلِهِ» .

وَقَالَ أَبُو مُحَمَّد: هَذَا خَبَرٌ صَحِيحٌ، وَلَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ الْفَصِيلَ لَا يُجْزِئُ فِي شَيْءٍ مِنْ الصَّدَقَةِ بِلَا شَكٍّ، وَنَاقَةٌ حَسْنَاءُ جَمِيلَةٌ قَدْ تَكُونُ جَذَعَةً وَقَدْ تَكُونُ حِقَّةً؛ فَأَعْطَى مَا عَلَيْهِ بِأَحْسَنِ مَا قُدِّرَ، وَلَيْسَ فِيهِ نَصٌّ وَلَا دَلِيلٌ عَلَى إعْطَاءِ غَيْرِ السِّنِّ الْوَاجِبَةِ عَلَيْهِ وَلَا عَلَى الْقِيمَةِ أَصْلًا؟ وَاحْتَجُّوا بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ مَالِكٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي رَافِعٍ قَالَ «اسْتَسْلَفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَكْرًا فَجَاءَتْهُ إبِلٌ مِنْ إبِلِ الصَّدَقَةِ، فَأَمَرَنِي أَنْ

me to repay the man his camel. I said: 'I found only prime four-year-old camels among the livestock.' The Prophet - peace and blessings be upon him - said: 'Give him this, for the best of people are those who settle debts most honorably.'"

أَقْضِيَ الرَّجُلَ بَكْرَهُ؟ فَقُلْتُ: لَمْ أَجِدْ فِي الْإِبِلِ إِلَّا جَمَلًا خِيَارًا رَبَاعِيًا، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطِهِ إِيَّاهُ، فَإِنَّ خِيَارَ النَّاسِ أَحْسَنُهُمْ قَضَاءً» .

L10685 Abu Muhammad said: This is an authentic report, and there is no valid argument for them in it, for it does not state that this particular camel was taken as part of an explicitly designated obligatory Zakah. The Zakah collector might have purchased it with some of the Zakah funds collected, and this is not impossible.

قَالَ أَبُو مُحَمَّد: هَذَا خَبَرٌ صَحِيحٌ، وَلَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّهُ لَيْسَ فِيهِ أَنَّ ذَلِكَ الْجَمَلَ أُخِذَ فِي زَكَاةٍ وَاجِبَةٍ بِعَيْنِهِ، وَقَدْ يُمْكِنُ أَنْ يَبْتَاعَهُ الْمُصَدِّقُ بِبَعْضِ مَا أَخَذَ فِي الصَّدَقَةِ، فَهَذَا غَيْرُ مُمْتَنِعٍ.

L10686–10687 In this matter, there is a narration they cite as evidence despite its inadequacy. As for us, we do not present it as proof but as a reminder for them. It is a report we narrated via the chain of Abū Bakr ibn Abī Shaybah, from ʿAbd al-Raḥīm ibn Sulaymān, from Mujālid, from al-Ṣunābiḥī al-Aḥmasī: "The Messenger of Allah (peace be upon him) noticed a she-camel among the zakāh camels and asked, 'What is this?' The zakāh collector responded, 'I reclaimed it by taking two camels from the fringes of the herd.' The Prophet said, 'Then that is acceptable.'"

وَقَدْ جَاءَ فِي هَذَا أَثَرٌ يَحْتَجُّونَ بِدُونِهِ، وَأَمَّا نَحْنُ فَلَسْنَا نُورِدُهُ مُحْتَجِّينَ بِهِ، لَكِنْ تَذْكِيرًا لَهُمْ؟ وَهُوَ خَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ عَنْ عَبْدِ الرَّحِيمِ بْنِ سُلَيْمَانَ عَنْ مُجَالِدٍ عَنْ الصُّنَابِحِ الْأَحْمَسِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبْصَرَ نَاقَةً فِي إبِلِ الصَّدَقَةِ، فَقَالَ مَا هَذِهِ؟ فَقَالَ صَاحِبُ الصَّدَقَةِ: إنِّي ارْتَجَعْتُهَا بِبَعِيرَيْنِ مِنْ حَوَاشِي الْإِبِلِ، فَقَالَ: فَنَعَمْ إذَنْ» .

L10688 It is possible that those camels were from voluntary charity, because the ḥadīth does not indicate that the two were obligatory alms. Since all of that is plausible—and we are certain that a four-year-old camel is not part of obligatory alms at all—it is impermissible to abandon certainty for conjecture. We have discussed the meaning of this narration in the book *Al-Iṣāl* and that it is absolutely impossible for the Messenger of Allah—peace and blessings be upon him—to have borrowed a young camel for himself and then repaid it from charity camels, given that charity is unquestionably forbidden for him. It is established that he—peace and blessings be upon him—said: "Charity is not permissible for Muḥammad or the family of Muḥammad." Thus, we are certain that he borrowed it on behalf of others; no other possibility exists. Consequently, the one who took the young camel became one of the debtors, as the loan was his liability and he took it. Since he was among the debtors, his entitlement from the charity was allocated, and thus his debt was settled from it. No other interpretation is permissible.

وَقَدْ يُمْكِنُ أَنْ تَكُونَ تِلْكَ الْإِبِلُ مِنْ صَدَقَةِ تَطَوُّعٍ، لِأَنَّهُ لَيْسَ فِي الْحَدِيثِ أَنَّهُمَا الصَّدَقَةُ الْوَاجِبَةُ، فَلِمَا أَمْكَنَ كُلُّ ذَلِكَ - وَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهُ لَيْسَ فِي الصَّدَقَةِ جَمَلُ رَبَاعٍ أَصْلًا - لَمْ يَحِلَّ تَرْكُ الْيَقِينِ لِلظُّنُونِ، وَقَدْ تَكَلَّمْنَا فِي مَعْنَى هَذَا الْخَبَرِ فِي كِتَابِ " الْإِيصَالِ "، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُمْكِنُ أَلْبَتَّةَ أَنْ يَسْتَسْلِفَ الْبِكْرَ لِنَفْسِهِ ثُمَّ يَقْضِيه مِنْ إبِلِ الصَّدَقَةِ، وَالصَّدَقَةُ حَرَامٌ عَلَيْهِ بِلَا شَكٍّ وَلَا خِلَافَ، صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: «الصَّدَقَةُ لَا تَحِلُّ لِمُحَمَّدٍ وَلَا لِآلِ مُحَمَّدٍ» فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهُ إنَّمَا اسْتَسْلَفَهُ لِغَيْرِهِ، لَا يُمْكِنُ غَيْرُ ذَلِكَ، فَصَارَ الَّذِي أَخَذَ الْبِكْرَ مِنْ الْغَارِمِينَ، لِأَنَّ السَّلَفَ

فِي ذِمَّتِهِ، وَهُوَ أَخَذَهُ، فَإِذْ هُوَ مِنْ الْغَارِمِينَ فَقَدْ صَارَ حَظُّهُ فِي الصَّدَقَةِ، فَقُضِيَ عَنْهُ مِنْهَا، لَا يَجُوزُ غَيْرُ ذَلِكَ.

L10689–10691 Similarly, we also do not doubt that the one from whom the Prophet—peace and blessings be upon him—borrowed the young camel was from some categories eligible for charity. Were it not for this, the Messenger of Allah would not have given him from the right of the charity recipients, as a surplus beyond his own entitlement. Abu Muhammad remarked: This report indeed contains evidence for prohibiting the advancement of charity before its appointed time. For if that had been permissible, he—peace be upon him—would not have borrowed against charity and awaited its appointed time; rather, he would have urgently sought charity from some of his companions. Since he did not do that—peace be upon him—it is confirmed that paying charity before its due time does not suffice. By Allah, the Exalted, we are strengthened. Thus, all that they deceptively presented is rendered void, and it is established that none of the arguments they advanced permit giving beyond the obligated measure in zakah or anything other than its defined attributes.

وَكَذَلِكَ أَيْضًا لَا نَشُكُّ أَنَّ الَّذِي كَانَ يَسْتَقْرِضُ مِنْهُ الْبَكْرَ كَانَ مِنْ بَعْضِ أَصْنَافِ الصَّدَقَةِ، وَلَوْلَا ذَلِكَ مَا أَعْطَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ حَقِّ أَهْلِ الصَّدَقَةِ فَضْلًا عَلَى حَقِّهِ قَالَ أَبُو مُحَمَّد: وَإِنَّمَا فِي هَذَا الْخَبَرِ دَلِيلٌ عَلَى الْمَنْعِ مِنْ تَقْدِيمِ الصَّدَقَةِ قَبْلَ وَقْتِهَا لِأَنَّهُ لَوْ كَانَ ذَلِكَ جَائِزًا لَمَا اسْتَقْرَضَ - عَلَيْهِ السَّلَامُ - عَلَى الصَّدَقَةِ وَانْتَظَرَ حَتَّى يَحِينَ وَقْتُهَا، بَلْ كَانَ يَسْتَعْجِلُ صَدَقَةً مِنْ بَعْضِ أَصْحَابِهِ، فَلَمَّا لَمْ يَفْعَلْ ذَلِكَ - عَلَيْهِ السَّلَامُ - صَحَّ أَنَّهُ لَا يُجْزِئُ أَدَاءُ صَدَقَةٍ قَبْلَ وَقْتِهَا - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ، وَصَحَّ أَنَّ كُلَّ مَا احْتَجُّوا بِهِ لَيْسَ فِيهِ إجَازَةُ إعْطَاءِ أَكْثَرَ مِنْ الْوَاجِبِ فِي الزَّكَاةِ وَلَا غَيْرِ الصِّفَةِ الْمَحْدُودَةِ فِيهَا.

L10692 As for valuation, they have no evidence whatsoever to support its permissibility. Rather, conclusive evidence stands established regarding the prohibition of taking it, for it is not what Allah the Exalted has commanded, and constitutes a transgression of Allah's boundaries. Allah the Exalted has said: "And whoever transgresses the bounds of Allah has indeed wronged himself" [At-Talaq: 1].[10]

وَأَمَّا الْقِيمَةُ فَلَا دَلِيلَ لَهُمْ عَلَى جَوَازِهَا أَصْلًا، بَلْ الْبُرْهَانُ ثَابِتٌ بِتَحْرِيمِ أَخْذِهَا، لِأَنَّهَا غَيْرُ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ، وَتَعَدٍّ لِحُدُودِ اللَّهِ، وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

L10693 And He, the Exalted, said: "So whoever alters it after having heard it, then indeed its sin is upon those who alter it." [Al-Baqarah: 181].[11]

وَقَالَ تَعَالَى: {فَمَنْ بَدَّلَهُ بَعْدَمَا سَمِعَهُ فَإِنَّمَا إِثْمُهُ عَلَى الَّذِينَ يُبَدِّلُونَهُ} [البقرة: ١٨١] .

L10694 If they were to say: "If the consideration is for the recipients of charity, what prevents it?" We would respond: The entirety of the consideration lies in ensuring that they are not given what Allah the Exalted has forbidden them,

فَإِنْ قَالُوا: إنْ كَانَ نَظَرًا لِأَهْلِ الصَّدَقَةِ فَمَا يَمْنَعُ مِنْهُ؟ قُلْنَا: النَّظَرُ كُلُّهُ لِأَهْلِ الصَّدَقَةِ أَنْ لَا يُعْطُوا مَا حَرَّمَهُ اللَّهُ تَعَالَى عَلَيْهِمْ، إذْ يَقُولُ تَعَالَى: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

[10] **Qur'an references (L10692):** Qur'an 65:1 (At-Talaq).
[11] **Qur'an references (L10693):** Qur'an 2:181 (Al-Baqarah).

as He says: “Do not consume one another’s wealth unjustly” [Al-Baqarah: 188].[12]

L10695 The Messenger of Allah—peace and blessings be upon him—said: “Verily, your blood and your property are inviolable to you.”

L10696–10698 It has been established that it is not permissible to take anything from anyone’s wealth except what Allah the Exalted has permitted or obligated therein only. The Exalted has never permitted taking monetary value instead of the specific zakat He ordained in its precise form and description. We do not know under what established consideration among us they found it permissible to take zakat from the owner of five camels that do not reach the required threshold. According to Abu Hanifah, even from one who owns nothing but a single productive plant yielded by a piece of land he owns, zakat is not taken. Nor is it taken from the owner of jewels, slaves, or houses worth a hundred thousand, nor from the owner of twenty-nine cows, thirty-nine sheep, or five awqiyyah of silver not in dirham form. Is all of this anything but adherence to what Allah the Exalted has commanded alone? Our position is transmitted from the early predecessors, as we have been narrated from the chain of Suwayd ibn Ghaflah, who said, “I traveled—” Or he said: “One who traveled with the zakāt validator of the Messenger of Allah—peace and blessings be upon him—informed me that a man presented a she-camel with a well-filled hump. The validator refused to accept it. The man said: ’I want you to take the best of my camels,’ but he refused. The man then brought forward another camel of lesser value, which he accepted, saying: ’I accept this one, though I fear the Messenger of Allah—peace and blessings be upon him—might censure me, saying: ”You approached a man and selected the choice of his camels.“”

L10699 From the path of Abd al-Razzaq via Ibn Jurayj, that he said to Abdullah ibn Tawus: “I was informed you claim Abu Abd al-Rahman – meaning his father – said: ’If you cannot find [an animal of] the specified age, then its value?”’ He replied: “I never said that.” Ibn Jurayj said: Ata told me: “In zakat, neither a young animal, nor a male, nor one with a defect, nor an aged

[12] **Qur’an references (L10694):** Qur’an 2:188 (Al-Baqarah).

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَصَحَّ أَنَّهُ لَا يَحِلُّ مِنْ مَالِ أَحَدٍ إِلَّا مَا أَبَاحَهُ اللَّهُ تَعَالَى مِنْهُ، أَوْ أَوْجَبَهُ فِيهِ فَقَطْ، وَمَا أَبَاحَ تَعَالَى قَطُّ أَخْذَ قِيمَةٍ عَنْ زَكَاةٍ افْتَرَضَهَا بِعَيْنِهَا وَصِفَتِهَا وَمَا نَدْرِي فِي أَيِّ نَظَرٍ مَعْهُودٍ بَيْنَنَا وَجَدُوا أَنْ تُؤْخَذَ الزَّكَاةُ مِنْ صَاحِبِ خَمْسٍ مِنْ الْإِبِلِ لَا تَقُومُ بِهِ، وَعِنْدَ أَبِي حَنِيفَةَ مِمَّنْ لَا يَمْلِكُ إلَّا وَرْدَةً وَاحِدَةً أَخْرَجَتْهَا قِطْعَةُ أَرْضٍ لَهُ: وَلَا تُؤْخَذُ مِنْ صَاحِبِ جَوَاهِرَ وَرَقِيقٍ وَدُورٍ بِقِيمَةِ مِائَةِ أَلْفٍ وَلَا مِنْ صَاحِبِ تِسْعٍ وَعِشْرِينَ بَقَرَةً، وَتِسْعٍ وَثَلَاثِينَ شَاةً، وَخَمْسِ أَوَاقٍ غَيْرِ دِرْهَمٍ مِنْ الْفِضَّةِ فَهَلْ فِي هَذَا كُلِّهِ إلَّا اتِّبَاعُ مَا أَمَرَ اللَّهُ تَعَالَى فَقَطْ؟ وَقَدْ جَاءَ قَوْلُنَا عَنْ السَّلَفِ، كَمَا رُوِّينَا [مِنْ طَرِيقِ] سُوَيْدِ بْنِ غَفَلَةَ قَالَ “ سِرْت - أَوْ قَالَ: أَخْبَرَنِي مَنْ سَارَ مَعَ مُصَدِّقِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَعَمَدَ رَجُلٌ إلَى نَاقَةٍ كَوْمَاءَ، فَأَبَى أَنْ يَقْبَلَهَا، فَقَالَ: إنِّي أُحِبُّ أَنْ تَأْخُذَ خَيْرَ إبِلِي فَأَبَى أَنْ يَقْبَلَهَا فَخَطَمَ لَهُ أُخْرَى دُونَهَا فَقَبِلَهَا، وَقَالَ: إنِّي لَآخُذُهَا وَأَخَافُ أَنْ يَجِدَ عَلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: عَمَدْت إلَى رَجُلٍ فَتَخَيَّرْت عَلَيْهِ إبِلَهُ ”.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَنَّهُ قَالَ لِعَبْدِ اللَّهِ بْنِ طَاوُسٍ: أُخْبِرْت أَنَّك تَقُولُ: قَالَ أَبُو عَبْدِ الرَّحْمَنِ - يَعْنِي أَبَاهُ - إذَا لَمْ تَجِدُوا السِّنَّ فَقِيمَتُهَا؟ قَالَ: مَا قُلْته قَطُّ قَالَ ابْنُ جُرَيْجٍ: وَقَالَ لِي عَطَاءٌ: لَا يَخْرُجُ فِي الصَّدَقَةِ صَغِيرٌ وَلَا ذَكَرٌ وَلَا ذَاتُ عَوَارٍ وَلَا هَرِمَةٌ؟ وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ جَرِيرٍ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ: لَا

يُؤْخَذُ فِي الصَّدَقَةِ ذَكَرٌ مَكَانَ أُنْثَى إِلَّا ابْنُ لَبُونٍ مَكَانَ ابْنَةِ مَخَاضٍ قَالَ عَلِيٌّ: وَمَنْ ذَبَحَ أَوْ نَحَرَ مَا يَجِبُ عَلَيْهِ فِي الصَّدَقَةِ ثُمَّ أَعْطَاهُ مُذَكًّى لَمْ يَجْزْ عَنْهُ، لِأَنَّ الْوَاجِبَ عَلَيْهِ إعْطَاؤُهُ حَيًّا وَلَا يَقَعُ عَلَى الْمُذْكِي اسْمُ شَاةٍ مُطْلَقَةٍ وَلَا اسْمُ بَقَرَةٍ مُطْلَقَةٍ، وَلَا اسْمُ بِنْتِ مَخَاضٍ مُطْلَقَةٍ، وَقَدْ وَجَبَ لِأَهْلِ الصَّدَقَةِ حَيًّا، وَلَا يَجُوزُ لَهُ ذَبْحُ مَا وَجَبَ لِغَيْرِهِ؟ فَإِذَا قَبَضَهُ أَهْلُهُ أَوْ الْمُصَدِّقُ فَقَدْ أَجْزَأَ، وَجَازَ لِلْمُصَدِّقِ حِينَئِذٍ بَيْعُهُ، إنْ رَأَى ذَلِكَ حَظًّا لِأَهْلِ الصَّدَقَةِ، لِأَنَّهُ نَاظِرٌ لَهُمْ وَلَيْسُوا قَوْمًا بِأَعْيَانِهِمْ، فَيَجُوزُ حُكْمُهُمْ فِيهِ، أَوْ إبْرَاؤُهُمْ مِنْهُ قَبْلَ قَبْضِهِمْ لَهُ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

animal may be given." From the path of Abu Ubayd via Jarir via Mansur via Ibrahim al-Nakhai, that he said: "A male animal is not accepted in zakat as a substitute for a female, except a two-year-old male camel in place of a one-year-old female camel." Ali said: "Whoever slaughters by regular means or by throat-cutting (for camels) what he owes in zakat, then gives it as a slaughtered animal, this does not suffice him. The obligation requires giving it alive. The absolute terms 'sheep,' 'cow,' or 'one-year-old female camel' do not apply to the slaughtered animal. The recipients of zakat must receive it alive, and one may not slaughter what is owed to others. If the recipients or the zakat collector take possession, it becomes valid. The collector may then sell it if he deems this beneficial for the zakat recipients, as he acts as their trustee. They are not a specific group of individuals, so their ruling applies whether they claim it or renounce it before taking possession – and in Allah the Exalted we seek support."

وَاخْتَلَفُوا فِيمَا زَادَ عَلَى الْعِشْرِينَ وَمِائَةٍ؟ فَقَالَتْ طَائِفَةٌ: حِقَّتَانِ إلَى أَنْ تَصِيرَ ثَلَاثِينَ وَمِائَةً؟ وَقَالَتْ طَائِفَةٌ: ثَلَاثُ بَنَاتِ لَبُونٍ وَلَا بُدَّ إلَى أَنْ تَصِيرَ ثَلَاثِينَ وَمِائَةً فَيَجِبُ فِيهَا حِقَّةٌ وَبِنْتَا لَبُونٍ ثُمَّ كُلَّمَا زَادَتْ عَشَرَةً كَانَ فِي كُلِّ خَمْسِينَ حِقَّةٌ، وَفِي كُلِّ أَرْبَعِينَ بِنْتُ لَبُونٍ.

L10700 They differed regarding what exceeds one hundred and twenty. One group said: "Two Hiqqahs [three-year-old she-camels] are due until it reaches one hundred and thirty." Another group said: "Three Bint Labūns [two-year-old she-camels] must be given until it reaches one hundred and thirty, at which point one Hiqqah and two Bint Labūns become due. Thereafter, whenever the total increases by ten, one Hiqqah is required per every fifty and one Bint Labūn per every forty."

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَابْنِ الْقَاسِمِ صَاحِبِ مَالِكٍ؟

L10701 And is this the opinion of Al-Shāfiʿī, Abū Sulaymān, and Ibn al-Qāsim, the companion of Mālik?

وَقَالَتْ طَائِفَةٌ: أَيَّ الصِّفَتَيْنِ أَدَّى أَجْزَأَهُ، وَهُوَ قَوْلُ مَالِكٍ إلَى أَنْ تَبْلُغَ مِائَةً وَثَلَاثِينَ، فَيَجِبُ فِيهَا حِقَّةٌ وَبِنْتَا لَبُونٍ، وَهَكَذَا كُلَّمَا زَادَتْ عَشْرًا فَفِي كُلِّ خَمْسِينَ حِقَّةٌ، وَفِي كُلِّ أَرْبَعِينَ بِنْتُ لَبُونٍ؟ وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَيْسَ فِيمَا بَعْدَ الْعِشْرِينَ وَمِائَةٍ إلَّا حِقَّتَانِ فَقَطْ، حَتَّى تَتِمَّ خَمْسًا وَعِشْرِينَ وَمِائَةً فَيَجِبُ فِيهَا حِقَّتَانِ وَشَاةٌ إلَى ثَلَاثِينَ وَمِائَةٍ فَإِذَا بَلَغَتْهَا فَفِيهَا حِقَّتَانِ وَشَاتَانِ، إلَى خَمْسٍ وَثَلَاثِينَ وَمِائَةٍ، فَفِيهَا حِقَّتَانِ وَثَلَاثُ شِيَاهٍ،

L10702–10705 A group said: Which of the two categories suffices? This is the opinion of Mālik until reaching one hundred and thirty, wherein a hīqqah and two bint labūn are due. Similarly, whenever the count increases by ten, for every fifty a hīqqah is due, and for every forty a bint labūn. Abū Ḥanīfah and his companions said: Beyond one hundred and twenty, only two hīqqahs are required until reaching one hundred and twenty-five, wherein two hīqqahs and one sheep become due up to one hundred and thirty. When attaining one hundred and thirty, two hīqqahs and two sheep are due up to one hundred and thirty-five. Then two hīqqahs and three sheep are due up to one hundred and forty. At this point, two hīqqahs and four sheep are due up to

one hundred and forty-five. Upon reaching one hundred and forty-five, two hīqqahs and one bint makhāḍ are due up to one hundred and fifty. When reaching one hundred and fifty, three hīqqahs are due indefinitely. If the count exceeds one hundred and fifty by five, three hīqqahs and one sheep are required, then as previously stated: for every five camels, a sheep is added alongside the three hīqqahs until reaching one hundred and seventy-five. At one hundred and seventy-five, one bint makhāḍ and three hīqqahs are due up to one hundred and eighty-six. When reaching one hundred and eighty-six, three hīqqahs and one bint labūn are due up to one hundred and ninety-six. At one hundred and ninety-six, four hīqqahs are due, continuing similarly until two hundred and five. Upon reaching two hundred and five, four hīqqahs and one sheep are due, continuing this pattern indefinitely. For every fifty added, a hīqqah is added, then the zakāt calculation restarts with sheep, followed by bint makhāḍ, then bint labūn, then hīqqah. Abū Muḥammad said: As for those who maintain two hīqqahs for counts between one hundred and twenty and one hundred and thirty, they cite the narration we transmitted through Abū ʻUbayd's chain from Ḥabīb ibn Abī Ḥabīb, from ʻAmr ibn Harim, from Muḥammad ibn ʻAbd al-Raḥmān: "Verily, in the Prophet's decree—peace and blessings of Allāh be upon him—and in his..." The Book of Umar on Zakat states that when camels exceed one hundred and twenty, no Zakat is due on the portion below ten until they reach one hundred and thirty.

إِلَى أَرْبَعِينَ وَمِائَةٍ، فَفِيهَا حِقَّتَانِ وَأَرْبَعُ شِيَاهٍ، إِلَى خَمْسٍ وَأَرْبَعِينَ وَمِائَةٍ، فَإِذَا بَلَغَتْهَا فَفِيهَا حِقَّتَانِ وَبِنْتُ مَخَاضٍ، إِلَى خَمْسِينَ وَمِائَةٍ، فَإِذَا بَلَغَتْهَا فَفِيهَا ثَلَاثُ حِقَاقٍ، وَهَكَذَا أَبَدًا، إِذَا زَادَتْ عَلَى الْخَمْسِينَ وَمِائَةٍ خَمْسًا فَفِيهَا ثَلَاثُ حِقَاقٍ وَشَاةٍ، ثُمَّ كَمَا ذَكَرْنَا، فِي كُلِّ خَمْسٍ شَاةٌ مَعَ الثَّلَاثِ حِقَاقٍ، إِلَى أَنْ تَصِيرَ خَمْسًا وَسَبْعِينَ وَمِائَةً، فَيَجِبُ فِيهَا بِنْتُ مَخَاضٍ وَثَلَاثُ حِقَاقٍ، إِلَى سِتٍّ وَثَمَانِينَ وَمِائَةٍ، فَإِذَا بَلَغَتْهَا كَانَتْ فِيهَا ثَلَاثُ حِقَاقٍ وَبِنْتُ لَبُونٍ، إِلَى سِتٍّ وَتِسْعِينَ وَمِائَةٍ، فَإِذَا بَلَغَتْهَا فَفِيهَا أَرْبَعُ حِقَاقٍ، وَكَذَلِكَ إِلَى أَنْ تَكُونَ مِائَتَيْنِ وَخَمْسًا، فَإِذَا بَلَغَتْهَا فَفِيهَا أَرْبَعُ حِقَاقٍ وَشَاةٌ، وَهَكَذَا أَبَدًا كُلَّمَا تَكُونُ الزِّيَادَةُ خَمْسِينَ زَادَ حِقَّةً، ثُمَّ اسْتُأْنِفَ تَزْكِيَتُهَا بِالْغَنَمِ، ثُمَّ بِبِنْتِ الْمَخَاضِ ثُمَّ بِبِنْتِ اللَّبُونِ ثُمَّ الْحِقَّةِ؟ قَالَ أَبُو مُحَمَّدٍ: فَأَمَّا مَنْ رَأَى الْحِقَّتَيْنِ فِيمَا زَادَ عَلَى الْعِشْرِينَ وَالْمِائَةِ إِلَى أَنْ تَصِيرَ ثَلَاثِينَ وَمِائَةً فَإِنَّهُمْ احْتَجُّوا بِأَنْ ذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ حَبِيبِ بْنِ أَبِي حَبِيبٍ عَنْ عَمْرِو بْنِ هَرِمٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ " إِنَّ فِي كِتَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي كِتَابِ عُمَرَ فِي الصَّدَقَةِ: أَنَّ الْإِبِلَ إِذَا زَادَتْ عَلَى عِشْرِينَ وَمِائَةٍ فَلَيْسَ فِيمَا دُونَ الْعَشْرِ شَيْءٌ حَتَّى تَبْلُغَ ثَلَاثِينَ وَمِائَةً ".

Ali said: This is a mursal narration containing no valid proof, for Muhammad ibn Abd al-Rahman is unknown. We shall present them with what is superior to this, as Abdullah ibn Rabi' narrated to us: Umar ibn Abd al-Malik narrated to us, Muhammad ibn Bakr narrated to us, Abu Dawud narrated to us, Muhammad ibn al-Ala (who is Abu Kuraib) narrated to us, Abdullah ibn al-Mubarak narrated to us, Yunus ibn Yazid narrated to us, from Ibn Shihab, who said...

L10706

قَالَ عَلِيٌّ: وَهَذَا مُرْسَلٌ، وَلَا حُجَّةَ فِيهِ، وَمُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ مَجْهُولٌ وَنَحْنُ نَأْتِيهِمْ بِمَا هُوَ خَيْرٌ مِنْ هَذَا، كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا مُحَمَّدُ بْنُ الْعَلَاءِ هُوَ أَبُو كُرَيْبٍ - ثنا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ ثنا يُونُسُ بْنُ يَزِيدَ عَنْ ابْنِ شِهَابٍ قَالَ.

This is a copy of the book of the Messenger of Allah (peace be upon him) which he wrote concerning charity. It is held by the family of Umar ibn al-Khattab. [The narrator] said: Salim ibn Abdullah ibn Umar recited it to

L10707

me, and I memorized it exactly as it was. This is the copy that Umar ibn Abd al-Aziz transcribed from Abdullah and Salim, the two sons of Abdullah ibn Umar, and he mentioned the hadith.

هَذِهِ نُسْخَةُ كِتَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي كَتَبَهُ فِي الصَّدَقَةِ، وَهِيَ عِنْدَ آلِ عُمَرَ بْنِ الْخَطَّابِ، قَالَ: أَقْرَأَنِي إِيَّاهَا سَالِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ، فَوَعَيْتُهَا عَلَى وَجْهِهَا، وَهِيَ الَّتِي انْتَسَخَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ مِنْ عَبْدِ اللَّهِ وَسَالِمِ ابْنَيْ عَبْدِ اللَّهِ بْنِ عُمَرَ وَذَكَرَ الْحَدِيثَ.

L10708 The hadith states: “Regarding camels, if they number one hundred and twenty-one, three bint labūn (two-year-old she-camels) are due for herds up to one hundred and thirty. When they reach one hundred and thirty, two bint labūn and one hiqqah (five-year-old she-camel) are due.” He then mentioned the remainder of the hadith.

وَفِيهِ «فِي الْإِبِلِ إِذَا كَانَتْ إِحْدَى وَعِشْرِينَ وَمِائَةً فَفِيهَا ثَلَاثُ بَنَاتِ لَبُونٍ إِلَى ثَلَاثِينَ وَمِائَةٍ، فَإِذَا بَلَغَتْهَا بِنْتَا لَبُونٍ وَحِقَّةٌ» وَذَكَرَ بَاقِيَ الْحَدِيثِ.

L10709 This is better than what we brought, and this is indeed the true book of Umar—not that falsified one.

وَهَذَا خَيْرٌ مِمَّا أَتَوْنَا بِهِ، وَهَذَا هُوَ كِتَابُ عُمَرَ حَقًّا، لَا تِلْكَ الْمَكْذُوبَةُ.

L10710 Abdullah ibn Rabi’ narrated to us: Ibn Mufarrij narrated to us, Qasim ibn Asbagh narrated to us, Ibn Waddah narrated to us, Sahnun narrated to us, Ibn Wahb narrated from Yunus ibn Yazid from Ibn Shihab, who said: The copy of the Messenger of Allah’s decree regarding zakāh—peace and blessings be upon him—which he wrote and which remains with the family of Umar ibn al-Khaṭṭāb, was recited to me by Salim ibn Abdullah ibn Umar. I memorized it verbatim, being the same text that Umar ibn Abdul Aziz transcribed from Salim and Abdullah—the two sons of Abdullah ibn Umar ibn al-Khaṭṭāb—during his governorship of Medina. He then instructed his officials to enforce its provisions. He subsequently cited a report resembling the one we have mentioned. They further stated: “There exists in certain narrations: ‘For every fifty [camels], a _hiqqah_ is due.’” We responded: “This is correct, though these are _mursal_ narrations transmitted through al-Sha‘bi and others. We have indeed recorded from Abu Bakr, citing the Messenger of Allah—peace and blessings be upon him—: ‘For every fifty [camels], a _hiqqah_ is due, and for every forty, a _bint labun_ is due.’”[13]

وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ مُفَرِّجٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ ثنا سَحْنُونٌ ثنا ابْنُ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنِ ابْنِ شِهَابٍ قَالَ: نُسْخَةُ كِتَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي كَتَبَ فِي الصَّدَقَةِ، وَهِيَ عِنْدَ آلِ عُمَرَ بْنِ الْخَطَّابِ، أَقْرَأَنِيهَا سَالِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ فَوَعَيْتُهَا عَلَى وَجْهِهَا وَهِيَ الَّتِي نَسَخَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ مِنْ سَالِمٍ وَعَبْدُ اللَّهِ ابْنَيْ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ حِينَ أُمِّرَ عَلَى الْمَدِينَةِ، وَأَمَرَ عُمَّالَهُ بِالْعَمَلِ بِهَا، ثُمَّ ذَكَرَ نَحْوَ هَذَا الْخَبَرِ الَّذِي أَوْرَدْنَا؟ وَقَالُوا أَيْضًا: قَدْ جَاءَ فِي أَحَادِيثَ “ فِي كُلِّ خَمْسِينَ حِقَّةٌ ”؟ قُلْنَا: نَعَمْ، وَهِيَ أَحَادِيثُ مُرْسَلَةٌ مِنْ طَرِيقِ الشَّعْبِيِّ وَغَيْرِهِ، وَقَدْ أَوْرَدْنَا عَنْ أَبِي بَكْرٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فِي كُلِّ خَمْسِينَ حِقَّةٌ وَفِي كُلِّ أَرْبَعِينَ بِنْتُ لَبُونٍ» .

L10711–10713 Similarly, it has also been established as authentic through the chain of Ibn ‘Umar, as has been narrated to us via the mentioned chain reaching Abū

وَكَذَلِكَ صَحَّ أَيْضًا مِنْ طَرِيقِ ابْنِ عُمَرَ، كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى أَبِي دَاوُد ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ النُّفَيْلِيُّ ثنا عُبَادُ بْنُ الْعَوَّامِ عَنْ سُفْيَانَ بْنِ حُسَيْنٍ عَنِ الزُّهْرِيِّ عَنْ سَالِمٍ

[13] **Hadith references (L10710):** Sunan Ibn Majah 1799.

بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: «كَتَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كِتَابَ الصَّدَقَةِ، فَلَمْ يُخْرِجْهُ إِلَى عُمَّالِهِ حَتَّى قُبِضَ، وَقَرَنَهُ بِسَيْفِهِ، فَعَمِلَ بِهِ أَبُو بَكْرٍ حَتَّى قُبِضَ، ثُمَّ عَمِلَ بِهِ عُمَرُ حَتَّى قُبِضَ، فَكَانَ فِيهِ: فِي خَمْسٍ مِنْ الْإِبِلِ شَاةٌ» وَذَكَرَ الْحَدِيثَ.

Dāwūd, who narrated to us. Abdullah ibn Muhammad al-Nufayli narrated to us: Ubadah ibn al-Awwam narrated from Sufyan ibn Husayn from al-Zuhri from Salim ibn Abdullah ibn Umar from his father, who said: "The Messenger of Allah — peace and blessings be upon him — wrote a book on charity, but he did not send it to his agents before he passed away, and he fastened it to his sword. Abu Bakr acted upon it until his death, then Umar acted upon it until his death. It stated: 'For every five camels, one sheep is due.'" And he mentioned the rest of the hadith.

وَفِيهِ «فَفِيهَا ابْنَتَا لَبُونٍ إِلَى تِسْعِينَ، فَإِذَا زَادَتْ وَاحِدَةً فَفِيهَا حِقَّتَانِ إِلَى عِشْرِينَ وَمِائَةٍ، فَإِنْ كَانَتْ الْإِبِلُ أَكْثَرَ مِنْ ذَلِكَ فَفِي كُلِّ خَمْسِينَ حِقَّةٌ، وَفِي كُلِّ أَرْبَعِينَ بِنْتُ لَبُونٍ»

L10714 The ruling specifies: "For that number, two three-year-old she-camels (bintā labūn) are due up to ninety. If the total increases by one camel, then two four-year-old she-camels (ḥiqqatān) are due up to one hundred and twenty. If the camels exceed that amount, then for every fifty, a four-year-old she-camel (ḥiqqah) is due, and for every forty, a three-year-old she-camel (bint labūn) is due."

وَهَذَا هُوَ الَّذِي لَا يَصِحُّ غَيْرُهُ، وَلَوْ صَحَّتْ تِلْكَ الْأَخْبَارُ الَّتِي لَيْسَ فِيهَا إلَّا «فِي كُلِّ خَمْسِينَ حِقَّةٌ» لَكَانَ هَذَانِ الْخَبَرَانِ الصَّحِيحَانِ زَائِدَيْنِ عَلَيْهَا حُكْمًا فِي أَنَّ فِي كُلِّ أَرْبَعِينَ بِنْتُ لَبُونٍ؛ فَتِلْكَ غَيْرُ مُخَالِفَةٍ لِهَذَيْنِ الْخَبَرَيْنِ، وَهَذَانِ الْخَبَرَانِ زَائِدَانِ عَلَى تِلْكَ؛ فَلَا يَحِلُّ خِلَافُهُمَا، وَالْحُجَّةُ الثَّانِيَةُ أَنَّهُمْ قَالُوا: لَمَّا وَجَبَ فِي الْعِشْرِينَ وَمِائَةٍ حِقَّتَانِ، ثُمَّ وَجَدْنَا الزِّيَادَةَ عَلَيْهَا لَا حُكْمَ لَهَا فِي نَفْسِهَا، إذْ كُلُّ أَرْبَعِينَ قَبْلَهَا فَفِيهَا بِنْتُ لَبُونٍ عَلَى قَوْلِكُمْ؛ إذْ تَجْعَلُونَ فِيمَا زَادَ عَلَى عِشْرِينَ وَمِائَةٍ ثَلَاثُ بَنَاتِ لَبُونٍ -: فَإِذَا لَا حُكْمَ لَهَا فِي نَفْسِهَا فَأَحْرَى أَنْ لَا يَكُونَ لَهَا - حُكْمٌ فِي غَيْرِهَا، فَكُلُّ زِيَادَةٍ قَبْلَهَا تَنْقُلُ الْفَرْضَ فَلَهَا حِصَّةٌ مِنْ تِلْكَ الزِّيَادَةِ وَهَذِهِ بِخِلَافِ ذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا بِكَلَامِ الْمَمْرُورِينَ، أَوْ بِكَلَامِ الْمُسْتَخِفِّينَ بِالدِّينِ أَشْبَهَ مِنْهُ بِكَلَامِ مَنْ يَعْقِلُ وَيَتَكَلَّمُ فِي الْعِلْمِ لِأَنَّهُ كَلَامٌ لَمْ يُوجِبْهُ قُرْآنٌ وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا رِوَايَةٌ فَاسِدَةٌ، وَلَا أَثَرٌ عَنْ صَاحِبٍ وَلَا تَابِعٍ، وَلَا قِيَاسٌ

L10715–10717 This is the only valid opinion. If those reports stating merely "a she-camel in her third year for every fifty" were authentic, these two authentic reports would still constitute additional rulings by specifying a two-year-old she-camel for every forty. Thus, those reports would not contradict these two, while these two would supplement them, making it impermissible to contradict them. The second argument is their claim: Since two she-camels in their third year are obligatory for one hundred and twenty, and we observe that any excess beyond this carries no intrinsic ruling—as every forty prior to it requires a two-year-old she-camel according to your position, since you mandate three two-year-old she-camels for amounts exceeding one hundred and twenty—then if this excess holds no ruling in itself, it is more appropriate that it should have no bearing on other amounts. Thus, every preceding increase modifies the obligation by claiming a portion of that excess, whereas this case differs.

Abū Muḥammad said: This speech resembles the utterances of the deluded or those who belittle the religion, rather than the discourse of one who reasons and speaks knowledgeably. For this claim lacks foundation in the Qur'an, authentic Sunnah, corrupt narration, report from a Companion or Follower, analogy to any such sources, or any opinion with a comprehensible basis.

عَلَى شَيْءٍ مِنْ ذَلِكَ، وَلَا رَأْيَ لَهُ وَجْهُ يُفْهَمُ ثُمَّ يُقَالُ: قَدْ كَذَبْتَ فِي وَسْوَاسِك هَذَا أَيْضًا، لِأَنَّ كُلَّ أَرْبَعِينَ فِي الْمِائَةِ وَالْعِشْرِينَ لَا تَجِبُ فِيهَا بِنْتُ لَبُونٍ أَصْلًا، وَلَا تَجِبُ فِيهَا مُجْتَمِعَةً ثَلَاثُ بَنَاتِ لَبُونٍ، وَإِنَّمَا فِيهَا حِقَّتَانِ فَقَطْ، حَتَّى إذَا زَادَتْ عَلَى الْعِشْرِينَ وَمِائَةٍ وَاحِدَةً فَصَاعِدًا إلَى أَنْ تَتِمَّ ثَلَاثِينَ وَمِائَةً فَحِينَئِذٍ وَجَبَ فِي كُلِّ أَرْبَعِينَ فِي الْمِائَةِ وَالْعِشْرِينَ مَعَ الزِّيَادَةِ الَّتِي زَادَتْ ثَلَاثُ بَنَاتِ لَبُونٍ فَتِلْكَ الزِّيَادَةُ غَيَّرَتْ فَرْضَ مَا قَبْلَهَا، وَصَارَ لَهَا أَيْضًا فِي نَفْسِهَا حِصَّةٌ مِنْ تِلْكَ الزِّيَادَةِ الْحَادِثَةِ، وَهَذَا ظَاهِرٌ لَا خَفَاءَ بِهِ؟ وَقَدْ صَحَّ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «فِي كُلِّ خَمْسِينَ حِقَّةٌ، وَفِي كُلِّ أَرْبَعِينَ بِنْتُ لَبُونٍ» فِيمَا زَادَ عَلَى الْعِشْرِينَ وَمِائَةٍ، فَوَجَبَ فِي الْمِائَةِ حِينَئِذٍ حِقَّتَانِ وَلَمْ يَجُزْ تَعْطِيلُ النِّيفِ وَالْعِشْرِينَ الزَّائِدَةِ فَلَا تُزَكَّى، وَحُكْمُهَا فِي الزَّكَاةِ مَنْصُوصٌ عَلَيْهِ، وَمُمْكِنٌ إخْرَاجُهَا فِيهِ، فَوَجَبَتْ الثَّلَاثُ بَنَاتِ لَبُونٍ، وَبَطَلَ مَا مَوَّهُوا بِهِ وَأَمَّا قَوْلُ مَالِكٍ فِي التَّخْيِيرِ بَيْنَ إخْرَاجِ حِقَّتَيْنِ أَوْ ثَلَاثِ بَنَاتِ، لَبُونٍ خَطَأٌ، لِأَنَّهُ تَضْيِيعٌ لِلنِّيفِ وَالْعِشْرِينَ الزَّائِدَةِ عَلَى الْمِائَةِ، فَلَا تَخْرُجُ زَكَاتُهَا وَهَذَا لَا يَجُوزُ؟ .

Moreover, it must be said: You are mistaken in these misguided insinuations of yours, for no forty within the one hundred and twenty requires a two-year-old she-camel at all, nor do three two-year-old she-camels in total become obligatory therein. Only two she-camels in their third year are required until the amount exceeds one hundred and twenty by one or more, progressively up to thirty. When it reaches 120, then in every forty of the 120—along with the addition of three *Bint Labūn*—that increase altered the obligation of what preceded it, and it also acquires a portion of that new increase for itself. Is this not evident and unambiguous? The Prophet's statement (peace be upon him) is authenticated: "For every fifty, a *Haqqah*, and for every forty, a *Bint Labūn*" regarding the surplus beyond 120. Thus, two *Haqqahs* became obligatory for the total 120 at that point, and it was impermissible to neglect the surplus of twenty over the hundred, for it is exempt from *zakāh*. The ruling concerning its *zakāh* is explicitly stated, and it is permissible to pay it accordingly. Therefore, the three *Bint Labūn* became obligatory, invalidating their confusion. As for Mālik's opinion permitting choice between paying two *Haqqahs* or three *Bint Labūn*, it is erroneous, for it disregards the surplus of twenty over the hundred—which is exempt from *zakāh*—and this is impermissible.

وَأَيْضًا: فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَّقَ بَيْنَ حُكْمِ الْعِشْرِينَ وَمِائَةٍ فَجَعَلَ فِيهَا حِقَّتَيْنِ.

L10718 Moreover, the Messenger of Allah (peace and blessings be upon him) differentiated between the rulings for twenty and one hundred, instituting two specific shares in the latter.

بِنَصِّ كَلَامِهِ فِي حَدِيثِ أَنَسٍ عَنْ أَبِي بَكْرٍ الَّذِي أَوْرَدْنَاهُ فِي أَوَّلِ كَلَامِنَا فِي زَكَاةِ الْإِبِلِ وَبَيْنَ حُكْمِ مَا زَادَ عَلَى ذَلِكَ، فَلَمْ يَجُزْ أَنْ يُسَوَّى بَيْنَ حُكْمَيْنِ فَرَّقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمَا وَلَا نَعْلَمُ أَحَدًا قَبْلَ مَالِكٍ قَالَ بِهَذَا التَّخْيِيرِ؟ .

L10719 By the explicit text of his statement in the ḥadīth of Anas from Abū Bakr—which we cited at the outset of our discussion on zakāt of camels—and between the ruling of what exceeds that, it is impermissible to equate two rulings between which the Messenger of Allah (may Allah bless him and grant him peace) distinguished. Are we aware of anyone before Mālik who advocated this optionality?

L10720–10722 Our position on this matter is the position of Al-Zuhri, the family of 'Umar ibn al-Khattab, and others, and it is the position of 'Umar ibn 'Abd al-'Aziz as

we presented before. As for Abu Hanifa's opinion: his companions defended him with what was narrated to us by 'Abdullah ibn Rabī'—who narrated from 'Abdullah ibn Muhammad ibn 'Uthman, who narrated from Ahmad ibn Khalid, who narrated from 'Ali ibn 'Abd al-'Aziz, who narrated from al-Hajjaj ibn al-Minhāl, who narrated from Hammad ibn Salamah—that he took a document from Qays ibn Sa'd on the authority of Abu Bakr ibn Muhammad ibn 'Amr ibn Hazm, stating that the Messenger of Allah (peace be upon him) wrote to his grandfather 'Amr ibn Hazm specifying the prescribed amounts for camels: "When there are twenty-five camels, a female camel that has completed one year (ibnat makhāḍ) is due until they reach thirty-five. If none is found, then a two-year-old male camel (ibn labūn) is due. If they exceed thirty-five, a two-year-old female camel (bint labūn) is due until they reach forty-five. If they exceed that, a three-year-old female camel (ḥiqqah) is due until they reach sixty. If they exceed sixty, a female camel that has entered its fifth year (jadhʿa) is due." Until they reach seventy-five, and if there are more than that, two two-year-old she-camels are due until they reach ninety. If they exceed that, two three-year-old she-camels are due up to one hundred and twenty. If they exceed that, count one three-year-old she-camel for every fifty camels. Any surplus reverts to the initial Zakat rate for camels. For fewer than twenty-five camels, one sheep is due for every five camels, with no male, aged, or defective sheep among them." Then he proceeded to mention the Zakat on sheep. As transmitted through Abd al-Razzaq's chain from Ma'mar from Abdullah ibn Abi Bakr ibn Muhammad ibn Amr ibn Hazm: "The Prophet - peace and blessings be upon him - wrote them a document stating regarding camels: When they number twenty-five to thirty-five, a one-year-old she-camel is due. If no one-year-old she-camel is found among the camels, a two-year-old male camel suffices." Until he mentioned ninety: "If they exceed this up to one hundred and twenty, two three-year-old she-camels are due. If they exceed that, count one three-year-old she-camel for every fifty camels. For fewer than twenty-five, one sheep is due for every five camels."

وَقَوْلُنَا فِي هَذَا هُوَ قَوْلُ الزُّهْرِيِّ وَآلِ عُمَرَ بْنِ الْخَطَّابِ، وَغَيْرِهِمْ، وَهُوَ قَوْلُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ كَمَا أَوْرَدْنَا قَبْلُ؟ وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ: فَإِنَّهُ احْتَجَّ أَصْحَابُهُ لَهُ بِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا حَمَّادُ بْنُ سَلَمَةَ: أَنَّهُ أَخَذَ مِنْ قَيْسِ بْنِ سَعْدٍ كِتَابًا عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَبَ لِجَدِّهِ عَمْرِو بْنِ حَزْمٍ ذِكْرُ مَا يَخْرُجُ مِنْ فَرَائِضِ الْإِبِلِ: «إِذَا كَانَتْ خَمْسَةً وَعِشْرِينَ فَفِيهَا ابْنَةُ مَخَاضٍ، إِلَى أَنْ تَبْلُغَ خَمْسَةً وَثَلَاثِينَ، فَإِنْ لَمْ تُوجَدْ فَابْنُ لَبُونٍ ذَكَرٌ فَإِنْ كَانَتْ أَكْثَرَ مِنْ ذَلِكَ فَفِيهَا بِنْتُ لَبُونٍ، إِلَى أَنْ تَبْلُغَ خَمْسَةً وَأَرْبَعِينَ، فَإِنْ كَانَتْ أَكْثَرَ مِنْ ذَلِكَ فَفِيهَا حِقَّةٌ، إِلَى أَنْ تَبْلُغَ سِتِّينَ، فَإِنْ كَانَتْ أَكْثَرَ مِنْهَا فَفِيهَا جَذَعَةٌ، إِلَى أَنْ تَبْلُغَ خَمْسَةً وَسَبْعِينَ، فَإِذَا كَانَتْ أَكْثَرَ مِنْ ذَلِكَ فَفِيهَا ابْنَتَا لَبُونٍ إِلَى أَنْ تَبْلُغَ تِسْعِينَ، فَإِنْ كَانَتْ أَكْثَرَ مِنْ ذَلِكَ فَفِيهَا حِقَّتَانِ، إِلَى عِشْرِينَ وَمِائَةٍ، فَإِنْ كَانَتْ أَكْثَرَ مِنْ ذَلِكَ فَعُدَّ فِي كُلِّ خَمْسِينَ حِقَّةٌ، فَمَا فَضَلَ فَإِنَّهُ يُعَادُ إِلَى أَوَّلِ فَرِيضَةِ الْإِبِلِ وَمَا كَانَ أَقَلَّ مِنْ خَمْسَةٍ وَعِشْرِينَ فَفِيهَا فِي كُلِّ خَمْسِ ذَوْدٍ شَاةٌ لَيْسَ فِيهَا ذَكَرٌ وَلَا هَرِمَةٌ وَلَا ذَاتُ عَوَارٍ مِنْ الْغَنَمِ» ثُمَّ خَرَجَ إِلَى ذِكْرِ زَكَاةِ الْغَنَمِ؟ وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَبَ لَهُمْ كِتَابًا فِيهِ وَفِي الْإِبِلِ إِذَا كَانَتْ خَمْسًا وَعِشْرِينَ إِلَى خَمْسٍ وَثَلَاثِينَ فَفِيهَا بِنْتُ مَخَاضٍ، فَإِنْ لَمْ تُوجَدْ ابْنَةُ مَخَاضٍ فِي الْإِبِلِ فَابْنُ لَبُونٍ ذَكَرٌ إِلَى أَنْ ذَكَرَ التِّسْعِينَ فَإِذَا كَانَتْ أَكْثَرَ مِنْ ذَلِكَ إِلَى عِشْرِينَ وَمِائَةٍ فَفِيهَا حِقَّتَانِ، فَإِذَا كَانَتْ أَكْثَرَ مِنْ ذَلِكَ فَاعْدُدْ فِي كُلِّ خَمْسِينَ حِقَّةً، وَمَا كَانَ أَقَلَّ مِنْ خَمْسَةٍ وَعِشْرِينَ فَفِي كُلِّ خَمْسٍ شَاةٌ» .

وَذَكَرُوا مَا حَدَّثَنَاهُ مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ فِي الْإِبِلِ قَالَ: فَإِذَا زَادَتْ عَلَى عِشْرِينَ وَمِائَةٍ فَبِحِسَابِ الْأَوَّلِ، وَتُسْتَأْنَفُ لَهَا الْفَرَائِضُ؟ قَالَ أَبُو مُحَمَّدٍ: وَبِقَوْلِهِمْ يَقُولُ إِبْرَاهِيمُ النَّخَعِيُّ، وَسُفْيَانُ الثَّوْرِيُّ؟ قَالُوا: وَحَدِيثُ عَلِيٍّ هَذَا مُسْنَدٌ؟ وَاحْتَجُّوا بِمَا حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا [الدَّبَرِيُّ] ثنا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ أَخْبَرَنِي مُحَمَّدُ بْنُ سُوقَةَ قَالَ أَخْبَرَنِي أَبُو يَعْلَى هُوَ مُنْذِرٌ الثَّوْرِيُّ - عَنْ مُحَمَّدِ بْنِ الْحَنَفِيَّةِ قَالَ: جَاءَ نَاسٌ إِلَى أَبِي فَشَكَوْا: سُعَاةَ عُثْمَانَ بْنِ عَفَّانَ، فَقَالَ أَبِي: أَيْ بُنَيَّ خُذْ هَذَا الْكِتَابَ فَاذْهَبْ بِهِ إِلَى عُثْمَانَ وَقُلْ لَهُ: إِنَّ نَاسًا مِنْ النَّاسِ شَكَوْا سُعَاتَك، وَهَذَا أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْفَرَائِضِ: فَأْمُرْهُمْ فَلْيَأْخُذُوا بِهِ؟ قَالَ: فَانْطَلَقْتُ بِالْكِتَابِ حَتَّى دَخَلْتُ عَلَى عُثْمَانَ بْنِ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُ - فَقُلْت: إنَّ أَبِي أَرْسَلَنِي إلَيْك، وَذَكَرَ أَنَّ نَاسًا مِنْ النَّاسِ شَكَوْا سُعَاتَك، وَهَذَا أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْفَرَائِضِ، فَمُرْهُمْ فَلْيَأْخُذُوا بِهِ؟ فَقَالَ: لَا حَاجَةَ لَنَا فِي كِتَابِك، فَرَجَعْتُ إلَى أَبِي فَأَخْبَرْته؟ فَقَالَ: أَيْ بُنَيَّ، لَا عَلَيْك، أُرْدِدْ الْكِتَابَ مِنْ حَيْثُ أَخَذْتَهُ، قَالَ: فَلَوْ كَانَ ذَاكِرًا عُثْمَانَ بِشَيْءٍ لَذَكَرَهُ بِسُوءٍ، وَإِنَّمَا كَانَ فِي الْكِتَابِ مَا كَانَ فِي حَدِيثِ عَلِيٍّ.

They mentioned what Muḥammad ibn Saʿīd ibn Nabāt narrated to us; Aḥmad ibn ʿAbd al-Baṣīr narrated to us; Qāsim ibn Aṣbagh narrated to us; Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us; Muḥammad ibn al-Muthannā narrated to us; Yaḥyā ibn Saʿīd al-Qaṭṭān narrated to us; Sufyān al-Thawrī narrated to us from Abū Isḥāq al-Sabīʿī from ʿĀṣim ibn Ḍamrah from ʿAlī ibn Abī Ṭālib regarding camels, who said: “When they exceed one hundred and twenty, the calculation reverts to the earlier rule, and the prescribed Zakāh shares are newly instituted for them?” Abū Muḥammad said: “Do Ibrāhīm al-Nakhaʿī and Sufyān al-Thawrī hold the same opinion as them?” They said: “Is this ḥadīth of ʿAlī transmitted through a connected chain?” The proponents cited as evidence what Ḥammām narrated to us; Ibn Mufarrij narrated to us; Ibn al-Aʿrābī narrated to us; [al-Dabarī] narrated to us; ʿAbd al-Razzāq narrated to us from Sufyān ibn ʿUyaynah, who informed me: Muḥammad ibn Sūqah said: “Abū Yaʿlā—who is Mundhir al-Thawrī—informed me from Muḥammad ibn al-Ḥanafiyyah, who said: ’People came to my father and complained about ʿUthmān ibn ʿAffān’s Zakāh agents. My father said: ”My dear son, take this letter and deliver it to ʿUthmān, and tell him: Some people among...“” The people complained about your tax collectors, and this is the command of Allah’s Messenger—peace be upon him—regarding the inheritance shares. Order them to adhere to it. He said: I departed with the letter until I entered upon Uthmān ibn Affān—may Allah be pleased with him—and said: My father sent me to you, mentioning that some people complained about your tax collectors, and this is the command of Allah’s Messenger—peace be upon him—regarding the inheritance shares. Order them to adhere to it. He replied: We have no need for your letter. I returned to my father and informed him. He said: My son, do not concern yourself. Return the letter to where you obtained it. He said: If he had intended to mention anything about Uthmān, he would have mentioned it in a negative manner. The letter contained only what was in the Hadith of Ali.

L10723–10725

قَالُوا: فَمِنْ الْبَاطِلِ أَنْ يُظَنَّ بِعَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - أَنْ يُخْبِرَ النَّاسَ بِغَيْرِ مَا فِي كِتَابِهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

It is baseless to presume that Ali (may Allah be pleased with him) would inform people of anything contrary to what the Prophet (peace be upon him) transmitted in his Book [Quran].

L10726

وَادَّعَوْا أَنَّهُ قَدْ رُوِيَ عَنْ ابْنِ مَسْعُودٍ، وَابْنِ عُمَرَ مِثْلُ قَوْلِهِمْ؟ قَالَ أَبُو مُحَمَّد: هَذَا كُلُّ مَا مَوَّهُوا بِهِ، مِمَّا يُمْكِنُ أَنْ يُمَوِّهَ بِهِ مَنْ لَا عِلْمَ لَهُ، أَوْ مَنْ لَا تَقْوَى لَهُ، وَأَمَّا الْهَذَرُ وَالتَّخْلِيطُ فَلَا نِهَايَةَ لَهُ فِي الْقُوَّةِ؟ قَالَ أَبُو مُحَمَّد: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا أَمَّا حَدِيثُ مَعْمَرٍ، وَحَمَّادِ بْنِ سَلَمَةَ: فَمُرْسَلَانِ لَا تَقُومُ بِهِمَا حُجَّةٌ، ثُمَّ لَوْ صَحَّا لَمَا كَانَ لَهُمْ فِيهِمَا مُتَعَلَّقٌ أَصْلًا أَمَّا طَرِيقُ مَعْمَرٍ فَإِنَّ الَّذِي فِي آخِرِهِ مِنْ قَوْلِهِ: " وَمَا كَانَ أَقَلَّ مِنْ خَمْسَةٍ وَعِشْرِينَ فَفِي كُلِّ خَمْسٍ شَاةٌ " فَإِنَّمَا هُوَ حُكْمُ ابْتِدَاءِ فَرَائِضِ الْإِبِلِ.

L10727 They claimed that statements resembling their opinion were narrated from Ibn Mas'ud and Ibn Umar. Abu Muhammad said: This constitutes the full extent of their deceptive arguments—matters that those lacking knowledge or piety might exploit to obscure truth. As for their incoherent rambling and muddled arguments, is there any limit to their persistence? Abu Muhammad said: None of this holds any valid evidence for them whatsoever. Regarding the narrations of Ma'mar and Hammad ibn Salama—these are mursal narrations incapable of constituting proof. Even if authenticated, they would provide no basis for their stance. As for Ma'mar's report concluding with "For amounts below twenty-five, one sheep is due per five camels"—this solely pertains to the foundational rulings governing obligatory shares for camels.

وَلَمْ يَسْتَحْيِ عَمِيدٌ مِنْ عُمُدِهِمْ مِنْ أَنْ يَكْذِبَ فِي هَذَا الْحَدِيثِ مَرَّتَيْنِ جِهَارًا -: إِحْدَاهُمَا: أَنَّهُ ادَّعَى أَنَّ فِي أَوَّلِهِ ذِكْرُ تَزْكِيَةِ الْإِبِلِ بِالْغَنَمِ فَلَا يَجُوزُ أَنْ يُظَنَّ أَنَّهُ كَرَّرَهُ قَالَ أَبُو مُحَمَّد: وَقَدْ كَذَبَ فِي هَذَا عَلَانِيَةً وَأَعْمَاهُ الْهَوَى وَأَصَمَّهُ وَلَمْ يَسْتَحِي وَمَا ذَكَرَ مَعْمَرٌ فِي أَوَّلِ كَلَامِهِ فِي فَرَائِضِ الْإِبِلِ إِلَّا كَمَا أَوْرَدْنَاهُ مِنْ حُكْمِ الْخَمْسَةِ وَالْعِشْرِينَ فَصَاعِدًا وَذَكَرَ فِي آخِرِ حَدِيثِهِ حُكْمَ تَزْكِيَتِهَا بِالْغَنَمِ إِذْ لَمْ يَذْكُرْهُ أَوَّلًا؟ وَالْمَوْضُوعُ الثَّانِي: أَنَّهُ جَاهَرَ بِالْكَذِبِ، فَقَالَ: " مَعْمَرٌ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ " وَهَذَا كَذِبٌ، مَا رَوَاهُ ذَلِكَ مَعْمَرٌ إِلَّا عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ فَقَطْ، ثُمَّ لَوْ صَحَّ لَهُ هَذَا لَمَا أَخْرَجَهُ عَنْ الْإِرْسَالِ، لِأَنَّ مُحَمَّدَ بْنَ عَمْرٍو لَمْ يُدْرِكْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. ثُمَّ عَجَبٌ آخَرُ وَهُوَ احْتِجَاجُهُ بِهَذَيْنِ الْخَبَرَيْنِ فِيمَا لَيْسَ فِيهِمَا مِنْهُ شَيْءٌ، وَهُوَ يُخَالِفُهُمَا فِيمَا فِيهِمَا مِنْ أَنَّهُ إِنْ لَمْ تُوجَدْ بِنْتُ مَخَاضٍ فَابْنُ لَبُونٍ ذَكَرٌ أَفَلَا يَعُوقُ الْمَرْءَ مُسَكَةٌ مِنْ الْحَيَاءِ عَنْ مِثْلِ هَذَا؟ وَالْعَجَبُ أَنَّهُمْ زَادُوا كَذِبًا وَجُرْأَةً وَفُحْشًا فَقَالُوا: مَعْنَى قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إِنْ لَمْ تُوجَدْ بِنْتُ مَخَاضٍ فَابْنُ لَبُونٍ ذَكَرٌ» إِنَّمَا أَرَادَ بِقِيمَةِ بِنْتِ مَخَاضٍ؟

L10728–10730 And a leading figure among their pillars did not refrain from openly lying in this narration twice. The first lie: he claimed that its beginning mentions the valuation of camels with sheep, so one should not presume he repeated it. Abū Muḥammad said: "He lied openly in this matter, as passion blinded him, deafened him, and he felt no shame. Maʿmar only mentioned at the start of his discourse on the prescribed amounts for camels what we cited regarding the ruling for twenty-five camels and above. Did he then mention the ruling on their valuation with sheep at the end of his narration because he had not mentioned it initially?" The second fabrication was his brazen falsehood in stating: "Maʿmar reported from ʿAbdullāh ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm, from his father, from his grandfather"—a lie, for Maʿmar narrated it only from ʿAbdullāh ibn Abī Bakr alone. Even if this were sound, it would not lift the narration from being mursal, for Muḥammad ibn ʿAmr... He did not live during the time of the Prophet - peace and blessings of Allah be upon him. Then there is another wonder: his reliance on these two reports concerning matters they do not address at all, while contradicting their explicit content stating that if a one-year-old she-camel is unavailable, a two-year-old male camel should be given. Does a person not feel restrained by a shred of decency from such behavior? What is astonishing is that they added layers of falsehood, audacity, and vulgarity by claiming: "The meaning of the Prophet's statement - peace and blessings of

Allah be upon him - 'If a one-year-old she-camel is unavailable, then a two-year-old male camel' refers only to the value of a one-year-old she-camel." This is a blatant, crude lie. There is no difference between this and one who says: "He meant only a blond two-year-old male camel," or "specifically in the land of Najd." Among the baseless and impossible claims is the notion that the Prophet - peace and blessings of Allah be upon him - could have intended substituting value for the unavailable camel while restricting the replacement to a two-year-old male camel. The astonishment lies in how these people attribute to the Prophet - peace and blessings of Allah be upon him - what he did not say, twisting his words into senselessness, foolishness, and deception, though they would never permit diverting a single word of Abu Hanifa's speech from its apparent meaning. By Allah, no trustworthy person would act thus! The Imams spoke truthfully when they declared: "They plot against Islam." It should be said to them: Why did you not interpret the reports you adopted from what is impermissible to adopt among some predecessors' views - such as setting the fugitive slave's compensation at forty dirhams - as merely denoting the value of the effort expended by whoever returned that fugitive? This would have been more valid and correct than imposing a ruling never ordained by Allah Almighty or His Messenger - peace and blessings of Allah be upon him.

وَهَذَا كَذِبٌ بَارِدٌ سَمْجٌ وَلَا فَرْقَ بَيْنَهُمْ فِي هَذَا وَبَيْنَ مَنْ قَالَ: مَا أَرَادَ إِلَّا ابْنَ لَبُونٍ أَصْهَبَ، أَوْ فِي أَرْضِ نَجْدٍ خَاصَّةً وَمِنْ الْبَاطِلِ الْمُمْتَنِعِ الَّذِي لَا يُمْكِنُ أَصْلًا أَنْ يُرِيدَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُعَوِّضَ مِمَّا عُدِمَ بِالْقِيمَةِ وَيَقْتَصِرُ عَلَى ذِكْرِ ابْنِ لَبُونٍ ذَكَرٌ أَيْضًا خَاصَّةً وَالْعَجَبُ مِنْ هَؤُلَاءِ الْقَوْمِ فِي تَقْوِيلِهِمْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْ وَإِحَالَةِ كَلَامِهِ إلَى الْهَوَسِ وَالْغَثَاثَةِ وَالتَّلْبِيسِ وَلَا يَسْتَجِيزُونَ إحَالَةَ لَفْظَةٍ مِنْ كَلَامِ أَبِي حَنِيفَةَ عَنْ مُقْتَضَاهَا وَاَللَّهُ لَا فَعَلَ هَذَا مَوْثُوقٌ بِعَقْدِهِ وَلَقَدْ صَدَقَ الْأَئِمَّةُ الْقَائِلُونَ: إنَّهُمْ يَكِيدُونَ الْإِسْلَامَ وَيُقَالُ لَهُمْ: هَلَّا حَمَلْتُمْ مَا أَخَذْتُمْ بِهِ مِمَّا لَا يَجُوزُ الْأَخْذُ بِهِ مِمَّا رُوِيَ عَنْ بَعْضِ السَّلَفِ مِنْ أَنَّ جُعْلَ الْآبِقِ أَرْبَعُونَ دِرْهَمًا -: عَلَى أَنَّهُ إنَّمَا أَرَادَ قِيمَةَ تَعَبِ ذَلِكَ الَّذِي رَدَّ ذَلِكَ الْآبِقَ فَقَطْ؟ عَلَى أَنَّ هَذَا كَانَ أَوْلَى وَأَصَحَّ مِنْ حَمْلِهِ عَلَى إيجَابِ شَرِيعَةٍ لَمْ يُوجِبْهَا اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L10731–10733 Just as they did not go beyond Abū Ḥanīfah's statement regarding one who marries on the basis of [providing] a house and a servant - that the house is fifty. For a dinar [of gold], and for an enslaved individual, forty dinars. Thus they avoided contradicting Abu Hanifah's erroneous view in valuation, yet showed no concern for opposing the command of Allah's Messenger—peace and blessings of Allah be upon him—and lying against him. The penalty [for undervaluation] compelled them to assess [fairly]. Furthermore, we have traced the narrators in what Hammam narrated to us, stating: Abbas ibn Asbagh narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, Abu Abdullah Al-Kabuli narrated to us, Ismail ibn Abi Uways narrated to us from his father, from Abdullah and Muhammad—the two sons of Abu Bakr ibn Muhammad ibn Amr ibn Hazm—from their father, from their grandfather, from Allah's Messenger—peace and blessings of Allah be upon

كَمَا لَمْ يَتَعَدَّوْا قَوْلَ أَبِي حَنِيفَةَ فِيمَنْ تَزَوَّجَ عَلَى بَيْتٍ وَخَادِمٍ أَنَّ الْبَيْتَ خَمْسُونَ دِينَارًا وَالْعَبْدَ أَرْبَعُونَ دِينَارًا، فَتَوَقَّوْا مُخَالَفَةَ خَطَأِ أَبِي حَنِيفَةَ فِي التَّقْوِيمِ، وَلَمْ يُبَالُوا بِمُخَالَفَةِ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْكَذِبِ عَلَيْهِ وَحَمَلَهُمْ حَدُّهُ عَلَى التَّقْوِيمِ وَأَيْضًا - فَإِنَّنَا قَدْ أَوْجَدْنَاهُمْ مَا حَدَّثَنَاهُ حُمَامٌ قَالَ: ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا أَبُو عَبْدِ اللَّهِ الْكَابُلِيُّ ثنا إسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ ثنا أَبِي عَنْ عَبْدِ اللَّهِ، وَمُحَمَّدُ ابْنَيْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِمَا عَنْ جَدِّهِمَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ كَتَبَ هَذَا الْكِتَابَ لِعَمْرِو بْنِ حَزْمٍ حِينَ أَمَّرَهُ الْيَمَنَ، وَفِيهِ الزَّكَاةُ،

him—that he wrote this letter to Amr ibn Hazm when appointing him over Yemen. It contained rulings on Zakat, and he stated: "When gold reaches the value of two hundred dirhams, then for every forty dirhams' worth, one dirham is due—when it reaches forty dinars."

L10734 It is inconceivable that Ibn Hazm's treatise could contain parts that are authoritative proofs and others that lack such authority. This is the characteristic of those about whom Allah the Exalted has told us, who said: "We believe in some [parts] and reject others" (Qur'an 4:150).[14]

L10735 As for the narration chain of Ḥammād ibn Salamah, it is also mursal (a narration with a broken chain), and the ruling concerning it is the same as that regarding the narration chain of Maʿmar. Even if both were authentic, they would not serve as evidence for their position, because there is nothing in either transmission that substantiates their claim whatsoever. The explicit text of Ḥammād's narration states: "Up to one hundred and twenty [camels]; if exceeding that, count one hiqqah (three-year-old she-camel) for every fifty. Whatever remains should revert to the initial Zakat rate for camels." This assumes that zakāh is recalculated using sheep rates as they allege? However, this wording could alternatively mean reverting the ruling to the initial Zakat rate for camels, where one bint labūn (two-year-old she-camel) is due for every forty, since the primary rate stipulates one bint labūn for forty camels and two for eighty. This interpretation is more valid than their false, corrupt, and impossible claim.

L10736–10738 As for their interpretation of what has been narrated from Ali regarding this matter as being the transmitted basis for their argument—that it is obligatory to maintain a favorable opinion of Ali (may Allah be pleased with him) and impermissible to presume he would narrate anything except what he has from the Messenger of Allah (peace and blessings be upon him)—then by my life, their claim is valid. Yet Ali is not more deserving of favorable regard than Uthman (may Allah be pleased with them both). The obligation upon us is to uphold a favorable opinion of both. Otherwise, they have indeed followed the path of their brothers among the Rafidah. We maintain: Just as it is

فَذَكَرُهُ، «فَإِذَا بَلَغَتْ الذَّهَبَ قِيمَةَ مِائَتَيِ دِرْهَمٍ فَفِي قِيمَةِ كُلِّ أَرْبَعِينَ دِرْهَمًا دِرْهَمٌ حِينَ تَبْلُغُ أَرْبَعِينَ دِينَارًا» .

فَمِنْ الْمُحَالِ أَنْ تَكُونَ صَحِيفَةُ ابْنِ حَزْمٍ بَعْضُهَا حُجَّةٌ وَبَعْضُهَا لَيْسَ بِحُجَّةٍ، وَهَذِهِ صِفَةُ الَّذِينَ أَخْبَرَ اللَّهُ تَعَالَى عَنْهُمْ أَنَّهُمْ قَالُوا: {نُؤْمِنُ بِبَعْضٍ وَنَكْفُرُ بِبَعْضٍ} [النساء: ١٥٠] .

وَأَمَّا طَرِيقُ حَمَّادِ بْنِ سَلَمَةَ فَمُرْسَلَةٌ أَيْضًا، وَالْقَوْلُ فِيهَا كَالْقَوْلِ فِي طَرِيقِ مَعْمَرٍ؟ ثُمَّ لَوْ صَحَّا جَمِيعًا لَمَا كَانَ لَهُمْ فِيهِمَا حُجَّةٌ، لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْهُمَا مَا قَالُوا بِهِ أَصْلًا، لِأَنَّ نَصَّ رِوَايَةِ حَمَّادٍ " إلَى عِشْرِينَ وَمِائَةٍ، فَإِنْ كَانَتْ أَكْثَرَ مِنْ ذَلِكَ فَعُدَّ فِي كُلِّ خَمْسِينَ حِقَّةً، فَمَا فَضَلَ فَإِنَّهُ يُعَادُ إلَى أَوَّلِ فَرِيضَةِ الْإِبِلِ " هَذَا عَلَى أَنْ تُعَادَ فِيهِ الزَّكَاةُ بِالْغَنَمِ كَمَا ادَّعَوْا؟ وَيَحْتَمِلُ هَذَا اللَّفْظُ أَنْ يَكُونَ أَرَادَ أَنْ يَرُدَّ الْحُكْمَ إلَى أَوَّلِ فَرِيضَةِ الْإِبِلِ فِي أَنَّ فِي كُلِّ أَرْبَعِينَ بِنْتُ لَبُونٍ، لِأَنَّ فِي أَوَّلِ فَرِيضَةِ الْإِبِلِ أَنَّ فِي أَرْبَعِينَ بِنْتُ لَبُونٍ وَفِي ثَمَانِينَ بِنْتَيْ لَبُونٍ، فَهَذَا أَوْلَى مِنْ تَأْوِيلِهِمْ الْكَاذِبِ الْفَاسِدِ الْمُسْتَحِيلِ.

وَأَمَّا حَمْلُهُمْ مَا رُوِّينَا عَنْ عَلِيٍّ فِي ذَلِكَ عَلَى أَنَّهُ مُسْنَدُ احْتِجَاجِهِمْ فِي ذَلِكَ بِوُجُوبِ حُسْنِ الظَّنِّ بِعَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - وَأَنَّهُ لَا يَجُوزُ أَنْ يُظَنَّ بِهِ أَنَّهُ يُحَدِّثُ بِغَيْرِ مَا عِنْدَهُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: فَقَوْلُ لَعَمْرِي صَحِيحٌ إلَّا أَنَّهُ لَيْسَ عَلِيٌّ بِأَوْلَى بِحُسْنِ الظَّنِّ مِنَّا مِنْ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُمَا - مَعًا، وَالْفَرْضُ عَلَيْنَا حُسْنُ الظَّنِّ بِهِمَا، وَإِلَّا فَقَدْ سَلَكُوا سَبِيلَ إخْوَانِهِمْ مِنْ الرَّوَافِضِ وَنَحْنُ نَقُولُ: كَمَا لَا يَجُوزُ أَنْ يُسَاءَ الظَّنُّ بِعَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - فِي أَنْ يُظَنَّ أَنَّهُ يُحَدِّثُ بِغَيْرِ مَا عِنْدَهُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ

[14] **Qur'an references (L10734):** Qur'an 4:150 (An-Nisa).

impermissible to hold a bad opinion of Ali—may Allah be pleased with him—by suspecting he narrated other than what he possessed from the Prophet—peace be upon him—or intentionally contradicted his own narration from him—peace be upon him—so too is it impermissible to hold a bad opinion of Uthman—may Allah be pleased with him—by suspecting he appointed as caliph based on the Prophet's book and said: "We have no need for it." Had Uthman not known that what was in Ali's book was abrogated, he would neither have rejected it nor disregarded it. However, that book remained with Ali while he was unaware of its abrogation, whereas Uthman possessed its abrogation. Thus, we uphold a good opinion of both—as obligated—for holding a favorable opinion of Ali alongside an unfavorable one of Uthman is no further from misguidance than holding a favorable opinion of Uthman alongside an unfavorable one of Ali.

وَسَلَّمَ - أَوْ يَتَعَمَّدُ خِلَافَ رِوَايَتِهِ عَنْهُ - عَلَيْهِ السَّلَامُ -: فَكَذَلِكَ لَا يَجُوزُ أَنْ يُسَاءَ الظَّنُّ بِعُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ -، فَيُظَنُّ بِهِ أَنَّهُ اسْتَخْلَفَ بِكِتَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ: لَا حَاجَةَ لَنَا بِهِ، لَوْلَا أَنَّ عُثْمَانَ عَلِمَ أَنَّ مَا فِي كِتَابِ عَلِيٍّ مَنْسُوخٌ مَا رَدَّهُ، وَلَا أَعْرَضَ عَنْهُ، لَكِنْ كَانَ ذَلِكَ الْكِتَابُ عِنْدَ عَلِيٍّ وَلَمْ يَعْلَمْ بِنَسْخِهِ، وَكَانَ عِنْدَ عُثْمَانَ نَسْخُهُ فَنُحْسِنُ الظَّنَّ بِهِمَا جَمِيعًا كَمَا يَلْزَمُنَا، وَلَيْسَ إِحْسَانُ الظَّنِّ بِعَلِيٍّ وَإِسَاءَتُهُ بِعُثْمَانَ بِأَبْعَدَ مِنْ الضَّلَالِ مِنْ إِحْسَانِ الظَّنِّ بِعُثْمَانَ وَإِسَاءَتِهِ بِعَلِيٍّ.

L10739 We say: If that book were from the Prophet—peace and blessings of Allah be upon him—Uthmān would not have rejected it, nor is either of the two evils easier than the other. As for us, we maintain a favorable opinion of them both—may Allah be pleased with them both—and we do not take lightly lying against the Messenger of Allah—peace and blessings of Allah be upon him—by attributing to him statements based on false conjecture, thereby securing our abode in the Fire just as those who did so have taken theirs. Rather, we affirm the positions of Uthmān and Ali; they are not independent authorities apart from the Messenger of Allah—peace and blessings of Allah be upon him—but rather they are two leaders among the people of Paradise, forgiven and not immune from error. We return to the statement of the Messenger of Allah—peace and blessings of Allah be upon him—adopting what is firmly established from him and discarding what is not? Then we say to them: Granted that Ali's book is authentically transmitted and unabrogated—it does not contain what you claim; rather, you obscure the matter. It merely states: "For camels exceeding one hundred and twenty, revert to the initial calculation and the prescribed amounts are reapplied for them." This does not clarify that the zakāh of sheep is subject to the same reversion. His statement could mean that they revert to their initial calculation, reapplying the prescribed amounts, thus reverting to: for

فَنَقُولُ: لَوْ كَانَ ذَلِكَ الْكِتَابُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا رَدَّهُ عُثْمَانُ، وَلَا إحْدَى السَّيِّئَتَيْنِ بِأَسْهَلَ مِنْ الْأُخْرَى وَأَمَّا نَحْنُ فَنُحْسِنُ الظَّنَّ بِهِمَا - رَضِيَ اللَّهُ عَنْهُمَا -، وَلَا نَسْتَسْهِلُ الْكَذِبَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَنْ نَنْسُبَ إلَيْهِ الْقَوْلَ بِالظَّنِّ الْكَاذِبِ فَنَتَبَوَّأَ مَقَاعِدَنَا مِنْ النَّارِ كَمَا تَبَوَّأَهُ مَنْ فَعَلَ ذَلِكَ، بَلْ [نُقِرُّ] قَوْلَ عُثْمَانَ وَعَلِيٍّ مَقَرَّهُمَا، فَلَيْسَا حُجَّةً دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكِنَّهُمَا إمَامَانِ مِنْ أَهْلِ الْجَنَّةِ، مَغْفُورٌ لَهُمَا، غَيْرُ مُبْعَدِينَ مِنْ الْوَهْمِ، وَنَرْجِعُ إلَى قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَنَأْخُذُ بِالثَّابِتِ عَنْهُ وَنَطْرَحُ مَا لَمْ يَثْبُتْ عَنْهُ؟ ثُمَّ نَقُولُ لَهُمْ: هَبْكُمْ أَنَّ كِتَابَ عَلِيٍّ مُسْنَدٌ، وَأَنَّهُ لَمْ يُنْسَخْ - فَإِنَّهُ لَيْسَ فِيهِ مَا تَقُولُونَ، بَلْ تُمَوِّهُونَ -: وَإِنَّمَا فِيهِ «فِي الْإِبِلِ إذَا زَادَتْ عَلَى عِشْرِينَ وَمِائَةٍ فَبِحِسَابِ الْأَوَّلِ وَتُسْتَأْنَفُ لَهَا الْفَرَائِضُ» وَلَيْسَ فِي هَذَا بَيَانٌ أَنَّ زَكَاةَ الْغَنَمِ تَعُودُ فِيهَا، وَيَحْتَمِلُ قَوْلُهُ هَذَا أَنْ تَعُودَ

every forty, a two-year-old she-camel (bint labūn), as initially prescribed: for forty, a two-year-old she-camel (bint labūn).

إِلَى حِسَابِهَا الْأَوَّلِ وَتُسْتَأْنَفَ لَهَا الْفَرَائِضُ، فَتَرْجِعَ إِلَى أَنْ يَكُونَ فِي كُلِّ أَرْبَعِينَ بِنْتُ لَبُونٍ، كَمَا فِي أَوَّلِهَا: فِي أَرْبَعِينَ بِنْتُ لَبُونٍ.

L10740–10742 And regarding eighty [camels], two three-year-old female camels (bintā labūn)—is this not more valid than your false interpretation? Then we say: Granted that your claim were authentic—and we seek refuge in Allah from such a notion—and that it explicitly states your position—and we seek refuge in Allah from this—then hear it in its entirety? Hammām narrated to us: Mufarrij narrated to us: Ibn al-Aʿrabī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq narrated from Maʿmar, from Abī Isḥāq al-Sabīʿī, from ʿĀṣim ibn Ḍamrah, from ʿAlī ibn Abī Ṭālib, who said: "For five [camels] from... [text ends abruptly]" For camels, one sheep is due. For fifteen camels, three sheep are due. For twenty camels, four sheep. For twenty-five camels, five sheep. For twenty-six camels, a one-year-old female camel (bint makhāḍ) is due. If none is available, a two-year-old male camel (ibn labūn) is due until the count reaches thirty-five. When the number increases by one, a two-year-old female camel (bint labūn) is due until it reaches forty-five. When the number increases by one, a three-year-old female camel (hiqqah) bred by a stallion - or he said "camel" - is due until it reaches sixty. When the number increases by one, a four-year-old female camel (jadhʿah) is due until it reaches seventy-five. When the number increases by one, two two-year-old female camels (bintā labūn) are due until it reaches ninety. When the number increases by one, two three-year-old female camels (hiqqatān) bred by a stallion are due, up to one hundred and twenty. When the number increases by one, one three-year-old female camel (hiqqah) is due for every fifty camels, and one two-year-old female camel (bint labūn) for every forty. For silver - once a full lunar year has passed - five dirhams are due per two hundred dirhams. Nothing is owed on amounts below two hundred. If it exceeds this, the obligation is calculated proportionally. I have exempted charity on horses and slaves.

وَفِي ثَمَانِينَ بِنْتَا لَبُونٍ، فَهَذَا أَوْلَى مِنْ تَأْوِيلِكُمْ الْكَاذِبِ؟ ثُمَّ نَقُولُ: هَبْكُمْ أَنَّهُ مُسْنَدٌ - وَمَعَاذَ اللَّهِ مِنْ ذَلِكَ - وَأَنَّ فِيهِ نَصَّ مَا قُلْتُمْ - وَمَعَاذَ اللَّهِ مِنْ ذَلِكَ - فَاسْمَعُوهُ بِكَمَالِهِ؟ حَدَّثَنَا حُمَامٌ ثنا مُفَرِّجٌ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: فِي خَمْسٍ مِنْ الْإِبِلِ شَاةٌ، وَفِي خَمْسَ عَشَرَةَ ثَلَاثُ شِيَاهٍ، وَفِي عِشْرِينَ أَرْبَعُ شِيَاهٍ، وَفِي خَمْسٍ وَعِشْرِينَ خَمْسُ شِيَاهٍ، وَفِي سِتٍّ وَعِشْرِينَ بِنْتُ مَخَاضٍ فَإِنْ لَمْ تَكُنْ بِنْتُ مَخَاضٍ فَابْنُ لَبُونٍ ذَكَرٌ، حَتَّى تَبْلُغَ خَمْسًا وَثَلَاثِينَ، فَإِذَا زَادَتْ وَاحِدَةً فَفِيهَا بِنْتُ لَبُونٍ، حَتَّى تَبْلُغَ خَمْسًا وَأَرْبَعِينَ، فَإِذَا زَادَتْ وَاحِدَةً فَفِيهَا حِقَّةٌ طَرُوقَةُ الْفَحْلِ - أَوْ قَالَ: الْجَمَلِ - حَتَّى تَبْلُغَ سِتِّينَ، فَإِذَا زَادَتْ، وَاحِدَةً فَفِيهَا جَذَعَةٌ، حَتَّى تَبْلُغَ خَمْسًا وَسَبْعِينَ، فَإِذَا زَادَتْ وَاحِدَةً فَفِيهَا بِنْتَا لَبُونٍ، حَتَّى تَبْلُغَ تِسْعِينَ، فَإِذَا زَادَتْ وَاحِدَةً فَفِيهَا حِقَّتَانِ طَرُوقَتَا الْفَحْلِ، إِلَى عِشْرِينَ وَمِائَةٍ، فَإِذَا زَادَتْ وَاحِدَةً فَفِي كُلِّ خَمْسِينَ حِقَّةٌ، وَفِي كُلِّ أَرْبَعِينَ بِنْتُ لَبُونٍ وَفِي الْوَرِقِ - إِذَا حَالَ عَلَيْهَا الْحَوْلُ - فِي كُلِّ مِائَتَيْ دِرْهَمٍ، خَمْسَةُ دَرَاهِمَ. وَلَيْسَ فِيمَا دُونَ مِائَتَيْنِ شَيْءٌ، فَإِنْ زَادَتْ فَبِحِسَابِ ذَلِكَ، وَقَدْ عَفَوْت عَنْ صَدَقَةِ الْخَيْلِ وَالرَّقِيقِ؟

L10743–10745 Muhammad ibn Saʿīd ibn Nabāt narrated to us: Aḥmad ibn ʿAbd al-Baṣīr narrated to us: Qāsim ibn Aṣbagh narrated to us: Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us: Muḥammad ibn al-Muthannā narrated to

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ ثنا شُعْبَةُ عَنْ أَبِي

إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إِذَا أَخَذَ الْمُصَدِّقُ سِنًّا فَوْقَ سِنٍّ رَدَّ عَشَرَةَ دَرَاهِمَ أَوْ شَاتَيْنِ؟ قَالَ عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: وَحَدَّثَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: وَإِذَا زَادَتْ الْإِبِلُ عَلَى خَمْسٍ وَعِشْرِينَ فَفِيهَا بِنْتُ مَخَاضٍ، فَإِنْ لَمْ تُوجَدْ بِنْتُ مَخَاضٍ فَابْنُ لَبُونٍ ذَكَرٌ، إِذَا أَخَذَ الْمُصَدِّقُ بِنْتَ لَبُونٍ مَكَانَ ابْنِ لَبُونٍ رَدَّ عَشَرَةَ دَرَاهِمَ أَوْ شَاتَيْنِ لَيْسَ فِي الْمَالِ الْمُسْتَفَادِ زَكَاةٌ حَتَّى يَحُولَ عَلَيْهِ الْحَوْلُ، فَإِذَا حَالَ عَلَيْهِ الْحَوْلُ فَفِي كُلِّ مِائَتَيْنِ خَمْسَةٌ، فَمَا زَادَ فَبِالْحِسَابِ، فِي أَرْبَعِينَ دِينَارًا دِينَارٌ، فَمَا نَقَصَ فَبِالْحِسَابِ، فَإِذَا بَلَغَتْ عِشْرِينَ دِينَارًا فَفِيهَا نِصْفُ دِينَارٍ؟ حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ ثنا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: فِي خَمْسٍ مِنْ الْإِبِلِ شَاةٌ، وَفِي عَشْرٍ شَاتَانِ، وَفِي خَمْسَ عَشْرَةَ ثَلَاثُ شِيَاهٍ، وَفِي عِشْرِينَ أَرْبَعُ شِيَاهٍ، وَفِي خَمْسٍ وَعِشْرِينَ خَمْسٌ، فَإِنْ زَادَتْ وَاحِدَةً فَفِيهَا ابْنَةُ مَخَاضٍ فَإِنْ لَمْ تَكُنْ، ابْنَةُ مَخَاضٍ فَابْنُ لَبُونٍ، إِنْ أَخَذَ الْمُصَدِّقُ سِنًّا فَوْقَ سِنٍّ رَدَّ عَشَرَةَ دَرَاهِمَ أَوْ شَاتَيْنِ، أَوْ أَخَذَ سِنًّا دُونَ سِنٍّ أَخَذَ شَاتَيْنِ أَوْ عَشَرَةَ دَرَاهِمَ؟ قَالَ عَلِيٌّ: فَهَذِهِ هِيَ الرِّوَايَاتُ الثَّابِتَةُ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ -: مَعْمَرٌ، وَسُفْيَانُ، وَشُعْبَةُ: مُتَّفِقُونَ كُلُّهُمْ، رَوَاهُ عَنْ سُفْيَانَ: وَكِيعٌ، وَرَوَاهُ عَنْ شُعْبَةَ: عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، وَرَوَاهُ عَنْ مَعْمَرٍ: عَبْدُ الرَّزَّاقِ؟ وَالَّذِي مَوَّهُوا بِطَرْفٍ، مِمَّا فِي رِوَايَةِ يَحْيَى بْنِ سَعِيدٍ عَنْ سُفْيَانَ خَاصَّةً: لَيْسَ أَيْضًا مُوَافِقًا لِقَوْلِهِمْ كَمَا أَوْرَدْنَا، فَادَّعَوْا فِي خَبَرِ عَلِيٍّ مَا لَيْسَ فِيهِ عَنْهُ أَثَرٌ، وَلَا

us: ʿAbd al-Raḥmān ibn Mahdī narrated to us: Shuʿbah narrated from Abī Isḥāq al-Sabīʿī from ʿĀṣim ibn Ḍamrah from ʿAlī ibn Abī Ṭālib, who said: If the Zakāt collector takes an animal older than the stipulated age, he must return ten dirhams or two sheep. ʿAbd al-Raḥmān ibn Mahdī said: Sufyān al-Thawrī narrated to us from Abī Isḥāq al-Sabīʿī from ʿĀṣim ibn Ḍamrah from ʿAlī ibn Abī Ṭālib, who said: When camels exceed twenty-five, a one-year-old female camel (bint makhāḍ) is due. If none is found, a male camel that has entered its third year (ibn labūn) is given. If the collector takes a two-year-old female camel instead of a male camel that has entered its third year, he must return ten dirhams or two sheep. No Zakāt is due on incrementally acquired wealth until a full lunar year passes over it. When the year elapses, five dirhams are due for every two hundred. Any surplus is calculated proportionally: one dinar is due for every forty dinars, and if it reaches twenty dinars, half a dinar is due.

Muhammad ibn Saʿīd ibn Nabāt narrated to us: ʿAbd Allāh ibn Naṣr narrated to us: Qāsim ibn Aṣbagh narrated to us: Ibn Waḍḍāḥ narrated to us: Mūsā ibn Muʿāwiyah narrated to us: Wakīʿ narrated from Sufyān al-Thawrī from Abī Isḥāq al-Sabīʿī from ʿĀṣim ibn Ḍamrah from ʿAlī ibn Abī Ṭālib, who said: For five camels, a sheep is due; for ten, two sheep; for fifteen, three sheep; for twenty, four sheep; for twenty-five, five sheep. If they increase by one, a one-year-old female camel is due. If none is available, a male camel that has entered its third year is given. If the collector takes an older age than stipulated, he must return ten dirhams or two sheep. If he takes an animal younger than required, he takes two sheep or ten dirhams.

Ali said: These are the established narrations from ʿAlī—may Allah be pleased with him—transmitted via Maʿmar and Sufyān. Shuʿbah: all of them are in agreement. Waki‘ narrated it from Sufyan; ‘Abd al-Rahman ibn Mahdi narrated it from Shu‘bah; and ‘Abd al-Razzaq narrated it from Ma‘mar. As for what they obscured by citing a portion from the narration of Yahya ibn Sa‘id specifically from Sufyan, it likewise does not align with their own statement as we presented. They falsely attributed to the narration of ‘Ali what contains no trace from him, nor did it ever originate from him, and they contradicted that very narration in twelve points where it contains explicit

textual evidence. Among these is his saying: “For twenty-five camels, five sheep are due.”

جَاءَ قَطُّ عَنْهُ وَخَالَفُوا ذَلِكَ الْخَبَرَ نَفْسَهُ فِي اثْنَيْ عَشَرَ مَوْضِعًا مِمَّا فِيهِ نَصًّا، وَهِيَ -: قَوْلُهُ: «فِي خَمْسٍ وَعِشْرِينَ مِنْ الْإِبِلِ خَمْسُ شِيَاهٍ» .

L10746 His statement: “Is the substitution of a two-year-old male camel (ibn labūn) instead of a one-year-old female camel (bint makhāḍ) sufficient?” And his statement regarding what exceeds one hundred and twenty: “For every forty camels, a two-year-old female camel (bint labūn).”

وَقَوْلُهُ: بِتَعْوِيضِ ابْنِ لَبُونٍ مَكَانَ ابْنَةِ مَخَاضٍ فَقَطْ؟ وَقَوْلُهُ فِيمَا زَادَ عَلَى عِشْرِينَ وَمِائَةٍ «فِي كُلِّ أَرْبَعِينَ بِنْتُ لَبُونٍ» .

L10747 His omission of mentioning the recurrence of the prescribed amounts for sheep—and he did not mention it? “His ruling regarding one who takes an animal older than the required age: he must return two sheep or ten dirhams as compensation”—he further clarified this concerning one who takes a two-year-old female camel (bint labūn) in place of a one-year-old female camel (ibna makhāḍ) if a two-year-old male camel (ibn labūn) is unavailable. “And his ruling regarding one who takes an animal younger than the required age: he must take two sheep or ten dirhams along with it.”

وَإِسْقَاطُهُ ذِكْرَ عَوْدَةِ فَرَائِضِ الْغَنَمِ، فَلَمْ يَذْكُرْهُ؟ «وَقَوْلُهُ فِيمَنْ أَخَذَ سِنًّا فَوْقَ سِنٍّ رَدَّ شَاتَيْنِ أَوْ عَشَرَةَ دَرَاهِمَ» وَبَيَّنَ ذَلِكَ فِيمَنْ أَخَذَ بِنْتَ لَبُونٍ مَكَانَ ابْنَةِ مَخَاضٍ إنْ لَمْ يُوجَدْ ابْنُ لَبُونٍ؟ «وَقَوْلُهُ فِيمَنْ أَخَذَ سِنًّا دُونَ سِنٍّ أَخَذَ مَعَهَا شَاتَيْنِ أَوْ عَشَرَةَ دَرَاهِمَ» .

L10748 His statement: “There is no Zakat on newly acquired wealth until a full year passes over it,” without specifying whether the owner already possessed the minimum threshold (*nisab*) of the same category or not. His statement: “On two hundred silver dirhams, five dirhams are due as Zakat. Whatever exceeds that is calculated proportionally,” without imposing a fixed ceiling as they claim through their opinion. His statement: “There is no Zakat on less than two hundred silver dirhams,” whereas they pay Zakat on amounts below two hundred if the owner has gold that, when combined with the silver, totals 200 dirhams or 20 dinars.

وَقَوْلُهُ: «لَيْسَ فِي الْمَالِ الْمُسْتَفَادِ زَكَاةٌ حَتَّى يَحُولَ عَلَيْهِ الْحَوْلُ» وَلَمْ يَخُصَّ، كَانَ عِنْدَهُ نِصَابٌ مِنْ جِنْسِهَا أَوْ لَمْ يَكُنْ؟ وَقَوْلُهُ: «فِي مِائَتَيْنِ مِنْ الْوَرِقِ خَمْسَةُ دَرَاهِمَ، فَمَا زَادَ فَبِالْحِسَابِ» وَلَمْ يَجْعَلْ فِي ذَلِكَ وَقْصًا، كَمَا يَزْعُمُونَ بِرَأْيِهِمْ وَقَوْلُهُ: «لَيْسَ فِيمَا دُونَ مِائَتَيْنِ مِنْ الْوَرِقِ زَكَاةٌ» وَهُمْ يُزَكُّونَ مَا دُونَ الْمِائَتَيْنِ إذَا كَانَ مَعَ مَالِكِهَا ذَهَبٌ إذَا جُمِعَ إلَى الْوَرِقِ سَاوَيَا جَمِيعًا مِائَتَيْ دِرْهَمٍ أَوْ عِشْرِينَ دِينَارًا.

L10749–10751 Among them is His pardoning of Zakat on horses, and among them is His pardoning of Zakat on slaves—did He not make an exception for trade or other purposes? Among them is His statement: “For forty dinars, one dinar; if it is less, then according to calculation”—did He not designate a fixed portion for that? Could anything be more absurd than one who cites as evidence a narration from Ali that contains no clarification of their claim, relying instead on conjecture? They are liars who contrive that the ruling is established through definitive proof via a false, fabricated assumption. Yet

وَمِنْهَا عَفْوُهُ عَنْ صَدَقَةِ الْخَيْلِ وَمِنْهَا عَفْوُهُ عَنْ صَدَقَةِ الرَّقِيقِ، وَلَمْ يَسْتَثْنِ لِتِجَارَةٍ أَوْ غَيْرِهَا؟ وَمِنْهَا قَوْلُهُ: «فِي أَرْبَعِينَ دِينَارًا دِينَارٌ، فَمَا نَقَصَ فَبِالْحِسَابِ» وَلَمْ يَجْعَلْ فِي ذَلِكَ وَقْصًا؟ أَفَيَكُونُ أَعْجَبَ مِمَّنْ يَحْتَجُّ بِرِوَايَةٍ عَنْ عَلِيٍّ لَا بَيَانَ فِيهَا لِقَوْلِهِمْ، لَكِنْ بِظَنٍّ كَاذِبٍ، وَيَتَخَيَّلُونَ فِي أَنَّهَا مُسْنَدَةٌ بِالْقَطْعِ بِالظَّنِّ الْكَاذِبِ الْمُفْتَرَى -: وَهُمْ قَدْ خَالَفُوا

تِلْكَ الرِّوَايَةَ نَفْسَهَا بِتِلْكَ الطَّرِيقِ، وَمَعَهَا مَا هُوَ أَقْوَى مِنْهَا فِي اثْنَيْ عَشْرَ مَوْضِعًا مِنْهَا، كُلُّهَا نُصُوصٌ فِي غَايَةِ الْبَيَانِ؟ هَذَا أَمْرٌ مَا نَدْرِي فِي أَيِّ دِينٍ أَمْ فِي أَيِّ عَقْلٍ وَجَدُوا مَا يُسَهِّلُهُ عَلَيْهِمْ؟ وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ احْتِجَاجِهِمْ بِصَحِيفَةِ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ، وَبِصَحِيفَةِ حَمَّادٍ عَنْ قَيْسِ بْنِ عَبَّادٍ عَنْ أَبِي بَكْرِ بْنِ حَزْمٍ، وَهُمَا مُرْسَلَتَانِ، وَحَدِيثٍ مَوْقُوفٍ عَلَى عَلِيٍّ وَلَيْسَ فِي كُلِّ ذَلِكَ نَصٌّ بِمِثْلِ قَوْلِهِمْ، وَلَا دَلِيلَ ظَاهِرٌ -: ثُمَّ لَا يَسْتَحْيُونَ مِنْ أَنْ يَعِيبُوا فِي هَذِهِ الْمَسْأَلَةِ نَفْسَهَا بِالْإِرْسَالِ الْحَدِيثَيْنِ الصَّحِيحَيْنِ الْمُسْنَدَيْنِ مِنْ طَرِيقِ حَمَّادٍ، وَعَبْدِ اللَّهِ بْنِ الْمُثَنَّى كِلَيْهِمَا عَنْ عَبْدِ اللَّهِ بْنِ الْمُثَنَّى، سَمِعَهُ مِنْهُ، عَنْ ثُمَامَةَ بْنِ عَبْدِ اللَّهِ بْنِ أَنَسٍ، سَمِعَهُ مِنْهُ، عَنْ أَنَسِ بْنِ مَالِكٍ، سَمِعَهُ مِنْهُ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ سَمِعَهُ مِنْهُ، عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنِ اللَّهِ تَعَالَى هَكَذَا نَصًّا وَمِنْ طَرِيقِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ قَالَ: ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا ابْنُ بَكْرٍ ثنا أَبُو دَاوُد السِّجِسْتَانِيُّ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدٍ النُّفَيْلِيِّ ثنا عَبَّادُ بْنُ الْعَوَّامِ عَنْ سُفْيَانَ بْنِ حُسَيْنٍ عَنِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: «كَتَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كِتَابَ الصَّدَقَةِ، فَلَمْ يُخْرِجْهُ إِلَى عُمَّالِهِ حَتَّى قُبِضَ، فَقَرَنَهُ بِسَيْفِهِ، فَعَمِلَ بِهِ أَبُو بَكْرٍ حَتَّى قُبِضَ، ثُمَّ عَمِلَ بِهِ عُمَرُ حَتَّى قُبِضَ، فَكَانَ فِيهِ: فِي خَمْسٍ مِنَ الْإِبِلِ شَاةٌ، وَفِي عَشْرٍ شَاتَانِ وَفِي خَمْسَ عَشْرَةَ ثَلَاثُ شِيَاهٍ، وَفِي عِشْرِينَ أَرْبَعُ شِيَاهٍ، وَفِي خَمْسٍ وَعِشْرِينَ ابْنَةُ مَخَاضٍ، إِلَى خَمْسٍ وَثَلَاثِينَ فَإِذَا زَادَتْ وَاحِدَةً، فَفِيهَا بِنْتُ لَبُونٍ: إِلَى خَمْسٍ وَأَرْبَعِينَ. فَإِذَا زَادَتْ وَاحِدَةً فَفِيهَا حِقَّةٌ، إِلَى سِتِّينَ، فَإِذَا زَادَتْ وَاحِدَةً فَفِيهَا جَذَعَةٌ، إِلَى خَمْسٍ وَسَبْعِينَ، فَإِذَا زَادَتْ وَاحِدَةً فَفِيهَا ابْنَتَا لَبُونٍ، إِلَى تِسْعِينَ: فَإِذَا زَادَتْ وَاحِدَةً فَفِيهَا حِقَّتَانِ، إِلَى

they themselves contradicted that very narration by the same method, despite there being stronger evidence in twelve instances—all of which are explicit texts of utmost clarity. How could they justify this within any religion or rational framework? Utterly baffling is their reliance on the document of Maʿmar from ʿAbdullāh ibn Abī Bakr and the document of Ḥammād from Qays ibn ʿAbbād from Abū Bakr ibn Ḥazm—both being *mursal* (disconnected) narrations—and a *mawqūf* (stopped) narration attributed to ʿAlī, none of which contain explicit textual support for their claim or any apparent evidence. Shamelessly, they dismiss the two authentic, fully-chained narrations in this very matter: one transmitted through Ḥammād and ʿAbdullāh ibn al-Muthannā—both of whom heard it from ʿAbdullāh ibn al-Muthannā, who heard it from Thumāmah ibn ʿAbdullāh ibn Anas, who heard it from Anas ibn Mālik, who heard it from Abū Bakr al-Ṣiddīq, who heard it from the Prophet (peace be upon him), who conveyed it from Allah the Exalted, explicitly so—and another through al-Zuhrī from Sālim ibn ʿAbdullāh ibn ʿUmar from his father.

ʿAbdullāh ibn Rabīʿ narrated to us, saying: ʿUmar ibn ʿAbd al-Malik narrated to us, Muḥammad ibn Bakr narrated to us, Abū Dāwūd al-Sijistānī narrated to us from ʿAbdullāh ibn Muḥammad al-Nufaylī, ʿAbbād ibn al-ʿAwwām narrated to us from Sufyān ibn Ḥusayn from al-Zuhrī from Sālim ibn ʿAbdullāh ibn ʿUmar from his father, who said: "The Messenger of Allah (peace be upon him) wrote a code for charity but did not dispatch it to his agents before his passing. He fastened it to his sword. Abū Bakr implemented it until his death, then ʿUmar implemented it until his death. It stipulated: For five camels, one sheep; for ten, two sheep; for fifteen, three sheep; for twenty, four sheep; for twenty-five, a *bint makhad* (one-year-old she-camel) up to thirty-five. If the number increases by one, a *bint labūn* (two-year-old she-camel) is due up to forty-five. If it increases by one, a *ḥiqqah* (three-year-old she-camel) is due up to sixty. If it increases by one, a *jadhaʿah* (four-year-old she-camel) is due up to seventy-five. If it increases by one, two *bint labūn* (two-year-old she-camels) are due up to ninety. If it increases by one, two *ḥiqqah* (three-year-old she-camels) are due up to one hundred and twenty. If the camels exceed this, for every fifty, a *ḥiqqah* (three-

year-old she-camel) is due, and for every forty, a *bint labūn* (two-year-old she-camel)."

عِشْرِينَ وَمِائَةٍ فَإِنْ كَانَتْ الْإِبِلُ أَكْثَرَ مِنْ ذَلِكَ فَفِي كُلِّ خَمْسِينَ حِقَّةٌ وَفِي كُلِّ أَرْبَعِينَ بِنْتُ لَبُونٍ؟»

L10752–10754 They said, "The origin of these two ḥadīths is their being mursal," but they lied about that. Then they do not even care that... They cite these two ḥadīths as evidence and authenticate them whenever they find within them what conforms to Abū Ḥanīfah's opinion—permitting something at times and prohibiting it at others. They criticize these narrations by claiming Ibn Ma'īn weakened them. If only I knew: What is Ibn Ma'īn's stance concerning Ibn Ḥazm's manuscript and 'Alī's ḥadīth? We do not see that he permitted even mentioning them, let alone occupying himself with weakening them. Most astonishing of all is that some of their leading scholars—those relegated in status before Allah the Exalted—said: "If this ruling were true, Allah's Messenger (peace and blessings be upon him) would have communicated it to his governors." Abū Muḥammad said: This is the statement of the Rāfiḍah in disparaging Abū Bakr, 'Umar, and the rest of the Companions concerning their implementation of rulings. Indeed, it is an affront against the Prophet (peace and blessings be upon him) by ascribing false books to him and linking him with his sword, then concealing them—only for his Companions to act upon them afterward. Thus, all their pretenses are nullified. The greater wonder is their claim to adhere to analogical reasoning while contradicting both textual proofs and analogy in this matter. Have they ever encountered an obligation that resumes after its annulment? Have they found in the prescribed camel thresholds a reduction below thirty-three camels? Since they established no additional rulings beyond ninety-one up to one hundred and twenty-five.

فَقَالُوا: إنَّ أَصْلَ هَذَيْنِ الْحَدِيثَيْنِ الْإِرْسَالُ، وَكَذَبُوا فِي ذَلِكَ ثُمَّ لَا يُبَالُونَ بِأَنْ يَحْتَجُّوا بِهَذَيْنِ الْحَدِيثَيْنِ وَيُصَحِّحُونَهُمَا، إذَا وَجَدُوا فِيهِمَا مَا يُوَافِقُ رَأْيَ أَبِي حَنِيفَةَ، فَيُحَلُّونَهُ طَوْرًا وَيُحَرِّمُونَهُ طَوْرًا وَاعْتَرَضُوا فِيهِمَا بِأَنَّ ابْنَ مَعِينٍ ضَعَّفَهُمَا وَلَيْتَ شِعْرِي مَا قَوْلُ ابْنِ مَعِينٍ فِي صَحِيفَةِ ابْنِ حَزْمٍ، وَحَدِيثِ عَلِيٍّ؟ مَا نَرَاهُ اسْتَجَازَ الْكَلَامَ بِذِكْرِهِمَا، فَضْلًا عَنْ أَنْ يَشْتَغِلَ بِتَضْعِيفِهِمَا؟ وَأَعْجَبُ مِنْ هَذَا كُلِّهِ أَنَّ بَعْضَ مُقَدِّمِيهِمْ - الْمُتَأَخِّرِينَ عِنْدَ اللَّهِ تَعَالَى - قَالَ: لَوْ كَانَ هَذَا الْحُكْمُ حَقًّا لَأَخْرَجَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى عُمَّالِهِ قَالَ أَبُو مُحَمَّدٍ: هَذَا قَوْلُ الرَّوَافِضِ فِي الطَّعْنِ عَلَى أَبِي بَكْرٍ، وَعُمَرَ، وَسَائِرِ الصَّحَابَةِ فِي الْعَمَلِ بِهِ: نَعَمْ، وَعَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ نُسِبَتْ إلَيْهِ كُتُبُ الْبَاطِلِ وَقَرَنَهُ بِسَيْفِهِ ثُمَّ كَتَمَهُ، وَعَمِلَ بِهِ أَصْحَابُهُ بَعْدَهُ، فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ وَالْعَجَبُ أَنَّهُمْ يَدَّعُونَ أَنَّهُمْ أَصْحَابُ قِيَاسٍ وَقَدْ خَالَفُوا فِي هَذَا الْمَكَانِ النُّصُوصَ وَالْقِيَاسَ؟ فَهَلْ وَجَدُوا فَرِيضَةً تَعُودُ بَعْدَ سُقُوطِهَا؟ وَهَلْ وَجَدُوا فِي أَوْقَاصِ الْإِبِلِ وَقْصًا مِنْ ثَلَاثَةٍ وَثَلَاثِينَ مِنْ الْإِبِلِ؟ إذْ لَمْ يَجْعَلُوا بَعْدَ الْإِحْدَى وَالتِّسْعِينَ حُكْمًا زَائِدًا إلَى خَمْسَةٍ وَعِشْرِينَ وَمِائَةٍ.

L10755 Have they found in any camels two differing rulings within a single category of camels – some requiring Zakat in camels and others in sheep? Yet they deny collecting Zakat from yields on kharaj land, their argument being that it is impermissible to impose two rights due to Allah upon a single property. Have they not – through their corrupt reasoning – imposed two rights here upon one property: one in camels and another in sheep? Why, when they rejected sheep and the hiqqah after annulling them, did they not also reject

وَهَلْ وَجَدُوا فِي شَيْءٍ مِنْ الْإِبِلِ حُكْمَيْنِ مُخْتَلِفَيْنِ فِي إبِلٍ وَاحِدَةٍ، بَعْضُهَا يُزَكَّى بِالْإِبِلِ وَبَعْضُهَا يُزَكَّى بِالْغَنَمِ؟ وَهُمْ يُنْكِرُونَ أَخْذَ زَكَاةٍ عَمَّا أُصِيبَ فِي أَرْضٍ خَرَاجِيَّةٍ، وَحُجَّتُهُمْ فِي ذَلِكَ أَنَّهُ لَا يَجُوزُ أَنْ يَأْخُذُوا حِقَّيْنِ لِلَّهِ تَعَالَى فِي مَالٍ وَاحِدٍ وَهُمْ قَدْ جَعَلُوا هَاهُنَا

the bint al-labūn for the thirty-six exceeding one hundred and twenty? If they say: "We are prevented by the Prophet's ruling (peace be upon him): 'For every fifty, a hiqqah is due.'"

-: بِرَأْيِهِمْ الْفَاسِدِ - فِي مَالٍ وَاحِدٍ حِقَّيْنِ: أَحَدُهُمَا إبِلٌ، وَالثَّانِي غَنَمٌ؟ وَهَلَّا إذْ رَدُّوا الْغَنَمَ وَبِنْتَ الْمَخَاضِ بَعْدَ إسْقَاطِهِمَا رَدُّوا أَيْضًا فِي سِتٍّ وَثَلَاثِينَ زَائِدَةً عَلَى الْعِشْرِينَ وَالْمِائَةِ بِنْتَ اللَّبُونِ؟ فَإِنْ قَالُوا: مَنَعَنَا مِنْ ذَلِكَ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «فِي كُلِّ خَمْسِينَ حِقَّةٌ» .

L10756 They were asked: Why did his statement—peace be upon him—"In every forty [camels], a two-year-old she-camel" not prevent you from returning the sheep?

قِيلَ لَهُمْ: فَهَلَّا مَنَعَكُمْ مِنْ رَدِّ الْغَنَمِ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «وَفِي كُلِّ أَرْبَعِينَ بِنْتُ لَبُونٍ» ؟

L10757–10758 Thus, it became evident that they did not base their ruling on anything, and we seek refuge in Allah from misguidance. They stated regarding the report we mentioned through the chain of Muḥammad ibn ʿAbd al-Raḥmān: "There is nothing after one hundred and twenty up to one hundred and thirty"—that it conflicts with the rest of the reports.

فَظَهَرَ أَنَّهُمْ لَمْ يَتَعَلَّقُوا بِشَيْءٍ، وَنَعُوذُ بِاَللَّهِ مِنْ الضَّلَالِ وَقَالُوا فِي الْخَبَرِ الَّذِي ذَكَرْنَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ «لَيْسَ فِيمَا بَعْدَ الْعِشْرِينَ وَالْمِائَةِ شَيْءٌ إلَى ثَلَاثِينَ وَمِائَةٍ» إنَّهُ يُعَارِضُ سَائِرَ الْأَخْبَارِ.

L10759 Abu Muhammad said: If this is the case, then the first matters to be countered are the scroll of 'Amr ibn Hazm and the narration attributed to 'Ali in what they presume - thus their entire obfuscation collapses, and success is from Allah, the Exalted. As for their claim that their position is narrated from 'Umar ibn al-Khattab, 'Ali, and Ibn Mas'ud - have they not brazenly lied? Regarding 'Ali, we have already mentioned the established narration from him, and there exists in what they cling to from his statements neither evidence nor explicit text for what they have claimed against him through false obfuscation. As for Ibn Mas'ud, they find no authentic basis from him. Either it is established - in which case we categorically assert this - or it is a rejected narration, which they are also unlikely to find; or it is fabricated for the occasion, which may come easily to them - though do such fabrications not circulate in the marketplace of knowledge? As for 'Umar - may Allah be pleased with him - what is established from him shines like the sun in contradicting their claim and aligning with our position. There remains no avenue to find contrary evidence from him unless they forge it for the occasion.

قَالَ أَبُو مُحَمَّدٍ: إنْ كَانَ هَذَا فَأَوَّلُ مَا يُعَارَضُ فَصَحِيفَةُ عَمْرِو بْنِ حَزْمٍ، وَحَدِيثُ عَلِيٍّ فِيمَا يَظُنُّهُ فِيهِمَا، فَسَقَطَ تَمْوِيهُهُمْ كُلُّهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟ وَأَمَّا دَعْوَاهُمْ أَنَّ قَوْلَهُمْ رُوِيَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيٍّ، وَابْنِ مَسْعُودٍ، فَقَدْ كَذَبُوا جِهَارًا؟ فَأَمَّا عَلِيٌّ فَقَدْ ذَكَرْنَا الرِّوَايَةَ الثَّابِتَةَ عَنْهُ، وَأَنَّهُ لَيْسَ فِيمَا تَعَلَّقُوا بِهِ مِنْ قَوْلِهِ دَلِيلٌ وَلَا نَصٌّ بِمَا ادَّعَوْهُ عَلَيْهِ بِالتَّمْوِيهِ الْكَاذِبِ وَأَمَّا ابْنُ مَسْعُودٍ فَلَا يَجِدُونَهُ عَنْهُ أَصْلًا، إمَّا ثَابِتٌ فَنَقْطَعُ بِذَلِكَ قَطْعًا، وَإِمَّا رِوَايَةٌ سَاقِطَةٌ فَبَعِيدٌ عَلَيْهِمْ وُجُودُهَا أَيْضًا، وَإِمَّا مَوْضُوعَةٌ مِنْ عَمَلِ الْوَقْتِ فَيَسْهُلُ عَلَيْهِمْ إلَّا أَنَّهَا لَا تُنْفَقُ فِي سُوقِ الْعِلْمِ؟ وَأَمَّا عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - فَالثَّابِتُ عَنْهُ كَالشَّمْسِ خِلَافُ قَوْلِهِمْ، وَمُوَافِقٌ لِقَوْلِنَا، وَلَا سَبِيلَ إلَى وُجُودِ خِلَافِ ذَلِكَ عَنْهُ، إلَّا إنْ صَاغُوهُ لِلْوَقْتِ.

L10760 Hammam narrated to us, Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated

to us, al-Dabari narrated to us, Abd al-Razzaq narrated from Sufyan al-Thawri from Musa ibn Uqbah and Ubayd Allah ibn Umar, both from Nafi' from Ibn Umar from his father, who said: For camels, the zakāt is one sheep for five camels, two sheep for ten, three sheep for fifteen, four sheep for twenty, and a one-year-old female camel for twenty-five. If there is no one-year-old female, then a two-year-old male camel is given, up to thirty-five. If the number exceeds thirty-five by one, then a two-year-old female camel is due, up to forty-five. If the number exceeds forty-five by one, then a three-year-old she-camel mated with a stallion is due, up to sixty. If the number exceeds sixty by one, then a four-year-old she-camel is due, up to seventy-five. If the number exceeds seventy-five by one, then two two-year-old female camels are due, up to ninety. If the number exceeds ninety by one, then two three-year-old she-camels mated with a stallion are due, up to one hundred twenty. If it exceeds that, then for every forty camels, a two-year-old female camel is due, and for every fifty, a three-year-old she-camel is due.

حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُوسَى بْنِ عُقْبَةَ، وَعُبَيْدُ اللَّهِ بْنُ عُمَرَ كِلَاهُمَا عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ أَبِيهِ أَنَّهُ قَالَ: فِي الْإِبِلِ فِي خَمْسٍ شَاةٌ، وَفِي عَشْرٍ شَاتَانِ وَفِي خَمْسَ عَشْرَةَ ثَلَاثُ شِيَاهٍ، وَفِي عِشْرِينَ أَرْبَعُ شِيَاهٍ، وَفِي خَمْسٍ وَعِشْرِينَ بِنْتُ مَخَاضٍ، فَإِنْ لَمْ تَكُنْ بِنْتُ مَخَاضٍ فَابْنُ لَبُونٍ ذَكَرٌ، إِلَى خَمْسٍ وَثَلَاثِينَ فَإِنْ زَادَتْ وَاحِدَةً فَفِيهَا بِنْتُ لَبُونٍ، إِلَى خَمْسٍ وَأَرْبَعِينَ فَإِنْ زَادَتْ وَاحِدَةً فَفِيهَا حِقَّةٌ طَرُوقَةُ الْفَحْلِ، إِلَى سِتِّينَ، فَإِنْ زَادَتْ وَاحِدَةً فَفِيهَا جَذَعَةٌ إِلَى خَمْسٍ وَسَبْعِينَ فَإِنْ زَادَتْ وَاحِدَةً فَفِيهَا ابْنَتَا لَبُونٍ إِلَى تِسْعِينَ، فَإِنْ زَادَتْ وَاحِدَةً فَفِيهَا حِقَّتَانِ طَرُوقَتَا الْفَحْلِ، إِلَى عِشْرِينَ وَمِائَةٍ، فَإِنْ زَادَتْ فَفِي كُلِّ أَرْبَعِينَ بِنْتُ لَبُونٍ، وَفِي كُلِّ خَمْسِينَ حِقَّةٌ؟

L10761–10762 Abdullah ibn Rabee'ah narrated to us: Umar ibn Abd al-Malik narrated to us: Muhammad ibn Bakr narrated to us: Abu Dawud narrated to us: Muhammad ibn Al-Ala'—he is Abu Kuraib—narrated to us: Abdullah ibn al-Mubarak narrated from Yunus ibn Yazid from Ibn Shihab, who said: "This is a copy of the letter of the Messenger of Allah—peace and blessings be upon him—which he wrote concerning Zakat, and it is in the possession of the family of Umar ibn al-Khattab." Ibn Shihab said: "Salim ibn Abdullah ibn Umar recited it to me, and I memorized it precisely. It is the same copy that Umar ibn Abd al-Aziz transcribed from Abdullah and Salim, the two sons of Abdullah ibn Umar." He said: "When the camels reach one hundred and twenty-one, three two-year-old she-camels are due, until they reach one hundred and twenty-nine. When they reach one hundred and thirty, two two-year-old she-camels and one three-year-old she-camel are due, until they reach one hundred and thirty-nine. When they reach one hundred and forty, two three-year-old she-camels and one two-year-old she-camel are due, until they reach one hundred and forty-nine. When they reach one hundred and fifty, three three-year-old she-camels are due, until they reach one hundred and fifty-nine. When they

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا مُحَمَّدُ بْنُ الْعَلَاءِ هُوَ أَبُو كُرَيْبٍ - ثنا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ قَالَ: هَذِهِ نُسْخَةُ كِتَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي كَتَبَهُ فِي الصَّدَقَةِ، وَهِيَ عِنْدَ آلِ عُمَرَ بْنِ الْخَطَّابِ، قَالَ ابْنُ شِهَابٍ: أَقْرَأَنِيهَا سَالِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ، فَوَعَيْتُهَا عَلَى وَجْهِهَا، وَهِيَ الَّتِي انْتَسَخَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ مِنْ عَبْدِ اللَّهِ وَسَالِمِ ابْنَيْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: «إِذَا كَانَتْ إِحْدَى وَعِشْرِينَ وَمِائَةً فَفِيهَا ثَلَاثُ بَنَاتِ لَبُونٍ، حَتَّى تَبْلُغَ تِسْعًا وَعِشْرِينَ وَمِائَةً، فَإِذَا كَانَتْ ثَلَاثِينَ وَمِائَةً، فَفِيهَا ابْنَتَا لَبُونٍ وَحِقَّةٌ، حَتَّى تَبْلُغَ تِسْعًا وَثَلَاثِينَ وَمِائَةً، فَإِذَا كَانَتْ أَرْبَعِينَ وَمِائَةً فَفِيهَا حِقَّتَانِ وَابْنَةُ لَبُونٍ، حَتَّى تَبْلُغَ تِسْعًا وَأَرْبَعِينَ وَمِائَةً، فَإِذَا كَانَتْ خَمْسِينَ وَمِائَةً فَفِيهَا ثَلَاثُ حِقَاقٍ، حَتَّى تَبْلُغَ تِسْعًا وَخَمْسِينَ وَمِائَةً، فَإِذَا كَانَتْ سِتِّينَ وَمِائَةً فَفِيهَا أَرْبَعُ بَنَاتِ لَبُونٍ، حَتَّى تَبْلُغَ تِسْعًا وَسِتِّينَ وَمِائَةٍ،

reach one hundred and sixty, four two-year-old she-camels are due, until they reach one hundred and sixty-nine. When they reach one hundred and seventy, three two-year-old she-camels and one three-year-old she-camel are due, until they reach one hundred and seventy-nine. When they reach one hundred and eighty, two three-year-old she-camels and two two-year-old she-camels are due, until they reach one hundred and eighty-nine. When they reach one hundred and ninety, three three-year-old she-camels and one two-year-old she-camel are due, until they reach one hundred and ninety-nine. When they reach two hundred, four three-year-old she-camels or five two-year-old she-camels are due; whichever type is found shall be taken. And regarding pasturing livestock"—he mentioned something similar to the Hadith of Sufyan ibn Husayn from al-Zuhri from Salim from his father. Abu Muhammad said: "This is the statement of Umar, and it is our very stance itself, contradicting their view. What is utterly astonishing is their weak pretext in dismissing this report because Yunus ibn Yazid alone narrated it." Ali said:

فَإِذَا كَانَتْ سَبْعِينَ وَمِائَةً فَفِيهَا ثَلَاثُ بَنَاتِ لَبُونٍ وَحِقَّةٌ، حَتَّى تَبْلُغَ تِسْعًا وَسَبْعِينَ وَمِائَةً، فَإِذَا كَانَتْ ثَمَانِينَ وَمِائَةً فَفِيهَا حِقَّتَانِ وَبِنْتَا لَبُونٍ، حَتَّى تَبْلُغَ تِسْعًا وَثَمَانِينَ وَمِائَةً، فَإِذَا كَانَتْ تِسْعِينَ وَمِائَةً فَفِيهَا ثَلَاثُ حِقَاقٍ وَبِنْتُ لَبُونٍ، حَتَّى تَبْلُغَ تِسْعًا وَتِسْعِينَ وَمِائَةً، فَإِذَا كَانَتْ مِائَتَيْنِ فَفِيهَا أَرْبَعُ حِقَاقٍ، أَوْ خَمْسُ بَنَاتِ لَبُونٍ، أَيُّ السِّنِينَ وُجِدَتْ أُخِذَتْ وَفِي سَائِمَةِ الْغَنَمِ» فَذَكَرَ نَحْوَ حَدِيثِ سُفْيَانَ بْنِ حُسَيْنٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمٍ عَنْ أَبِيهِ؟ قَالَ أَبُو مُحَمَّد: فَهَذَا قَوْلُ عُمَرَ، هُوَ قَوْلُنَا نَفْسُهُ، مُخَالِفٌ لِقَوْلِهِمْ وَالْعَجَبُ كُلُّهُ تَعَلُّلُهُمْ فِي هَذَا الْخَبَرِ بِأَنَّهُ انْفَرَدَ بِهِ يُونُسُ بْنُ يَزِيدَ؟ قَالَ عَلِيٌّ:

L10763 And that is a complaint whose shame emanating from you is evident.

وَتِلْكَ شَكَاةٌ ظَاهِرٌ عَنْك عَارُهَا

L10764–10766 Then they do not shy away from affirming it and using it as proof, falsely suggesting that it conforms to their view that there is no zakāh except on grazing livestock. Thus, the invalidity of their claim and their opposition to Allah, the Exalted, to the established Sunnahs of the Messenger of Allah (peace be upon him), and to Abu Bakr, Umar, Ali, Anas, Ibn 'Umar, and all the Companions (may Allah be pleased with them) became evident, without... They should not rely on an authentic narration from any one of them similar to their statements, except from Ibrāhīm alone—and success is by the grace of Allah, the Most High?

ثُمَّ لَا يَسْتَحْيُونَ مِنْ تَصْحِيحِهِ وَالِاحْتِجَاجِ بِهِ مُوهِمِينَ أَنَّهُ مُوَافِقٌ لِرَأْيِهِمْ فِي أَنْ لَا زَكَاةَ إلَّا فِي السَّائِمَةِ؟ فَظَهَرَ فَسَادُ قَوْلِهِمْ، وَخِلَافِهِمْ لِلَّهِ تَعَالَى، وَلِلسُّنَنِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلِأَبِي بَكْرٍ، وَعُمَرَ، وَعَلِيٍّ، وَأَنَسٍ، وَابْنِ عُمَرَ، وَسَائِرِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - دُونَ أَنْ يَتَعَلَّقُوا بِرِوَايَةٍ صَحِيحَةٍ عَنْ أَحَدٍ مِنْهُمْ بِمِثْلِ قَوْلِهِمْ، إلَّا عَنْ إبْرَاهِيمَ وَحْدَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

[مَسْأَلَةٌ يُعْطِي الْمُصَدِّقُ الشَّاتَيْنِ مِمَّا أَخَذَ مِنْ صَدَقَةِ الْغَنَمِ]

L10767 **An issue: The zakāh collector gives two sheep from what he has collected as zakāh on sheep.**

L10768 675 - Issue: Abu Muhammad said: The collector must give two sheep or twenty dirhams from what he has taken as sheep zakat, or sell from the camels, for this is taken from the Muslims among zakat recipients. He fulfills it from their wealth. Set-off is impermissible - such as when a Muslim owes

٦٧٥ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: وَيُعْطِي الْمُصَدِّقُ، الشَّاتَيْنِ أَوْ الْعِشْرِينَ دِرْهَمًا مِمَّا أَخَذَ مِنْ صَدَقَةِ الْغَنَمِ، أَوْ يَبِيعَ مِنْ الْإِبِلِ، لِأَنَّهُ لِلْمُسْلِمِينَ مِنْ أَهْلِ الصَّدَقَاتِ يَأْخُذُ ذَلِكَ؛ فَمِنْ

two female camels that have entered their third year (bintā labūn) but only possesses a three-year-old female camel (ḥiqqah) and a one-year-old female camel (bint makhāḍ). In this case, the collector takes these two, gives him two sheep or twenty dirhams, and it is obligatory to take from him two sheep or twenty dirhams. It is permissible for him to take this then return it in kind, or give it then return it in kind, for he has fulfilled and received fully. As for set-off - where each party relinquishes what is owed by the other - this constitutes abandonment of Allah's right which has become due yet remains uncollected. This is invalid. Nor is it permissible to exonerate the collector from the right of zakat recipients, for it is others' property. Success comes through Allah, the Exalted.

مَالِهِمْ يُؤَدِّيه؟ وَلَا يَجُوزُ لَهُ التَّقَاصُّ، وَهُوَ: أَنْ يَجِبَ عَلَى الْمُسْلِمِ بِنْتَا لَبُونٍ فَلَا يَجِدُهُمَا عِنْدَهُ، وَيَجِدُ عِنْدَهُ حِقَّةً وَبِنْتَ مَخَاضٍ، فَإِنَّهُ يَأْخُذُهُمَا وَيُعْطِيه شَاتَيْنِ أَوْ عِشْرِينَ دِرْهَمًا وَيَأْخُذ مِنْهُ شَاتَيْنِ أَوْ عِشْرِينَ دِرْهَمًا وَلَا بُدَّ، وَجَائِزٌ لَهُ أَنْ يَأْخُذَ ذَلِكَ ثُمَّ يَرُدَّهُ بِعَيْنِهِ، أَوْ يُعْطِيهُ ثُمَّ يَرُدَّهُ بِعَيْنِهِ لِأَنَّهُ قَدْ أَوْفَى وَاسْتَوْفَى وَأَمَّا التَّقَاصُّ - بِأَنْ يَتْرُكَ كُلُّ وَاحِدٍ مِنْهُمَا لِصَاحِبِهِ مَا عَلَيْهِ مِنْ ذَلِكَ - فَهُوَ تَرْكٌ لِحَقِّ اللَّهِ تَعَالَى قَدْ وَجَبَ لَمْ يُقْبَضْ، وَهَذَا لَا يَجُوزُ، وَلَا يَجُوزُ إبْرَاءُ الْمُصَدِّقِ مِنْ حَقِّ أَهْلِ الصَّدَقَةِ؛ لِأَنَّهُ مَالُ غَيْرِهِ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L10769 **A legal issue: Zakat is due annually on camels.**

[مَسْأَلَةٌ الزَّكَاةُ تَتَكَرَّرُ فِي كُلِّ سَنَةٍ فِي الْإِبِلِ]

L10770 676 - Issue: Zakat is recurring every year for camels, cattle, sheep, gold, and silver, unlike wheat, barley, and dates. Once Zakat has been paid on these categories, no Zakat is ever due on them again thereafter. Zakat is only due on these categories when they are threshed and winnowed, measured, when dates are dried and measured. There is no disagreement among anyone on this matter, except concerning jewelry and working animals, which we will mention, God Almighty willing. Did the Messenger of God—peace and blessings be upon him—send out Zakat collectors every year?

٦٧٦ - مَسْأَلَةٌ: وَالزَّكَاةُ تَتَكَرَّرُ فِي كُلِّ سَنَةٍ، فِي الْإِبِلِ، وَالْبَقَرِ، وَالْغَنَمِ، وَالذَّهَبِ وَالْفِضَّةِ، بِخِلَافِ الْبُرِّ وَالشَّعِيرِ وَالتَّمْرِ، فَإِنَّ هَذِهِ الْأَصْنَافَ إذَا زُكِّيَتْ فَلَا زَكَاةَ فِيهَا بَعْدَ ذَلِكَ أَبَدًا، وَإِنَّمَا تُزَكَّى عِنْدَ تَصْفِيَتِهَا، وَكَيْلِهَا، وَيُبْسِ التَّمْرِ، وَكَيْلِهِ، وَهَذَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ، إلَّا فِي الْحُلِيِّ وَالْعَوَامِلِ، وَسَنَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى؛ وَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُخْرِجُ الْمُصَدِّقِينَ كُلَّ سَنَةٍ؟

[مَسْأَلَةٌ الزَّكَاةُ وَاجِبَةٌ فِي الْإِبِلِ بِانْقِضَاءِ الْحَوْلِ]

L10771 **Issue: Zakat is obligatory on camels upon the completion of the lunar year.**

L10772 677: Question:

٦٧٧ - مَسْأَلَةٌ:

L10773 Zakāt is obligatory on camels, cattle, and sheep upon the completion of the lunar year, and its obligation is not contingent upon the arrival of the collector—who is the assessor (al-muṣaddiq). This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and our companions. Mālik and Abū Thawr, however, said: "Zakāt is only obligatory upon the arrival of the assessor." Yet they

وَالزَّكَاةُ وَاجِبَةٌ، فِي الْإِبِلِ، وَالْبَقَرِ، وَالْغَنَمِ بِانْقِضَاءِ الْحَوْلِ، وَلَا حُكْمَ فِي ذَلِكَ لِمَجِيءِ السَّاعِي - وَهُوَ الْمُصَدِّقُ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَصْحَابِنَا؟ وَقَالَ مَالِكٌ، وَأَبُو ثَوْرٍ: لَا تَجِبُ الزَّكَاةُ إلَّا بِمَجِيءِ الْمُصَدِّقِ؟ ثُمَّ تَنَاقَضُوا فَقَالُوا: إنْ أَبْطَأَ الْمُصَدِّقُ

contradicted themselves by stating: “If the assessor is delayed for one or two years, Zakāt does not lapse because of this; rather, it remains obligatory for every year that has passed and must be collected.” Does this not invalidate their claim that Zakāt is only obligatory upon the arrival of the collector? For the collector is merely an appointed agent tasked with collecting what has already become due. He cannot collect what is not owed, nor can he annul what is obligated.

L10774–10775 There is no disagreement among anyone in the Ummah — in general — that if the Zakat collector arrives before the completion of the Hawl (lunar year), it would not be permissible to give him anything from it. Does this not nullify the ruling being contingent on the arrival of the collector? The collector must necessarily be one of three: either sent by the Imam whose obedience is obligatory, his appointed Amir, or sent by someone whose obedience is not obligatory. If he is sent by one whose obedience is not obligatory, he is not the agent commanded by Allah Almighty or His Messenger — peace be upon him — to collect Zakat. Thus, what he collects is invalid, the Zakat obligation remains binding, and the wealth owner must necessarily fulfill it without fail, for what was taken from him constitutes an injustice — not the obligatory Zakat.

L10776 If the one who dispatched him is someone whose obedience is obligatory, it must necessarily be either that the one who sent him distributes it to its rightful recipients or does not do so. If he distributes it to its rightful recipients, it is impermissible for anyone to give his zakat except to him, for he is the one commanded by Allah the Exalted and His Messenger (peace and blessings of Allah be upon him) to collect it. Whoever gives it to someone other than the one commanded to receive it has transgressed, and transgression is invalid. The Messenger of Allah (peace and blessings of Allah be upon him) said: “Whoever introduces a practice not part of our command, it is rejected.”[15]

L10777 ## Zakat of Grazing and Non-Grazing Livestock

[15] **Hadith references (L10776):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

عَامًا أَوْ عَامَيْنِ لَمْ تَسْقُطْ الزَّكَاةُ بِذَلِكَ، وَوَجَبَ أَخْذُهَا لِكُلِّ عَامٍ خَلَا وَهَذَا إبْطَالُ قَوْلِهِمْ فِي أَنَّ الزَّكَاةَ لَا تَجِبُ إلَّا بِمَجِيءِ السَّاعِي، وَإِنَّمَا السَّاعِي وَكِيلٌ مَأْمُورٌ بِقَبْضِ مَا وَجَبَ؛ لَا يَقْبِضُ مَا لَمْ يَجِبْ، وَلَا بِإِسْقَاطِ مَا وَجَبَ؟

وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ - وَهُمْ فِي الْجُمْلَةِ - فِي أَنَّ الْمُصَدِّقَ لَوْ - جَاءَ قَبْلَ تَمَامِ الْحَوْلِ لَمَا جَازَ أَنْ يُعْطَى مِنْهَا شَيْئًا، فَبَطَلَ أَنْ يَكُونَ الْحُكْمُ لِمَجِيءِ السَّاعِي؟ وَلَا يَخْلُو السَّاعِي مِنْ أَنْ يَكُونَ بَعَثَهُ الْإِمَامُ الْوَاجِبَةُ طَاعَتُهُ، أَوْ أَمِيرُهُ، أَوْ بَعَثَهُ مَنْ لَا تَجِبُ طَاعَتُهُ، فَإِنْ بَعَثَهُ مَنْ لَا تَجِبُ طَاعَتُهُ فَلَيْسَ هُوَ الْمَأْمُورُ مِنْ اللَّهِ تَعَالَى أَوْ رَسُولِهِ - عَلَيْهِ السَّلَامُ - بِقَبْضِ الزَّكَاةِ، فَإِذْ لَيْسَ هُوَ ذَلِكَ فَلَا يُجْزِئُ مَا قَبَضَ، وَالزَّكَاةُ بَاقِيَةٌ وَعَلَى صَاحِبِ الْمَالِ أَدَاؤُهَا وَلَا بُدَّ؛ لِأَنَّ الَّذِي أُخِذَ مِنْهُ مَظْلِمَةٌ لَا صَدَقَةٌ وَاجِبَةٌ.

وَإِنْ كَانَ بَعَثَهُ مَنْ تَجِبُ طَاعَتُهُ، فَلَا يَخْلُو مِنْ أَنْ يَكُونَ بَاعِثُهُ يَضَعُهَا مَوَاضِعَهَا، أَوْ لَا يَضَعُهَا مَوَاضِعَهَا، فَإِنْ كَانَ يَضَعُهَا مَوَاضِعَهَا فَلَا يَحِلُّ لِأَحَدٍ دَفْعُ زَكَاتِهِ إلَّا إلَيْهِ؛ لِأَنَّهُ هُوَ الْمَأْمُورُ بِقَبْضِهَا مِنْ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَنْ دَفَعَهَا إلَى غَيْرِ الْمَأْمُورِ بِدَفْعِهَا إلَيْهِ فَقَدْ تَعَدَّى، وَالتَّعَدِّي مَرْدُودٌ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

[زَكَاةُ السَّائِمَةِ وَغَيْرِ السَّائِمَةِ مِنْ الْمَاشِيَةِ]

L10778 678 – Issue:

٦٧٨ - مَسْأَلَةٌ:

L10779 Malik, al-Layth, and some of our companions said: Is Zakat due on grazing livestock, hand-fed livestock, and those kept for riding, plowing, or other purposes among camels, cattle, and sheep? Some of our companions said: As for camels, yes; but regarding sheep and cattle, no Zakat is due except on their grazing ones.

قَالَ مَالِكٌ، وَاللَّيْثُ، وَبَعْضُ أَصْحَابِنَا: تُزَكَّى السَّوَائِمُ، وَالْمَعْلُوفَةُ، وَالْمُتَّخَذَةُ لِلرُّكُوبِ، وَلِلْحَرْثِ وَغَيْرِ ذَلِكَ، مِنْ الْإِبِلِ، وَالْبَقَرِ، وَالْغَنَمِ؟ وَقَالَ بَعْضُ أَصْحَابِنَا: أَمَّا الْإِبِلُ فَنَعَمْ، وَأَمَّا الْغَنَمُ وَالْبَقَرُ فَلَا زَكَاةَ إلَّا فِي سَائِمَتِهَا.

L10780 And this is the statement of Abī al-Ḥasan ibn al-Mughallis.

وَهُوَ قَوْلُ أَبِي الْحَسَنِ بْنِ الْمُغَلِّسِ.

L10781 Some scholars said: As for camels and sheep, zakah is due on both their grazing and non-grazing ones. But as for cattle, zakah is only due on their grazing ones.

وَقَالَ بَعْضُهُمْ: أَمَّا الْإِبِلُ، وَالْغَنَمُ فَتُزَكَّى سَائِمَتُهَا وَغَيْرُ سَائِمَتِهَا، وَأَمَّا الْبَقَرُ فَلَا تُزَكَّى إلَّا سَائِمَتُهَا.

L10782 And this is the statement of Abu Bakr ibn Dawud—may Allah have mercy on him—? None of our companions have disagreed that grazing camels and non-grazing ones are subject to zakah in exactly the same manner, without distinction.

وَهُوَ قَوْلُ أَبِي بَكْرِ بْنِ دَاوُد - رَحِمَهُ اللَّهُ -؟ وَلَمْ يَخْتَلِفْ أَحَدٌ مِنْ أَصْحَابِنَا فِي أَنَّ سَائِمَةَ الْإِبِلِ وَغَيْرَ السَّائِمَةِ مِنْهَا تُزَكَّى سَوَاءً سَوَاءً.

L10783–10785 Abu Hanifah and Al-Shafi'i said: There is no zakah except in grazing livestock among all those. Some of them said: Stall-fed livestock from all such [taxable categories] must pay zakāh once in their lifetime, after which zakāh is no longer obligatory for them.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: لَا زَكَاةَ إلَّا فِي السَّائِمَةِ مِنْ كُلِّ ذَلِكَ: وَقَالَ بَعْضُهُمْ: تُزَكَّى غَيْرُ السَّائِمَةِ مِنْ كُلِّ ذَلِكَ مَرَّةً وَاحِدَةً فِي الدَّهْرِ، ثُمَّ لَا تَعُودُ الزَّكَاةُ فِيهَا.

L10786 The followers of Abu Hanifah and Al-Shafi'i argued by stating: "Our view is the view of the majority of the Salaf among the Companions, may Allah be pleased with them, and others." As transmitted to us through the narration of Sufyan and Ma'mar from Abu Ishaq from Asim ibn Ḍamrah from Ali: "There is no Zakat due on working oxen?" We have previously mentioned the statement of Umar, may Allah be pleased with him, regarding forty grazing sheep requiring one sheep as Zakat, up to one hundred and twenty sheep.

فَاحْتَجَّ أَصْحَابُ أَبِي حَنِيفَةَ، وَالشَّافِعِيُّ، بِأَنْ قَالُوا: قَوْلُنَا قَوْلُ جُمْهُورِ السَّلَفِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَغَيْرِهِمْ؟ كَمَا رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ، وَمَعْمَرٍ عَنْ أَبِي إسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ: لَيْسَ عَلَى عَوَامِلِ الْبَقَرِ صَدَقَةٌ؟ وَقَدْ ذَكَرْنَا آنِفًا قَوْلَ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ -: فِي أَرْبَعِينَ مِنْ الْغَنَمِ سَائِمَةُ شَاةٍ إلَى عِشْرِينَ وَمِائَةٍ.

L10787 From Layth, from Ṭāwūs, from Muʿādh ibn Jabal: There is no zakah on working cattle. From Ibn Jurayj, from Abī al-Zubayr, from Jābir: There is no zakah on plowing cattle, and no disagreement is known from any of the Companions (may Allah be pleased with them) regarding this. From Ibn Jurayj, from ʿAṭāʾ: There is no zakah on load-bearing camels and plowing

وَعَنْ لَيْثٍ عَنْ طَاوُسٍ عَنْ مُعَاذِ بْنِ جَبَلٍ: لَيْسَ عَلَى عَوَامِلِ الْبَقَرِ صَدَقَةٌ؟ وَعَنْ ابْنِ جُرَيْجٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ: لَا صَدَقَةَ فِي الْمُثِيرَةِ وَلَا يُعْرَفُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ

cattle. This is the opinion of ʿAmr ibn Dīnār and ʿAbd al-Karīm. Al-ḥumūlah refers to camels used for transport, and al-muthīrah denotes cattle used for tilling the land. Allah the Exalted said: “Not trained to plow the earth” [Quran 2:71].[16]

L10788 From Saʿid ibn Jubayr: Is there no sadaqah due on a working bull or a camel used for transporting litters? From Ibrāhīm al-Nakhaʿī: Is there no sadaqah due on working cattle? From Mujāhid: If one owns forty sheep in a settled area that he milks, is there no zakah due on them, and no sadaqah on working cattle? From al-Zuhrī: Is there no sadaqah due on water-drawing cattle or plowing cattle? For other cattle besides these two, sadaqah is due as the sadaqah for camels, and he held that zakah is obligatory on working camels. From ʿUmar ibn ʿAbd al-ʿAzīz: Is there no sadaqah due on camels and working cattle? From al-Hasan al-Basrī: Is there no sadaqah due on working cattle and working camels?

L10789–10790 From Musa ibn Talha ibn ʿUbayd Allah: There is no Zakat on cows used for labor. From Saʿid ibn ʿAbd al-ʿAziz: There is no Zakat on cows used for plowing. From al-Hakam ibn ʿUtaybah: There is no Zakat on cows used for labor. From Tawus: There is no Zakat on cows and camels employed for labor, except on pastured livestock exclusively. From al-Shaʿbi: There is no Zakat on cows used for labor. This is also the position of Shahr ibn Hawshab and al-Dahhak. From Ibn Shubrumah: There is no Zakat on camels used for labor.

L10791 Al-Awzaʿī said: There is no zakah on cows used for labor, whereas he obligated it on female camels used for labor.

L10792 Sufyan said: There is no zakah on camels, cattle, or sheep that are not pastured, nor is there zakah on sheep reared for slaughter. When Malik’s opinion imposing zakah in such cases was mentioned to him, he expressed astonishment and said: I never imagined anyone would hold this view? This

[16] **Qur’an references (L10787):** Qur’an 2:71 (Al-Baqarah).

- رَضِيَ اللَّهُ عَنْهُمْ - خِلَافٌ فِي ذَلِكَ؟ وَعَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: لَا صَدَقَةَ فِي الْحُمُولَةِ، وَالْمُثِيرَةِ؟ وَهُوَ قَوْلُ عَمْرِو بْنِ دِينَارٍ، وَعَبْدِ الْكَرِيمِ وَالْحُمُولَةُ: هِيَ الْإِبِلُ الْحَمَّالَةُ، وَالْمُثِيرَةُ بَقَرُ الْحَرْثِ، قَالَ تَعَالَى: {لا ذَلُولٌ تُثِيرُ الأَرْضَ} [البقرة: ٧١] .

وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ: لَيْسَ عَلَى ثَوْرٍ عَامِلٍ وَلَا عَلَى جَمَلِ ظَعِينَةٍ صَدَقَةٌ؟ وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ: لَيْسَ فِي عَوَامِلِ الْبَقَرِ صَدَقَةٌ؟ وَعَنْ مُجَاهِدٍ: مَنْ لَهُ أَرْبَعُونَ شَاةً فِي مِصْرٍ يَحْلِبُهَا فَلَا زَكَاةَ عَلَيْهِ فِيهَا، وَلَا صَدَقَةَ فِي الْبَقَرِ الْعَوَامِلِ؟ وَعَنْ الزُّهْرِيِّ: لَيْسَ فِي السَّوَانِي مِنْ الْبَقَرِ، وَبَقَرِ الْحَرْثِ صَدَقَةٌ، وَفِيمَا عَدَاهُمَا مِنْ الْبَقَرِ الصَّدَقَةُ كَصَدَقَةِ الْإِبِلِ، وَأَوْجَبَ الزَّكَاةَ فِي عَوَامِلِ الْإِبِلِ؟ وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: لَيْسَ فِي الْإِبِلِ وَالْبَقَرِ الْعَوَامِلِ صَدَقَةٌ؟ وَعَنْ الْحَسَنِ الْبَصْرِيِّ: لَيْسَ فِي الْبَقَرِ الْعَوَامِلِ وَالْإِبِلِ الْعَوَامِلِ صَدَقَةٌ.

وَعَنْ مُوسَى بْنِ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ: لَيْسَ فِي الْبَقَرِ الْعَوَامِلِ صَدَقَةٌ؟ وَعَنْ سَعِيدِ بْنِ عَبْدِ الْعَزِيزِ لَيْسَ فِي الْبَقَرِ الْحَرْثِ صَدَقَةٌ؟ وَعَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، لَيْسَ فِي الْبَقَرِ الْعَوَامِلِ صَدَقَةٌ؟ وَعَنْ طَاوُسٍ: لَيْسَ فِي عَوَامِلِ الْبَقَرِ، وَالْإِبِلِ صَدَقَةٌ، إلَّا فِي السَّوَائِمِ خَاصَّةً؟ وَعَنْ الشَّعْبِيِّ: لَيْسَ فِي الْبَقَرِ الْعَوَامِلِ صَدَقَةٌ؟ وَهُوَ أَيْضًا قَوْلُ شَهْرِ بْنِ حَوْشَبٍ وَالضَّحَّاكِ؟ وَعَنْ ابْنِ شُبْرُمَةَ: لَيْسَ فِي الْإِبِلِ الْعَوَامِلِ صَدَقَةٌ.

وَقَالَ الْأَوْزَاعِيُّ: لَا زَكَاةَ فِي الْبَقَرِ الْعَوَامِلِ، وَأَوْجَبَهَا فِي الْإِبِلِ الْعَوَامِلِ.

وَقَالَ سُفْيَانُ: لَا زَكَاةَ فِي غَيْرِ السَّائِمَةِ مِنْ الْإِبِلِ وَالْبَقَرِ وَالْغَنَمِ، وَلَا زَكَاةَ فِي الْغَنَمِ الْمُتَّخَذَةِ لِلذَّبْحِ - وَذُكِرَ لَهُ قَوْلُ مَالِكٍ فِي إيجَابِ الزَّكَاةِ فِي ذَلِكَ، فَعَجِبَ، وَقَالَ: مَا ظَنَنْتُ أَنَّ أَحَدًا يَقُولُ هَذَا؟ وَهُوَ قَوْلُ أَبِي عُبَيْدٍ، وَغَيْرِهِ وَرُوِّينَا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ،

position aligns with Abu Ubayd and others. We have received reports attributing to Umar ibn Abd al-Aziz, Qatadah, and Hammad ibn Abi Sulayman the obligation of zakah on working camels. It is also narrated from Yahya ibn Sa'id al-Ansari that zakah is obligatory on all sheep, cattle, and camels—whether pastured or non-pastured. They argued that the Prophet (peace and blessings be upon him) explicitly addressed pastured sheep in the authentic hadith. They maintained: It is inconceivable that he (peace and blessings be upon him) would speak words devoid of legal purpose—thus proving that non-pastured animals differ in ruling from pastured ones.

وَقَتَادَةَ وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ إِيجَابَ الزَّكَاةِ فِي الْإِبِلِ الْعَوَامِلِ؟ وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ إِيجَابُ الزَّكَاةِ فِي كُلِّ غَنَمٍ، وَبَقَرٍ، وَإِبِلٍ، سَائِمَةٍ، أَوْ غَيْرِ سَائِمَةٍ؟ وَاحْتَجُّوا بِأَنَّهُ قَدْ صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: فِي سَائِمَةِ الْغَنَمِ قَالُوا: وَلَا يَجُوزُ أَنْ يَقُولَ - عَلَيْهِ السَّلَامُ - كَلَامًا لَا فَائِدَةَ فِيهِ، فَدَلَّ أَنَّ غَيْرَ السَّائِمَةِ بِخِلَافِ السَّائِمَةِ.

L10793–10795 It is mentioned in some narrations: "In grazing camels," they said, "Do we then analogize grazing cows to that?" They said, "Zakat has been imposed only on that which generates growth, but not on that which entails expenses. Do we know of any argument they contended with other than what we have mentioned?" Our companions argued regarding the specification of working cows specifically because the reports concerning cows have not been authenticated. Therefore, the ruling is that Zakat is not obligatory on them except where consensus exists regarding its obligation, for has consensus not been established concerning the obligation of Zakat on non-grazing livestock? Those who held that Zakat is due once in a lifetime on non-grazing livestock argued, saying: "The obligation of Zakat on them is established by a general textual injunction, and no text stipulates the recurrence of Zakat on them annually. Thus, the recurrence of Zakat on grazing livestock is obligated by indisputable consensus, whereas recurrence on non-grazing livestock is not obligated—neither by textual proof nor by consensus?" Abu Muhammad said: "As for the argument of those who cite the multitude of proponents holding this view and that it constitutes the opinion of four Companions—may Allah be pleased with them—with no known dissenter among them, no authoritative proof can be derived from anyone's opinion apart from that of the Messenger of Allah—peace and blessings be upon him."

وَقَدْ جَاءَ فِي بَعْضِ الْآثَارِ: " فِي سَائِمَةِ الْإِبِلِ " قَالُوا: فَقِسْنَا سَائِمَةَ الْبَقَرِ عَلَى ذَلِكَ؟ وَقَالُوا: إِنَّمَا جُعِلَتِ الزَّكَاةُ فِيمَا فِيهِ النَّمَاءُ، وَأَمَّا فِيمَا فِيهِ الْكُلْفَةُ فَلَا، مَا نَعْلَمُ لَهُمْ شَيْئًا شَغَبُوا بِهِ غَيْرَ مَا ذَكَرْنَا؟ وَاحْتَجَّ أَصْحَابُنَا فِي تَخْصِيصِ عَوَامِلِ الْبَقَرِ خَاصَّةً بِأَنَّ الْأَخْبَارَ فِي الْبَقَرِ لَمْ تَصِحَّ، فَالْوَاجِبُ أَنْ لَا تَجِبَ الزَّكَاةُ فِيهَا إِلَّا حَيْثُ اُجْتُمِعَ عَلَى وُجُوبِ الزَّكَاةِ فِيهَا، لَمْ يُجْمَعْ عَلَى وُجُوبِ الزَّكَاةِ فِيهَا فِي غَيْرِ السَّائِمَةِ؟ وَاحْتَجَّ مَنْ رَأَى الزَّكَاةَ فِي غَيْرِ السَّائِمَةِ مَرَّةً فِي الدَّهْرِ بِأَنْ قَالَ: قَدْ صَحَّتِ الزَّكَاةُ فِيهَا بِالنَّصِّ الْمُجْمَلِ، وَلَمْ يَأْتِ نَصٌّ بِأَنْ تُكَرَّرَ الزَّكَاةُ فِيهَا فِي كُلِّ عَامٍ، فَوَجَبَ تَكَرُّرُ الزَّكَاةِ فِي السَّائِمَةِ بِالْإِجْمَاعِ الْمُتَيَقَّنِ، وَلَمْ يَجِبِ التَّكْرَارُ فِي غَيْرِ السَّائِمَةِ، لَا بِنَصٍّ وَلَا بِإِجْمَاعٍ؟ قَالَ أَبُو مُحَمَّدٍ: أَمَّا حُجَّةُ مَنِ احْتَجَّ بِكَثْرَةِ الْقَائِلِينَ بِذَلِكَ، وَبِأَنَّهُ قَوْلُ أَرْبَعَةٍ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ مِنْهُمْ مُخَالِفٌ -: فَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L10796–10798 Then we say to the Ḥanafīs and Shāfi'īs regarding their argumentation through this issue: The Ḥanafīs have indeed contradicted themselves in this matter, for they ruled that fifty cows require a zakāt of one cow and a quarter—a ruling unknown from any Companion or successor except Ibrāhīm.

ثُمَّ نَقُولُ لِلْحَنَفِيِّينَ، وَالشَّافِعِيِّينَ فِي احْتِجَاجِهِمْ بِهَذِهِ الْقَضِيَّةِ فَإِنَّ الْحَنَفِيِّينَ نَسُوا أَنْفُسَهُمْ فِي هَذِهِ الْقِصَّةِ، إِذْ قَالُوا بِزَكَاةِ خَمْسِينَ بَقَرَةً بِبَقَرَةٍ وَرُبُعٍ، وَلَا يُعْرَفُ ذَلِكَ عَنْ أَحَدٍ

Their categorization concerning carcasses falling into wells and dying there lacks precedent before them. Their stipulation of wiping the head with three fingers once and a quarter of the head once is unprecedented, and we wish to know: Which fingers are intended? By what thread is a quarter of the head measured? Their permission to use dung for istinjā' finds no prior endorsement. Their rulings on what invalidates ablution among substances exiting the body, their statements on the zakāt of horses, and similar unprecedented rulings are exceedingly numerous.

They oppose every narration from Abū Hurayra regarding washing vessels licked by dogs—with no known dissent from any Companion. They contradict ʿUmar ibn al-Khaṭṭāb, Abū Ḥathma, and his son Sahl ibn Abī Ḥathma concerning leaving dates consumed by the one whose dates were stolen, despite all Companions being certain to agree with them without dissent. Such instances are exceedingly numerous.

Similarly, the Shāfiʿīs contradict themselves by categorizing zakāt obligations on earth's produce in a manner unknown before al-Shāfiʿī. Their quantification of water impurity at five hundred Baghdadi ritl lacks prior basis. They oppose Jābir ibn ʿAbdullāh... In what is irrigated by bucket irrigation and natural springs, zakat is due based on the predominant case, and no differing opinion from the Companions is known regarding this. Similar examples abound in their rulings. As for their argument citing the mention of pastured livestock in some narrations, yes, this wording is authentically established in the ḥadīth of Anas from Abū Bakr (may Allah be pleased with him) specifically regarding sheep and goats? Had no other narration besides this existed, it would have been obligatory to restrict zakat to pastured livestock alone. However, the ḥadīth of Ibn ʿUmar – as we cited previously – affirms the obligation of zakat on sheep and goats in totality. Thus, this narration adds to what is in Abū Bakr's ḥadīth, and it is not permissible to disregard such additions.

مِنْ الصَّحَابَةِ وَلَا مِنْ غَيْرِهِمْ إلَّا عَنْ إبْرَاهِيمَ، وَتَقْسِيمِهِمْ فِي الْمَيْتَاتِ تَقَعُ فِي الْبِئْرِ فَتَمُوتُ فِيهِ، فَلَا يُعْرَفُ أَنَّ أَحَدًا قَسَّمَهُ قَبْلَهُمْ، وَتَقْدِيرِهِمْ الْمَسْحَ فِي الرَّأْسِ بِثَلَاثِ أَصَابِعَ مَرَّةً وَبِرُبُعِ الرَّأْسِ مَرَّةً وَلَا يُعْرَفُ هَذَا الْهَوَسُ عَنْ أَحَدٍ قَبْلَهُمْ، وَلَوَدِدْنَا أَنْ نَعْرِفَ بِأَيِّ الْأَصَابِعِ هِيَ؟ أَمْ بِأَيِّ خَيْطٍ يُقَدَّرُ رُبُعُ الرَّأْسِ؟ وَإِجَازَتِهِمْ الِاسْتِنْجَاءَ بِالرَّوْثِ، وَلَا يُعْرَفُ أَنَّ أَحَدًا أَجَازَهُ قَبْلَهُمْ، وَتَقْسِيمِهِمْ فِيمَا يَنْقُضُ الْوُضُوءَ مِمَّا يَخْرُجُ مِنْ الْجَوْفِ وَلَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُمْ، وَقَوْلِهِمْ فِي صِفَةِ صَدَقَةِ الْخَيْلِ، وَلَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُمْ، وَمِثْلُ هَذَا كَثِيرٌ جِدًّا، وَخِلَافِهِمْ لِكُلِّ رِوَايَةٍ جَاءَتْ عَنْ أَبِي هُرَيْرَةَ فِي غَسْلِ الْإِنَاءِ مِنْ وُلُوغِ الْكَلْبِ، وَلَا مُخَالِفَ لَهُ يُعْرَفُ مِنْ الصَّحَابَةِ، وَخِلَافِهِمْ عُمَرُ بْنُ الْخَطَّابِ، وَأَبُو حَثْمَةَ، وَابْنُهُ سَهْلُ بْنُ أَبِي حَثْمَةَ فِي تَرْكِ مَا يَأْكُلُهُ الْمَخْرُوصُ عَلَيْهِ مِنْ التَّمْرِ، وَمَعَهُمْ جَمِيعُ الصَّحَابَةِ بِيَقِينٍ، لَا مُخَالِفَ لَهُمْ فِي ذَلِكَ مِنْهُمْ - وَمِثْلُ هَذَا كَثِيرٌ جِدًّا وَكَذَلِكَ نَسِيَ الشَّافِعِيُّونَ أَنْفُسَهُمْ فِي تَقْسِيمِهِمْ مَا تُؤْخَذُ مِنْهُ الزَّكَاةُ مِمَّا يَخْرُجُ مِنْ الْأَرْضِ وَلَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَ الشَّافِعِيِّ، وَتَحْدِيدِهِمْ مَا يَنْجَسُ مِنْ الْمَاءِ مِمَّا لَا يَنْجَسُ بِخَمْسِمِائَةِ رِطْلٍ بَغْدَادِيَّةٍ وَمَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُمْ، وَخِلَافُهُمْ جَابِرَ بْنَ عَبْدِ اللَّهِ فِيمَا سُقِيَ بِالنَّضْحِ وَبِالْعَيْنِ أَنَّهُ يُزَكَّى عَلَى الْأَغْلَبِ، وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ، وَمِثْلُ هَذَا كَثِيرٌ جِدًّا لَهُمْ وَأَمَّا احْتِجَاجُهُمْ بِمَا جَاءَ فِي بَعْضِ الْأَخْبَارِ مِنْ ذِكْرِ السَّائِمَةِ، فَنَعَمْ، صَحَّ هَذَا اللَّفْظُ فِي حَدِيثِ أَنَسٍ عَنْ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - فِي الْغَنَمِ خَاصَّةً؟ فَلَوْ لَمْ يَأْتِ غَيْرُ هَذَا الْخَبَرِ لَوَجَبَ أَنْ لَا يُزَكَّى غَيْرُ السَّائِمَةِ، لَكِنْ جَاءَ فِي حَدِيثِ ابْنِ عُمَرَ - كَمَا أَوْرَدْنَا قَبْلَ - إيجَابِ الزَّكَاةِ فِي الْغَنَمِ جُمْلَةً، فَكَانَ هَذَا زَائِدًا عَلَى مَا فِي حَدِيثِ أَبِي بَكْرٍ، وَالزِّيَادَةُ لَا يَجُوزُ تَرْكُهَا.

L10799 As for the report concerning grazing camels, it is not valid because it has not been reported except solely in the report of Bahz ibn Hakim.

وَأَمَّا الْخَبَرُ فِي سَائِمَةِ الْإِبِلِ فَلَا يَصِحُّ؛ لِأَنَّهُ لَمْ يَرِدْ إِلَّا فِي خَبَرِ بَهْزِ بْنِ حَكِيمٍ فَقَطْ.

L10800 Then, if it were valid, what is in the ḥadīth of Abū Bakr and Ibn ʿUmar would constitute an additional ruling superseding it - and is it impermissible to oppose the addition? There is no distinction between this and the verse of Allah, the Most High: "Say: 'I find nothing in what has been revealed to me forbidding any eater to eat thereof, except carrion, or blood poured forth'" (6:145), alongside His statement: "Forbidden to you are carrion and blood" (5:3). Thus, this was an addition to what was in that verse.[17]

ثُمَّ لَوْ صَحَّ لَكَانَ مَا فِي حَدِيثِ أَبِي بَكْرٍ وَابْنِ عُمَرَ زِيَادَةَ حُكْمٍ عَلَيْهِ وَالزِّيَادَةُ لَا يَحِلُّ خِلَافُهَا؟ وَلَا فَرْقَ بَيْنَ هَذَا وَبَيْنَ قَوْلِ اللَّهِ تَعَالَى: {قُلْ لا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلا أَنْ يَكُونَ مَيْتَةً أَوْ دَمًا مَسْفُوحًا} [الأنعام: ١٤٥] مَعَ قَوْلِه تَعَالَى: {حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ وَالدَّمُ} [المائدة: ٣] فَكَانَ هَذَا زَائِدًا عَلَى مَا فِي تِلْكَ الْآيَةِ.

L10801 His Exalted saying: "Do not kill your children for fear of poverty" [Al-Isrāʾ 17:31], alongside His saying: "Lost indeed are those who killed their children out of folly without knowledge" [Al-Anʿām 6:140] - does this [second verse] add to what is stated in the former verse?[18]

قَوْلِه تَعَالَى: {وَلا تَقْتُلُوا أَوْلادَكُمْ خَشْيَةَ إِمْلاقٍ} [الإسراء: ٣١] مَعَ قَوْلِه تَعَالَى: {قَدْ خَسِرَ الَّذِينَ قَتَلُوا أَوْلادَهُمْ سَفَهًا بِغَيْرِ عِلْمٍ} [الأنعام: ١٤٠] فَكَانَ هَذَا زَائِدًا عَلَى مَا فِي تِلْكَ الْآيَةِ؟

L10802–10803 Why did the Ḥanafīs and Shāfiʿīs fail to apply this ruling where its implementation was obligatory based on the statement of the Almighty: {Whoever among you kills game intentionally must compensate with livestock equivalent to what he killed} [5:95]? They responded: "Does this apply even to one who kills it unintentionally?" By my life, the analogy of non-grazing livestock to grazing ones is more appropriate than comparing an unintentional killer to an intentional killer. When Allah the Almighty said: {Your stepdaughters in your care from wives you have consummated marriage with} [4:23], they affirmed: "Indeed, even if they are not in our care." Such instances are exceedingly numerous. They do not anchor their reasoning to a foundational principle. At times they prohibit extrapolation beyond the explicit text when another textual addition exists, while at other times they overstep the text when no supplementary ruling is provided. Thus, they perpetually distort fundamental truths.[19]

وَهَلَّا اسْتَعْمَلَ الْحَنَفِيُّونَ وَالشَّافِعِيُّونَ هَذَا الْعَمَلَ حَيْثُ كَانَ يَلْزَمُهُم اسْتِعْمَالُهُ مِنْ قَوْلِه تَعَالَى: {وَمَنْ قَتَلَهُ مِنْكُمْ مُتَعَمِّدًا فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ} [المائدة: ٩٥] فَقَالُوا: وَكَذَلِكَ مَنْ قَتَلَهُ مُخْطِئًا؟ وَلَعَمْرِي إِنَّ قِيَاسَ غَيْرِ السَّائِمَةِ عَلَى السَّائِمَةِ لَأَشْبَهُ مِنْ قِيَاسِ قَاتِلِ الْخَطَأِ عَلَى قَاتِلِ الْعَمْدِ وَحَيْثُ قَالَ اللَّهُ تَعَالَى: {وَرَبَائِبُكُمُ اللاتِي فِي حُجُورِكُمْ مِنْ نِسَائِكُمُ اللاتِي دَخَلْتُمْ بِهِنَّ} [النساء: ٢٣] فَقَالُوا: نَعَمْ، وَإِنْ لَمْ يَكُنْ فِي حُجُورِنَا وَمِثْلُ هَذَا كَثِيرٌ جِدًّا، لَا يَتَثَقَّفُونَ فِيهِ إِلَى أَصْلٍ فَمَرَّةً يَمْنَعُونَ مَنْ تَعَدَّى مَا فِي النَّصِّ حَيْثُ جَاءَ نَصٌّ آخَرُ بِزِيَادَةٍ عَلَيْهِ، وَمَرَّةً يَتَعَدَّوْنَ النَّصَّ حَيْثُ لَمْ يَأْتِ نَصٌّ آخَرُ بِزِيَادَةٍ عَلَيْهِ فَهُمْ أَبَدًا يَعْكِسُونَ الْحَقَائِقَ.

L10804 Had they adhered to all the texts, not neglected some in favor of others,

وَلَوْ أَنَّهُمْ أَخَذُوا بِجَمِيعِ النُّصُوصِ، وَلَمْ يَتْرُكُوا بَعْضَهَا لِبَعْضٍ، وَلَمْ يَتَعَدَّوْهَا إِلَى مَا لَا نَصَّ فِيهِ -: لَكَانَ أَسْلَمَ لَهُمْ مِنَ النَّارِ وَالْعَارِ؟ وَأَمَّا قَوْلُهُمْ: إِنَّ الزَّكَاةَ إِنَّمَا جُعِلَتْ عَلَى

[17] **Qur'an references (L10800):** Qur'an 6:145 (Al-An'am); Qur'an 5:3 (Al-Ma'idah).
[18] **Qur'an references (L10801):** Qur'an 17:31 (Al-Isra); Qur'an 6:140 (Al-An'am).
[19] **Qur'an references (L10803):** Qur'an 5:95 (Al-Ma'idah); Qur'an 4:23 (An-Nisa).

and not transgressed beyond them to matters without textual basis—would it not have been safer for them from the Fire and disgrace? As for their claim that Zakat was only imposed on what grows or increases, this is false. Zakat is obligatory on dirhams and dinars, which do not grow at all, yet it is not obligatory on donkeys—though they multiply—nor on vegetables according to the majority of scholars, even though they grow. Moreover, working cattle and camels yield profit through their labor and rental value, and multiply through reproduction. If they argue: "They incur fodder expenses," we reply: "Grazing animals incur herding costs. Yet you disregard immense agricultural expenses even if they entirely consume the produce—instead you deem Zakat obligatory on it. You ignore trade losses yet impose Zakat on them." Thus this argument is wholly invalidated—and success comes solely from Allah, the Most High.

مَا فِيهِ النَّمَاءُ، فَبَاطِلٌ، وَالزَّكَاةُ وَاجِبَةٌ فِي الدَّرَاهِمِ وَالدَّنَانِيرِ، وَلَا تَنْمِي أَصْلًا، وَلَيْسَتْ فِي الْحَمِيرِ، وَهِيَ تَنْمِي، وَلَا فِي الْخَضَرِ عِنْدَ أَكْثَرِهِمْ، وَهِيَ تَنْمِي؟ وَأَيْضًا فَإِنَّ الْعَوَامِلَ مِنْ الْبَقَرِ، وَالْإِبِلِ تَنْمِي أَعْمَالُهَا وَكِرَاؤُهَا، وَتَنْمِي بِالْوِلَادَةِ أَيْضًا؟ فَإِنْ قَالُوا: لَهَا مُؤْنَةٌ فِي الْعَلَفِ؟ قُلْنَا: وَلِلسَّائِمَةِ مُؤْنَةُ الرَّاعِي وَأَنْتُمْ لَا تَلْتَفِتُونَ إلَى عَظِيمِ الْمُؤْنَةِ وَالنَّفَقَةِ فِي الْحَرْثِ، وَإِنْ اسْتَوْعَبَتْهُ كُلَّهُ؛ بَلْ تَرَوْنَ الزَّكَاةَ فِيهِ، وَلَا تُرَاعُونَ الْخَسَارَةَ فِي التِّجَارَةِ، بَلْ تَرَوْنَ الزَّكَاةَ فِيهَا فَسَقَطَ هَذَا الْقَوْلُ جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

L10805–10806 As for those among the scholars of our school who restricted cows by stipulating that zakah is only due on their freely-grazing ones, they stated: The rulings on zakah for camels and sheep have been authentically established from the Prophet—peace and blessings be upon him—in general terms, detailing the thresholds for zakah and the number from which it is taken. Thus, it is impermissible to restrict his command through independent reasoning or analogy.

وَأَمَّا مَنْ خَصَّ مِنْ أَصْحَابِنَا الْبَقَرَ بِأَنْ لَا تُزَكَّى إلَّا سَائِمَتُهَا فَقَطْ فَإِنَّهُمْ قَالُوا: قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَكَاةُ الْإِبِلِ وَالْغَنَمِ عُمُومًا، وَحَدُّ زَكَاتِهَا، وَمِنْ كَمْ تُؤْخَذُ الزَّكَاةُ مِنْهَا: فَلَمْ يَجُزْ أَنْ يُخَصَّ أَمْرُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِرَأْيٍ وَلَا بِقِيَاسٍ.

L10807 As for cattle, no valid ruling has been established concerning the conditions for their Zakat. Thus Zakat should only be obligatory on cattle for which a valid consensus has been established regarding its obligation, and there is no consensus except in pastured cattle. Therefore Zakat is obligatory on them—not on others lacking consensus. Abū Muḥammad said: "This is erroneous. Rather, it has been authentically established from the Prophet (peace and blessings of Allah be upon him) that he mandated Zakat on cattle through his statement—peace be upon him—which we previously cited with its chain of transmission: 'There is no owner of camels or cattle who withholds their Zakat except that such will be done to him.'"

وَأَمَّا الْبَقَرُ فَلَمْ يَصِحَّ فِي صِفَةِ زَكَاتِهَا، فَوَجَبَ أَنْ لَا تَجِبَ الزَّكَاةُ إلَّا فِي بَقَرٍ صَحَّ الْإِجْمَاعُ عَلَى وُجُوبِ الزَّكَاةِ فِيهَا، وَلَا إجْمَاعَ إلَّا فِي السَّائِمَةِ؛ فَوَجَبَتْ الزَّكَاةُ فِيهَا، دُونَ غَيْرِهَا الَّتِي لَا إجْمَاعَ فِيهَا؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ؛ بَلْ قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إيجَابُ الزَّكَاةِ فِي الْبَقَرِ، بِقَوْلِهِ - عَلَيْهِ السَّلَامُ - الَّذِي قَدْ أَوْرَدْنَاهُ قَبْلُ بِإِسْنَادِهِ -: «مَا مِنْ صَاحِبِ إبِلٍ وَلَا بَقَرٍ لَا يُؤَدِّي زَكَاتَهَا إلَّا فُعِلَ بِهِ كَذَا» .

L10808–10810 The text definitively establishes the obligation of Zakāh on cattle in general. However, no explicit text specifies the number at which Zakāh becomes due on them or the amount to be taken from them. In these two matters, one

must rely on scholarly consensus. As for restricting the obligation to specific cattle while excluding others, this constitutes an unfounded specification of what is established from the Prophet (peace be upon him) regarding Zakāh on cattle without textual basis. This is invalid. There is no difference between those who exempt non-grazing cattle from Zakāh using this rationale and those who exempt male cattle through the same reasoning, for has valid disagreement not arisen regarding their Zakāh?

As narrated by Humām via ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bājī, via ʿAbdullāh ibn Yūnus, via Baqī ibn Makhlad, via Abū Bakr ibn Abī Shaybah, via Jarīr—that is, Ibn ʿAbd al-Ḥamīd—from al-Mughīrah—that is, Ibn Miqsam al-Ḍabbī—from Ibrāhīm al-Nakhaʿī, who said: "No Zakāh is due on any grazing livestock except female camels, female cattle, and sheep."

Abū Muḥammad said: None of our school's scholars, nor the Ḥanafīs, Mālikīs, Shāfiʿīs, or Ḥanbalīs, uphold this view. It is fundamentally impermissible to adopt this position, for it constitutes baseless judgment without evidence. Zakāh is obligated by the text on all cattle, whatever their attributes may be—whether grazing or otherwise. Does this apply to grazing livestock, except for cattle for which an authentic scriptural text or scholarly consensus has particularized rulings? As for the number, timing, and what is taken from them, no opinion may be asserted except through certain consensus or a sound scriptural text—and with Allah, the Exalted, lies all success.

L10811 As for those who stated that Zakat must be paid annually on grazing cattle, camels, and sheep, and held that Zakat on all non-grazing livestock is due only once in a lifetime, they argued that Zakat is obligatory on cattle based on the explicit text we cited, but no text specifies its repetition every year. Thus, Zakat cannot be required again on wealth already subjected to it unless by consensus. A valid consensus confirms annual Zakat on grazing cattle, camels, and sheep, necessitating this ruling. However, there is no text or consensus requiring its annual repetition for all non-grazing livestock, so how can this ruling be mandated?

فَصَحَّ بِالنَّصِّ وُجُوبُ الزَّكَاةِ فِي الْبَقَرِ جُمْلَةً، إلَّا أَنَّهُ لَمْ يَأْتِ نَصٌّ فِي الْعَدَدِ الَّذِي تَجِبُ فِيهِ الزَّكَاةُ مِنْهَا، وَلَا كَمْ يُؤْخَذُ مِنْهَا، فَفِي هَذَيْنِ الْأَمْرَيْنِ يُرَاعَى الْإِجْمَاعُ، وَأَمَّا تَخْصِيصُ بَقَرٍ دُونَ بَقَرٍ فَهُوَ تَخْصِيصٌ لِلثَّابِتِ عَنْهُ - عَلَيْهِ السَّلَامُ - مِنْ إيجَابِهِ الزَّكَاةَ فِي الْبَقَرِ بِغَيْرِ نَصٍّ: وَهَذَا لَا يَجُوزُ وَلَا فَرْقَ بَيْنَ مَنْ أَسْقَطَ الزَّكَاةَ عَنْ غَيْرِ السَّائِمَةِ بِهَذَا الدَّلِيلِ وَبَيْنَ مَنْ أَسْقَطَهَا عَنْ الذُّكُورِ بِهَذَا الدَّلِيلِ نَفْسِهِ، فَقَدْ صَحَّ الْخِلَافُ فِي زَكَاتِهَا؟ -: كَمَا حَدَّثَنَا حُمَامٌ قَالَ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ ثنا عَبْدُ اللَّهِ بْنُ يُونُسَ ثنا بَقِيُّ بْنُ مَخْلَدٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا جَرِيرٌ هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ الْمُغِيرَةِ هُوَ ابْنُ مِقْسَمٍ الضَّبِّيُّ - عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَيْسَ فِي شَيْءٍ مِنْ السَّوَائِمِ صَدَقَةٌ إلَّا إنَاثَ الْإِبِلِ، وَإِنَاثَ الْبَقَرِ، وَالْغَنَمِ؟ قَالَ أَبُو مُحَمَّدٍ: وَلَا يَقُولُ بِهَذَا أَحَدٌ مِنْ أَصْحَابِنَا، وَلَا الْحَنَفِيُّونَ، وَلَا الْمَالِكِيُّونَ، وَلَا الشَّافِعِيُّونَ، وَلَا الْحَنْبَلِيُّونَ، وَلَا يَجُوزُ الْقَوْلُ بِهِ أَصْلًا، لِأَنَّهُ تَحَكُّمٌ بِلَا بُرْهَانٍ فَوَجَبَتْ بِالنَّصِّ الزَّكَاةُ فِي كُلِّ بَقَرٍ، أَيْ صِفَةٍ مِنْ صِفَاتِ الْبَقَرِ كَانَتْ، سَائِمَةً أَوْ غَيْرَ سَائِمَةٍ، إلَّا بَقَرًا خَصَّهَا نَصٌّ أَوْ إجْمَاعٌ؟ وَأَمَّا الْعَدَدُ، وَالْوَقْتُ، وَمَا يُؤْخَذُ مِنْهَا فَلَا يَجُوزُ الْقَوْلُ بِهِ إلَّا بِإِجْمَاعٍ مُتَيَقَّنٍ أَوْ بِنَصٍّ صَحِيحٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا مَنْ قَالَ فِي السَّائِمَةِ بِعَوْدَةِ الزَّكَاةِ فِيهَا كُلَّ عَامٍ، وَرَأَى الزَّكَاةَ فِي غَيْرِ السَّائِمَةِ مَرَّةً فِي الدَّهْرِ -: فَإِنَّهُ احْتَجَّ بِأَنَّ الزَّكَاةَ وَاجِبَةٌ فِي الْبَقَرِ بِالنَّصِّ الَّذِي أَوْرَدْنَا، وَلَمْ يَأْتِ بِتَكْرَارِ الزَّكَاةِ فِي كُلِّ عَامٍ نَصٌّ، فَلَا تَجُوزُ عَوْدَةُ الزَّكَاةِ فِي مَالٍ قَدْ زُكِّيَ، إلَّا بِالْإِجْمَاعِ، وَقَدْ صَحَّ الْإِجْمَاعُ بِعَوْدَةِ الزَّكَاةِ فِي الْبَقَرِ، وَالْإِبِلِ، وَالْغَنَمِ السَّائِمَةِ كُلَّ عَامٍ، فَوَجَبَ الْقَوْلُ بِذَلِكَ، وَلَا نَصَّ وَلَا إجْمَاعَ فِي عَوْدَتِهَا فِي غَيْرِ السَّائِمَةِ مِنْهَا كُلِّهَا، فَلَا يَجِبُ الْقَوْلُ

بِذَلِكَ؟ قَالَ أَبُو مُحَمَّد: كَانَ هَذَا قَوْلًا صَحِيحًا لَوْلَا أَنَّهُ قَدْ ثَبَتَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَبْعَثُ الْمُصَدِّقِينَ فِي كُلِّ عَامٍ لِزَكَاةِ الْإِبِلِ، وَالْبَقَرِ، وَالْغَنَمِ» هَذَا أَمْرٌ مَنْقُولٌ نَقْلَ الْكَافَّةِ، وَقَدْ صَحَّ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرْضُوا مُصَدِّقِيكُمْ» فَإِذْ قَدْ صَحَّ هَذَا بِيَقِينٍ، فَخُرُوجُ الْمُصَدِّقِينَ فِي كُلِّ عَامٍ مُوجِبٌ أَخْذَ الزَّكَاةِ فِي كُلِّ عَامٍ بِيَقِينٍ، فَإِذْ لَا شَكَّ فِي ذَلِكَ، فَتَخْصِيصُ بَعْضِ مَا وَجَبَتْ فِيهِ الزَّكَاةُ عَامًا بِأَنْ لَا يَأْخُذَ مِنْهُ الْمُصَدِّقُ الزَّكَاةَ عَامًا ثَانِيًا تَخْصِيصٌ لِلنَّصِّ.

وَقَوْلٌ بِلَا بُرْهَانٍ، وَإِنَّمَا يُرَاعَى مِثْلُ هَذَا فِيمَا لَا نَصَّ فِيهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Abū Muḥammad said: This opinion would have been valid were it not for the established fact that "the Messenger of Allah (peace and blessings be upon him) sent Zakat collectors every year for camels, cattle, and sheep," a matter transmitted by mass transmission. It is authentically reported from the Prophet (peace and blessings be upon him): "Satisfy your Zakat collectors." Since this is certain, the annual dispatch of Zakat collectors necessarily entails the annual collection of Zakat with certainty. Given this indubitable reality, to specify that Zakat collectors should not collect in subsequent years from categories subject to Zakat in one year constitutes an unjustified specification of the text.

L10812 And an opinion without evidence; rather, such is only considered in matters where there is no scriptural text. Success is through Allah, the Most High.

[مَسْأَلَةٌ عَلَى كُلِّ ذِي إبِلٍ وَبَقَرٍ وَغَنَمٍ حَلْبُهَا يَوْمَ وِرْدِهَا وَالتَّصَدُّقُ مِنْ لَبَنِهَا]

L10813 **A ruling is incumbent upon every owner of camels, cattle, and sheep: the milking of them on the day they come to drink and the giving of alms from their milk.**

٦٧٩ - مَسْأَلَةٌ:

وَفَرْضٌ عَلَى كُلِّ ذِي إبِلٍ، وَبَقَرٍ، وَغَنَمٍ أَنْ يَحْلُبَهَا يَوْمَ وِرْدِهَا عَلَى الْمَاءِ، وَيَتَصَدَّقُ مِنْ لَبَنِهَا بِمَا طَابَتْ بِهِ نَفْسُهُ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا الْحَكَمُ بْنُ نَافِعٍ هُوَ أَبُو الْيَمَانِ ثنا شُعَيْبٌ هُوَ ابْنُ أَبِي حَمْزَةَ ثنا أَبُو الزِّنَادِ أَنَّ عَبْدَ الرَّحْمَنِ بْنَ هُرْمُزٍ الْأَعْرَجَ حَدَّثَهُ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «تَأْتِي الْإِبِلُ عَلَى صَاحِبِهَا عَلَى خَيْرِ مَا كَانَتْ، إذَا هُوَ لَمْ يُعْطِ فِيهَا حَقَّهَا، تَطَؤُهُ بِأَخْفَافِهَا، وَتَأْتِي الْغَنَمُ عَلَى صَاحِبِهَا عَلَى خَيْرِ مَا كَانَتْ، إذَا لَمْ يُعْطِ فِيهَا حَقَّهَا، تَطَؤُهُ بِأَظْلَافِهَا وَتَنْطَحُهُ بِقُرُونِهَا، قَالَ: وَمِنْ حَقِّهَا أَنْ تُحْلَبَ عَلَى الْمَاءِ» .

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L10815–10817 It is incumbent upon every owner of camels, cattle, and sheep to milk them on the day they come to water and to give in charity from their milk as much as his soul is content to give. ʻAbd al-Raḥmān ibn ʻAbd Allāh ibn Khālid narrated to us: Ibrāhīm ibn Aḥmad narrated to us, al-Farabrī narrated to us, al-Bukhārī narrated to us, al-Ḥakam ibn Nāfiʻ (Abū al-Yamān) narrated to us, Shuʻayb ibn Abī Ḥamzah narrated to us, Abū al-Zinād narrated that ʻAbd al-Raḥmān ibn Hurmuz al-Aʻraj reported hearing Abū Hurayrah say: Allah's Messenger (ﷺ) said: "Camels will come to their owner in the best condition they ever had if he withheld their due right; they will trample him with their hooves. Sheep will come to their owner in the best condition they ever had if he withheld their due right; they will trample him with their hooves and butt him." He said, while mentioning her horns: "And among her rights is that she be milked onto water."

L10818 Abu Muhammad said: Whoever asserts that there is no rightful claim in wealth apart from zakāh has uttered falsehood, with no evidence supporting the correctness of his statement—neither from textual authority nor consensus. Is not everything the Messenger of Allah—peace and blessings of Allah be upon him—has imposed regarding wealth truly obligatory? We challenge those who make this claim: Are the expiations for ẓihār, broken oaths, and people's financial debts obligatory upon wealth or not? From their own doctrine they answer: "Yes"—and herein lies their self-contradiction.

قَالَ أَبُو مُحَمَّد: وَمَنْ قَالَ: إنَّهُ لَا حَقَّ فِي الْمَالِ غَيْرُ الزَّكَاةِ فَقَدْ قَالَ: الْبَاطِلَ، وَلَا بُرْهَانَ عَلَى صِحَّةِ قَوْلِهِ، لَا مِنْ نَصٍّ وَلَا إجْمَاعٍ، وَكُلُّ مَا أَوْجَبَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْأَمْوَالِ فَهُوَ وَاجِبٌ؟ وَنَسْأَلُ مَنْ قَالَ هَذَا: هَلْ تَجِبُ فِي الْأَمْوَالِ كَفَّارَةُ الظِّهَارِ وَالْأَيْمَانِ وَدُيُونِ النَّاسِ أَمْ لَا؟ فَمِنْ قَوْلِهِمْ: نَعَمْ، وَهَذَا تَنَاقُضٌ مِنْهُمْ.

L10819 As for lending a bucket and denying the stallion's service, these fall under Allah's words: "And they withhold even common aid" (Quran 107:7).[20]

وَأَمَّا إعَارَةُ الدَّلْوِ وَإِطْرَاقُ الْفَحْلِ فَدَاخِلٌ تَحْتَ قَوْلِ اللَّهِ تَعَالَى: {وَيَمْنَعُونَ الْمَاعُونَ} [الماعون: ٧] .

L10820 The issue of the aforementioned age categories for Zakat on camels.

[مَسْأَلَةٌ الْأَسْنَانُ الْمَذْكُورَاتُ فِي زَكَاةِ الْإِبِلِ]

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٦٨٠ - مَسْأَلَةٌ:

L10822 The mentioned ages for camels are: Bint al-Makhāḍ - a female camel that has completed one year and entered the second year, named so because its mother is mākhiḍ (has delivered). When she completes two years and enters the third, she is called Bint Labūn if female, or he is called Ibn Labūn if male, because their mother has delivered and now produces milk. When she completes three years and enters the fourth, she is called Ḥiqqah, as she has become eligible to be mounted by a breeding male and to carry loads. When she completes four years and enters the fifth, she is called Jadhaʿah. When she completes five years and enters the sixth, she is called Thaniyyah.

الْأَسْنَانُ الْمَذْكُورَاتُ فِي الْإِبِلِ -: بِنْتُ الْمَخَاضِ: هِيَ الَّتِي أَتَمَّتْ سَنَةً وَدَخَلَتْ فِي سَنَتَيْنِ، سُمِّيَتْ بِذَلِكَ لِأَنَّ أُمَّهَا مَاخِضٌ، أَيْ قَدْ حَمَلَتْ فَإِذَا أَتَمَّتْ سَنَتَيْنِ وَدَخَلَتْ فِي الثَّالِثَةِ فَهِيَ بِنْتُ لَبُونٍ وَابْنُ لَبُونٍ، لِأَنَّ أُمَّهَا قَدْ وَضَعَتْ فَلَهَا لَبَنٌ، فَإِذَا أَتَمَّتْ ثَلَاثَ سِنِينَ وَدَخَلَتْ فِي الرَّابِعَةِ فَهِيَ حِقَّةٌ، لِأَنَّهَا قَدْ اسْتَحَقَّتْ أَنْ يُحْمَلَ عَلَيْهَا الْفَحْلُ، وَالْحَمْلُ، فَإِذَا أَتَمَّتْ أَرْبَعَ سِنِينَ وَدَخَلَتْ فِي الْخَامِسَةِ فَهِيَ جَذَعَةٌ، فَإِذَا أَتَمَّتْ خَمْسَ سِنِينَ وَدَخَلَتْ فِي السَّادِسَةِ فَهِيَ ثَنِيَّةٌ.

L10823 It is not permissible to give as charity a weaned young camel that has not completed a year; it is not permissible in charity.

وَلَا يَجُوزُ فِي الصَّدَقَةِ وَهُوَ مَا لَمْ يَتِمَّ سَنَةً وَهُوَ فَصِيلٌ لَا يَجُوزُ فِي الصَّدَقَةِ.

L10824 Abdullah ibn Rabiʿ narrated to us these names and their interpretation: ʿUmar ibn ʿAbd al-Malik narrated to us, Muhammad ibn Bakr narrated to us, Abu Dawud narrated all of that from Abu Hatim al-Sijistani, al-ʿAbbas

حَدَّثَنَا بِهَذِهِ الْأَسْمَاءِ وَتَفْسِيرِهَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ: ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد بِذَلِكَ كُلِّهِ، عَنْ أَبِي حَاتِمٍ السِّجِسْتَانِيِّ، وَالْعَبَّاسِ بْنِ الْفَرَجِ الرِّيَاشِيِّ، وَعَنْ أَبِي دَاوُد الْمُصَاحِفِيِّ عَنْ أَبِي عُبَيْدَةَ مَعْمَرِ بْنِ الْمُثَنَّى

[20] **Qur'an references (L10819):** Qur'an 107:7 (Al-Ma'un).

ibn al-Faraj al-Riyāshī, and Abu Dawud al-Muṣaḥḥafī, from Abu ʻUbaydah Maʻmar ibn al-Muthannā.

[مَسْأَلَةٌ الْخُلْطَةُ فِي الْمَاشِيَةِ أَوْ غَيْرِهَا لَا تُحِيلُ حُكْمَ الزَّكَاةِ]

مَسْأَلَةٌ:

وَالْخُلْطَةُ فِي الْمَاشِيَةِ أَوْ غَيْرِهَا لَا تُحِيلُ حُكْمَ الزَّكَاةِ، وَلِكُلِّ أَحَدٍ حُكْمُهُ فِي مَالِهِ، خَالَطَ أَوْ لَمْ يُخَالِطْ لَا فَرْقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عُبَيْدُ اللَّهِ بْنُ فَضَالَةَ أَنَا سُرَيْجُ بْنُ النُّعْمَانِ ثني حَمَّادُ بْنُ سَلَمَةَ عَنْ ثُمَامَةَ بْنِ عَبْدِ اللَّهِ بْنِ أَنَسِ بْنِ مَالِكٍ عَنْ أَنَسِ بْنِ مَالِكٍ: أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ كَتَبَ لَهُ " أَنَّ هَذِهِ فَرَائِضُ الصَّدَقَةِ الَّتِي فَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمُسْلِمِينَ الَّتِي أَمَرَ اللَّهُ بِهَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " فَذَكَرَ الْحَدِيثَ، وَفِي آخِرِهِ «وَلَا يُجْمَعُ بَيْنَ مُفْتَرِقٍ وَلَا يُفَرَّقُ بَيْنَ مُجْتَمِعٍ خَشْيَةَ الصَّدَقَةِ، وَمَا كَانَ مِنْ خَلِيطَيْنِ فَإِنَّهُمَا يَتَرَاجَعَانِ بَيْنَهُمَا بِالسَّوِيَّةِ» .

قَالَ أَبُو مُحَمَّدٍ: فَاخْتَلَفَ النَّاسُ فِي تَأْوِيلِ هَذَا الْخَبَرِ؟ فَقَالَتْ طَائِفَةٌ: إذَا تَخَالَطَ اثْنَانِ فَأَكْثَرُ فِي إبِلٍ، أَوْ فِي بَقَرٍ، أَوْ فِي غَنَمٍ، فَإِنَّهُمْ تُؤْخَذُ مِنْ مَاشِيَتِهِمْ، الزَّكَاةُ كَمَا كَانَتْ تُؤْخَذُ لَوْ كَانَتْ لِوَاحِدٍ، وَالْخُلْطَةُ عِنْدَهُمْ أَنْ تَجْتَمِعَ الْمَاشِيَةُ فِي: الرَّاعِي، وَالْمَرَاحِ، وَالْمَسْرَحِ، وَالْمَسْقَى، وَمَوَاضِعِ الْحَلْبِ: عَامًا كَامِلًا مُتَّصِلًا وَإِلَّا فَلَيْسَتْ خُلْطَةً، وَسَوَاءٌ كَانَتْ مَاشِيَتُهُمْ مُشَاعَةً لَا تَتَمَيَّزُ، أَوْ مُتَمَيِّزَةً، وَزَادَ بَعْضُهُمْ: الدَّلْوُ، وَالْفَحْلُ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا الْقَوْلُ مَمْلُوءٌ مِنْ الْخَطَأِ؟ أَوَّلُ ذَلِكَ: أَنَّ ذِكْرَهُمْ الرَّاعِيَ كَانَ يُغْنِي عَنْ ذِكْرِ الْمَسْرَحِ، وَالْمَسْقَى؛ لِأَنَّهُ لَا يُمْكِنُ أَلْبَتَّةَ أَنْ يَكُونَ الرَّاعِي وَاحِدًا وَتَخْتَلِفُ مَسَارِحُهَا وَمَسَاقِيهَا؛

L10825–10826 **The commingling of livestock or other zakatable assets does not invalidate the zakat obligation.**

L10827 Issue:

L10828 The partnership in livestock or other things does not invalidate the ruling of Zakat. Each individual remains subject to the rulings applicable to their own wealth, whether they have partnered or not partnered, with no distinction between any part of it. Abdullah ibn Rabiʻ narrated to us: Muhammad ibn Muʻawiyah narrated to us: Ahmad ibn Shuʻayb narrated to us: from Ubaydullah ibn Fadalah: from Surayj ibn an-Nuʻman: from Hammad ibn Salamah: from Thumamah ibn Abdullah ibn Anas ibn Malik: from Anas ibn Malik, that Abu Bakr as-Siddiq wrote to him: "These are the ordained Zakat obligations which Allah's Messenger ﷺ established for the Muslims, as Allah commanded His Messenger ﷺ." He mentioned the hadith, concluding with: "Do not merge separate [entities] nor split combined [entities] to evade paying Zakat. Whatever belongs to two partners shall reconcile between them with equity."[21]

L10829–10831 Abū Muḥammad said: People have differed in interpreting this narration. A group stated: If two or more jointly own camels, cattle, or sheep, zakāh is taken from their livestock as it would be taken if owned by a single person. According to them, joint ownership occurs when the livestock share the same herder, resting place, pasture, watering source, and milking locations continuously for a full year; otherwise, it is not considered joint ownership. This applies equally whether their livestock is communally held and indistinguishable or distinguishable. Some added: the bucket and stud. Abū Muḥammad said: This opinion is filled with errors. The first error is that mentioning the herder would have rendered references to pasture and watering source redundant, as it is utterly impossible for livestock sharing one herder to have

[21] **Hadith references (L10828):** Sunan Abi Dawud 1567.

differing pastures and watering sources. Thus, specifying pasture and watering source is superfluous. Moreover, mentioning the stud is erroneous, for a single owner may possess two or more studs due to his livestock's abundance, or multiple herders for the same reason. By their rationale, if joint ownership is established by shared herder and management, then one person's livestock – even with multiple herders – should incur zakāh as a single unit, while the livestock of a single owner should not be aggregated if... In this scenario, there are two herders and two male camels, and is there no escape from this? We ask them: if the two are intermingled in some of these aspects, does the ruling of joint ownership apply to them or not? Whatever they answer, their statement can only amount to a corrupt ruling without proof, and whatever is thus is undeniably invalid—and success comes solely from Allah the Exalted. They further expanded their arbitrary rulings, opining that for a group collectively possessing five camels, forty sheep, or thirty cows—fully shared among all members—zakat must be taken from them. They held that if three individuals jointly owned forty sheep—being partners in this ownership—they would owe only a single sheep, just as if it were owned by one person. They also stated: If five individuals each own five camels—having jointly held them for a year—only a she-camel that has entered its second year is due, and this applies to all livestock zakat. This is the position of Al-Layth ibn Sa'd, Ahmad ibn Hanbal, Al-Shāfi'ī, and Abū Bakr ibn Dāwūd among those of our companions who concurred with him. Al-Shāfi'ī even extended the ruling of joint ownership to fruits, crops, silver dirhams, and gold dinars—holding that a group collectively possessing only five wasqs must pay zakat, and that a group jointly owning merely two hundred dirhams or twenty dinars—even if they number a thousand or more or fewer members—are obligated to pay zakat. Another group maintained: If each partner individually attains the zakat threshold, they must pay zakat as separate owners at that point. If none individually reach the threshold, no zakat is due. Whoever among them attains the threshold must pay zakat, while those who do not are not obligated to pay anything.

فَصَارَ ذِكْرُ الْمَسْرَحِ وَالْمَسْقَى فُضُولًا وَأَيْضًا - فَإِنَّ ذِكْرَ الْفَحْلِ خَطَأٌ، لِأَنَّهُ قَدْ يَكُونُ لِإِنْسَانٍ وَاحِدٍ فَحْلَانِ وَأَكْثَرُ، لِكَثْرَةِ مَاشِيَتِهِ، وَرَاعِيَانِ وَأَكْثَرُ لِكَثْرَةِ مَاشِيَتِهِ، فَيَنْبَغِي عَلَى قَوْلِهِمْ - إِذَا أَوْجَبَ اخْتِلَاطُهُمَا فِي الرَّاعِي، وَالْعَمَلِ -: أَنْ يُزَكِّيَهَا، زَكَاةَ الْمُنْفَرِدِ، وَأَنْ لَا تُجْمَعُ مَاشِيَةُ إِنْسَانٍ وَاحِدٍ إِذَا كَانَ لَهُ فِيهَا رَاعِيَانِ فَحْلَانِ، وَهَذَا لَا تَخَلُّصَ مِنْهُ؟ وَنَسْأَلُهُمْ إِذَا اخْتَلَطَا فِي بَعْضِ هَذِهِ الْوُجُوهِ: أَلَهُمَا حُكْمُ الْخُلْطَةِ أَمْ لَا؟ فَأَيُّ ذَلِكَ قَالُوا فَلَا سَبِيلَ أَنْ يَكُونَ قَوْلُهُمْ إِلَّا تَحَكُّمًا فَاسِدًا بِلَا بُرْهَانٍ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ بِلَا شَكٍّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. ثُمَّ زَادُوا فِي التَّحَكُّمِ فَرَأَوْا فِي جَمَاعَةٍ لَهُمْ خَمْسَةٌ مِنْ الْإِبِلِ، أَوْ أَرْبَعُونَ مِنْ الْغَنَمِ، أَوْ ثَلَاثُونَ مِنْ الْبَقَرِ - بَيْنَهُمْ كُلِّهِمْ -: أَنَّ الزَّكَاةَ مَأْخُوذَةٌ مِنْهَا، وَأَنَّ ثَلَاثَةً لَوْ مَلَكَ كُلُّ وَاحِدٍ مِنْهُمْ أَرْبَعِينَ شَاةً - وَهُمْ خُلَطَاءُ فِيهَا -: فَلَيْسَ عَلَيْهِمْ إِلَّا شَاةٌ وَاحِدَةٌ فَقَطْ، كَمَا لَوْ كَانَتْ لِوَاحِدٍ، وَقَالُوا: إِنَّ خَمْسَةً لِكُلِّ وَاحِدٍ مِنْهُمْ خَمْسَةٌ مِنْ الْإِبِلِ - تَخَالَطُوا بِهَا عَامًا - فَلَيْسَ فِيهَا إِلَّا بِنْتُ مَخَاضٍ وَهَكَذَا فِي جَمِيعِ صَدَقَاتِ الْمَوَاشِي. وَهَذَا قَوْلُ اللَّيْثِ بْنِ سَعْدٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَالشَّافِعِيِّ، وَأَبِي بَكْرِ بْنِ دَاوُد فِيمَنْ وَافَقَهُ مِنْ أَصْحَابِنَا. حَتَّى أَنَّ الشَّافِعِيَّ رَأَى حُكْمَ الْخُلْطَةِ جَارِيًا كَذَلِكَ فِي الثِّمَارِ، وَالزَّرْعِ، وَالدَّرَاهِمِ، وَالدَّنَانِيرِ - فَرَأَى فِي جَمَاعَةٍ بَيْنَهُمْ خَمْسَةُ أَوْسُقٍ فَقَطْ أَنَّ الزَّكَاةَ فِيهَا، وَأَنَّ جَمَاعَةً يَمْلِكُونَ مِائَتَيْ دِرْهَمٍ فَقَطْ أَوْ عِشْرِينَ دِينَارًا فَقَطْ - وَهُمْ خُلَطَاءُ فِيهَا - أَنَّ الزَّكَاةَ وَاجِبَةٌ فِي ذَلِكَ، وَلَوْ أَنَّهُمْ أَلْفٌ أَوْ أَكْثَرُ أَوْ أَقَلُّ؟ وَقَالَتْ طَائِفَةٌ: إِنْ كَانَ يَقَعُ لِكُلِّ وَاحِدٍ مِنْ الْخُلَطَاءِ مَا فِيهِ الزَّكَاةُ زَكَّوْا حِينَئِذٍ زَكَاةَ الْمُنْفَرِدِ، وَإِنْ كَانَ لَا يَقَعُ لِكُلِّ

وَاحِدٍ مِنْهُمْ مَا فِيهِ الزَّكَاةُ فَلَا زَكَاةَ عَلَيْهِمْ، وَمَنْ كَانَ مِنْهُمْ يَقَعُ لَهُ مَا فِيهِ الزَّكَاةُ فَعَلَيْهِ الزَّكَاةُ، وَمَنْ كَانَ غَيْرُهُ مِنْهُمْ لَا يَقَعُ لَهُ مَا فِيهِ الزَّكَاةُ فَلَا زَكَاةَ عَلَيْهِ.

L10832–10834 The opinion of these scholars regarding two or more individuals who collectively own forty sheep, sixty sheep, or less than eighty; thirty cattle or less than sixty; and similarly regarding camels—there is no zakat due upon them. If three individuals own one hundred and twenty sheep, each possessing a third thereof, they are obligated to pay only one sheep collectively. This ruling applies analogously to all other livestock categories. These individuals only recognized the ruling of mixed partnership (al-khultah) in livestock specifically - this being the opinion of al-Awzā‘ī, Mālik, Abū Thawr, Abū ‘Ubayd, and Abū al-Ḥasan ibn al-Mughallis from our companions? Another group stated: Mixed partnership does not fundamentally alter the ruling of zakāt - neither in livestock nor in other properties. Every partner must pay zakāt on what he possesses as if he were not partnered, and there is no difference. If three partners each own forty sheep, they owe three sheep - one from each. If five partners each own five camels while being partners, each owes one sheep. This ruling applies universally - this being the opinion of Sufyān al-Thawrī, Abū Ḥanīfah, Sharīk ibn ‘Abd Allāh, and al-Ḥasan ibn Ḥayy? Abū Muḥammad said: We found no statement from any Companion regarding this issue, but we found reports from ‘Aṭā’, Ṭāwūs, Ibn Hurmuz, Yaḥyā ibn Sa‘īd al-Anṣārī, and al-Zuhrī. We only received the narration from Ibn Jurayj, from ‘Amr ibn Dīnār, from Ṭāwūs that he said: “When two partners can distinguish their properties, their assets are not combined for zakāt.”

فَرَأْيُ هَؤُلَاءِ فِي اثْنَيْنِ - فَصَاعِدًا - يَمْلِكَانِ أَرْبَعِينَ شَاةً، أَوْ سِتِّينَ أَوْ مَا دُونَ الثَّمَانِينَ، أَوْ ثَلَاثِينَ مِنْ الْبَقَرِ أَوْ مَا دُونَ السِّتِّينَ، وَكَذَلِكَ فِي الْإِبِلِ -: فَلَا زَكَاةَ عَلَيْهِمْ؛ فَإِنْ كَانَ ثَلَاثَةٌ يَمْلِكُونَ مِائَةً وَعِشْرِينَ شَاةً، لِكُلِّ وَاحِدٍ مِنْهُمْ ثُلُثُهَا، فَلَيْسَ عَلَيْهِمْ إلَّا شَاةٌ وَاحِدَةٌ فَقَطْ، وَهَكَذَا فِي سَائِرِ الْمَوَاشِي وَلَمْ يَرَ هَؤُلَاءِ حُكْمَ الْخُلْطَةِ إلَّا فِي الْمَوَاشِي فَقَطْ وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَمَالِكٍ، وَأَبِي ثَوْرٍ، وَأَبِي عُبَيْدٍ، وَأَبِي الْحَسَنِ بْنِ الْمُغَلِّسِ مِنْ أَصْحَابِنَا؟ وَقَالَتْ طَائِفَةٌ: لَا تُحِيلُ الْخُلْطَةُ حُكْمَ الزَّكَاةِ أَصْلًا، لَا فِي الْمَاشِيَةِ، وَلَا فِي غَيْرِهَا، وَكُلُّ خَلِيطٍ لِيُزَكِّيَ مَا مَعَهُ كَمَا لَوْ لَمْ يَكُنْ خَلِيطًا، وَلَا فَرْقَ، فَإِنْ كَانَ ثَلَاثَةُ خُلَطَاءَ لِكُلِّ وَاحِدٍ أَرْبَعُونَ شَاةً فَعَلَيْهِمْ ثَلَاثُ شِيَاهٍ، عَلَى كُلِّ وَاحِدٍ مِنْهُمْ شَاةٌ، وَإِنْ كَانَ خَمْسَةً لِكُلِّ وَاحِدٍ مِنْهُمْ خَمْسٌ مِنْ الْإِبِلِ وَهُمْ خُلَطَاءُ فَعَلَى كُلِّ وَاحِدٍ شَاةٌ، وَهَكَذَا الْقَوْلُ فِي كُلِّ شَيْءٍ. وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَشَرِيكِ بْنِ عَبْدِ اللَّهِ، وَالْحَسَنِ بْنِ حَيٍّ؟ قَالَ أَبُو مُحَمَّدٍ: لَمْ نَجِدْ فِي هَذِهِ الْمَسْأَلَةِ قَوْلَةً لِأَحَدٍ مِنْ الصَّحَابَةِ، وَوَجَدْنَا أَقْوَالًا عَنْ عَطَاءٍ وَطَاوُوسٍ، وَابْنِ هُرْمُزٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَالزُّهْرِيِّ، فَقَطْ رُوِّينَا عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ أَنَّهُ كَانَ يَقُولُ: إذَا كَانَ الْخَلِيطَانِ يَعْلَمَانِ أَمْوَالَهُمَا فَلَا تُجْمَعُ أَمْوَالُهُمَا فِي الصَّدَقَةِ.

L10835–10841 Ibn Jurayj said: I mentioned this to ‘Aṭā’ from Ṭāwūs’s statement, and he said: I see it only as valid. It was narrated to us from Ma‘mar from al-Zuhrī, who said: If their shepherd is one, and they come to water together – and depart to pasture together – are they all subject to obligatory alms as a whole? From the chain of Ibn Wahb from al-Layth from Yaḥyā ibn Sa‘īd

قَالَ ابْنُ جُرَيْجٍ: فَذَكَرْتُ هَذَا لِعَطَاءٍ مِنْ قَوْلِ طَاوُوسٍ فَقَالَ: مَا أَرَاهُ إلَّا حَقًّا، وَرُوِّينَا عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: إذَا كَانَ رَاعِيهِمَا وَاحِدًا، وَكَانَتْ تَرِدُ جَمِيعًا - وَتَرُوحُ جَمِيعًا

- صُدِّقَتْ جَمِيعًا؟ وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ اللَّيْثِ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّهُ قَالَ: إنَّ الْإِبِلَ إذَا جَمَعَهَا الرَّاعِي وَالْفَحْلُ وَالْحَوْضُ تُصَدَّقُ جَمِيعًا ثُمَّ يَتَخَاصُّ أَصْحَابُهَا عَلَى عِدَّةِ الْإِبِلِ فِي قِيمَةِ الْفَرِيضَةِ الَّتِي أُخِذَتْ مِنْ الْإِبِلِ، فَإِنْ كَانَ اسْتَوْدَعَهُ إيَّاهَا لَا يُرِيدُ مُخَالَطَتَهُ وَلَا وَضْعَهَا عِنْدَهُ يُرِيدُ نِتَاجَهَا - فَإِنَّ تِلْكَ تُصَدَّقُ وَحْدَهَا؟ وَعَنْ ابْنِ هُرْمُزَ مِثْلُ قَوْلِ مَالِكٍ؟ قَالَ أَبُو مُحَمَّدٍ: احْتَجَّتْ كُلُّ طَائِفَةٍ لِقَوْلِهَا بِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي صَدَّرْنَا بِهِ -: فَقَالَ مَنْ رَأَى أَنَّ الْخُلْطَةَ تُحِيلُ الصَّدَقَةَ وَتَجْعَلُ مَالَ الِاثْنَيْنِ فَصَاعِدًا بِمَنْزِلَةِ كَمَا] لَوْ أَنَّهُ لِوَاحِدٍ -: أَنَّ مَعْنَى قَوْلِهِ - عَلَيْهِ السَّلَامُ - «لَا يُفَرَّقُ بَيْنَ مُجْتَمِعٍ وَلَا يُجْمَعُ بَيْنَ مُفْتَرِقٍ خَشْيَةَ الصَّدَقَةِ» أَنَّ مَعْنَى ذَلِكَ هُوَ أَنْ يَكُونَ لِثَلَاثَةِ مِائَةٌ وَعِشْرُونَ شَاةً، لِكُلِّ وَاحِدٍ مِنْهُمَا ثُلُثُهَا: وَهُمْ خُلَطَاءُ، فَلَا يَجِبُ عَلَيْهِمْ كُلِّهِمْ إلَّا شَاةٌ وَاحِدَةٌ، فَنَهَى الْمُصَدِّقَ أَنْ يُفَرِّقَهَا لِيَأْخُذَ مِنْ كُلِّ وَاحِدٍ شَاةً فَيَأْخُذُ ثَلَاثَ شِيَاهٍ، وَالرَّجُلَانِ يَكُونُ لَهُمَا مِائَتَا شَاةٍ وَشَاتَانِ، لِكُلِّ وَاحِدٍ نِصْفُهَا، فَيَجِبُ عَلَيْهِمَا ثَلَاثُ شِيَاهٍ فَيُفَرِّقَانِهَا خَشْيَةَ الصَّدَقَةِ، فَيَلْزَمُ كُلَّ وَاحِدٍ مِنْهُمَا شَاةٌ، فَلَا يَأْخُذُ الْمُصَدِّقُ إلَّا شَاتَيْنِ؟ وَقَالُوا: مَعْنَى قَوْلِهِ - عَلَيْهِ السَّلَامُ - «كُلُّ خَلِيطَيْنِ يَتَرَاجَعَانِ بَيْنَهُمَا بِالسَّوِيَّةِ» هُوَ أَنْ يَعْرِفَا أَخْذَ السَّاعِي فَيَقَعُ عَلَى كُلِّ وَاحِدٍ حِصَّتُهُ عَلَى حَسْبِ عَدَدِ مَاشِيَتِهِ كَاثْنَيْنِ لِأَحَدِهِمَا أَرْبَعُونَ شَاةً وَلِلْآخَرِ ثَمَانُونَ وَهُمَا خَلِيطَانِ، فَعَلَيْهِمَا شَاةٌ وَاحِدَةٌ، عَلَى صَاحِبِ الثَّمَانِينَ ثُلُثَاهَا وَعَلَى صَاحِبِ الْأَرْبَعِينَ ثُلُثُهَا وَقَالَ مَنْ رَأَى أَنَّ الْخُلْطَةَ لَا تُحِيلُ حُكْمَ الصَّدَقَةِ: مَعْنَى قَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يُفَرَّقُ بَيْنَ مُجْتَمِعٍ وَلَا يُجْمَعُ بَيْنَ مُفْتَرِقٍ خَشْيَةَ الصَّدَقَةِ» هُوَ أَنْ يَكُونَ لِثَلَاثَةٍ مِائَةٌ وَعِشْرُونَ شَاةً، لِكُلِّ وَاحِدٍ ثُلُثُهَا، فَيَجِبُ عَلَى كُلِّ وَاحِدٍ شَاةٌ، فَنُهُوا عَنْ جَمْعِهَا وَهِيَ مُتَفَرِّقَةٌ فِي مِلْكِهِمْ تَلْبِيسًا عَلَى السَّاعِي أَنَّهَا لِوَاحِدٍ

al-Anṣārī, he said: When camels are gathered due to the shepherd, the stud camel, and the watering place, obligatory alms are due on them collectively. Then their owners apportion based on the number of camels in the value of the prescribed amount taken from them. If the owner entrusted them to the shepherd without intending to mix them with his own camels or place them with him while seeking their offspring, then those camels are subject to obligatory alms alone. Is a statement similar to Mālik's reported from Ibn Hurmuz? Abū Muḥammad said: Every group cited as evidence for their opinion the ruling of the Messenger of Allah—peace and blessings be upon him—which we prefaced earlier. Thus, those who held that joint ownership alters the obligation of alms and renders the wealth of two or more akin to a single entity... Just as if it were for one: The meaning of the Prophet's statement - peace be upon him - "Do not separate combined holdings, nor combine separated holdings to evade Zakat" is that three partners jointly own 320 sheep - each possessing a third share - making only one sheep collectively obligatory. The Zakat collector is thus forbidden to divide their joint ownership to demand one sheep from each partner, thereby taking three. Similarly, two men jointly owning 202 sheep - each holding half - owe three sheep. If they separate their joint ownership to reduce liability, each becomes individually obligated for one sheep, allowing the collector to take only two.

Scholars explained his statement - peace be upon him - "Every two partners who are mutually accountable between themselves equitably" means they recognize the Zakat collector's assessment, with obligations apportioned according to individual flock size. For instance, partners owning 40 and 80 sheep jointly owe one sheep: the owner of 80 bears two-thirds of the obligation, and the owner of 40 bears one-third.

Those who assert partnership does not alter Zakat rulings interpreted his words - peace and blessings be upon him - "Do not separate combined holdings, nor combine separated holdings to evade Zakat" as follows: Three individuals separately owning 120 sheep (40 each) must each give one sheep. They are forbidden to mislead the Zakat collector by falsely presenting their separate holdings as jointly owned, thereby reducing their total liability to

one sheep. Conversely, a single owner of 202 sheep (obligated to give three) may not split them into two falsely independent holdings to limit payment to two.

The Zakat collector is likewise prohibited from aggregating multiple owners' livestock to inflate collections or from treating a single owner's holdings in two distant locations as separate entities to claim excessive Zakat. Scholars stated his words - peace be upon him - "Every two partners who reciprocate obligations equitably" signify that the collector assesses each partner's share proportionally, ensuring Zakat obligations reflect actual ownership shares without evasion or undue burden. The term "two intermingled entities" (al-khalīṭayn) in the linguistic usage by which the Prophet (peace be upon him) addressed us refers to what has mixed with another to the point of indistinguishability. This is why the two blended types of nabīdh are named as such. Entities that remain unmixed do not qualify as "two intermingled entities"—a matter beyond dispute. Scholars explain that "two intermingled entities" in wealth specifically denote two partners whose shares are inseparable. If distinguishable, they are not considered intermingled. They state: When intermingling exists as described and the zakāh collector arrives, he must collect the obligatory zakāh from the combined wealth without awaiting its division—even if the partners are present and unwilling to divide it. The collector has no right to force them to divide it. Upon collecting their zakāh, the two settle their shares proportionally. For instance, if one owns eighty sheep and the other forty, with shared ownership of the entire flock, the collector takes two sheep. Each sheep taken comprises two-thirds from the owner of eighty and one-third from the owner of forty. After proportional settlement, the owner of forty retains thirty-nine sheep, and the owner of eighty retains seventy-nine.

Abū Muḥammad remarked: Both scholarly opinions appear equally valid based on the literal text of the report, with neither group holding explicit precedence in the cited narration. Upon examination, we found the interpretation of the group asserting that intermingling does not alter zakāh rulings to be stronger, as much of their explanation aligns with scholarly consensus. None of the opposing group's interpretations enjoy such agreement, render-

فَلَا يَأْخُذُ إِلَّا وَاحِدَةً، وَالْمُسْلِمُ يَكُونُ لَهُ مِائَتَا شَاةٍ وَشَاتَانِ فَيَجِبُ عَلَيْهِ ثَلَاثُ شِيَاهٍ، فَيُفَرِّقُهَا قِسْمَيْنِ وَيُلْبِسُ عَلَى السَّاعِي أَنَّهَا لِاثْنَيْنِ، لِئَلَّا يُعْطِيَ مِنْهَا إِلَّا شَاتَيْنِ، وَكَذَلِكَ نَهَى الْمُصَدِّقَ أَيْضًا عَنْ أَنْ يَجْمَعَ عَلَى الِاثْنَيْنِ - فَصَاعِدًا - مَا لَهُمْ لِيُكْثِرَ مَا يَأْخُذُ، وَعَنْ أَنْ يُفَرِّقَ مَالَ الْوَاحِدِ فِي الصَّدَقَةِ، وَإِنْ وَجَدَهُ فِي مَكَانَيْنِ مُتَبَاعِدَيْنِ لِيُكْثِرَ مَا يَأْخُذُ وَقَالُوا: وَمَعْنَى قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «كُلُّ خَلِيطَيْنِ يَتَرَادَّانِ بَيْنَهُمَا بِالسَّوِيَّةِ» هُوَ أَنَّ الْخَلِيطَيْنِ فِي اللُّغَةِ الَّتِي بِهَا خَاطَبَنَا - عَلَيْهِ السَّلَامُ - هُمَا مَا اخْتَلَطَ مَعَ غَيْرِهِ فَلَمْ يَتَمَيَّزْ، وَلِذَلِكَ سُمِّيَ الْخَلِيطَانِ مِنَ النَّبِيذِ بِهَذَا الِاسْمِ، وَأَمَّا مَا لَمْ يَخْتَلِطْ غَيْرُهُ فَلَيْسَا خَلِيطَيْنِ، هَذَا مَا لَا شَكَّ فِيهِ، قَالُوا: فَلَيْسَ الْخَلِيطَانِ فِي الْمَالِ إِلَّا الشَّرِيكَيْنِ فِيهِ اللَّذَيْنِ لَا يَتَمَيَّزُ مَالُ أَحَدِهِمَا مِنَ الْآخَرِ، فَإِنْ تَمَيَّزَ فَلَيْسَا خَلِيطَيْنِ، قَالُوا: فَإِذَا كَانَ خَلِيطَانِ كَمَا ذَكَرْنَا وَجَاءَ الْمُصَدِّقُ فَفُرِضَ عَلَيْهِ أَنْ يَأْخُذَ مِنْ جُمْلَةِ الْمَالِ الزَّكَاةَ الْوَاجِبَةَ عَلَى كُلِّ وَاحِدٍ مِنْهُمَا فِي مَالِهِ، وَلَيْسَ عَلَيْهِ أَنْ يَنْتَظِرَ قِسْمَتَهَا لِمَالِهِمَا، وَلَعَلَّهُمَا لَا يُرِيدَانِ الْقِسْمَةَ، وَإِنْ كَانَا حَاضِرَيْنِ فَلَيْسَ لَهُ أَنْ يُجْبِرَهُمَا عَلَى الْقِسْمَةِ، فَإِذَا أَخَذَ زَكَاتَيْهِمَا فَإِنَّهُمَا يَتَرَادَّانِ بِالسَّوِيَّةِ، كَائِنَيْنِ لِأَحَدِهِمَا ثَمَانُونَ شَاةً وَلِلْآخَرِ أَرْبَعُونَ، وَهُمَا شَرِيكَانِ فِي جَمِيعِهَا، فَيَأْخُذُ الْمُصَدِّقُ شَاتَيْنِ، وَقَدْ كَانَ لِأَحَدِهِمَا ثُلُثَا كُلِّ شَاةٍ مِنْهُمَا وَلِلْآخَرِ ثُلُثُهَا، فَيَتَرَادَّانِ بِالسَّوِيَّةِ فَيَبْقَى لِصَاحِبِ الْأَرْبَعِينَ تِسْعٌ وَثَلَاثُونَ، وَلِصَاحِبِ الثَّمَانِينَ تِسْعٌ وَسَبْعُونَ؟ قَالَ أَبُو مُحَمَّدٍ: فَاسْتَوَتْ دَعْوَى الطَّائِفَتَيْنِ فِي ظَاهِرِ الْخَبَرِ، وَلَمْ تَكُنْ لِإِحْدَاهُمَا مَزِيَّةٌ عَلَى الْأُخْرَى فِي الْخَبَرِ الْمَذْكُورِ فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا تَأْوِيلَ الطَّائِفَةِ الَّتِي رَأَتْ أَنَّ الْخُلْطَةَ لَا تُحِيلُ حُكْمَ الزَّكَاةِ أَصَحَّ؛ لِأَنَّ كَثِيرًا مِنْ تَفْسِيرِهِمْ الْمَذْكُورِ مُتَّفَقٌ مِنْ جَمِيعِ أَهْلِ الْعِلْمِ عَلَى صِحَّتِهِ، وَلَيْسَ شَيْءٌ مِنْ تَفْسِيرِ الطَّائِفَةِ الْأُخْرَى مُجْمَعًا عَلَيْهِ؛ فَبَطَلَ تَأْوِيلُهُمْ لِتَعَرِّيهِ

ing their view baseless due to lack of evidence. The interpretation of the other group prevails, as consensus affirms its validity. It is impermissible to ascribe to the Messenger of Allah (peace be upon him) any ruling unsupported by textual proof or consensus—this constitutes a sound argument.

We also affirm the established rulings of the Prophet (peace be upon him): "No zakāh is due on fewer than five camels," "Whoever owns only four camels owes no zakāh," and "No zakāh is due on fewer than forty sheep," along with his explicit stipulations regarding zakāh for sheep and camels—such as one sheep for every forty, a one-year-old she-camel for twenty-five camels, and other similar rulings. Those who do not permit intermingling to alter zakāh rulings adhere to all these texts without contradiction, while we find... Whoever applies the ruling of Zakat through joint ownership considers these texts without opposing any of them. We have found that those who apply the ruling of Zakat through joint ownership hold the view regarding five individuals—each owning five camels—that each is obligated to give one-fifth of a Bint Makhad. And if three individuals jointly possess one hundred and twenty sheep equally, each is obligated to give one-third of a sheep. And ten men who have five camels shared among them—some obligate each individual to give one-tenth of a sheep. This is a Zakat obligation Allah the Exalted has never legislated, opposing the ruling of Him the Exalted and the ruling of His Messenger, peace be upon him.

مِنْ الْبُرْهَانِ، وَصَحَّ تَأْوِيلُ الْأُخْرَى لِأَنَّهُ لَا شَكَّ فِي صِحَّةِ مَا اتُّفِقَ عَلَيْهِ، وَلَا يَجُوزُ أَنْ يُضَافَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَوْلٌ لَا يَدُلُّ عَلَى صِحَّتِهِ نَصٌّ وَلَا إجْمَاعٌ، فَهَذِهِ حُجَّةٌ صَحِيحَةٌ؟ وَوَجَدْنَا أَيْضًا الثَّابِتَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَوْلَهُ: «وَلَيْسَ فِيمَا دُونَ خَمْسِ ذَوْدٍ صَدَقَةٌ» وَأَنَّ مَنْ لَمْ يَكُنْ لَهُ إلَّا أَرْبَعٌ مِنْ الْإِبِلِ فَلَا صَدَقَةَ عَلَيْهِ «وَلَيْسَ فِيمَا دُونَ أَرْبَعِينَ شَاةً شَيْءٌ» وَسَائِرُ مَا نَصَّهُ - عَلَيْهِ السَّلَامُ - فِي صَدَقَةِ الْغَنَمِ، وَالْإِبِلِ، مِنْ أَنَّ فِي أَرْبَعِينَ شَاةً شَاةً، وَفِي خَمْسٍ وَعِشْرِينَ [مِنْ الْإِبِلِ] بِنْتُ مَخَاضٍ، وَغَيْرُ ذَلِكَ، وَوَجَدْنَا مَنْ لَمْ يُحِلْ بِالْخُلْطَةِ حُكْمَ الزَّكَاةِ قَدْ أَخَذَ بِجَمِيعِ هَذِهِ النُّصُوصِ وَلَمْ يُخَالِفْ شَيْئًا مِنْهَا، وَوَجَدْنَا مَنْ أَحَالَ بِالْخُلْطَةِ حُكْمَ الزَّكَاةِ يَرَى هَذِهِ النُّصُوصَ وَلَمْ يُخَالِفْ شَيْئًا مِنْهَا وَوَجَدْنَا مَنْ أَحَالَ بِالْخُلْطَةِ حُكْمَ الزَّكَاةِ يَرَى فِي خَمْسَةٍ لِكُلِّ وَاحِدٍ مِنْهُمْ خَمْسٌ مِنْ الْإِبِلِ أَنَّ عَلَى كُلِّ وَاحِدٍ مِنْهُمْ خُمُسُ بِنْتِ مَخَاضٍ، وَأَنَّ ثَلَاثَةً لَهُمْ مِائَةٌ وَعِشْرُونَ شَاةً عَلَى السَّوَاءِ بَيْنَهُمْ أَنَّ عَلَى كُلِّ امْرِئٍ مِنْهُمْ ثُلُثُ شَاةٍ، وَأَنَّ عَشْرَةَ رِجَالٍ لَهُمْ خَمْسٌ مِنْ الْإِبِلِ بَيْنَهُمْ، فَإِنَّ بَعْضَهُمْ يُوجِبُ عَلَى كُلِّ وَاحِدٍ مِنْهُمْ عُشْرَ شَاةٍ وَهَذِهِ زَكَاةٌ مَا أَوْجَبَهَا اللَّهُ تَعَالَى قَطُّ، وَخِلَافٌ لِحُكْمِهِ تَعَالَى وَحُكْمِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L10842 We asked them about a man who has five camels, having mixed them with an owner of five camels in one locality; who has four camels, having mixed them with an owner of twenty-four camels in a second locality; and who has three camels, having mixed them with an owner of thirty-five camels in a third locality. We found they produced no ruling that was rationally coherent or intelligible, and our questioning of them on this matter became exceedingly extensive. Thus, they had no means to provide an answer that anyone could comprehend whatsoever. Through this inquiry, we alerted them to what exceeds it. The Exalted states: *"No soul earns except against

وَسَأَلْنَاهُمْ عَنْ إنْسَانٍ لَهُ خَمْسٌ مِنْ الْإِبِلِ، خَالَطَ بِهَا صَاحِبَ خَمْسٍ مِنْ الْإِبِلِ فِي بَلَدٍ، وَلَهُ أَرْبَعٌ مِنْ الْإِبِلِ خَالَطَ بِهَا صَاحِبَ أَرْبَعٍ وَعِشْرِينَ فِي بَلَدٍ آخَرَ، وَلَهُ ثَلَاثٌ مِنْ الْإِبِلِ، خَالَطَ بِهَا صَاحِبَ خَمْسٍ وَثَلَاثِينَ فِي بَلَدٍ ثَالِثٍ؟ فَمَا عَلِمْنَاهُمْ أَتَوْا فِي ذَلِكَ بِحُكْمٍ يُعْقَلُ أَوْ يُفْهَمُ وَسُؤَالُنَا إيَّاهُمْ فِي هَذَا الْبَابِ يَتَّسِعُ جِدًّا، فَلَا سَبِيلَ لَهُمْ إلَى جَوَابٍ

itself. No bearer of burdens shall bear the burden of another”* (al-An‘ām 6:164).[22]

L10843–10845 Whoever deems the ruling of intermixing to nullify zakat has effectively made Zaid a gainer at Amr’s expense and imposed the legal status of one’s wealth upon the other’s wealth. This is invalid and contradicts the Quran and the Sunnah. The Messenger of Allah—peace and blessings be upon him, who was obligated to clarify matters for us—was never incapable of stating, “Two intermixed parties in such circumstances pay the zakat of a single individual.” Since he did not say this, how can it be permissible to assert it? Moreover, their claim of this ruling applies only to what is intermixed in the [same] bucket, shared shepherd, shared grazing area, or shared milking area. This constitutes an arbitrary imposition without any evidence whatsoever—neither from the Sunnah, nor the Quran, nor a Companion’s statement, nor analogy, nor any rationally conceivable justification. Some have restricted the ruling to certain aspects without evidence—if only... My verse: Is his statement—peace be upon him—restricted solely to shared usage in these specific aspects without intending shared dwelling, occupation, or joint ownership of sheep as Ṭāwus and ʿAṭāʾ held? This suffices as evidence. If they mention what Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us—Muḥammad ibn ʿĪsā ibn Rifāʿah narrated to us; ʿAlī ibn ʿAbd al-ʿAzīz narrated to us; Abū ʿUbayd narrated to us; Abū al-Aswad (al-Naḍr ibn ʿAbd al-Jabbār al-Miṣrī) narrated to us; Ibn Lahīʿah narrated from Yaḥyā ibn Saʿīd that he wrote to him, reporting he heard al-Sā’ib ibn Yazīd say he heard Saʿd ibn Abī Waqqāṣ narrate from Allah’s Messenger—peace and blessings be upon him—state: “Two partners are those who share access to the stallion, pasture, and watering trough.” We said: This is inauthentic because it is from Ibn Lahīʿah.

L10846–10848 “Then, if this were valid, we would not oppose your view that when two parties share a stud animal, grazing land, and watering source, the two are partners in this arrangement—an undeniable truth. However, this does not

[22]**Qur’an references (L10842):** Qur’an 6:164 (Al-An’am).

يَفْهَمُهُ أَحَدٌ أَلْبَتَّةَ، فَنَبَّهَنَا بِهَذَا السُّؤَالِ عَلَى مَا زَادَ عَلَيْهِ. وَقَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

وَمَنْ رَأَى حُكْمَ الْخُلْطَةِ يُحِيلُ الزَّكَاةَ فَقَدْ جَعَلَ زَيْدًا كَاسِبًا عَلَى عَمْرٍو، وَجَعَلَ لِمَالِ أَحَدِهِمَا حُكْمًا فِي مَالِ الْآخَرِ، وَهَذَا بَاطِلٌ وَخِلَافٌ لِلْقُرْآنِ وَالسُّنَنِ. وَمَا عَجَزَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ - وَهُوَ الْمُفْتَرَضُ عَلَيْهِ الْبَيَانُ لَنَا - عَنْ أَنْ يَقُولَ: الْمُخْتَلِطَانِ فِي وَجْهِ كَذَا وَوَجْهِ كَذَا [يُزَكِّيَانِ] زَكَاةَ الْمُنْفَرِدِ، فَإِذْ لَمْ يَقُلْهُ فَلَا يَجُوزُ الْقَوْلُ بِهِ؟ وَأَيْضًا - فَإِنَّ قَوْلَهُمْ بِهَذَا الْحُكْمِ إِنَّمَا هُوَ فِيمَا اخْتَلَطَ فِي الدَّلْوِ، وَالرَّاعِي، وَالْمَرَاحِ، وَالْمُحْتَلَبِ -: تَحَكُّمٌ بِلَا دَلِيلٍ أَصْلًا، لَا مِنْ سُنَّةٍ وَلَا مِنْ قُرْآنٍ وَلَا قَوْلِ صَاحِبٍ وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ وَجْهٍ يُعْقَلُ، وَبَعْضُهُمْ اقْتَصَرَ عَلَى بَعْضِ الْوُجُوهِ بِلَا دَلِيلٍ وَلَيْتَ شِعْرِي: أَمِنْ قَوْلِهِ - عَلَيْهِ السَّلَامُ - مَقْصُورًا عَلَى الْخُلْطَةِ فِي هَذِهِ الْوُجُوهِ دُونَ أَنْ يُرِيدَ بِهِ الْخُلْطَةَ فِي الْمَنْزِلِ، أَوْ فِي الصِّنَاعَةِ، أَوْ فِي الشَّرِكَةِ فِي الْغَنَمِ كَمَا قَالَ طَاوُسٍ وَعَطَاءٌ؟ وَفِي هَذَا كِفَايَةٌ فَإِنْ ذَكَرُوا مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا مُحَمَّدُ بْنُ عِيسَى بْنِ رِفَاعَةَ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا أَبُو عُبَيْدٍ ثنا أَبُو الْأَسْوَدِ هُوَ النَّضْرُ بْنُ عَبْدِ الْجَبَّارِ مِصْرِيٌّ - ثنا ابْنُ لَهِيعَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ أَنَّهُ كَتَبَ إِلَيْهِ: أَنَّهُ سَمِعَ السَّائِبَ بْنَ يَزِيدَ يَقُولُ: إِنَّهُ سَمِعَ سَعْدَ بْنَ أَبِي وَقَّاصٍ يُحَدِّثُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «الْخَلِيطَانِ مَا اجْتَمَعَ عَلَى الْفَحْلِ، وَالْمَرْعَى، وَالْحَوْضِ» . قُلْنَا: هَذَا لَا يَصِحُّ؛ لِأَنَّهُ عَنْ ابْنِ لَهِيعَةَ.

ثُمَّ لَوْ صَحَّ فَمَا خَالَفْنَاكُمْ فِي أَنَّ مَا اجْتَمَعَ عَلَى فَحْلٍ، وَمَرْعًى، وَحَوْضٍ: أَنَّهُمَا خَلِيطَانِ فِي ذَلِكَ، وَهَذَا حَقٌّ لَا شَكَّ فِيهِ، وَلَكِنْ لَيْسَ فِيهِ إِحَالَةُ حُكْمِ الزَّكَاةِ الْمُفْتَرَضَةِ بِذَلِكَ

transfer the ruling concerning zakat obligations." If the prescribed transfer of the zakat ruling were obligatory due to mixing in pastures, it would necessarily apply to all livestock on earth, since pastures are interconnected across most of the world unless separated by a sea, river, or inhabited area. Moreover, this report does not mention their mixing through the shepherd - the basis upon which Mālik and al-Shāfiʿī relied. Otherwise, the livestock of the entire settlement's inhabitants could intermingle at watering places, pastures, and stud animals, yet they do not consider such mixing to nullify the zakat ruling. Ibn Ḥanbal added: "and the milking places."

وَلَوْ وَجَبَ بِالِاخْتِلَاطِ فِي الْمَرْعَى إحَالَةُ حُكْمِ الزَّكَاةِ لَوَجَبَ ذَلِكَ فِي كُلِّ مَاشِيَةٍ فِي الْأَرْضِ، لِأَنَّ الْمَرَاعِيَ مُتَّصِلَةٌ فِي أَكْثَرِ الدُّنْيَا، إلَّا أَنْ يَقْطَعَ بَيْنَهُمَا بَحْرٌ، أَوْ نَهْرٌ، أَوْ عِمَارَةٌ وَأَيْضًا - فَلَيْسَ فِي هَذَا الْخَبَرِ ذِكْرٌ لِتَخَالُطِهِمَا بِالرَّاعِي، وَهُوَ الَّذِي عَوَّلَ عَلَيْهِ مَالِكٌ، وَالشَّافِعِيُّ؛ وَإِلَّا فَقَدْ يَخْتَلِطُ فِي الْمَسْقَى، وَالْمَرْعَى، وَالْفَحْلِ: أَهْلُ الْحِلَّةِ كُلُّهُمْ، وَهُمَا لَا يَرَيَانِ ذَلِكَ خُلْطَةً تُحِيلُ حُكْمَ الصَّدَقَةِ؟ وَزَادَ ابْنُ حَنْبَلٍ: وَالْمُحْتَلَبِ.

L10849 And some of them said: If they remained in a state of mixed finances for most of the lunar year, the ruling of partnership (khulṭah) applies to them.

وَقَالَ بَعْضُهُمْ: إنْ اخْتَلَطَا أَكْثَرَ الْحَوْلِ كَانَ لَهُمَا حُكْمُ الْخُلْطَةِ

L10850 This is an arbitrary imposition. We ask them about one who entered into joint ownership with another for six months: On what basis did they respond? They have increased the imposition without evidence and hold no greater right to this claim than others. As for Mālik's statement, it constitutes manifestly evident transfer, for he restricted joint ownership rulings to livestock alone—excluding joint ownership in fruits, crops, and ripening dates—though this restriction is absent in the hadith. Should they argue, "The Prophet (peace be upon him) only stated this after mentioning livestock rulings," we reply: What does that imply? If this supports your position, then restrict joint ownership rulings to sheep exclusively, since he (peace be upon him) spoke of this only after mentioning sheep zakah—is this not inescapable? If they counter, "We analogized camels and cattle to sheep," respond: Why then did you not analogize joint ownership in crops and fruits to joint ownership in sheep? Furthermore, Mālik applied zakah transfer through joint ownership concerning the nisab threshold and beyond, yet did not extend it to general joint ownership as al-Shāfiʿī did. This is arbitrary ruling-making—an unsubstantiated claim. Even if he avoided applying the text regarding exemption below the nisab, he has contradicted himself concerning amounts above it, with no distinction between the two applications. Success comes solely from Allah the Exalted.

وَهَذَا تَحَكُّمٌ بَارِدٌ وَنَسْأَلُهُمْ عَمَّنْ خَالَطَ آخَرَ سِتَّةَ أَشْهُرٍ؟ فَبِأَيِّ شَيْءٍ أَجَابُوا فَقَدْ زَادُوا فِي التَّحَكُّمِ بِلَا دَلِيلٍ وَلَمْ يَكُونُوا بِأَحَقَّ بِالدَّعْوَى مِنْ غَيْرِهِمْ؟ وَأَمَّا قَوْلُ مَالِكٍ فَظَاهِرُ الْحَوَالَةِ جِدًّا، لِأَنَّهُ خَصَّ بِالْخُلْطَةِ الْمَوَاشِيَ، فَقَطْ، دُونَ الْخُلْطَةِ فِي الثِّمَارِ، وَالزَّرْعِ وَالنَّاضِّ، وَلَيْسَ هَذَا التَّخْصِيصُ مَوْجُودًا فِي الْخَبَرِ فَإِنْ قَالَ: إنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا قَالَ ذَلِكَ بِعَقِبِ ذِكْرِهِ حُكْمَ الْمَاشِيَةِ؟ قُلْنَا: فَكَانَ مَاذَا؟ فَإِنْ كَانَ هَذَا حُجَّةً لَكُمْ فَاقْتَصِرُوا بِحُكْمِ الْخُلْطَةِ عَلَى الْغَنَمِ فَقَطْ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَقُلْ ذَلِكَ إلَّا بِعَقِبِ ذِكْرِ زَكَاةِ الْغَنَمِ، وَهَذَا مَا لَا مُخَلَّصَ مِنْهُ؟ فَإِنْ قَالُوا: قِسْنَا الْإِبِلَ، وَالْبَقَرَ، عَلَى الْغَنَمِ؟ قِيلَ لَهُمْ: فَهَلَّا قِسْتُمْ الْخُلْطَةَ فِي الزَّرْعِ وَالثَّمَرَةِ عَلَى الْخُلْطَةِ فِي الْغَنَمِ؟ وَأَيْضًا: فَإِنَّ مَالِكًا اسْتَعْمَلَ إحَالَةَ الزَّكَاةِ بِالْخُلْطَةِ فِي النِّصَابِ [فَزَائِدًا] وَلَمْ يَسْتَعْمِلْهُ فِي عُمُومِ الْخُلْطَةِ كَمَا فَعَلَ الشَّافِعِيُّ، وَهَذَا تَحَكُّمٌ وَدَعْوَى بِلَا بُرْهَانٍ، وَإِنْ كَانَ فَرَّ عَنْ إحَالَةِ النَّصِّ فِي أَنْ لَا زَكَاةَ فِيمَا دُونَ النِّصَابِ -: فَقَدْ وَقَعَ فِيهِ فِيمَا فَوْقَ النِّصَابِ، وَلَا فَرْقَ بَيْنَ الْإِحَالَتَيْنِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L10851–10852 Abū Muḥammad said: As for Abū Ḥanīfah and his companions, they con-

demn dissent from the majority when it aligns with their practice of taqlīd. Yet here they have opposed five Followers, with no known opponent from their own generation or predecessors. This is not deemed objectionable in our view, but we presented it to expose their contradictions and their reliance on evidence they reject when it conflicts with their desires. They also justified it by the narration transmitted to us by Aḥmad ibn Muḥammad ibn al-Jasūr – from Wahb ibn Masarrāh, from Muḥammad ibn Waḍḍāḥ, from Abū Bakr ibn Abī Shaybah, from Yazīd ibn Hārūn, from Bahz ibn Ḥakīm ibn Muʿāwiyah ibn Ḥaydah, from his father Ḥakīm, from Muʿāwiyah ibn Ḥaydah, who said: I heard Allah's Messenger – peace and blessings be upon him – say: "For every forty grazing camels, a she-camel in its third year (ibnatu labūn) is due; camels must not be split up when calculating their zakat. Whoever gives it seeking reward will have its reward – a binding decree among the ordinances of our Lord. Nothing of it is lawful for the family of Muḥammad. Whoever withholds it, we seize it along with half his camels."

قَالَ أَبُو مُحَمَّد: وَأَمَّا أَبُو حَنِيفَةَ وَأَصْحَابُهُ فَإِنَّهُمْ يُشَنِّعُونَ بِخِلَافِ الْجُمْهُورِ إِذَا وَافَقَ تَقْلِيدَهُمْ، وَهُمْ هُنَا قَدْ خَالَفُوا خَمْسَةً مِنْ التَّابِعِينَ، لَا يُعْلَمُ لَهُمْ - مِنْ طَبَقَتِهِمْ وَلَا مِمَّنْ قَبْلَهُمْ - مُخَالِفٌ وَهَذَا عِنْدَنَا غَيْرُ مُنْكَرٍ، لَكِنْ أَوْرَدْنَاهُ لِنُرِيَهُمْ تَنَاقُضَهُمْ، وَاحْتِجَاجَهُمْ بِشَيْءٍ لَا يَرَوْنَهُ حُجَّةً إِذَا خَالَفَ أَهْوَاءَهُمْ وَمَوَّهُوا أَيْضًا بِمَا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا وَهْبُ بْنُ مَسَرَّةَ ثنا مُحَمَّدُ بْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا يَزِيدُ بْنُ هَارُونَ عَنْ بَهْزِ بْنِ حَكِيمِ بْنِ مُعَاوِيَةَ بْنِ حَيْدَةَ عَنْ أَبِيهِ حَكِيمٍ عَنْ مُعَاوِيَةَ بْنِ حَيْدَةَ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «فِي كُلِّ إِبِلٍ سَائِمَةٍ فِي كُلِّ أَرْبَعِينَ ابْنَةُ لَبُونٍ، لَا تُفَرَّقُ إِبِلٌ عَنْ حِسَابِهَا، مَنْ أَعْطَاهَا مُؤْتَجِرًا فَلَهُ أَجْرُهَا، عَزْمَةٌ مِنْ عَزَمَاتِ رَبِّنَا، لَا يَحِلُّ لِآلِ مُحَمَّدٍ مِنْهَا شَيْءٌ، وَمَنْ مَنَعَهَا فَإِنَّا آخِذُوهَا وَشَطْرَ إِبِلِهِ»

They said: So if someone takes zakatable sheep from forty she-camels owned by eight partners—each owning five—he has separated them from their proper calculation, and the Prophet (peace be upon him) did not single out individual ownership from collective ownership? Abu Muhammad said: We respond to them, with support from Allah the Exalted, that since all this narration is deemed authoritative in your view, then adhere to its content: that the zakat-withholder's camels are taken from him, with half his camels as an added amount. If you claim: "This is abrogated?" We reply: This is a baseless assertion; your opponents could equally assert this, retorting: "What you cite is abrogated"—even if the one disputing is Maliki. We say to them: If his partner is a mukatab or a Christian, and if they say: "This is specified by other narrations?" We reply: This text too is specified by other narrations, namely that no zakat is due on four camels or fewer. And that for every five, a sheep is due, up to twenty-four.

L10853–10855

قَالُوا: فَمَنْ أَخَذَ الْغَنَمَ مِنْ أَرْبَعِينَ نَاقَةً لِثَمَانِيَةِ شُرَكَاءَ، لِكُلِّ وَاحِدٍ مِنْهُمْ خَمْسٌ، فَقَدْ فَرَّقَهَا عَنْ حِسَابِهَا، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - مِلْكَ وَاحِدٍ مِنْ مِلْكِ جَمَاعَةٍ؟ قَالَ أَبُو مُحَمَّد: فَنَقُولُ لَهُمْ وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ: إِنَّ كُلَّ هَذَا الْخَبَرِ عِنْدَكُمْ حُجَّةٌ فَخُذُوا بِمَا فِيهِ، مِنْ أَنَّ مَانِعَ الزَّكَاةِ تُؤْخَذُ مِنْهُ وَشَطْرُ إِبِلِهِ زِيَادَةً؟ فَإِنْ قُلْتُمْ: هَذَا مَنْسُوخٌ؟ قُلْنَا لَكُمْ: هَذِهِ دَعْوَى بِلَا حُجَّةٍ، لَا يَعْجِزُ عَنْ مِثْلِهَا خُصُومُكُمْ، فَيَقُولُوا لَكُمْ وَالَّذِي تَعَلَّقْتُمْ بِهِ مِنْهُ مَنْسُوخٌ وَإِنْ كَانَ الْمُشْغَبُ بِهِ مَالِكِيًّا؟ قُلْنَا لَهُمْ: فَإِنْ كَانَ شَرِيكُهُ مُكَاتَبًا أَوْ نَصْرَانِيًّا فَإِنْ قَالُوا: هَذَا قَدْ خَصَّتْهُ أَخْبَارٌ أُخَرُ؟ قُلْنَا: وَهَذَا نَصٌّ قَدْ خَصَّتْهُ أَخْبَارٌ أُخَرُ، وَهِيَ أَنْ لَا زَكَاةَ فِي أَرْبَعٍ مِنْ الْإِبِلِ فَأَقَلَّ، وَأَنَّ فِي كُلِّ خَمْسٍ شَاةً إِلَى أَرْبَعٍ وَعِشْرِينَ.

Then we say: This narration is not valid, for Bahz ibn Hakim is not renowned for reliability, nor is his father Hakim. How then could this be? Even if this narration were authentic, it would not constitute proof for them,

L10856

since it does not state that the ruling for jointly owned properties equates to that of a single owner. It is impermissible to combine one person's wealth with another's for zakah purposes, nor to assess Zayd's zakah based on the ruling for Amr's wealth, in accordance with Allah's decree: {No bearer of burdens bears the burden of another} [6:164]. Even if authentic, its meaning would undoubtedly apply only to camels exceeding one hundred and twenty, as it contradicts all narrations entirely—from start to finish—and opposes their consensus and the established narrations stipulating a hiqqah (three-year-old she-camel) for forty-six camels, not a bint labun (two-year-old she-camel), along with the other rulings we mentioned. Furthermore, this narration pertains solely to camels. They have erroneously applied the ruling of joint ownership to sheep and cattle through qiyas (analogy), though all qiyas is invalid. Even if qiyas were valid, this would epitomize falsehood, for transferring this ruling from camels to cattle and sheep holds no greater validity than transferring it to fruits, grains, or currency. All such assertions are profoundly baseless—and success is attained solely through Allah, the Exalted.[23]

ثُمَّ نَقُولُ، هَذَا خَبَرٌ لَا يَصِحُّ. لِأَنَّ بَهْزَ بْنَ حَكِيمٍ غَيْرُ مَشْهُورِ الْعَدَالَةِ، وَوَالِدُهُ حَكِيمٌ كَذَلِكَ. فَكَيْفَ وَلَوْ صَحَّ هَذَا الْخَبَرُ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ أَنَّ حُكْمَ الْمُخْتَلِطَيْنِ حُكْمُ الْوَاحِدِ، وَلَا يَجُوزُ أَنْ يُجْمَعَ مَالُ إِنْسَانٍ إِلَى مَالِ غَيْرِهِ فِي الزَّكَاةِ، وَلَا أَنْ يُزَكَّى مَالُ زَيْدٍ بِحُكْمِ مَالِ عَمْرٍو، لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] فَلَوْ صَحَّ لَكَانَ مَعْنَاهُ بِلَا شَكٍّ فِيمَا جَاوَزَ الْعِشْرِينَ وَمِائَةً مِنَ الْإِبِلِ، لِمُخَالَفَةِ جَمِيعِ الْأَخْبَارِ أَوَّلِهَا عَنْ آخِرِهَا، لِمَا خَالَفَ هَذَا الْعَمَلَ لِإِجْمَاعِهِمْ وَإِجْمَاعِ الْأَخْبَارِ عَلَى أَنَّ فِي سِتٍّ وَأَرْبَعِينَ مِنَ الْإِبِلِ حِقَّةً لَا بِنْتَ لَبُونٍ، وَلِسَائِرِ ذَلِكَ مِنَ الْأَحْكَامِ الَّتِي ذَكَرْنَا وَأَيْضًا: أَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ إِلَّا الْإِبِلُ فَقَطْ، نَقَلَهُمْ حُكْمُ الْخُلْطَةِ إِلَى الْغَنَمِ، وَالْبَقَرِ: قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنُ الْبَاطِلِ، لِأَنَّهُ لَيْسَ نَقْلُ هَذَا الْحُكْمِ عَنِ الْإِبِلِ إِلَى الْبَقَرِ وَالْغَنَمِ بِأَوْلَى مِنْ نَقْلِهِ إِلَى الثِّمَارِ وَالْحُبُوبِ وَالْعَيْنِ. وَكُلُّ ذَلِكَ دَعْوَى فِي غَايَةِ الْفَسَادِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L10857–10859 Abu Hanifah displays a striking contradiction here. He ruled that two partners jointly owning eighty sheep—each possessing half—must give two sheep as zakah between them, which is correct. Yet he declared regarding eighty sheep where half belongs to one man and the other half to forty men: no zakah is due at all—neither from the owner of the forty sheep nor from the others. He justified exempting the owner of the forty by arguing that jointly owned property between two partners permits division of shares, whereas this case with forty owners does not. His statement combines four categories of gross error: first, exempting the owner of forty sheep here; second, imposing zakah on the owner of forty in the prior case; thereby differentiating without evidence. The third—his argument for exempting zakat here is that division is possible in that case but impossible here. Is this not astonishing?

وَلِأَبِي حَنِيفَةَ هَاهُنَا تَنَاقُضٌ طَرِيفٌ، وَهُوَ أَنَّهُ قَالَ فِي شَرِيكَيْنِ فِي ثَمَانِينَ شَاةً لِكُلِّ وَاحِدٍ مِنْهُمَا نِصْفُهَا: إِنَّ عَلَيْهِمَا شَاتَيْنِ بَيْنَهُمَا، وَأَصَابَ فِي هَذَا. ثُمَّ قَالَ فِي ثَمَانِينَ شَاةً لِرَجُلٍ وَاحِدٍ نِصْفُهَا وَنِصْفُهَا الثَّانِي لِأَرْبَعِينَ رَجُلًا: إِنَّهُ لَا زَكَاةَ فِيهَا أَصْلًا، لَا عَلَى الَّذِي يَمْلِكُ نِصْفَهَا، وَلَا عَلَى الْآخَرِينَ، وَاحْتَجَّ فِي إِسْقَاطِهِ الزَّكَاةَ عَنْ صَاحِبِ الْأَرْبَعِينَ بِأَنَّ تِلْكَ الَّتِي بَيْنَ اثْنَيْنِ يُمْكِنُ قِسْمَتُهَا وَهَذِهِ لَا يُمْكِنُ قِسْمَتُهَا؟ فَجَمَعَ كَلَامُهُ هَذَا: أَرْبَعَةَ أَصْنَافٍ مِنْ فَاحِشِ الْخَطَأِ؟ أَحَدُهَا - إِسْقَاطُهُ الزَّكَاةَ عَنْ مَالِكِ أَرْبَعِينَ شَاةً هَاهُنَا؟ وَالثَّانِي - إِيجَابُهُ الزَّكَاةَ عَلَى مَالِكِ أَرْبَعِينَ فِي الْمَسْأَلَةِ الْأُخْرَى، فَفَرَّقَ بِلَا دَلِيلٍ وَالثَّالِثُ - احْتِجَاجُهُ فِي إِسْقَاطِهِ الزَّكَاةَ هُنَا بِأَنَّ الْقِسْمَةَ تُمْكِنُ هُنَالِكَ: وَلَا تُمْكِنُ هَاهُنَا، فَكَانَ

[23] **Qur'an references (L10856):** Qur'an 6:164 (Al-An'am); Qur'an 17:15 (Al-Isra); Qur'an 35:18 (Fatir); Qur'an 39:7 (Az-Zumar).

We do not know how division, its possibility, or the impossibility of its possibility could have any relevance to the rulings of zakat. The fourth—that he has spoken falsehood; rather, if division is possible there, it is possible here, and if it is impossible here, it is impossible there. Marvel at a people whose level of understanding is such?

L10860 Abū Muḥammad said: If someone were to say: You obligate Zakat on a partner in livestock when he owns a share subject to Zakat in his portion, and you obligate it on two partners jointly owning slaves for Zakat al-Fitr. You also state that if someone owns half of one slave with another person and half of another slave with someone else, and he emancipates both halves - this does not suffice as fulfilling the obligation of freeing an entire slave. Similarly, if someone owns half a sheep with one person and half of another sheep with someone else, and he slaughters both halves - this does not suffice as an obligatory Hajj sacrifice. How is this [so]? We replied: Indeed, because the Messenger of Allah—peace and blessings be upon him—said: "No Zakat is due from a Muslim on his horse or slave except Zakat al-Fitr in slaves." We thus upheld the general wording of this statement. He—peace be upon him—also said: "Any two partners shall settle their shares equally between them." We maintained this ruling. Therefore, two halves of two slaves are not termed a "whole slave," and two halves of a sheep are not termed a "whole sheep." And success is from Allah, the Most High.

L10861 **Zakat on Silver**

L10862 **Issue: There is no zakāt due on silver until the silver reaches five ūqiyyahs.**

L10863 **Zakat on Silver**

L10864–10868 Issue 682: There is no zakah due on silver—whether minted, ornamented, hammered, or otherwise—until it reaches five awāqī of pure silver. Substances other than silver mixed with it are not counted toward this weight. When it completes a full, uninterrupted lunar year in this state, five dirhams according to the Meccan weight standard are due as zakah. The five awāqī

هَذَا عَجَبًا؟ وَمَا نَدْرِي لِلْقِسْمَةِ وَإِمْكَانِهَا. أَوْ تَعَذُّرِ إِمْكَانِهَا مَدْخَلًا فِي شَيْءٍ مِنْ أَحْكَامِ الزَّكَاةِ؟ وَالرَّابِعُ - أَنَّهُ قَدْ قَالَ الْبَاطِلَ؛ بَلْ إِنْ كَانَتْ الْقِسْمَةُ هُنَالِكَ مُمْكِنَةً فَهِيَ هَاهُنَا مُمْكِنَةٌ، وَإِنْ كَانَتْ هَاهُنَا مُتَعَذِّرَةً فَهِيَ هُنَالِكَ مُتَعَذِّرَةٌ؛ فَاعْجَبُوا لِقَوْمٍ هَذَا مِقْدَارُ فَهْمِهِمْ؟

قَالَ أَبُو مُحَمَّد: فَإِذَا قَالَ قَائِلٌ: فَأَنْتُمْ تُوجِبُونَ الزَّكَاةَ عَلَى الشَّرِيكِ فِي الْمَاشِيَةِ إِذَا مَلَكَ مَا فِيهِ الزَّكَاةُ فِي حِصَّتِهِ، وَتُوجِبُونَهَا عَلَى الشَّرِيكَيْنِ فِي الرَّقِيقِ فِي زَكَاةِ الْفِطْرِ، وَتَقُولُونَ فِيمَنْ لَهُ نِصْفُ عَبْدٍ مَعَ آخَرَ وَنِصْفُ عَبْدٍ آخَرَ مَعَ آخَرَ، فَأَعْتَقَ النِّصْفَيْنِ -: إِنَّهُ لَا يُجْزِئَانِهِ عَنْ رَقَبَةٍ وَاجِبَةٍ؛ وَمَنْ لَهُ نِصْفُ شَاةٍ مَعَ إِنْسَانٍ، وَنِصْفُ شَاةٍ أُخْرَى مَعَ آخَرَ فَذَبَحَهُمَا -: إِنَّهُ لَا يُجْزِئُهُ ذَلِكَ عَنْ هَدْيٍ وَاجِبٍ فَكَيْفَ هَذَا؟ قُلْنَا: نَعَمْ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَيْسَ عَلَى الْمُسْلِمِ فِي فَرَسِهِ وَعَبْدِهِ صَدَقَةٌ إِلَّا صَدَقَةَ الْفِطْرِ فِي الرَّقِيقِ» فَقُلْنَا بِعُمُومِ هَذِهِ اللَّفْظَةِ. وَقَالَ - عَلَيْهِ السَّلَامُ -: «كُلُّ خَلِيطَيْنِ فَإِنَّهُمَا يَتَرَادَّانِ بَيْنَهُمَا بِالسَّوِيَّةِ» فَقُلْنَا بِذَلِكَ، وَأَوْجَبَ رَقَبَةً وَهَدْيَ شَاةٍ وَلَا يُسَمَّى نِصْفَا عَبْدَيْنِ: رَقَبَةً، وَلَا نِصْفَا شَاةٍ: شَاةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[زَكَاةُ الْفِضَّةِ]

[مَسْأَلَةٌ لَا زَكَاةَ فِي الْفِضَّةِ حَتَّى تَبْلُغَ خَمْسَ أَوَاقِيَ]

[زَكَاةُ الْفِضَّةِ]

٦٨٢ - مَسْأَلَةٌ: لَا زَكَاةَ فِي الْفِضَّةِ مَضْرُوبَةً كَانَتْ أَوْ مَصُوغَةً أَوْ نِقَارًا أَوْ غَيْرَ ذَلِكَ - حَتَّى تَبْلُغَ خَمْسَ أَوَاقِيَ فِضَّةٍ مَحْضَةٍ، لَا يُعَدُّ فِي هَذَا الْوَزْنِ شَيْءٌ يُخَالِطُهَا مِنْ غَيْرِهَا

are equivalent to two hundred dirhams by the Meccan weight standard we mentioned earlier in the section on zakah of wheat, dates, and barley. If it exceeds five awāqī... What we have mentioned, and if it completes a lunar year with its increase, then on whatever is added—whether little or much—a quarter of a tenth of it is due, and this applies every year. If the weight of the mentioned ounces decreases by even a fals, there is no Zakat due on it. If there is an alloy in it, and the alloy alters any of the silver's color, purity, or weight, that alloy is disregarded and not counted. If five ounces of pure silver remain, Zakat is due; otherwise, not. If the alloy does not alter any of the silver's qualities, Zakat is due based on its total weight. All of this is unanimously agreed upon except in three points, which we will mention, God willing. Malik said: If two hundred dirhams decrease by a dirham within the tolerance permitted during weighing, Zakat remains obligatory. Some of the Tabi'in said: If it decreases by half a dirham, Zakat remains obligatory. Ali ibn Abi Talib—may God be pleased with him—as narrated to us through Sufyan al-Thawri from Abu Ishaq from Asim ibn Damrah from Ali, said: When two hundred dirhams are reached, five dirhams are due as Zakat. If it is less than two hundred, nothing is due. This is the view of Umar ibn al-Khattab, al-Hasan al-Basri, al-Sha'bi, Sufyan al-Thawri, Abu Sulayman, and al-Shafi'i. Abu Hanifa's view on the decrease in weight aligns with our companions, but he held conflicting opinions regarding alloyed silver. Malik said: If there is an alloy in the dirhams, Zakat is due on their total weight. Al-Shafi'i and Abu Sulayman held the same view as we stated. It was narrated to us by Abd al-Rahman ibn Abd Allah ibn Khalid: Ibrahim ibn Ahmad narrated to us: al-Farabri narrated to us: al-Bukhari narrated to us: Musaddad narrated to us: Yahya ibn Sa'id al-Qattan narrated to us: Malik narrated to us: Muhammad ibn Abd al-Rahman ibn Abi Sa'sa'ah narrated from his father from Abu Sa'id al-Khudri from the Prophet—peace and blessings be upon him—who said: "There is no Zakat on less than five wasqs, nor on a herd of fewer than five camels, nor on less than five ounces of silver." There is a charity due on silver.

فَإِذَا أَتَمَّتْ كَذَلِكَ سَنَةً قَمَرِيَّةً مُتَّصِلَةً فَفِيهَا خَمْسَةُ دَرَاهِمَ بِوَزْنِ مَكَّةَ، وَالْخُمْسُ أَوَاقٍ هِيَ مِائَتَيْ دِرْهَمٍ بِوَزْنِ مَكَّةَ الَّذِي قَدْ ذَكَرْنَا قَبْلَ زَكَاةِ الْبُرِّ وَالتَّمْرِ وَالشَّعِيرِ، فَإِذَا زَادَتْ عَلَى مَا ذَكَرْنَا وَأَتَمَّتْ بِزِيَادَتِهَا سَنَةً قَمَرِيَّةً فَفِيمَا زَادَ - قَلَّ أَوْ كَثُرَ - رُبْعُ عُشْرِهَا، وَهَكَذَا كُلُّ سَنَةٍ، فَإِنْ نَقَصَ مِنْ وَزْنِ الْأَوَاقِي الْمَذْكُورَةِ وَلَوْ فَلْسٌ فَلَا زَكَاةَ فِيهَا؟ وَإِنْ كَانَ فِيهَا خَلْطٌ، فَإِنْ غَيَّرَ الْخَلْطُ شَيْئًا مِنْ لَوْنِ الْفِضَّةِ أَوْ مَحَكِّهَا أَوْ رزَانَتِهَا أُسْقِطَ ذَلِكَ الْخَلْطُ فَلَمْ يُعَدَّ، فَإِنْ بَقِيَ فِي الْفِضَّةِ الْمَحْضَةِ خَمْسُ أَوَاقٍ زُكِّيَتْ، وَإِلَّا فَلَا، وَإِنْ كَانَ الْخَلْطُ لَمْ يُغَيِّرْ شَيْئًا مِنْ صِفَاتِ الْفِضَّةِ زُكِّيَتْ بِوَزْنِهَا؟ وَهَذَا كُلُّهُ مُجْمَعٌ عَلَيْهِ إِلَّا ثَلَاثَةَ مَوَاضِعَ، نَذْكُرُهَا إِنْ شَاءَ اللَّهُ تَعَالَى؟ قَالَ مَالِكٌ: إِنْ نَقَصَتْ الْمِائَتَا دِرْهَمٍ نُقْصَانًا تَجُوزُ بِهِ جَوَازَ الْوَزْنَةِ فَفِيهَا الزَّكَاةُ؟ وَقَالَ بَعْضُ التَّابِعِينَ: إِنْ نَقَصَتْ نِصْفَ دِرْهَمٍ فَفِيهَا الزَّكَاةُ؟ وَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - كَمَا رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ قَالَ: إِذَا بَلَغَتْ مِائَتَيْ دِرْهَمٍ فَفِيهَا خَمْسَةُ دَرَاهِمَ، وَإِنْ نَقَصَ مِنْ الْمِائَتَيْنِ فَلَيْسَ فِيهِ شَيْءٌ وَهُوَ قَوْلُ عُمَرَ بْنِ الْخَطَّابِ، وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَالشَّعْبِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَبِي سُلَيْمَانَ، وَالشَّافِعِيِّ؟ وَقَالَ أَبُو حَنِيفَةَ فِي نُقْصَانِ الْوَزْنِ كَقَوْلِ أَصْحَابِنَا، وَاضْطَرَبَ فِي الْخَلْطِ يَكُونُ فِيهَا؟ وَقَالَ مَالِكٌ: إِنْ كَانَ فِي الدَّرَاهِمِ خَلْطٌ زُكِّيَتْ بِوَزْنِهَا كُلِّهَا؟ وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، كَمَا قُلْنَا؟ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُسَدَّدٌ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ ثنا مَالِكٌ ثنا مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ أَبِي صَعْصَعَةَ عَنْ أَبِيهِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَيْسَ فِيمَا

دُونَ خَمْسَةِ أَوْسُقٍ صَدَقَةٌ، وَلَا فِي أَقَلَّ مِنْ خَمْسٍ مِنَ الْإِبِلِ الذَّوْدِ صَدَقَةٌ وَلَا فِي أَقَلَّ مِنْ خَمْسِ أَوَاقٍ مِنَ الْوَرِقِ صَدَقَةٌ» .

L10869 We have also narrated it from Ali, from the Prophet (peace and blessings be upon him), as narrated by Humam: Abu Muhammad al-Baji narrated to us, from Abdullah ibn Yunus, from Baqi, from Abu Bakr ibn Abi Shaybah, from Abdullah ibn Numayr, from Abu Ishaq, from Asim ibn Ḍamrah, from Ali, from the Prophet (peace and blessings be upon him), who said: "There is no obligation concerning less than two hundred dirhams."

وَرُوِّينَاهُ أَيْضًا عَنْ عَلِيٍّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا حَدَّثَنَا حُمَامٌ ثنا أَبُو مُحَمَّدٍ الْبَاجِيُّ ثنا عَبْدُ اللَّهِ بْنُ يُونُسَ ثنا بَقِيٌّ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَيْسَ فِي أَقَلَّ مِنْ مِائَتَيْ دِرْهَمٍ شَيْءٌ» .

L10870 Abu Muhammad said: He (peace be upon him) forbade the obligation of zakah on silver amounting to less than five awāqī. Thus, if the quantity decreases—whether slightly or substantially—resulting in less than five awāqī, it is certain that nothing is due. This applies equally whether mixed materials reaching more than five awāqī are combined with it or not, and all opinions contrary to the statement of Allah's Messenger are invalid.

قَالَ أَبُو مُحَمَّدٍ: فَمَنَعَ - عَلَيْهِ السَّلَامُ - مِنْ أَنْ يَجِبَ فِي أَقَلَّ مِنْ خَمْسِ أَوَاقٍ مِنَ الْوَرِقِ صَدَقَةٌ، فَإِذَا نَقَصَتْ - مَا قَلَّ أَوْ كَثُرَ - فِي أَقَلَّ مِنْ خَمْسِ أَوَاقٍ، فَصَحَّ يَقِينًا أَنَّهُ لَا شَيْءَ فِيهَا، وَسَوَاءٌ كَانَ مَعَهَا خَلْطٌ يَبْلُغُ أَزْيَدَ مِنْ خَمْسِ أَوَاقٍ أَوْ لَمْ يَكُنْ، وَسَقَطَ كُلُّ قَوْلٍ مَعَ قَوْلِ رَسُولِ اللَّهِ.

L10871 This is among the matters wherein the Mālikīs opposed a Companion for whom no opposing Companion is known among the Companions (may Allah be pleased with them). As for when mixing does not alter any of silver's boundaries or attributes, it remains silver—like mixing a substance into water without changing its properties. This applies to anything where mixing does not alter its essence—and with Allah, the Exalted, lies success. They differed regarding what exceeds two hundred: It was narrated to us via Abū Bakr ibn Abī Shaybah from ʿAbd al-Raḥīm ibn Sulaymān from ʿĀṣim al-Aḥwal from al-Ḥasan al-Baṣrī, who said: ʿUmar wrote to Abū Mūsā concerning what exceeds two hundred: "For every forty dirhams, one dirham is due." This is the opinion of al-Ḥasan, Makhūl, ʿAṭāʾ, Ṭāwūs, ʿAmr ibn Dīnār, al-Zuhrī—and it is the view upheld by Abū Ḥanīfah and al-Awzāʿī. Ḥammām narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrābī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq narrated from Maʿmar from Abī Isḥāq from ʿĀṣim ibn

وَهَذَا مِمَّا خَالَفَ فِيهِ الْمَالِكِيُّونَ صَاحِبًا لَا يُعْرَفُ لَهُ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ؟ وَأَمَّا إِذَا لَمْ يُغَيِّرِ الْخَلْطُ شَيْئًا مِنْ حُدُودِ الْفِضَّةِ وَصِفَاتِهَا فَهُوَ فِضَّةٌ، كَالْخَلْطِ يَكُونُ فِي الْمَاءِ لَا يُغَيِّرُ شَيْئًا مِنْ صِفَاتِهِ، وَهَكَذَا فِي كُلِّ شَيْءٍ لَمْ يُغَيِّرْ مَا صَارَ فِيهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ؟ وَاخْتَلَفُوا فِيمَا زَادَ عَلَى الْمِائَتَيْنِ -: فَرُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ عَنْ عَبْدِ الرَّحِيمِ بْنِ سُلَيْمَانَ عَنْ عَاصِمٍ الْأَحْوَلِ عَنِ الْحَسَنِ الْبَصْرِيِّ قَالَ: كَتَبَ عُمَرُ إِلَى أَبِي مُوسَى: فِيمَا زَادَ عَلَى الْمِائَتَيْنِ فَفِي كُلِّ أَرْبَعِينَ دِرْهَمًا دِرْهَمٌ وَهُوَ قَوْلُ الْحَسَنِ، وَمَكْحُولٍ، وَعَطَاءٍ، وَطَاوُوسٍ، وَعَمْرِو بْنِ دِينَارٍ، وَالزُّهْرِيِّ - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَالْأَوْزَاعِيُّ؟ وَحَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا

Ḍamrah from ʿAlī ibn Abī Ṭālib, who said: “For two hundred dirhams, five dirhams are due; whatever exceeds this is calculated proportionally.”

عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: فِي مِائَتَيْ دِرْهَمٍ خَمْسَةُ دَرَاهِمَ، فَمَا زَادَ فَبِحِسَابِ ذَلِكَ.

L10872–10873 And through him to Maʿmar from Ayyūb from Nāfiʿ from Ibn ʿUmar, who said: “Is what exceeds two hundred subject to proportional calculation?” This is the opinion of Ibrāhīm al-Nakhaʿī, ʿUmar ibn ʿAbd al-ʿAzīz, Muḥammad ibn Sīrīn, Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, Wakīʿ, Abū Yūsuf, Muḥammad ibn al-Ḥasan, Abī Laylā, and Mālik. Abū Muḥammad said: “The proponents of this view cited as evidence a ḥadīth transmitted through the chain of al-Minhāl ibn al-Jarrāḥ—who is a liar—from Ḥabīb ibn Najīḥ—who is unknown—from ʿUbāda ibn Nuṣayy from Muʿādh ibn Jabal: ’The Messenger of Allāh—peace be upon him—commanded him when he dispatched him to Yemen not to take anything from smaller denominations. When silver amounts to two hundred dirhams, five dirhams, and to take nothing from the excess until it reaches forty dirhams.”’

وَبِهِ إِلَى مَعْمَرٍ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: مَا زَادَ عَلَى الْمِائَتَيْنِ فَبِالْحِسَابِ؟ وَهُوَ قَوْلُ إِبْرَاهِيمَ النَّخَعِيِّ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَمُحَمَّدِ بْنِ سِيرِينَ، وَسُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَوَكِيعٍ. وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَأَبِي لَيْلَى، وَمَالِكٍ؟ قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِحَدِيثٍ مِنْ طَرِيقِ الْمِنْهَالِ بْنِ الْجَرَّاحِ - وَهُوَ كَذَّابٌ - عَنْ حَبِيبِ بْنِ نَجِيحٍ - وَهُوَ مَجْهُولٌ - عَنْ عُبَادَةَ بْنِ نُسَيٍّ عَنْ مُعَاذِ بْنِ جَبَلٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَهُ - حِينَ وَجَّهَهُ إِلَى الْيَمَنِ - أَنْ لَا يَأْخُذَ مِنْ الْكُسُورِ شَيْئًا، إِذَا بَلَغَ الْوَرِقُ مِائَتَيْ دِرْهَمٍ خَمْسَةَ دَرَاهِمَ، وَلَا يَأْخُذُ مِمَّا زَادَ حَتَّى يَبْلُغَ أَرْبَعِينَ دِرْهَمًا» .

L10874 And due to what we have narrated through the chain of Yahya ibn Hamzah from Sulayman ibn Dawud al-Jazari—who is dismissed by consensus as unreliable—from al-Zuhri from Abu Bakr ibn Muhammad ibn Amr ibn Hazm from his father from his grandfather, that the Messenger of Allah—peace and blessings be upon him—said: “For every five awaq, five dirhams are due. What exceeds, then for every forty dirhams, one dirham is due.”

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ حَمْزَةَ عَنْ سُلَيْمَانَ بْنِ دَاوُد الْجَزَرِيِّ - وَهُوَ سَاقِطٌ مُطْرَحٌ بِإِجْمَاعٍ عَنِ الزُّهْرِيِّ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «فِي كُلِّ خَمْسِ أَوَاقٍ خَمْسَةُ دَرَاهِمَ، فَمَا زَادَ فَفِي كُلِّ أَرْبَعِينَ دِرْهَمًا دِرْهَمٌ» .

L10875–10877 And by what we have narrated through the chain of Al-Ḥasan ibn ʿUmarah—who is unanimously regarded as rejected and abandoned by consensus—from Abū Isḥāq, from ʿĀṣim ibn Ḍamrah, from ʿAlī ibn Abī Ṭālib, from the Prophet—peace and blessings be upon him—that he said to him: “O ʿAlī, do you not know that I have exempted the zakat on horses and slaves? As for cattle, camels, and sheep, they are not exempt. Rather, bring one-fortieth from every two hundred dirhams—five dirhams—and from every twenty dinars half a dinar.” Half a dinar; there is nothing due on two hundred

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْحَسَنِ بْنِ عُمَارَةَ - وَهُوَ سَاقِطٌ مَطْرُوحٌ بِإِجْمَاعٍ - عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ لَهُ: «يَا عَلِيُّ، أَمَا عَلِمْتَ أَنِّي عَفَوْتُ عَنْ صَدَقَةِ الْخَيْلِ، وَالرَّقِيقِ، فَأَمَّا الْبَقَرُ وَالْإِبِلُ وَالشَّاءُ فَلَا، وَلَكِنْ هَاتُوا رُبُعَ الْعُشْرِ مِنْ كُلِّ مِائَتَيْ دِرْهَمٍ خَمْسَةُ دَرَاهِمَ، وَمِنْ كُلِّ

dirhams until a full lunar year passes over them. When a year has passed, five dirhams are obligatory. For whatever exceeds that, one dirham is due for every forty dirhams. As narrated by Hammam who said: Abbas narrated to us, Ibn Ayman narrated to us, **I**, Mutallib ibn Shu'ayb al-Misri, narrated to us, Abdullah ibn Salih - the scribe of al-Layth - narrated to us from al-Layth, who said: Yunus narrated to me from Ibn Shihab regarding zakat regulations, from the copy of the Messenger of Allah's document (peace be upon him) concerning zakat, which is preserved with the family of Umar ibn al-Khattab. Salim ibn Abdullah ibn Umar recited it to me, and I memorized it verbatim. He mentioned the zakat for camels, stating: When they reach one hundred and twenty-one, **three three-year-old female camels** are due until they reach one hundred and twenty-nine. Then he said: No zakat is due on silver coins until they amount to two hundred dirhams. When they reach two hundred dirhams, five dirhams are obligatory. Thereafter, for every forty dirhams **exceeding two hundred**, one dirham is due.

عِشْرِينَ دِينَارًا نِصْفُ دِينَارٍ، وَلَيْسَ فِي مِائَتَيْ دِرْهَمٍ شَيْءٌ حَتَّى يَحُولَ عَلَيْهَا الْحَوْلُ، فَإِذَا حَالَ عَلَيْهَا الْحَوْلُ فَفِيهَا خَمْسَةُ دَرَاهِمَ، فَمَا زَادَ فَفِي كُلِّ أَرْبَعِينَ دِرْهَمًا دِرْهَمٌ» وَبِمَا حَدَّثَنَاهُ حُمَامٌ قَالَ: ثنا عَبَّاسٌ ثنا ابْنُ أَيْمَنَ أَنَا مُطَّلِبُ بْنُ شُعَيْبٍ الْمِصْرِيُّ ثنا عَبْدُ اللَّهِ بْنُ صَالِحٍ كَاتِبُ اللَّيْثِ عَنْ اللَّيْثِ قَالَ: حَدَّثَنِي يُونُسُ «عَنْ ابْنِ شِهَابٍ فِي الصَّدَقَةِ نُسْخَةَ كِتَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الصَّدَقَةِ، وَهِيَ عِنْدَ آلِ عُمَرَ بْنِ الْخَطَّابِ، أَقْرَأَنِيهَا سَالِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ، فَوَعَيْتُهَا عَلَى وَجْهِهَا فَذَكَرَ صَدَقَةَ الْإِبِلِ، فَقَالَ فَإِذَا كَانَتْ إِحْدَى وَعِشْرِينَ وَمِائَةً فَفِيهَا ثَلَاثُ بَنَاتِ لَبُونٍ حَتَّى تَبْلُغَ تِسْعًا وَعِشْرِينَ وَمِائَةً» ثُمَّ قَالَ: «لَيْسَ فِي الْوَرِقِ صَدَقَةٌ حَتَّى تَبْلُغَ مِائَتَيْ دِرْهَمٍ، فَإِذَا بَلَغَتْ مِائَتَيْ دِرْهَمٍ فَفِيهَا خَمْسَةُ دَرَاهِمَ، ثُمَّ فِي أَرْبَعِينَ زَادَتْ عَلَى مِائَتَيْ دِرْهَمٍ دِرْهَمٌ» .

L10878–10880 This was also narrated to us by ʿAbdullāh ibn Rabīʿ from ʿAbdullāh ibn Muḥammad ibn ʿUthmān, from Aḥmad ibn Khālid, from ʿAlī ibn ʿAbd al-ʿAzīz, from al-Ḥajjāj ibn al-Minhāl, from ʿAbdullāh ibn ʿUmar al-Numayrī, from Yūnus ibn Yazīd, who said: I heard al-Zuhrī state: "This is a copy of the document of the Messenger of Allah—peace be upon him—regarding obligatory alms (zakāh), preserved by the family of ʿUmar ibn al-Khaṭṭāb. Sālim ibn ʿAbdullāh recited it to me, and I memorized it verbatim. It is the same document ʿUmar ibn ʿAbd al-ʿAzīz transcribed upon his appointment over Medina, directing his officials to implement it." It specifies the alms for camels: "When they number ninety-one, two ḥiqqahs—third-year she-camels both covered by a stallion—are due, until the total reaches one hundred and twenty. At one hundred and thirty, one ḥiqqah and two labūnahs—third-year she-camels—are due, until they reach one hundred and thirty-nine. At one hundred and forty, two ḥiqqahs and one labūnah are due, until they reach one hundred and forty-nine. At one hundred and fifty, three ḥiqqahs are due, until they reach fifty-nine." When the camels reach one hundred and sixty, four three-year-old female camels are due, until they reach one hundred and sixty-nine. When they reach one hundred and seventy, a five-year-old she-

وَحَدَّثَنَاهُ أَيْضًا عَبْدُ اللَّهِ بْنُ رَبِيعٍ قَالَ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ قَالَ: ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا عَبْدُ اللَّهِ بْنُ عُمَرَ النُّمَيْرِيُّ ثنا يُونُسُ بْنُ يَزِيدَ سَمِعْت «الزُّهْرِيَّ قَالَ: هَذِهِ نُسْخَةُ كِتَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الصَّدَقَةِ، وَهِيَ عِنْدَ آلِ عُمَرَ بْنِ الْخَطَّابِ، أَقْرَأَنِيهَا سَالِمُ بْنُ عَبْدِ اللَّهِ فَوَعَيْتُهَا عَلَى وَجْهِهَا، وَهِيَ الَّتِي نَسَخَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ حِينَ أُمِّرَ عَلَى الْمَدِينَةِ، فَأَمَرَ عُمَّالَهُ بِالْعَمَلِ بِهَا، فَذَكَرَ فِيهَا صَدَقَةَ الْإِبِلِ، وَفِيهَا فَإِذَا كَانَتْ إِحْدَى وَتِسْعِينَ فَفِيهَا حِقَّتَانِ طَرُوقَتَا الْفَحْلِ، حَتَّى تَبْلُغَ عِشْرِينَ وَمِائَةً، فَإِذَا كَانَتْ ثَلَاثِينَ وَمِائَةً فَفِيهَا حِقَّةٌ وَابْنَتَا لَبُونٍ، حَتَّى تَبْلُغَ تِسْعًا وَثَلَاثِينَ وَمِائَةً، فَإِذَا كَانَتْ أَرْبَعِينَ وَمِائَةً، فَفِيهَا حِقَّتَانِ وَابْنَةُ لَبُونٍ، حَتَّى تَبْلُغَ تِسْعًا وَأَرْبَعِينَ وَمِائَةً، فَإِذَا كَانَتْ خَمْسِينَ وَمِائَةً فَفِيهَا ثَلَاثُ حِقَاقٍ، حَتَّى تَبْلُغَ تِسْعًا وَخَمْسِينَ وَمِائَةً، فَإِذَا بَلَغَتْ سِتِّينَ وَمِائَةً فَفِيهَا أَرْبَعُ بَنَاتِ لَبُونٍ، حَتَّى

camel and three three-year-old female camels are due, until they reach one hundred and seventy-nine. When they reach one hundred and eighty, two five-year-old she-camels and two three-year-old female camels are due, until they reach one hundred and eighty-nine. When they reach one hundred and ninety, three five-year-old she-camels and one three-year-old female camel are due, until they reach one hundred and ninety-nine. When they reach two hundred, four five-year-old she-camels or five three-year-old female camels are due—whichever [age] is found among them is taken." He mentioned the Zakat on sheep. Al-Zuhri said: "There is no Zakat on silver until it reaches two hundred dirhams. When it reaches two hundred dirhams, five dirhams are due. Then, for every forty dirhams exceeding two hundred, one dirham is due. There is no Zakat on gold until its exchange value reaches two hundred dirhams. When its exchange value reaches two hundred dirhams, five dirhams are due. Then, for every portion of it whose exchange value reaches forty dirhams, one dirham is due, until it reaches forty gold dinars, in which case one dinar is due. Thereafter, whatever exceeds that in gold: for every exchange value of forty dirhams, one dirham is due, and for every forty gold dinars, one dinar is due."

تَبْلُغَ تِسْعًا وَسِتِّينَ وَمِائَةً، فَإِذَا بَلَغَتْ سَبْعِينَ وَمِائَةً فَفِيهَا حِقَّةٌ وَثَلَاثُ بَنَاتِ لَبُونٍ حَتَّى تَبْلُغَ تِسْعًا وَسَبْعِينَ وَمِائَةً، فَإِذَا بَلَغَتْ ثَمَانِينَ وَمِائَةً فَفِيهَا حِقَّتَانِ وَابْنَتَا لَبُونٍ حَتَّى تَبْلُغَ تِسْعًا وَثَمَانِينَ وَمِائَةً، فَإِذَا كَانَتْ تِسْعِينَ وَمِائَةً فَفِيهَا ثَلَاثُ حِقَاقٍ وَابْنَةُ لَبُونٍ حَتَّى تَبْلُغَ تِسْعًا وَتِسْعِينَ وَمِائَةً، فَإِذَا كَانَتْ مِائَتَيْنِ فَفِيهَا أَرْبَعُ حِقَاقٍ، أَوْ خَمْسُ بَنَاتِ لَبُونٍ -: أَيُّ السِّنِينَ وُجِدَتْ فِيهَا أُخِذَتْ» وَذَكَرَ صَدَقَةَ الْغَنَمِ. قَالَ الزُّهْرِيُّ: وَلَيْسَ فِي الرِّقَةِ صَدَقَةٌ حَتَّى تَبْلُغَ مِائَتَيْ دِرْهَمٍ، فَإِذَا بَلَغَتْ مِائَتَيْ دِرْهَمٍ فَفِيهَا خَمْسَةُ دَرَاهِمَ ". ثُمَّ قَالَ: " فِي كُلِّ أَرْبَعِينَ دِرْهَمًا زَادَ عَلَى الْمِائَتَيْ دِرْهَمٍ دِرْهَمٌ؛ وَلَيْسَ فِي الذَّهَبِ صَدَقَةٌ حَتَّى يَبْلُغَ صَرْفُهَا مِائَتَيْ دِرْهَمٍ؛ فَإِذَا بَلَغَ صَرْفُهَا مِائَتَيْ دِرْهَمٍ فَفِيهَا خَمْسَةُ دَرَاهِمَ، ثُمَّ فِي كُلِّ شَيْءٍ مِنْهَا يَبْلُغُ صَرْفُهُ أَرْبَعِينَ دِرْهَمًا دِرْهَمٌ، حَتَّى تَبْلُغَ أَرْبَعِينَ دِينَارًا فَفِيهَا دِينَارٌ، ثُمَّ مَا زَادَ عَلَى ذَلِكَ مِنَ الذَّهَبِ فَفِي كُلِّ صَرْفِ أَرْبَعِينَ دِرْهَمًا دِرْهَمٌ، وَفِي كُلِّ أَرْبَعِينَ دِينَارًا دِينَارٌ "

L10881 Abdullah ibn Rabee' narrated to us: 'Umar ibn 'Abd al-Malik narrated to us, on the authority of Muhammad ibn Bakr, on the authority of Abu Dawud, on the authority of 'Amr ibn 'Awn, who informed us via Abu 'Awanah, from Abu Ishaq al-Sabee'i, from 'Asim ibn Damrah, from 'Ali ibn Abi Talib, who said: The Messenger of Allah (peace be upon him) said: "I have exempted [Zakat on] horses and slaves. So give Zakat on silver: one dirham for every forty dirhams. No Zakat is due on 190 dirhams, but when it reaches 200, five dirhams are due."[24]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا عَمْرُو بْنُ عَوْنٍ أَخْبَرَنَا أَبُو عَوَانَةَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «قَدْ عَفَوْتُ عَنْ الْخَيْلِ وَالرَّقِيقِ، فَهَاتُوا صَدَقَةَ الرِّقَّةِ، مِنْ كُلِّ أَرْبَعِينَ دِرْهَمًا دِرْهَمٌ، وَلَيْسَ فِي تِسْعِينَ وَمِائَةٍ شَيْءٌ، فَإِذَا بَلَغَتْ مِائَتَيْنِ فَفِيهَا خَمْسَةُ دَرَاهِمَ» .

L10882–10884 This is all they have adorned with traditions; have we not investigated it for them more thoroughly than they investigate for themselves? They argued, stating: "Zakat becomes obligatory by consensus on the forty dirhams ex-

هَذَا كُلُّ مَا مَوَّهُوا بِهِ مِنَ الْآثَارِ، قَدْ تَقَصَّيْنَاهُ لَهُمْ أَكْثَرَ مِمَّا يَتَقَصَّوْنَهُ لِأَنْفُسِهِمْ؟ وَاحْتَجُّوا بِأَنْ قَالُوا: قَدْ صَحَّتِ الزَّكَاةُ فِي الْأَرْبَعِينَ الزَّائِدَةِ عَلَى الْمِائَتَيْنِ بِإِجْمَاعٍ، وَاخْتَلَفُوا فِيمَا بَيْنَ

[24] **Hadith references (L10881):** Sunan Abi Dawud 1574; Mishkat al-Masabih 1799.

ceeding two hundred, while they differed regarding what lies between two hundred and two hundred forty dirhams. Therefore, Zakat is not obligatory in that range due to disagreement." They further claimed through analogy: "Since dirhams have a minimum threshold from which Zakat is not taken, and since Zakat recurs on them annually, they resemble livestock. Thus, it becomes obligatory for them to have exempt amounts below the threshold, just as..." In livestock, and it is not permissible to analogize them to fruits and crops, because zakah there is due once in the prescribed period and does not recur, unlike gold and silver or livestock. Is this all they have vehemently argued through their reasoning and analogies? Whatever arguments they have cited from that contain no valid proof for them in any respect – rather, it constitutes proof against them, as we will clarify, God, the Exalted, willing. As for the hadith of Mu'adh, it is rejected and discarded because it comes from a lying fabricator of hadiths through an unknown narrator. As for the hadith of Abu Bakr ibn 'Amr ibn Hazm, it is a mursal narration – and no valid proof exists in a mursal report. Moreover, its chain includes Sulayman ibn Dawud al-Jazari, who is himself rejected and discarded.

L10885–10887 Moreover, if it were authentic, the statement of the Messenger of Allah—peace and blessings be upon him—"On silver, a quarter of a tenth [2.5%] is due," would constitute an addition to this report, and such additions must not be omitted. For this report merely stipulates one dirham for every forty dirhams, without negating Zakat liability between forty and two hundred dirhams. As for the ḥadīth of al-Ḥasan ibn 'Umārah, it is invalidated due to the consensus on the rejection of al-Ḥasan ibn 'Umārah's reliability. Even if it were authentic, they would have opposed him because they maintain that Zakat is obligatory on grazing horses, horses, and enslaved people acquired for trade—whereas this report wholly exempts Zakat on all these categories. Who behaves worse than one who cites a report that neither substantiates his claim nor aligns with its explicit text? Were this report authentic, the Prophet's statement—peace be upon him—"On silver, a quarter of a tenth is due," would stand as an indispensable addition. As for al-Zuhrī's ḥadīth, it is mursal (with an interrupted chain), and mursal reports hold no authority. The rulings on silver and gold Zakat within it merely reflect al-Zuhrī's own

الْمِائَتَيْنِ وَبَيْنَ الْأَرْبَعِينَ، فَلَا تَجِبُ فِيهَا زَكَاةٌ بِاخْتِلَافٍ؟ وَقَالُوا مِنْ جِهَةِ الْقِيَاسِ: لَمَّا كَانَتْ الدَّرَاهِمُ لَهَا نِصَابٌ لَا تُؤْخَذُ الزَّكَاةُ مِنْ أَقَلَّ مِنْهُ، وَكَانَتْ الزَّكَاةُ تَتَكَرَّرُ فِيهَا كُلَّ عَامٍ -: أَشْبَهَتْ الْمَوَاشِيَ؛ فَوَجَبَ أَنْ يَكُونَ فِيهَا أَوْقَاصٌ كَمَا فِي الْمَوَاشِي وَلَمْ يَجُزْ أَنْ تُقَاسَ عَلَى الثِّمَارِ وَالزَّرْعِ؛ لِأَنَّ الزَّكَاةَ هُنَالِكَ مَرَّةٌ فِي الدَّهْرِ لَا تَتَكَرَّرُ، بِخِلَافِ الْعَيْنِ وَالْمَاشِيَةِ؟ هَذَا كُلُّ مَا شَغَبُوا بِهِ مِنْ نَظَرٍ وَقِيَاسٍ؟ وَكُلُّ مَا احْتَجُّوا بِهِ مِنْ ذَلِكَ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ؛ بَلْ هُوَ حُجَّةٌ عَلَيْهِمْ، عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى -: أَمَّا حَدِيثُ مُعَاذٍ فَسَاقِطٌ مُطْرَحٌ؛ لِأَنَّهُ عَنْ كَذَّابٍ وَاضِعٍ لِلْأَحَادِيثِ، عَنْ مَجْهُولٍ -: وَأَمَّا حَدِيثُ أَبِي بَكْرِ بْنِ عَمْرِو بْنِ حَزْمٍ فَصَحِيفَةٌ مُرْسَلَةٌ؛ وَلَا حُجَّةَ فِي مُرْسَلٍ؛ وَأَيْضًا فَإِنَّهَا عَنْ سُلَيْمَانَ بْنِ دَاوُد الْجَزَرِيِّ، وَهُوَ سَاقِطٌ مُطْرَحٌ.

ثُمَّ لَوْ صَحَّ كَانَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فِي الرِّقَةِ رُبْعُ الْعُشْرِ» زَائِدًا عَلَى هَذَا الْخَبَرِ، وَالزِّيَادَةُ لَا يَحِلُّ تَرْكُهَا؛ لِأَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ إلَّا أَنَّ فِي كُلِّ أَرْبَعِينَ دِرْهَمًا دِرْهَمًا فَقَطْ، وَلَيْسَ فِيهِ أَنْ لَا زَكَاةَ فِيمَا بَيْنَ الْمِائَتَيْنِ وَبَيْنَ الْأَرْبَعِينَ -: وَأَمَّا حَدِيثُ الْحَسَنِ بْنِ عُمَارَةَ فَسَاقِطٌ، لِلِاتِّفَاقِ عَلَى سُقُوطِ الْحَسَنِ بْنِ عُمَارَةَ وَلَوْ صَحَّ لَكَانُوا قَدْ خَالَفُوهُ؛ فَإِنَّهُمْ يَرَوْنَ الزَّكَاةَ فِي الْخَيْلِ السَّائِمَةِ، وَفِي الْخَيْلِ، وَالرَّقِيقِ الْمُتَّخَذِينَ لِلتِّجَارَةِ، وَفِي هَذَا الْخَبَرِ سُقُوطُ الزَّكَاةِ عَنْ كُلِّ ذَلِكَ جُمْلَةً، فَمَنْ أَقْبَحُ سِيرَةً مِمَّنْ يَحْتَجُّ بِخَبَرٍ لَيْسَ فِيهِ بَيَانُ مَا يَدَّعِي، وَهُوَ يُخَالِفُهُ فِي نَصِّ مَا فِيهِ؟ وَلَوْ صَحَّ هَذَا الْخَبَرُ لَكَانَ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «فِي الرِّقَةِ رُبْعُ الْعُشْرِ» زَائِدًا، وَالزِّيَادَةُ لَا يَجُوزُ تَرْكُهَا؟ -: وَأَمَّا حَدِيثُ الزُّهْرِيِّ فَمُرْسَلٌ أَيْضًا، وَلَا حُجَّةَ فِي مُرْسَلٍ؛ وَالَّذِي فِيهِ مِنْ حُكْمِ زَكَاةِ الْوَرِقِ، وَالذَّهَبِ

words, as previously cited from al-Ḥajjāj ibn al-Minhāl's narration. What is utterly astonishing is their neglect of the explicit rulings in the scroll transmitted by al-Zuhrī regarding the attributes... Zakat on camels.

فَإِنَّمَا هُوَ كَلَامُ الزُّهْرِيِّ، كَمَا أَوْرَدْنَاهُ آنِفًا مِنْ رِوَايَةِ الْحَجَّاجِ بْنِ الْمِنْهَالِ؟ وَالْعَجَبُ كُلَّ الْعَجَبِ تَرْكُهُمْ مَا فِي الصَّحِيفَةِ الَّتِي رَوَاهَا الزُّهْرِيُّ نَصًّا مِنْ صِفَةِ زَكَاةِ الْإِبِلِ.

L10888 Their argument relies on what does not belong to it, and they opposed al-Zuhrī regarding his mention of paying zakah on gold based on its value. This amounts to playing fast and loose with religion, truths, and intellects. As for the ḥadīth of ʿAlī—with which we concluded—it is authentic with a connected chain. There is no proof in it for them; rather, it constitutes evidence against them, for it states: "I have exempted from horses and enslaved people," while they hold that zakah applies to pastured horses, those intended for trade, and enslaved people acquired for commerce.

وَاحْتِجَاجُهُمْ بِمَا لَيْسَ مِنْهَا وَخَالَفُوا الزُّهْرِيَّ أَيْضًا فِيمَا ذَكَرَ مِنْ زَكَاةِ الذَّهَبِ بِالْقِيمَةِ وَهَذَا تَلَاعُبٌ بِالدِّيَانَةِ وَبِالْحَقَائِقِ وَبِالْعُقُولِ -: وَأَمَّا حَدِيثُ عَلِيٍّ - الَّذِي خَتَمْنَا بِهِ - فَصَحِيحٌ مُسْنَدٌ، وَلَا حُجَّةَ لَهُمْ فِيهِ، بَلْ هُوَ حُجَّةٌ عَلَيْهِمْ، لِأَنَّ فِيهِ «قَدْ عَفَوْتُ عَنْ الْخَيْلِ وَالرَّقِيقِ» وَهُمْ يَرَوْنَ الزَّكَاةَ فِي الْخَيْلِ السَّائِمَةِ، وَالَّتِي لِلتِّجَارَةِ، وَفِي الرَّقِيقِ الَّذِي لِلتِّجَارَةِ.

L10889 Among the reprehensible acts is their reliance on a hadith they are the first to contradict in its explicit wording - a text containing no evidence for their claim - for two reasons: First, its explicit text states: "Give the Zakat on silver coins: one dirham for every forty dirhams. There is nothing due on one hundred and ninety dirhams. When it reaches two hundred dirhams, five dirhams are due." Indeed, this is correct, for two hundred dirhams comprise five sets of forty, thus requiring five dirhams. We do not deny that one dirham is due for every additional forty dirhams. However, this narration does not waive Zakat for amounts less than forty dirhams added beyond two hundred, thus invalidating their argument in this matter. Furthermore, they assert: "When a Companion narrates a hadith then contradicts it, this indicates the weakness of that narration."

وَمِنْ الشَّنَاعَةِ احْتِجَاجُهُمْ بِحَدِيثٍ هُمْ أَوَّلُ مُخَالِفٍ لَهُ فِي نَصِّ مَا فِيهِ وَلَا دَلِيلَ فِيهِ عَلَى مَا يَقُولُونَ لِوَجْهَيْنِ -: أَحَدُهُمَا أَنَّ نَصَّهُ «هَاتُوا صَدَقَةَ الرِّقَةِ مِنْ كُلِّ أَرْبَعِينَ دِرْهَمًا دِرْهَمٌ، وَلَيْسَ فِي تِسْعِينَ وَمِائَةٍ شَيْءٌ فَإِذَا بَلَغَتْ مِائَتَيْ دِرْهَمٍ فَفِيهَا خَمْسَةُ دَرَاهِمَ» . وَنَعَمْ، هَكَذَا هُوَ، لِأَنَّ فِي الْمِائَتَيْنِ أَرْبَعِينَ مُكَرَّرَةً خَمْسَ مَرَّاتٍ، فَفِيهَا خَمْسَةُ دَرَاهِمَ، وَنَحْنُ لَا نُنْكِرُ أَنَّ فِي أَرْبَعِينَ دِرْهَمًا [زَائِدًا] دِرْهَمٌ، وَلَيْسَ فِي هَذَا الْخَبَرِ إسْقَاطُ الزَّكَاةِ عَنْ أَقَلَّ مِنْ أَرْبَعِينَ زَائِدَةً عَلَى الْمِائَتَيْنِ فَلَا حُجَّةَ لَهُمْ فِيهِ -: وَأَيْضًا فَهُمْ يَقُولُونَ: إنَّ الصَّاحِبَ إذَا رَوَى خَبَرًا ثُمَّ خَالَفَهُ فَهُوَ دَلِيلٌ عَلَى ضَعْفِ ذَلِكَ الْخَبَرِ.

L10890–10892 Just as they claimed in the ḥadīth of Abū Hurayrah regarding washing a vessel seven times after a dog's lapping, it has been authentically established from ʿAlī—as we mentioned at the outset of this issue—that whatever exceeds two hundred dirhams requires zakāh calculated per two hundred. Had ʿAlī's narration included their asserted exemption of zakāh for the amount between two hundred and the excess forty, his ruling imposing zakāh on that—by their two principles—would invalidate what he transmitted. Yet they are those who engage in sophistry? Abū Muḥammad said: Thus, all the narrations they obfuscated have been invalidated, and the proof has become

كَمَا ادَّعَوْا فِي حَدِيثِ أَبِي هُرَيْرَةَ فِي غَسْلِ الْإِنَاءِ مِنْ وُلُوغِ الْكَلْبِ سَبْعًا وَقَدْ صَحَّ عَنْ عَلِيٍّ - كَمَا ذَكَرْنَا فِي صَدْرِ هَذِهِ الْمَسْأَلَةِ أَنَّ مَا زَادَ عَلَى مِائَتَيْ دِرْهَمٍ فَالزَّكَاةُ فِيهِ بِحِسَابِ الْمِائَتَيْنِ، فَلَوْ كَانَ فِي رِوَايَةِ عَلِيٍّ مَا يَدَّعُونَهُ مِنْ إسْقَاطِ الزَّكَاةِ عَمَّا بَيْنَ الْمِائَتَيْنِ وَالْأَرْبَعِينَ الزَّائِدَةِ لَكَانَ قَوْلُ عَلِيٍّ بِإِيجَابِ الزَّكَاةِ فِي ذَلِكَ عَلَى أَصْلِهِمَا مُسْقِطًا لِمَا رَوَى مِنْ ذَلِكَ وَالْقَوْمُ مُتَلَاعِبُونَ؟ قَالَ أَبُو مُحَمَّدٍ: فَسَقَطَ كُلُّ مَا مَوَّهُوا بِهِ مِنْ الْآثَارِ، وَعَادَتْ حُجَّةً

a rebuttal against them, as we have cited. As for their claim that zakāh on the forty in excess over two hundred is established by consensus... They differed regarding amounts less than forty dirhams, and zakah is not obligatory in such cases due to disagreement. This would have been a valid argument had there been no explicit text obligating zakah in such cases. However, this reasoning undermines their own positions regarding zakah on horses, cattle, agricultural produce below five wasqs [a volumetric measure], jewelry, and other matters – invalidating most of their legal doctrines.

L10893–10895 As for their analogy of zakat on monetary wealth to zakat on livestock based on the recurrence of charity obligation every year—unlike zakat on crops—this constitutes an invalid analogy. If analogy were valid, comparing monetary wealth to crops would hold greater validity since livestock are living creatures, while monetary wealth, crops, and dates are non-living entities. Thus, analogizing zakat obligations between non-living entities is more valid than comparing non-living entities to rulings for living creatures. Moreover, crops, dates, and monetary wealth all originate from the earth, unlike livestock. Therefore, analogizing earth-derived substances to other earth-derived entities holds greater validity than comparing them to non-earth-derived entities. Additionally, they set the minimum taxable amount (nisab) for silver at thirty-nine dirhams, whereas no livestock category has a nisab of thirty-nine. Thus the invalidity of their analogy becomes evident (and with Allah the Exalted lies all success), nullifying all their specious reasoning. We then examined the narration attributed to Umar (may Allah be pleased with him) matching their position and found it unreliable, as it is transmitted through al-Hasan from Umar—though al-Hasan was born only two years before the end of Umar's caliphate. This leaves the narrations from Ali and Ibn Umar (may Allah be pleased with them) aligning with our position, with no valid contradiction reported from any Companions (may Allah be pleased with them). Abu Muhammad said: Since proponents of this view lack any valid foundation, we investigated the second opinion and found what Abd al-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated, al-Farbari narrated, al-Bukhari narrated, Muhammad ibn Abdullah al-Ansari reported from his father Abdullah ibn al-Muthanna,

عَلَيْهِمْ كَمَا أَوْرَدْنَا وَأَمَّا قَوْلُهُمْ: قَدْ صَحَّتْ الزَّكَاةُ فِي الْأَرْبَعِينَ الزَّائِدَةِ عَلَى الْمِائَتَيْنِ بِإِجْمَاعٍ، وَاخْتَلَفُوا فِيمَا دُونَ الْأَرْبَعِينَ، فَلَا تَجِبُ الزَّكَاةُ فِيهَا بِاخْتِلَافٍ -: فَإِنَّ هَذَا كَانَ يَكُونُ احْتِجَاجًا صَحِيحًا لَوْ لَمْ يَأْتِ نَصٌّ بِإِيجَابِ الزَّكَاةِ فِي ذَلِكَ، وَلَكِنَّ هَذَا الِاسْتِدْلَالَ يَعُودُ عَلَيْهِمْ فِي قَوْلِهِمْ فِي زَكَاةِ الْخَيْلِ وَزَكَاةِ الْبَقَرِ وَمَا دُونَ خَمْسَةِ أَوْسُقٍ مِمَّا أَخْرَجَتْ الْأَرْضُ وَالْحُلِيُّ وَغَيْرُ ذَلِكَ، وَيَهْدِمُ عَلَيْهِمْ أَكْثَرَ مَذَاهِبِهِمْ.

وَأَمَّا قِيَاسُهُمْ زَكَاةَ الْعَيْنِ عَلَى زَكَاةِ الْمَوَاشِي بِعِلَّةِ تَكَرُّرِ الصَّدَقَةِ فِي كُلِّ ذَلِكَ كُلَّ عَامٍ بِخِلَافِ زَكَاةِ الزَّرْعِ -: فَقِيَاسٌ فَاسِدٌ، بَلْ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ قِيَاسُ الْعَيْنِ عَلَى الزَّرْعِ أَوْلَى لِأَنَّ الْمَوَاشِيَ حَيَوَانٌ، وَالْعَيْنُ، وَالزَّرْعُ، وَالتَّمْرُ لَيْسَ شَيْءٌ مِنْ ذَلِكَ حَيَوَانًا، فَقِيَاسُ زَكَاةِ مَا لَيْسَ حَيًّا عَلَى زَكَاةِ مَا لَيْسَ حَيًّا أَوْلَى مِنْ قِيَاسِ مَا لَيْسَ حَيًّا عَلَى حُكْمِ الْحَيِّ؟ . وَأَيْضًا - فَإِنَّ الزَّرْعَ، وَالتَّمْرَ، وَالْعَيْنَ كُلَّهَا خَارِجٌ مِنْ الْأَرْضِ، وَلَيْسَ الْمَاشِيَةُ كَذَلِكَ، فَقِيَاسُ مَا خَرَجَ مِنْ الْأَرْضِ عَلَى مَا خَرَجَ مِنْ الْأَرْضِ أَوْلَى مِنْ قِيَاسِهِ عَلَى مَا لَمْ يَخْرُجْ مِنْ الْأَرْضِ؟ وَأَيْضًا - فَإِنَّهُمْ جَعَلُوا وَقْصَ الْوَرِقِ تِسْعَةً وَثَلَاثِينَ دِرْهَمًا، وَلَيْسَ فِي شَيْءٍ مِنْ الْمَاشِيَةِ وَقْصٌ مِنْ تِسْعَةٍ وَثَلَاثِينَ، فَظَهَرَ فَسَادُ قِيَاسِهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - فَسَقَطَ كُلُّ مَا مَوَّهُوا بِهِ؟ ثُمَّ وَجَدْنَا الرِّوَايَةَ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - بِمِثْلِ قَوْلِهِمْ لَا تَصِحُّ، لِأَنَّهَا عَنْ الْحَسَنِ عَنْ عُمَرَ، وَالْحَسَنُ لَمْ يُولَدْ إلَّا لِسَنَتَيْنِ بَاقِيَتَيْنِ مِنْ خِلَافَةِ عُمَرَ، فَبَقِيَتْ الرِّوَايَةُ عَنْ عَلِيٍّ، وَابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - بِمِثْلِ قَوْلِنَا، وَلَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافٌ لِذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ: فَإِذْ لَمْ يَبْقَ لِأَهْلِ هَذَا الْقَوْلِ مُتَعَلَّقٌ نَظَرْنَا فِي الْقَوْلِ الثَّانِي -: فَوَجَدْنَا مَا حَدَّثَنَاهُ

from Thumamah ibn Anas ibn Malik, that Anas narrated: Abu Bakr al-Siddiq wrote to him this... In the name of Allah, the Most Gracious, the Most Merciful. This is the ordained alms obligation that Allah's Messenger—peace and blessings be upon him—established when he directed his letter to Bahrain. He mentioned the Hadith, within which: «On silver, one-fortieth is due. If there is only one hundred and ninety, nothing is obligatory unless its owner wishes to give.»

عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفِرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْأَنْصَارِيُّ قَالَ حَدَّثَنِي أَبِي هُوَ عَبْدُ اللَّهِ بْنُ الْمُثَنَّى - ثنا ثُمَامَةُ بْنُ أَنَسِ بْنِ مَالِكٍ أَنَّ أَنَسًا حَدَّثَهُ: أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ كَتَبَ لَهُ هَذَا الْكِتَابَ لَمَّا وَجَّهَهُ إِلَى الْبَحْرَيْنِ " بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ، هَذِهِ فَرِيضَةُ الصَّدَقَةِ الَّتِي فَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " فَذَكَرَ الْحَدِيثَ وَفِيهِ «وَفِي الرِّقَةِ رُبُعُ عُشْرِهَا فَإِنْ لَمْ تَكُنْ إِلَّا تِسْعِينَ وَمِائَةً فَلَيْسَ فِيهَا شَيْءٌ، إِلَّا أَنْ يَشَاءَ رَبُّهَا» .

L10896 The Messenger of Allah—may Allah's peace and blessings be upon him—obligated charity in al-raqabah, which is silver, at a universal rate of one-quarter of one-tenth, applying generally without exception except for amounts less than five awaq. What remains beyond the zakat obligation in it may not have any portion excluded under any circumstance—and with Allah, the Exalted, lies success.

فَأَوْجَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الصَّدَقَةَ فِي الرَّقَبَةِ، وَهِيَ الْوَرِقُ، رُبُعُ الْعُشْرِ عُمُومًا لَمْ يَخُصَّ مِنْ ذَلِكَ شَيْئًا إِلَّا مَا كَانَ أَقَلَّ مِنْ خَمْسِ أَوَاقٍ، فَبَقِيَ مَا زَادَ عَلَى وُجُوبِ الزَّكَاةِ فِيهِ، فَلَا يَجُوزُ تَخْصِيصُ شَيْءٍ مِنْهُ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

L10897 ## Zakat of gold

[زَكَاةُ الذَّهَبِ]

L10898 ## Issue: There is no Zakat due on less than forty mithqal of gold.

[مَسْأَلَةٌ لَا زَكَاةَ فِي أَقَلَّ مِنْ أَرْبَعِينَ مِثْقَالًا مِنْ الذَّهَبِ]

L10899 Zakat on Gold 683 - Issue: A group holds that no Zakat is due on less than forty mithqals (equivalent to one dinar) of pure, unalloyed gold according to Meccan weight - whether in minted coins, jewelry, gold dust, or worked form. When it reaches forty mithqals (as stated) and remains in a single Muslim's uninterrupted possession for a complete lunar year, a quarter of a tenth of it (one mithqal) becomes due. This applies annually. For amounts exceeding this, when another forty mithqals are completed and remain for a full year, an additional dinar is due. This applies perpetually: for every forty additional dinars, one dinar is due, with nothing required for the excess until completing another forty dinars. If gold is mixed without altering its color, weight, or edge, the ruling regarding the mixture is nullified. If

[زَكَاةُ الذَّهَبِ] ٦٨٣ - مَسْأَلَةٌ: قَالَتْ طَائِفَةٌ: لَا زَكَاةَ فِي أَقَلَّ مِنْ أَرْبَعِينَ مِثْقَالًا مِنْ الذَّهَبِ الصَّرْفِ الَّذِي لَا يُخَالِطُهُ شَيْءٌ بِوَزْنِ مَكَّةَ، سَوَاءٌ: مَسْكُوكُهُ، وَحُلِيُّهُ، وَنَقَارُهُ وَمَصُوغُهُ، فَإِذَا بَلَغَ أَرْبَعِينَ مِثْقَالًا - كَمَا ذَكَرْنَا - وَأَتَمَّ فِي مِلْكِ الْمُسْلِمِ الْوَاحِدِ عَامًا قَمَرِيًّا مُتَّصِلًا فَفِيهِ رُبُعُ عُشْرِهِ، وَهُوَ مِثْقَالٌ، وَهَكَذَا فِي كُلِّ عَامٍ، وَفِي الزِّيَادَةِ عَلَى ذَلِكَ إِذَا أَتَمَّ أَرْبَعِينَ مِثْقَالًا أُخْرَى وَبَقِيَتْ عَامًا كَامِلًا دِينَارٌ آخَرُ، وَهَكَذَا أَبَدًا فِي كُلِّ أَرْبَعِينَ دِينَارًا زَائِدَةً دِينَارٌ، وَلَيْسَ فِي الزِّيَادَةِ شَيْءٌ زَائِدٌ حَتَّى تَتِمَّ أَرْبَعِينَ دِينَارًا؟ فَإِنْ كَانَ

the remaining quantity reaches the aforementioned amount, Zakat becomes obligatory; otherwise, it does not.

الذَّهَبُ خُلِطَ لَمْ يُغَيِّرْ لَوْنُهُ أَوْ رزَانَتُهُ أَوْ حَدُّهُ سَقَطَ حُكْمُ الْخَلْطِ، فَإِنْ كَانَ فِيمَا بَقِيَ الْعَدَدُ الْمَذْكُورُ زُكِّيَ. وَإِلَّا فَلَا.

L10900–10902 If the number mentioned decreases—whether the decrease is small or large—there is no Zakat due on it. There is disagreement regarding much of what we have mentioned, which we will discuss—if Allah, the Exalted, wills? The majority of people have affirmed the obligation of Zakat on twenty dinars, not less. It has been transmitted to us from ʻUmar ibn ʻAbd al-ʻAzīz through the chain: from Aḥmad ibn Muḥammad ibn al-Jasūr, from Muḥammad ibn ʻĪsā, from ʻAlī ibn ʻAbd al-ʻAzīz, from Abū ʻUbayd al-Qāsim ibn Sallām, from Saʻīd ibn ʻUfayr, from… Malik ibn Anas from Yahya ibn Sa'id al-Ansari from Zuraiq ibn Hayyan, who said: Umar ibn Abd al-Aziz wrote to me: "Assess those Muslims who pass by you and take from their apparent wealth - from what they circulate in commercial transactions - one dinar from every forty dinars. If the amount is less, calculate proportionally until it reaches twenty dinars. If it falls short by one-third of a dinar, leave it."

فَإِنْ نَقَصَ مِنْ الْعَدَدِ الْمَذْكُورِ - مَا قَلَّ أَوْ كَثُرَ - فَلَا زَكَاةَ فِيهِ، وَفِي كَثِيرٍ مِمَّا ذَكَرْنَا اخْتِلَافٌ نَذْكُرُهُ - إنْ شَاءَ اللَّهُ تَعَالَى؟ قَالَ جُمْهُورُ النَّاسِ: بِإِيجَابِ الزَّكَاةِ فِي عِشْرِينَ دِينَارًا لَا أَقَلَّ -: وَرُوِّينَا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ مِمَّا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا مُحَمَّدُ بْنُ عِيسَى ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا أَبُو عُبَيْدٍ الْقَاسِمُ بْنُ سَلَّامٍ ثنا سَعِيدُ بْنُ عُفَيْرٍ عَنْ مَالِكِ بْنِ أَنَسٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ زُرَيْقِ بْنِ حَيَّانَ قَالَ: كَتَبَ إِلَيَّ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: انْظُرْ مَنْ مَرَّ بِكَ مِنْ الْمُسْلِمِينَ فَخُذْ مِمَّا ظَهَرَ مِنْ أَمْوَالِهِمْ مِمَّا يُدِيرُونَ فِي التِّجَارَاتِ مِنْ كُلِّ أَرْبَعِينَ دِينَارًا دِينَارًا، وَمَا نَقَصَ فَبِحِسَابِ ذَلِكَ، حَتَّى تَبْلُغَ عِشْرِينَ دِينَارًا، فَإِنْ نَقَصَتْ ثُلُثَ دِينَارٍ فَدَعْهَا قَالَ أَبُو مُحَمَّدٌ: فَهَذَا عُمَرُ بْنُ عَبْدِ الْعَزِيزِ يَرَى فِي الذَّهَبِ أَنَّ فِيهَا الزَّكَاةَ وَإِنْ نَقَصَتْ، فَإِنْ نَقَصَتْ ثُلُثَ دِينَارٍ فَلَا صَدَقَةَ فِيهَا؟ وَقَالَ مَالِكٌ: إنْ نَقَصَتْ نُقْصَانًا تَجُوزُ بِهِ جَوَازَ الْمُوَازَنَةِ زُكِّيَتْ، وَإِلَّا فَلَا، وَقَالَ: إنْ كَانَ فِي الدَّنَانِيرِ الذَّهَبِ وَحُلِيِّ الذَّهَبِ خَلْطٌ زَكَّى الدَّنَانِيرَ بِوَزْنِهَا وَقَالَ الشَّافِعِيُّ: لَا يُزَكَّى إلَّا مَا فَضَلَ عَنْ الْخَلْطِ مِنْ الذَّهَبِ الْمَحْضِ، وَلَا يُزَكَّى مَا نَقَصَ عَنْ عِشْرِينَ دِينَارًا، وَلَا بِمَا كَثُرَ؟ وَقَالَ أَبُو حَنِيفَةَ، وَغَيْرُهُ: الزَّكَاةُ فِي عِشْرِينَ دِينَارًا نِصْفُ دِينَارٍ، فَإِنْ زَادَتْ فَلَا صَدَقَةَ فِيهَا حَتَّى تَبْلُغَ الزِّيَادَةُ أَرْبَعَةَ دَنَانِيرَ، فَإِذَا زَادَتْ أَرْبَعَةَ دَنَانِيرَ فَفِيهَا رُبْعُ عُشْرِهَا، وَهَكَذَا أَبَدًا.

Abu Muhammad said: "This shows Umar ibn Abd al-Aziz maintains that zakat is due on gold even when diminished, but if diminished by a third of a dinar, there is no charity obligation?"

Malik said: "If the shortfall is within the permissible tolerance of measurement, zakat is due; otherwise, it is not." He said: "If gold coins are mixed with gold jewelry, pay zakat on the coins according to their weight."

Al-Shafi'i said: "Zakat is only obligatory on the surplus of pure gold beyond the alloyed mixture. No zakat is due on what falls below twenty dinars, nor on what is abundant."

Abu Hanifah and others said: "The zakat on twenty dinars is half a dinar. If the amount increases, no zakat is due on the increase until it reaches four dinars. When the increase reaches four dinars, pay a quarter of a tenth of it as zakat, continuing this calculation indefinitely."

L10903–10905 Malik and al-Shāfiʻī said: Whatever exceeds—whether small or large—requires a quarter of a tenth (2.5%) of it? We were narrated from some

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: مَا زَادَ - قَلَّ أَوْ كَثُرَ - فَفِيهِ رُبْعُ عُشْرِهِ؟ وَرُوِّينَا عَنْ بَعْضِ التَّابِعِينَ أَنَّهُ لَا زَكَاةَ فِيمَا زَادَ حَتَّى تَبْلُغَ الزِّيَادَةُ عِشْرِينَ دِينَارًا وَهَكَذَا أَبَدًا وَرُوِّينَا عَنِ الزُّهْرِيِّ وَعَطَاءٍ: أَنَّ الزَّكَاةَ إِنَّمَا تَجِبُ فِي الذَّهَبِ بِالْقِيمَةِ، كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا عَبْدُ اللَّهِ بْنُ عُمَرَ النُّمَيْرِيُّ ثنا يُونُسُ بْنُ يَزِيدَ الْأَيْلِيُّ قَالَ: سَمِعْتُ الزُّهْرِيَّ يَقُولُ: لَيْسَ فِي الذَّهَبِ صَدَقَةٌ حَتَّى يَبْلُغَ صَرْفُهَا مِائَتَيْ دِرْهَمٍ، فَإِذَا بَلَغَ صَرْفُهَا مِائَتَيْ دِرْهَمٍ فَفِيهَا خَمْسَةُ دَرَاهِمَ، ثُمَّ فِي كُلِّ شَيْءٍ مِنْهَا يَبْلُغُ صَرْفُهُ أَرْبَعِينَ دِرْهَمًا دِرْهَمٌ، حَتَّى تَبْلُغَ أَرْبَعِينَ دِينَارًا، فَفِيهَا دِينَارٌ، ثُمَّ مَا زَادَ عَلَى ذَلِكَ مِنَ الذَّهَبِ فَفِي صَرْفِ كُلِّ أَرْبَعِينَ دِرْهَمًا دِرْهَمٌ، وَفِي كُلِّ أَرْبَعِينَ دِينَارًا دِينَارٌ.

Followers that there is no zakāt on the excess until the increase reaches twenty dinars, and this applies perpetually. We were narrated from al-Zuhrī and ʿAṭāʾ that zakāt is only obligatory on gold according to its value, as narrated to us by ʿAbdullāh ibn Rabīʿ, from ʿAbdullāh ibn Muḥammad ibn ʿUthmān, from Aḥmad ibn Khālid, from ʿAlī ibn ʿAbd al-ʿAzīz, from al-Ḥajjāj ibn al-Minhāl, from ʿAbdullāh ibn ʿUmar al-Numayrī, from Yūnus ibn Yazīd al-Aylī, who said: I heard al-Zuhri say: There is no Zakat on gold until its equivalent value reaches two hundred dirhams. When its equivalent value reaches two hundred dirhams, five dirhams are due. Then, for every portion of it reaching forty dirhams in equivalent value, one dirham is due, until it reaches forty dinars, at which point one dinar is due. Thereafter, whatever exceeds that in gold - for every forty dirhams in equivalent value, one dirham is due, and for every forty dinars, one dinar is due.

حَدَّثَنَا حُمَامُ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: قَالَ عَطَاءٌ، وَعَمْرُو بْنُ دِينَارٍ: لَا يَكُونُ فِي مَالٍ زَكَاةٌ حَتَّى يَبْلُغَ عِشْرِينَ دِينَارًا، فَإِذَا بَلَغَ عِشْرِينَ دِينَارًا فَفِيهَا نِصْفُ دِينَارٍ، ثُمَّ فِي كُلِّ أَرْبَعَةِ دَنَانِيرَ يَزِيدُهَا الْمَالُ دِرْهَمٌ، حَتَّى يَبْلُغَ الْمَالُ أَرْبَعِينَ دِينَارًا، فَفِي كُلِّ أَرْبَعِينَ دِينَارًا دِينَارٌ.

L10906 Humam narrated to us: Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabari narrated to us, Abd al-Razzaq narrated from Ibn Jurayj, who said: Ata' and Amr ibn Dinar said: There is no zakat due on wealth until it reaches twenty dinars. When it reaches twenty dinars, half a dinar is due. Then, for every four additional dinars in the wealth, a dirham is due, until the wealth reaches forty dinars, at which point one dinar is due for every forty dinars.

قَالَ ابْنُ جُرَيْجٍ: فَلَمَّا كَانَ بَعْدَ ذَلِكَ بِحِينٍ قُلْتُ لِعَطَاءٍ: لَوْ كَانَ لِرَجُلٍ تِسْعَةَ عَشَرَ دِينَارًا لَيْسَ لَهُ غَيْرُهَا وَالصَّرْفُ اثْنَا عَشَرَ أَوْ ثَلَاثَةَ عَشَرَ بِدِينَارٍ، فِيهَا صَدَقَةٌ؟ قَالَ: نَعَمْ، إِذَا كَانَتْ لَوْ صُرِفَتْ بَلَغَتْ مِائَتَيْ دِرْهَمٍ، إِنَّمَا كَانَتْ إِذْ ذَلِكَ الْوَرِقَ وَلَمْ يَكُنْ ذَهَبٌ وَمِمَّنْ قَالَ -: بِأَنْ لَا زَكَاةَ فِي الذَّهَبِ إِلَّا بِقِيمَةِ مَا يَبْلُغُ مِائَتَيْ دِرْهَمٍ فَصَاعِدًا مِنَ الْوَرِقِ -: سُلَيْمَانُ بْنُ حَرْبٍ الْوَاشِحِيُّ.

L10907 Ibn Jurayj said: After some time had passed, I said to ʿAṭāʾ: If a man possesses nineteen dinars—and he possesses nothing else—while the exchange rate is twelve or thirteen dirhams per dinar, is there Zakat due on them? He replied: Yes, if exchanged, they would amount to two hundred dirhams. This is because at that time it was silver, and there was no gold. Among those who held the view—that there is no Zakat on gold except by the value that reaches two hundred dirhams or more of silver—was Sulaymān ibn Ḥarb al-Wāshiḥī.

قَالَ أَبُو مُحَمَّد: أَمَّا مَنْ قَالَ: لَمْ يَكُنْ يَوْمَئِذٍ ذَهَبٌ -: فَخَطَأٌ، كَيْفَ هَذَا؟ وَاللَّهُ عَزَّ وَجَلَّ يَقُولُ: {وَالَّذِينَ يَكْنِزُونَ الذَّهَبَ وَالْفِضَّةَ وَلا يُنْفِقُونَهَا فِي سَبِيلِ اللَّهِ} [التوبة: ٣٤] . وَالْأَخْبَارُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي كَوْنِ الذَّهَبِ عِنْدَهُمْ كَثِيرَةً جِدًّا، كَقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «الذَّهَبُ حَرَامٌ عَلَى ذُكُورِ أُمَّتِي حَلَالٌ لِإِنَاثِهَا» وَاتِّخَاذُهُ - عَلَيْهِ السَّلَامُ - خَاتَمًا مِنْ ذَهَبٍ ثُمَّ رَمَى بِهِ، وَغَيْرُ ذَلِكَ كَثِيرٌ وَإِيجَابُ الزَّكَاةِ فِي الذَّهَبِ بِقِيمَةِ الْفِضَّةِ قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ مِنْ نَصٍّ وَلَا إجْمَاعٍ وَلَا نَظَرٍ، فَسَقَطَ هَذَا الْقَوْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Abu Muhammad said: As for those who claim there was no gold at that time—this is erroneous. How can this be? For Allah, the Exalted and Majestic, says: *{And those who hoard gold and silver and do not spend it in the way of Allah}* [9:34]. The narrations from the Messenger of Allah—peace and blessings be upon him—regarding the abundance of gold among them are exceedingly numerous, such as his statement—peace and blessings be upon him—: "Gold is forbidden for the men of my Ummah and permissible for their women," his having made a gold ring—peace and blessings be upon him—which he later discarded, and many other such examples. The obligation of zakah on gold according to silver's value is an opinion unsupported by evidence from textual sources, consensus, or logical rationale; thus, this view is dismissed. And success is from Allah, the Exalted.[25]

ثُمَّ نَظَرْنَا هَلْ صَحَّ فِي إيجَابِ الزَّكَاةِ فِي الذَّهَبِ شَيْءٌ أَمْ لَا. فَوَجَدْنَا مَا حَدَّثَنَاهُ حُمَامٌ قَالَ: ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا عَبْدُ الرَّزَّاقِ ثنا مَعْمَرٌ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ الْحَدِيثَ، وَفِيهِ: «مَنْ كَانَتْ لَهُ ذَهَبٌ أَوْ فِضَّةٌ لَمْ يُؤَدِّ مَا فِيهَا جُعِلَتْ لَهُ يَوْمَ الْقِيَامَةِ صَفَائِحَ مِنْ نَارٍ فَوُضِعَتْ عَلَى جَنْبِهِ وَظَهْرِهِ وَجَبْهَتِهِ، حَتَّى يُقْضَى بَيْنَ النَّاسِ، ثُمَّ يَرَى سَبِيلَهُ» . فَوَجَبَتْ الزَّكَاةُ فِي الذَّهَبِ بِهَذَا الْوَعِيدِ الشَّدِيدِ، فَوَجَبَ طَلَبُ الْوَاجِبِ فِي الذَّهَبِ الَّذِي مَنْ لَمْ يُؤَدِّهِ عُذِّبَ هَذَا الْعَذَابَ الْفَظِيعَ، نَعُوذُ بِاَللَّهِ مِنْهُ، بَعْدَ الْإِجْمَاعِ الْمُتَيَقَّنِ الْمَقْطُوعِ بِهِ عَلَى أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُرِدْ كُلَّ عَدَدٍ مِنْ الذَّهَبِ، وَلَا كُلَّ وَقْتٍ مِنْ الزَّمَانِ، وَأَنَّ الزَّكَاةَ إنَّمَا تَجِبُ فِي عَدَدٍ مَعْدُودٍ، وَفِي وَقْتٍ مَحْدُودٍ، فَوَجَبَ فَرْضًا طَلَبُ ذَلِكَ الْعَدَدِ وَذَلِكَ الْوَقْتِ؟ فَوَجَدْنَا مَنْ حَدَّ فِي ذَلِكَ عِشْرِينَ دِينَارًا احْتَجَّ بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ: أَخْبَرَنِي جَرِيرُ بْنُ حَازِمٍ وَآخَرُ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ، وَالْحَارِثِ الْأَعْوَرِ عَنْ عَلِيٍّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ كَلَامًا، وَفِيهِ - «وَلَيْسَ عَلَيْكَ

Then we examined whether anything authentic exists regarding the obligation of zakah on gold or not. We found what Hammād narrated to us, stating: Ibn Mufarrij narrated to us, Ibn al-A'rabī narrated to us, 'Abd al-Razzāq narrated to us, Ma'mar narrated from Suhayl ibn Abī Ṣāliḥ from his father from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—mentioned the ḥadīth, which includes: "Whoever possesses gold or silver and does not pay what is due on it, it will be forged into plates of fire for him on the Day of Resurrection, placed upon his side, back, and forehead, until judgment is rendered among mankind. Then his destiny will be shown to him." Thus, zakah became obligatory on gold due to this severe threat. Consequently, it became obligatory to determine the zakah obligation regarding gold—the obligation which, if not fulfilled, incurs this dreadful punishment (we seek refuge with Allah from it)—following the definitive, conclusive consensus that he—peace be upon him—did not intend every quantity of gold, nor every span of time, and that zakah is only obligatory for a specified quantity within a defined period. Therefore, it became an obligation to ascertain that quantity and that timeframe. We found those who set the threshold at twenty dinars, relying on what was transmitted to us via Ibn Wahb's chain: Jarīr ibn Ḥāzim and another narrated to me from Abū Isḥāq from 'Āṣim ibn Ḍamrah and al-Ḥārith al-A'war from 'Alī, from the

[25] **Qur'an references (L10908):** Qur'an 9:34 (At-Tawbah).

Prophet—peace and blessings be upon him—who related a statement containing: “Nothing is incumbent upon you until you possess twenty dinars in gold. When you possess twenty dinars and a full year passes over them, half a dinar is due. Whatever exceeds this is calculated proportionally.” He said: I do not know whether ʻAlī said “calculated proportionally” or raised it as a ruling to the Prophet—peace and blessings be upon him.

شَيْءٌ حَتَّى يَكُونَ - يَعْنِي فِي الذَّهَبِ - لَكَ عِشْرُونَ دِينَارًا فَإِذَا كَانَ لَكَ عِشْرُونَ دِينَارًا وَحَالَ عَلَيْهَا الْحَوْلُ فَفِيهَا نِصْفُ دِينَارٍ، فَمَا زَادَ فَبِحِسَابِ ذَلِكَ» . قَالَ: لَا أَدْرِي، أَعَلِيٌّ يَقُولُ " بِحِسَابِ ذَلِكَ، " أَوْ رَفَعَهُ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟

L10912–10913 Narrated via Abd al-Razzaq → al-Hasan ibn Umarah → Abu Ishaq → Asim ibn Ḍamrah → Ali (may Allah be pleased with him), who said: The Messenger of Allah (PBUH) said: “And from every twenty dinars, half a dinar.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ الْحَسَنِ بْنِ عُمَارَةَ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَمِنْ كُلِّ عِشْرِينَ دِينَارًا نِصْفُ دِينَارٍ» .

L10914 And via Ibn Abī Laylā from ʿAbd al-Karīm from ʿAmr ibn Shuʿayb from his father from his grandfather from the Prophet (peace be upon him), who said: “There is no zakah on less than twenty mithqals of gold nor on less than two hundred silver dirhams.”

وَمِنْ طَرِيقِ ابْنِ أَبِي لَيْلَى عَنْ عَبْدِ الْكَرِيمِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَيْسَ فِي أَقَلَّ مِنْ عِشْرِينَ مِثْقَالًا مِنَ الذَّهَبِ وَلَا فِي أَقَلَّ مِنْ مِائَتَيْ دِرْهَمٍ صَدَقَةٌ» .

L10915 And through the chain of Abī ʻUbayd from Yazīd from Ḥabīb ibn Abī Ḥabīb from ʻAmr ibn Hurm from Muḥammad ibn ʻAbd al-Raḥmān al-Anṣārī: “Indeed, in the book of the Messenger of Allāh—peace and blessings of Allāh be upon him—and in the book of ʻUmar regarding alms, it is stated that nothing is taken from gold until it reaches twenty dinars. When it reaches twenty dinars, then therein is half a dinar.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ يَزِيدَ عَنْ حَبِيبِ بْنِ أَبِي حَبِيبٍ عَنْ عَمْرِو بْنِ هُرْمٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ الْأَنْصَارِيِّ «أَنَّ فِي كِتَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي كِتَابِ عُمَرَ فِي الصَّدَقَةِ أَنَّ الذَّهَبَ لَا يُؤْخَذُ مِنْهَا شَيْءٌ حَتَّى تَبْلُغَ عِشْرِينَ دِينَارًا، فَإِذَا بَلَغَ عِشْرِينَ دِينَارًا فَفِيهِ نِصْفُ دِينَارٍ» .

L10916 And mentioned therein are a group via the chain of Abdullah ibn Waqid, from Ibn Umar, from Aisha, from the Prophet (peace be upon him): “Zakat is due on twenty dinars.” Ali said, “This is all that has been mentioned concerning this matter from the Messenger of Allah (peace be upon him).”

وَذُكِرَ فِيهِ قَوْمٌ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ وَاقِدٍ عَنِ ابْنِ عُمَرَ عَنْ عَائِشَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ فِي عِشْرِينَ دِينَارًا الزَّكَاةَ» . قَالَ عَلِيٌّ: هَذَا كُلُّ مَا ذَكَرُوا فِي ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L10917 As for those below him (the Prophet, peace be upon him), it has been narrated to us through the chain of Al-Layth ibn Sa‘d from Yahya ibn Ayyub from Humayd from Anas, who said: “‘Umar appointed me in charge of the alms.

He instructed me to take half a dinar for every twenty dinars. If the excess reaches four dinars, then a dirham is due?"

وَأَمَّا عَمَّنْ دُونَهُ - عَلَيْهِ السَّلَامُ - فَرُوِّينَا مِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنْ حُمَيْدٍ عَنْ أَنَسٍ قَالَ: وَلَّانِي عُمَرُ الصَّدَقَاتِ، فَأَمَرَنِي أَنْ آخُذَ مِنْ كُلِّ عِشْرِينَ دِينَارًا نِصْفَ دِينَارٍ، فَمَا زَادَ فَبَلَغَ أَرْبَعَةَ دَنَانِيرَ فَفِيهِ دِرْهَمٌ؟

L10918–10919 And through the narration of Waki': Sufyān al-Thawrī narrated to us from Abū Isḥāq from ʻĀṣim ibn Ḍamrah from ʻAlī, who said: "There is nothing due on less than twenty dinars. On twenty dinars, half a dinar is due, and on forty dinars, one dinar." And through the narration of Abū Bakr ibn Abī Shaybah from Waki' from Sufyān al-Thawrī from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakha'ī, who said: "The wife of ʻAbdullāh ibn Mas'ūd had a necklace weighing twenty mithqāls, so he ordered her to pay five dirhams from it." And through the narration of Waki' from Sufyān from ʻAlqamah ibn Marthad from al-Sha'bī, who said: "On twenty mithqāls, half a mithqāl is due; and on forty mithqāls, one mithqāl." And through the narration of ʻAbdullāh ibn Aḥmad ibn Ḥanbal from his father: Hushaym and al-Mu'tamir ibn Sulaymān narrated to us. Hushaym said: "I cite Manṣūr and Mughīrah." Manṣūr narrated from Ibn Sīrīn, and Mughīrah narrated from Ibrāhīm. Al-Mu'tamir said: From Hishām from al-Ḥasan. Then al-Ḥasan, Ibn Sīrīn, and Ibrāhīm concurred; all of them said: "On twenty dinars, half a dinar is due, and on forty dinars, one dinar." We have mentioned this at the beginning of the chapter as narrated by ʻUmar ibn ʻAbd al-ʻAzīz.

وَمِنْ طَرِيقِ - وَكِيعٍ: ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ قَالَ: لَيْسَ فِي أَقَلَّ مِنْ عِشْرِينَ دِينَارًا شَيْءٌ، وَفِي عِشْرِينَ دِينَارًا نِصْفُ دِينَارٍ، وَفِي أَرْبَعِينَ دِينَارًا دِينَارٌ؟ وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ لِامْرَأَةِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ طَوْقٌ فِيهِ عِشْرُونَ مِثْقَالًا فَأَمَرَهَا أَنْ تُخْرِجَ عَنْهُ خَمْسَةَ دَرَاهِمَ وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ عَلْقَمَةَ بْنِ مَرْثَدٍ عَنْ الشَّعْبِيِّ قَالَ: فِي عِشْرِينَ مِثْقَالًا نِصْفُ مِثْقَالٍ، وَفِي أَرْبَعِينَ مِثْقَالًا مِثْقَالٌ وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ عَنْ أَبِيهِ: ثنا هُشَيْمٌ، وَالْمُعْتَمِرُ بْنُ سُلَيْمَانَ قَالَ هُشَيْمٌ: أَنَا مَنْصُورٌ، وَمُغِيرَةُ، قَالَ مَنْصُورٌ: عَنْ ابْنِ سِيرِينَ وَقَالَ مُغِيرَةُ: عَنْ إِبْرَاهِيمَ وَقَالَ الْمُعْتَمِرُ: عَنْ هِشَامٍ عَنْ الْحَسَنِ، ثُمَّ اتَّفَقَ الْحَسَنُ، وَابْنُ سِيرِينَ، وَإِبْرَاهِيمُ، قَالُوا كُلُّهُمْ: فِي عِشْرِينَ دِينَارًا، وَفِي أَرْبَعِينَ دِينَارًا دِينَارٌ؟ وَقَدْ ذَكَرْنَاهُ فِي أَوَّلِ الْبَابِ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ

L10920–10922 And through the chain of Abu Bakr ibn Abi Shaybah: He narrated to us from Yahya ibn Abd al-Malik ibn Abi Ghaniyyah, from his father, from al-Hakam ibn Utaybah that he did not consider zakah due on twenty dinars until they are twenty mithqals, in which case half a mithqal would be due. We have previously mentioned this from ʿAṭāʾ and Amr ibn Dinar, and we have mentioned ʿAṭāʾ's retraction from that position. Abū Muḥammad said: We do not know of anything from any of the Successors besides what we have mentioned. As for all they have reported concerning this matter from

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ: ثنا يَحْيَى بْنُ عَبْدِ الْمَلِكِ بْنِ أَبِي غَنِيَّةَ عَنْ أَبِيهِ عَنْ الْحَكَمِ هُوَ ابْنُ عُتَيْبَةَ - أَنَّهُ كَانَ لَا يَرَى فِي عِشْرِينَ دِينَارًا زَكَاةً حَتَّى تَكُونَ عِشْرِينَ مِثْقَالًا، فَيَكُونُ فِيهَا نِصْفُ مِثْقَالٍ؟ وَقَدْ ذَكَرْنَاهُ قَبْلُ عَنْ عَطَاءٍ، وَعَمْرِو بْنِ دِينَارٍ، وَذَكَرْنَا رُجُوعَ عَطَاءٍ عَنْ ذَلِكَ قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ عَنْ أَحَدٍ مِنْ التَّابِعِينَ غَيْرَ مَا ذَكَرْنَا فَأَمَّا

كُلُّ مَا ذَكَرُوا فِيهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا يَصِحُّ مِنْهُ شَيْءٌ وَلَوْ صَحَّ لَمَا اسْتَحْلَلْنَا خِلَافَهُ، وَأَعُوذُ بِاللَّهِ مِنْ ذَلِكَ؟ أَمَّا حَدِيثُ عَلِيٍّ - الَّذِي صَدَّرْنَا بِهِ - فَإِنَّ ابْنَ وَهْبٍ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ أَبِي إِسْحَاقَ قَرَنَ فِيهِ بَيْنَ عَاصِمِ بْنِ ضَمْرَةَ وَبَيْنَ الْحَارِثِ الْأَعْوَرِ، وَالْحَارِثُ كَذَّابٌ، وَكَثِيرٌ مِنَ الشُّيُوخِ يَجُوزُ عَلَيْهِمْ مِثْلُ هَذَا، وَهُوَ أَنَّ الْحَارِثَ أَسْنَدَهُ وَعَاصِمٌ لَمْ يُسْنِدْهُ، فَجَمَعَهُمَا جَرِيرٌ، وَأَدْخَلَ حَدِيثَ أَحَدِهِمَا فِي الْآخَرِ. وَقَدْ رَوَاهُ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمٍ عَنْ عَلِيٍّ: شُعْبَةُ، وَسُفْيَانُ، وَمَعْمَرٌ، فَأَوْقَفُوهُ عَلَى عَلِيٍّ، وَهَكَذَا كُلُّ ثِقَةٍ رَوَاهُ عَنْ عَاصِمٍ. وَقَدْ رَوَى حَدِيثَ الْحَارِثِ، وَعَاصِمٍ: زُهَيْرُ بْنُ مُعَاوِيَةَ فَشَكَّ فِيهِ.

the Messenger of Allah - peace and blessings of Allah be upon him - none of it is authentic. Even if it were authentic, we would not have deemed it permissible to oppose it. I seek refuge in Allah from such a notion! Regarding the ḥadīth of ʿAlī - with which we prefaced our discussion - Ibn Wahb reported it from Jarīr ibn Ḥāzim from Abū Isḥāq, who conflated in it ʿĀṣim ibn Ḍamrah with al-Ḥārith al-Aʿwar. Now al-Ḥārith is a confirmed liar, and many senior narrators could be prone to such errors. The crux is that al-Ḥārith narrated it with a chain of transmission while ʿĀṣim did not provide a chain of transmission for it. Jarīr combined both accounts and intermingled the narration of one with the other. This ḥadīth was transmitted from Abū Isḥāq from ʿĀṣim from ʿAlī by Shuʿbah, Sufyān, and Maʿmar - but they suspended the chain at ʿAlī. This is how every reliable transmitter reported it from ʿĀṣim. Zuhayr ibn Muʿāwiyah narrated the ḥadīth through both al-Ḥārith and ʿĀṣim but expressed uncertainty about it.

كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ النُّفَيْلِيُّ ثنا زُهَيْرُ بْنُ مُعَاوِيَةَ ثنا أَبُو إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ، وَعَنْ الْحَارِثِ عَنْ عَلِيٍّ. قَالَ زُهَيْرٌ: أَحْسَبُهُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ صَدَقَةَ الْوَرِقِ، «إذَا كَانَتْ مِائَتَيْ دِرْهَمٍ فَفِيهَا خَمْسَةُ دَرَاهِمَ، فَمَا زَادَ فَعَلَى حِسَابِ ذَلِكَ» .

L10923 Abdullah ibn Rabee' narrated to us: Umar ibn Abdul Malik narrated to us, Muhammad ibn Bakr narrated to us, Abu Dawood narrated to us, Abdullah ibn Muhammad al-Nufayli narrated to us, Zuhayr ibn Mu'awiyah narrated to us: Abu Ishaq narrated to us from Asim ibn Damrah, and from al-Harith who narrated from Ali. Zuhayr said: "I believe Abu Ishaq reported from the Prophet, peace be upon him," then he mentioned the charity on silver: "When it reaches two hundred silver dirhams, five dirhams are due. Whatever exceeds that amount is proportionate to that measure."

وَقَالَ فِي الْبَقَرِ: «فِي كُلِّ ثَلَاثِينَ تَبِيعٌ، وَفِي كُلِّ أَرْبَعِينَ مُسِنَّةٌ، وَلَيْسَ عَلَى الْعَوَامِلِ شَيْءٌ» .

L10924 He said regarding cattle: "For every thirty cattle, a one-year-old male calf is due; for every forty cattle, a two-year-old cow is due. Nothing is due on working animals."

وَقَالَ فِي الْإِبِلِ، «فِي خَمْسٍ وَعِشْرِينَ خَمْسٌ مِنْ الْغَنَمِ، فَإِذَا زَادَتْ وَاحِدَةً فَفِيهَا بِنْتُ مَخَاضٍ، فَإِنْ لَمْ تَكُنْ فَابْنُ لَبُونٍ ذَكَرٌ» .

L10925–10927 "And he said regarding camels, 'For twenty-five (camels), five sheep are obligatory. Then, if the number increases by one...' Then in it is a one-year-old she-camel; if there is none, then a two-year-old male camel.

قَالَ زُهَيْرٌ: وَفِي حَدِيثِ عَاصِمٍ: «إذَا لَمْ يَكُنْ فِي الْإِبِلِ بِنْتُ مَخَاضٍ وَلَا ابْنُ لَبُونٍ فَعَشَرَةُ دَرَاهِمَ أَوْ شَاتَانِ» . قَالَ عَلِيٌّ: قَدْ ذَكَرْنَا أَنَّهُ حَدِيثُ مَالِكٍ، وَلَوْ أَنَّ جَرِيرًا أَسْنَدَهُ عَنْ

L10928 Zuhayr said: In the ḥadīth of ʿĀṣim: "If there is neither a one-year-old she-camel (ibnat makhāḍ) nor a two-year-old male camel (ibn labūn) among the camels, then ten dirhams or two sheep." ʿAlī said: We have previously men-

tioned that this is a ḥadīth transmitted by Mālik. Had Jarīr narrated it with a complete chain solely from ʿĀṣim, we would have accepted it. However, he only transmitted it through al-Ḥārith alongside him, and the chain of transmission was not established as authentic to us via ʿĀṣim's route. Then when Zuhayr expressed doubt about it, its chain of transmission became invalidated. Consequently, whoever validates it must necessarily accept all that we have mentioned concerning it, yet there exists no opposing faction except that they contradict its contents. It is invalid to accept some parts of the report as evidence while rejecting others. Does their reliance on this report not thereby become invalid?

عَاصِمٍ وَحْدَهُ لَأَخَذْنَا بِهِ، لَكِنْ لَمْ يُسْنِدْهُ إِلَّا عَنْ الْحَارِثِ مَعَهُ، وَلَمْ يَصِحَّ لَنَا إِسْنَادُهُ مِنْ طَرِيقِ عَاصِمٍ، ثُمَّ لَمَّا شَكَّ زُهَيْرٌ فِيهِ بَطَلَ إِسْنَادُهُ. ثُمَّ يَلْزَمُ مَنْ صَحَّحَهُ أَنْ يَقُولَ بِكُلِّ مَا ذَكَرْنَا فِيهِ، وَلَيْسَ مِنْ الْمُخَالِفِينَ لَنَا طَائِفَةٌ إِلَّا وَهِيَ تُخَالِفُ مَا فِيهِ، وَمِنْ الْبَاطِلِ أَنْ يَكُونَ بَعْضُ مَا فِي الْخَبَرِ حُجَّةً وَبَعْضُهُ غَيْرَ حُجَّةٍ، فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ؟ أَمَّا خَبَرُ الْحَسَنِ بْنِ عُمَارَةَ فَالْحَسَنُ مُطْرَحٌ وَأَمَّا حَدِيثُ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ فَصَحِيفَةٌ مُرْسَلَةٌ. وَرَوَاهُ أَيْضًا ابْنُ أَبِي لَيْلَى وَهُوَ سَيِّئُ الْحِفْظِ. فَإِنْ لَجُّوا عَلَى عَادَاتِهِمْ وَصَحَّحُوا حَدِيثَ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ إِذَا وَافَقَهُمْ فَلْيَسْتَمِعُوا؟ رُوِّينَا مِنْ طَرِيقِ دَاوُد بْنِ أَبِي هِنْدٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَجُوزُ لِامْرَأَةٍ أَمْرٌ فِي مَالِهَا إِذَا مَلَكَ زَوْجُهَا عِصْمَتَهَا» .

As for the report of al-Ḥasan ibn ʿUmārah - al-Ḥasan is deemed unreliable. Regarding the ḥadīth of ʿAmr ibn Shuʿayb from his father from his grandfather - it constitutes a mursal narration from a written record. Ibn Abī Laylā also narrated it, but he was known for poor memorization. If they obstinately persist in their customary ways and validate the ḥadīth of ʿAmr ibn Shuʿayb from his father from his grandfather whenever it suits them - then let them listen! It was narrated to us through the chain of Dāwūd ibn Abī Hind from ʿAmr ibn Shuʿayb from his father from his grandfather from the Prophet - peace and blessings be upon him: "A woman holds no discretionary authority over her property once her husband has authority over the marital bond."[26]

L10929 From the chain of Husayn al-Mu'allim, from 'Amr ibn Shu'ayb, from his father, from his grandfather, that the Prophet (peace be upon him) said: "It is not permissible for a woman to give a gift except with her husband's permission."

وَمِنْ طَرِيقِ حُسَيْنٍ الْمُعَلِّمِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَجُوزُ لِامْرَأَةٍ عَطِيَّةٌ إِلَّا بِإِذْنِ زَوْجِهَا» .

L10930 From the narration of Al-'Alā' ibn al-Ḥārith, from 'Amr ibn Shu'ayb, from his father, from his grandfather, from the Prophet—peace be upon him—: "He ruled that for an eye blinded by obstruction yet remaining in its socket, the compensation is one-third of the diyah due to its position."

وَمِنْ طَرِيقِ الْعَلَاءِ بْنِ الْحَارِثِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ -: «أَنَّهُ قَضَى فِي الْعَيْنِ الْقَائِمَةِ السَّادَّةِ لِمَكَانِهَا بِثُلُثِ الدِّيَةِ» .

L10931–10932 From Husayn al-Mu'allim, from Amr ibn Shu'ayb, from his father, from his grandfather: "The value of blood money during the time of Allah's Messen-

وَعَنْ حُسَيْنٍ الْمُعَلِّمِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «كَانَتْ قِيمَةُ الدِّيَةِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَمَانِمِائَةِ دِينَارٍ ثَمَانِيَةَ آلَافِ دِرْهَمٍ، وَدِيَةُ أَهْلِ

[26] **Hadith references (L10928):** Sunan Abi Dawud 3546.

ger—peace and blessings be upon him—was eight hundred dinars, equivalent to eight thousand dirhams. The blood money for the People of the Book was half that of the Muslims, and this remained the case until Umar was given the oath of allegiance. He stood to deliver a sermon and fixed the blood money at one thousand dinars for those who paid in gold, twelve thousand dirhams for those who paid in silver, two hundred cows for those who paid in cows, two thousand sheep for those who paid in sheep, two hundred sets of garments for those who paid in clothing. He left the blood money for the Dhimmis unchanged, not raising it alongside the increases he made to the blood money rates."

الْكِتَابِ عَلَى النِّصْفِ مِنْ دِيَةِ الْمُسْلِمِ، وَكَانَتْ كَذَلِكَ حَتَّى اُسْتُخْلِفَ عُمَرُ، فَقَامَ خَطِيبًا فَفَرَضَهَا عَلَى أَهْلِ الذَّهَبِ أَلْفَ دِينَارٍ، وَعَلَى أَهْلِ الْوَرِقِ اثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ، وَعَلَى أَهْلِ الْبَقَرِ مِائَتَيْ بَقَرَةٍ، وَعَلَى أَهْلِ الشَّاءِ أَلْفَيْ شَاةٍ، وَعَلَى أَهْلِ الْحُلَلِ مِائَتَيْ حُلَّةٍ، وَتَرَكَ دِيَةَ أَهْلِ الذِّمَّةِ لَمْ يَرْفَعْهَا فِيمَا رَفَعَ مِنْ الدِّيَةِ» .

L10933 And from Sulaymān ibn Mūsā, from ʿAmr ibn Shuʿayb, from his father, from his grandfather: "The Messenger of Allāh—peace and blessings of Allāh be upon him—ruled that the blood money for one killed unintentionally is one hundred camels: thirty female camels having completed one year and entered the second, thirty female camels having completed two years and entered the third, twenty two-year-old male camels, and twenty female camels having completed three years and entered the fourth. The Messenger of Allāh—peace and blessings of Allāh be upon him—also ruled that for cattle owners, the blood money is two hundred cows—meaning, in blood money—and for those whose blood money is in sheep, two thousand sheep." All the Ḥanafīs, Mālikīs, and Shāfiʿīs oppose most of this. Had we wished to expand further on the narration of ʿAmr ibn Shuʿayb from his father from his grandfather, it would have been possible, but this suffices. There is no one weaker in religion than one who authenticates a narration when it aligns with his desires and weakens it when it contradicts his desires. Such a person clings to nothing in religion except playfulness. The ḥadīth of Muḥammad ibn ʿAbd al-Raḥmān is a broken-chain narration and also transmitted from an unknown narrator.

وَعَنْ سُلَيْمَانَ بْنِ مُوسَى عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى أَنَّ مَنْ قُتِلَ خَطَأً فَدِيَتُهُ مِائَةٌ مِنْ الْإِبِلِ، ثَلَاثُونَ بِنْتَ مَخَاضٍ، وَثَلَاثُونَ بِنْتَ لَبُونٍ وَعِشْرُونَ ابْنَ لَبُونٍ ذَكَرٍ، وَعِشْرُونَ حِقَّةً، وَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَهْلِ الْبَقَرِ مِائَتَيْ بَقَرَةٍ - يَعْنِي فِي الدِّيَةِ - وَمَنْ كَانَتْ دِيَتُهُ فِي الشَّاءِ فَأَلْفَا شَاةٍ» ؟ وَكُلُّ هَذَا فَجَمِيعُ الْحَنَفِيَّةِ، وَالْمَالِكِيَّةِ، وَالشَّافِعِيَّةِ: مُخَالِفُونَ لِأَكْثَرِهِ، وَلَوْ أَرَدْنَا أَنْ نَزِيدَ مِنْ رِوَايَةِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ لَأَمْكَنَ ذَلِكَ، وَفِي هَذَا كِفَايَةٌ؟ وَلَا أَرَقُّ دِينًا مِمَّنْ يُوَثِّقُ رِوَايَةً إذَا وَافَقَتْ هَوَاهُ، وَيُوهِنُهَا إذَا خَالَفَتْ هَوَاهُ فَمَا يَتَمَسَّكُ فَاعِلُ هَذَا مِنْ الدِّينِ إلَّا بِالتَّلَاعُبِ وَحَدِيثُ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ مُرْسَلٌ وَعَنْ مَجْهُولٍ أَيْضًا.

L10934–10936 As for the ḥadīth of Ibn ʿUmar, ʿAbdullāh ibn Wāqid is an unknown narrator. Thus, everything attributed to the Prophet—peace and blessings of Allāh be upon him—in this [narration] is invalidated, and nothing from it is authentic. As for what is reported regarding this matter from the Companions—may Allāh be pleased with them—it is not authentically transmitted from ʿUmar, for its narrator Yaḥyā ibn Ayyūb is weak. Yet it has been narrated to us

وَأَمَّا حَدِيثُ ابْنِ عُمَرَ فَعَبْدُ اللَّهِ بْنُ وَاقِدٍ مَجْهُولٌ. فَسَقَطَ كُلُّ مَا فِي هَذَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَصِحَّ مِنْهُ شَيْءٌ وَأَمَّا مَا رُوِيَ فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَا يَصِحُّ عَنْ عُمَرَ، لِأَنَّ رَاوِيَهُ يَحْيَى بْنُ أَيُّوبَ، وَهُوَ ضَعِيفٌ. وَقَدْ

from ʿUmar reports more authentic than this—and all of them contradict him? As transmitted by Ḥumām via Ibn Mufarrij via Ibn al-Aʿrābī via al-Dabarī via ʿAbd al-Razzāq from Hishām ibn Ḥassān, Sufyān al-Thawrī, and Maʿmar. Hishām said: from Anas ibn Sīrīn, and Sufyān said... Maʾmar reported from Ayyub al-Sakhtiyani, from Anas ibn Sirin—then all narrators concurred through Anas ibn Sirin—who said: Anas ibn Malik appointed me to oversee al-Ubullah and produced a letter from Umar ibn al-Khattab, which read: "Take from Muslims one dirham for every forty dirhams, from the People of the Covenant one dirham for every twenty dirhams, and from those without a covenant one dirham for every ten dirhams." This report from Anas and Umar has the strongest possible chain. If some advance an interpretation necessitated by its apparent meaning, they possess no greater authority in this than others who cite evidence. Anyone could contend: "Umar's directive regarding twenty dinars was half a dinar, just as he mandated ten dirhams per head for slaves and horses—provided the owner's heart is content with it; otherwise, it is invalid." As for the report from Ibn Mas'ud, it is mursal (lacking a complete chain) and thus not adopted by Malikis or Shafi'is. It is invalid to treat Ibn Mas'ud's statement as authoritative for some rulings while rejecting it for others, for negligence in religious matters is destruction. The statement of Ali, however, is sound. We have transmitted numerous rulings from Ali through this same chain—among them: five sheep for every twenty-five camels—and all of these narrations contradict this position.

رُوِّينَا عَنْ عُمَرَ مَا هُوَ أَصَحُّ مِنْ هَذَا، وَكُلُّهُمْ يُخَالِفُونَهُ؟ -: كَمَا حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ هِشَامِ بْنِ حَسَّانَ وَسُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ قَالَ هِشَامٌ: عَنْ أَنَسِ بْنِ سِيرِينَ، وَقَالَ سُفْيَانُ، وَمَعْمَرٌ: عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَنَسِ بْنِ سِيرِينَ، ثُمَّ اتَّفَقُوا كُلُّهُمْ عَنْ أَنَسِ بْنِ سِيرِينَ قَالَ: بَعَثَنِي أَنَسُ بْنُ مَالِكٍ عَلَى الْأُبُلَةِ فَأَخْرَجَ إِلَيَّ كِتَابًا مِنْ عُمَرَ بْنِ الْخَطَّابِ " خُذْ مِنَ الْمُسْلِمِينَ مِنْ كُلِّ أَرْبَعِينَ دِرْهَمًا دِرْهَمًا وَمِنْ أَهْلِ الذِّمَّةِ مِنْ كُلِّ عِشْرِينَ دِرْهَمًا دِرْهَمًا وَمِمَّنْ لَا ذِمَّةَ لَهُ مِنْ كُلِّ عَشَرَةِ دَرَاهِمَ دِرْهَمًا ". فَهَذَا أَنَسٌ، وَعُمَرُ بِأَصَحِّ إِسْنَادٍ يُمْكِنُ، فَإِنْ تَأَوَّلُوا فِيهِ تَأْوِيلًا يَقْتَضِيهِ ظَاهِرُهُ فَمَا هُمْ بِأَقْوَى عَلَى ذَلِكَ مِنْ غَيْرِهِمْ فِيمَا يَحْتَجُّونَ بِهِ، وَمَا يَعْجِزُ أَحَدٌ عَنْ أَنْ يَقُولَ: إِنَّمَا أَمَرَ عُمَرُ فِي الْعِشْرِينَ دِينَارًا بِنِصْفِ دِينَارٍ كَمَا أَمَرَ فِي الرَّقِيقِ وَالْخَيْلِ بِعَشَرَةِ دَرَاهِمَ مِنْ كُلِّ رَأْسٍ -: إِذَا طَابَتْ نَفْسُ مَالِكِ كُلِّ ذَلِكَ بِهِ، وَإِلَّا فَلَا وَأَمَّا الْخَبَرُ فِي ذَلِكَ عَنِ ابْنِ مَسْعُودٍ فَمُرْسَلٌ، وَلَا يَأْخُذُ بِهِ الْمَالِكِيُّونَ، وَلَا الشَّافِعِيُّونَ، وَمِنَ الْبَاطِلِ أَنْ يَكُونَ قَوْلُ ابْنِ مَسْعُودٍ حُجَّةً فِي بَعْضِ حُكْمِهِ ذَلِكَ وَلَا يَكُونُ حُجَّةً فِي بَعْضِهِ، وَالْمُسَامَحَةُ فِي الدِّينِ هَلَاكٌ وَأَمَّا قَوْلُ عَلِيٍّ فَهُوَ صَحِيحٌ، وَقَدْ رُوِّينَا عَنْ عَلِيٍّ مِنْ هَذِهِ الطَّرِيقِ نَفْسِهَا أَشْيَاءَ كَثِيرَةً قَدْ ذَكَرْنَاهَا -: مِنْهَا: فِي كُلِّ خَمْسٍ وَعِشْرِينَ مِنَ الْإِبِلِ خَمْسًا مِنَ الْغَنَمِ، وَكُلُّهُمْ مُخَالِفٌ لِهَذَا.

L10937 Among the falsehoods is that the statement of ʿAlī could be considered a proof in one context but not in another. Thus, all that they relied upon from the traditions of the Companions (may Allah, Exalted be He, be pleased with them) becomes invalid.

وَمِنَ الْبَاطِلِ أَنْ يَكُونَ قَوْلُ عَلِيٍّ حُجَّةً فِي مَكَانٍ غَيْرَ حُجَّةٍ فِي آخَرَ؟ فَبَطَلَ كُلُّ مَا تَعَلَّقُوا بِهِ مِنْ آثَارِ الصَّحَابَةِ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمْ -.

L10938–10940 Moreover, even if all these narrations were authentic from the Prophet—peace and blessings of Allah be upon him—and the Companions—may Allah

be pleased with them—they would have contradicted those very narrations. For the Ḥanafīs and Mālikīs assert: If there are ten dinars and one hundred dirhams, zakat becomes obligatory. Yet all these narrations invalidate zakat for amounts less than twenty dinars, whereas they mandate it for less than twenty dinars. Thus, all these narrations stand as evidence against them, and what they authenticated of such reports became a decisive refutation against them in the harshest terms. We seek refuge in Allah from being deprived of His support. The Mālikīs obligate zakat in slightly less than twenty dinars when the equivalence between gold and silver is permissible, and this... The disagreement in all these narrations? As for the Followers, they differed as we mentioned. It is authentically reported from al-Zuhrī and ‘Aṭā’ that gold is not subject to zakāh with gold unless it is forty dīnārs, no less than forty. Then likewise, if it increases by forty dīnārs, they held zakāh to be due on amounts below that threshold and between every forty and the subsequent forty—the value being assessed. Yet this valuation was an opinion not established by the Qur’ān, the Sunnah, consensus, a Companion’s statement, or any foundational evidence at all. Thus, this opinion is invalidated.

ثُمَّ حَتَّى لَوْ صَحَّتْ هَذِهِ الْآثَارُ كُلُّهَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: لَكَانُوا مُخَالِفِينَ لَهَا؛ لِأَنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ يَقُولُونَ: إنْ كَانَتْ عَشْرَةَ دَنَانِيرَ وَمِائَةَ دِرْهَمٍ فَفِيهَا الصَّدَقَةُ، وَكُلُّ هَذِهِ الْآثَارِ تُبْطِلُ الزَّكَاةَ عَنْ أَقَلَّ مِنْ عِشْرِينَ دِينَارًا؛ وَهُمْ يُوجِبُونَهَا فِي أَقَلَّ مِنْ عِشْرِينَ دِينَارًا؛ فَصَارَتْ كُلُّهَا حُجَّةً عَلَيْهِمْ، وَعَادَ مَا صَحَّحُوا مِنْ ذَلِكَ قَاطِعًا بِهِمْ أَقْبَحَ قَطْعٍ وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ وَالْمَالِكِيُّونَ: يُوجِبُونَهَا فِي عِشْرِينَ دِينَارًا نَاقِصَةً إذَا جَازَتْ جَوَازَ الْمُوَازَنَةِ، وَهَذَا خِلَافُ مَا فِي هَذِهِ الْأَخْبَارِ كُلِّهَا؟ وَأَمَّا التَّابِعُونَ فَقَدْ اخْتَلَفُوا كَمَا ذَكَرْنَا، وَصَحَّ عَنْ الزُّهْرِيِّ، وَعَطَاءٍ: أَنَّهُ لَا يُزَكَّى مِنْ الذَّهَبِ بِالذَّهَبِ إلَّا أَرْبَعِينَ دِينَارًا، لَا أَقَلَّ؛ ثُمَّ كَذَلِكَ إذَا زَادَتْ أَرْبَعِينَ دِينَارًا، وَرَأَوْا الزَّكَاةَ فِيمَا دُونَ ذَلِكَ وَمَا بَيْنَ كُلِّ أَرْبَعِينَ وَأَرْبَعِينَ بَعْدَهَا الْقِيمَةُ، وَكَانَتْ الْقِيمَةُ قَوْلًا لَا يُوجِبُهُ قُرْآنٌ وَلَا سُنَّةٌ وَلَا إجْمَاعٌ وَلَا قَوْلُ صَاحِبٍ وَلَا دَلِيلٌ أَصْلًا؛ فَسَقَطَ هَذَا الْقَوْلُ.

L10941–10943 وَقَدْ حَدَّثَنَا حُمَامٌ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ ثنا عَبْدُ اللَّهِ بْنُ يُونُسَ ثنا بَقِيُّ بْنُ مَخْلَدٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا حَمَّادُ بْنُ مَسْعَدَةَ عَنْ أَشْعَثَ هُوَ ابْنُ عَبْدِ الْمَلِكِ الْحُمْرَانِيُّ - عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: لَيْسَ فِي أَقَلَّ مِنْ أَرْبَعِينَ دِينَارًا شَيْءٌ؟ قَالَ أَبُو مُحَمَّدٍ: فَصَحَّتْ الزَّكَاةُ فِي أَرْبَعِينَ مِنْ الذَّهَبِ ثُمَّ فِي كُلِّ أَرْبَعِينَ زَائِدَةً -: بِالْإِجْمَاعِ الْمُتَيَقَّنِ الْمَقْطُوعِ بِهِ فَوَجَبَ الْقَوْلُ بِهِ وَلَمْ يَكُنْ فِي إيجَابِ الزَّكَاةِ فِي أَقَلَّ مِنْ ذَلِكَ وَلَا فِيمَا بَيْنَ النِّصَابَيْنِ -: قُرْآنٌ وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا إجْمَاعٌ، وَلَا يَجُوزُ أَنْ تُؤْخَذَ الشَّرَائِعُ فِي دِينِ الْإِسْلَامِ إلَّا بِأَحَدِ هَذِهِ الثَّلَاثَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟ قَالَ عَلِيٌّ: فَلَيْسَ إلَّا هَذَا الْقَوْلُ، أَوْ قَوْلُ مَنْ قَالَ: قَدْ صَحَّ أَنَّ فِي الذَّهَبِ زَكَاةً بِالنَّصِّ الثَّابِتِ؛ فَالْوَاجِبُ أَنْ يُزَكَّى كُلُّ

Hammam narrated to us: Abdullah ibn Muhammad ibn Ali Al-Baji narrated to us: Abdullah ibn Yunus narrated to us: Baqi ibn Makhlad narrated to us: Abu Bakr ibn Abi Shaybah narrated to us: Hammad ibn Mas’adah narrated to us from Ash’ath—who is Ibn Abd Al-Malik Al-Humrani—from Al-Hasan Al-Basri, who said: “No zakat is due on less than forty dinars.” Abu Muhammad said: “Thus, zakat is validated on forty of gold, then on every additional forty—by the certain, definitive consensus—making this opinion obligatory to uphold. There exists no Quranic verse, authentic Sunnah, or consensus requiring zakat on amounts below this threshold or between the minimum amounts (niṣāb). Islamic rulings may not be derived except through one of these three sources—and success is from Allah, the Exalted?” Ali said: “There is no valid opinion except this one or that of those who assert: ’It is established through authenticated textual evidence that zakat applies to gold; thus, all gold must be subject to zakat unless exempted by consensus.’ Whoever

adopts this view must obligate zakat on all gold below twenty dinars based on value, on gold jewelry, and on all gold whenever possessed by its owner—positions upheld by a group of imams of greater stature than Abu Hanifah, Malik, and Al-Shafi'i." Abu Muhammad said: "We do not adopt this view due to our prior clarification: attributing rulings to Allah, the Exalted, or His Messenger—peace be upon him—is impermissible except through verified transmission, mass-narrated reports, or consensus. None of these conditions apply to these opinions. We affirm: 'Consensus confirms that the Prophet—peace be upon him—did not mandate zakat on every quantity of gold or at every time interval'—and success is from Allah." Abu Muhammad said: "As for Abu Hanifah's opinion, he did not rely on narrations from the Companions—may Allah be pleased with them—for the report from Umar—may Allah be pleased with him—states only that what exceeds twenty..." A dinar is purified for Zakat with dirhams.

ذَهَبٍ، إِلَّا ذَهَبًا صَحَّ الْإِجْمَاعُ عَلَى إِسْقَاطِ زَكَاتِهَا فَمَنْ قَالَ هَذَا: فَوَاجِبٌ عَلَيْهِ أَنْ يُزَكِّيَ كُلَّ مَا دُونَ الْعِشْرِينَ بِالْقِيمَةِ، وَأَنْ يُزَكِّيَ حُلِيَّ الذَّهَبِ، وَأَنْ يُزَكِّيَ كُلَّ ذَهَبٍ حِينَ يَمْلِكُهُ مَالِكُهُ - فَكُلُّ هَذَا قَدْ قَالَ بِهِ جَمَاعَةٌ مِنْ الْأَئِمَّةِ الَّذِينَ هُمْ أَجَلُّ مِنْ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ؟ قَالَ أَبُو مُحَمَّدٍ: وَلَمْ نَقُلْ بِهَذَا لِمَا قَدَّمْنَاهُ مِنْ أَنَّهُ لَا يَحِلُّ أَنْ يُنْسَبَ إلَى اللَّهِ تَعَالَى وَلَا إلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَوْلٌ إلَّا بِيَقِينِ نَقْلٍ صَحِيحٍ مِنْ رِوَايَةِ الْإِثْبَاتِ أَوْ بِنَقْلِ تَوَاتُرٍ أَوْ مُجْمَعٍ عَلَيْهِ، وَلَيْسَ شَيْءٌ مِنْ هَذِهِ الْأَحْوَالِ مَوْجُودًا فِي شَيْءٍ مِنْ هَذِهِ الْأَقْوَالِ؟ وَقَدْ قُلْنَا: إنَّ الْإِجْمَاعَ قَدْ صَحَّ عَلَى أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُوجِبْ الزَّكَاةَ فِي كُلِّ عَدَدٍ مِنْ الذَّهَبِ، وَلَا فِي كُلِّ وَقْتٍ مِنْ الدَّهْرِ - وَبِاَللَّهِ التَّوْفِيقُ؛ قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَمَا تَعَلَّقَ بِمَا رُوِيَ فِي ذَلِكَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؛ لِأَنَّ الرِّوَايَةَ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - بِأَنَّ مَا زَادَ عَلَى عِشْرِينَ دِينَارًا فَإِنَّهُ يُزَكَّى بِالدَّرَاهِمِ.

L10944 On the authority of Ibn Masʿūd: The purification of gold is with dirhams, and this contradicts the opinion of Az-Zuhrī and ʿAṭāʾ. We have not found any Companion nor any Follower stating that the shortfall in gold is purified with gold itself. Thus, does his opinion lack any precedent among the predecessors? We further ask them: From where did you establish that the shortfall in gold is four dīnārs? This is absent in any of the transmitted evidences you cited as proof. Rather, the narration traced to ʿAlī regarding this matter - attributed to the Prophet (peace and blessings of Allāh be upon him) - states that whatever exceeds twenty dīnārs must be purified through calculated valuation. As for what is reported from ʿUmar on this matter, it is an unverified statement. Despite this, you contradicted him by requiring its purification in gold, while he ruled it should be in silver coins according to market value. ʿAlī and Ibn ʿUmar opposed them with a narration more authentic than the one transmitted from ʿUmar. They have no escape but to

وَعَنْ ابْنِ مَسْعُودٍ: تَزْكِيَةُ الذَّهَبِ بِالدَّرَاهِمِ، وَهَذَا يَخْرُجُ عَلَى قَوْلِ الزُّهْرِيِّ، وَعَطَاءٍ، وَمَا وَجَدْنَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ وَلَا مِنْ التَّابِعِينَ أَنَّ الْوَقْصَ فِي الذَّهَبِ يُزَكَّى بِالذَّهَبِ فَخَرَجَ قَوْلُهُ عَنْ أَنْ يَكُونَ لَهُ سَلَفٌ؟ وَنَسْأَلُهُمْ أَيْضًا: مِنْ أَيْنَ جَعَلْتُمْ الْوَقْصَ فِي الذَّهَبِ أَرْبَعَةَ دَنَانِيرَ؟ وَلَيْسَ هَذَا فِي شَيْءٍ مِنْ الْآثَارِ الَّتِي احْتَجَجْتُمْ بِهَا؛ بَلْ الْأَثَرُ الَّذِي رُوِيَ عَنْ عَلِيٍّ فِي ذَلِكَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ مَا زَادَ عَلَى عِشْرِينَ دِينَارًا فَإِنَّهُ يُزَكَّى بِالْحِسَابِ؛ وَإِنَّمَا جَاءَ عَنْ عُمَرَ فِي ذَلِكَ قَوْلٌ لَا يَصِحُّ وَمَعَ ذَلِكَ فَقَدْ خَالَفْتُمُوهُ، وَرَأَيْتُمْ تَزْكِيَتَهُ بِالذَّهَبِ وَرَأْيُهُ هُوَ بِالْوَرِقِ بِالْقِيمَةِ، وَقَدْ خَالَفَهُ عَلِيٌّ، وَابْنُ عُمَرَ بِرِوَايَةٍ أَصَحَّ

claim: “We analogized gold to silver.” ʿAlī’s statement: This is qiyās, and all forms of qiyās are invalid. Even if qiyās were valid, this would constitute an analogy built upon compounding errors and an unsound foundation. It has never been established through any Qur’anic text, nor authentic Sunnah, nor weak narration, nor consensus - such as the claim that ten dirhams equate to one dīnār. Rather, this is something they stated concerning zakāt and the amputation penalty for theft.

مِنْ الرِّوَايَةِ عَنْ عُمَرَ؟ فَلَا مَلْجَأَ لَهُمْ إلَّا أَنْ يَقُولُوا: قِسْنَاهُ عَلَى الْفِضَّةِ؟ قَوْلُ عَلِيٍّ: وَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ قِيَاسًا لِلْخَطَأِ عَلَى الْخَطَأِ وَعَلَى أَصْلٍ غَيْرِ صَحِيحٍ - وَلَمْ يَأْتِ بِهِ قَطُّ قُرْآنٌ وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا رِوَايَةٌ سَقِيمَةٌ وَلَا إجْمَاعٌ مِنْ أَنَّ كُلَّ عَشَرَةِ دَرَاهِمَ بِإِزَاءِ دِينَارٍ، وَإِنَّمَا هُوَ شَيْءٌ قَالُوهُ فِي الزَّكَاةِ، وَالْقَطْعِ فِي السَّرِقَةِ.

L10945–10947 And regarding diyah, the dower, and all of that—none of it is valid, as we have clarified and will clarify—if Allah, the Exalted, wills—since there exists no Quranic text, authentic Sunnah, or consensus concerning any of it. Success comes from Allah, the Exalted, and by the evidence we cited, it becomes obligatory that gold not be subject to zakah unless it completes a full year in its owner’s possession, as we previously stated? Then we later realized and concluded that the ḥadīth of Jarīr ibn Ḥāzim is a rigorously authenticated (ṣaḥīḥ) ḥadīth with an unbroken chain of transmission (musnad), which it is unlawful to contradict, and that… The reasoning here is that the assumption that ʿĀṣim ibn Ḍamrah, Abū Isḥāq, or Jarīr mixed al-Ḥārith’s chain with ʿĀṣim’s mursal transmission is a baseless conjecture that is impermissible. We bear no responsibility for al-Ḥārith’s participation with ʿĀṣim, nor for the mursal transmission of whoever transmitted it, nor is there anything regarding Zuhayr’s doubt in it. Jarīr is reliable; thus, adhering to his transmitted report is obligatory; and success is from Allah, the Exalted.

وَالدِّيَةِ، وَالصَّدَاقِ، وَكُلُّ ذَلِكَ خَطَأٌ مِنْهُمْ، لَيْسَ شَيْءٌ مِنْهُ صَحِيحًا عَلَى مَا بَيَّنَّاهُ وَنُبَيِّنُ - إنْ شَاءَ اللَّهُ تَعَالَى؛ إذْ لَيْسَ فِي شَيْءٍ مِنْ ذَلِكَ قُرْآنٌ وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا إجْمَاعٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ وَبِالدَّلِيلِ الَّذِي ذَكَرْنَا وَجَبَ أَنْ لَا يُزَكَّى الذَّهَبُ إلَّا حَتَّى يَتِمَّ عِنْدَ مَالِكِهِ حَوْلًا كَمَا قَدَّمْنَا؟ ثُمَّ اسْتَدْرَكْنَا فَرَأَيْنَا أَنَّ حَدِيثَ جَرِيرِ بْنِ حَازِمٍ مُسْنَدٌ صَحِيحٌ لَا يَجُوزُ خِلَافُهُ وَأَنَّ الِاعْتِلَالَ فِيهِ بِأَنَّ عَاصِمَ بْنَ ضَمْرَةَ، أَوْ أَبَا إسْحَاقَ، أَوْ جَرِيرًا خَلَطَ إسْنَادَ الْحَارِثِ بِإِرْسَالِ عَاصِمٍ -: هُوَ الظَّنُّ الْبَاطِلُ الَّذِي لَا يَجُوزُ، وَمَا عَلَيْنَا مِنْ مُشَارَكَةِ الْحَارِثِ لِعَاصِمٍ، وَلَا لِإِرْسَالِ مَنْ أَرْسَلَهُ، وَلَا لِشَكِّ زُهَيْرٍ فِيهِ شَيْءٌ وَجَرِيرٌ ثِقَةٌ؛ فَالْأَخْذُ بِمَا أَسْنَدَهُ لَازِمٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The Ruling on Zakat for Gold and Silver Ornaments

[مَسْأَلَةُ الزَّكَاةِ فِي حُلِيِّ الذَّهَبِ وَالْفِضَّةِ]

L10948

L10949 684. Issue: Zakat is obligatory on silver and gold jewelry when each reaches the specified quantity we mentioned and completes a lunar year in its owner’s possession. It is impermissible to combine gold and silver for Zakat calculations, nor to offset one against the other, nor to pay their equivalent value in merchandise whatsoever. This ruling applies equally to a woman’s jewelry or a man’s jewelry, including decorative elements on swords, Qurans, rings, and every minted item from them - whether their possession is permissible

٦٨٤ - مَسْأَلَةٌ: وَالزَّكَاةُ وَاجِبَةٌ فِي حُلِيِّ الْفِضَّةِ وَالذَّهَبِ إذَا بَلَغَ كُلُّ وَاحِدٍ مِنْهُمَا الْمِقْدَارَ الَّذِي ذَكَرْنَا وَأَتَمَّ عِنْدَ مَالِكِهِ عَامًا قَمَرِيًّا. وَلَا يَجُوزُ أَنْ يُجْمَعَ بَيْنَ الذَّهَبِ وَالْفِضَّةِ فِي الزَّكَاةِ وَلَا أَنْ يَخْرُجَ أَحَدُهُمَا عَنْ الْآخَرِ وَلَا قِيمَتُهُمَا فِي عَرْضٍ أَصْلًا، وَسَوَاءٌ كَانَ حُلِيَّ امْرَأَةٍ أَوْ حُلِيَّ رَجُلٍ، وَكَذَلِكَ حِلْيَةُ السَّيْفِ وَالْمُصْحَفِ وَالْخَاتَمِ وَكُلِّ مَصُوغٍ مِنْهُمَا

حَلَّ اتِّخَاذُهُ أَوْ لَمْ يَحِلَّ؟ وَقَالَ أَبُو حَنِيفَةَ: بِوُجُوبِ الزَّكَاةِ فِي حُلِيِّ الذَّهَبِ وَالْفِضَّةِ وَقَالَ مَالِكٌ: إِنْ كَانَ الْحُلِيُّ لِامْرَأَةٍ تَلْبَسُهُ أَوْ تُكْرِيهِ أَوْ كَانَ لِرَجُلٍ يُعِدُّهُ لِنِسَائِهِ فَلَا زَكَاةَ فِي شَيْءٍ مِنْهُ، فَإِنْ كَانَ لِرَجُلٍ يُعِدُّهُ لِنَفْسِهِ عِدَّةً فَفِيهِ الزَّكَاةُ وَلَا زَكَاةَ عَلَى الرَّجُلِ فِي حِلْيَةِ السَّيْفِ، وَالْمِنْطَقَةِ، الْمُصْحَفِ، وَالْخَاتَمِ؟ وَقَالَ الشَّافِعِيُّ: لَا زَكَاةَ فِي حُلِيِّ ذَهَبٍ، أَوْ فِضَّةٍ؟ وَجَاءَ فِي ذَلِكَ عَنْ السَّلَفِ مَا قَدْ ذَكَرْنَاهُ فِي الْبَابِ الَّذِي قَبْلَ هَذَا عَنْ ابْنِ مَسْعُودٍ عَنْ إِيجَابِهِ الزَّكَاةَ فِي حُلِيِّ امْرَأَتِهِ.

or not. Abu Hanifa held that Zakat is obligatory on gold and silver jewelry. Malik said: If jewelry belongs to a woman who wears it, rents it out, or belongs to a man who provides it for his wives, no Zakat is due on any of it. But if a man maintains it as a personal collection, Zakat becomes obligatory. No Zakat is incumbent upon a man for sword ornamentation, ornamental belts, Qurans, or rings. Al-Shafi'i said: There is no Zakat on gold or silver jewelry. Regarding this matter, it is reported from the Salaf as we previously mentioned in the preceding chapter concerning Ibn Masud's position mandating Zakat on his wife's jewelry.

L10950–10952 وَهُوَ عَنْهُ فِي غَايَةِ الصِّحَّةِ وَرُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِي عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ قَالَ قَالَتْ امْرَأَةٌ لِعَبْدِ اللَّهِ بْنِ مَسْعُودٍ: لِي حُلِيٌّ؟ فَقَالَ لَهَا: إِذَا بَلَغَ مِائَتَيْنِ فَفِيهِ الزَّكَاةُ؟ وَعَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ كَتَبَ إِلَى أَبِي مُوسَى: مُرْ نِسَاءَ الْمُسْلِمِينَ يُزَكِّينَ حُلِيَّهُنَّ -: وَمِنْ طَرِيقِ جَرِيرِ بْنِ حَازِمٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ قَالَ: كَانَ عَبْدُ اللَّهِ بْنُ عَمْرِو بْنِ الْعَاصِ يَأْمُرُ بِالزَّكَاةِ فِي حُلِيِّ بَنَاتِهِ وَنِسَائِهِ؟ وَمِنْ طَرِيقِ حُسَيْنٍ الْمُعَلِّمِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ سَالِمٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّهُ كَانَ يَأْمُرُهُ بِذَلِكَ كُلَّ عَامٍ؟ وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: لَا بَأْسَ بِلُبْسِ الْحُلِيِّ إِذَا أُعْطِيت زَكَاتُهُ؟ وَهُوَ قَوْلُ مُجَاهِدٍ، وَعَطَاءٍ، وَطَاوُسٍ، وَجَابِرِ بْنِ زَيْدٍ، وَمَيْمُونِ بْنِ مِهْرَانَ، وَعَبْدِ اللَّهِ بْنِ شَدَّادٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَذَرٍّ الْهَمْدَانِيِّ وَابْنِ سِيرِينَ، وَاسْتَحَبَّهُ الْحَسَنُ.

This narration from him is of the highest authenticity. It has been narrated to us via the chain of Muḥammad ibn al-Muthannā, from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī, from ʿAlqamah who said: A woman said to ʿAbdullāh ibn Masʿūd: "Do I have gold or silver jewelry?" He replied: "If it reaches two hundred, then zakāt is due on it." And from ʿUmar ibn al-Khaṭṭāb, that he wrote to Abū Mūsā: "Command the Muslim women to pay zakāt on their jewelry." From the narration of Jarir ibn Hazim from Amr ibn Shu'ayb from his father, he said: "Did Abdullah ibn Amr ibn al-As use to order the payment of *zakat* on the jewelry of his daughters and wives?" From the narration of Husayn al-Mu'allim from Amr ibn Shu'ayb from Salim from Abdullah ibn Umar: "Did he order him to do that every year?" From the narration of Amr ibn Shu'ayb from Urwah from Aishah, the Mother of the Believers, she said: "There is no harm in wearing jewelry if its *zakat* has been given." This is the opinion of Mujahid, Ata, Tawus, Jabir ibn Zayd, Maymun ibn Mihran, Abdullah ibn Shaddad, Sa'id ibn al-Musayyib, Sa'id ibn Jubayr, Dharr al-Hamdani, and Ibn Sirin. Al-Hasan also deemed it preferable.

L10953 قَالَ الزُّهْرِيُّ: مَضَتْ السُّنَّةُ أَنَّ فِي الْحُلِيِّ الزَّكَاةَ؟ وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ.

Al-Zuhri said: The Sunnah has established that Zakat is due on jewelry. This is the view of Ibn Shubrumah, Al-Awza'i, and Al-Ḥasan ibn Ḥayyin.

وَقَالَ اللَّيْثُ: مَا كَانَ مِنْ حُلِيٍّ يُلْبَسُ وَيُعَارُ فَلَا زَكَاةَ فِيهِ، وَمَا كَانَ مِنْ حُلِيٍّ اتُّخِذَ لِيُحْرَزَ مِنْ الزَّكَاةِ فَفِيهِ الزَّكَاةُ؟ وَقَالَ جَابِرُ بْنُ عَبْدِ اللَّهِ، وَابْنُ عُمَرَ: لَا زَكَاةَ فِي الْحُلِيِّ؟ وَهُوَ قَوْلُ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ؛ وَرُوِيَ أَيْضًا عَنْ عَائِشَةَ، وَهُوَ عَنْهُمَا صَحِيحٌ، وَهُوَ قَوْلُ الشَّعْبِيِّ، وَعَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ، وَأَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيٍّ؛ وَرُوِيَ أَيْضًا عَنْ طَاوُسٍ، وَالْحَسَنِ، وَسَعِيدِ بْنِ الْمُسَيِّبِ.

L10954 Al-Layth said: There is no zakat on jewelry that is worn or loaned, but zakat is due on jewelry acquired to exempt from zakat. Jabir ibn Abdullah and Ibn Umar said: There is no zakat on jewelry. This is the opinion of Asma bint Abi Bakr al-Siddiq, and it is authentically reported from Aisha as well. This is also the view of al-Shaʿbi, Amrah bint Abd al-Rahman, Abu Jaʿfar Muhammad ibn Ali, and it is narrated from Tawus, al-Hasan, and Saʿid ibn al-Musayyib.

وَاخْتَلَفَ فِيهِ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، فَمَرَّةً رَأَى فِيهِ الزَّكَاةَ، وَمَرَّةً لَمْ يَرَهَا قَالَ أَبُو مُحَمَّدٍ: وَهُنَا قَوْلُ أَنَسٍ: إنَّ الزَّكَاةَ فِيهِ مَرَّةٌ وَاحِدَةٌ، ثُمَّ لَا تَعُودُ فِيهِ الزَّكَاةُ.

L10955 The opinion of Sufyan al-Thawri regarding this matter varied: at times he considered zakat due on it, and at other times he did not. Abu Muhammad said: Here is Anas's statement: "Zakat is due in it once, after which it does not recur in it."

وَرُوِّينَا عَنْ أَبِي أُمَامَةَ الْبَاهِلِيِّ وَخَالِدِ بْنِ مَعْدَانَ: أَنَّ حِلْيَةَ السَّيْفِ مِنْ الْكُنُوزِ.

L10956 It has been narrated to us from Abū Umāmah al-Bāhilī and Khālid ibn Maʿdān that the ornamentation of the sword is among the hoarded treasures.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ وَعَطَاءٍ: لَا زَكَاةَ فِي قَدَحٍ مُفَضَّضٍ وَلَا فِي مِنْطَقَةٍ مُحَلَّاةٍ وَلَا فِي سَيْفٍ مُحَلًّى. قَالَ عَلِيٌّ: أَمَّا قَوْلُ مَالِكٍ فَتَقْسِيمٌ غَيْرُ صَحِيحٍ، وَمَا عَلِمْنَا ذَلِكَ التَّقْسِيمَ عَنْ أَحَدٍ قَبْلَهُ، وَلَا تَقُومُ عَلَى صِحَّتِهِ حُجَّةٌ مِنْ قُرْآنٍ وَلَا سُنَّةٍ وَلَا إجْمَاعٍ، وَلَا قَوْلِ صَاحِبٍ وَلَا قِيَاسٍ وَلَا رَأْيٍ لَهُ وَجْهٌ وَالْعَجَبُ أَنَّهُمْ احْتَجُّوا فِي ذَلِكَ بِأَنَّ الزَّكَاةَ إنَّمَا سَقَطَتْ عَنْ الْحُلِيِّ الْمُتَّخَذِ لِلنِّسَاءِ لِأَنَّهُ مُبَاحٌ لَهُنَّ، وَكَذَلِكَ عَنْ الْمِنْطَقَةِ، وَالسَّيْفِ، وَحِلْيَةِ الْمُصْحَفِ، وَالْخَاتَمِ لِلرِّجَالِ قَالَ أَبُو مُحَمَّدٍ: فَكَانَ هَذَا الِاحْتِجَاجُ عَجَبًا وَلَقَدْ عَلِمَ كُلُّ مُسْلِمٍ أَنَّ الدَّنَانِيرَ وَالدَّرَاهِمَ وَنِقَارَ الذَّهَبِ وَالْفِضَّةِ -: مُبَاحٌ اتِّخَاذُ كُلِّ ذَلِكَ لِلرِّجَالِ وَالنِّسَاءِ فَيَنْبَغِي عَلَى هَذَا أَنْ تَسْقُطَ الزَّكَاةُ عَنْ كُلِّ ذَلِكَ، إنْ كَانَتْ هَذِهِ الْعِلَّةُ صَحِيحَةً وَيَلْزَمُ عَلَى هَذِهِ الْعِلَّةِ أَنَّ مَنْ اتَّخَذَ مَا لَا زَكَاةَ فِيهِ - مِمَّا لَمْ يُبَحْ لَهُ اتِّخَاذُهُ - أَنْ تَكُونَ فِيهِ الزَّكَاةُ عُقُوبَةً لَهُ، كَمَا أَسْقَطَ الزَّكَاةَ عَمَّا فِيهِ الزَّكَاةُ مِنْ الذَّهَبِ وَالْفِضَّةِ إذَا اتُّخِذَ مِنْهُ حُلِيٌّ مُبَاحٌ اتِّخَاذُهُ فَإِنْ

L10957–10961 No Zakat is obligatory on a silver-plated cup, nor on an ornamented belt, nor on... Regarding a decorated sword. Ali said: As for Malik's statement, it is an invalid categorization, and we have not known such categorization from anyone before him. No evidence from the Quran, the Sunnah, consensus, the opinion of a companion, analogy, or any sound reasoning supports its validity. It is astonishing that they argued that zakat is waived for women's jewelry because it is permissible for them, and similarly for belts, swords, ornamentation of the Qur'an, and men's rings. Abu Muhammad said: This argument is indeed astonishing. Every Muslim knows that dinars, dirhams, gold fragments, and silver are permissible for both men and women to possess. By this rationale, zakat should be waived for all such items if this reasoning were valid. It would follow that zakat becomes obligatory as a penalty on impermissible items—just as zakat is waived for gold and silver when fashioned into permissible jewelry. If they argue: "This resembles household items like clothing, which are not subject to zakat," we reply: Then by this same rationale—if you deem it valid—you must waive zakat for camels used for riding, plowing, carrying, or milling, and for oxen used for plowing. Ultimately, given the invalidity and contradiction in this

reasoning, from where did you derive it? How did you establish that zakat is waived for permissible jewelry? This is nothing but your own assertion, which you posit as evidence for your view—nothing more. Moreover, where did you find the permissibility of men owning belts adorned with silver or Qur'ans ornamented with silver, but not saddles, bridles, or whips adorned with silver? If they claim a narration from the early scholars in this matter, they assert what they cannot substantiate. Yet we have found through the most authentic chain via al-Bukhari, Muhammad ibn Isma'il in his *Ta'rikh*, that the early scholars held... From Abdullah ibn Muhammad al-Musnadi, from Sufyan, from Isma'il ibn Muhammad ibn Sa'd ibn Abi Waqqas, from his uncle Mus'ab ibn Sa'd, who said: I saw gold rings on Sa'd ibn Abi Waqqas, Talha ibn Ubayd Allah, and Suhayb. It has also been authentically established from al-Bara' ibn Azib.

قَالُوا: إنَّهُ يُشْبِهُ مَتَاعَ الْبَيْتِ الَّذِي لَا زَكَاةَ فِيهِ مِنْ الثِّيَابِ وَنَحْوِهَا؟ قُلْنَا لَهُمْ: فَأَسْقِطُوا بِهَذِهِ الْعِلَّةِ نَفْسِهَا - إنْ صَحَّحْتُمُوهَا - الزَّكَاةَ عَنْ الْإِبِلِ الْمُتَّخَذَةِ لِلرُّكُوبِ وَالسَّنِيِّ وَالْحَمْلِ وَالطَّحْنِ، وَعَنْ الْبَقَرِ الْمُتَّخَذَةِ لِلْحَرْثِ؟ وَقَبْلَ كُلِّ شَيْءٍ وَبَعْدُ، فَمَعَ فَسَادِ هَذِهِ الْعِلَّةِ وَتَنَاقُضِهَا، مِنْ أَيْنَ قُلْتُمْ بِهَا؟ وَمِنْ أَيْنَ صَحَّ لَكُمْ أَنَّ مَا أُبِيحَ اتِّخَاذُهُ مِنْ الْحُلِيِّ تَسْقُطُ عَنْهُ الزَّكَاةُ؟ وَمَا هُوَ إلَّا قَوْلُكُمْ جَعَلْتُمُوهُ حُجَّةً لِقَوْلِكُمْ وَلَا مَزِيدَ ثُمَّ أَيْنَ وَجَدْتُمْ إبَاحَةَ اتِّخَاذِ الْمِنْطَقَةِ الْمُحَلَّاةِ بِالْفِضَّةِ وَالْمُصْحَفِ الْمُحَلَّى بِالْفِضَّةِ لِلرِّجَالِ دُونَ السَّرْجِ وَاللِّجَامِ، وَالْمَهَامِيزِ الْمُحَلَّاةِ بِالْفِضَّةِ؟ فَإِنْ ادَّعَوْا فِي ذَلِكَ رِوَايَةً عَنْ السَّلَفِ ادَّعَوْا مَا لَا يَجِدُونَهُ وَأَوْجَدْنَاهُمْ عَنْ السَّلَفِ بِأَصَحِّ طَرِيقٍ مِنْ طَرِيقِ الْبُخَارِيِّ مُحَمَّدِ بْنِ إسْمَاعِيلَ فِي تَارِيخِهِ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدٍ الْمُسْنَدِيِّ عَنْ سُفْيَانَ عَنْ إسْمَاعِيلَ بْنِ مُحَمَّدِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ عَمِّهِ مُصْعَبِ بْنِ سَعْدٍ قَالَ: رَأَيْتُ عَلَى سَعْدِ بْنِ أَبِي وَقَّاصٍ، وَطَلْحَةَ بْنِ عُبَيْدِ اللَّهِ، وَصُهَيْبٍ خَوَاتِيمَ ذَهَبٍ؟ وَصَحَّ أَيْضًا عَنْ الْبَرَاءِ بْنِ عَازِبٍ.

L10962 Exempt zakat on men's gold rings for this reason, or analogize the ornaments of saddles, bridles, armor, and helmets by analogy to belts and swords. Otherwise, have you neither followed the texts nor employed analogy? Is this opinion then invalidated with certainty? As for Al-Layth's view, it is also flawed, for women's jewelry is either subject to zakat or not. If it is subject to zakat, then it remains so in all circumstances. If not, what obligation do we know upon one who acquires zakat-exempt assets to exempt them from zakat through zakat? If this were valid, would it not obligate one who buys a house or estate with their dirhams to preserve them from zakat to pay zakat on them—a view he himself rejects? As for Al-Shafi'i, he justified exemption based on revenue-generating growth, thus exempting jewelry, camels, cattle, and non-grazing sheep. Abu Muhammad said: This justification is invalid, as it lacks Quranic, Sunnah, consensus, or sound rational basis. We know fruits and vegetables grow, yet he rejects zakat on them. Camel rentals and cattle

فَأَسْقِطُوا لِهَذَا الزَّكَاةَ عَنْ خَوَاتِيمِ الذَّهَبِ لِلرِّجَالِ، أَوْ قِيسُوا حِلْيَةَ السَّرْجِ وَاللِّجَامِ وَالدِّرْعِ وَالْبَيْضَةِ عَلَى الْمِنْطَقَةِ وَالسَّيْفِ، وَإِلَّا فَلَا النُّصُوصَ اتَّبَعْتُمْ، وَلَا الْقِيَاسَ اسْتَعْمَلْتُمْ فَسَقَطَ هَذَا الْقَوْلُ بِيَقِينٍ؟ وَأَمَّا قَوْلُ اللَّيْثِ فَفَاسِدٌ أَيْضًا، لِأَنَّهُ لَا يَخْلُو حُلِيُّ النِّسَاءِ مِنْ أَنْ تَكُونَ فِيهِ الزَّكَاةُ أَوْ لَا تَكُونَ فِيهِ الزَّكَاةُ، فَإِنْ كَانَتْ فِيهِ الزَّكَاةُ فَفِي كُلِّ حَالٍّ فِيهِ الزَّكَاةُ وَإِنْ كَانَ لَا زَكَاةَ فِيهِ فَمَا عَلِمْنَا عَلَى مَنْ اتَّخَذَ مَا لَا زَكَاةَ فِيهِ لِيُحْرِزَهُ مِنْ الزَّكَاةِ زَكَاةً وَلَوْ كَانَ هَذَا لَوَجَبَ عَلَى مَنْ اشْتَرَى بِدَرَاهِمِهِ دَارًا أَوْ ضَيْعَةً لِيُحْرِزَهَا مِنْ الزَّكَاةِ أَنْ يُزَكِّيَهَا، وَهُوَ لَا يَقُولُ بِهَذَا؟ وَأَمَّا الشَّافِعِيُّ فَإِنَّهُ عَلَّلَ ذَلِكَ بِالنَّمَاءِ. فَأَسْقَطَ الزَّكَاةَ عَنْ الْحُلِيِّ وَعَنْ الْإِبِلِ، وَالْبَقَرِ وَالْغَنَمِ غَيْرِ السَّوَائِمِ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَعْلِيلٌ فَاسِدٌ، لِأَنَّهُ لَمْ يَأْتِ بِهِ

labor generate growth, yet he rejects zakat on them. Dirhams do not increase when retained, yet he imposes zakat on them. Jewelry's rental income and value increase, yet he rejects zakat on it? As for Abu Hanifa, he obligated zakat on jewelry but exempted non-commercial camels, cattle, and sheep—a contradiction. Some of his followers argued that gold and silver were zakatable before being fashioned into jewelry, after which a group claimed the obligation of zakat ceased.

L10963–10964 Others argued: It has not been waived. Should what they unanimously agreed upon be invalidated by mere disagreement? We responded: This is a valid argument, except that it applies to your position regarding non-grazing livestock - for all agree on the obligation of zakāh in them before being stall-fed. When they became stall-fed, scholars disagreed whether zakāh lapses or continues. Does this mean their initial consensus should not be overturned by subsequent disagreement? This proponent said: We observe that stall-fed animals require our expenditure while we benefit from them, whereas grazing livestock provide benefit without our expenditure. Ornaments yield rental income and are utilized without maintenance costs, thus resembling grazing livestock more than stall-fed ones. He was countered: But grazing livestock require expenditure on herders' wages! All these are baseless whims and arbitrary religious rulings stemming from error.

Abū Muḥammad said: Those who assert zakāh on ornaments rely on weak narrations unworthy of consideration. Nevertheless, we cite them to refute Mālikīs who employ similar or weaker proofs when supporting their doctrines. These include a report we transmitted through Khālid ibn al-Ḥārith → al-Ḥusayn al-Mu'allim → 'Amr ibn Shu'ayb → his father → his grandfather: "A woman came to Allah's Messenger (peace and blessings be upon him) wearing two heavy gold bracelets. He asked: 'Do you pay zakāh on these?' She replied: 'No.' He said: 'Would you like Allah to replace them with two fiery bracelets on Judgment Day?' She immediately discarded them, declaring: 'These are for Allah and His Messenger.'"

قُرْآنٌ وَلَا سُنَّةٌ وَلَا إِجْمَاعٌ وَلَا نَظَرٌ صَحِيحٌ؛ وَقَدْ عَلِمْنَا أَنَّ الثِّمَارَ وَالْخُضَرَ تَنْمِي، وَهُوَ لَا يَرَى الزَّكَاةَ فِيهَا وَكِرَاءُ الْإِبِلِ، وَعَمَلُ الْبَقَرِ يَنْمِي، وَهُوَ لَا يَرَى الزَّكَاةَ فِيهَا وَالدَّرَاهِمُ لَا تَنْمِي إِذَا بَقِيَتْ عِنْدَ مَالِكِهَا، وَهُوَ يَرَى الزَّكَاةَ فِيهَا، وَالْحُلِيُّ يَنْمِي كِرَاؤُهُ وَقِيمَتُهُ، وَهُوَ لَا يَرَى الزَّكَاةَ فِيهِ؟ وَأَمَّا أَبُو حَنِيفَةَ - فَأَوْجَبَ الزَّكَاةَ فِي الْحُلِيِّ، وَأَسْقَطَ الزَّكَاةَ عَنْ الْمُسْتَعْمَلَةِ مِنْ الْإِبِلِ، وَالْبَقَرِ، وَالْغَنَمِ؛ وَهَذَا تَنَاقُضٌ وَاحْتَجَّ لَهُ بَعْضُ مُقَلِّدِيهِ بِأَنَّ الذَّهَبَ، وَالْفِضَّةَ قَبْلَ أَنْ يُتَّخَذَ حُلِيًّا كَانَتْ فِيهِمَا الزَّكَاةُ، ثُمَّ قَالَتْ طَائِفَةٌ: قَدْ سَقَطَ عَنْهُمَا حَقُّ الزَّكَاةِ.

وَقَالَ آخَرُونَ: لَمْ يَسْقُطْ، فَوَجَبَ أَنْ لَا يَسْقُطَ مَا أَجْمَعُوا عَلَيْهِ بِاخْتِلَافٍ؟ فَقُلْنَا: هَذِهِ حُجَّةٌ صَحِيحَةٌ؛ إلَّا أَنَّهَا لَازِمَةٌ لَكُمْ فِي غَيْرِ السَّوَائِمِ؛ لِاتِّفَاقِ الْكُلِّ عَلَى وُجُوبِ الزَّكَاةِ فِيهَا قَبْلَ أَنْ تُعْلَفَ، فَلَمَّا عُلِفَتْ اخْتَلَفُوا فِي سُقُوطِ الزَّكَاةِ أَوْ تَمَادِيهَا، فَوَجَبَ أَنْ لَا يَسْقُطَ مَا أَجْمَعُوا عَلَيْهِ بِاخْتِلَافٍ؟ وَقَالَ هَذَا الْقَائِلُ: وَجَدْنَا الْمَعْلُوفَةَ نُنْفِقُ عَلَيْهَا وَنَأْخُذُ مِنْهَا، وَوَجَدْنَا السَّوَائِمَ نَأْخُذُ مِنْهَا وَلَا نُنْفِقُ عَلَيْهَا؛ وَالْحُلِيُّ يُؤْخَذُ كِرَاؤُهُ وَيُنْتَفَعُ بِهِ وَلَا يُنْفَقُ عَلَيْهِ، فَكَانَ أَشْبَهَ بِالسَّوَائِمِ مِنْهُ بِالْمَعْلُوفَةِ؟ فَقِيلَ لَهُ: وَالسَّائِمَةُ أَيْضًا يُنْفَقُ عَلَيْهَا أَجْرُ الرَّاعِي. وَهَذِهِ كُلُّهَا أَهْوَاسٌ وَتَحَكُّمٌ فِي الدِّينِ بِالضَّلَالِ؟ قَالَ أَبُو مُحَمَّد: وَاحْتَجَّ مَنْ رَأَى إيجَابَ الزَّكَاةِ فِي الْحُلِيِّ بِآثَارٍ وَاهِيَةٍ، لَا وَجْهَ لِلِاشْتِغَالِ بِهَا، إلَّا أَنَّنَا نُنَبِّهُ عَلَيْهَا تَبْكِيتًا لِلْمَالِكِيِّينَ الْمُحْتَجِّينَ بِمِثْلِهَا وَبِمَا هُوَ دُونَهَا إذَا وَافَقَ تَقْلِيدَهُمْ وَهِيَ -: خَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ خَالِدِ بْنِ الْحَارِثِ عَنْ الْحُسَيْنِ الْمُعَلِّمِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ امْرَأَةً دَخَلَتْ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي يَدِهَا مَسَكَتَانِ غَلِيظَتَانِ مِنْ ذَهَبٍ فَقَالَ لَهَا: أَتُؤَدِّينَ زَكَاةَ هَذَا؟ قَالَتْ: لَا، قَالَ: أَيَسُرُّكِ أَنْ يُسَوِّرَكِ اللَّهُ بِهِمَا يَوْمَ الْقِيَامَةِ سِوَارَيْنِ مِنْ نَارٍ؟ فَأَلْقَتْهُمَا، وَقَالَتْ: هُمَا لِلَّهِ وَلِرَسُولِهِ» .

وَالْمَالِكِيُّونَ يَحْتَجُّونَ بِرِوَايَةِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ إِذَا وَافَقَ أَهْوَاءَهُمْ، وَلَمْ يَرْوِهِ هَاهُنَا حُجَّةً؟ -: وَخَبَرٌ مِنْ طَرِيقِ عَتَّابٍ عَنْ ثَابِتِ بْنِ عَجْلَانَ عَنْ عَطَاءٍ عَنْ «أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ كُنْتُ أَلْبَسُ أَوْضَاحًا لِي مِنْ ذَهَبٍ، فَقُلْتُ: يَا رَسُولَ اللَّهِ أَكَنْزٌ هُوَ؟ قَالَ: مَا بَلَغَ أَنْ تُؤَدَّى زَكَاتُهُ فَزُكِّيَ فَلَيْسَ بِكَنْزٍ» .

L10965–10966 The Malikis cite the narration of ‘Amr ibn Shu‘ayb from his father from his grandfather as evidence when it aligns with their inclinations—do they not cite it as evidence here?—Yet here is a report through the chain of ‘Attāb from Thābit ibn ‘Ajlān from ‘Aṭā’ from Umm Salamah, the Mother of the Believers, who said: “I used to wear gold bracelets of mine, so I asked: ’O Messenger of Allah, is this considered treasure subject to zakat?’ He replied: ’Whatever reaches the amount on which zakat is due, so its zakat is paid, then it is not treasure subject to zakat.’”

وَعَتَّابٌ مَجْهُولٌ، إِلَّا أَنَّ الْمَالِكِيِّينَ يَحْتَجُّونَ بِمِثْلِ حَرَامِ بْنِ عُثْمَانَ، وَسَوَّارِ بْنِ مُصْعَبٍ، وَهَذَا خَيْرٌ مِنْهُ؟ -: وَمِنْ طَرِيقِ يَحْيَى بْنِ أَيُّوبَ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ: أَنَّ مُحَمَّدَ بْنَ عَمْرٍو هُوَ ابْنُ عَطَاءٍ - أَخْبَرَهُ [عَنْ] عَبْدِ اللَّهِ بْنِ شَدَّادِ بْنِ الْهَادِ قَالَ: «دَخَلْنَا عَلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَقَالَتْ دَخَلَ عَلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَأَى فِي يَدِي سِخَابًا مِنْ وَرِقٍ فَقَالَ: أَتُؤَدِّينَ زَكَاتَهُ؟ قُلْت: لَا، أَوْ مَا شَاءَ اللَّهُ تَعَالَى، فَقَالَ: هُوَ حَسْبُكِ مِنْ النَّارِ» . قَالَ أَبُو مُحَمَّدٍ: يَحْيَى بْنُ أَيُّوبَ ضَعِيفٌ، وَالْمَالِكِيُّونَ يَحْتَجُّونَ بِرِوَايَتِهِ، إِذَا وَافَقَ أَهْوَاءَهُمْ.

L10967–10968 And ‘Attāb is unknown, except that the Mālikīs rely on narrators like Ḥarām ibn ‘Uthmān and Sawwār ibn Muṣ‘ab. Is this one more reliable than him? From the chain of Yaḥyā ibn Ayyūb via ‘Ubayd Allāh ibn Abī Ja‘far: that Muḥammad ibn ‘Amr – he is the son of ‘Aṭā’ – narrated from ‘Abd Allāh ibn Shaddād ibn al-Hādī, who said: “We visited ‘Ā’ishah, the Mother of the Believers, and she said: ’The Messenger of Allāh, peace and blessings be upon him, entered my chamber and saw a beaded silver necklace in my hand. He asked: ’Do you pay its *zakāh*¿‘ I replied: ’’No“ – or perhaps, ’’Whatever Allāh the Exalted wills.“ He then said: ’’It will suffice as protection for you from the Fire.“” Abū Muḥammad remarked: Yaḥyā ibn Ayyūb is weak, yet the Mālikīs rely on his narration when it conforms to their inclinations.

وَنَقُولُ لِلْحَنَفِيِّينَ: أَنْتُمْ قَدْ تَرَكْتُمْ رِوَايَةَ أَبِي هُرَيْرَةَ فِي غَسْلِ الْإِنَاءِ مِنْ وُلُوغِ الْكَلْبِ سَبْعًا مِنْ أَجْلِ أَنَّكُمْ رَوَيْتُمْ مِنْ طَرِيقٍ لَا خَيْرَ فِيهَا أَنَّهُ خَالَفَ مَا رُوِيَ مِنْ ذَلِكَ لَا حُجَّةَ لَكُمْ فِي تَرْكِ ذَلِكَ الْخَبَرِ الثَّابِتِ إِلَّا بِهَذَا، ثُمَّ أَخَذْتُمْ بِرِوَايَةِ عَائِشَةَ هَذِهِ الَّتِي لَا تَصِحُّ، وَهِيَ قَدْ خَالَفَتْهُ مِنْ أَصَحِّ طَرِيقٍ، فَمَا هَذَا التَّلَاعُبُ بِالدِّينِ؟ فَإِنْ قَالُوا: قَدْ رُوِيَ عَنْهَا الْأَخْذُ بِمَا رَوَتْ مِنْ هَذَا؟ قُلْنَا لَهُمْ: وَقَدْ صَحَّ عَنْ أَبِي هُرَيْرَةَ الْأَخْذُ بِمَا رَوَى فِي غَسْلِ الْإِنَاءِ مِنْ وُلُوغِ الْكَلْبِ؟ فَإِنْ قَالُوا: قَدْ رَوَى زَكَاةَ الْحُلِيِّ كَمَا أَوْرَدْتُمْ غَيْرُ عَائِشَةَ، وَهُوَ عَبْدُ اللَّهِ بْنُ عَمْرٍو. قُلْنَا لَهُمْ: وَقَدْ رَوَى غَسْلَ الْإِنَاءِ مِنْ وُلُوغِ الْكَلْبِ سَبْعًا غَيْرُ أَبِي هُرَيْرَةَ، وَهُوَ

L10969–10971 We say to the Hanafis: You have abandoned the narration of Abū Hurayrah regarding washing a vessel seven times after a dog’s lapping because you transmitted it through a chain lacking merit that contradicts what was narrated otherwise. You have no valid proof for abandoning this established report except this. Then you adopted ‘Ā’ishah’s narration—which is inauthentic—while her narration contradicts his through the most authentic chain. What is this trifling with the religion? If they say: “It has been narrated from her to act upon what she reported in this matter,” we reply: “Has it not been authentically established from Abū Hurayrah to act upon his narration about washing the vessel seven times after a dog’s lapping?” If they say: “Others besides ‘Ā’ishah narrated the obligation of zakāh on jewelry—namely ‘Abdullāh ibn ‘Amr, as you cited,” we reply: “Others besides

Abū Hurayrah narrated washing the vessel seven times after a dog's lapping—namely 'Abdullāh ibn Mughaffal. This is inescapable for them!" Abū Muḥammad said: Had there been only these reports, we would not have ruled the obligation of zakāh on jewelry. However, since it is authentically established from the Messenger of Allah—peace and blessings of Allah be upon him—regarding silver: "A quarter of a tenth is due," and "There is no zakat on silver less than five awaq, but when it reaches two hundred dirhams, five dirhams are due," and silver jewelry is included as silver, the obligation of zakat applies to it due to the generality of these two authentic narrations. As for gold, it is authentically established from the Messenger of Allah—peace and blessings of Allah be upon him—that he said: "No owner of gold who fails to pay what is due on it will be spared; on the Day of Resurrection, plates of fire will be made for him, and he will be branded with them." Thus, zakat becomes obligatory on all gold by virtue of this text. Zakat on gold is waived only for those not specified in this text regarding its obligation—namely, the amount and time—due to the consensus of the entire Ummah without any disagreement that the Prophet—peace and blessings of Allah be upon him—did not obligate zakat on every quantity of gold or at every point in time. Since this is established and no text specifies the amount or time, nothing may be attributed to the Messenger of Allah—peace and blessings of Allah be upon him—except what is authentically transmitted from him via individual narrators or consensus. No consensus has ever asserted that he—peace and blessings of Allah be upon him—intended only specific conditions or attributes of gold. Thus, is it not impermissible to restrict any part of this without textual or consensual evidence? If it is asked: "Why do you not adopt the opinion of Anas regarding jewelry based on this very evidence, exempting it from zakat except once ever?" We respond: Because the Prophet—peace and blessings of Allah be upon him—generally obligated zakat on gold without excluding jewelry from this obligation, neither by text nor consensus. Therefore, zakat is obligatory by the text on all gold and silver. The definitively established consensus specifies certain amounts and time periods for them, so zakat is only obligatory in amounts mandated by text or consensus and at times mandated by text or consensus. It is impermissible to exclude anything from them, as the text is general. Hence,

عَبْدُ اللَّهِ بْنُ مُغَفَّلٍ، وَهَذَا مَا لَا انْفِكَاكَ لَهُمْ مِنْهُ؟ قَالَ أَبُو مُحَمَّدٍ: لَوْ لَمْ يَكُنْ إِلَّا هَذِهِ الْآثَارُ لَمَا قُلْنَا بِوُجُوبِ الزَّكَاةِ فِي الْحُلِيِّ، وَلَكِنْ لِمَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فِي الرِّقَةِ رُبْعُ الْعُشْرِ» «وَلَيْسَ فِيمَا دُونَ خَمْسِ أَوَاقٍ مِنْ الْوَرِقِ صَدَقَةٌ فَإِذَا بَلَغَ مِائَتَيْ دِرْهَمٍ فَفِيهَا خَمْسَةُ دَرَاهِمَ» وَكَانَ الْحُلِيُّ وَرِقًا وَجَبَ فِيهِ حَقُّ الزَّكَاةِ، لِعُمُومِ هَذَيْنِ الْأَثَرَيْنِ الصَّحِيحَيْنِ؟ وَأَمَّا الذَّهَبُ فَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَا مِنْ صَاحِبِ ذَهَبٍ لَا يُؤَدِّي مَا فِيهَا إِلَّا جُعِلَ لَهُ يَوْمَ الْقِيَامَةِ صَفَائِحُ مِنْ نَارٍ يُكْوَى بِهَا» فَوَجَبَتْ الزَّكَاةُ فِي كُلِّ ذَهَبٍ بِهَذَا النَّصِّ، وَإِنَّمَا تَسْقُطُ الزَّكَاةُ مِنْ الذَّهَبِ عَمَّنْ لَا بَيَانَ فِي هَذَا النَّصِّ بِإِيجَابِهَا فِيهِ، وَهُوَ الْعَدَدُ وَالْوَقْتُ، لِإِجْمَاعِ الْأُمَّةِ كُلِّهَا - بِلَا خِلَافٍ مِنْهَا أَصْلًا - عَلَى أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يُوجِبْ الزَّكَاةَ فِي كُلِّ عَدَدٍ مِنْ الذَّهَبِ، وَلَا فِي كُلِّ وَقْتٍ مِنْ الزَّمَانِ، فَلَمَّا صَحَّ ذَلِكَ وَلَمْ يَأْتِ نَصٌّ فِي الْعَدَدِ وَالْوَقْتِ وَجَبَ أَنْ لَا يُضَافَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا مَا صَحَّ عَنْهُ بِنَقْلِ آحَادٍ أَوْ بِنَقْلِ إجْمَاعٍ، وَلَمْ يَأْتِ إجْمَاعٌ قَطُّ بِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يُرِدْ إلَّا بَعْضَ أَحْوَالِ الذَّهَبِ وَصِفَاتِهِ، فَلَمْ يَجُزْ تَخْصِيصُ شَيْءٍ مِنْ ذَلِكَ بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ؟ فَإِنْ قِيلَ: فَهَلَّا أَخَذْتُمْ بِقَوْلِ أَنَسٍ فِي الْحُلِيِّ بِهَذَا الدَّلِيلِ نَفْسِهِ، فَلَمْ تُوجِبُوا فِيهِ الزَّكَاةَ إلَّا مَرَّةً وَاحِدَةً فِي الدَّهْرِ؟ قُلْنَا لَهُمْ: لِأَنَّهُ قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إيجَابُ الزَّكَاةِ فِي الذَّهَبِ عُمُومًا، وَلَمْ يَخُصَّ الْحُلِيَّ مِنْهُ بِسُقُوطِ الزَّكَاةِ فِيهِ، لَا بِنَصٍّ وَلَا بِإِجْمَاعٍ، فَوَجَبَتْ الزَّكَاةُ بِالنَّصِّ فِي كُلِّ ذَهَبٍ وَفِضَّةٍ، وَخَصَّ الْإِجْمَاعُ الْمُتَيَقَّنُ بَعْضَ الْأَعْدَادِ مِنْهُمَا وَبَعْضَ الْأَزْمَانِ، فَلَمْ تَجِبْ الزَّكَاةُ فِيهِمَا إلَّا فِي عَدَدٍ أَوْجَبَهُ نَصٌّ أَوْ إجْمَاعٌ وَفِي زَمَانٍ أَوْجَبَهُ نَصٌّ أَوْ إجْمَاعٌ، وَلَمْ يَجُزْ تَخْصِيصُ شَيْءٍ مِنْهُمَا، إذْ قَدْ عَمَّهُمَا

distinctions between conditions of gold cannot be made without textual or consensual evidence. It is conclusively established, without dispute, that the Messenger of Allah—peace and blessings of Allah be upon him—obligated zakat on gold, silver, and jewelry—whether silver or gold—annually. Thus, it is invalid to claim "except jewelry" without textual or consensual evidence—and by Allah, the Exalted, is success.

L10972–10973 Regarding the combining of silver and gold for zakāt, Mālik, Abū Yūsuf, and Muḥammad ibn al-Ḥasan said: Whoever possesses dirhams and dinars such that when calculated at the rate of one dinar equaling ten dirhams, the total reaches twenty dinars or two hundred dirhams, must pay zakāt on the entire amount as a single obligation. For example, if he has one dinar and one hundred ninety dirhams, ten dirhams and nineteen dinars, or ten dinars and one hundred dirhams, this ruling applies perpetually. If he possesses less than that, no zakāt is due. They disregarded fluctuations in the value of dinars or dirhams, whether high or low. Is this Abū Ḥanīfah's initial opinion? Then he retracted it and said: They are combined based on their value. If the total value of what he possesses reaches twenty dinars or two hundred dirhams, zakāt is obligatory; otherwise, it is not. Thus, he held that one who has a single dinar equivalent to 199 dirhams (due to the high value of gold) and possesses one dirham must pay zakāt. However, he did not require zakāt from one who has nineteen dinars and 199 dirhams (not equivalent to a dinar).

Ibn Abī Laylā, Sharīk, al-Ḥasan ibn Ḥayy, al-Shāfiʿī, and Abū Sulaymān said: Gold and silver are never combined—neither by value nor by fractional parts. If one has two hundred dirhams (not a single coin less) and twenty dinars (not a single coin less), no zakāt is due on either. If one of them independently reaches the threshold, he pays zakāt for it alone, not the other.

Abū Muḥammad said: Those who advocate combining them argued that they are monetary standards. ʿAlī replied: Then by this flawed reasoning, you must impose zakāt on copper coins (fulūs), for they too serve as monetary standards.

النَّصُّ، فَوَجَبَ أَنْ لَا يُفَرَّقَ بَيْنَ أَحْوَالِ الذَّهَبِ بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ، وَصَحَّ يَقِينًا - بِلَا خِلَافٍ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُوجِبُ الزَّكَاةَ فِي الذَّهَبِ وَالْفِضَّةِ كُلَّ عَامٍ، وَالْحُلِيِّ فِضَّةٍ أَوْ ذَهَبٍ، فَلَا يَجُوزُ أَنْ يُقَالَ " إلَّا الْحُلِيَّ " بِغَيْرِ نَصٍّ فِي ذَلِكَ وَلَا إجْمَاعٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا الْجَمْعُ بَيْنَ الْفِضَّةِ وَالذَّهَبِ فِي الزَّكَاةِ فَإِنَّ مَالِكًا، وَأَبَا يُوسُفَ، وَمُحَمَّدَ بْنَ الْحَسَنِ، قَالُوا: مَنْ كَانَ مَعَهُ مِنْ الدَّرَاهِمِ وَالدَّنَانِيرِ مَا إذَا حَسِبَهُمَا عَلَى أَنَّ كُلَّ دِينَارٍ بِإِزَاءِ عَشَرَةِ دَرَاهِمَ فَاجْتَمَعَ مِنْ ذَلِكَ عِشْرُونَ دِينَارًا أَوْ مِائَتَا دِرْهَمٍ - زَكَّى الْجَمِيعَ زَكَاةً وَاحِدَةً، مِثْلَ أَنْ يَكُونَ لَهُ دِينَارٌ وَمِائَةٌ وَتِسْعُونَ دِرْهَمًا، أَوْ عَشَرَةُ دَرَاهِمَ وَتِسْعَةَ عَشَرَ دِينَارًا أَوْ عَشَرَةُ دَنَانِيرَ وَمِائَةُ دِرْهَمٍ وَعَلَى هَذَا الْحُكْمِ أَبَدًا. فَإِنْ كَانَ لَهُ أَقَلُّ مِنْ ذَلِكَ فَلَا زَكَاةَ عَلَيْهِ، وَلَمْ يَلْتَفِتُوا إلَى غَلَاءِ قِيمَةِ الدَّنَانِيرِ، أَوْ الدَّرَاهِمِ أَوْ رُخْصِهَا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ الْأَوَّلُ؟ ثُمَّ رَجَعَ فَقَالَ: يُجْمَعُ بَيْنَهُمَا بِالْقِيمَةِ، فَإِذَا بَلَغَ قِيمَةُ مَا عِنْدَهُ مِنْهُمَا جَمِيعًا عِشْرِينَ دِينَارًا أَوْ مِائَتَيْ دِرْهَمٍ فَعَلَيْهِ الزَّكَاةُ، وَإِلَّا فَلَا، فَيَرَى عَلَى مَنْ عِنْدَهُ دِينَارٌ وَاحِدٌ يُسَاوِي - لِغَلَاءِ الذَّهَبِ - مِائَتَيْ دِرْهَمٍ غَيْرَ دِرْهَمٍ وَعِنْدَهُ دِرْهَمٌ وَاحِدٌ -: أَنَّ الزَّكَاةَ وَاجِبَةٌ عَلَيْهِ، وَلَمْ يَرَ عَلَى مَنْ عِنْدَهُ تِسْعَةَ عَشَرَ دِينَارًا وَمِائَتَيْ دِرْهَمٍ غَيْرَ دِرْهَمٍ - لَا تُسَاوِي دِينَارًا - زَكَاةً وَقَالَ ابْنُ أَبِي لَيْلَى، وَشَرِيكٌ، وَالْحَسَنُ بْنُ حَيٍّ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: لَا يُضَمُّ ذَهَبٌ إلَى وَرِقٍ أَصْلًا، لَا بِقِيمَةٍ وَلَا عَلَى الْأَجْزَاءِ، فَمَنْ عِنْدَهُ مِائَتَا دِرْهَمٍ غَيْرُ حَبَّةٍ وَعِشْرُونَ دِينَارًا غَيْرُ حَبَّةٍ -: فَلَا زَكَاةَ عَلَيْهِ فِيهِمَا، فَإِنْ كَمُلَ أَحَدُهُمَا نِصَابًا زَكَّاهُ

وَلَمْ يُزَكِّ الْآخَرَ؟ قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ مَنْ رَأَى الْجَمْعَ بَيْنَهُمَا بِأَنَّهُمَا أَثْمَانُ الْأَشْيَاءِ؟ قَالَ عَلِيٌّ: فَيُقَالُ لَهُ: وَالْفُلُوسُ قَدْ تَكُونُ أَثْمَانًا أَيْضًا، فَزَكِّهَا عَلَى هَذَا الرَّأْيِ الْفَاسِدِ.

L10974–10976 All things may be sold in exchange for one another, thereby serving as prices. Therefore, pay zakāh on merchandise due to this effective cause. Moreover, who can assure you that since these two [items] functioned as prices for goods, their inclusion together in zakāh became obligatory? This effective cause is validated neither by the Qur'ān, nor the Sunnah, nor even a defective narration, nor consensus, nor the statement of a Companion, nor... A rational analogy, yet no sound opinion—rather, is this not an utterly corrupt claim? Moreover, if you validate this, then combine camels and cows in zakāh, for they are both eaten, their milk is drunk, and each suffices for seven in sacrificial offerings. Indeed, combine them with sheep in zakāh, as all are permissible for sacrifices and subject to zakāh. If it is said: "Does the text not differentiate between them?" We reply: "The text also differentiates between gold and silver in zakāh." Gold and silver must either constitute one type or two. If considered one type, trading them with excess becomes prohibited. If two types, combining them is impermissible without explicit textual evidence. This would logically compel combining dates and raisins in zakāh—a position they reject, though both are staple sweet foods—thus exposing the inherent corruption of this argument with certainty. Furthermore, proponents of combining them by value would be obliged to pay zakāh at times as a single dinar or dirham in value. We have observed a dinar in al-Andalus exceeding two hundred dirhams in value—a very heinous invalidity. Likewise, those advocating combination through completion of parts would be obligated to pay gold for gold and silver by value, whether gold is cheap or expensive.

وَالْأَشْيَاءُ كُلُّهَا قَدْ يُبَاعُ بَعْضُهَا بِبَعْضٍ، فَتَكُونُ أَثْمَانًا، فَزَكِّ الْعُرُوضَ بِهَذِهِ الْعِلَّةِ وَأَيْضًا: فَمَنْ لَكُمْ بِأَنَّهُمَا لَمَّا كَانَا أَثْمَانًا لِلْأَشْيَاءِ وَجَبَ ضَمُّهُمَا فِي الزَّكَاةِ؟ فَهَذِهِ عِلَّةٌ لَمْ يُصَحِّحْهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ فَاسِدَةٌ، وَلَا إِجْمَاعٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ يُعْقَلُ، وَلَا رَأْيٌ سَدِيدٌ وَإِنَّمَا هِيَ دَعْوَى فِي غَايَةِ الْفَسَادِ؟ وَأَيْضًا: فَإِذْ صَحَّحْتُمُوهَا فَاجْمَعُوا بَيْنَ الْإِبِلِ وَالْبَقَرِ فِي الزَّكَاةِ، لِأَنَّهُمَا يُؤْكَلَانِ وَتُشْرَبُ أَلْبَانُهُمَا، وَيُجْزِئُ كُلُّ وَاحِدٍ مِنْهُمَا عَنْ سَبْعَةٍ فِي الْهَدْيِ نَعَمْ، وَاجْمَعُوا بَيْنَهُمَا وَبَيْنَ الْغَنَمِ فِي الزَّكَاةِ، لِأَنَّهَا كُلَّهَا تَجُوزُ فِي الْأَضَاحِيِّ وَتَجِبُ فِيهَا الزَّكَاةُ فَإِنْ قِيلَ: النَّصُّ فَرَّقَ بَيْنَهُمَا؟ قُلْنَا: وَالنَّصُّ فَرَّقَ بَيْنَ الذَّهَبِ، وَالْفِضَّةِ فِي الزَّكَاةِ، لَا يَخْلُو الذَّهَبُ، وَالْفِضَّةُ مِنْ أَنْ يَكُونَا جِنْسًا وَاحِدًا أَوْ جِنْسَيْنِ، فَإِنْ كَانَا جِنْسًا وَاحِدًا فَحَرَّمُوا بَيْعَ أَحَدِهِمَا بِالْآخَرِ مُتَفَاضِلًا، وَإِنْ كَانَا جِنْسَيْنِ فَالْجَمْعُ بَيْنَ الْجِنْسَيْنِ لَا يَجُوزُ، إِلَّا بِنَصٍّ وَارِدٍ فِي ذَلِكَ وَيَلْزَمُهُمُ الْجَمْعُ بَيْنَ التَّمْرِ، وَالزَّبِيبِ فِي الزَّكَاةِ، وَهُمْ لَا يَقُولُونَ هَذَا، لِأَنَّهُمَا قُوتَانِ حُلْوَانِ فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ بِيَقِينٍ؟ وَأَيْضًا: فَيَلْزَمُ مَنْ رَأَى الْجَمْعَ بَيْنَهُمَا بِالْقِيمَةِ أَنْ يُزَكِّيَ فِي بَعْضِ الْأَوْقَاتِ دِينَارًا أَوْ دِرْهَمًا فَقَدْ شَاهَدْنَا الدِّينَارَ يَبْلُغُ بِالْأَنْدَلُسِ أَزْيَدَ مِنْ مِائَتَيْ دِرْهَمٍ، وَهَذَا بَاطِلٌ شَنِيعٌ جِدًّا وَيَلْزَمُ مَنْ رَأَى الْجَمْعَ بَيْنَهُمَا بِتَكَامُلِ الْأَجْزَاءِ أَنَّهُ إِنْ كَانَ الذَّهَبُ رَخِيصًا أَوْ غَالِيًا فَإِنَّهُ يُخْرِجُ الذَّهَبَ عَنِ الذَّهَبِ، وَالْفِضَّةَ بِالْقِيمَةِ.

L10977–10979 Or silver is extracted from the gold and silver based on value—this contradicts the method by which he combined them, sometimes considering value without quantity and sometimes considering quantity without value within

a single zakat obligation. This is certainly an error. There is no difference between this opinion and one who says: "Rather, I combine gold with silver by value and extract one of them while observing quantity"—both constitute arbitrary rulings without valid basis. Moreover, it would necessarily follow that if someone possesses gold and silver subject to zakat according to his view—when a dinar's value exceeds ten dirhams—then:

If he extracts gold from both metals, he would pay a quarter dinar—less than the zakat required for twenty dinars. This is invalid according to them. If he extracts dirhams from both—when... A dinar is not equivalent except to less than ten dirhams. If it were obligatory to pay more than ten dirhams from two hundred dirhams, this would be invalid by consensus. If they say: "You combine sheep and goats for zakah despite them being two distinct types?" We reply: Yes, because zakah was prescribed for both under a collective name encompassing them - the term "small livestock." Zakah was not prescribed for gold and silver under any unifying term. If zakah had been legislated for sheep only under their specific name and for goats only under theirs, we would not combine them - just as we do not combine cows and camels. Had zakah been ordained for gold and silver under a single collective name, we would combine them.

Abū Muḥammad said: They unanimously agree that gold differs from silver, that selling a dirham of one for a hundred of the other is permissible, that one is lawful for women and men while the other is lawful for women but forbidden for men. They acknowledge zakah is not due on less than two hundred dirhams or twenty dinars, yet they impose it on ten dinars and one hundred dirhams. This is an undeniable contradiction.

Abū Muḥammad said: Our proof that combining them for zakah is impermissible is the statement of Allah's Messenger - peace and blessings be upon him: "There is no zakah on less than five awaq of silver." Thus, whoever combines gold and silver imposes zakah on less than five awaq - a direct violation of Allah's Messenger's decree and a ruling unsanctioned by Allah

أَوْ تُخْرَجُ الْفِضَّةُ عَنْ الذَّهَبِ وَالْفِضَّةِ بِالْقِيمَةِ وَهَذَا ضِدُّ مَا جَمَعَ بِهِ بَيْنَهُمَا، فَمَرَّةً رَاعَى الْقِيمَةَ لَا الْأَجْزَاءَ، وَمَرَّةً رَاعَى الْأَجْزَاءَ لَا الْقِيمَةَ، فِي زَكَاةٍ وَاحِدَةٍ وَهَذَا خَطَأٌ بِيَقِينٍ وَلَا فَرْقَ بَيْنَ هَذَا الْقَوْلِ وَبَيْنَ مَنْ قَالَ: بَلْ أَجْمَعُ الذَّهَبَ مَعَ الْفِضَّةِ بِالْقِيمَةِ وَأُخْرِجُ عَنْهُمَا أَحَدَهُمَا بِمُرَاعَاةِ الْأَجْزَاءِ، وَكِلَاهُمَا تَحَكُّمٌ بِالْبَاطِلِ؟ وَأَيْضًا: فَيَلْزَمُهُ إذَا اجْتَمَعَ لَهُ ذَهَبٌ وَفِضَّةٌ تَجِبُ فِيهِمَا عِنْدَهُ الزَّكَاةُ - وَكَانَ الدِّينَارُ قِيمَتُهُ أَكْثَرُ مِنْ عَشَرَةِ دَرَاهِمَ - فَإِنَّهُ إنْ أَخْرَجَ ذَهَبًا عَنْ كِلَيْهِمَا فَإِنَّهُ يُخْرِجُ رُبْعَ دِينَارٍ وَأَقَلَّ عَنْ زَكَاةِ عِشْرِينَ دِينَارًا، وَهَذَا بَاطِلٌ عِنْدَهُمْ، وَإِنْ أَخْرَجَ دَرَاهِمَ عَنْ كِلَيْهِمَا - وَكَانَ الدِّينَارُ لَا يُسَاوِي إلَّا أَقَلَّ مِنْ عَشَرَةِ دَرَاهِمَ - وَجَبَ أَنْ يُخْرِجَ أَكْثَرَ مِنْ عَشَرَةِ دَرَاهِمَ عَنْ مِائَتَيْ دِرْهَمٍ، وَهَذَا بَاطِلٌ بِإِجْمَاعٍ؟ فَإِنْ قَالُوا: إنَّكُمْ تَجْمَعُونَ بَيْنَ الضَّأْنِ وَالْمَاعِزِ فِي الزَّكَاةِ، وَهُمَا نَوْعَانِ مُخْتَلِفَانِ؟ قُلْنَا نَعَمْ، لِأَنَّ الزَّكَاةَ جَاءَتْ فِيهِمَا بِاسْمٍ يَجْمَعُهُمَا، وَهُوَ لَفْظُ " الْغَنَمِ " " وَالشَّاءِ " وَلَمْ تَأْتِ الزَّكَاةُ فِي الذَّهَبِ، وَالْفِضَّةِ بِلَفْظٍ يَجْمَعُهُمَا وَلَوْ لَمْ تَأْتِ الزَّكَاةُ فِي الضَّأْنِ إلَّا بِاسْمِ " الضَّأْنِ " وَلَا فِي الْمَاعِزِ إلَّا بِاسْمِ " الْمَاعِزِ " لَمَا جَمَعْنَا بَيْنَهُمَا، كَمَا لَمْ نَجْمَعْ بَيْنَ الْبَقَرِ، وَالْإِبِلِ وَلَوْ جَاءَتْ الزَّكَاةُ فِي الذَّهَبِ، وَالْفِضَّةِ بِلَفْظٍ وَاسْمٍ جَمَعَ بَيْنَهُمَا لَجَمَعْنَا بَيْنَهُمَا؟ قَالَ أَبُو مُحَمَّدٍ: وَهُمْ مُجْمِعُونَ عَلَى أَنَّ الذَّهَبَ غَيْرُ الْفِضَّةِ، وَأَنَّهُ يَجُوزُ بَيْعُ دِرْهَمٍ مِنْ أَحَدِهِمَا بِمِائَةٍ مِنْ الْآخَرِ، وَأَنَّ أَحَدَهُمَا حَلَالٌ لِلنِّسَاءِ وَالرِّجَالِ، وَالْآخَرَ حَلَالٌ لِلنِّسَاءِ حَرَامٌ عَلَى الرِّجَالِ، وَهُمْ مُقِرُّونَ أَنَّ الزَّكَاةَ لَا تَجِبُ فِي أَقَلَّ مِنْ مِائَتَيْ دِرْهَمٍ، وَلَا فِي أَقَلَّ مِنْ عِشْرِينَ دِينَارًا ثُمَّ يُوجِبُونَهَا فِي عَشَرَةِ دَنَانِيرَ وَمِائَةِ دِرْهَمٍ وَهَذَا تَنَاقُضٌ لَا خَفَاءَ بِهِ؟ قَالَ أَبُو مُحَمَّدٍ: وَحُجَّتُنَا فِي أَنَّهُ لَا يَحِلُّ الْجَمْعُ بَيْنَهُمَا فِي الزَّكَاةِ هُوَ قَوْلُ رَسُولِ اللَّهِ

the Exalted. Yet they validate the narration exempting zakah on less than twenty dinars, then impose it on lesser amounts.[27]

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَيْسَ فِيمَا دُونَ خَمْسِ أَوَاقٍ مِنْ الْوَرِقِ صَدَقَةٌ» فَكَانَ مَنْ جَمَعَ بَيْنَ الذَّهَبِ، وَالْفِضَّةِ قَدْ أَوْجَبَ الزَّكَاةَ فِي أَقَلَّ مِنْ خَمْسِ أَوَاقٍ وَهَذَا خِلَافٌ مُجَرَّدٌ لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَشَرْعٌ لَمْ يَأْذَنْ اللَّهُ تَعَالَى بِهِ، وَهُمْ يُصَحِّحُونَ الْخَبَرَ فِي إسْقَاطِ الزَّكَاةِ فِي أَقَلَّ مِنْ عِشْرِينَ دِينَارًا ثُمَّ يُوجِبُونَهَا فِي أَقَلَّ.

L10980 This is exceedingly significant, and it is authentically reported from Ali, Umar, and Ibn Umar that Zakāh is waived in cases of less than two hundred dirhams, with no dissenting opinion among the Companions (may Allah be pleased with them), and with Allah, the Exalted, is success.

وَهَذَا عَظِيمٌ جِدًّا وَقَدْ صَحَّ عَنْ عَلِيٍّ، وَعُمَرَ، وَابْنِ عُمَرَ: إسْقَاطُ الزَّكَاةِ فِي أَقَلَّ مِنْ مِائَتَيْ دِرْهَمٍ، وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L10981–10983 As for exchanging gold for silver and silver for gold, Mālik and Abū Ḥanīfah ruled that... Two permitted it, but Al-Shāfiʿī and Abū Sulaymān prohibited it, and we uphold this ruling. This is because the Messenger of Allah—peace and blessings be upon him—said: “On silver currency, one-quarter of one-tenth is due, and on two hundred dirhams, five dirhams.” Whoever gives other than what the Messenger of Allah—peace and blessings be upon him—commanded to be given has transgressed the limits set by Allah. *“Whoever obeys the Messenger has obeyed Allah”* [4:80]. *“And whoever transgresses the limits set by Allah has wronged himself”* [65:1]. Whoever fails to fulfill what was commanded has not brought forth what was ordained, and whoever does not bring forth what was commanded—has he not purified?[28]

وَأَمَّا إخْرَاجُ الذَّهَبِ عَنْ الْوَرِقِ، وَالْوَرِقِ عَنْ الذَّهَبِ، فَإِنَّ مَالِكًا، وَأَبَا حَنِيفَةَ أَجَازَاهُ وَمَنَعَ مِنْهُ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَبِهِ نَأْخُذُ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «فِي الرِّقَةِ رُبْعُ الْعُشْرِ، وَفِي مِائَتَيْ دِرْهَمٍ خَمْسَةُ دَرَاهِمَ» فَمَنْ أَخْرَجَ غَيْرَ مَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِإِخْرَاجِهِ فَقَدْ تَعَدَّى حُدُودَ اللَّهِ. {مَنْ يُطِعِ الرَّسُولَ فَقَدْ أَطَاعَ اللَّهَ} [النساء: ٨٠] . {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] . وَلَمْ يَأْتِ بِمَا أُمِرَ، وَمَنْ لَمْ يَأْتِ بِمَا أُمِرَ فَلَمْ يُزَكِّ؟

L10984 As for gold, the entire Ummah is unanimously agreed that whoever pays gold for its obligatory zakāh has fulfilled his duty and acted in accordance with what the Messenger of Allāh—peace be upon him—commanded him. They differed regarding one who pays silver in place of gold, or trade goods as a substitute for either of them, or anything other than what is stipulated in the explicit text from the Messenger of Allāh—peace be upon him—regarding categories beyond these two. It is impermissible to attribute a ruling to the Messenger of Allāh—peace be upon him—without a textual proof or consensus. And with Allāh, the Most High, is the facilitation of success.

(وَأَمَّا الذَّهَبُ فَالْأُمَّةُ كُلُّهَا مُجْمِعَةٌ عَلَى أَنَّهُ إنْ أَخْرَجَ فِي زَكَاتِهَا الذَّهَبَ) فَقَدْ أَدَّى مَا عَلَيْهِ، وَوَافَقَ مَا أَمَرَهُ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ وَاخْتَلَفُوا فِيمَنْ أَخْرَجَ فِضَّةً عَنْ ذَهَبٍ، أَوْ عَرْضًا عَنْ أَحَدِهِمَا، أَوْ غَيْرَ مَا جَاءَ بِهِ النَّصُّ (عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -) فِيمَا عَدَاهُمَا فَلَا يَجُوزُ أَنْ يُنْسَبَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُكْمًا بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[27] **Hadith references (L10977):** Sahih Muslim 980; Sunan an-Nasai 2476.

[28] **Qur’an references (L10981):** Qur’an 4:80 (An-Nisa); Qur’an 65:1 (At-Talaq).

Zakat on Acquired Wealth

A juridical point: Zakat is obligatory on all Zakatable wealth from the moment a Muslim acquires full ownership of it.

Acquired Wealth 685 - Issue: Abu Muhammad said: It is authentically reported from Ibn Abbas that Zakat is obligatory on every type of wealth subject to Zakat as soon as a Muslim owns it. It is also authentically reported from Ibn Umar that there is no Zakat on it until a full year has passed. Abu Hanifa said: Acquired wealth is not obligated to have Zakat paid until a full year has passed, except if one already possesses wealth of the same type that had reached the minimum taxable amount (nisab) at the beginning of the year. If they acquire more of the same type—even an hour before the year's completion, whether little or much—they must pay Zakat on the newly acquired wealth along with the original, whether it is gold, silver, livestock, offspring, or other categories. Malik said: Acquired wealth is not obligated to have Zakat paid until a full year has passed, regardless of the type of wealth he possesses. Zakat is due on assets whether they are of the same kind or not, except for livestock acquired through birth. If one acquires livestock through means other than birth, and the existing livestock constitutes a Nisab, Zakat is due on the entire holdings upon the completion of the Hawl (Zakat year). If not, no Zakat is due. If acquired through birth, Zakat is due on all of them based on the Hawl of the mothers, regardless of whether the mothers themselves constituted a Nisab? Al-Shāfiʿī said: Acquired wealth is not subject to Zakat when added to a preexisting Nisab of the same kind, except only for the offspring of livestock with their mothers, provided the mothers constituted a Nisab; otherwise, no Zakat is due. Abū Muḥammad said: We have previously mentioned the invalidity of all these opinions. The mere fact that they are contradictory, unsubstantiated assertions, and invalid conflicting categorizations suffices to demonstrate their flaws. None are supported by evidence from the Qur'an, authentic Sunnah, weak narration, consensus, analogy, or any rationally sound opinion.

[زَكَاة الْمَال الْمُسْتَفَاد]

[مَسْأَلَةٌ إِيجَابُ الزَّكَاةِ فِي كُلِّ مَالٍ يُزَكَّى حِينَ يَمْلِكُهُ الْمُسْلِمُ]

الْمَالُ الْمُسْتَفَادُ ٦٨٥ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: صَحَّ عَنْ ابْنِ عَبَّاسٍ إِيجَابُ الزَّكَاةِ فِي كُلِّ مَالٍ يُزَكَّى حِينَ يَمْلِكُهُ الْمُسْلِمُ؟ وَصَحَّ عَنْ ابْنِ عُمَرَ: لَا زَكَاةَ فِيهِ حَتَّى يُتِمَّ حَوْلًا؟ وَقَالَ أَبُو حَنِيفَةَ: لَا يُزَكَّى الْمَالُ الْمُسْتَفَادُ إِلَّا حَتَّى يُتِمَّ حَوْلًا إِلَّا إِنْ كَانَ عِنْدَهُ مَالٌ يَجِبُ فِي عَدَدِ مَا عِنْدَهُ مِنْهُ الزَّكَاةُ فِي أَوَّلِ الْحَوْلِ -: فَإِنَّهُ إِنْ اكْتَسَبَ بَعْدَ ذَلِكَ - لَوْ قَبْلَ تَمَامِ الْحَوْلِ بِسَاعَةٍ شَيْئًا - قَلَّ أَوْ كَثُرَ - مِنْ جِنْسِ مَا عِنْدَهُ: فَإِنَّهُ يُزَكِّي الْمُكْتَسَبَ مَعَ الْأَصْلِ، سَوَاءٌ عِنْدَهُ الذَّهَبُ، وَالْفِضَّةُ، وَالْمَاشِيَةُ، وَالْأَوْلَادُ، وَغَيْرُهَا؟ وَقَالَ مَالِكٌ: لَا يُزَكَّى الْمَالُ الْمُسْتَفَادُ إِلَّا حَتَّى يُتِمَّ حَوْلًا، وَسَوَاءٌ كَانَ عِنْدَهُ مَا فِيهِ الزَّكَاةُ مِنْ جِنْسِهِ أَوْ لَمْ يَكُنْ، إِلَّا الْمَاشِيَةَ، فَإِنَّ مَنْ اسْتَفَادَ مِنْهَا شَيْئًا بِغَيْرِ وِلَادَةٍ مِنْهَا، فَإِنْ كَانَ الَّذِي عِنْدَهُ مِنْهَا نِصَابًا -: زَكَّى الْجَمِيعَ عِنْدَ تَمَامِ الْحَوْلِ، وَإِلَّا فَلَا، وَإِنْ كَانَتْ مِنْ وِلَادَةٍ زَكَّى الْجَمِيعَ بِحَوْلِ الْأُمَّهَاتِ سَوَاءٌ كَانَتْ الْأُمَّهَاتُ نِصَابًا أَوْ لَمْ تَكُنْ؟ وَقَالَ الشَّافِعِيُّ: لَا يُزَكَّى مَالٌ مُسْتَفَادٌ مَعَ نِصَابٍ كَانَ عِنْدَ الَّذِي اسْتَفَادَهُ مِنْ جِنْسِهِ أَلْبَتَّةَ، إِلَّا أَوْلَادَ الْمَاشِيَةِ مَعَ أُمَّهَاتِهَا فَقَطْ إِذَا كَانَتْ الْأُمَّهَاتُ نِصَابًا وَإِلَّا فَلَا؟ قَالَ أَبُو مُحَمَّد: وَقَدْ ذَكَرْنَا قَبْلُ فَسَادَ هَذِهِ الْأَقْوَالِ كُلِّهَا، وَيَكْفِي مِنْ فَسَادِهَا أَنَّهَا كُلَّهَا مُخْتَلِفَةٌ وَكُلُّهَا دَعَاوٍ مُجَرَّدَةٌ، وَتَقَاسِيمُ فَاسِدَةٌ مُتَنَاقِضَةٌ لَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا. لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ إجْمَاعٍ وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ وَقَالَ أَبُو

Abū Ḥanīfa said: If one possesses two hundred dirhams at the Hawl's commencement, then all but one dirham perish or are spent a day later, and one subsequently acquires 199 dirhams an hour before the Hawl's completion, Zakat is due on the entire amount based on the Hawl of the perished dirhams. If not even a single dirham remained, no Zakat is due on the newly acquired wealth – even if it were a hundred thousand dirhams – until a full Hawl passes for it. If only I knew! What is the significance of this single dirham? What would he say if nothing remained except a single fals [copper coin]? Similarly, his opinion applies to one who possesses a Nisab of gold, cattle, camels, or sheep, then all but one unit perish, and later acquires more of the same kind before the Hawl's completion to complete the Nisab with the remaining unit. Merely stating this opinion renders refutation unnecessary! If Zakat remains obligatory on the remaining dirham, it is due on it even without acquiring other wealth. Indeed, it is due on acquired wealth even if another dirham. If Zakat ceases for the remaining dirham, the acquired wealth must initiate its own Hawl.

Among those reported to have permitted prepaying Zakat on acquired wealth are Ibn Masʿūd, Muʿāwiya, ʿUmar ibn ʿAbd al-ʿAzīz, al-Ḥasan, and al-Zuhrī. Among those authentically reported to have said, "There is no zakah due on wealth until a full lunar year has elapsed over it," are: Ali, Abu Bakr al-Siddiq, Aisha the Mother of the Believers, and Ibn Umar. We have addressed this in a chapter discussing the young of grazing livestock?

L10992 As for the division by Abū Ḥanīfah, Mālik, and al-Shāfiʿī, there is no record of it from any of the Companions—may Allah be pleased with them—nor from any of the Successors.

L10993–10997 Abū Muḥammad said: Every increase is subject to zakāt only according to its own lunar year cycle, not the cycle of existing holdings of the same category—even if the durations become entangled? The explanation is: If a person possesses the niṣāb—which is two hundred dirhams of silver, forty

حَنِيفَةَ: مَنْ كَانَ عِنْدَهُ مِائَتَا دِرْهَمٍ فِي أَوَّلِ الْحَوْلِ فَلَمَّا كَانَ بَعْدَ ذَلِكَ بِيَوْمٍ تَلِفَتْ كُلُّهَا أَوْ أَنْفَقَهَا إِلَّا دِرْهَمًا وَاحِدًا وَاحِدًا فَإِنَّهُ بَقِيَ عِنْدَهُ، فَلَمَّا كَانَ قَبْلَ تَمَامِ الْحَوْلِ بِسَاعَةٍ اكْتَسَبَ مِائَةَ دِرْهَمٍ وَتِسْعَةً وَتِسْعِينَ دِرْهَمًا -: فَالزَّكَاةُ عَلَيْهِ فِي الْجَمِيعِ لِحَوْلِ الَّتِي تَلِفَتْ، فَلَوْ لَمْ يَبْقَ مِنْهَا وَلَا دِرْهَمٌ فَلَا زَكَاةَ عَلَيْهِ فِيمَا اكْتَسَبَ وَلَوْ أَنَّهَا مِائَةُ أَلْفِ دِرْهَمٍ - حَتَّى يَتِمَّ لَهَا حَوْلٌ؟ فَيَا لَيْتَ شِعْرِي مَا شَأْنُ هَذَا الدِّرْهَمِ؟ وَمَا قَوْلُهُ لَوْ لَمْ يَبْقَ مِنْهَا إِلَّا فَلْسٌ؟ وَكَذَلِكَ قَوْلُهُ فِيمَنْ عِنْدَهُ نِصَابٌ مِنْ ذَهَبٍ، أَوْ مِنْ بَقَرٍ، أَوْ مِنْ إِبِلٍ، أَوْ مِنْ غَنَمٍ، ثُمَّ تَلِفَتْ كُلُّهَا إِلَّا وَاحِدَةً، ثُمَّ اكْتَسَبَ مِنْ جِنْسِهَا قَبْلَ الْحَوْلِ مَا يُتِمُّ بِمَا بَقِيَ عِنْدَهُ النِّصَابَ؟ وَهَذَا قَوْلٌ يُغْنِي ذِكْرُهُ عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهِ؟ وَلَئِنْ كَانَتْ الزَّكَاةُ بَاقِيَةً فِي الدِّرْهَمِ الْبَاقِي فَإِنَّ الزَّكَاةَ وَاجِبَةٌ فِيهِ وَإِنْ لَمْ يَكْتَسِبْ غَيْرَهُ، نَعَمْ، وَفِيمَا اكْتَسَبَ إِلَيْهِ وَلَوْ أَنَّهُ دِرْهَمٌ آخَرُ وَلَئِنْ كَانَتْ الزَّكَاةُ غَيْرَ بَاقِيَةٍ فِيهِ فَإِنَّ الْوَاجِبَ عَلَيْهِ اسْتِئْنَافُ الْحَوْلِ بِمَا اكْتَسَبَ مَعَهُ؟ وَمِمَّنْ رُوِيَ عَنْهُ تَعْجِيلُ الزَّكَاةِ مِنْ الْفَائِدَةِ: ابْنُ مَسْعُودٍ، وَمُعَاوِيَةُ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ، وَالْحَسَنُ، وَالزُّهْرِيُّ وَمِمَّنْ صَحَّ عَنْهُ: لَا زَكَاةَ فِي مَالٍ حَتَّى يَتِمَّ لَهُ حَوْلٌ -: عَلِيٌّ، وَأَبُو بَكْرٍ الصِّدِّيقُ، وَعَائِشَةُ أُمُّ الْمُؤْمِنِينَ، وَابْنُ عُمَرَ، وَقَدْ ذَكَرْنَاهَا فِي بَابِ ذِكْرِنَا أَوْلَادَ الْمَاشِيَةِ؟ .

وَأَمَّا تَقْسِيمُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ فَلَا يُحْفَظُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - نَعَمْ، وَلَا عَنْ أَحَدٍ مِنْ التَّابِعِينَ.

قَالَ أَبُو مُحَمَّدٍ: كُلُّ فَائِدَةٍ فَإِنَّمَا تُزَكَّى لِحَوْلِهَا، لَا لِحَوْلِ مَا عِنْدَهُ مِنْ جِنْسِهَا وَإِنْ اخْتَلَطَتْ عَلَيْهِ الْأَحْوَالُ؟ تَفْسِيرُ ذَلِكَ: لَوْ أَنَّ امْرَأً مَلَكَ نِصَابًا - وَذَلِكَ مِائَتَا دِرْهَمٍ مِنْ الْوَرِقِ

dīnārs of gold, five camels, or fifty cattle—then later acquires, during any period (whether short or long, provided it is before the completion of the cycle), additional property of the same type below these minimum thresholds, or owns forty sheep and later acquires within the cycle enough to complete one hundred and twenty sheep: If the acquired property does not alter the zakāt rate applicable to his existing holdings, he combines the new acquisition with his original property (since it does not change the existing zakāt ruling). He pays zakāt on the total when the original cycle concludes and resets a new cycle for the entire combined amount. If the acquisition within the cycle changes the zakāt rate for his existing holdings—provided this increase alone would not incur zakāt (applicable exclusively to silver in all cases, and to other categories under specific circumstances)—he pays zakāt only for the original holdings upon completing their cycle. At that point, he combines the new acquisition (not before) and resets a new cycle for the total. Examples: One who owns one hundred and twenty sheep then acquires one or more; owns ninety-nine cattle and acquires one or more; owns nine camels and acquires one or more; or possesses seventy-nine dīnārs and acquires one or more—since the remainder after he has paid zakāt incurs no obligation, and it is impermissible to neglect this. For a wealth to be subjected to Zakat twice within one lunar year: If one possesses a niṣāb threshold (as we mentioned) then acquires another niṣāb threshold within the same lunar year from silver, gold, or livestock, each wealth must be zakatized according to its own lunar year. If the first wealth falls below the taxable threshold while the second remains liable, when the new acquisition's lunar year concludes, its Zakat is paid. The first wealth is then combined with the second at that point, since the first no longer requires Zakat, and it is invalid to zakatize it alongside the second wealth already subjected to Zakat—this would necessitate zakatizing the second wealth twice within one year. Would a new lunar year then commence for the combined wealth?

If the second wealth falls below the niṣāb while the first remains taxable, its Zakat is paid when its lunar year concludes. The second is then combined with the first for the reason we mentioned, initiating a new lunar year for both. If the two are indistinguishably mixed, Zakat is paid on each portion

أَوْ أَرْبَعِينَ دِينَارًا مِنْ الذَّهَبِ، أَوْ خَمْسًا مِنْ الْإِبِلِ، أَوْ خَمْسِينَ مِنْ الْبَقَرِ - ثُمَّ مَلَكَ بَعْدَ ذَلِكَ بِمُدَّةٍ - قَرِيبَةٍ أَوْ بَعِيدَةٍ، إلَّا أَنَّهَا قَبْلَ تَمَامِ الْحَوْلِ - مِنْ جِنْسِ مَا عِنْدَهُ أَقَلَّ مِمَّا ذَكَرْنَا، أَوْ مَلَكَ أَرْبَعِينَ شَاةً ثُمَّ مَلَكَ فِي الْحَوْلِ تَمَامَ مِائَةٍ وَعِشْرِينَ -: فَإِنْ كَانَ مَا اكْتَسَبَ لَا يُغَيِّرُ مَا كَانَ عَلَيْهِ مِنْ الزَّكَاةِ فَإِنَّهُ يَضُمُّ الَّتِي مَلَكَ إلَى مَا كَانَ عِنْدَهُ؛ لِأَنَّهَا لَا تُغَيِّرُ حُكْمَ مَا كَانَ عَلَيْهِ مِنْ الزَّكَاةِ، فَيُزَكِّي ذَلِكَ لِحَوْلِ الَّتِي كَانَتْ عِنْدَهُ ثُمَّ يَسْتَأْنِفُ الْجَمِيعَ حَوْلًا، فَإِنْ اسْتَفَادَ فِي دَاخِلِ الْحَوْلِ مَا يُغَيِّرُ الْفَرِيضَةَ فِيمَا عِنْدَهُ، إلَّا أَنَّ تِلْكَ الْفَائِدَةَ لَوْ انْفَرَدَتْ لَمْ تَجِبْ فِيهَا الزَّكَاةُ - وَلَيْسَ ذَلِكَ إلَّا فِي الْوَرِقِ خَاصَّةً - عَلَى كُلِّ حَالٍ، وَفِي سَائِرِ ذَلِكَ فِي بَعْضِ الْأَحْوَالِ -: فَإِنَّهُ يُزَكِّي الَّذِي عِنْدَهُ وَحْدَهُ لِتَمَامِ حَوْلِهِ، وَضَمَّ حِينَئِذٍ الَّذِي اسْتَفَادَ إلَيْهِ - لَا قَبْلَ ذَلِكَ - وَاسْتَأْنَفَ بِالْجَمِيعِ حَوْلًا؟ مِثْلُ: مَنْ كَانَ عِنْدَهُ مِائَةُ شَاةٍ وَعِشْرِينَ شَاةً ثُمَّ اسْتَفَادَ شَاةً فَأَكْثَرَ، أَوْ كَانَ عِنْدَهُ تِسْعٌ وَتِسْعُونَ بَقَرَةً فَأَفَادَ بَقَرَةً فَأَكْثَرَ، أَوْ كَانَ عِنْدَهُ تِسْعٌ مِنْ الْإِبِلِ فَأَفَادَ وَاحِدَةً فَأَكْثَرَ أَوْ تِسْعٌ وَسَبْعُونَ دِينَارًا فَأَفَادَ دِينَارًا فَأَكْثَرَ، لِأَنَّ الَّذِي يَبْقَى بَعْدَ الَّذِي زَكَّى لَا زَكَاةَ فِيهِ، وَلَا يَجُوزُ أَنْ يُزَكَّى مَالٌ مَرَّتَيْنِ فِي عَامٍ وَاحِدٍ فَلَوْ مَلَكَ نِصَابًا - كَمَا ذَكَرْنَا - ثُمَّ مَلَكَ فِي دَاخِلِ الْحَوْلِ نِصَابًا أَيْضًا مِنْ الْوَرِقِ أَوْ الذَّهَبِ أَوْ الْمَاشِيَةِ فَإِنَّهُ يُزَكِّي كُلَّ مَالٍ لِحَوْلِهِ؛ فَإِنْ رَجَعَ الْأَوَّلُ مِنْهُمَا إلَّا مَا لَا زَكَاةَ فِيهِ فَإِذَا حَالَ حَوْلُ الْفَائِدَةِ زَكَّاهَا ثُمَّ ضَمَّ الْأَوَّلَ حِينَئِذٍ إلَى الْآخَرِ، لِأَنَّ الْأَوَّلَ قَدْ صَارَ لَا زَكَاةَ فِيهِ، وَلَا يَجُوزُ أَنْ يُزَكِّيَهُ مَعَ مَا قَدْ زَكَّاهُ مِنْ الْمَالِ الثَّانِي، فَيَكُونُ يُزَكِّي الثَّانِي مَرَّتَيْنِ فِي عَامٍ؛ وَيَسْتَأْنِفُ بِالْجَمِيعِ حَوْلًا؟ فَإِنْ رَجَعَ الْمَالُ الثَّانِي إلَى مَا لَا زَكَاةَ فِيهِ وَبَقِيَ الْأَوَّلُ نِصَابًا فَإِنَّهُ يُزَكِّيهِ إذَا حَالَ حَوْلُهُ، ثُمَّ يَضُمُّ الثَّانِي إلَى الْأَوَّلِ حِينَئِذٍ لِمَا قَدْ ذَكَرْنَا فَيَسْتَأْنِفُ بِهِمَا حَوْلًا؟ فَلَوْ خَلَطَهُمَا فَلَمْ

according to its own lunar year, with any deducted amount counted as a reduction from the second wealth, for certainty of depletion only arises after paying Zakat on the second. Prior to this, there is no confirmation of which portion diminished. This persists until both revert below the niṣāb—inevitably—such as two flocks of sheep reduced below one hundred and twenty, two herds of cattle below one hundred, two gold holdings below eighty dinars, two camel herds below ten, or two silver holdings below four hundred dirhams.

When both revert thus, depletion may have occurred in one or both, but Zakat is not waived from him due to doubt. In such cases, the second wealth is combined with the first, and the entirety follows the first's lunar year henceforth until all falls below the niṣāb. If one acquires five camels—a quantity for which Zakat is paid in sheep—or more, then acquires within the lunar year another amount independently liable for Zakat (whether payable in sheep or camels), the existing camels are zakatized in sheep upon completing their lunar year. These are then combined with the new acquisition, as it is not permissible for a single individual to maintain separate Zakat calculations... He possesses camels for which a complete year has elapsed for all of them, yet he purifies some through sheep and others through camels—contrary to the command of Allah's Messenger (peace and blessings of Allah be upon him) regarding camel zakah. If one owns twenty-five camels, then acquires eleven more during the annual cycle, he must pay zakah for the original group upon the completion of their year with a two-year-old female camel (entering its third year). He then combines them with the acquired increase from that moment onward under all circumstances. Consequently, the entire herd becomes subject to zakah for a renewed annual cycle starting from that point, requiring a three-year-old female camel (entering its fourth year)—as we established, because the zakah rate for a single owner's unified herd cannot vary. Does this not apply universally? If questioned: "Do you postpone some camels' zakah by months beyond their due year?" We respond: Indeed, for we have absolutely no alternative except imposing two zakah obligations on a single asset, which contradicts the textual evidence. Postponing zakah

يَتَمَيَّزَا فَإِنَّهُ يُزَكِّي كُلَّ عَدَدٍ مِنْهُمَا لِحَوْلِهِ، وَيَجْعَلُ مَا أَخْرَجَ مِنْ ذَلِكَ كُلِّهِ نُقْصَانًا مِنْ الْمَالِ الثَّانِي؛ لِأَنَّهُ لَا يُوقِنُ بِالنَّقْصِ إلَّا بَعْدَ إخْرَاجِ الزَّكَاةِ مِنْ الثَّانِي، وَأَمَّا قَبْلَ ذَلِكَ فَلَا يَقِينَ عِنْدَهُ بِأَنَّ أَحَدَهُمَا نَقَصَ، فَلَا يَزَالُ كَذَلِكَ حَتَّى يَرْجِعَ كِلَاهُمَا إلَى مَا يُوقِنُ أَنَّ أَحَدَهُمَا قَدْ نَقَصَ - وَلَا بُدَّ - عَمَّا فِيهِ الزَّكَاةُ وَذَلِكَ مِثْلُ: أَنْ يَرْجِعَ الْغَنَمَانِ إلَى أَقَلَّ مِنْ عِشْرِينَ وَمِائَةٍ؛ لِأَنَّهُ لَا يَجُوزُ أَنْ يُزَكِّيَ عَنْ هَذَا الْعَدَدِ بِشَاتَيْنِ، أَوْ أَنَّهُ قَدْ رَجَعَ الْبَقَرَانِ إلَى أَقَلَّ مِنْ مِائَةٍ، وَالذَّهَبَانِ إلَى أَقَلَّ مِنْ ثَمَانِينَ دِينَارًا، وَالْإِبِلَانِ إلَى أَقَلَّ مِنْ عَشْرَةٍ، وَالْفِضَّتَانِ إلَى أَقَلَّ مِنْ أَرْبَعِمِائَةِ دِرْهَمٍ؟ فَإِذَا رَجَعَ الْمَالَانِ إلَى مَا ذَكَرْنَا فَقَدْ يُمْكِنُ أَنَّ النَّقْصَ دَخَلَ فِي كِلَيْهِمَا، وَيُمْكِنُ أَنْ يَكُونَ دَخَلَ فِي أَحَدِهِمَا، إلَّا أَنَّهُ بِلَا شَكٍّ قَدْ كَانَ عِنْدَهُ مَالٌ تَجِبُ فِيهِ الزَّكَاةُ، فَلَا تَسْقُطُ عَنْهُ بِالشَّكِّ فَإِذَا كَانَ هَذَا: ضَمَّ الْمَالَ الثَّانِي إلَى الْأَوَّلِ فَزَكَّى الْجَمِيعَ لِحَوْلِ الْأَوَّلِ أَبَدًا، حَتَّى يَرْجِعَ الْكُلُّ إلَى مَا لَا زَكَاةَ فِيهِ فَلَوْ اقْتَنَى خَمْسًا مِنْ الْإِبِلِ أَوْ أَكْثَرَ - إلَّا أَنَّهُ عَدَدٌ يُزَكَّى بِالْغَنَمِ - ثُمَّ اقْتَنَى فِي دَاخِلِ الْحَوْلِ عَدَدًا يُزَكَّى وَحْدَهُ لَوْ انْفَرَدَ - إمَّا بِالْغَنَمِ، وَإِمَّا بِالْإِبِلِ - فَإِنَّهُ يُزَكِّي مَا كَانَ عِنْدَهُ عِنْدَ تَمَامِ حَوْلِهِ بِالْغَنَمِ، ثُمَّ ضَمَّهُ إثْرَ ذَلِكَ إلَى مَا اسْتَفَادَ، إذْ لَا يَجُوزُ أَنْ يَكُونَ إنْسَانٌ وَاحِدٌ عِنْدَهُ إبِلٌ لَهُ قَدْ تَمَّ لِجَمِيعِهَا حَوْلٌ فَيُزَكِّي بَعْضَهَا بِالْغَنَمِ وَبَعْضَهَا بِالْإِبِلِ؛ لِأَنَّهُ خِلَافُ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي زَكَاةِ الْإِبِلِ فَلَوْ مَلَكَ خَمْسًا وَعِشْرِينَ مِنْ الْإِبِلِ ثُمَّ مَلَكَ فِي الْحَوْلِ إحْدَى عَشْرَةَ زَكَّى الْأَوَّلَ لِحَوْلِهَا بِنْتَ مَخَاضٍ، ثُمَّ ضَمَّهَا إلَى الْفَائِدَةِ مِنْ حِينَئِذٍ عَلَى كُلِّ حَالٍ فَزَكَّى الْجَمِيعَ لِحَوْلٍ - مِنْ حِينَئِذٍ مُسْتَأْنَفٍ - بِبِنْتِ لَبُونٍ، لِمَا ذَكَرْنَا مِنْ أَنَّهُ لَا تَخْتَلِفُ زَكَاةُ إبِلٍ وَاحِدَةٍ لِمَالِكٍ وَاحِدٍ. وَهَكَذَا فِي كُلِّ شَيْءٍ؟ فَإِنْ قِيلَ: فَإِنَّكُمْ تُؤَخِّرُونَ زَكَاةَ بَعْضِهَا عَنْ بَعْضٍ عَنْ حَوْلِهِ شُهُورًا؟ قُلْنَا:

when acceleration is impossible is permissible—there is no sin in it. Success comes solely from Allah the Exalted.

نَعَمْ: لِأَنَّنَا لَا نَقْدِرُ عَلَى غَيْرِ ذَلِكَ أَلْبَتَّةَ، إِلَّا بِإِحْدَاثِ زَكَاتَيْنِ فِي مَالٍ وَاحِدٍ، وَهَذَا خِلَافُ النَّصِّ؛ وَتَأْخِيرُ الزَّكَاةِ إِذَا لَمْ يُمْكِنْ التَّعْجِيلُ مُبَاحٌ لَا حَرَجَ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ اجْتَمَعَ فِي مَالِهِ زَكَاتَانِ فَصَاعِدًا]

A case where two or more zakāts have converged in his wealth.

L10998

L10999

Issue 686: If two or more zakat obligations accumulate on someone's wealth while alive, how is this handled? Abu Muhammad said: All of them must be paid for every year according to each annual obligation - whether due to fleeing with his wealth, the collector's delay, the owner's ignorance, or other reasons. This ruling applies equally to monetary assets (gold and silver), crops, and livestock, whether zakat consumes all his wealth or not, and whether his wealth reduces below the taxable minimum after payment or not. Creditors may not take anything until zakat is fully settled. Malik said: If this concerns monetary assets (gold or silver), zakat is taken annually until the weight returns to 200 dirhams of silver or 20 dinars of gold. Only one year's zakat is then owed regardless of subsequent years. For neglected crop zakat over multiple years, all must be taken - even if it consumes all his wealth?

٦٨٦ - مَسْأَلَةٌ: مَنْ اجْتَمَعَ فِي مَالِهِ زَكَاتَانِ فَصَاعِدًا هُوَ حَيٌّ؟ قَالَ أَبُو مُحَمَّدٍ: تُؤَدَّى كُلُّهَا لِكُلِّ سَنَةٍ عَلَى عَدَدِ مَا وَجَبَ عَلَيْهِ فِي كُلِّ عَامٍ؛ وَسَوَاءٌ كُلُّ ذَلِكَ لِهُرُوبِهِ بِمَالِهِ؛ أَوْ لِتَأْخِيرِ السَّاعِي؛ أَوْ لِجَهْلِهِ، أَوْ لِغَيْرِ ذَلِكَ؛ وَسَوَاءٌ فِي ذَلِكَ الْعَيْنُ، وَالْحَرْثُ، وَالْمَاشِيَةُ، وَسَوَاءٌ أَتَتْ الزَّكَاةُ عَلَى جَمِيعِ مَالِهِ أَوْ لَمْ تَأْتِ، وَسَوَاءٌ رَجَعَ مَالُهُ بَعْدَ أَخْذِ الزَّكَاةِ مِنْهُ إِلَى مَا لَا زَكَاةَ فِيهِ أَوْ لَمْ يَرْجِعْ، وَلَا يَأْخُذُ الْغُرَمَاءُ شَيْئًا حَتَّى تَسْتَوْفِيَ الزَّكَاةُ وَقَالَ مَالِكٌ: إنْ كَانَ ذَلِكَ عَيْنًا - ذَهَبًا أَوْ فِضَّةً - فَإِنَّهُ تُؤْخَذُ مِنْهُ زَكَاةُ كُلِّ سَنَةٍ حَتَّى يَرْجِعَ الْوَزْنُ إلَى مِائَتَيْ دِرْهَمٍ، وَالذَّهَبُ إلَى عِشْرِينَ دِينَارًا، فَتُؤْخَذُ الزَّكَاةُ لِسَنَةٍ وَاحِدَةٍ، ثُمَّ لَا شَيْءَ عَلَيْهِ لِمَا بَعْدَ ذَلِكَ مِنْ السِّنِينَ؟ وَإِنْ كَانَتْ زَكَاةَ زَرْعٍ فَرَّطَ فِيهَا سِنِينَ أُخِذَتْ كُلُّهَا وَإِنْ اصْطَلَمَتْ جَمِيعَ مَالِهِ؟

وَإِنْ كَانَتْ مَاشِيَةً.

L11000–11001 And if the property was grazing livestock.

فَإِنْ كَانَ هُوَ هَرَبَ أَمَامَ السَّاعِي فَإِنَّ الزَّكَاةَ تُؤْخَذُ مِنْهُ عَلَى حَسْبِ مَا كَانَ عِنْدَهُ فِي كُلِّ عَامٍ، فَإِذَا رَجَعَ مَالُهُ بِإِخْرَاجِ الزَّكَاةِ إِلَّا مَا لَا زَكَاةَ فِيهِ لَمْ يُؤْخَذْ مِنْهُ شَيْءٌ لِسَائِرِ مَا بَقِيَ مِنْ الْأَعْوَامِ، وَإِنْ كَانَ السَّاعِي هُوَ الَّذِي تَأَخَّرَ عَنْهُ فَإِنَّهُ تُؤْخَذُ مِنْهُ زَكَاةُ مَا وُجِدَ بِيَدِهِ لِكُلِّ عَامٍ خَلَا - سَوَاءٌ كَانَ بِيَدِهِ فِيمَا خَلَا أَكْثَرُ أَوْ أَقَلُّ مَا لَمْ يَخْرُجْ إِلَى مَا لَا زَكَاةَ فِيهِ، فَإِذَا رَجَعَ إِلَى مَا لَا زَكَاةَ فِيهِ لَمْ يُؤْخَذْ مِنْهُ شَيْءٌ؟ وَقَالَ أَبُو حَنِيفَةَ فِيمَنْ كَانَ لَهُ عَشْرٌ مِنْ الْإِبِلِ عَامَيْنِ لَمْ يُؤَدِّ زَكَاتَهَا: إِنَّهُ يُزَكِّي لِلْعَامِ الْأَوَّلِ شَاتَيْنِ. وَلِلْعَامِ الثَّانِي شَاةً وَاحِدَةً وَقَالَ هُوَ وَمُحَمَّدُ بْنُ الْحَسَنِ فِيمَنْ كَانَ عِنْدَهُ مِائَتَا دِرْهَمٍ - لَا مَالَ لَهُ غَيْرَهَا - فَلَمْ يُزَكِّهَا سَنَتَيْنِ فَصَاعِدًا: إِنَّهُ لَا زَكَاةَ عَلَيْهِ، لِأَنَّ الزَّكَاةَ صَارَتْ عَلَيْهِ دَيْنًا فِيهَا هَذَا نَصُّ كَلَامِهِ وَقَالَ أَبُو يُوسُفَ: عَلَيْهِ زَكَاتُهَا لِعَامٍ وَاحِدٍ فَقَطْ؟ وَقَالَ زُفَرُ: عَلَيْهِ زَكَاتُهَا لِكُلِّ عَامٍ أَبَدًا. وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا؟ قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مَالِكٍ فَظَاهِرُ التَّنَاقُضِ، وَتَقْسِيمٌ فَاسِدٌ، لَا بُرْهَانَ عَلَى صِحَّتِهِ، لِأَنَّهُ دَعْوَى بِلَا دَلِيلٍ. وَمَا الْعَجَبُ إِلَّا مِنْ رِفْقِهِمْ بِالْهَارِبِ أَمَامَ الْمُصَدِّقِ وَتَحَرِّيهِمْ الْعَدْلَ فِيهِ وَشِدَّةِ حَمْلِهِمْ عَلَى مَنْ تَأَخَّرَ عَنْهُ السَّاعِي، فَيُوجِبُونَ عَلَيْهِ زَكَاةَ أَلْفِ نَاقَةٍ لِعَشْرِ سِنِينَ، وَلَمْ يَمْلِكْهَا إِلَّا سَنَةً وَاحِدَةً، وَإِنَّمَا مَلَكَ فِي سَائِرِ الْأَعْوَامِ خَمْسًا مِنْ الْإِبِلِ فَقَطْ.

L11002 If he fled before the Zakat collector, Zakat is taken from him according to what he possessed each year. If his wealth reverted to non-Zakatable assets upon paying Zakat, nothing is taken from him for the remaining years. If the Zakat collector was delayed, Zakat is taken from him for what was found in his possession for each past year—whether he had more or less in previous years, provided the assets did not fall below the Zakat threshold. If they reverted to non-Zakatable assets, nothing is taken? Abū Ḥanīfa said regarding one who owned ten camels for two years without paying their Zakat: he must pay two sheep for the first year and one sheep for the second. He and Muḥammad ibn al-Ḥasan said regarding one who had two hundred dirhams—with no other wealth—and did not pay Zakat for two years or more: no Zakat is owed, as Zakat became a debt on him concerning them. This is the explicit wording of his statement. Abū Yūsuf said: he owes Zakat for only one year? Zufar said: he owes Zakat for every year indefinitely. Abū Sulaymān and our companions hold this view? Abū Muḥammad said: Mālik's statement is evidently contradictory and an invalid division, with no proof of its validity, being an unsupported claim. The only perplexing aspect is their leniency toward one who flees before the Zakat assessor and their pursuit of justice for him, while imposing harshly on one from whom the collector was delayed—obliging him to pay Zakat as if he owned a thousand camels over ten years when he possessed them only one year, having merely five camels in the remaining years.

وَاحْتَجُّوا فِي هَذَا بِأَنَّ هَكَذَا زَكَّى النَّاسُ إِذْ أَجْمَعُوا عَلَى مُعَاوِيَةَ؟ قَالَ أَبُو مُحَمَّدٍ: وَهُمْ قَدْ خَالَفُوا مُعَاوِيَةَ فِي أَخْذِ الزَّكَاةِ مِنْ الْأَعْطِيَةِ وَمَعَهُ ابْنُ مَسْعُودٍ، وَقَلَّدُوا هَاهُنَا سُعَاةَ مَنْ لَا يُعْتَدُّ بِهِ، كَمَرْوَانَ، وَسَعِيدِ بْنِ الْعَاصِ، وَمَا هُنَالِكَ وَمَعَاذَ اللَّهِ أَنْ تُؤْخَذَ الزَّكَاةُ مِنْ إِبِلٍ لَمْ يَمْلِكْهَا الْمُسْلِمُ وَتُعَطَّلَ زَكَاةٌ قَدْ أَوْجَبَهَا اللَّهُ تَعَالَى؟

L11003–11005 They argued in this by claiming, "Did the people not validate in this way when they reached consensus regarding Mu'awiyah?" Abu Muhammad responded: Yet they opposed Mu'awiyah's method of taking zakat from gifts while Ibn Mas'ud was with him. In this matter, they followed the practices of unworthy people such as Marwan, Sa'id ibn al-As, and their like. Allah forbid that Zakat be taken from camels a Muslim does not own, and thus nullify a Zakat Allah the Exalted has made obligatory?

L11006 As for Abū Yūsuf's statement, it is understood to mean that zakāh—whether in physical assets or other categories—pertains to the wealth itself rather than personal obligation. We have previously demonstrated the invalidity of this position and clarified that zakāh indeed relates to personal obligation, not physical assets. Were it tied to physical wealth, it would not suffice to pay zakāh from assets other than those specific ones—a position rejected by consensus, since it is established that one may discharge it from wherever he wishes. Once it is established that zakāh pertains to personal obligation, how could the loss of one's wealth or its reverting to assets not subject to zakāh cause this duty to cease? Some argued that if a man sells his livestock after zakāh becomes due, the collector may take zakāh from those sold animals. Abū Muḥammad responded: "This is invalid and impermissible, for the livestock then becomes the buyer's property. It is unlawful to collect zakāh from 'Umar when the obligation lies not on him but on Zayd. Rather, the collector pursues the seller for this debt as a personal obligation. And success is from Allah, the Exalted."

L11007 **An issue regarding one who died after Zakat became obligatory on his gold and silver.**

L11008 687 - Issue: If the one upon whom zakat became obligatory for one or two years dies, it must be deducted from his estate, whether he acknowledged it or evidence was established against him. His child or collateral heirs inherit from him. The creditors, bequest beneficiaries, and the heirs have no right until all of it is fully settled. This applies equally to currency, livestock, and crops. This is the opinion of Al-Shāfiʿī, Abū Sulaymān, and their adherents.

L11009 Abu Hanifah said: If someone dies after zakah becomes obligatory on his gold and silver, it is waived by his death and is not levied whatsoever, whether he died shortly after the completion of the lunar year by a brief or extended period, or if the obligation had accrued over years. As for zakah on livestock, Ibn al-Mubarak narrated from him that the zakah collector takes it from the livestock, even if he finds them in the possession of his heirs.

وَأَمَّا قَوْلُ أَبِي يُوسُفَ فَإِنَّهُ مَحْمُولٌ عَلَى أَنَّ الزَّكَاةَ - فِي الْعَيْنِ وَغَيْرِهِ - فِي الْمَالِ نَفْسِهِ، وَلَا فِي الذِّمَّةِ، وَهَذَا أَمْرٌ قَدْ بَيَّنَّا فَسَادَهُ قَبْلُ، وَأَوْضَحْنَا أَنَّهَا فِي الذِّمَّةِ لَا فِي الْعَيْنِ، وَلَوْ كَانَتْ فِي الْعَيْنِ لَمَا أَجْزَأَهُ أَنْ يُعْطِيَ الزَّكَاةَ مِنْ غَيْرِ ذَلِكَ الْمَالِ نَفْسِهِ، وَهَذَا أَمْرٌ مُجْمَعٌ عَلَى خِلَافِهِ، وَعَلَى أَنَّهُ لَهُ أَنْ يُعْطِيَهَا مِنْ حَيْثُ شَاءَ، فَإِذَا صَحَّ أَنَّهَا فِي الذِّمَّةِ فَلَا يُسْقِطُهَا عَنْهُ ذَهَابُ مَالِهِ، وَلَا رُجُوعُهُ إِلَى مَا لَا زَكَاةَ فِيهِ؟ وَاحْتَجَّ بَعْضُهُمْ بِأَنَّ امْرَأً لَوْ بَاعَ مَاشِيَتَهُ بَعْدَ حُلُولِ الزَّكَاةِ فِيهَا أَنَّ لِلسَّاعِي أَخْذَ الزَّكَاةِ مِنْ تِلْكَ الْمَاشِيَةِ الْمَبِيعَةِ؟ قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ، وَمَا لَهُ ذَلِكَ، لِأَنَّهَا قَدْ صَارَتْ مَالًا مِنْ مَالِ الْمُشْتَرِي، وَلَا يَحِلُّ أَنْ تُؤْخَذَ زَكَاةُ مِنْ عُمَرَ وَلَمْ تَجِبْ عَلَيْهِ وَإِنَّمَا وَجَبَتْ عَلَى زَيْدٍ، وَلَكِنْ يَتْبَعُ الْبَائِعُ بِهَا دَيْنًا فِي ذِمَّتِهِ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَاتَ بَعْدَ وُجُوبِ الزَّكَاةِ فِي ذَهَبِهِ وَفِضَّتِهِ]

٦٨٧ - مَسْأَلَةٌ: فَلَوْ مَاتَ الَّذِي وَجَبَتْ عَلَيْهِ الزَّكَاةُ سَنَةً أَوْ سَنَتَيْنِ فَإِنَّهَا مِنْ رَأْسِ مَالِهِ، أَقَرَّ بِهَا أَوْ قَامَتْ عَلَيْهِ بَيِّنَةٌ، وَرِثَهُ وَلَدُهُ أَوْ كَلَالَةً، لَا حَقَّ لِلْغُرَمَاءِ وَلَا لِلْوَصِيَّةِ وَلَا لِلْوَرَثَةِ حَتَّى تَسْتَوْفِيَ كُلُّهَا، سَوَاءٌ فِي ذَلِكَ الْعَيْنُ وَالْمَاشِيَةُ وَالزَّرْعُ. وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

وَقَالَ أَبُو حَنِيفَةَ: مَنْ مَاتَ بَعْدَ وُجُوبِ الزَّكَاةِ فِي ذَهَبِهِ وَفِضَّتِهِ فَإِنَّهَا تَسْقُطُ بِمَوْتِهِ، لَا تُؤْخَذُ أَصْلًا، سَوَاءٌ مَاتَ إِثْرَ الْحَوْلِ بِيَسِيرٍ أَوْ كَثِيرٍ، أَوْ كَانَتْ كَذَلِكَ لِسِنِينَ. وَأَمَّا زَكَاةُ الْمَاشِيَةِ فَإِنَّهُ رَوَى عَنْهُ ابْنُ الْمُبَارَكِ: أَنَّهُ يَأْخُذُهَا الْمُصَدِّقُ مِنْهَا، وَإِنْ وَجَدَهَا بِأَيْدِي وَرَثَتِهِ.

وَرَوَى عَنْهُ أَبُو يُوسُفَ: أَنَّهَا تَسْقُطُ بِمَوْتِهِ وَاخْتَلَفَ قَوْلُهُ فِي زَكَاةِ الثِّمَارِ وَالزَّرْعِ: فَرَوَى عَنْهُ عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ أَنَّهَا تَسْقُطُ بِمَوْتِهِ، وَرَوَى عَنْهُ مُحَمَّدُ بْنُ الْحَسَنِ عَنْ أَبِي يُوسُفَ عَنْ أَبِي حَنِيفَةَ: أَنَّهَا تُؤْخَذُ بَعْدَ مَوْتِهِ، وَيَرَى أَنَّ قَوْلَهُ الْمَذْكُورَ فِي الْمَاشِيَةِ، وَالزَّرْعِ إِنَّمَا هُوَ فِي زَكَاةِ تِلْكَ السَّنَةِ فَقَطْ، فَأَمَّا زَكَاةٌ فَرَّطَ فِيهَا حَتَّى مَاتَ فَإِنَّهُ يَقُولُ: بِأَنَّهَا تَسْقُطُ عَنْهُ.

L11010–11011 Abu Yusuf reported from him that the Zakat obligation is nullified by his death. His own statements differed regarding the Zakat on fruits and crops: Abdullah ibn al-Mubarak reported from him that they are nullified by his death, while Muhammad ibn al-Hasan reported via Abu Yusuf, from Abu Hanifah, that it is taken after his death. He maintains that his aforementioned statement concerning grazing livestock and crops applies only to the Zakat of that year. As for any Zakat he neglected to pay until he died, he asserts that it is nullified for him.

وَقَالَ مَالِكٌ فِيمَنْ مَاتَ بَعْدَ حُلُولِ الزَّكَاةِ فِي مَالِهِ أَيِّ مَالٍ كَانَ حَاشَا الْمَوَاشِيَ -: فَإِنَّهَا تُؤْخَذُ مِنْ رَأْسِ مَالِهِ، فَإِنْ كَانَ فَرَّطَ فِيهَا أَكْثَرَ مِنْ عَامٍ فَلَا تَخْرُجُ عَنْهُ إِلَّا أَنْ يُوصِيَ بِهَا، فَتَكُونُ مِنْ ثُلُثِهِ مُبْدَاةً عَلَى سَائِرِ وَصَايَاهُ كُلِّهَا، حَاشَا التَّدْبِيرِ فِي الصِّحَّةِ، وَهِيَ مُبْدَاةٌ عَلَى التَّدْبِيرِ فِي الْمَرَضِ قَالَ: وَأَمَّا الْمَوَاشِي فَإِنَّهُ إِنْ حَالَ الْحَوْلُ عَلَيْهَا ثُمَّ مَاتَ قَبْلَ مَجِيءِ السَّاعِي ثُمَّ جَاءَ السَّاعِي فَلَا سَبِيلَ لِلسَّاعِي عَلَيْهَا، وَقَدْ بَطَلَتْ، إِلَّا أَنْ يُوصِيَ بِهَا، فَتَكُونُ فِي الثُّلُثِ غَيْرُ مُبْدَاةٍ عَلَى سَائِرِ الْوَصَايَا. وَاخْتَلَفَ قَوْلُ الْأَوْزَاعِيِّ فِي ذَلِكَ: فَمَرَّةً رَآهَا مِنْ الثُّلُثِ، وَمَرَّةً رَآهَا مِنْ رَأْسِ الْمَالِ قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، فَفِي غَايَةِ الْخَطَأِ، لِأَنَّهُمَا أَسْقَطَا بِمَوْتِ الْمَرْءِ دَيْنًا لِلَّهِ تَعَالَى وَجَبَ عَلَيْهِ فِي حَيَاتِهِ، بِلَا بُرْهَانٍ أَكْثَرَ مِنْ أَنْ قَالُوا: لَوْ كَانَ ذَلِكَ لَمَا شَاءَ إِنْسَانٌ أَنْ لَا يُوَرِّثَ وَرَثَتَهُ شَيْئًا إِلَّا أَمْكَنَهُ فَقُلْنَا: فَمَا تَقُولُونَ فِي إِنْسَانٍ أَكْثَرَ مِنْ إِتْلَافِ أَمْوَالِ النَّاسِ لِيَكُونَ ذَلِكَ دَيْنًا عَلَيْهِ وَلَا يَرِثُ وَرَثَتُهُ شَيْئًا، وَلَوْ أَنَّهَا دُيُونُ يَهُودِيٍّ، أَوْ نَصْرَانِيٍّ لَا فِي خُمُورٍ أَهْرَقَهَا لَهُمْ.

L11012 Malik said regarding one who dies after zakat has become due on his property—any property excluding livestock—that it must be taken from his capital. If he neglected it for over a year, the zakat is not deducted after his death unless he bequeaths it, in which case it is taken from a third of his estate, given precedence over all his other bequests except for contractual manumission enacted in good health. However, it precedes in priority over contractual manumission established during illness. As for livestock: if the zakat year has elapsed and the owner dies before the zakat collector arrives, the collector has no claim to it, and the obligation is nullified unless the deceased bequeaths it. In that case, it is taken from the third of the estate as non-precedential over other bequests. Al-Awza'i's position on this varied—sometimes considering it payable from the third, sometimes from the capital. Abu Muhammad said: "The view of Abu Hanifah and Malik is profoundly erroneous, for they invalidated a divine obligation owed to God Almighty—established during the person's lifetime—without evidence beyond their assertion that 'if this [rule] applied, no one could will anything to their heirs without restriction.' We counter: What is your ruling regarding one who deliberately wastes others' wealth to incur liabilities against himself, thereby leaving his heirs nothing? If these were debts owed to a Jew or Christian (not for wine he spilled on their behalf), the heirs would inherit nothing."

فَمِنْ قَوْلِهِمْ: إِنَّهَا كُلَّهَا مِنْ رَأْسِ مَالِهِ، سَوَاءٌ وَرِثَ وَرَثَتُهُ أَوْ لَمْ يَرِثُوا، فَنَقَضُوا عِلَّتَهُمْ بِأَوْحَشِ نَقْضٍ وَأَسْقَطُوا حَقَّ اللَّهِ تَعَالَى - الَّذِي جَعَلَهُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ مِنْ الْمُسْلِمِينَ، وَالْغَارِمِينَ مِنْهُمْ، وَفِي الرِّقَابِ مِنْهُمْ، وَفِي سَبِيلِهِ تَعَالَى، وَابْنِ السَّبِيلِ فَرِيضَةً مِنْ اللَّهِ تَعَالَى

L11013–11015 Among their statements is that all of it is from his capital, whether his heirs inherit or do not inherit. Thus, they invalidated their reasoning in the most reprehensible manner and nullified the right of Allah Almighty—which He has ordained as an obligation from Allah Almighty for the poor and needy among the Muslims, the indebted among them, the freeing of slaves, for His

cause, and for the wayfarer—while enforcing people's debts and providing the heirs with unlawful wealth. What is astonishing is that this stems from their obligation of prayer after its time has expired upon one who deliberately omits it, and their nullification... Zakat and its appointed time remain obligatory upon the one who intentionally neglects it. Malik's categorization divides wealth between livestock and non-livestock, and between the zakat of the current year and other years. He ruled that the current year's zakat is taken from the principal wealth even if it leaves the heirs without means of sustenance, while deeming the zakat of previous years invalid. He further differentiated between the zakat of liquid assets bequeathed—which is allocated from one-third of the estate and prioritized over other bequests except for *tadbeer* (conditional manumission) enacted during health, whereas *tadbeer* during illness is prioritized over bequests—and the zakat of livestock bequeathed, which is allocated from one-third but not prioritized over bequests. These are matters in which some erred despite good intentions, yet it is astonishing how one could enthusiastically embrace blind adherence to such opinions and then labor to nullify established Prophetic precedents in their defense. Abu Muhammad said: The distinction between the validity of our view and the invalidity of the opponents' view lies in Allah's statement—Exalted and Majestic—(regarding inheritance): *"After any bequest he may have made or debt"* (Quran 4:11). Thus, He—Exalted—encompassed all debts. Zakat is an outstanding debt owed to Allah—Exalted—and to the poor, the needy, debtors, and all others whom He—Exalted—designated as recipients in the Quranic text. Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn Al-Hajjaj narrated to us: Ahmad ibn Umar Al-Wāqiʿī and Abu Sa'id Al-Ashajj narrated to us.[1]

-: وَأَوْجَبُوا دُيُونَ الْآدَمِيِّينَ وَأَطْعَمُوا الْوَرَثَةَ الْحَرَامَ. وَالْعَجَبُ أَنَّهُ مِنْ إيجَابِهِمْ الصَّلَاةَ بَعْدَ خُرُوجِ وَقْتِهَا عَلَى الْعَامِدِ لِتَرْكِهَا، وَإِسْقَاطِهِمْ الزَّكَاةَ وَوَقْتُهَا قَائِمٌ عَنْ الْمُتَعَمِّدِ لِتَرْكِهَا. ثُمَّ تَقْسِيمُ مَالِكٍ بَيْنَ الْمَوَاشِي وَغَيْرِ الْمَوَاشِي، وَبَيْنَ زَكَاةِ عَامِهِ ذَلِكَ وَسَائِرِ الْأَعْوَامِ، فَرَأَى زَكَاةَ عَامِهِ مِنْ رَأْسِ الْمَالِ، وَإِنْ لَمْ يَبْقَ لِلْوَرَثَةِ شَيْءٌ يَعِيشُونَ مِنْهُ، وَلَمْ يَرَ زَكَاةَ سَائِرِ الْأَعْوَامِ إلَّا سَاقِطَةً. ثُمَّ تَفْرِيقُهُ بَيْنَ زَكَاةِ النَّاضِّ يُوصِي بِهَا فَتَكُونُ فِي الثُّلُثِ وَتُبَدَّى عَلَى الْوَصَايَا إلَّا عَلَى التَّدْبِيرِ فِي الصِّحَّةِ وَتُبَدَّى عَلَى التَّدْبِيرِ فِي الْمَرَضِ -: وَبَيْنَ زَكَاةِ الْمَاشِيَةِ يُوصِي بِهَا فَتَكُونُ فِي الثُّلُثِ وَلَا تُبَدَّى الْوَصَايَا، وَهَذِهِ أَشْيَاءُ غَلِطَ فِيهَا مَنْ غَلِطَ وَقَصَدَ الْخَيْرَ، وَإِنَّمَا الْعَجَبُ مِمَّنْ انْشَرَحَ صَدْرُهُ لِتَقْلِيدِ قَائِلِهَا. ثُمَّ اسْتَعْمَلَ نَفْسَهُ فِي إبْطَالِ السُّنَنِ الثَّابِتَةِ نَصْرًا لَهَا. قَالَ أَبُو مُحَمَّد: وَبَيْنَ صِحَّةِ قَوْلِنَا وَبُطْلَانِ قَوْلِ الْمُخَالِفِينَ قَوْلُ اللَّهِ عَزَّ وَجَلَّ (فِي الْمَوَارِيثِ) {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] فَعَمَّ - عَزَّ وَجَلَّ - الدُّيُونَ كُلَّهَا، وَالزَّكَاةُ دَيْنٌ قَائِمٌ لِلَّهِ تَعَالَى وَلِلْمَسَاكِينِ، وَالْفُقَرَاءِ وَالْغَارِمِينَ وَسَائِرِ مَنْ فَرَضَهَا تَعَالَى لَهُمْ فِي نَصِّ الْقُرْآنِ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَحْمَدُ بْنُ عُمَرَ الْوَكِيعِيُّ وَأَبُو سَعِيدٍ الْأَشَجُّ.

L11016–11018 Al-Waki'i said: Husayn ibn 'Ali narrated to us from Za'idah; and Abu Sa'id said: Abu Khalid al-Ahmar narrated to us. Then Za'idah and Abu Khalid al-Ahmar concurred in narrating from al-A'mash, who narrated from Muslim al-Batin, al-Hakam ibn 'Utaybah, and Salamah ibn Kuhayl. Muslim al-Batin

قَالَ الْوَكِيعِيُّ: ثنا حُسَيْنُ بْنُ عَلِيٍّ عَنْ زَائِدَةَ، وَقَالَ أَبُو سَعِيدٍ ثنا أَبُو خَالِدٍ الْأَحْمَرُ ثُمَّ اتَّفَقَ زَائِدَةُ، وَأَبُو خَالِدٍ الْأَحْمَرُ كِلَاهُمَا عَنْ الْأَعْمَشِ عَنْ مُسْلِمٍ الْبَطِينِ وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَسَلَمَةَ بْنِ كُهَيْلٍ، قَالَ مُسْلِمٌ الْبَطِينُ: عَنْ سَعِيدِ بْنِ جُبَيْرٍ وَقَالَ الْحَكَمُ، وَسَلَمَةُ: سَمِعْنَا

[1] **Qur'an references (L11013):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

said: From Sa‘id ibn Jubayr. Al-Hakam and Salamah said: We heard Mujahid. Then Sa‘id ibn Jubayr and Mujahid concurred in narrating from Ibn ‘Abbas, who said: “A man came to the Messenger of Allah — peace and blessings of Allah be upon him — and said: ’My mother died and she owed a month of fasting. Shall I fast it on her behalf?’ He said: ’If your mother owed a debt, would you repay it for her?’ He said: ’Yes.’ He said: ’Then the debt owed to Allah...’” “The most deserving to be fulfilled.”

مُجَاهِدًا ثُمَّ اتَّفَقَ سَعِيدُ بْنُ جُبَيْرٍ، وَمُجَاهِدٌ عَنْ ابْنِ عَبَّاسٍ قَالَ «جَاءَ رَجُلٌ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إِنَّ أُمِّي مَاتَتْ وَعَلَيْهَا صَوْمُ شَهْرٍ أَفَأَقْضِيهِ عَنْهَا؟ فَقَالَ: لَوْ كَانَ عَلَى أُمِّكِ دَيْنٌ أَكُنْتَ قَاضِيهِ عَنْهَا؟ قَالَ: نَعَمْ، قَالَ: فَدَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى» .

L11019 Abū Khālid said: In his narration from al-Aʿmash—from Muslim al-Buṭayn, al-Ḥakam ibn ʿUtaybah, and Salamah ibn Kuhayl—from Saʿīd ibn Jubayr, Mujāhid, and ʿAṭāʾ, from Ibn ʿAbbās. Zāʾidah mentioned in his narration that al-Aʿmash heard it from al-Ḥakam, Salamah, and Muslim al-Buṭayn.

قَالَ أَبُو خَالِدٍ: فِي رِوَايَتِهِ عَنْ الْأَعْمَشِ عَنْ مُسْلِمٍ الْبُطَيْنِ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَسَلَمَةَ بْنِ كُهَيْلٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ وَمُجَاهِدٍ وَعَطَاءٍ عَنْ ابْنِ عَبَّاسٍ، وَذَكَرَ زَائِدَةُ فِي حَدِيثِهِ أَنَّ الْأَعْمَشَ سَمِعَهُ مِنْ الْحَكَمِ، وَسَلَمَةَ وَمُسْلِمٍ

L11020 We have also narrated it through the chain of Muḥammad ibn Jaʿfar from Shuʿbah from Abū Bishr, Jaʿfar ibn Abī Waḥshiyyah, who said: I heard Saʿīd ibn Jubayr report from Ibn ʿAbbās from the Prophet—peace and blessings be upon him—who mentioned it, and in it, he—peace and blessings be upon him—said: “Fulfill your duty to Allah, for He is most deserving that you fulfill [your obligations].”

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ عَنْ شُعْبَةَ عَنْ أَبِي بِشْرٍ جَعْفَرِ بْنِ أَبِي وَحْشِيَّةَ قَالَ: سَمِعْت سَعِيدَ بْنَ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَهُ، وَفِيهِ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ: «فَاقْضُوا اللَّهَ فَهُوَ أَحَقُّ بِالْوَفَاءِ»

L11021 These individuals—Aṭā, Saʿīd ibn Jubayr, and Mujāhid—narrate it from Ibn ʿAbbās, who said: “These [rulings] are based on their personal opinions. Rather, the debt owed to Allah the Exalted is waived, while the debt owed to people is more deserving of settlement, and people are more entitled to fulfillment.” Abū Muḥammad said: “They inquire about zakah—is it a liability (dhimmah) or tied to tangible assets (ʿayn al-māl).? There is no third possibility. If they claim it is tied to tangible assets, it is established that the eligible recipients of zakah are partners in that wealth. How then can it be obligatory to invalidate their right while the debts owed to Jews and Christians persist? If they claim it is a liability (dhimmah), how do they nullify it upon death?” They unanimously agree that the admission of a sound-minded person is legally binding regarding the principal. How then do they invalidate the admission of an ailing person? If they argue, “Because it constitutes a will,” they lie and contradict themselves—for if the admission were a will, it would apply to the sound-minded person as well, limited to a third. Otherwise,

فَهَؤُلَاءِ: عَطَاءٌ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَمُجَاهِدٌ يَرْوُونَهُ عَنْ ابْنِ عَبَّاسٍ، فَقَالَ: هَؤُلَاءِ بِآرَائِهِمْ، بَلْ دَيْنُ اللَّهِ تَعَالَى سَاقِطٌ وَدَيْنُ النَّاسِ أَحَقُّ أَنْ يُقْضَى وَالنَّاسُ أَحَقُّ بِالْوَفَاءِ قَالَ أَبُو مُحَمَّد: وَيَسْأَلُونَ عَنْ الزَّكَاةِ أَفِي الذِّمَّةِ هِيَ أَمْ فِي عَيْنِ الْمَالِ.؟ وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ. فَإِنْ قَالُوا: فِي عَيْنِ الْمَالِ، فَقَدْ صَحَّ أَنَّ أَهْلَ الصَّدَقَاتِ شُرَكَاءُ فِي ذَلِكَ الْمَالِ، فَمِنْ أَيْنَ وَجَبَ أَنْ يَبْطُلَ حَقُّهُمْ وَتَبْقَى دَيْنُ الْيَهُودِ وَالنَّصَارَى؟ وَإِنْ قَالُوا: فِي الذِّمَّةِ فَمِنْ أَيْنَ أَسْقَطُوهَا بِمَوْتِهِ؟ وَلَا يَخْتَلِفُونَ أَنَّ إقْرَارَ الصَّحِيحِ لَازِمٌ فِي رَأْسِ الْمَالِ فَمِنْ أَيْنَ وَقَعَ لَهُمْ إبْطَالُ إقْرَارِ الْمَرِيضِ؟ فَإِنْ قَالُوا: لِأَنَّهُ وَصِيَّةٌ، كَذَبُوا وَتَنَاقَضُوا لِأَنَّ الْإِقْرَارَ إنْ كَانَ وَصِيَّةً فَهُوَ مِنْ الصَّحِيحِ أَيْضًا فِي الثُّلُثِ، وَإِلَّا فَهَاتُوا فَرْقًا بَيْنَ الْمَرِيضِ، وَالصَّحِيحِ.

let them provide a distinction between the ailing and the sound-minded. If they argue, “Because we suspect him,” we respond: “Why do you not suspect the sound-minded person? He is more deserving of suspicion!” This applies particularly to the Mālikīs, who accept the testimony of an ailing person claiming, “So-and-so killed me,” yet invalidate his admission concerning his wealth. These matters are as you see, and we ask Allah for well-being.

وَإِنْ قَالُوا: لِأَنَّنَا نَتَّهِمُه. قُلْنَا: فَهَلَّا اتَّهَمْتُمْ الصَّحِيحَ فَهُوَ أَحَقُّ بِالتُّهْمَةِ؟ لَا سِيَّمَا الْمَالِكِيِّينَ الَّذِينَ يُصَدِّقُونَ قَوْلَ الْمَرِيضِ فِي دَعْوَاهُ: إنَّ فُلَانًا قَتَلَهُ، وَيُبْطِلُونَ إقْرَارَهُ فِي مَالِهِ، وَهَذِهِ أُمُورٌ كَمَا تَرَى وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

L11022–11023 It has been reported to us through the chain of Ibn Wahb from Yunus ibn Yazid from Al-Zuhri regarding a man who dies without having paid the zakāh of his wealth: that it is taken from his estate if it becomes known [that he owed zakāh]. Rabīʿah said: “It is not taken, and what he is liable for remains upon him.” From the chain of Ibn Abī Shaybah: Jarīr narrated to us from Sulaymān al-Taymī from Al-Hasan and Tāwūs that they said concerning the obligatory Hajj in Islam and zakāh: “They hold the same status as debts.” ʿAlī said: “Al-Shāfiʿī has another opinion: that all such obligations are to be proportionally allocated from the estate alongside people’s debts.” ʿAlī said: “This is incorrect, due to the statement of the Messenger of Allah (peace and blessings be upon him): ’Allah’s debt is more deserving to be settled.’” ʿAlī said: “This is among the matters in which they contradicted the Quran, the established Sunnahs (which have no opposing evidence), and analogical reasoning, and they did not rely on the opinion of a Companion known to us.”

رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ الزُّهْرِيِّ فِي الرَّجُلِ يَمُوتُ وَلَمْ يُؤَدِّ زَكَاةَ مَالِهِ: أَنَّهَا تُؤْخَذُ مِنْ مَالِهِ إذَا عُلِمَ بِذَلِكَ. وَقَالَ رَبِيعَةُ: لَا تُؤْخَذُ وَعَلَيْهِ مَا تَحَمَّلَ -: وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: ثنا جَرِيرٌ عَنْ سُلَيْمَانَ التَّيْمِيِّ عَنْ الْحَسَنِ، وَطَاوُسٍ: أَنَّهُمَا قَالَا فِي حَجَّةِ الْإِسْلَامِ، وَالزَّكَاةِ: هُمَا بِمَنْزِلَةِ الدَّيْنِ قَالَ عَلِيٌّ: وَلِلشَّافِعِيِّ قَوْلٌ آخَرُ: إنَّ كُلَّ ذَلِكَ يَتَحَاصُّ مَعَ دُيُونِ النَّاسِ. قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «دَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى.» قَالَ عَلِيٌّ: هَذَا مِمَّا خَالَفُوا فِيهِ الْقُرْآنَ وَالسُّنَنَ الثَّابِتَةَ - الَّتِي لَا مُعَارِضَ لَهَا - وَالْقِيَاسَ، وَلَمْ يَتَعَلَّقُوا بِقَوْلِ صَاحِبٍ نَعْلَمُهُ.

L11024

A legal ruling: The payment of Zakat is not valid unless one intends it to be Zakat.

[مَسْأَلَةٌ لَا يُجْزِئُ أَدَاءُ الزَّكَاةِ إلَّا بِنِيَّةِ أَنَّهَا الزَّكَاةُ]

L11025–11027 688. Issue: The payment of Zakāh is not valid when a Muslim—or his agent acting by his order—disburses it without explicitly intending it as the obligatory Zakāh incumbent upon him. If the Imam, his Zakāh collector, his governor, or the latter’s collector takes it, this intention must likewise be present, based on Allah’s statement: “They were commanded only to worship Allah, devoting religion sincerely to Him” (Surah Al-Bayyinah 98:5), and the Messenger of Allah’s (peace be upon him) saying: “Actions are judged by intentions.” If a person disburses Zakāh for his absent wealth while stating, “This is the Zakāh of my wealth if it remains intact; otherwise, it is voluntary

٦٨٨ - مَسْأَلَةٌ: وَلَا يُجْزِئُ أَدَاءُ الزَّكَاةِ إذَا أَخْرَجَهَا الْمُسْلِمُ عَنْ نَفْسِهِ أَوْ وَكِيلُهُ بِأَمْرِهِ إلَّا بِنِيَّةِ أَنَّهَا الزَّكَاةُ الْمَفْرُوضَةُ عَلَيْهِ، فَإِنْ أَخَذَهَا الْإِمَامُ، أَوْ سَاعِيهِ، أَوْ أَمِيرُهُ، أَوْ سَاعِيهِ فَبِنِيَّةِ كَذَلِكَ، لِقَوْلِ اللَّهِ تَعَالَى {وَمَا أُمِرُوا إلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ} [البينة: ٥] وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ.» فَلَوْ أَنَّ امْرَأً أَخْرَجَ زَكَاةَ مَالٍ لَهُ غَائِبٍ فَقَالَ: هَذِهِ زَكَاةُ مَالِي إنْ كَانَ سَالِمًا، وَإِلَّا فَهِيَ صَدَقَةُ تَطَوُّعٍ

-: لَمْ يُجْزِهِ ذَلِكَ عَنْ زَكَاةِ مَالِهِ إِنْ كَانَ سَالِمًا، وَلَمْ يَكُنْ تَطَوُّعًا لِأَنَّهُ لَمْ يُخْلِصِ النِّيَّةَ لِلزَّكَاةِ مَحْضَةً كَمَا أُمِرَ، وَإِنَّمَا يُجْزِئُهُ إِنْ أَخْرَجَهَا عَلَى أَنَّهَا زَكَاةُ مَالِهِ فَقَطْ؛ فَإِنْ كَانَ الْمَالُ سَالِمًا أَجْزَأَهُ، لِأَنَّهُ أَدَّاهَا كَمَا أُمِرَ مُخْلِصًا لَهَا، وَإِنْ كَانَ الْمَالُ قَدْ تَلِفَ، فَإِنْ قَامَتْ لَهُ بَيِّنَةٌ فَلَهُ أَنْ يَسْتَرِدَّ مَا أَعْطَى، وَإِنْ فَاتَتْ أَدَّى الْإِمَامُ إِلَيْهِ ذَلِكَ مِنْ سَهْمِ الْغَارِمِينَ، لِأَنَّهُمْ أَخَذُوهَا وَلَيْسَ لَهُمْ أَخْذُهَا، فَهُمْ غَارِمُونَ بِذَلِكَ، وَهَذَا كَمَنْ شَكَّ: عَلَيْهِ يَوْمٌ مِنْ رَمَضَانَ أَمْ لَا؟ وَهَلْ عَلَيْهِ صَلَاةُ فَرْضٍ أَمْ لَا؟ فَصَلَّى عَدَدَ رَكَعَاتِ تِلْكَ الصَّلَاةِ وَقَالَ: إِنْ كُنْتَ أُنْسِيتُهَا فَهِيَ هَذِهِ، وَإِلَّا فَهِيَ تَطَوُّعٌ؛ وَصَامَ يَوْمًا فَقَالَ: إِنْ كَانَ عَلَيَّ يَوْمٌ فَهُوَ هَذَا، وَإِلَّا فَهُوَ تَطَوُّعٌ؛ فَإِنَّ هَذَا لَا يُخْرِجُهُ عَنْ تِلْكَ الصَّلَاةِ وَلَا عَنْ ذَلِكَ الْيَوْمِ إِنْ ذَكَرَ بَعْدَ ذَلِكَ أَنَّهُمَا عَلَيْهِ.

charity," this does not suffice as Zakāh if the wealth is intact, nor is it valid as voluntary charity, because he failed to dedicate the intention purely to Zakāh as commanded. It suffices only if he disburses it solely as Zakāh for his wealth. If the wealth remains intact, it suffices, as he has fulfilled the obligation with sincere intention. If the wealth has perished, he may reclaim what he gave if he provides evidence. If it is irrecoverable, the Imam must compensate him from the share designated for those in debt (ghārimīn), since they took it without rightful claim, thus making them debtors. This resembles the case of one uncertain whether he owes a day of fasting in Ramadan or an obligatory (farḍ) prayer, and thus prays the number of rak'ahs corresponding to that prayer. He said: "If I have forgotten it, then this is it; otherwise, it is supererogatory." He fasted a day and said: "If there is a day owed upon me, this is it; otherwise, it is supererogatory." For indeed, this does not exempt him from that prayer or from that day if he later remembers that they were still due upon him.[2]

[مَسْأَلَةٌ اشْتَرَى بِدَرَاهِمِهِ أَوْ بِدَنَانِيرِهِ فِرَارًا مِنْ الزَّكَاةِ]

Issue: A person who buys with his dirhams or dinars in order to evade paying zakat.

٦٨٩ - مَسْأَلَةٌ: مَنْ خَرَجَ الْمَالُ عَنْ مِلْكِهِ فِي دَاخِلِ الْحَوْلِ قَبْلَ تَمَامِهِ - بِأَيِّ وَجْهٍ خَرَجَ عَنْ مِلْكِهِ - ثُمَّ رَجَعَ إِلَيْهِ - بِأَيِّ وَجْهٍ رَجَعَ إِلَيْهِ، وَلَوْ إِثْرَ خُرُوجِهِ بِطَرْفَةِ عَيْنٍ أَوْ أَكْثَرَ -: فَإِنَّهُ يَسْتَأْنِفُ بِهِ الْحَوْلَ مِنْ حِينِ رُجُوعِهِ، لَا مِنْ حِينِ الْحَوْلِ الْأَوَّلِ، لِأَنَّ ذَلِكَ الْحَوْلَ قَدْ بَطَلَ بِبُطْلَانِ الْمِلْكِ، وَمِنَ الْبَاطِلِ أَنْ يُعَدَّ عَلَيْهِ وَقْتٌ كَانَ فِيهِ الْمَالُ لِغَيْرِهِ. وَكَذَلِكَ مَنْ بَاعَ إِبِلًا بِإِبِلٍ، أَوْ بَقَرًا بِبَقَرٍ، أَوْ غَنَمًا بِغَنَمٍ، أَوْ فِضَّةً بِفِضَّةٍ، أَوْ ذَهَبًا بِذَهَبٍ -: فَإِنَّ حَوْلَ الَّذِي خَرَجَ عَنْ مِلْكِهِ، مِنْ ذَلِكَ قَدْ بَطَلَ، وَيَسْتَأْنِفُ الْحَوْلَ الَّذِي صَارَ فِي مِلْكِهِ مِنْ ذَلِكَ لِمَا ذَكَرْنَا. وَسَوَاءٌ فِي كُلِّ ذَلِكَ فَعَلَ ذَلِكَ فِرَارًا مِنَ الزَّكَاةِ أَوْ لِغَيْرِ فِرَارٍ، فَهُوَ عَاصٍ بِنِيَّتِهِ السُّوءَ فِي فِرَارِهِ مِنَ الزَّكَاةِ.

L11028 L11029 Issue 689: If wealth exits one's ownership during the _ḥawl_ before its completion - through whatever means it leaves ownership - then returns to him - through whatever means it returns, even if immediately after exiting, be it in the blink of an eye or more - he must restart the _ḥawl_ period from the time of its return, not from the initial _ḥawl_'s commencement. This is because the original _ḥawl_ becomes void due to the termination of ownership, as it is invalid to count a duration during which the wealth belonged to another. Similarly, whoever sells camels in exchange for camels, cattle for cattle, sheep for sheep, silver for silver, or gold for gold - the _ḥawl_ for the wealth that left his ownership is voided by such an exchange. He must initiate a new _ḥawl_ for what enters his ownership, as we have explained. This ruling applies equally whether such actions were performed to evade Zakāt or for other purposes. Nevertheless, one who acts with the evil intent

[2] **Qur'an references (L11025):** Qur'an 98:5 (Al-Bayyinah).

of avoiding Zakāt through such means becomes sinful due to this corrupt intention.

L11030 Some people said: If he did that to evade zakāt, then zakāt is obligatory upon him. Then they contradicted the one who presented the opinion by stating: Whoever purchases property or goods with his silver or gold coins to evade zakāt owes no zakāt on what he purchased. Abū Muḥammad said: It is an impossibility – not commanded by God Almighty – for a person to pay zakāt on wealth held by someone else, which has not completed its annual cycle in the owner's possession. God Almighty said: {No soul earns [sin] except against itself, and no bearer of burdens shall bear the burden of another} [Al-Anʿām 6:164]. Our position on all of this aligns with the opinion of Abū Ḥanīfa, Al-Shāfiʿī, and Abū Sulaymān.[3]

L11031–11033 Mālik said: If one exchanges camels for cattle or sheep, or cattle for sheep, the ruling is the same whether done to avoid Zakāh or not. And if he exchanges camels for camels, cattle for cattle, sheep for sheep, gold for gold, or Regarding silver exchanged for silver: Is zakāh obligatory upon him when the year concludes during which it left his possession? Abū Muḥammad said: This is a manifest error and an unsupported claim with no evidence for its validity—neither from the Qur'an, nor a sound Sunnah, nor a weak narration, nor consensus, nor a Companion's opinion, nor analogy, nor any valid opinion. We ask those who uphold this view: Is this silver that came to him the same as what left him, or is it different? If they say: "It is different," we counter: How can he pay zakāh for wealth he does not own? What if it is with the deceased or with a disbeliever? If they say: "No, it is the same," they display open obstinacy and join the ranks of those who brazenly trivialize lying. If they say: "It is not the same but of the same type," we respond: Yes, what then? From where do you derive zakāh liability for wealth other than that which began the year in his ownership, even if of the same type? They are further questioned: If the quantities differ, which quantity obligates zakāh—the one that left his ownership or the one acquired? Perhaps one does not meet the niṣāb. All this is undeniably erroneous, and success lies with

[3] **Qur'an references (L11030):** Qur'an 6:164 (Al-An'am).

وَقَالَ بَعْضُ النَّاسِ: إِنْ كَانَ فَعَلَ ذَلِكَ فِرَارًا مِنْ الزَّكَاةِ فَعَلَيْهِ الزَّكَاةُ، ثُمَّ نَاقَضَ مَنْ قَرَّبَ فَقَالَ: مَنْ اشْتَرَى بِدَرَاهِمِهِ أَوْ بِدَنَانِيرِهِ عَقَارًا أَوْ مَتَاعًا فِرَارًا مِنْ الزَّكَاةِ فَلَا زَكَاةَ عَلَيْهِ فِيمَا اشْتَرَى. قَالَ أَبُو مُحَمَّدٍ: وَمِنْ الْمُحَالِ الَّذِي لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِهِ أَنْ يُزَكِّيَ الْإِنْسَانُ مَالًا هُوَ فِي يَدِ غَيْرِهِ [مَا] لَمْ يَحُلْ حَوْلُهُ عِنْدَهُ. قَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] . وَقَوْلُنَا فِي هَذَا كُلِّهِ هُوَ قَوْلُ أَبِي حَنِيفَةَ وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

وَقَالَ مَالِكٌ: إِنْ بَادَلَ إبِلًا بِبَقَرٍ أَوْ بِغَنَمٍ أَوْ بَقَرًا بِغَنَمٍ فَكَذَلِكَ سَوَاءٌ فَعَلَهُ فِرَارًا مِنْ الزَّكَاةِ أَوْ لِغَيْرِ فِرَارٍ، وَإِنْ بَادَلَ إبِلًا بِإِبِلٍ، أَوْ بَقَرًا بِبَقَرٍ، أَوْ غَنَمًا بِغَنَمٍ، أَوْ ذَهَبًا بِذَهَبٍ، أَوْ فِضَّةً بِفِضَّةٍ -: فَعَلَيْهِ الزَّكَاةُ عِنْدَ انْقِضَاءِ الْحَوْلِ الَّذِي خَرَجَ عَنْ يَدِهِ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ ظَاهِرٌ، وَدَعْوَى لَا دَلِيلَ عَلَى صِحَّتِهَا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ (صَحِيحَةٍ) وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا إجْمَاعٍ، وَلَا قَوْلِ صَاحِبٍ وَلَا قِيَاسٍ، وَلَا رَأْيٍ يَصِحُّ وَنَسْأَلُ مَنْ قَالَ بِهَذَا: أَهَذِهِ الَّتِي صَارَتْ إلَيْهِ هِيَ الَّتِي خَرَجَتْ عَنْهُ؟ أَمْ هِيَ غَيْرُهَا؟ فَإِنْ قَالَ: هِيَ غَيْرُهَا؟ قِيلَ: فَكَيْفَ يُزَكِّي عَنْ مَالٍ لَا يَمْلِكُهُ؟ وَلَعَلَّهَا أَمْوَاتٌ، أَوْ عِنْدَ كَافِرٍ. وَإِنْ: قَالَ بَلْ هِيَ تِلْكَ، كَابِرُ الْعِيَانِ، وَصَارَ فِي مِسْلَاخِ مَنْ يَسْتَسْهِلُ الْكَذِبَ جِهَارًا، فَإِنْ قَالَ: لَيْسَتْ هِيَ، وَلَكِنَّهَا مِنْ نَوْعِهَا؟ قُلْنَا نَعَمْ، فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ لَكُمْ زَكَاةُ غَيْرِ الْمَالِ الَّذِي ابْتَدَأَ الْحَوْلُ فِي مِلْكِهِ إذَا كَانَ مِنْ نَوْعِهِ؟ ثُمَّ يُسْأَلُونَ إنْ كَانَتْ الْأَعْدَادُ مُخْتَلِفَةً: أَيُّ الْعَدَدَيْنِ يُزَكِّي الْعَدَدَ الَّذِي خَرَجَ عَنْ مِلْكِهِ؟ أَمْ الْعَدَدُ الَّذِي اكْتَسَبَ؟

Allah, the Exalted. Whatever they allege in this matter constitutes arbitrary judgment and baseless falsehood without proof.

وَلَعَلَّ أَحَدُهُمَا لَيْسَ نِصَابًا؟ وَهَذَا كُلُّهُ خَطَأٌ لَا خَفَاءَ بِهِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. وَأَيُّ شَيْءٍ قَالُوا فِي ذَلِكَ كَانَ تَحَكُّمًا وَبَاطِلًا بِلَا بُرْهَانٍ.

L11034 "If they say, 'Has he owned a hundred sheep, ten camels, or two hundred dirhams for a complete and uninterrupted lunar year?'"

فَإِنْ قَالُوا: إِنَّهُ لَمْ يَزَلْ مَالِكًا لِمِائَةِ شَاةٍ أَوْ لِعَشْرٍ مِنَ الْإِبِلِ أَوْ لِمِائَتَيْ دِرْهَمٍ حَوْلًا كَامِلًا مُتَّصِلًا؟

L11035–11036 We have stated: Zakat is only obligatory as an obligation upon a Muslim on the wealth he owns in its specific asset form for a complete year, on all that we have mentioned without dispute. Therefore, the proof lies on you to demonstrate Zakat's obligation regarding a specific number not tied to its specific asset but on varied distinct assets. This is something that cannot be established except through claim, and success is by Allah's grace, the Exalted.

قُلْنَا: إِنَّمَا الزَّكَاةُ تَجِبُ فِي ذِمَّةِ الْمُسْلِمِ عَنْ مَالِ مِلْكِهِ بِعَيْنِهِ حَوْلًا كَامِلًا مِنْ كُلِّ مَا ذَكَرْنَا بِلَا خِلَافٍ، فَعَلَيْكُمُ الْبُرْهَانُ فِي وُجُوبِ الزَّكَاةِ عَنْ عَدَدٍ بِغَيْرِ عَيْنِهِ لَكِنْ فِي أَعْيَانٍ مُخْتَلِفَةٍ، وَهَذَا مَا لَا سَبِيلَ إِلَى وُجُودِهِ، إِلَّا بِالدَّعْوَى - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[زَكَاة الْمَغْصُوبِ]

L11037 ## Zakat on Usurped Property

[مَسْأَلَةٌ مَنْ تَلِفَ مَالُهُ أَوْ غُصِبَهُ أَوْ حِيلَ بَيْنَهُ وَبَيْنَهُ فَلَا زَكَاةَ عَلَيْهِ فِيهِ]

L11038 **Issue: If a person's wealth perishes, is usurped, or trickery prevents them from accessing it, no zakat is obligatory on them for it.**

زَكَاة الْمَغْصُوبِ ٦٩٠ - مَسْأَلَةٌ: وَمَنْ تَلِفَ مَالُهُ أَوْ غُصِبَهُ أَوْ حِيلَ بَيْنَهُ وَبَيْنَهُ فَلَا زَكَاةَ عَلَيْهِ فِيهِ أَيُّ نَوْعٍ كَانَ مِنْ أَنْوَاعِ الْمَالِ، فَإِنْ رَجَعَ إِلَيْهِ يَوْمًا مَا اسْتَأْنَفَ (بِهِ) حَوْلًا مِنْ حِينَئِذٍ، وَلَا زَكَاةَ (عَلَيْهِ) لِمَا خَلَا؛ فَلَوْ زَكَّاهُ الْغَاصِبُ ضَمِنَهُ كُلَّهُ، وَضَمِنَ مَا أَخْرَجَ مِنْهُ فِي الزَّكَاةِ؛ لِأَنَّهُ لَا خِلَافَ بَيْنَ الْأُمَّةِ كُلِّهَا فِي أَنَّ صَاحِبَ الْمَالِ إِنْ أَحَبَّ أَنْ يُؤَدِّيَ الزَّكَاةَ مِنْ نَفْسِ الْمَالِ الَّذِي وَجَبَتْ فِيهِ الزَّكَاةُ - لَا مِنْ غَيْرِهِ - كَانَ ذَلِكَ لَهُ، وَلَمْ يُكَلَّفِ الزَّكَاةَ (مِنْ سِوَاهُ) مَا لَمْ يَبِعْهُ هُوَ أَوْ يُخْرِجْهُ عَنْ مِلْكِهِ بِاخْتِيَارِهِ، فَإِنَّهُ حِينَئِذٍ يُكَلَّفُ أَدَاءَ الزَّكَاةِ مِنْ عِنْدِ نَفْسِهِ، فَسَقَطَ بِهَذَا الْإِجْمَاعِ تَكْلِيفُهُ أَدَاءَ زَكَاةٍ مِنْ عِنْدِ نَفْسِهِ؛ ثُمَّ لَمَّا صَحَّ ذَلِكَ، وَكَانَ غَيْرَ قَادِرٍ عَلَى أَدَاءِ الزَّكَاةِ مِنْ نَفْسِ الْمَالِ الْمَغْصُوبِ،

L11039–11041 Zakat on Wrongfully Seized Property 690 - Issue: If a person's wealth perishes, is wrongfully taken by force, or they are prevented from accessing it, no zakat is obligatory upon them for it, regardless of the type of wealth. Should it ever return to them, they must begin a new zakat cycle with it from the time of recovery, with no zakat due for the past period. If the wrongful possessor pays zakat on it, they are liable for the entire value and must compensate for what they paid as zakat from it. This is because there is unanimous agreement among all scholars that if the owner wishes to pay zakat from the actual wealth on which zakat is due—not from other property—they may do so. No one other than the owner is obligated unless the owner sells it or voluntarily transfers ownership, at which point the new owner becomes responsible for paying zakat from their own resources. This consensus removes any obligation for the original owner to pay zakat from their personal wealth. Since they are unable to pay zakat from the wrongfully seized,

destroyed, or inaccessible wealth itself, their obligation is waived for what they cannot access—unlike property they or their agent can retrieve from its storage place. What is nullified by evidence cannot be reinstated except through explicit textual proof or consensus. During the lifetime of Allah's Messenger (peace be upon him), hostile forces would raid Muslim livestock, yet he never obligated anyone to pay zakat on wealth seized by them. Wealth may also be stolen or wrongfully taken and scattered, leaving no trace of its location. Imposing zakat in such cases would constitute undue hardship, which Allah has abolished, as He states: "He has not placed upon you in the religion any hardship" (22:78). Similarly, if disbelievers seize control of a town known for its date palms, it is impossible to obligate its owner to pay zakah on what it produces. As for the usurper, he is forbidden to dispose of another's property, for the Messenger of Allah—peace and blessings be upon him—said: "Your blood and your wealth are sacred to you." Therefore, his payment of zakah from another's wealth constitutes an act of usurpation on his part, and he is liable for that in which he transgressed—Allah the Exalted said: "So whoever transgresses against you, then transgress against them in the same manner as they transgressed against you" [Al-Baqarah: 194].[4]

أَوْ الْمُتْلَفِ، أَوْ الْمَمْنُوعِ مِنْهُ: سَقَطَ عَنْهُ مَا عَجَزَ عَنْهُ مِنْ ذَلِكَ، بِخِلَافِ مَا هُوَ قَادِرٌ عَلَى إحْضَارِهِ وَاسْتِخْرَاجِهِ مِنْ مَدْفَنِهِ هُوَ أَوْ وَكِيلُهُ، وَمَا سَقَطَ بِبُرْهَانٍ لَمْ يَعُدْ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ، وَقَدْ كَانَتْ الْكُفَّارُ يُغِيرُونَ عَلَى سَرْحِ الْمُسْلِمِينَ فِي حَيَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، فَمَا كَلَّفَ قَطُّ أَحَدًا زَكَاةَ مَا أَخَذَهُ الْكُفَّارُ مِنْ مَالِهِ. وَقَدْ يُسْرَقُ الْمَالُ وَيُغْصَبُ فَيُفَرَّقُ وَلَا يَدْرِي أَحَدٌ مَكَانَهُ، فَكَانَ تَكْلِيفُ أَدَاءِ الزَّكَاةِ عَنْهُ مِنْ الْحَرَجِ الَّذِي قَدْ أَسْقَطَهُ اللَّهُ تَعَالَى، إذْ يَقُولُ: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] وَكَذَلِكَ تَغَلُّبُ الْكُفَّارِ عَلَى بَلَدِ نَخْلٍ فَمِنْ الْمُحَالِ تَكْلِيفُ رَبِّهَا أَدَاءَ زَكَاةِ مَا أَخْرَجَتْ، وَأَمَّا الْغَاصِبُ فَإِنَّهُ مُحَرَّمٌ عَلَيْهِ التَّصَرُّفُ فِي مَالِ غَيْرِهِ، يَقُولُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَإِعْطَاؤُهُ الزَّكَاةَ مِنْ مَالِ غَيْرِهِ تَعَدٍّ مِنْهُ، فَهُوَ ضَامِنٌ لِمَا تَعَدَّى فِيهِ - قَالَ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤]

L11042 Abu Hanifa held the same position in all these matters, except he stated: If the buried wealth is in a place within his home that is destroyed, he must pay its Zakat; but if it was outside his home, there is no Zakat due on it. This division [of rulings] is invalid, and we know of no one before him who held this view. Malik said: There is no Zakat due on it. If it returns to his possession, he pays Zakat for only one year even if it was inaccessible for years. This is an evidently erroneous opinion, and we do not know any proof for them except that they imitated Umar ibn Abd al-Aziz in a statement he later reverted to. He had previously said: He would collect Zakat for every past year [even retroactively]. How strange that they followed Umar here but did not follow him when he reverted to imposing Zakat on honey! Umar only held the opinion they imitated here because he believed Zakat was due on incrementally acquired wealth at the time of acquisition, yet they

وَقَالَ أَبُو حَنِيفَةَ: بِمِثْلِ هَذَا كُلِّهِ، إلَّا أَنَّهُ قَالَ: إنْ كَانَ الْمَالُ الْمَدْفُونُ بِتَلَفِ مَكَانِهِ فِي مَنْزِلِهِ أَدَّى زَكَاتَهُ، وَإِنْ كَانَ خَارِجَ مَنْزِلِهِ فَلَا زَكَاةَ عَلَيْهِ فِيهِ. وَهَذَا تَقْسِيمٌ فَاسِدٌ مَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ، وَقَالَ مَالِكٌ: لَا زَكَاةَ عَلَيْهِ فِيهِ، فَإِنْ رَجَعَ إلَيْهِ زَكَّاهُ لِسَنَةٍ وَاحِدَةٍ فَقَطْ وَإِنْ غَابَ عَنْهُ سِنِينَ. وَهَذَا قَوْلٌ ظَاهِرُ الْخَطَأِ، وَمَا نَعْلَمُ لَهُمْ حُجَّةً إلَّا أَنَّهُمْ قَلَّدُوا فِي ذَلِكَ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ فِي قَوْلٍ لَهُ رَجَعَ إلَيْهِ، وَكَانَ قَالَ قَبْلَ ذَلِكَ: يَأْخُذُ الزَّكَاةَ مِنْهُ لِكُلِّ سَنَةٍ خَلَتْ؟ وَالْعَجَبُ أَنَّهُمْ قَلَّدُوا عُمَرَ هَاهُنَا، وَلَمْ يُقَلِّدُوهُ فِي رُجُوعِهِ إلَى الْقَوْلِ بِالزَّكَاةِ فِي الْعَسَلِ، وَإِنَّمَا قَالَ عُمَرُ بِالْقَوْلِ الَّذِي قَلَّدُوهُ فِيهِ لِأَنَّهُ كَانَ يَرَى الزَّكَاةَ فِي الْمَالِ الْمُسْتَفَادِ حِينَ يُفَادُ فَخَالَفُوهُ هَاهُنَا وَهَذَا كُلُّهُ تَخْلِيطٌ، وَقَالَ سُفْيَانُ: - فِي أَحَدِ قَوْلَيْهِ -

[4] **Qur'an references (L11039):** Qur'an 22:78 (Al-Hajj); Qur'an 2:194 (Al-Baqarah).

opposed him here. All of this reflects confused reasoning. Sufyan (in one of his two opinions) and Abu Sulayman said: Is Zakat due for every past year? It has been reported from Uthman and Ibn Umar that they obligated Zakat on accessible wealth, indicating that they did not consider Zakat due on inaccessible wealth. There was no dissenting opinion from the Companions - may Allah be pleased with them - regarding this.

L11043–11044 Our stance on this matter corresponds to the view of Qatādah, al-Layth, and one of the two positions of Sufyān. It is also reported from ʿUmar ibn ʿAbd al-ʿAzīz, as conveyed to us through the chain of al-Ḥajjāj ibn al-Minhāl from Hammām ibn Yaḥyā, who narrated from Abū ʿUthmān—the governor appointed by ʿUmar ibn ʿAbd al-ʿAzīz—who said: ʿUmar ibn ʿAbd al-ʿAzīz wrote to me regarding wealth returned to a man after being unjustly seized, instructing: "Take zakāh from it for the period it was held [by the wrongdoer]." Then ʿUmar's courier reached me at dawn, stating: "Do not take zakāh from it, for it was a debt deemed irrecoverable or an obscured liability."

The Issue of Zakat on the Pledged Item

L11045

L11046 691 - Issue: If someone pawns livestock, gold, silver, land that he cultivates, or palm trees that bear fruit, and the lunar year has passed for the livestock and the pawned asset - zakat is obligatory on all these. The pawner is not required to provide substitute compensation for what was given from them as zakat. As for the obligation of zakat: this is because it constitutes wealth from his possessions, on which the ordained zakat is due. His ownership remains intact, and no textual evidence or consensus exists necessarily mandating his compulsory payment of zakat from other assets. Regarding the prohibition of imposing compensation: what he gave from it was not surrendered through falsehood or transgression (which would necessitate restitution), but rather fulfilled as a mandated obligation. Thus, obligating him to compensate through judicial ruling over his wealth is null and void, and impermissible except based on textual proof or consensus. The Messenger of Allah (peace be upon him) said: "Your blood and your wealth are inviolable to you."

وَأَبُو سُلَيْمَانَ: عَلَيْهِ الزَّكَاةُ لِكُلِّ سَنَةٍ خَلَتْ؟ وَقَدْ جَاءَ عَنْ عُثْمَانَ، وَابْنِ عُمَرَ: إِيجَابُ الزَّكَاةِ فِي الْمَقْدُورِ عَلَيْهِ، فَدَلَّ (ذَلِكَ) عَلَى أَنَّهُمَا لَا يَرَيَانِ الزَّكَاةَ فِي غَيْرِ الْمَقْدُورِ عَلَيْهِ، وَلَا مُخَالِفَ لَهُمَا مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؟

وَقَوْلُنَا فِي هَذَا هُوَ قَوْلُ قَتَادَةَ، وَاللَّيْثِ وَأَحَدِ قَوْلَيْ سُفْيَانَ، وَرُوِيَ أَيْضًا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ هَمَّامِ بْنِ يَحْيَى ثنا أَبُو عُثْمَانَ عَامِلُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: كَتَبَ إِلَيَّ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي مَالٍ رَدَّهُ عَلَى رَجُلٍ كَانَ ظُلِمَهُ: أَنْ خُذْ مِنْهُ الزَّكَاةَ لِمَا أَتَتْ عَلَيْهِ، ثُمَّ صَبَّحَنِي بَرِيدُ عُمَرَ: لَا تَأْخُذْ مِنْهُ زَكَاةً، فَإِنَّهُ كَانَ ضِمَارًا أَوْ غَوْرًا.

[مَسْأَلَةُ الزَّكَاةِ فِي الْمَرْهُونِ]

٦٩١ - مَسْأَلَةٌ: وَمَنْ رَهَنَ مَاشِيَةً، أَوْ ذَهَبًا، أَوْ فِضَّةً، أَوْ أَرْضًا فَزَرَعَهَا، أَوْ نَخْلًا فَأَثْمَرَتْ، وَحَالَ الْحَوْلُ عَلَى الْمَاشِيَةِ، وَالْعَيْنِ -: فَالزَّكَاةُ فِي كُلِّ ذَلِكَ وَلَا يُكَلَّفُ الرَّاهِنُ عِوَضًا عَمَّا خَرَجَ مِنْ ذَلِكَ فِي زَكَاتِهِ، أَمَّا وُجُوبُ الزَّكَاةِ؛ فَلِأَنَّهُ مَالٌ مِنْ مَالِهِ، عَلَيْهِ فِيهِ الزَّكَاةُ الْمَفْرُوضَةُ، وَلَمْ يَنْتَقِلْ مِلْكُهُ عَنْهُ، وَلَمْ يَأْتِ نَصٌّ وَلَا إِجْمَاعٌ بِتَكْلِيفِهِ أَدَاءَ الزَّكَاةِ مِنْ غَيْرِهِ وَلَا بُدَّ، وَأَمَّا الْمَنْعُ مِنْ تَكْلِيفِهِ الْعِوَضَ فَإِنَّهُ لَمْ يَخْرُجْ مَا أَخْرَجَ مِنْهُ بِبَاطِلٍ وَعُدْوَانٍ، فَيَقْضِي عَلَيْهِ بِرَدِّهِ وَإِنَّمَا أَخْرَجَهُ بِحَقٍّ مُفْتَرَضٍ إِخْرَاجُهُ؛ فَتَكْلِيفُهُ حُكْمًا فِي مَالِهِ بَاطِلٌ، وَلَا يَجُوزُ إِلَّا بِنَصٍّ، أَوْ إِجْمَاعٍ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ»

L11047 **Issue: One upon whom zakat is obligated is not required to hand it over to the ruler.**

L11048 692 – Issue: It is not obligatory for one liable to pay Zakat to deliver it to the ruling authority. However, they must gather their wealth and present it to the Zakat collector, handing over the rightful share to him. Furthermore, the expense of transporting it is borne by the Zakat itself. This is a matter uncontested by anyone. And success is from Allah, the Exalted.

L11049–11051 Similarly, "The Messenger of Allah—peace and blessings be upon him—would send the zakah collectors—and they were the collectors—to take the obligated amount, and the wealth owners would thereby be absolved of that responsibility." If there is no certifier, the one obligated to pay Zakāh must deliver it to whichever eligible recipients are present, with no further obligation. This is because imposing transportation entails an expense and financial burden not supported by explicit textual or consensus-based evidence. And success is from Allah, the Exalted. There is no distinction whether one compelled by personal inclination or one compelled to deliver it to Khurasan or beyond.

L11052 **A ruling on advancing zakat before the completion of the hawl (lunar year).**

L11053 Issue 693: It is not permissible to prepay Zakāh before the completion of the annual cycle, not even for an instant. If one does so, it remains invalid, obliging him to repeat it. What he disbursed prematurely must be returned to him, for he gave it without rightful basis. The validity of prepaying Zakāh before its due time has been reported from Sa'īd ibn Jubayr, 'Aṭā', Ibrāhīm, al-Ḍaḥḥāk, al-Ḥakam, and al-Zuhrī. Al-Ḥasan permitted this practice for three years. Ibn Sīrīn remarked regarding prepayment before maturity: "I do not recognize this." Abū Ḥanīfah and his companions maintained the permissibility of prepaying Zakāh before its due time, though they exhibited numerous inconsistencies in this matter. For instance, Muḥammad ibn al-Ḥasan stated: "This is impermissible for property he currently owns, crops he has cultivated, or date palms whose fruit has emerged."

[مَسْأَلَةٌ لَيْسَ عَلَى مَنْ وَجَبَ عَلَيْهِ الزَّكَاةُ إِيصَالُهَا إِلَى السُّلْطَانِ]

٦٩٢ - مَسْأَلَةٌ: وَلَيْسَ عَلَى مَنْ وَجَبَ عَلَيْهِ الزَّكَاةُ إِيصَالُهَا إِلَى السُّلْطَانِ لَكِنْ عَلَيْهِ أَنْ يَجْمَعَ مَالَهُ لِلْمُصَدِّقِ وَيَدْفَعَ إِلَيْهِ الْحَقَّ، ثُمَّ مُؤْنَةُ نَقْلِ ذَلِكَ مِنْ نَفْسِ الزَّكَاةِ وَهَذَا مَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَكَذَلِكَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَبْعَثُ الْمُصَدِّقِينَ - وَهُمْ السُّعَاةُ فَيَقْبِضُونَ الْوَاجِبَ وَيَبْرَأُ أَصْحَابُ الْأَمْوَالِ مِنْ ذَلِكَ» فَإِنْ لَمْ يَكُنْ مُصَدِّقٌ فَعَلَى مَنْ عَلَيْهِ الزَّكَاةُ إِيصَالُهَا إِلَى مَنْ يَحْضُرُهُ مِنْ أَهْلِ الصَّدَقَاتِ وَلَا مَزِيدَ؛ لِأَنَّ تَكْلِيفَ النَّقْلِ مُؤْنَةٌ وَغَرَامَةٌ لَمْ يَأْتِ بِهَا نَصٌّ وَلَا إجْمَاعٌ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؛ وَلَا فَرْقَ بَيْنَ مَنْ كَلَّفَهُ ذَلِكَ مَيْلًا أَوْ (مَنْ) كَلَّفَهُ إلَى خُرَاسَانَ أَوْ أَبْعَدَ.

[مَسْأَلَةٌ تَعْجِيلُ الزَّكَاةِ قَبْلَ تَمَامِ الْحَوْلِ]

٦٩٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ تَعْجِيلُ الزَّكَاةِ قَبْلَ تَمَامِ الْحَوْلِ وَلَا بِطَرْفَةِ عَيْنٍ فَإِنْ فَعَلَ لَمْ يُجْزِهِ، وَعَلَيْهِ إعَادَتُهَا، وَيَرُدُّ إلَيْهِ مَا أَخْرَجَ قَبْلَ وَقْتِهِ؛ لِأَنَّهُ أَعْطَاهُ بِغَيْرِ حَقٍّ وَصَحَّ تَعْجِيلُ الزَّكَاةِ قَبْلَ وَقْتِهَا عَنْ سَعِيدِ بْنِ جُبَيْرٍ، وَعَطَاءٍ، وَإِبْرَاهِيمَ، وَالضَّحَّاكِ، وَالْحَكَمِ، وَالزُّهْرِيِّ وَأَجَازَهُ الْحَسَنُ لِثَلَاثِ سِنِينَ، وَقَالَ ابْنُ سِيرِينَ: فِي تَعْجِيلِ الزَّكَاةِ قَبْلَ أَنْ تَحِلَّ: لَا أَدْرِي مَا هَذَا، وَقَالَ أَبُو حَنِيفَةَ: وَأَصْحَابُهُ بِجَوَازِ تَعْجِيلِ الزَّكَاةِ قَبْلَ وَقْتِهَا؟ ثُمَّ لَهُمْ فِي ذَلِكَ تَخْلِيطٌ كَثِيرٌ -: مِثْلُ قَوْلِ مُحَمَّدِ بْنِ الْحَسَنِ: لَا يَجُوزُ ذَلِكَ فِي مَالٍ عِنْدَهُ، وَلَا فِي زَرْعٍ قَدْ زَرَعَهُ، وَلَا فِي نَخْلٍ قَدْ أَطْلَعَتْ.

وَقَالَ أَبُو يُوسُفَ يَجُوزُ ذَلِكَ (كُلُّهُ) قَبْلَ اطِّلَاعِ النَّخْلِ وَقَبْلَ زَرْعِ الْأَرْضِ، وَلَوْ عَجَّلَ زَكَاةَ ثَلَاثِ سِنِينَ أَجْزَأَهُ. وَأَكْثَرُ مِنْ هَذَا سَنَذْكُرُهُ - إِنْ شَاءَ اللَّهُ تَعَالَى - فِي ذِكْرِ تَخَالِيطِ أَقْوَالِهِمْ فِي كِتَابِ الْأَعْرَابِ " واللَّهُ الْمُسْتَعَانُ.

L11054 Abū Yūsuf said (all of this) is permissible before the appearance of date palm fruit spikes and before sowing the land. Even if one prepays Zakat for three years, it suffices him. We will mention more than this—if Allah, the Exalted, wills—in discussing the discrepancies in their opinions in the *Book of the Bedouins*. And Allah is the Source of all help.

قَالَ الشَّافِعِيُّ: بِتَعْجِيلِ الزَّكَاةِ عَنْ مَالٍ عِنْدَهُ، لَا عَنْ مَالٍ لَمْ يَكْتَسِبْهُ بَعْدُ وَقَالَ: إِنْ اسْتَغْنَى الْمِسْكِينُ مِمَّا أَخَذَ مِمَّا عَجَّلَهُ صَاحِبُ الْمَالِ قَبْلَ الْحَوْلِ أَجْزَأَ صَاحِبَ الْمَالِ، فَإِنْ اسْتَغْنَى مِنْ غَيْرِ ذَلِكَ لَمْ يُجْزِئْ عَنْ صَاحِبِ الْمَالِ.

L11055–11057 Al-Shafi'i said: Expediting zakat applies to wealth in one's possession, not to wealth not yet acquired. He said: If the poor person becomes self-sufficient through what they took from the wealth owner's advance before the ḥawl (the lunar year), it suffices for the wealth owner's obligation. But if they become self-sufficient through other means, it does not suffice for the wealth owner.

وَقَالَ مَالِكٌ: يُجْزِئُ تَعْجِيلُ الزَّكَاةِ بِشَهْرَيْنِ أَوْ نَحْوِ ذَلِكَ، لَا أَكْثَرَ، فِي رِوَايَةِ ابْنِ الْقَاسِمِ عَنْهُ - وَأَمَّا رِوَايَةُ ابْنِ وَهْبٍ عَنْهُ فَكَمَا قُلْنَا نَحْنُ، وَهَذِهِ (كُلُّهَا) تَقَاسِيمُ فِي غَايَةِ الْفَسَادِ، لَا دَلِيلَ عَلَى صِحَّتِهَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إِجْمَاعٍ، وَلَا قَوْلِ صَاحِبٍ يَصِحُّ، وَلَا قِيَاسٍ.

L11058 Malik said: Advancing the payment of zakāh by two months or thereabouts suffices, but no more than that, in the narration of Ibn al-Qāsim from him. As for Ibn Wahb's narration from him, it is as we have said. All these categorizations are entirely baseless, with no proof of their correctness from the Qur'an, the Sunnah, consensus, a sound opinion of a Companion, or analogical reasoning.

وَقَوْلُ اللَّيْثِ، وَأَبِي سُلَيْمَانَ: كَقَوْلِنَا. وَاحْتَجَّ مَنْ أَجَازَ تَعْجِيلَهَا بِحُجَجٍ -: مِنْهَا: الْخَبَرُ الَّذِي ذَكَرْنَاهُ فِي زَكَاةِ الْمَوَاشِي، فِي هَلْ تُجْزِئُ قِيمَةٌ أَمْ لَا؟ مِنْ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَسْلَفَ بَكْرًا فَقَضَاهُ مِنْ إِبِلِ الصَّدَقَةِ جَمَلًا رَبَاعِيًا» ؟ وَهَذَا لَا دَلِيلَ فِيهِ عَلَى تَعْجِيلِ الصَّدَقَةِ، لِأَنَّهُ اسْتِسْلَافٌ كَمَا تَرَى، لَا اسْتِعْجَالُ صَدَقَةٍ، بَلْ فِيهِ دَلِيلٌ عَلَى أَنَّ تَعْجِيلَهَا لَا يَجُوزُ، إِذْ لَوْ جَازَ لَمَا احْتَاجَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إِلَى الِاسْتِقْرَاضِ، بَلْ كَانَ يَسْتَعْجِلُ زَكَاةً لِحَاجَتِهِ إِلَى الْبِكْرِ، وَذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد: ثنا سَعِيدُ بْنُ مَنْصُورٍ ثنا إِسْمَاعِيلُ بْنُ زَكَرِيَّاءَ عَنْ الْحَجَّاجِ بْنِ دِينَارٍ عَنْ الْحَكَمِ بْنِ عُيَيْنَةَ عَنْ

L11059 The opinion of al-Layth and Abu Sulayman corresponds to our view. Those who permit the advancement of zakah cited several proofs - among them: the report we mentioned concerning livestock zakah (regarding whether monetary valuation suffices or not) stating that "the Prophet - peace and blessings be upon him - borrowed a young male camel and repaid it with a male camel from zakah livestock that had entered its fourth year." This contains no evidence for advancing zakah, as it constitutes a loan transaction as you observe, not an acceleration of zakah payment. Rather, it indicates the impermissibility of advancing zakah, for had it been valid, the Prophet - peace and blessings be upon him - would not have needed to borrow; he would have simply expedited zakah collection due to his need for the young camel. They also cited what we transmitted through Abu Dawud's chain: Sa'īd ibn Manṣūr narrated to us, Ismā'īl ibn Zakariyyā narrated to us from al-Ḥajjāj ibn Dīnār from al-Ḥakam ibn 'Uyaynah from Ḥujayyah from 'Alī ibn Abī

Ṭālib that “al-‘Abbās asked Allah’s Messenger - peace and blessings be upon him - about advancing his zakah before its due time, and he permitted him.”

L11060 Abu Dawud said: Hushaym narrated this *hadith* from Mansur from Zadhān from al-Hakam from al-Hasan from Anas from the Prophet - peace be upon him -.

L11061–11062 Through the chain of Waki‘ from Isra’il from Al-Hakam: “The Prophet (peace and blessings be upon him) sent ‘Umar as a Zakat collector and said to him regarding Al-‘Abbas: ‘We have taken his Zakat in advance for the previous year.’”

L11063 And through the chain of Abd al-Razzaq, who reported from Ibn Jurayj—who narrated that Yazid Abu Khalid informed me—[it is related] that he said: “Umar said to al-Abbas: ’Pay the _zakat_ of your wealth.’ Al-Abbas replied: ’I have already paid it before that.’ Umar mentioned this to the Prophet—peace and blessings be upon him—, the Messenger of Allah—peace and blessings be upon him—, and the Messenger of Allah—peace and blessings be upon him—said: ’He has spoken the truth.’”

L11064 This is all they objected to from the transmitted narrations.

L11065 They said: All financial rights may permissibly be fulfilled in advance of their due date, by analogy to people’s deferred debts and entitlements, such as alimony and similar obligations. They argued: Zakat was delayed until the lunar year’s completion solely as a concession for the people. This is all they presented through their legal reasoning and analogy.

L11066–11067 All of this provides them with no valid argument in any regard.

L11068 As for the hadith regarding probative authority: the probative authority of one not known for integrity is invalid, for proof is only established through the narration of upright, well-known transmitters.

L11069 As for the ḥadīth of Hushaym, Abū Dāwūd did not mention the narrators

حُجَّيَّةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ «أَنَّ الْعَبَّاسَ سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي تَعْجِيلِ صَدَقَتِهِ قَبْلَ أَنْ تَحِلَّ فَأَذِنَ لَهُ» .

قَالَ أَبُو دَاوُد رَوَى هَذَا الْحَدِيثَ هُشَيْمٌ عَنْ مَنْصُورٍ عَنْ زَاذَانَ عَنْ الْحَكَمِ عَنْ الْحَسَنِ عَنْ أَنَسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْرَائِيلَ عَنْ الْحَكَمِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ عُمَرَ مُصَدِّقًا وَقَالَ لَهُ عَنْ الْعَبَّاسِ: إنَّا قَدْ اسْتَسْلَفْنَا زَكَاتَهُ لِعَامِ عَامِ الْأَوَّلِ»

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي يَزِيدُ أَبُو خَالِدٍ قَالَ " قَالَ عُمَرُ لِلْعَبَّاسِ: أَدِّ زَكَاةَ مَالِكَ فَقَالَ الْعَبَّاسُ: قَدْ أَدَّيْتُهَا قَبْلَ ذَلِكَ، فَذَكَرَ عُمَرُ ذَلِكَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: صَدَقَ ".

هَذَا كُلُّ مَا شَغَبُوا بِهِ مِنْ الْآثَارِ.

وَقَالُوا: حُقُوقُ الْأَمْوَالِ كُلُّهَا جَائِزٌ تَعْجِيلُهَا قَبْلَ أَجَلِهَا، قِيَاسًا عَلَى دُيُونِ النَّاسِ الْمُؤَجَّلَةِ وَحُقُوقِهِمْ، كَالنَّفَقَاتِ وَغَيْرِهَا. وَقَالُوا: إنَّمَا أُخِّرَتْ الزَّكَاةُ إلَى الْحَوْلِ فُسْحَةً عَلَى النَّاسِ فَقَطْ. وَهَذَا كُلُّ مَا مَوَّهُوا بِهِ مِنْ النَّظَرِ وَالْقِيَاسِ.

وَهَذَا كُلُّهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ.

أَمَّا حَدِيثُ حُجَّيَّةَ: فَحُجَّيَّةُ غَيْرُ مَعْرُوفٍ بِالْعَدَالَةِ، وَلَا تَقُومُ الْحُجَّةُ إلَّا بِرِوَايَةِ الْعُدُولِ الْمَعْرُوفِينَ.

between himself and Hushaym. Had there been any, he would have specified them, rendering the chain interrupted. Furthermore, he did not cite the precise wording of Anas nor clarify how he transmitted it, making definitive assertion impermissible due to the uncertainty. As for the remaining reports, they are mursal (hadiths with broken chains). This is among the cases where the Mālikīs rejected the mursal, though they assert—when it conforms to their school—that it is equivalent to a musnad (hadith with a continuous chain). They rejected reports from unknown narrators here, yet accept them when they align with their position, thereby invalidating all the traditions they used as a pretext [?].

As for their analogy of zakāh to people's deferred debts: the entire analogy is invalid. Even if valid, this particular case would be the very essence of invalidity, because the obligation to fulfill deferred debts arose afterward, and both parties subsequently agreed to keep them deferred. Zakāh, however, had not yet become obligatory. Thus, analogizing what is not yet obligatory to what is already obligatory in fulfillment is invalid.

L11070–11072 Moreover, accelerating the repayment of people's deferred debts is not permissible except with the consent of the creditor. Zakat is not treated likewise, for it is not designated for a specific person or particular individuals to the exclusion of others, thus prepayment is permissible with their consent. Rather, it is owed to those deserving of specific attributes—attributes that may newly apply to those who previously did not qualify and cease to apply to those who once did. There is no dispute that according to those who permit its prepayment, if current recipients were to grant discharge without actual receipt, this would not have been permitted, nor would the one obligated to pay Zakat be absolved through their discharge—unlike discharging a deferred debt. Similarly, if one pays it to the collector, the time for Zakat may arrive while the collector is deceased, dismissed, or the authority who appointed him is likewise deceased or removed, thereby invalidating their analogy to personal debts. Their analogy to obligatory maintenance is similarly flawed. If a man prepays maintenance for his wife or someone he must support, yet when the time for obligatory maintenance arrives the recipient is in dire need, the prepayment would not suffice. He would be obligated

وَأَمَّا حَدِيثُ هُشَيْمٍ فَلَمْ يَذْكُرْ أَبُو دَاوُد مَنْ بَيْنَهُ وَبَيْنَ هُشَيْمٍ، وَلَوْ كَانَ فِيهِ لَبَنَّدَ بِهِ، فَصَارَ مُنْقَطِعًا، ثُمَّ لَمْ يَذْكُرْ أَيْضًا لَفْظَ أَنَسٍ وَلَا كَيْفَ رَوَاهُ، فَلَمْ يُجْزِ الْقَطْعَ بِهِ عَلَى الْجَهَالَةِ، وَأَمَّا سَائِرُ الْأَخْبَارِ فَمُرْسَلَةٌ. وَهَذَا مِمَّا تَرَكَ فِيهِ الْمَالِكِيُّونَ الْمُرْسَلَ، وَهُمْ يَقُولُونَ - إِذَا وَافَقَ تَقْلِيدَهُمْ -: إِنَّهُ كَالْمُسْنَدِ، وَرَدُّوا فِيهِ رِوَايَةَ الْمَجْهُولِ، وَهُمْ يَأْخُذُونَ بِهَا إِذَا وَافَقَتْهُمْ فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ مِنْ الْآثَارِ.؟ وَأَمَّا قِيَاسُهُمْ الزَّكَاةَ عَلَى دُيُونِ النَّاسِ الْمُؤَجَّلَةِ: فَالْقِيَاسُ كُلُّهُ بَاطِلٌ؛ ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّ تَعْجِيلَ دُيُونِ النَّاسِ الْمُؤَجَّلَةِ قَدْ وَجَبَ بَعْدُ، ثُمَّ اتَّفَقَا عَلَى تَأْجِيلِهَا وَالزَّكَاةُ لَمْ تَجِبْ بَعْدُ، فَقِيَاسُ مَا لَمْ يَجِبْ عَلَى مَا قَدْ وَجَبَ فِي الْأَدَاءِ بَاطِلٌ.

وَأَيْضًا: فَتَعْجِيلُ دُيُونِ النَّاسِ الْمُؤَجَّلَةِ لَا يَجُوزُ إلَّا بِرِضَا مِنْ الَّذِي لَهُ الدَّيْنُ، وَلَيْسَتْ الزَّكَاةُ كَذَلِكَ؛ لِأَنَّهَا لَيْسَتْ لِإِنْسَانٍ بِعَيْنِهِ، وَلَا لِقَوْمٍ بِأَعْيَانِهِمْ دُونَ غَيْرِهِمْ، فَيَجُوزُ الرِّضَا مِنْهُمْ بِالتَّعْجِيلِ، وَإِنَّمَا هِيَ لِأَهْلِ صِفَاتٍ تَحْدُثُ فِيمَنْ لَمْ يَكُنْ مِنْ أَهْلِهَا، وَتَبْطُلُ عَمَّنْ كَانَ مِنْ أَهْلِهَا، وَلَا خِلَافَ فِي أَنَّ الْقَابِضِينَ لَهَا الْآنَ - عِنْدَ مَنْ أَجَازَ تَعْجِيلَهَا - لَوْ أَبْرَءُوا مِنْهَا دُونَ قَبْضٍ لَمْ يُجْزِ ذَلِكَ، وَلَا بَرِئَ مِنْهَا مِنْ تَلْزَمُهُ الزَّكَاةُ بِإِبْرَائِهِمْ بِخِلَافِ إبْرَاءِ مَنْ لَهُ دَيْنٌ مُؤَجَّلٌ، وَكَذَلِكَ إنْ دَفَعَهَا إلَى السَّاعِي، فَقَدْ يَأْتِي وَقْتُ الزَّكَاةِ وَالسَّاعِي مَيِّتٌ أَوْ مَعْزُولٌ، وَالَّذِي بَعَثَهُ كَذَلِكَ، فَبَطَلَ قِيَاسُهُمْ ذَلِكَ عَلَى دُيُونِ النَّاسِ، وَكَذَلِكَ قِيَاسُهُمْ عَلَى النَّفَقَاتِ الْوَاجِبَةِ، وَلَوْ أَنَّ امْرَأً عَجَّلَ نَفَقَةً لِامْرَأَتِهِ أَوْ مَنْ تَلْزَمُهُ نَفَقَتُهُ، ثُمَّ جَاءَ الْوَقْتُ الْوَاجِبَةُ فِيهِ النَّفَقَةَ، وَالَّذِي تَجِبُ لَهُ مُضْطَرٌّ -: لَمْ يُجْزِئْهُ تَعْجِيلُ مَا عَجَّلَ، وَأُلْزِمَ الْآنَ النَّفَقَةَ، وَأُمِرَ بِاتِّبَاعِهِ بِمَا عَجَّلَ لَهُ دَيْنًا، لِاسْتِهْلَاكِهِ مَا لَمْ

to provide maintenance anew and required to claim what he prepaid as a recoverable debt, having consumed what was not yet obligatory. Indeed, if analogy were valid here, comparing prepayment of Zakat before its due time to performing Prayer before its time or fasting before its time would be more valid, as all are acts of worship bound by specific periods that may not be transgressed. This is among the matters in which they abandoned analogy.

يَجِبْ لَهُ بَعْدُ، بَلْ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ قِيَاسُ تَعْجِيلِ الزَّكَاةِ قَبْلَ وَقْتِهَا عَلَى تَعْجِيلِ الصَّلَاةِ قَبْلَ وَقْتِهَا وَالصَّوْمُ قَبْلَ وَقْتِهِ أَصَحُّ، لِأَنَّهَا كُلَّهَا عِبَادَاتٌ مَحْدُودَةٌ بِأَوْقَاتٍ لَا يَجُوزُ تَعَدِّيهَا وَهَذَا مِمَّا تَرَكُوا فِيهِ الْقِيَاسَ.

L11073 If they claim a consensus on the prohibition of hastening prayer, the authentic report from Ibn ʿAbbās and al-Ḥasan refutes them. Indeed! Even if their consensus were valid, this would constitute proof against them, for among their principles is that analogical reasoning which applies the disputed matter to the agreed-upon matter is the valid analogy.

فَإِنْ ادَّعُوا إِجْمَاعًا عَلَى الْمَنْعِ مِنْ تَعْجِيلِ الصَّلَاةِ أَكْذَبَهُمْ الْأَثَرُ الصَّحِيحُ عَنْ ابْنِ عَبَّاسٍ وَالْحَسَنِ، وَهَبْكَ لَوْ صَحَّ لَهُمْ الْإِجْمَاعُ لَكَانَ هَذَا حُجَّةً عَلَيْهِمْ، لِأَنَّ مِنْ أُصُولِهِمْ أَنَّ قِيَاسَ مَا اخْتُلِفَ فِيهِ عَلَى مَا أَجْمَعَ عَلَيْهِ هُوَ الْقِيَاسُ الصَّحِيحُ.

L11074 As for their claim that Zakat was obligated beforehand and people were later permitted to delay it—this is false, baseless, and an assertion without proof. Zakat has never been obligated except upon the completion of the lunar year, not prior to that. This is confirmed by the sound textual evidence that the Messenger of Allah (peace and blessings be upon him) dispatched the Zakat administrators at the completion of the lunar year, not before it. He (peace and blessings be upon him) would never have failed to secure a right that had become due. Moreover, there is consensus among the Ummah that Zakat becomes obligatory at the lunar year's completion, and they never agreed on its obligation before that. Prescribed duties are only established by textual evidence or consensus, thus invalidating all they embellished through narrations and reasoning.

وَأَمَّا قَوْلُهُمْ: إِنَّ الزَّكَاةَ وَجَبَتْ قَبْلُ، ثُمَّ فُسِحَ لِلنَّاسِ فِي تَأْخِيرِهَا -: فَكَذِبٌ وَبَاطِلٌ وَدَعْوَى بِلَا بُرْهَانٍ، وَمَا وَجَبَتْ الزَّكَاةُ قَطُّ إِلَّا عِنْدَ انْقِضَاءِ الْحَوْلِ، لَا قَبْلَ ذَلِكَ، لِصِحَّةِ النَّصِّ بِإِخْرَاجِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُصَدِّقِينَ عِنْدَ الْحَوْلِ، لَا قَبْلَ ذَلِكَ، وَمَا كَانَ - عَلَيْهِ السَّلَامُ - لِيُضَيِّعَ قَبْضَ حَقٍّ قَدْ وَجَبَ وَلِإِجْمَاعِ الْأُمَّةِ عَلَى وُجُوبِهَا عِنْدَ الْحَوْلِ وَلَمْ يُجْمِعُوا عَلَى وُجُوبِهَا قَبْلَهُ، وَلَا تَجِبُ الْفَرَائِضُ إِلَّا بِنَصٍّ أَوْ إِجْمَاعٍ، فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ مِنْ أَثَرٍ وَنَظَرٍ.

L11075–11076 Then we ask them: Has Zakat become obligatory before the completion of the lunar year (Hawl) or not? If they say it has not become obligatory, we say: How do you permit paying what is not yet obligatory? An act not yet obligatory is voluntary, and performing it does not fulfill the obligation. If they say it has become obligatory, we say: Then it is mandatory to compel the one upon whom the obligation is due to fulfill it, and this is conclusive evidence that cannot be fundamentally avoided. We ask them: What would be the ruling if the one who advanced Zakat dies before the lunar year ends, the wealth perishes before the lunar year, those who received it die before the lunar year, or they lose the qualifying conditions for Zakat eligibility? Thus,

ثُمَّ نَسْأَلُهُمْ: أَوَجَبَتْ الزَّكَاةُ قَبْلَ الْحَوْلِ أَمْ لَمْ تَجِبْ فَإِنْ قَالُوا: لَمْ تَجِبْ؟ قُلْنَا: فَكَيْفَ تُجِيزُونَ أَدَاءَ مَا لَمْ يَجِبْ؟ وَمَا لَمْ يَجِبْ فِعْلُهُ تَطَوُّعٌ، وَمَنْ تَطَوَّعَ فَلَمْ يُؤَدِّ الْوَاجِبَ وَإِنْ قَالُوا: قَدْ وَجَبَتْ؟ قُلْنَا: فَالْوَاجِبُ إِجْبَارُ مَنْ وَجَبَ عَلَيْهِ حَقٌّ عَلَى أَدَائِهِ، وَهَذَا بُرْهَانٌ لَا مَحِيدَ عَنْهُ أَصْلًا، وَنَسْأَلُهُمْ: كَيْفَ الْحَالُ إِنْ مَاتَ الَّذِي عَجَّلَ الصَّدَقَةَ قَبْلَ الْحَوْلِ؟ أَوْ تَلِفَ الْمَالُ قَبْلَ الْحَوْلِ؟ أَوْ مَاتَ الَّذِينَ أَعْطُوهَا قَبْلَ الْحَوْلِ؟ أَوْ خَرَجُوا عَنْ

it becomes evident that advancing Zakat is invalid—constituting a gift to the undeserving, withholding from the deserving, and nullifying the obligatory Zakat. All of this is impermissible. It is astonishing that the Ḥanafīs permit advancing Zakat yet prohibit advancing expiation before breaking the oath, though both involve prepayment of funds. However, textual evidence may validate advancing what they prohibit, while no text exists permitting what they allow. Thus, they contradict their own analogical reasoning, authenticate defective reports, and invalidate the authentic report. As for the Mālikīs—despite their internal contradictions—they oppose the majority of scholars in this matter, though both of them uphold this position when it aligns with their views. The Shāfiʿīs contradict analogy in this issue and accept a disconnected report they would otherwise reject. Success comes only from Allah, the Exalted.

الصِّفَاتِ الَّتِي بِهَا تُسْتَحَقُّ الزَّكَوَاتُ؟ فَصَحَّ أَنَّ تَعْجِيلَهَا بَاطِلٌ، وَإِعْطَاءً لِمَنْ لَا يَسْتَحِقُّهَا، وَمَنْعٌ لِمَنْ يَسْتَحِقُّهَا، وَإِبْطَالُ الزَّكَاةِ الْوَاجِبَةِ، وَكُلُّ هَذَا لَا يَجُوزُ. وَالْعَجَبُ مِنْ إِجَازَةِ الْحَنَفِيِّينَ تَعْجِيلَ الزَّكَاةِ وَمَنْعُهُمْ مِنْ تَعْجِيلِ الْكَفَّارَةِ قَبْلَ الْحِنْثِ وَكِلَاهُمَا مَالٌ مُعَجَّلٌ، إِلَّا أَنَّ النَّصَّ قَدْ يَصِحُّ بِتَعْجِيلِ مَا مَنَعُوا تَعْجِيلَهُ، وَلَمْ يَأْتِ بِتَعْجِيلِ مَا أَبَاحُوا تَعْجِيلَهُ، فَتَنَاقَضُوا فِي الْقِيَاسِ، وَصَحَّحُوا الْآثَارَ الْفَاسِدَةَ، وَأَبْطَلُوا الْأَثَرَ الصَّحِيحَ، وَأَمَّا الْمَالِكِيُّونَ فَإِنَّهُمْ - مَعَ مَا تَنَاقَضُوا - خَالَفُوا فِي هَذِهِ الْجُمْهُورَ مِنْ الْعُلَمَاءِ، وَهُمَا يُعَظِّمُونَ هَذَا إِذَا وَافَقَهُمْ، وَخَالَفَ الشَّافِعِيُّونَ فِيهِ الْقِيَاسَ، وَقَبِلُوا الْمُرْسَلَ الَّذِي يَرُدُّونَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: The obligation of Zakat upon one who has a debt in dirhams, dinars, or livestock.

[مَسْأَلَةٌ الزَّكَاةُ عَلَى مَنْ عَلَيْهِ دَيْنٌ دَرَاهِمُ أَوْ دَنَانِيرُ أَوْ مَاشِيَةٌ]

L11077

Issue 694: For one indebted with silver dirhams, gold dinars, or livestock payable as debt - if such wealth had been present as his own possession (so that Zakat would be obligatory in its quantity), then: if it remained present with him intact (without loss) and had completed a full year from its possession, he must pay its Zakat. Otherwise, no Zakat whatsoever is due on it - even if the debt remains outstanding for years. A group of people said regarding "he should pay zakāt on it": It has been narrated to us through the chain of Ibn Abī Shaybah from Muḥammad ibn Bakr from Ibn Jurayj from Yazīd ibn Yazīd ibn Jābir that ʿAbd al-Malik ibn Abī Bakr informed him that ʿUmar said: "When zakāt becomes due, assess your debts and what you possess, gather all of it together, then pay zakāt on the total." (And via this chain to) ʿAbd al-Razzāq from Ibn Jurayj: Yazīd ibn Yazīd ibn Jābir informed me from ʿAbd al-Malik ibn Abī Bakr from ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām - he being ʿAbd al-Malik's paternal grandfather - who said: A man asked ʿUmar: "When the time of my zakāt payment arrives, should I expedite giving it by spending on my family and settling my debts?" ʿUmar replied:

L11078–11080

٦٩٤ - مَسْأَلَةٌ: وَمَنْ عَلَيْهِ دَيْنٌ دَرَاهِمُ أَوْ دَنَانِيرُ أَوْ مَاشِيَةٌ تَجِبُ الزَّكَاةُ فِي مِقْدَارِ ذَلِكَ لَوْ كَانَ حَاضِرًا فَإِنْ كَانَ حَاضِرًا عِنْدَهُ لَمْ يَتْلَفْ وَأَتَمَّ عِنْدَهُ حَوْلًا مِنْهُ مَا فِي مِقْدَارِهِ الزَّكَاةُ -: زَكَّاهُ، وَإِلَّا فَلَا زَكَاةَ عَلَيْهِ فِيهِ أَصْلًا، وَلَوْ أَقَامَ عَلَيْهِ سِنِينَ وَقَالَ قَوْمٌ: يُزَكِّيهِ -: رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ مُحَمَّدِ بْنِ بَكْرٍ عَنْ ابْنِ جُرَيْجٍ عَنْ يَزِيدَ بْنِ يَزِيدَ بْنِ جَابِرٍ أَنَّ عَبْدَ الْمَلِكِ بْنَ أَبِي بَكْرٍ أَخْبَرَهُ أَنَّ عُمَرَ قَالَ: إذَا حَلَّتْ - يَعْنِي الزَّكَاةَ - فَاحْسِبْ دَيْنَكَ وَمَا عِنْدَكَ وَاجْمَعْ ذَلِكَ جَمِيعًا ثُمَّ زَكِّهِ. (وَبِهِ إلَى) عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي يَزِيدُ بْنُ يَزِيدَ بْنِ جَابِرٍ عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي بَكْرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ هُوَ جَدُّ عَبْدِ الْمَلِكِ أَبُو أَبِيهِ قَالَ: قَالَ رَجُلٌ لِعُمَرَ: يَجِيءُ إبَّانَ صَدَقَتِي فَأُبَادِرُ

الصَّدَقَةَ فَأُنْفِقُ عَلَى أَهْلِي وَأَقْضِي، دَيْنِي؟ قَالَ عُمَرُ: لَا تُبَادِرْ بِهَا، وَاحْسِبْ دَيْنَك وَمَا عَلَيْكَ، وَزَكِّ ذَلِكَ أَجْمَعَ

"Do not hasten its payment. Calculate your debts and what you owe, then pay zakāt on the entire sum."

وَهُوَ قَوْلُ الْحَسَنِ بْنِ حَيٍّ، وَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي الدَّيْنِ يَكُونُ لِلرَّجُلِ عَلَى الرَّجُلِ فَيَمْطُلُهُ؟ قَالَ: زَكَاتُهُ عَلَى الَّذِي يَأْكُلُ مَهْنَأَةً وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسٍ عَنْ عَطَاءٍ أَوْ غَيْرِهِ نَحْوَهُ.

L11081 This is the statement of Al-Ḥasan ibn Ḥayy, and it has been narrated to us through the chain of Ḥammād ibn Salamah from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakhaʿī concerning a debt that one man owes to another, and the debtor delays repayment. He said: "Its zakah is obligatory upon the one who benefits from it." Through Ḥammād ibn Salamah's narration from Qays from ʿAṭāʾ or someone else, a similar ruling is reported.

وَمِمَّنْ قَالَ بِقَوْلِنَا - فِي إِسْقَاطِ الزَّكَاةِ عَنْ الَّذِي عَلَيْهِ الدَّيْنُ فِيمَا عَلَيْهِ مِنْهُ -: ابْنُ عَمْرٍو وَغَيْرُهُ.

L11082 Among those who held our opinion—regarding deducting the debt from one's wealth before calculating Zakat—were Ibn 'Amr and others.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الْوَهَّابِ بْنِ عَبْدِ الْمَجِيدِ الثَّقَفِيِّ، وَسُفْيَانَ الثَّوْرِيِّ قَالَا: ثنا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ وُلِّيَ مَالَ يَتِيمٍ فَكَانَ يَسْتَسْلِفُ مِنْهُ، يَرَى أَنَّ ذَلِكَ أُحْرِزَ لَهُ: وَيُؤَدِّي زَكَاتَهُ مِنْ مَالِ الْيَتِيمِ، فَهَذَا ابْنُ عُمَرَ عَلَيْهِ الدَّيْنُ لَا يُزَكِّيهِ عَنْ نَفْسِهِ، وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ: إذَا كَانَ لِلرَّجُلِ عَلَى الرَّجُلِ الدَّيْنُ فَالزَّكَاةُ عَلَى الَّذِي لَهُ الدَّيْنُ، وَعَنْ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ يَزِيدَ بْنِ إبْرَاهِيمَ عَنْ مُجَاهِدٍ: إذَا كَانَ عَلَيْكَ دَيْنٌ فَلَا زَكَاةَ عَلَيْهِ، إنَّمَا زَكَاتُهُ عَلَى الَّذِي هُوَ لَهُ، وَعَنْ وَكِيعٍ عَنْ سُفْيَانَ عَنْ الْمُغِيرَةِ عَنْ الْفُضَيْلِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: زَكِّ مَا فِي يَدَيْكَ مِنْ مَالِكَ، وَمَا لَكَ عَلَى الْمَلِيءِ وَلَا تُزَكِّ مَا لِلنَّاسِ عَلَيْكَ؟ وَهُوَ قَوْلُ سُفْيَانَ: وَمَالِكٍ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَوَكِيعٍ؟ قَالَ أَبُو مُحَمَّدٍ: إنَّمَا وَافَقْنَا (قَوْلَ) هَؤُلَاءِ فِي سُقُوطِ الزَّكَاةِ عَنْ الَّذِي عَلَيْهِ الدَّيْنُ فَقَطْ.

L11083–11085 As narrated to us through the chain of ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī and Sufyān al-Thawrī, who said: We were told by ʿUbayd Allāh ibn ʿUmar, from Nāfiʿ, from Ibn ʿUmar: that he was entrusted with the wealth of an orphan and would borrow from it, believing it was secured for him. He would pay its Zakāh from the orphan's wealth. Thus, this Ibn ʿUmar, upon whom is the debt, does not pay Zakāh on it from his own wealth. From Hammad ibn Salama, from Humaid, from Al-Hasan: If a man owes another a debt, the Zakat obligation rests on the creditor. From Al-Hajjāj ibn Al-Minhāl, from Yazīd ibn Ibrāhīm, from Mujāhid: If you owe a debt, there is no Zakat on it; its Zakat is solely upon the one to whom it is owed. From Wakīʿ, from Sufyān, from Al-Mughīrah, from Al-Fuḍayl, from Ibrāhīm An-Nakhaʿī, who said: "Pay Zakat on the wealth in your possession and on what you are owed by a solvent debtor, but do you pay Zakat on what others are owed by you?" This is the view of Sufyān: Mālik, Abū Ḥanīfah, his companions, and Wakīʿ? Abū Muḥammad said: "We have only concurred with (the opinion of) these scholars in exempting the debtor from Zakat."

L11086 Through the chain of Ubayd Allah ibn Umar, from Abd al-Rahman ibn al-Qasim ibn Muhammad, from his father, from Aishah, the Mother of the

Believers: “There is no zakat on debt.” Through the chain of Abd al-Rahman ibn Mahdi, from Sufyan al-Thawri, from Abu al-Zinad, from Ikrimah, who said: “There is no zakat on debt.” Through the chain of Wakiʿ, from Misʿar, from al-Hakam ibn Utaybah, who said: “Ibrahim disagreed with me regarding debt. I used to say, ’It does not require zakat,’ then he reverted to my view.” It was narrated to us from Abu Bakr ibn Abi Shaybah: Abu Muawiyah narrated to us from al-Hajjaj, from Ata, who said: “There is no zakat upon the one to whom it is owed nor upon the one who owes it.”

وَمِنْ طَرِيقِ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، لَيْسَ فِي الدَّيْنِ زَكَاةٌ وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي الزِّنَادِ عَنْ عِكْرِمَةَ قَالَ: لَيْسَ فِي الدَّيْنِ زَكَاةٌ، وَمِنْ طَرِيقِ وَكِيعٍ عَنْ مِسْعَرٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: خَالَفَنِي إبْرَاهِيمُ فِي الدَّيْنِ، كُنْتُ أَقُولُ: لَا يُزَكِّي، ثُمَّ رَجَعَ إلَى قَوْلِي -: وَرُوِّينَا عَنْ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ: ثنا أَبُو مُعَاوِيَةَ عَنْ حَجَّاجٍ عَنْ عَطَاءٍ قَالَ: لَيْسَ عَلَى صَاحِبِ الدَّيْنِ الَّذِي هُوَ لَهُ وَلَا عَلَى الَّذِي هُوَ عَلَيْهِ زَكَاةٌ.

L11087 From Abd al-Razzaq, from Sufyan al-Thawri, from al-Mughirah ibn Miqsam, from Ata’, who said, “There is no zakat on debt.”

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ عَطَاءٍ قَالَ: لَيْسَ فِي الدَّيْنِ زَكَاةٌ.

L11088–11089 Narrated through the chain of Abd al-Razzaq from Ibn Jurayj: I asked Ata: “When a man grants a loan to someone.” He replied: “Is there no Zakat obligation upon the lender nor upon the borrower?” Narrated through the chain of Abu Ubayd from Abu Zā’idah from Abd al-Malik from Ata ibn Abi Rabah: “The debtor does not pay Zakat on the debt, nor does the creditor pay Zakat until he takes possession of it.” This is the opinion of Abu Sulayman and our companions.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: قُلْتُ لِعَطَاءٍ: السَّلَفُ يُسْلِفُهُ الرَّجُلُ. قَالَ: لَيْسَ عَلَى سَيِّدِ الْمَالِ وَلَا عَلَى الَّذِي اسْتَسْلَفَهُ زَكَاةٌ؟ وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ أَبِي زَائِدَةَ عَنْ عَبْدِ الْمَلِكِ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ: لَا يُزَكِّي الَّذِي عَلَيْهِ الدَّيْنُ الدَّيْنَ، وَلَا يُزَكِّيهِ الَّذِي هُوَ لَهُ حَتَّى يَقْبِضَهُ؟ وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L11090 Abū Muḥammad said: When the debt exits the ownership of the one who took the loan, it becomes nonexistent in his ownership. It is definitively invalid to pay zakāh on non-existent assets, on what one does not own, and on something if he stole it, his hand would be cut off - as it is owned by another.

قَالَ أَبُو مُحَمَّد: إذَا خَرَجَ الدَّيْنُ عَنْ مِلْكِ الَّذِي اسْتَقْرَضَهُ فَهُوَ مَعْدُومٌ عِنْدَهُ، وَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يُزَكِّيَ عَنْ لَا شَيْءَ، وَعَمَّا لَا يَمْلِكُ، وَعَنْ شَيْءٍ لَوْ سَرَقَهُ قُطِعَتْ يَدُهُ، لِأَنَّهُ فِي مِلْكِ غَيْرِهِ.

L11091 **A case where a person owes a debt but possesses assets of the type upon which zakat is obligatory in similar circumstances.**

[مَسْأَلَةٌ عَلَيْهِ دَيْنٌ وَعِنْدَهُ مَالٌ تَجِبُ فِي مِثْلِهِ الزَّكَاةُ]

L11092 695. Issue: If someone owes a debt—as we mentioned—and possesses wealth subject to zakat, whether this wealth exceeds the debt, equals it, or

is less than it, and whether the debt is of the same type (e.g., gold vs. gold) or a different type (e.g., gold vs. silver), they must pay zakat on the wealth they possess. The debt does not reduce their zakat obligation in any way. This is the view of Al-Shāfiʿī, Abū Sulaymān, and others. Mālik held that the debt is considered part of the trade goods not subject to zakat which they possess, and they pay zakat on their remaining wealth. If they possess no trade goods, the debt is deducted from their zakatable wealth, thereby exempting them from paying zakat on that amount. If the remainder after this deduction reaches the zakat threshold, they pay zakat on it; otherwise, they do not. However, Mālik restricted this ruling to monetary wealth (gold, silver, or their equivalents).

٦٩٥ - مَسْأَلَةٌ: وَمَنْ عَلَيْهِ دَيْنٌ - كَمَا ذَكَرْنَا وَعِنْدَهُ مَالٌ تَجِبُ فِي مِثْلِهِ الزَّكَاةُ سَوَاءٌ كَانَ أَكْثَرَ مِنْ الدَّيْنِ الَّذِي عَلَيْهِ أَوْ مِثْلَهُ أَوْ أَقَلَّ مِنْهُ، مِنْ جِنْسِهِ كَانَ أَوْ مِنْ غَيْرِ جِنْسِهِ -: فَإِنَّهُ يُزَكِّي مَا عِنْدَهُ، وَلَا يَسْقُطُ مِنْ أَجْلِ الدَّيْنِ الَّذِي عَلَيْهِ شَيْءٌ مِنْ زَكَاةِ مَا بِيَدِهِ -: وَهُوَ قَوْلُ الشَّافِعِيِّ وَأَبِي سُلَيْمَانَ وَغَيْرِهِمَا. وَقَالَ مَالِكٌ: يُجْعَلُ الدَّيْنُ فِي الْعُرُوضِ الَّتِي عِنْدَهُ الَّتِي لَا زَكَاةَ فِيهَا، وَيُزَكِّي مَا عِنْدَهُ فَإِنْ لَمْ يَكُنْ عِنْدَهُ عُرُوضٌ جَعَلَ دَيْنَهُ فِيمَا بِيَدِهِ مِمَّا فِيهِ الزَّكَاةُ، وَأَسْقَطَ بِذَلِكَ الزَّكَاةَ، فَإِنْ فَضَلَ عَنْ دَيْنِهِ شَيْءٌ يَجِبُ فِي مِقْدَارِهِ الزَّكَاةُ زَكَّاهُ وَإِلَّا فَلَا، وَإِنَّمَا هَذَا عِنْدَهُ فِي الذَّهَبِ وَالْفِضَّةِ فَقَطْ.

L11093 As for livestock, crops, and fruits, they are not exempt; one must pay zakat on all of these, whether the debt owed equals, exceeds, or falls short of what he possesses of them? Others said: Debt cancels zakat on cash and livestock but does not cancel it on crops and fruits.

وَأَمَّا الْمَوَاشِي وَالزَّرْعُ وَالثِّمَارُ فَلَا، وَلَكِنْ يُزَكِّي كُلَّ ذَلِكَ، سَوَاءٌ كَانَ عَلَيْهِ دَيْنٌ مِثْلَ مَا مَعَهُ مِنْ ذَلِكَ أَوْ أَكْثَرَ أَوْ أَقَلَّ؟ وَقَالَ آخَرُونَ: يُسْقِطُ الدَّيْنُ زَكَاةَ الْعَيْنِ وَالْمَوَاشِي، وَلَا يُسْقِطُ زَكَاةَ الزَّرْعِ وَالثِّمَارِ.

L11094–11096 Abu Yusuf and Muhammad said: The debt owed is considered part of the wealth on which zakat is obligatory. This applies equally to gold, silver, livestock, crops, fruits, and trade goods. The zakat obligation on all of that is waived thereby. His debt is not assigned to his capital assets as long as he possesses wealth subject to zakat or holds commercial merchandise. This is the opinion of al-Layth ibn Saʿd and Sufyan al-Thawri. Zufar said: "Debt related to crops is only applied to crops, debt related to livestock is only applied to livestock, and debt related to cash is only applied to cash." Thus, whatever he owns equivalent to debts he owes of the same type is waived. Through Ibn Jurayj's transmission: I asked ʿAṭāʾ, "If a man's debt exceeds the value of his wealth, must he fulfill his zakat duty?" He replied, "We do not consider one whose debt surpasses his wealth liable for zakat - neither in livestock nor in capital assets." Ibn Jurayj said: I heard Abū al-Zubayr relate that he heard Ṭāwūs state, "No zakat is incumbent upon him."

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدٌ: يُجْعَلُ مَا عَلَيْهِ مِنْ الدَّيْنِ فِي مَالٍ تَجِبُ فِيهِ الزَّكَاةُ، سَوَاءٌ فِي ذَلِكَ الذَّهَبُ، وَالْفِضَّةُ، وَالْمَوَاشِي، وَالْحَرْثُ، وَالثِّمَارُ، وَعُرُوضُ التِّجَارَةِ، وَيَسْقُطُ بِهِ زَكَاةُ كُلِّ ذَلِكَ. وَلَا يُجْعَلُ دَيْنُهُ فِي عُرُوضِ الْقِنْيَةِ مَا دَامَ عِنْدَهُ مَالٌ تَجِبُ فِيهِ الزَّكَاةُ، أَوْ مَا دَامَ عِنْدَهُ عُرُوضٌ لِلتِّجَارَةِ، وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ وَسُفْيَانَ الثَّوْرِيِّ. وَقَالَ زُفَرُ: لَا يُجْعَلُ دَيْنُ الزَّرْعِ إلَّا فِي الزَّرْعِ، وَلَا يُجْعَلُ دَيْنُ الْمَاشِيَةِ إلَّا فِي الْمَاشِيَةِ، وَلَا يُجْعَلُ دَيْنُ الْعَيْنِ إلَّا فِي الْعَيْنِ، فَيَسْقُطُ بِذَلِكَ مَا عِنْدَهُ مِمَّا عَلَيْهِ دَيْنُ مِثْلِهِ، وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ: قُلْتُ لِعَطَاءٍ: حَرْثٌ لِرَجُلٍ دَيْنُهُ أَكْثَرُ مِنْ مَالِهِ، أَيُؤَدِّي حَقَّهُ؟ قَالَ: مَا نَرَى عَلَى رَجُلٍ دَيْنُهُ أَكْثَرُ مِنْ مَالِهِ صَدَقَةً، لَا فِي مَاشِيَةٍ وَلَا فِي أَصْلٍ، قَالَ ابْنُ جُرَيْجٍ: سَمِعْتُ أَبَا الزُّبَيْرِ، سَمِعْت طَاوُسًا يَقُولُ لَيْسَ عَلَيْهِ صَدَقَةٌ.

قَالَ أَبُو مُحَمَّد: إِسْقَاطُ الدَّيْنِ زَكَاةُ مَا بِيَدِ الْمَدِينِ لَمْ يَأْتِ بِهِ قُرْآنٌ وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا سَقِيمَةٌ وَلَا إِجْمَاعٌ، بَلْ قَدْ جَاءَتْ السُّنَنُ الصِّحَاحُ بِإِيجَابِ الزَّكَاةِ فِي الْمَوَاشِي، وَالْحَبِّ، وَالتَّمْرِ، وَالذَّهَبِ، وَالْفِضَّةِ، بِغَيْرِ تَخْصِيصِ مَنْ عَلَيْهِ دَيْنٌ مِمَّنْ لَا دَيْنَ عَلَيْهِ، وَأَمَّا مِنْ طَرِيقِ النَّظَرِ فَإِنَّ مَا بِيَدِهِ لَهُ أَنْ يُصَدِّقَهُ وَيَبْتَاعَ مِنْهُ جَارِيَةً يَطَؤُهَا وَيَأْكُلَ مِنْهُ وَيُنْفِقَ مِنْهُ، وَلَوْ لَمْ يَكْفِ لَهُ لَمْ يَحِلَّ لَهُ التَّصَرُّفُ فِيهِ بِشَيْءٍ مِنْ هَذَا، فَإِذَا هُوَ لَهُ وَلَمْ يُخْرِجْهُ عَنْ مِلْكِهِ وَيَدِهِ مَا عَلَيْهِ مِنْ الدَّيْنِ فَزَكَاةُ مَالِهِ عَلَيْهِ بِلَا شَكٍّ.

L11097 Abū Muḥammad said: The remission of debt as zakāh of what is in the debtor's possession has no basis in the Qur'an, nor in any sound or weak Sunnah, nor in consensus. Rather, authentic Sunnah texts explicitly obligate zakāh on livestock, grains, dates, gold, and silver, without distinguishing between indebted persons and those free of debt. As for rational consideration: the wealth in his possession permits him to validate it, purchase a slave girl for conjugal relations, consume from it, or spend from it. If it were insufficient for him, it would not be lawful to dispose of it through any such means. Since this wealth remains under his legal ownership and physical possession despite his debt, the zakāh on his wealth is undoubtedly his obligation.

وَأَمَّا تَقْسِيمُ مَالِكٍ: فَفِي غَايَةِ التَّنَاقُضِ، وَمَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ، وَكَذَلِكَ قَوْلُ أَصْحَابِ أَبِي حَنِيفَةَ أَيْضًا - وَبِاَللَّهِ التَّوْفِيقُ. وَالْمَالِكِيُّونَ: يُنْكِرُونَ عَلَى أَبِي حَنِيفَةَ هَذَا بِعَيْنِهِ فِي إِيجَابِهِ لِلزَّكَاةِ فِي زَرْعِ الْيَتِيمِ وَثِمَارِهِ دُونَ مَاشِيَتِهِ وَذَهَبِهِ وَفِضَّتِهِ، فَإِنْ احْتَجُّوا بِأَنْ قَبْضَ زَكَاةِ الْمَوَاشِي وَالزَّرْعِ إلَى الْمُصَدِّقِ.

L11098 As for Mālik's categorization, it is in extreme contradiction—we know of none before him who held it. Likewise, the statement of Abū Ḥanīfah's followers as well—and with Allah is success. The Mālikīs object to this very position of Abū Ḥanīfah in his obligating zakāt on the orphan's crops and fruits while exempting his livestock, gold, and silver. If they argue that the collection of zakāt on livestock and crops is delegated to the zakāt assessor.

قِيلَ: فَكَانَ مَاذَا؟ وَكَذَلِكَ أَيْضًا قَبْضُ زَكَاةِ الْعَيْنِ إلَى السُّلْطَانِ إذَا طَلَبَهَا وَلَا فَرْقَ.

L11099–11100 It was asked: "What is the ruling?" Likewise, the collection of zakat on tangible property by the governing authority when it is due, and there is no distinction.

[مَسْأَلَةٌ مِنْ كَانَ لَهُ عَلَى غَيْرِهِ دَيْنٌ فَلَا زَكَاةَ عَلَيْهِ فِيهِ]

L11101 **Issue: If someone is owed a debt by another person, there is no Zakat incumbent upon him for it.**

٦٩٦ - مَسْأَلَةٌ: وَمَنْ كَانَ لَهُ عَلَى غَيْرِهِ دَيْنٌ فَسَوَاءٌ كَانَ حَالًّا أَوْ مُؤَجَّلًا عِنْدَ مَلِيءٍ مُقِرٍّ يُمْكِنُهُ قَبْضُهُ أَوْ مُنْكِرٍ، أَوْ عِنْدَ عَدِيمٍ مُقِرٍّ أَوْ مُنْكِرٍ كُلُّ ذَلِكَ سَوَاءٌ، وَلَا زَكَاةَ فِيهِ عَلَى صَاحِبِهِ، وَلَوْ أَقَامَ عَنْهُ سِنِينَ حَتَّى يَقْبِضَهُ فَإِذَا قَبَضَهُ اسْتَأْنَفَ حَوْلًا كَسَائِرِ الْفَوَائِدِ وَلَا فَرْقَ. فَإِنْ قَبَضَ مِنْهُ مَا لَا تَجِبُ فِيهِ الزَّكَاةُ فَلَا زَكَاةَ فِيهِ، لَا حِينَئِذٍ وَلَا بَعْدَ ذَلِكَ -

L11102 Issue 696: If a person is owed a debt by another—whether immediate or deferred, held by a solvent debtor (acknowledging the debt and from whom collection is possible or denying it) or held by an insolvent debtor (acknowledging or denying it)—all these cases are equivalent. The creditor has no zakāh obligation on it, even if it remains outstanding for years, until they collect it. Once collected, they must initiate a new annual cycle for zakāh like all other proceeds, without distinction. If they collect from it an item not eligible for zakāh—livestock, gold, or silver being treated the same in this ruling—no zakāh is due on it, neither at the time of collection nor there-

after. As for date palms and crops, there is no zakāh obligation on them whatsoever, since he did not produce them from his own crops or fruits.

الْمَاشِيَةُ، وَالذَّهَبُ، وَالْفِضَّةُ فِي ذَلِكَ سَوَاءٌ - وَأَمَّا النَّخْلُ، وَالزَّرْعُ فَلَا زَكَاةَ فِيهِ أَصْلًا؛ لِأَنَّهُ لَمْ يُخْرِجْ مِنْ زَرْعِهِ وَلَا مِنْ ثِمَارِهِ.

L11103 A group said: “He should purify it with *zakah*”—as narrated through the chain of Ibn Abi Shaybah from Jarīr from al-Ḥakam ibn ʿUtaybah, who said: “‘Alī was asked about a man owed a debt by another. He replied: ’The owner of the wealth should purify it with *zakah*. If he fears it will not be repaid, he may delay. When the debt is recovered, he should purify it with *zakah* for the elapsed periods.’” Through another chain via Ibn Abi Shaybah: Yazīd ibn Hārūn narrated to us: Hishām—meaning Ibn Ḥassān—from Muḥammad ibn Sīrīn from ʿUbaydah al-Salmānī: “‘Alī was asked about a doubtful debt: Should he purify it with *zakah*? He said: ’If the owner is confident [of its validity], let him purify it with *zakah* for the elapsed periods.’” This ruling is rigorously sound. “The doubtful debt” refers to one whose repayment is not anticipated.

وَقَالَتْ طَائِفَةٌ: يُزَكِّيهِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ جَرِيرٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: سُئِلَ عَلِيٌّ عَنْ الرَّجُلِ يَكُونُ لَهُ الدَّيْنُ عَلَى آخَرَ؟ فَقَالَ: يُزَكِّيهِ صَاحِبُ الْمَالِ، فَإِنْ خَشِيَ أَنْ لَا يَقْضِيَهُ فَإِنَّهُ يُمْهِلُ، فَإِذَا خَرَجَ الدَّيْنُ زَكَّاهُ لِمَا مَضَى، وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: ثنا يَزِيدُ بْنُ هَارُونَ أَنَا هِشَامٌ - هُوَ ابْنُ حَسَّانَ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبِيدَةَ السَّلْمَانِيِّ: سُئِلَ عَلِيٌّ عَنْ الدَّيْنِ الظَّنُونِ: أَيُزَكِّيهِ؟ قَالَ: إنْ كَانَ صَادِقًا فَلْيُزَكِّهِ لِمَا مَضَى وَهَذَا فِي غَايَةِ الصِّحَّةِ، وَالظَّنُونُ: هُوَ الَّذِي لَا يُرْجَى.

L11104 And from the chain of Ṭāwūs: If you are owed a debt, then pay Zakat on it [once repayable].

وَمِنْ طَرِيقِ طَاوُسٍ: إذَا كَانَتْ لَك دَيْنٌ فَزَكِّهِ.

L11105–11106 From the chain of Ashʿath via al-Zubayr via Jābir, who said: “He must purify it by paying Zakāt” — meaning his wealth that others owe him as debts. From the chain of ʿUmar ibn al-Khaṭṭāb as we previously mentioned: “Calculate what is owed to you and what you owe, then pay Zakāt on the total sum.” From the chain of Ibn Jurayj, who said: Saʿīd ibn al-Musayyab would state: “When a debt is owed by a solvent debtor, the creditor must pay Zakāt on it [the debt]. If owed by a destitute debtor, no Zakāt applies until repayment occurs — then the creditor must pay Zakāt for all the past years.” From the chain of Maʿmar via al-Zuhrī: identical to the ruling of Saʿīd ibn al-Musayyab — precisely identical, without exception.

وَمِنْ طَرِيقِ أَشْعَثَ عَنْ الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: يُزَكِّيهِ - يَعْنِي: مَالَهُ مِنْ الدَّيْنِ عَلَى غَيْرِهِ، وَمِنْ طَرِيقِ عُمَرَ بْنِ الْخَطَّابِ كَمَا ذَكَرْنَا قَبْلُ - احْسِبْ دَيْنَك وَمَا عَلَيْك وَزَكِّ ذَلِكَ أَجْمَعَ وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ قَالَ: كَانَ سَعِيدُ بْنُ الْمُسَيِّبِ يَقُولُ: إذَا كَانَ الدَّيْنُ عَلَى مَلِيءٍ فَعَلَى صَاحِبِهِ أَدَاءُ زَكَاتِهِ، فَإِنْ كَانَ عَلَى مُعْدِمٍ فَلَا زَكَاةَ فِيهِ حَتَّى يَخْرُجَ؛ فَيَكُونُ عَلَيْهِ زَكَاةُ السِّنِينَ الَّتِي مَضَتْ، وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ الزُّهْرِيِّ مِثْلُ قَوْلِ سَعِيدِ بْنِ الْمُسَيِّبِ سَوَاءً سَوَاءً.

L11107 From Mujāhid: If a debt is owed to you, you must pay its *Zakat*; but if you owe a debt, there is no *Zakat* obligation on you for it. This is the opinion of Sufyān al-Thawrī and al-Ḥasan ibn Ṣāliḥ ibn Ḥayy.

وَعَنْ مُجَاهِدٍ: إذَا كَانَ لَكَ الدَّيْنُ فَعَلَيْكَ زَكَاتُهُ، وَإِذَا كَانَ عَلَيْكَ فَلَا زَكَاةَ عَلَيْكَ فِيهِ؟ وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ

L11108 A group held that there is no zakah due on it until one takes possession of

it. When one takes possession of it or takes possession of an amount from it reaching the threshold subject to zakah, one must pay zakah for one year, even if it remains for multiple years. This is the opinion of Mālik.

وَقَالَتْ طَائِفَةٌ: لَا زَكَاةَ فِيهِ حَتَّى يَقْبِضَهُ، فَإِذَا قَبَضَهُ أَوْ قَبَضَ مِنْهُ مِقْدَارَ مَا فِيهِ الزَّكَاةُ زَكَّاهُ لِسَنَةٍ وَاحِدَةٍ، وَإِنْ بَقِيَ سِنِينَ - وَهُوَ قَوْلُ مَالِكٍ.

L11109 A group has said: If the debt is owed by a trustworthy debtor, the creditor must pay zakat on it; but if it is owed by an untrustworthy debtor, there is no zakat obligation until the creditor recovers it—and this is the opinion of al-Shāfiʿī. We have been narrated through the chain of ʿAbdullāh ibn ʿUmar that he said: "Purify your wealth from one lunar year to another. Whatever debt lies with a trustworthy person, treat it as equivalent to wealth in your possession. As for doubtful debt, there is no zakat on it until its owner recovers it."

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَ عَلَى ثِقَةٍ زَكَّاهُ، وَإِنْ كَانَ عَلَى غَيْرِ ثِقَةٍ فَلَا زَكَاةَ عَلَيْهِ فِيهِ حَتَّى يَقْبِضَهُ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّهُ قَالَ: زَكُّوا أَمْوَالَكُمْ مِنْ حَوْلٍ إِلَى حَوْلٍ، فَمَا كَانَ فِي دَيْنٍ فِي ثِقَةٍ فَاجْعَلُوهُ بِمَنْزِلَةِ مَا كَانَ فِي أَيْدِيكُمْ، وَمَا كَانَ مِنْ دَيْنٍ ظَنُونٍ فَلَا زَكَاةَ فِيهِ حَتَّى يَقْبِضَهُ صَاحِبُهُ.

L11110 From Tawus through an established chain of transmission: If you have a debt that you know will be repaid, then pay zakat on it. From Ibrahim through an authentic chain of transmission: Pay zakat on what is in your possession and on wealth owed to you by a solvent person, but do not pay zakat on what you owe to others. Then Ibrahim retracted this opinion.

وَعَنْ طَاوُسٍ مِنْ طَرِيقٍ ثَابِتَةٍ: إِذَا كَانَ لَكَ دَيْنٌ تَعْلَمُ أَنَّهُ يَخْرُجُ فَزَكِّهِ، وَعَنْ إِبْرَاهِيمَ مِنْ طَرِيقٍ صَحِيحَةٍ: زَكِّ مَا فِي يَدَيْكَ وَمَالَكَ عَلَى الْمَلِيءِ، وَلَا تُزَكِّ مَا لِلنَّاسِ عَلَيْكَ. ثُمَّ رَجَعَ عَنْ هَذَا.

L11111 From Maymun ibn Mihran: For any debt owed by a solvent debtor that you anticipate receiving, calculate it, subtract what you owe, and pay zakāh on the remainder. From Mujāhid: If you are certain it will be repaid, pay zakāh on it.

وَعَنْ مَيْمُونَ بْنِ مِهْرَانَ: مَا كَانَ مِنْ دَيْنٍ فِي مَلِيءٍ تَرْجُوهُ فَاحْسُبْهُ، ثُمَّ أَخْرِجْ مَا عَلَيْكَ وَزَكِّ مَا بَقِيَ؟ وَعَنْ مُجَاهِدٍ: إِنْ كُنْتَ تَعْلَمُ أَنَّهُ خَارِجٌ فَزَكِّهِ.

L11112–11113 And from Muhammad ibn Ali ibn al-Hasan: There is no zakat due on a debt until it is collected. As for our view, it has been narrated to us previously from Aisha, the Mother of the Believers, a similar ruling, and from Ata; it has also been narrated to us from Ibn Umar: There is no zakat due on a debt.

وَعَنْ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحَسَنِ لَيْسَ فِي الدَّيْنِ زَكَاةٌ حَتَّى يَقْبِضَهُ، وَأَمَّا قَوْلُنَا فَقَدْ رُوِّينَا قَبْلُ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ مِثْلَهُ، وَعَنْ عَطَاءٍ، وَرُوِّينَا أَيْضًا عَنِ ابْنِ عُمَرَ: لَيْسَ فِي الدَّيْنِ زَكَاةٌ.

L11114 Abu Muhammad said: As for the statement of al-Ḥasan ibn Ḥayy, its apparent error is that he imposed zakat for debt both on the creditor and the debtor. Thus, he obligated two zakat payments on a single wealth within one year. This would result in requiring half of one-tenth from the cash assets, two sheep for five camels, and similarly for larger amounts.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ الْحَسَنِ بْنِ حَيٍّ فَظَاهِرُ الْخَطَأِ، لِأَنَّهُ جَعَلَ زَكَاةَ الدَّيْنِ عَلَى الَّذِي هُوَ لَهُ، وَعَلَى الَّذِي هُوَ عَلَيْهِ. فَأَوْجَبَ زَكَاتَيْنِ فِي مَالٍ وَاحِدٍ فِي عَامٍ وَاحِدٍ، فَفَصَلَ فِي الْعَيْنِ نِصْفُ الْعُشْرِ، وَفِي خَمْسٍ مِنَ الْإِبِلِ شَاتَانِ، وَكَذَلِكَ مَا زَادَ.

L11115 As for Malik's division, we do not know of it from anyone except Umar ibn

Abd al-Aziz, and it has been authentically established that he contradicted that division, resembling our statement.

وَأَمَّا تَقْسِيمُ مَالِكٍ فَمَا نَعْلَمُهُ عَنْ أَحَدٍ إِلَّا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَقَدْ صَحَّ عَنْهُ خِلَافُ ذَلِكَ وَمِثْلُ قَوْلِنَا.

L11116 As for Abū Ḥanīfa, he divided this matter into classifications that are profoundly flawed. These are: He held that any debt not arising from exchange, or arising from exchange for something one does not own—such as inheritance, dowry, contractual remuneration, diyah for unintentional homicide, diyah for intentional homicide if settled through reconciliation, and khulʿ—incurs no zakāh on its owner whatsoever until he takes possession of it. Upon taking possession, he must initiate a new lunar annual cycle from that time. He also ruled that any debt arising from exchange which, had it remained in one's ownership, would have obligated zakāh—such as a loan of dirhams, the liability of a usurper or transgressor, and the sale price of a slave acquired for commercial resale—incurs no zakāh, whether the debtor is trustworthy or not, until forty dirhams are received. When received, he pays zakāh for them after one complete lunar year, then pays zakāh for every forty dirhams received thereafter. He further categorized any debt arising from exchange which, had it remained in one's possession, would not have obligated zakāh—such as non-commercial assets sold by the owner—as a separate class. His position here became inconsistent: at times equating it with his rulings on inheritance and dowry; at other times stating that no zakāh is due until two hundred dirhams are received. Upon receiving them, he pays zakāh after one complete lunar year. In his view, this ruling applies equally whether the debtor is insolvent or solvent, provided both parties acknowledge the debt.

وَأَمَّا أَبُو حَنِيفَةَ فَإِنَّهُ قَسَّمَ ذَلِكَ تَقَاسِيمَ فِي غَايَةِ الْفَسَادِ، وَهِيَ: أَنَّهُ جَعَلَ كُلَّ دَيْنٍ لَيْسَ عَنْ بَدَلٍ، أَوْ كَانَ عَنْ بَدَلِ مَا لَا يَمْلِكُ، كَالْمِيرَاثِ، وَالْمَهْرِ، وَالْجُعْلِ، وَدِيَةِ الْخَطَأِ، وَالْعَمْدِ إِذَا صَالَحَ عَلَيْهَا، وَالْخُلْعِ: أَنَّهُ لَا زَكَاةَ عَلَى مَالِكِهِ أَصْلًا حَتَّى يَقْبِضَهُ، فَإِذَا قَبَضَهُ اسْتَأْنَفَ بِهِ حَوْلًا، وَجَعَلَ كُلَّ دَيْنٍ يَكُونُ عَنْ بَدَلٍ لَوْ بَقِيَ فِي مِلْكِهِ لَوَجَبَتْ فِيهِ الزَّكَاةُ كَقَرْضِ الدَّرَاهِمِ وَفِيمَا وَجَبَ فِي ذِمَّةِ الْغَاصِبِ وَالْمُتَعَدِّي، وَثَمَنِ عَبْدِ التِّجَارَةِ -: فَإِنَّهُ لَا زَكَاةَ فِيهِ - كَانَ عَلَى ثِقَةٍ أَوْ غَيْرِ ثِقَةٍ - حَتَّى يَقْبِضَ أَرْبَعِينَ دِرْهَمًا فَإِذَا قَبَضَهَا زَكَّاهَا لِعَامٍ خَالٍ، ثُمَّ يُزَكِّي كُلَّ أَرْبَعِينَ يَقْبِضُ، وَجَعَلَ كُلَّ دَيْنٍ يَكُونُ عَنْ بَدَلٍ لَوْ بَقِيَ فِي يَدِهِ لَمْ تَجِبْ فِيهِ الزَّكَاةُ كَالْعُرُوضِ لِغَيْرِ التِّجَارَةِ يَبِيعُهَا -: قِسْمًا آخَرَ، فَاضْطَرَبَ فِيهِ قَوْلُهُ، فَمَرَّةً جَعَلَ ذَلِكَ بِمَنْزِلَةِ قَوْلِهِ فِي الْمِيرَاثِ، وَالْمَهْرِ، وَمَرَّةً قَالَ: لَا زَكَاةَ عَلَيْهِ حَتَّى يَقْبِضَ مِائَتَيْ دِرْهَمٍ، فَإِذَا قَبَضَهَا زَكَّاهَا لِعَامٍ خَالٍ، وَسَوَاءٌ عِنْدَهُ مَا كَانَ عِنْدَ عَدِيمٍ أَوْ مَلِيءٍ إِذَا كَانَا مُقِرَّيْنِ.

L11117 As for Abū Ḥanīfah's statement, it is undeniably confused. Abū Muḥammad said: The creditor has only a countable liability in the debtor's responsibility and a mere description—he does not hold any tangible asset whatsoever. The silver or gold owed to him may still be in unmined deposits, the silver still mere dust. The livestock owed may not yet exist. How then could zakat be obligatory for something of this nature? Thus, it is confirmed that no zakat is required for such debts—and success is from Allah, the Exalted.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَتَخْلِيطٌ لَا خَفَاءَ بِهِ. قَالَ أَبُو مُحَمَّدٍ: إِنَّمَا لِصَاحِبِ الدَّيْنِ عِنْدَ غَرِيمِهِ عَدَدٌ فِي الذِّمَّةِ وَصِفَةٌ فَقَطْ، وَلَيْسَ لَهُ عِنْدَهُ عَيْنُ مَالٍ أَصْلًا، وَلَعَلَّ الْفِضَّةَ أَوْ الذَّهَبَ اللَّذَيْنِ لَهُ عِنْدَهُ فِي الْمَعْدِنِ بَعْدُ، وَالْفِضَّةُ تُرَابٌ بَعْدُ، وَلَعَلَّ الْمَوَاشِيَ الَّتِي لَهُ عَلَيْهِ لَمْ تُخْلَقْ بَعْدُ، فَكَيْفَ تَلْزَمُهُ زَكَاةُ مَا هَذِهِ صِفَتُهُ؟ فَصَحَّ أَنَّهُ لَا زَكَاةَ عَلَيْهِ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَاعْلَمْ أَنَّ تَقْسِيمَ أَبِي حَنِيفَةَ، وَمَالِكٍ: لَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُمَا، لِأَنَّ الرِّوَايَةَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ إِنَّمَا هِيَ فِي الْغَصْبِ لَا فِي الدَّيْنِ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L11118–11120 Understand that the division articulated by Abu Hanifa and Malik is not known to have been articulated by anyone before them, because the narration from ʿUmar ibn ʿAbd al-ʿAzīz: It is only in the case of ghaṣb (unlawful seizure), not in debt. And success is from Allah, the Exalted.

[مَسْأَلَةُ الزَّكَاةِ فِي الْمُهُورِ وَالْخُلْعِ وَالدِّيَاتِ]

L11121 **The issue of *zakāt* concerning dowries (*muhūr*), *khulʿ*, and blood money (*diyāt*).**

٦٩٧ - مَسْأَلَةٌ: وَأَمَّا الْمُهُورُ وَالْخُلْعُ، وَالدِّيَاتُ، فَبِمَنْزِلَةِ مَا قُلْنَا؛ مَا لَمْ يَتَعَيَّنْ الْمَهْرُ؛ لِأَنَّ كُلَّ ذَلِكَ دَيْنٌ، فَإِنْ كَانَ الْمَهْرُ فِضَّةً مُعَيَّنَةً - دَرَاهِمَ أَوْ غَيْرَ ذَلِكَ - أَوْ ذَهَبًا بِعَيْنِهِ - دَنَانِيرَ أَوْ غَيْرَ ذَلِكَ - أَوْ مَاشِيَةً بِعَيْنِهَا، أَوْ نَخْلًا بِعَيْنِهَا، أَوْ كَانَ كُلُّ ذَلِكَ مِيرَاثًا -: فَالزَّكَاةُ وَاجِبَةٌ عَلَى مَنْ كُلُّ ذَلِكَ لَهُ؛ لِأَنَّهَا أَمْوَالٌ صَحِيحَةٌ ظَاهِرَةٌ مَوْجُودَةٌ، فَالزَّكَاةُ فِيهَا، وَلَا مَعْنَى لِلْقَبْضِ فِي ذَلِكَ مَا لَمْ يَمْنَعْ صَاحِبَهُ شَيْءٌ مِنْ ذَلِكَ، فَإِنْ مَنَعَ صَارَ مَغْصُوبًا وَسَقَطَتْ الزَّكَاةُ كَمَا قَدَّمْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L11122 697. Issue: As for bridal wealth (mahr), judicial divorce (khulʿ), and blood money, they hold the same ruling as what we previously mentioned—so long as the dowry remains unspecified, for all these constitute debts. If the dowry consists of specific silver (whether dirhams or otherwise), specific gold (whether dīnārs or otherwise), specific livestock, specific palm trees, or if such assets are inherited wealth, then zakāt is obligatory upon the owner of such wealth. This is because these are sound, apparent, and existing assets. Zakāt is therefore due on them, and possession (qabḍ) holds no relevance in this matter unless the owner is prevented from accessing them. If prevented, the assets become usurped (ghaṣb), and the obligation of zakāt ceases as we previously established. And success is from Allah, the Most High.

[مَسْأَلَةٌ لَهُ دَيْنٌ عَلَى بَعْضِ أَهْلِ الصَّدَقَاتِ فَتَصَدَّقَ عَلَيْهِ بِهِ وَنَوَى الزَّكَاةَ زَكَاتِهِ]

L11123 **A scenario in which a person is owed a debt by someone eligible to receive charity, and they give the debt as charity through forgiveness, intending it to serve as their zakat.**

٦٩٨ - مَسْأَلَةٌ: وَمَنْ كَانَ لَهُ دَيْنٌ عَلَى بَعْضِ أَهْلِ الصَّدَقَاتِ - وَكَانَ ذَلِكَ الدَّيْنُ بُرًّا، أَوْ شَعِيرًا، أَوْ ذَهَبًا، أَوْ فِضَّةً، أَوْ مَاشِيَةً - فَتَصَدَّقَ عَلَيْهِ بِدَيْنِهِ قِبَلَهُ، وَنَوَى بِذَلِكَ أَنَّهُ مِنْ زَكَاتِهِ أَجْزَأَهُ ذَلِكَ، وَكَذَلِكَ لَوْ تَصَدَّقَ بِذَلِكَ الدَّيْنِ عَلَى مَنْ يَسْتَحِقُّهُ وَأَحَالَهُ بِهِ عَلَى مَنْ هُوَ لَهُ عِنْدَهُ وَنَوَى بِذَلِكَ الزَّكَاةَ فَإِنَّهُ يُجْزِئُهُ؟ بُرْهَانُ ذَلِكَ -: أَنَّهُ مَأْمُورٌ بِالصَّدَقَةِ الْوَاجِبَةِ، وَبِأَنْ يَتَصَدَّقَ عَلَى أَهْلِ الصَّدَقَاتِ مِنْ زَكَاتِهِ الْوَاجِبَةِ بِمَا عَلَيْهِ مِنْهَا، فَإِذَا كَانَ إبْرَاؤُهُ مِنْ الدَّيْنِ يُسَمَّى صَدَقَةً فَقَدْ أَجْزَأَهُ.

L11124 698 - Issue: If someone has a debt owed by some of those eligible for zakāh - whether that debt consists of wheat, barley, gold, silver, or livestock - and he forgives the debt as charity to the debtor, intending this to count toward his obligatory *zakāh*, this suffices. Similarly, if he forgives that debt in favor of someone deserving [of zakāh] and transfers it to a debtor of his own, while intending this as *zakāh*, does this suffice? The proof for this lies in the fact that he is commanded to give obligatory charity and to bestow upon those entitled to zakāh from his required *zakāh* what he owes from it. Since his forgiveness of the debt is termed an act of charity, it thereby suffices.

L11125 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath → Abdul-Wahhab ibn

Isa → Ahmad ibn Muhammad → Ahmad ibn Ali → Muslim ibn al-Hajjaj → Qutaybah ibn Sa'id → al-Layth—that is, ibn Sa'd—from Bukayr—that is, ibn al-Ashajj—from Iyad ibn Abdullah from Abu Sa'id al-Khudri, who said: "A man incurred a loss during the time of Allah's Messenger—peace and blessings be upon him—in fruits he had purchased, and his debt became substantial. Allah's Messenger—peace and blessings be upon him—said: 'Give him charity.'" He then mentioned the full hadith. This is the opinion of Ata ibn Abi Rabah and others.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا قُتَيْبَةُ بْنُ سَعِيدٍ ثنا اللَّيْثُ - هُوَ ابْنُ سَعْدٍ - عَنْ بُكَيْرٍ - هُوَ ابْنُ الْأَشَجِّ - عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: «أُصِيبَ رَجُلٌ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ثِمَارٍ ابْتَاعَهَا فَكَثُرَ دَيْنُهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَصَدَّقُوا عَلَيْهِ» وَذَكَرَ الْحَدِيثَ. وَهُوَ قَوْلُ عَطَاءِ بْنِ أَبِي رَبَاحٍ وَغَيْرِهِ.

L11126 **A case: Someone gave the zakat of his wealth to an eligible recipient entitled to it, and the recipient subsequently sold the zakat.**

[مَسْأَلَةٌ أَعْطَى زَكَاةَ مَالِهِ مَنْ وَجَبَتْ لَهُ مِنْ أَهْلِهَا فَبَاعَهَا]

L11127–11129 699. Issue: If someone gives the *zakāt* of his wealth to eligible recipients entitled to it or delivers it to the authorized *zakāt* collector appointed to receive it, and the one who claimed his rightful share in it or the authorized collector sells it – considering it belongs to its eligible recipients – then it becomes permissible for the giver to purchase it. Similarly, if it returns to him through a gift, inheritance, bridal gift (mahr), lease, or any other lawful means, none of this is permissible for him whatsoever before... He pays the zakah because he has purchased an unspecified item, and this is impermissible since he does not know what he has purchased. He has not delivered the zakah that Allah the Exalted obligated him to give to its rightful recipients. Thereby, it is forbidden for him to give anything other than the obligatory amount. As for after delivering it to its recipients, Allah the Exalted said: "And Allah has permitted trade" [Al-Baqarah: 275]. Thus, he has fulfilled the zakah due on his wealth as he was commanded, and the recipient sold it as he was permitted. Abū Ḥanīfah did not permit this, Mālik disliked it, and al-Layth ibn Saʿd permitted it. Those who prohibited it cited the ḥadīth we narrated through Mālik's chain from Zayd ibn Aslam from his father, who said: I heard ʿUmar say: "I entrusted a horse in the cause of Allah, but the one entrusted with it neglected it. I wished to buy it, thinking he would sell

٦٩٩ - مَسْأَلَةٌ: وَمَنْ أَعْطَى زَكَاةَ مَالِهِ مَنْ وَجَبَتْ لَهُ مِنْ أَهْلِهَا، أَوْ دَفَعَهَا إلَى الْمُصَدِّقِ الْمَأْمُورِ بِقَبْضِهَا فَبَاعَهَا مَنْ قَبَضَ حَقَّهُ فِيهَا أَوْ مَنْ لَهُ قَبْضُهَا نَظَرًا لِأَنَّهَا لِأَهْلِهَا -: فَجَائِزٌ لِلَّذِي أَعْطَاهَا أَنْ يَشْتَرِيَهَا، وَكَذَلِكَ لَوْ رَجَعَتْ إلَيْهِ بِهِبَةٍ، أَوْ هَدِيَّةٍ، أَوْ مِيرَاثٍ، أَوْ صَدَاقٍ أَوْ إجَارَةٍ أَوْ سَائِرِ الْوُجُوهِ الْمُبَاحَةِ، وَلَا يَجُوزُ لَهُ شَيْءٌ مِنْ ذَلِكَ أَلْبَتَّةَ قَبْلَ أَنْ يَدْفَعَهَا؛ لِأَنَّهُ ابْتَاعَ شَيْئًا غَيْرَ مُعَيَّنٍ، وَهَذَا لَا يَجُوزُ؛ لِأَنَّهُ لَا يَدْرِي مَا الَّذِي ابْتَاعَ، وَلَمْ يُعْطِ الزَّكَاةَ الَّتِي افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ أَنْ يُؤَدِّيَهَا إلَى أَهْلِهَا، وَبِهَذَا نَفْسِهِ يَحْرُمُ عَلَيْهِ أَنْ يُعْطِيَ غَيْرَ مَا لَزِمَهُ الْقِيمَةُ، وَأَمَّا بَعْدَ أَنْ يُؤَدِّيَهَا إلَى أَهْلِهَا فَإِنَّ اللَّهَ تَعَالَى قَالَ: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] فَهُوَ قَدْ أَدَّى صَدَقَةَ مَالِهِ كَمَا أُمِرَ، وَبَاعَهَا الْآخِذُ كَمَا أُبِيحَ لَهُ، وَلَمْ يُجِزْ ذَلِكَ أَبُو حَنِيفَةَ، وَكَرِهَهُ مَالِكٌ، وَأَجَازَهُ اللَّيْثُ بْنُ سَعْدٍ، وَاحْتَجَّ مَنْ مَنَعَ مِنْ ذَلِكَ بِالْحَدِيثِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ أَبِيهِ قَالَ: سَمِعْتُ «عُمَرَ يَقُولُ: حَمَلْتُ عَلَى فَرَسٍ فِي سَبِيلِ اللَّهِ، فَأَضَاعَهُ الَّذِي كَانَ عِنْدَهُ فَأَرَدْتُ

it cheaply. The Messenger of Allah—peace and blessings be upon him—said to him: 'Do not buy it, and do not reclaim your charity even if he offers it for a dirham, for one who reclaims his charity is like one who returns to his vomit.'"[5][6]

أَنْ أَشْتَرِيَهُ، وَظَنَنْتُ أَنَّهُ بَائِعُهُ بِرُخْصٍ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا تَشْتَرِهِ، وَلَا تَعُدْ فِي صَدَقَتِكَ وَإِنْ أَعْطَاكَهُ بِدِرْهَمٍ فَإِنَّ الْعَائِدَ فِي صَدَقَتِهِ كَالْعَائِدِ فِي قَيْئِهِ» .

L11130 From Hammad ibn Salamah, from 'Asim al-Ahwal, from Sulayman al-Taymi, from Abu 'Uthman al-Nahdi: "Al-Zubayr dedicated a horse in the cause of Allah the Exalted. He found a horse from its offspring—meaning its lineage—and sought to purchase it, but he was forbidden."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَاصِمٍ الْأَحْوَلِ عَنْ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ " أَنَّ الزُّبَيْرَ حَمَلَ عَلَى فَرَسٍ فِي سَبِيلِ اللَّهِ تَعَالَى، فَوَجَدَ فَرَسًا مِنْ ضِئْضِئِهَا يَعْنِي مِنْ نَسْلِهَا - فَأَرَادَ أَنْ يَشْتَرِيَهُ، فَنُهِيَ "

L11131 A similar narration is also reported from Usama ibn Zayd, but it is not authentic. Abu Muhammad said: All of this contains no valid evidence for their position, because Umar's horse - as explicitly stated in the hadith - was pledged for use in Allah's cause, thereby becoming a dedicated endowment for this purpose. Selling it constitutes removing it from the cause for which it was consecrated, and this is fundamentally impermissible. Purchasing it is therefore forbidden for everyone. The same applies to the other two narrations even if they were authentic, especially since in the hadith of Abu Uthman al-Nahdi, he prohibited its progeny, and this is the characteristic of the dedicated endowment.

وَنَحْوَ هَذَا أَيْضًا عَنْ أُسَامَةَ بْنِ زَيْدٍ، وَلَا يَصِحُّ، قَالَ أَبُو مُحَمَّدٍ وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ فَرَسَ عُمَرَ - كَانَ بِنَصِّ الْحَدِيثِ - حَمَلَ عَلَيْهِ فِي سَبِيلِ اللَّهِ، فَصَارَ حَبْسًا فِي هَذَا الْوَجْهِ، فَبَيْعُهُ إخْرَاجٌ لَهُ عَمَّا سُبِّلَ فِيهِ، وَلَا يَحِلُّ هَذَا أَصْلًا؛ فَابْتِيَاعُهُ حَرَامٌ عَلَى كُلِّ أَحَدٍ، وَكَذَلِكَ الْقَوْلُ فِي الْخَبَرَيْنِ الْآخَرَيْنِ، لَوْ صَحَّا، لَا سِيَّمَا، وَفِي حَدِيثِ أَبِي عُثْمَانَ النَّهْدِيِّ أَنَّهُ نَهَى نِتَاجَهَا، وَهَذِهِ صِفَةُ الْحَبْسِ.

L11132–11134 As for that whose sale is not prohibited and which is an absolute charity—owned by the recipient upon whom it is given, who may sell it if he wishes—the donor's purchase of it does not constitute taking back his charity, neither linguistically nor in religious law. For taking back charity means seizing it and returning it to oneself without a legitimate right, and nullifying his charity through this act alone. Those present among the dissenting scholars permit the donor to own the donated item via inheritance, as it reverts to his possession just as it would through purchase, and there is no distinction. Therefore, it is established that the return refers exclusively to what we have mentioned.

وَأَمَّا مَا لَمْ يَحْرُمْ بَيْعُهُ وَكَانَ صَدَقَةً مُطْلَقَةً يَمْلِكُهَا الْمُتَصَدَّقُ بِهَا عَلَيْهِ وَيَبِيعُهَا إنْ شَاءَ - فَلَيْسَ ابْتِيَاعُ الْمُتَصَدِّقِ بِهَا عَوْدًا فِي صَدَقَتِهِ، لَا فِي اللُّغَةِ، وَلَا فِي الدِّيَانَةِ؛ لِأَنَّ الْعَوْدَ فِي الصَّدَقَةِ هُوَ انْتِزَاعُهَا وَرَدُّهَا إلَى نَفْسِهِ بِغَيْرِ حَقٍّ، وَإِبْطَالُ صَدَقَتِهِ بِهَا فَقَطْ، وَالْحَاضِرُونَ مِنْ الْمُخَالِفِينَ يُجِيزُونَ أَنْ يَمْلِكَهَا الْمُتَصَدِّقُ بِهَا بِالْمِيرَاثِ، وَقَدْ عَادَتْ إلَى مِلْكِهِ كَمَا عَادَتْ بِالشِّرَاءِ وَلَا فَرْقَ؛ فَصَحَّ أَنَّ الْعَوْدَ هُوَ مَا ذَكَرْنَا فَقَطْ.

[5] **Hadith references (L11127):** Riyad as-Salihin 1613.
[6] **Qur'an references (L11127):** Qur'an 2:275 (Al-Baqarah).

L11135 Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us, al-Farbarī narrated to us, al-Bukhari narrated to us, Adam narrated to us, al-Hakam ibn Utaybah narrated to us from Ibrahim al-Nakhaʿī, from al-Aswad, from Aisha, the Mother of the Believers (may Allah be pleased with her), who said: "Some meat was brought to the Messenger of Allah (peace be upon him). I said: 'This is from what was given as charity to Barirah.' He replied: 'It is charity for her and a gift for us.'"

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا آدَم ثنا الْحَكَمُ بْنُ عُتَيْبَةَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ الْأَسْوَدِ «عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - قَالَتْ: أُتِيَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِلَحْمٍ، فَقُلْتُ: هَذَا مِمَّا تَصَدَّقَ بِهِ عَلَى بَرِيرَةَ. فَقَالَ: هُوَ لَهَا صَدَقَةٌ وَلَنَا هَدِيَّةٌ»

L11136 Hummam narrated to us from Abbas ibn Asbagh from Muhammad ibn Abd al-Malik ibn Ayman from Muhammad ibn Isma'il al-Tirmidhi from al-Humaydi from Sufyan from al-Zuhri, who reported hearing Ubaydullah al-Sabbaq narrate from Juwayriyah, the Mother of the Faithful, who said: "Allah's Messenger—peace and blessings be upon him—came to me and asked: 'Is there any food?' I replied: 'None, except a bone given to us by one of our freed female slaves as charity.' He said: 'Present it, for it has reached its proper destination.'" There is no dispute that charity was prohibited for him—peace and blessings be upon him—yet he permitted it for himself after it had reached its proper destination, since it was given back to him as a gift.

حَدَّثَنَا حُمَامُ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ ثنا الْحُمَيْدِيُّ ثنا سُفْيَانُ ثنا الزُّهْرِيُّ أَنَّهُ سَمِعَ عُبَيْدَ اللَّهِ السَّبَّاقَ أَنَّهُ سَمِعَ «جُوَيْرِيَةَ أُمَّ الْمُؤْمِنِينَ تَقُولُ: دَخَلَ عَلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: هَلْ مِنْ طَعَامٍ؟ فَقُلْتُ: لَا، إلَّا عَظْمًا أُعْطِيَتْهُ مَوْلَاةٌ لَنَا مِنْ الصَّدَقَةِ فَقَالَ: قَرِّبِيهِ فَقَدْ بَلَغَتْ مَحِلَّهَا» . وَلَا خِلَافَ فِي أَنَّ الصَّدَقَةَ حَرَامٌ عَلَيْهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ اسْتَبَاحَهَا بَعْدَ بُلُوغِهَا مَحِلَّهَا، إذْ رَجَعَتْ إلَيْهِ بِالْهَدِيَّةِ.

L11137 Abdullah ibn Rabee' narrated to us, 'Umar ibn 'Abd al-Malik narrated to us, Abu Dawud narrated to us, al-Hasan ibn 'Ali narrated to us, 'Abd al-Razzaq narrated to us, Maʿmar narrated from Zayd ibn Aslam from 'Ata' ibn Yasar from Abu Saʿid al-Khudri, who said: The Messenger of Allah (peace and blessings be upon him) said: "Zakat is not permissible for a wealthy person except in five cases: for one fighting in Allah's cause, for an administrator appointed over it, for a debtor, for a man who purchases it with his wealth, or for a man who had a poor neighbor; Zakat was given to the poor man, and the poor man gifted it to the wealthy man."[7]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا أَبُو دَاوُد ثنا الْحَسَنُ بْنُ عَلِيٍّ ثنا عَبْدُ الرَّزَّاقِ ثنا مَعْمَرٌ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَحِلُّ الصَّدَقَةُ لِغَنِيٍّ إلَّا لِخَمْسَةٍ لِغَازٍ فِي سَبِيلِ اللَّهِ، أَوْ لِعَامِلٍ عَلَيْهَا، أَوْ لِغَارِمٍ، أَوْ لِرَجُلٍ اشْتَرَاهَا بِمَالِهِ، أَوْ لِرَجُلٍ كَانَ لَهُ جَارٌ مِسْكِينٌ، فَتُصُدِّقَ عَلَى الْمِسْكِينِ فَأَهْدَاهَا الْمِسْكِينُ لِلْغَنِيِّ.»

L11138–11139 This is a text from the Prophet—may Allah bless him and grant him peace—regarding the permissibility of purchasing charity, and he did not distinguish the one giving it from others.

فَهَذَا نَصٌّ مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِجَوَازِ ابْتِيَاعِ الصَّدَقَةِ، وَلَمْ يَخُصَّ الْمُتَصَدِّقَ بِهَا مِنْ غَيْرِهِ.

[7] **Hadith references (L11137):** Sunan Abi Dawud 1635.

L11140 We have been narrated from Abu Hurairah who said: “Do not repurchase charity until you have paid it” - meaning until you have delivered it. This is the explicit statement of our position. From Ibn Abbas concerning charity, he said: “If you purchase it, if it is returned to you, or if you inherit it, it becomes lawful for you.” From Umar ibn al-Khattab, he said: “Whoever gives charity must not buy it back until it passes to someone other than its original recipient.” Abu Muhammad said: “Thus Umar permits the donor to repurchase the charity when it transfers from the initial recipient to another. We make no distinction in our view between these cases, and this view of ours corresponds to the positions of Ikrimah and Makhul.”

وَرُوِّينَا عَنْ أَبِي هُرَيْرَةَ قَالَ: لَا تَشْتَرِ الصَّدَقَةَ حَتَّى تَعْقِلَ -: يَعْنِي حَتَّى تُؤَدِّيَهَا -: وَهَذَا نَصُّ قَوْلِنَا، وَعَنْ ابْنِ عَبَّاسٍ فِي الصَّدَقَةِ قَالَ: إنْ اشْتَرَيْتَهَا أَوْ رُدَّتْ عَلَيْك، أَوْ وَرِثْتَهَا حَلَّتْ لَك، وَعَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: مَنْ تَصَدَّقَ بِصَدَقَةٍ فَلَا يَبْتَاعَهَا حَتَّى تَصِيرَ إلَى غَيْرِ الَّذِي تَصَدَّقَ بِهَا عَلَيْهِ قَالَ أَبُو مُحَمَّدٍ: فَهَذَا عُمَرُ يُجِيزُ لِلْمُتَصَدِّقِ بِالصَّدَقَةِ ابْتِيَاعَهَا إذَا انْتَقَلَتْ عَنْ الَّذِي تَصَدَّقَ بِهَا عَلَيْهِ إلَى غَيْرِهِ، وَلَا فَرْقَ عِنْدَنَا بَيْنَ الْأَمْرَيْنِ، وَقَوْلُنَا هَذَا هُوَ قَوْلُ عِكْرِمَةَ، وَمَكْحُولٍ

L11141 And with this, Abu Hanifah and al-Awzaʿi say. Al-Shafiʿi permitted it but did not recommend it, while Malik forbade it, and permitted her reversion to him through inheritance.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَالْأَوْزَاعِيُّ، وَأَجَازَهُ الشَّافِعِيُّ وَلَمْ يَسْتَحِبَّهُ، وَمَنَعَ مِنْهُ مَالِكٌ، وَأَجَازَ رُجُوعَهَا إلَيْهِ بِالْمِيرَاثِ.

L11142 It has been narrated to us from Ibn Umar that when he gave something in charity and it returned to him through inheritance, he would give it in charity, and he would give legal opinions according to that practice. Malik’s opinion thereby stood apart from having any agreement with the Companions, may Allah the Exalted be pleased with them.

وَرُوِّينَا عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ إذَا تَصَدَّقَ بِشَيْءٍ فَرَجَعَ إلَيْهِ بِالْمِيرَاثِ تَصَدَّقَ بِهِ، وَيُفْتِي بِذَلِكَ، فَخَرَجَ قَوْلُ مَالِكٍ عَنْ أَنْ يَكُونَ لَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمْ - مُوَافِقٌ.

L11143 The Issue of Zakat in Mineral

[مَسْأَلَةُ الزَّكَاةِ فِي الْمَعْدِنِ]

L11144 700 – Issue: Abu Muhammad said: There is nothing owed on minerals, and they are a benefit—neither khums (a fifth) nor immediate zakat. If the gold or silver remains in the possession of its extractor for a full lunar year and reaches the amount upon which zakat becomes obligatory, he must pay zakat on it; otherwise, no zakat is due.

٧٠٠ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: وَلَا شَيْءَ فِي الْمَعَادِنِ، وَهِيَ فَائِدَةٌ، لَا خُمْسَ فِيهَا وَلَا زَكَاةً مُعَجَّلَةً، فَإِنْ بَقِيَ الذَّهَبُ، وَالْفِضَّةُ عِنْدَ مُسْتَخْرِجِهَا حَوْلًا قَمَرِيًّا، وَكَانَ ذَلِكَ مِقْدَارَ مَا تَجِبُ فِيهِ الزَّكَاةُ -: زَكَّاهُ، وَإِلَّا فَلَا.

L11145–11147 Abu Hanifah said: There is an obligation upon one regarding minerals of gold, silver, copper, and lead. The khums is due on lead and iron, whether found in land subject to the ‘ushr or land subject to kharāj, and whether acquired by a Muslim, non-Muslim, slave, or free person. He said: If it is found within one’s dwelling, no khums, zakāh, or anything else is due on it, and nothing is due on other minerals besides those mentioned. His opinion

وَقَالَ أَبُو حَنِيفَةَ: عَلَيْهِ فِي مَعَادِنِ الذَّهَبِ، وَالْفِضَّةِ، وَالنُّحَاسِ، وَالرَّصَاصِ، وَالْقَزْدِيرِ، وَالْحَدِيدِ -: الْخُمُسُ، سَوَاءٌ كَانَ فِي أَرْضِ عُشْرٍ أَوْ فِي أَرْضِ خَرَاجٍ، سَوَاءٌ أَصَابَهُ مُسْلِمٌ، أَوْ كَافِرٌ، عَبْدٌ، أَوْ حُرٌّ. قَالَ: فَإِنْ كَانَ فِي دَارِهِ فَلَا خُمْسَ فِيهِ، وَلَا زَكَاةَ، وَلَا شَيْءَ

differed regarding mercury: at times, he ruled that khums is due on it, and at other times, he ruled that nothing is due. Mālik said concerning gold and silver mines: Zakāh becomes due immediately upon extraction if the amount meets the threshold. Nothing is due on other minerals. Any debt owed by the individual does not exempt him from paying zakāh in this case. If someone acquires a rare discovery from a gold or silver mine without significant labor, then khums is due on it.

فِيمَا عَدَا ذَلِكَ مِنْ الْمَعَادِنِ - وَاخْتَلَفَ قَوْلُهُ فِي الزِّئْبَقِ، فَمَرَّةً رَأَى فِيهِ الْخُمُسَ، وَمَرَّةً لَمْ يَرَ فِيهِ شَيْئًا، وَقَالَ مَالِكٌ: فِي مَعَادِنِ الذَّهَبِ، وَالْفِضَّةِ: الزَّكَاةُ مُعَجَّلَةٌ فِي الْوَقْتِ إنْ كَانَ مِقْدَارُ مَا فِيهِ الزَّكَاةُ وَلَا شَيْءَ فِي غَيْرِهَا، وَلَا يُسْقِطُ الزَّكَاةَ فِي ذَلِكَ دَيْنٌ يَكُونُ عَلَيْهِ، فَإِنْ كَانَ الَّذِي أَصَابَ فِي مَعْدِنِ الذَّهَبِ، أَوْ الْفِضَّةِ نُدْرَةً بِغَيْرِ كَبِيرِ عَمَلٍ فَفِي ذَلِكَ الْخُمُسُ.

L11148 Abu Muhammad said: Those who held the opinion that the khums is due on it cited the Authentic Hadith as evidence: "And in pre-Islamic buried treasure (rikaz), the khums is due."

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ رَأَى فِيهِ الْخُمُسَ بِالْحَدِيثِ الثَّابِتِ: «وَفِي الرِّكَازِ الْخُمُسُ»

L11149 They mentioned a narration through the chain of ʿAbdullāh ibn Saʿīd ibn Abī Saʿīd al-Maqburī from his grandfather from Abū Hurayrah: "The Messenger of Allah—peace and blessings of Allah be upon him—was asked about the rikāz. He said: 'It is the gold that Allah created in the earth on the day He created the heavens and the earth.'"

وَذَكَرُوا حَدِيثًا مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ جَدِّهِ عَنْ أَبِي هُرَيْرَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ عَنْ الرِّكَازِ. فَقَالَ: هُوَ الذَّهَبُ الَّذِي خَلَقَهُ اللَّهُ فِي الْأَرْضِ يَوْمَ خَلَقَ السَّمَاوَاتِ وَالْأَرْضَ» .

L11150–11152 Abū Muḥammad said: This is a rejected ḥadīth because there is consensus regarding the rejection of ʿAbdullāh ibn Saʿīd's narrations. Furthermore, even if it were authentic, it would be exclusively restricted to gold. If they argue: "We analogize all the mentioned minerals to gold," we respond: "Then analogize to it minerals such as sulfur, kohl, arsenic, and others!" If they say: "These are stones," we reply: "What then? The mineral of silver and copper are also stones, and there is no difference." As for the Rikāz, it is solely the buried items of the Jāhiliyyah, not the minerals. There is no disagreement among the people of language regarding that.

قَالَ أَبُو مُحَمَّدٍ: هَذَا حَدِيثٌ سَاقِطٌ، لِأَنَّ عَبْدَ اللَّهِ بْنَ سَعِيدٍ مُتَّفَقٌ عَلَى إطْرَاحِ رِوَايَتِهِ ثُمَّ لَوْ صَحَّ لَكَانَ فِي الذَّهَبِ خَاصَّةً. فَإِنْ قَالُوا: قِسْنَا سَائِرَ الْمَعَادِنِ الْمَذْكُورَةِ عَلَى الذَّهَبِ. قُلْنَا لَهُمْ: فَقِيسُوا عَلَيْهِ أَيْضًا مَعَادِنَ الْكِبْرِيتِ، وَالْكُحْلِ، وَالزِّرْنِيخِ، وَغَيْرِ ذَلِكَ؟ فَإِنْ قَالُوا: هَذِهِ حِجَارَةٌ. قُلْنَا: فَكَانَ مَاذَا؟ وَمَعْدِنُ الْفِضَّةِ، وَالنُّحَاسِ أَيْضًا حِجَارَةٌ وَلَا فَرْقَ وَأَمَّا الرِّكَازُ فَهُوَ دَفْنُ الْجَاهِلِيَّةِ فَقَطْ، لَا الْمَعَادِنُ، لَا خِلَافَ بَيْنَ أَهْلِ اللُّغَةِ فِي ذَلِكَ.

L11153 The height of absurdity lies in some scholars' reliance on the ḥadīth of ʿAmr ibn Shuʿayb from his father through his grandfather—"From the Prophet (peace and blessings of Allah be upon him) concerning lost property found in ruins or untitled land: *a fifth is due for it* and for *rikāz* (pre-Islamic buried wealth)"—while they themselves reject this ruling. This is plainly evident, for had minerals been classified as *rikāz*, the fifth would apply universally to all mineral extraction just as it applies to every buried item

وَالْعَجَبُ كُلُّهُ احْتِجَاجُ بَعْضِهِمْ فِي هَذَا بِحَدِيثِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي اللُّقَطَةِ مَا كَانَ مِنْهَا فِي الْخَرَابِ وَالْأَرْضِ الْمِيتَاءِ فَفِيهِ وَفِي الرِّكَازِ الْخُمُسُ» وَهُمْ لَا يَقُولُونَ بِهَذَا، وَهَذَا كَمَا تَرَى، وَلَوْ كَانَ الْمَعْدِنُ رِكَازًا لَكَانَ الْخُمُسُ فِي كُلِّ شَيْءٍ مِنْ الْمَعَادِنِ، كَمَا أَنَّ الْخُمُسَ فِي كُلِّ دَفْنٍ لِلْجَاهِلِيَّةِ،

from the pre-Islamic era, whatever its nature. Does this not reveal the invalidity of their claim and their contradiction? This is especially evident in their exemption of obligatory *zakāh* on lands subject to *kharāj* tax, while still imposing the fifth on minerals despite *kharāj*—even enforcing it on mines located in lands liable for *ʿushr*, on extractions by disbelievers and slaves, and distinguishing between mines within settled areas and those outside. None of these distinctions are known from earlier scholars. Yet they claim to reject authentic narrations contradicting legal principles while their own ruling here opposes those very principles.

أَيُّ شَيْءٍ كَانَ، فَظَهَرَ فَسَادُ قَوْلِهِمْ وَتَنَاقُضُهُمْ؟ لَا سِيَّمَا فِي إِسْقَاطِهِمْ الزَّكَاةَ الْمَفْرُوضَةَ بِالْخَرَاجِ، وَلَمْ يُسْقِطُوا الْخُمْسَ فِي الْمَعَادِنِ بِالْخَرَاجِ وَأَوْجَبُوا فِيهَا خُمْسًا فِي أَرْضِ الْعُشْرِ، وَعَلَى الْكَافِرِ، وَالْعَبْدِ وَفَرَّقُوا بَيْنَ الْمَعْدِنِ فِي الدَّارِ وَبَيْنَهُ خَارِجَ الدَّارِ، وَلَا يُعْرَفُ كُلُّ هَذَا عَنْ أَحَدٍ قَبْلَهُمْ وَهُمْ يَقُولُونَ: بِرَدِّ الْأَخْبَارِ الصِّحَاحِ إذَا خَالَفَتْ الْأُصُولَ وَحُكْمُهُمْ هَاهُنَا مُخَالِفٌ لِلْأُصُولِ.

L11154 If they say: "It has been reported from Ali that there is khums due on it," we respond: You would be the first to oppose this ruling if it were considered authoritative proof, for the report only concerns a man who extracted a mineral, sold it for a hundred sheep, and the buyer obtained from it a price equivalent to a thousand sheep. Ali held that khums was obligatory upon the buyer, not upon the extractor.

فَإِنْ قَالُوا: قَدْ رُوِيَ عَنْ عَلِيٍّ: أَنَّ فِيهِ الْخُمْسَ. قُلْنَا: أَنْتُمْ أَوَّلُ مُخَالِفٍ لِهَذَا الْحُكْمِ إنْ كَانَ حُجَّةً؛ لِأَنَّ الْخَبَرَ إنَّمَا هُوَ فِي رَجُلٍ اسْتَخْرَجَ مَعْدِنًا فَبَاعَهُ بِمِائَةِ شَاةٍ، وَأَخْرَجَ الْمُشْتَرِي مِنْهُ ثَمَنَ أَلْفِ شَاةٍ فَرَأَى عَلِيٌّ الْخُمْسَ عَلَى الْمُشْتَرِي؛ لَا عَلَى الْمُسْتَخْرِجِ لَهُ.

L11155–11157 As for those who held the view that zakāh is obligatory on mines, they cited the ḥadīth reported by Mālik from Rabīʿah from several of their scholars, "The Messenger of Allah (peace and blessings be upon him and his family) granted Bilāl ibn al-Ḥārith the mines of al-Qabaliyyah." "It is located in the district of al-Furūʿ."

وَأَمَّا مَنْ رَأَى فِيهِ الزَّكَاةَ فَاحْتَجُّوا - بِحَدِيثِ مَالِكٍ عَنْ رَبِيعَةَ عَنْ غَيْرِ وَاحِدٍ مِنْ عُلَمَائِهِمْ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَطَعَ لِبِلَالِ بْنِ الْحَارِثِ مَعَادِنَ الْقَبَلِيَّةِ - وَهِيَ فِي نَاحِيَةِ الْفُرْعِ» .

L11158 He said: Therefore, up to this day, nothing is taken from those mines except Zakat.

قَالَ: فَتِلْكَ الْمَعَادِنُ لَا يُؤْخَذُ مِنْهَا إلَّا الزَّكَاةَ إلَى الْيَوْمِ.

L11159 Abū Muḥammad said: This is not valid because it is a mursal narration containing nothing beyond his allocation—peace be upon him—of those mineral deposits, without stating that he—peace be upon him—took *zakāh* from them. Even if it were authentic, the Mālikīs would be the first to oppose it, for they hold that khums is due on scarce minerals obtained without extensive labor—contrary to this report. They are also asked to define the extent of that "extensive labor" and the threshold of scarcity, but this can only be established through an inadmissible claim that cannot be acted upon. Thus, the invalidity and self-contradiction of this view become evident. They also argued: Minerals are like crops, yielded gradually over time.

قَالَ أَبُو مُحَمَّدٍ: وَلَيْسَ هَذَا بِشَيْءٍ لِأَنَّهُ مُرْسَلٌ، وَلَيْسَ فِيهِ مَعَ إرْسَالِهِ إلَّا إقْطَاعُهُ - عَلَيْهِ السَّلَامُ - تِلْكَ الْمَعَادِنَ فَقَطْ، وَلَيْسَ فِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَخَذَ مِنْهَا الزَّكَاةَ، ثُمَّ لَوْ صَحَّ لَكَانَ الْمَالِكِيُّونَ أَوَّلَ مُخَالِفٍ لَهُ؛ لِأَنَّهُمْ رَأَوْا فِي النُّدْرَةِ تُصَابُ فِيهِ بِغَيْرِ كَبِيرِ عَمَلٍ: الْخُمْسَ؛ وَهَذَا خِلَافُ مَا فِي هَذَا الْخَبَرِ. وَيُسْأَلُونَ أَيْضًا عَنْ مِقْدَارِ ذَلِكَ الْعَمَلِ الْكَبِيرِ وَحَدِّ النُّدْرَةِ؟ وَلَا سَبِيلَ إلَيْهِ إلَّا بِدَعْوَى لَا يَجُوزُ الِاشْتِغَالُ بِهَا - فَظَهَرَ أَيْضًا فَسَادُ هَذَا الْقَوْلِ وَتَنَاقُضُهُ. وَقَالُوا أَيْضًا: الْمَعْدِنُ كَالزَّرْعِ يَخْرُجُ شَيْءٌ بَعْدَ شَيْءٍ.

L11160 Ali said: The analogy of minerals to crops is like their analogy to Zakat—all of this is invalid. If analogy were valid, these two analogies would conflict, and both are corrupt. As for their analogy to Rikaz (buried treasure), they would be obliged to apply this to every mineral; otherwise, they would contradict themselves. As for their analogy to crops, they would be obliged to observe the requirement of five awsuq in it; otherwise, they would contradict themselves. They would also be compelled to apply analogy to every mineral—whether iron or copper—to crops. Both groups cited as evidence the authenticated report transmitted by Muslim on the authority of Qutaybah: "Abd al-Wahid narrated to us from Umarah ibn al-Qa'qa', who narrated to us from Abd al-Rahman ibn Ubayy. Indeed, he said: I heard Abu Sa'id al-Khudri say: 'Ali ibn Abi Talib sent a gold nugget in a tanned leather pouch to the Messenger of Allah, peace and blessings be upon him, before it had been extracted from its soil. He distributed it among four men: Uyaynah ibn Badr, al-Aqra' ibn Habis, Zayd al-Khayr, and a fourth, Alqamah ibn Ulathah."'

قَالَ عَلِيٌّ: قِيَاسُ الْمَعْدِنِ عَلَى الزَّرْعِ كَقِيَاسِهِ عَلَى الزَّكَاةِ، وَكُلُّ ذَلِكَ بَاطِلٌ وَلَوْ كَانَ الْقِيَاسُ حَقًّا لَتَعَارَضَ هَذَانِ الْقِيَاسَانِ، وَكِلَاهُمَا فَاسِدٌ، أَمَّا قِيَاسُهُ عَلَى الرِّكَازِ فَيَلْزَمُهُمْ ذَلِكَ فِي كُلِّ مَعْدِنٍ، وَإِلَّا فَقَدْ تَنَاقَضُوا، وَأَمَّا قِيَاسُهُ عَلَى الزَّرْعِ فَيَلْزَمُهُمْ أَنْ يُرَاعُوا فِيهِ خَمْسَةَ أَوْسُقٍ وَإِلَّا فَقَدْ تَنَاقَضُوا، وَيَلْزَمُهُمْ أَيْضًا أَنْ يَقِيسُوا كُلَّ مَعْدِنٍ - مِنْ حَدِيدٍ أَوْ نُحَاسٍ - عَلَى الزَّرْعِ، وَاحْتَجَّ كِلْتَا الطَّائِفَتَيْنِ بِالْخَبَرِ الثَّابِتِ مِنْ طَرِيقِ مُسْلِمٍ عَنْ قُتَيْبَةَ، ثنا عَبْدُ الْوَاحِدِ عَنْ عُمَارَةَ بْنِ الْقَعْقَاعِ ثنا عَبْدُ الرَّحْمَنِ بْنُ أُبَيٍّ نعم قَالَ: سَمِعْتُ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ: «بَعَثَ عَلِيُّ بْنُ أَبِي طَالِبٍ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذُهَيْبَةٍ فِي أَدِيمٍ مَقْرُوظٍ لَمْ تُحْصَلْ مِنْ تُرَابِهَا، فَقَسَّمَهَا بَيْنَ أَرْبَعَةِ نَفَرٍ: عُيَيْنَةَ بْنِ بَدْرٍ، وَالْأَقْرَعِ بْنِ حَابِسٍ، وَزَيْدِ الْخَيْرِ، وَذَكَرَ رَابِعًا، وَهُوَ عَلْقَمَةُ بْنُ عُلَاثَةَ» .

L11161–11163 He said: Those who assert that zakah is obligatory on minerals—they are among the mu'allafa qulūbuhum (those whose hearts are reconciled), and their right pertains to zakah, not to khums (the fifth). Others said: Ali is from Banu Hashim, and it is not permissible for him to oversee zakat; rather, oversight pertains to khums.

فَقَالَ مَنْ رَأَى فِي الْمَعْدِنِ الزَّكَاةَ: هَؤُلَاءِ مِنْ الْمُؤَلَّفَةِ قُلُوبُهُمْ، وَحَقُّهُمْ فِي الزَّكَاةِ لَا فِي الْخُمُسِ، وَقَالَ الْآخَرُونَ: عَلِيٌّ مِنْ بَنِي هَاشِمٍ، وَلَا يَحِلُّ لَهُ النَّظَرُ فِي الصَّدَقَةِ، وَإِنَّمَا النَّظَرُ فِي الْأَخْمَاسِ.

L11164 Ali said: Each of the two claims is an invalid assertion. Had that gold been from obligatory khums or zakat, it would never have been permissible to take it except through precise weighing and verification—ensuring no injustice to the giver nor to the people entitled to four-fifths. Since it did not originate from its soil, it is conclusively evident that it does not belong to any of those categories. Rather, it was a gift from the one who obtained it or from a source other than those two. Thus, he—peace be upon him—gave it to whom he wished. We have previously established that zakat is not due on wealth other than crops except after a year's passage, and minerals such as gold and silver fall under this category—thus nothing is due on them except after a year. This is the view of Al-Layth ibn Sa'd, one of Al-Shafi'i's opinions, and the

قَالَ عَلِيٌّ: كِلَا الْقَوْلَيْنِ دَعْوَى فَاسِدَةٌ، وَلَوْ كَانَتْ تِلْكَ الذَّهَبُ مِنْ خُمْسٍ وَاجِبٍ، أَوْ مِنْ زَكَاةٍ لَمَا جَازَ أَلْبَتَّةَ أَخْذُهَا إِلَّا بِوَزْنٍ وَتَحْقِيقٍ، لَا يُظْلَمُ مَعَهُ الْمُعْطِي وَلَا أَهْلُ الْأَرْبَعَةِ الْأَخْمَاسِ، فَلَمَّا كَانَتْ لَمْ تُحْصَلْ مِنْ تُرَابِهَا صَحَّ يَقِينًا أَنَّهَا لَيْسَتْ مِنْ شَيْءٍ مِنْ ذَلِكَ، وَإِنَّمَا كَانَتْ هَدِيَّةً مِنْ الَّذِي أَصَابَهَا، أَوْ مِنْ وَجْهٍ غَيْرِ هَذَيْنِ الْوَجْهَيْنِ، فَأَعْطَاهَا - عَلَيْهِ السَّلَامُ - مَنْ شَاءَ، وَقَدْ قَدَّمْنَا أَنَّهُ لَا زَكَاةَ فِي مَالٍ غَيْرِ الزَّرْعِ إِلَّا بَعْدَ الْحَوْلِ، وَالْمَعْدِنِ مِنْ جُمْلَةِ الذَّهَبِ وَالْفِضَّةِ، فَلَا شَيْءَ فِيهَا إِلَّا بَعْدَ الْحَوْلِ، وَهَذَا قَوْلُ اللَّيْثِ بْنِ

position of Abu Sulayman. Malik held that if a mineral appears on someone's land, their ownership ceases and it becomes the ruler's property. This is an utterly corrupt opinion, lacking any proof from the Quran, authentic Sunnah, defective narration, consensus, a Companion's statement, or sound reasoning. By this logic, if a mineral were found in a mosque, its ownership would transfer to the ruler—even if it were the Kaaba—nullifying its original status. This is utterly invalid.

L11165 The Messenger of Allah—peace and blessings be upon him—said: "Your lives and property are inviolable to you." Thus, it is established that whoever discovers a mineral deposit in their land, it belongs to them, is inherited from him, and he may utilize it as he wishes.

L11166 **Issue: Zakat is not to be taken from a disbeliever.**

L11167–11169 701 - Issue: Zakat is not taken from a disbeliever - neither in doubled form nor in its regular form, whether from Banu Taghlib or others. This is the opinion of Malik. Abu Hanifah and Al-Shafi'i held the same view except specifically regarding Banu Taghlib, for they maintained that doubled Zakat should be collected from them. They relied on a weak, highly conflicting report transmitted through Abu Ishaq Al-Shaybani from Al-Saffah ibn Matar from Dawud ibn Kurdus Al-Taghlibi, who stated: "I made a peace agreement with Umar ibn Al-Khattab..." Regarding Banū Taghlib — after they crossed the Euphrates and sought to join the Romans — on the condition that they would neither baptize any child nor compel anyone to abandon their religion, and that they would pay a doubled charitable tax of one dirham for every twenty dirhams. Dāwūd ibn Kurdūs said: "Do Banū Taghlib have no protected status, when they baptized within their religion?" Through the chain of Hushaym, from al-Mughīrah ibn Miqsam, from al-Saffāḥ ibn al-Muthannā, from Zurʿah ibn al-Nuʿmān or al-Nuʿmān ibn Zurʿah: that he addressed ʿUmar concerning Banū Taghlib, saying: "They are Arabs who disdain the *jizya* — do not aid your enemy with them." So ʿUmar reconciled

سَعْدٍ، وَأَحَدِ أَقْوَالِ الشَّافِعِيِّ، وَقَوْلِ أَبِي سُلَيْمَانَ، وَرَأَى مَالِكٌ أَنَّ مَنْ ظَهَرَ فِي أَرْضِهِ مَعْدِنٌ فَإِنَّهُ يَسْقُطُ مِلْكُهُ عَنْهُ، وَيَصِيرُ لِلسُّلْطَانِ، وَهَذَا قَوْلٌ فِي غَايَةِ الْفَسَادِ، بِلَا بُرْهَانٍ مِنْ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا إِجْمَاعٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ، وَعَلَى هَذَا إِنْ ظَهَرَ فِي مَسْجِدٍ أَنْ يَصِيرَ مِلْكُهُ لِلسُّلْطَانِ وَيَبْطُلُ حُكْمُهُ وَلَوْ أَنَّهُ الْكَعْبَةُ وَهَذَا فِي غَايَةِ الْفَسَادِ.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ.» ، فَصَحَّ أَنَّ مَنْ ظَهَرَ فِي أَرْضِهِ مَعْدِنٌ فَهُوَ لَهُ، يُورَثُ عَنْهُ وَيَعْمَلُ فِيهِ مَا شَاءَ.

[مَسْأَلَةٌ لَا تُؤْخَذُ زَكَاةٌ مِنْ كَافِرٍ]

٧٠١ - مَسْأَلَةٌ: وَلَا تُؤْخَذُ زَكَاةٌ مِنْ كَافِرٍ لَا مُضَاعَفَةً وَلَا غَيْرَ مُضَاعَفَةٍ، لَا مِنْ بَنِي تَغْلِبَ وَلَا مِنْ غَيْرِهِمْ - وَهُوَ قَوْلُ مَالِكٍ؟ وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، كَذَلِكَ إِلَّا فِي بَنِي تَغْلِبَ خَاصَّةً، فَإِنَّهُمْ قَالُوا: تُؤْخَذُ مِنْهُمْ الزَّكَاةُ مُضَاعَفَةً، وَاحْتَجُّوا بِخَبَرٍ وَاهٍ مُضْطَرِبٍ فِي غَايَةِ الِاضْطِرَابِ، رُوِّينَاهُ مِنْ طَرِيقِ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ السَّفَّاحِ بْنِ مَطَرٍ عَنْ دَاوُد بْنِ كُرْدُوسٍ التَّغْلِبِيِّ قَالَ: صَالَحْتُ عُمَرَ بْنَ الْخَطَّابِ عَنْ بَنِي تَغْلِبَ - بَعْدَ أَنْ قَطَعُوا الْفُرَاتَ وَأَرَادُوا اللُّحُوقَ بِالرُّومِ - عَلَى أَنْ لَا يَصْبُغُوا صَبِيًّا وَلَا يُكْرَهُوا عَلَى غَيْرِ دِينِهِمْ عَلَى أَنَّ عَلَيْهِمْ الْعُشْرَ مُضَاعَفًا فِي كُلِّ عِشْرِينَ دِرْهَمًا دِرْهَمٌ قَالَ دَاوُد بْنُ كُرْدُوسٍ: لَيْسَ لِبَنِي تَغْلِبَ ذِمَّةٌ، قَدْ صَبَغُوا فِي دِينِهِمْ؟ وَمِنْ طَرِيقِ هُشَيْمٍ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ السَّفَّاحِ بْنِ الْمُثَنَّى عَنْ زُرْعَةَ بْنِ النُّعْمَانِ أَوْ النُّعْمَانِ بْنِ زُرْعَةَ: أَنَّهُ كَلَّمَ عُمَرَ

with them by imposing upon them a doubled charitable tax, stipulating that they would not support their children.

فِي بَنِي تَغْلِبَ وَقَالَ لَهُ: إِنَّهُمْ عَرَبٌ يَأْنَفُونَ مِنْ الْجِزْيَةِ، فَلَا تُعِنْ عَدُوَّكَ بِهِمْ؛ فَصَالَحَهُمْ عُمَرُ عَلَى أَنْ أُضَعِّفَ عَلَيْهِمْ الصَّدَقَةَ، فَاشْتَرَطَ عَلَيْهِمْ: أَنْ لَا يَنْصُرُوا أَوْلَادَهُمْ.

L11170 Mughīrah said: And it was related to me that ʿAlī ibn Abī Ṭālib said: If I were to devote myself entirely to Banū Taghlib, I will certainly kill their combatants and take their children captive, for they have violated the covenant. Their covenant of protection was revoked when they supported their offspring.

قَالَ مُغِيرَةُ فَحُدِّثْتُ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لَئِنْ تَفَرَّغْتُ لِبَنِي تَغْلِبَ لَأُقَتِّلَنَّ مُقَاتِلَتَهُمْ وَلَأَسْبِيَنَّ ذَرَارِيَّهُمْ؛ فَقَدْ نَقَضُوا، وَبَرِئَتْ مِنْهُمْ الذِّمَّةُ حِينَ نَصَرُوا أَوْلَادَهُمْ.

L11171 It has also been narrated through the chain of ʿAbd al-Salām ibn Ḥarb, who said: In it, from Dāwūd ibn Kurdūs from ʿUmārah ibn al-Nuʿmān—and he reiterated the exact same—adding that they have no *dhimma* today.

وَرُوِيَ أَيْضًا مِنْ طَرِيقِ عَبْدِ السَّلَامِ بْنِ حَرْبٍ فَقَالَ: فِيهِ عَنْ دَاوُد بْنِ كُرْدُوسٍ عَنْ عُمَارَةَ بْنِ النُّعْمَانِ، وَذَكَرَ مِثْلَهُ سَوَاءً سَوَاءً، وَذَكَرَ أَنَّهُمْ لَا ذِمَّةَ لَهُمْ الْيَوْمَ.

L11172 We have also been narrated through the chain of ʿAbdullāh ibn Ṣāliḥ, the scribe of al-Layth, from al-Layth, from Yūnus ibn Yazīd, from al-Zuhrī: "We do not know of any sadaqah obligation on the livestock of the People of the Book except the jizyah. However, the Christians of Banī Taghlib — whose wealth consists mostly of livestock — are required to pay double until it equals twice the sadaqah." This is all they have presented, and even if this report were attributed to the Messenger of Allah — peace and blessings be upon him — it would still be impermissible to act upon it due to its interrupted chain and the weakness of its narrators. How much more so when it is not even from the Messenger of Allah — peace and blessings be upon him?

وَرُوِّينَا أَيْضًا مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ صَالِحٍ كَاتِبِ اللَّيْثِ عَنْ اللَّيْثِ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ الزُّهْرِيِّ: لَا نَعْلَمُ فِي مَوَاشِي أَهْلِ الْكِتَابِ صَدَقَةً إلَّا الْجِزْيَةَ غَيْرَ أَنَّ نَصَارَى بَنِي تَغْلِبَ - الَّذِينَ جُلُّ أَمْوَالِهِمْ الْمَوَاشِي - تُضَعَّفُ عَلَيْهِمْ حَتَّى تَكُونَ مِثْلَيْ الصَّدَقَةِ. هَذَا كُلُّ مَا مَوَّهُوا بِهِ، وَلَوْ كَانَ هَذَا الْخَبَرُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَا حَلَّ الْأَخْذُ بِهِ لِانْقِطَاعِهِ وَضَعْفِ رُوَاتِهِ، فَكَيْفَ وَلَيْسَ هُوَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L11173–11177 How can this be, when they have opposed this very report itself and with it demolished most of their own principles, for they say: No. The solitary reports of trustworthy narrators are accepted regarding matters of frequent occurrence that lack consensus, as this is an issue of common prevalence unknown to the people of Medina and others. Yet they accepted here a report devoid of merit, while rejecting the narration on ablution after touching the penis for reasons lesser than this. They claim that solitary reports from trustworthy narrators are inadmissible if they add to or contradict the Quran, thereby rejecting the hadith on oaths with a witness and declaring anything contradicting the Quran to be false. No contradiction to the Quran

فَكَيْفَ وَقَدْ خَالَفُوا هَذَا الْخَبَرَ نَفْسَهُ وَهَدَمُوا بِهِ أَكْثَرَ أُصُولِهِمْ لِأَنَّهُمْ يَقُولُونَ: لَا يُقْبَلُ خَبَرُ الْآحَادِ الثِّقَاتِ الَّتِي لَمْ يُجْمَعْ عَلَيْهَا فِيمَا إذَا كَثُرَتْ بِهِ الْبَلْوَى، وَهَذَا أَمْرٌ تَكْثُرُ بِهِ الْبَلْوَى، وَلَا يَعْرِفُهُ أَهْلُ الْمَدِينَةِ وَغَيْرُهُمْ، فَقَبِلُوا فِيهِ خَبَرًا لَا خَيْرَ فِيهِ، وَهُمْ قَدْ رَدُّوا بِأَقَلَّ مِنْ هَذَا خَبَرَ الْوُضُوءِ مِنْ مَسِّ الذَّكَرِ، وَيَقُولُونَ: لَا يُقْبَلُ خَبَرُ الْآحَادِ الثِّقَاتِ إذَا كَانَ زَائِدًا عَلَى مَا فِي الْقُرْآنِ أَوْ مُخَالِفًا لَهُ، وَرَدُّوا بِهَذَا حَدِيثَ الْيَمِينِ مَعَ الشَّاهِدِ،

وَكَذَّبُوا مَا هُوَ مُخَالِفٌ لِمَا فِي الْقُرْآنِ، وَلَا خِلَافَ لِلْقُرْآنِ أَكْثَرُ مِنْ قَوْلِ اللَّهِ تَعَالَى: {حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] فَقَالُوا هُمْ: إِلَّا بَنِي تَغْلِبَ فَلَا يُؤَدُّونَ الْجِزْيَةَ (وَلَا صَغَارَ عَلَيْهِمْ؛ بَلْ يُؤَدُّونَ الصَّدَقَةَ مُضَاعَفَةً؛ فَخَالَفُوا الْقُرْآنَ، وَالسُّنَنَ الْمَنْقُولَةَ نَقْلَ الْكَافَّةِ) بِخَبَرٍ لَا خَيْرَ فِيهِ، وَقَالُوا: لَا يُقْبَلُ خَبَرُ الْآحَادِ الثِّقَاتِ إِذَا خَالَفَ الْأُصُولَ، وَرَدُّوا بِذَلِكَ خَبَرَ الْقُرْعَةِ فِي الْأَعْبُدِ السِّتَّةِ، وَخَبَرَ الْمُصَرَّاةِ، وَكَذَّبُوا مَا هُمَا مُخَالِفَيْنِ لِلْأُصُولِ بَلْ هُمَا أَصْلَانِ مِنْ كِبَارِ الْأُصُولِ، وَخَالَفُوا هَاهُنَا جَمِيعَ الْأُصُولِ فِي الصَّدَقَاتِ، وَفِي الْجِزْيَةِ بِخَبَرٍ لَا يُسَاوِي بَعْرَةً، وَتَعَلَّلُوا بِالِاضْطِرَابِ فِي أَخْبَارِ الثِّقَاتِ، وَرَدُّوا خَبَرَ «لَا تُحَرِّمُ الرَّضْعَةُ وَلَا الرَّضْعَتَانِ» وَخَبَرَ «لَا قَطْعَ إِلَّا فِي رُبُعِ دِينَارٍ فَصَاعِدًا» وَأَخَذُوا هَاهُنَا بِأَسْقَطِ خَبَرٍ وَأَشَدِّهِ اضْطِرَابًا، لِأَنَّهُ يَقُولُ رِوَايَةً مَرَّةً: عَنِ السَّفَّاحِ بْنِ مَطَرٍ، وَمَرَّةً: عَنِ السَّفَّاحِ بْنِ الْمُثَنَّى، وَمَرَّةً عَنْ دَاوُد بْنِ كُرْدُوسٍ أَنَّهُ صَالَحَ عُمَرَ عَنْ بَنِي تَغْلِبَ وَمَرَّةً: عَنْ دَاوُد بْنِ كُرْدُوسٍ عَنْ عُبَادَةَ بْنِ النُّعْمَانِ، أَوْ زُرْعَةَ بْنِ النُّعْمَانِ، أَوْ النُّعْمَانِ بْنِ زُرْعَةَ أَنَّهُ صَالَحَ عُمَرَ؟ وَمَعَ شِدَّةِ هَذَا الِاضْطِرَابِ الْمُفْرِطِ فَإِنَّ جَمِيعَ هَؤُلَاءِ لَا يَدْرِي أَحَدٌ مَنْ هُمْ مِنْ خَلْقِ اللَّهِ تَعَالَى؟ وَكَمْ مِنْ قَضِيَّةٍ خَالَفُوا فِيهَا عُمَرَ، كَكَلَامِهِ مَعَ عُثْمَانَ فِي الْخُطْبَةِ، وَنَفْيِهِ فِي الزِّنَى وَإِغْرَامِهِ فِي السَّرِقَةِ قَبْلَ الْقَطْعِ، وَغَيْرِ ذَلِكَ، وَقَدْ صَحَّ عَنْ عُمَرَ - بِأَصَحِّ طَرِيقٍ - مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ شُعْبَةَ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ زِيَادِ بْنِ حُدَيْرٍ قَالَ: أَمَرَنِي عُمَرُ بْنُ الْخَطَّابِ أَنْ آخُذَ مِنْ نَصَارَى بَنِي تَغْلِبَ الْعُشْرَ، وَمِنْ نَصَارَى أَهْلِ الْكِتَابِ نِصْفَ الْعُشْرِ.

exceeds Allah's decree: "until they pay the jizyah directly from hand while in a state of humiliation" [9:29]. Yet they exempted Banu Taghlib from paying jizyah (imposing neither humiliation nor jizyah, but instead doubled obligatory charity), thus opposing the Quran and universally transmitted Sunnah through a meritless report. They asserted that solitary reports conflicting with foundational principles are rejected, using this to dismiss the narration on allocating six slaves by lottery and the hadith on milk retention, falsely claiming these contradict principles when they are two principles among the major foundational principles. Here, they opposed all foundational principles on charity and jizyah through a report not worth a dung beetle, justifying their stance by citing excessive inconsistencies in reliable narrations. They rejected the reports "One or two breastfeedings do not establish prohibition" and "No amputation except for theft of a quarter dinar or more," while here adopting the weakest and most severely inconsistent narration. The report variably attributes to Al-Saffāḥ ibn Maṭar, Al-Saffāḥ ibn Al-Muthannā, Dāwūd ibn Kurdus claiming he negotiated ʿUmar's treaty with Banu Taghlib, or Dāwūd ibn Kurdus narrating from ʿUbāda ibn Al-Nuʿmān, Zurʿa ibn Al-Nuʿmān, or Al-Nuʿmān ibn Zurʿa regarding ʿUmar's treaty. Despite this excessively severe inconsistency, none of these narrators are known to anyone in God's creation. They opposed ʿUmar in numerous rulings: his discourse with ʿUthmān on sermons, his imposition of exile for adultery, his enforcement of financial compensation for theft prior to amputation, and others. What is authentically established from ʿUmar through the strongest chain—via ʿAbd al-Raḥmān ibn Mahdī from Shuʿbah—confirms these matters. From al-Hakam ibn ʿUtaybah, from Ibrāhīm al-Nakhaʿī, from Ziyād ibn Ḥudayr, who said: "Umar ibn al-Khaṭṭāb ordered me to collect the tenth from the Christian tribe of Banū Taghlib, and half of the tenth from the Christian People of the Book."[8]

L11178 Abū Muḥammad said: Just as collecting half the tithe from the People of the Book did not exempt them from jizyah, similarly collecting the full tithe from

[8] **Qur'an references (L11173):** Qur'an 9:29 (At-Tawbah).

Banū Taghlib does not exempt them from jizyah either. This is the soundest analogy—if any analogy were valid—for they have contradicted analogy itself. Furthermore, even if such an analogy were valid and established, they would still have opposed it, since all narrators of this ruling—from the earliest to the latest—uniformly state: "Banū Taghlib violated that covenant, thereby nullifying that ruling." They also transmitted this from ʿAlī. Thus, they opposed ʿUmar and ʿAlī, contradicted the report they themselves cited as evidence, the Quran, the Sunnah (regarding jizyah collection from every People of the Book in Arab lands and elsewhere, such as Hijr, Yemen, and other regions), the practice of the Companions (may Allah be pleased with them), and analogy. We seek refuge in Allah from abandonment.

قَالَ أَبُو مُحَمَّد: فَكَمَا لَمْ يُسْقِطْ أَخْذُ نِصْفِ الْعُشْرِ مِنْ أَهْلِ الْكِتَابِ الْجِزْيَةَ عَنْهُمْ فَكَذَلِكَ لَا يُسْقِطُ أَخْذُ الْعُشْرِ مِنْ بَنِي تَغْلِبَ أَيْضًا الْجِزْيَةَ عَنْهُمْ، وَهَذَا أَصَحُّ قِيَاسٍ، لَوْ كَانَ شَيْءٌ مِنْ الْقِيَاسِ صَحِيحًا، فَقَدْ خَالَفُوا الْقِيَاسَ أَيْضًا، ثُمَّ لَوْ صَحَّ وَثَبَتَ لَكَانُوا قَدْ خَالَفُوهُ؛ لِأَنَّ جَمِيعَ مَنْ رَوَوْهُ عَنْهُ - أَوَّلُهُمْ عَنْ آخِرِهِمْ - يَقُولُونَ كُلُّهُمْ: إنَّ بَنِي تَغْلِبَ قَدْ نَقَضُوا تِلْكَ الذِّمَّةَ، فَبَطَلَ ذَلِكَ الْحُكْمُ، وَرَوَوْا ذَلِكَ أَيْضًا - عَنْ عَلِيٍّ، فَخَالَفُوا: عُمَرَ وَعَلِيًّا، وَالْخَبَرَ الَّذِي بِهِ احْتَجُّوا وَالْقُرْآنَ وَالسُّنَنَ - فِي أَخْذِ الْجِزْيَةِ مِنْ كُلِّ كِتَابِيٍّ فِي أَرْضِ الْعَرَبِ وَغَيْرِهَا، كَهَجَرَ، وَالْيَمَنِ، وَغَيْرِهِمَا - وَفِعْلِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَالْقِيَاسَ، وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L11179 **Issue: Zakāt on goods used in trade.**

[مَسْأَلَةُ الزَّكَاةُ مِمَّا يَتَّجِرُ بِهِ]

L11180 702 - Issue: It is not permissible to collect zakāh or a tenth from goods traded by Muslim merchants, nor from a non-believer under any circumstance—whether trading within his own territory or elsewhere—unless a treaty stipulating this alongside the jizyah was formally concluded in their original covenant. In such a case, it is collected from them; otherwise, it is not. As for Muslims, we have previously stated that no zakāh is due on their goods—whether intended for trade or non-commercial purposes. As for non-believers, Allah the Exalted has only obligated the jizyah upon them. If this was a treaty alongside the jizyah, it constitutes a valid right and covenant; otherwise, it is unlawful to take anything from their wealth after establishing the valid dhimma contract with the jizyah and submission, provided they do not breach the covenant—and success comes solely from Allah the Exalted. Abū Ḥanīfah said: Half of the tenth is taken from dhimmī traders once annually, and nothing is taken if their goods are worth less than two hundred *dirhams*. Similarly, the full tenth is taken from *ḥarbī* non-believers if their goods reach two hundred *dirhams*; otherwise, it is not.

٧٠٢ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَخْذُ زَكَاةٍ وَلَا تَعْشِيرَ مِمَّا يَتَّجِرُ بِهِ تُجَّارُ الْمُسْلِمِينَ، وَلَا مِنْ كَافِرٍ أَصْلًا - تَجَرَ فِي بِلَادِهِ أَوْ فِي غَيْرِ بِلَادِهِ - إلَّا أَنْ يَكُونُوا صُولِحُوا عَلَى ذَلِكَ مَعَ الْجِزْيَةِ فِي أَصْلِ عَقْدِهِمْ، فَتُؤْخَذُ حِينَئِذٍ مِنْهُمْ وَإِلَّا فَلَا، أَمَّا الْمُسْلِمُونَ فَقَدْ ذَكَرْنَا قَبْلُ أَنَّهُ لَا زَكَاةَ عَلَيْهِمْ فِي الْعُرُوضِ - لِتِجَارَةٍ كَانَتْ أَوْ لِغَيْرِ تِجَارَةٍ - وَأَمَّا الْكُفَّارُ فَإِنَّمَا أَوْجَبَ اللَّهُ تَعَالَى عَلَيْهِمْ الْجِزْيَةَ فَقَطْ، فَإِنْ كَانَ ذَلِكَ صُلْحًا مَعَ الْجِزْيَةِ فَهُوَ حَقٌّ وَعَهْدٌ صَحِيحٌ، وَإِلَّا فَلَا يَحِلُّ أَخْذُ شَيْءٍ مِنْ أَمْوَالِهِمْ بَعْدَ صِحَّةِ عَقْدِ الذِّمَّةِ بِالْجِزْيَةِ وَالصَّغَارِ، مَا لَمْ يَنْقُضُوا الْعَهْدَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ، وَقَالَ أَبُو حَنِيفَةَ: يُؤْخَذُ مِنْ أَهْلِ الذِّمَّةِ إذَا سَافَرُوا نِصْفُ الْعُشْرِ فِي الْحَوْلِ مَرَّةً فَقَطْ وَلَا يُؤْخَذُ مِنْهُمْ مِنْ أَقَلَّ مِنْ مِائَتَيْ دِرْهَمٍ شَيْءٌ، وَكَذَلِكَ

Unless they refrain from levying anything from our traders, in which case we refrain from levying anything from theirs.

يُؤْخَذُ مِنْ الْحَرْبِيِّ الْعُشْرُ إِذَا بَلَغَ مِائَتَيْ دِرْهَمٍ، وَإِلَّا فَلَا، إِلَّا إِنْ كَانُوا لَا يَأْخُذُونَ مِنْ تُجَّارِنَا شَيْئًا فَلَا نَأْخُذُ مِنْ تُجَّارِهِمْ شَيْئًا؟

L11181–11182 Malik said: A tenth is levied on the People of the Dhimma when they trade beyond their territories and sell goods—regardless of whether the quantity is small or large—and this tenth is levied on every trading journey in the same manner, even if they travel multiple times a year. If they trade within their own territories, nothing is levied from them. The same applies to the harbis, except for what they transport specifically to the City [Medina]—specifically wheat and raisins—for only half the tenth is levied in these two cases.

قَالَ مَالِكٌ: يُؤْخَذُ مِنْ أَهْلِ الذِّمَّةِ الْعُشْرُ إِذَا تَجَرُوا إِلَى غَيْرِ بِلَادِهِمْ - مِمَّا قَلَّ أَوْ كَثُرَ - إِذَا بَاعُوا، وَيُؤْخَذُ مِنْهُمْ فِي كُلِّ سُفْرَةٍ كَذَلِكَ، وَلَوْ مِرَارًا فِي السَّنَةِ، فَإِنْ تَجَرُوا فِي بِلَادِهِمْ لَمْ يُؤْخَذْ مِنْهُمْ شَيْءٌ، وَيُؤْخَذُ مِنْ الْحَرْبِيِّينَ كَذَلِكَ إِلَّا فِيمَا حَمَلُوا إِلَى الْمَدِينَةِ خَاصَّةً مِنْ الْحِنْطَةِ، وَالزَّيْتِ خَاصَّةً، فَإِنَّهُ لَا يُؤْخَذُ مِنْهُمْ إِلَّا نِصْفُ الْعُشْرِ فَقَطْ.

L11183 Abu Muhammad said: They argued for that with what was narrated through Ma'mar's chain from al-Zuhri from al-Sa'ib ibn Yazid: "I used to collect the tithe with Abdullah ibn Utbah during Umar ibn al-Khattab's era. He would take from the dhimmis half of a tenth of their wealth on what they traded." And with the hadith of Anas ibn Sirin from Anas ibn Malik from Umar ibn al-Khattab: "Take one dirham from every forty dirhams of the Muslims, one dirham from every twenty dirhams of the dhimmis, and one dirham from every ten dirhams of those without dhimma."

قَالَ أَبُو مُحَمَّد: احْتَجُّوا فِي ذَلِكَ بِمَا رُوِيَ مِنْ طَرِيقِ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ السَّائِبِ بْنِ يَزِيدَ: كُنْتُ أَعْشُرُ مَعَ عَبْدِ اللَّهِ بْنَ عُتْبَةَ زَمَنَ عُمَرَ بْنِ الْخَطَّابِ، فَكَانَ يَأْخُذُ مِنْ أَهْلِ الذِّمَّةِ أَنْصَافَ عُشْرِ أَمْوَالِهِمْ فِيمَا تَجَرُوا بِهِ؟ وَبِحَدِيثِ أَنَسِ بْنِ سِيرِينَ عَنْ أَنَسِ بْنِ مَالِكٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ: خُذْ مِنْ الْمُسْلِمِينَ مِنْ كُلِّ أَرْبَعِينَ دِرْهَمًا دِرْهَمًا، وَمِنْ أَهْلِ الذِّمَّةِ مِنْ كُلِّ عِشْرِينَ دِرْهَمًا دِرْهَمًا، وَمِمَّنْ لَا ذِمَّةَ لَهُ مِنْ كُلِّ عَشَرَةِ دَرَاهِمِ دِرْهَمًا.

L11184 And by way of Ziyād ibn Ḥudayr: "Umar commanded me to take the *'ushr* from the *Banū Taghlib*, and from the Christians among the People of the Book half of the *'ushr*."

وَمِنْ طَرِيقِ زِيَادِ بْنِ حُدَيْرٍ: أَمَرَنِي عُمَرُ بِأَنْ آخُذَ مِنْ بَنِي تَغْلِبَ الْعُشْرَ، وَمِنْ نَصَارَى أَهْلِ الْكِتَابِ نِصْفَ الْعُشْرِ.

L11185–11187 And from the narration of Mālik via al-Zuhrī from al-Sā'ib ibn Yazīd, who said: "I was a boy accompanying ʿAbdullāh ibn ʿUtbah while he oversaw the market of Medina during ʿUmar ibn al-Khaṭṭāb's era. He used to take a tenth from the Nabateans." Abū Muḥammad said: "None of this constitutes proof, as it is not transmitted from the Messenger of Allah (peace be upon him). Moreover, there are indeed many cases where they opposed ʿUmar—as we previously mentioned—and it is impermissible to consider some of ʿUmar's rulings as authoritative while rejecting others. Furthermore, these narrations

وَمِنْ طَرِيقِ مَالِكٍ عَنْ الزُّهْرِيِّ عَنْ السَّائِبِ بْنِ يَزِيدَ قَالَ: كُنْتُ غُلَامًا مَعَ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَلَى سُوقِ الْمَدِينَةِ زَمَانَ عُمَرَ بْنِ الْخَطَّابِ، فَكَانَ يَأْخُذُ مِنْ النَّبَطِ الْعُشْرَ؟ قَالَ أَبُو مُحَمَّد: هَذَا كُلُّهُ لَا حُجَّةَ فِيهِ، لِأَنَّهُ لَيْسَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَأَيْضًا - فَرُبَّ قَضِيَّةٍ خَالَفُوا فِيهَا عُمَرَ قَدْ ذَكَرْنَاهَا آنِفًا، وَلَيْسَ يَجُوزُ أَنْ يَكُونَ بَعْضُ حُكْمِ عُمَرَ

from ʿUmar are contradictory: some mention a tenth from the People of the Book, while others mention half-tenth. What justifies prioritizing some over others? The Mālikīs opposed these narrations by distinguishing between their trade within the regions of their lands and beyond, while the Ḥanafīs opposed them by limiting its levy to once annually, as indicated in these narrations. They cited a weak report via Ibn Abī Dhi'b from ʿAbd al-Raḥmān ibn Mihrān: that ʿUmar wrote to Ayyūb ibn Shuraḥbīl: 'Take from Muslims one dinar for every forty dinars, and from...'" The People of the Book must give one dinar from every twenty dinars if they trade with them. Then nothing is to be taken from them until the Hawl (completion of the lunar year) is reached, for I heard this from those who heard it from those who heard the Prophet (peace and blessings of Allah be upon him).

L11188 Abu Muhammad said: This is from unknown narrators, and there is also no clarification in it that it was heard from the Prophet—peace and blessings of Allah be upon him. Abu Muhammad said: How can this be when we have been narrated from Umar—may Allah be pleased with him—the clarification of all this, as Ahmad ibn Muhammad ibn al-Jasur narrated to us, Muhammad ibn Isa narrated to us, Ali ibn Abdulaziz narrated to us, Abu Ubayd narrated to us, al-Ansari—who is the judge Muhammad ibn Abdullah ibn al-Muthanna—from Sa'id ibn Abi Arubah from Qatadah from Abu Mijlaz, who said: Umar sent Ammar, Ibn Mas'ud, and Uthman ibn Hunayf to Kufa. He mentioned the hadith, in which Uthman ibn Hunayf surveyed the land and placed upon it such and such. He imposed one dirham for every twenty dirhams on the wealth of the dhimmis who differed concerning it and levied upon their heads twenty-four, exempting women and children from that. He then wrote about this to Umar, who approved it.

L11189 Thus, it is established that this was inherent in the foundation of the covenant, contract, and their dhimma. And through him to Abū ʿUbayd: ʿAbd al-Raḥmān ibn Mahdī narrated to us, on the authority of Sufyān al-

حُجَّةً وَبَعْضُهُ لَيْسَ بِحُجَّةٍ، وَأَيْضًا - فَإِنَّ هَذِهِ الْآثَارَ مُخْتَلِفَةٌ عَنْ عُمَرَ، فِي بَعْضِهَا الْعُشْرُ مِنْ أَهْلِ الْكِتَابِ، وَفِي بَعْضِهَا نِصْفُ الْعُشْرِ، فَمَا الَّذِي جَعَلَ بَعْضَهَا أَوْلَى مِنْ بَعْضٍ، وَقَدْ خَالَفَ الْمَالِكِيُّونَ هَذِهِ الْآثَارَ فِي تَفْرِيقِهِمْ بَيْنَ تِجَارَتِهِمْ فِي أَقْطَارِ بِلَادِهِمْ أَوْ غَيْرِهَا، وَخَالَفَهَا الْحَنَفِيُّونَ فِي وَضْعِهِمْ ذَلِكَ مَرَّةً فِي الْعَامِ فَقَطْ، وَذَلِكَ فِي هَذِهِ الْآثَارِ، وَذَكَرُوا فِي ذَلِكَ خَبَرًا فَاسِدًا مِنْ طَرِيقِ ابْنِ أَبِي ذِئْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مِهْرَانَ: أَنَّ عُمَرَ كَتَبَ إلَى أَيُّوبَ بْنِ شُرَحْبِيلَ: خُذْ مِنْ الْمُسْلِمِينَ مِنْ كُلِّ أَرْبَعِينَ دِينَارًا دِينَارًا، وَمِنْ أَهْلِ الْكِتَابِ مِنْ كُلِّ عِشْرِينَ دِينَارًا دِينَارًا، إذَا كَانُوا يُدِيرُونَهَا، ثُمَّ لَا تَأْخُذْ مِنْهُمْ شَيْئًا حَتَّى رَأْسِ الْحَوْلِ، فَإِنِّي سَمِعْتُ ذَلِكَ مِمَّنْ سَمِعَهُ مِمَّنْ سَمِعَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

(قَالَ أَبُو مُحَمَّد: وَهَذَا عَنْ مَجْهُولِينَ، وَلَيْسَ أَيْضًا فِيهِ بَيَانٌ أَنَّهُ سُمِعَ مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -) قَالَ أَبُو مُحَمَّد: فَكَيْفَ وَقَدْ رُوِّينَا عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - بَيَانَ هَذَا كُلِّهِ، كَمَا حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا مُحَمَّدُ بْنُ عِيسَى ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا أَبُو عُبَيْد ثنا الْأَنْصَارِيُّ هُوَ الْقَاضِي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُثَنَّى عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ أَبِي مِجْلَزٍ قَالَ: بَعَثَ عُمَرُ: عَمَّارًا، وَابْنَ مَسْعُودٍ، وَعُثْمَانَ بْنَ حُنَيْفٍ إلَى الْكُوفَةِ - فَذَكَرَ الْحَدِيثَ وَفِيهِ -: أَنَّ عُثْمَانَ بْنَ حُنَيْفٍ مَسَحَ الْأَرْضَ فَوَضَعَ عَلَيْهَا كَذَا وَكَذَا، وَجَعَلَ فِي أَمْوَالِ أَهْلِ الذِّمَّةِ الَّذِينَ يَخْتَلِفُونَ بِهَا مِنْ كُلِّ عِشْرِينَ دِرْهَمًا دِرْهَمًا وَجَعَلَ عَلَى رُءُوسِهِمْ - وَعَطَّلَ مِنْ ذَلِكَ النِّسَاءَ وَالصِّبْيَانَ -: أَرْبَعَةً وَعِشْرِينَ ثُمَّ كَتَبَ بِذَلِكَ إلَى عُمَرَ فَأَجَازَهُ.

Thawrī, from ʿAbd Allāh ibn Khālid al-ʿAbsī, who said: "I asked Ziyād ibn Ḥudayr: 'Whom did you levy the tithe on?' He replied: 'We never levied the tithe on a Muslim nor a covenanted person. We levied it only on merchants from the people of war, just as they would levy it on us when we came to them.'"

فَصَحَّ أَنَّ هَذَا كَانَ فِي أَصْلِ الْعَهْدِ وَالْعَقْدِ وَذِمَّتِهِمْ، وَبِهِ إِلَى أَبِي عُبَيْدٍ: ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ اللَّهِ بْنِ خَالِدٍ الْعَبْسِيِّ قَالَ: سَأَلْتُ زِيَادَ بْنَ حُدَيْرٍ: مَنْ كُنْتُمْ تُعْشِرُونَ؟ قَالَ مَا كُنَّا نُعْشِرُ مُسْلِمًا وَلَا مُعَاهِدًا، كُنَّا نُعْشِرُ تُجَّارَ أَهْلِ الْحَرْبِ كَمَا يُعَشِّرُونَنَا إِذَا أَتَيْنَاهُمْ.

L11190–11192 It is established that such was not taken from one not contracted for it. And through it to Abū ʿUbayd: Muʿāwiyah narrated to us from al-Aʿmash from Shaqīq ibn Salamah from Masrūq, who said: "By Allah, I have performed no deed I dread more as a cause for my entry into the Fire than this deed of yours. I would never wrong a Muslim or covenanted person in this matter a dinar or dirham, but I know not what this covenant is that has not..." "Did the Messenger of Allah (peace and blessings of Allah be upon him) establish it as a Sunnah, or Abu Bakr, or Umar?" They said: "What drove you to take part in it?" He replied: "Ziyad, Shurayh, and Satan would not leave me alone until I became involved in it."

فَصَحَّ أَنَّهُ لَمْ يَكُنْ يُؤْخَذُ ذَلِكَ مِمَّنْ لَمْ يُعَاقَدْ عَلَى ذَلِكَ. وَبِهِ إِلَى أَبِي عُبَيْدٍ: ثنا مُعَاوِيَةُ عَنِ الْأَعْمَشِ عَنْ شَقِيقِ بْنِ سَلَمَةَ عَنْ مَسْرُوقٍ قَالَ: وَاَللَّهِ مَا عَمِلْتُ عَمَلًا أَخْوَفُ عِنْدِي أَنْ يُدْخِلَنِي النَّارَ مِنْ عَمَلِكُمْ هَذَا، وَمَا بِي أَنْ أَكُونَ ظَلَمْتُ فِيهِ مُسْلِمًا أَوْ مُعَاهِدًا دِينَارًا وَلَا دِرْهَمًا، وَلَكِنْ لَا أَدْرِي مَا هَذَا الْحَبْلُ الَّذِي لَمْ يَسُنَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا أَبُو بَكْرٍ، وَلَا عُمَرُ؟ قَالُوا: فَمَا حَمَلَكَ عَلَى أَنْ دَخَلْتَ فِيهِ؟ قَالَ: لَمْ يَدَعْنِي زِيَادٌ، وَلَا شُرَيْحٌ، وَلَا الشَّيْطَانُ، حَتَّى دَخَلْتُ فِيهِ.

L11193 Abu Muhammad said: It is thus established that this is an innovation, and it is impermissible to suspect that ʿUmar—may Allah be pleased with him—breached the terms of their covenant, just as one does not suspect his directive—to take one dirham from every forty dirhams of the Muslims—applies to amounts below two hundred dirhams. And with Allah, the Exalted, lies all success.

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ أَنَّهُ عَمَلٌ مُحْدَثٌ وَلَا يَجُوزُ أَنْ يُظَنَّ بِعُمَرَ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ تَعَدَّى مَا كَانَ فِي عَقْدِهِمْ؛ كَمَا لَا يُظَنُّ بِهِ فِي أَمْرِهِ أَنْ يُؤْخَذَ مِنَ الْمُسْلِمِينَ مِنْ كُلِّ أَرْبَعِينَ دِرْهَمًا دِرْهَمٌ أَنَّهُ فِيمَا هُوَ أَقَلُّ مِنْ مِائَتَيْ دِرْهَمٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L11194 The juristic issue of zakāt pertaining to items found such as ambergris, precious metals, rubies, and emeralds.

[مَسْأَلَةُ الزَّكَاةِ فِيمَا أُصِيبَ مِنَ الْعَنْبَرِ وَالْجَوَاهِرِ وَالْيَاقُوتِ وَالزُّمُرُّدِ]

L11195 A legal issue: There is nothing due on anything obtained from ambergris, gems, rubies, or emeralds—whether marine or terrestrial—and all of it belongs to the one who finds it.

٧٠٣ - مَسْأَلَةٌ: وَلَيْسَ فِي شَيْءٍ مِمَّا أُصِيبَ مِنَ الْعَنْبَرِ وَالْجَوَاهِرِ وَالْيَاقُوتِ وَالزُّمُرُّدِ - بِحَرِيِّهِ وَبَرِّيِّهِ -: شَيْءٌ أَصْلًا، وَهُوَ كُلُّهُ لِمَنْ وَجَدَهُ.

L11196 It has been narrated through the chain of al-Ḥasan ibn ʿUmārah from ʿAmr ibn Dīnār from Ṭāwūs from Ibn ʿAbbās from ʿUmar ibn al-Khaṭṭāb: that

khums (one-fifth tax) is obligatory on ambergris and on everything extracted from the ornaments of the sea. This is the opinion of Abū Yūsuf.

وَقَدْ رُوِيَ مِنْ طَرِيقِ الْحَسَنِ بْنِ عُمَارَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ: أَنَّ فِي الْعَنْبَرِ، وَفِي كُلِّ مَا اُسْتُخْرِجَ مِنْ حِلْيَةِ الْبَحْرِ: الْخُمُسُ وَبِهِ يَقُولُ أَبُو يُوسُفَ.

L11197 Abū Muḥammad said: Al-Ḥasan ibn ʿUmārah is discarded.

قَالَ أَبُو مُحَمَّدٍ: الْحَسَنُ بْنُ عُمَارَةَ مُطْرَحٌ.

L11198 It has been authentically reported that Ibn Abbas said regarding ambergris: "If it contains anything, then the khums (one-fifth) is due in it." This is narrated via the chain of Sufyan ibn Uyaynah from Tawus from his father from Ibn Abbas: "There is nothing due in it."

وَقَدْ صَحَّ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ فِي الْعَنْبَرِ: إنْ كَانَ فِيهِ شَيْءٌ فَفِيهِ الْخُمُسُ، مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ لَا شَيْءَ فِيهِ.

L11199 Abu Muhammad said: The Messenger of Allah, peace be upon him, said: "Indeed, your blood and your wealth are inviolable to you."

قَالَ أَبُو مُحَمَّدٍ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L11200 It is established that it is impermissible to impose a financial penalty on a Muslim for any matter without an authentic scriptural text. It is unanimously affirmed that whatever has no owner belongs to the finder, and success is from Allah, the Most High.

فَصَحَّ أَنَّهُ لَا يَحِلُّ إغْرَامُ مُسْلِمٍ شَيْئًا بِغَيْرِ نَصٍّ صَحِيحٍ، وَكَانَ - بِلَا خِلَافٍ - كُلُّ مَا لَا رَبَّ لَهُ فَهُوَ لِمَنْ وَجَدَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L11201–11202 **Zakat al-Fitr from Ramadan is an obligatory duty required of every Muslim.**

[زَكَاةُ الْفِطْرِ] [مَسْأَلَةٌ زَكَاةُ الْفِطْرِ مِنْ رَمَضَانَ فَرْضٌ وَاجِبٌ عَلَى كُلِّ مُسْلِمٍ]

L11203 704. Issue: The Zakāt al-Fiṭr at the conclusion of Ramadan is an obligatory duty upon every Muslim—adult or minor, male or female, free or slave—even including a fetus in its mother's womb. For each individual, one ṣāʿ of dates or one ṣāʿ of barley is required. We have previously clarified that the ṣāʿ equals four mudds according to the Prophet's measurement—peace and blessings be upon him—as explained earlier. No substitute is valid for what we have specified: neither wheat, nor wheat flour or barley flour, nor bread, nor monetary equivalent. Nothing besides the prescribed items suffices. Abdullah ibn Yūsuf narrated to us from Aḥmad ibn Fatḥ, from ʿAbd al-Wahhāb ibn ʿĪsā, from Aḥmad ibn Muḥammad, from Aḥmad ibn ʿAlī, from Muslim ibn al-

٧٠٤ - مَسْأَلَةٌ: زَكَاةُ الْفِطْرِ مِنْ رَمَضَانَ فَرْضٌ وَاجِبٌ عَلَى كُلِّ مُسْلِمٍ، كَبِيرٍ أَوْ صَغِيرٍ، ذَكَرٍ أَوْ أُنْثَى، حُرٍّ أَوْ عَبْدٍ، وَإِنْ كَانَ مَنْ ذَكَرْنَا جَنِينًا فِي بَطْنِ أُمِّهِ عَنْ كُلِّ وَاحِدٍ صَاعٌ مِنْ تَمْرٍ أَوْ صَاعٌ مِنْ شَعِيرٍ، وَقَدْ قَدَّمْنَا أَنَّ الصَّاعَ أَرْبَعَةُ أَمْدَادٍ بِمُدِّ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ فَسَّرْنَاهُ قَبْلُ، وَلَا يُجْزِئُ شَيْءٌ غَيْرُ مَا ذَكَرْنَا، لَا قَمْحٌ، وَلَا دَقِيقَ قَمْحٍ أَوْ شَعِيرٍ، وَلَا خُبْزَ وَلَا قِيمَةَ، وَلَا شَيْءَ غَيْرَ مَا ذَكَرْنَا، حَدَّثَنَا عَبْدُ اللَّهِ بْنُ

يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيِّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ رَافِعٍ ثنا ابْنُ أَبِي فُدَيْكٍ أَنَا الضَّحَّاكُ بْنُ عُثْمَانَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: «فَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى كُلِّ نَفْسٍ مِنْ الْمُسْلِمِينَ - حُرٍّ أَوْ عَبْدٍ، رَجُلٍ أَوْ امْرَأَةٍ، صَغِيرٍ أَوْ كَبِيرٍ -: صَاعًا مِنْ تَمْرٍ، أَوْ صَاعًا مِنْ شَعِيرٍ» .

Ḥajjāj, from Muḥammad ibn Rāfiʿ, from Ibn Abī Fudayk, from al-Ḍaḥḥāk ibn ʿUthmān, from Nāfiʿ, from Ibn ʿUmar, who said: "Allah's Messenger—peace and blessings be upon him—obligated upon every Muslim soul, whether free or slave, male or female, minor or adult: one ṣāʿ of dates or one ṣāʿ of barley."

L11204 حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا أَبُو إِسْحَاقَ الْبَلْخِيُّ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَحْمَدُ بْنُ يُونُسَ ثنا اللَّيْثُ بْنُ سَعْدٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِزَكَاةِ الْفِطْرِ صَاعًا مِنْ تَمْرٍ، أَوْ صَاعًا مِنْ شَعِيرٍ» .

Abdur Rahman ibn Abdullah ibn Khalid narrated to us, Abu Ishaq al-Balkhi narrated to us, al-Farbari narrated to us, al-Bukhari narrated to us, Ahmad ibn Yunus narrated to us, al-Layth ibn Sa'd narrated to us, from Nafi', from Ibn 'Umar, who said: "The Messenger of Allah (peace be upon him) commanded the giving of Zakāt al-Fiṭr as one *ṣā'* of dates or one *ṣā'* of barley."

L11205 وَقَالَ مَالِكٌ: لَيْسَتْ فَرْضًا، وَاحْتَجَّ لَهُ مَنْ قَلَّدَهُ بِأَنْ قَالَ: مَعْنَى " فَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " أَيُّ قَدَّرَ مِقْدَارَهَا.

Malik said: "It is not obligatory." Those who followed his opinion argued by stating that the meaning of "the Messenger of Allah—peace be upon him—determined" refers to him specifying its ordained measure.

L11206–11207 قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ، لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ وَإِحَالَةُ اللَّفْظِ عَنْ مَوْضُوعِهِ بِلَا دَلِيلٍ. وَقَدْ أَوْرَدْنَا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِهَا وَأَمْرُهُ فَرْضٌ، قَالَ تَعَالَى: {فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ} [النور: ٦٣]

Abu Muhammad said: This is erroneous, as it is an unsupported claim and diverting the wording from its intended meaning without evidence. We have already established that the Messenger of Allah—peace and blessings of Allah be upon him—commanded it, and his command constitutes an obligation. Allah the Exalted said: "Let those who deviate from his command beware, lest a trial strike them or a painful punishment befall them" [An-Nur 24:63].[9]

L11208 وَذَكَرُوا خَبَرًا رُوِّينَاهُ مِنْ طَرِيقِ قَيْسِ بْنِ سَعْدٍ «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِصَدَقَةِ الْفِطْرِ قَبْلَ أَنْ تَنْزِلَ الزَّكَاةُ، فَلَمَّا نَزَلَتْ الزَّكَاةُ لَمْ يَأْمُرْنَا وَلَمْ يَنْهَنَا، وَنَحْنُ نَفْعَلُهُ»

They mentioned a report we narrated through Qays ibn Sa'd: "The Messenger of Allah—peace and blessings be upon him—commanded us to give Sadaqat al-Fitr before Zakāh was revealed. When Zakāh was revealed, he neither commanded us nor forbade us, and we do it."[10]

L11209 وَعَنْهُ أَيْضًا «كُنَّا نَصُومُ عَاشُورَاءَ وَنُعْطِي الْفِطْرَ مَا لَمْ يَنْزِلْ عَلَيْنَا صَوْمُ رَمَضَانَ وَالزَّكَاةُ، فَلَمَّا نَزَلَا لَمْ نُؤْمَرْ وَلَمْ نُنْهَ عَنْهُ، وَنَحْنُ نَفْعَلُهُ»

And he also said: "We used to fast Ashura and give Zakat al-Fitr before

[9] **Qur'an references (L11207):** Qur'an 24:63 (An-Nur).
[10] **Hadith references (L11208):** Sunan Ibn Majah 1828; Sunan an-Nasai 2507.

the obligations of Ramadan fasting and obligatory Zakat were revealed to us. When the two were revealed, we were neither ordered to stop them nor forbidden from them, and we continue to practice them."

L11210 Abū Muḥammad said: This report is a proof for us against them, for it contains the command of Allah's Messenger—peace and blessings be upon him—regarding Zakāt al-Fiṭr, thus making it a prescribed duty. Since he did not later prohibit it, it remained an obligation as it was. As for the day of 'Āshūrā', were it not for the authentic report that he—peace and blessings be upon him—later said, "Whoever wishes may fast it, and whoever wishes may leave it," its obligation would have remained. No similar statement came regarding Zakāt al-Fiṭr, thus invalidating their reliance on this report. The Exalted has said: {Establish prayer and give zakāh} [Al-Baqarah: 43].[11]

L11211 The Messenger of Allah—peace and blessings be upon him—referred to Zakat al-Fitr as Zakat, thus it is encompassed by Allah's command regarding it. The evidence supporting this is exceedingly abundant? It has been narrated to us from Waki', from Sufyan al-Thawrī, from 'Asim ibn Sulayman al-Ahwal, from Muhammad ibn Muhammad ibn Sirin and Abu Qilabah—both of whom declared: "Zakat al-Fitr is an obligation." This is also the opinion of al-Shafi'i, Abu Sulayman, and others. However, some groups permitted things other than what was commanded by the Messenger of Allah—peace and blessings be upon him. One group asserted: "Wheat suffices for it," while others claimed: "Raisins and dried yogurt curds (al-aqiṭ) also suffice."

L11212–11213 They argued using some of these points, such as their statement: "Each person must pay from what they consume and from the staple food of their region's inhabitants." We responded: "This is an invalid claim without evidence. Moreover, you have contradicted it yourselves, for one eats bread rather than grain. Therefore, they have ruled it obligatory to give bread because that is what one consumes and it constitutes the staple of his region's people." If they object: "This differs from what the hadith specifies," we reply: "You have spoken truthfully, and what is excluded are dates and barley." They

[11] **Qur'an references (L11210):** Qur'an 2:43 (Al-Baqarah).

وَقَالَ أَبُو مُحَمَّدٍ وَهَذَا الْخَبَرُ حُجَّةٌ لَنَا عَلَيْهِمْ لِأَنَّ فِيهِ أَمْرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِزَكَاةِ الْفِطْرِ، فَصَارَ أَمْرًا مُفْتَرَضًا ثُمَّ لَمْ يَنْهَ عَنْهُ فَبَقِيَ فَرْضًا كَمَا كَانَ، وَأَمَّا يَوْمُ عَاشُورَاءَ فَلَوْلَا أَنَّهُ - عَلَيْهِ السَّلَامُ - صَحَّ أَنَّهُ قَالَ بَعْدَ ذَلِكَ: «مَنْ شَاءَ صَامَهُ وَمَنْ شَاءَ تَرَكَهُ» لَكَانَ فَرْضُهُ بَاقِيًا، وَلَمْ يَأْتِ مِثْلُ هَذَا الْقَوْلِ فِي زَكَاةِ الْفِطْرِ، فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ، وَقَدْ قَالَ تَعَالَى: {وَأَقِيمُوا الصَّلاةَ وَآتُوا الزَّكَاةَ} [البقرة: ٤٣]

وَقَدْ سَمَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَكَاةَ الْفِطْرِ: زَكَاةً، فَهِيَ دَاخِلَةٌ فِي أَمْرِ اللَّهِ تَعَالَى بِهَا، وَالدَّلَائِلُ عَلَى هَذَا تَكْثُرُ جِدًّا؟ وَرُوِّينَا عَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَاصِمِ بْنِ سُلَيْمَانَ الْأَحْوَلِ عَنْ مُحَمَّدِ بْنِ مُحَمَّدِ بْنِ سِيرِينَ، وَأَبِي قِلَابَةَ قَالَا جَمِيعًا: زَكَاةُ الْفِطْرِ فَرِيضَةٌ، وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمَا. وَأَجَازَ قَوْمٌ أَشْيَاءَ غَيْرَ مَا أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ قَوْمٌ: يُجْزِئُ فِيهَا الْقَمْحُ وَقَالَ آخَرُونَ: وَالزَّبِيبُ، وَالْأَقِطُ.

وَاحْتَجُّوا بِأَشْيَاءَ مِنْهَا -: أَنَّهُمْ قَالُوا: إنَّمَا يُخْرِجُ كُلُّ أَحَدٍ مِمَّا يَأْكُلُ وَمِنْ قُوتِ أَهْلِ بَلَدِهِ، فَقُلْنَا: هَذِهِ دَعْوَى بَاطِلٍ بِلَا بُرْهَانٍ، ثُمَّ قَدْ نَقَضْتُمُوهَا لِأَنَّهُ إنَّمَا يَأْكُلُ الْخُبْزَ لَا الْحَبَّ: فَأَوْجَبُوا أَنْ يُعْطِيَ خُبْزًا لِأَنَّهُ هُوَ أَكَلَهُ، وَهُوَ قُوتُ أَهْلِ بَلَدِهِ، فَإِنْ قَالُوا: هُوَ غَيْرُ مَا جَاءَ بِهِ الْخَبَرُ. قُلْنَا: صَدَقْتُمْ، وَكَذَلِكَ مَا عَدَا التَّمْرَ، وَالشَّعِيرَ، وَقَالُوا: إنَّمَا خَصَّ - عَلَيْهِ السَّلَامُ - بِالذِّكْرِ - التَّمْرَ، وَالشَّعِيرَ، لِأَنَّهُمَا كَانَا قُوتَ أَهْلِ الْمَدِينَةِ.

argued: “The Prophet (peace be upon him) specifically singled out dates and barley because they were the staple food of Medina’s inhabitants.”

L11214 Abū Muḥammad said: This is an extremely abominable statement. The first of that is that it constitutes a manifest lie against the Messenger of Allah—peace and blessings be upon him—for this speaker has attributed to him—peace be upon him—what he did not say, and this is profoundly grave. It must be said to him: From where do you derive that the Messenger of Allah—peace and blessings be upon him—intended to mention wheat and raisins but remained silent about them, directing his speech to dates and barley because they are the staple food of the people of Medina? No one knows this except whom he—peace be upon him—informed of it himself, or one to whom revelation was sent concerning it. Moreover, even if this were valid for them, the obligation would only bind the people of Medina exclusively. Additionally, Allah the Exalted knew and informed His Messenger—peace and blessings be upon him—that He would open for them Syria, Iraq, Egypt, and lands beyond the seas. How then could it be permissible to obscure the religion for the people of these lands—to demand from them a ruling he did not mention and bind them through his speech to what does not obligate them from dates and barley? We seek refuge in Allah from such corrupt and confused conjecture. They have cited invalid narrations: among them a report we transmit via the chain of Ismāʿīl ibn Umayyah from al-Ḥārith ibn ʿAbd al-Raḥmān ibn Abī Dhubāb from ʿIyāḍ ibn ʿAbdullāh from Abū Saʿīd al-Khudrī: “The Messenger of Allah—peace and blessings be upon him—ordained the Fiṭr charity as a ṣāʿ of barley, a ṣāʿ of dates, or a ṣāʿ of dried curds.” Yet al-Ḥārith is a weak narrator. Even if this were authentic, would it not mention only dried curds, not the rest of what they permit?[12]

L11215–11216 And through the chain of Ibn Wahb: Kathīr ibn ʿAbdullāh ibn ʿAmr al-Muzanī, from Rubayḥ ibn ʿAbd al-Raḥmān, from Abū Saʿīd al-Khudrī, from the Prophet (peace be upon him), who mentioned “a *ṣāʿ* of dates, a *ṣāʿ* of raisins, a *ṣāʿ* of *aqiṭ*, or a *ṣāʿ* of barley.” Kathīr ibn ʿAbdullāh is

قَالَ أَبُو مُحَمَّد: وَهَذَا قَوْلٌ فَاحِشٌ جِدًّا، أَوَّلُ ذَلِكَ أَنَّهُ كَذِبٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَكْشُوفٌ، لِأَنَّ هَذَا الْقَائِلَ قَوَّلَهُ - عَلَيْهِ السَّلَامُ - مَا لَمْ يَقُلْ، وَهَذَا عَظِيمٌ جِدًّا، وَيُقَالُ لَهُ: مِنْ أَيْنَ لَكَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرَادَ أَنْ يَذْكُرَ الْقَمْحَ، وَالزَّبِيبَ، فَسَكَتَ عَنْهُمَا وَقَصَدَ إلَى التَّمْرِ، وَالشَّعِيرِ، أَنَّهُمَا قُوتُ أَهْلِ الْمَدِينَةِ، وَهَذَا لَا يَعْلَمُهُ إلَّا مَنْ أَخْبَرَهُ - عَلَيْهِ السَّلَامُ - بِذَلِكَ عَنْ نَفْسِهِ، أَوْ مَنْ نَزَلَ عَلَيْهِ وَحْيٌ بِذَلِكَ، وَأَيْضًا: فَلَوْ صَحَّ لَهُمْ ذَلِكَ لَكَانَ الْفَرْضُ فِي ذَلِكَ لَا يَلْزَمُ إلَّا أَهْلَ الْمَدِينَةِ فَقَطْ، وَأَيْضًا: فَإِنَّ اللَّهَ تَعَالَى قَدْ عَلِمَ وَأَنْذَرَ بِذَلِكَ رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ اللَّهَ تَعَالَى سَيَفْتَحُ لَهُمْ الشَّامَ، وَالْعِرَاقَ، وَمِصْرَ، وَمَا وَرَاءَ الْبِحَارِ، فَكَيْفَ يَجُوزُ أَنْ يَلْبِسَ عَلَى أَهْلِ هَذِهِ الْبِلَادِ دِينَهُمْ؟ فَيُرِيدُ مِنْهُمْ أَمْرًا وَلَا يَذْكُرُهُ لَهُمْ وَيُلْزِمُهُمْ بِكَلَامِهِ مَا لَا يُلْزِمُهُمْ مِنْ التَّمْرِ، وَالشَّعِيرِ؟ وَنَعُوذُ بِاَللَّهِ مِنْ مِثْلِ هَذَا الظَّنِّ الْفَاسِدِ الْمُخْتَلَطِ، وَاحْتَجُّوا بِأَخْبَارٍ فَاسِدَةٍ لَا تَصِحُّ -: مِنْهَا خَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي ذُبَابٍ عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ: «فَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَدَقَةَ الْفِطْرِ: صَاعًا مِنْ شَعِيرٍ، أَوْ صَاعًا مِنْ تَمْرٍ، أَوْ صَاعًا مِنْ أَقِطٍ» وَالْحَارِثُ ضَعِيفٌ، ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ إلَّا الْأَقِطُ لَا سَائِرَ مَا يُجِيزُونَ؟

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ كَثِيرِ بْنِ عَبْدِ اللَّهِ بْنِ عَمْرٍو الْمُزَنِيِّ عَنْ رُبَيْحِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ «صَاعًا مِنْ تَمْرٍ، أَوْ

[12] **Hadith references (L11214):** Sunan an-Nasai 2511.

rejected; narration from him is impermissible. Even if authentic, it would contain nothing except the *aqiṭ* and raisins.

صَاعًا مِنْ زَبِيبٍ، أَوْ صَاعًا مِنْ أَقِطٍ، أَوْ صَاعًا مِنْ شَعِيرٍ.» وَكَثِيرُ بْنُ عَبْدِ اللَّهِ سَاقِطٌ، لَا تَجُوزُ الرِّوَايَةُ عَنْهُ، ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ فِيهِ إِلَّا الْأَقِطُ، وَالزَّبِيبُ.

L11217 From the chain of Nasr ibn Hammad, from Abu Ma'shar al-Madani, from Nafi', from Ibn 'Umar, from the Prophet (peace and blessings of Allah be upon him), who mentioned "a sa' [a volume measure] of dates, or barley, or wheat," and said: "Make them self-sufficient so they need not go around [seeking help] on this day." This Abu Ma'shar al-Madani is Nujayḥ, a discarded narrator; he transmits forged ḥadīths from Nafi' and others.

وَمِنْ طَرِيقِ نَصْرِ بْنِ حَمَّادٍ عَنْ أَبِي مَعْشَرٍ الْمَدَنِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ «صَاعًا مِنْ تَمْرٍ، أَوْ مِنْ شَعِيرٍ، أَوْ مِنْ قَمْحٍ، وَيَقُولُ أَغْنُوهُمْ عَنْ تَطْوَافِ هَذَا الْيَوْمِ» . وَأَبُو مَعْشَرٍ الْمَدَنِيُّ هَذَا نَجِيحٌ مُطَّرَحٌ يُحَدِّثُ بِالْمَوْضُوعَاتِ عَنْ نَافِعٍ وَغَيْرِهِ.

L11218–11220 From the path of Ya'lā, from Ḥammād ibn Zayd, from al-Nu'mān ibn Rashād, from al-Zuhrī, from Tha'labah ibn Abī Ṣu'ayr, from his father, from the Prophet - peace and blessings of Allāh be upon him: "A ṣā' of wheat from every male or female, young or old, rich or poor, free or enslaved." Al-Nu'mān ibn Rāshid is weak, prone to frequent errors. Furthermore, even if it were authentic, Abū Ḥanīfah would have opposed it, because he... It requires only half a *ṣā'* of wheat.

وَمِنْ طَرِيقِ يَعْلَى عَنْ حَمَّادِ بْنِ زَيْدٍ عَنِ النُّعْمَانِ بْنِ رَشَادٍ عَنِ الزُّهْرِيِّ عَنْ ثَعْلَبَةَ بْنِ أَبِي صُعَيْرٍ عَنْ أَبِيهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «صَاعًا مِنْ بُرٍّ عَنْ كُلِّ ذَكَرٍ أَوْ أُنْثَى، صَغِيرٍ أَوْ كَبِيرٍ، غَنِيٍّ أَوْ فَقِيرٍ، حُرٍّ أَوْ مَمْلُوكٍ» وَالنُّعْمَانُ بْنُ رَاشِدٍ ضَعِيفٌ كَثِيرُ الْغَلَطِ، ثُمَّ لَوْ صَحَّ لَكَانَ أَبُو حَنِيفَةَ قَدْ خَالَفَهُ، لِأَنَّهُ لَا يُوجِبُ إِلَّا نِصْفَ صَاعٍ مِنْ بُرٍّ.

L11221 From the chain of Hammām ibn Yaḥyā: Bakr ibn Wā'il ibn Dāwūd narrated to us, who narrated to us from Al-Zuhrī, from ʿAbdullāh ibn Thaʿlabah or Thaʿlabah ibn ʿAbdullāh, that the Prophet (peace and blessings of Allah be upon him) instructed regarding Ṣadaqat al-Fiṭr: a ṣāʿ of dates, a ṣāʿ of barley per individual, or a ṣāʿ of wheat to be shared between two.

وَمِنْ طَرِيقِ هَمَّامِ بْنِ يَحْيَى: ثنا بَكْرُ بْنُ وَائِلِ بْنِ دَاوُد ثنا الزُّهْرِيُّ عَنْ عَبْدِ اللَّهِ بْنِ ثَعْلَبَةَ، أَوْ ثَعْلَبَةَ بْنِ عَبْدِ اللَّهِ «عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَمَرَ فِي صَدَقَةِ الْفِطْرِ: صَاعَ تَمْرٍ، أَوْ صَاعَ شَعِيرٍ عَلَى كُلِّ وَاحِدٍ، أَوْ صَاعَ قَمْحٍ بَيْنَ اثْنَيْنِ» .

L11222 From Ibn Jurayj from al-Zuhri from ʿAbd Allāh ibn Thaʿlabah from the Prophet—peace and blessings of Allāh be upon him—both chains being mursal; and through the chain of Musaddad from Ḥammād ibn Zayd from al-Nuʿmān ibn Rāshid from al-Zuhri from Thaʿlabah ibn Abī Ṣuʿayr from his father, from the Prophet—peace and blessings of Allāh be upon him—regarding Sadaqat al-Fiṭr: "A ṣāʿ of wheat for every two people."

وَعَنِ ابْنِ جُرَيْجٍ عَنِ الزُّهْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ ثَعْلَبَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَانِ مُرْسَلَانِ: وَمِنْ طَرِيقِ مُسَدَّدٍ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنِ النُّعْمَانِ بْنِ رَاشِدٍ عَنِ الزُّهْرِيِّ عَنْ ثَعْلَبَةَ بْنِ أَبِي صُعَيْرٍ عَنْ أَبِيهِ «عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي صَدَقَةِ الْفِطْرِ: صَاعٌ مِنْ قَمْحٍ عَلَى كُلِّ اثْنَيْنِ» .

L11223 From the chain of Sulaymān ibn Dāwūd al-ʿAtakī, from Ḥammād ibn Zayd, from al-Nuʿmān ibn Rāshid, from al-Zuhrī, from ʿAbdullāh ibn Thaʿlaba - or

وَمِنْ طَرِيقِ سُلَيْمَانَ بْنِ دَاوُد الْعَتَكِيّ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ النُّعْمَانِ بْنِ رَاشِدٍ عَنْ الزُّهْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ ثَعْلَبَةَ، أَوْ ثَعْلَبَةَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي صُعَيْرٍ عَنْ أَبِيهِ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي صَدَقَةِ الْفِطْرِ: صَاعٌ مِنْ بُرٍّ عَلَى كُلِّ اثْنَيْنِ» . فَحَصَل هَذَا الْحَدِيثُ رَاجِعًا إلَى رَجُلٍ مَجْهُولِ الْحَالِ، مُضْطَرِبٍ عَنْهُ، مُخْتَلَفٍ فِي اسْمِهِ، مَرَّةً: عَبْدُ اللَّهِ بْنُ ثَعْلَبَةَ، وَمَرَّةً: ثَعْلَبَةُ بْنُ عَبْدِ اللَّهِ وَلَا خِلَافَ فِي أَنَّ الزُّهْرِيَّ لَمْ يَلْقَ ثَعْلَبَةَ بْنِ أَبِي صُعَيْرٍ، وَلَيْسَ لِعَبْدِ اللَّهِ بْنِ ثَعْلَبَةَ صُحْبَةٌ.

Tha'laba ibn 'Abdullāh ibn Abī Ṣu'ayr - from his father: "The Prophet - peace and blessings of Allāh be upon him - ruled regarding Zakāt al-Fiṭr: a ṣā' of wheat is obligatory for every two individuals." This ḥadīth traces back to a narrator of unknown reliability, with conflicting reports attributed to him and disagreement about his name - sometimes called 'Abdullāh ibn Tha'laba, other times Tha'laba ibn 'Abdullāh. There is unanimous agreement that al-Zuhrī never met Tha'laba ibn Abī Ṣu'ayr, and that 'Abdullāh ibn Tha'laba was not a Companion.

وَأَحْسَنُ حَدِيثٍ فِي هَذَا الْبَابِ مَا حَدَّثَنَاهُ هَمَّامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ ثنا مُوسَى بْنُ إسْمَاعِيلَ ثنا هَمَّامُ بْنُ يَحْيَى عَنْ بَكْرِ بْنِ وَائِلٍ، أَنَّ الزُّهْرِيَّ حَدَّثَهُ عَنْ عَبْدِ اللَّهِ بْنِ ثَعْلَبَةَ بْنِ أَبِي صُعَيْرٍ عَنْ أَبِيهِ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَامَ خَطِيبًا فَأَمَرَ بِصَدَقَةِ الْفِطْرِ، صَاعَ تَمْرٍ، أَوْ صَاعَ شَعِيرٍ عَنْ كُلِّ وَاحِدٍ»

L11224–11226 The best narration in this chapter is what Hammām narrated to us: 'Abbās ibn Aṣbagh narrated to us, Muḥammad ibn 'Abd al-Malik ibn Ayman narrated to us, Aḥmad ibn Zuhayr ibn Ḥarb narrated to us, Mūsā ibn Ismā'īl narrated to us, Hammām ibn Yaḥyā narrated from Bakr ibn Wā'il that al-Zuhrī narrated to him from 'Abdullāh ibn Tha'labah ibn Abī Ṣu'ayr from... From his father: "The Prophet—peace and blessings of Allah be upon him—stood to deliver a sermon and commanded the giving of Sadaqat al-Fitr as one *sa'a* of dates or one *sa'a* of barley for every individual."

وَلَمْ يَذْكُرْ " الْبُرَّ " وَلَا شَيْئًا غَيْرَ التَّمْرِ وَالشَّعِيرِ: وَلَكِنَّا لَا نَحْتَجُّ بِهِ؛ لِأَنَّ عَبْدَ اللَّهِ بْنَ ثَعْلَبَةَ مَجْهُولٌ - ثُمَّ هَذَا كُلُّهُ مُخَالِفٌ لِقَوْلِ مَالِكٍ، وَالشَّافِعِيِّ، وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ عَنْ أَبِي يَزِيدَ الْمَدَنِيِّ «أَعْطَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِمُظَاهِرٍ شَعِيرًا وَقَالَ: أَطْعِمْ هَذَا، فَإِنَّ مُدَّيْنِ مِنْ شَعِيرٍ يَقْضِيَانِ مُدًّا مِنْ قَمْحٍ» وَهَذَا مُرْسَلٌ.

L11227 He did not mention "wheat" nor anything other than dates and barley. However, we do not rely on this, because Abdullah ibn Tha'labah is an unknown narrator. Moreover, all of this contradicts the opinion of Malik and al-Shafi'i. Narrated through Hammad ibn Zayd from Ayyub from Abu Yazid al-Madani: "The Messenger of Allah (peace be upon him) gave barley to a man who had declared dhihar and said: 'Feed this, for two mudds of barley suffice for one mudd of wheat.'" This is a mursal narration.

وَمِنْ طَرِيقِ ابْنِ جَرِيرٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا حَجَّ بَعَثَ صَارِخًا فِي بَطْنِ مَكَّةَ: أَلَا إنَّ زَكَاةَ الْفِطْرِ حَقٌّ وَاجِبٌ عَلَى كُلِّ مُسْلِمٍ مُدَّانِ مِنْ حِنْطَةٍ، أَوْ صَاعٌ مِمَّا سِوَى ذَلِكَ مِنْ الطَّعَامِ» وَهَذَا مُرْسَلٌ.

L11228 And through the chain of Ibn Jarir from Amr ibn Shu'ayb: "When the Messenger of Allah - peace and blessings be upon him - performed Hajj, he sent a caller in the valley of Mecca proclaiming, 'Verily, the Zakat al-Fitr is an obligatory duty upon every Muslim: two mudd of wheat or one sa' of other types of food.'" This is a *mursal* narration.

L11229 From Jābir al-Juʿfī, on the authority of al-Shaʿbī: “During the time of the Messenger of Allah—peace and blessings be upon him—they would give Zakāt al-Fiṭr as a ṣāʿ of dates, a ṣāʿ of barley, or half a ṣāʿ of wheat.” This is a *mursal* narration.

وَعَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الشَّعْبِيِّ «كَانُوا يُخْرِجُونَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَكَاةَ الْفِطْرِ صَاعًا مِنْ تَمْرٍ، أَوْ صَاعًا مِنْ شَعِيرٍ أَوْ نِصْفَ صَاعٍ مِنْ بُرٍّ.» وَهَذَا مُرْسَلٌ.

L11230 From the narration of Al-Layth from Abd al-Rahman ibn Khalid ibn Musafir, Uqayl ibn Khalid, and Amr ibn al-Harith. Abd al-Rahman and Uqayl narrated from Al-Zuhri, while Amr narrated from Yazid ibn Abd Allah ibn Qusayt. Then Yazid and Al-Zuhri concurred in narrating from Saʿid ibn al-Musayyab: “The Messenger of Allah—peace and blessings be upon him—prescribed Zakat al-Fitr as two mudds of wheat.” This narration is mursal.

وَمِنْ طَرِيقِ اللَّيْثِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ خَالِدِ بْنِ مُسَافِرٍ، وَعُقَيْلِ بْنِ خَالِدٍ، وَعَمْرِو بْنِ الْحَارِثِ قَالَ عَبْدُ الرَّحْمَنِ، وَعُقَيْلٌ: عَنْ الزُّهْرِيِّ، وَقَالَ عَمْرٌو: عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ ثُمَّ اتَّفَقَ يَزِيدُ، وَالزُّهْرِيُّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ «فَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَدَقَةَ الْفِطْرِ: مُدَّيْنِ حِنْطَةً» وَهَذَا مُرْسَلٌ.

L11231–11232 Similarly—from Ubayd Allah ibn Abdullah ibn Utbah, Al-Qasim ibn Muhammad ibn Abi Bakr, Salim ibn Abdullah ibn Umar, and Abu Salamah ibn Abd al-Rahman ibn Awf (all transmitting from the Messenger of Allah, peace be upon him)—these are Marasil (disconnected narrations).

وَمِثْلُهُ أَيْضًا - عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ، وَالْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، كُلِّهِمْ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهِيَ مَرَاسِيلُ.

L11233 And narrated through the chain of Humaid, from Al-Hasan, from Ibn Abbas: “The Messenger of Allah (peace and blessings be upon him) prescribed it—that is, the Zakat al-Fitr—as one _sa‘_ of dates, or one _sa‘_ of barley, or half a _sa‘_ of husked wheat.” There is no authentic report of Al-Hasan’s direct hearing from Ibn Abbas.

وَمِنْ طَرِيقِ حُمَيْدٍ عَنْ الْحَسَنِ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَضَهَا - يَعْنِي زَكَاةَ الْفِطْرِ - صَاعًا مِنْ تَمْرٍ، أَوْ صَاعًا مِنْ شَعِيرٍ، أَوْ نِصْفَ صَاعٍ مِنْ بُرٍّ» وَلَا يَصِحُّ لِلْحَسَنِ سَمَاعٌ مِنْ ابْنِ عَبَّاسٍ.

L11234 It has also been narrated through the chain of Abū Hurayrah, Aws ibn al-Ḥārith, and ʿAmr ibn Shuʿayb from his father from his grandfather. All of that is unsound, should not be preoccupied with, and none would act upon it except an ignorant person.

وَرُوِيَ أَيْضًا - مِنْ طَرِيقِ أَبِي هُرَيْرَةَ، وَأَوْسِ بْنِ الْحَارِثِ وَعَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ. وَكُلُّ ذَلِكَ لَا يَصِحُّ، وَلَا يَشْتَغِلُ بِهِ، وَلَا يَعْمَلُ بِهِ إلَّا جَاهِلٌ.

L11235 Abū Muḥammad said: This is among the matters wherein each group contradicted their own foundational principles. As for the Shāfiʿīs, they report that al-Shāfiʿī held the *mursal* of Saʿīd ibn al-Musayyib as authoritative, yet they disregarded his *mursal* in this instance. Al-Shāfiʿī stated in the more famous of his two opinions that Zakāt al-Fiṭr is valid only from grains liable to

قَالَ أَبُو مُحَمَّد: وَهَذَا مِمَّا نَقَضَتْ كُلُّ طَائِفَةٍ مِنْهُمْ فِيهِ أَصْلَهَا -: فَأَمَّا الشَّافِعِيُّونَ فَإِنَّهُمْ يَقُولُونَ عَنْ الشَّافِعِيِّ: بِأَنَّ مُرْسَلَ سَعِيدِ بْنِ الْمُسَيِّبِ حُجَّةٌ، وَقَدْ تَرَكُوا هَاهُنَا مُرْسَلَ سَعِيدِ بْنِ الْمُسَيِّبِ: وَقَالَ الشَّافِعِيُّ: فِي أَشْهَرِ قَوْلَيْهِ لَا تُجْزِئُ زَكَاةُ الْفِطْرِ إلَّا مِنْ حَبٍّ

Zakāt, suspended judgment regarding *aqiṭ* (dried curd), but permitted it in another opinion. As for the Mālikīs, while they accept *mursal* reports and equate them with *musnad* (fully-chained narrations), they rejected *mursal* transmissions here that—by their own principles of accepting *mursal* reports—ought to have been admissible, given their abundance, widespread recognition, and transmission through the jurists of Medina.

تَخْرُجُ مِنْهُ الزَّكَاةُ، وَتُوقَفُ فِي الْأَقِطِ، وَأَجَازَهُ مَرَّةً أُخْرَى -: وَأَمَّا الْمَالِكِيُّونَ، فَأَجَازُوا الْمُرْسَلَ وَجَعَلُوهُ كَالْمُسْنَدِ، وَخَالَفُوا هَاهُنَا مِنَ الْمَرَاسِيلِ مَا لَوْ جَازَ قَبُولُ شَيْءٍ مِنْهَا لَجَازَ هَاهُنَا، لِكَثْرَتِهَا وَشُهْرَتِهَا وَمَجِيئِهَا مِنْ طَرِيقِ فُقَهَاءِ الْمَدِينَةِ.

L11236–11237 As for the Ḥanafīs, according to their most renowned narrations from him, they considered raisins equivalent to wheat in that half a *ṣāʿ* suffices. They only permitted dried yogurt by substituting its value and did not sanction anything besides wheat, barley, their flour, their roasted barley meal and roasted wheat meal, dates, and raisins—except through value substitution. This opposes some of these transmitted reports and contradicts all of them regarding the validity of value substitution. The greatest astonishment lies in their consensus that when a report's transmitter abandons it, this constitutes evidence for dismissing the report—as they did with the narration concerning "washing a vessel seven times due to a dog's lapping."

وَأَمَّا الْحَنَفِيُّونَ فَإِنَّهُمْ - فِي أَشْهَرِ رِوَايَاتِهِمْ عَنْهُ - جَعَلَ الزَّبِيبَ كَالْبُرِّ فِي أَنَّهُ يُجْزِئُ مِنْهُ نِصْفُ صَاعٍ، وَلَمْ يُجِزْ الْأَقِطَ إِلَّا بِالْقِيمَةِ، وَلَا أَجَازَ غَيْرَ الْبُرِّ، وَالشَّعِيرِ وَدَقِيقِهِمَا وَسَوِيقِهِمَا، وَالتَّمْرِ، وَالزَّبِيبِ فَقَطْ إِلَّا بِالْقِيمَةِ، وَهَذَا خِلَافٌ لِبَعْضِ هَذِهِ الْآثَارِ وَخِلَافٌ لِجَمِيعِهَا فِي إِجَازَةِ الْقِيمَةِ، وَالْعَجَبُ كُلُّهُ مِنْ إِطْبَاقِهِمْ عَلَى أَنَّ رَاوِيَ الْخَبَرِ إِذَا تَرَكَهُ كَانَ ذَلِكَ دَلِيلًا عَلَى سُقُوطِ الْخَبَرِ، كَمَا فَعَلُوا فِي خَبَرِ «غَسْلِ الْإِنَاءِ مِنْ وُلُوغِ الْكَلْبِ سَبْعًا» .

L11238 Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Muʿawiyah narrated to us: Ahmad ibn Shuʿayb narrated to us: ʿAli ibn Maymun al-Ruqi (from Ruqa) narrated to us from Makhlad ibn al-Husayn, from Hisham ibn Hassan, from Ibn Sirin, from Ibn ʿAbbas, who said: He mentioned Sadaqat al-Fitr and said: "A saʿ of wheat, or a saʿ of dates, or a saʿ of barley, or a saʿ of sult (husked barley)."

وَقَدْ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَلِيُّ بْنُ مَيْمُونٍ الرُّقِّيُّ عَنْ مَخْلَدٍ هُوَ ابْنُ الْحُسَيْنِ - عَنْ هِشَامٍ هُوَ ابْنُ حَسَّانَ - عَنْ ابْنِ سِيرِينَ عَنْ ابْنِ عَبَّاسٍ قَالَ: ذَكَرَ فِي صَدَقَةِ الْفِطْرِ فَقَالَ " صَاعٌ مِنْ بُرٍّ، أَوْ صَاعٌ مِنْ تَمْرٍ، أَوْ صَاعٌ مِنْ شَعِيرٍ، أَوْ صَاعٌ مِنْ سُلْتٍ ".

L11239 Ibn Abbas has contradicted what was narrated through the most authentic chain that exists from him, thus obligating them to reject that narration; otherwise, they have undermined their own foundational principle. They cited in this matter a sound ḥadīth which we have narrated through the chain of Mālik from Zayd ibn Aslam from ʿIyāḍ ibn ʿAbdullāh, who heard Abū Saʿīd al-Khudrī state: "We would discharge Zakāt al-Fiṭr as a ṣāʿ of staple food, or a ṣāʿ of barley, or a ṣāʿ of dates, or a ṣāʿ of dried cottage cheese, or a ṣāʿ of raisins."

فَهَذَا ابْنُ عَبَّاسٍ قَدْ خَالَفَ مَا رُوِيَ بِأَصَحِّ إِسْنَادٍ يَكُونُ عَنْهُ فَوَاجِبٌ عَلَيْهِمْ رَدُّ تِلْكَ الرِّوَايَةِ، وَإِلَّا فَقَدْ نَقَضُوا أَصْلَهُمْ. وَذَكَرُوا فِي ذَلِكَ حَدِيثًا صَحِيحًا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ أَنَّهُ سَمِعَ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ: " كُنَّا نُخْرِجُ زَكَاةَ الْفِطْرِ، صَاعًا مِنْ طَعَامٍ، أَوْ صَاعًا مِنْ شَعِيرٍ، أَوْ صَاعًا مِنْ تَمْرٍ، أَوْ صَاعًا مِنْ أَقِطٍ، أَوْ صَاعًا مِنْ زَبِيبٍ "

L11240 Abu Muhammad said: This is unauthenticated, and it also contains conflicting reports in the transmission attributed to Abu Sa'id.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا غَيْرُ مُسْنَدٍ، وَهُوَ أَيْضًا مُضْطَرِبٌ فِيهِ عَلَى أَبِي سَعِيدٍ.

L11241 We have transmitted it via Al-Bukhārī's transmission: Mu'ādh ibn Faḍālah narrated to us [Abū 'Umar narrated to us] from Zayd (who is Ibn Aslam) from 'Iyāḍ ibn 'Abdullāh from Abū Sa'īd al-Khudrī, who said: "During the time of the Messenger of Allah—peace be upon him—we used to give out on the day of Eid al-Fitr a *ṣā'* of food, and our food was: barley, raisins, dried cottage cheese, and dates."

فَرُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ: ثنا مُعَاذُ بْنُ فَضَالَةَ [حَدَّثَنَا أَبُو عُمَرَ] عَنْ زَيْدٍ هُوَ ابْنُ أَسْلَمَ - عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «كُنَّا نُخْرِجُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ الْفِطْرِ صَاعًا مِنْ طَعَامٍ، وَكَانَ طَعَامُنَا: الشَّعِيرَ، وَالزَّبِيبَ، وَالْأَقِطَ وَالتَّمْرَ» .

L11242–11244 From the narration of ʿAbd al-Razzāq, from Maʿmar, from Ismāʿīl ibn Umayyah: ʿIyāḍ ibn ʿAbd Allāh informed me that he heard Abū Saʿīd al-Khudrī say: "We used to give Zakāt al-Fiṭr - while the Messenger of Allah (peace be upon him) was among us - from... [text incomplete]" "Every person, whether minor or adult, free or enslaved, is obligated to give one of three types: a *ṣāʿ* of dates, a *ṣāʿ* of dried cottage cheese, or a *ṣāʿ* of barley."[13]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ أَخْبَرَنِي عِيَاضُ بْنُ عَبْدِ اللَّهِ أَنَّهُ سَمِعَ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ: «كُنَّا نُخْرِجُ زَكَاةَ الْفِطْرِ - وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِينَا عَنْ كُلِّ صَغِيرٍ وَكَبِيرٍ، حُرٍّ وَمَمْلُوكٍ -: مِنْ ثَلَاثَةِ أَصْنَافٍ: صَاعًا مِنْ تَمْرٍ، صَاعًا مِنْ أَقِطٍ، صَاعًا مِنْ شَعِيرٍ.»

L11245 Abu Sa'id said: As for me, I continue to bring it out in that way.

قَالَ أَبُو سَعِيدٍ: فَأَمَّا أَنَا فَلَا أَزَالُ أُخْرِجُهُ كَذَلِكَ.

L11246 And from the narration of Sufyān ibn 'Uyaynah: Ibn 'Ajlān narrated to us, saying: "I heard 'Iyāḍ ibn 'Abdullāh report from Abū Sa'īd al-Khudrī, who said: 'We did not pay as charity during the time of Allah's Messenger (peace and blessings be upon him) except a ṣāʿ measure of dates, a ṣāʿ measure of barley, a ṣāʿ measure of raisins, a ṣāʿ measure of dried curd, a ṣāʿ measure of flour, or a ṣāʿ measure of peeled barley.'" Then Sufyān doubted and said: "Was it flour or peeled barley?"

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ: ثنا ابْنُ عَجْلَانَ سَمِعْتُ عِيَاضَ بْنَ عَبْدِ اللَّهِ يُخْبِرُ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: «لَمْ نُخْرِجْ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا صَاعًا مِنْ تَمْرٍ، أَوْ صَاعًا مِنْ شَعِيرٍ، أَوْ صَاعًا مِنْ زَبِيبٍ، أَوْ صَاعًا مِنْ أَقِطٍ، أَوْ صَاعًا مِنْ دَقِيقٍ، أَوْ صَاعًا مِنْ سُلْتٍ ثُمَّ شَكَّ سُفْيَانُ فَقَالَ: دَقِيقٌ أَوْ سُلْتٌ» .

L11247 And through the chain of al-Layth from Yazid—who is the son of Abī Ḥabīb—from 'Abdullāh ibn 'Abdullāh ibn 'Uthmān, that 'Iyāḍ ibn 'Iyāḍ ibn 'Abdullāh narrated to him that Abū Saʿīd al-Khudrī said: "During the time of Allah's Messenger—peace and blessings be upon him—we would give one *ṣāʿ* of dates, one *ṣāʿ* of barley, or one *ṣāʿ* of dried curd as Zakat al-Fitr, and we would not give anything else." Abū Muḥammad said: "In some of

وَمِنْ طَرِيقِ اللَّيْثِ عَنْ يَزِيدَ هُوَ ابْنُ أَبِي حَبِيبٍ - عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُثْمَانَ أَنَّ عِيَاضَ بْنَ عِيَاضِ بْنِ عَبْدِ اللَّهِ حَدَّثَهُ أَنَّ أَبَا سَعِيدٍ الْخُدْرِيَّ قَالَ «كُنَّا نُخْرِجُ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَاعًا مِنْ تَمْرٍ، أَوْ صَاعًا مِنْ شَعِيرٍ، أَوْ صَاعًا مِنْ أَقِطٍ، لَا نُخْرِجُ غَيْرَهُ» يَعْنِي فِي زَكَاةِ الْفِطْرِ، قَالَ أَبُو مُحَمَّدٍ: فَفِي بَعْضِ هَذِهِ الْأَخْبَارِ

[13] **Hadith references (L11242):** Sahih Muslim 985c.

these reports lies a complete invalidation of giving wheat altogether. Others affirm raisins while negating them, and others affirm dried curd entirely. They contain nothing beyond this. Yet they criticize authenticated reports—which are irreproachable—for inconsistencies lesser than this, such as the ḥadīth invalidating the prohibition due to one or two breastfeedings and similar matters."[14]

إِبْطَالُ إِخْرَاجِ " الْبُرِّ " جُمْلَةً، وَفِي بَعْضِهَا إِثْبَاتُ الزَّبِيبِ، وَفِي بَعْضِهَا نَفْيُهُ، وَإِثْبَاتُ الْأَقِطِ جُمْلَةً، وَلَيْسَ فِيهَا شَيْءٌ غَيْرُ ذَلِكَ، وَهُمْ يَعِيبُونَ الْأَخْبَارَ الْمُسْنَدَةَ - الَّتِي لَا مَغْمَزَ فِيهَا - بِأَقَلَّ مِنْ هَذَا الِاضْطِرَابِ، كَحَدِيثِ إِبْطَالِ تَحْرِيمِ الرَّضْعَةِ وَالرَّضْعَتَيْنِ وَغَيْرِ ذَلِكَ.

L11248–11250 Moreover, none of all this constitutes a musnad narration, for none of it indicates that the Messenger of Allah (peace and blessings be upon him) was aware of it and approved it. It is no wonder that most of those who assert regarding the established narration of Jabir—"We used to sell enslaved mothers of children (ummahāt al-awlād) during the time of the Messenger of Allah (peace and blessings be upon him)"—and the established narration of Asmā bint Abī Bakr—"We slaughtered a horse during the time of the Messenger of Allah (peace and blessings be upon him) and ate it"—argue that these two are not musnad, since neither mentions that the Messenger of Allah (peace and blessings be upon him) was aware of it and approved it. Yet this narration of Abū Sa'īd is nevertheless considered musnad despite its internal inconsistency and the contradiction among its transmitters in it. Let every person of intellect declare: Which is more plausible—that the Messenger of Allah (peace and blessings of Allah be upon him) remained unaware of a companion's sale of his umm walad, or of a horse slaughtered in the house of Abu Bakr al-Siddiq or al-Zubair—their two houses adjoining the house of the Messenger of Allah (peace and blessings of Allah be upon him), with the Prophet's daughter present there—considering the esteem of horses among them, their scarcity, and their necessity? Or [is it likelier he was unaware of] a Muslim man's charity among Banu Khudra in Medina's uplands consisting of a sa' of dried yogurt, or a sa' of raisins and a sa' of wheat? Had a horse been slaughtered for food in one quarter of Baghdad, it could not have been concealed in the opposite quarter. Yet if a woman among us or an adjacent neighbor gave a sa' of dried yogurt, or a sa' of raisins and a sa' of wheat as charity, he would scarcely know of it in most instances.

ثُمَّ إِنَّهُ لَيْسَ مِنْ هَذَا كُلِّهِ خَبَرٌ مُسْنَدٌ؛ لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلِمَ بِذَلِكَ فَأَقَرَّهُ، وَلَا عَجَبَ أَكْثَرَ مِمَّنْ يَقُولُ فِي خَبَرِ جَابِرٍ الثَّابِتِ: «كُنَّا نَبِيعُ أُمَّهَاتِ الْأَوْلَادِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» وَحَدِيثُ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الثَّابِتُ «ذَبَحْنَا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَسًا فَأَكَلْنَاهُ» أَنَّ هَذَانِ لَيْسَا مُسْنَدَيْنِ " لِأَنَّهُ لَيْسَ فِيهِمَا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلِمَ بِذَلِكَ فَأَقَرَّهُ، ثُمَّ يَجْعَلُ حَدِيثَ أَبِي سَعِيدٍ هَذَا مُسْنَدًا عَلَى اضْطِرَابِهِ وَتَعَارُضِ رُوَاتِهِ فِيهِ فَلْيَقُلْ كُلُّ ذِي عَقْلٍ: أَيُّمَا أَوْلَى أَنْ يَكُونَ لَا يَخْفَى عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْعُ رَجُلٍ مِنْ أَصْحَابِهِ أُمَّ وَلَدِهِ، أَوْ ذَبْحُ فَرَسٍ فِي بَيْتِ أَبِي بَكْرٍ الصِّدِّيقِ أَوْ بَيْتِ الزُّبَيْرِ، وَبَيْتَاهُمَا مُطْنِبَانِ بِبَيْتِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَابْنَتُهُ عِنْدَهُ، عَلَى عِزَّةِ الْخَيْلِ عِنْدَهُمْ وَقِلَّتِهَا وَحَاجَتِهِمْ إِلَيْهَا، أَمْ صَدَقَةُ رَجُلٍ مِنْ الْمُسْلِمِينَ فِي بَنِي خُدْرَةَ فِي عَوَالِي الْمَدِينَةِ بِصَاعٍ أَقِطٍ، أَوْ صَاعِ زَبِيبٍ، وَلَوْ ذُبِحَ فَرَسٌ لِلْأَكْلِ فِي جَانِبٍ مِنْ جَوَانِبِ بَغْدَادَ مَا كَانَ يُمْكِنُ أَنْ يَخْفَى فِي الْجَانِبِ الْآخَرِ، وَلَوْ تَصَدَّقَتْ امْرَأَةٌ أَحَدُنَا أَوْ جَارُهُ الْمُلَاصِقُ بِصَاعِ أَقِطٍ، أَوْ صَاعِ زَبِيبٍ وَصَاعِ قَمْحٍ، مَا كَادَ هُوَ يَعْلَمُهُ فِي الْأَغْلَبِ؛ فَاعْجَبُوا لِعَكْسِ هَؤُلَاءِ الْقَوْمِ الْحَقَائِقَ، ثُمَّ إِنَّ هَذِهِ الطَّوَائِفَ الثَّلَاثَةَ مُخَالِفَةٌ لِمَا فِي هَذَا الْخَبَرِ.

[14] **Hadith references (L11247):** Sunan an-Nasai 2518.

Marvel, then, at how these people have inverted realities! Furthermore, these three groups contradict what is stated in this report.

L11251 As for Abū Ḥanīfa, the most well-known of his opinions is that half a *sa‘* of raisins suffices and that dried yogurt is not valid except by its monetary value.

أَمَّا أَبُو حَنِيفَةَ فَأَشْهَرُ أَقْوَالِهِ أَنَّ نِصْفَ صَاعِ زَبِيبٍ يُجْزِئُ وَأَنَّ الْأَقِطَ لَا يُجْزِئُ إِلَّا بِالْقِيمَةِ.

L11252 As for Al-Shafi‘i, the most well-known of his opinions is that dried curd is not valid [as Zakāt]. Yet he permitted paying Zakāt with items these narrations prohibit—including from what was not specified in them, such as corn and others.

وَأَمَّا الشَّافِعِيُّ فَأَشْهَرُ أَقْوَالِهِ أَنَّ الْأَقِطَ لَا يُجْزِئُ، وَأَجَازَ إِخْرَاجَ مَا مَنَعَتْ هَذِهِ الْأَخْبَارُ مِنْ إِخْرَاجِهِ، مِمَّا لَمْ يَذْكُرْ فِيهَا مِنَ الذُّرَةِ وَغَيْرِ ذَلِكَ.

L11253 As for the Mālikīs and Shāfi‘īs, they opposed it entirely, for they do not permit giving any of the items mentioned in this report except to one whose staple food it is. The report of Abū Sa‘īd is undisputed as establishing optionality. Yet all of them permit giving what these reports prohibit. Who is more misguided than one who invokes as proof that which he himself is the foremost to contradict? This is not an act of God-consciousness, nor of righteousness, nor of sincere counsel for those Muslims who allowed themselves to be deceived by them.

وَأَمَّا الْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ فَخَالَفُوهَا جُمْلَةً، لِأَنَّهُمْ لَا يُجِيزُونَ إِخْرَاجَ شَيْءٍ مِنْ هَذِهِ الْمَذْكُورَاتِ فِي هَذَا الْخَبَرِ إِلَّا لِمَنْ كَانَتْ قُوتَهُ، وَخَبَرُ أَبِي سَعِيدٍ لَا يُخْتَلَفُ فِيهِ أَنَّهُ عَلَى التَّخْيِيرِ، وَكُلُّهُمْ يُجِيزُ إِخْرَاجَ مَا مَنَعَتْ هَذِهِ الْأَخْبَارُ مِنْ إِخْرَاجِهِ، فَمَنْ أَضَلُّ مِمَّنْ يَحْتَجُّ بِمَا هُوَ أَوَّلُ مُخَالِفٍ لَهُ مَا هَذَا مِنَ التَّقْوَى، وَلَا مِنَ الْبِرِّ، وَلَا مِنَ النُّصْحِ لِمَنْ أَغْتَرَّ بِهِمْ مِنَ الْمُسْلِمِينَ.

L11254–11256 As for us—by Allah—if anything from all the reports we mentioned were soundly supported, we would hasten to act upon it without hesitation. But none of them—not even one—has a sound chain of transmission, rendering it impermissible to adopt them in Allah's religion. Some of them said: "We only affirmed the permissibility of wheat due to its widespread acceptance among scholars." Yet the steed of certain individuals bolted recklessly, falsely claiming consensus on the matter through audacity and ignorance. They cited what we have narrated through Abd al-Razzaq's chain from Ma'mar, from Ayyub al-Sakhtiyani, from Nafi. From Ibn ‘Umar: "The Messenger of Allah—peace be upon him—obligated Zakāt al-Fiṭr upon every male and female, free or enslaved: a ṣā‘ of dates or a ṣā‘ of barley." Ibn ‘Umar said: "Thereafter, the people equated it to two _mudds_ of wheat."

وَأَمَّا نَحْنُ فَوَاللَّهِ لَوْ انْسَنَدَ صَحِيحًا شَيْءٌ مِنْ كُلِّ مَا ذَكَرْنَا مِنَ الْأَخْبَارِ لَبَادَرْنَا إِلَى الْأَخْذِ بِهِ، وَمَا تَوَقَّفْنَا عِنْدَ ذَلِكَ، لَكِنَّهُ لَيْسَ مِنْهَا مُسْنَدٌ صَحِيحٌ وَلَا وَاحِدٌ، فَلَا يَحِلُّ الْأَخْذُ بِهَا فِي دِينِ اللَّهِ تَعَالَى، وَقَالَ بَعْضُهُمْ: إِنَّمَا قُلْنَا بِجَوَازِ الْقَمْحِ لِكَثْرَةِ الْقَائِلِينَ بِهِ، وَجَمَحَ فَرَسُ بَعْضِهِمْ فَادَّعَى الْإِجْمَاعَ فِي ذَلِكَ جُرْأَةً وَجَهْلًا، فَذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ «فَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَكَاةَ الْفِطْرِ عَلَى الذَّكَرِ، وَالْأُنْثَى، وَالْحُرِّ، وَالْعَبْدِ: صَاعًا مِنْ تَمْرٍ، أَوْ صَاعًا مِنْ شَعِيرٍ. قَالَ ابْنُ عُمَرَ: فَعَدَلَهُ النَّاسُ بَعْدُ: مُدَّيْنِ مِنْ قَمْحٍ» .

L11257 And through the chain of Ḥammād ibn Zayd from Ayyūb al-Sakhtiyānī

from Nāfiʿ from Ibn ʿUmar: “Afterwards, the people equated it to half a ṣāʿ of wheat.”

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «فَعَدَلَ النَّاسُ بَعْدُ نِصْفَ صَاعٍ مِنْ بُرٍّ»

L11258 Ibn Umar used to give dates. When the people of Medina lacked dates for a year, so he gave barley.

وَكَانَ ابْنُ عُمَرَ يُعْطِي التَّمْرَ، فَأَعْوَزَ أَهْلُ الْمَدِينَةِ التَّمْرَ عَامًا فَأَعْطَى الشَّعِيرَ “.

L11259 Abū Muḥammad said: If Ibn ʿUmar had regarded the people’s actions as binding evidence, he would not have permitted opposing him. Allah the Exalted has said: Truly, the people have gathered against you [Āl ʿImrān: 173].[15]

قَالَ أَبُو مُحَمَّد: لَوْ كَانَ فِعْلُ النَّاسِ حُجَّةً عِنْدَ ابْنِ عُمَرَ مَا اسْتَجَازَ خِلَافَهُ، وَقَدْ قَالَ اللَّهُ تَعَالَى: {إِنَّ النَّاسَ قَدْ جَمَعُوا لَكُمْ} [آل عمران: ١٧٣] .

L11260 No proof can be levied against the Messenger of Allah (peace and blessings of Allah be upon him) from the people, but he is a proof over the people and over the jinn governing them. We draw near to Allah the Exalted by opposing the people whom Ibn ʿUmar opposed in drawing near to Him. They cited what we have narrated through the chain of Ḥusayn from Zāʾidah, who narrated from ʿAbd al-ʿAzīz ibn Abī Rawwād from Nāfiʿ from Ibn ʿUmar: “In the time of the Messenger of Allah (peace and blessings of Allah be upon him), the people would give Zakāt al-Fiṭr as a ṣāʿ of barley, dates, raisins, or hulled barley.” Abū Muḥammad said: This lacks a connected chain, for it does not state that the Messenger of Allah (peace and blessings of Allah be upon him) knew of this and approved it. Even if their opposition to him were transmitted with a chain and authenticated, it would be like their opposition to Saʿīd which we mentioned. Their exaggerated concern is invalidated by the phrase ’the people would give’—contrary to Ibn ʿUmar’s report about them, exactly as in Abū Saʿīd’s narration, without difference. Moreover, the narrator of this report, ʿAbd al-ʿAzīz ibn Abī Rawwād, is weak in reliability and rejected in narration.

وَلَا حُجَّةَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالنَّاسِ، لَكِنَّهُ حُجَّةٌ عَلَى النَّاسِ وَعَلَى الْجِنِّ مَعَهُمْ، وَنَحْنُ نَتَقَرَّبُ إلَى اللَّهِ تَعَالَى بِخِلَافِ النَّاسِ الَّذِينَ تَقَرَّبَ ابْنُ عُمَرَ إلَيْهِ بِخِلَافِهِمْ، وَذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ حُسَيْنٍ عَنْ زَائِدَةَ ثنا عَبْدُ الْعَزِيزِ بْنُ أَبِي رُوَادٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «كَانَ النَّاسُ يُخْرِجُونَ صَدَقَةَ الْفِطْرِ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَاعًا مِنْ شَعِيرٍ، أَوْ تَمْرٍ، أَوْ زَبِيبٍ، أَوْ سُلْتٍ» قَالَ أَبُو مُحَمَّد: هَذَا لَا يَنْسَنِدُ، لِأَنَّهُ لَيْسَ فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلِمَ ذَلِكَ وَأَقَرَّهُ، ثُمَّ خِلَافُهُمْ لَهُ - لَوْ أُسْنِدَ وَصَحَّ - كَخِلَافِهِمْ لِسَعِيدٍ الَّذِي ذَكَرْنَا، وَإِبْطَالُ تَهْوِيلِهِمْ بِمَا فِيهِ مِنْ “ كَانَ النَّاسُ يُخْرِجُونَ ” بِخِلَافِ ابْنِ عُمَرَ الْمُخْبِرِ عَنْهُمْ كَمَا فِي خَبَرِ أَبِي سَعِيدٍ سَوَاءً سَوَاءً، وَأَيْضًا - فَإِنَّ رَاوِيَ هَذَا الْخَبَرِ عَبْدُ الْعَزِيزِ بْنُ أَبِي رُوَادٍ، وَهُوَ ضَعِيفٌ مُنْكَرُ الْحَدِيثِ.

L11261–11262 Muhammad ibn Saʿīd ibn Nabāt narrated to us; ʿAbdullāh ibn Naṣr narrated to us; Qāsim ibn Aṣbagh narrated to us; Ibn Waḍḍāḥ narrated to us; Mūsā ibn Muʿāwiyah narrated to us; Wakīʿ narrated to us, from ʿImrān ibn Ḥudayr, from Abū Mijlaz, who said: I said to Ibn ʿUmar, “Allah has granted ample

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ ثنا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعٌ عَنْ عِمْرَانَ بْنِ حُدَيْرٍ عَنْ أَبِي مِجْلَزٍ قَالَ قُلْت لِابْنِ عُمَرَ:

[15] **Qur’an references (L11259):** Qur’an 3:173 (Ali ’Imran).

provision, and wheat is superior to dates" – meaning concerning Sadaqat al-Fiṭr – so Ibn ʿUmar replied: "My companions followed a path, and I desire to follow it."

إِنَّ اللَّهَ قَدْ أَوْسَعَ، وَالْبُرُّ أَفْضَلُ مِنْ التَّمْرِ - يَعْنِي فِي صَدَقَةِ الْفِطْرِ - فَقَالَ ابْنُ عُمَرَ: إِنَّ أَصْحَابِي سَلَكُوا طَرِيقًا فَأَنَا أُحِبُّ أَنْ أَسْلُكَهُ.

L11263 Abu Muhammad said: Now, this Ibn Umar—we have mentioned that he would only give dates or barley and would not give wheat. When he was questioned about this, he explained that in this practice he followed the way of his companions. Such are those whose disagreement causes unease, for they are the Companions—may Allah be pleased with them—following the soundest way. Verily, they would claim consensus on the basis of less than this when they found it.

قَالَ أَبُو مُحَمَّد: فَهَذَا ابْنُ عُمَرَ قَدْ ذَكَرْنَا أَنَّهُ كَانَ لَا يُخْرِجُ إلَّا التَّمْرَ، أَوْ الشَّعِيرَ، وَلَا يُخْرِجُ الْبُرَّ، وَقِيلَ لَهُ فِي ذَلِكَ، فَأَخْبَرَ أَنَّهُ فِي عَمَلِهِ ذَلِكَ عَلَى طَرِيقِ أَصْحَابِهِ، فَهَؤُلَاءِ هُمْ النَّاسُ الَّذِينَ يُسْتَوْحَشُ مِنْ خِلَافِهِمْ وَهُمْ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ -، بِأَصَحِّ طَرِيقٍ، وَإِنَّهُمْ لَيَدَّعُونَ الْإِجْمَاعَ بِأَقَلَّ مِنْ هَذَا إذَا وَجَدُوهُ.

L11264 On the authority of Aflah ibn Humaid: Al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq would discharge the Zakat al-Fitr as a *sa'* of dates.

وَعَنْ أَفْلَحَ بْنِ حُمَيْدٍ: كَانَ الْقَاسِمُ بْنُ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ يُخْرِجُ زَكَاةَ الْفِطْرِ صَاعًا مِنْ تَمْرٍ.

L11265 From the narration of Hisham ibn Urwah from his father: When the day of Fitr arrived, he would send a sa' of dates as sadaqah for each member of his household. From the narration of Ibn Abi Shaybah: Hammad ibn Mas'adah narrated to us from Khalid ibn Abi Bakr, who said: Salim ibn Abdullah would only give out dates – meaning as sadaqat al-Fitr.

وَمِنْ طَرِيقِ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ: أَنَّهُ كَانَ إذَا كَانَ يَوْمُ الْفِطْرِ أَرْسَلَ صَدَقَةَ كُلِّ إنْسَانٍ مِنْ أَهْلِهِ صَاعًا مِنْ تَمْرٍ، وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: ثنا حَمَّادُ بْنُ مَسْعَدَةَ عَنْ خَالِدِ بْنِ أَبِي بَكْرٍ قَالَ: كَانَ سَالِمُ بْنُ عَبْدِ اللَّهِ لَا يُخْرِجُ إلَّا تَمْرًا " يَعْنِي فِي صَدَقَةِ الْفِطْرِ.

L11266 These individuals—Ibn Umar, Al-Qāsim, Sālim, and Urwah—only give dates as Sadaqat al-Fiṭr, though it is undisputed that their staple food is wheat, and their wealth would indeed suffice to give the value of a ṣāʿ [of wheat] in dirhams for themselves without diminishing their possessions. May Allah be pleased with them. If it is objected: "Are they not from the people of Medina?" We respond: The Messenger of Allah—peace and blessings be upon him—did not restrict the ruling of Sadaqat al-Fiṭr to the people of Medina to the exclusion of the people of China, nor did he direct it exclusively to the people of Medina while excluding others.

فَهَؤُلَاءِ: ابْنُ عُمَرَ، وَالْقَاسِمُ، وَسَالِمٌ، وَعُرْوَةُ: لَا يُخْرِجُونَ فِي صَدَقَةِ الْفِطْرِ إلَّا التَّمْرَ، وَهُمْ يَقْتَاتُونَ الْبُرَّ بِلَا خِلَافٍ، وَإِنَّ أَمْوَالَهُمْ لَتَسَعُ إلَى إخْرَاجِ صَاعِ دَرَاهِمَ عَنْ أَنْفُسِهِمْ، وَلَا يُؤَثِّرُ ذَلِكَ فِي أَمْوَالِهِمْ. - رَضِيَ اللَّهُ عَنْهُمْ - فَإِنْ قِيلَ: هُمْ مِنْ أَهْلِ الْمَدِينَةِ؟ قُلْنَا: مَا خَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِحُكْمِ صَدَقَةِ الْفِطْرِ أَهْلَ الْمَدِينَةِ مِنْ أَهْلِ الصِّينِ، وَلَا بَعَثَ إلَى أَهْلِ الْمَدِينَةِ دُونَ غَيْرِهِمْ.

L11267–11269 It is utterly astonishing that Mālik permitted discharging zakāh with sorghum, millet, and rice for those whose staple food these are—though none are mentioned in the narrations whatsoever—while prohibiting flour because it is absent from the narrations. He forbade legumes even if they

وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ إجَازَةِ مَالِكٍ إخْرَاجَ الذُّرَةِ، وَالدُّخْنِ، وَالْأُرْزِ لِمَنْ كَانَ ذَلِكَ قُوتَهُ، وَلَيْسَ شَيْءٌ مِنْ ذَلِكَ مَذْكُورًا فِي شَيْءٍ مِنْ الْأَخْبَارِ أَصْلًا، وَمَنَعَ مِنْ إخْرَاجِ

were the payer's staple, and prohibited figs and olives despite their being staples. This is contradictory, opposes the narrations, reflects flawed analogy, and invalidates their own reasoning—for they asserted wheat's superiority over barley without justification. That flour, bread (from wheat), and sugar are superior to wheat, as they are less costly and provide quicker benefits. At times, [jurists] permit what is not mentioned in the narrated texts, and at times, they prohibit what is not mentioned in them. And success is from Allah, the Most High.

الدَّقِيقِ لِأَنَّهُ لَمْ يُذْكَرْ فِي الْأَخْبَارِ، وَمَنَعَ مِنْ إخْرَاجِ الْقَطَانِيِّ وَإِنْ كَانَتْ قُوتَ الْمُخْرِجِ، وَمَنَعَ مِنْ التِّينِ، وَالزَّيْتُونِ، وَإِنْ كَانَا قُوتَ الْمُخْرِجِ، وَهَذَا تَنَاقُضٌ، وَخِلَافٌ لِلْأَخْبَارِ، وَتَخَاذُلٌ فِي الْقِيَاسِ، وَإِبْطَالُهُمْ لِتَعْلِيلِهِمْ بِأَنَّ الْبُرَّ أَفْضَلُ مِنْ الشَّعِيرِ، وَلَا شَكَّ فِي أَنَّ الدَّقِيقَ وَالْخُبْزَ مِنْ الْبُرِّ وَالسُّكَّرُ أَفْضَلُ مِنْ الْبُرِّ وَأَقَلُّ مُؤْنَةً وَأَعْجَلُ نَفْعًا، فَمَرَّةً يُجِيزُونَ مَا لَيْسَ فِي الْخَبَرِ، وَمَرَّةً يَمْنَعُونَ مِمَّا لَيْسَ فِي الْخَبَرِ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L11270 The same ruling applies to the Shāfiʿīs, with no distinction.

وَهَكَذَا الْقَوْلُ فِي الشَّافِعِيِّينَ وَلَا فَرْقَ.

L11271 Abu Muhammad said: The Hanafi scholars clamored using narrations—of which, Allah willing, we will mention a selection—:

قَالَ أَبُو مُحَمَّدٍ: وَشَغِبَ الْحَنَفِيُّونَ بِأَخْبَارٍ نَذْكُرُ مِنْهَا طَرَفًا إنْ شَاءَ اللَّهُ تَعَالَى -:

L11272 Among them is a report - we narrated it through the path of Sufyān and Shuʿbah, both of whom narrated from ʿĀṣim ibn Sulaymān al-Aḥwal who heard Abū Qilābah say: "One who delivered to Abū Bakr al-Ṣiddīq half a ṣāʿ of burr wheat as Zakāt al-Fiṭr narrated to me."

مِنْهَا خَبَرٌ - رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ، وَشُعْبَةَ، كِلَاهُمَا عَنْ عَاصِمِ بْنِ سُلَيْمَانَ الْأَحْوَلِ سَمِعَ أَبَا قِلَابَةَ قَالَ: حَدَّثَنِي مَنْ أَدَّى إلَى أَبِي بَكْرٍ الصِّدِّيقِ نِصْفَ صَاعٍ بُرٍّ فِي صَدَقَةِ الْفِطْرِ.

L11273 From the narration of al-Ḥusayn ibn ʿAlī al-Juʿfī, from Zāʾida, from ʿAbd al-ʿAzīz ibn Abī Ruwād, from Nāfiʿ, from Ibn ʿUmar, who said: "During the time of the Messenger of Allah—peace be upon him—people would give the *ṣadaqat al-fiṭr* as one *ṣāʿ* of barley, dates, hulled barley, or raisins." Ibn ʿUmar added: "When ʿUmar was in authority and wheat became plentiful, he instituted half a *ṣāʿ* of wheat in place of a *ṣāʿ* of those items."

وَمِنْ طَرِيقِ الْحُسَيْنِ بْنِ عَلِيٍّ الْجُعْفِيِّ عَنْ زَائِدَةَ عَنْ عَبْدِ الْعَزِيزِ بْنِ أَبِي رُوَادٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: «كَانَ النَّاسُ يُخْرِجُونَ صَدَقَةَ الْفِطْرِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَاعًا مِنْ شَعِيرٍ، أَوْ تَمْرٍ، أَوْ سُلْتٍ، أَوْ زَبِيبٍ. قَالَ ابْنُ عُمَرَ: فَلَمَّا كَانَ عُمَرُ وَكَثُرَتْ الْحِنْطَةُ جَعَلَ عُمَرُ نِصْفَ صَاعِ حِنْطَةٍ مَكَانَ صَاعٍ مِنْ تِلْكَ الْأَشْيَاءِ» .

L11274 And through the chain of Hammad ibn Zayd from Khalid al-Hadhdha' from Abi Qilabah from Abi al-Ash'ath, that he heard Uthman ibn Affan—may Allah be pleased with him—while delivering a sermon, saying concerning Sadaqat al-Fitr: a *sa'* of dates, or a *sa'* of barley, or half a *sa'* of *burr* (wheat).

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْأَشْعَثِ أَنَّهُ سَمِعَ عُثْمَانَ بْنَ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُ - وَهُوَ يَخْطُبُ، فَقَالَ: فِي صَدَقَةِ الْفِطْرِ: صَاعٌ مِنْ تَمْرٍ، أَوْ صَاعٌ مِنْ شَعِيرٍ، أَوْ نِصْفُ صَاعٍ مِنْ بُرٍّ.

L11275 And via Wakiʿ from Sufyan al-Thawri, from ʿAbd al-Aʿlā, from Abu ʿAbd

al-Rahman al-Sulami, from Ali ibn Abi Talib that he said: A saʿ of dates, a saʿ of barley, or half a saʿ of wheat.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الْأَعْلَى عَنْ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: صَاعٌ مِنْ تَمْرٍ، أَوْ صَاعٌ مِنْ شَعِيرٍ، أَوْ نِصْفُ صَاعٍ مِنْ بُرٍّ.

L11276 From the narration of Jarīr from Manṣūr from Ibrāhīm from al-Aswad from ʿĀ'ishah, the Mother of the Believers, who said: "People used to give half a *ṣāʿ* as the Zakat of Ramadan. However, since Allah the Exalted has granted people abundance, I believe one should give a *ṣāʿ* as Zakat al-Fitr."

وَمِنْ طَرِيقِ جَرِيرٍ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ عَنْ الْأَسْوَدِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ " كَانَ النَّاسُ يُعْطُونَ زَكَاةَ رَمَضَانَ نِصْفَ صَاعٍ، فَأَمَّا إِذْ أَوْسَعَ اللَّهُ تَعَالَى عَلَى النَّاسِ فَإِنِّي أَرَى أَنْ يَتَصَدَّقَ بِصَاعٍ ".

L11277–11279 And through the chain of transmission narrated by Waki', from Hishām ibn ʿUrwah, from Fāṭimah bint al-Mundhir: Asmāʾ bint Abī Bakr al-Ṣiddīq was [...]. One gives Sadaqat al-Fitr—for one's dependents—a ṣāʿ of dates, barley, or half a ṣāʿ of wheat. Through the narration of Ibn Jurayj: Abū l-Zubayr informed me that he heard Jābir ibn ʿAbd Allāh say: Sadaqat al-Fitr is incumbent upon every Muslim as two mudds of wheat, or a ṣāʿ of dates or barley.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ فَاطِمَةَ بِنْتِ الْمُنْذِرِ: كَانَتْ أَسْمَاءُ بِنْتُ أَبِي بَكْرٍ الصِّدِّيقِ تُعْطِي زَكَاةَ الْفِطْرِ - عَمَّنْ تَمُونَ - صَاعًا مِنْ تَمْرٍ، صَاعًا مِنْ شَعِيرٍ، أَوْ نِصْفَ صَاعٍ مِنْ بُرٍّ، وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: صَدَقَةُ الْفِطْرِ عَلَى كُلِّ مُسْلِمٍ مُدَّانِ مِنْ قَمْحٍ، أَوْ صَاعٍ مِنْ تَمْرٍ أَوْ شَعِيرٍ.

L11280 From the narration of Maʿmar from al-Zuhri from ʿAbd al-Rahman from Abu Hurairah, who said: Zakat al-Fitr is due upon every person, poor and rich, as one saʿ of dates or half a saʿ of wheat.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ قَالَ: زَكَاةُ الْفِطْرِ عَلَى كُلِّ فَقِيرٍ وَغَنِيٍّ صَاعٌ مِنْ تَمْرٍ، أَوْ نِصْفُ صَاعٍ مِنْ قَمْحٍ.

L11281 From Ibn Jurayj: ʿAmr ibn Dīnār informed me that he heard Ibn al-Zubayr proclaiming upon the pulpit: The *zakāh al-fiṭr* is two mudd of wheat, a ṣāʿ of barley, or dates.

وَعَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ أَنَّهُ سَمِعَ ابْنَ الزُّبَيْرِ يَقُولُ عَلَى الْمِنْبَرِ: زَكَاةُ الْفِطْرِ مُدَّانِ مِنْ قَمْحٍ، أَوْ صَاعٌ مِنْ شَعِيرٍ، أَوْ تَمْرٍ.

L11282 ʿAmr ibn Dīnār said: "This also came to me from Ibn ʿAbbās."

قَالَ عَمْرُو بْنُ دِينَارٍ: وَبَلَغَنِي هَذَا أَيْضًا عَنْ ابْنِ عَبَّاسٍ.

L11283 From the transmission of ʿAbd al-Karīm Abū Umayyah, from Ibrāhīm al-Nakhaʿī, from ʿAlqamah, and from al-Aswad—both narrating from ʿAbd Allāh ibn Masʿūd—who said: Two mudd measures of wheat, or a saʿ of dates, or a saʿ of barley—this being in reference to Sadaqat al-Fitr.

وَمِنْ طَرِيقِ عَبْدِ الْكَرِيمِ أَبِي أُمَيَّةَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ. وَالْأَسْوَدِ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: مُدَّانِ مِنْ قَمْحٍ، أَوْ صَاعٍ مِنْ تَمْرٍ، أَوْ شَعِيرٍ - يَعْنِي فِي صَدَقَةِ الْفِطْرِ.

L11284 From the transmission of Muslim ibn al-Hajjaj: Abdullah ibn Maslamah ibn Qaʿnab narrated to us, Dawud—meaning ibn Qays—narrated to us, from

Iyad ibn Abdullah, from Abu Saʿid al-Khudri, who said: “We used to give Zakat al-Fitr—when the Messenger of Allah, peace and blessings be upon him, was among us—as a saʿ of dried curd, a saʿ of food, or a saʿ of raisins. We continued to give that until Muʿawiyah came as a pilgrim performing Hajj or Umrah. He addressed the people from the pulpit and said: ’I deem that two mudds of Syrian white wheat are equivalent to a saʿ of dates.’ So the people adopted that. Abu Saʿid said: ’As for me, I will never give it in any way other than as I used to, as long as I live.’”

وَمِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ: ثنا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ بْنِ قَعْنَبَ ثنا دَاوُد يَعْنِي ابْنَ قَيْسٍ - عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «كُنَّا نُخْرِجُ - إِذْ كَانَ فِينَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَكَاةَ الْفِطْرِ صَاعًا مِنْ أَقِطٍ، أَوْ صَاعًا مِنْ طَعَامٍ، أَوْ صَاعًا مِنْ زَبِيبٍ، فَلَمْ نَزَلْ نُخْرِجُ ذَلِكَ حَتَّى قَدِمَ مُعَاوِيَةُ حَاجًّا أَوْ مُعْتَمِرًا، فَكَلَّمَ النَّاسَ عَلَى الْمِنْبَرِ فَقَالَ: إِنِّي أَرَى أَنَّ مُدَّيْنِ مِنْ سَمْرَاءَ الشَّامِ تَعْدِلُ صَاعًا مِنْ تَمْرٍ، فَأَخَذَ النَّاسُ بِذَلِكَ. قَالَ أَبُو سَعِيدٍ: فَأَمَّا أَنَا فَلَا أُخْرِجُهُ أَبَدًا مَا عِشْتُ كَمَا كُنْتُ أُخْرِجُهُ» .

L11285–11286 From the chain of Ḥammād ibn Salamah, from Yūnus ibn ʿUbayd, from al-Ḥasan al-Baṣrī: That Marwān sent to Abū Saʿīd, “Dispatch to me the zakāh due on your slaves.” Abū Saʿīd responded, “Verily Marwān does not know. Upon us is only to provide for every individual at each Eid al-Fiṭr a *ṣāʿ* of dates or half a *ṣāʿ* of wheat.”

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ: أَنَّ مَرْوَانَ بَعَثَ إلَى أَبِي سَعِيدٍ: أَنْ ابْعَثْ إلَيَّ بِزَكَاةِ رَقِيقِكَ، فَقَالَ أَبُو سَعِيدٍ: إنَّ مَرْوَانَ لَا يَعْلَمُ، إنَّمَا عَلَيْنَا أَنَّ نُطْعِمَ عَنْ كُلِّ رَأْسٍ عِنْدَ كُلِّ فِطْرٍ صَاعَ تَمْرٍ، أَوْ نِصْفَ صَاعِ بُرٍّ.

L11287 We have been narrated through the chain of Muḥammad ibn Isḥāq, who narrated to us: ʿAbdullāh ibn ʿAbdullāh ibn ʿUthmān ibn Ḥakīm ibn Ḥizām, from ʿIyāḍ ibn Saʿd, who said: “I mentioned Sadaqat al-Fitr to Abū Saʿīd al-Khudrī. He replied: ’I only give out what I used to give out during the time of the Messenger of Allah—peace and blessings be upon him—a *ṣāʿ* of dates, a *ṣāʿ* of barley, a *ṣāʿ* of raisins, or a *ṣāʿ* of dried curd.’ It was said to him: ’Or two *mudds* of wheat?’ He responded: ’No, that is Muʿāwiyah’s valuation. I do not accept it, nor do I follow it.’”

وَرُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ إِسْحَاقَ ثنا عَبْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُثْمَانَ بْنِ حَكِيمِ بْنِ حِزَامٍ عَنْ عِيَاضِ بْنِ سَعْدٍ قَالَ: " ذَكَرْتُ لِأَبِي سَعِيدٍ الْخُدْرِيِّ صَدَقَةَ الْفِطْرِ؟ فَقَالَ لَا أُخْرِجُ إلَّا مَا كُنْتُ أُخْرِجُ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَاعًا مِنْ تَمْرٍ، أَوْ صَاعًا مِنْ شَعِيرٍ، أَوْ صَاعَ زَبِيبٍ أَوْ صَاعَ أَقِطٍ، فَقِيلَ لَهُ: أَوْ مُدَّيْنِ مِنْ قَمْحٍ؟ فَقَالَ: لَا، تِلْكَ قِيمَةُ مُعَاوِيَةَ، لَا أَقْبَلُهَا، وَلَا أَعْمَلُ بِهَا ".

L11288 Here, Abū Saʿīd prohibits “burr” entirely and anything beyond what has been mentioned. It has been authentically established from ʿUmar ibn ʿAbd al-ʿAzīz that a person’s obligation for Ṣadaqat al-Fiṭr is half a ṣāʿ of burr or its value, according to the administrative authorities, which is half a dirham.

فَهَذَا أَبُو سَعِيدٍ يَمْنَعُ مِنْ " الْبُرِّ " جُمْلَةً، وَمِمَّا عَدَا مَا ذُكِرَ، وَصَحَّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ إيجَابُ نِصْفِ صَاعٍ مِنْ بُرٍّ عَلَى الْإِنْسَانِ فِي صَدَقَةِ الْفِطْرِ، أَوْ قِيمَتِهِ عَلَى أَهْلِ الدِّيوَانِ نِصْفُ دِرْهَمٍ.

L11289 Via Waki‘ from Qurrah ibn Khalid, who said: ‘Umar ibn ‘Abd al-‘Aziz wrote to us to that effect. It is also authentically reported from Tawus, Mu-

jahid, Sa'id ibn al-Musayyab, 'Urwah ibn al-Zubayr, Abu Salamah ibn 'Abd al-Rahman ibn 'Awf, and Sa'id ibn Jubayr. This is the view of al-Awza'i, al-Layth, and Sufyan al-Thawri.

مِنْ طَرِيقِ وَكِيعٍ عَنْ قُرَّةَ بْنِ خَالِدٍ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ إِلَيْنَا بِذَلِكَ، وَصَحَّ أَيْضًا عَنْ طَاوُسٍ، وَمُجَاهِدٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ وَسَعِيدِ بْنِ جُبَيْرٍ. وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَاللَّيْثِ، وَسُفْيَانَ الثَّوْرِيِّ

L11290–11292 Abu Muhammad said: The Mālikīs—those exaggerators regarding the practice of the people of Medina—have contradicted themselves here, opposing Abū Bakr, ʿUmar, [ʿUthmān], ʿAlī ibn Abī Ṭālib, ʿĀ'ishah, Asmā' bint Abī Bakr, Abū Hurayrah, Jābir ibn ʿAbd Allāh, Ibn Masʿūd, Ibn ʿAbbās, Ibn al-Zubayr, and Abū Saʿīd al-Khudrī. The reports from all of them are authentic except those from Abū Bakr and Ibn Masʿūd. Yet the Mālikīs cite chains weaker than these when they align with their views. Then the jurists of Medina—Ibn al-Muṣayyab, ʿUrwah, Abū Salamah ibn ʿAbd al-Raḥmān, and others—does he not fear Allah, the one who adds to the divine laws what has never been authentically established, like flogging one who consumes wine eighty times based on a narration from ʿUmar that has never been authenticated? Indeed, authentic reports contradicting this have been established from ʿUmar himself, Abū Bakr before him, ʿUthmān and ʿAlī after him, al-Ḥasan, and ʿAbd Allāh ibn Jaʿfar in the presence of the Companions—may Allah be pleased with them—with none opposing them. None of them, and with them is the established Sunnah—then he must not turn here to any of these people.

قَالَ أَبُو مُحَمَّد: تَنَاقَضَ هَاهُنَا الْمَالِكِيُّونَ الْمُهَوِّلُونَ بِعَمَلِ أَهْلِ الْمَدِينَةِ فَخَالَفُوا أَبَا بَكْرٍ، وَعُمَرَ، (وَعُثْمَانَ) وَعَلِيَّ بْنَ أَبِي طَالِبٍ، وَعَائِشَةَ، وَأَسْمَاءَ بِنْتَ أَبِي بَكْرٍ، وَأَبَا هُرَيْرَةَ، وَجَابِرَ بْنَ عَبْدِ اللَّهِ وَابْنَ مَسْعُودٍ، وَابْنَ عَبَّاسٍ، وَابْنَ الزُّبَيْرِ، وَأَبَا سَعِيدٍ الْخُدْرِيِّ، وَهُوَ عَنْهُمْ كُلُّهُمْ صَحِيحٌ إلَّا عَنْ أَبِي بَكْرٍ، وَابْنِ مَسْعُودٍ، إلَّا أَنَّ الْمَالِكِيِّينَ يَحْتَجُّونَ بِأَضْعَفَ مِنْ هَذِهِ الطُّرُقِ إذَا وَافَقَتْهُمْ. ثُمَّ فُقَهَاءُ الْمَدِينَةِ: ابْنَ الْمُسَيِّبِ، وَعُرْوَةَ، وَأَبَا سَلَمَةَ بْنَ عَبْدِ الرَّحْمَنِ وَغَيْرَهُمْ أَفَلَا يَتَّقِي اللَّهَ مَنْ يَزِيدُ فِي الشَّرَائِعِ مَا لَمْ يَصِحَّ قَطُّ، مِنْ جَلْدِ الشَّارِبِ لِلْخَمْرِ ثَمَانِينَ، بِرِوَايَةٍ لَمْ تَصِحَّ قَطُّ عَنْ عُمَرَ، ثُمَّ قَدْ صَحَّ خِلَافُهَا عَنْهُ، وَعَنْ أَبِي بَكْرٍ قَبْلَهُ، وَعَنْ عُثْمَانَ، وَعَلِيٍّ بَعْدَهُ، وَالْحَسَنِ، وَعَبْدِ اللَّهِ بْنِ جَعْفَرٍ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُخَالِفُهُمْ مِنْهُمْ أَحَدٌ، وَمَعَهُمْ السُّنَّةُ الثَّابِتَةُ -: ثُمَّ لَا يَلْتَفِتُ هَاهُنَا إلَى هَؤُلَاءِ كُلِّهِمْ.

L11293 As for the Hanafis—who pride themselves in this position through their adherence—they have opposed Abu Bakr, Umar, Ali ibn Abi Talib, Ibn Mas'ud, Ibn Abbas, Al-Mughirah ibn Shu'bah, Anas ibn Malik, and Umm Salamah, the Mother of the Believers, regarding wiping over the turban. They have also opposed Ali ibn Abi Talib, Abu Mas'ud, Ammar ibn Yasir, Al-Bara' ibn Azib, Bilal, Abu Umamah Al-Bahili, Anas ibn Malik, Ibn Umar, and Sahl ibn Sa'd concerning the permissibility of wiping over socks. No opposing opinion is known against them from all those [Companions] who permit wiping over khuffs, and such cases of opposition from them are very numerous. In

وَأَمَّا الْحَنَفِيُّونَ - الْمُتَزَيِّنُونَ فِي هَذَا الْمَكَانِ بِاتِّبَاعِهِمْ - فَقَدْ خَالَفُوا أَبَا بَكْرٍ، وَعُمَرَ، وَعَلِيَّ بْنَ أَبِي طَالِبٍ؛ وَابْنَ مَسْعُودٍ، وَابْنَ عَبَّاسٍ، وَالْمُغِيرَةَ بْنَ شُعْبَةَ، وَأَنَسَ بْنَ مَالِكٍ، وَأُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ فِي الْمَسْحِ عَلَى الْعِمَامَةِ، وَخَالَفُوا عَلِيَّ بْنَ أَبِي طَالِبٍ، وَأَبَا مَسْعُودٍ، وَعَمَّارَ بْنَ يَاسِرٍ وَالْبَرَاءَ بْنَ عَازِبٍ، وَبِلَالًا وَأَبَا أُمَامَةَ الْبَاهِلِيَّ وَأَنَسَ بْنَ مَالِكٍ وَابْنَ عُمَرَ، وَسَهْلَ بْنَ سَعْدٍ فِي جَوَازِ الْمَسْحِ عَلَى الْجَوْرَبَيْنِ، وَلَا يُعْرَفُ لَهُمْ فِي ذَلِكَ مُخَالِفٌ مِنْ

Allah, the Exalted, we place our reliance, and there is no valid proof except in what is authentically reported from the Prophet—peace and blessings be upon him—and we have already mentioned it.

الصَّحَابَةِ مِنْ كُلِّ مَنْ يُجِيزُ الْمَسْحَ عَلَى الْخُفَّيْنِ، وَمِثْلُ هَذَا لَهُمْ كَثِيرٌ جِدًّا وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ، وَلَا حُجَّةَ إلَّا فِيمَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ ذَكَرْنَاهُ.

L11294 Abu Muhammad said: It has been narrated to us from ʿAṭāʾ that the Bedouins—the people of the desert—are exempt from Zakāh al-Fiṭr. From al-Ḥasan, however, it is narrated that it is obligatory upon them, and they must pay Zakāh al-Fiṭr in the form of milk.

قَالَ أَبُو مُحَمَّد: وَرُوِّينَا عَنْ عَطَاءٍ لَيْسَ عَلَى الْأَعْرَابِ، أَهْلِ الْبَادِيَةِ زَكَاةُ الْفِطْرِ - وَعَنْ الْحَسَنِ: أَنَّهَا عَلَيْهِمْ، وَأَنَّهُمْ يُخْرِجُونَ فِي ذَلِكَ اللَّبَنِ.

L11295 Abu Muhammad said: The Messenger of Allah—may Allah bless him and grant him peace—did not single out a Bedouin or nomad to the exclusion of others. Thus, he did not permit singling out any Muslim, nor are milk or other things acceptable unless they are barley or dates alone.

قَالَ أَبُو مُحَمَّد: لَمْ يَخُصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْرَابِيًّا وَلَا بَدَوِيًّا مِنْ غَيْرِهِمْ، فَلَمْ يُجِزْ تَخْصِيصَ أَحَدٍ مِنْ الْمُسْلِمِينَ، وَلَا يُجْزِئُ لَبَنٌ وَلَا غَيْرُهُ، إلَّا الشَّعِيرَ، أَوْ التَّمْرَ فَقَطْ.

L11296 As for the fetus, the Messenger of Allah—peace and blessings be upon him—made Sadaqat al-Fitr obligatory for every minor or adult. The fetus falls under the designation: "minor." If it completes one hundred and twenty days in its mother's womb before the break of dawn on the night of Fitr, it becomes obligatory to give Sadaqat al-Fitr on its behalf.

وَأَمَّا الْحَمْلُ فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْجَبَهَا عَلَى كُلِّ صَغِيرٍ أَوْ كَبِيرٍ، وَالْجَنِينُ يَقَعُ عَلَيْهِ اسْمُ: صَغِيرٍ، فَإِذَا أَكْمَلَ مِائَةً وَعِشْرِينَ يَوْمًا فِي بَطْنِ أُمِّهِ قَبْلَ انْصِدَاعِ الْفَجْرِ مِنْ لَيْلَةِ الْفِطْرِ وَجَبَ أَنْ تُؤَدَّى عَنْهُ صَدَقَةُ الْفِطْرِ.

L11297 Abdullah ibn Rabee' narrated to us: Umar ibn Abdul-Malik narrated to us, Muhammad ibn Bakr narrated to us, Abu Dawud narrated to us: Hafs ibn Umar Al-Namari and Muhammad ibn Katheer narrated to us. Hafs said: Shu'bah narrated to us, while Ibn Katheer said: Sufyan Al-Thawri narrated to us. Both Sufyan and Shu'bah then converged in their narration from Al-A'mash, who narrated from Zayd ibn Wahb, who narrated from Abdullah ibn Mas'ud, who narrated from the Messenger of Allah—peace and blessings be upon him—who said: "The creation of one of you is formed in his mother's womb over forty days, then becomes a clinging clot for a like period, then a chewed lump for a like period. Then Allah sends an angel to him, commanding him to write four matters: his provision, his deeds, his lifespan, and whether he will be doomed or blessed. Then the soul is breathed into him."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا حَفْصُ بْنُ عُمَرَ النَّمَرِيُّ، وَمُحَمَّدُ بْنُ كَثِيرٍ، قَالَ حَفْصٌ: ثنا شُعْبَةُ، وَقَالَ ابْنُ كَثِيرٍ: ثنا سُفْيَانُ الثَّوْرِيُّ، ثُمَّ اتَّفَقَ سُفْيَانُ، وَشُعْبَةُ كِلَاهُمَا عَنْ الْأَعْمَشِ: ثنا زَيْدُ بْنُ وَهْبٍ ثنا عَبْدُ اللَّهِ بْنُ مَسْعُودٍ ثنا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ خَلْقَ أَحَدِكُمْ يُجْمَعُ فِي بَطْنِ أُمِّهِ أَرْبَعِينَ يَوْمًا، ثُمَّ يَكُونُ عَلَقَةً مِثْلَ ذَلِكَ، ثُمَّ يَكُونُ مُضْغَةً مِثْلَ ذَلِكَ، ثُمَّ يَبْعَثُ اللَّهُ إلَيْهِ مَلَكًا فَيُؤْمَرُ بِأَرْبَعِ كَلِمَاتٍ، رِزْقُهُ، وَعَمَلُهُ، وَأَجَلُهُ، ثُمَّ يُكْتَبُ: شَقِيٌّ أَوْ سَعِيدٌ، ثُمَّ يُنْفَخُ فِيهِ الرُّوحُ»

L11298 Abu Muhammad said: The ruling precedes the death we discussed, so no

legal obligation applies to the deceased. However, if he is alive as the Messenger of Allah—peace and blessings be upon him—clarified, every obligation incumbent upon a minor is incumbent upon him.

قَالَ أَبُو مُحَمَّد: هُوَ قَبْلَ مَا ذَكَرْنَا مَوَاتَ، فَلَا حُكْمَ عَلَى مَيِّتٍ، فَأَمَّا إذَا كَانَ حَيًّا كَمَا أَخْبَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكُلُّ حُكْمٍ وَجَبَ عَلَى الصَّغِيرِ فَهُوَ وَاجِبٌ عَلَيْهِ.

L11299–11301 It has been narrated to us through the chain of Abdullah ibn Ahmad ibn Hanbal: My father narrated to us, al-Mu'tamir ibn Sulaiman at-Taymi narrated to us, from Humaid, from Bakr ibn Abdullah al-Muzani, and from Qatadah, that Uthman ibn Affan used to give [charity]. Zakat al-Fitr is given on behalf of minors, adults, and fetuses.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ: ثنا أَبِي ثنا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ حُمَيْدٍ عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيِّ وَقَتَادَةَ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ كَانَ يُعْطِي صَدَقَةَ الْفِطْرِ عَنْ الصَّغِيرِ، وَالْكَبِيرِ، وَالْحَمْلِ.

L11302 From 'Abd al-Razzāq from Ma'mar from Ayyūb from Abū Qilābah, who said: They deemed it proper to give Zakāt al-Fiṭr for the young, the old, and even the unborn child in its mother's womb. Abū Qilābah met the Companions, kept their company, and narrated from them. And through the chain of 'Abd al-Razzāq from Mālik from a man from Sulaymān ibn Yasār: He was asked, "Is Zakāt to be given for the unborn child?" He replied: "Yes."

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ أَبِي قِلَابَةَ قَالَ: كَانَ يُعْجِبُهُمْ أَنْ يُعْطُوا زَكَاةَ الْفِطْرِ عَنْ الصَّغِيرِ، وَالْكَبِيرِ، حَتَّى عَنْ الْحَمْلِ فِي بَطْنِ أُمِّهِ، وَأَبُو قِلَابَةَ أَدْرَكَ الصَّحَابَةَ وَصَحِبَهُمْ وَرَوَى عَنْهُمْ، وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَالِكٍ عَنْ رَجُلٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ: أَنَّهُ سُئِلَ عَنْ الْحَمْلِ أَيُزَكَّى عَنْهُ؟ قَالَ: نَعَمْ.

L11303 No dissenter against Uthman in this matter is known among the Companions, and they would honor in this manner those who concurred with them.

وَلَا يُعْرَفُ لِعُثْمَانَ فِي هَذَا مُخَالِفٌ مِنْ الصَّحَابَةِ وَهُمْ يُعَظِّمُونَ بِمِثْلِ هَذَا إذَا وَافَقَهُمْ.

L11304 **Issue: Zakat al-Fitr Concerning Enslaved Individuals.**

[مَسْأَلَةٌ زَكَاةُ الْفِطْرِ عَنْ الرَّقِيقِ]

L11305 705 – Issue: A Muslim must pay it on behalf of his slaves – both believers and disbelievers among them – whether they are for trade or non-trade purposes, as we have mentioned.

٧٠٥ - مَسْأَلَةٌ: وَيُؤَدِّيهَا الْمُسْلِمُ عَنْ رَقِيقِهِ، مُؤْمِنِهِمْ وَكَافِرِهِمْ، مَنْ كَانَ مِنْهُمْ لِتِجَارَةٍ أَوْ لِغَيْرِ تِجَارَةٍ كَمَا ذَكَرْنَا.

L11306 This is the opinion of Abū Ḥanīfah and Sufyān al-Thawrī regarding non-Muslims. Mālik, al-Shāfi'ī, and Abū Sulaymān said: It is only paid on behalf of the Muslims among them. Abū Ḥanīfah said: Zakāt al-Fiṭr is not paid on behalf of slaves held for trade. Mālik, al-Shāfi'ī, and Abū Sulaymān said: Zakāt al-Fiṭr is paid on their behalf. All of them—except Abū Sulaymān—

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيِّ فِي الْكُفَّارِ؟ وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: لَا تُؤَدَّى إلَّا عَنْ الْمُسْلِمِينَ مِنْهُمْ وَقَالَ أَبُو حَنِيفَةَ: لَا تُؤَدَّى زَكَاةُ الْفِطْرِ عَنْ رَقِيقِ التِّجَارَةِ. وَقَالَ مَالِكٌ وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: تُؤَدَّى عَنْهُمْ زَكَاةُ الْفِطْرِ. وَقَالُوا

said: The master must pay it on their behalf, and this is our position. Abū Sulaymān said: The slaves must pay Zakāt al-Fiṭr on their own behalf.

L11307 Those who do not deem it obligatory to pay Sadaqat al-Fitr from disbelieving slaves cited as evidence the narration from Allah's Messenger (peace and blessings be upon him): "The Messenger of Allah ordained Sadaqat al-Fitr upon every free person or slave, male or female, young or old, from the Muslims."

L11308–11310 Abu Muhammad said: This is authentic, and we uphold it, except that it does not mention exempting the Muslim regarding disbelievers among his slaves nor imposing its obligation. If this were the sole report, Zakat al-Fitr would only be obligatory on us for the Muslims among our slaves. However, we found that Yusuf ibn Abdullah al-Namari narrated to us, stating: Abdullah ibn Muhammad ibn Yusuf al-Azdi al-Qadi narrated to us, from Yahya ibn Malik ibn A'idh, who narrated to us from Muhammad ibn Sulaiman ibn Abi al-Sharif, who narrated to us... Muhammad ibn Makki al-Khawlānī and Ibrāhīm ibn Ismāʿīl al-Ghāfiqī both said: Muḥammad ibn ʿAbd Allāh ibn ʿAbd al-Ḥakam narrated to us, Saʿīd ibn Abī Maryam narrated to us, and Nāfiʿ ibn Yazīd reported to me from Jaʿfar ibn Rabīʿah, from ʿIrāk ibn Mālik, from Abū Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him) said, "No charity is obligatory upon a Muslim for his horse or his slave, except the Ṣadaqat al-Fiṭr for slaves." We have transmitted this through other chains of transmission besides this one.

L11311 Abu Muhammad said: The Prophet—peace be upon him—obligated Zakat al-Fitr upon every Muslim for their slaves as a general ruling. This adds to the hadith of Abu Sa'id al-Khudri, as the remainder of Abu Sa'id's hadith contains some of what is in this narration without opposing it in any fundamental way. Thus, it is impermissible to contradict this narration.

L11312 This report establishes that the payment of Zakāt al-Fiṭr falls upon the master regarding his slaves, not upon the slaves themselves? Through this, what they claimed concerning Zakāt on trade in slaves is also invalidated, for

كُلُّهُمْ - حَاشَا أَبَا سُلَيْمَانَ -: يُخْرِجُهَا السَّيِّدُ عَنْهُمْ، وَبِهِ نَقُولُ وَقَالَ أَبُو سُلَيْمَانُ: يُخْرِجُهَا الرَّقِيقُ عَنْ أَنْفُسِهِمْ.

وَاحْتَجَّ مَنْ لَمْ يَرَ إِخْرَاجَهَا عَنْ الرَّقِيقِ الْكُفَّارِ بِمَا رُوِيَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَدَقَةَ الْفِطْرِ عَلَى حُرٍّ، أَوْ عَبْدٍ ذَكَرٍ أَوْ أُنْثَى، صَغِيرٍ أَوْ كَبِيرٍ مِنْ الْمُسْلِمِينَ» .

قَالَ أَبُو مُحَمَّد: وَهَذَا صَحِيحٌ، وَبِهِ نَأْخُذُ، إلَّا أَنَّهُ لَيْسَ فِيهِ إسْقَاطُهَا عَنْ الْمُسْلِمِ فِي الْكُفَّارِ مِنْ رَقِيقِهِ وَلَا إيجَابُهَا، فَلَوْ لَمْ يَكُنْ إلَّا هَذَا الْخَبَرُ وَحْدَهُ لَمَا وَجَبَتْ عَلَيْنَا زَكَاةُ الْفِطْرِ إلَّا عَنْ الْمُسْلِمِينَ مِنْ رَقِيقِنَا فَقَطْ. وَلَكِنْ وَجَدْنَا حَدَّثَنَاهُ يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ قَالَ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ يُوسُفَ الْأَزْدِيُّ الْقَاضِي ثنا يَحْيَى بْنُ مَالِكِ بْنِ عَائِذٍ ثنا مُحَمَّدُ بْنُ سُلَيْمَانَ بْنِ أَبِي الشَّرِيفِ ثنا مُحَمَّدُ بْنُ مَكِّيٍّ الْخَوْلَانِيِّ، وَإِبْرَاهِيمُ بْنُ إسْمَاعِيلَ الْغَافِقِيُّ قَالَا جَمِيعًا: ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ ثنا سَعِيدُ بْنُ أَبِي مَرْيَمَ أَخْبَرَنِي نَافِعُ بْنُ يَزِيدَ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ عَنْ عِرَاكِ بْنِ مَالِكٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَيْسَ عَلَى الْمُسْلِمِ فِي فَرَسِهِ وَعَبْدِهِ صَدَقَةٌ، إلَّا صَدَقَةُ الْفِطْرِ فِي الرَّقِيقِ» وَقَدْ رُوِّينَاهُ مِنْ غَيْرِ هَذِهِ الطَّرِيقِ.

قَالَ أَبُو مُحَمَّد: فَأَوْجَبَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - صَدَقَةَ الْفِطْرِ عَلَى الْمُسْلِمِ فِي رَقِيقِهِ عُمُومًا، فَكَانَ هَذَا زَائِدًا عَلَى حَدِيثِ أَبِي سَعِيدٍ الْخُدْرِيِّ، وَكَانَ بَاقِي حَدِيثِ أَبِي سَعِيدٍ بَعْضَ مَا فِي هَذَا الْحَدِيثِ، لَا مُعَارِضًا لَهُ أَصْلًا، فَلَمْ يَجُزْ خِلَافُ هَذَا الْخَبَرِ.

the Prophet - peace be upon him - nullified all Zakāt obligations related to slaves except Zakāt al-Fiṭr. What utter astonishment that Abū Ḥanīfah and his followers approached two obligatory Zakāt - one concerning livestock, and the other Zakāt al-Fiṭr pertaining to slaves - then abolished through the first Zakāt on trade in livestock intended for commerce, and annulled through the second Zakāt on trade in slaves. Does this not suffice to deem their conduct frivolous?

وَبِهَذَا الْخَبَرِ تَأْدِيَةُ زَكَاةِ الْفِطْرِ عَلَى السَّيِّدِ عَنْ رَقِيقِهِ، لَا عَلَى الرَّقِيقِ؟ وَبِهِ أَيْضًا يَسْقُطُ مَا ادَّعَوْهُ مِنْ زَكَاةِ التِّجَارَةِ فِي الرَّقِيقِ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - أَبْطَلَ كُلَّ زَكَاةٍ فِي الرَّقِيقِ إِلَّا زَكَاةَ الْفِطْرِ؟ وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ أَنَّ أَبَا حَنِيفَةَ وَأَصْحَابَهُ أَتَوْا إِلَى زَكَاتَيْنِ مَفْرُوضَتَيْنِ، إِحْدَاهُمَا فِي الْمَوَاشِي، وَالْأُخْرَى زَكَاةُ الْفِطْرِ فِي الرَّقِيقِ -: فَأَسْقَطُوا بِإِحْدَاهُمَا زَكَاةَ التِّجَارَةِ فِي الْمَوَاشِي الْمُتَّخَذَةِ لِلتِّجَارَةِ، وَأَسْقَطُوا الْأُخْرَى بِزَكَاةِ التِّجَارَةِ فِي الرَّقِيقِ وَحَسْبُكَ بِهَذَا تَلَاعُبًا؟

L11313–11314 It is astonishing that they favored what is reported in some narrations—"for every forty grazing sheep, one sheep [is due]"—yet did not favor what is stated in some narrations: "Zakat al-Fitr is incumbent upon every free person, slave, minor, adult, male, or female among the Muslims," over what is mentioned in all other reports: "except Zakat al-Fitr regarding slaves." This constitutes a corrupt exercise of judgment and a contradiction. It is essential to prioritize the general ruling over the specific in every instance, unless there comes an explicit statement of a text regarding the specific category that negates that ruling in the general. And success is with Allah, the Exalted.

وَالْعَجَبُ أَنَّهُمْ غَلَّبُوا مَا رُوِيَ فِي بَعْضِ الْأَخْبَارِ «فِي سَائِمَةِ الْغَنَمِ فِي كُلِّ أَرْبَعِينَ شَاةٍ شَاةٌ» وَلَمْ يُغَلِّبُوا مَا جَاءَ فِي بَعْضِ الْأَخْبَارِ فِي أَنَّ «صَدَقَةَ الْفِطْرِ عَلَى كُلِّ حُرٍّ أَوْ عَبْدٍ صَغِيرٍ أَوْ كَبِيرٍ أَوْ أُنْثَى مِنْ الْمُسْلِمِينَ» عَلَى مَا جَاءَ فِي سَائِرِ الْأَخْبَارِ «إِلَّا صَدَقَةَ الْفِطْرِ فِي الرَّقِيقِ» وَهَذَا تَحَكُّمٌ فَاسِدٌ وَتَنَاقُضٌ وَلَا بُدَّ مِنْ تَغْلِيبِ الْأَعَمِّ عَلَى الْأَخَصِّ فِي كُلِّ مَوْضِعٍ، إِلَّا أَنْ يَأْتِيَ بَيَانُ نَصٍّ فِي الْأَخَصِّ بِنَفْيِ ذَلِكَ الْحُكْمِ فِي الْأَعَمِّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ عَبْدٌ بَيْنَ اثْنَيْنِ فَعَلَى مِنْ زَكَاةِ فِطْرِه]

L11315 **Issue: A slave jointly owned by two individuals. Upon whom is the obligation of his Zakāt al-Fitr incumbent?**

L11316 706 - Issue: If a male or female slave is shared between two masters or more, their two masters must pay Zakat al-Fitr for them, each contributing from his own wealth according to his share. This ruling similarly applies if many slaves are shared between two masters or more. Abu Hanifa, al-Hasan ibn Hayy, and Sufyan al-Thawri said: Neither their two masters nor the slaves are obligated to pay Zakat al-Fitr, even if the jointly owned slaves are numerous. Malik and al-Shafi'i said: Their two masters must pay for them according to each one's share of ownership, even if the slaves are numerous. Abu Muhammad said: We know of no valid argument whatsoever for exempting

٧٠٦ - مَسْأَلَةٌ: فَإِنْ كَانَ عَبْدٌ أَوْ أَمَةٌ بَيْنَ اثْنَيْنِ فَصَاعِدًا فَعَلَى سَيِّدَيْهِمَا إخْرَاجُ زَكَاةِ الْفِطْرِ، يُخْرِجُ عَنْ كُلِّ وَاحِدٍ مِنْ مَالِكَيْهِ بِقَدْرِ حِصَّتِهِ، وَكَذَلِكَ إنْ كَانَ الرَّقِيقُ كَثِيرًا بَيْنَ سَيِّدَيْنِ فَصَاعِدًا؟ وَقَالَ أَبُو حَنِيفَةَ، وَالْحَسَنُ بْنُ حَيٍّ، وَسُفْيَانُ الثَّوْرِيُّ: لَيْسَ عَلَى سَيِّدَيْهِ وَلَا عَلَيْهِ أَدَاءُ زَكَاةِ الْفِطْرِ، وَكَذَلِكَ لَوْ كَثُرَ الرَّقِيقُ الْمُشْتَرَكُ؟ وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: يُخْرِجُ عَنْهُ سَيِّدَاهُ بِقَدْرِ مَا يَمْلِكُ كُلُّ وَاحِدٍ مِنْهُمَا، وَكَذَلِكَ لَوْ كَثُرَ الرَّقِيقُ؟

the one from whom Zakat al-Fitr was dropped and his master, except their claim that none of their two masters owns a male or female slave. Some of them said: Just as one who owns part of a *sa‘* is not obligated to pay it, so too one who owns a portion of a male slave, a portion of each male or female slave, or shares in many slaves. Abu Muhammad said: As for their statement, “They do not own a male or female slave,” this is true, but it constitutes no proof, for the Messenger of Allah (peace be upon him) did not say, “Every owner must pay it for his slave.” Rather, he said, “A Muslim owes no charity on his slave or horse except Zakat al-Fitr for slaves.” These are slaves, and a jointly owned slave is a slave. Thus, this charity is obligatory by the explicit text of the cited report upon the Muslim. This term encompasses the entire category and a part of it, applying to both the singular and plural. By this text, it is invalid to free half of two slaves for an obligatory manumission, because the term “a slave” does not apply to them, whereas the text stipulates “freeing a slave.” The Hanafis said: If one gives two halves of two sheep for Zakat, it suffices him, but if one frees half of two slaves for one required manumission, it does not suffice.

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ لِمَنْ أُسْقِطَ عَنْهُ صَدَقَةُ الْفِطْرِ وَعَنْ سَيِّدِهِ حُجَّةً أَصْلًا، إلَّا أَنَّهُمْ قَالُوا: لَيْسَ أَحَدٌ مِنْ سَيِّدَيْهِ يَمْلِكُ عَبْدًا، وَلَا أَمَةً - وَقَالَ بَعْضُهُمْ: مَنْ مَلَكَ بَعْضَ الصَّاعِ لَمْ يَكُنْ عَلَيْهِ أَدَاؤُهُ، فَكَذَلِكَ مَنْ مَلَكَ بَعْضَ عَبْدٍ، أَوْ بَعْضَ كُلِّ عَبْدٍ، أَوْ أَمَةٍ مِنْ رَقِيقٍ كَثِيرٍ؟ قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُهُمْ: لَا يَمْلِكُ عَبْدًا، وَلَا أَمَةً فَصَدَقُوا، وَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقُلْ: يُخْرِجُهَا كُلُّ أَحَدٍ عَنْ عَبْدِهِ وَأَمَتِهِ، وَإِنَّمَا قَالَ «لَيْسَ عَلَى الْمُسْلِمِ فِي عَبْدِهِ وَلَا فَرَسِهِ صَدَقَةٌ إلَّا صَدَقَةُ الْفِطْرِ فِي الرَّقِيقِ» فَهَؤُلَاءِ رَقِيقٌ، وَالْعَبْدُ الْمُشْتَرَكُ رَقِيقٌ، فَالصَّدَقَةُ فِيهِ وَاجِبَةٌ بِنَصِّ الْخَبَرِ الْمَذْكُورِ عَلَى الْمُسْلِمِ، وَهَذَا اسْمٌ يَعُمُّ النَّوْعَ كُلَّهُ وَبَعْضَهُ، وَيَقَعُ عَلَى الْوَاحِدِ وَالْجَمِيعِ، وَبِهَذَا النَّصِّ لَمْ يَجُزْ فِي الرَّقَبَةِ الْوَاجِبَةِ نِصْفَا رَقَبَتَيْنِ، لِأَنَّهُ لَا يَقَعُ عَلَيْهِمَا اسْمُ " رَقَبَةٌ " وَالنَّصُّ جَاءَ بِعِتْقِ رَقَبَةٍ؟ وَقَالَ الْحَنَفِيُّونَ: مَنْ أَعْطَى نِصْفَيْ شَاتَيْنِ فِي الزَّكَاةِ أَجْزَأَتْهُ، وَلَوْ أَعْتَقَ نِصْفَيْ رَقَبَتَيْنِ فِي رَقَبَةٍ وَاحِدَةٍ لَمْ يُجْزِهِ؟

L11317–11318 Muhammad ibn al-Hasan said: If a slave is jointly owned by two or more individuals, the obligation of ṣadaqat al-fiṭr for him rests upon their masters collectively. If two or more slaves are owned by two [individuals], there is no ṣadaqat al-fiṭr incumbent on the slaves or their owners. As for their claim that this is analogous to one who possesses only part of a ṣāʿ, the analogy is entirely invalid. Even if it were valid, this case would epitomize falsehood, for it constitutes an analogy of error upon error. Rather, whoever can afford part of a ṣāʿ must discharge it, as we shall clarify later, God, the Exalted, willing.

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: مَنْ كَانَ مِنْ مَمْلُوكٍ بَيْنَ اثْنَيْنِ فَصَاعِدًا فَعَلَى سَادَاتِهِ فِيهِ زَكَاةُ الْفِطْرِ، فَإِنْ كَانَ عَبْدَانِ فَصَاعِدًا عَنْ اثْنَيْنِ فَلَا صَدَقَةَ فِطْرٍ عَلَى الرَّقِيقِ وَلَا عَلَى مَنْ يَمْلِكُهُمْ؟ وَأَمَّا قَوْلُهُمْ: إنَّهُ قِيَاسٌ عَلَى مَنْ لَمْ يَجِدْ إلَّا بَعْضَ الصَّاعِ فَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّهُ قِيَاسٌ لِلْخَطَأِ عَلَى الْخَطَأِ، بَلْ مَنْ قَدَرَ عَلَى بَعْضِ صَاعٍ لَزِمَهُ أَدَاؤُهُ، عَلَى مَا نُبَيِّنُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

L11319 We have been narrated through the chain of Waki‘ from Sufyān from Abī al-Ḥuwayrith from Muḥammad ibn ʿAmmār from Abī Hurayrah, who said: “Zakat al-Fitr is only due from a slave you own.” Waki‘ said: “Meaning regarding a slave co-owned by two men.” This is among the matters where the

وَقَدْ رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ أَبِي الْحُوَيْرِثِ عَنْ مُحَمَّدِ بْنِ عَمَّارٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: لَيْسَ زَكَاةُ الْفِطْرِ إلَّا عَنْ مَمْلُوكٍ تَمْلِكُهُ، قَالَ وَكِيعٌ: يَعْنِي فِي الْمَمْلُوكِ بَيْنَ

Mālikīs adopted a position attributed to a Companion without any known opposition from other Companions – may Allah be pleased with them. This is also among the issues where the Ḥanafīs opposed the ruling of the Messenger of Allah – peace and blessings be upon him – in his obligating Zakat al-Fitr upon every free person, slave, minor, adult, male, or female. They deviated from qiyās (analogical reasoning) in this matter, for they obligated Zakat on jointly owned sheep while exempting jointly owned slaves from Zakat al-Fitr.

الرَّجُلَيْنِ، وَهَذَا مِمَّا خَالَفَ فِيهِ الْمَالِكِيُّونَ صَاحِبًا لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ، وَهَذَا مِمَّا خَالَفَ فِيهِ الْحَنَفِيُّونَ حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي إيجَابِهِ صَدَقَةَ الْفِطْرِ عَلَى كُلِّ حُرٍّ، وَعَبْدٍ، صَغِيرٍ، وَكَبِيرٍ ذَكَرٍ أَوْ أُنْثَى، وَخَالَفُوا فِيهِ الْقِيَاسَ؛ لِأَنَّهُمْ أَوْجَبُوا الزَّكَاةَ فِي الْغَنَمِ الْمُشْتَرَكَةِ وَأَسْقَطُوا زَكَاةَ الْفِطْرِ عَنْ الرَّقِيقِ الْمُشْتَرَكِ.

An issue concerning Zakāt al-Fiṭr for the mukatab who has not paid anything of his kitabah.

[مَسْأَلَةٌ زَكَاة الْفِطْر عَنْ الْمُكَاتَب الَّذِي لَمْ يُؤَدِّ شَيْئًا مِنْ كِتَابَتِهِ]

L11320

L11321 Issue 707: As for the mukatab who has not paid any portion of his manumission payment, he remains a slave whose master must pay Zakat al-Fitr on his behalf. If he has paid any amount toward his manumission - whether small or large - or if a slave is partially free and partially a slave, or a female slave likewise: Al-Shafi'i stated regarding one who is partially free and partially owned - the owner of any portion must pay Sadaqat al-Fitr for him according to the share he owns. The individual himself is obligated to pay Sadaqat al-Fitr for himself proportionate to his free portion. No obligation falls upon the mukatab's master to give Zakat al-Fitr for his mukatab. Malik said: The master must pay Zakat al-Fitr for his mukatab and for the proportion he owns in one who is partially free and partially a slave. The person who is partially a slave and partially free bears no obligation to pay the remaining sa' measure for his free portion.

٧٠٧ - مَسْأَلَةٌ: وَأَمَّا الْمُكَاتَبُ الَّذِي لَمْ يُؤَدِّ شَيْئًا مِنْ كِتَابَتِهِ فَهُوَ عَبْدٌ، يُؤَدِّي سَيِّدُهُ عَنْهُ زَكَاةَ الْفِطْرِ. فَإِنْ أَدَّى مِنْ كِتَابَتِهِ مَا قَلَّ أَوْ كَثُرَ، أَوْ كَانَ عَبْدٌ بَعْضُهُ حُرٌّ وَبَعْضُهُ رَقِيقٌ، أَوْ أَمَةٌ كَذَلِكَ -: فَإِنَّ الشَّافِعِيَّ قَالَ فِيمَنْ بَعْضُهُ حُرٌّ وَبَعْضُهُ مَمْلُوكٌ: عَلَى مَالِكِ بَعْضِهِ إخْرَاجُ صَدَقَةِ الْفِطْرِ عَنْهُ بِمِقْدَارِ مَا يَمْلِكُ مِنْهُ، وَعَلَيْهِ أَنْ يُخْرِجَ عَنْ نَفْسِهِ بِمِقْدَارِ مَا فِيهِ مِنْ الْحُرِّيَّةِ، وَلَمْ يَرِدْ عَلَى سَيِّدِ الْمُكَاتَبِ أَنْ يُعْطِيَ زَكَاةَ الْفِطْرِ عَنْ مُكَاتَبِهِ. وَقَالَ مَالِكٌ: يُؤَدِّي السَّيِّدُ زَكَاةَ الْفِطْرِ عَنْ مُكَاتَبِهِ وَعَنْ مِقْدَارِ مَا يَمْلِكُ عَنْ الَّذِي بَعْضُهُ حُرٌّ وَبَعْضُهُ رَقِيقٌ وَلَيْسَ عَلَى الَّذِي بَعْضُهُ رَقِيقٌ وَبَعْضُهُ حُرٌّ أَنْ يُخْرِجَ بَاقِيَ الصَّاعِ عَنْ بَعْضِهِ الْحُرِّ.

L11322 Abū Ḥanīfah said: Zakāt al-Fiṭr is not obligatory in any of that - neither upon the contracted slave nor upon his master.

وَقَالَ أَبُو حَنِيفَةَ: لَا تَجِبُ زَكَاةُ الْفِطْرِ فِي شَيْءٍ مِنْ ذَلِكَ، لَا عَلَى الْمُكَاتَبِ وَلَا عَلَى سَيِّدِهِ.

L11323–11325 Those who did not hold the view that the master is obligated to pay zakāt for his mukatab cited the narration of Mūsā ibn ʿUqbah from Nāfiʿ as evidence. From Ibn ʻUmar: He used to pay Zakat al-Fitr for his slaves and his wife's slaves. He had a *mukatab*, but he would not pay it for him, and he did not consider Zakat al-Fitr due from the *mukatab*.

وَاحْتَجَّ مَنْ لَمْ يَرَ عَلَى السَّيِّدِ أَدَاءَ الزَّكَاةِ عَنْ مُكَاتَبِهِ بِرِوَايَةِ مُوسَى بْنِ عُقْبَةَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ يُؤَدِّي زَكَاةَ الْفِطْرِ عَنْ رَقِيقِهِ وَرَقِيقِ امْرَأَتِهِ، وَكَانَ لَهُ مُكَاتَبٌ فَكَانَ لَا يُؤَدِّي عَنْهُ، وَكَانَ لَا يَرَى عَلَى الْمُكَاتَبِ زَكَاةً.

قَالُوا: وَهَذَا صَاحِبٌ لَا مُخَالِفَ لَهُ يُعْرَفُ مِنْ الصَّحَابَةِ. قَالَ أَبُو مُحَمَّد: لَا حُجَّةَ فِيمَنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْعَجَبُ كُلُّ الْعَجَبِ أَنَّ الْحَنَفِيِّينَ الْمُحْتَجِّينَ بِهَذَا الْأَثَرِ أَوَّلُ مُخَالِفٍ لَهُ فَلَمْ يُوجِبُوا عَلَى الْمَرْءِ إخْرَاجَ صَدَقَةِ الْفِطْرِ عَنْ رَقِيقِ امْرَأَتِهِ وَمِنْ الْعَجَبِ أَنْ يَكُونَ فِعْلُ ابْنِ عُمَرَ بَعْضُهُ حُجَّةً وَبَعْضُهُ لَيْسَ بِحُجَّةٍ فَإِنْ قَالُوا: لَعَلَّهُ كَانَ يَتَطَوَّعُ بِإِخْرَاجِهَا عَنْ رَقِيقِ الْمَرْأَةِ؟ قِيلَ: وَلَعَلَّ ذَلِكَ الْمُكَاتَبَ كَلَّفَهُ إخْرَاجَهَا مِنْ كَسْبِهِ، كَمَا لِلْمَرْءِ أَنْ يُكَلِّفَ ذَلِكَ عَبْدَهُ، كَمَا يُكَلِّفُهُ الضَّرِيبَةَ، وَلَعَلَّهُ كَانَ يَرَى أَنْ يُخْرِجَهَا الْمُكَاتَبُ عَنْ نَفْسِهِ، وَلَعَلَّهُ قَدْ رَجَعَ عَنْ قَوْلِهِ فِي ذَلِكَ، فَكُلُّ هَذَا يَدْخُلُ فِيهِ " لَعَلَّ ".

They said: "This is a companion with no dissenting opinion against him, recognized among the Companions." Abū Muḥammad said: "There is no proof in anyone other than the Messenger of Allah - peace and blessings be upon him. The utmost wonder is that the Ḥanafīs who cite this narration as evidence are the first to oppose it, for they do not obligate a man to pay Sadaqat al-Fiṭr for his wife's slaves. Equally astonishing is that some of Ibn ʿUmar's actions are deemed authoritative while others are not. If they argue: 'Perhaps he voluntarily gave it for the wife's slaves?' One may respond: 'Perhaps that *mukatab* was required to pay it from his earnings, just as a person may impose this on his slave, like imposing a tax on him. Or perhaps he held that the *mukatab* should pay it for himself. Or perhaps he retracted his ruling on this matter.' All of this is encompassed by 'perhaps.'"

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وَأَمَّا قَوْلُ مَالِكٍ فَظَاهِرُ الْخَطَأِ، لِأَنَّهُ جَعَلَ زَكَاةَ الْفِطْرِ نِصْفَ صَاعٍ، أَوْ عُشْرَ صَاعٍ، أَوْ تِسْعَةَ أَعْشَارِ صَاعٍ فَقَطْ، وَهَذَا خِلَافُ مَا أَوْجَبَهُ اللَّهُ تَعَالَى فِيهَا، وَأَوْجَبَهَا عَلَى بَعْضِ إنْسَانٍ دُونَ سَائِرِهِ، وَهَذَا خِلَافُ مَا أَوْجَبَهُ اللَّهُ تَعَالَى فِيهَا؟ وَأَمَّا قَوْلُ الشَّافِعِيِّ فَخَطَأٌ، لِأَنَّهُ أَوْجَبَ الزَّكَاةَ فِي الْفِطْرِ فِيمَنْ لَا يَقَعُ عَلَيْهِ اسْمُ رَقِيقٍ مِمَّنْ بَعْضُهُ حُرٌّ وَبَعْضُهُ عَبْدٌ، وَهَذَا مَا لَمْ يَأْتِ بِهِ نَصٌّ وَلَا إجْمَاعٌ.

As for Mālik's opinion, its erroneous nature is evident, for he restricted Zakāt al-Fiṭr to merely half a ṣāʿ, a tenth of a ṣāʿ, or nine-tenths of a ṣāʿ. This contradicts what Allah the Exalted has obligated in this matter, applying it to only a portion of an individual's legal status while excluding the remainder. Does this not contradict what Allah the Exalted has ordained? As for Al-Shāfiʿī's opinion, it is incorrect, for he obligated Zakāt al-Fiṭr upon someone not legally classified as a slave—that is, one who is partially free and partially enslaved. This lacks any textual or consensus-based foundation.

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قَالَ أَبُو مُحَمَّد: وَالْحَقُّ مِنْ هَذَا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْجَبَهَا عَلَى الْحُرِّ، وَالْعَبْدِ، وَالذَّكَرِ، وَالْأُنْثَى، وَالصَّغِيرِ، وَالْكَبِيرِ مِنْ الْمُسْلِمِينَ، فَمَنْ بَعْضُهُ حُرٌّ وَبَعْضُهُ عَبْدٌ فَلَيْسَ حُرًّا، وَلَا هُوَ أَيْضًا عَبْدٌ، وَلَا هُوَ رَقِيقٌ، فَسَقَطَ بِذَلِكَ عَنْ أَنْ يَجِبَ عَلَى مَالِكِ بَعْضِهِ عَنْهُ شَيْءٌ، وَلَكِنَّهُ ذَكَرٌ، أَوْ أُنْثَى، صَغِيرٌ، أَوْ كَبِيرٌ فَوَجَبَتْ عَلَيْهِ صَدَقَةُ الْفِطْرِ عَنْ نَفْسِهِ وَلَا بُدَّ بِهَذَا النَّصِّ. وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Abu Muhammad said: The truth in this matter is that the Messenger of Allah—peace and blessings of Allah be upon him—made it obligatory upon the free person, the slave, the male, the female, the young, and the old among the Muslims. As for one who is partially free and partially enslaved, he is neither free nor is he a slave, nor is he chattel. Thus, by this reasoning, nothing becomes incumbent upon the owner of any portion of him. However, since he is male or female, young or old, the obligation of Zakāt al-Fiṭr is required of him personally by necessity of this text. This is the opinion of Abu Sulayman—and success is from Allah, the Exalted.

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As for our statement regarding the *mukātab* (a slave with a manumis-

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sion contract) who pays part of his *kitābah*—that he fulfills it on his own behalf—this is because he is partially free and partially enslaved, as we have mentioned. Since this is the case, as we have stated, he is obligated to fulfill it on his own behalf due to what we have mentioned. ʿAbdullāh ibn Rabīʿ narrated to us from Muḥammad ibn Muʿāwiyah, from Aḥmad ibn Shuʿayb, from Muḥammad ibn ʿĪsā al-Dimashqī: I am Muḥammad ibn ʿĪsā al-Dimashqī. Yazid ibn Harun narrated to us: Hammad ibn Salamah narrated from Ayyub al-Sakhtiyani and Qatadah. Qatadah said: From Khilas from Ali ibn Abi Talib. Ayyub said: From Ikrimah from Ibn Abbas. Then Ali and Ibn Abbas agreed, both narrating from the Prophet—peace and blessings of Allah be upon him—that he said: "The mukatab is emancipated proportionally to what he has paid, and the hadd punishment is imposed upon him proportionally to the portion that has been freed of him." This is a chain of transmission of the highest authenticity. It is the opinion of Ali ibn Abi Talib and others.

L11332 It has been reported to us from Al-Hasan that Sadaqat al-Fitr is incumbent upon the mukatab. It is also reported from Maymun ibn Mihran and 'Ata' that his master pays it on his behalf.

L11333 **[Issue: Discharging part of the saʿ as barley and another part as dates for Zakat al-Fitr.]**

L11334 Issue 708: It is not valid to give part of the ṣāʿ as barley and part as dates. Nor is monetary value valid in principle, because all such practices are not what the Messenger of Allah (peace be upon him) ordained. Monetary substitution in mutual rights between people is only permissible through mutual agreement of the parties involved, whereas zakah has no specific owner whose consent or release [of obligation] could validate it.

L11335 **The legal principle is that one is only obligated to pay Zakāt al-Fiṭr for oneself and one's slaves.**

L11336 709 – Issue: A person is not obligated to pay Zakat for his father, his mother, his wife, his child, or anyone else whom he is legally obligated to maintain. The obligation applies solely to himself and his slaves.

وَأَمَّا قَوْلُنَا فِي الْمُكَاتَبِ يُؤَدِّي بَعْضَ كِتَابَتِهِ إِنَّهُ يُؤَدِّيهَا عَنْ نَفْسِهِ -: فَهُوَ لِأَنَّ بَعْضَهُ حُرٌّ وَبَعْضَهُ مَمْلُوكٌ كَمَا ذَكَرْنَا، فَإِذْ هُوَ كَذَلِكَ كَمَا ذَكَرْنَا فَعَلَيْهِ إِخْرَاجُهَا عَنْ نَفْسِهِ لِمَا ذَكَرْنَا؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبَ أَنَا مُحَمَّدُ بْنُ عِيسَى الدِّمَشْقِيُّ ثنا يَزِيدُ هُوَ ابْنُ هَارُونَ - أَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، وَقَتَادَةَ، قَالَ قَتَادَةُ: عَنْ خِلَاسٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَقَالَ أَيُّوبُ: عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ، ثُمَّ اتَّفَقَ عَلِيٌّ، وَابْنُ عَبَّاسٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «الْمُكَاتَبُ يُعْتَقُ مِنْهُ بِمِقْدَارِ مَا أَدَّى وَيُقَامُ عَلَيْهِ الْحَدُّ بِمِقْدَارِ مَا عَتَقَ مِنْهُ» وَهَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ؟ وَهُوَ قَوْلُ عَلِيِّ بْنِ أَبِي طَالِبٍ وَغَيْرِهِ.

وَرُوِّينَا عَنِ الْحَسَنِ: أَنَّ عَلَى الْمُكَاتَبِ صَدَقَةَ الْفِطْرِ. وَعَنْ مَيْمُونِ بْنِ مِهْرَانَ، وَعَطَاءٍ: يُؤَدِّيهَا عَنْهُ سَيِّدُهُ.

[مَسْأَلَةٌ إِخْرَاجُ بَعْضِ الصَّاعِ شَعِيرًا وَبَعْضِهِ تَمْرًا فِي زَكَاةِ الْفِطْرِ]

٧٠٨ - مَسْأَلَةٌ: وَلَا يُجْزِئُ إِخْرَاجُ بَعْضِ الصَّاعِ شَعِيرًا وَبَعْضِهِ تَمْرًا، وَلَا تُجْزِئُ قِيمَةٌ أَصْلًا؛ لِأَنَّ كُلَّ ذَلِكَ غَيْرُ مَا فَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْقِيمَةُ فِي حُقُوقِ النَّاسِ لَا تَجُوزُ إِلَّا بِتَرَاضٍ مِنْهُمَا، وَلَيْسَ لِلزَّكَاةِ مَالِكٌ بِعَيْنِهِ فَيَجُوزُ رِضَاهُ، أَوْ إِبْرَاؤُهُ.

[مَسْأَلَةٌ لَيْسَ عَلَيْهِ أَنْ يُخْرِجَ زَكَاةَ الْفِطْرِ إِلَّا عَنْ نَفْسِهِ وَرَقِيقِهِ]

٧٠٩ - مَسْأَلَةٌ: وَلَيْسَ عَلَى الْإِنْسَانِ أَنْ يُخْرِجَهَا عَنْ أَبِيهِ، وَلَا عَنْ أُمِّهِ، وَلَا عَنْ زَوْجَتِهِ، وَلَا عَنْ وَلَدِهِ، وَلَا أَحَدٍ مِمَّنْ تَلْزَمُهُ نَفَقَتُهُ، وَلَا تَلْزَمُهُ إِلَّا عَنْ نَفْسِهِ، وَرَقِيقِهِ فَقَطْ.

L11337 The category of slaves includes mothers of children (umm al-walad), those under tadbeer (posthumously manumitted), both absent and present among them. This is the opinion of Abu Hanifah, Abu Sulayman, Sufyan al-Thawri, and others.

وَيَدْخُلُ فِي: الرَّقِيقِ أُمَّهَاتُ الْأَوْلَادِ، وَالْمُدَبَّرُونَ، غَائِبُهُمْ وَحَاضِرُهُمْ. وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ، وَسُفْيَانَ الثَّوْرِيِّ، وَغَيْرِهِمْ.

L11338 Mālik and al-Shāfiʿī said: He is required to give zakah for his wife and her servant whom she cannot do without, but he does not have to give zakah for his hired worker.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: يُخْرِجُهَا عَنْ زَوْجَتِهِ، وَعَنْ خَادِمِهَا الَّتِي لَا بُدَّ لَهَا مِنْهَا وَلَا يُخْرِجُهَا عَنْ أَجِيرِهِ.

L11339 Al-Layth said: He must pay it on behalf of his wife and on behalf of his hired worker whose wage is not specified. If the wage is specified, he is not obligated to pay it on his behalf, nor on behalf of his wife's slaves.

وَقَالَ اللَّيْثُ: يُخْرِجُهَا عَنْ زَوْجَتِهِ، وَعَنْ أَجِيرِهِ الَّذِي لَيْسَتْ أُجْرَتُهُ مَعْلُومَةً، فَإِنْ كَانَتْ أُجْرَتُهُ مَعْلُومَةً فَلَا يَلْزَمُهُ إِخْرَاجُهَا عَنْهُ، وَلَا عَنْ رَقِيقِ امْرَأَتِهِ.

L11340–11342 Abu Muhammad said: We know of no basis for obligating it upon the husband for his wife and her servant except a hadith narrated by Ibrahim ibn Abi Yahya on the authority of Jaʿfar ibn Muhammad on the authority of his father: "The Messenger of Allah (peace be upon him) ordained the Zakat [...]" The obligation of Zakāt al-Fiṭr applies to every free person or slave, male or female, among those under your financial care. Abū Muḥammad said: There is profound perplexity in this matter, for al-Shāfiʿī rejects *mursal* narrations yet here adopts the foulest *mursal* in existence—transmitted by Ibn Abī Yaḥyā. Sufficient for us is Allāh, the Best Disposer of Affairs. Abū Ḥanīfa and his followers equate *mursal* with *musnad* narrations while relying on reports from every liar and discredited transmitter. Yet they discard this ḥadīth, censuring it for being *mursal* and its weak narrator, thereby contradicting themselves—for they rule one need not pay Zakāt al-Fiṭr for his wife, though it is *obligated* upon him to offer the Udhiyah for her. This alone suffices to expose their inconsistency.

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ لِمَنْ أَوْجَبَهَا عَلَى الزَّوْجِ عَنْ زَوْجَتِهِ وَخَادِمِهَا إِلَّا خَبَرًا رَوَاهُ إِبْرَاهِيمُ بْنُ أَبِي يَحْيَى عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَضَ صَدَقَةَ الْفِطْرِ عَلَى كُلِّ حُرٍّ، أَوْ عَبْدٍ، ذَكَرٍ، أَوْ أُنْثَى، مِمَّنْ تَمُونُونَ» . قَالَ أَبُو مُحَمَّد: وَفِي هَذَا الْمَكَانِ عَجَبٌ عَجِيبٌ وَهُوَ أَنَّ الشَّافِعِيَّ لَا يَقُولُ بِالْمُرْسَلِ، ثُمَّ أَخَذَ هَاهُنَا بِأَنْتَنِ مُرْسَلٍ فِي الْعَالَمِ، مِنْ رِوَايَةِ ابْنِ أَبِي يَحْيَى. وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ. وَأَبُو حَنِيفَةَ وَأَصْحَابُهُ يَقُولُونَ: الْمُرْسَلُ كَالْمُسْنَدِ، وَيَحْتَجُّونَ بِرِوَايَةِ كُلِّ كَذَّابٍ، وَسَاقِطٍ، ثُمَّ تَرَكُوا هَذَا الْخَبَرَ وَعَابُوهُ بِالْإِرْسَالِ وَبِضَعْفِ رَاوِيهِ وَتَنَاقَضُوا فَقَالُوا: لَا يُزَكِّي زَكَاةَ الْفِطْرِ عَنْ زَوْجَتِهِ، وَعَلَيْهِ - فُرِضَ - أَنْ يُضَحِّيَ عَنْهَا فَحَسْبُكُمْ بِهَذَا تَخْلِيطًا.

L11343 As for the division of Al-Layth, it is manifestly erroneous.

وَأَمَّا تَقْسِيمُ اللَّيْثِ فَظَاهِرُ الْخَطَأِ.

L11344 As for the Mālikīs, they cited this ḥadīth as evidence but contradicted it by refusing to require the payment of Zakāt al-Fiṭr on behalf of a hired worker—though he is among those being sustained. Abū Muḥammad said: The Messenger of Allah (peace and blessings be upon him) obligated Zakāt al-Fiṭr upon the young, the old, the free, the slave, the male, and the female as an obligation of it incumbent upon them. Thus, it is not binding upon others in this matter except those explicitly stated in the text—namely slaves alone. Allah the Exalted said: "No soul bears the burden of another. No bearer of burdens bears the burden of another" [Quran 6:164].[16]

L11345 Abū Muḥammad said: It is obligatory for a married woman to pay Zakāt al-Fiṭr for herself and her dependents, according to the text we have cited—and by Allāh, the Exalted, is success granted?

A question: If someone among the slaves has subordinates, who must pay Zakāt al-Fiṭr on their behalf?

L11346

L11347 710. Issue: If a bondsman owns other bondsmen, the obligation of Zakât al-Fiṭr for them falls on him, not his master. This is based on the saying of Allah's Messenger—peace and blessings be upon him—which we previously mentioned: "No charity is due from a Muslim for his horse or his bondsman except Zakât al-Fiṭr for bondsmen." Thus, the bondsman is a Muslim while being owned by another. If he owns bondsmen, their owner must pay Zakât al-Fiṭr for them. He is obligated to pay it for his own bondsmen according to the aforementioned text—and with Allah, the Most High, lies all success.

L11348–11350 If it is said: Why is it not binding on him by his own [action], yet binding on him by others' [actions]? We say: Just as the Lord of the Worlds has decreed regarding that through the tongue of His Prophet—may Allah bless him and grant him peace. Then we say to the Malikis and the Shafi'is: You uphold this position where you make mistakes, so you say: The wife is not obligated to pay Zakat for herself, but she must pay Zakat on her servants except those she cannot do without for her own service.

[16] **Qur'an references (L11344):** Qur'an 6:164 (Al-An'am).

وَأَمَّا الْمَالِكِيُّونَ فَاحْتَجُّوا بِهَذَا الْخَبَرِ ثُمَّ خَالَفُوهُ، فَلَمْ يَرَوْا أَنْ يُؤَدِّيَ زَكَاةَ الْفِطْرِ عَنْ الْأَجِيرِ، وَهُوَ مِمَّنْ يُمَوَّنُ؟ قَالَ أَبُو مُحَمَّدٍ: إيجَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَكَاةَ الْفِطْرِ عَلَى الصَّغِيرِ، وَالْكَبِيرِ، وَالْحُرِّ، وَالْعَبْدِ، وَالذَّكَرِ، وَالْأُنْثَى: هُوَ إيجَابٌ لَهَا عَلَيْهِمْ، فَلَا تَجِبُ عَلَى غَيْرِهِمْ فِيهِ إلَّا مَنْ أَوْجَبَهُ النَّصُّ، وَهُوَ الرَّقِيقُ فَقَطْ، قَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

قَالَ أَبُو مُحَمَّدٍ: وَوَاجِبٌ عَلَى ذَاتِ الزَّوْجِ إخْرَاجُ زَكَاةِ الْفِطْرِ عَنْ نَفْسِهَا وَعَنْ رَقِيقِهَا، بِالنَّصِّ الَّذِي أَوْرَدْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

[مَسْأَلَةٌ مِنْ كَانَ مِنْ الْعَبِيدِ لَهُ رَقِيقٌ فَمَنْ يُخْرِجُ زَكَاةَ الْفِطْرِ عَنْهُمْ]

٧١٠ - مَسْأَلَةٌ: وَمَنْ كَانَ مِنْ الْعَبِيدِ لَهُ رَقِيقٌ فَعَلَيْهِ إخْرَاجُهَا عَنْهُمْ لَا عَلَى سَيِّدِهِ، لِمَا ذَكَرْنَا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَيْسَ عَلَى الْمُسْلِمِ فِي فَرَسِهِ، وَلَا عَبْدِهِ صَدَقَةٌ إلَّا صَدَقَةُ الْفِطْرِ فِي الرَّقِيقِ» . فَالْعَبْدُ مُسْلِمٌ وَهُوَ رَقِيقٌ لِغَيْرِهِ، وَلَهُ رَقِيقٌ، فَعَلَى مَنْ هُوَ لَهُ رَقِيقٌ أَنْ يُخْرِجَهَا عَنْهُ، وَعَلَيْهِ أَنْ يُخْرِجَهَا عَنْ رَقِيقِهِ بِالنَّصِّ الْمَذْكُورِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَإِنْ قِيلَ: كَيْفَ لَا يَلْزَمُهُ عَنْ نَفْسِهِ وَتَلْزَمُهُ عَنْ غَيْرِهِ؟ قُلْنَا: كَمَا حَكَمَ فِي ذَلِكَ رَبُّ الْعَالَمِينَ عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. ثُمَّ نَقُولُ لِلْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ: أَنْتُمْ تَقُولُونَ بِهَذَا حَيْثُ تُخْطِئُونَ، فَتَقُولُونَ: إنَّ الزَّوْجَةَ لَا تُخْرِجُهَا عَنْ نَفْسِهَا، وَعَلَيْهَا أَنْ تُخْرِجَهَا عَنْ رَقِيقِهَا حَاشَا مَنْ لَا بُدَّ لَهَا مِنْهُ لِخِدْمَتِهَا؟

L11351 We would like to know the Ḥanafī position regarding a Christian whose umm walad (female slave who bore him a child) or male slave embraced Islam, was then detained for sale, and Eid al-Fitr arrived: who bears the obligation to pay Zakat al-Fitr for them? These two cases never arise in our doctrine, for the moment he takes possession of his umm walad or male slave, they are manumitted immediately.

وَلَوَدِدْنَا أَنْ نَعْرِفَ مَا يَقُولُ الْحَنَفِيُّونَ فِي نَصْرَانِيَّةٍ أَسْلَمَتْ أُمُّ وَلَدِهِ أَوْ عَبْدُهُ حُبِسَ لِيُبَاعَ فَجَاءَ الْفِطْرُ، عَلَى مَنْ صَدَقَةُ الْفِطْرِ عَنْهُمَا؟ وَهَاتَانِ الْمَسْأَلَتَانِ لَا تَقَعَانِ فِي قَوْلِنَا أَبَدًا؛ لِأَنَّهُ سَاعَةَ تَسَلُّمِ أُمِّ وَلَدِهِ أَوْ عَبْدِهِ: عَتَقَا فِي الْوَقْتِ.

L11352 **Question: A person has two slaves or more than two. Is Zakat al-Fitr to be given for them?**

[مَسْأَلَةٌ لَهُ عَبْدَانِ فَأَكْثَرُ فَهَلْ يَخْرُجُ صَدَقَةَ الْفِطْرِ عَنْهُمَا]

L11353 711 – Issue: If someone has two or more slaves, he may give a sa'a of dates for one and a sa'a of barley for the other. If he wishes, he may give dates for all or barley for all, based on the explicit text of the aforementioned hadith.

٧١١ - مَسْأَلَةٌ: وَمَنْ لَهُ عَبْدَانِ فَأَكْثَرُ فَلَهُ أَنْ يُخْرِجَ عَنْ أَحَدِهِمَا تَمْرًا وَعَنِ الْآخَرِ شَعِيرًا، صَاعًا صَاعًا. وَإِنْ شَاءَ التَّمْرَ عَنِ الْجَمِيعِ، وَإِنْ شَاءَ الشَّعِيرَ عَنِ الْجَمِيعِ؛ لِأَنَّهُ نَصُّ الْخَبَرِ الْمَذْكُورِ؟

L11354 **Issue: The minors on whose behalf Zakat al-Fitr is paid.**

[مَسْأَلَةٌ الصِّغَارُ مِنْ يدفع زَكَاةَ الْفِطْرِ عَنْهُمْ]

L11355 712 - Issue: As for minors, the father or guardian must pay Zakat al-Fitr on their behalf from their wealth if they possess any. If they have no wealth, then no Zakat al-Fitr is required for them at that time or thereafter. Abu Hanifah said: The father must pay it on behalf of his minor children who have no wealth. If they have wealth and he pays it from their wealth, it is disliked for him to do so, but it suffices. He also stated: The guardian must pay it on behalf of an orphan from the orphan's wealth, and on behalf of the orphan's dependents as well. Zufar and Muhammad ibn al-Hasan said: Zakat al-Fitr is not obligatory for an orphan, whether he possesses wealth or not. If his guardian pays it, he becomes responsible for it. Malik said: The father must pay Zakat al-Fitr on behalf of his minor children if they have no wealth. If they have wealth, it is due from their wealth. It is due from the orphan's wealth. This is the view of al-Shafi'i. They unanimously agreed that the father is not required to pay it on behalf of his adult children, whether they have wealth or not.

٧١٢ - مَسْأَلَةٌ: وَأَمَّا الصِّغَارُ فَعَلَيْهِمْ أَنْ يُخْرِجَهَا الْأَبُ، وَالْوَلِيُّ عَنْهُمْ مِنْ مَالٍ إِنْ كَانَ لَهُمْ، وَإِنْ لَمْ يَكُنْ لَهُمْ مَالٌ فَلَا زَكَاةَ فِطْرٍ عَلَيْهِمْ حِينَئِذٍ، وَلَا بَعْدَ ذَلِكَ؟ وَقَالَ أَبُو حَنِيفَةَ: يُؤَدِّيهَا الْأَبُ عَنْ وَلَدِهِ الصِّغَارِ الَّذِينَ لَا مَالَ لَهُمْ؛ فَإِنْ كَانَ لَهُمْ مَالٌ، فَإِنْ أَدَّاهَا مِنْ مَالِهِمْ كَرِهْتُ لَهُ ذَلِكَ وَأَجْزَأَهُ؟ قَالَ: وَيُؤَدِّيهَا عَنِ الْيَتِيمِ وَصِيُّهُ مِنْ مَالِ الْيَتِيمِ، وَعَنْ رَقِيقِ الْيَتِيمِ أَيْضًا؟ وَقَالَ زُفَرُ، وَمُحَمَّدُ بْنُ الْحَسَنِ: لَيْسَ عَلَى الْيَتِيمِ زَكَاةُ الْفِطْرِ، كَانَ لَهُ مَالٌ، أَوْ لَمْ يَكُنْ؛ فَإِنْ أَدَّاهَا وَصِيُّهُ ضَمِنَهَا؟ وَقَالَ مَالِكٌ: عَلَى الْأَبِ أَنْ يُؤَدِّيَ زَكَاةَ الْفِطْرِ عَنْ وَلَدِهِ الصِّغَارِ إِنْ لَمْ يَكُنْ لَهُمْ مَالٌ، فَإِنْ كَانَ لَهُمْ مَالٌ فَهِيَ فِي أَمْوَالِهِمْ؛ وَهِيَ عَلَى الْيَتِيمِ فِي مَالِهِ. وَهُوَ قَوْلُ الشَّافِعِيِّ. وَلَمْ يَخْتَلِفُوا فِي أَنَّ الْأَبَ لَا يُؤَدِّيهَا عَنْ وَلَدِهِ الْكِبَارِ، كَانَ لَهُمْ مَالٌ، أَوْ لَمْ يَكُنْ.

L11356–11358 Abu Muhammad said: We do not know any proof whatsoever for them, except the claim that the intent behind mentioning minors is directed toward their fathers rather than toward them. Abu Muhammad said: This is an utterly baseless assertion, because if he did not intend the directive concerning the imposition of Zakat al-Fitr's obligation to be directed at them, but rather directed it at others, then whoever designates the fathers as specifically designated for that to the exclusion of... All guardians, relatives, neighbors, and rulers? If they argued: "Because the father financially supports them," would the Ḥanafīs then have to retract their prior rejection of this position? This would render it incumbent upon the Mālikīs and Shāfiʿīs to mandate that the father - whether willingly or unwillingly - discharge this duty on their behalf, regardless of whether the dependents possess wealth or not, since he alone bears this legal obligation rather than them. Thus the inherent flaw in this argument has been decisively exposed.

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا، إلَّا الدَّعْوَى: فِي أَنَّ الْقَصْدَ بِذِكْرِ الصِّغَارِ إنَّمَا هُوَ إلَى آبَائِهِمْ لَا إلَيْهِمْ؟ قَالَ أَبُو مُحَمَّد: وَهَذِهِ دَعْوَى فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ إذَا لَمْ يَقْصِدْ بِالْخِطَابِ إلَيْهِمْ فِي إيجَابِ زَكَاةِ الْفِطْرِ، وَإِنَّمَا قَصَدَ إلَى غَيْرِهِمْ -: فَمَنْ جَعَلَ الْآبَاءَ مَخْصُوصِينَ بِذَلِكَ دُونَ سَائِرِ الْأَوْلِيَاءِ، وَالْأَقَارِبِ، وَالْجِيرَانِ، وَالسُّلْطَانِ؟ فَإِنْ قَالُوا: لِأَنَّ الْأَبَ يُنْفِقُ عَلَيْهِمْ رَجَعَ الْحَنِيفِيُّونَ إلَى مَا أَنْكَرُوا مِنْ ذَلِكَ؟ وَيَلْزَمُ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ فِي هَذَا أَنْ يُؤَدِّيَهَا الْأَبُ - أَحَبَّ أَمْ كَرِهَ - عَنْهُمْ، كَانَ لَهُمْ مَالٌ، أَوْ لَمْ يَكُنْ؛ لِأَنَّهُ هُوَ الْمُخَاطَبُ بِذَلِكَ دُونَهُمْ. فَوَضَحَ فَسَادُ هَذَا الْقَوْلِ بِيَقِينٍ.

L11359 The truth in this matter is that Allah the Exalted ordained Zakāt al-Fiṭr through the words of His Prophet—peace be upon him—upon both the adult and the minor. Whoever distinguishes between the rulings pertaining to them has uttered falsehood and falsely ascribed to the Messenger of Allah—peace be upon him—what he neither stated nor indicated. Moreover, we note that Allah the Exalted declares: {Allah does not burden a soul beyond its capacity} [Al-Baqarah: 286]. And the Messenger of Allah—peace be upon him—said: "When I command you with a matter, fulfill it to the best of your ability." Thus, we conclude that one who possesses no wealth—whether adult or minor—lacks the capacity to discharge Zakāt al-Fiṭr. It is established that such a person was never obligated to pay it, and since they could not fulfill it, they were not commanded to do so by the explicit statement of the Prophet—peace be upon him. And it remains obligatory for an orphan if they own wealth. We assert that it is not obligatory beyond this because Zakāt al-Fiṭr is bound by a time with two fixed limits, unlike other Zakāt obligations. Once its designated time elapses, it is not permissible to consider it obligatory thereafter or outside its timeframe, as no textual proof or

وَالْحَقُّ فِي هَذَا أَنَّ اللَّهَ تَعَالَى فَرَضَهَا عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى: الْكَبِيرِ، وَالصَّغِيرِ، فَمَنْ فَرَّقَ بَيْنَ حُكْمَيْهِمَا فَقَدْ قَالَ الْبَاطِلَ، وَادَّعَى عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْهُ، وَلَا دَلَّ عَلَيْهِ؟ ثُمَّ وَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] . وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» . فَوَجَدْنَا مَنْ لَا مَالَ لَهُ - مِنْ كَبِيرٍ أَوْ صَغِيرٍ - لَيْسَ فِي وُسْعِهِ أَدَاءُ زَكَاةِ الْفِطْرِ؛ فَقَدْ صَحَّ أَنَّهُ لَمْ يُكَلَّفْهَا قَطُّ، وَلَمَّا كَانَ لَا يَسْتَطِيعُهَا لَمْ يَكُنْ مَأْمُورًا بِهَا، بِنَصِّ كَلَامِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَهِيَ لَازِمَةٌ لِلْيَتِيمِ إذَا كَانَ لَهُ مَالٌ، وَإِنَّمَا قُلْنَا: إنَّهَا لَا تَلْزَمُهُ بَعْدَ ذَلِكَ فَلِأَنَّ زَكَاةَ الْفِطْرِ مَحْدُودَةٌ بِوَقْتٍ مَحْدُودِ الطَّرَفَيْنِ، بِخِلَافِ سَائِرِ الزَّكَوَاتِ، فَلَمَّا خَرَجَ وَقْتُهَا لَمْ يَجُزْ أَنْ تَجِبَ بَعْدَ خُرُوجِ وَقْتِهَا وَفِي غَيْرِ وَقْتِهَا؛ لِأَنَّهُ لَمْ يَأْتِ بِإِيجَابِهَا بَعْدَ ذَلِكَ نَصٌّ وَلَا إجْمَاعٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

consensus establishes its obligation beyond that period. And success comes only from Allah, the Exalted.[17]

L11360 **A case where one cannot find how to pay Zakāt al-Fitr.**

L11361 713. Issue: The one who cannot find the means to pay Zakāt al-Fiṭr is not obligated to do so, as mentioned in the preceding issue, nor does it become binding on him even if he later acquired the means, as also mentioned? If someone can afford dates but not barley due to barley's high price, or can afford barley but not dates due to dates' high price, he must necessarily give a *ṣāʿ* of what he can afford, as previously stated. If he can only afford part of a *ṣāʿ*, he must give that portion without fail, in accordance with Allah's statement: "Allah does not burden a soul beyond its capacity" [Al-Baqarah 2:286].[18]

L11362 And due to the statement of Allah's Messenger—may Allah bless him and grant him peace—: "When I command you with a matter, do as much of it as you can." If one has the capacity for part of the *saʿ*, they are legally responsible to fulfill that part, but if they lack capacity for any part of it, they are not charged with fulfilling it.

L11363–11364 This is analogous to prayer, where one is incapable of certain portions yet capable of others, and akin to debt, where one fulfills part of it but cannot fulfill the entirety. This differs from fasting, wherein inability to complete the full day or two consecutive months invalidates it; nor is it like the obligatory manumission, obligatory feeding in expiations, or obligatory sacrificial offering—where partial fulfillment from each of these categories does not suffice. For instance, if one is obligated to give a ṣāʿ in Zakāt al-Fiṭr, scholars unanimously permit giving portions incrementally. Yet dividing a fasting day is invalid, and one who fails to complete a day's fast is not deemed to have fasted unless explicitly permitted by an explicit textual ruling—does it suffice him then? As for partial manumission, Allah the Exalted ordained the substitution of fasting when manumission is unavailable; thus, transgressing

[17] **Qur'an references (L11359):** Qur'an 2:286 (Al-Baqarah).
[18] **Qur'an references (L11361):** Qur'an 2:286 (Al-Baqarah).

[مَسْأَلَةٌ لَا يَجِدُ مِنْ أَيْنَ يُؤَدِّي زَكَاةَ الْفِطْرِ]

٧١٣ - مَسْأَلَةٌ: وَالَّذِي لَا يَجِدُ مِنْ أَيْنَ يُؤَدِّي زَكَاةَ الْفِطْرِ فَلَيْسَتْ عَلَيْهِ، لِمَا ذَكَرْنَا فِي الْمَسْأَلَةِ الَّتِي قَبْلَ هَذِهِ، وَلَا تَلْزَمُهُ وَإِنْ أَيْسَرَ بَعْدَ ذَلِكَ، لِمَا ذُكِرَ أَيْضًا؟ فَمَنْ قَدَرَ عَلَى التَّمْرِ وَلَمْ يَقْدِرْ عَلَى الشَّعِيرِ لِغَلَائِهِ، أَوْ قَدَرَ عَلَى الشَّعِيرِ وَلَمْ يَقْدِرْ عَلَى التَّمْرِ لِغَلَائِهِ -: أَخْرَجَ صَاعًا وَلَا بُدَّ مِنَ الَّذِي يَقْدِرُ عَلَيْهِ، لِمَا ذَكَرْنَا أَيْضًا. فَإِنْ لَمْ يَقْدِرْ إِلَّا عَلَى بَعْضِ صَاعٍ أَدَّاهُ وَلَا بُدَّ، لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» وَهُوَ وَاسِعٌ لِبَعْضِ الصَّاعِ، فَهُوَ مُكَلَّفٌ إِيَّاهُ، وَلَيْسَ وَاسِعًا لِبَعْضِهِ، فَلَمْ يُكَلَّفْهُ.

وَهَذَا مِثْلُ الصَّلَاةِ، يَعْجِزُ عَنْ بَعْضِهَا وَيَقْدِرُ عَلَى بَعْضِهَا، وَمِثْلُ الدَّيْنِ، يَقْدِرُ عَلَى بَعْضِهِ وَلَا يَقْدِرُ عَلَى سَائِرِهِ؟ وَلَيْسَ هَذَا مِثْلُ الصَّوْمِ، يَعْجِزُ فِيهِ عَنْ تَمَامِ الْيَوْمِ، أَوْ تَمَامِ الشَّهْرَيْنِ الْمُتَتَابِعَيْنِ؛ وَلَا مِثْلُ الرَّقَبَةِ الْوَاجِبَةِ، وَالْإِطْعَامِ الْوَاجِبِ فِي الْكَفَّارَاتِ، وَالْهَدْيِ الْوَاجِبِ، يَقْدِرُ عَلَى الْبَعْضِ مِنْ كُلِّ ذَلِكَ وَلَا يَقْدِرُ عَلَى سَائِرِهِ، فَلَا يُجْزِئُهُ شَيْءٌ مِنْهُ. لِأَنَّ مَنْ افْتُرِضَ عَلَيْهِ صَاعٌ فِي زَكَاةِ الْفِطْرِ فَلَا خِلَافَ فِي أَنَّهُ جَائِزٌ لَهُ أَنْ يُخْرِجَ بَعْضَهُ ثُمَّ بَعْضَهُ ثُمَّ بَعْضَهُ. وَلَا يَجُوزُ تَفْرِيقُ الْيَوْمِ، وَلَا يُسَمَّى مَنْ لَمْ يُتِمَّ صَوْمَ الْيَوْمِ صَائِمَ يَوْمٍ، إِلَّا حَيْثُ جَاءَ بِهِ النَّصُّ فَيُجْزِئُهُ حِينَئِذٍ؟ وَأَمَّا بَعْضُ الرَّقَبَةِ فَإِنَّ اللَّهَ تَعَالَى نَصَّ بِتَعْوِيضِ الصِّيَامِ مِنَ الرَّقَبَةِ إِذَا لَمْ تُوجَدْ فَلَمْ يَجُزْ تَعَدِّي النَّصِّ، وَكَانَ مُعْتِقُ

this textual ruling is impermissible. Freeing part of a slave contravenes the obligation to fully manumit, provide the substitute feeding, or perform the substitute fasting. Regarding the two consecutive months: if one splits them, failing to observe them consecutively as commanded, the obligation remains until fulfilled, or he substitutes it where the text permits substitution. As for the sacrificial offering, combining parts of separate sacrificial offerings does not constitute a valid offering, leaving it as an outstanding debt until fulfilled. Feeding, however, suffices incrementally until he can provide the remainder, as it is not bound by a fixed terminal timeframe. And success comes only from Allah, the Exalted.

بَعْضِ رَقَبَةٍ مُخَالِفًا لِمَا أُمِرَ بِهِ وَافْتُرِضَ عَلَيْهِ مِنْ الرَّقَبَةِ التَّامَّةِ، أَوْ مِنْ الْإِطْعَامِ الْمُعَوَّضِ مِنْهَا، أَوْ الصِّيَامِ الْمُعَوَّضِ مِنْهَا. وَأَمَّا بَعْضُ الشَّهْرَيْنِ فَمِنْ بَعْضِهَا، أَوْ فَرَّقَهُمَا فَلَمْ يَأْتِ بِمَا أُمِرَ بِهِ مُتَتَابِعًا، فَهُوَ عَلَيْهِ أَوْ عَوَّضَهُ حَيْثُ جَاءَ النَّصُّ بِالتَّعْوِيضِ مِنْهُ. وَأَمَّا الْهَدْيُ فَإِنَّ بَعْضَ الْهَدْيِ مَعَ بَعْضِ هَدْيٍ آخَرَ لَا يُسَمَّى هَدْيًا، فَلَمْ يَأْتِ بِمَا أُمِرَ بِهِ؛ فَهُوَ دَيْنٌ عَلَيْهِ حَتَّى يَقْدِرَ عَلَيْهِ؟ وَأَمَّا الْإِطْعَامُ فَيُجْزِئُهُ مَا وَجَدَ مِنْهُ حَتَّى يَجِدَ بَاقِيَهُ؛ لِأَنَّهُ لَمْ يَأْتِ مُرْتَبِطًا بِوَقْتٍ مَحْدُودِ الْآخِرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L11365 **[An issue regarding Zakāt al-Fiṭr concerning his slave who is pledged, absconding, absent, or usurped.]**

[مَسْأَلَةٌ زَكَاةُ الْفِطْرِ عَنْ عَبْدِهِ الْمَرْهُونِ وَالْآبِقِ وَالْغَائِبِ وَالْمَغْصُوبِ]

L11366 Issue 714: Zakat al-Fitr is obligatory upon the master for his pledged slave, runaway slave, absent slave, and usurped slave, because they are his slaves, and no text specifies these as exceptions. If the slave possesses property or earnings, the master may require him to pay Zakat al-Fitr from his earnings or property, as the master retains the right to seize these assets at will and may impose the kharaj (land tax) upon him according to textual evidence and scholarly consensus. Given this authority, the master may instruct the slave to allocate whatever he is obligated to pay from these resources for whatever purpose the master deems appropriate.

٧١٤ - مَسْأَلَةٌ: وَتَجِبُ زَكَاةُ الْفِطْرِ عَلَى السَّيِّدِ عَنْ عَبْدِهِ الْمَرْهُونِ، وَالْآبِقِ، وَالْغَائِبِ، وَالْمَغْصُوبِ، لِأَنَّهُمْ رَقِيقُهُ، وَلَمْ يَأْتِ نَصٌّ بِتَخْصِيصِ هَؤُلَاءِ. وَلِلسَّيِّدِ إنْ كَانَ لِلْعَبْدِ مَالٌ أَوْ كَسْبٌ أَنْ يُكَلِّفَهُ إخْرَاجَ زَكَاةِ الْفِطْرِ مِنْ كَسْبِهِ أَوْ مَالِهِ، لِأَنَّ لَهُ انْتِزَاعَ مَالِ مَتَى شَاءَ، وَلَهُ أَنْ يُكَلِّفَهُ الْخَرَاجَ بِالنَّصِّ وَالْإِجْمَاعِ، فَإِذَا كَانَ لَهُ ذَلِكَ فَلَهُ أَنْ يَأْمُرَهُ بِأَنْ يَصْرِفَ مَا كُلِّفَهُ مِنْ ذَلِكَ فِيمَا شَاءَ.

[مَسْأَلَةٌ زَكَاةُ الْفِطْرِ عَلَى الْمَجْنُونِ]

Issue: Zakāt al-Fiṭr upon the Insane Person

L11367–11370 715 – Issue: Zakāh al-Fiṭr is obligatory upon an insane person if he possesses wealth, because he is male or [...] A female, whether free or enslaved, minor or adult.

٧١٥ - مَسْأَلَةٌ: وَالزَّكَاةُ لِلْفِطْرِ وَاجِبَةٌ عَلَى الْمَجْنُونِ إنْ كَانَ لَهُ مَالٌ؛ لِأَنَّهُ ذَكَرٌ أَوْ أُنْثَى، حُرٌّ أَوْ عَبْدٌ، صَغِيرٌ أَوْ كَبِيرٌ.

L11371 **If a person was poor and took Zakāt al-Fiṭr, then there remained for him what he would give in Zakāt al-Fiṭr.**

[مَسْأَلَةٌ كَانَ فَقِيرًا فَأَخَذَ مِنْ زَكَاةِ الْفِطْرِ فَفَضَلَ لَهُ مَا يُعْطِي فِي زَكَاةِ الْفِطْرِ]

L11372 716 – Issue: If a poor person takes from Zakāt al-Fiṭr or other types of zakāt an amount sufficient for his day's sustenance, and a surplus equivalent to the amount due for Zakāt al-Fiṭr remains, it becomes incumbent upon him to give that surplus.

L11373 This is the opinion of ʿAṭāʾ, Abū Sulaymān, and al-Shāfiʿī.

L11374 Abu Hanifah said: Whoever possesses less than two hundred dirhams is not obligated to pay Zakat al-Fitr, and is entitled to receive it. Whoever possesses two hundred dirhams must pay it. Sufyan said: Whoever has fifty dirhams is wealthy, and whoever does not possess fifty dirhams is needy.

L11375 Others besides them said: Whoever possesses forty dirhams is wealthy—if he has less, is he considered poor? Others said: Whoever possesses his daily sustenance, is he considered wealthy? Abu Muhammad said: We will address these statements later—if Allah the Exalted wills. As for here, specifically exempting the poor from paying Zakat al-Fitr—if he possesses the required amount or part of it—is an impermissible view, for no textual proof supports exempting the poor from it. The texts only waive the obligation of what is beyond one's capacity. Thus, if Zakat al-Fitr is within the poor person's means, he is obligated to pay it by the generality of the Prophet's (peace be upon him) statement: "Upon every free person or slave, male or female, young or old." We have also been narrated from ʿAta regarding the poor: Is it permissible for him to receive Zakat and give it?

A case of one who intends to discharge Zakât al-Fiṭr on behalf of his child.

L11376

L11377 Issue: Whoever intends to give Zakāt al-Fiṭr on behalf of their minor children, adult children, or others may only do so by gifting the Zakat amount to them first. They may then pay it on behalf of minors and the mentally incapacitated, but cannot pay it on behalf of mentally competent adults without their explicit authorization. The evidence for this is our earlier clarification: Allah the Exalted obligated this duty specifically upon an individual from

٧١٦ - مَسْأَلَةٌ: وَمَنْ كَانَ فَقِيرًا فَأَخَذَ مِنْ زَكَاةِ الْفِطْرِ أَوْ غَيْرِهَا مِقْدَارَ مَا يَقُومُ بِقُوتِ يَوْمِهِ وَفَضَلَ لَهُ مِنْهُ مَا يُعْطِي فِي زَكَاةِ الْفِطْرِ -: لَزِمَهُ أَنْ يُعْطِيَهُ.

وَهُوَ قَوْلُ عَطَاءٍ، وَأَبِي سُلَيْمَانَ، وَالشَّافِعِيِّ.

وَقَالَ أَبُو حَنِيفَةَ: مَنْ لَهُ أَقَلُّ مِنْ مِائَتَيْ دِرْهَمٍ فَلَيْسَ عَلَيْهِ زَكَاةُ الْفِطْرِ، وَلَهُ أَخْذُهَا، وَمَنْ كَانَ لَهُ مِائَتَا دِرْهَمٍ فَعَلَيْهِ أَنْ يُؤَدِّيَهَا. وَقَالَ سُفْيَانُ: مَنْ لَهُ خَمْسُونَ دِرْهَمًا فَهُوَ غَنِيٌّ، وَمَنْ لَمْ يَكُنْ لَهُ خَمْسُونَ دِرْهَمًا فَهُوَ فَقِيرٌ.

وَقَالَ غَيْرُهُمَا: مَنْ لَهُ أَرْبَعُونَ دِرْهَمًا فَهُوَ غَنِيٌّ، فَإِنْ كَانَ لَهُ أَقَلُّ فَهُوَ فَقِيرٌ؟ وَقَالَ آخَرُونَ: مَنْ لَهُ قُوتُ يَوْمِهِ فَهُوَ غَنِيٌّ؟ قَالَ أَبُو مُحَمَّدٍ: سَنَتَكَلَّمُ بَعْدَ هَذَا - إِنْ شَاءَ تَعَالَى - فِي هَذِهِ الْأَقْوَالِ، وَأَمَّا هَاهُنَا فَإِنَّ تَخْصِيصَ الْفَقِيرِ بِإِسْقَاطِ صَدَقَةِ الْفِطْرِ عَنْهُ - إِذَا كَانَ وَاجِدًا لِمِقْدَارِهَا أَوْ لِبَعْضِهِ - قَوْلٌ لَا يَجُوزُ، لِأَنَّهُ لَمْ يَأْتِ بِهِ نَصٌّ، نَعْنِي بِإِسْقَاطِهَا عَنْ الْفَقِيرِ، وَإِنَّمَا جَاءَ النَّصُّ بِإِسْقَاطِ تَكْلِيفِ مَا لَيْسَ فِي الْوُسْعِ فَقَطْ، فَإِذَا كَانَتْ فِي وُسْعِ الْفَقِيرِ فَهُوَ مُكَلَّفٌ إيَّاهَا بِعُمُومِ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «عَلَى كُلِّ حُرٍّ أَوْ عَبْدٍ، ذَكَرٍ أَوْ أُنْثَى، صَغِيرٍ أَوْ كَبِيرٍ» . وَقَدْ رُوِّينَا عَنْ عَطَاءٍ فِي الْفَقِيرِ: أَنَّهُ يَأْخُذُ الزَّكَاةَ وَيُعْطِيهَا؟

[مَسْأَلَةٌ أَرَادَ إخْرَاجَ زَكَاةِ الْفِطْرِ عَنْ وَلَدِهِ]

٧١٧ - مَسْأَلَةٌ: وَمَنْ أَرَادَ إخْرَاجَ زَكَاةِ الْفِطْرِ عَنْ وَلَدِهِ الصِّغَارِ أَوْ الْكِبَارِ أَوْ عَنْ غَيْرِهِمْ -: لَمْ يَجُزْ لَهُ ذَلِكَ إلَّا بِأَنْ يَهَبَهَا لَهُمْ، ثُمَّ يُخْرِجَهَا عَنْ الصَّغِيرِ، وَالْمَجْنُونِ، وَلَا يُخْرِجَهَا عَمَّنْ يَعْقِلُ مِنْ الْبَالِغِينَ إلَّا بِتَوْكِيلٍ مِنْهُمْ لَهُ عَلَى ذَلِكَ. بُرْهَانُ ذَلِكَ -: مَا قَدَّمْنَا مِنْ أَنَّ

what they possess and are capable of paying, or what their guardian can pay on their behalf. Another person's wealth cannot substitute for fulfilling this obligation, as no textual evidence or consensus permits this. If one gifts the Zakat to them, they become owners of its amount and must discharge the obligation. As for those who have not reached puberty or lack mental capacity, this is based on Allah's command: "Cooperate in righteousness and piety" (Quran 5:2).[19]

L11378–11379 As for the adult, this is based on the statement of Allah the Most High: "No soul earns except against itself" [Al-An'am 6:164]. And with Allah the Most High is all success.[20]

[Issue: The Time for Zakāt al-Fiṭr]

L11380

L11381 718. Issue: The time for Zakat al-Fitr—which is not obligatory before its commencement, becomes obligatory at its onset, and ceases to be obligatory at its conclusion—begins after the rising of the second dawn on Eid day, extending until the sun whitens [the horizon] and the prayer becomes permissible on that very day. Whoever dies before the rising of the second dawn on the mentioned day has no obligation for Zakat al-Fitr. Whoever is born when the sun whitens on Eid day or afterward, or embraces Islam at that time—likewise bears no obligation. However, whoever dies between these two times, is born during this period, embraces Islam within it, or persists in life as a Muslim—must pay Zakat al-Fitr. If he does not fulfill it while having a son who can pay it, this obligation remains a perpetual debt until he discharges it whenever he pays it.

L11382 Al-Shafi'i said: Its time is the sunset of the final day of Ramadan. Whoever is born on the night of al-Fiṭr or embraces Islam is not obligated to pay Zakat al-Fiṭr. But whoever dies during that night remains bound by the obligation.

L11383 Abu Hanifah said: Its time is the splitting of dawn from the day of Fitr.

[19] **Qur'an references (L11377):** Qur'an 5:2 (Al-Ma'idah).
[20] **Qur'an references (L11379):** Qur'an 6:164 (Al-An'am).

اللَّهَ تَعَالَى إِنَّمَا فَرَضَهَا عَلَيْهِ فِيمَا يَجِدُ مِمَّا هُوَ قَادِرٌ عَلَى إِخْرَاجِهَا مِنْهُ، أَوْ يَكُونُ وَلِيُّهُ قَادِرًا عَلَى إِخْرَاجِهَا مِنْهُ، وَلَا يَكُونُ مَالُ غَيْرِهِ مَكَانًا لِأَدَاءِ الْفَرْضِ عَنْهُ؛ إِذْ لَمْ يَأْتِ بِذَلِكَ نَصٌّ وَلَا إِجْمَاعٌ؛ فَإِذَا وَهَبَهَا لَهُ فَقَدْ صَارَ مَالِكًا لِمِقْدَارِهَا، فَعَلَيْهِ إِخْرَاجُهَا، فَأَمَّا مَنْ لَمْ يَبْلُغْ، وَلَا يَعْقِلُ، فَلِقَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢] .

وَأَمَّا الْبَالِغُ فَلِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ وَقْتُ زَكَاةِ الْفِطْرِ]

٧١٨ - مَسْأَلَةٌ: وَوَقْتُ زَكَاةِ الْفِطْرِ - الَّذِي لَا تَجِبُ قَبْلَهُ، إِنَّمَا تَجِبُ بِدُخُولِهِ، ثُمَّ لَا تَجِبُ بِخُرُوجِهِ -: فَهُوَ إِثْرَ طُلُوعِ الْفَجْرِ الثَّانِي مِنْ يَوْمِ الْفِطْرِ، مُمْتَدًّا إِلَى أَنْ تَبْيَضَّ الشَّمْسُ وَتَحِلَّ الصَّلَاةُ مِنْ ذَلِكَ الْيَوْمِ نَفْسِهِ، فَمَنْ مَاتَ قَبْلَ طُلُوعِ الْفَجْرِ مِنْ الْيَوْمِ الْمَذْكُورِ فَلَيْسَ عَلَيْهِ زَكَاةُ الْفِطْرِ، وَمَنْ وُلِدَ حِينَ ابْيِضَاضِ الشَّمْسِ مِنْ يَوْمِ الْفِطْرِ فَمَا بَعْدَ ذَلِكَ، أَوْ أَسْلَمَ كَذَلِكَ -: فَلَيْسَ عَلَيْهِ زَكَاةُ الْفِطْرِ، وَمَنْ مَاتَ بَيْنَ هَذَيْنِ الْوَقْتَيْنِ أَوْ وُلِدَ أَوْ أَسْلَمَ أَوْ تَمَادَتْ حَيَاتُهُ وَهُوَ مُسْلِمٌ -: فَعَلَيْهِ زَكَاةُ الْفِطْرِ، فَإِنْ لَمْ يُؤَدِّهَا وَلَهُ مِنْ ابْنٍ يُؤَدِّيهَا فَهِيَ دَيْنٌ عَلَيْهِ أَبَدًا حَتَّى يُؤَدِّيَهَا مَتَى أَدَّاهَا.

وَقَالَ الشَّافِعِيُّ: وَقْتُهَا مَغِيبُ الشَّمْسِ مِنْ آخِرِ يَوْمٍ مِنْ رَمَضَانَ، فَمَنْ وُلِدَ لَيْلَةَ الْفِطْرِ أَوْ أَسْلَمَ فَلَا زَكَاةَ فِطْرٍ عَلَيْهِ، وَمَنْ مَاتَ فِيهَا فَهِيَ عَلَيْهِ.

وَقَالَ أَبُو حَنِيفَةَ: وَقْتُهَا انْشِقَاقُ الْفَجْرِ مِنْ يَوْمِ الْفِطْرِ، فَمَنْ مَاتَ قَبْلَ ذَلِكَ، أَوْ وُلِدَ بَعْدَ ذَلِكَ، أَوْ أَسْلَمَ بَعْدَ ذَلِكَ فَلَا زَكَاةَ فِطْرٍ عَلَيْهِ.

Whoever dies before that, is born after that, or embraces Islam after that, is not obligated to pay Zakat al-Fitr.

L11384 Malik once held the same opinion as al-Shafiʿī, as reported by Ashhab from him, and on another occasion he said: "Whoever is born on the day of Eid al-Fiṭr must give Zakāt al-Fiṭr."

L11385 Abu Muhammad said: As for whoever holds that its time is the sunset of the final day of Ramadan, he said: This is Zakāt al-Fiṭr, and that is the breaking of the Ramadan fast and the complete exit from it.

L11386 The others who observed its time to be the dawn of Eid al-Fitr said: "This is the time for breaking the fast, not what precedes it, for every night he would break his fast in this manner and then begin fasting again in the morning. Thus, he only broke his fast on the morning of Eid al-Fitr, not before it. At that point, its time begins by mutual agreement between us and you." Abu Muhammad said: Allah the Almighty declared: {If you disagree over anything, refer it to Allah and the Messenger, if you believe in Allah and the Last Day} [an-Nisā' 4:59].[21]

L11387–11388 We came across the narration of Abdullah ibn Yusuf, who narrated to us: Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Muhammad ibn Rafiʿ narrated to us, Ibn Abi Fudayk narrated to us, al-Dahhak ibn Uthman narrated to us from Nafiʿ from Ibn Umar, who said: "The Messenger of Allah (peace and blessings be upon him) commanded that Zakat al-Fitr be paid before the people depart for the Eid prayer ground."

L11389 Abū Muḥammad said: This is the time for performing it according to the explicit text, and their departure to it is solely to catch it. The time for the Eid al-Fitr prayer is the permissibility of prayer when the sun whitens on that day. Once they enter the prayer after departing for Eid al-Fitr, has its time not already expired? The discussion remains regarding the beginning

[21] **Qur'an references (L11386):** Qur'an 4:59 (An-Nisa).

وَقَالَ مَالِكٌ مَرَّةً كَقَوْلِ الشَّافِعِيِّ فِي رِوَايَةِ أَشْهَبَ عَنْهُ، وَمَرَّةً قَالَ: إِنَّ مَنْ وُلِدَ يَوْمَ الْفِطْرِ فَعَلَيْهِ زَكَاةُ الْفِطْرِ.

قَالَ أَبُو مُحَمَّد أَمَّا مَنْ رَأَى وَقْتَهَا غُرُوبَ الشَّمْسِ مِنْ آخِرِ يَوْمٍ مِنْ رَمَضَانَ فَإِنَّهُ قَالَ: هِيَ زَكَاةُ الْفِطْرِ، وَذَلِكَ هُوَ الْفِطْرُ مِنْ صَوْمِ رَمَضَانَ وَالْخُرُوجُ عَنْهُ جُمْلَةً.

وَقَالَ الْآخَرُونَ الَّذِينَ رَأَوْا وَقْتَهَا طُلُوعَ الْفَجْرِ مِنْ يَوْمِ الْفِطْرِ: إِنَّ هَذَا هُوَ وَقْتُ الْفِطْرِ، لَا مَا قَبْلَهُ؛ لِأَنَّهُ فِي كُلِّ لَيْلَةٍ كَانَ يُفْطِرُ كَذَلِكَ ثُمَّ يُصْبِحُ صَائِمًا فَإِنَّمَا أَفْطَرَ مِنْ صَوْمِهِ صَبِيحَةَ يَوْمِ الْفِطْرِ، لَا قَبْلَهُ، وَحِينَئِذٍ دَخَلَ وَقْتُهَا بِاتِّفَاقٍ مِنَّا وَمِنْكُمْ. قَالَ أَبُو مُحَمَّد: قَالَ اللَّهُ عَزَّ وَجَلَّ: {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ} [النساء: ٥٩] .

فَوَجَدْنَا مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّد ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا مُحَمَّدُ بْنُ رَافِعٍ ثنا ابْنُ أَبِي فُدَيْكٍ أَخْبَرَنَا الضَّحَّاكُ بْنُ عُثْمَانَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِإِخْرَاجِ زَكَاةِ الْفِطْرِ أَنْ تُؤَدَّى قَبْلَ خُرُوجِ النَّاسِ إِلَى الْمُصَلَّى» .

قَالَ أَبُو مُحَمَّد: فَهَذَا وَقْتُ أَدَائِهَا بِالنَّصِّ، وَخُرُوجُهُمْ إِلَيْهَا إِنَّمَا هُوَ لِإِدْرَاكِهَا، وَوَقْتُ صَلَاةِ الْفِطْرِ هُوَ جَوَازُ الصَّلَاةِ بِابْيِضَاضِ الشَّمْسِ يَوْمَئِذٍ فَإِذَا تَمَّ الْخُرُوجُ إِلَى صَلَاةِ الْفِطْرِ بِدُخُولِهِمْ فِي الصَّلَاةِ فَقَدْ خَرَجَ وَقْتُهَا؟ وَبَقِيَ الْقَوْلُ فِي أَوَّلِ وَقْتِهَا: فَوَجَدْنَا الْفِطْرَ الْمُتَيَقَّنَ إِنَّمَا هُوَ بِطُلُوعِ الْفَجْرِ مِنْ يَوْمِ الْفِطْرِ، وَبَطَلَ قَوْلُ مَنْ جَعَلَ وَقْتَهَا غُرُوبَ

of its time: We have determined that the certain Eid al-Fitr occurs only at the emergence of dawn on the day of Eid, thereby invalidating the claim of those who designate its time as sunset on the night preceding Eid—for this contradicts the time in which the Prophet—peace be upon him—was commanded to perform it.

الشَّمْسِ مِنْ أَوَّلِ لَيْلَةِ الْفِطْرِ، لِأَنَّهُ خِلَافُ الْوَقْتِ الَّذِي أُمِرَ - عَلَيْهِ السَّلَامُ - بِأَدَائِهَا فِيهِ.

L11390 Abu Muhammad said: Whoever does not fulfill it until its time has expired, it becomes an obligation upon his liability and wealth for those entitled to it. It is a debt owed to them and a right among their rights. It is obligatory to discharge it from his wealth, and withholding it in his possession is forbidden. He is thus perpetually obligated to fulfill it, and success is by Allah, the Exalted. Their claim is thereby nullified, but Allah's right remains for his waste of the obligation's time. He cannot remedy this except through seeking forgiveness and repentance. And in Allah, the Exalted, we seek support.

قَالَ أَبُو مُحَمَّدٍ: فَمَنْ لَمْ يُؤَدِّهَا حَتَّى خَرَجَ وَقْتُهَا فَقَدْ وَجَبَتْ فِي ذِمَّتِهِ وَمَالِهِ لِمَنْ هِيَ لَهُ، فَهِيَ دَيْنٌ لَهُمْ، وَحَقٌّ مِنْ حُقُوقِهِمْ، وَقَدْ وَجَبَ إِخْرَاجُهَا مِنْ مَالٍ وَحَرُمَ عَلَيْهِ إِمْسَاكُهَا فِي مَالِهِ، فَوَجَبَ عَلَيْهِ أَدَاؤُهَا أَبَدًا، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ، وَيَسْقُطُ بِذَلِكَ حَقُّهُمْ، وَيَبْقَى حَقُّ اللَّهِ تَعَالَى فِي تَضْيِيعِهِ الْوَقْتَ، لَا يَقْدِرُ عَلَى جَبْرِهِ إِلَّا بِالِاسْتِغْفَارِ وَالنَّدَامَةِ - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

L11391 It is fundamentally impermissible to advance Zakāt al-Fiṭr before its designated time. If they cite the narration of Abū Hurayrah—when the Messenger of Allāh (peace and blessings of Allāh be upon him) commanded him to guard the Zakāt al-Fiṭr overnight, and Satan came to him on the first, second, and third nights—this constitutes no valid proof for their stance. This is because those nights must have been either in Ramaḍān or Shawwāl. It is impermissible for them to have been in Ramaḍān, as the narration does not specify this, and it is inconceivable to attribute to the Messenger of Allāh (peace and blessings of Allāh be upon him) that he withheld a charity whose payment was due from its rightful recipients. If they were in Shawwāl, this is not prohibited, since he had not completed [the collection] and had withheld access to the recipients. His delay (peace be upon him) in distributing it constitutes definitive proof that the time for its payment had not yet commenced. Had those nights been in Ramaḍān, he (peace be upon him) would not have dispensed it.

وَلَا يَجُوزُ تَقْدِيمُهَا قَبْلَ وَقْتِهَا أَصْلًا. فَإِنْ ذَكَرُوا خَبَرَ «أَبِي هُرَيْرَةَ إِذْ أَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمَبِيتِ عَلَى صَدَقَةِ الْفِطْرِ فَأَتَاهُ الشَّيْطَانُ لَيْلَةً، وَثَانِيَةً، وَثَالِثَةً» -: فَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَا تَخْلُو تِلْكَ اللَّيَالِي أَنْ تَكُونَ مِنْ رَمَضَانَ أَوْ مِنْ شَوَّالٍ، وَلَا يَجُوزُ أَنْ تَكُونَ مِنْ رَمَضَانَ، لِأَنَّهُ لَيْسَ ذَلِكَ فِي الْخَبَرِ، وَلَا يُظَنُّ بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ حَبَسَ صَدَقَةً وَجَبَ أَدَاؤُهَا عَنْ أَهْلِهَا، وَإِنْ كَانَتْ مِنْ شَوَّالٍ فَلَا يُمْنَعُ مِنْ ذَلِكَ، إِذْ لَمْ يُكْمِلْ وَحَبَسَ وُجُودَ أَهْلِهَا، وَفِي تَأْخِيرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إِعْطَاءَهَا بُرْهَانٌ عَلَى أَنَّ وَقْتَ إِخْرَاجِهَا لَمْ يَحِنْ بَعْدُ، فَإِنْ كَانَ ذَلِكَ فِي لَيَالِي رَمَضَانَ فَلَمْ يُخْرِجْهَا - عَلَيْهِ السَّلَامُ -.

L11392–11394 Hence, it has been established that it is neither permissible to perform it before its prescribed time nor valid if performed beforehand; and if it is performed during the nights of Shawwāl, it is invalid. There was a doubt whether the inhabitants had not been found, so he (peace and blessings be

upon him) awaited their presence. Was their reliance on this report thereby invalidated?

فَصَحَّ أَنَّهُ لَمْ يَجُزْ تَقْدِيمُهَا قَبْلَ وَقْتِهَا وَلَا يُجْزِئُ، وَإِنْ كَانَتْ مِنْ لَيَالِي شَوَّالٍ فَبِلَا شَكٍّ أَنَّ أَهْلَهَا لَمْ يُوجَدُوا، فَتَرَبَّصَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وُجُودَهُمْ. فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ؟

The Division of Zakat

[قَسْمُ الصَّدَقَةِ]

L11395

An issue: Whether the distribution of one's wealth's Zakat or Zakat al-Fitr is undertaken by the individual himself or by the Imam or ruler.

[مَسْأَلَةٌ مَنْ تَوَلَّى تَفْرِيقَ زَكَاةِ مَالِهِ أَوْ زَكَاةِ فِطْرِهِ أَوْ تَوَلَّاهَا الْإِمَامُ أَوْ أَمِيرُهُ]

L11396

L11397 The Division of Zakat — An Issue: If one handles the distribution of their wealth's Zakat or their Zakat al-Fitr, or if the Imam or his amir does so — then the Imam and his amir must divide it into eight equal parts: a share for the destitute, a share for the poor, a share in those under contract for manumission and in freeing slaves, a share in the cause of Allah the Exalted, a share for wayfarers, a share for the workers who collect it, and a share for those whose hearts are to be reconciled.

قَسْمُ الصَّدَقَةِ - مَسْأَلَةٌ: وَمَنْ تَوَلَّى تَفْرِيقَ زَكَاةِ مَالِهِ أَوْ زَكَاةِ فِطْرِهِ أَوْ تَوَلَّاهَا الْإِمَامُ أَوْ أَمِيرُهُ -: فَإِنَّ الْإِمَامَ، أَوْ أَمِيرَهُ: يُفَرِّقَانِهَا ثَمَانِيَةَ أَجْزَاءٍ مُسْتَوِيَةٍ: لِلْمَسَاكِينِ سَهْمٌ، وَلِلْفُقَرَاءِ سَهْمٌ، وَفِي الْمُكَاتَبِينَ وَفِي عِتْقِ الرِّقَابِ سَهْمٌ، وَفِي سَبِيلِ اللَّهِ تَعَالَى سَهْمٌ، وَلِأَبْنَاءِ السَّبِيلِ سَهْمٌ، وَلِلْعُمَّالِ الَّذِينَ يَقْبِضُونَهَا سَهْمٌ، وَلِلْمُؤَلَّفَةِ قُلُوبُهُمْ سَهْمٌ.

L11398 As for one who distributes the zakāh of his wealth, it is allocated to six shares as we mentioned, while the share of the collectors and the share of those whose hearts are to be reconciled are dropped. It is not permissible to give fewer than three individuals from the people of a share unless one cannot find them, in which case he gives to those he finds. It is not permissible to give to some people of the shares while excluding others unless one cannot find them, in which case he gives to those he finds. It is not permissible to give any of it to a disbeliever, nor to anyone from Banū Hāshim and Banū al-Muṭṭalib (the two sons of ʿAbd Manāf), nor to any of their clients. If one gives to someone outside the eligible categories—intentionally or out of ignorance—it does not suffice him, nor is it permissible for the recipient to keep it. The recipient must return what he took, and the giver must fulfill by giving that which he gave to its rightful people. The evidence for this is Allah's statement: "The alms are only for the poor, the needy, those employed

وَأَمَّا مَنْ فَرَّقَ زَكَاةَ مَالِهِ فَفِي سِتَّةِ أَسْهُمٍ كَمَا ذَكَرْنَا، وَيَسْقُطُ: سَهْمُ الْعُمَّالِ، وَسَهْمُ الْمُؤَلَّفَةِ قُلُوبُهُمْ. وَلَا يَجُوزُ أَنْ يُعْطِيَ مِنْ أَهْلِ سَهْمٍ أَقَلَّ مِنْ ثَلَاثَةِ أَنْفُسٍ، إلَّا أَنْ لَا يَجِدَ، فَيُعْطِيَ مَنْ وَجَدَ؟ وَلَا يَجُوزُ أَنْ يُعْطِيَ بَعْضَ أَهْلِ السِّهَامِ دُونَ بَعْضٍ، إلَّا أَنْ يَجِدَ، فَيُعْطِيَ مَنْ وَجَدَ؟ وَلَا يَجُوزُ أَنْ يُعْطِيَ مِنْهَا كَافِرًا، وَلَا أَحَدًا مِنْ بَنِي هَاشِمٍ، وَالْمُطَّلِبِ ابْنَيْ عَبْدِ مَنَافٍ، وَلَا أَحَدًا مِنْ مَوَالِيهِمْ؟ فَإِنْ أَعْطَى مَنْ لَيْسَ مِنْ أَهْلِهَا - عَامِدًا أَوْ جَاهِلًا - لَمْ يُجْزِهِ، وَلَا جَازَ لِلْآخِذِ، وَعَلَى الْآخِذِ أَنْ يَرُدَّ مَا أَخَذَ، وَعَلَى الْمُعْطِي أَنْ يُوفِيَ ذَلِكَ الَّذِي أَعْطَى فِي أَهْلِهِ؟ بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: ﴿إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ

to collect them, those whose hearts are to be reconciled, for freeing captives, those in debt, in the cause of Allah, and for the traveler—a duty ordained by Allah. Allah is All-Knowing, All-Wise" (Quran 9:60).[22]

وَالْمَسَاكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ} [التوبة: ٦٠] .

L11399 Some of them said: Is it sufficient for a person to give his zakah to a single category [of recipients]? They argued that one cannot practically distribute it to all the poor and all the needy. Therefore, it is valid to give it to some [of them].

وَقَالَ بَعْضُهُمْ: يُجْزِئُ أَنْ يُعْطِيَ الْمَرْءُ صَدَقَتَهُ فِي صِنْفٍ وَاحِدٍ مِنْهَا؟ وَاحْتَجُّوا بِأَنَّهُ لَا يَقْدِرُ عَلَى عُمُومِ جَمِيعِ الْفُقَرَاءِ وَجَمِيعِ الْمَسَاكِينِ. فَصَحَّ أَنَّهَا فِي الْبَعْضِ.

L11400–11401 Abu Muhammad said: "This offers no proof for them in it, due to the statement of the Messenger of Allah (peace be upon him): 'When I command you with a command, do as much of it as you are able,' and due to the words of Allah the Most High: 'Allah does not burden a soul beyond its capacity' (Quran 2:286)."[23]

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» . وَلِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

L11402 Thus, it is established that whatever a person is incapable of is waived for them, while what they can manage remains obligatory—they must fulfill it. Consequently, the universal obligation to every poor and needy person is lifted, leaving only what one can afford from all categories. If they cannot manage some portions, those too are waived. Is it not erroneous to neglect what one *can* fulfill merely because what they *cannot* is waived? Did they not cite the hadith about the gold coin that he—peace and blessings be upon him—divided among four individuals? Abū Muḥammad said: We have already mentioned this report, and that the gold coin was never from obligatory alms (zakāh) in the first place, as this is not stated in the hadith at all. There is no prohibition against him—peace and blessings be upon him—giving to those whose hearts are being reconciled from sources other than obligatory alms, for he indeed gave them from the booty of Ḥunayn.

فَصَحَّ أَنَّ مَا عَجَزَ عَنْهُ الْمَرْءُ فَهُوَ سَاقِطٌ عَنْهُ، وَبَقِيَ عَلَيْهِ مَا اسْتَطَاعَ، لَا بُدَّ لَهُ مِنْ إِيفَائِهِ؛ فَسَقَطَ عُمُومُ كُلِّ فَقِيرٍ وَكُلِّ مِسْكِينٍ، وَبَقِيَ مَا قَدَرَ عَلَيْهِ مِنْ جَمِيعِ الْأَصْنَافِ، فَإِنْ عَجَزَ عَنْ بَعْضِهَا سَقَطَ عَنْهُ أَيْضًا؛ وَمِنَ الْبَاطِلِ أَنْ يُسْقِطَ مَا يَقْدِرُ عَلَيْهِ مِنْ أَجْلِ أَنَّهُ سَقَطَ عَنْهُ مَا لَا يَقْدِرُ عَلَيْهِ؟ وَذَكَرُوا حَدِيثَ الذُّهَيْبَةِ الَّتِي قَسَمَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَيْنَ الْأَرْبَعَةِ؟ قَالَ أَبُو مُحَمَّدٍ: وَقَدْ ذَكَرْنَا هَذَا الْخَبَرَ، وَأَنَّهُ لَمْ تَكُنْ تِلْكَ الذُّهَيْبَةُ مِنَ الصَّدَقَةِ أَصْلًا، لِأَنَّهُ لَيْسَ ذَلِكَ فِي الْحَدِيثِ أَصْلًا، وَلَا يَمْتَنِعُ أَنْ يُعْطَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْمُؤَلَّفَةُ قُلُوبُهُمْ مِنْ غَيْرِ الصَّدَقَةِ، بَلْ قَدْ أَعْطَاهُمْ مِنْ غَنَائِمِ حُنَيْنٍ.

L11403 They cited the narration of Sulaymān ibn Yasār: "From Salamah ibn Ṣakhr that the Messenger of Allah—peace and blessings be upon him—granted him the zakat funds of Banū Zurayq." Abū Muḥammad remarked: "This is a mursal narration. Even if authentic, it would not substantiate their claim, for it does not state that the Messenger of Allah—peace and blessings be

وَذَكَرُوا حَدِيثَ سُلَيْمَانَ بْنِ يَسَارٍ «عَنْ سَلَمَةَ بْنِ صَخْرٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَاهُ صَدَقَةَ بَنِي زُرَيْقٍ» . قَالَ أَبُو مُحَمَّدٍ: وَهَذَا مُرْسَلٌ، وَلَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَرَّمَ سَائِرَ الْأَصْنَافِ مِنْ سَائِرِ الصَّدَقَاتِ؟ وَادَّعَى قَوْمٌ: أَنَّ سَهْمَ الْمُؤَلَّفَةِ قُلُوبُهُمْ قَدْ سَقَطَ؟ قَالَ أَبُو مُحَمَّدٍ:

[22] **Qur'an references (L11398):** Qur'an 9:60 (At-Tawbah).
[23] **Qur'an references (L11401):** Qur'an 2:286 (Al-Baqarah).

upon him—prohibited all other categories from the rest of the charities." Some asserted that the share designated for those whose hearts are to be reconciled has ceased. Abū Muḥammad responded: "This is invalid. Rather, they are more numerous today than they have ever been. Their share—and that of the administrators—ceases only when an individual undertakes the distribution of his own charity, as there are no appointed administrators over it. The disposition of those whose hearts are to be reconciled rests solely with the Imam, not others."

وَهَذَا بَاطِلٌ، بَلْ هُمْ الْيَوْمَ أَكْثَرُ مَا كَانُوا، وَإِنَّمَا يَسْقُطُونَ هُمْ وَالْعَامِلُونَ إِذَا تَوَلَّى الْمَرْءُ قِسْمَةَ صَدَقَةِ نَفْسِهِ، لِأَنَّهُ لَيْسَ هُنَالِكَ عَامِلُونَ عَلَيْهَا، وَأَمْرُ الْمُؤَلَّفَةِ إلَى الْإِمَامِ لَا إلَى غَيْرِهِ.

L11404–11406 Abū Muḥammad said: They do not differ regarding one who bequeaths wealth to a group and named them—that it is impermissible to exclusively allocate it to some of them over others. Among the calamitous statements is the claim of those who say: "The decrees of humans take precedence over the decrees of Allāh the Exalted." Aḥmad ibn ʿUmar ibn Anas narrated to us: ʿAbdullāh ibn al-Ḥusayn ibn ʿIqāl narrated to us: Ibrāhīm ibn Muḥammad al-Dīnawarī narrated to us: Muḥammad ibn al-Jahm narrated to us: Muḥammad ibn Maslamah narrated to us: Yaʿqūb ibn Muḥammad narrated to us: Rifāʿah narrated to us. From his grandfather: "One of the emirs appointed Rafiʿ ibn Khadij over livestock zakāt. He came to him with nothing, so he questioned him? Rafiʿ said: 'My covenant with the Messenger of Allah—peace be upon him—is a hadith. I apportioned them into eight parts and divided them. Likewise, the Messenger of Allah—peace be upon him—used to act.'"

قَالَ أَبُو مُحَمَّد: لَا يَخْتَلِفُونَ فِي أَنَّ مَنْ أَمَرَ لِقَوْمٍ بِمَالٍ - وَسَمَّاهُمْ - أَنَّهُ لَا يَحِلُّ أَنْ يَخُصَّ بِهِ بَعْضَهُمْ دُونَ بَعْضٍ، فَمِنْ الْمُصِيبَةِ قَوْلُ مَنْ قَالَ: إنَّ أَمْرَ النَّاسِ أَوْكَدُ مِنْ أَمْرِ اللَّهِ تَعَالَى -: حَدَّثَنَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ ثنا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ ثنا إبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ ثنا مُحَمَّدُ بْنُ الْجَهْمِ ثنا مُحَمَّدُ بْنُ مَسْلَمَةَ ثنا يَعْقُوبُ بْنُ مُحَمَّدٍ ثنا رِفَاعَةُ عَنْ جَدِّهِ: «أَنَّ بَعْضَ الْأُمَرَاءِ اسْتَعْمَلَ رَافِعَ بْنَ خَدِيجٍ عَلَى صَدَقَةِ الْمَاشِيَةِ، فَأَتَاهُ لَا شَيْءَ مَعَهُ فَسَأَلَهُ؟ فَقَالَ رَافِعٌ إنَّ عَهْدِي بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَدِيثٌ وَإِنِّي جَزَيْتُهَا ثَمَانِيَةَ أَجْزَاءٍ فَقَسَّمْتُهَا، وَكَذَلِكَ كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَصْنَعُ».

L11407 It is authentically reported that Ibn Abbas said regarding Zakat: "Put it in its proper places." The same is narrated from Ibrahim al-Nakha'i and al-Hasan. The same is narrated from Abu Wa'il, who said concerning the share of those whose hearts are to be reconciled: "Return it to the other categories." Sa'id ibn Jubayr said: "Place it where Allah has commanded you." This is the opinion of al-Shafi'i, Abu Sulayman, Ibn Umar, and Rafi', as we have cited. We have also narrated the second opinion from Hudhayfa, 'Ata', and others.

وَصَحَّ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ فِي الزَّكَاةِ: ضَعُوهَا مَوَاضِعَهَا؟ وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَالْحَسَنِ مِثْلُ ذَلِكَ. وَعَنْ أَبِي وَائِلٍ مِثْلُ ذَلِكَ، وَقَالَ فِي نَصِيبِ الْمُؤَلَّفَةِ قُلُوبُهُمْ رَدُّهُ عَلَى الْآخَرِينَ. وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ: ضَعْهَا حَيْثُ أَمَرَك اللَّهُ. وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَقَوْلُ ابْنِ عُمَرَ، وَرَافِعٍ، كَمَا أَوْرَدْنَا، وَرُوِّينَا الْقَوْلَ الثَّانِي عَنْ حُذَيْفَةَ، وَعَطَاءٍ، وَغَيْرِهِمَا.

L11408 As for our statement: "Less than three of each type is not sufficient unless he cannot find [three]"—this is because the collective noun applies only to

three or more and does not apply to a single item. The dual form has a specific grammatical form in the language: one says “miskīn” for the singular, “miskīnāni” for two, and “masākīn” for three or more. Similarly, the term “the poor” (al-fuqarāʾ) and all other names mentioned in the verse? This is the opinion of al-Shāfiʿī and others.

وَأَمَّا قَوْلُنَا: لَا يُجْزِئُ أَقَلُّ مِنْ ثَلَاثَةٍ مِنْ كُلِّ صِنْفٍ إِلَّا أَنْ لَا يَجِدَ -: فَلِأَنَّ اسْمَ الْجَمْعِ: لَا يَقَعُ إِلَّا عَلَى ثَلَاثَةٍ فَصَاعِدًا، وَلَا يَقَعُ عَلَى وَاحِدٍ، وَلِلتَّثْنِيَةِ بِنِيَّةٍ فِي اللُّغَةِ، تَقُولُ: مِسْكِينٌ لِلْوَاحِدِ، وَمِسْكِينَانِ لِلِاثْنَيْنِ، وَمَسَاكِينُ لِلثَّلَاثَةِ، فَصَاعِدًا، وَكَذَلِكَ اسْمُ الْفُقَرَاءِ وَسَائِرُ الْأَسْمَاءِ الْمَذْكُورَةِ فِي الْآيَةِ؟ وَهُوَ قَوْلُ الشَّافِعِيِّ، وَغَيْرُهُ.

L11409 As for not giving to a disbeliever, this is based on what ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid narrated to us: Ibrāhīm ibn Aḥmad narrated to us: al-Farbarī narrated to us: al-Bukhārī narrated to us: Abū ʿĀṣim al-Ḍaḥḥāk ibn Makhlad narrated to us, from Zakariyyāʾ ibn Isḥāq, from Yaḥyā ibn ʿAbd Allāh ibn Ṣayfī, from Abī Maʿbad, from Ibn ʿAbbās: “The Prophet, peace and blessings be upon him, sent Muʿādh to Yemen and instructed him in the narration: ’Inform them that Allah has ordained upon them an obligatory charity to be taken from their wealthy people and distributed to their poor people.’” Thus, the Prophet, peace and blessings be upon him, designated this charity exclusively for the poor Muslims.

وَأَمَّا أَنْ لَا يُعْطِيَ كَافِرًا فَلِمَا حَدَّثَنَاهُ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا أَبُو عَاصِمٍ الضَّحَّاكُ بْنُ مَخْلَدٍ عَنْ زَكَرِيَّاءَ بْنِ إِسْحَاقَ عَنْ يَحْيَى بْنِ عَبْدِ اللَّهِ بْنِ صَيْفِيٍ عَنْ أَبِي مَعْبَدٍ عَنِ ابْنِ عَبَّاسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ مُعَاذًا إِلَى الْيَمَنِ وَقَالَ لَهُ فِي حَدِيثٍ فَأَعْلِمْهُمْ أَنَّ اللَّهَ افْتَرَضَ عَلَيْهِمْ صَدَقَةً تُؤْخَذُ مِنْ أَغْنِيَائِهِمْ وَتُرَدُّ فِي فُقَرَائِهِمْ» . فَإِنَّمَا جَعَلَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لِفُقَرَاءِ الْمُسْلِمِينَ فَقَطْ.

L11410–11412 As for Banū Hāshim and Banū al-Muṭṭalib, regarding what ʿAbdullāh ibn Yūsuf narrated to us: from Aḥmad ibn Fatḥ, from ʿAbd al-Wahhāb ibn ʿĪsā, from Aḥmad ibn Muḥammad, from Aḥmad ibn ʿAlī, from Muslim ibn al-Ḥajjāj, from Hārūn ibn Maʿrūf, from Ibn Wahb, who reported to me through Yūnus ibn Yazīd, from Ibn Shihāb, from ʿAbdullāh ibn al-Ḥārith ibn Nawfal, from ʿAbd al-Muṭṭalib ibn Rabīʿah ibn al-Ḥārith ibn ʿAbd al-Muṭṭalib, that the Messenger of... The Messenger of Allah—peace be upon him—said to him and to al-Faḍl ibn ʿAbbās ibn ʿAbd al-Muṭṭalib: “Indeed these alms are nothing but the filth of people, and they are not lawful for Muḥammad or his family.”

وَأَمَّا بَنُو هَاشِمٍ، وَبَنُو الْمُطَّلِبِ فَلِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا هَارُونُ بْنُ مَعْرُوفٍ ثنا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنِ ابْنِ شِهَابٍ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ بْنِ نَوْفَلٍ عَنْ عَبْدِ الْمُطَّلِبِ بْنِ رَبِيعَةَ بْنِ الْحَارِثِ بْنِ عَبْدِ الْمُطَّلِبِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ وَلِلْفَضْلِ بْنِ عَبَّاسِ بْنِ عَبْدِ الْمُطَّلِبِ «إِنَّ هَذِهِ الصَّدَقَاتِ إِنَّمَا هِيَ أَوْسَاخُ الْقَوْمِ، وَإِنَّهَا لَا تَحِلُّ لِمُحَمَّدٍ وَلَا لِآلِ مُحَمَّدٍ» .

L11413 Abū Muḥammad said: The people differed concerning who the Family of Muḥammad are. A group said: They are exclusively the sons of ʿAbd al-Muṭṭalib ibn Hāshim ibn ʿAbd Manāf, because Hāshim has no descendants except through ʿAbd al-Muṭṭalib. They argued that they are undoubtedly the

قَالَ أَبُو مُحَمَّدٍ: فَاخْتَلَفَ النَّاسُ فِي: مَنْ هُمْ آلُ مُحَمَّدٍ؟ فَقَالَ قَوْمٌ: هُمْ بَنُو عَبْدِ الْمُطَّلِبِ بْنِ هَاشِمِ بْنِ عَبْدِ مَنَافٍ فَقَطْ، لِأَنَّهُ لَا عَقِبَ لِهَاشِمٍ مِنْ غَيْرِ عَبْدِ الْمُطَّلِبِ، وَاحْتَجُّوا

Family of Muḥammad, since ʿAbd Allāh—the father of the Messenger of Allāh (upon him be blessings and peace)—had no descendants, so the Prophet had no remaining kin except the children of al-ʿAbbās, Abū Ṭālib, al-Ḥārith, and Abū Lahab: the sons of ʿAbd al-Muṭṭalib exclusively. Others said: Rather, they are exclusively the sons of ʿAbd al-Muṭṭalib ibn Hāshim and the sons of al-Muṭṭalib ibn ʿAbd Manāf, along with their clients.

بِأَنَّهُمْ آلُ مُحَمَّدٍ بِيَقِينٍ، لِأَنَّهُ لَا عَقِبَ لِعَبْدِ اللَّهِ وَالِدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمْ يَبْقَ لَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَهْلٌ إِلَّا وَلَدُ الْعَبَّاسِ، وَأَبِي طَالِبٍ، وَالْحَارِثِ، وَأَبِي لَهَبٍ: بَنِي عَبْدِ الْمُطَّلِبِ فَقَطْ، وَقَالَ آخَرُونَ: بَلْ بَنُو عَبْدِ الْمُطَّلِبِ بْنِ هَاشِمٍ، وَبَنُو الْمُطَّلِبِ بْنِ عَبْدِ مَنَافٍ فَقَطْ وَمَوَالِيهِمْ.

L11414 Asbagh ibn al-Faraj al-Maliki said: "The Family of Muḥammad encompasses all Quraysh, and the clients are certainly not among them."

وَقَالَ أَصْبَغُ بْنُ الْفَرَجِ الْمَالِكِيُّ: آلُ مُحَمَّدٍ: جَمِيعُ قُرَيْشٍ، وَلَيْسَ الْمَوَالِي مِنْهُمْ.

L11415 Abu Muhammad said: Therefore, it was necessary to examine that: we found what Abdullah ibn Rabiʿ narrated to us, saying: Muhammad ibn Muʿawiyah narrated to us, Ahmad ibn Shuʿayb narrated to us, I, ʿAmr ibn ʿAli, narrated to us, Yahya—who is Ibn Saʿīd al-Qaṭṭān—narrated to us, Shuʿbah narrated to us, al-Ḥakam—who is Ibn ʿUtaybah—narrated to us, from ʿUbaydullāh ibn Abī Rāfiʿ, from his father: "The Messenger of Allah—peace and blessings be upon him—appointed a man from Banū Makhzūm in charge of collecting charity. Abū Rāfiʿ wanted to follow him, but the Messenger of Allah—peace and blessings be upon him—said: 'Charity is not lawful for us, and indeed the freed bondsman of a people is from them.'"[24]

قَالَ أَبُو مُحَمَّدٍ: فَوَجَبَ النَّظَرُ فِي ذَلِكَ -: فَوَجَدْنَا مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ قَالَ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ ثنا يَحْيَى وَهُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - ثنا شُعْبَةُ ثنا الْحَكَمُ هُوَ ابْنُ عُتَيْبَةَ - عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي رَافِعٍ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَعْمَلَ رَجُلًا مِنْ بَنِي مَخْزُومٍ عَلَى الصَّدَقَةِ، فَأَرَادَ أَبُو رَافِعٍ أَنْ يَتْبَعَهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّ الصَّدَقَةَ لَا تَحِلُّ لَنَا، وَإِنَّ مَوْلَى الْقَوْمِ مِنْهُمْ» .

L11416 Thus, the opinion of those who excluded the clients from the ruling applicable to them regarding the prohibition of alms has been invalidated.

فَبَطَلَ قَوْلُ مَنْ أَخْرَجَ الْمَوَالِيَ مِنْ حُكْمِهِمْ فِي تَحْرِيمِ الصَّدَقَةِ.

L11417–11419 And we found what Abdullah ibn Rabiʾ narrated to us: Muhammad ibn Ishaq ibn as-Sulaym narrated to us; Ibn al-Aʿrabi narrated to us; Abu Dawud as-Sijistani narrated to us; Ubaydullah ibn Umar ibn Maysarah narrated to us; and Abdur-Rahman ibn Mahdi narrated to us from. Abdullah ibn al-Mubarak reported from Yunus ibn Yazid, from al-Zuhri, who said: Saʿīd ibn al-Musayyab informed me that Jubayr ibn Muṭʿim informed him: He came—alongside Uthman ibn Affan—and they both addressed the Messenger of Allah, peace and blessings be upon him, regarding his allocation of the fifth (khums) to Banu Hashim and Banu Abd al-Muttalib. He said: "O Messenger of Allah, you allocated to our brothers Banu al-Muttalib but granted us

وَوَجَدْنَا مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد السِّجِسْتَانِيُّ ثنا عُبَيْدُ اللَّهِ بْنُ عُمَرَ بْنِ مَيْسَرَةَ ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ الزُّهْرِيِّ أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيِّبِ أَخْبَرَنِي «جُبَيْرُ بْنُ مُطْعِمٍ أَنَّهُ جَاءَ هُوَ وَعُثْمَانُ بْنُ عَفَّانَ يُكَلِّمَانِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَا قَسَمَ مِنْ الْخُمُسِ بَيْنَ بَنِي هَاشِمٍ، وَبَنِي عَبْدِ الْمُطَّلِبِ، فَقُلْتُ: يَا رَسُولَ اللَّهِ، قَسَمْتَ لِإِخْوَانِنَا بَنِي الْمُطَّلِبِ وَلَمْ تُعْطِنَا شَيْئًا، وَقَرَابَتُنَا وَقَرَابَتُهُمْ مِنْكَ وَاحِدَةٌ؟

[24] **Hadith references (L11415):** Sunan an-Nasai 2612.

فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا بَنُو هَاشِمٍ، وَبَنُو الْمُطَّلِبِ شَيْءٌ وَاحِدٌ» . فَصَحَّ أَنَّهُ لَا يَجُوزُ أَنْ يُفَرَّقَ بَيْنَ حُكْمِهِمْ فِي شَيْءٍ أَصْلًا؛ لِأَنَّهُمْ شَيْءٌ وَاحِدٌ بِنَصِّ كَلَامِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -؛ فَصَحَّ أَنَّهُمْ آلُ مُحَمَّدٍ، وَإِذْ هُمْ آلُ مُحَمَّدٍ فَالصَّدَقَةُ عَلَيْهِمْ حَرَامٌ؛ فَيَخْرُجُ بَنُو عَبْدِ شَمْسٍ، وَبَنُو نَوْفَلٍ ابْنَيْ عَبْدِ مَنَافٍ، وَسَائِرُ قُرَيْشٍ عَنْ هَذَيْنِ: الْبَطْنَيْنِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

nothing, though our kinship to you and theirs are equal?" The Messenger of Allah, peace and blessings be upon him, replied: "Banu Hashim and Banu al-Muttalib are indeed one and the same." This establishes that it is impermissible to differentiate between their legal rulings in anything fundamentally, for they are a single entity by the explicit text of his speech—peace and blessings be upon him. Thus, it is confirmed that they are the family of Muhammad. Since they are the family of Muhammad, charity is forbidden for them. Therefore, Banu Abd Shams and Banu Nawfal—the two sons of Abd Manaf—along with the rest of Quraysh, are excluded from these two branches. Success comes solely from Allah, the Exalted.

وَلَا يَحِلُّ لِهَذَيْنِ الْبَطْنَيْنِ صَدَقَةُ فَرْضٍ وَلَا تَطَوُّعٍ أَصْلًا، لِعُمُومِ قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «لَا تَحِلُّ الصَّدَقَةُ لِمُحَمَّدٍ وَلَا لِآلِ مُحَمَّدٍ» فَسَوَّى بَيْنَ نَفْسِهِ وَبَيْنَهُمْ، وَأَمَّا مَا لَا يَقَعُ عَلَيْهِ اسْمُ صَدَقَةٍ مُطْلَقَةٍ فَهُوَ حَلَالٌ لَهُمْ، كَالْهِبَةِ، وَالْعَطِيَّةِ، وَالْهَدِيَّةِ، وَالنُّحْلِ، وَالْحَبْسِ، وَالصِّلَةِ، وَالْبِرِّ، وَغَيْرِ ذَلِكَ، لِأَنَّهُ لَمْ يَأْتِ نَصٌّ بِتَحْرِيمِ شَيْءٍ مِنْ ذَلِكَ عَلَيْهِمْ وَأَمَّا قَوْلُنَا: لَا تُجْزِئُ إِنْ وُضِعَتْ فِي يَدِ مَنْ لَا تَجُوزُ لَهُ - فَلِأَنَّ اللَّهَ تَعَالَى سَمَّاهَا لِقَوْمٍ خَصَّهُمْ بِهَا، فَصَارَ حَقُّهُمْ فِيهَا؛ فَمَنْ أَعْطَى مِنْهَا غَيْرَهُمْ فَقَدْ خَالَفَ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ.

L11420 It is not permissible at all for these two clans to receive obligatory or voluntary charity, due to the generality of his statement—peace and blessings be upon him—"Charity is not permissible for Muḥammad nor for the family of Muḥammad," thereby equating himself with them. As for what does not fall under the absolute designation of charity, it is permissible for them, such as gifts, bestowals, presents, bridal gifts, endowments, sustaining relations, righteous deeds, and other such matters, because no textual prohibition has come regarding any of these for them. As for our statement that charity does not suffice if placed in the hand of an ineligible recipient—this is because Allah the Exalted designated it for specific people, making it their exclusive right. Thus whoever gives it to others has opposed what Allah the Exalted commanded.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» فَوَجَبَ عَلَى الْمُعْطِي إِيصَالُ مَا عَلَيْهِ إِلَى مَنْ هُوَ لَهُ، وَوَجَبَ عَلَى الْآخِذِ رَدُّ مَا أَخَذَ بِغَيْرِ حَقٍّ. قَالَ تَعَالَى: {وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

L11421 The Messenger of Allah - peace and blessings be upon him - said: "Whoever performs an act not in accordance with our teachings, it is rejected." Therefore, it is obligatory upon the giver to deliver what is due to its rightful owner, and it is obligatory upon the recipient to return what he has taken without right. Allah, the Exalted, said: {And do not acquire your wealth among yourselves unjustly} [Al-Baqarah: 188].[2526]

[مَسْأَلَةُ إِعْتَاقِ الْإِمَامِ مِنْ الزَّكَاةِ]

L11422–11423 **Issue: The Imam's emancipation using Zakat funds.**

[25] **Hadith references (L11421):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[26] **Qur'an references (L11421):** Qur'an 2:188 (Al-Baqarah).

مَسْأَلَةٌ: الْفُقَرَاءُ هُمْ الَّذِينَ لَا شَيْءَ لَهُمْ أَصْلًا. وَالْمَسَاكِينُ: هُمْ الَّذِينَ لَهُمْ شَيْءٌ لَا يَقُومُ بِهِمْ.

L11424 Issue: The poor are those who possess no means whatsoever. The needy are those who have some means insufficient to meet their needs.

بُرْهَانُ ذَلِكَ -: أَنَّهُ لَيْسَ إلَّا مُوسِرٌ، أَوْ غَنِيٌّ، أَوْ فَقِيرٌ، أَوْ مِسْكِينٌ، فِي الْأَسْمَاءِ. وَمَنْ لَهُ فَضْلٌ عَنْ قُوتِهِ. وَمَنْ لَا يَحْتَاجُ إلَى أَحَدٍ وَإِنْ لَمْ يَفْضُلْ عَنْهُ شَيْءٌ. وَمَنْ لَهُ مَا لَا يَقُومُ بِنَفْسِهِ مِنْهُ. وَمَنْ لَا شَيْءَ لَهُ فَهَذِهِ مَرَاتِبُ أَرْبَعٌ مَعْلُومَةٌ بِالْحِسِّ.

L11425 The proof for this is: the classifications are limited to four evident categories in tangible terms—the affluent, the wealthy, the poor, and the destitute. These comprise: one who possesses surplus beyond their essential sustenance; one who requires no assistance from others even if nothing exceeds their basic needs; one whose resources are insufficient to sustain themselves; and one who possesses nothing. These four distinct categories are evident through practical assessment.

فَالْمُوسِرُ بِلَا خِلَافٍ: هُوَ الَّذِي يَفْضُلُ مَالُهُ عَنْ قُوتِهِ وَقُوتِ عِيَالِهِ عَلَى السَّعَةِ.

L11426 The affluent person, without any disagreement, is one whose surplus wealth exceeds his sustenance and the sustenance of his dependents abundantly.

وَالْغَنِيُّ: هُوَ الَّذِي لَا يَحْتَاجُ إلَى أَحَدٍ وَإِنْ كَانَ لَا يَفْضُلُ عَنْهُ شَيْءٌ؛ لِأَنَّهُ فِي غِنًى عَنْ غَيْرِهِ.

L11427 The self-sufficient is one who does not need anyone, even if nothing surplus remains from him, because he is independent of others.

وَكُلُّ مُوسِرٍ غَنِيٌّ، وَلَيْسَ كُلُّ غَنِيٍّ مُوسِرًا -: فَإِنْ قِيلَ: لِمَ فَرَّقْتُمْ بَيْنَ الْمِسْكِينِ، وَالْفَقِيرِ؟ قُلْنَا: لِأَنَّ اللَّهَ تَعَالَى فَرَّقَ بَيْنَهُمَا، وَلَا يَجُوزُ أَنْ يُقَالَ فِي شَيْئَيْنِ فَرَّقَ اللَّهُ تَعَالَى بَيْنَهُمَا: إنَّهُمَا شَيْءٌ وَاحِدٌ، إلَّا بِنَصٍّ أَوْ إجْمَاعٍ أَوْ ضَرُورَةِ حِسٍّ، فَإِذْ ذَلِكَ كَذَلِكَ فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {أَمَّا السَّفِينَةُ فَكَانَتْ لِمَسَاكِينَ يَعْمَلُونَ فِي الْبَحْرِ} [الكهف: ٧٩] سَمَّاهُمْ اللَّهُ تَعَالَى مَسَاكِينَ وَلَهُمْ سَفِينَةٌ، وَلَوْ كَانَتْ تَقُومُ بِهِمْ لَكَانُوا أَغْنِيَاءَ بِلَا خِلَافٍ. فَصَحَّ اسْمُ الْمِسْكِينِ بِالنَّصِّ لِمَنْ هَذِهِ صِفَتُهُ.

L11428 Every wealthy person is affluent, but not every affluent person is wealthy. If it is asked: Why do you distinguish between the needy (miskīn) and the poor (faqīr)? We reply: Because Allāh the Exalted distinguished between them, and it is impermissible to claim that two things distinguished by Allāh the Exalted are one entity, except through a textual proof, consensus, or sensory necessity. Given this, Allāh the Exalted says: {As for the ship, it belonged to needy people working at sea} [Al-Kahf: 79]. Allāh the Exalted called them "needy" and they had a ship. Had it sufficed for their needs, they would have been wealthy without dispute. Thus, the designation "needy" is validated by the textual proof for those possessing such a description.[27]

وَبَقِيَ الْقِسْمُ الرَّابِعُ: وَهُوَ مَنْ لَا شَيْءَ لَهُ أَصْلًا، وَلَمْ يَبْقَ لَهُ مِنْ الْأَسْمَاءِ إلَّا الْفَقِيرُ، فَوَجَبَ ضَرُورَةً أَنَّهُ ذَاكَ. وَرُوِّينَا مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنَا نَصْرُ بْنُ عَلِيٍّ أَخْبَرَنَا عَبْدُ الْأَعْلَى ثنا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ

L11429–11431 The fourth category remains: those who possess absolutely nothing and retain no designation except "the Faqir." It must necessarily be that case. We were narrated through Abdullah ibn Rabīʿ, who narrated to us from Muḥammad ibn Muʿāwiyah, who narrated to us from Aḥmad ibn Shuʿayb, who in-

[27] **Qur'an references (L11428):** Qur'an 18:79 (Al-Kahf).

أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَيْسَ الْمِسْكِينُ الَّذِي تَرُدُّهُ الْأَكْلَةُ وَالْأَكْلَتَانِ، وَالتَّمْرَةُ وَالتَّمْرَتَانِ، قَالُوا: فَمَا الْمِسْكِينُ يَا رَسُولَ اللَّهِ؟ قَالَ: الْمِسْكِينُ الَّذِي لَا يَجِدُ غِنًى، وَلَا يَفْطِنُ لِحَاجَتِهِ فَيُتَصَدَّقُ عَلَيْهِ» . قَالَ أَبُو مُحَمَّد: فَصَحَّ أَنَّ الْمِسْكِينَ هُوَ الَّذِي لَا يَجِدُ غِنًى إلَّا أَنَّ لَهُ شَيْئًا لَا يَقُومُ لَهُ، فَهُوَ يَصْبِرُ وَيَنْطَوِي، وَهُوَ مُحْتَاجٌ وَلَا يَسْأَلُ. وَقَالَ تَعَالَى: {لِلْفُقَرَاءِ الْمُهَاجِرِينَ الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ وَأَمْوَالِهِمْ} [الحشر: ٨] فَصَحَّ أَنَّ الْفَقِيرَ الَّذِي لَا مَالَ لَهُ أَصْلًا؛ لِأَنَّ اللَّهَ تَعَالَى أَخْبَرَ أَنَّهُمْ أُخْرِجُوا مِنْ دِيَارِهِمْ وَأَمْوَالِهِمْ. وَلَا يَجُوزُ أَنْ يُحْمَلَ ذَلِكَ عَلَى بَعْضِ أَمْوَالِهِمْ. فَإِنْ قِيلَ: قَالَ اللَّهُ تَعَالَى: {لِلْفُقَرَاءِ الَّذِينَ أُحْصِرُوا فِي سَبِيلِ اللَّهِ لا يَسْتَطِيعُونَ ضَرْبًا فِي الأَرْضِ يَحْسَبُهُمُ الْجَاهِلُ أَغْنِيَاءَ مِنَ التَّعَفُّفِ} [البقرة: ٢٧٣] .

formed us through Naṣr ibn ʿAlī, who informed us from ʿAbd al-Aʿlā, who narrated from Maʿmar, reporting from al-Zuhrī, from Abū Salamah, from Abū Hurayrah, that the Messenger of Allāh—peace and blessings be upon him—said: "The Miskeen is not the one turned away by a morsel or two, or a date or two." They asked: "Then who is the Miskeen, O Messenger of Allāh?" He replied: "The Miskeen is one who does not attain self-sufficiency, nor does he have his need noticed so that charity might be given to him." Abū Muḥammad said: This establishes that the Miskeen is indeed one who finds no self-sufficiency, though he possesses something that does not suffice him. He endures and retreats inwardly, he is in need but does not ask. Allah the Exalted said: "For the poor emigrants who were driven out of their homes and their wealth" [Al-Hashr: 8]. Thus, it is established that the poor person is the one who has no wealth whatsoever, for Allah the Exalted informed that they were driven out of their homes and their wealth. It is impermissible to interpret this as referring to only some of their wealth. If it is objected: Allah the Exalted said: "For the poor who are restricted in the cause of Allah, unable to earn a livelihood; the unaware suppose them to be wealthy due to their self-restraint" [Al-Baqarah: 273].[28]

قُلْنَا: صَدَقَ اللَّهُ تَعَالَى: وَقَدْ يَلْبَسُ الْمَرْءُ فِي تِلْكَ الْبِلَادِ إزَارًا وَرِدَاءً خَلَقَيْنِ غَسِيلَيْنِ لَا يُسَاوِيَانِ دِرْهَمًا، فَمَنْ رَآهُ كَذَلِكَ ظَنَّهُ غَنِيًّا، وَلَا يُعَدُّ مَالًا مَا لَا بُدَّ مِنْهُ مِمَّا يَسْتُرُ الْعَوْرَةَ، إذَا لَمْ تَكُنْ لَهُ قِيمَةٌ - وَذَكَرُوا قَوْلَ الشَّاعِرِ:

L11432 We said: Allah, the Exalted, has spoken the truth. And indeed, a person in those lands may wear a worn-out, washed waist wrapper and cloak that together are not worth a dirham. Whoever sees him in such a state would assume he is wealthy. What is necessary for covering the private parts is not considered wealth if it has no value. And they mentioned the poet's verse:

أَمَّا الْفَقِيرُ الَّذِي كَانَتْ حَلُوبَتُهُ ... وَفْقَ الْعِيَالِ فَلَمْ يُتْرَكْ لَهُ سَبَدُ

L11433 As for the poor man whose milking yield was sufficient for his dependents, he was left with no surplus.

وَهَذَا حُجَّةٌ عَلَيْهِمْ؛ لِأَنَّ مَنْ كَانَتْ حَلُوبَتُهُ وَفْقَ عِيَالِهِ فَهُوَ غَنِيٌّ، وَإِنَّمَا صَارَ فَقِيرًا إذَا لَمْ يُتْرَكْ لَهُ سَبَدٌ، وَهُوَ قَوْلُنَا؟ وَالْعَامِلُونَ عَلَيْهَا: هُمْ الْعُمَّالُ الْخَارِجُونَ مِنْ عِنْدِ الْإِمَامِ الْوَاجِبَةِ طَاعَتُهُ، وَهُمْ الْمُصَدِّقُونَ، السُّعَاةُ؟ قَالَ أَبُو مُحَمَّد: وَقَدْ اتَّفَقَتْ الْأُمَّةُ عَلَى أَنَّهُ لَيْسَ كُلُّ مَنْ قَالَ: أَنَا عَامِلٌ عَامِلًا، وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ

L11434 This is an argument against them, for whoever's livelihood aligns with his dependents is wealthy, and he only becomes poor if no surplus is left for him—and this is our position? As for those appointed to administer it: they are the workers dispatched by the Imam whose obedience is obligatory—the collectors, the gatherers? Abu Muhammad said: The Ummah has unanimously agreed that not everyone who declares, "I am a worker," is truly a

[28] **Qur'an references (L11429):** Qur'an 59:8 (Al-Hashr); Qur'an 2:273 (Al-Baqarah).

worker. The Prophet (peace be upon him) stated, “Whoever performs an act not under our authority is invalid.” Thus, anyone who acts without being appointed by the Imam whose obedience is obligatory is not among those tasked with administering it. Giving zakah to such a person is invalid and constitutes an injustice, unless he distributes it to its rightful recipients, in which case it becomes valid, as it has reached its rightful beneficiaries. As for the worker appointed by the Imam whose obedience is obligatory, we are commanded to give zakah to him. We bear no responsibility for how he handles it, for he is an agent—like the guardian of an orphan, no distinction—or just like an agent appointed by a principal; they are entirely equivalent.

L11435–11437 And those whose hearts are to be reconciled: they are a people of influence whose advice to Muslims cannot be relied upon, so they are reconciled by... They are to be given from the alms and a fifth of the fifth.

L11438 Ar-riqāb are those under a contract of manumission (mukātabūn) and freed individuals (‘utaqā’); it is permissible to give them from Zakat.

L11439 Malik said: The mukātab is not to be given any of it [zakah]. Others said he should be given from it what is required to fulfill his kitābah.

L11440 Abu Muhammad said: “These are two opinions - are there no proofs for their soundness?”

L11441 And that the *mukatab* may be given from *zakāh* – as stated by Abū Ḥanīfah and al-Shāfiʿī. It is permissible to give from it the *mukatab* of a Hāshimī or al-Muṭṭalibī, because the *mukatab* is not from them nor a client affiliated with them, provided his emancipation is not yet fully completed. If the Imam emancipates slaves using *zakāh* funds, their clientage belongs to the Muslims, because he did not emancipate them from his own wealth nor from wealth remaining in the possession of the *zakāh* giver.

L11442 If a person frees [a slave] from his own zakat, the right of patronage belongs to him, because he freed [the slave] from his wealth—his own slave. The Prophet (peace and blessings be upon him) said: “The right of patronage belongs solely to the one who manumits,” and this is the opinion of Abū Thawr. It is reported from Ibn Abbas that he said: “Free from your zakat.”

عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» فَكُلُّ مَنْ عَمِلَ مِنْ غَيْرِ أَنْ يُوَلِّيَهُ الْإِمَامُ الْوَاجِبَةُ طَاعَتُهُ فَلَيْسَ مِنْ الْعَامِلِينَ عَلَيْهَا، وَلَا يُجْزِئُ دَفْعُ الصَّدَقَةِ إلَيْهِ، وَهِيَ مَظْلَمَةٌ، إلَّا أَنْ يَكُونَ يَضَعُهَا مَوَاضِعَهَا، فَتُجْزِئُ حِينَئِذٍ، لِأَنَّهَا قَدْ وَصَلَتْ إلَى أَهْلِهَا. وَأَمَّا عَامِلُ الْإِمَامِ الْوَاجِبَةِ طَاعَتُهُ فَنَحْنُ مَأْمُورُونَ بِدَفْعِهَا إلَيْهِ، وَلَيْسَ عَلَيْنَا مَا يَفْعَلُ فِيهَا، لِأَنَّهُ وَكِيلٌ، كَوَصِيِّ الْيَتِيمِ وَلَا فَرْقَ، وَكَوَكِيلِ الْمُوَكِّلِ سَوَاءٌ سَوَاءٌ.

وَالْمُؤَلَّفَةُ قُلُوبُهُمْ: هُمْ قَوْمٌ لَهُمْ قُوَّةٌ لَا يُوثَقُ بِنَصِيحَتِهِمْ لِلْمُسْلِمِينَ فَيَتَأَلَّفُونَ بِأَنْ يُعْطَوْا مِنْ الصَّدَقَاتِ، وَمِنْ خُمْسِ الْخُمْسِ

وَالرِّقَابُ: هُمْ الْمُكَاتَبُونَ، وَالْعُتَقَاءُ، فَجَائِزٌ أَنْ يُعْطَوْا مِنْ الزَّكَاةِ.

وَقَالَ مَالِكٌ: لَا يُعْطَى مِنْهَا الْمُكَاتَبُ. وَقَوْلُ غَيْرِهِ: يُعْطَى مِنْهَا مَا يُتِمُّ بِهِ كِتَابَتَهُ.

وَقَالَ أَبُو مُحَمَّدٍ: وَهَذَانِ قَوْلَانِ لَا دَلِيلَ عَلَى صِحَّتِهِمَا؟

وَبِأَنَّ الْمُكَاتَبَ يُعْطَى مِنْ الزَّكَاةِ يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ؟ وَجَازَ أَنْ يُعْطَى مِنْهَا مُكَاتَبُ الْهَاشِمِيِّ، وَالْمُطَّلِبِيِّ، لِأَنَّهُ لَيْسَ مِنْهُمَا، وَلَا مَوْلًى لَهُمَا مَا لَمْ يُعْتَقْ كُلُّهُ؟ وَإِنْ أَعْتَقَ الْإِمَامُ مِنْ الزَّكَاةِ رِقَابًا فَوَلَاؤُهَا لِلْمُسْلِمِينَ لِأَنَّهُ لَمْ يُعْتِقْهَا مِنْ مَالِ نَفْسِهِ وَلَا مِنْ مَالٍ بَاقٍ فِي مِلْكِ الْمُعْطِي الزَّكَاةَ.

فَإِنْ أَعْتَقَ الْمَرْءُ مِنْ زَكَاةِ نَفْسِهِ فَوَلَاؤُهَا لَهُ، لِأَنَّهُ أَعْتَقَ مِنْ مَالِهِ، وَعَبْدِ نَفْسِهِ، وَقَدْ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «إنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ» وَهُوَ قَوْلُ أَبِي ثَوْرٍ. وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ: أَعْتِقْ مِنْ زَكَاتِك.

فَإِنْ قِيلَ: إِنَّهُ إِنْ مَاتَ رَجَعَ مِيرَاثُهُ إِلَى سَيِّدِهِ. قُلْنَا: نَعَمْ هَذَا حَسَنٌ، إِذَا بَلَغَتْ الزَّكَاةُ مَحَلَّهَا فَرُجُوعُهَا بِالْوُجُوهِ الْمُبَاحَةِ حَسَنٌ، وَهُمْ يَقُولُونَ فِيمَنْ تَصَدَّقَ مِنْ زَكَاتِهِ عَلَى قَرِيبٍ لَهُ ثُمَّ مَاتَ فَوَجَبَ مِيرَاثُهُ لِلْمُعْطِي: إِنَّهُ لَهُ حَلَالٌ، وَإِنْ كَانَ فِيهِ عَيْنُ زَكَاتِهِ.

L11443 If it is said: "If he dies, his inheritance reverts to his owner," we reply: "Yes, this is acceptable, provided the zakat has fulfilled its rightful purpose, and its reversion through permissible means is sound." They hold that if one gives from his zakat to a relative who later dies—so the inheritance passes to the donor—it is lawful for him, even if the inherited estate includes the specific zakat asset.

وَالْغَارِمُونَ: هُمْ الَّذِينَ عَلَيْهِمْ دُيُونٌ لَا تَفِي أَمْوَالُهُمْ بِهَا، أَوْ مَنْ تَحَمَّلَ بِحَمَالَةٍ وَإِنْ كَانَ فِي مَالِهِ وَفَاءٌ بِهَا؛ فَأَمَّا مَنْ لَهُ وَفَاءٌ بِدَيْنِهِ فَلَا يُسَمَّى فِي اللُّغَةِ غَارِمًا؟ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنَا مُحَمَّدُ بْنُ النَّضْرِ بْنِ مُسَاوِرٍ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ هَارُونَ بْنِ رِئَابٍ حَدَّثَنِي كِنَانَةُ بْنُ نُعَيْمٍ عَنْ قَبِيصَةَ بْنِ الْمُخَارِقِ قَالَ: «تَحَمَّلْتُ بِحَمَالَةٍ فَأَتَيْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَسْأَلُهُ فِيهَا؟ فَقَالَ: أَقِمْ يَا قَبِيصَةُ حَتَّى تَأْتِينَا الصَّدَقَةُ فَنَأْمُرُ لَكَ بِهَا يَا قَبِيصَةُ إِنَّ الصَّدَقَةَ لَا تَحِلُّ إِلَّا لِأَحَدِ ثَلَاثَةٍ رَجُلٍ تَحَمَّلَ بِحَمَالَةٍ فَحَلَّتْ لَهُ الْمَسْأَلَةُ حَتَّى يُصِيبَ قِوَامًا مِنْ عَيْشٍ، أَوْ قَالَ: سَدَادًا مِنْ عَيْشٍ» وَذَكَرَ الْحَدِيثَ.

L11444–11446 The debtors (*al-ghārimūn*) are those whose assets are insufficient to cover their debts, or those who assume debt to reconcile others even if their wealth suffices to repay it. As for one whose wealth suffices to repay their debt, are they not referred to as *ghārimūn* in the linguistic sense?

It was narrated to us by ʿAbdullāh ibn Rabīʿ: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: Muḥammad ibn al-Naḍr ibn Musāwir informed us: Ḥammād ibn Salamah narrated from Hārūn ibn Riʾāb, who narrated to me from Kinānah ibn Nuʿaym, from Qabīṣah ibn al-Mukhāriq, who said: "I assumed a debt to reconcile others and came to the Prophet (peace be upon him) to inquire about it. He said: 'Stay, O..." O Qabisah, wait until the charity comes to us, and we will arrange for it to be given to you. O Qabisah, charity is only permissible for one of three [people]: a man who has incurred debt, making it lawful for him to ask until he attains sufficiency of livelihood - or he said: repayment of livelihood -" and he narrated the ḥadīth.

وَأَمَّا سَبِيلُ اللَّهِ فَهُوَ الْجِهَادُ بِحَقٍّ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا ابْنُ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا الْحَسَنُ بْنُ عَلِيٍّ ثنا عَبْدُ الرَّزَّاقِ ثنا مَعْمَرٌ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَحِلُّ الصَّدَقَةُ لِغَنِيٍّ إِلَّا لِخَمْسَةٍ: لِغَازٍ فِي سَبِيلِ اللَّهِ، أَوْ لِعَامِلٍ عَلَيْهَا، أَوْ لِغَارِمٍ، أَوْ لِرَجُلٍ اشْتَرَاهَا بِمَالِهِ، أَوْ لِرَجُلٍ كَانَ لَهُ جَارٌ مِسْكِينٌ فَتَصَدَّقَ عَلَى الْمِسْكِينِ فَأَهْدَاهَا الْمِسْكِينُ لِلْغَنِيِّ» . وَقَدْ رُوِيَ هَذَا الْحَدِيثُ عَنْ غَيْرِ مَعْمَرٍ فَأَوْقَفَهُ بَعْضُهُمْ، وَنَقَصَ بَعْضُهُمْ مِمَّا ذَكَرَ

L11447 As for the path of Allah, it is jihad in truth. Abdullah ibn Rabiʿ narrated to us: Ibn al-Sulaym narrated to us: Ibn al-Aʿrabī narrated to us: Abū Dāwūd narrated to us: al-Ḥasan ibn ʿAlī narrated to us: ʿAbd al-Razzāq narrated to us: Maʿmar narrated from Zayd ibn Aslam from ʿAṭāʾ ibn Yasār from Abū Saʿīd al-Khudrī, who said: The Messenger of Allah – peace and blessings of Allah be upon him – said: "Zakat is not lawful for the wealthy except in five cases: for a fighter in the path of Allah, for an administrator appointed over it, for a debtor, for a man who purchased it with his wealth, or for a wealthy man whose poor neighbor received Zakat from him, then the poor neighbor gifted it to the wealthy man." This hadith has been narrated through chains other than Maʿmar's, with some attributing it to the Companion's statement and others omitting parts of what Maʿmar mentioned. Is it permissible to

abandon the addition of a just narrator? If it is said: There is a narration from the Messenger of Allah – peace and blessings of Allah be upon him – that Hajj is from the path of Allah.[29]

L11448 It has been authentically reported from Ibn Abbas that some of it may be given for Hajj. We said: "Yes, for every act of goodness falls within the path of Allah, the Exalted." However, there is no disagreement that He, the Exalted, did not intend every aspect of righteousness to be included in the distribution of alms. Therefore, it is impermissible to allocate them except where the textual evidence has specified - and that is what we have stated. Success comes solely from Allah, the Exalted.

L11449 The traveler in need: Is he one who set out to commit disobedience and then fell into need? It has been narrated to us through the chain of Ibn Abi Shaybah: Abu Ja'far reported from al-A'mash from Hassan from Mujahid from Ibn Abbas: "Did he see no issue with a man giving his zakah during Hajj or using it to emancipate an enslaved person?"

L11450–11451 This is among the matters in which the Shafi'is, Malikis, and Hanafis have differed from a Companion, with no dissenter against him known from these schools.

L11452 **Issue regarding a person giving from Zakāh to his *mukātab* and another person's *mukātab*.**

L11453 721 - Issue: It is permissible for a person to give from his zakāh to his own mukātab slave or another's mukātab, as this constitutes righteous action. This also applies to a destitute slave whose master wrongs him by withholding his rightful provisions, for he is indigent. We have been narrated that Ismāʿīl ibn ʿUlayyah permitted this. If one's father, mother, son, brothers, or wife are among the debtors, have fought in Allah's cause, or are mukātab slaves, it is permissible for him to give them from his obligatory alms. This is because he bears no obligation to repay their debts, nor to assist them in fulfilling their manumission contracts or military expeditions - just as he remains obligated

[29] **Hadith references (L11447):** Sunan Abi Dawud 1635.

فِيهِ مَعْمَرٌ، وَزِيَادَةُ الْعَدْلِ لَا يَحِلُّ تَرْكُهَا؟ فَإِنْ قِيلَ: قَدْ رُوِيَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ الْحَجَّ مِنْ سَبِيلِ اللَّهِ.

وَصَحَّ عَنِ ابْنِ عَبَّاسٍ أَنْ يُعْطَى مِنْهَا فِي الْحَجِّ. قُلْنَا: نَعَمْ، وَكُلُّ فِعْلِ خَيْرٍ فَهُوَ مِنْ سَبِيلِ اللَّهِ تَعَالَى، إِلَّا أَنَّهُ لَا خِلَافَ فِي أَنَّهُ تَعَالَى لَمْ يُرِدْ كُلَّ وَجْهٍ مِنْ وُجُوهِ الْبِرِّ فِي قِسْمَةِ الصَّدَقَاتِ، فَلَمْ يَجُزْ أَنْ تُوضَعَ إِلَّا حَيْثُ بَيَّنَ النَّصُّ، وَهُوَ الَّذِي ذَكَرْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَابْنُ السَّبِيلِ: هُوَ مَنْ خَرَجَ فِي مَعْصِيَةٍ فَاحْتَاجَ؟ وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: ثنا أَبُو جَعْفَرٍ عَنِ الْأَعْمَشِ عَنْ حَسَّانَ عَنْ مُجَاهِدٍ عَنِ ابْنِ عَبَّاسٍ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يُعْطِيَ الرَّجُلُ زَكَاتَهُ فِي الْحَجِّ وَأَنْ يُعْتِقَ مِنْهَا النَّسَمَةَ؟

وَهَذَا مِمَّا خَالَفَ فِيهِ الشَّافِعِيُّونَ، وَالْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ: صَاحِبًا، لَا يُعْرَفُ مِنْهُمْ لَهُ مُخَالِفٌ.

[مَسْأَلَةٌ إِعْطَاء الْمَرْء مِنْ الزَّكَاة مُكَاتَبَهُ وَمُكَاتَبَ غَيْرِهِ]

٧٢١ - مَسْأَلَةٌ: وَجَازَ أَنْ يُعْطِيَ الْمَرْءُ مِنْهَا مُكَاتَبَهُ وَمُكَاتَبَ غَيْرِهِ، لِأَنَّهُمَا مِنْ الْبِرِّ، وَالْعَبْدُ الْمُحْتَاجُ الَّذِي يَظْلِمُهُ سَيِّدُهُ وَلَا يُعْطِيهِ حَقَّهُ؛ لِأَنَّهُ مِسْكِينٌ، وَقَدْ رُوِّينَا عَنْ إِسْمَاعِيلَ بْنِ عُلَيَّةَ أَنَّهُ: أَجَازَ ذَلِكَ؟ وَمَنْ كَانَ أَبُوهُ، أَوْ أُمُّهُ، أَوْ ابْنُهُ، أَوْ إِخْوَتُهُ، أَوْ امْرَأَتُهُ مِنْ الْغَارِمِينَ، أَوْ غَزَوْا فِي سَبِيلِ اللَّهِ، أَوْ كَانُوا مُكَاتَبِينَ -: جَازَ لَهُ أَنْ يُعْطِيَهُمْ مِنْ صَدَقَتِهِ الْفَرْضَ؛ لِأَنَّهُ لَيْسَ عَلَيْهِ أَدَاءُ دُيُونِهِمْ وَلَا عَوْنُهُمْ فِي الْكِتَابَةِ وَالْغَزْوِ وَكَمَا تَلْزَمُهُ نَفَقَتُهُمْ إِنْ كَانُوا فُقَرَاءَ، وَلَمْ يَأْتِ نَصٌّ بِالْمَنْعِ مِمَّا ذَكَرْنَا.

to provide their maintenance if they are poor. No textual prohibition exists regarding what we have mentioned.

L11454 It has been reported to us from Abu Bakr that he instructed Umar, saying: "Whoever pays Zakāt to those not among its rightful recipients, his Zakāt will not be accepted from him, even if he were to donate all worldly wealth as voluntary charity." And from Al-Ḥasan: "Zakāt does not suffice until one places it with its designated recipients. And success is granted by Allah, the Most High."

L11455 ## The issue of a woman giving her husband from her Zakat.

L11456 722 - Issue: A woman may give her husband from her Zakat if he is among those eligible for Zakat. It is authentically reported from the Messenger of Allah (peace and blessings be upon him) that he issued a legal verdict to Zaynab, the wife of Ibn Mas'ud, when he commanded to give Zakat. She asked him: Is it permissible for her to give her Zakat to her husband and to her brother's orphaned sons? He informed her (peace and blessings be upon him) that she would receive two rewards: the reward of Zakat and the reward of kinship.

L11457 ## A question regarding one who possesses wealth of the type in which Zakat is obligatory.

L11458 Issue 723: Abū Muḥammad said: If someone possesses wealth requiring obligatory zakat - such as two hundred dirhams, forty mithqāls, five camels, forty sheep, fifty cows, or has acquired five wasqs of wheat, barley, or dates - yet his possessions cannot sustain his dependents due to a large family or high prices, is he considered poor and eligible to receive from the obligatory zakat while still being obligated to pay zakat on the wealth that meets the criteria? We have previously mentioned the opinions of those who defined the wealth threshold as a day's provision, forty dirhams, fifty dirhams, or two hundred dirhams.

L11459–11460 Those who hold that sufficiency means possessing a day's sustenance argue

وَرُوِّينَا عَنْ أَبِي بَكْرٍ: أَنَّهُ أَوْصَى عُمَرَ فَقَالَ: مَنْ أَدَّى الزَّكَاةَ إلَى غَيْرِ أَهْلِهَا لَمْ تُقْبَلْ مِنْهُ زَكَاةٌ، وَلَوْ تَصَدَّقَ بِالدُّنْيَا جَمِيعِهَا، وَعَنْ الْحَسَنِ: لَا تُجْزِئُ حَتَّى يَضَعَهَا مَوَاضِعَهَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ إعْطَاء الْمَرْأَة زَوْجَهَا مِنْ زَكَاتِهَا]

٧٢٢ - مَسْأَلَةٌ: وَتُعْطِي الْمَرْأَةُ زَوْجَهَا مِنْ زَكَاتِهَا، إنْ كَانَ مِنْ أَهْلِ السِّهَامِ، صَحَّ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَفْتَى زَيْنَبَ امْرَأَةَ ابْنِ مَسْعُودٍ إذْ أَمَرَ بِالصَّدَقَةِ فَسَأَلَتْهُ: أَيَسَعُهَا أَنْ تَضَعَ صَدَقَتَهَا فِي زَوْجِهَا، وَفِي بَنِي أَخٍ لَهَا يَتَامَى؟ فَأَخْبَرَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّ لَهَا أَجْرَيْنِ: أَجْرَ الصَّدَقَةِ وَأَجْرَ الْقَرَابَةِ» ؟ .

[مَسْأَلَةٌ مَنْ كَانَ لَهُ مَالٌ مِمَّا يَجِبُ فِيهِ الصَّدَقَةُ]

٧٢٣ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: مَنْ كَانَ لَهُ مَالٌ مِمَّا يَجِبُ فِيهِ الصَّدَقَةُ، كَمِائَتَيْ دِرْهَمٍ أَوْ أَرْبَعِينَ مِثْقَالًا أَوْ خَمْسٍ مِنْ الْإِبِلِ أَوْ أَرْبَعِينَ شَاةً أَوْ خَمْسِينَ بَقَرَةً، أَوْ أَصَابَ خَمْسَةَ أَوْسُقٍ مِنْ بُرٍّ، أَوْ شَعِيرٍ، أَوْ تَمْرٍ وَهُوَ لَا يَقُومُ مَا مَعَهُ بِعَوْلَتِهِ لِكَثْرَةِ عِيَالِهِ أَوْ لِغَلَاءِ السِّعْرِ -: فَهُوَ مِسْكِينٌ، يُعْطَى مِنْ الصَّدَقَةِ الْمَفْرُوضَةِ، وَتُؤْخَذُ مِنْهُ فِيمَا وَجَبَتْ فِيهِ مِنْ مَالِهِ؟ وَقَدْ ذَكَرْنَا أَقْوَالَ مَنْ حَدَّ الْغِنَى بِقُوتِ الْيَوْمِ، أَوْ بِأَرْبَعِينَ دِرْهَمًا، أَوْ بِخَمْسِينَ دِرْهَمًا، أَوْ بِمِائَتَيْ دِرْهَمٍ؟

using a hadith we narrated through the chain of Abū Kabshah al-Sulūlī from Sahl ibn al-Ḥanẓaliyyah from the Prophet (peace and blessings be upon him), who said: “Whoever asks while possessing what suffices him is only seeking to increase his share of the Fire.” It was asked: “What is the measure of sufficiency, O Messenger of Allah?” He replied: “Being satiated for a day and a night.” In some of its chains, the wording is: “If your family has enough to provide them breakfast or supper.”

وَاحْتَجَّ مَنْ رَأَى الْغِنَى بِقُوتِ الْيَوْمِ بِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي كَبْشَةَ السَّلُولِيِّ عَنْ سَهْلِ بْنِ الْحَنْظَلِيَّةِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ سَأَلَ وَعِنْدَهُ مَا يُغْنِيهِ فَإِنَّمَا يَسْتَكْثِرُ مِنْ النَّارِ، فَقِيلَ: وَمَا حَدُّ الْغِنَى يَا رَسُولَ اللَّهِ؟ قَالَ: شِبَعُ يَوْمٍ وَلَيْلَةٍ» . وَفِي بَعْضِ طُرُقِهِ: «إنْ يَكُنْ عِنْدَ أَهْلِكَ مَا يُغَدِّيهِمْ أَوْ مَا يُعَشِّيهِمْ» .

L11461 From the path of Ibn Lahi’ah, from Yazid ibn Abi Habib, from a man, from Abu Kulayb al-Amiri, from Abu Sallam al-Habashi, from Sahl ibn al-Hanthaliyyah, from the Prophet—peace be upon him: “Whoever asks for something to amass more through it while having sufficiency has amassed for himself a portion of the Fire.” It was said: “What constitutes sufficiency?” He replied: “A midday meal or an evening meal.” Abu Muhammad said: “This is baseless, for Abu Kabshah al-Sululi is unknown, and Ibn Lahi’ah is discredited.”

وَمِنْ طَرِيقِ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ رَجُلٍ عَنْ أَبِي كُلَيْبٍ الْعَامِرِيِّ عَنْ أَبِي سَلَّامٍ الْحَبَشِيِّ عَنْ سَهْلِ بْنِ الْحَنْظَلِيَّةِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ سَأَلَ مَسْأَلَةً يَتَكَثَّرُ بِهَا عَنْ غِنًى فَقَدْ اسْتَكْثَرَ مِنْ النَّارِ، فَقِيلَ: مَا الْغِنَى؟ قَالَ: غَدَاءٌ أَوْ عَشَاءٌ» . قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا شَيْءَ، لِأَنَّ أَبَا كَبْشَةَ السَّلُولِيَّ مَجْهُولٌ وَابْنَ لَهِيعَةَ سَاقِطٌ.

L11462 Those who defined the threshold of sufficiency as forty dirhams argued based on what we transmitted through Mālik’s chain from Zayd ibn Aslam from ʿAṭāʾ ibn Yasār from a man of Banū Asad: that he heard the Messenger of Allah—peace and blessings be upon him—say: “Whoever among you asks while possessing an uqiyya or its equivalent has indeed asked importunately.” And through Hishām ibn ʿAmmār’s chain from ʿAbd al-Raḥmān ibn Abī al-Rijāl from ʿUmāra ibn Ghaziyya from ʿAbd al-Raḥmān ibn Abī Saʿīd al-Khudrī from his father, from the Messenger of Allah—peace and blessings be upon him—that he said: “Whoever asks while possessing an uqiyya’s worth has been importunate.” He said: “The uqiyya during the era of the Messenger of Allah—peace and blessings be upon him—was forty dirhams.”[30]

وَاحْتَجَّ مَنْ حَدَّ الْغِنَى بِأَرْبَعِينَ دِرْهَمًا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ رَجُلٍ مِنْ بَنِي أَسَدٍ: أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ سَأَلَ مِنْكُمْ وَلَهُ أُوقِيَّةٌ أَوْ عِدْلُهَا فَقَدْ سَأَلَ إلْحَافًا» . وَمِنْ طَرِيقِ هِشَامِ بْنِ عَمَّارٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الرِّجَالِ عَنْ عُمَارَةَ بْنِ غَزِيَّةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنْ أَبِيهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «مَنْ سَأَلَ وَلَهُ قِيمَةُ أُوقِيَّةٍ فَقَدْ أَلْحَفَ» . قَالَ: " وَكَانَتْ الْأُوقِيَّةُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرْبَعِينَ دِرْهَمًا ".

L11463–11464 From the narration of Maymūn ibn Mihrān: A woman came to ʿUmar ibn al-Khaṭṭāb, may Allah be pleased with him, seeking alms. He said to her: “If you possess an ūqiyyah, alms are not lawful for you.” Maymūn said: “The

وَمِنْ طَرِيقِ مَيْمُونِ بْنِ مِهْرَانَ: أَنَّ امْرَأَةً أَتَتْ عُمَرَ بْنَ الْخَطَّابِ تَسْأَلُهُ مِنْ الصَّدَقَةِ. فَقَالَ لَهَا: إنْ كَانَتْ لَكِ أُوقِيَّةٌ فَلَا تَحِلُّ لَكِ الصَّدَقَةُ، قَالَ مَيْمُونُ: وَالْأُوقِيَّةُ حِينَئِذٍ أَرْبَعُونَ دِرْهَمًا. قَالَ أَبُو مُحَمَّدٍ: الْأَوَّلُ عَمَّنْ لَمْ يُسَمَّ، وَلَا يُدْرَى صِحَّةُ صُحْبَتِهِ، وَالثَّانِي عَنْ عُمَارَةَ

[30] **Hadith references (L11462):** Sunan an-Nasai 2596; Sunan Abi Dawud 1627; Mishkat al-Masabih 1849.

ūqiyyah at that time was forty dirhams." Abū Muḥammad said: The first narration is from an unnamed transmitter whose status as a Companion is unknown and unverified. The second is from ʿUmārah ibn Ghaziyyah, who is a weak narrator. The Mālikīs - those practicing taqlīd (legal following) of ʿUmar, may Allah be pleased with him - previously adhered to his ruling of eternally prohibiting marriage with a woman still in her waiting period (ʿiddah) for the man who married her, though ʿUmar later retracted his ruling. Regarding other issues where they assert that opposing his view is impermissible - such as setting the punishment for intoxicants at eighty lashes and granting the sexually impotent man a year's respite - they follow his rulings here, as do the Ḥanafīs, though they disregard the contradictions. Those who define financial sufficiency as fifty dirhams cite a report we transmitted through Sufyān al-Thawrī from Ḥakīm ibn Jubayr, from Muḥammad ibn ʿAbd al-Raḥmān ibn Yazīd, from his father, from Ibn Masʿūd, who said: The Messenger of Allah, peace be upon him, said: "Whoever asks while possessing what suffices him will come with scratches or gashes on his face on the Day of Resurrection." They asked: "O Messenger of Allah, what suffices him?" He replied: "Fifty dirhams or its value in gold." Sufyān said: I heard Zubayd narrating from Muḥammad ibn ʿAbd al-Raḥmān from his father. We transmitted through Hushaym from al-Ḥajjāj ibn Arṭāh from his informant, from al-Ḥasan ibn ʿAṭiyyah, and from al-Ḥakam ibn ʿUtaybah. One narrator said: From Ibrāhīm al-Nakhaʿī, from Ibn Masʿūd. Al-Ḥasan ibn ʿAṭiyyah said: From Saʿd ibn Abī Waqqāṣ. Al-Ḥakam said: From ʿAlī ibn Abī Ṭālib, may Allah be pleased with him. All stated: "Alms are not permissible for one who possesses fifty dirhams." ʿAlī ibn Abī Ṭālib added: "Or its equivalent in gold?" This is the opinion of al-Nakhaʿī, upheld by Sufyān al-Thawrī and al-Ḥasan ibn Ḥayy. Abū Muḥammad said: Ḥakīm ibn Jubayr is discredited, Zubayd did not provide a full chain of transmission, and there is no legal proof in an interrupted narration.[31]

L11465–11467 Indeed, it was incumbent upon the Ḥanafīs and Mālikīs—those who assert that the *mursal* (disconnected narration) is equivalent to the *musnad* (connected narration), who emphasize the disagreement of the Companion,

بْنِ غَزِيَّةَ وَهُوَ ضَعِيفٌ. وَقَدْ كَانَ يَلْزَمُ الْمَالِكِيِّينَ - الْمُقَلِّدِينَ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فِي تَحْرِيمِ الْمَنْكُوحَةِ فِي الْعِدَّةِ عَلَى ذَلِكَ النَّاكِحِ فِي الْأَبَدِ، وَقَدْ رَجَعَ عُمَرُ عَنْ ذَلِكَ، وَفِي سَائِرِ مَا يَدَّعُونَ أَنَّ خِلَافَهُ فِيهِ لَا يَحِلُّ كَحَدِّ الْخَمْرِ ثَمَانِينَ، وَتَأْجِيلِ الْعِنِّينِ سَنَةً -: أَنْ يُقَلِّدُوهُ هَاهُنَا، وَكَذَلِكَ الْحَنَفِيُّونَ، وَلَكِنْ لَا يُبَالُونَ بِالتَّنَاقُضِ وَاحْتَجَّ مَنْ حَدَّ الْغِنَى بِخَمْسِينَ دِرْهَمًا بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ حَكِيمِ بْنِ جُبَيْرٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ عَنْ أَبِيهِ عَنِ ابْنِ مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ سَأَلَ وَلَهُ مَا يُغْنِيهِ جَاءَتْ خُمُوشًا أَوْ كُدُوحًا فِي وَجْهِهِ يَوْمَ الْقِيَامَةِ، وَقِيلَ: يَا رَسُولَ اللَّهِ، وَمَا يُغْنِيهِ. قَالَ: خَمْسُونَ دِرْهَمًا أَوْ حِسَابُهَا مِنْ الذَّهَبِ» قَالَ سُفْيَانُ: وَسَمِعْتُ زُبَيْدًا يُحَدِّثُ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ رُوِّينَا مِنْ طَرِيقِ هُشَيْمٍ عَنِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَمَّنْ حَدَّثَهُ، وَعَنِ الْحَسَنِ بْنِ عَطِيَّةَ، وَعَنِ الْحَكَمِ بْنِ عُتَيْبَةَ، قَالَ مَنْ حَدَّثَهُ: عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنِ ابْنِ مَسْعُودٍ. وَقَالَ الْحَسَنُ بْنُ عَطِيَّةَ: عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ، وَقَالَ الْحَكَمُ: عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، قَالُوا كُلُّهُمْ: لَا تَحِلُّ الصَّدَقَةُ لِمَنْ لَهُ خَمْسُونَ دِرْهَمًا، قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: أَوْ عِدْلُهَا مِنْ الذَّهَبِ؟ وَهُوَ قَوْلُ النَّخَعِيِّ - وَبِهِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ: وَالْحَسَنُ بْنُ حَيٍّ. قَالَ أَبُو مُحَمَّدٍ: حَكِيمُ بْنُ جُبَيْرٍ سَاقِطٌ، وَلَمْ يُسْنِدْهُ زُبَيْدٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ.

وَلَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ - الْقَائِلِينَ بِأَنَّ الْمُرْسَلَ كَالْمُسْنَدِ وَالْمُعَظِّمِينَ خِلَافَ الصَّاحِبِ، وَالْمُحْتَجِّينَ بِشَيْخٍ مِنْ بَنِي كِنَانَةَ عَنْ عُمَرَ فِي رَدِّ السُّنَّةِ الثَّابِتَةِ مِنْ أَنَّ الْمُتَبَايِعَيْنِ

[31] **Hadith references (L11464):** Sunan an-Nasai 2592.

and who cite as evidence a narrator from Banū Kināna transmitting from ʿUmar in rejecting the established Sunnah regarding the two parties in a sale— There is no sale between them until they separate: [this means] they must not depart from these two positions, for no disagreement from any of the Companions is recorded in this chapter opposing what is cited therein from ʻUmar, Ibn Masʻūd, Saʻd, and ʻAlī—may Allāh be pleased with them—alongside the mursal material it contains.

L11468 As for those who define wealth as two hundred dirhams—the opinion of Abū Ḥanīfah—it is the most invalid of all opinions, for they have no proof except their claim that zakah is taken from the wealthy and given to the poor; thus, such a person is wealthy and cannot be deemed poor. Abū Muḥammad said: They have no valid evidence for this due to several reasons. First: They impose zakah on one who possesses an ear of grain or more, or owns five camels or forty sheep. How then did they set the threshold of wealth at two hundred dirhams, excluding the ear of grain, five camels, or forty sheep—all of which are subject to zakah? This is an excessive obsession. Similarly, it has been narrated to us from Ḥammād ibn Abī Sulaymān, who said: "Is it permissible for one who owns no wealth subject to zakah to receive zakah?" Second: They would be required to deem someone who owns grand estates and jewels but lacks two hundred dirhams as poor, eligible to receive zakah. Third: The Prophet's (peace be upon him) statement, "It is taken from their wealthy and given to their poor," contains no proof or explicit text restricting zakah to being taken solely from the wealthy and given exclusively to the poor. It merely states that it is taken from the wealthy and given to the poor—which is true. However, other texts stipulate that zakah is also taken from the poor who are not wealthy and given to many who are wealthy, such as collectors, debtors, those whose hearts are to be reconciled, and travelers—even if wealthy in their homeland.

لَا بَيْعَ بَيْنَهُمَا حَتَّى يَفْتَرِقَا -: أَنْ لَا يَخْرُجُوا عَنْ هَذَيْنِ الْقَوْلَيْنِ؛ لِأَنَّهُ لَا يُحْفَظُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ فِي هَذَا الْبَابِ خِلَافٌ لِمَا ذُكِرَ فِيهِ عَنْ عُمَرَ، وَابْنِ مَسْعُودٍ، وَسَعْدٍ، وَعَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمْ -، مَعَ مَا فِيهِ مِنْ الْمُرْسَلِ.

وَأَمَّا مَنْ حَدَّ الْغِنَى بِمِائَتَيْ دِرْهَمٍ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَهُوَ أَسْقَطُ الْأَقْوَالِ كُلِّهَا لِأَنَّهُ لَا حُجَّةَ لَهُمْ إلَّا أَنْ قَالُوا: إنَّ الصَّدَقَةَ تُؤْخَذُ مِنْ الْأَغْنِيَاءِ وَتُرَدُّ عَلَى الْفُقَرَاءِ، فَهَذَا غَنِيٌّ: فَبَطَلَ أَنْ يَكُونَ فَقِيرًا. قَالَ أَبُو مُحَمَّدٍ: وَلَا حُجَّةَ لَهُمْ فِي هَذِهِ لِوُجُوهٍ. أَوَّلُهَا: أَنَّهُمْ يَقُولُونَ بِالزَّكَاةِ عَلَى مَنْ أَصَابَ سُنْبُلَةً فَمَا فَوْقَهَا، أَوْ مَنْ لَهُ خَمْسٌ مِنْ الْإِبِلِ، أَوْ أَرْبَعُونَ شَاةً، فَمِنْ أَيْنَ وَقَعَ لَهُمْ أَنْ يَجْعَلُوا حَدَّ الْغِنَى مِائَتَيْ دِرْهَمٍ، دُونَ السُّنْبُلَةِ، أَوْ دُونَ خَمْسٍ مِنْ الْإِبِلِ، أَوْ دُونَ أَرْبَعِينَ شَاةً، وَكُلُّ ذَلِكَ تَجِبُ فِيهِ الزَّكَاةُ. وَهَذَا هَوَسٌ مُفْرِطٌ. وَهَكَذَا رُوِّينَا عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ قَالَ: مَنْ لَمْ يَكُنْ عِنْدَهُ مَالٌ تَبْلُغُ فِيهِ الزَّكَاةُ أَخَذَ مِنْ الزَّكَاةِ؟ وَالثَّانِي: أَنَّهُمْ يَلْزَمُهُمْ أَنَّ مَنْ لَهُ الدُّورُ الْعَظِيمَةُ، وَالْجَوْهَرُ وَلَا يَمْلِكُ مِائَتَيْ دِرْهَمٍ أَنْ يَكُونَ فَقِيرًا يَحِلُّ لَهُ أَخْذُ الصَّدَقَةِ. وَالثَّالِثُ: أَنَّهُ لَيْسَ فِي قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «تُؤْخَذُ مِنْ أَغْنِيَائِهِمْ وَتُرَدُّ عَلَى فُقَرَائِهِمْ» دَلِيلٌ وَلَا نَصٌّ بِأَنَّ الزَّكَاةَ لَا تُؤْخَذُ إلَّا مِنْ غَنِيٍّ وَلَا تُرَدُّ إلَّا عَلَى فَقِيرٍ، وَإِنَّمَا فِيهِ أَنَّهَا تُؤْخَذُ مِنْ الْأَغْنِيَاءِ وَتُرَدُّ عَلَى الْفُقَرَاءِ فَقَطْ، وَهَذَا حَقٌّ، وَتُؤْخَذُ أَيْضًا - بِنُصُوصٍ أُخَرَ - مِنْ الْمَسَاكِينِ الَّذِينَ لَيْسُوا أَغْنِيَاءَ، وَتُرَدُّ بِتِلْكَ النُّصُوصِ عَلَى أَغْنِيَاءَ كَثِيرٍ، كَالْعَامِلِينَ، وَالْغَارِمِينَ، وَالْمُؤَلَّفَةِ قُلُوبُهُمْ، وَابْنِ السَّبِيلِ وَإِنْ كَانَ غَنِيًّا فِي بَلَدِهِ.

L11469 Are these five categories the wealthy—do they have a right to Zakah? Allah the Exalted clarified this in Zakah by distinguishing between them when He states: “Zakah is only for the poor, the needy, and those employed to manage them...” [Quran 9:60] until the end of the verse. Allah the Exalted mentioned the poor and the needy, then added others who are neither poor nor needy?[32]

فَهَذِهِ خَمْسُ طَبَقَاتٍ أَغْنِيَاءَ، لَهُمْ حَقٌّ فِي الصَّدَقَةِ؟ وَقَدْ بَيَّنَ اللَّهُ تَعَالَى ذَلِكَ فِي الصَّدَقَةِ فِي تَفْرِيقِهِ بَيْنَهُمْ إِذْ يَقُولُ: {إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ وَالْعَامِلِينَ عَلَيْهَا} [التوبة: ٦٠] إِلَى آخِرِ الْآيَةِ فَذَكَرَ اللَّهُ تَعَالَى الْفُقَرَاءَ وَالْمَسَاكِينَ ثُمَّ أَضَافَ إِلَيْهِمْ مَنْ لَيْسَ فَقِيرًا، وَلَا مِسْكِينًا؟

L11470–11471 Zakāh is taken from the poor who owns nothing except five camels and has ten dependents; from one who owns nothing except two hundred dirhams and has ten dependents; and from one who has obtained nothing except five awsuq—which may not equal fifty dirhams—and has ten dependents, as a Sunnah for that year.

وَتُؤْخَذُ الصَّدَقَةُ مِنْ الْمَسَاكِينِ الَّذِينَ لَيْسَ لَهُمْ إِلَّا خَمْسٌ مِنْ الْإِبِلِ، وَلَهُ عَشَرَةٌ مِنْ الْعِيَالِ، وَلَيْسَ لَهُ إِلَّا مِائَتَا دِرْهَمٍ، وَلَهُ عَشَرَةٌ مِنْ الْعِيَالِ، وَمِمَّنْ لَمْ يُصِبْ إِلَّا خَمْسَةَ أَوْسُقٍ - لَعَلَّهَا لَا تُسَاوِي خَمْسِينَ دِرْهَمًا - وَلَهُ عَشَرَةٌ مِنْ الْعِيَالِ فِي عَامٍ سُنَّةً.

L11472 Thus, their reliance on the aforementioned report is invalidated, and the unsoundness of this statement—which no Companion, may Allah be pleased with them, is known to have articulated—has become evident.

فَبَطَلَ تَعَلُّقُهُمْ بِالْخَبَرِ الْمَذْكُورِ، وَظَهَرَ فَسَادُ هَذَا الْقَوْلِ الَّذِي لَا يُعْلَمُ أَنَّ أَحَدًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - قَالَهُ.

L11473 It has been narrated to us through the chain of Ibn Abi Shaybah from Hafs—who is Ibn Ghiyath—from Ibn Jurayj from Amr ibn Dinar, who said: Umar ibn al-Khattab said: “When you give, enrich [them]”—meaning from sadaqah. We do not know of any disagreement among the Companions regarding this statement. It has been reported to us from al-Hasan: “Is one who owns a house and a servant given from the obligatory sadaqah if they are in need?” A similar view is reported from Ibrahim: “Is one who owns a horse, a house, and a servant given from it?” From Sa‘id ibn Jubayr: “Is one who owns a horse, a house, and a servant given from it?” From Muqatil ibn Hibban: “Is one who receives a stipend from the public registry and owns a horse given?” Abu Muhammad said: “A very large amount and a small amount are given from zakat. There is no limit in that, as neither the Quran nor the Sunnah has stipulated a limit for it?”

وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ حَفْصٍ هُوَ ابْنُ غِيَاثٍ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: إِذَا أَعْطَيْتُمْ فَأَغْنُوا - يَعْنِي مِنْ الصَّدَقَةِ، وَلَا نَعْلَمُ لِهَذَا الْقَوْلِ خِلَافًا مِنْ أَحَدٍ مِنْ الصَّحَابَةِ. وَرُوِّينَا عَنْ الْحَسَنِ: أَنَّهُ يُعْطَى مِنْ الصَّدَقَةِ الْوَاجِبَةِ مَنْ لَهُ الدَّارُ، وَالْخَادِمُ، إِذَا كَانَ مُحْتَاجًا؟ وَعَنْ إبْرَاهِيمَ نَحْوُ ذَلِكَ؟ وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ: يُعْطَى مِنْهَا مَنْ لَهُ الْفَرَسُ، وَالدَّارُ، وَالْخَادِمُ؟ وَعَنْ مُقَاتِلِ بْنِ حِبَّانَ: يُعْطَى مَنْ لَهُ الْعَطَاءُ مِنْ الدِّيوَانِ وَلَهُ فَرَسٌ؟ قَالَ أَبُو مُحَمَّدٍ: وَيُعْطَى مِنْ الزَّكَاةِ الْكَثِيرُ جِدًّا وَالْقَلِيلُ، لَا حَدَّ فِي ذَلِكَ، إِذْ لَمْ يُوجِبْ الْحَدَّ فِي ذَلِكَ قُرْآنٌ وَلَا سُنَّةٌ؟

L11474 ## The Issue of Displaying Charity

[مَسْأَلَةٌ إظْهَارُ الصَّدَقَةِ]

[32] **Qur’an references (L11469):** Qur’an 9:60 (At-Tawbah).

L11475 Issue 724: Abū Muḥammad said: Displaying charity (whether obligatory or voluntary) without intending to show off is commendable, but concealing all of it is more virtuous. This is the view of the scholars of our school.

L11476 And Mālik said: Publicly performing the obligatory act is preferable.

L11477 Abu Muhammad said: This is a distinction without proof for its validity. Allah, the Mighty and Majestic, said: *"If you display your charities openly, how excellent it is! But if you conceal them and give them to the poor, that is better for you."* [Al-Baqarah: 271].[33]

L11478–11479 If they say: "Do we analogize that to the obligatory prayer?" We say: "All analogy is entirely invalid. If you claim it is valid, then proclaim the call for Zakāh just as it is done for prayer. Among non-obligatory prayers are those publicly announced, such as the two Eids, eclipse prayers, and the two rak'ahs of entering the mosque. Then analogize voluntary charity to those [prayers]!"

L11480 It is a duty upon the affluent among the people of every locality to provide for their poor.

L11481 725 - Issue: Abu Muhammad said: The wealthy in every locality are obligated to provide for their poor, and the authority must compel them to do so if zakat funds are insufficient for them, nor is there enough in the rest of the Muslims' wealth. They must be supplied with basic food provisions, adequate clothing for winter and summer, and a dwelling that shelters them from rain, summer heat, the sun, and the gaze of passersby.

L11482 The evidence for this is the statement of Allah, the Exalted: "And give the close relative his rightful due, and the poor, and the wayfarer" [Al-Isrāʾ: 26]. He also said: "And show kindness to parents, and to close relatives, and orphans, and the poor, and the neighbor who is a close relative, and the distant neighbor, and the companion at your side, and the wayfarer,

[33] **Qur'an references (L11477):** Qur'an 2:271 (Al-Baqarah).

٧٢٤ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: إظْهَارُ الصَّدَقَةِ - الْفَرْضِ وَالتَّطَوُّعِ - مِنْ غَيْرِ أَنْ يَنْوِيَ بِذَلِكَ رِيَاءً: حَسَنٌ، وَإِخْفَاءُ كُلِّ ذَلِكَ أَفْضَلُ، وَهُوَ قَوْلُ أَصْحَابِنَا.

وَقَالَ مَالِكٌ: إعْلَانُ الْفَرْضِ أَفْضَلُ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا فَرْقٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ. قَالَ اللَّهُ عَزَّ وَجَلَّ: {إِنْ تُبْدُوا الصَّدَقَاتِ فَنِعِمَّا هِيَ وَإِنْ تُخْفُوهَا وَتُؤْتُوهَا الْفُقَرَاءَ فَهُوَ خَيْرٌ لَكُمْ} [البقرة: ٢٧١] .

فَإِنْ قَالُوا: نَقِيسُ ذَلِكَ عَلَى صَلَاةِ الْفَرْضِ؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، فَإِنْ قُلْتُمْ: هُوَ حَقٌّ، فَأَذِّنُوا لِلزَّكَاةِ كَمَا يُؤَذَّنُ لِلصَّلَاةِ وَمِنْ الصَّلَاةِ غَيْرِ الْفَرْضِ مَا يُعْلَنُ بِهَا كَالْعِيدَيْنِ، وَالْكُسُوفِ، وَرَكْعَتَيْ دُخُولِ الْمَسْجِدِ، فَقِيسُوا صَدَقَةَ التَّطَوُّعِ عَلَى ذَلِكَ؟

[مَسْأَلَةٌ عَلَى الْأَغْنِيَاءِ مِنْ أَهْلِ كُلِّ بَلَدٍ أَنْ يَقُومُوا بِفُقَرَائِهِمْ]

٧٢٥ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: وَفُرِضَ عَلَى الْأَغْنِيَاءِ مِنْ أَهْلِ كُلِّ بَلَدٍ أَنْ يَقُومُوا بِفُقَرَائِهِمْ، وَيُجْبِرُهُمْ السُّلْطَانُ عَلَى ذَلِكَ، إنْ لَمْ تَقُمْ الزَّكَوَاتُ بِهِمْ، وَلَا فِي سَائِرِ أَمْوَالِ الْمُسْلِمِينَ، فَيُقَامُ لَهُمْ بِمَا يَأْكُلُونَ مِنْ الْقُوتِ الَّذِي لَا بُدَّ مِنْهُ، وَمِنْ اللِّبَاسِ لِلشِّتَاءِ وَالصَّيْفِ بِمِثْلِ ذَلِكَ، وَبِمَسْكَنٍ يَكُنُّهُمْ مِنْ الْمَطَرِ، وَالصَّيْفِ وَالشَّمْسِ، وَعُيُونِ الْمَارَّةِ.

وَبُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى: {وَآتِ ذَا الْقُرْبَى حَقَّهُ وَالْمِسْكِينَ وَابْنَ السَّبِيلِ} [الإسراء: ٢٦] . وَقَالَ تَعَالَى: {وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَالْجَارِ ذِي الْقُرْبَى وَالْجَارِ الْجُنُبِ وَالصَّاحِبِ بِالْجَنْبِ وَابْنِ السَّبِيلِ وَمَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٣٦] . فَأَوْجَبَ تَعَالَى حَقَّ الْمَسَاكِينِ، وَابْنِ السَّبِيلِ، وَمَا مَلَكَتْ الْيَمِينُ مَعَ حَقِّ

and those whom your right hands possess" [An-Nisā': 36]. Thus, He made obligatory the right of the poor, the wayfarer, and those whom your right hands possess alongside the right of close relatives. He mandated kindness toward parents, close relatives, the poor, the neighbor, and those whom your right hands possess. Benevolence necessitates all that we have mentioned, and withholding it is undoubtedly mistreatment? He further said: "What has caused you to enter Saqar?" [Al-Muddaththir: 42]. They replied, "We were not among those who prayed" [Al-Muddaththir: 43], "nor did we feed the poor" [Al-Muddaththir: 44]. Here, Allah coupled feeding the poor with the obligation of prayer.[34]

ذِي الْقُرْبَى وَافْتَرَضَ الْإِحْسَانَ إِلَى الْأَبَوَيْنِ، وَذِي الْقُرْبَى، وَالْمَسَاكِينِ، وَالْجَارِ، وَمَا مَلَكَتْ الْيَمِينُ، وَالْإِحْسَانُ يَقْتَضِي كُلَّ مَا ذَكَرْنَا، وَمَنْعُهُ إِسَاءَةٌ بِلَا شَكٍّ؟ وَقَالَ تَعَالَى: {مَا سَلَكَكُمْ فِي سَقَرَ} [المدثر: ٤٢] {قَالُوا لَمْ نَكُ مِنَ الْمُصَلِّينَ} [المدثر: ٤٣] {وَلَمْ نَكُ نُطْعِمُ الْمِسْكِينَ} [المدثر: ٤٤] . فَقَرَنَ اللَّهُ تَعَالَى إِطْعَامَ الْمِسْكِينِ بِوُجُوبِ الصَّلَاةِ.

L11483 From the Messenger of Allah, may Allah's peace and blessings be upon him, through numerous chains of narration of the highest authenticity, that he said: "Whoever shows no mercy to people will receive no mercy from Allah."

وَعَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طُرُقٍ كَثِيرَةٍ فِي غَايَةِ الصِّحَّةِ أَنَّهُ قَالَ: «مَنْ لَا يَرْحَمْ النَّاسَ لَا يَرْحَمْهُ اللَّهُ» .

L11484–11485 Abū Muḥammad said: Whoever possesses surplus provisions and sees his Muslim brother hungry, naked, or perishing yet fails to succor him—he has undoubtedly not shown him mercy. This narration was narrated by Nāfiʿ ibn Jubayr ibn Muṭʿim, Qays ibn Abī Ḥātim, Abī Ẓabiyān, and Zayd ibn Wahb—all of them narrating from Jarīr ibn ʿAbdullāh from the Messenger of Allah, peace be upon him. Its meaning was also narrated by al-Zuhrī from Abū Salamah from Abū Hurayrah from the Messenger of Allah, peace be upon him.

قَالَ أَبُو مُحَمَّد: وَمَنْ كَانَ عَلَى فَضْلَةٍ وَرَأَى الْمُسْلِمَ أَخَاهُ جَائِعًا عُرْيَانَ ضَائِعًا فَلَمْ يُغِثْهُ -: فَمَا رَحِمَهُ بِلَا شَكٍّ. وَهَذَا خَبَرٌ رَوَاهُ نَافِعُ بْنُ جُبَيْرِ بْنِ مُطْعِمٍ، وَقَيْسُ بْنُ أَبِي حَاتِمٍ، وَأَبِي ظَبْيَانَ وَزَيْدِ بْنِ وَهْبٍ، وَكُلُّهُمْ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. رَوَى أَيْضًا مَعْنَاهُ الزُّهْرِيُّ عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L11486 And it was narrated to us by Abd al-Rahman ibn Abd Allah ibn Khalid: Ibrahim ibn Ahmad narrated to us, al-Farbari narrated to us, al-Bukhari narrated to us, Musa ibn Ismail narrated to us - who is al-Tabudhaki - al-Muʿtamir narrated to us - who is the son of Sulayman - from his father, that Abu Uthman al-Nahdi narrated to us that Abd al-Rahman ibn Abi Bakr al-Siddiq reported: "The Companions of the Suffa were poor people, and the Messenger of Allah—peace and blessings be upon him—said: 'Whoever possesses food for two, let him bring a third. Whoever has food for four, let

وَحَدَّثَنَاهُ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا مُوسَى بْنُ إِسْمَاعِيلَ هُوَ التَّبُوذَكِيُّ - ثنا الْمُعْتَمِرُ هُوَ ابْنُ سُلَيْمَانَ - عَنْ أَبِيهِ ثنا أَبُو عُثْمَانَ النَّهْدِيُّ أَنَّ عَبْدَ الرَّحْمَنِ بْنَ أَبِي بَكْرٍ الصِّدِّيقِ حَدَّثَهُ «أَنَّ أَصْحَابَ الصُّفَّةِ كَانُوا نَاسًا فُقَرَاءَ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: مَنْ كَانَ عِنْدَهُ طَعَامُ اثْنَيْنِ فَلْيَذْهَبْ بِثَالِثٍ، وَمَنْ كَانَ عِنْدَهُ طَعَامُ أَرْبَعَةٍ فَلْيَذْهَبْ بِخَامِسٍ أَوْ سَادِسٍ» أَوْ كَمَا قَالَ فَهَذَا هُوَ نَفْسُ قَوْلِنَا.

[34] **Qur'an references (L11482):** Qur'an 17:26 (Al-Isra); Qur'an 4:36 (An-Nisa); Qur'an 74:42 (Al-Muddaththir); Qur'an 74:43 (Al-Muddaththir); Qur'an 74:44 (Al-Muddaththir).

him bring a fifth or a sixth,'" or words to that effect. This is precisely our view.

L11487 And through the chain of Al-Layth ibn Sa'd from 'Uqayl ibn Khalid from Al-Zuhri that Salim ibn 'Abdullah ibn 'Umar informed him that 'Abdullah ibn 'Umar informed him that the Messenger of Allah—peace and blessings be upon him—said: "A Muslim is the brother of a Muslim; he does not wrong him nor betray him." Abu Muhammad said: Whoever leaves him hungry and unclothed when he is capable of feeding him and clothing him has indeed betrayed him.

وَمِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنْ الزُّهْرِيِّ أَنَّ سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ أَخْبَرَهُ أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْمُسْلِمُ أَخُو الْمُسْلِمِ، لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ» . قَالَ أَبُو مُحَمَّدٍ: مَنْ تَرَكَهُ يَجُوعُ وَيَعْرَى - وَهُوَ قَادِرٌ عَلَى إطْعَامِهِ وَكِسْوَتِهِ - فَقَدْ أَسْلَمَهُ.

L11488 Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Shayban ibn Farrukh narrated to us, Abu al-Ashhab narrated from Abu Nadrah from Abu Sa'id al-Khudri that the Messenger of Allah—peace be upon him—said: "Whoever has an excess riding animal should offer it to one who has none, and whoever has an excess of provisions should offer it to one who has none." He said: Then he mentioned types of wealth as he enumerated them until we realized that none of us had any right to excess. Abu Muhammad said: This is the consensus of the Companions—may Allah be pleased with them—as Abu Sa'id reports, and we uphold all that is in this report. Narrated through the chain of Abu Musa, from the Prophet—peace be upon him—: "Feed the hungry and free the captive."[35]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا شَيْبَانُ بْنُ فَرُّوخَ ثنا أَبُو الْأَشْهَبِ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ كَانَ مَعَهُ فَضْلُ ظَهْرٍ فَلْيَعُدْ بِهِ عَلَى مَنْ لَا ظَهْرَ لَهُ، وَمَنْ كَانَ لَهُ فَضْلٌ مِنْ زَادٍ فَلْيَعُدْ بِهِ عَلَى مَنْ لَا زَادَ لَهُ، قَالَ: فَذَكَرَ مِنْ أَصْنَافِ الْمَالِ مَا ذَكَرَ، حَتَّى رَأَيْنَا أَنَّهُ لَا حَقَّ لِأَحَدٍ مِنَّا فِي فَضْلٍ» . قَالَ أَبُو مُحَمَّدٍ: وَهَذَا إجْمَاعُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - يُخْبِرُ بِذَلِكَ أَبُو سَعِيدٍ، وَبِكُلِّ مَا فِي هَذَا الْخَبَرِ نَقُولُ. وَمِنْ طَرِيقِ أَبِي مُوسَى عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَطْعِمُوا الْجَائِعَ وَفُكُّوا الْعَانِيَ» .

L11489–11490 The texts from the Qur'an and the authentic ḥadīths regarding this matter are exceedingly numerous.

وَالنُّصُوصُ مِنْ الْقُرْآنِ، وَالْأَحَادِيثِ الصِّحَاحِ فِي هَذَا تَكْثُرُ جِدًّا.

L11491 It was narrated to us through the chain of 'Abdurraḥmān ibn Mahdī from Sufyān al-Thawrī from Ḥabīb ibn Abī Thābit from Abū Wā'il Shaqīq ibn Salamah, who said: 'Umar ibn al-Khaṭṭāb—may Allah be pleased with him—declared: "If I were to face anew what I have already experienced, I would take the excess wealth of the rich and distribute it among the poor emigrants." This chain is supremely authentic and illustrious. Through the chain of Sa'īd

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ أَبِي وَائِلٍ شَقِيقِ بْنِ سَلَمَةَ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ -: لَوْ اسْتَقْبَلْتُ مِنْ أَمْرِي مَا اسْتَدْبَرْت لَأَخَذْت فُضُولَ أَمْوَالِ الْأَغْنِيَاءِ فَقَسَّمْتُهَا عَلَى فُقَرَاءِ الْمُهَاجِرِينَ؟ هَذَا إسْنَادٌ فِي غَايَةِ الصِّحَّةِ وَالْجَلَالَةِ. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ أَبِي

[35] **Hadith references (L11488):** Sahih Muslim 1728.

ibn Manṣūr from Abū Shihāb from Abū ʻAbdullāh al-Thaqafī from Muḥammad ibn ʻAlī ibn al-Ḥusayn from Muḥammad ibn ʻAlī ibn Abī Ṭālib, who heard ʻAlī ibn Abī Ṭālib state: "Allah the Exalted has obligated upon the rich in their wealth an amount sufficient to sustain their poor. If they suffer hunger, nakedness, or hardship, and the rich withhold [their due], is it not indeed a right upon Allah the Exalted to hold them accountable on the Day of Resurrection and punish them for it?" From Ibn ʻUmar, it is reported that he said: "In your wealth lies a right beyond zakāh." From ʻĀ'ishah, the Mother of the Believers, al-Ḥasan ibn ʻAlī, and Ibn ʻUmar, it is reported that they all responded to petitioners: "If you ask due to grievous bloodshed, crushing debt, or destitute poverty, your right has become binding." It is authentically reported from Abū ʻUbaydah ibn al-Jarrāḥ and three hundred Companions—may Allah be pleased with them—that when their provisions were exhausted, Abū ʻUbaydah commanded them to gather their supplies into two bags, and he rationed them equally. This constitutes an unequivocal consensus of the Companions—may Allah be pleased with them—with no dissent among them.

شِهَابٍ عَنْ أَبِي عَبْدِ اللَّهِ الثَّقَفِيِّ عَنْ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ مُحَمَّدِ بْنِ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ سَمِعَ عَلِيَّ بْنَ أَبِي طَالِبٍ يَقُولُ: إِنَّ اللَّهَ تَعَالَى فَرَضَ عَلَى الْأَغْنِيَاءِ فِي أَمْوَالِهِمْ بِقَدْرِ مَا يَكْفِي فُقَرَاءَهُمْ، فَإِنْ جَاعُوا أَوْ عَرُوا وَجَهَدُوا فَمَنَعَ الْأَغْنِيَاءُ، وَحَقٌّ عَلَى اللَّهِ تَعَالَى أَنْ يُحَاسِبَهُمْ يَوْمَ الْقِيَامَةِ، وَيُعَذِّبَهُمْ عَلَيْهِ؟ وَعَنْ ابْنِ عُمَرَ أَنَّهُ قَالَ: فِي مَالِكَ حَقٌّ سِوَى الزَّكَاةِ. وَعَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَالْحَسَنِ بْنِ عَلِيٍّ، وَابْنِ عُمَرَ أَنَّهُمْ قَالُوا كُلُّهُمْ لِمَنْ سَأَلَهُمْ: إِنْ كُنْتَ تَسْأَلُ فِي دَمٍ مُوجِعٍ، أَوْ غُرْمٍ مُفْظِعٍ أَوْ فَقْرٍ مُدْقِعٍ فَقَدْ وَجَبَ حَقُّكَ. وَصَحَّ عَنْ أَبِي عُبَيْدَةَ بْنِ الْجَرَّاحِ وَثَلَاثِمِائَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّ زَادَهُمْ فَنِيَ فَأَمَرَهُمْ أَبُو عُبَيْدَةَ فَجَمَعُوا أَزْوَادَهُمْ فِي مِزْوَدَيْنِ، وَجَعَلَ يَقُوتُهُمْ إيَّاهَا عَلَى السَّوَاءِ؟ فَهَذَا إجْمَاعٌ مَقْطُوعٌ بِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، لَا مُخَالِفَ لَهُمْ مِنْهُمْ.

L11492 It has been authentically reported from al-Shaʻbi, Mujahid, Tawus, and others—all of whom said: "There is an obligation on wealth other than Zakat."

وَصَحَّ عَنْ الشَّعْبِيِّ، وَمُجَاهِدٍ، وَطَاوُسٍ، وَغَيْرِهِمْ، كُلُّهُمْ يَقُولُ: فِي الْمَالِ حَقٌّ سِوَى الزَّكَاةِ.

L11493 Abu Muhammad said: We do not know of any disagreement among them regarding this except from al-Ḍaḥḥāk ibn Muzāḥim, for he said: "Zakat has abrogated every rightful obligation concerning wealth." Abu Muhammad said: Al-Ḍaḥḥāk's narration is not a proof – how then can his opinion [be valid]? The astonishment lies in those who cite this as evidence being the first to oppose it, for they assert obligations in wealth beyond Zakat, including expenditures for needy parents, spouses, enslaved individuals and dependents, care for livestock, debts, and compensation for injuries. Thus their contradiction is laid bare.

قَالَ أَبُو مُحَمَّدٍ: وَمَا نَعْلَمُ عَنْ أَحَدٍ مِنْهُمْ خِلَافَ هَذَا، إلَّا عَنْ الضَّحَّاكِ بْنِ مُزَاحِمٍ، فَإِنَّهُ قَالَ: نَسَخَتْ الزَّكَاةُ كُلَّ حَقٍّ فِي الْمَالِ. قَالَ أَبُو مُحَمَّدٍ: وَمَا رِوَايَةُ الضَّحَّاكِ حُجَّةٌ فَكَيْفَ رَأْيُهُ. وَالْعَجَبُ أَنَّ الْمُحْتَجَّ بِهَذَا أَوَّلُ مُخَالِفٍ لَهُ فَيَرَى فِي الْمَالِ حُقُوقًا سِوَى الزَّكَاةِ، مِنْهَا النَّفَقَاتُ عَلَى الْأَبَوَيْنِ الْمُحْتَاجَيْنِ، وَعَلَى الزَّوْجَةِ، وَعَلَى الرَّقِيقِ، وَعَلَى الْحَيَوَانِ، وَالدُّيُونِ، وَالْأُرُوشِ، فَظَهَرَ تَنَاقُضُهُمْ.

L11494–11496 If it is said: You have narrated through the chain of Ibn Abī Shaybah - Abū al-Aḥwaṣ reported to us from ʿIkrimah from Ibn ʿAbbās. He said: Whoever pays the zakāh of his wealth, there is no blame upon him for refraining from

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: ثنا أَبُو الْأَحْوَصِ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: مَنْ أَدَّى زَكَاةَ مَالِهِ فَلَيْسَ عَلَيْهِ جُنَاحٌ أَنْ لَا يَتَصَدَّقَ. وَمِنْ طَرِيقِ الْحَكَمِ

voluntary charity. Narrated through the chain of Al-Ḥakam, from Miqsam, from Ibn ʿAbbās regarding the Most High's statement: {And give its due on the day of its harvest} [Al-Anʿām 6:141] – the rulings of one-tenth and half-tenth abrogated it. Indeed, Miqsam's narration is rejected because he is weak.[36]

عَنْ مِقْسَمٍ عَنْ ابْنِ عَبَّاسٍ فِي قَوْلِه تَعَالَى: {وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ} [الأنعام: ١٤١] نَسَخَتْهَا: الْعُشْرُ، وَنِصْفُ الْعُشْرِ. فَإِنَّ رِوَايَةَ مِقْسَمٍ سَاقِطَةٌ لِضَعْفِهِ

L11497 And is there not in it [the ruling], even if valid, a disagreement with our position? As for ʿIkrimah's narration, it only restricts voluntary charity; is this not sound? As for fulfilling due diligence, it is an obligation and a debt, not a voluntary act of charity.

؛ وَلَيْسَ فِيهَا وَلَوْ صَحَّتْ خِلَافٌ لِقَوْلِنَا؟ وَأَمَّا رِوَايَةُ عِكْرِمَةَ فَإِنَّمَا هِيَ أَنْ لَا يَتَصَدَّقَ تَطَوُّعًا، وَهَذَا صَحِيحٌ؟ وَأَمَّا الْقِيَامُ بِالْمَجْهُودِ فَفَرْضٌ وَدَيْنٌ، وَلَيْسَ صَدَقَةَ تَطَوُّعٍ.

L11498 They say: Whoever is thirsty and fears death must take water wherever he finds it and fight to obtain it. Abu Muhammad said: What distinction exists between what they permitted him—fighting to obtain what repels death from himself due to thirst—and what they prohibited him from—fighting to obtain what repels death from himself due to hunger or lack of clothing? This contradicts the consensus, the Quran, the Sunnahs, and analogical reasoning. Abu Muhammad said: It is not permissible for a Muslim compelled by necessity to eat carrion or pork if he finds food that the owner has in surplus—whether from a Muslim or Dhimmi owner—for it is obligatory upon the food's owner to feed the hungry. Since this is the case, he is not compelled by necessity to eat carrion or pork. And success comes from Allah, the Exalted.

وَيَقُولُونَ: مَنْ عَطِشَ فَخَافَ الْمَوْتَ فَفُرِضَ عَلَيْهِ أَنْ يَأْخُذَ الْمَاءَ حَيْثُ وَجَدَهُ وَأَنْ يُقَاتِلَ عَلَيْهِ. قَالَ أَبُو مُحَمَّدٍ: فَأَيُّ فَرْقٍ بَيْنَ مَا أَبَاحُوا لَهُ مِنْ الْقِتَالِ عَلَى مَا يَدْفَعُ بِهِ عَنْ نَفْسِهِ الْمَوْتَ مِنْ الْعَطَشِ، وَبَيْنَ مَا مَنَعُوهُ مِنْ الْقِتَالِ عَنْ نَفْسِهِ فِيمَا يَدْفَعُ بِهِ عَنْهَا الْمَوْتَ مِنْ الْجُوعِ وَالْعُرْيِ. وَهَذَا خِلَافٌ لِلْإِجْمَاعِ، وَلِلْقُرْآنِ، وَلِلسُّنَنِ، وَلِلْقِيَاسِ. قَالَ أَبُو مُحَمَّدٍ: وَلَا يَحِلُّ لِمُسْلِمٍ اُضْطُرَّ أَنْ يَأْكُلَ مَيْتَةً، أَوْ لَحْمَ خِنْزِيرٍ وَهُوَ يَجِدُ طَعَامًا فِيهِ فَضْلٌ عَنْ صَاحِبِهِ، لِمُسْلِمٍ أَوْ لِذِمِّيٍّ؛ لِأَنَّ فَرْضًا عَلَى صَاحِبِ الطَّعَامِ إطْعَامُ الْجَائِعِ فَإِذَا كَانَ ذَلِكَ كَذَلِكَ فَلَيْسَ بِمُضْطَرٍّ إلَى الْمَيْتَةِ وَلَا إلَى لَحْمِ الْخِنْزِيرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L11499 He has the right to fight for this. If he is killed, retribution becomes obligatory upon his killer. If he kills the preventer, he incurs Allah's curse, for the preventer obstructed a rightful claim and constitutes a rebel faction. Allah, Exalted is He, said: "If one faction rebels against the other, then fight the rebellious faction until it returns to Allah's command" [Quran 49:9]. The preventer of a rightful claim rebels against his brother who holds the right. Upon this principle, Abu Bakr al-Siddiq (may Allah be pleased with him) fought the preventer of zakat. With Allah the Exalted is success. This con-

وَلَهُ أَنْ يُقَاتِلَ عَنْ ذَلِكَ، فَإِنْ قُتِلَ فَعَلَى قَاتِلِهِ الْقَوَدُ، وَإِنْ قَتَلَ الْمَانِعَ فَإِلَى لَعْنَةِ اللَّهِ؛ لِأَنَّهُ مَنَعَ حَقًّا، وَهُوَ طَائِفَةٌ بَاغِيَةٌ، قَالَ تَعَالَى: {فَإِنْ بَغَتْ إحْدَاهُمَا عَلَى الْأُخْرَى فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إلَى أَمْرِ اللَّهِ} [الحجرات: ٩] وَمَانِعُ الْحَقِّ بَاغٍ عَلَى أَخِيهِ الَّذِي لَهُ الْحَقُّ؛ وَبِهَذَا قَاتَلَ أَبُو بَكْرٍ الصِّدِّيقُ - رَضِيَ اللَّهُ عَنْهُ - مَانِعَ الزَّكَاةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. تَمَّ كِتَابُ الزَّكَاةِ بِحَمْدِ اللَّهِ تَعَالَى وَحُسْنِ عَوْنِهِ.

[36] **Qur'an references (L11494):** Qur'an 6:141 (Al-An'am).

cludes the Book of Zakat with praise to Allah the Exalted and His excellent support.[37]

[37] **Qur'an references (L11499):** Qur'an 49:9 (Al-Hujurat).



AL-MUHALLA

كِتَابُ الصِّيَامِ

The Book of Fasting

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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The Book of Fasting: Chapter on Fasting. Fasting comprises two categories: obligatory and voluntary.

In the name of Allah, the Most Gracious, the Most Merciful. May Allah send blessings upon Muhammad and his progeny, and grant him peace.

The Book of Fasting 726 – Issue: Fasting is of two categories: obligatory and voluntary. This is a true, certain consensus. Is there no avenue within the framework of reason for a third category?

An issue: Fasting the month of Ramadan.

727 - Issue: Among the obligations is fasting the month of Ramadan, which falls between Shaaban and Shawwal. It is obligatory upon every Muslim who is sane, adult, healthy, and resident—whether free or enslaved, male or female—except menstruating women and women in postpartum bleeding. They are not to fast during the days of their menstruation at all, nor during the days of their postpartum bleeding, and they must make up the fasting of those days. All of this is a definitively established obligation by consensus among all Muslims.

An issue: There is no fasting except with intention.

728 - Issue: No fast is valid at all—whether Ramadan or otherwise—except with a renewed intention each night for the fast of the coming day. Whoever intentionally abandons the intention invalidates their fast. The proof for this is Allah the Exalted's statement: _"And they were not commanded except to worship Allah, sincerely devoting their religion to Him"_ [Al-Bayyinah: 5]. Hence, it is established they were commanded with nothing in the religion except to worship Allah the Exalted and to maintain sincerity to Him in it, because it is His religion which He has commanded.[1]

The Messenger of Allah—may the peace and blessings of Allah be upon

[1] **Qur'an references (L11507):** Qur'an 98:5 (Al-Bayyinah).

[كِتَابُ الصِّيَامِ] [مَسْأَلَةٌ الصِّيَامُ قِسْمَانِ فَرْضٌ وَتَطَوُّعٌ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وآلِهِ وَسَلَّمَ

كِتَابُ الصِّيَامِ ٧٢٦ - مَسْأَلَةٌ: الصِّيَامُ قِسْمَانِ فَرْضٌ، وَتَطَوُّعٌ، وَهَذَا إجْمَاعُ حَقٍّ مُتَيَقَّنٍ، وَلَا سَبِيلَ فِي بِنْيَةِ الْعَقْلِ إلَى قِسْمٍ ثَالِثٍ؟

[مَسْأَلَةٌ صِيَامُ شَهْرِ رَمَضَانَ]

٧٢٧ - مَسْأَلَةٌ: فَمِنْ الْفَرْضِ صِيَامُ شَهْرِ رَمَضَانَ، الَّذِي بَيْنَ شَعْبَانَ، وَشَوَّالٍ، فَهُوَ فَرْضٌ عَلَى كُلِّ مُسْلِمٍ عَاقِلٍ بَالِغٍ صَحِيحٍ مُقِيمٍ، حُرًّا كَانَ أَوْ عَبْدًا، ذَكَرًا أَوْ أُنْثَى، إلَّا الْحَائِضَ وَالنُّفَسَاءَ، فَلَا يَصُومَانِ أَيَّامَ حَيْضِهِمَا أَلْبَتَّةَ، وَلَا أَيَّامَ نَفَسِهِمَا، وَيَقْضِيَانِ صِيَامَ تِلْكَ الْأَيَّامِ وَهَذَا كُلُّهُ فَرْضٌ مُتَيَقَّنٌ مِنْ جَمِيعِ أَهْلِ الْإِسْلَامِ.

[مَسْأَلَةٌ لَا صِيَامَ إلَّا بِنِيَّةٍ]

٧٢٨ - مَسْأَلَةٌ: وَلَا يُجْزِئُ صِيَامٌ أَصْلًا - رَمَضَانَ كَانَ أَوْ غَيْرَهُ - إلَّا بِنِيَّةٍ مُجَدَّدَةٍ فِي كُلِّ لَيْلَةٍ لِصَوْمِ الْيَوْمِ الْمُقْبِلِ، فَمَنْ تَعَمَّدَ تَرْكَ النِّيَّةِ بَطَلَ صَوْمُهُ؟ بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَمَا أُمِرُوا إلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ} [البينة: ٥] فَصَحَّ أَنَّهُمْ لَمْ يُؤْمَرُوا بِشَيْءٍ فِي الدِّينِ إلَّا بِعِبَادَةِ اللَّهِ تَعَالَى وَالْإِخْلَاصِ لَهُ فِيهَا بِأَنَّهَا دِينُهُ الَّذِي أَمَرَ بِهِ.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى» .

him—said: “Actions are only by intentions, and every person will only have what they intended.”[2]

L11509–11510 Thus, it is correct that no deed is valid except with an intention from oneself, and that none may claim reward except for what he intended. Therefore, whoever intends to fast, their fasting is valid, and whoever does not intend it, their fasting is invalid.

L11511 And from the method of analytical reasoning: fasting entails abstaining from eating and drinking, deliberate vomiting, sexual intercourse, and sins. Thus, if fasting were valid without the intention to fast, anyone who abstained from these categories would be fasting at all times. Yet this is something no one asserts.

L11512–11514 And by the method of consensus: It has been established through consensus that whoever fasts with an intention formed during the night has fulfilled their obligation. No textual evidence or consensus exists validating the fast of one who failed to form this intention during the night. Scholars differed regarding this matter: Zufar ibn al-Hudhayl held that if one observes Ramadan’s fasts without any intention to fast—intending not to fast each day yet abstaining from food, drink, and intercourse—their fast is valid and suffices. However, voluntary fasting requires a specific nightly intention.

Abu Hanifah maintained: Intention is obligatory for fasting—whether in Ramadan, voluntary acts, or vowed fasts. However, forming the intention during daytime suffices provided the sun has not yet passed its zenith and no prior eating, drinking, or intercourse occurred. Failure to form the intention—neither during the night nor before the sun passes its zenith—invalidates any subsequent intention after zenith, nullifies the fast, and obligates its makeup. As for compensating missed Ramadan days or expiatory fasts, nightly intention for each day is indispensable; forming it after dawn invalidates the fast.

[2]**Hadith references (L11508):** Sahih al-Bukhari 1; Sunan Abi Dawud 2201; Mishkat al-Masabih 1.

فَصَحَّ أَنَّهُ لَا عَمَلَ إِلَّا بِنِيَّةٍ لَهُ، وَأَنَّهُ لَيْسَ لِأَحَدٍ إِلَّا مَا نَوَى. فَصَحَّ أَنَّ مَنْ نَوَى الصَّوْمَ فَلَهُ صَوْمٌ، وَمَنْ لَمْ يَنْوِهِ فَلَيْسَ لَهُ صَوْمٌ.

وَمِنْ طَرِيقِ النَّظَرِ: أَنَّ الصَّوْمَ إِمْسَاكٌ عَنْ الْأَكْلِ وَالشُّرْبِ، وَتَعَمُّدِ الْقَيْءِ، وَعَنْ الْجِمَاعِ، وَعَنْ الْمَعَاصِي، فَكُلُّ مَنْ أَمْسَكَ عَنْ هَذِهِ الْوُجُوهِ - لَوْ أَجْزَأَهُ الصَّوْمُ بِلَا نِيَّةٍ لِلصَّوْمِ - لَكَانَ فِي كُلِّ وَقْتٍ صَائِمًا، وَهَذَا مَا لَا يَقُولُ أَحَدٌ.

وَمِنْ طَرِيقِ الْإِجْمَاعِ: أَنَّهُ قَدْ صَحَّ الْإِجْمَاعُ عَلَى أَنَّ مَنْ صَامَ وَنَوَاهُ مِنْ اللَّيْلِ فَقَدْ أَدَّى مَا عَلَيْهِ، وَلَا نَصَّ وَلَا إجْمَاعَ عَلَى أَنَّ الصَّوْمَ يُجْزِئُ مَنْ لَمْ يَنْوِهِ مِنْ اللَّيْلِ. وَاخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَ زُفَرُ بْنُ الْهُذَيْلِ: مَنْ صَامَ رَمَضَانَ، وَهُوَ لَا يَنْوِي صَوْمًا أَصْلًا، بَلْ نَوَى أَنَّهُ مُفْطِرٌ فِي كُلِّ يَوْمٍ مِنْهُ، إلَّا أَنَّهُ لَمْ يَأْكُلْ وَلَمْ يَشْرَبْ، وَلَا جَامَعَ -: فَإِنَّهُ صَائِمٌ وَيُجْزِئُهُ، وَلَا بُدَّ لَهُ فِي صَوْمِ التَّطَوُّعِ مِنْ نِيَّةٍ؟ وَقَالَ أَبُو حَنِيفَةَ: النِّيَّةُ فَرْضٌ لِلصَّوْمِ فِي كُلِّ يَوْمٍ مِنْ رَمَضَانَ، أَوْ التَّطَوُّعِ، أَوْ النَّذْرِ إلَّا أَنَّهُ يُجْزِئُهُ أَنْ يُحْدِثَهَا فِي النَّهَارِ، مَا لَمْ تَزُلْ الشَّمْسُ، وَمَا لَمْ يَكُنْ أَكَلَ قَبْلَ ذَلِكَ، وَلَا شَرِبَ، وَلَا جَامَعَ، فَإِنْ لَمْ يُحْدِثْهَا - لَا مِنْ اللَّيْلِ وَلَا مِنْ النَّهَارِ مَا لَمْ تَزُلْ الشَّمْسُ - لَمْ يَنْتَفِعْ بِإِحْدَاثِ النِّيَّةِ بَعْدَ زَوَالِ الشَّمْسِ، وَلَا صَوْمَ لَهُ، وَعَلَيْهِ قَضَاءُ ذَلِكَ الْيَوْمِ، وَأَمَّا قَضَاءُ رَمَضَانَ وَالْكَفَّارَاتِ فَلَا بُدَّ فِيهَا مِنْ النِّيَّةِ مِنْ اللَّيْلِ لِكُلِّ يَوْمٍ، وَإِلَّا فَلَا صَوْمَ لَهُ، وَلَا يُجْزِئُهُ أَنْ يُحْدِثَ النِّيَّةَ فِي ذَلِكَ بَعْدَ طُلُوعِ الْفَجْرِ. وَقَالَ مَالِكٌ: لَا بُدَّ مِنْ نِيَّةٍ فِي الصَّوْمِ وَأَمَّا فِي رَمَضَانَ فَتُجْزِئُهُ نِيَّتُهُ لِصَوْمِهِ كُلِّهِ مِنْ أَوَّلِ لَيْلَةٍ مِنْهُ، ثُمَّ لَيْسَ عَلَيْهِ أَنْ يُجَدِّدَ نِيَّةَ كُلِّ لَيْلَةٍ، إلَّا أَنْ يَمْرَضَ

فَيُفْطِرَ، أَوْ يُسَافِرَ فَيُفْطِرَ، فَلَا بُدَّ لَهُ مِنْ نِيَّةٍ - حِينَئِذٍ - مُجَدَّدَةٍ قَالَ: وَأَمَّا التَّطَوُّعُ فَلَا بُدَّ لَهُ مِنْ نِيَّةٍ لِكُلِّ لَيْلَةٍ. وَقَالَ الشَّافِعِيُّ، وَدَاوُد: مِثْلَ قَوْلِنَا، إِلَّا أَنَّ الشَّافِعِيَّ رَأَى فِي التَّطَوُّعِ خَاصَّةً إِحْدَاثَ النِّيَّةِ لَهُ مَا لَمْ تَزُلْ الشَّمْسُ، وَمَا لَمْ يَكُنْ أَكَلَ قَبْلَ ذَلِكَ، أَوْ شَرِبَ، أَوْ جَامَعَ -: وَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: لَا يَصُومُ إِلَّا مَنْ أَجْمَعَ الصِّيَامَ قَبْلَ الْفَجْرِ.

Malik asserted: Intention is obligatory for fasting. In Ramadan, a single intention formed on the first night suffices for the entire month unless one breaks the fast due to illness or travel, necessitating a renewed intention upon resumption. Voluntary fasting requires a nightly intention.

Al-Shāfiʿī and Dāwūd concurred with the author's school, though Al-Shāfiʿī specifically permitted forming the intention for voluntary fasts before the sun passes its zenith, provided no prior consumption or intercourse occurred. We narrate through Malik's chain from Nāfiʿ, from Ibn ʿUmar, who stated: "None fasts except one who resolves to fast." before Fajr.

وَعَنْ مَالِكٍ عَنْ الزُّهْرِيِّ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ قَالَتْ: لَا يَصُومُ إِلَّا مَنْ أَجْمَعَ الصِّيَامَ قَبْلَ الْفَجْرِ () -: وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ: أَخْبَرَنِي حَمْزَةُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: قَالَتْ حَفْصَةُ أُمُّ الْمُؤْمِنِينَ: لَا صِيَامَ لِمَنْ لَمْ يُجْمِعْ قَبْلَ الْفَجْرِ؟ فَهَؤُلَاءِ ثَلَاثَةٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ أَصْلًا، وَالْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ: يُعَظِّمُونَ مِثْلَ هَذَا إذَا خَالَفَ أَهْوَاءَهُمْ وَقَدْ خَالَفُوهُمْ هَاهُنَا، مَا نَعْلَمُ أَحَدًا قَبْلَ أَبِي حَنِيفَةَ، وَمَالِكٍ قَالَ بِقَوْلِهِمَا فِي هَذِهِ الْمَسْأَلَةِ؛ هُمْ يُشَنِّعُونَ أَيْضًا بِمِثْلِ هَذَا عَلَى مَنْ قَالَهُ مُتَّبِعًا لِلْقُرْآنِ وَالسُّنَّةِ الصَّحِيحَةِ، وَهُمْ هَاهُنَا خَالَفُوا الْقُرْآنَ وَالسُّنَنَ الثَّابِتَةَ بِرَأْيٍ فَاسِدٍ لَمْ يُحْفَظْ عَنْ أَحَدٍ قَبْلَهُمْ؟ قَالَ أَبُو مُحَمَّد: بُرْهَانُ صِحَّةِ قَوْلِنَا مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ الْأَزْهَرِ ثنا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ شِهَابٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ عَنْ حَفْصَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ لَمْ يُبَيِّتْ الصِّيَامَ مِنْ اللَّيْلِ فَلَا صِيَامَ لَهُ» .

From Malik, from Az-Zuhri: That Aisha, the Mother of the Believers, said: "No one fasts except the one who resolves to fast before dawn." From the chain of Ibn Wahb, from Yunus ibn Yazid, from Ibn Shihab: Hamzah ibn Abdullah ibn Umar informed me from his father, who said: Hafsah, the Mother of the Believers, stated: "Is there no fast for one who does not resolve [to fast] before dawn?" These are three Companions—may Allah be pleased with them—with no opposition known from any of them whatsoever. The Hanafis and Malikis magnify such a stance when it contradicts their own inclinations, yet here they oppose them. We know of none before Abu Hanifah and Malik who upheld the opinion of these two on this matter. Moreover, they denounce those who follow the Quran and authentic Sunnah, while themselves opposing the Quran and established Sunnah through an invalid opinion not preserved from any predecessor. Abu Muhammad said: The proof for our position is what Abdullah ibn Rabīʿ narrated to us—Muhammad ibn Muʿāwiyah narrated to us—Aḥmad ibn Shuʿayb informed us—Aḥmad ibn Al-Azhar narrated to us—ʿAbdur-Razzāq reported from Ibn Jurayj, from Ibn Shihāb, from Sālim ibn Abdullah ibn Umar, from his father, from Hafsah, the Mother of the Believers, that Allah's Messenger—peace and blessings be upon him—said: "Whoever does not intend the fast from the night, there is no fast for him."[3]

L11515

This is an authentic chain of narration, and the fact that Maʿmar, Malik,

L11516–11517

[3] **Hadith references (L11515):** Sunan an-Nasai 2334.

وَهَذَا إِسْنَادٌ صَحِيحٌ، وَلَا يَضُرُّ إِسْنَادُ ابْنِ جُرَيْجٍ لَهُ أَنْ أَوْقَفَهُ مَعْمَرٌ، وَمَالِكٌ، وَعُبَيْدُ اللَّهِ، وَيُونُسُ، وَابْنُ عُيَيْنَةَ، فَابْنُ جُرَيْجٍ لَا يَتَأَخَّرُ عَنْ أَحَدٍ مِنْ هَؤُلَاءِ فِي الثِّقَةِ وَالْحِفْظِ، وَالزُّهْرِيُّ وَاسِعُ الرِّوَايَةِ، فَمَرَّةً يَرْوِيهِ عَنْ سَالِمٍ عَنْ أَبِيهِ، وَمَرَّةً عَنْ حَمْزَةَ عَنْ أَبِيهِ، وَكِلَاهُمَا ثِقَةٌ، وَابْنُ عُمَرَ كَذَلِكَ، مَرَّةً رَوَاهُ مُسْنَدًا، وَمَرَّةً رَوَى أَنَّ حَفْصَةَ أَفْتَتْ بِهِ، وَمَرَّةً أَفْتَى هُوَ بِهِ، وَكُلُّ هَذَا قُوَّةٌ لِلْخَبَرِ.

'Ubayd Allah, Yunus, and Ibn 'Uyaynah narrated it as a mawqūf (stopped narration) does not detract from Ibn Jurayj's chain, for Ibn Jurayj is not inferior to any of them in reliability and memorization. Al-Zuhri was prolific in narration: sometimes he narrated it from Salim on his [Salim's] father's authority, and sometimes from Hamza on his [Hamza's] father's authority—both of whom are reliable. Similarly, Ibn 'Umar sometimes narrated it with a connected chain, sometimes narrated that Hafsa issued a fatwa based on it, and sometimes issued a fatwa himself based on it. All of this strengthens the ḥadīth.

وَالْعَجَبُ أَنَّ الْمُعْتَرِضِينَ بِهَذَا مِنْ مَذْهَبِهِمْ: أَنَّ الْمُرْسَلَ كَالْمُسْنَدِ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا عُمُومٌ لَا يَحِلُّ تَخْصِيصُهُ، وَلَا تَبْدِيلُهُ، وَلَا الزِّيَادَةُ فِيهِ، وَلَا النَّقْصُ مِنْهُ، إِلَّا بِنَصٍّ آخَرَ صَحِيحٍ؟ فَإِنْ قِيلَ: فَهَلَّا أَوْجَبْتُمْ النِّيَّةَ مُتَّصِلَةً بِتَبَيُّنِ الْفَجْرِ، كَمَا تَقُولُونَ: فِي الْوُضُوءِ وَالصَّلَاةِ، وَالزَّكَاةِ، وَالْحَجِّ، وَسَائِرِ الْفَرَائِضِ.؟ قُلْنَا: لِوَجْهَيْنِ اثْنَيْنِ أَحَدُهُمَا هَذَا النَّصُّ الْوَارِدُ الَّذِي لَا يَحِلُّ خِلَافُهُ وَلِلَّهِ الْحَمْدُ وَلَسْنَا مِمَّنْ يَضْرِبُ كَلَامَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْضَهُ بِبَعْضٍ فَيُؤْمِنُ بِبَعْضِهِ، وَيَكْفُرُ بِبَعْضِهِ، وَلَا مِمَّنْ يُعَارِضُ أَوَامِرَ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِنَظَرِهِ الْفَاسِدِ، بَلْ نَأْخُذُ جَمِيعَ السُّنَنِ كَمَا وَرَدَتْ، وَنَسْمَعُ وَنُطِيعُ بِجَمِيعِهَا كَمَا أَتَتْ؟ وَالثَّانِي: قَوْلُ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَلَمْ يُكَلِّفْنَا - عَزَّ وَجَلَّ - السَّهَرَ مُرَاعَاةً لِتَبَيُّنِ الْفَجْرِ، وَإِنَّمَا أَلْزَمَنَا النِّيَّةَ مِنْ اللَّيْلِ، ثُمَّ نَحْنُ عَلَيْهَا إِلَى أَنْ يَتَبَيَّنَ الْفَجْرُ وَإِنْ نِمْنَا وَإِنْ غَفَلْنَا، مَا لَمْ نَتَعَمَّدْ إِبْطَالَهَا.

L11518 It is astonishing that those who raise this objection from their own school hold that a mursal report is equivalent to a musnad ḥadīth. Abū Muḥammad said: This is a universal principle that may not be restricted, altered, augmented, or diminished except by another sound textual proof. If it is asked: "Why do you not require the intention to be continuously linked to the discernment of dawn, as you assert regarding ablution, prayer, zakāt, pilgrimage, and all other obligatory acts?" We reply with two points. The first is this transmitted text—which it is impermissible to oppose—and all praise is due to Allah, we are not among those who pit the Messenger's words—peace be upon him—against each other, believing in some while rejecting others, nor among those who contradict Allah's commands conveyed through His Messenger—peace be upon him—with their corrupt reasoning. Rather, we accept all Prophetic traditions as they were transmitted, hearing and obeying them all as they came. The second is Allah's statement—Exalted is He: {Allah does not burden any soul beyond its capacity} [2:286]. He—Majestic and Exalted—has not obligated us to vigilantly monitor the emergence of dawn, but only required us to form the intention by night. We remain bound by this intention until dawn becomes evident—even if we sleep or become heedless—provided we do not deliberately invalidate it.[4]

فَإِنْ قِيلَ: فَأَنْتُمْ تُجِيزُونَ لِمَنْ نَسِيَ النِّيَّةَ مِنْ اللَّيْلِ إِحْدَاثَهَا فِي الْيَوْمِ الثَّانِي؟ .

L11519 If it is said: Do you [scholars] permit one who forgot to form the intention during the night to newly initiate it on the second day?

We said: Yes, based on an authentic textual evidence established regarding

L11520–11521

[4] **Qur'an references (L11518):** Qur'an 2:286 (Al-Baqarah).

this matter—for had it not been for that, would we have acted thus? Abu Muhammad [Ibn Hazm] said: We know of no valid argument supporting Zufar's position except his statement: "Ramadan is inherently designated for fasting and not at all for breaking the fast. What purpose then remains for forming the intention to fast during it, when fasting is already obligatory?"

L11522 Ali said: This constitutes a decisive proof against him, nullifying his claim, because since it is fundamentally a prescribed occasion for fasting - not for breaking the fast at all - it is obligatory to intend the act of worship Allah the Exalted has prescribed through that fasting, to sincerely direct the intention to Allah therein, and not to treat it as jest or frivolity.

L11523 Another aspect is that we have been commanded to designate the month of Ramadan for fasting and prohibited from breaking it therein, except where the text has come to us with breaking the fast therein. Thus, it is a time for obedience for one who obeys by fulfilling what he has been commanded, and a time—by Allah—for immense disobedience for whoever disobeys Allah the Exalted therein and opposes His command by not fasting as he was commanded. Since this is so—with certainty through sensory perception and observation—it necessarily requires an earnest commitment to the obligatory obedience and abandonment of the forbidden disobedience. This cannot occur except through an intention for that. This is supremely evident, and praise be to Allah.

L11524 A third perspective is that according to this view, if someone has only enough time remaining in the dawn prayer period to perform two units and prays them voluntarily or frivolously, this should suffice for their obligatory Fajr prayer since this time is designated exclusively for it, not for any other prayer whatsoever. This constitutes qiyas – if qiyas holds validity. We find no argument from Abū Ḥanīfah whatsoever for these invalid, absurd categorizations except that some afflicted by rigidly following him obscured the matter using a ḥadīth we will mention in the subsequent issue – its proper context. This narration provides no foundation for Abū Ḥanīfah's position at all; rather, it invalidates his core principle by mandating intention here – contrary to his stance on ṭahārah – then obligating it during daytime without evidence. We recognize no valid argument from Mālik either, except their assertion that

قُلْنَا: نَعَمْ، بِنَصٍّ صَحِيحٍ وَرَدَ فِي ذَلِكَ وَلَوْلَا ذَلِكَ مَا فَعَلْنَاهُ؟ قَالَ أَبُو مُحَمَّد: وَمَا نَعْلَمُ لِزُفَرَ حُجَّةً إلَّا أَنَّهُ قَالَ: رَمَضَانُ مَوْضِعٌ لِلصِّيَامِ وَلَيْسَ. مَوْضِعًا لِلْفِطْرِ أَصْلًا، فَلَا مَعْنَى لِنِيَّةِ الصَّوْمِ فِيهِ، إذْ لَا بُدَّ مِنْهُ؟

قَالَ عَلِيٌّ: وَهَذِهِ حُجَّةٌ عَلَيْهِ، مُبْطِلَةٌ لِقَوْلِهِ، لِأَنَّهُ لَمَّا كَانَ مَوْضِعًا لِلصَّوْمِ لَا لِلْفِطْرِ أَصْلًا وَجَبَ أَنْ يَنْوِيَ مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ مِنْ الْعِبَادَةِ بِذَلِكَ الصَّوْمِ، وَأَنْ يُخْلِصَ النِّيَّةَ لِلَّهِ تَعَالَى فِيهَا، وَلَا يُخْرِجُهَا مَخْرَجَ الْهَزْلِ وَاللَّعِبِ.

وَوَجْهٌ آخَرُ: وَهُوَ أَنَّ شَهْرَ رَمَضَانَ أُمِرْنَا بِأَنْ نَجْعَلَهُ لِلصَّوْمِ، وَنُهِينَا فِيهِ عَنْ الْفِطْرِ، إلَّا حَيْثُ جَاءَنَا النَّصُّ بِالْفِطْرِ فِيهِ، فَهُوَ وَقْتٌ لِلطَّاعَةِ مِمَّنْ أَطَاعَ بِأَدَاءِ مَا أُمِرَ بِهِ وَوَقْتٌ - وَاَللَّهِ - لِلْمَعْصِيَةِ الْعَظِيمَةِ فَمَنْ عَصَى اللَّهَ تَعَالَى فِيهِ وَخَالَفَ أَمْرَهُ عَزَّ وَجَلَّ فَلَمْ يَصُمْهُ كَمَا أُمِرَ، فَإِذْ هُوَ كَذَلِكَ - يَقِينًا بِالْحِسِّ وَالْمُشَاهَدَةِ - فَلَا بُدَّ ضَرُورَةً مِنْ قَصْدٍ إلَى الطَّاعَةِ الْمَفْرُوضَةِ، وَتَرْكِ الْمَعْصِيَةِ الْمُحَرَّمَةِ، وَهَذَا لَا يَكُونُ إلَّا بِنِيَّةٍ لِذَلِكَ. وَهَذَا فِي غَايَةِ الْبَيَانِ وَالْحَمْدُ لِلَّهِ.

وَوَجْهٌ ثَالِثٌ: وَهُوَ أَنَّهُ يَلْزَمُ عَلَى هَذَا الْقَوْلِ أَنَّ مَنْ لَمْ يَبْقَ لَهُ مِنْ وَقْتِ صَلَاةِ الصُّبْحِ إلَّا مِقْدَارُ رَكْعَتَيْنِ فَصَلَّى رَكْعَتَيْنِ تَطَوُّعًا أَوْ عَابِثًا -: أَنْ يُجْزِئَهُ ذَلِكَ مِنْ صَلَاةِ الصُّبْحِ؛ لِأَنَّ ذَلِكَ الْوَقْتَ وَقْتٌ لَهَا، لَا لِغَيْرِهَا أَصْلًا، وَهَذَا هُوَ الْقِيَاسُ: إنْ كَانَ الْقِيَاسُ حَقًّا. وَمَا عَلِمْنَا لِأَبِي حَنِيفَةَ حُجَّةً أَصْلًا فِي تِلْكَ التَّقَاسِيمِ الْفَاسِدَةِ السَّخِيفَةِ، إلَّا أَنَّ بَعْضَ مَنْ ابْتَلَاهُ بِتَقْلِيدِهِ مَوَّهَ فِي ذَلِكَ بِحَدِيثٍ نَذْكُرُهُ فِي الْمَسْأَلَةِ التَّالِيَةِ، لِأَنَّهُ مَوْضِعُهُ، وَلَيْسَ فِي هَذَا الْخَبَرِ مُتَعَلَّقٌ لِأَبِي حَنِيفَةَ أَصْلًا، بَلْ قَدْ نَقَضَ أَصْلَهُ، فَأَوْجَبَ فِيهِ نِيَّةً، بِخِلَافِ

قَوْلِهِ فِي الطَّهَارَةِ، ثُمَّ أَوْجَبَهَا فِي النَّهَارِ بِلَا دَلِيلٍ، وَمَا نَعْرِفُ لِمَالِكٍ حُجَّةً أَصْلًا؛ إِلَّا أَنَّهُمْ قَالُوا: رَمَضَانُ كَصَلَاةٍ وَاحِدَةٍ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ مُكَابَرَةٌ بِالْبَاطِلِ؛ لِأَنَّ الصَّلَاةَ الْوَاحِدَةَ لَا يَحُولُ بَيْنَ أَعْمَالِهَا - بِعَمْدٍ - مَا لَيْسَ مِنْهَا أَصْلًا، وَصِيَامُ رَمَضَانَ يَحُولُ بَيْنَ كُلِّ يَوْمَيْنِ مِنْهُ لَيْلٌ يَبْطُلُ فِيهِ الصَّوْمُ جُمْلَةً وَيَحِلُّ فِيهِ الْأَكْلُ وَالشُّرْبُ وَالْجِمَاعُ، فَكُلُّ يَوْمٍ لَهُ حُكْمٌ غَيْرُ حُكْمِ الْيَوْمِ الَّذِي قَبْلَهُ وَالْيَوْمِ الَّذِي بَعْدَهُ؛ وَقَدْ يَمْرَضُ فِيهِ أَوْ يُسَافِرُ، أَوْ تَحِيضُ، فَيَبْطُلُ الصَّوْمُ، وَكَانَ بِالْأَمْسِ صَائِمًا، وَيَكُونُ غَدًا صَائِمًا.

Ramadan resembles a single prayer. Abū Muḥammad remarked: This constitutes obstinate persistence in falsehood, for a single prayer's acts are not interrupted by unrelated intentional elements, whereas Ramadan's fasting is severed between every two days by nights where fasting becomes wholly invalid and consumption, drinking, and intercourse become permissible. Each day carries rulings distinct from its predecessor and successor. One might fall ill, travel, or a woman might menstruate during it – nullifying the fast – having fasted yesterday and fasting tomorrow.

وَإِنَّمَا شَهْرُ رَمَضَانَ كَصَلَوَاتِ الْيَوْمِ وَاللَّيْلَةِ، يَحُولُ بَيْنَ كُلِّ صَلَاتَيْنِ مَا لَيْسَ صَلَاةً، فَلَا بُدَّ لِكُلِّ صَلَاةٍ مِنْ نِيَّةٍ، فَكَذَلِكَ لَا بُدَّ لِكُلِّ يَوْمٍ فِي صَوْمِهِ مِنْ نِيَّةٍ. وَهُمْ أَوَّلُ مَنْ أَبْطَلَ هَذَا الْقِيَاسَ، فَرَأَوْا مَنْ أَفْطَرَ عَامِدًا فِي يَوْمٍ مِنْ رَمَضَانَ أَنَّ عَلَيْهِ قَضَاءَهُ وَأَنَّ سَائِرَ صِيَامِهِ كَسَائِرِ أَيَّامِ الشَّهْرِ صَحِيحٌ، فَقَدْ أَقَرُّوا بِأَنَّ حُكْمَ الشَّهْرِ كَصَلَاةِ لَيْلَةٍ وَاحِدَةٍ، وَيَوْمٍ وَاحِدٍ.

L11525–11526 The month of Ramadan is like the prayers of day and night, where non-prayer acts intervene between every two prayers. Thus, each prayer requires an intention, and likewise, each day of fasting requires an intention. Yet they were the first to nullify this analogy, ruling that one who deliberately breaks the fast on a day of Ramadan must make up that day, while the rest of their fasting is valid, as are the remaining days of the month. By this, they acknowledged that the ruling of the month is analogous to the prayer of a single night and a single day.

وَإِنَّمَا يَخْرُجُ هَذَا عَلَى قَوْلِ سَعِيدِ بْنِ الْمُسَيِّبِ الَّذِي يَرَى مَنْ أَفْطَرَ يَوْمًا مِنْ رَمَضَانَ عَامِدًا أَوْ أَفْطَرَهُ كُلَّهُ - سَوَاءٌ، وَأَنَّ عَلَيْهِ فِي الْيَوْمِ قَضَاءُ شَهْرٍ، كَمَا عَلَيْهِ فِي الشَّهْرِ كُلِّهِ، وَلَا فَرْقَ. وَهَذَا مِمَّا أَخْطَئُوا فِيهِ الْقِيَاسَ - لَوْ كَانَ الْقِيَاسُ حَقًّا - فَلَا النَّصَّ اتَّبَعُوا، وَلَا الصَّحَابَةَ قَلَّدُوا، وَلَا قِيَاسَ صَحِبُوا، وَلَا الِاحْتِيَاطَ الْتَزَمُوا، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L11527 This position aligns with the view of Sa'īd ibn al-Musayyab, who considers one who intentionally breaks a single day of Ramadan or breaks the entire month as equivalent—requiring them to make up a month for each day, just as one who breaks the whole month must make up it entirely, with no distinction. This exemplifies their error regarding analogy—if analogy were correct—for they neither followed the text, nor imitated the Companions, nor followed analogy, nor committed to precaution. And with Allah the Exalted is success.

[مَسْأَلَةٌ نَسِيَ أَنْ يَنْوِيَ مِنْ اللَّيْلِ فِي رَمَضَانَ]

٧٢٩ - مَسْأَلَةٌ:

A legal issue: He forgot to make the intention during the night in Ramadan.

729 - Issue:

L11530 Whoever forgets to make the intention during the night in Ramadan, then

at whatever time they remember during the following day—whether they ate, drank, had marital relations, or did none of those things—they must form the intention to fast from that moment of recollection, abstain from what fasting people abstain from, and their fast will be fully valid. There is no requirement to make it up, even if nothing remains of the day for him except the time needed to form the intention. If they do not form the intention in this manner, their fast is invalid, and they are disobeying Allah the Exalted by deliberately invalidating their fast, being unable to make it up (by fasting another day).

وَمَنْ نَسِيَ أَنْ يَنْوِيَ مِنَ اللَّيْلِ فِي رَمَضَانَ فَأَيُّ وَقْتٍ ذَكَرَ مِنَ النَّهَارِ التَّالِي لِتِلْكَ اللَّيْلَةِ - سَوَاءٌ أَكَلَ وَشَرِبَ وَوَطِئَ أَوْ لَمْ يَفْعَلْ شَيْئًا مِنْ ذَلِكَ - فَإِنَّهُ يَنْوِي الصَّوْمَ مِنْ وَقْتِهِ إِذَا ذَكَرَ، وَيُمْسِكُ عَمَّا يُمْسِكُ عَنْهُ الصَّائِمُ، وَيُجْزِئُهُ صَوْمُهُ ذَلِكَ تَامًّا، وَلَا قَضَاءَ عَلَيْهِ، وَلَوْ لَمْ يَبْقَ عَلَيْهِ مِنَ النَّهَارِ، إِلَّا مِقْدَارُ النِّيَّةِ فَقَطْ، فَإِنْ لَمْ يَنْوِ كَذَلِكَ فَلَا صَوْمَ لَهُ، وَهُوَ عَاصٍ لِلَّهِ تَعَالَى مُتَعَمِّدٌ لِإِبْطَالِ صَوْمِهِ، وَلَا يَقْدِرُ عَلَى الْقَضَاءِ.

L11531–11533 Similarly, if someone receives news that the Ramadan crescent was sighted the previous night—whether they had eaten, drunk, had intercourse, or not done any of those things at any time during that day, even at its end, as we mentioned—then if they form the intention to fast immediately once the report is confirmed to them, they must abstain from what a fasting person abstains from. Their fast is valid, no compensatory fast is required, and if they fail to do so, their fast is invalid. The ruling is the same as in the previous case, without distinction. Likewise, one obligated to observe a vowed fast on a specific day who forgets the intention and remembers during the day: the ruling applies as we mentioned, with no difference. Similarly, one who forgets the intention during a night of the two consecutive obligatory months and remembers during the day: the ruling is the same, without distinction. Similarly, if one sleeps before sunset during Ramadan, during the two consecutive months (as in expiation), or during a specified vow, and does not wake except after the emergence of Fajr or during any part of that daytime—even at its end, as we stated—then as we clarified earlier, it is the same, the same. There is absolutely no difference in any regard. If he does not recall in any of the scenarios we mentioned, nor wakes up until sunset, then no sin is upon him. He did not fast that day, and no make-up obligation is incumbent upon him.

وَكَذَلِكَ مَنْ جَاءَهُ الْخَبَرُ بِأَنَّ هِلَالَ رَمَضَانَ رُئِيَ الْبَارِحَةَ - فَسَوَاءٌ أَكَلَ وَشَرِبَ وَوَطِئَ أَوْ لَمْ يَفْعَلْ شَيْئًا مِنْ ذَلِكَ - فِي أَيِّ وَقْتٍ جَاءَ الْخَبَرُ مِنْ ذَلِكَ الْيَوْمِ وَلَوْ فِي آخِرِهِ كَمَا ذَكَرْنَا -: فَإِنْ يَنْوِيَ الصَّوْمَ سَاعَةَ صَحَّ الْخَبَرُ عِنْدَهُ، وَيُمْسِكُ عَمَّا يُمْسِكُ عَنْهُ الصَّائِمُ، وَيُجْزِئُهُ صَوْمُهُ، وَلَا قَضَاءَ عَلَيْهِ، فَإِنْ لَمْ يَفْعَلْ فَصَوْمُهُ بَاطِلٌ، كَمَا قُلْنَا فِي الَّتِي قَبْلَهَا سَوَاءٌ سَوَاءٌ، وَكَذَلِكَ أَيْضًا: مَنْ عَلَيْهِ صَوْمُ نَذْرٍ مُعَيَّنٍ فِي يَوْمٍ بِعَيْنِهِ فَنَسِيَ النِّيَّةَ وَذَكَرَ بِالنَّهَارِ فَكَمَا قُلْنَا وَلَا فَرْقَ، وَكَذَلِكَ مَنْ نَسِيَ النِّيَّةَ فِي لَيْلَةٍ مِنْ لَيَالِي الشَّهْرَيْنِ الْمُتَتَابِعَيْنِ الْوَاجِبَيْنِ ثُمَّ ذَكَرَ بِالنَّهَارِ وَلَا فَرْقَ وَكَذَلِكَ مَنْ نَامَ قَبْلَ غُرُوبِ الشَّمْسِ فِي رَمَضَانَ، أَوْ فِي الشَّهْرَيْنِ الْمُتَتَابِعَيْنِ، أَوْ فِي نَذْرٍ مُعَيَّنٍ فَلَمْ يَنْتَبِهْ إِلَّا بَعْدَ طُلُوعِ الْفَجْرِ أَوْ فِي شَيْءٍ مِنْ نَهَارِ ذَلِكَ الْيَوْمِ، وَلَوْ فِي آخِرِهِ - كَمَا قُلْنَا - فَكَمَا قُلْنَا أَيْضًا آنِفًا سَوَاءٌ سَوَاءٌ، وَلَا فَرْقَ فِي شَيْءٍ أَصْلًا، فَلَوْ لَمْ يَذْكُرْ فِي شَيْءٍ مِنَ الْوُجُوهِ الَّتِي ذَكَرْنَا، وَلَا اسْتَيْقَظَ حَتَّى غَابَتْ الشَّمْسُ -: فَلَا إِثْمَ عَلَيْهِ، وَلَمْ يَصُمْ ذَلِكَ الْيَوْمَ وَلَا قَضَاءَ عَلَيْهِ.

L11534 The evidence for our position is the statement of Allah the Exalted: **"There is no blame upon you for that in which you erred, but only for what your hearts deliberately intended"** [Al-Ahzab: 5]. Likewise, the Messenger of Allah—peace and blessings be upon him—said: **"My nation has been absolved

بُرْهَانُ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] وَكَذَلِكَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ

from accountability for mistakes, forgetfulness, and what they were coerced to do.”** All those we have mentioned—whether they forgot or committed non-deliberate errors—bear no blame whatsoever.[5]

عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» . وَكُلُّ مَنْ ذَكَرْنَا نَاسٍ، أَوْ مُخْطِئٌ غَيْرُ عَامِدٍ، فَلَا جُنَاحَ عَلَيْهِ.

L11535 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to me: Abu Bakr ibn Nafi‘ al-Abdi narrated to me, Bishr ibn al-Mufaddal narrated to us, Khalid ibn Dhakwan narrated from ar-Rubayyi‘ bint Mu‘awwidh ibn Afra’, who said: “At the dawn of Ashura, the Messenger of Allah—peace and blessings be upon him—sent to the villages of the Ansar surrounding Medina: ’Whoever has begun the day fasting, let him complete his fast, and whoever has not fasted since dawn, let him fast for the remainder of the day.’” Through the same chain, Muslim ibn al-Hajjaj narrated: Qutaybah ibn Sa‘id narrated to us, Hatim ibn Isma‘il narrated to us from Yazid ibn Abi ‘Ubayd from Salamah ibn al-Akwa‘, who said: “The Messenger of Allah—peace and blessings be upon him—sent a man from Aslam on the day of Ashura and commanded him to announce to the people: ’Whoever has not fasted, let him fast, and whoever has eaten, let him complete his fast until...’”[6]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي أَبُو بَكْرِ بْنُ نَافِعٍ الْعَبْدِيُّ ثنا بِشْرُ بْنُ الْمُفَضَّلِ ثنا خَالِدُ بْنُ ذَكْوَانَ عَنْ الرُّبَيِّعِ بِنْتِ مُعَوِّذِ ابْنِ عَفْرَاءَ قَالَتْ «أَرْسَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَدَاةَ عَاشُورَاءَ إلَى قُرَى الْأَنْصَارِ الَّتِي حَوْلَ الْمَدِينَةِ: مَنْ كَانَ أَصْبَحَ صَائِمًا فَلْيُتِمَّ صَوْمَهُ، وَمَنْ كَانَ أَصْبَحَ مُفْطِرًا فَلْيُتِمَّ بَقِيَّةَ يَوْمِهِ» . وَبِهِ إلَى مُسْلِمِ بْنِ الْحَجَّاجِ: ثنا قُتَيْبَةُ بْنُ سَعِيدٍ ثنا حَاتِمُ بْنُ إسْمَاعِيلَ عَنْ يَزِيدَ بْنِ أَبِي عُبَيْدٍ عَنْ سَلَمَةَ بْنِ الْأَكْوَعِ قَالَ: «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَجُلًا مِنْ أَسْلَمَ يَوْمَ عَاشُورَاءَ، فَأَمَرَهُ أَنْ يُؤَذِّنَ فِي النَّاسِ: مَنْ كَانَ لَمْ يَصُمْ فَلْيَصُمْ، وَمَنْ كَانَ أَكَلَ فَلْيُتِمَّ صِيَامَهُ إلَى» .

L11536 Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us from Ibrahim ibn Ahmad al-Balkhi, from al-Farbari, from al-Bukhari, from al-Makki ibn Ibrahim, from Yazid ibn Abi Ubayd, from Salama ibn al-Akwa‘, who said: “The Prophet—peace and blessings of Allah be upon him—commanded a man from the tribe of Aslam to proclaim to the people: ’Whoever has eaten, let him fast for the rest of the day, and whoever has not eaten, let him fast, for today is the Day of Ashura.’”

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيُّ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا الْمَكِّيُّ بْنُ إبْرَاهِيمَ ثنا يَزِيدُ بْنُ أَبِي عُبَيْدٍ عَنْ سَلَمَةَ بْنِ الْأَكْوَعِ قَالَ: «أَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَجُلًا مِنْ أَسْلَمَ أَنْ أَذِّنْ فِي النَّاسِ: إنَّ مَنْ أَكَلَ فَلْيَصُمْ بَقِيَّةَ يَوْمِهِ، وَمَنْ لَمْ يَكُنْ أَكَلَ فَلْيَصُمْ، فَإِنَّ الْيَوْمَ يَوْمُ عَاشُورَاءَ» .

L11537–11538 We have also transmitted it through the chain of Mu‘āwiyah and others as a connected narration. Abū Muḥammad said: “The obligation at that time was fasting on the Day of ‘Āshūrā’.” As we transmitted via the aforementioned chain to Al-Bukhārī: Abū Ma‘mar narrated to us from ‘Abd al-Wārith—who

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مُعَاوِيَةَ وَغَيْرِهِ مُسْنَدًا. قَالَ أَبُو مُحَمَّدٍ: وَيَوْمُ عَاشُورَاءَ هُوَ كَانَ الْفَرْضُ حِينَئِذٍ صِيَامَهُ. كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إلَى الْبُخَارِيِّ: ثنا أَبُو مَعْمَرٍ ثنا عَبْدُ الْوَارِثِ هُوَ ابْنُ سَعِيدٍ التَّنُّورِيُّ - ثنا أَيُّوبُ السِّخْتِيَانِيُّ ثنا عَبْدُ اللَّهِ بْنُ سَعِيدِ بْنِ جُبَيْرٍ

[5] **Qur’an references (L11534):** Qur’an 33:5 (Al-Ahzab).

[6] **Hadith references (L11535):** Sahih Muslim 1136a; Sahih Muslim 1135.

عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ - فَذَكَرَ الْحَدِيثَ فِي يَوْمِ عَاشُورَاءَ وَفِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَامَهُ وَأَمَرَ بِصِيَامِهِ» .

is Ibn Sa'īd at-Tannūrī—from Ayyūb as-Sikhtiyānī, from 'Abdullāh ibn Sa'īd ibn Jubayr, from his father, from Ibn 'Abbās. He mentioned the ḥadīth concerning the Day of 'Āshūrā', which states: "Allah's Messenger (peace and blessings be upon him) fasted on it and commanded fasting upon it."

L11539 حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا عُبَيْدُ اللَّهِ بْنُ مُوسَى أَخْبَرَنَا شَيْبَانُ عَنْ أَشْعَثَ بْنِ أَبِي الشَّعْثَاءِ عَنْ جَعْفَرِ بْنِ أَبِي ثَوْرٍ عَنْ جَابِرِ بْنِ سَمُرَةَ قَالَ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُ بِصَوْمِ عَاشُورَاءَ وَيَحُثُّنَا عَلَيْهِ وَيَتَعَاهَدُنَا عِنْدَهُ، فَلَمَّا فُرِضَ رَمَضَانُ لَمْ يَأْمُرْنَا وَلَمْ يَنْهَنَا عَنْهُ وَلَمْ يَتَعَاهَدْنَا عِنْدَهُ» .

L11539 Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abd al-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Abu Bakr ibn Abi Shaybah narrated to us, Ubaidullah ibn Musa narrated to us, Shayban narrated to us from Ash'ath ibn Abi al-Sha'thā' from Ja'far ibn Abi Thawr from Jabir ibn Samurah, who said: "The Messenger of Allah, peace and blessings be upon him, would command fasting on Ashura, urge us to observe it, and personally check on us regarding it. When Ramadan was ordained as obligatory, he neither commanded nor forbade us from it, nor did he oversee our observance of it."

وَرُوِّينَا مِنْ طَرِيقِ الزُّهْرِيِّ، وَهِشَامِ بْنِ عُرْوَةَ، وَعِرَاكِ بْنِ مَالِكٍ كُلُّهُمْ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِصِيَامِ عَاشُورَاءَ، حَتَّى فُرِضَ رَمَضَانُ» . قَالَ عِرَاكٌ: فَقَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ شَاءَ فَلْيَصُمْهُ وَمَنْ شَاءَ فَلْيُفْطِرْهُ» .

L11540 And it has been narrated to us through the chain of Az-Zuhrī, Hishām ibn 'Urwah, and 'Irāk ibn Mālik—all transmitting from 'Urwah ibn Az-Zubayr—from 'Ā'ishah, Mother of the Believers: "The Messenger of Allah (peace be upon him) ordained fasting on 'Āshūrā' until Ramaḍān was made obligatory." 'Irāk stated: He (peace be upon him) then said: "Whoever wishes may fast it, and whoever wishes may abstain from fasting it."

قَالَ أَبُو مُحَمَّدٍ: فَكَانَ هَذَا حُكْمَ صَوْمِ الْفَرْضِ، وَمَا نُبَالِي بِنَسْخِ فَرْضِ صَوْمِ عَاشُورَاءَ، فَقَدْ أُحِيلَ صِيَامُ رَمَضَانَ أَحْوَالًا، فَقَدْ كَانَ مَرَّةً: مَنْ شَاءَ صَامَهُ، وَمَنْ شَاءَ أَفْطَرَهُ وَأَطْعَمَ عَنْ كُلِّ يَوْمٍ مِسْكِينًا، إلَّا أَنَّ حُكْمَ مَا كَانَ فَرْضًا حُكْمٌ وَاحِدٌ، وَإِنَّمَا نَزَلَ هَذَا الْحُكْمُ فِيمَنْ لَمْ يَعْلَمْ بِوُجُوبِ الصَّوْمِ عَلَيْهِ، وَكُلُّ مَنْ ذَكَرْنَا - مِنْ نَاسٍ، أَوْ جَاهِلٍ، أَوْ نَائِمٍ - فَلَمْ يَعْلَمُوا وُجُوبَ الصَّوْمِ عَلَيْهِمْ، فَحُكْمُهُمْ كُلِّهِمْ هُوَ الْحُكْمُ الَّذِي جَعَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ اسْتِدْرَاكِ النِّيَّةِ فِي الْيَوْمِ الْمَذْكُورِ مَتَى مَا عَلِمُوا بِوُجُوبِ صَوْمِهِ عَلَيْهِمْ، وَسُمِّيَ مَنْ فَعَلَ ذَلِكَ صَائِمًا، وَجُعِلَ فِعْلُهُ صَوْمًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L11541–11542 Abu Muhammad said: This is the ruling concerning obligatory fasting, and we do not care about the abrogation of the obligation to fast 'Āshūrā', for the obligation of fasting Ramadan passed through various phases. It was once the case that whoever wished could fast it, and whoever wished could break it and feed a needy person for each day. However, the ruling for what was an obligation is a single ruling. This ruling was revealed specifically for those unaware of the fasting obligation incumbent upon him. All those we mentioned—whether people, the ignorant, or the sleeper—if they were unaware of the fasting obligation incumbent upon them, the ruling for all of them is the ruling established by the Messenger of Allah—peace and blessings of Allah be upon him—regarding the retrospective validation of intention on the specified day whenever they become aware of the fasting obligation

incumbent upon them. Whoever does this is considered a fasting person, and his action is counted as valid fasting—and with Allah, Exalted is He, alone is success. A group of the early scholars held this view, as narrated to us through Waki''s chain from Sufyān al-Thawrī from ʻAbd al-Karīm al-Jazarī: Some people sighted the crescent after daybreak, whereupon ʻUmar ibn ʻAbd al-ʻAzīz said, "Whoever has eaten must abstain from food, and whoever has not eaten must fast the remainder of the day." From ʻAṭā': If a man begins the day not fasting and has not tasted anything, then learns of the crescent sighting—whether at the day's beginning or end—he must fast the remaining portion without substituting it. From Waki''s chain from Abū Maymūnah from Abū Bashīr from ʻAlī ibn Abī Ṭālib, who said on the day of ʻĀshūrā': "Whoever has not eaten must fast, and whoever has eaten must complete the remainder of the day."

وَبِهِ قَالَ جَمَاعَةٌ مِنْ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ: أَنَّ قَوْمًا شَهِدُوا عَلَى الْهِلَالِ بَعْدَمَا أَصْبَحُوا، فَقَالَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ مَنْ أَكَلَ فَلْيُمْسِكْ عَنْ الطَّعَامِ، وَمَنْ لَمْ يَأْكُلْ فَلْيَصُمْ بَقِيَّةَ يَوْمِهِ؟ وَعَنْ عَطَاءٍ: إذَا أَصْبَحَ رَجُلٌ مُفْطِرًا وَلَمْ يَذُقْ شَيْئًا ثُمَّ عَلِمَ بِرُؤْيَةِ الْهِلَالِ أَوَّلَ النَّهَارِ أَوْ آخِرَهُ فَلْيَصُمْ مَا بَقِيَ وَلَا يُبَدِّلْهُ؟ وَمِنْ طَرِيقِ وَكِيعٍ عَنْ أَبِي مَيْمُونَةَ عَنْ أَبِي بَشِيرٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ يَوْمَ عَاشُورَاءَ: مَنْ لَمْ يَأْكُلْ فَلْيَصُمْ، وَمَنْ أَكَلَ فَلْيُتِمَّ بَقِيَّةَ يَوْمِهِ.

L11543–11545 We have been narrated through the chain of Wakīʿ from Ibn ʿAwn from Ibn Sīrīn that Ibn Masʿūd said: "Whoever eats at the beginning of the day, let him eat at its end?" ʿAlī remarked: "People have differed regarding one who started the day not fasting on the first day of Ramadan, then learned that the crescent had been sighted the previous night - holding various opinions: Some said: Let him intend to fast for that day, and it will suffice him. This is the view of ʿUmar ibn ʿAbd al-ʿAzīz, the position we adopt, and this is supported by the text we previously cited. Others said: He should not fast, because he did not form the intention to fast at night, and they did not deem it necessary to make up (the fast). This is the view of Ibn Masʿūd as we mentioned, and the position upheld by Dāwūd and our companions. Others said: Let him eat the remainder of the day and make up the fast. This is an opinion we have transmitted from ʿAṭā'? Yet others said..." He must abstain during that day from what a fasting person abstains from, yet this does not count as valid for him, and he remains obligated to make it up. This is the opinion of Mālik and al-Shāfiʿī. Abū Ḥanīfah held this view specifically for one who had eaten – not for one who had not eaten – and for one who learned of the news only after the sun passed its zenith, whether he ate or not. This is the weakest of opinions, for there is no textual evidence supporting it, no legal analogy, nor is it known from any statement of a Companion.

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ ابْنِ عَوْنٍ عَنْ ابْنِ سِيرِينَ: أَنَّ ابْنَ مَسْعُودٍ قَالَ: مَنْ أَكَلَ أَوَّلَ النَّهَارِ فَلْيَأْكُلْ آخِرَهُ؟ قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِيمَنْ أَصْبَحَ مُفْطِرًا فِي أَوَّلِ يَوْمٍ مِنْ رَمَضَانَ ثُمَّ عَلِمَ أَنَّ الْهِلَالَ رُئِيَ الْبَارِحَةَ عَلَى أَقْوَالٍ -: مِنْهُمْ مَنْ قَالَ: يَنْوِي صَوْمَ يَوْمِهِ وَيُجْزِئُهُ، وَهُوَ قَوْلُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَبِهِ نَأْخُذُ، وَبِهِ جَاءَ النَّصُّ الَّذِي قَدَّمْنَا -: وَمِنْهُمْ مَنْ قَالَ: لَا يَصُومُ، لِأَنَّهُ لَمْ يَنْوِ الصِّيَامَ مِنْ اللَّيْلِ، وَلَمْ يَرَوْا فِيهِ قَضَاءً، وَهُوَ قَوْلُ ابْنِ مَسْعُودٍ كَمَا ذَكَرْنَا، وَبِهِ يَقُولُ دَاوُد وَأَصْحَابُنَا: وَمِنْهُمْ مَنْ قَالَ: يَأْكُلُ بَقِيَّتَهُ وَيَقْضِيهِ، وَهُوَ قَوْلٌ رُوِّينَاهُ عَنْ عَطَاءٍ؟ وَمِنْهُمْ مَنْ قَالَ: يُمْسِكُ فِيهِ عَمَّا يُمْسِكُ الصَّائِمُ، وَلَا يُجْزِئُهُ، وَعَلَيْهِ قَضَاؤُهُ، وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ. وَقَالَ بِهِ أَبُو حَنِيفَةَ فِيمَنْ أَكَلَ خَاصَّةً، دُونَ مَنْ لَمْ يَأْكُلْ؛ وَفِيمَنْ عَلِمَ الْخَبَرَ بَعْدَ الزَّوَالِ فَقَطْ، أَكَلَ أَوْ لَمْ يَأْكُلْ، وَهَذَا أَسْقَطُ الْأَقْوَالِ؛ لِأَنَّهُ لَا نَصَّ فِيهِ، وَلَا قِيَاسَ، وَلَا نَعْلَمُهُ مِنْ قَوْلِ صَاحِبٍ، وَلَا يَخْلُو هَذَا الْإِمْسَاكُ - الَّذِي أَمَرُوهُ بِهِ - مِنْ أَنْ يَكُونَ صَوْمًا يُجْزِئُهُ، وَهُمْ لَا يَقُولُونَ بِهَذَا، أَوْ لَا

This abstention they prescribed must be one of two things: either it is a valid fast that counts for him (which they do not claim), or it is not a fast at all and thus invalid. How then could they impose upon him an act requiring effort and hardship that brings him no validity? Moreover, his state must either be that of a non-fasting person or a fasting person. If he is fasting, why must he make it up? This would require fasting two days when only one is obligatory. If he is not fasting, why did they command him to perform the observances of fasting? This is profoundly astonishing. Allah suffices us, and He is the finest Trustee.

يَكُونُ صَوْمًا وَلَا يُجْزِئُهُ، فَمِنْ أَيْنَ وَقَعَ لَهُمْ أَنْ يَأْمُرُوهُ بِعَمَلٍ يَتْعَبُ فِيهِ وَيَتَكَلَّفُهُ وَلَا يُجْزِئُهُ، وَأَيْضًا: فَإِنَّهُ لَا يَخْلُو مِنْ أَنْ يَكُونَ مُفْطِرًا أَوْ صَائِمًا، فَإِنْ كَانَ صَائِمًا فَلِمَ يَقْضِيهِ إِذَنْ؟ فَيَصُومُ يَوْمَيْنِ وَلَيْسَ عَلَيْهِ إِلَّا وَاحِدٌ. وَإِنْ كَانَ مُفْطِرًا فَلِمَ أَمَرُوهُ بِعَمَلِ الصَّوْمِ؟ وَهَذَا عَجَبٌ جِدًّا، وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

L11546 Abū Muḥammad said: Abū Ḥanīfah argued to validate his amalgamation—which we previously mentioned concerning the intention for fasting—by citing the report of al-Rubayyiʿ and Salamah ibn al-Akwaʿ that we referenced. This is profoundly astonishing, for they contradicted the Messenger of Allāh—peace and blessings be upon him—in the very matter the report addresses. They declared: "Whoever eats, his fasting for the remainder of the day is invalid," while restricting the intention to before the sun passes its zenith—a condition absent in the report. Then they cited it as evidence for a ruling it does not contain—a blameworthy habit among them. This is utterly reprehensible, an obfuscation no sincere, truth-seeking scholar would permit. Some of them claimed: This report was narrated by ʿAbd al-Bāqī ibn Qāniʿ from Aḥmad ibn ʿAlī ibn Muslim from Muḥammad ibn al-Minhāl from Yazīd ibn Zuraiʿ from Qatādah from ʿAbd al-Raḥmān ibn Salamah from his uncle, who said: "I came to the Prophet—peace and blessings be upon him—on Ashura. He asked: 'Have you fasted today?' They replied: 'No.' He said: 'Then complete the remainder of your day and make up for it.'"

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ أَبُو حَنِيفَةَ فِي تَصْحِيحِ تَخْلِيطِهِ الَّذِي ذَكَرْنَاهُ قَبْلُ - فِي نِيَّةِ الصَّوْمِ - بِخَبَرِ الرُّبَيِّعِ، وَسَلَمَةَ بْنِ الْأَكْوَعِ الَّذِي ذَكَرْنَا، وَهَذَا عَجَبٌ جِدًّا أَنْ يَكُونُوا قَدْ خَالَفُوا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي نَفْسِ مَا جَاءَ بِهِ الْخَبَرُ، فَقَالُوا: مَنْ أَكَلَ لَمْ يُجْزِهِ صِيَامُ بَاقِي يَوْمِهِ، وَفِي تَخْصِيصِهِمْ بِالنِّيَّةِ قَبْلَ الزَّوَالِ وَلَيْسَ هَذَا فِي الْخَبَرِ، ثُمَّ احْتَجُّوا بِهِ فِيمَا لَيْسَ مِنْهُ شَيْءٌ وَمِنْ عَادَتِهِمْ هَذَا الْخُلُقُ الذَّمِيمُ، وَهَذَا قَبِيحٌ جِدًّا، وَتَمْوِيهٌ لَا يَسْتَجِيزُهُ مُحَقِّقٌ نَاصِحٌ لِنَفْسِهِ، وَقَالَ بَعْضُهُمْ: قَدْ رَوَى هَذَا الْخَبَرَ عَبْدُ الْبَاقِي بْنُ قَانِعٍ عَنْ أَحْمَدَ بْنِ عَلِيِّ بْنِ مُسْلِمٍ عَنْ مُحَمَّدِ بْنِ الْمِنْهَالِ عَنْ يَزِيدَ بْنِ زُرَيْعٍ عَنْ قَتَادَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ سَلَمَةَ عَنْ عَمِّهِ قَالَ: «أَتَيْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَعْنِي فِي عَاشُورَاءَ - فَقَالَ: صُمْتُمْ يَوْمَكُمْ هَذَا؟ قَالُوا: لَا، قَالَ: فَأَتِمُّوا يَوْمَكُمْ هَذَا وَاقْضُوا» .

L11547–11548 Abū Muḥammad said: The phrase "waqḍū" is undoubtedly fabricated. ʻAbd al-Bāqī ibn Qāniʻ, client of Banū Abī al-Shawārib, was known by the kunya Abū al-Ḥusayn. He died in the year 51 AH - three hundred and fifty-one, and his mind had deteriorated a year before his death. In general, his narrations are deemed rejected, and scholars of ḥadīth abandoned him completely. Aḥmad ibn ʻAlī ibn Muslim is unknown.

قَالَ أَبُو مُحَمَّدٍ: لَفْظَةُ " وَاقْضُوا " مَوْضُوعَةٌ بِلَا شَكٍّ، وَعَبْدُ الْبَاقِي بْنُ قَانِعٍ مَوْلَى بَنِي أَبِي الشَّوَارِبِ يُكَنَّى أَبَا الْحُسَيْنِ، مَاتَ سَنَةَ ٥١ هـ - إِحْدَى وَخَمْسِينَ وَثَلَاثَمِائَةٍ، وَقَدْ اخْتَلَطَ عَقْلُهُ قَبْلَ مَوْتِهِ بِسَنَةٍ، وَهُوَ بِالْجُمْلَةِ مُنْكَرُ الْحَدِيثِ، وَتَرَكَهُ أَصْحَابُ الْحَدِيثِ جُمْلَةً وَأَحْمَدُ بْنُ عَلِيِّ بْنِ مُسْلِمٍ مَجْهُولٌ.

L11549 This hadith has been narrated to us through two chains: one from Shuʻbah

via Qatādah, and another from Ibn Abī ʻArūbah via Qatādah, but these chains do not contain this wording. Moreover, narrated to us by Muḥammad ibn Saʻīd ibn Nabāt via ʻAbbās ibn Aṣbagh, via Muḥammad ibn Qāsim ibn Muḥammad, via Muḥammad ibn ʻAbd al-Salām al-Khushanī, via Muḥammad ibn al-Muthannā, via Muḥammad ibn Jaʻfar (known as Ghundar), via Shuʻbah, via Qatādah, from ʻAbd al-Raḥmān ibn al-Minhāl ibn Salamah al-Khuẓāʻī, from his (ʻAbd al-Raḥmān's) uncle, that the Messenger of Allah (peace and blessings be upon him) said to Aslam: "Fast today." They said: "We have already eaten." He said: "Fast for the rest of your day," meaning ʻĀshūrā'.

وَقَدْ رُوِّينَا هَذَا الْحَدِيثَ مِنْ طَرِيقِ شُعْبَةَ عَنْ قَتَادَةَ، وَمِنْ طَرِيقِ ابْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ، وَلَيْسَتْ فِيهِ هَذِهِ اللَّفْظَةُ. كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا عَبَّاسُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ قَاسِمِ بْنِ مُحَمَّدٍ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ ثنا شُعْبَةُ ثنا قَتَادَةُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْمِنْهَالِ بْنِ سَلَمَةَ الْخُزَاعِيِّ عَنْ عَمِّهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِأَسْلَمَ: «صُومُوا الْيَوْمَ قَالُوا: إنَّا قَدْ أَكَلْنَا، قَالَ: صُومُوا بَقِيَّةَ يَوْمِكُمْ - يَعْنِي عَاشُورَاءَ» .

L11550–11552 ʿAbdullāh ibn Rabīʿ al-Tamīmī narrated to us: Muḥammad ibn Muʿāwiyah al-Qurashī narrated to us: Aḥmad ibn Shuʿayb narrated to us: I am Isḥāq ibn Ibrāhīm—he is Ibn Rāhwayh—; Muḥammad ibn Bakr—he is al-Bursānī—narrated to us: Saʿīd ibn Abī ʿArūbah narrated to us. From Qatadah, from ʿAbd al-Raḥmān ibn Salamah al-Khuzaʿī, from his paternal uncle, who said: "We came to the Messenger of Allah—peace be upon him—on the morning of Ashura. He said to us: 'Have you begun the day fasting?' We replied: 'We have already eaten [this morning], O Messenger of Allah.' He said: 'Then fast for the remainder of your day.'"

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ التَّيْمِيُّ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ الْقُرَشِيُّ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - ثنا مُحَمَّدُ بْنُ بَكْرٍ هُوَ الْبُرْسَانِيُّ - ثنا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ سَلَمَةَ الْخُزَاعِيِّ عَنْ عَمِّهِ قَالَ: «غَدَوْنَا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَبِيحَةَ عَاشُورَاءَ، فَقَالَ لَنَا: أَصْبَحْتُمْ صِيَامًا؟ قُلْنَا: قَدْ تَغَدَّيْنَا يَا رَسُولَ اللَّهِ، قَالَ: فَصُومُوا بَقِيَّةَ يَوْمِكُمْ» .

L11553 Abu Muhammad said: Among the oddities is the Hanafi jurists' obfuscation through this fabricated wording in the ḥadīth of Ibn Qāniʿ—their citation of his statement "Make up [the fast]," then contradicting it by restricting the obligation of qaḍāʾ only to those who ate, not those who abstained, and to those who formed the intention after the sun passed its zenith. All this opposes the falsehood for which they earned Allah's deserved wrath. Wherever they turn, they falter, and every argument they use, they have contradicted it. Such is the humiliation of forsaking [the truth]—we seek refuge in Allah from it. As for one unaware of his obligation to fast that day until after sunset: if he did not fast as commanded—because he neither intended fasting during any part of the day nor deliberately neglected forming the intention—then no sin burdens him for what he did not deliberately do, nor is qaḍāʾ required. For no textual proof or consensus obligates him to make it up, and no religious ruling is established except through one of these two. He

قَالَ أَبُو مُحَمَّدٍ: وَمِنْ الْغَرَائِبِ تَمْوِيهُ الْحَنَفِيِّينَ بِهَذِهِ اللَّفْظَةِ الْمَوْضُوعَةِ فِي حَدِيثِ ابْنِ قَانِعٍ مِنْ قَوْلِهِ: «وَاقْضُوا» ثُمَّ خَالَفُوهَا فَلَمْ يَرَوْا الْقَضَاءَ إلَّا عَلَى مَنْ أَكَلَ دُونَ مَنْ لَمْ يَأْكُلْ، وَعَلَى مَنْ نَوَى بَعْدَ الزَّوَالِ. وَهَذَا كُلُّهُ خِلَافُ الْكِذْبَةِ الَّتِي اسْتَحَقُّوا بِهَا الْمَقْتَ مِنْ اللَّهِ تَعَالَى، فَحَيْثُمَا تَوَجَّهُوا عَثَرُوا، وَبِكُلِّ مَا احْتَجُّوا فَقَدْ خَالَفُوهُ، وَهَكَذَا فَلْيَكُنْ الْخِذْلَانُ نَعُوذُ بِاَللَّهِ مِنْهُ، وَأَمَّا مَنْ لَمْ يَعْلَمْ بِوُجُوبِ صَوْمِ ذَلِكَ الْيَوْمِ عَلَيْهِ إلَّا بَعْدَ غُرُوبِ الشَّمْسِ فَإِنْ لَمْ يَصُمْهُ كَمَا أُمِرَ، وَلِأَنَّهُ لَمْ يَنْوِ فِي شَيْءٍ مِنْهُ صَوْمًا، وَلَمْ يَتَعَمَّدْ تَرْكَ النِّيَّةِ، فَلَا إثْمَ عَلَيْهِ فِيمَا لَمْ يَتَعَمَّدْ، وَلَا قَضَاءَ عَلَيْهِ، لِأَنَّهُ لَمْ يَأْتِ بِإِيجَابِ الْقَضَاءِ عَلَيْهِ

was commanded to fast that specific day, not to substitute another day for it. Thus, what he was not commanded cannot replace what he was commanded.

L11554 **Issue: Supererogatory fasting is not valid unless the intention is made during the night.**

L11555 Issue 730: Voluntary fasting is not valid except with an intention formulated from the night. Similarly, making up missed Ramadan fasts or expiatory fasts are not valid except in the same manner. This is because the text stipulates that there is no fast for one who does not formulate it during the night, as we have previously mentioned. The text excludes nothing from this ruling except obligatory fasts specifically determined to occur at a fixed time. All other such cases remain subject to the general textual principle.

L11556 Our position regarding voluntary acts, making up missed Ramadan fasts, and expiations corresponds to the view of Mālik, Abī Sulaymān, and others besides them both.

L11557–11559 If someone were to say: How did you deem it permissible to oppose what is established from the Messenger of Allah—which you narrated through the chain of Talḥah ibn Yaḥyā ibn Ṭalḥah ibn ʿUbayd Allāh, tracing back to Mujāhid and ʿĀʾishah bint Ṭalḥah, both of whom narrated from ʿĀʾishah, Umm al-Muʾminīn: "The Messenger of Allah—peace and blessings be upon him—asked her, 'Do you have anything?' and on another occasion, 'Any lunch?' We said, 'No.' He said, 'Then I am fasting.' On another occasion, he asked her, 'Do you have anything?' We said, 'Yes, we had received some *ḥays* as a gift.' He said:" Indeed, I began the day intending to fast, so I ate. The majority of the Salaf held this opinion, as narrated to us through the chain of Ḥammād ibn Salama from Thābit al-Bunānī and ʿAbd Allāh ibn Abī ʿUtba. Thābit reported from Anas ibn Mālik: "Abū Ṭalḥa would come to his family in the forenoon and ask: 'Do you have any food?' If they said no, he would declare: 'Then I am fasting.'" Ibn Abī ʿUtba similarly reported from Abū Ayyūb al-Anṣārī, describing the identical practice of Abū Ṭalḥa—identical, identical in every way.

نَصٌّ وَلَا إِجْمَاعٌ، وَلَا يَجِبُ فِي الدِّينِ حُكْمٌ إِلَّا بِأَحَدِهِمَا، وَإِنَّمَا أُمِرَ بِصِيَامِ ذَلِكَ الْيَوْمِ، لَا بِصَوْمِ غَيْرِهِ مَكَانَهُ، فَلَا يُجْزِئُ مَا لَمْ يُؤْمَرْ بِهِ مَكَانَ مَا أُمِرَ بِهِ.

[مَسْأَلَةٌ لَا يُجْزِئُ صَوْمُ التَّطَوُّعِ إِلَّا بِنِيَّةٍ مِنَ اللَّيْلِ]

٧٣٠ - مَسْأَلَةٌ: وَلَا يُجْزِئُ صَوْمُ التَّطَوُّعِ إِلَّا بِنِيَّةٍ مِنَ اللَّيْلِ، وَلَا صَوْمُ قَضَاءِ رَمَضَانَ، أَوِ الْكَفَّارَاتِ إِلَّا كَذَلِكَ، لِأَنَّ النَّصَّ وَرَدَ بِأَنْ لَا صَوْمَ لِمَنْ لَمْ يُبَيِّتْهُ مِنَ اللَّيْلِ كَمَا قَدَّمْنَا، وَلَمْ يَخُصَّ النَّصُّ مِنْ ذَلِكَ إِلَّا مَا كَانَ فَرْضًا مُتَعَيِّنًا فِي وَقْتٍ بِعَيْنِهِ، وَبَقِيَ سَائِرُ ذَلِكَ عَلَى النَّصِّ الْعَامِّ.

وَقَوْلُنَا بِهَذَا فِي التَّطَوُّعِ، وَقَضَاءِ رَمَضَانَ، وَالْكَفَّارَاتِ: هُوَ قَوْلُ مَالِكٍ، وَأَبِي سُلَيْمَانَ وَغَيْرِهِمَا.

فَإِنْ قَالَ قَائِلٌ: فَكَيْفَ اسْتَجَزْتُمْ خِلَافَ الثَّابِتِ عَنْ رَسُولِ اللَّهِ الَّذِي رَوَيْتُمُوهُ مِنْ طَرِيقِ طَلْحَةَ بْنِ يَحْيَى بْنِ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ عَنْ مُجَاهِدٍ، وَعَائِشَةَ بِنْتِ طَلْحَةَ كِلَاهُمَا عَنْ أُمِّ الْمُؤْمِنِينَ عَائِشَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهَا: هَلْ عِنْدَكُمْ مِنْ شَيْءٍ؟ وَقَالَ مَرَّةً: مِنْ غَدَاءٍ؟ قُلْنَا: لَا، قَالَ: فَإِنِّي إِذَنْ صَائِمٌ» . وَقَالَ لَهَا مَرَّةً أُخْرَى: «هَلْ عِنْدَكُمْ مِنْ شَيْءٍ؟ قُلْنَا: نَعَمْ، أُهْدِيَ لَنَا حَيْسٌ، قَالَ: أَمَا إِنِّي أَصْبَحْتُ أُرِيدُ الصَّوْمَ فَأَكَلَ» . وَقَالَ بِهَذَا جُمْهُورُ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ، وَعَبْدِ اللَّهِ بْنِ أَبِي عُتْبَةَ، قَالَ ثَابِتٌ: عَنْ أَنَسِ بْنِ مَالِكٍ: إِنَّ أَبَا طَلْحَةَ كَانَ يَأْتِي أَهْلَهُ مِنَ الضُّحَى، فَيَقُولُ: هَلْ عِنْدَكُمْ مِنْ غَدَاءٍ؟ فَإِنْ قَالُوا: لَا، قَالَ: فَأَنَا صَائِمٌ، وَقَالَ ابْنُ أَبِي عُتْبَةَ: عَنْ أَبِي أَيُّوبَ الْأَنْصَارِيِّ بِمِثْلِ فِعْلِ أَبِي طَلْحَةَ سَوَاءً سَوَاءً.

L11560 From the narration of Hammād ibn Salamah: Umm Shabīb narrated to me from ʻĀ'ishah, the Mother of the Believers, who said: "I wake up on the day of my purity [after menstruation] while intending to fast, yet find myself still menstruating. Then between [my waking time] and midday, my purity becomes evident to me, so I perform the ritual bath and fast." From the narration of ʻAbd al-Razzāq from Ibn Jurayj and Maʻmar: Ibn Jurayj said, "'Aṭā' informed me," while Maʻmar said, "From al-Zuhrī and Ayyūb al-Sikhtiyānī." Al-Zuhrī said, "From Abū Idrīs al-Khawlānī," and Ayyūb said, "From Abū Qilābah." Then their chains converged—'Aṭā', Abū Idrīs, and Abū Qilābah—all narrating from Umm al-Dardā', that Abū al-Dardā' would ask his household for the morning meal when he awoke. If there was none, he would declare: "Indeed, we are fasting."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ: حَدَّثَتْنِي أُمُّ شَبِيبٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: إِنِّي لَأُصْبِحُ يَوْمَ طُهْرِي حَائِضًا وَأَنَا أُرِيدُ الصَّوْمَ، فَأَسْتَبِينُ طُهْرِي فِيمَا بَيْنِي وَبَيْنَ نِصْفِ النَّهَارِ فَأَغْتَسِلُ ثُمَّ أَصُومُ، وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ وَمَعْمَرٍ، قَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي عَطَاءٌ، وَقَالَ مَعْمَرٌ: عَنِ الزُّهْرِيِّ، وَأَيُّوبَ السِّخْتِيَانِيِّ، قَالَ الزُّهْرِيُّ عَنْ أَبِي إِدْرِيسَ الْخَوْلَانِيِّ، وَقَالَ أَيُّوبُ: عَنْ أَبِي قِلَابَةَ، ثُمَّ اتَّفَقَ عَطَاءٌ، وَأَبُو إِدْرِيسَ، وَأَبُو قِلَابَةَ كُلُّهُمْ عَنْ أُمِّ الدَّرْدَاءِ، أَنَّ أَبَا الدَّرْدَاءِ كَانَ إِذَا أَصْبَحَ سَأَلَ أَهْلَهُ الْغَدَاءَ، فَإِنْ لَمْ يَكُنْ، قَالَ: إِنَّا صَائِمُونَ.

L11561–11563 ʿAṭā' said in his narration: Abū al-Dardā' would come to his family at midday and ask, "Is there any midday meal?" Whether he found it or not, he would declare, "I will certainly complete the fast of this day." ʿAṭā' added, "I too do this." Through the chain of Qatādah: Muʿādh ibn Jabal would inquire about the midday meal, and if unavailable, he would fast his day. Through the chain of ʿAbd al-Razzāq from Ibn Jurayj: ʿUbayd Allāh ibn ʿUmar informed me, stating: Verily, Abū Hurayrah... He would wake up in the morning not fasting and ask: "Is there any food?" Whether he found it or not, he would complete that day as a fast.

وَقَالَ عَطَاءٌ فِي حَدِيثِهِ: إِنَّ أَبَا الدَّرْدَاءِ كَانَ يَأْتِي أَهْلَهُ حِينَ يَنْتَصِفُ النَّهَارُ، فَيَقُولُ: هَلْ مِنْ غَدَاءٍ؟ فَيَجِدُهُ، أَوْ لَا يَجِدُهُ، فَيَقُولُ: لَأُتِمَّنَّ صَوْمَ هَذَا الْيَوْمِ. قَالَ عَطَاءٌ: وَأَنَا أَفْعَلُهُ، وَمِنْ طَرِيقِ قَتَادَةَ: أَنَّ مُعَاذَ بْنَ جَبَلٍ كَانَ يَسْأَلُ الْغَدَاءَ، فَإِنْ لَمْ يَجِدْهُ صَامَ يَوْمَهُ، وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ: أَخْبَرَنِي عُبَيْدُ اللَّهِ بْنُ عُمَرَ قَالَ: إِنَّ أَبَا هُرَيْرَةَ كَانَ يُصْبِحُ مُفْطِرًا، فَيَقُولُ: هَلْ مِنْ طَعَامٍ؟ فَيَجِدُهُ، أَوْ لَا يَجِدُهُ، فَيُتِمُّ ذَلِكَ الْيَوْمَ.

L11564 From the narration of Al-Harith from Ali ibn Abi Talib, he said: "If you wake up in the morning intending to fast, you have the choice: if you wish, you may fast, and if you wish, you may break the fast - unless you have made fasting obligatory upon yourself during the night." From the narration of Ibn Jurayj: Ja'far ibn Muhammad related to me from his father that a man asked Ali ibn Abi Talib, saying: "I woke up in the morning not intending to fast." Ali replied to him: "You have the choice up to midday. If midday arrives, it is impermissible for you to break the fast."

وَمِنْ طَرِيقِ الْحَارِثِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إِذَا أَصْبَحْتَ وَأَنْتَ تُرِيدُ الصَّوْمَ فَأَنْتَ بِالْخِيَارِ: إِنْ شِئْتَ صُمْتَ وَإِنْ شِئْتَ أَفْطَرْتَ، إِلَّا أَنْ تَفْرِضَ عَلَى نَفْسِكَ الصَّوْمَ مِنَ اللَّيْلِ؟ وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ: حَدَّثَنِي جَعْفَرُ بْنُ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّ رَجُلًا سَأَلَ عَلِيَّ بْنَ أَبِي طَالِبٍ، فَقَالَ: أَصْبَحْتُ وَلَا أُرِيدُ الصَّوْمَ؟ فَقَالَ لَهُ عَلِيٌّ: أَنْتَ بِالْخِيَارِ بَيْنَكَ وَبَيْنَ نِصْفِ النَّهَارِ، فَإِنِ انْتَصَفَ النَّهَارُ فَلَيْسَ لَكَ أَنْ تُفْطِرَ.

L11565 From the narration of Ṭāwūs from Ibn ʿAbbās and the narration of Saʿd

ibn ʿUbaydah from Ibn ʿUmar, they both said: “The fasting person retains the choice until midday.” Ibn ʿUmar added: “Provided he has not eaten. If he wishes to eat, he may eat; if he wishes to make it a fast, it becomes a fast.” From the narration of Ibn Abī Shaybah from al-Muʿtamir ibn Sulaymān al-Taymī from Ḥumayd from Anas ibn Mālik, he said: “Whoever resolves inwardly to fast retains the choice so long as he has not spoken, until the day is well advanced.”

وَمِنْ طَرِيقِ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ، وَمِنْ طَرِيقِ سَعْدِ بْنِ عُبَيْدَةَ عَنِ ابْنِ عُمَرَ، قَالَا جَمِيعًا: الصَّائِمُ بِالْخِيَارِ مَا بَيْنَهُ وَبَيْنَ نِصْفِ النَّهَارِ، قَالَ ابْنُ عُمَرَ: مَا لَمْ يُطْعِمْ، فَإِنْ بَدَا لَهُ أَنْ يُطْعِمَ طَعِمَ، وَإِنْ بَدَا لَهُ أَنْ يَجْعَلَهُ صَوْمًا كَانَ صَوْمًا. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنِ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ حُمَيْدٍ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: مَنْ حَدَّثَ نَفْسَهُ بِالصِّيَامِ فَهُوَ بِالْخِيَارِ مَا لَمْ يَتَكَلَّمْ، حَتَّى يَمْتَدَّ النَّهَارُ.

L11566 From the chain of Ibn Abi Shaybah through Waki’ through al-A’mash through ’Umarah through Abi al-Ahwas, who said: Ibn Mas’ud stated: “Indeed, one of you is under one of the two views [regarding fasting] as long as he has not eaten or drunk.” From the chain of Ibn Abi Shaybah through Yahya ibn Sa’id al-Qattan through Sufyan al-Thawri through al-A’mash through Talhah through Sa’d ibn ’Ubaydah through Abu ’Abd al-Rahman (al-Sulami) through Hudhayfah: that he decided to fast after the sun had passed its zenith, so he fasted. From Hudhayfah also: “Whoever intends to fast after the sun has passed its zenith, let him fast.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنِ الْأَعْمَشِ عَنْ عُمَارَةَ عَنْ أَبِي الْأَحْوَصِ قَالَ قَالَ ابْنُ مَسْعُودٍ: إِنَّ أَحَدَكُمْ بِأَحَدِ النَّظَرَيْنِ مَا لَمْ يَأْكُلْ أَوْ يَشْرَبْ، وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنِ الْأَعْمَشِ عَنْ طَلْحَةَ عَنْ سَعْدِ بْنِ عُبَيْدَةَ عَنْ أَبِي عَبْدِ الرَّحْمَنِ هُوَ السُّلَمِيُّ - عَنْ حُذَيْفَةَ: أَنَّهُ بَدَا لَهُ فِي الصَّوْمِ بَعْدَ أَنْ زَالَتْ الشَّمْسُ فَصَامَ. وَعَنْ حُذَيْفَةَ أَيْضًا أَنَّهُ قَالَ: مَنْ بَدَا لَهُ فِي الصِّيَامِ بَعْدَ أَنْ تَزُولَ الشَّمْسُ فَلْيَصُمْ.

L11567–11569 From the chain of Maʿmar from ʿAṭāʾ al-Khurāsānī: I was on a journey during Eid al-Fiṭr. When midday had passed, I resolved, “I shall fast this day,” and fasted. I mentioned this to Saʿīd ibn al-Musayyib, who said, “You are correct.” ʿAṭāʾ said: While I was with Saʿīd ibn al-Musayyib, a Bedouin came to him at the time of the ʿAṣr prayer. He said, “I have not eaten anything today—should I fast?” He replied, “Yes.” He said, “I owe a day of Ramadan; should I substitute it for that day?” He replied, “Yes.”

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ عَطَاءٍ الْخُرَاسَانِيِّ: كُنْتُ فِي سَفَرٍ وَكَانَ يَوْمَ فِطْرٍ، فَلَمَّا كَانَ بَعْدَ نِصْفِ النَّهَارِ قُلْتُ: لَأَصُومَنَّ هَذَا الْيَوْمَ، فَصُمْتُ، فَذَكَرْتُ ذَلِكَ لِسَعِيدِ بْنِ الْمُسَيِّبِ، فَقَالَ: أَصَبْتَ، قَالَ عَطَاءٌ: وَكُنْتُ عِنْدَ سَعِيدِ بْنِ الْمُسَيِّبِ فَجَاءَهُ أَعْرَابِيٌّ عِنْدَ الْعَصْرِ فَقَالَ: إِنِّي لَمْ آكُلْ الْيَوْمَ شَيْئًا أَفَأَصُومُ؟ قَالَ: نَعَمْ، قَالَ: فَإِنَّ عَلَيَّ يَوْمًا مِنْ رَمَضَانَ، أَفَأَجْعَلُهُ مَكَانَهُ؟ قَالَ نَعَمْ.

L11570 Through the chain of Hammad ibn Salamah, from Hammad ibn Abi Sulayman, from Ibrahim al-Nakha‘i, who said: If one resolves to fast after dawn, the entire day counts in full for his fast. If he resolves at midday, the remaining portion of the day suffices. If he awakens at dawn without resolving, he retains the option between dawn and midday. Through the chain of Ibn

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: إِذَا عَزَمَ عَلَى الصَّوْمِ مِنَ الضُّحَى فَلَهُ النَّهَارُ أَجْمَعُ، فَإِنْ عَزَمَ مِنْ نِصْفِ النَّهَارِ فَلَهُ مَا بَقِيَ مِنَ النَّهَارِ، وَإِنْ أَصْبَحَ وَلَمْ يَعْزِمْ فَهُوَ بِالْخِيَارِ مَا بَيْنَهُ وَبَيْنَ نِصْفِ النَّهَارِ، وَمِنْ طَرِيقِ ابْنِ

Jurayj: I asked ‘Ata’ about a man who owed compensatory days for Ramadan, who awoke at dawn without intending to fast, then later decided to fast and count it toward his Ramadan compensation. ‘Ata’ said: He may do so.

جُرَيْجٌ: سَأَلْتُ عَطَاءً عَنْ رَجُلٍ كَانَ عَلَيْهِ أَيَّامٌ مِنْ رَمَضَانَ، فَأَصْبَحَ وَلَيْسَ فِي نَفْسِهِ أَنْ يَصُومَ، ثُمَّ بَدَا لَهُ بَعْدَمَا أَصْبَحَ أَنْ يَصُومَ وَأَنْ يَجْعَلَهُ مِنْ قَضَاءِ رَمَضَانَ. فَقَالَ عَطَاءٌ: لَهُ ذَلِكَ.

L11571 From the report of Mujāhid: The fasting person has the option [to begin fasting] between [their starting time] and midday. If they exceed midday, their fast only counts for the remaining portion of the day. From the report of Abū Isḥāq al-Shaybānī, narrated from al-Sha‘bī: Whoever intends to fast has the option [to do so] between [their starting time] and midday.

وَمِنْ طَرِيقِ مُجَاهِدٍ: الصَّائِمُ بِالْخِيَارِ مَا بَيْنَهُ وَبَيْنَ نِصْفِ النَّهَارِ، فَإِذَا جَاوَزَ ذَلِكَ فَإِنَّمَا لَهُ بِقَدْرِ مَا بَقِيَ مِنَ النَّهَارِ. وَمِنْ طَرِيقِ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنِ الشَّعْبِيِّ: مَنْ أَرَادَ الصَّوْمَ فَهُوَ بِالْخِيَارِ مَا بَيْنَهُ وَبَيْنَ نِصْفِ النَّهَارِ.

L11572 From the narration of Hisham from Al-Hasan Al-Basri, who said: If a man takes the pre-dawn meal (Suhoor), fasting becomes obligatory upon him. If he breaks the fast, he must make up for it. If he intends to fast, he has the choice: if he wishes, he may fast, and if he wishes, he may break the fast. If someone asks him, “Are you fasting?” and he says, “Yes,” fasting becomes obligatory upon him unless he says, “If Allah wills.” If he says that, he has the choice: if he wishes, he may fast, and if he wishes, he may break the fast.

وَمِنْ طَرِيقِ هِشَامٍ عَنِ الْحَسَنِ الْبَصْرِيِّ قَالَ: إِذَا تَسَحَّرَ الرَّجُلُ فَقَدْ وَجَبَ عَلَيْهِ الصَّوْمُ، فَإِنْ أَفْطَرَ فَعَلَيْهِ الْقَضَاءُ، وَإِنْ هَمَّ بِالصَّوْمِ فَهُوَ بِالْخِيَارِ، إِنْ شَاءَ صَامَ وَإِنْ شَاءَ أَفْطَرَ، فَإِنْ سَأَلَهُ إِنْسَانٌ فَقَالَ: أَصَائِمٌ أَنْتَ؟ فَقَالَ: نَعَمْ، فَقَدْ وَجَبَ عَلَيْهِ الصَّوْمُ إِلَّا أَنْ يَقُولَ: إِنْ شَاءَ، فَإِنْ قَالَهَا فَهُوَ بِالْخِيَارِ، إِنْ شَاءَ صَامَ وَإِنْ شَاءَ أَفْطَرَ.

L11573 These from the Companions are: ’Ā’ishah, the Mother of the Believers; ’Alī ibn Abī Ṭālib; Ibn ’Umar; Ibn ’Abbās; Anas; Abū Ṭalḥah; Abū Ayyūb; Mu’ādh ibn Jabal; Abū al-Dardā’; Abū Hurayrah; Ibn Mas’ūd, and Ḥudhayfah.

فَهَؤُلَاءِ مِنَ الصَّحَابَةِ: عَائِشَةُ أُمُّ الْمُؤْمِنِينَ، وَعَلِيُّ بْنُ أَبِي طَالِبٍ، وَابْنُ عُمَرَ، وَابْنُ عَبَّاسٍ، وَأَنَسٌ، وَأَبُو طَلْحَةَ، وَأَبُو أَيُّوبَ، وَمُعَاذُ بْنُ جَبَلٍ، وَأَبُو الدَّرْدَاءِ، وَأَبُو هُرَيْرَةَ، وَابْنُ مَسْعُودٍ وَحُذَيْفَةُ.

L11574 Among the Followers: Ibn al-Musayyib, ʿAṭāʾ al-Khurāsānī, ʿAṭāʾ ibn Abī Rabāḥ, Mujāhid, al-Nakhaʿī, al-Shaʿbī, and al-Ḥasan. Sufyān al-Thawrī and Aḥmad ibn Ḥanbal said: Whoever begins the day intending to break the fast—though he did not eat, drink, or have sexual intercourse—may form the intention to fast as long as the sun has not set, and his fast thereby becomes valid.

وَمِنَ التَّابِعِينَ: ابْنُ الْمُسَيِّبِ، وَعَطَاءٌ الْخُرَاسَانِيُّ، وَعَطَاءُ بْنُ أَبِي رَبَاحٍ، وَمُجَاهِدٌ وَالنَّخَعِيُّ، وَالشَّعْبِيُّ، وَالْحَسَنُ. وَقَالَ سُفْيَانُ الثَّوْرِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ: مَنْ أَصْبَحَ وَهُوَ يَنْوِي الْفِطْرَ إِلَّا أَنَّهُ لَمْ يَأْكُلْ وَلَا شَرِبَ وَلَا وَطِئَ -: فَلَهُ أَنْ يَنْوِيَ الصَّوْمَ مَا لَمْ تَغِبْ الشَّمْسُ، وَيَصِحُّ صَوْمُهُ بِذَلِكَ.

L11575–11576 Abu Muhammad said: We say: We seek refuge in Allah from opposing anything authentically reported from the Messenger of Allah—peace and bless-

ings be upon him—or diverting it from its apparent meaning without another explicit text. This report is authentic from the Messenger of Allah—peace and blessings be upon him—except that it does not state he—peace be upon him—had not resolved to fast during the night, nor that he—peace be upon him—began the morning not fasting then resolved to fast afterward. Had this been in that report, we would have upheld it. However, it states that he—peace be upon him—would begin the morning voluntarily fasting then break his fast. This is permissible according to us, and we do not deem it reprehensible, as in the report. Since the report does not contain what we mentioned, and it is authentically established from him—peace be upon him—that "There is no fasting for one who does not resolve it during the night," it is impermissible to abandon this certainty for a false assumption. Had he—peace and blessings be upon him—begun the morning not fasting then resolved to fast during the day, he would have clarified it, just as he clarified that regarding the fasting of Ashura when it was obligatory. Being lax in religious matters is impermissible. If it is said: You have narrated through the chain of Layth ibn Abi Sulaym from Mujahid from one of the Prophet's wives—peace and blessings be upon him—who said: "The Prophet—peace and blessings be upon him—would come and call for food. If he did not find it, he would commence fasting."

قَالَ أَبُو مُحَمَّد: فَنَقُولُ: مَعَاذَ اللَّهِ أَنْ نُخَالِفَ شَيْئًا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ أَنْ نَصْرِفَهُ عَنْ ظَاهِرِهِ بِغَيْرِ نَصٍّ آخَرَ، وَهَذَا الْخَبَرُ صَحِيحٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا أَنَّهُ لَيْسَ فِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَكُنْ نَوَى الصِّيَامَ مِنْ اللَّيْلِ، وَلَا أَنَّهُ - عَلَيْهِ السَّلَامُ - أَصْبَحَ مُفْطِرًا ثُمَّ نَوَى الصَّوْمَ بَعْدَ ذَلِكَ، وَلَوْ كَانَ هَذَا فِي ذَلِكَ الْخَبَرِ لَقُلْنَا بِهِ، لَكِنْ فِيهِ: أَنَّهُ - عَلَيْهِ السَّلَامُ -، كَانَ يُصْبِحُ مُتَطَوِّعًا صَائِمًا ثُمَّ يُفْطِرُ، وَهَذَا مُبَاحٌ عِنْدَنَا لَا نَكْرَهُهُ، كَمَا فِي الْخَبَرِ، فَلَمَّا لَمْ يَكُنْ فِي الْخَبَرِ مَا ذَكَرْنَا، وَكَانَ قَدْ صَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - «لَا صِيَامَ لِمَنْ لَمْ يُبَيِّتْهُ مِنْ اللَّيْلِ» لَمْ يَجُزْ أَنْ نَتْرُكَ هَذَا الْيَقِينَ لِظَنٍّ كَاذِبٍ. وَلَوْ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَصْبَحَ مُفْطِرًا ثُمَّ نَوَى الصَّوْمَ نَهَارًا لَبَيَّنَهُ، كَمَا بَيَّنَ ذَلِكَ فِي صِيَامِ عَاشُورَاءَ إذْ كَانَ فَرْضًا، وَالتَّسَمُّحُ فِي الدِّينِ لَا يَحِلُّ، فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ مُجَاهِدٍ عَنْ بَعْضِ أَزْوَاجِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَتْ: «كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَجِيءُ فَيَدْعُو بِالطَّعَامِ فَلَا يَجِدُهُ فَيَفْرِضُ الصَّوْمَ» .

L11577 It was narrated from Ibn Qani'—a transmitter of every calamity—from Musa ibn Abd al-Rahman al-Sulami al-Balkhi, from Umar ibn Harun, from Ya'qub ibn 'Ata', from his father, from Ibn Abbas: "That the Prophet—peace and blessings of Allah be upon him—would wake in the morning without having resolved to fast, then the inclination would arise within him, so he would fast." We said: Layth is weak, Ya'qub ibn 'Ata' is worthless, and below him lie darknesses layered one upon another. By Allah, if this report were sound, we would have acted upon it.

وَرُوِيَ عَنْ ابْنِ قَانِعٍ - رَاوِي كُلِّ بَلِيَّةٍ - عَنْ مُوسَى بْنِ عَبْدِ الرَّحْمَنِ السُّلَمِيِّ الْبَلْخِيِّ عَنْ عُمَرَ بْنِ هَارُونَ عَنْ يَعْقُوبَ بْنِ عَطَاءٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُصْبِحُ وَلَمْ يَجْمَعْ الصَّوْمَ ثُمَّ يَبْدُو لَهُ فَيَصُومُ» قُلْنَا: لَيْثٌ ضَعِيفٌ، وَيَعْقُوبُ بْنُ عَطَاءٍ: هَالِكٌ، وَمِنْ دُونِهِ ظُلُمَاتٌ بَعْضُهَا فَوْقَ بَعْضٍ، وَاَللَّهِ لَوْ صَحَّ لَقُلْنَا بِهِ.

L11578 Abu Muhammad said: As for the Malikis, they censure others for dissenting from the scholarly majority, yet here they themselves oppose the majority without any valid legal basis.

قَالَ أَبُو مُحَمَّد: أَمَّا الْمَالِكِيُّونَ فَيُشَنِّعُونَ بِخِلَافِ الْجُمْهُورِ، وَخَالَفُوا هَاهُنَا الْجُمْهُورَ بِلَا رِقْبَةٍ.

L11579–11581 As for the Ḥanafīs, we do not know of anyone before them who permit-

ted one to enter the morning during Ramadan while deliberately intending to break the fast, then remain in that state until just before midday, and thereafter form the intention to fast at that time - and it suffices him. And they asserted... They have lied in their claim of consensus that an intention formed after the sun passes its zenith is invalid in that matter, and they feel no burden in lying. This has been explicitly reported from Hudhayfah, Abu al-Darda', and Sa'id ibn al-Musayyib; unrestrictedly reported from Ibn Mas'ud; similarly reported from 'Ata' al-Khurasani; and also from al-Hasan, Sufyan al-Thawri, and Ahmad ibn Hanbal. Abu Muhammad said: No authority exists in anyone besides the Messenger of Allah—peace and blessings be upon him—and all success comes from Allah, the Exalted.

L11582 **A case where one mixes the intention of an obligatory fast with another obligatory act.**

L11583 731 - Issue: Whoever mixes the intention of an obligatory fast with another obligatory act or with a voluntary act, or does so in prayer, Zakāh, Ḥajj, ʿUmrah, or manumission—none of that is valid for him, and the entire act is nullified, whether it be fasting, prayer, Zakāh, Ḥajj, ʿUmrah, or manumission—except mixing ʿUmrah with Ḥajj for one who enters Ihrām while having the sacrificial animal with him exclusively. This is the definitive ruling incumbent upon him.

L11584 The proof of that is the statement of Allah, the Exalted: {They were commanded only to worship Allah, sincere to Him in religion} [Al-Bayyinah: 5]. Sincerity means that the commanded act be performed solely for the sake that Allah, the Exalted, ordained in it alone. The Messenger of Allah—peace and blessings of Allah be upon him—said: "Whoever performs a deed not in accordance with our command, it is rejected." Therefore, whoever combines one deed with another has performed a deed not aligned with the command of Allah, the Exalted, nor the command of His Messenger—peace and blessings of Allah be upon him—so it is invalid and rejected. Success comes

وَأَمَّا الْحَنَفِيُّونَ فَمَا نَعْلَمُ أَحَدًا قَبْلَهُمْ أَجَازَ أَنْ يُصْبِحَ فِي رَمَضَانَ عَامِدًا لِإِرَادَةِ الْفِطْرِ، ثُمَّ يَبْقَى كَذَلِكَ إلَى قَبْلِ زَوَالِ الشَّمْسِ ثُمَّ يَنْوِي الصِّيَامَ حِينَئِذٍ وَيُجْزِئُهُ، وَادَّعَوْا الْإِجْمَاعَ عَلَى أَنَّهُ لَا تُجْزِئُ النِّيَّةُ بَعْدَ زَوَالِ الشَّمْسِ فِي ذَلِكَ قَدْ كَذَبُوا، وَلَا مُؤْنَةَ عَلَيْهِمْ مِنْ الْكَذِبِ، وَقَدْ صَحَّ هَذَا عَنْ حُذَيْفَةَ نَصًّا، وَعَنْ ابْنِ مَسْعُودٍ بِإِطْلَاقٍ، وَعَنْ أَبِي الدَّرْدَاءِ نَصًّا، وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ نَصًّا، وَعَنْ عَطَاءٍ الْخُرَاسَانِيِّ كَذَلِكَ، وَعَنْ الْحَسَنِ، وَعَنْ سُفْيَانَ الثَّوْرِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ. قَالَ أَبُو مُحَمَّدٍ: وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَزَجَ نِيَّةَ صَوْمِ فرض بِفَرْضٍ آخَرَ]

٧٣١ - مَسْأَلَةٌ: وَمَنْ مَزَجَ نِيَّةَ صَوْمٍ فُرِضَ بِفَرْضٍ آخَرَ أَوْ بِتَطَوُّعٍ، أَوْ فَعَلَ ذَلِكَ فِي صَلَاةٍ أَوْ زَكَاةٍ، أَوْ حَجٍّ، أَوْ عُمْرَةٍ، أَوْ عِتْقٍ -: لَمْ يُجْزِهِ لِشَيْءٍ مِنْ كُلِّ ذَلِكَ وَبَطَلَ ذَلِكَ الْعَمَلُ كُلُّهُ، صَوْمًا كَانَ أَوْ صَلَاةً، أَوْ زَكَاةً، أَوْ حَجًّا، أَوْ عُمْرَةً أَوْ عِتْقًا، إلَّا مَزْجَ الْعُمْرَةِ بِالْحَجِّ لِمَنْ أَحْرَمَ وَمَعَهُ الْهَدْيُ فَقَطْ، فَهُوَ حُكْمُهُ اللَّازِمُ لَهُ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَمَا أُمِرُوا إلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ} [البينة: ٥] وَالْإِخْلَاصُ هُوَ أَنْ يَخْلُصَ الْعَمَلُ الْمَأْمُورُ بِهِ لِلْوَجْهِ الَّذِي أَمَرَهُ اللَّهُ تَعَالَى بِهِ فِيهِ فَقَطْ، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» فَمَنْ مَزَجَ عَمَلًا بِآخَرَ فَقَدْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُ اللَّهِ تَعَالَى وَلَا أَمْرُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ بَاطِلٌ مَرْدُودٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَهُوَ قَوْلُ مَالِكٍ وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

only from Allah, the Exalted. This is the opinion of Malik, Al-Shafi'i, Abu Sulayman, and their companions.[7][8]

وَقَالَ أَبُو يُوسُفَ: مَنْ صَلَّى، وَهُوَ مُسَافِرٌ رَكْعَتَيْنِ نَوَى بِهِمَا الظُّهْرَ وَالتَّطَوُّعَ مَعًا أَوْ صَامَ يَوْمًا مِنْ قَضَاءِ رَمَضَانَ يَنْوِي بِهِ قَضَاءَ مَا عَلَيْهِ وَالتَّطَوُّعَ مَعًا وَأَعْطَى مَا يَجِبُ عَلَيْهِ فِي زَكَاةِ مَالِهِ وَنَوَى بِهِ الزَّكَاةَ وَالتَّطَوُّعَ مَعًا، أَوْ أَحْرَمَ بِحَجَّةِ الْإِسْلَامِ وَنَوَى بِهَا الْفَرِيضَةَ وَالتَّطَوُّعَ مَعًا -: فَإِنَّ كُلَّ ذَلِكَ يُجْزِئُهُ مِنْ صَلَاةِ الْفَرْضِ وَصَوْمِ الْفَرْضِ، وَزَكَاةِ الْفَرْضِ، وَحَجَّةِ الْفَرْضِ، وَيَبْطُلُ التَّطَوُّعُ فِي كُلِّ ذَلِكَ. وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: أَمَّا الصَّلَاةُ فَتَبْطُلُ وَلَا تُجْزِئُهُ، لَا عَنْ فَرْضٍ وَلَا عَنْ تَطَوُّعٍ - وَأَمَّا الزَّكَاةُ، وَالصَّوْمُ فَيَكُونُ فِعْلُهُ ذَلِكَ تَطَوُّعًا فِيهِمَا جَمِيعًا، وَيَبْطُلُ الْفَرْضُ - وَأَمَّا الْحَجُّ فَيُجْزِئُهُ عَنْ الْفَرْضِ وَيَبْطُلُ التَّطَوُّعُ. فَهَلْ سُمِعَ بِأَسْقَطَ مِنْ هَذِهِ الْأَقْوَالِ؟ وَمَا نَدْرِي مِمَّنْ الْعَجَبُ أَمِّمَّنْ أَطْلَقَ لِسَانَهُ بِمِثْلِهَا فِي دِينِ اللَّهِ تَعَالَى؟ يَمْحُو مَا يَشَاءُ وَيُثْبِتُ بِالْإِهْدَارِ وَيَخُصُّ مَا يَشَاءُ، وَيُبْطِلُ بِالتَّخَالِيطِ، أَوْ مِمَّنْ قَلَّدَ قَائِلَهَا، وَأَفْنَى عُمُرَهُ فِي دَرْسِهَا وَنَصْرِهَا مُتَدَيِّنًا بِهَا وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ، وَنَسْأَلُهُ إدَامَةَ السَّلَامَةِ وَالْعِصْمَةِ، وَنَحْمَدُهُ عَلَى نِعَمِهِ بِذَلِكَ عَلَيْنَا كَثِيرًا.

L11585–11587 Abū Yūsuf said: If someone prays two *rak'ahs* while traveling, intending them for both the obligatory *Dhuhr* prayer and a supererogatory prayer, or fasts a day to make up (*qaḍā'*) for Ramadan while intending both the obligatory makeup and a supererogatory fast, or gives what is due in *zakāh* on his wealth while intending it as both *zakāh* and supererogatory charity, or enters the state of *iḥrām* for the obligatory Hajj in Islam while intending it as both the obligatory and supererogatory Hajj—then all of these suffice for the obligatory prayer, fast, *zakāh*, and Hajj, while the supererogatory act is invalidated in each case. Muḥammad ibn al-Ḥasan said: As for the prayer, it is invalid and does not suffice for either an obligation or a supererogatory act. As for *zakāh* and fasting, his action becomes supererogatory in both cases combined, and the obligatory aspect is nullified. As for Hajj, it suffices for the obligation, and the supererogatory act is invalidated. Has anything more invalid than these statements ever been heard? We do not know whether the greater wonder is at the one who held these views or the one who expressed them so recklessly. Is it by its equivalent in the religion of Allah, the Exalted? He erases what He wills, confirms through clarification, particularizes what He wills, and nullifies through corruption—or [is this akin to] those who blindly follow its proponents, spending their lives studying and defending it, adhering to it religiously? We seek refuge in Allah from abandonment; we ask Him for enduring safety and protection, and we praise Him for His abundant blessings bestowed upon us through this.

وَقَدْ رُوِّينَا عَنْ مُجَاهِدٍ: أَنَّهُ قَالَ فِيمَنْ جَعَلَ عَلَيْهِ صَوْمَ شَهْرَيْنِ مُتَتَابِعَيْنِ: إنْ شَاءَ صَامَ شَعْبَانَ وَرَمَضَانَ، وَأَجْزَأَ عَنْهُ - يَعْنِي مَنْ فَرَضَهُ وَنَذَرَهُ، قَالَ مُجَاهِدٌ: وَمَنْ كَانَ عَلَيْهِ قَضَاءُ رَمَضَانَ فَصَامَ تَطَوُّعًا فَهُوَ قَضَاؤُهُ وَإِنْ لَمْ يُرِدْهُ.؟

L11588 It was reported from Mujāhid that he said regarding one who obligated upon himself fasting two consecutive months: "If he wishes, he may fast Sha'bān and Ramaḍān, and it suffices for him"—referring to one who obligated it or vowed it. Mujāhid said: "Whoever owes compensatory fasts for Ramaḍān and observes a supererogatory fast, it counts as his compensation even if he did not intend it."

[7] **Hadith references (L11584):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[8] **Qur'an references (L11584):** Qur'an 98:5 (Al-Bayyinah).

An issue: A person who, while fasting, intended to invalidate his fast.

732. Issue: If someone fasting deliberately intends to invalidate their fast while being aware that they are fasting, their fast becomes invalid—even if they do not eat, drink, or engage in intercourse. This is based on the statement of Allah's Messenger, peace and blessings be upon him: "Actions are but by intentions, and every person will have only what they intended." Thus, it is decisively established that whoever intends to invalidate the fast they are observing, their fast is invalidated according to his statement, peace and blessings be upon him, which it is impermissible to oppose. Since they intended the invalidation of the fast, their fast is invalidated. If they were unaware that they were in a state of fasting, this would not harm them at all, due to Allah's statement: "There is no blame on you for what you do by mistake, but only for what your hearts deliberately intend" [Al-Aḥzāb:5].[9]

The same ruling applies to one who intends to invalidate a prayer he is performing, a pilgrimage he is undertaking, and all other acts in their entirety—these similarly apply. If he forms such an intention after completing his fast or the aforementioned acts, he is deemed sinful, yet none of those acts are invalidated by this. This is because all of them have been validly performed and completed as commanded, and whatever is valid cannot be invalidated without an explicit scriptural basis for its nullification. The first scenario concerns one who did not complete his act as commanded—and success comes solely through Allah, the Exalted.

A ruling on one who intentionally eats, drinks, engages in sexual intercourse, or vomits while fasting.

733 – Issue:

The fast is invalidated by: intentional eating, intentional drinking, intentional vaginal intercourse, or intentional vomiting—while being mindful of his fasting in all these instances. It is the same whether he ate little or much,

[9] **Qur'an references (L11590):** Qur'an 33:5 (Al-Ahzab).

[مَسْأَلَةٌ نَوَى وَهُوَ صَائِمٌ إِبْطَالَ صَوْمِهِ]

٧٣٢ - مَسْأَلَةٌ: وَمَنْ نَوَى وَهُوَ صَائِمٌ إِبْطَالَ صَوْمِهِ بَطَلَ، إِذَا تَعَمَّدَ ذَلِكَ ذَاكِرًا لِأَنَّهُ فِي صَوْمٍ وَإِنْ لَمْ يَأْكُلْ وَلَا شَرِبَ وَلَا وَطِئَ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» فَصَحَّ يَقِينًا أَنَّ مَنْ نَوَى إِبْطَالَ مَا هُوَ فِيهِ مِنْ الصَّوْمِ فَلَهُ مَا نَوَى بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الَّذِي لَا تَحِلُّ مُعَارَضَتُهُ، وَهُوَ قَدْ نَوَى بُطْلَانَ الصَّوْمِ، فَلَهُ بُطْلَانُهُ، فَلَوْ لَمْ يَكُنْ ذَاكِرًا لِأَنَّهُ فِي صَوْمٍ لَمْ يَضُرَّهُ شَيْئًا، لِقَوْلِ اللَّهِ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

وَهَكَذَا الْقَوْلُ فِيمَنْ نَوَى إِبْطَالَ صَلَاةٍ هُوَ فِيهَا، أَوْ حَجٍّ هُوَ فِيهِ، وَسَائِرُ الْأَعْمَالِ كُلِّهَا كَذَلِكَ، فَلَوْ نَوَى ذَلِكَ بَعْدَ تَمَامِ صَوْمِهِ أَوْ أَعْمَالِهِ الْمَذْكُورَةِ كَانَ آثِمًا، وَلَمْ يُبْطِلْ بِذَلِكَ شَيْئًا مِنْهَا، لِأَنَّهَا كُلَّهَا قَدْ صَحَّتْ وَتَمَّتْ كَمَا أُمِرَ، وَمَا صَحَّ فَلَا يَجُوزُ أَنْ يُبْطِلَ بِغَيْرِ نَصٍّ فِي بُطْلَانِهِ، وَالْمَسْأَلَةُ الْأُولَى لَمْ يُتِمَّ عَمَلَهُ فِيهَا كَمَا أُمِرَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَعَمَّدَ الْأَكْلَ أَوْ الشُّرْبَ أَوْ الْوَطْءَ أَوْ الْقَيْءَ وَهُوَ صَائِمٌ]

٧٣٣ - مَسْأَلَةٌ:

وَيُبْطِلُ الصَّوْمَ: تَعَمُّدُ الْأَكْلِ، أَوْ تَعَمُّدُ الشُّرْبِ، أَوْ تَعَمُّدُ الْوَطْءِ فِي الْفَرْجِ، أَوْ تَعَمُّدُ الْقَيْءِ، وَهُوَ فِي كُلِّ ذَلِكَ ذَاكِرٌ لِصَوْمِهِ، وَسَوَاءٌ قَلَّ مَا أَكَلَ أَوْ كَثُرَ، أَخْرَجَهُ مِنْ بَيْنِ أَسْنَانِهِ أَوْ أَخَذَهُ مِنْ خَارِجِ فَمِهِ فَأَكَلَهُ.

whether he extracted it from between his teeth and ate it, or took it from outside his mouth and ate it.

L11595 All of this is established by a definitive consensus, except for what we mention, as supported by the words of Allah, the Exalted: {So now have relations with them and seek what Allah has prescribed for you. And eat and drink until the white thread of dawn becomes distinct to you from the black thread, then complete the fast until nightfall} [Al-Baqarah 2:187].[10]

L11596–11598 Ḥumām narrated to us: ʿAbd Allāh ibn Muḥammad al-Bājī narrated to us: Muḥammad ibn ʿAbd al-Malik ibn Ayman narrated to us: Ḥabīb ibn Khalaf al-Bukhārī narrated to us: Abū Thawr Ibrāhīm ibn Khālid narrated to us: Muʿallā narrated to us: ʿĪsā ibn Yūnus narrated to us: Hishām ibn Ḥassān narrated to us from Muḥammad ibn Sīrīn from Abū Hurayrah (may Allah be pleased with him) that the Messenger of Allah (peace and blessings be upon him) said: "Whoever is overwhelmed..." If vomiting occurs while he is fasting, there is no obligation upon him to make up for it, but whoever induces vomiting must make up for it.

L11599 This was also narrated to us from Ibn ʿUmar, ʿAlī and ʿAlqamah.

L11600–11602 Ali said: Isa ibn Yunus is reliable. The Hanafis said: Whoever intentionally vomits less than a mouthful does not invalidate their fast by that. But if it is a mouthful or more, their fast becomes invalid. Is this not contrary to the Messenger of Allah—peace and blessings of Allah be upon him—despite the absurdity of such quantification? The Hanafis and Malikis said: If something from the remnants of one's pre-dawn meal—such as dried meat, a piece of meat, or similar—emerges from between the teeth of a fasting person and they deliberately swallow it while conscious of their fast, their fast remains valid. Do we know of anyone holding this opinion before them? Some argued for this view by claiming it was something already consumed, asserting that only what has not been eaten is prohibited. Yet this argument is even more invalid and absurd than the opinion it seeks to justify, for we know of nothing consumed that could remain after eating except vomit or excrement—we seek refuge in Allah from such calamity! Some Hanafis quantified

[10] **Qur'an references (L11595):** Qur'an 2:187 (Al-Baqarah).

وَهَذَا كُلُّهُ مُجْمَعٌ عَلَيْهِ إِجْمَاعًا مُتَيَقَّنًا، إِلَّا فِيمَا نَذْكُرُهُ، مَعَ قَوْلِ اللَّهِ تَعَالَى: {فَالآنَ بَاشِرُوهُنَّ وَابْتَغُوا مَا كَتَبَ اللَّهُ لَكُمْ وَكُلُوا وَاشْرَبُوا حَتَّى يَتَبَيَّنَ لَكُمُ الْخَيْطُ الأَبْيَضُ مِنَ الْخَيْطِ الأَسْوَدِ مِنَ الْفَجْرِ ثُمَّ أَتِمُّوا الصِّيَامَ إِلَى اللَّيْلِ} [البقرة: ١٨٧] .

وَمَا حَدَّثَنَاهُ حُمَامٌ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الْبَاجِيَّ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا حَبِيبُ بْنُ خَلَفٍ الْبُخَارِيُّ ثنا أَبُو ثَوْرٍ إِبْرَاهِيمُ بْنُ خَالِدٍ ثنا مُعَلَّى ثنا عِيسَى بْنُ يُونُسَ ثنا هِشَامُ بْنُ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ ذَرَعَهُ الْقَيْءُ وَهُوَ صَائِمٌ فَلَيْسَ عَلَيْهِ قَضَاءٌ، وَمَنْ اسْتَقَاءَ فَلْيَقْضِ» .

وَرُوِّينَا هَذَا أَيْضًا عَنِ ابْنِ عُمَرَ، وَعَلِيٍّ وَعَلْقَمَةَ.

قَالَ عَلِيٌّ: عِيسَى بْنُ يُونُسَ: ثِقَةٌ. وَقَالَ الْحَنَفِيُّونَ مَنْ تَعَمَّدَ أَنْ يَتَقَيَّأَ أَقَلَّ مِنْ مِلْءِ فِيهِ لَمْ يَبْطُلْ بِذَلِكَ صَوْمُهُ، فَإِنْ كَانَ مِلْءَ فِيهِ فَأَكْثَرَ، بَطَلَ صَوْمُهُ، وَهَذَا خِلَافٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعَ سَخَافَةِ التَّحْدِيدِ؟ وَقَالَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ: مَنْ خَرَجَ - وَهُوَ صَائِمٌ - مِنْ بَيْنِ أَسْنَانِهِ شَيْءٌ مِنْ بَقِيَّةِ سَحُورِهِ كَالْجَذِيذَةِ وَشَيْءٌ مِنَ اللَّحْمِ وَنَحْوُ ذَلِكَ فَبَلَعَهُ عَامِدًا لِبَلْعِهِ ذَاكِرًا لِصَوْمِهِ فَصَوْمُهُ تَامٌّ، وَمَا نَعْلَمُ هَذَا الْقَوْلَ لِأَحَدٍ قَبْلَهُمَا؟ وَاحْتَجَّ بَعْضُهُمْ لِهَذَا الْقَوْلِ بِأَنَّهُ شَيْءٌ قَدْ أُكِلَ بَعْدُ، وَإِنَّمَا حَرُمَ مَا لَمْ يُؤْكَلْ؟ فَكَانَ الِاحْتِجَاجُ أَسْقَطَ وَأَوْحَشَ مِنَ الْقَوْلِ الْمُحْتَجِّ لَهُ وَمَا عَلِمْنَا شَيْئًا أُكِلَ فَيُمْكِنُ وُجُودُهُ بَعْدَ الْأَكْلِ، إِلَّا أَنْ يَكُونَ قَيْئًا أَوْ عَذِرَةً وَنَعُوذُ بِاللَّهِ مِنَ الْبَلَاءِ؟ وَحَدَّ بَعْضُ

the amount that does not invalidate the fast if intentionally eaten as being smaller than a chickpea. This quantification is utterly nonsensical. Moreover, which chickpea is meant—the large premium variety (al-Imleesī) or the small one? If they say, "We measure it against saliva," we respond: Then how do you differentiate between small and large quantities contrary to saliva? We further ask them about someone possessing a large perforated millstone into which a raisin or fava bean from their pre-dawn meal enters. So he brought it forth another day with his tongue while fasting: Is there accountability for his intentional swallowing of it or not? If they were to prohibit this, they would contradict themselves. If they were to permit it, we would question them about all his mills – twelve mills, all perforated so they became filled with sesame, raisins, hemp seeds, chickpeas, broad beans, bread, or flax seeds. If they permitted the intentional consumption of all this, they would achieve an absurdity. If they prohibited it, they would contradict themselves and rule falsely in matters of religion through invalid judgment.

الْحَنَفِيِّينَ الْمِقْدَارَ الَّذِي لَا يَضُرُّ تَعَمُّدُ أَكْلِهِ فِي الصَّوْمِ مِنْ ذَلِكَ بِأَنْ يَكُونَ دُونَ مِقْدَارِ الْحُمَّصَةِ. فَكَانَ هَذَا التَّحْدِيدُ طَرِيفًا جِدًّا ثُمَّ بَعْدَ ذَلِكَ، فَأَيُّ الْحُمَّصِ هُوَ؟ الْإِمْلِيسِيُّ الْفَاخِرُ، أَمْ الصَّغِيرُ؟ فَإِنْ قَالُوا قِسْنَاهُ عَلَى الرِّيقِ؟ قُلْنَا لَهُمْ: فَمِنْ أَيْنَ فَرَّقْتُمْ بَيْنَ قَلِيلِ ذَلِكَ وَكَثِيرِهِ بِخِلَافِ الرِّيقِ؟ وَنَسْأَلُهُمْ عَمَّنْ لَهُ مِطْحَنَةٌ كَبِيرَةٌ مَثْقُوبَةٌ فَدَخَلَتْ فِيهَا مِنْ سَحُورِهِ زَبِيبَةٌ، أَوْ بَاقِلَاءُ فَأَخْرَجَهَا يَوْمًا آخَرَ بِلِسَانِهِ وَهُوَ صَائِمٌ: أَلَهُ تَعَمُّدُ بَلْعِهَا أَمْ لَا؟ فَإِنْ مَنَعُوا مِنْ ذَلِكَ تَنَاقَضُوا، وَإِنْ أَبَاحُوا سَأَلْنَاهُمْ عَنْ جَمِيعِ طَوَاحِينِهِ وَهِيَ ثِنْتَا عَشْرَةَ مِطْحَنَةً - مَثْقُوبَةً كُلُّهَا فَامْتَلَأَتْ سِمْسِمًا أَوْ زَبِيبًا أَوْ قُنْبًا أَوْ حِمَّصًا أَوْ بَاقِلَّا أَوْ خُبْزًا أَوْ زَرِيعَةَ كَتَّانٍ؟ فَإِنْ أَبَاحُوا تَعَمُّدَ أَكْلِ ذَلِكَ كُلِّهِ حَصَّلُوا أُعْجُوبَةً وَإِنْ مَنَعُوا مِنْهُ تَنَاقَضُوا وَتَحَكَّمُوا فِي الدِّينِ بِالْبَاطِلِ.

L11603 The clear ruling is that anything termed as eating—regardless of its nature—invalidates the fast if done intentionally. As for saliva, whether small or large in quantity, there is consensus that deliberately swallowing it does not invalidate the fast. And success is from Allah, the Exalted.

وَإِنَّمَا الْحَقُّ الْوَاضِحُ فَإِنَّ كُلَّ مَا سُمِّيَ أَكْلًا - أَيُّ شَيْءٍ كَانَ - فَتَعَمُّدُهُ يُبْطِلُ الصَّوْمَ، وَأَمَّا الرِّيقُ - فَقَلَّ أَوْ كَثُرَ - فَلَا خِلَافَ فِي أَنْ تَعَمَّدَ ابْتِلَاعَهُ لَا يَنْقُضُ الصَّوْمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L11604 All astonishment lies in one who emulates Abū Ḥanīfah and Mālik in this matter, yet does not emulate for even a single hour of his hours one who is better than the entirety of their lifetimes - namely Abū Ṭalḥah. It has been narrated to us through the most authentic chain from Shu'bah and 'Imrān al-Qaṭṭān, both of whom reported from Qatādah from Anas: that Abū Ṭalḥah would eat cold substances while fasting. 'Imrān stated in his narration: "He used to say: 'It is neither food nor drink.'"

وَالْعَجَبُ كُلُّهُ مِمَّنْ قَلَّدَ أَبَا حَنِيفَةَ، وَمَالِكًا فِي هَذَا، وَلَمْ يُقَلِّدْ مِنْ سَاعَةِ مَنْ سَاعَاتِهِ خَيْرٌ مِنْ دَهْرِهِمَا كُلِّهِ وَهُوَ أَبُو طَلْحَةَ، الَّذِي رُوِّينَا بِأَصَحِّ طَرِيقٍ عَنْ شُعْبَةَ، وَعِمْرَانَ الْقَطَّانِ كِلَاهُمَا عَنْ قَتَادَةَ عَنْ أَنَسٍ: أَنَّ أَبَا طَلْحَةَ كَانَ يَأْكُلُ الْبَرْدَ وَهُوَ صَائِمٌ قَالَ عِمْرَانُ فِي حَدِيثِهِ: وَيَقُولُ: لَيْسَ طَعَامًا وَلَا شَرَابًا

L11605 Shu'bah heard it from Qatādah, and Qatādah heard it from Anas; but are they not a people who fail to acquire [knowledge]?

وَقَدْ سَمِعَهُ شُعْبَةُ مِنْ قَتَادَةَ، وَسَمِعَهُ قَتَادَةُ مِنْ أَنَسٍ؛ وَلَكِنَّهُمْ قَوْمٌ لَا يُحَصِّلُونَ؟

[مَسْأَلَةٌ تَعَمُّدُ الْمَعْصِيَةِ أَثْنَاءَ الصَّوْمِ]

L11606 **The issue of deliberate disobedience during the fast.**

L11607 734 - Issue: Fasting is also invalidated by the intentional commission of any sin - whatever sin it may be, without excluding anything - when committed deliberately while mindful of one's fast. This includes engaging in unlawful relations with prohibited females or males, kissing one's lawful wife or female slave, engaging in anal intercourse with one's wife, female slave, or others besides them, lying, backbiting, slander, willful abandonment of prayer, oppression, or any other act forbidden for a person to commit. The proof for this is what was transmitted to us via Abdullah ibn Yusuf → Ahmad ibn Fath → Abdul Wahhab ibn Isa → Ahmad ibn Muhammad → Ahmad ibn Ali → Muslim ibn Al-Hajjaj → Muhammad ibn Rafi' → Abdul Razzaq → Ibn Jurayj → Ata' → Abu Salih Al-Zayyat (known as al-Samman), who heard Abu Hurairah report: The Messenger of Allah (peace and blessings be upon him) said, "Fasting is a shield. When one of you fasts, let him neither engage in obscene speech nor raise his voice. If someone insults him or confronts him, let him say: 'I am fasting.'"

٧٣٤ - مَسْأَلَةٌ: وَيُبْطِلُ الصَّوْمَ أَيْضًا تَعَمُّدُ كُلِّ مَعْصِيَةٍ - أَيِّ مَعْصِيَةٍ كَانَتْ، لَا نُحَاشِ شَيْئًا - إِذَا فَعَلَهَا عَامِدًا ذَاكِرًا لِصَوْمِهِ، كَمُبَاشَرَةِ مَنْ لَا يَحِلُّ لَهُ مِنْ أُنْثَى أَوْ ذَكَرٍ، أَوْ تَقْبِيلِ امْرَأَتِهِ وَأَمَتِهِ الْمُبَاحَتَيْنِ لَهُ مِنْ أُنْثَى أَوْ ذَكَرٍ، أَوْ إِتْيَانٍ فِي دُبُرِ امْرَأَتِهِ أَوْ أَمَتِهِ أَوْ غَيْرِهِمَا، أَوْ كَذِبٍ، أَوْ غِيبَةٍ، أَوْ نَمِيمَةٍ، أَوْ تَعَمُّدِ تَرْكِ صَلَاةٍ، أَوْ ظُلْمٍ، أَوْ غَيْرِ ذَلِكَ مِنْ كُلِّ مَا حَرُمَ عَلَى الْمَرْءِ فِعْلُهُ؟ بُرْهَانُ ذَلِكَ -: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي مُحَمَّدُ بْنُ رَافِعٍ ثنا عَبْدُ الرَّزَّاقِ ثنا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَطَاءٌ عَنْ أَبِي صَالِحٍ الزَّيَّاتِ هُوَ السَّمَّانُ - أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَالصِّيَامُ جُنَّةٌ فَإِذَا كَانَ يَوْمُ صَوْمِ أَحَدِكُمْ فَلَا يَرْفُثْ يَوْمَئِذٍ، وَلَا يَصْخَبْ فَإِنْ سَابَّهُ أَحَدٌ أَوْ قَاتَلَهُ؟ فَلْيَقُلْ: إِنِّي صَائِمٌ» .

L11608–11609 It has been conveyed to us through Mālik from Abī al-Zinād from al-Aʿraj from Abū Hurayrah: That the Messenger of Allah—peace and blessings of Allah be upon him—said, "Fasting is a shield. When any one of you is fasting, he must neither engage in obscene speech nor behave ignorantly. If anyone confronts him with fighting or insults, let him respond: 'Indeed, I am fasting.'"

وَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الصِّيَامُ جُنَّةٌ، فَإِذَا كَانَ أَحَدُكُمْ صَائِمًا فَلَا يَرْفُثْ وَلَا يَجْهَلْ، فَإِنْ امْرُؤٌ قَاتَلَهُ أَوْ شَاتَمَهُ؟ فَلْيَقُلْ: إِنِّي صَائِمٌ» .

L11610 Abdur-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: al-Farbari narrated to us: al-Bukhārī narrated to us: Adam ibn Abī Iyas narrated to us: Ibn Abī Dhi'b narrated to us: Saʿīd ibn Abī Saʿīd al-Maqburī narrated from his father, from Abū Hurayrah: that the Prophet said, "Whoever does not abandon false speech and acting upon it, Allah has no need for his abandonment of food and drink."[11]

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا آدَمُ بْنُ أَبِي إِيَاسٍ ثنا ابْنُ أَبِي ذِئْبٍ ثنا سَعِيدُ بْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ: أَنَّ النَّبِيَّ قَالَ: «مَنْ لَمْ يَدَعْ قَوْلَ الزُّورِ وَالْعَمَلَ بِهِ فَلَيْسَ لِلَّهِ حَاجَةٌ فِي أَنْ يَدَعَ طَعَامَهُ وَشَرَابَهُ» .

[11] **Hadith references (L11610):** Sahih al-Bukhari 1903; Riyad as-Salihin 1241; Mishkat al-Masabih 1999.

L11611 From Abdullah ibn Rabee, from Abdullah ibn Muhammad ibn Uthman, from Ahmad ibn Khalid, from Ali ibn Abd al-Aziz, from al-Hajjaj ibn al-Minhal, from Hammad ibn Salamah, from Sulaiman al-Taymi, from Ubayd—the freed slave of the Messenger of Allah, may Allah's peace and blessings be upon him—who reported: The Messenger of Allah, may Allah's peace and blessings be upon him, encountered two fasting women who were backbiting people. He said to them, "Vomit!" They vomited pus, blood, and rotten flesh. Then he, peace be upon him, said, "Indeed, these two abstained from the lawful and broke their fast with the unlawful."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ ثنا أَحْمَدُ بْنُ خَالِدٍ ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ سُلَيْمَانَ التَّيْمِيِّ عَنْ عُبَيْدٍ مَوْلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَتَى عَلَى امْرَأَتَيْنِ صَائِمَتَيْنِ تَغْتَابَانِ النَّاسَ فَقَالَ لَهُمَا: قِيئَا، فَقَاءَتَا قَيْحًا وَدَمًا وَلَحْمًا عَبِيطًا، ثُمَّ قَالَ - عَلَيْهِ السَّلَامُ -: هَا إِنَّ هَاتَيْنِ صَامَتَا عَنْ الْحَلَالِ وَأَفْطَرَتَا عَلَى الْحَرَامِ» .

L11612 Abu Muhammad said: He—peace be upon him—prohibited obscenity and vulgar behavior during fasting. Thus, whoever commits any of these acts—deliberately and mindful of his fast—has not fasted as commanded. Whoever does not fast as commanded has not fasted, for he has not fulfilled the fasting enjoined by Allah the Exalted—which is free from obscenity and vulgar behavior. These two terms encompass every sin. He—peace be upon him—further stated that whoever does not abandon false speech (i.e., lying) nor cease acting upon it, Allah the Exalted has no interest in his abstention from food and drink.

قَالَ أَبُو مُحَمَّدٍ: فَنَهَى - عَلَيْهِ السَّلَامُ - عَنْ الرَّفَثِ وَالْجَهْلِ فِي الصَّوْمِ، فَكَانَ مَنْ فَعَلَ شَيْئًا مِنْ ذَلِكَ - عَامِدًا ذَاكِرًا لِصَوْمِهِ - لَمْ يَصُمْ كَمَا أُمِرَ، وَمَنْ لَمْ يَصُمْ كَمَا أُمِرَ، فَلَمْ يَصُمْ، لِأَنَّهُ لَمْ يَأْتِ بِالصِّيَامِ الَّذِي أَمَرَهُ اللَّهُ تَعَالَى بِهِ، وَهُوَ السَّالِمُ مِنْ الرَّفَثِ وَالْجَهْلِ، وَهُمَا اسْمَانِ يَعُمَّانِ كُلَّ مَعْصِيَةٍ؛ وَأَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّ مَنْ لَمْ يَدَعْ الْقَوْلَ بِالْبَاطِلِ - وَهُوَ الزُّورُ - وَلَمْ يَدَعْ الْعَمَلَ بِهِ فَلَا حَاجَةَ لِلَّهِ تَعَالَى فِي تَرْكِ طَعَامِهِ وَشَرَابِهِ.

L11613–11615 Thus, it is confirmed that Allah the Exalted neither approves of that fasting of his nor accepts it. And if He has not approved of it nor accepted it, then it... It is invalid and nullified. He—peace be upon him—declared that backbiting invalidates the fast, a matter none may oppose. Yet some obstinately claimed: "Only its reward is nullified, not the fasting itself." Abu Muhammad said: This epitomizes sheer foolishness. Every sensible person necessarily knows that whenever Allah the Exalted nullifies a worker's reward for any deed, He neither credits nor accepts that deed - this being nullification itself beyond doubt. The pious predecessors affirmed this: It has been narrated to us through Abū Bakr ibn Abī Shaybah who narrated to us: Ḥafṣ ibn Ghiyāth and Hushaym—both transmitting from Mujālid, from al-Shaʿbī. Hushaym added: via Masrūq, from ʿUmar ibn al-Khaṭṭāb: "Fasting is not merely abstaining from drink and food, but from lies, falsehood, and idle talk." Similarly via Ḥafṣ ibn Ghiyāth from Mujālid, from al-Shaʿbī, from ʿAlī ibn Abī Ṭālib—the same wording is explicitly reported.

فَصَحَّ أَنَّ اللَّهَ تَعَالَى لَا يَرْضَى صَوْمَهُ ذَلِكَ وَلَا يَتَقَبَّلُهُ، وَإِذَا لَمْ يَرْضَهُ وَلَا قَبِلَهُ فَهُوَ بَاطِلٌ سَاقِطٌ؛ وَأَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّ الْمُغْتَابَ مُفْطِرٌ وَهَذَا مَا لَا يَسَعُ أَحَدًا خِلَافُهُ؟ وَقَدْ كَابَرَ بَعْضُهُمْ فَقَالَ: إنَّمَا يَبْطُلُ أَجْرُهُ لَا صَوْمُهُ؟ قَالَ أَبُو مُحَمَّدٍ: فَكَانَ هَذَا فِي غَايَةِ السَّخَافَةِ وَبِالضَّرُورَةِ يَدْرِي كُلُّ ذِي حِسٍّ أَنَّ كُلَّ عَمَلٍ أَحْبَطَ اللَّهُ تَعَالَى أَجْرَ عَامِلِهِ فَإِنَّهُ تَعَالَى لَمْ يَحْتَسِبْ لَهُ بِذَلِكَ الْعَمَلَ وَلَا قَبِلَهُ، وَهَذَا هُوَ الْبُطْلَانُ بِعَيْنِهِ بِلَا مِرْيَةٍ؟ وَبِهَذَا يَقُولُ السَّلَفُ الطَّيِّبُ -: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ: ثنا حَفْصُ بْنُ غِيَاثٍ، وَهُشَيْمٌ كِلَاهُمَا عَنْ مُجَالِدٍ عَنْ الشَّعْبِيِّ، قَالَ هُشَيْمٌ: عَنْ مَسْرُوقٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ لَيْسَ الصِّيَامُ مِنْ الشَّرَابِ وَالطَّعَامِ وَحْدَهُ، وَلَكِنَّهُ مِنْ الْكَذِبِ، وَالْبَاطِلِ

وَاللَّغْوِ؟ وَعَنْ حَفْصِ بْنِ غِيَاثٍ عَنْ مُجَالِدٍ عَنْ الشَّعْبِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ مِثْلُهُ نَصًّا.

L11616 From the chain of Ibn Abī Shaybah: Muḥammad ibn Bakr narrated to us from Ibn Jurayj from Sulaymān ibn Mūsā, who said: Jābir—that is, Ibn ʿAbdullāh—said: When you fast, let your hearing, sight, and tongue abstain from falsehood and sin. Refrain from harming the servant, let there be upon you dignity and calmness on your fasting day, and do not treat your day of breaking the fast and your day of fasting as alike.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: ثنا مُحَمَّدُ بْنُ بَكْرٍ عَنْ ابْنِ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى قَالَ قَالَ جَابِرٌ هُوَ ابْنُ عَبْدِ اللَّهِ -: إذَا صُمْت فَلْيَصُمْ سَمْعُكَ، وَبَصَرُكَ، وَلِسَانُكَ عَنْ الْكَذِبِ وَالْمَأْثَمِ، وَدَعْ أَذَى الْخَادِمِ وَلْيَكُنْ عَلَيْكَ وَقَارٌ، وَسَكِينَةٌ يَوْمَ صِيَامِكَ، وَلَا تَجْعَلْ يَوْمَ فِطْرِكَ وَيَوْمَ صَوْمِكَ سَوَاءً.

L11617 And through the chain of Abū Bakr ibn Abī Shaybah from Wakīʿ from Abī al-ʿUmayyis (he is ʿUtbah ibn ʿAbdullāh ibn ʿUtbah ibn ʿAbdullāh ibn Masʿūd) from ʿAmr ibn Murrah from Abī Ṣāliḥ al-Ḥanafī from his brother Ṭalīq ibn Qays, who said: Abū Dharr said, "When you fast, be vigilant to the best of your ability." Thus, on his fasting day, Ṭalīq would enter and not emerge except for prayer.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ أَبِي الْعُمَيْسِ هُوَ عُتْبَةُ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ - عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ أَبِي صَالِحٍ الْحَنَفِيِّ عَنْ أَخِيهِ طَلِيقِ بْنِ قَيْسٍ قَالَ قَالَ أَبُو ذَرٍّ: إذَا صُمْت فَتَحَفَّظْ مَا اسْتَطَعْت، فَكَانَ طَلِيقٌ إذَا كَانَ يَوْمُ صِيَامِهِ دَخَلَ فَلَمْ يَخْرُجْ إلَّا إلَى صَلَاةٍ.

L11618 From the chain of Wakīʿ from Ḥammād al-Bakkāʾ from Thābit al-Bunānī from Anas ibn Mālik, who said: "If a fasting person backbites, he invalidates his fast."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ حَمَّادٍ الْبَكَّاءِ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: إذَا اغْتَابَ الصَّائِمُ أَفْطَرَ.

L11619–11621 And through the transmission of Wakiʿ, from Ismāʿīl ibn Muslim al-ʿAbdī, from Abū al-Mutawakkil al-Nājī, who said: Abu Hurairah and his companions would sit in the mosque while fasting and say, "Should we purify our fasting?" These Companions—may Allah be pleased with them: Umar, Abu Dharr, Abu Hurairah, Anas, Jabir, and Ali—hold that the fast is invalidated through sins because they uniquely linked fasting to the prohibition of sins, though sins are forbidden to non-fasters alike. Had fasting been valid with sins, their specific prohibition of sins in relation to fasting would carry no meaning. No dissenting opinion is known among the Companions—may Allah be pleased with them.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إسْمَاعِيلَ بْنِ مُسْلِمٍ الْعَبْدِيِّ عَنْ أَبِي الْمُتَوَكِّلِ النَّاجِي قَالَ: كَانَ أَبُو هُرَيْرَةَ وَأَصْحَابُهُ إذَا صَامُوا جَلَسُوا فِي الْمَسْجِدِ وَقَالُوا: نُطَهِّرُ صِيَامَنَا؟ فَهَؤُلَاءِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: عُمَرُ، وَأَبُو ذَرٍّ وَأَبُو هُرَيْرَةَ، وَأَنَسٌ، وَجَابِرٌ، وَعَلِيٌّ: يَرَوْنَ بُطْلَانَ الصَّوْمِ بِالْمَعَاصِي، لِأَنَّهُمْ خَصُّوا الصَّوْمَ بِاجْتِنَابِهَا وَإِنْ كَانَتْ حَرَامًا عَلَى الْمُفْطِرِ، فَلَوْ كَانَ الصِّيَامُ تَامًّا بِهَا مَا كَانَ لِتَخْصِيصِهِمْ الصَّوْمَ بِالنَّهْيِ عَنْهَا مَعْنًى، وَلَا يُعْرَفُ لَهُمْ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L11622 And among the Followers: Mansur reported from Mujahid, who said:

"Nothing harms the fasting person except backbiting and lying."

وَمِنْ التَّابِعِينَ: مَنْصُورٌ عَنْ مُجَاهِدٍ قَالَ: مَا أَصَابَ الصَّائِمُ شَوًى إلَّا الْغِيبَةَ، وَالْكَذِبَ.

L11623 From Hafsah bint Sirin: "Fasting is a shield so long as one does not breach it—and is breaching it [done through] backbiting?" From Maymun ibn Mihran: "Is the least significant aspect of fasting [merely] abandoning food and drink?" From Ibrahim al-Nakha'i, who said: "They used to say that lying breaks the fast?" Abu Muhammad said: "We ask those who oppose this view about intentionally eating swine or drinking wine: Does this break the fast or not? They respond, 'Yes?' We then ask, 'Why?' If they argue, 'Because these are forbidden during fasting,' we counter: The same applies to all sins, for they too are prohibited in fasting by the scriptural text we cited."

وَعَنْ حَفْصَةَ بِنْتِ سِيرِينَ: الصِّيَامُ جُنَّةٌ، مَا لَمْ يَخْرِقْهَا صَاحِبُهَا، وَخَرْقُهَا: الْغِيبَةُ؟ وَعَنْ مَيْمُونِ بْنِ مِهْرَانَ: إنَّ أَهْوَنَ الصَّوْمِ تَرْكُ الطَّعَامِ وَالشَّرَابِ؟ وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانُوا يَقُولُونَ: الْكَذِبُ يُفْطِرُ الصَّائِمَ؟ قَالَ أَبُو مُحَمَّدٍ: وَنَسْأَلُ مَنْ خَالَفَ هَذَا عَنْ الْأَكْلِ لِلَحْمِ الْخِنْزِيرِ، وَالشُّرْبِ لِلْخَمْرِ عَمْدًا: أَيُفْطِرُ الصَّائِمَ أَمْ لَا؟ فَمِنْ قَوْلِهِمْ: نَعَمْ؟ فَنَقُولُ لَهُمْ: وَلِمَ ذَلِكَ؟ فَإِنْ قَالُوا: لِأَنَّهُ مَنْهِيٌّ عَنْهُمَا فِيهِ؟ قُلْنَا لَهُمْ: وَكَذَلِكَ الْمَعَاصِي؛ لِأَنَّهُ مَنْهِيٌّ عَنْهَا فِي الصَّوْمِ أَيْضًا بِالنَّصِّ الَّذِي ذَكَرْنَا.

L11624 If they say: "Is even one who is not fasting forbidden from sins?" We reply: "Is even one who is not fasting forbidden from consuming wine and pork—is there no distinction?" If they say: "The prohibition concerns only eating and drinking, and we do not concern ourselves with what substance is consumed?" We say: "Then the prohibition against sins during fasting should similarly not concern itself with the means by which one sins—whether through eating and drinking or otherwise?" If they say: "The fast is only broken by eating and drinking due to the consensus that these invalidate it?" We say: "Then you must not invalidate the fast except through what is unanimously agreed upon as invalidating it. This would compel you to refrain from invalidating it by eating ice or by many acts you consider invalidators—such as nasal drops, enemas, and the like." If they say: "We have analogized those to eating and drinking?"

فَإِنْ قَالُوا: وَغَيْرُ الصَّائِمِ أَيْضًا مَنْهِيٌّ عَنْ الْمَعَاصِي؟ قُلْنَا لَهُمْ: وَغَيْرُ الصَّائِمِ أَيْضًا مَنْهِيٌّ عَنْ الْخَمْرِ، وَالْخِنْزِيرِ، وَلَا فَرْقَ؟ فَإِنْ قَالُوا: إنَّمَا نُهِيَ عَنْ الْأَكْلِ وَالشُّرْبِ وَلَا نُبَالِي أَيَّ شَيْءٍ أَكَلَ أَوْ شَرِبَ؟ قُلْنَا: وَإِنَّمَا نُهِيَ عَنْ الْمَعَاصِي فِي صَوْمِهِ وَلَا نُبَالِي بِمَا عَصَى، أَبِأَكْلٍ وَشُرْبٍ، أَمْ بِغَيْرِ ذَلِكَ؟ فَإِنْ قَالُوا: إنَّمَا أَفْطَرَ بِالْأَكْلِ وَالشُّرْبِ لِلْإِجْمَاعِ عَلَى أَنَّهُ مُفْطِرٌ بِهِمَا؟ قُلْنَا: فَلَا تُبْطِلُوا الصَّوْمَ إلَّا بِمَا أُجْمِعَ عَلَى بُطْلَانِهِ بِهِ وَهَذَا يُوجِبُ عَلَيْكُمْ أَنْ لَا تُبْطِلُوهُ بِأَكْلِ الْبَرَدِ وَلَا بِكَثِيرٍ مِمَّا أَبْطَلْتُمُوهُ بِهِ كَالسَّعُوطِ وَالْحُقْنَةِ وَغَيْرِ ذَلِكَ؟ فَإِنْ قَالُوا: قِسْنَا ذَلِكَ عَلَى الْأَكْلِ وَالشُّرْبِ؟

L11625–11626 We said: All analogy is invalid. Moreover, if it were valid, this would remain corrupt according to analogy itself. The soundest of your principles would be to analogize the invalidation of fasting by all sins upon its invalidation by the sin of eating and drinking – this being a matter from which there is no escape. If they say: "Is avoiding sins not among the conditions of fasting?" We reply: You lie, for the textual reports (Hadith) have confirmed it to be among fasting's conditions as we have cited. If they say: "Those reports are additions beyond what is in the Quran?" We counter: Your invalidation of

قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا فَاسِدًا مِنْ الْقِيَاسِ وَكَانَ أَصَحُّ أُصُولِكُمْ أَنْ تَقِيسُوا بُطْلَانَ الصَّوْمِ بِجَمِيعِ الْمَعَاصِي عَلَى بُطْلَانِهِ بِالْمَعْصِيَةِ بِالْأَكْلِ، وَالشُّرْبِ، وَهَذَا مَا لَا مُخَلَّصَ مِنْهُ. فَإِنْ قَالُوا: لَيْسَ اجْتِنَابُ الْمَعَاصِي مِنْ شُرُوطِ الصَّوْمِ؟ قُلْنَا: كَذَبْتُمْ لِأَنَّ النَّصَّ قَدْ صَحَّ بِأَنَّهُ مِنْ شُرُوطِ الصَّوْمِ كَمَا أَوْرَدْنَا. فَإِنْ قَالُوا: تِلْكَ الْأَخْبَارُ

fasting through nasal medication, anal injection, ejaculation accompanied by kissing, and similar acts are corrupt and invalid additions beyond the Quran. Thus you abandon the rightful additions while upholding false ones – and success comes solely from Allah, the Exalted.

L11627 735. Issue: Whoever intentionally commits any of the aforementioned acts while conscious of his fasting invalidates his fast and cannot make it up if the fast occurs during Ramadan or a specified vowed fast—except in the case of deliberate vomiting specifically, for which qaḍāʾ (makeup fast) is obligatory.

L11628 The evidence for this is that the obligation to make up the fast due to deliberate vomiting has been authentically established from the Messenger of Allah (peace be upon him), as we mentioned two issues prior to this one. However, no explicit text mandates making up the fast for deliberate eating, drinking, or intercourse that invalidates the fast. Allah the Exalted has ordained only Ramadan—and no other month—for the healthy, resident, sane adult. Therefore, obligating fasting of another month as substitution constitutes legislating a ruling Allah has not sanctioned, rendering it nullified. There is no difference between Allah obligating fasting of a specified month and someone claiming—without an extant text—that fasting another month substitutes for it; nor between one who claims that Hajj to a place other than Mecca substitutes for Hajj to Mecca, or that prayer toward a direction other than the Kaaba substitutes for prayer toward the Kaaba, and so on for all analogous cases.

L11629 Allah, the Exalted, has said: "These are the limits of Allah, so do not transgress them." al-Baqarah 2:229.[12]

L11630 He, the Exalted, said: "Whoever transgresses the bounds of Allah has indeed wronged his own soul" (al-Ṭalāq 1).[13]

L11631 If they say: "We analogized every individual who intentionally breaks the fast to the one who deliberately breaks it in requiring makeup fasting," we reply:

[12]**Qur'an references (L11629):** Qur'an 2:229 (Al-Baqarah).
[13]**Qur'an references (L11630):** Qur'an 65:1 (At-Talaq).

زَائِدَةٌ عَلَى مَا فِي الْقُرْآنِ؟ قُلْنَا: وَإِبْطَالُكُمْ الصَّوْمَ بِالسَّعُوطِ وَالْحُقْنَةِ، وَالْإِمْنَاءِ مَعَ التَّقْبِيلِ زِيَادَةٌ فَاسِدَةٌ بَاطِلَةٌ عَلَى مَا فِي الْقُرْآنِ فَتَرَكْتُمْ زِيَادَةَ الْحَقِّ، وَأَثْبَتُّمْ زِيَادَةَ الْبَاطِلِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

٧٣٥ - مَسْأَلَةٌ: فَمَنْ تَعَمَّدَ ذَاكِرًا لِصَوْمِهِ شَيْئًا مِمَّا ذَكَرْنَا فَقَدْ بَطَلَ صَوْمُهُ، وَلَا يَقْدِرُ عَلَى قَضَائِهِ إنْ كَانَ فِي رَمَضَانَ أَوْ فِي نَذْرٍ مُعَيَّنٍ، إلَّا فِي تَعَمُّدِ الْقَيْءِ خَاصَّةً فَعَلَيْهِ الْقَضَاءُ.

بُرْهَانُ ذَلِكَ -: أَنَّ وُجُوبَ الْقَضَاءِ فِي تَعَمُّدِ الْقَيْءِ قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا ذَكَرْنَا قَبْلَ هَذِهِ الْمَسْأَلَةِ بِمَسْأَلَتَيْنِ، وَلَمْ يَأْتِ فِي فَسَادِ الصَّوْمِ بِالتَّعَمُّدِ لِلْأَكْلِ أَوْ الشُّرْبِ أَوْ الْوَطْءِ: نَصٌّ بِإِيجَابِ الْقَضَاءِ، وَإِنَّمَا افْتَرَضَ تَعَالَى رَمَضَانَ - لَا غَيْرَهُ - عَلَى الصَّحِيحِ الْمُقِيمِ الْعَاقِلِ الْبَالِغِ، فَإِيجَابُ صِيَامِ غَيْرِهِ بَدَلًا مِنْهُ إيجَابُ شَرْعٍ لَمْ يَأْذَنْ اللَّهُ تَعَالَى بِهِ، فَهُوَ بَاطِلٌ، وَلَا فَرْقَ بَيْنَ أَنْ يُوجِبَ اللَّهُ تَعَالَى صَوْمَ شَهْرٍ مُسَمًّى فَيَقُولُ قَائِلٌ: إنَّ صَوْمَ غَيْرِهِ يَنُوبُ عَنْهُ، بِغَيْرِ نَصٍّ وَارِدٍ فِي ذَلِكَ -: وَبَيْنَ مَنْ قَالَ: إنَّ الْحَجَّ إلَى غَيْرِ مَكَّةَ يَنُوبُ عَنْ الْحَجِّ إلَى مَكَّةَ، وَالصَّلَاةَ إلَى غَيْرِ الْكَعْبَةِ تَنُوبُ عَنْ الصَّلَاةِ إلَى الْكَعْبَةِ، وَهَكَذَا فِي كُلِّ شَيْءٍ.

قَالَ اللَّهُ تَعَالَى: {تِلْكَ حُدُودُ اللَّهِ فَلا تَعْتَدُوهَا} [البقرة: ٢٢٩] .

وَقَالَ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

فَإِنْ قَالُوا: قِسْنَا كُلَّ مُفْطِرٍ بِعَمْدٍ فِي إيجَابِ الْقَضَاءِ عَلَى الْمُتَقَيِّي عَمْدًا قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّهُمْ أَوَّلُ مَنْ نَقَضَ هَذَا الْقِيَاسَ؟ فَأَكْثَرُهُمْ لَمْ يَقِسْ الْمُفْطِرَ عَمْدًا بِأَكْلٍ أَوْ شُرْبٍ عَلَى الْمُفْطِرِ بِالْقَيْءِ عَمْدًا فِي إسْقَاطِ

الْكَفَّارَةِ عَنْهُمْ كَسُقُوطِهَا عَنْ الْمُتَّقِي عَمْدًا، وَهُمْ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: قَاسُوهُمْ عَلَى الْمُفْطِرِ بِالْقَيْءِ عَمْدًا، وَلَمْ يَقِيسُوهُمْ كُلَّهُمْ عَلَى الْمُجَامِعِ عَمْدًا فِي وُجُوبِ الْكَفَّارَةِ عَلَيْهِمْ كُلِّهِمْ؛ فَقَدْ تَرَكُوا الْقِيَاسَ الَّذِي يَدَّعُونَ فَإِنْ وُجِدَ مَنْ يُسَوِّي بَيْنَ الْكُلِّ فِي إيجَابِ الْقَضَاءِ وَالْكَفَّارَةِ كُلِّهِ فِي إبْطَالِ الْقِيَاسِ فَقَطْ.

All analogy is invalid. Even were analogy valid, this particular instance would epitomize invalidity, for they are the first to undermine this analogy. Most of them—namely the Hanafis, Malikis, and Shafi'is—did not extend the analogy between those who intentionally break the fast through eating or drinking and those who intentionally break it through vomiting to exempt them from atonement, just as it is exempted for the one who intentionally breaks the fast. They analogized such individuals to those who intentionally break the fast through vomiting but did not extend the analogy to all of them being equated with those who intentionally engage in intercourse regarding the universal obligation of atonement. Thus, they abandoned the very analogy they claim. If someone is found who equalizes all cases by universally requiring both makeup fasting and atonement, it suffices to address only the invalidity of analogy itself.

فَإِنْ ذَكَرُوا أَخْبَارًا وَرَدَتْ فِي إيجَابِ الْقَضَاءِ عَلَى الْمُتَعَمِّدِ لِلْوَطْءِ فِي نَهَارِ رَمَضَانَ؟ قِيلَ: تِلْكَ آثَارٌ لَا يَصِحُّ فِيهَا شَيْءٌ -: لِأَنَّ أَحَدَهَا: مِنْ طَرِيقِ أَبِي أُوَيْسٍ عَنْ الزُّهْرِيِّ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ الَّذِي أَفْطَرَ فِي رَمَضَانَ بِالْكَفَّارَةِ وَأَنْ يَصُومَ يَوْمًا» وَأَبُو أُوَيْسٍ ضَعِيفٌ، ضَعَّفَهُ ابْنُ مَعِينٍ وَغَيْرُهُ.

L11632–11633 If they cite reports concerning the obligation of compensatory fasting for those who intentionally engage in intercourse during the daytime of Ramadan, it should be said: These are narrations with no authenticity—for one of them is transmitted through Abū Uways from al-Zuhrī, from Ḥumayd ibn ʿAbd al-Raḥmān, from Abū Hurayrah: "The Messenger of Allah—peace and blessings be upon him—commanded the one who broke the fast in Ramadan to perform expiation and fast one additional day." However, Abū Uways is a weak narrator; Ibn Maʿīn and others declared him weak.

وَالثَّانِي:

L11634 And the second:

رُوِّينَاهُ مِنْ طَرِيقِ هِشَامِ بْنِ سَعْدٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَهُ بِأَنْ يَصُومَ يَوْمًا» وَهِشَامُ بْنُ سَعْدٍ ضَعَّفَهُ أَحْمَدُ بْنُ حَنْبَلٍ، وَابْنُ مَعِينٍ، وَغَيْرُهُمَا، وَلَمْ يَسْتَجِزْ الرِّوَايَةَ عَنْهُ يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ.

L11635 It was narrated through the chain of Hisham ibn Saʿd from al-Zuhri from Abu Salama from Abu Hurayrah: "The Messenger of Allah (peace be upon him) commanded him to fast for a day." Ahmad ibn Hanbal, Ibn Maʿin, and others declared Hisham ibn Saʿd a weak narrator, and Yahya ibn Saʿid al-Qattan deemed him unreliable for narration.

وَالثَّالِثُ: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِلْوَاطِئِ فِي رَمَضَانَ

L11636 Thirdly: We have narrated it via the chain of ʿAbd al-Jabbār ibn ʿUmar from Yaḥyā ibn Saʿīd al-Anṣārī from Saʿīd ibn al-Musayyib from Abū Hurayrah: "The Prophet—peace and blessings of Allah be upon him—said to one who had sexual intercourse during Ramaḍān: 'Compensate by fasting another

day in its place.'" As for ʿAbd al-Jabbār ibn ʿUmar: he is weak. Al-Bukhārī weakened him, Ibn Maʿīn said: "He is not reliable," and Abū Dāwūd al-Sijistānī said: "His hadiths are deemed anomalous."

اقْضِ يَوْمًا مَكَانَهُ» ؟ وَعَبْدُ الْجَبَّارِ بْنُ عُمَرَ: ضَعِيفٌ، ضَعَّفَهُ الْبُخَارِيُّ، وَقَالَ ابْنُ مَعِينٍ: لَيْسَ بِشَيْءٍ، وَقَالَ أَبُو دَاوُد السِّجِسْتَانِيُّ: هُوَ مُنْكَرُ الْحَدِيثِ.

L11637 And the fourth:

وَالرَّابِعُ:

L11638 It was narrated through the chain of al-Ḥajjāj ibn Arṭāʾ from ʿAṭāʾ, from ʿAmr ibn Shuʿayb, from his father, from his grandfather, that "the Prophet (peace be upon him) commanded the one who engaged in intercourse during daytime in Ramaḍān to fast one day in its place." This report omits all these chains because al-Ḥajjāj is deemed unreliable. Furthermore, this is a written record. It was narrated as *mursal* through the chain of Mālik from ʿAṭāʾ ibn al-Sāʾib, from Saʿīd ibn al-Musayyib, and through the chain of Ibn Jurayj from Nāfiʿ ibn Jubayr ibn Muṭʿim.

رُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ عَطَاءٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ «النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَمَرَ الْوَاطِئَ فِي نَهَارِ رَمَضَانَ أَنْ يَصُومَ يَوْمًا مَكَانَهُ» وَهَذَا أَسْقَطَهَا كُلَّهَا لِأَنَّ الْحَجَّاجَ لَا شَيْءَ، ثُمَّ هِيَ صَحِيفَةٌ وَرُوِّينَاهُ مُرْسَلًا مِنْ طَرِيقِ مَالِكٍ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ نَافِعِ بْنِ جُبَيْرِ بْنِ مُطْعِمٍ.

L11639–11641 And from the transmission of Abū Maʿshar al-Madanī, from Muḥammad ibn Kaʿb al-Quraẓī—all of them narrating that the Prophet—peace and blessings be upon him—. He instructed him to make up a day. All of this is *mursal*.

وَمِنْ طَرِيقِ أَبِي مَعْشَرٍ الْمَدَنِيِّ «عَنْ مُحَمَّدِ بْنِ كَعْبٍ الْقُرَظِيِّ، كُلِّهِمْ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَهُ بِقَضَاءِ يَوْمٍ» . وَهَذَا كُلُّهُ مُرْسَلٌ

L11642 And does a mursal report not constitute valid evidence? By Allah, if even a single report with a complete chain from reliable narrators were found among them, we would hasten to adopt its ruling. But if they persist and say, "The mursal report is valid evidence, and we do not weaken the narrators," we would respond: Then there is no blame upon you. Yusuf ibn ʻAbdullāh al-Namarī narrated to us, Ahmad ibn Muḥammad ibn al-Jasūr narrated to us, Qāsim ibn Aṣbagh narrated to us, Muṭarrif ibn Qays narrated to us, Yaḥyā ibn Bukayr narrated to us, Mālik narrated from ʻAṭāʾ al-Khurāsānī from Saʿīd ibn al-Musayyab, who said: A Bedouin came to the Messenger of Allah—peace and blessings be upon him—striking his chest and plucking his hair, crying, "I am utterly ruined!" The Messenger of Allah—peace and blessings be upon him—asked, "What is the matter?" He replied, "I had intercourse with my wife during Ramadan while fasting." The Messenger of Allah—peace and blessings be upon him—asked him, "Can you afford to free a slave?" He said, "No." He asked, "Can you afford to sacrifice a she-camel?" He said, "No."

، وَلَا تَقُومُ بِالْمُرْسَلِ حُجَّةٌ؟ وَتَاللَّهِ لَوْ صَحَّ مِنْهَا خَبَرٌ وَاحِدٌ - مُسْنَدٌ مِنْ طَرِيقِ الثِّقَاتِ - لَسَارَعْنَا إِلَى الْقَوْلِ بِهِ فَإِنْ لَجُّوا وَقَالُوا: الْمُرْسَلُ حُجَّةٌ، وَلَا نُضَعِّفُ الْمُحَدِّثِينَ؟ قُلْنَا لَهُمْ: فَلَا عَلَيْكُمْ حَدَّثَنَا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ ثنا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا مُطَرِّفُ بْنُ قَيْسٍ ثنا يَحْيَى بْنُ بُكَيْرٍ ثنا مَالِكٌ عَنْ عَطَاءٍ الْخُرَاسَانِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: «جَاءَ أَعْرَابِيٌّ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَضْرِبُ نَحْرَهُ وَيَنْتِفُ شَعْرَهُ وَيَقُولُ: هَلَكَ الْأَبْعَدُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَا ذَاكَ؟ قَالَ: أَصَبْتُ أَهْلِي فِي رَمَضَانَ وَأَنَا صَائِمٌ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ

The Prophet said, “Sit down.” Then a sack of dates was brought to him—and the remainder of the report was mentioned.

وَسَلَّمَ - هَلْ تَسْتَطِيعُ أَنْ تَعْتِقَ رَقَبَةً؟ قَالَ: لَا، قَالَ: تَسْتَطِيعُ أَنْ تُهْدِيَ بَدَنَةً؟ قَالَ: لَا، قَالَ: فَاجْلِسْ فَأُتِيَ بِعَرَقِ تَمْرٍ وَذَكَرَ بَاقِيَ الْخَبَرِ» .

L11643 And thus we have narrated it through the chain of Ibn Jurayj and Ma’mar from ’Ata’ al-Khurasani from Sa’id ibn al-Musayyib: “They should take the sacrificial animal as expiation for that matter; otherwise, are the people merely jesting?” We said to them: “Had we sought to cling to invalid proofs, we would have found better than every narration you have clung to here.” As narrated by ’Abdullah ibn Rabi’, from Muhammad ibn Mu’awiyah, from Ahmad ibn Shu’ayb, from Muhammad ibn Bashshar, from Yahya—Ibn Sa’id al-Qattan—and ’Abd al-Rahman ibn Mahdi, both said together: From Sufyan al-Thawri, from Habib ibn Abi Thabit, from Abu al-Mutawwis, from his father, from Abu Hurayrah, who said: The Messenger of Allah (peace be upon him) said: “Whoever breaks the fast of a day in Ramadan without a valid concession or illness, the fasting of a lifetime will not make up for it even if he observes it.”

وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ جُرَيْجٍ وَمَعْمَرٍ عَنْ عَطَاءٍ الْخُرَاسَانِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ -: فَلْيَأْخُذُوا بِالْبَدَنَةِ فِي الْكَفَّارَةِ فِي ذَلِكَ، وَإِلَّا فَالْقَوْمُ مُتَلَاعِبُونَ؟ وَقُلْنَا لَهُمْ: لَوْ أَرَدْنَا التَّعَلُّقَ بِمَا لَا يَصِحُّ لَوَجَدْنَا خَيْرًا مِنْ كُلِّ خَبَرٍ تَعَلَّقْتُمْ بِهِ هَاهُنَا، كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ ثنا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانِ - وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ قَالَا جَمِيعًا: ثنا سُفْيَانُ هُوَ الثَّوْرِيُّ - عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ حَدَّثَنِي أَبُو الْمُطَوِّسِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أَفْطَرَ يَوْمًا مِنْ رَمَضَانَ - مِنْ غَيْرِ رُخْصَةٍ وَلَا مَرَضٍ - لَمْ يَقْضِ عَنْهُ صِيَامُ الدَّهْرِ وَإِنْ صَامَهُ» .

L11644–11645 Aḥmad ibn Shuʿayb said: Muʿammal ibn Hishām reported to us: Ismāʿīl narrated from Shuʿbah, from Ḥabīb ibn Abī Thābit, from ʿUmārah ibn ʿUmayr, from Abū’l-Muṭawwis, from his father, from Abū Hurayrah, from the Prophet—peace and blessings be upon him—who said: “Whoever breaks the fast for a single day in Ramadan without a concession Allah has permitted, a lifetime’s fasting would never compensate for him.”

قَالَ أَحْمَدُ بْنُ شُعَيْبٍ: وَأَنْبَأَنَا مُؤَمَّلُ بْنُ هِشَامٍ ثنا إِسْمَاعِيلُ عَنْ شُعْبَةَ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ عُمَارَةَ بْنِ عُمَيْرٍ عَنْ أَبِي الْمُطَوِّسِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَفْطَرَ يَوْمًا مِنْ رَمَضَانَ - مِنْ غَيْرِ رُخْصَةٍ رَخَّصَهَا اللَّهُ لَمْ يَقْضِ عَنْهُ صَوْمُ الدَّهْرِ» .

L11646 Ahmad ibn Shu’ayb said: Mahmud ibn Ghaylan informed us, Abu Dawud al-Tayalisi narrated to us, Shu‘bah narrated to us, saying: Habib ibn Abi Thabit informed me, saying: I heard ‘Umarah ibn ‘Umayr narrating from Abu al-Mutawwis. Habib said: I saw Abu al-Mutawwis, so Habib’s meeting with him was validated. Is this not better than all they have relied upon? As for us, we do not depend on it, for Abu al-Mutawwis is not renowned for integrity. May Allah protect us from citing a weak narrator when he agrees with us and rejecting him when he contradicts us? The eminent predecessors held

قَالَ أَحْمَدُ بْنُ شُعَيْبٍ: أَنْبَأَنَا مَحْمُودُ بْنُ غَيْلَانَ ثنا أَبُو دَاوُد الطَّيَالِسِيُّ ثنا شُعْبَةُ، قَالَ: أَخْبَرَنِي حَبِيبُ بْنُ أَبِي ثَابِتٍ قَالَ: سَمِعْت عُمَارَةَ بْنَ عُمَيْرٍ يُحَدِّثُ عَنْ أَبِي الْمُطَوِّسِ، قَالَ حَبِيبٌ: وَقَدْ رَأَيْت أَبَا الْمُطَوِّسِ، فَصَحَّ لِقَاؤُهُ إيَّاهُ فَهَذَا أَحْسَنُ مِنْ كُلِّ مَا تَعَلَّقُوا بِهِ؟ وَأَمَّا نَحْنُ فَلَا نَعْتَمِدُ عَلَيْهِ، لِأَنَّ أَبَا الْمُطَوِّسِ غَيْرُ مَشْهُورٍ بِالْعَدَالَةِ، وَيُعِيذُنَا اللَّهُ مِنْ

a view similar to ours. It was narrated to us through the chain of ʻAbdullah ibn al-Mubarak from Hisham al-Dastuwa'i from Yahya ibn Abi Kathir from ʻAbd al-Rahman ibn al-Baylamani: that Abu Bakr al-Siddiq said to ʻUmar ibn al-Khattab—may Allah be pleased with them—among his instructions to him: "Whoever fasts the month of Ramadan at another time, it will not be accepted from him, even if he were to fast for all eternity."

أَنَّ نَحْتَجَّ بِضَعِيفٍ إِذَا وَافَقَنَا، وَنَرُدُّهُ إِذَا خَالَفَنَا؟ وَقَالَ بِمِثْلِ قَوْلِنَا أَفَاضِلُ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْبَيْلَمَانِيِّ: أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ قَالَ لِعُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُمَا - فِيمَا أَوْصَاهُ بِهِ: مَنْ صَامَ شَهْرَ رَمَضَانَ فِي غَيْرِهِ لَمْ يُقْبَلْ مِنْهُ وَلَوْ صَامَ الدَّهْرَ أَجْمَعَ.

L11647 And through the chain of Sufyan al-Thawri from Abdullah ibn Sinan from Abdullah ibn Abi al-Hudhayl from Umar ibn al-Khattab, that an elderly man who drank wine during Ramadan was brought to him. He said, "To the nostrils! To the nostrils! Our two sons are fasting!" Then he lashed him eighty times and sent him to the Levant.

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ سِنَانٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي الْهُذَيْلِ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ أُتِيَ بِشَيْخٍ شَرِبَ الْخَمْرَ فِي رَمَضَانَ، فَقَالَ لِلْمَنْخَرَيْنِ لِلْمَنْخَرَيْنِ وِلْدَانُنَا صِيَامٌ ثُمَّ ضَرَبَهُ ثَمَانِينَ وَصَيَّرَهُ إِلَى الشَّامِ.

L11648–11649 Abū Muḥammad said: Did he not mention making up the fast or expiation? From the narration of Sufyān, from ʿAṭāʾ ibn Abī Marwān, from his father: that the Negus was brought to ʿAlī ibn Abī Ṭālib after he had drunk wine during Ramadan. He struck him eighty, then struck him twenty the next day, saying: "We struck you twenty for your audacity against Allah and your breaking the fast in Ramadan?" ʿAlī said: He did not mention making up the fast or expiation.

قَالَ أَبُو مُحَمَّد: وَلَمْ يَذْكُرْ قَضَاءً وَلَا كَفَّارَةً؟ وَمِنْ طَرِيقِ سُفْيَانَ عَنْ عَطَاءِ بْنِ أَبِي مَرْوَانَ عَنْ أَبِيهِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أُتِيَ بِالنَّجَاشِيِّ قَدْ شَرِبَ الْخَمْرَ فِي رَمَضَانَ، فَضَرَبَهُ ثَمَانِينَ، ثُمَّ ضَرَبَهُ مِنْ الْغَدِ عِشْرِينَ، وَقَالَ: ضَرَبْنَاكَ الْعِشْرِينَ لِجُرْأَتِكَ عَلَى اللَّهِ وَإِفْطَارِكَ فِي رَمَضَانَ؟ قَالَ عَلِيٌّ: وَلَمْ يَذْكُرْ قَضَاءً، وَلَا كَفَّارَةً

L11650 And through the narration chain of Ibn Abī Shaybah, from Abū Muʿāwiyah, from ʿUmar ibn Yaʿlā al-Thaqafī.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي مُعَاوِيَةَ عَنْ عُمَرَ بْنِ يَعْلَى الثَّقَفِيِّ.

L11651 On the authority of Arfajah, on the authority of Ali ibn Abi Talib, who said: Whoever intentionally breaks the fast on a day of Ramadan will never compensate for it, even with the entire span of time.

عَنْ عَرْفَجَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: مَنْ أَفْطَرَ يَوْمًا مِنْ رَمَضَانَ مُتَعَمِّدًا لَمْ يَقْضِهِ أَبَدًا طُولُ الدَّهْرِ.

L11652 From Ibn Masʿud: Whoever breaks the fast during a day of Ramadan without a valid excuse, his fasting for a lifetime would not suffice him—even if he were to fast it.

وَعَنْ ابْنِ مَسْعُودٍ: مَنْ أَفْطَرَ يَوْمًا مِنْ رَمَضَانَ مِنْ غَيْرِ رُخْصَةٍ لَمْ يُجْزِهِ صِيَامُ الدَّهْرِ وَإِنْ صَامَهُ.

L11653 And via the most authentic chain from Ali ibn al-Husayn, narrating from Abu Huraira, that a man broke his fast during Ramadan. Abu Huraira said: "His fasting for a year is not accepted."

وَبِأَصَحِّ طَرِيقٍ عَنْ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَجُلًا أَفْطَرَ فِي رَمَضَانَ، فَقَالَ أَبُو هُرَيْرَةَ: لَا يُقْبَلُ مِنْهُ صَوْمُ سَنَةٍ.

L11654 From the route of Al-ʿAlāʾ ibn ʿAbd al-Raḥmān, from his father, from Abū Hurayrah: Whoever breaks the fast on a day of Ramadan without making it up with a day from the worldly life, no day in this worldly life can compensate for it.

وَمِنْ طَرِيقِ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ: مَنْ أَفْطَرَ يَوْمًا مِنْ أَيَّامِ رَمَضَانَ لَمْ يَقْضِهِ يَوْمًا مِنْ أَيَّامِ الدُّنْيَا.

L11655 Abu Muhammad said: Among the foundational principles of the Hanafi school—those who go to extremes in opposing it while abandoning the Sunnah for its sake—is their stance that when a narration contradicts its transmitter among the Companions, this constitutes evidence for them of the narration's weakness or abrogation. They applied this principle to the hadith of Ibn Mughaffal and Abu Huraira concerning washing a vessel seven times after a dog's lapping, one wash being with soil. They rejected it by claiming Abu Huraira contradicted it, though they lied in this assertion. Rather, his endorsement of it has been authentically established. This represents a case where Abu Huraira contradicted the reported ruling transmitted in this matter.

قَالَ أَبُو مُحَمَّد: مِنْ أَصْلِ الْحَنَفِيِّينَ الَّذِينَ يُجَاحِشُونَ عَنْهُ - وَيَتْرُكُونَ لَهُ السُّنَنَ -: أَنَّ الْخَبَرَ إذَا خَالَفَهُ رَاوِيهِ مِنْ الصَّحَابَةِ كَانَ ذَلِكَ عِنْدَهُمْ دَلِيلًا عَلَى ضَعْفِ ذَلِكَ الْخَبَرِ أَوْ نَسْخِهِ، قَالُوا ذَلِكَ فِي حَدِيثِ ابْنِ مُغَفَّلٍ، وَأَبِي هُرَيْرَةَ فِي غَسْلِ الْإِنَاءِ مِنْ وُلُوغِ الْكَلْبِ سَبْعًا إحْدَاهُنَّ بِالتُّرَابِ، فَتَرَكُوهُ؛ لِأَنَّهُمْ ادَّعَوْا أَنَّ أَبَا هُرَيْرَةَ خَالَفَهُ، وَقَدْ كَذَبُوا فِي ذَلِكَ، بَلْ قَدْ صَحَّ عَنْهُ الْقَوْلُ بِهِ، وَهَذَا مَكَانٌ قَدْ خَالَفَ فِيهِ - أَبُو هُرَيْرَةَ مَا رُوِيَ مِنْ هَذَا الْقَضَاءِ.

L11656–11658 Saʿīd ibn al-Musayyab also disagreed with him—as we will mention after this if Allah the Exalted wills—holding the view that whoever breaks the fast on a day of Ramadan must fast for one month. Therefore, it is incumbent upon them to disregard the make-up fasts mentioned in the hadith. With these two narrations? If they say others besides Abu Hurairah and Sa'id have narrated it, we say: The washing of the vessel seven times after a dog's lapping has indeed been narrated by others besides Abu Hurairah. If they say it is impossible that Abu Hurairah possessed this report yet issued a legal opinion contradicting it, we say: Then say this regarding the report about washing the vessel: "Is it impossible that he possessed that report yet contradicts it?" Is this what they cannot escape from?

وَخَالَفَهُ أَيْضًا سَعِيدُ بْنُ الْمُسَيِّبِ - عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى، فَرَأَى عَلَى مَنْ أَفْطَرَ يَوْمًا مِنْ رَمَضَانَ صَوْمَ شَهْرٍ؛ فَيَنْبَغِي لَهُمْ إسْقَاطُ الْقَضَاءِ الْمَذْكُورِ فِي الْخَبَرِ بِهَاتَيْنِ الرِّوَايَتَيْنِ؟ فَإِنْ قَالُوا قَدْ رَوَاهُ غَيْرُ أَبِي هُرَيْرَةَ، وَغَيْرُ سَعِيدٍ؟ قُلْنَا: وَغَسْلُ الْإِنَاءِ مِنْ وُلُوغِ الْكَلْبِ سَبْعًا قَدْ رَوَاهُ غَيْرُ أَبِي هُرَيْرَةَ فَإِنْ قَالُوا مُحَالٌ أَنْ يَكُونَ عِنْدَ أَبِي هُرَيْرَةَ هَذَا الْخَبَرُ وَيُفْتِي بِخِلَافِهِ؟ قُلْنَا: فَقُولُوا هَذَا فِي خَبَرِ غَسْلِ الْإِنَاءِ: مُحَالٌ أَنْ يَكُونَ عِنْدَهُ ذَلِكَ الْخَبَرُ وَيُخَالِفُهُ وَهَذَا مَا لَا مُخْلَصَ لَهُمْ مِنْهُ؟

[مَسْأَلَةٌ الْمَرِيض وَالْمُسَافِر إذَا أَفْطَرَا]

The ruling regarding the sick person and the traveler when they break their fast.

L11659

L11660 736 - Issue: There is no obligation to make up [fasts] except upon five only: they are the menstruating women, the postpartum women (for these two must make up the days of menstruation and postpartum, there being

no disagreement from anyone regarding that), the sick, and the traveler on a journey where prayer is shortened.

٧٣٦ - مَسْأَلَةٌ: وَلَا قَضَاءَ إلَّا عَلَى خَمْسَةٍ فَقَطْ: وَهُمْ الْحَائِضُ، وَالنُّفَسَاءُ فَإِنَّهُمَا يَقْضِيَانِ أَيَّامَ الْحَيْضِ وَالنِّفَاسِ، لَا خِلَافَ فِي ذَلِكَ مِنْ أَحَدٍ، وَالْمَرِيضُ، وَالْمُسَافِرُ سَفَرًا تُقْصَرُ فِيهِ الصَّلَاةُ.

L11661 Due to the saying of Allah the Exalted: {The month of Ramadan is that in which the Qur'an was revealed as guidance for mankind, clear proofs of guidance, and the Criterion. So whoever among you witnesses the month, let him fast during it, and whoever is ill or on a journey, then let them fast an equal number of other days} [Al-Baqarah: 185].[14]

لِقَوْلِ اللَّهِ تَعَالَى: {شَهْرُ رَمَضَانَ الَّذِي أُنْزِلَ فِيهِ الْقُرْآنُ هُدًى لِلنَّاسِ وَبَيِّنَاتٍ مِنَ الْهُدَى وَالْفُرْقَانِ فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ وَمَنْ كَانَ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ} [البقرة: ١٨٥] .

L11662 The one who intentionally vomits, based on the report we mentioned earlier – and there is also scholarly consensus regarding the sick person and the traveler if they break their fast – all of them are obedient to God Almighty, and no sin is upon them except the intentional vomiter who is mindful. Indeed, he is sinful, and no expiation is required of him.

وَالْمُتَقَيِّئُ عَمْدًا، بِالْخَبَرِ الَّذِي ذَكَرْنَا قَبْلُ، وَهَذَا كُلُّهُ أَيْضًا مُجْمَعٌ عَلَيْهِ فِي الْمَرِيضِ، وَالْمُسَافِرِ إذَا أَفْطَرَا، وَكُلُّهُمْ مُطِيعٌ لِلَّهِ تَعَالَى، لَا إثْمَ عَلَيْهِمْ، إلَّا الْمُتَقَيِّئَ، وَهُوَ ذَاكِرٌ، فَإِنَّهُ آثِمٌ وَلَا كَفَّارَةَ عَلَيْهِ

L11663 **A legal case: Deliberately invalidating the fast during Ramadan by means of an impermissible act for him.**

[مَسْأَلَةٌ تَعَمَّدَ فِطْرًا فِي رَمَضَانَ بِمَا لَمْ يُبَحْ لَهُ]

L11664–11666 Issue 737: There is no expiation required for one who intentionally breaks the fast in Ramadan through impermissible means, except for one who engages in vaginal intercourse with his wife or female slave whom he is lawfully permitted to have intercourse with, if he was not fasting at all. In that case, expiation is incumbent upon him, as we will detail hereafter, God Almighty willing. No making up the fast is obligated for the missed day, for the reason we mentioned. The proof of this is that the Messenger of God—peace and blessings be upon him—only mandated expiation upon one who intentionally had intercourse with his wife. The term "his wife" applies to the lawfully permitted female slave, just as it applies to the wife. The plural of "woman" (imra'a) is not derived from its root; rather, it is "women" (nisā'), and there is no singular form for "women" from its root. God Almighty said: "Your women are a tilth for you" (Quran 2:223), which indisputably

؟ ٧٣٧ - مَسْأَلَةٌ: وَلَا كَفَّارَةَ عَلَى مَنْ تَعَمَّدَ فِطْرًا فِي رَمَضَانَ بِمَا لَمْ يُبَحْ لَهُ، إلَّا مَنْ وَطِئَ فِي الْفَرْجِ مِنْ امْرَأَتِهِ أَوْ أَمَتِهِ الْمُبَاحِ لَهُ وَطْؤُهُمَا إذَا لَمْ يَكُنْ صَائِمًا فَقَطْ، فَإِنَّ عَلَيْهِ الْكَفَّارَةَ، عَلَى مَا نَصِفُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى، وَلَا يُقَدَّرُ الْقَضَاءُ، لِمَا ذَكَرْنَا؟ بُرْهَانُ ذَلِكَ -: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُوجِبْ الْكَفَّارَةَ إلَّا عَلَى وَاطِئِ امْرَأَتِهِ عَامِدًا، وَاسْمُ امْرَأَتِهِ يَقَعُ عَلَى الْأَمَةِ الْمُبَاحِ وَطْؤُهَا، كَمَا يَقَعُ عَلَى الزَّوْجَةِ، وَلَا جَمْعَ لِلْمَرْأَةِ مِنْ لَفْظِهَا، لَكِنْ جَمْعُ الْمَرْأَةِ عَلَى نِسَاءٍ، وَلَا وَاحِدَ لِلنِّسَاءِ مِنْ لَفْظِهِ، قَالَ تَعَالَى: {نِسَاؤُكُمْ حَرْثٌ لَكُمْ} [البقرة: ٢٢٣] فَدَخَلَ فِي ذَلِكَ - بِلَا خِلَافٍ -: الْأَمَةُ الْمُبَاحَةُ، وَالزَّوْجَةُ؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ

[14] **Qur'an references (L11661):** Qur'an 2:185 (Al-Baqarah).

includes both the lawfully permitted female slave and the wife? Narrated by Abdullah ibn Yusuf, from Ahmad ibn Fath, from Abdul Wahhab ibn Isa, from Ahmad ibn Muhammad. Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Yahya ibn Yahya, Abu Bakr ibn Abi Shaybah, Zuhayr ibn Harb, and Muhammad ibn Abdullah ibn Numayr all narrated to us—all from Sufyan ibn Uyaynah from al-Zuhri from Humaid ibn Abd al-Rahman from Abu Hurayrah, who said: A man came to the Messenger of Allah—peace and blessings be upon him—and said, "I am ruined, O Messenger of Allah!" He asked, "What has ruined you?" The man replied, "I lay with my wife during Ramadan." He asked, "Can you afford to free a slave?" The man said, "No." He asked, "Can you fast two consecutive months?" The man said, "No." He asked, "Can you afford to feed sixty poor people?" The man said, "No." Then he sat down. The Prophet—peace and blessings be upon him—was brought a palm-leaf basket filled with dates, and he said, "Give this as charity." The man replied, "Is there anyone poorer than us? By the two lava plains, there is no household more in need of it than us!" The Prophet—peace and blessings be upon him—laughed until his canine teeth became visible, then said, "Go and feed it to your family."[15]

بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَزُهَيْرُ بْنُ حَرْبٍ، وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ، كُلُّهُمْ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ قَالَ «جَاءَ رَجُلٌ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: هَلَكْتُ يَا رَسُولَ اللَّهِ، قَالَ: وَمَا أَهْلَكَكَ؟ قَالَ: وَقَعْتُ عَلَى امْرَأَتِي فِي رَمَضَانَ، قَالَ: هَلْ تَجِدُ مَا تَعْتِقُ رَقَبَةً؟ قَالَ: لَا، قَالَ: فَهَلْ تَسْتَطِيعُ أَنْ تَصُومَ شَهْرَيْنِ مُتَتَابِعَيْنِ؟ قَالَ: لَا، قَالَ: فَهَلْ تَجِدُ مَا تُطْعِمُ سِتِّينَ مِسْكِينًا؟ قَالَ لَا ثُمَّ جَلَسَ، فَأُتِيَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِعَرَقٍ فِيهِ تَمْرٌ، فَقَالَ: تَصَدَّقْ بِهَذَا؟ فَقَالَ: أَفْقَرَ مِنَّا فَمَا بَيْنَ لَابَتَيْهَا أَهْلُ بَيْتٍ أَحْوَجُ إِلَيْهِ مِنَّا فَضَحِكَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى بَدَتْ أَنْيَابُهُ، ثُمَّ قَالَ: اذْهَبْ فَأَطْعِمْهُ أَهْلَكَ» .

L11667 Abu Muhammad said: This was narrated by Mansur ibn al-Mu'tamir, Shu'ayb ibn Abi Hamzah, al-Layth ibn Sa'd, al-Awza'i, Ma'mar, and 'Irāq ibn Mālik: all of them from al-Zuhri, from Humaid ibn Abd al-Rahman, from Abu Hurayrah, from the Messenger of Allah, peace and blessings be upon him.

قَالَ أَبُو مُحَمَّدٍ: هَكَذَا رَوَاهُ مَنْصُورُ بْنُ الْمُعْتَمِرِ، وَشُعَيْبُ بْنُ أَبِي حَمْزَةَ، وَاللَّيْثُ بْنُ سَعْدٍ، وَالْأَوْزَاعِيُّ، وَمَعْمَرٌ، وَعِرَاكُ بْنُ مَالِكٍ كُلُّهُمْ عَنْ الزُّهْرِيِّ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L11668 Ashhab differed in this wording from the rest of Al-Layth's companions; he did not impose expiation on anyone other than those we specified. The Prophet (peace be upon him) said: "Your blood and your wealth are inviolable for you." Thus, it is unlawful to appropriate anyone's property without explicit textual evidence or definitive consensus.

وَخَالَفَ أَشْهَبُ فِي هَذَا اللَّفْظِ سَائِرَ أَصْحَابِ اللَّيْثِ؟ فَلَمْ يُوجِبْ الْكَفَّارَةَ عَلَى غَيْرِ مَنْ ذَكَرْنَا، وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَحِلُّ مَالُ أَحَدٍ بِغَيْرِ نَصٍّ أَوْ إجْمَاعٍ مُتَيَقَّنٍ.

L11669 Is it not impermissible for anyone to enforce the imposition of a monetary fine that has not been ordained by the Quran or the Messenger of Allah—may Allah's peace and blessings be upon him—thereby transgressing Allah's

وَلَا يَحِلُّ لِأَحَدٍ إيجَابُ غَرَامَةٍ لَمْ يُوجِبْهَا الْقُرْآنُ وَلَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيَتَعَدَّى بِذَلِكَ حُدُودَ اللَّهِ، وَيُبِيحُ الْمَالَ الْمُحَرَّمَ، وَيُشَرِّعُ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى؟

[15] **Qur'an references (L11664):** Qur'an 2:223 (Al-Baqarah).

boundaries, legitimizing forbidden wealth, and legislating what Allah the Exalted has not authorized?

فَإِنْ قِيلَ: فَلِمَ لَمْ تُوجِبُوا الْكَفَّارَةَ عَلَى كُلِّ مَنْ أَفْطَرَ فِي رَمَضَانَ فِطْرًا لَمْ يُبَحْ لَهُ، بِأَيِّ شَيْءٍ أَفْطَرَ؟ بِمَا رَوَيْتُمُوهُ مِنْ طَرِيقِ مَالِكٍ، وَابْنِ جُرَيْجٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، كُلُّهُمْ عَنِ الزُّهْرِيِّ، وَمِنْ طَرِيقِ أَشْهَبَ عَنِ اللَّيْثِ عَنِ الزُّهْرِيِّ، ثُمَّ اتَّفَقُوا: عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَجُلًا أَفْطَرَ فِي نَهَارِ رَمَضَانَ، فَأَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُكَفِّرَ بِعِتْقِ رَقَبَةٍ، أَوْ صِيَامِ شَهْرَيْنِ مُتَتَابِعَيْنِ، أَوْ إِطْعَامِ سِتِّينَ مِسْكِينًا؟ فَقَالَ: لَا أَجِدُ، فَأُتِيَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِعَرَقِ تَمْرٍ، فَقَالَ: خُذْ هَذَا فَتَصَدَّقْ بِهِ؟ فَقَالَ: يَا رَسُولَ اللَّهِ لَا أَجِدُ أَحْوَجَ إِلَيْهِ مِنِّي فَضَحِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى بَدَتْ أَنْيَابُهُ، وَقَالَ: كُلْهُ» .

L11670–11673 If it is asked: Why do you not obligate expiation upon everyone who breaks the fast in Ramadan through a fast-breaking that was not permissible for him, by what means he broke it? This is based on what you have narrated through the chains of Mālik, Ibn Jurayj, and Yaḥyā ibn Saʿīd al-Anṣārī—all from al-Zuhrī—and through the chain of Ashhab from al-Layth from al-Zuhrī. Then they all concurred in narrating from Ḥumayd ibn ʿAbd al-Raḥmān from Abū Hurayrah: “A man broke his fast during the day in Ramadan, so the Messenger of Allah—peace and blessings be upon him—commanded him to atone by freeing a slave, fasting two consecutive months, or feeding sixty needy people.” The man said, “I cannot find.” Then the Messenger of Allah—peace and blessings be upon him—was brought a basket of dates, and he said, “Take this and give it in charity.” The man replied, “O Messenger of Allah, I cannot find.” “He is more in need of it than I,” so the Messenger of Allah - may Allah bless him and grant him peace - laughed until his molars became visible and said: “Eat it.”

قُلْنَا: لِأَنَّهُ خَبَرٌ وَاحِدٌ عَنْ رَجُلٍ وَاحِدٍ، فِي قِصَّةٍ وَاحِدَةٍ، بِلَا شَكٍّ، فَرَوَاهُ مَنْ ذَكَرْنَا عَنِ الزُّهْرِيِّ مُجْمَلًا مُخْتَصَرًا، وَرَوَاهُ الْآخَرُونَ الَّذِي ذَكَرْنَا قَبْلُ وَأَتَوْا بِلَفْظِ الْخَبَرِ كَمَا وَقَعَ، كَمَا سُئِلَ - عَلَيْهِ السَّلَامُ -، وَكَمَا أَفْتَى، وَبَيَّنُوا فِيهِ أَنَّ تِلْكَ الْقَضِيَّةَ إِنَّمَا كَانَتْ وَطْئًا لِامْرَأَتِهِ، وَرَتَّبُوا الْكَفَّارَةَ كَمَا أَمَرَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَحَالَ مَالِكٌ، وَابْنُ جُرَيْجٍ، وَيَحْيَى: صِفَةَ التَّرْتِيبِ، وَأَجْمَلُوا الْأَمْرَ، وَأَتَوْا بِغَيْرِ لَفْظِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمْ يَجُزْ الْأَخْذُ بِمَا رَوَوْهُ مِنْ ذَلِكَ، مِمَّا هُوَ لَفْظٌ مِنْ دُونِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - مِمَّنْ اخْتَصَرَ الْخَبَرَ وَأَجْمَلَهُ، وَكَانَ الْفَرْضُ أَخْذُ فُتْيَا النَّبِيِّ - عَلَيْهِ السَّلَامُ - كَمَا أَفْتَى بِهَا، بِنَصِّ كَلَامِهِ فِيمَا أَفْتَى بِهِ؟ فَإِنْ قِيلَ: فَإِنَّا نَقِيسُ كُلَّ مُفْطِرٍ عَلَى الْمُفْطِرِ بِالْوَطْءِ؛

L11674–11676 We said: because it is a single narration from a single man in a single case, without any doubt, so those we mentioned transmitted it. From al-Zuhri in a summarized and concise form, while the other narrators we previously mentioned reported it with the precise wording of the incident as it occurred—just as he (peace be upon him) was asked, issued the ruling, and they clarified within it that this case specifically involved intercourse with one’s wife. They outlined the expiation in the sequence commanded by the Messenger of Allah (peace and blessings be upon him). Mālik, Ibn Jurayj, and Yaḥyā referenced the description of the sequence but omitted details, generalized the matter, and used wording other than that of the Prophet (peace be upon him). It is therefore impermissible to adopt what they narrated from such reports—those phrased by narrators other than the Prophet (peace be upon him) who condensed and generalized the report. The obligation is to adhere strictly to the Prophet’s ruling (peace be upon him) as he issued it, with the explicit wording of his statement in his verdict. If it is said: “We analogize every person who breaks the fast to one who breaks it through intercourse,

since all involve prohibited breaking of the fast," we respond: All analogical reasoning is invalid. Even if analogy were valid, this specific analogy would remain invalid, for there exists a report about one who intentionally induces vomiting—requiring only makeup fasting without expiation.

لِأَنَّهُ كُلُّهُ فِطْرٌ مُحَرَّمٌ؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَاهُنَا هَذَا الْقِيَاسُ بَاطِلًا، لِأَنَّهُ قَدْ جَاءَ خَبَرُ الْمُتَقَيِّءِ عَمْدًا، وَفِيهِ الْقَضَاءُ، وَلَمْ يَذْكُرْ فِيهِ كَفَّارَةً.

L11677 What makes the analogy of other fasting-breakers to the ruling on one who engages in intercourse more valid than analogizing them to the ruling on one who intentionally vomits? The eater and the drinker resemble the intentional vomiter more than the one who engages in intercourse, because their breaking of the fast originates entirely from their throats—not their private parts, unlike the latter. Moreover, their breaking of the fast does not necessitate ghusl (ritual bath), unlike that of the one who engages in intercourse. Thus, this is sounder in analogy—if analogy were valid. They have unanimously agreed that no expiation is required for one who intentionally interrupts their prayer, though prayer holds greater sanctity and stricter obligation than fasting. Consequently, expiation deviates from the foundational principle, rendering analogy based on its report impermissible. If one argues: "I impose expiation on the intentional vomiter because I include him among those who broke the fast and were commanded to perform expiation, treating this report transmitted by Malik, Ibn Jurayj, and Yahya from al-Zuhrī as supplementary to the report regarding intentional vomiting," we reply: This necessarily applies to anyone who employs the wording of Malik's report, Ibn Jurayj's report, and Yahya's report from al-Zuhrī. Otherwise, it is self-contradictory. Indeed, some jurists have upheld this position.

فَمَا الَّذِي جَعَلَ قِيَاسَ سَائِرِ الْمُفْطِرِينَ عَلَى حُكْمِ الْوَاطِئِ أَوْلَى مِنْ قِيَاسِهِمْ عَلَى حُكْمِ الْمُتَعَمِّدِ لِلْقَيْءِ؟ وَالْآكِلُ، وَالشَّارِبُ أَشْبَهُ بِالْمُتَعَمِّدِ لِلْقَيْءِ مِنْهُمَا بِالْوَاطِئِ؛ لِأَنَّ فِطْرَهُمْ كُلَّهُمْ مِنْ حُلُوقِهِمْ لَا مِنْ فُرُوجِهِمْ، بِخِلَافِ الْوَاطِئِ؛ وَلِأَنَّ فِطْرَهُمْ كُلَّهُمْ لَا يُوجِبُ الْغُسْلَ، بِخِلَافِ فِطْرِ الْوَاطِئِ؛ فَهَذَا أَصَحُّ فِي الْقِيَاسِ، لَوْ كَانَ الْقِيَاسُ حَقًّا؟ وَقَدْ أَجْمَعُوا عَلَى أَنَّهُ لَا كَفَّارَةَ عَلَى الْمُتَعَمِّدِ لِقَطْعِ صَلَاتِهِ؛ وَالصَّلَاةُ أَعْظَمُ حُرْمَةً وَآكَدُ مِنَ الصِّيَامِ، فَصَارَتِ الْكَفَّارَةُ خَارِجَةً عَنِ الْأَصْلِ، فَلَمْ يَجُزْ أَنْ يُقَاسَ عَلَى خَبَرِهَا؟ فَإِنْ قَالَ: إِنِّي أُوجِبُ الْكَفَّارَةَ عَلَى الْمُتَعَمِّدِ لِلْقَيْءِ، لِأَنِّي أُدْخِلُهُ فِي جُمْلَةِ مَنْ أَفْطَرَ فَأُمِرَ بِالْكَفَّارَةِ، وَأَجْعَلُ هَذَا الْخَبَرَ الَّذِي رَوَاهُ مَالِكٌ، وَابْنُ جُرَيْجٍ، وَيَحْيَى عَنِ الزُّهْرِيِّ -: زَائِدًا عَلَى مَا فِي خَبَرِ الْمُتَعَمِّدِ الْقَيْءَ؟ قُلْنَا: هَذَا لَازِمٌ لِكُلِّ مَنِ اسْتَعْمَلَ لَفْظَ خَبَرِ مَالِكٍ، وَابْنِ جُرَيْجٍ عَنِ الزُّهْرِيِّ لَازِمٌ لَهُ، وَإِلَّا فَهُوَ مُتَنَاقِضٌ، وَقَدْ قَالَ بِهَذَا بَعْضُ الْفُقَهَاءِ.

L11678 It has been narrated from Abu Thawr and Ibn al-Majishun. However, those who held this view did not speak except to assert the predominance of the narrations from all of al-Zuhri's companions - which we have previously prioritized - over what these [scholars] exclusively abbreviated.

وَرُوِيَ عَنْ أَبِي ثَوْرٍ، وَابْنِ الْمَاجِشُونِ، إِلَّا أَنَّ مَنْ ذَهَبَ إِلَى هَذَا لَمْ يُكَلِّمْ إِلَّا فِي تَغْلِيبِ رِوَايَةِ سَائِرِ أَصْحَابِ الزُّهْرِيِّ الَّتِي قَدَّمْنَا عَلَى مَا اخْتَصَرَهُ هَؤُلَاءِ فَقَطْ.

L11679–11680 There is no position except our view or the position of those who mandate expiation and making up the fast for every person who breaks it, regardless of the manner in which they broke it. This is based on the generality of the narrations from Mālik, Ibn Jurayj, and Yaḥyā, and by analogy in totality to the ruling for those who break the fast through sexual intercourse or vomiting.

وَلَيْسَ إِلَّا قَوْلُنَا أَوْ قَوْلُ مَنْ أَوْجَبَ الْكَفَّارَةَ وَالْقَضَاءَ عَلَى كُلِّ مُفْطِرٍ، بِأَيِّ وَجْهٍ أَفْطَرَ، بِعُمُومِ رِوَايَةِ مَالِكٍ، وَابْنِ جُرَيْجٍ، وَيَحْيَى، وَبِالْقِيَاسِ جُمْلَةً عَلَى الْمُفْطِرِ بِالْوَطْءِ وَبِالْقَيْءِ.

وَأَمَّا الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: فَلَمْ يَتَعَلَّقُوا بِشَيْءٍ مِنْ هَذَا الْخَبَرِ أَصْلًا، وَلَا بِالْقِيَاسِ، وَلَا بِقَوْلِ أَحَدٍ مِنَ السَّلَفِ لِأَنَّهُمْ أَوْجَبُوا الْكَفَّارَةَ عَلَى بَعْضِ مَنْ أَفْطَرَ بِغَيْرِ الْوَطْءِ فَتَعَدَّوْا مَا رَوَاهُ جُمْهُورُ أَصْحَابِ الزُّهْرِيِّ، وَأَسْقَطُوا الْكَفَّارَةَ عَنْ بَعْضِ مَنْ أَفْطَرَ بِغَيْرِ الْوَطْءِ، مِمَّا قَدْ أَوْجَبَهَا فِيهِ غَيْرُهُمْ، فَخَالَفُوا مَا رَوَاهُ مَالِكٌ، وَيَحْيَى، وَابْنُ جُرَيْجٍ؛ فَخَالَفُوا كُلَّ لَفْظِ خَبَرٍ وَرَدَ فِي ذَلِكَ جُمْلَةً وَخَالَفُوا الْقِيَاسَ؛ إِذْ لَمْ يُوجِبُوا الْكَفَّارَةَ عَلَى بَعْضِ مَنْ أَفْطَرَ بِغَيْرِ الْوَطْءِ وَبِالْوَطْءِ، وَلَمْ يَتَّبِعُوا ظَاهِرَ الْآثَارِ؛ إِذْ أَوْجَبُوهَا عَلَى بَعْضِ مَنْ أَفْطَرَ بِغَيْرِ الْوَطْءِ عَلَى مَا نَذْكُرُ مِنْ أَقْوَالِهِمْ بَعْدَ هَذَا؛ فَلَا يَجُوزُ إِيهَامُهُمْ بِأَنَّهُمْ تَعَلَّقُوا فِي هَذَا الْمَوْضِعِ بِشَيْءٍ مِنَ الْآثَارِ، أَوْ بِشَيْءٍ مِنَ الْقِيَاسِ -: عَلَى مَنْ نَبَّهْنَاهُ عَلَى تَخَاذُلِ أَقْوَالِهِمْ فِي ذَلِكَ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L11681 As for the Ḥanafīs, Mālikīs, and Shāfiʿīs: they did not rely on any part of this report whatsoever, nor on Analogy, nor on any statement from the Salaf. This is because they obligated expiation upon some who broke their fast without sexual intercourse, thereby overstepping what the majority of al-Zuhrī's companions narrated. They also exempted some who broke their fast without sexual intercourse from expiation in cases where others had obligated it, thereby contradicting what Mālik, Yaḥyā, and Ibn Jurayj transmitted. Thus, they rejected every textual report on this matter in its entirety, and contradicted Analogy by not obligating expiation upon some who broke their fast either without or with sexual intercourse. They further deviated from the apparent meaning of the traditions, as they obligated expiation upon some who broke their fast without sexual intercourse—as we will later mention in their statements. Therefore, it is impermissible to imply that they relied on any traditions or any Analogy in this matter—for those regarding whom we have highlighted the mutual inconsistency of their positions on this. And success is from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ اخْتَلَفَ السَّلَفُ فِي هَذَا، فَنَذْكُرُ إِنْ شَاءَ اللَّهُ تَعَالَى مَا يَسَّرَ اللَّهُ عَزَّ وَجَلَّ لِذِكْرِهِ مِنْ أَقْوَالِهِمْ، ثُمَّ نُعْقِبُ بِأَقْوَالِ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، الَّتِي لَا مُتَعَلَّقَ لَهَا بِالْقُرْآنِ وَلَا بِشَيْءٍ مِنَ الرِّوَايَاتِ، وَالسُّنَنِ، لَا صَحِيحِهَا وَلَا سَقِيمِهَا، وَلَا بِإِجْمَاعٍ، وَلَا بِقَوْلِ صَاحِبٍ، وَلَا بِقِيَاسٍ، وَلَا بِرَأْيٍ لَهُ وَجْهٌ، وَلَا بِاحْتِيَاطٍ، وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ؟ فَقَالَتْ طَائِفَةٌ: لَا كَفَّارَةَ عَلَى مُفْطِرٍ فِي رَمَضَانَ بِوَطْءٍ وَلَا بِغَيْرِهِ -: رُوِّينَا بِأَصَحِّ إِسْنَادٍ عَنِ الْحَجَّاجِ بْنِ الْمِنْهَالِ: ثنا أَبُو عَوَانَةَ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ - عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، فِي رَجُلٍ أَفْطَرَ يَوْمًا مِنْ رَمَضَانَ، قَالَ: يَسْتَغْفِرُ اللَّهَ وَيَصُومُ يَوْمًا مَكَانَهُ؟ وَعَنِ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَأَيُّوبَ السِّخْتِيَانِيِّ، وَحَبِيبِ بْنِ الشَّهِيدِ، وَهِشَامِ بْنِ حَسَّانَ، قَالَ حَمَّادٌ: عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَقَالَ أَيُّوبُ، وَحَبِيبٌ وَهِشَامٌ كُلُّهُمْ عَنْ مُحَمَّدِ بْنِ سِيرِينَ. ثُمَّ اتَّفَقَ إِبْرَاهِيمُ، وَابْنُ سِيرِينَ، فِيمَنْ وَطِئَ

L11682–11684 Abu Muhammad said: The predecessors have differed regarding this matter. We will mention, God willing, what God Almighty has facilitated to recount of their statements, then we will follow with the statements of the Hanafis, Malikis, and Shafi'is—which have no connection to the Quran, nor to any narrations or traditions (neither sound nor weak), nor to consensus, nor to a companion's opinion, nor to analogy, nor to a rationally defensible personal view, nor to precaution. And in God Almighty do we seek support. A group said: There is no expiation for one who breaks the fast in Ramadan through intercourse or otherwise. It was narrated to us through the most authentic chain from al-Hajjaj ibn al-Minhal: Abu Awana narrated to us from al-Mughira ibn Miqsam from Ibrahim al-Nakha'i concerning a man who broke a day of Ramadan. He said: He should seek God's forgiveness and fast a day in its place. From al-Hajjaj ibn al-Minhal from Hammad ibn Salamah, who narrated from Hammad ibn Abi Sulayman, Ayyub al-Sikhtiyani, Habib ibn al-Shahid, and Hisham ibn Hassan. Hammad said: From Ibrahim al-Nakha'i. Ayyub, Habib, and Hisham—all of them—said: From Muhammad ibn Sirin. Then Ibrahim and Ibn Sirin concurred regarding one who engages

in intercourse during Ramadan: he must repent to God. Exalted be He, he seeks closeness to Him as much as he is able, and fasts a day in its place.

عَمْدًا فِي رَمَضَانَ: أَنَّهُ يَتُوبُ إِلَى اللَّهِ تَعَالَى، وَيَتَقَرَّبُ إِلَيْهِ مَا اسْتَطَاعَ، وَيَصُومُ يَوْمًا مَكَانَهُ.

L11685 We have also narrated it through Ma'mar's chain from Ayyub from Ibn Sirīn regarding one who intentionally eats during a day of Ramadan—he said: "Must he make up a day and seek Allah's forgiveness?" From Hajjāj ibn al-Minhāl's chain: Jarīr ibn Ḥāzim narrated to us—Ya'lā ibn Ḥakīm reported to me, saying: I asked Sa'īd ibn Jubayr about a man who engaged in sexual intercourse with his wife during Ramadan: "What expiates it?" He replied: "We do not know what expiates it: whether a sin or an error. Allah the Exalted will do with him concerning it as He wills—and must he make up a day?" From Hajjāj ibn al-Minhāl's chain: Abū 'Awāna narrated to us from Ismā'īl ibn Abī Khālid from 'Āmir al-Sha'bī that he said regarding one who breaks a day of Ramadan: "If I were him, I would make up a day." These—Ibn Sirīn, al-Nakha'ī, al-Sha'bī, and Sa'īd ibn Jubayr—hold that no expiation is required for one who intentionally engages in sexual intercourse during Ramadan's daytime. Yet a group affirmed expiation, then differed. We have narrated through Wakī''s chain from Ja'far ibn Barqān from Thābit ibn al-Ḥajjāj al-Kilābī from 'Awf ibn Mālik al-Ashja'ī, who said: 'Umar ibn al-Khaṭṭāb stated: "Does fasting a day outside Ramadan and feeding a poor person equal a day of Ramadan?"—and he joined his two fingers, indicating equivalence. Abū Muḥammad said: "We have observed them adopting 'Umar's ruling regarding the waiting period due to impotence and in setting eighty lashes as the punishment for wine."

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ عَنِ ابْنِ سِيرِينَ فِيمَنْ أَكَلَ يَوْمًا مِنْ رَمَضَانَ عَامِدًا، قَالَ: يَقْضِي يَوْمًا وَيَسْتَغْفِرُ اللَّهَ؟ وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ: ثنا جَرِيرُ بْنُ حَازِمٍ حَدَّثَنِي يَعْلَى بْنُ حَكِيمٍ قَالَ: سَأَلْت سَعِيدَ بْنَ جُبَيْرٍ عَنْ رَجُلٍ وَقَعَ بِامْرَأَتِهِ فِي رَمَضَانَ: مَا يُكَفِّرُهُ؟ فَقَالَ: مَا نَدْرِي مَا يُكَفِّرُهُ ذَنْبٌ أَوْ خَطِيئَةٌ، يَصْنَعُ اللَّهُ تَعَالَى بِهِ فِيهِ مَا يَشَاءُ وَيَصُومُ يَوْمًا مَكَانَهُ؟ وَمِنْ طَرِيقِ حَجَّاجِ بْنِ الْمِنْهَالِ: ثنا أَبُو عَوَانَةَ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ عَامِرٍ الشَّعْبِيِّ أَنَّهُ قَالَ فِيمَنْ أَفْطَرَ يَوْمًا مِنْ رَمَضَانَ: لَوْ كُنْت أَنَا لَصُمْت يَوْمًا مَكَانَهُ؟ فَهَؤُلَاءِ: ابْنُ سِيرِينَ، وَالنَّخَعِيُّ، وَالشَّعْبِيُّ، وَسَعِيدُ بْنُ جُبَيْرٍ: لَا يَرَوْنَ عَلَى الْوَاطِئِ فِي نَهَارِ رَمَضَانَ عَامِدًا كَفَّارَةً وَقَالَتْ طَائِفَةٌ بِالْكَفَّارَةِ، ثُمَّ اخْتَلَفُوا فَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ جَعْفَرِ بْنِ بَرْقَانَ عَنْ ثَابِتِ بْنِ الْحَجَّاجِ الْكِلَابِيِّ عَنْ عَوْفِ بْنِ مَالِكٍ الْأَشْجَعِيِّ قَالَ قَالَ عُمَرُ بْنُ الْخَطَّابِ: صَوْمُ يَوْمٍ مِنْ غَيْرِ رَمَضَانَ وَإِطْعَامُ مِسْكِينٍ يَعْدِلُ يَوْمًا مِنْ رَمَضَانَ وَجَمَعَ بَيْنَ أُصْبُعَيْهِ؟ قَالَ أَبُو مُحَمَّدٍ: وَعَهِدْنَاهُمْ يُقَلِّدُونَ عُمَرَ فِي أَجَلِ الْعِنِّينِ، وَفِي حَدِّ الْخَمْرِ ثَمَانِينَ.

L11686 Nothing authentic is reported from Umar regarding that matter, so they should follow him here, as it is more firmly established from him than what they have followed. However, they are imposing falsehood in religion. A group has stated, as narrated from Al-Mu'tamir ibn Sulayman: "I read to Fudayl from Abu Hariz, who said: Ayyaf narrated to me, saying: I asked Sa'id ibn Jubayr about someone who breaks the fast during Ramadan. He replied: Ibn Abbas used to say, 'Whoever breaks the fast during Ramadan must free a slave, fast for one month, or feed thirty needy people.' And regarding one who has intercourse with his wife while she is menstruating,

وَلَا يَصِحُّ فِي ذَلِكَ شَيْءٌ عَنْ عُمَرَ، فَلْيُقَلِّدُوهُ هَاهُنَا، فَهُوَ أَثْبَتُ عَنْهُ مِمَّا قَلَّدُوهُ وَلَكِنَّهُمْ مُتَحَكِّمُونَ بِالْبَاطِلِ فِي الدِّينِ وَقَالَتْ طَائِفَةٌ كَمَا رُوِّينَا عَنِ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ: قَرَأْت عَلَى فُضَيْلٍ عَنْ أَبِي حَرِيزٍ قَالَ: حَدَّثَنِي أَيْفَعُ قَالَ: سَأَلْت سَعِيدَ بْنَ جُبَيْرٍ عَمَّنْ أَفْطَرَ فِي رَمَضَانَ؟ فَقَالَ: كَانَ ابْنُ عَبَّاسٍ يَقُولُ: مَنْ أَفْطَرَ فِي رَمَضَانَ فَعَلَيْهِ عِتْقُ رَقَبَةٍ، أَوْ

and hears the call to the Friday prayer but does not attend without a valid excuse—is freeing a slave likewise?"

صَوْمُ شَهْرٍ، أَوْ إِطْعَامُ ثَلَاثِينَ مِسْكِينًا، وَمَنْ وَقَعَ عَلَى امْرَأَتِهِ وَهِيَ حَائِضٌ، وَسَمِعَ أَذَانَ الْجُمُعَةِ وَلَمْ يَجْمَعْ، وَلَيْسَ لَهُ عُذْرٌ -: كَذَلِكَ عِتْقُ رَقَبَةٍ؟

L11687–11688 Ali said: This is an opinion unsupported by textual evidence. Our experience with the Ḥanafīs shows that in such matters—when aligned with their desires—they declare, "This cannot be based on opinion," leaving no alternative but to consider it divinely ordained. Thus, they must affirm this here; otherwise, are they not mocking the religion?

قَالَ عَلِيٌّ: وَهَذَا قَوْلٌ لَا نَصَّ فِيهِ، وَعَهْدُنَا بِالْحَنَفِيِّينَ يَقُولُونَ فِي مِثْلِ هَذَا - إِذَا وَافَقَ أَهْوَاءَهُمْ -: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، فَلَمْ يَبْقَ إِلَّا أَنَّهُ تَوْقِيفٌ، فَيَلْزَمُهُمْ أَنْ يَقُولُوهُ هَاهُنَا، وَإِلَّا فَهُمْ مُتَلَاعِبُونَ بِالدِّينِ؟ وَقَالَتْ طَائِفَةٌ كَمَا رُوِّينَا عَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، فِي رَجُلٍ أَفْطَرَ يَوْمًا مِنْ رَمَضَانَ: يَصُومُ ثَلَاثَةَ آلَافِ يَوْمٍ. وَقَالَتْ طَائِفَةٌ كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ: أَنَا حُمَيْدٌ أَنَّهُ سَأَلَ الْحَسَنَ الْبَصْرِيَّ عَنْ رَجُلٍ أَفْطَرَ فِي رَمَضَانَ أَرْبَعَةَ أَيَّامٍ يَأْكُلُ وَيَشْرَبُ وَيَنْكِحُ؟ فَقَالَ الْحَسَنُ: يَعْتِقُ أَرْبَعَةَ رِقَابٍ، فَإِنْ لَمْ يَجِدْ فَأَرْبَعٌ مِنَ الْبُدْنِ، فَإِنْ لَمْ يَجِدْ فَعِشْرِينَ صَاعًا مِنْ تَمْرٍ لِكُلِّ يَوْمٍ، فَإِنْ لَمْ يَجِدْ صَامَ لِكُلِّ يَوْمٍ يَوْمَيْنِ؟ وَقَدْ ذَكَرْنَا مِثْلَ هَذَا مُرْسَلًا عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ.

L11689–11691 It has also been narrated to us through the chain of Abd al-Razzaq from Ma'mar from Qatadah and al-Hasan: "The Prophet, peace be upon him, said regarding one who had intercourse with his wife during Ramadan: 'Free a slave, then sacrifice a camel.'" Then he mentioned a narration similar to that of al-Zuhri concerning date juice[?]. And through the chain of Waki' from al-Rabi' ibn Subayh from al-Hasan: "A man came to the Prophet, peace be upon him, after having had intercourse with his wife during Ramadan. He, peace be upon him, said to him: 'Free a slave.' He said: 'I do not have.' He said: 'Sacrifice a camel.' He said: 'I do not have.' He said: 'Fast two months.' He said: 'I am unable.' He said: 'Feed sixty poor people.' He said: 'I do not have.' Then the Prophet, peace be upon him, was brought a basket containing dates, so he said: 'Give this in charity.' He said: 'O Messenger of Allah, between these two obligations there is no household needier than us.' He said: 'Eat

وَرُوِّينَا أَيْضًا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ وَالْحَسَنِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي الَّذِي وَطِئَ امْرَأَتَهُ فِي رَمَضَانَ: رَقَبَةٌ، ثُمَّ بَدَنَةٌ» ، ثُمَّ ذَكَرَ نَحْوَ حَدِيثِ الزُّهْرِيِّ فِي الْعَرَقِ مِنَ التَّمْرِ؟ وَمِنْ طَرِيقِ وَكِيعٍ عَنِ الرَّبِيعِ بْنِ صُبَيْحٍ عَنِ الْحَسَنِ «أَنَّ رَجُلًا أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ وَاقَعَ أَهْلَهُ فِي رَمَضَانَ، فَقَالَ لَهُ - عَلَيْهِ السَّلَامُ -: أَعْتِقْ رَقَبَةً؟ قَالَ: لَا أَجِدُ، قَالَ: أَهْدِ بَدَنَةً؟ قَالَ: لَا أَجِدُ، قَالَ: صُمْ شَهْرَيْنِ، قَالَ: لَا أَسْتَطِيعُ، قَالَ: أَطْعِمْ سِتِّينَ مِسْكِينًا؟ قَالَ: لَا أَجِدُ، فَأُتِيَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِكْتَلٍ فِيهِ تَمْرٌ فَقَالَ: تَصَدَّقْ بِهَذَا؟ فَقَالَ: يَا رَسُولَ اللَّهِ: مَا

it, you and your family.'" And through the chain of Hammad ibn Salamah: From Umara ibn Maymun from Ata ibn Abi Rabah: "That..." The Messenger of Allah—peace and blessings of Allah be upon him—commanded the man who had intercourse with his wife during Ramadan to free a slave. He said: "I cannot find one." The Prophet said: "Offer a sacrificial animal?" The man replied: "I cannot find it," and the narrator mentioned the remainder of the hadith. If you critique Sa'id's *mursal* narration by arguing that he attributed to Sa'id what 'Aṭā' al-Khurāsānī reported regarding this matter, then Sa'id responded: "He lied. I only told him: 'Give charity, give charity.'" For al-Ḥasan, Qatādah, and 'Aṭā' also transmitted this as a *mursal* narration, and in it is the sacrificial animal as a camel.

بَيْنَهُمَا أَهْلُ بَيْتٍ أَحْوَجُ مِنَّا، قَالَ: كُلْهُ أَنْتَ وَعِيَالُكَ» ؟ وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ: أَنَا عُمَارَةُ بْنُ مَيْمُونٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ الَّذِي وَقَعَ بِامْرَأَتِهِ فِي رَمَضَانَ أَنْ يُعْتِقَ رَقَبَةً؟ قَالَ: لَا أَجِدُ، قَالَ: أَهْدِ هَدْيًا؟ قَالَ: لَا أَجِدُهُ وَذَكَرَ بَاقِيَ الْحَدِيثِ» ؟ فَإِنْ تَعَلَّلُوا فِي مُرْسَلِ سَعِيدٍ بِأَنَّهُ ذَكَرَ لَهُ مَا رَوَاهُ عَطَاءٌ الْخُرَاسَانِيُّ عَنْهُ مِنْ ذَلِكَ؟ فَقَالَ سَعِيدٌ: كَذَبَ، إِنَّمَا قُلْت لَهُ: تَصَدَّقْ تَصَدَّقْ -: فَإِنَّ الْحَسَنَ وَقَتَادَةَ، وَعَطَاءً رَوَوْهُ أَيْضًا مُرْسَلًا وَفِيهِ الْهَدْيُ بِالْبَدَنَةِ.

L11692 Abū Muḥammad said: We have known that the Ḥanafīs and Mālikīs assert, "The *mursal* is treated like the *musnad*," and this is a *mursal* transmitted through multiple chains. Thus, they are bound to uphold it, because it surpasses all other hadiths by including the mention of the ritual sacrifice (*al-hady*).

قَالَ أَبُو مُحَمَّد: عَهِدْنَا بِالْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ يَقُولُونَ: الْمُرْسَلُ كَالْمُسْنَدِ، وَهَذَا مُرْسَلٌ مِنْ طُرُقٍ، فَيَلْزَمُهُمْ الْقَوْلُ بِهِ؛ لِأَنَّهُ زَادَ عَلَى سَائِرِ الْأَحَادِيثِ ذِكْرَ الْهَدْيِ.

L11693 Also, by way of analogical reasoning: the sacrificial camel and sacrificial offering compensate for deficiencies in Hajj. We have not found any acts of worship whose shortcomings are compensated by expiation except Hajj and fasting. Thus, the sacrificial offering must have a place in fasting just as it does in Hajj. But do they not hold firmly to any stance? As for us, we do not consider mursal ḥadīth as valid evidence at all.

وَأَيْضًا - مِنْ طَرِيقِ الْقِيَاسِ: فَإِنَّ الْبَدَنَةَ، وَالْهَدْيَ يُجْبَرُ بِهِمَا نَقْصُ الْحَجِّ؛ وَلَمْ نَجِدْ شَيْئًا مِنْ الْأَعْمَالِ يُجْبَرُ نَقْصُهُ بِكَفَّارَةٍ إلَّا الْحَجَّ، وَالصَّوْمَ؛ فَيَجِبُ أَنْ يَكُونَ لِلْهَدْيِ فِي الصَّوْمِ مَدْخَلٌ كَمَا لَهُ فِي الْحَجِّ؛ وَلَكِنَّ الْقَوْمَ لَا يَثْبُتُونَ عَلَى شَيْءٍ؟ وَأَمَّا نَحْنُ فَلَا حُجَّةَ فِي مُرْسَلٍ عِنْدَنَا أَصْلًا.

L11694–11696 A group held the view, as transmitted through ʿAbd al-Razzāq's chain from Maʿmar via Qatādah, who said: I asked Saʿīd ibn al-Musayyab about a man who intentionally ate during Ramadan. He answered: "He must observe fasting for a month." I asked: "Two days?" He responded: "Fasting for a month." I counted days and he reiterated: "Fasting for a month?!" Through Wakīʿ's chain from Hishām al-Dastuwāʾī via Qatādah from Saʿīd ibn al-Musayyab concerning one who deliberately breaks the Ramadan fast: "He must fast for a month." Through al-Ḥajjāj ibn al-Minhāl's chain: Hammām ibn Yaḥyā narrated from Qatādah from Saʿīd ibn al-Musayyab, who stated: "He owes a month's fasting for every day he broke." ʿAlī remarked: "This statement

وَقَالَتْ طَائِفَةٌ كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: سَأَلْت سَعِيدَ بْنَ الْمُسَيِّبِ عَنْ رَجُلٍ أَكَلَ فِي رَمَضَانَ عَامِدًا؟ فَقَالَ: عَلَيْهِ صِيَامُ شَهْرٍ، قُلْت: يَوْمَيْنِ؟ قَالَ: صِيَامُ شَهْرٍ، قَالَ: فَعَدَدْت أَيَّامًا فَقَالَ: صِيَامُ شَهْرٍ؟ وَمِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي الَّذِي يُفْطِرُ مِنْ رَمَضَانَ مُتَعَمِّدًا: عَلَيْهِ صَوْمُ شَهْرٍ؟ وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ: ثنا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ

could imply a separate month for each day, or what Maʿmar transmitted - that he must fast one continuous month for each day broken. The latter interpretation is clearer and more incumbent, given the certainty of narrations from him." The proof of those upholding this view lies in what we received through Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār's chain, who said: Aḥmad ibn Yaḥyā al-Ṣūfī al-Kūfī narrated to us: Abū Ghassān narrated to us: Mandal narrated to us from ʿAbd al-Wārith via... Anas reported that the Messenger of Allah (peace and blessings be upon him) said: "Whoever breaks a day's fast of Ramadan must fast for a month."

الْمُسَيِّبِ قَالَ: عَلَيْهِ لِكُلِّ يَوْمٍ أَفْطَرَ شَهْرٌ؟ قَالَ عَلِيٌّ: يَحْتَمِلُ هَذَا الْقَوْلُ أَنَّهُ أَرَادَ شَهْرًا شَهْرًا عَنْ كُلِّ يَوْمٍ، وَيَحْتَمِلُ مَا رَوَاهُ مَعْمَرٌ مِنْ أَنَّ عَلَيْهِ لِكُلِّ يَوْمٍ أَفْطَرَ شَهْرًا وَاحِدًا، وَهَذَا أَظْهَرُ وَأَوْلَى، لِتَيَقُّنِ الرِّوَايَاتِ عَنْهُ؟ وَحُجَّةُ مَنْ قَالَ بِهَذَا: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارِ قَالَ: ثنا أَحْمَدُ بْنُ يَحْيَى الصُّوفِيُّ الْكُوفِيُّ ثنا أَبُو غَسَّانَ ثنا مِنْدَلٌ عَنْ عَبْدِ الْوَارِثِ عَنْ أَنَسٍ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَفْطَرَ يَوْمًا مِنْ رَمَضَانَ فَعَلَيْهِ صَوْمُ شَهْرٍ» .

L11697 Ali said: Mindal is weak, and ʿAbd al-Wārith is unknown. Had it been authentic, we would have accepted it. This opinion is binding on those who disregard weak narrators, as it is additional to other reports. It also binds the Mālikīs—who hold that a single intention at the month's outset suffices for the entire month—since the entire month is considered a single prayer and a single day, is that not the case?

قَالَ عَلِيٌّ: مِنْدَلٌ ضَعِيفٌ، وَعَبْدُ الْوَارِثِ مَجْهُولٌ. وَلَوْ صَحَّ لَقُلْنَا بِهِ، وَيَلْزَمُ الْقَوْلُ بِهِ مَنْ لَمْ يُبَالِ بِالضُّعَفَاءِ، لِأَنَّهُ زَائِدٌ عَلَى سَائِرِ الْأَخْبَارِ، وَيَلْزَمُ أَيْضًا الْمَالِكِيِّينَ الْقَائِلِينَ بِأَنَّ نِيَّةً وَاحِدَةً فِي أَوَّلِ الشَّهْرِ تُجْزِئُ لِجَمِيعِهِ، لِأَنَّهُ كُلُّهُ كَصَلَاةٍ وَاحِدَةٍ، وَكَيَوْمٍ وَاحِدٍ؟

L11698 A group stated—as reported to us through the chain of transmission of Al-Shāfiʿī—that Rabīʿah said: "Whoever intentionally breaks a fast during a day of Ramadan must fast twelve days, because Allah, the Mighty and Majestic, has distinguished that day above days in twelve months." Al-Shāfiʿī remarked: "By this reasoning, it becomes obligatory that whoever neglects a prayer on the Night of Power must perform thirty thousand prayers as recompense, for Allah the Exalted says: 'The Night of Power is better than a thousand months' (97:3)."[16]

وَقَالَتْ طَائِفَةٌ كَمَا رُوِّينَا مِنْ طَرِيقِ الشَّافِعِيِّ: أَنَّ رَبِيعَةَ قَالَ: مَنْ أَفْطَرَ يَوْمًا مِنْ رَمَضَانَ عَامِدًا فَعَلَيْهِ صِيَامُ اثْنَيْ عَشَرَ يَوْمًا، لِأَنَّ اللَّهَ عَزَّ وَجَلَّ تَخَيَّرَهُ مِنْ اثْنَيْ عَشَرَ شَهْرًا قَالَ الشَّافِعِيُّ: يَجِبُ عَلَى هَذَا أَنَّ مَنْ تَرَكَ صَلَاةً مِنْ لَيْلَةِ الْقَدْرِ أَنْ يَقْضِيَ ثَلَاثِينَ أَلْفَ صَلَاةٍ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {لَيْلَةُ الْقَدْرِ خَيْرٌ مِنْ أَلْفِ شَهْرٍ} [القدر: ٣] .

L11699 The Hanafis and Malikis—whose rulings we will mention, Allah willing—hold positions that lack legal effect, as none are traced to any of the early predecessors. As for the Shafi'is, they exhibit the least contradiction among the three schools. This is because they ruled that expiation is not obligatory for one who intentionally breaks the fast in Ramadan except for those who engage in intercourse with a human or an animal in the vagina or anus. Whoever does this incurs obligatory expiation due to penetration, regard-

وَقَالَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ مَا نَذْكُرُهُ إِنْ شَاءَ اللَّهُ تَعَالَى، وَهُوَ أَقْوَالٌ لَا تُؤَثِّرُ كَمَا هِيَ عَنْ أَحَدٍ مِنَ السَّلَفِ -: فَأَمَّا الشَّافِعِيُّونَ: فَهُمْ أَقَلُّ الثَّلَاثِ الطَّبَاقِ تَنَاقُضًا، وَذَلِكَ أَنَّهُمْ قَالُوا: لَا تَجِبُ الْكَفَّارَةُ عَلَى مُفْطِرٍ عَمْدًا فِي رَمَضَانَ إِلَّا عَلَى مَنْ جَامَعَ إِنْسَانًا، أَوْ بَهِيمَةً فِي فَرْجٍ أَوْ دُبُرٍ، فَإِنَّ مَنْ فَعَلَ هَذَا تَجِبُ عَلَيْهِ الْكَفَّارَةُ بِالْإِيلَاجِ، أَمْنَى أَمْ لَمْ

[16] **Qur'an references (L11698):** Qur'an 97:3 (Al-Qadr).

less of ejaculation. The expiation according to al-Shafi'i is as we previously detailed in the majority scholarly report transmitted by al-Zuhri from Humaid from Abu Hurairah from the Prophet—peace be upon him. In the most well-known opinions from him (Imam al-Shafi'i), he did not impose expiation on the woman subjected to intercourse, nor on one who intentionally eats, drinks, or commits other acts, requiring only the makeup fast. He analogized one who has intercourse with a woman forbidden to him to one who approaches his wife, equated one who engages in male intercourse to one who approaches his spouse, and likened one who has intercourse with an animal to one who approaches his wife. None of these analogies are found in the cited prophetic tradition.

يُمْنٍ، وَالْكَفَّارَةُ عِنْدَهُ كَمَا ذَكَرْنَا قَبْلُ مِنْ رِوَايَةِ الْجُمْهُورِ عَنْ الزُّهْرِيِّ عَنْ حُمَيْدٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَرَ عَلَى الْمَرْأَةِ الْمَوْطُوءَةِ كَفَّارَةً فِي أَشْهَرِ الْأَقْوَالِ عَنْهُ، وَلَا عَلَى مَنْ تَعَمَّدَ الْأَكْلَ، وَالشُّرْبَ، أَوْ غَيْرَ ذَلِكَ، وَلَمْ يَجْعَلْ فِي كُلِّ ذَلِكَ إلَّا الْقَضَاءَ فَقَطْ فَقَاسَ الْوَاطِئَ لِامْرَأَةٍ مُحَرَّمَةٍ عَلَيْهِ عَلَى وَاطِئِ امْرَأَتِهِ، وَقَاسَ مَنْ أَتَى ذَكَرًا عَلَى مَنْ أَتَى امْرَأَتَهُ، وَقَاسَ مَنْ أَتَى بَهِيمَةً عَلَى مَنْ أَتَى أَهْلَهُ، وَلَيْسَ شَيْءٌ مِنْ ذَلِكَ فِي الْخَبَرِ.

L11700–11702

He did not analogize the one who eats, drinks, and engages in intercourse outside the vagina leading to ejaculation, and the penetrated woman, to the one who has intercourse with his wife. Is this not a contradiction? If his followers say: "We analogized intercourse to intercourse, and eating and drinking to the one who intentionally induces vomiting," we respond: "Then why did you not analogize the one who has intercourse with an animal to the one who has intercourse with a woman regarding the obligation of the ḥadd punishment, just as you analogized them?" Regarding the obligation of expiation upon him? Why do you not analogize the woman subjected to intercourse to the man who has intercourse in imposing expiation? It is a single act they share together? Why do you not analogize one who engages in non-penetrative intercourse intentionally leading to emission, obligating expiation upon him? This case is closer to him than to one who eats? This constitutes an utterly vile contradiction in legal analogy? As for the Malikis: their contradiction is more severe. They imposed expiation and compensatory fasting upon: the one who breaks the fast by eating or drinking; one who kisses and emits semen; engages in foreplay and emits; persists in gazing and emits; one who eats, drinks, or copulates while doubting sunset, then it turns out the sun had not set; one who resolves to break fasting during Ramadan's daytime without eating, drinking, or copulating, if maintaining this resolve through most of the day; and the woman who deliberately touches her genitals and emits vaginal fluid. They ruled that a woman coerced into

وَلَمْ يَقِسْ الْآكِلَ، وَالشَّارِبَ، وَالْمُجَامِعَ دُونَ الْفَرْجِ فَيُمْنِي وَالْمَرْأَةَ الْمَوْطُوءَةَ -: عَلَى الْوَاطِئِ امْرَأَتَهُ، وَهَذَا تَنَاقُضٌ؟ فَإِنْ قَالَ أَصْحَابُهُ: قِسْنَا الْجِمَاعَ عَلَى الْجِمَاعِ، وَالْأَكْلَ وَالشُّرْبَ عَلَى الْمُتَعَمِّدِ لِلْقَيْءِ؟ قُلْنَا: فَهَلَّا قِسْتُمْ مُجَامِعَ الْبَهِيمَةِ عَلَى مُجَامِعِ الْمَرْأَةِ فِي إيجَابِ الْحَدِّ؟ كَمَا قِسْتُمُوهُ عَلَيْهِ فِي إيجَابِ الْكَفَّارَةِ؟ وَهَلَّا قِسْتُمْ الْمَرْأَةَ الْمَوْطُوءَةَ عَلَى الرَّجُلِ الْوَاطِئِ فِي إيجَابِ الْكَفَّارَةِ؟ فَهُوَ وَطْءٌ وَاحِدٌ، هُمَا فِيهِ مَعًا؟ وَهَلَّا قِسْتُمْ الْمُجَامِعَ دُونَ الْفَرْجِ عَامِدًا فَيُمْنِي عَلَى الْمُجَامِعِ فِي إيجَابِ الْكَفَّارَةِ عَلَيْهِ؟ فَهَذَا أَقْرَبُ إلَيْهِ مِنْهُ إلَى الْآكِلِ؟ وَهَذَا تَنَاقُضٌ قَبِيحٌ فِي الْقِيَاسِ جِدًّا؟ وَأَمَّا الْمَالِكِيُّونَ: فَتَنَاقُضُهُمْ أَشَدُّ، وَهُوَ أَنَّهُمْ أَوْجَبُوا الْكَفَّارَةَ، وَالْقَضَاءَ: عَلَى الْمُفْطِرِ بِالْأَكْلِ أَوْ الشُّرْبِ، وَعَلَى مَنْ قَبَّلَ فَأَمْنَى، أَوْ بَاشَرَ فَأَمْنَى، أَوْ تَابَعَ النَّظَرَ فَأَمْنَى، وَعَلَى مَنْ أَكَلَ، أَوْ شَرِبَ، أَوْ جَامَعَ شَاكًّا فِي غُرُوبِ الشَّمْسِ فَإِذَا بِهَا لَمْ تَغْرُبْ، وَعَلَى مَنْ نَوَى الْفِطْرَ فِي نَهَارِ رَمَضَانَ وَإِنْ لَمْ يَأْكُلْ وَلَا شَرِبَ، وَلَا جَامَعَ، إذَا نَوَى ذَلِكَ أَكْثَرَ النَّهَارِ، وَعَلَى الْمَرْأَةِ تَمَسُّ فَرْجَهَا عَامِدَةً فَتُنْزِلُ؟ وَرَأَى عَلَى الْمَرْأَةِ الْمُكْرَهَةِ عَلَى الْجِمَاعِ فِي نَهَارِ رَمَضَانَ الْقَضَاءَ، وَأَوْجَبَ عَلَى الْوَاطِئِ لَهَا الْكَفَّارَةَ عَنْ نَفْسِهِ وَكَفَّارَةً أُخْرَى عَنْهَا. وَهَذَا عَجَبٌ جِدًّا وَلَمْ

يَرَ عَلَيْهَا إِنْ أَكْرَهَهَا عَلَى الْأَكْلِ وَالشُّرْبِ كَفَّارَةً، وَلَا عَلَى الَّتِي جُومِعَتْ نَائِمَةً، وَلَا عَلَيْهَا وَلَا عَلَيْهِ عَنْهَا وَهَذَا تَنَاقُضٌ نَاهِيكَ بِهِ وَلَئِنْ كَانَتْ الْكَفَّارَةُ عَلَيْهَا فَمَا يُجْزِئُ أَنْ تُوجَبَ الْكَفَّارَةُ عَلَى غَيْرِهَا؟ وَلَئِنْ لَمْ تَكُنْ الْكَفَّارَةُ عَلَيْهَا فَأَبْعَدُ مِنْ ذَلِكَ أَنْ تَجِبَ عَلَى غَيْرِهَا عَنْهَا؟ وَأَبْطَلُوا صِيَامَ مَنْ قَبَّلَ فَأَنْعَظَ، أَوْ أَمْذَى وَلَمْ يُمْنِ أَوْ بَاشَرَ أَوْ لَمَسَ فَأَمْذَى وَلَمْ يُمْنِ.

intercourse during Ramadan must make up the fast, while obligating her coercer to perform expiation for himself and another on her behalf. This is most astonishing, yet they do not impose expiation if he coerces her to eat or drink, nor upon a woman penetrated while asleep - neither upon her nor another for her. This is a contradiction beyond description! If expiation were truly her obligation, how could another's fulfillment suffice? If not her obligation, how much more far-fetched to impose it upon another for her? They invalidate the fast of one who kisses and experiences penile erection, emits prostatic fluid without semen, engages in foreplay or contact producing prostatic fluid without full emission.

وَمَنْ - نَظَرَ إِلَى امْرَأَةٍ - غَيْرِ عَامِدٍ لِذَلِكَ - وَتَابَعَ النَّظَرَ فَأَمْذَى وَلَمْ يُمْنِ، أَوْ نَظَرَ نَظْرَةً وَلَمْ يُتَابِعْ النَّظَرَ فَأَمْنَى، وَمَنْ تَمَضْمَضَ فِي صِيَامِ نَهَارِ رَمَضَانَ فَدَخَلَ الْمَاءُ حَلْقَهُ عَنْ غَيْرِ تَعَمُّدٍ، وَمَنْ أَكَلَ نَاسِيًا أَوْ وَطِئَ نَاسِيًا، أَوْ كَانَ ذَلِكَ وَهُوَ لَا يُوقِنُ بِطُلُوعِ الْفَجْرِ فَإِذَا بِالْفَجْرِ قَدْ طَلَعَ، أَوْ كَانَ ذَلِكَ وَهُوَ يَرَى أَنَّ الشَّمْسَ قَدْ غَرَبَتْ فَإِذَا بِهَا لَمْ تَغْرُبْ، وَمَنْ أَكَلَ شَاكًّا فِي طُلُوعِ الْفَجْرِ ثُمَّ لَمْ يُوقِنْ بِأَنَّهُ طَلَعَ وَلَا أَنَّهُ لَمْ يَطْلُعْ، وَمَنْ أَقَامَ مَجْنُونًا يَوْمًا مِنْ رَمَضَانَ أَوْ أَيَّامًا، أَوْ رَمَضَانَ كُلَّهُ، أَوْ عِدَّةَ شُهُورِ رَمَضَانَ مِنْ عِدَّةِ سِنِينَ، وَمَنْ أُغْمِيَ عَلَيْهِ أَكْثَرَ النَّهَارِ، وَمَنْ أُغْمِيَ عَلَيْهِ أَيَّامًا مِنْ رَمَضَانَ، وَالْمُرْضِعُ تَخَافُ عَلَى رَضِيعِهَا، وَالْمَرْأَةُ تُجَامَعُ نَائِمَةً، وَالْمُكْرَهُ عَلَى الْأَكْلِ وَالشُّرْبِ، وَمَنْ صُبَّ فِي - حَلْقِهِ مَاءٌ وَهُوَ نَائِمٌ، وَمَنْ احْتَقَنَ، وَمَنْ اكْتَحَلَ بِكُحْلٍ فِيهِ عَقَاقِيرُ، وَمَنْ بَلَعَ حَصَاةً.

L11703 And whoever looked at a woman unintentionally and continued gazing until emitting pre-seminal fluid without ejaculating; or looked once without continuing the gaze and then ejaculated; and whoever rinsed his mouth while fasting during the daytime of Ramadan and water entered his throat unintentionally; and whoever ate or had intercourse out of forgetfulness; or performed such acts while not being certain of dawn's emergence only to find it had broken; or performed them believing the sun had set only to discover it had not; and whoever ate while doubting dawn's arrival without being certain whether it had occurred or not; and whoever was insane for a day or days of Ramadan, the entire month, or several months of Ramadan over multiple years; and whoever remained unconscious for most of the day or for days during Ramadan; the nursing mother who fears for her infant; the woman subjected to intercourse while asleep; one compelled to eat or drink under duress; one into whose throat water is poured while he is asleep; one who administers an enema; one who applies kohl containing medicinal compounds; and one who swallows a small stone.

وَأَوْجَبُوا عَلَى كُلِّ مَنْ ذَكَرْنَا الْقَضَاءَ، وَلَمْ يَرَوْا فِي شَيْءٍ مِنْ ذَلِكَ كَفَّارَةً.

L11704 They obligated all those we have mentioned to perform qaḍāʾ and did not consider expiation obligatory for any of it.

وَهَذَا تَنَاقُضٌ لَا وَجْهَ لَهُ أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ.

L11705–11706 And this is a contradiction that has no basis whatsoever, neither from the Qur'an nor from the Sunnah.

L11707 Nor from a corrupt narration, nor from consensus, nor from the state-

ment of a Companion or Successor, nor from analogy, nor from any opinion with apparent validity—has this classification been reported from anyone before him? We have seen some of his followers obliging flour millers, henna grinders, and sifters of flax and grains to make up their fasts, invalidating their fasting without requiring atonement for intentional violations—claiming this aligns with Mālik's analogy. Yet this constitutes confusion without parallel! Would this not necessitate invalidating the fast of every traveler who walks through dust by their reasoning? They do not invalidate the fast of one who kisses or engages in intimacy without erection, preseminal fluid, or ejaculation; nor the fast of one who ejaculates from gazing or touching; nor a voluntary fast when water enters the throat during rinsing; nor the fast of a voluntary observer if water is poured into his throat while asleep. Is it not utterly astonishing that one act invalidates obligatory fasting but not voluntary fasting? They do not invalidate the fast of one who experiences insanity or fainting for the shortest part of the day—is this not another marvel? They uphold the fast of one who sleeps the entire day—is this not increased wonder? We remain unaware of his ruling regarding one who intends to break the fast momentarily: would he require make-up fasting, thereby invalidating it? Or would he deem the fast complete—though undoubtedly without requiring atonement? They do not invalidate fasting due to medicated wicks inserted for treatment, nor do we currently know his position on nasal or ear drops. They permit fasting with kohl containing no medicinal agents, with intentional swallowing of food remnants between teeth, and with gum-chewing that draws saliva—though he disliked it. Abu Muhammad said: "If it does not invalidate fasting, why the disapproval?" These positions require no more than their mere mention to be refuted. As for the Ḥanafīs, their doctrines exhibit the most corrupt antitheses, the basest contradictions, and the furthest remove from rationality.

وَلَا مِنْ رِوَايَةٍ فَاسِدَةٍ، وَلَا مِنْ إجْمَاعٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، أَوْ تَابِعٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ، وَلَا يُعْرَفُ هَذَا التَّقْسِيمُ عَنْ أَحَدٍ قَبْلَهُ؟ وَقَدْ رَأَيْنَا بَعْضَ مُقَلِّدِيهِ يُوجِبُونَ عَلَى طَحَّانِي الدَّقِيقِ، وَالْحَنَّاءِ وَمُغَرْبِلِي الْكَتَّانِ وَالْحُبُوبِ -: الْقَضَاءَ، وَيُبْطِلُونَ صَوْمَهُمْ، وَلَا يُوجِبُونَ عَلَيْهِمْ فِي تَعَمُّدِ ذَلِكَ كَفَّارَةً وَيَدَّعُونَ أَنَّ هَذَا قِيَاسُ قَوْلِ مَالِكٍ وَهَذَا تَخْلِيطٌ لَا نَظِيرَ لَهُ وَيَلْزَمُهُمْ إبْطَالُ صَوْمِ كُلِّ مَنْ سَافَرَ فَمَشَى فِي غَبَرَةٍ عَلَى هَذَا؟ وَلَمْ يُبْطِلْ صَوْمَ مَنْ قَبَّلَ أَوْ بَاشَرَ فَلَمْ يُنْعِظْ وَلَا أَمْذَى وَلَا أَمْنَى، وَلَا صَوْمَ مَنْ أَمْنَى مِنْ نَظَرٍ وَلَا لَمَسَ، وَلَا صَوْمَ تَطَوُّعٍ بِدُخُولِ الْمَاءِ فِي حَلْقِ فَاعِلِهِ مِنْ الْمَضْمَضَةِ، وَلَا صَوْمَ مُتَطَوِّعٍ صُبَّ الْمَاءُ فِي حَلْقِهِ وَهُوَ نَائِمٌ وَهَذَا عَجَبٌ جِدًّا أَنْ يَكُونَ أَمْرٌ وَاحِدٌ يُبْطِلُ صَوْمَ الْفَرْضِ وَلَا يُبْطِلُ صَوْمَ التَّطَوُّعِ؟ وَلَمْ يُبْطِلْ صَوْمَ مَنْ جُنَّ، أَوْ أُغْمِيَ عَلَيْهِ أَقَلَّ النَّهَارِ، وَهَذَا عَجَبٌ آخَرُ؟ وَلَمْ يُبْطِلْ صَوْمَ مَنْ نَامَ النَّهَارَ كُلَّهُ، وَهَذَا عَجَبٌ زَائِدٌ؟ وَلَا نَدْرِي قَوْلَهُ فِيمَنْ نَوَى الْفِطْرَ أَقَلَّ النَّهَارِ: أَيَرَى عَلَيْهِ الْقَضَاءَ وَيُبْطِلُ صَوْمَهُ بِذَلِكَ؟ أَمْ يَرَى صَوْمَهُ تَامًّا؟ إلَّا أَنَّهُ لَا يَرَى فِيهِ كَفَّارَةً بِلَا شَكٍّ؟ وَلَمْ يُبْطِلْ الصَّوْمَ بِالْفَتَائِلِ تَتَدَخَّلُ لِدَوَاءٍ، وَلَا نَقِفُ الْآنَ عَلَى قَوْلِهِ فِي السَّعُوطِ وَالتَّقْطِيرِ فِي الْأُذُنِ؟ وَلَمْ يُبْطِلْ الصَّوْمَ بِكُحْلٍ فِي الْعَيْنِ لَا عَقَاقِيرَ فِيهِ، وَلَا بِمَنْ تَعَمَّدَ بَلْعَ مَا يُخْرِجُهُ مِنْ بَيْنِ أَضْرَاسِهِ مِنْ الْجَذِيذَةِ وَنَحْوِهَا، وَلَا بِمَضْغِ الْعِلْكِ، وَإِنْ اسْتَدْعَى الرِّيقَ، وَكَرِهَهُ؟ قَالَ أَبُو مُحَمَّدٍ: إنْ كَانَ لَا يُبْطِلُ الصَّوْمَ فَلِمَ كَرِهَهُ؟ وَهَذِهِ أَقْوَالٌ لَا نَحْتَاجُ مِنْ إبْطَالِهَا إلَى أَكْثَرَ مِنْ إيرَادِهَا؟ وَأَمَّا الْحَنَفِيُّونَ فَأَفْسَدُ الطِّبَاقِ أَقْوَالًا، وَأَسْمَجُهَا تَنَاقُضًا وَأَبْعَدُهَا عَنْ الْمَعْقُولِ؟

L11708–11709 And it is that Abū Ḥanīfah obligated expiation and making up the fast upon anyone who engages specifically in vaginal intercourse with a woman—whether lawful or unlawful for him—and upon the woman for her own act,

and upon anyone who eats what he subsists on, drinks what he nourishes himself with, swallows a green almond, or eats specifically Armenian clay.

وَهُوَ أَنَّ أَبَا حَنِيفَةَ أَوْجَبَ الْكَفَّارَةَ وَالْقَضَاءَ عَلَى مَنْ وَطِئَ فِي الْفَرْجِ - خَاصَّةً - امْرَأَةً، حَلَالًا لَهُ أَوْ حَرَامًا وَعَلَى الْمَرْأَةِ عَنْ نَفْسِهَا، وَعَلَى مَنْ أَكَلَ مَا يَغْتَذِي بِهِ، أَوْ شَرِبَ مَا يَتَغَذَّى بِهِ، أَوْ بَلَعَ لَوْزَةً خَضْرَاءَ، أَوْ أَكَلَ طِينًا إِرْمِينِيًّا خَاصَّةً.

L11710 The fast is invalidated for one who engages in anal intercourse with a human and ejaculates, or with an animal in its genital or anal orifice and ejaculates; for one who remains until after the sun passes its zenith without intending to fast; for one who kisses while being aware of fasting and ejaculates; for one who touches and ejaculates; for one who engages in intercourse without vaginal penetration and ejaculates; for one who rinses his mouth and water enters his throat while being aware of fasting; for one who eats, drinks, or engages in intercourse after dawn while unaware of its arrival and then becomes aware; for one who performs any of these acts while believing the sun has set when it has not; for one who becomes insane during a day of Ramadan, or for days, or the entire month except one hour of it; for one who loses consciousness after Ramadan has begun, except the day of the night during which he lost consciousness; for a nursing mother who fears for her infant; for one who starts fasting while traveling and later intentionally eats, drinks, or engages in intercourse; for one who intentionally engages in intercourse, eats, or drinks then falls ill during that day, or menstruates if a woman; for one who begins Ramadan without intending to fast then eats, drinks, or engages in intercourse early or late in the day; for a woman with whom intercourse is performed while she is asleep, insane, or coerced; for one who uses an enema, nasal drops, or ear drops. His opinion differed regarding one who instills drops into his urethra—sometimes invalidating the fast and other times not. The fast is invalidated for one who treats a deep or penetrating wound with moist medicine, but not if dry medicine is used; for one who intentionally swallows a pebble, fresh or dry walnut, or dry almond; for one who raises his head to the sky and raindrops enter his throat. They obligated making up (qada) the fast in all these cases but did not require expiation for any.

وَأَبْطَلَ صَوْمَ مَنْ لَاطَ بِإِنْسَانٍ فِي دُبُرِهِ فَأَمْنَى، أَوْ بِبَهِيمَةٍ فِي قُبُلٍ أَوْ دُبُرٍ فَأَمْنَى، وَمَنْ بَقِيَ إِلَى بَعْدَ الزَّوَالِ لَا يَنْوِي صَوْمًا، وَمَنْ قَبَّلَ ذَاكِرًا لِصَوْمِهِ فَأَمْنَى، وَمَنْ لَمَسَ كَذَلِكَ فَأَمْنَى، أَوْ جَامَعَ كَذَلِكَ دُونَ الْفَرْجِ فَأَمْنَى، وَمَنْ تَمَضْمَضَ فَدَخَلَ الْمَاءُ فِي حَلْقِهِ وَهُوَ ذَاكِرٌ لِصَوْمِهِ، وَمَنْ أَكَلَ، أَوْ شَرِبَ، [أَوْ جَامَعَ] بَعْدَ طُلُوعِ الْفَجْرِ وَهُوَ غَيْرُ عَالِمٍ بِطُلُوعِهِ ثُمَّ عَلِمَ، وَمَنْ فَعَلَ شَيْئًا مِنْ ذَلِكَ وَهُوَ يَرَى أَنَّ الشَّمْسَ قَدْ غَرَبَتْ فَإِذَا بِهَا لَمْ تَغْرُبْ، وَمَنْ جُنَّ فِي يَوْمٍ مِنْ رَمَضَانَ، أَوْ أَيَّامًا، أَوْ الشَّهْرَ كُلَّهُ إِلَّا سَاعَةً وَاحِدَةً مِنْهُ، وَمَنْ أُغْمِيَ عَلَيْهِ بَعْدَ مَا دَخَلَ رَمَضَانُ، حَاشَا يَوْمِ اللَّيْلَةِ الَّتِي أُغْمِيَ عَلَيْهِ فِيهَا، وَالْمُرْضِعُ تَخَافُ عَلَى رَضِيعِهَا، وَمَنْ أَصْبَحَ صَائِمًا فِي السَّفَرِ ثُمَّ جَامَعَ، أَوْ أَكَلَ، أَوْ شَرِبَ عَامِدًا ذَاكِرًا، وَمَنْ جَامَعَ، أَوْ أَكَلَ، أَوْ شَرِبَ عَمْدًا ثُمَّ مَرِضَ مِنْ نَهَارِهِ ذَلِكَ، أَوْ حَاضَتْ إِنْ كَانَتْ امْرَأَةً، وَمَنْ أَصْبَحَ فِي رَمَضَانَ لَا يَنْوِي صَوْمًا ثُمَّ أَكَلَ، أَوْ شَرِبَ، أَوْ جَامَعَ فِي صَدْرِ النَّهَارِ، أَوْ فِي آخِرِهِ، وَالْمَرْأَةُ تُجَامَعُ وَهِيَ نَائِمَةٌ، أَوْ مَجْنُونَةٌ، أَوْ مُكْرَهَةٌ وَمَنْ احْتَقَنَ أَوْ اسْتَعَطَ أَوْ قَطَّرَ فِي أُذُنِهِ قُطُورًا؟ وَاخْتَلَفَ قَوْلُهُ فِيمَنْ قَطَّرَ فِي إِحْلِيلِهِ قُطُورًا، فَمَرَّةً أَبْطَلَ صَوْمَهُ، وَمَرَّةً لَمْ يُبْطِلْهُ؟ وَأَبْطَلَ صَوْمَ مَنْ دَاوَى جَائِفَةً بِهِ أَوْ مَأْمُومَةً بِدَوَاءٍ رَطْبٍ، وَإِلَّا فَلَا؟ وَأَبْطَلَ صَوْمَ مَنْ بَلَعَ حَصَاةً عَامِدًا، أَوْ بَلَعَ جَوْزَةً رَطْبَةً أَوْ يَابِسَةً، أَوْ لَوْزَةً يَابِسَةً، وَمَنْ رَفَعَ رَأْسَهُ إِلَى السَّمَاءِ فَوَقَعَ نُقَطٌ مِنْ الْمَطَرِ فِي حَلْقِهِ؟ وَأَوْجَبُوا فِي كُلِّ ذَلِكَ الْقَضَاءَ وَلَمْ يَرَوْا فِي شَيْءٍ مِنْ ذَلِكَ كَفَّارَةً.

وَلَمْ يُبْطِلُوا صَوْمَ مَنْ لَاطَ بِذَكَرٍ فَأَوْلَجَ إِلَّا أَنَّهُ لَمْ يُنْزِلْ وَلَا صَوْمَ مَنْ أَتَى بَهِيمَةً فِي قُبُلٍ أَوْ دُبُرٍ إِلَّا أَنَّهُ لَمْ يُنْزِلْ وَلَا صَوْمَ مَنْ أَوْلَجَ فِي دُبُرِ امْرَأَةٍ إِلَّا أَنَّهُ لَمْ يُنْزِلْ وَرَأَوْا صَوْمَهُ فِي كُلِّ ذَلِكَ تَامًّا صَحِيحًا لَا قَضَاءَ فِيهِ وَلَا كَفَّارَةَ وَلَمْ يُبْطِلُوا صَوْمَ مَنْ اكْتَحَلَ بِعَقَاقِيرَ أَوْ بِغَيْرِهَا، وَصَلَ إِلَى الْحَلْقِ أَوْ لَمْ يَصِلْ، وَلَا صَوْمَ مَنْ تَابَعَ النَّظَرَ إِلَى فَرْجِ امْرَأَةٍ فَأَمْنَى؛ وَلَا صَوْمَ مَنْ قَبَّلَ أَوْ بَاشَرَ فَأَمْذَى وَلَمْ يُمْنِ، وَلَا صَوْمَ مَنْ أَكَلَ نَاسِيًا، أَوْ جَامَعَ نَاسِيًا، أَوْ شَرِبَ نَاسِيًا، وَلَا صَوْمَ مَنْ جَامَعَ أَوْ شَرِبَ، أَوْ أَكَلَ شَاكًّا فِي الْفَجْرِ مَا لَمْ يَتَبَيَّنْ أَنَّهُ أَكَلَ بَعْدَ الْفَجْرِ، أَوْ جَامَعَ بَعْدَهُ، أَوْ شَرِبَ بَعْدَهُ.

L11711–11713 They did not invalidate the fast of one who pressed against a penis and inserted it [without ejaculation], nor the fast of one who sodomized an animal in its vagina or anus [without ejaculation], nor the fast of one who inserted into a woman's anus [without ejaculation]. They deemed his fast in all those instances complete and valid, requiring neither makeup nor expiation. They did not invalidate the fast of one who applied kohl with medicinal compounds or other materials—whether it reached the throat or not; nor the fast of one who persistently gazed at a woman's private parts and emitted semen; nor the fast of one who kissed or touched and emitted pre-seminal fluid without ejaculating; nor the fast of one who ate, had intercourse, or drank out of forgetfulness; nor the fast of one who had intercourse, drank, or ate while in doubt about whether dawn had occurred—provided it was not established that he ate, had intercourse, or drank after dawn.

وَمَنَعَ لِلْقَادِمِ مِنْ سَفَرٍ فَوَجَدَ امْرَأَتَهُ قَدْ طَهُرَتْ مِنْ حَيْضِهَا أَنْ يُجَامِعَهَا " فَلَيْتَ شِعْرِي: إِنْ كَانَا صَائِمَيْنِ، فَهَلَّا أَوْجَبَ عَلَيْهِمَا الْكَفَّارَةَ؟ وَإِنْ كَانَا غَيْرَ صَائِمَيْنِ، فَلِمَ مَنَعَهُمَا؟ وَلَا أَبْطَلَ صَوْمَ مَنْ أَخْرَجَ مِنْ بَيْنِ أَسْنَانِهِ طَعَامًا - أَقَلَّ مِنْ حِمَّصَةٍ - فَبَلَعَهُ عَامِدًا ذَاكِرًا لِصَوْمِهِ.

L11714 He prohibited the traveler returning from a journey—who finds his wife has become pure from her menstruation—from having intercourse with her. I wish I knew: if they were fasting, why did he not obligate expiation upon them? And if they were not fasting, why did he prohibit them? Nor did he nullify the fast of one who removed food—smaller than a chickpea—from between his teeth and swallowed it intentionally while mindful of his fasting.

قَالَ أَبُو مُحَمَّد: فَمَنْ أَعْجَبُ شَأْنًا، أَوْ أَقْبَحُ قَوْلًا مِمَّنْ يَرَى اللِّيَاطَةَ. وَإِتْيَانُ الْبَهِيمَةِ عَمْدًا فِي نَهَارِ رَمَضَانَ لَا يَنْقُضُ الصَّوْمَ؟ وَيَرَى أَنَّ مَنْ قَبَّلَ امْرَأَتَهُ الَّتِي أَبَاحَ اللَّهُ تَعَالَى لَهُ تَقْبِيلَهَا وَهُوَ صَائِمٌ فَأَمْنَى فَقَدْ بَطَلَ صَوْمُهُ أَوْ مِمَّنْ فَرَّقَ بَيْنَ أَكْلِ مَا يُغَذِّي وَمَا لَا يُغَذِّي؟ وَلَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ هَذَا؟ وَمِمَّنْ رَأَى أَنَّ مَنْ قَبَّلَ زَانِيَةً أَوْ ذَكَرًا أَوْ بَاشَرَهُمَا فِي نَهَارِ رَمَضَانَ فَلَمْ يُنْعِظْ، وَلَا أَمْذَى: أَنَّ صَوْمَهُ صَحِيحٌ تَامٌّ لَا دَاخِلَةَ فِيهِ؟ وَمَنْ قَبَّلَ امْرَأَتَهُ الَّتِي أَبَاحَ اللَّهُ تَعَالَى لَهُ تَقْبِيلَهَا وَهُوَ صَائِمٌ فَأَنْعَظَ: أَنَّ صَوْمَهُ قَدْ بَطَلَ؛ وَمَنْ يَرَى عَلَى مَنْ أَكَلَ نَاسِيًا الْقَضَاءَ وَيُبْطِلُ صَوْمَهُ؟ وَيَرَى أَنَّ مَنْ أَكَلَ مُتَعَمِّدًا مَا يَخْرُجُ مِنْ

L11715–11717 Abū Muḥammad said: Who holds a stranger position or utters more repugnant words than one who views sodomy and deliberate bestiality during Ramadan's daytime as not invalidating the fast? Or who deems that a man kissing his wife—whom God has lawfully permitted him to kiss—while fasting, then emitting semen, invalidates his fast? Or than those who differentiate between consuming what nourishes and what does not nourish? We know not from where they derived this. Or than those who assert that one who kisses a fornicatress or a male, or engages in intimate contact with them during Ramadan's daytime without experiencing an erection or emitting pre-ejaculatory fluid, maintains a valid and complete fast with no defect within it—yet if a man kisses his lawful wife while fasting and becomes aroused, his fast is invalidated? Or who judges that compensatory fasting is required for one who eats forgetfully, thus invalidating his fast, yet claims that intention-

ally consuming food remnants from between one's molars does not affect the fast's validity? Is there anything more astounding than this? The ultimate astonishment lies in their imposition of expiation on some who break the fast without intercourse—by analogy to those who engage in intercourse—while absolving others who break it without intercourse, though both are acts of invalidation. They abandoned analogy in this matter and did not adhere to the textual ruling, imposing expiation upon the coerced woman for intercourse while she incurs no sin through that act, yet exempting the one who intentionally engages in genital contact and emits pre-ejaculatory fluid despite his sinful state. If they argue: "Is he not sinning?" We counter: Then the one who kisses and emits fluid would likewise not be sinning—why then do you impose expiation upon him? These contradictions are unparalleled and lack any basis in textual reports, for they differentiated between negligent parties in rulings without adopting the narration where "A man broke his fast and the Prophet (peace be upon him) ordered him to perform expiation," nor the report where "A man had intercourse with his wife while fasting and the Prophet (peace be upon him) ordered him to perform expiation"—restricting it to these cases without analogically applying it to all who invalidate their fasts. They exempted expiation from those who intentionally break fasts during the makeup fasts for Ramadan (qada), vowed fasts, or the two expiatory months, despite Qatadah's authentic position obliging expiation for intentionally breaking a Ramadan makeup fast. Here they abandoned analogy despite both being obligatory fasts and both involving intentional breaking. If questioned: "From where do you exempt expiation for one who has intercourse with a woman forbidden to him genitally, or from the woman coerced or willingly participating?" We respond: The text specifies only intercourse with one's wife. Terms like "intercourse," "engaging," or "copulating" cannot be applied to non-genital acts without explanatory qualification. Imposing expiation beyond this contradicts the Sunnah, transgresses Allah's ordained limits, and legislates obligations He never decreed. As for the woman, she is the one penetrated, not the one penetrating, making her exemption from expiation in all circumstances clearer than clarity itself. Moreover, unlawful intercourse inevitably involves intentional preparation through verbal persuasion or physical coercion—both sinful acts invalidating the fast. Thus

بَيْنِ أَضْرَاسِهِ مِنْ طَعَامِهِ أَنَّ صَوْمَهُ تَامٌّ؟ فَهَلْ فِي الْعَجَبِ أَكْثَرُ مِنْ هَذَا؟ وَالْعَجَبُ كُلُّهُ فِي إِيجَابِهِمْ الْكَفَّارَةَ عَلَى بَعْضِ مَنْ أَفْطَرَ مِنْ غَيْرِ الْمُجَامِعِ قِيَاسًا عَلَى الْمُجَامِعِ، ثُمَّ إسْقَاطُهُمْ الْكَفَّارَةَ عَنْ بَعْضِ مَنْ أَفْطَرَ مِنْ غَيْرِ الْمُجَامِعِ وَكِلَاهُمَا مُفْطِرٌ، وَتَرَكُوا الْقِيَاسَ فِي ذَلِكَ وَلَمْ يَلْتَزِمُوا النَّصَّ وَأَوْجَبُوا الْكَفَّارَةَ عَلَى الْمُكْرَهَةِ عَلَى الْوَطْءِ، وَهِيَ غَيْرُ عَاصِيَةٍ بِذَلِكَ، وَأَسْقَطُوهَا عَنْ الْمُتَعَمِّدِ لِلْقُبُلِ فَيُمْذِي وَهُوَ عَاصٍ؟ فَإِنْ قَالَ: لَيْسَ عَاصِيًا؟ قُلْنَا: فَالَّذِي قَبَّلَ فَأَمْنَى إذَنْ لَيْسَ عَاصِيًا، فَلِمَ أَوْجَبْتُمُوهَا عَلَيْهِ؟ وَهَذِهِ تَخَالِيطُ لَا نَظِيرَ لَهَا وَلَا مُتَعَلَّقَ لَهُمْ أَصْلًا بِشَيْءٍ مِنْ الْأَخْبَارِ؛ لِأَنَّهُمْ فَرَّقُوا بَيْنَ الْمُفْرِطِينَ فِي الْحُكْمِ فَلَمْ يَأْخُذُوا بِرِوَايَةِ مَنْ رَوَى «أَنَّ رَجُلًا أَفْطَرَ فَأَمَرَهُ النَّبِيُّ - عَلَيْهِ السَّلَامُ - بِالْكَفَّارَةِ» وَلَا بِرِوَايَةِ مَنْ رُوِيَ «أَنَّ رَجُلًا وَقَعَ عَلَى امْرَأَتِهِ وَهُوَ صَائِمٌ فَأَمَرَهُ النَّبِيُّ - عَلَيْهِ السَّلَامُ - بِالْكَفَّارَةِ» ، فَيَقْتَصِرُوا عَلَيْهِ، وَلَا قَاسُوا عَلَيْهِ كُلَّ مُفْطِرٍ؟ وَأَسْقَطُوا الْكَفَّارَةَ عَمَّنْ تَعَمَّدَ الْفِطْرَ فِي قَضَاءِ رَمَضَانَ، وَفِي صَوْمِ نَذْرٍ، وَفِي شَهْرَيْ الْكَفَّارَةِ، وَقَدْ صَحَّ عَنْ قَتَادَةَ إيجَابُ الْكَفَّارَةِ فِي قَضَاءِ رَمَضَانَ إذَا أَفْطَرَ فِيهِ عَامِدًا، وَتَرَكُوا هَاهُنَا الْقِيَاسَ؛ لِأَنَّهُ صَوْمُ فَرْضٍ، وَصَوْمُ فَرْضٍ، وَتَعَمُّدُ فِطْرٍ، وَتَعَمُّدُ فِطْرٍ؟ فَإِنْ قِيلَ: فَمِنْ أَيْنَ أَسْقَطْتُمْ الْكَفَّارَةَ عَمَّنْ وَطِئَ امْرَأَةً مُحَرَّمَةً عَلَيْهِ فِي الْفَرْجِ؟ وَعَنْ الْمَرْأَةِ الْمَوْطُوءَةِ بِإِكْرَاهٍ أَوْ بِمُطَاوَعَةٍ؟ قُلْنَا: لِأَنَّ النَّصَّ لَمْ يَرِدْ إلَّا فِيمَنْ وَطِئَ امْرَأَتَهُ، وَلَا يُطْلَقُ عَلَى مَنْ وَطِئَهَا فِي غَيْرِ الْفَرْجِ اسْمُ وَاطِئٍ، وَلَا اسْمُ مُوَاقِعٍ، وَلَا اسْمُ مُجَامِعٍ، وَلَا أَنَّهُ وَطِئَهَا، وَلَا أَنَّهُ وَقَعَ عَلَيْهَا، وَلَا أَنَّهُ جَامَعَهَا، إلَّا حَتَّى يُضَافَ إلَى ذَلِكَ صِلَةُ الْبَيَانِ، فَإِيجَابُ الْكَفَّارَةِ عَلَى غَيْرِ مَنْ ذَكَرْنَا مُخَالِفٌ لِلسُّنَّةِ وَتَعَدِّي لِحُدُودِ اللَّهِ تَعَالَى فِي ذَلِكَ، وَإِيجَابُ مَا لَمْ يُوجِبْهُ؟ وَأَمَّا الْمَرْأَةُ فَمَوْطُوءَةٌ، وَالْمَوْطُوءَةُ غَيْرُ الْوَاطِئِ، فَالْأَمْرُ فِي سُقُوطِ الْكَفَّارَةِ

intercourse occurs only after the fast has already been invalidated. And with Allah alone is success.

عَنْهَا عَلَى كُلِّ حَالٍ أَوْضَحُ مِنْ كُلِّ وَاضِحٍ؟ وَأَيْضًا: فَإِنَّ وَاطِئَ الْحَرَامِ لَا يَصِلُ إلَى الْوَطْءِ إلَّا بَعْدَ قَصْدٍ إلَى ذَلِكَ بِكَلَامٍ أَوْ بَطْشٍ وَلَا بُدَّ، وَكِلَا الْأَمْرَيْنِ مَعْصِيَةٌ تُبْطِلُ الصَّوْمَ فَلَمْ يُجَامِعْ إلَّا وَصَوْمُهُ قَدْ بَطَلَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L11718 If it is asked: "Do you jurists then require expiation from one who has intercourse with his wife or female slave while both women are menstruating?"

فَإِنْ قِيلَ: فَإِنَّكُمْ تُوجِبُونَهَا عَلَى مَنْ وَطِئَ امْرَأَتَهُ أَوْ أَمَتَهُ وَهُمَا حَائِضَانِ؟

L11719–11720 We said: Because the Messenger of Allah—peace be upon him—made it obligatory upon anyone who had intercourse with his wife without exception, without asking him whether she was menstruating or not.

قُلْنَا: لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْجَبَهَا عَلَى مَنْ وَطِئَ امْرَأَتَهُ جُمْلَةً، وَلَمْ يَسْأَلْهُ: أَحَائِضًا هِيَ أَمْ غَيْرَ حَائِضٍ؟

L11721 **A legal issue: If a man intentionally had sexual intercourse during the daytime of Ramadan and then traveled on that same day, or became insane, or became ill.**

[مَسْأَلَةٌ وَطِئَ عَمْدًا فِي نَهَارِ رَمَضَانَ ثُمَّ سَافَرَ فِي يَوْمِهِ ذَلِكَ أَوْ جُنَّ أَوْ مَرِضَ]

L11722 738 – Issue: If someone [intentionally] engages in sexual intercourse during the daytime of Ramadan and then travels on that same day, becomes insane, or falls ill, the expiation is not waived for him. This is because obligations mandated by Allah, the Exalted, cannot be nullified after becoming binding except through explicit textual evidence, and there is no textual evidence indicating the waiver of this expiation for the circumstances we have mentioned.

٧٣٨ - مَسْأَلَةٌ: وَمَنْ وَطِئَ [عَمْدًا] فِي نَهَارِ رَمَضَانَ ثُمَّ سَافَرَ فِي يَوْمِهِ ذَلِكَ أَوْ جُنَّ، أَوْ مَرِضَ لَا تَسْقُطُ عَنْهُ الْكَفَّارَةُ، لِأَنَّ مَا أَوْجَبَهُ اللَّهُ تَعَالَى فَلَا يَسْقُطُ بَعْدَ وُجُوبِهِ إلَّا بِنَصٍّ، وَلَا نَصَّ فِي سُقُوطِهَا لِمَا ذَكَرْنَا.

L11723 Abu Hanifah and his companions stated: The obligation is waived due to illness but is not waived due to travel.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: تَسْقُطُ بِالْمَرَضِ وَلَا تَسْقُطُ بِالسَّفَرِ

L11724 **Issue: The manner of expiation for breaking the fast during Ramadan.**

[مَسْأَلَةٌ صِفَةُ كَفَّارَةِ الْفِطْرِ فِي رَمَضَانَ]

L11725 Issue 739: The description of the obligatory expiation is as we mentioned in the narration of the majority of Al-Zuhri's companions: it requires freeing a slave - nothing else suffices while one remains capable of this. If he becomes incapable, he must fast two consecutive months. If he becomes incapable of this, he must, at that point, feed sixty needy people. If it is asked: "Why do you not hold the opinion reported by Yahya Al-Ansari, Ibn Jurayj, and Malik

٧٣٩ - مَسْأَلَةٌ: وَصِفَةُ الْكَفَّارَةِ الْوَاجِبَةِ هِيَ كَمَا ذَكَرْنَا فِي رِوَايَةِ جُمْهُورِ أَصْحَابِ الزُّهْرِيِّ: مِنْ عِتْقِ رَقَبَةٍ لَا يُجْزِئُهُ غَيْرُهَا مَا دَامَ يَقْدِرُ عَلَيْهَا، فَإِنْ لَمْ يَقْدِرْ عَلَيْهَا لَزِمَهُ صَوْمُ شَهْرَيْنِ مُتَتَابِعَيْنِ، فَإِنْ لَمْ يَقْدِرْ عَلَيْهَا لَزِمَهُ - حِينَئِذٍ - إطْعَامُ سِتِّينَ مِسْكِينًا؟ فَإِنْ قِيلَ: هَلَّا قُلْتُمْ

from Al-Zuhri regarding his granting of choice between all these options?" We respond: Due to what we have clarified - that these scholars abbreviated the narration and conveyed it through their own wording or through wording other than the Prophet's (peace be upon him).

بِمَا رَوَاهُ يَحْيَى الْأَنْصَارِيُّ وَابْنُ جُرَيْجٍ، وَمَالِكٌ عَنْ الزُّهْرِيِّ مِنْ تَخْيِيرِهِ بَيْنَ كُلِّ ذَلِكَ؟ قُلْنَا: لِمَا قَدْ بَيَّنَّا مِنْ أَنَّ هَؤُلَاءِ اخْتَصَرُوا الْحَدِيثَ، وَأَتَوْا بِأَلْفَاظِهِمْ، أَوْ بِلَفْظٍ مِنْ دُونِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L11726 As for the rest of Az-Zuhri's companions, they cited the wording of the Prophet—peace and blessings of Allah be upon him—which is absolutely impermissible to transgress in any way, along with the additional ruling of sequential order. It is impermissible to omit this addition. In our view, do Abu Hanifah, Al-Shafi'i, Abu Sulayman, Ahmad, and the majority of people state this? As for Malik, he adhered to what was narrated, though he recommended feeding as a preferable act—yet there is absolutely no basis for this recommendation.

وَأَمَّا سَائِرُ أَصْحَابِ الزُّهْرِيِّ فَأَتَوْا بِلَفْظِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ الَّذِي لَا يَحِلُّ تَعَدِّيهِ أَصْلًا، وَبِزِيَادَةِ حُكْمِ التَّرْتِيبِ، وَلَا يَحِلُّ تَرْكُ الزِّيَادَةِ وَبِقَوْلِنَا يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَحْمَدُ، وَجُمْهُورُ النَّاسِ؟ وَأَمَّا مَالِكٌ فَقَالَ بِمَا رُوِيَ، إلَّا أَنَّهُ اسْتَحَبَّ الْإِطْعَامَ، وَلَيْسَ لِهَذَا الِاسْتِحْبَابِ وَجْهٌ أَصْلًا.

L11727 As for Abū Ḥanīfa, he permitted—regarding the prescribed feeding—that one should feed a single poor person for sixty days. This constitutes a sheer contradiction of the command of Allah's Messenger (peace and blessings be upon him), for the term "sixty poor people" cannot apply to a single individual at all.

وَأَمَّا أَبُو حَنِيفَةَ فَإِنَّهُ أَجَازَ فِي الْإِطْعَامِ الْمَذْكُورِ: أَنْ تُطْعِمَ مِسْكِينًا وَاحِدًا سِتِّينَ يَوْمًا، وَهَذَا خِلَافٌ مُجَرَّدٌ لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا يَقَعُ اسْمُ سِتِّينَ مِسْكِينًا عَلَى مِسْكِينٍ وَاحِدٍ أَصْلًا

L11728 **Issue: What suffices as expiation for breaking the fast.**

[مَسْأَلَةٌ مَا يُجْزِئُ فِي كَفَّارَةِ الْفِطْرِ]

L11729 Issue 740: It suffices in this matter to free a believing or disbelieving slave, young or old, male or female, blemished or sound, due to the generality of the Messenger of Allah's statement (peace and blessings be upon him): "Free a slave." If any category among the slaves to be emancipated were insufficient for this purpose, he (peace be upon him) would have specified it, and he would not have left it unaddressed until others had to clarify it for him.

٧٤٠ - مَسْأَلَةٌ: وَيُجْزِئُ فِي ذَلِكَ رَقَبَةٌ مُؤْمِنَةٌ أَوْ كَافِرَةٌ، صَغِيرَةٌ، أَوْ كَبِيرَةٌ، ذَكَرٌ أَوْ أُنْثَى، مَعِيبٌ أَوْ سَلِيمٌ؛ لِعُمُومِ «قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْتِقْ رَقَبَةً» فَلَوْ كَانَ شَيْءٌ مِنْ الرِّقَابِ الَّتِي تُعْتَقُ لَا يُجْزِئُ فِي ذَلِكَ لَبَيَّنَهُ - عَلَيْهِ السَّلَامُ -، وَلَمَا أَهْمَلَهُ حَتَّى يُبَيِّنَهُ لَهُ غَيْرُهُ.

L11730–11731 The following are considered sufficient in that regard: the mother of the child (umm al-walad), the slave whose emancipation is deferred until the master's death (mudabbar), the slave emancipated with stipulated conditions (muʿtaq bi-ṣifah), the slave emancipated for a specified term, and the slave who has entered into a manumission contract (mukātab) but has not yet paid

وَيُجْزِئُ فِي ذَلِكَ: أُمُّ الْوَلَدِ، وَالْمُدَبَّرُ، وَالْمُعْتَقُ بِصِفَةٍ، وَإِلَى أَجَلٍ، وَالْمُكَاتَبُ الَّذِي لَمْ يُؤَدِّ شَيْئًا مِنْ كِتَابَتِهِ، وَلَا يُجْزِئُ فِي ذَلِكَ نِصْفَانِ مِنْ رَقَبَتَيْنِ، وَلَا مَنْ بَعْضُهُ حُرٌّ؟ وَقَالَ

any portion of the agreed sum. It is not sufficient to use half of two separate slaves, nor someone partially freed? Abū Ḥanīfah agreed with our opinion regarding the disbeliever and the minor. Mālik and Al-Shāfiʿī said: "Only a female believer suffices." They argued: "We analogize this to the female slave in accidental killing."

أَبُو حَنِيفَةَ بِقَوْلِنَا فِي الْكَافِرِ وَالصَّغِيرِ: وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ لَا يُجْزِئُ إِلَّا مُؤْمِنَةٌ، قَالُوا: قِسْنَا ذَلِكَ عَلَى - الرَّقَبَةِ فِي قَتْلِ الْخَطَأِ.

L11732 Abu Muhammad said: All analogy is invalid. Furthermore, even if analogy were valid, this instance of it would still be invalid. For Mālik does not analogize the ruling of an intentional killer to that of an unintentional killer in the matter of expiation. Since he did not analogize one killer to another, then analogizing the ruling for one who engages in sexual intercourse during Ramadan to the killer would be more invalid, if analogy were valid? Al-Shāfiʿī does not analogize the one who breaks the fast by eating to the one who breaks it by intercourse in the matter of expiation. Since he did not analogize one who breaks the fast to another, then analogizing the one who breaks the fast to the killer would be more invalid, if analogy were valid? Moreover, there is no disagreement that in the expiation for intercourse during Ramadan, feeding is substituted instead of fasting, whereas feeding is not substituted instead of fasting in the expiation for unintentional killing.

قَالَ أَبُو مُحَمَّد: وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّ مَالِكًا لَا يَقِيسُ حُكْمَ قَاتِلِ الْعَمْدِ عَلَى حُكْمِ قَاتِلِ الْخَطَأِ فِي الْكَفَّارَةِ، فَإِذَا لَمْ يَقِسْ قَاتِلًا عَلَى قَاتِلٍ فَقِيَاسُ الْوَاطِئِ عَلَى الْقَاتِلِ أَوْلَى بِالْبُطْلَانِ، إِنْ كَانَ الْقِيَاسُ حَقًّا؟ وَالشَّافِعِيُّ لَا يَقِيسُ الْمُفْطِرَ بِالْأَكْلِ عَلَى الْمُفْطِرِ بِالْوَطْءِ فِي الْكَفَّارَةِ، فَإِذَا لَمْ يَقِسْ مُفْطِرًا عَلَى مُفْطِرٍ فَقِيَاسُ الْمُفْطِرِ عَلَى الْقَاتِلِ أَوْلَى بِالْبُطْلَانِ، إِنْ كَانَ الْقِيَاسُ حَقًّا؟ وَأَيْضًا: فَإِنَّهُ لَا خِلَافَ فِي أَنَّ كَفَّارَةَ الْوَاطِئِ فِي رَمَضَانَ يُعَوَّضُ فِيهَا الْإِطْعَامُ مِنَ الصِّيَامِ، وَلَا يُعَوَّضُ الْإِطْعَامُ مِنَ الصِّيَامِ فِي كَفَّارَةِ قَتْلِ الْخَطَأِ

L11733 Their consensus has been soundly established that the ruling on the expiation for intercourse differs from the ruling on the expiation for killing. Does this not thereby invalidate the analogy of one to the other? If they argue: "The text did not prescribe compensation in the expiation for killing, yet prescribed it in the expiation for intercourse," we respond: "Similarly, the text did not stipulate [freeing] a believing female [slave] in the expiation for intercourse, yet stipulated this in the expiation for killing—and this is the correct position."

فَقَدْ صَحَّ إِجْمَاعُهُمْ عَلَى أَنَّ حُكْمَ كَفَّارَةِ الْوَاطِئِ مُخَالِفٌ لِحُكْمِ كَفَّارَةِ الْقَاتِلِ، فَبَطَلَ بِهَذَا قِيَاسُ إِحْدَاهُمَا عَلَى الْأُخْرَى؟ فَإِنْ قَالُوا: إِنَّ النَّصَّ لَمْ يَرِدْ بِالتَّعْوِيضِ فِي كَفَّارَةِ الْقَتْلِ، وَوَرَدَ بِهِ فِي كَفَّارَةِ الْوَطْءِ؟ قُلْنَا: وَالنَّصُّ لَمْ يَرِدْ بِاشْتِرَاطِ مُؤْمِنَةٍ فِي كَفَّارَةِ الْوَطْءِ وَوَرَدَ بِهِ فِي كَفَّارَةِ الْقَتْلِ، وَهَذَا هُوَ الْحَقُّ.

L11734 If they say: "Is the believing woman superior?" We say: Yes, and the virtuous scholar is superior to the ignorant sinner.

فَإِنْ قَالُوا: الْمُؤْمِنَةُ أَفْضَلُ؟ قُلْنَا: نَعَمْ، وَالْعَالِمُ الْفَاضِلُ أَفْضَلُ مِنَ الْجَاهِلِ الْفَاسِقِ.

L11735 Exalted is He said, "Say, 'Are those who know equal to those who do not know?'" [Az-Zumar 9].[17]

قَالَ تَعَالَى: {قُلْ هَلْ يَسْتَوِي الَّذِينَ يَعْلَمُونَ وَالَّذِينَ لا يَعْلَمُونَ} [الزمر: ٩] .

L11736 The Almighty said: "Or do those who commit evil deeds think that We will

[17] **Qur'an references (L11735):** Qur'an 39:9 (Az-Zumar).

make them like those who believe and do righteous deeds?" [Al-Jāthiyah: 21] Yet you validate the ignorant transgressor in this matter.[18]

وَقَالَ تَعَالَى: {أَمْ حَسِبَ الَّذِينَ اجْتَرَحُوا السَّيِّئَاتِ أَنْ نَجْعَلَهُمْ كَالَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ} [الجاثية: ٢١] وَأَنْتُمْ تُجِيزُونَ فِيهَا الْجَاهِلَ الْفَاسِقَ.

L11737 As for the defective item, all scholars agree on permitting minor defects in it. And has there come any text, consensus, or analogical reasoning addressing the distinction between defects in that matter?

وَأَمَّا الْمَعِيبُ فَكُلُّهُمْ مُتَّفِقٌ عَلَى إجَازَةِ الْعَيْبِ الْخَفِيفِ فِيهَا، وَلَمْ يَأْتِ نَصٌّ، وَلَا إجْمَاعٌ، وَلَا قِيَاسٌ بِالْفَرْقِ بَيْنَ الْعُيُوبِ فِي ذَلِكَ؟

L11738–11739 Moreover, they have no means to define the minor act—which they permit from the numerous acts they generally prohibit. Is it not correct that this is a corrupt opinion among their opinions? Abu Hanifah said: A one-eyed person is sufficient, and one with a hand, leg, or both amputated due to differing opinions, and one with two fingers amputated from each hand other than the thumbs.

وَأَيْضًا: فَلَا سَبِيلَ لَهُمْ إلَى تَحْدِيدِ الْخَفِيفِ - الَّذِي أَجَازُوهُ مِنْ الْكَثِيرِ - الَّذِي لَا يُجِيزُونَهُ - فَصَحَّ أَنَّهُ رَأْيٌ فَاسِدٌ مِنْ آرَائِهِمْ؟ وَقَالَ أَبُو حَنِيفَةَ: يُجْزِئُ الْأَعْوَرُ، وَالْمَقْطُوعُ الْيَدِ أَوْ الرِّجْلِ أَوْ كِلَيْهِمَا مِنْ خِلَافٍ، وَالْمَقْطُوعُ إصْبَعَيْنِ مِنْ كُلِّ يَدٍ سِوَى الْإِبْهَامَيْنِ.

L11740 The blind person does not suffice, nor the paralyzed person, nor one whose hand and leg are cut off from one side, nor one whose only both thumbs are cut off from both hands, nor one whose three fingers are cut off from each hand. Abu Muhammad said: "These are utterly confused assertions. Had any of this been invalid, he (peace be upon him) would have clarified it." As for the mother of the master's child (umm al-walad) and the contractually designated slave (mudabbar), there is no disagreement that emancipation is valid for them and its ruling takes effect upon their emancipation. The emancipator of each is called one who frees a slave, and the emancipation of each constitutes freeing a slave without dispute. Therefore, whoever emancipates one of them has fulfilled what Allah the Exalted commanded him to do.

وَلَا يُجْزِئُ الْأَعْمَى، وَلَا الْمُقْعَدُ، وَلَا الْمَقْطُوعُ يَدًا وَرِجْلًا مِنْ جَانِبٍ وَاحِدٍ، وَلَا مَقْطُوعُ الْإِبْهَامَيْنِ فَقَطْ مِنْ كِلْتَا يَدَيْهِ وَلَا مَقْطُوعُ ثَلَاثِ أَصَابِعَ مِنْ كُلِّ يَدٍ قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ تَخَالِيطُ قَوِيَّةٌ بِمَرَّةٍ وَلَوْ كَانَ شَيْءٌ مِنْ هَذَا لَا يُجْزِئُ لَبَيَّنَهُ - عَلَيْهِ السَّلَامُ -. وَأَمَّا أُمُّ الْوَلَدِ وَالْمُدَبَّرُ فَلَا خِلَافَ فِي أَنَّ الْعِتْقَ جَائِزٌ فِيهِمَا وَحُكْمُهُ وَاقِعٌ عَلَيْهِمَا إذَا عَتَقَا، فَمُعْتِقُ كُلِّ وَاحِدٍ مِنْهُمَا يُسَمَّى مُعْتِقَ رَقَبَةٍ، وَعِتْقُ كُلِّ وَاحِدٍ مِنْهُمْ عِتْقَ رَقَبَةٍ بِلَا خِلَافٍ، فَوَجَبَ أَنَّ مَنْ أَعْتَقَ أَحَدَهُمَا فِي ذَلِكَ فَقَدْ فَعَلَ مَا أَمَرَهُ اللَّهُ تَعَالَى بِهِ.

L11741 Abu Hanifa and Malik said: The two do not suffice. Al-Shafi'i said: The umm al-walad does not suffice because she cannot be sold. Abu Muhammad said: What then? Did the Prophet, peace be upon him, stipulate—when ordering the emancipation of a slave in expiation—that it must be one whose sale is permissible? Allah is far above such a thing! Since the Prophet, peace be upon him, did not stipulate this attribute, stipulating it is invalid and legislation in

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَا يُجْزِئَانِ؟ وَقَالَ الشَّافِعِيُّ: لَا تُجْزِئُ أُمُّ الْوَلَدِ، لِأَنَّهَا لَا تُبَاعُ؟ قَالَ أَبُو مُحَمَّدٍ: فَكَانَ مَاذَا؟ وَهَلْ اشْتَرَطَ - عَلَيْهِ السَّلَامُ - إذْ أَمَرَ فِي الْكَفَّارَةِ بِعِتْقِ رَقَبَةٍ - أَنْ تَكُونَ مِمَّنْ يَجُوزُ بَيْعُهَا؟ حَاشَ لِلَّهِ مِنْ هَذَا، فَإِذْ لَمْ يَشْتَرِطْ - عَلَيْهِ السَّلَامُ - هَذِهِ الصِّفَةَ فَاشْتِرَاطُهَا بَاطِلٌ، وَشَرْعٌ فِي الدِّينِ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤].

[18] **Qur'an references (L11736):** Qur'an 45:21 (Al-Jathiyah).

the religion which Allah the Exalted has not permitted. “And your Lord is not forgetful.” [Maryam 19:64][19]

وَأَجَازَ فِي ذَلِكَ عِتْقَ الْمُدَبَّرِ؟ وَمِمَّنْ أَجَازَ عِتْقَ أُمِّ الْوَلَدِ، وَالْمُدَبَّرِ فِي ذَلِكَ: عُثْمَانُ الْبَتِّيُّ، وَأَبُو سُلَيْمَانَ؟ وَأَمَّا الْمُكَاتَبُ الَّذِي لَمْ يُؤَدِّ شَيْئًا فَقَدْ ذَكَرْنَا أَنَّهُ عَبْدٌ، وَمِمَّنْ أَجَازَهُ فِي الْكَفَّارَةِ دُونَ مَنْ أَدَّى شَيْئًا مِنْ كِتَابَتِهِ -: أَبُو حَنِيفَةَ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ.

L11742 And he permitted in that regard the emancipation of the mudabbar (a slave designated for posthumous freedom). Among those who permitted the emancipation of the umm al-walad (a slave mother) and the mudabbar in that context are ʿUthmān al-Battī and Abū Sulaymān. As for the mukatab (a slave under a manumission contract) who has not paid anything, we have stated that he remains a slave. Among those who permitted his inclusion in expiation—excluding one who has paid part of his kitābah payments—are Abū Ḥanīfah, Aḥmad ibn Ḥanbal, and Isḥāq ibn Rāhawayh.

وَأَمَّا الْمُكَاتَبُ الَّذِي أَدَّى شَيْئًا مِنْ كِتَابَتِهِ، وَمَنْ بَعْضُهُ حُرٌّ، فَقَدْ ذَكَرْنَا فِي كِتَابِ الزَّكَاةِ شُرُوعُ الْحُرِّيَّةِ فِيهِ بِقَدْرِ مَا أَدَّى، فَمَنْ أَعْتَقَ بَاقِيَهُمَا فَإِنَّمَا أَعْتَقَ بَعْضَ رَقَبَةٍ، لَا رَقَبَةً، فَلَمْ يُؤَدِّ مَا أُمِرَ بِهِ.

L11743 As for the mukatab (one bound by a manumission contract) who has paid part of his contractual obligation and part of whom is free, we have mentioned in the chapter on Zakât that the commencement of freedom applies to him in proportion to what he has paid. Therefore, whoever manumits the remainder of both has only freed part of a slave—not a whole slave—and thus has not fulfilled his obligation.

وَمِمَّنْ قَالَ بِقَوْلِنَا فِي أَنَّهُمَا لَا يُجْزِئَانِ: أَبُو حَنِيفَةَ، وَأَحْمَدُ، وَإِسْحَاقُ.

L11744–11745 Among those who affirmed our position that the two do not suffice are Abu Hanifa, Ahmad, and Ishaq.

وَأَمَّا مَنْ أَعْتَقَ نِصْفَيْ رَقَبَتَيْنِ فَلَا يُسَمَّى مُعْتِقَ رَقَبَةٍ كَمَا ذَكَرْنَا، وَلِأَنَّهُ يَعْتِقُ عَلَيْهِ سَائِرُهُمَا بِحُكْمٍ آخَرَ وَلَا بُدَّ، فَإِذَا لَمْ يَكُنْ مُعْتِقَ - رَقَبَةٍ فِي ذَلِكَ فَلَمْ يُؤَدِّ مَا أُمِرَ بِهِ؟ وَأَمَّا الْمُعْتِقُ إِلَى أَجَلٍ - وَإِنْ قَرُبَ - أَوْ بِصِفَةٍ فَعِتْقُهُمَا وَبَيْعُهُمَا جَائِزٌ، أَمَّا الْمُعْتَقُ فَلَا خِلَافَ مِنْهُمْ نَعْلَمُهُ فِيهِ.

L11746 As for one who frees two halves of two slaves, he is not called “the emancipator of a slave” as we stated, because the remainder of both must inevitably be emancipated under another legal ruling. If he is not considered to have emancipated a slave in this case, has he not fulfilled what he was commanded to do? As for one who emancipates with a stipulated term—even if brief—or with a condition, both their emancipation and the sale in such cases are permissible. Regarding the emancipated slave, there is no disagreement among them that we know of concerning him.

وَمِمَّنْ أَجَازَهُمَا فِي الْكَفَّارَةِ: الشَّافِعِيُّ وَغَيْرُهُ، وَمُعْتَقُهُمَا يُسَمَّى: مُعْتِقَ رَقَبَةٍ.

L11747 Among those who permitted both for expiation are al-Shāfiʿī and others, and their manumission is termed “freeing a neck.”

L11748 Issue 741: All that we have stated to be invalid constitutes a rejected, void, and non-effective manumission, based on the statement of Allah’s Messen-

[19] **Qur’an references (L11741):** Qur’an 19:64 (Maryam).

ger—peace and blessings of Allah be upon him: "Whoever performs an act not in accordance with our command, it is rejected." This is because he only manumitted through an invalid condition, thus his manumission did not become valid—and with Allah alone is [the grant of] success, the Exalted.[20]

A case where one observed fasting as expiation for breaking a fast, but their fast was invalidated by the onset of Ramadan or another period during which fasting is prohibited.

742. Issue: If one's obligatory fast is interrupted by the arrival of Ramadan, the days of Eid al-Adha, or days when fasting is impermissible, the two [fasts] are not consecutive. But was he not commanded to observe them consecutively? A scholar said: "Does it suffice him?" Ali said: "This contradicts the command of the Prophet—peace be upon him. Merely being excused for breaking the fast, without being sinful or blameworthy, does not permit abandoning continuity unless Allah the Exalted has permitted it."

It was narrated to us through the chain of Al-Ḥajjāj ibn Al-Minhāl, from Abū ʿAwānah, from Al-Mughīrah, from Ibrāhīm: If someone required to fast two consecutive months falls ill and breaks his fast, must he restart fasting both months?

Issue 743: If in both cases he encounters a day he had vowed to fast, the vow is nullified and ceases to bind him, and he must continue the fast for expiation. Likewise in Ramadan, it is exactly the same, due to the statement of Allah's Messenger - peace and blessings be upon him: "Allah's Book has greater precedence, and Allah's condition is more binding."

Thus, it is established that no one may obligate themselves to anything beyond what Allah, the Exalted, has ordained. Whoever vows an act that nullifies Allah's obligation—their vow is invalid, for it transgresses the limits set by Allah, the Almighty, the Majestic.

[20] **Hadith references (L11748):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

٧٤١ - مَسْأَلَةٌ: وَكُلُّ مَا قُلْنَا: أَنَّهُ لَا يُجْزِئُ، فَإِنَّهُ عِتْقٌ مَرْدُودٌ بَاطِلٌ لَا يَنْفُذُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَلِأَنَّهُ لَمْ يُعْتِقْهُ إِلَّا بِصِفَةٍ لَمْ تَصِحَّ، فَلَمْ يَصِحَّ عِتْقُهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ صام فِي كَفَّارَةِ الْفِطْرِ فَقَطَعَ صَوْمَهُ عَلَيْهِ رَمَضَانُ أَوْ مَا لَا يَحِلُّ صِيَامُهُ]

٧٤٢ - مَسْأَلَةٌ: وَمَنْ كَانَ فَرْضُهُ الصَّوْمُ، فَقَطَعَ صَوْمَهُ عَلَيْهِ رَمَضَانُ، أَوْ أَيَّامُ الْأَضْحَى، أَوْ مَا لَا يَحِلُّ صِيَامُهُ فَلَيْسَا مُتَتَابِعِينَ، وَإِنَّمَا أُمِرَ بِهِمَا مُتَتَابِعِينَ؟ وَقَالَ قَائِلٌ: يُجْزِئُهُ؟ قَالَ عَلِيٌّ: وَهَذَا خِلَافُ أَمْرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَيْسَ كَوْنُهُ مَعْذُورًا فِي إِفْطَارِهِ غَيْرَ آثِمٍ وَلَا مَلُومٍ بِمُجِيزٍ لَهُ مَا لَمْ يُجَوِّزْهُ اللَّهُ تَعَالَى مِنْ عَدَمِ التَّتَابُعِ.

وَرُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ أَبِي عَوَانَةَ عَنْ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ: مَنْ لَزِمَهُ شَهْرَانِ مُتَتَابِعَانِ فَمَرِضَ فَأَفْطَرَ فَإِنَّهُ يَبْتَدِئُ صَوْمَهُمَا؟

٧٤٣ - مَسْأَلَةٌ: فَإِنْ اعْتَرَضَهُ فِيهِمَا يَوْمُ نَذْرٍ نَذَرَهُ: بَطَلَ النَّذْرُ وَسَقَطَ عَنْهُ، وَتَمَادَى فِي صَوْمِ الْكَفَّارَةِ، وَكَذَلِكَ فِي رَمَضَانَ سَوَاءٌ سَوَاءٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ» .

فَصَحَّ أَنَّهُ لَيْسَ لِأَحَدٍ أَنْ يَلْتَزِمَ غَيْرَ مَا أَلْزَمَهُ اللَّهُ تَعَالَى، وَمَنْ نَذَرَ مَا يُبْطِلُ بِهِ فَرْضَ اللَّهِ تَعَالَى: فَنَذْرُهُ بَاطِلٌ؛ لِأَنَّهُ تَعَدٍّ لِحُدُودِ اللَّهِ عَزَّ وَجَلَّ؟

L11754–11756 744 - Issue: If one begins fasting for the two months on the first day of the month, they must fast until sighting the third crescent—whether both months are complete, both shortened, or one complete and one shortened—due to Allah, the Exalted's statement: {Indeed, the number of months with Allah is twelve months in the Book of Allah} [Quran 9:36]. Thus, whoever is obligated to fast two months must... Does he count both of them among the twelve aforementioned months?[21]

٧٤٤ - مَسْأَلَةٌ: فَإِنْ بَدَأَ بِصَوْمِهِمَا فِي أَوَّلِ يَوْمٍ مِنْ الشَّهْرِ صَامَ إلَى أَنْ يَرَى الْهِلَالَ الثَّالِثَ وَلَا بُدَّ، كَامِلَيْنِ كَانَا أَوْ نَاقِصَيْنِ، أَوْ كَامِلًا وَنَاقِصًا لِقَوْلِ اللَّهِ تَعَالَى: {إِنَّ عِدَّةَ الشُّهُورِ عِنْدَ اللَّهِ اثْنَا عَشَرَ شَهْرًا فِي كِتَابِ اللَّهِ} [التوبة: ٣٦] فَمَنْ لَزِمَهُ صَوْمُ شَهْرَيْنِ لَزِمَهُ أَنْ يَأْتِيَ بِهِمَا مِنْ جُمْلَةِ الِاثْنَيْ عَشَرَ شَهْرًا الْمَذْكُورَةِ؟

L11757 745 – Issue: If he begins with both [obligations] during any part of the month—even if only one day has passed, only one day remains, or any duration in between—he is required to fast fifty-eight days, no more.

٧٤٥ - مَسْأَلَةٌ: فَإِنْ بَدَأَ بِهِمَا فِي بَعْضِ الشَّهْرِ - وَلَوْ لَمْ يَمْضِ مِنْهُ إلَّا يَوْمٌ، أَوْ لَمْ يَبْقَ إلَّا يَوْمٌ فَمَا بَيْنَ ذَلِكَ -: لَزِمَهُ صَوْمُ ثَمَانِيَةٍ وَخَمْسِينَ يَوْمًا لَا أَكْثَرَ.

L11758 Abd al-Rahman ibn Abd Allah ibn Khalid reported to us, Ibrahim ibn Ahmad reported to us, al-Farbari reported to us, al-Bukhari reported to us, Abd al-Aziz ibn Abd Allah reported to us, Sulayman ibn Bilal narrated from Humaid from Anas ibn Malik, who said: "The Messenger of Allah - peace and blessings be upon him - vowed to abstain from his wives, so he remained in an upper chamber for twenty-nine nights, then descended. They said: 'O Messenger of Allah, you vowed to abstain for a month.' He replied: 'The month may be twenty-nine days.'" We have transmitted this through extensively mass-transmitted (mutawātir) chains: via Ibn Jurayj's chain from Abu al-Zubayr, who heard it from Jabir; via Ikrimah ibn Abd al-Rahman's chain from Umm Salamah; via the chains of Sa'id ibn Amr, Jabalah ibn Suhaym, Amr ibn Dinar, Uqbah ibn Hurayth, and Sa'd ibn Ubaydah—all transmitting from Ibn Umar; via Isma'il ibn Abi Khalid's chain from Muhammad ibn Sa'd ibn Abi Waqqas from his father; and via al-Zuhri's chain from Urwah from Aisha—all transmitting from the Messenger of Allah - peace and blessings be upon him - with chains of the utmost soundness. Therefore, if a month may be twenty-nine or thirty days, is one only obligated by certainty—with twenty-nine being the minimum? Some argue: "Must he complete sixty days to ensure the full fulfillment of two months?" Abu Muhammad said: This is erroneous, for Allah the Exalted obligated two months without stipulating "complete months of thirty days." One is bound only by what constitutes

لِمَا حَدَّثَنَاهُ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ ثنا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ حُمَيْدٍ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «آلَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ نِسَائِهِ فَأَقَامَ فِي مَشْرُبَةٍ تِسْعًا وَعِشْرِينَ لَيْلَةً ثُمَّ نَزَلَ، فَقَالُوا: يَا رَسُولَ اللَّهِ، آلَيْتَ شَهْرًا، فَقَالَ: إنَّ الشَّهْرَ يَكُونُ تِسْعًا وَعِشْرِينَ» . وَرُوِّينَاهُ مِنْ طُرُقٍ مُتَوَاتِرَةٍ جِدًّا كَذَلِكَ مِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ أَبِي الزُّبَيْرِ: أَنَّهُ سَمِعَ جَابِرًا، وَمِنْ طَرِيقِ عِكْرِمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أُمِّ سَلَمَةَ وَمِنْ طَرِيقِ سَعِيدِ بْنِ عَمْرٍو، وَجَبَلَةِ بْنِ سُحَيْمٍ، وَعَمْرِو بْنِ دِينَارٍ، وَعُقْبَةَ بْنِ حُرَيْثٍ، وَسَعْدِ بْنِ عُبَيْدَةَ كُلُّهُمْ عَنْ ابْنِ عُمَرَ، وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ مُحَمَّدِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ، وَمِنْ طَرِيقِ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ، كُلُّهُمْ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَسَانِيدَ فِي غَايَةِ الصِّحَّةِ، فَإِذَا الشَّهْرُ يَكُونُ تِسْعًا وَعِشْرِينَ وَيَكُونُ ثَلَاثِينَ، فَلَا يَلْزَمُهُ إلَّا الْيَقِينُ، وَهُوَ الْأَقَلُّ؟ وَقَالَ قَائِلُونَ: عَلَيْهِ أَنْ يُوَفِّيَ سِتِّينَ يَوْمًا لِيَكُونَ عَلَى يَقِينٍ مِنْ إتْمَامِ الشَّهْرَيْنِ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ، لِأَنَّ اللَّهَ تَعَالَى إنَّمَا أَلْزَمَهُ شَهْرَيْنِ، وَلَمْ يَقُلْ

[21] **Qur'an references (L11754):** Qur'an 9:36 (At-Tawbah).

two months, and the term “two months”—by the explicit declaration of the Prophet (peace be upon him)—applies to twenty-nine days each. Are prescribed duties not binding except by explicit textual proof or consensus? By this reasoning, it would necessitate that Hanafis who hold this view also assert: “Emancipating a slave is invalid unless the slave is a believer”—to attain certainty of fulfilling the obligation in emancipation?

كَامِلَيْنِ، كُلُّ شَهْرٍ مِنْ ثَلَاثِينَ يَوْمًا، فَإِنَّمَا عَلَيْهِ مَا يَقَعُ عَلَيْهِ اسْمُ شَهْرَيْنِ، وَاسْمُ شَهْرَيْنِ يَقَعُ بِنَصِّ كَلَامِهِ - عَلَيْهِ السَّلَامُ - عَلَى تِسْعٍ وَعِشْرِينَ، وَتِسْعٍ وَعِشْرِينَ، وَالْفَرَائِضُ لَا تَلْزَمُ إِلَّا بِنَصٍّ، أَوْ إِجْمَاعٍ؟ وَيَلْزَمُ مَنْ قَالَ هَذَا مِنَ الْحَنَفِيِّينَ أَنْ يَقُولَ: لَا تُجْزِئُ - الرَّقَبَةُ إِلَّا مُؤْمِنَةً، لِيَكُونَ عَلَى يَقِينٍ مِنْ أَنَّهُ قَدْ أَدَّى الْفَرْضَ فِي الرَّقَبَةِ؟

L11759–11760 It is incumbent upon those who hold this view among the Mālikīs and Shāfiʿīs to state: “Does it only suffice to provide lunch and dinner, or two lunches, or two dinners—as the Ḥanafīs assert—and does it not suffice unless one gives a *ṣāʿ* of barley for each poor person, or half a *ṣāʿ* of wheat, so that one may be certain of fulfilling the obligation of feeding?”

وَيَلْزَمُ مَنْ قَالَ بِهَذَا مِنَ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ أَنْ يَقُولَ: لَا تُجْزِئُ إِلَّا غَدَاءً وَعَشَاءً، أَوْ غَدَاءً وَغَدَاءً، أَوْ عَشَاءً وَعَشَاءً، كَمَا يَقُولُ الْحَنَفِيُّونَ، وَلَا يُجْزِئُ إِلَّا صَاعٌ مِنْ شَعِيرٍ لِكُلِّ مِسْكِينٍ، أَوْ نِصْفُ صَاعِ بُرٍّ -: لِيَكُونَ عَلَى يَقِينٍ مِنْ أَدَاءِ فَرْضِ الْإِطْعَامِ؟

L11761 A legal question regarding one for whom feeding [the poor] is obligatory as expiation (kaffārah) for breaking the fast during Ramadan.

[مَسْأَلَةٌ مَنْ كَانَ فَرْضُهُ الْإِطْعَامَ فِي كَفَّارَةِ الْفِطْرِ فِي رَمَضَانَ]

L11762 746 - Issue: For one whose obligation is to provide food, it is essential that he feeds them to their satiety, regardless of what he feeds them, even if differing in type. For example, he may feed some bread, some dates, some tharīd, some raisins, and the like.

٧٤٦ - مَسْأَلَةٌ: وَمَنْ كَانَ فَرْضُهُ الْإِطْعَامَ فَإِنَّهُ لَا بُدَّ لَهُ مِنْ أَنْ يُطْعِمَهُمْ شِبَعَهُمْ، مِنْ أَيِّ شَيْءٍ أَطْعَمَهُمْ، وَإِنِ اخْتَلَفَ، مِثْلُ: أَنْ يُطْعِمَ بَعْضَهُمْ خُبْزًا، وَبَعْضَهُمْ تَمْرًا، وَبَعْضَهُمْ ثَرِيدًا، وَبَعْضَهُمْ زَبِيبًا، وَنَحْوَ ذَلِكَ.

L11763 It suffices in that a *mudd* by the Prophet’s *mudd*—peace be upon him—if one gives them grains, flour, dates, raisins, or other such items among what is edible and measurable. If one feeds them prepared food, does it suffice to provide what satisfies them in a single meal—whether the quantity is less or more?

Aḥmad ibn ʿUmar narrated to us: ʿAbdullāh ibn Ḥusayn ibn ʿIqāl narrated to us: Bakkār ibn Qutaybah narrated to us: Muʾammal—that is, ibn Ismāʿīl al-Ḥimyarī—narrated to us: Sufyān—that is, al-Thawrī—narrated from Manṣūr—that is, ibn al-Muʿtamir—from al-Zuhrī from Ḥumayd—that is, ibn ʿAbd al-Raḥmān ibn ʿAwf—from Abū Hurayrah that the Messenger of Allah—peace be upon him—mentioned the case of one who had intercourse

وَيُجْزِئُ فِي ذَلِكَ مُدٌّ بِمُدِّ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنْ أَعْطَاهُمْ حَبًّا أَوْ دَقِيقًا أَوْ تَمْرًا أَوْ زَبِيبًا أَوْ غَيْرَ ذَلِكَ، مِمَّا يُؤْكَلُ وَيُكَالُ، فَإِنْ أَطْعَمَهُمْ طَعَامًا مَعْمُولًا فَيُجْزِئُهُ مَا أَشْبَعَهُمْ أَكْلَةً وَاحِدَةً، أَقَلَّ كَانَ أَوْ أَكْثَرَ؟ حَدَّثَنَا أَحْمَدُ بْنُ عُمَرَ ثنا عَبْدُ اللَّهِ بْنُ حُسَيْنِ بْنِ عِقَالٍ ثنا بَكَّارُ بْنُ قُتَيْبَةَ ثنا مُؤَمَّلٌ هُوَ ابْنُ إِسْمَاعِيلَ الْحِمْيَرِيُّ ثنا سُفْيَانُ هُوَ الثَّوْرِيُّ - عَنْ مَنْصُورٍ هُوَ ابْنُ الْمُعْتَمِرِ - عَنِ الزُّهْرِيِّ عَنْ حُمَيْدٍ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ خَبَرَ الْوَاطِئِ فِي رَمَضَانَ،

during Ramadan. He said: The Prophet—peace be upon him—was brought a basket containing fifteen—meaning fifteen *ṣāʿs*—and said to him: "Take it and feed it as expiation for yourself."

قَالَ قَالَ: فَأُتِيَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِكْتَلٍ فِيهِ خَمْسَةَ عَشَرَ - يَعْنِي صَاعًا - فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خُذْهُ فَأَطْعِمْهُ عَنْكَ» .

L11764 Ali said: "So this sufficed for [the required act of] feeding."

قَالَ عَلِيٌّ: فَأَجْزَأَ هَذَا فِي الْإِطْعَامِ.

L11765 Their satiation from whatever satiates them among what people eat is called feeding. Wheat is eaten parched; all of that constitutes feeding. It is not permissible to specify one form of feeding over another without a textual basis or consensus. Has there been any disagreement that providing less than satiety in food, or less than a mudd in quantity, does not suffice? Abu Hanifa said: Nothing suffices except half a saʿ of wheat, or its equivalent in roasted flour or fine flour, or a full saʿ of barley, raisins, or dates for each destitute person.

وَكَانَ إشْبَاعُهُمْ مِنْ أَيِّ شَيْءٍ أَشْبَعَهُمْ مِمَّا يَأْكُلُ النَّاسُ -: يُسَمَّى إطْعَامًا، وَالْبُرُّ: يُؤْكَلُ مَقْلُوًّا، فَكُلُّ ذَلِكَ إطْعَامٌ. وَلَا يَجُوزُ تَحْدِيدُ إطْعَامٍ دُونَ إطْعَامٍ بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ، وَلَمْ يُخْتَلَفْ فِيمَا دُونَ الشِّبَعِ فِي الْأَكْلِ، وَفِيمَا دُونَ الْمُدِّ فِي الْإِعْطَاءِ: أَنَّهُ لَا يُجْزِئُ؟ وَقَالَ أَبُو حَنِيفَةَ: لَا يُجْزِئُ إلَّا نِصْفُ صَاعِ بُرٍّ، أَوْ مِثْلُهُ مِنْ سَوِيقِهِ أَوْ دَقِيقِهِ، أَوْ صَاعٌ مِنْ شَعِيرٍ، أَوْ زَبِيبٍ، أَوْ تَمْرٍ، لِكُلِّ مِسْكِينٍ.

L11766–11767 Is it necessary to have lunch and dinner, or lunch and lunch, or dinner and dinner, or suhoor and lunch, or suhoor and dinner? Abū Muḥammad said: Is this an arbitrary imposition and a religious ruling not mandated by any revealed text, consensus, analogical reasoning, or statement of a Companion?

وَلَا بُدَّ مِنْ غَدَاءٍ وَعَشَاءٍ أَوْ غَدَاءٍ وَغَدَاءٍ، أَوْ عَشَاءٍ وَعَشَاءٍ، أَوْ سُحُورٍ وَغَدَاءٍ، أَوْ سُحُورٍ وَعَشَاءٍ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَحَكُّمٌ وَشَرْعٌ لَمْ يُوجِبْهُ نَصٌّ وَلَا إجْمَاعٌ وَلَا قِيَاسٌ وَلَا قَوْلُ صَاحِبٍ؟

L11768 Issue 747: It is not valid to feed a suckling infant who does not eat food, nor to give him thereof, since it is not termed feeding. If he eats as children eat, feeding him and satisfying him suffices—even if he eats a small amount—because he fed as he was commanded. And success is from Allah, the Exalted?

٧٤٧ - مَسْأَلَةٌ: وَلَا يُجْزِئُ إطْعَامُ رَضِيعٍ لَا يَأْكُلُ الطَّعَامَ، وَلَا إعْطَاؤُهُ مِنْ ذَلِكَ، لِأَنَّهُ لَا يُسَمَّى إطْعَامًا، فَإِنْ كَانَ يَأْكُلُ كَمَا تَأْكُلُ الصِّبْيَانُ أَجْزَأَ إطْعَامُهُ وَإِشْبَاعُهُ، وَإِنْ أَكَلَ قَلِيلًا، لِأَنَّهُ أَطْعَمَ كَمَا أُمِرَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

L11769 748 – Issue: Is feeding fewer than sixty insufficient, and is fasting for less than two months insufficient, since this contravenes what was commanded?

٧٤٨ - مَسْأَلَةٌ: وَلَا يُجْزِئُ إطْعَامُ أَقَلَّ مِنْ سِتِّينَ، وَلَا صِيَامُ أَقَلَّ مِنْ شَهْرَيْنِ، لِأَنَّهُ خِلَافُ مَا أُمِرَ بِهِ؟

L11770 **A legal issue: He was financially capable of freeing a slave at the time of engaging in sexual intercourse during the**

[مَسْأَلَةٌ كَانَ قَادِرًا حِينَ وَطْئِهِ فِي نَهَارِ رَمَضَانَ عَلَى الرَّقَبَةِ]

daytime of Ramadan and thereby became obligated to do so.

L11771 749. Issue: Whoever was capable of manumitting a slave at the time of intercourse, nothing else suffices him—whether he becomes impoverished afterward or not. Whoever was incapable of manumitting a slave at that time but capable of fasting two consecutive months, only fasting suffices—whether he later finds means and acquires a slave or not. Whoever was incapable at that time of both manumission and fasting but capable of feeding the needy, only feeding suffices—whether he later becomes capable of manumission or fasting or not. This is because all we have mentioned constitutes his obligation by textual ruling and consensus. Thus, it is impermissible to nullify his obligation and impose another duty upon him without textual basis or consensus.

L11772 Some have said: If one enters into fasting and it becomes easier, does the ruling shift to freeing a slave? Is this an error and a statement without proof?

An issue where the one liable for expiation due to breaking the fast in Ramadan found nothing except a slave he could not do without.

L11774 750 - Issue: If someone possesses only a bondsperson whom he cannot do without—because he would face destitution if he frees her or fears his attachment to her may lead to his corruption—he is not obligated to free her, based on Allah's statement: "Allah does not burden any soul beyond its capacity" [Al-Baqarah: 286].[22]

L11775 And His saying, the Exalted: "He has not imposed upon you in the religion any hardship" [Al-Ḥajj: 78]. And His saying, the Exalted: "Allah intends ease for you and does not intend hardship for you" [Al-Baqarah: 185].[23]

L11776–11778 And everything we have mentioned is constraint and hardship; He the Ex-

٧٤٩ - مَسْأَلَةٌ: وَمَنْ كَانَ قَادِرًا حِينَ وَطْئِهِ عَلَى الرَّقَبَةِ لَمْ يُجْزِهِ غَيْرُهَا، افْتَقَرَ بَعْدَ ذَلِكَ أَوْ لَمْ يَفْتَقِرْ، وَمَنْ كَانَ عَاجِزًا عَنْهَا حِينَئِذٍ قَادِرًا عَلَى صِيَامِ شَهْرَيْنِ مُتَتَابِعَيْنِ لَمْ يُجْزِهِ شَيْءٌ غَيْرُ الصِّيَامِ، أَيْسَرَ بَعْدَ ذَلِكَ وَوَجَدَ رَقَبَةً أَوْ لَمْ يُوسِرْ؟ وَمَنْ كَانَ عَاجِزًا حِينَ ذَلِكَ عَنْ - الرَّقَبَةِ وَعَنْ الصِّيَامِ قَادِرًا عَلَى الْإِطْعَامِ لَمْ يُجْزِهِ غَيْرُ الْإِطْعَامِ، قَدَرَ عَلَى الرَّقَبَةِ أَوْ الصَّوْمِ بَعْدَ ذَلِكَ أَوْ لَمْ يَقْدِرْ، لِأَنَّ كُلَّ مَا ذَكَرْنَا هُوَ فَرْضُهُ بِالنَّصِّ، وَالْإِجْمَاعِ، فَلَا يَجُوزُ سُقُوطُ فَرْضِهِ وَإِيجَابُ فَرْضٍ آخَرَ عَلَيْهِ بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ.

وَقَالَ قَائِلُونَ: إنْ دَخَلَ فِي الصَّوْمِ فَأَيْسَرَ انْتَقَلَ حُكْمُهُ إلَى الرَّقَبَةِ؟ وَهَذَا خَطَأٌ، وَقَوْلٌ بِلَا بُرْهَانٍ؟

[مَسْأَلَةٌ لَمْ يَجِدْ المكفر عَنْ الْفِطْرِ فِي رَمَضَانَ إلَّا رَقَبَةً لَا غِنَى بِهِ عَنْهَا]

٧٥٠ - مَسْأَلَةٌ: فَمَنْ لَمْ يَجِدْ إلَّا رَقَبَةً لَا غِنَى بِهِ عَنْهَا، لِأَنَّهُ يَضِيعُ بَعْدَهَا أَوْ يَخَافُ عَلَى نَفْسِهِ مِنْ حُبِّهَا -: لَمْ يَلْزَمْهُ عِتْقُهَا؟ لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البَقَرَة: ٢٨٦] .

وَقَوْله تَعَالَى: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] . وَقَوْله تَعَالَى: {يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلا يُرِيدُ بِكُمُ الْعُسْرَ} [البقرة: ١٨٥] .

[22] **Qur'an references (L11774):** Qur'an 2:286 (Al-Baqarah).
[23] **Qur'an references (L11775):** Qur'an 22:78 (Al-Hajj); Qur'an 2:185 (Al-Baqarah).

alted has not imposed it upon us, nor does He will it from us, and its obligation is thereby nullified at that time. As for fasting [as expiation], if he is not in need of it while being self-sufficient yet possessing no wealth, must he free her [the slave]? For he possesses a slave [to free] without hardship in emancipating her?

وَكُلُّ مَا ذَكَرْنَا حَرَجٌ وَعُسْرٌ لَمْ يَجْعَلْهُ تَعَالَى عَلَيْنَا، وَلَا أَرَادَهُ مِنَّا، وَفَرْضُهُ حِينَئِذٍ الصِّيَامُ، فَإِنْ كَانَ فِي غِنًى عَنْهَا وَهُوَ قَائِمٌ بِنَفْسِهِ وَلَا مَالَ لَهُ فَعَلَيْهِ عِتْقُهَا؛ لِأَنَّهُ وَاجِدُ رَقَبَةٍ لَا حَرَجَ عَلَيْهِ فِي عِتْقِهَا؟

L11779 751 – Question: Whoever is incapable of all that, his obligation is providing food [to the needy], and this remains binding upon him. If he finds food and is in need of it, he and his household may eat it, while the obligation to provide food remains a debt upon him. This is because the Messenger of Allah – peace and blessings of Allah be upon him – commanded him to provide food, but he informed him of his inability. The Prophet then brought him dates, gave them to him, and ordered him to distribute them as his expiation. Thus, it is confirmed that the obligation to provide food remains binding even if he cannot fulfill it. The Prophet – peace be upon him – permitted him to eat it when informed of his need, yet did not nullify the obligation he had imposed. It is impermissible to nullify what the Prophet – peace be upon him – obligated except through his explicit notification of its waiver. Success is attained through Allah, the Most High.

٧٥١ - مَسْأَلَةٌ: وَمَنْ كَانَ عَاجِزًا عَنْ ذَلِكَ كُلِّهِ فَفَرْضُهُ الْإِطْعَامُ، وَهُوَ بَاقٍ عَلَيْهِ، فَإِنْ وَجَدَ طَعَامًا وَهُوَ إلَيْهِ مُحْتَاجٌ أَكَلَهُ هُوَ وَأَهْلُهُ وَبَقِيَ الْإِطْعَامُ دَيْنًا عَلَيْهِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَهُ بِالْإِطْعَامِ فَأَخْبَرَهُ أَنَّهُ لَا يَقْدِرُ عَلَيْهِ، فَأَتَاهُ بِالتَّمْرِ فَأَعْطَاهُ إيَّاهُ وَأَمَرَهُ بِأَنْ يُطْعِمَهُ عَنْ كَفَّارَتِهِ؟ فَصَحَّ أَنَّ الْإِطْعَامَ بَاقٍ عَلَيْهِ وَإِنْ كَانَ لَا يَقْدِرُ عَلَيْهِ، وَأَمَرَهُ - عَلَيْهِ السَّلَامُ - بِأَكْلِهِ إذْ أَخْبَرَهُ أَنَّهُ مُحْتَاجٌ إلَى أَكْلِهِ، وَلَمْ يَسْقُطْ عَنْهُ مَا قَدْ أَلْزَمَهُ إيَّاهُ مِنْ الْإِطْعَامِ، وَلَا يَجُوزُ سُقُوطُ مَا افْتَرَضَهُ - عَلَيْهِ السَّلَامُ - إلَّا بِإِخْبَارٍ مِنْهُ - عَلَيْهِ السَّلَامُ - بِأَنَّهُ قَدْ أَسْقَطَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L11780 Issue 752: The free person and the slave are equal in all that we have mentioned. One is to feed both the free person and the slave from that, for the ruling of Allah's Messenger - peace and blessings be upon him - came in comprehensive terms, making no distinction between free persons and slaves. When a slave is impoverished, he is among those whom one has been commanded to feed. It is impermissible to oppose his injunction - upon him be peace - through false pretexts. In Allah the Exalted do we seek support.

٧٥٢ - مَسْأَلَةٌ: وَالْحُرُّ وَالْعَبْدُ فِي كُلِّ مَا ذَكَرْنَا سَوَاءٌ وَيُطْعِمُ مِنْ ذَلِكَ الْحُرَّ وَالْعَبْدَ، لِأَنَّ حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَاءَ عُمُومًا، لَمْ يُخَصَّ مِنْهُ حُرٌّ مِنْ عَبْدٍ، وَإِذَا كَانَ الْعَبْدُ مِسْكِينًا فَهُوَ مِمَّنْ أُمِرَ بِإِطْعَامِهِ وَلَا تَجُوزُ مُعَارَضَةُ أَمْرِهِ - عَلَيْهِ السَّلَامُ - بِالدَّعَاوَى الْكَاذِبَةِ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ؟

A juristic ruling: Cupping, nocturnal emission, and masturbation do not invalidate the fast.

[مَسْأَلَةٌ لَا يَنْقُضُ الصَّوْمَ حِجَامَةٌ وَلَا احْتِلَامٌ وَلَا اسْتِمْنَاءٌ]

L11781–11784 753. Issue: Fasting is not invalidated by cupping, nocturnal emission, masturbation, a man's intimate contact with his wife or female slave permissible to him excluding the genital area - whether he intentionally ejaculates or not, whether pre-seminal fluid is emitted or not - nor by kissing them in the same manner. It is not invalidated by forceful vomiting, regurgitation exiting the

٧٥٣ - مَسْأَلَةٌ: وَلَا يَنْقُضُ الصَّوْمَ حِجَامَةٌ وَلَا احْتِلَامٌ، وَلَا اسْتِمْنَاءٌ، وَلَا مُبَاشَرَةُ الرَّجُلِ امْرَأَتَهُ أَوْ أَمَتَهُ الْمُبَاحَةَ لَهُ فِيمَا دُونَ الْفَرْجِ، تَعَمَّدَ الْإِمْنَاءَ أَمْ لَمْ يُمْنِ، أَمْذَى أَمْ لَمْ يُمْذِ وَلَا قُبْلَةٌ كَذَلِكَ فِيهِمَا، وَلَا قَيْءٌ غَالِبٌ، وَلَا قَلْسٌ خَارِجٌ مِنْ الْحَلْقِ، مَا لَمْ يَتَعَمَّدْ

throat unless one intentionally swallows it back after it reaches the mouth while capable of expelling it; nor by blood exiting the teeth or abdomen unless deliberately swallowed. Fasting remains valid despite enema, nasal drops, ear drops, dripping into the urethra, nasal drops, or inhalation even if reaching the throat; unintentional swallowing during mouth rinsing; kohl application (whether reaching the throat by day or night through medicines or other substances); flour dust; sifting of flour; henna; perfume; colocynth; any substance; a fly entering the throat unavoidably; water droplets accidentally entering the throat when raising one's head; chewing tar, mastic gum, or resin. It is not invalidated by one who intentionally enters the state of junub at dawn provided he performs prayer; nor by one taking pre-dawn meal or having intercourse while believing it is still night, then discovering dawn had broken; nor by one breaking fast through eating or intercourse while thinking the sun had set when it had not; nor by eating, drinking, or intercourse done forgetfully - for he remains fasting - nor by forgetful sinning. The following do not invalidate one's fast: using a siwak, whether fresh or dry; chewing or tasting food without intentionally swallowing it; treating an abdominal wound or a wound reaching the brain membrane with edible substances, drinkable liquids, or other materials; food found between the teeth at any time during the day if it is dislodged; one compelled to break the fast; entering a steam room; full-body immersion in water; or applying oil to the mustache. As for cupping—Abu Muhammad stated: It is authentically established from the Messenger of Allah (peace be upon him) through the narrations of Thawban, Shaddad ibn Aws, Ma'qil ibn Sinan, Abu Hurayrah, Rafi' ibn Khadij, and others that he said, "Both the practitioner and recipient of cupping have invalidated their fast." This ruling must therefore be upheld unless its abrogation is reliably proven.

L11785 Some people believed that the narration from Ibn Abbas—The Messenger of Allah (peace and blessings be upon him) underwent cupping—is abrogating the aforementioned report. Their belief is invalid, for he (peace be upon

رَدَّهُ بَعْدَ حُصُولِهِ فِي فَمِهِ وَقُدْرَتِهِ عَلَى رَمْيِهِ، وَلَا دَمٌ خَارِجٌ مِنْ الْأَسْنَانِ أَوْ الْجَوْفِ مَا لَمْ يَتَعَمَّدْ بَلْعَهُ، وَلَا حُقْنَةٌ وَلَا سَعُوطٌ وَلَا تَقْطِيرٌ فِي أُذُنٍ، أَوْ فِي إحْلِيلٍ، أَوْ فِي أَنْفٍ وَلَا اسْتِنْشَاقٌ وَإِنْ بَلَغَ الْحَلْقَ، وَلَا مَضْمَضَةٌ دَخَلَتْ الْحَلْقَ مِنْ غَيْرِ تَعَمُّدٍ، وَلَا كُحْلٌ - أَوْ إنْ بَلَغَ إلَى الْحَلْقِ نَهَارًا أَوْ لَيْلًا - بِعَقَاقِيرَ أَوْ بِغَيْرِهَا، وَلَا غُبَارُ طَحْنٍ، أَوْ غَرْبَلَةُ دَقِيقٍ، أَوْ حِنَّاءٍ، أَوْ غَيْرُ ذَلِكَ، أَوْ عِطْرٌ، أَوْ حَنْظَلٌ، أَوْ أَيُّ شَيْءٍ كَانَ، وَلَا ذُبَابٌ دَخَلَ الْحَلْقَ بِغَلَبَةٍ، وَلَا مَنْ رَفَعَ رَأْسَهُ فَوَقَعَ فِي حَلْقِهِ نُقْطَةُ مَاءٍ بِغَيْرِ تَعَمُّدٍ لِذَلِكَ مِنْهُ، وَلَا مَضْغُ زِفْتٍ أَوْ مُصْطَكَى أَوْ عِلْكٍ، وَلَا مَنْ تَعَمَّدَ أَنْ يُصْبِحَ جُنُبًا، مَا لَمْ يَتْرُكْ الصَّلَاةَ، وَلَا مَنْ تَسَحَّرَ أَوْ وَطِئَ وَهُوَ يَظُنُّ أَنَّهُ لَيْلٌ فَإِذَا بِالْفَجْرِ كَانَ قَدْ طَلَعَ وَلَا مَنْ أَفْطَرَ بِأَكْلٍ أَوْ وَطْءٍ، وَيَظُنُّ أَنَّ الشَّمْسَ قَدْ غَرَبَتْ فَإِذَا بِهَا لَمْ تَغْرُبْ، وَلَا مَنْ أَكَلَ أَوْ شَرِبَ أَوْ وَطِئَ نَاسِيًا، لِأَنَّهُ صَائِمٌ، وَكَذَلِكَ مَنْ عَصَى نَاسِيًا لِصَوْمِهِ، وَلَا سِوَاكٌ بِرَطْبٍ أَوْ يَابِسٍ، وَلَا مَضْغُ طَعَامٍ أَوْ ذَوْقُهُ، مَا لَمْ يَتَعَمَّدْ بَلْعَهُ، وَلَا مُدَاوَاةُ جَائِفَةٍ أَوْ مَأْمُومَةٍ بِمَا يُؤْكَلُ أَوْ يُشْرَبُ أَوْ بِغَيْرِ ذَلِكَ، وَلَا طَعَامٌ وُجِدَ بَيْنَ الْأَسْنَانِ -: أَيَّ وَقْتٍ مِنْ النَّهَارِ وُجِدَ، إذَا رُمِيَ، وَلَا مَنْ أُكْرِهَ عَلَى مَا يَنْقُضُ الصَّوْمَ، وَلَا دُخُولُ حَمَّامٍ، وَلَا تَغْطِيسٌ فِي مَاءٍ، وَلَا دَهْنُ شَارِبٍ؟ أَمَّا الْحِجَامَةُ - قَالَ أَبُو مُحَمَّدٍ: صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ ثَوْبَانَ، وَشَدَّادِ بْنِ أَوْسٍ: وَمَعْقِلِ بْنِ سِنَانٍ، وَأَبِي هُرَيْرَةَ، وَرَافِعِ بْنِ خَدِيجٍ وَغَيْرِهِمْ: أَنَّهُ قَالَ: «أَفْطَرَ الْحَاجِمُ وَالْمَحْجُومُ» ، فَوَجَبَ الْأَخْذُ بِهِ، إلَّا أَنْ يَصِحَّ نَسْخُهُ.

him) might have undergone cupping while traveling, thereby breaking his fast permissibly, or during a voluntary fast, breaking his fast permissibly.

وَقَدْ ظَنَّ قَوْمٌ أَنَّ الرِّوَايَةَ عَنْ ابْنِ عَبَّاسٍ " احْتَجَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَاسِخَةٌ لِلْخَبَرِ الْمَذْكُورِ، وَظَنُّهُمْ فِي ذَلِكَ بَاطِلٌ؛ لِأَنَّهُ قَدْ يَحْتَجِمُ - عَلَيْهِ السَّلَامُ - وَهُوَ مُسَافِرٌ فَيُفْطِرُ، وَذَلِكَ مُبَاحٌ، أَوْ فِي صِيَامِ تَطَوُّعٍ فَيُفْطِرُ، وَذَلِكَ مُبَاحٌ.

L11786–11788 All astonishment is directed at one who says regarding the authentically established report that he—peace be upon him—"wiped over the turban": "Perhaps he was ill?" yet does not say here: "Perhaps he was ill?" Moreover, Ibn ʿAbbās's report contains no indication that this occurred after his—peace be upon him—declaring that "the cupper and the cupped have invalidated the fast." Nor can a definitively established ruling be abandoned for a false conjecture. Furthermore, even if it were valid that Ibn ʿAbbās's report came after those we mentioned, it would only entail the abrogation of the ruling invalidating the fast of the cupped person, not the cupper—for he—peace be upon him—may have been cupped by a boy who had not reached puberty. Abū Muḥammad said: However, we found what ʿAbdullāh ibn Rabīʿah al-Tamīmī and Aḥmad ibn ʿUmar al-ʿUdhri narrated to us. At-Tamīmī said: Muʿāwiyah al-Qurashī al-Marwānī narrated to us: Aḥmad ibn Shuʿayb narrated to us: Ibrāhīm ibn Saʿīd narrated to us: Isḥāq ibn Yūsuf al-Azraq narrated to us from Sufyān ath-Thawrī from Khālid al-Khaddā'. Al-ʿUḍrī said: 'Abdullāh ibn al-Ḥusayn ibn 'Iqāl al-Asadī al-Qurashī narrated to us: Ibrāhīm ibn Muḥammad ad-Dīnawarī narrated to us: Muḥammad ibn Aḥmad ibn al-Jahm narrated to us: Mūsā ibn Hārūn narrated to us: Isḥāq ibn Rāhawayh narrated to us: al-Muʿtamir ibn Sulaymān narrated to us from Ḥumayd. Then Khālid al-Khaddā' and Ḥumayd concurred, both narrating from Abī al-Mutawakkil an-Nājī from Abī Saʿīd al-Khudrī: "The Messenger of Allah – peace and blessings be upon him – permitted cupping for one fasting." Ḥumayd added to his narration: "and kissing."

وَالْعَجَبُ كُلُّهُ مِمَّنْ يَقُولُ فِي الْخَبَرِ الثَّابِتِ أَنَّهُ - عَلَيْهِ السَّلَامُ - " مَسَحَ عَلَى الْعِمَامَةِ " -: لَعَلَّهُ كَانَ مَرِيضًا ثُمَّ لَا يَقُولُ هَاهُنَا: لَعَلَّهُ كَانَ مَرِيضًا؟ وَأَيْضًا فَلَيْسَ فِي خَبَرِ ابْنِ عَبَّاسٍ أَنَّ ذَلِكَ كَانَ بَعْدَ إخْبَارِهِ - عَلَيْهِ السَّلَامُ - أَنَّهُ «أَفْطَرَ الْحَاجِمُ وَالْمَحْجُومُ» وَلَا يُتْرَكُ حُكْمٌ مُتَيَقَّنٌ لِظَنٍّ كَاذِبٍ؟ وَأَيْضًا: فَلَوْ صَحَّ أَنَّ خَبَرَ ابْنِ عَبَّاسٍ بَعْدَ خَبَرِ مَنْ ذَكَرْنَا لَمَا كَانَ فِيهِ إلَّا نَسْخُ إفْطَارِ الْمَحْجُومِ لَا الْحَاجِمِ؛ لِأَنَّهُ قَدْ يَحْجُمُهُ - عَلَيْهِ السَّلَامُ - غُلَامٌ لَمْ يَحْتَلِمْ؟ قَالَ أَبُو مُحَمَّدٍ: لَكِنْ وَجَدْنَا مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ التَّمِيمِيُّ وَأَحْمَدُ بْنُ عُمَرَ الْعُذْرِيُّ قَالَ التَّمِيمِيُّ: ثنا مُعَاوِيَةُ الْقُرَشِيُّ الْمَرْوَانِيُّ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إبْرَاهِيمُ بْنُ سَعِيدٍ ثنا إسْحَاقُ بْنُ يُوسُفَ الْأَزْرَقُ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ خَالِدٍ الْحَذَّاءِ، وَقَالَ الْعُذْرِيُّ ثنا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ الْأَسَدِيُّ الْقُرَشِيُّ ثنا إبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ ثنا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ ثنا مُوسَى بْنُ هَارُونَ ثنا إسْحَاقُ بْنُ رَاهْوَيْهِ أَنَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ حُمَيْدٍ، ثُمَّ اتَّفَقَ خَالِدٌ الْحَذَّاءُ وَحُمَيْدٌ كِلَاهُمَا عَنْ أَبِي الْمُتَوَكِّلِ النَّاجِي عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرْخَصَ فِي الْحِجَامَةِ لِلصَّائِمِ» زَادَ حُمَيْدٌ فِي رِوَايَتِهِ " وَالْقُبْلَةِ ".

L11789 Ali said: Indeed, Abu Nadrah and Qatadah traced it back through Abu al-Mutawakkil to Abu Saʿīd, and Ibn al-Mubārak traced it back through Khālid al-Ḥadhdhāʾ from Abu al-Mutawakkil to Abu Saʿīd. However, this lacks validity, since a trustworthy narrator transmitted it with a connected chain.

قَالَ عَلِيٌّ: إنَّ أَبَا نَضْرَةَ، وَقَتَادَةَ أَوْقَفَاهُ عَنْ أَبِي الْمُتَوَكِّلِ عَلَى أَبِي سَعِيدٍ، وَإِنَّ ابْنَ الْمُبَارَكِ أَوْقَفَهُ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي الْمُتَوَكِّلِ عَلَى أَبِي سَعِيدٍ؛ وَلَكِنْ هَذَا لَا مَعْنَى لَهُ إذْ

The two chains transmitted from Khālid and Ḥumayd—both trustworthy—constitute definitive evidence. The term “granted a concession” presupposes a prior prohibition. Thus, does this report confirm the abrogation of the first report? Among those who held that cupping invalidates the fast are ʿAlī ibn Abī Ṭālib, Abū Mūsā al-Ashʿarī, ʿAbdullāh ibn ʿUmar, and others.

L11790–11792 Ibn Abbas, Zayd ibn Arqam, and others did not deem it to invalidate the fast. Our understanding of the Ḥanafīs is that they assert: “A solitary report is not accepted concerning matters of widespread prevalence,” yet this is an issue of frequent occurrence. How then do they accept a conflicting solitary report in this case? As for nocturnal emission, there is no dispute that it does not invalidate the fast except from those not deemed authoritative. Regarding masturbation, no textual proof has come forth stating it invalidates the fast. The height of astonishment is reserved for those who do not invalidate the fast for committing acts akin to the people of Lot, bestiality, murder, spreading corruption on earth, abandoning prayer, or intentionally kissing Muslim women without emission or pre-ejaculate—yet they invalidate it by touching the penis if accompanied by emission, despite their unanimous agreement that mere contact... The emission of semen invalidates the fast, and that the release of semen without deliberate action does not break the fast. The fast is then invalidated by the combination of both factors—this is a manifest error with no ambiguity whatsoever. What is utterly perplexing is those who invalidate the fast by the emission of semen when one intentionally seeks pleasure, despite there being no textual evidence, consensus, opinion of a Companion, or analogical reasoning to support this. Yet they do not obligate the ritual bath if it is emitted without pleasure, while the textual ruling explicitly establishes the obligation of the ritual bath in all cases?

L11793 As for kissing and intimate contact for a man with his wife or his lawfully owned female slave, these are a commendable Sunnah. We recommend them for the fasting person, whether he is a young man, middle-aged, or elderly. We do not concern ourselves with whether it leads to intentional ejaculation or not. It was narrated to us by Abdullah ibn Yusuf, from Ahmad ibn Fath, from Abdul-Wahhab ibn Isa, from Ahmad ibn Muhammad, from Ahmad ibn Ali, from Muslim ibn al-Hajjaj, from Abu Bakr ibn Abi Shaybah, from

أَسْنَدَهُ الثِّقَةُ، وَالْمُسْنَدَانِ لَهُ عَنْ خَالِدٍ وَحُمَيْدٍ: ثِقَتَانِ، فَقَامَتْ بِهِ الْحُجَّةُ، وَلَفْظَةُ " أَرْخَصَ " لَا تَكُونُ إِلَّا بَعْدَ نَهْيٍ، فَصَحَّ بِهَذَا الْخَبَرِ نَسْخُ الْخَبَرِ الْأَوَّلِ؟ وَمِمَّنْ قَالَ بِأَنَّ الْحِجَامَةَ تُفْطِرُ: عَلِيُّ بْنُ أَبِي طَالِبٍ، وَأَبُو مُوسَى الْأَشْعَرِيُّ، وَعَبْدُ اللَّهِ بْنُ عُمَرَ، وَغَيْرُهُمْ.

وَلَمْ يَرَهَا تُفْطِرُ: ابْنُ عَبَّاسٍ، وَزَيْدُ بْنُ أَرْقَمَ، وَغَيْرُهُمَا. وَعَهْدُنَا بِالْحَنَفِيِّينَ يَقُولُونَ: إِنَّ خَبَرَ الْوَاحِدِ لَا يُقْبَلُ فِيمَا تَعُمُّ بِهِ الْبَلْوَى، وَهَذَا مِمَّا تَكْثُرُ بِهِ الْبَلْوَى، وَقَدْ قَبِلُوا فِيهِ خَبَرَ الْوَاحِدِ مُضْطَرِبًا؟ وَأَمَّا الِاحْتِلَامُ: فَلَا خِلَافَ فِي أَنَّهُ لَا يَنْقُضُ الصَّوْمَ، إِلَّا مِمَّنْ لَا يُعْتَدُّ بِهِ وَأَمَّا الِاسْتِمْنَاءُ: فَإِنَّهُ لَمْ يَأْتِ نَصٌّ بِأَنَّهُ يَنْقُضُ الصَّوْمَ؟ وَالْعَجَبُ كُلُّهُ مِمَّنْ لَا يَنْقُضُ الصَّوْمَ بِفِعْلِ قَوْمِ لُوطٍ، وَإِتْيَانِ الْبَهَائِمِ وَقَتْلِ الْأَنْفُسِ، وَالسَّعْيِ فِي الْأَرْضِ بِالْفَسَادِ، وَتَرْكِ الصَّلَاةِ وَتَقْبِيلِ نِسَاءِ الْمُسْلِمِينَ عَمْدًا إِذَا لَمْ يُمْنِ وَلَا أَمْذَى -: ثُمَّ يَنْقُضُهُ بِمَسِّ الذَّكَرِ إِذَا كَانَ مَعَهُ إِمْنَاءٌ وَهُمْ لَا يَخْتَلِفُونَ: أَنَّ مَسَّ الذَّكَرِ لَا يُبْطِلُ الصَّوْمَ، وَأَنَّ خُرُوجَ الْمَنِيِّ دُونَ عَمَلٍ لَا يَنْقُضُ الصَّوْمَ، ثُمَّ يَنْقُضُ الصَّوْمُ بِاجْتِمَاعِهِمَا، وَهَذَا خَطَأٌ ظَاهِرٌ لَا خَفَاءَ بِهِ؟ وَالْعَجَبُ كُلُّهُ مِمَّنْ يَنْقُضُ الصَّوْمَ بِالْإِنْزَالِ لِلْمَنِيِّ إِذَا تَعَمَّدَ اللَّذَّةَ، وَلَمْ يَأْتِ بِذَلِكَ نَصٌّ، وَلَا إِجْمَاعٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ -: ثُمَّ لَا يُوجِبُ بِهِ الْغُسْلَ إِذَا خَرَجَ بِغَيْرِ لَذَّةٍ، وَالنَّصُّ جَاءَ بِإِيجَابِ الْغُسْلِ مِنْهُ جُمْلَةً؟ .

وَأَمَّا الْقُبْلَةُ وَالْمُبَاشَرَةُ لِلرَّجُلِ مَعَ امْرَأَتِهِ وَأَمَتِهِ الْمُبَاحَةِ لَهُ فَهُمَا سُنَّةٌ حَسَنَةٌ، نَسْتَحِبُّهَا لِلصَّائِمِ، شَابًّا كَانَ أَوْ كَهْلًا أَوْ شَيْخًا، وَلَا نُبَالِي أَكَانَ مَعَهَا إِنْزَالٌ مَقْصُودٌ إِلَيْهِ أَوْ لَمْ يَكُنْ؟ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا الْحَسَنُ بْنُ مُوسَى

al-Hasan ibn Musa, from Shayban, from Yahya ibn Abi Kathir, from Abu Salama ibn Abdul-Rahman ibn Awf: that Umar ibn Abdul-Aziz informed him, from Urwah ibn az-Zubayr, that Aisha, the Mother of the Believers, reported: "The Messenger of Allah (peace and blessings be upon him) would kiss her while fasting."

ثنا شَيْبَانُ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَخْبَرَهُ أَنَّ عُرْوَةَ بْنَ الزُّبَيْرِ أَخْبَرَهُ أَنَّ «عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَخْبَرَتْهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُقَبِّلُهَا وَهُوَ صَائِمٌ» .

L11794–11796 From him to Muslim: Narrated to us by Muḥammad ibn al-Muthannā; narrated to us by Muḥammad ibn Jaʿfar Ghundar; narrated to us by Shuʿbah; from Manṣūr. From Ibrāhīm an-Nakhaʿī from ʿAlqamah from ʿĀ'ishah, the Mother of the Believers, that "the Messenger of Allah—peace and blessings be upon him—would engage in intimate contact while he was fasting."

وَبِهِ إِلَى مُسْلِمٍ: ثنا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ ثنا شُعْبَةُ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ عَنْ «عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُبَاشِرُ وَهُوَ صَائِمٌ» .

L11797 And Allah the Exalted said: "There has certainly been for you in the Messenger of Allah an excellent example for anyone who hopes in Allah and the Last Day" [Al-Ahzab: 21], especially those who stubbornly insist that the actions of the Prophet (peace and blessings of Allah be upon him) are obligatory (fard).[24]

وَقَالَ اللَّهُ تَعَالَى: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ لِمَنْ كَانَ يَرْجُو اللَّهَ وَالْيَوْمَ الآخِرَ} [الأحزاب: ٢١] لَا سِيَّمَا مَنْ كَابَرَ عَلَى أَنَّ أَفْعَالَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرْضٌ.

L11798 This has been narrated to us through golden chains? from al-Qāsim ibn Muḥammad ibn Abī Bakr, ʿAlī ibn al-Ḥusayn, ʿAmr ibn Maymūn, Masrūq, al-Aswad, and Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf—all narrating from ʿĀ'isha. It has been narrated through chains of the highest authenticity from the Mothers of the Believers—Umm Salama, Umm Ḥabība, and Ḥafṣa—and from ʿUmar ibn al-Khaṭṭāb, Ibn ʿAbbās, ʿUmar ibn Abi Salama, and others, all narrating from the Prophet, peace and blessings be upon him.

وَقَدْ رُوِّينَا ذَلِكَ مِنْ طَرِيقِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ، وَعَلِيِّ بْنِ الْحُسَيْنِ، وَعَمْرِو بْنِ مَيْمُونٍ، وَمَسْرُوقٍ، وَالْأَسْوَدِ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، كُلُّهُمْ عَنْ عَائِشَةَ بِأَسَانِيدَ كَالذَّهَبِ؟ وَرُوِّينَاهُ بِأَسَانِيدَ فِي غَايَةِ الصِّحَّةِ عَنْ أُمَّهَاتِ الْمُؤْمِنِينَ: أُمِّ سَلَمَةَ، وَأُمِّ حَبِيبَةَ، وَحَفْصَةَ وَعُمَرَ بْنِ الْخَطَّابِ، وَابْنِ عَبَّاسٍ وَعُمَرَ بْنِ أَبِي سَلَمَةَ، وَغَيْرِهِمْ كُلُّهُمْ: عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L11799 Some people claimed that kissing invalidates the fast. Others said it is reprehensible. Some said it is permissible for the older man but reprehensible for the young. Others maintained that it was exclusively permitted for the Prophet (peace and blessings be upon him).

فَادَّعَى قَوْمٌ أَنَّ الْقُبْلَةَ تُبْطِلُ الصَّوْمَ؟ وَقَالَ قَوْمٌ: هِيَ مَكْرُوهَةٌ. وَقَالَ قَوْمٌ: هِيَ مُبَاحَةٌ لِلشَّيْخِ، مَكْرُوهَةٌ لِلشَّابِّ. وَقَالَ قَوْمٌ: هِيَ خُصُوصٌ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L11800–11802 As for whoever claims this is an exclusive ruling for him (peace be upon him), he has spoken falsehood. For how can one lacking self-restraint be in-

فَأَمَّا مَنْ ادَّعَى أَنَّهَا خُصُوصٌ لَهُ - عَلَيْهِ السَّلَامُ - فَقَدْ قَالَ الْبَاطِلَ، وَمَا يَعْجَزُ عَنْ الدَّعْوَى مَنْ لَا تَقْوَى لَهُ؟ فَإِنْ احْتَجَّ فِي ذَلِكَ بِمَا رُوِيَ مِنْ قَوْلِ عَائِشَةَ - رَضِيَ اللَّهُ

[24] **Qur'an references (L11797):** Qur'an 33:21 (Al-Ahzab).

capable of such claims? If he argues by citing what is narrated from ʻĀ'isha's statement (may Allah be pleased with her): "The Messenger of Allah (peace be upon him) would kiss while fasting and engage in intimate contact while fasting, but he was the most in control of his urges among you," we respond: You have no valid proof in this statement of ʻĀ'isha. For ʻAbd al-Raḥmān ibn ʻAbd Allāh ibn Khālid narrated; Ibrāhīm ibn Aḥmad narrated; al-Farbarī narrated; al-Bukhārī narrated; Ismāʻīl ibn al-Khalīl narrated; ʻAlī ibn Mushir narrated; Abū Isḥāq al-Shaybānī narrated from ʻAbd al-Raḥmān ibn al-Aswad ibn Yazīd from his father from ʻĀ'isha, Mother of the Believers, who said: "When any of us was menstruating and the Prophet (peace be upon him) wished to engage in intimate contact, she would tie a waist-wrapper during her menstruation, then he would engage in intimate contact." She said: "Which of you can restrain his urges as the Messenger of Allah (peace be upon him) restrained his urges?" If her statement regarding the fasting person's kiss necessitates this as an exclusive ruling for him, then her statement here about intimate contact with a menstruating woman would likewise necessitate it being an exclusive ruling for him, or that it is disliked, or that it is permissible for the elderly but not others. As for the young men, they cannot claim consensus here, for Ibn Abbas and others wholly disapproved of physical contact with a menstruating woman in its entirety. By my life, indeed physical contact with a menstruating woman is more perilous, as one refrains from intercourse with her for days and nights, thereby intensifying his desire. As for the fasting person—he had intercourse with her last night and will do so tonight—is he then left with merely a whiff of intercourse? Hammam narrated from Ibn Mufarrij, from Ibn Al-A'rabi, from Al-Dabari, from Abd Al-Razzaq, from Ibn Jurayj, who informed me: Zayd ibn Aslam narrated from Ata ibn Yasar, who said, "A man from the Ansar informed me that he kissed his wife during the time of Allah's Messenger (peace and blessings be upon him). He instructed her to inquire, so she asked the Prophet (peace and blessings be upon him) about it. The Prophet (peace and blessings be upon him) said to her, 'Allah's Messenger does that.' She informed her husband, who said, 'The Prophet (peace and blessings be upon him) was granted concessions in certain matters. Return to him.' She returned and mentioned this, whereupon Allah's

عَنْهَا - «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُقَبِّلُ وَهُوَ صَائِمٌ، وَيُبَاشِرُ وَهُوَ صَائِمٌ وَلَكِنَّهُ كَانَ أَمْلَكَكُمْ لِإِرْبِهِ» . قُلْنَا: لَا حُجَّةَ لَكَ فِي قَوْلِ عَائِشَةَ هَذَا، لِأَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا قَالَ: ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا إِسْمَاعِيلُ بْنُ الْخَلِيلِ ثنا عَلِيُّ بْنُ مُسْهِرٍ ثنا أَبُو إِسْحَاقَ هُوَ الشَّيْبَانِيُّ - عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ بْنِ يَزِيدَ عَنْ أَبِيهِ عَنْ «عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ كَانَتْ إِحْدَانَا إِذَا كَانَتْ حَائِضًا فَأَرَادَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُبَاشِرَهَا أَنْ تَتَّزِرَ فِي فَوْرِ حَيْضَتِهَا ثُمَّ يُبَاشِرَهَا، قَالَتْ: وَأَيُّكُمْ يَمْلِكُ إِرْبَهُ كَمَا كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَمْلِكُ إِرْبَهُ» ؟ فَإِنْ كَانَ قَوْلُهَا ذَلِكَ فِي قُبْلَةِ الصَّائِمِ يُوجِبُ أَنَّهُ لَهُ خُصُوصٌ فَقَوْلُهَا هَذَا فِي مُبَاشَرَةِ الْحَائِضِ يُوجِبُ أَنَّهَا لَهُ أَيْضًا خُصُوصٌ، أَوْ أَنَّهَا مَكْرُوهَةٌ، أَوْ أَنَّهَا لِلشَّيْخِ دُونَ الشَّابِّ وَلَا يُمْكِنُهُمْ هَاهُنَا دَعْوَى الْإِجْمَاعِ، لِأَنَّ ابْنَ عَبَّاسٍ وَغَيْرَهُ كَرِهُوا مُبَاشَرَةَ الْحَائِضِ، جُمْلَةً وَلَعَمْرِي إِنَّ مُبَاشَرَةَ الْحَائِضِ لَأَشَدُّ غَرَرًا، لِأَنَّهُ يَبْقَى عَنْ جِمَاعِهَا أَيَّامًا وَلَيَالِيَ فَتَشْتَدُّ حَاجَتُهُ، وَأَمَّا الصَّائِمُ فَالْبَارِحَةُ وَطِئَهَا، وَاللَّيْلَةَ يَطَؤُهَا، فَهُوَ بِشَمٍّ مِنَ الْوَطْءِ؟ حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي زَيْدُ بْنُ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ قَالَ: «أَخْبَرَنِي رَجُلٌ مِنَ الْأَنْصَارِ، أَنَّهُ قَبَّلَ امْرَأَتَهُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَهَا فَسَأَلَتِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ فَقَالَ لَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّ رَسُولَ اللَّهِ يَفْعَلُ ذَلِكَ، فَأَخْبَرَتْهُ امْرَأَتُهُ، فَقَالَ لَهَا: إِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رُخِّصَ لَهُ فِي أَشْيَاءَ، فَارْجِعِي إِلَيْهِ، فَرَجَعَتْ إِلَيْهِ، فَذَكَرَتْ لَهُ ذَلِكَ، فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَا أَتْقَاكُمْ وَأَعْلَمُكُمْ بِحُدُودِ اللَّهِ» .

Messenger (peace and blessings be upon him) said to her, ‘I am the most God-fearing among you and the most knowledgeable of Allah’s boundaries.’”

L11803 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn Al-Hajjaj narrated to me: Harun ibn Sa’id Al-Ayli narrated to me: Ibn Wahb narrated to us: Amr—who is Ibn Al-Harith—informed me from Abd Rabbih ibn Sa’id, from Abdullah ibn Ka’b Al-Himyari, from Umar ibn Abi Salamah Al-Makhzumi that he asked the Messenger of Allah—peace be upon him—“Does a fasting person kiss?” The Messenger of Allah—peace be upon him—said to him, “Ask this one”—meaning Umm Salamah. She informed him that the Messenger of Allah—peace be upon him—does that. He said, “O Messenger of Allah, you have been forgiven what has preceded of your sins and what will follow.” The Messenger of Allah—peace be upon him—responded, “By Allah, I am indeed the most God-fearing of you toward Allah and the most reverent of Him.”

L11804 These two reports refute the claim of those who asserted this ruling was specifically for him (peace be upon him), for he (peace be upon him) gave this legal verdict to those who sought his judgment. They also disprove the assertion of those who claimed it was disliked for a young man but permissible for an elderly man, for Umar ibn Abi Salamah was in the prime of his youth when the Prophet (peace be upon him) died. He was the son of Umm Salamah, the Mother of the Believers, and the Prophet (peace be upon him) arranged his marriage to the daughter of Hamza, his paternal uncle (may Allah be pleased with him).

L11805–11807 Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Muʿawiyah from Ahmad ibn Shuʿayb, who informed us from Qutaybah ibn Saʿīd. Abu ’Awanah reported from Sa’d ibn Ibrahim ibn ’Abd al-Rahman ibn ’Awf, from Talha ibn ’Abdullah ibn ’Uthman al-Qurashi, from ’A’ishah, the Mother of the Believers, who said: The Prophet (peace and blessings of Allah be upon him) leaned in to kiss me. I said, “I am fasting.” He replied, “I am also fasting,” and he kissed me.

L11808–11810 When ʿĀ’ishah was eighteen years old at the time of the Prophet’s death—

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي هَارُونُ بْنُ سَعِيدٍ الْأَيْلِيُّ ثنا ابْنُ وَهْبٍ أَخْبَرَنِي عَمْرٌو هُوَ ابْنُ الْحَارِثِ - عَنْ عَبْدِ رَبِّهِ بْنِ سَعِيدٍ عَنْ عَبْدِ اللَّهِ بْنِ كَعْبٍ الْحِمْيَرِيِّ «عَنْ عُمَرَ بْنِ أَبِي سَلَمَةَ الْمَخْزُومِيِّ أَنَّهُ سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَيُقَبِّلُ الصَّائِمُ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَلْ هَذِهِ، يَعْنِي أُمَّ سَلَمَةَ، فَأَخْبَرَتْهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَصْنَعُ ذَلِكَ، فَقَالَ: يَا رَسُولَ اللَّهِ، قَدْ غُفِرَ لَكَ مَا تَقَدَّمَ مِنْ ذَنْبِكَ وَمَا تَأَخَّرَ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَا وَاللَّهِ إِنِّي لَأَتْقَاكُمْ لِلَّهِ وَأَخْشَاكُمْ» .

فَهَذَانِ الْخَبَرَانِ يُكَذِّبَانِ قَوْلَ مَنْ ادَّعَى فِي ذَلِكَ الْخُصُوصَ لَهُ - عَلَيْهِ السَّلَامُ -، لِأَنَّهُ أَفْتَى بِذَلِكَ - عَلَيْهِ السَّلَامُ - مَنْ اسْتَفْتَاهُ، وَيُكَذِّبُ قَوْلَ مَنْ ادَّعَى أَنَّهَا مَكْرُوهَةٌ لِلشَّابِّ مُبَاحَةٌ لِلشَّيْخِ؟ لِأَنَّ عُمَرَ بْنَ أَبِي سَلَمَةَ كَانَ شَابًّا جِدًّا فِي قُوَّةِ شَبَابِهِ إِذْ مَاتَ - عَلَيْهِ السَّلَامُ -، وَهُوَ ابْنُ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ وَزَوَّجَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِنْتَ حَمْزَةَ عَمِّهِ - رَضِيَ اللَّهُ عَنْهُ -.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنَا قُتَيْبَةُ بْنُ سَعِيدٍ ثنا أَبُو عَوَانَةَ عَنْ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ طَلْحَةَ بْنِ عَبْدِ اللَّهِ بْنِ عُثْمَانَ الْقُرَشِيِّ «عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ أَهْوَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُقَبِّلَنِي، فَقُلْتُ: إِنِّي صَائِمَةٌ فَقَالَ: وَأَنَا صَائِمٌ، فَقَبَّلَنِي» .

peace and blessings be upon him—the invalidity of the opinion of those who differentiated between mature adults and the young in this matter became evident, as did the invalidity of the claim that it is disliked. It was established that it is a virtuous, recommended act, a Sunnah among the established practices, and a means of drawing closer to God Almighty, in emulation of the Prophet—peace and blessings of Allah be upon him—and following his explicit instruction on the matter. As for the evidence cited by those who disliked it for the young, they rely on two unsound hadiths. One is transmitted through a chain containing Ibn Lahiʿah, who is weak, and Qays, the client of Tajib, who is unknown. The other is transmitted through Isrāʾīl, who is weak, from Abū al-ʿAnbas—also unidentified—from al-Agharr from Abū Hurayrah. Both narrations state: "The Prophet—peace and blessings of Allah be upon him—permitted mature adults to kiss while fasting but prohibited it for the young," but both are deemed unreliable. As for those who invalidate the fast due to kissing, they argue using Allah's words: "Now, have intercourse with them and seek what Allah has ordained for you. Eat and drink until the white thread of dawn becomes distinct to you from the black thread. Then complete the fast until night" [2:187], claiming this verse prohibits physical intimacy. We respond: It is authentically established from the Messenger of Allah—peace and blessings be upon him—that he permitted physical intimacy, and he is the one who clarifies Allah's intent for us. Thus, it is confirmed that the prohibited intimacy during fasting is solely sexual intercourse. There is no proof in this verse for a Hanafi or a Maliki, for they permit intimate contact and do not invalidate the fast by it at all. Rather, they invalidate it only by something that accompanies it, namely semen or pre-seminal fluid. Rather, it is proof for those who prohibit intimate contact and invalidate the fast because of it.[25]

وَكَانَتْ عَائِشَةُ إِذْ مَاتَ - عَلَيْهِ السَّلَامُ - بِنْتَ ثَمَانِ عَشْرَةَ سَنَةً فَظَهَرَ بُطْلَانُ قَوْلِ مَنْ فَرَّقَ فِي ذَلِكَ بَيْنَ الشَّيْخِ وَالشَّابِّ، وَبُطْلَانُ قَوْلِ مَنْ قَالَ: إِنَّهَا مَكْرُوهَةٌ، وَصَحَّ أَنَّهَا حَسَنَةٌ مُسْتَحَبَّةٌ، سُنَّةٌ مِنْ السُّنَنِ، وَقُرْبَةٌ مِنْ الْقُرَبِ إِلَى اللَّهِ تَعَالَى اقْتِدَاءً بِالنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَوُقُوفًا عِنْدَ فُتْيَاهُ بِذَلِكَ؟ وَأَمَّا مَا تَعَلَّقَ بِهِ مَنْ كَرِهَهَا لِلشَّابِّ فَإِنَّمَا هُمَا حَدِيثَا سَوْءٍ، رُوِّينَا أَحَدَهُمَا مِنْ طَرِيقٍ فِيهَا ابْنُ لَهِيعَةَ، وَهُوَ لَا شَيْءَ، وَفِيهَا قَيْسٌ مَوْلَى تَجِيبٍ، وَهُوَ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ؟ وَالْآخَرَ مِنْ طَرِيقِ إِسْرَائِيلَ - وَهُوَ ضَعِيفٌ - عَنْ أَبِي الْعَنْبَسِ، وَلَا يُدْرَى مَنْ هُوَ؟ عَنْ الْأَغَرِّ عَنْ أَبِي هُرَيْرَةَ، فِي كِلَيْهِمَا، «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرْخَصَ فِي قُبْلَةِ الصَّائِمِ لِلشَّيْخِ وَنَهَى عَنْهَا الشَّابَّ» ، فَسَقَطَا جَمِيعًا؟ وَأَمَّا مَنْ أَبْطَلَ الصَّوْمَ بِهَا فَإِنَّهُمْ احْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {فَالآنَ بَاشِرُوهُنَّ وَابْتَغُوا مَا كَتَبَ اللَّهُ لَكُمْ وَكُلُوا وَاشْرَبُوا حَتَّى يَتَبَيَّنَ لَكُمُ الْخَيْطُ الأَبْيَضُ مِنَ الْخَيْطِ الأَسْوَدِ مِنَ الْفَجْرِ ثُمَّ أَتِمُّوا الصِّيَامَ إِلَى اللَّيْلِ} [البقرة: ١٨٧] فَفِي هَذِهِ الْآيَةِ الْمَنْعُ مِنْ الْمُبَاشَرَةِ؟ قُلْنَا قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إبَاحَةُ الْمُبَاشَرَةِ، وَهُوَ الْمُبَيِّنُ عَنْ اللَّهِ تَعَالَى مُرَادُهُ مِنَّا، فَصَحَّ أَنَّ الْمُبَاشَرَةَ الْمُحَرَّمَةَ فِي الصَّوْمِ إنَّمَا هِيَ الْجِمَاعُ فَقَطْ، وَلَا حُجَّةَ فِي هَذِهِ الْآيَةِ لِحَنَفِيٍّ وَلَا لِمَالِكِيٍّ، فَإِنَّهُمْ يُبِيحُونَ الْمُبَاشَرَةَ، وَلَا يُبْطِلُونَ الصَّوْمَ بِهَا أَصْلًا وَإِنَّمَا يُبْطِلُونَهُ بِشَيْءٍ يَكُونُ مَعَهَا، مِنْ الْمَنِيِّ أَوْ الْمَذْيِ فَقَطْ، وَإِنَّمَا هِيَ حُجَّةٌ لِمَنْ مَنَعَ الْمُبَاشَرَةَ وَأَبْطَلَ الصَّوْمَ بِهَا.

L11811 These individuals also cited two reports as evidence: One of these was narrated to us through Abū Usāmah Ḥammād ibn Usāmah, from ʿUmar ibn Ḥamzah, who reported that Sālim ibn ʿAbdullāh informed him from his father: ʿUmar said, "I saw the Messenger of Allah (peace be upon him) in a

وَهَؤُلَاءِ أَيْضًا قَدْ احْتَجُّوا بِخَبَرَيْنِ: رُوِّينَا أَحَدَهُمَا مِنْ طَرِيقِ أَبِي أُسَامَةَ حَمَّادِ بْنِ أُسَامَةَ عَنْ عُمَرَ بْنِ حَمْزَةَ أَخْبَرَنِي سَالِمُ بْنُ عَبْدِ اللَّهِ عَنْ أَبِيهِ قَالَ قَالَ عُمَرُ: رَأَيْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمَنَامِ، فَرَأَيْتُهُ لَا يَنْظُرُنِي، فَقُلْت: يَا رَسُولَ اللَّهِ مَا شَأْنِي؟

[25] **Qur'an references (L11808):** Qur'an 2:187 (Al-Baqarah).

dream. He was not looking at me, so I asked: 'O Messenger of Allah, what is wrong with me?' He replied: 'Are you not the one who kisses while fasting?' So I swore: 'By Him Who sent you with the truth, I shall never kiss after that while fasting.'"

فَقَالَ: أَلَسْتَ الَّذِي تُقَبِّلُ وَأَنْتَ صَائِمٌ؟ قُلْت: فَوَالَّذِي بَعَثَكَ بِالْحَقِّ لَا أُقَبِّلُ بَعْدَهَا وَأَنَا صَائِمٌ.

L11812 Abu Muhammad said: Religious rulings are not derived from dreams, especially since the Messenger of Allah (peace be upon him) issued a fatwa to Umar during wakefulness while alive, permitting kissing for one fasting. It is falsehood to abrogate this through a dream while he is dead—we seek refuge in Allah from this. It suffices regarding all this that Umar ibn Hamzah is nothing.

قَالَ أَبُو مُحَمَّد: الشَّرَائِعُ لَا تُؤْخَذُ بِالْمَنَامَاتِ لَا سِيَّمَا وَقَدْ أَفْتَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عُمَرَ فِي الْيَقَظَةِ حَيًّا بِإِبَاحَةِ الْقُبْلَةِ لِلصَّائِمِ، فَمِنْ الْبَاطِلِ أَنْ يُنْسَخَ ذَلِكَ فِي الْمَنَامِ مَيِّتًا نَعُوذُ بِاَللَّهِ مِنْ هَذَا. وَيَكْفِي مِنْ هَذَا كُلِّهِ أَنَّ عُمَرَ بْنَ حَمْزَةَ لَا شَيْءَ.

L11813 Abdullah ibn Rabee' narrated to us: Umar ibn Abd al-Malik narrated to us: Muhammad ibn Bakr narrated to us: Abu Dawood narrated to us: Isa ibn Hammad—who is Zughbah—from al-Layth ibn Sa'd, from Bukayr ibn Abdullah ibn al-Ashajj, from Abd al-Malik ibn Sa'd al-Sā'idī al-Ansari, from Jabir ibn Abdullah, who said: "Umar ibn al-Khattab said: 'I became physically aroused and kissed while fasting. I said: O Messenger of Allah, I did a significant deed today—I kissed while fasting.' The Messenger of Allah—peace and blessings be upon him—said: 'What if you rinsed your mouth with water while fasting?' I said: 'There is no harm in that.' He said: 'Then why worry?'"

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا عِيسَى بْنُ حَمَّادٍ هُوَ زُغْبَةُ - عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ عَبْدِ الْمَلِكِ بْنِ سَعْدٍ السَّاعِدِيِّ الْأَنْصَارِيِّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ «قَالَ عُمَرُ بْنُ الْخَطَّابِ هَشَشْتُ فَقَبَّلْتُ وَأَنَا صَائِمٌ، فَقُلْتُ: يَا رَسُولَ اللَّهِ، صَنَعْتُ الْيَوْمَ أَمْرًا عَظِيمًا، قَبَّلْتُ وَأَنَا صَائِمٌ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرَأَيْتَ لَوْ مَضْمَضْتَ مِنْ الْمَاءِ وَأَنْتَ صَائِمٌ؟ قُلْت: لَا بَأْسَ بِهِ، قَالَ: فَمَهْ» ؟ ".

L11814 The second report we have transmitted via the chain of narration (isnād) of Isrā'īl – who is weak – from Zayd ibn Jubayr from Abū Yazīd al-Ḍabbī – who is unknown – from Maymūnah bint 'Utbah, the freedwoman of the Messenger of Allah (peace and blessings be upon him): He was asked about one who kissed his wife while they were both fasting, and he said: "He has broken his fast."

وَالْخَبَرُ الثَّانِي الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ إسْرَائِيلَ - وَهُوَ ضَعِيفٌ - عَنْ زَيْدِ بْنِ جُبَيْرٍ عَنْ أَبِي يَزِيدَ الضَّبِّيِّ - وَهُوَ مَجْهُولٌ «عَنْ مَيْمُونَةَ بِنْتِ عُتْبَةَ مَوْلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ عَمَّنْ قَبَّلَ امْرَأَتَهُ وَهُمَا صَائِمَانِ؟ فَقَالَ: قَدْ أَفْطَرَ» .

L11815–11816 Abu Muhammad said: Even if this were valid, would the hadith of Abu Sa'id al-Khudri - which we mentioned in the chapter on cupping for the fasting person - stating that the Prophet (peace be upon him) permitted kissing for the fasting person not serve as an abrogator of it? And among those from whom it is narrated that kissing invalidates fasting: via the chain of Sa'id ibn al-Musayyab that Umar used to prohibit kissing for the fasting

قَالَ أَبُو مُحَمَّد: حَتَّى لَوْ صَحَّ هَذَا لَكَانَ حَدِيثُ أَبِي سَعِيدٍ الْخُدْرِيِّ - الَّذِي ذَكَرْنَا فِي بَابِ الْحِجَامَةِ لِلصَّائِمِ - أَنَّهُ - عَلَيْهِ السَّلَامُ - أَرْخَصَ فِي الْقُبْلَةِ لِلصَّائِمِ -: نَاسِخًا لَهُ؟ وَمِمَّنْ رُوِيَ عَنْهُ إبْطَالُ الصِّيَامِ بِالْقُبْلَةِ مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُمَرَ كَانَ يَنْهَى عَنْ الْقُبْلَةِ لِلصَّائِمِ، فَقِيلَ لَهُ «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُقَبِّلُ وَهُوَ صَائِمٌ» ؟

فَقَالَ: وَمَنْ ذَا لَهُ مِنْ الْحِفْظِ وَالْعِصْمَةِ مَا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ وَمِنْ طَرِيقِ عِمْرَانَ بْنِ مُسْلِمٍ عَنْ زَاذَانَ عَنْ ابْنِ عُمَرَ قَالَ فِي الَّذِي يُقَبِّلُ وَهُوَ صَائِمٌ، فَقَالَ: أَلَا يُقَبِّلُ جَمْرَةً؟ وَعَنْ مُوَرِّقٍ عَنْهُ: أَنَّهُ كَانَ يَنْهَى عَنْهَا؟ وَمِنْ طَرِيقِ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ مَا تُرِيدُ إِلَى خُلُوفٍ فِيهَا؟ دَعْهَا حَتَّى تُفْطِرَ؟ وَعَنْ الْهَزْهَازِ: أَنَّ ابْنَ مَسْعُودٍ سُئِلَ عَمَّنْ قَبَّلَ وَهُوَ صَائِمٌ فَقَالَ: أَفْطَرَ، وَيَقْضِي يَوْمًا مَكَانَهُ.

person. When told "Indeed Allah's Messenger (peace be upon him) would kiss while fasting," he retorted: "Who possesses the preservation and divine safeguarding granted to Allah's Messenger (peace be upon him)?"

Via the chain of Imran ibn Muslim from Zadhan from Ibn Umar: When asked about one who kisses while fasting, he replied: "Would he not rather kiss an ember?" Through Muwarriq's chain from Ibn Umar: that he prohibited it. Via the chain of Ali ibn Abi Talib who said: "Do you seek foul breath? Leave her until you break your fast." Through al-Hazhaz's chain: Ibn Mas'ud was asked about one who kisses while fasting, and he ruled: "He invalidates his fast and is obligated to compensate with another day in its place."[26]

وَعَنْ حُذَيْفَةَ قَالَ: مَنْ تَأَمَّلَ خَلْقَ امْرَأَتِهِ وَهُوَ صَائِمٌ بَطَلَ صَوْمُهُ؟ وَعَنْ الزُّهْرِيِّ عَنْ ثَعْلَبَةَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي صُعَيْرٍ: رَأَيْت أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْهَوْنَ عَنْ الْقُبْلَةِ لِلصَّائِمِ؟ وَمِنْ طَرِيقِ شُرَيْحٍ: أَنَّهُ سُئِلَ عَنْ قُبْلَةِ الصَّائِمِ؟ فَقَالَ: يَتَّقِي اللَّهَ وَلَا يَعُدْ. وَعَنْ أَبِي قِلَابَةَ: أَنَّهُ نَهَى عَنْهَا؟ وَعَنْ مُحَمَّدِ بْنِ الْحَنَفِيَّةِ: إنَّمَا الصَّوْمُ مِنْ الشَّهْوَةِ، وَالْقُبْلَةُ مِنْ الشَّهْوَةِ؟ وَعَنْ أَبِي رَافِعٍ قَالَ: لَا يُقَبِّلُ الصَّائِمُ. وَعَنْ مَسْرُوقٍ: أَنَّهُ سُئِلَ عَنْهَا؟ فَقَالَ: اللَّيْلُ قَرِيبٌ وَقَالَ ابْنُ شُبْرُمَةَ: إنْ قَبَّلَ الصَّائِمُ أَفْطَرَ وَقَضَى يَوْمًا مَكَانَهُ؟ وَمَنْ كَرِهَهَا -: رُوِّينَا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: الْقُبْلَةُ تُنْقِضُ الصَّوْمَ وَلَا تُفْطِرُ وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّهُ كَرِهَهَا؟ وَعَنْ عَبْدِ اللَّهِ بْنِ مُغَفَّلٍ أَنَّهُ كَرِهَهَا؟ وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ: أَنَّهُ قَالَ: لَا بَأْسَ بِهَا، وَإِنَّهَا لَبَرِيدُ سُوءٍ؟ وَعَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: لَمْ أَرَ الْقُبْلَةَ تَدْعُو إلَى خَيْرٍ - يَعْنِي لِلصَّائِمِ؟ وَصَحَّ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ قَالَ: هِيَ دَلِيلٌ إلَى غَيْرِهَا وَالِاعْتِزَالُ أَكْيَسُ؟ وَكَرِهَهَا مَالِكٌ؟ وَمَنْ فَرَّقَ بَيْنَ الشَّيْخِ وَالشَّابِّ -: رُوِّينَا مِنْ طَرِيقِ ابْنِ الْمُسَيِّبِ عَنْ عُمَرَ بْنِ الْخَطَّابِ وَمِنْ طَرِيقِ أَبِي مِجْلَزٍ عَنْ ابْنِ عَبَّاسٍ، وَمِنْ طَرِيقِ ابْنِ أَبِي مُلَيْكَةَ عَنْ أَبِي هُرَيْرَةَ، وَمِنْ طَرِيقِ نَافِعٍ عَنْ ابْنِ عُمَرَ، وَمِنْ طَرِيقِ هِشَامِ

L11817–11819 From Hudhayfah, he said: "Does whoever contemplates the body of his wife while fasting invalidate his fast?" From Az-Zuhri, from Tha'labah ibn 'Abdillah ibn Abi Su'ayr: "I saw the companions of the Messenger of Allah — peace and blessings be upon him — forbidding kissing for the fasting person." Via Shurayḥ: He was asked about the fasting person kissing, so he said: "He should fear Allah and not repeat it." From Abu Qilabah: "He is reported to have prohibited it." From Muhammad ibn al-Hanafiyyah: "Fasting is abstaining from desire, and kissing is an act of desire." From Abu Rafi', he said: "The fasting person must not kiss." From Masruq: He was asked about it, so he said: "The night is near." Ibn Shubrumah said: "If the fasting person kisses, he invalidates his fast and must substitute another day." Among those who disliked it: We narrate from Sa'id ibn al-Musayyib: "Kissing invalidates the fast but does not require making it up." And from Ibrāhīm al-Nakhaʿī: that he disliked it? And from ʿAbdullāh ibn Mughaffal: that he disliked it? And from Saʿīd ibn Jubayr: that he said, "There is no harm in it, though it is a herald of evil?" And from ʿUrwah ibn al-Zubayr: he said, "I have never seen kissing lead to any good"—referring to the fasting person? It is authentically reported from Ibn ʿAbbās: that he said, "It is a precursor to other acts, and avoidance is wiser?" Mālik disliked it? As for those who differentiated between elderly men and young men—it was transmitted via Ibn al-Musayyib's chain from ʿUmar ibn al-Khaṭṭāb, via Abū Mijlaz's chain from Ibn ʿAbbās, via Ibn Abī Mulaykah's chain from Abū Hurayrah, via Nāfiʿ's chain from Ibn

[26] **Hadith references (L11816):** Sahih Muslim 1106e.

ʿUmar, via Hishām ibn al-Ghāz's chain from Makhūl, and via Ḥurayth's chain from al-Shaʿbī: that all of them permitted kissing for elderly fasting men but disliked it for young men? As for those who disapproved of intimate contact for the fasting person—it was transmitted via ʿAṭāʾ's chain from Ibn ʿAbbās: that he was asked about kissing for the fasting person, and he said, "There is no harm in it." He was asked, "May he grasp her leg?" He replied, "He must not grasp her leg. Maintain chastity during fasting." Via Mālik's chain from Ibn ʿUmar: that he prohibited intimate contact for those fasting.

بْنِ الْغَازِ عَنْ مَكْحُولٍ، وَمِنْ طَرِيقِ حُرَيْثٍ عَنْ الشَّعْبِيِّ: أَنَّهُمْ كُلَّهُمْ رَخَّصُوا فِي قُبْلَةِ الصَّائِمِ لِلشَّيْخِ وَكَرِهُوهَا لِلشَّابِّ؟ وَمَنْ كَرِهَ الْمُبَاشَرَةَ لِلصَّائِمِ -: رُوِّينَا مِنْ طَرِيقِ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ سُئِلَ عَنْ الْقُبْلَةِ لِلصَّائِمِ؟ فَقَالَ: لَا بَأْسَ بِهَا، وَسُئِلَ أَيَقْبِضُ عَلَى سَاقِهَا؟ قَالَ لَا يَقْبِضُ عَلَى سَاقِهَا، أَعِفُّوا الصِّيَامَ؟ وَمِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ يَنْهَى عَنْ الْمُبَاشَرَةِ لِلصَّائِمِ.

L11820 And from al-Zuhri: that he prohibited touching the fasting person and stripping them.

وَعَنْ الزُّهْرِيِّ: أَنَّهُ نَهَى عَنْ لَمْسِ الصَّائِمِ وَتَجْرِيدِهِ.

L11821 From Sa'id ibn al-Musayyib concerning a fasting person who engages in physical intimacy: He said, "He must repent ten times, for this diminishes the reward of his fast - the one who undresses or engages in intimate touching. Is it permissible for him to take her hand or the nearest part of her body while leaving the farthest part?" From 'Ata' ibn Abi Rabah concerning a fasting person who engages in physical intimacy during daytime: He said, "His fast is not invalidated, but he must make up for it with another day."

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي الصَّائِمِ يُبَاشِرُ قَالَ: يَتُوبُ عَشْرَ مِرَارٍ، إنَّهُ يَنْقُصُ مِنْ صَوْمِهِ الَّذِي يُجَرِّدُ أَوْ يَلْمِسُ، لَكَ أَنْ تَأْخُذَ بِيَدِهَا وَبِأَدْنَى جَسَدِهَا وَتَدَعَ أَقْصَاهُ؟ وَعَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ فِي الصَّائِمِ يُبَاشِرُ بِالنَّهَارِ؟ قَالَ: لَمْ يَبْطُلْ صَوْمُهُ، وَلَكِنْ يُبَدِّلُ يَوْمًا مَكَانَهُ.

L11822 From Abu Rafi': A fasting person does not engage in intimate contact.

وَعَنْ أَبِي رَافِعٍ: لَا يُبَاشِرُ الصَّائِمُ.

L11823 And Mālik considered it reprehensible (makrūh).

وَكَرِهَهَا مَالِكٌ.

L11824 Whoever permits physical contact for the elderly man and prohibits it for the young man: this has been narrated to us from Ibn 'Umar, Ibn 'Abbas, and Al-Sha'bi.

وَمَنْ أَبَاحَ الْمُبَاشَرَةَ لِلشَّيْخِ وَنَهَى عَنْهَا لِلشَّابِّ -: رُوِّينَا هَذَا عَنْ ابْنِ عُمَرَ، وَعَنْ ابْنِ عَبَّاسٍ وَالشَّعْبِيِّ.

L11825–11827 As for the one who permitted all of that: It has been narrated to us through the chain of 'Abd al-Razzāq from Abū al-Naḍr, the freed slave of 'Umar ibn 'Ubayd Allāh, that 'Ā'ishah bint Ṭalḥah ibn 'Ubayd Allāh informed him that she was in the presence of 'Ā'ishah, the Mother of the Believers. Then her husband, Abdullah ibn Abd al-Rahman ibn Abi Bakr al-Siddiq, came to her while fasting during Ramadan. Umm al-Mu'minīn (Mother of the Believers) Aisha said to him: "What prevents you from approaching your wife and

وَأَمَّا مَنْ أَبَاحَ كُلَّ ذَلِكَ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي النَّضْرِ مَوْلَى عُمَرَ بْنِ عُبَيْدِ اللَّهِ أَنَّ عَائِشَةَ بِنْتَ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ أَخْبَرَتْهُ: أَنَّهَا كَانَتْ عِنْدَ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَدَخَلَ عَلَيْهَا زَوْجُهَا، وَهُوَ عَبْدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ - وَهُوَ صَائِمٌ فِي

kissing her and engaging in affectionate play with her?" He replied: "Shall I kiss her while fasting?" She said: "Yes."

رَمَضَانَ، فَقَالَتْ لَهُ عَائِشَةُ أُمُّ الْمُؤْمِنِينَ: مَا يَمْنَعُكَ أَنْ تَدْنُوَ مِنْ أَهْلِكَ فَتُقَبِّلَهَا وَتُلَاعِبَهَا؟ فَقَالَ: أُقَبِّلُهَا وَأَنَا صَائِمٌ؟ قَالَتْ: نَعَمْ.

L11828 From the narration of Ma'mar from Ayyub al-Sikhtiyani from Abu Qilabah from Masruq, who said: I asked Aisha, the Mother of the Believers: "What is permissible for a man to do with his wife while fasting?" She replied: "Everything except intercourse." Abu Muhammad said: Aisha bint Talha was the most beautiful woman of her time, and during Aisha's days, she and her husband were in the prime of youth. These two accounts disprove the claim of those who pay no heed to falsehood that her statement, "Which of you has more control over his urges than the Messenger of Allah—peace and blessings be upon him?" intended to prohibit kissing and physical contact for one fasting. From the narration of Abdullah and Ubaydullah, the two sons of Abdullah ibn Umar ibn al-Khattab: Umar ibn al-Khattab's wife, Atika bint Zayd ibn Amr, would kiss him while he fasted, and he did not forbid her. From the narration of Dawud ibn Abi Hind from Sa'id ibn Jubayr: A man said to Ibn Abbas: "I married a beautiful cousin and consummated the marriage during Ramadan. By my father and mother, I implore you! Is there any way for me to kiss her?" Ibn Abbas asked: "Can you restrain yourself?" He said: "Yes." He said: "Then kiss her." The man said: "By my father and mother, I implore you! Is there any way for me to touch her?" He asked: "Can you restrain yourself?" He said: "Yes." He said: "Then touch her." The man said: "Is there any way for me to place my hand on her private part?" He asked: "Can you restrain yourself?" He said: "Yes." He said: "Then place it." This is the most authentic chain from Ibn Abbas.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ مَسْرُوقٍ قَالَ: سَأَلْت عَائِشَةَ أُمَّ الْمُؤْمِنِينَ: مَا يَحِلُّ لِلرَّجُلِ مِنْ امْرَأَتِهِ صَائِمًا؟ فَقَالَتْ كُلُّ شَيْءٍ إلَّا الْجِمَاعَ؟ قَالَ أَبُو مُحَمَّد: عَائِشَةُ بِنْتُ طَلْحَةَ كَانَتْ أَجْمَلَ نِسَاءِ أَهْلِ زَمَانِهَا، وَكَانَتْ أَيَّامَ عَائِشَةَ وَهِيَ وَزَوْجُهَا فَتِيَّيْنِ فِي عُنْفُوَانِ الْحَدَاثَةِ؟ وَهَذَانِ الْخَبَرَانِ يُكَذِّبَانِ قَوْلَ مَنْ لَا يُبَالِي بِالْكَذِبِ أَنَّهَا أَرَادَتْ بِقَوْلِهَا «وَأَيُّكُمْ أَمْلَكُ لِإِرْبِهِ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» النَّهْيَ مِنْ الْقُبْلَةِ وَالْمُبَاشَرَةِ لِلصَّائِمِ؟ وَمِنْ طَرِيقِ عَبْد اللَّهِ، وَعُبَيْد اللَّهِ: ابْنَيْ عَبْد اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَانَتْ تُقَبِّلُهُ امْرَأَتُهُ عَاتِكَةُ بِنْتُ زَيْدِ بْنِ عَمْرٍو وَهُوَ صَائِمٌ، فَلَا يَنْهَاهَا وَمِنْ طَرِيقِ دَاوُد بْنِ أَبِي هِنْد عَنْ سَعِيدِ بْنِ جُبَيْرٍ: أَنَّ رَجُلًا قَالَ لِابْنِ عَبَّاسٍ: إنِّي تَزَوَّجْت ابْنَةَ عَمٍّ لِي جَمِيلَةً، فَبَنَيْتُ بِهَا فِي رَمَضَانَ: فَهَلْ لِي - بِأَبِي أَنْتَ وَأُمِّي إلَى قُبْلَتِهَا مِنْ سَبِيلٍ؟ فَقَالَ لَهُ ابْنُ عَبَّاسٍ: هَلْ تَمْلِكُ نَفْسَكَ؟ قَالَ: نَعَمْ، قَالَ: قَبِّلْ، قَالَ: فَبِأَبِي أَنْتَ وَأُمِّي: هَلْ إلَى مُبَاشَرَتِهَا مِنْ سَبِيلٍ؟ قَالَ: هَلْ تَمْلِكُ نَفْسَكَ؟ قَالَ: نَعَمْ، قَالَ: فَبَاشِرْهَا، قَالَ: فَهَلْ لِي إلَى أَنْ أَضْرِبَ بِيَدِي عَلَى فَرْجِهَا مِنْ سَبِيلٍ؟ قَالَ: وَهَلْ تَمْلِكُ نَفْسَكَ؟ قَالَ: نَعَمْ، قَالَ: اضْرِبْ - وَهَذِهِ أَصَحُّ طَرِيقٍ عَنْ ابْنِ عَبَّاسٍ.

L11829–11831 From Yahyā ibn Saʿīd al-Qaṭṭān, from Ḥabīb ibn Shihāb, from his father, who said: I asked Abū Hurayrah about a man drawing near to his wife while fasting. He replied: "Indeed, I do lightly kiss her lips while fasting." And from Zayd ibn Aslam, who said: Abū Hurayrah was asked: "Do you kiss while fasting?" He said: "Yes, and I embrace her—" Its meaning is that he

وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ حَبِيبِ بْنِ شِهَابٍ عَنْ أَبِيهِ قَالَ: سَأَلْت أَبَا هُرَيْرَةَ عَنْ دُنُوِّ الرَّجُلِ مِنْ امْرَأَتِهِ وَهُوَ صَائِمٌ؟ فَقَالَ: إنِّي لَأَرُفُّ شَفَتَيْهَا وَأَنَا صَائِمٌ. وَعَنْ زَيْدِ بْنِ

brings his mouth to hers. He was asked, “What about kissing someone other than your wife?” and he averted his face.

أَسْلَمَ قَالَ: قِيلَ لِأَبِي هُرَيْرَةَ: أَتُقَبِّلُ وَأَنْتَ صَائِمٌ قَالَ: نَعَمْ وَأَكْفَحُهَا - مَعْنَاهُ: أَنَّهُ يَفْتَحُ فَاهُ إِلَى فِيهَا وَسُئِلَ عَنْ تَقْبِيلِ غَيْرِ امْرَأَتِهِ؟ فَأَعْرَضَ بِوَجْهِهِ.

L11832 Among the authentic narrations from Sa‘d ibn Abī Waqqāṣ is that he was asked: “Do you kiss [your wife] while fasting?” He replied: “Yes, and I grasp her belongings [to avoid further intimacy].”

وَمِنْ طُرُقٍ صِحَاحٍ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ: أَنَّهُ سُئِلَ: أَتُقَبِّلُ وَأَنْتَ صَائِمٌ؟ قَالَ: نَعَمْ وَأَقْبِضُ عَلَى مَتَاعِهَا.

L11833 From Abu al-Mutawakkil, who narrated from Abu Sa’id al-Khudri: He did not see any harm in a fasting person being kissed.

وَعَنْ أَبِي الْمُتَوَكِّلِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ: أَنَّهُ كَانَ لَا يَرَى بِالْقُبْلَةِ لِلصَّائِمِ بَأْسًا.

L11834 From Sufyan ibn ’Uyaynah from Zakariyyā—who is the son of Abī Zā’idah—from al-Sha’bi from ’Amr ibn Shurahbil that Ibn Mas’ūd would have sexual intercourse with his wife at midday while fasting. This is the most authentic chain of transmission from Ibn Mas’ūd.

وَعَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ زَكَرِيَّا هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ الشَّعْبِيِّ عَنْ عَمْرِو بْنِ شُرَحْبِيلَ أَنَّ ابْنَ مَسْعُودٍ كَانَ يُبَاشِرُ امْرَأَتَهُ نِصْفَ النَّهَارِ وَهُوَ صَائِمٌ - وَهَذِهِ أَصَحُّ طَرِيقٍ عَنْ ابْنِ مَسْعُودٍ.

L11835 From the transmission chain of Ḥanẓala ibn Sabra [from] al-Musayyib ibn Nujba al-Fazārī, from his aunt - who was the wife of Ḥudhayfa ibn al-Yamān - she said: “When Ḥudhayfa prayed the dawn prayer in Ramadan, he would come and enter into my quilt with me, then he would have intercourse with me.”

وَمِنْ طَرِيقِ حَنْظَلَةَ بْنِ سَبْرَةَ (عَنْ) الْمُسَيَّبِ بْنِ نُجْبَةَ الْفَزَارِيِّ عَنْ عَمَّتِهِ - وَكَانَتْ تَحْتَ حُذَيْفَةَ بْنِ الْيَمَانِ - قَالَتْ: كَانَ حُذَيْفَةُ إذَا صَلَّى الْفَجْرَ فِي رَمَضَانَ جَاءَ فَدَخَلَ مَعِي فِي لِحَافِي ثُمَّ يُبَاشِرُنِي.

L11836 On the authority of Abū Zabyān from ʿAlī ibn Abī Ṭālib: There is no harm in kissing for a fasting person.

وَعَنْ أَبِي ظَبْيَانَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: لَا بَأْسَ بِالْقُبْلَةِ لِلصَّائِمِ.

L11837 From Mis‘ar, from Sa‘id ibn Mardanah—who narrated from Abu Kathir—that Umm Salamah, the Mother of the Believers, said to the man she addressed when he had married during Ramadan: “If you were to draw near, would you kiss?” Among the Followers, through the chain from ‘Ikrimah: “There is no harm in a kiss or intimate contact for one fasting; it is merely like a morsel he smells.”

وَعَنْ مِسْعَرٍ عَنْ سَعِيدِ بْنِ مَرْدَانَ بِهِ عَنْ أَبِي كَثِيرٍ أَنَّ أُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ قَالَتْ لَهُ وَقَدْ تَزَوَّجَ فِي رَمَضَانَ: لَوْ دَنَوْت، لَوْ قَبَّلْت؟ وَمِنْ التَّابِعِينَ مِنْ طَرِيقِ عِكْرِمَةَ: لَا بَأْسَ بِالْقُبْلَةِ وَالْمُبَاشَرَةِ لِلصَّائِمِ، إنَّمَا هِيَ كَالْكِسْرَةِ يَشْتَمُّهَا.

L11838 And from Al-Hasan Al-Basri, he said: The fasting person may kiss and engage in intimate relations.

وَعَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: يُقَبِّلُ الصَّائِمُ، وَيُبَاشِرُ.

L11839 From Abu Salama ibn Abd al-Rahman ibn Awf: He would kiss his wife during the daytime of Ramadan and issue a legal ruling on that.

وَعَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: أَنَّهُ كَانَ يُقَبِّلُ فِي رَمَضَانَ نَهَارًا وَيُفْتِي بِذَلِكَ.

L11840–11841 It is reported from Sa’id ibn Jubayr that kissing is permissible for one who is fasting.

وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ: إبَاحَةُ الْقُبْلَةِ لِلصَّائِمِ.

L11842 And from Al-Sha‘bi: There is no harm in kissing or intimate contact for one who is fasting.

وَعَنْ الشَّعْبِيِّ: لَا بَأْسَ بِالْقُبْلَةِ، وَالْمُبَاشَرَةِ لِلصَّائِمِ.

L11843 And from Masruq: He was asked about a fasting person kissing his wife, so he said, “I do not mind whether I kissed her or kissed my hand.” These are among the Companions—may Allah be pleased with them—Aisha, Umm Salamah (the Mother of the Believers), Umar ibn al-Khattab, Ali, Atikah bint Zayd, Ibn Abbas, Abu Hurairah, Sa‘d ibn Abi Waqqas, Ibn Mas‘ud, Abu Sa‘id al-Khudri, and Hudhayfah. We do not know of any of them reported to have considered it reprehensible without there being a more authentic chain permitting it than the one reporting dislike—except Ibn Umar alone. Permissibility has been collectively narrated from Sa‘d, Abu Sa‘id, Aisha, Umm Salamah, and Atikah.

وَعَنْ مَسْرُوقٍ: أَنَّهُ سُئِلَ عَنْ تَقْبِيلِ الصَّائِمِ امْرَأَتَهُ؟ فَقَالَ: مَا أُبَالِي أَقَبَّلْتهَا، أَوْ قَبَّلْت يَدِي؟ فَهَؤُلَاءِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - عَائِشَةُ، وَأُمُّ سَلَمَةَ أُمُّ الْمُؤْمِنِينَ، وَعُمَرُ بْنُ الْخَطَّابِ، وَعَلِيٌّ، وَعَاتِكَةُ بِنْتُ زَيْدٍ، وَابْنُ عَبَّاسٍ، وَأَبُو هُرَيْرَةَ، وَسَعْدُ بْنُ أَبِي وَقَّاصٍ، وَابْنُ مَسْعُودٍ، وَأَبُو سَعِيدٍ الْخُدْرِيِّ، وَحُذَيْفَةُ، وَمَا نَعْلَمُ مِنْهُمْ أَحَدًا رُوِيَ عَنْهُ كَرَاهَتُهَا إلَّا وَقَدْ جَاءَ عَنْهُ إبَاحَتُهَا بِأَصَحَّ مِنْ طَرِيقِ الْكَرَاهَةِ؛ إلَّا ابْنَ عُمَرَ وَحْدَهُ، وَرُوِيَتْ الْإِبَاحَةُ جُمْلَةً عَنْ سَعْدٍ، وَأَبِي سَعِيدٍ، وَعَائِشَةَ، وَأُمِّ سَلَمَةَ، وَعَاتِكَةَ.

L11844 Abu Muhammad said: Indeed, it was incumbent upon those who prioritize analogy over textual precedents to assign to fasting the same ruling applied in Hajj, and to prescribe charity in it as was established therein. Yet, this is among the matters where they abandoned analogy—and in Allah the Exalted we seek support.

قَالَ أَبُو مُحَمَّد: وَلَقَدْ كَانَ يَجِبُ لِمَنْ غَلَّبَ الْقِيَاسَ عَلَى الْأَثَرِ أَنْ يَجْعَلَهَا فِي الصِّيَامِ بِمَنْزِلَتِهَا فِي الْحَجِّ، وَيَجْعَلَ فِيهَا صَدَقَةً كَمَا جَعَلَ فِيهَا هُنَالِكَ؛ وَلَكِنْ هَذَا مِمَّا تَرَكُوا فِيهِ الْقِيَاسَ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

L11845 Since it has been established that kissing and foreplay are recommended during fasting, and that the fasting person is prohibited from nothing with his wife except intercourse—whether he intentionally causes ejaculation during such acts or not, all of this is permissible without any juristic dislike, as no textual evidence or consensus indicates its discouragement—how could fasting be invalidated by it, let alone how could expiation be legislated for it? We have clarified, alongside the fact that this contradicts the Sunnah, the invalidity of the opinion of those who assert that fasting is invalidated by such acts. For they hold that the emission of semen without foreplay does not invalidate the fast; that foreplay without the release of pre-ejaculate or semen does not invalidate the fast; and that mere arousal without physical contact does not invalidate the fast. Each of these, when isolated, does not invalidate

وَإِذْ قَدْ صَحَّ أَنَّ الْقُبْلَةَ وَالْمُبَاشَرَةَ: مُسْتَحَبَّتَانِ فِي الصَّوْمِ وَأَنَّهُ لَمْ يَنْهَ الصَّائِمُ فِي امْرَأَتِهِ عَنْ شَيْءٍ إلَّا الْجِمَاعَ -: فَسَوَاءٌ تَعَمَّدَ الْإِمْنَاءَ فِي الْمُبَاشَرَةِ أَوْ لَمْ يَتَعَمَّدْ كُلُّ ذَلِكَ مُبَاحٌ لَا كَرَاهَةَ فِي شَيْءٍ مِنْ ذَلِكَ؛ إذْ لَمْ يَأْتِ بِكَرَاهِيَتِهِ نَصٌّ وَلَا وَإِجْمَاعٌ، فَكَيْف إبْطَالُ الصَّوْمِ بِهِ، فَكَيْف أَنْ تُشْرَعَ فِيهِ كَفَّارَةٌ؟ وَقَدْ بَيَّنَّا مَعَ ذَلِكَ - مِنْ أَنَّهُ خِلَافٌ لِلسُّنَّةِ - فَسَادَ قَوْلِ مَنْ رَأَى الصَّوْمَ يُنْتَقَضُ بِذَلِكَ؛ لِأَنَّهُمْ، يَقُولُونَ: خُرُوجُ الْمَنِيِّ بِغَيْرِ مُبَاشَرَةٍ لَا يَنْقُضُ الصَّوْمَ؛ وَأَنَّ الْمُبَاشَرَةَ إذَا لَمْ يَخْرُجْ مَعَهَا مَذْيٌ، وَلَا مَنِيٌّ، لَا تَنْقُضُ الصَّوْمَ؛

the fast in the least. How then do they justify its invalidation when these acts are combined? This is manifestly baseless unless supported by explicit textual evidence—a possibility entirely precluded, as no such evidence exists in any narration, authentic or weak. As for fabricating falsehood and persisting in falsehood, even those without religion are capable of it.

وَأَنَّ الْإِنْعَاظَ دُونَ مُبَاشَرَةٍ لَا يَنْقُضُ الصَّوْمَ، فَكُلُّ وَاحِدٍ مِنْ هَذِهِ عَلَى انْفِرَادِهِ لَا يَكْدَحُ فِي الصَّوْمِ أَصْلًا؛ فَمِنْ أَيْنَ لَهُمْ إِذَا اجْتَمَعَتْ أَنْ تَنْقُضَ الصَّوْمَ؟ هَذَا بَاطِلٌ لَا خَفَاءَ بِهِ، إِلَّا أَنْ يَأْتِيَ بِذَلِكَ نَصٌّ، وَلَا سَبِيلَ إِلَى وُجُودِهِ أَبَدًا، لَا مِنْ رِوَايَةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَأَمَّا تَوْلِيدُ الْكَذِبِ وَالدَّعَاوَى بِالْمُكَابَرَةِ، فَمَا يَعْجِزُ عَنْهَا مَنْ لَا دِينَ لَهُ.

L11846 There is no precedent of two lawful substances combining to become prohibited except through an explicit text. By this very evidence, the Ḥanafīs opposed the established Sunnah in the prohibition of nabīdh of dates and raisins when combined, then they applied this ruling here where it is not permissible to apply it. And with Allāh, the Exalted, lies success.

وَمَا رُئِيَ قَطُّ حَلَالٌ وَحَلَالٌ يَجْتَمِعَانِ فَيَحْرُمَانِ إِلَّا أَنْ يَأْتِيَ بِذَلِكَ نَصٌّ، وَبِهَذَا الدَّلِيلِ نَفْسِهِ خَالَفَ الْحَنَفِيُّونَ السُّنَّةَ الثَّابِتَةَ فِي تَحْرِيمِ نَبِيذِ التَّمْرِ وَالزَّبِيبِ يُجْمَعَانِ، ثُمَّ حَكَمُوا بِهِ هَاهُنَا حَيْثُ لَا يَحِلُّ الْحُكْمُ بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L11847–11848 They say that intercourse without vaginal penetration—even to the point of ejaculation—does not incur a ḥadd penalty nor establish the child's lineage to him. Yet they should have distinguished between this act and vaginal intercourse regarding fasting's invalidation, though we know of no precedent—among any of Allah's creation before Abū Ḥanīfah—for breaking the fast solely due to intentional ejaculation. Then did Mālik and Al-Shāfiʿī follow him?

وَهُمْ يَقُولُونَ: إِنَّ الْجِمَاعَ دُونَ الْفَرْجِ حَتَّى يُمْنِيَ لَا يُوجِبُ حَدًّا وَلَا يُلْحَقُ بِهِ الْوَلَدُ، وَكَانَ يَجِبُ أَنْ يُفَرِّقُوا بَيْنَهُ وَبَيْنَ الْجِمَاعِ فِي إِبْطَالِ الصَّوْمِ بِهِ، مَعَ أَنَّ نَقْضَ الصَّوْمِ بِتَعَمُّدِ الْإِمْنَاءِ خَاصَّةً لَا نَعْلَمُهُ عَنْ أَحَدٍ مِنْ خَلْقِ اللَّهِ تَعَالَى قَبْلَ أَبِي حَنِيفَةَ، ثُمَّ اتَّبَعَهُ مَالِكٌ، وَالشَّافِعِيُّ؟

L11849 As for unintentional vomiting, a transmitted tradition has been related regarding that as we previously mentioned. We know of no disagreement that regurgitation and blood: the two exiting from the teeth that do not return to the throat do not invalidate the fast. Even if there were disagreement regarding that, it would not be considered, since no definitive textual proof establishes the invalidation of the fast due to them.

وَأَمَّا الْقَيْءُ الَّذِي لَا يُتَعَمَّدُ فَقَدْ جَاءَ الْأَثَرُ بِذَلِكَ عَلَى مَا ذَكَرْنَا قَبْلُ، وَلَا نَعْلَمُ فِي الْقَلْسِ، وَالدَّمِ: الْخَارِجَيْنِ مِنَ الْأَسْنَانِ لَا يَرْجِعَانِ إِلَى - الْحَلْقِ، خِلَافًا فِي أَنَّ الصَّوْمَ لَا يَبْطُلُ بِهِمَا، وَحَتَّى لَوْ جَاءَ فِي ذَلِكَ خِلَافٌ لَمَا الْتُفِتَ إِلَيْهِ؛ إِذْ لَمْ يُوجِبْ بُطْلَانَ الصَّوْمِ بِذَلِكَ نَصٌّ

L11850–11852 As for enemas, urethral instillation, ear drops, snuff, kohl application, treatment of penetrating abdominal wounds, and skull injuries exposing the brain—they claimed that anything reaching the body cavity or the inner head (being a cavity) invalidates fasting by analogy to eating. Yet they contradicted themselves: Ḥanafīs and Shāfiʿīs did not mandate compensatory fasting for kohl even if it reached the throat. Mālik saw no harm in inserting medicated

وَأَمَّا الْحُقْنَةُ، وَالتَّقْطِيرُ فِي الْإِحْلِيلِ، وَالتَّقْطِيرُ فِي الْأُذُنِ، وَالسَّعُوطُ، وَالْكُحْلُ، وَمُدَاوَاةُ الْجَائِفَةِ، وَالْمَأْمُومَةُ -: فَإِنَّهُمْ قَالُوا: إِنَّ مَا وَصَلَ إِلَى الْجَوْفِ وَإِلَى بَاطِنِ الرَّأْسِ - لِأَنَّهُ جَوْفٌ - فَإِنَّهُ يَنْقُضُ الصَّوْمَ، قِيَاسًا عَلَى الْأَكْلِ؟ ثُمَّ تَنَاقَضُوا، فَلَمْ يَرَ الْحَنَفِيُّونَ،

wicks for treatment during fasting, nor did he consider kohl invalidating unless it contained therapeutic agents. Al-Ḥasan ibn Ḥayy stated: “Enemas for treatment do not break the fast.” From Ibrāhīm al-Nakhaʿī: “There is no issue with using snuff while fasting.” Through ʿAbd al-Razzāq’s transmission from al-Muʿtamir ibn Sulaymān al-Taymī: his father, Manṣūr ibn al-Muʿtamir, Ibn Abī Laylā, and Ibn Shubruma ruled that a fasting person using kohl must compensate with a day’s fast.

Abū Muḥammad said: “Allah has only prohibited us during fasting from eating, drinking, intercourse, deliberate vomiting, and sins. We know of no consumption occurring through the anus, urethra, ear, eye, nose, or via abdominal/head wounds. We were never forbidden from introducing substances into the body cavity by non-consumptive means—unless the substance itself is prohibited. Astonishingly, those who deem such acts invalidating do not apply the legal penalty for administering wine via enema or ear infusion—proving it is neither drinking nor eating. Their contradiction regarding kohl is utterly perplexing, as it more directly reaches the throat through its natural pathway.” Regarding food entering through the ear? Some compared it to road dust or flour. It was said to him: It is not equivalent, because road dust and flour are not intentionally introduced into the throat, whereas kohl is intentionally introduced. Moreover, analogizing snuff to road dust and flour is more valid, as both enter through the nose. But they neither apply sound analogy, nor adhere to textual injunctions, nor uphold foundational principles. As for gargling and nasal inhalation, water predominates and enters the throat unintentionally.

وَالشَّافِعِيُّونَ فِي الْكُحْلِ قَضَاءً، وَإِنْ وَصَلَ إِلَى حَلْقِه، وَلَمْ يَرَ مَالِكٌ بِالْفَتَائِلِ تُسْتَدْخَلُ لِدَوَاءٍ بَأْسًا لِلصَّائِمِ، وَلَمْ يَرَ الْكُحْلَ يُفْطِرُ، إِلَّا أَنْ يَكُونَ فِيهِ عَقَاقِيرُ؟ وَقَالَ الْحَسَنُ بْنُ حَيٍّ: لَا تُفْطِرُ الْحُقْنَةُ إِنْ كَانَتْ لِدَوَاءٍ؟ وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ لَا بَأْسَ بِالسَّعُوطِ لِلصَّائِمِ؟ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ. أَنَّ أَبَاهُ، وَمَنْصُورَ بْنَ الْمُعْتَمِرِ، وَابْنَ أَبِي لَيْلَى، وَابْنَ شُبْرُمَةَ كَانُوا يَقُولُونَ: إنْ اكْتَحَلَ الصَّائِمُ فَعَلَيْهِ أَنْ يَقْضِيَ يَوْمًا مَكَانَهُ.

قَالَ أَبُو مُحَمَّدٍ: إنَّمَا نَهَانَا اللَّهُ تَعَالَى فِي الصَّوْمِ عَنْ الْأَكْلِ وَالشُّرْبِ وَالْجِمَاعِ، وَتَعَمُّدِ الْقَيْءِ، وَالْمَعَاصِي، وَمَا عَلِمْنَا أَكْلًا، وَلَا شُرْبًا، يَكُونُ عَلَى دبُرٍ، أَوْ إحْلِيلٍ، أَوْ أُذُنٍ، أَوْ عَيْنٍ، أَوْ أَنْفٍ، أَوْ مِنْ جُرْحٍ فِي الْبَطْنِ، أَوْ الرَّأْسِ وَمَا نُهِينَا قَطُّ عَنْ أَنَّ نُوَصِّلَ إلَى الْجَوْفِ - بِغَيْرِ الْأَكْلِ، وَالشُّرْبِ - مَا لَمْ يُحَرِّمْ عَلَيْنَا إيصَالَهُ وَالْعَجَبُ أَنَّ مَنْ رَأَى مِنْهُمْ الْفِطْرَ بِكُلِّ ذَلِكَ لَا يَرَى عَلَى مَنْ احْتَقَنَ بِالْخَمْرِ، أَوْ صَبَّهَا فِي أُذُنِهِ حَدًّا فَصَحَّ أَنَّهُ لَيْسَ شُرْبًا، وَلَا أَكْلًا؟ ثُمَّ تَنَاقُضُهُمْ فِي الْكُحْلِ عَجَبٌ جِدًّا وَهُوَ أَشَدُّ وُصُولًا إلَى الْحَلْقِ، وَمَجْرَى الطَّعَامِ مِنْ الْقُطُورِ فِي الْأُذُنِ؟ وَاحْتَجَّ بَعْضُهُمْ بِأَنَّهُ كَغُبَارِ الطَّرِيقِ، وَالطَّحِينِ؟ فَقِيلَ لَهُ: لَيْسَ مِثْلَهُ؛ لِأَنَّ غُبَارَ الطَّرِيقِ، وَالطَّحِينِ: لَمْ يُتَعَمَّدْ إيصَالُهُ إلَى الْحَلْقِ، وَالْكُحْلُ تَعَمَّدَ إيصَالَهُ؟ وَأَيْضًا: فَإِنَّ قِيَاسَ السَّعُوطِ عَلَى غُبَارِ الطَّرِيقِ، وَالطَّحِينِ أَوْلَى؛ لِأَنَّ كُلَّ ذَلِكَ مَسْلَكُهُ الْأَنْفُ، وَلَكِنَّهُمْ لَا يُحْسِنُونَ قِيَاسًا وَلَا يَلْتَزِمُونَ نَصًّا، وَلَا يَطْرُدُونَ أَصْلًا وَأَمَّا الْمَضْمَضَةُ، وَالِاسْتِنْشَاقُ فَيَغْلِبُهُ الْمَاءُ فَيَدْخُلُ حَلْقَهُ عَنْ غَيْرِ تَعَمُّدٍ.

L11853 Abu Hanifah said: If he was conscious of his fast, he invalidates it and must make it up; but if he forgot, there is no obligation upon him—and this is the opinion of Ibrahim.

فَإِنَّ أَبَا حَنِيفَةَ قَالَ: إنْ كَانَ ذَاكِرًا لِصَوْمِهِ فَقَدْ أَفْطَرَ وَعَلَيْهِ الْقَضَاءُ، وَإِنْ كَانَ نَاسِيًا فَلَا شَيْءَ عَلَيْهِ - وَهُوَ قَوْلُ إبْرَاهِيمَ.

L11854 And Malik said: He must compensate in all such cases.

وَقَالَ مَالِكٌ: عَلَيْهِ الْقَضَاءُ فِي كُلِّ ذَلِكَ.

L11855 Ibn Abi Layla said: There is no requirement to make it up, whether he was aware or unaware.

وَقَالَ ابْنُ أَبِي لَيْلَى: لَا قَضَاءَ عَلَيْهِ، ذَاكِرًا كَانَ أَوْغَيْرَ ذَاكِرٍ.

L11856 And it has been narrated to us from some of the Followers—namely al-Sha'bī and Ḥammād—and from al-Ḥasan ibn Ḥayy: If that occurred during ablution for prayer, he incurs no obligation. But if it occurred not during ablution, he must perform the compensatory prayer.

وَرُوِّينَا عَنْ بَعْضِ التَّابِعِينَ - وَهُوَ الشَّعْبِيُّ، وَحَمَّادٌ - وَعَنْ الْحَسَنِ بْنِ حَيٍّ: إنْ كَانَ ذَلِكَ فِي وُضُوءٍ لِصَلَاةٍ فَلَا شَيْءَ عَلَيْهِ، وَإِنْ كَانَ لِغَيْرِ وُضُوءٍ فَعَلَيْهِ الْقَضَاءُ.

L11857 Abu Muhammad said: Allah the Exalted said: {There is no blame on you for what you erred in, but only for what your hearts deliberately intended} (Al-Ahzab 33:5). The Messenger of Allah (peace and blessings be upon him) said: "My nation has been exempted from error, forgetfulness, and what they are compelled to do." We have been narrated that our position on this matter derives from Aṭā' ibn Abī Rabāḥ.[27]

قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ عَنْ أُمَّتِي: الْخَطَأُ وَالنِّسْيَانُ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» . وَرُوِّينَا قَوْلَنَا فِي هَذِهِ الْمَسْأَلَةِ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ.

L11858 And those who break their fast cite as evidence the authentic ḥadīth from the Messenger of Allah (peace be upon him): "When rinsing the nose [during ablution], perform it thoroughly unless you are observing a fast."

وَاحْتَجَّ مَنْ أَفْطَرَ بِذَلِكَ بِالْأَثَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَإِذَا اسْتَنْشَقْتَ فَبَالِغْ، إلَّا أَنْ تَكُونَ صَائِمًا» .

L11859–11861 Abū Muḥammad said: They have no valid argument in this matter, for it does not state that excessive inhalation breaks the fast of one who is fasting. Rather, it establishes the obligation of excessive inhalation for the non-fasting person and only removes this obligation from the fasting person—not prohibiting him from excessive inhalation. Thus, the fasting person may choose between exaggerating in inhalation or not doing so. As for the non-fasting person, excessive inhalation is an obligation upon him; otherwise, he would oppose the command of the Prophet (peace be upon him) to perform excessive inhalation. If someone were to claim that excessive inhalation breaks the fast of a fasting person, he would be more deeply entrenched in deception than them, for this report contains no mention of water reaching... Shaving leaves no trace, blemish, sign, nor evidence; yet they persistently indulge

قَالَ أَبُو مُحَمَّدٍ: وَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَيْسَ فِيهِ أَنَّهُ يُفْطِرُ الصَّائِمُ بِالْمُبَالَغَةِ فِي الِاسْتِنْشَاقِ، وَإِنَّمَا فِيهِ إيجَابُ الْمُبَالَغَةِ فِي الِاسْتِنْشَاقِ لِغَيْرِ الصَّائِمِ، وَسُقُوطُ وُجُوبِ ذَلِكَ عَنْ الصَّائِمِ فَقَطْ، لَا نَهْيُهُ عَنْ الْمُبَالَغَةِ، فَالصَّائِمُ مُخَيَّرٌ بَيْنَ أَنْ يُبَالِغَ فِي الِاسْتِنْشَاقِ وَبَيْنَ أَنْ لَا يُبَالِغَ فِيهِ، وَأَمَّا غَيْرُ الصَّائِمِ فَالْمُبَالَغَةُ فِي الِاسْتِنْشَاقِ فَرْضٌ عَلَيْهِ، وَإِلَّا كَانَ مُخَالِفًا لِأَمْرِهِ - عَلَيْهِ السَّلَامُ -: بِالْمُبَالَغَةِ، وَلَوْ أَنَّ امْرَأً يَقُولُ: إنَّ الْمُبَالَغَةَ فِي الِاسْتِنْشَاقِ تُفْطِرُ الصَّائِمَ لَكَانَ أَدْخَلَ فِي التَّمْوِيهِ مِنْهُمْ، لِأَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ مِنْ وُصُولِ الْمَاءِ إلَى الْحَلْقِ أَثَرٌ وَلَا عِثْيَرٌ وَلَا إشَارَةٌ وَلَا دَلِيلٌ، وَلَكِنَّهُمْ لَا يَزَالُونَ يَتَكَهَّنُونَ فِي السُّنَنِ مَا يُوَافِقُ آرَاءَهُمْ بِالدَّعَاوَى الْكَاذِبَةِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[27] **Qur'an references (L11857):** Qur'an 33:5 (Al-Ahzab).

in soothsaying regarding the Sunnah to align it with their views through deceptive claims, and success is from Allah, the Most High.

L11862 As for a fly entering the throat against one's control, or if someone raises their head to the sky, yawns, and a droplet of rain falls into their throat: Mālik ruled it invalidates the fast. Abū Ḥanīfa said one does not invalidate the fast due to the fly.

وَأَمَّا الذُّبَابُ يَدْخُلُ فِي الْحَلْقِ غَلَبَةً، وَمَنْ رَفَعَ رَأْسَهُ إِلَى السَّمَاءِ فَتَثَاءَبَ فَوَقَعَ فِي حَلْقِهِ نُقْطَةٌ مِنْ الْمَطَرِ -: فَإِنَّ مَالِكًا قَالَ: يُفْطِرُ، وَقَالَ أَبُو حَنِيفَةَ: لَا يُفْطِرُ بِالذُّبَابِ.

L11863 It has been narrated to us through the chain of Wakiʿ from Abū Mālik from Ibn Abī Najīḥ from Mujāhid from Ibn ʿAbbās regarding a fly that enters the throat of a fasting person: He said, "It does not invalidate the fast." And from Wakiʿ from al-Rabiʿ from al-Ḥasan regarding a fly that enters the throat of a fasting person: He said, "It does not invalidate the fast."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ أَبِي مَالِكٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ فِي الذُّبَابِ يَدْخُلُ حَلْقَ الصَّائِمِ قَالَ: لَا يُفْطِرُ؟ وَعَنْ وَكِيعٍ عَنْ الرَّبِيعِ عَنْ الْحَسَنِ فِي الذُّبَابِ يَدْخُلُ حَلْقَ الصَّائِمِ قَالَ: لَا يُفْطِرُ.

L11864 And similarly from Al-Sha'bi: We do not know of any Companion who disagreed with Ibn Abbas in this matter—may Allah be pleased with them—except for that weak narration attributed to him.

وَعَنْ الشَّعْبِيِّ مِثْلُهُ: وَمَا نَعْلَمُ لِابْنِ عَبَّاسٍ فِي هَذَا مُخَالِفًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إلَّا تِلْكَ الرِّوَايَةَ الضَّعِيفَةَ عَنْهُ.

L11865 And from Ibn Mas'ud: "Breaking the fast [occurs] from what enters, not what exits; and ablution [is invalidated] from what exits, not what enters?" Yet all of them have contradicted this narration, for they hold that the fast is invalidated by the intentional emission of semen - which is an exit, not an entry - and they invalidate ablution through penetration - which is an entry, not an exit? Abu Muhammad said: "We have stated that whatever is not eating, drinking, intercourse, or a sinful act does not invalidate the fast, because neither Allah the Exalted nor His Messenger - peace and blessings be upon him - has ordained this."

وَعَنْ ابْنِ مَسْعُودٍ: الْفِطْرُ مِمَّا دَخَلَ وَلَيْسَ مِمَّا خَرَجَ، وَالْوُضُوءُ مِمَّا خَرَجَ وَلَيْسَ مِمَّا دَخَلَ؟ وَكُلُّهُمْ قَدْ خَالَفَ هَذِهِ الرِّوَايَةَ، لِأَنَّهُمْ يَرَوْنَ الْفِطْرَ بِتَعَمُّدِ خُرُوجِ الْمَنِيِّ، وَهُوَ خَارِجٌ لَا دَاخِلٌ، وَيُبْطِلُونَ الْوُضُوءَ بِالْإِيلَاجِ، وَهُوَ دَاخِلٌ لَا خَارِجٌ؟ قَالَ أَبُو مُحَمَّد: قَدْ قُلْنَا: إنَّ مَا لَيْسَ أَكْلًا، وَلَا شُرْبًا، وَلَا جِمَاعًا، وَلَا مَعْصِيَةً، فَلَا يُفْطِرُ، لِأَنَّهُ لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِذَلِكَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L11866 As for using a moist or dry miswak, or intentionally chewing food or tasting anything—provided that none of it reaches the throat—all the scholars hold that such acts do not invalidate the fast. Although al-Shāfiʿī disliked using the miswak late in the day, he did not invalidate the fast for that reason.

وَأَمَّا السِّوَاكُ بِالرَّطْبِ، وَالْيَابِسِ، وَمَضْغُ الطَّعَامِ أَوْ ذَوْقُهُ مَا لَمْ يَصِلْ مِنْهُ إلَى الْحَلْقِ أَيُّ شَيْءٍ بِتَعَمُّدٍ -: فَكُلُّهُمْ لَا يَرَوْنَ الصِّيَامَ بِذَلِكَ مُنْتَقَضًا، وَإِنْ كَانَ الشَّافِعِيُّ كَرِهَ السِّوَاكَ فِي آخِرِ النَّهَارِ، وَلَمْ يُبْطِلْ بِذَلِكَ الصَّوْمَ.

L11867–11869 Some of them disliked chewing food or tasting it, but this is baseless, for declaring an act disliked requires evidence from the Quran or... Deeming the sunnah disliked is erroneous, for they do not disapprove of rinsing the

mouth. There is no distinction between these two acts and chewing food; rather, water is less detectable when entering and more thoroughly mixed with saliva than food is. This is among the matters wherein they contradicted analogical reasoning. Al-Shāfiʿī substantiated his position with the authentic hadith: "Verily, the odor from a fasting person's mouth [due to fasting] is more fragrant before Allah than the scent of musk."

وَكَرِهَ بَعْضُهُمْ مَضْغَ الطَّعَامِ وَذَوْقَهُ، وَهَذَا لَا شَيْءَ؛ لِأَنَّ كَرَاهَةَ مَا لَمْ يَأْتِ قُرْآنٌ وَلَا سُنَّةٌ بِكَرَاهَتِهِ خَطَأٌ، وَهُمْ لَا يَكْرَهُونَ الْمَضْمَضَةَ، وَلَا فَرْقَ بَيْنَهُمَا وَبَيْنَ مَضْغِ الطَّعَامِ؛ بَلْ الْمَاءُ أَخْفَى وُلُوجًا وَأَشَدُّ امْتِزَاجًا بِالرِّيقِ مِنْ الطَّعَامِ؛ وَهَذَا مِمَّا خَالَفُوا فِيهِ الْقِيَاسَ؟ وَاحْتَجَّ الشَّافِعِيُّ بِالْخَبَرِ الثَّابِتِ: «إنَّ خُلُوفَ فَمِ الصَّائِمِ أَطْيَبُ عِنْدَ اللَّهِ مِنْ رِيحِ الْمِسْكِ»

L11870 Abu Muhammad said: The odor originates from the throat, not the teeth. Rinsing the mouth performs the same function as the siwāk in this regard, and he does not consider it disliked. Al-Shafi'i's statement on this matter corresponds to the opinion of Mujahid, Waki', and others.

قَالَ أَبُو مُحَمَّد: الْخُلُوفُ خَارِجٌ مِنْ الْحَلْقِ، وَلَيْسَ فِي الْأَسْنَانِ، وَالْمَضْمَضَةُ تَعْمَلُ فِي ذَلِكَ عَمَلَ السِّوَاكِ، وَهُوَ لَا يَكْرَهُهَا، وَقَوْلُ الشَّافِعِيِّ فِي هَذَا هُوَ قَوْلُ مُجَاهِدٍ، وَوَكِيعٍ، وَغَيْرِهِمَا.

L11871 The Messenger of Allah - peace and blessings of Allah be upon him - emphasized the siwāk for every prayer, without distinguishing between a fasting person and others. Thus, the siwāk is a recommended practice for ʿAṣr, Maghrib, and all other prayers. Abū Maysarah disliked the fresh siwāk for a fasting person, while Al-Ḥasan and others did not dislike it.

وَقَدْ حَضَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى السِّوَاكِ لِكُلِّ صَلَاةٍ، وَلَمْ يَخُصَّ صَائِمًا مِنْ غَيْرِهِ فَالسِّوَاكُ سُنَّةٌ - لِلْعَصْرِ، وَالْمَغْرِبِ، وَسَائِرِ الصَّلَوَاتِ؟ وَقَدْ كَرِهَ أَبُو مَيْسَرَةَ الرَّطْبَ مِنْ السِّوَاكِ لِلصَّائِمِ، وَلَمْ يَكْرَهْهُ الْحَسَنُ وَغَيْرُهُ.

L11872 It has been narrated to us through the chain of Al-Ḥasan, Ḥammād, and Ibrāhīm that they did not deem it disliked for a fasting person to chew food for a child, and Al-Ḥasan would do it.

وَرُوِّينَا مِنْ طَرِيقِ الْحَسَنِ، وَحَمَّاد، وَإِبْرَاهِيمَ: أَنَّهُمْ كَانُوا لَا يَكْرَهُونَ لِلصَّائِمِ أَنْ يَمْضُغَ الطَّعَامَ لِلصَّبِيِّ، وَكَانَ الْحَسَنُ يَفْعَلُهُ

L11873 As for chewing gum resin, pitch, and mastic resin: We have been narrated through an unauthenticated chain from Umm Habibah, the Mother of the Believers, that she deemed it disliked for a fasting person to chew gum resin. We have also been narrated from Al-Shaʿbi that he saw no harm in it. We have stated that whatever does not constitute eating, drinking, intercourse, or sinful acts remains permissible during fasting. No textual prohibition exists against anything we have mentioned that is neither food nor drink. Prolonged chewing does not reduce its weight if it were to be weighed. And success is from Allah the Exalted.

وَأَمَّا مَضْغُ الْعِلْكِ، وَالزِّفْتِ، وَالْمَصْطَكَى: فَرُوِّينَا مِنْ طَرِيقٍ لَا يَصِحُّ عَنْ أُمِّ حَبِيبَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّهَا كَرِهَتْ الْعِلْكَ لِلصَّائِمِ؟ وَرُوِّينَا عَنْ الشَّعْبِيِّ: أَنَّهُ لَمْ يَرَ بِهِ بَأْسًا؟ وَقَدْ قُلْنَا: إنَّ مَا لَمْ يَكُنْ أَكْلًا، وَلَا شُرْبًا، وَلَا جِمَاعًا، وَلَا مَعْصِيَةً: فَهُوَ مُبَاحٌ فِي الصَّوْمِ؛ وَلَمْ يَأْتِ بِهِ نَصٌّ بِنَهْيِ الصَّائِمِ عَنْ شَيْءٍ مِمَّا ذَكَرْنَا، وَلَيْسَ أَكْلًا، وَلَا شُرْبًا، وَلَا يَنْقُصُ مِنْهُ شَيْءٌ بِطُولِ الْمَضْغِ لَوْ وُزِنَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L11874 As for the dust from sifted substances, we have mentioned from Abū Ḥanīfah

that it does not invalidate the fast. We have also transmitted it through the chain of transmission of Ibn Waḍḍāḥ from Saḥnūn. Since it is not classified as eating or drinking, it does not invalidate the fast of the one fasting.

وَأَمَّا غُبَارُ مَا يُغَرْبَلُ فَقَدْ ذَكَرْنَا عَنْ أَبِي حَنِيفَةَ: أَنَّهُ لَا يُفْطِرُ، وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ عَنْ سَحْنُونَ وَهُوَ لَا يُسَمَّى أَكْلًا، وَلَا شُرْبًا، فَلَا يُفْطِرُ الصَّائِمَ

L11875 As for food that exits from between the teeth at any time during the day and is discarded, this person has neither eaten nor drunk. Thus, there is no sin, and it does not invalidate the fast. Success is from Allah, the Most High, and this is the unanimous opinion of all the scholars.

وَأَمَّا طَعَامٌ يَخْرُجُ مِنْ بَيْنِ الْأَسْنَانِ فِي أَيِّ وَقْتٍ مِنْ النَّهَارِ خَرَجَ فَرَمَى بِهِ -: فَهَذَا لَمْ يَأْكُلْ، وَلَا شَرِبَ، فَلَا حَرَجَ، وَلَا يُبْطِلُ الصَّوْمَ -: وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ، وَهُوَ قَوْلُهُمْ كُلُّهُمْ.

L11876–11878 As for the one who wakes up in a state of major ritual impurity—whether intentionally or forgetfully—as long as he does not intentionally prolong it until forenoon, similarly, until he ceases. Deliberately delaying prayer while conscious of it: The Salaf differed concerning this. Did some of them hold that one's fasting is invalidated by abandoning the ritual bath before dawn? The Hanafis, Malikis, and Shafi'is said: His fast remains valid even if he deliberately refrains from purifying himself from major impurity throughout the entirety of Ramadan. Abu Muhammad said: This opinion is manifestly invalid due to our earlier assertion that intentional sin invalidates the fast, for no sin is greater than intentionally delaying prayer until its time expires. A group of the Salaf upheld the view we previously mentioned—as narrated to us through Shu'ayb ibn Abi Hamzah from al-Zuhri: 'Abdullah ibn 'Abdullah ibn 'Umar informed me that he experienced a nocturnal emission during a Ramadan night, then slept and did not awaken until dawn. He said: I met Abu Hurayrah and sought his ruling. He replied: Break your fast, for the Messenger of Allah—peace and blessings be upon him—commanded such a person to break the fast if he remains in a state of major impurity at dawn. He said: I went to my father and informed him of Abu Hurayrah's verdict. He declared: By Allah, if you break your fast, I will beat your back. Continue fasting, and if you later wish to fast another day, you may do so.

وَأَمَّا مَنْ أَصْبَحَ جُنُبًا عَامِدًا أَوْ نَاسِيًا - مَا لَمْ يَتَعَمَّدْ التَّمَادِي ضُحًى كَذَلِكَ حَتَّى يَتْرُكَ الصَّلَاةَ عَامِدًا ذَاكِرًا لَهَا: - فَإِنَّ السَّلَفَ اخْتَلَفُوا فِي هَذَا؟ فَرَأَى بَعْضُهُمْ أَنَّهُ يُبْطِلُ صَوْمَهُ بِتَرْكِ الْغُسْلِ قَبْلَ الْفَجْرِ؟ وَقَالَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: صَوْمُهُ تَامٌّ وَإِنْ تَعَمَّدَ أَنْ لَا يَغْتَسِلَ مِنْ الْجَنَابَةِ شَهْرَ رَمَضَانَ كُلَّهُ؟ قَالَ أَبُو مُحَمَّدٍ: أَمَّا هَذَا الْقَوْلُ فَظَاهِرُ الْفَسَادِ، لِمَا ذَكَرْنَا قَبْلُ مِنْ أَنَّ تَعَمُّدَ الْمَعْصِيَةِ يُبْطِلُ الصَّوْمَ، وَلَا مَعْصِيَةَ أَعْظَمُ مِنْ تَعَمُّدِ تَرْكِ الصَّلَاةِ حَتَّى يَخْرُجَ وَقْتُهَا؟ وَذَهَبَتْ طَائِفَةٌ مِنْ السَّلَفِ إلَى مَا ذَكَرْنَا قَبْلُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ شُعَيْبِ بْنِ أَبِي حَمْزَةَ عَنْ الزُّهْرِيِّ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ: " أَنَّهُ احْتَلَمَ لَيْلَةً فِي رَمَضَانَ ثُمَّ نَامَ فَلَمْ يَنْتَبِهْ حَتَّى أَصْبَحَ، قَالَ: فَلَقِيت أَبَا هُرَيْرَةَ فَاسْتَفْتَيْتُهُ؟ فَقَالَ: أَفْطِرْ، فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَأْمُرُ بِالْفِطْرِ إذَا أَصْبَحَ الرَّجُلُ جُنُبًا قَالَ: فَجِئْت إلَى أَبِي فَأَخْبَرْتُهُ بِمَا أَفْتَانِي بِهِ أَبُو هُرَيْرَةَ، فَقَالَ: أُقْسِمُ بِاَللَّهِ لَئِنْ أَفْطَرْتَ لَأُوجِعَنَّ مَتْنَكَ، صُمْ، فَإِنْ بَدَا لَكَ أَنْ تَصُومَ يَوْمًا آخَرَ فَافْعَلْ.

L11879 It has been narrated to us through the chain of Sufyān ibn 'Uyaynah from 'Amr ibn Dīnār from Yaḥyā ibn Ja'dah, who said: "I heard 'Abdullāh ibn 'Amr al-Qāri' say: 'I heard Abū Hurayrah declare: "No, by the Lord of this House!

It was not I who said, 'Whoever is overtaken by dawn while in a state of janabah must not fast.' Muhammad — by the Lord of the Ka'bah — said it¡''

وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ يَحْيَى بْنِ جَعْدَةَ سَمِعْت عَبْدَ اللَّهِ بْنَ عَمْرٍو الْقَارِئَ قَالَ: «سَمِعْتُ أَبَا هُرَيْرَةَ يَقُولُ: لَا وَرَبِّ هَذَا الْبَيْتِ، مَا أَنَا قُلْتُ: مَنْ أَدْرَكَهُ الصُّبْحُ وَهُوَ جُنُبٌ فَلَا يَصُمْ، مُحَمَّدٌ - وَرَبِّ الْكَعْبَةِ - قَالَهُ» .

L11880 Abu Muhammad said: Those devoid of religion and knowledge have criticized this report, objecting that Abd al-Rahman ibn al-Harith ibn Hisham narrated from Abu Hurairah—who stated in this report that Usamah ibn Zayd had narrated it to him, and that al-Fadl ibn Abbas had narrated it to him. Abu Muhammad responded: This is an additional strength for the report—that both Usamah and al-Fadl transmitted it from the Prophet (peace be upon him). We cannot discern what this ignorant critic intends. What arises from this objection except the attribution of lying to Abu Hurairah? Yet is the objector not more deserving of being accused of falsehood than him? Similarly, some people—who fail to grasp what they utter—have opposed this report by citing that the two Mothers of the Believers had both narrated: "The Prophet (peace be upon him) would awaken in a state of major impurity due to intercourse, not nocturnal emission, then observe fasting that day."

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ عَابَ مَنْ لَا دِينَ لَهُ وَلَا عِلْمَ لَهُ هَذَا الْخَبَرَ بِأَنَّ عَبْدَ الرَّحْمَنِ بْنَ الْحَارِثِ بْنِ هِشَامٍ رَوَى عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ لَهُ فِي هَذَا الْخَبَرِ: إنَّ أُسَامَةَ بْنَ زَيْدٍ حَدَّثَهُ بِهِ، وَإِنَّ الْفَضْلَ بْنَ عَبَّاسٍ حَدَّثَهُ بِهِ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ قُوَّةٌ زَائِدَةٌ لِلْخَبَرِ، أَنْ يَكُونَ أُسَامَةُ وَالْفَضْلُ رَوَيَاهُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَا نَدْرِي إلَى مَا أَشَارَ بِهِ هَذَا الْجَاهِلُ؟ وَمَا يَخْرُجُ مِنْ هَذَا الِاعْتِرَاضِ إلَّا نِسْبَةُ أَبِي هُرَيْرَةَ لِلْكَذِبِ، وَالْمُعْتَرِضُ بِذَلِكَ أَحَقُّ بِالْكَذِبِ مِنْهُ؟ وَكَذَلِكَ عَارَضَ قَوْمٌ - لَا يُحَصِّلُونَ مَا يَقُولُونَ - هَذَا الْخَبَرَ بِأَنَّ أُمَّيْ الْمُؤْمِنِينَ رَوَتَا «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُصْبِحُ جُنُبًا مِنْ جِمَاعٍ غَيْرِ احْتِلَامٍ ثُمَّ يَصُومُ ذَلِكَ النَّهَارَ» .

L11881–11882 Abū Muḥammad said: The narration of Abū Hurayrah does not contradict this report because his narration is the additional one.

قَالَ أَبُو مُحَمَّدٍ: وَلَيْسَ يُعَارِضُ هَذَا الْخَبَرَ مَا رَوَاهُ أَبُو هُرَيْرَةَ لِأَنَّ رِوَايَةَ أَبِي هُرَيْرَةَ هِيَ الزَّائِدَةُ.

L11883–11885 How strange of one who—relying on his own opinion—rejects the narrations of them both (may Allah be pleased with them) concerning the Messenger of Allah (peace and blessings be upon him) kissing while fasting, then employs their narrations here as an argument against the established Sunnah—especially given the authenticity of the narration from ʿĀ'ishah (may Allah be pleased with her), who said: "The dawn never overtook the Messenger of Allah (peace and blessings be upon him) except..." "He was asleep"—so why not interpret this as being overpowered by sleep, rather than intentionally omitting *ghusl*? Another group also cited as evidence what we transmitted through the chain of ʿAbd al-Raḥmān ibn Mahdī from Hishām

وَالْعَجَبُ مِمَّنْ يَرُدُّ رِوَايَتَهُمَا - رَضِيَ اللَّهُ عَنْهُمَا - فِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُقَبِّلُ وَهُوَ صَائِمٌ بِرَأْيِهِ -: ثُمَّ يَجْعَلُ رِوَايَتَهُمَا هَاهُنَا حُجَّةً عَلَى السُّنَّةِ الثَّابِتَةِ لَا سِيَّمَا مَعَ صِحَّةِ الرِّوَايَةِ «عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا -: أَنَّهَا قَالَتْ: مَا أَدْرَكَ الْفَجْرُ قَطُّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا وَهُوَ نَائِمٌ» فَهَلَّا حَمَلُوا هَذَا عَلَى غَلَبَةِ النَّوْمِ، لَا عَلَى تَعَمُّدِ تَرْكِ الْغُسْلِ؟ وَاحْتَجَّ أَيْضًا قَوْمٌ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ

عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: رَجَعَ أَبُو هُرَيْرَةَ عَنْ فُتْيَاهُ فِي الرَّجُلِ يُصْبِحُ جُنُبًا. قَالَ عَلِيٌّ: وَلَا حُجَّةَ فِي رُجُوعِهِ، لِأَنَّهُ رَأْيٌ مِنْهُ، إنَّمَا الْحُجَّةُ فِي رِوَايَتِهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ افْتُرِضَ عَلَيْنَا اتِّبَاعُ رِوَايَتِهِمْ، وَلَمْ نُؤْمَرْ بِاتِّبَاعِ الرَّأْيِ مِمَّنْ رَآهُ مِنْهُمْ.

al-Dastuwāʾī from Qatādah from Saʿīd ibn al-Musayyib, who said: Abū Hurayrah retracted his fatwa concerning a man who awakens in a state of ritual impurity (*junub*). ʿAlī said: There is no proof in his retraction, for it was merely his personal reasoning. Valid proof lies only in his narration from the Prophet (peace be upon him). We have been commanded to follow their transmitted narrations, not ordered to adopt the personal opinions held by any among them.

L11886 وَالْعَجَبُ مِمَّنْ يَحْتَجُّ بِهَذَا مِنْ الْمَالِكِيِّينَ وَهُمْ قَدْ ثَبَتُوا عَلَى مَا رُوِيَ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - مِنْ تَحْرِيمِ الْمُتَزَوِّجَةِ فِي الْعِدَّةِ عَلَى الَّذِي دَخَلَ بِهَا فِي الْأَبَدِ.

It is astonishing that some Malikis cite this as evidence, despite adhering to the ruling transmitted from Umar—may Allah be pleased with him—which forever prohibits the man who consummated the marriage from marrying the woman in her waiting period.

L11887 وَقَدْ صَحَّ رُجُوعُ عُمَرَ عَنْ ذَلِكَ إلَى أَنَّهُ مُبَاحٌ لَهُ ابْتِدَاءُ زَوَاجِهَا؟ وَمِمَّنْ قَالَ بِهَذَا مِنْ السَّلَفِ كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: أَنَّهُ لَمَّا اخْتَلَفَ عَلَيْهِ أَبُو هُرَيْرَةَ، وَعَائِشَةُ فِي هَذَا قَالَ عَطَاءٌ: يُبَدِّلُ يَوْمًا وَيُتِمُّ يَوْمَهُ ذَلِكَ.

It has been authentically reported that ʿUmar retracted from that position to the position that it is permissible for him to initiate her marriage? Among the Salaf who held this view—as we have narrated through the chain of Ibn Jurayj from ʿAṭāʾ—are those who, when Abū Hurayrah and ʿĀʾishah disagreed with him on this matter, ʿAṭāʾ said: "He substitutes a [missed] day and completes it on that day."

L11888 وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ أَنَّهُ قَالَ: مَنْ أَدْرَكَهُ الصُّبْحُ جُنُبًا وَهُوَ مُتَعَمِّدٌ أَبْدَلَ الصِّيَامَ، وَمَنْ أَتَاهُ غَيْرَ مُتَعَمِّدٍ فَلَا يُبَدِّلُهُ؟ فَهَذَا عُرْوَةُ ابْنُ أُخْتِ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - قَدْ تَرَكَ قَوْلَهَا لِرِوَايَةِ أَبِي هُرَيْرَةَ.

Through the narration of Sufyan ibn Uyaynah, from Hisham ibn Urwah ibn al-Zubayr, from his father, who said: "Whoever is overtaken by dawn in a state of major impurity intentionally must make up the fast, but whoever experiences it unintentionally, he does not have to make it up." This is Urwah, the nephew of Aishah—may Allah be pleased with her—who abandoned her opinion due to the narration of Abu Hurairah.

L11889 وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ قَالَ: سَأَلْت إبْرَاهِيمَ النَّخَعِيَّ عَنْ الرَّجُلِ يُصْبِحُ جُنُبًا؟ فَقَالَ: أَمَّا رَمَضَانُ فَيُتِمُّ صَوْمَهُ وَيَصُومُ يَوْمًا مَكَانَهُ، وَأَمَّا التَّطَوُّعُ فَلَا؟ وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ ثنا ابْنُ إسْحَاقَ هُوَ عَبْدُ اللَّهِ قَالَ: سَأَلْت سَالِمًا عَنْ رَجُلٍ أَصْبَحَ جُنُبًا فِي رَمَضَانَ؟ قَالَ: يُتِمُّ يَوْمَهُ وَيَقْضِي يَوْمًا مَكَانَهُ.

And through the chain of Abd al-Rahman ibn Mahdi from Sufyan al-Thawri from Mansur ibn al-Mu'tamir, who said: I asked Ibrahim al-Nakha'i about a man who becomes *junub* in the morning. He replied: As for Ramadan, he should complete his fast and make up another day. As for voluntary fasting, he does not. And through the chain of Abd al-Rahman ibn Mahdi: he narrated to us from Ibn Ishaq—who is Abdullah—who said: I asked Salim about a man who becomes *junub* in the morning during Ramadan. He said: He should complete his day and make up another day in its place.

وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: مَنْ أَصْبَحَ جُنُبًا فِي شَهْرِ رَمَضَانَ فَاسْتَيْقَظَ وَلَمْ يَغْتَسِلْ حَتَّى يُصْبِحَ فَإِنَّهُ يُتِمُّ ذَلِكَ وَيَصُومُ يَوْمًا مَكَانَهُ، فَإِنْ لَمْ يَسْتَيْقِظْ فَلَا بَدَلَ عَلَيْهِ.

L11890–11891 Through the narration of Abdullah ibn Tawus from his father, who said: Whoever is in a state of major impurity at dawn during Ramadan, awakens yet neglects to perform ghusl after waking, he must complete that day's fast and observe another day in its place. If he does not wake up at all, no substitute is required of him.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الرَّبِيعِ عَنْ الْحَسَنِ الْبَصْرِيِّ فِيمَنْ أَصْبَحَ جُنُبًا فِي رَمَضَانَ: يَقْضِيهِ فِي الْفَرْضِ. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ عَائِذِ بْنِ حَبِيبٍ عَنْ هِشَامِ بْنِ عُرْوَةَ فِي الَّذِي يُصْبِحُ جُنُبًا فِي رَمَضَانَ قَالَ: عَلَيْهِ الْقَضَاءُ.

L11892 From the narration of Waki' via al-Rabi' via al-Ḥasan al-Baṣrī regarding one who enters the morning in a state of major impurity during Ramadan, he must make it up as an obligation. From the narration of Ibn Abī Shaybah via ʿĀ'idh ibn Ḥabīb via Hishām ibn ʿUrwah regarding one who enters the morning in a state of major impurity during Ramadan, he said: Upon him is the qaḍā'.

قَالَ أَبُو مُحَمَّدٍ: لَوْ لَمْ يَكُنْ إلَّا مَا ذَكَرْنَا لَكَانَ الْوَاجِبُ الْقَوْلَ بِخَبَرِ أَبِي هُرَيْرَةَ، لَكِنْ مَنَعَ مِنْ ذَلِكَ صِحَّةُ نَسْخِهِ؟ وَبُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {أُحِلَّ لَكُمْ لَيْلَةَ الصِّيَامِ الرَّفَثُ إِلَى نِسَائِكُمْ هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ لِبَاسٌ لَهُنَّ عَلِمَ اللَّهُ أَنَّكُمْ كُنْتُمْ تَخْتَانُونَ أَنْفُسَكُمْ فَتَابَ عَلَيْكُمْ وَعَفَا عَنْكُمْ فَالآنَ بَاشِرُوهُنَّ وَابْتَغُوا مَا كَتَبَ اللَّهُ لَكُمْ وَكُلُوا وَاشْرَبُوا حَتَّى يَتَبَيَّنَ لَكُمُ الْخَيْطُ الأَبْيَضُ مِنَ الْخَيْطِ الأَسْوَدِ مِنَ الْفَجْرِ ثُمَّ أَتِمُّوا الصِّيَامَ إِلَى اللَّيْلِ} [البقرة: ١٨٧] .

L11893 Abu Muhammad said: If there were nothing but what we have mentioned, it would be obligatory to accept the report of Abu Hurairah. However, does the validity of its abrogation prevent this? The proof of this is Allah's statement: *It has been made permissible for you during the nights of fasting to engage in sexual relations with your wives. They are a garment for you, and you are a garment for them. Allah knew that you were betraying yourselves, so He turned to you in repentance and forgave you. So now, you may have relations with them and seek what Allah has ordained for you. And eat and drink until the white thread becomes distinct to you from the black thread at dawn. Then complete the fast until night.* [Al-Baqarah: 187].[28]

حَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ ثنا أَحْمَدُ بْنُ دُحَيْمٍ ثنا إِبْرَاهِيمُ بْنُ حَمَّادٍ ثنا إِسْمَاعِيلُ بْنُ إِسْحَاقَ ثنا عَبْدُ الْوَاحِدِ ثنا حَمَّادُ بْنُ سَلَمَةَ ثنا عَطَاءُ بْنُ السَّائِبِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: {كُتِبَ عَلَيْكُمُ الصِّيَامُ كَمَا كُتِبَ عَلَى الَّذِينَ مِنْ قَبْلِكُمْ} [البقرة: ١٨٣] كَانَ أَحَدُهُمْ إِذَا نَامَ لَمْ تَحِلَّ لَهُ النِّسَاءُ، وَلَمْ يَحِلَّ لَهُ أَنْ يَأْكُلَ شَيْئًا إِلَى الْقَابِلَةِ، وَرَخَّصَ اللَّهُ لَكُمْ.

L11894 Yahya ibn Abd al-Rahman ibn Mas'ud narrated to us: Ahmad ibn Duhaym narrated to us: Ibrahim ibn Hammad narrated to us: Isma'il ibn Ishaq narrated to us: Abd al-Wahid narrated to us: Hammad ibn Salamah narrated to us: Ata ibn al-Sa'ib narrated from Sa'id ibn Jubayr, from Ibn Abbas, who said: "Fasting has been prescribed for you as it was prescribed for those before you" [Al-Baqarah 2:183]. It used to be that if any of them slept, women became forbidden for him, and he was not permitted to eat anything until the following day. Allah has granted you a dispensation.[29]

L11895 Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to

[28] **Qur'an references (L11893):** Qur'an 2:187 (Al-Baqarah).
[29] **Qur'an references (L11894):** Qur'an 2:183 (Al-Baqarah).

us: Ahmad ibn Shu'ayb narrated to us: Hilal ibn al-'Ala' ibn Hilal al-Raqqi reported to me: Husayn ibn 'Ayyash—a trustworthy person from Bājadda—narrated to us: Zuhayr ibn Mu'awiyah narrated to us: Abu Ishaq al-Sabi'ī narrated from al-Bara' ibn 'Azib: That when any one of them slept before eating supper, it was not permissible for him to eat anything or drink during that night and the following day until the sun sets, until the verse was revealed: "And eat and drink until the white thread from the dawn becomes distinct to you from the black thread" [Al-Baqarah: 187].[30]

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي هِلَالُ بْنُ الْعَلَاءِ بْنِ هِلَالٍ الرَّقِّيُّ ثنا حُسَيْنُ بْنُ عَيَّاشٍ - ثِقَةٌ مِنْ أَهْلِ بَاجَدَّا -: ثنا زُهَيْرُ بْنُ مُعَاوِيَةَ ثنا أَبُو إِسْحَاقَ السَّبِيعِيّ عَنْ الْبَرَاءِ بْنِ عَازِبٍ: أَنَّ أَحَدَهُمْ كَانَ إذَا نَامَ قَبْلَ أَنْ يَتَعَشَّى لَمْ يَحِلَّ لَهُ أَنْ يَأْكُلَ شَيْئًا وَلَا يَشْرَبَ لَيْلَتَهُ وَيَوْمَهُ مِنْ الْغَدِ حَتَّى تَغْرُبَ الشَّمْسُ، حَتَّى نَزَلَتْ {وَكُلُوا وَاشْرَبُوا حَتَّى يَتَبَيَّنَ لَكُمُ الْخَيْطُ الأَبْيَضُ مِنَ الْخَيْطِ الأَسْوَدِ مِنَ الْفَجْرِ} [البقرة: ١٨٧] .

L11896–11898 Abu Muhammad said: It has been established that this verse abrogates all circumstances that preceded fasting, and the narration of Abu Hurayrah corresponds to some of the abrogated circumstances. Since it has been confirmed that this verse abrogates what preceded it, its ruling is... It is enduring and cannot be abrogated, and it permits sexual intercourse until dawn becomes evident. Since it is permissible with certainty, there is no doubt that ghusl does not take place except after dawn, and no doubt that dawn will overtake him while he is junub. Thus, for this reason, it is obligatory to reject the hadith of Abu Hurairah—not due to anything else—and success is from Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ أَنَّ هَذِهِ الْآيَةَ نَاسِخَةٌ لِكُلِّ حَالٍ تَقَدَّمَتْ الصَّوْمَ، وَخَبَرُ أَبِي هُرَيْرَةَ مُوَافِقٌ لِبَعْضِ الْأَحْوَالِ الْمَنْسُوخَةِ، وَإِذْ صَحَّ أَنَّ هَذِهِ الْآيَةَ نَاسِخَةٌ لِمَا تَقَدَّمَ فَحُكْمُهَا بَاقٍ لَا يَجُوزُ نَسْخُهُ وَفِيهَا إبَاحَةُ الْوَطْءِ إلَى تَبَيُّنِ الْفَجْرِ، فَإِذْ هُوَ مُبَاحٌ بِيَقِينٍ، فَلَا شَكَّ فِي أَنَّ الْغُسْلَ لَا يَكُونُ إلَّا بَعْدَ الْفَجْرِ، وَلَا شَكَّ فِي أَنَّ الْفَجْرَ يُدْرِكُهُ وَهُوَ جُنُبٌ، فَبِهَذَا وَجَبَ تَرْكُ حَدِيثِ أَبِي هُرَيْرَةَ، لَا بِمَا سِوَاهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L11899 As for one who forgets that they are fasting during Ramadan, in an obligatory fast, or a voluntary fast, and they eat, drink, engage in intercourse, or disobey; or one who thinks it is night and does any of those acts, only to realize it is already dawn; or thinks the sun has set and does any of those acts, only to find it has not yet set—the fast of all those we have mentioned remains valid, based on the words of Allah the Exalted: "There is no blame on you for what you do by mistake, but only for what your hearts intend" [Al-Ahzab:5], and the words of the Messenger of Allah—peace and blessings be upon him: "My Ummah is pardoned for mistakes, forgetfulness, and what they are compelled to do." This was narrated to us by Ahmad ibn Umar ibn Anas al-'Udhri, who said: Al-Husayn ibn Abdullah al-Jurjani narrated to us, who said: Abd al-Razzaq ibn Ahmad ibn Abd al-Hamid al-Shirazi narrated to us, informed

وَأَمَّا مَنْ نَسِيَ أَنَّهُ صَائِمٌ فِي رَمَضَانَ، أَوْ فِي صَوْمِ فَرْضٍ، أَوْ تَطَوُّعٍ: فَأَكَلَ، وَشَرِبَ، وَوَطِئَ، وَعَصَى؛ وَمَنْ ظَنَّ أَنَّهُ لَيْلٌ فَفَعَلَ شَيْئًا مِنْ ذَلِكَ فَإِذَا بِهِ قَدْ أَصْبَحَ؛ أَوْ ظَنَّ أَنَّهُ غَابَتْ الشَّمْسُ فَفَعَلَ شَيْئًا مِنْ ذَلِكَ فَإِذَا بِهَا لَمْ تَغْرُبْ -: فَإِنَّ صَوْمَ كُلِّ مَنْ ذَكَرْنَا تَامٌّ لِقَوْلِ اللَّهِ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» . حَدَّثَنَا بِذَلِكَ أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ قَالَ ثنا الْحُسَيْنُ بْنُ عَبْدِ اللَّهِ الْجُرْجَانِيّ قَالَ ثنا عَبْدُ الرَّزَّاقِ بْنُ أَحْمَدَ بْنِ عَبْدِ الْحَمِيدِ الشِّيرَازِيُّ

[30] **Qur'an references (L11895):** Qur'an 2:187 (Al-Baqarah).

by Fatimah bint al-Hasan al-Rayyan al-Makhzumi, the copyist of Abu Bakr ibn Qutaybah, who said: Al-Rabiʿ ibn Sulayman al-Muʾadhdhin al-Muradi narrated to us, who said: Bishr ibn Bakr narrated to us from al-Awzaʿi, from ʿAta', from ʿUbayd ibn ʿUmayr, from Ibn ʿAbbas, who said: The Messenger of Allah—peace and blessings be upon him—said, "Allah has overlooked for my Ummah their mistakes, forgetfulness, and what they are compelled to do."[31]

أَخْبَرَتْنَا فَاطِمَةُ بِنْتُ الْحَسَنِ الرَّيَّانِ الْمَخْزُومِيِّ وَرَّاقِ أَبِي بَكْرِ بْنِ قُتَيْبَةَ ثنا الرَّبِيعِ بْنِ سُلَيْمَانَ الْمُؤَذِّنِ الْمَرَادِيِّ ثنا بِشْرُ بْنُ بَكْرٍ عَنِ الْأَوْزَاعِيِّ عَنْ عَطَاءٍ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ اللَّهَ تَجَاوَزَ لِي عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اسْتُكْرِهُوا عَلَيْهِ» .

L11900 Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us; Ibrahim ibn Ahmad narrated to us; al-Farbari narrated to us; al-Bukhari narrated to us; Abdan narrated to us; Yazid ibn Zurayʿ narrated to us; Hisham—that is, Ibn Hassan—narrated to us; Ibn Sirin narrated to us from Abu Hurairah from the Prophet, peace be upon him, who said: "If one of you forgets and eats or drinks, let him complete his fast, for indeed Allah has fed him and given him drink."[32]

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عَبْدَانُ أَنَا يَزِيدُ بْنُ زُرَيْعٍ ثنا هِشَامٌ هُوَ ابْنُ حَسَّانَ - ثنا ابْنُ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا نَسِيَ أَحَدُكُمْ فَأَكَلَ، أَوْ شَرِبَ فَلْيُتِمَّ صَوْمَهُ، فَإِنَّمَا أَطْعَمَهُ اللَّهُ وَسَقَاهُ» .

L11901–11903 Abdullah ibn Rabīʿ narrated to us, Muḥammad ibn Isḥāq ibn As-Sulaym narrated to us, Ibn Al-Aʿrābī narrated to us, Abū Dāwūd narrated to us, Mūsā ibn Ismāʿīl narrated to us, Ḥammād ibn Salamah narrated to us: Ayyub—who is As-Sikhtiyānī—and Ḥabīb ibn Ash-Shahīd, both of them from Muḥammad ibn Sīrīn, from Abū Hurayrah, who said: "A man came to the Messenger of Allah—peace be upon him—and said: 'O...' "O Messenger of Allah, I ate and drank due to forgetfulness while I was fasting?" He said, "Allah has fed you and given you to drink."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السُّلَيْمِ ثنا ابْنُ الْأَعْرَابِيِّ ثنا أَبُو دَاوُد ثنا مُوسَى بْنُ إِسْمَاعِيلَ ثنا حَمَّادُ بْنُ سَلَمَةَ ثنا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ - وَحَبِيبُ بْنُ الشَّهِيدِ كِلَاهُمَا عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ قَالَ: «جَاءَ رَجُلٌ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ، إِنِّي أَكَلْتُ وَشَرِبْتُ نَاسِيًا وَأَنَا صَائِمٌ؟ فَقَالَ: اللَّهُ أَطْعَمَكَ وَسَقَاكَ» .

L11904 It has also been narrated by us from Abū Rāfiʿ and Khilās, both from Abū Hurayrah, from the Prophet—may Allah bless him and grant him peace.

وَرُوِّينَاهُ أَيْضًا عَنْ أَبِي رَافِعٍ، وَخِلَاسٍ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L11905 Abu Muhammad said: The Messenger of Allah (peace be upon him) named him a fasting person and commanded him to complete his fast, thus confirming the validity of his fast - and this is the position held by the majority of the Salaf. It has been narrated to us through the chain of Wakiʿ from Shuʿbah from ʿAbdullah ibn Dinar, who said: Ibn ʿUmar requested water while fast-

قَالَ أَبُو مُحَمَّد: فَسَمَّاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَائِمًا، وَأَمَرَهُ بِإِتْمَامِ صَوْمِهِ ذَلِكَ فَصَحَّ أَنَّهُ صَحِيحُ الصَّوْمِ - وَبِهِ يَقُولُ جُمْهُورُ السَّلَفِ؟ رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ قَالَ: اسْتَسْقَى ابْنُ عُمَرَ وَهُوَ صَائِمٌ، فَقُلْت: أَلَسْتَ صَائِمًا؟ فَقَالَ: أَرَادَ اللَّهُ أَنْ يَسْقِيَنِي فَمَنَعْتَنِي؟ .

[31] **Qur'an references (L11899):** Qur'an 33:5 (Al-Ahzab).
[32] **Hadith references (L11900):** Riyad as-Salihin 1242.

ing. I said, “Are you not fasting?” He replied, “Did Allah intend to quench my thirst, yet you prevented me?”

وَمِنْ طَرِيقِ أَبِي هُرَيْرَةَ: مَنْ شَرِبَ نَاسِيًا أَوْ أَكَلَ نَاسِيًا فَلَيْسَ عَلَيْهِ بَأْسٌ، إِنَّ اللَّهَ أَطْعَمَهُ وَسَقَاهُ؟ وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَزَيْدِ بْنِ ثَابِتٍ مِثْلُ هَذَا.

L11906 From the transmission of Abū Hurayrah: “Whoever drinks forgetfully or eats forgetfully - there is no blame upon him. Has Allah not fed him and given him drink?” A similar [report] is narrated from ʿAlī ibn Abī Ṭālib and Zayd ibn Thābit.

وَرُوِّينَاهُ أَيْضًا عَنْ عَطَاءٍ، وَقَتَادَةَ، وَمُجَاهِدٍ وَالْحَسَنِ، وَسَوَّيَا فِي ذَلِكَ بَيْنَ الْمُجَامِعِ، وَالْآكِلِ، وَعَنِ الْحَكَمِ بْنِ عُتَيْبَةَ مِثْلُهُ، وَعَنْ أَبِي الْأَحْوَصِ، وَعَلْقَمَةَ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَالْحَسَنِ الْبَصْرِيِّ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ؛ إِلَّا أَنَّ بَعْضَ مَنْ ذَكَرْنَا رَأَى الْجِمَاعَ بِخِلَافِ الْأَكْلِ وَالشُّرْبِ، وَرَأَى فِيهِ الْقَضَاءَ.

L11907 We have also narrated it from ʿAṭāʾ, Qatādah, Mujāhid, and al-Ḥasan—and the two treated as equivalent in this matter the one who engages in sexual intercourse and the one who eats. It was similarly narrated from al-Ḥakam ibn ʿUtaybah, and from Abū al-Aḥwaṣ, ʿAlqamah, Ibrāhīm al-Nakhaʿī, and al-Ḥasan al-Baṣrī. This is the opinion of Abū Ḥanīfah, Sufyān, Aḥmad ibn Ḥanbal, al-Shāfiʿī, Abū Sulaymān, and others. However, some of those we mentioned held that sexual intercourse differs from eating and drinking, and ruled that compensation is required in that case.

وَهُوَ قَوْلُ عَطَاءٍ، وَسُفْيَانَ: قَالَ أَبُو مُحَمَّدٍ: وَقَالَ مَالِكٌ: الْقَضَاءُ وَاجِبٌ عَلَى النَّاسِي؟ قَالَ عَلِيٌّ: وَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا، إِلَّا أَنَّهُمْ قَالُوا: الْأَكْلُ، وَالْجِمَاعُ، وَالشُّرْبُ يُنَافِي الصَّوْمَ؟ فَقِيلَ لَهُمْ: وَعَلَى هَذَا فَالْأَكْلُ وَالشُّرْبُ يُنَافِي الصَّلَاةَ وَأَنْتُمْ تَقُولُونَ: إِنَّ ذَلِكَ لَا يُبْطِلُ الصَّلَاةَ إِذَا كَانَ بِنِسْيَانٍ فَظَهَرَ تَنَاقُضُهُمْ فَكَيْفَ وَقَوْلُهُمْ هَذَا خَطَأٌ؟ وَإِنَّمَا الصَّوَابُ أَنَّ تَعَمُّدَ الْأَكْلِ وَالشُّرْبِ وَالْجِمَاعِ وَالْقَيْءِ يُنَافِي الصَّوْمَ لَا الْأَكْلُ كَيْفَ كَانَ، وَلَا الشُّرْبُ كَيْفَ كَانَ، وَلَا الْجِمَاعُ كَيْفَ كَانَ، وَلَا الْقَيْءُ كَيْفَ كَانَ، فَهَذَا هُوَ الْحَقُّ الْمُتَّفَقُ عَلَيْهِ، وَالَّذِي جَاءَتْ بِهِ النُّصُوصُ مِنَ الْقُرْآنِ وَالسُّنَنِ.

L11908 This is the view of ʿAṭāʾ and Sufyān. Abū Muḥammad said: Mālik said: Is making up the fast obligatory for the one who forgot? ʿAlī said: We do not know any valid proof for their position whatsoever, except that they claimed that eating, intercourse, and drinking nullify the fast. They were told: According to this logic, eating and drinking would also nullify the prayer, yet you assert that such acts do not nullify the prayer if done forgetfully. Thus, their contradiction became evident. How can this be, when their claim itself is erroneous? The correct position is that intentionally eating, drinking, engaging in intercourse, or vomiting nullifies the fast—not eating however it occurs, nor drinking however it occurs, nor intercourse however it occurs, nor vomiting however it occurs. This is the established truth agreed upon, and which is brought by the scriptural texts from the Quran and the Sunnahs.

وَأَمَّا دَعْوَاهُمْ فَبَاطِلٌ، عَارِيَةٌ مِنَ الدَّلِيلِ جُمْلَةً، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ، وَلَا مِنْ رِوَايَةٍ فَاسِدَةٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ قَوْلِ أَحَدٍ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ

L11909–11910 As for their claim, it is baseless, wholly devoid of evidence—neither from the Quran, nor from an authentic Sunnah, nor from an unsound narration, nor from analogical reasoning, nor from the statement of any Companion—may Allah be pleased with them. Rather, this is among the matters in which they contradicted and invalidated their own principles, for they exaggerate

their rejection of a Companion's opinion when it aligns with their views. Yet here, they opposed a group of Companions for whom no dissenting opinion among them is known. They asserted: Speaking, eating, or drinking in prayer due to forgetfulness does not nullify it, while simultaneously ruling that fasting is nullified by all such acts performed forgetfully. This is a contradiction that is utterly evident. As for Abū Ḥanīfah, he too contradicted himself, for he held that speaking, eating, or drinking forgetfully nullifies the prayer, necessitating its recommencement—a position opposing the established textual evidence. He deemed intercourse nullifying Hajj whether performed forgetfully or deliberately, yet maintained that none of these acts invalidate fasting. While he followed the textual evidence regarding fasting, he analogized forgetful intercourse to forgetful eating as non-nullifying, yet refused to analogize eating while asleep to eating forgetfully. Instead, he ruled that eating while asleep nullifies the fast, even though the sleeper is undoubtedly in a state of forgetfulness. This is unparalleled inconsistency. His blind followers falsely claimed consensus that forgetful intercourse and forgetful eating are equivalent. We have transmitted via ʿAbd al-Razzāq from Ibn Jurayj: I asked ʿAṭāʾ, "What of a man who forgetfully has intercourse with his wife during Ramadan?" ʿAṭāʾ replied, "He cannot possibly be entirely forgetful of such an act. He must perform qaḍāʾ, for Allah has not provided him an excuse. But if he eats forgetfully, let him complete his fast without qaḍāʾ—Allah has fed and quenched him." This is the position held by Sufyān al-Thawrī.

L11911 Ibn al-Mājishūn held that one who eats or drinks forgetfully must make up the fast, and one who has intercourse forgetfully must make up the fast and perform kaffarah (expiation). These are invalid opinions and baseless distinctions - and success is by Allah, the Most High.

L11912 Abu Muhammad said: If someone eats while believing it is night, or has intercourse in such a state, or drinks similarly, then discovers it is daytime—whether due to the rising of dawn or because the sun has not set—neither of them intended to invalidate their fasting. Both believed they were not fasting, and the forgetful person similarly believed they were not fasting.

عَنْهُمْ -، بَلْ هَذَا مِمَّا نَقَضُوا فِيهِ وَتَنَاقَضُوا فِيهِ، لِأَنَّهُمْ يُعَظِّمُونَ خِلَافَ قَوْلِ الصَّاحِبِ إذَا وَافَقَهُمْ. وَخَالَفُوا هَاهُنَا طَائِفَةً مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، وَقَالُوا: الْكَلَامُ، أَوْ الْأَكْلُ، أَوْ الشُّرْبُ فِي الصَّلَاةِ بِنِسْيَانٍ لَا يُبْطِلُهَا، وَأَبْطَلُوا الصَّوْمَ بِكُلِّ ذَلِكَ بِالنِّسْيَانِ وَهَذَا تَنَاقُضٌ لَا خَفَاءَ بِهِ؟ وَأَمَّا أَبُو حَنِيفَةَ فَتَنَاقَضَ أَيْضًا، لِأَنَّهُ رَأَى أَنَّ الْكَلَامَ، أَوْ الْأَكْلَ نَاسِيًا، أَوْ الشُّرْبَ نَاسِيًا تُبْطِلُ الصَّلَاةُ بِكُلِّ ذَلِكَ وَيَبْتَدِئُهَا، وَخَالَفَ السُّنَّةَ الْوَارِدَةَ فِي ذَلِكَ، وَرَأَى الْجِمَاعَ يُبْطِلُ الْحَجَّ نَاسِيًا كَانَ أَوْ عَامِدًا وَرَأَى أَنَّ كُلَّ ذَلِكَ لَا يُبْطِلُ الصَّوْمَ، وَاتَّبَعَ الْخَبَرَ فِي ذَلِكَ، وَرَأَى الْجِمَاعَ نَاسِيًا لَا يُبْطِلُ الصَّوْمَ، قِيَاسًا عَلَى الْأَكْلِ، وَلَمْ يَقِسْ الْآكِلَ نَائِمًا عَلَى الْآكِلِ نَاسِيًا؛ بَلْ رَأَى الْأَكْلَ نَائِمًا يُبْطِلُ الصَّوْمَ، وَهُوَ نَاسٍ بِلَا شَكٍّ، وَهَذَا تَخْلِيطٌ لَا نَظِيرَ لَهُ؟ وَادَّعَى مُقَلِّدُوهُ الْإِجْمَاعَ عَلَى أَنَّ الْجِمَاعَ وَالْأَكْلَ نَاسِيًا سَوَاءٌ، وَكَذَبُوا فِي ذَلِكَ، لِأَنَّنَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: قُلْت لِعَطَاءٍ: رَجُلٌ أَصَابَ امْرَأَتَهُ نَاسِيًا فِي رَمَضَانَ؟ فَقَالَ عَطَاءٌ: لَا يَنْسَى هَذَا كُلَّهُ عَلَيْهِ الْقَضَاءُ، لَمْ يَجْعَلْ اللَّهُ لَهُ عُذْرًا، وَإِنْ طَعِمَ نَاسِيًا فَلْيُتِمَّ صَوْمَهُ وَلَا يَقْضِيهِ، اللَّهُ أَطْعَمَهُ وَسَقَاهُ وَبِهِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ.

وَرَأَى ابْنُ الْمَاجِشُونِ عَلَى مَنْ أَكَلَ نَاسِيًا أَوْ شَرِبَ نَاسِيًا الْقَضَاءَ وَعَلَى مَنْ جَامَعَ نَاسِيًا الْقَضَاءَ وَالْكَفَّارَةَ وَهَذِهِ أَقْوَالٌ فَاسِدَةٌ وَتَفَارِيقُ لَا تَصِحُّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

قَالَ أَبُو مُحَمَّد: وَمَنْ أَكَلَ وَهُوَ يَظُنُّ أَنَّهُ لَيْلٌ أَوْ جَامَعَ كَذَلِكَ أَوْ شَرِبَ كَذَلِكَ فَإِذَا بِهِ نَهَارٌ إمَّا بِطُلُوعِ الْفَجْرِ وَإِمَّا بِأَنَّ الشَّمْسَ لَمْ تَغْرُبْ -: كِلَاهُمَا لَمْ يَتَعَمَّدْ إبْطَالَ صَوْمِهِ، وَكِلَاهُمَا ظَنَّ أَنَّهُ فِي غَيْرِ صِيَامٍ، وَالنَّاسِي ظَنَّ أَنَّهُ فِي غَيْرِ صِيَامٍ وَلَا فَرْقَ، فَهُمَا وَالنَّاسِي سَوَاءٌ وَلَا فَرْقَ.

There is no difference; thus these two and the forgetful person are equal, with no distinction.

وَلَيْسَ هَذَا قِيَاسًا - وَمَعَاذَ اللَّهِ مِنْ ذَلِكَ - وَإِنَّمَا يَكُونُ قِيَاسًا لَوْ جَعَلْنَا النَّاسِيَ أَصْلًا ثُمَّ شَبَّهْنَا بِهِ مَنْ أَكَلَ وَشَرِبَ وَجَامَعَ وَهُوَ يَظُنُّ أَنَّهُ فِي لَيْلٍ فَإِذَا بِهِ فِي نَهَارٍ، وَلَمْ نَفْعَلْ هَذَا بَلْ كُلُّهُمْ سَوَاءٌ فِي قَوْلِ اللَّهِ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] وَفِي قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ اللَّهَ تَجَاوَزَ لِأُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» . وَهَذَا قَوْلُ جُمْهُورِ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ: ثنا مَعْمَرٌ عَنْ الْأَعْمَشِ عَنْ زَيْدِ بْنِ وَهْبٍ قَالَ: أَفْطَرَ النَّاسُ فِي زَمَنِ عُمَرَ بْنِ الْخَطَّابِ فَرَأَيْت عِسَاسًا أُخْرِجَتْ مِنْ بَيْتِ حَفْصَةَ فَشَرِبُوا، ثُمَّ طَلَعَتْ الشَّمْسُ مِنْ سَحَابٍ، فَكَأَنَّ ذَلِكَ شَقَّ عَلَى النَّاسِ، فَقَالُوا: نَقْضِي هَذَا الْيَوْمَ فَقَالَ عُمَرُ: لِمَ؟ وَاَللَّهِ مَا تَجَانَفْنَا لِإِثْمٍ وَرُوِّينَا أَيْضًا مِنْ طَرِيقِ الْأَعْمَشِ عَنْ الْمُسَيِّبِ عَنْ زَيْدِ بْنِ وَهْبٍ.

L11913–11914 This is not analogy—and we seek refuge in Allah from that—but analogy would only apply if we took the forgetful person as an original case and then likened to him one who eats, drinks, or has intercourse while believing it is night, only to discover it is daytime. We have not done this; rather, all are equally addressed in Allah's statement: "There is no blame on you for what you do by mistake, but only for what your hearts intend" [Al-Ahzab:5] and the Messenger of Allah's—peace and blessings be upon him—saying: "Allah has overlooked for my Ummah mistakes, forgetfulness, and what they are compelled to do." This is the view of the majority of the Salaf. Narrated via ʿAbd al-Razzaq: Maʿmar reported from al-Aʿmash from Zayd ibn Wahb, who said: "People broke their fast during ʿUmar ibn al-Khattab's time. I saw a water-skin brought out from Hafsa's house, and they drank. Then the sun emerged from clouds, and it was as though this weighed heavily on the people. They said: 'Shall we make up this day?' ʿUmar responded: 'Why? By Allah, we did not incline toward sin.'" Also narrated via al-Aʿmash's chain from al-Musayyib from Zayd ibn Wahb.[33]

وَمِنْ طَرِيقِ ابْنِ أَسْلَمَ عَنْ أَخِيهِ عَنْ أَبِيهِ وَلَمْ يَذْكُرْ قَضَاءً؟ وَقَدْ رُوِيَ عَنْ عُمَرَ أَيْضًا الْقَضَاءُ، وَهَذَا تَخَالُفٌ مِنْ قَوْلِهِ، فَوَجَبَ الرُّجُوعُ إلَى مَا افْتَرَضَ اللَّهُ تَعَالَى الرُّجُوعَ إلَيْهِ عِنْدَ التَّنَازُعِ، مِنْ الْقُرْآنِ وَالسُّنَّةِ، فَوَجَدْنَا مَا ذَكَرْنَا قَبْلُ، مَعَ أَنَّ هَذِهِ الرِّوَايَةَ عَنْ عُمَرَ أَوْلَى لِأَنَّ زَيْدَ بْنَ وَهْبٍ لَهُ صُحْبَةٌ، وَإِنَّمَا رُوِيَ عَنْهُ الْقَضَاءُ مِنْ طَرِيقِ عَلِيِّ بْنِ حَنْظَلَةَ عَنْ أَبِيهِ. وَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ قَالَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ عَمَّنْ تَسَحَّرَ نَهَارًا وَهُوَ يَرَى أَنَّ عَلَيْهِ لَيْلًا؟ فَقَالَ: يُتِمُّ صَوْمَهُ.

L11915 And from the chain of Ibn Aslam, from his brother, from his father—but he did not mention compensatory fasting? Yet compensatory fasting has been reported from ʿUmar as well, and this constitutes a contradiction in his statement. Therefore, it became obligatory to revert to what Allah the Exalted has obligated recourse to in cases of dispute—the Quran and the Sunnah. Thereupon, we found what we had previously mentioned. Moreover, this narration from ʿUmar holds greater precedence because Zayd ibn Wahb was a Companion, and compensatory fasting was transmitted from him through the chain of ʿAlī ibn Ḥanẓala, from his father. It was narrated to us through Shuʿba's chain that he said: "I asked al-Ḥakam ibn ʿUtayba about one who ate the pre-dawn meal during daylight while believing it was still night." He replied: "He must complete his fast."

[33] **Qur'an references (L11914):** Qur'an 33:5 (Al-Ahzab).

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: مَنْ أَكَلَ بَعْدَ طُلُوعِ الْفَجْرِ وَهُوَ يَظُنُّ أَنَّهُ لَمْ يَطْلُعْ فَلَيْسَ عَلَيْهِ الْقَضَاءُ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {حَتَّى يَتَبَيَّنَ لَكُمُ الْخَيْطُ الأَبْيَضُ مِنَ الْخَيْطِ الأَسْوَدِ مِنَ الْفَجْرِ} [البقرة: ١٨٧] .

L11916–11917 And from the chain of Sufyan ibn ʻUyaynah, from ʻAbdullah ibn Abi Najih, from Mujahid, who said: Whoever eats after the emergence of dawn while thinking it has not yet emerged is not required to make up, because Allah the Exalted says: {Until the white thread of dawn becomes distinct to you from the black thread} [Al-Baqarah 2:187].[34]

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: ثنا سَهْلُ بْنُ يُوسُفَ عَنْ عَمْرٍو عَنِ الْحَسَنِ الْبَصْرِيِّ فِيمَنْ تَسَحَّرَ وَهُوَ يَرَى أَنَّهُ لَيْلٌ، قَالَ: يُتِمُّ صَوْمَهُ.

L11918 Via the chain of Ibn Abī Shaybah: Sahl ibn Yūsuf narrated to us on the authority of ʿAmr, on the authority of al-Ḥasan al-Baṣrī, regarding one who eats the pre-dawn meal (saḥūr) while believing it is still nighttime. Al-Ḥasan al-Baṣrī said: He must complete his fast.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: ثنا أَبُو دَاوُد - هُوَ الطَّيَالِسِيُّ - عَنْ حَبِيبٍ عَنْ عَمْرِو بْنِ هَرِمٍ عَنْ جَابِرِ بْنِ زَيْدٍ فِيمَنْ أَكَلَ يَرَى أَنَّهُ لَيْلٌ فَإِذَا بِهِ نَهَارٌ، قَالَ: يُتِمُّ صَوْمَهُ.

L11919 And through the chain of Ibn Abī Shaybah: Abū Dāwūd al-Ṭayālisī narrated to us from Ḥabīb, from ʿAmr ibn Hirim, from Jābir ibn Zayd regarding one who ate, thinking it was night, only to find it was daytime. He said: “He must complete his fast.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ، وَمَعْمَرٍ، قَالَ ابْنُ جُرَيْجٍ: عَنْ عَطَاءٍ، وَقَالَ مَعْمَرٌ: عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ، ثُمَّ اتَّفَقَ عُرْوَةُ وَعَطَاءٌ فِيمَنْ أَكَلَ فِي الصُّبْحِ وَهُوَ يَرَى أَنَّهُ لَيْلٌ: لَمْ يَقْضِهِ، فَهَؤُلَاءِ: عُمَرُ بْنُ الْخَطَّابِ، وَالْحَكَمُ بْنُ عُتَيْبَةَ، وَمُجَاهِدٌ، وَالْحَسَنُ، وَجَابِرُ بْنُ زَيْدٍ أَبُو الشَّعْثَاءِ، وَعَطَاءُ بْنُ أَبِي رَبَاحٍ، وَعُرْوَةُ بْنُ الزُّبَيْرِ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ.

L11920 And from the chain of ʿAbd al-Razzāq from Ibn Jurayj and Maʿmar: Ibn Jurayj said: from ʿAṭāʾ, and Maʿmar said: from Hishām ibn ʿUrwah from his father. Then ʿUrwah and ʿAṭāʾ agreed regarding one who ate at dawn while believing it was still night—he does not have to make it up. This opinion is held by: ʿUmar ibn al-Khaṭṭāb, al-Ḥakam ibn ʿUtaybah, Mujāhid, al-Ḥasan, Jābir ibn Zayd Abū al-Shaʿthāʾ, ʿAṭāʾ ibn Abī Rabāḥ, and ʿUrwah ibn al-Zubayr—this being the view of Abū Sulaymān.

وَرُوِّينَا عَنْ مُعَاوِيَةَ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَابْنِ سِيرِينَ، وَهِشَامِ بْنِ عُرْوَةَ، وَعَطَاءٍ، وَزِيَادِ بْنِ النَّضْرِ، وَإِنَّمَا قَالَ هَؤُلَاءِ: بِالْقَضَاءِ فِي الَّذِي يُفْطِرُ وَهُوَ يَرَى أَنَّهُ لَيْلٌ ثُمَّ تَطْلُعُ الشَّمْسُ وَأَمَّا فِي الْفَجْرِ فَلَا، مِثْلَ قَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا.

L11921 It has been reported to us from Mu’awiyah, Sa’id ibn Jubayr, Ibn Sirin, Hisham ibn Urwah, Ata, and Ziyad ibn al-Nadr. These scholars said that making up the fast is required for one who breaks it while thinking it is night, then the sun rises afterward. As for regarding dawn, they did not require making it up, similar to the view of Abu Hanifah, Malik, and al-Shafi’i. We know of no evidence whatsoever for them at all.

فَإِنْ ذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي أُسَامَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ فَاطِمَةَ بِنْتِ الْمُنْذِرِ عَنْ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ قَالَتْ: «أَفْطَرَ النَّاسُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ طَلَعَتْ الشَّمْسُ» .

L11922 If they mention what we have narrated via the chain of Ibn Abī Shaybah from Abū Usāmah from Hishām ibn ‘Urwah from Fāṭimah bint al-Mundhir from Asmā’ bint Abī Bakr, who said: “The people broke their fast prematurely

[34] **Qur’an references (L11917):** Qur’an 2:187 (Al-Baqarah).

during the time of the Messenger of Allah (peace and blessings be upon him) [thinking sunset had occurred], and then the sun reappeared."

L11923 Abu Usamah said: I said to Hisham: So, were they commanded to make it up? He replied: Is that not unavoidable?

L11924–11925 This is solely the speech of Hishām and not from Ḥadīth; therefore, it holds no authoritative evidence.

L11926 And Ma'mar said: I heard Hishām ibn ʿUrwah himself say regarding this very narration: "I do not know whether they ruled or not." Thus, what we have said is confirmed.

L11927 As for one compelled to break the fast, or a woman who is asleep, coerced, insane, or unconscious and is subjected to intercourse, or one in whose throat water is poured while he is asleep: the fast of the sleeper (male), the sleeper (female), the coerced (male), and the coerced (female) is fully valid and intact without any invalidation; nothing is required of them, and nothing is required of the insane woman.

L11928 There is no sin incurred by the unconscious woman, nor by the insane person or the unconscious man, due to what we mentioned from the statement of Allah's Messenger—peace and blessings be upon him: "Verily, Allah has pardoned my nation for mistakes, forgetfulness, and what they are compelled to do under duress." As for the sleeping man and the sleeping woman—are they not unquestionably acting involuntarily, with no choice in what is done to them? Zufar said: "No sin is incurred by the sleeping man or the sleeping woman, nor is there any requirement to make up for it, as we stated—they are entirely equal in this regard, and their fasting is fully valid." This is the view of al-Ḥasan ibn Ziyād.

L11929 It has also been reported from Abū Ḥanīfah concerning the sleeper - a statement similar to Zufar's opinion.

L11930 Sufyan al-Thawri said: If a woman is forced into sexual intercourse during the daytime of Ramadan, her fast remains valid, and she is not required to compensate for it. This is the opinion of Ubayd Allah ibn al-Hasan.

L11931 According to this view, Abū Sulaymān and all our companions hold the

قَالَ أَبُو أُسَامَةَ: قُلْت لِهِشَامٍ: فَأُمِرُوا بِالْقَضَاءِ؟ فَقَالَ: وَمِنْ ذَلِكَ بُدٌّ؟

فَإِنَّ هَذَا لَيْسَ إلَّا مِنْ كَلَامِ هِشَامٍ، وَلَيْسَ مِنْ الْحَدِيثِ، فَلَا حُجَّةَ فِيهِ.

وَقَدْ قَالَ مَعْمَرٌ: سَمِعْت هِشَامَ بْنَ عُرْوَةَ فِي هَذَا الْخَبَرِ نَفْسِهِ يَقُولُ: لَا أَدْرِي أَقَضَوْا أَمْ لَا؟ فَصَحَّ مَا قُلْنَا.

وَأَمَّا مَنْ أُكْرِهَ عَلَى الْفِطْرِ، أَوْ وُطِئَتْ امْرَأَةٌ نَائِمَةً، أَوْ مُكْرَهَةً أَوْ مَجْنُونَةً أَوْ مُغْمًى عَلَيْهَا، أَوْ صُبَّ فِي حَلْقِهِ مَاءٌ وَهُوَ نَائِمٌ -: فَصَوْمُ النَّائِمِ، وَالنَّائِمَةِ، وَالْمُكْرَهِ، وَالْمُكْرَهَةِ: تَامٌّ صَحِيحٌ لَا دَاخِلَةَ فِيهِ، وَلَا شَيْءَ عَلَيْهِمْ، وَلَا شَيْءَ عَلَى الْمَجْنُونَةِ.

وَالْمُغْمَى عَلَيْهَا، وَلَا عَلَى الْمَجْنُونِ وَالْمُغْمَى عَلَيْهِ؛ لِمَا ذَكَرْنَا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ اللَّهَ تَجَاوَزَ لِأُمَّتِهِ عَنْ الْخَطَأِ وَالنِّسْيَانِ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» . وَالنَّائِمُ وَالنَّائِمَةُ مُكْرَهَانِ بِلَا شَكٍّ غَيْرُ مُخْتَارَيْنِ لِمَا فُعِلَ بِهِمَا؟ وَقَالَ زُفَرُ: لَا شَيْءَ عَلَى النَّائِمِ، وَالنَّائِمَةِ وَلَا قَضَاءَ كَمَا قُلْنَا، سَوَاءٌ سَوَاءٌ، وَصَوْمُهُمَا تَامٌّ - وَهُوَ قَوْلُ الْحَسَنِ بْنِ زِيَادٍ.

وَقَدْ رُوِيَ أَيْضًا عَنْ أَبِي حَنِيفَةَ فِي النَّائِمِ مِثْلُ قَوْلِ زُفَرَ.

وَقَالَ سُفْيَانُ الثَّوْرِيِّ: إذَا جُومِعَتْ الْمَرْأَةُ مُكْرَهَةً فِي نَهَارِ رَمَضَانَ فَصَوْمُهَا تَامٌّ وَلَا قَضَاءَ عَلَيْهَا وَهُوَ قَوْلُ عُبَيْدِ اللَّهِ بْنِ الْحَسَنِ.

position. The mentally incapacitated and the unconscious are not subject to obligations, as the Messenger of Allah—peace be upon him—said: "The pen is lifted from the insane until he regains sanity, the sleeper until he awakens, and the child until he reaches puberty."

وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا. وَالْمَجْنُونُ، وَالْمُغْمَى عَلَيْهِ غَيْرُ مُخَاطَبَيْنِ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ الْقَلَمُ عَنْ الْمَجْنُونِ حَتَّى يُفِيقَ، وَالنَّائِمِ حَتَّى يَسْتَيْقِظَ، وَالصَّبِيِّ حَتَّى يَحْتَلِمَ» .

L11932 The well-known opinion of Abū Ḥanīfah is that compensating for missed prayers is required for those who are asleep, coerced, mentally incapacitated, or unconscious - whether male or female; this is the view of Mālik.

وَالْمَشْهُورُ عَنْ أَبِي حَنِيفَةَ أَنَّ الْقَضَاءَ عَلَى النَّائِمِ وَالنَّائِمَةِ، وَالْمُكْرَهِ وَالْمُكْرَهَةِ، وَالْمَجْنُونِ وَالْمَجْنُونَةِ، وَالْمُغْمَى عَلَيْهِمَا وَهُوَ قَوْلُ مَالِكٍ.

L11933 Abu Muhammad said: This is an evidently invalid opinion, and we do not know of any proof for them from the Qur'an, nor an authentic Sunnah, nor an invalid narration, nor a statement of a Companion, nor analogical reasoning—except that some of them analogized this to the case of one compelled [to invalidate] ritual purity, [asserting] that his purity is thereby nullified.

قَالَ أَبُو مُحَمَّد: وَهُوَ قَوْلٌ ظَاهِرُ الْفَسَادِ، وَمَا نَعْلَمُ لَهُمْ حُجَّةً مِنْ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ وَلَا رِوَايَةٍ فَاسِدَةٍ وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، إلَّا أَنَّ بَعْضَهُمْ قَاسَ ذَلِكَ عَلَى الْمُكْرَهِ عَلَى الْحَدَثِ أَنَّهُ تُنْتَقَضُ طَهَارَتُهُ.

L11934–11936 Ali said: "This is an analogy of extreme corruption—even if analogy were valid—how can this be, when all analogy is entirely invalid? For ritual purity is nullified by acts in two types: one nullifies it regardless of how it occurs, whether through forgetfulness, intent, or coercion; and the other nullifies it only through intent, according to the texts mentioned in..." Moreover, they are unanimously agreed that wind, urine, and excrement invalidate ritual purity. Yet they analogize the forgetful person in fasting to the forgetful person in ritual purity, and the one overpowered by vomiting to the one overwhelmed by acts that nullify ritual purity. However, none of them uphold this view at all, thereby voiding their corrupt analogy. It would have been more fitting in analogy had they compared the coerced and overpowered in fasting to the coerced and overpowered in prayer regarding the omission of standing, bowing, or prostrating. For by their consensus, such individuals' prayers remain complete. Likewise, it is obligatory that the fast of the coerced and overpowered be valid without distinction. Yet they neither apply analogical reasoning correctly, nor follow the textual evidences, nor systematically apply their principles. And success comes only from Allah, the Exalted.

قَالَ عَلِيٌّ: وَهَذَا قِيَاسٌ فِي غَايَةِ الْفَسَادِ - لَوْ كَانَ الْقِيَاسُ حَقًّا - فَكَيْفَ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ؟ لِأَنَّ الطَّهَارَةَ تُنْتَقَضُ مِنْ الْأَحْدَاثِ بِقِسْمَيْنِ: أَحَدُهُمَا بِنَقْضِهَا كَيْفَ مَا كَانَ، بِنِسْيَانٍ أَوْ عَمْدٍ أَوْ إكْرَاهٍ: وَالْآخَرُ لَا يَنْقُضُهَا إلَّا بِالْعَمْدِ عَلَى حَسَبِ النُّصُوصِ الْوَارِدَةِ فِي ذَلِكَ، وَهُمْ مُتَّفِقُونَ عَلَى أَنَّ - الرِّيحَ، وَالْبَوْلَ، وَالْغَائِطَ يَنْقُضُ الطَّهَارَةَ -: أَنْ يَقِيسُوا النَّاسِيَ فِي الصَّوْمِ عَلَى النَّاسِي فِي الطَّهَارَةِ، وَالْمَغْلُوبَ بِالْقَيْءِ عَلَى الْمَغْلُوبِ بِالْحَدَثِ، وَكُلُّهُمْ لَا يَقُولُونَ بِهَذَا أَصْلًا، فَبَطَلَ قِيَاسُهُمْ الْفَاسِدُ وَكَانَ أَدْخَلَ فِي الْقِيَاسِ لَوْ قَاسُوا الْمُكْرَهَ، وَالْمَغْلُوبَ فِي الصَّوْمِ عَلَى الْمُكْرَهِ، وَالْمَغْلُوبِ فِي الصَّلَاةِ عَلَى تَرْكِ الْقِيَامِ، أَوْ تَرْكِ السُّجُودِ، أَوْ الرُّكُوعِ، فَهَؤُلَاءِ صَلَاتُهُمْ تَامَّةٌ بِإِجْمَاعٍ مِنْهُمْ؛ فَكَذَلِكَ يَجِبُ أَنْ يَكُونَ صَوْمُ الْمُكْرَهِ وَالْمَغْلُوبِ وَلَا فَرْقَ؛ وَلَكِنَّهُمْ لَا يُحْسِنُونَ الْقِيَاسَ وَلَا يَتَّبِعُونَ النُّصُوصَ وَلَا يَطَّرِدُونَ أُصُولَهُمْ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L11937 As for entering the bathhouse, immersing in water, and applying oil to the

mustache, we have narrated from Ali ibn Abi Talib—may Allah be pleased with him—that a fasting person should not enter the bathhouse, immerse in water, or apply oil to the mustache.

L11938 From Ibrahim al-Nakhai: invalidating the fast by applying oil to the mustache. From some of the early predecessors (Salaf): a similar ruling regarding immersion in water. There is no valid proof except in what is authentically established from the Messenger of Allah (peace and blessings be upon him), and no prohibition has been reported from him regarding the fasting person in any of these matters. Thus, all such acts are permissible and do not invalidate the fast. And success is from Allah, the Exalted.

L11939 ## The Legal Ruling on the Legally Insane and the One Who Has Fainted During Ramadan

L11940 754. Issue: Ali said: People have differed regarding the insane and the unconscious. Abu Hanifah said: Whoever was insane throughout the entire month of Ramadan has no obligation to make it up. If he regained sanity during any part of it, he must make up the entire month. He said: Whoever was unconscious throughout the entire month must make up the entire month. If he became unconscious after the first night of the month, he must make up the entire month except the day of that night in which he became unconscious, because he had formed the intention to fast during the night. Malik said: If someone reached puberty while continuously insane and remained so for years, then recovered, he must make up every Ramadan that occurred during those years, but he does not make up any prayers. He said: If someone was unconscious for most of the day, he must make it up. If he was unconscious for a lesser portion of the day, he has no obligation to make it up.

L11941–11943 It has been reported from him that the obligation to make up missed prayers is upon him in full, without division. And Ubaydullah ibn al-Hasan said: There is no obligation to make up prayers for insane persons except for one who is afflicted with insanity and then recovers, and no— The obligation to make up missed fasts is upon the unconscious person. Al-Shāfiʿī said: The insane person does not make up missed fasts, but the unconscious person

وَأَمَّا دُخُولُ الْحَمَّامِ، وَالتَّغْطِيسُ فِي الْمَاءِ، وَدَهْنُ الشَّارِبِ، فَقَدْ رُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ -: لَا يَدْخُلُ الصَّائِمُ الْحَمَّامَ.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ الْإِفْطَارُ بِدَهْنِ الشَّارِبِ، وَعَنْ بَعْضِ السَّلَفِ مِثْلُ ذَلِكَ فِي التَّغْطِيسِ فِي الْمَاءِ، وَلَا حُجَّةَ إِلَّا فِيمَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَأْتِ عَنْهُ نَهْيٌ لِلصَّائِمِ عَنْ شَيْءٍ مِنْ ذَلِكَ؛ فَكُلُّ ذَلِكَ مُبَاحٌ لَا يَكْدَحُ فِي الصَّوْمِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْمَجْنُونِ وَالْمُغْمَى عَلَيْهِ فِي شَهْرِ رَمَضَانَ]

٧٥٤ - مَسْأَلَةٌ: قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي الْمَجْنُونِ، وَالْمُغْمَى عَلَيْهِ؟ فَقَالَ أَبُو حَنِيفَةَ: مَنْ جُنَّ شَهْرَ رَمَضَانَ كُلَّهُ فَلَا قَضَاءَ عَلَيْهِ، فَإِنْ أَفَاقَ فِي شَيْءٍ مِنْهُ - قَضَى الشَّهْرَ كُلَّهُ. قَالَ: وَمَنْ أُغْمِيَ عَلَيْهِ الشَّهْرَ كُلَّهُ فَعَلَيْهِ قَضَاؤُهُ كُلِّهِ، فَإِنْ أُغْمِيَ عَلَيْهِ بَعْدَ لَيْلَةٍ مِنْ الشَّهْرِ - قَضَى الشَّهْرَ كُلَّهُ إِلَّا يَوْمَ تِلْكَ اللَّيْلَةِ الَّتِي أُغْمِيَ عَلَيْهِ فِيهَا؛ لِأَنَّهُ قَدْ نَوَى صِيَامَهُ مِنْ اللَّيْلِ. وَقَالَ مَالِكٌ: مَنْ بَلَغَ وَهُوَ مَجْنُونٌ مُطْبَقٌ فَأَقَامَ وَهُوَ كَذَلِكَ سِنِينَ ثُمَّ أَفَاقَ -: فَإِنَّهُ يَقْضِي كُلَّ رَمَضَانَ كَانَ فِي تِلْكَ السِّنِينَ، وَلَا يَقْضِي شَيْئًا مِنْ الصَّلَوَاتِ. قَالَ: فَإِنْ أُغْمِيَ عَلَيْهِ أَكْثَرَ النَّهَارِ فَعَلَيْهِ قَضَاؤُهُ، فَإِنْ أُغْمِيَ عَلَيْهِ أَقَلَّ النَّهَارِ فَلَيْسَ عَلَيْهِ قَضَاؤُهُ.

وَقَدْ رُوِيَ عَنْهُ إِيجَابُ الْقَضَاءِ عَلَيْهِ جُمْلَةً دُونَ تَقْسِيمٍ. وَقَالَ عُبَيْدُ اللَّهِ بْنُ الْحَسَنِ: لَا قَضَاءَ عَلَى الْمَجْنُونِ إِلَّا عَلَى الَّذِي يُجَنُّ وَيُفِيقُ، وَلَا قَضَاءَ عَلَى الْمُغْمَى عَلَيْهِ. وَقَالَ الشَّافِعِيُّ: لَا يَقْضِي الْمَجْنُونُ، وَيَقْضِي الْمُغْمَى عَلَيْهِ. وَقَالَ أَبُو سُلَيْمَانَ: لَا قَضَاءَ عَلَيْهِمْ.

does. Abū Sulaymān said: There is no obligation to make up missed fasts upon them. Abū Muḥammad said: We used to hold the view that the fasting of the insane and the unconscious persons is invalidated, and there is no obligation upon them to make it up, and similarly, their prayer is invalidated with no obligation to make it up. We say: The evidence for that is what ʻAbdullāh ibn Rabīʻ narrated to us from ʻUmar ibn ʻAbd al-Malik al-Khawlānī, from Muḥammad ibn Bakr, from Abū Dāwūd, from Mūsā ibn Ismāʻīl, from Wuhaib—who is Ibn Khālid—from Khālid—who is al-Ḥadhdhāʼ—from Abū al-Ḍuḥā, from ʻAlī ibn Abī Ṭālib, from the Messenger of Allah—peace and blessings be upon him and his family—who said: "The pen is raised for three: the sleeper until he awakens, the child until he reaches puberty, and the insane person until he regains sanity."

قَالَ أَبُو مُحَمَّد: كُنَّا نَذْهَبُ إِلَى أَنَّ الْمَجْنُونَ، وَالْمُغْمَى عَلَيْهِ يَبْطُلُ صَوْمُهُمَا وَلَا قَضَاءَ عَلَيْهِمَا، وَكَذَلِكَ الصَّلَاةُ. وَنَقُولُ: إِنَّ الْحُجَّةَ فِي ذَلِكَ -: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ الْخَوْلَانِيِّ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا مُوسَى بْنُ إِسْمَاعِيلَ ثنا وُهَيْبٌ هُوَ ابْنُ خَالِدٍ - عَنْ خَالِدٍ هُوَ الْحَذَّاءُ - عَنْ أَبِي الضُّحَى عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ: عَنْ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنْ الصَّبِيِّ حَتَّى يَحْتَلِمَ، وَعَنْ الْمَجْنُونِ حَتَّى يَعْقِلَ»

L11944 We used to assert: When divine accountability is lifted from an individual, he is not held responsible for fasting or prayer. Then we reflected upon this textual evidence—by the enablement of Allah, the Exalted—and found it contained nothing beyond what we stated: that he is not legally responsible during his insanity until he regains reason. This does not nullify the fast incumbent upon him prior to his insanity, nor require its repetition after recovery. The same applies to one unconscious. Thus, it is established that whoever becomes insane after intending to fast at night does not invalidate his fast through insanity, though he ceases to be legally responsible during this state despite prior obligation. If he regains consciousness on that day or a subsequent day of Ramadan, he must renew the intention from that point and is considered fasting, for he then recognizes the obligation. This ruling equally applies to one informed of the crescent sighting, one aware of his vowed or obligatory day as previously outlined, the unconscious, the insane or unconscious before sunset, and one who sleeps or becomes intoxicated before sunset without awakening until the next day—whether most or little of the day remains. We further determined that insanity does not invalidate one's declaration of faith, oaths, marriage, divorce, *dhihar*, *ila'*, pilgrimage, *ihram* state, sales, gifts, any binding legal obligations predating insanity, caliphate (if a caliph), governorship (if a governor), guardianship, agency, deputization, apostasy, sinfulness, moral integrity, wills, *i'tikaf*, travel, res-

وَكُنَّا نَقُولُ: إِذَا رُفِعَ الْقَلَمُ عَنْهُ فَهُوَ غَيْرُ مُخَاطَبٍ بِصَوْمٍ وَلَا بِصَلَاةٍ. ثُمَّ تَأَمَّلْنَا هَذَا الْخَبَرَ - بِتَوْفِيقِ اللَّهِ تَعَالَى - فَوَجَدْنَاهُ لَيْسَ فِيهِ إِلَّا مَا ذَكَرْنَا مِنْ أَنَّهُ غَيْرُ مُخَاطَبٍ فِي حَالِ جُنُونِهِ حَتَّى يَعْقِلَ، وَلَيْسَ فِي ذَلِكَ بُطْلَانُ صَوْمِهِ الَّذِي لَزِمَهُ قَبْلَ جُنُونِهِ، وَلَا عَوْدَتُهُ عَلَيْهِ بَعْدَ إِفَاقَتِهِ، وَكَذَلِكَ الْمُغْمَى، فَوَجَبَ أَنَّ مَنْ جُنَّ بَعْدَ أَنْ نَوَى الصَّوْمَ مِنْ اللَّيْلِ فَلَا يَكُونُ مُفْطِرًا بِجُنُونِهِ، لَكِنَّهُ فِيهِ غَيْرُ مُخَاطَبٍ، وَقَدْ كَانَ مُخَاطَبًا بِهِ، فَإِنْ أَفَاقَ فِي ذَلِكَ الْيَوْمِ أَوْ فِي يَوْمٍ بَعْدَهُ مِنْ أَيَّامِ رَمَضَانَ فَإِنَّهُ يَنْوِي الصَّوْمَ مِنْ حِينِهِ وَيَكُونُ صَائِمًا، لِأَنَّهُ حِينَئِذٍ عَلِمَ بِوُجُوبِ الصَّوْمِ عَلَيْهِ. وَهَكَذَا مَنْ جَاءَهُ الْخَبَرُ بِرُؤْيَةِ الْهِلَالِ، أَوْ مَنْ عَلِمَ بِأَنَّهُ يَوْمُ نَذْرِهِ أَوْ فَرْضِهِ عَلَى مَا قَدَّمْنَا قَبْلُ، وَكَذَلِكَ مَنْ أُغْمِيَ عَلَيْهِ كَمَا ذَكَرْنَا، وَكَذَلِكَ مَنْ جُنَّ أَوْ أُغْمِيَ عَلَيْهِ قَبْلَ غُرُوبِ الشَّمْسِ، أَوْ مَنْ نَامَ، أَوْ سَكِرَ قَبْلَ غُرُوبِ الشَّمْسِ فَلَمْ يَسْتَيْقِظْ وَلَا صَحَا إِلَّا مِنْ الْغَدِ وَقَدْ مَضَى أَكْثَرُ النَّهَارِ، أَوْ أَقَلُّهُ. وَوَجَدْنَا الْمَجْنُونَ لَا يُبْطِلُ جُنُونُهُ إِيمَانَهُ، وَلَا أَيْمَانَهُ وَلَا نِكَاحَهُ وَلَا طَلَاقَهُ، وَلَا ظِهَارَهُ وَلَا إِيلَاءَهُ، وَلَا حَجَّهُ، وَلَا إِحْرَامَهُ وَلَا بَيْعَهُ، وَلَا هِبَتَهُ، وَلَا شَيْئًا مِنْ أَحْكَامِهِ اللَّازِمَةِ لَهُ قَبْلَ جُنُونِهِ،

idence, ownership, vows, oath violation, the general ruling concerning *zakah* upon him, or the continuity of his prior administrative authority.

وَلَا خلَافَتَهُ إِنْ كَانَ خَلِيفَةً، وَلَا إِمَارَتَهُ إِنْ كَانَ أَمِيرًا وَلَا وِلَايَتَهُ وَلَا وَكَالَتَهُ، وَلَا تَوْكِيلَهُ، وَلَا كُفْرَهُ، وَلَا فِسْقَهُ، وَلَا عَدَالَتَهُ، وَلَا وَصَايَاهُ، وَلَا اعْتِكَافَهُ، وَلَا سَفَرَهُ، وَلَا إِقَامَتَهُ، وَلَا مِلْكَهُ، وَلَا نَذْرَهُ، وَلَا حِنْثَهُ، وَلَا حُكْمَ الْعَامِّ فِي الزَّكَاةِ عَلَيْهِ.

L11945–11946 We hold the view that one's neglect of all these matters does not invalidate any of them. A person may neglect fasting and prayer to the extent of believing they are neither praying nor fasting, so he may eat and drink—yet this does not invalidate his fast or prayer. This is as the Sunnah has established regarding prayer and other matters we mentioned, and the same applies to one who is unconscious, with no distinction in any of these cases. Insanity and unconsciousness invalidate only what sleep invalidates, such as ritual purity, which requires ablution alone and only that. Moreover, an overpowered person compelled to break their fast does not invalidate their fast thereby, as we shall clarify afterward if God the Exalted wills. Those afflicted by insanity and the compelled are both constrained by an overpowering decree from God the Exalted that befalls them, hence this does not invalidate their fast. Furthermore, whoever intended to fast as commanded by God the Mighty and Majestic, then became insane or unconscious—their fast remains valid with certainty based on textual evidence and consensus. It is impermissible to invalidate a fast once validated except through explicit textual proof or consensus, and there exists absolutely no consensus in this matter. Success comes solely through God the Exalted.

وَوَجَدْنَا ذُهُولَهُ عَنْ كُلِّ ذَلِكَ لَا يُوجِبُ بُطْلَانَ شَيْءٍ مِنْ ذَلِكَ، فَقَدْ يَذْهَلُ الْإِنْسَانُ عَنْ الصَّوْمِ، وَالصَّلَاةِ، حَتَّى يَظُنَّ أَنَّهُ لَيْسَ مُصَلِّيًا وَلَا صَائِمًا، فَيَأْكُلَ، وَيَشْرَبَ، وَلَا يُبْطِلُ بِذَلِكَ صَوْمُهُ وَلَا صَلَاتُهُ، بِهَذَا جَاءَتْ السُّنَنُ عَلَى مَا ذَكَرْنَا فِي الصَّلَاةِ وَغَيْرِهَا، وَكَذَلِكَ الْمُغْمَى عَلَيْهِ وَلَا فَرْقَ فِي كُلِّ ذَلِكَ، وَلَا يُبْطِلُ الْجُنُونُ وَالْإِغْمَاءُ إِلَّا مَا يُبْطِلُ النَّوْمُ مِنْ الطَّهَارَةِ بِالْوُضُوءِ وَحْدَهُ فَقَطْ. وَأَيْضًا: فَإِنَّ الْمَغْلُوبَ الْمُكْرَهَ عَلَى الْفِطْرِ لَا يُبْطِلُ صَوْمُهُ بِذَلِكَ عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى، وَالْمَجْنُونُ، وَالْمُكْرَهُ مَغْلُوبَانِ مُكْرَهَانِ مُضْطَرَّانِ بِقَدَرٍ غَالِبٍ مِنْ عِنْدِ اللَّهِ تَعَالَى مَا أَصَابَهُمَا، فَلَا يُبْطِلُ ذَلِكَ صَوْمَهُمَا. وَأَيْضًا: فَإِنَّ مَنْ نَوَى الصَّوْمَ كَمَا أَمَرَهُ اللَّهُ عَزَّ وَجَلَّ ثُمَّ جُنَّ، أَوْ أُغْمِيَ عَلَيْهِ فَقَدْ صَحَّ صَوْمُهُ بِيَقِينٍ مِنْ نَصٍّ وَإِجْمَاعٍ، فَلَا يَجُوزُ بُطْلَانُهُ بَعْدَ صِحَّتِهِ إِلَّا بِنَصٍّ أَوْ إِجْمَاعٍ، وَلَا إِجْمَاعَ فِي ذَلِكَ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L11947 As for one who reaches puberty while persistently insane, such a person has never been addressed by divine injunction, nor are religious statutes or legal rulings incumbent upon him. The pen has always been lifted from him; thus, he is fundamentally not required to make up any missed fasting, contrary to Mālik's opinion that if he regains sanity, the divine address then becomes incumbent upon him, not before that.

وَأَمَّا مَنْ بَلَغَ مَجْنُونًا مُطْبَقًا فَهَذَا لَمْ يَكُنْ - قَطُّ - مُخَاطَبًا، وَلَا لَزِمَتْهُ الشَّرَائِعُ، وَلَا الْأَحْكَامُ وَلَمْ يَزَلْ مَرْفُوعًا عَنْهُ الْقَلَمُ؛ فَلَا يَجِبُ عَلَيْهِ قَضَاءُ صَوْمٍ - أَصْلًا؛ بِخِلَافِ قَوْلِ مَالِكٍ: فَإِذَا عَقَلَ فَحِينَئِذٍ ابْتَدَأَ الْخِطَابُ بِلُزُومِهِ إيَّاهُ، لَا قَبْلَ ذَلِكَ.

L11948 As for one who drinks until intoxicated during the night of Ramadan while having resolved to fast, then becomes sober after the day has begun—whether a small or large portion of it has passed—or after sunset: his fast remains valid. Intoxication itself is not sinful; rather, the sin lies in drinking what in-

وَأَمَّا مَنْ شَرِبَ حَتَّى سَكِرَ فِي لَيْلَةِ رَمَضَانَ وَكَانَ نَوَى الصَّوْمَ فَصَحَا بَعْدَ صَدْرٍ مِنْ النَّهَارِ أَقَلِّهِ أَوْ أَكْثَرِهِ - أَوْ بَعْدَ غُرُوبِ الشَّمْسِ -: فَصَوْمُهُ تَامٌّ، وَلَيْسَ السُّكْرُ مَعْصِيَةً، إنَّمَا

toxicates, whether one becomes intoxicated or not. There is no disagreement that if a person's mouth is forced open, or his hand and body are restrained, and wine is poured into his throat until he becomes intoxicated, he is not sinful due to his intoxication. This is because he did not voluntarily drink what intoxicates by his own choice, and intoxication is not his own action. Rather, it is an act God, the Exalted, has enacted upon him. A person is only prohibited from his own actions, not from what God, the Exalted, has caused within him over which he has no control.

الْمَعْصِيَةُ شُرْبُ مَا يُسْكِرُ سَوَاءٌ سَكِرَ أَمْ لَمْ يَسْكَرْ، وَلَا خِلَافَ فِي أَنَّ مَنْ فُتِحَ فَمُهُ أَوْ أُمْسِكَتْ يَدُهُ وَجَسَدُهُ وَصُبَّ الْخَمْرُ فِي حَلْقِهِ حَتَّى سَكِرَ أَنَّهُ لَيْسَ عَاصِيًا بِسُكْرِهِ، لِأَنَّهُ لَمْ يَشْرَبْ مَا يُسْكِرُهُ بِاخْتِيَارِهِ، وَالسُّكْرُ لَيْسَ هُوَ فِعْلَهُ، إنَّمَا هُوَ فِعْلُ اللَّهِ تَعَالَى فِيهِ، وَإِنَّمَا يُنْهَى الْمَرْءُ عَنْ فِعْلِهِ، لَا عَنْ فِعْلِ اللَّهِ تَعَالَى فِيهِ الَّذِي لَا اخْتِيَارَ لَهُ فِيهِ.

L11949–11951 Similarly, whoever sleeps and does not wake up except during daytime - there being no difference in ruling - or whoever intends to fast but does not wake up until after sunset, his fast is valid. The ruling also remains for one who becomes insane, or faints, or becomes intoxicated, or sleeps before sunset and does not regain consciousness, nor sober up, nor become aware throughout the entire night and the entire next day until after sunset: must he make up the fast (qaḍāʾ) or not? We hold that making up the fast constitutes a Sharīʿah-mandated obligation, and Sharīʿah obligations are only established through textual evidence. Thus we find no basis for requiring the making up of the fast. The text specifies four exceptions: the traveler, the sick—according to the Qur'an—the menstruating woman, and the postpartum woman, along with one who deliberately induces vomiting—according to the Sunnah—with no further additions. We hold that the sleeping person, the intoxicated person, and the persistently insane are neither travelers, nor those who deliberately induce vomiting, nor menstruating women, nor postpartum women, nor the sick. Therefore, they are not required to make up missed fasts at all, nor are they obligated to fast during those states. Rather, the pen is lifted from them—as per the Sunnah.

وَكَذَلِكَ مَنْ نَامَ وَلَمْ يَسْتَيْقِظْ إلَّا فِي النَّهَارِ وَلَا فَرْقَ، أَوْ مَنْ نَوَى الصَّوْمَ ثُمَّ لَمْ يَسْتَيْقِظْ إلَّا بَعْدَ غُرُوبِ الشَّمْسِ، فَصَوْمُهُ تَامٌّ. وَبَقِيَ حُكْمُ مَنْ جُنَّ، أَوْ أُغْمِيَ عَلَيْهِ أَوْ سَكِرَ، أَوْ نَامَ قَبْلَ غُرُوبِ الشَّمْسِ فَلَمْ يُفِقْ وَلَا صَحَا وَلَا انْتَبَهَ لَيْلَتَهُ كُلَّهَا وَالْغَدَ كُلَّهُ إلَى بَعْدَ غُرُوبِ الشَّمْسِ -: أَيَقْضِيهِ أَمْ لَا؟ . فَوَجَدْنَا الْقَضَاءَ إيجَابَ شَرْعٍ، وَالشَّرْعُ لَا يَجِبُ إلَّا بِنَصٍّ، فَلَا نَجِدُ إيجَابَ الْقَضَاءِ فِي النَّصِّ إلَّا عَلَى أَرْبَعَةٍ: الْمُسَافِرُ، وَالْمَرِيضُ - بِالْقُرْآنِ - وَالْحَائِضُ، وَالنُّفَسَاءُ، وَالْمُتَعَمِّدُ لِلْقَيْءِ - بِالسُّنَّةِ - وَلَا مَزِيدَ. وَوَجَدْنَا النَّائِمَ، وَالسَّكْرَانَ، وَالْمَجْنُونَ الْمُطْبَقَ عَلَيْهِ لَيْسُوا مُسَافِرِينَ وَلَا مُتَعَمِّدِينَ لِلْقَيْءِ، وَلَا حُيَّضًا، وَلَا مِنْ ذَوَاتِ النِّفَاسِ، وَلَا مَرْضَى؛ فَلَمْ يَجِبْ عَلَيْهِمْ الْقَضَاءُ أَصْلًا، وَلَا خُوطِبُوا بِوُجُوبِ الصَّوْمِ عَلَيْهِمْ فِي تِلْكَ الْأَحْوَالِ؛ بَلْ الْقَلَمُ مَرْفُوعٌ عَنْهُمْ - بِالسُّنَّةِ.

L11952 We found the epileptic and the unconscious to be undoubtedly ill, for illness is a state that removes a person from equilibrium, sound limbs, and strength to disturbance, feeble limbs, and ailment—and this is unquestionably the description of the epileptic and the unconscious. The lingering feebleness and weakness of this state remain upon them both for a duration after regaining consciousness. Since they are ill, the obligation to make up is incumbent upon them by the text of the Quran—and success is from Allah, the Exalted.

وَوَجَدْنَا الْمَصْرُوعَ، وَالْمُغْمَى عَلَيْهِ مَرِيضَيْنِ بِلَا شَكٍّ، لِأَنَّ الْمَرَضَ هِيَ حَالٌ مُخْرِجَةٌ لِلْمَرْءِ عَنْ حَالِ الِاعْتِدَالِ وَصِحَّةِ الْجَوَارِحِ وَالْقُوَّةِ إلَى الِاضْطِرَابِ وَضَعْفِ الْجَوَارِحِ وَاعْتِلَالِهَا، وَهَذِهِ صِفَةُ الْمَصْرُوعِ وَالْمُغْمَى عَلَيْهِ بِلَا شَكٍّ، وَيَبْقَى وَهْنُ ذَلِكَ وَضَعْفُهُ عَلَيْهِمَا بَعْدَ الْإِفَاقَةِ مُدَّةً؛ فَإِذْ هُمَا مَرِيضَانِ فَالْقَضَاءُ عَلَيْهِمَا بِنَصِّ الْقُرْآنِ - وَبِاَللَّهِ تَعَالَى

التَّوْفِيقُ. وَلَيْسَ قَوْلُنَا بِسُقُوطِ الصَّلَاةِ عَنْ الْمُغْمَى عَلَيْهِ إلَّا مَا أَفَاقَ فِي وَقْتِهِ مِنْهَا وَبِقَضَاءِ النَّائِمِ لِلصَّلَاةِ -: مُخَالِفًا لِقَوْلِنَا هَاهُنَا؛ بَلْ هُوَ مُوَافِقٌ، لِأَنَّ مَا خَرَجَ وَقْتُهُ لِلْمُغْمَى عَلَيْهِ فَلَمْ يَكُنْ مُخَاطَبًا بِالصَّلَاةِ فِيهِ، وَلَا كَانَ أَيْضًا مُخَاطَبًا بِالصَّوْمِ؛ وَلَكِنَّ اللَّهَ تَعَالَى أَوْجَبَ عَلَى الْمَرِيضِ عِدَّةً مِنْ أَيَّامٍ أُخَرَ، وَلَمْ يُوجِبْ تَعَالَى - عَلَى الْمَرِيضِ: قَضَاءَ صَلَاةٍ، وَأَوْجَبَ قَضَاءَ الصَّلَاةِ: عَلَى النَّائِمِ، وَالنَّاسِي، وَلَمْ يُوجِبْ قَضَاءَ صِيَامٍ عَلَى النَّائِمِ، وَالنَّاسِي بَلْ أَسْقَطَهُ تَعَالَى عَنْ النَّاسِي، وَالنَّائِمِ؛ إذْ لَمْ يُوجِبْهُ عَلَيْهِ. فَصَحَّ قَوْلُنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

Our ruling that prayer is waived for the unconscious—except if they regain consciousness during its time and must make it up like one who slept—does not contradict our position here. Rather, it aligns with it, for the time during which they were unconscious did not render them accountable for prayer or fasting. However, Allah the Exalted obligated the ill to make up a number of days later but did not obligate them to make up prayers. He obligated making up prayers for the sleeper and the one who forgot, yet did not obligate making up fasting for them—rather, He waived it, as He imposed no such obligation. Thus, our position is sound—and all praise belongs to Allah, Lord of the worlds.

L11953 وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفِي غَايَةِ الْفَسَادِ، لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ، وَلَمْ يَتَّبِعْ نَصًّا، وَلَا قِيَاسًا، لِأَنَّهُ رَأَى عَلَى مَنْ أَفَاقَ فِي شَيْءٍ مِنْ رَمَضَانَ مِنْ جُنُونِهِ: قَضَاءَ الشَّهْرِ كُلِّهِ، وَهُوَ لَا يَرَاهُ عَلَى مَنْ بَلَغَ، أَوْ - أَسْلَمَ حِينَئِذٍ.

As for the opinion of Abū Ḥanīfah, it is utterly corrupt, for it is an unsupported claim. He adhered to neither textual evidence nor analogical reasoning, since he held that one who recovers from his insanity during any part of Ramadan must make up the entire month, yet he does not impose this obligation on one who reaches puberty or embraces Islam at that time.

L11954 وَقَالَ بَعْضُ الْمَالِكِيِّينَ: الْمَجْنُونُ بِمَنْزِلَةِ الْحَائِضِ وَهَذَا كَلَامٌ يُغْنِي ذِكْرُهُ عَنْ تَكَلُّفِ إبْطَالِهِ، وَمَا نَدْرِي فِيمَا يُشْبِهُ الْمَجْنُونُ الْحَائِضَ

Some Mālikīs said: The mentally incapacitated person is equivalent in legal status to the menstruating woman. The mere mention of this opinion suffices to dispense with laborious refutation, for we do not know how the mentally incapacitated resembles the menstruating woman.

[مَسْأَلَةُ الصَّائِمِ الَّذِي جَهَدَهُ الْجُوعُ أَوْ الْعَطَشُ حَتَّى غَلَبَهُ الْأَمْرُ]

A jurisprudential issue concerning a fasting person afflicted by hunger or thirst to the point where the situation overwhelms them.

L11955 ؟ ٧٥٥ - مَسْأَلَةٌ: وَمَنْ جَهَدَهُ الْجُوعُ، أَوْ الْعَطَشُ حَتَّى غَلَبَهُ الْأَمْرُ فَفَرْضٌ عَلَيْهِ أَنْ يُفْطِرَ، لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] . وَلِقَوْلِ اللَّهِ تَعَالَى: {يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلا يُرِيدُ بِكُمُ الْعُسْرَ} [البقرة: ١٨٥] .

L11956 Issue 755: Whoever is overwhelmed by hunger or thirst until the hardship overpowers him, it becomes a fard (obligation) upon him to break his fast, according to Allah's words: {Do not destroy yourselves} [Qur'an 4:29], and His words: {Allah desires ease for you, not hardship} [Qur'an 2:185].[35]

L11957–11958 And the statement of Allah the Exalted: "He has not placed upon you in the

[35] **Qur'an references (L11956):** Qur'an 4:29 (An-Nisa); Qur'an 2:185 (Al-Baqarah).

religion any hardship" [Al-Hajj: 78]. And the statement of the Messenger of Allah (peace and blessings of Allah be upon him and his family): "When I command you to do something, do as much of it as you can." If he (due to fasting) reaches the point of illness, then qada (making up) is obligatory upon him. But if he does not reach the point of illness, his fast remains valid with no qada required, for he is overcome, compelled, or compelled by necessity. Allah the Almighty said: "He has detailed what He forbade you, except that to which you are compelled [by necessity]" [Al-An'am: 119]. Neither the Quran nor the Sunnah has established the obligation of qada upon one who is coerced or overcome. Rather, Allah the Exalted has lifted qada from one overcome by vomiting involuntarily, while imposing it upon one who intentionally induces it.[36]

وَقَوْلِ اللَّهِ تَعَالَى: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] . وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» . فَإِنْ كَانَ خَرَجَ بِذَلِكَ إلَى حَدِّ الْمَرَضِ فَعَلَيْهِ الْقَضَاءُ، وَإِنْ كَانَ لَمْ يَخْرُجْ إلَى حَدِّ الْمَرَضِ فَصَوْمُهُ صَحِيحٌ وَلَا قَضَاءَ عَلَيْهِ؛ لِأَنَّهُ مَغْلُوبٌ مُكْرَهٌ مُضْطَرٌّ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] . وَلَمْ يَأْتِ الْقُرْآنُ وَلَا السُّنَّةُ بِإِيجَابِ قَضَاءٍ عَلَى مُكْرَهٍ، أَوْ مَغْلُوبٍ؛ بَلْ قَدْ أَسْقَطَ اللَّهُ تَعَالَى الْقَضَاءَ عَمَّنْ ذَرَعَهُ الْقَيْءُ وَأَوْجَبَهُ عَلَى مَنْ تَعَمَّدَهُ

L11959 **A legal ruling: Fasting is not obligatory except with the clear ascertainment of the emergence of the true dawn.**

[مَسْأَلَةٌ لَا يَلْزَمُ صَوْمٌ إلَّا بِتَبَيُّنِ طُلُوعِ الْفَجْرِ الثَّانِي]

L11960 756. Issue: Fasting is not obligatory in Ramadan or at other times except upon verification of the rising of the second dawn. As for when it has not been verified, eating, drinking, and intercourse are all permissible—whether one doubts the dawn's rising or is certain it has not risen.

٧٥٦ - مَسْأَلَةٌ: وَلَا يَلْزَمُ صَوْمٌ فِي رَمَضَانَ وَلَا فِي غَيْرِهِ إلَّا بِتَبَيُّنِ طُلُوعِ الْفَجْرِ الثَّانِي، وَأَمَّا مَا لَمْ يَتَبَيَّنْ فَالْأَكْلُ وَالشُّرْبُ وَالْجِمَاعُ مُبَاحٌ كُلُّ ذَلِكَ، كَانَ عَلَى شَكٍّ مِنْ طُلُوعِ الْفَجْرِ أَوْ عَلَى يَقِينٍ مِنْ أَنَّهُ لَمْ يَطْلُعْ.

L11961 So whoever sees the dawn while eating must spit out whatever food or drink is in their mouth, must fast, and no compensatory fast is required. And whoever sees the dawn while engaging in intercourse must cease immediately, must fast, and no compensatory fast is required. The ruling is the same in all such cases whether the dawn appeared after a long or brief period. If one ceases in confusion, nothing is required of them, and their fast remains valid. But if one deliberately continues [the act], he must perform atonement (kaffārah).

فَمَنْ رَأَى الْفَجْرَ وَهُوَ يَأْكُلُ فَلْيَقْذِفْ مَا فِي فَمِهِ مِنْ طَعَامٍ أَوْ شَرَابٍ، وَلْيَصُمْ، وَلَا قَضَاءَ عَلَيْهِ؛ وَمَنْ رَأَى الْفَجْرَ وَهُوَ يُجَامِعُ فَلْيَتْرُكْ مِنْ وَقْتِهِ، وَلْيَصُمْ، وَلَا قَضَاءَ عَلَيْهِ؛ وَسَوَاءٌ فِي كُلِّ ذَلِكَ كَانَ طُلُوعُ الْفَجْرِ بَعْدَ مُدَّةٍ طَوِيلَةٍ أَوْ قَرِيبَةٍ، فَلَوْ تَوَقَّفَ بَاهِتًا فَلَا شَيْءَ عَلَيْهِ، وَصَوْمُهُ تَامٌّ؛ وَلَوْ أَقَامَ عَامِدًا فَعَلَيْهِ الْكَفَّارَةُ.

L11962–11964 Whoever eats while uncertain whether the sun has set or drinks has disobeyed Allah the Exalted, invalidated his fast, and is unable to make up (qada'). If he engages in sexual intercourse while uncertain whether the sun

وَمَنْ أَكَلَ شَاكًّا فِي غُرُوبِ الشَّمْسِ أَوْ شَرِبَ فَهُوَ عَاصٍ لَهُ تَعَالَى، مُفْسِدٌ لِصَوْمِهِ، وَلَا يَقْدِرُ عَلَى - الْقَضَاءِ؛ فَإِنْ جَامَعَ شَاكًّا فِي غُرُوبِ الشَّمْسِ فَعَلَيْهِ الْكَفَّارَةُ -:

[36] **Qur'an references (L11958):** Qur'an 22:78 (Al-Hajj); Qur'an 6:119 (Al-An'am).

has set, expiation is incumbent upon him. The proof of that is Allah's statement: {So now have relations with them and seek what Allah has ordained for you. Eat and drink until the white thread of dawn becomes distinct to you from the black thread, then complete the fast until night} [Al-Baqarah 2:187]. This text confirms our position, for Allah the Exalted permitted intercourse, eating, and drinking until dawn becomes evident to us. He did not say: "until dawn appears," nor "until you doubt the dawn." Thus, none may assert this or impose fasting based on its appearance unless it becomes clearly apparent. Then Allah the Exalted commanded to maintain the fast until night. Narrated to us by Abdur-Rahman ibn Abdullah ibn Khalid; narrated to us by Ibrahim ibn Ahmad; narrated to us by al-Farbari; narrated to us by al-Bukhari; narrated to us by Ubaydullah ibn Isma'il from Abu Usamah from Ubaydullah—who is Ibn Umar—from Nafi' and al-Qasim ibn Muhammad ibn Abi Bakr. Al-Qasim said: from Aishah, while Nafi' said: from Ibn Umar. Aisha and Ibn Umar said: "Bilal used to call the adhan at night. The Messenger of Allah (may Allah bless him and his family and grant him peace) said: 'Bilal calls the adhan at night, so eat and drink until Ibn Umm Maktum calls it, for he does not call it until dawn appears.'"[37]

L11965 And through him, the narration reaches Al-Bukhārī: ʿAbdullāh ibn Maslamah—who is Al-Qaʿnabī—narrated to us from Mālik from Ibn Shihāb from Sālim ibn ʿAbdillāh ibn ʿUmar from his father: that the Messenger of Allah—peace and blessings be upon him and his family—said: "Indeed Bilāl gives the adhān at night, so eat and drink until Ibn Umm Maktūm gives the adhān." The narrator said: "He was a blind man who would not call until someone told him: 'The morning has come, the morning has come.'" ʿAbdullāh ibn Yūsuf narrated to us: Aḥmad ibn Fatḥ narrated to us: ʿAbd al-Wahhāb ibn ʿĪsā narrated to us: Aḥmad ibn Muḥammad narrated to us: Aḥmad ibn ʿAlī narrated to us: Muslim ibn al-Ḥajjāj narrated to us: Shaybān ibn Farrūkh [narrated to us from ʿAbd al-Wārith] from ʿAbdillāh ibn Sawādah ibn Ḥanẓalah al-Qushayrī: My father narrated to me that he heard Samurah

[37] **Qur'an references (L11962):** Qur'an 2:187 (Al-Baqarah).

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {فَالآنَ بَاشِرُوهُنَّ وَابْتَغُوا مَا كَتَبَ اللَّهُ لَكُمْ وَكُلُوا وَاشْرَبُوا حَتَّى يَتَبَيَّنَ لَكُمُ الْخَيْطُ الأَبْيَضُ مِنَ الْخَيْطِ الأَسْوَدِ مِنَ الْفَجْرِ ثُمَّ أَتِمُّوا الصِّيَامَ إِلَى اللَّيْلِ} [البقرة: ١٨٧] وَهَذَا نَصُّ مَا قُلْنَا، لِأَنَّ اللَّهَ تَعَالَى أَبَاحَ الْوَطْءَ وَالْأَكْلَ وَالشُّرْبَ إِلَى أَنْ يَتَبَيَّنَ لَنَا الْفَجْرُ، وَلَمْ يَقُلْ تَعَالَى: حَتَّى يَطْلُعَ الْفَجْرُ، وَلَا قَالَ: حَتَّى تَشُكُّوا فِي الْفَجْرِ، فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَقُولَهُ، وَلَا أَنْ يُوجِبَ صَوْمًا بِطُلُوعِهِ مَا لَمْ يَتَبَيَّنْ لِلْمَرْءِ، ثُمَّ أَوْجَبَ اللَّهُ تَعَالَى الْتِزَامَ الصَّوْمِ إِلَى اللَّيْلِ -: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ ثنا إِبْرَاهِيمُ بْنُ أَحْمَدَ ثنا الْفَرَبْرِيُّ ثنا الْبُخَارِيُّ ثنا عُبَيْدُ اللَّهِ بْنُ إِسْمَاعِيلَ عَنْ أَبِي أُسَامَةَ عَنْ عُبَيْدِ اللَّهِ هُوَ ابْنُ عُمَرَ عَنْ نَافِعٍ وَالْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ، قَالَ الْقَاسِمُ: عَنْ عَائِشَةَ، وَقَالَ نَافِعٌ: عَنِ ابْنِ عُمَرَ، قَالَتْ عَائِشَةُ، وَابْنُ عُمَرَ: «كَانَ بِلَالٌ يُؤَذِّنُ بِلَيْلٍ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِنَّ بِلَالًا يُؤَذِّنُ بِلَيْلٍ، فَكُلُوا وَاشْرَبُوا حَتَّى يُؤَذِّنَ ابْنُ أُمِّ مَكْتُومٍ، فَإِنَّهُ لَا يُؤَذِّنُ حَتَّى يَطْلُعَ الْفَجْرُ» .

وَبِهِ إِلَى الْبُخَارِيِّ: ثنا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ هُوَ الْقَعْنَبِيُّ - عَنْ مَالِكٍ عَنِ ابْنِ شِهَابٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «إِنَّ بِلَالًا يُؤَذِّنُ بِلَيْلٍ، فَكُلُوا وَاشْرَبُوا حَتَّى يُؤَذِّنَ ابْنُ أُمِّ مَكْتُومٍ، قَالَ: وَكَانَ رَجُلًا أَعْمَى لَا يُنَادِي حَتَّى يُقَالَ لَهُ: أَصْبَحْتَ أَصْبَحْتَ» -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا شَيْبَانُ بْنُ فَرُّوخَ [ثنا عَبْدُ الْوَارِثِ] عَنْ عَبْدِ اللَّهِ بْنِ سَوَادَةَ بْنِ حَنْظَلَةَ الْقُشَيْرِيِّ حَدَّثَنِي أَبِي أَنَّهُ سَمِعَ سَمُرَةَ بْنَ جُنْدُبٍ يَقُولُ: [قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ

ibn Jundub say: [The Messenger of Allah—peace and blessings be upon him and his family—said]: "Do not let the call of Bilāl during suḥūr deceive any of you, nor this vertical whiteness until it spreads horizontally."

L11966–11967 Similarly, the narration of ʿAdī ibn Ḥātim and Sahl ibn Saʿd regarding the two threads—the black and the white—where the Prophet (peace be upon him) said, "That is only the darkness of night and the whiteness of day." Abū Muḥammad said: The Prophet (peace be upon him) explicitly affirmed that Ibn Umm Maktūm would not give the adhān until dawn emerged, and he permitted eating until his adhān. Thus, it is established that eating remains permissible after the appearance of dawn as long as the one intending to fast has not clearly discerned its emergence. Indeed, a group has claimed that Allah's statement, "Until the white thread becomes distinct to you from the black thread" [Al-Baqarah 2:187], and the Messenger of Allah's (peace and blessings be upon him and his family) saying, "Until dawn appears and until it is proclaimed to him: 'It is dawn, it is dawn'"—that this denotes approximation, like Allah's statement, "When they have reached their term, retain them with kindness" [Aṭ-Ṭalāq 65:2], meaning only when they approach the completion of their term. Abū Muḥammad said: The proponent of this view is frivolously attributing falsehood to the Quran and to the Messenger of Allah (peace and blessings be upon him and his family). Firstly, this is an assertion without evidence, a diversion of Allah's words from their proper contexts, and an ascription to the Messenger of Allah (peace and blessings be upon him and his family) of what he did not state. Had their claim been valid, both Bilāl and Ibn Umm Maktūm would only give the adhān before dawn—yet this is false, and none asserts it, neither they nor others.[38]

L11968 As for Allah the Exalted's statement: {When they have reached their term} [Al-Baqarah: 234], their forcing this [interpretation]—that He the Exalted meant "When they approach reaching their term"—is false and baseless, a claim without proof. Had their assertion been valid, it would permit him to take her back except when nearing the end of the waiting period. Yet

[38] **Qur'an references (L11967):** Qur'an 2:187 (Al-Baqarah); Qur'an 65:2 (At-Talaq).

عَلَيْهِ وآلِهِ وَسَلَّمَ -] : «لَا يَغُرَّنَّ أَحَدَكُمْ نِدَاءُ بِلَالٍ مِنْ السُّحُورِ، وَلَا هَذَا الْبَيَاضُ حَتَّى يَسْتَطِيرَ» .

وَكَذَلِكَ حَدِيثُ عَدِيِّ بْنِ حَاتِمٍ، وَسَهْلِ بْنِ سَعْدٍ فِي الْخَيْطَيْنِ الْأَسْوَدِ، وَالْأَبْيَضِ فَقَالَ - عَلَيْهِ السَّلَامُ - «إنَّمَا ذَلِكَ سَوَادُ اللَّيْلِ وَبَيَاضُ النَّهَارِ» . قَالَ أَبُو مُحَمَّدٍ: فَنَصَّ - عَلَيْهِ السَّلَامُ - عَلَى أَنَّ ابْنَ أُمِّ مَكْتُومٍ لَا يُؤَذِّنُ حَتَّى يَطْلُعَ الْفَجْرُ، وَأَبَاحَ الْأَكْلَ إلَى أَذَانِهِ، فَقَدْ صَحَّ أَنَّ الْأَكْلَ مُبَاحٌ بَعْدَ طُلُوعِ الْفَجْرِ مَا لَمْ يَتَبَيَّنْ لِمُرِيدِ الصَّوْمِ طُلُوعُهُ. وَقَدْ ادَّعَى قَوْمٌ أَنَّ قَوْله تَعَالَى: {حَتَّى يَتَبَيَّنَ لَكُمُ الْخَيْطُ الْأَبْيَضُ مِنَ الْخَيْطِ الْأَسْوَدِ} [البقرة: ١٨٧] وَقَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وآلِهِ وَسَلَّمَ -: «حَتَّى يَطْلُعَ الْفَجْرُ وَحَتَّى يُقَالَ لَهُ: أَصْبَحْتَ أَصْبَحْتَ» أَنَّ ذَلِكَ عَلَى الْمُقَارَبَةِ، مِثْلُ قَوْله تَعَالَى: {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] إنَّمَا مَعْنَاهُ فَإِذَا قَارَبْنَ بُلُوغَ أَجَلِهِنَّ، قَالَ أَبُو مُحَمَّدٍ: وَقَائِلُ هَذَا مُسْتَسْهِلٌ لِلْكَذِبِ عَلَى الْقُرْآنِ وَعَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وآلِهِ وَسَلَّمَ -. أَوَّلُ ذَلِكَ أَنَّهُ دَعْوَى بِلَا بُرْهَانٍ، وَإِحَالَةٌ لِكَلَامِ اللَّهِ تَعَالَى عَنْ مَوَاضِعِهِ، وَلِكَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وآلِهِ وَسَلَّمَ - وَقَوْلٌ عَلَيْهِ بِمَا لَمْ يَقُلْ، وَلَوْ كَانَ مَا قَالُوا لَكَانَ بِلَالٌ، وَابْنُ أُمِّ مَكْتُومٍ مَعًا لَا يُؤَذِّنَانِ إلَّا قَبْلَ الْفَجْرِ، وَهَذَا بَاطِلٌ لَا يَقُولُهُ أَحَدٌ، لَا هُمْ وَلَا غَيْرُهُمْ.

وَأَمَّا قَوْله تَعَالَى: {فَإِذَا بَلَغْنَ أَجَلَهُنَّ} [البقرة: ٢٣٤] فَإِلْقَامُهُمْ فِيهِ: أَنَّهُ تَعَالَى أَرَادَ فَإِذَا قَارَبْنَ بُلُوغَ أَجَلِهِنَّ -: بَاطِلٌ وَكَذِبٌ، وَدَعْوَى بِلَا بُرْهَانٍ، وَلَوْ كَانَ مَا قَالُوهُ لَكَانَ يَجُوزُ لَهُ الرَّجْعَةُ إلَّا عِنْدَ مُقَارَبَةِ انْتِهَاءِ الْعِدَّةِ، وَلَا يَقُولُ هَذَا أَحَدٌ، لَا هُمْ وَلَا غَيْرُهُمْ، وَهُوَ تَحْرِيفٌ لِلْكَلِمِ عَنْ مَوَاضِعِهِ، بَلْ الْآيَةُ عَلَى ظَاهِرِهَا، وَبُلُوغُ أَجَلِهِنَّ هُوَ بُلُوغُهُنَّ أَجَلَ

none affirms this—neither them nor others—and it is a distortion of words from their rightful context. Rather, the verse follows its apparent meaning: "reaching their term" means they have attained the duration of the waiting period, not its expiration. This is the truth, for as long as they remain within the entire waiting period, the husband retains the right to take her back and to divorce. Thus their claim is conclusively refuted without ambiguity. Some argued: "The Prophet's (peace be upon him) instruction to Bilal—'Look out for the dawn for us'—validates their position." Abu Muhammad responded: This is false for two reasons—first: He (peace be upon him) only commanded this for prayer, not fasting.[39]

L11969–11970 The second point is that even if he had instructed him regarding the fast, it would serve as evidence for us, not them. This is because eating and intercourse remain permissible until Bilal gives the adhan at dawn's emergence. His adhan to them at dawn's emergence undoubtedly occurs only after the actual rising of dawn. Therefore, eating, drinking, and intercourse remain entirely permissible even after dawn has appeared. These acts only become prohibited through Bilal's adhan following dawn's emergence—an argument they cannot rebut. Their stance here contradicts the Quran and the established Sunnah.

Narrated by Hammām ibn Aḥmad from ʿAbdullāh ibn Muḥammad al-Bājī from Muḥammad ibn ʿAbd al-Malik ibn Ayman from Ḥabīb ibn Khalaf al-Bukhārī from Abū Thawr Ibrāhīm ibn Khālid from Rawḥ ibn ʿUbādah from Ḥammād ibn Salamah, who reported from ʿĀṣim ibn Abī al-Najūd from Zirr ibn Ḥubaysh: "I took the pre-dawn meal, then went to the mosque. I visited Ḥudhayfah, who ordered a milking camel to be milked. He then instructed a pot to be heated and said: 'Eat.' I said: 'I intend to fast.' He replied: 'I too intend to fast.' We ate, drank, then proceeded to the mosque where the prayer had already commenced. Ḥudhayfah remarked: 'This is what Allah's Messenger—peace and blessings be upon him and his family—did with me.' I asked: 'After dawn?' He answered: 'After dawn, though the sun had not yet risen.'"

[39] **Qur'an references (L11968):** Qur'an 2:234 (Al-Baqarah); Qur'an 65:2 (At-Talaq).

الْعِدَّة، لَيْسَ هُوَ انْقِضَاءَهَا، وَهَذَا هُوَ الْحَقُّ؛ لِأَنَّهُنَّ إذَا كُنَّ فِي أَجَلِ الْعِدَّةِ كُلِّهِ فَلِلزَّوْجِ الرَّجْعَةُ، وَلَهُ الطَّلَاقُ، فَبَطَلَ مَا قَالُوهُ بِيَقِينٍ لَا إشْكَالَ فِيهِ. وَقَالَ بَعْضُهُمْ: «قَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِبِلَالٍ: اكْلَأْ لَنَا الْفَجْرَ» مُوجِبٌ لِصِحَّةِ قَوْلِهِمْ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ لِوَجْهَيْنِ -: أَحَدُهُمَا: أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَأْمُرْهُ بِذَلِكَ إلَّا لِلصَّلَاةِ، لَا لِلصَّوْمِ.

وَالثَّانِي: أَنَّهُ حَتَّى لَوْ أَمَرَهُ بِذَلِكَ لِلصَّوْمِ لَكَانَ حُجَّةً لَنَا لَا لَهُمْ؛ لِأَنَّ الْأَكْلَ، وَالْجِمَاعَ: مُبَاحَانِ إلَى أَنْ يُنْذِرَهُمْ بِلَالٌ بِطُلُوعِ الْفَجْرِ، وَإِنْذَارُهُ إيَّاهُمْ بِطُلُوعِ الْفَجْرِ لَا يَكُونُ إلَّا بَعْدَ طُلُوعِ الْفَجْرِ بِلَا شَكٍّ، فَالْأَكْلُ، وَالشُّرْبُ، وَالْجِمَاعُ: مُبَاحٌ كُلُّ ذَلِكَ، وَلَوْ طَلَعَ الْفَجْرُ، وَإِنَّمَا يَحْرُمُ كُلُّ ذَلِكَ بِإِنْذَارِ بِلَالٍ بَعْدَ طُلُوعِ الْفَجْرِ، هَذَا مَا لَا حِيلَةَ لَهُمْ فِيهِ، وَقَوْلُهُمْ هُنَا خِلَافٌ لِلْقُرْآنِ وَلِجَمِيعِ السُّنَنِ -: حَدَّثَنَا حُمَامُ بْنُ أَحْمَدَ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الْبَاجِيُّ ثنا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ ثنا حَبِيبُ بْنُ خَلَفٍ الْبُخَارِيُّ ثنا أَبُو ثَوْرٍ إبْرَاهِيمُ بْنِ خَالِدٍ ثنا رَوْحُ بْنُ عُبَادَةَ ثنا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَاصِمِ بْنِ أَبِي النَّجُودِ عَنْ «زِرِّ بْنِ حُبَيْشٍ قَالَ تَسَحَّرْتُ ثُمَّ انْطَلَقْتُ إلَى الْمَسْجِدِ، فَدَخَلْتُ عَلَى حُذَيْفَةَ، فَأَمَرَ بِلِقْحَةٍ فَحُلِبَتْ، ثُمَّ أَمَرَ بِقِدْرٍ فَسُخِّنَتْ، ثُمَّ قَالَ: كُلْ. قُلْتُ: إنِّي أُرِيدُ الصَّوْمَ، قَالَ: وَأَنَا أُرِيدُ الصَّوْمَ، فَأَكَلْنَا ثُمَّ شَرِبْنَا ثُمَّ أَتَيْنَا الْمَسْجِدَ وَقَدْ أُقِيمَتْ الصَّلَاةُ، فَقَالَ حُذَيْفَةُ: هَكَذَا فَعَلَ بِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقُلْتُ: بَعْدَ الصُّبْحِ؟ قَالَ: بَعْدَ الصُّبْحِ، إلَّا أَنَّ الشَّمْسَ لَمْ تَطْلُعْ» . حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ ثنا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ ثنا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَاصِمٍ

Narrated by Muḥammad ibn Saʿīd ibn Nabāt from ʿAbdullāh ibn Naṣr from Qāsim ibn Aṣbagh from Ibn Waḍḍāḥ from Mūsā ibn Muʿāwiyah from Wakīʿ, who reported from Sufyān al-Thawrī from ʿĀṣim ibn Abī al-Najūd from Zirr ibn Ḥubaysh: "I asked Ḥudhayfah: 'At what time did you take the pre-dawn meal with the Prophet—peace and blessings be upon him and his family?' He replied: 'It was daytime, except that the sun had not yet risen.'"

Through the chain of Ḥammād ibn Salamah from ʿAmmār ibn Abī ʿAmmār from Abū Hurayrah, the Prophet—peace and blessings be upon him and his family—said: "If one of you hears the adhan while holding a vessel, let him not put it down until he finishes what he needs from it." ʿAmmār added: "They used to give the adhan when dawn had broken."[40]

L11971–11972 Hammad narrated from Hisham ibn Urwah: "Did my father issue a fatwa regarding this?" Narrated to us Humām, narrated to us Ibn Mufarrij, narrated to us Ibn al-A'rabi, narrated to us al-Dabari, narrated to us Abd al-Razzaq, narrated to us Ma'mar from Qatadah from Anas: "He saw Allah's Messenger—peace and blessings be upon him and his family—partaking in the pre-dawn meal with Zayd ibn Thabit while he—peace be upon him—intended to fast. Then he prayed the two rak'ahs, proceeded to the mosque, and the prayer was established." Abu Muhammad said: "All of this is founded upon the premise that dawn had not yet become apparent to them. Thus, do the traditions align with the Quran in this manner?" We also received through Ma'mar's transmission from Abān, from Anas, from Abu Bakr al-Siddiq that he said: "If two men discern the dawn and one doubts it, let both eat until it becomes evident to them."

L11973–11975 From the path of Abu Ahmad al-Zubayri through Sufyan al-Thawri, Mansur ibn al-Mu'tamir, Hilal ibn Yasaf, and Salim ibn 'Ubayd, who said: Abu Bakr al-Siddiq would say to me, "Stand between me and the dawn until you have partaken of the pre-dawn meal." From the path of Ibn Abi Shaybah through Jarir ibn 'Abd al-Hamid, Mansur ibn al-Mu'tamir, Hilal ibn Yasaf, and Salim ibn 'Ubayd al-Ashja'i, who said: "Stand between me and the dawn," then he ate. This Salim ibn 'Ubayd was an Ashja'i from Kufa, among the companions of the Messenger of Allah—may Allah's peace and blessings be upon

[40] **Hadith references (L11970):** Sunan Abi Dawud 2350.

بْنِ أَبِي النَّجُودِ «عَنْ زِرِّ بْنِ حُبَيْشٍ قُلْتُ لِحُذَيْفَةَ: أَيُّ وَقْتٍ تَسَحَّرْتُمْ مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ قَالَ: هُوَ النَّهَارُ، إِلَّا أَنَّ الشَّمْسَ لَمْ تَطْلُعْ» . وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَمَّارِ بْنِ أَبِي عَمَّارٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «إِذَا سَمِعَ أَحَدُكُمْ النِّدَاءَ وَالْإِنَاءُ عَلَى يَدِهِ فَلَا يَضَعْهُ حَتَّى يَقْضِيَ حَاجَتَهُ مِنْهُ» قَالَ عَمَّارٌ: وَكَانُوا يُؤَذِّنُونَ إِذَا بَزَغَ الْفَجْرُ.

قَالَ حَمَّادٌ عَنْ هِشَامِ بْنِ عُرْوَةَ: كَانَ أَبِي يُفْتِي بِهَذَا؟ وَحَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ ثنا مَعْمَرٌ عَنْ قَتَادَةَ «عَنْ أَنَسٍ: أَنَّهُ رَأَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدْ تَسَحَّرَ هُوَ وَزَيْدُ بْنُ ثَابِتٍ، وَهُوَ - عَلَيْهِ السَّلَامُ - يُرِيدُ الصَّوْمَ، ثُمَّ صَلَّى الرَّكْعَتَيْنِ، ثُمَّ خَرَجَ إلَى الْمَسْجِدِ فَأُقِيمَتْ الصَّلَاةُ» . قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّهُ عَلَى أَنَّهُ لَمْ يَكُنْ يَتَبَيَّنُ لَهُمْ الْفَجْرُ بَعْدُ، فَبِهَذَا تَتَّفِقُ السُّنَنُ مَعَ الْقُرْآنِ؟ وَرُوِّينَا مِنْ طَرِيقِ مَعْمَرٍ عَنْ أَبَانَ عَنْ أَنَسٍ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ أَنَّهُ قَالَ: إذَا نَظَرَ الرَّجُلَانِ إلَى الْفَجْرِ فَشَكَّ أَحَدُهُمَا فَلْيَأْكُلَا حَتَّى يَتَبَيَّنَ لَهُمَا.

وَمِنْ طَرِيقِ أَبِي أَحْمَدَ الزُّبَيْرِيِّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ هِلَالِ بْنِ يَسَافٍ عَنْ سَالِمِ بْنِ عُبَيْدٍ قَالَ: كَانَ أَبُو بَكْرٍ الصِّدِّيقِ يَقُولُ لِي: قُمْ بَيْنِي وَبَيْنَ الْفَجْرِ حَتَّى تَسَحَّرَ؟ وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ جَرِيرِ بْنِ عَبْدِ الْحَمِيدِ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ هِلَالِ بْنِ يَسَافٍ عَنْ سَالِمِ بْنِ عُبَيْدٍ الْأَشْجَعِيِّ قَالَ: قُمْ فَاسْتُرْنِي مِنْ الْفَجْرِ، ثُمَّ أَكَلَ. سَالِمُ بْنُ عُبَيْدٍ هَذَا أَشْجَعِيٌّ كُوفِيٌّ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ

him. This is the most authentic path possible. We have been narrated from the paths of Waki‘ and ‘Abd al-Razzaq. Waki‘ said: From Yunus ibn Abi Ishaq. From Abī al-Safar—Abd al-Razzāq said: from Maʿmar, from Ayyūb al-Sikhtiyānī, from Abī Qilābah—the latter two said together: Abū Bakr al-Ṣiddīq used to say, “Close the door securely until we partake of the pre-dawn meal.” *Al-ijāf*: meaning closing. From the chain of al-Ḥasan: that ʿUmar ibn al-Khaṭṭāb used to say, “If two men are uncertain about dawn, let them eat until they are certain.”

وَسَلَّمَ - وَهَذِهِ أَصَحُّ طَرِيقٍ يُمْكِنُ أَنْ تَكُونَ؟ وَقَدْ رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ وَعَبْدِ الرَّزَّاقِ، قَالَ وَكِيعٌ: عَنْ يُونُسَ بْنِ أَبِي إِسْحَاقَ عَنْ أَبِي السَّفَرِ، وَقَالَ عَبْدُ الرَّزَّاقِ: عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ، قَالَا جَمِيعًا: كَانَ أَبُو بَكْرٍ الصِّدِّيقِ يَقُولُ: أَجِيفُوا الْبَابَ حَتَّى نَتَسَحَّرَ الْإِيجَافُ: الْغَلْقُ وَمِنْ طَرِيقِ الْحَسَنِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَانَ يَقُولُ: إِذَا شَكَّ الرَّجُلَانِ فِي الْفَجْرِ فَلْيَأْكُلَا حَتَّى يَسْتَيْقِنَا.

L11976 And through the chain of Hammad ibn Salamah: Narrated to us Humaid from Abu Rafi‘ or another from Abu Hurairah, that he heard the call to prayer while the cup was in his hand, so he said: “Have I secured it by the Lord of the Kaaba!” And through the chain of Ibn Jurayj from Ata ibn Abi Rabah from Ibn Abbas, who said: “Allah has permitted drinking as long as you are uncertain,” meaning in the dawn.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ: ثنا حُمَيْدٌ عَنْ أَبِي رَافِعٍ أَوْ غَيْرِهِ عَنْ أَبِي هُرَيْرَةَ: أَنَّهُ سَمِعَ النِّدَاءَ وَالْإِنَاءُ عَلَى يَدِهِ فَقَالَ: أَحْرَزْتُهَا وَرَبِّ الْكَعْبَةِ؟ وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: أَحَلَّ اللَّهُ الشَّرَابَ مَا شَكَكْتَ، يَعْنِي فِي الْفَجْرِ.

L11977 And from Ikrimah, who said: Ibn Abbas said, “Give me a drink, boy.” The boy replied, “Is it morning?” I [Ikrimah] said, “No!” Ibn Abbas then declared, “By Allah’s life, is there any doubt? Give me a drink!” So the boy gave him a drink.

وَعَنْ عِكْرِمَةَ قَالَ: قَالَ ابْنُ عَبَّاسٍ: اسْقِنِي يَا غُلَامُ، قَالَ لَهُ: أَصْبَحْتَ، فَقُلْتُ: كَلَّا، فَقَالَ ابْنُ عَبَّاسٍ: شَكٌّ لَعَمْرُ اللَّهِ، اسْقِنِي؟ فَشَرِبَ.

L11978 From Waki‘, from ‘Umarah ibn Zadhan, from Makhul al-Azdi, who said: I saw Ibn ‘Umar take a bucket from Zamzam and ask two men: “Has dawn appeared?” One replied: “It has appeared,” while the other said: “No.” Then Ibn ‘Umar drank. From Sa‘d ibn Abi Waqqas: He ate the pre-dawn meal in Ramadan in Kufa, then went to the mosque, and the prayer was established.

وَعَنْ وَكِيعٍ عَنْ عُمَارَةَ بْنِ زَاذَانَ عَنْ مَكْحُولٍ الْأَزْدِيِّ قَالَ: رَأَيْتُ ابْنَ عُمَرَ أَخَذَ دَلْوًا مِنْ زَمْزَمَ وَقَالَ لِرَجُلَيْنِ: أَطَلَعَ الْفَجْرُ؟ قَالَ أَحَدُهُمَا: قَدْ طَلَعَ، وَقَالَ الْآخَرُ: لَا، فَشَرِبَ ابْنُ عُمَرَ. وَعَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ: أَنَّهُ تَسَحَّرَ فِي رَمَضَانَ بِالْكُوفَةِ ثُمَّ خَرَجَ إِلَى الْمَسْجِدِ فَأُقِيمَتْ الصَّلَاةُ.

L11979–11981 From Sufyan ibn ‘Uyaynah, from Shu‘ayb ibn Gharqadah, from Hibban ibn al-Harith: That he partook of suhoor with Ali ibn Abi Talib while they both intended to fast. When he finished, Ali said to the mu’adhdhin: “Establish the prayer.” From the chain of Ibn Abi Shaybah: Narrated to us by Jarir (he is Ibn ‘Abd al-Hamid) from Mansur ibn al-Mu‘tamir, from Shabib ibn Gharqadah, from Abu ‘Aqil, who said: “I partook of suhoor with Ali ibn Abi Talib, then he ordered the mu’adhdhin to establish the prayer.” From another chain of

وَعَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ شُعَيْبِ بْنِ غَرْقَدَةَ عَنْ حِبَّانَ بْنِ الْحَارِثِ: أَنَّهُ تَسَحَّرَ مَعَ عَلِيِّ بْنِ أَبِي طَالِبٍ وَهُمَا يُرِيدَانِ الصِّيَامَ، فَلَمَّا فَرَغَ قَالَ لِلْمُؤَذِّنِ: أَقِمْ الصَّلَاةَ وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ ثنا جَرِيرٌ هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ شَبِيبِ بْنِ غَرْقَدَةَ عَنْ أَبِي عَقِيلٍ قَالَ: تَسَحَّرْتُ مَعَ عَلِيِّ بْنِ أَبِي طَالِبٍ ثُمَّ أَمَرَ الْمُؤَذِّنَ أَنْ يُقِيمَ الصَّلَاةَ.

Ibn Abi Shaybah: Narrated to us by Abu Mu'awiyah, from al-Shaybani (he is Abū Isḥāq) from... Jabalah ibn Suhaym reported from Amir ibn Matar, who said: I came to Abdullah ibn Mas'ud in his home, and he brought out leftover suhoor for us, so we ate the pre-dawn meal with him. Then the call to prayer (iqamah) was proclaimed, so we went out and prayed with him. A similar account is narrated through Hudhayfah's chain of narration.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: ثنا أَبُو مُعَاوِيَةَ عَنْ الشَّيْبَانِيِّ هُوَ أَبُو إِسْحَاقَ - عَنْ جَبَلَةَ بْنِ سُحَيْمٍ عَنْ عَامِرِ بْنِ مَطَرٍ قَالَ: أَتَيْت عَبْدَ اللَّهِ بْنَ مَسْعُودٍ فِي دَارِهِ، فَأَخْرَجَ لَنَا فَضْلَ سُحُورٍ، فَتَسَحَّرْنَا مَعَهُ، فَأُقِيمَتْ الصَّلَاةُ، فَخَرَجْنَا فَصَلَّيْنَا مَعَهُ. وَمِنْ طَرِيقِ حُذَيْفَةَ نَحْوُ هَذَا.

L11982–11984 And via the chain of Ibn Abi Shaybah: Affān ibn Muslim narrated to us, Shu'bah narrated to us from Khubayb ibn 'Abd al-Raḥmān, who said: I heard my aunt—who had performed *ḥajj* with the Messenger of Allah, peace and blessings be upon him and his family—say: "The Messenger of Allah, peace and blessings be upon him and his family, would say: 'Indeed, Ibn Umm Maktum calls out at night, so eat and drink until Bilāl gives the *adhān*. And Bilāl gives the *adhān* at night, so eat and drink until Ibn Umm Maktum gives the *adhān*.'" She added: "One would ascend while the other would descend. We would cling to him and say: 'Stay as you are until we take the pre-dawn meal!'" From this report, we derive that they were two *mu'adhdhins*: one of them would call shortly before dawn—whichever of the two they were, sometimes this one and sometimes that one—and the other necessarily after dawn. From Muḥammad ibn 'Alī ibn al-Ḥusayn: "Eat until the dawn becomes distinctly clear to you." From al-Ḥasan: "Eat as long as you are uncertain." From Abī Mijlaz: "The spreading light: that is the false dawn, but when the dawn spreads across the horizon..." From Ibrāhīm al-Nakha'ī: "The horizontally spreading red light permits prayer and prohibits food." From Ibn Jurayj: I asked 'Aṭā': "Do you disapprove of me drinking while in my house, uncertain whether dawn has broken?" He replied: "There is no harm in that—it is merely doubt." And via the chain of Ibn Abi Shaybah: Abū Mu'āwiyah narrated to us from al-A'mash from Muslim, who said: "They were not..." They considered the dawn as your dawn, but they actually counted as dawn that which fills houses and roads. From Abū Wā'il: He ate the pre-dawn meal and went to the mosque, where the prayer had commenced. From Ma'mar: He would delay the pre-dawn meal extensively, to the point that an uninformed person might say, "He has no fast." ʿAlī said: We have already mentioned in the chapter "One who

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: ثنا عَفَّانُ بْنُ مُسْلِمٍ ثنا شُعْبَةُ «عَنْ خُبَيْبِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: سَمِعْتُ عَمَّتِي - وَكَانَتْ قَدْ حَجَّتْ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَتْ: كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ: إنَّ ابْنَ أُمِّ مَكْتُومٍ يُنَادِي بِلَيْلٍ، فَكُلُوا وَاشْرَبُوا حَتَّى يُنَادِيَ بِلَالٌ، وَإِنَّ بِلَالًا يُؤَذِّنُ بِلَيْلٍ فَكُلُوا وَاشْرَبُوا حَتَّى يُؤَذِّنَ ابْنُ أُمِّ مَكْتُومٍ، قَالَتْ: وَكَانَ يَصْعَدُ هَذَا وَيَنْزِلُ هَذَا قَالَتْ: فَكُنَّا نَتَعَلَّقُ بِهِ فَنَقُولُ: كَمَا أَنْتَ حَتَّى نَتَسَحَّرَ» . فَحَصَلَ لَنَا مِنْ هَذَا الْخَبَرِ أَنَّهُمَا كَانَا مُؤَذِّنَيْنِ: أَحَدُهُمَا قَبْلَ الْفَجْرِ بِيَسِيرٍ، أَيَّهُمَا كَانَا -: حِينًا هَذَا وَحِينًا هَذَا - وَالْآخَرُ وَلَا بُدَّ بَعْدَ الْفَجْرِ. وَعَنْ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ: كُلْ حَتَّى يَتَبَيَّنَ لَكَ الْفَجْرُ. وَعَنْ الْحَسَنِ: كُلْ مَا امْتَرَيْت. وَعَنْ أَبِي مِجْلَزٍ: السَّاطِعُ: ذَلِكَ الصُّبْحُ الْكَاذِبُ، وَلَكِنْ إذَا انْفَضَحَ الصُّبْحُ فِي الْأُفُقِ. وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ: الْمُعْتَرِضُ الْأَحْمَرُ يُحِلُّ الصَّلَاةَ وَيُحَرِّمُ الطَّعَامَ. وَعَنْ ابْنِ جُرَيْجٍ: قُلْت لِعَطَاءٍ: أَتَكْرَهُ أَنْ أَشْرَبَ وَأَنَا فِي الْبَيْتِ لَا أَدْرِي لَعَلَّ قَدْ أَصْبَحْت؟ قَالَ: لَا بَأْسَ بِذَلِكَ، هُوَ شَكٌّ؟ وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: ثنا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ مُسْلِمٍ قَالَ: لَمْ يَكُونُوا يَعُدُّونَ الْفَجْرَ فَجْرَكُمْ، إنَّمَا كَانُوا يَعُدُّونَ الْفَجْرَ الَّذِي يَمْلَأُ الْبُيُوتَ وَالطُّرُقَ. وَعَنْ أَبِي وَائِلٍ: أَنَّهُ تَسَحَّرَ وَخَرَجَ إلَى الْمَسْجِدِ فَأُقِيمَتْ الصَّلَاةُ وَعَنْ مَعْمَرٍ: أَنَّهُ كَانَ يُؤَخِّرُ السُّحُورَ جِدًّا، حَتَّى يَقُولَ الْجَاهِلُ: لَا صَوْمَ لَهُ؟ قَالَ عَلِيٌّ: وَقَدْ ذَكَرْنَا فِي

eats the pre-dawn meal thinking it is night while it is daytime" those who did not require making up the fast in such a case. These are: Abū Bakr, ʿUmar, ʿAlī, Ibn ʿUmar, Ibn ʿAbbās, Abū Hurayrah, Ibn Masʿūd, Ḥudhayfah, his uncle Khubayb, Zayd ibn Thābit, and Saʿd ibn Abī Waqqāṣ—eleven Companions, with no opponent known among the Companions (may Allah be pleased with them), except for a weak narration via Makḥūl from Abū Saʿīd al-Khudrī—whom Makḥūl never met—and another via Yaḥyā al-Jazzār from Ibn Masʿūd—whom Yaḥyā never met. Among the Successors: Muḥammad ibn ʿAlī, Abū Mijlaz, Ibrāhīm, Muslim, the companions of Ibn Masʿūd, ʿAṭāʾ, al-Ḥasan, al-Ḥakam ibn ʿUtaybah, Mujāhid, ʿUrwah ibn al-Zubayr, and Jābir ibn Zayd. Among the jurists: Maʿmar and al-Aʿmash. If they cite the report of Saʿīd ibn Qaṭn from his father from Muʿāwiyah regarding one who breaks the fast thinking it is night, only for the sun to rise—requiring him to make it up—along with a similar report from ʿUmar, this pertains specifically to breaking the fast at night, not to eating while uncertain about dawn. There is a distinction between the two matters. Eating is only permissible after being certain that the sun has set, for Allah the Exalted said: {Then complete the fast until the night} [Al-Baqarah: 187]. Thus, whoever eats while uncertain whether night has arrived has disobeyed Allah, invalidated his fast, and if he engaged in intercourse, he must atone—because he was still bound by the obligation to fast until he was certain night had arrived. This differs from His saying: {until the white thread becomes distinct to you} [Al-Baqarah: 187], which concerns the obligation to cease eating only after certainty of daytime. And with Allah lies all success.[41]

L11985 **A question regarding someone for whom it becomes certain that the crescent moon was sighted the previous night at the end of Shaʿbān.**

L11986–11988 Issue 757: Whoever confirms through a trustworthy report - whether from

[41] **Qur'an references (L11982):** Qur'an 2:187 (Al-Baqarah).

بَابِ " مَنْ تَسَحَّرَ فَإِذَا بِهِ نَهَارٌ وَهُوَ يَظُنُّ أَنَّهُ لَيْلٌ " مَنْ لَمْ يَرَ فِي ذَلِكَ قَضَاءً. فَهَؤُلَاءِ: أَبُو بَكْرٍ، وَعُمَرُ، وَعَلِيٌّ، وَابْنُ عُمَرَ، وَابْنُ عَبَّاسٍ، وَأَبُو هُرَيْرَةَ، وَابْنُ مَسْعُودٍ، وَحُذَيْفَةُ، وَعَمُّهُ خُبَيْبٌ، وَزَيْدُ بْنُ ثَابِتٍ، وَسَعْدُ بْنُ أَبِي وَقَّاصٍ، فَهُمْ أَحَدَ عَشَرَ مِنْ الصَّحَابَةِ، لَا يُعْرَفُ لَهُمْ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -. إلَّا رِوَايَةً ضَعِيفَةً مِنْ طَرِيقِ مَكْحُولٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ وَلَمْ يُدْرِكْهُ؛ وَمِنْ طَرِيقِ يَحْيَى الْجَزَّارِ عَنْ ابْنِ مَسْعُودٍ وَلَمْ يُدْرِكْهُ. وَمِنْ التَّابِعِينَ: مُحَمَّدُ بْنُ عَلِيٍّ، وَأَبُو مِجْلَزٍ، وَإِبْرَاهِيمُ، وَمُسْلِمٌ، وَأَصْحَابُ ابْنِ مَسْعُودٍ، وَعَطَاءٌ، وَالْحَسَنُ، وَالْحَكَمُ بْنُ عُتَيْبَةَ، وَمُجَاهِدٌ، وَعُرْوَةُ بْنُ الزُّبَيْرِ، وَجَابِرُ بْنُ زَيْدٍ. وَمِنْ الْفُقَهَاءِ: مَعْمَرٌ، وَالْأَعْمَشُ. فَإِنْ ذَكَرُوا رِوَايَةَ سَعِيدِ بْنِ قَطَنٍ عَنْ أَبِيهِ عَنْ مُعَاوِيَةَ فِيمَنْ أَفْطَرَ وَهُوَ يَرَى أَنَّهُ لَيْلٌ فَطَلَعَتْ الشَّمْسُ: أَنَّ عَلَيْهِ الْقَضَاءَ، وَبِالرِّوَايَةِ عَنْ عُمَرَ بِمِثْلِ ذَلِكَ -: فَإِنَّمَا هَذَا فِي الْإِفْطَارِ عِنْدَ اللَّيْلِ، لَا فِي الْأَكْلِ شَاكًّا فِي الْفَجْرِ، وَبَيْنَ الْأَمْرَيْنِ فَرْقٌ، وَلَا يَحِلُّ الْأَكْلُ إلَّا بَعْدَ يَقِينِ غُرُوبِ الشَّمْسِ، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {إلَى اللَّيْلِ} [البقرة: ١٨٧] فَمَنْ أَكَلَ شَاكًّا فِي مَجِيءِ اللَّيْلِ فَقَدْ عَصَى اللَّهَ تَعَالَى، وَصِيَامُهُ بَاطِلٌ، فَإِنْ جَامَعَ فَعَلَيْهِ الْكَفَّارَةُ، لِأَنَّهُ فِي فَرْضِ الصِّيَامِ، مَا لَمْ يُوقِنْ اللَّيْلَ، بِخِلَافِ قَوْلِهِ: {حَتَّى يَتَبَيَّنَ لَكُمُ الْخَيْطُ الْأَبْيَضُ} [البقرة: ١٨٧] لِأَنَّ هَذَا فِي فَرْضِ الْإِفْطَارِ حَتَّى يُوقِنَ بِالنَّهَارِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَنْ صَحَّ عِنْدَهُ أَنَّ الْهِلَالَ قَدْ رُئِيَ الْبَارِحَةَ فِي آخِرِ شَعْبَانَ]

٧٥٧ - مَسْأَلَةٌ: وَمَنْ صَحَّ عِنْدَهُ بِخَبَرِ مَنْ يُصَدِّقُهُ - مِنْ رَجُلٍ وَاحِدٍ، أَوْ امْرَأَةٍ وَاحِدَةٍ: عَبْدٍ، أَوْ حُرٍّ، أَوْ أَمَةٍ، أَوْ حُرَّةٍ، فَصَاعِدًا - أَنَّ الْهِلَالَ قَدْ رُئِيَ الْبَارِحَةَ فِي آخِرِ شَعْبَانَ

a single man, woman, male slave, free man, female slave, free woman, and so forth - that the crescent moon was sighted last night at the end of Sha'bān, fasting is made obligatory upon him. He must fast whether the people fasted or did not fast. Similarly, if he himself sights it alone, he must fast. Likewise, if he confirms through the report of even one person (as mentioned previously) and so forth that the crescent moon of Shawwāl has been sighted, he must break his fast. The people either fasted or broke their fast; likewise, if he alone sights it. If he fears harm in that matter, let him conceal himself by that: Abdullah ibn Yusuf → Ahmad ibn Fath → Abd al-Wahhab ibn Isa → Ahmad ibn Muhammad → Ahmad ibn Ali → Muslim ibn al-Hajjaj → Yahya ibn Yahya reported: I recited to Malik, from Nafi, from Ibn Umar, from the Prophet—peace be upon him and his family—who mentioned Ramadan and said: "Do not fast until you see the new moon; do not break your fast until you see it. If clouds obscure it from you, then estimate it."[42]

فَفُرِضَ عَلَيْهِ الصَّوْمُ، صَامَ النَّاسُ أَوْ لَمْ يَصُومُوا، وَكَذَلِكَ لَوْ رَآهُ هُوَ وَحْدَهُ، وَلَوْ صَحَّ عِنْدَهُ بِخَبَرِ وَاحِدٍ أَيْضًا - كَمَا ذَكَرْنَا - فَصَاعِدًا: أَنَّ هِلَالَ شَوَّالٍ قَدْ رُئِيَ فَلْيُفْطِرْ، أَفْطَرَ النَّاسُ أَوْ صَامُوا، وَكَذَلِكَ لَوْ رَآهُ هُوَ وَحْدَهُ، فَإِنْ خَشِيَ فِي ذَلِكَ أَذًى فَلْيَسْتَتِرْ بِذَلِكَ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدُ بْنُ فَتْحٍ ثنا عَبْدُ الْوَهَّابِ بْنُ عِيسَى ثنا أَحْمَدُ بْنُ مُحَمَّدٍ ثنا أَحْمَدُ بْنُ عَلِيٍّ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا يَحْيَى بْنُ يَحْيَى: قَرَأْتُ عَلَى مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: أَنَّهُ ذَكَرَ رَمَضَانَ فَقَالَ: لَا تَصُومُوا حَتَّى تَرَوْا الْهِلَالَ، وَلَا تُفْطِرُوا حَتَّى تَرَوْهُ، فَإِنْ غُمَّ عَلَيْكُمْ فَاقْدُرُوا لَهُ» .

L11989 And through him to Muslim: Ibn al-Muthannā narrated to us, Muḥammad ibn Ja'far narrated to us, Shu'bah narrated to us from 'Amr ibn Murrah, who said, "I heard Abū al-Bakhtarī from Ibn 'Abbās that the Messenger of Allāh—peace and blessings of Allāh be upon him and his family—said: 'If the moon is obscured from you, then complete the count.'" People differed regarding accepting the solitary report in that matter. Abū Ḥanīfah and al-Shāfi'ī held the same view as ours concerning the crescent of Ramaḍān, but they did not permit except two just men for the crescent of Shawwāl. Abū Muḥammad said: "This is a clear contradiction." Mālik said: "I do not accept in either of them except two just men." Abū Muḥammad said: "As for those who differentiated between the two crescents, we know of no proof for their position. As for Mālik's statement, they applied analogy to other rulings." Abū Muḥammad said: "All analogy is invalid. Even if it were valid, this instance of it would still be invalid, because legal rights differ. Among them, according to the Mālikīs, are cases validated by one witness and an oath, cases requiring only two men or one man and two women, cases requiring only two men, and cases requiring only four."

وَبِهِ إلَى مُسْلِمٍ: ثنا ابْنُ الْمُثَنَّى ثنا مُحَمَّدُ بْنُ جَعْفَرٍ ثنا شُعْبَةُ عَنْ عَمْرِو بْنِ مُرَّةَ قَالَ سَمِعْت أَبَا الْبَخْتَرِيِّ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: فَإِنْ غُمَّ عَلَيْكُمْ فَأَكْمِلُوا الْعِدَّةَ» . وَاخْتَلَفَ النَّاسُ فِي قَبُولِ خَبَرِ الْوَاحِدِ فِي ذَلِكَ -: فَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ بِمِثْلِ قَوْلِنَا فِي هِلَالِ رَمَضَانَ، وَلَمْ يُجِيزُوا فِي هِلَالِ شَوَّالٍ إلَّا رَجُلَيْنِ عَدْلَيْنِ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَنَاقُضٌ ظَاهِرٌ. وَقَالَ مَالِكٌ: لَا أَقْبَلُ فِي كِلَيْهِمَا إلَّا رَجُلَيْنِ عَدْلَيْنِ. قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ فَرَّقَ بَيْنَ الْهِلَالَيْنِ فَمَا نَعْلَمُ لَهُمْ حُجَّةً. وَأَمَّا قَوْلُ مَالِكٍ فَإِنَّهُمْ قَاسُوهُ عَلَى سَائِرِ الْأَحْكَامِ. قَالَ أَبُو مُحَمَّدٍ: وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّ الْحُقُوقَ تَخْتَلِفُ -: فَمِنْهَا عِنْدَ الْمَالِكِيِّينَ مَا يُقْبَلُ فِيهَا شَاهِدٌ وَيَمِينٌ، وَمِنْهَا مَا لَا يُقْبَلُ فِيهِ إلَّا رَجُلَانِ، أَوْ رَجُلٌ وَامْرَأَتَانِ. وَمِنْهَا مَا لَا يُقْبَلُ فِيهِ إلَّا رَجُلَانِ فَقَطْ. وَمِنْهَا مَا لَا يُقْبَلُ فِيهِ إلَّا أَرْبَعَةٌ.

[42] **Hadith references (L11986):** Sahih al-Bukhari 1906; Sunan an-Nasai 2121; Mishkat al-Masabih 1969.

L11990–11993 Among these are matters where permission is granted even if a Christian or a sinner testifies, such as defects in medicine. So how can they restrict some of these rulings over others through analogy to testimony concerning the crescent moon? We ask them about a village containing only sinners, Christians, or women, yet among them is a just person whose eyesight is too weak to observe the crescent. Abu Muhammad said: As for us, the report of the entire community is accepted in this matter, even if they are disbelievers or sinners, because it necessarily establishes knowledge. If they say: "People have unanimously agreed to accept two just witnesses for this," we reply: No – rather Judge Abu Yusuf states: "If the sky is clear, I do not accept fewer than fifty witnesses for sighting the crescent." If they say: "His statement is invalid," we respond: Indeed, and your analogy is even weaker. If they ask: "How do you permit a solitary report in both matters?" We answer: Because it pertains to religion, and accepting individual reports is established in religious matters. Thus it is accepted universally except where Allah explicitly requires a specified number. Moreover, we previously cited the Messenger of Allah's saying – peace be upon him and his family – regarding Bilal's Adhan: "Eat and drink until Ibn Umm Maktum gives the Adhan." He – peace be upon him – commanded fasting based on Ibn Umm Maktum's dawn Adhan, which constitutes a solitary report confirming the appearance of dawn.

Narrated by Abdullah ibn Rabi' via Umar ibn Abdul Malik via Muhammad ibn Bakr via Abu Dawud via Abdullah ibn Abdul Rahman Al-Samarqandi via Marwan ibn Muhammad from Abdullah ibn Wahb from Yahya ibn Abdullah ibn Salim from Abu Bakr ibn Nafi' from his father Nafi' – freed slave of Ibn Umar – from Ibn Umar, who said: "People sought the crescent. I informed Allah's Messenger – peace be upon him and his family – that I had seen it, so he fasted and ordered them to fast that day." This is an authentic report. We also narrate through Abu Dawud's chain: Al-Hasan ibn Ali via Husayn Al-Ju'fi from... Zā'idah reported from Simāk from 'Ikrimah from Ibn 'Abbās, who said: "A Bedouin came to the Messenger of Allah—peace and blessings be upon him and his family—and said: 'I saw the crescent,' meaning Ramadan. He asked: 'Do you testify that there is no deity but Allah?' The man said: 'Yes.'

وَمِنْهَا مَا يُسْمَحُ فِيهِ حَتَّى يُجِيزُوا فِيهِ النَّصْرَانِيَّ وَالْفَاسِقَ، كَالْعُيُوبِ فِي الطِّبِّ، فَمِنْ أَيْنَ لَهُمْ أَنْ يَخُصُّوا بَعْضَ هَذِهِ الْحُقُوقِ دُونَ بَعْضٍ بِقِيَاسِ الشَّهَادَةِ فِي الْهِلَالِ عَلَيْهِ. وَنَسْأَلُهُمْ عَنْ قَرْيَةٍ لَيْسَ فِيهَا إِلَّا فُسَّاقٌ، أَوْ نَصَارَى، أَوْ نِسَاءٌ وَفِيهِمْ عَدْلٌ يَضْعُفُ بَصَرُهُ عَنْ رُؤْيَةِ الْهِلَالِ؟ قَالَ أَبُو مُحَمَّد: فَأَمَّا نَحْنُ فَخَبَرُ الْكَافَّةِ مَقْبُولٌ فِي ذَلِكَ، وَإِنْ كَانُوا كُفَّارًا أَوْ فُسَّاقًا، لِأَنَّهُ يُوجِبُ الْعِلْمَ ضَرُورَةً. فَإِنْ قَالُوا: قَدْ أَجْمَعَ النَّاسُ عَلَى قَبُولِ عَدْلَيْنِ فِي ذَلِكَ؟ قُلْنَا: لَا، بَلْ أَبُو يُوسُفَ الْقَاضِي يَقُولُ: إِنْ كَانَ الْجَوُّ صَافِيًا لَمْ أَقْبَلْ فِي رُؤْيَةِ الْهِلَالِ أَقَلَّ مِنْ خَمْسِينَ. فَإِنْ قَالُوا: كَلَامُهُ سَاقِطٌ؟ قُلْنَا: نَعَمْ، وَقِيَاسُكُمْ أَسْقَطُ. فَإِنْ قَالُوا: فَمِنْ أَيْنَ أَجَزْتُمْ فِيهِمَا خَبَرَ الْوَاحِدِ؟ قُلْنَا: لِأَنَّهُ مِنْ الدِّينِ، وَقَدْ صَحَّ فِي الدِّينِ قَبُولُ خَبَرِ الْوَاحِدِ، فَهُوَ مَقْبُولٌ فِي كُلِّ مَكَانٍ، إِلَّا حَيْثُ أَمَرَ اللَّهُ تَعَالَى بِأَنْ لَا يُقْبَلَ إِلَّا عَدَدٌ سَمَّاهُ لَنَا. وَأَيْضًا: فَقَدْ ذَكَرْنَا قَبْلَ هَذَا قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي أَذَانِ بِلَالٍ «كُلُوا وَاشْرَبُوا حَتَّى يُؤَذِّنَ ابْنُ أُمِّ مَكْتُومٍ» فَأَمَرَ - عَلَيْهِ السَّلَامُ - بِالْتِزَامِ الصِّيَامِ بِأَذَانِ ابْنِ أُمِّ مَكْتُومٍ بِالصُّبْحِ، وَهُوَ خَبَرٌ وَاحِدٌ بِأَنَّ الْفَجْرَ قَدْ تَبَيَّنَ. وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ثنا مُحَمَّدُ بْنُ بَكْرٍ ثنا أَبُو دَاوُد ثنا عَبْدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ السَّمَرْقَنْدِيُّ ثنا مَرْوَانُ بْنُ مُحَمَّدٍ عَنْ عَبْدِ اللَّهِ بْنِ وَهْبٍ عَنْ يَحْيَى بْنِ عَبْدِ اللَّهِ بْنِ سَالِمٍ عَنْ أَبِي بَكْرِ بْنِ نَافِعٍ عَنْ أَبِيهِ نَافِعٍ مَوْلَى ابْنِ عُمَرَ «عَنْ ابْنِ عُمَرَ قَالَ: تَرَاءَى النَّاسُ الْهِلَالَ، فَأَخْبَرْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنِّي رَأَيْتُهُ، فَصَامَ وَأَمَرَ النَّاسَ بِصِيَامِهِ» . وَهَذَا خَبَرٌ صَحِيحٌ. وَقَدْ رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد: ثنا الْحَسَنُ بْنُ عَلِيٍّ ثنا حُسَيْنٌ هُوَ الْجُعْفِيُّ - عَنْ زَائِدَةَ عَنْ سِمَاكٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: «جَاءَ أَعْرَابِيٌّ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ، إِنِّي رَأَيْتُ

He asked: 'Do you testify that Muḥammad is the Messenger of Allah?' The man said: 'Yes.' He then said: 'Stand up, O Bilāl, and announce to the people that they should fast tomorrow.'" Abū Muḥammad said: "We neither rely on Simāk's narration nor accept it from them, yet they have cited it as proof for exchanging dinars for dirhams. Thus, they must apply it here as well; otherwise, are they not trifling with the religion? If those who distinguish between the crescent of Ramadan and Shawwāl cling to these two reports, arguing that this applies only to Ramadan's crescent, we say: 'No text has ever prohibited this for Ramadan's crescent, and you are proponents of qiyas. Why not analogize Shawwāl's crescent to Ramadan's?' If they reply: 'The Ramadan witness gains no personal benefit, whereas the Shawwāl witness does,' we counter: 'Then reject the testimony of two witnesses in Shawwāl for the same doubt—since both seek personal benefit—as you do in other legal rights.' Moreover, one who lies in such matters cares not whether their testimony is accepted. We ask them: 'If you fast based on a single witness's testimony and the crescent remains obscured after thirty days, do you fast the thirty-first? This is a calamity—a ruling not from Allah's religion! Or do you break the fast after thirty days without sighting the crescent? Then you have broken it based on a single witness's testimony, contradicting yourselves!' And success is from Allah, the Exalted."

الْهِلَالَ - يَعْنِي رَمَضَانَ فَقَالَ: أَتَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ؟ قَالَ: نَعَمْ، قَالَ، أَتَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ؟ قَالَ: نَعَمْ، قَالَ: قُمْ يَا بِلَالُ فَأَذِّنْ فِي النَّاسِ فَلْيَصُومُوا غَدًا» . قَالَ أَبُو مُحَمَّد: رِوَايَةُ سِمَاكٍ لَا نَحْتَجُّ بِهَا وَلَا نَقْبَلُهَا مِنْهُمْ، وَهُمْ قَدْ احْتَجُّوا بِهَا فِي أَخْذِ الدَّنَانِيرِ مِنْ الدَّرَاهِمِ، فَيَلْزَمُهُمْ أَنْ يَأْخُذُوهَا هَاهُنَا، وَإِلَّا فَهُمْ مُتَلَاعِبُونَ فِي الدِّينِ؟ فَإِنْ تَعَلَّقَ مَنْ فَرَّقَ بَيْنَ هِلَالِ رَمَضَانَ وَهِلَالِ شَوَّالٍ بِهَذَيْنِ الْخَبَرَيْنِ، وَقَالَ: لَمْ يَرِدْ إلَّا فِي هِلَالِ رَمَضَانَ؟ قُلْنَا: وَلَا جَاءَ نَصٌّ قَطُّ بِالْمَنْعِ مِنْ ذَلِكَ فِي هِلَالِ رَمَضَانَ، وَأَنْتُمْ أَصْحَابُ قِيَاسٍ، فَهَلَّا قِسْتُمْ هِلَالَ شَوَّالٍ عَلَى هِلَالِ رَمَضَانَ؟ فَإِنْ قَالُوا: إنَّ الشَّاهِدَ فِي هِلَالِ رَمَضَانَ لَا يَجُرُّ إلَى نَفْسِهِ، وَالشَّاهِدُ فِي هِلَالِ شَوَّالٍ يَجُرُّ إلَى نَفْسِهِ؟ قُلْنَا: فَرَدُّوا بِهَذَا الظَّنِّ بِعَيْنِهِ شَهَادَةَ الشَّاهِدَيْنِ فِي شَوَّالٍ أَيْضًا، لِأَنَّهُمَا يَجُرَّانِ إلَى أَنْفُسِهِمَا، كَمَا تَفْعَلُونَ فِي سَائِرِ الْحُقُوقِ. وَأَيْضًا: فَإِنَّ مَنْ يَكْذِبُ فِي مِثْلِ هَذَا لَا يُبَالِي قُبِلَ أَوْ رُدَّ؟ وَنَقُولُ لَهُمْ: إذَا صُمْتُمْ بِشَهَادَةِ وَاحِدٍ، فَغُمَّ الْهِلَالُ بَعْدَ الثَّلَاثِينَ، أَتَصُومُونَ أَحَدًا وَثَلَاثِينَ؟ فَهَذِهِ طَامَّةٌ، وَشَرِيعَةٌ لَيْسَتْ مِنْ دِينِ اللَّهِ تَعَالَى أَمْ تُفْطِرُونَ عِنْدَ تَمَامِ الثَّلَاثِينَ وَإِنْ لَمْ تَرَوْا الْهِلَالَ؟ فَقَدْ أَفْطَرْتُمْ بِشَهَادَةِ وَاحِدٍ وَتَنَاقَضْتُمْ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L11994 Abu Muhammad said: If they object by citing what we narrated through the chain of Abbad ibn al-Awwam—Abu Malik al-Ashja'i narrated to us, Husayn ibn al-Harith al-Jadali (of Jadīlah clan of Qays) narrated to us—that the commander of Mecca, al-Harith ibn Hatib, delivered a sermon and said: "The Messenger of Allah—may Allah's blessings and peace be upon him and his family—instructed us to observe the rites [of Ramadan] upon sighting the crescent. If we do not sight it and two just witnesses testify, we observe the rites based on their testimony."

قَالَ أَبُو مُحَمَّد: فَإِنْ شَغَبُوا بِمَا رُوِّينَا مِنْ طَرِيقِ عَبَّادِ بْنِ الْعَوَّامِ: ثنا أَبُو مَالِكٍ الْأَشْجَعِيُّ ثنا حُسَيْنُ بْنُ الْحَارِثِ الْجَدَلِيُّ - جَدِيلَةُ قَيْسٍ: «أَنَّ أَمِيرَ مَكَّةَ وَهُوَ الْحَارِثُ بْنُ حَاطِبٍ خَطَبَ فَقَالَ: عَهِدَ إلَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنْ نَنْسُكَ لِرُؤْيَتِهِ، فَإِنْ لَمْ نَرَهُ وَشَهِدَ شَاهِدَا عَدْلٍ نَسَكْنَا بِشَهَادَتِهِمَا» .

L11995–11996 And according to what was narrated to us through the chain of Abū ʿUthmān al-Nahdī, who said: "Two Bedouins came to the Messenger of Allah (may

Allah bless him and his family and grant him peace), and the Messenger of Allah (may Allah bless him and his family and grant him peace) asked: 'Are you two Muslims?' They replied: 'Yes.' He then commanded the people [regarding fasting], so they either broke their fast or continued fasting."

وَبِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُثْمَانَ النَّهْدِيِّ قَالَ: «قَدِمَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَعْرَابِيَّانِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَمُسْلِمَانِ أَنْتُمَا؟ قَالَا: نَعَمْ فَأَمَرَ النَّاسَ فَأَفْطَرُوا أَوْ صَامُوا» .

L11997 From Al-Harith, on the authority of Ali: If two men bear witness to having seen the crescent moon, the people are to break their fast. From Amr ibn Dinar, who said that his father Uthman would accept the testimony of Hashim ibn Utbah or others regarding the sighting of the crescent moon.

وَعَنْ الْحَارِثِ عَنْ عَلِيٍّ: إذَا شَهِدَ رَجُلَانِ عَلَى رُؤْيَةِ الْهِلَالِ أَفْطَرُوا. وَعَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: أَبِي عُثْمَانُ أَنْ يُجِيزَ شَهَادَةَ هَاشِمِ بْنِ عُتْبَةَ أَوْ غَيْرِهِ عَلَى رُؤْيَةِ الْهِلَالِ.

L11998 From Abd al-Razzaq from Ma'mar from al-A'mash from Abu Wa'il, who said: Umar wrote to us while we were in Khanqīn: "If you see the crescent during daytime, do not break the fast until two men testify that they indeed saw it yesterday?" We said: As for the hadith of al-Harith ibn Hatib, its narrator is Husayn ibn al-Harith – an unknown figure. Even if authentic, it holds no proof, for it only mentions accepting two witnesses – which we do not dispute – but does it state that a single witness should not be accepted? Likewise, the hadith of Abu Uthman is mursal. The same applies equally to Ali's action. It is plausible that Uthman – may Allah be pleased with him – rejected Hashim ibn Utbah's testimony due to personal dissatisfaction, not his solitary status. Indeed, Hashim was among those who incited opposition against Uthman – may Allah be pleased with him. As for Umar's report: Authentic narrations contradict this, such as our transmission through Muhammad ibn Ja'far from Shu'bah from Abu Abd al-A'la al-Tha'labī from his father from Abd al-Rahman ibn Abi Layla from al-Bara' ibn Azib: Umar ibn al-Khattab once observed the crescent. When a man sighted it, Umar declared: "One Muslim suffices them all," then ordered them to end their fast or begin fasting. How could this be Umar's position when he was in the presence of the Companions?

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الْأَعْمَشِ عَنْ أَبِي وَائِلٍ قَالَ: كَتَبَ إلَيْنَا عُمَرُ - وَنَحْنُ بِخَانِقِينَ: إذَا رَأَيْتُمْ الْهِلَالَ نَهَارًا فَلَا تُفْطِرُوا حَتَّى يَشْهَدَ رَجُلَانِ: لَرَأَيَاهُ بِالْأَمْسِ.؟ قُلْنَا: أَمَّا حَدِيثُ الْحَارِثِ بْنِ حَاطِبٍ فَإِنَّ رَاوِيَهُ حُسَيْنُ بْنُ الْحَارِثِ وَهُوَ مَجْهُولٌ، ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ إلَّا قَبُولُهُ اثْنَيْنِ، وَنَحْنُ لَا نُنْكِرُ هَذَا، وَلَيْسَ فِيهِ أَنْ لَا يُقْبَلَ وَاحِدٌ؟ وَكَذَلِكَ حَدِيثُ أَبِي عُثْمَانَ، عَلَى أَنَّهُ مُرْسَلٌ. وَكَذَا الْقَوْلُ فِي فِعْلِ عَلِيٍّ سَوَاءٌ سَوَاءٌ. وَقَدْ يُمْكِنُ أَنْ يَكُونَ عُثْمَانُ - رَضِيَ اللَّهُ عَنْهُ - إنَّمَا رَدَّ شَهَادَةَ هَاشِمِ بْنِ عُتْبَةَ لِأَنَّهُ لَمْ يَرْضَهُ، لَا لِأَنَّهُ وَاحِدٌ، وَلَقَدْ كَانَ هَاشِمٌ أَحَدَ الْمُجَلِّبِينَ عَلَى عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ -. وَأَمَّا خَبَرُ عُمَرَ: فَقَدْ صَحَّ عَنْ عُمَرَ فِي هَذَا خِلَافُ ذَلِكَ، كَمَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ عَنْ شُعْبَةَ عَنْ أَبِي عَبْدِ الْأَعْلَى الثَّعْلَبِيِّ عَنْ أَبِيهِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ الْبَرَاءِ بْنِ عَازِبٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَانَ يَنْظُرُ إلَى الْهِلَالِ، فَرَآهُ رَجُلٌ، فَقَالَ عُمَرُ: يَكْفِي الْمُسْلِمِينَ أَحَدُهُمْ، فَأَمَرَهُمْ فَأَفْطَرُوا أَوْ صَامُوا - فَهَذَا عُمَرُ بِحَضْرَةِ الصَّحَابَةِ؟

L11999–12000 It has been narrated to us similarly from ʿAlī ibn Abī Ṭālib—may Allah be pleased with him—and this is the opinion of Abū Thawr. As for our view that fasting is based on one's sighting, we have received narrations from

ʿUmar contradicting this. He held that whoever sights the crescent alone at the beginning of Ramadan must not fast, and whoever sights it alone at the beginning of Shawwāl must not break the fast—and this is the opinion of al-Ḥasan. It has been narrated to us through the chain of Maʿmar from Abū Qilābah: Two men sighted the crescent while traveling and arrived in Medina the following forenoon, informing ʿUmar. He asked one, "Are you fasting?" The man replied, "Yes. I disliked that people would be fasting while I was not fasting; I disliked contradicting them." He asked the other, "And you?" The man replied, "I awoke not fasting, for I had sighted the crescent." ʿUmar told him, "Were it not for this one"—referring to the one who fasted—"we would have made your head hurt and rejected your testimony." He then ordered the people to break their fast. Through Ibn Jurayj's chain: I was informed from Muʿādh ibn ʿAbd al-Raḥmān al-Taymī that a man told ʿUmar, "I sighted the Ramadan crescent." ʿUmar asked, "Did anyone else see it with you?" He said, "No." ʿUmar asked, "What did you do?" He replied, "I fasted with the people." ʿUmar said, "Good for you." This is the view of ʿAṭāʾ. Abū Muḥammad remarked: Those who adhere to ʿUmar's position regarding their claims—such as rejecting "the buyer and seller retaining the right of retraction as long as they have not parted" and prohibiting marital relations during the waiting period—ought to follow him here as well.

وَقَدْ رُوِّينَا أَيْضًا: - عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - مِثْلَ هَذَا، وَبِهِ يَقُولُ أَبُو ثَوْرٍ. وَأَمَّا قَوْلُنَا: أَنَّهُ يُبْنَى عَلَى رُؤْيَتِهِ فَقَدْ رُوِّينَا عَنْ عُمَرَ خِلَافَ ذَلِكَ، وَهُوَ أَنَّ مَنْ رَآهُ وَحْدَهُ فِي اسْتِهْلَالِ رَمَضَانَ فَلَا يَصُمْ، وَمَنْ رَآهُ وَحْدَهُ فِي اسْتِهْلَالِ شَوَّالٍ فَلَا يُفْطِرُ - وَبِهِ يَقُولُ الْحَسَنُ -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ مَعْمَرٍ عَنْ أَبِي قِلَابَةَ: أَنَّ رَجُلَيْنِ رَأَيَا الْهِلَالَ فِي سَفَرٍ، فَقَدِمَا الْمَدِينَةَ ضُحَى الْغَدِ، فَأَخْبَرَا عُمَرَ، فَقَالَ لِأَحَدِهِمَا: أَصَائِمٌ أَنْتَ؟ قَالَ: نَعَمْ، كَرِهْت أَنْ يَكُونَ النَّاسُ صِيَامًا وَأَنَا مُفْطِرٌ، كَرِهْت الْخِلَافَ عَلَيْهِمْ، وَقَالَ لِلْآخَرِ: فَأَنْتَ؟ قَالَ: أَصْبَحْت مُفْطِرًا، لِأَنِّي رَأَيْت الْهِلَالَ، فَقَالَ لَهُ عُمَرُ: لَوْلَا هَذَا - يَعْنِي الَّذِي صَامَ - لَأَوْجَعْنَا رَأْسَكَ، وَرَدَدْنَا شَهَادَتَكَ، ثُمَّ أَمَرَ النَّاسَ فَأَفْطَرُوا. وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ: أُخْبِرْت عَنْ مُعَاذِ بْنِ عَبْدِ الرَّحْمَنِ التَّيْمِيِّ: أَنَّ رَجُلًا قَالَ لِعُمَرَ: إنِّي رَأَيْت هِلَالَ رَمَضَانَ، قَالَ: أَرَآهُ مَعَكَ أَحَدٌ؟ قَالَ: لَا قَالَ: فَكَيْف صَنَعْت؟ قَالَ: صُمْت بِصِيَامِ النَّاسِ، فَقَالَ عُمَرُ: يَا لَكَ فِيهَا. وَهُوَ قَوْلُ عَطَاءٍ: قَالَ أَبُو مُحَمَّدٍ: يَنْبَغِي لِمَنْ قَلَّدَ عُمَرَ فِيمَا يَدْعُونَهُ مِنْ مُخَالَفَةِ «الْبَيِّعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا» وَتَحْرِيمِ الْمَنْكُوحَةِ فِي الْعِدَّةِ -: أَنْ يُقَلِّدَهُ هَاهُنَا.

قَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: يَصُومُ إِنْ رَآهُ وَحْدَهُ، وَلَا يُفْطِرُ إِنْ رَآهُ وَحْدَهُ وَهَذَا تَنَاقُضٌ وَقَالَ الشَّافِعِيُّ كَمَا قُلْنَا؟ وَخُصُومُنَا لَا يَقُولُونَ بِهَذَا وَلَا نَقُولُ بِهِ، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {لا تُكَلَّفُ إِلا نَفْسَكَ} [النساء: ٨٤] .

L12001 Abu Hanifah and Malik said: One must fast if he sights it alone, but he need not break the fast if he sights it alone—and this is a contradiction. Did al-Shāfiʿī say as we do? Our opponents do not adhere to this view, nor do we adopt it, for Allah the Exalted said: *"No soul is burdened except with its own responsibility"* [4:84].[1]

وَقَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] . وَقَالَ تَعَالَى: {فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ} [البقرة: ١٨٥] فَمَنْ رَآهُ فَقَدْ شَهِدَهُ. وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «صُومُوا لِرُؤْيَتِهِ وَأَفْطِرُوا لِرُؤْيَتِهِ» .

L12002 And the Exalted said: "No soul earns except against itself" [Al-An'am 6:164]. And the Exalted said: "Whoever among you is present for the month, let him fast during it" [Al-Baqarah 2:185]. Thus, whoever sights the moon has thereby witnessed it. The Messenger of Allah (peace and blessings be upon him and his family) said: "Fast when it is sighted, and break your fast when it is sighted."[2]

[مَسْأَلَةٌ هِلَالُ رَمَضَانَ إِذَا رُئِيَ قَبْلَ الزَّوَالِ]

Issue: If the Ramadan crescent is sighted before zawal (solar noon).

٧٥٨ - مَسْأَلَةٌ: وَإِذَا رُئِيَ الْهِلَالُ قَبْلَ الزَّوَالِ فَهُوَ مِنْ الْبَارِحَةِ وَيَصُومُ النَّاسُ مِنْ حِينَئِذٍ بَاقِيَ يَوْمِهِمْ - إِنْ كَانَ أَوَّلَ رَمَضَانَ - وَيُفْطِرُونَ إِنْ كَانَ آخِرَهُ، فَإِنْ رُئِيَ بَعْدَ الزَّوَالِ فَهُوَ لِلَّيْلَةِ الْمُقْبِلَةِ. بُرْهَانُ ذَلِكَ -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «صُومُوا لِرُؤْيَتِهِ وَأَفْطِرُوا لِرُؤْيَتِهِ» فَخَرَجَ مِنْ هَذَا الظَّاهِرِ إِذَا رُئِيَ بَعْدَ الزَّوَالِ بِالْإِجْمَاعِ الْمُتَيَقَّنِ، وَلَمْ يَجِبْ الصَّوْمُ إلَّا مِنْ الْغَدِ؛ وَبَقِيَ حُكْمُ لَفْظِ الْحَدِيثِ إِذَا رُئِيَ قَبْلَ الزَّوَالِ، لِلِاخْتِلَافِ فِي ذَلِكَ، فَوَجَبَ الرُّجُوعُ إلَى النَّصِّ. وَأَيْضًا: فَإِنَّ الْهِلَالَ إِذَا رُئِيَ قَبْلَ الزَّوَالِ فَإِنَّمَا يَرَاهُ النَّاظِرُ إلَيْهِ وَالشَّمْسُ بَيْنَهُ وَبَيْنَهُ، وَلَا شَكَّ فِي أَنَّهُ لَمْ يُمْكِنْ رُؤْيَتُهُ مَعَ حَوَالَةِ الشَّمْسِ دُونَهُ إلَّا وَقَدْ أَهَلَّ مِنْ الْبَارِحَةِ وَبَعُدَ عَنْهَا بُعْدًا كَثِيرًا. رُوِّينَا مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا عَبْدُ الرَّحْمَنِ بْنِ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ سِمَاكٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَتَبَ إلَى النَّاسِ إذَا رَأَيْتُمُوهُ قَبْلَ زَوَالِ الشَّمْسِ فَأَفْطِرُوا وَإِذَا رَأَيْتُمُوهُ بَعْدَ زَوَالِهَا فَلَا تُفْطِرُوا؟ وَرُوِّينَاهُ

L12003

L12004–12006 758 - Issue: If the crescent moon is sighted before midday, it is considered part of the previous night, and the people are to fast from... At that time, the remainder of their day – if it was the beginning of Ramadan – is observed, and they break their fast if it was the end. If the crescent is sighted after solar noon, it belongs to the following night. The proof for this is the statement of the Messenger of Allah—peace and blessings of Allah be upon him and his family—: "Fast upon its sighting and break your fast upon its sighting." From this text, the apparent ruling is that if the crescent is sighted after solar noon by definitively established consensus, the fast is not obligatory except from the next day. The literal meaning of the hadith's wording applies if it is sighted before solar noon, due to differences of opinion on the matter, necessitating recourse to the scriptural text. Moreover, if the crescent is sighted before solar noon, the observer sees it while the sun is positioned between him and the crescent. There is no doubt that its sighting is impossible with the sun's proximity unless it had risen the previous night and moved far away. It is narrated through the chain of Abdullah ibn Ahmad ibn Hanbal: My father narrated to us from Abd al-Rahman ibn Mahdi from

[1] **Qur'an references (L12001):** Qur'an 4:84 (An-Nisa).

[2] **Qur'an references (L12002):** Qur'an 6:164 (Al-An'am); Qur'an 2:185 (Al-Baqarah).

Sufyan al-Thawri from al-Mughirah ibn Miqsam from Simak from Ibrahim al-Nakha'i that Umar ibn al-Khattab—may Allah be pleased with him—wrote to the people: "If you see it before the sun passes its zenith, break your fast, and if you see it afterward, do not break your fast." It is also narrated through the chain of Abd al-Razzaq from Sufyan al-Thawri similarly—and this is the opinion of Sufyan. It is narrated through the chain of Yahya ibn al-Jazzar from Ali ibn Abi Talib—may Allah be pleased with him—who said: "If you see the crescent in the forenoon, break your fast, and if you see it late in the day, do not break your fast, for the sun deviates or inclines away from it." From the chain of Muhammad ibn al-Muthanna: Abd al-Rahman ibn Mahdi narrated to us from Sufyan al-Thawri from al-Rukayn ibn al-Rabi' from his father, who said: "We were with Salman ibn Rabi'ah al-Bahili in Balanjar when I saw the crescent in the forenoon. I informed Salman, who stood under a tree. Upon sighting it, he ordered the people to end their fast." This is the opinion of Abd al-Malik ibn Habib al-Andalusi, Abu Bakr ibn Dawud, and others. If it is objected: "A contrary report is narrated from Umar," we respond: Yes, and when disagreement is confirmed, it becomes obligatory to refer back to the Quran and the Sunnah. We have now clarified the basis for this—and success comes only from Allah, the Exalted.

أَيْضًا: مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ بِمِثْلِهِ - وَبِهِ يَقُولُ سُفْيَانُ. وَرُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ الْجَزَّارِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ - رَضِيَ اللَّهُ عَنْهُ - إذَا رَأَيْتُمْ الْهِلَالَ مِنْ أَوَّلِ النَّهَارِ فَأَفْطِرُوا وَإِذَا رَأَيْتُمُوهُ فِي آخِرِ النَّهَارِ فَلَا تُفْطِرُوا فَإِنَّ الشَّمْسَ تَزِيغُ عَنْهُ أَوْ تَمِيلُ عَنْهُ. وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الرُّكَيْنِ بْنِ الرَّبِيعِ عَنْ أَبِيهِ قَالَ: كُنَّا مَعَ سَلْمَانَ بْنِ رَبِيعَةَ الْبَاهِلِيِّ بِبَلَنْجَرَ فَرَأَيْت الْهِلَالَ ضُحًى فَأَتَيْت سَلْمَانَ فَأَخْبَرْتُهُ فَقَامَ تَحْتَ شَجَرَةٍ فَلَمَّا رَآهُ أَمَرَ النَّاسَ فَأَفْطَرُوا. وَبِهِ يَقُولُ عَبْدُ الْمَلِكِ بْنُ حَبِيبٍ الْأَنْدَلُسِيُّ، وَأَبُو بَكْرِ بْنُ دَاوُد، وَغَيْرُهُ. فَإِنْ قِيلَ: قَدْ رُوِيَ عَنْ عُمَرَ خِلَافُ هَذَا؟ قُلْنَا: نَعَمْ وَإِذَا صَحَّ التَّنَازُعُ وَجَبَ الرَّدُّ إلَى الْقُرْآنِ وَالسُّنَّةِ. وَقَدْ ذَكَرْنَا الْآنَ وَجْهَ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

An Issue of Hastening the Breaking of the Fast and Delaying the Suhoor

L12007–12008

[مَسْأَلَةُ تَعْجِيلُ الْفِطْرِ وَتَأْخِيرُ السُّحُورِ]

L12009 A juristic ruling: Among the Sunnah is hastening the breaking of the fast and delaying the pre-dawn meal. It is solely defined as the sun's departure from the fasting person's horizon with nothing added. We have been narrated through the chain of Muslim from Qutaybah from Abu 'Awanah from Qatadah from Anas that the Messenger of Allah (peace and blessings be upon him and his family) said: "Partake in the pre-dawn meal, for there is indeed blessing in it."

مَسْأَلَةٌ: وَمِنْ السُّنَّةِ تَعْجِيلُ الْفِطْرِ وَتَأْخِيرُ السُّحُورِ وَإِنَّمَا هُوَ مَغِيبُ الشَّمْسِ عَنْ أُفُقِ الصَّائِمِ وَلَا مَزِيدَ. رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ عَنْ قُتَيْبَةَ عَنْ أَبِي عَوَانَةَ عَنْ قَتَادَةَ عَنْ أَنَسٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «تَسَحَّرُوا فَإِنَّ فِي السَّحُورِ بَرَكَةً» .

L12010 Narrated via Qutaybah from Al-Layth ibn Sa'd, from Musa ibn Ali ibn Rabah, from his father, from Abu Qays - the freed slave of Amr ibn Al-As - from Amr ibn Al-As, that the Messenger of Allah (peace and blessings of Allah be upon him and his family) said: "The distinction between our fasting and the

وَمِنْ طَرِيقِ قُتَيْبَةَ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ مُوسَى بْنِ عَلِيِّ بْنِ رَبَاحٍ عَنْ أَبِيهِ عَنْ أَبِي قَيْسٍ مَوْلَى عَمْرِو بْنِ الْعَاصِ عَنْ عَمْرِو بْنِ الْعَاصِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ

وَسَلَّمَ - قَالَ: «فَصْلُ مَا بَيْنَ صِيَامِنَا وَصِيَامِ أَهْلِ الْكِتَابِ أَكْلَةُ السُّحُورِ» . قَالَ أَبُو مُحَمَّدٍ: لَا يَضُرُّ الصَّوْمَ تَعَمُّدُ تَرْكِ السَّحُورِ، لِأَنَّهُ مِنْ حُكْمِ اللَّيْلِ وَالصِّيَامُ مِنْ حُكْمِ النَّهَارِ، وَلَا يَبْطُلُ عَمَلٌ بِتَرْكِ عَمَلٍ غَيْرِهِ إِلَّا بِأَنْ يُوجِبَ ذَلِكَ نَصٌّ فَيُوقَفُ عِنْدَهُ. وَمِنْ طَرِيقِ «ابْنِ مَسْعُودٍ أَنَّهُ كَانَ يُؤَخِّرُ السُّحُورَ وَيُعَجِّلُ الْإِفْطَارَ، فَقَالَتْ عَائِشَةُ: هَكَذَا كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَصْنَعُ» . وَمِنْ طَرِيقِ مُسْلِمٍ عَنْ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ قَتَادَةَ عَنْ أَنَسٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «لَا يَزَالُ النَّاسُ بِخَيْرٍ مَا عَجَّلُوا الْفِطْرَ» .

وَمِنْ طَرِيقِ الْبُخَارِيِّ عَنْ مُسَدَّدٍ عَنْ عَبْدِ الْوَاحِدِ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي أَوْفَى «سِرْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهُوَ صَائِمٌ فَلَمَّا غَرُبَتْ الشَّمْسُ قَالَ: انْزِلْ فَاجْدَحْ لَنَا فَقَالَ: يَا رَسُولَ اللَّهِ لَوْ أَمْسَيْتُ؟ قَالَ: انْزِلْ فَاجْدَحْ لَنَا؟ قَالَ: يَا رَسُولَ اللَّهِ إِنَّ عَلَيْكَ نَهَارًا؟ قَالَ: انْزِلْ فَاجْدَحْ لَنَا؟ فَنَزَلَ فَجَدَحَ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِذَا رَأَيْتُمْ اللَّيْلَ قَدْ أَقْبَلَ مِنْ هَاهُنَا فَقَدْ أَفْطَرَ الصَّائِمُ، وَأَشَارَ بِأُصْبُعِهِ قِبَلَ الْمَشْرِقِ» . وَرُوِّينَا عَنْ أَبِي مُوسَى: تَأْخِيرَ الْفِطْرِ حَتَّى تَبْدُوَ الْكَوَاكِبُ وَلَا نَقُولُ بِهَذَا - لِمَا ذَكَرْنَا - وَتَعْجِيلُ الْفِطْرِ قَبْلَ الصَّلَاةِ وَالْأَذَانِ أَفْضَلُ، كَذَلِكَ رُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَأَبِي هُرَيْرَةَ، وَجَمَاعَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

[مَسْأَلَةٌ أَسْلَمَ أَوْ بَلَغَ بَعْدَمَا تَبَيَّنَ الْفَجْرُ لَهُ فِي رَمَضَانَ]

fasting of the People of the Book lies in the taking of the Suhoor meal." Abu Muhammad said: Intentionally abandoning Suhoor does not harm the fast, for it pertains to the rulings of the night while fasting concerns the rulings of the day. No act of worship is invalidated by omitting another unrelated act unless explicitly required by an explicit text, in which case one adheres strictly to it. From the narration of Ibn Mas'ud: He would delay the Suhoor and hasten the Iftar. Aisha remarked: "This was the practice of the Messenger of Allah (peace and blessings of Allah be upon him and his family)." From the narration of Muslim, through Abu Bakr ibn Abi Shaybah from Waki', from Hisham al-Dastawā'ī, from Qatadah, from Anas, the Prophet (peace and blessings of Allah be upon him and his family) said: "People will thrive in goodness so long as they hasten to perform Iftar."[3]

L12011–12012 From the narration of Al-Bukhari via Musaddad, from Abdul Wahid, from Abu Ishaq Al-Shaybani, from Abdullah ibn Abi Awfa: "We journeyed with the Messenger of Allah (peace and blessings be upon him and his family) while he was fasting. When the sun set, he said: 'Dismount and mix a drink for us.' The man said: 'O Messenger of Allah, if I wait until nightfall?' He replied: 'Dismount and mix a drink for us.' The man said: 'O Messenger of Allah, is the day still upon you?' He repeated: 'Dismount and mix a drink for us.' So he dismounted and mixed the drink. Then the Messenger of Allah (peace and blessings be upon him and his family) said: 'When you see night approaching from here'—pointing with his finger toward the east—'the fasting person has broken his fast.'" It has been narrated to us from Abu Musa—may Allah be pleased with him—that delaying the breaking of the fast until the stars become visible. We do not uphold this view due to what we have mentioned, and consider hastening the breaking of the fast before the prayer and its call to prayer as superior. Likewise, it has been narrated to us from Umar ibn Al-Khattab, Abu Huraira, and a group of the Companions—may Allah be pleased with them.

L12013 **A jurisprudential case regarding one who embraced Islam**

[3] **Hadith references (L12010):** Sunan an-Nasai 2166.

or reached the age of legal responsibility after Fajr had become evident to them during Ramadan.

L12014–12016 760 - Issue: If someone embraces Islam after dawn has become apparent to them, or reaches puberty after dawn's appearance, or a woman attains ritual purity [from menstruation] after dawn's appearance, or [attains purity] from postpartum bleeding after dawn's appearance, or recovers from illness after dawn's appearance, or returns from travel after dawn's appearance—they may eat for the remainder of that day and have marital relations with wives who have not reached puberty or those who attained purity on that same day. They must begin fasting anew from the next day. There is no requirement to make up fasts for those who embraced Islam or reached puberty, but the menstruating woman, the one recovering from illness, the traveler, and the woman in postpartum bleeding must make up their fasts. People have differed regarding some aspects of this matter. We have narrated from Ibrāhīm al-Nakhaʿī that he said regarding a menstruating woman who becomes pure after dawn: "She should not eat until nightfall to avoid resembling the polytheists." This is the opinion of Abū Ḥanīfah, al-Awzāʿī, al-Ḥasan ibn Ḥayy, ʿUbayd Allāh ibn al-Ḥasan. From ʿAṭāʾ: "If she becomes pure at the start of the day, she must complete her day [of fasting], but if she becomes pure at its end, she may eat and drink." Sufyān al-Thawrī, Mālik, al-Shāfiʿī, and Abū Sulaymān hold the same opinion as ours.

As for a disbeliever who embraces Islam: We have narrated from ʿAṭāʾ that "if a disbeliever embraces Islam during a day in Ramadan, he must fast the remaining days of the month. If he embraces Islam at the day's end, he must fast that day." A similar view is reported from ʿIkrimah, who said: "This is analogous to a traveler joining residents in their full prayers." A similar view is reported from al-Ḥasan.

L12017 Abu Hanifah said concerning a minor who reaches puberty after dawn: He is obligated to fast the remaining part of the day. He similarly ruled regarding a traveler who arrives after dawn. Abu Muhammad said: Those who obligate fasting for the remainder of the day argued by stating: "The minor was already commanded to practice fasting before puberty—how much more so after attaining it?" They said: "Why do you not consider these cases

٧٦٠ - مَسْأَلَةٌ: وَمَنْ أَسْلَمَ بَعْدَمَا تَبَيَّنَ الْفَجْرُ لَهُ، أَوْ بَلَغَ كَذَلِكَ، أَوْ رَأَتْ الطُّهْرَ [مِنْ الْحَيْضِ] كَذَلِكَ، أَوْ مِنْ النِّفَاسِ كَذَلِكَ، أَوْ أَفَاقَ مِنْ مَرَضِهِ كَذَلِكَ، أَوْ قَدِمَ مِنْ سَفَرِهِ كَذَلِكَ - فَإِنَّهُمْ يَأْكُلُونَ بَاقِيَ نَهَارِهِمْ وَيَطَئُونَ مِنْ نِسَائِهِمْ مَنْ لَمْ تَبْلُغْ، أَوْ مَنْ طَهُرَتْ فِي يَوْمِهَا ذَلِكَ، وَيَسْتَأْنِفُونَ الصَّوْمَ مِنْ غَدٍ - وَلَا قَضَاءَ عَلَى مَنْ أَسْلَمَ، أَوْ بَلَغَ؛ وَتَقْضِي الْحَائِضُ، وَالْمُفِيقُ، وَالْقَادِمُ، وَالنُّفَسَاءُ. وَقَدْ اخْتَلَفَ النَّاسُ فِي بَعْضِ هَذَا -: فَرُوِّينَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ فِي الْحَائِضِ تَطْهُرُ بَعْدَ طُلُوعِ الْفَجْرِ: لَا تَأْكُلُ إلَى اللَّيْلِ، كَرَاهَةَ التَّشَبُّهِ بِالْمُشْرِكِينَ. وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَالْأَوْزَاعِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَعُبَيْدُ اللَّهِ بْنُ الْحَسَنِ، وَعَنْ عَطَاءٍ - إنْ طَهُرَتْ أَوَّلَ النَّهَارِ فَلْتُتِمَّ يَوْمَهَا، وَإِنْ طَهُرَتْ فِي آخِرِهِ أَكَلَتْ وَشَرِبَتْ؛ وَبِمِثْلِ قَوْلِنَا يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ. وَأَمَّا الْكَافِرُ يُسْلِمُ -: فَرُوِّينَا عَنْ عَطَاءٍ إنْ - أَسْلَمَ الْكَافِرُ فِي يَوْمٍ مِنْ رَمَضَانَ صَامَ مَا مَضَى مِنْ الشَّهْرِ وَإِنْ أَسْلَمَ فِي آخِرِ النَّهَارِ صَامَ ذَلِكَ الْيَوْمَ. وَعَنْ عِكْرِمَةَ مِثْلُ ذَلِكَ، وَقَالَ: هُوَ بِمَنْزِلَةِ الْمُسَافِرِ يَدْخُلُ فِي صَلَاةِ الْمُقِيمِينَ. وَعَنْ الْحَسَنِ مِثْلُ ذَلِكَ.

وَقَالَ أَبُو حَنِيفَةَ فِي الصَّبِيِّ يَبْلُغُ بَعْدَ الْفَجْرِ: أَنَّ عَلَيْهِ صَوْمَ مَا بَقِيَ مِنْ يَوْمِهِ. وَكَذَلِكَ قَالَ فِي الْمُسَافِرِ يَقْدُمُ بَعْدَ الْفَجْرِ. قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ مَنْ أَوْجَبَ صَوْمَ بَاقِي الْيَوْمِ بِأَنْ قَالَ: قَدْ كَانَ الصَّبِيُّ قَبْلَ بُلُوغِهِ مَأْمُورًا بِالصِّيَامِ فَكَيْف بَعْدَ بُلُوغِهِ. وَقَالُوا: هَلَّا

analogous to one who receives news that the crescent moon was sighted the previous night?" We replied: "This is qiyas, and all qiyas is invalid. Furthermore, even if qiyas were valid, this instance would still be invalid, for the one informed about the crescent moon was obligated to fast that day only if he knew it was Ramadan or his compulsory duty. Everyone who reminds us is aware of the obligation of fasting upon others and the commencement of Ramadan—except that among them are those prohibited from fasting altogether; if they fasted, they would be disobedient: such as a menstruating woman, a postpartum woman, a traveler, and an ill person harmed by fasting. Among them are also those not legally addressed by the obligation to fast—if they fasted, it would not be valid. This refers to the minor, who only fasts as a voluntary act, not a compulsory one."

جَعَلْتُمْ هَؤُلَاءِ بِمَنْزِلَةِ مَنْ بَلَغَهُ الْخَبَرُ أَنَّ الْهِلَالَ رُئِيَ الْبَارِحَةَ؟ قُلْنَا: هَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا لِأَنَّ الَّذِي جَاءَهُ خَبَرُ الْهِلَالِ كَانَ مَأْمُورًا بِصَوْمِ ذَلِكَ الْيَوْمِ لَوْ عَلِمَ أَنَّهُ مِنْ رَمَضَانَ أَوْ أَنَّهُ فَرْضُهُ. وَكُلُّ مَنْ ذَكَّرَنَا فَهُمْ عَالِمُونَ بِوُجُوبِ الصَّوْمِ عَلَى غَيْرِهِمْ، وَبِدُخُولِ رَمَضَانَ، إِلَّا أَنَّ فِيهِمْ مَنْ هُوَ مَنْهِيٌّ عَنْ الصَّوْمِ جُمْلَةً، وَلَوْ صَامَ كَانَ عَاصِيًا: كَالْحَائِضِ، وَالنُّفَسَاءِ، وَالْمُسَافِرِ، وَالْمَرِيضِ الَّذِي يُؤْذِيهِ الصَّوْمُ. وَفِيهِمْ مَنْ هُوَ غَيْرُ مُخَاطَبٍ بِالصَّوْمِ، وَلَوْ صَامَهُ لَمْ يُجْزِهُ - وَهُوَ الصَّبِيُّ - وَإِنَّمَا يَصُومُ إِنْ صَامَ تَطَوُّعًا لَا فَرْضًا.

L12018–12019 Among them is one legally obligated to fast on condition of having embraced Islam before the fast - this being the disbeliever. Among them is one granted a dispensation to fast if capable or break the fast if desired - this being the sick person who does not find fasting burdensome. None of them is initially bound to fast that day under any circumstance, unlike one who receives news of the crescent sighting. For the latter, fasting the remainder of the day suffices with no makeup obligation, though eating constitutes disobedience. We only followed the transmitted textual evidence specifically pertaining to those informed that the day was part of Ramadan.

وَفِيهِمْ مَنْ هُوَ مُخَاطَبٌ بِالصَّوْمِ بِشَرْطِ أَنْ يُقَدِّمَ الْإِسْلَامَ قَبْلَهُ، وَهُوَ الْكَافِرُ. وَفِيهِمْ مَنْ هُوَ مَفْسُوحٌ لَهُ فِي الصَّوْمِ إِنْ قَدَرَ عَلَيْهِ وَفِي الْفِطْرِ إِنْ شَاءَ - وَهُوَ الْمَرِيضُ الَّذِي [لَا] يَشُقُّ عَلَيْهِ الصَّوْمُ؛ فَكُلُّهُمْ غَيْرُ مُلْزَمٍ ابْتِدَاءً صَوْمَ ذَلِكَ الْيَوْمِ بِحَالٍ بِخِلَافِ مَنْ جَاءَهُ الْخَبَرُ بِرُؤْيَةِ الْهِلَالِ، وَالَّذِي جَاءَهُ الْخَبَرُ بِرُؤْيَةِ الْهِلَالِ يُجْزِئُهُ صِيَامُ بَاقِي يَوْمِهِ وَلَا قَضَاءَ عَلَيْهِ وَيَعْصِي إِنْ أَكَلَ، وَإِنَّمَا اتَّبَعْنَا فِيمَنْ بَلَغَهُ أَنَّ الْيَوْمَ [مِنْ] رَمَضَانَ الْخَبَرَ الْوَارِدَ فِي ذَلِكَ فَقَطْ.

L12020 Additionally, those we have mentioned—our contemporary opponents—do not dispute that for a woman who has become ritually pure from menstruation or postpartum bleeding, a traveler who has returned from a journey, or a person who has recovered from illness: fasting on that day is not valid for them, and they are obligated to make it up.

وَأَيْضًا: فَإِنَّ مَنْ ذَكَرْنَا لَا يَخْتَلِفُ الْحَاضِرُونَ الْمُخَالِفُونَ لَنَا فِي أَنَّ الَّتِي طَهُرَتْ مِنْ الْحَيْضِ، وَالنِّفَاسِ، وَالْقَادِمَ مِنْ السَّفَرِ، وَالْمُفِيقَ مِنْ الْمَرَضِ: لَا يُجْزِئُهُمْ صِيَامُ ذَلِكَ الْيَوْمِ وَعَلَيْهِمْ قَضَاؤُهُ.

L12021 They do not differ regarding the ruling that the one who has reached puberty and the convert—if they eat, there is no obligation upon them to compensate it. Thus, it is established that on this day they are fundamentally not fasting. Since they are not fasting, their fasting holds no meaning, nor should they be instructed to observe fasting that does not qualify as such. They are neither

وَلَا يَخْتَلِفُونَ فِي أَنَّ الَّذِي بَلَغَ، وَالَّذِي أَسْلَمَ إِنْ أَكَلَا فَلَيْسَ عَلَيْهِمَا قَضَاؤُهُ، فَصَحَّ أَنَّهُمْ فِي هَذَا الْيَوْمِ غَيْرُ صَائِمِينَ أَصْلًا، وَإِذَا كَانُوا غَيْرَ صَائِمِينَ فَلَا مَعْنَى لِصِيَامِهِمْ، وَلَا أَنْ

discharging through it an obligation owed to Allah the Exalted, nor are they disobeying Him by abstaining from it [the invalid fast]—and success is from Allah, the Exalted.

L12022 As for those who hold that making up the fast on that day is obligatory for one who embraced Islam? This is a statement with no proof of its validity. Indeed, it would be incumbent upon those who deem a single Intention sufficient for the entire month in fasting to adopt this view; otherwise, they are contradictory. It has been narrated to us from Ibn Mas'ūd that he said: "Whoever eats at the beginning of the day, let him eat at its end." And with Allah the Exalted lies success.

L12023 **A legal question concerning the deliberate breaking of the fast on a day during Ramadan in disobedience to Allah, the Exalted.**

L12024–12026 761 – Issue: Whoever intentionally breaks the fast during a day of Ramadan in disobedience to Allah the Exalted, it is not permissible for him to... If he eats during the remainder of the day, drinks, or engages in intercourse, he is disobeying Allah the Exalted—while not being considered fasting—unlike those we previously mentioned. All those we mentioned earlier are either prohibited from fasting or permitted to omit fasting. Thus, their breaking of the fast constitutes obedience to Allah the Exalted, not disobedience. It is authentically established from the Prophet—peace and blessings of Allah be upon him and his family—that "There is no fast for one who does not intend it from the night." None are exempt from this ruling except those ignorant that it is a day of his obligation, as per the explicit text concerning them. Therefore, they may not fast because they did not intend it from the night, nor are they deemed disobedient by breaking the fast. They are considered to have broken the fast, not to be fasting. As for one who deliberately breaks the fast in a state of disobedience, fasting that day remains obligated upon him without dispute. Everything forbidden to a fasting person remains forbidden for him, as no textual evidence or consensus permits breaking the fast for one who disobeys through deliberate cessation. Thus, what was prohibited remains prohibited for him. He compounds his disobedience whenever he

يُؤْمَرُوا بِصَوْمٍ لَيْسَ صَوْمًا، وَلَا هُمْ مُؤَدُّونَ بِهِ فَرْضًا لِلَّهِ تَعَالَى، وَلَا هُمْ عَاصُونَ لَهُ بِتَرْكِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا مَنْ رَأَى الْقَضَاءَ فِي ذَلِكَ [الْيَوْمِ] عَلَى مَنْ أَسْلَمَ؟ فَقَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ، وَلَقَدْ كَانَ يَلْزَمُ مَنْ رَأَى نِيَّةً وَاحِدَةً تُجْزِئُ لِلشَّهْرِ كُلِّهِ فِي الصَّوْمِ أَنْ يَقُولَ بِهَذَا الْقَوْلِ، وَإِلَّا فَهُمْ مُتَنَاقِضُونَ. وَرُوِّينَا عَنْ ابْنِ مَسْعُودٍ أَنَّهُ قَالَ: مَنْ أَكَلَ أَوَّلَ النَّهَارِ فَلْيَأْكُلْ آخِرَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَعَمَّدَ الْفِطْرَ فِي يَوْمٍ مِنْ رَمَضَانَ عَاصِيًا لِلَّهِ تَعَالَى]

٧٦١ - مَسْأَلَةٌ: وَمَنْ تَعَمَّدَ الْفِطْرَ فِي يَوْمٍ مِنْ رَمَضَانَ عَاصِيًا لِلَّهِ تَعَالَى لَمْ يَحِلَّ لَهُ أَنْ يَأْكُلَ فِي بَاقِيهِ وَلَا أَنْ يَشْرَبَ، وَلَا أَنْ يُجَامِعَ وَهُوَ عَاصٍ لِلَّهِ تَعَالَى إنْ فَعَلَ - وَهُوَ مَعَ ذَلِكَ غَيْرُ صَائِمٍ - بِخِلَافِ مَنْ ذَكَرْنَا قَبْلَ هَذَا، لِأَنَّ كُلَّ مَنْ ذَكَرْنَا قَبْلَ هَذَا إمَّا مَنْهِيٌّ عَنْ الصَّوْمِ، وَإِمَّا مُبَاحٌ لَهُ تَرْكُ الصَّوْمِ فَهُمْ فِي إفْطَارِهِمْ مُطِيعُونَ لِلَّهِ تَعَالَى غَيْرُ عَاصِينَ لَهُ بِذَلِكَ. وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَا صِيَامَ لِمَنْ لَمْ يُبَيِّتْهُ مِنْ اللَّيْلِ» وَلَمْ يَخْرُجْ مِنْ هَذِهِ الْجُمْلَةِ إلَّا مَنْ جَهِلَ أَنَّهُ يَوْمُ فَرْضِهِ فَقَطْ بِالنَّصِّ الْوَارِدِ فِيهِمْ، فَلَمْ يَجُزْ أَنْ يَصُومُوا، لِأَنَّهُمْ لَمْ يَنْوُوهُ مِنْ اللَّيْلِ، وَلَمْ يَكُونُوا عُصَاةً بِالْفِطْرِ فَهُمْ مُفْطِرُونَ لَا صَائِمُونَ. وَأَمَّا مَنْ تَعَمَّدَ الْفِطْرَ عَاصِيًا فَهُوَ مُفْتَرَضٌ عَلَيْهِ بِلَا خِلَافٍ، صَوْمُ ذَلِكَ الْيَوْمِ، وَمُحَرَّمٌ عَلَيْهِ فِيهِ كُلُّ مَا يَحْرُمُ عَلَى الصَّائِمِ وَلَمْ يَأْتِ نَصٌّ، وَلَا إجْمَاعٌ بِإِبَاحَةِ الْفِطْرِ لَهُ إذَا عَصَى بِتَعَمُّدِ الْفِطْرِ، فَهُوَ بَاقٍ عَلَى مَا كَانَ حَرَامًا عَلَيْهِ، وَهُوَ مُتَزَيِّدٌ

increases in breaking the fast, and he is not considered fasting. It has been narrated to us from ʿAmr ibn Dīnār in a similar vein, and from al-Ḥasan and ʿAṭāʾ, that he is permitted to break his fast.

مِنْ الْمَعْصِيَةِ مَتَى مَا تَزَيَّدَ فِطْرًا، وَلَا صَوْمَ لَهُ مَعَ ذَلِكَ. وَرُوِّينَا عَنْ عَمْرِو بْنِ دِينَارٍ نَحْوَ هَذَا، وَعَنْ الْحَسَنِ، وَعَطَاءٍ: أَنَّ لَهُ أَنْ يُفْطِرَ.

The Issue Concerning the Traveler in Ramadan

[مَسْأَلَةُ الْمُسَافِرِ فِي رَمَضَانَ]

L12027

762 - Issue: Whoever travels during Ramadan—whether the travel is for obedience, sinful, or neither for obedience nor sin—it is obligatory upon him to break the fast once he exceeds a mile, reaches it, or is adjacent to it. His fast becomes invalid at that point, not before. He must make up for it afterward during other days. He may observe it voluntarily as a supererogatory act, to fulfill an obligatory fast incumbent upon him, or as makeup for a missed Ramadan that was obligatory upon him. If the day coincides with a vowed day of fasting, he must fast it for his vow. Some scholars differentiated between travel for obedience and sinful travel, holding that breaking the fast is not permissible during sinful travel—this being the opinion of Mālik and al-Shāfiʿī. ʿAlī said: Equating all such cases is the opinion of Abū Ḥanīfah and Abū Sulaymān. The proof for the validity of our opinion is Allah's statement: {Whoever is ill or on a journey, then an equal number of other days} [Al-Baqarah 2:185]. He, the Exalted, encompassed all types of travel without specifying one over another, {and your Lord is not forgetful} [Maryam 19:64].[4]

L12028

٧٦٢ - مَسْأَلَةٌ: وَمَنْ سَافَرَ فِي رَمَضَانَ - سَفَرَ طَاعَةٍ أَوْ [سَفَرَ] مَعْصِيَةٍ، أَوْ لَا طَاعَةَ وَلَا مَعْصِيَةَ - فَفَرْضٌ عَلَيْهِ الْفِطْرُ إذَا تَجَاوَزَ مِيلًا، أَوْ بَلَغَهُ، أَوْ إزَاءَهُ، وَقَدْ بَطَلَ صَوْمُهُ حِينَئِذٍ لَا قَبْلَ ذَلِكَ، وَيَقْضِي بَعْدَ ذَلِكَ فِي أَيَّامٍ أُخَرَ، وَلَهُ أَنْ يَصُومَهُ تَطَوُّعًا، أَوْ عَنْ وَاجِبٍ لَزِمَهُ، أَوْ قَضَاءً عَنْ رَمَضَانَ خَالٍ لَزِمَهُ، وَإِنْ وَافَقَ فِيهِ يَوْمَ نَذْرِهِ صَامَهُ لِنَذْرِهِ. وَقَدْ فَرَّقَ قَوْمٌ بَيْنَ سَفَرِ الطَّاعَةِ، وَسَفَرِ الْمَعْصِيَةِ فَلَمْ يَرَوْا لَهُ الْفِطْرَ فِي سَفَرِ الْمَعْصِيَةِ، وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ. قَالَ عَلِيٌّ: وَالتَّسْوِيَةُ بَيْنَ كُلِّ ذَلِكَ [هُوَ] قَوْلُ أَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ. وَبُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {وَمَنْ كَانَ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ} [البقرة: ١٨٥] فَعَمَّ تَعَالَى الْأَسْفَارَ كُلَّهَا وَلَمْ يَخُصَّ سَفَرًا مِنْ سَفَرٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

Moreover, we have presented proofs that fasting is invalidated by deliberate sin, and traveling in sin is itself a sin and a transgression. Therefore, one's fasting is invalidated by either of them.

L12029–12030

وَأَيْضًا فَقَدْ أَتَيْنَا بِالْبَرَاهِينِ عَلَى بُطْلَانِ الصَّوْمِ بِالْمَعْصِيَةِ بِتَعَمُّدٍ، وَالسَّفَرُ فِي الْمَعْصِيَةِ مَعْصِيَةٌ وَفُسُوقٌ، فَقَدْ بَطَلَ صَوْمُهُ بِهِمَا.

The group, as they claim, are proponents of analogy and do not differ regarding this ruling: If someone commits highway robbery or wrongfully attacks people intending to kill them and seize their wealth, and they ward him off in lawful defense, inflicting grave injuries during this resistance until they debilitate him—then if he becomes ill from those injuries such that he cannot fast or pray standing, he must break his fast, pray seated, and shorten

L12031

وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَلَا يَخْتَلِفُونَ: أَنَّ مَنْ قَطَعَ الطَّرِيقَ، أَوْ ضَارَبَ قَوْمًا ظَالِمًا لَهُمْ مُرِيدًا قَتْلَهُمْ، وَأَخْذَ أَمْوَالِهِمْ فَدَفَعُوهُ عَنْ أَنْفُسِهِمْ وَأَثْخَنُوهُ ضَرْبًا فِي تِلْكَ الْمُدَافَعَةِ حَتَّى أَوْهَنُوهُ؛ فَمَرِضَ مِنْ ذَلِكَ مَرَضًا لَا يَقْدِرُ مَعَهُ عَلَى الصَّوْمِ، وَلَا عَلَى

[4] **Qur'an references (L12028):** Qur'an 2:185 (Al-Baqarah); Qur'an 19:64 (Maryam).

[prayers during travel]. What distinction then exists between illness arising from sin and travel arising from sin?

الصَّلَاةِ قَائِمًا، فَإِنَّهُ يُفْطِرُ وَيُصَلِّي قَاعِدًا وَيَقْصُرُ فَأَيُّ فَرْقٍ بَيْنَ مَرَضِ الْمَعْصِيَةِ وَسَفَرِ الْمَعْصِيَةِ.

L12032 As for the distance that necessitates breaking the fast, we have previously elaborated on this in the Book of Prayer (and praise be to God, Lord of the Worlds). Here, God the Exalted willing, we shall mention a brief reference to it: Abū Ḥanīfah defined the journey [that necessitates breaking the fast] temporally as a three-day journey and spatially as the distance between Kufa and al-Madā'in—Muḥammad ibn al-Ḥasan mentioned this in *al-Jāmiʿ al-Ṣaghīr*. Al-Shāfiʿī defined it as forty-six miles.

وَأَمَّا الْمِقْدَارُ الَّذِي يُفْطِرُ فِيهِ فَقَدْ ذَكَرْنَاهُ فِي كِتَابِ الصَّلَاةِ مُتَقَصًّى - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ وَنَذْكُرُ هَاهُنَا إِنْ شَاءَ اللَّهُ تَعَالَى مِنْهُ طَرَفًا -: وَهُوَ أَنَّ أَبَا حَنِيفَةَ حَدَّ السَّفَرَ [الَّذِي يُفْطِرُ فِيهِ] مِنْ الزَّمَانِ بِمَسِيرِ ثَلَاثَةِ أَيَّامٍ، وَمِنْ الْمَسَافَاتِ بِمِقْدَارِ مَا بَيْنَ الْكُوفَةِ وَالْمَدَائِنِ، ذَكَرَ ذَلِكَ مُحَمَّدُ بْنُ الْحَسَنِ فِي الْجَامِعِ الصَّغِيرِ؟ وَحَدَّ الشَّافِعِيِّ ذَلِكَ بِسِتَّةٍ وَأَرْبَعِينَ مِيلًا.

L12033 Malik stipulated unified criteria for this ruling, defining it at one point as a day and a night, at another as forty-eight miles, elsewhere as forty-five miles, on another occasion as forty-two miles, in one instance as forty miles, and in another as thirty-six miles. Ismail ibn Ishaq mentioned this in his renowned book Al-Mabsut. Abu Muhammad said: All these are flawed boundaries, with no evidence from the Quran or an authentic Sunnah to substantiate any of them.

وَحَدَّ مَالِكٌ فِي ذَلِكَ، مَرَّةً يَوْمًا وَلَيْلَةً، وَمَرَّةً ثَمَانِيَةً وَأَرْبَعِينَ مِيلًا، وَمَرَّةً خَمْسَةً وَأَرْبَعِينَ مِيلًا، وَمَرَّةً اثْنَيْنِ وَأَرْبَعِينَ مِيلًا، وَمَرَّةً أَرْبَعِينَ مِيلًا، وَمَرَّةً سِتَّةً وَثَلَاثِينَ مِيلًا؛ ذَكَرَ ذَلِكَ إِسْمَاعِيلُ بْنُ إِسْحَاقَ فِي كِتَابِهِ الْمَعْرُوفِ بِالْمَبْسُوطِ. قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ هَذِهِ حُدُودٌ فَاسِدَةٌ لَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ.

L12034–12036 Nor from a corrupt narration, nor a consensus, since differing narrations have come regarding that matter from the Companions (may Allah be pleased with them)—none of which is preferable to another. It is narrated from Ibn Umar that he would not shorten the prayer for a distance less than that between Khaybar and Medina, which is ninety-six Arab miles. It is also narrated from him that he would not shorten the prayer for a distance less than that between Medina and Al-Suwayda, which is seventy-two Arab miles. Moreover, it is narrated from him that breaking the fast is only done within three days, and it is narrated from him that shortening the prayer is not... Except on a full day. It has been reported from him that qasr is permissible for thirty miles; and it has been reported from him that qasr is permissible for eighteen miles; all are authentically reported from him. It has also been reported from him that qasr is permissible for a journey of an hour, for a journey of one mile, and for a journey of three miles, with chains of narration

وَلَا مِنْ رِوَايَةٍ فَاسِدَةٍ، وَلَا إجْمَاعٍ [قَدْ] جَاءَتْ فِي ذَلِكَ رِوَايَاتٌ مُخْتَلِفَةٌ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَيْسَ بَعْضُهَا أَوْلَى مِنْ بَعْضٍ -: فَرُوِيَ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ لَا يَقْصُرُ فِي أَقَلَّ مِمَّا بَيْنَ خَيْبَرٍ وَالْمَدِينَةِ وَهُوَ سِتَّةٌ وَتِسْعُونَ مِيلًا؛ وَرُوِيَ عَنْهُ أَنْ لَا يَقْصُرَ فِي أَقَلَّ مِمَّا بَيْنَ الْمَدِينَةِ إلَى السُّوَيْدَاءِ وَهُوَ اثْنَانِ وَسَبْعُونَ مِيلًا، وَرُوِيَ عَنْهُ لَا يَكُونُ الْفِطْرُ إلَّا فِي ثَلَاثَةِ أَيَّامٍ؛ وَرُوِيَ عَنْهُ لَا يَكُونُ الْقَصْرُ إلَّا فِي الْيَوْمِ التَّامِّ وَرُوِيَ عَنْهُ الْقَصْرُ فِي ثَلَاثِينَ مِيلًا؛ وَرُوِيَ عَنْهُ الْقَصْرُ فِي ثَمَانِيَةَ عَشَرَ مِيلًا؛ وَكُلُّ ذَلِكَ صَحِيحٌ عَنْهُ. وَرُوِيَ عَنْهُ الْقَصْرُ فِي سَفَرِ سَاعَةٍ، وَفِي مِيلٍ وَفِي سَفَرِ ثَلَاثَةِ أَمْيَالٍ بِإِسْنَادٍ فِي غَايَةِ الصِّحَّةِ، وَهُوَ جَبَلَةُ بْنُ سُحَيْمٍ عَنْهُ، وَمُحَارِبُ بْنُ دِثَارٍ، وَمُحَمَّدُ بْنُ زَيْدِ بْنِ خَلْدَةَ عَنْهُ.

of utmost authenticity. These include Jabalah ibn Suhaym from him, Muharib ibn Dithar, and Muhammad ibn Zayd ibn Khaldah from him.

L12037 It is reported from Ibn Abbas: four burds. It is also reported from him: a full day. Another narration states: There is no shortening of prayers on a day until [the time of] Isha. If you extend beyond it, then shorten the prayers.

وَرُوِيَ عَنْ ابْنِ عَبَّاسٍ أَرْبَعَةُ بُرُدٍ. وَرُوِيَ عَنْهُ يَوْمٌ تَامٌّ، وَرُوِيَ عَنْهُ لَا قَصْرَ فِي يَوْمٍ إِلَى الْعَتَمَةِ فَإِنْ زِدْت فَأَقْصِرْ،

L12038 They have no basis to attribute to any of the Companions—may Allah be pleased with them—except those we mentioned. Differing opinions have been reported from them, as well as from al-Zuhrī and al-Ḥasan—they both specified the limit as two days. It has been narrated to us through the chain of Ibn Abī Shaybah: Wakīʿ narrated to us from Misʿar (Ibn Kidām) from Muḥārib ibn Dithār, who said: "I heard Ibn ʿUmar say: 'I travel for an hour of the day and shorten the prayer.'" And through the chain of Ibn Abī Shaybah: ʿAlī ibn Mushir narrated to us from Abū Isḥāq al-Shaybānī from Muḥammad ibn Zayd ibn Khalda from Ibn ʿUmar, who said: "The prayer is shortened for a journey of three miles."

وَلَا مُتَعَلَّقَ لَهُمْ بِأَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - غَيْرَ مَنْ ذَكَرْنَا، وَقَدْ اُخْتُلِفَ عَنْهُمْ، وَعَنْ الزُّهْرِيِّ، وَالْحَسَنِ: أَنَّهُمَا حَدَّا ذَلِكَ بِيَوْمَيْنِ. وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا مِسْعَرٌ وَهُوَ ابْنُ كِدَامٍ - عَنْ مُحَارِبِ بْنِ دِثَارٍ قَالَ: سَمِعْتُ ابْنَ عُمَرَ يَقُولُ: إنِّي لَأُسَافِرُ السَّاعَةَ مِنْ النَّهَارِ فَأَقْصُرُ. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَلِيُّ بْنُ مُسْهِرٍ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ مُحَمَّدِ بْنِ زَيْدِ بْنِ خَلْدَةَ عَنْ ابْنِ عُمَرَ قَالَ: تُقْصَرُ الصَّلَاةُ فِي مَسِيرَةِ ثَلَاثَةِ أَمْيَالٍ.

L12039–12041 From the chain of Muḥammad ibn al-Muthannā, on the authority of ʿAbd al-Raḥmān ibn Mahdī, on the authority of Sufyān al-Thawrī, who said: I heard Jabalah ibn Suḥaym say: I heard Ibn ʿUmar say: "If I were to travel a mile, I would shorten the prayer." From Shuraḥbīl ibn al-Samṭ, from Ibn ʿUmar: that he shortened the prayer after four miles. From Ḥafṣ ibn ʿĀṣim ibn ʿUmar ibn al-Khaṭṭāb, from Ibn ʿUmar: that he accompanied him to a place eighteen miles distant—and Ibn ʿUmar shortened the prayer. These transmission chains from him are as clear as the sun. From ʿUmar ibn al-Khaṭṭāb: shortening [the prayer] applies after three miles. From Anas: [the ruling applies] after fifteen miles. From Ibn Masʿūd: [the ruling applies] after twelve miles. From the chain of Ibn Abī Shaybah, on the authority of Ḥātim ibn Ismāʿīl, on the authority of ʿAbd al-Raḥmān ibn Ḥarmalah. He narrated, "I asked Sa'id ibn al-Musayyib, 'Should I shorten the prayer obligations and break the fast when traveling a distance of two *barids* from Medina?'" Sa'id replied, "Yes."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ قَالَ: سَمِعْت جَبَلَةَ بْنَ سُحَيْمٍ يَقُولُ: سَمِعْت ابْنَ عُمَرَ يَقُولُ: لَوْ خَرَجْت مِيلًا لَقَصَرْت الصَّلَاةَ. وَعَنْ شُرَحْبِيلَ بْنِ السَّمْطِ عَنْ ابْنِ عُمَرَ: أَنَّهُ قَصَرَ فِي أَرْبَعَةِ أَمْيَالٍ. وَعَنْ حَفْصِ بْنِ عَاصِمِ بْنِ عُمَرَ بْنِ الْخَطَّابِ عَنْ ابْنِ عُمَرَ: أَنَّهُ خَرَجَ مَعَهُ إلَى مَكَانٍ عَلَى ثَمَانِيَةَ عَشَرَ مِيلًا فَقَصَرَ ابْنُ عُمَرَ الصَّلَاةَ - وَهَذِهِ أَسَانِيدُ عَنْهُ كَالشَّمْسِ. وَعَنْ عُمَرَ بْنِ الْخَطَّابِ الْقَصْرُ فِي ثَلَاثَةِ أَمْيَالٍ. وَعَنْ أَنَسٍ فِي خَمْسَةَ عَشَرَ مِيلًا. وَعَنْ ابْنِ مَسْعُودٍ فِي اثْنَيْ عَشَرَ مِيلًا. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ حَاتِمِ بْنِ إسْمَاعِيلَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ حَرْمَلَةَ قَالَ سَأَلْتُ سَعِيدَ بْنَ الْمُسَيِّبِ أَأَقْصُرُ وَأُفْطِرُ فِي بَرِيدَيْنِ مِنْ الْمَدِينَةِ؟ قَالَ: نَعَمْ.

L12042 Abdullah ibn Rabi' narrated to us: Umar ibn Abdul Malik narrated to us;

Muhammad ibn Bakr narrated to us; Abu Dawud narrated to us; Ubaydullah ibn Umar narrated to us; Abdullah ibn Yazeed al-Muqri narrated from Sa'eed ibn Abi Ayyub, who narrated from Yazeed ibn Abi Habeeb: That Kulayb ibn Duhl al-Hadhrami informed him that Ubayd ibn Jabr said: "I was with Abi Basrah al-Ghifari, the companion of the Messenger of Allah (peace and blessings of Allah be upon him and his family), on a ship from Fustat during Ramadan. He raised, then brought his midday meal closer and said: 'Come closer.' I said: 'Do you not see the houses?' He replied: 'Do you reject the Sunnah of the Messenger of Allah (peace and blessings of Allah be upon him and his family)?' Then he ate." The narrations on this matter are extremely numerous. As for the definitions proposed by Abu Hanifah, Malik, and al-Shafi'i, they are entirely baseless—mere claims without proof. Some of them obscured [the issue] with the report from the Messenger of Allah (peace and blessings of Allah be upon him and his family) prohibiting a woman from traveling except with a mahram. Abu Muhammad said: "This is an authentic report, but it contains no evidence for their position, as it includes no trace or indication regarding the rulings of shortened prayers or breaking the fast. Moreover, the report appears in varying wordings: in some versions, 'She may not travel more than three days'; in others, 'She may not travel three days'; in others, 'She may not travel two nights'; in others, 'She may not travel a day and a night'; in others, 'She may not travel a day'; and in others, 'She may not travel a barid.'"

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ نا أَبُو دَاوُد نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ نا عَبْدُ اللَّهِ بْنُ يَزِيدَ هُوَ الْمُقْرِي عَنْ سَعِيدِ بْنِ أَبِي أَيُّوبَ نا يَزِيدُ بْنُ أَبِي حَبِيبٍ: أَنَّ كُلَيْبَ بْنَ ذُهْلٍ الْحَضْرَمِيَّ أَخْبَرَهُ أَنَّ «عُبَيْدَ بْنَ جَبْرٍ قَالَ: كُنْتُ مَعَ أَبِي بَصْرَةَ الْغِفَارِيِّ صَاحِبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي سَفِينَةٍ مِنْ الْفُسْطَاطِ فِي رَمَضَانَ فَرَفَعَ ثُمَّ قَرَّبَ غَدَاءَهُ قَالَ: اقْتَرِبْ فَقُلْتُ: أَلَسْتَ تَرَى الْبُيُوتَ؟ فَقَالَ: أَتَرْغَبُ عَنْ سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَكَلَ.» وَالرِّوَايَاتُ فِي هَذَا كَثِيرَةٌ جِدًّا. فَأَمَّا تَحْدِيدُ أَبِي حَنِيفَةَ، وَمَالِكٍ وَالشَّافِعِيِّ، فَلَا مَعْنَى لَهُ أَصْلًا وَإِنَّمَا هِيَ دَعَاوَى بِلَا بُرْهَانٍ، وَمَوَّهَ بَعْضُهُمْ فِي ذَلِكَ بِالْخَبَرِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِيمَا مَنَعَ مِنْ أَنْ تُسَافِرَ الْمَرْأَةُ إلَّا مَعَ ذِي مَحْرَمٍ؟ قَالَ أَبُو مُحَمَّدٍ: وَذَلِكَ خَبَرٌ صَحِيحٌ لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّهُ لَيْسَ فِيهِ مِنْ حُكْمِ الْقَصْرِ وَالْفِطْرِ أَثَرٌ وَلَا دَلِيلٌ. وَأَيْضًا: فَإِنَّهُ جَاءَ بِأَلْفَاظٍ مُخْتَلِفَةٍ فِي بَعْضِهَا «لَا تُسَافِرُ أَكْثَرَ مِنْ ثَلَاثٍ» وَفِي بَعْضِهَا «لَا تُسَافِرُ ثَلَاثًا» وَفِي بَعْضِهَا «لَا تُسَافِرُ لَيْلَتَيْنِ» وَفِي بَعْضِهَا «لَا تُسَافِرُ يَوْمًا وَلَيْلَةً» وَفِي بَعْضِهَا «لَا تُسَافِرُ يَوْمًا» وَفِي بَعْضِهَا «لَا تُسَافِرُ بَرِيدًا» .

L12043 These are wordings about which there is disagreement attributed to Abu Sa'id, Abu Hurayrah, and Ibn 'Umar. The narration "A woman shall not travel" has been authentically established through the transmission of Ibn Abbas without any qualification whatsoever, and no disagreement whatsoever is reported from him regarding this matter.

وَهَذِهِ أَلْفَاظٌ اُخْتُلِفَ فِيهَا عَنْ أَبِي سَعِيدٍ، وَأَبِي هُرَيْرَةَ، وَابْنِ عُمَرَ. وَصَحَّ مِنْ طَرِيقِ ابْنِ عَبَّاسٍ هَذَا الْخَبَرُ «لَا تُسَافِرُ الْمَرْأَةُ» دُونَ تَحْدِيدٍ أَصْلًا وَلَمْ يُخْتَلَفْ [عَنْهُ] فِي ذَلِكَ أَصْلًا

L12044–12046 If they resolve to abandon narrators with reported discrepancies and adopt narrations from undisputed narrators, then Ibn Abbas—from whom no discrepancies are reported—holds precedence based on this principle. If they opt for the additional narration, Ibn Abbas's narration is the additional one over all other narrations, as it universally encompasses every type of travel,

، فَإِنْ عَزَمُوا عَلَى تَرْكِ مَنْ اخْتَلَفَ عَنْهُ وَالْأَخْذِ بِرِوَايَةِ مَنْ لَمْ يَخْتَلِفْ عَنْهُ فَابْنُ عَبَّاسٍ لَمْ يَخْتَلِفْ عَنْهُ؛ فَهُوَ أَوْلَى عَلَى هَذَا الْأَصْلِ، وَإِنْ أَخَذُوا بِالزِّيَادَةِ، فَرِوَايَةُ ابْنِ عَبَّاسٍ هِيَ الزَّائِدَةُ عَلَى سَائِرِ الرِّوَايَاتِ، لِأَنَّهَا تَعُمُّ كُلَّ سَفَرٍ، وَإِنْ أَخَذُوا بِالْمُتَّفَقِ عَلَيْهِ فَأَكْثَرُ

even if They adopted the agreed-upon position that more than three constitutes the agreed-upon limit, not three, as narrated by Abdullah ibn Numayr from Ubaydullah ibn Umar from Nāfiʿ from Ibn Umar from the Prophet—peace and blessings be upon him and his family—: "A woman must not travel beyond three days unless accompanied by a mahram." Similarly, Hishām al-Dastawā'ī and Saʿīd ibn Abī ʿArūbah both narrated it from Qatādah from Qazʿah from Abū Saʿīd al-Khudrī from the Prophet—peace and blessings be upon him and his family. Likewise, Abū Muʿāwiyah and Wakīʿ narrated it from al-Aʿmash from Abū Sālih from Abū Saʿīd from the Prophet—peace and blessings be upon him and his family. Thus, it became invalid for Abū Hanīfah, Mālik, and al-Shāfiʿī to rely on this report fundamentally, except in the manner of al-Zuhrī and al-Hasan's reliance on the mention of two nights therein, with no distinction. After this, they have no recourse, though they have spared us the burden. Mālik mentioned in al-Mudawwanah: "Whoever among the herders or others interprets [the law] and breaks their fast after traveling a distance of three miles is only obligated to make up the fast," and he held the view of shortening prayers while in Minā, near Mecca—this being our position. Similarly, Abū Hanīfah and al-Shāfiʿī held the view regarding the interpreter, with no distinction.

مِنْ ثَلَاثٍ هُوَ الْمُتَّفَقُ عَلَيْهِ لَا الثَّلَاثُ، كَمَا رَوَاهُ عَبْدُ اللَّهِ بْنُ نُمَيْرٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَا تُسَافِرُ الْمَرْأَةُ فَوْقَ ثَلَاثٍ إلَّا وَمَعَهَا ذُو مَحْرَمٍ» . وَهَكَذَا رَوَاهُ هِشَامُ الدَّسْتُوَائِيُّ، وَسَعِيدُ بْنُ أَبِي عَرُوبَةَ كِلَاهُمَا عَنْ قَتَادَةَ عَنْ قَزَعَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -. وَهَكَذَا رَوَاهُ أَبُو مُعَاوِيَةَ وَوَكِيعٌ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي سَعِيدٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَبَطَلَ أَنْ يَكُونَ لِأَبِي حَنِيفَةَ وَمَالِكٍ، وَالشَّافِعِيِّ مُتَعَلَّقٌ بِهَذَا الْخَبَرِ أَصْلًا إلَّا كَتَعَلُّقِ الزُّهْرِيِّ، وَالْحَسَنِ بِذِكْرِ اللَّيْلَتَيْنِ فِيهِ وَلَا فَرْقَ. وَمَا لَهُمْ بَعْدَ هَذَا حِيلَةٌ، عَلَى أَنَّهُمْ قَدْ كَفَوْنَا الْمُؤْنَةَ، فَذَكَرَ مَالِكٌ فِي الْمُدَوَّنَةِ: أَنَّ مَنْ تَأَوَّلَ مِنْ الرُّعَاةِ وَغَيْرِهِمْ فَأَفْطَرَ فِي مَخْرَجِ ثَلَاثَةِ أَمْيَالٍ فَلَيْسَ عَلَيْهِ إلَّا الْقَضَاءُ، وَرَأَى الْقَصْرَ فِي مِنًى مِنْ مَكَّةَ، وَهَذَا قَوْلُنَا، وَكَذَلِكَ رَأَى أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ فِي الْمُتَأَوِّلِ وَلَا فَرْقَ.

L12047 Moreover, they all held the view that whoever undertakes a three-day journey may break the fast upon departing the inhabited area of the village. If he returns due to a circumstance necessitating the abandonment of the journey, he is only required to make up the missed fasts. Thus, they mandated breaking the fast for less than a mile. All of this is rendered unnecessary by the statement of Allah, the Exalted: {But whoever is ill or on a journey, then a like number of other days} [Al-Baqarah: 185]. He, the Exalted, did not specify any particular type of travel.[5]

وَأَيْضًا: فَإِنَّهُمْ كُلَّهُمْ رَأَوْا لِمَنْ سَافَرَ ثَلَاثَةَ أَيَّامٍ أَنْ يُفْطِرَ إذَا فَارَقَ بُيُوتَ الْقَرْيَةِ، فَإِنْ رَجَعَ لِشَيْءٍ أُوجِبَ عَلَيْهِ تَرْكُ السَّفَرِ، فَلَا شَيْءَ عَلَيْهِ إلَّا الْقَضَاءُ، فَقَدْ أَوْجَبُوا الْفِطْرَ فِي أَقَلَّ مِنْ مِيلٍ، وَيُغْنِي مِنْ هَذَا كُلِّهِ قَوْلُ اللَّهِ تَعَالَى: {وَمَنْ كَانَ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ} [البقرة: ١٨٥] فَلَمْ يَخُصَّ تَعَالَى سَفَرًا مِنْ سَفَرٍ.

L12048–12050 We found that a distance less than an Arabic mile does not entail the rulings applicable to travel, for it is authentically established that the Prophet—peace be upon him—would go far to relieve himself, yet he would neither shorten his prayers nor break his fast. We found no statement from any of the

وَوَجَدْنَا مَا دُونَ الْمِيلِ لَيْسَ لَهُ حُكْمُ السَّفَرِ، لِأَنَّهُ قَدْ صَحَّ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ يَبْعُدُ لِلْغَائِطِ وَالْبَوْلِ فَلَا يَقْصُرُ وَلَا يُفْطِرُ، وَلَمْ نَجِدْ فِي أَقَلَّ مِنْ الْمِيلِ قَوْلًا عَنْ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ بِالدِّينِ وَاللُّغَةِ. قَالَ عَلِيٌّ: وَيَلْزَمُ مَنْ تَعَلَّقَ مِنْ الْحَنَفِيِّينَ بِحَدِيثِ

[5] **Qur'an references (L12047):** Qur'an 2:185 (Al-Baqarah).

religious and linguistic scholars regarding a distance shorter than an Arabic mile. Ali said, “Those among the Ḥanafīs who adhere to the ḥadīth ’A woman must not travel’ must not consider it permissible to shorten prayers or break the fast during a journey involving disobedience, for the Prophet—peace be upon him—did not permit her—without any disagreement—to undertake a journey of disobedience.” Fundamentally, He permitted for her journeys of obedience without doubt. This is among the narrations they misleadingly cited as adhering to them while contradicting them. ʿAlī said: “As for what is less than a mile, some scholars held that it has no ruling of travel. Therefore, breaking the fast and shortening prayers are fundamentally impermissible in such cases, even if one intends a mile or more. For the intention of travel is distinct from actual travel, as one may intend travel without undertaking it, or undertake travel without intending it.” It is narrated from Anas that he broke the fast during Ramadan at his home when intending to travel. From ʿAlī, it is narrated: “When he departs the village’s houses.” From Ibn ʿUmar: “Abstaining from shortening prayers until reaching the distance at which shortening is required in similar cases.” Success is from Allah, the Exalted.

«لَا تُسَافِرُ الْمَرْأَةُ» أَنْ لَا يَرَى الْقَصْرَ وَالْفِطْرَ فِي سَفَرٍ مَعْصِيَةً، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُبِحْ لَهَا بِلَا خِلَافٍ سَفَرَ الْمَعْصِيَةِ أَصْلًا، وَإِنَّمَا أَبَاحَ لَهَا بِلَا شَكٍّ أَسْفَارَ الطَّاعَاتِ، وَهَذَا مِمَّا أَوْهَمُوا فِيهِ مِنْ الْأَخْبَارِ أَنَّهُمْ أَخَذُوا بِهِ وَهُمْ مُخَالِفُونَ لَهُ. قَالَ عَلِيٌّ: فَأَمَّا مَا دُونَ الْمِيلِ فَقَدْ قَالَ قَوْمٌ: لَيْسَ لَهُ حُكْمُ السَّفَرِ، فَلَا يَجُوزُ الْفِطْرُ وَلَا الْقَصْرُ فِيهِ أَصْلًا، وَإِنْ أَرَادَ مِيلًا فَصَاعِدًا، لِأَنَّ نِيَّةَ السَّفَرِ هِيَ غَيْرُ السَّفَرِ، وَقَدْ يَنْوِي السَّفَرَ مَنْ لَا يُسَافِرُ، وَقَدْ يُسَافِرُ مَنْ لَا يَنْوِي السَّفَرَ. وَقَدْ رُوِيَ عَنْ أَنَسٍ الْفِطْرُ فِي رَمَضَانَ فِي مَنْزِلِهِ إذَا أَرَادَ السَّفَرَ. وَرُوِيَ عَنْ عَلِيٍّ: إذْ يُفَارِقُ بُيُوتَ الْقَرْيَةِ. وَرُوِيَ عَنْ ابْنِ عُمَرَ: تَرْكُ الْقَصْرِ حَتَّى يَبْلُغَ مَا يُقْصَرُ فِي مِثْلِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L12051 This would have been the view were it not for the hadith of Anas: “We set out with the Messenger of Allah—peace and blessings be upon him and his family—from Medina to Mecca, and he continued praying two rak’ahs at a time until we returned to Medina.” This hadith, in its general application, permits no part of it to be excepted without explicit textual evidence. As for our statement that one must make up the prayers afterward on other days, this is the explicit ruling of the Quran. It is permissible to make them up during travel or while resident, for Allah the Exalted did not restrict “other days” to residence to the exclusion of travel.

وَكَانَ هَذَا هُوَ النَّظَرُ لَوْلَا حَدِيثُ أَنَسٍ «خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ الْمَدِينَةِ إلَى مَكَّةَ فَلَمْ يَزَلْ يُصَلِّي رَكْعَتَيْنِ رَكْعَتَيْنِ حَتَّى رَجَعْنَا إلَى الْمَدِينَةِ» فَهَذَا عَلَى عُمُومِهِ لَا يَجُوزُ أَنْ يُخَصَّ مِنْهُ شَيْءٌ بِغَيْرِ نَصٍّ. وَأَمَّا قَوْلُنَا: يَقْضِي بَعْدَ ذَلِكَ فِي أَيَّامٍ أُخَرَ فَهُوَ نَصُّ الْقُرْآنِ، وَجَائِزٌ أَنْ يَقْضِيَهُ فِي سَفَرٍ، وَفِي حَضَرٍ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَخُصَّ بِأَيَّامٍ أُخَرَ حَضَرًا مِنْ سَفَرٍ.

L12052 As for our statement: “Fasting during travel is not valid,” people have differed on this matter. One group said: “Whoever travels after the commencement of Ramadan must fast its entirety.” Another group said: “Rather, they have the choice - if they will, they may fast, and if they will, they may break the fast.”

وَأَمَّا قَوْلُنَا: لَا يَجُوزُ الصَّوْمُ فِي السَّفَرِ فَإِنَّ النَّاسَ اخْتَلَفُوا -: فَقَالَتْ طَائِفَةٌ: مَنْ سَافَرَ بَعْدَ دُخُولِ رَمَضَانَ فَعَلَيْهِ أَنْ يَصُومَهُ كُلَّهُ. وَقَالَتْ طَائِفَةٌ: بَلْ هُوَ مُخَيَّرٌ إنْ شَاءَ صَامَ وَإِنْ شَاءَ أَفْطَرَ.

L12053 A group maintained that it is necessary for him to break the fast, and his fasting does not suffice him.

وَقَالَتْ طَائِفَةٌ: لَا بُدَّ لَهُ مِنْ الْفِطْرِ وَلَا يُجْزِئُهُ صَوْمُهُ.

ثُمَّ افْتَرَقَ الْقَائِلُونَ بِتَخْيِيرِهِ -: فَقَالَتْ طَائِفَةٌ: الصَّوْمُ أَفْضَلُ، وَقَالَتْ طَائِفَةٌ: الْفِطْرُ أَفْضَلُ: وَقَالَتْ طَائِفَةٌ: هُمَا سَوَاءٌ، وَقَالَتْ طَائِفَةٌ: لَا يُجْزِئُهُ الصَّوْمُ وَلَا بُدَّ لَهُ مِنَ الْفِطْرِ -: فَرُوِّينَا الْقَوْلَ الْأَوَّلَ: عَنْ عَلِيٍّ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبِيدَةَ السَّلْمَانِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: مَنْ أَدْرَكَهُ رَمَضَانُ وَهُوَ مُقِيمٌ ثُمَّ سَافَرَ بَعْدُ لَزِمَهُ الصَّوْمُ، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ} [البقرة: ١٨٥] وَعَنْ عَبِيدَةَ مِثْلُهُ.

L12054–12055 Then those who held the view of granting choice differed: one group said fasting is superior, another group said breaking the fast is superior, another group said they are equal, and another group said fasting is not valid for him and he must break the fast. We have received the first opinion from ʿAlī via the chain: Ḥammād ibn Salamah → Qatādah → Muḥammad ibn Sīrīn → ʿUbaydah al-Salmānī → ʿAlī ibn Abī Ṭālib, who said: "Whoever experiences Ramadan as a resident then travels afterward is obliged to fast, for Allah the Exalted said: {Whoever is present for the month among you shall fast it} [Al-Baqarah: 185]." A similar report is narrated from ʿUbaydah.[6]

وَمِنْ طَرِيقِ ابْنِ عَبَّاسٍ مِثْلُهُ، وَعَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّهَا نَهَتْ عَنِ السَّفَرِ فِي رَمَضَانَ، وَعَنْ خَيْثَمَةَ كَانُوا يَقُولُونَ: إِذَا حَضَرَ رَمَضَانُ: فَلَا تُسَافِرْ حَتَّى تَصُومَ. وَعَنْ أَبِي مِجْلَزٍ مِثْلُهُ قَالَ: فَإِنْ أَبَى أَنْ لَا يُسَافِرَ فَلْيَصُمْ.

L12056 Via Ibn Abbas, the same ruling is narrated. From Aisha, the Mother of the Believers: she prohibited travel during Ramadan. From Khaythamah, it is reported that they held: "When Ramadan begins, do not travel until you have fasted." Similarly, from Abu Mijlaz, the same ruling is narrated. He said: "If one refuses to abstain from traveling, let him fast."

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ مِثْلُ قَوْلِ أَبِي مِجْلَزٍ. وَعَنْ عُرْوَةَ بْنِ الزُّبَيْرِ أَنَّهُ سُئِلَ عَنِ الْمُسَافِرِ أَيَصُومُ أَمْ يُفْطِرُ؟ فَقَالَ: يَصُومُ. وَأَمَّا الطَّائِفَةُ الْمُجَوِّزَةُ لِلصَّوْمِ وَالْفِطْرِ، أَوِ الْمُخْتَارَةُ لِلصَّوْمِ -: فَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ وَالشَّافِعِيِّ، فَشَغَبُوا بِقَوْلِ اللَّهِ تَعَالَى: {وَأَنْ تَصُومُوا خَيْرٌ لَكُمْ} [البقرة: ١٨٤] وَاحْتَجُّوا بِأَحَادِيثَ -: مِنْهَا حَدِيثُ سَلَمَةَ بْنِ الْمُحَبَّقِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «مَنْ كَانَتْ لَهُ حَمُولَةٌ يَأْوِي إِلَى شِبَعٍ فَلْيَصُمْ رَمَضَانَ حَيْثُ أَدْرَكَهُ» . وَمِنْ طَرِيقِ أَبِي سَعِيدٍ، وَأَبِي الدَّرْدَاءِ، وَجَابِرٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَمَرَ أَصْحَابَهُ فِي السَّفَرِ بِالْفِطْرِ وَهُوَ صَائِمٌ فَتَرَدَّدُوا وَفَطَرَ هُوَ - عَلَيْهِ السَّلَامُ -» . وَذَكَرُوا عَنْ أُمِّ الْمُؤْمِنِينَ أَنَّهَا كَانَتْ تَصُومُ فِي السَّفَرِ وَتُتِمُّ الصَّلَاةَ، وَعَنْ أَبِي مُوسَى أَنَّهُ كَانَ يَصُومُ رَمَضَانَ فِي السَّفَرِ. وَعَنْ أَنَسِ بْنِ مَالِكٍ إِنْ أَفْطَرَتْ فَرُخْصَةُ اللَّهِ

L12057–12059 From Ibrahim al-Nakhaʿi comes a statement similar to that of Abu Mijlaz. From Urwah ibn al-Zubayr: he was asked about the traveler—should he fast or break his fast? He replied: "He should fast." As for the group permitting both fasting and breaking the fast, or the group preferring fasting—this is the opinion of Abu Hanifah, Malik, and al-Shafiʿi. They contended using Allah's statement—Exalted is He—{And to fast is better for you} [Al-Baqarah: 184] and cited several hadiths. Among these is the hadith of Salama ibn al-Muhabbaq from the Prophet—peace and blessings of Allah be upon him and his family—who said: "Whoever possesses a pack animal providing access to sufficiency, let them fast Ramadan wherever they encounter it." Through the narration of Abu Saʿid, Abu al-Darda', and Jabir: "The Messenger of Allah—peace and blessings of Allah be upon him and his family—commanded his companions during travel to break their fast while he himself was fasting. They hesitated, so he himself broke his fast—peace be upon him." They also mentioned from Umm al-Mu'minin that she would fast during travel and perform the prayer in full; and from Abu Musa. He used to fast during

[6] **Qur'an references (L12055):** Qur'an 2:185 (Al-Baqarah).

Ramadan while traveling. It is reported from Anas ibn Mālik: “If breaking the fast [occurs], it is by Allah’s concession, and if you fast, then fasting is more virtuous.” It is reported from ʿUthmān ibn Abī al-ʿĀṣ and Ibn ʿAbbās: “Fasting is more virtuous.” Al-Miswar ibn Makhramah and ʿAbd al-Raḥmān ibn al-Aswad ibn ʿAbd Yaghūth held the same position. It is reported from ʿAlī that he fasted during travel because he was mounted [on a conveyance], while his freedman Saʿd broke the fast because he was walking. ʿUmar ibn ʿAbd al-ʿAzīz said: “Fast when it is easy and break the fast when it is difficult.”[7]

L12060 From Tāwus: Fasting is more virtuous. From al-Aswad ibn Yazīd: a similar opinion. Those who held both options to be equal argued with the ḥadīth of Ḥamzah ibn ʿAmr al-Aslamī, who said: “O Messenger of Allah, I possess the strength to fast during travel.” The Messenger of Allah—peace and blessings be upon him and his family—responded: “Whichever of those you choose, O Ḥamzah.” And with a mursal ḥadīth from al-Ghiṭrīf Abu Hārūn: “Two men traveled; one fasted while the other broke his fast. They mentioned this to the Messenger of Allah—peace and blessings be upon him and his family—and he said: ’Both of you are correct.’” And with a mursal ḥadīth from Abū ʿIyāḍ: “The Messenger of Allah—peace and blessings be upon him and his family—commanded that a proclamation be made among the people: ’Whoever wishes may fast, and whoever wishes may break the fast.’” Through the chain of Abū Saʿīd and Jābir: “We would travel with the Messenger of Allah—peace and blessings be upon him and his family—and neither the fasting person would censure the one breaking the fast, nor would the one breaking the fast censure the fasting person.”

L12061–12062 And from Alqamah, Al-Aswad, and Yazid ibn Muʿawiyah an-Nakhaʿi: that they traveled during Ramadan, so some of them fasted and some of them broke the fast, and none of them blamed the others. And from ʿAta: “If you wish to fast, then fast; if you wish to break the fast, then do so.” As for those who considered breaking the fast to be superior, they cited as evidence the hadith of Hamzah ibn ʿAmr when he asked the Messenger of Allah—peace and blessings be upon him—about that, and he—peace be upon him—said to

[7] **Qur’an references (L12057):** Qur’an 2:184 (Al-Baqarah).

تَعَالَى، وَإِنْ صُمْت فَالصَّوْمُ أَفْضَلُ. وَعَنْ عُثْمَانَ بْنِ أَبِي الْعَاصِ، وَابْنِ عَبَّاسٍ: الصَّوْمُ أَفْضَلُ. وَعَنْ الْمِسْوَرِ بْنِ مَخْرَمَةَ، وَعَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ بْنِ عَبْدِ يَغُوثَ مِثْلُهُ؛ وَعَنْ عَلِيٍّ أَنَّهُ صَامَ فِي سَفَرٍ؛ لِأَنَّهُ كَانَ رَاكِبًا، وَأَفْطَرَ سَعْدٌ مَوْلَاهُ، لِأَنَّهُ كَانَ مَاشِيًا وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: صُمْهُ فِي الْيُسْرِ وَأَفْطِرْهُ فِي الْعُسْرِ.

وَعَنْ طَاوُسٍ: الصَّوْمُ أَفْضَلُ، وَعَنْ الْأَسْوَدِ بْنِ يَزِيدَ مِثْلُهُ. وَاحْتَجَّ مَنْ رَأَى الْأَمْرَيْنِ سَوَاءً بِحَدِيثِ «حَمْزَةَ بْنِ عَمْرٍو الْأَسْلَمِيِّ أَنَّهُ قَالَ: يَا رَسُولَ اللَّهِ أَجِدُ بِي قُوَّةً عَلَى الصِّيَامِ فِي السَّفَرِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَيُّ ذَلِكَ شِئْتَ يَا حَمْزَةُ» . وَبِحَدِيثٍ مُرْسَلٍ عَنْ الْغِطْرِيفِ أَبِي هَارُونَ «أَنَّ رَجُلَيْنِ سَافَرَا، فَصَامَ أَحَدُهُمَا وَأَفْطَرَ الْآخَرُ، فَذَكَرَا ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: كِلَاكُمَا أَصَابَ» . وَبِحَدِيثٍ مُرْسَلٍ عَنْ أَبِي عِيَاضٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَمَرَ أَنْ يُنَادَى فِي النَّاسِ: مَنْ شَاءَ صَامَ وَمَنْ شَاءَ أَفْطَرَ» . وَمِنْ طَرِيقِ أَبِي سَعِيدٍ وَجَابِرٍ، «كُنَّا نُسَافِرُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَلَا يَعِيبُ الصَّائِمُ عَلَى الْمُفْطِرِ وَلَا الْمُفْطِرُ عَلَى الصَّائِمِ» .

وَعَنْ عَلْقَمَةَ، وَالْأَسْوَدِ، وَيَزِيدَ بْنِ مُعَاوِيَةَ النَّخَعِيِّ: أَنَّهُمْ سَافَرُوا فِي رَمَضَانَ فَصَامَ بَعْضُهُمْ، وَأَفْطَرَ بَعْضُهُمْ فَلَمْ يَعِبْ بَعْضُهُمْ عَلَى بَعْضٍ. وَعَنْ عَطَاءٍ إنْ شِئْت فَصُمْ وَإِنْ شِئْت فَأَفْطِرْ. وَأَمَّا مَنْ رَأَى الْفِطْرَ أَفْضَلَ فَاحْتَجُّوا بِحَدِيثِ «حَمْزَةَ بْنِ عَمْرٍو إذْ سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ فَقَالَ لَهُ - عَلَيْهِ السَّلَامُ -: هِيَ رُخْصَةٌ مِنْ اللَّهِ فَمَنْ أَخَذَ بِهَا فَحَسَنٌ وَمَنْ أَحَبَّ أَنْ يَصُومَ فَلَا جُنَاحَ عَلَيْهِ» .

him: “It is a concession from Allah. Whoever acts upon it, that is good, and whoever prefers to fast, there is no sin upon him.”[8]

L12063–12065 Among those from whom it has been narrated to us that they favored breaking the fast over fasting are Sa‘d ibn Abi Waqqas. It has been narrated to us that he traveled, while ‘Abd al-Rahman ibn al-Aswad and al-Miswar ibn Makhramah fasted, but Sa‘d broke his fast. When questioned about this, he said: “I have greater understanding than them.” It is authentically reported that Ibn ‘Umar would not fast during travel. When he had slaves with him, he would say: “O Nafi‘, prepare his pre-dawn meal?” Nafi‘ said: “When Ibn ‘Umar traveled, he preferred to break the fast, declaring: ‘The concession of my Lord is dearer to me, and that He reward you for breaking the fast during travel.’” Advocates of this opinion cite the hadith of Hamzah ibn ‘Amr narrated to us previously: “From the Prophet (peace and blessings of Allah be upon him): ‘It is a concession from Allah. Whoever accepts it has done well, and whoever prefers to fast bears no sin.’” Thus, he affirmed the merit of breaking the fast and limited fasting to the removal of blame. ‘Ali said: “This constitutes the evidence cited by every faction endorsing fasting during travel. We have omitted nothing from it, nor do we adopt any of these views in a manner requiring us to prioritize some over others, except that they...” All of them agree on the permissibility of fasting Ramadan during travel, which contradicts our position. We are therefore obligated to refute all of them for this reason. Thus we say - and by Allah the Exalted we seek strength and assistance -: As for Allah the Exalted’s statement {To fast is better for you} [Al-Baqarah: 184], whoever cites this as evidence to permit fasting during travel has indeed committed a major sin among the major sins and uttered a shameless lie. For this is a word from Allah the Exalted’s speech being taken out of its context - we seek refuge with Allah the Exalted from the like of this.[9][10]

L12066 This is a disgrace that no meticulous jurist would accept, for the explicit text of the verse {Fasting has been prescribed for you as it was prescribed for those

وَمِمَّنْ رُوِّينَا عَنْهُ اخْتِيَارُ الْفِطْرِ عَلَى الصَّوْمِ -: سَعْدِ بْنِ أَبِي وَقَّاصٍ، رُوِّينَا أَنَّهُ سَافَرَ هُوَ، وَعَبْدُ الرَّحْمَنِ بْنُ الْأَسْوَدِ، وَالْمِسْوَرُ بْنُ مَخْرَمَةَ فَصَامَا وَأَفْطَرَ سَعْدٌ فَقِيلَ لَهُ فِي ذَلِكَ؟ فَقَالَ: أَنَا أَفْقَهُ مِنْهُمَا. وَصَحَّ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ لَا يَصُومُ فِي السَّفَرِ وَكَانَ مَعَهُ رَقِيقٌ فَكَانَ يَقُولُ: يَا نَافِعُ ضَعْ لَهُ سُحُورَهُ؟ قَالَ نَافِعٌ: وَكَانَ ابْنُ عُمَرَ إِذَا سَافَرَ أَحَبَّ إِلَيْهِ أَنْ يُفْطِرَ يَقُولُ: رُخْصَةُ رَبِّي أَحَبُّ إِلَيَّ وَأَنْ آجَرَ لَكَ أَنْ تُفْطِرَ فِي السَّفَرِ. وَيَحْتَجُّ أَهْلُ هَذَا الْقَوْلِ بِحَدِيثِ حَمْزَةَ بْنِ عَمْرٍو الَّذِي رُوِّينَا آنِفًا «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هِيَ رُخْصَةٌ مِنْ اللَّهِ فَمَنْ أَخَذَ بِهَا فَحَسَنٌ، وَمَنْ أَحَبَّ أَنْ يَصُومَ فَلَا جُنَاحَ عَلَيْهِ» ، فَحَسَّنَ الْفِطْرَ وَلَمْ يَزِدْ فِي الصَّوْمِ عَلَى إسْقَاطِ الْجُنَاحِ. قَالَ عَلِيٌّ: هَذَا مَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ مِمَّنْ رَأَتْ الصَّوْمَ فِي السَّفَرِ لَمْ نَدَعْ مِنْهُ شَيْئًا، وَلَسْنَا نَقُولُ بِشَيْءٍ مِنْ هَذِهِ الْأَقْوَالِ فَنَحْتَاجُ إلَى تَرْجِيحِ بَعْضِهَا عَلَى بَعْضٍ، إلَّا أَنَّهَا كُلَّهَا مُتَّفِقَةٌ عَلَى جَوَازِ الصَّوْمِ لِرَمَضَانَ فِي السَّفَرِ، وَهُوَ خِلَافُ قَوْلِنَا فَإِنَّمَا يَلْزَمُنَا دَفْعُهَا كُلُّهَا مِنْ أَجْلِ ذَلِكَ فَنَقُولُ وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ وَنَسْتَعِينُ -: أَمَّا قَوْلُ اللَّهِ تَعَالَى: {وَأَنْ تَصُومُوا خَيْرٌ لَكُمْ} [البقرة: ١٨٤] فَقَدْ أَتَى كَبِيرَةً مِنْ الْكَبَائِرِ، وَكَذَبَ كَذِبًا فَاحِشًا مَنْ احْتَجَّ بِهَا فِي إبَاحَةِ الصَّوْمِ فِي السَّفَرِ؛ لِأَنَّهُ حَرْفٌ كَلَامِ اللَّهِ تَعَالَى عَنْ مَوْضِعِهِ نَعُوذُ بِاَللَّهِ تَعَالَى مِنْ مِثْلِ هَذَا.

وَهَذَا عَارٌ لَا يَرْضَى بِهِ مُحَقِّقٌ؛ لِأَنَّ نَصَّ الْآيَةِ {كُتِبَ عَلَيْكُمُ الصِّيَامُ كَمَا كُتِبَ عَلَى الَّذِينَ مِنْ قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ} [البقرة: ١٨٣] {أَيَّامًا مَعْدُودَاتٍ فَمَنْ كَانَ مِنْكُمْ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ وَعَلَى الَّذِينَ يُطِيقُونَهُ فِدْيَةٌ طَعَامُ مِسْكِينٍ فَمَنْ

[8] **Hadith references (L12062):** Sahih Muslim 1121e.
[9] **Hadith references (L12063):** Sahih Muslim 1121e.
[10] **Qur’an references (L12063):** Qur’an 2:184 (Al-Baqarah).

before you, so that you may attain piety} [Al-Baqarah 2:183] {for numbered days. Whoever among you is ill or on a journey may substitute an equal number of days later. For those who can bear it, a ransom of feeding a poor person is due. Whoever volunteers good, it is better for him. But fasting is better for you, if only you knew} [Al-Baqarah 2:184] was revealed concerning the abrogated ruling on fasting. The initial ruling when Ramadan fasting was first ordained was that whoever willed could fast, and whoever willed could abstain from fasting and feed a poor person for each day instead - fasting was preferable. This is the explicit text of the verse, wherein journeying had no relevance whatsoever to the ruling, nor did feeding relate to breaking the fast during travel. How could they permit this grave enormity? This is substantiated by the Sunnah:

Abdullāh ibn Yūsuf reported to us: Aḥmad ibn Fatḥ reported to us: ʻAbd al-Wahhāb ibn ʻĪsā reported to us: Aḥmad ibn Muḥammad reported to us: Aḥmad ibn ʻAlī reported to us: Muslim ibn al-Ḥajjāj reported to me: ʻAmr ibn Sawād reported to us: ʻAbdullāh ibn Wahb reported to us: ʻAmr ibn al-Ḥārith reported to us: Bukayr ibn al-Ashajj reported to us: Yazīd, the freed slave of Salamah ibn al-Akwaʻ, reported from Salamah ibn al-Akwaʻ, who said: "During Ramadan in the era of Allah's Messenger (peace be upon him), whoever willed would fast and whoever willed would abstain from fasting and offer a ransom by feeding a poor person, until this verse was revealed: {Whoever witnesses the month must fast it} [Al-Baqarah 2:185]."

Through this chain to Muslim: Qutaybah ibn Saʻīd reported to us: Bakr ibn Muḍar reported to us: ʻAmr ibn al-Ḥārith reported to us: Bukayr ibn al-Ashajj reported to us: Yazīd, the freed slave of Salamah ibn al-Akwaʻ, reported from Salamah ibn al-Akwaʻ, who said: "When the verse {For those who can bear it, a ransom of feeding a poor person is due} [Al-Baqarah 2:184] was revealed, those who wished to abstain from fasting would offer the ransom until the subsequent verse abrogated it."[11]

L12067–12068 Abū Muḥammad said: At that time, fasting was superior; thus, the disgrace of those who cited this verse to justify fasting during travel became apparent.

[11] **Qur'an references (L12066):** Qur'an 2:183 (Al-Baqarah); Qur'an 2:184 (Al-Baqarah); Qur'an 2:185 (Al-Baqarah).

تَطَوَّعَ خَيْرًا فَهُوَ خَيْرٌ لَهُ وَأَنْ تَصُومُوا خَيْرٌ لَكُمْ} [البقرة: ١٨٤] وَإِنَّمَا نَزَلَتْ هَذِهِ الْآيَةُ فِي حَالِ الصَّوْمِ الْمَنْسُوخَةِ، وَذَلِكَ أَنَّهُ كَانَ الْحُكْمُ فِي أَوَّلِ نُزُولِ صَوْمِ رَمَضَانَ: أَنَّ مَنْ شَاءَ صَامَهُ وَمَنْ شَاءَ أَفْطَرَهُ وَأَطْعَمَ مَكَانَ كُلِّ يَوْمٍ مِسْكِينًا، وَكَانَ الصَّوْمُ أَفْضَلَ، هَذَا نَصُّ الْآيَةِ، وَلَيْسَ لِلسَّفَرِ فِيهَا مَدْخَلٌ أَصْلًا وَلَا لِلْإِطْعَامِ مَدْخَلٌ فِي الْفِطْرِ فِي السَّفَرِ أَصْلًا، فَكَيْفَ اسْتَجَازُوا هَذِهِ الطَّامَّةَ؟ وَبِهَذَا جَاءَتْ السُّنَنُ؟ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ ثنا أَحْمَدَ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنِ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي عَمْرُو بْنُ سَوَادٍ أَنَّا عَبْدَ اللَّهِ بْنَ وَهْبٍ أَنَّا عَمْرُو بْنُ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ يَزِيدَ مَوْلَى سَلَمَةَ بْنِ الْأَكْوَعِ «عَنْ سَلَمَةَ بْنِ الْأَكْوَعِ قَالَ: كُنَّا فِي رَمَضَانَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ شَاءَ صَامَ وَمَنْ شَاءَ أَفْطَرَ فَافْتَدَى بِطَعَامٍ مِسْكِينٍ حَتَّى نَزَلَتْ هَذِهِ الْآيَةُ: {فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ} [البقرة: ١٨٥] ». وَبِهِ إِلَى مُسْلِمٍ -: نا قُتَيْبَةُ بْنُ سَعِيدٍ نا بَكْرٌ يَعْنِي ابْنَ مُضَرَ - عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ يَزِيدَ مَوْلَى سَلَمَةَ بْنِ الْأَكْوَعِ عَنْ سَلَمَةَ بْنِ الْأَكْوَعِ قَالَ: لَمَّا نَزَلَتْ هَذِهِ الْآيَةُ: {وَعَلَى الَّذِينَ يُطِيقُونَهُ فِدْيَةٌ طَعَامُ مِسْكِينٍ} [البقرة: ١٨٤] كَانَ مَنْ أَرَادَ أَنْ يُفْطِرَ وَيَفْتَدِيَ حَتَّى نَزَلَتْ الْآيَةُ الَّتِي بَعْدَهَا فَنَسَخَتْهَا.

قَالَ أَبُو مُحَمَّد: فَحِينَئِذٍ كَانَ الصَّوْمُ أَفْضَلَ، فَظَهَرَتْ فَضِيحَةُ مَنْ احْتَجَّ بِهَذِهِ الْآيَةِ فِي الصَّوْمِ فِي السَّفَرِ؟ وَأَمَّا حَدِيثُ ابْنِ الْمُحَبَّقِ «مَنْ كَانَ يَأْوِي إلَى حَمُولَةٍ أَوْ شِبَعٍ فَلْيَصُمْ»

فَحَدِيثٌ سَاقِطٌ لِأَنَّ رَاوِيَهُ عَبْدُ الصَّمَدِ بْنُ حَبِيبٍ - وَهُوَ بَصْرِيٌّ - لَيِّنُ الْحَدِيثِ عَنْ سِنَانِ بْنِ سَلَمَةَ بْنِ الْمُحَبَّقِ وَهُوَ مَجْهُولٌ

As for the ḥadīth of Ibn al-Muḥabbaq, “Whoever has access to a pack animal or sufficient provision, let him fast,” it is a weak ḥadīth. This is because its narrator, ʿAbd al-Ṣamad ibn Ḥabīb, a Basran, is weak in ḥadīth transmission from Sinān ibn Salamah ibn al-Muḥabbaq, who is majhūl (unknown).

L12069 ثُمَّ لَوْ صَحَّ هَذَا الْخَبَرُ لَمَا كَانَ فِيهِ حُجَّةٌ لِأَحَدٍ مِنْ الطَّوَائِفِ الْمَذْكُورَةِ إلَّا لِلْقَوْلِ الْمَرْوِيِّ عَنْ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ " صُمْهُ فِي الْيُسْرِ، وَأَفْطِرْهُ فِي الْعُسْرِ " لِأَنَّهُ لَيْسَ فِيهِ إلَّا إيجَابُ الصَّوْمِ، وَلَا بُدَّ عَلَى ذِي الْحُمُولَةِ وَالشِّبَعِ، وَهَذَا خِلَافُ جَمِيعِ الطَّوَائِفِ الْمَذْكُورَةِ. وَأَمَّا حَدِيثُ الْغِطْرِيفِ، وَأَبِي عِيَاضٍ فَمُرْسَلَانِ، وَلَا حُجَّةَ فِي مُرْسَلٍ؛ وَأَمَّا حَدِيثُ حَمْزَةَ بْنِ عَمْرٍو الَّذِي ذَكَرْنَا هَاهُنَا الَّذِي فِيهِ إبَاحَةُ الصَّوْمِ فِي رَمَضَانَ فِي السَّفَرِ؛ فَإِنَّمَا هُوَ مِنْ رِوَايَةِ ابْنِ حَمْزَةَ - ابْنِهِ مُحَمَّدِ بْنِ حَمْزَةَ - وَهُوَ ضَعِيفٌ، وَأَبُوهُ كَذَلِكَ؛ وَأَمَّا الثَّابِتُ مِنْ حَدِيثِ حَمْزَةَ هُوَ مَا نَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى.

Then, if this report were authentic, it would not constitute evidence for any of the mentioned groups except for the opinion narrated from ʿUmar ibn ʿAbd al-ʿAzīz: “Fast it in times of ease and break it in times of hardship,” because it contains nothing but the obligation of fasting—a necessity for those bearing burdens and having sufficiency. This contradicts all the mentioned groups. As for the ḥadīths of al-Ghiṭrīf and Abu ʿIyāḍ, they are disconnected narrations, and there is no valid evidence in disconnected narrations. Regarding the ḥadīth of Ḥamza ibn ʿAmr mentioned here—which addresses the permissibility of fasting during Ramadan while traveling—it is only transmitted by Ibn Ḥamza (his son Muḥammad ibn Ḥamza), who is weak, as is his father. The established portion of Ḥamza’s ḥadīth is what we will mention, God Almighty willing.

وَأَمَّا حَدِيثُ أَبِي سَعِيدٍ، وَأَبِي الدَّرْدَاءِ، وَجَابِرٍ؛ فَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهَا لِوَجْهَيْنِ:

L12070 As for the ḥadīths of Abū Saʿīd, Abū al-Dardāʾ, and Jābir, their narrations hold no valid evidence in any of these matters for two reasons:

أَحَدُهُمَا: لَيْسَ فِي شَيْءٍ مِنْهَا أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كَانَ صَائِمًا لِرَمَضَانَ، وَإِذْ لَيْسَ ذَلِكَ فِيهَا فَلَا يَجُوزُ الْقَطْعُ بِذَلِكَ، وَلَا الِاحْتِجَاجُ بِاخْتِرَاعِ مَا لَيْسَ فِي الْخَبَرِ عَلَى الْقُرْآنِ، وَقَدْ يُمْكِنُ أَنْ يَكُونَ صَائِمًا تَطَوُّعًا.

L12071 One of the two: There is nothing in any of them indicating that he—peace and blessings be upon him—was fasting for Ramadan. Since this is not mentioned therein, it is impermissible to assert it definitively, nor to use fabricated claims absent in the report to challenge the Qur’an. It remains possible that he was fasting voluntarily.

وَالثَّانِي: أَنَّهُ حَتَّى لَوْ كَانَ ذَلِكَ فِيهَا نَصًّا لَمَا كَانَ لَهُمْ فِيهَا حُجَّةٌ؛ لِأَنَّ آخِرَ الْأَمْرَيْنِ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إيجَابُ الْفِطْرِ فِي رَمَضَانَ فِي السَّفَرِ؛ فَلَوْ كَانَ صَوْمُ رَمَضَانَ فِي السَّفَرِ قَبْلَ ذَلِكَ مُبَاحًا لَكَانَ مَنْسُوخًا بِآخِرِ أَمْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كَمَا نَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى وَأَمَّا احْتِجَاجُ مَنْ أَوْجَبَ الصَّوْمَ فِي السَّفَرِ لِمَنْ أَهَلَّ عَلَيْهِ الشَّهْرُ فِي الْحَضَرِ بِقَوْلِ اللَّهِ تَعَالَى: {فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ} [البقرة: ١٨٥] ،

L12072–12074 The second is that even if there were an explicit text concerning it, they would have no valid argument in this matter, because the latter of the two commands from the Messenger of Allah (peace and blessings be upon him) was the obligation to abstain from fasting during Ramadan while traveling. Thus, if fasting in Ramadan during travel had been permissible prior to that, it would have been abrogated by his final command (peace and blessings be upon him), as we will mention it, God, the Exalted, willing. As for the argument of those who obligate fasting during travel for one who witnessed the beginning of the month (via moon sighting) while resident, based on

فَلَا حُجَّةَ لَهُمْ فِي هَذِهِ الْآيَةِ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَقُلْ: فَمَنْ شَهِدَ بَعْضَ الشَّهْرِ فَلْيَصُمْهُ، وَإِنَّمَا أَوْجَبَ تَعَالَى صِيَامَهُ عَلَى مَنْ شَهِدَ الشَّهْرَ لَا عَلَى مَنْ شَهِدَ بَعْضَهُ، ثُمَّ يُبْطِلُ قَوْلَهُمْ أَيْضًا قَوْلُ اللَّهِ تَعَالَى: {وَمَنْ كَانَ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ} [البقرة: ١٨٥] فَجَعَلَ السَّفَرَ وَالْمَرَضَ. نَاقِلَيْنِ عَنْ الصَّوْمِ فِيهِ إلَى الْفِطْرِ. وَأَيْضًا: فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَحَّ عَنْهُ أَنَّهُ سَافَرَ فِي رَمَضَانَ عَامَ الْفَتْحِ فَأَفْطَرَ وَهُوَ أَعْلَمُ بِمُرَادِ رَبِّهِ تَعَالَى، وَالْبَلَاغُ مِنْهُ نَأْخُذُهُ، وَعَنْهُ لَا مِنْ غَيْرِهِ.

Allah's statement: {So whoever among you witnesses the month, let him fast it} [Al-Baqarah: 185], there is no valid argument for them in this verse. For Allah the Exalted did not say: "So whoever witnesses part of the month, let him fast it." Rather, He obligated fasting it upon whoever witnesses the entire month, not upon whoever witnesses part of it. Moreover, their claim is invalidated by Allah's statement: {And whoever is ill or on a journey, then an equal number of other days} [Al-Baqarah: 185], thereby making travel and illness grounds for transferring from fasting during it to breaking the fast and making up the days later. Additionally, it is authentically established that the Messenger of Allah—peace and blessings be upon him—traveled during Ramadan in the year of the Conquest and broke his fast, and he is the most knowledgeable of what his Lord the Exalted intends. We take the conveyed rulings from him alone, not from others.[12]

L12075

فَلَمَّا بَطَلَ كُلُّ مَا احْتَجُّوا بِهِ، وَجَبَ أَنْ نَأْتِيَ بِالْبُرْهَانِ عَلَى صِحَّةِ قَوْلِنَا، بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ. قَالَ عَلِيٌّ: نَذْكُرُ الْآنَ حَدِيثَ أَبِي سَعِيدٍ، وَأَبِي الدَّرْدَاءِ، وَجَابِرٍ، وَحَمْزَةَ بْنِ عَمْرٍو مِنْ الْوُجُوهِ الصِّحَاحِ - إنْ شَاءَ اللَّهُ تَعَالَى - وَنَرَى أَنَّهَا لَا حُجَّةَ لَهُمْ فِيهَا، ثُمَّ نُعَقِّبُ بِالْبُرْهَانِ عَلَى صِحَّةِ قَوْلِنَا إنْ شَاءَ اللَّهُ، وَبِهِ نَتَأَيَّدُ. رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُؤَمَّلُ بْنُ الْفَضْلِ نا الْوَلِيدُ هُوَ ابْنُ مُسْلِمٍ - نا سَعِيدُ بْنُ عَبْدِ الْعَزِيزِ حَدَّثَنِي إسْمَاعِيلُ بْنُ عُبَيْدِ اللَّهِ حَدَّثَتْنِي أُمُّ الدَّرْدَاءِ عَنْ أَبِي الدَّرْدَاءِ قَالَ: «خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي بَعْضِ غَزَوَاتِهِ فِي حَرٍّ شَدِيدٍ حَتَّى إنَّ أَحَدَنَا لَيَضَعُ يَدَهُ عَلَى رَأْسِهِ أَوْ كَفَّهُ عَلَى رَأْسِهِ مِنْ شِدَّةِ الْحَرِّ مَا فِينَا صَائِمٌ إلَّا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَبْدُ اللَّهِ بْنُ رَوَاحَةَ» . وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْجُرَيْرِيِّ عَنْ أَبِي نَضْرَةَ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ فِي سَفَرٍ فَأَتَى عَلَى غَدِيرٍ فَقَالَ لِلْقَوْمِ:

When all their arguments were refuted, it became incumbent upon us to establish evidence for the correctness of our position by the enabling power of Allah, the Exalted. 'Alī said: We shall now cite the narrations of Abū Sa'īd, Abū al-Dardā', Jābir, and Ḥamzah ibn 'Amr from authentic transmissions—if Allah, the Exalted, wills—and demonstrate that these contain no proof for their claim. Thereafter, we shall follow with decisive evidence for the validity of our position—if Allah wills—through which we are strengthened [by Him].

We were narrated through the chain of transmission of Abū Dāwūd: Mu'ammal ibn al-Faḍl narrated to us, al-Walīd—that is, Ibn Muslim—narrated to us, Sa'īd ibn 'Abd al-'Azīz reported to me: Ismā'īl ibn 'Ubayd Allāh narrated to me, Umm al-Dardā' narrated to me from Abū al-Dardā', who said: "We set out with the Messenger of Allah—*peace and blessings of Allah upon him*—on one of his military expeditions in scorching heat, to the extent that one of us would press his hand or palm against his head due to the intensity. None among us was fasting except the Messenger of Allah—*peace and blessings of Allah upon him*—and 'Abdullāh ibn Rawāḥah."

Through the chain of Ḥammād ibn Salamah from al-Jurayrī from Abū Naḍrah from Jābir ibn 'Abd Allāh: "The Prophet—*peace and blessings of Allah upon

[12] **Qur'an references (L12072):** Qur'an 2:185 (Al-Baqarah).

him*—was traveling when he came upon a pond. He said to the people: ‘Drink.’ They asked: ‘O Messenger of Allah, are we to drink while you do not?’ He replied: ‘I am in a better position than you, for I ride while you walk.’ So he drank, and they drank.”[13]

L12076–12077 From the chain of Hammad ibn Zayd, from al-Jurayri, from Abu Nadhrah, from Abu Sa‘id al-Khudri, who said: “We set out with the Messenger of Allah (peace be upon him) during Ramadan. He passed by a water source and said: ’Dismount and drink.’ The people hesitated, so the Messenger of Allah (peace be upon him) dismounted, drank, and we drank with him.” This report has been narrated to us through a chain that is not considered reliable, as it was narrated from the chain of Mu‘awiyah ibn Salih, from Rabi‘ah ibn Yazid: Qaza‘ah narrated to me that he asked Abu Sa‘id about fasting during travel. He replied: “We traveled with the Messenger of Allah (peace be upon him) to Mecca while fasting. We halted at a place, and the Messenger of Allah (peace be upon him) said: ’You have drawn near to your enemy, and breaking the fast will strengthen you.’ This was a concession, so some of us fasted while others broke the fast. Then we halted at another place, and he said: ’You will face your enemy at dawn, and breaking the fast will strengthen you. Break your fast.’ This became a binding command, so we broke the fast. He added: ’I observed that we later fasted with the Messenger of Allah (peace be upon him) during travel.’”

From the chain of ‘Abd al-Razzaq: From Ma‘mar, from Ayyub al-Sakhtiyānī, from ‘Ikrimah, from Ibn ‘Abbas, who said: “The Prophet (peace be upon him) journeyed during Ramadan and fasted until he came upon a watering hole on the route [and then broke his fast] at the peak of midday heat. The people grew thirsty, so the Prophet (peace be upon him) called for a cup of water. He held it in his hand until the people saw it, then drank, and the people drank.”

From the chain of al-Bukhari: ‘Abdullah ibn Yusuf narrated to us from Malik, from Hisham ibn ‘Urwah, from his father, from ‘Aishah, the Mother of the Believers: “Hamzah ibn ‘Amr al-Aslami asked the Messenger of Allah (peace

[13] **Hadith references (L12075):** Sunan Abi Dawud 2409.

اشْرَبُوا؟ فَقَالُوا: يَا رَسُولَ اللَّهِ أَنَشْرَبُ وَلَا تَشْرَبُ؟ فَقَالَ: إِنِّي أَيْسَرُكُمْ إِنِّي رَاكِبٌ وَأَنْتُمْ مُشَاةٌ فَشَرِبَ وَشَرِبُوا» .

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ الْجُرَيْرِيِّ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي رَمَضَانَ فَمَرَّ بِمَاءٍ فَقَالَ: انْزِلُوا فَاشْرَبُوا، فَتَلَكَّأَ الْقَوْمُ فَنَزَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَشَرِبَ وَشَرِبْنَا مَعَهُ» . وَقَدْ رُوِّينَا هَذَا الْخَبَرَ مِنْ طَرِيقٍ لَا يُحْتَجُّ بِهَا كَمَا رُوِّينَاهُ مِنْ طَرِيقِ مُعَاوِيَةَ بْنِ صَالِحٍ عَنْ رَبِيعَةَ بْنِ يَزِيدَ حَدَّثَنِي «قَزَعَةُ أَنَّهُ سَأَلَ أَبَا سَعِيدٍ عَنْ الصَّوْمِ فِي السَّفَرِ فَقَالَ سَافَرْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى مَكَّةَ وَنَحْنُ صِيَامٌ فَنَزَلْنَا مَنْزِلًا فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّكُمْ قَدْ دَنَوْتُمْ مِنْ عَدُوِّكُمْ وَالْفِطْرُ أَقْوَى لَكُمْ فَكَانَتْ رُخْصَةً، فَمِنَّا مَنْ صَامَ وَمِنَّا مَنْ أَفْطَرَ، ثُمَّ نَزَلْنَا مَنْزِلًا آخَرَ فَقَالَ: إنَّكُمْ تُصَبِّحُونَ عَدُوَّكُمْ وَالْفِطْرُ أَقْوَى لَكُمْ فَأَفْطِرُوا فَكَانَتْ عَزْمَةً فَأَفْطَرْنَا، ثُمَّ قَالَ لَقَدْ رَأَيْتُنَا نَصُومُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْدَ ذَلِكَ فِي السَّفَرِ» وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ -: عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ «خَرَجَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي شَهْرِ رَمَضَانَ فَصَامَ حَتَّى مَرَّ بِغَدِيرٍ فِي الطَّرِيقِ وَذَلِكَ فِي نَحْرِ الظَّهِيرَةِ فَعَطِشَ النَّاسُ فَدَعَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَدَحٍ فِيهِ مَاءٌ فَأَمْسَكَهُ عَلَى يَدِهِ حَتَّى رَآهُ النَّاسُ ثُمَّ شَرِبَ فَشَرِبَ النَّاسُ» . وَمِنْ طَرِيقِ الْبُخَارِيِّ -: نا عَبْدُ اللَّهِ بْنُ يُوسُفَ عَنْ مَالِكٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ حَمْزَةَ بْنَ عَمْرٍو الْأَسْلَمِيَّ قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَأَصُومُ فِي السَّفَرِ؟ وَكَانَ كَثِيرَ الصِّيَامِ فَقَالَ: إنْ شِئْتَ فَصُمْ وَإِنْ شِئْتَ فَأَفْطِرْ» .

be upon him): 'Shall I fast while traveling?' He was a frequent faster. The Prophet replied: 'If you wish, fast; if you wish, break the fast.'"[14]

L12078–12080 And from the chain of Muslim—: Abu Rabi' al-Zahrani and Yahya ibn Yahya reported to us. Abu Rabi' said: Hammad ibn Zayd narrated to us. Yahya said: Abu Mu'awiyah narrated to us. Then the chains of Abu Mu'awiyah and Hammad converged, both narrating from... Hisham ibn Urwah from his father from Aisha, the Mother of the Believers, that Hamzah ibn Amr al-Aslami said: "O Messenger of Allah, I am a man who fasts continuously. Should I fast while traveling?" He replied: "Fast if you wish." Ali said: "All of this contains no evidence for their position. As for the hadith of Abu al-Darda—it does not mention this occurred during Ramadan at all. Inserting what is not in the report is a lie. It could have been voluntary fasting, which we do not reject, leaving no basis for their argument or ours in it. As for the hadith of Abu Sa'id, the chain through Muawiyah ibn Salih is not authoritative. Even if we grant its authenticity, it supports our position against them, for it states the final ruling of the Messenger of Allah (peace and blessings be upon him) was to break the fast—if verified this occurred in Ramadan. In the hadith of Hammad ibn Salamah mentioned earlier and the hadith of Ibn Abbas, it is clarified this was during Ramadan. Both contain a serious matter for Abu Hanifah, Malik, and al-Shafi'i, as they do not permit one who begins fasting while traveling in Ramadan to break that day's fast. They unanimously deem him mistaken and do not refrain from labeling it a sin. Malik further holds that expiation is required upon him. Let the defenders of their opinions consider how they justify using these two reports—thereby attributing error and sin to the Messenger of Allah (peace and blessings be upon him) and imposing expiation for his breaking the fast, an act constituting apostasy for whoever asserts it. As for us, we say: Had it been confirmed he (peace and blessings be upon him) fasted with Ramadan's intention, this would be abrogated by his final command and action. Since this is not mentioned in any authentic reports, it remains plausible he fasted voluntarily. Breaking a voluntary fast is unconditionally permissible without disapproval, as he (peace and blessings be upon him) did. The height of astonishment is that some as-

وَمِنْ طَرِيقِ مُسْلِمٍ -: نا أَبُو الرَّبِيعِ الزَّهْرَانِيُّ وَيَحْيَى بْنُ يَحْيَى قَالَ أَبُو الرَّبِيعِ نا حَمَّادٌ هُوَ ابْنُ زَيْدٍ - وَقَالَ يَحْيَى نا أَبُو مُعَاوِيَةَ ثُمَّ اتَّفَقَ أَبُو مُعَاوِيَةَ وَحَمَّادٌ كِلَاهُمَا عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ حَمْزَةَ بْنَ عَمْرٍو الْأَسْلَمِيَّ قَالَ يَا رَسُولَ اللَّهِ إنِّي رَجُلٌ أَسْرُدُ الصَّوْمَ أَفَأَصُومُ فِي السَّفَرِ؟ قَالَ: صُمْ إنْ شِئْتَ» . قَالَ عَلِيٌّ: كُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ، أَمَّا حَدِيثُ أَبِي الدَّرْدَاءِ -: فَلَيْسَ فِيهِ أَنَّ ذَلِكَ كَانَ فِي رَمَضَانَ أَصْلًا، وَإِقْحَامُ مَا لَيْسَ فِي الْخَبَرِ كَذِبٌ، وَقَدْ يُمْكِنُ أَنْ يَكُونَ تَطَوُّعًا فَلَا نُنْكِرُهُ فَلَا مُتَعَلَّقَ لَهُمْ وَلَا لَنَا فِيهِ. وَأَمَّا حَدِيثُ أَبِي سَعِيدٍ فَطَرِيقُ مُعَاوِيَةَ بْنِ صَالِحٍ لَا يُحْتَجُّ بِهَا، ثُمَّ هَبْكَ أَنَّهَا صَحِيحَةٌ فَهُوَ حُجَّةٌ لَنَا عَلَيْهِمْ، لِأَنَّ فِيهِ: أَنَّ آخِرَ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ الْفِطْرُ، هَذَا إنْ صَحَّ أَنَّهُ كَانَ فِي رَمَضَانَ. وَفِي حَدِيثِ حَمَّادِ بْنِ سَلَمَةَ الْمَذْكُورِ، وَحَدِيثِ ابْنِ عَبَّاسٍ بَيَانٌ أَنَّهُ كَانَ فِي رَمَضَانَ، وَفِيهِمَا عَلَى أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ: أَمْرٌ عَظِيمٌ، لِأَنَّهُمْ لَا يُجِيزُونَ لِمَنْ صَامَ وَهُوَ مُسَافِرٌ فِي رَمَضَانَ أَنْ يُفْطِرَ فِي ذَلِكَ الْيَوْمِ الَّذِي ابْتَدَأَ صِيَامَهُ، وَاتَّفَقُوا عَلَى أَنَّهُ مُخْطِئٌ وَمَا يَبْعُدُ عَنْهُمْ إطْلَاقُ اسْمِ الْمَعْصِيَةِ عَلَيْهِ، وَمَالِكٌ يَرَى عَلَيْهِ الْكَفَّارَةَ، فَلْيَنْظُرْ نَاصِرُ أَقْوَالِهِمْ فَبِمَاذَا يَدْخُلُ فِي احْتِجَاجِهِ بِهَذَيْنِ الْخَبَرَيْنِ مِنْ إطْلَاقِ اسْمِ الْخَطَأِ وَالْمَعْصِيَةِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِيجَابِ الْكَفَّارَةِ عَلَيْهِ فِي إفْطَارِهِ، وَهَذَا خُرُوجٌ عَنْ الْإِسْلَامِ مِمَّنْ أَقْدَمَ عَلَيْهِ. وَأَمَّا نَحْنُ فَنَقُولُ: لَوْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ صَائِمًا بِنِيَّتِهِ مِنْ رَمَضَانَ لَكَانَ ذَلِكَ مَنْسُوخًا بِآخِرِ أَمْرِهِ، وَآخِرِ فِعْلِهِ، وَإِذْ لَمْ يَأْتِ ذَلِكَ فِي شَيْءٍ مِنْ الْأَخْبَارِ فَيُمْكِنُ

[14] **Hadith references (L12077):** Sahih al-Bukhari 1943.

sert regarding the established report—‘A woman who borrowed jewelry and denied it had her hand cut off by the Messenger of Allah’s order (peace and blessings be upon him)’—claiming perhaps he ordered it for another reason.”

أَنْ يَكُونَ صَامَ تَطَوُّعًا، وَالْفِطْرُ لِلصَّائِمِ تَطَوُّعًا مُبَاحٌ مُطْلَقٌ لَا كَرَاهَةَ فِيهِ كَمَا فَعَلَ - عَلَيْهِ السَّلَامُ -. وَالْعَجَبُ كُلُّ الْعَجَبِ مِمَّنْ يَقُولُ فِي الْخَبَرِ الثَّابِتِ «أَنَّ امْرَأَةً كَانَتْ تَسْتَعِيرُ الْحُلِيَّ وَتَجْحَدُهُ فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَطْعِ يَدِهَا» : لَعَلَّهُ إِنَّمَا قَطَعَ يَدَهَا لِغَيْرِ ذَلِكَ.

L12081–12084 In the authentic narration stating, “The Messenger of Allah (peace and blessings be upon him) saw a man praying alone behind the row and ordered him to repeat the prayer,” he says, “Perhaps he ordered him to repeat it for a reason other than that.” Regarding the narration, “The Messenger of Allah (peace and blessings be upon him) saw a man praying the two Fajr *rak’ahs* while the prayer was being established and said to him, ’Which of your two prayers do you consider valid?’” he says, “Perhaps he disapproved of him praying them among the people defiantly persisting in falsehood, as the narration explicitly states that he used to pray them in a corner.” Yet here, he does not say, “Perhaps he was fasting voluntarily,” whereas in this case one must say this, for there is no evidence in the narrations indicating otherwise. As for those other narrations, none of them allow for the interpretation they propose, as their explicit texts prohibit that. It is astonishing that someone cites “the statement of Abū Sa‘īd, ‘Then I witnessed us fasting after that during travel with the Messenger of Allah (peace and blessings be upon him)’” to justify what has no trace or sign thereof in the narration—such as permitting fasting in Ramadan during travel—when the narration does not mention that the Prophet (peace and blessings be upon him) knew of it and approved it. They do not consider “the statement of Asmā’, ‘We slaughtered a horse during the time of the Messenger of Allah (peace and blessings be upon him) and ate it’” as evidence, nor do they regard Ibn ‘Abbās’s statement, “Triple divorce was treated as a single pronouncement during the time of the Messenger of Allah (peace and blessings be upon him)” as evidence. This is astonishingly strange. The ḥadīth of Abū Sa‘īd only indicates the permissibility of fasting during travel, and we do not reject it for voluntary fasting or obligatory fasting other than Ramadan. What clarifies this further is that it is not known that the Prophet (peace and blessings be upon him) traveled during Ramadan

وَيَقُولُ فِي الْخَبَرِ الثَّابِتِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَأَى رَجُلًا يُصَلِّي خَلْفَ الصَّفِّ وَحْدَهُ فَأَمَرَهُ بِإِعَادَةِ الصَّلَاةِ» : لَعَلَّهُ إِنَّمَا أَمَرَهُ بِالْإِعَادَةِ لِغَيْرِ ذَلِكَ. وَيَقُولُ فِي الْخَبَرِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَأَى رَجُلًا يُصَلِّي رَكْعَتَيْ الْفَجْرِ وَالصَّلَاةُ تُقَامُ فَقَالَ لَهُ: بِأَيِّ صَلَاتَيْكَ تَعْتَدُّ» : لَعَلَّهُ إِنَّمَا أَنْكَرَ عَلَيْهِ أَنَّهُ صَلَّاهُمَا بَيْنَ النَّاسِ مُكَابَرَةً لِلْبَاطِلِ: وَفِي الْخَبَرِ مَنْصُوصٌ أَنَّهُ كَانَ يُصَلِّيهِمَا نَاحِيَةً. ثُمَّ لَا يَقُولُ هَاهُنَا: لَعَلَّهُ كَانَ يَصُومُ تَطَوُّعًا، وَهَاهُنَا يَجِبُ أَنْ يُقَالَ هَذَا، لِأَنَّهُ لَيْسَ فِي الْأَخْبَارِ دَلِيلٌ عَلَى غَيْرِ ذَلِكَ، وَأَمَّا تِلْكَ الْأَخْبَارُ فَلَيْسَ مِنْهَا شَيْءٌ يَحْتَمِلُ مَا تَأَوَّلُوهُ لِأَنَّ نَصَّهَا يَمْنَعُ مِنْ ذَلِكَ. وَالْعَجَبُ مِمَّنْ يَحْتَجُّ «بِقَوْلِ أَبِي سَعِيدٍ ثُمَّ لَقَدْ رَأَيْتُنَا نَصُومُ بَعْدَ ذَلِكَ فِي السَّفَرِ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» فِي إِجَازَةِ مَا لَيْسَ فِي الْخَبَرِ مِنْهُ أَثَرٌ وَلَا عَثْرٌ مِنْ إِجَازَةِ الصَّوْمِ لِرَمَضَانَ فِي السَّفَرِ، وَلَيْسَ فِي الْخَبَرِ أَنَّهُ - عَلَيْهِ السَّلَامُ - عَلِمَ بِذَلِكَ فَأَقَرَّهُ. وَهُمْ لَا يَرَوْنَ «قَوْلَ أَسْمَاءَ: ذَبَحْنَا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَسًا فَأَكَلْنَاهُ» حُجَّةً، وَلَا يَرَوْنَ قَوْلَ ابْنِ عَبَّاسٍ «إِنَّ طَلَاقَ الثَّلَاثِ كَانَتْ تُجْعَلُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاحِدَةً» حُجَّةً. وَهَذَا عَجَبٌ عَجِيبٌ وَإِنَّمَا فِي حَدِيثِ أَبِي سَعِيدٍ إِبَاحَةُ الصَّوْمِ فِي السَّفَرِ وَنَحْنُ لَا نُنْكِرُهُ تَطَوُّعًا أَوْ فَرْضًا غَيْرَ رَمَضَانَ، وَمِمَّا يُبَيِّنُ هَذَا أَنَّهُ لَا يُعْلَمُ أَنَّهُ - عَلَيْهِ السَّلَامُ - سَافَرَ فِي رَمَضَانَ بَعْدَ عَامِ الْفَتْحِ. وَأَمَّا

after the year of the Conquest. As for the report of Ḥamzah, it clearly shows that he asked the Prophet (peace and blessings be upon him) about voluntary fasting, as stated in the narration: “I am a man who fasts continuously; should I fast during travel?” He was frequent in fasting, thus invalidating all their interpretations and nullifying any evidence they claim from these narrations—and success is by Allah, the Exalted. Abū Muḥammad said: Since no evidence remains for them—neither from the Quran nor the Sunnah—let us now present the proofs for the validity of our position, by the will and power of Allah, the Exalted. Allah the Exalted said: {So whoever among you witnesses the month, he must fast it; and whoever is ill or traveling, then a number of other days.} [Al-Baqarah: 185] This is a clear verse by the consensus of Muslims—neither abrogated nor specified. Thus, it is established that Allah the Exalted only obligated fasting the month upon those who witness it, and He imposed no duty upon the sick or the traveler except to fast days other than Ramadan. This is a clear text with no ambiguity, and it is impermissible for anyone to claim, “This only means if they break the fast during it,” for that is a baseless claim without evidence.[15]

خَبَرُ حَمْزَةَ فَبَيَانٌ جَلِيٌّ فِي أَنَّهُ إنَّمَا سَأَلَهُ - عَلَيْهِ السَّلَامُ - عَنْ التَّطَوُّعِ لِقَوْلِهِ فِي الْخَبَرِ «إنِّي امْرُؤٌ أَسْرُدُ الصَّوْمَ أَفَأَصُومُ فِي السَّفَرِ» ؟ وَكَانَ كَثِيرَ الصِّيَامِ فَبَطَلَ كُلُّ مَا تَأَوَّلُوهُ، وَبَطَلَ أَنْ يَكُونَ لَهُمْ فِي شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ حُجَّةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. قَالَ أَبُو مُحَمَّد: فَإِذْ لَمْ يَبْقَ لَهُمْ حُجَّةٌ لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ فَلْنَذْكُرْ الْآنَ الْبَرَاهِينَ عَلَى صِحَّةِ قَوْلِنَا بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ -: قَالَ اللَّهُ تَعَالَى: {فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ وَمَنْ كَانَ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ} [البقرة: ١٨٥] وَهَذِهِ آيَةٌ مُحْكَمَةٌ بِإِجْمَاعٍ مِنْ أَهْلِ الْإِسْلَامِ لَا مَنْسُوخَةٌ وَلَا مَخْصُوصَةٌ. فَصَحَّ أَنَّ اللَّهَ تَعَالَى لَمْ يَفْرِضْ صَوْمَ الشَّهْرِ إلَّا عَلَى مَنْ شَهِدَهُ، وَلَا فَرْضَ عَلَى الْمَرِيضِ، وَالْمُسَافِرِ إلَّا أَيَّامًا أُخَرَ غَيْرَ رَمَضَانَ، وَهَذَا نَصٌّ جَلِيٌّ لَا حِيلَةَ فِيهِ، وَلَا يَجُوزُ لِمَنْ قَالَ: إنَّمَا مَعْنَى ذَلِكَ إنْ أَفْطَرَا فِيهِ، لِأَنَّهَا دَعْوَى مَوْضُوعَةٌ بِلَا بُرْهَانٍ.

L12085–12087

Allah the Exalted said: {Say, “Produce your proof if you are truthful.”} [Al-Baqarah: 111]. Narrated by Abdullah ibn Yusuf, Ahmad ibn Fath, Abd al-Wahhab ibn Isa, Ahmad ibn Muhammad, Ahmad ibn Ali, Muslim ibn al-Hajjaj, Muhammad ibn al-Muthanna, Abd al-Wahhab—son of Abd al-Majid al-Thaqafi—Jaafar ibn Muhammad ibn Ali ibn al-Husayn, from his father, from Jabir ibn Abdullah: “Allah’s Messenger—peace and blessings be upon him—journeyed to Mecca during Ramadan in the Year of the Conquest. He fasted until reaching Kura’ al-Ghamim, and the people fasted with him. Then he called for a cup of water, raised it until the people looked at it, and drank. Later, he was told: ’Some people had fasted.’ He responded: ’Those are the disobedient! Those are the disobedient!”’ Abu Muhammad remarked: If his fasting—peace be upon him—was for Ramadan, his statement “Those are the disobedient” abrogated it, making breaking the fast obligatory and fasting sinful. No report can abrogate this. If his fasting—peace be upon him—was

قَالَ اللَّهُ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١]-: نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَد بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الْوَهَّابِ هُوَ ابْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيّ نا جَعْفَرُ بْنُ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ أَبِيهِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ “ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «خَرَجَ عَامَ الْفَتْحِ إلَى مَكَّةَ فِي رَمَضَانَ فَصَامَ حَتَّى بَلَغَ كُرَاعَ الْغَمِيمِ فَصَامَ النَّاسُ ثُمَّ دَعَا بِقَدَحٍ مِنْ مَاءٍ فَرَفَعَهُ حَتَّى نَظَرَ النَّاسُ إلَيْهِ ثُمَّ شَرِبَ فَقِيلَ لَهُ بَعْدَ ذَلِكَ: إنَّ بَعْضَ النَّاسِ قَدْ صَامَ؟ فَقَالَ: أُولَئِكَ الْعُصَاةُ أُولَئِكَ الْعُصَاةُ» . قَالَ أَبُو مُحَمَّد: إنْ كَانَ صِيَامُهُ - عَلَيْهِ السَّلَامُ - لِرَمَضَانَ فَقَدْ نَسَخَهُ بِقَوْلِهِ «أُولَئِكَ الْعُصَاةُ» وَصَارَ الْفِطْرُ

[15] **Qur’an references (L12082):** Qur’an 2:185 (Al-Baqarah).

voluntary, this more strongly prohibits fasting during Ramadan while traveling. From al-Bukhari's and Muslim's transmissions: Al-Bukhari narrated through Adam, and Muslim stated: Narrated by Abu Bakr ibn Abi Shaybah, Muhammad ibn Jaafar. Their chains then converged—both Adam and Muhammad narrated from Shu'bah, from Muhammad ibn Abd al-Rahman ibn Sa'd ibn Zurarah al-Ansari, from Muhammad ibn Umar ibn al-Hasan ibn Ali ibn Abi Talib, from Jabir ibn Abdullah, who said: "Allah's Messenger—peace and blessings be upon him—saw a man who had been shaded during a journey. He inquired about him, and they said: 'He is fasting.'" He said: "Fasting during travel is not from righteousness." This is the wording of Adam, while Ghundar's wording is: "Your fasting during travel is not from righteousness." Abu Muhammad said: "This is manifestly clear." If it is objected: "The Prophet (peace be upon him) only prohibited this in that man's specific situation?" We respond: "This is invalid and impermissible, for such a state is forbidden to deliberately reach through one's choice to fast while settled, just as during travel. To restrict the Prophet's (peace be upon him) prohibition of fasting specifically to travel would nullify this fabricated assertion against him (peace be upon him), and it is obligatory to accept his speech (peace be upon him) in its general application." Through the chain of Sufyan ibn Uyaynah from al-Zuhri, from Safwan ibn Abdullah ibn Safwan ibn Umayyah al-Jumahi, from al-Darda' bint Abi al-Darda', from Ka'b ibn Asim al-Ash'ari who said: "I heard Allah's Messenger (peace be upon him) say: 'Fasting during travel is not from righteousness.'" Safwan is trustworthy, renowned, Meccan, and was married to al-Darda' bint Abi al-Darda'. Ka'b ibn Asim is a well-known Companion who migrated with Abu Musa, being from al-Ashāqir - a branch of the Azd tribe. Through the chain of Shu'ayb ibn Ishaq from al-Awza'i: Yahya (ibn Abi Kathir) narrated to me: Abu Qilabah al-Jarmi narrated to me that Abu Umayyah, Amr ibn Umayyah al-Damri, informed him: "Allah's Messenger (peace be upon him) said to him when he invited him to eat: 'Shall I inform you about the traveler? Verily Allah has exempted him from fasting and half of the prayer.'"[16][17]

فَرْضًا وَالصَّوْمُ مَعْصِيَةً، وَلَا سَبِيلَ إلَى خَبَرٍ نَاسِخٍ لِهَذَا أَبَدًا، وَإِنْ كَانَ صِيَامُهُ - عَلَيْهِ السَّلَامُ - تَطَوُّعًا فَهَذَا أَحْرَى لِلْمَنْعِ مِنْ صِيَامِ رَمَضَانَ لِرَمَضَانَ فِي السَّفَرِ، وَمِنْ طَرِيقِ الْبُخَارِيِّ، وَمُسْلِمٍ. قَالَ الْبُخَارِيِّ نا آدَمُ، وَقَالَ مُسْلِمٌ: نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ جَعْفَرٍ ثُمَّ اتَّفَقَ آدَمُ وَمُحَمَّدٌ وَكِلَاهُمَا عَنْ شُعْبَةَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ سَعْدِ بْنِ زُرَارَةَ الْأَنْصَارِيِّ عَنْ مُحَمَّدِ بْنِ عُمَرَ بْنِ الْحَسَنِ بْنِ عَلِيِّ بْنِ أَبِي طَالِبٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَفَرٍ فَرَأَى رَجُلًا قَدْ ظُلِّلَ عَلَيْهِ فَسَأَلَ عَنْهُ فَقِيلَ: صَائِمٌ، فَقَالَ: لَيْسَ مِنْ الْبِرِّ الصَّوْمُ فِي السَّفَرِ» هَذَا لَفْظُ آدَمَ، وَلَفْظُ غُنْدَرٍ «لَيْسَ مِنْ الْبِرِّ أَنْ تَصُومُوا فِي السَّفَرِ». قَالَ أَبُو مُحَمَّدٍ: وَهَذَا مَكْشُوفٌ وَاضِحٌ. فَإِنْ قِيلَ: إنَّمَا مَنَعَ - عَلَيْهِ السَّلَامُ - فِي مِثْلِ حَالِ ذَلِكَ الرَّجُلِ؟ قُلْنَا: هَذَا بَاطِلٌ لَا يَجُوزُ لِأَنَّ تِلْكَ الْحَالَ مُحَرَّمُ الْبُلُوغِ إلَيْهَا بِاخْتِيَارِ الْمَرْءِ لِلصَّوْمِ فِي الْحَضَرِ كَمَا هُوَ فِي السَّفَرِ فَتَخْصِيصُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمَنْعِ مِنْ الصِّيَامِ فِي السَّفَرِ إبْطَالٌ لِهَذِهِ الدَّعْوَى الْمُفْتَرَاةِ عَلَيْهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَوَاجِبٌ أَخْذُ كَلَامِهِ - عَلَيْهِ السَّلَامُ - عَلَى عُمُومِهِ. وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ صَفْوَانَ بْنِ عَبْدِ اللَّهِ بْنِ صَفْوَانَ بْنِ أُمَيَّةَ الْجُمَحِيِّ عَنْ أُمِّ الدَّرْدَاءِ عَنْ كَعْبِ بْنِ عَاصِمٍ الْأَشْعَرِيِّ قَالَ " سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَيْسَ مِنْ الْبِرِّ الصِّيَامُ فِي السَّفَرِ». صَفْوَانُ ثِقَةٌ مَشْهُورٌ مَكِّيٌّ كَانَ مُتَزَوِّجًا بِالدَّرْدَاءِ بِنْتِ أَبِي الدَّرْدَاءِ. وَكَعْبُ بْنُ عَاصِمٍ مَشْهُورُ الصُّحْبَةِ هَاجَرَ مَعَ أَبِي مُوسَى وَهُوَ مِنْ الْأَشَاقِرِ حَيٌّ مِنْ الْأَزْدِ. وَمِنْ طَرِيقِ شُعَيْبِ بْنِ إسْحَاقَ عَنْ الْأَوْزَاعِيِّ حَدَّثَنِي يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ حَدَّثَنِي أَبُو قِلَابَةَ الْجَرْمِيُّ «أَنَّ أَبَا

[16] **Hadith references (L12085):** Sahih Muslim 1114a; Mishkat al-Masabih 2027.

[17] **Qur'an references (L12085):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

أُمَيَّةَ عَمْرو بْنَ أُمَيَّةَ الضَّمْرِيَّ أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ وَقَدْ دَعَاهُ إِلَى الْغَدَاءِ: أُخْبِرُكَ عَنْ الْمُسَافِرِ؟ إِنَّ اللَّهَ وَضَعَ عَنْهُ الصِّيَامَ وَنِصْفَ الصَّلَاةِ» .

L12088–12090 وَمِنْ طَرِيقِ أَبِي زُرْعَةَ عُبَيْدِ اللَّهِ بْنِ عَبْدِ الْكَرِيمِ نا سَهْلُ بْنُ بَكَّارٍ نا أَبُو عَوَانَةَ عَنْ أَبِي بِشْرٍ «عَنْ هَانِئِ بْنِ عَبْدِ اللَّهِ بْنِ الشِّخِّيرِ عَنْ أَبِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ وَدَعَاهُ إِلَى الْغَدَاءِ: أَتَدْرِي مَا وَضَعَ اللَّهُ عَنْ الْمُسَافِرِ؟ قُلْتُ: مَا وَضَعَ اللَّهُ عَنْ الْمُسَافِرِ؟ قَالَ: الصَّوْمُ، وَشَطْرُ الصَّلَاةِ» . وَمِنْ طَرِيقِ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ حَدَّثَنِي جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَرَّ بِرَجُلٍ فِي ظِلٍّ يُرَشُّ عَلَيْهِ الْمَاءُ فَسَأَلَ عَنْهُ فَأُخْبِرَ أَنَّهُ صَائِمٌ فَقَالَ: لَيْسَ مِنْ الْبِرِّ أَنْ تَصُومُوا فِي السَّفَرِ وَعَلَيْكُمْ بِرُخْصَةِ اللَّهِ الَّتِي رَخَّصَ لَكُمْ فَاقْبَلُوهَا» فَهَذَا أَمْرٌ بِقَبُولِهَا وَأَمْرُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَرْضٌ فَهِيَ رُخْصَةٌ مُفْتَرَضَةٌ، وَصَحَّ بِهَذِهِ الْأَخْبَارِ أَنَّ اللَّهَ تَعَالَى أَسْقَطَ عَنْ الْمُسَافِرِ الصَّوْمَ وَنِصْفَ الصَّلَاةِ وَهَذِهِ آثَارٌ مُتَوَاتِرَةٌ مُتَظَاهِرَةٌ لَمْ يَأْتِ شَيْءٌ يُعَارِضُهَا فَلَا يَجُوزُ الْخُرُوجُ عَنْهَا. فَإِنْ قِيلَ: فَإِنَّ هَذِهِ الْأَخْبَارَ مَانِعَةٌ كُلُّهَا بِعُمُومِهَا مِنْ كُلِّ صَوْمٍ فِي السَّفَرِ وَأَنْتُمْ تُبِيحُونَ فِيهِ كُلَّ صَوْمٍ إلَّا رَمَضَانَ وَحْدَهُ؟ قُلْنَا: نَعَمْ، لِأَنَّ النُّصُوصَ جَاءَتْ بِمِثْلِ مَا قُلْنَا، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {فَمَنْ تَمَتَّعَ بِالْعُمْرَةِ إِلَى الْحَجِّ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ فَمَنْ لَمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةٍ إِذَا رَجَعْتُمْ} [البقرة: ١٩٦] فَافْتَرَضَ تَعَالَى صَوْمَ الثَّلَاثَةِ الْأَيَّامِ فِي السَّفَرِ وَلَا بُدَّ. وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْحَضِّ عَلَى صَوْمِ عَرَفَةَ مَا سَنَذْكُرُهُ إِنْ شَاءَ اللَّهُ تَعَالَى وَهُوَ فِي السَّفَرِ لِمَنْ كَانَ حَاجًّا. وَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «إِنَّ أَفْضَلَ الصِّيَامِ صِيَامُ دَاوُد يَصُومُ يَوْمًا وَيُفْطِرُ يَوْمًا» فَعَمَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَلَمْ يَخُصَّ. وَقَالَ - عَلَيْهِ

From the chain of Abu Zur'ah Ubaydullah ibn Abd al-Karim: Sahl ibn Bakkar narrated to us, Abu Awanah narrated to us from Abu Bishr, from Hani ibn Abdullah ibn al-Shikhkhir, from his father, that the Messenger of Allah (peace and blessings be upon him) said to him when he invited him to lunch: "Do you know what Allah has lifted from the traveler?" He said: "What has Allah lifted from the traveler?" He replied: "Fasting and half the prayer." And from the chain of Yahya ibn Abu Kathir, from Muhammad ibn Abd al-Rahman ibn Thawban: Jabir ibn Abdullah narrated to me that the Messenger of Allah (peace and blessings be upon him) passed by a man sitting in the shade while water was sprinkled on him. He inquired about him and was informed that he was fasting. He said: "It is not an act of virtue to fast while traveling. You should take advantage of the concession of Allah that He has granted you, so accept it." This is a command to accept them, and his command—peace and blessings be upon him—is obligatory, so it is a prescribed concession. These reports confirm that Allah, the Exalted, has exempted the traveler from fasting and halving the prayer. These are widely transmitted and mutually reinforcing narrations, with nothing contradicting them, so it is impermissible to deviate from them. If it is said: These reports universally prohibit all fasting during travel, yet you permit all fasting therein except Ramadan alone? We respond: Yes, because the texts have come as we have stated. Allah, the Exalted, said: {But whoever cannot afford [a sacrificial animal]—then fasting three days during the pilgrimage and seven when you return [Al-Baqarah 2:196].} Thus, He, the Exalted, has ordained fasting three days during travel necessarily. The Messenger of Allah—peace and blessings be upon him—encouraged fasting on the Day of Arafah, as we will mention, Allah willing, and this applies during travel for those performing Hajj. He—peace and blessings be upon him—said: "The best fasting is the fasting of David; he would fast a day and break a day." He—peace and blessings be upon him—spoke generally without restriction. He—peace and blessings be upon him—also said: "Whoever fasts a day in the

path of Allah, Allah will distance the Fire from his face," thereby encouraging fasting. Therefore, all texts must be adhered to. Thus, fasting Ramadan during travel is uniquely prohibited, while all other fasting—whether obligatory or voluntary—remains permissible during travel. It is impermissible to discard one text in favor of another. Some ignorant individuals who audaciously assert falsehood in matters of religion claim that the meaning of his statement—peace and blessings be upon him—"Fasting during travel is not righteousness," is like his statement—peace and blessings be upon him—"The needy are not those who go around begging." Abu Muhammad said: This is distorting words from their contexts, lying against the Messenger of Allah—peace and blessings be upon him—and attributing to him what he did not say. The perpetrator of this will occupy their seat in the Fire by the explicit words of the Prophet—peace and blessings be upon him. The existence of a text that is clarified by another text or consensus does not nullify all texts or remove them from their apparent meanings. This leads to the method of the Qarmatians in diverting the Quran from its understood and apparent meanings. Whoever reaches this point has spared his opponent the trouble.[18]

الصَّلَاةُ وَالسَّلَامُ -: «مَنْ صَامَ يَوْمًا فِي سَبِيلِ اللَّهِ بَاعَدَ اللَّهُ النَّارَ عَنْ وَجْهِهِ» فَخَصَّ عَلَى الصَّوْمِ فِي السَّفَرِ. فَوَجَبَ الْأَخْذُ بِجَمِيعِ النُّصُوصِ فَخَرَجَ صَوْمُ رَمَضَانَ فِي السَّفَرِ بِالْمَنْعِ وَحْدَهُ وَبَقِيَ سَائِرُ الصَّوْمِ وَاجِبُهُ وَتَطَوُّعُهُ عَلَى جَوَازِهِ فِي السَّفَرِ وَلَا يَجُوزُ تَرْكُ نَصٍّ لِآخَرَ. وَقَالَ بَعْضُ أَهْلِ الْجَهْلِ وَالْجُرْأَةِ عَلَى الْقَوْلِ بِالْبَاطِلِ فِي الدِّينِ: مَعْنَى قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «لَيْسَ مِنْ الْبِرِّ الصِّيَامُ فِي السَّفَرِ» مِثْلُ قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «لَيْسَ الْمِسْكِينُ بِهَذَا الطَّوَّافِ» . قَالَ أَبُو مُحَمَّدٍ: هَذَا تَحْرِيفٌ لِلْكَلِمِ عَنْ مَوَاضِعِهِ، وَكَذِبٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَقْوِيلٌ لَهُ مَا لَمْ يَقُلْ، وَفَاعِلُ هَذَا يَتَبَوَّأُ مَقْعَدَهُ مِنْ النَّارِ بِنَصِّ قَوْلِهِ - عَلَيْهِ السَّلَامُ -، وَلَيْسَ إذَا وُجِدَ نَصٌّ قَدْ جَاءَ نَصٌّ آخَرُ أَوْ إجْمَاعٌ بِإِخْرَاجِهِ عَنْ ظَاهِرِهِ وَجَبَ أَنْ تَبْطُلَ جَمِيعُ النُّصُوصِ وَتَخْرُجَ عَنْ ظَوَاهِرِهَا فَيَحْصُلُ مِنْ فِعْلِ هَذَا عَلَى مَذْهَبِ الْقَرَامِطَةِ فِي إحَالَةِ الْقُرْآنِ عَنْ مَفْهُومِهِ وَظَاهِرِهِ، وَمَنْ بَلَغَ إلَى هَاهُنَا فَقَدْ كَفَى خَصْمَهُ مُؤْنَتَهُ.

L12091–12094 It is said to him: If you make this claim regarding his statement—peace and blessings be upon him—"Fasting during travel is not righteousness," then must you not equally apply it to Allah's words: {Righteousness is not in turning your faces toward the east or the west} [Al-Baqarah: 177]? Is there no distinction? Abu Muhammad said: Whoever adopts this approach has utterly invalidated religion, intellect, and shared understanding in their totality. If it is objected: How then do you reconcile his fasting—peace and blessings be upon him—with Allah's decree: {Whoever witnesses the month must fast it, and whoever is ill or traveling should fast an equal number of days thereafter} [Al-Baqarah: 185]? We reply: This is supremely evident. This verse can only be interpreted in two ways: either its revelation was delayed until after the conquest of Mecca or later—while Ramadan's obligation was established through prior revelation, just as the ablution verse in

وَيُقَالُ لَهُ: إذَا قُلْت هَذَا فِي قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «لَيْسَ مِنْ الْبِرِّ الصِّيَامُ فِي السَّفَرِ» فَقُلْهُ أَيْضًا فِي قَوْله تَعَالَى: {لَيْسَ الْبِرَّ أَنْ تُوَلُّوا وُجُوهَكُمْ قِبَلَ الْمَشْرِقِ وَالْمَغْرِبِ} [البقرة: ١٧٧] وَلَا فَرْقَ؟ قَالَ أَبُو مُحَمَّدٍ: وَمَنْ سَلَكَ هَذَا السَّبِيلَ فَقَدْ أَبْطَلَ الدِّينَ وَالْعَقْلَ وَالتَّفَاهُمَ جُمْلَةً. فَإِنْ قِيلَ: فَكَيْف تَقُولُونَ فِي صَوْمِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَعَ قَوْلِ اللَّهِ تَعَالَى: {فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ وَمَنْ كَانَ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ} [البقرة: ١٨٥] . قُلْنَا: هَذَا فِي غَايَةِ الْبَيَانِ لَا تَخْلُو هَذِهِ الْآيَةُ مِنْ أَنْ يَكُونَ نُزُولُهَا تَأَخَّرَ إلَى وَقْتِ فَتْحِ مَكَّةَ أَوْ بَعْدَهُ، وَتَقَدَّمَ فَرْضُ رَمَضَانَ بِوَحْيٍ آخَرَ كَمَا كَانَ نُزُولُ آيَةِ الْوُضُوءِ فِي الْمَائِدَةِ مُتَأَخِّرًا عَنْ نُزُولِ فَرْضِهِ، فَإِنْ كَانَ تَأَخَّرَ نُزُولُهَا

[18] **Qur'an references (L12088):** Qur'an 2:196 (Al-Baqarah).

فَسُؤَالُكُمْ سَاقِطٌ وَلِلَّهِ الْحَمْدُ رَبِّ الْعَالَمِينَ. وَإِنْ كَانَ تَقَدَّمَ نُزُولُهَا فَلَا يَخْلُو - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي صَوْمِهِ ذَلِكَ مِنْ أَنْ يَكُونَ صَامَهُ لِرَمَضَانَ أَوْ تَطَوُّعًا، فَإِنْ كَانَ صَامَهُ تَطَوُّعًا فَسُؤَالُكُمْ سَاقِطٌ وَلِلَّهِ الْحَمْدُ. وَإِنْ كَانَ صَامَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لِرَمَضَانَ فَلَا نُنْكِرُ أَنْ يَكُونَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - نَسَخَ بِفِعْلِهِ حُكْمَ الْآيَةِ ثُمَّ نَسَخَ ذَلِكَ الْفِعْلَ وَعَادَ حُكْمُ الْآيَةِ، فَهَذَا كُلُّهُ حَسَنٌ فَكَيْف وَلَا دَلِيلَ أَصْلًا عَلَى تَقَدُّمِ نُزُولِ الْآيَةِ قَبْلَ غَزْوَةِ الْفَتْحِ؟ وَمَا نَزَلَ بَعْضُهَا إلَّا بَعْدَ إسْلَامِ عَدِيِّ بْنِ حَاتِمٍ بَعْدَ الْفَتْحِ بِمُدَّةٍ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. قَالَ أَبُو مُحَمَّد: وَلَمْ يَبْقَ عَلَيْنَا إلَّا أَنْ نَذْكُرَ مَنْ قَالَ: بِمِثْلِ قَوْلِنَا لِئَلَّا يَدَّعُوا عَلَيْنَا خِلَافَ الْإِجْمَاعِ، فَالدَّعْوَى لِذَلِكَ مِنْهُمْ سَهْلَةٌ، وَهُمْ أَكْثَرُ النَّاسِ خِلَافًا لِلْإِجْمَاعِ عَلَى مَا قَدْ بَيَّنَّا فِي كِتَابِنَا هَذَا وَفِي غَيْرِهِ. رُوِّينَا مِنْ طَرِيقِ سُلَيْمَانَ بْنِ حَرْبٍ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ كُلْثُومِ بْنِ جَبْرٍ عَنْ رَجُلٍ مِنْ بَنِي قَيْسٍ أَنَّهُ صَامَ فِي السَّفَرِ فَأَمَرَهُ عُمَرُ بْنُ الْخَطَّابِ أَنْ يُعِيدَ. وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَاصِمِ بْنِ عُبَيْدِ اللَّهِ عَنْ عَبْدِ اللَّهِ بْنِ عَامِرِ بْنِ رَبِيعَةَ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ أَمَرَ رَجُلًا أَنْ يُعِيدَ صِيَامَهُ فِي السَّفَرِ. قَالَ أَبُو مُحَمَّد: إنَّ مَنْ احْتَجَّ فِي رَدِّ السُّنَنِ الثَّابِتَةِ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ بَيِّعَيْنِ فَلَا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا» بِرِوَايَةِ شَيْخٍ مِنْ بَنِي كِنَانَةَ عَنْ عُمَرَ أَنَّهُ قَالَ: الْبَيْعُ عَلَى صَفْقَةٍ أَوْ تَخَايُرٍ، ثُمَّ رَدَّ هَذِهِ الرِّوَايَةَ عَنْ عُمَرَ وَمَعَهُ الْقُرْآنُ وَالسُّنَنُ: لَأُعْجُوبَةٌ وَأُخْلُوقَةٌ؟ وَمِنْ طَرِيقِ سُلَيْمَانَ بْنِ حَرْبٍ عَنْ أَبِي عَوَانَةَ عَنْ عُمَرَ بْنِ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِيهِ قَالَ: نَهَتْنِي عَائِشَةُ أُمُّ الْمُؤْمِنِينَ عَنْ أَنْ أَصُومَ رَمَضَانَ فِي السَّفَرِ. وَعَنْ أَبِي هُرَيْرَةَ: لَيْسَ مِنْ الْبِرِّ الصِّيَامُ فِي السَّفَرِ.

Al-Māʾidah was revealed after its obligation—or its revelation preceded. If its revelation was delayed, your objection is void—praise be to Allah, Lord of the worlds. If it preceded, the Prophet's fasting—peace and blessings be upon him—must have been either for Ramadan or voluntary. If voluntary, your argument collapses—praise be to Allah. If he fasted for Ramadan, we do not deny that his action may have abrogated the verse's ruling, which was later itself abrogated, thereby restoring the verse's injunction. All this is plausible—but how so when there exists no evidence whatsoever that the verse was revealed before the conquest? Indeed, part of it was not revealed until after ʿAdī ibn Ḥātim's conversion, a period after the conquest. Success is granted solely by Allah, the Exalted. Abu Muhammad said: It remains only for us to cite those who concur with our position, lest they accuse us of contravening consensus—though such claims are facile, for they themselves constitute the majority in opposing consensus, as we have elucidated in this work and others. We narrate via Sulaymān ibn Ḥarb's chain: Ḥammād ibn Salamah reported from Kulthūm ibn Jabr, from a man of Banū Qays, that he fasted while traveling, and ʿUmar ibn al-Khaṭṭāb ordered him to repeat it. Through Sufyān ibn ʿUyaynah's chain: ʿĀṣim ibn ʿUbaydullāh reported from ʿAbdullāh ibn ʿĀmir ibn Rabīʿah that ʿUmar ibn al-Khaṭṭāb commanded a man to repeat his travel fast. Abu Muhammad said: Those who cite the Messenger's saying—peace and blessings be upon him—"Every..." to refute established sunnahs... When two parties engage in sale, they retain the option [to cancel] until they part," via a narration transmitted by a sheikh from Banū Kinānah reporting that ʿUmar said: "A sale is [concluded] through a transaction or mutual option." He then rejected this narration from ʿUmar—despite the Quran and Sunnah being present—exclaiming: "What a wonder and fabrication this is¿' Through the chain of Sulaymān ibn Ḥarb from Abū ʿAwānah from ʿUmar ibn Abī Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf from his father, who said: "'Ā'ishah, the Mother of the Faithful, forbade me from fasting Ramadan during travel." From Abū Hurayrah: "Fasting during travel is not an act of righteousness."[19]

[19] **Qur'an references (L12092):** Qur'an 2:177 (Al-Baqarah); Qur'an 2:185 (Al-Baqarah).

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي حَمْزَةَ نَصْرِ بْنِ عِمْرَانَ الضُّبَعِيِّ - قَالَ: سَأَلْتُ ابْنَ عَبَّاسٍ عَنْ الصَّوْمِ فِي السَّفَرِ؟ فَقَالَ: يُسْرٌ وَعُسْرٌ خُذْ بِيُسْرِ اللَّهِ تَعَالَى. قَالَ أَبُو مُحَمَّدٍ: إخْبَارُهُ بِأَنَّ صَوْمَ رَمَضَانَ فِي السَّفَرِ عُسْرٌ: إيجَابٌ مِنْهُ لِفِطْرِهِ.

L12095 And through the chain of Shu’bah from Abu Hamzah Nasr ibn ’Imran al-Duba’i, who said: I asked Ibn ’Abbas about fasting while traveling. He replied: “There is facilitation and difficulty; take the facilitation of Allah the Exalted.” Abu Muhammad said: His report that fasting Ramadan during travel is a difficulty demonstrates his view that breaking the fast is obligatory.

وَعَنْهُ أَيْضًا: الْإِفْطَارُ فِي رَمَضَانَ فِي السَّفَرِ: عَزْمَةٌ. رُوِّينَا هَذَا عَنْهُ مِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ، وَابْنِ أَبِي شَيْبَةَ كِلَاهُمَا عَنْ مُحَمَّدِ بْنِ بِشْرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ جَابِرِ بْنِ زَيْدٍ أَبِي الشَّعْثَاءِ عَنْ ابْنِ عَبَّاسٍ.

L12096 Breaking the fast during Ramadan while traveling is a confirmed ruling. This was narrated to us from him through the chain of Abd ibn Humayd and Ibn Abi Shaybah, both of whom narrated from Muhammad ibn Bishr, from Sa’id ibn Abi Aroobah, from Qatadah, from Jabir ibn Zayd Abu al-Sha’tha’, from Ibn Abbas.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي دَاوُد الطَّيَالِسِيِّ عَنْ عِمْرَانَ الْقَطَّانِ عَنْ عَمَّارٍ مَوْلَى بَنِي هَاشِمٍ هُوَ ابْنُ أَبِي عَمَّارٍ - عَنْ ابْنِ عَبَّاسٍ أَنَّهُ سُئِلَ عَمَّنْ صَامَ رَمَضَانَ فِي السَّفَرِ؟ فَقَالَ ابْنُ عَبَّاسٍ: لَا يُجْزِئُهُ - يَعْنِي لَا يُجْزِئُهُ صِيَامُهُ. وَعَنْ ابْنِ عُمَرَ أَنَّهُ سُئِلَ عَنْ الصَّوْمِ فِي السَّفَرِ؟ فَقَالَ {فَمَنْ كَانَ مِنْكُمْ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ} [البقرة: ١٨٤] .

L12097 From the chain of Ibn Abī Shaybah, from Abū Dāwūd al-Ṭayālisī, from ʿImrān al-Qaṭṭān, from ʿAmmār—client of Banū Hāshim (he is Ibn Abī ʿAmmār)—from Ibn ʿAbbās, that he was asked about one who fasted during Ramadan while traveling. Ibn ʿAbbās replied: “It is not valid for him: meaning his fasting is not valid.” From Ibn ʿUmar, that he was asked about fasting during travel. He said: *“‘So whoever among you is ill or on a journey, then a number of other days’”* [al-Baqarah 2:184].[20]

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ يَعْلَى بْنِ عَطَاءٍ عَنْ يُوسُفَ بْنِ الْحَكَمِ الثَّقَفِيِّ أَنَّ ابْنَ عُمَرَ سُئِلَ عَنْ الصَّوْمِ فِي السَّفَرِ؟ فَقَالَ: إنَّمَا هِيَ صَدَقَةٌ تَصَدَّقَ اللَّهُ بِهَا عَلَيْكَ أَرَأَيْت لَوْ تَصَدَّقْت بِصَدَقَةٍ فَرُدَّتْ عَلَيْكَ؟ أَلَمْ تَغْضَبْ؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا يُبَيِّنُ أَنَّهُ كَانَ يَرَى الصَّوْمَ فِي رَمَضَانَ فِي السَّفَرِ مُغْضِبًا لِلَّهِ تَعَالَى، وَلَا يُقَالُ هَذَا فِي شَيْءٍ مُبَاحٍ أَصْلًا. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ كُلْثُومِ بْنِ جَبْرٍ أَنَّ امْرَأَةً صَحِبَتْ ابْنَ عُمَرَ فِي سَفَرٍ فَوَضَعَ الطَّعَامَ فَقَالَ لَهَا: كُلِّي؟ قَالَتْ: إنِّي صَائِمَةٌ قَالَ: لَا تَصْحَبِينَا؟

L12098 From the narration of Shu’bah through Ya’la ibn ’Ata’, from Yusuf ibn al-Hakam al-Thaqafi: Ibn Umar was asked about fasting during travel. He replied, “It is only a charity that Allah has bestowed upon you. If you were to give a charity and it were returned to you, would you not be angered?” Abu Muhammad remarked: This clarifies that he viewed fasting in Ramadan during travel as provoking Allah’s anger, and such a description is never applied to anything fundamentally permissible.

From the narration of Hammad ibn Salamah through Kulthum ibn Jabr: A woman accompanied Ibn Umar on a journey. When he set out the food, he told her: “Eat.” She said, “I am fasting.” He retorted, “Why are you traveling with us?”

L12099–12100 And through the chain of Maʿn ibn ʿĪsā al-Qazzāz, from Ibn Abī Dhiʾb,

[20] **Qur’an references (L12097):** Qur’an 2:184 (Al-Baqarah).

from al-Zuhrī, from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf, from his father, who said: "It is said: Fasting during travel is equivalent to not fasting while settled." Abū Muḥammad said: This is an authentic chain, and it is confirmed that Abū Salama heard from his father. ʿAbd al-Raḥmān ibn ʿAwf would not say in matters of religion "It is said such-and-such" except from the Companions (of the Prophet), his peers (may Allah be pleased with them). As for our opponents, had they found something like this, the easiest thing for them would have been to assert: "He would not say that except from the Messenger of Allah (peace be upon him)."

وَمِنْ طَرِيقِ مَعْنِ بْنِ عِيسَى الْقَزَّازِ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِيهِ قَالَ: يُقَالُ: الصِّيَامُ فِي السَّفَرِ كَالْإِفْطَارِ فِي الْحَضَرِ. قَالَ أَبُو مُحَمَّدٍ: هَذَا إسْنَادٌ صَحِيحٌ، وَقَدْ صَحَّ سَمَاعُ أَبِي سَلَمَةَ مِنْ أَبِيهِ، وَلَا يَقُولُ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ فِي الدِّينِ: يُقَالُ كَذَا إلَّا عَنْ الصَّحَابَةِ أَصْحَابِهِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَأَمَّا خُصُومُنَا فَلَوْ وَجَدُوا مِثْلَ هَذَا لَكَانَ أَسْهَلَ شَيْءٍ عَلَيْهِمْ أَنْ يَقُولُوا: لَا يَقُولُ ذَلِكَ إلَّا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L12101 And from the path of Abu Mu'awiyah: Ibn Abi Dhi'b reported to us from al-Zuhri from Humaid ibn Abd al-Rahman ibn Awf from his father, who said: "One who fasts while traveling is akin to one who does not fast while settled at home." And this chain is of the utmost soundness.

وَمِنْ طَرِيقِ أَبِي مُعَاوِيَةَ نا ابْنُ أَبِي ذِئْبٍ عَنْ الزُّهْرِيِّ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِيهِ قَالَ: الصَّائِمُ فِي السَّفَرِ كَالْمُفْطِرِ فِي الْحَضَرِ، وَهَذَا سَنَدٌ فِي غَايَةِ الصِّحَّةِ.

L12102 On the authority of ʿAṭāʾ from al-Muḥarrar ibn Abī Hurayrah, he said: I fasted Ramadan while traveling, so Abū Hurayrah ordered me to repeat it with my family and to make it up. Thus, I did so.

وَمِنْ طَرِيقِ عَطَاءٍ عَنْ الْمُحَرَّرِ بْنِ أَبِي هُرَيْرَةَ قَالَ: صُمْت رَمَضَانَ فِي السَّفَرِ فَأَمَرَنِي أَبُو هُرَيْرَةَ أَنْ أُعِيدَهُ فِي أَهْلِي، وَأَنْ أَقْضِيَهُ فَقَضَيْته.

L12103 Through the chain of al-Darāwardī from ʻAbd al-Raḥmān ibn Ḥarmalah: A man asked Saʻīd ibn al-Musayyib, "Should I perform prayers in full during travel and fast?" He replied, "No." The man said, "But I am strong enough to do so!" Saʻīd said, "The Messenger of Allah (may peace and blessings be upon him) was stronger than you, and he would shorten prayers and break the fast." From 'Aṭā', when he was asked about fasting during travel, he said, "As for the obligatory, no; but regarding the voluntary, there is no harm in it."

وَمِنْ طَرِيقِ الدَّرَاوَرْدِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ حَرْمَلَةَ أَنَّ رَجُلًا سَأَلَ سَعِيدَ بْنَ الْمُسَيِّبِ أَأُتِمُّ الصَّلَاةَ فِي السَّفَرِ وَأَصُومُ؟ قَالَ: لَا فَقَالَ: إنِّي أَقْوَى عَلَى ذَلِكَ؟ قَالَ سَعِيدٌ: رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ أَقْوَى مِنْك قَدْ كَانَ يَقْصُرُ وَيُفْطِرُ. وَعَنْ عَطَاءٍ أَنَّهُ سُئِلَ عَنْ الصَّوْمِ فِي السَّفَرِ فَقَالَ: أَمَّا الْمَفْرُوضُ فَلَا، وَأَمَّا التَّطَوُّعُ فَلَا بَأْسَ بِهِ.

L12104 From the narration of Shu'bah from 'Asim, the freed slave of Quraybah, from 'Urwah ibn al-Zubayr that he said concerning a man who fasted while traveling that he must make it up when not traveling. Shu'bah said: If I were to fast Ramadan while traveling, I would have reservations about it.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ عَاصِمٍ مَوْلَى قُرَيْبَةَ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ أَنَّهُ قَالَ فِي رَجُلٍ صَامَ فِي السَّفَرِ: إنَّهُ يَقْضِيه فِي الْحَضَرِ، قَالَ شُعْبَةُ: لَوْ صُمْت رَمَضَانَ فِي السَّفَرِ لَكَانَ فِي نَفْسِي مِنْهُ شَيْءٌ.

L12105 From the narration of Ma'mar, Al-Zuhri said: Breaking the fast was the

later of the two matters from the Messenger of Allah (peace be upon him). Indeed, only the latest command of the Messenger of Allah (peace be upon him) is to be followed - adhering to the last [instruction], then the last.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: كَانَ الْفِطْرُ آخِرَ الْأَمْرَيْنِ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا يُؤْخَذُ مِنْ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْآخِرِ فَالْآخِرِ.

L12106–12108 From the narration of Ismāʿīl ibn Abī Khālid from al-Shaʿbī, who said: Do not fast during travel. And from Muḥammad ibn ʿAlī ibn al-Ḥusayn ibn ʿAlī ibn Abī Ṭālib that his father used to forbid fasting. Fasting during Ramadan while traveling; Muhammad ibn Ali also prohibited this. From al-Qasim ibn Muhammad ibn Abi Bakr, he said: "A traveler does not fast; break the fast! Break the fast!" From Yunus ibn Ubayd and his companions, they rejected fasting Ramadan during travel. Abu Muhammad said: "A report has been transmitted which, had they found its like, the matter would have become grave for them – as narrated to us through the chain of Muhammad ibn Ahmad ibn al-Jahm, from Musa ibn Harun, from Ibrahim ibn al-Mundhir, from Abdullah ibn Musa al-Taymi, from Usamah ibn Zayd al-Laythi, from al-Zuhri, from Abi Maslamah ibn Abd al-Rahman ibn Awf, from his father, who ascribed it through an elevated chain to the Prophet – peace and blessings be upon him – who said: 'The one who fasts during travel in Ramadan is like one who breaks the fast while resident.'" Abu Muhammad said: "As for us, we do not cite Usamah ibn Zayd al-Laythi as evidence, nor do we regard him as a valid proof for us or against us. The Quran and authentic Sunnahs suffice, and praise be to Allah." Ali said: "It is astonishing that Abu Hanifah does not consider the completion of prayers during travel valid, while Malik holds the view of repeating them within their time, yet they prefer fasting over breaking the fast during travel – a contradiction devoid of meaning, opposition to the Quran's explicit text, and rejection of the analogical reasoning they assert for the Sunnahs!" Ali said: "Since this is confirmed, whoever travels during Ramadan may fast voluntarily, or observe during it the makeup days for a previous Ramadan fast he missed, or any other obligatory fast from vows or otherwise. For Allah the Exalted said: 'so a number of other days' (2:184), without specifying another Ramadan over other months. The prohibition applies solely to fasting Ramadan itself. As for the sick person: if fasting harms him yet he forces himself, it does

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنَ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: لَا تَصُومُوا فِي السَّفَرِ. وَعَنْ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ بْنِ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّ أَبَاهُ كَانَ يَنْهَى عَنْ صِيَامِ رَمَضَانَ فِي السَّفَرِ، وَكَانَ مُحَمَّدُ بْنُ عَلِيٍّ يَنْهَى عَنْ ذَلِكَ أَيْضًا. وَعَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ قَالَ: لَا يَصُومُ الْمُسَافِرُ أَفْطِرْ أَفْطِرْ؟ وَعَنْ يُونُسَ بْنِ عُبَيْدٍ وَأَصْحَابِهِ أَنَّهُمْ أَنْكَرُوا صِيَامَ رَمَضَانَ فِي السَّفَرِ. قَالَ أَبُو مُحَمَّدٍ: وَقَدْ جَاءَ خَبَرٌ لَوْ وَجَدُوا مِثْلَهُ لَعَظُمَ الْخَطْبُ مَعَهُمْ كَمَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ أَحْمَدَ بْنِ الْجَهْمِ نا مُوسَى بْنُ هَارُونَ نا إِبْرَاهِيمُ بْنُ الْمُنْذِرِ نا عَبْدُ اللَّهِ بْنِ مُوسَى التَّيْمِيِّ عَنْ أُسَامَةَ بْنِ زَيْدٍ اللَّيْثِيِّ عَنْ الزُّهْرِيِّ عَنْ أَبِي مَسْلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِيهِ رَفَعَهُ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الصَّائِمُ فِي السَّفَرِ فِي رَمَضَانَ كَالْمُفْطِرِ فِي الْحَضَرِ» . قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا نَحْنُ فَلَا نَحْتَجُّ بِأُسَامَةَ بْنِ زَيْدٍ اللَّيْثِيِّ وَلَا نَرَاهُ حُجَّةً لَنَا وَلَا عَلَيْنَا وَفِي الْقُرْآنِ وَصَحِيحِ السُّنَنِ كِفَايَةٌ، وَلِلَّهِ الْحَمْدُ. قَالَ عَلِيٌّ: وَمِنْ الْعَجَبِ أَنَّ أَبَا حَنِيفَةَ لَا يُجْزِئُ عِنْدَهُ إتْمَامُ الصَّلَاةِ فِي السَّفَرِ، وَمَالِكٌ يَرَى فِي ذَلِكَ الْإِعَادَةَ فِي الْوَقْتِ ثُمَّ يَخْتَارُونَ الصَّوْمَ فِي السَّفَرِ عَلَى الْفِطْرِ، تَنَاقُضًا لَا مَعْنَى لَهُ، وَخِلَافًا لِنَصِّ الْقُرْآنِ، وَلِلْقِيَاسِ الَّذِي يَدَّعُونَ لَهُ السُّنَنَ؟ قَالَ عَلِيٌّ: فَإِذْ قَدْ صَحَّ هَذَا فَمَنْ سَافَرَ فِي رَمَضَانَ فَلَهُ أَنْ يَصُومَ تَطَوُّعًا، وَلَهُ أَنْ يَصُومَ فِيهِ قَضَاءَ رَمَضَانَ أَفْطَرَهُ قَبْلُ أَوْ سَائِرَ مَا يَلْزَمُهُ مِنْ الصَّوْمِ نَذْرًا أَوْ غَيْرَهُ، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ} [البقرة:

not suffice, and he must make it up, for he is prohibited from hardship and self-imposed strain, and from harming himself. If it does not burden him, it suffices, as there is no disagreement on this. We know of no sick person exempt from hardship in fasting. Allah the Exalted said: 'He has not placed upon you in the religion any hardship' (22:78). Thus, Allah has not ordained hardship in the religion."[21]

L12109 **A case concerning a fasting person who remained from before dawn and did not travel until after sunset.**

L12110–12112 763. Issue: Whoever settles in a place before dawn and did not travel until after sunset during their journey must, when intending the aforementioned stay, necessarily intend to fast. This applies equally whether engaged in jihad, umrah, or other travels, for the obligation to break the fast applies only during travel, whereas this person is a resident. If they intentionally break the fast, they err if ignorant or interpretively mistaken, and sin if knowingly [doing so]. No makeup fast is required, as they are a resident in valid legal condition. He thought he was a traveler. If he intended during the night while traveling to depart the next day without intending to fast, then an unforeseen stay occurred for him the following day, he is not fasting. This is because he acted upon what he was commanded as a traveler, so long as he did not intend the aforementioned stay. This differs from prayer, for textual evidence specifies shortening prayers for twenty days when residing in jihad, four days when residing in pilgrimage, and shortening the prayers he performs as a resident from his arrival until his departure the next day. No textual evidence permits breaking the fast except on days when one is a traveler.

L12113 If it is said: Allah the Exalted stated, {But whoever among you is ill or on a journey, then an equal number of other days} [Al-Baqarah: 184], does this

[21] **Qur'an references (L12106):** Qur'an 2:184 (Al-Baqarah); Qur'an 2:185 (Al-Baqarah); Qur'an 22:78 (Al-Hajj).

١٨٤] : وَلَمْ يَخُصَّ رَمَضَانَ آخَرَ مِنْ غَيْرِهِ وَلَمْ يَمْنَعْ النَّصُّ مِنْ صِيَامِهِ إلَّا لِعَيْنِهِ فَقَطْ، وَأَمَّا الْمَرِيضُ فَإِنْ كَانَ يُؤْذِيه الصَّوْمُ فَتَكَلَّفَهُ لَمْ يُجْزِهِ وَعَلَيْهِ أَنْ - يَقْضِيَهُ لِأَنَّهُ مَنْهِيٌّ عَنْ الْحَرَجِ وَالتَّكَلُّفِ، وَعَنْ أَذَى نَفْسِهِ وَإِنْ كَانَ لَا يَشُقُّ عَلَيْهِ أَجْزَأَهُ، لِأَنَّهُ لَا خِلَافَ فِي ذَلِكَ وَمَا نَعْلَمُ مَرِيضًا لَا حَرَجَ عَلَيْهِ فِي الصَّوْمِ قَالَ اللَّهُ تَعَالَى: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] فَالْحَرَجُ لَمْ يَجْعَلْهُ اللَّهُ تَعَالَى فِي الدِّينِ.

[مَسْأَلَةٌ أَقَامَ الصَّائِمُ مِنْ قَبْلِ الْفَجْرِ وَلَمْ يُسَافِرْ إلَى بَعْدِ غُرُوبِ الشَّمْسِ]

٧٦٣ - مَسْأَلَةٌ: وَمَنْ أَقَامَ مِنْ قَبْلِ الْفَجْرِ وَلَمْ يُسَافِرْ إلَى بَعْدِ غُرُوبِ الشَّمْسِ فِي سَفَرِهِ فَعَلَيْهِ إذَا نَوَى الْإِقَامَةَ الْمَذْكُورَةَ أَنْ يَنْوِيَ الصَّوْمَ وَلَا بُدَّ، سَوَاءٌ كَانَ فِي جِهَادٍ، أَوْ عُمْرَةٍ، أَوْ غَيْرِ ذَلِكَ، لِأَنَّهُ إنَّمَا أُلْزِمَ الْفِطْرَ إذَا كَانَ عَلَى سَفَرٍ وَهَذَا مُقِيمٌ، فَإِنْ أَفْطَرَ عَامِدًا فَقَدْ أَخْطَأَ إنْ كَانَ جَاهِلًا مُتَأَوِّلًا، وَعَصَى إنْ كَانَ عَالِمًا وَلَا قَضَاءَ عَلَيْهِ، لِأَنَّهُ مُقِيمٌ صَحِيحٌ ظَنَّ أَنَّهُ مُسَافِرٌ، فَإِنْ نَوَى مِنْ اللَّيْلِ وَهُوَ فِي سَفَرِهِ أَنْ يَرْحَلَ غَدًا فَلَمْ يَنْوِ الصَّوْمَ فَلَمَّا كَانَ مِنْ الْغَدِ حَدَثَتْ لَهُ إقَامَةٌ فَهُوَ مُفْطِرٌ، لِأَنَّهُ مَأْمُورٌ بِمَا فَعَلَ، وَهُوَ عَلَى سَفَرٍ مَا لَمْ يَنْوِ الْإِقَامَةَ الْمَذْكُورَةَ وَهَذَا بِخِلَافِ الصَّلَاةِ، لِأَنَّ النَّصَّ وَرَدَ فِي الصَّلَاةِ بِقَصْرِ عِشْرِينَ يَوْمًا يُقِيمُهَا فِي الْجِهَادِ، وَبِقَصْرِ أَرْبَعَةِ أَيَّامٍ يُقِيمُهَا فِي الْحَجِّ. وَبِقَصْرِ مَا يَكُونُ فِيهِ مِنْ الصَّلَوَاتِ مُقِيمًا مَا بَيْنَ نُزُولِهِ إلَى رَحِيلِهِ مِنْ غَدٍ، وَلَمْ يَأْتِ نَصٌّ بِأَنْ يُفْطِرَ فِي غَيْرِ يَوْمٍ لَا يَكُونُ فِيهِ مُسَافِرًا.

فَإِنْ قِيلَ: قَالَ اللَّهُ تَعَالَى: {فَمَنْ كَانَ مِنْكُمْ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ} [البقرة: ١٨٤] فَهَذَا عَلَى سَفَرٍ؟ قُلْنَا: لَوْ كَانَتْ " عَلَى " فِي هَذِهِ الْآيَةِ مَعْنَاهَا مَا ظَنَنْتُمْ

مِنْ إرَادَةِ السَّفَرِ لَا الدُّخُولِ فِي السَّفَرِ لَوَجَبَ عَلَى مَنْ أَرَادَ السَّفَرَ وَهُوَ فِي مَنْزِلِهِ أَنْ يُفْطِرَ وَإِنْ نَوَى السَّفَرَ بَعْدَ أَيَّامٍ، لِأَنَّهُ عَلَى سَفَرٍ وَهَذَا مَا لَا يُشَكُّ فِي أَنَّهُ لَا يَقُولُهُ أَحَدٌ، وَيُبْطِلُهُ أَيْضًا أَوَّلُ الْآيَةِ إذْ يَقُولُ تَعَالَى: {فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ} [البقرة: ١٨٥] فَوَجَبَ عَلَى الشَّاهِدِ صِيَامُهُ وَعَلَى الْمُسَافِرِ إفْطَارُهُ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَيْسَ مِنْ الْبِرِّ الصِّيَامُ فِي السَّفَرِ» وَلِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «إنَّ اللَّهَ وَضَعَ عَنْ الْمُسَافِرِ الصِّيَامَ وَشَطْرَ الصَّلَاةِ» . فَصَحَّ أَنَّهُ لَيْسَ إلَّا مُسَافِرٌ أَوْ شَاهِدٌ، فَالشَّاهِدُ يَصُومُ وَالْمُسَافِرُ يُفْطِرُ وَلَيْسَ الْمُسَافِرُ إلَّا الْمُنْتَقِلُ لَا الْمُقِيمُ، فَلَا يُفْطِرُ إلَّا مَنْ انْتَقَلَ بِخِلَافِ مَنْ لَمْ يَنْتَقِلْ، وَمَنْ كَانَ مُقِيمًا صَائِمًا فَحَدَثَ لَهُ سَفَرٌ فَإِنَّهُ إذَا بَرَزَ عَنْ مَوْضِعِهِ فَقَدْ سَافَرَ فَقَدْ بَطَلَ صَوْمُهُ وَعَلَيْهِ قَضَاؤُهُ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

apply to one who is traveling? We respond: If "on" in this verse carried the meaning you assume—referring to the intention to travel rather than physically embarking on the journey—it would obligate anyone intending to travel while still at home to abstain from fasting, even if planning to travel days later, since they would be "on a journey." This is undeniably absurd, as no one would ever claim it. This is also refuted by the verse's beginning, where Allah the Exalted says: {So whoever witnesses the month among you, let them fast it} [Al-Baqarah: 185]. Thus, the resident is obligated to fast, while the traveler is exempt from fasting, in accordance with the Messenger of Allah's statement—peace and blessings be upon him—: "It is not an act of piety to fast while traveling," and his saying—peace and blessings be upon him—: "Allah has exempted the traveler from fasting and half the prayer." This confirms there are only two categories: a traveler or a resident. The resident fasts, and the traveler abstains from fasting. A traveler is none other than one who has departed, not one remaining settled. Therefore, only one who departs abstains from fasting, unlike one who has not departed. If a resident begins fasting and then undertakes a journey, their fast is invalidated once they depart after the journey begins, and they must make up for it. And success is from Allah, the Exalted.[22]

فَإِنْ قِيلَ: بَلْ نَقِيسُ الصَّوْمَ عَلَى الصَّلَاةِ؟ قُلْنَا: الْقِيَاسُ بَاطِلٌ ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّهُمْ مُتَّفِقُونَ عَلَى أَنَّ قَصْرَ بَعْضِ الصَّلَوَاتِ لَا يُقَاسُ عَلَيْهِ قَصْرُ سَائِرِهَا، فَإِذَا لَمْ يَجُزْ عِنْدَهُمْ قِيَاسُ قَصْرِ صَلَاةٍ عَلَى قَصْرِ صَلَاةٍ أُخْرَى فَأَبْطَلُ وَأَبْعَدُ أَنْ يُقَاسَ فِطْرٌ عَلَى فِطْرٍ، وَأَيْضًا فَقَدْ يَنْوِي فِي الصَّلَاةِ الْمُسَافِرُ إقَامَةً فَيَنْتَقِلُ إلَى حُكْمِ الْمُقِيمِ وَلَا يُمْكِنُ ذَلِكَ فِي الصَّوْمِ، فَبَطَلَ عَلَى كُلِّ حَالٍ قِيَاسُ أَحَدِهِمَا عَلَى الْآخَرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L12114 If it is said: "Should we analogize fasting to prayer?" We reply: The analogy is invalid. Moreover, even if it were valid, this instance would remain invalid because scholars unanimously agree that shortening some prayers does not allow the shortening of other prayers to be analogized to it. Since they prohibit analogizing the shortening of one prayer to another, it becomes even more invalid and far-fetched to analogize breaking one fast to another. Additionally, a traveler may intend to settle during prayer, thereby transitioning to the ruling of a resident—a possibility nonexistent in fasting. Thus, in all cases, analogizing one of them to the other is invalid—and with Allah, the Exalted, lies success.

[مَسْأَلَةُ الْحَيْضُ الَّذِي يُبْطِلُ الصَّوْمَ]

L12115 **An issue: The menstruation that invalidates the fast.**

[22] **Qur'an references (L12113):** Qur'an 2:184 (Al-Baqarah); Qur'an 2:185 (Al-Baqarah).

٧٦٤ - مَسْأَلَةٌ: وَالْحَيْضُ الَّذِي يُبْطِلُ الصَّوْمَ هُوَ الْأَسْوَدُ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دَمَ الْحَيْضِ أَسْوَدُ يُعْرَفُ» .

L12116 Issue 764: The menstrual discharge that invalidates fasting is specifically the black [blood], due to the Prophet's declaration (peace be upon him): "Indeed, menstrual blood is black and is recognized."

وَقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «فَإِذَا جَاءَ الْآخَرُ فَاغْتَسِلِي وَصَلِّي» وَقَدْ ذَكَرْنَاهُ فِي كِتَابِ الْحَيْضِ مِنْ الطَّهَارَةِ مِنْ دِيوَانِنَا هَذَا فَأَغْنَى عَنْ إعَادَتِهِ.

L12117–12118 And his saying—peace and blessings be upon him—"When the cessation [of menstruation] occurs, then perform the ritual bath and pray." We have already mentioned this in the Book of Menstruation within the section on Purification in this compendium of ours, rendering its repetition unnecessary here.

وَعَنْ أُمِّ عَطِيَّةَ، وَغَيْرِهَا كُنَّا لَا نَعُدُّ الصُّفْرَةَ وَالْكُدْرَةَ شَيْئًا.

L12119 And from Umm ʿAṭiyyah and other women: We did not regard the yellowness or cloudiness as significant.

[مَسْأَلَةٌ رَأَتْ الطُّهْرَ قَبْلَ الْفَجْرِ فَأَخَّرَتْ الْغُسْلَ عَمْدًا إلَى طُلُوعِ الْفَجْرِ]

Issue: A woman observed her purity before dawn but intentionally delayed performing ghusl until the onset of dawn.

٧٦٥ - مَسْأَلَةٌ: وَإِذَا رَأَتْ الْحَائِضُ الطُّهْرَ قَبْلَ الْفَجْرِ أَوْ رَأَتْهُ النُّفَسَاءُ وَأَتَمَّتَا عِدَّةَ أَيَّامِ الْحَيْضِ وَالنِّفَاسِ قَبْلَ الْفَجْرِ فَأَخَّرَتَا الْغُسْلَ عَمْدًا إلَى طُلُوعِ الْفَجْرِ ثُمَّ اغْتَسَلَتَا وَأَدْرَكَتَا الدُّخُولَ فِي صَلَاةِ الصُّبْحِ قَبْلَ طُلُوعِ الشَّمْسِ لَمْ يَضُرَّهُمَا شَيْئًا وَصَوْمُهُمَا تَامٌّ؛ لِأَنَّهُمَا فَعَلَتَا مَا هُوَ مُبَاحٌ لَهُمَا، فَإِنْ تَعَمَّدَتَا تَرْكَ الْغُسْلِ حَتَّى تَفُوتَهُمَا الصَّلَاةُ بَطَلَ صَوْمُهُمَا؛ لِأَنَّهُمَا عَاصِيَتَانِ بِتَرْكِ الصَّلَاةِ عَمْدًا، فَلَوْ نَسِيَتَا ذَلِكَ أَوْ جَهِلَتَا فَصَوْمُهُمَا تَامٌّ؛ لِأَنَّهُمَا لَمْ يَتَعَمَّدَا مَعْصِيَةً؛ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L12120 **Issue: A woman observed her purity before dawn but intentionally delayed performing ghusl until the onset of dawn.**

L12121 If a menstruating woman or a postpartum woman observes the cessation of bleeding before dawn and completes the prescribed period for menstruation or postpartum bleeding before dawn, and they then intentionally delay the *ghusl* until dawn breaks; if they perform the *ghusl* afterward and manage to join the Fajr prayer before sunrise, this does not invalidate their fast. Their fasting remains valid because they have performed what is permissible for them. However, if they intentionally neglect the *ghusl* until they miss the prayer, their fast becomes invalid, as they would be sinning by deliberately abandoning the prayer. If they forgot or were unaware, their fast remains valid since they did not intentionally commit disobedience. And success is from Allah, the Most High.

[مَسْأَلَةٌ الْمُسْتَحَاضَةُ تَصُومُ]

Ruling: The mustahadah (a woman experiencing abnormal bleeding) must fast.

٧٦٦ - مَسْأَلَةٌ: وَتَصُومُ الْمُسْتَحَاضَةُ كَمَا تُصَلِّي عَلَى مَا ذَكَرْنَا فِي كِتَابِ الْحَيْضِ مِنْ دِيوَانِنَا هَذَا فَأَغْنَى عَنْ إعَادَتِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L12122 **Ruling: The mustahadah (a woman experiencing abnormal bleeding) must fast.**

L12123 Issue 766: The mustahadah fasts just as she prays, as we have detailed in the Book of Menstruation within this codified corpus of ours, thereby rendering its repetition unnecessary. And success is from Allah, the Most High.

L12124 **A case where one owed days from Ramadan but delayed**

making them up until the next Ramadan arrived.

L12125 767 - Issue: If someone has days to make up from Ramadan and delays fulfilling them intentionally, due to an excuse, or through forgetfulness until another Ramadan arrives, they must observe the incoming Ramadan as Allah the Exalted has commanded. When they break their fast at the beginning of Shawwāl, they must make up the owed days with no addition and no feeding obligation. This applies even if delayed for several years, differing only in the wrong committed by intentional delay—whether postponing until Ramadan or delaying during the number of days when making up was possible, based on Allah's statement: "And hasten to forgiveness from your Lord" (3:133). Hastening to Allah's obligations is obligatory. Allah also said: "But whoever is ill or on a journey, then an equal number of days [are to be made up]" (2:184). The Prophet (peace be upon him) commanded those who intentionally vomit, menstruating women, and postpartum women to make up fasts. Neither Allah nor His Messenger specified a particular time for this, so making up remains obligatory forever until fulfilled forever. No Quranic or Sunnah text mandates feeding in this case, making it impermissible to impose this, as divine law imposes religious obligations only through Allah's decree via His Messenger's tongue. This is the view of Abū Ḥanīfah and Abū Sulaymān.[23]

L12126–12127 Mālik said: If one intentionally delays making up the missed fasts until the following Ramadan arrives, they must make up each day and provide one mudd per day to a number of poor people equal to the days missed. If their illness persists, they must make up the fasts without any obligation to provide food. This is the opinion of al-Shāfiʿī.

L12128 Abu Muhammad said: It has been narrated to us regarding that from the

[23] **Qur'an references (L12125):** Qur'an 3:133 (Ali 'Imran); Qur'an 2:184 (Al-Baqarah).

[مَسْأَلَةٌ كَانَتْ عَلَيْهِ أَيَّامٌ مِنْ رَمَضَانَ فَأَخَّرَ الْقَضَاءَ حَتَّى جَاءَ آخَرُ]

٧٦٧ - مَسْأَلَةٌ: وَمَنْ كَانَتْ عَلَيْهِ أَيَّامٌ مِنْ رَمَضَانَ فَأَخَّرَ قَضَاءَهَا عَمْدًا، أَوْ لِعُذْرٍ، أَوْ لِنِسْيَانٍ حَتَّى جَاءَ رَمَضَانُ آخَرُ فَإِنَّهُ يَصُومُ رَمَضَانَ الَّذِي وَرَدَ عَلَيْهِ كَمَا أَمَرَهُ اللَّهُ تَعَالَى فَإِذَا أَفْطَرَ فِي أَوَّلِ شَوَّالٍ قَضَى الْأَيَّامَ الَّتِي كَانَتْ عَلَيْهِ وَلَا مَزِيدَ، وَلَا إطْعَامَ عَلَيْهِ فِي ذَلِكَ، وَكَذَلِكَ لَوْ أَخَّرَهَا عِدَّةَ سِنِينَ وَلَا فَرْقَ إلَّا أَنَّهُ قَدْ أَسَاءَ فِي تَأْخِيرِهَا عَمْدًا سَوَاءٌ أَخَّرَهَا إلَى رَمَضَانَ أَوْ مِقْدَارَ مَا كَانَ يُمْكِنُهُ قَضَاؤُهَا مِنْ الْأَيَّامِ لِقَوْلِ اللَّهِ تَعَالَى: {وَسَارِعُوا إِلَى مَغْفِرَةٍ مِنْ رَبِّكُمْ} [آل عمران: ١٣٣] فَالْمُسَارَعَةُ إلَى اللَّهِ الْمُفْتَرَضَةُ وَاجِبَةٌ. وَقَالَ اللَّهُ تَعَالَى: {فَمَنْ كَانَ مِنْكُمْ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ} [البقرة: ١٨٤] وَأَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُتَعَمِّدَ لِلْقَيْءِ، وَالْحَائِضَ، وَالنُّفَسَاءَ: بِالْقَضَاءِ، وَلَمْ يَحُدَّ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ وَقْتًا بِعَيْنِهِ، فَالْقَضَاءُ وَاجِبٌ عَلَيْهِمْ أَبَدًا حَتَّى يُؤَدَّى أَبَدًا، وَلَمْ يَأْتِ نَصٌّ قُرْآنٍ وَلَا سُنَّةٍ بِإِيجَابِ إطْعَامٍ فِي ذَلِكَ فَلَا يَجُوزُ إلْزَامُ ذَلِكَ أَحَدًا لِأَنَّهُ شَرْعٌ وَالشَّرْعُ لَا يُوجِبُهُ فِي الدِّينِ إلَّا اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ. وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ.

وَقَالَ مَالِكٌ: يُطْعِمُ مَعَ الْقَضَاءِ عَنْ كُلِّ يَوْمٍ مِنْ الرَّمَضَانِ الْآتِي مُدًّا مُدًّا عَدَدَهَا مَسَاكِينَ إنْ تَعَمَّدَ تَرْكَ - الْقَضَاءِ، فَإِنْ كَانَ تَمَادَى مَرَضُهُ قَضَى وَلَا إطْعَامَ عَلَيْهِ - وَهُوَ قَوْلُ الشَّافِعِيِّ.

Salaf—may Allah be pleased with them—statements: And it has been narrated to us from Ibn Abbas and Abu Hurairah the like of the opinion of Malik and Al-Shafi'i.

L12129 It was also narrated to us from ʻUmar and Ibn ʻUmar—both via broken chains—and this is the position maintained by al-Ḥasan and ʻAṭā'.

L12130 It has been reported to us from Ibn Umar through an authentic chain that he would fast the subsequent Ramadan without making up the previous one by fasting, but rather feed on his behalf a needy person a mudd for each day—a mudd each.

L12131 And according to it say Abu Qatadah and Ikrimah.

L12132 And it has also been narrated from him: He must offer a garlanded sacrificial camel in place of every Ramadan he neglected to make up.

L12133 And it has been narrated to us via Ibn Masʿūd's chain that he fasts this [day] and makes up the first [day], without mentioning food. This is the opinion of Ibrāhīm an-Nakhaʿī, al-Ḥasan, Ṭāwus, and Ḥammād ibn Abī Sulaymān. ʿAlī said: "Our understanding of them is that they would say regarding a Companion's opinion that aligned with theirs: 'Such a matter cannot be based on personal reasoning.' Why then did they not say this about Ibn ʻUmar's opinion concerning the two ritual sacrificial camels?"

L12134 **The issue of whether missed Ramadan fasts must be made up consecutively.**

L12135 768. Issue: Consecutiveness in making up missed Ramadan fasts is obligatory, based on Allah's decree: *"Strive eagerly for forgiveness from your Lord"* [Āl ʻImrān 3:133]. If one fails to do so, they must make them up separately, and this suffices the individual, in accordance with Allah's decree: *"Then [fast] an equal number of days at other times"* [Al-Baqarah 2:184]. The Exalted has not specified a time limit for this, after which making up the fasts becomes invalid due to their expiration.[24]

[24] **Qur'an references (L12135):** Qur'an 3:133 (Ali 'Imran); Qur'an 2:184 (Al-Baqarah); Qur'an 2:185 (Al-Baqarah).

قَالَ أَبُو مُحَمَّدٍ: وَرُوِّينَا فِي ذَلِكَ عَنْ السَّلَفِ - رَضِيَ اللَّهُ عَنْهُمْ - أَقْوَالًا -: فَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ، وَأَبِي هُرَيْرَةَ مِثْلَ قَوْلِ مَالِكٍ، وَالشَّافِعِيِّ.

وَرُوِّيناهُ أَيْضًا عَنْ عُمَرَ، وَابْنِ عُمَرَ مِنْ طَرِيقٍ مُنْقَطِعَةٍ، وَبِهِ يَقُولُ الْحَسَنُ، وَعَطَاءٌ.

وَرُوِّينَا عَنْ ابْنِ عُمَرَ مِنْ طَرِيقٍ صَحِيحَةٍ أَنَّهُ يَصُومُ رَمَضَانَ الْآخَرَ وَلَا يَقْضِي الْأَوَّلَ بِصِيَامٍ، لَكِنْ يُطْعِمُ عَنْهُ مَكَانَ كُلِّ يَوْمٍ مِسْكِينًا مُدًّا مُدًّا.

وَبِهِ يَقُولُ أَبُو قَتَادَةَ، وَعِكْرِمَةُ.

وَرُوِّينَا عَنْهُ أَيْضًا: يُهْدِي مَكَانَ كُلِّ رَمَضَانَ فَرَّطَ فِي قَضَائِهِ بَدَنَةً مُقَلَّدَةً.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ مَسْعُودٍ يَصُومُ هَذَا وَيَقْضِي الْأَوَّلَ وَلَمْ يَذْكُرْ طَعَامًا - وَهُوَ قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ، وَالْحَسَنِ، وَطَاوُسٍ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ؟ قَالَ عَلِيٌّ: عَهْدُنَا بِهِمْ يَقُولُونَ فِيمَا وَافَقَهُمْ مِنْ قَوْلِ الصَّاحِبِ: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، فَهَلَّا قَالُوهُ فِي قَوْلِ ابْنِ عُمَرَ فِي الْبَدَنَتَيْنِ؟

[مَسْأَلَةٌ الْمُتَابَعَةُ فِي قَضَاءِ رَمَضَانَ]

٧٦٨ - مَسْأَلَةٌ: وَالْمُتَابَعَةُ فِي قَضَاءِ رَمَضَانَ وَاجِبَةٌ لِقَوْلِ اللَّهِ تَعَالَى: {وَسَارِعُوا إِلَى مَغْفِرَةٍ مِنْ رَبِّكُمْ} [آل عمران: ١٣٣] فَإِنْ لَمْ يَفْعَلْ فَيَقْضِيهَا مُتَفَرِّقَةً وَتُجْزِئُهُ لِقَوْلِ اللَّهِ تَعَالَى: {فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ} [البقرة: ١٨٤] وَلَمْ يَحُدَّ تَعَالَى فِي ذَلِكَ وَقْتًا يَبْطُلُ الْقَضَاءُ بِخُرُوجِهِ.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ - نَعْنِي أَنَّهُمْ اتَّفَقُوا عَلَى جَوَازِ قَضَائِهَا مُتَفَرِّقَةً.

وَاحْتَجَّ مَنْ قَالَ: بِأَنَّهَا لَا تُجْزِئُ إِلَّا مُتَتَابِعَةً بِأَنَّ فِي مُصْحَفِ أُبَيٍّ " فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ مُتَتَابِعَاتٍ ". قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ عُرْوَةُ: قَالَتْ عَائِشَةُ أُمُّ الْمُؤْمِنِينَ: نَزَلَتْ {فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ} [البقرة: ١٨٤] مُتَتَابِعَاتٍ " فَسَقَطَتْ " مُتَتَابِعَاتٌ ". قَالَ أَبُو مُحَمَّد: سُقُوطُهَا مُسْقِطٌ لِحُكْمِهَا، لِأَنَّهُ لَا يَسْقُطُ الْقُرْآنُ بَعْدَ نُزُولِهِ إِلَّا بِإِسْقَاطِ اللَّهِ تَعَالَى إيَّاهُ قَالَ اللَّهُ تَعَالَى: {إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ} [الحجر: ٩]

وَقَالَ تَعَالَى: {مَا نَنْسَخْ مِنْ آيَةٍ أَوْ نُنْسِهَا نَأْتِ بِخَيْرٍ مِنْهَا أَوْ مِثْلِهَا} [البقرة: ١٠٦]

وَقَالَ تَعَالَى: {سَنُقْرِئُكَ فَلا تَنْسَى} [الأعلى: ٦] {إِلا مَا شَاءَ اللَّهُ} [الأعلى: ٧]

فَإِنْ قِيلَ: قَدْ يَسْقُطُ لَفْظُ الْآيَةِ وَيَبْقَى حُكْمُهَا كَمَا كَانَ فِي آيَةِ الرَّجْمِ. قُلْنَا: لَوْلَا إخْبَارُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِبَقَاءِ حُكْمِ الرَّجْمِ لَمَا جَازَ الْعَمَلُ بِهِ بَعْدَ إسْقَاطِ الْآيَةِ النَّازِلَةِ بِهِ لِأَنَّ مَا رَفَعَ اللَّهُ تَعَالَى فَلَا يَجُوزُ لَنَا إبْقَاءُ لَفْظِهِ وَلَا حُكْمِهِ إلَّا بِنَصٍّ آخَرَ.

[مَسْأَلَةٌ الْأَسِيرُ فِي دَارِ الْحَرْبِ إنْ عَرَفَ رَمَضَانَ]

L12136 This is the opinion of Abu Hanifah, Malik, al-Shafi'i, and Abu Sulayman—meaning that they agreed on the validity of making up missed prayers at separate times.

L12137–12139 Those who say that [fasts] do not suffice unless performed consecutively base their argument on the presence in Ubayy's Muṣḥaf of the phrase: "a number of other consecutive days." ʿAlī said: We were narrated through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī, who said: ʿUrwah reported that she ['Ā'ishah] said. Aisha, the Mother of the Believers, said: "The verse {then a number of other days} [Al-Baqarah: 184] was revealed as consecutive days, but the requirement of consecutiveness was abrogated." Abu Muhammad stated: The abrogation of this specification nullifies its legal ruling, for no Quranic ruling is abrogated after its revelation except by Allah's abrogation of it. Allah the Exalted said: {Indeed, it is We who sent down the Reminder, and indeed, We will be its guardians} [Al-Hijr: 9].[25]

L12140 And He, the Exalted, said: "Whatever verse We abrogate or cause to be forgotten, We bring better than it or similar to it." [Quran 2:106][26]

L12141 And He, the Exalted, said: *"We will make you recite, so you will not forget—except what Allah wills"* [87:6-7].[27]

L12142 If it is said: The wording of a verse may be abrogated while its legal injunction remains, as occurred with the verse of stoning. We reply: Had the Prophet (peace and blessings be upon him) not informed us of the persistence of the stoning injunction, it would not have been permissible to act upon it after the abrogation of the verse revealed concerning it, because once Allah the Exalted has abolished something, it is impermissible for us to retain either its wording or its legal injunction except through another explicit text.

L12143 **A legal issue: If a captive in the abode of war ascertains the arrival of Ramadan [through valid means]...**

[25] **Qur'an references (L12137):** Qur'an 2:184 (Al-Baqarah); Qur'an 2:185 (Al-Baqarah); Qur'an 15:9 (Al-Hijr).

[26] **Qur'an references (L12140):** Qur'an 2:106 (Al-Baqarah).

[27] **Qur'an references (L12141):** Qur'an 87:6 (Al-A'la); Qur'an 87:7 (Al-A'la).

L12144 769. Issue: If a captive in enemy territory knows Ramadan's occurrence, he is obligated to fast during it if resident, as the Quran addresses him to fast. If taken on journey, he must break his fast necessarily, being considered a traveler who must make up (the fasts) per prior ruling. If unable to recognize the month and remains uncertain, his fasting obligation ceases though he must substitute other days if traveling - otherwise not. Some scholars said: He should estimate a month which suffices. Others said: If (the estimate) coincides with a month before Ramadan, it does not suffice, but if coinciding with a month after Ramadan, it suffices as this constitutes making up Ramadan's fasts.

٧٦٩ - مَسْأَلَةٌ: وَالْأَسِيرُ فِي دَارِ الْحَرْبِ إنْ عَرَفَ رَمَضَانَ لَزِمَهُ صِيَامُهُ إنْ كَانَ مُقِيمًا، لِأَنَّهُ مُخَاطَبٌ بِصَوْمِهِ فِي الْقُرْآنِ، فَإِنْ سُوفِرَ بِهِ أَفْطَرَ وَلَا بُدَّ لِأَنَّهُ عَلَى سَفَرٍ وَعَلَيْهِ قَضَاؤُهُ لِمَا ذُكِرَ قَبْلُ، فَإِنْ لَمْ يَعْرِفْ الشَّهْرَ وَأَشْكَلَ عَلَيْهِ سَقَطَ عَنْهُ صِيَامُهُ وَلَزِمَتْهُ أَيَّامٌ أُخَرُ إنْ كَانَ مُسَافِرًا وَإِلَّا فَلَا. وَقَالَ قَوْمٌ: يَتَحَرَّى شَهْرًا وَيُجْزِئُهُ. وَقَالَ آخَرُونَ: إنْ وَافَقَ شَهْرًا قَبْلَ رَمَضَانَ لَمْ يُجْزِهِ، وَإِنْ وَافَقَ شَهْرًا بَعْدَ رَمَضَانَ أَجْزَأَهُ، لِأَنَّهُ يَكُونُ قَضَاءً عَنْ رَمَضَانَ.

L12145 Ali said: As for determining a month to validate it or designate it as making up for it, this ruling is not supported by the Quran, an authentic Sunnah, a weak narration, consensus, nor even a companion's opinion. Whatever resembles this constitutes a baseless claim with no evidence for its validity. If they argue: "We have analogized it to one ignorant of the qibla," we respond: This is invalid, for Allah the Exalted did not impose determination upon one ignorant of the qibla. Rather, whoever is ignorant of it is exempt from its obligation and may pray as he wishes.

قَالَ عَلِيٌّ: أَمَّا تَحَرِّي شَهْرٍ فَيُجْزِئُهُ أَوْ يَجْعَلُهُ قَضَاءً فَحُكْمٌ لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا إجْمَاعٌ، وَلَا قَوْلُ صَاحِبٍ، وَمَا كَانَ هَكَذَا فَهُوَ دَعْوَى فَاسِدَةٌ لَا بُرْهَانَ عَلَى صِحَّتِهَا. فَإِنْ قَالُوا: قِسْنَاهُ عَلَى مَنْ جَهِلَ الْقِبْلَةَ. قُلْنَا: هَذَا بَاطِلٌ؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ التَّحَرِّيَ عَلَى مَنْ جَهِلَ الْقِبْلَةَ؛ بَلْ مَنْ جَهِلَهَا فَقَدْ سَقَطَ عَنْهُ فَرْضُهَا، فَيُصَلِّي كَيْفَ شَاءَ.

L12146 If they say: We have applied analogy to one for whom the prayer time is obscured. We say: This is invalid as well, for his prayer is not valid unless he is certain that its time has commenced.

فَإِنْ قَالُوا: قِسْنَاهُ عَلَى مَنْ خَفِيَ عَلَيْهِ وَقْتُ الصَّلَاةِ. قُلْنَا: وَهَذَا بَاطِلٌ، أَيْضًا، لِأَنَّهُ لَا يُجْزِئُهُ صَلَاةٌ إلَّا حَتَّى يُوقِنَ بِدُخُولِ وَقْتِهَا.

L12147–12148 Abu Muhammad said: The proof for the validity of our opinion is Allah's statement, the Exalted: {So whoever among you witnesses the month, he must fast it; and whoever is ill or on a journey, then a number of other days} [Al-Baqarah 185]. Thus, Allah, the Exalted, obligated fasting only upon those who witness it. By necessity, we recognize that whoever is unaware of its time has not witnessed it. Allah, the Mighty and Majestic, said: {Allah does not burden a soul beyond its capacity} [Al-Baqarah 286], and He, the Exalted, said: {He has not placed upon you in the religion any hardship} [Al-Hajj 78]. Therefore, whoever is unable to know the commencement of Ramadan is not obligated by Allah, the Exalted, to fast it, by the definitive

قَالَ أَبُو مُحَمَّدٍ: وَبُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ وَمَنْ كَانَ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ} [البقرة: ١٨٥] فَلَمْ يُوجِبْ اللَّهُ تَعَالَى صِيَامَهُ إلَّا عَلَى مَنْ شَهِدَهُ، وَبِالضَّرُورَةِ نَدْرِي أَنَّ مَنْ جَهِلَ وَقْتَهُ فَلَمْ يَشْهَدْهُ قَالَ اللَّهُ عَزَّ وَجَلَّ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إلا وُسْعَهَا} [البقرة: ٢٨٦] وَقَالَ تَعَالَى: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] فَمَنْ لَمْ يَكُنْ فِي وُسْعِهِ مَعْرِفَةُ دُخُولِ رَمَضَانَ فَلَمْ يُكَلِّفْهُ اللَّهُ تَعَالَى صِيَامَهُ بِنَصِّ الْقُرْآنِ، وَمَنْ سَقَطَ عَنْهُ صَوْمُ الشَّهْرِ فَلَا قَضَاءَ عَلَيْهِ؛

Quranic text. Whoever is exempt from fasting the month is not obligated to make it up, for this would constitute fasting other than what Allah, the Exalted, has commanded. If it is later confirmed to him that he was ill or traveling during it, he must fulfill what Allah, the Exalted, has obligated upon the ill and the traveler during it—which is to fast a number of other days. Thus, he must make up only the days he traveled and was ill, and this is obligatory. If he remains uncertain whether he was ill or traveling during it, there is no obligation upon him—and success is from Allah, the Exalted.[28]

L12149 **A legal issue: a pregnant woman fears harm to her fetus, or the elderly man is unable to fast.**

L12150 770 - Issue: Pregnant women, nursing mothers, and elderly individuals are all obligated to fast, as fasting Ramadan is incumbent upon them. If a nursing mother fears a reduction in milk supply or its complete cessation, thereby harming the infant, due to that - when there is no other woman to nurse him, or he refuses another's breast; or if a pregnant woman fears for the fetus; or if elderly individuals are incapable of fasting due to advanced age—they may break their fast without being required to make up the days nor provide compensatory feeding (fidya). If they break their fast due to a temporary illness affecting them, they must make up the days.

L12151 As for making up due to illness, it is based on the statement of Allah, the Most High: *"So whoever among you is ill or on a journey, then a number of other days"* (Surah Al-Baqarah 2:184).[29]

L12152 As for the obligation of breaking the fast upon the two of them (the pregnant woman and the nursing mother) due to fear for the fetus or the nursing infant, this is based on the words of Allah the Exalted: "Lost indeed are those who have killed their children in foolishness without knowledge" (6:140). The Messenger of Allah—peace and blessings be upon him—said: "He who shows no compassion will receive no compassion." Since showing compas-

[28] **Qur'an references (L12148):** Qur'an 2:185 (Al-Baqarah); Qur'an 2:286 (Al-Baqarah); Qur'an 22:78 (Al-Hajj).

[29] **Qur'an references (L12151):** Qur'an 2:184 (Al-Baqarah).

لأَنَّهُ صَوْمُ غَيْرِ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ. فَإِنْ صَحَّ عِنْدَهُ بَعْدَ ذَلِكَ أَنَّهُ كَانَ فِيهِ مَرِيضًا أَوْ مُسَافِرًا فَعَلَيْهِ مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَى الْمَرِيضِ فِيهِ وَالْمُسَافِرِ فِيهِ وَهُوَ عِدَّةٌ مِنْ أَيَّامٍ أُخَرَ، فَيَقْضِي الْأَيَّامَ الَّتِي سَافَرَ، وَالَّتِي مَرِضَ فَقَطْ وَلَا بُدَّ؛ وَإِنْ لَمْ يُوقِنْ بِأَنَّهُ مَرِضَ فِيهِ أَوْ سَافَرَ فَلَا شَيْءَ عَلَيْهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ خَافَتْ الْحَامِلُ عَلَى الْجَنِينِ أَوْ عَجَزَ الشَّيْخُ عَنْ الصَّوْمِ]

٧٧٠ - مَسْأَلَةٌ: - وَالْحَامِلُ، وَالْمُرْضِعُ، وَالشَّيْخُ الْكَبِيرُ كُلُّهُمْ مُخَاطَبُونَ بِالصَّوْمِ فَصَوْمُ رَمَضَانَ فَرْضٌ عَلَيْهِمْ، فَإِنْ خَافَتْ الْمُرْضِعُ عَلَى الْمُرْضَعِ قِلَّةَ اللَّبَنِ وَضَيْعَتَهُ لِذَلِكَ وَلَمْ يَكُنْ لَهُ غَيْرُهَا، أَوْ لَمْ يَقْبَلْ ثَدْيَ غَيْرِهَا، أَوْ خَافَتْ الْحَامِلُ عَلَى الْجَنِينِ، أَوْ عَجَزَ الشَّيْخُ عَنْ الصَّوْمِ لِكِبَرِهِ: أَفْطَرُوا وَلَا قَضَاءَ عَلَيْهِمْ وَلَا إطْعَامَ، فَإِنْ أَفْطَرُوا لِمَرَضٍ بِهِمْ عَارِضٍ فَعَلَيْهِمْ الْقَضَاءُ.

أَمَّا قَضَاؤُهُمْ لِمَرَضٍ فَلِقَوْلِ اللَّهِ تَعَالَى: {فَمَنْ كَانَ مِنْكُمْ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ} [البقرة: ١٨٤] .

وَأَمَّا وُجُوبُ الْفِطْرِ عَلَيْهِمَا فِي الْخَوْفِ عَلَى الْجَنِينِ، وَالرَّضِيعِ فَلِقَوْلِ اللَّهِ تَعَالَى: {قَدْ خَسِرَ الَّذِينَ قَتَلُوا أَوْلادَهُمْ سَفَهًا بِغَيْرِ عِلْمٍ} [الأنعام: ١٤٠] . وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ لَا يَرْحَمْ لَا يُرْحَمْ» فَإِذْ رَحْمَةُ الْجَنِينِ، وَالرَّضِيعِ: فَرْضٌ، وَلَا وُصُولَ إلَيْهَا إلَّا بِالْفِطْرِ: فَالْفِطْرُ فَرْضٌ، وَإِذْ هُوَ فَرْضٌ فَقَدْ سَقَطَ عَنْهُمَا الصَّوْمُ، وَإِذَا سَقَطَ الصَّوْمُ فَإِيجَابُ الْقَضَاءِ عَلَيْهِمَا شَرْعٌ لَمْ يَأْذَنْ اللَّهُ تَعَالَى بِهِ وَلَمْ يُوجِبْ اللَّهُ تَعَالَى الْقَضَاءَ

sion to the fetus and the nursing infant is obligatory, and this compassion can only be achieved by breaking the fast, breaking the fast thereby becomes obligatory. When this obligation takes effect, they are excused from fasting. To impose the duty of making up the fast upon them would constitute a Sharia ruling that Allah the Exalted has not authorized, for He has only obligated making up missed fasts upon the sick, the traveler, the menstruating woman, the postpartum woman, and the one who intentionally vomits. “Whoever transgresses the limits set by Allah has indeed wronged himself” (65:1).[30]

إِلَّا عَلَى الْمَرِيضِ، وَالْمُسَافِرِ، وَالْحَائِضِ، وَالنُّفَسَاءِ، وَمُتَعَمِّدِ الْقَيْءِ فَقَطْ، {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

L12153–12154 As for the elderly man who cannot endure fasting due to old age, Allah the Exalted says: {Allah does not burden a soul beyond its capacity} [Al-Baqarah: 286]. Thus, if fasting is not within his capacity, He has not obligated him. As for imposing feeding as an obligation upon them, the Messenger of Allah — peace and blessings be upon him — said: “Your blood and your wealth are inviolable to you.” Therefore, it is not permissible for anyone to impose a compensatory duty not established by textual evidence or consensus. Abu Muhammad said: It was narrated to us from Ibrahim that a woman came to Alqamah and said: “I am pregnant and capable of fasting, yet my husband orders me to break my fast?” Alqamah replied: “Obey your Lord and disobey your husband.” Among those who exempted her from making up the fast: It was narrated to us from Hammad ibn Salamah, from Ayyub al-Sikhtiyani and Ubaydullah ibn Umar, both from Nafi’, that a woman from Quraysh asked Ibn Umar while she was pregnant. He said to her: “Break your fast and feed a needy person each day, and do not make up the fast.” From the narration of Hammad ibn Salamah, from Ayyub al-Sikhtiyani and Qatadah, both from Sa‘id ibn Jubayr, from Ibn Abbas, that he said to his nursing female slave: “You are in the position of {those who can only fast with great difficulty must feed a needy person as a ransom} [Al-Baqarah: 184]. Break your fast and feed a needy person each day, and do not make up the fast.” Both narrations were transmitted to us through Ismail ibn Ishaq from Al-Hajjaj ibn Al-Minhal from Hammad, and through Abd al-Razzaq from Ma‘mar from Ayyub from Sa‘id ibn Jubayr, who said: “The pregnant woman in her final month of pregnancy

وَأَمَّا الشَّيْخُ الَّذِي لَا يُطِيقُ الصَّوْمَ لِكِبَرِهِ فَاللَّهُ تَعَالَى يَقُولُ {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] فَإِذَا لَمْ يَكُنْ الصَّوْمُ فِي وُسْعِهِ فَلَمْ يُكَلِّفْهُ. وَأَمَّا تَكْلِيفُهُمْ إطْعَامًا فَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَجُوزُ لِأَحَدٍ إيجَابُ غَرَامَةٍ لَمْ يَأْتِ بِهَا نَصٌّ وَلَا إجْمَاعٌ. قَالَ أَبُو مُحَمَّد: رُوِّينَا عَنْ إبْرَاهِيمَ أَنَّ عَلْقَمَةَ جَاءَتْهُ امْرَأَةٌ فَقَالَتْ لَهُ: إنِّي حُبْلَى وَأَنَا أُطِيقُ الصَّوْمَ وَزَوْجِي يَأْمُرُنِي أَنْ أُفْطِرَ؟ فَقَالَ لَهَا عَلْقَمَةُ: أَطِيعِي رَبَّكِ وَأَعْصِي زَوْجَكِ. وَمِمَّنْ أَسْقَطَ عَنْهَا الْقَضَاءَ -: رُوِّينَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ وَعُبَيْدِ اللَّهِ بْنِ عُمَرَ كِلَاهُمَا عَنْ نَافِعٍ أَنَّ امْرَأَةً مِنْ قُرَيْشٍ سَأَلَتْ ابْنَ عُمَرَ وَهِيَ حُبْلَى؟ فَقَالَ لَهَا: أَفْطِرِي وَأَطْعِمِي كُلَّ يَوْمٍ مِسْكِينًا وَلَا تَقْضِي. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، وَقَتَادَةَ كِلَاهُمَا عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ لِأَمَةٍ لَهُ مُرْضِعٍ: أَنْتِ بِمَنْزِلَةِ {وَعَلَى الَّذِينَ يُطِيقُونَهُ فِدْيَةٌ طَعَامُ مِسْكِينٍ} [البقرة: ١٨٤] أَفْطِرِي وَأَطْعِمِي كُلَّ يَوْمٍ مِسْكِينًا وَلَا تَقْضِي. رُوِّينَا كِلَيْهِمَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ عَنْ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ حَمَّادٍ، وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: تُفْطِرُ الْحَامِلُ

[30] **Qur’an references (L12152):** Qur’an 6:140 (Al-An’am); Qur’an 65:1 (At-Talaq).

and the nursing woman who fears for her child may break their fast. Each of them must feed a needy person every day, and there is no obligation to make up the fast." This is the opinion of Qatadah and the apparent meaning of Sa'id ibn al-Musayyab's statement.[31]

L12155 Among those who waived the feeding obligation—as we have reported through the chain of Abd al-Razzaq from Ibn Jurayj from Ata from Ibn Abbas—he said: The pregnant woman and the nursing woman may break their fasts in Ramadan and must make up for them by fasting, with no feeding obligation upon them.

L12156 And similar to it from ʿIkrimah and Ibrāhīm al-Nakhaʿī—which is the opinion of Abū Ḥanīfah and Sufyān.

L12157 Among those who held that both rulings apply to them is ʿAṭāʾ ibn Abī Rabāḥ, for he said: If a breastfeeding woman or a pregnant woman fears for her child, she should break her fast and feed (someone) half a ṣāʿ in place of each day, and she must make up for it by fasting afterward - and this is the opinion of al-Shāfiʿī.

L12158–12160 Abū Muḥammad said: They did not reach consensus on establishing the obligation to make up the missed fast nor on establishing the obligation to feed the poor; therefore, neither is obligatory. None of that is obligatory, as there is no textual proof or consensus on its obligation. Our knowledge of them indicates they would address a companion's statement only when it aligned with their position. Such a ruling cannot be based on personal opinion—so why did they not mention here Ibn Umar's statement regarding the waiver of compensatory acts (qada)?

L12161 And indeed, it has been narrated to us from Ibn Abbas similar to our view, just as it was narrated to us from Ismāʿīl ibn Isḥāq: Ibrāhīm ibn Ḥamzah al-Zubayrī narrated to us, ʿAbd al-ʿAzīz ibn Muḥammad – he is al-Darāwardī – narrated to us, from Ḥumayd, from Bakr ibn ʿAbd Allāh al-Muzanī, from Ibn ʿAbbās, that he was asked about a breastfeeding woman during Ramadan who feared for her child. Ibn ʿAbbās permitted her to break the fast.

[31] **Qur'an references (L12154):** Qur'an 2:286 (Al-Baqarah); Qur'an 2:184 (Al-Baqarah).

الَّتِي فِي شَهْرِهَا وَالْمُرْضِعُ الَّتِي تَخَافُ عَلَى وَلَدِهَا وَتُطْعِمُ كُلُّ وَاحِدَةٍ مِنْهُمَا كُلَّ يَوْمٍ مِسْكِينًا وَلَا قَضَاءَ عَلَيْهِمَا. وَبِهِ يَقُولُ قَتَادَةُ، وَهُوَ ظَاهِرُ قَوْلِ سَعِيدِ بْنِ الْمُسَيِّبِ.

وَمِمَّنْ أَسْقَطَ الْإِطْعَامَ كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: تُفْطِرُ الْحَامِلُ، وَالْمُرْضِعُ فِي رَمَضَانَ وَيَقْضِيَانِهِ صِيَامًا وَلَا إِطْعَامَ عَلَيْهِمَا.

وَمِثْلُهُ عَنْ عِكْرِمَةَ، وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ.

وَمِمَّنْ رَأَى عَلَيْهِمَا الْأَمْرَيْنِ جَمِيعًا: عَطَاءُ بْنُ أَبِي رَبَاحٍ فَإِنَّهُ قَالَ: إِذَا خَافَتْ الْمُرْضِعُ وَالْحَامِلُ عَلَى وَلَدِهَا فَلْتُفْطِرْ وَلْتُطْعِمْ مَكَانَ كُلِّ يَوْمٍ نِصْفَ صَاعٍ وَلْتَقْضِ بَعْدَ ذَلِكَ - وَهُوَ قَوْلُ الشَّافِعِيِّ.

قَالَ أَبُو مُحَمَّدٍ: فَلَمْ يَتَّفِقُوا عَلَى إيجَابِ الْقَضَاءِ وَلَا عَلَى إيجَابِ الْإِطْعَامِ فَلَا يَجِبُ شَيْءٌ مِنْ ذَلِكَ؛ إذْ لَا نَصَّ فِي وُجُوبِهِ وَلَا إجْمَاعَ، وَعَهْدُنَا بِهِمْ يَقُولُونَ فِي قَوْلِ الصَّاحِبِ إذَا وَافَقَهُمْ. مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، فَهَلَّا قَالُوا هَاهُنَا فِي قَوْلِ ابْنِ عُمَرَ فِي إسْقَاطِ الْقَضَاءِ؟

وَقَدْ رُوِّينَا عَنْ ابْنِ عَبَّاسٍ مِثْلَ قَوْلِنَا كَمَا رُوِّينَا عَنْ إسْمَاعِيلَ بْنِ إسْحَاقَ نا إبْرَاهِيمُ بْنُ حَمْزَةَ الزُّبَيْرِيِّ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ هُوَ الدَّرَاوَرْدِيُّ عَنْ حُمَيْدٍ عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيِّ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ سُئِلَ عَنْ مُرْضِعٍ فِي رَمَضَانَ خَشِيَتْ عَلَى وَلَدِهَا فَرَخَّصَ لَهَا ابْنُ عَبَّاسٍ فِي الْفِطْرِ.

L12162 Ali said: He did not mention making up the fasts nor feeding. Malik said: As for the nursing woman, she breaks the fast, feeds one needy person for each day, and makes up the fasts afterward. As for the pregnant woman, she makes up the fasts with no feeding required. Is this categorization not recorded from any of the Companions or Successors? Abu Muhammad said: Those who hold the opinion of requiring feeding in this matter cite the words of Allah the Exalted: {For those who can [fast] only with extreme difficulty, a ransom of feeding a needy person} [Al-Baqarah 2:184].[32]

قَالَ عَلِيٌّ: وَلَمْ يَذْكُرْ قَضَاءً وَلَا طَعَامًا، وَقَالَ مَالِكٌ: أَمَّا الْمُرْضِعُ فَتُفْطِرُ وَتُطْعِمُ عَنْ كُلِّ يَوْمٍ مِسْكِينًا وَتَقْضِي مَعَ ذَلِكَ، وَأَمَّا الْحَامِلُ فَتَقْضِي وَلَا إِطْعَامَ عَلَيْهَا، وَلَا يُحْفَظُ هَذَا التَّقْسِيمُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ؟ قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ رَأَى الْإِطْعَامَ فِي ذَلِكَ بِقَوْلِ اللَّهِ تَعَالَى: {وَعَلَى الَّذِينَ يُطِيقُونَهُ فِدْيَةٌ طَعَامُ مِسْكِينٍ} [البقرة: ١٨٤] .

L12163 They mentioned what was narrated to us through the chain of Hammad ibn Salamah, who reported to us from Qatadah, on the authority of Ikrimah, who said: "This verse was revealed pertaining to the pregnant woman, the nursing mother, the elderly man, and the elderly woman."

وَذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نَا قَتَادَةُ عَنْ عِكْرِمَةَ قَالَ: نَزَلَتْ هَذِهِ الْآيَةُ فِي الْحُبْلَى وَالْمُرْضِعِ، وَالشَّيْخِ، وَالْعَجُوزِ.

L12164 Those who held the view of obligatory makeup fasting cited as evidence what we narrated through Yazīd ibn Hārūn's chain from Juwaybir from al-Ḍaḥḥāk ibn Muzāḥim, who said: "The Prophet—peace and blessings of Allah be upon him—would permit pregnant and nursing women to break their fast in Ramadan. When the nursing mother weaned her child and the pregnant woman delivered, they were to reinstate their fasting." ʿAlī said: The ḥadīth of ʿIkrimah is mursal (disconnected). The ḥadīth of al-Ḍaḥḥāk contains three grave defects: Juwaybir—a rejected narrator; al-Ḍaḥḥāk—similarly rejected; and the ḥadīth's disconnected chain. Nevertheless, the correct ruling in this matter is what we previously narrated in the ruling on fasting during travel through Salama ibn al-Akwaʿ's chain—that this verse has been abrogated.

وَاحْتَجَّ مَنْ رَأَى الْقَضَاءَ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ يَزِيدَ بْنِ هَارُونَ عَنْ جُوَيْبِرٍ عَنْ الضَّحَّاكِ بْنِ مُزَاحِمٍ قَالَ: «كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُرَخِّصُ لِلْحُبْلَى، وَالْمُرْضِعِ أَنْ يُفْطِرَا فِي رَمَضَانَ فَإِذَا أَفْطَمَتْ الْمُرْضِعُ، وَوَضَعَتْ الْحُبْلَى جَدَّدَتَا صَوْمَهُمَا» . قَالَ عَلِيٌّ: حَدِيثُ عِكْرِمَةَ مُرْسَلٌ، وَحَدِيثُ الضَّحَّاكِ فِيهِ ثَلَاثُ بَلَايَا، جُوَيْبِرٌ وَهُوَ سَاقِطٌ وَالضَّحَّاكُ مِثْلُهُ وَالْإِرْسَالُ مَعَ ذَلِكَ، لَكِنَّ الْحَقَّ فِي ذَلِكَ مَا رُوِّينَاهُ قَبْلُ فِي حُكْمِ الصَّوْمِ فِي السَّفَرِ مِنْ طَرِيقِ سَلَمَةَ بْنِ الْأَكْوَعِ، أَنَّ هَذِهِ الْآيَةَ مَنْسُوخَةٌ.

L12165 And through the chain of Ḥammād ibn Zayd from Salamah ibn ʿAlqamah ibn Muḥammad ibn Sīrīn from Ibn ʿAbbās that he recited this verse {An expiation is feeding a poor person} [2:184] and said: "It is abrogated." This is the authentic *musnad* report, and it is impermissible to contradict it.[33]

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ سَلَمَةَ بْنِ عَلْقَمَةَ بْنِ مُحَمَّدِ بْنِ سِيرِينَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَرَأَ هَذِهِ الْآيَةَ {فِدْيَةٌ طَعَامُ مِسْكِينٍ} [البقرة: ١٨٤] فَقَالَ: هِيَ مَنْسُوخَةٌ، فَهَذَا هُوَ الْمُسْنَدُ الصَّحِيحُ الَّذِي لَا يَجُوزُ خِلَافُهُ.

L12166–12167 And the height of astonishment is regarding these people, for they manipulate this verse as verbs are conjugated, applying it to contexts for which it

وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ هَؤُلَاءِ الْقَوْمِ فَإِنَّهُمْ يُصَرِّفُونَ هَذِهِ الْآيَةَ تَصْرِيفَ الْأَفْعَالِ فِي غَيْرِ مَا أُنْزِلَتْ فِيهِ، فَمَرَّةً يَحْتَجُّونَ بِهَا فِي أَنَّ الصَّوْمَ فِي السَّفَرِ أَفْضَلُ، وَمَرَّةً يُصَرِّفُونَهَا

[32] **Qur'an references (L12162):** Qur'an 2:184 (Al-Baqarah).
[33] **Qur'an references (L12165):** Qur'an 2:184 (Al-Baqarah).

was not revealed. At times they cite it to claim fasting during travel is superior, and at other times apply it to pregnant women, nursing mothers, and elderly individuals. All this amounts to a misapplication of Allah's speech and a distortion of words from their rightful contexts. How could one who knows Allah's promise is true dare to permit such manipulation of the Quran and Allah's religion? We seek refuge in Allah from misguidance. As for the elderly individual, Imam Abu Hanifah ruled it obligatory for him to feed a needy person in lieu of each day's fast, while Imam Malik did not deem feeding obligatory upon him.

فِي الْحَامِلِ، وَالْمُرْضِعِ، وَالشَّيْخِ الْكَبِيرِ، وَكُلُّ هَذَا إحَالَةٌ لِكَلَامِ اللَّهِ تَعَالَى، وَتَحْرِيفٌ لِلْكَلِمِ عَنْ مَوَاضِعِهِ، وَمَا نَدْرِي كَيْفَ يَسْتَجِيزُ - مَنْ يَعْلَمَ أَنَّ وَعْدَ اللَّهِ حَقٌّ - مِثْلَ هَذَا فِي الْقُرْآنِ وَفِي دِينِ اللَّهِ تَعَالَى؟ وَنَعُوذُ بِاَللَّهِ مِنْ الضَّلَالِ؟ وَأَمَّا الشَّيْخُ الْكَبِيرُ فَإِنَّ أَبَا حَنِيفَةَ أَوْجَبَ عَلَيْهِ إطْعَامَ مِسْكِينٍ مَكَانَ كُلِّ يَوْمٍ، وَلَمْ يَرَ مَالِكٌ الْإِطْعَامَ عَلَيْهِ وَاجِبًا.

L12168 Al-Shāfiʿī once stated opinions like those of Abū Ḥanīfah and once like those of Mālik.

وَقَالَ الشَّافِعِيُّ مَرَّةً كَقَوْلِ أَبِي حَنِيفَةَ، وَمَرَّةً كَقَوْلِ مَالِكٍ.

L12169 Abu Muhammad said: It was narrated to us through the chain of Ismail from Ali ibn Abdullah, from both Sufyan and Jarir. Sufyan reported that Amr ibn Dinar said: Ata informed me he heard Ibn Abbas recite it as: "And upon those made to bear it [as a collar] is an expiation: feeding a needy person" - they are obligated to it but cannot bear it.

قَالَ أَبُو مُحَمَّد: رُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ عَنْ عَلِيِّ بْنِ عَبْدِ اللَّهِ عَنْ سُفْيَانَ، وَجَرِيرٍ قَالَ سُفْيَانُ قَالَ عَمْرُو بْنُ دِينَارٍ: أَخْبَرَنِي عَطَاءٌ أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ يَقْرَؤُهَا (وَعَلَى الَّذِينَ يُطَوَّقُونَهُ فِدْيَةٌ طَعَامُ مِسْكِينٌ) يُكَلَّفُونَهُ وَلَا يُطِيقُونَهُ.

L12170 He said: This elderly, decrepit man and the elderly, decrepit woman—if either cannot fast—must break the fast and feed a poor person each day.

قَالَ: هَذَا الشَّيْخُ الْكَبِيرُ الْهَرِمُ وَالْمَرْأَةُ الْكَبِيرَةُ الْهَرِمَةُ لَا يَسْتَطِيعُ الصَّوْمَ يُفْطِرُ وَيُطْعِمُ كُلَّ يَوْمٍ مِسْكِينًا.

L12171 Jarīr reported from Manṣūr from Mujāhid from Ibn ʿAbbās: a similar account.

وَقَالَ جَرِيرٌ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ: مِثْلَهُ.

L12172 Ali said: This is authentically reported from Ibn Abbas. It has been narrated to us from Ali ibn Abi Talib that he ruled regarding an elderly man incapable of fasting: He breaks the fast and feeds a needy person instead of each day. It is authentically established from Anas that when he became too feeble to fast due to old age, he would break the fast and feed a needy person instead of each day. Qatadah said: One is expiation, and three is voluntary.

قَالَ عَلِيٌّ: هَذَا صَحِيحٌ عَنْ ابْنِ عَبَّاسٍ، وَرُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ فِي الشَّيْخِ الْكَبِيرِ الَّذِي لَا يَسْتَطِيعُ الصَّوْمَ: إنَّهُ يُفْطِرُ وَيُطْعِمُ مَكَانَ كُلِّ يَوْمٍ مِسْكِينًا، وَصَحَّ عَنْ أَنَسٍ أَنَّهُ ضَعُفَ عَنْ الصَّوْمِ - إذْ كَبِرَ - فَكَانَ يُفْطِرُ وَيُطْعِمُ مَكَانَ كُلِّ يَوْمٍ مِسْكِينًا، قَالَ قَتَادَةُ: الْوَاحِدُ كَفَّارَةٌ، وَالثَّلَاثَةُ تَطَوُّعٌ.

L12173 From the narration of Yahya ibn Sa'id al-Qattan, from Abd al-Rahman ibn Harmalah, who said: I heard Sa'id ibn al-Musayyab say regarding the statement of Allah the Exalted: {And upon those who find it difficult to fast, a

fidyah consisting of feeding a needy person} [Al-Baqarah: 184]: this refers to the elderly man who is unable to fast and the pregnant woman for whom fasting is difficult. Each of them must provide fidyah by feeding a needy person for every day.[34]

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ حَرْمَلَةَ قَالَ: سَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ فِي قَوْلِ اللَّهِ تَعَالَى: {وَعَلَى الَّذِينَ يُطِيقُونَهُ فِدْيَةٌ طَعَامُ مِسْكِينٍ} [البقرة: ١٨٤] هُوَ الْكَبِيرُ الَّذِي عَجَزَ عَنْ الصَّوْمِ، وَالْحُبْلَى يَشُقُّ عَلَيْهَا الصَّوْمُ، فَعَلَى كُلِّ وَاحِدٍ مِنْهُمَا إطْعَامُ مِسْكِينٍ عَنْ كُلِّ يَوْمٍ.

L12174 From al-Ḥasan and Qatādah regarding the elderly man and the elderly woman: they feed a poor person for each day instead of fasting. The same ruling is reported from ʻAṭāʼ, al-Ḥasan, and Saʻīd ibn Jubayr.

وَعَنْ الْحَسَنِ، وَقَتَادَةَ فِي الشَّيْخِ الْكَبِيرِ، وَالْعَجُوزِ: أَنَّهُمَا يُطْعِمَانِ مَكَانَ كُلِّ يَوْمٍ مِسْكِينًا. وَعَنْ عَطَاءٍ، وَالْحَسَنِ، وَسَعِيدِ بْنِ جُبَيْرٍ مِثْلُ ذَلِكَ.

L12175–12176 It is reported from Qays ibn al-Sāʼib—who was among the Companions—the same as that. From Abū Hurayrah, it is related that he would give charity of one dirham for each day. From Makhūl, Ṭāwus, and Yaḥyā ibn Abī Kathīr regarding those prevented by thirst from fasting—they held that such a person should break the fast and feed a poor person one *mudd* for each day. Abū Muḥammad said: Abū Ḥanīfah ruled that the elderly man who cannot endure fasting due to old age must feed one poor person in place of each day, but he did not impose this on the pregnant or nursing woman. Mālik obligated it specifically on the nursing woman but not on the pregnant woman or the very old man—this is an evident contradiction. Some Ḥanafīs argued that the pregnant and nursing women are akin to the sick and the traveler, for all of them are permitted to break the fast without feeding others. ʿAlī said: The elderly man is likewise, being more akin to the sick and the traveler, since he is permitted to break the fast due to his own incapacity, just as the sick and traveler are permitted for their own circumstances. As for the pregnant and nursing women, they are permitted to break the fast for the sake of others. ʿAlī said: The Mālikīs, however, disparage opposing the Companions when it aligns with their school, yet here they have opposed ʿAlī, Ibn ʿAbbās, Qays ibn al-Sāʼib, and Abū Hurayrah—and no opposing view is known from the Companions. They have also opposed ʿIkrimah, Saʿīd ibn al-Musayyib, ʿAṭāʼ, Qatādah, and Saʿīd ibn Jubayr, though they themselves disparage others for

وَرُوِيَ عَنْ قَيْسِ بْنِ السَّائِبِ وَهُوَ مِنْ الصَّحَابَةِ مِثْلُ ذَلِكَ. وَعَنْ أَبِي هُرَيْرَةَ أَنَّهُ يَتَصَدَّقُ عَنْ كُلِّ يَوْمٍ بِدِرْهَمٍ. وَعَنْ مَكْحُولٍ، وَطَاوُسٍ، وَيَحْيَى بْنِ أَبِي كَثِيرٍ فِيمَنْ مَنَعَهُ الْعُطَاشُ مِنْ الصَّوْمِ: أَنَّهُ يُفْطِرُ وَيُطْعِمُ عَنْ كُلِّ يَوْمٍ مُدًّا. قَالَ أَبُو مُحَمَّد: فَرَأَى أَبُو حَنِيفَةَ عَلَى الشَّيْخِ الَّذِي لَا يُطِيقُ الصَّوْمَ لِهَرَمِهِ إطْعَامَ مِسْكِينٍ مَكَانَ كُلِّ يَوْمٍ، وَلَمْ يَرَهُ عَلَى الْحَامِلِ وَالْمُرْضِعِ. وَأَوْجَبَهُ مَالِكٌ عَلَى الْمُرْضِعِ خَاصَّةً، وَلَمْ يُوجِبْهُ عَلَى الْحَامِلِ وَلَا الشَّيْخِ الْكَبِيرِ، وَهَذَا تَنَاقُضٌ ظَاهِرٌ. وَاحْتَجَّ بَعْضُ الْحَنَفِيِّينَ بِأَنَّ الْحَامِلَ وَالْمُرْضِعَ بِمَنْزِلَةِ الْمَرِيضِ وَالْمُسَافِرِ، لِأَنَّهُمْ كُلَّهُمْ أُبِيحَ لَهُمْ الْفِطْرُ دُونَ إطْعَامٍ. قَالَ عَلِيٌّ: وَالشَّيْخُ كَذَلِكَ وَهُوَ أَشْبَهُ بِالْمَرِيضِ، وَالْمُسَافِرِ، لِأَنَّهُ أُبِيحَ لَهُ الْفِطْرُ مِنْ أَجْلِ نَفْسِهِ كَمَا أُبِيحَ لَهُمَا مِنْ أَجْلِ أَنْفُسِهِمَا، وَأَمَّا الْحَامِلُ وَالْمُرْضِعُ، فَإِنَّمَا أُبِيحَ لَهُمَا الْفِطْرُ مِنْ أَجْلِ غَيْرِهِمَا. قَالَ عَلِيٌّ: وَأَمَّا الْمَالِكِيُّونَ فَيُشَنِّعُونَ بِخِلَافِ الصَّاحِبِ إذَا وَافَقَ تَقْلِيدَهُمْ. وَقَدْ خَالَفُوا هَاهُنَا: عَلِيًّا، وَابْنَ عَبَّاسٍ، وَقَيْسَ بْنَ السَّائِبِ، وَأَبَا هُرَيْرَةَ، وَلَا يُعْرَفُ لَهُمْ مِنْ الصَّحَابَةِ مُخَالِفٌ. وَخَالَفُوا: عِكْرِمَةَ، وَسَعِيدَ بْنَ الْمُسَيِّبِ، وَعَطَاءً، وَقَتَادَةَ، وَسَعِيدَ بْنَ جُبَيْرٍ، وَهُمْ

[34] **Qur'an references (L12173):** Qur'an 2:184 (Al-Baqarah).

such actions. Abū Muḥammad said: As for us, we hold no proof except from the Prophet—peace and blessings of Allah be upon him.

يُشَنِّعُونَ بِمِثْلِ هَذَا. قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي غَيْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L12177 As for the narration from Ibn Abbas that he used to recite it as "and upon those who are burdened with it (وَعَلَى الَّذِينَ يُطَوَّقُونَهُ)"—this is a Reading that is not permissible for anyone to recite, because the Quran is only to be taken from the exact wording of the Messenger of God—peace and blessings be upon him. Therefore, whoever cites this narration as evidence, then let them recite it in this way, and Far removed is God from imposing upon an old man what he cannot bear.

وَأَمَّا الرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ كَانَ يَقْرَؤُهَا (وَعَلَى الَّذِينَ يُطَوَّقُونَهُ) فَقِرَاءَةٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يَقْرَأَ بِهَا، لِأَنَّ الْقُرْآنَ لَا يُؤْخَذُ إِلَّا عَنْ لَفْظِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَنْ احْتَجَّ بِهَذِهِ الرِّوَايَةِ فَلْيَقْرَأْ بِهَذِهِ الْقِرَاءَةِ وَحَاشَ اللَّهَ أَنْ يُطَوِّقَ الشَّيْخَ مَا لَا يُطِيقُهُ.

L12178–12180 It has been authentically established from Salama ibn al-Akwaʿ and Ibn Abbas that the abrogation of this verse occurred, as we have mentioned in this chapter and in the chapter on the fasting of the traveler. It was never revealed concerning the elderly man, nor the pregnant woman, nor concerning... The nursing mother—the verse was revealed for a specific situation, but it has been abrogated and invalidated. As for the elderly man and woman who cannot endure fasting, fasting is not obligatory upon them. Allah the Exalted said: *"Allah does not burden a soul beyond its capacity"* [2:286]. Since fasting is not required of them, expiation is likewise not required, for Allah the Exalted has not imposed it upon them nor has His Messenger—peace and blessings be upon him. Wealth is forbidden except by textual authority or consensus? What is utterly astonishing is that Abū Ḥanīfah, Mālik, and Al-Shāfiʿī waive expiation for one who intentionally breaks the fast during Ramadan—willfully nullifying their fast in disobedience to Allah by committing the act of Lut's people, deliberate eating, drinking wine, or intentional vomiting. Indeed, some of them even waive both making up the fast and expiation for one who removes food from between their teeth and deliberately consumes it while mindful of their fast. Yet they impose expiation upon those whom Allah has commanded to break the fast and permitted it for—such as a nursing mother fearing her infant's death, an elderly person too weak to fast due to frailty, or a pregnant woman fearing harm to her fetus. Let this inconsistency suffice you! It is impermissible to accept such rulings except from the One *"Who is not questioned about what He does"*

وَقَدْ صَحَّ عَنْ سَلَمَةَ بْنِ الْأَكْوَعِ، وَعَنْ ابْنِ عَبَّاسٍ نَسْخُ هَذِهِ الْآيَةِ كَمَا ذَكَرْنَا فِي هَذَا الْبَابِ، وَفِي بَابِ صَوْمِ الْمُسَافِرِ، وَأَنَّهَا لَمْ تَنْزِلْ قَطُّ فِي الشَّيْخِ، وَلَا فِي الْحَامِلِ، وَلَا فِي الْمُرْضِعِ وَإِنَّمَا نَزَلَتْ فِي حَالٍ وَقَدْ نُسِخَتْ وَبَطَلَتْ. وَالشَّيْخُ، وَالْعَجُوزُ اللَّذَانِ لَا يُطِيقَانِ الصَّوْمَ فَالصَّوْمُ لَا يَلْزَمُهُمَا قَالَ اللَّهُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَإِذَا لَمْ يَلْزَمْهُمَا الصَّوْمُ فَالْكَفَّارَةُ لَا تَلْزَمُهُمَا، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُلْزِمْهُمَا إِيَّاهَا وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْأَمْوَالُ مُحَرَّمَةٌ إِلَّا بِنَصٍّ أَوْ إِجْمَاعٍ؟ وَالْعَجَبُ كُلُّهُ مِنْ أَنَّ أَبَا حَنِيفَةَ، وَمَالِكًا، وَالشَّافِعِيَّ يُسْقِطُونَ الْكَفَّارَةَ عَمَّنْ أَفْطَرَ فِي نَهَارِ رَمَضَانَ عَمْدًا وَقَصَدَ إِبْطَالَ صَوْمِهِ عَاصِيًا، لِلَّهِ تَعَالَى بِفِعْلِ قَوْمِ لُوطٍ، وَبِالْأَكْلِ، وَشُرْبِ الْخَمْرِ عَمْدًا وَبِتَعَمُّدِ الْقَيْءِ. نَعَمْ، وَبَعْضُهُمْ يُسْقِطُ الْقَضَاءَ وَالْكَفَّارَةَ عَنْهُ فِيمَنْ أَخْرَجَ مِنْ بَيْنِ أَسْنَانِهِ شَيْئًا مِنْ طَعَامِهِ فَتَعَمَّدَ أَكْلَهُ ذَاكِرًا لِصَوْمِهِ، ثُمَّ يُوجِبُونَ الْكَفَّارَةَ عَلَى مَنْ أَفْطَرَ مِمَّنْ أَمَرَهُ اللَّهُ تَعَالَى بِالْإِفْطَارِ وَأَبَاحَهُ لَهُ مِنْ مُرْضِعٍ خَائِفَةٍ عَلَى رَضِيعِهَا التَّلَفَ، وَشَيْخٍ كَبِيرٍ لَا يُطِيقُ الصَّوْمَ ضَعْفًا، وَحَامِلٍ تَخَافُ عَلَى مَا فِي بَطْنِهَا، وَحَسْبُكَ بِهَذَا تَخْلِيطًا،

[21:23]—Allah the Exalted, as conveyed by His Messenger's tongue—peace and blessings be upon him.[35]

A jurisprudential issue: The fasting person engaged in intercourse multiple times during the day intentionally.

771 - Issue: If someone engages in intercourse multiple times within a single day intentionally, only one expiation is required. If someone engages in intercourse intentionally over two or more days, an expiation is due for each day, regardless of whether they performed the expiation before the second act or not. Abu Hanifah said: For all such acts - even if one breaks the fast every day of Ramadan intentionally - only one expiation is required unless they perform the expiation and then break another day's fast, in which case another expiation becomes obligatory. It has also been narrated from him that whether they perform the expiation or not, only one expiation is required if the days fall within a single month. However, if the two days on which the fast was broken occur in two different months of Ramadan, each day requires an expiation separate from the expiation of the other day. His ruling remains consistent regarding one who intentionally breaks the fast for all, some, or a single day of Ramadan: only one expiation is required if no expiation was performed in between. Similarly, his ruling is consistent for one who breaks the fast on two days across two different months of Ramadan: two expiations are due, whether an expiation was performed between them or not.

He held differing opinions regarding one who broke the fast on two or more days during a single Ramadan and atoned in the midst of that period. On one occasion, he said: "Another atonement is incumbent upon him," and on another, he said: "Nothing is required except the atonement he subsequently performed."

Malik, al-Layth, al-Ḥasan ibn Ḥayy, and al-Shāfiʿī held the same opinion as ours, which is also the position of ʿAṭāʾ and one of the reported views of

[35]**Qur'an references (L12178):** Qur'an 2:286 (Al-Baqarah); Qur'an 21:23 (Al-Anbya).

وَلَا يَحِلُّ قَبُولُ مِثْلِ هَذَا إِلَّا مِنْ الَّذِي {لا يُسْأَلُ عَمَّا يَفْعَلُ} [الأنبياء: ٢٣] وَهُوَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَةُ وَطِئَ الصَّائِمُ مِرَارًا فِي الْيَوْمِ عَامِدًا]

٧٧١ - مَسْأَلَةٌ: وَمَنْ وَطِئَ مِرَارًا فِي الْيَوْمِ عَامِدًا فَكَفَّارَةٌ وَاحِدَةٌ فَقَطْ، وَمَنْ وَطِئَ فِي يَوْمَيْنِ عَامِدًا فَصَاعِدًا فَعَلَيْهِ لِكُلِّ يَوْمٍ كَفَّارَةٌ، سَوَاءٌ كَفَّرَ قَبْلَ أَنْ يَطَأَ الثَّانِيَةَ أَوْ لَمْ يُكَفِّرْ: قَالَ أَبُو حَنِيفَةَ: عَلَيْهِ لِكُلِّ ذَلِكَ - وَلَوْ أَنَّهُ أَفْطَرَ فِي كُلِّ يَوْمٍ مِنْ رَمَضَانَ عَامِدًا - كَفَّارَةٌ وَاحِدَةٌ فَقَطْ إِلَّا أَنْ يَكُونَ قَدْ كَفَّرَ ثُمَّ أَفْطَرَ نَهَارًا آخَرَ فَعَلَيْهِ كَفَّارَةٌ أُخْرَى. وَقَدْ رُوِيَ عَنْهُ: أَنَّهُ سَوَاءٌ كَفَّرَ أَوْ لَمْ يُكَفِّرْ لَيْسَ عَلَيْهِ إِلَّا كَفَّارَةٌ وَاحِدَةٌ إِذَا كَانَتْ الْأَيَّامُ مِنْ شَهْرٍ وَاحِدٍ، فَإِنْ كَانَ الْيَوْمَانِ اللَّذَانِ أَفْطَرَ فِيهِمَا مِنْ شَهْرِ رَمَضَانَ اثْنَيْنِ، فَلِكُلِّ يَوْمٍ مِنْهُمَا كَفَّارَةٌ غَيْرُ كَفَّارَةِ الْيَوْمِ الْآخَرِ. فَلَمْ يَخْتَلِفْ قَوْلُهُ فِيمَنْ تَعَمَّدَ الْفِطْرَ أَيَّامَ رَمَضَانَ كُلَّهَا أَوْ بَعْضَهَا أَوْ يَوْمًا وَاحِدًا مِنْهَا فِي أَنَّهُ لَيْسَ عَلَيْهِ إِلَّا كَفَّارَةٌ وَاحِدَةٌ فَقَطْ، إِذَا لَمْ يُكَفِّرْ فِي خِلَالِ ذَلِكَ، وَلَمْ يَخْتَلِفْ قَوْلُهُ فِيمَنْ أَفْطَرَ يَوْمَيْنِ مِنْ رَمَضَانَيْنِ أَنَّ عَلَيْهِ كَفَّارَتَيْنِ كَفَّرَ بَيْنَهُمَا أَوْ لَمْ يُكَفِّرْ.

وَاخْتَلَفَ قَوْلُهُ فِيمَنْ أَفْطَرَ يَوْمَيْنِ فَصَاعِدًا مِنْ رَمَضَانَ وَاحِدٍ وَكَفَّرَ فِي خِلَالِ ذَلِكَ، فَمَرَّةً قَالَ: عَلَيْهِ كَفَّارَةٌ أُخْرَى، وَمَرَّةً قَالَ: لَيْسَ عَلَيْهِ إِلَّا الْكَفَّارَةُ الَّتِي كَفَّرَ بَعْدُ.

وَقَالَ مَالِكٌ وَاللَّيْثُ، وَالْحَسَنُ بْنُ حَيٍّ، وَالشَّافِعِيُّ: مِثْلَ قَوْلِنَا وَهُوَ عَطَاءٍ، وَأَحَدُ قَوْلُ الشَّافِعِيِّ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا مِمَّا تَنَاقَضَ فِيهِ أَبُو حَنِيفَةَ وَخَالَفَ فِيهِ جُمْهُورَ الْعُلَمَاءِ.

al-Shāfiʿī. Abū Muḥammad said: This is among the matters in which Abū Ḥanīfah contradicted himself and opposed the majority of scholars in it. The proof for the validity of our opinion is the command of the Messenger of Allah—peace and blessings of Allah be upon him—to the man who had intercourse with his wife during Ramadan to perform expiation. This establishes that the commanded expiation is required for that day, and for every day without distinction between it and others, since the divine address to expiate applies to each day as it applied to the first day, with no difference. If it is asked: "Why did you not analogize this to the ḥudūd?" We respond: The analogy is invalid. Even if it were valid, applying it here would be manifestly incorrect, because ḥudūd are imposed by the imam or judge coercively, and it is not permissible for a person to impose them upon himself—unlike expiation, which a person imposes upon himself as a personal obligation, whereas he is not personally addressed to enforce ḥudūd upon himself. There are other distinctions—Allah the Exalted willing—that we will mention in the section on ḥudūd. Moreover, Abū Ḥanīfah held that if the two days belong to two Ramadans, two expiations are necessarily required. Yet there is no disagreement from him that if a man commits adultery with two women from two cities in two different years, only one punishment is applied. Similarly, if he drinks wine from the fermentation of one year's grapes and wine from another year's fermentation, only one punishment is applied. And if he steals in two different years, only one amputation is required. And success is by Allah, the Exalted.

بُرْهَانُ صِحَّةِ قَوْلِنَا -: أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي وَطِئَ امْرَأَتَهُ فِي رَمَضَانَ بِالْكَفَّارَةِ، فَصَحَّ أَنَّ لِذَلِكَ الْيَوْمِ الْكَفَّارَةُ الْمَأْمُورُ بِهَا، وَكُلُّ يَوْمٍ فَلَا فَرْقَ بَيْنَهُ وَبَيْنَ ذَلِكَ الْيَوْمِ؛ لِأَنَّ الْخِطَابَ بِالْكَفَّارَةِ وَاقِعٌ عَلَيْهِ فِيهِ كَمَا وَقَعَ فِي الْيَوْمِ الْأَوَّلِ وَلَا فَرْقَ. فَإِنْ قِيلَ: هَلَّا قِسْتُمْ هَذَا عَلَى الْحُدُودِ؟ قُلْنَا: الْقِيَاسُ بَاطِلٌ ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّ الْحُدُودَ الَّتِي يُقِيمُهَا الْإِمَامُ وَالْحَاكِمُ عَلَى الْمَرْءِ كُرْهًا، وَلَا يَحِلُّ لِلْمَرْءِ أَنْ يُقِيمَهَا عَلَى نَفْسِهِ، بِخِلَافِ الْكَفَّارَةِ الَّتِي إنَّمَا يُقِيمُهَا الْمَرْءُ عَلَى نَفْسِهِ وَهُوَ مُخَاطَبٌ بِهَا عَلَى نَفْسِهِ، وَلَيْسَ مُخَاطَبًا بِالْحُدُودِ عَلَى نَفْسِهِ؛ وَفُرُوقٌ أُخَرُ نَذْكُرُهَا إنْ شَاءَ اللَّهُ تَعَالَى فِي الْحُدُودِ؟ وَأَيْضًا: فَإِنَّ أَبَا حَنِيفَةَ رَأَى إنْ كَانَ الْيَوْمَانِ مِنْ رَمَضَانَيْنِ فَكَفَّارَتَانِ وَلَا بُدَّ؛ وَلَا خِلَافَ مِنْهُ فِي أَنَّهُ لَوْ زَنَى بِامْرَأَتَيْنِ مِنْ بَلَدَيْنِ مُخْتَلِفَتَيْنِ فِي عَامَيْنِ مُخْتَلِفَيْنِ فَحَدٌّ وَاحِدٌ، وَلَوْ شَرِبَ خَمْرًا مِنْ عَصِيرِ عَامٍ وَاحِدٍ، وَخَمْرًا مِنْ عَصِيرِ عَامٍ آخَرَ فَحَدٌّ وَاحِدٌ، وَلَوْ سَرَقَ فِي عَامَيْنِ مُخْتَلِفَيْنِ فَقَطْعٌ وَاحِدٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L12186 Among the most astonishing matters is that Abū Ḥanīfah held the view we mentioned, maintaining that one who pronounced *dhihar* against both his wives with a single utterance must offer a separate expiation for each wife. He also ruled that if someone swore in one gathering, "By Allah, I will not speak to Zayd," then swore in another gathering, "By Allah, I will not speak to Zayd," these constitute two oaths requiring two expiations. Similarly, one who swears, "By Allah and the Most Merciful, I will not speak to Zayd," must offer two expiations unless intending them as a single oath. ʿAlī said: As for one who engages in intercourse multiple times in a single day, the Prophet—peace and blessings of Allah be upon him—commanded only one

وَمِنْ أَعْجَبِ الْأَشْيَاءِ أَنَّ أَبَا حَنِيفَةَ قَالَ مَا ذَكَرْنَا، وَرَأَى فِيمَنْ ظَاهَرَ مِنْ امْرَأَتَيْهِ بِلَفْظٍ وَاحِدٍ أَنَّ عَلَيْهِ لِكُلِّ امْرَأَةٍ كَفَّارَةً أُخْرَى. وَقَالَ فِيمَنْ قَالَ فِي مَجْلِسٍ: وَاَللَّهِ لَا كَلَّمْت زَيْدًا، ثُمَّ قَالَ فِي مَجْلِسٍ آخَرَ: وَاَللَّهِ لَا كَلَّمْت زَيْدًا -: أَنَّهُمَا يَمِينَانِ يَجِبُ عَلَيْهِ كَفَّارَتَانِ، وَمَنْ قَالَ: وَاَللَّهِ وَالرَّحْمَنِ لَا كَلَّمْت زَيْدًا -: فَعَلَيْهِ كَفَّارَتَانِ إلَّا أَنْ يَنْوِيَ أَنَّهُمَا يَمِينٌ وَاحِدَةٌ. قَالَ عَلِيٌّ: وَأَمَّا إذَا كَرَّرَ الْوَطْءَ فِي يَوْمٍ وَاحِدٍ مِرَارًا فَإِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَأْمُرْهُ إلَّا بِكَفَّارَةٍ وَاحِدَةٍ وَلَمْ يَسْأَلْهُ أَعَادَ أَمْ لَا؟ وَأَيْضًا: فَإِنَّهُ إذَا وَطِئَ

expiation without inquiring whether he repeated the act. Moreover, once he has broken the fast through intercourse, the second act occurs outside the state of fasting, thus requiring no expiation. Furthermore, the first deliberate and conscious penetration obligates expiation regardless of repetition, as no expiation is required for subsequent penetrations by textual evidence and consensus.

L12187–12188 **A jurisprudential issue: one who did not fast for the entire month of Ramadan due to travel or illness.**

L12189 Issue: Whoever does not fast during the entire month of Ramadan due to travel or illness is only obligated to make up the number of days they missed. An incomplete month cannot validly substitute a complete one, nor can a complete month substitute an incomplete one, based on Allah's statement: "Then [fast] a like number of other days" (Q. 2:184). Al-Ḥasan ibn Ḥayy said: "A month is valid as compensation for [another] month if one fasts for the duration between two crescent moons," but there is no proof to validate this opinion.[36]

L12190 **The Issue of Breaking a Voluntary Fast**

L12191 773 - Issue: A person may break their voluntary fast if they wish, and we do not disapprove of it for them. However, if they intentionally break it, they must make up a day in its place. The proof of this—that the entirety of the Sharīʿah comprises obligatory and voluntary acts, and this is known through the texts of the Quran, the Sunnah, consensus, and rational necessity, since a third category is fundamentally impossible. The obligatory is what one sins by abandoning, while the voluntary is what one does not sin by abandoning—for if abandoning it were sinful, it would be obligatory. One who fails to perform voluntary acts is merely omitting what is not obligatory upon them, so there is no blame on them for that.

L12192–12194 The Messenger of Allah (peace and blessings be upon him) informed the

فَقَدْ أَفْطَرَ، فَالْوَطْءُ الثَّانِي وَقَعَ فِي غَيْرِ صِيَامٍ فَلَا كَفَّارَةَ فِيهِ، وَأَيْضًا: فَإِنَّ الْوَاطِئَ بِأَوَّلِ إِيلَاجِهِ مُتَعَمِّدًا ذَاكِرًا وَجَبَتْ عَلَيْهِ الْكَفَّارَةُ عَاوَدَ أَوْ لَمْ يُعَاوِدْ، وَلَا كَفَّارَةَ فِي إِيلَاجِهِ ثَانِيَةً بِالنَّصِّ، وَالْإِجْمَاعِ؟

[مَسْأَلَةٌ أَفْطَرَ رَمَضَانَ كُلَّهُ بِسَفَرٍ أَوْ مَرَضٍ]

مَسْأَلَةٌ: وَمَنْ أَفْطَرَ رَمَضَانَ كُلَّهُ بِسَفَرٍ أَوْ مَرَضٍ فَإِنَّمَا عَلَيْهِ عَدَدُ الْأَيَّامِ الَّتِي أَفْطَرَ وَلَا يُجْزِئُهُ شَهْرٌ نَاقِصٌ مَكَانَ تَامٍّ، وَلَا يَلْزَمُهُ شَهْرٌ تَامٌّ مَكَانَ نَاقِصٍ لِقَوْلِ اللَّهِ تَعَالَى: {فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ} [البقرة: ١٨٤] وَقَالَ الْحَسَنُ بْنُ حَيٍّ: يُجْزِئُ شَهْرٌ مَكَانَ شَهْرٍ إِذَا صَامَ مَا بَيْنَ الْهِلَالَيْنِ وَلَا بُرْهَانَ عَلَى صِحَّةِ هَذَا الْقَوْلِ.

[مَسْأَلَةٌ الْإِفْطَارِ فِي صَوْمِ التَّطَوُّعِ]

٧٧٣ - مَسْأَلَةٌ: وَلِلْمَرْءِ أَنْ يُفْطِرَ فِي صَوْمِ التَّطَوُّعِ إِنْ شَاءَ، لَا نَكْرَهُ لَهُ ذَلِكَ، إِلَّا أَنَّ عَلَيْهِ إِنْ أَفْطَرَ عَامِدًا قَضَاءَ يَوْمٍ مَكَانَهُ. بُرْهَانُ ذَلِكَ -: أَنَّ الشَّرِيعَةَ كُلَّهَا فَرْضٌ وَتَطَوُّعٌ، وَهَذَا مَعْلُومٌ بِنُصُوصِ الْقُرْآنِ، وَالسُّنَنِ، وَالْإِجْمَاعِ، وَضَرُورَةِ الْعَقْلِ، إِذْ لَا يُمْكِنُ قِسْمٌ ثَالِثٌ أَصْلًا؛ فَالْفَرْضُ هُوَ الَّذِي يَعْصِي مَنْ تَرَكَهُ، وَالتَّطَوُّعُ هُوَ الَّذِي لَا يَعْصِي مَنْ تَرَكَهُ وَلَوْ عَصَى لَكَانَ فَرْضًا، وَالْمُفَرِّطُ فِي التَّطَوُّعِ تَارِكٌ مَا لَا يَجِبُ عَلَيْهِ فَرْضًا، فَلَا حَرَجَ عَلَيْهِ فِي ذَلِكَ.

[36] **Qur'an references (L12189):** Qur'an 2:184 (Al-Baqarah); Qur'an 2:185 (Al-Baqarah).

Bedouin who inquired about fasting, telling him of Ramadan. The Bedouin asked, “Is there anything obligatory upon me besides it?” He replied, “No, unless you perform voluntary acts of worship.” The Bedouin then declared, “By Allah, I will neither add to this nor diminish it.” The Prophet (peace and blessings be upon him) responded, “He has succeeded and will enter Paradise if he is truthful.” The Prophet did not deem abandoning voluntary acts as objectionable in the slightest. Similarly, we state regarding one who discontinues a voluntary prayer, reconsiders a voluntary charity, deliberately annuls a voluntary Hajj, or voluntary retreat: there is no distinction in what we have mentioned. Whatever exceeds this is an unsubstantiated claim without evidence. To impose obligations not mandated by Allah the Exalted or His Messenger (peace and blessings be upon him) is impermissible, except that there is no requirement to compensate for any of the mentioned acts except breaking a voluntary fast alone, for reasons we shall clarify Allah willing.

If it is argued: “You impose obligatory fasting beyond Ramadan, such as vowed fasts and expiatory fasts,” we respond: We impose only what the Messenger of Allah (peace and blessings be upon him) obligated, adding it to the obligation of Ramadan. We do not impose what he did not obligate, nor overstep his boundaries, nor oppose him with our opinions. A prophetic precedent exists in this matter, as narrated to us by ʿAbd Allāh ibn Rabīʿ: Muḥammad ibn Muʿāwiyah reported to us, from Aḥmad ibn Shuʿayb, who said: ʿAbd Allāh ibn al-Haytham informed me, from Abū Bakr al-Ḥanafī, from Sufyān, from Ṭalḥah ibn Yaḥyā ibn Ṭalḥah ibn ʿUbayd Allāh [chain incomplete]. Mujahid reported from Aisha, the Mother of the Believers, who said: “The Messenger of Allah—peace and blessings of Allah be upon him—came to us one day and asked: ‘Do you have anything?’ We replied: ‘Yes, we were given some *hais* [a date-based dish].’ He said: ‘I had intended to fast this morning,’ but then he ate it.”

L12195 We have narrated it through the chain of ʿĀ’ishah bint Ṭalḥah from the Mother of the Believers. ʿAlī said: “This is an established Sunnah.” From ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid, from Ibrāhīm ibn Aḥmad, from al-Farbari, from al-Bukhārī, from Muḥammad ibn Bashshār, from Jaʿfar ibn ʿAwn, from Abū al-ʿUmaymis—who is ʿUtbah ibn ʿAbd Allāh ibn ʿUtbah ibn

وَقَدْ «أَخْبَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْأَعْرَابِيَّ الَّذِي سَأَلَهُ عَنْ الصَّوْمِ فَأَخْبَرَهُ - عَلَيْهِ السَّلَامُ - بِرَمَضَانَ؟ فَقَالَ: هَلْ عَلَيَّ غَيْرُهُ؟ قَالَ: لَا إلَّا أَنْ تَتَطَوَّعَ شَيْئًا؟ فَقَالَ الْأَعْرَابِيُّ: وَاَللَّهِ لَا أَزِيدُ عَلَى ذَلِكَ وَلَا أَنْقُصُ مِنْهُ، فَقَالَ - عَلَيْهِ السَّلَامُ -: أَفْلَحَ إنْ صَدَقَ، دَخَلَ الْجَنَّةَ إنْ صَدَقَ» فَلَمْ يَجْعَلْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي تَرْكِ التَّطَوُّعِ كَرَاهَةً أَصْلًا. وَهَكَذَا نَقُولُ فِيمَنْ قَطَعَ صَلَاةَ تَطَوُّعٍ، أَوْ بَدَا لَهُ فِي صَدَقَةِ تَطَوُّعٍ، أَوْ فَسَخَ عَمْدًا حَجَّ تَطَوُّعٍ، أَوْ اعْتِكَافَ تَطَوُّعٍ، وَلَا فَرْقَ لِمَا ذَكَرْنَا، وَمَا عَدَا ذَلِكَ فَدَعْوَى لَا بُرْهَانَ عَلَيْهَا، وَإِيجَابُ مَا لَمْ يُوجِبْهُ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا أَنَّهُ لَا قَضَاءَ عَلَيْهِ فِي شَيْءٍ مِمَّا ذَكَرْنَا إلَّا فِي فِطْرِ التَّطَوُّعِ فَقَطْ لِمَا نَذْكُرُ إنْ شَاءَ اللَّهُ تَعَالَى؟ فَإِنْ قِيلَ: إنَّكُمْ تُوجِبُونَ فَرْضًا فِي الصَّوْمِ غَيْرَ رَمَضَانَ كَالنَّذْرِ وَصِيَامِ الْكَفَّارَاتِ؟ قُلْنَا: نُوجِبُ مَا أَوْجَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنُضِيفُهُ إلَى فَرْضِ رَمَضَانَ، وَلَا نُوجِبُ مَا لَمْ يُوجِبْ وَلَا نَتَعَدَّى حُدُودَهُ وَلَا نُعَارِضُهُ بِآرَائِنَا، وَقَدْ جَاءَتْ فِي ذَلِكَ سُنَّةٌ -: كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ: أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ الْهَيْثَمِ نا أَبُو بَكْرٍ الْحَنَفِيُّ نا سُفْيَانُ عَنْ طَلْحَةَ بْنِ يَحْيَى بْنِ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ عَنْ مُجَاهِدٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَتَانَا يَوْمًا فَقَالَ: هَلْ عِنْدَكُمْ مِنْ شَيْءٍ؟ قُلْنَا: نَعَمْ، أُهْدِيَ لَنَا حَيْسٌ؟ فَقَالَ: أَمَّا إنِّي أَصْبَحْتُ أُرِيدُ الصَّوْمَ فَأَكَلَ» .

وَقَدْ رُوِّينَاهُ مِنْ طَرِيقِ عَائِشَةَ بِنْتِ طَلْحَةَ عَنْ أُمِّ الْمُؤْمِنِينَ؟ قَالَ عَلِيٌّ: وَهَذِهِ سُنَّةٌ ثَابِتَةٌ، نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نَا مُحَمَّدُ بْنُ بَشَّارٍ نا جَعْفَرُ بْنُ عَوْنٍ نا أَبُو الْعُمَيْسِ هُوَ عُتْبَةُ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ عَبْدِ اللَّهِ

ʿAbd Allāh ibn Masʿūd—from ʿAwn ibn Abī Juḥayfah, from his father, who said: "The Prophet—peace and blessings be upon him—established brotherhood between Salmān and Abū al-Dardāʾ. Salmān visited Abū al-Dardāʾ and saw Umm al-Dardāʾ in unkempt attire (from neglecting worldly concerns). He asked her: 'What is your situation?' She replied: 'Your brother Abū al-Dardāʾ has no concern for worldly matters.' When Abū al-Dardāʾ came, he prepared food for him and said: 'Eat.' He replied: 'I am fasting.' Salmān said: 'I will not eat unless you eat.' So Abū al-Dardāʾ ate." The remainder of the ḥadīth was mentioned, including: "Salmān said to him: 'Your Lord has a right over you, your soul has a right over you, and your family has a right over you. Give each rightful claimant their due.' He went to the Prophet—peace and blessings be upon him—who said: 'Salmān has spoken truthfully.'" Thus, the Prophet—peace and blessings be upon him—endorsed Salmān's statement regarding breaking a voluntary fast without disapproval.

Through another chain from Ibn Abī Shaybah, from Abū Dāwūd, from ʿUmar ibn Saʿd al-Ḥafrī, from Sufyān al-Thawrī, from al-Awzāʿī, from Yaḥyā ibn Abī Kathīr, from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, from Abū Hurayrah, who said: "Food was brought to the Prophet—peace and blessings be upon him—while he was at Marr al-Ẓahrān. He said to Abū Bakr and ʿUmar: 'Come near and eat.' They replied: 'We are fasting.' The Messenger of Allāh—peace and blessings be upon him—said: 'Go tend to your companion; see to your companion. Come near and eat.'" All these are sound narrations, and this is the position held by the majority of the early predecessors.

We have narrated through Wakīʿ, from Sayf ibn Sulaymān al-Makkī, from Qays ibn Saʿd, from Dāwūd ibn Abī ʿĀṣim, from Saʿīd ibn al-Musayyib, who said: "'Umar ibn al-Khaṭṭāb once addressed his companions, saying: 'I began the day fasting, but then my slave girl passed by, and I had relations with her. What is your ruling?' They faltered in their response. ʿAlī said to him: 'You have acted permissibly; fast another day in its stead.' ʿUmar replied: 'Your legal opinion is the most sound among them.'"

L12196–12197 And through the chain of Waki' from Mis'ar ibn Kidam from 'Imran ibn 'Umayr from Sa'id ibn Jubayr from Ibn 'Umar regarding one who eats after commencing voluntary fasting at dawn, Ibn 'Umar said: "There is no

بْنِ مَسْعُودٍ عَنْ عَوْنِ بْنِ أَبِي جُحَيْفَةَ عَنْ أَبِيهِ قَالَ: «آخَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ سَلْمَانَ، وَأَبِي الدَّرْدَاءِ فَزَارَ سَلْمَانُ أَبَا الدَّرْدَاءِ فَرَأَى أُمَّ الدَّرْدَاءِ مُتَبَذِّلَةً فَقَالَ لَهَا: مَا شَأْنُكِ؟ قَالَتْ: أَخُوكَ أَبُو الدَّرْدَاءِ لَيْسَ لَهُ حَاجَةٌ فِي الدُّنْيَا، فَجَاءَ أَبُو الدَّرْدَاءِ فَصَنَعَ لَهُ طَعَامًا فَقَالَ: كُلْ قَالَ فَإِنِّي صَائِمٌ، قَالَ سَلْمَانُ: مَا أَنَا بِآكِلٍ حَتَّى تَأْكُلَ؟ فَأَكَلَ» ، وَذَكَرَ بَاقِيَ الْحَدِيثِ. وَفِيهِ: «أَنَّ سَلْمَانَ قَالَ لَهُ: إِنَّ لِرَبِّكَ عَلَيْكَ حَقًّا، وَإِنَّ لِنَفْسِكَ عَلَيْكَ حَقًّا، وَلِأَهْلِكَ عَلَيْكَ حَقًّا، فَأَعْطِ كُلَّ ذِي حَقٍّ حَقَّهُ، فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ - عَلَيْهِ السَّلَامُ -: صَدَقَ سَلْمَانُ» فَهَذَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ صَوَّبَ قَوْلَ سَلْمَانَ فِي إِفْطَارِ الصَّائِمِ الْمُتَطَوِّعِ وَلَمْ يُنْكِرْهُ: وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي دَاوُد عُمَرَ بْنِ سَعْدٍ الْحَفْرِيِّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَوْزَاعِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: «أُتِيَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِطَعَامٍ وَهُوَ بِمَرِّ الظَّهْرَانِ فَقَالَ لِأَبِي بَكْرٍ وَعُمَرَ ادْنُوَا فَكُلَا؟ قَالَا: إنَّا صَائِمَانِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ارْحَلُوا لِصَاحِبِكُمْ، اعْمَلُوا لِصَاحِبِكُمْ، ادْنُوَا فَكُلَا» . وَهَذِهِ كُلُّهَا آثَارٌ صِحَاحٌ، وَبِهَذَا يَقُولُ جُمْهُورُ السَّلَفِ. رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سَيْفِ بْنِ سُلَيْمَانَ الْمَكِّيِّ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ دَاوُد بْنِ أَبِي عَاصِمٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: خَرَجَ عُمَرُ بْنُ الْخَطَّابِ يَوْمًا عَلَى أَصْحَابِهِ فَقَالَ: إنِّي أَصْبَحْت صَائِمًا فَمَرَّتْ بِي جَارِيَةٌ لِي فَوَقَعْت عَلَيْهَا فَمَا تَرَوْنَ؟ قَالَ: فَلَمْ يَأْلُوا مَا شَكُّوا عَلَيْهِ، وَقَالَ لَهُ عَلِيٌّ: أَصَبْت حَلَالًا وَتَقْضِي يَوْمًا مَكَانَهُ، قَالَ لَهُ عُمَرُ: أَنْتَ أَحْسَنُهُمْ فُتْيَا.

sin upon him unless it was a vowed fast or a makeup fast." And through the chain of Waki' from al-Rabi' ibn Subayh from Qays ibn Sa'd from Ibn 'Abbas, he said: "Voluntary fasting, circumambulation, prayer, and charity—if one wishes, they may continue or discontinue." It is narrated that one may begin the day observing a voluntary fast, then break it without concern, and instruct to compensate with another day. From Ibn Jurayj from Abu al-Zubayr from Jabir ibn 'Abd Allah: he saw no harm in breaking a voluntary fast. This is the opinion of Sa'id ibn Jubayr, 'Ata', Sulayman ibn Musa, al-Shafi'i, and Abu Sulayman—though al-Shafi'i and Abu Sulayman did not deem compensation necessary. Malik said: "If one breaks a voluntary fast forgetfully, they must complete it with no consequence. If broken intentionally, they have erred and must compensate." 'Ali said: "No valid proof supports this view, contradicting the positions of the Companions—may Allah be pleased with them: Abu Bakr, 'Umar, 'Ali, Ibn 'Abbas, Ibn 'Umar, Jabir ibn 'Abd Allah, the Mother of the Believers, and others."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ عِمْرَانَ بْنِ عُمَيْرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عُمَرَ فِي الَّذِي يَأْكُلُ بَعْدَ أَنْ أَصْبَحَ صَائِمًا قَالَ ابْنُ عُمَرَ: لَا جُنَاحَ عَلَيْهِ مَا لَمْ يَكُنْ نَذْرًا أَوْ قَضَاءً وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الرَّبِيعِ بْنِ صُبَيْحٍ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: الصِّيَامُ تَطَوُّعًا وَالطَّوَافُ وَالصَّلَاةُ وَالصَّدَقَةُ إِنْ شَاءَ مَضَى وَإِنْ شَاءَ قَطَعَ. وَرُوِّينَا أَنَّهُ كَانَ يُصْبِحُ مُتَطَوِّعًا ثُمَّ يُفْطِرُ وَلَا يُبَالِي وَيَأْمُرُ بِقَضَاءِ يَوْمٍ مَكَانَهُ. وَعَنْ ابْنِ جُرَيْجٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّهُ كَانَ لَا يَرَى بِإِفْطَارِ التَّطَوُّعِ بَأْسًا. وَهُوَ قَوْلُ سَعِيدِ بْنِ جُبَيْرٍ، وَعَطَاءٍ، وَسُلَيْمَانَ بْنِ مُوسَى، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، إِلَّا أَنَّهُمَا لَمْ يَرَيَا فِي ذَلِكَ قَضَاءً. وَقَالَ مَالِكٌ: إِنْ أَفْطَرَ فِيهِ نَاسِيًا يُتِمُّ صَوْمَهُ وَلَا شَيْءَ عَلَيْهِ وَإِنْ أَفْطَرَ فِيهِ عَمْدًا فَقَدْ أَسَاءَ وَيَقْضِي. قَالَ عَلِيٌّ: وَلَا بُرْهَانَ عَلَى صِحَّةِ هَذَا الْقَوْلِ مَعَ خِلَافِهِ لِمَنْ ذَكَرْنَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: أَبِي بَكْرٍ، وَعُمَرَ، وَعَلِيٍّ، وَابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ، وَأُمِّ الْمُؤْمِنِينَ وَغَيْرِهِمْ.

L12198–12200

As for our obligation to make up the fast, this is based on what Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us: Aḥmad ibn ʿĪsā narrated from Ibn Wahb from Jarīr ibn Ḥāzim from Yaḥyā ibn Saʿīd al-Anṣārī from ʿAmrah from ʿĀ'ishah, who said: "Hafṣah and I awoke fasting. Food was gifted to us that pleased us, so we broke our fast. The Prophet—peace and blessings of Allāh be upon him—entered, and Hafṣah preceded me in asking him. He said: 'Fast another day in its place.'" ʿAlī said: "We are not unaware of the claims of those who assert that Jarīr ibn Ḥāzim erred in this report. Yet this holds no merit, for Jarīr is trustworthy. The allegation of error is invalid unless the claimant substantiates it with proof. Jarīr's unique narration of this chain is not a defect, as he is reliable." Abū Muḥammad said: "There is no disagreement between anyone regarding the ruling for breaking the fast—whether through

وَأَمَّا إِيجَابُنَا الْقَضَاءَ فَلِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ عِيسَى عَنْ ابْنِ وَهْبٍ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ عَمْرَةَ «عَنْ عَائِشَةَ قَالَتْ: أَصْبَحْتُ صَائِمَةً أَنَا وَحَفْصَةُ أُهْدِيَ لَنَا طَعَامٌ فَأَعْجَبَنَا فَأَفْطَرْنَا فَدَخَلَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَدَرَتْنِي حَفْصَةُ فَسَأَلَتْهُ؟ فَقَالَ: صُومَا يَوْمًا مَكَانَهُ» . قَالَ عَلِيٌّ: لَمْ يَخْفَ عَلَيْنَا قَوْلُ مَنْ قَالَ: إنَّ جَرِيرَ بْنَ حَازِمٍ أَخْطَأَ فِي هَذَا الْخَبَرِ، إلَّا أَنَّ هَذَا لَيْسَ بِشَيْءٍ لِأَنَّ جَرِيرًا ثِقَةٌ؛ وَدَعْوَى الْخَطَأِ بَاطِلٌ إلَّا أَنْ يُقِيمَ الْمُدَّعِي لَهُ بُرْهَانًا عَلَى صِحَّةِ دَعْوَاهُ، وَلَيْسَ انْفِرَادُ جَرِيرٍ بِإِسْنَادِهِ عِلَّةً، لِأَنَّهُ ثِقَةٌ. قَالَ أَبُو

intercourse or other means—being uniform. Some obligate making up the fast in all such cases, while others waive the obligation entirely in all such cases. Nevertheless, the authentic textual proof remains established." Regarding the making up of a broken fast, it does not matter by what means one broke it; and with Allah, the Exalted, is [all] divine facilitation.

L12201 As for Mālik's distinction between breaking the fast forgetfully during voluntary or obligatory fasting, this is a baseless error with no valid justification. There are only two states: fasting or having broken the fast. If one has broken the fast, the ruling is the same whether one makes it up or not. But if one is fasting, there is no requirement to make it up.

L12202 **A legal case: one who intentionally broke the fast during the making up of Ramadan.**

L12203 774. Issue: Whoever intentionally breaks their fast while making up for Ramadan is only required to make up one day, because imposing extra makeup days is a Sharia-based obligation not authorized by Allah the Exalted. It is authentically established that the Prophet (peace be upon him) made up that Ramadan day, thus it is impermissible to require more without textual evidence or consensus. We have narrations from Qatādah stating such a person incurs atonement (*kafārah*) like one who breaks the fast during Ramadan, because it is a substitute for it. Abū Muḥammad said: This constitutes the soundest analogy – if analogy is valid. Some early scholars held that one must make up two days: the Ramadan day and the makeup day.

L12204 **Case: If a person dies while owing obligatory fasts—whether from making up missed Ramadan fasts or a vowed fast—**

L12205 775 - Issue: If someone dies while owing obligatory fasts—whether from making up for missed days of Ramadan, fulfilling a vow, or obligatory expiation—it becomes incumbent upon their guardians to fast on their behalf, either all or some of them. There is absolutely no feeding required in this matter whatsoever—whether the deceased instructed it or not. If the de-

مُحَمَّدٍ: لَا خِلَافَ بَيْنَ أَحَدٍ فِي أَنَّ حُكْمَ مَا أَفْطَرَ بِهِ مِنْ جِمَاعٍ أَوْ غَيْرِهِ حُكْمٌ وَاحِدٌ، فَمِنْ مُوجِبٍ لِلْقَضَاءِ فِي كُلِّ ذَلِكَ، وَمُسْقِطٍ لَهُ فِي كُلِّ ذَلِكَ؛ وَقَدْ صَحَّ النَّصُّ بِالْقَضَاءِ فِي الْإِفْطَارِ فَمَا نُبَالِي بِأَيِّ شَيْءٍ أَفْطَرَ؛ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا تَفْرِيقُ مَالِكٍ بَيْنَ الْإِفْطَارِ نَاسِيًا فِي صَوْمِ تَطَوُّعٍ أَوْ فَرْضٍ خَطَأً لَا وَجْهَ لَهُ، وَلَيْسَ إلَّا صَائِمٌ أَوْ مُفْطِرٌ، فَإِنْ كَانَ مُفْطِرًا فَالْحُكْمُ وَاحِدٌ فِي الْقَضَاءِ أَوْ تَرْكِهِ، وَإِنْ كَانَ صَائِمًا فَلَا قَضَاءَ عَلَى صَائِمٍ.

[مَسْأَلَةٌ أَفْطَرَ عَامِدًا فِي قَضَاءِ رَمَضَانَ]

٧٧٤ - مَسْأَلَةٌ: وَمَنْ أَفْطَرَ عَامِدًا فِي قَضَاءِ رَمَضَانَ فَلَيْسَ عَلَيْهِ إلَّا قَضَاءُ يَوْمٍ وَاحِدٍ فَقَطْ؛ لِأَنَّ إيجَابَ الْقَضَاءِ إيجَابُ شَرْعٍ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى. وَقَدْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَضَى ذَلِكَ الْيَوْمَ مِنْ رَمَضَانَ فَلَا يَجُوزُ أَنْ يُزَادَ عَلَيْهِ غَيْرُهُ بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ. وَرُوِّينَا عَنْ قَتَادَةَ أَنَّ عَلَيْهِ الْكَفَّارَةَ كَمَنْ فَعَلَ ذَلِكَ فِي رَمَضَانَ؛ لِأَنَّهُ بَدَلٌ مِنْهُ. قَالَ أَبُو مُحَمَّدٍ: هَذَا أَصَحُّ مَا يَكُونُ مِنْ الْقِيَاسِ إنْ كَانَ الْقِيَاسُ حَقًّا، وَعَنْ بَعْضِ السَّلَفِ -: عَلَيْهِ قَضَاءُ يَوْمَيْنِ، يَوْمِ رَمَضَانَ، وَيَوْمِ الْقَضَاءِ -.

[مَسْأَلَةٌ مَاتَ وَعَلَيْهِ صَوْمُ فَرْضٍ مِنْ قَضَاءِ رَمَضَانَ أَوْ نَذْرٍ]

٧٧٥ - مَسْأَلَةٌ: وَمَنْ مَاتَ وَعَلَيْهِ صَوْمُ فَرْضٍ مِنْ قَضَاءِ رَمَضَانَ، أَوْ نَذْرٍ أَوْ كَفَّارَةٍ وَاجِبَةٍ فَفَرْضٌ عَلَى أَوْلِيَائِهِ أَنْ يَصُومُوهُ عَنْهُ هُمْ أَوْ بَعْضُهُمْ، وَلَا إطْعَامَ فِي ذَلِكَ أَصْلًا - أَوْصَى بِهِ أَوْ لَمْ يُوصِ بِهِ - فَإِنْ لَمْ يَكُنْ لَهُ وَلِيٌّ اُسْتُؤْجِرَ عَنْهُ مِنْ رَأْسِ مَالِهِ مَنْ يَصُومُهُ

ceased has no guardian, it is obligatory to hire someone from the principal of their wealth to fast on their behalf—whether they instructed this or not—and this obligation takes precedence over repaying debts owed to others. This is the view of Abū Thawr, Abū Sulaymān, and others. Abū Ḥanīfah and Mālik said: If the deceased instructed feeding the poor on their behalf, one needy person must be fed for each day instead of fasting; if they did not instruct this, there is no obligation. According to Mālik, the feeding in this case is one *mudd* (per day), while according to Abū Ḥanīfah, it is one *ṣāʿ* of non-wheat grain per needy person, or half a *ṣāʿ* of wheat or its flour. Al-Layth held the same opinion as we have stated.

عَنْهُ وَلَا بُدَّ - أَوْصَى بِكُلِّ ذَلِكَ أَوْ لَمْ يُوصِ - وَهُوَ مُقَدَّمٌ عَلَى دُيُونِ النَّاسِ. وَهُوَ قَوْلُ أَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمَا. وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: إِنْ أَوْصَى أَنْ يُطْعَمَ عَنْهُ أُطْعِمَ عَنْهُ مَكَانَ كُلِّ يَوْمٍ مِسْكِينٌ، وَإِنْ لَمْ يُوصِ بِذَلِكَ فَلَا شَيْءَ عَلَيْهِ. وَالْإِطْعَامُ عِنْدَ مَالِكٍ فِي ذَلِكَ مُدٌّ مُدٌّ، وَعِنْدَ أَبِي حَنِيفَةَ صَاعٌ مِنْ غَيْرِ الْبُرِّ لِكُلِّ مِسْكِينٍ، نِصْفُ صَاعٍ مِنْ الْبُرِّ أَوْ دَقِيقِهِ. وَقَالَ اللَّيْثُ كَمَا قُلْنَا.

L12206–12208 And this is the opinion of Aḥmad ibn Ḥanbal and Isḥāq ibn Rāhawayh specifically on vows. Abū Muḥammad said: Allāh the Exalted stated, “after any bequest he has bequeathed or debt” [al-Nisāʾ 4:11]. Narrated to us by ʿAbdullāh ibn Yūsuf and ʿAbd al-Raḥmān ibn ʿAbdullāh ibn Khālid. ʿAbdullāh said: Narrated to us. Aḥmad ibn Fatḥ narrated from ʿAbd al-Wahhāb ibn ʿĪsā, who narrated from Aḥmad ibn Muḥammad, who narrated from Aḥmad ibn ʿAlī, who narrated from Muslim ibn al-Ḥajjāj, who narrated to me: Hārūn ibn Saʿīd al-Aylāʾī and Aḥmad ibn ʿĪsā both narrated to me from Ibn Wahb. ʿAbd al-Raḥmān said: Ibrāhīm ibn Aḥmad al-Farabrī narrated from al-Bukhārī, who narrated from Muḥammad ibn Mūsā ibn Aʿyan, who narrated from my father.[37]

وَهُوَ قَوْلُ أَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ فِي النَّذْرِ خَاصَّةً. قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ تَعَالَى {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] . نا عَبْدُ اللَّهِ بْنُ يُوسُفَ، وَعَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ، قَالَ عَبْدُ اللَّهِ: نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي هَارُونُ بْنُ سَعِيدٍ الْأَيْلِيُّ، وَأَحْمَدُ بْنُ عِيسَى نا ابْنُ وَهْبٍ، وَقَالَ عَبْدُ الرَّحْمَنِ: نا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْفَرَبْرِيُّ نا الْبُخَارِيُّ نَا مُحَمَّدُ بْنُ مُوسَى بْنِ أَعْيَنَ نا أَبِي.

L12209 Then Musa and Ibn Wahb concurred in their narration, both transmitting from Amr ibn al-Harith from Ubayd Allah ibn Abi Ja’far: Muhammad ibn Ja’far ibn al-Zubayr narrated to me from Urwah from Aisha, the Mother of the Believers, that the Messenger of Allah—peace and blessings be upon him—said: “Whoever dies while owing obligatory fasts, their guardian shall fast on their behalf.” And via this chain in Sahih Muslim: Abu Sa’id al-Ashajj reported to us from Abu Khalid al-Ahmar from al-A’mash from Salamah ibn Kuhayl, al-Hakam ibn Utaybah, and Muslim al-Batin from Sa’id ibn Jubayr, Ata’, and Mujahid from Ibn Abbas: “A questioner asked the Prophet—peace and blessings be upon him—saying: ’My mother died while owing a month of fasting. Should I fulfill it for her?’ The Messenger of Allah—peace and

ثُمَّ اتَّفَقَ مُوسَى، وَابْنُ وَهْبٍ كِلَاهُمَا عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ حَدَّثَنِي مُحَمَّدُ بْنُ جَعْفَرِ بْنِ الزُّبَيْرِ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ مَاتَ وَعَلَيْهِ صِيَامٌ صَامَ عَنْهُ وَلِيُّهُ» وَبِهِ إِلَى مُسْلِمٍ -: نا أَبُو سَعِيدٍ الْأَشَجُّ نا أَبُو خَالِدٍ الْأَحْمَرُ نا الْأَعْمَشُ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَمُسْلِمٍ الْبَطِينِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ، وَعَطَاءٍ، وَمُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ: «أَنَّ سَائِلًا سَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إِنَّ أُمِّي مَاتَتْ وَعَلَيْهَا صَوْمُ شَهْرٍ أَفَأَقْضِيهِ عَنْهَا؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَوْ كَانَ عَلَى أُمِّكَ دَيْنٌ أَكُنْتَ قَاضِيَهُ عَنْهَا؟

[37] **Qur’an references (L12206):** Qur’an 4:11 (An-Nisa); Qur’an 4:12 (An-Nisa).

blessings be upon him—responded: 'If your mother owed a debt, would you fulfill it for her?' He said: 'Yes.' He said: 'Then Allah's debt is more worthy of fulfillment.'" Abu Muhammad noted: Al-A'mash heard this from Muslim al-Batin, from al-Hakam, and from Salamah. Al-Hakam and Salamah heard it from Mujahid. And via this chain in Sahih Muslim: Abu Bakr ibn Abi Shaybah, Abd ibn Humayd, and Ali ibn Hajar al-Sa'di reported. Abu Bakr stated: Abdullah ibn Numayr reported to us. Abd stated: Abd al-Razzaq reported to us from Sufyan al-Thawri.

L12210–12212 Ali ibn Hijr said: Narrated to us Ali ibn Mishar. Then Ibn Numayr, Sufyan, and Ali ibn Mishar all concurred—each narrating from Abdullah ibn Ataa al-Makki, from Abdullah ibn Buraidah, from his father, who said: "While I was sitting with the Messenger of Allah—peace and blessings be upon him—a woman came to him and said: 'I gave a slave girl as charity to my mother, and she has died.' The Messenger of Allah—peace and blessings be upon him—said: 'Your reward is assured, and the inheritance law has caused her to be returned to you.' She said: 'O Messenger of Allah, she owed a month of fasting—should I fast on her behalf?' He said: 'Fast for her.' She said: 'She never performed Hajj at all—should I perform Hajj on her behalf?' He said: 'Perform Hajj for her.'" In his narration, Ibn Numayr mentioned "two months," while they all agreed on everything else. Abu Muhammad said: "This is the Quran and the widely transmitted, manifest Sunnah that it is impermissible to oppose. All scholars say: 'Hajj may be performed on behalf of the deceased if they stipulated it,' yet they do not permit fasting on their behalf even if stipulated, though both are bodily acts. Wealth can compensate for invalidation in both acts through sacrificial offerings." And by feeding and manumission, they neither followed the Quran nor adhered to the Sunnah nor comprehended qiyas. They became occupied in this matter with certain issues - including their citation of Allah's verse: "Man shall have nothing but what he strives for" [53:39], and the Messenger's saying (peace be upon him): "When a person dies, their deeds cease except three: disseminated knowledge, perpetual charity, or a righteous child who supplicates for them." They also cited a narration we transmitted through Abd al-Razzaq's chain: Ibrahim ibn Abi Yahya → al-Hajjaj ibn Artah → Ubadah ibn Nusayy → that

قَالَ: نَعَمْ، قَالَ: فَدَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى» . قَالَ أَبُو مُحَمَّد: سَمِعَهُ الْأَعْمَشُ مِنْ مُسْلِمٍ الْبَطِينِ، وَمِنْ الْحَكَمِ، وَمِنْ سَلَمَةَ، وَسَمِعَهُ الْحَكَمُ، وَسَلَمَةُ مِنْ مُجَاهِدٍ. وَبِهِ إلَى مُسْلِمٍ -: نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَعَبْدُ بْنُ حُمَيْدٍ، وَعَلِيُّ بْنُ حَجَرٍ السَّعْدِيّ، قَالَ أَبُو بَكْرٍ: نا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ، وَقَالَ عَبْدٌ: نا عَبْدُ الرَّزَّاقِ أَنَا سُفْيَانُ الثَّوْرِيُّ.

وَقَالَ عَلِيُّ بْنُ حَجَرٍ: نا عَلِيُّ بْنُ مِسْهَرٍ، ثُمَّ اتَّفَقَ ابْنُ نُمَيْرٍ، وَسُفْيَانُ، وَعَلِيُّ بْنُ مِسْهَرٍ، كُلُّهُمْ عَنْ عَبْدِ اللَّهِ بْنِ عَطَاءٍ الْمَكِّيِّ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ عَنْ أَبِيهِ قَالَ: «بَيْنَمَا أَنَا جَالِسٌ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ أَتَتْهُ امْرَأَةٌ فَقَالَتْ: إنِّي تَصَدَّقْتُ عَلَى أُمِّي بِجَارِيَةٍ وَإِنَّهَا مَاتَتْ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَجَبَ أَجْرُكِ وَرَدَّهَا عَلَيْكِ الْمِيرَاثُ؟ قَالَتْ: يَا رَسُولَ اللَّهِ إنَّهُ كَانَ عَلَيْهَا صَوْمُ شَهْرٍ أَفَأَصُومُ عَنْهَا؟ قَالَ: صُومِي، قَالَتْ: إنَّهَا لَمْ تَحُجَّ قَطُّ أَفَأَحُجُّ عَنْهَا؟ قَالَ: حُجِّي عَنْهَا» . قَالَ ابْنُ نُمَيْرٍ فِي رِوَايَتِهِ: شَهْرَيْنِ، وَاتَّفَقُوا عَلَى كُلِّ مَا عَدَا ذَلِكَ. قَالَ أَبُو مُحَمَّد: فَهَذَا الْقُرْآنُ، وَالسُّنَنُ الْمُتَوَاتِرَةُ الْمُتَظَاهِرَةُ الَّتِي لَا يَحِلُّ خِلَافُهَا، وَكُلُّهُمْ يَقُولُ: يُحَجُّ عَنْ الْمَيِّتِ إنْ أَوْصَى بِذَلِكَ، ثُمَّ لَا يَرَوْنَ أَنْ يُصَامَ عَنْهُ وَإِنْ أَوْصَى بِذَلِكَ، وَكِلَاهُمَا عَمَلُ بَدَنٍ، وَلِلْمَالِ فِي إصْلَاحِ مَا فَسَدَ مِنْهُمَا مَدْخَلٌ بِالْهَدْيِ، وَبِالْإِطْعَامِ، وَبِالْعِتْقِ، فَلَا الْقُرْآنَ اتَّبَعُوا، وَلَا بِالسُّنَنِ أَخَذُوا وَلَا الْقِيَاسَ عَرَفُوا، وَشُغِلُوا فِي ذَلِكَ بِأَشْيَاءَ -: مِنْهَا: أَنَّهُمْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {وَأَنْ لَيْسَ لِلإِنْسَانِ إِلا مَا سَعَى} [النجم: ٣٩] . وَذَكَرُوا قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا مَاتَ الْمَيِّتُ انْقَطَعَ عَمَلُهُ إلَّا مِنْ ثَلَاثٍ: عِلْمٌ عَلَّمَهُ، أَوْ صَدَقَةٌ جَارِيَةٌ، أَوْ وَلَدٌ صَالِحٌ يَدْعُو لَهُ» . وَبِأَثَرٍ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إبْرَاهِيمَ بْنِ أَبِي يَحْيَى

the Messenger (peace be upon him) said: “Whoever falls ill in Ramadan and remains sick until death requires no expiation feeding. But if they recover yet neglect to make up the fast until death, expiation feeding is provided for them.”[38]

عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ عُبَادَةَ بْنِ نُسَيٍّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ مَرِضَ فِي رَمَضَانَ فَلَمْ يَزَلْ مَرِيضًا حَتَّى مَاتَ لَمْ يُطْعَمْ عَنْهُ، وَإِنْ صَحَّ فَلَمْ يَقْضِهِ حَتَّى مَاتَ أُطْعِمَ عَنْهُ»

L12213 Some of them said: It has been narrated from ’Ā’ishah and Ibn ’Abbās—and they both narrated the mentioned ḥadīth—that they did not hold the view that fasting could be performed on behalf of the deceased as has been narrated through the chain of Ibn Abī Shaybah from Jarīr ibn ’Abd al-Ḥamīd from ’Abd al-’Azīz ibn Rufayʿ from a woman among the Companions named ’Amrah: that her mother died while owing days from Ramaḍān, so she asked ’Ā’ishah: “Shall I fast them on her behalf?” She replied: “No, but give charity on her behalf for each day half a ṣāʿ to every needy person.” If the Companion abandons the report that was narrated, it constitutes evidence of its abrogation, and it is impermissible to presume otherwise, for had he deliberately contradicted what he narrated, it would have been a flaw in him—and Allah the Exalted has protected them from that. They said: “Should fasting not be performed on his behalf just as prayer is not performed on his behalf?” Abū Muḥammad said: This is all they have used to obscure the matter, and none of it contains any valid proof for them. As for Allah’s statement: {And that a human shall have nothing but what he has striven for} [53:39], it is true—except that the One who revealed this is the same Who revealed {after any bequest he may have made or debt} [4:11]. He is the One Who said to His Messenger—peace and blessings be upon him—{To clarify for people what was sent down to them} [16:44]. He is the One Who said: {Whoever obeys the Messenger has obeyed Allah} [4:80]. Thus, it is confirmed that a human has nothing except what he has striven for, and whatever Allah the Exalted or His Messenger—peace and blessings be upon him—has decreed to attribute to him from the efforts of another on his behalf, such as fasting, is included in that.[39]

وَقَالَ بَعْضُهُمْ: قَدْ رُوِيَ عَنْ عَائِشَةَ، وَابْنِ عَبَّاسٍ - وَهُمَا رَوَيَا الْحَدِيثَ الْمَذْكُورَ - أَنَّهُمَا لَمْ يَرَيَا الصِّيَامَ عَنْ الْمَيِّتِ كَمَا رَوَيْتُمْ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ جَرِيرِ بْنِ عَبْدِ الْحَمِيدِ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنْ امْرَأَةٍ مِنْهُمْ اسْمُهَا عَمْرَةُ: أَنَّ أُمَّهَا مَاتَتْ وَعَلَيْهَا مِنْ رَمَضَانَ فَقَالَتْ لِعَائِشَةَ: أَقْضِيه عَنْهَا؟ قَالَتْ: لَا، بَلْ تَصَدَّقِي عَنْهَا مَكَانَ كُلِّ يَوْمٍ نِصْفَ صَاعٍ عَلَى كُلِّ مِسْكِينٍ. وَإِذَا تَرَكَ الصَّاحِبُ الْخَبَرَ الَّذِي رُوِيَ فَهُوَ دَلِيلٌ عَلَى نَسْخِهِ لَا يَجُوزُ أَنْ يُظَنَّ بِهِ غَيْرُ ذَلِكَ، إذْ لَوْ تَعَمَّدَ مَا رَوَاهُ لَكَانَتْ جُرْحَةً فِيهِ، وَقَدْ أَعَاذَهُمْ اللَّهُ تَعَالَى مِنْ ذَلِكَ. وَقَالُوا: لَا يُصَامُ عَنْهُ كَمَا لَا يُصَلَّى عَنْهُ؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا مَوَّهُوا بِهِ، وَهُوَ كُلُّهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ، أَمَّا قَوْلُ اللَّهِ تَعَالَى: {وَأَنْ لَيْسَ لِلإِنْسَانِ إِلا مَا سَعَى} [النجم: ٣٩] فَحَقٌّ إلَّا أَنَّ الَّذِي أَنْزَلَ هَذَا هُوَ الَّذِي أَنْزَلَ {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] . وَهُوَ الَّذِي قَالَ لِرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] . وَهُوَ الَّذِي قَالَ: {مَنْ يُطِعِ الرَّسُولَ فَقَدْ أَطَاعَ اللَّهَ} [النساء: ٨٠] . فَصَحَّ أَنَّهُ لَيْسَ لِلْإِنْسَانِ إلَّا مَا سَعَى، وَمَا حَكَمَ اللَّهُ تَعَالَى أَوْ رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ لَهُ مِنْ سَعْيِ غَيْرِهِ عَنْهُ، وَالصَّوْمُ عَنْهُ مِنْ جُمْلَةِ ذَلِكَ.

[38] **Qur’an references (L12210):** Qur’an 53:39 (An-Najm).

[39] **Qur’an references (L12213):** Qur’an 53:39 (An-Najm); Qur’an 4:11 (An-Nisa); Qur’an 4:12 (An-Nisa); Qur’an 16:44 (An-Nahl); Qur’an 4:80 (An-Nisa).

وَالْعَجَبُ أَنَّهُمْ نَسُوا أَنْفُسَهُمْ فِي الِاحْتِجَاجِ بِهَذِهِ الْآيَةِ فَقَالُوا: إِنْ حَجَّ عَنْ الْمَيِّتِ، أَوْ أَعْتَقَ عَنْهُ، أَوْ تَصَدَّقَ عَنْهُ، فَأَجْرُ كُلِّ ذَلِكَ لَهُ وَلَا حَقَّ بِهِ، فَظَهَرَ تَنَاقُضُهُمْ؟

L12214 How astonishing that they forgot themselves while citing this verse as evidence, saying: "If one performs Hajj on behalf of the deceased, frees a slave on behalf of him, or gives charity on behalf of him, the reward for all these acts is his, and no claim attaches to him." Thus their contradiction becomes evident.

فَإِنْ قَالَ مِنْهُمْ قَائِلٌ: إِنَّمَا يُحَجُّ عَنْهُ إِذَا أَوْصَى بِذَلِكَ، لِأَنَّهُ دَاخِلٌ فِيمَا سَعَى؟ قُلْنَا لَهُ: فَقُولُوا: بِأَنْ يُصَامَ عَنْهُ كَمَا إِذَا أَوْصَى بِذَلِكَ لِأَنَّهُ دَاخِلٌ فِيمَا سَعَى. فَإِنْ قَالُوا: لِلْمَالِ فِي الْحَجِّ مَدْخَلٌ فِي جَبْرِ مَا نَقَصَ مِنْهُ؟ قُلْنَا: وَلِلْمَالِ فِي الصَّوْمِ مَدْخَلٌ فِي جَبْرِ مَا نَقَصَ مِنْهُ بِالْعِتْقِ وَالِإطْعَامِ، وَكُلُّ هَذَا مِنْهُمْ تَخْلِيطٌ، وَتَنَاقُضٌ، وَشَرْعٌ فِي الدِّينِ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى وَهُمْ يُجِيزُونَ الْعِتْقَ عَنْهُ، وَالصَّدَقَةَ عَنْهُ - وَإِنْ لَمْ يُوصِ بِذَلِكَ - فَبَطَلَ تَمْوِيهُهُمْ بِهَذِهِ الْآيَةِ؟ .

L12215–12216 If one of them were to say: "Hajj is only performed on his behalf if he bequeathed it, because it falls under what he was responsible for," we would respond: "Then you must also say that fasting should be performed on his behalf if he bequeathed it, as it similarly falls under what he was responsible for." If they argue: "Wealth plays a role in compensating for deficiencies in his deeds through Hajj," we would counter: "Wealth similarly has a role in compensating for what is deficient through fasting—via manumission and feeding the poor. All of this on their part is confusion, contradiction, and legislation in the religion that Allah the Exalted has not permitted. Yet they allow manumission and charity on his behalf—even without his bequest—thus their deception is nullified by this verse?"

وَأَمَّا إِخْبَارُهُ - عَلَيْهِ السَّلَامُ - بِأَنَّ عَمَلَ الْمَيِّتِ يَنْقَطِعُ إِلَّا مِنْ ثَلَاثٍ، فَصَحِيحٌ، وَالْعَجَبُ أَنَّهُمْ لَمْ يَخَافُوا الْفَضِيحَةَ فِي احْتِجَاجِهِمْ بِهِ وَلَيْتَ شِعْرِي مَنْ قَالَ لَهُمْ: إِنَّ صَوْمَ الْوَلِيِّ عَنْ الْمَيِّتِ هُوَ عَمَلُ الْمَيِّتِ حَتَّى يَأْتُوا بِهَذَا الْخَبَرِ الَّذِي لَيْسَ فِيهِ إِلَّا انْقِطَاعُ عَمَلِ الْمَيِّتِ فَقَطْ، وَلَيْسَ فِيهِ انْقِطَاعُ عَمَلِ غَيْرِهِ أَصْلًا، وَلَا الْمَنْعُ مِنْ ذَلِكَ؛ فَظَهَرَ قُبْحُ تَمْوِيهِهِمْ فِي الِاحْتِجَاجِ بِهَذَا الْخَبَرِ جُمْلَةً؟ وَأَمَّا حَدِيثُ عَبْدِ الرَّزَّاقِ فَلَا تَحِلُّ رِوَايَتُهُ إِلَّا عَلَى سَبِيلِ بَيَانِ فَسَادِهَا لِعِلَلٍ ثَلَاثٍ فِيهِ: إحْدَاهَا - أَنَّهُ مُرْسَلٌ، وَالثَّانِيَةُ: أَنَّ فِيهِ الْحَجَّاجَ بْنَ أَرْطَاةَ، وَهُوَ سَاقِطٌ، وَالثَّالِثَةُ: أَنَّ فِيهِ إبْرَاهِيمَ بْنَ أَبِي يَحْيَى وَهُوَ كَذَّابٌ. ثُمَّ لَوْ صَحَّ لَكَانَ عَلَيْهِمْ لَا لَهُمْ؛ لِأَنَّ فِيهِ إيجَابَ الْإِطْعَامِ عَنْهُ إنْ صَحَّ بَعْدَ أَنْ مَرِضَ، وَالْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ لَا يَقُولُونَ بِذَلِكَ، إلَّا أَنْ يُوصِيَ بِذَلِكَ، وَإِلَّا فَلَا. فَإِنْ قَالُوا: مَعْنَى ذَلِكَ

L12217 As for his statement—peace be upon him—that the deceased's deeds cease except three, it is authentic. How astonishing they did not fear scandal in their argument citing this! I wish I knew who told them that the guardian's fasting for the deceased constitutes the deceased's own deed, leading them to cite this report which mentions only the cessation of the deceased's deeds—with no reference to others' deeds ceasing nor any prohibition thereof. Thus, the ugliness of their obfuscation in relying on this report is laid completely bare.

As for 'Abd al-Razzāq's ḥadīth, its narration is impermissible except to expose its corruption due to three flaws: First, it is mursal. Second, it contains al-Ḥajjāj ibn Arṭā'a—a rejected narrator. Third, it contains Ibrāhīm ibn Abī Yaḥyā—a known liar. Even if authentic, it would oppose their stance, for it obligates feeding on his behalf if he recovered after illness. Yet Ḥanafīs and Mālikīs reject this unless he bequeathed it. If they claim, "This applies only if he bequeathed it," we respond: You lie! You have added to the report contrary to its text, which states: "If he dies without recovering, no feeding occurs for him." Had the intent required bequeathing, there would be no distinction

between one whose illness persists until death (where no feeding occurs) and one who recovers between illness and death (where feeding occurs)—since according to them, feeding would occur if he bequeathed it regardless of recovery. Thus, their deception through this invalid report is nullified, and it becomes evidence against them.

إِنْ أَوْصَى بِهِ؟ قُلْنَا: كَذَبْتُمْ وَزِدْتُمْ فِي الْخَبَرِ خِلَافَ مَا فِيهِ، لِأَنَّ فِيهِ «إِنْ مَاتَ وَلَمْ يَصِحَّ لَمْ يُطْعَمْ عَنْهُ» فَلَوْ أَرَادَ إِلَّا أَنْ يُوصِيَ بِذَلِكَ لَمَا كَانَ لِتَفْرِيقِهِ بَيْنَ تَمَادِي مَرَضِهِ حَتَّى يَمُوتَ فَلَا يُطْعَمُ عَنْهُ، وَبَيْنَ صِحَّتِهِ بَيْنَ مَرَضِهِ وَمَوْتِهِ فَيُطْعَمُ عَنْهُ؛ لِأَنَّهُ إِنْ أَوْصَى بِالْإِطْعَامِ عَنْهُ، وَإِنْ لَمْ يَصِحَّ أُطْعِمَ عَنْهُ عِنْدَهُمْ؛ فَبَطَلَ تَمْوِيهُهُمْ بِهَذَا الْخَبَرِ الْهَالِكِ وَعَادَ حُجَّةً عَلَيْهِمْ.

L12218 As for their obfuscation that ʿĀ'ishah and Ibn ʿAbbās both transmitted the report and abandoned it, this is an invalid statement for several reasons. One of them is that their claim is impermissible, for Allah the Exalted has ordained upon us to follow the narration of the Companion from the Prophet—peace and blessings be upon him—and He has never ordained upon us at all to follow the opinion of any one of them.

وَأَمَّا تَمْوِيهُهُمْ بِأَنَّ عَائِشَةَ، وَابْنَ عَبَّاسٍ رَوَيَا الْخَبَرَ وَتَرَكَاهُ فَقَوْلٌ فَاسِدٌ لِوُجُوهٍ: أَحَدُهَا - أَنَّهُ لَا يَجُوزُ مَا قَالُوا، لِأَنَّ اللَّهَ تَعَالَى إِنَّمَا افْتَرَضَ عَلَيْنَا اتِّبَاعَ رِوَايَةِ الصَّاحِبِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَفْتَرِضْ عَلَيْنَا قَطُّ اتِّبَاعَ رَأْيِ أَحَدِهِمْ.

L12219–12220 The second is that a companion might abandon following what he narrated for reasons other than intentional disobedience. These include: interpreting his narration through an effort-based interpretation wherein he erred and was thus rewarded once; forgetting his narration and issuing a contradictory legal opinion; or the existence of conflicting narrations from him transmitted by reliable narrators. Since all these scenarios are possible, it becomes impermissible to abandon what we are obligated to follow from the Sunnah of Allah's Messenger (peace be upon him) merely due to these potential flaws. This is because Allah did not condition our obligation to follow the Sunnah on the absence of such weaknesses—how could this be, when all these possibilities apply to it? There is no merit in the claim that "this indicates the narration's abrogation," for it is refuted by noting that the companion's possession of that narration demonstrates the weakness of contradictory reports attributed to him, or possibly his subsequent retraction from them.

وَالثَّانِي: أَنَّهُ قَدْ يَتْرُكُ الصَّاحِبُ اتِّبَاعَ مَا رَوَى لِوُجُوهٍ غَيْرِ تَعَمُّدِ الْمَعْصِيَةِ، وَهِيَ أَنْ يَتَأَوَّلَ فِيمَا رَوَى تَأْوِيلًا مَا اجْتَهَدَ فِيهِ فَأَخْطَأَ فَأُجِرَ مَرَّةً، أَوْ أَنْ يَكُونَ نَسِيَ مَا رَوَى فَأَفْتَى بِخِلَافِهِ؛ أَوْ أَنْ تَكُونَ الرِّوَايَةُ عَنْهُ بِخِلَافِهِ وَهُمَا مِمَّنْ رَوَى ذَلِكَ عَنِ الصَّاحِبِ؛ فَإِذْ كُلُّ ذَلِكَ مُمْكِنٌ فَلَا يَحِلُّ تَرْكُ مَا افْتُرِضَ عَلَيْنَا اتِّبَاعُهُ مِنْ سُنَنِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِمَا لَمْ يَأْمُرْنَا بِاتِّبَاعِهِ لَوْ لَمْ يَكُنْ فِيهِ هَذِهِ الْعِلَلُ فَكَيْفَ وَكُلُّهَا مُمْكِنٌ فِيهِ؟ وَلَا مَعْنَى لِقَوْلِ مَنْ قَالَ: هَذَا دَلِيلٌ عَلَى نَسْخِ الْخَبَرِ، لِأَنَّهُ يُعَارَضُ بِأَنْ يُقَالَ: كَوْنُ ذَلِكَ الْخَبَرِ عِنْدَ ذَلِكَ الصَّاحِبِ دَلِيلٌ عَلَى ضَعْفِ الرِّوَايَةِ عَنْهُ بِخِلَافِهِ، أَوْ لَعَلَّهُ قَدْ رَجَعَ عَنْ ذَلِكَ.

L12221–12223 The third point is that they only invoke this general principle when it aligns with the positions of Abū Ḥanīfa, Mālik, and al-Shāfiʿī. However, when a Companion's opinion contradicts the views of those we have mentioned, they consider it trivial to discard the Companion's opinion and cling to their

وَالثَّالِثُ: أَنَّهُمْ إِنَّمَا يَحْتَجُّونَ بِهَذِهِ الْجُمْلَةِ إِذَا وَافَقَتْ تَقْلِيدَ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَمَّا إِذَا خَالَفَ قَوْلُ الصَّاحِبِ رَأْيَ أَحَدٍ مِمَّنْ ذَكَرْنَا فَأَهْوَنُ شَيْءٍ عِنْدَهُمْ إِطْرَاحُ رَأْيِ

narration—does this not indicate weak religiosity and lack of piety? For example: ʿĀ'isha—may Allah be pleased with her—narrated, "Prayer was initially ordained as two rakʿahs each. When the Messenger of Allah—peace and blessings upon him—migrated, the prayers performed while resident were increased, while travel prayers remained in their original form." Yet when a rigorously authenticated chain from her endorsed completing prayers without shortening during travel, the Ḥanafīs and Mālikīs adhered to her narration while disregarding her opinion—despite her own opinion contradicting what she had narrated. She is the same one who narrated, "Any woman who marries without her guardian's permission—her marriage is void," yet she married off her brother's daughter, ʿAbd al-Raḥmān al-Mundhir ibn al-Zubayr's daughter, while her father was absent in Syria, without his consent. When he learned of this, he vehemently denounced it. Thus, they rejected her opinion yet followed her narration. She is also the one who transmitted the prohibition through fosterage via a male's milk, yet she would not admit into her presence those nursed by her brothers' wives, while permitting those nursed by her sisters' daughters. Thus, they abandoned her opinion and adhered to her narration. Abū Hurayra narrated through an unreliable chain the obligation of making up for intentionally broken fasts in Ramaḍān, while an authentic report from him states that even a lifetime of fasting would not suffice for such a person, nor is making it up required. Yet they discarded his well-founded opinion for this defective narration. Abū Hurayra also narrated regarding the sea: "Its water is pure, and its dead are lawful." Then it was reported from him through the chain of Saʿīd ibn Manṣūr → Ismāʿīl ibn Ibrāhīm (Ibn ʿUlayya) → Hishām al-Dastuwā'ī... A man from the Ansar through Abu Hurairah: "Two types of water do not suffice for the major ritual purification: seawater and bathwater." It is narrated from Ibn Abbas regarding Zakat al-Fitr as "two *mudds* of wheat" via an inauthentic chain, while a verified report from his personal opinion states: "A *sa'* of husked wheat for Zakat al-Fitr." The Hanafis abandoned his opinion in favor of his transmitted narration - a practice exceedingly common among them. What

الصَّاحِبِ وَالتَّعَلُّقُ بِرِوَايَتِهِ وَهَذَا فِعْلٌ يَدُلُّ عَلَى رِقَّةِ الدِّينِ وَقِلَّةِ الْوَرَعِ؟ فَمِنْ ذَلِكَ: أَنَّ عَائِشَةَ - رَضِيَ اللَّهُ تَعَالَى عَنْهَا - رَوَتْ «فُرِضَتْ الصَّلَاةُ رَكْعَتَيْنِ رَكْعَتَيْنِ فَلَمَّا هَاجَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زِيدَ فِي صَلَاةِ الْحَضَرِ وَأُقِرَّتْ صَلَاةُ السَّفَرِ عَلَى الْحَالَةِ الْأُولَى» . ثُمَّ رُوِيَ عَنْهَا مِنْ أَصَحِّ طَرِيقِ الْإِتْمَامِ فِي السَّفَرِ، فَتَعَلَّقَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ بِرِوَايَتِهَا وَتَرَكُوا رَأْيَهَا، إذْ خَالَفَتْ فِيهِ مَا رَوَتْ، وَهِيَ الَّتِي رَوَتْ «أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إذْنِ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ» ثُمَّ أَنْكَحَتْ بِنْتَ أَخِيهَا عَبْدَ الرَّحْمَنِ الْمُنْذِرِ بْنِ الزُّبَيْرِ وَأَبُوهَا غَائِبٌ بِالشَّامِ بِغَيْرِ إذْنِهِ، وَأَنْكَرَ ذَلِكَ إذْ بَلَغَهُ أَشَدَّ الْإِنْكَارِ، فَخَالَفُوا رَأْيَهَا وَاتَّبَعُوا رِوَايَتَهَا. وَهِيَ الَّتِي رَوَتْ التَّحْرِيمَ بِلَبَنِ الْفَحْلِ ثُمَّ كَانَتْ لَا - تُدْخِلُ عَلَيْهَا مَنْ أَرْضَعَهُ نِسَاءُ إخْوَتِهَا، - وَتُدْخِلُ عَلَيْهَا مَنْ أَرْضَعَهُ بَنَاتُ أَخَوَاتِهَا، فَتَرَكُوا رَأْيَهَا وَاتَّبَعُوا رِوَايَتَهَا. وَرَوَى أَبُو هُرَيْرَةَ مِنْ طَرِيقٍ لَا تَصِحُّ عَنْهُ: إيجَابَ الْقَضَاءِ عَلَى مَنْ تَعَمَّدَ الْفِطْرَ فِي نَهَارِ رَمَضَانَ، وَصَحَّ عَنْهُ أَنَّهُ لَا يُجْزِئُهُ صِيَامُ الدَّهْرِ وَإِنْ صَامَهُ وَأَنَّهُ لَا يَقْضِيهِ، فَتَرَكُوا الثَّابِتَ مِنْ رَأْيِهِ لِلْهَالِكِ مِنْ رِوَايَتِهِ. وَرَوَى أَبُو هُرَيْرَةَ فِي الْبَحْرِ «هُوَ الطَّهُورُ مَاؤُهُ الْحِلُّ مَيْتَتُهُ» ثُمَّ رُوِّينَا عَنْهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ إسْمَاعِيلَ بْنِ إبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ - عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ رَجُلٍ مِنْ الْأَنْصَارِ عَنْ أَبِي هُرَيْرَةَ مَاءَانِ لَا يُجْزِئَانِ مِنْ غُسْلِ الْجَنَابَةِ: مَاءُ الْبَحْرِ وَمَاءُ الْحَمَّامِ. وَرُوِيَ عَنْ ابْنِ عَبَّاسٍ فِي صَدَقَةِ الْفِطْرِ " مُدَّانِ مِنْ قَمْحٍ " مِنْ طَرِيقٍ لَا تَصِحُّ، وَصَحَّ عَنْهُ مِنْ رَأْيِهِ صَاعٌ مِنْ بُرٍّ فِي صَدَقَةِ الْفِطْرِ فَتَرَكَ الْحَنَفِيُّونَ رَأْيَهُ لِرِوَايَتِهِ، وَهَذَا كَثِيرٌ مِنْهُمْ جِدًّا وَفِيمَا ذَكَرْنَا كِفَايَةٌ تُحَقِّقُ تَلَاعُبَ الْقَوْمِ بِدِينِهِمْ.

we have mentioned sufficiently demonstrates this group's frivolous handling of their religion.[40]

L12224 The fourth [point] is to say: Could it be that the report from ʿĀ'ishah regarding compensatory feeding [of the poor] was not validated until after her death, and thus fasting was not incumbent upon her?

L12225 The fifth point is that a fatwa has been narrated from Ibn Abbas concerning fasting on behalf of the deceased, as we will mention after this if God Almighty wills. Thus, it is established that the ruling was forgotten, or something else which God knows best concerning those we are not tasked to judge. Statements from the predecessors have been transmitted regarding this. It was narrated to us from Hammad ibn Salamah, from Ayyub al-Sikhtiyani, from Abu Yazid al-Madani: A man said to his brother at his death, "I owe the fasts of two Ramadans I did not observe." His brother asked Ibn Umar, who said: "Two garlanded sacrificial camels." Then he asked Ibn Abbas, who responded: "May God have mercy on Abu Abd al-Rahman! What have camels to do with fasting? Feed sixty needy people on behalf of your brother." Abu Muhammad said: If Ibn Umar's statement about the two camels is not proof, then Ibn Abbas's ruling about feeding is likewise not proof, with no distinction. Perhaps the deceased was not capable of fasting, or perhaps those two Ramadans were intentionally missed, requiring no makeup. It was narrated to us through Sulayman al-Taymi that Umar ibn al-Khattab said: "When a man dies owing Ramadan fasts, half a sa' of wheat should be given as food for each day on his behalf." Through a sound chain from Ibn Abbas: "If one who owed fasting dies without having recovered before death, nothing is required. If he recovered, half a sa' of wheat should be given as food for each day on his behalf." From al-Hasan: "If he did not recover until death, nothing is required. If he recovered but died without fulfilling his fasts, a makkuk of wheat and a makkuk of dates should be given as food for each day on his behalf."

L12226–12227 It has also been narrated from a group that a mudd is required for each day.

وَالرَّابِعُ - أَنْ نَقُولَ: لَعَلَّ الَّذِي رُوِيَ عَنْ عَائِشَةَ فِيهِ الْإِطْعَامُ كَأَنْ لَمْ يَصِحَّ حَتَّى مَاتَتْ فَلَا صَوْمَ عَلَيْهَا؟

وَالْخَامِسُ - أَنَّهُ قَدْ رُوِيَ عَنْ ابْنِ عَبَّاسٍ الْفُتْيَا بِمَا رُوِيَ مِنْ الصَّوْمِ عَنْ الْمَيِّتِ كَمَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى، فَصَحَّ أَنَّهُ قَدْ نَسِيَ، أَوْ غَيْرُ ذَلِكَ مِمَّا اللَّهُ تَعَالَى أَعْلَمُ بِهِ مِمَّنْ لَمْ نُكَلَّفْهُ. وَقَدْ جَاءَ عَنْ السَّلَفِ فِي هَذَا أَقْوَالٌ -: رُوِّينَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي يَزِيدَ الْمَدَنِيِّ: أَنَّ رَجُلًا قَالَ لِأَخِيهِ عِنْدَ مَوْتِهِ: إنَّ عَلَيَّ رَمَضَانَيْنِ لَمْ أَصُمْهُمَا فَسَأَلَ أَخُوهُ ابْنَ عُمَرَ فَقَالَ: بَدَنَتَانِ مُقَلَّدَتَانِ، ثُمَّ سَأَلَ ابْنَ عَبَّاسٍ؟ فَقَالَ ابْنُ عَبَّاسٍ: يَرْحَمُ اللَّهُ أَبَا عَبْدِ الرَّحْمَنِ مَا شَأْنُ الْبُدْنِ وَشَأْنُ الصَّوْمِ، أَطْعِمْ عَنْ أَخِيكَ سِتِّينَ مِسْكِينًا؟ قَالَ أَبُو مُحَمَّد: إنْ لَمْ يَكُنْ قَالَ ابْنُ عُمَرَ فِي الْبَدَنَتَيْنِ حُجَّةً فَلَيْسَ قَوْلُ ابْنِ عَبَّاسٍ فِي الْإِطْعَامِ حُجَّةً وَلَا فَرْقَ، وَلَعَلَّ هَذَا لَمْ يَكُنْ مُطِيقًا لِلصَّوْمِ، أَوْ لَعَلَّ ذَيْنِكَ الرَّمَضَانَيْنِ كَانَا عَنْ تَعَمُّدٍ فَلَا قَضَاءَ فِي ذَلِكَ. رُوِّينَا مِنْ طَرِيقِ سُلَيْمَانَ التَّيْمِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إذَا مَاتَ الرَّجُلُ عَلَيْهِ صِيَامُ رَمَضَانَ أُطْعِمَ عَنْهُ مَكَانَ كُلِّ يَوْمٍ نِصْفُ صَاعٍ مِنْ بُرٍّ. وَمِنْ طَرِيقٍ صَحِيحَةٍ عَنْ ابْنِ عَبَّاسٍ: إنْ مَاتَ الَّذِي عَلَيْهِ صَوْمٌ وَلَمْ يَصِحَّ قَبْلَ مَوْتِهِ لَيْسَ عَلَيْهِ شَيْءٌ فَإِنْ صَحَّ أُطْعِمَ عَنْهُ عَنْ كُلِّ يَوْمٍ نِصْفُ صَاعٍ حِنْطَةً. وَعَنْ الْحَسَنِ إنْ لَمْ يَصِحَّ حَتَّى مَاتَ فَلَا شَيْءَ عَلَيْهِ، فَإِنْ صَحَّ فَلَمْ يَقْضِ صَوْمَهُ حَتَّى مَاتَ أُطْعِمَ عَنْهُ عَنْ كُلِّ يَوْمٍ مَكُّوكٌ مِنْ بُرٍّ، وَمَكُّوكٌ مِنْ تَمْرٍ.

[40] **Hadith references (L12221):** Jami at-Tirmidhi 1102; Mishkat al-Masabih 3131.

وَرُوِيَ أَيْضًا عَنْ طَائِفَةٍ مُدٌّ عَنْ كُلِّ يَوْمٍ، وَقَدْ جَاءَ عَنْ الْحَسَنِ: لَا إطْعَامَ فِي ذَلِكَ وَلَا صِيَامَ، وَأَيْضًا فَإِنَّ احْتِجَاجَ الْمَالِكِيِّينَ وَالشَّافِعِيِّينَ بِتَرْكِ عَائِشَةَ، وَابْنِ عَبَّاسٍ لِلْخَبَرِ الْمَذْكُورِ هُوَ حُجَّةٌ عَلَيْهِمْ لِأَنَّهُمْ خَالَفُوا عَائِشَةَ فِي هَذَا الْخَبَرِ نَفْسِهِ فِي قَوْلِهَا أَنْ يُطْعِمَ عَنْ كُلِّ يَوْمٍ نِصْفَ صَاعٍ لِمِسْكِينٍ، وَهُمْ لَا يَقُولُونَ: بِهَذَا، فَإِنْ كَانَ تَرْكُ عَائِشَةَ لِلْخَبَرِ حُجَّةً، فَقَوْلُهَا فِي نِصْفِ صَاعٍ حُجَّةٌ، وَإِنْ لَمْ يَكُنْ قَوْلُهَا فِي نِصْفِ صَاعٍ حُجَّةً فَلَيْسَ تَرْكُهَا لِلْخَبَرِ حُجَّةً، فَظَهَرَ أَنَّهُمْ إنَّمَا يَحْتَجُّونَ مِنْ قَوْلِ الصَّاحِبِ بِمَا وَافَقَ تَقْلِيدَهُمْ فَقَطْ، فَإِذَا خَالَفَ مَنْ قَلَّدُوهُ هَانَ عَلَيْهِمْ خِلَافُ الصَّاحِبِ، وَهَذَا دَلِيلُ سَوْءٍ نَعُوذُ بِاَللَّهِ مِنْهُ.

Al-Ḥasan transmitted: “There is neither feeding nor fasting in this matter.” Furthermore, the argument of Mālikīs and Shāfiʿīs by citing ʿĀ’ishah and Ibn ʿAbbās’s rejection of the mentioned report itself constitutes evidence against them, for they opposed ʿĀ’ishah in this very report itself regarding her ruling that one must feed half a ṣāʿ per day to a needy person - whereas they do not hold this opinion. If ʿĀ’ishah’s rejection of the report constitutes proof, then her statement about half a ṣāʿ must equally be proof. If her statement about half a ṣāʿ is not proof, then her rejection of the report cannot be proof. Thus it becomes evident that they only cite the Companions’ opinions when these conform to their doctrinal adherence. When those they emulate contradict this, they readily disregard the Companions’ disagreement - a reprehensible proof we seek refuge in Allah from such.

وَأَمَّا قَوْلُ أَحْمَدَ فَرُوِّينَا مِنْ طَرِيقِ أَبِي ثَوْرٍ نا عَبْدُ الْوَهَّابِ هُوَ ابْنُ عَطَاءٍ - عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، وَرَوْحِ بْنِ الْقَاسِمِ عَنْ عَلِيِّ بْنِ الْحَكَمِ عَنْ مَيْمُونِ بْنِ مِهْرَانَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ فِيمَنْ مَاتَ وَعَلَيْهِ رَمَضَانُ وَنَذْرُ شَهْرٍ: يُطْعَمُ عَنْهُ مَكَانَ كُلِّ يَوْمٍ مِسْكِينٌ وَيَصُومُ عَنْهُ وَلِيُّهُ نَذْرَهُ. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: نا ابْنُ عُلَيَّةَ عَنْ عَلِيِّ بْنِ الْحَكَمِ الْبُنَانِيِّ عَنْ مَيْمُونِ بْنِ مِهْرَانَ عَنْ ابْنِ عَبَّاسٍ سُئِلَ عَنْ رَجُلٍ مَاتَ وَعَلَيْهِ رَمَضَانُ وَصَوْمُ شَهْرٍ فَقَالَ: يُطْعَمُ عَنْهُ لِرَمَضَانَ وَيُصَامُ عَنْهُ النَّذْرُ، وَهَذَا إسْنَادٌ صَحِيحٌ، فَإِنْ كَانَ تَرْكُ ابْنِ عَبَّاسٍ لِمَا تَرَكَ مِنْ الْخَبَرِ حُجَّةً فَأَخْذُهُ بِمَا أَخَذَ مِنْهُ حُجَّةٌ، وَإِنْ لَمْ يَكُنْ أَخْذُهُ بِمَا أَخَذَ بِهِ حُجَّةً فَتَرْكُهُ مَا تَرَكَ لَيْسَ بِحُجَّةٍ وَمَا عَدَا هَذَا فَتَلَاعُبٌ بِالدِّينِ.

L12228 As for the statement of Ahmad, we have narrated through the chain of Abū Thawr: ʿAbd al-Wahhāb—who is Ibn ʿAṭāʾ—from Saʿīd ibn Abī ʿArūbah and Rawḥ ibn al-Qāsim, from ʿAlī ibn al-Ḥakam, from Maymūn ibn Mihrān, from Ibn ʿAbbās, that he said regarding one who dies while owing Ramadan fasts and a vowed month of fasting: “A meal is provided in lieu of each day to a needy person on his behalf, and his guardian fulfills his vowed fast on his behalf.” Through the chain of Ibn Abī Shaybah: Ibn ʿUlayyah narrated from ʿAlī ibn al-Ḥakam al-Bunānī, from Maymūn ibn Mihrān, from Ibn ʿAbbās, who was asked about a man who died while owing Ramadan and the fasting of a month. He replied: “Meals are provided as compensation for Ramadan on his behalf, and the vowed fast is performed on his behalf.” This chain is sound. If Ibn ʿAbbās’s rejection of part of the report constitutes evidence, then his acceptance of another part must equally constitute evidence. If his acceptance of what he affirmed is not deemed evidence, then his rejection of what he negated cannot be evidence either. Anything beyond this constitutes trifling with the religion.

وَأَمَّا قَوْلُنَا فَرُوِّينَا مِنْ طَرِيقِ أَبِي ثَوْرٍ نا عَبْدُ الْوَهَّابِ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ قَالَ: حَدَّثُونِي عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّهُ قَالَ فِيمَنْ مَاتَ وَعَلَيْهِ رَمَضَانُ: إنْ لَمْ يَجِدُوا مَا يُطْعَمُ عَنْهُ صَامَهُ عَنْهُ وَلِيُّهُ، وَهُوَ قَوْلُ الْأَوْزَاعِيِّ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ

L12229 As for our statement, it has been narrated to us through the chain of Abū Thawr: ʻAbd al-Wahhāb reported to us from Saʻīd ibn Abī ʻArūbah, who said: They narrated to me from Qatādah from Saʻīd ibn al-Musayyib that he said regarding one who dies while owing Ramadan fasts: If they find no means to feed on his behalf, his guardian should fast for him. This is the opinion of al-

Awzā‘ī. Through another chain from ‘Abd al-Razzāq from Ma‘mar from Ibn Ṭāwūs from his father: When a man dies while owing Ramadan fasts, some of his guardians should fulfill them for him. Ma‘mar said: Ḥammād ibn Abī Sulaymān also held this view. Via the same chain to Ma‘mar from al-Zuhrī: Whoever dies while owing a vowed fast, some of his guardians should fast for him. Abū Muḥammad said: The opinion of some Companions – may Allāh be pleased with them – is not more preferable than others. All that we have mentioned contradicts the view of Abū Ḥanīfah and al-Shāfi‘ī, for everyone we cited imposed the obligations they did without stipulating that the deceased must have bequeathed it.

عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ إذَا مَاتَ الرَّجُلُ وَعَلَيْهِ صِيَامُ رَمَضَانَ قَضَى عَنْهُ بَعْضُ أَوْلِيَائِهِ، قَالَ مَعْمَرٌ: وَقَالَ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ. وَبِهِ إلَى مَعْمَرٍ عَنْ الزُّهْرِيِّ: مَنْ مَاتَ وَعَلَيْهِ نَذْرُ صِيَامٍ فَإِنَّهُ يَصُومُ عَنْهُ بَعْضُ أَوْلِيَائِهِ. قَالَ أَبُو مُحَمَّدٍ: لَيْسَ قَوْلُ بَعْضِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَوْلَى مِنْ بَعْضٍ، وَكُلُّ مَا ذَكَرْنَا فَهُوَ مُخَالِفٌ لِقَوْلِ أَبِي حَنِيفَةَ وَالشَّافِعِيِّ؛ لِأَنَّ كُلَّ مَنْ ذَكَرْنَا فَقَدْ أَوْجَبَ مَا أَوْجَبَ مِنْ غَيْرِ اشْتِرَاطِ أَنْ يُوصِيَ الْمَيِّتُ بِذَلِكَ.

L12230–12231 Abu Hanifah and Malik said: There is no obligation in that matter unless one bequeaths in a will to provide food, in which case food should be provided on his behalf. We do not know of anyone before them who held this view except for a narration attributed to al-Hasan, though a report reliably authenticated from him explicitly contradicts it.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَا شَيْءَ فِي ذَلِكَ إلَّا أَنْ يُوصِيَ بِالْإِطْعَامِ فَيُطْعَمَ عَنْهُ وَمَا نَعْلَمُ أَحَدًا قَبْلَهُمْ قَالَ بِهَذَا، إلَّا رِوَايَةً عَنْ الْحَسَنِ قَدْ صَحَّ عَنْهُ خِلَافُهَا.

L12232 As for their statement: “Fasting is not performed on his behalf, just as prayer is not performed on his behalf”—this is invalid and an analogy of error upon error. Rather, vowed prayers are performed on his behalf, as well as obligatory prayers if he forgot them, slept through them, and died without performing them. This falls under the saying of the Messenger of Allah, peace and blessings of Allah be upon him: “The debt owed to Allah is more deserving of being fulfilled.” It is astonishing that they all unanimously agreed that the two rak’ahs following tawaf should be performed on behalf of the deceased for whom Hajj is being performed. This is an undeniable contradiction in their position. This is the opinion of Ishaq ibn Rahwayh regarding the fulfillment of prayer on behalf of the deceased. Al-Shafi’i said: “If the report is authentic, we adhere to it; otherwise, a mudd of food is given as charity on his behalf for each day.” We stated that hiring someone for this purpose if he has no guardian takes precedence over people’s debts from the estate, based on the Prophet’s, peace and blessings of Allah be upon him, saying: “The debt owed to Allah is more deserving of being fulfilled.” Abu Muhammad said: Among the major sins is for someone to say, “Rather,

وَأَمَّا قَوْلُهُمْ: لَا يُصَامُ عَنْهُ كَمَا لَا يُصَلَّى عَنْهُ، فَبَاطِلٌ وَقِيَاسٌ لِلْخَطَأِ عَلَى الْخَطَأِ بَلْ يُصَلَّى عَنْهُ النَّذْرُ، وَصَلَاةُ فَرْضٍ إنْ نَسِيَهَا أَوْ نَامَ عَنْهَا وَلَمْ يُصَلِّهَا حَتَّى مَاتَ، فَهَذَا دَخَلَ تَحْتَ، قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " فَدَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى ". وَالْعَجَبُ أَنَّهُمْ كُلَّهُمْ أَجْمَعُوا عَلَى أَنْ تُصَلَّى الرَّكْعَتَانِ إثْرَ الطَّوَافِ عَنْ الْمَيِّتِ الَّذِي يُحَجُّ عَنْهُ، وَهَذَا تَنَاقُضٌ مِنْهُمْ لَا خَفَاءَ بِهِ. وَهَذَا قَوْلُ إسْحَاقَ بْنِ رَاهْوَيْهِ فِي قَضَاءِ الصَّلَاةِ عَنْ الْمَيِّتِ. وَقَالَ الشَّافِعِيُّ: إنْ صَحَّ الْخَبَرُ قُلْنَا بِهِ وَإِلَّا فَيُطْعَمُ عَنْهُ مُدٌّ عَنْ كُلِّ يَوْمٍ. وَإِنَّمَا قُلْنَا: إنَّ الِاسْتِئْجَارَ لِذَلِكَ إنْ لَمْ يَكُنْ لَهُ وَلِيٌّ مِنْ رَأْسِ الْمَالِ مُقَدَّمٌ عَلَى دُيُونِ النَّاسِ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَدَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى» . قَالَ أَبُو مُحَمَّدٍ: مِنْ الْكَبَائِرِ أَنْ يَقُولَ قَائِلٌ: بَلْ دَيْنُ النَّاسِ أَحَقُّ أَنْ يُقْضَى مِنْ دَيْنِ اللَّهِ تَعَالَى عَزَّ وَجَلَّ وَقَدْ سَمِعَ هَذَا الْقَوْلَ.

people's debts are more deserving of being settled than the debt owed to Allah, the Exalted and Majestic," and this statement was heard.

[مَسْأَلَةٌ صَامَ بَعْضُ أَوْلِيَائِهِ عَنْهُ]

٧٧٦ - مَسْأَلَةٌ: فَإِنْ صَامَهُ بَعْضُ أَوْلِيَائِهِ أَجْزَأَ؛ لِعُمُومِ الْخَبَرِ فِي ذَلِكَ، وَإِنْ كَانُوا جَمَاعَةً فَاقْتَسَمُوهُ جَازَ كَذَلِكَ أَيْضًا إلَّا أَنَّهُ لَا يُجْزِئُ أَنْ يَصُومُوا كُلُّهُمْ يَوْمًا وَاحِدًا لِقَوْلِ اللَّهِ تَعَالَى: {فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ} [البقرة: ١٨٤] . فَلَا بُدَّ مِنْ أَيَّامٍ مُتَغَايِرَةٍ، فَلَوْ لَمْ يَصِحَّ حَتَّى مَاتَ فَلَا شَيْءَ عَلَى أَوْلِيَائِهِ وَلَا عَلَيْهِ؛ لِأَنَّ الْأَثَرَ إنَّمَا جَاءَ فِيمَنْ مَاتَ وَعَلَيْهِ صَوْمٌ، وَهَذَا مَاتَ وَلَيْسَ عَلَيْهِ صَوْمٌ لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] فَإِذَا لَمْ يَكُنْ فِي وُسْعِهِ الصَّوْمُ فَلَمْ يُكَلَّفْ، وَإِذَا لَمْ يُكَلَّفْهُ فَقَدْ مَاتَ وَلَا صَوْمَ عَلَيْهِ. وَالْأَوْلِيَاءُ هُمْ ذَوُو الْمَحَارِمِ بِلَا شَكٍّ وَلَوْ صَامَهُ الْأَبْعَدُ مِنْ بَنِي عَمِّهِ أَجْزَأَ عَنْهُ، لِأَنَّهُ وَلِيُّهُ، فَإِنْ أَبَوْا مِنْ الصَّوْمِ فَهُمْ عُصَاةٌ لِلَّهِ تَعَالَى وَلَا شَيْءَ عَلَى الْمَيِّتِ مِنْ ذَلِكَ الصَّوْمِ، لِأَنَّهُ قَدْ نَقَلَهُ اللَّهُ تَعَالَى عَنْهُ إلَيْهِمْ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ مَاتَ وَعَلَيْهِ صَوْمٌ صَامَ عَنْهُ وَلِيُّهُ» . وَبِأَمْرِهِ - عَلَيْهِ السَّلَامُ - الْوَلِيَّ أَنْ يَصُومَ عَنْهُ.

776 - Issue: If some of his relatives fast on his behalf, it suffices, based on the general applicability of the narration concerning this matter. If they are a group and divide the days among themselves, this is likewise permissible. However, it does not suffice for all of them to fast a single day due to Allah's statement: {[Fast] a number of other days} [Al-Baqarah: 184]. Therefore, distinct days are essential. If the fasting was not validated before he died, there is nothing incumbent upon his relatives nor upon him, because the narration only applies to one who dies while owing fasting. This person died without any fasting being incumbent upon him, in accordance with Allah's statement: {Allah does not burden any soul beyond its capacity} [Al-Baqarah: 286]. Since fasting was beyond his capacity, he was not held responsible, and having no responsibility, he died without owing any fasting. The relatives are unquestionably the mahram kin. Even if a distant paternal cousin fasts on his behalf, it suffices, as he is his relative. If they refuse to fast, they are transgressors against Allah the Exalted, and nothing from that fasting is required of the deceased, for Allah has transferred it from him to them through the Messenger of Allah's (peace and blessings be upon him) statement: "Whoever dies while owing fasting, their relative shall fast on their behalf," and by the command of the Prophet (peace and blessings be upon him) for the relative to fast on his behalf.[41]

[مَسْأَلَةٌ تَعَمَّدَ النُّذُورَ لِيُوقِعَهَا عَلَى وَلِيِّهِ بَعْدَ مَوْتِهِ]

مَسْأَلَةٌ: فَإِنْ تَعَمَّدَ النُّذُورَ لِيُوقِعَهَا عَلَى وَلِيِّهِ بَعْدَ مَوْتِهِ فَلَيْسَ نَذْرًا وَلَا يَلْزَمُهُ هُوَ وَلَا وَلِيُّهُ بَعْدَهُ، وَهُوَ عَاصٍ لِلَّهِ تَعَالَى بِذَلِكَ، وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ اللَّهِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا

An issue where a person deliberately makes religious vows to impose them on his legal guardian after his death.

Issue: If someone intentionally makes vows to impose them upon his guardian after his death, it is not a valid vow. Neither he nor his guardian after him is obligated by it. Therein, he disobeys Allah the Exalted. It is au-

[41] **Qur'an references (L12234):** Qur'an 2:184 (Al-Baqarah); Qur'an 2:185 (Al-Baqarah); Qur'an 2:286 (Al-Baqarah).

thentically reported from the Prophet—peace and blessings of Allah be upon him—as transmitted through the chain: Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdullah ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated: Ali ibn Hajar narrated to me, Isma'il ibn Ibrahim narrated to us, Ayyub—he is al-Sakhtiyānī—narrated to us, from Abu Qilabah, from Abu al-Muhallab, from Imran ibn al-Husayn that the Messenger of Allah—peace and blessings of Allah be upon him—said: "There is no fulfillment for a vow made in disobedience to Allah." Ali said: This is only considered a valid vow if intended for Allah the Exalted, thereby becoming binding. But if intended for other than Allah the Exalted, it is disobedience; fulfilling it is impermissible, and neither its maker nor anyone else is obligated by it. And with Allah the Exalted lies success.

أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي عَلِيُّ بْنُ حَجَرٍ نا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ نا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ - عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا وَفَاءَ لِنَذْرٍ فِي مَعْصِيَةِ اللَّهِ» . قَالَ عَلِيٌّ: وَهَذَا النَّذْرُ إِنَّمَا يَكُونُ نَذْرًا إِذَا قُصِدَ بِهِ اللَّهُ تَعَالَى فَيَلْزَمُ حِينَئِذٍ فَإِذَا قُصِدَ بِهِ غَيْرُ اللَّهِ تَعَالَى فَهُوَ مَعْصِيَةٌ لَا يَحِلُّ الْوَفَاءُ بِهِ وَلَا يَلْزَمُ صَاحِبَهُ وَلَا غَيْرَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Case: If someone vowed to fast a day and then increased out of gratitude to Allah, the Almighty and Majestic.

[مَسْأَلَةٌ نَذَرَ صَوْمَ يَوْمٍ فَأَكْثَرَ شُكْرًا لِلَّهِ عَزَّ وَجَلَّ]

778 - Issue:

٧٧٨ - مَسْأَلَةٌ:

Whoever vows to fast a day or more out of gratitude to Allah, the Almighty, or seeking closeness to Him, the Exalted, or if he is able, or if Allah, the Exalted, shows him a hope he aspires to—provided that the object of this hope does not involve disobedience to Allah, the Almighty—then fulfilling it is obligatory upon him. Allah, the Majestic and Glorious, said: *"Fulfill the covenants"* (Quran 5:1). Abdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Isḥāq narrated to us: Ibn al-Aʿrabī narrated to us: Abū Dāwūd narrated to us: al-Qaʿnabī narrated from Mālik, from Ṭalḥah ibn ʿAbd al-Malik al-Aylī, from al-Qāsim ibn Muḥammad, from ʿĀ'ishah, the Mother of the Believers, who said: The Messenger of Allah—peace and blessings be upon him—said: "Whoever vows to obey Allah, let him obey Him; and whoever vows to disobey Allah, let him not disobey Him." This is a general ruling for every vow involving disobedience, such as a woman who vowed to fast the day of her menstruation or the day of Eid, and similar acts of disobedience.[42][43]

وَمَنْ نَذَرَ صَوْمَ يَوْمٍ فَأَكْثَرَ، شُكْرًا لِلَّهِ عَزَّ وَجَلَّ، أَوْ تَقَرُّبًا إِلَيْهِ تَعَالَى، أَوْ إِنْ فَاقَ، أَوْ إِنْ أَرَاهُ اللَّهُ تَعَالَى أَمَلًا يَأْمُلُهُ لَا مَعْصِيَةً لِلَّهِ عَزَّ وَجَلَّ فِي ذَلِكَ الشَّيْءِ الْمَأْمُولِ، فَفَرْضٌ عَلَيْهِ أَدَاؤُهُ. قَالَ عَزَّ وَجَلَّ: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١]-: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا الْقَعْنَبِيُّ عَنْ مَالِكٍ عَنْ طَلْحَةَ بْنِ عَبْدِ الْمَلِكِ الْأَيْلِيِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ نَذَرَ أَنْ يُطِيعَ اللَّهَ فَلْيُطِعْهُ وَمَنْ نَذَرَ أَنْ يَعْصِيَ اللَّهَ فَلَا يَعْصِهِ» فَهَذَا عُمُومٌ لِكُلِّ نَذْرِ مَعْصِيَةٍ كَمَنْ نَذَرَتْ صَوْمَ يَوْمِ حَيْضَتِهَا أَوْ صَوْمَ يَوْمِ الْعِيدِ، وَنَحْوِ ذَلِكَ مِنْ كُلِّ مَعْصِيَةٍ.

[42] **Hadith references (L12240):** Sunan an-Nasai 3806; Sunan Abi Dawud 3289; Jami at-Tirmidhi 1526.

L12241 **A legal issue: a vow concerning an act that is neither an act of obedience nor an act of disobedience.**

L12242 779 - Issue: If someone vows something that is neither an act of obedience nor disobedience, such as sitting in the house of a certain person, not eating seasoned bread, or similar matters, it is not binding upon him. There is no legal ruling for this except seeking forgiveness from Allah the Exalted concerning it, because the binding nature of a vow is a matter of divine law, and divine laws are only binding through textual evidence. There is no textual evidence except regarding vows of obedience alone.

L12243 **Issue: It is completely prohibited to make vows.**

L12244–12246 Issue 780: Vowing is entirely prohibited. Should it occur, it becomes binding as we previously established. We narrated via the aforementioned chain from Abu Dawud: ‘Uthman ibn Abi Shaybah narrated to us, Jarir ibn ‘Abd al-Hamid narrated to us, from Mansur - that is Ibn al-Mu‘tamir - from ‘Abdullah ibn Murrah al-Hamdani, from ‘Abdullah ibn ‘Umar, who said: “Allah’s Messenger - peace and blessings be upon him - prohibited vowing, saying: ’It does not avert anything; rather, it is only a means to extract by it from the miser.”’ In his statement... – Peace be upon him – “And indeed, it is thereby extracted from the miser” obligates its fulfillment when this occurs within obedience to Allah, the Exalted.

L12247 **A legal issue: He said, “Fasting on the day when I regain consciousness is an obligation I owe to Allah, the Exalted.”**

L12248 781 - Issue: If someone says, “Upon me is a vow to God the Exalted to fast the day I recover,” or says, “the day so-and-so arrives,” or says, “the day I am released from my prison,” or anything similar, and what he intended occurs at night or during the day: he is not obligated to fast that day, nor to make up for it, nor to fast another day. If what he intended occurs at night – since it is not within a day – he bears no obligation for what he did not commit to. If it occurs during the day, he cannot start a fast he did not resolve upon

[مَسْأَلَةٌ نَذَرَ مَا لَيْسَ طَاعَةً وَلَا مَعْصِيَةً]

٧٧٩ - مَسْأَلَةٌ: فَإِنْ نَذَرَ مَا لَيْسَ طَاعَةً وَلَا مَعْصِيَةً كَالْقُعُودِ فِي دَارِ فُلَانٍ أَوْ أَنْ لَا يَأْكُلَ خُبْزًا مَأْدُومًا أَوْ مَا أَشْبَهَ هَذَا لَمْ يَلْزَمْهُ، وَلَا حُكْمَ لِهَذَا إلَّا اسْتِغْفَارُ اللَّهِ تَعَالَى مِنْهُ، لِأَنَّ إيجَابَ النَّذْرِ شَرِيعَةٌ، وَالشَّرَائِعُ لَا تَلْزَمُ إلَّا بِنَصٍّ وَلَا نَصَّ إلَّا فِي نَذْرِ الطَّاعَةِ فَقَطْ.

[مَسْأَلَةٌ يُنْهَى عَنْ النَّذْرِ جُمْلَةً]

٧٨٠ - مَسْأَلَةٌ: وَيُنْهَى عَنْ النَّذْرِ جُمْلَةً فَإِنْ وَقَعَ لَزِمَ كَمَا قَدَّمْنَا، رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إلَى أَبِي دَاوُد نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ مَنْصُورٍ هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةَ الْهَمْدَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: «أَخَذَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْهَى عَنْ النَّذْرِ وَيَقُولُ لَا يَرُدُّ شَيْئًا وَإِنَّمَا يُسْتَخْرَجُ بِهِ مِنْ الْبَخِيلِ» فَفِي قَوْلِهِ - عَلَيْهِ السَّلَامُ - «وَإِنَّمَا يُسْتَخْرَجُ بِهِ مِنْ الْبَخِيلِ» إيجَابٌ لِلْوَفَاءِ بِهِ إذَا وَقَعَ فِي طَاعَةِ اللَّهِ تَعَالَى.

[مَسْأَلَةٌ قَالَ عَلَيَّ لِلَّهِ تَعَالَى صَوْمُ يَوْمَ أُفِيقُ]

٧٨١ - مَسْأَلَةٌ: وَمَنْ قَالَ عَلَيَّ لِلَّهِ تَعَالَى صَوْمُ يَوْمَ أُفِيقُ، أَوْ قَالَ: يَوْمَ يَقْدَمُ فُلَانٌ، أَوْ قَالَ يَوْمَ أَنْطَلِقُ مِنْ سِجْنِي، أَوْ مَا أَشْبَهَ هَذَا فَكَانَ مَا رَغِبَ فِيهِ لَيْلًا أَوْ نَهَارًا: لَمْ يَلْزَمْهُ صِيَامُ ذَلِكَ الْيَوْمِ وَلَا قَضَاؤُهُ وَلَا صَوْمُ غَيْرِهِ؛ لِأَنَّهُ إنْ كَانَ مَا رَغِبَ فِيهِ لَيْلًا فَلَمْ يَكُنْ فِي يَوْمٍ فَلَا يَلْزَمُهُ مَا لَمْ يَلْتَزِمْهُ، وَإِنْ كَانَ نَهَارًا فَلَا يُمْكِنُهُ إحْدَاثُ صَوْمٍ لَمْ يُبَيِّتْهُ

[43] **Qur’an references (L12240):** Qur’an 5:1 (Al-Ma’idah).

the night before, nor has God the Exalted previously bound him to it. He is also not required to fast another day, as he did not commit to it. This is the opinion of Abū Ḥanīfa and al-Shāfiʿī. Al-Awzāʿī said: If the arrival occurs during the day, the one who made the vow must fast the remainder of that day without needing to make it up. Mālik said: If the arrival occurs at night, the one who made the vow must fast the next day.

مِنْ اللَّيْلِ وَلَا تَقَدَّمَ إلْزَامُ اللَّهِ تَعَالَى لَهُ إيَّاهُ، وَلَا يَلْزَمُهُ صِيَامُ يَوْمٍ آخَرَ؛ لِأَنَّهُ لَمْ يَلْتَزِمْهُ - وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ - وَقَالَ الْأَوْزَاعِيُّ: إنْ قَدِمَ نَهَارًا صَامَ بَقِيَّةَ ذَلِكَ الْيَوْمِ وَلَا قَضَاءَ عَلَيْهِ، وَقَالَ مَالِكٌ: إنْ قَدِمَ لَيْلًا صَامَ النَّاذِرُ غَدَ تِلْكَ اللَّيْلَةِ

A legal question: It is stated, "I am obligated to observe the fasting of that day forever."

[مَسْأَلَةٌ قَالَ عَلَيَّ صَوْمُ ذَلِكَ الْيَوْمِ أَبَدًا]

782. Issue: If he said in all such cases: "I am obligated to fast that day forever," then if it was nighttime, he is not obligated – as we previously established – because he did not commit to it, and fasting at night is not incumbent, for it constitutes disobedience. If it was daytime, he becomes obligated to fast that day whenever it recurs in accordance with his vow. He is not required to make up for that day of his vow, as it differs from what he originally vowed.

٧٨٢ - مَسْأَلَةٌ: فَلَوْ قَالَ فِي كُلِّ ذَلِكَ: عَلَيَّ صَوْمُ ذَلِكَ الْيَوْمِ أَبَدًا فَإِنْ كَانَ لَيْلًا لَمْ يَلْزَمْهُ كَمَا قَدَّمْنَا، لِأَنَّهُ لَمْ يَلْتَزِمْهُ وَلَا يَلْزَمُ صِيَامُ اللَّيْلِ، لِأَنَّهُ مَعْصِيَةٌ، فَإِنْ كَانَ نَهَارًا لَزِمَهُ فِي الْمُسْتَأْنَفِ صَوْمُ ذَلِكَ الْيَوْمِ إذَا تَكَرَّرَ كَمَا نَذَرَهُ وَلَا قَضَاءَ عَلَيْهِ فِي يَوْمِهِ ذَلِكَ، لِأَنَّهُ غَيْرُ مَا نَذَرَ.

A legal issue: he broke the fast during a vowed fast.

[مَسْأَلَةٌ أَفْطَرَ فِي صَوْمِ نَذْرٍ]

783 - Issue: Whoever breaks a vowed fast intentionally or due to an excuse is not required to make it up unless they vowed to make it up, in which case it becomes obligatory. This is because if they did not vow to make it up, it is impermissible to impose on them what they did not vow, as no scriptural text necessitates this obligation.

٧٨٣ - مَسْأَلَةٌ: وَمَنْ أَفْطَرَ فِي صَوْمِ نَذْرٍ عَامِدًا أَوْ لِعُذْرٍ فَلَا قَضَاءَ عَلَيْهِ إلَّا أَنْ يَكُونَ نَذَرَ أَنْ يَقْضِيَهُ فَيَلْزَمُهُ، لِأَنَّهُ إذَا لَمْ يَنْذِرْ الْقَضَاءَ فَلَا يَجُوزُ أَنْ يُلْزَمَ مَا لَمْ يَنْذِرْهُ؛ إذْ لَمْ يُوجِبْ ذَلِكَ نَصٌّ.

Issue: He vowed to fast two days or more.

[مَسْأَلَةٌ نَذَرَ صَوْمَ يَوْمَيْنِ فَصَاعِدًا]

Issue 784: If one vows to fast two days or more, it suffices him to fast these days separately, as this does not contradict the vow.

٧٨٤ - مَسْأَلَةٌ: وَمَنْ نَذَرَ صَوْمَ يَوْمَيْنِ فَصَاعِدًا أَجْزَأَهُ أَنْ يَصُومَ ذَلِكَ مُتَفَرِّقًا لِأَنَّهُ غَيْرُ مُخَالِفٍ لِمَا نَذَرَ.

A legal issue concerning one who vowed to fast on Friday or said a month.

[مَسْأَلَةٌ نَذَرَ صَوْمَ جُمُعَةٍ أَوْ قَالَ شَهْرٍ]

٧٨٥ - مَسْأَلَةٌ: فَلَوْ نَذَرَ صَوْمَ جُمُعَةٍ أَوْ قَالَ: شَهْرٍ لَمْ يَجُزْ أَنْ يَصُومَ ذَلِكَ إِلَّا مُتَتَابِعًا وَلَا بُدَّ، فَإِنْ تَعَمَّدَ فِي خِلَالِ ذَلِكَ فِطْرًا لِعُذْرٍ أَوْ لِغَيْرِ عُذْرٍ: ابْتَدَأَهُ مِنْ أَوَّلِهِ لِأَنَّ اسْمَ الْجُمُعَةِ وَالشَّهْرِ لَا يَقَعُ إِلَّا عَلَى أَيَّامٍ مُتَتَابِعَةٍ لَا مُتَفَرِّقَةٍ، فَإِنَّمَا يَلْزَمُهُ مَا نَذَرَ لَا مَا لَمْ يَنْذِرْ؛ فَإِنْ لَمْ يُتَابِعْ ذَلِكَ فَلَمْ يَأْتِ بِمَا نَذَرَ فَعَلَيْهِ أَنْ يَأْتِيَ بِهِ.

L12256 785 - Issue: If someone vows to fast a Friday or says: “a month,” they may only fast that consecutively, and this is necessary. If they intentionally break the fast during that period due to an excuse or without an excuse: they must recommence it from the beginning, because the terms “Friday” and “month” only apply to consecutive days, not scattered ones. They are obligated to fulfill what they vowed, not what they did not vow. If they fail to maintain continuity, they have not fulfilled what they vowed, and must therefore fulfill it.

[مَسْأَلَةُ نَذَرَ صَوْمَ جُمُعَتَيْنِ أَوْ قَالَ شَهْرَيْنِ وَلَمْ يَنْذِرْ التَّتَابُعَ]

٧٨٦ - مَسْأَلَةٌ: وَمَنْ نَذَرَ صَوْمَ جُمُعَتَيْنِ أَوْ قَالَ: شَهْرَيْنِ، وَلَمْ يَنْذِرْ التَّتَابُعَ فِي ذَلِكَ لَزِمَهُ أَنْ يَصُومَ كُلَّ جُمُعَةٍ مُتَتَابِعَةٍ وَلَا بُدَّ، وَكُلَّ شَهْرٍ مُتَتَابِعًا وَلَا بُدَّ، وَلَهُ أَنْ يُفَرِّقَ بَيْنَ الْجُمُعَةِ وَالْجُمُعَةِ، وَبَيْنَ الشَّهْرِ وَالشَّهْرِ لِمَا ذَكَرْنَا آنِفًا إِلَّا أَنْ يَنْذِرَهُمَا مُتَتَابِعِينَ فَيَلْزَمُهُ ذَلِكَ؛ لِأَنَّهُ طَاعَةٌ زَائِدَةٌ.

L12257 **Issue: If one vows to fast two Fridays or two months but does not vow consecutiveness.**

L12258–12260 786 - Issue: If someone vows to fast two Fridays or vows two months without stipulating consecutiveness, they must fast the two Fridays or two months consecutively. However, they may separate the Fridays or months (i.e., observe them non-consecutively) based on the reasoning we earlier mentioned—unless they vow them as consecutive, in which case it becomes obligatory. That is because it is supererogatory obedience.

[مَسْأَلَةُ نَذْرِ صِيَامِ شَهْرٍ فَصَامَ مَا بَيْنَ الْهِلَالَيْنِ]

٧٨٧ - مَسْأَلَةٌ: فَإِنْ صَامَ الشَّهْرَ مَا بَيْنَ الْهِلَالَيْنِ لَزِمَهُ إِتْمَامُهُ، فَإِنْ ابْتَدَأَ صِيَامَهُ بَعْدَ دُخُولِ الشَّهْرِ لَمْ يَلْزَمْهُ إِلَّا تِسْعَةٌ وَعِشْرُونَ يَوْمًا مُتَّصِلَةٌ وَلَا بُدَّ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الشَّهْرُ تِسْعَةٌ وَعِشْرُونَ» وَأَنَّ الشَّهْرَ يَكُونُ تِسْعًا وَعِشْرِينَ فَلَا يَلْزَمُهُ زِيَادَةُ يَوْمٍ إِلَّا بِنَصٍّ وَارِدٍ وَلَا نَصَّ فِي ذَلِكَ، وَإِنَّمَا يَلْزَمُهُ مَا يَقَعُ عَلَيْهِ اسْمُ مَا نَذَرَ مِنْ شَهْرٍ أَوْ أَكْثَرَ فَقَطْ، فَإِنْ نَذَرَ نِصْفَ شَهْرٍ لَمْ يَلْزَمْهُ إِلَّا أَرْبَعَةَ عَشَرَ يَوْمًا، لِأَنَّ كَسْرَ يَوْمٍ لَا يَلْزَمُهُ صِيَامُهُ لِمَنْ نَذَرَهُ، وَلَا يَجُوزُ أَنْ يُلْزَمَ يَوْمًا زَائِدًا لَمْ يَنْذُرْهُ.

L12261 **An issue concerning a vow to fast for a month, so he fasted the period between the sightings of the two crescent moons.**

L12262 787 - Issue: If one fasts the entire month between the two crescents, they are obligated to complete it. If they begin fasting after the month has commenced, they are only required to fast twenty-nine consecutive days, as it is necessary to adhere to the statement of the Messenger of Allah - peace and blessings be upon him - “The month is twenty-nine days,” and since the month may indeed be twenty-nine days, they are not obligated to add an extra day unless specified by explicit textual evidence, and there is no textual evidence for that. They are only obligated to fulfill what is covered by the term of their vow - whether a month or more. If one vows to fast half a month, they are only required to fast fourteen days, as fasting a fraction of a day is not obligatory for one who has vowed it, and it is impermissible to obligate them to an extra day they did not vow.

Case: He vowed fasting for a year.

[مَسْأَلَةٌ نَذَرَ صَوْمَ سَنَةٍ]

L12263

L12264 Issue 788: If one vows to fast a year, some scholars state: He must fast twelve months without including Ramadan in them, nor the day of al-Fitr, al-Adha, or the days of *Tashreeq*. We have reservations regarding this. The correct position according to us is that nothing becomes binding upon him, for this fatwa imposes obligations he did not vow. The term "year" applies only to twelve consecutive months - not non-consecutive ones. Since he cannot fulfill his vow as pledged, it is impermissible to impose on him what he neither committed to nor vowed, nor to commit to what is impossible or beyond his capacity. Allah Almighty said: *"Allah does not burden a soul beyond its capacity"* (2:286). Whoever claims consensus here lies, for no narration exists from the Companions on this matter, nor any known statement from a Successor.

Abu Hanifa said: He may break fast during the days of al-Fitr, al-Adha, and days of *Tashreeq*, then make them up. Zufar said: He may break fast on these days without making them up. Malik said: He may fast and break fast on these days without making up the days of Ramadan or the specified days unless he specifically intends to make up those days. al-Layth said: He must fast, make up Ramadan, two days in place of al-Fitr and al-Adha, and fast the days of *Tashreeq*. [Abu Muhammad remarked: These rulings either impose obligations he did not vow or nullify what was vowed.][44]

٧٨٨ - مَسْأَلَةٌ: وَمَنْ نَذَرَ صَوْمَ سَنَةٍ فَقَدْ قَالَ قَوْمٌ: يَصُومُ اثْنَيْ عَشَرَ شَهْرًا لَا يَعُدُّ فِيهَا رَمَضَانَ، وَلَا يَوْمَ الْفِطْرِ، وَالْأَضْحَى، وَلَا أَيَّامَ التَّشْرِيقِ، وَفِي هَذَا عِنْدَنَا نَظَرٌ وَالْوَاجِبُ عِنْدَنَا أَنْ لَا يَلْزَمَهُ شَيْءٌ؛ لِأَنَّ هَذِهِ الْفُتْيَا إلْزَامٌ لَهُ مَا لَمْ يَنْذِرْهُ، لِأَنَّ اسْمَ سَنَةٍ لَا يَقَعُ إلَّا عَلَى اثْنَيْ عَشَرَ شَهْرًا مُتَّصِلَةٍ لَا مُبَدَّدَةٍ، وَهُوَ لَا يَقْدِرُ عَلَى الْوَفَاءِ بِنَذْرِهِ كَمَا نَذَرَهُ، فَلَا يَجُوزُ أَنْ يُلْزَمَ مَا لَمْ يَلْتَزِمْهُ وَلَا نَذَرَهُ، وَلَا أَنْ يَلْتَزِمَ مَا لَمْ يُمْكِنْ، وَمَا لَيْسَ فِي وُسْعِهِ قَالَ اللَّهُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إلا وُسْعَهَا} [البقرة: ٢٨٦] وَمَنْ ادَّعَى هَاهُنَا إجْمَاعًا فَقَدْ كَذَبَ، لِأَنَّهُ لَا يَقْدِرُ عَلَى أَنْ يَأْتِيَ فِي ذَلِكَ بِرِوَايَةٍ عَنْ صَاحِبٍ أَصْلًا، وَلَا نَعْلَمُ فِي ذَلِكَ قَوْلًا عَنْ تَابِعٍ. وَقَدْ قَالَ فِيهَا أَبُو حَنِيفَةَ يُفْطِرُ فِيهَا يَوْمَيْ الْفِطْرِ وَالْأَضْحَى وَأَيَّامَ التَّشْرِيقِ، ثُمَّ يَقْضِيهَا. وَقَالَ زُفَرُ: يُفْطِرُ الْأَيَّامَ الْمَذْكُورَةَ، وَلَا يَقْضِيهَا. وَقَالَ مَالِكٌ: يَصُومُ، وَيُفْطِرُ الْأَيَّامَ الْمَذْكُورَةَ، وَلَا يَقْضِي رَمَضَانَ، وَلَا الْأَيَّامَ الْمَذْكُورَةَ، إلَّا أَنْ يَنْوِيَ قَضَاءَهَا. وَقَالَ اللَّيْثُ: يَصُومُ وَيَقْضِي رَمَضَانَ وَيَوْمَيْنِ مَكَانَ الْفِطْرِ وَالْأَضْحَى، وَيَصُومُ أَيَّامَ التَّشْرِيقِ. [قَالَ أَبُو مُحَمَّدٍ: فَهَذِهِ الْأَقْوَالُ إمَّا مُوجِبَةٌ عَلَيْهِ مَا لَمْ يَنْذِرْهُ وَلَا الْتَزَمَهُ، وَإِمَّا مُسْقِطَةٌ عَنْهُ مَا نَذَرَ] .

L12265–12266 Abū Muḥammad said: If one vows to fast these days and the fast of Ramadan as part of his vow, he has vowed to misguidance and falsehood, and to an act opposing the religion of Islam. Therefore, such a vow is not binding upon him, as it is sinful, nor is fasting any other days obligatory, for it is not what he vowed. Any act of obedience that is mixed with disobedience becomes entirely disobedience, since he did not perform the obedience as commanded. Allah the Exalted said: *"And they were not commanded except to worship

قَالَ أَبُو مُحَمَّدٍ: إنْ كَانَ نَذَرَ صَوْمَ هَذِهِ الْأَيَّامِ وَصَوْمَ رَمَضَانَ عَنْ نَذْرِهِ، فَقَدْ نَذَرَ الضَّلَالَ وَالْبَاطِلَ، وَأَمْرًا مُخَالِفًا لِدِينِ الْإِسْلَامِ، فَلَا يَلْزَمُهُ نَذْرُهُ ذَلِكَ لِأَنَّهُ مَعْصِيَةٌ، وَلَا يَلْزَمُ صَوْمُ سَائِرِ الْأَيَّامِ لِأَنَّهُ غَيْرُ مَا نَذَرَ، وَكُلُّ طَاعَةٍ مَازَجَتْهَا مَعْصِيَةٌ فَهِيَ كُلُّهَا مَعْصِيَةٌ، لِأَنَّهُ لَمْ يَأْتِ بِالطَّاعَةِ كَمَا أُمِرَ، قَالَ تَعَالَى: {وَمَا أُمِرُوا إلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ

[44] **Qur'an references (L12264):** Qur'an 2:286 (Al-Baqarah).

Allah, sincere to Him in religion”* (Q98:5). If one vows to fast a year except Ramadan and the days forbidden for fasting, this vow is binding upon him, as it constitutes a vow of obedience. Similarly, if one vows to fast Shawwāl, Dhū al-Ḥijjah, or Shaʿbān, nothing is incumbent upon him due to the reasoning we mentioned, unless he intends to exclude the days on which fasting is impermissible—in which case the vow becomes binding.[45]

L12267 **Issue: He was obligated to fast a particular day by vow, then Ramadan commenced.**

L12268 789 - Issue: If someone is obligated to fast a specific day by vow, and Ramadan commences, it becomes obligatory upon them to fast that day exclusively for Ramadan, not for the vow whatsoever. If they fast it for their vow, or for both Ramadan and their vow, they incur sin, and the fast does not count for either their vow or Ramadan. This is because Allah’s command takes precedence over their vow. They may not fast Ramadan or any part of it for any purpose other than what Allah has obligated them to fast, maintaining sincere devotion to Him alone. Success is from Allah, the Exalted. There is no requirement to make up this fast due to the reason we have stated.

L12269 **Issue: The best fasting after the obligatory fasting.**

L12270 790 - Issue: The best fasting after obligatory fasting is fasting a day and breaking a day.

L12271–12273 It is absolutely impermissible for anyone to fast beyond that at all, and exceeding it is a sin for one against whom the proof has been established. Perpetual fasting is fundamentally impermissible. It is narrated by Abdur Rahman ibn Abdullah ibn Khalid, on the authority of Ibrahim ibn Ahmad, Al-Farbari, Al-Bukhari, Muhammad ibn Muqatil, Abdullah ibn Al-Mubarak, Al-Awza’i, Yahya ibn Abi Kathir, who said: Abu Salama ibn Abdur Rahman ibn Awf narrated to me, saying: Abdullah ibn Amr ibn Al-As reported: The Messenger of Allah said to me, “O Abdullah ibn Amr! Have I not been told

[45] **Qur’an references (L12266):** Qur’an 98:5 (Al-Bayyinah).

لَهُ الدِّينَ} [البينة: ٥] . فَإِنْ نَذَرَ أَنْ يَصُومَ سَنَةً حَاشَا رَمَضَانَ وَالْأَيَّامَ الْمَنْهِيَّ عَنْ صِيَامِهَا لَزِمَهُ ذَلِكَ، لِأَنَّهُ نَذْرُ طَاعَةٍ، وَكَذَلِكَ لَوْ نَذَرَ صَوْمَ شَوَّالٍ، أَوْ صَوْمَ ذِي الْحِجَّةِ، أَوْ صَوْمَ شَعْبَانَ فَلَا يَلْزَمُهُ شَيْءٌ لِمَا ذَكَرْنَا إِلَّا أَنْ يَنْوِيَ اسْتِثْنَاءَ مَا لَا يَجُوزُ صَوْمُهُ مِنَ الْأَيَّامِ فَيَلْزَمُهُ ذَلِكَ.

[مَسْأَلَةٌ كَانَ عَلَيْهِ صَوْمُ يَوْمٍ بِعَيْنِهِ نَذْرًا فَجَاءَ رَمَضَانُ]

٧٨٩ - مَسْأَلَةٌ: وَمَنْ كَانَ عَلَيْهِ صَوْمُ يَوْمٍ بِعَيْنِهِ نَذْرًا فَإِذَا جَاءَ رَمَضَانُ لَزِمَهُ فَرْضًا أَنْ يَصُومَ ذَلِكَ الْيَوْمَ لِرَمَضَانَ لَا لِلنَّذْرِ أَصْلًا، فَإِنْ صَامَهُ لِنَذْرِهِ أَوْ لِرَمَضَانَ وَلِنَذْرِهِ فَالْإِثْمُ عَلَيْهِ وَلَا يُجْزِئُهُ لَا لِنَذْرِهِ وَلَا لِرَمَضَانَ، لِأَنَّ أَمْرَ اللَّهِ تَعَالَى مُتَقَدِّمٌ لِنَذْرِهِ فَلَيْسَ لَهُ أَنْ يَصُومَ رَمَضَانَ وَلَا شَيْئًا مِنْهُ لِغَيْرِ مَا أَمَرَهُ اللَّهُ تَعَالَى بِصِيَامِهِ مُخْلِصًا لَهُ ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ، وَلَا قَضَاءَ عَلَيْهِ فِيهِ لِمَا ذَكَرْنَاهُ.

[مَسْأَلَةٌ أَفْضَلُ الصَّوْمِ بَعْدَ الصِّيَامِ الْمَفْرُوضِ]

٧٩٠ - مَسْأَلَةٌ: وَأَفْضَلُ الصَّوْمِ بَعْدَ الصِّيَامِ الْمَفْرُوضِ صَوْمُ يَوْمٍ وَإِفْطَارُ يَوْمٍ.

وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَصُومَ أَكْثَرَ مِنْ ذَلِكَ أَصْلًا، وَالزِّيَادَةُ عَلَيْهِ مَعْصِيَةٌ مِمَّنْ قَامَتْ عَلَيْهِ بِهَا الْحُجَّةُ، وَلَا يَحِلُّ صَوْمُ الدَّهْرِ أَصْلًا: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نَا إِبْرَاهِيمُ بْنُ أَحْمَدَ نَا الْفَرَبْرِيُّ نَا الْبُخَارِيُّ نَا مُحَمَّدُ بْنُ مُقَاتِلٍ نَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ أَنَا الْأَوْزَاعِيُّ نَا يَحْيَى بْنُ أَبِي كَثِيرٍ حَدَّثَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ قَالَ: حَدَّثَنِي عَبْدُ اللَّهِ بْنُ عَمْرِو بْنِ الْعَاصِ قَالَ: قَالَ لِي رَسُولُ اللَّهِ: «يَا عَبْدَ اللَّهِ بْنَ عَمْرٍو

that you fast during the day and pray at night?" I replied, "Yes, O Messenger of Allah." He said, "Do not do so. Fast and break your fast, pray and sleep, for your body has a right over you, your eyes have a right over you, your wife has a right over you, and your guest has a right over you. It suffices you to fast three days each month, for every good deed is multiplied tenfold, thus that equals fasting the entire perpetual time." I insisted, so it was made stricter for me. I said, "O Messenger of Allah, I feel capable of more." He said, "Then fast as the Prophet of Allah, David, fasted." And do not exceed that. I said: What was the fasting of the Prophet of Allah, David? He said: Half the year. By the narration of al-Bukhari from Abu al-Yaman al-Hakam ibn Nafi', from Shu'ayb ibn Abi Hamzah, from al-Zuhri, from Sa'id ibn al-Musayyib, from Abdullah ibn Amr, from the Messenger of Allah (peace be upon him), narrating the hadith. In it: "Abdullah ibn Amr said (may Allah be pleased with him): 'I can do better than that.' He said, 'Fast a day and break a day.' I said, 'I can do better than that.' He said, 'There is nothing better than that.'"[46]

أَلَمْ أُخْبَرْ أَنَّكَ تَصُومُ النَّهَارَ وَتَقُومُ اللَّيْلَ؟ قُلْتُ: بَلَى يَا رَسُولَ اللَّهِ قَالَ: فَلَا تَفْعَلْ، صُمْ وَأَفْطِرْ وَقُمْ وَنَمْ، فَإِنَّ لِجَسَدِكَ عَلَيْكَ حَقًّا وَإِنَّ لِعَيْنِكَ عَلَيْكَ حَقًّا، وَإِنَّ لِزَوْجِكَ عَلَيْكَ حَقًّا، وَإِنَّ لِزَوْرِكَ عَلَيْكَ حَقًّا، وَإِنَّ بِحَسْبِكَ أَنْ تَصُومَ مِنْ كُلِّ شَهْرٍ ثَلَاثَةَ أَيَّامٍ فَإِنَّ لَكَ بِكُلِّ حَسَنَةٍ عَشْرَ أَمْثَالِهَا فَإِذَا ذَلِكَ صِيَامُ الدَّهْرِ كُلِّهِ فَشَدَّدْتُ فَشُدِّدَ عَلَيَّ قُلْتُ: يَا رَسُولَ اللَّهِ إِنِّي أَجِدُ قُوَّةً؟ قَالَ فَصُمْ صِيَامَ نَبِيِّ اللَّهِ دَاوُد وَلَا تَزِدْ عَلَيْهِ، قُلْتُ: وَمَا كَانَ صِيَامُ نَبِيِّ اللَّهِ دَاوُد؟ قَالَ: نِصْفُ الدَّهْرِ» . وَمِنْ طَرِيقِ الْبُخَارِيِّ عَنْ أَبِي الْيَمَانِ الْحَكَمِ بْنِ نَافِعٍ عَنْ شُعَيْبِ بْنِ أَبِي حَمْزَةَ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَذَكَرَ الْحَدِيثَ. وَفِيهِ: «أَنَّ عَبْدَ اللَّهِ بْنَ عَمْرٍو قَالَ - عَلَيْهِ السَّلَامُ - إِنِّي أُطِيقُ أَفْضَلَ مِنْ ذَلِكَ، قَالَ: فَصُمْ يَوْمًا وَأَفْطِرْ يَوْمًا؟ قُلْتُ: إِنِّي أُطِيقُ أَفْضَلَ مِنْ ذَلِكَ؟ قَالَ: لَا أَفْضَلَ مِنْ ذَلِكَ» .

L12274 Abu Muhammad said: The prohibition of the Prophet (peace be upon him) against exceeding the practice of fasting one day and breaking the next is confirmed, and we seek refuge in Allah from violating his prohibition. Since he (peace be upon him) affirmed that nothing is superior to this practice, it is established that whoever fasts beyond this has diminished his merit. If his merit is diminished, those additional fasts are nullified without doubt, becoming a deed without reward—rather, it diminishes his reward. Thus, it is confirmed that this is fundamentally impermissible. Ali said: Among the peculiar misfortunes is the statement of some who speak about knowledge in a way incumbent upon them rather than it being their right. He said: This hadith mentions that the Prophet (peace be upon him) stated, "Observe the fast of Dawud: he would fast one day and break the next, and would not flee when encountering." Thus he claimed: This ruling applies only to those who do not flee when encountering. Abu Muhammad said: This accursed

قَالَ أَبُو مُحَمَّد: فَصَحَّ نَهْيُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الزِّيَادَةِ عَلَى صِيَامِ يَوْمٍ وَإِفْطَارِ يَوْمٍ وَنَعُوذُ بِاَللَّهِ مِنْ مُوَاقَعَةِ نَهْيِهِ، وَإِذْ أَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّهُ لَا أَفْضَلَ مِنْ ذَلِكَ فَقَدْ صَحَّ أَنَّ مَنْ صَامَ أَكْثَرَ مِنْ ذَلِكَ فَقَدْ انْحَطَّ فَضْلُهُ فَإِذَا انْحَطَّ فَضْلُهُ فَقَدْ حَبِطَتْ تِلْكَ الزِّيَادَةُ بِلَا شَكٍّ وَصَارَ عَمَلًا لَا أَجْرَ لَهُ فِيهِ بَلْ هُوَ نَاقِصٌ مِنْ أَجْرِهِ؛ فَصَحَّ أَنَّهُ لَا يَحِلُّ أَصْلًا. قَالَ عَلِيٌّ: وَمِنْ طَرَائِفِ الْمَصَائِبِ قَوْلُ بَعْضِ مَنْ يَتَكَلَّمُ فِي الْعِلْمِ بِمَا هُوَ عَلَيْهِ لَا لَهُ: قَالَ: قَدْ جَاءَ هَذَا الْحَدِيثُ وَفِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: «فَصُمْ صَوْمَ دَاوُد كَانَ يَصُومُ يَوْمًا وَيُفْطِرُ يَوْمًا وَلَا يَفِرُّ إذَا لَاقَى» فَقَالَ: إنَّمَا هَذَا الْحُكْمُ لِمَنْ لَا يَفِرُّ إذَا لَاقَى. قَالَ أَبُو مُحَمَّدٍ: فَجَمَعَ هَذَا الْكَلَامُ الْمَلْعُونُ وَجْهَيْنِ مِنْ الضَّلَالِ -: أَحَدُهُمَا:

[46] **Hadith references (L12271):** Sahih al-Bukhari 5199.

statement combines two aspects of misguidance: First, falsely attributing to Allah's Messenger (peace be upon him) what he did not say, for he (peace be upon him) commanded Abdullah ibn Amr to follow this practice and declared definitively that no fasting surpasses the fasting of Dawud.[47]

الْكَذِبُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَا لَمْ يُخْبِرْ بِهِ بَلْ قَدْ أَمَرَ - عَلَيْهِ السَّلَامُ - بِذَلِكَ عَبْدَ اللَّهِ بْنَ عَمْرٍو وَقَطَعَ بِأَنَّهُ لَا صَوْمَ أَفْضَلُ مِنْ صَوْمِ دَاوُد.

L12275 Secondly: that it is a preposterous interpretation devoid of logic, for there is no doubt that one who does not flee in the path of Allah when confronting [the enemy] is superior to one who flees. If the ruling for the superior individual is that he should not seek to increase in virtue through fasting and is prohibited from it, then this is the law of Satan—not the law of Muḥammad (peace be upon him).

وَالثَّانِي: أَنَّهُ تَأْوِيلٌ سَخِيفٌ لَا يُعْقَلُ، لِأَنَّهُ لَا شَكَّ فِي أَنَّ مَنْ لَا يَفِرُّ فِي سَبِيلِ اللَّهِ إذَا لَاقَى أَفْضَلُ مِمَّنْ يَفِرُّ، فَإِذَا كَانَ حُكْمُ الْأَفْضَلِ أَنْ لَا يَتَزَيَّدَ مِنْ الْفَضْلِ فِي الصِّيَامِ وَيُمْنَعُ مِنْ ذَلِكَ، فَهَذِهِ شَرِيعَةُ إبْلِيسَ لَا شَرِيعَةُ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L12276 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us; Abdul-Wahhab ibn Isa narrated to us; Ahmad ibn Muhammad narrated to us; Ahmad ibn Ali narrated to us; Muslim ibn al-Hajjaj narrated to us; Ubaidullah ibn Mu'adh—that is, Ibn Mu'adh al-Anbari—narrated to us: My father narrated to us; Shu'bah narrated from Habib ibn Abi Thabit, who heard Abu al-Abbas—identified as al-Sa'ib ibn Farrukh al-Makki—who heard Abdullah ibn Amr say: The Messenger of Allah—may Allah's peace and blessings be upon him—said, "There is no valid fast for the one who fasts perpetually."

نَا عَبْدُ اللَّهِ بْنُ يُوسُفَ نَا أَحْمَدُ بْنُ فَتْحٍ نَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نَا أَحْمَدُ بْنُ مُحَمَّدٍ نَا أَحْمَدُ بْنُ عَلِيٍّ نَا مُسْلِمُ بْنُ الْحَجَّاجِ نَا عُبَيْدُ اللَّهِ بْنُ مُعَاذٍ هُوَ ابْنُ مُعَاذٍ الْعَنْبَرِيُّ نَا أَبِي نَا شُعْبَةُ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ سَمِعَ أَبَا الْعَبَّاسِ هُوَ السَّائِبُ بْنُ فَرُّوخَ الْمَكِّيُّ - سَمِعَ عَبْدَ اللَّهِ بْنَ عَمْرٍو يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا صَامَ مَنْ صَامَ الْأَبَدَ» .

L12277–12278 We have narrated it through the chain of Al-Bukhari: from Adam, from Shu'bah, who mentioned it with the aforementioned chain. In it is: "The Messenger of Allah (peace be upon him) said: 'There is no fast for one who fasts perpetually.'" Through the chain of Abu Qatadah: "From the Messenger of Allah (peace be upon him)—when it was mentioned to him that someone fasts perpetually—he (peace be upon him) said: 'He has neither truly fasted nor properly broken his fast,' or 'There is no fast nor breaking of fast for him.'" Similarly, an explicit text through the chain of Mutarrif from 'Abdullah ibn Ash-Shikhkhir from his father, and 'Imran ibn Al-Husayn—both narrators—from the Messenger of Allah (peace be upon him) states regarding one who fasts perpetually: "He has neither truly fasted nor properly broken his fast." Thus, it is confirmed that his fasting is invalidated and devoid of reward, yet he has not broken the fast. These are corroborating, mass-transmitted

وَرُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نَا آدَمُ نَا شُعْبَةُ فَذَكَرَهُ بِإِسْنَادِهِ الْمَذْكُورِ، وَفِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا صَامَ مَنْ صَامَ الدَّهْرَ» . وَمِنْ طَرِيقِ أَبِي قَتَادَةَ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ -: وَقَدْ ذُكِرَ لَهُ مَنْ يَصُومُ الدَّهْرَ - فَقَالَ - عَلَيْهِ السَّلَامُ - لَا صَامَ وَلَا أَفْطَرَ، أَوْ مَا صَامَ وَلَا أَفْطَرَ» . وَكَذَلِكَ نَصًّا مِنْ طَرِيقِ مُطَرِّفٍ عَنْ عَبْدِ اللَّهِ بْنِ الشِّخِّيرِ عَنْ أَبِيهِ، وَعِمْرَانَ بْنِ الْحُصَيْنِ كِلَاهُمَا «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ فِيمَنْ صَامَ الدَّهْرَ لَا صَامَ وَلَا أَفْطَرَ» فَقَدْ صَحَّ أَنَّهُ حَبِطَ صَوْمُهُ وَلَمْ يُفْطِرْ. وَهَذِهِ أَخْبَارٌ مُتَظَاهِرَةٌ مُتَوَاتِرَةٌ لَا يَحِلُّ الْخُرُوجُ عَنْهَا. وَمِنْ عَجَائِبِهِمْ أَنَّهُمْ قَالُوا: إنَّمَا لَا يَجُوزُ إذَا صَامَ الدَّهْرَ وَلَمْ يُفْطِرْ الْأَيَّامَ الْمَنْهِيَّ عَنْهَا؟

[47] **Hadith references (L12274):** Sahih Muslim 1159h.

reports; it is impermissible to deviate from them. Among their astonishing claims is their assertion: “It is only impermissible if one fasts perpetually and does not break the fast on the prohibited days.” We responded: “He who said this has uttered falsehood, for the Messenger of Allah (peace be upon him) forbade exceeding half the year in fasting and nullified the reward of those who exceed it.” Abu Muhammad said: “Those who oppose us have raised baseless objections by citing the hadith of Hamzah ibn ʻAmr Al-Aslami, who said: ’O Messenger of Allah, I fast continuously; should I fast while traveling?’ He replied, ’If you wish, fast, and if you wish, break your fast.’”

فَقُلْنَا: كَذَبَ مَنْ قَالَ هَذَا لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنَعَ وَنَهَى عَنْ الزِّيَادَةِ عَلَى نِصْفِ الدَّهْرِ وَأَبْطَلَ أَجْرَ مَنْ زَادَ. قَالَ أَبُو مُحَمَّد: وَشَغَبَ مَنْ خَالَفَنَا بِأَنْ ذَكَرَ حَدِيثَ «حَمْزَةَ بْنِ عَمْرٍو الْأَسْلَمِيِّ أَنَّهُ قَالَ: يَا رَسُولَ اللَّهِ إنِّي أَسْرُدُ الصَّوْمَ أَفَأَصُومُ فِي السَّفَرِ؟ قَالَ: إنْ شِئْت فَصُمْ وَإِنْ شِئْتَ فَأَفْطِرْ» .

L12279 And with a report we transmitted through the chain of Zayd ibn al-Ḥubāb: Thābit informed me from Qays al-Ghifārī, who narrated to me; Abū Saʿīd al-Maqburī narrated to me; Abū Hurayrah narrated to me from Usāmah ibn Zayd, who said: “The Messenger of Allah—peace and blessings of Allah be upon him—would fast continuously (successively), and people would say: ’He does not break his fast.’” Abū Muḥammad said: There is no proof for them in these two reports, because continuous fasting merely means consecutive observance, not fasting more than half the time (the year). This is clarified by the ḥadīth of ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ which we cited. And the ḥadīth of ʿĀ’ishah which we transmitted through the chain reported in the collection of Muslim ibn al-Ḥajjāj: From Abū Bakr ibn Abī Shaybah, from Sufyān ibn ʿUyaynah, from Ibn Abī Labīd, from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, who said: “I asked ʿĀ’ishah, the Mother of the Believers, about the fasting of the Messenger of Allah—peace and blessings of Allah be upon him—and she said: ’He would fast until we said: He must be fasting, and he would cease fasting until we said: He must have stopped. I never saw him fast in any month more than he fasted in Shaʿbān. He would fast all of Shaʿbān—he would fast Shaʿbān except for a little.’”

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ زَيْدِ بْنِ الْحُبَابِ: أَخْبَرَنِي ثَابِتٌ عَنْ قَيْسٍ الْغِفَارِيِّ حَدَّثَنِي أَبُو سَعِيدٍ الْمَقْبُرِيِّ حَدَّثَنِي أَبُو هُرَيْرَةَ عَنْ أُسَامَةَ بْنِ زَيْدٍ قَالَ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَسْرُدُ الصَّوْمَ فَيُقَالُ: لَا يُفْطِرُ» . قَالَ أَبُو مُحَمَّد: لَا حُجَّةَ لَهُمْ فِي هَذَيْنِ الْخَبَرَيْنِ، لِأَنَّ السَّرْدَ إنَّمَا هُوَ الْمُتَابَعَةُ لَا صَوْمُ أَكْثَرَ مِنْ نِصْفِ الدَّهْرِ، يُبَيِّنُ ذَلِكَ حَدِيثُ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ الَّذِي أَوْرَدْنَاهُ. وَحَدِيثُ عَائِشَةَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ ابْنِ أَبِي لَبِيدٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ قَالَ: «سَأَلْتُ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ عَنْ صِيَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: كَانَ يَصُومُ حَتَّى نَقُولَ: قَدْ صَامَ وَيُفْطِرُ حَتَّى نَقُولَ: قَدْ أَفْطَرَ، وَلَمْ أَرَهُ صَائِمًا مِنْ شَهْرٍ قَطُّ أَكْثَرَ مِنْ صِيَامِهِ مِنْ شَعْبَانَ، كَانَ يَصُومُ شَعْبَانَ كُلَّهُ، كَانَ يَصُومُ شَعْبَانَ إلَّا قَلِيلًا» .

L12280–12281 This Mother of the Believers clarified the consecutive fasting mentioned by Usama and that mentioned by Hamza ibn Amr in his narration, thereby invalidating any basis they might have in any of the narrations. They further obscured matters with what we transmitted through Abd al-Rahman ibn Mahdi from Shu’bah from Abd al-Rahman ibn al-Qasim ibn Muhammad from his father: “Aisha used to fast perpetually.” I asked: “Perpetually?”

فَهَذِهِ أُمُّ الْمُؤْمِنِينَ بَيَّنَتْ السَّرْدَ الَّذِي ذَكَرَهُ أُسَامَةُ، وَالَّذِي ذَكَرَهُ حَمْزَةُ بْنُ عَمْرٍو فِي حَدِيثِهِ، فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ بِشَيْءٍ مِنْ الْآثَارِ. وَمَوَّهُوا أَيْضًا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ شُعْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ

He replied: “She would fast consecutively.” Through the chain of Hammad ibn Salama from Ubayd Allah ibn Umar from Nafi’ from Ibn Umar: “Umar maintained consecutive fasting.” It is also narrated from him that he maintained consecutive fasting starting two years before his death. Through Abd al-Razzaq’s chain from Ja’far ibn Sulayman al-Duba’i from Thabit al-Bunani from Anas: “Abu Talha rarely fasted during the lifetime of Allah’s Messenger (peace and blessings be upon him) due to the enemy. After the Prophet’s death (peace and blessings be upon him), I never saw him break his fast except on Eid al-Adha or Eid al-Fitr.” Through Ibn Abi Shaybah’s chain via Hammad ibn Khalid from al-Zubayr ibn Abdullah ibn Umayma from his grandmother: “Uthman would fast perpetually and pray nightly except for a brief sleep at the night’s beginning.” Al-Aswad, Urwah, and Ubayd are also reported to have fasted perpetually.

أَنَّ عَائِشَةَ كَانَتْ تَصُومُ الدَّهْرَ، قُلْت: الدَّهْرُ؟ قَالَ: كَانَتْ تَسْرُدُ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: كَانَ عُمَرُ يَسْرُدُ الصَّوْمَ. وَعَنْهُ أَيْضًا أَنَّهُ سَرَدَ الصَّوْمَ قَبْلَ مَوْتِهِ بِسَنَتَيْنِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ جَعْفَرِ بْنِ سُلَيْمَانَ هُوَ الضُّبَعِيُّ - عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسٍ قَالَ: كَانَ أَبُو طَلْحَةَ قَلَّ مَا يَصُومُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَجْلِ الْعَدُوِّ، فَلَمَّا تُوُفِّيَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا رَأَيْتُهُ مُفْطِرًا إلَّا يَوْمَ أَضْحًى، أَوْ يَوْمَ فِطْرٍ. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا حَمَّادُ بْنُ خَالِدٍ عَنْ الزُّبَيْرِ بْنِ عَبْدِ اللَّهِ ابْنِ أُمَيْمَةَ عَنْ جَدَّتِهِ قَالَتْ: كَانَ عُثْمَانُ يَصُومُ الدَّهْرَ وَيَقُومُ اللَّيْلَ إلَّا هَجْعَةً مِنْ أَوَّلِهِ. وَعَنْ الْأَسْوَدِ، وَعُرْوَةَ، وَعُبَيْدٍ: أَنَّهُمْ كَانُوا يَصُومُونَ الدَّهْرَ.

L12282 Abu Muhammad said: All of this holds no proof for them. As for Aisha (may Allah be pleased with her), Abd al-Rahman ibn al-Qasim ibn Muhammad distinguished between perpetual fasting and consecutive fasting as we mentioned. Only consecutive fasting—meaning uninterrupted succession, not perpetual fasting—was reliably established from her. Even if that were authentically reported from her—and it is not authentic—we have narrations through Waki’’s chain from Hisham ibn Urwah from his father that Aisha, the Mother of the Believers, used to fast the Days of Tashreeq. Similarly, it is reliably established from her (may Allah be pleased with her) that she preferred fasting the doubtful day at the end of Sha‘ban. If what is unauthenticated from her regarding perpetual fasting is considered proof, then what is authenticated from her regarding fasting the Days of Tashreeq and the doubtful day must equally be proof. If this is not proof, then that cannot be proof.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ -: أَمَّا عَائِشَةُ - رَضِيَ اللَّهُ عَنْهَا - فَقَدْ فَرَّقَ عَبْدُ الرَّحْمَنِ بْنُ الْقَاسِمِ بْنِ مُحَمَّدٍ بَيْنَ صِيَامِ الدَّهْرِ وَبَيْنَ سَرْدِ الصَّوْمِ كَمَا ذَكَرْنَا، وَلَمْ يَثْبُتْ عَلَيْهَا إلَّا السَّرْدُ وَهُوَ الْمُتَابَعَةُ لَا صَوْمُ الدَّهْرِ، وَلَوْ صَحَّ عَنْهَا ذَلِكَ وَلَا يَصِحُّ؟ -: فَقَدْ رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ كَانَتْ تَصُومُ أَيَّامَ التَّشْرِيقِ. وَكَذَلِكَ صَحَّ عَنْهَا - رَضِيَ اللَّهُ عَنْهَا - أَنَّهَا كَانَتْ تَخْتَارُ صَوْمَ يَوْمِ الشَّكِّ مِنْ آخِرِ شَعْبَانَ، فَإِنْ كَانَ مَا لَا يَصِحُّ عَنْهَا مِنْ صَوْمِ الدَّهْرِ حُجَّةً فَالَّذِي صَحَّ عَنْهَا مِنْ صَوْمِ أَيَّامِ التَّشْرِيقِ، وَيَوْمِ الشَّكِّ حُجَّةٌ، وَإِنْ لَمْ يَكُنْ هَذَا حُجَّةً فَلَيْسَ ذَلِكَ حُجَّةً.

L12283–12284 If they say: The prohibition of the Prophet—peace and blessings be upon him—against fasting the days of Tashriq has been authentically established. It is said to them: His prohibition—peace and blessings be upon him—against fasting more than half of the year has also been authentically established, as

فَإِنْ قَالُوا: قَدْ صَحَّ نَهْيُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ صَوْمِ أَيَّامِ التَّشْرِيقِ. قِيلَ لَهُمْ: وَقَدْ صَحَّ نَهْيُهُ - عَلَيْهِ السَّلَامُ - عَنْ صَوْمِ أَكْثَرَ مِنْ نِصْفِ الدَّهْرِ، وَصَحَّ نَهْيُهُ عَنْ

has his prohibition against perpetual fasting. As for the report concerning Umar, it contains nothing but uninterrupted continuity—that is, consistent observance—not perpetual fasting. Rather, the prohibition of perpetual fasting has been authentically transmitted from him, as we have narrated through Waki''s chain from Isma'il ibn Abi Khalid from Abu 'Amr al-Shaybani, who said: Umar ibn al-Khattab was informed that a man engaged in perpetual fasting. He went to him, struck him with a whip, and repeated: "Eat, O time! Eat, O time!" This narration is of the highest authenticity from him. Thus, it is confirmed that prohibiting perpetual fasting was part of his legal doctrine, for had he deemed it permissible, he would not have struck him for it nor commanded him to break the fast.

L12285 As for 'Uthmān, al-Zubayr ibn 'Abd Allāh ibn Umayma and his grandmother are unknown narrators, thus this report is invalidated. As for Abū Ṭalḥa, we have received a narration via Shu'ba from Qaṭāda from Anas ibn Mālik, who said: "Abū Ṭalḥa would consume hail while fasting." Abū Muḥammad said: In the report they disputed, Anas stated: "I never saw him break his fast except on Eid al-Fiṭr or Eid al-Aḍḥā." Yet this report indicates he used to fast during the days of Tashrīq. If Abū Ṭalḥa's act of consuming hail while fasting is not authoritative evidence, then his perpetual fasting cannot be authoritative evidence either. Conversely, if his perpetual fasting is authoritative evidence, then his consumption of hail during fasting must likewise be authoritative evidence. Thus, all the specious arguments they fabricated concerning the Companions—may Allāh be pleased with them—are refuted.

L12286 As for al-Aswad: We narrated from Waki' through Shu'bah from al-Hakam ibn 'Utaybah that al-Aswad would fast perpetually and the days of Tashreeq. From Ma'mar through Hisham ibn 'Urwah from his father: He fasted forty years or thirty years - Hisham said: "I never saw him break his fast except on a day of Fitr or a Day of Sacrifice." They should follow these two in fasting the days of Tashreeq; otherwise, the people are trifling. 'Ali said: It is authentically established from 'Umar what we mentioned regarding the prohibition of perpetual fasting, his command to break it, and 'Umar's striking the one who fasted regarding his fasting. Through Shu'bah's chain from Qatādah from Abī Tamīmah al-Hujaymī from Abū Mūsā al-Ash'arī who said: "Who-

صَوْمِ الدَّهْرِ. وَأَمَّا خَبَرُ عُمَرَ فَلَيْسَ فِيهِ إِلَّا السَّرْدُ فَقَطْ وَهُوَ الْمُتَابَعَةُ لَا صِيَامُ الدَّهْرِ، بَلْ قَدْ صَحَّ عَنْهُ تَحْرِيمُ صِيَامِ الدَّهْرِ كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ قَالَ: بَلَغَ عُمَرُ بْنُ الْخَطَّابِ: أَنَّ رَجُلًا يَصُومُ الدَّهْرَ فَأَتَاهُ فَعَلَاهُ بِالدِّرَّةِ وَجَعَلَ يَقُولُ: كُلْ يَا دَهْرُ كُلْ يَا دَهْرُ، وَهَذَا فِي غَايَةِ الصِّحَّةِ عَنْهُ، فَصَحَّ أَنَّ تَحْرِيمَ صَوْمِ الدَّهْرِ كَانَ مِنْ مَذْهَبِهِ وَلَوْ كَانَ عِنْدَهُ مُبَاحًا لَمَا ضَرَبَ فِيهِ وَلَا أَمَرَ بِالْفِطْرِ.

وَأَمَّا عُثْمَانُ، فَإِنَّ الزُّبَيْرَ بْنَ عَبْدِ اللَّهِ ابْنِ أُمَيْمَةَ وَجَدَّتَهُ مَجْهُولَانِ، فَسَقَطَ هَذَا الْخَبَرُ. وَأَمَّا أَبُو طَلْحَةَ فَقَدْ رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ قَتَادَةَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: كَانَ أَبُو طَلْحَةَ يَأْكُلُ الْبَرَدَ وَهُوَ صَائِمٌ. قَالَ أَبُو مُحَمَّدٍ: وَفِي الْخَبَرِ الَّذِي شَغَبُوا بِهِ: أَنَّ أَنَسًا قَالَ: مَا رَأَيْتُهُ مُفْطِرًا إِلَّا يَوْمَ فِطْرٍ، أَوْ يَوْمَ أَضْحَى، فَفِي هَذَا الْخَبَرِ: أَنَّهُ كَانَ يَصُومُ أَيَّامَ التَّشْرِيقِ فَإِنْ لَمْ يَكُنْ فِعْلُ أَبِي طَلْحَةَ فِي أَكْلِهِ الْبَرَدَ وَهُوَ صَائِمٌ حُجَّةً فَصَوْمُهُ الدَّهْرَ لَيْسَ حُجَّةً، وَلَئِنْ كَانَ صَوْمُهُ الدَّهْرَ حُجَّةً فَإِنَّ أَكْلَهُ الْبَرَدَ فِي صِيَامٍ حُجَّةٌ، فَسَقَطَ كُلُّ مَا مَوَّهُوا بِهِ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

وَأَمَّا الْأَسْوَدُ: فَرُوِّينَا عَنْ وَكِيعٍ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ: أَنَّ الْأَسْوَدَ كَانَ يَصُومُ الدَّهْرَ وَأَيَّامَ التَّشْرِيقِ وَعَنْ مَعْمَرٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ: أَنَّهُ صَامَ أَرْبَعِينَ سَنَةً أَوْ ثَلَاثِينَ سَنَةً - قَالَ هِشَامٌ: لَمْ أَرَهُ مُفْطِرًا إِلَّا يَوْمَ فِطْرٍ أَوْ يَوْمَ نَحْرٍ، فَلْيَقْتَدُوا بِهِمَا فِي صَوْمِ أَيَّامِ التَّشْرِيقِ وَإِلَّا فَالْقَوْمُ مُتَلَاعِبُونَ. قَالَ عَلِيٌّ: صَحَّ عَنْ عُمَرَ مَا ذَكَرْنَاهُ مِنْ النَّهْيِ عَنْ صَوْمِ الدَّهْرِ، وَأَمْرِهِ بِالْفِطْرِ فِيهِ، وَضَرْبِهِ عَلَى صِيَامِهِ. وَمِنْ طَرِيقِ شُعْبَةَ عَنْ قَتَادَةَ

ever fasts perpetually, Allah will restrict him like this:" - and he clenched his fist.

L12287–12288 From the narration of Sufyan al-Thawri through Abu Tamimah al-Hujaymi from Abu Musa al-Ash'ari, who said: "Whoever fasts perpetually will have Hellfire constricted upon him." This has also been transmitted as a musnad narration. Ali said: "Among their rare interpretations is their claim that this means 'Hellfire is constricted upon him so he cannot enter it?'" Ali said: "This contains a dialectal irregularity and a falsehood. As for the dialectal irregularity: Had this been the intended meaning, the wording would have been 'constricted away from him' rather than 'upon him.' As for the falsehood: All transmitters of this report conveyed it in the context of prohibition against perpetual fasting. How then can this align with Shu'bah's aforementioned narration which states only 'Allah constricted it upon him'?"

Through Abd al-Rahman ibn Mahdi from Abu Ishaq: Ibn Abi An'um used to fast perpetually. Amr ibn Maymun remarked: "Had Muhammad's companions - peace be upon him - witnessed this, they would have pelted him with stones." Ali said: "They claim scholarly consensus over lesser matters. Pelting here refers to throwing pebbles, as Ibn Umar would do to those speaking during the Friday sermon."

Through Shu'bah from Yahya ibn Umar and al-Hamdani from his father: Abdullah ibn Mas'ud was asked about perpetual fasting and disliked it. Through Abu Bakrah and A'idh ibn Amr: Both disliked fasting in Rajab, which necessarily indicates their rejection of perpetual fasting. Ali said: "Had it been permissible according to Ibn Mas'ud, he would not have disliked it, for righteous acts are not disliked - only deeds devoid of virtue earn disapproval."

Al-Sha'bi is reported to have disliked perpetual fasting. Sa'id ibn Jubayr disliked fasting any complete month besides Ramadan.

L12289 **The issue of fasting three days in each month.**

L12290–12292 Issue 791: Abū Muḥammad said: We recommend fasting three days each month, and we recommend fasting on Mondays and Thursdays. All of this

عَنْ أَبِي تَمِيمَةَ الْهُجَيْمِيِّ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ قَالَ: مَنْ صَامَ الدَّهْرَ ضَيَّقَ اللَّهُ عَلَيْهِ هَكَذَا -: وَقَبَضَ كَفَّهُ.

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي تَمِيمَةَ الْهُجَيْمِيِّ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ قَالَ: مَنْ صَامَ الدَّهْرَ ضُيِّقَتْ عَلَيْهِ جَهَنَّمُ، وَقَدْ رُوِيَ أَيْضًا مُسْنَدًا. قَالَ عَلِيٌّ: مِنْ نَوَادِرِهِمْ قَوْلُهُمْ: مَعْنَاهُ ضُيِّقَتْ عَلَيْهِ جَهَنَّمُ حَتَّى لَا يَدْخُلَهَا؟ قَالَ عَلِيٌّ: وَهَذِهِ لُكْنَةٌ وَكَذِبٌ -: أَمَّا اللُّكْنَةُ: فَإِنَّهُ لَوْ أَرَادَ هَذَا لَقَالَ: ضُيِّقَتْ عَنْهُ، وَلَمْ يَقُلْ: عَلَيْهِ، وَأَمَّا الْكَذِبُ: فَإِنَّمَا أَوْرَدَهُ رُوَاتُهُ كُلُّهُمْ عَلَى التَّشْدِيدِ وَالنَّهْيِ عَنْ صَوْمِهِ فَكَيْفَ وَرِوَايَةُ شُعْبَةَ الْمَذْكُورَةُ إِنَّمَا هِيَ ضَيَّقَ اللَّهُ عَلَيْهِ فَقَطْ؟ وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ أَبِي إِسْحَاقَ أَنَّ ابْنَ أَبِي أَنْعُمٍ كَانَ يَصُومُ الدَّهْرَ؟ فَقَالَ عَمْرُو بْنُ مَيْمُونٍ: لَوْ رَأَى هَذَا أَصْحَابُ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَرَجَمُوهُ. قَالَ عَلِيٌّ: هُمْ يَدَّعُونَ الْإِجْمَاعَ بِأَقَلَّ مِنْ هَذَا، وَقَدْ يَكُونُ الرَّجْمُ حَصْبًا كَمَا كَانَ يَفْعَلُ ابْنُ عُمَرَ بِمَنْ رَآهُ يَتَكَلَّمُ وَالْإِمَامُ يَخْطُبُ. وَمِنْ طَرِيقِ شُعْبَةَ عَنْ يَحْيَى بْنِ عُمَرَ وَالْهَمْدَانِيِّ عَنْ أَبِيهِ أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ مَسْعُودٍ - وَسُئِلَ عَنْ صَوْمِ الدَّهْرِ - فَكَرِهَهُ. وَمِنْ طَرِيقِ أَبِي بَكْرَةَ، وَعَائِذِ بْنِ عَمْرٍو أَنَّهُمَا كَرِهَا صَوْمَ رَجَبٍ، وَهَذَا يَقْتَضِي وَلَا بُدَّ أَنَّهُمَا لَا يُجِيزَانِ صِيَامَ الدَّهْرِ. قَالَ عَلِيٌّ: لَوْ كَانَ مُبَاحًا عِنْدَ ابْنِ مَسْعُودٍ مَا كَرِهَهُ، لِأَنَّ فِعْلَ الْخَيْرِ لَا يُكْرَهُ، وَلَا يُكْرَهُ إِلَّا مَا لَا خَيْرَ فِيهِ وَلَا أَجْرَ. وَعَنْ الشَّعْبِيِّ أَنَّهُ كَرِهَ صَوْمَ الدَّهْرِ. وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ أَنَّهُ كَرِهَ صَوْمَ شَهْرٍ تَامٍّ غَيْرِ رَمَضَانَ

[مَسْأَلَةٌ صِيَامِ ثَلَاثَةِ أَيَّامٍ مِنْ كُلِّ شَهْرٍ]

is on the condition that one does not exceed fasting more than half of one's time. As for the three days, this is due to what we mentioned earlier in the ḥadīth of ʿAbd Allāh ibn ʿAmr ibn al-ʿĀṣ. As for Mondays and Thursdays... And Thursday: For what Abdullah ibn Rabi' narrated to us, from Muhammad ibn Mu'awiyah, from Ahmad ibn Shu'ayb, from al-Qasim ibn Zakariyya, from Husayn, who is al-Ju'fi, from Za'idah, from 'Asim, from al-Musayyib ibn Rafi', from Hafsa, the Mother of the Believers, who said: "The Messenger of Allah (peace be upon him) used to fast on Mondays and Thursdays." It is disliked to fast an entire month other than Ramadan due to what we mentioned of his practice (peace be upon him). We have previously mentioned a statement similar to our earlier position from Sa'id ibn Jubayr.[48]

٧٩١ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ -: وَنَسْتَحِبُّ صِيَامَ ثَلَاثَةِ أَيَّامٍ مِنْ كُلِّ شَهْرٍ، وَنَسْتَحِبُّ صِيَامَ الِاثْنَيْنِ، وَالْخَمِيسِ، وَكُلُّ هَذَا فَبِأَنْ لَا يَتَجَاوَزَ أَكْثَرَ مِنْ نِصْفِ الدَّهْرِ، فَأَمَّا الثَّلَاثَةُ الْأَيَّامِ فَلِمَا ذَكَرْنَا آنِفًا فِي حَدِيثِ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ وَأَمَّا الِاثْنَيْنِ وَالْخَمِيسُ فَلِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا الْقَاسِمُ بْنُ زَكَرِيَّا نَا حُسَيْنٌ هُوَ الْجُعْفِيُّ - عَنْ زَائِدَةَ عَنْ عَاصِمٍ عَنْ الْمُسَيَّبِ هُوَ ابْنُ رَافِعٍ - عَنْ حَفْصَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَصُومُ الِاثْنَيْنِ، وَالْخَمِيسَ» . وَيُكْرَهُ صَوْمُ شَهْرٍ تَامٍّ غَيْرِ رَمَضَانَ لِمَا ذَكَرْنَا مِنْ فِعْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَقَدْ ذَكَرْنَا مِثْلَ قَوْلِنَا آنِفًا عَنْ سَعِيدِ بْنِ جُبَيْرٍ.

A juristic issue: restricting oneself in fasting to the obligatory [fasting].

[مَسْأَلَةٌ اقْتَصَرَ فِي الصِّيَامِ عَلَى الْفَرْضِ]

Issue 792: Whoever confines themselves to performing only the obligatory acts does well, due to what we have previously mentioned from the statement of Allah's Messenger—peace and blessings be upon him—to the man who inquired about religion. The Prophet—peace be upon him—informed him of the obligation of Ramadan. The man asked, "Is there anything else incumbent upon me?" He replied, "No, unless you perform voluntary acts." He mentioned a similar response regarding prayer, zakat, and Hajj. The questioner then declared, "By Allah, I will neither add to this nor neglect it." Thereupon Allah's Messenger—peace and blessings be upon him—said: "He will succeed if he is truthful—he will enter Paradise if he is truthful."

٧٩٢ - مَسْأَلَةٌ: وَمَنْ اقْتَصَرَ عَلَى الْفَرْضِ فَقَطْ فَحَسَنٌ لِمَا قَدْ ذَكَرْنَاهُ قَبْلُ مِنْ «قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلَّذِي سَأَلَهُ عَنْ الدِّينِ فَأَخْبَرَهُ - عَلَيْهِ السَّلَامُ - بِوُجُوبِ رَمَضَانَ قَالَ: هَلْ عَلَيَّ غَيْرُهُ؟ قَالَ: لَا إلَّا أَنْ تَتَطَوَّعَ - وَذَكَرَ مِثْلَ ذَلِكَ فِي الصَّلَاةِ وَالزَّكَاةِ وَالْحَجِّ، فَقَالَ السَّائِلُ: وَاَللَّهِ لَا أَزِيدُ عَلَى هَذَا وَلَا أَنْقُصُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَفْلَحَ إنْ صَدَقَ دَخَلَ الْجَنَّةَ إنْ صَدَقَ» .

[The Issue of Fasting the Day of ʿĀshūrāʾ]

[مَسْأَلَةٌ صَوْمِ يَوْمِ عَاشُورَاءَ]

Issue 793: We recommend fasting the Day of Ashura, which is the ninth of Muharram, and fasting the tenth day afterward is also commendable. We also recommend fasting the Day of Arafah for pilgrims and others. Abdullah

٧٩٣ - مَسْأَلَةٌ: وَنَسْتَحِبُّ صَوْمَ يَوْمِ عَاشُورَاءَ: وَهُوَ التَّاسِعُ مِنْ الْمُحَرَّمِ وَإِنْ صَامَ الْعَاشِرَ بَعْدَهُ فَحَسَنٌ. وَنَسْتَحِبُّ أَيْضًا صِيَامَ يَوْمِ عَرَفَةَ لِلْحَاجِّ وَغَيْرِهِ -: نَا عَبْدُ اللَّهِ بْنُ

[48] **Hadith references (L12290):** Mishkat al-Masabih 2055.

يُوسُفَ نَا أَحْمَدُ بْنُ فَتْحٍ نَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نَا أَحْمَدُ بْنُ مُحَمَّدٍ نَا أَحْمَدُ بْنُ عَلِيٍّ نَا مُسْلِمُ بْنُ الْحَجَّاجِ نَا مُحَمَّدُ بْنُ الْمُثَنَّى نَا مُحَمَّدُ بْنُ جَعْفَرٍ نَا شُعْبَةُ عَنْ غَيْلَانَ بْنِ جَرِيرٍ سَمِعَ عَبْدَ اللَّهِ بْنَ مَعْبَدٍ الزِّمَّانِيَّ عَنْ أَبِي قَتَادَةَ الْأَنْصَارِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ عَنْ صَوْمِ يَوْمِ عَرَفَةَ؟ فَقَالَ: يُكَفِّرُ السَّنَةَ الْمَاضِيَةَ وَالْبَاقِيَةَ» .

ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us, Abdul-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Muhammad ibn al-Muthanna narrated to us, Muhammad ibn Ja'far narrated to us, Shu'bah narrated from Ghaylan ibn Jarir, who heard it on the authority of Abdullah ibn Ma'bad al-Zimmānī, who narrated from Abu Qatadah al-Ansari that the Messenger of Allah, peace and blessings be upon him, was asked about fasting the Day of Arafah. He said: "It atones for the past year and the coming year."

«وَسُئِلَ عَنْ صَوْمِ يَوْمِ عَاشُورَاءَ؟ فَقَالَ يُكَفِّرُ السَّنَةَ الْمَاضِيَةَ» . وَبِهِ إِلَى مُسْلِمٍ -: نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نَا وَكِيعُ بْنُ الْجَرَّاحِ عَنْ حَاجِبِ بْنِ عُمَرَ عَنِ الْحَكَمِ بْنِ الْأَعْرَجِ قَالَ: «سَأَلْتُ ابْنَ عَبَّاسٍ عَنْ صَوْمِ عَاشُورَاءَ؟ فَقَالَ: إِذَا رَأَيْتَ هِلَالَ الْمُحَرَّمِ فَاعْدُدْ وَأَصْبِحْ يَوْمَ التَّاسِعِ صَائِمًا؟ فَقُلْتُ: هَكَذَا كَانَ مُحَمَّدٌ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَصُومُهُ؟ قَالَ: نَعَمْ» .

L12297 He was asked about fasting the Day of Ashura. He replied, "It expiates the past year." This chain is transmitted in Ṣaḥīḥ Muslim: Abū Bakr ibn Abī Shaybah reported to us: Wakīʿ ibn al-Jarrāḥ reported to us from Ḥājib ibn ʿUmar from al-Ḥakam ibn al-Aʿraj, who said: "I asked Ibn ʿAbbās about fasting Ashura. He said, 'When you see the crescent of Muḥarram, count, then fast on the ninth day.' I said, 'Was this how Muḥammad (peace be upon him) fasted it?' He said, 'Yes.'"[49]

نَا حَمَّادُ بْنُ مُفَرِّجٍ نَا ابْنُ الْأَعْرَابِيِّ نَا الدَّبَرِيُّ نَا عَبْدُ الرَّزَّاقِ نَا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَطَاءٌ أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ يَقُولُ فِي يَوْمِ عَاشُورَاءَ: خَالِفُوا الْيَهُودَ صُومُوا التَّاسِعَ وَالْعَاشِرَ، فَإِنْ قِيلَ: مِنْ أَيْنَ أَحْبَبْتُمْ صَوْمَ يَوْمِ عَرَفَةَ فِي الْحَجِّ؟ وَقَدْ صَحَّ مِنْ طَرِيقِ مَيْمُونَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا قَالَتْ: «إِنَّ النَّاسَ شَكُّوا فِي صَوْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ عَرَفَةَ فَأَرْسَلْتُ إِلَيْهِ بِحِلَابٍ وَهُوَ وَاقِفٌ فِي الْمَوْقِفِ فَشَرِبَ مِنْهُ وَالنَّاسُ يَنْظُرُونَ» ؟ وَمِنْ طَرِيقِ حَامِدِ بْنِ يَحْيَى الْبَلْخِيِّ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: أَتَيْت ابْنَ عَبَّاسٍ بِعَرَفَةَ وَهُوَ يَأْكُلُ رُمَّانًا فَقَالَ: ادْنُ فَكُلْ لَعَلَّكَ صَائِمٌ إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَكُنْ يَصُومُ هَذَا الْيَوْمَ.

L12298–12299 From Hammad ibn Mufarrij, from Ibn al-A'rabi, from al-Dabari, from Abd al-Razzaq, from Ibn Jurayj, who informed me that Ata' heard Ibn Abbas say concerning the day of Ashura: "Differ from the Jews; fast the ninth and the tenth." If it is asked: "From where did you derive the preference for fasting the day of Arafah during Hajj?" It has been authentically established via Maymunah, the Mother of the Believers, that she said: "People doubted the Messenger of Allah's fasting on the day of Arafah - peace and blessings be upon him - so I sent him a vessel of milk while he stood at the station. He drank from it as people watched."

Through the narration of Hamid ibn Yahya al-Balkhi from Sufyan ibn Uyaynah from Ayyub al-Sakhtiyānī from Sa'id ibn Jubayr, who said: "I came to Ibn Abbas at Arafah while he ate a pomegranate. He said: 'Approach and eat - perhaps you are fasting. Truly the Messenger of Allah - peace and blessings be upon him - did not fast this day.'"

[49] **Hadith references (L12297):** Sahih Muslim 1162b.

L12300 Narrated through the chain of Mu’ammal ibn Isma’il, from Sufyan al-Thawri, from Isma’il ibn Umayyah, from Nāfiʿ, who said: Ibn Umar was asked about fasting on the Day of Arafah. He replied: “The Prophet—may Allah’s peace and blessings be upon him—did not fast on it, nor did Abu Bakr, nor Umar, nor Uthman.”

وَمِنْ طَرِيقِ مُؤَمَّلِ بْنِ إِسْمَاعِيلَ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ نَافِعٍ قَالَ: سُئِلَ ابْنُ عُمَرَ عَنْ صَوْمِ يَوْمِ عَرَفَةَ؟ فَقَالَ: لَمْ يَصُمْهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا أَبُو بَكْرٍ، وَلَا عُمَرُ، وَلَا عُثْمَانُ.

L12301 Through the chain of ʿAbd al-Raḥmān ibn Mahdī, Ḥawshab ibn ʿUqayl narrated from Mahdī al-Hijrī al-ʿAbdī, from ʿIkrimah, who said: Abū Hurayrah told me: “The Messenger of Allah (peace be upon him) forbade fasting on the day of ʿArafah in ʿArafat.”[50]

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ نَا حَوْشَبُ بْنُ عُقَيْلٍ عَنْ مَهْدِيٍّ الْهَجَرِيِّ الْعَبْدِيِّ عَنْ عِكْرِمَةَ قَالَ: قَالَ لِي أَبُو هُرَيْرَةَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ صَوْمِ يَوْمِ عَرَفَةَ بِعَرَفَاتٍ» .

L12302–12304 And through the chain of Shuʿbah, ʿAmr ibn Dīnār reported to me, saying: I heard ʿAṭāʾ narrating from ʿUbayd ibn ʿUmayr, who said: ʿUmar ibn al-Khaṭṭāb prohibited fasting on the Day of ʿArafah. There has been discussion regarding the transmission of ʿAbdullāh ibn Maʿbad al-Zamānī from Abū Qatādah. We said—and with Allah’s guidance alone is success—: As for the Messenger of Allah (peace and blessings be upon him) not fasting it, this provides no proof for your position, for he (peace and blessings be upon him) emphatically encouraged fasting it and informed that it expiates sins of two years. It is not upon us to wait after this whether he (peace and blessings be upon him) later fasted it or not. Yūsuf ibn ʿAbdullāh al-Numayrī narrated to us, saying: Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us, Qāsim ibn Aṣbagh narrated to us, Muṭarrif ibn Qays narrated to us, Yaḥyā ibn Bukayr narrated to us, Mālik narrated to us from Ibn Shihāb from ʿUrwah ibn al-Zubayr from... Aisha, the Mother of the Believers, said: “The Messenger of Allah—peace and blessings be upon him—would abandon a deed he loved to perform, fearing that people might adopt it and it would become obligatory upon them.” As for the ḥadīth of Abū Hurayrah prohibiting fasting on the Day of ʿArafah at Arafat, the narration of Ḥawshab ibn ʿUqayl—who is not strong—from Mahdī al-Hajarī, who is unknown, is unreliable and cannot be used as a proof. Regarding the abandonment of fasting by Abū Bakr, ʿUmar, Ibn ʿUmar, and Ibn ʿAbbās, others did fast—as we have reported through the

وَمِنْ طَرِيقِ شُعْبَةَ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ قَالَ: سَمِعْت عَطَاءً عَنْ عُبَيْدِ بْنِ عُمَيْرٍ قَالَ: نَهَى عُمَرُ بْنُ الْخَطَّابِ عَنْ صَوْمِ يَوْمِ عَرَفَةَ: وَقَدْ تَكَلَّمَ فِي سَمَاعِ عَبْدِ اللَّهِ بْنِ مَعْبَدٍ الزِّمَّانِيِّ مِنْ أَبِي قَتَادَةَ. قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: أَمَّا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَصُمْهُ فَلَا حُجَّةَ لَكُمْ فِي ذَلِكَ؛ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ حَضَّ عَلَى صِيَامِهِ أَعْظَمَ حَضٍّ، وَأَخْبَرَ أَنَّهُ يُكَفِّرُ ذُنُوبَ سَنَتَيْنِ، وَمَا عَلَيْنَا أَنْ نَنْتَظِرَ بَعْدَ هَذَا أَيَصُومُهُ - عَلَيْهِ السَّلَامُ - أَمْ لَا؟ وَقَدْ حَدَّثَنَا يُوسُفُ بْنُ عَبْدِ اللَّهِ النُّمَيْرِيُّ قَالَ: نَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ قَالَ: نَا قَاسِمُ بْنُ أَصْبَغَ نَا مُطَرِّفُ بْنُ قَيْسٍ نَا يَحْيَى بْنُ بُكَيْرٍ نَا مَالِكٌ عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا قَالَتْ: «إِنْ كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَيَتْرُكُ الْعَمَلَ وَهُوَ يُحِبُّ أَنْ يَعْمَلَ بِهِ خَشْيَةَ أَنْ يَعْمَلَ بِهِ النَّاسُ فَيُفْرَضَ عَلَيْهِمْ» ؟ وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ فِي النَّهْيِ عَنْ صَوْمِ يَوْمِ عَرَفَةَ بِعَرَفَاتٍ فَإِنَّ رِوَايَةَ حَوْشَبِ بْنِ عُقَيْلٍ وَلَيْسَ بِالْقَوِيِّ عَنْ مَهْدِيٍّ الْهَجَرِيِّ وَهُوَ مَجْهُولٌ، وَهَذَا لَا يُحْتَجُّ بِهِ وَأَمَّا تَرْكُ أَبِي بَكْرٍ، وَعُمَرَ، وَابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ صِيَامَهُ فَقَدْ صَامَهُ غَيْرُهُمْ -: كَمَا

[50] **Hadith references (L12301):** Sunan Ibn Majah 1732.

chain of ʿAbd al-Raḥmān ibn Mahdī from Sahl ibn Abī al-Ṣalt from al-Ḥasan al-Baṣrī: He was asked about fasting the Day of ʿArafah and replied, "'Uthmān ibn ʿAffān fasted it on a scorching day while he was shaded." Through the chain of Ḥammād ibn Salamah from Yaḥyā ibn Saʿīd al-Anṣārī from al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq: Aisha, the Mother of the Believers, would fast the Day of ʿArafah during Ḥajj. Through this chain to Ḥammād ibn Salamah, ʿAṭāʾ al-Khurāsānī reported: ʿAbd al-Raḥmān ibn Abī Bakr entered upon Aisha, the Mother of the Believers, on the Day of ʿArafah while she was pouring water over herself [to cool down]. He said to her, "Break your fast!" She retorted, "Should I break [my fast]? I heard the Messenger of Allah—peace and blessings be upon him—say: 'Fasting the Day of ʿArafah expiates the sins of the preceding year.'"

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سَهْلِ بْنِ أَبِي الصَّلْتِ عَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ سُئِلَ عَنْ صَوْمِ يَوْمِ عَرَفَةَ؟ فَقَالَ: صَامَهُ عُثْمَانُ بْنُ عَفَّانَ فِي يَوْمٍ حَارٍّ يُظَلَّلُ عَلَيْهِ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ كَانَتْ تَصُومُ يَوْمَ عَرَفَةَ فِي الْحَجِّ. وَبِهِ إلَى حَمَّادِ بْنِ سَلَمَةَ نَا عَطَاءٌ الْخُرَاسَانِيُّ: أَنَّ عَبْدَ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ - دَخَلَ عَلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ يَوْمَ عَرَفَةَ وَهِيَ تَصُبُّ عَلَيْهَا الْمَاءَ فَقَالَ لَهَا: أَفْطِرِي؟ فَقَالَتْ: أُفْطِرُ؟ وَقَدْ سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «صَوْمُ يَوْمِ عَرَفَةَ يُكَفِّرُ الْعَامَ الَّذِي قَبْلَهُ» .

L12305 From the narration of Hishām ibn ʿUrwah: "Did ʿAbdullāh ibn al-Zubayr use to supplicate on the evening of ʿArafah when the people poured forth with water, then he would depart?" ʿAlī said: "When they differ, the recourse is to the Sunnah of Allah's Messenger—peace and blessings be upon him." It has been narrated to us via al-Bukhārī's transmission from Musaddad from Yaḥyā ibn Saʿīd al-Qaṭṭān from Shuʿbah from Tawbah from Muwarriq al-ʿIjlī, who said: "I asked Ibn ʿUmar: 'Do you pray Ḍuḥā?' He said: 'No.' I asked: 'What about ʿUmar?' He said: 'No.' I asked: 'What about Abū Bakr?' He said: 'No.' I asked: 'What about Allah's Messenger—peace and blessings be upon him?' He said: 'I do not think he did.'"

وَمِنْ طَرِيقِ هِشَامِ بْنِ عُرْوَةَ: أَنَّ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ كَانَ يَدْعُو عَشِيَّةَ عَرَفَةَ إذَا أَفَاضَ النَّاسُ بِمَاءٍ ثُمَّ يُفِيضُ؟ قَالَ عَلِيٌّ: فَإِذَا اخْتَلَفُوا فَالْمَرْجُوعُ إلَيْهِ سُنَّةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ مُسَدَّدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ شُعْبَةَ عَنْ تَوْبَةَ عَنْ مُوَرِّقٍ الْعِجْلِيِّ قَالَ: «قُلْتُ لِابْنِ عُمَرَ أَتُصَلِّي الضُّحَى؟ قَالَ: لَا، قُلْتُ: فَعُمَرُ؟ قَالَ: لَا، قُلْتُ: فَأَبُو بَكْرٍ؟ قَالَ: لَا، قُلْتُ -: فَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: لَا إخَالُهُ.»

L12306–12307 Whoever deems fasting on the Day of Arafah disliked based on Ibn Umar's statement that the Messenger of Allah (peace and blessings be upon him) did not fast it, nor did Abu Bakr or Umar, should likewise deem the Ḍhuḥā prayer disliked therein in the same manner. Both approaches are valid; otherwise, he is playing games with the religion. Since it is authentically established that Abu Bakr and Umar did not perform the Uḍḥiyah sacrifice, would they consequently deem the Uḍḥiyah sacrifice disliked for that reason? Ali said: "It is astonishing that the Prophet (peace and blessings be upon him) delivered the gravest warning regarding perpetual fasting while he himself (peace and blessings be upon him) did not observe it, yet people consider it rec-

فَمَنْ كَرِهَ صَوْمَ يَوْمِ عَرَفَةَ لِقَوْلِ ابْنِ عُمَرَ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَصُمْهُ، وَلَا أَبُو بَكْرٍ، وَلَا عُمَرُ، فَلْيَكْرَهْ صَلَاةَ الضُّحَى فِيهَا مِثْلُ ذَلِكَ، وَالطَّرِيقَانِ صَحِيحَانِ وَإِلَّا فَهُوَ مُتَلَاعِبٌ بِالدِّينِ، وَقَدْ صَحَّ أَنَّ أَبَا بَكْرٍ، وَعُمَرَ لَمْ يَكُونَا يُضَحِّيَانِ فَلْيَكْرَهُوا الْأُضْحِيَّةَ أَيْضًا لِذَلِكَ؟ قَالَ عَلِيٌّ: وَمِنْ الْعَجَبِ أَنْ يَكُونَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ جَاءَ بِأَغْلَظِ الْوَعِيدِ عَنْ صِيَامِ الدَّهْرِ وَلَمْ يَصُمْهُ - عَلَيْهِ السَّلَامُ - فَيَسْتَحِبُّونَهُ

ommended and permissible. Then when the Prophet (peace and blessings be upon him) most emphatically encouraged fasting on Arafah, they deem it disliked because he (peace and blessings be upon him) did not fast it. Yet the Prophet (peace and blessings be upon him) neither urged pilgrims to abandon it to the exclusion of others, nor did he encourage non-pilgrims from among the pilgrims." As for Abdullah ibn Ma'bad's transmission from Abu Qatadah, Abdullah is trustworthy—and trustworthy narrators are accepted; it is impermissible to reject their narrations based on assumptions. Success is from Allah the Exalted.

L12308 **A jurisprudential ruling on fasting during the ten [sacred] days of Dhū al-Ḥijjah.**

L12309 Issue 794: We recommend fasting during the ten days of Dhul-Hijjah before the Day of Sacrifice. This is based on what Hammam narrated to us from Ibn Mufarrij, from Ibn al-A'rabi, from al-Dabari, from Abd al-Razzaq, from Sufyan al-Thawri, from al-A'mash, from Muslim al-Batin, from Sa'id ibn Jubayr, from Ibn Abbas, who said: The Prophet (peace and blessings of Allah be upon him) stated, "There are no days in which deeds are more beloved to Allah - or wherein deeds are superior - than the ten days. Someone asked: 'O Messenger of Allah, not even jihad?' He replied: 'Not even jihad, except for a man who risks his life and wealth and returns with nothing whatsoever.'" Abu Muhammad commented: These are the ten days of Dhul-Hijjah, and fasting constitutes an act of righteousness. Therefore, fasting on Arafah day is also encompassed within this merit.

L12310 **Fasting on the day of Friday**

L12311–12313 Issue 795: It is not permissible to fast on Friday unless one fasts a day before it or a day after it. If a person vows to fast it, his vow is invalid. If someone fasts a day and breaks fast a day, and his fasting day coincides with Friday, let him fast it. Narrated by 'Abdullāh ibn Yūsuf from Aḥmad ibn Fatḥ from 'Abd al-Wahhāb ibn 'Īsā from Aḥmad ibn Muḥammad from Aḥmad ibn 'Alī from Muslim ibn al-Ḥajjāj from Abū Kurayb from Ḥusayn al-Ju'fī from Zā'idah from Hishām ibn Ḥassān from Ibn Sīrīn from Abū Hu-

وَيُبِيحُونَهُ ثُمَّ يَأْتِي حَضُّ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَشَدِّ الْحَضِّ عَلَى صَوْمِ عَرَفَةَ فَيَكْرَهُونَهُ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَصُمْهُ وَلَمْ يَحُضَّ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِتَرْكِهِ الْحَاجَّ دُونَ غَيْرِهِ، وَلَا بِالْحَضِّ عَلَيْهِ مَنْ لَيْسَ حَاجًّا مِنْ حَاجٍّ؟ وَأَمَّا سَمَاعُ عَبْدِ اللَّهِ بْنِ مَعْبَدٍ مِنْ أَبِي قَتَادَةَ فَعَبْدُ اللَّهِ ثِقَةٌ - وَالثِّقَاتُ مَقْبُولُونَ - لَا يَحِلُّ رَدُّ رِوَايَاتِهِمْ بِالظُّنُونِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ صِيَام أَيَّامِ الْعَشْرِ مِنْ ذِي الْحِجَّةِ]

٧٩٤ - مَسْأَلَةٌ: وَنَسْتَحِبُّ صِيَامَ أَيَّامِ الْعَشْرِ مِنْ ذِي الْحِجَّةِ قَبْلَ النَّحْرِ لِمَا حَدَّثَنَاهُ حُمَامٌ نَا ابْنُ مُفَرِّجٍ نَا ابْنُ الْأَعْرَابِيِّ نَا الدَّبَرِيُّ نَا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ مُسْلِمٍ الْبَطِينِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَا مِنْ أَيَّامٍ أَحَبُّ إلَى اللَّهِ فِيهِمْ الْعَمَلُ - أَوْ أَفْضَلُ فِيهِنَّ الْعَمَلُ - مِنْ أَيَّامِ الْعَشْرِ قِيلَ: يَا رَسُولَ اللَّهِ وَلَا الْجِهَادُ؟ قَالَ: وَلَا الْجِهَادُ إلَّا رَجُلٌ خَرَجَ بِنَفْسِهِ وَمَالِهِ فَلَمْ يَرْجِعْ مِنْ ذَلِكَ بِشَيْءٍ» . قَالَ أَبُو مُحَمَّدٍ: هُوَ عَشْرُ ذِي الْحِجَّةِ، وَالصَّوْمُ عَمَلُ بِرٍّ؛ فَصَوْمُ عَرَفَةَ يَدْخُلُ فِي هَذَا أَيْضًا.

[مَسْأَلَةٌ صَوْمُ يَوْمِ الْجُمُعَةِ]

٧٩٥ - مَسْأَلَةٌ: وَلَا يَحِلُّ صَوْمُ يَوْمِ الْجُمُعَةِ إلَّا لِمَنْ صَامَ يَوْمًا قَبْلَهُ أَوْ يَوْمًا بَعْدَهُ فَلَوْ نَذَرَهُ إنْسَانٌ كَانَ نَذْرُهُ بَاطِلًا، فَلَوْ كَانَ إنْسَانٌ يَصُومُ يَوْمًا وَيُفْطِرُ يَوْمًا فَجَاءَهُ صَوْمُهُ فِي الْجُمُعَةِ فَلْيَصُمْهُ، -: نَا عَبْدُ اللَّهِ بْنُ يُوسُفَ نَا أَحْمَدُ بْنُ فَتْحٍ نَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نَا أَحْمَدُ

rayrah from the Prophet, peace and blessings be upon him, who said: “Do not single out the night of Friday for night prayer among the nights, nor single out the day of Friday for fasting among the days except [text ends here].” Narrated by Abdullah ibn Rabee’ from Muhammad ibn Mu’awiyah from Ahmad ibn Shu’ayb from Isma’eel ibn Mas’ood (he is Al-Jahdari) from Bishr (he is the son of Al-Mufaddal) from Sa’eed (he is the son of Abi ‘Aroobah) from Qatadah from Sa’eed ibn Al-Musayyib from Abdullah ibn ‘Amr, who said: “The Messenger of Allah—peace and blessings be upon him—visited Juwayriyah bint Al-Harith on a Friday while she was fasting. He asked her: ’Did you fast yesterday?’ She replied: ’No.’ He said: ’Do you intend to fast tomorrow?’ She said: ’No.’ He then said: ’Break your fast.’” We have also narrated this through the chain of Jabir and through the chain of Juwayriyah, Umm al-Mu’minīn (Mother of the Believers).[51]

بْنُ مُحَمَّدٍ نَا أَحْمَدُ بْنُ عَلِيٍّ نَا مُسْلِمُ بْنُ الْحَجَّاجِ نَا أَبُو كُرَيْبٍ نَا حُسَيْنٌ هُوَ الْجُعْفِيُّ - عَنْ زَائِدَةَ عَنْ هِشَامٍ هُوَ ابْنُ حَسَّانٍ - عَنِ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَخْتَصُّوا لَيْلَةَ الْجُمُعَةِ بِقِيَامٍ مِنْ بَيْنِ اللَّيَالِي وَلَا تَخُصُّوا يَوْمَ الْجُمُعَةِ بِصِيَامٍ مِنْ بَيْنِ الْأَيَّامِ إِلَّا أَنْ يَكُونَ فِي صَوْمٍ يَصُومُهُ أَحَدُكُمْ» -.- نَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ نَا إِسْمَاعِيلُ بْنُ مَسْعُودٍ هُوَ الْجَحْدَرِيُّ - نَا بِشْرٌ هُوَ ابْنُ الْمُفَضَّلِ - نَا سَعِيدٌ هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ: «دَخَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى جُوَيْرِيَةَ بِنْتِ الْحَارِثِ يَوْمَ الْجُمُعَةِ وَهِيَ صَائِمَةٌ فَقَالَ لَهَا: أَصُمْتِ أَمْسِ؟ قَالَتْ: لَا قَالَ: أَتُرِيدِينَ أَنْ تَصُومِي غَدًا؟ قَالَتْ: لَا قَالَ: فَأَفْطِرِي» . وَرُوِّينَا أَيْضًا مِنْ طَرِيقِ جَابِرٍ، وَمِنْ طَرِيقِ جُوَيْرِيَةَ أُمِّ الْمُؤْمِنِينَ.

L12314 And from the chain of Junādah al-Azdī—who was a Companion of the Prophet—with all narrators transmitting from the Prophet, peace and blessings of Allah be upon him. This was also stated by a group of the Companions—may Allah be pleased with them. It has been narrated to us through the chain of Ḥammād ibn Salamah, from Saʿīd al-Jurayrī, from Abū al-ʿAlāʾ—who is Ibn al-Shikhkhīr—that Salmān al-Fārisī, the Companion of the Messenger of Allah—peace and blessings of Allah be upon him—said to Zayd ibn Ṣawḥān: “Take heed regarding the night of Friday, and do not pray during it.” ʿAlī said: “We do not know of any among the Companions—may Allah be pleased with them—who disagreed with this.”

وَمِنْ طَرِيقِ جُنَادَةَ الْأَزْدِيُّ: - وَلَهُ صُحْبَةٌ كُلُّهُمْ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.- وَبِهِ قَالَ طَائِفَةٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ سَعِيدٍ الْجُرَيْرِيِّ عَنْ أَبِي الْعَلَاءِ هُوَ ابْنُ الشِّخِّيرِ - أَنَّ سَلْمَانَ الْفَارِسِيَّ صَاحِبَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِزَيْدِ بْنِ صَوْحَانَ: انْظُرْ لَيْلَةَ الْجُمُعَةِ فَلَا تَصُلِّهَا؟ قَالَ عَلِيٌّ: لَا نَعْلَمُ لَهُ مُخَالِفًا مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L12315 From the chain of Yahyā ibn Saʿīd al-Qaṭṭān from Shuʿbah from ʿAbd al-ʿAzīz ibn Rufayʿ from Qays ibn al-Sakan, who said: Some companions of Ibn Masʿūd passed by Abū Dharr on a Friday while they were fasting. He said: “I enjoin you to break your fast, because it is a day of Eid.” Qays ibn al-

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ شُعْبَةَ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنْ قَيْسِ بْنِ السَّكَنِ قَالَ: مَرَّ نَاسٌ مِنْ أَصْحَابِ ابْنِ مَسْعُودٍ بِأَبِي ذَرٍّ يَوْمَ جُمُعَةٍ وَهُمْ صِيَامٌ فَقَالَ: عَزَمْتُ عَلَيْكُمْ لَمَا أَفْطَرْتُمْ فَإِنَّهُ يَوْمُ عِيدٍ - قَيْسُ بْنُ السَّكَنِ أَدْرَكَ أَبَا ذَرٍّ وَجَالَسَهُ. وَعَنْ

[51] **Hadith references (L12311):** Sahih Muslim 1144b.

Sakan met Abū Dharr and accompanied him. It is narrated from ʿAlī ibn Abī Ṭālib that he prohibited the intentional fasting on Friday. From the chain of Muḥammad ibn Jaʿfar from Shuʿbah from Manṣūr from Mujāhid from Abū Hurayrah, who said: "Do not fast on Friday unless you fast a day before or after it." This is the opinion of Ibrāhīm al-Nakhaʿī, Mujāhid, al-Shaʿbī, Ibn Sīrīn, and others. Ibrāhīm attributed this view to those he met—and he only met the companions of Ibn Masʿūd. If it is objected: "You have narrated through the chain of Shaybān from ʿĀṣim from Zarr from Ibn Masʿūd, who said: 'The Messenger of Allāh—peace and blessings be upon him—would fast three days each month, and he seldom omitted fasting on Friday.'"

L12316–12317 From the narration of Layth ibn Abī Sulaym through ʿUmar ibn Abī ʿUmayr, from Ibn ʿUmar: "Rarely did I see the Messenger of Allah—peace and blessings of Allah be upon him—not fasting on a Friday." And from the narration of Layth ibn Abī Sulaym through Ṭāwūs, from Ibn ʿAbbās: "Rarely did I ever see him not fasting on a Friday." Abū Muḥammad said: Layth is not a strong narrator. As for the narration of Ibn Masʿūd, it is authentic. The ruling concerning all of them is the same, which is that none of them—neither from the Messenger of Allah (peace and blessings of Allah be upon him), nor from Ibn Masʿūd, nor from Ibn ʿUmar, nor from Ibn ʿAbbās—indicates the permissibility of singling out Friday for fasting without fasting a day before or after it. We do not disapprove of fasting it if one fasts a day before or after it. It is not permissible to lie against the Messenger of Allah (peace and blessings of Allah be upon him) by attributing to him what his companion did not report from him, nor to interpret his action as contradicting his command entirely except through a clear, authentic text, which would then constitute abrogation or specification. Allah the Exalted commanded him to say: **"{I do not wish to contradict you in what I forbid you}"** [Hūd 11:88]. How could it be otherwise when an explanation of our view has been transmitted from Ibn ʿAbbās and Ṭāwūs through more authentic chains than these? As we have been narrated via the chain of Ibn Abī Shaybah: Muḥammad ibn Bakr reported from Ibn Jurayj from ʿAṭāʾ, who said: Ibn ʿAbbās used to prohibit singling out a day whenever it occurs to a person—meaning for fasting. Thus, the prohibition by Ibn ʿAbbās of singling out a specific day for fasting

عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ نَهَى عَنْ تَعَمُّدِ صِيَامِ يَوْمِ الْجُمُعَةِ. وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ عَنْ شُعْبَةَ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: لَا تَصُمْ يَوْمَ الْجُمُعَةِ إِلَّا أَنْ تَصُومَ قَبْلَهُ أَوْ بَعْدَهُ. وَهُوَ قَوْلُ إِبْرَاهِيمَ النَّخَعِيِّ، وَمُجَاهِدٍ، وَالشَّعْبِيِّ، وَابْنِ سِيرِينَ وَغَيْرِهِمْ، وَذَكَرَهُ إِبْرَاهِيمُ عَمَّنْ لَقِيَ، وَإِنَّمَا لَقِيَ أَصْحَابَ ابْنِ مَسْعُودٍ. فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ شَيْبَانَ عَنْ عَاصِمٍ عَنْ زِرٍّ عَنِ ابْنِ مَسْعُودٍ قَالَ: «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَصُومُ ثَلَاثَةَ أَيَّامٍ مِنْ كُلِّ شَهْرٍ وَقَلَّ مَا كَانَ يُفْطِرُ يَوْمَ الْجُمُعَةِ» .

وَمِنْ طَرِيقِ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ عُمَرَ بْنِ أَبِي عُمَيْرٍ «عَنِ ابْنِ عُمَرَ قَلَّ مَا رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُفْطِرًا يَوْمَ جُمُعَةٍ» . وَمِنْ طَرِيقِ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ طَاوُسٍ «عَنِ ابْنِ عَبَّاسٍ قَلَّ مَا رَأَيْتُهُ مُفْطِرًا يَوْمَ جُمُعَةٍ قَطُّ» . قَالَ أَبُو مُحَمَّدٍ: لَيْثٌ لَيْسَ بِالْقَوِيِّ وَأَمَّا خَبَرُ ابْنِ مَسْعُودٍ فَصَحِيحٌ، وَالْقَوْلُ فِيهَا كُلُّهَا سَوَاءٌ، وَهُوَ أَنَّهُ لَيْسَ فِي شَيْءٍ مِنْهَا - لَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا عَنِ ابْنِ مَسْعُودٍ، وَلَا عَنِ ابْنِ عُمَرَ، وَلَا عَنِ ابْنِ عَبَّاسٍ -: إِبَاحَةُ تَخْصِيصِ يَوْمِ الْجُمُعَةِ بِصِيَامٍ دُونَ يَوْمٍ قَبْلَهُ أَوْ يَوْمٍ بَعْدَهُ. وَنَحْنُ لَا نُنْكِرُ صِيَامَهُ إِذَا صَامَ يَوْمًا قَبْلَهُ أَوْ يَوْمًا بَعْدَهُ، وَلَا يَحِلُّ أَنْ نَكْذِبَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَنُخْبِرُ عَنْهُ بِمَا لَمْ يُخْبِرْ بِهِ عَنْهُ صَاحِبُهُ، وَلَا أَنْ نَحْمِلَ فِعْلَهُ عَلَى مُخَالَفَةِ أَمْرِهِ أَلْبَتَّةَ إِلَّا بِبَيَانِ نَصٍّ صَحِيحٍ فَيَكُونَ حِينَئِذٍ نَسْخًا أَوْ تَخْصِيصًا، قَالَ تَعَالَى آمِرًا لَهُ أَنْ يَقُولَ: {وَمَا أُرِيدُ أَنْ أُخَالِفَكُمْ إِلَى مَا أَنْهَاكُمْ عَنْهُ} [هود: ٨٨] فَكَيْفَ وَقَدْ وَرَدَ عَنِ ابْنِ عَبَّاسٍ، وَطَاوُسٍ بَيَانُ قَوْلِنَا بِأَصَحَّ مِنْ هَذِهِ الطُّرُقِ؟ كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ -: نَا مُحَمَّدُ بْنُ بَكْرٍ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: كَانَ ابْنُ عَبَّاسٍ يَنْهَى عَنْ اقْتِرَادِ الْيَوْمِ كُلَّمَا مَرَّ بِالْإِنْسَانِ - يَعْنِي عَنْ صِيَامِهِ -: فَصَحَّ نَهْيُ ابْنِ عَبَّاسٍ

is confirmed, and this includes Friday and other days. From the chain of ʿAbdullāh ibn Ṭāwūs from his father: He disliked deliberately selecting a specific day for fasting. We know of no disagreement among the Companions we mentioned—may Allah be pleased with them—regarding the prohibition of singling out Friday for fasting. Success is from Allah, the Exalted.[52]

L12318 **An issue: a person vowed to fast on the day they regain consciousness, and it coincided with a Friday.**

L12319–12321 796 - Issue: If a person vows to fast the day he recovers [from illness], or if that day coincides with Friday, it is not binding; because he does not fast a day preceding it nor a day following it, nor does it coincide with a fast he habitually performed, nor is fasting on it permissible except... In one of these two aspects, as mentioned earlier, and all success (tawfīq) lies with Allah, the Exalted.

L12322 **A Juristic Issue: Fasting the Night**

L12323–12325 797 - Issue: Fasting during the night is not permissible at all, nor may one connect the fast of one day to another without breaking the fast between them. It is obligated upon every individual to eat or drink during each day and night without exception. Narrated by Abdurrahman ibn Abdullah ibn Khalid from Ibrahim ibn Ahmad from Al-Farbari from Al-Bukhari from Ibrahim ibn Hamzah from Ibn Abi Hazim from Yazid - Ibn Al-Hadi - from Abdullah ibn Khabbab from Abu Sa'id Al-Khudri: "He heard Allah's Messenger - peace and blessings be upon him - say: 'Do not practice continuous fasting. Let whoever wishes to do so fast until the pre-dawn meal time.' They said: 'Yet you practice it, O Messenger of Allah!' He replied: 'I am not in the same state as you. I spend the night with One who feeds me and One who gives me drink.'" We have transmitted this as an authentic chain-supported narration through the routes of Umm Al-Mu'minin Aisha, Anas, Abu Huraira, and Ibn Umar - all from Allah's Messenger - peace and

[52] **Qur'an references (L12317):** Qur'an 11:88 (Hud).

عَنْ افْتِرَادِ يَوْمٍ بِعَيْنِهِ فِي الصَّوْمِ، فَدَخَلَ فِي ذَلِكَ يَوْمُ الْجُمُعَةِ وَغَيْرُهُ. وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ كَانَ يَكْرَهُ أَنْ يَتَحَرَّى يَوْمًا يَصُومُهُ، وَمَا نَعْلَمُ لِمَنْ ذَكَرْنَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفًا أَصْلًا فِي النَّهْيِ عَنْ تَخْصِيصِ يَوْمِ الْجُمُعَةِ بِالصِّيَامِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ نَذَرَ صَوْمَ يَوْمَ يُفِيقُ فَوَافَقَ يَوْمَ جُمُعَةٍ]

٧٩٦ - مَسْأَلَةٌ: فَلَوْ نَذَرَ الْمَرْءُ صَوْمَ يَوْمَ يُفِيقُ، أَوْ ذَلِكَ فَوَافَقَ يَوْمَ جُمُعَةٍ لَمْ يَلْزَمْ؛ لِأَنَّهُ لَا يَصُومُ يَوْمًا قَبْلَهُ، وَلَا يَوْمًا بَعْدَهُ، وَلَا وَافَقَ صَوْمًا كَانَ يَصُومُهُ، وَلَا يَجُوزُ صِيَامُهُ إلَّا بِأَحَدِ هَذَيْنِ الْوَجْهَيْنِ كَمَا ذَكَرْنَا قَبْلُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ صَوْمُ اللَّيْلِ]

٧٩٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ صَوْمُ اللَّيْلِ أَصْلًا، وَلَا أَنْ يَصِلَ الْمَرْءُ صَوْمَ يَوْمٍ بِصَوْمِ يَوْمٍ آخَرَ لَا يُفْطِرُ بَيْنَهُمَا، وَفُرِضَ عَلَى كُلِّ أَحَدٍ أَنْ يَأْكُلَ أَوْ يَشْرَبَ فِي كُلِّ يَوْمٍ وَلَيْلَةٍ وَلَا بُدَّ. نَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نَا إبْرَاهِيمُ بْنُ أَحْمَدَ نَا الْفَرَبْرِيُّ نَا الْبُخَارِيُّ نَا إبْرَاهِيمُ بْنُ حَمْزَةَ نَا ابْنُ أَبِي حَازِمٍ عَنْ يَزِيدَ هُوَ ابْنُ الْهَادِي - عَنْ عَبْدِ اللَّهِ بْنِ خَبَّابٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ: " أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا تُوَاصِلُوا فَأَيُّكُمْ أَرَادَ أَنْ يُوَاصِلَ فَلْيُوَاصِلْ حَتَّى السَّحَرِ، قَالُوا: فَإِنَّكَ تُوَاصِلُ يَا رَسُولَ اللَّهِ قَالَ: لَسْتُ كَهَيْئَتِكُمْ، إنِّي أَبِيتُ لِي مُطْعِمٌ يُطْعِمُنِي وَسَاقٍ يَسْقِينِي» . وَرُوِّينَاهُ أَيْضًا مُسْنَدًا صَحِيحًا مِنْ طَرِيقِ أُمِّ الْمُؤْمِنِينَ عَائِشَةَ، وَأَنَسٍ، وَأَبِي هُرَيْرَةَ، وَابْنِ عُمَرَ، كُلِّهِمْ

blessings be upon him. These narrations comprehensively encompass all that we have stated. Abu Muhammad said: “We have transmitted the prohibition of continuous fasting from Abu Sa’id Al-Khudri, Aisha the Mother of the Believers, Ali, and Abu Huraira. We have also transmitted from some early scholars the permissibility of continuous fasting, as reported through Ibn Wahb from Yunus from Ibn Shihab: Abu Salama ibn Abdurrahman ibn Awf narrated that Abu Huraira said: ’Allah’s Messenger - peace and blessings be upon him - forbade continuous fasting. A man said: ”Yet you do it, O Messenger of Allah¡‘ He replied: ”Which of you is like me? I spend the night with my Lord feeding me and giving me drink.“ When they refused to cease continuous fasting, he fasted with them one day then another until they sighted the crescent. He - peace be upon him - said: ”Had the crescent been delayed, I would have prolonged it for you“ - acting as a deterrent when they refused to desist.”’ From the sister of Abu Sa’id Al-Khudri, it is reported that she practiced continuous fasting while her brother forbade her. Ali said: “She is certainly a righteous woman.” Through Hammad ibn Salama from Ammar ibn Abi Ammar: “Abdullah ibn Al-Zubayr would fast continuously for seven days. On the seventh night, he would call for a vessel of ghee to consume, then be brought a dish of tharid.” Two vessels, and he brings people large platters, saying: “This is from my personal wealth, and this is from your public treasury.” Ibn Waḍḍāḥ would fast continuously for four days. Abū Muḥammad said: “This clarifies that no valid proof exists for anyone besides Allah’s Messenger (peace and blessings be upon him)—neither a Companion nor others. Indeed, some Companions (may Allah be pleased with them) practiced continuous fasting during the Prophet’s lifetime (peace be upon him), advancing strained interpretations. How then after him (peace be upon him)? How about those below them in rank? There is no difference between one who opposed his encouragement (peace be upon him) to fast the Day of ‘Arafah and his prohibition (peace be upon him) against singling out Friday for fasting—claiming he (peace be upon him) did not fast the Day of ‘Arafah, alongside Ibn Mas‘ūd’s statement: ’I rarely saw him (peace be upon him) breaking fast on a Friday’—and one who opposed his prohibition against continuous fasting while claiming he (peace be upon him) practiced it.”

عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذِهِ الْآثَارُ تَنْتَظِمُ كُلَّ مَا قُلْنَا. قَالَ أَبُو مُحَمَّدٍ: وَقَدْ رُوِّينَا النَّهْيَ عَنْ الْوِصَالِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ، وَعَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَعَلِيٍّ، وَأَبِي هُرَيْرَةَ، وَرُوِّينَا عَنْ بَعْضِ السَّلَفِ إبَاحَةَ الْوِصَالِ، كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ عَنْ ابْنِ شِهَابٍ حَدَّثَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَّ أَبَا هُرَيْرَةَ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْوِصَالِ فَقَالَ رَجُلٌ مِنْ الْمُسْلِمِينَ: فَإِنَّكَ تُوَاصِلُ يَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: وَأَيُّكُمْ مِثْلِي إنِّي أَبِيتُ يُطْعِمُنِي رَبِّي وَيَسْقِينِي؛ فَلَمَّا أَبَوْا أَنْ يَنْتَهُوا عَنْ الْوِصَالِ وَاصَلَ بِهِمْ يَوْمًا ثُمَّ يَوْمًا ثُمَّ رَأَوْا الْهِلَالَ فَقَالَ - عَلَيْهِ السَّلَامُ -: لَوْ تَأَخَّرَ الْهِلَالُ لَزِدْتُكُمْ؛ كَالْمُنَكِّلِ لَهُمْ حِينَ أَبَوْا أَنْ يَنْتَهُوا» . وَعَنْ أُخْتِ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّهَا كَانَتْ تُوَاصِلُ، وَكَانَ أَخُوهَا يَنْهَاهَا؛ قَالَ عَلِيٌّ: هِيَ صَاحِبَةٌ بِلَا شَكٍّ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نَا عَمَّارُ بْنُ أَبِي عَمَّارٍ قَالَ: كَانَ عَبْدُ اللَّهِ بْنُ الزُّبَيْرِ يُوَاصِلُ سَبْعَةَ أَيَّامٍ فَإِذَا كَانَ اللَّيْلَةَ السَّابِعَةَ دَعَا بِإِنَاءٍ مِنْ سَمْنٍ فَشَرِبَهُ ثُمَّ يُؤْتَى بِثَرِيدَةٍ فِيهَا عَرْقَانِ وَيُؤْتِي النَّاسَ بِالْجِفَانِ فَيَقُولُ: هَذَا مِنْ خَالِصِ مَالِي، وَهَذَا مِنْ بَيْتِ مَالِكُمْ. وَكَانَ ابْنُ وَضَّاحٍ يُوَاصِلُ أَرْبَعَةَ أَيَّامٍ. قَالَ أَبُو مُحَمَّدٍ: هَذَا يُوَضِّحُ أَنْ لَا حُجَّةَ فِي أَحَدٍ غَيْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا صَاحِبٍ، وَلَا غَيْرِهِ؛ فَقَدْ وَاصَلَ قَوْمٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي حَيَاةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَأَوَّلُوا فِي ذَلِكَ التَّأْوِيلَاتِ الْبَعِيدَةَ فَكَيْفَ بَعْدَهُ - عَلَيْهِ السَّلَامُ -؟ فَكَيْفَ مَنْ دُونَهُمْ؟ وَلَا فَرْقَ بَيْنَ مَنْ خَالَفَ حَضَّهُ - عَلَيْهِ السَّلَامُ - عَلَى صَوْمِ يَوْمِ عَرَفَةَ وَنَهْيِهِ - عَلَيْهِ السَّلَامُ - عَنْ تَخْصِيصِ صَوْمِ يَوْمِ الْجُمُعَةِ، وَتَأَوَّلُوا فِي ذَلِكَ: أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَصُمْ يَوْمَ

عَرَفَةَ «، وَقَوْلَ ابْنِ مَسْعُودٍ قَلَّ مَا رَأَيْتُهُ - عَلَيْهِ السَّلَامُ - مُفْطِرًا يَوْمَ الْجُمُعَةِ» وَبَيْنَ مَنْ خَالَفَ نَهْيَهُ عَنْ الْوِصَالِ وَتَأَوَّلَ أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يُوَاصِلُ.

[مَسْأَلَةُ صَوْمُ يَوْمِ الشَّكِّ]

An Issue: Fasting the Day of Doubt

٧٩٨ - مَسْأَلَةٌ: وَلَا يَجُوزُ صَوْمُ يَوْمِ الشَّكِّ الَّذِي مِنْ آخِرِ شَعْبَانَ، وَلَا صِيَامُ الْيَوْمِ الَّذِي قَبْلَ يَوْمِ الشَّكِّ الْمَذْكُورِ إلَّا مَنْ صَادَفَ يَوْمًا كَانَ يَصُومُهُ فَيَصُومُهُمَا حِينَئِذٍ لِلْوَجْهِ الَّذِي كَانَ يَصُومُهُمَا لَهُ لَا لِأَنَّهُ يَوْمُ شَكٍّ وَلَا خَوْفًا مِنْ أَنْ يَكُونَ مِنْ رَمَضَانَ -: نَا عَبْدُ اللَّهِ بْنُ يُوسُفَ نَا أَحْمَدُ بْنُ فَتْحٍ نَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نَا أَحْمَدُ بْنُ مُحَمَّدٍ نَا أَحْمَدُ بْنُ عَلِيٍّ نَا مُسْلِمُ بْنُ الْحَجَّاجِ نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَأَبُو كُرَيْبٍ كِلَاهُمَا عَنْ وَكِيعٍ عَنْ عَلِيِّ بْنِ الْمُبَارَكِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَقَدَّمُوا رَمَضَانَ بِصَوْمِ يَوْمٍ وَلَا يَوْمَيْنِ إلَّا رَجُلٌ كَانَ يَصُومُ صَوْمًا فَلْيَصُمْ» . وَقَدْ ذَكَرْنَا أَمْرَهُ - عَلَيْهِ السَّلَامُ - بِأَنْ لَا يُصَامَ حَتَّى يُرَى الْهِلَالُ مِنْ طَرِيقِ ابْنِ عَمْرٍو -: نَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نَا أَحْمَدُ بْنُ خَالِدٍ نَا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نَا الْحَجَّاجُ بْنُ الْمِنْهَالِ نَا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ ابْنِ عَبَّاسٍ: " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «صُومُوا لِرُؤْيَتِهِ وَأَفْطِرُوا لِرُؤْيَتِهِ فَإِنْ أُغْمِيَ عَلَيْكُمْ فَعُدُّوا ثَلَاثِينَ، قَالُوا: يَا رَسُولَ اللَّهِ أَلَا نُقَدِّمُ بَيْنَ يَدَيْهِ يَوْمًا أَوْ يَوْمَيْنِ؟ فَغَضِبَ وَقَالَ: لَا» . قَالَ أَبُو مُحَمَّدٍ: نَعُوذُ بِاَللَّهِ مِنْ غَضَبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَذَا الْخَبَرُ يُوَضِّحُ أَنَّهُ لَا حُجَّةَ فِي أَيِّ صَاحِبٍ وَلَا غَيْرِهِ أَصْلًا - وَبِهَذَا يَقُولُ طَائِفَةٌ مِنْ السَّلَفِ -: رُوِّينَا عَنْ ابْنِ مَسْعُودٍ أَنَّهُ قَالَ: لَأَنْ أُفْطِرَ يَوْمًا مِنْ

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٧٩٨ - Issue: It is not permissible to fast the day of doubt at the end of Sha'ban, nor to fast the day preceding this mentioned day of doubt, except for one who encounters a day he customarily fasts. In that case, he may fast both days for the reason he used to fast them - not because it is a day of doubt nor out of fear that it might belong to Ramadan. Narrated by 'Abdullāh ibn Yūsuf, from Aḥmad ibn Fatḥ, from 'Abd al-Wahhāb ibn 'Īsā, from Aḥmad ibn Muḥammad, from Aḥmad ibn 'Alī, from Muslim ibn al-Ḥajjāj, from Abū Bakr ibn Abī Shaybah and Abū Kurayb - both from Wakī', from 'Alī ibn al-Mubārak, from Yaḥyā ibn Abī Kathīr, from Abū Salamah, from Abū Hurayrah, who said: The Messenger of Allah - peace be upon him - said: "Do not anticipate Ramadan by fasting a day or two except a man who was fasting a fast - let him fast it." We have previously mentioned his command - peace be upon him - that one must not fast until the crescent is sighted through the narration of Ibn 'Amr: Narrated by 'Abdullāh ibn Rabī', from 'Abdullāh ibn Muḥammad ibn 'Uthmān, from Aḥmad ibn Khālid, from 'Alī ibn 'Abd al-'Azīz, from al-Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salamah, from 'Amr ibn Dīnār, from Ibn 'Abbās: "That..." The Prophet - peace and blessings of Allah be upon him - said: "Fast upon sighting it and break your fast upon sighting it. If it is obscured from you, then complete thirty days." They said: "O Messenger of Allah, should we not precede it by a day or two?" He became angry and said: "No." Abu Muhammad said: We seek refuge with Allah from the anger of Allah's Messenger - peace and blessings of Allah be upon him. This report clarifies that there is absolutely no valid proof in any companion or others whatsoever - and this is the view held by a group of the Salaf: It has been narrated to us from Ibn Mas'ud that he said: "For me to break fast one day of Ramadan then make it up is more beloved to me than adding a day that is not part of Ramadan." From Hudhayfah that he used to prohibit fasting the day of doubt. From Abu

رَمَضَانَ ثُمَّ أَقْضِيهُ أَحَبُّ إِلَيَّ مِنْ أَنْ أَزِيدَ فِيهِ يَوْمًا لَيْسَ فِيهِ. وَعَنْ حُذَيْفَةَ أَنَّهُ كَانَ يَنْهَى عَنْ صَوْمِ الْيَوْمِ الَّذِي يَشُكُّ فِيهِ. وَعَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ صِلَةَ بْنِ أَشْيَمَ أَنَّهُ سَمِعَ عَمَّارَ بْنَ يَاسِرٍ فِي يَوْمِ الشَّكِّ فِي آخِرِ شَعْبَانَ يَقُولُ: مَنْ صَامَ هَذَا الْيَوْمَ فَقَدْ عَصَى أَبَا الْقَاسِمِ. وَعَنْ حُذَيْفَةَ، وَابْنِ عَبَّاسٍ، وَأَبِي هُرَيْرَةَ، وَعُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَأَنَسِ بْنِ مَالِكٍ: النَّهْيُ عَنْ صِيَامِهِ. وَعَنْ ابْنِ عُمَرَ، وَالضَّحَّاكِ بْنِ قَيْسٍ أَنَّهُمَا قَالَا: لَوْ صُمْت السَّنَةَ كُلَّهَا لَأَفْطَرْت الْيَوْمَ الَّذِي يُشَكُّ فِيهِ؟ قَالَ أَبُو مُحَمَّدٍ: وَرُوِيَ خِلَافُ هَذَا عَنْ بَعْضِ السَّلَفِ -: كَمَا رُوِّينَا عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا قَالَتْ: لَأَنْ أَصُومَ يَوْمًا مِنْ شَعْبَانَ أَحَبُّ إِلَيَّ مِنْ أَنْ أُفْطِرَ يَوْمًا مِنْ رَمَضَانَ. وَعَنْ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ: أَنَّهَا كَانَتْ تَصُومُ يَوْمَ الشَّكِّ -: وَحَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ نَا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ نَا أَحْمَدُ بْنُ خَالِدٍ نَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نَا مُحَمَّدُ بْنُ بَشَّارٍ نَا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ نَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ قَالَ: كَانَ ابْنُ عُمَرَ إِذَا خَلَتْ تِسْعٌ وَعِشْرُونَ لَيْلَةً مِنْ شَعْبَانَ بَعَثَ مَنْ يَنْظُرُ الْهِلَالَ فَإِنْ حَالَ مِنْ دُونِ مَنْظَرِهِ سَحَابٌ أَوْ قَتَرَةٌ أَصْبَحَ صَائِمًا، وَإِنْ لَمْ يَرَ وَلَمْ يَحُلْ دُونَ مَنْظَرِهِ أَصْبَحَ مُفْطِرًا. وَعَنْ أَبِي عُثْمَانَ النَّهْدِيِّ أَنَّهُ كَانَ يَصُومُ يَوْمَ الشَّكِّ. وَعَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ: أَنَّهُ كَانَ لَا يَكْرَهُ صِيَامَ يَوْمِ الشَّكِّ إِلَّا إِنْ أُغْمِيَ دُونَ رُؤْيَةِ الْهِلَالِ، وَعَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ كَانَ يُصْبِحُ يَوْمَ الشَّكِّ صَائِمًا فَإِنْ قَدِمَ خَبَرٌ بِرُؤْيَةِ الْهِلَالِ مَا بَيْنَهُ وَبَيْنَ نِصْفِ النَّهَارِ أَتَمَّ صَوْمَهُ وَإِلَّا أَفْطَرَ. وَبِالنَّهْيِ عَنْ صَوْمِهِ جُمْلَةً يَقُولُ إِبْرَاهِيمُ النَّخَعِيُّ، وَالشَّعْبِيُّ، وَعِكْرِمَةُ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَابْنُ سِيرِينَ وَغَيْرُهُمْ. قَالَ أَبُو مُحَمَّدٍ: هَذَا ابْنُ عُمَرَ هُوَ رَوَى أَنْ لَا يُصَامَ حَتَّى يَرَى الْهِلَالَ ثُمَّ كَانَ يَفْعَلُ مَا ذَكَرْنَا، وَاحْتَجَّ مَنْ رَأَى صِيَامَ يَوْمِ الشَّكِّ بِمَا رُوِّينَا مِنْ

Ishaq al-Sabi'i from Silah ibn Ashim that he heard Ammar ibn Yasir say on the day of doubt at the end of Sha'ban: "Whoever fasts this day has disobeyed Abu al-Qasim." From Hudhayfah, Ibn Abbas, Abu Hurayrah, Umar ibn al-Khattab, Ali ibn Abi Talib, and Anas ibn Malik: The prohibition against fasting it. From Ibn Umar and al-Dahhak ibn Qays that they said: "If I were to fast the entire year, I would break fast on the day of doubt." Abu Muhammad said: Contrary reports are narrated from some of the Salaf - such as the narration from Aishah, the Mother of the Believers, that she said: "For me to fast a day of Sha'ban is more beloved than breaking a day of Ramadan." From Asma bint Abi Bakr: That she used to fast the day of doubt. Yunus ibn Abdullah narrated to us: Ahmad ibn Abdullah ibn Abd al-Rahim narrated to us: Ahmad ibn Khalid narrated to us: Muhammad ibn Abd al-Salam al-Khushani narrated to us: Muhammad ibn Bashshar narrated to us: Abd al-Wahhab ibn Abd al-Majid al-Thaqafi narrated to us: Ubaydullah ibn Umar narrated from Nafi who said: "When twenty-nine nights of Sha'ban had passed, Ibn Umar would send someone to look for the crescent. If clouds or haze obstructed its visibility, he would fast that day. If it was not seen and nothing obstructed its visibility, he would begin the day without fasting." From Abu Uthman al-Nahdi that he used to fast the day of doubt. From al-Qasim ibn Muhammad: That he did not disapprove of fasting the day of doubt except when clouds prevented sighting the crescent. From Al-Ḥasan al-Baṣrī: He would start the day fasting on the day of uncertainty. If news of the crescent sighting reached him between his time and midday, he would complete his fast; otherwise, he would break it. Regarding the total prohibition of fasting on that day, Ibrāhīm al-Nakhaʿī, al-Shaʿbī, ʿIkrimah, Saʿīd ibn Jubayr, Ibn Sīrīn, and others say this. Abū Muḥammad said: This Ibn ʿUmar is the one who transmitted the prohibition of fasting until the crescent is sighted—then he did as we mentioned. Those who permit fasting on the day of uncertainty cite as evidence the narration we transmitted from Muslim's chain: Ibn Abī Shaybah from Yazīd ibn Hārūn from al-Jurayrī from Abī al-ʿAlāʾ from Muṭarrif from ʿImrān ibn al-Ḥuṣayn: "The Prophet (peace and blessings be upon him) asked a man, 'Did you fast any of the final days of this month?'—meaning Shaʿbān. The man replied, 'No.' He said, 'When you have ended the fast of Ramaḍān, fast two days in its place.'" They also cite our

narration from Abū Dāwūd's chain: Aḥmad ibn Ḥanbal from Muḥammad ibn Jaʿfar from Shuʿbah from Tawbah al-ʿAnbarī from Muḥammad ibn Ibrāhīm from Abī Salamah ibn ʿAbd al-Raḥmān from Umm Salamah, the Mother of the Believers: "The Prophet (peace and blessings be upon him) never fasted an entire month except Shaʿbān, which he would connect to Ramaḍān."

طَرِيقِ مُسْلِمٍ عَنْ ابْنِ أَبِي شَيْبَةَ نَا يَزِيدُ بْنُ هَارُونَ عَنْ الْجُرَيْرِيِّ عَنْ أَبِي الْعَلَاءِ عَنْ مُطَرِّفٍ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِرَجُلٍ: هَلْ صُمْت مِنْ سُرَرِ هَذَا الشَّهْرِ شَيْئًا؟ يَعْنِي شَعْبَانَ قَالَ: لَا، قَالَ: فَإِذَا أَفْطَرْتَ مِنْ صِيَامِ رَمَضَانَ فَصُمْ يَوْمَيْنِ مَكَانَهُ» . وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نَا أَحْمَدُ بْنُ حَنْبَلٍ نَا مُحَمَّدُ بْنُ جَعْفَرٍ نَا شُعْبَةُ عَنْ تَوْبَةَ الْعَنْبَرِيِّ عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَكُنْ يَصُومُ مِنْ السَّنَةِ شَهْرًا تَامًّا إلَّا شَعْبَانَ يَصِلُهُ بِرَمَضَانَ» .

L12332 From the narration of Abdullah ibn Abi al-Ala, through Abi al-Azhar al-Mughirah ibn Farwah, who said: Muʿāwiyah ibn Abī Sufyān stood before the people at Dayr Mishal near the gate of Ḥimṣ and said: "O people, we have sighted the crescent on such-and-such day, and we will begin fasting. Let whoever wishes to follow suit do so." Mālik ibn Hubayrah al-Sabāʿī rose and said: "Muʿāwiyah—is this something you heard from Allah's Messenger—peace and blessings be upon him—or your own opinion?" He replied: "I heard Allah's Messenger—peace and blessings be upon him—say: 'Fast the month and its hidden portion.'"

Abu Muḥammad remarked: "Al-Mughīrah ibn Farwah is obscure. Even if the narration were sound, it would hold no validity as evidence, for its text states: 'Fast the month and its hidden portion'—unquestionably referring to the month of Ramadan, not any other month. 'Its hidden portion' is annexed to it (the month), and this phrase can only denote its beginning, end, or midpoint. Whichever applies, it pertains to Ramadan, not Shaʿbān. The narration does not state: 'Fast the hidden portion of Shaʿbān.' Thus, it cannot be used as evidence."

L12333–12334 As for the report of Umm Salamah, there is no evidence for them in it, because whoever had an accustomed fast coinciding with the Day of Uncertainty must observe it, as stated in the narration we introduced earlier.

وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَبِي الْعَلَاءِ عَنْ أَبِي الْأَزْهَرِ الْمُغِيرَةِ بْنِ فَرْوَةَ قَالَ: قَامَ مُعَاوِيَةُ بْنُ أَبِي سُفْيَانَ فِي النَّاسِ فِي دَيْرِ مِسْحَلٍ الَّذِي عَلَى بَابِ حِمْصٍ فَقَالَ: يَا أَيُّهَا النَّاسُ إنَّا قَدْ رَأَيْنَا الْهِلَالَ يَوْمَ كَذَا وَكَذَا وَأَنَا مُتَقَدِّمٌ بِالصِّيَامِ فَمَنْ أَحَبَّ أَنْ يَفْعَلَهُ فَلْيَفْعَلْهُ، فَقَامَ إلَيْهِ مَالِكُ بْنُ هُبَيْرَةَ السَّبَائِيُّ فَقَالَ: يَا مُعَاوِيَةُ أَشَيْءٌ سَمِعْتَهُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ أَمْ شَيْءٌ مِنْ رَأْيِكَ؟ فَقَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «صُومُوا الشَّهْرَ وَسِرَّهُ» . قَالَ أَبُو مُحَمَّد: الْمُغِيرَةُ بْنُ فَرْوَةَ غَيْرُ مَشْهُورٍ ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ أَصْلًا، لِأَنَّ نَصَّهُ «صُومُوا الشَّهْرَ وَسِرَّهُ» وَهُوَ بِلَا شَكٍّ شَهْرُ رَمَضَانَ لَا مَا سِوَاهُ " وَسِرَّهُ " مُضَافٌ إلَيْهِ، وَلَا يَخْلُو " سِرُّهُ " مِنْ أَنْ يَكُونَ أَوَّلَهُ أَوْ آخِرَهُ أَوْ وَسَطَهُ وَأَيَّ ذَلِكَ كَانَ؟ فَهُوَ مِنْ رَمَضَانَ لَا مِنْ شَعْبَانَ، وَلَيْسَ فِيهِ: صُومُوا سِرَّ شَعْبَانَ، فَبَطَلَ التَّعَلُّقُ بِهِ.

وَأَمَّا خَبَرُ أُمِّ سَلَمَةَ فَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ كُلَّ مَنْ كَانَ لَهُ صَوْمٌ مَعْهُودٌ فَوَافَقَ يَوْمَ الشَّكِّ فَلْيَصُمْهُ كَمَا جَاءَ فِي الْخَبَرِ الَّذِي صَدَّرْنَا بِهِ، وَلَا يَجُوزُ أَنْ يُحْمَلَ صَوْمُ النَّبِيِّ - صَلَّى

It is impermissible to interpret the Prophet's fasting—peace be upon him—for himself or his joining Shaʿban with Ramadan unless it is considered an accustomed fast he had. As for ʿImran's report, it is authentic but contains no evidence for them, for we do not know what the Prophet—peace be upon him—used to say to him. If a man were to say, "I fasted the middle days of Shaʿban," would he forbid him or approve it? Established religious rulings cannot be contradicted by conjectures or ambiguous matters. Even if these narrations contained explicit evidence permitting fasting the Day of Uncertainty in Shaʿban, it would still not have been evidence for them, since fasting the Day of Uncertainty and other days was unquestionably permissible in early Islam, for fasting as a whole is an act of virtue and goodness. When the Prophet's prohibition—peace be upon him—against fasting two days preceding Ramadan became firmly established, except for those with an accustomed fast, it became certain beyond doubt that the prior permissibility had been abrogated and annulled. This is because fasting preceded this prohibition by explicit textual stipulation, just as his exception—peace be upon him—applied to those with an accustomed fast. It is unlawful to act upon anything confirmed as abrogated beyond doubt, nor is it permissible to contravene the abrogating ruling. Whoever claims the abrogated ruling has been reinstated or that the abrogation itself is void has uttered falsehood, pursued matters beyond his knowledge, and advanced claims devoid of evidence. Conjecture is the falsest of speech.

اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهُ وَفِي وَصْلِهِ شَعْبَانَ بِرَمَضَانَ إِلَّا عَلَى أَنَّهُ صَوْمٌ مَعْهُودٌ كَانَ لَهُ؟ وَأَمَّا خَبَرُ عِمْرَانَ فَصَحِيحٌ إِلَّا أَنَّهُ لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّا لَا نَدْرِي مَاذَا كَانَ يَقُولُ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ لَوْ قَالَ لَهُ الرَّجُلُ: إِنَّهُ صَامَ سِرَرَ شَعْبَانَ أَيَنْهَاهُ أَمْ يُقِرُّهُ عَلَى ذَلِكَ؟ وَالشَّرَائِعُ الثَّابِتَةُ لَا يَجُوزُ خِلَافُهَا بِالظُّنُونِ وَلَا بِمَا لَا بَيَانَ فِيهِ، ثُمَّ لَوْ كَانَ فِي هَذِهِ الْأَخْبَارِ بَيَانٌ جَلِيٌّ بِإِبَاحَةِ صَوْمِ يَوْمِ الشَّكِّ مِنْ شَعْبَانَ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّ صَوْمَ يَوْمِ الشَّكِّ وَغَيْرِهِ كَانَ مُبَاحًا بِلَا شَكٍّ فِي صَدْرِ الْإِسْلَامِ، لِأَنَّ الصَّوْمَ جُمْلَةَ عَمَلُ بِرٍّ وَخَيْرٍ، فَلَمَّا صَحَّ نَهْيُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ صَوْمِ يَوْمَيْنِ قَبْلَ رَمَضَانَ إِلَّا لِمَنْ كَانَ لَهُ صَوْمٌ يَصُومُهُ صَحَّ يَقِينًا لَا مِرْيَةَ فِيهِ أَنَّ الْإِبَاحَةَ الْمُتَقَدِّمَةَ قَدْ نُسِخَتْ وَبَطَلَتْ، لِأَنَّ الصَّوْمَ قَدْ كَانَ مُتَقَدِّمًا لِهَذَا النَّهْيِ بِنَصِّهِ كَمَا هُوَ لِاسْتِثْنَائِهِ - عَلَيْهِ السَّلَامُ - مَنْ كَانَ لَهُ صَوْمٌ فَلْيَصُمْهُ، وَلَا يَحِلُّ الْعَمَلُ بِشَيْءٍ قَدْ صَحَّ أَنَّهُ مَنْسُوخٌ بِلَا شَكٍّ وَلَا يَحِلُّ خِلَافُ النَّاسِخِ وَمَنْ ادَّعَى أَنَّ الْحَالَةَ الْمَنْسُوخَةَ قَدْ عَادَتْ وَأَنَّ النَّاسِخَ قَدْ بَطَلَ فَقَدْ كَذَبَ وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَقَالَ مَا لَا دَلِيلَ لَهُ بِهِ أَبَدًا، وَالظَّنُّ أَكْذَبُ الْحَدِيثِ.

The Issue of Self-Reproach on the Day of Uncertainty.

[مَسْأَلَةُ التَّلَوُّمِ فِي يَوْمِ الشَّكِّ]

799. Issue: There is no meaning to hesitation on the day of uncertainty. If one's hesitation involves the intention to fast, they have contradicted the command of Allah's Messenger—peace be upon him—to abandon fasting and violated the prohibition. If their hesitation occurs without fasting intention, it constitutes pointless exertion devoid of purpose, as a person who breaks the fast refraining from eating performs a meaningless act. We have received narrations from Anas and a group with him regarding hastening the breaking of the fast immediately at its due time.

٧٩٩ - مَسْأَلَةٌ: وَلَا مَعْنَى لِلتَّلَوُّمِ فِي يَوْمِ الشَّكِّ، لِأَنَّهُ إِنْ كَانَ تَلَوُّمُهُ بِنِيَّةِ الصَّوْمِ فَقَدْ خَالَفَ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِتَرْكِ صَوْمِهِ وَوَاقَعَ النَّهْيَ، وَإِنْ كَانَ تَلَوُّمُهُ بِغَيْرِ نِيَّةِ الصَّوْمِ فَهُوَ عَنَاءٌ لَا مَعْنَى لَهُ، وَتَرْكُ الْمُفْطِرِ الْأَكْلَ عَمَلٌ فَارِغٌ. وَقَدْ رُوِّينَا عَنْ أَنَسٍ وَجَمَاعَةٍ مَعَهُ تَعْجِيلَ الْفِطْرِ فِي أَوَّلِهِ.

Voluntary fasting on the sixteenth day of Shaʿbān.

[مَسْأَلَةٌ صَوْمُ الْيَوْمِ السَّادِسَ عَشَرَ مِنْ شَعْبَانَ تَطَوُّعًا]

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٨٠٠ - مَسْأَلَةٌ: وَلَا يَجُوزُ صَوْمُ الْيَوْمِ السَّادِسَ عَشَرَ مِنْ شَعْبَانَ تَطَوُّعًا أَصْلًا وَلَا لِمَنْ صَادَفَ يَوْمًا كَانَ يَصُومُهُ -: نَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نَا مُحَمَّدُ بْنُ بَكْرٍ نَا أَبُو دَاوُد نَا قُتَيْبَةُ بْنُ سَعِيدٍ نَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ قَالَ: قَدِمَ عَبَّادُ بْنُ كَثِيرٍ الْمَدِينَةَ فَمَالَ إلَى مَجْلِسِ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ فَأَخَذَ بِيَدِهِ فَأَقَامَهُ ثُمَّ قَالَ: اللَّهُمَّ إنَّ هَذَا يُحَدِّثُ عَنْ أَبِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا انْتَصَفَ شَعْبَانُ فَلَا تَصُومُوا» فَقَالَ الْعَلَاءُ: اللَّهُمَّ إنَّ أَبِي حَدَّثَنِي عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ ذَلِكَ. قَالَ أَبُو مُحَمَّدٍ: هَكَذَا رَوَاهُ سُفْيَانُ عَنْ الْعَلَاءِ، وَالْعَلَاءُ ثِقَةٌ رَوَى عَنْهُ: شُعْبَةُ، وَسُفْيَانُ الثَّوْرِيُّ، وَمَالِكٌ، وَسُفْيَانُ بْنُ عُيَيْنَةَ، وَمِسْعَرُ بْنُ كِدَامٍ، وَأَبُو الْعُمَيْسِ، وَكُلُّهُمْ يُحْتَجُّ بِحَدِيثِهِ فَلَا يَضُرُّهُ غَمْزُ ابْنِ مَعِينٍ لَهُ، وَلَا يَجُوزُ أَنْ يُظَنَّ بِأَبِي هُرَيْرَةَ مُخَالَفَةُ مَا رَوَى عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالظَّنُّ أَكْذَبُ الْحَدِيثِ؛ فَمَنْ ادَّعَى هَاهُنَا إجْمَاعًا فَقَدْ كَذَبَ. وَقَدْ كَرِهَ قَوْمٌ الصَّوْمَ بَعْدَ النِّصْفِ مِنْ شَعْبَانَ جُمْلَةً، إلَّا أَنَّ الصَّحِيحَ الْمُتَيَقَّنَ مِنْ مُقْتَضَى لَفْظِ هَذَا الْخَبَرِ النَّهْيُ عَنْ الصِّيَامِ بَعْدَ النِّصْفِ مِنْ شَعْبَانَ، وَلَا يَكُونُ الصِّيَامُ فِي أَقَلَّ مِنْ يَوْمٍ، وَلَا يَجُوزُ أَنْ يُحْمَلَ عَلَى النَّهْيِ عَنْ صَوْمِ بَاقِي الشَّهْرِ إذْ لَيْسَ ذَلِكَ بَيِّنًا، وَلَا يَخْلُو شَعْبَانُ مِنْ أَنْ يَكُونَ ثَلَاثِينَ أَوْ تِسْعًا وَعِشْرِينَ؛ فَإِنْ كَانَ ذَلِكَ فَانْتِصَافُهُ بِخَمْسَةَ عَشَرَ يَوْمًا، وَإِنْ كَانَ تِسْعًا وَعِشْرِينَ فَانْتِصَافُهُ فِي نِصْفِ الْيَوْمِ الْخَامِسِ عَشَرَ، وَلَمْ يَنْهَ عَنْ الصِّيَامِ بَعْدَ النِّصْفِ، فَحَصَلَ مِنْ ذَلِكَ النَّهْيُ عَنْ صِيَامِ الْيَوْمِ السَّادِسَ عَشَرَ بِلَا شَكٍّ. فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ وَكِيعٍ عَنْ أَبِي الْعُمَيْسِ عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ

800 - Issue: It is not permissible to observe voluntary fasting on the 16th day of Shaʿbān under any circumstance, nor for one who encounters a day he habitually fasts. Narrated by ʿAbdullāh ibn Rabīʿ, narrated by ʿUmar ibn ʿAbd al-Malik, narrated by Muḥammad ibn Bakr, narrated by Abū Dāwūd, narrated by Qutaybah ibn Saʿīd, narrated by ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī, who said: ʿAbbād ibn Kathīr came to Medina and approached the gathering of al-ʿAlāʾ ibn ʿAbd al-Raḥmān. He took him by the hand, asked him to stand, then said: "O Allah, this man narrates from his father that the Messenger of Allah - peace and blessings be upon him - said: 'When Shaʿbān reaches its midpoint, do not fast.'" Al-ʿAlāʾ responded: "O Allah, my father narrated to me..." From Abu Hurairah that the Messenger of Allah—peace and blessings of Allah be upon him—said this. Abu Muhammad said: Sufyan narrated it thus from al-Ala', and al-Ala' is reliable. Shuʿbah, Sufyan al-Thawri, Malik, Sufyan ibn ʿUyaynah, Misʿar ibn Kidam, and Abu al-Umayyis narrated from him—all of whose narrations are deemed authoritative. Therefore, Ibn Maʿin's disparagement of him does not impair his reliability. It is not permissible to entertain suspicion that Abu Hurairah contradicted what he narrated from the Prophet—peace and blessings of Allah be upon him—for suspicion is the most deceitful of speech. Whoever claims consensus here has uttered falsehood. Some people wholly disapproved of fasting after the midpoint of Shaʿban. However, the authentic and certain implication of the wording of this report is the prohibition of fasting after the midpoint of Shaʿban. Fasting cannot be observed in less than a day, nor is it permissible to interpret this as a prohibition against fasting the remainder of the month, since this is not explicitly stated. Shaʿban must either consist of thirty days or twenty-nine. If thirty, its midpoint is the fifteenth day; if twenty-nine, its midpoint falls at midday on the fifteenth. Since the prohibition was not against fasting after the midpoint, it is conclusively established from this that the prohibition applies without doubt to fasting the sixteenth day. If it is objected: "You have narrated through Waki' from Abu al-Umayyis, from al-Ala' ibn 'Abd al-Rahman, from his father, from Abu Hurairah, from the Messenger of Allah—peace and blessings of Allah be upon him—'When the midpoint

of Sha‘ban arrives, abstain from fasting until Ramadan begins,’” we respond: Indeed. This could indicate a prohibition against all fasting after the midpoint of Sha‘ban, or it could indicate a prohibition against only part of what follows the midpoint. Neither interpretation is inherently more valid than the other based on the apparent wording. We have previously cited the statement of Umm Salamah, Mother of the Believers: “The Messenger of Allah—peace and blessings of Allah be upon him—would fast Sha‘ban continuously into Ramadan,” and the statement of ‘A’ishah, Mother of the Believers: “He—peace and blessings of Allah be upon him—would fast nearly all of Sha‘ban.” Their statements necessitate that he—peace and blessings of Allah be upon him—maintained this practice consistently. Therefore, it is obligatory to act upon all these narrations collectively, rejecting none. Thus, fasting most of Sha‘ban is established as commendable, and the permissibility of fasting its latter portion is confirmed. Consequently, the only definitive prohibition remaining applies solely to what is incontrovertible—the day that is without doubt. “The sixteenth, as we have stated—and all success is from Allah, the Exalted.”

L12343 And whoever claims abrogation in the narration of Al-ʿAlāʾ has lied and followed what he has no knowledge of—and in Allah the Exalted we seek support. We have previously clarified in what preceded the statements of Abū Ḥanīfah, Mālik, and Al-Shāfiʿī—most of which is not known to have been stated by anyone before each of them. Most of what they said was based on opinion rather than textual evidence. Among these is Abū Ḥanīfah’s ruling: It suffices for one performing ablution to wipe an amount equivalent to three fingers on the head, and less than this does not suffice. On one occasion he said: A quarter of the head suffices, and less does not suffice. Wiping with three fingers suffices, but not with two fingers or one. They permitted istinjāʾ—post-defecation cleansing—using dung. His ruling: Vomit and bodily fluid exiting from the body cavity invalidate ablution if each amounts to a mouthful. If less than this, they do not invalidate ablution. Similarly, intentional vomiting and blood exiting from the body cavity invalidate ablution if it dominates the saliva, even if not filling the mouth. Phlegm exiting from the body cavity does not invalidate ablution even if filling the mouth. His

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا كَانَ النِّصْفُ مِنْ شَعْبَانَ فَأَمْسِكُوا عَنْ الصَّوْمِ حَتَّى يَكُونَ رَمَضَانُ» . قُلْنَا: نَعَمْ، وَهَذَا يَحْتَمِلُ النَّهْيَ عَنْ كُلِّ مَا بَعْدَ النِّصْفِ مِنْ شَعْبَانَ، وَيَحْتَمِلُ أَنْ يَكُونَ النَّهْيُ عَنْ بَعْضِ مَا بَعْدَ النِّصْفِ، وَلَيْسَ أَحَدُ الِاحْتِمَالَيْنِ أَوْلَى بِظَاهِرِ اللَّفْظِ مِنْ الْآخَرِ، وَقَدْ رُوِّينَا مَا ذَكَرْنَا قَبْلُ مِنْ قَوْلِ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَصُومُ شَعْبَانَ يَصِلُهُ بِرَمَضَانَ» وَقَوْلِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: «أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: كَانَ يَصُومُ شَعْبَانَ كُلَّهُ إلَّا قَلِيلًا» وَقَوْلُهُمَا هَذَا يَقْتَضِي أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يُدَاوِمُ ذَلِكَ فَوَجَبَ اسْتِعْمَالُ هَذِهِ الْأَخْبَارِ كُلِّهَا وَأَلَّا يُرَدَّ مِنْهَا شَيْءٌ لِشَيْءٍ أَصْلًا، فَصَحَّ صِيَامُ أَكْثَرِ شَعْبَانَ مَرْغُوبًا فِيهِ، وَصَحَّ جَوَازُ صَوْمِ آخِرِهِ، فَلَمْ يَبْقَ يَقِينُ النَّهْيِ إلَّا عَلَى مَا لَا شَكَّ فِيهِ وَهُوَ الْيَوْمُ السَّادِسَ عَشَرَ كَمَا قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَمَنْ ادَّعَى نَسْخًا فِي خَبَرِ الْعَلَاءِ فَقَدْ كَذَبَ وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ. وَقَدْ بَيَّنَّا فِيمَا خَلَا مَا قَالَهُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ مِمَّا لَا يُعْرَفُ أَنَّ أَحَدًا قَالَهُ قَبْلَ كُلِّ وَاحِدٍ مِنْهُمْ، أَكْثَرُ ذَلِكَ مِمَّا قَالُوهُ بِرَأْيٍ لَا بِنَصٍّ؟ مِنْ ذَلِكَ قَوْلُ أَبِي حَنِيفَةَ: يُجْزِئُ مَنْ مَسَحَ الرَّأْسَ فِي الْوُضُوءِ مِقْدَارُ ثَلَاثَةِ أَصَابِعَ وَلَا يُجْزِئُ أَقَلُّ مِنْهُ، وَمَرَّةً قَالَ: رُبْعُ الرَّأْسِ وَلَا يُجْزِئُ أَقَلُّ، وَيُجْزِي مَسْحُهُ بِثَلَاثِ أَصَابِعَ وَلَا يُجْزِئُ بِأُصْبُعَيْنِ وَلَا بِأُصْبُعٍ. وَأَجَازُوا الِاسْتِنْجَاءَ بِالرَّوْثِ. وَقَوْلُهُ: الْمِرَّةُ وَالْمَاءُ الْخَارِجَانِ، مِنْ الْجَوْفِ يَنْقُضَانِ الْوُضُوءَ إذَا كَانَ كُلُّ وَاحِدٍ مِنْهُمَا مِلْءَ الْفَمِ، فَإِنْ كَانَ أَقَلَّ لَمْ يَنْقُضْ الْوُضُوءَ، وَكَذَلِكَ تَعَمُّدُ الْقَيْءِ وَالدَّمُ الْخَارِجُ مِنْ الْجَوْفِ يَنْقُضُ الْوُضُوءَ إنْ غَلَبَ عَلَى الْبُصَاقِ وَإِنْ لَمْ يَمْلَأْ الْفَمَ، وَالْبَلْغَمُ الْخَارِجُ مِنْ الْجَوْفِ لَا يَنْقُضُ الْوُضُوءَ وَإِنْ مَلَأَ الْفَمَ. وَقَوْلُهُ

ruling regarding zakāt on horses: One may give ten dirham per head for females, males, or mixed genders. Alternatively, one may appraise their value and give five dirham per every two hundred dirham, while giving nothing for male horses not used for breeding or riding. His ruling: Zakāt applies to all agricultural produce, whether little or much, except firewood, reeds, grass, and certain stalks. If the produce remains in the home, no zakāt is due. All these rulings are not known to have been stated by anyone before them. Similarly, Mālik's ruling: Omitting three takbīrs or three tasmīʿāt—saying "Samiʿa Allāhu liman ḥamidah"—invalidates the prayer. Omitting two takbīrs or less, or two tasmīʿāt or less, does not invalidate it. His rulings on zakāt regarding agricultural yields and exempted grain types. His ruling: Zakāt obligations lapse upon death except for that year's due. His ruling on grains subject to Zakāt al-Fiṭr. Al-Shāfiʿī's rulings: On which grains zakāt is obligatory and exempted. His ruling: On grains valid for Zakāt al-Fiṭr and those insufficient for it.

فِي صَدَقَةِ الْخَيْلِ: إنْ شَاءَ أَعْطَى عَنْ كُلِّ رَأْسٍ مِنْ الْإِنَاثِ أَوْ الذُّكُورِ أَوْ الْإِنَاثِ مَخْلُوطِينَ عَنْ كُلِّ رَأْسٍ عَشَرَةَ دَرَاهِمَ، وَإِنْ شَاءَ قَوَّمَهَا قِيمَةً وَأَعْطَى عَنْ كُلِّ مِائَتَيْ دِرْهَمٍ خَمْسَةً، وَلَا يُعْطِي مِنْ الذُّكُورِ الْمُفْرَدَةِ شَيْئًا. وَقَوْلُهُ: الزَّكَاةُ فِي كُلِّ مَا أَخْرَجَتْ الْأَرْضُ قَلَّ أَوْ كَثُرَ إلَّا الْحَطَبَ، وَالْقَصَبَ، وَالْحَشِيشَ، وَقَصَبَ الزَّرِيرَةِ، فَإِنْ كَانَ الْخَارِجُ فِي الدَّارِ فَلَا زَكَاةَ فِيهِ، وَكُلُّ هَذَا لَا يُعْلَمُ أَحَدٌ قَالَهُ قَبْلَهُمْ. وَكَقَوْلِ مَالِكٍ: مَنْ تَرَكَ مِنْ الصَّلَاةِ ثَلَاثَ تَكْبِيرَاتٍ، أَوْ ثَلَاثَ تَسْمِيعَاتٍ بَطَلَتْ صَلَاتُهُ، فَإِنْ تَرَكَ تَكْبِيرَتَيْنِ فَأَقَلَّ لَمْ تَبْطُلْ وَلَا تَسْمِيعَتَيْنِ فَأَقَلَّ. وَقَوْلُهُ فِي الزَّكَاةِ فِيمَا تُخْرِجُهُ الْأَرْضُ وَمِمَّا لَا زَكَاةَ فِيهِ مِنْ ذَلِكَ مِنْ أَنْوَاعِ الْحُبُوبِ. وَقَوْلُهُ: إنَّ الزَّكَاةَ تَسْقُطُ بِمَوْتِ الْمَرْءِ إلَّا زَكَاةَ عَامِهِ ذَلِكَ. وَقَوْلُهُ فِيمَا تَخْرُجُ مِنْهُ زَكَاةُ الْفِطْرِ مِنْ الْحُبُوبِ. وَقَوْلُ الشَّافِعِيِّ: فِيمَا يَخْرُجُ مِنْهُ الزَّكَاةُ مِنْ الْحُبُوبِ وَمَا يَخْرُجُ مِنْهُ. وَقَوْلُهُ: فِيمَا يَخْرُجُ مِنْهُ زَكَاةُ الْفِطْرِ مِنْ الْحُبُوبِ وَمَا لَا يُجْزِئُ فِيهَا مِنْهَا.

L12344–12345 His statement that if the water amounts to five hundred ratls according to the Baghdadi measure, it is not susceptible to impurity unless the impurity alters it. If it is less - even by a dirham's weight - it becomes impure even if unaltered. All of this was not known to have been held by any scholar prior to those we mentioned.

وَقَوْلُهُ فِي أَنَّ الْمَاءَ إنْ كَانَ خَمْسَمِائَةِ رِطْلٍ بِالْبَغْدَادِيِّ لَهُ لَمْ يَقْبَلْ نَجَاسَةً إلَّا أَنْ تُغَيِّرَهُ، فَإِنْ كَانَ أَقَلَّ - وَلَوْ بِوَزْنِ دِرْهَمٍ - فَإِنَّهُ يُنَجَّسُ وَإِنْ لَمْ يَتَغَيَّرْ. وَكُلُّ هَذَا لَا يُعْرَفُ لَهُ قَائِلٌ قَبْلَ مَنْ ذَكَرْنَا.

L12346 If we were to pursue the similar cases for each of them, it would amount to thousands of jurisprudential questions for Abū Ḥanīfa and Mālik, and it would reach two hundred for Al-Shāfiʿī—and in Allah the Exalted we seek support.

وَلَوْ تَتَبَّعْنَا مَا لِكُلِّ وَاحِدٍ مِنْهُمْ مِنْ مِثْلِ هَذَا لَبَلَغَ لِأَبِي حَنِيفَةَ، وَمَالِكٍ: أُلُوفًا مِنْ الْمَسَائِلِ، وَلَبَلَغَ لِلشَّافِعِيِّ مِائَتَيْنِ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

L12347 Issue: The ruling on fasting on the day of Eid al-Fitr.

[مَسْأَلَةُ صَوْمُ يَوْمِ الْفِطْرِ]

L12348–12350 801 - Issue: It is not permissible to fast on the day of Eid al-Fitr or the day of Eid al-Adha—neither as an obligation nor as a voluntary act—and this is

the view of the majority of people. We have reported through the chain of Waki‘ from ‘Abdullah ibn ‘Awn from Ziyad ibn Jubayr, who said: “A man asked Ibn ‘Umar about someone who vowed to fast a day that coincided with Eid al-Adha or Eid al-Fitr. Ibn ‘Umar replied: ’Allah the Exalted commanded fulfilling vows, but the Messenger of Allah—peace and blessings be upon him—prohibited fasting on this day.”’ We have also reported from ‘Ata’ regarding one who vows to fast the month of Shawwal: they should break their fast on Eid al-Fitr, fast a day in Dhul-Qi‘dah in its place, and feed ten destitute individuals in addition. ‘Ali said: “Allah the Mighty and Majestic only commanded fulfilling vows if they involve obedience, not disobedience. And since the Prophet’s prohibition—peace and blessings be upon him—against fasting on Eid al-Fitr, Eid al-Adha, or any other day he forbade is established, fasting on such days is an act of disobedience. Allah the Exalted never commanded fulfilling a vow involving disobedience.” Authentic Companion narrations support this, including what we have reported via Bukhari’s chain from ‘Abdullah ibn Yusuf from Malik from Ibn Shihab from Abi ‘Ubayd, the freed slave of Ibn Azhar, who said: “I attended Eid with ‘Umar ibn al-Khattab—may Allah be pleased with him—and he said: ’These are two days the Messenger of Allah—peace and blessings be upon him—forbade fasting: the day you break your fast after your Ramadan fast, and the day you eat from your sacrifices.”’ This is also authentically established through chains from Abu Hurayrah and Abu Sa‘id with connected chains. Muhammad ibn al-Hasan stated in Hisham ibn ‘Ubaydullah’s narration from him: “Whoever vows to fast perpetually as an oath must fulfill the vow by fasting but must break the fast on Eid al-Fitr, Eid al-Adha, and the days of Tashreeq.” He does not provide any food himself, but he instructs in his will upon his death that half a ṣāʿ of food be given on his behalf for each day. This is a muddle without precedent.

Issue: Fasting the Days of Tashreeq.

L12351

L12352–12354

Issue 802: It is impermissible to fast during the Days of Tashreeq - the

٨٠١ - مَسْأَلَةٌ: وَلَا يَحِلُّ صَوْمُ يَوْمِ الْفِطْرِ، وَلَا يَوْمِ الْأَضْحَى - لَا فِي فَرْضٍ وَلَا فِي تَطَوُّعٍ - وَهُوَ قَوْلُ جُمْهُورِ النَّاسِ. وَقَدْ رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ زِيَادِ بْنِ جُبَيْرٍ قَالَ: «سَأَلَ رَجُلٌ ابْنَ عُمَرَ عَمَّنْ نَذَرَ صَوْمَ يَوْمٍ فَوَافَقَ يَوْمَ أَضْحَى، أَوْ يَوْمَ فِطْرٍ؟ فَقَالَ ابْنُ عُمَرَ: أَمَرَ اللَّهُ تَعَالَى بِوَفَاءِ النَّذْرِ، وَنَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ صَوْمِ هَذَا الْيَوْمِ» . وَرُوِّينَا عَنْ عَطَاءٍ فِيمَنْ نَذَرَ صَوْمَ شَوَّالٍ: أَنَّهُ يُفْطِرُ يَوْمَ الْفِطْرِ ثُمَّ يَصُومُ يَوْمًا مِنْ ذِي الْقِعْدَةِ مَكَانَهُ وَيُطْعِمُ مَعَ ذَلِكَ عَشَرَةَ مَسَاكِينَ. قَالَ عَلِيٌّ: إنَّمَا أَمَرَ عَزَّ وَجَلَّ بِالْوَفَاءِ بِالنَّذْرِ إذَا كَانَ طَاعَةً لَا إذَا كَانَ مَعْصِيَةً، وَإِذْ صَحَّ نَهْيُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ صَوْمِ يَوْمِ الْفِطْرِ وَالْأَضْحَى، أَوْ أَيِّ يَوْمٍ نَهَى عَنْهُ فَصَوْمُ ذَلِكَ الْيَوْمِ مَعْصِيَةٌ، وَلَمْ يَأْمُرْ اللَّهُ تَعَالَى - قَطُّ - بِالْوَفَاءِ بِنَذْرٍ مَعْصِيَةٍ، وَقَدْ صَحَّ فِي ذَلِكَ آثَارٌ -: مِنْهَا مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ عَبْدِ اللَّهِ بْنِ يُوسُفَ عَنْ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي عُبَيْدٍ مَوْلَى ابْنِ أَزْهَرَ قَالَ: «شَهِدْتُ الْعِيدَ مَعَ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - فَقَالَ: هَذَانِ يَوْمَانِ نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ صِيَامِهِمَا: يَوْمُ فِطْرِكُمْ مِنْ صِيَامِكُمْ، وَالْيَوْمُ الْآخَرُ يَوْمَ تَأْكُلُونَ فِيهِ مِنْ نُسُكِكُمْ» . وَصَحَّ أَيْضًا مِنْ طَرِيقِ أَبِي هُرَيْرَةَ، وَأَبِي سَعِيدٍ مُسْنَدًا. وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ فِي رِوَايَةِ هِشَامِ بْنِ عُبَيْدِ اللَّهِ عَنْهُ: " مَنْ نَذَرَ أَنْ يَصُومَ الدَّهْرَ وَأَرَادَ بِذَلِكَ الْيَمِينَ: فَعَلَيْهِ أَنْ يَصُومَهُ وَيُفْطِرَ: يَوْمَ الْفِطْرِ وَالْأَضْحَى وَأَيَّامَ التَّشْرِيقِ؛ وَلَا يُطْعِمُ شَيْئًا، لَكِنْ يُوصِي عِنْدَ مَوْتِهِ أَنْ يُطْعَمَ عَنْهُ لِكُلِّ يَوْمٍ نِصْفُ صَاعٍ ". وَهَذَا تَخْلِيطٌ لَا نَظِيرَ لَهُ.

[مَسْأَلَةٌ صِيَامُ أَيَّامِ التَّشْرِيقِ]

٨٠٢ - مَسْأَلَةٌ: وَلَا يَجُوزُ صِيَامُ أَيَّامِ التَّشْرِيقِ، وَهِيَ ثَلَاثَةُ أَيَّامٍ بَعْدَ يَوْمِ الْأَضْحَى، لَا فِي قَضَاءِ رَمَضَانَ، وَلَا فِي نَذْرٍ، وَلَا فِي كَفَّارَةٍ، وَلَا لِمُتَمَتِّعٍ بِالْحَجِّ لَا يَقْدِرُ عَلَى الْهَدْيِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ. وَقَالَ مَالِكٌ: يَصُومُهَا الْمُتَمَتِّعُ الْمَذْكُورُ كُلَّهَا، وَلَا يَصُومُ النَّاذِرُ مِنْهَا إلَّا الْيَوْمَ الثَّالِثَ فَقَطْ، وَلَا يَجُوزُ أَنْ يُصَامَ شَيْءٌ مِنْهَا تَطَوُّعًا، وَلَا فِي كَفَّارَةٍ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ إِسْحَاقَ نَا ابْنُ الْأَعْرَابِيِّ نَا أَبُو دَاوُد نَا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ الْقَعْنَبِيُّ نَا مَالِكٌ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ أُسَامَةَ بْنِ الْهَادِ عَنْ أَبِي مُرَّةَ مَوْلَى أُمِّ هَانِئٍ «أَنَّهُ دَخَلَ مَعَ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ عَلَى أَبِيهِ عَمْرِو بْنِ الْعَاصِ فَقَرَّبَ إلَيْهِمَا طَعَامًا فَقَالَ: إنِّي صَائِمٌ فَقَالَ لَهُ: كُلْ فَهَذِهِ الْأَيَّامُ الَّتِي كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُنَا بِإِفْطَارِهَا وَيَنْهَانَا عَنْ صِيَامِهَا» قَالَ مَالِكٌ: هِيَ أَيَّامُ التَّشْرِيقِ. نَا حُمَامُ بْنُ أَحْمَدَ نَا عَبَّاسُ بْنُ أَصْبَغَ نَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نَا بَكْرٌ هُوَ ابْنُ حَمَّادٍ - نَا مُسَدَّدٌ نَا حَمَّادُ بْنُ زَيْدٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ نَافِعِ بْنِ جُبَيْرِ بْنِ مُطْعِمٍ عَنْ بِشْرِ بْنِ سُحَيْمٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَهُ أَنْ يُنَادِيَ أَيَّامَ التَّشْرِيقِ: أَنَّهُ لَا يَدْخُلُ الْجَنَّةَ إلَّا مُؤْمِنٌ، وَأَنَّهَا أَيَّامُ أَكْلٍ وَشُرْبٍ» . قَالَ أَبُو مُحَمَّد: تَفْرِيقُ مَالِكٍ بَيْنَ الْيَوْمَيْنِ وَبَيْنَ الْيَوْمِ الثَّالِثِ لَا وَجْهَ لَهُ أَصْلًا؛ فَإِنْ ذَكَرَ ذَاكِرٌ مَا رُوِّينَاهُ مِنْ طَرِيقِ شُعْبَةَ قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ عِيسَى هُوَ ابْنُ أَبِي لَيْلَى - عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ عُرْوَةُ: عَنْ عَائِشَةَ، وَقَالَ سَالِمٌ: عَنْ أَبِيهِ، ثُمَّ اتَّفَقَا، قَالَا: لَمْ يُرَخَّصْ فِي أَيَّامِ التَّشْرِيقِ أَنْ يُصَمْنَ إلَّا لِمَنْ لَمْ يَجِدْ الْهَدْيَ. وَقَدْ أَسْنَدَهُ عَنْ شُعْبَةَ: يَحْيَى بْنُ سَلَّامٍ، وَلَيْسَ هُوَ مِمَّنْ يُحْتَجُّ بِحَدِيثِهِ، فَإِنَّ هَذَا مَوْقُوفٌ عَلَى أُمِّ الْمُؤْمِنِينَ، وَابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا حُجَّةَ فِي أَحَدٍ

three days following the Day of Sacrifice - whether for making up Ramadan obligations, fulfilling vows, performing expiations, or for a Tamattuʿ pilgrim unable to provide the sacrificial offering. This is the position of Abū Ḥanīfah and al-Shāfiʿī. Mālik stated: The aforementioned Tamattuʿ pilgrim may fast all these days, while one fulfilling a vow may fast only the third day. No voluntary fasting or expiatory fasting is permitted during any of these days.

ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Isḥāq narrated to us: Ibn al-Aʿrābī narrated to us: Abū Dāwūd narrated to us: ʿAbdullāh ibn Maslamah al-Qaʿnabī narrated to us: Mālik narrated from Yazīd ibn ʿAbdillāh ibn Usāmah ibn al-Hād from Abū Murrah, freedman of Umm Hāniʾ: "He entered with ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ to his father ʿAmr ibn al-ʿĀṣ, who offered them food. ʿAbdullāh said: 'I am fasting.' His father responded: 'Eat, for these are the days when Allah's Messenger (peace be upon him) instructed us to abstain from fasting and prohibited us from observing fasts.'" Mālik commented: "These are the Days of Tashreeq."

Ḥumām ibn Aḥmad narrated to us: ʿAbbās ibn Aṣbagh narrated to us: Muḥammad ibn ʿAbd al-Malik ibn Ayman narrated to us: Bakr ibn Ḥammād narrated to us: Musaddad narrated to us: Ḥammād ibn Zayd narrated from ʿAmr ibn Dīnār from Nāfiʿ ibn Jubayr ibn Muṭʿim from Bishr ibn Suḥaym: "Allah's Messenger (peace be upon him) commanded him to proclaim during the Days of Tashreeq: 'None enters Paradise except believers, and these are days of eating and drinking.'"

Abū Muḥammad remarked: Mālik's differentiation between the first two days and the third day lacks any valid foundation. Should anyone cite the narration transmitted through Shuʿbah - who reported hearing ʿAbdullāh ibn ʿĪsā (son of Abū Laylā) relate from al-Zuhrī, from ʿUrwah ibn al-Zubayr and Sālim ibn ʿAbdillāh ibn ʿUmar - where ʿUrwah transmitted from ʿĀishah and Sālim from his father, their consensus being: "Fasting during the Days of Tashreeq was only sanctioned for those incapable of procuring the sacrificial offering" - we note this chain includes Yaḥyā ibn Sallām citing Shuʿbah, though Yaḥyā's narrations are not authoritative. This report remains attributed to the Mother of the Believers (ʿĀishah) and Ibn ʿUmar (may Allah be pleased with them), and no human argument holds validity alongside the Messen-

ger of Allah (peace be upon him). It is not permissible to attribute this to the Messenger of Allah (peace and blessings of Allah be upon him) based on conjecture, for the Messenger of Allah (peace and blessings of Allah be upon him) said: "Beware of conjecture, for conjecture is the most deceitful form of speech." It has been narrated to us via the transmission of Waki', from Hishām ibn 'Urwah, from his father, from 'Ā'ishah, the Mother of the Believers, that she used to fast during the days of Tashrīq.

L12355 Through the chain of Yahya ibn Sa'id al-Qattan, from Abd al-Malik ibn Abi Na'ama, from his father, from Ibn Abbas: he used to fast the days of Tashreeq. From Abu Talha: he would only break his fast on the day of Eid al-Fitr or Eid al-Adha. From al-Aswad: he used to fast the days of Tashreeq. Had this narration been authentically transmitted, it would constitute evidence against the Malikis, for they permit one under a vow to fast the third day - which contradicts this report. Abu Muhammad said: We have observed the Hanafis and Malikis affirming Companions' opinions aligning with their inclinations by declaring "This cannot be based on independent reasoning," as they did regarding Jabir's practice of tayammum up to the elbows. Similarly, concerning Aisha's statement - may Allah be pleased with her - to the umm walad of Zaid ibn Arqam when she sold a slave to him for eight hundred then repurchased it for six hundred: "Inform Zaid his jihad with the Messenger of Allah - peace and blessings be upon him - is invalidated unless he repents" - though this is an inauthentic report - thereby opposing the Quran and established Sunnah. Regarding tayammum up to the wrists, why did they not apply their principle to Aisha's and Ibn Umar's statements by asserting "Such cannot be based on opinion?" We have observed their rejection of solitary reports in matters of widespread tribulation conflicting with their views, as when they dismissed ablution after genital contact. Why not apply this here: "This involves widespread tribulation, thus solitary reports are unacceptable," especially since an authentic prohibition of fasting Tashreeq days would not have escaped Aisha, Abu Talha, Ibn Abbas, and al-Aswad? We have witnessed their rejection of conflicting reports, as with the hadith "One or two breastfeedings do not prohibit marriage," yet this report

مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا يَجُوزُ أَنْ يُسْنَدَ هَذَا إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالظَّنِّ فَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» . وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا كَانَتْ تَصُومُ أَيَّامَ التَّشْرِيقِ.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي نَعَامَةَ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ يَصُومُ أَيَّامَ التَّشْرِيقِ. وَعَنْ أَبِي طَلْحَةَ: أَنَّهُ كَانَ لَا يُفْطِرُ إلَّا يَوْمَ فِطْرٍ أَوْ أَضْحَى. وَعَنْ الْأَسْوَدِ أَنَّهُ كَانَ يَصُومُ أَيَّامَ التَّشْرِيقِ. وَلَوْ كَانَ مُسْنَدًا لَكَانَ حُجَّةً عَلَى الْمَالِكِيِّينَ، لِأَنَّهُ أَبَاحَ الْيَوْمَ الثَّالِثَ أَنْ يَصُومَهُ النَّاذِرُ، وَهُوَ خِلَافُ هَذَا الْخَبَرِ. قَالَ أَبُو مُحَمَّدٍ: عَهِدْنَا بِالْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ يَقُولُونَ فِيمَا وَافَقَ أَهْوَاءَهُمْ مِنْ أَقْوَالِ الصَّحَابَةِ: هَذَا لَا يُقَالُ بِالرَّأْيِ، قَالُوا ذَلِكَ فِي تَيَمُّمِ جَابِرٍ إلَى الْمَرْفِقَيْنِ. وَفِي قَوْلِ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - لِأُمِّ وَلَدِ زَيْدِ بْنِ أَرْقَمَ إذْ بَاعَتْ مِنْهُ عَبْدًا إلَى الْعَطَاءِ بِثَمَانِ مِائَةٍ ثُمَّ اشْتَرَتْهُ مِنْهُ بِسِتِّمِائَةٍ: أَبْلِغْ زَيْدًا أَنَّهُ قَدْ أُبْطِلَ جِهَادُهُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ إنْ لَمْ يَتُبْ - وَهُوَ خَبَرٌ لَا يَصِحُّ، وَخَالَفُوا بِذَلِكَ الْقُرْآنَ وَالسُّنَّةَ الثَّابِتَةَ. وَفِي التَّيَمُّمِ إلَى الْكُوعَيْنِ، فَهَلَّا قَالُوا هُنَا فِي قَوْلِ عَائِشَةَ، وَابْنِ عُمَرَ: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ؟ وَعَهِدْنَا بِهِمْ يَقُولُونَ فِيمَا خَالَفَ أَهْوَاءَهُمْ مِنْ السُّنَنِ مَا تَعْظُمُ بِهِ الْبَلْوَى: لَا يُقْبَلُ فِيهِ خَبَرُ الْوَاحِدِ، وَرَدُّوا بِذَلِكَ الْوُضُوءَ مِنْ مَسِّ الذَّكَرِ، فَهَلَّا قَالُوا هَاهُنَا: هَذَا مِمَّا تَعْظُمُ بِهِ الْبَلْوَى؟ فَلَا يُقْبَلُ فِيهِ خَبَرُ الْوَاحِدِ، إذْ لَوْ كَانَ النَّهْيُ عَنْ صِيَامِ أَيَّامِ التَّشْرِيقِ صَحِيحًا مَا خَفِيَ عَلَى عَائِشَةَ، وَأَبِي طَلْحَةَ وَابْنِ عَبَّاسٍ، وَالْأَسْوَدِ. وَعَهِدْنَا بِهِمْ يَقُولُونَ: إنَّ الْخَبَرَ

exhibits greater inconsistency - being narrated through Bishr ibn Suhaym and sometimes through him from Ali.

L12356–12357 Our established understanding of them shows they declare regarding whatever aligns with their position: "Is this a recommended act?" Then why do they not say the same here? Our established understanding of them shows they assert: When a Companion narrates a report and abandons acting upon it, this indicates its abrogation. Yet ʿĀ'isha narrated—as we mentioned—the prohibition against fasting the Days of Tashrīq, abandoned acting on it, and instead fasted them voluntarily. Why then do they not abandon her narration here in favor of her opinion? No one can claim that both of them and Ibn ʿAbbās fasted those days during the Tamattuʿ Hajj, for their prosperity, al-Aswad's prosperity, and the sufficiency of their wealth for a thousand sacrificial animals are too well-known to be ignored except by one utterly devoid of knowledge.

L12358 **A juristic issue where fasting is treated in the procedural framework of an oath.**

L12359 803 – Issue: It is impermissible to use fasting as a substitute for an oath, such as when one says, "I will not enter your house. If I enter it, I must fast for a lunar month," or anything analogous to this. Yunus ibn ʿAbdullah ibn Mughīth narrated to us; Abū Bakr Muḥammad ibn Aḥmad ibn Khālid narrated to us. He said: My father narrated to us; ʿAlī ibn ʿAbd al-ʿAzīz narrated to us; Abū ʿUbayd al-Qāsim ibn Sallām narrated to us; Ismāʿīl ibn Jaʿfar narrated to us from ʿAbdullāh ibn Dīnār from Ibn ʿUmar, who said: The Messenger of Allah (ﷺ) said, "Whoever takes an oath must swear only by Allah."

L12360 Abu Muhammad said: Swearing by other than Allah the Exalted is an act of disobedience and a contravention of the prohibition of the Messenger of Allah (peace be upon him). Since this is established, we have previously mentioned the statement of the Messenger of Allah (peace be upon him): "There is no fulfillment for a vow made in disobedience to Allah." The binding vow is that by which one draws closer to Allah the Exalted alone.

الْمُضْطَرَبَ فِيهِ مَرْدُودٌ، وَادَّعُوا ذَلِكَ فِي حَدِيثِ: «لَا تُحَرِّمُ الْمَصَّةُ وَلَا الْمَصَّتَانِ» فَهَذَا الْخَبَرُ أَشَدُّ اضْطِرَابًا، لِأَنَّهُ رُوِيَ عَنْ بِشْرِ بْنِ سُحَيْمٍ، وَمَرَّةً عَنْهُ عَنْ عَلِيٍّ.

وَعَهْدُنَا بِهِمْ يَقُولُونَ فِيمَا وَافَقَهُمْ: هَذَا نَدْبٌ؟ فَهَلَّا قَالُوهُ هَاهُنَا؟ وَعَهْدُنَا بِهِمْ يَقُولُونَ: إِذَا رَوَى الصَّاحِبُ خَبَرًا وَتَرَكَهُ فَهُوَ دَلِيلٌ عَلَى نَسْخِهِ، وَعَائِشَةُ قَدْ رَوَتْ كَمَا ذَكَرْنَا النَّهْيَ عَنْ صِيَامِ أَيَّامِ التَّشْرِيقِ وَتَرَكَتْ ذَلِكَ فَكَانَتْ تَصُومُهَا تَطَوُّعًا، فَهَلَّا تَرَكُوا هَاهُنَا رِوَايَتَهَا لِرَأْيِهَا؟ وَلَا يَقْدِرُ أَحَدٌ عَلَى أَنْ يَقُولَ إِنَّهُمَا وَابْنَ عَبَّاسٍ صَامَاهَا فِي تَمَتُّعِ الْحَجِّ؛ لِأَنَّ يَسَارَهُمَا وَيَسَارَ الْأَسْوَدِ وَسَعَةَ أَمْوَالِهِمْ لِأَلْفِ هَدْيٍ أَشْهَرُ مِنْ أَنْ يَجْهَلَهُ إِلَّا مَنْ لَا عِلْمَ لَهُ أَصْلًا.

[مَسْأَلَةٌ صَوْمٌ أُخْرِجَ مَخْرَجَ الْيَمِينِ]

٨٠٣ - مَسْأَلَةٌ: وَلَا يَحِلُّ صَوْمٌ أُخْرِجَ مَخْرَجَ الْيَمِينِ كَأَنْ يَقُولَ الْقَائِلُ: أَنَا لَا أَدْخُلُ دَارَكَ فَإِنْ دَخَلْتُهَا فَعَلَيَّ صَوْمُ شَهْرٍ، أَوْ مَا جَرَى هَذَا الْمَجْرَى -: نَا يُونُسُ بْنُ عَبْدِ اللَّهِ بْنِ مُغِيثٍ نَا أَبُو بَكْرٍ مُحَمَّدُ بْنُ أَحْمَدَ بْنِ خَالِدٍ قَالَ: نَا أَبِي نَا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نَا أَبُو عُبَيْدٍ الْقَاسِمُ بْنُ سَلَّامٍ نَا إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ كَانَ حَالِفًا فَلَا يَحْلِفْ إِلَّا بِاللَّهِ» .

قَالَ أَبُو مُحَمَّدٍ: فَصَارَ الْحَلِفُ بِغَيْرِ اللَّهِ تَعَالَى مَعْصِيَةً، وَخِلَافًا لِنَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِذَا هُوَ كَذَلِكَ فَقَدْ ذَكَرْنَا قَبْلُ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

This is the position of al-Shāfiʿī, Aḥmad ibn Ḥanbal, Abū Sulaymān, and others.

L12361 **Rule: A wife or bondwoman may not undertake a supererogatory fast without permission.**

L12362 804 - A legal issue: It is not permissible for a woman who has a husband or a slave owner to observe voluntary fasting without his permission. As for all obligatory fasts, she must observe them whether he approves or disapproves. If he is absent—whether she is unable to seek his permission or is able—she may observe voluntary fasting if she wishes. Narrated by Abdullah ibn Rabiʿ from Muhammad ibn Ishaq from Ibn al-Aʿrabi from Abu Dawud from al-Hasan ibn Ali (al-Hulwani) from Abd al-Razzaq from Maʿmar from Hammam ibn Munabbih, who heard Abu Hurayrah say: The Messenger of Allah—peace and blessings be upon him—said: "A woman must not fast while her husband is present except with his permission, apart from Ramadan, nor may she allow anyone in his house while he is present except with his permission."[53]

L12363 Ali said: "Al-Baʿl" is a term for the master in linguistic usage. The make-up fasting for Ramadan, expiations, and every vow she pledged before her marriage to him are attached to Ramadan, for Allah the Exalted has prescribed all of that just as He prescribed Ramadan.

L12364–12365 Allah the Exalted said: {It is not for a believing man or a believing woman, when Allah and His Messenger have decreed a matter, that they should have any choice in their affair.} [Al-Ahzab: 36] Thus, Allah—Majestic and Exalted—abolished choice in what He has decreed. The Prophet (peace be upon him) only established permission and the seeking of permission in matters where choice exists. As for matters where there is no choice, and no one has permission regarding it, nor in abandoning it, nor in altering it, there is no place for seeking permission in them. This is self-evident, and it necessi-

[53] **Hadith references (L12362):** Sunan Abi Dawud 2458.

«لَا وَفَاءَ لِنَذْرٍ فِي مَعْصِيَةِ اللَّهِ» وَالنَّذْرُ اللَّازِمُ: هُوَ الَّذِي يُتَقَرَّبُ بِهِ إِلَى اللَّهِ تَعَالَى فَقَطْ، وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي سُلَيْمَانَ وَغَيْرِهِمْ.

[مَسْأَلَةٌ لَا يَحِلُّ لِلزَّوْجَةِ أَوْ الْأَمَةِ أَنْ تَصُومَ تَطَوُّعًا بِغَيْرِ إِذْنٍ]

٨٠٤ - مَسْأَلَةٌ وَلَا يَحِلُّ لِذَاتِ الزَّوْجِ أَوْ السَّيِّدِ أَنْ تَصُومَ تَطَوُّعًا بِغَيْرِ إِذْنِهِ، وَأَمَّا الْفُرُوضُ كُلُّهَا فَتَصُومُهَا أَحَبَّ أَمْ كَرِهَ، فَإِنْ كَانَ غَائِبًا لَا تَقْدِرُ عَلَى اسْتِئْذَانِهِ أَوْ تَقْدِرُ فَلْتَصُمْ التَّطَوُّعَ إِنْ شَاءَتْ -: نَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ إِسْحَاقَ نَا ابْنُ الْأَعْرَابِيِّ نَا أَبُو دَاوُد نَا الْحَسَنُ بْنُ عَلِيٍّ هُوَ الْحُلْوَانِيُّ - نَا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَصُومُ الْمَرْأَةُ وَبَعْلُهَا شَاهِدٌ إِلَّا بِإِذْنِهِ غَيْرَ رَمَضَانَ وَلَا تَأْذَنُ فِي بَيْتِهِ وَهُوَ شَاهِدٌ إِلَّا بِإِذْنِهِ» .

قَالَ عَلِيٌّ: الْبَعْلُ اسْمٌ لِلسَّيِّدِ، فِي اللُّغَةِ، وَصِيَامُ قَضَاءِ رَمَضَانَ، وَالْكَفَّارَاتُ، وَكُلُّ نَذْرٍ تَقَدَّمَ لَهَا قَبْلَ نِكَاحِهَا إيَّاهُ مَضْمُومٌ إلَى رَمَضَانَ، لِأَنَّ اللَّهَ تَعَالَى افْتَرَضَ كُلَّ ذَلِكَ كَمَا افْتَرَضَ رَمَضَانَ.

وَقَالَ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] فَأَسْقَطَ اللَّهَ عَزَّ وَجَلَّ الِاخْتِيَارَ فِيمَا قَضَى بِهِ، وَإِنَّمَا جَعَلَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْإِذْنَ وَالِاسْتِئْذَانَ فِيمَا فِيهِ الْخِيَارُ، وَأَمَّا مَا لَا خِيَارَ فِيهِ وَلَا إذْنَ لِأَحَدٍ فِيهِ وَلَا فِي تَرْكِهِ وَلَا فِي تَغْيِيرِهِ فَلَا مَدْخَلَ لِلِاسْتِئْذَانِ فِيهِ: هَذَا مَعْلُومٌ بِالْحِسِّ، وَهُوَ الَّذِي يَقْتَضِي تَخْصِيصُهُ - عَلَيْهِ السَّلَامُ - إذْنَ الْبَعْلِ فِيهِ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

tates the Prophet's (peace be upon him) explicit stipulation of the husband's permission in such cases. Success comes from Allah, the Exalted.[54]

An Issue on Training Children to Fast During Ramadan

L12366

L12367 805 - Issue: We recommend training children to fast during Ramadan if they are capable of enduring it, though it is not obligatory upon them, due to what we have previously mentioned from the statement of Allah's Messenger—peace and blessings be upon him: "The pen is lifted from three," among whom he mentioned the child until he reaches puberty. We have also mentioned in the opening of the Book of Purification the obligation of legal rulings contingent on the growth of pubic hair or the onset of menstruation. Allah the Exalted says: "And let there be among you a community calling to righteousness" (3:104). Training them in fasting is a righteous act.[55]

L12368 We previously mentioned the statement of ʿUmar—may Allah be pleased with him—to the elderly man whom he found intoxicated during Ramadan: "Our youths are fasting." We have narrated through the chain of Ibn Jurayj from Muḥammad ibn ʿAbd al-Raḥmān ibn Labībah from his father from his grandfather from the Messenger of Allah—peace and blessings be upon him: "If a boy fasts three consecutive days, the fasting of the month of Ramadan becomes obligatory upon him." Abū Muḥammad said: Muḥammad ibn ʿAbd al-Raḥmān ibn Labībah is of no significance. Yet the Ḥanafīs, Mālikīs, and Shāfiʿīs adopted his narration regarding the permissibility of leasing land, thereby invalidating the established narrations prohibiting land leasing. Thus, he is a proof when they desire, and not a proof when they wish. We have narrated from ʿUmar ibn al-Khaṭṭāb—may Allah be pleased with him—that if a boy reaches five spans in height, the ḥudūd become obligatory upon him.

L12369 It has been narrated to us from Ibn Sīrīn, Qatādah, and al-Zuhrī: A child should be instructed to pray when he distinguishes his right from his left, and instructed to fast when he can manage it.

[مَسْأَلَةٌ تَدْرِيب الصِّبْيَانِ عَلَى الصَّوْمِ فِي رَمَضَانَ]

٨٠٥ - مَسْأَلَةٌ: وَنَسْتَحِبُّ تَدْرِيبَ الصِّبْيَانِ عَلَى الصَّوْمِ فِي رَمَضَانَ إذَا أَطَاقُوهُ وَلَيْسَ وَاجِبًا عَلَيْهِمْ لِمَا قَدْ ذَكَرْنَا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ» فَذَكَرَ فِيهِمْ الصَّبِيَّ حَتَّى يَحْتَلِمَ. وَقَدْ ذَكَرْنَا فِي أَوَّلِ كِتَابِ الطَّهَارَةِ وُجُوبَ الْأَحْكَامِ بِالْإِنْبَاتِ، وَالْحَيْضِ. وَاَللَّهُ تَعَالَى يَقُولُ: {وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إلَى الْخَيْرِ} [آل عمران: ١٠٤] وَتَدْرِيبُهُمْ عَلَى الصَّوْمِ خَيْرٌ.

وَقَدْ ذَكَرْنَا (قَبْلُ) قَوْلَ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - لِلشَّيْخِ الَّذِي وَجَدَهُ سَكْرَانَ فِي رَمَضَانَ: وِلْدَانُنَا صِيَامٌ. وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ ابْنِ لَبِيبَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا صَامَ الْغُلَامُ ثَلَاثَةَ أَيَّامٍ مُتَتَابِعَةً فَقَدْ وَجَبَ عَلَيْهِ صِيَامُ شَهْرِ رَمَضَانَ» . قَالَ أَبُو مُحَمَّد: مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ ابْنِ لَبِيبَةَ لَا شَيْءَ إلَّا أَنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، أَخَذُوا بِرِوَايَتِهِ فِي (إبَاحَةِ) كِرَاءِ الْأَرْضِ وَأَبْطَلُوا بِهَا الرِّوَايَاتِ الثَّابِتَةَ فِي تَحْرِيمِ كِرَاءِ الْأَرْضِ، فَهُوَ حُجَّةٌ إذَا اشْتَهَوْا وَلَيْسَ هُوَ حُجَّةً إذَا اشْتَهَوْا -: وَرُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - إذَا بَلَغَ الْغُلَامُ خَمْسَةَ أَشْبَارٍ وَجَبَتْ عَلَيْهِ الْحُدُودُ.

وَرُوِّينَا عَنْ ابْنِ سِيرِينَ، وَقَتَادَةَ، وَالزُّهْرِيِّ: يُؤْمَرُ الْغُلَامُ بِالصَّلَاةِ إذَا عَرَفَ يَمِينَهُ مِنْ شِمَالِهِ، وَبِالصَّوْمِ إذَا أَطَاقَهُ.

[54] **Qur'an references (L12365):** Qur'an 33:36 (Al-Ahzab).
[55] **Qur'an references (L12367):** Qur'an 3:104 (Ali 'Imran).

L12370 From Urwah ibn al-Zubayr: They are obligated to pray once they attain the age of reason and to fast once they are physically capable of it. Ali said: No one's opinion holds as decisive authority except that of the Messenger of Allah.

L12371–12372 The prayer becomes obligatory for the girl when she begins menstruating, and for the boy when he has a nocturnal emission.

L12373 **A case in which one breaks his fast by consuming wine, consuming the flesh of a pig, or engaging in unlawful sexual intercourse.**

L12374 806. Issue: It is obligatory upon one who finds dates to break his fast with them. If he does not find dates, then with water; otherwise, he is defiant toward Allah the Exalted if the definitive proof is established against him and he persists in obstinacy. His fasting is not invalidated by this, for his fast has been completed and has transitioned beyond the state of fasting. Likewise, if he breaks his fast with wine, pork meat, or commits illicit sexual intercourse, his fast remains valid while he is sinful toward Allah the Exalted. Narrated by ʿAbdullāh ibn Rabīʿ: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: I heard Quṭaybah ibn Saʿīd narrate: Sufyān ibn ʿUyaynah narrated from ʿĀṣim al-Aḥwal from Ḥafṣah bint Sīrīn from al-Rabāb from her uncle Salmān ibn ʿĀmir—elevated to the Prophet (peace be upon him)—who said: "When any of you breaks the fast, let him break it with dates, for they are blessed. If he finds no dates, then with water, for it is purifying." Narrated by ʿAbdullāh ibn Rabīʿ: Muḥammad ibn Isḥāq narrated to us: Ibn al-Aʿrābī narrated to us: Abū Dāwūd narrated to us: Aḥmad ibn Ḥanbal narrated to us: ʿAbd al-Razzāq narrated to us: Jaʿfar ibn Sulaymān al-Ḍubaʿī narrated to us: Thābit al-Bunānī reported that he heard Anas ibn Mālik say: "The Prophet (peace be upon him) would break his fast with fresh dates before praying. If there were no fresh dates, then with dried dates; if there were none, he would sip sips of water." Some have argued: This is not an obligation, for he (peace be upon him) once broke his fast on the route to Khaybar with barley meal mixed with water. We responded: What is your evidence that he had not already broken his fast with dates or

وَعَنْ عُرْوَةَ بْنِ الزُّبَيْرِ: يُؤْمَرُونَ بِالصَّلَاةِ إِذَا عَقَلُوهَا، وَبِالصَّوْمِ إِذَا أَطَاقُوهُ قَالَ عَلِيٌّ: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: الصَّلَاةُ عَلَى الْجَارِيَةِ إِذَا حَاضَتْ، وَعَلَى الْغُلَامِ إِذَا احْتَلَمَ.

[مَسْأَلَةٌ أَفْطَرَ عَلَى خَمْرٍ أَوْ لَحْمِ خِنْزِيرٍ أَوْ زَنَى]

٨٠٦ - مَسْأَلَةٌ: وَيَجِبُ عَلَى مَنْ وَجَدَ التَّمْرَ أَنْ يُفْطِرَ عَلَيْهِ فَإِنْ لَمْ يَجِدْ فَعَلَى الْمَاءِ وَإِلَّا فَهُوَ عَاصٍ لِلَّهِ تَعَالَى إنْ قَامَتْ عَلَيْهِ الْحُجَّةُ فَعَنَدَ وَلَا يَبْطُلُ صَوْمُهُ بِذَلِكَ، لِأَنَّ صَوْمَهُ قَدْ تَمَّ وَصَارَ فِي غَيْرِ صِيَامٍ، وَكَذَلِكَ لَوْ أَفْطَرَ عَلَى خَمْرٍ، أَوْ لَحْمِ خِنْزِيرٍ، أَوْ زَنَى، فَصَوْمُهُ تَامٌّ وَهُوَ عَاصٍ لِلَّهِ تَعَالَى. نَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ نَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَاصِمٍ الْأَحْوَلِ عَنْ حَفْصَةَ بِنْتِ سِيرِينَ عَنْ الرَّبَابِ عَنْ عَمِّهَا سَلْمَانَ بْنِ عَامِرٍ يَبْلُغُ بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا أَفْطَرَ أَحَدُكُمْ فَلْيُفْطِرْ عَلَى تَمْرٍ فَإِنَّهُ بَرَكَةٌ، فَإِنْ لَمْ يَجِدْ تَمْرًا فَالْمَاءُ فَإِنَّهُ طَهُورٌ» : نَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ إِسْحَاقَ نَا ابْنُ الْأَعْرَابِيِّ نَا أَبُو دَاوُد نَا أَحْمَدُ بْنُ حَنْبَلٍ نَا عَبْدُ الرَّزَّاقِ نَا جَعْفَرُ بْنُ سُلَيْمَانَ الضُّبَعِيُّ نَا ثَابِتٌ الْبُنَانِيُّ أَنَّهُ سَمِعَ أَنَسَ بْنَ مَالِكٍ يَقُولُ: «كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: يُفْطِرُ عَلَى رُطَبَاتٍ قَبْلَ أَنْ يُصَلِّيَ، فَإِنْ لَمْ تَكُنْ رُطَبَاتٌ فَعَلَى تَمَرَاتٍ، فَإِنْ لَمْ يَكُنْ حَسَا حَسَوَاتٍ مِنْ مَاءٍ» . وَقَدْ قَالَ قَوْمٌ: لَيْسَ هَذَا فَرْضًا، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ أَفْطَرَ فِي طَرِيقِ خَيْبَرَ عَلَى السَّوِيقِ؟ فَقُلْنَا وَمَا دَلِيلُكُمْ

that he had dates with him? The barley meal was prepared with water, and since water is its primary component, it constitutes breaking the fast with water.[56]

L12375–12377 Moreover, breaking the fast with any permissible substance aligns with the established practice, while the directive to break the fast with dates—or with water if unavailable—constitutes a legally binding obligation. This directive unquestionably abrogates the initial state. Some groups claimed consensus contrary to this position—for whoever claims consensus here lied, as they cannot enumerate the opinions of ten Companions or Followers (may God be pleased with them). They cited ʿUmar's act (may God be pleased with him) of breaking his fast with milk in the Companions' presence. Abū Muḥammad remarked: If this were consensus or proof, they would have contradicted him by mandating compensatory fasting contrary to ʿUmar's opinion—thereby acknowledging their own divergence from consensus. As for us, this is not... In our view, consensus is only that which is beyond doubt—what every Muslim must uphold, for whoever rejects it is a disbeliever: such as the five daily prayers, the pilgrimage to Mecca, fasting during Ramadan, and similar obligations. And success is from Allah, the Exalted.

A Fiqh Issue Regarding Righteous Acts in Ramadan

L12378

L12379 807 - Issue: It is recommended to perform good deeds in Ramadan. ʿAbd Allāh ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: Sulaymān ibn Dāwūd — he is al-Mahrī — from Ibn Wahb, who informed me: Yūnus — he is the son of Yazīd — from Ibn Shihāb, from ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah, that ʿAbd Allāh ibn ʿAbbās used to say: "The Messenger of Allah — peace and blessings of Allah be upon him — was the most generous of people, and he was at his most generous during Ramadan." He mentioned the remainder of the hadith.

[56] **Hadith references (L12374):** Jami at-Tirmidhi 658; Riyad as-Salihin 332.

عَلَى أَنَّهُ لَمْ يَكُنْ أَفْطَرَ بَعْدُ عَلَى تَمْرٍ، أَوْ أَنَّهُ كَانَ مَعَهُ تَمْرٌ؟ وَالسَّوِيقُ الْمَجْدُوحُ بِالْمَاءِ، فَالْمَاءُ فِيهِ ظَاهِرٌ، فَهُوَ فِطْرٌ عَلَى الْمَاءِ.

وَأَيْضًا فَالْفِطْرُ عَلَى كُلِّ مُبَاحٍ مُوَافِقٌ لِلْحَالَةِ الْمَعْهُودَةِ، وَالْأَمْرُ بِالْفِطْرِ عَلَى التَّمْرِ - فَإِنْ لَمْ يَكُنْ فَعَلَى الْمَاءِ - أَمْرٌ وَارِدٌ يَجِبُ فَرْضًا، وَهُوَ رَافِعٌ لِلْحَالَةِ الْأُولَى بِلَا شَكٍّ، وَادَّعَى قَوْمٌ الْإِجْمَاعَ عَلَى غَيْرِ هَذَا - وَقَدْ كَذَبَ مَنْ ادَّعَى الْإِجْمَاعَ وَهُوَ لَا يَقْدِرُ عَلَى أَنْ يُحْصِيَ فِي هَذَا أَقْوَالَ عَشَرَةٍ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ - رَضِيَ اللَّهُ عَنْهُمْ -، وَذَكَرُوا إفْطَارَ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - بِحَضْرَةِ الصَّحَابَةِ عَلَى اللَّبَنِ -: قَالَ أَبُو مُحَمَّد: إنْ كَانَ هَذَا إجْمَاعًا أَوْ حُجَّةً فَقَدْ خَالَفُوهُ وَأَوْجَبُوا الْقَضَاءَ بِخِلَافِ قَوْلِ عُمَرَ فِي ذَلِكَ، فَقَدْ اعْتَرَفُوا عَلَى أَنْفُسِهِمْ خِلَافَ الْإِجْمَاعِ، وَأَمَّا نَحْنُ فَلَيْسَ هَذَا عِنْدَنَا إجْمَاعًا، وَلَا يَكُونُ إجْمَاعًا إلَّا مَا لَا شَكَّ فِي أَنَّ كُلَّ مُسْلِمٍ يَقُولُ بِهِ؛ فَإِنْ لَمْ يَقُلْهُ فَهُوَ كَافِرٌ: كَالصَّلَوَاتِ الْخَمْسِ، وَالْحَجِّ إلَى مَكَّةَ، وَصَوْمِ رَمَضَانَ، وَنَحْوِ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فِعْلُ الْخَيْرِ فِي رَمَضَانَ]

٨٠٧ - مَسْأَلَةٌ: وَيُسْتَحَبُّ فِعْلُ الْخَيْرِ فِي رَمَضَانَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا سُلَيْمَانُ بْنُ دَاوُد هُوَ الْمَهْرِيُّ - عَنْ ابْنِ وَهْبٍ أَخْبَرَنِي يُونُسُ هُوَ ابْنُ يَزِيدَ - عَنْ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ أَنَّ عَبْدَ اللَّهِ بْنَ عَبَّاسٍ كَانَ يَقُولُ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَجْوَدَ النَّاسِ وَكَانَ أَجْوَدَ مَا يَكُونُ فِي رَمَضَانَ» وَذَكَرَ بَاقِيَ الْحَدِيثِ. قَالَ اللَّهُ تَعَالَى: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١]

Allah the Exalted said: {There has certainly been for you in the Messenger of Allah an excellent example} [Al-Aḥzāb 33:21].[57][58]

Issue: One who was invited to a meal while fasting.

L12380

L12381 808 - Issue: If someone is invited to a meal while fasting, he must accept. When he joins them, let him supplicate for them and say: “I am fasting.” Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Isḥāq narrated to us: Ibn al-Aʿrabī narrated to us: Abū Dāwūd narrated to us: ʿAbdullāh ibn Saʿīd narrated to us: Abū Khālid (al-Aḥmar) narrated from Hishām ibn Ḥassān, from Ibn Sīrīn, from Abū Hurayrah who said: Allāh’s Messenger (peace be upon him) stated: “When any of you is invited, he must accept. If he is not fasting, let him eat. If he is fasting, let him pray.”[59]

L12382 Hisham said: And prayer is supplication. Through his chain to Abu Dawud: Musaddad narrated to us, Sufyan narrated to us from Abu al-Zinad from al-A’raj from Abu Hurairah, who said: The Messenger of Allah - peace and blessings be upon him - said: “When one of you is invited to a meal while fasting, let him say: ’I am fasting.’” Abu Muhammad said: He must combine both matters together. We have been informed that Ibn Umar, when invited to a meal while fasting, would attend them, supplicate for them, then take his leave. From the narration of Hammad ibn Salamah from Thabit al-Bunani, who said: Anas invited me to a meal, so I said: “I do not eat.” He responded: “Say: ’I am fasting.’”[60]

L12383 And from the narration of Ḥammād ibn Salamah from Ayyūb al-Sakhtiyānī from Ibn Sīrīn: that his father hosted a wedding feast in Medina for seven days, inviting people. He invited Ubayy ibn Kaʿb, who was fasting, and he accepted the invitation, supplicated for them, and returned.

[مَسْأَلَةٌ دُعِيَ إِلَى طَعَامٍ وَهُوَ صَائِمٌ]

٨٠٨ - مَسْأَلَةٌ: وَمَنْ دُعِيَ إِلَى طَعَامٍ - وَهُوَ صَائِمٌ - فَلْيُجِبْ، فَإِذَا أَتَاهُمْ فَلْيَدْعُ لَهُمْ وَلْيَقُلْ: إِنِّي صَائِمٌ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ إِسْحَاقَ نَا ابْنُ الْأَعْرَابِيِّ نَا أَبُو دَاوُد نَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ نَا أَبُو خَالِدٍ هُوَ الْأَحْمَرُ - عَنْ هِشَامٍ هُوَ ابْنُ حَسَّانَ - عَنِ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا دُعِيَ أَحَدُكُمْ فَلْيُجِبْ، فَإِنْ كَانَ مُفْطِرًا فَلْيَطْعَمْ، وَإِنْ كَانَ صَائِمًا فَلْيُصَلِّ» .

قَالَ هِشَامٌ: وَالصَّلَاةُ الدُّعَاءُ. وَبِهِ إِلَى أَبِي دَاوُد نَا مُسَدَّدٌ نَا سُفْيَانُ عَنْ أَبِي الزِّنَادِ عَنِ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا دُعِيَ أَحَدُكُمْ إِلَى طَعَامٍ وَهُوَ صَائِمٌ فَلْيَقُلْ: إِنِّي صَائِمٌ» . قَالَ أَبُو مُحَمَّدٍ: فَعَلَيْهِ أَنْ يَجْمَعَ بَيْنَ الْأَمْرَيْنِ جَمِيعًا. وَرُوِّينَا أَنَّ ابْنَ عُمَرَ كَانَ إِذَا دُعِيَ إِلَى طَعَامٍ وَهُوَ صَائِمٌ أَتَاهُمْ فَدَعَا لَهُمْ ثُمَّ انْصَرَفَ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ قَالَ: دَعَانِي أَنَسٌ إِلَى طَعَامٍ فَقُلْت: إِنِّي لَا أَطْعَمُ؟ فَقَالَ: قُلْ: إِنِّي صَائِمٌ.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنِ ابْنِ سِيرِينَ: أَنَّ أَبَاهُ أَوْلَمَ بِالْمَدِينَةِ سَبْعَةَ أَيَّامٍ يَدْعُو النَّاسَ فَدَعَا أُبَيَّ بْنَ كَعْبٍ وَهُوَ صَائِمٌ فَأَجَابَهُ وَدَعَا لَهُمْ وَرَجَعَ.

[57] **Hadith references (L12379):** Sunan an-Nasai 2095; Riyad as-Salihin 1222.
[58] **Qur’an references (L12379):** Qur’an 33:21 (Al-Ahzab).
[59] **Hadith references (L12381):** Sunan Abi Dawud 2460.
[60] **Hadith references (L12382):** Sunan Abi Dawud 2461; Sunan Ibn Majah 1750; Sahih Muslim 1150.

The Night of Decree

[لَيْلَةُ الْقَدْرِ]

L12384–12385

L12386 Issue: The Night of Decree is one specific night each year, occurring exclusively in the month of Ramadan, specifically within the last ten nights, on a single fixed night that never shifts. However, none among mankind knows precisely which night it is from these ten nights, except that it must necessarily fall on an odd-numbered night. If the month is twenty-nine days, the first of the last ten nights is unquestionably the twentieth night. Therefore, it is either the twentieth night, the twenty-second night, the twenty-fourth night, the twenty-sixth night, or the twenty-eighth night—as these are designated the odd-numbered nights within the last ten [nights].

مَسْأَلَةٌ: لَيْلَةُ الْقَدْرِ وَاحِدَةٌ فِي الْعَامِ فِي كُلِّ عَامٍ، فِي شَهْرِ رَمَضَانَ خَاصَّةً، فِي الْعَشْرِ الْأَوَاخِرِ خَاصَّةً، فِي لَيْلَةٍ وَاحِدَةٍ بِعَيْنِهَا لَا تَنْتَقِلُ أَبَدًا إِلَّا أَنَّهُ لَا يَدْرِي أَحَدٌ مِنْ النَّاسِ أَيَّ لَيْلَةٍ هِيَ مِنْ الْعَشْرِ الْمَذْكُورِ؟ إِلَّا أَنَّهَا فِي وِتْرٍ مِنْهُ وَلَا بُدَّ. فَإِنْ كَانَ الشَّهْرُ تِسْعًا وَعِشْرِينَ فَأَوَّلُ الْعَشْرِ الْأَوَاخِرِ بِلَا شَكٍّ: لَيْلَةُ عِشْرِينَ مِنْهُ، فَهِيَ إِمَّا لَيْلَةُ عِشْرِينَ، وَإِمَّا لَيْلَةُ اثْنَيْنِ وَعِشْرِينَ، وَإِمَّا لَيْلَةُ أَرْبَعٍ وَعِشْرِينَ، وَإِمَّا لَيْلَةُ سِتٍّ وَعِشْرِينَ، وَإِمَّا لَيْلَةُ ثَمَانٍ وَعِشْرِينَ؛ لِأَنَّ هَذِهِ هِيَ الْأَوْتَارُ مِنْ الْعَشْرِ (الْأَوَاخِرِ) .

L12387 If the month is thirty days, then the first of the last ten nights is without doubt the night of the twenty-first. [Laylat al-Qadr] is either the night of the twenty-first, the night of the twenty-third, the night of the twenty-fifth, the night of the twenty-seventh, or the night of the twenty-ninth, for these are the odd nights of the ten without doubt. Some of the Salaf said: Whoever prays throughout the year will attain it. The proof for our statement that it occurs specifically in Ramadan – not in other times of the year – is Allah's declaration: {Indeed, We sent it down during the Night of Decree} [Al-Qadr: 1], and His exalted saying: {The month of Ramadan in which the Quran was revealed} [Al-Baqarah: 185]. Thus, it is confirmed that it was revealed during the Night of Decree in the month of Ramadan. This necessarily establishes that the Night of Decree occurs in Ramadan, not elsewhere. For if it were in another month, Allah's exalted words would contradict one another impossibly – a notion no Muslim would entertain.[61]

إِنْ كَانَ الشَّهْرُ ثَلَاثِينَ فَأَوَّلُ الْعَشْرِ الْأَوَاخِرِ بِلَا شَكٍّ: لَيْلَةُ إِحْدَى وَعِشْرِينَ، فَهِيَ إِمَّا لَيْلَةُ إِحْدَى وَعِشْرِينَ، وَإِمَّا لَيْلَةُ ثَلَاثٍ وَعِشْرِينَ، وَإِمَّا لَيْلَةُ خَمْسٍ وَعِشْرِينَ، وَإِمَّا لَيْلَةُ سَبْعٍ وَعِشْرِينَ، وَإِمَّا لَيْلَةُ تِسْعٍ وَعِشْرِينَ، لِأَنَّ هَذِهِ هِيَ أَوْتَارُ الْعَشْرِ بِلَا شَكٍّ. وَقَالَ بَعْضُ السَّلَفِ: مَنْ يَقُمْ الْعَامَ يُدْرِكْهَا. وَبُرْهَانُ قَوْلِنَا: أَنَّهَا فِي رَمَضَانَ خَاصَّةً دُونَ سَائِرِ الْعَامِ قَوْلُ اللَّهِ تَعَالَى: {إِنَّا أَنْزَلْنَاهُ فِي لَيْلَةِ الْقَدْرِ} [القدر: ١] وَقَالَ عَزَّ وَجَلَّ: {شَهْرُ رَمَضَانَ الَّذِي أُنْزِلَ فِيهِ الْقُرْآنُ} [البقرة: ١٨٥] فَصَحَّ أَنَّهُ أُنْزِلَ فِي لَيْلَةِ الْقَدْرِ فِي شَهْرِ رَمَضَانَ، فَصَحَّ ضَرُورَةً أَنَّهَا فِي رَمَضَانَ لَا فِي غَيْرِهِ، وَإِذْ لَوْ كَانَتْ فِي غَيْرِهِ لَكَانَ كَلَامُهُ تَعَالَى يَنْقُضُ بَعْضُهُ بَعْضًا بِالْمُحَالِ، وَهَذَا مَا لَا يَظُنُّهُ مُسْلِمٌ.

L12388–12390 It is narrated from Ibn Mas'ud that it is on the seventeenth night of Ramadan, the night of the day of Badr. The evidence for the correctness of our opinion that it is in the last ten days—necessarily—is what was transmitted to us: from 'Abdullah ibn Yusuf, from Ahmad ibn Fath, from 'Abd al-Wahhab ibn 'Isa, from Ahmad ibn Muhammad, from Ahmad ibn 'Ali, from Muslim

وَرُوِيَ عَنْ ابْنِ مَسْعُودٍ: أَنَّهَا فِي لَيْلَةِ سَبْعَ عَشْرَةَ مِنْ رَمَضَانَ لَيْلَةِ يَوْمَ بَدْرٍ. وَبُرْهَانُ صِحَّةِ قَوْلِنَا: أَنَّهَا فِي الْعَشْرِ الْأَوَاخِرِ مِنْهُ وَلَا بُدَّ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ نَا أَحْمَدُ بْنُ فَتْحٍ نَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نَا أَحْمَدُ بْنُ مُحَمَّدٍ نَا أَحْمَدُ بْنُ عَلِيٍّ نَا مُسْلِمُ بْنُ الْحَجَّاجِ

[61] **Qur'an references (L12387):** Qur'an 97:1 (Al-Qadr); Qur'an 2:185 (Al-Baqarah).

ibn al-Hajjaj, from Muhammad ibn al-Muthanna, from ʻAbd al-Aʻla, from Saʻid ibn Abi Nadrah, from Abu Saʻid al-Khudri, who said: “The Messenger of Allah—peace be upon him—observed i'tikaf during the middle third of Ramadan seeking Laylat al-Qadr before it was disclosed to him. When those days concluded, he ordered the structure to be dismantled. Then it was disclosed to him that it was in the last ten days.” He ordered the building to be reconstructed, then addressed the people saying: “O people, the Night of Decree was revealed to me, and I came out to inform you of it. But two men quarreling fiercely, accompanied by the devil, caused me to forget it. Therefore, seek it in the last ten nights of Ramadan—seek it on the ninth night, the seventh night, and the fifth night.” Abu Saʻid then explained: “When twenty-one nights have passed, the following night (the twenty-second) is the ninth night. When twenty-three nights have passed, the following night (the twenty-fourth) is the seventh night. When twenty-five nights have passed, the following night (the twenty-sixth) is the fifth night.”

نَا مُحَمَّدُ بْنُ الْمُثَنَّى نَا عَبْدُ الْأَعْلَى نَا سَعِيدُ بْنُ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: «اعْتَكَفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْعَشْرَ الْأَوْسَطَ مِنْ رَمَضَانَ يَلْتَمِسُ لَيْلَةَ الْقَدْرِ قَبْلَ أَنْ تُبَانَ لَهُ قَالَ فَلَمَّا انْقَضَيْنَ أَمَرَ بِالْبِنَاءِ فَقُوِّضَ ثُمَّ أُبِينَتْ لَهُ أَنَّهَا فِي الْعَشْرِ الْأَوَاخِرِ فَأَمَرَ بِالْبِنَاءِ فَأُعِيدَ ثُمَّ خَرَجَ عَلَى النَّاسِ فَقَالَ: يَا أَيُّهَا النَّاسُ إِنَّهَا كَانَتْ أُبِينَتْ لِي لَيْلَةُ الْقَدْرِ وَإِنِّي خَرَجْتُ لِأُخْبِرَكُمْ بِهَا فَجَاءَ رَجُلَانِ يَحْتَقَّانِ مَعَهُمَا الشَّيْطَانُ فَنُسِّيتُهَا فَالْتَمِسُوهَا فِي الْعَشْرِ الْأَوَاخِرِ مِنْ رَمَضَانَ، وَالْتَمِسُوهَا فِي التَّاسِعَةِ، وَالسَّابِعَةِ، وَالْخَامِسَةِ» . ثُمَّ فَسَّرَهَا أَبُو سَعِيدٍ فَقَالَ: إِذَا مَضَتْ وَاحِدَةٌ وَعِشْرُونَ فَالَّتِي تَلِيهَا اثْنَتَيْنِ وَعِشْرِينَ فَهِيَ التَّاسِعَةُ، فَإِذَا مَضَى ثَلَاثٌ وَعِشْرُونَ فَالَّتِي تَلِيهَا السَّابِعَةُ، فَإِذَا مَضَى خَمْسٌ وَعِشْرُونَ فَالَّتِي تَلِيهَا الْخَامِسَةُ “.

L12391 Abu Muhammad said: This is based on our assertion concerning Ramadan being twenty-nine days. In the chain transmitted to Muslim: Zuhayr ibn Harb narrated to us, Sufyan ibn Uyaynah narrated from al-Zuhri from Salim ibn Abdillah ibn Umar from his father: “Some men saw it as the twenty-seventh night, so Allah’s Messenger, peace be upon him, said: ’I perceive your dreams regarding the last ten nights; seek it among the odd nights thereof.”’ Abu Muhammad said: These reports confirm our position, for if the Night of Decree were shifting, the Prophet’s declaration, peace be upon him, about its reality would lack validity because it would not be fixed. It would then obligate him - whenever he emerged to inform them of it - to renew this information every year until the Day of Resurrection, which is impossible. If he, peace be upon him, was made to forget it, it becomes an impossible falsehood that anyone after him could know it. Since he, peace be upon him, did not confirm the vision of those companions who saw it, the visions of later people are even less worthy of confirmation. It is narrated from Ubayy ibn Kaʻb that it is the twenty-seventh night, yet his statement holds no greater authority than Ibn Masʻud’s. If it is said: There is a report that its sign is the sun rising without rays at that time - we respond: True,

قَالَ أَبُو مُحَمَّدٍ: هَذَا عَلَى مَا قُلْنَا مِنْ كَوْنِ رَمَضَانَ تِسْعًا وَعِشْرِينَ. وَبِهِ إِلَى مُسْلِمٍ: نَا زُهَيْرُ بْنُ حَرْبٍ نَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ «أَنَّ رِجَالًا رَأَوْا أَنَّهَا لَيْلَةُ سَبْعٍ وَعِشْرِينَ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَرَى رُؤْيَاكُمْ فِي الْعَشْرِ الْأَوَاخِرِ فَاطْلُبُوهَا فِي الْوِتْرِ مِنْهَا» . قَالَ أَبُو مُحَمَّدٍ: هَذِهِ الْأَخْبَارُ تُصَحِّحُ مَا قُلْنَا: إِذْ لَوْ كَانَتْ تَنْتَقِلُ لَمَا كَانَ لِإِعْلَامِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَقِيقَةٌ، لِأَنَّهَا كَانَتْ لَا تَثْبُتُ، وَلَوَجَبَ إِذْ خَرَجَ لِيُخْبِرَهُمْ بِهَا أَنْ يُخْبِرَهُمْ بِهَا عَامًّا إِلَى يَوْمِ الْقِيَامَةِ، وَهَذَا مُحَالٌ، وَإِذَا نُسِّيهَا - عَلَيْهِ السَّلَامُ - فَمِنْ الْمُحَالِ الْبَاطِلِ أَنْ يَعْلَمَهَا أَحَدٌ بَعْدَهُ، وَإِذْ لَمْ يَقْطَعْ - عَلَيْهِ السَّلَامُ - بِرُؤْيَا مَنْ رَأَى مِنْ أَصْحَابِهِ فَرُؤْيَا مَنْ بَعْدَهُمْ أَبْعَدُ مِنْ الْقَطْعِ بِهَا، وَقَدْ رُوِيَ عَنْ أُبَيِّ بْنِ كَعْبٍ: أَنَّهَا لَيْلَةُ سَبْعٍ وَعِشْرِينَ، وَلَيْسَ قَوْلُهُ بِأَوْلَى مِنْ قَوْلِ ابْنِ مَسْعُودٍ. فَإِنْ قِيلَ: قَدْ جَاءَ أَنَّ عَلَامَتَهَا أَنَّ الشَّمْسَ تَطْلُعُ حِينَئِذٍ لَا

but he, peace be upon him, did not state this sign would manifest for us to deduce from it what he himself did not know. Rather, this occurs at the sun's initial rising when no one can perceive this sign in it. If it is argued: He, peace be upon him, said, "I was shown that I would prostrate in water and mud on its morning" - does this mean it occurred on the morning after the twenty-first night?

شُعَاعَ لَهَا؟ قُلْنَا: نَعَمْ، وَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ -: إِنَّ ذَلِكَ يَظْهَرُ إِلَيْنَا فَنَعْلَمُ مِنْ ذَلِكَ مَا لَمْ يَعْلَمْهُ هُوَ - عَلَيْهِ السَّلَامُ -، فَيَكُونُ ذَلِكَ أَوَّلَ طُلُوعِهَا بِحَيْثُ لَا يَتَبَيَّنُ ذَلِكَ فِيهَا أَحَدٌ. فَإِنْ قِيلَ: قَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «إِنَّهُ أُرِيَ أَنَّهُ يَسْجُدُ فِي صَبِيحَتِهَا فِي مَاءٍ وَطِينٍ» فَكَانَ ذَلِكَ صَبَاحَ لَيْلَةِ إِحْدَى وَعِشْرِينَ؟

L12392–12393 We said: Yes. And the mosque was filled as well on the morning following the twenty-third night, so he (peace be upon him) prostrated in water and mud. This was narrated to us through the chain of Muslim ibn al-Ḥajjāj from Saʿīd ibn ʿAmr ibn Sahl ibn Isḥāq ibn Muḥammad ibn al-Ashʿath al-Kindī: Abū Ḍamrah Anas ibn ʿIyāḍ; al-Ḍaḥḥāk ibn ʿUthmān narrated to me from Abū al-Naḍr, the freed slave of ʿUmar ibn ʿUbayd Allāh, from Busr ibn Saʿīd, from ʿAbd Allāh ibn Unays, that the Messenger of Allāh (peace be upon him) said: "I was shown the Night of Decree, then I was made to forget it, and I saw myself on its morning prostrating in water and mud." He said, "On the twenty-third night, it rained, and the Messenger of Allāh (peace be upon him) led us in prayer. When he concluded, there were indeed traces of water and mud on his forehead and nose."

قُلْنَا: نَعَمْ، وَقَدْ وَكَفَ الْمَسْجِدُ أَيْضًا فِي صَبِيحَةِ لَيْلَةِ ثَلَاثٍ وَعِشْرِينَ فَسَجَدَ - عَلَيْهِ السَّلَامُ - فِي مَاءٍ وَطِينٍ -: رُوِّينَا هَذَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ عَنْ سَعِيدِ بْنِ عَمْرِو بْنِ سَهْلِ بْنِ إِسْحَاقَ بْنِ مُحَمَّدِ بْنِ الْأَشْعَثِ الْكِنْدِيِّ أَنَا أَبُو ضَمْرَةَ أَنَسُ بْنُ عِيَاضٍ حَدَّثَنِي الضَّحَّاكُ بْنُ عُثْمَانَ عَنْ أَبِي النَّضْرِ مَوْلَى عُمَرَ بْنِ عُبَيْدِ اللَّهِ عَنْ بُسْرِ بْنِ سَعِيدٍ عَنْ عَبْدِ اللَّهِ بْنِ أُنَيْسٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أُرِيتُ لَيْلَةَ الْقَدْرِ ثُمَّ أُنْسِيتُهَا وَأَرَانِي صَبِيحَتَهَا أَسْجُدُ فِي مَاءٍ وَطِينٍ، قَالَ: ٨ فَمُطِرْنَا لَيْلَةَ ثَلَاثٍ وَعِشْرِينَ فَصَلَّى بِنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَانْصَرَفَ وَإِنَّ أَثَرَ الْمَاءِ وَالطِّينِ عَلَى جَبْهَتِهِ وَأَنْفِهِ» .

L12394 He said: Abdullah ibn Unays would state: "Twenty-three [days]. It is possible the sky may withhold [rain] during the entire last ten days, so the legal ruling to detain him remained established."

(قَالَ) وَكَانَ عَبْدُ اللَّهِ بْنُ أُنَيْسٍ يَقُولُ: ثَلَاثٌ وَعِشْرُونَ وَقَدْ يُمْكِنُ أَنْ تَكُفَّ السَّمَاءُ فِي الْعَشْرِ الْأَوَاخِرِ كُلِّهَا فَبَقِيَ الْأَمْرُ بِحَبْسِهِ.

L12395 Among the subtle intricacies of satanic whisperings is Ibn Bukayr al-Maliki's argument that it is the twenty-seventh night, based on the saying of Allah, the Exalted: "Peace it is" [Al-Qadr: 5]. He said: "The word 'hiya' is the twenty-seventh in the surah."[62]

وَمِنْ طَرَائِفِ الْوَسْوَاسِ: احْتِجَاجُ ابْنِ بُكَيْرٍ الْمَالِكِيِّ فِي أَنَّهَا لَيْلَةُ سَبْعٍ وَعِشْرِينَ بِقَوْلِ اللَّهِ تَعَالَى: {سَلامٌ هِيَ} [القدر: ٥] قَالَ: فَلَفْظَةُ " هِيَ " هِيَ السَّابِعَةُ وَعِشْرُونَ مِنَ السُّورَةِ.

L12396 C:AH,AQ Abu Muhammed said: The right of the one who gets this in his brain is to suffer the suffering of the dwellers of the sanitarium. We seek refuge with

قَالَ أَبُو مُحَمَّدٍ: حَقُّ مَنْ قَامَ هَذَا فِي دِمَاغِهِ أَنْ يُعَانِيَ بِمَا يُعَانِي بِهِ سُكَّانُ الْمَارَسْتَانِ نَعُوذُ بِاللَّهِ مِنَ الْبَلَاءِ، وَلَوْ لَمْ يَكُنْ لَهُ مِنْ هَذَا أَكْثَرُ مِنْ دَعْوَاهُ أَنَّهُ وَقَفَ عَلَى مَا غَابَ مِنْ

[62] **Qur'an references (L12395):** Qur'an 97:5 (Al-Qadr).

Allah from affliction! And if he had in this nothing more than his claim that he has access to knowledge that was hidden from the Messenger of Allah and he has not forgotten any of the knowledge of the unseen that Allāh made the Prophet ﷺ forget, then the one who reaches this state, his recompense is that Allah abandons him with such immediate abandonment, and then in the Hereafter, the punishment will be even harsher.

A Matter of Ijtihād in the Last Ten Days of Ramadan.

L12397

L12398–12400

810 - Issue: It is recommended to observe diligent striving in worship during the last ten nights of Ramadan, in accordance with the statement of Allah's Messenger - peace and blessings be upon him -: "Seek it [Laylat al-Qadr] in the last ten nights." This [Night] is sought through righteous deeds, not by means of a specific form or observable characteristic that can be distinctly recognized - unlike other nights, as the ignorant assume. The Exalted said: "We indeed sent it down during a blessed night, for We are surely warners. In it is decreed every wise matter." [Ad-Dukhān: 3-4] And He, the Most High, said: "The Night of Decree is better than a thousand months" [Al-Qadr: 3]. "The angels and the Spirit descend therein by their Lord's permission with every command" [Al-Qadr: 4]. "It is peace until the break of dawn" [Al-Qadr: 5]. Thus, this night is uniquely distinguished from all others. No one sees the angels after the Prophet (peace and blessings of Allah be upon him). We ask Allah the Most High for success, guidance, and protection. Amen.[63]

[63] **Qur'an references (L12398):** Qur'an 44:3 (Ad-Dukhan); Qur'an 44:4 (Ad-Dukhan); Qur'an 97:3 (Al-Qadr); Qur'an 97:4 (Al-Qadr); Qur'an 97:5 (Al-Qadr).

ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَنْسَ مِنْ عِلْمِ الْغَيْبِ مَا أَنْسَاهُ اللَّهُ عَزَّ وَجَلَّ نَبِيَّهُ - عَلَيْهِ السَّلَامُ -، وَمَنْ بَلَغَ إِلَى هَذَا الْحَدِّ فَجَزَاؤُهُ أَنْ يَخْذُلَهُ اللَّهُ تَعَالَى مِثْلَ هَذَا الْخِذْلَانِ الْعَاجِلِ ثُمَّ فِي الْآخِرَةِ أَشَدُّ تَنْكِيلًا.

[مَسْأَلَةُ الِاجْتِهَادُ فِي الْعَشْرِ الْأَوَاخِرِ مِنْ رَمَضَانَ]

٨١٠ - مَسْأَلَةُ: وَيُسْتَحَبُّ الِاجْتِهَادُ فِي الْعَشْرِ الْأَوَاخِرِ مِنْ رَمَضَانَ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْتَمِسُوهَا فِي الْعَشْرِ الْأَوَاخِرِ» وَإِنَّمَا تُلْتَمَسُ بِالْعَمَلِ الصَّالِحِ لَا بِأَنَّ لَهَا صُورَةً وَهَيْئَةً يُمْكِنُ الْوُقُوفُ عَلَيْهَا بِخِلَافِ سَائِرِ اللَّيَالِي كَمَا يَظُنُّ أَهْلُ الْجَهْلِ، إِنَّمَا قَالَ تَعَالَى: {إِنَّا أَنْزَلْنَاهُ فِي لَيْلَةٍ مُبَارَكَةٍ إِنَّا كُنَّا مُنْذِرِينَ} [الدخان: ٣] {فِيهَا يُفْرَقُ كُلُّ أَمْرٍ حَكِيمٍ} [الدخان: ٤] وَقَالَ تَعَالَى: {لَيْلَةُ الْقَدْرِ خَيْرٌ مِنْ أَلْفِ شَهْرٍ} [القدر: ٣] {تَنَزَّلُ الْمَلَائِكَةُ وَالرُّوحُ فِيهَا بِإِذْنِ رَبِّهِمْ مِنْ كُلِّ أَمْرٍ} [القدر: ٤] {سَلَامٌ هِيَ حَتَّى مَطْلَعِ الْفَجْرِ} [القدر: ٥] فَبِهَذَا بَانَتْ عَنْ سَائِرِ اللَّيَالِي فَقَطْ وَالْمَلَائِكَةُ لَا يَرَاهُمْ أَحَدٌ بَعْدَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. نَسْأَلُ اللَّهَ تَعَالَى التَّوْفِيقَ وَالْهُدَى وَالْعِصْمَةَ آمِينَ



AL-MUHALLA

كِتَابُ الْحَجِّ

The Book of Pilgrimage (Hajj)

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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The Chapter on the Hajj

811 – Issue:

[Abū Muḥammad said]: Hajj to Mecca and Umrah to Mecca are two obligations incumbent upon every believing Muslim—sane, adult, male or female, virgin or married. Free men and slaves, free women and female slaves—all are equally obligated in this matter, once in a lifetime, provided they possess the means we have mentioned to reach it. These obligations are also incumbent upon disbelievers, except that these obligations are not accepted from them unless after embracing Islam, nor are they permitted to enter the Sacred Sanctuary until they believe.

As for our statement regarding the obligation of Hajj—upon the believing, sane, adult free man, and the free woman who has a husband or a mahram to accompany her in performing Hajj once in a lifetime—this constitutes a definitively established consensus. Scholars have differed concerning the woman who has neither a husband nor a mahram, the female slave, the male slave, and concerning *ʿUmrah*. The proof for the validity of our position is the statement of Allah, the Exalted: {And due to Allah upon the people is [to make] Hajj to the House—whoever is able to find a way to it} [Āl ʿImrān:97]. Thus, He, the Exalted, generalized and did not specify.[1]

The Almighty and Majestic said: "Fulfill the Ḥajj and ʿUmrah for Allah" [al-Baqarah: 196].[2]

A group said: "'Umrah is not obligatory," and they cited as evidence what we narrated through the chain of Al-Ḥajjāj ibn Arṭā'ah from Ibn al-Munkadir from Jābir: "The Messenger of Allah (peace be upon him) was asked about 'Umrah, 'Is it an obligation?' He replied: 'No, but to perform 'Umrah is better for you.'"

It has been narrated to us from Mu'awiyah ibn Ishaq, through Abu Salih

[1] **Qur'an references (L12405):** Qur'an 3:97 (Ali 'Imran).
[2] **Qur'an references (L12406):** Qur'an 2:196 (Al-Baqarah).

[كِتَابُ الْحَجِّ]

٨١١ - مَسْأَلَةٌ:

[قَالَ أَبُو مُحَمَّدٍ] : الْحَجُّ إلَى مَكَّةَ، وَالْعُمْرَةُ [إلَيْهَا] فَرْضَانِ عَلَى كُلِّ مُؤْمِنٍ، عَاقِلٍ، بَالِغٍ، ذَكَرٍ، أَوْ أُنْثَى، بِكْرٍ، أَوْ ذَاتِ زَوْجٍ. الْحُرُّ وَالْعَبْدُ، وَالْحُرَّةُ وَالْأَمَةُ، فِي كُلِّ ذَلِكَ سَوَاءٌ، مَرَّةً فِي الْعُمْرِ إذَا وَجَدَ مَنْ ذَكَرْنَا إلَيْهَا سَبِيلًا، وَهُمَا أَيْضًا عَلَى أَهْلِ الْكُفْرِ إلَّا أَنَّهُ لَا يُقْبَلُ مِنْهُمْ إلَّا بَعْدَ - الْإِسْلَامِ، وَلَا يُتْرَكُونَ وَدُخُولَ الْحَرَمِ حَتَّى يُؤْمِنُوا.

أَمَّا قَوْلُنَا بِوُجُوبِ الْحَجِّ - عَلَى الْمُؤْمِنِ الْعَاقِلِ الْبَالِغِ الْحُرِّ، وَالْحُرَّةِ الَّتِي لَهَا زَوْجٌ أَوْ ذُو مَحْرَمٍ يَحُجُّ مَعَهَا مَرَّةً فِي الْعُمْرِ - فَإِجْمَاعٌ مُتَيَقَّنٌ، وَاخْتَلَفُوا فِي الْمَرْأَةِ، لَا زَوْجَ لَهَا وَلَا ذَا مَحْرَمٍ، وَفِي الْأَمَةِ وَالْعَبْدِ، وَفِي الْعُمْرَةِ -: بُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلا} [آل عمران: ٩٧] فَعَمَّ تَعَالَى وَلَمْ يَخُصَّ.

وَقَالَ عَزَّ وَجَلَّ: {وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ} [البقرة: ١٩٦] .

وَقَالَ قَوْمٌ: الْعُمْرَةُ لَيْسَتْ فَرْضًا وَاحْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ ابْنِ الْمُنْكَدِرِ عَنْ جَابِرٍ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْعُمْرَةِ أَفَرِيضَةٌ هِيَ؟ قَالَ: لَا، وَأَنْ تَعْتَمِرَ خَيْرٌ لَكَ» .

وَبِمَا رُوِّينَاهُ عَنْ مُعَاوِيَةَ بْنِ إِسْحَاقَ عَنْ أَبِي صَالِحٍ مَاهَانَ الْحَنَفِيِّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْحَجُّ جِهَادٌ وَالْعُمْرَةُ تَطَوُّعٌ» .

Mahan al-Hanafi, that the Prophet (peace be upon him) said: “Hajj is jihad, and Umrah is a supererogatory act.”

L12410 And through the narration of Yaḥyā ibn Ayyūb from ʿAbd Allāh ibn ʿUmar from Abī al-Zubayr from Jābir: “I said: O Messenger of Allah, is ʿUmrah an obligation like the Ḥajj? He said: No, but performing ʿUmrah is better for you.”

وَمِنْ طَرِيقِ يَحْيَى بْنِ أَيُّوبَ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ «قُلْتُ: يَا رَسُولَ اللَّهِ الْعُمْرَةُ فَرِيضَةٌ كَالْحَجِّ؟ قَالَ: لَا، وَأَنْ تَعْتَمِرَ خَيْرٌ لَكَ» .

L12411 From the chain of Hafs ibn Ghaylan, from Makhul, from Abu Umamah al-Bahili, from the Prophet—peace and blessings of Allah be upon him—: “Whoever walks to an obligatory prayer, it is like Hajj, and whoever walks to a voluntary prayer, it is like a complete Umrah.”

وَمِنْ طَرِيقِ حَفْصِ بْنِ غَيْلَانَ عَنْ مَكْحُولٍ عَنْ أَبِي أُمَامَةَ الْبَاهِلِيِّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ مَشَى إِلَى صَلَاةٍ مَكْتُوبَةٍ فَهِيَ كَحَجَّةٍ، وَمَنْ مَشَى إِلَى صَلَاةِ تَطَوُّعٍ فَهِيَ كَعُمْرَةٍ تَامَّةٍ» .

L12412–12413 From the narration of Yaḥyā ibn al-Ḥārith from al-Qāsim Abū ʿAbd al-Raḥmān from Abū Umāmah from the Prophet (peace be upon him): “Whoever walks to a prescribed prayer, his reward is equivalent to that of a pilgrim, and whoever walks to glorification in the forenoon, his reward is equivalent to that of one performing ʿUmrah.”

وَمِنْ طَرِيقِ يَحْيَى بْنِ الْحَارِثِ عَنْ الْقَاسِمِ أَبِي عَبْدِ الرَّحْمَنِ عَنْ أَبِي أُمَامَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ مَشَى إِلَى مَكْتُوبَةٍ فَأَجْرُهُ كَأَجْرِ الْحَاجِّ، وَمَنْ مَشَى إِلَى تَسْبِيحِ الضُّحَى فَأَجْرُهُ كَأَجْرِ الْمُعْتَمِرِ» .

L12414 From the narration of Muḥāḍir ibn al-Muwarriʿ from al-Aḥwaṣ ibn Ḥakīm from ʿAbd Allāh ibn Ḥakīm from ʿAbd Allāh ibn ʿĀbir al-Alhānī from ʿUtbah ibn ʿAbd al-Sulamī and Abū Umāmah al-Bāhilī—both narrating from the Messenger of Allāh (peace and blessings be upon him): “Whoever prays in a mosque in congregation and then remains in it to perform the supererogatory prayer of Duḥā will have a reward like that of a Ḥajj pilgrim and one who performs ʿUmrah.”

وَمِنْ طَرِيقِ مُحَاضِرِ بْنِ الْمُوَرِّعِ عَنْ الْأَحْوَصِ بْنِ حَكِيمٍ عَنْ عَبْدِ اللَّهِ بْنِ حَكِيمٍ عَنْ عَبْدِ اللَّهِ بْنِ عَابِرٍ الْأَهْلَانِيِّ عَنْ عُتْبَةَ بْنِ عَبْدٍ السُّلَمِيِّ، وَعَنْ أَبِي أُمَامَةَ الْبَاهِلِيِّ كِلَاهُمَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ صَلَّى فِي مَسْجِدٍ جَمَاعَةً ثُمَّ ثَبَتَ فِيهِ سُبْحَةَ الضُّحَى كَانَ كَأَجْرِ حَاجٍّ وَمُعْتَمِرٍ» .

L12415 And from the chain of Abd al-Baqi ibn Qaniʿ: a hadith in which Umar ibn Qays narrates from Talhah ibn Musa, from his paternal uncle Ishaq ibn Talhah, from his father, that he heard the Prophet—may Allah’s peace and blessings be upon him—say: “Hajj is jihad, and Umrah is a supererogatory act.”

وَمِنْ طَرِيقِ عَبْدِ الْبَاقِي بْنِ قَانِعٍ حَدِيثًا فِيهِ عُمَرُ بْنُ قَيْسٍ عَنْ طَلْحَةَ بْنِ مُوسَى، عَنْ عَمِّهِ إِسْحَاقَ بْنِ طَلْحَةَ عَنْ أَبِيهِ أَنَّهُ سَمِعَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «الْحَجُّ جِهَادٌ وَالْعُمْرَةُ تَطَوُّعٌ» .

L12416 From the path of Ibn Qāniʿ from Aḥmad ibn Muḥammad ibn Baḥīr al-ʿAṭṭār from Muḥammad ibn Bakkār from Muḥammad ibn al-Faḍl ibn ʿUlayyah

from Sālim al-Afṭas from Saʿīd ibn Jubayr from Ibn ʿAbbās from the Prophet (peace be upon him): “Ḥajj is a struggle, and ʿUmrah is a voluntary act.”

وَمِنْ طَرِيقِ ابْنِ قَانِعٍ عَنْ أَحْمَدَ بْنِ مُحَمَّدِ بْنِ بَحِيرٍ الْعَطَّارِ عَنْ مُحَمَّدِ بْنِ بَكَّارَ عَنْ مُحَمَّدِ بْنِ الْفَضْلِ ابْنِ عُلَيَّةَ عَنْ سَالِمٍ الْأَفْطَسِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْحَجُّ جِهَادٌ وَالْعُمْرَةُ تَطَوُّعٌ» .

L12417 And through the chain of Abd al-Baqi ibn Qani’, who narrated to us Bishr ibn Musa, who narrated to us Ibn al-Isfahani, who narrated to us Jarir and Abu al-Ahwas from Mu’awiyah ibn Ishaq from Abu Salih from Abu Hurairah from the Prophet - peace and blessings of Allah be upon him -: “Hajj is jihad, and Umrah is a voluntary act.”

وَمِنْ طَرِيقِ عَبْدِ الْبَاقِي بْنِ قَانِعٍ نا بِشْرُ بْنُ مُوسَى نا ابْنُ الْأَصْبَهَانِيِّ نا جَرِيرٌ وَأَبُو الْأَحْوَصِ عَنْ مُعَاوِيَةَ بْنِ إِسْحَاقَ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْحَجُّ جِهَادٌ وَالْعُمْرَةُ تَطَوُّعٌ» .

L12418–12419 They said: It has been authentically reported from the Prophet (peace and blessings of Allah be upon him) that he said: “‘Umrah has entered into Hajj until the Day of Resurrection.”

وَقَالُوا: قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «دَخَلَتْ الْعُمْرَةُ فِي الْحَجِّ إلَى يَوْمِ الْقِيَامَةِ» .

L12420 Abu Dawud reported via Zuhayr ibn Harb and Uthman ibn Abi Shaybah, who both said: Zayd ibn Harun reported to us from Sufyan ibn Husayn, from al-Zuhri, from Abu Sinan, from Ibn Abbas that al-Aqraʿ ibn Habis said: “O Messenger of Allah, is Hajj every year or only once?” He replied: “Rather, once. Whatever exceeds that is supererogatory.” They said: It has been established that only one Hajj is obligatory. As for Umrah, it is supererogatory due to its inclusion within Hajj. They said: Allah’s statement, {And complete Hajj and Umrah} (Al-Baqarah 2:196), does not mandate their obligation, but rather mandates their completion for those who have entered into them - not their initial undertaking. This is akin to saying, “Complete the supererogatory prayer” or “Complete the supererogatory fast.”[3]

وَرَوَى أَبُو دَاوُد نا زُهَيْرُ بْنُ حَرْبٍ وَعُثْمَانُ بْنُ أَبِي شَيْبَةَ قَالَا: نا زَيْدُ بْنُ هَارُونَ عَنْ سُفْيَانَ بْنِ حُسَيْنٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي سِنَانٍ عَنْ ابْنِ عَبَّاسٍ أَنَّ الْأَقْرَعَ بْنَ حَابِسٍ قَالَ: «يَا رَسُولَ اللَّهِ الْحَجُّ فِي كُلِّ عَامٍ أَمْ مَرَّةً وَاحِدَةً؟ قَالَ: بَلْ مَرَّةً وَاحِدَةً فَمَا زَادَ فَتَطَوُّعٌ» قَالُوا: فَقَدْ صَحَّ أَنَّهُ لَا يَلْزَمُ إلَّا حَجَّةٌ وَاحِدَةٌ، فَالْعُمْرَةُ تَطَوُّعٌ لِدُخُولِهَا فِي الْحَجِّ، وَقَالُوا: قَوْلُ اللَّهِ تَعَالَى: {وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ} [البقرة: ١٩٦] لَا يُوجِبُ كَوْنَهَا فَرْضًا، وَإِنَّمَا يُوجِبُ إتْمَامَهَا عَلَى مَنْ دَخَلَ فِيهَا لَا ابْتِدَاءَهَا، لَكِنْ كَمَا تَقُولُ: أَتِمَّ الصَّلَاةَ التَّطَوُّعَ، وَالصَّوْمَ التَّطَوُّعَ.

L12421 They said: Since the Umrah is not tied to a specific time, it must not be obligatory: and it has been reported to us from Ibrāhīm al-Nakhaʿī and al-Shaʿbī that it is voluntary? Abū Muḥammad said: This is all they have used to obscure the matter, and all of it is invalid. As for the ḥadīths they

وَقَالُوا: لَمَّا كَانَتْ الْعُمْرَةُ غَيْرَ مُرْتَبِطَةٍ بِوَقْتٍ وَجَبَ أَنْ لَا تَكُونَ فَرْضًا -: وَرُوِّينَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ: أَنَّهَا تَطَوُّعٌ؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا مَوَّهُوا بِهِ وَكُلُّهُ بَاطِلٌ،

[3] **Qur’an references (L12420):** Qur’an 2:196 (Al-Baqarah).

mentioned, they are entirely fabricated; as for Jabir's ḥadīth, al-Ḥajjāj ibn Arṭāʿah is discarded – his narrations cannot be used as proof.

أَمَّا الْأَحَادِيثُ الَّتِي ذَكَرُوا فَمَكْذُوبَةٌ كُلُّهَا، أَمَّا حَدِيثُ جَابِرٍ فَالْحَجَّاجُ بْنُ أَرْطَاةَ سَاقِطٌ لَا يُحْتَجُّ بِهِ.

L12422 The other chain of narrators is discarded and weaker because it is transmitted via Yahya ibn Ayyub – who is weak – from al-ʻUmari the Younger – who is also weak.

وَالطَّرِيقُ الْأُخْرَى أَسْقَطُ وَأَوْهَنُ، لِأَنَّهَا مِنْ طَرِيقِ يَحْيَى بْنِ أَيُّوبَ - وَهُوَ ضَعِيفٌ عَنْ الْعُمَرِيِّ الصَّغِيرِ - وَهُوَ ضَعِيفٌ.

L12423 As for the ḥadīth of Abū Ṣāliḥ, Māhan al-Ḥanafī, it is mursal, and this Māhan is weak, a Kūfī.

وَأَمَّا حَدِيثُ أَبِي صَالِحٍ مَاهَانَ الْحَنَفِيِّ فَهُوَ مُرْسَلٌ - وَمَاهَانُ هَذَا ضَعِيفٌ كُوفِيٌّ.

L12424–12425 As for the ḥadīth of Abū Umāmah, one of its chains of transmission is reported through Ḥafṣ ibn Ghaylān (who is an unknown narrator) from Makḥūl, who is reported from Abū Umāmah, though Makḥūl did not hear anything from Abū Umāmah.

وَأَمَّا حَدِيثُ أَبِي أُمَامَةَ فَأَحَدُ طُرُقِهِ عَنْ حَفْصِ بْنِ غَيْلَانَ - وَهُوَ مَجْهُولٌ عَنْ مَكْحُولٍ عَنْ أَبِي أُمَامَةَ وَلَمْ يَسْمَعْ مَكْحُولٌ مِنْ أَبِي أُمَامَةَ شَيْئًا.

L12426 The second narration is through the chain of al-Qāsim Abī ʿAbd al-Raḥmān—and he is weak. The third narration is through the chain of Ibn al-Muwarriʿ—and he is weak—from al-Aḥwaṣ ibn Ḥakīm—and he is discarded—from ʿAbd Allāh ibn ʿĀbir—and he is unknown. It is a denounced ḥadīth, blatantly fabricated, because if the reward for ʿUmrah were equivalent to the reward of one who walks to a voluntary prayer, there would be no point in the Prophet's—peace and blessings of Allah be upon him—deliberate undertaking to perform ʿUmrah in Mecca after departing from Medina; it would have been futile—and we seek refuge in Allah from this.

وَالْأُخْرَى مِنْ طَرِيقِ الْقَاسِمِ أَبِي عَبْدِ الرَّحْمَنِ - وَهُوَ ضَعِيفٌ. وَالثَّالِثَةُ - مِنْ طَرِيقِ ابْنِ الْمُوَرِّعِ وَهُوَ ضَعِيفٌ عَنْ الْأَحْوَصِ بْنِ حَكِيمٍ وَهُوَ سَاقِطٌ عَنْ عَبْدِ اللَّهِ بْنِ عَابِرٍ، وَهُوَ مَجْهُولٌ، وَهُوَ حَدِيثٌ مُنْكَرٌ ظَاهِرُ الْكَذِبِ، لِأَنَّهُ لَوْ كَانَ أَجْرُ الْعُمْرَةِ كَأَجْرِ مَنْ مَشَى إِلَى صَلَاةِ تَطَوُّعٍ لَمَا كَانَ - لِمَا تَكَلَّفَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ الْقَصْدِ إِلَى الْعُمْرَةِ إِلَى مَكَّةَ مِنْ الْمَدِينَةِ - مَعْنًى، وَلَكَانَ فَارِغًا - وَنَعُوذُ بِاَللَّهِ مِنْ هَذَا.

L12427 As for the ḥadīth of Ṭalḥah, it is transmitted through the chain of ʿAbd al-Bāqī ibn Qāniʿ. The ḥadīth scholars have unanimously agreed to disregard his narrations, for he is the narrator of every baseless tale and fabrication. Moreover, in its chain of transmission is ʿUmar ibn Qays Sandal, who is weak.

وَأَمَّا حَدِيثُ طَلْحَةَ فَمِنْ طَرِيقِ عَبْدِ الْبَاقِي بْنِ قَانِعٍ، وَقَدْ أَصْفَقَ أَصْحَابُ الْحَدِيثِ عَلَى تَرْكِهِ، وَهُوَ رَاوِي كُلِّ بَلِيَّةٍ وَكَذِبَةٍ، ثُمَّ فِيهِ عُمَرُ بْنُ قَيْسٍ سندل وَهُوَ ضَعِيفٌ.

L12428 As for the ḥadīth of Ibn ʾAbbās, it is transmitted through ʾAbd al-Bāqī ibn Qāniʾ, and that suffices; moreover, it comes via three unknown narrators in an uninterrupted chain of unknown individuals whose identities remain undetermined.

وَأَمَّا حَدِيثُ ابْنِ عَبَّاسٍ فَمِنْ طَرِيقِ عَبْدِ الْبَاقِي بْنِ قَانِعٍ وَيَكْفِي، ثُمَّ هُوَ عَنْ ثَلَاثَةٍ مَجْهُولِينَ فِي نَسَقٍ لَا يُدْرَى مَنْ هُمْ.

L12429 As for the ḥadīth of Abū Hurayrah, it is an absolute fabrication from the calamities introduced by ʿAbd al-Bāqī ibn Qāniʿ, which he alone narrated, while others transmitted it as mursal through the chain of Abū Ṣāliḥ Māhān as we previously mentioned. Yet he inserted Abū Hurayrah into it, misleadingly implying it was from Ṣāliḥ al-Sammān. Thus all these narrations have been invalidated, and all praise belongs to Allah.

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ فَكَذِبٌ بَحْتٌ مِنْ بَلَايَا عَبْدِ الْبَاقِي بْنِ قَانِعٍ الَّتِي انْفَرَدَ بِهَا وَالنَّاسُ رَوَوْهُ مُرْسَلًا مِنْ طَرِيقِ أَبِي صَالِحٍ مَاهَانَ كَمَا أَوْرَدْنَا قَبْلُ فَزَادَ فِيهِ أَبَا هُرَيْرَةَ، وَأَوْهَمَ أَنَّهُ صَالِحٌ السَّمَّانُ - فَسَقَطَتْ كُلُّهَا وَلِلَّهِ الْحَمْدُ.

L12430 If we had willed, we could have countered them with what we narrated through Ibn Lahīʿah's chain from ʿAṭāʾ from Jābir from the Prophet—peace and blessings of Allah be upon him—that he said: "Ḥajj and ʿUmrah are two obligatory and mandated rites." But Allah—Exalted and Glorified—grants us refuge, and I seek refuge with Allah and the Sacred Month from citing what is not a valid proof. Yet when Ibn Lahīʿah narrates what aligns with their views, he becomes reliable, but when he narrates what contradicts them, he is deemed weak. By Allah, is this the act of one who is certain he will be held accountable for his statements regarding Allah's religion? Abū Muḥammad said: We know them to say: "When a Companion narrates a report but neglects it, this serves as evidence of that report's weakness."

وَلَوْ شِئْنَا لَعَارَضْنَاهُمْ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ لَهِيعَةَ عَنْ عَطَاءٍ عَنْ جَابِرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «الْحَجُّ وَالْعُمْرَةُ: فَرِيضَتَانِ وَاجِبَتَانِ» وَلَكِنْ يُعِيذُنَا اللَّهُ عَزَّ وَجَلَّ، وَمَعَاذَ اللَّهِ وَالشَّهْرِ الْحَرَامِ مِنْ أَنْ نَحْتَجَّ بِمَا لَيْسَ حُجَّةً، وَلَكِنَّ ابْنَ لَهِيعَةَ إذَا رَوَى مَا يُوَافِقُهُمْ صَارَ ثِقَةً وَإِذَا رَوَى مَا يُخَالِفُهُمْ صَارَ ضَعِيفًا، وَاَللَّهِ مَا هَذَا فِعْلُ مَنْ يُوقِنُ أَنَّهُ مُحَاسَبٌ بِكَلَامِهِ فِي دِينِ اللَّهِ تَعَالَى؟ قَالَ أَبُو مُحَمَّدٍ: وَعَهْدُنَا بِهِمْ يَقُولُونَ: إنَّ الصَّاحِبَ إذَا رَوَى خَبَرًا وَتَرَكَهُ كَانَ ذَلِكَ دَلِيلًا عَلَى ضَعْفِ ذَلِكَ الْخَبَرِ.

L12431–12432 From Aḥmad ibn Muḥammad al-Ṭalamankī, from Ibn Mufarrij, from Ibrāhīm ibn Aḥmad ibn Firās, from Muḥammad ibn ʿAlī ibn Zayd al-Ṣāʾigh, from Saʿīd ibn Manṣūr, from Sufyān—that is, Ibn ʿUyaynah—from ʿAbd Allāh ibn Ṭāwūs, from his father, from Ibn ʿAbbās, that he said: "Ḥajj and ʿUmrah are two obligations."

وَقَدْ حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا إبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ فِرَاسٍ نا مُحَمَّدُ بْنُ عَلِيِّ بْنِ زَيْدٍ الصَّائِغُ نا سَعِيدُ بْنُ مَنْصُورٍ نا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: «الْحَجُّ وَالْعُمْرَةُ وَاجِبَتَانِ» .

L12433 He transmitted textually to Sufyān from ʿAmr ibn Dīnār from Ṭāwūs from Ibn ʿAbbās that he said regarding Ḥajj and ʿUmrah: "She (ʿUmrah) is indeed her companion (Ḥajj's) in the Book of Allah." This is narrated from Ibn ʿAbbās through chains of the highest authenticity, affirming that it (ʿUmrah) is obligatory like the obligation of Ḥajj.

وَبِهِ نَصًّا إلَى سُفْيَانَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ فِي الْحَجِّ وَالْعُمْرَةِ: إنَّهَا لَقَرِينَتُهَا فِي كِتَابِ اللَّهِ وَهَذَا عَنْ ابْنِ عَبَّاسٍ مِنْ طُرُقٍ فِي غَايَةِ الصِّحَّةِ أَنَّهَا وَاجِبَةٌ كَوُجُوبِ الْحَجِّ.

L12434 Aḥmad ibn ʿUmar ibn Anas informed us: ʿAbdullāh ibn al-Ḥusayn ibn ʿIqāl informed us, from Ibrāhīm ibn Muḥammad al-Dīnawarī, from Muḥammad ibn Aḥmad ibn al-Jahm, from Abū Qilābah, from al-Anṣārī—who is Muḥammad ibn ʿAbdillāh the Judge—stating: "I am Ibn Jurayj; Abū al-Zubayr informed me that he heard Jābir ibn ʿAbdillāh say: 'No Muslim is exempted

وَنا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نا عَبْدُ اللَّهِ بْنِ الْحُسَيْنِ بْنِ عِقَالٍ نا إبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ نا أَبُو قِلَابَةَ نا الْأَنْصَارِيُّ هُوَ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْقَاضِي - أَنَا

from performing a Ḥajj and an ʿUmrah—[as per] "whoever is able to undertake the journey" [Quran 3:97]."[4]

L12435 Abu Muhammad said: If the fabricated lies they narrated were authentic, it would necessitate—by their vile, baselessly invented principles—the rejection of all such reports, since they claim Ibn Abbas and Jabir transmitted those narrations while authentic contrary reports are established from them. But these people are deceivers, as you see, and we seek refuge in Allah from abandonment.

L12436 Abu Muhammad said: Then even if all of them were valid—and Allah forbid that falsehood and lies be validated—they would have no valid argument in any of those matters.

L12437 As for what was narrated to us by Abdullah ibn Rabi': Muhammad ibn Mu'awiyah from Ahmad ibn Shu'ayb from Muhammad ibn Abd al-A'la al-San'ani from Khalid ibn al-Harith from Shu'bah, who said: I heard al-Nu'man ibn Salim say: I heard Amr ibn Awsa narrate from Abu Razin al-Uqayli that he said: «O Messenger of Allah, my father is a venerable elder unable to perform Hajj, Umrah, or travel by mount.» He replied: «Perform Hajj and Umrah on behalf of your father.»

L12438–12440 So this is the command of Allah's Messenger - peace and blessings be upon him - regarding the fulfillment of the obligatory Hajj and Umrah on behalf of those unable to perform them; thus this is the ruling. An additional [consideration] and a prescribed law; those narrations were in accordance with the established principle, for Hajj and Umrah were undoubtedly voluntary acts, not obligations. When Allah the Exalted and His Messenger (peace be upon him) commanded them, their voluntary status was unequivocally nullified, and they became two obligations. Whoever claims the invalidity of this ruling and the revival of the abrogated has lied, spoken falsely, and fabricated—pursuing what he has no knowledge of. Thus, every forged report they falsified is invalid—even if they were authentic, how much more so when all

ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: لَيْسَ مُسْلِمٌ إِلَّا عَلَيْهِ حَجَّةٌ وَعُمْرَةٌ {مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلا} [آل عمران: ٩٧] .

قَالَ أَبُو مُحَمَّدٍ: فَلَوْ صَحَّ مَا رَوَوْا مِنَ الْكَذِبِ الْمُلَفَّقِ لَوَجَبَ عَلَى أُصُولِهِمُ الْخَبِيثَةِ الْمُفْتَرَاةِ إِسْقَاطُ كُلِّ ذَلِكَ إِذَا كَانَ ابْنُ عَبَّاسٍ وَجَابِرٌ رَوَيَا تِلْكَ الْأَخْبَارَ بِزَعْمِهِمْ قَدْ صَحَّ عَنْهُمَا خِلَافُهَا، وَلَكِنَّ الْقَوْمَ مُتَلَاعِبُونَ كَمَا تَرَوْنَ، وَنَعُوذُ بِاللَّهِ مِنَ الْخِذْلَانِ.

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ لَوْ صَحَّتْ كُلُّهَا - وَمَعَاذَ اللَّهِ مِنْ أَنْ يَصِحَّ الْبَاطِلُ وَالْكَذِبُ - لَمَا كَانَتْ لَهُمْ فِي شَيْءٍ مِنْهَا حُجَّةٌ -.

لِمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى الصَّنْعَانِيُّ نا خَالِدٌ هُوَ ابْنُ الْحَارِثِ - نا شُعْبَةَ قَالَ: سَمِعْتُ النُّعْمَانَ بْنَ سَالِمٍ قَالَ: سَمِعْتُ عَمْرَو بْنَ أَوْسٍ يُحَدِّثُ عَنْ «أَبِي رَزِينٍ الْعُقَيْلِيِّ أَنَّهُ قَالَ: يَا رَسُولَ اللَّهِ إِنَّ أَبِي شَيْخٌ كَبِيرٌ لَا يَسْتَطِيعُ الْحَجَّ وَلَا الْعُمْرَةَ وَلَا الظَّعْنَ قَالَ: فَحُجَّ عَنْ أَبِيكَ وَاعْتَمِرْ» .

فَهَذَا أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَدَاءِ فَرْضِ الْحَجِّ وَالْعُمْرَةِ عَمَّنْ لَا يُطِيقُهُمَا، فَهَذَا حُكْمٌ زَائِدٌ وَشَرْعٌ وَارِدٌ، وَكَانَتْ تَكُونُ تِلْكَ الْأَحَادِيثُ مُوَافِقَةً لِمَعْهُودِ الْأَصْلِ فَإِنَّ الْحَجَّ وَالْعُمْرَةَ قَدْ كَانَا بِلَا شَكٍّ تَطَوُّعًا لَا فَرْضًا فَإِذَا أَمَرَ بِهِمَا اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ بَطَلَ كَوْنُهُمَا تَطَوُّعًا بِلَا شَكٍّ وَصَارَا فَرْضَيْنِ، فَمَنِ ادَّعَى بُطْلَانَ هَذَا الْحُكْمِ وَعَوْدَةَ الْمَنْسُوخِ فَقَدْ كَذَبَ وَأَفِكَ وَافْتَرَى، وَقَفَا مَا لَيْسَ لَهُ بِهِ عِلْمٌ، فَبَطَلَ كُلُّ خَبَرٍ مَكْذُوبٍ مَوَّهُوا بِهِ لَوْ صَحَّ فَكَيْفَ وَكُلُّهَا بَاطِلٌ؟ وَأَمَّا قَوْلُ مَنْ قَالَ: إِنَّ إِخْبَارَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِدُخُولِ الْعُمْرَةِ فِي الْحَجِّ، وَبِأَنَّهُ لَيْسَ

[4]**Qur'an references (L12434):** Qur'an 3:97 (Ali 'Imran).

are invalid? As for those who say: "The Prophet's (peace be upon him) report that Umrah is incorporated into Hajj, and that one is only required to perform Hajj once, indicates Umrah is not obligatory"—this is an irrational assertion. Rather, it constitutes clear evidence that Umrah is obligatory, for he (peace be upon him) declared its incorporation into Hajj. No rational person doubts that Umrah has not become equivalent to Hajj. Therefore, its incorporation into Hajj must derive from only two aspects: The first is:

L12441 That a single deed is rewarded to both of them in the Qur'an.

L12442 The second [point] is its inclusion among obligations, like Hajj. If they argue: "It has been reported that it is the lesser Hajj?" We reply: Had this been authentic, it would support our position—for the Qiran entails the obligation of Hajj. Thus, it would then constitute an obligation by the explicit text of Allah's words, the Exalted: {It is a duty to Allah for people to perform Hajj to the House—for those able to do so} [3:97]. However, we do not resort to obscuring with unverified claims, particularly since the narration they cite from Ibn Abbas provides no valid evidence for them. Its narrator, Abu Sinan al-Du'ali, was described by 'Uqayl as "Sinan—unknown and unrecognized." Moreover, they fabricated the narration, distorted it, and falsely implied that it contains the Prophet's statement—peace be upon him—"One is only obligated to perform Hajj once." This has absolutely no basis in that narration whatsoever. It merely states that Hajj is performed once, which does not negate the obligation of Umrah—whether combined with Hajj as Qiran or performed alongside it in the same year. Thus, this [ruling] becomes evidence in our favor against them.[5]

L12443–12444 As for their claim that Allah, the Exalted, only commanded those who have entered them to complete them rather than initiate them, and that some people recited *al-ʿumratu lillāhi* (in the nominative case) instead of the accusative – this is an entirely false assertion, for it is baseless. The statement of the Exalted: "And complete the Ḥajj and 'Umrah for Allah" [al-Baqarah 2:196] does not entail what they claim. Rather, it necessitates the obligation to fulfill both rites in their complete form. Even if their claim were valid,

عَلَى الْمَرْءِ إِلَّا حَجَّةٌ وَاحِدَةٌ دَلِيلٌ عَلَى أَنَّهَا لَيْسَتْ فَرْضًا فَهَذَيَانٌ لَا يُعْقَلُ، بَلْ هَذَا بُرْهَانٌ وَاضِحٌ فِي كَوْنِ الْعُمْرَةِ فَرْضًا، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - أَخْبَرَ بِأَنَّهَا دَخَلَتْ فِي الْحَجِّ، وَلَا يَشُكُّ ذُو عَقْلٍ فِي أَنَّهَا لَمْ تَصِرْ حَجَّةً، فَوَجَبَ أَنَّ دُخُولَهَا فِي الْحَجِّ إِنَّمَا هُوَ مِنْ وَجْهَيْنِ فَقَطْ -: أَحَدُهُمَا:

أَنَّهُ يُجْزَى لَهُمَا عَمَلٌ وَاحِدٌ فِي الْقِرَانِ.

وَالثَّانِي: دُخُولُهَا فِي أَنَّهَا فَرْضٌ كَالْحَجِّ. فَإِنْ قَالُوا: قَدْ جَاءَ أَنَّهَا الْحَجُّ الْأَصْغَرُ؟ قُلْنَا لَوْ صَحَّ هَذَا لَكَانَ حُجَّةً لَنَا، لِأَنَّ الْقِرَانَ [قَدْ] جَاءَ بِإِيجَابِ الْحَجِّ فَكَانَتْ حِينَئِذٍ تَكُونُ فَرْضًا بِنَصِّ قَوْلِه تَعَالَى {وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلا} [آل عمران: ٩٧] لَكِنَّا لَا نَسْتَحِلُّ التَّمْوِيهَ بِمَا لَا يَصِحُّ، مَعَ أَنَّ الْخَبَرَ الَّذِي ذَكَرُوا عَنِ ابْنِ عَبَّاسٍ لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ رَاوِيَهُ أَبُو سِنَانٍ الدُّؤَلِيُّ وَقَدْ قَالَ فِيهِ عُقَيْلٌ: سِنَانٌ هُوَ مَجْهُولٌ غَيْرُ مَعْرُوفٍ، وَأَيْضًا: فَإِنَّهُمْ كَذَبُوا فِيهِ وَحَرَّفُوهُ وَأَوْهَمُوا أَنَّ فِيهِ مِنْ لَفْظِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ «لَيْسَ عَلَى الْمَرْءِ إِلَّا حَجَّةٌ وَاحِدَةٌ» لَيْسَ هَذَا فِي ذَلِكَ الْخَبَرِ أَصْلًا وَإِنَّمَا فِيهِ أَنَّ الْحَجَّ مَرَّةٌ وَاحِدَةٌ وَهَذَا لَا يَمْنَعُ مِنْ وُجُوبِ الْعُمْرَةِ: إِمَّا مَعَ الْحَجِّ مَقْرُونَةً، وَإِمَّا مَعَهُ فِي عَامٍ وَاحِدٍ، فَصَارَ حُجَّةً لَنَا عَلَيْهِمْ.

وَأَمَّا قَوْلُهُمْ: إِنَّ اللَّهَ تَعَالَى إِنَّمَا أَمَرَ بِإِتْمَامِهَا مَنْ دَخَلَ فِيهَا لَا بِابْتِدَائِهَا، وَأَنَّ بَعْضَ النَّاسِ قَرَأَ: {وَالْعُمْرَةَ لِلَّهِ} [البقرة: ١٩٦] بِالرَّفْعِ فَقَوْلٌ كُلُّهُ بَاطِلٌ، لِأَنَّهَا دَعْوَى بِلَا بُرْهَانٍ وَقَوْلِه تَعَالَى: {وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ} [البقرة: ١٩٦] لَا يَقْتَضِي مَا قَالُوا وَإِنَّمَا يَقْتَضِي وُجُوبَ الْمَجِيءِ بِهِمَا تَامَّيْنِ وَحَتَّى لَوْ صَحَّ مَا قَالُوهُ لَكَانَ حُجَّةً عَلَيْهِمْ، لِأَنَّهُ إِذَا كَانَ

[5] **Qur'an references (L12442):** Qur'an 3:97 (Ali 'Imran).

it would constitute proof against them, for if those who enter into these rites are commanded to complete them, they become an obligatory duty commanded to be fulfilled. This is our position, not their corrupt and self-contradictory assertion. Ibn Abbas is an authority in the Arabic language.[6]

L12445 We have been narrated through the chain of ʿAbd al-Razzāq from Sufyān ibn ʿUyaynah from ʿAmr ibn Dīnār from Ṭāwūs, who said: I heard Ibn ʿAbbās say: "By Allah, it is indeed its equivalent in the Book of Allah, the Almighty and Majestic: *'And complete the Ḥajj and ʿUmrah for Allah'* [Al-Baqarah: 196]." Thus, Ibn ʿAbbās considered this text as necessitating that ʿUmrah is an obligation like Ḥajj, contrary to the shrewd linguistic analysis of these experts who hold the opposite view. This is the proof cited by Masrūq, Saʿīd ibn al-Musayyib, ʿAlī ibn al-Ḥusayn, and Nāfiʿ; and Masrūq and Saʿīd are linguistic authorities.[7]

L12446 If they say: "Do you hold this opinion regarding voluntary Hajj and voluntary Umrah?" We respond: No. Rather, both are entirely non-obligatory voluntary acts. If one dedicates themselves to them, they will be rewarded; otherwise, there is no blame. Were it otherwise, Hajj's obligation would recur multiple times, and this would contradict Allah Almighty's decree that it is not binding except once in one's lifetime.

L12447 If they say: "Do you assert the completion of vows and the completion of compensatory fasting for voluntary fasts upon one who broke them?" We respond: Yes, for all of that becomes an additional obligation by the command of Allah the Exalted concerning these matters and the command of His Messenger (peace and blessings be upon him). Verily, Hajj is obligatory only once upon those who did not vow it, not upon those who vowed it; rather, for those who vowed it, it becomes another obligation. We do not set the commands of Allah the Exalted against one another; rather, we combine them with one another and act upon all of them.

L12448–12450 As for the recitation {wal-ʿumrata lillāh} [Al-Baqarah: 196] with the accusative case, it is a rejected recitation impermissible for anyone to recite.

الدَّاخِلُ فِيهَا مَأْمُورًا بِإِتْمَامِهَا فَقَدْ صَارَتْ فَرْضًا مَأْمُورًا بِهِ، وَهَذَا قَوْلُنَا لَا قَوْلُهُمْ الْفَاسِدُ الْمُتَخَاذِلُ - وَابْنُ عَبَّاسٍ حُجَّةٌ فِي اللُّغَةِ.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ قَالَ: سَمِعْتُ ابْنَ عَبَّاسٍ يَقُولُ: وَاَللَّهِ إنَّهَا لَقَرِينَتُهَا فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ: {وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ} [البقرة: ١٩٦] فَابْنُ عَبَّاسٍ يَرَى هَذَا النَّصَّ مُوجِبًا لِكَوْنِهَا فَرْضًا كَالْحَجِّ بِخِلَافِ كَيْسِ هَؤُلَاءِ الْحُذَّاقِ بِاللُّغَةِ بِالضِّدِّ، وَبِهَذَا احْتَجَّ مَسْرُوقٌ، وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَعَلِيُّ بْنُ الْحُسَيْنِ، وَنَافِعٌ فِي إيجَابِهَا؛ وَمَسْرُوقٌ، وَسَعِيدٌ حُجَّةٌ فِي اللُّغَةِ.

فَإِنْ قَالُوا: أَنْتُمْ تَقُولُونَ: بِهَذَا فِي الْحَجِّ التَّطَوُّعِ، وَالْعُمْرَةِ التَّطَوُّعِ؟ قُلْنَا: لَا بَلْ هُمَا تَطَوُّعٌ غَيْرُ لَازِمٍ جُمْلَةً إنْ تَمَادَى فِيهِمَا أُجِرَ، وَإِلَّا فَلَا حَرَجَ وَلَوْ كَانَ غَيْرَ هَذَا لَكَانَ الْحَجُّ يَتَكَرَّرُ فَرْضُهُ مَرَّاتٍ، وَهَذَا خِلَافُ حُكْمِ اللَّهِ تَعَالَى فِي أَنَّهُ لَا يَلْزَمُ إلَّا مَرَّةً وَاحِدَةً فِي الدَّهْرِ.

فَإِنْ قَالُوا: فَإِنَّكُمْ تَقُولُونَ: بِإِتْمَامِ النَّذْرِ، وَإِتْمَامِ قَضَاءِ صَوْمِ التَّطَوُّعِ عَلَى مَنْ أَفْطَرَ فِيهِ؟ قُلْنَا: نَعَمْ، لِأَنَّ كُلَّ ذَلِكَ صَارَ فَرْضًا زَائِدًا بِأَمْرِ اللَّهِ تَعَالَى بِذَلِكَ وَأَمْرِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنَّمَا الْحَجُّ فَرْضُ مَرَّةٍ وَاحِدَةً عَلَى مَنْ لَمْ يَنْذِرْهُ لَا عَلَى مَنْ نَذَرَهُ، بَلْ هُوَ عَلَى مَنْ نَذَرَهُ فَرْضٌ آخَرُ لَا نَضْرِبُ أَوَامِرَ اللَّهِ تَعَالَى بَعْضَهَا بِبَعْضٍ بَلْ نَضُمُّ بَعْضَهَا إلَى بَعْضٍ وَنَأْخُذُ بِجَمِيعِهَا.

وَأَمَّا الْقِرَاءَةُ {وَالْعُمْرَةَ لِلَّهِ} [البقرة: ١٩٦] بِالرَّفْعِ فَقِرَاءَةٌ مُنْكَرَةٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يَقْرَأَ بِهَا، وَسُبْحَانَ مَنْ جَعَلَهُمْ يَلْجَئُونَ إلَى تَبْدِيلِ الْقُرْآنِ فَيَحْتَجُّونَ بِهِ؟ وَأَمَّا قَوْلُهُمْ: لَوْ كَانَتْ

[6] **Qur'an references (L12444):** Qur'an 2:196 (Al-Baqarah).
[7] **Qur'an references (L12445):** Qur'an 2:196 (Al-Baqarah).

فَرْضًا لَكَانَتْ مُرْتَبِطَةً بِوَقْتٍ؟ فَكَلَامٌ سَخِيفٌ لَمْ يَأْتِ بِهِ قَطُّ قُرْآنٌ وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا رِوَايَةٌ سَقِيمَةٌ وَلَا قَوْلُ صَاحِبٍ وَلَا إِجْمَاعٌ وَلَا قِيَاسٌ يُعْقَلُ، وَهُمْ مُوَافِقُونَ لَنَا عَلَى أَنَّ الصَّلَاةَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرْضٌ وَلَوْ مَرَّةً فِي الدَّهْرِ وَلَيْسَتْ مُرْتَبِطَةً بِوَقْتٍ، وَأَنَّ النَّذْرَ فَرْضٌ وَلَيْسَ مُرْتَبِطًا بِوَقْتٍ، وَأَنَّ قَضَاءَ رَمَضَانَ فَرْضٌ وَلَيْسَ مُرْتَبِطًا بِوَقْتٍ، وَالْإِحْرَامُ لِلْحَجِّ عِنْدَهُمْ فَرْضٌ وَلَيْسَ عِنْدَهُمْ مُرْتَبِطًا بِوَقْتٍ، فَظَهَرَ هَوَسُ مَا يَأْتُونَ بِهِ؟ قَالَ أَبُو مُحَمَّدٍ: رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الْوَهَّابِ هُوَ ابْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنِ ابْنِ سِيرِينَ عَنْ ثَابِتٍ قَالَ فِيمَنْ يَعْتَمِرُ قَبْلَ أَنْ يَحُجَّ: نُسُكَانِ لِلَّهِ عَلَيْكَ لَا يَضُرُّكَ بِأَيِّهِمَا بَدَأْتَ.

Glory be to the One who compelled them to resort to altering the Quran, only to then cite it as evidence! As for their claim—"If it were obligatory, it would be tied to a specific time?"—this is preposterous speech unsupported by any Quranic verse, authentic Sunnah, unsound narration, Companion's statement, consensus, or rational analogy. Yet they concede to us that invoking blessings upon the Messenger of Allah—peace and blessings be upon him—is obligatory, even once in a lifetime, without being tied to a specific time. Some acts are tied to a time, while the vow is obligatory and not tied to a time, making up Ramadan fasts is obligatory and not tied to a time, and entering *Ihram* for *Hajj* is—according to them—obligatory though not tied to a time. What then is the obsession in what they uphold? Abū Muḥammad said: We were narrated through Ibn Abī Shaybah, who received from ʿAbd al-Wahhāb—that is Ibn ʿAbd al-Majīd al-Thaqafī—from Ayyūb al-Sikhtiyānī, from Ibn Sīrīn, from Thābit, who said regarding one performing ʿUmrah before Ḥajj: "Two rituals are owed to God upon you; it does not harm whichever of them you begin with."[8]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي نَافِعٌ مَوْلَى ابْنِ عُمَرَ أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ عُمَرَ يَقُولُ: لَيْسَ مِنْ خَلْقِ اللَّهِ أَحَدٌ إِلَّا وَعَلَيْهِ حَجَّةٌ وَعُمْرَةٌ وَاجِبَتَانِ مَنْ اسْتَطَاعَ إِلَى ذَلِكَ سَبِيلًا وَمَنْ زَادَ بَعْدَهُمَا شَيْئًا فَهُوَ خَيْرٌ وَتَطَوُّعٌ.

L12451 From the narration chain of ʿAbd al-Razzāq: Ibn Jurayj narrated to us, informing me that Nāfiʿ—the client of Ibn ʿUmar—heard ʿAbdullāh ibn ʿUmar saying: "There is no one among Allah's creation except that upon him are two obligatory duties: Ḥajj and ʿUmrah, for whoever can afford the means to them. Whoever adds anything beyond them, it is good and a supererogatory act."

وَمِنْ طَرِيقِ أَبِي إِسْحَاقَ عَنْ مَسْرُوقٍ عَنِ ابْنِ مَسْعُودٍ قَالَ: أُمِرْتُمْ بِإِقَامَةِ الصَّلَاةِ، وَالْعُمْرَةِ إِلَى الْبَيْتِ؛ وَقَدْ ذَكَرْنَاهُ آنِفًا عَنْ جَابِرٍ، وَابْنِ عَبَّاسٍ.

L12452 And through the narration of Abu Ishaq from Masruq from Ibn Masʿud, who said: "You have been commanded to establish the Salah and perform Umrah to the House." We have previously cited this on the authority of Jabir and Ibn Abbas.

وَمِنْ طَرِيقِ قَتَادَةَ قَالَ عُمَرُ بْنُ الْخَطَّابِ: يَا أَيُّهَا النَّاسُ كُتِبَتْ عَلَيْكُمُ الْعُمْرَةُ.

L12453 And through the chain of Qatadah, ʿUmar ibn al-Khaṭṭāb said: "O people, ʿUmrah has been prescribed for you."

وَعَنْ أَشْعَثَ عَنِ ابْنِ سِيرِينَ قَالَ: كَانُوا لَا يَخْتَلِفُونَ أَنَّ الْعُمْرَةَ فَرِيضَةٌ، وَابْنُ سِيرِينَ أَدْرَكَ الصَّحَابَةَ وَأَكَابِرَ التَّابِعِينَ.

L12454 On the authority of Ashʿath from Ibn Sirin, who said: They did not differ that the Umrah is an obligation, and Ibn Sirin met the Companions and the eminent Followers.

[8] **Qur'an references (L12448):** Qur'an 2:196 (Al-Baqarah).

L12455 And on the authority of Ma’mar, on the authority of Qatādah, who said: “Umrah is obligatory.”

وَعَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: الْعُمْرَةُ وَاجِبَةٌ.

L12456 From the chain of Sufyan al-Thawrī, and from Ma‘mar, from Dāwūd ibn Abī Hind: I asked ‘Aṭā’, “Is the Umrah obligatory upon us like the Ḥajj?” He replied, “Yes.”

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ عَنْ دَاوُد بْنِ أَبِي هِنْدٍ قُلْت لِعَطَاءٍ: الْعُمْرَةُ عَلَيْنَا فَرِيضَةٌ كَالْحَجِّ؟ قَالَ: نَعَمْ.

L12457 Yunus ibn ‘Ubayd reported from al-Hasan and Ibn Sirin collectively: “Umrah is obligatory”—and from Tawus: “Umrah is obligatory.”

وَعَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ، وَابْنِ سِيرِينَ جَمِيعًا الْعُمْرَةُ وَاجِبَةٌ - وَعَنْ طَاوُسٍ الْعُمْرَةُ وَاجِبَةٌ.

L12458 It is reported from Sa’id ibn Jubayr: “‘Umrah is obligatory.” It was said to him: “So-and-so says it is not obligatory.” He replied: “He lied. Allah the Exalted says: *‘Complete the Hajj and ‘Umrah for Allah’* [2:196].”[9]

وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ الْعُمْرَةُ وَاجِبَةٌ، فَقِيلَ لَهُ: إنَّ فُلَانًا يَقُولُ: لَيْسَتْ وَاجِبَةً، فَقَالَ: كَذَبَ إنَّ اللَّهَ تَعَالَى يَقُولُ: {وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ} [البقرة: ١٩٦] .

L12459–12461 Through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from Abū Isḥāq al-Sabīʿī, who said, “I heard...” Masrūq said: “You have been commanded in the Quran to establish four: Prayer, Zakāt, Hajj, and Umrah.” Abū Isḥāq said: I heard ‘Abdullāh ibn Shaddād say: “The Umrah is the lesser Hajj.” From Saʿīd ibn al-Musayyib: “Only one Umrah and one Hajj have been made obligatory upon me.” From Mujāhid: “Hajj and Umrah are two obligations.” From Manṣūr, from Mujāhid: “The Umrah is the lesser Hajj.” From ‘Alī ibn al-Ḥusayn, who was asked about the Umrah: “We know it only as obligatory: {And complete Hajj and Umrah for Allah} [al-Baqarah 2:196].” From Ḥammād ibn Zayd, from ‘Abd al-Raḥmān ibn al-Sarrāj, who said: “I asked Hishām ibn ‘Urwah and Nāfiʿ, the freedman of Ibn ‘Umar, whether the Umrah is obligatory.” Both recited: {And complete Hajj and Umrah for Allah} [al-Baqarah 2:196].“[10]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ قَالَ: سَمِعْتُ مَسْرُوقًا يَقُولُ أُمِرْتُمْ فِي الْقُرْآنِ بِإِقَامَةِ أَرْبَعٍ: الصَّلَاةُ، وَالزَّكَاةُ، وَالْحَجُّ، وَالْعُمْرَةُ - قَالَ أَبُو إِسْحَاقَ: وَسَمِعْتُ عَبْدَ اللَّهِ بْنَ شَدَّادٍ يَقُولُ: الْعُمْرَةُ الْحَجُّ الْأَصْغَرُ. وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ إنَّمَا كُتِبَتْ عَلَيَّ عُمْرَةٌ، وَحَجَّةٌ. وَعَنْ مُجَاهِدٍ: الْحَجُّ وَالْعُمْرَةُ فَرِيضَتَانِ، وَعَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ الْعُمْرَةُ الْحَجَّةُ الصُّغْرَى، وَعَنْ عَلِيِّ بْنِ الْحُسَيْنِ أَنَّهُ سُئِلَ عَنْ الْعُمْرَةِ؟ فَقَالَ: مَا نَعْلَمُهَا إلَّا وَاجِبَةً {وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ} [البقرة: ١٩٦] . وَعَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ السَّرَّاجِ قَالَ: سَأَلْتُ هِشَامَ بْنَ عُرْوَةَ، وَنَافِعًا مَوْلَى ابْنِ عُمَرَ عَنْ الْعُمْرَةِ أَوَاجِبَةٌ هِيَ؟ - فَقَرَأَ جَمِيعًا: {وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ} [البقرة: ١٩٦] .

L12462 From the transmission of Saʿīd ibn Manṣūr: Hushaym narrated to us: Mughīrah—he is ibn Maqsam—narrated to us from al-Shaʿbī, who said re-

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا مُغِيرَةُ هُوَ ابْنُ مِقْسَمٍ - عَنْ الشَّعْبِيِّ أَنَّهُ قَالَ فِي الْعُمْرَةِ: هِيَ وَاجِبَةٌ - وَعَنْ شُعْبَةَ عَنْ الْحَكَمِ قَالَ: الْعُمْرَةُ وَاجِبَةٌ.

[9] **Qur’an references (L12458):** Qur’an 2:196 (Al-Baqarah).
[10] **Qur’an references (L12459):** Qur’an 2:196 (Al-Baqarah).

garding the ʿUmrah: “It is obligatory.” And from Shuʿbah, from al-Ḥakam, who said: “The ʿUmrah is obligatory.”

قَالَ أَبُو مُحَمَّد: وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِهِمْ.

L12463 Abu Muhammad said: This is the opinion of Sufyan al-Thawri, al-Awza’i, al-Shafi’i, Ahmad, Ishaq, Abu Sulayman, and all their followers.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَيْسَتْ فَرْضًا، وَالْقَوْمُ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ، وَهُمْ قَدْ خَالَفُوا هَاهُنَا عُمَرَ بْنَ الْخَطَّابِ، وَابْنَهُ عَبْدَ اللَّهِ، وَابْنَ عَبَّاسٍ، وَجَابِرَ بْنَ عَبْدِ اللَّهِ، وَابْنَ مَسْعُودٍ، وَزَيْدَ بْنَ ثَابِتٍ، وَلَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ خِلَافٌ لَهُمْ فِي هَذَا إلَّا رِوَايَةً سَاقِطَةً مِنْ طَرِيقِ أَبِي مَعْشَرٍ عَنْ إبْرَاهِيمَ أَنَّ عَبْدَ اللَّهِ قَالَ: الْعُمْرَةُ تَطَوُّعٌ، وَالصَّحِيحُ عَنْهُ خِلَافُ هَذَا كَمَا ذَكَرْنَا.

L12464 Abu Hanifa and Malik held that it is not obligatory. They strongly emphasize the solitary opinion of a Companion with no known dissenters, yet here they opposed the positions of Umar ibn al-Khattab, his son Abdullah, Ibn Abbas, Jabir ibn Abdullah, Abdullah ibn Masud, and Zayd ibn Thabit. No authentic report from any Companion contradicts their view in this matter except a rejected narration through Abu Ma’shar from Ibrahim, claiming that Abdullah ibn Umar said: “Umrah is voluntary.” The authentic report from him contradicts this, as we have previously stated.

وَعَهْدُنَا بِهِمْ يُعَظِّمُونَ خِلَافَ الْجُمْهُورِ، وَقَدْ خَالَفُوا [هَاهُنَا] عَطَاءً، وَطَاوُسًا، وَمُجَاهِدًا، وَسَعِيدَ بْنَ جُبَيْرٍ، وَالْحَسَنَ، وَابْنَ سِيرِينَ، وَمَسْرُوقًا، وَعَلِيَّ بْنَ الْحُسَيْنِ، وَنَافِعًا مَوْلَى ابْنِ عُمَرَ، وَهِشَامَ بْنَ عُرْوَةَ، وَالْحَكَمَ بْنَ عُتَيْبَةَ، وَسَعِيدَ بْنَ الْمُسَيِّبِ، وَالشَّعْبِيَّ، وَقَتَادَةَ وَمَا نَعْلَمُ لِمَنْ قَالَ: لَيْسَتْ وَاجِبَةً سَلَفًا، مِنْ التَّابِعِينَ إلَّا إبْرَاهِيمَ النَّخَعِيَّ وَحْدَهُ؛ وَرِوَايَةً عَنْ الشَّعْبِيِّ قَدْ صَحَّ عَنْهُ خِلَافُهَا كَمَا ذَكَرْنَا - وَتَوَقَّفَ فِي ذَلِكَ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ.

L12465–12467 We know that they attach great significance to opposing the majority scholarly consensus, yet [here] they have contradicted ʻAṭāʼ, Ṭāwūs, Mujāhid, Saʻīd ibn Jubayr, al-Ḥasan, Ibn Sīrīn, Masrūq, ʻAlī ibn al-Ḥusayn, Nāfiʻ the client of Ibn ʻUmar, Hishām ibn ʻUrwah, al-Ḥakam ibn ʻUtaybah, Saʻīd ibn al-Musayyib, al-Shaʻbī, and Qatādah. We know of no predecessor among the Followers who said “It is not obligatory” except Ibrāhīm Nakhaʻī. solely; and a narration from Al-Shaʻbi—though a sound narration established from him contradicts it, as we mentioned—and Hammad ibn Abi Sulayman withheld judgment on that.

قَالَ أَبُو مُحَمَّد: وَمَوَّهَ بَعْضُهُمْ بِحَدِيثَيْنِ هُمَا مِنْ أَعْظَمِ الْحُجَّةِ عَلَيْهِمْ -: أَحَدُهُمَا: الْخَبَرُ الثَّابِتُ فِي الَّذِي سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْإِسْلَامِ؟ فَأَخْبَرَهُ بِالصَّلَاةِ، وَالزَّكَاةِ، وَالصِّيَامِ، وَالْحَجِّ، فَقَالَ: هَلْ عَلَيَّ غَيْرُهَا يَا رَسُولَ اللَّهِ؟ قَالَ: لَا إلَّا أَنْ تَطَوَّعَ. وَالثَّانِي:

L12468 Abū Muḥammad said: Some of them resorted to sophistry using two narrations that are among the greatest proofs against them. The first is the authentically established report concerning the man who asked the Messenger of Allāh (peace be upon him) about Islam. He informed him of prayer, almsgiving, fasting, and pilgrimage. The man said: “Is there anything else obligatory upon me, O Messenger of Allāh?” He replied: “No, unless you perform voluntary acts.” The second narration:...

L12469 The narration of Ibn ʻUmar: “Islam is built upon five pillars,” and he men-

tioned the testimony of Tawhid (Shahada), Prayer (Salat), Almsgiving (Zakat), Fasting (Sawm), and Pilgrimage (Hajj).

L12470 Abu Muhammad said: And these two—the strongest of our arguments against them—are due to the authenticity of the statement of the Messenger of Allah, peace and blessings be upon him: "The 'Umrah has been incorporated into Hajj until the Day of Resurrection." Thus, it is established that it is obligatory by virtue of Hajj's obligation, and that its prescribed duty is encompassed within the obligation of Hajj.

L12471 Moreover, even if this report had not come, the command of the Prophet (peace and blessings of Allah be upon him) and the Qur'an's mention of these matters would still constitute additional legislation and a prescribed obligation added to the other mentioned religious laws. They all regard vows as obligatory, jihad when it befalls the Muslims as obligatory, the post-impurity bath as obligatory, and ablution as obligatory—despite none of these being mentioned in the two hadiths. They never considered the two hadiths as evidence to negate the obligation of what we have listed. Thus, their contradiction and the invalidity of their doctrine in this matter became clear—and all praise belongs to Allah, Lord of the worlds.

L12472 **Issue: Hajj for Male and Female Servants**

L12473 Legal Question 812:

L12474 As for the Hajj of a male slave and a female slave, Abū Ḥanīfah, Mālik, and al-Shāfiʿī said: There is no Hajj required of him/her. If he/she performs Hajj, it does not suffice him/her for the obligatory Hajj mandated by Islam.

L12475 Ahmad ibn Hanbal said: If a slave is emancipated at Arafah, that Hajj is sufficient for him. Some of our companions stated: He must perform Hajj like a free person. We previously mentioned the narrations from Jabir and Ibn Umar. One of them said: "There is no Muslim," while the other said: "There is no one among Allah's creation except that they are obligated to perform Umrah and Hajj." Thus, they made a comprehensive generalization without

خَبَرُ ابْنِ عُمَرَ «بُنِيَ الْإِسْلَامُ عَلَى خَمْسٍ» فَذَكَرَ شَهَادَةَ التَّوْحِيدِ، وَالصَّلَاةَ، وَالزَّكَاةَ، وَالصِّيَامَ، وَالْحَجَّ.

قَالَ أَبُو مُحَمَّدٍ: وَهُمَا - أَقْوَى، حُجَجِنَا عَلَيْهِمْ لِصِحَّةِ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «دَخَلَتْ الْعُمْرَةُ فِي الْحَجِّ إلَى يَوْمِ الْقِيَامَةِ» فَصَحَّ أَنَّهَا وَاجِبَةٌ بِوُجُوبِ الْحَجِّ، وَأَنَّ فَرْضَهَا دَخَلَ فِي فَرْضِ الْحَجِّ.

وَأَيْضًا: فَحَتَّى لَوْ لَمْ يَأْتِ هَذَا الْخَبَرُ لَكَانَ أَمْرُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَوُرُودُ الْقُرْآنِ بِهَا شَرْعًا زَائِدًا وَفَرْضًا وَارِدًا مُضَافًا إلَى سَائِرِ الشَّرَائِعِ الْمَذْكُورَةِ، وَكُلُّهُمْ يَرَى النَّذْرَ فَرْضًا، وَالْجِهَادَ إذَا نَزَلَ بِالْمُسْلِمِينَ فَرْضًا، وَغُسْلَ الْجَنَابَةِ فَرْضًا، وَالْوُضُوءَ فَرْضًا، وَلَيْسَ ذَلِكَ مَذْكُورًا فِي الْحَدِيثَيْنِ الْمَذْكُورَيْنِ وَلَمْ يَرَوْا الْحَدِيثَيْنِ الْمَذْكُورَيْنِ حُجَّةً فِي سُقُوطِ فَرْضِ كُلِّ مَا ذَكَرْنَا، فَوَضَحَ تَنَاقُضُهُمْ وَفَسَادُ مَذْهَبِهِمْ فِي ذَلِكَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[مَسْأَلَةٌ حَجُّ الْعَبْدِ وَالْأَمَةِ]

٨١٢ - مَسْأَلَةٌ:

وَأَمَّا حَجُّ الْعَبْدِ، وَالْأَمَةِ، فَإِنَّ أَبَا حَنِيفَةَ، وَمَالِكًا، وَالشَّافِعِيَّ قَالُوا: لَا حَجَّ عَلَيْهِ فَإِنْ حَجَّ لَمْ يُجْزِهِ ذَلِكَ مِنْ حَجَّةِ الْإِسْلَامِ.

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: إذَا عَتَقَ بِعَرَفَةَ أَجْزَأَتْهُ تِلْكَ الْحَجَّةُ، وَقَالَ بَعْضُ أَصْحَابِنَا: عَلَيْهِ الْحَجُّ كَالْحُرِّ، وَقَدْ ذَكَرْنَا آنِفًا عَنْ جَابِرٍ، وَابْنِ عُمَرَ قَالَ أَحَدُهُمَا: مَا مِنْ مُسْلِمٍ، وَقَالَ الْآخَرُ: مَا مِنْ أَحَدٍ مِنْ خَلْقِ اللَّهِ إلَّا عَلَيْهِ عُمْرَةٌ وَحَجَّةٌ، فَقَطَعَا وَعَمَّا وَلَمْ يَخُصَّا إنْسِيًّا مِنْ جِنِّيٍّ،

وَلَا حُرًّا مِنْ عَبْدٍ، وَلَا حُرَّةً مِنْ أَمَةٍ، وَمَنْ ادَّعَى عَلَيْهِمَا تَخْصِيصَ الْحُرِّ، وَالْحُرَّةِ؛ فَقَدْ كَذَبَ عَلَيْهِمَا، وَلَا أَقَلَّ حَيَاءً مِمَّنْ يَجْعَلُ قَوْلَ ابْنِ عُمَرَ «بُنِيَ الْإِسْلَامُ عَلَى خَمْسٍ» حُجَّةً فِي إِسْقَاطِ فَرْضِ الْعُمْرَةِ - وَهُوَ حُجَّةٌ فِي وُجُوبِ فَرْضِهَا كَمَا ذَكَرْنَا - وَلَا يَجْعَلُ قَوْلَهُ: مَا مِنْ أَحَدٍ مِنْ خَلْقِ اللَّهِ إِلَّا عَلَيْهِ: حَجَّةٌ، وَعُمْرَةٌ -: حُجَّةً فِي وُجُوبِ الْحَجِّ عَلَى الْعَبْدِ.

exception, neither differentiating between a human and a jinn, nor a free person from a slave, nor a free woman from a female slave. Whoever claims they restricted this obligation to free men and women has fabricated lies against them. None is more shameless than one who cites Ibn Umar's statement, "Islam is built upon five pillars," as evidence to negate the obligatory status of Umrah—while it actually confirms its obligation, as we explained—yet refuses to treat his statement, "There is no one among Allah's creation except that they are obligated to perform Hajj and Umrah," as proof for the slave's obligation to perform Hajj.

فَإِنْ قِيلَ: لَعَلَّهُمَا أَرَادَا إِلَّا الْعَبْدَ؟ قِيلَ: هَذَا هُوَ الْكَذِبُ بِعَيْنِهِ أَنْ يُرِيدَا إِلَّا الْعَبْدَ ثُمَّ لَا يُبَيِّنَانِهِ، وَأَيْضًا: فَلَعَلَّهُمَا أَرَادَا إِلَّا الْمُقْعَدَ، وَإِلَّا الْأَعْمَى، وَإِلَّا الْأَعْوَرَ، وَإِلَّا بَنِي تَمِيمٍ، وَإِلَّا أَهْلَ إِفْرِيقِيَةَ، وَهَذَا حَقٌّ لَا خَفَاءَ بِهِ، وَلَا يَصِحُّ مَعَ هَذِهِ الدَّعْوَى قَوْلَةٌ لِأَحَدٍ أَبَدًا.

L12476–12477 If it is said: "Perhaps they intended to exclude the slave?" It is replied: "This is the lie itself—that they intended to exclude the slave but then did not clarify it. Moreover, perhaps they intended to exclude the bedridden, the blind, the one-eyed, Banu Tamim, or the people of Ifriqiyah. This is an evident truth, and with such a claim, no one's statement can ever hold validity."

وَلَعَلَّ كُلَّ مَا أَخَذُوا بِهِ مِنْ قَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، لَيْسَ عَلَى عُمُومِهِ، وَلَكِنَّهُمْ أَرَادُوا تَخْصِيصًا لَمْ يُبَيِّنُوهُ وَهَذِهِ طَرِيقُ السُّوفُسْطَائِيَّةِ نَفْسِهَا، وَلَا يَجُوزُ أَنْ يَقُولَ أَحَدٌ مَا لَمْ يَقُلْ إِلَّا بِبَيَانٍ وَارِدٍ مُتَيَقَّنٍ يُنْبِئُ بِأَنَّهُ أَرَادَ غَيْرَ مُقْتَضَى قَوْلِهِ.

L12478 Perhaps all that they have adopted from the statements of Abū Ḥanīfah, Mālik, and al-Shāfiʿī is not in their general sense. Rather, they intended a specification they did not elucidate, and this is the very method of the Sophists themselves. It is impermissible for anyone to assert what was not stated unless there exists a certain, presented indication revealing that the speaker intended other than what his words necessitate.

وَقَدْ ذَكَرُوا هَاهُنَا قَوْلَ اللَّهِ تَعَالَى: {تُدَمِّرُ كُلَّ شَيْءٍ بِأَمْرِ رَبِّهَا} [الأحقاف: ٢٥] .

L12479 And they have mentioned here the words of Allah, Exalted is He: {It destroys everything by the command of its Lord} [Al-Ahqaf: 25].[11]

{وَأُوتِيَتْ مِنْ كُلِّ شَيْءٍ} [النمل: ٢٣] .

L12480 "And she was given from all things" [Surah An-Naml 27:23].[12]

وَ {مَا تَذَرُ مِنْ شَيْءٍ أَتَتْ عَلَيْهِ إِلا جَعَلَتْهُ كَالرَّمِيمِ} [الذاريات: ٤٢] .

L12481 *"It leaves nothing it comes upon but reduces it to decayed debris"* [adh-Dhāriyāt 51:42].[13]

وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهَا إِنَّمَا دَمَّرَتْ بِنَصِّ الْآيَةِ كُلَّ شَيْءٍ بِأَمْرِ رَبِّهَا فَدَمَّرَتْ مَا أَمَرَهَا رَبُّهَا بِتَدْمِيرِهِ لَا مَا لَمْ يَأْمُرْهَا.

L12482 All of this contains no valid argument for them within it; for according to the

[11] **Qur'an references (L12479):** Qur'an 46:25 (Al-Ahqaf).
[12] **Qur'an references (L12480):** Qur'an 27:23 (An-Naml).
[13] **Qur'an references (L12481):** Qur'an 51:42 (Adh-Dhariyat).

explicit text of the verse, she destroyed everything by her Lord's command alone. Thus, she destroyed only what her Lord commanded her to destroy, not what He did not command.

وَمَا تَذَرُ مِنْ شَيْءٍ أَتَتْ عَلَيْهِ، فَإِنَّمَا جَعَلَتْ كَالرَّمِيمِ مَا أَتَتْ عَلَيْهِ لَا مَا لَمْ تَأْتِ عَلَيْهِ بِنَصِّ الْآيَةِ.

L12483 And it leaves nothing of what it overtakes; rather, it renders whatever it affects into decayed remnants—not what it has not overtaken—by the explicit wording of the verse.

وَأُوتِيَتْ مِنْ كُلِّ شَيْءٍ: لَا يَقْتَضِي إِلَّا بَعْضَ الْأَشْيَاءِ، لِأَنَّ " مِنْ " لِلتَّبْعِيضِ، فَمَنْ آتَاهُ اللَّهُ شَيْئًا مَا قَلَّ أَوْ كَثُرَ فَقَدْ آتَاهُ مِنْ كُلِّ شَيْءٍ، لِأَنَّ كُلَّ شَيْءٍ هُوَ الْعَالَمُ كُلُّهُ، فَمَنْ أُوتِيَ شَيْئًا فَقَدْ أُوتِيَ مِنْ الْعَالَمِ كُلِّهِ - وَهَذَا بَيِّنٌ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L12484 It was given a portion of everything; this implies only some things, for "from" denotes partitivity. Thus, whoever Allah grants something—whether small or great—He has granted them a portion of everything, since "everything" is the entire world. Therefore, whoever is granted something has been granted a portion of the entire world—and this is evident. Success is with Allah, the Most High.

وَكَتَبَ إِلَيَّ أَبُو الْمَرْجِيِّ الْحُسَيْنُ بْنُ عَبْدِ اللَّهِ بْنِ زِرٍّ الْمَصْرِيُّ قَالَ: نا أَبُو الْحَسَنِ الرَّحَبِيُّ -: نا أَبُو مُسْلِمٍ الْكَاتِبُ نا أَبُو الْحَسَنِ عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ المغلس نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا زَيْدُ بْنُ الْحُبَابِ الْعُكْلِيُّ نا ابْنُ لَهِيعَةَ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ قَالَ: سَأَلْتُ الْقَاسِمَ بْنَ مُحَمَّدٍ، وَسُلَيْمَانَ بْنَ يَسَارٍ عَنْ الْعَبْدِ إِذَا حَجَّ بِإِذْنِ سَيِّدِهِ؟ فَقَالَا جَمِيعًا: تُجْزِئُ عَنْهُ مِنْ حَجَّةِ الْإِسْلَامِ فَإِذَا حَجَّ بِغَيْرِ إِذْنِ سَيِّدِهِ لَمْ تُجْزِهِ، وَبِهِ إِلَى زَيْدِ بْنِ الْحُبَابِ أَنَا إِبْرَاهِيمُ بْنُ نَافِعٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: إِذَا حَجَّ الْعَبْدُ وَهُوَ مُخَلًّى فَقَدْ أَجْزَأَتْ عَنْهُ حَجَّةُ الْإِسْلَامِ.

L12485 Abū al-Marjī al-Ḥusayn ibn ʿAbd Allāh ibn Zirr al-Miṣrī wrote to me, saying: Abū al-Ḥasan al-Raḥabī [...] narrated to us: Abū Muslim al-Kātib narrated to us: Abū al-Ḥasan ʿAbd Allāh ibn Aḥmad ibn al-Mughallis narrated to us: ʿAbd Allāh ibn Aḥmad ibn Ḥanbal narrated to us: My father narrated to us: Zayd ibn al-Ḥubāb al-ʿUklī narrated to us: Ibn Lahīʿah narrated from Bukayr ibn ʿAbd Allāh ibn al-Ashajj, who said: I asked al-Qāsim ibn Muḥammad and Sulaymān ibn Yasār about the slave performing Hajj with his master's permission. They both said: "It suffices for him as part of the Hajj of Islam. But if he performs Hajj without his master's permission, it does not suffice for him." And via the same chain up to Zayd ibn al-Ḥubāb: Ibrāhīm ibn Nāfiʿ narrated from Ibn Abī Najīḥ, who narrated from Mujāhid, who said: "If the slave performs Hajj while permitted, it suffices for him as the Hajj of Islam."

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ مَنْ لَمْ يَرَ لِلْعَبْدِ حَجًّا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ يُونُسَ بْنِ أَبِي إِسْحَاقَ قَالَ: سَمِعْتُ شَيْخًا يُحَدِّثُ أَبَا إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ كَعْبٍ الْقُرَظِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَيُّمَا صَبِيٍّ حَجَّ بِهِ أَهْلُهُ ثُمَّ مَاتَ أَجْزَأَ

L12486–12488 Abu Muhammad said: Those who do not hold that Hajj is required of slaves cited as evidence what we narrated through the chain of Ibn Abi Shaybah (نا). Waki' reported from Yunus ibn Abī Isḥāq, who said: I heard a shaykh narrating to Abū Isḥāq from Muḥammad ibn Ka'b al-Qurazī from the Messenger of Allah (peace and blessings of Allah be upon him): "If any child's guardians perform Hajj on his behalf and he subsequently dies, it suffices for him. And if he comes of age, Hajj becomes obligatory upon him. And if any

slave's owner performs Hajj on his behalf and he subsequently dies, it suffices for him. And if he is emancipated, Hajj becomes obligatory upon him."

عَنْهُ وَإِنْ أَدْرَكَ فَعَلَيْهِ الْحَجُّ، وَأَيُّمَا مَمْلُوكٍ حَجَّ بِهِ أَهْلُهُ ثُمَّ مَاتَ أَجْزَأَ عَنْهُ وَإِنْ عَتَقَ فَعَلَيْهِ الْحَجُّ» .

L12489 Abu Muhammad said: This is a mursal, narrated from a shaykh whose name is unknown, nor who he is.

قَالَ أَبُو مُحَمَّدٍ: هَذَا مُرْسَلٌ، وَعَنْ شَيْخٍ لَا يُدْرَى اسْمُهُ وَلَا مَنْ هُوَ.

L12490 They also cited as evidence a report we transmitted through the chain of ʿUthmān ibn Khirazād al-Anṭākī, narrated via Muḥammad ibn al-Minḥāl al-Ḍarīr, on the authority of Yazīd ibn Zurayʿ, on the authority of Shuʿbah from al-Aʿmash from Abū Ẓabiyān from Ibn ʿAbbās, who said: The Messenger of Allāh—peace and blessings of Allāh be upon him—said: "Any minor who performs Ḥajj before reaching puberty is obligated to perform Hajj again, and any slave who performs Ḥajj then is emancipated is obligated to perform Hajj again."

وَاحْتَجُّوا أَيْضًا بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ عُثْمَانَ بْنِ خِرْزَادٍ الْأَنْطَاكِيِّ نا مُحَمَّدُ بْنُ الْمِنْهَالِ الضَّرِيرِ نا يَزِيدُ بْنُ زُرَيْعٍ نا شُعْبَةُ عَنْ الْأَعْمَشِ عَنْ أَبِي ظَبْيَانَ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَيُّمَا صَبِيٍّ حَجَّ لَمْ يَبْلُغْ الْحِنْثَ فَعَلَيْهِ حَجَّةٌ أُخْرَى، وَأَيُّمَا عَبْدٍ حَجَّ ثُمَّ أُعْتِقَ فَعَلَيْهِ أَنْ يَحُجَّ حَجَّةً أُخْرَى» .

L12491 Ali said: This is a report narrated by someone more reliable than Uthman ibn Kharrāzādh from Muhammad ibn al-Minhāl from Yazīd ibn Zuraiʿ from Shuʿbah, and by someone comparable to Yazīd ibn Zuraiʿ (if not superior) from Shuʿbah. One of them stopped the chain at Ibn Abbas, while the other supported it with an addition through a chain: Muhammad ibn Saʿīd ibn Nubāt narrated to us, Ahmad ibn ʿAwn Allāh narrated to us, Qāsim ibn Aṣbagh narrated to us, Muhammad ibn ʿAbd al-Salām al-Khushanī narrated to us, Muhammad ibn Bashshār narrated to us, Muhammad ibn Abī ʿAdī and Muhammad ibn al-Minhāl narrated to us. Ibn al-Minhāl said: Yazīd ibn Zuraiʿ narrated to us from Shuʿbah. Ibn Abī ʿAdī said: Shuʿbah narrated to us. Then they both concurred from Shuʿbah from al-Aʿmash from Umm Ẓabyān from Ibn Abbas. Yazīd ibn Zuraiʿ said: From the Messenger of Allah - peace and blessings be upon him - who said: "If Hajj is performed on behalf of a child, it remains a child's Hajj until he reaches the age of reason. When he reaches the age of reason, he must perform another Hajj. If a Bedouin performs Hajj, it remains a Bedouin's Hajj. When he migrates, he must perform another Hajj."

قَالَ عَلِيٌّ: وَهَذَا خَبَرٌ رَوَاهُ مَنْ هُوَ أَوْثَقُ مِنْ عُثْمَانَ بْنِ خَرَّزَاذٍ عَنْ مُحَمَّدِ بْنِ الْمِنْهَالِ عَنْ يَزِيدَ بْنِ زُرَيْعٍ عَنْ شُعْبَةَ، وَمَنْ هُوَ إنْ لَمْ يَكُنْ فَوْقَ يَزِيدَ بْنِ زُرَيْعٍ لَمْ يَكُنْ دُونَهُ عَنْ شُعْبَةَ فَأَوْقَفَهُ أَحَدُهُمَا عَلَى ابْنِ عَبَّاسٍ، وَأَسْنَدَهُ الْآخَرُ بِزِيَادَةٍ: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ وَمُحَمَّدُ بْنُ الْمِنْهَالِ، قَالَ ابْنُ الْمِنْهَالِ: نا يَزِيدُ بْنُ زُرَيْعٍ نا شُعْبَةُ، وَقَالَ ابْنُ أَبِي عَدِيٍّ: نا شُعْبَةُ، ثُمَّ اتَّفَقَا عَنْ شُعْبَةَ عَنْ الْأَعْمَشِ عَنْ أُمِّ ظَبْيَانَ عَنْ ابْنِ عَبَّاسٍ قَالَ يَزِيدُ بْنُ زُرَيْعٍ: عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا حَجَّ الصَّبِيُّ لَهُ فَهِيَ حَجَّةُ صَبِيٍّ حَتَّى يَعْقِلَ، فَإِذَا عَقَلَ فَعَلَيْهِ حَجَّةٌ أُخْرَى، وَإِذَا حَجَّ الْأَعْرَابِيُّ فَهِيَ لَهُ حَجَّةُ أَعْرَابِيٍّ، فَإِذَا هَاجَرَ فَعَلَيْهِ حَجَّةٌ أُخْرَى» .

L12492 Ibn Abī ʿAdiyy ascribed it as a statement of Ibn ʿAbbās, and Sufyān al-Thawrī

likewise ascribed it as a statement of Ibn ʿAbbās via the chain: al-Aʿmash → Abū Ẓabyān → Ibn ʿAbbās.

وَأَوْقَفَهُ ابْنُ أَبِي عَدِيٍّ عَلَى ابْنِ عَبَّاسٍ مِنْ قَوْلِهِ - وَأَوْقَفَهُ أَيْضًا: سُفْيَانُ الثَّوْرِيُّ عَنْ الْأَعْمَشِ عَنْ أَبِي ظَبْيَانَ عَنْ ابْنِ عَبَّاسٍ مِنْ قَوْلِهِ.

L12493 Also, Abū al-Safar, ʻUbayd (the owner of the ornaments), and Qatādah stopped it at Ibn Abbas as mawqūf.

وَأَوْقَفَهُ أَيْضًا: أَبُو السَّفَرِ، وَعُبَيْدٌ صَاحِبُ الْحُلَى، وَقَتَادَةُ عَلَى ابْنِ عَبَّاسٍ.

L12494 And Abu Muhammad said: If this narration is proof that the slave's pilgrimage does not suffice, then it is equally proof that the Bedouin's pilgrimage does not suffice, for there is no distinction; this is the position of Ibn Abbas, firmly established from him, as we have mentioned.

وَقَالَ أَبُو مُحَمَّدٍ: إنْ كَانَ هَذَا الْخَبَرُ حُجَّةً فِي أَنْ لَا يُجْزِئَ الْعَبْدَ حَجُّهُ فَهُوَ حُجَّةٌ فِي أَنْ لَا يُجْزِئَ الْأَعْرَابِيَّ حَجُّهُ وَلَا فَرْقَ؛ وَهُوَ قَوْلُ ابْنِ عَبَّاسٍ الثَّابِتُ عَنْهُ كَمَا أَوْرَدْنَا.

L12495–12497 And likewise, we have also narrated it through the route of Abu Muʻawiyah and Sufyan al-Thawri from al-Aʻmash, from... From Abū Ẓabyān, on the authority of Ibn ʿAbbās, regarding his statement about the obligation to repeat the Ḥajj for a boy upon reaching puberty, for a slave upon emancipation, and for a Bedouin upon emigration, which is the opinion of al-Ḥasan.

وَكَذَلِكَ أَيْضًا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي مُعَاوِيَةَ، وَسُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ أَبِي ظَبْيَانَ عَنْ ابْنِ عَبَّاسٍ مِنْ قَوْلِهِ فِي إعَادَةِ الْحَجِّ عَلَى الصَّبِيِّ إذَا احْتَلَمَ، وَعَلَى الْعَبْدِ إذَا عَتَقَ، وَعَلَى الْأَعْرَابِيِّ إذَا هَاجَرَ - وَهُوَ قَوْلُ الْحَسَنِ.

L12498 As narrated to us by Ibn Abi Shaybah from Ali ibn Hashim from Ismail from Al-Hasan Al-Basri, who said: If a minor performs Hajj, a slave performs Hajj, or a Bedouin performs Hajj—then if the Bedouin migrates [to a Muslim community], the minor reaches puberty (by experiencing a wet dream), and the slave is emancipated, Hajj becomes obligatory upon them.

كَمَا رُوِّينَا عَنْ ابْنِ أَبِي شَيْبَةَ عَنْ عَلِيِّ بْنِ هَاشِمٍ عَنْ إسْمَاعِيلَ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: الصَّبِيُّ إنْ حَجَّ، وَالْمَمْلُوكُ إنْ حَجَّ، وَالْأَعْرَابِيُّ إنْ حَجَّ، ثُمَّ هَاجَرَ الْأَعْرَابِيُّ، وَاحْتَلَمَ الصَّبِيُّ، وَعَتَقَ الْعَبْدُ فَعَلَيْهِمْ الْحَجُّ.

L12499 Aṭā said: As for the nomadic Arab (Bedouin), his Hajj suffices for his obligation. As for the minor and the slave, Hajj is obligatory for both of them.

وَقَالَ عَطَاءٌ: أَمَّا الْأَعْرَابِيُّ فَيُجْزِئُهُ حَجُّهُ، وَأَمَّا الصَّبِيُّ، وَالْمَمْلُوكُ فَعَلَيْهِمَا الْحَجُّ.

L12500 Ibrahim al-Nakha'i said: If a slave is emancipated, his Hajj does not suffice him, and he is required to perform another Hajj. As for the Bedouin, his Hajj suffices him.

وَقَالَ إِبْرَاهِيمُ النَّخَعِيُّ: لَا يُجْزِئُ الْعَبْدَ حَجُّهُ إِذَا أُعْتِقَ، وَعَلَيْهِ حَجَّةٌ أُخْرَى، وَأَمَّا الْأَعْرَابِيُّ فَيُجْزِئُهُ حَجُّهُ.

L12501 We have also had similar to this narrated to us from Al-Ḥasan, Al-Zuhrī, and Ṭāwūs. We do not know of any Successor from whom anything has been narrated in this chapter other than what we have mentioned, nor from the Companions other than what we have cited.

وَقَدْ رُوِّينَا أَيْضًا مِثْلَ هَذَا عَنِ الْحَسَنِ، وَعَنِ الزُّهْرِيِّ، وَطَاوُسٍ، وَمَا نَعْلَمُ أَحَدًا مِنَ التَّابِعِينَ رُوِيَ عَنْهُ فِي هَذَا الْبَابِ شَيْءٌ غَيْرُ مَا ذَكَرْنَاهُ، وَلَا عَنِ الصَّحَابَةِ غَيْرَ مَا أَوْرَدْنَا.

L12502 Abu Muhammad said: Who is more astonishing in situation than one who claims consensus in this matter while having only five Followers with him in this—one of whom is subject to disagreement regarding his position—when we have transmitted reports corresponding to our view from three Followers and two Companions (may Allah be pleased with them)? And they indeed have opposed in this issue every opinion reported from the Companions (may Allah be pleased with them). They magnify such a stance when it aligns with their adherence (taqlīd), yet they do not regard as consensus what has been narrated from six Companions and fourteen Followers affirming that Umrah is obligatory—though no valid disagreement is recorded from any Companion on this matter, nor from any Follower except from one with a disagreement—and they do not consider this consensus.

قَالَ أَبُو مُحَمَّدٍ: فَمَنْ أَعْجَبُ شَأْنًا مِمَّنْ يَدَّعِي الْإِجْمَاعَ فِي هَذَا وَلَيْسَ مَعَهُ فِيهِ إِلَّا خَمْسَةٌ مِنَ التَّابِعِينَ، أَحَدُهُمْ مُخْتَلَفٌ عَنْهُ فِي ذَلِكَ، وَقَدْ رُوِّينَا مِثْلَ قَوْلِنَا عَنْ ثَلَاثَةٍ مِنَ التَّابِعِينَ، وَعَنِ اثْنَيْنِ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهُمْ قَدْ خَالَفُوا فِي هَذِهِ الْمَسْأَلَةِ كُلَّ قَوْلٍ جَاءَ فِي ذَلِكَ عَنِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إِذَا وَافَقَ تَقْلِيدَهُمْ فَلَمْ يَجْعَلُوا مَا رُوِيَ عَنْ سِتَّةٍ مِنَ الصَّحَابَةِ وَأَرْبَعَةَ عَشَرَ مِنَ التَّابِعِينَ فِي أَنَّ الْعُمْرَةَ فَرْضٌ، وَلَا يَصِحُّ عَنْ أَحَدٍ مِنَ الصَّحَابَةِ فِي ذَلِكَ خِلَافٌ وَلَا عَنْ أَحَدٍ مِنَ التَّابِعِينَ إِلَّا عَنْ وَاحِدٍ بِاخْتِلَافٍ فَلَمْ يَجْعَلُوهُ إِجْمَاعًا.

L12503 Abu Muhammad said: The narration of Uthman ibn Kharrazadh and Muhammad ibn Bashshār from Muhammad ibn al-Minhāl from Yazīd ibn Zurayʿ can only be either authentic or inauthentic. If it is inauthentic, we are relieved of the effort regarding it. If it is authentic—and this is the more evident possibility in it, since its narrators are reliable—then it is unquestionably an abrogated report.

قَالَ أَبُو مُحَمَّدٍ: لَا تَخْلُو رِوَايَةُ عُثْمَانَ بْنِ خَرَّزَاذٍ، وَمُحَمَّدِ بْنِ بَشَّارٍ عَنْ مُحَمَّدِ بْنِ الْمِنْهَالِ عَنْ يَزِيدَ بْنِ زُرَيْعٍ مِنْ أَنْ تَكُونَ صَحِيحَةً أَوْ غَيْرَ صَحِيحَةٍ فَإِنْ كَانَتْ غَيْرَ صَحِيحَةٍ فَقَدْ كُفِينَا الْمُؤْنَةَ فِيهَا، وَإِنْ كَانَتْ صَحِيحَةً وَهُوَ الْأَظْهَرُ فِيهَا -؛ لِأَنَّ رُوَاتَهَا ثِقَاتٌ - فَإِنَّهُ خَبَرٌ مَنْسُوخٌ بِلَا شَكٍّ.

L12504–12506 The proof of this is that this report undoubtedly dates to before the Conquest of Mecca, for it contains the requirement for Bedouins who performed Hajj before his Hijrah to repeat it. The chain of transmission is: Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abd al-Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali

بُرْهَانُ ذَلِكَ -: أَنَّ هَذَا الْخَبَرَ بِلَا شَكٍّ كَانَ قَبْلَ فَتْحِ مَكَّةَ؛ لِأَنَّ فِيهِ إِعَادَةَ الْحَجِّ عَلَى مَنْ حَجَّ مِنَ الْأَعْرَابِ قَبْلَ هِجْرَتِهِ، وَقَدْ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا مُحَمَّدُ بْنُ

narrated to us: Muslim ibn al-Hajjaj narrated to us. Muhammad ibn Abdullah ibn Numayr narrated to us: Ubayy narrated to us: Abdullah ibn Habib ibn Abi Thabit narrated to us, from Abdullah ibn Abd al-Rahman ibn Abi Husayn, from Ata, from Aisha, the Mother of the Believers, who said: "The Messenger of Allah (peace and blessings be upon him) was asked about emigration. He said: 'There is no emigration after the Conquest, but jihad and sincere intention. So when you are summoned to march forth, then march forth.'"

عَبْدِ اللَّهِ بْنِ نُمَيْرٍ نا أُبَيٌّ نا عَبْدُ اللَّهِ بْنُ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي حُسَيْنٍ عَنْ عَطَاءٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْهِجْرَةِ فَقَالَ: لَا هِجْرَةَ بَعْدَ الْفَتْحِ وَلَكِنْ جِهَادٌ وَنِيَّةٌ فَإِذَا اُسْتُنْفِرْتُمْ فَانْفِرُوا» .

L12507 And through him [the previous narrator] to Muslim: Yahya and Ishaq ibn Ibrahim—who is Ibn Rahawayh—both said together: "I am Jarir reporting from Mansur from Mujahid from Tawus from Ibn Abbas, who said: 'Allah's Messenger—peace and blessings be upon him—said on the day of the conquest of Mecca: "There is no Hijrah, but Jihad and intention. When you are summoned to march forth, then march forth."'"

وَبِهِ إلَى مُسْلِمٍ نا يَحْيَى وَإِسْحَاقُ بْنُ إبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - قَالَا جَمِيعًا أَنَا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ فَتْحِ مَكَّةَ لَا هِجْرَةَ وَلَكِنْ جِهَادٌ وَنِيَّةٌ إذَا اُسْتُنْفِرْتُمْ فَانْفِرُوا» .

L12508 We have also narrated it through a reliable chain from Mujāshiʿ and Mujālid, the two sons of Masʿūd al-Silmī, from the Messenger of Allah—peace and blessings be upon him. Since it has been confirmed without doubt that this report predates the Conquest [of Mecca], it has been abrogated by what we have narrated through the aforementioned chain in Muslim: Zuḥayr ibn Ḥarb reported to us, Yazīd ibn Hārūn reported to us, al-Rabīʿ ibn Muslim al-Qurashī reported to us, from Muḥammad ibn Ziyād, from Abū Hurayrah, who said: "The Messenger of Allah—peace and blessings be upon him—addressed us and said, 'O people, Allah has made Hajj obligatory upon you, so perform Hajj.' A man asked, 'Every year, O Messenger of Allah?' He remained silent until the man repeated it three times. Then the Prophet—peace be upon him—said, 'If I had said yes, it would have become obligatory, and you would not have been able to fulfill it. Hold fast to what I have left you. Those before you were destroyed only because they asked too many questions and disputed their prophets. When I command you to do something, do as much of it as you can, and when I forbid you from something, refrain from it.'"[1]

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقٍ ثَابِتَةٍ عَنْ مُجَاشِعٍ، وَمُجَالِدٍ: ابْنَيْ مَسْعُودٍ السِّلْمِيَّيْنِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِذْ قَدْ صَحَّ بِلَا شَكٍّ أَنَّ هَذَا الْخَبَرَ كَانَ قَبْلَ الْفَتْحِ فَقَدْ نَسَخَهُ مَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إلَى مُسْلِمٍ -: نا زُهَيْرُ بْنُ حَرْبٍ نا يَزِيدُ بْنُ هَارُونَ نا الرَّبِيعُ بْنُ مُسْلِمٍ الْقُرَشِيُّ عَنْ مُحَمَّدِ بْنِ زِيَادٍ عَنْ أَبِي هُرَيْرَةَ قَالَ «خَطَبَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: أَيُّهَا النَّاسُ إنَّ اللَّهَ قَدْ فَرَضَ عَلَيْكُمْ الْحَجَّ فَحُجُّوا، فَقَالَ رَجُلٌ: أَكُلَّ عَامٍ يَا رَسُولَ اللَّهِ؟ فَسَكَتَ حَتَّى قَالَهَا ثَلَاثًا فَقَالَ - عَلَيْهِ السَّلَامُ -: لَوْ قُلْتُ: نَعَمْ، لَوَجَبَتْ وَلَمَا اسْتَطَعْتُمْ، ذَرُونِي مَا تَرَكْتُكُمْ، فَإِنَّمَا هَلَكَ مَنْ كَانَ قَبْلَكُمْ بِكَثْرَةِ سُؤَالِهِمْ وَاخْتِلَافِهِمْ عَلَى أَنْبِيَائِهِمْ، فَإِذَا أَمَرْتُكُمْ بِشَيْءٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ، وَإِذَا نَهَيْتُكُمْ عَنْ شَيْءٍ فَدَعُوهُ» .

L12509–12511 Abu Muhammad said: This occurred during the Farewell Pilgrimage, thereby establishing a universal ruling applicable to every free person, slave, Bedouin,

قَالَ أَبُو مُحَمَّدٍ: كَانَ هَذَا فِي حَجَّةِ الْوَدَاعِ فَصَارَ عُمُومًا لِكُلِّ حُرٍّ، وَعَبْدٍ، وَأَعْرَابِيٍّ، وَعَجَمِيٍّ [وَبِلَا شَكٍّ وَلَا مِرْيَةٍ] أَنَّ الْعَبْدَ قَدْ كَانَ غَيْرَ مُخَاطَبٍ بِالْحَجِّ فِي صَدْرِ الْإِسْلَامِ وَلَا

[1] **Hadith references (L12508):** Riyad as-Salihin 1272.

الْحُرُّ أَيْضًا، فَكَانَ خَبَرُ يَزِيدَ بْنِ زُرَيْعٍ فِي أَنَّ عَلَيْهِ وَعَلَى الْأَعْرَابِيِّ حَجَّةَ الْإِسْلَامِ إِذَا عَتَقَ الْعَبْدُ، وَهَاجَرَ الْأَعْرَابِيُّ، مُوَافِقًا لِلْحَالَةِ الْأُولَى وَبَقِيَا عَلَى أَنَّهُمَا غَيْرُ مُخَاطَبَيْنِ كَمَا كَانَا، وَجَاءَ هَذَا الْخَبَرُ فَدَخَلَ فِي نَصِّهِ فِي الْخِطَابِ بِالْحَجِّ: الْعَبْدُ، وَالْأَعْرَابِيُّ؛ لِأَنَّهُمَا مِنْ النَّاسِ فَكَانَ بِلَا شَكٍّ نَاسِخًا لِلْحَالَةِ الْأُولَى وَمُدْخِلًا لَهُمَا فِي الْخِطَابِ بِالْحَجِّ ضَرُورَةً وَلَا بُدَّ.

and non-Arab, without doubt or hesitation, since the slave was not originally addressed with the obligation of Hajj in the early era of Islam, nor was the free person. Consequently, the report of Yazid ibn Zurai' states that the Hajj of Islam becomes obligatory upon the slave and the Bedouin once the slave is emancipated and the Bedouin migrates. This aligns with the original ruling, while both remain unbound by the obligation, just as... They were both [such], but when this report came, it included in its text the injunction concerning Hajj to address the slave and the Bedouin, since they are among the people. Thus, it undeniably abrogated the initial state and necessarily and unavoidably brought them under the scope of the Hajj injunction.

L12512 وَرَأَيْت بَعْضَهُمْ قَدْ احْتَجَّ فَقَالَ: حَجَّ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَزْوَاجِهِ، وَلَمْ يَحُجَّ بِأُمِّ وَلَدِهِ؟ قَالَ عَلِيٌّ: وَهَذِهِ كِذْبَةٌ شَنِيعَةٌ لَا نَجِدُهَا فِي شَيْءٍ مِنْ الْآثَارِ أَبَدًا وَإِنَّ التَّسَهُّلَ فِي مِثْلِ هَذَا لَعَظِيمٌ جِدًّا -: قَالَ أَبُو مُحَمَّدٍ: عَهْدُنَا بِهِمْ يَقُولُونَ فِي النَّفْيِ فِي الزِّنَا، وَفِي كَثِيرٍ مِنْ السُّنَنِ مِثْلَ: لَا تُحَرِّمُ الرَّضْعَةُ وَلَا الرَّضْعَتَانِ، وَفِي خَبَرِ الْيَمِينِ مَعَ الشَّاهِدِ، هَذَا زِيَادَةٌ عَلَى مَا فِي الْقُرْآنِ، وَهَذَا تَخْصِيصٌ لِلْقُرْآنِ، وَهَذَا خِلَافُ مَا فِي الْقُرْآنِ، وَكَذَبُوا فِي كُلِّ ذَلِكَ، ثُمَّ لَمْ يَقُولُوا فِي هَذَا الْخَبَرِ: هَذَا تَخْصِيصٌ لِلْقُرْآنِ، وَهَذَا زِيَادَةٌ عَلَى مَا فِي الْقُرْآنِ، وَهَذَا خِلَافٌ لِمَا فِي الْقُرْآنِ.

I saw some of them argue by saying: "The Prophet (may Allah bless him and grant him peace) performed Hajj with his wives, but did not perform Hajj with his umm walad?" ʿAlī said: "This is a heinous lie we have never encountered in any of the narrations whatsoever, and indeed such laxity in matters of this nature is profoundly grave." Abū Muḥammad said: "Our knowledge of them is that they assert negation concerning adultery and many Sunnahs, such as their claim: 'One breastfeeding or two do not establish prohibition,' and regarding the report about the oath with a witness. They say: 'This is an addition to the Quran,' 'This specifies the Quran,' and 'This contradicts the Quran' – yet they lied in all of that. Then they did not say about this report: 'This specifies the Quran,' 'This is an addition to the Quran,' or 'This contradicts the Quran.'"

L12513 وَعَهْدُنَا بِهِمْ يَرُدُّونَ السُّنَنَ الثَّابِتَةَ بِدَعْوَى الِاضْطِرَابِ: كَخَبَرِ الْقَطْعِ فِي رُبْعِ دِينَارٍ، وَخَبَرِ ابْنِ عُمَرَ فِي الزَّكَاةِ وَغَيْرِ ذَلِكَ، وَكَذَبُوا فِي ذَلِكَ، ثُمَّ احْتَجُّوا (فِي ذَلِكَ) بِهَذَا الْخَبَرِ الَّذِي لَا نَعْلَمُ خَبَرًا أَشَدَّ اضْطِرَابًا مِنْهُ.

We know them to reject the established Sunnahs on the claim of inconsistency—such as the report on amputation for theft involving a quarter dinar, the report of Ibn 'Umar regarding *zakāh*, and others—and they have lied in that. Then they argued regarding that with this report, for we know of no narration more inconsistent than it.

L12514–12516 وَهُمْ يَتْرُكُونَ السُّنَنَ لِلْقِيَاسِ: كَخَبَرِ الْمُصَرَّاةِ، وَخَبَرِ الْقُرْعَةِ فِي السِّتَّةِ الْأَعْبُدِ، وَهُمْ هَاهُنَا قَدْ تَرَكُوا الْقِيَاسَ؛ لِأَنَّهُمْ لَا يَخْتَلِفُونَ أَنَّ الْعَبْدَ مُخَاطَبٌ بِالْإِسْلَامِ وَبِالصَّلَاةِ، وَالصِّيَامِ، فَمَا الَّذِي مَنَعَ (مِنْ) أَنْ يُخَاطَبَ بِالْحَجِّ، وَالْعُمْرَةِ؛ ثُمَّ يَقُولُونَ: الْعَبْدُ لَيْسَ هُوَ مِنْ أَهْلِ

They abandon the Sunnah for analogy—such as the report of the milk-retained animal and the report of the lottery among the six slaves—yet here they have abandoned analogy. For they do not dispute that the slave is obligated by Islam, prayer, and fasting. What then prevents him from being obligated by Hajj and Umrah? They argue: "The slave is not among those

الْجُمُعَةِ فَإِذَا حَضَرَهَا صَارَ مِنْ أَهْلِهَا وَأَجْزَأَتْهُ، فَهُمْ قَالُوا هَاهُنَا: إِنَّ الْعَبْدَ وَإِنْ لَمْ يَكُنْ مِنْ أَهْلِ الْحَجِّ فَإِنَّهُ إِذَا حَضَرَهُ صَارَ مِنْ أَهْلِهِ وَأَجْزَأَهُ وَأَكْثَرُهُمْ يَقُولُ: مَنْ نَوَى تَطَوُّعًا بِحَجِّهِ أَجْزَأَهُ عَنْ الْفَرْضِ، وَأَقَلُّ حَالِ حَجِّ الْعَبْدِ: أَنْ يَكُونَ تَطَوُّعًا فَهَلَّا أَجْزَأَهُ عِنْدَهُمْ؟ فَإِنْ قَالُوا: هُوَ غَيْرُ مُخَاطَبٍ؟ قُلْنَا: قَدْ جَمَعْتُمْ فِي هَذَا الْقَوْلِ الْكَذِبَ وَخِلَافَ الْقُرْآنِ إِذْ لَمْ يَخُصَّ اللَّهُ تَعَالَى عَبْدًا مِنْ حُرٍّ، وَالتَّنَاقُضَ؛ لِأَنَّهُ إِنْ لَمْ يَكُنْ مُخَاطَبًا بِهِ فَلَا يَحِلُّ لَهُ أَنْ يَتَكَلَّفَ وَلَا يَلْزَمُهُ إِحْرَامٌ وَلَا شَيْءٌ مِنْ جَزَاءِ صَيْدٍ وَلَا فِدْيَةِ أَذًى وَلَا غَيْرِ ذَلِكَ كَمَا لَا يَلْزَمُ الْحَائِضَ شَيْءٌ مِنْ أَحْكَامِ الصَّلَاةِ وَالصِّيَامِ، إِذْ لَيْسَتْ مُخَاطَبَةً بِهِ، وَكَالصَّبِيِّ الَّذِي لَا يَلْزَمُهُ شَيْءٌ مِنْ أُمُورِ الْحَجِّ فَإِنْ فَعَلَهُمَا أَوْ فَعَلَ بِهِ كَانَ لَهُ أَجْرٌ وَكَانَ لَهُ حَجٌّ لِلْأَثَرِ فِي ذَلِكَ لَا لِغَيْرِهِ.

obligated for Jumuʿah, but if he attends it, he becomes one of its obligated people and it suffices him." Here they argue: "Even if the slave is not among those obligated for Hajj, if he performs it, he becomes one of its obligated people and it suffices him." Most of them say: "Whoever intends voluntary worship through his Hajj, it suffices him for the obligation." The least possible standing of a slave's Hajj is that it count as voluntary—so why does it not suffice according to them? If they say: "He is not obligated," we reply: "You have combined in this statement falsehood, opposition to the Quran—since Allah the Exalted makes no distinction between slave and free—and contradiction. For if he were not obligated by it, it would neither be permissible for him to undertake it, nor would the ihram be binding upon him, nor..." A menstruating woman is not liable for any compensation for hunting, nor expiation for harm, nor other such obligations, just as she is not bound by any rulings of prayer and fasting, since she is not legally addressed by them. This is akin to a minor who is not bound by any obligations of pilgrimage. If he performs both of them or has them performed on his behalf, he receives reward, and his pilgrimage is valid due to the narrations (Athar) regarding that, not for any other reason.

فَهَذَا مِمَّا خَالَفُوا فِيهِ الْقُرْآنَ وَالسُّنَنَ الثَّابِتَةَ وَقَوْلَ طَائِفَةٍ مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ وَالْقِيَاسُ: نَعَمْ، وَالْخَبَرُ الَّذِي بِهِ احْتَجُّوا؛ لِأَنَّهُمْ خَالَفُوا مَا فِيهِ مِنْ حُكْمِ الْأَعْرَابِيِّ فِي الْحَجِّ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L12517 This is among the matters in which they opposed the Qur'an, the established Sunnahs, the statement of a group of the Companions (with no dissenter known among them), and analogy. And as for analogy: yes, and the report they invoked as evidence—for they contradicted what it contained of the ruling of the Bedouin in Hajj. And success is from Allah, the Exalted.

[مَسْأَلَةٌ الْمَرْأَةُ الَّتِي لَا زَوْجَ لَهَا وَلَا ذَا مَحْرَمٍ يَحُجُّ مَعَهَا تَحُجُّ]

Issue: Is it permissible for a woman who has neither a husband nor a *mahram* to perform Hajj with her to perform Hajj?

٨١٣ - مَسْأَلَةٌ: وَأَمَّا الْمَرْأَةُ الَّتِي لَا زَوْجَ لَهَا وَلَا ذَا مَحْرَمٍ يَحُجُّ مَعَهَا فَإِنَّهَا تَحُجُّ وَلَا شَيْءَ عَلَيْهَا، فَإِنْ كَانَ لَهَا زَوْجٌ فَفَرْضٌ عَلَيْهِ أَنْ يَحُجَّ مَعَهَا فَإِنْ لَمْ يَفْعَلْ فَهُوَ عَاصٍ لِلَّهِ تَعَالَى وَتَحُجُّ هِيَ دُونَهُ وَلَيْسَ لَهُ مَنْعُهَا مِنْ حَجِّ التَّطَوُّعِ.

L12518 L12519 Issue 813: As for a woman who has neither a husband nor a mahram to accompany her on Hajj, she may perform Hajj and there is no sin upon her. If she has a husband, it is obligatory upon him to perform Hajj with her. If he fails to do so, he is disobedient to Allah the Exalted, and she may perform Hajj independently of him. He has no right to prevent her from performing voluntary Hajj.

L12520 It has been reported to us from Ibrāhīm, Ṭāwūs, al-Shaʿbī, and al-Ḥasan: "A woman may not perform *Ḥajj* unless accompanied by her husband or a *maḥram*," and this is the statement of al-Ḥasan ibn Ḥayy.

وَرُوِّينَا عَنْ إِبْرَاهِيمَ، وَطَاوُسٍ، وَالشَّعْبِيِّ، وَالْحَسَنِ: لَا تَحُجَّ الْمَرْأَةُ إِلَّا مَعَ زَوْجٍ أَوْ مَحْرَمٍ، وَهُوَ قَوْلُ الْحَسَنِ بْنِ حَيٍّ.

L12521 It has been reported to us from Abū Ḥanīfah and Sufyān: If a woman is at a distance from Makkah requiring less than three nights' journey, she may perform Hajj without being accompanied by her husband or a *mahram*. If the distance requires three nights' journey or more, she may not perform Hajj except with her husband or a *mahram* from among her male relatives.

وَرُوِّينَا عَنْ أَبِي حَنِيفَةَ، وَسُفْيَانَ: إِنْ كَانَتْ مِنْ مَكَّةَ عَلَى أَقَلَّ مِنْ لَيَالٍ ثَلَاثٍ فَلَهَا أَنْ تَحُجَّ مَعَ غَيْرِ زَوْجٍ، وَغَيْرِ ذِي مَحْرَمٍ، وَإِنْ كَانَتْ عَلَى ثَلَاثٍ فَصَاعِدًا فَلَيْسَ لَهَا أَنْ تَحُجَّ إِلَّا مَعَ زَوْجٍ، أَوْ ذِي مَحْرَمٍ مِنْ رِجَالِهَا.

L12522 A woman may not travel for more than three nights except with a mahram.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ عُمَرَ لَا تُسَافِرْ امْرَأَةٌ فَوْقَ ثَلَاثِ لَيَالٍ إِلَّا مَعَ ذِي مَحْرَمٍ.

L12523 It was narrated through the chain of Abu Bakr ibn Abi Shaybah from Humaid from al-Hasan ibn Ḥayy from Ali ibn Abd al-A'la that Ikrimah was asked about a woman performing Hajj without a mahram or her husband. He said: "The Messenger of Allah (peace be upon him) forbade a woman from traveling more than three days except with a mahram."

وَرُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ بْنِ حَيٍّ عَنْ عَلِيِّ بْنُ عَبْدِ الْأَعْلَى: أَنَّ عِكْرِمَةَ سُئِلَ عَنْ الْمَرْأَةِ تَحُجُّ مَعَ غَيْرِ ذِي مَحْرَمٍ أَوْ زَوْجٍ؟ فَقَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تُسَافِرَ الْمَرْأَةُ فَوْقَ ثَلَاثٍ إِلَّا مَعَ ذِي مَحْرَمٍ» .

L12524 A group held that a woman may perform Hajj in a secure group even if she has no husband or *mahram* accompanying her—as we narrated through the chain of Ibn Abi Shaybah: he reported to us from Wakiʿ, from Yunus (who is Ibn Yazid), from al-Zuhri, who said: "It was mentioned in the presence of ʿAisha, the Mother of the Believers: 'Should a woman not travel except with a *mahram*?' She replied: 'Not every woman can find a *mahram*.'"

وَقَالَتْ طَائِفَةٌ: تَحُجُّ فِي رُفْقَةٍ مَأْمُونَةٍ وَإِنْ لَمْ يَكُنْ لَهَا زَوْجٌ وَلَا كَانَ مَعَهَا ذُو مَحْرَمٍ -: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ يُونُسَ هُوَ ابْنُ يَزِيدَ - عَنْ الزُّهْرِيِّ قَالَ: ذُكِرَ عِنْدَ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ الْمَرْأَةُ لَا تُسَافِرُ إِلَّا مَعَ ذِي مَحْرَمٍ؟ قَالَتْ عَائِشَةُ: لَيْسَ كُلُّ النِّسَاءِ تَجِدُ مَحْرَمًا.

L12525–12526 From the transmission of Saʿīd ibn Manṣūr: Ibn Wahb narrated to us from ʿAmr ibn al-Ḥārith, from Bukayr ibn al-Ashajj, from Nāfiʿ, the freed slave of Ibn ʿUmar, who said: "'Abdullāh ibn ʿUmar would travel with [his] female freed slaves lacking a maḥram escort." This is the opinion of Ibn Sīrīn and ʿAṭāʾ, as well as the apparent position of the statements of al-Zuhrī, Qatādah, and al-Ḥakam ibn ʿUtaybah. It is also the view of al-Awzāʿī, Mālik, al-Shāfiʿī, Abū Sulaymān, and all their companions.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا ابْنُ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ قَالَ: كَانَ يُسَافِرُ مَعَ عَبْدِ اللَّهِ بْنِ عُمَرَ مَوْلَيَاتٌ (لَهُ) لَيْسَ مَعَهُنَّ مَحْرَمٌ، وَهُوَ قَوْلُ ابْنِ سِيرِينَ وَعَطَاءٍ، وَهُوَ ظَاهِرُ قَوْلِ الزُّهْرِيِّ، وَقَتَادَةَ، وَالْحَكَمِ بْنِ عُتَيْبَةَ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِهِمْ.

L12527 Abu Muhammad said: As for Abu Hanifah's statement regarding the afore-

mentioned specification, we do not know of any predecessor from the Companions who established it.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فِي التَّحْدِيدِ الَّذِي ذُكِرَ فَلَا نَعْلَمُ لَهُ سَلَفًا فِيهِ مِنْ الصَّحَابَةِ.

L12528 Nor from the Followers—may Allah be pleased with them—for we know none who held this view before them. Yet they greatly respect a Companion's differing opinion when it aligns with their adherence to legal precedent, declaring: "The *mursal* narration equates to the *musnad*." What we cited has been authentically transmitted from Ibn Umar, while a narration from the Mother of the Believers is reported through the finest *mursal* chain that can exist. No opposing view from the Companions—may Allah be pleased with them—is known against both of them in this matter. Yet the followers of Abu Hanifah have opposed both of them—is this not a gross contradiction? Abu Muhammad said: We then scrutinized the proofs each faction cited for their position and found Abu Hanifah's followers justifying their stance with the Prophet's report—peace and blessings be upon him: "A woman must not travel three days unless accompanied by her husband or a *mahram*."

وَلَا مِنْ التَّابِعِينَ - رَضِيَ اللَّهُ عَنْهُمْ -؛ بَلْ مَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُمْ، وَهُمْ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ إذَا وَافَقَ تَقْلِيدَهُمْ، وَيَقُولُونَ: إنَّ الْمُرْسَلَ كَالْمُسْنَدِ، وَقَدْ صَحَّ عَنْ ابْنِ عُمَرَ مَا ذَكَرْنَا؛ وَرُوِيَ عَنْ أُمِّ الْمُؤْمِنِينَ بِأَحْسَنِ مُرْسَلٍ يُمْكِنُ وُجُودُ مِثْلِهِ، وَلَا يُعْرَفُ لَهُمَا فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَقَدْ خَالَفَهُمَا أَصْحَابُ أَبِي حَنِيفَةَ، وَهَذَا تَنَاقُضٌ فَاحِشٌ؟ قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَظَرْنَا فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا فَوَجَدْنَا أَصْحَابَ أَبِي حَنِيفَةَ يَحْتَجُّونَ لِقَوْلِهِمْ بِالْخَبَرِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُسَافِرُ امْرَأَةٌ ثَلَاثًا إلَّا مَعَ زَوْجٍ أَوْ ذِي مَحْرَمٍ» .

L12529–12530 They said: It has also been reported as "two nights," "a day and a night," "a day," and "a barid (a day's journey)." They said: We are certain about the prohibition of her traveling for three days and doubtful regarding its prohibition for less than that, because the mention of three days might appear earlier or later in the transmitted reports. In any case, her travel is prohibited for three days except with a husband or a mahram relative. Thus, we act upon what is certain and abandon what is doubtful. They have no valid argument whatsoever beyond this at all.

وَقَالُوا: قَدْ رُوِيَ أَيْضًا " لَيْلَتَيْنِ " وَرُوِيَ " يَوْمًا وَلَيْلَةً " وَرُوِيَ " يَوْمًا " وَرُوِيَ " بَرِيدًا " قَالُوا: وَنَحْنُ عَلَى يَقِينٍ مِنْ تَحْرِيمِ سَفَرِهَا ثَلَاثًا وَعَلَى شَكٍّ مِنْ تَحْرِيمِ سَفَرِهَا أَقَلَّ مِنْ ذَلِكَ، لِأَنَّهُ قَدْ يَكُونُ ذِكْرُ الثَّلَاثِ مُتَقَدِّمًا وَيَكُونُ مُتَأَخِّرًا فَالثَّلَاثُ عَلَى كُلِّ حَالٍ مُحَرَّمٌ عَلَيْهَا سَفَرُهَا إلَّا مَعَ زَوْجٍ أَوْ ذِي مَحْرَمٍ فَنَأْخُذُ مَا لَا شَكَّ فِيهِ وَنَدَعُ مَا فِيهِ الشَّكُّ لَا حُجَّةَ لَهُمْ غَيْرَ هَذَا أَصْلًا.

L12531–12533 Ali said: "And this is upon them, not for them, for two aspects—:" One of them is that the validity of the practice is not as they asserted, for whether the narration concerning three days is earlier or later, it does not nullify the prohibition against her traveling for less than three days. Rather, it constitutes part of what exists in other narrations, while the remaining narrations supplement it. This is not a context for abrogation at all. Rather, all those

قَالَ عَلِيٌّ: وَهَذَا عَلَيْهِمْ لَا لَهُمْ لِوَجْهَيْنِ -: أَحَدُهُمَا: أَنَّهُ لَيْسَ صَوَابُ الْعَمَلِ مَا ذَكَرُوا، لِأَنَّهُ إنْ كَانَ خَبَرُ الثَّلَاثِ مُتَقَدِّمًا أَوْ مُتَأَخِّرًا فَلَيْسَ فِيهِ إنْ تَقَدَّمَ إبْطَالٌ لِحُكْمِ النَّهْيِ عَنْ سَفَرِهَا أَقَلَّ مِنْ ثَلَاثٍ لَكِنَّهُ بَعْضُ مَا فِي سَائِرِ الرِّوَايَاتِ، وَسَائِرُ الرِّوَايَاتِ زَائِدَةٌ عَلَيْهِ،

narrations are authentic, all are binding, and none of them are inherently contradictory.

وَلَيْسَ هَذَا مَكَانَ نَسْخٍ أَصْلًا؛ بَلْ كُلُّ (تِلْكَ) الْأَخْبَارِ حَقٌّ وَكُلُّهَا يَجِبُ اسْتِعْمَالُهَا وَلَيْسَ بَعْضُهَا مُخَالِفًا لِبَعْضٍ أَصْلًا.

L12534 And it is said to them: The narration of Ibn Abbas from the Prophet—peace and blessings of Allah be upon him—"A woman must not travel except with a *mahram*" is comprehensive for all types of travel. Thus, we are certain of the prohibition of every journey for her unless accompanied by a husband or *mahram*. However, we do not know whether this ruling has been abrogated or not. Therefore, we adhere to certainty and discard doubt. This contradicts their argument in addition to what we have already established.

وَيُقَالُ لَهُمْ: خَبَرُ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تُسَافِرْ امْرَأَةٌ إلَّا مَعَ ذِي مَحْرَمٍ» جَامِعٌ لِكُلِّ سَفَرٍ فَنَحْنُ عَلَى يَقِينٍ مِنْ تَحْرِيمِ كُلِّ سَفَرٍ عَلَيْهَا إلَّا مَعَ زَوْجٍ أَوْ ذِي مَحْرَمٍ، ثُمَّ لَا نَدْرِي أَبَطَلَ هَذَا الْحُكْمُ أَمْ لَا؟ فَنَأْخُذُ بِالْيَقِينِ وَنُلْغِي الشَّكَّ؛ فَهَذَا مُعَارِضٌ لِاحْتِجَاجِهِمْ مَعَ مَا قَدَّمْنَا.

L12535 They are told: Our covenant with you is that you criticize narrations due to inconsistency, yet this is a narration transmitted by Abu Sa'id, Abu Hurayrah, Ibn 'Umar, and Ibn 'Abbas. There was no inconsistency whatsoever in the narration from Ibn 'Abbas, while contradictions occurred in transmissions from the others. It was narrated from Ibn 'Umar: "Do not travel for three days"; another narration states: "Do not travel beyond three days." From Abu Sa'id, it was narrated: "Do not travel beyond three days"; yet another narration states: "Do not travel two days." From Abu Hurayrah, narrations include: "Do not travel three days"; "Do not travel beyond three days"; "Do not travel a day and a night"; "Do not travel a day"; and "Do not travel a buraid." By your own principle, you must abandon narrations from those contradicted in transmissions or showing inconsistency, since none of the narrations from any individual is more deserving of acceptance than the others narrated from him. Instead, adopt the narration of one from whom no contradictions are reported and whose transmissions remain consistent—namely Ibn 'Abbas. This aligns more closely with sound reasoning than your mode of deduction. The second perspective:

وَيُقَالُ لَهُمْ: عَهْدُنَا بِكُمْ تَذُمُّونَ الْأَخْبَارَ بِالِاضْطِرَابِ، وَهَذَا خَبَرٌ رَوَاهُ أَبُو سَعِيدٍ، وَأَبُو هُرَيْرَةَ، وَابْنُ عُمَرَ، وَابْنُ عَبَّاسٍ، فَلَمْ يَضْطَرِبْ عَنْ ابْنِ عَبَّاسٍ أَصْلًا وَاضْطَرَبَ عَنْ سَائِرِهِمْ -: فَرُوِيَ عَنْ ابْنِ عُمَرَ: «لَا تُسَافِرْ ثَلَاثًا» ؛ وَرُوِيَ عَنْهُ: «لَا تُسَافِرْ فَوْقَ ثَلَاثٍ» ؛ وَرُوِيَ عَنْ أَبِي سَعِيدٍ: «لَا تُسَافِرْ فَوْقَ ثَلَاثٍ» ؛ وَرُوِيَ عَنْهُ «لَا تُسَافِرْ يَوْمَيْنِ» ؛ وَرُوِيَ عَنْ أَبِي هُرَيْرَةَ: «لَا تُسَافِرْ ثَلَاثًا» ؛ وَرُوِيَ عَنْهُ: «لَا تُسَافِرْ فَوْقَ ثَلَاثٍ» ؛ وَرُوِيَ عَنْهُ: «لَا تُسَافِرْ يَوْمًا وَلَيْلَةً» ؛ وَرُوِيَ عَنْهُ: «لَا تُسَافِرْ يَوْمًا» ؛ وَرُوِيَ عَنْهُ: «لَا تُسَافِرْ بَرِيدًا» ؛ فَعَلَى أَصْلِكُمْ دَعُوا رِوَايَةَ مَنْ اُخْتُلِفَ عَلَيْهِ وَاضْطَرَبَ عَنْهُ إذْ لَيْسَ بَعْضُ مَا رُوِيَ عَنْ كُلِّ وَاحِدٍ أَوْلَى مِنْ سَائِرِ مَا رُوِيَ عَنْهُ؛ وَخُذُوا بِرِوَايَةِ مَنْ لَمْ يُخْتَلَفْ عَلَيْهِ وَلَا اضْطَرَبَ عَنْهُ، وَهُوَ ابْنُ عَبَّاسٍ؛ فَهَذَا أَشْبَهُ مِنْ اسْتِدْلَالِكُمْ. وَالْوَجْهُ الثَّانِي:

L12536 It has been reported from Ibn Umar, Abu Sa'id, and Abu Hurairah – as we mentioned – that "a woman should not travel beyond three days." If you validate your corrupt reasoning by extending beyond what is mentioned in those reports, then prevent her from traveling beyond a three days' journey, as that

أَنَّهُ قَدْ رُوِيَ عَنْ ابْنِ عُمَرَ، وَأَبِي سَعِيدٍ، وَأَبِي هُرَيْرَةَ، كَمَا ذَكَرْنَا لَا تُسَافِرْ (الْمَرْأَةُ) فَوْقَ ثَلَاثٍ، فَإِنْ صَحَّحْتُمْ اسْتِدْلَالَكُمْ (الْفَاسِدَ) بِأَخْذِ أَكْثَرَ مِمَّا ذُكِرَ فِي تِلْكَ الْأَخْبَارِ فَامْنَعُوهَا

مِمَّا زَادَ عَلَى مَسِيرَةِ ثَلَاثٍ، لِأَنَّهُ الْيَقِينُ وَأَبِيحُوا لَهَا سَفَرَ الثَّلَاثِ، لِأَنَّهُ مَشْكُوكٌ فِيهِ كَمَا سَفَرُ الْيَوْمَيْنِ، وَالْيَوْمِ، وَالْبَرِيدِ مَشْكُوكٌ فِيهِ عِنْدَكُمْ، وَهَذَا مَا لَا مُخَلَّصَ لَهُمْ مِنْهُ، فَإِنْ ادَّعَوْا إِجْمَاعًا هَاهُنَا - فَمَا هَذَا يُنْكَرُ مِنْ إِقْدَامِهِمْ، وَأَكْذَبُهُمْ مَا رُوِّينَا مِنْ طَرِيقِ الْحُذَافِيِّ - عَنْ عَبْدِ الرَّزَّاقِ - نا عَبْدُ اللَّهِ بْنُ عُمَرَ بْنِ حَفْصٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: لَا تُسَافِرُ امْرَأَةٌ فَوْقَ ثَلَاثٍ إِلَّا مَعَ ذِي مَحْرَمٍ، وَلَا سِيَّمَا وَابْنُ عُمَرَ هُوَ رَاوِي الْحَدِيثِ الَّذِي تَعَلَّقُوا بِهِ.

is the certainty, and permit her to travel three days, since it is doubtful – just as a two-day journey, a one-day journey, or a barīd [specific distance unit] are considered doubtful in your view. This is something they cannot escape. If they claim consensus here – this audacity of theirs cannot be denied – and what most demonstrates their falsehood is what we have reported through the chain of al-Ḥudhāfī – from ʿAbd al-Razzaq – narrated by ʿAbdullah ibn ʿUmar ibn Hafs from Nāfiʿ from Ibn Umar, who said: "A woman should not travel beyond three days except with a maḥram." Especially since Ibn Umar himself is the narrator of the ḥadīth they rely upon.

وَأَكْذَبُهُمْ أَيْضًا مَا رُوِّينَا عَنْ عِكْرِمَةَ آنِفًا مِنْ مَنْعِهِ إِيَّاهَا مَا زَادَ عَلَى الثَّلَاثِ لَا مَا دُونَ ذَلِكَ.

L12537–12538 And he also deemed them liars regarding what was recently reported to us from ʿIkrimah concerning his prohibition of her exceeding three [days], not less than that.

وَالْعَجَبُ أَنَّهُمْ يَقُولُونَ فِي امْرَأَةٍ لَا تَجِدُ مَعَاشًا أَصْلًا إِلَّا عَلَى ثَلَاثٍ فَصَاعِدًا، أَنَّهَا تَخْرُجُ بِلَا زَوْجٍ وَلَا ذِي مَحْرَمٍ.

L12539 It is surprising that they rule regarding a woman who cannot secure her livelihood except in three or more cases, that she may go out without a husband or mahram.

وَيَقُولُونَ فِيمَنْ حَفَزَتْهَا فِتْنَةٌ - وَخَشِيَتْ عَلَى، نَفْسِهَا غَلَبَةَ الْكُفَّارِ، وَالْمُحَارِبِينَ، أَوْ الْفُسَّاقِ وَلَمْ تَجِدْ أَمْنًا إِلَّا عَلَى ثَلَاثٍ فَصَاعِدًا - أَنَّهَا تَخْرُجُ مَعَ غَيْرِ زَوْجٍ وَمَعَ غَيْرِ ذِي مَحْرَمٍ، وَطَاعَةُ اللَّهِ تَعَالَى فِي الْحَجِّ وَاجِبَةٌ عَلَيْهَا كَوُجُوبِ خَلَاصِ رُوحِهَا.

L12540 They say regarding a woman compelled by a trial—who fears for herself the dominance of disbelievers, combatants, or transgressors and finds no security except at a distance of three [days] or more—that she may depart without her husband and without a mahram. Obedience to Allah the Exalted in Hajj is as obligatory upon her as the obligation to secure her soul's salvation.

فَإِنْ قَالُوا: الزَّوْجُ وَالْمَحْرَمُ مِنْ السَّبِيلِ؟ قُلْنَا: عَلَيْكُمْ الدَّلِيلُ وَإِلَّا فَهِيَ دَعْوَى فَاسِدَةٌ لَمْ يَعْجِزْ عَنْ مِثْلِهَا أَحَدٌ، فَسَقَطَ هَذَا الْقَوْلُ الْفَاسِدُ جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L12541 If they say: "Are the husband and the mahram included in the permissible category?" We reply: "The burden of proof lies upon you. Otherwise, it is an invalid claim that anyone could make." Thus, this invalid claim is entirely dismissed—and success comes only from Allah, the Exalted.

ثُمَّ نَظَرْنَا فِي قَوْلِ عِكْرِمَةَ وَاحْتِجَاجِهِ بِالْخَبَرِ الَّذِي فِيهِ مَا زَادَ عَلَى الثَّلَاثِ فَوَجَدْنَاهُ لَا حُجَّةَ لَهُ فِيهِ لِمَا ذَكَرْنَا مِنْ أَنَّ سَائِرَ الْأَخْبَارِ وَرَدَتْ بِالْمَنْعِ، مِمَّا دُونَ الثَّلَاثِ، فَلَيْسَ الْخَبَرُ الَّذِي فِيهِ نَهْيُهَا عَنْ أَنْ تُسَافِرَ ثَلَاثًا أَوْ أَكْثَرَ مِنْ ثَلَاثٍ بِأَوْلَى مِنْ سَائِرِ الْأَخْبَارِ الَّتِي

L12542 Then we examined the statement of Ikrimah and his argument based on the narration containing the mention of exceeding three days, and we found he has no proof in it due to our earlier explanation that all other narrations indicate prohibition for durations shorter than three days. Thus, the narration prohibiting her from traveling three days or more is no more valid than the other narrations prohibiting her from traveling less than three days.

فِيهَا مَنْعُهَا مِنْ سَفَرٍ أَقَلَّ مِنْ ثَلَاثٍ؟ قَالَ أَبُو مُحَمَّد: فَبَطَلَ هَذَا الْقَوْلُ أَيْضًا وَلَمْ يَبْقَ إِلَّا قَوْلُنَا، أَوْ قَوْلُ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَطَاوُسٍ، وَالْحَسَنِ فِي مَنْعِهَا جُمْلَةً أَوْ إِطْلَاقِهَا جُمْلَةً؛ فَوَجَدْنَا الْمَانِعِينَ يَحْتَجُّونَ بِالْأَخْبَارِ الَّتِي ذَكَرْنَا، وَهِيَ أَخْبَارٌ صِحَاحٌ لَا يَحِلُّ خِلَافُهَا إِلَّا لِنَصٍّ آخَرَ يُبَيِّنُ حُكْمَهَا إِنْ وُجِدَ.

Abu Muhammad said: Therefore, this opinion is also nullified, leaving only our opinion or the opinion of Al-Nakha'i, Al-Sha'bi, Tawus, and Al-Hasan regarding either completely prohibiting her or completely permitting her. We found those who prohibit citing the narrations we mentioned - authentic narrations that it is impermissible to contradict unless another text exists clarifying their ruling, if found.

L12543 فَنَظَرْنَا فَوَجَدْنَا مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا ابْنُ نُمَيْرٍ نا أُبَيٌّ، وَابْنُ إِدْرِيسَ قَالَا: نا عُبَيْدُ اللَّهِ هُوَ ابْنُ عُمَرَ - عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَلَا تَمْنَعُوا إِمَاءَ اللَّهِ مَسَاجِدَ اللَّهِ» .

Then we looked and found what 'Abdullāh ibn Yūsuf narrated to us: Aḥmad ibn Fatḥ narrated to us; 'Abd al-Wahhāb ibn 'Īsā narrated to us; Aḥmad ibn Muḥammad narrated to us; Aḥmad ibn 'Alī narrated to us; Muslim ibn al-Ḥajjāj narrated to us; Ibn Numayr narrated to us; Ubayy and Ibn Idrīs narrated: 'Ubaydullāh—he is Ibn 'Umar—narrated from Nāfi' from Ibn 'Umar, who said: The Messenger of Allah, peace be upon him, said, "Do not prevent Allah's maidservants from Allah's mosques."

L12544–12546 وَبِهِ إِلَى ابْنِ نُمَيْرٍ نا أُبَيٌّ نا حَنْظَلَةُ هُوَ ابْنُ أَبِي سُفْيَانَ الْجُمَحِيُّ - قَالَ: سَمِعْتُ سَالِمًا هُوَ ابْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ يَقُولُ: سَمِعْتُ ابْنَ عُمَرَ يَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إِذَا اسْتَأْذَنَكُمْ نِسَاؤُكُمْ إِلَى الْمَسَاجِدِ فَأْذَنُوا لَهُنَّ» فَأَمَرَ - عَلَيْهِ السَّلَامُ - الْأَزْوَاجَ وَغَيْرَهُمْ أَنْ لَا يَمْنَعُوا النِّسَاءَ مِنَ الْمَسَاجِدِ، وَالْمَسْجِدُ الْحَرَامُ أَجَلُّ الْمَسَاجِدِ قَدْرًا.

And through him to Ibn Numayr; Ubayy reported to us: Hanzalah—who is Ibn Abi Sufyan al-Jumahi—narrated to us. He said: I heard Salim—who is Ibn Abdullah ibn Umar—say: I heard Ibn Umar narrate: I heard the Messenger of Allah (peace be upon him) say: "When your women seek your permission to go to the mosques, then permit them." So the Prophet (peace be upon him) commanded this. Husbands and male guardians must not prevent women from going to mosques; and the Holy Mosque is the noblest of mosques in rank.

L12547 وَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلا} [آل عمران: ٩٧] ثُمَّ وَجَدْنَا الْأَسْفَارَ تَنْقَسِمُ قِسْمَيْنِ سَفَرًا وَاجِبًا، وَسَفَرًا غَيْرَ وَاجِبٍ؛ فَكَانَ السَّفَرُ الْوَاجِبُ بَعْضَ الْأَسْفَارِ بِلَا شَكٍّ، وَكَانَ الْحَجُّ مِنَ السَّفَرِ الْوَاجِبِ؛ فَلَمْ يَجُزْ أَخْذُ بَعْضِ الْآثَارِ دُونَ بَعْضٍ وَوَجَبَتِ الطَّاعَةُ بِجَمِيعِهَا وَلَزِمَ اسْتِعْمَالُهَا كُلُّهَا وَلَا بُدَّ: فَهَذَا هُوَ الْفَرْضُ، وَكَانَ مَنْ رَفَضَ بَعْضَهَا وَأَخَذَ بَعْضَهَا عَاصِيًا لِلَّهِ تَعَالَى، وَلَا سَبِيلَ

We find Allah the Exalted stating: {Hajj to the House is an obligation from Allah upon those who are capable of undertaking the journey} [Āl 'Imrān: 97]. We further find travels divided into two categories: obligatory travels and non-obligatory travels. Obligatory travels are undeniably a subset of all travels, and Hajj is among the obligatory travels. Thus, it is impermissible to adopt some narrations while rejecting others. Obedience to all of them is obligatory, and their comprehensive application is indispensable—this constitutes the obligation. Whoever rejects some of them while accepting others disobeys Allah the Exalted. There is no way to apply all of them except by exempting the more specific from the more general, as necessitated. The pro-

hibition against a woman traveling without her husband or a mahram applies universally to every journey. Consequently, it becomes obligatory to exempt the specific travels mandated for her by explicit textual evidence from this general prohibition. Since Hajj is an obligatory travel, it must necessarily be exempted from the general prohibition.[2]

إِلَى اسْتِعْمَالِ جَمِيعِهَا إِلَّا بِأَنْ يُسْتَثْنَى الْأَخَصُّ مِنْهَا مِنَ الْأَعَمِّ، وَلَا بُدَّ؛ فَكَانَ نَهْيُ الْمَرْأَةِ عَنِ السَّفَرِ إِلَّا مَعَ زَوْجٍ، أَوْ ذِي مَحْرَمٍ عَامًّا لِكُلِّ سَفَرٍ؛ فَوَجَبَ اسْتِثْنَاءُ مَا جَاءَ بِهِ النَّصُّ مِنْ إِيجَابِ بَعْضِ الْأَسْفَارِ عَلَيْهَا مِنْ جُمْلَةِ النَّهْيِ، وَالْحَجُّ سَفَرٌ وَاجِبٌ فَوَجَبَ اسْتِثْنَاؤُهُ مِنْ جُمْلَةِ النَّهْيِ.

L12548 If they say: Rather, the obligation of Hajj upon women is general, so that is specified by the narration prohibiting travel except with a husband or a mahram? We say: This is incorrect, because those reports only came to prohibit all travel comprehensively, not Hajj specifically. It could have been possible to oppose this argument had the prohibition explicitly stated that a woman may not perform Hajj except with a husband or a mahram. Then it would validly oppose and particularize the narrower ruling from the broader one – and this is exceedingly evident. Another proof: All these reports were directed solely toward married women and those with mahrams, for they undoubtedly permit or obligate Hajj when accompanied by a husband or mahram. It is utterly impossible and inconceivable – entirely unfeasible – that the Prophet (peace be upon him) would address women who have neither husbands nor mahrams regarding performing Hajj with a husband or mahram. Thus, women without husbands or mahrams remain obligated to perform Hajj and are exempt from that prohibition.

فَإِنْ قَالُوا: بَلْ إِيجَابُ الْحَجِّ عَلَى النِّسَاءِ عُمُومٌ فَيُخَصُّ ذَلِكَ بِحَدِيثِ النَّهْيِ عَنِ السَّفَرِ إِلَّا مَعَ زَوْجٍ أَوْ ذِي مَحْرَمٍ؟ قُلْنَا: هَذَا خَطَأٌ، لِأَنَّ تِلْكَ الْأَخْبَارَ إِنَّمَا جَاءَتْ بِالنَّهْيِ عَنْ كُلِّ سَفَرٍ جُمْلَةً لَا عَنِ الْحَجِّ خَاصَّةً، وَإِنَّمَا كَانَ يُمْكِنُ أَنْ يُعَارِضُوا بِهَذَا (أَنْ) لَوْ جَاءَتْ فِي النَّهْيِ عَنْ أَنْ تَحُجَّ الْمَرْأَةُ إِلَّا مَعَ زَوْجٍ، أَوْ ذِي مَحْرَمٍ؛ فَكَانَ يَكُونُ حِينَئِذٍ اعْتِرَاضًا صَحِيحًا وَتَخْصِيصًا لِأَقَلِّ الْحُكْمَيْنِ مِنْ أَعَمِّهِمَا وَهَذَا بَيِّنٌ جِدًّا؟ وَبُرْهَانٌ آخَرُ -: وَهُوَ أَنَّ تِلْكَ الْأَخْبَارَ كُلَّهَا إِنَّمَا خُوطِبَ بِهَا ذَوَاتُ الْأَزْوَاجِ، وَاللَّاتِي لَهُنَّ الْمَحَارِمُ؛ لِأَنَّ فِيهَا إِبَاحَةَ الْحَجِّ أَوْ إِيجَابَهُ مَعَ الزَّوْجِ، أَوْ ذِي الْمَحْرَمِ بِلَا شَكٍّ، وَمِنَ الْمُحَالِ الْمُمْتَنِعِ الَّذِي لَا يُمْكِنُ أَصْلًا أَنْ يُخَاطِبَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْحَجِّ مَعَ زَوْجٍ أَوْ ذِي مَحْرَمٍ مَنْ لَا زَوْجَ لَهَا وَلَا ذَا مَحْرَمٍ، فَبَقِيَ مَنْ لَا زَوْجَ لَهَا وَلَا مَحْرَمَ عَلَى وُجُوبِ الْحَجِّ عَلَيْهَا وَعَلَى خُرُوجِهَا عَنْ ذَلِكَ النَّهْيِ.

L12549–12551 Another proof is what Hammam narrated to us, saying: Abdullah ibn Muhammad ibn Ali al-Bājiyy narrated to us, from Ahmad ibn Khalid, who informed us from Ubayd ibn Muhammad al-Kashwariyy, from Muhammad ibn Yusuf al-Hudhāfī, from Abd al-Razzaq, from both Ibn Jurayj and Sufyan ibn Uyaynah, from Amr ibn Dinar, from Abi Ma'bad, from Ibn Abbas, who said: I heard the Messenger of Allah (peace and blessings be upon him) delivering a sermon, saying: "No man shall ever seclude himself with a woman,

وَبُرْهَانٌ آخَرُ -: وَهُوَ مَا حَدَّثَنَاهُ حُمَامٌ قَالَ: نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ نا أَحْمَدُ بْنُ خَالِدٍ أَخْبَرَنَا عُبَيْدُ بْنُ مُحَمَّدٍ الْكَشْوَرِيُّ نا مُحَمَّدُ بْنُ يُوسُفَ الْحُذَافِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ، وَسُفْيَانُ بْنُ عُيَيْنَةَ كِلَاهُمَا عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي مَعْبَدٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَخْطُبُ يَقُولُ: «لَا يَخْلُوَنَّ رَجُلٌ

[2] **Qur'an references (L12547):** Qur'an 3:97 (Ali 'Imran).

بِامْرَأَةٍ، وَلَا تُسَافِرْ امْرَأَةٌ إِلَّا مَعَ ذِي مَحْرَمٍ، فَقَامَ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ إِنَّ امْرَأَتِي خَرَجَتْ حَاجَّةً وَإِنِّي اكْتَتَبْتُ فِي غَزْوَةِ كَذَا وَكَذَا قَالَ: انْطَلِقْ فَاحْجُجْ مَعَ امْرَأَتِكَ» فَكَانَ هَذَا الْحَدِيثُ رَافِعًا لِلْإِشْكَالِ وَمُبَيِّنًا لِمَا اخْتَلَفْنَا فِيهِ مِنْ هَذِهِ الْمَسْأَلَةِ، لِأَنَّ نَهْيَهُ - عَلَيْهِ السَّلَامُ - عَنْ أَنْ تُسَافِرَ امْرَأَةٌ إِلَّا مَعَ ذِي مَحْرَمٍ وَقَعَ ثُمَّ سَأَلَهُ الرَّجُلُ عَنْ امْرَأَتِهِ الَّتِي خَرَجَتْ حَاجَّةً لَا مَعَ ذِي مَحْرَمٍ، وَلَا مَعَ زَوْجٍ فَأَمَرَهُ - عَلَيْهِ السَّلَامُ - بِأَنْ يَنْطَلِقَ فَيَحُجَّ مَعَهَا وَلَمْ يَأْمُرْ بِرَدِّهَا وَلَا عَابَ سَفَرَهَا إِلَى الْحَجِّ دُونَهُ وَدُونَ ذِي مَحْرَمٍ، وَفِي أَمْرِهِ - عَلَيْهِ السَّلَامُ - بِأَنْ يَنْطَلِقَ فَيَحُجَّ مَعَهَا بَيَانٌ صَحِيحٌ وَنَصٌّ صَرِيحٌ عَلَى أَنَّهَا كَانَتْ مُمْكِنًا إِدْرَاكُهَا بِلَا شَكٍّ فَأَقَرَّ - عَلَيْهِ السَّلَامُ - سَفَرَهَا كَمَا خَرَجَتْ فِيهِ، وَأَثْبَتَهُ وَلَمْ يُنْكِرْهُ، فَصَارَ الْفَرْضُ عَلَى الزَّوْجِ، فَإِنْ حَجَّ مَعَهَا فَقَدْ أَدَّى مَا عَلَيْهِ مِنْ صُحْبَتِهَا وَإِنْ لَمْ يَفْعَلْ فَهُوَ عَاصٍ لِلَّهِ تَعَالَى وَعَلَيْهَا التَّمَادِي فِي حَجِّهَا وَالْخُرُوجُ إِلَيْهِ دُونَهُ أَوْ مَعَهُ أَوْ دُونَ ذِي مَحْرَمٍ أَوْ مَعَهُ كَمَا أَقَرَّهَا عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يُنْكِرْهُ عَلَيْهَا، فَارْتَفَعَ الشَّغَبُ جُمْلَةً - وَلِلَّهِ الْحَمْدُ كَثِيرًا.

L12552 فَإِنْ قَالَ قَائِلٌ: فَأَيْنَ أَنْتُمْ عَمَّا رَوَيْتُمُوهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ دِينَارٍ؟ قَالَ: أَخْبَرَنِي عِكْرِمَةُ، أَوْ أَبُو مَعْبَدٍ عَنِ ابْنِ عَبَّاسٍ قَالَ «جَاءَ رَجُلٌ إِلَى الْمَدِينَةِ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَيْنَ نَزَلْتَ؟ قَالَ: عَلَى فُلَانَةَ، قَالَ: أَغْلَقْتَ عَلَيْهَا بَابَكَ - مَرَّتَيْنِ - لَا تَحُجَّنَّ امْرَأَةٌ إِلَّا وَمَعَهَا ذُو مَحْرَمٍ» قَالَ عَبْدُ الرَّزَّاقِ: وَأَمَّا ابْنُ عُيَيْنَةَ فَأَخْبَرَنَاهُ عَنْ عَمْرٍو عَنْ عِكْرِمَةَ لَيْسَ فِيهِ شَكٌّ؟ قُلْنَا: هَذَا خَبَرٌ لَمْ يَحْفَظْهُ ابْنُ جُرَيْجٍ لِأَنَّهُ شَكَّ فِيهِ أَحَدَّثَهُ بِهِ عَمْرٌو عَنْ عِكْرِمَةَ مُرْسَلًا؟ أَمْ حَدَّثَهُ بِهِ عَمْرٌو عَنْ أَبِي مَعْبَدٍ مُسْنَدًا؟ فَلَمْ يُثْبِتْهُ أَصْلًا، فَبَطَلَ التَّعَلُّقُ بِهِ وَإِنَّمَا صَوَابُهُ كَمَا رَوَاهُ عَبْدُ الرَّزَّاقِ عَنْ

nor shall a woman travel." A woman is not to travel except with a mahram. A man stood up and said: "O Messenger of Allah, my wife has departed for Hajj, while I have volunteered for such-and-such military expedition." He replied: "Set out and perform Hajj with your wife." This hadith resolves the dispute and clarifies the contested aspect of this matter, for his prohibition—peace be upon him—against a woman traveling without a mahram had been established. When the man inquired about his wife who had left for Hajj without a mahram or her husband, the Prophet—may Allah's blessings and peace be upon him—commanded him to accompany her in Hajj without ordering her return or censuring her journey in the absence of himself or a mahram. His directive—peace be upon him—to join her in Hajj constitutes a valid clarification and definitive textual evidence that she could still be caught up with without doubt. Thus, he—peace be upon him—affirmed her journey as she had set out for it, upheld it, and did not disapprove of it. The obligation then fell upon the husband: if he performed Hajj with her, he fulfilled his duty of companionship; if he refused, he disobeyed Allah the Exalted. As for her, she must proceed with her Hajj and may depart for it without him, with him, without a mahram, or with one—just as the Messenger of Allah—may Allah's blessings and peace be upon him—affirmed her action without reproach. Thus, the dispute is entirely resolved, and all praise is due to Allah in abundance.

If someone were to say: Where do you stand regarding what you have narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAmr ibn Dīnār? He [ʿAmr] said: ʿIkrimah or Abū Maʿbad informed me from Ibn ʿAbbās, who said: A man came to Medina, and the Messenger of Allah—peace and blessings be upon him—said to him: "Where have you lodged?" He replied: "With so-and-so [a woman]." He said: "Did you lock the door securely behind her?"—repeating it twice—"No woman shall perform Hajj unless accompanied by a mahram." ʿAbd al-Razzāq said: As for Ibn ʿUyaynah, he narrated to us from ʿAmr from ʿIkrimah without any doubt. We responded: This is a narration Ibn Jurayj failed to preserve accurately, for he doubted whether ʿAmr related it from ʿIkrimah as mursal or from Abū Maʿbad as musnad. Thus, he did not verify it at all, rendering any reliance

on it invalid. The correct version is as narrated by ʿAbd al-Razzāq from Sufyān and Ibn Jurayj from ʿAmr from Abū Maʿbad from Ibn ʿAbbās—as we presented earlier—which does not contain this wording.

L12553–12555 And likewise, we have transmitted it through the chain of Ḥammād ibn Zayd, as Aḥmad ibn Muḥammad al-Ṭalamankī narrated to us, who narrated from Ibn Mufarrij, who narrated from Ibrāhīm ibn Aḥmad ibn Firās, who narrated from Muḥammad ibn ʿAlī ibn Zayd al-Ṣāʾigh, who narrated from Saʿīd ibn Manṣūr, who narrated from Ḥammād ibn Zayd, from ʿAmr ibn Dīnār, from Abū Maʿbad, from Ibn ʿAbbās: that he heard the Messenger of Allah—peace and blessings be upon him—while delivering a sermon, declaring, "A woman must not travel except with a maḥram, nor may a man enter upon her unless she has a maḥram present." A man asked, "O Messenger of Allah, if I vowed to join such-and-such military campaign while my wife intends to perform Ḥajj?" He replied, "Go with her." Thus, the Prophet—peace and blessings be upon him—did not say "No." She may not go for Hajj except with you; nor was she prohibited from Hajj altogether. Rather, the husband was obligated to abandon his vow to undertake jihad and was bound to perform Hajj with her. Thus, the obligation in this matter rests upon the husband, not her.

L12556 As for the ḥadīth of ʿIkrimah, it is a mursal narration as Muḥammad ibn Saʿīd ibn Nubāt narrated to us: Ismāʿīl ibn Isḥāq al-Baṣrī narrated to us; ʿĪsā ibn Khabīb, the judge of Ushūnah, narrated to us, saying: "'Abd al-Raḥmān ibn ʿAbd Allāh ibn Muḥammad ibn ʿAbd Allāh ibn Yazīd al-Muqrī narrated to us; my grandfather Muḥammad ibn ʿAbd Allāh ibn Yazīd narrated to us; Sufyān ibn ʿUyaynah narrated to us from ʿAmr ibn Dīnār from ʿIkrimah, who said: 'A man arrived from a journey, so the Messenger of Allāh (peace and blessings of Allāh be upon him) said to him: "You lodged with so-and-so woman and locked the door upon her"—twice."'

L12557 This is—the hadith of Amr ibn Dinar from Ikrimah—which became confused for Ibn Jurayj, so he did not know whether Amr ibn Dinar had narrated it to him from Ikrimah or whether Amr had narrated it to him from Abu Maʿbad from Ibn Abbas, and he introduced into it the mention of Hajj amid doubt. A legal ruling cannot be based on a hadith report whose chain of transmission

سُفْيَانَ، وَابْنِ جُرَيْجٍ عَنْ عَمْرٍو عَنْ أَبِي مَعْبَدٍ عَنْ ابْنِ عَبَّاسٍ كَمَا أَوْرَدْنَاهُ آنِفًا لَيْسَ فِيهِ هَذِهِ اللَّفْظَةُ.

وَهَكَذَا رُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ كَمَا حَدَّثَنَا (بِهِ) أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ فِرَاسٍ نا مُحَمَّدُ بْنُ عَلِيِّ بْنِ زَيْدٍ الصَّائِغُ نا سَعِيدُ بْنُ مَنْصُورٍ نا حَمَّادِ بْنِ زَيْدٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي مَعْبَدٍ «عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ يَخْطُبُ - يَقُولُ لَا تُسَافِرَنَّ امْرَأَةٌ إِلَّا مَعَ ذِي مَحْرَمٍ، وَلَا يَدْخُلَنَّ عَلَيْهَا رَجُلٌ إِلَّا وَمَعَهَا مَحْرَمٌ، فَقَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ إِنْ نَذَرْتُ أَنْ أَخْرُجَ فِي جَيْشِ كَذَا وَكَذَا وَامْرَأَتِي تُرِيدُ الْحَجَّ؟ قَالَ: فَاخْرُجْ مَعَهَا» فَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ -: لَا تَخْرُجْ إِلَى الْحَجِّ إِلَّا مَعَكَ، وَلَا نَهَاهَا عَنْ الْحَجِّ أَصْلًا، بَلْ أَلْزَمَ الزَّوْجَ تَرْكَ نَذْرِهِ فِي الْجِهَادِ وَأَلْزَمَهُ الْحَجَّ مَعَهَا، فَالْفَرْضُ فِي ذَلِكَ عَلَى الزَّوْجِ لَا عَلَيْهَا.

وَأَمَّا حَدِيثُ عِكْرِمَةَ فَمُرْسَلٌ كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ الْبَصْرِيُّ نا عِيسَى بْنُ خَبِيبٍ قَاضِي أُشُونَةَ قَالَ: نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي نا جَدِّي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ يَزِيدَ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عِكْرِمَةَ قَالَ: «قَدِمَ رَجُلٌ مِنْ سَفَرٍ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ نَزَلْتَ عَلَى فُلَانَةَ فَأَغْلَقْتَ عَلَيْهَا بَابَكَ - مَرَّتَيْنِ» .

فَهَذَا هُوَ - حَدِيثُ عَمْرِو بْنِ دِينَارٍ عَنْ عِكْرِمَةَ اخْتَلَطَ عَلَى ابْنِ جُرَيْجٍ فَلَمْ يَدْرِ أَحَدَّثَهُ بِهِ عَمْرُو بْنُ دِينَارٍ عَنْ عِكْرِمَةَ أَمْ حَدَّثَهُ بِهِ عَمْرٌو عَنْ أَبِي مَعْبَدٍ عَنْ ابْنِ عَبَّاسٍ وَأَدْخَلَ

فِيهِ ذِكْرَ الْحَجِّ بِالشَّكِّ، وَلَا تَثْبُتُ الْحُجَّةُ بِخَبَرٍ مَشْكُوكٍ فِي إسْنَادِهِ أَوْ فِي إرْسَالِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

is doubtful or whose *mursal* status is uncertain—and with Allah the Exalted lies success.

وَأَمَّا قَوْلُنَا: إنَّ لَهُ مَنْعَهَا مِنْ حَجِّ التَّطَوُّعِ فَلِأَنَّ طَاعَتَهُ فَرْضٌ عَلَيْهَا فِيمَا لَا مَعْصِيَةَ لِلَّهِ تَعَالَى فِيهِ، وَلَيْسَ فِي تَرْكِ الْحَجِّ التَّطَوُّعِ مَعْصِيَةٌ؟

L12558 As for our statement that he has the right to prevent her from performing the voluntary pilgrimage, it is because obeying him is obligatory upon her in matters that do not involve disobedience to Allah, the Exalted—and is there any disobedience in abandoning the voluntary pilgrimage?

[مَسْأَلَةٌ أَحْرَمَتْ بِغَيْرِ إذْنِ زَوْجِهَا]

L12559 An issue: A woman assumed ihram without her husband's permission.

٨١٤ - مَسْأَلَةٌ: فَإِنْ أَحْرَمَتْ مِنْ الْمِيقَاتِ أَوْ مِنْ مَكَانٍ يَجُوزُ الْإِحْرَامُ مِنْهُ بِغَيْرِ إذْنِ زَوْجِهَا، وَأَحْرَمَ الْعَبْدُ بِغَيْرِ إذْنِ سَيِّدِهِ؛ فَإِنْ كَانَ حَجَّ تَطَوُّعٍ - كُلُّ ذَلِكَ - فَلَهُ مَنْعُهُمَا وَإِحْلَالُهُمَا لِمَا ذَكَرْنَا وَإِنْ كَانَ حَجَّ الْفَرْضِ نَظَرَ فَإِنْ كَانَ لَا غِنَى بِهِ عَنْهَا أَوْ عَنْهُ - لِمَرَضٍ أَوْ لِضَيْعَتِهِ دُونَهُ أَوْ دُونَهَا أَوْ ضَيْعَةِ مَالِهِ - فَلَهُ إحْلَالُهُمَا لِمَا ذَكَرْنَا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ» وَإِنْ كَانَ لَا حَاجَةَ بِهِ إلَيْهِمَا لَمْ يَكُنْ لَهُ مَنْعُهُمَا أَصْلًا فَإِنْ مَنَعَهُمَا فَهُوَ عَاصٍ لِلَّهِ عَزَّ وَجَلَّ وَهُمَا فِي حُكْمِ الْمُحْصَرِ، وَكَذَلِكَ الْقَوْلُ فِي الِابْنِ وَالِابْنَةِ مَعَ الْأَبِ وَالْأُمِّ وَلَا فَرْقَ، وَطَاعَةُ اللَّهِ تَعَالَى فِي الْحَجِّ مُتَقَدِّمَةٌ لِطَاعَةِ الْأَبَوَيْنِ وَالزَّوْجِ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا الطَّاعَةُ فِي الطَّاعَةِ» .

814 - Issue: If a woman assumes pilgrimage sanctity from the miqat or a permissible location without her husband's permission, or a slave assumes it without his master's permission - in all these cases regarding a voluntary pilgrimage - the husband or master may prevent them and compel them to exit sanctity for the reasons we mentioned. If it is an obligatory pilgrimage, the matter is assessed. Should he require her presence or his slave's due to illness, his reliance on her, her reliance on him, failure to manage his property, or loss of his wealth, he may terminate their sanctity based on the saying of Allah's Messenger (peace be upon him): "A Muslim is a brother to another Muslim - he neither wrongs him nor betrays him." If he has no need for them, he holds no legitimate right to prevent them. Should he prevent them, he defies Allah, the Exalted and Majestic, and they assume the legal status of those constrained from completing pilgrimage. The same ruling applies to sons and daughters concerning their parents without distinction. Obedience to Allah the Exalted in performing pilgrimage takes precedence over obedience to parents or spouses. Allah's Messenger (peace be upon him) said: "Obedience is only required in matters of obedience."

وَقَالَ - عَلَيْهِ السَّلَامُ -: «فَإِذَا أُمِرْتَ بِمَعْصِيَةٍ فَلَا سَمْعَ وَلَا طَاعَةَ» وَتَرْكُ الْحَجِّ مَعْصِيَةٌ، وَلَا فَرْقَ بَيْنَ طَاعَةِ الْأَبَوَيْنِ وَالزَّوْجِ فِي تَرْكِ الْحَجِّ وَبَيْنَ طَاعَتِهِمْ فِي تَرْكِ الصَّلَاةِ أَوْ فِي تَرْكِ الزَّكَاةِ أَوْ فِي تَرْكِ صِيَامِ شَهْرِ رَمَضَانَ.

L12561 He (peace be upon him) said: "If you are commanded to commit a sin, there is neither hearing nor obedience." Abandoning *Hajj* is a sin, and there is no difference between obeying parents or a husband to abandon *Hajj* and obeying them to abandon prayer, *zakat*, or fasting in Ramadan.

L12562 If it is asked: Is there permissibility in its delay?

فَإِنْ قِيلَ: الْحَجُّ فِي تَأْخِيرِهِ فُسْحَةٌ؟

L12563–12564 We said: Until when? Have you considered if they never permit Hajj for children or a spouse? If they were to set a limit of one year, two years, or more, they would be wrongfully dominating religious affairs through falsehood, legislating what Allah, the Exalted, has not authorized. No one would ever advocate obeying them in wholly abandoning Hajj indefinitely. And with Allah, the Exalted, lies all enablement.

قُلْنَا: إِلَى مَتَى؟ أَفَرَأَيْت إِنْ لَمْ يُبِيحُوا الْحَجَّ لِلْأَوْلَادِ أَوْ الزَّوْجَةِ أَبَدًا؟ فَإِنْ حَدُّوا فِي ذَلِكَ سَنَةً أَوْ سَنَتَيْنِ أَوْ أَكْثَرَ كَانُوا مُتَحَكِّمِينَ فِي الدِّينِ بِالْبَاطِلِ وَشَارِعِينَ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى وَلَا يَقُولُ أَحَدٌ بِطَاعَتِهِمْ فِي تَرْكِ الْحَجِّ أَبَدًا جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L12565 It has been reported to us from Qatādah and Al-Ḥakam ibn ʿUtaybah regarding a woman who entered iḥrām without her husband's permission—whether she is in iḥrām. Al-Ḥakam said: "Until she performs ṭawāf around the House."

وَرُوِّينَا عَنْ قَتَادَةَ وَالْحَكَمِ بْنِ عُتَيْبَةَ فِي امْرَأَةٍ أَحْرَمَتْ بِغَيْرِ إذْنِ زَوْجِهَا، أَنَّهَا مُحْرِمَةٌ؟ قَالَ الْحَكَمُ: حَتَّى تَطُوفَ بِالْبَيْتِ.

[مَسْأَلَةٌ اسْتِطَاعَةُ السَّبِيلِ الَّذِي يَجِبُ بِهِ الْحَجُّ]

A legal issue regarding the capability of the means by which Hajj becomes obligatory.

L12567 Issue 815: The capability required for Hajj entails either: physical fitness and strength to walk along with earnings from work or trade sufficient to reach Hajj and return to his place of livelihood or family; or wealth enabling sea or land travel - and livelihood from it until reaching Mecca and returning him to his place of livelihood or family - even if he is not physically fit, except that he faces no hardship in land or sea travel; or having someone who obeys him perform Hajj and Umrah on his behalf for payment or without payment, if he cannot undertake the journey whether mounted or on foot. Whichever of these conditions enables a sane adult Muslim, Hajj and Umrah are obligatory upon him. Whoever is incapable of all of them bears no obligation for Hajj or Umrah.

٨١٥ - مَسْأَلَةٌ: وَاسْتِطَاعَةُ السَّبِيلِ الَّذِي يَجِبُ بِهِ الْحَجُّ إمَّا صِحَّةُ الْجِسْمِ وَالطَّاقَةُ عَلَى الْمَشْيِ وَالتَّكَسُّبُ مِنْ عَمَلٍ أَوْ تِجَارَةٍ مَا يَبْلُغُ بِهِ إلَى الْحَجِّ وَيَرْجِعُ إلَى مَوْضِعِ عَيْشِهِ أَوْ أَهْلِهِ، وَإِمَّا مَالٌ يُمَكِّنُهُ مِنْ رُكُوبِ الْبَحْرِ أَوْ الْبَرِّ - وَالْعَيْشِ مِنْهُ حَتَّى يَبْلُغَ مَكَّةَ وَيَرُدَّهُ - إلَى مَوْضِعِ عَيْشِهِ أَوْ أَهْلِهِ وَإِنْ لَمْ يَكُنْ صَحِيحَ الْجِسْمِ إلَّا أَنَّهُ لَا مَشَقَّةَ عَلَيْهِ فِي السَّفَرِ بَرًّا أَوْ بَحْرًا، وَإِمَّا أَنْ يَكُونَ لَهُ مَنْ يُطِيعُهُ فَيَحُجَّ عَنْهُ وَيَعْتَمِرَ بِأُجْرَةٍ أَوْ بِغَيْرِ أُجْرَةٍ إنْ كَانَ هُوَ لَا يَقْدِرُ عَلَى النُّهُوضِ لَا رَاكِبًا وَلَا رَاجِلًا؛ فَأَيُّ هَذِهِ الْوُجُوهِ أَمْكَنَتْ الْإِنْسَانَ الْمُسْلِمَ الْعَاقِلَ الْبَالِغَ؟ فَالْحَجُّ وَالْعُمْرَةُ فَرْضٌ عَلَيْهِ، وَمَنْ عَجَزَ عَنْ جَمِيعِهَا فَلَا حَجَّ عَلَيْهِ وَلَا عُمْرَةَ.

L12568 Some jurists said, "The capability consists of provisions and a riding animal."

وَقَالَ قَوْمٌ: الِاسْتِطَاعَةُ زَادٌ وَرَاحِلَةٌ.

L12569 Malik said: Capability [to perform Hajj] is physical strength or financial ability to undertake Hajj by oneself. He did not regard the availability of

someone under one's authority as capability, nor did he thereby obligate Hajj.

وَقَالَ مَالِكٌ: الِاسْتِطَاعَةُ قُوَّةُ الْجِسْمِ أَوْ الْقُوَّةُ بِالْمَالِ عَلَى الْحَجِّ بِنَفْسِهِ، وَلَمْ يَرَ وُجُودَ مَنْ يُطِيعُهُ اسْتِطَاعَةً وَلَا أَوْجَبَ بِذَلِكَ حَجًّا.

L12570 It is reported from Abu Hanifah that one paralyzed in his legs—even if he possesses ample wealth and is capable of maintaining stability upon a riding animal—has no Hajj obligation. The same applies to the blind. However, it is also reported from him that Hajj is obligatory upon him (the paralyzed) and upon the blind.

وَرُوِيَ عَنْ أَبِي حَنِيفَةَ أَنَّ الْمُقْعَدَ مِنْ رِجْلَيْهِ وَإِنْ كَانَ لَهُ مَالٌ وَاسِعٌ وَهُوَ قَادِرٌ عَلَى الثَّبَاتِ عَلَى الرَّاحِلَةِ فَلَا حَجَّ عَلَيْهِ، وَكَذَلِكَ الْأَعْمَى - وَقَدْ رُوِيَ عَنْهُ أَنَّ عَلَيْهِ الْحَجَّ وَعَلَى الْأَعْمَى.

L12571–12573 Al-Shafi'i held that the means [to perform Hajj] consist solely of possessing wealth to undertake it oneself or having someone who obeys him to perform it on his behalf. He did not regard physical strength or the ability to secure a mount as constituting the means. The evidence for those who assert, "The means are provisions and a mount," lies in narrated traditions we have transmitted. Among them: From Waki', from Ibrāhīm ibn Yazīd, from Muḥammad ibn 'Abbād ibn Ja'far al-Makhzūmī, from Ibn 'Umar, from the Messenger of Allah (peace be upon him), who was asked about the means [for Hajj]. He said: "Provisions and a riding animal." It was said: "O Messenger of Allah, what is Hajj?" He replied: "It is to be disheveled and dust-stained."

وَرَأَى الشَّافِعِيُّ: أَنَّ الِاسْتِطَاعَةَ إنَّمَا هِيَ بِمَالٍ يَحُجُّ بِهِ أَوْ مَنْ يُطِيعُهُ فَيَحُجُّ عَنْهُ فَقَطْ، وَلَمْ يَرَ قُوَّةَ الْجِسْمِ وَالْقُدْرَةَ عَلَى الرَّاحِلَةِ اسْتِطَاعَةً، وَحُجَّةُ مَنْ قَالَ: الِاسْتِطَاعَةُ زَادٌ وَرَاحِلَةٌ بِآثَارٍ رُوِّيْنَاهَا -: مِنْهَا: عَنْ وَكِيعٍ عَنْ إبْرَاهِيمَ بْنِ يَزِيدَ عَنْ مُحَمَّدِ بْنِ عَبَّادِ بْنِ جَعْفَرٍ الْمَخْزُومِيِّ عَنْ ابْنِ عُمَرَ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ سُئِلَ عَنْ الِاسْتِطَاعَةِ فَقَالَ: الزَّادُ وَالرَّاحِلَةُ؟ فَقِيلَ: يَا رَسُولَ اللَّهِ فَمَا الْحَجُّ؟ قَالَ: الْأَشْعَثُ التَّفِلُ» .

L12574 Through the chain of Ḥammād ibn Salamah: I [Ḥammād] narrate from Qatādah and Ḥumayd, who narrate from al-Ḥasan that a man asked: "O Messenger of Allah, what enables one to perform it [Ḥajj]?" He replied: "Sufficient provisions and a mount."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ: أَنَا قَتَادَةُ، وَحُمَيْدٌ عَنْ الْحَسَنِ «أَنَّ رَجُلًا قَالَ: يَا رَسُولَ اللَّهِ مَا السَّبِيلُ إلَيْهِ؟ قَالَ: زَادٌ وَرَاحِلَةٌ» .

L12575 From the chain of Isma'il ibn Ishaq, from Muslim ibn Ibrahim, from Hilal ibn Abdullah (the client of Rabi'ah ibn 'Amr ibn Muslim al-Bahili), from Abu Ishaq al-Hamdani, from al-Harith, from Ali, from the Prophet (peace be upon him): "Whoever possesses provisions and a mount capable of conveying him to the House of Allah—the Almighty—yet does not perform Hajj, let him die as a Jew or a Christian, for Allah the Exalted says: {And Hajj to the House is a duty owed to Allah by those who can find a way to it. But whoever rejects it [the obligation], then Allah is free of need from the worlds} [3:97]."[3]

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ عَنْ مُسْلِمِ بْنِ إبْرَاهِيمَ نا هِلَالُ بْنُ عَبْدِ اللَّهِ مَوْلَى رَبِيعَةَ بْنِ عَمْرِو بْنِ مُسْلِمٍ الْبَاهِلِيِّ نا أَبُو إسْحَاقَ الْهَمْدَانِيُّ عَنْ الْحَارِثِ عَنْ عَلِيٍّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ مَلَكَ زَادًا وَرَاحِلَةً تُبَلِّغُهُ إلَى بَيْتِ اللَّهِ - عَزَّ وَجَلَّ - فَلَمْ يَحُجَّ فَلَا عَلَيْهِ أَنْ يَمُوتَ يَهُودِيًّا، أَوْ نَصْرَانِيًّا، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلا وَمَنْ كَفَرَ فَإِنَّ اللَّهَ غَنِيٌّ عَنِ الْعَالَمِينَ} [آل عمران: ٩٧] » .

[3] **Qur'an references (L12575):** Qur'an 3:97 (Ali 'Imran).

وَقَالُوا: لَمَّا قَالَ اللَّهُ تَعَالَى: {مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلا} [آل عمران: ٩٧] عَلِمْنَا أَنَّهَا اسْتِطَاعَةٌ غَيْرُ الْقُوَّةِ بِالْجِسْمِ، إِذْ لَوْ كَانَ تَعَالَى أَرَادَ قُوَّةَ الْجِسْمِ لَمَا احْتَاجَ إِلَى ذِكْرِهَا، لِأَنَّنَا قَدْ عَلِمْنَا أَنَّ اللَّهَ تَعَالَى لَا يُكَلِّفُ نَفْسًا إِلَّا وُسْعَهَا.

L12576–12578 And they said: Since Allah the Exalted stated, "Whoever is able to find a way [to it]" (3:97), we inferred from the wording that this denotes an ability other than strength. Regarding the body; for if the Exalted had intended the strength of the body, He would not have needed to mention it, as we know that Allah, the Exalted, does not burden any soul beyond its capacity.[4]

وَقَالُوا: قَالَ اللَّهُ تَعَالَى: {إِلَى بَلَدٍ لَمْ تَكُونُوا بَالِغِيهِ إِلا بِشِقِّ الأَنْفُسِ} [النحل: ٧] فَصَحَّ أَنَّ الرِّحْلَةَ شِقُّ الْأَنْفُسِ بِالضَّرُورَةِ وَلَا يُكَلِّفُنَا اللَّهُ تَعَالَى ذَلِكَ لِقَوْلِهِ تَعَالَى: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] .

L12579 They said: Allah, the Exalted, stated: "To a land you could not reach except at the risk of your lives" (16:7). Thus, it is valid that the journey inherently entails great hardship, and Allah, the Exalted, does not burden us with that, as He states: "And He has not placed upon you in the religion any hardship" (22:78).[5]

وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ عَطَاءٍ الْخُرَاسَانِيِّ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ فِي اسْتِطَاعَةِ السَّبِيلِ إِلَى الْحَجِّ: زَادٌ وَرَاحِلَةٌ.

L12580 They mentioned what was narrated to us through ʿAṭāʾ al-Khurāsānī from ʿUmar ibn al-Khaṭṭāb, who said concerning the capability for the journey to Hajj: "Provisions and a mount."

وَمِنْ طَرِيقِ الضَّحَّاكَ عَنْ ابْنِ عَبَّاسٍ فِي ذَلِكَ أَيْضًا: زَادٌ، وَبَعِيرٌ: وَمِنْ طَرِيقِ إِسْرَائِيلَ عَنْ الْحَسَنِ عَنْ أَنَسٍ {مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلا} [آل عمران: ٩٧] قَالَ: زَادٌ، وَرَاحِلَةٌ.

L12581 Narrated by al-Ḍaḥḥāk from Ibn ʿAbbās regarding this matter: provisions and camel. Narrated by Isrāʾīl from al-Ḥasan from Anas concerning the verse "Whoever is able to undertake the journey" [Āl ʿImrān 3:97], he said: provisions and riding camel.[6]

وَمِنْ طَرِيقِ إِسْرَائِيلَ عَنْ مُجَاهِدٍ عَنْ ابْنِ عُمَرَ قَالَ: {مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلا} [آل عمران: ٩٧] قَالَ: مِلْءُ بَطْنِهِ، وَرَاحِلَةٌ يَرْكَبُهَا - وَهُوَ قَوْلُ الضَّحَّاكِ بْنِ مُزَاحِمٍ، وَالْحَسَنِ الْبَصْرِيِّ، وَمُجَاهِدٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَمُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ، وَأَيُّوبَ السِّخْتِيَانِيِّ وَأَحَدُ قَوْلَيْ عَطَاءٍ.

L12582 Through the chain of Isra'īl from Mujāhid from Ibn 'Umar, who said regarding "Whoever is able to find a way" [Āl 'Imrān 3:97]: "The filling of his stomach and a riding animal he can mount" — this being the opinion of al-Ḍaḥḥāk ibn Muzāḥim, al-Ḥasan al-Baṣrī, Mujāhid, Saʿīd ibn Jubayr, Muḥammad ibn 'Alī ibn al-Ḥusayn, Ayyūb al-Sikhtiyānī, and one of the two opinions of 'Aṭā'.[7]

قَالَ أَبُو مُحَمَّد: فَادَّعَوْا فِي هَذَا أَنَّهُ قَوْلُ طَائِفَةٍ مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ وَلَيْسَ كَمَا قَالُوا أَصْلًا، لِأَنَّنَا قَدْ رُوِّينَا عَنْ وَكِيعٍ وَغَيْرِهِ عَنْ عِمْرَانَ بْنِ حُدَيْرٍ عَنْ النَّزَّالِ بْنِ عَمَّارٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: " مَنْ مَلَكَ ثَلَاثَمِائَةِ دِرْهَمٍ وَجَبَ عَلَيْهِ الْحَجُّ وَحَرُمَ عَلَيْهِ نِكَاحُ الْإِمَاءِ ".

L12583–12585 Abu Muhammad said: They claimed in this that it is the opinion of a group of the Companions with no dissenter from among them known to them, but it is not at all as they said; for it has been narrated to us from Waki' and others, from 'Imran ibn Ḥudayr, from... Al-Nazzal ibn Ammar reported

[4] **Qur'an references (L12576):** Qur'an 3:97 (Ali 'Imran).
[5] **Qur'an references (L12579):** Qur'an 16:7 (An-Nahl); Qur'an 22:78 (Al-Hajj).
[6] **Qur'an references (L12581):** Qur'an 3:97 (Ali 'Imran).
[7] **Qur'an references (L12582):** Qur'an 3:97 (Ali 'Imran).

from Ibn Abbas, who said: “Whoever owns three hundred silver dirhams, Hajj becomes obligatory upon them, and they are forbidden from marrying enslaved women.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ الْخُرَاسَانِيِّ عَنِ ابْنِ عَبَّاسٍ قَالَ، فِي الْحَجِّ: سَبِيلُهُ مَنْ وَجَدَ لَهُ سِعَةً، وَلَمْ يَحُلْ بَيْنَهُ وَبَيْنَهُ - وَهَذَا هُوَ قَوْلُنَا.

L12586 From the chain of Abd al-Razzaq, from Ibn Jurayj, from Ata al-Khurasani, from Ibn Abbas, who said regarding Hajj: “It is obligatory upon whoever has the financial capacity and no obstacle stands between him and it—and this is our school’s position.”

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِي عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ خَالِدِ بْنِ أَبِي كَرِيمَةَ عَنِ ابْنِ الزُّبَيْرِ قَالَ: {مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلا} [آل عمران: ٩٧] قَالَ: عَلَى قَدْرِ الْقُوَّةِ - وَهُوَ أَحَدُ قَوْلَيْ عَطَاءٍ.

L12587 Through the chain of ʿAbd al-Raḥmān ibn Mahdī from Sufyān al-Thawrī from Khālid ibn Abī Karīmah from Ibn al-Zubayr, who said concerning “Whoever has the means to journey to it” [Āl ʿImrān:97]: “According to one’s capacity” – and this is one of two opinions of ʿAṭāʾ.[8]

قَالَ عَلِيٌّ: أَمَّا احْتِجَاجُهُمْ بِأَنَّ الِاسْتِطَاعَةَ لَوْ كَانَتْ عَلَى الْعُمُومِ لَمَا كَانَ لِذِكْرِهَا مَعْنًى فَكَلَامٌ فَاسِدٌ، وَاعْتِرَاضٌ عَلَى اللَّهِ تَعَالَى، وَإِخْرَاجٌ لِلْقُرْآنِ عَنْ ظَاهِرِهِ بِلَا بُرْهَانٍ.

L12588 Ali said: As for their argument that if capability were general, there would be no purpose in mentioning it, this is invalid speech, opposition to Allah the Exalted, and a diversion of the Quran from its plain sense without evidence.

ثُمَّ لَوْ صَحَّ هَذَا لَكَانَ حُجَّةً عَلَيْهِمْ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْجَبَ الْحَجَّ عَلَى مَنْ لَا يَسْتَطِيعُهُ بِجِسْمِهِ، وَلَا بِمَالِهِ - إذَا وَجَدَ مَنْ يَحُجُّ عَنْهُ - كَمَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى؛ فَكَانَ ذَلِكَ دَاخِلًا فِي الِاسْتِطَاعَةِ بِبَيَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L12589 Moreover, if this were valid, it would stand as proof against them, because the Messenger of Allah—peace and blessings of Allah be upon him—made Hajj obligatory even upon those who are not capable either physically or financially, provided they find someone to perform it on their behalf, as we will mention later, if Allah the Exalted wills. Thus, this is included in the definition of capacity as clarified by the Messenger of Allah—peace and blessings of Allah be upon him.

وَأَمَّا قَوْلُهُمْ: إنَّ الرِّحْلَةَ مِنْ شِقِّ الْأَنْفُسِ وَالْحَرَجِ، وَاَللَّهُ تَعَالَى لَا يُكَلِّفُ ذَلِكَ عِبَادَهُ، فَصَحِيحٌ وَلَمْ نَقُلْ نَحْنُ: إنَّ مَنْ كَانَتْ الرِّحْلَةُ تَشُقُّ عَلَيْهِ - وَعَلَيْهِ فِيهَا حَرَجٌ - أَنَّ الْحَجَّ يَلْزَمُهُ: بَلْ الْحَجُّ عَمَّنْ هَذِهِ صِفَتُهُ سَاقِطٌ كَمَا قَالُوا، وَإِنَّمَا قُلْنَا: إنَّ مَنْ يَسْهُلُ عَلَيْهِ الْمَشْيُ وَهُوَ لَوْ كَانَتْ لَهُ فِي دُنْيَاهُ حَاجَةٌ لَاسْتَسْهَلَ الْمَشْيَ إلَيْهَا - فَالْحَجُّ يَلْزَمُهُ؛ لِأَنَّهُ مُسْتَطِيعٌ؟ وَأَمَّا الْأَخْبَارُ الَّتِي ذَكَرُوا -: فَإِنَّ فِي أَحَدِهَا -: إبْرَاهِيمَ بْنَ يَزِيدَ وَهُوَ سَاقِطٌ مَطْرَحٌ؛

L12590 As for their statement that traveling entails hardship and difficulty, and that Allah the Exalted does not impose such a burden upon His servants—this is correct. We ourselves have not asserted that Hajj is obligatory for one who finds traveling arduous and upon whom it imposes hardship. Rather, Hajj is waived for such a person, as they have stated. We only said that Hajj is obligatory for one who finds walking easy and who, if he had a worldly need, would consider the journey to fulfill it easy—for he is capable. As for the narrations they cited: one of them includes Ibrāhīm ibn Yazīd, who

[8] **Qur’an references (L12587):** Qur’an 3:97 (Ali ’Imran).

وَفِي الثَّانِي: الْحَارِثُ الْأَعْوَرُ وَهُوَ مَذْكُورٌ بِالْكَذِبِ، وَحَدِيثُ الْحَسَنِ مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ وَالْعَجَبُ مِنْ مَالِكٍ، وَالشَّافِعِيِّ، فِي هَذِهِ الْمَسْأَلَةِ؛ فَإِنَّ الْمَالِكِيِّينَ يَقُولُونَ: الْمُرْسَلُ، وَالْمُسْنَدُ سَوَاءٌ لَا سِيَّمَا مُرْسَلُ الْحَسَنِ فَإِنَّهُمْ ادَّعَوْا أَنَّهُ كَانَ لَا يُرْسِلُ الْحَدِيثَ إِلَّا إِذَا حَدَّثَهُ بِهِ أَرْبَعَةٌ مِنْ الصَّحَابَةِ فَصَاعِدًا، ثُمَّ خَالَفُوا هَاهُنَا أَحْسَنَ مَرَاسِيلِ الْحَسَنِ؛ وَالشَّافِعِيُّونَ لَا يَقُولُونَ: إلَّا بِالْمُسْنَدِ الصَّحِيحِ وَأَخَذُوا هَاهُنَا بِالسَّاقِطِ، وَالْمُرْسَلِ.

is rejected and discarded; the second includes al-Ḥārith al-Aʿwar, who is known for lying; and the narration of al-Ḥasan is mursal, and there is no valid proof in a mursal narration. It is astonishing regarding Mālik and al-Shāfiʿī in this matter. The Mālikīs claim that mursal and musnad (narrations with complete chains) are equivalent in validity, especially the mursal narrations of al-Ḥasan, as they assert he would only report a narration if four or more Companions had narrated it to him. Yet here, they contradict even the soundest of al-Ḥasan's mursal narrations. The Shāfiʿīs, however, only accept musnad narrations with sound chains, yet here they have relied on discarded and mursal narrations.

وَأَمَّا الرِّوَايَاتُ فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَوَاهِيَةٌ كُلُّهَا؛ لِأَنَّهَا إمَّا مِنْ طَرِيقِ عَطَاءٍ الْخُرَاسَانِيِّ مُرْسَلَةً، وَإِمَّا مِنْ طَرِيقِ إسْرَائِيلَ، وَإِمَّا مِنْ طَرِيقِ رَجُلٍ لَمْ يُسَمَّ، وَأَحْسَنُهَا الرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ الْمُوَافِقَةُ لِقَوْلِنَا، وَأَمَّا الرِّوَايَةُ الْأُخْرَى عَنْهُ فِي الثَّلَاثِمِائَةِ دِرْهَمٍ، إلَّا أَنَّ هَذَا مِمَّا خَالَفَ فِيهِ الْمَالِكِيُّونَ جُمْهُورَ الْعُلَمَاءِ وَهُمْ يُعَظِّمُونَ ذَلِكَ.

L12591–12592 As for the narrations concerning this matter from the Companions—may Allah be pleased with them—they are all feeble, as they are either transmitted via ʿAṭāʾ al-Khurāsānī's mursal (incompletely chained) narration, through Isrāʾīl, or through an unnamed man. The best of them is the narration from Ibn ʿAbbās that aligns with our position. As for the other narration attributed to him regarding three hundred dirhams, this is among the matters in which the Mālikīs opposed the majority of scholars, and the Mālikīs attach great importance to this stance.

وَالْحَنَفِيُّونَ يُبْطِلُونَ السُّنَنَ الصِّحَاحَ -: كَنَفْيِ الزَّانِي، وَحَدِيثِ لَا تُحَرِّمُ الْمَصَّةُ وَلَا الْمَصَّتَانِ، وَحَدِيثِ رَضَاعِ سَالِمٍ، وَغَيْرِهَا؛ لِزَعْمِهِمْ: أَنَّهَا زَائِدَةٌ عَلَى مَا فِي الْقُرْآنِ، أَوْ مُخَالِفَةٌ لَهُ، وَأَخَذُوا هَاهُنَا بِأَخْبَارٍ سَاقِطَةٍ لَا يَحِلُّ الْأَخْذُ بِهَا مُخَصِّصَةً لِلْقُرْآنِ مُخَالِفَةً لَهُ، ثُمَّ خَالَفُوهَا مَعَ ذَلِكَ فِي تَخْصِيصِهِمْ الْمُقْعَدِ.

L12593 The Hanafis invalidate the authentic Sunnahs—such as the exile of the adulterer, the hadith stating "one or two sucklings do not establish prohibition," the hadith regarding Salim's breastfeeding, and others—alleging that these constitute additions to the Qur'an or contradictions to it. In doing so, they rely on rejected narrations that are impermissible to adopt—narrations that specify Qur'anic rulings while opposing them. Yet despite this, they themselves contradict those narrations in their specification of al-Muqʿad.

وَأَطْرَفُ شَيْءٍ احْتِجَاجُهُمْ فِي تَخْصِيصِ الْمُقْعَدِ بِقَوْلِ اللَّهِ تَعَالَى: {لَيْسَ عَلَى الأَعْمَى حَرَجٌ وَلا عَلَى الأَعْرَجِ حَرَجٌ وَلا عَلَى الْمَرِيضِ حَرَجٌ} [النور: ٦١] وَهُمْ يَقُولُونَ: إنَّ الْأَعْرَجَ يَلْزَمُهُ الْحَجُّ إذَا وَجَدَ زَادًا وَرَاحِلَةً وَقَدَرَ عَلَى الرُّكُوبِ، وَكَذَلِكَ الْأَعْمَى؛

L12594 The most absurd aspect of their argument in exempting the paralyzed person is their citation of God's statement: *"There is no blame upon the blind, nor upon the lame, nor upon the sick"* (24:61), while they simultaneously assert that the lame must perform Hajj if he possesses provisions, a riding animal, and the capacity to mount it—and likewise for the blind. Thus, they contradicted what is in the verse and applied its ruling to a matter not mentioned within it. ʿAlī said: When all their specious arguments were invalidated, it

became obligatory to seek proof from the Quran and authentic Sunnah. We found God Almighty stating: *"Whoever is able to find a way"* (3:97). This constitutes a general ruling encompassing all forms of capability—whether financial or physical—as necessitated by the verse's explicit wording. It is impermissible to exempt the paralyzed, the blind, or the lame from this obligation if they are capable of riding while having adequate means. This does not fall under the hardship God has lifted from them, for no constraining burden exists upon them in this matter.[9]

فَخَالَفُوا مَا فِي الْآيَةِ وَحَكَمُوا بِهَا فِيمَا لَيْسَ فِيهَا مِنْهُ شَيْءٌ؟ قَالَ عَلِيٌّ: فَلَمَّا بَطَلَ كُلُّ مَا شَغَبُوا بِهِ وَجَبَ طَلَبُ الْبُرْهَانِ مِنْ الْقُرْآنِ وَالسُّنَّةِ الصَّحِيحَةِ فَوَجَدْنَا اللَّهَ تَعَالَى قَالَ: {مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلا} [آل عمران: ٩٧] فَكَانَ هَذَا عُمُومًا لِكُلِّ اسْتِطَاعَةٍ بِمَالٍ أَوْ جِسْمٍ هَذَا الَّذِي يُوجِبُهُ لَفْظُ الْآيَةِ ضَرُورَةً، وَلَمْ يَجُزْ أَنْ يُخَصَّ مِنْ ذَلِكَ مُقْعَدٌ وَلَا أَعْمَى وَلَا أَعْرَجُ إذَا كَانُوا مُسْتَطِيعِينَ الرُّكُوبَ وَمَعَهُمْ سِعَةٌ، وَلَيْسَ هَذَا مِنْ الْحَرَجِ الَّذِي أَسْقَطَهُ اللَّهُ تَعَالَى عَنْهُمْ؛ لِأَنَّهُ لَا حَرَجَ فِيهِ عَلَيْهِمْ.

L12595 Moreover, this verse, by the explicit text of the Quran, was revealed concerning jihad, which necessitates exertion, heightened caution, and running—all of which are clearly burdensome for the lame and the blind. As for Hajj, it involves none of that whatsoever.

وَأَيْضًا: فَإِنَّ هَذِهِ الْآيَةَ بِنَصِّ الْقُرْآنِ إنَّمَا نَزَلَتْ فِي الْجِهَادِ، وَهُوَ الَّذِي يَحْتَاجُ فِيهِ إلَى الشَّدِّ وَالتَّحَفُّظِ وَالْجَرْيِ، وَكُلُّ ذَلِكَ حَرَجٌ ظَاهِرٌ عَلَى الْأَعْرَجِ وَالْأَعْمَى؛ وَأَمَّا الْحَجُّ فَلَيْسَ فِيهِ شَيْءٌ مِنْ ذَلِكَ أَصْلًا.

L12596 There remains one who has neither wealth nor physical strength, except that he finds someone to perform Hajj on his behalf without payment or with an affordable payment. We observe that the language in which the Quran was revealed and through which God Almighty addressed us regarding all He has obligated us with shows no disagreement among its speakers concerning statements like: "The caliph is capable of conquering such-and-such land and positioning the catapult against it"—even if he is ill and bedridden—because his capability arises from his command and the people's obedience. This falls within the explicit ruling of the verse.

وَبَقِيَ مَنْ لَا مَالَ لَهُ وَلَا قُوَّةَ جِسْمٍ إلَّا أَنَّهُ يَجِدُ مَنْ يَحُجُّ عَنْهُ بِلَا أُجْرَةٍ أَوْ بِأُجْرَةٍ يَقْدِرُ عَلَيْهَا، فَوَجَدْنَا اللُّغَةَ الَّتِي بِهَا نَزَلَ الْقُرْآنُ وَبِهَا خَاطَبَنَا اللَّهُ تَعَالَى فِي كُلِّ مَا أَلْزَمَنَا إيَّاهُ لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ أَهْلِهَا فِي أَنَّهُ يُقَالُ: الْخَلِيفَةُ مُسْتَطِيعٌ لِفَتْحِ بَلَدِ كَذَا، وَلِنَصْبِ الْمَنْجَنِيقِ عَلَيْهِ - وَإِنْ كَانَ مَرِيضًا مُثْبَتًا - لِأَنَّهُ مُسْتَطِيعٌ لِذَلِكَ بِأَمْرِهِ وَطَاعَةِ النَّاسِ لَهُ، وَكَانَ ذَلِكَ دَاخِلًا فِي نَصِّ الْآيَةِ.

L12597–12598 We found in the Sunnah what was narrated to us by Abdullah ibn Yusuf from Ahmad ibn Fath from Abdul-Wahhab ibn Isa from Ahmad ibn Muhammad from Ahmad ibn Ali from Muslim ibn al-Hajjaj from Ali ibn Khashram from Isa ibn Yunus from Ibn Jurayj from Ibn Shihab from Sulayman ibn Yasar from Ibn Abbas from al-Fadl ibn Abbas: "A woman from Khath'am said: 'O Messenger of Allah (peace and blessings be upon him), my father is an

وَوَجَدْنَا مِنْ السُّنَنِ -: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا عَلِيُّ بْنُ خَشْرَمٍ عَنْ عِيسَى بْنِ يُونُسَ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ شِهَابٍ نا سُلَيْمَانُ بْنُ يَسَارٍ عَنْ ابْنِ عَبَّاسٍ عَنْ الْفَضْلِ بْنِ عَبَّاسٍ: «أَنَّ امْرَأَةً مِنْ خَثْعَمَ قَالَتْ: يَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

[9] **Qur'an references (L12594):** Qur'an 24:61 (An-Nur); Qur'an 48:17 (Al-Fath); Qur'an 3:97 (Ali 'Imran).

elderly man bound by Allah's obligation regarding Hajj, yet he cannot sit upright upon his camel.' The Prophet (peace and blessings be upon him) said to her: 'Perform Hajj for him.'"

L12599 It has also been narrated to us [through the chain] of Al-Bukhārī from ʿAbdullāh ibn Maslamah from Mālik from Ibn Shihāb from Sulaymān ibn Yasār from ʿAbdullāh ibn ʿAbbās* that the Khathʿamī woman said to the Messenger of Allah: "Allah's obligation has become incumbent upon my father - an elderly man too frail to stay upright on his riding animal. Shall I perform Hajj for him?" He said: "Yes." This occurred during the Farewell Pilgrimage.[10]

L12600–12602 Abdullah ibn Rabiʿ narrated to us: Abdullah ibn Muhammad ibn Uthman narrated to us: Ahmad ibn Khalid narrated to us: Ali ibn Abdul Aziz narrated to us: Al-Hajjaj ibn Al-Minhal narrated to us: Yazid ibn Ibrahim narrated to us from Ibn Sīrīn from Ubaidullah ibn Al-Abbas, who said: "I was mounted behind the Messenger of Allah—peace and blessings of Allah be upon him—when a man came to him and said: 'O Messenger of Allah, my mother is an elderly woman. If he binds her firmly, he fears he might kill her, but if he does not bind her, she cannot hold on.' The Prophet—peace be upon him—commanded him to perform Hajj on her behalf." Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Muʿāwiyah narrated to us: Ahmad ibn Shuʿayb narrated to us: Isḥāq ibn Ibrāhīm (Ibn Rāhwayh) narrated to us: Wakīʿ ibn Al-Jarrāḥ narrated to us: Shuʿbah narrated to us from An-Nuʿmān (Ibn Sālim) from ʿAmr ibn... From Aws, from Abu Razin al-Uqayli that he said: "O Messenger of Allah, my father is an elderly man who cannot perform Hajj, Umrah, and undertake the journey for Hajj." The Messenger of Allah (peace be upon him) said to him: "Perform Hajj on behalf of your father and perform Umrah."

L12603 We have also narrated it: through the chain of Ibn al-Zubayr from the Messenger of Allah—peace and blessings of Allah be upon him. These are corroborated, mass-transmitted reports from sound chains of transmission originating from five Companions—may Allah be pleased with them: al-Faḍl,

- إِنَّ أَبِي شَيْخٌ كَبِيرٌ عَلَيْهِ فَرِيضَةُ اللَّهِ تَعَالَى فِي الْحَجِّ وَهُوَ لَا يَسْتَطِيعُ أَنْ يَسْتَوِيَ عَلَى ظَهْرِ بَعِيرِهِ فَقَالَ لَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: حُجِّي عَنْهُ» .

وَرُوِّينَاهُ (أَيْضًا) مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مَسْلَمَةَ عَنْ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عَبْدِ اللَّهِ بْنِ عَبَّاسٍ (*) أَنَّ الْخَثْعَمِيَّةَ قَالَتْ لِرَسُولِ اللَّهِ «إِنَّ فَرِيضَةَ اللَّهِ أَدْرَكَتْ أَبِي شَيْخًا كَبِيرًا لَا يَثْبُتُ عَلَى الرَّاحِلَةِ أَفَأَحُجُّ عَنْهُ؟ قَالَ: نَعَمْ، وَذَلِكَ فِي حَجَّةِ الْوَدَاعِ» .

ونا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا يَزِيدُ بْنُ إِبْرَاهِيمَ عَنِ ابْنِ سِيرِينَ عَنْ عُبَيْدِ اللَّهِ بْنِ الْعَبَّاسِ قَالَ: «كُنْتُ رَدِيفَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَتَاهُ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ إِنَّ أُمِّي عَجُوزٌ كَبِيرَةٌ إِنْ حَزَمَهَا خَشِيَ أَنْ يَقْتُلَهَا وَإِنْ لَمْ يَحْزِمْهَا لَمْ تَسْتَمْسِكْ؟ فَأَمَرَهُ - عَلَيْهِ السَّلَامُ - أَنْ يَحُجَّ عَنْهَا» : نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا إِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - نا وَكِيعُ بْنُ الْجَرَّاحِ نا شُعْبَةُ عَنِ النُّعْمَانِ هُوَ ابْنُ سَالِمٍ - عَنْ عَمْرِو بْنِ أَوْسٍ عَنْ أَبِي رَزِينٍ الْعُقَيْلِيِّ أَنَّهُ قَالَ «يَا رَسُولَ اللَّهِ إِنَّ أَبِي شَيْخٌ كَبِيرٌ لَا يَسْتَطِيعُ الْحَجَّ وَالْعُمْرَةَ وَالظَّعْنَ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: حُجَّ عَنْ أَبِيكَ وَاعْتَمِرْ» .

رُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ ابْنِ الزُّبَيْرِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذِهِ أَخْبَارٌ مُتَظَاهِرَةٌ مُتَوَاتِرَةٌ مِنْ طُرُقٍ صِحَاحٍ عَنْ خَمْسَةٍ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -:

[10] **Hadith references (L12599):** Sahih al-Bukhari 1855.

ʿAbdullāh, ʿUbaydullāh ibn al-ʿAbbās ibn ʿAbd al-Muṭṭalib, Ibn al-Zubayr, and Abū Razīn al-ʿUqaylī.

الْفَضْلُ، وَعَبْدُ اللَّهِ، وَعُبَيْدُ اللَّهِ بْنُ الْعَبَّاسِ بْنِ عَبْدِ الْمُطَّلِبِ - وَابْنُ الزُّبَيْرِ، وَأَبُو رَزِينٍ الْعُقَيْلِيُّ.

L12604–12606 The aforementioned Yazeed ibn Ibrahim is Abu Sa'id al-Tustari, a Basran who resided with his family near the cemetery of Banu Sahm. He died in the year 161 AH [one hundred and sixty-one], but it is said he died in Muḥarram of 162 AH [one hundred and sixty-two]. He was trustworthy and reliable, declared trustworthy by Abu al-Walid al-Ṭayālisī and ʿAbdullah ibn Numayr. Aḥmad ibn Ḥanbal, Ibn Maʿīn, ʿAmr ibn ʿAlī, Aḥmad ibn Ṣāliḥ, and al-Nasāʾī—who is not Yazīd ibn Ibrāhīm, the one who narrates from Qatādah—that one being weak.

وَيَزِيدُ بْنُ إِبْرَاهِيمَ الْمَذْكُورُ هُوَ أَبُو سَعِيدٍ التُّسْتَرِيُّ بَصْرِيٌّ - كَانَ يَنْزِلُ بِأَهْلِهِ عِنْدَ مَقْبَرَةِ بَنِي سَهْمٍ مَاتَ سَنَةَ (١٦١ هـ) إِحْدَى وَسِتِّينَ وَمِائَةٍ، وَقِيلَ: بَلْ فِي الْمُحَرَّمِ سَنَةَ ١٦٢ هـ اثْنَتَيْنِ وَسِتِّينَ وَمِائَةٍ ثِقَةٌ ثَبْتٌ، وَثَّقَهُ أَبُو الْوَلِيدِ الطَّيَالِسِيُّ، وَعَبْدُ اللَّهِ بْنُ نُمَيْرٍ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَابْنُ مَعِينٍ، وَعَمْرُو بْنُ عَلِيٍّ، وَأَحْمَدُ بْنُ صَالِحٍ، وَالنَّسَائِيُّ وَلَيْسَ هُوَ يَزِيدَ بْنَ إِبْرَاهِيمَ الَّذِي يَرْوِي عَنْ قَتَادَةَ، ذَلِكَ لَيْسَ بِالْقَوِيِّ.

L12607 In these narrations, it is clarified that if someone has never been healthy, the obligation of Hajj persists for them if they find someone to perform Hajj on their behalf. This is because the Prophet (peace be upon him) heard the woman's statement regarding her father: "Allah's obligation overtook him while he was an elderly man unable to stay mounted on a riding animal," and he did not object to her statement, nor to Abu Razīn's similar statement about his father. Hence, it is validated that the obligation persists for these two individuals if they find someone to perform Hajj on their behalf.

فَبَيَّنَ فِي هَذِهِ الْأَخْبَارِ أَنَّ مَنْ لَمْ يَكُنْ قَطُّ صَحِيحًا فَإِنَّ فَرِيضَةَ الْحَجِّ لَازِمَةٌ لَهُ إِذَا وَجَدَ مَنْ يَحُجُّ عَنْهُ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - سَمِعَ قَوْلَ الْمَرْأَةِ عَنْ أَبِيهَا: «إِنَّ فَرِيضَةَ اللَّهِ تَعَالَى أَدْرَكَتْهُ وَهُوَ شَيْخٌ كَبِيرٌ لَا يَسْتَطِيعُ الثَّبَاتَ عَلَى الرَّاحِلَةِ» ، فَلَمْ يُنْكِرْ ذَلِكَ عَلَيْهَا، وَلَا عَلَى أَبِي رَزِينٍ مِثْلَ ذَلِكَ فِي أَبِيهِ، فَصَحَّ أَنَّ الْفَرْضَ بَاقٍ عَلَى هَذَيْنِ إِذَا وَجَدَا مَنْ يَحُجُّ عَنْهُمَا.

L12608 Al-Shafiʿī said: That obligation applies only if he has provisions and a riding animal. This is incorrect, as it is not stated in the ḥadīth of Abū Razīn that he possessed a riding animal, nor is it mentioned in the ḥadīth of ʿUbayd Allāh ibn al-ʿAbbās. This is a corrupt addition.

وَقَالَ الشَّافِعِيُّ: إِنَّمَا يَلْزَمُهُ ذَلِكَ إِذَا كَانَ لَهُ زَادٌ وَرَاحِلَةٌ - وَهَذَا خَطَأٌ لِأَنَّهُ لَيْسَ فِي حَدِيثِ أَبِي رَزِينٍ: أَنَّهُ كَانَتْ لَهُ رَاحِلَةٌ، وَلَا فِي حَدِيثِ عُبَيْدِ اللَّهِ بْنِ الْعَبَّاسِ أَيْضًا، فَهَذِهِ زِيَادَةٌ فَاسِدَةٌ.

L12609 If it is said: These hadiths came regarding a very elderly man and a very elderly woman—how then do you generalize their rulings to include anyone unable to move due to paralysis, illness, or not being elderly? We respond: Not every elderly man inherently possesses this description. Rather, this applies specifically to those overcome by frailty. The Prophet (peace be upon

فَإِنْ قِيلَ: إِنَّمَا جَاءَتْ هَذِهِ الْأَحَادِيثُ فِي شَيْخٍ كَبِيرٍ، وَعَجُوزٍ كَبِيرَةٍ، فَمِنْ أَيْنَ تَعَدَّيْتُمْ مَا فِيهَا إِلَى كُلِّ مَنْ لَا يَسْتَطِيعُ الْحَرَكَةَ بِزَمَانَةٍ، أَوْ مَرَضٍ وَلَمْ يَكُنْ شَيْخًا كَبِيرًا؟ قُلْنَا: لَيْسَ كُلُّ شَيْخٍ كَبِيرٍ تَكُونُ هَذِهِ صِفَتَهُ وَإِنَّمَا يَكُونُ بِهَذِهِ الصِّفَةِ مَنْ غَلَبَهُ الضَّعْفُ،

him) mandated this solely for those incapable of maintaining stability while seated on a riding animal. The elderly person holds no relevance whatsoever in this context.

فَإِنَّمَا أَمَرَ - عَلَيْهِ السَّلَامُ - بِذَلِكَ فِيمَنْ لَا يَسْتَطِيعُ ثَبَاتًا عَلَى الدَّابَّةِ وَلَيْسَ لِلشَّيْخِ هُنَالِكَ مَعْنًى أَصْلًا.

L12610 Moreover, there is no specific defined limit for an elderly person - one is not called "elderly" until reaching that limit. The religion of Allah the Most High must not be treated with negligence, nor based on false fabricated assumptions by which rulings are instituted without Allah the Most High's permission. If there were a ruling specific to the elderly in this matter, Allah's Messenger - peace and blessings be upon him - would have clarified the defining limit that shifts the obligation to having someone perform Hajj on their behalf, just as he established this for those unable to remain mounted on a riding animal or walk to undertake Hajj. Thus, it is confirmed that there is absolutely no ruling for the elderly in this matter - the ruling pertains solely to the inability to ride or walk. And success is by Allah the Most High. Therefore, this represents the capability for the journey, combined with physical and financial capacity.

وَأَيْضًا: فَإِنَّهُ لَيْسَ لِلشَّيْخِ حَدٌّ مَحْدُودٌ إذَا بَلَغَهُ الْمَرْءُ سُمِّيَ: شَيْخًا، وَلَمْ يُسَمَّ: شَيْخًا، حَتَّى يَبْلُغَهُ، وَدِينُ اللَّهِ تَعَالَى لَا يُتَسَامَحُ فِيهِ وَلَا يُؤْخَذُ بِالظُّنُونِ الْكَاذِبَةِ الْمُفْتَرَاةِ الْمَشْرُوعِ بِهَا مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى، وَلَوْ كَانَ لِلشَّيْخِ فِي ذَلِكَ حُكْمٌ لَبَيَّنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَدَّهُ الَّذِي بِهِ يَنْتَقِلُ حُكْمُهُ إلَى أَنْ يَحُجَّ عَنْهُ كَمَا أَثْبَتَ ذَلِكَ فِيمَنْ لَا يَسْتَطِيعُ الثَّبَاتَ عَلَى الرَّاحِلَةِ، وَلَا الْمَشْيَ إلَى الْحَجِّ؛ فَصَحَّ أَنَّهُ لَيْسَ لِلشَّيْخِ فِي ذَلِكَ حُكْمٌ أَصْلًا، وَإِنَّمَا الْحُكْمُ لِلْعَجْزِ عَنْ الرُّكُوبِ وَالْمَشْيِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - فَكَانَ هَذَا اسْتِطَاعَةً لِلسَّبِيلِ مُضَافَةً إلَى الْقُوَّةِ بِالْجِسْمِ وَبِالْمَالِ.

L12611–12613 Abu Muhammad said: Some people made pretexts concerning these traditions using a report we transmitted through the chain of Abd al-Razzaq from... From Sufyān al-Thawrī from Abū Isḥāq al-Shaybānī from Yazīd ibn al-Aṣamm from Ibn ʿAbbās: "A man asked the Messenger of Allah (peace and blessings be upon him), 'Shall I perform Ḥajj on behalf of my father?' He replied: 'Yes. If you do not add good to him, you do not add evil to him.'"

قَالَ أَبُو مُحَمَّد: فَتَعَلَّلَ قَوْمٌ فِي هَذِهِ الْآثَارِ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ يَزِيدَ بْنِ الْأَصَمِّ عَنْ ابْنِ عَبَّاسٍ: «أَنَّ رَجُلًا سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَأَحُجُّ عَنْ أَبِي؟ قَالَ: نَعَمْ، إنْ لَمْ تَزِدْهُ خَيْرًا لَمْ تَزِدْهُ شَرًّا» .

L12614 They said: This is evidence that it is recommended, not obligatory. Ali said: This contains no valid proof for their claim, for it does not indicate that his father was deceased, nor that he was incapable of riding or walking, nor that he had performed the obligatory Hajj. Rather, it is a general inquiry about performing Hajj on behalf of another - from those who may have already performed it for themselves or are capable of performing Hajj. The Prophet (peace be upon him) responded by permitting it. This report only establishes the permissibility of performing Hajj on behalf of any person, and nothing more - and this is our position.

قَالُوا: فَهَذَا دَلِيلٌ عَلَى أَنَّهُ نَدْبٌ لَا فَرْضٌ. قَالَ عَلِيٌّ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّهُ لَيْسَ فِيهِ أَنَّ أَبَاهُ كَانَ مَيِّتًا، وَلَا أَنَّهُ كَانَ عَاجِزًا عَنْ الرُّكُوبِ وَالْمَشْيِ وَلَا أَنَّهُ كَانَ حَجَّ الْفَرِيضَةِ، بَلْ إنَّمَا هُوَ سُؤَالٌ مُطْلَقٌ عَنْ الْحَجِّ عَنْ غَيْرِهِ مِمَّنْ هُوَ مُمْكِنٌ أَنْ يَكُونَ قَدْ حَجَّ عَنْ نَفْسِهِ، أَوْ أَنَّهُ قَادِرٌ عَلَى الْحَجِّ، فَأَجَابَهُ - عَلَيْهِ السَّلَامُ - بِإِبَاحَةِ ذَلِكَ، وَإِنَّمَا فِي هَذَا الْخَبَرِ جَوَازُ الْحَجِّ عَنْ كُلِّ أَحَدٍ وَلَا مَزِيدَ، وَهُوَ قَوْلُنَا.

وَأَمَّا تِلْكَ الْأَحَادِيثُ فَفِيهَا بَيَانٌ أَنَّهَا فِي الْحَجِّ الْفَرْضِ، وَأَيْضًا: فَلَيْسَ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «إِنْ لَمْ تَزِدْهُ خَيْرًا لَمْ تَزِدْهُ شَرًّا» بِمُخْرِجٍ لِذَلِكَ عَنْ الْفَرْضِ إلَى التَّطَوُّعِ، لِأَنَّ هَذِهِ صِفَةُ كُلِّ عَمَلٍ مُفْتَرَضٍ أَوْ تَطَوُّعٍ إنْ لَمْ يُتَقَبَّلْ مِنْ الْمَرْءِ فَإِنَّهُ عَلَى كُلِّ حَالٍ لَا يُكْتَبُ لَهُ بِهِ سَيِّئَةٌ، فَبَطَلَ اعْتِرَاضُهُمْ بِهَذَا الْخَبَرِ؟ وَقَالُوا: قَالَ اللَّهُ تَعَالَى: {وَأَنْ لَيْسَ لِلإِنْسَانِ إِلا مَا سَعَى} [النجم: ٣٩] .

L12615 As for those ḥadīths, they demonstrate that they pertain to the obligatory Ḥajj. Furthermore, the Prophet's statement—peace be upon him—"If it does not increase him in good, it does not increase him in evil" does not shift this ruling from being obligatory to voluntary. For this description applies to every deed—whether obligatory or voluntary—in that if it is not accepted from a person, no sin is recorded against him in any case. Thus, their objection based on this report is invalidated. They argued: "Allah the Exalted says, 'And man will have nothing except what he strives for'" (Quran 53:39).[11]

قَالَ عَلِيٌّ: هَذِهِ سُورَةٌ مَكِّيَّةٌ بِلَا خِلَافٍ، وَهَذِهِ الْأَحَادِيثُ كَانَتْ فِي حَجَّةِ الْوَدَاعِ، فَصَحَّ أَنَّ اللَّهَ تَعَالَى بَعْدَ أَنْ لَمْ يَجْعَلْ لِلْإِنْسَانِ إلَّا مَا سَعَى تَفَضَّلَ عَلَى عِبَادِهِ وَجَعَلَ لَهُمْ مَا سَعَى فِيهِ غَيْرُهُمْ عَنْهُمْ بِهَذِهِ النُّصُوصِ الثَّابِتَةِ.

L12616 Ali said: "This is a Meccan surah without any disagreement, and these narrations were during the Farewell Pilgrimage. Thus, it is established that after Allah the Exalted had not ordained for man except what he strives for, He graciously bestowed upon His servants—through these firmly established texts—what others had striven for on their behalf."

وَقَالَ بَعْضُهُمْ: قَالَ اللَّهُ تَعَالَى: {وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

L12617–12618 And some of them said: Allah, the Exalted, said, "No bearer of burdens shall bear the burden of another" [Al-An'am 6:164].[12]

قَالَ عَلِيٌّ: إذَا أَمَرَ اللَّهُ تَعَالَى أَنْ تَزِرَ وَازِرَةٌ وِزْرَ أُخْرَى لَزِمَ ذَلِكَ، وَكَانَ مَخْصُوصًا مِنْ هَذِهِ الْآيَةِ، وَقَدْ أَجْمَعُوا مَعَنَا عَلَى أَنَّ الْعَاقِلَةَ لَمْ تَقْتُلْ وَأَنَّهَا تَغْرَمُ عَنْ الْقَاتِلِ، وَلَمْ يَعْتَرِضُوا عَلَى ذَلِكَ بِهَذِهِ الْآيَةِ، وَلَيْسَ هُوَ إجْمَاعًا، فَإِنَّ عُثْمَانَ الْبَتِّيَّ لَا يَرَى حُكْمَ الْعَاقِلَةِ.

L12619 Ali said: When God, the Exalted, commands that a bearer of burdens bear another's burden, this necessarily follows and is derived from this verse [Q. 6:164]. They have agreed with us unanimously that the ʿāqilah (responsible kin group) did not kill and that they are liable to pay on behalf of the killer, nor did they object to this using the verse. This is not a consensus, for ʿUthmān al-Battī does not accept the ruling of the ʿāqilah.

وَأَيْضًا: فَإِنَّ الَّذِي أَتَانَا بِهَذَا هُوَ الَّذِي افْتَرَضَ أَنْ يُحَجَّ عَنْ الْعَاجِزِ، وَالْمَيِّتِ، وَقَدْ قَالَ تَعَالَى: {مَنْ يُطِعِ الرَّسُولَ فَقَدْ أَطَاعَ اللَّهَ} [النساء: ٨٠] وَهُمْ يُجِيزُونَ الْحَجَّ عَنْ الْمَيِّتِ إذَا أَوْصَى بِذَلِكَ، وَالصَّدَقَةَ عَنْ الْحَيِّ، وَالْمَيِّتِ، وَالْعِتْقَ عَنْهُمَا أَوْصَيَا بِذَلِكَ أَوْ لَمْ يُوصِيَا، وَلَا يَعْتَرِضُونَ فِي ذَلِكَ بِهَذِهِ الْآيَةِ.

L12620 Moreover, the One who has brought us this is the same One who made obligatory that Hajj be performed on behalf of those unable and the deceased. Allah the Exalted has said: "Whoever obeys the Messenger has indeed obeyed Allah" [An-Nisa: 80]. They permit Hajj to be performed on behalf of the deceased if he instructed it, as well as charity on behalf of the living and the deceased, and emancipation of slaves on behalf of the living and deceased,

[11] **Qur'an references (L12615):** Qur'an 53:39 (An-Najm).

[12] **Qur'an references (L12618):** Qur'an 6:164 (Al-An'am); Qur'an 17:15 (Al-Isra); Qur'an 35:18 (Fatir); Qur'an 39:7 (Az-Zumar).

whether they (both) instructed it or not, and they do not object to this using this verse.[13]

L12621 If they say: "Since he enjoined the Hajj, is it considered part of his striving?" We respond: "Then obligate by this [logic] that fasting be observed on his behalf if he enjoins it, for it is part of his striving."

L12622 If they say: "Acts of worship involving the body cannot be performed by one person on behalf of another," we reply: This is invalid and a false claim. From where did you derive this assertion? Rather, every act that the Prophet—peace be upon him—commanded that a person perform on behalf of another becomes obligatory, even if it chokes the obstinate opponent. If they say: "By analogy to the prayer?"

L12623–12624 We said: All analogy is invalid, and even if it were valid, this would be against you rather than in your favor. For you do not disagree about the permissibility of a person performing Hajj on another's behalf praying two rak'ahs at the Maqām for the one being represented in Hajj. You have permitted people to pray on each other's behalf - so analogize all bodily acts of worship to this! They said: Since Hajj involves a financial dimension through compensation by sacrificial offerings and feeding [the poor], it becomes permissible for some people to perform it on others' behalf. We said: From where do you derive this ruling - a fabricated falsehood and undoubtedly invented legislation? Moreover, you have contradicted yourselves in this matter, for fasting similarly involves a financial dimension through compensation by manumission and feeding [the poor] - with no distinction - and in the obligation of Zakāt al-Fiṭr arising from his fasting. Then by this reasoning, permit that some people perform it on others' behalf!

L12625 Abu Muhammad said: The strangest thing of all is that the Malikis permit a man to wage jihad on behalf of another for a fee, and they allow transferring the atonement liability from a woman coerced into intercourse during the daytime of Ramadan onto someone other than herself—and he is the one who coerced her. Thus, they permit all that which Allah the Exalted and His Messenger—peace be upon him—did not sanction, while prohibiting what

فَإِنْ قَالُوا: لَمَّا أَوْصَى بِالْحَجِّ كَانَ مِمَّا سَعَى؟ قُلْنَا لَهُمْ: فَأَوْجِبُوا بِذَلِكَ أَنْ يُصَامَ عَنْهُ إِذَا أَوْصَى بِذَلِكَ؛ لِأَنَّهُ مِمَّا سَعَى.

فَإِنْ قَالُوا: عَمَلُ الْأَبْدَانِ لَا يَعْمَلُهُ أَحَدٌ عَنْ أَحَدٍ؟ فَقُلْنَا: هَذَا بَاطِلٌ وَدَعْوَى كَاذِبَةٌ، وَمِنْ أَيْنَ قُلْتُمْ هَذَا؟ بَلْ كُلُّ عَمَلٍ إِذَا أَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهِ أَنْ يَعْمَلَهُ الْمَرْءُ عَنْ غَيْرِهِ وَجَبَ ذَلِكَ عَلَى رَغْمِ أَنْفِ الْمُعَانِدِ فَإِنْ قَالُوا: قِيَاسًا عَلَى الصَّلَاةِ؟

قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا عَلَيْكُمْ لَا لَكُمْ؛ لِأَنَّكُمْ لَا تَخْتَلِفُونَ فِي جَوَازِ أَنْ يُصَلِّيَ الْمَرْءُ الَّذِي يَحُجُّ عَنْ غَيْرِهِ رَكْعَتَيْنِ عِنْدَ الْمَقَامِ عَنْ الْمَحْجُوجِ عَنْهُ، فَقَدْ جَوَّزْتُمْ أَنْ يُصَلِّيَ النَّاسُ بَعْضُهُمْ عَنْ بَعْضٍ فَقِيسُوا عَلَى ذَلِكَ سَائِرَ أَعْمَالِ الْأَبْدَانِ؟ وَقَالُوا: لَمَّا كَانَ الْحَجُّ فِيهِ مَدْخَلٌ لِلْمَالِ فِي جَبْرِهِ بِالْهَدْيِ، وَالْإِطْعَامِ -: جَازَ أَنْ يَعْمَلَهُ بَعْضُ النَّاسِ عَنْ بَعْضٍ؟ قُلْنَا: وَمِنْ أَيْنَ لَكُمْ هَذَا الْحُكْمُ الَّذِي هُوَ كَذِبٌ مُفْتَرًى وَشَرْعٌ مَوْضُوعٌ بِلَا شَكٍّ؟ ثُمَّ قَدْ تَنَاقَضْتُمْ فِيهِ؛ لِأَنَّ الصِّيَامَ فِيهِ مَدْخَلٌ لِلْمَالِ فِي جَبْرِهِ بِالْعِتْقِ، وَالْإِطْعَامِ وَلَا فَرْقَ، وَفِي وُجُوبِ زَكَاةِ الْفِطْرِ مِنْ صَوْمِهِ، فَأَجِيزُوا لِذَلِكَ أَنْ يَعْمَلَهُ بَعْضُ النَّاسِ عَنْ بَعْضٍ.

قَالَ أَبُو مُحَمَّد: وَالْعَجَبُ كُلُّهُ أَنَّ الْمَالِكِيِّينَ يُجِيزُونَ أَنْ يُجَاهِدَ الرَّجُلُ عَنْ غَيْرِهِ بِجُعْلٍ، وَيُجِيزُونَ الْكَفَّارَةَ عَنْ الْمَرْأَةِ الْمُكْرَهَةِ عَلَى الْوَطْءِ فِي نَهَارِ رَمَضَانَ عَلَى غَيْرِهَا عَنْهَا، وَهُوَ الَّذِي أَكْرَهَهَا، فَأَجَازُوا كُلَّ ذَلِكَ حَيْثُ لَمْ يُجِزْهُ اللَّهُ تَعَالَى، وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - وَمَنَعُوا مِنْ جَوَازِهِ حَيْثُ افْتَرَضَهُ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[13] **Qur'an references (L12620):** Qur'an 4:80 (An-Nisa).

Allah the Exalted and His Messenger—may Allah bless him and grant him peace—obligated.

L12626 Ali said: If they raise doubts with what we have narrated through the chain of transmission of Ibn Abi Uwais—Muhammad ibn Abdullah ibn Karim al-Ansari narrated from Ibrahim ibn Muhammad ibn Yahya al-Adawi al-Najjari—"A woman said: 'O Messenger of Allah, my father is an elderly man.' The Messenger of Allah (peace be upon him) said: 'Perform Hajj on his behalf, and no one else has the right to do so after his death.'"

قَالَ عَلِيٌّ: فَإِنْ مَوَّهُوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي أُوَيْسٍ: نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ كَرِيمٍ الْأَنْصَارِيُّ عَنْ إِبْرَاهِيمَ بْنِ مُحَمَّدِ بْنِ يَحْيَى الْعَدَوِيِّ النَّجَّارِيِّ «أَنَّ امْرَأَةً قَالَتْ: يَا رَسُولَ اللَّهِ إِنَّ أَبِي شَيْخٌ كَبِيرٌ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لِتَحُجِّي عَنْهُ، وَلَيْسَ لِأَحَدٍ بَعْدَهُ» .

L12627 And by what we have narrated through the chain of ʿAbd al-Malik ibn Ḥabīb: Muṭarrif reported to me from Muḥammad ibn al-Karīr from Muḥammad ibn Ḥibbān al-Anṣārī: "A woman came to the Messenger of Allah (peace and blessings be upon him) and said: 'My father is an elderly man who cannot undertake Hajj.' He (peace be upon him) said: 'Perform Hajj on his behalf, and this is not permissible for anyone after him.'"

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ حَدَّثَنِي مُطَرِّفٌ عَنْ مُحَمَّدِ بْنِ الْكَرِيرِ عَنْ مُحَمَّدِ بْنِ حِبَّانَ الْأَنْصَارِيِّ: «أَنَّ امْرَأَةً جَاءَتْ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: إِنَّ أَبِي شَيْخٌ كَبِيرٌ لَا يَقْوَى عَلَى الْحَجِّ فَقَالَ - عَلَيْهِ السَّلَامُ -: فَلْتَحُجِّي عَنْهُ، وَلَيْسَ ذَلِكَ لِأَحَدٍ بَعْدَهُ» .

L12628–12630 And from the path of Abd al-Malik ibn Habib, Harun ibn Salih al-Talhi reported to me, on the authority of [Abd...]. Al-Rahman ibn Zayd ibn Aslam from Rabi'ah from Muhammad ibn Ibrahim ibn al-Harith al-Taymi reported that the Messenger of Allah, peace and blessings be upon him, said: "No one may perform Hajj on another's behalf except a child for their parent."

وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ حَدَّثَنِي هَارُونُ بْنُ صَالِحٍ الطَّلْحِيُّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ زَيْدِ بْنِ أَسْلَمَ عَنْ رَبِيعَةَ عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ بْنِ الْحَارِثِ التَّيْمِيِّ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَحُجُّ أَحَدٌ عَنْ أَحَدٍ إِلَّا وَلَدٌ عَنْ وَالِدٍ» .

L12631 Ali said: These are fabrications. The first is that it is a *mursal* report, and there is no valid proof in a *mursal*. The first one contains two unknowns—who are they? They are Muḥammad ibn ʿAbd Allāh ibn Karīm and Ibrāhīm ibn Muḥammad al-ʿAdawī. The other two are through ʿAbd al-Malik ibn Ḥabīb, and that suffices. How then, when it includes al-Ṭalḥī, Muḥammad ibn al-Karīr, Muḥammad ibn Ḥibbān—whose identities are unknown—and ʿAbd al-Raḥmān ibn Zayd, who is weak (*ḍaʿīf*)? This report was distorted by ʿAbd al-Malik, for we have transmitted it through the chain of Saʿīd ibn Manṣūr, who said: ʿAbd al-Raḥmān ibn Zayd ibn Aslam narrated to us, reporting from Rabīʿah ibn ʿUthmān al-Taymī, from Muḥammad ibn Ibrāhīm al-Taymī: "A man said to the Prophet—peace and blessings be upon him: 'O Messenger

قَالَ عَلِيٌّ: فَهَذِهِ تَكَاذِيبُ، أَوَّلُ ذَلِكَ: أَنَّهَا مُرْسَلَةٌ وَلَا حُجَّةَ فِي مُرْسَلٍ: وَالْأَوَّلُ: فِيهِ مَجْهُولَانِ لَا يُدْرَى مَنْ هُمَا؟ وَهُمَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ كَرِيمٍ، وَإِبْرَاهِيمُ بْنُ مُحَمَّدٍ الْعَدَوِيُّ؟ وَالْآخَرَانِ مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ وَكَفَى، فَكَيْفَ وَفِيهِ: الطَّلْحِيُّ، وَمُحَمَّدُ بْنُ الْكَرِيرِ، وَمُحَمَّدُ بْنُ حِبَّانَ، وَلَا يُدْرَى مَنْ هُمْ، وَعَبْدُ الرَّحْمَنِ بْنُ زَيْدٍ وَهُوَ ضَعِيفٌ، وَهَذَا خَبَرٌ حَرَّفَهُ عَبْدُ الْمَلِكِ؛ لِأَنَّنَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ قَالَ: نا عَبْدُ الرَّحْمَنِ بْنُ

of Allāh, my father died without performing Ḥajj. Shall I perform Ḥajj on his behalf?' He replied: 'Yes, and you will receive a reward equal to his.'"

زَيْدِ بْنِ أَسْلَمَ حَدَّثَنِي رَبِيعَةُ بْنُ عُثْمَانَ التَّيْمِيُّ عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ التَّيْمِيِّ «أَنَّ رَجُلًا قَالَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: يَا رَسُولَ اللَّهِ، أَبِي مَاتَ وَلَمْ يَحُجَّ أَفَأَحُجُّ عَنْهُ؟ قَالَ: نَعَمْ وَلَكَ مِثْلُ أَجْرِهِ» .

L12632 And from the chain of Sa'id ibn Mansur, via Abd al-Rahman ibn Zayd, from his father: "A man said: 'O Messenger of Allah, my father died without performing the Hajj of Islam. Should I perform Hajj on his behalf?' He said: 'What would you say if your father had a debt, and you summoned his creditors to settle it? Would they accept this from you?' He said: 'Yes.' He said: 'Then perform Hajj on his behalf, for Allah will accept from your father.'"

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ زَيْدٍ عَنْ أَبِيهِ: «أَنَّ رَجُلًا قَالَ: يَا رَسُولَ اللَّهِ إِنَّ أَبِي مَاتَ وَلَمْ يَحُجَّ حَجَّةَ الْإِسْلَامِ أَفَأَحُجُّ عَنْهُ؟ قَالَ: أَرَأَيْتَ لَوْ كَانَ عَلَى أَبِيكَ دَيْنٌ فَدَعَوْتَ غُرَمَاءَهُ لِتَقْضِيَهُمْ؟ أَكَانُوا يَقْبَلُونَ ذَلِكَ مِنْكَ؟ قَالَ: نَعَمْ، قَالَ: فَحُجَّ عَنْهُ فَإِنَّ اللَّهَ قَابِلٌ مِنْ أَبِيكَ» .

L12633 Abū Muḥammad said: Be astonished at these disgraceful matters, and we seek refuge in Allāh from abandonment. Moreover, even if these narrations were authentic, they would be contradicting them, for they permit performing Ḥajj on behalf of the deceased if he bequeathed it—allowing someone other than his child to perform it—which opposes what is stated in these reports. Thus, these narrations are against them [not in their favor]. Their specification that Ḥajj is permissible only when bequeathed is not found in any textual evidence, nor is it transmitted from any of the Companions, nor does qiyās necessitate it. For a bequest is only valid for matters a person could rightfully command during his lifetime without dispute.

قَالَ أَبُو مُحَمَّد: فَاعْجَبُوا لِهَذِهِ الْفَضَائِحِ وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ، ثُمَّ لَوْ صَحَّتْ لَكَانُوا مُخَالِفِينَ لَهَا؛ لِأَنَّهُمْ يُجِيزُونَ الْحَجَّ عَنْ الْمَيِّتِ إذَا أَوْصَى بِهِ، وَأَنْ يَحُجَّ عَنْهُ غَيْرُ وَلَدِهِ؛ وَهُوَ خِلَافٌ لِمَا فِي هَذِهِ الْآثَارِ فَهِيَ عَلَيْهِمْ [لَا لَهُمْ] وَتَخْصِيصُهُمْ جَوَازَ الْحَجِّ إذَا أَوْصَى بِهِ لَا يُوجَدُ فِي شَيْءٍ مِنْ النُّصُوصِ، وَلَا يُحْفَظُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ، وَلَا يُوجِبُهَا قِيَاسٌ؛ لِأَنَّ الْوَصِيَّةَ لَا تَجُوزُ إلَّا فِيمَا يَجُوزُ لِلْإِنْسَانِ أَنْ يَأْمُرَ بِهِ فِي حَيَاتِهِ بِلَا خِلَافٍ؟ قَالَ أَبُو مُحَمَّد: فَإِنْ قَالُوا: قَدْ صَحَّ مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: لَا يَصُومَنَّ أَحَدٌ عَنْ أَحَدٍ وَلَا يَحُجَّنَّ أَحَدٌ عَنْ أَحَدٍ.

Abū Muḥammad said: If they argue, "It has been authentically reported through Ḥammād ibn Zayd from Ayyūb al-Sakhtiyānī from Nāfiʿ from Ibn ʿUmar, who said: 'No one must fast on behalf of another, nor must anyone perform Ḥajj on behalf of another,'"

L12634–12636 From the narration of Waki', from Aflaḥ, from al-Qāsim ibn Muḥammad, who said: "Should no one perform Hajj on behalf of another?" We replied, "Yes." This is an authentic report from both of them, but you oppose them in this matter, for you permit it. Performing Hajj on behalf of the deceased if they have bequeathed it is contrary to the opinion of Ibn 'Umar and Al-Qāsim. We did not find their opinion attributed to any of the Companions—

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ أَفْلَحَ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ قَالَ: لَا يَحُجُّ أَحَدٌ عَنْ أَحَدٍ؟ قُلْنَا: نَعَمْ، هَذَا صَحِيحٌ عَنْهُمَا، وَأَنْتُمْ مُخَالِفُونَ لَهُمَا فِي ذَلِكَ؛ لِأَنَّكُمْ تُجِيزُونَ الْحَجَّ عَنْ الْمَيِّتِ

may Allah be pleased with them—while our opinion is established as sound by a group of the Salaf.

إِذَا أَوْصَى بِذَلِكَ وَهُوَ خِلَافُ قَوْلِ ابْنِ عُمَرَ، وَالْقَاسِمِ وَمَا وَجَدْنَا قَوْلَهُمْ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَصَحَّ قَوْلُنَا عَنْ طَائِفَةٍ مِنْ السَّلَفِ.

L12637 As has been narrated to us through the chain of al-Ḥajjāj ibn al-Minhāl → Shu'bah → Muslim al-Qārī, who said: I asked Ibn 'Abbās, "My mother performed Ḥajj but did not perform 'Umrah. Should I perform 'Umrah on her behalf?" He replied, "Yes;"

كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ شُعْبَةَ عَنْ مُسْلِمٍ الْقَرِّيِّ قَالَ: قُلْت لِابْنِ عَبَّاسٍ: إنَّ أُمِّي حَجَّتْ وَلَمْ تَعْتَمِرْ، أَفَأَعْتَمِرُ عَنْهَا؟ قَالَ: نَعَمْ؛.

L12638 Abu Muhammad said, "Thus, this [ruling] does not apply specifically to a deceased person to the exclusion of a living one."

قَالَ أَبُو مُحَمَّدٍ فَهَذَا لَا تَخْصِيصَ فِيهِ لِمَيِّتٍ دُونَ حَيٍّ.

L12639 From the narration of Yazīd ibn Zurayʿ from Dāwūd, who said: I asked Saʿīd ibn al-Musayyab, "O Abā Muḥammad, to which of the two does the reward belong—the pilgrim or the one prevented from [Hajj]?" Saʿīd replied, "Allāh the Exalted is All-Encompassing—for both of them together."

وَمِنْ طَرِيقِ يَزِيدَ بْنِ زُرَيْعٍ عَنْ دَاوُد أَنَّهُ قَالَ، قُلْت لِسَعِيدِ بْنِ الْمُسَيِّبِ: يَا أَبَا مُحَمَّدٍ، لِأَيِّهِمَا الْأَجْرُ أَلِلْحَاجِّ أَمْ لِلْمَحْجُوجِ عَنْهُ؟ فَقَالَ سَعِيدٌ: إنَّ اللَّهَ تَعَالَى وَاسِعٌ لَهُمَا جَمِيعًا.

L12640 Abū Muḥammad said: Saʿīd was truthful (may Allāh have mercy on him).

قَالَ أَبُو مُحَمَّدٍ: صَدَقَ سَعِيدٌ - رَحِمَهُ اللَّهُ -.

L12641 From the narration of Ma'mar, from Abu Ishaq, from Umm Muhibbah: she vowed to walk to the Kaaba. She walked until she reached Aqabat al-Batn, then became unable, so she rode. She then came to Ibn Abbas and asked him. He said: "Are you able to walk to the Kaaba next year? When you reach the place where you rode, walk the distance you rode." She said: "No." He said to her: "Do you have a daughter who can walk on your behalf?" She said: "I have two daughters, but they consider themselves too dignified for that." He said: "Then seek forgiveness from Allah."

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ أَبِي إِسْحَاقَ عَنْ أُمِّ مُحِبَّةَ أَنَّهَا نَذَرَتْ أَنْ تَمْشِيَ إلَى الْكَعْبَةِ فَمَشَتْ حَتَّى إذَا بَلَغَتْ عَقَبَةَ الْبَطْنِ عَجَزَتْ فَرَكِبَتْ ثُمَّ أَتَتْ ابْنَ عَبَّاسٍ فَسَأَلَتْهُ فَقَالَ: أَتَسْتَطِيعِينَ أَنْ تَحُجِّي قَابِلًا؟ فَإِذَا انْتَهَيْت إلَى الْمَكَانِ الَّذِي رَكِبَتْ فِيهِ فَتَمْشِي مَا رَكِبْت؟ قَالَتْ: لَا، قَالَ لَهَا: فَهَلْ لَك ابْنَةٌ تَمْشِي عَنْك؟ قَالَتْ: لِي ابْنَتَانِ وَلَكِنَّهُمَا أَعْظَمُ فِي أَنْفُسِهِمَا مِنْ ذَلِكَ قَالَ: فَاسْتَغْفِرِي اللَّهَ.

L12642–12643 A similar narration has been conveyed to us via the narration of Waki', from Yunus ibn Abī Isḥāq, from his mother (the elevated one), from Ibn ʿAbbās.

وَرُوِّينَا أَيْضًا مِثْلَهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ يُونُسَ بْنِ أَبِي إِسْحَاقَ عَنْ أُمِّهِ الْعَالِيَةِ عَنْ ابْنِ عَبَّاسٍ.

L12644 Abu Muhammad said: This is the narration they relied upon from Aisha - may Allah be pleased with her - concerning the matter of the slave sold by Zayd ibn Arqam to Al-Atā' for eight hundred dirhams, then she bought him from him for six hundred. They omitted Zayd ibn Arqam's action in this

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ هِيَ الَّتِي عَوَّلُوا عَلَى رِوَايَتِهَا عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - فِي أَمْرِ الْعَبْدِ الْمَبِيعِ مِنْ زَيْدِ بْنِ أَرْقَمَ إلَى الْعَطَاءِ بِثَمَانِمائَةِ دِرْهَمٍ ثُمَّ ابْتَاعَتْهُ مِنْهُ بِسِتِّمائَةٍ، وَتَرَكُوا

فِيهِ فِعْلَ زَيْدِ بْنِ أَرْقَمَ فَكَانَتْ حُجَّةً هُنَالِكَ إِذْ لَمْ تُوَافِقْ النُّصُوصَ، وَلَمْ تَكُنْ حُجَّةً عَنْ ابْنِ عَبَّاسٍ إِذْ وَافَقَتْ النُّصُوصَ.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا حَفْصٌ هُوَ ابْنُ غِيَاثٍ - عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ فِي الشَّيْخِ الْكَبِيرِ: أَنَّهُ يُجَهِّزُ رَجُلًا بِنَفَقَتِهِ فَيَحُجُّ عَنْهُ.

L12645 From the chain of Abū Bakr ibn Abī Shaybah who informed us from Ḥafṣ—that is Ibn Ghiyāth—from Ja‘far ibn Muḥammad, from his father, from ‘Alī ibn Abī Ṭālib, that he said regarding the elderly man: that he provides a man with his expenses so that the man performs Hajj on his behalf.

وَمِنْ طَرِيقِ إبْرَاهِيمَ بْنِ مَيْسَرَةَ قَالَ: رَمَى عَبْدُ اللَّهِ بْنُ طَاوُسٍ عَنْ أَبِيهِ الْجِمَارَ، وَطَافَ عَنْهُ طَوَافَ يَوْمِ النَّحْرِ وَكَانَ أَبُوهُ مَرِيضًا.

L12646 From the narration of Ibrāhīm ibn Maysarah: ʿAbdullāh ibn Ṭāwus performed the Ramy at the Jamarat on behalf of his father and performed the Tawaf of the Day of Sacrifice for him, as his father was ill.

وَعَنْ سُفْيَانَ عَنْ ابْنِ طَاوُسٍ فِي رَمْيِ الْجِمَارِ عَنْ أَبِيهِ بِأَمْرِ أَبِيهِ.

L12647 And from Sufyān, from Ibn Ṭāwūs concerning the throwing of pebbles at the Jamarāt, from his father by the command of his father.

وَعَنْ مُجَاهِدٍ مَنْ حَجَّ عَنْ رَجُلٍ فَلَهُ مِثْلُ أَجْرِهِ.

L12648 And it is narrated from Mujāhid: Whoever performs Hajj on behalf of a man, for him is a reward like the man’s.

وَعَنْ عَطَاءٍ فِيمَنْ نَذَرَ أَنْ يَمْشِيَ فَعَجَزَ؟ قَالَ: يَمْشِي عَنْهُ بَعْضُ أَهْلِ بَيْتِهِ، وَأَنَّهُ رَأَى الرَّمْيَ عَنْ الْمَرِيضِ لِلْجِمَارِ.

L12649 From ʿAṭāʾ regarding one who vowed to walk but became incapable: He said, “A member of his household should walk in his stead.” He further opined that the ritual stoning for the Jamarat may be performed in place of the sick person.

فَهَؤُلَاءِ: ابْنُ عَبَّاسٍ، وَعَلِيٌّ، وَعَطَاءٌ، وَطَاوُسٌ، وَمُجَاهِدٌ، وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَعَبْدُ اللَّهِ بْنُ طَاوُسٍ: وَرُوِيَ أَيْضًا: عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَمَا نَعْلَمُ لِمَنْ خَالَفَنَا هَاهُنَا - فَلَمْ يُوجِبْ الْحَجَّ عَلَى مَنْ وَجَدَ مَنْ يَحُجُّ عَنْهُ وَهُوَ عَاجِزٌ، وَلَا عَنْ الْمَيِّتِ إلَّا أَنْ يُوصِيَ -: سَلَفًا أَصْلًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهَذَا مِمَّا خَالَفُوا فِيهِ الْجُمْهُورَ مِنْ الْعُلَمَاءِ، وَبِمِثْلِ قَوْلِنَا يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَالْأَوْزَاعِيُّ، وَابْنُ أَبِي لَيْلَى، وَأَحْمَدُ، وَإِسْحَاقُ.

L12650 These individuals are: Ibn Abbas, Ali, Ata, Tawus, Mujahid, Sa‘id ibn al-Musayyib, and Abdullah ibn Tawus. It has also been narrated from Ibrahim al-Nakha‘i. We do not know of any foundational precedent from the Companions—may Allah be pleased with them—for those who disagree with us here and do not make Hajj obligatory on one who finds someone to perform Hajj on their behalf while they are incapacitated, nor on behalf of the deceased unless the deceased has bequeathed it. This is one of the matters in which they have opposed the majority of scholars. The following scholars hold the same opinion as us: Sufyan al-Thawri, al-Awza‘i, Ibn Abi Layla, Ahmad, and Ishaq.

[مَسْأَلَةُ حَجَّ عَمَّنْ لَمْ يُطِقْ الرُّكُوبَ وَالْمَشْيَ ثُمَّ أَفَاقَ]

L12651 **Issue: Performing Hajj on behalf of one who could not**

ride or walk, then recovered.

L12652 816 – Question:

٨١٦ - مَسْأَلَةٌ:

L12653 Abu Muhammad said: If someone performs Hajj on behalf of a person who was incapable of enduring riding or walking due to illness or chronic infirmity, thereby fulfilling the obligatory Hajj, and the latter subsequently recovers, then Abu Hanifah and Al-Shafi'i maintained that he must perform Hajj. Our companions said: He is no longer obligated to perform Hajj thereafter.

قَالَ أَبُو مُحَمَّد: فَإِنْ حَجَّ عَمَّنْ لَمْ يُطِقِ الرُّكُوبَ وَالْمَشْيَ لِمَرَضٍ أَوْ زَمَانَةٍ حَجَّةَ الْإِسْلَامِ ثُمَّ أَفَاقَ، فَإِنَّ أَبَا حَنِيفَةَ، وَالشَّافِعِيَّ قَالَا: عَلَيْهِ أَنْ يَحُجَّ وَلَا بُدَّ، وَقَالَ أَصْحَابُنَا: لَيْسَ عَلَيْهِ أَنْ يَحُجَّ بَعْدُ.

L12654–12656 Abu Muhammad said: When the Prophet - peace and blessings of Allah be upon him - commanded *Hajj* on behalf of the one who cannot perform it by mount or on foot, and informed that it is a debt to Allah that must be discharged on his behalf, then indeed the debt has undoubtedly been settled and suffices for him. And without doubt, that which... The obligation has lapsed and been validly discharged; therefore, it is impermissible for the obligation to be reinstated except through explicit textual evidence. No textual evidence exists here whatsoever regarding its reinstatement - for had this been applicable, he (peace and blessings of Allah be upon him) would have clarified it, considering an elderly man might regain strength and become capable of riding. Since the Prophet (peace and blessings of Allah be upon him) did not indicate this, it is impermissible for the obligation to be reimposed on him after its valid discharge - and with Allah the Exalted lies all success. Issue 817

قَالَ أَبُو مُحَمَّد: إذَا أَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْحَجِّ عَمَّنْ لَا يَسْتَطِيعُ الْحَجَّ رَاكِبًا وَلَا مَاشِيًا، وَأَخْبَرَ: أَنَّهُ دَيْنُ اللَّهِ يُقْضَى عَنْهُ، فَقَدْ تَأَدَّى الدَّيْنُ بِلَا شَكٍّ وَأَجْزَأَ عَنْهُ، وَبِلَا شَكٍّ أَنَّ مَا سَقَطَ وَتَأَدَّى، فَلَا يَجُوزُ أَنْ يَعُودَ فَرْضُهُ بِذَلِكَ، إلَّا بِنَصٍّ وَلَا نَصَّ هَاهُنَا أَصْلًا بِعَوْدَتِهِ - وَلَوْ كَانَ ذَلِكَ عَائِدًا لَبَيَّنَ - عَلَيْهِ السَّلَامُ - ذَلِكَ، إذْ قَدْ يَقْوَى الشَّيْخُ فَيُطِيقُ الرُّكُوبَ، فَإِذْ لَمْ يُخْبِرْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ فَلَا يَجُوزُ عَوْدَةُ الْفَرْضِ عَلَيْهِ بَعْدَ صِحَّةِ تَأَدِّيهِ عَنْهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. ٨١٧ - مَسْأَلَةٌ:

L12657 The ruling is the same whether one attains legal maturity while being incapable of walking and riding, or one attains it while having the means and then becomes incapable regarding all the modes we mentioned. Abu Sulayman said: This obligation only applies to one who was independently able to perform Hajj (even for a single year) and subsequently became incapable.

وَسَوَاءٌ مَنْ بَلَغَ وَهُوَ عَاجِزٌ عَنْ الْمَشْيِ وَالرُّكُوبِ، أَوْ مَنْ بَلَغَ مُطِيقًا ثُمَّ عَجَزَ فِي كُلِّ مَا ذَكَرْنَا، وَقَالَ أَبُو سُلَيْمَانَ: لَا يَلْزَمُ ذَلِكَ إلَّا عَمَّنْ قَدَرَ بِنَفْسِهِ عَلَى الْحَجِّ - وَلَوْ عَامًا وَاحِدًا - ثُمَّ عَجَزَ.

L12658 Ali said: This is erroneous, because the report we previously cited—concerning Allah's obligation of Hajj—became incumbent upon him when he was unable to remain mounted on a riding animal. Thus, it is established that the obligation of Hajj indeed became binding upon him, and at no point

after it became binding was he physically capable of fulfilling it. Therefore, our position is correct—and success is by Allah, the Exalted.

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِأَنَّ الْخَبَرَ الَّذِي قَدَّمْنَا فِيهِ فَرِيضَةُ اللَّهِ تَعَالَى فِي الْحَجِّ أَدْرَكَتْهُ لَا يَقْدِرُ عَلَى الثَّبَاتِ عَلَى الدَّابَّةِ، فَصَحَّ أَنَّهُ قَدْ لَزِمَهُ فَرْضُ الْحَجِّ وَلَمْ يَكُنْ قَطُّ بَعْدَ لُزُومِهِ لَهُ قَادِرًا عَلَيْهِ بِجِسْمِهِ، فَصَحَّ قَوْلُنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: Someone died while being capable of performing Hajj.

[مَسْأَلَةٌ مَاتَ وَهُوَ مُسْتَطِيعٌ لِلْحَجِّ]

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Whoever dies while financially and physically capable by any of the means we previously mentioned must have Hajj and Umrah performed from their estate - prioritized over settling debts owed to others if no one volunteers to perform Hajj on their behalf freely - regardless of whether they left such instructions or not. Abu Hanifah and Malik said: Hajj is not to be performed for them unless they stipulated it in a will, in which case it is fulfilled from one-third of the estate.

وَمَنْ مَاتَ وَهُوَ مُسْتَطِيعٌ بِأَحَدِ الْوُجُوهِ الَّتِي قَدَّمْنَا حُجَّ عَنْهُ مِنْ رَأْسِ مَالِهِ وَاعْتُمِرَ وَلَا بُدَّ مُقَدَّمًا عَلَى دُيُونِ النَّاسِ إنْ لَمْ يُوجَدْ مَنْ يَحُجُّ عَنْهُ تَطَوُّعًا سَوَاءٌ أَوْصَى بِذَلِكَ أَوْ لَمْ يُوصِ بِذَلِكَ - وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَا يُحَجُّ عَنْهُ إلَّا أَنْ يُوصِيَ بِذَلِكَ فَيَكُونُ مِنْ الثُّلُثِ.

The proof for the validity of our view is Allah's statement regarding inheritance: *{After any bequest he bequeaths or debt}* [4:11]. Thus, the Almighty encompassed all debts.

بُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى فِي الْمَوَارِيثِ: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] فَعَمَّ عَزَّ وَجَلَّ الدُّيُونَ كُلَّهَا -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَّا عِمْرَانُ بْنُ مُوسَى الْمِصْرِيُّ نا عَبْدُ الْوَارِثِ هُوَ ابْنُ سَعِيدٍ التَّنُّورِيُّ - نا أَبُو التَّيَّاحِ يَزِيدُ بْنُ حُمَيْدٍ الْبَصْرِيُّ نا مُوسَى بْنُ سَلَمَةَ الْهُذَلِيُّ: " أَنَّ ابْنَ عَبَّاسٍ قَالَ: أَمَرَتْ «امْرَأَةُ سِنَانِ بْنِ سَلَمَةَ الْجُهَنِيِّ أَنْ تَسْأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ أَنَّ أُمَّهَا مَاتَتْ وَلَمْ تَحُجَّ أَفَيُجْزِئُ عَنْ أُمِّهَا أَنْ تَحُجَّ عَنْهَا؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: نَعَمْ، لَوْ كَانَ عَلَى أُمِّهَا دَيْنٌ فَقَضَتْهُ عَنْهَا أَلَمْ يَكُنْ يُجْزِئُ عَنْهَا؟ فَلْتَحُجَّ عَنْ أُمِّهَا» .

Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: ʿImrān ibn Mūsā al-Miṣrī narrated to us: ʿAbd al-Wārith ibn Saʿīd al-Tannūrī narrated to us: Abū al-Tayyāḥ Yazīd ibn Ḥamīd al-Baṣrī narrated to us: Mūsā ibn Salamah al-Hudhalī narrated:

Ibn ʿAbbās said: "I instructed the wife of Sinān ibn Salamah al-Juhanī to ask the Prophet—peace and blessings of Allah be upon him—whether her mother had died without performing Hajj. Would it suffice for her mother if she performed Hajj on her behalf? The Messenger of Allah—peace and blessings of Allah be upon him—replied: 'Yes. If her mother had owed a

debt and she repaid it on her behalf, was it not sufficient? Then let her perform Hajj on behalf of her mother.'"[14][15]

L12663–12665 And from the path of Hammad ibn Zayd from Ayyub al-Sikhtiyānī from al-Zuhri from Sulayman ibn Yasar. On the authority of Ibn Abbas: "A woman asked the Messenger of Allah - peace and blessings be upon him - about her father who died without having performed Hajj. He said: 'Perform Hajj on behalf of your father.'"

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنِ الزُّهْرِيِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنِ ابْنِ عَبَّاسٍ: «أَنَّ امْرَأَةً سَأَلَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَبِيهَا مَاتَ وَلَمْ يَحُجَّ؟ قَالَ: حُجِّي عَنْ أَبِيكِ» .

L12666 And it has also been narrated to us through the chain of 'Ikrimah from Ibn 'Abbās as a musnad narration with a connected chain.

وَرُوِّينَا أَيْضًا مِنْ طَرِيقِ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ مُسْنَدًا.

L12667 Muhammad ibn Sa'id ibn Nubāt narrated to us, Ahmad ibn 'Awn Allah narrated to us, Qāsim ibn Aṣbagh narrated to us, Muhammad ibn 'Abd al-Salām al-Khushanī narrated to us, Muhammad ibn Bashshār narrated to us, Muhammad ibn Ja'far narrated to us, Shu'bah narrated from Abū Bishr (he is Ja'far ibn Abī Waḥshiyyah) who said: I heard Sa'īd ibn Jubayr narrating from Ibn 'Abbās that a woman vowed to perform Ḥajj but died. Her brother came to the Prophet (peace be upon him) and asked him about it. The Messenger of Allah (peace be upon him) said: "Tell me: if your mother had owed a debt, would you have settled it?" He replied: "Yes." He said: "Then fulfill Allah's due, for He is most deserving to have it fulfilled."

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ عَنْ أَبِي بِشْرٍ هُوَ جَعْفَرُ بْنُ أَبِي وَحْشِيَّةَ - قَالَ: سَمِعْتُ سَعِيدَ بْنَ جُبَيْرٍ يُحَدِّثُ عَنِ ابْنِ عَبَّاسٍ: «أَنَّ امْرَأَةً نَذَرَتْ أَنْ تَحُجَّ فَمَاتَتْ فَأَتَى أَخُوهَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَأَلَهُ عَنْ ذَلِكَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَرَأَيْتَ لَوْ كَانَ عَلَى أُمِّكَ دَيْنٌ أَكُنْتَ قَاضِيَهُ؟ قَالَ: نَعَمْ، قَالَ: فَاقْضُوا اللَّهَ فَهُوَ أَحَقُّ بِالْوَفَاءِ» .

L12668 We also narrated it through the chain of Bukhārī from Mūsā ibn Ismā'īl from Abū 'Awānah from Abū Bishr from Sa'īd ibn Jubayr from Ibn 'Abbās from the Prophet (peace be upon him) [verbatim] concerning a woman from Juḥaynah: her mother had vowed to perform Ḥajj but died before she could perform Ḥajj.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ مُوسَى بْنِ إِسْمَاعِيلَ عَنْ أَبِي عَوَانَةَ عَنْ أَبِي بِشْرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -[بِنَصِّهِ] فِي امْرَأَةٍ مِنْ جُهَيْنَةَ نَذَرَتْ أُمُّهَا أَنْ تَحُجَّ فَمَاتَتْ قَبْلَ أَنْ تَحُجَّ ".

L12669 We have also narrated it through the chain of al-Ḥajjāj ibn al-Minhāl: Abū 'Awānah narrated to us from Abū Bishr from Sa'īd ibn Jubayr from Ibn 'Abbās from the Prophet, peace be upon him, akin to al-Bukhārī's narration. It includes his statement, peace be upon him: "Perform Ḥajj on behalf of

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ أَبِي بِشْرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلَ رِوَايَةِ الْبُخَارِيِّ، وَفِيهِ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «فَحُجِّي عَنْ أُمِّكِ، اقْضُوا اللَّهَ الَّذِي لَهُ عَلَيْكُمْ، فَاللَّهُ تَبَارَكَ وَتَعَالَى أَحَقُّ بِالْوَفَاءِ» .

[14]**Hadith references (L12662):** Sunan an-Nasai 2633.

[15]**Qur'an references (L12662):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

your mother. Fulfill Allah's right that He holds over you, for Allah, Blessed and Exalted, is most deserving of fulfillment."

فَهَذِهِ آثَارٌ فِي غَايَةِ الصِّحَّةِ لَا يَسَعُ أَحَدٌ الْخُرُوجَ عَنْهَا -: قَالَ أَبُو مُحَمَّدٍ: وَمِنْ عَجَائِبِ الدُّنْيَا احْتِجَاجُهُمْ بِهَذَا الْحَدِيثِ فِي الْقَوْلِ بِالْقِيَاسِ فِي تَحْرِيمِ التِّينِ بِالتِّينِ مُتَفَاضِلًا ثُمَّ يُخَالِفُونَهُ فِيمَا جَاءَ فِيهِ أَقْبَحُ خِلَافٍ فَيَقُولُونَ: لَا يُحَجُّ عَنْ مَيِّتٍ، وَدَيْنُ اللَّهِ لَا يُقْضَى، وَدُيُونُ النَّاسِ أَحَقُّ مِنْهُ، فَأَيُّ قَوْلٍ أَقْبَحُ مِنْ قَوْلِ مَنْ قَالَ: مَنْ أَهْرَقَ خَمْرَ الْيَهُودِيِّ، أَوْ النَّصْرَانِيِّ وَمَاتَ قُضِيَ دَيْنُ الْخَمْرِ مِنْ رَأْسِ مَالِهِ أَوْصَى بِهِ أَوْ لَمْ يُوصِ، وَلَا يُقْضَى دَيْنُ اللَّهِ تَعَالَى فِي الْحَجِّ إلَّا أَنْ يُوصَى بِهِ فَيَكُونُ مِنْ الثُّلُثِ؟ -: قَالَ أَبُو مُحَمَّدٍ: قَوْلُنَا هُوَ قَوْلُ جُمْهُورِ السَّلَفِ -: رُوِّينَا عَنْ أَبِي هُرَيْرَةَ مَنْ مَاتَ وَعَلَيْهِ نَذْرٌ أَوْ حَجٌّ فَلْيَقْضِ عَنْهُ وَلِيُّهُ.

L12670–12672 These are rigorously authentic textual evidences that no one may contravene. Abū Muḥammad said: Among the wonders of the world is their citation of this ḥadīth to justify analogy for prohibiting unequal exchange of figs for figs, then contradicting it in the most reprehensible manner regarding its explicit content by declaring: "No Hajj is performed." Regarding a deceased person, the debt owed to God is not settled, while debts owed to people take precedence over it. What assertion is more reprehensible than that of one who says: "If someone destroys the wine of a Jew or a Christian and dies, compensation for the destroyed wine must be paid from his estate whether he bequeathed it or not," yet the debt owed to God Almighty for Hajj is not settled unless it is bequeathed, thus being taken from one-third of the estate? Abū Muḥammad said: Our position aligns with that of the majority of the early scholars. It has been narrated to us from Abū Hurayrah: "If someone dies while owing a vow or Hajj, his guardian must fulfill it on his behalf."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو الْأَحْوَصِ عَنْ سِمَاكٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: " أَنَّ امْرَأَةً أَتَتْهُ فَقَالَتْ: إنَّ أُمِّي مَاتَتْ وَعَلَيْهَا حَجَّةٌ أَفَأَحُجُّ عَنْهَا؟ فَقَالَ ابْنُ عَبَّاسٍ: هَلْ كَانَ عَلَى أُمِّك دَيْنٌ؟ قَالَتْ: نَعَمْ، قَالَ: فَمَا صَنَعْتِ؟ قَالَتْ قَضَيْته عَنْهَا قَالَ ابْنُ عَبَّاسٍ: فَاَللَّهُ خَيْرُ غُرَمَائِك، حُجِّي عَنْ أُمِّك ".

L12673 From the chain of Sa'id ibn Mansur: Abu al-Ahwas narrated to us through Simak through Ikrimah through Ibn Abbas: "A woman came to him and said: 'My mother died while Hajj was incumbent upon her—shall I perform it on her behalf?' Ibn Abbas asked: 'Did your mother have any unpaid debt?' She replied: 'Yes.' He said: 'What did you do?' She answered: 'I discharged it for her.' Ibn Abbas said: 'Then Allah is the best of creditors; perform Hajj on your mother's behalf.'"

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ مُسْلِمٍ الْقَرِّيِّ قُلْت لِابْنِ عَبَّاسٍ: إنَّ أُمِّي حَجَّتْ وَمَاتَتْ وَلَمْ تَعْتَمِرْ أَفَأَعْتَمِرُ عَنْهَا؟ قَالَ: نَعَمْ، وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا أَبُو الْأَحْوَصِ عَنْ طَارِقِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: كُنْت جَالِسًا عِنْدَ سَعِيدِ بْنِ الْمُسَيِّبِ فَأَتَاهُ رَجُلٌ فَقَالَ: إنَّ أَبِي لَمْ يَحُجَّ قَطُّ أَفَأَحُجُّ عَنْهُ؟ فَقَالَ لَهُ سَعِيدٌ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ كَانَ رَخَّصَ لِرَجُلٍ حَجَّ عَنْ أَبِيهِ وَهَلْ هُوَ إلَّا دَيْنٌ؟ وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مَرْوَانُ

L12674 From the chain of Shuʿbah via Muslim al-Qarī: I said to Ibn ʿAbbās: "My mother performed Hajj and died without having performed ʿUmrah. Shall I perform ʿUmrah on her behalf?" He replied: "Yes."

From the chain of Abū Bakr ibn Abī Shaybah: Abū al-Aḥwaṣ reported from Ṭāriq ibn ʿAbd al-Raḥmān, who said: "I was seated with Saʿīd ibn al-Musayyib when a man approached him and asked: 'My father never performed Hajj. Should I perform Hajj on his behalf?' Saʿīd responded: 'The Messenger

of Allah—peace and blessings of Allah be upon him—permitted a man to perform Hajj for his father. Is this not akin to settling a debt?'"

From the chain of Ibn Abī Shaybah: Marwān ibn Muʿāwiyah al-Fazārī reported from Qudāmah ibn ʿAbd Allāh al-Ruʾāsī, who said: "I asked Saʿīd ibn Jubayr about my brother, saying: 'He died without ever performing Hajj. Should I perform Hajj for him?' He inquired: 'Did he leave any children?' I replied: 'He left an infant son.' He said: 'Perform Hajj on his behalf, for if he could find a messenger, he would send you word: "Expedite it¡" I asked: 'Shall I perform it using my funds or his?' He answered: 'Use his funds.'"

L12675 He said: And I asked Ibrāhīm al-Nakhaʿī? He replied: "Perform Ḥajj on his behalf."

L12676 He said: I asked Al-Dahhak, who replied: "Perform Hajj on his behalf using his wealth, for that is valid for him." Through the chain of Hammad ibn Salamah from Al-Hajjaj from Fudayl ibn 'Amr, who said: A woman vowed to circumambulate the House while joined together with her daughter. The mother died before she could perform the circumambulation, so her son asked Ibrahim al-Nakha'i about that. He said: "You and your sister should perform the circumambulation on behalf of your mother, but do not perform it while joined together."

L12677–12678 And from the chain of Waki', via Sufyan, via Aslam al-Munqirī, via 'Ata', who said: Hajj should be performed on behalf of the deceased even if they did not bequeath it.

L12679 From the chain of Abd al-Rahman ibn Mahdi, from Sufyan al-Thawri, from Abu Nuhayk, who said: I asked Tawus about a woman who died while having unfulfilled pilgrimage rites remaining. He replied: Her guardian must fulfill them on her behalf - Abu Nuhayk—he is al-Qasim ibn Muhammad al-Asadi. It was narrated from him by Sufyan, Mansur, and Jarir ibn Abd al-Hamid.

L12680 And via the chain of Ḥammād ibn Salamah, from Qays ibn Saʿd, from ʿAṭāʾ.

L12681 And through the chain of Hammad ibn Salamah from Ziyad al-Aʿlam from al-Hasan: ʿAta' and al-Hasan said regarding one who did not perform the

بْنُ مُعَاوِيَةَ هُوَ الْفَزَارِيّ - عَنْ قُدَامَةَ بْنِ عَبْدِ اللَّهِ الرُّؤَاسِيِّ قَالَ: سَأَلْتُ سَعِيدَ بْنَ جُبَيْرٍ عَنْ أَخِي فَقُلْتُ: مَاتَ وَلَمْ يَحُجَّ قَطُّ أَفَأَحُجُّ عَنْهُ؟ فَقَالَ: هَلْ تَرَكَ مِنْ وَلَدٍ؟ قُلْتُ: تَرَكَ صَبِيًّا صَغِيرًا، فَقَالَ: حُجَّ عَنْهُ فَإِنَّهُ لَوْ وَجَدَ رَسُولًا لَأَرْسَلَ إِلَيْك أَنْ عَجِّلْ بِهَا؟ فَقُلْتُ: أَحُجُّ عَنْهُ مِنْ مَالِي أَوْ مِنْ مَالِهِ: قَالَ: بَلْ مِنْ مَالِهِ.

قَالَ: وَسَأَلْتُ إِبْرَاهِيمَ النَّخَعِيَّ؟ فَقَالَ: حُجَّ عَنْهُ.

قَالَ: وَسَأَلْتُ الضَّحَّاكَ فَقَالَ: حُجَّ عَنْهُ مِنْ مَالِهِ؟ فَإِنَّ ذَلِكَ مُجْزِئٌ عَنْهُ، وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ عَنْ فُضَيْلِ بْنِ عَمْرٍو وَقَالَ: نَذَرَتْ امْرَأَةٌ أَنْ تَطُوفَ بِالْبَيْتِ مُقْتَرِنَةً مَعَ ابْنَتِهَا فَمَاتَتْ الْأُمُّ قَبْلَ أَنْ تَطُوفَ فَسَأَلَ ابْنُهَا إِبْرَاهِيمَ النَّخَعِيَّ عَنْ ذَلِكَ؟ فَقَالَ: طُفْ أَنْتَ وَأُخْتُك عَنْ أُمِّك وَلَا تَقْتَرِنَا.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ أَسْلَمَ الْمُنْقِرِيِّ عَنْ عَطَاءٍ قَالَ: يُحَجُّ عَنْ الْمَيِّتِ وَإِنْ لَمْ يُوصِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِي عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي نَهِيكٍ قَالَ: سَأَلْتُ طَاوُسًا عَنْ امْرَأَةٍ مَاتَتْ وَقَدْ بَقِيَ عَلَيْهَا مِنْ نُسُكِهَا؟ فَقَالَ: يَقْضِي عَنْهَا وَلِيُّهَا - أَبُو نَهِيكٍ هُوَ الْقَاسِمُ بْنُ مُحَمَّدٍ الْأَسَدِيُّ - رُوِيَ عَنْهُ سُفْيَانُ، وَمَنْصُورٌ، وَجَرِيرُ بْنُ عَبْدِ الْحَمِيدِ.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ عَطَاءٍ.

obligatory Hajj: that Hajj should be performed on his behalf from his entire estate, and the same applies to Zakat - whether he left a will or not. It has also been narrated from ʿAbd al-Rahman ibn Abi Layla.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ زِيَادٍ الْأَعْلَمِ عَنْ الْحَسَنِ: قَالَ عَطَاءٌ وَالْحَسَنُ فِيمَنْ لَمْ يَحُجَّ الْفَرِيضَةَ: أَنَّهُ يُحَجُّ عَنْهُ مِنْ جَمِيعِ الْمَالِ، وَالزَّكَاةُ مِثْلُ ذَلِكَ، أَوْصَى أَوْ لَمْ يُوصِ.
وَرُوِيَ أَيْضًا عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى.

L12682 Abū Muḥammad said: This is the opinion of al-Awzāʿī, al-Thawrī, Muḥammad ibn ʿAbd al-Raḥmān ibn Abī Laylā, al-Shāfiʿī, Abū Thawr, Aḥmad, Isḥāq, Abū Sulaymān, and their companions.

قَالَ أَبُو مُحَمَّد: وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَالثَّوْرِيِّ، وَمُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L12683 Abu Muhammad said: We have previously mentioned the statement of Ibn Umar and al-Qasim ibn Muhammad, and others' disagreement with them both.

قَالَ أَبُو مُحَمَّدٍ: قَدْ ذَكَرْنَا قَبْلُ قَوْلَ ابْنِ عُمَرَ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ، وَخِلَافَهُمْ لَهُمَا.

L12684 And it was narrated to us through the chain of Ḥammād ibn Zayd, who said: Ayyūb was asked, "What about bequests in Ḥajj?" He replied: "I have no knowledge of bequests in Ḥajj; a bequest is only for close relatives."

وَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ قَالَ: سُئِلَ أَيُّوبُ عَنْ الْوَصَايَا فِي الْحَجِّ؟ فَقَالَ: لَا أَعْرِفُ الْوَصَايَا فِي الْحَجِّ إنَّمَا الْوَصِيَّةُ فِي الْأَقْرَبِينَ.

L12685 We asked: If someone neglects to perform Hajj, should he bequeath its performance? He replied: No.

قُلْنَا: إذَا فَرَّطَ فِي الْحَجِّ أَيُوصِي بِهِ؟ قَالَ: لَا.

L12686 It has been transmitted to us from Ibrāhīm al-Nakhaʿī through Shuʿbah's chain, from al-Ḥakam ibn ʿUtaybah, from Ibrāhīm: "The Hajj is not to be performed on behalf of a deceased person."

وَقَدْ رُوِّينَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ مِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إبْرَاهِيمَ: لَا يُقْضَى حَجٌّ عَنْ مَيِّتٍ.

L12687 From the narration of Saʿīd ibn Manṣūr via Hushaym via al-Mughīrah ibn Miqsam via Ibrāhīm: Regarding one who dies without having performed the pilgrimage, he said: They used to prefer that he bequeath in his will for a sacrificial she-camel to be slaughtered on his behalf.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ هُشَيْمٍ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ: فِيمَنْ مَاتَ وَلَمْ يَحُجَّ، قَالَ: كَانُوا يُحِبُّونَ أَنْ يُوصِيَ أَنْ يُنْحَرَ عَنْهُ بَدَنَةً.

L12688 It is narrated via Sufyān, from Manṣūr, from him: No one should perform Hajj on behalf of another.

وَمِنْ طَرِيقِ سُفْيَانَ عَنْ مَنْصُورٍ عَنْهُ: لَا يَحُجُّ أَحَدٌ عَنْ أَحَدٍ.

L12689 From the narration of Shuʿbah, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm: If a person stipulates in his will that Hajj be performed [on his behalf], it should be performed from his third. Otherwise, no.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ: إنْ أَوْصَى بِالْحَجِّ، حُجَّ عَنْهُ مِنْ ثُلُثِهِ، وَإِلَّا فَلَا.

L12690–12692 Via Yaḥyā ibn Saʿīd al-Qaṭṭān, via Hishām ibn Ḥassān, via Ibn Sīrīn: When...

He bequeathed the performance of Ḥajj from [a third] of the estate. This is the view of Ḥammād ibn Abī Sulaymān, Ḥumayd al-Ṭawīl, Dāwūd ibn Abī Hind, and ʿUthmān al-Battī.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ هِشَامِ بْنِ حَسَّانٍ عَنْ ابْنِ سِيرِينَ: إذَا أَوْصَى بِالْحَجِّ فَمِنْ الثُّلُثِ، وَبِهَذَا يَقُولُ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ، وَحُمَيْدُ الطَّوِيلُ، وَدَاوُد بْنُ أَبِي هِنْدٍ، وَعُثْمَانُ الْبَتِّيُّ.

L12693 Abu Muhammad said: We know of no proof for those who asserted this except what we have already mentioned in the preceding chapter, where we clarified that it constitutes a proof against them and that they possess no proof therein. And with Allah lies all success.

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ لِمَنْ قَالَ؟ بِهَذَا حُجَّةً إلَّا مَا قَدْ ذَكَرْنَاهُ فِي الْبَابِ الَّذِي قَبْلَ هَذَا وَبَيَّنَّا أَنَّهُ حُجَّةٌ عَلَيْهِمْ وَأَنَّهُ لَا حُجَّةَ لَهُمْ فِيهِ - وَبِاَللَّهِ التَّوْفِيقُ.

L12694 Abu Muhammad said: When the Messenger of Allah—peace be upon him—stated, "Allah has a greater right to be fulfilled, and Allah's debt is more entitled to be repaid," it is impermissible to settle any human's debt until the religious obligations owed to Allah, the Mighty and Majestic, are fully discharged. This is the opinion of those we have mentioned, one of the two opinions of al-Shafiʿi, and the view of all scholars of our school. As for the two Malikis and the Hanafi jurists regarding what takes precedence in bequests, they hold opinions for which no valid basis whatsoever is recognized.

قَالَ أَبُو مُحَمَّد: وَإِذَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَاَللَّهُ أَحَقُّ بِالْوَفَاءِ، وَدَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى» فَلَا يَحِلُّ أَنْ يُقْضَى دَيْنُ آدَمِيٍّ حَتَّى تَتِمَّ دُيُونُ اللَّهِ عَزَّ وَجَلَّ، وَهُوَ قَوْلُ مَنْ ذَكَرْنَا، وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ، وَقَوْلُ جَمِيعِ أَصْحَابِنَا، وَلِلْمَالِكِيَّيْنِ، وَالْحَنِيفِيِّينَ فِيمَا يَبْدَأُ بِهِ فِي الْوَصَايَا أَقْوَالٌ لَا يُعْرَفُ لَهَا وَجْهٌ أَصْلًا.

L12695 **Issue: No part of the rites of Hajj is valid except during its designated times.**

[مَسْأَلَةٌ الْحَجُّ لَا يَجُوزُ شَيْءٌ مِنْ عَمَلِهِ إلَّا فِي أَوْقَاتِهِ]

L12696 819 – Issue:

٨١٩ - مَسْأَلَةٌ:

L12697 None of the rites of Hajj may be performed except during its prescribed times, nor is it permissible to enter Ihram for Hajj except during the months of Hajj before the time of standing at Arafat.

وَالْحَجُّ لَا يَجُوزُ شَيْءٌ مِنْ عَمَلِهِ إلَّا فِي أَوْقَاتِهِ الْمَنْصُوصَةِ وَلَا يَحِلُّ الْإِحْرَامُ بِهِ إلَّا فِي أَشْهُرِ الْحَجِّ قَبْلَ وَقْتِ الْوُقُوفِ بِعَرَفَةَ.

L12698 As for the ʿUmrah, it is permissible in every time of the year, every day of the year, and every night of its nights, excluding nothing. The proof of our statement's validity is the word of Allah, the Almighty, the Majestic: "The Hajj is [during] well-known months. Whoever undertakes Hajj therein, there shall be no sexual intimacy, no disobedience, and no disputing during Hajj" [Al-Baqarah 2:197].[16]

وَأَمَّا الْعُمْرَةُ فَهِيَ جَائِزَةٌ فِي كُلِّ وَقْتٍ مِنْ أَوْقَاتِ السَّنَةِ، وَفِي كُلِّ يَوْمٍ مِنْ أَيَّامِ السَّنَةِ، وَفِي كُلِّ لَيْلَةٍ مِنْ لَيَالِيهَا لَا تُحَاشِ شَيْئًا -: بُرْهَانُ صِحَّةِ قَوْلِنَا: - قَوْلُ اللَّهِ عَزَّ وَجَلَّ {الْحَجُّ أَشْهُرٌ مَعْلُومَاتٌ فَمَنْ فَرَضَ فِيهِنَّ الْحَجَّ فَلا رَفَثَ وَلا فُسُوقَ وَلا جِدَالَ فِي الْحَجِّ} [البقرة: ١٩٧] .

[16] **Qur'an references (L12698):** Qur'an 2:197 (Al-Baqarah).

L12699 The verse states that He, the Almighty and Majestic, explicitly declares they are *“well-known months”* [Quran 2:197].[17]

L12700 And He, the Exalted, said: “Whoever transgresses the limits of Allah has certainly wronged” [At-Talaq: 1].[18]

L12701 It has been narrated to us through the chain of Abd al-Razzaq, who reported from Sufyan al-Thawri and Ibn Jurayj—both of whom reported from Abu al-Zubayr: I heard Jabir ibn Abd Allah asking, “Does anyone enter the state of ihram for Hajj before the months of Hajj?” He said: “No.”

L12702 And via the chain of ʿIkrimah from Ibn ʿAbbās, he said: It is not fitting for anyone to enter the state of Ihram for Hajj except during the months of Hajj, due to the statement of Allah, the Exalted: {So whoever undertakes Hajj therein} [Al-Baqarah: 197].[19]

L12703–12705 Via the chain of Abd al-Rahman ibn Mahdi: Sufyan al-Thawri reported to us from Abu Ishaq al-Sabi’i, who said... Amr ibn Maymun ibn Abi Nuʿm saw someone entering the sacred state of iḥrām for Hajj outside the prescribed months of Hajj and said: “If the Companions of Muḥammad had encountered him, they would have censured him.”

L12706 And through the chain of Hammad ibn Zayd from Ayyub al-Sikhtiyani, that Ikrimah said to Abu al-Hakam: “You are a man of wrongdoing, for you have opposed the Book of Allah Almighty and abandoned the Sunnah of His Prophet—peace and blessings be upon him. Allah, Blessed and Exalted, says: ’The Hajj is [observed in] specified months. So whoever has made Hajj obligatory upon himself therein’ (Quran 2:197). The Messenger of Allah—peace and blessings be upon him—set out on his journey until he arrived at al-Bayda’, where he turned so that the village was behind his back and recited the talbiyah. Yet you indeed recite the talbiyah outside the months of Hajj.”[20]

L12707 From ‘Aṭā’, Tāwus, and Mujāhid, they said, “It is not appropriate for anyone to enter *iḥrām* for Hajj outside the months of Hajj.”

الْآيَةَ، فَنَصَّ عَزَّ وَجَلَّ عَلَى أَنَّهُ {أَشْهُرٌ مَعْلُومَاتٌ} [البقرة: ١٩٧] .

وَقَالَ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ} [الطلاق: ١] .

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَابْنِ جُرَيْجٍ كِلَيْهِمَا عَنْ أَبِي الزُّبَيْرِ: سَمِعْتُ جَابِرَ بْنَ عَبْدِ اللَّهِ يَسْأَلُ أَيُهِلُّ أَحَدٌ بِالْحَجِّ قَبْلَ أَشْهُرِ الْحَجِّ؟ قَالَ: لَا.

وَمِنْ طَرِيقِ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا يَنْبَغِي لِأَحَدٍ أَنْ يُهِلَّ بِالْحَجِّ إِلَّا فِي أَشْهُرِ الْحَجِّ لِقَوْلِ اللَّهِ تَعَالَى: {فَمَنْ فَرَضَ فِيهِنَّ الْحَجَّ} [البقرة: ١٩٧] .

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ قَالَ: رَأَى عَمْرُو بْنُ مَيْمُونِ بْنِ أَبِي نُعْمٍ يُحْرِمُ بِالْحَجِّ فِي غَيْرِ أَشْهُرِ الْحَجِّ فَقَالَ: لَوْ أَنَّ أَصْحَابَ مُحَمَّدٍ أَدْرَكُوهُ رَجَمُوهُ.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ أَنَّ عِكْرِمَةَ قَالَ لِأَبِي الْحَكَمِ: أَنْتَ رَجُلُ سُوءٍ، لِأَنَّك خَالَفْتَ كِتَابَ اللَّهِ عَزَّ وَجَلَّ وَتَرَكْتَ سُنَّةَ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. قَالَ اللَّهُ تَبَارَكَ وَتَعَالَى: {الْحَجُّ أَشْهُرٌ مَعْلُومَاتٌ فَمَنْ فَرَضَ فِيهِنَّ الْحَجَّ} [البقرة: ١٩٧] . وَخَرَجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى إذَا كَانَ بِالْبَيْدَاءِ، وَجَعَلَ الْقَرْيَةَ خَلْفَ ظَهْرِهِ أَهَلَّ وَإِنَّك تُهِلُّ فِي غَيْرِ أَشْهُرِ الْحَجِّ ؟ وَعَنْ عَطَاءٍ، وَطَاوُسٍ، وَمُجَاهِدٍ قَالُوا: لَا يَنْبَغِي لِأَحَدٍ أَنْ يُحْرِمَ بِالْحَجِّ فِي غَيْرِ أَشْهُرِ الْحَجِّ.

[17] **Qur’an references (L12699):** Qur’an 2:197 (Al-Baqarah).
[18] **Qur’an references (L12700):** Qur’an 65:1 (At-Talaq).
[19] **Qur’an references (L12702):** Qur’an 2:197 (Al-Baqarah).
[20] **Qur’an references (L12706):** Qur’an 2:197 (Al-Baqarah).

وَعَنْ عَطَاءٍ، وَالشَّعْبِيِّ مِثْلُ ذَلِكَ قَالَا: فَإِنَّ أَهَلَّ بِالْحَجِّ فِي غَيْرِ أَشْهُرِ الْحَجِّ فَإِنَّهُ يُحِلُّ.

L12708 It is similarly reported from ʻAṭāʼ and al-Shaʻbī that they said: If someone declares ihram for Hajj outside the prescribed months of Hajj, they must exit ihram.

وَعَنْ عَطَاءٍ أَنَّهُ يُحِلُّ وَيَجْعَلُهَا عُمْرَةً وَأَنَّهُ لَيْسَ حَجًّا، يَقُولُ اللَّهُ تَعَالَى: {الْحَجُّ أَشْهُرٌ مَعْلُومَاتٌ} [البقرة: ١٩٧] .

L12709 It is narrated from ʻAṭāʼ that he permits dissolving Ihram and converts it into Umrah, stating that it is not Hajj. Allah the Exalted says: *"Hajj occurs in well-known months"* (Al-Baqarah 2:197).[21]

وَعَنْ سَعِيدِ بْنِ مَنْصُورٍ عَنْ جَرِيرِ بْنِ عَبْدِ الْحَمِيدِ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ أَنَّهُ قَالَ: لَا يَنْبَغِي لِأَحَدٍ أَنْ يُحْرِمَ بِالْحَجِّ إلَّا فِي أَشْهُرِ الْحَجِّ، فَإِنْ فَعَلَ فَلَا يَحِلُّ حَتَّى يَقْضِيَ حَجَّهُ. .

L12710 From Saʻīd ibn Manṣūr, from Jarīr ibn ʻAbd al-Ḥamīd, from al-Mughīrah, from Ibrāhīm, that he said: It is impermissible for anyone to enter iḥrām for Hajj except during the months of Hajj. If they do so, it is not lawful for them to exit iḥrām until they complete the Hajj.

وَقَالَ الْأَوْزَاعِيُّ، وَالشَّافِعِيُّ: تَصِيرُ عُمْرَةً وَلَا بُدَّ.

L12711 Al-Awzaʻī and al-Shāfiʻī said: The Hajj ritual must inevitably become the ʻUmrah.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: يُكْرَهُ ذَلِكَ وَيَلْزَمُهُ إنْ أَحْرَمَ قَبْلَ أَشْهُرِ الْحَجِّ.

L12712 Abu Hanifah and Malik said: That is reprehensible, and he is bound to it if he enters into iḥrām before the months of Hajj.

قَالَ أَبُو مُحَمَّدٍ مَا نَعْلَمُ فِي هَذَا الْقَوْلِ سَلَفًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهُوَ خِلَافُ الْقُرْآنِ وَخِلَافُ الْقِيَاسِ، وَاحْتَجَّ الشَّافِعِيُّ بِأَنَّهُ كَمَنْ أَحْرَمَ بِصَلَاةِ فَرْضٍ قَبْلَ وَقْتِهَا أَنَّهَا تَكُونُ تَطَوُّعًا.

L12713–12715 Abū Muḥammad said, "We do not know of any precedent among the Companions - may Allah be pleased with them - regarding this opinion, and it is..." This position is contrary to both the Quran and analogical reasoning. Al-Shafiʻi argued that it resembles the case of one who enters into the state of obligatory prayer before its prescribed time, thereby rendering it a supererogatory act.

قَالَ أَبُو مُحَمَّدٍ: هَذَا تَشْبِيهُ الْخَطَأِ بِالْخَطَأِ بَلْ هُوَ لَا شَيْءَ؛ لِأَنَّهُ لَمْ يَأْتِ بِالصَّلَاةِ كَمَا أُمِرَ، وَقَالَ اللَّهُ تَعَالَى: {وَمَا أُمِرُوا إِلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ} [البينة: ٥] .

L12716 Abū Muḥammad said: This is comparing one error to another; rather, it is nothing, for he did not perform the ṣalāh as he was commanded. And Allah the Exalted said: "They were commanded only to worship Allah, sincerely devoting the religion to Him" [Al-Bayyinah: 5].[22]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L12717 The Messenger of Allah—peace be upon him—said: "Whoever performs a deed that is not in accordance with our command, then it is rejected."[23]

فَصَحَّ أَنْ عَمَلَ الْمُحْرِمِ بِالْحَجِّ فِي غَيْرِ أَشْهُرِ الْحَجِّ عَمَلٌ لَيْسَ عَلَيْهِ أَمْرُ اللَّهِ تَعَالَى: وَلَا أَمْرُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَصَحَّ أَنَّهُ رَدٌّ، وَلَا يَصِيرُ عُمْرَةً وَلَا هُوَ حَجٌّ.

L12718 Thus, it is established that the act of one in consecration (iḥrām) related to

[21] **Qur'an references (L12709):** Qur'an 2:197 (Al-Baqarah).
[22] **Qur'an references (L12716):** Qur'an 98:5 (Al-Bayyinah).
[23] **Hadith references (L12717):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

Ḥajj outside the months of Ḥajj is an act upon which there is no command from Allah, the Exalted: nor His Messenger—may Allah bless him and grant peace. Therefore, it is established that it is invalid, and it does not become ʿUmrah nor is it considered Ḥajj.

L12719 The astonishment is at the statement of those Ḥanafīs who argue that they have unanimously agreed upon the obligation of some form of iḥrām for him. Since it cannot be ʿUmrah, it must be Ḥajj. If he contends with one who supports him in this error, then by my life, it is binding upon him. But if he intended to imply this constitutes a [complete] consensus, he has trivialized falsehood against the entire Ummah - we seek refuge in Allah from this. ʿAlī said: We previously mentioned that Al-Shaʿbī and ʿAṭāʾ held permissibility, while the Companions - may Allah be pleased with them - entirely prohibited it. We say to the Ḥanafīs and Mālikīs: You deem reprehensible entering iḥrām for Ḥajj before the Ḥajj months while permitting it. Inform us: is this an act of righteousness containing extra reward? Why then do you deem reprehensible righteousness and an act that entails reward? This is profoundly grave, for within the religion there exists no reprehension of righteousness or acts of goodness. Or is it an act devoid of extra reward and not part of righteousness? How then do you permit it within the religion? Allah forbid such! Abū Muḥammad said: If it is a superfluous act without reward, it is undoubtedly void. The Exalted said: "That He might establish the truth and nullify falsehood" (8:8). To the Shāfiʿī: How do you invalidate his act which he undertook because it contradicted the truth, yet oblige him to an ʿUmrah he never intended, aimed for, or intended? The Messenger of Allah - peace be upon him - said: "Deeds are judged by intentions, and each person receives what they intended." This is manifestly clear. Thus both opinions are invalidated - praise be to Allah, Lord of the worlds.[24][25]

L12720–12721 The aforementioned individuals do not differ regarding the ruling that who-

وَالْعَجَبُ مِنْ قَوْلِ مَنْ يَحْتَجُّ مِنْ الْحَنِيفِيِّينَ بِأَنَّهُمْ قَدْ أَجْمَعُوا عَلَى أَنَّهُ يَلْزَمُهُ إحْرَامٌ مَا، فَإِذْ لَا يَجُوزُ أَنْ يَكُونَ عُمْرَةً فَهُوَ الْحَجُّ، وَإِنْ كَانَ إنَّمَا يُنَاظِرُ مَنْ يُسَاعِدُهُ عَلَى هَذَا الْخَطَأِ فَهُوَ لَعَمْرِي لَازِمٌ لَهُ، وَإِنْ كَانَ قَصَدَ الْإِيهَامَ بِأَنَّهُ إجْمَاعٌ [تَامٌّ] فَقَدْ اسْتَسْهَلَ الْكَذِبَ عَلَى الْأُمَّةِ كُلِّهَا - نَعُوذُ بِاَللَّهِ مِنْ ذَلِكَ؟ قَالَ عَلِيٌّ: وَقَدْ ذَكَرْنَا آنِفًا عَنْ الشَّعْبِيِّ، وَعَطَاءٍ: أَنَّهُ يَحِلُّ، وَعَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - الْمَنْعُ مِنْ ذَلِكَ [جُمْلَةً] . وَنَقُولُ لِلْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ: أَنْتُمْ تَكْرَهُونَ الْإِحْرَامَ بِالْحَجِّ قَبْلَ أَشْهُرِ الْحَجِّ وَتُجِيزُونَهُ فَأَخْبِرُونَا عَنْكُمْ أَهُوَ عَمَلُ بِرٍّ وَفِيهِ أَجْرٌ زَائِدٌ؟ فَلِمَ تَكْرَهُونَ الْبِرَّ وَعَمَلًا فِيهِ - أَجْرٌ؟ هَذَا عَظِيمٌ جِدًّا وَمَا فِي الدِّينِ كَرَاهِيَةُ الْبِرِّ وَعَمَلُ الْخَيْرِ، أَمْ هُوَ عَمَلٌ لَيْسَ فِيهِ أَجْرٌ زَائِدٌ وَلَا هُوَ مِنْ الْبِرِّ؟ فَكَيْفَ أَجَزْتُمُوهُ فِي الدِّينِ وَمَعَاذَ اللَّهِ مِنْ هَذَا؟ قَالَ أَبُو مُحَمَّدٍ: إذْ هُوَ عَمَلٌ زَائِدٌ لَا أَجْرَ فِيهِ فَهُوَ بَاطِلٌ بِلَا شَكٍّ، وَقَدْ قَالَ تَعَالَى: {لِيُحِقَّ الْحَقَّ وَيُبْطِلَ الْبَاطِلَ} [الأنفال: ٨] وَيُقَالُ لِلشَّافِعِيِّ: كَيْفَ تُبْطِلُ عَمَلَهُ الَّذِي دَخَلَ فِيهِ، لِأَنَّهُ خَالَفَ الْحَقَّ، ثُمَّ تُلْزِمُهُ بِذَلِكَ الْعَمَلِ عُمْرَةً لَمْ يُرِدْهَا قَطُّ وَلَا قَصَدَهَا وَلَا نَوَاهَا؟ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى» وَهَذَا بَيِّنٌ لَا خَفَاءَ بِهِ، فَبَطَلَ كِلَا الْقَوْلَيْنِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَلَا يَخْتَلِفُ الْمَذْكُورُونَ فِي أَنَّ مَنْ أَحْرَمَ بِصَلَاةٍ قَبْلَ وَقْتِهَا فَإِنَّهَا تَبْطُلُ وَمَنْ نَوَى صِيَامًا قَبْلَ وَقْتِهِ فَهُوَ بَاطِلٌ، وَمَنْ قَدَّمَ الْوُقُوفَ بِعَرَفَةَ قَبْلَ وَقْتِهِ فَهُوَ بَاطِلٌ، فَهَلَّا قَاسُوا الْحَجَّ

[24] **Hadith references (L12719):** Sahih al-Bukhari 1; Sunan Abi Dawud 2201; Mishkat al-Masabih 1.

[25] **Qur'an references (L12719):** Qur'an 8:8 (Al-Anfal); Qur'an 37:182 (As-Saffat).

ever begins the prayer with the opening declaration (Ihram) before its designated time invalidates it, whoever intends to fast before its designated time invalidates it, and whoever advances the standing at Arafat before its designated time invalidates it. Why then did they not analogize Hajj to these cases? Why did they not analogize some acts of Hajj to others? This would have been the most correct analogy—if analogy were valid. Yet this is among the matters in which they contradicted the Quran, the practice of the Prophet—peace and blessings of Allah be upon him—and his companions (with no dissenting opinion known from them), and analogy itself.

عَلَى ذَلِكَ؟ وَهَلَّا قَاسُوا بَعْضَ عَمَلِ الْحَجِّ عَلَى بَعْضٍ؟ فَهَذَا أَصَحُّ قِيَاسٍ لَوْ كَانَ الْقِيَاسُ حَقًّا وَهَذَا مِمَّا خَالَفُوا فِيهِ الْقُرْآنَ، وَعَمَلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَصْحَابِهِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، وَالْقِيَاسُ.

L12722 And it is astonishing that the Hanafi jurists said regarding the statement of Allah's Messenger—peace and blessings be upon him—"For grazing sheep, one sheep is due for every forty sheep": "Far be it from Allah that the Messenger of Allah—peace and blessings be upon him—would deliver speech containing no benefit." Why then do they not similarly say regarding Allah's words—Exalted is He—{The Hajj is well-known months} [Al-Baqarah: 197]: "Far be it from Allah to state in the Quran something with no benefit in it"—and yet it is authentically established from the Prophet—peace and blessings be upon him—that the obligation of Zakat on sheep applies universally without specifying grazing, and no Quranic text or Sunnah has ever indicated the permissibility of prescribing Hajj outside its known months?[26]

وَالْعَجَبُ أَنَّ الْحَنِيفِيِّينَ قَالُوا فِي قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فِي الْغَنَمِ فِي سَائِمَتِهَا فِي كُلِّ أَرْبَعِينَ شَاةً شَاةٌ» : حَاشَا لِلَّهِ أَنْ يَأْتِيَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِكَلَامٍ لَا فَائِدَةَ فِيهِ فَهَلَّا قَالُوا: هَاهُنَا فِي قَوْلِ اللَّهِ تَعَالَى: {الْحَجُّ أَشْهُرٌ مَعْلُومَاتٌ} [البقرة: ١٩٧] حَاشَا لِلَّهِ مِنْ أَنْ يَقُولَ فِي الْقُرْآنِ قَوْلًا لَا فَائِدَةَ فِيهِ هَذَا وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وُجُوبُ الزَّكَاةِ فِي الْغَنَمِ جُمْلَةً دُونَ ذِكْرِ سَائِمَةٍ، وَلَمْ يَأْتِ قَطُّ فِي قُرْآنٍ وَلَا سُنَّةٍ جَوَازُ فَرْضِ الْحَجِّ فِي غَيْرِ أَشْهُرِهِ الْمَعْلُومَاتِ؟ .

L12723 If they say: "You do not accept implicit evidence, so why do you cite Allah's statement {The Hajj is [observed in] specified months} [Al-Baqarah: 197] as proof that Hajj rituals must not be extended beyond their designated period?" We reply: We only reject your claim regarding implicit evidence when you seek to use it to invalidate another general Sunnah. However, if a text establishes a ruling and no other text introduces additions to it, it is not permissible for anyone to extend that ruling beyond the text in which it was explicitly mentioned.[27]

فَإِنْ قَالُوا: أَنْتُمْ لَا تَقُولُونَ بِدَلِيلِ الْخِطَابِ فَلِمَ جَعَلْتُمْ قَوْله تَعَالَى: {الْحَجُّ أَشْهُرٌ مَعْلُومَاتٌ} [البقرة: ١٩٧] حُجَّةً فِي أَنْ لَا يَتَعَدَّى بِأَعْمَالِ الْحَجِّ إلَى غَيْرِهَا؟ قُلْنَا: إنَّمَا نَمْنَعُ مِنْ دَعْوَاكُمْ فِي دَلِيلِ الْخِطَابِ إذَا أَرَدْتُمْ أَنْ تُبْطِلُوا بِهِ سُنَّةً أُخْرَى عَامَّةً، وَأَمَّا إذَا وَرَدَ نَصٌّ بِحُكْمٍ وَلَمْ يَرِدْ نَصٌّ آخَرُ بِزِيَادَةٍ عَلَيْهِ فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَتَعَدَّى بِذَلِكَ الْحُكْمِ النَّصَّ الَّذِي وَرَدَ فِيهِ.

L12724 As for the ʿUmrah, there have indeed been differences of opinion concerning it:

وَأَمَّا الْعُمْرَةُ فَإِنَّ الْخِلَافَ قَدْ جَاءَ فِي ذَلِكَ -:

[26] **Qur'an references (L12722):** Qur'an 2:197 (Al-Baqarah).
[27] **Qur'an references (L12723):** Qur'an 2:197 (Al-Baqarah).

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ سُئِلَ ابْنُ مَسْعُودٍ عَنْ الْعُمْرَةِ فِي أَشْهُرِ الْحَجِّ؟ فَقَالَ: الْحَجُّ أَشْهُرٌ مَعْلُومَاتٌ لَيْسَ فِيهِنَّ عُمْرَةٌ؟ وَعَنْ وَكِيعٍ عَنْ ابْنِ أَبِي رَوَّادٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ عُمَرُ: اجْعَلُوا الْعُمْرَةَ فِي غَيْرِ أَشْهُرِ الْحَجِّ أَتَمَّ لِحَجِّكُمْ وَلِعُمْرَتِكُمْ.

L12725 It was narrated to us from Ibn Abī Shaybah, from Abū Muʿāwiyah, from al-Aʿmash, from Qays ibn Muslim, from Ṭāriq ibn Shihāb: Ibn Masʿūd was asked about performing ʿUmrah during the months of Ḥajj. He replied, "Ḥ[illegible]ajj has well-known months; there is no ʿUmrah in them." In another narration from Wakīʿ, from Ibn Abī Rawwād, from Nāfiʿ, from Ibn ʿUmar, who reported that ʿUmar said: "Perform ʿUmrah outside the months of Ḥajj, for it is more complete for your Ḥajj and your ʿUmrah."

وَرُوِّينَا مِنْ طَرِيقِ الدَّرَاوَرْدِيِّ عَنْ الْجُعَيْدِ بْنِ عَبْدِ الرَّحْمَنِ: أَنَّ السَّائِبَ بْنَ يَزِيدَ اسْتَأْذَنَ عُثْمَانَ بْنَ عَفَّانَ فِي الْعُمْرَةِ فِي أَشْهُرِ الْحَجِّ؟ فَلَمْ يَأْذَنْ لَهُ.

L12726–12728 It was reported to us through the route of Ad-Darāwardī from al-Ju'ayd ibn ʿAbd al-Raḥmān that as-Sā'ib ibn Yazīd... A man sought permission from Uthman ibn Affan to perform Umrah during the months of Hajj, but Uthman did not permit him.

وَرُوِّينَا مِنْ طَرِيقِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: حَلَّتْ الْعُمْرَةُ الدَّهْرَ إلَّا ثَلَاثَةَ أَيَّامٍ: يَوْمَ النَّحْرِ، وَيَوْمَيْنِ مِنْ أَيَّامِ التَّشْرِيقِ.

L12729 And it has been reported to us through the chain of ʿĀ'ishah, the Mother of the Believers: "Umrah was permissible at all times except three days: the Day of Sacrifice, and the two days of Tashreeq."

وَمِنْ طَرِيقِ قَتَادَةَ عَنْ مُعَاذَةَ عَنْهَا.

L12730 And via the chain of Qatādah from Muʿādhah from her.

وَرُوِّينَا أَيْضًا عَنْهَا: تَمَّتْ الْعُمْرَةُ السَّنَةَ كُلَّهَا إلَّا أَرْبَعَةَ أَيَّامٍ: يَوْمَ عَرَفَةَ، وَيَوْمَ النَّحْرِ وَيَوْمَيْنِ مِنْ أَيَّامِ التَّشْرِيقِ.

L12731 It has also been narrated to us from her that Umrah is valid throughout the entire year except for four days: the Day of ʿArafah, the Day of Slaughter (Yawm al-Naḥr), and the two days of Tashrīq.

وَرُوِيَ أَيْضًا عَنْهَا إلَّا خَمْسَةَ أَيَّامٍ: يَوْمُ عَرَفَةَ، وَيَوْمُ النَّحْرِ، وَثَلَاثَةُ أَيَّامِ التَّشْرِيقِ.

L12732 It has also been narrated from her that fasting is prohibited on five days: the Day of Arafah, Eid al-Adha, and the three days of *Tashreeq*.

وَقَالَ أَبُو حَنِيفَةَ: الْعُمْرَةُ كُلُّهَا جَائِزَةٌ إلَّا خَمْسَةَ أَيَّامٍ، يَوْمُ عَرَفَةَ، وَيَوْمُ النَّحْرِ، وَثَلَاثَةُ أَيَّامِ التَّشْرِيقِ.

L12733 Abu Hanifah said: Umrah is entirely permissible except for five days: the Day of Arafah, the Day of Sacrifice, and the three Days of Tashreeq.

وَقَالَ مَالِكٌ: الْعُمْرَةُ جَائِزَةٌ فِي كُلِّ وَقْتٍ مِنْ السَّنَةِ إلَّا لِلْحَاجِّ خَاصَّةً فِي أَيَّامِ النَّحْرِ خَاصَّةً.

L12734 Malik said: Umrah is permissible at any time of the year except for the pilgrim specifically during the days of sacrifice specifically.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ كَمَا قُلْنَا.

L12735 And he said that Sufyan al-Thawri, al-Shafi'i, and Abu Sulayman said, as we have said.

قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ بْنَ أَبِي سَلَمَةَ اسْتَأْذَنَ عُمَرَ بْنَ الْخَطَّابِ فِي أَنْ يَعْتَمِرَ فِي شَوَّالٍ فَأَذِنَ لَهُ فَاعْتَمَرَ.

L12736 Ali said: It was narrated to us through Mālik from al-Zuhrī from Saʿīd ibn al-Musayyib that ʿUmar ibn Abī Salamah sought permission from ʿUmar ibn al-Khaṭṭāb to perform ʿUmrah in Shawwāl, so he permitted him, and he performed ʿUmrah.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ بُسْرِ بْنِ سَعِيدٍ قَالَ: اسْتَأْذَنَتْ أُخْتِي عَبْدَ اللَّهِ بْنَ عُمَرَ بَعْدَ مَا قَضَتْ حَجَّهَا أَتَعْتَمِرُ فِي ذِي الْحِجَّةِ؟ قَالَ: نَعَمْ.

L12737 And through the chain of Ibn Wahb from ʻAmr ibn al-Ḥārith from Bukayr ibn al-Ashajj from Busr ibn Saʿīd, who said: My sister asked ʻAbdullāh ibn ʻUmar after completing her Ḥajj, “May I perform ʻUmrah in Dhū al-Ḥijjah?” He replied: Yes.

وَعَنْ طَاوُسٍ أَنَّ رَجُلًا سَأَلَهُ فَقَالَ: تَعَجَّلْتُ فِي يَوْمَيْنِ أَفَأَعْتَمِرُ؟ قَالَ: نَعَمْ.

L12738 It is narrated from Ṭāwus that a man asked him, saying: “I hastened in two days. May I perform ʿUmrah?” He replied: “Yes.”

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ قَوْلُ بَعْضِهِمْ أَوْلَى مِنْ بَعْضٍ، وَلَا بَعْضُ الرِّوَايَاتِ عَنْ عَائِشَةَ أَوْلَى مِنْ غَيْرِهَا، وَقَدْ حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا إبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ فِرَاسٍ نا مُحَمَّدُ بْنُ عَلِيِّ بْنِ زَيْدٍ الصَّائِغُ نا سَعِيدُ بْنُ مَنْصُورٍ نا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - نا سُمَيٌّ هُوَ مَوْلَى أَبِي بَكْرٍ - عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْحَجُّ الْمَبْرُورُ لَيْسَ لَهُ جَزَاءٌ إلَّا الْجَنَّةُ وَالْعُمْرَةُ إلَى الْعُمْرَةِ تَكْفِيرٌ لِمَا بَيْنَهُمَا» .

L12739 Abu Muhammad said: The opinion of some is not more deserving of consideration than others, nor are some narrations from ’Aisha more authoritative than others. Ahmad ibn Muhammad al-Talamanki narrated to us from Ibn Mufarrij, from Ibrahim ibn Ahmad ibn Firas, from Muhammad ibn ’Ali ibn Zayd al-Sa’igh, from Sa’id ibn Mansur, from Sufyan - Ibn ’Uyaynah - from Sumayy - the freed slave of Abu Bakr - from Abu Salih, from Abu Hurayrah, from the Prophet - peace and blessings of Allah be upon him - who said: “The accepted Hajj has no recompense except Paradise, and the performance of one Umrah after another serves as expiation for what occurs between them.”

قَالَ أَبُو مُحَمَّدٍ: فَحَضَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْعُمْرَةِ وَلَمْ يَحُدَّ لَهَا وَقْتًا مِنْ وَقْتٍ فَهِيَ مُسْتَحَبَّةٌ فِي كُلِّ وَقْتٍ، وَأَمَّا اخْتِيَارُ أَبِي حَنِيفَةَ فَفَاسِدٌ جِدًّا، لِأَنَّهُ لَا حُجَّةَ لَهُ عَلَى صِحَّتِهِ دُونَ سَائِرِ مَا رُوِيَ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L12740–12741 Abu Muhammad said: The Messenger of God—may God bless him and grant him peace—exhorted to perform Umrah and did not restrict it to any specific time. Thus, it is recommended in every time. As for Abu Hanifa’s preferred opinion, it is profoundly unsound, for he possesses no decisive proof validating its correctness apart from other transmitted reports on this matter—and success comes only from God, the Exalted.

[مَسْأَلَةٌ الْحَجُّ لَا يَجُوزُ إلَّا مَرَّةً فِي السَّنَةِ]

٨٢٠ - مَسْأَلَةٌ:

Issue: The Hajj is not permissible except once a year.

820 – Issue:

Hajj is not permissible except once a year. As for Umrah, we recommend

performing it frequently because of the merit we have mentioned for it. As for Hajj, there is no disagreement concerning it.

وَالْحَجُّ لَا يَجُوزُ إِلَّا مَرَّةً فِي السَّنَةِ، وَأَمَّا الْعُمْرَةُ فَنُحِبُّ الْإِكْثَارَ مِنْهَا لِمَا ذَكَرْنَا مِنْ فَضْلِهَا، فَأَمَّا الْحَجُّ فَلَا خِلَافَ فِيهِ.

As for ʿUmrah, it has been narrated to us through Mujāhid's chain of transmission that ʿAlī ibn Abī Ṭālib said: "There is ʿUmrah every month."

L12745

وَأَمَّا الْعُمْرَةُ فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ مُجَاهِدٍ قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: فِي كُلِّ شَهْرٍ عُمْرَةٌ.

It is narrated from Al-Qāsim ibn Muḥammad that he considered two ʿUmrahs in a single month reprehensible (makruh).

L12746

وَعَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ أَنَّهُ كَرِهَ عُمْرَتَيْنِ فِي شَهْرٍ وَاحِدٍ.

And from Aisha, the Mother of the Believers, that she performed ʿUmrah three times in a single year.

L12747

وَعَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا اعْتَمَرَتْ ثَلَاثَ مَرَّاتٍ فِي عَامٍ وَاحِدٍ.

And from Saʿīd ibn Jubayr, al-Ḥasan al-Baṣrī, Muḥammad ibn Sīrīn, and Ibrāhīm al-Nakhaʿī: The reprehensibility of performing Umrah more than once per year; and this is the view of Mālik.

L12748

وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ، وَالْحَسَنِ الْبَصْرِيِّ، وَمُحَمَّدِ بْنِ سِيرِينَ وَإِبْرَاهِيمَ النَّخَعِيِّ: كَرَاهَةُ الْعُمْرَةِ أَكْثَرُ مِنْ مَرَّةٍ فِي السَّنَةِ، وَهُوَ قَوْلُ مَالِكٍ.

And it has been narrated to us from Tāwus that when the Days of Tashrīq have passed, perform ʿUmrah whenever you wish.

L12749

وَرُوِّينَا عَنْ طَاوُسٍ: إذَا مَضَتْ أَيَّامُ التَّشْرِيقِ فَاعْتَمِرْ مَتَى شِئْت.

And from Ikrimah: Perform Umrah whenever you are able to complete its rites, including the ritual shaving.

L12750

وَعَنْ عِكْرِمَةَ: اعْتَمِرْ مَتَى أَمْكَنَك الْمُوسَى.

And it is narrated from 'Aṭā' that he said: The validity of performing ʿUmrah twice in a single month.

L12751

وَعَنْ عَطَاءٍ إجَازَةُ الْعُمْرَةِ مَرَّتَيْنِ فِي الشَّهْرِ.

It is narrated from Ibn 'Umar that he performed *Umrah* twice in a single year: once in Rajab and once in Shawwal.

L12752

وَعَنْ ابْنِ عُمَرَ: أَنَّهُ اعْتَمَرَ مَرَّتَيْنِ فِي عَامٍ وَاحِدٍ مَرَّةً فِي رَجَبٍ، وَمَرَّةً فِي شَوَّالٍ.

From Anas ibn Mālik: that he resided for a period in Makkah, and whenever his hair became thick, he would depart to perform Umrah. This is the position of al-Shāfiʿī, Abū Ḥanīfah, and Abū Sulaymān, and we adopt this opinion because the Messenger of Allah—peace and blessings be upon him—instructed ʿĀ'ishah to perform Umrah. "Twice in a single month," and he—peace be upon him—did not deem it disliked; rather, he encouraged it and stated that it expiates what is between it and the second Umrah. Thus, performing it frequently is superior—and success comes from Allah, the Most High.

L12753–12755

وَعَنْ أَنَسِ بْنِ مَالِكٍ: أَنَّهُ أَقَامَ مُدَّةً بِمَكَّةَ فَكُلَّمَا جَمَّ رَأْسُهُ خَرَجَ فَاعْتَمَرَ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ، وَبِهِ نَأْخُذُ لِأَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ أَعْمَرَ عَائِشَةَ مَرَّتَيْنِ فِي الشَّهْرِ الْوَاحِدِ» وَلَمْ يَكْرَهْ - عَلَيْهِ السَّلَامُ - ذَلِكَ بَلْ حَضَّ عَلَيْهَا وَأَخْبَرَ أَنَّهَا تُكَفِّرُ مَا بَيْنَهَا، وَبَيْنَ الْعُمْرَةِ الثَّانِيَةِ، فَالْإِكْثَارُ مِنْهَا أَفْضَلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Those who disliked that argued by saying: "The Messenger of Allah—peace

L12756

and blessings be upon him—never performed Umrah in a year except once." We responded: "There is no valid proof in this, for something is only deemed disliked if he actively urged its abandonment. Yet he—peace and blessings be upon him—did not perform Hajj after migrating except once, nor perform Umrah after migrating except three Umrahs. This would obligate you to deem Hajj beyond once in a lifetime as disliked and Umrah beyond three times in one's entire life as disliked—contrary to your own position. It has been authentically established that he—peace and blessings be upon him—would abandon deeds he loved to perform, fearing they might impose hardship on his community or become obligatory upon them."

L12757 It is astonishing that they recommend a person to fast more than half the year and pray more than a third of the night, despite it being authentically reported that the Messenger of Allah (peace and blessings be upon him) never fasted an entire month, nor more than half the year, nor performed more than thirteen rak'ahs, nor prayed beyond a third of the night. Yet they did not consider his action (peace and blessings be upon him) as evidence for the disapproval of exceeding these amounts, despite the authenticity of his prohibition against increasing the fast beyond that amount and the duration of prayer performed at night beyond that.

L12758 They took his action—peace be upon him—in not performing Umrah within a year except once, even though he emphatically encouraged undertaking Umrah and performing it frequently, as a proof for the juristic dislike of exceeding one Umrah per year. This is utterly astonishing!

L12759 ## Issue: The Months of Hajj

L12760 ٨٢١ - Legal Question:

L12761 The months of Hajj are Shawwāl, Dhū al-Qiʿdah, and Dhū al-Ḥijjah. Some have said: Shawwāl, Dhū al-Qiʿdah, and ten days of Dhū al-Ḥijjah.

L12762 We have transmitted our statement from Ibn Abbas, and it has been authen-

وَاحْتَجَّ مَنْ كَرِهَ ذَلِكَ: بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَعْتَمِرْ فِي عَامٍ إِلَّا مَرَّةً وَاحِدَةً؟ قُلْنَا: لَا حُجَّةَ فِي هَذَا، لِأَنَّهُ إِنَّمَا يُكْرَهُ مَا حَضَّ عَلَى تَرْكِهِ وَهُوَ - عَلَيْهِ السَّلَامُ - لَمْ يَحُجَّ مُذْ هَاجَرَ إِلَّا حَجَّةً وَاحِدَةً وَلَا اعْتَمَرَ مُذْ هَاجَرَ إِلَّا ثَلَاثَ عُمَرَ فَيَلْزَمُكُمْ أَنْ تَكْرَهُوا الْحَجَّ إِلَّا مَرَّةً فِي الْعُمْرِ، وَأَنْ تَكْرَهُوا الْعُمْرَةَ إِلَّا ثَلَاثَ مَرَّاتٍ فِي الدَّهْرِ، وَهَذَا خِلَافُ قَوْلِكُمْ، وَقَدْ صَحَّ أَنَّهُ كَانَ - عَلَيْهِ السَّلَامُ - يَتْرُكُ الْعَمَلَ هُوَ يُحِبُّ أَنْ يَعْمَلَ بِهِ مَخَافَةَ أَنْ يَشُقَّ عَلَى أُمَّتِهِ أَوْ أَنْ يُفْرَضَ عَلَيْهِمْ.

وَالْعَجَبُ أَنَّهُمْ يَسْتَحِبُّونَ أَنْ يَصُومَ الْمَرْءُ أَكْثَرَ مِنْ نِصْفِ الدَّهْرِ، وَأَنْ يَقُومَ أَكْثَرَ مِنْ ثُلُثِ اللَّيْلِ، وَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَصُمْ قَطُّ - شَهْرًا كَامِلًا، وَلَا أَكْثَرَ مِنْ نِصْفِ الدَّهْرِ، وَلَا قَامَ بِأَكْثَرَ مِنْ ثَلَاثَ عَشْرَةَ رَكْعَةً، وَلَا أَكْثَرَ مِنْ ثُلُثِ اللَّيْلِ، فَلَمْ يَرَوْا فِعْلَهُ - عَلَيْهِ السَّلَامُ - هَاهُنَا حُجَّةً فِي كَرَاهَةِ مَا زَادَ عَلَى صِحَّةِ نَهْيِهِ عَنْ الزِّيَادَةِ فِي الصَّوْمِ وَمِقْدَارِ مَا يُقَامُ مِنْ اللَّيْلِ عَلَى أَكْثَرَ مِنْ ذَلِكَ.

وَجَعَلُوا فِعْلَهُ - عَلَيْهِ السَّلَامُ - فِي أَنَّهُ لَمْ يَعْتَمِرْ فِي الْعَامِ إِلَّا مَرَّةً مَعَ حَضِّهِ عَلَى الْعُمْرَةِ وَالْإِكْثَارِ مِنْهَا حُجَّةً فِي كَرَاهَةِ الزِّيَادَةِ عَلَى عُمْرَةٍ مِنْ الْعَامِ وَهَذَا عَجَبٌ جِدًّا.

[مَسْأَلَةُ أَشْهُرُ الْحَجِّ]

٨٢١ - مَسْأَلَةٌ:

وَأَشْهُرُ الْحَجِّ: شَوَّالٌ، وَذُو الْقِعْدَةِ، وَذُو الْحِجَّةِ، وَقَالَ قَوْمٌ: شَوَّالٌ، وَذُو الْقِعْدَةِ، وَعَشْرٌ مِنْ ذِي الْحِجَّةِ.

ticated from Ibn Umar through the chain of Ibn Umar → Nafiʿ → Muhammad ibn Ishaq. This is also the view of Tawus, and Ata.

L12763 It has also been narrated to us regarding the alternative view from Ibn Abbas, Ibn Mas'ud, and Ibrahim al-Nakha'i. Moreover, it has been narrated to us from al-Hasan that [the designated period comprises] Shawwal, Dhu al-Qa'dah, and the beginning of Dhu al-Hijjah.

L12764 Abu Muhammad said: The Exalted stated: {Hajj is [during] well-known months} [Al-Baqarah: 197]. The term "months" is not applied to two months and a portion of another, for "months" [implies three or more]. Moreover, the stoning of the jamarat – which is among the rites of Hajj – is performed on the thirteenth day of Dhul-Hijjah, and Tawaf al-Ifadah (the visitation circumambulation) – which is among the obligations of Hajj – is performed throughout all of Dhul-Hijjah without any disagreement among them. Thus, it is confirmed that they are three months – and success is from Allah, the Exalted.[28]

Chapter on the Designated Boundaries for Ḥajj and ʿUmrah.

L12765–12766

L12767 Issue:

L12768 For Hajj and Umrah, there are designated places called "the Mawaqit," singularly termed "Miqat." It is impermissible for anyone to assume ihram for Hajj or Umrah before reaching them.

L12769 It is for those coming from all lands on the route toward Medina or who are residents of Medina: Dhu al-Hulayfah, located four miles from Medina and one hundred ninety-eight miles (two hundred less two) from Mecca.

L12770 And for those coming from all regions, or from the Levant, or from Egypt via the Egyptian route or via the Levantine route: Al-Juhfah—which lies between the west and north of Mecca—is eighty-two miles from it.

رُوِّينَا قَوْلَنَا عَنْ ابْنِ عَبَّاسٍ وَصَحَّ عَنْ ابْنِ عُمَرَ مِنْ طَرِيقِ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ نَافِعٍ عَنْهُ - وَهُوَ قَوْلُ طَاوُسٍ، وَعَطَاءٍ.

وَرُوِّينَا الْقَوْلَ الْآخَرَ عَنْ ابْنِ عَبَّاسٍ أَيْضًا، وَعَنْ ابْنِ مَسْعُودٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَرُوِّينَا عَنْ الْحَسَنِ: شَوَّالٌ، وَذُو الْقَعْدَةِ، وَصَدْرُ ذِي الْحِجَّةِ.

قَالَ أَبُو مُحَمَّدٍ: قَالَ تَعَالَى: {الْحَجُّ أَشْهُرٌ مَعْلُومَاتٌ} [البقرة: ١٩٧] وَلَا يُطْلَقُ عَلَى شَهْرَيْنِ، وَبَعْضِ آخَرَ: أَشْهُرٌ، وَأَيْضًا فَإِنَّ رَمْيَ الْجِمَارِ - وَهُوَ مِنْ أَعْمَالِ الْحَجِّ - يُعْمَلُ الْيَوْمَ الثَّالِثَ عَشَرَ مِنْ ذِي الْحِجَّةِ، وَطَوَافُ الْإِفَاضَةِ - وَهُوَ مِنْ فَرَائِضِ الْحَجِّ - يُعْمَلُ فِي ذِي الْحِجَّةِ كُلِّهِ بِلَا خِلَافٍ مِنْهُمْ، فَصَحَّ أَنَّهَا ثَلَاثَةُ أَشْهُرٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ لِلْحَجِّ وَالْعُمْرَةِ مَوَاقِيت]

مَسْأَلَةٌ:

وَلِلْحَجِّ، وَالْعُمْرَةِ مَوَاضِعُ تُسَمَّى: الْمَوَاقِيتَ، وَاحِدُهَا: مِيقَاتٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يُحْرِمَ بِالْحَجِّ، وَلَا بِالْعُمْرَةِ قَبْلَهَا.

وَهِيَ لِمَنْ جَاءَ مِنْ جَمِيعِ الْبِلَادِ عَلَى طَرِيقِ الْمَدِينَةِ، أَوْ كَانَ مِنْ أَهْلِ الْمَدِينَةِ: ذُو الْحُلَيْفَةِ - وَهُوَ مِنْ الْمَدِينَةِ عَلَى أَرْبَعَةِ أَمْيَالٍ - وَهُوَ مِنْ مَكَّةَ عَلَى مِائَتَيْ مِيلٍ - غَيْرَ مِيلَيْنِ.

وَلِمَنْ جَاءَ مِنْ جَمِيعِ الْبِلَادِ، أَوْ مِنْ الشَّامِ، أَوْ مِنْ مِصْرَ عَلَى طَرِيقِ مِصْرَ، أَوْ عَلَى طَرِيقِ الشَّامِ: الْجُحْفَةُ - وَهِيَ فِيمَا بَيْنَ الْمَغْرِبِ وَالشِّمَالِ - مِنْ مَكَّةَ وَمِنْهَا إلَى مَكَّةَ اثْنَانِ وَثَمَانُونَ مِيلًا.

[28] **Qur'an references (L12764):** Qur'an 2:197 (Al-Baqarah).

L12771 For those coming via the Iraq route to Mecca, and from all regions: Dhat ‘Irq—located between the east and the north of Mecca—is forty-two miles from it.

وَلِمَنْ جَاءَ مِنْ طَرِيقِ الْعِرَاقِ مِنْهَا، وَمِنْ جَمِيعِ الْبِلَادِ: ذَاتُ عِرْقٍ - وَهُوَ بَيْنَ الْمَشْرِقِ وَالشِّمَالِ - مِنْ مَكَّةَ، وَمِنْهَا إِلَى مَكَّةَ اثْنَانِ وَأَرْبَعُونَ مِيلًا.

L12772 For those arriving via Najd’s route from all regions entirely: Qarn—east of Mecca—and from there to Mecca is forty-two miles.

وَلِمَنْ جَاءَ عَلَى طَرِيقِ نَجْدٍ مِنْ جَمِيعِ الْبِلَادِ كُلِّهَا: قَرْنٌ - وَهُوَ شَرْقِيٌّ مِنْ مَكَّةَ - وَمِنْهُ إِلَى مَكَّةَ اثْنَانِ وَأَرْبَعُونَ مِيلًا.

L12773 For those arriving via the Yemeni route—whether traveling along that path or from all regions—the miqat is Yalamlam, situated south of Mecca. It lies thirty miles from Mecca.

وَلِمَنْ جَاءَ عَلَى طَرِيقِ الْيَمَنِ مِنْهَا، أَوْ مِنْ جَمِيعِ الْبِلَادِ: يَلَمْلَمُ - وَهُوَ جَنُوبٌ مِنْ مَكَّةَ - وَمِنْهُ إِلَى مَكَّةَ ثَلَاثُونَ مِيلًا.

L12774 Every person who passes by any of these places while intending to perform Hajj or Umrah is not permitted to proceed beyond it without being in the state of Ihram. If one does not assume Ihram at it, they have no valid Ihram, Hajj, or Umrah unless they return to the Miqat they passed through, intend to assume Ihram from it, whereby their Ihram, Hajj, and Umrah are then valid.

فَكُلُّ مَنْ خَطَرَ عَلَى أَحَدِ هَذِهِ الْمَوَاضِعِ وَهُوَ يُرِيدُ الْحَجَّ، أَوْ الْعُمْرَةَ، فَلَا يَحِلُّ لَهُ أَنْ يَتَجَاوَزَهُ إِلَّا مُحْرِمًا فَإِنْ لَمْ يُحْرِمْ مِنْهُ: فَلَا إِحْرَامَ لَهُ، وَلَا حَجَّ لَهُ، وَلَا عُمْرَةَ لَهُ إِلَّا أَنْ يَرْجِعَ إِلَى الْمِيقَاتِ الَّذِي مَرَّ عَلَيْهِ فَيَنْوِيَ الْإِحْرَامَ مِنْهُ، فَيَصِحَّ حِينَئِذٍ إِحْرَامُهُ، وَحَجُّهُ، وَعُمْرَتُهُ.

L12775 If he assumes ihram before any of these designated places (mawaqit) while passing through them, he has no valid ihram, no valid Hajj, and no valid Umrah—unless he intends, upon reaching the miqat, to reassume ihram. In that case, it is permissible. His ihram at that time is complete, his Hajj is complete, and his Umrah is complete.

فَإِنْ أَحْرَمَ قَبْلَ شَيْءٍ مِنْ هَذِهِ الْمَوَاقِيتِ وَهُوَ يَمُرُّ عَلَيْهَا: فَلَا إِحْرَامَ لَهُ، وَلَا حَجَّ لَهُ، وَلَا عُمْرَةَ لَهُ إِلَّا أَنْ يَنْوِيَ إِذَا صَارَ فِي الْمِيقَاتِ تَجْدِيدَ إِحْرَامٍ فَذَلِكَ جَائِزٌ، وَإِحْرَامُهُ حِينَئِذٍ تَامٌّ، وَحَجُّهُ تَامٌّ، وَعُمْرَتُهُ تَامَّةٌ.

L12776 Whoever is from the people of Syria or Egypt, or the regions beyond them, and takes the route of Madinah while intending Hajj or Umrah, may not delay entering ihram from Dhu al-Hulayfah to enter ihram from al-Juhfah. If he does so, his Hajj, ihram, and Umrah remain invalid unless he returns to Dhu al-Hulayfah and renews his ihram from there - only then will his ihram, Hajj, and Umrah become valid.

وَمَنْ كَانَ مِنْ أَهْلِ الشَّامِ، أَوْ مِصْرَ فَمَا خَلْفَهُمَا فَأَخَذَ عَلَى طَرِيقِ الْمَدِينَةِ - وَهُوَ يُرِيدُ حَجًّا، أَوْ عُمْرَةً - فَلَا يَحِلُّ لَهُ تَأْخِيرُ الْإِحْرَامِ مِنْ ذِي الْحُلَيْفَةِ لِيُحْرِمَ مِنْ الْجُحْفَةِ، فَإِنْ فَعَلَ فَلَا حَجَّ لَهُ، وَلَا إِحْرَامَ لَهُ، وَلَا عُمْرَةَ لَهُ إِلَّا أَنْ يَرْجِعَ إِلَى ذِي الْحُلَيْفَةِ، فَيُجَدِّدَ مِنْهَا إِحْرَامًا: فَيَصِحَّ حِينَئِذٍ إِحْرَامُهُ، وَحَجُّهُ، وَعُمْرَتُهُ.

L12777–12779 So whoever passes by one of these miqat locations without intending to perform either Hajj or Umrah, there is no obligation upon him... If someone

فَمَنْ مَرَّ عَلَى أَحَدِ هَذِهِ الْمَوَاقِيتِ وَهُوَ لَا يُرِيدُ حَجًّا، وَلَا عُمْرَةً فَلَيْسَ عَلَيْهِ أَنْ يُحْرِمَ، فَإِنْ تَجَاوَزَهُ بِقَلِيلٍ، أَوْ بِكَثِيرٍ ثُمَّ بَدَا لَهُ فِي الْحَجِّ، أَوْ فِي الْعُمْرَةِ فَلْيُحْرِمْ مِنْ حَيْثُ بَدَا لَهُ فِي الْحَجِّ، أَوْ الْعُمْرَةِ، وَلَيْسَ عَلَيْهِ أَنْ يَرْجِعَ إِلَى الْمِيقَاتِ، وَلَا يَجُوزُ لَهُ الرُّجُوعُ إِلَيْهِ، وَمِيقَاتُهُ حِينَئِذٍ الْمَوْضِعُ الَّذِي بَدَا لَهُ فِي الْحَجِّ، أَوْ الْعُمْرَةِ: فَلَا يَحِلُّ لَهُ أَنْ يَتَجَاوَزَهُ إِلَّا مُحْرِمًا - فَإِنْ فَعَلَ ذَلِكَ: فَلَا إحْرَامَ لَهُ، وَلَا حَجَّ لَهُ، وَلَا عُمْرَةَ لَهُ إِلَّا أَنْ يَرْجِعَ إِلَى ذَلِكَ الْمَوْضِعِ فَيُجَدِّدَ مِنْهُ إحْرَامًا.

passes the miqāt by a short or long distance and subsequently forms the intention for Ḥajj or ʿUmrah, they must enter iḥrām from the place where the intention arises. They are not obligated to return to the miqāt, nor is it permissible for them to do so. Their miqāt at that point becomes the location where they formed the intention for Ḥajj or ʿUmrah. It is impermissible for them to proceed beyond this place without being in iḥrām. If they do so, there is no valid iḥrām, Ḥajj, or ʿUmrah for them unless they return to that specific place and renew their iḥrām anew from there.

فَمَنْ كَانَ مَنْزِلُهُ بَيْنَ الْمِيقَاتِ وَمَكَّةَ فَمِيقَاتُهُ مِنْ مَنْزِلِهِ كَمَا ذَكَرْنَا سَوَاءً سَوَاءً، أَوْ مِنْ الْمَوْضِعِ الَّذِي بَدَا لَهُ أَنْ يَحُجَّ مِنْهُ أَوْ يَعْتَمِرَ كَمَا قَدَّمْنَا.

L12780 Whoever resides between the designated *miqat* and Makkah must assume *ihram* from their residence precisely as we mentioned, or from the location where they intend to undertake Hajj or Umrah, as we have previously mentioned.

وَمَنْ كَانَ مِنْ أَهْلِ مَكَّةَ فَأَرَادَ الْحَجَّ فَمِيقَاتُهُ مَنَازِلُ مَكَّةَ، وَإِنْ أَرَادَ الْعُمْرَةَ فَلْيَخْرُجْ إِلَى الْحِلِّ فَلْيُحْرِمْ مِنْهُ وَأَدْنَى ذَلِكَ: التَّنْعِيمُ.

L12781 Whoever is from the people of Mecca and intends to perform Hajj, his Miqāt is the dwellings of Mecca. If he intends to perform Umrah, he must exit to al-Hill and enter Ihrām from there, and the closest of these [locations] is at-Tanʿīm.

وَمَنْ كَانَ طَرِيقُهُ لَا تَمُرُّ بِشَيْءٍ مِنْ هَذِهِ الْمَوَاقِيتِ فَلْيُحْرِمْ مِنْ حَيْثُ شَاءَ بَرًّا أَوْ بَحْرًا، فَإِنْ أَخْرَجَهُ قَدَرٌ بَعْدَ إحْرَامِهِ إلَى شَيْءٍ مِنْ هَذِهِ الْمَوَاقِيتِ فَفَرْضٌ عَلَيْهِ أَنْ يُجَدِّدَ مِنْهَا نِيَّةَ إحْرَامٍ وَلَا بُدَّ.

L12782 Whoever's route does not pass through any of these miqats must assume ihram from wherever they choose, whether on land or at sea. If divine decree compels them to pass through one of these miqats after assuming ihram, it becomes obligatory upon them to renew the intention (niyyah) for ihram from there.

بُرْهَانُ ذَلِكَ -: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عُمَرُ بْنُ مَنْصُورٍ نَا هِشَامُ بْنُ بَهْرَامَ نَا الْمَعَافِرِيُّ هُوَ ابْنُ عِمْرَانَ الْمَوْصِلِيُّ - نَا أَفْلَحُ بْنُ حُمَيْدٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَّتَ لِأَهْلِ الْمَدِينَةِ ذَا الْحُلَيْفَةِ، وَلِأَهْلِ الشَّامِ، وَمِصْرَ: الْجُحْفَةَ، وَلِأَهْلِ الْعِرَاقِ: ذَاتَ عِرْقٍ، وَلِأَهْلِ الْيَمَنِ: يَلَمْلَمَ» .

L12783 The proof of that is what was narrated to us by Abdullah ibn Rabīʿ through Muhammad ibn Muʿāwiyah through Ahmad ibn Shuʿayb through ʿUmar ibn Manṣūr through Hishām ibn Bahram through al-Maʿāfirī (who is Ibn ʿImrān al-Mawṣilī) through Aflaḥ ibn Ḥumayd through al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq through ʿĀ'ishah the Mother of the Believers: "That the Messenger of Allah (peace and blessings of Allah be upon him) designated Dhū al-Ḥulayfah for the people of Medina; al-Juḥfah for the people of Syria

and Egypt; Dhāt ʿIrq for the people of Iraq; and Yalamlam for the people of Yemen."[29]

L12784–12786 Abu Muhammad said: Hisham ibn Bahram is trustworthy, and al-Mu'afi is trustworthy; Sufyan used to call him "the red ruby." The rest of the narrators are more renowned than that. From Abdullah ibn Yusuf, from Ahmad ibn Fath, from Abdul Wahhab ibn Isa, from Ahmad ibn Muhammad, from Ahmad ibn Ali, from Muslim ibn al-Hajjaj, from Abu Bakr ibn Abi Shaybah, from Yahya ibn Adam, from Wuhaib, who is the son of Khalid, from Abdullah ibn Tawus, from his father, from Ibn Abbas: "The Messenger of Allah—peace and blessings be upon him—designated as miqāt for the people of Medina: Dhu al-Hulayfa; for the people of Syria: al-Juhfa; for the people of Najd: Qarn al-Manazil; and for the people of Yemen: Yalamlam. He said: These are for them and for every person coming from beyond them who intends Hajj or Umrah. And whoever..." If that is not possible, one must face it from where one begins—even the people of Mecca must face it from Mecca.[30]

قَالَ أَبُو مُحَمَّدٍ: هِشَامُ بْنُ بَهْرَامَ ثِقَةٌ، وَالْمُعَافِيُّ ثِقَةٌ، كَانَ سُفْيَانُ يُسَمِّيهِ: الْيَاقُوتَةَ الْحَمْرَاءَ، وَبَاقِيهِمْ أَشْهَرُ مِنْ ذَلِكَ -: نَا عَبْدُ اللَّهِ بْنُ يُوسُفَ نَا أَحْمَدُ بْنُ فَتْحٍ نَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نَا أَحْمَدُ بْنُ مُحَمَّدٍ نَا أَحْمَدُ بْنُ عَلِيٍّ نَا مُسْلِمُ بْنُ الْحَجَّاجِ نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نَا يَحْيَى بْنُ آدَمَ نَا وُهَيْبٌ هُوَ ابْنُ خَالِدٍ - نَا عَبْدُ اللَّهِ بْنُ طَاوُسٍ عَنْ أَبِيهِ عَنِ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَّتَ لأَهْلِ الْمَدِينَةِ: ذَا الْحُلَيْفَةِ، وَلأَهْلِ الشَّامِ: الْجُحْفَةَ، وَلأَهْلِ نَجْدٍ: قَرْنَ الْمَنَازِلِ، وَلأَهْلِ الْيَمَنِ: يَلَمْلَمَ. وَقَالَ: هُنَّ لَهُمْ وَلِكُلِّ آتٍ أَتَى عَلَيْهِنَّ مِنْ غَيْرِهِنَّ مِمَّنْ أَرَادَ الْحَجَّ وَالْعُمْرَةَ، وَمَنْ كَانَ دُونَ ذَلِكَ فَمِنْ حَيْثُ أَنْشَأَ حَتَّى أَهْلُ مَكَّةَ مِنْ مَكَّةَ» .

L12787 Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us; Ibrahim ibn Ahmad al-Balkhi narrated to us; al-Farbari narrated to us; al-Bukhari narrated to us; Musaddad narrated to us; Hammad, who is Ibn Zayd, narrated to us from Amr ibn Dinar from Tawus from Ibn Abbas, who said: "The Messenger of Allah—peace and blessings be upon him—designated for the people of Medina: Dhu al-Hulayfah; for the people of Syria: al-Juhfah; for the people of Najd: Qarn al-Manazil; and for the people of Yemen: Yalamlam. These are designated for their respective people and for those who come to them from outside their regions intending Hajj or Umrah. Whoever is located closer than these points—their place of assuming ihram (ihram) is their own locality. And in the same way, even the people of Mecca enter the state of consecration (ihram) from Mecca."

نَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نَا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيّ نَا الْفَرَبْرِيُّ نَا الْبُخَارِيُّ نَا مُسَدَّدٌ نَا حَمَّادٌ هُوَ ابْنُ زَيْدٍ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: «وَقَّتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لأَهْلِ الْمَدِينَةِ: ذَا الْحُلَيْفَةِ، وَلأَهْلِ الشَّامِ: الْجُحْفَةَ، وَلأَهْلِ نَجْدٍ: قَرْنَ الْمَنَازِلِ، وَلأَهْلِ الْيَمَنِ: يَلَمْلَمَ، فَهُنَّ لأَهْلِهِنَّ وَلِمَنْ أَتَى عَلَيْهِنَّ مِنْ غَيْرِ أَهْلِهِنَّ لِمَنْ كَانَ يُرِيدُ الْحَجَّ وَالْعُمْرَةَ فَمَنْ كَانَ دُونَهُنَّ فَمُهِلُّهُ مِنْ أَهْلِهِ، وَكَذَاكَ حَتَّى أَهْلُ مَكَّةَ يُهِلُّونَ مِنْهَا» .

L12788 Abu Muhammad said: These reports are more complete than every Hadith narrated on that matter and more authentic, and they systematically encompass all that we have mentioned section by section. Abu Muhammad said:

قَالَ أَبُو مُحَمَّدٍ: فَهَذِهِ الأَخْبَارُ أَتَمُّ مِنْ كُلِّ خَبَرٍ رُوِيَ فِي ذَلِكَ وَأَصَحُّ وَهِيَ مُنْتَظِمَةٌ كُلَّ مَا ذَكَرْنَا فَصْلًا فَصْلًا -: قَالَ أَبُو مُحَمَّدٍ: وَفِي بَعْضِ مَا ذَكَرْنَا خِلَافٌ -: فَمِنْهُ أَنَّ قَوْمًا

[29] **Hadith references (L12783):** Sunan an-Nasai 2653.
[30] **Hadith references (L12784):** Sahih Muslim 1181b.

There is disagreement regarding some of what we have mentioned—among which is that some people claimed the Miqat [designated pilgrimage site] for the people of Iraq is al-ʿAqīq, and they cited a Hadith as evidence that is not authentic, because its narrator Yazīd ibn Ziyād—who is weak in reliability as a narrator—transmitted it from Muḥammad ibn ʿAlī ibn ʿAbdullāh ibn al-ʿAbbās from al-ʿAbbās.

ادَّعَوْا أَنَّ مِيقَاتَ أَهْلِ الْعِرَاقِ: الْعَقِيقُ وَاحْتَجُّوا بِخَبَرٍ لَا يَصِحُّ لِأَنَّ رَاوِيَهُ يَزِيدَ بْنِ زِيَادٍ - وَهُوَ ضَعِيفٌ - عَنْ مُحَمَّدِ بْنِ عَلِيِّ بْنِ عَبْدِ اللَّهِ بْنِ الْعَبَّاسِ عَنْ عَبَّاسٍ.

L12789 Among these rulings is that the Mālikīs said: Specifically, those from the people of Ash-Shām who pass through Medina may delay assuming iḥrām until reaching Al-Juḥfa, as it is their mīqāt, and this does not apply to others. Abū Ḥanīfah, Ash-Shāfiʿī, Abū Sulaymān, and others prohibited this, and it is the correct view, based on the statement of the Prophet - peace and blessings be upon him -: "These mīqāts are for their people and for those who pass through them from other than their people who intend to perform Ḥajj or ʿUmrah."

وَمِنْهُ أَنَّ الْمَالِكِيِّينَ قَالُوا: مَنْ مَرَّ عَلَى الْمَدِينَةِ مِنْ أَهْلِ الشَّامِ خَاصَّةً فَلَهُمْ أَنْ يَدَعُوا الْإِحْرَامَ إلَى الْجُحْفَةِ؛ لِأَنَّهُ مِيقَاتُهُمْ وَلَيْسَ ذَلِكَ لِغَيْرِهِمْ؛ وَمَنَعَ مِنْ ذَلِكَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَغَيْرُهُمْ، وَهُوَ الْحَقُّ، لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «هُنَّ لِأَهْلِهِنَّ وَلِمَنْ أَتَى عَلَيْهِنَّ مِنْ غَيْرِ أَهْلِهِنَّ لِمَنْ كَانَ يُرِيدُ الْحَجَّ وَالْعُمْرَةَ» .

L12790 Dhu al-Hulayfah is the miqat for a Syrian or an Egyptian when he reaches it. If he passes beyond it without entering the state of ihram, he becomes disobedient to the Messenger of Allah—peace be upon him. The miqat applies exclusively to those who pass by it, according to the explicit statement of the Prophet—peace be upon him—not to those who do not pass by it at all.

فَقَدْ صَارَ ذُو الْحُلَيْفَةِ مِيقَاتًا لِلشَّامِيِّ، وَالْمِصْرِيِّ إذَا أَتَى عَلَيْهِ وَكَانَ إنْ تَجَاوَزَهُ غَيْرَ مُحْرِمٍ عَاصِيًا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا الْمِيقَاتُ لِمَنْ مَرَّ عَلَيْهِ بِنَصِّ كَلَامِهِ - عَلَيْهِ السَّلَامُ - لَا لِمَنْ لَمْ يَمُرَّ عَلَيْهِ فَقَطْ.

L12791–12793 If a Medinan were to pass by Al-Juhfah intending Ḥajj, but a need arose for him to go to Medina, it would not be permissible for him to delay assuming Iḥrām until Dhul-Hulayfah: It has been narrated to us through the chain of Saʿīd ibn Manṣūr: ʿAbd al-ʿAzīz narrated to us—the son of Muḥammad, al-Darāwardī—who informed me: Hishām ibn ʿUrwah reported from his father and Saʿīd ibn al-Musayyib, both of whom jointly stated: "Whoever from various regions passes through Madīnah should enter the state of iḥrām from the Prophet's iḥrām site (peace and blessings of Allāh be upon him) at Dhū al-Ḥulayfah." It has also been narrated to us from 'Aṭā' a statement identical to Mālik's. Additionally, it has been narrated to us through the chain of 'Abd al-Razzāq: from Maʿmar, from Ibn Jurayj, who informed me: Nāfiʿ reported from Ibn 'Umar that he said: "The people of Egypt and those

وَلَوْ أَنَّ مَدَنِيًّا يَمُرُّ عَلَى الْجُحْفَةِ يُرِيدُ الْحَجَّ وَعُرِضَتْ لَهُ مَعَ ذَلِكَ حَاجَةٌ إلَى الْمَدِينَةِ لَمْ يَجُزْ لَهُ أَنْ يُؤَخِّرَ الْإِحْرَامَ إلَى ذِي الْحُلَيْفَةِ -: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا عَبْدُ الْعَزِيزِ هُوَ ابْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ - أَخْبَرَنِي هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ، وَسَعِيدُ بْنُ الْمُسَيِّبِ قَالَا جَمِيعًا: مَنْ مَرَّ مِنْ أَهْلِ الْآفَاقِ بِالْمَدِينَةِ أَهَلَّ مِنْ مُهِلِّ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ ذِي الْحُلَيْفَةِ، وَرُوِّينَا عَنْ عَطَاءٍ مِثْلَ قَوْلِ مَالِكٍ: وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي نَافِعٌ عَنْ ابْنِ عُمَرَ قَالَ: أَهْلُ مِصْرَ، وَمَنْ مَرَّ مِنْ أَهْلِ الْجَزِيرَةِ عَلَى الْمَدِينَةِ فِي الْمِيقَاتِ مِنْ أَهْلِ الشَّامِ.

passing through Madīnah from the Jazīrah region at the prescribed boundary (mīqāt) are from the people of Shām."

L12794 Abu Muhammad said: This statement of Ibn Umar obligates them to delay assuming Ihram until al-Juhfah. From his opinion also derives the ruling for those whose route lies beyond the designated Miqāts, for some people held that one must assume Ihram when parallel to the Miqat—this being the opinion of Aṭā'. They cited as evidence the narration we transmitted through Ibn Umar's chain, who reported: The people of Iraq complained to Umar about their Hajj routes, stating that "Qarn al-Manāzil" deviated from their path. He instructed them: "Determine a point parallel to it along your route," thereby designating Dhāt ʿIrq for them.

L12795 Ali said: There is no proof in this for them because the authentically transmitted report regarding the Prophet's designation of Dhāt 'Irq as the pilgrimage boundary for the people of Iraq - peace and blessings of Allah be upon him - which we previously mentioned, demonstrates that 'Umar only designated for them what the Prophet - peace and blessings of Allah be upon him - had established. Even if no valid report existed concerning this matter, the statement of anyone other than Allah's Messenger - peace and blessings of Allah be upon him - would not constitute proof. Sufficient in this regard is his statement - peace be upon him - which we mentioned earlier: "Whoever is within that boundary should begin from where they reside."

L12796 It has been authentically reported from Ibn Umar that he did not hear the Prophet—peace and blessings of Allah be upon him—specify *al-Yalamlam* as a *miqat*. Thus, is the narration of one who heard [the Prophet] and knew more complete than that of one who heard some parts and not others? Another proof is that the entire Ummah has reached definitive consensus that whoever's path does not pass by any of the *miqats* is not obligated to enter *ihram* before reaching the point opposite the *miqat*'s location.

L12797 Then they differed regarding when one reaches the location of the Miqat. One faction held: He must assume Ihrām. Others maintained: It is not obligatory, for it is impermissible to establish an obligation without textual evidence or consensus.

قَالَ أَبُو مُحَمَّد: قَوْلُ ابْنِ عُمَرَ هَذَا يُوجِبُ عَلَيْهِمْ تَأْخِيرَ الْإِحْرَامِ إِلَى الْجُحْفَةِ، وَمِنْهُ مَنْ كَانَتْ طَرِيقُهُ عَلَى غَيْرِ الْمَوَاقِيتِ فَإِنَّ قَوْمًا قَالُوا: إِذَا حَاذَى الْمِيقَاتَ لَزِمَهُ أَنْ يُحْرِمَ - وَهُوَ قَوْلُ عَطَاءٍ - وَاحْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ عُمَرَ قَالَ: إِنَّ أَهْلَ الْعِرَاقِ شَكَوْا إِلَى عُمَرَ فِي حَجِّهِمْ أَنَّ " قَرْنَ الْمَنَازِلِ " جَوْرٌ عَنْ طَرِيقِهِمْ، فَقَالَ لَهُمْ: انْظُرُوا حَذْوَهَا مِنْ طَرِيقِكُمْ؟ فَحَدَّ لَهُمْ " ذَاتَ عِرْقٍ ".

قَالَ عَلِيٌّ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّ الْخَبَرَ الْمُسْنَدَ فِي تَوْقِيتِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَاتَ عِرْقٍ لِأَهْلِ الْعِرَاقِ وَقَدْ ذَكَرْنَاهُ آنِفًا فَإِنَّمَا حَدَّ لَهُمْ عُمَرُ مَا حَدَّ لَهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ لَوْ لَمْ يَصِحَّ فِي ذَلِكَ خَبَرٌ لَمَا كَانَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُجَّةٌ وَيَكْفِي مِنْ ذَلِكَ قَوْلُهُ - عَلَيْهِ السَّلَامُ - الَّذِي ذَكَرْنَا آنِفًا " وَمَنْ كَانَ دُونَ ذَلِكَ فَمِنْ حَيْثُ أَنْشَأَ ".

وَقَدْ صَحَّ عَنْ ابْنِ عُمَرَ أَنَّهُ لَمْ يَسْمَعْ تَوْقِيتَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَلَمْلَمَ، فَرِوَايَةُ مَنْ سَمِعَ، وَعَلِمَ: أَتَمُّ مِنْ رِوَايَةِ مَنْ سَمِعَ بَعْضًا وَلَمْ يَسْمَعْ بَعْضًا؟ وَبُرْهَانٌ آخَرُ -: وَهُوَ أَنَّ جَمِيعَ الْأُمَّةِ مُجْمِعُونَ إجْمَاعًا مُتَيَقَّنًا عَلَى أَنَّ مَنْ كَانَ طَرِيقُهُ لَا يَمُرُّ بِشَيْءٍ مِنْ الْمَوَاقِيتِ فَإِنَّهُ لَا يَلْزَمُهُ الْإِحْرَامُ قَبْلَ مُحَاذَاةِ مَوْضِعِ الْمِيقَاتِ.

ثُمَّ اخْتَلَفُوا إذَا حَاذَى مَوْضِعَ الْمِيقَاتِ، فَقَالَتْ طَائِفَةٌ: يَلْزَمُهُ أَنْ يُحْرِمَ، وَقَالَ آخَرُونَ: لَا يَلْزَمُهُ، فَلَا يَجُوزُ أَنْ يَجِبَ فَرْضٌ بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ.

وَمِنْهُ مَنْ تَجَاوَزَ الْمِيقَاتَ وَهُوَ يُرِيدُ حَجًّا أَوْ عُمْرَةً فَلَمْ يُحْرِمْ وَأَحْرَمَ بَعْدَهُ فَإِنَّ أَبَا حَنِيفَةَ قَالَ: هُوَ مُسِيءٌ وَيَرْجِعُ إِلَى مِيقَاتِهِ فَيُلَبِّي مِنْهُ وَلَا دَمَ عَلَيْهِ وَلَا شَيْءَ؛ فَإِنْ رَجَعَ إِلَى الْمِيقَاتِ وَلَمْ يُلَبِّ مِنْهُ فَعَلَيْهِ دَمُ شَاةٍ، وَكَذَلِكَ عَلَيْهِ دَمٌ إِنْ لَمْ يَرْجِعْ إِلَى الْمِيقَاتِ، وَحَجُّهُ وَعُمْرَتُهُ تَامَّانِ فِي كُلِّ ذَلِكَ.

Among them is one who passes the Miqāt intending Ḥajj or ʿUmrah without entering iḥrām, then enters iḥrām after passing it. For Abū Ḥanīfah said: He is blameworthy and must return to his Miqāt to recite the Talbiyah from it, with no sacrificial offering nor anything else. If he returns to... If he passed the designated boundary (miqāt) without reciting the talbiyah from it, he must offer a sheep as expiatory sacrifice (dam). Likewise, he must offer a sacrifice if he does not return to the miqāt, yet his Hajj and Umrah are still complete in all such circumstances.

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ أَحَدًا قَبْلَهُ قَسَّمَ هَذَا التَّقْسِيمَ [الطَّرِيفَ] مِنْ إِسْقَاطِهِ الدَّمَ بِرُجُوعِهِ إِلَى الْمِيقَاتِ وَتَلْبِيَتِهِ مِنْهُ وَإِثْبَاتِهِ الدَّمَ إِنْ لَمْ يَرْجِعْ، أَوْ إِنْ رَجَعَ إِلَى الْمِيقَاتِ وَلَمْ يُلَبِّ وَهَذَا أَمْرٌ لَا يُوجِبُهُ قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا قِيَاسٌ، وَلَا نَظَرٌ يُعْقَلُ؟ وَقَالَ مَالِكٌ، وَسُفْيَانُ، وَالْأَوْزَاعِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَاللَّيْثُ، وَأَبُو يُوسُفَ: إِنْ رَجَعَ إِلَى الْمِيقَاتِ فَأَحْرَمَ مِنْهُ، فَلَا شَيْءَ عَلَيْهِ، وَلَا دَمَ وَلَا غَيْرَهُ لَبَّى أَوْ لَمْ يُلَبِّ؛ وَإِنْ لَمْ يَرْجِعْ فَعَلَيْهِ دَمٌ، وَحَجُّهُ، وَعُمْرَتُهُ: صَحِيحَانِ.

Abū Muḥammad said: We do not know anyone before him who divided this novel categorization - annulling the expiation sacrifice (dam) by returning to the miqāt and uttering the talbiyah there, while affirming the dam if one does not return, or returns to the miqāt without uttering the talbiyah. Is this a ruling not mandated by the Quran, nor a sound Sunnah, nor a weak narration, nor the opinion of a Companion, nor a Successor, nor analogical reasoning, nor any rationally sound reasoning? Mālik, Sufyān, al-Awzāʿī, Ḥasan ibn Ḥayy, al-Layth, and Abū Yūsuf said: If one returns to the miqāt and enters into iḥrām from it, there is nothing incumbent upon him, neither dam nor anything else, whether he uttered the talbiyah or not. If he does not return, then the dam is required of him, and both his Ḥajj and ʿUmrah remain valid.

وَقَالَ زُفَرُ: عَلَيْهِ دَمُ شَاةٍ رَجَعَ إِلَى الْمِيقَاتِ أَوْ لَمْ يَرْجِعْ.

Zufar said: He is obligated to sacrifice a sheep, whether he returned to the mīqāt or did not return.

قَالَ أَبُو مُحَمَّدٍ: رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ قَالَ: نَا وَكِيعٌ وَابْنُ عُلَيَّةَ قَالَ وَكِيعٌ: عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ؛ وَقَالَ ابْنُ عُلَيَّةَ: عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ جَابِرِ بْنِ زَيْدٍ ثُمَّ اتَّفَقَ حَبِيبٌ، وَجَابِرٌ كِلَاهُمَا عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ كَانَ يَرُدُّ إِلَى الْمِيقَاتِ الَّذِينَ يَدْخُلُونَ مَكَّةَ بِغَيْرِ إِحْرَامٍ، قَالَ جَابِرٌ: رَأَيْته يَفْعَلُ ذَلِكَ، وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ مُجَاهِدٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ قَالَ: إذَا زَلَّ الرَّجُلُ

Abu Muhammad said: It was reported to us through the chain of Ibn Abi Shaybah, who said: Narrated to us by Waki‘ and Ibn ‘Ulayyah. Waki‘ said: From Sufyan al-Thawri from Habib ibn Abi Thabit; and Ibn ‘Ulayyah said: From Ayyub al-Sikhtiyani from ‘Amr ibn Dinar from Jabir ibn Zayd. Then the chains of Habib and Jabir concur, both narrating from Ibn ‘Abbas: that he would go to the *miqat* [to address] those who enter Mecca without *iḥrām*. Jabir said: I saw him do that. Through the chain of ‘Abd al-Razzaq from Ibn Mujahid from his father from Ibn ‘Abbas, who said: If a man misses the time [i.e., the *miqat*] while not in *iḥrām*, he must return to the *miqat*. If he fears missing Hajj, he may proceed forward and offer a compensatory sacrifice *dam*.

عَنْ الْوَقْتِ - وَهُوَ غَيْرُ مُحْرِمٍ - فَإِنَّهُ يَرْجِعُ إِلَى الْمِيقَاتِ فَإِنْ خَشِيَ أَنْ يَفُوتَهُ الْحَجُّ تَقَدَّمَ وَأَهْرَاقَ دَمًا.

L12804 From Laith, from ‘Ata’, from Ibn Abbas: If one does not assume ihram from his designated miqat, it suffices him, but he must sacrifice a dam.

وَعَنْ لَيْثٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ إِذَا لَمْ يُهِلَّ مِنْ مِيقَاتِهِ أَجْزَأَهُ وَأَرَاقَ دَمًا - وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا وَكِيعٌ عَنْ إِسْمَاعِيلَ عَنْ وَبَرَةَ: أَنَّ رَجُلًا دَخَلَ مَكَّةَ - وَعَلَيْهِ ثِيَابٌ وَقَدْ حَضَرَ الْحَجَّ وَخَافَ إِنْ رَجَعَ فَوْتَهُ - فَأَمَرَهُ ابْنُ الزُّبَيْرِ أَنْ يُهِلَّ مِنْ مَكَانِهِ فَإِذَا قَضَى الْحَجَّ خَرَجَ إِلَى الْوَقْتِ فَأَهَلَّ بِعُمْرَةٍ.

Via the chain of Ibn Abi Shaybah: Wakīʿ narrated to us from Ismāʿīl from Wabarah: A man entered Mecca wearing non-ihram garments while intending for Hajj, fearing that returning [to the miqat] would cause him to miss Hajj. Ibn al-Zubayr ordered him to assume ihram from his current location. When he completed Hajj, he departed from Mecca immediately and assumed ihram for Umrah.

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا ابْنُ عُيَيْنَةَ عَنْ أَبَانَ بْنِ تَغْلِبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ عَنْ أَبِيهِ أَوْ عَمِّهِ: أَنَّ ابْنَ مَسْعُودٍ رَآهُمْ بِذَاتِ الشُّقُوقِ فَقَالَ: مَا هَؤُلَاءِ؟ أَتُجَّارٌ؟ قَالُوا: لَا، قَالَ: فَمَا يَحْبِسُهُمْ عَمَّا خَرَجُوا لَهُ؟ فَمَالُوا إِلَى أَدْنَى مَاءٍ فَاغْتَسَلُوا وَأَحْرَمُوا.

L12805 It has been narrated to us via Saʿīd ibn Manṣūr: Ibn ʿUyaynah narrated to us, from Abān ibn Taghlib, from ʿAbd al-Raḥmān ibn al-Aswad, from his father or uncle: that Ibn Masʿūd saw them at Dhāt al-Shuqūq and said, “Who are these? Are they merchants?” They said, “No.” He said, “What keeps them from fulfilling the purpose of their journey?” They then turned to the nearest water, performed *ghusl*, and assumed *iḥrām*.

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ عَنْ الصَّحَابَةِ فِي هَذَا إِلَّا مَا أَوْرَدْنَا.

L12806–12807 Abu Muhammad said: We know of nothing from the Companions regarding this matter except what we have cited.

وَرُوِيَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِتَجَاوُزِ الْمِيقَاتِ لِمَنْ أَرَادَ الْحَجَّ وَالْعُمْرَةَ.

L12808 It has been reported from Yaḥyā ibn Saʿīd al-Anṣārī that he found no objection to those intending to perform Ḥajj and ʿUmrah passing beyond the mīqāt (the predefined ritual boundary for entering iḥrām).

وَعَنْ الزُّهْرِيِّ نَحْوُ هَذَا لِمَنْ تَوَقَّعَ شَيْئًا - وَعَنْ وَكِيعٍ عَنْ سُفْيَانَ عَنْ حَبِيبٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ فِيمَنْ دَخَلَ مَكَّةَ لَا حَاجًّا وَلَا مُعْتَمِرًا وَخَشِيَ فَوَاتَ الْحَجِّ إنْ خَرَجَ إلَى الْمِيقَاتِ، قَالَ: يُهِلُّ مِنْ مَكَانِهِ.

L12809 A ruling similar to this is reported from al-Zuhri regarding one who anticipates something. From Waki’, from Sufyan, from Habib, from Ibrahim al-Nakha’i concerning someone who enters Mecca neither to perform Hajj nor Umrah, yet fears missing Hajj if he departs for the Miqat (designated boundary for assuming Ihram). He said: “He should declare his intention for Hajj from his current location.”

قَالَ حَبِيبٌ: وَلَمْ يَذْكُرْ دَمًا.

L12810 Habib said: And he did not mention blood.

وَعَنْ الْحَسَنِ، وَسَعِيدِ بْنِ جُبَيْرٍ: أَنَّهُ يَرْجِعُ إلَى الْمِيقَاتِ.

L12811 And from al-Ḥasan and Saʿīd ibn Jubayr, that one is to return to the miqāt.

وَعَنْ عَطَاءٍ قَالَ مَرَّةً: عَلَيْهِ دَمٌ، وَمَرَّةً قَالَ: لَا شَيْءَ عَلَيْهِ، رُوِّينَا ذَلِكَ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ عَطَاءٍ قَالَ: لَيْسَ عَلَى مَنْ تَجَاوَزَ الْمِيقَاتَ غَيْرَ مُحْرِمٍ شَيْءٌ.

L12812 From ‘Ata’, it is reported that he once said: “Upon him is a sacrifice,” and another time he said: “There is no obligation upon him.” This was narrated to us through Sa‘id ibn Mansur, who narrated to us: Sufyan (Ibn ‘Uyaynah) from Ibn Abi Najih, from ‘Ata’, who said: “There is nothing incumbent upon one who passes beyond the *miqat* without entering *ihram*.”

قَالَ سُفْيَانُ: لَا يُعْجِبُنَا.

L12813 Sufyān said, “It does not please us.”

</FinalTranslation>

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا عَتَّابُ بْنُ بَشِيرٍ أَنَا خُصَيْفٌ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: مَنْ جَاوَزَ الْوَقْتَ الَّذِي وَقَّتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يُحْرِمْ مِنْهُ فَلَنْ يُغْنِيَ عَنْهُ إنْ أَحْرَمَ شَيْئًا حَتَّى يَرْجِعَ إلَى الْوَقْتِ الَّذِي وَقَّتَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيُحْرِمُ مِنْهُ إلَّا إنْسَانٌ أَهْلُهُ مِنْ وَرَاءِ الْوَقْتِ فَيُحْرِمُ مِنْ أَهْلِهِ.

L12814 From the narration of Sa’id ibn Mansur: ’Attab ibn Bashir narrated to us, Khusayf narrated to us from Sa’id ibn Jubayr, who said: Whoever exceeds the designated time that the Messenger of Allah - peace and blessings of Allah be upon him - specified without entering Ihram during it, nothing will avail him if he assumes Ihram at all until he returns to the time that the Prophet - peace and blessings of Allah be upon him - designated and enters Ihram during it. This excludes one whose family resides beyond the designated time, in which case he may enter Ihram from where his family resides.

قَالَ أَبُو مُحَمَّدٍ: فَأَصَحُّ الرِّوَايَاتِ عَنْ ابْنِ عَبَّاسٍ، وَهَذِهِ الرِّوَايَةُ عَنْ سَعِيدِ بْنِ جُبَيْرٍ مُوَافِقَةٌ لِقَوْلِنَا، وَأَضْعَفُ الرِّوَايَاتِ عَنْ ابْنِ عَبَّاسٍ مُوَافِقَةٌ لِقَوْلِ الْحَاضِرِينَ مِنْ مُخَالِفِينَا وَلَيْسَ بَعْضُ أَقْوَالِهِمْ - رَضِيَ اللَّهُ عَنْهُمْ - بِأَوْلَى مِنْ بَعْضٍ، الْوَاجِبُ عِنْدَ التَّنَازُعِ مَا أَوْجَبَهُ اللَّهُ تَعَالَى إذْ يَقُولُ: {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [النساء: ٥٩] فَفَعَلْنَا - وَلِلَّهِ الْحَمْدُ - فَوَجَدْنَا اللَّهَ تَعَالَى قَدْ وَقَّتَ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَوَاقِيتَ وَحَدَّ حُدُودًا فَلَا يَحِلُّ تَعَدِّيهَا {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

L12815 Abū Muḥammad said: The most authentic narrations from Ibn ʿAbbās—and this narration from Saʿīd ibn Jubayr aligns with our position—while the weakest narrations from Ibn ʿAbbās conform to the statements of our present opponents. None of their statements—may Allah be pleased with them—holds greater validity than another. In cases of dispute, only what Allah the Exalted has ordained is obligatory, as He states: “If you differ regarding any matter, refer it to Allah and His Messenger, if you truly believe in Allah and the Last Day” (al-Nisāʾ 4:59). We have done so—praise be to Allah—and we found that Allah the Exalted specified times through His Messenger’s pronouncement—peace and blessings of Allah be upon him—and defined boundaries that must not be transgressed. “Whoever transgresses the boundaries set by Allah has wronged themselves” (al-Ṭalāq 65:1).[31]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَقَالَ - عَلَيْهِ السَّلَامُ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَمْ يَجُزْ أَنْ يُصَحِّحَ عَمَلًا عُمِلَ عَلَى خِلَافِ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا أَنْ يُشَرِّعَ وُجُوبَ

L12816–12818 The Messenger of Allah—peace be upon him—said, “Whoever performs an action not in accordance with our command, it is rejected.” He—peace be upon him—also said, “Your blood and wealth upon you are inviolable.”

[31] **Qur’an references (L12815):** Qur’an 4:59 (An-Nisa); Qur’an 65:1 (At-Talaq).

دَمٍ لَمْ يُوجِبْهُ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] فَيُبِيحُ مِنْ مَالِهِ الْمُحْرِمُ مَا لَمْ يَأْتِ قُرْآنٌ وَلَا سُنَّةٌ بِإِبَاحَتِهِ، وَمَا نَعْلَمُ لِمَنْ أَوْجَبَ الدَّمَ وَأَجَازَ الْإِحْرَامَ حُجَّةً أَصْلًا.

Therefore, it is not permissible to validate any action performed contrary to the command. It is not for the Messenger of Allah (peace and blessings of Allah be upon him) to legislate the obligation of a compensatory offering that Allah the Exalted has not ordained, nor His Messenger (peace and blessings of Allah be upon him) - "And your Lord is never forgetful" [Maryam: 64]. Thus, those [who impose this ruling] permit the pilgrim to use his wealth for what no Quranic injunction or Sunnah has legitimized, and we know of no valid foundational evidence whatsoever for those who impose the compensatory offering while permitting the assumption of Ihram.[3233]

فَإِنَّ قَالُوا: إنَّ أَشْيَاءَ جَاءَ النَّصُّ فِيهَا بِوُجُوبِ دَمٍ؟ قُلْنَا: نَعَمْ، فَلَا يَجُوزُ تَعَدِّيهَا وَلَيْسَ مِنْكُمْ أَحَدٌ إلَّا وَقَدْ أَوْجَبَ الدَّمَ حَيْثُ لَمْ يُوجِبْهُ صَاحِبُهُ، وَهَذَا تَحَكُّمٌ لَا يَجُوزُ الْقَوْلُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L12819 If they say, "Are there not matters where the text specifies the obligation of a blood sacrifice?" We reply: Yes, so it is impermissible to transgress them. There is none among you who has not required a blood offering where his counterpart did not deem it obligatory—and this is arbitrary judgment; it is impermissible to uphold such a view. And success is from Allah, the Exalted.

وَمِنْهُ مَنْ أَحْرَمَ قَبْلَ الْوَقْتِ فَإِنَّ قَوْمًا اسْتَحَبُّوهُ، وَقَوْمًا كَرِهُوهُ وَأَلْزَمُوهُ إذَا وَقَعَ.

L12820 Another juristic ruling concerns one who enters *iḥrām* before its designated time. Some jurists deemed this commendable, while others disapproved of it yet nonetheless obligated him to adhere to it once undertaken.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ أُذَيْنَةَ بْنِ مَسْلَمَةَ الْعَبْدِيِّ عَنْ أَبِيهِ قَالَ: قُلْت لِعُمَرَ بْنِ الْخَطَّابِ: إنِّي رَكِبْت السُّفُنَ، وَالْخَيْلَ، وَالْإِبِلَ فَمِنْ أَيْنَ أُحْرِمُ، فَقَالَ: ائْتِ عَلِيًّا فَاسْأَلْهُ؟ فَسَأَلَ عَلِيًّا؟ فَقَالَ لَهُ: مِنْ حَيْثُ أَبْدَأْت أَنْ تُنْشِئَهَا مِنْ بِلَادِك، فَرَجَعَ إلَى عُمَرَ فَأَخْبَرَهُ، فَقَالَ لَهُ عُمَرُ: هُوَ كَمَا قَالَ لَك عَلِيٌّ.

L12821 It was narrated to us via the chain of ʿAbd al-Raḥmān ibn Udhaynah ibn Maslamah al-ʿAbdī from his father, who said: I said to ʿUmar ibn al-Khaṭṭāb: "I have ridden ships, horses, and camels. From where should I assume Ihrām?" He replied: "Go to ʿAlī and ask him." So he asked ʿAlī, who said to him: "From where you began to assume Ihrām in your land." He returned to ʿUmar and informed him. ʿUmar said: "It is as ʿAlī told you."

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ عَبْدِ اللَّهِ بْنِ سَلَمَةَ أَنَّ رَجُلًا سَأَلَ عَلِيَّ بْنَ أَبِي طَالِبٍ عَنْ قَوْلِ اللَّهِ تَعَالَى: {وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ} [البقرة: ١٩٦] فَقَالَ: أَنْ تُحْرِمَ مِنْ دُوَيْرَةِ أَهْلِك.

L12822 And from the narration of Shuʿbah from ʿAmr ibn Murrah from ʿAbdullāh ibn Salamah that a man asked ʿAlī ibn Abī Ṭālib about the statement of Allah the Exalted: {And complete the Ḥajj and ʿUmrah for Allah} [Al-Baqarah: 196].

[32]**Hadith references (L12816):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[33]**Qur'an references (L12816):** Qur'an 19:64 (Maryam).

He replied: “That you enter into iḥrām from the small dwelling of your family.”[34]

L12823 And through him to ʿAbd Allāh ibn Salamah from ʿĀ’ishah, a similar narration is related.

وَبِهِ إِلَى عَبْدِ اللَّهِ بْنِ سَلَمَةَ عَنْ عَائِشَةَ مِثْلُهُ.

L12824 And through the chain of Abd al-Rahman ibn Mahdi from Hushaym from Abu Bishr from Sallam ibn Amr from Uthman ibn Affan: Performing Umrah is complete when done on behalf of one’s family.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ هُشَيْمٍ عَنْ أَبِي بِشْرٍ عَنْ سَلَّامِ بْنِ عَمْرٍو عَنْ عُثْمَانَ بْنِ عَفَّانَ: الْعُمْرَةُ تَامَّةٌ مِنْ أَهْلِكَ.

L12825 From the chain of Al-Ḥammānī, from Hushaym, from some of his companions, from Ibrāhīm, from Ibn Masʿūd: “Among the integral components of perfecting the Hajj is to assume the state of Ihram at the vicinity of one’s family’s residence.”

وَمِنْ طَرِيقِ الْحِمَّانِيِّ عَنْ هُشَيْمٍ عَنْ بَعْضِ أَصْحَابِهِ عَنْ إِبْرَاهِيمَ عَنِ ابْنِ مَسْعُودٍ مِنْ تَمَامِ الْحَجِّ أَنْ يُحْرِمَ مِنْ دُوَيْرَةِ أَهْلِهِ.

L12826 Through the chain of Ibn Abī Shaybah from Wakīʿ, from ʿUyaynah ibn ʿAbd al-Raḥmān, from his father, that he saw ʿUthmān ibn Abī al-ʿĀṣ enter into *iḥrām* from Al-Manjashāniyyah near Basra.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ عُيَيْنَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ أَنَّهُ رَأَى عُثْمَانَ بْنَ أَبِي الْعَاصِ أَحْرَمَ مِنَ الْمَنْجَشَانِيَةِ بِقُرْبِ الْبَصْرَةِ.

L12827 It is reported from Al-Hasan that ʿImrān ibn al-Ḥuṣayn assumed ihram from Basra.

وَعَنِ الْحَسَنِ: أَنَّ عِمْرَانَ بْنَ الْحُصَيْنِ أَحْرَمَ مِنَ الْبَصْرَةِ.

L12828–12829 It has been authentically reported from Ibn ʻUmar that he assumed the state of ihrām from the Sanctuary of Bayt al-Maqdis.

وَصَحَّ عَنِ ابْنِ عُمَرَ أَنَّهُ أَحْرَمَ مِنْ بَيْتِ الْمَقْدِسِ.

L12830 From a man who was not named—that Abū Masʿūd entered the state of iḥrām from Al-Saylaḥīn. From a man—that Ibn ʿAbbās entered the state of iḥrām from Al-Shām during severe cold. Through the chain of Saʿīd ibn Manṣūr: Ḥammād ibn Zayd narrated to us from Hishām ibn Ḥassān from Ḥafṣa bint Sīrīn from Muḥammad ibn Sīrīn that he journeyed with Anas to Mecca, then entered the state of iḥrām from Al-ʿAqīq.

وَعَنْ رَجُلٍ لَمْ يُسَمَّ أَنَّ أَبَا مَسْعُودٍ أَحْرَمَ مِنَ السَّيْلَحِينِ. وَعَنْ رَجُلٍ: أَنَّ ابْنَ عَبَّاسٍ أَحْرَمَ مِنَ الشَّامِ فِي بَرْدٍ شَدِيدٍ - وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا حَمَّادُ بْنُ زَيْدٍ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ حَفْصَةَ بِنْتِ سِيرِينَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ خَرَجَ مَعَ أَنَسٍ إِلَى مَكَّةَ، فَأَحْرَمَ مِنَ الْعَقِيقِ.

L12831 And from Muʿādh: that he assumed iḥrām from the Levant—and we narrated it through the chain of al-Ḥudhāfī from ʿAbd al-Razzāq: Ibn Jurayj reported to us, Yūsuf ibn Māhak reported to us: that he heard ʿAbdullāh ibn Abī ʿAmmār report that he was with Muʿādh ibn Jabal and Kaʿb al-Khayr. They both assumed iḥrām for ʿUmrah from Jerusalem, and he assumed iḥrām with

وَعَنْ مُعَاذٍ: أَنَّهُ أَحْرَمَ مِنَ الشَّامِ - وَرُوِّينَاهُ مِنْ طَرِيقِ الْحُذَافِيِّ عَنْ عَبْدِ الرَّزَّاقِ نَا ابْنُ جُرَيْجٍ أَنَا يُوسُفُ بْنُ مَاهَكَ: أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ أَبِي عَمَّارٍ أَنَّهُ كَانَ مَعَ مُعَاذِ بْنِ جَبَلٍ،

[34] **Qur’an references (L12822):** Qur’an 2:196 (Al-Baqarah).

them. And through it to ʿAbd al-Razzāq: Maʿmar reported to us from al-Zuhrī from Sālim that Ibn ʿUmar assumed iḥrām for ʿUmrah from Jerusalem.

وَكَعْبِ الْخَيْرِ: فَأَحْرَمَا مِنْ بَيْتِ الْمَقْدِسِ بِعُمْرَةٍ وَأَحْرَمَ مَعَهُمَا - وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ نَا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ سَالِمٍ أَنَّ ابْنَ عُمَرَ أَحْرَمَ بِعُمْرَةٍ مِنْ بَيْتِ الْمَقْدِسِ.

L12832 From Ibrāhīm: They deemed it preferable that the first time a man performs Ḥajj or ʿUmrah, he should assume Iḥrām from his own land from which he departs. It is reported from Saʿīd ibn Jubayr that he assumed Iḥrām from al-Kufa. It is reported from Muslim ibn Yasār that he assumed Iḥrām from Ḍariyyah.

وَعَنْ إِبْرَاهِيمَ: كَانُوا يَسْتَحِبُّونَ أَوَّلَ مَا يَحُجُّ الرَّجُلُ أَوْ يَعْتَمِرُ أَنْ يُحْرِمَ مِنْ أَرْضِهِ الَّتِي يَخْرُجُ مِنْهَا - وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ أَنَّهُ أَحْرَمَ مِنَ الْكُوفَةِ. وَعَنْ مُسْلِمِ بْنِ يَسَارٍ أَنَّهُ أَحْرَمَ مِنْ ضَرِيَّةَ.

L12833 From Al-Aswad and the companions of Ibn Masʿud: that they assumed Ihram from Al-Kufah, and from Tawus and ‘Ata’, a similar opinion.

وَعَنِ الْأَسْوَدِ، وَأَصْحَابِ ابْنِ مَسْعُودٍ: أَنَّهُمْ أَحْرَمُوا مِنَ الْكُوفَةِ - وَعَنْ طَاوُسٍ، وَعَطَاءٍ نَحْوُ هَذَا.

L12834 Those who held this opinion argued based on what we have transmitted through Abū Dāwūd’s chain: Ahmad ibn Ṣāliḥ → Ibn Abī Fudayk → ʿAbdullāh ibn ʿAbd al-Raḥmān ibn Yuḥannas → Yaḥyā ibn Abī Sufyān al-Akhnasī → his grandmother Ḥakīmah → Umm Salamah, the Mother of the Believers, who heard the Prophet—peace and blessings be upon him—say: “Whoever assumes iḥrām for Ḥajj or ʿUmrah from Al-Masjid Al-Aqṣā to Al-Masjid Al-Ḥarām will have his past and future sins forgiven, or Paradise will be guaranteed for him.” ʿAbdullāh expressed uncertainty about which of the two statements he actually pronounced.[35]

وَاحْتَجَّ مَنْ رَأَى هَذَا بِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا أَحْمَدُ بْنُ صَالِحٍ نَا ابْنُ أَبِي فُدَيْكٍ عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ يُحَنَّسَ عَنْ يَحْيَى بْنِ أَبِي سُفْيَانَ الْأَخْنَسِيِّ عَنْ جَدَّتِهِ حَكِيمَةَ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا سَمِعَتِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: " يَقُولُ: «مَنْ أَهَلَّ بِحَجَّةٍ، أَوْ عُمْرَةٍ مِنَ الْمَسْجِدِ الْأَقْصَى إِلَى الْمَسْجِدِ الْحَرَامِ غُفِرَ لَهُ مَا تَقَدَّمَ مِنْ ذَنْبِهِ وَمَا تَأَخَّرَ أَوْ وَجَبَتْ لَهُ الْجَنَّةُ» شَكَّ عَبْدُ اللَّهِ أَيُّهُمَا قَالَ؟

L12835–12836 And through the chain of Abu Bakr ibn Abi Shaybah, from Abd al-A’la ibn Abd al-A’la, from Ibn Ishaq, from Sulayman ibn Suhaym, from Umm Hakim bint Umayyah, from Umm Salamah, that the Messenger of Allah (peace and blessings be upon him) said: “Whoever assumes ihram with Umrah from Bayt al-Maqdis will be forgiven.”[36]

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نَا عَبْدُ الْأَعْلَى بْنُ عَبْدِ الْأَعْلَى عَنِ ابْنِ إِسْحَاقَ عَنْ سُلَيْمَانَ بْنِ سُحَيْمٍ عَنْ أُمِّ حَكِيمٍ بِنْتِ أُمَيَّةَ عَنْ أُمِّ سَلَمَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَهَلَّ بِعُمْرَةٍ مِنْ بَيْتِ الْمَقْدِسِ غُفِرَ لَهُ» .

L12837 Ali said: As for these two narrations, no one with the slightest knowledge of hadith would concern themselves with them, because Yahya ibn Abi Sufyan al-Akhnasi, his grandmother Hakimah, and Umm Hakim bint Umayyah—it is not known who they are among the people. It is impermissible to contradict

قَالَ عَلِيٌّ: أَمَّا هَذَانِ الْأَثَرَانِ فَلَا يَشْتَغِلُ بِهِمَا مَنْ لَهُ أَدْنَى عِلْمٍ بِالْحَدِيثِ لِأَنَّ يَحْيَى بْنَ أَبِي سُفْيَانَ الْأَخْنَسِيَّ، وَجَدَّتَهُ حَكِيمَةَ، وَأُمَّ حَكِيمٍ بِنْتِ أُمَيَّةَ لَا يُدْرَى مَنْ هُمْ مِنَ النَّاسِ؟ وَلَا يَجُوزُ مُخَالَفَةُ مَا صَحَّ بِيَقِينٍ بِمِثْلِ هَذِهِ الْمَجْهُولَاتِ الَّتِي لَمْ تَصِحَّ قَطُّ، وَاحْتَجَّ بَعْضُهُمْ

[35] **Hadith references (L12834):** Sunan Abi Dawud 1741; Mishkat al-Masabih 2532.
[36] **Hadith references (L12836):** Sunan Ibn Majah 3001.

what has been authentically established with certainty through such obscure individuals that have never been authenticated. Some of them cited as proof that Ali and Abu Musa assumed *ihram* from Yemen, and the Prophet—peace and blessings of Allah be upon him—did not censure them for this.

L12838 He said, "And likewise Ka'b ibn 'Ujrata."

L12839 Abū Muḥammad said: We do not know where this report originated from Ka'b ibn 'Ujrah. As for 'Alī and Abū Mūsā, they arrived from Yemen having entered *iḥrām* in the same manner as the Prophet's *iḥrām*—peace be upon him—so the Prophet (peace be upon him) taught them how to proceed. This narration contains absolutely no mention of the location from which they entered the state of *iḥrām*, nor does it include any indication or explicit text confirming this occurred after the Prophet's (peace be upon him) designation of the *miqāt*. Since this is entirely absent from the report, it provides no valid proof for them whatsoever. We do not dispute their assertion that prior to the Prophet's (peace be upon him) designation of the *miqāt*, it was permissible to enter *iḥrām* from any place.

L12840 As for those we previously mentioned among the Companions and Successors—may Allah be pleased with them— ()—regarding the report of Ibn Udhaynah: We have transmitted it through Waki', who said: Shu'bah narrated to us from al-Ḥakam—that is, Ibn 'Utaybah—from Yaḥyā ibn al-Jazzār, from Ibn Udhaynah, who said: I came to 'Umar ibn al-Khaṭṭāb in Makkah and asked him, "I rode camels and horses until I reached you. From where should I begin my 'Umrah?" He replied, "Go to 'Alī ibn Abī Ṭālib and ask him." I went to 'Alī and asked him. He told me, "From where you began"—meaning the miqāt of his land. I then returned to 'Umar and informed him of this. He said, "I find no ruling for you except what Ibn Abī Ṭālib has stated."

L12841–12843 Abu Muhammad said: This is as stated in the hadith itself—that is, from the miqat of his land—thus it became a decisive proof for us. If it were sound in its origin—and it was narrated to us via Yahya ibn Sa'id al-Qattan's chain: Ibn Abi 'Arubah narrated to me from al-Hasan al-Basri, who said: Imran ibn al-Husayn assumed ihram from Basra, and 'Umar ibn al-Khattab criticized him

بِأَنَّ عَلِيًّا، وَأَبَا مُوسَى: أَحْرَمَا مِنْ الْيَمَنِ فَلَمْ يُنْكِرْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ عَلَيْهِمَا.

قَالَ: وَكَذَلِكَ كَعْبُ بْنُ عُجْرَةَ.

قَالَ أَبُو مُحَمَّدٍ: وَلَا نَدْرِي أَيْنَ وَجَدَ هَذَا عَنْ كَعْبِ بْنِ عُجْرَةَ؟ وَأَمَّا عَلِيٌّ، وَأَبُو مُوسَى، فَإِنَّهُمَا قَدِمَا مِنْ الْيَمَنِ مُهِلَّيْنِ كَإِهْلَالِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَعَلَّمَهُمَا - عَلَيْهِ السَّلَامُ - كَيْفَ يَعْمَلَانِ؟ وَلَيْسَ فِي هَذَا الْخَبَرِ أَلْبَتَّةَ ذِكْرٌ لِلْمَكَانِ الَّذِي أَحْرَمَا مِنْهُ، وَلَا فِيهِ دَلِيلٌ وَلَا نَصٌّ بِأَنَّ ذَلِكَ كَانَ بَعْدَ تَوْقِيتِهِ - عَلَيْهِ السَّلَامُ - الْمَوَاقِيتَ، فَإِذْ لَيْسَ ذَلِكَ فِيهِ فَلَا حُجَّةَ لَهُمْ بِهِ أَصْلًا، وَلَا نُخَالِفُهُمْ فِي أَنَّ قَبْلَ تَوْقِيتِهِ - عَلَيْهِ السَّلَامُ - الْمَوَاقِيتَ كَانَ الْإِحْرَامُ جَائِزًا مِنْ كُلِّ مَكَانٍ.

وَأَمَّا مَنْ قَدَّمْنَا ذِكْرَهُ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ - رَضِيَ اللَّهُ عَنْهُمْ - () فَأَمَّا خَبَرُ ابْنِ أُذَيْنَةَ فَإِنَّنَا رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ قَالَ: نَا شُعْبَةُ عَنْ الْحَكَمِ هُوَ ابْنُ عُتَيْبَةَ - عَنْ يَحْيَى بْنِ الْجَزَّارِ عَنْ ابْنِ أُذَيْنَةَ قَالَ: أَتَيْت عُمَرَ بْنَ الْخَطَّابِ بِمَكَّةَ فَقُلْت لَهُ: إنِّي رَكِبْت الْإِبِلَ، وَالْخَيْلَ حَتَّى أَتَيْتُك فَمِنْ أَيْنَ أَعْتَمِرُ؟ قَالَ: ائْتِ عَلِيَّ بْنَ أَبِي طَالِبٍ فَسَلْهُ، فَأَتَيْته فَسَأَلْته، فَقَالَ لِي عَلِيٌّ: مِنْ حَيْثُ أَبْدَأْت - يَعْنِي مِنْ مِيقَاتِ أَرْضِهِ - قَالَ: فَأَتَيْت عُمَرَ فَذَكَرْت لَهُ ذَلِكَ، فَقَالَ: مَا أَجِدُ لَك إلَّا مَا قَالَ ابْنُ أَبِي طَالِبٍ.

قَالَ أَبُو مُحَمَّدٍ: هَكَذَا فِي الْحَدِيثِ نَفْسِهِ يَعْنِي مِنْ مِيقَاتِ أَرْضِهِ، فَعَادَ حُجَّةً لَنَا عَلَيْهِمْ لَوْ صَحَّ مِنْ أَصْلِهِ - وَرُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ: حَدَّثَنِي ابْنُ أَبِي عَرُوبَةَ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: أَحْرَمَ عِمْرَانُ بْنُ الْحُصَيْنِ مِنْ الْبَصْرَةِ فَعَابَ ذَلِكَ عَلَيْهِ عُمَرُ بْنُ

for that, saying: “You meant for people to say, ‘A man from the Companions of the Messenger of Allah (peace and blessings be upon him) assumed ihram from a garrison city among the cities.’” ‘Ali said: “‘Umar does not criticize a recommended act containing reward and nearness to Allah the Exalted—no, nor even a permissible act. He only criticizes what he deems impermissible. This is among what cannot be supposed otherwise about him at all.”

الْخَطَّابِ وَقَالَ: أَرَدْت أَنْ يَقُولَ النَّاسُ: أَحْرَمَ رَجُلٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ مِصْرٍ مِنْ الْأَمْصَارِ. قَالَ عَلِيٌّ: وَعُمَرُ لَا يَعِيبُ مُسْتَحَبًّا فِيهِ أَجْرٌ وَقُرْبَةٌ إلَى اللَّهِ تَعَالَى، نَعَمْ، وَلَا مُبَاحًا، وَإِنَّمَا يَعِيبُ مَا لَا يَجُوزُ عِنْدَهُ، هَذَا مِمَّا لَا يَجُوزُ أَنْ يُظَنَّ بِهِ غَيْرُ هَذَا أَصْلًا.

L12844 We have narrated it through the chain of Sa‘īd ibn Manṣūr: Yazeed ibn Hārūn reported to us from Sa‘īd ibn Abī ‘Arūbah from Qatādah from Al-Ḥasan: That ‘Imrān ibn Al-Ḥuṣayni entered the state of iḥrām from Al-Baṣrah. When ‘Umar was informed of this, he became angry and said, “Will it become known among the people that a man from the Companions of the Messenger of Allāh—peace and blessings of Allāh be upon him—entered iḥrām from his city?” Abū Muḥammad said: “It is absolutely impossible for ‘Umar to be angered by an act he deemed permissible.” We have also narrated through the chain of ‘Abdur-Razzāq: Ma‘mar reported to us from Ayyūb As-Sikhtiyānī from Muḥammad ibn Sīrīn, who said: “‘Abdullāh ibn ‘Āmir entered iḥrām from Ḥayrabin. When he came to ‘Uthmān ibn ‘Affān, he reproached him, saying: ’You endangered yourself and treated your pilgrimage lightly!’”

وَرُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا يَزِيدُ بْنُ هَارُونَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ: أَنَّ عِمْرَانَ بْنَ الْحُصَيْنِ أَحْرَمَ مِنْ الْبَصْرَةِ، فَبَلَغَ ذَلِكَ عُمَرَ فَغَضِبَ وَقَالَ: يَتَسَامَعُ النَّاسُ: أَنَّ رَجُلًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَحْرَمَ مِنْ مِصْرِهِ؟ قَالَ أَبُو مُحَمَّدٍ: عُمَرُ لَا يُمْكِنُ أَلْبَتَّةَ أَنْ يَغْضَبَ مِنْ عَمَلٍ مُبَاحٍ عِنْدَهُ - وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: أَحْرَمَ عَبْدُ اللَّهِ بْنُ عَامِرٍ مِنْ حَيْرَبٍ فَقَدِمَ عَلَى عُثْمَانَ بْنِ عَفَّانَ فَلَامَهُ فَقَالَ لَهُ: غَرَرْت وَهَانَ عَلَيْك نُسُكُك.

L12845 Abu Muhammad said: Uthman does not criticize any righteous deed he considers valid nor any permissible action. He only criticizes what he deems impermissible—especially since he has clarified that this constitutes belittlement of ritual devotion. Belittlement of ritual devotion is impermissible, for the Exalted has commanded the veneration of Hajj’s sacred rites.

قَالَ أَبُو مُحَمَّدٍ: وَعُثْمَانُ لَا يَعِيبُ عَمَلًا صَالِحًا عِنْدَهُ وَلَا مُبَاحًا وَإِنَّمَا يَعِيبُ مَا لَا يَجُوزُ عِنْدَهُ لَا سِيَّمَا وَقَدْ بَيَّنَ أَنَّهُ هَوَانٌ بِالنُّسُكِ وَالْهَوَانُ بِالنُّسُكِ لَا يَحِلُّ، وَقَدْ أَمَرَ تَعَالَى بِتَعْظِيمِ شَعَائِرِ الْحَجِّ.

L12846 It has been narrated to us through the chain of Waki‘: **From** ‘Umarah ibn Zādān, who said: I asked Ibn ‘Umar: “What about a man who assumes ihram from Samarkand, or from **the time appointed for him**, or from Basra, or from Kufah?” Ibn ‘Umar replied: “Then we would have certainly faced hardship.”

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ: نَا عُمَارَةُ بْنُ زَاذَانَ قَالَ: قُلْت لِابْنِ عُمَرَ: الرَّجُلُ يُحْرِمُ مِنْ سَمَرْقَنْدَ، أَوْ مِنْ الْوَقْتِ الَّذِي وُقِّتَ لَهُ، أَوْ مِنْ الْبَصْرَةِ، أَوْ مِنْ الْكُوفَةِ؟ فَقَالَ ابْنُ عُمَرَ: قَدْ شَقِينَا إذًا.

L12847 Abu Muhammad said: The statement of Ibn Umar can only mean that if initiating the state of consecration outside the prescribed time had been

قَالَ أَبُو مُحَمَّدٍ: لَا يَحْتَمِلُ قَوْلُ ابْنِ عُمَرَ إلَّا أَنَّهُ لَوْ كَانَ الْإِحْرَامُ مِنْ غَيْرِ الْوَقْتِ مُبَاحًا لَشَقِيَ الْمُحْرِمُونَ مِنْ الْوَقْتِ.

permissible, those in consecration would have faced hardship from the prescribed time.

L12848 It was narrated to us through the chain of Waki‘, on our authority from Shu‘bah, from Muslim al-Qarri, who said: I asked Ibn Abbas in Makkah, “Where should I enter the state of *ihram* for Umrah?” He replied: “From the direction from which you arrived,” meaning the *miqat* of your land.

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نَا شُعْبَةُ عَنْ مُسْلِمٍ الْقَرِّيِّ قَالَ: سَأَلْت ابْنَ عَبَّاسٍ بِمَكَّةَ مِنْ أَيْنَ أَعْتَمِرُ؟ قَالَ: مِنْ وَجْهِك الَّذِي جِئْت مِنْهُ، يَعْنِي مِيقَاتَ أَرْضِهِ.

L12849–12850 Abu Muhammad said: This is stated verbatim in the ḥadīth: meaning the miqat of his land.

قَالَ أَبُو مُحَمَّدٍ: هَكَذَا فِي الْحَدِيثِ نَصًّا - يَعْنِي مِيقَاتَ أَرْضِهِ.

L12851 Ali said: Their reliance on Umar, Uthman, Ali, Ibn Abbas, and Ibn Umar is invalidated. As for the other narrations we mentioned from the Companions and the Followers, none of them indicate that they passed by the miqat. Since this detail is absent in those narrations, we likewise affirm: Whoever does not pass by the miqat must enter the state of iḥrām from wherever they choose. This aligns the reports from them with what is authentically established from the Prophet—peace and blessings of Allah be upon him. It is impermissible to discard what is authentically established from the Prophet—peace and blessings of Allah be upon him—through the narrations transmitted by Aisha, Ibn Abbas, and Ibn Umar—may Allah be pleased with them—due to false assumptions that lack evidence to validate their interpretations. These assumptions align most perfectly with compliance with the Messenger of Allah—peace and blessings of Allah be upon him—the only permissible assumption about them, which it is impermissible to assume otherwise.

قَالَ عَلِيٌّ: فَبَطَلَ تَعَلُّقُهُمْ بِعُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ، وَابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ؛ وَأَمَّا سَائِرُ الرِّوَايَاتِ الَّتِي ذَكَرْنَا عَنْ الصَّحَابَةِ وَالتَّابِعِينَ فَلَيْسَ فِي شَيْءٍ مِنْهَا: أَنَّهُمْ مَرُّوا عَلَى الْمِيقَاتِ، وَإِذْ لَيْسَ هَذَا فِيهَا فَكَذَلِكَ نَقُولُ: إنَّ مَنْ لَمْ يَمُرَّ عَلَى الْمِيقَاتِ فَلْيُحْرِمْ مِنْ حَيْثُ شَاءَ، وَبِهَذَا تَتَّفِقُ الْأَخْبَارُ عَنْهُمْ مَعَ مَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا يَجُوزُ أَنْ يُتْرَكَ مَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ عَائِشَةَ، وَابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمْ - لِظُنُونٍ كَاذِبَةٍ لَا دَلِيلَ عَلَى صِحَّةِ تَأْوِيلِهِمْ فِيهَا، وَهِيَ خَارِجَةٌ أَحْسَنَ خُرُوجٍ عَلَى مُوَافَقَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّتِي لَا يَحِلُّ أَنْ يُظَنَّ بِهِمْ غَيْرُهَا.

L12852 Abu Muhammad said: As for those who cite the report from Ibn Masʿūd—his statement, “The kiss invalidates the fast of one who is fasting”—he likely meant when it is accompanied by semen emission.

قَالَ أَبُو مُحَمَّدٍ: وَمَنْ أَتَى إلَى مَا رُوِيَ عَنْ ابْنِ مَسْعُودٍ مِنْ قَوْلِهِ: إنَّ الْقُبْلَةَ تُفْطِرُ الصَّائِمَ، فَقَالَ: لَعَلَّهُ أَرَادَ إذَا كَانَ مَعَهَا مَنِيٌّ.

L12853 And regarding the narration of ʿĀ’ishah—may Allah be pleased with her—that she did not permit those whom the wives of her brothers had breastfed to visit her, he said: “We do not know why, and perhaps it was for some reason, not because she did not consider that breastfeeding to be a cause for prohibition.” Thus, he has no right to criticize us for interpreting what is narrated from them according to its literal and apparent meaning. Rather,

وَإِلَى خَبَرِ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا -: أَنَّهَا كَانَتْ لَا تَدْخُلُ عَلَيْهَا مَنْ أَرْضَعَهُ نِسَاءُ إخْوَتِهَا، فَقَالَ: لَا نَدْرِي لِمَاذَا وَلَعَلَّهُ لِأَمْرٍ مَا، وَلَيْسَ لِأَنَّهَا كَانَتْ لَا تَرَى ذَلِكَ الرَّضَاعَ مُحَرِّمًا -: فَلَيْسَ لَهُ أَنْ يُنْكِرَ عَلَيْنَا حَمْلَ مَا رُوِيَ عَنْهُمْ عَلَى حَقِيقَتِهِ وَظَاهِرِهِ؛ بَلْ الْمَلَامَةُ كُلُّهَا عَلَى

all blame lies upon those who insert into these narrations what is absent from them—namely, that they exceeded the prescribed breastfeeding periods. Indeed, whoever said this has undoubtedly lied—and success comes from Allah, the Exalted.

L12854 Abū Muḥammad said: As for Abū Ḥanīfah, Sufyān, and al-Ḥasan ibn Ḥayyin, they deemed it recommended to hasten the iḥrām before the mīqāt. As for Mālik, he disapproved of this but held it as obligatory once it was undertaken.

L12855 As for al-Shāfiʿī, he deemed it reprehensible; as for Abū Sulaymān, he did not permit it, and this is the opinion of our companions.

L12856 As for Abū Ḥanīfah, he abandoned analogical reasoning by permitting entering the state of iḥrām before the mīqāt, while not considering valid the prayer of one who prays when a river lies between him and the imam. Moreover, he did not distinguish between entering the state of iḥrām for Ḥajj outside the prescribed place and initiating prayer outside the prescribed place.

L12857–12859 As for the Mālikīs, if they interpret these traditions as the Ḥanafīs interpreted them, they would gravely contradict their own principles, for they deemed reprehensible what the Companions considered recommended. Yet if they interpret them as we have interpreted them... Given this, how can they permit what contradicts the limits established by the Messenger of Allah (peace and blessings be upon him)? This is something from which there is no escape—and success is solely from Allah, the Most High.

L12860 **Issue: The Garments Worn by a Pilgrim in Ihram.**

L12861 823 – Issue:

L12862 When one who intends to perform Hajj or Umrah reaches any of these designated points, if he intends Umrah and is male, he must strip off his clothes. He must not wear a shirt, trousers, turban, cap, robe, hooded cloak, socks, or gloves whatsoever. However, he may drape himself in any cloth, sheet, or upper garment he chooses. He should wear a lower garment, keep his head uncovered, and wear his sandals.

مَنْ أَقْحَمَ فِي هَذِهِ الْآثَارِ مَا لَيْسَ فِيهَا مِنْ أَنَّهُمْ جَازُوا عَلَى الْمَوَاقِيتِ، بَلْ قَدْ كَذَبَ مَنْ قَالَ هَذَا بِلَا شَكٍّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

قَالَ أَبُو مُحَمَّد: أَمَّا أَبُو حَنِيفَةَ، وَسُفْيَانُ، وَالْحَسَنُ بْنُ حَيٍّ فَاسْتَحَبُّوا تَعْجِيلَ الْإِحْرَامِ قَبْلَ الْمِيقَاتِ، وَأَمَّا مَالِكٌ فَكَرِهَهُ وَأَلْزَمَهُ إذَا وَقَعَ.

وَأَمَّا الشَّافِعِيُّ فَكَرِهَهُ، وَأَمَّا أَبُو سُلَيْمَانَ فَلَمْ يُجِزْهُ - وَهُوَ قَوْلُ أَصْحَابِنَا.

فَأَمَّا أَبُو حَنِيفَةَ فَإِنَّهُ تَرَكَ الْقِيَاسَ، إذْ أَجَازَ الْإِحْرَامَ قَبْلَ الْمِيقَاتِ وَلَمْ يُجِزْ صَلَاةَ مَنْ صَلَّى وَبَيْنَهُ وَبَيْنَ الْإِمَامِ نَهْرٌ وَلَا فَرَّقَ بَيْنَ الْإِحْرَامِ بِالْحَجِّ فِي غَيْرِ مَوْضِعِ الْإِحْرَامِ وَبَيْنَ الْإِحْرَامِ بِالصَّلَاةِ فِي غَيْرِ مَوْضِعِ الصَّلَاةِ.

وَأَمَّا الْمَالِكِيُّونَ فَإِنْ حَمَلُوا هَذِهِ الْآثَارَ عَلَى مَا حَمَلَهَا عَلَيْهِ الْحَنَفِيُّونَ فَقَدْ أَعْظَمُوا الْقَوْلَ عَلَى أُصُولِهِمْ إذْ كَرِهُوا مَا اسْتَحَبَّهُ الصَّحَابَةُ، وَإِنْ حَمَلُوهَا عَلَى مَا حَمَلْنَاهَا نَحْنُ عَلَيْهِ فَكَيْفَ يُجِيزُونَ خِلَافَ مَا حَدَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ وَهَذَا مَا لَا مُخَلِّصَ مِنْهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَا يَلْبَسُ الْمُحْرِمُ مِنْ الثِّيَابِ]

٨٢٣ - مَسْأَلَةٌ:

فَإِذَا جَاءَ مَنْ يُرِيدُ الْحَجَّ أَوْ الْعُمْرَةَ إلَى أَحَدِ هَذِهِ الْمَوَاقِيتِ فَإِنْ كَانَ يُرِيدُ الْعُمْرَةَ فَلْيَتَجَرَّدْ مِنْ ثِيَابِهِ إنْ كَانَ رَجُلًا، فَلَا يَلْبَسُ الْقَمِيصَ، وَلَا سَرَاوِيلَ، وَلَا عِمَامَةً، وَلَا قَلَنْسُوَةً، وَلَا جُبَّةً، وَلَا بُرْنُسًا، وَلَا خُفَّيْنِ، وَلَا قُفَّازَيْنِ أَلْبَتَّةَ، لَكِنْ يَلْتَحِفُ فِيمَا شَاءَ مِنْ كِسَاءٍ، أَوْ مِلْحَفَةٍ " أَوْ رِدَاءٍ، وَيَتَّزِرُ وَيَكْشِفُ رَأْسَهُ وَيَلْبَسُ نَعْلَيْهِ.

وَلَا يَحِلُّ لَهُ أَنْ يَتَّزِرَ، وَلَا أَنْ يَلْتَحِفَ فِي ثَوْبٍ صُبِغَ كُلُّهُ أَوْ بَعْضُهُ بِوَرْسٍ، أَوْ زَعْفَرَانٍ، أَوْ عُصْفُرٍ.

L12863 It is not permissible for him to wear a lower garment (izar), nor to wrap himself in a garment dyed entirely or partially with wars (a plant-based dye), saffron, or safflower (عُصْفُرٍ).

فَإِنْ كَانَ امْرَأَةً فَلْتَلْبَسْ مَا شَاءَتْ مِنْ كُلِّ مَا ذَكَرْنَا أَنَّهُ لَا يَلْبَسُهُ الرَّجُلُ وَتُغَطِّي رَأْسَهَا إِلَّا أَنَّهَا لَا تَنْتَقِبُ أَصْلًا؛ لَكِنْ إِمَّا أَنْ تَكْشِفَ وَجْهَهَا، وَإِمَّا أَنْ تَسْدُلَ عَلَيْهِ ثَوْبًا مِنْ فَوْقِ رَأْسِهَا فَذَلِكَ لَهَا إِنْ شَاءَتْ.

L12864 If it is a woman, she may wear whatever she wishes from all that we have mentioned that men do not wear, and she must cover her head, except that she does not have to wear a niqab at all. She may either leave her face uncovered or let a garment hang over it from above her head—that is up to her, if she wishes.

وَلَا يَحِلُّ لَهَا أَنْ تَلْبَسَ شَيْئًا صُبِغَ كُلُّهُ أَوْ بَعْضُهُ بِوَرْسٍ أَوْ زَعْفَرَانٍ، وَلَا أَنْ تَلْبَسَ قُفَّازَيْنِ فِي يَدَيْهَا، وَلَهَا أَنْ تَلْبَسَ الْخِفَافَ وَالْمُعَصْفَرَ.

L12865 It is not permissible for her to wear anything dyed entirely or partially with wars (a yellow dye plant) or saffron, nor to wear a pair of gloves, but she may wear khuffs and safflower-dyed.

فَإِنْ لَمْ يَجِدْ الرَّجُلُ إِزَارًا فَلْيَلْبَسْ السَّرَاوِيلَ كَمَا هِيَ وَإِنْ لَمْ يَجِدْ نَعْلَيْنِ فَلْيَقْطَعْ خُفَّيْهِ تَحْتَ الْكَعْبَيْنِ وَلَا بُدَّ وَيَلْبَسُهُمَا كَذَلِكَ.

L12866 If a man does not find an *izar*, he must wear trousers as they are. If he does not find sandals, he must cut both his khuffs above the ankles and wear them in that manner.

بُرْهَانُ ذَلِكَ -: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ نَا أَحْمَدُ بْنُ فَتْحٍ نَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نَا أَحْمَدُ بْنُ مُحَمَّدٍ نَا أَحْمَدُ بْنُ عَلِيٍّ نَا مُسْلِمُ بْنُ الْحَجَّاجِ نَا يَحْيَى بْنُ يَحْيَى قَالَ: قَرَأْت عَلَى مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ [قَالَ] «سَأَلَ رَجُلٌ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا يَلْبَسُ الْمُحْرِمُ مِنْ الثِّيَابِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَا تَلْبَسُوا الْقُمُصَ، وَلَا الْعَمَائِمَ، وَلَا السَّرَاوِيلَاتِ، وَلَا الْبَرَانِسَ وَلَا الْخِفَافَ إلَّا أَحَدٌ - لَا يَجِدُ النَّعْلَيْنِ - فَلْيَلْبَسْ خُفَّيْنِ وَلْيَقْطَعْهُمَا أَسْفَلَ مِنْ الْكَعْبَيْنِ، وَلَا تَلْبَسُوا مِنْ الثِّيَابِ شَيْئًا مَسَّهُ الزَّعْفَرَانُ وَلَا الْوَرْسُ» .

L12867 The evidence for that is what was narrated to us by Abdullah ibn Yusuf, who narrated to us from Ahmad ibn Fath, who narrated to us from Abd al-Wahhab ibn Isa, who narrated to us from Ahmad ibn Muhammad, who narrated to us from Ahmad ibn Ali, who narrated to us from Muslim ibn al-Hajjaj, who narrated to us from Yahya ibn Yahya, who said: I read to Malik, from Nafi', from Ibn Umar, who said: A man asked the Messenger of Allah (peace and blessings be upon him), "What garments should a pilgrim in the state of consecration (Ihram) not wear?" The Messenger of Allah (peace and blessings be upon him) replied: "Do not wear shirts, turbans, trousers, burnouses, or leather socks (khuffs), except for one who cannot find sandals. In that case, let him wear khuffs and cut them below the ankles. And do not wear any garment dyed with saffron or wars."

وَبِهِ إلَى مُسْلِمٍ نَا مُحَمَّدُ بْنُ رَافِعٍ نَا وَهْبُ بْنُ جَرِيرِ بْنِ حَازِمٍ نَا أَبِيٌّ [قَالَ] سَمِعْت قَيْسًا هُوَ ابْنُ سَعْدٍ - يُحَدِّثُ عَنْ عَطَاءٍ عَنْ صَفْوَانَ بْنِ يَعْلَى بْنِ أُمَيَّةَ عَنْ أَبِيهِ «أَنَّ رَجُلًا

L12868–12869 And through him to Muslim: From Muhammad ibn Rafi', from Wahb ibn Jarir ibn Hazim, from his father [Jarir ibn Hazim], [who said]: I heard Qays—who is Ibn Sa'd—narrating from 'Ata' from Safwan ibn Ya'la ibn Umayyah from his father: "A man came to the Prophet (peace be upon him) while

أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ بِالْجِعْرَانَةِ قَدْ أَهَلَّ بِالْعُمْرَةِ وَهُوَ مُصَفِّرٌ رَأْسَهُ وَلِحْيَتَهُ، وَعَلَيْهِ جُبَّةٌ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: انْزِعْ عَنْكَ الْجُبَّةَ، وَاغْسِلْ عَنْكَ الصُّفْرَةَ، وَمَا كُنْتَ صَانِعًا فِي حَجِّكَ فَاصْنَعْهُ فِي عُمْرَتِكَ» .

he was at Al-Ji'ranah, having assumed Ihram for Umrah, with his head and beard dyed with saffron (yellow) and wearing a cloak. The Messenger of Allah (peace be upon him) said to him: 'Remove the cloak from yourself, wash off the saffron dye, and whatever you intended to perform in your Hajj, then perform it in your Umrah.'"[37]

L12870 قَالَ أَبُو مُحَمَّدٍ: كُلُّ مَا جُبَّ فِيهِ مَوْضِعٌ لِإِخْرَاجِ الرَّأْسِ مِنْهُ: فَهُوَ جُبَّةٌ فِي لُغَةِ الْعَرَبِ، وَكُلُّ مَا خِيطَ أَوْ نُسِجَ فِي طَرَفَيْهِ لِيَتَمَسَّكَ عَلَى الرَّأْسِ فَهُوَ بُرْنُسٌ كَالْغِفَارَةِ وَنَحْوِهَا -: نَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السَّلِيمِ نَا ابْنُ الْأَعْرَابِيِّ نَا أَبُو دَاوُد نَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ حَنْبَلٍ نَا يَعْقُوبُ هُوَ ابْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ - نَا أَبِي عَنْ مُحَمَّدُ بْنُ إِسْحَاقَ قَالَ: إنَّ نَافِعًا مَوْلَى عَبْدِ اللَّهِ بْنِ عُمَرَ " أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «نَهَى النِّسَاءَ فِي إحْرَامِهِنَّ عَنْ الْقُفَّازَيْنِ، وَالنِّقَابِ، وَمَا مَسَّ الْوَرْسُ وَالزَّعْفَرَانُ، مِنْ الثِّيَابِ وَلْتَلْبَسْ بَعْدَ ذَلِكَ مَا أَحَبَّتْ مِنْ أَلْوَانِ الثِّيَابِ - مِنْ مُعَصْفَرٍ، أَوْ خَزٍّ، أَوْ حُلِيٍّ، أَوْ سَرَاوِيلَ، أَوْ قَمِيصٍ، أَوْ خُفٍّ» .

Abu Muhammad said: Every garment in which an opening is made for the head to emerge is called a "jubbah" in the Arabic language. Every garment stitched or woven at its edges to adhere to the head is a "burnus," such as a head veil or similar covering. Narrated to us: Abdullah ibn Rabi' narrated to us: Muhammad ibn Ishaq ibn al-Sulaym narrated to us: Ibn al-A'rabi narrated to us: Abu Dawud narrated to us: Ahmad ibn Muhammad ibn Hanbal narrated to us: Ya'qub—the son of Ibrahim ibn Sa'd—narrated to us: His father narrated from Muhammad ibn Ishaq, who said: Nafi', the freed slave of Abdullah ibn Umar, reported hearing Allah's Messenger—peace be upon him—forbid women in ihrām from wearing gloves, face-veils, and garments touched by wars or saffron. Let them wear after that any colored garments they prefer—whether safflower-dyed, silk, ornamented garments, trousers, shirts, or leather socks.

L12871 قَالَ عَلِيٌّ: وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ قَالَ: نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ نَا نُوحُ بْنُ حَبِيبٍ الْقُومِسِيُّ نَا يَحْيَى بْنُ سَعِيدٍ هُوَ الْقَطَّانُ - نَا ابْنُ جُرَيْجٍ نَا عَطَاءٌ عَنْ صَفْوَانَ بْنِ يَعْلَى بْنِ أُمَيَّةَ عَنْ أَبِيهِ «أَنَّ رَجُلًا أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ أَحْرَمَ فِي جُبَّةٍ مُتَضَمِّخٌ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَّا الْجُبَّةُ فَاخْلَعْهَا، وَأَمَّا الطِّيبُ فَاغْسِلْهُ، ثُمَّ أَحْدِثْ إحْرَامًا» .

Ali said: Abdullah ibn Rabi'ah narrated to us, saying: Muhammad ibn Mu'awiyah on the authority of Ahmad ibn Shu'ayb, on the authority of Nuh ibn Habib al-Qūmisī, on the authority of Yahya ibn Sa'eed—that is, al-Qattān—on the authority of Ibn Jurayj, on the authority of 'Ata', from Safwan ibn Ya'la ibn Umayyah, from his father: "A man came to the Messenger of Allah—peace and blessings be upon him—while in the state of iḥrām, wearing a jubbah and saturated with perfume. The Messenger of Allah—peace and blessings be upon him—said to him: 'Remove the jubbah, wash off the perfume, then renew your iḥrām.'"

L12872–12874 قَالَ أَبُو مُحَمَّدٍ: نُوحٌ ثِقَةٌ مَشْهُورٌ، فَالْأَخْذُ بِهَذِهِ الزِّيَادَةِ وَاجِبٌ، وَيَجِبُ إحْدَاثُ الْإِحْرَامِ لِمَنْ أَحْرَمَ فِي جُبَّةٍ مُتَضَمِّخًا بِصُفْرَةٍ مَعًا - وَإِنْ كَانَ جَاهِلًا - لِأَنَّ رَسُولَ اللَّهِ - صَلَّى

Abu Muhammad said: Noah is trustworthy and renowned; thus, adhering to this addition is obligatory, and instituting it is obligatory. The state of ritual consecration (Iḥrām) for one who assumes it while wearing a cloak

[37] **Hadith references (L12869):** Sahih Muslim 1180d.

and anointing himself with yellow dye simultaneously—even if he is unaware [of the ruling]—because the Messenger of Allah (peace and blessings be upon him) only commanded this for those who combined both acts. We have mentioned in the Book of Prayer the Prophet's (peace and blessings be upon him) complete prohibition against men wearing garments dyed with safflower.

اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَأْمُرْ بِذَلِكَ إِلَّا مَنْ جَمَعَهَا، وَقَدْ ذَكَرْنَا فِي كِتَابِ الصَّلَاةِ نَهْيَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الرِّجَالَ عَنْ الْمُعَصْفَرِ جُمْلَةً.

L12875 Abu Muhammad said: There is disagreement regarding some of what we have mentioned, and it is the garment dyed with wars or saffron when it is washed until no trace of it remains. A group of scholars said: Wearing it is permissible.

قَالَ أَبُو مُحَمَّد: وَفِي بَعْضِ مَا ذَكَرْنَا خِلَافٌ، وَهُوَ الثَّوْبُ الْمَصْبُوغُ بِالْوَرْسِ، أَوْ الزَّعْفَرَانِ، إذَا غُسِلَ حَتَّى لَا يَبْقَى مِنْهُ أَثَرٌ فَقَالَ قَوْمٌ: لِبَاسُهُ جَائِزٌ.

L12876 Ali said: Some people have narrated a report (athar) concerning this matter. If it is authentic, it is obligatory to abide by it, but we do not know it to be authentic. Otherwise, wearing such a garment is impermissible at all because it has come into contact with wars or saffron. It has been narrated to us through the chain of Ibn Abi Shaybah: from ʻAbd al-Samad ibn ʻAbd al-Wārith al-Tannūrī, from Ḥammād ibn Salamah, from Hishām ibn ʻUrwah, that ʻAbdullāh ibn ʻUrwah asked ʻUrwah ibn al-Zubayr about a dyed garment that had been washed until its color faded—referring to saffron used by a pilgrim in iḥrām—and he prohibited him from it.

قَالَ عَلِيٌّ: قَدْ رَوَى بَعْضُ النَّاسِ فِي هَذَا أَثَرًا فَإِنْ صَحَّ وَجَبَ الْوُقُوفُ عِنْدَهُ وَلَا نَعْلَمُهُ صَحِيحًا، وَإِلَّا فَلَا يَجُوزُ لِبَاسُهُ أَصْلًا، لِأَنَّهُ قَدْ مَسَّهُ الْوَرْسُ، أَوْ الزَّعْفَرَانُ -: رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَبْدُ الصَّمَدِ بْنُ عَبْدِ الْوَارِثِ التَّنُّورِيُّ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ: أَنَّ عَبْدَ اللَّهِ بْنَ عُرْوَةَ سَأَلَ عُرْوَةَ بْنَ الزُّبَيْرِ عَنْ الثَّوْبِ الْمَصْبُوغِ إذَا غُسِلَ حَتَّى ذَهَبَ لَوْنُهُ - يَعْنِي بِالزَّعْفَرَانِ لِلْمُحْرِمِ - فَنَهَاهُ عَنْهُ.

L12877 Through the chain of Ibn Abī Shaybah: Hushaym narrated to us from Abū Bishr, who said: I was with Saʻīd ibn al-Musayyib when a man said to him, "I intend to assume iḥrām, and I have a garment dyed with saffron, so I washed it until its color disappeared." Saʻīd asked him, "Do you have any other garment with you?" The man replied, "No." Saʻīd said, "Then assume iḥrām in it."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا هُشَيْمٌ عَنْ أَبِي بِشْرٍ قَالَ: كُنْت عِنْدَ سَعِيدِ بْنِ الْمُسَيِّبِ فَقَالَ لَهُ رَجُلٌ: إنِّي أُرِيدُ أَنْ أُحْرِمَ وَمَعِي ثَوْبٌ مَصْبُوغًا بِالزَّعْفَرَانِ فَغَسَلْته حَتَّى ذَهَبَ لَوْنُهُ؟ فَقَالَ لَهُ سَعِيدٌ: أَمَعَك ثَوْبٌ غَيْرُهُ؟ قَالَ: لَا، قَالَ: فَأَحْرِمْ فِيهِ.

L12878 And it was reported to us through the chain of Ibrāhīm from ʿĀ'ishah, the Mother of the Believers, that assuming iḥrām in a garment is permissible if it has been washed—though Ibrāhīm's direct hearing from ʿĀ'ishah is not valid.

وَرُوِّينَا مِنْ طَرِيقِ إبْرَاهِيمَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ إبَاحَةَ الْإِحْرَامِ فِيهِ إذَا غُسِلَ - وَلَا يَصِحُّ سَمَاعُ إبْرَاهِيمَ مِنْ عَائِشَةَ.

L12879 It has been narrated to us from Saʻīd ibn Jubayr, Ibrāhīm, ʿAṭā', al-Ḥasan, and Ṭāwus regarding the permissibility of wearing it in ihrām when it has been washed—though there are weaknesses in their chains of transmission. Among these is: What should one do if they find leather socks but cannot find

وَرُوِّينَا عَنْ سَعِيدِ بْنِ جُبَيْرٍ وَإِبْرَاهِيمَ، وَعَطَاءٍ، وَالْحَسَنِ، وَطَاوُسٍ: إبَاحَةَ الْإِحْرَامِ فِيهِ إذَا غُسِلَ - وَفِي أَسَانِيدِهِمْ مَغْمَزٌ -: وَمِنْهُ: مَنْ وَجَدَ خُفَّيْنِ وَلَمْ يَجِدْ نَعْلَيْنِ؟ فَقَدْ قَالَ

sandals? Some said: They may wear them as they are without cutting them. Others said: They should slit the trousers and wear them as a lower garment. Those who permitted wearing trousers and leather socks cited as evidence the following hadith transmitted to us by ʿAbdullāh ibn Rabīʿ: ʿAbdullāh ibn Muḥammad ibn ʿUthmān narrated to us, Aḥmad ibn Khālid narrated to us, ʿAlī ibn ʿAbd al-ʿAzīz narrated to us, al-Ḥajjāj ibn al-Minhāl narrated to us, Shuʿbah ibn al-Ḥajjāj narrated to us, reporting: ʿAmr ibn Dīnār informed me that he heard Jābir ibn Zayd say: I heard Ibn ʿAbbās say, "The Messenger of Allah—peace and blessings be upon him—addressed us at ʿArafāt and said: 'Whoever cannot find sandals may wear leather socks, and whoever cannot find a lower garment may wear trousers.'"[38]

قَوْمٌ: يَلْبَسُهُمَا كَمَا هُمَا وَلَا يَقْطَعُهُمَا - وَقَالَ قَوْمٌ يَشُقُّ السَّرَاوِيلَ فَيَتَّزِرُ بِهَا - وَاحْتَجَّ مَنْ أَجَازَ لَهُ لِبَاسَ السَّرَاوِيلِ وَالْخُفَّيْنِ بِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نَا أَحْمَدُ بْنُ خَالِدٍ نَا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نَا الْحَجَّاجُ بْنُ الْمِنْهَالِ نَا شُعْبَةُ بْنُ الْحَجَّاجِ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ سَمِعْت جَابِرَ بْنَ زَيْدٍ قَالَ: سَمِعْت ابْنَ عَبَّاسٍ قَالَ «خَطَبَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِعَرَفَاتٍ فَقَالَ: مَنْ لَمْ يَجِدْ نَعْلَيْنِ فَلْيَلْبَسْ خُفَّيْنِ، وَمَنْ لَمْ يَجِدْ إزَارًا فَلْيَلْبَسْ سَرَاوِيلَ» .

L12880–12881 Some scholars said: Cutting the khuffayn is an act of property destruction and is prohibited.

وَقَالَ بَعْضُهُمْ: قَطْعُ الْخُفَّيْنِ إفْسَادٌ لِلْمَالِ وَقَدْ نُهِيَ عَنْهُ.

L12882 Abu Muhammad said: The hadith of the Messenger of Allah—peace and blessings be upon him—is not permissible to oppose. Thus, one must wear trousers as they are, and there is no issue in that. As for leather socks, Ibn Umar's hadith—based on Ibn Abbas's hadith—specifies additional trimming of them until they lie below the ankles. Therefore, it is impermissible to oppose this ruling or to leave the excess [portion] untrimmed.

قَالَ أَبُو مُحَمَّدٍ: حَدِيثُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَحِلُّ خِلَافُهُ، فَلْيَلْبَسْ السَّرَاوِيلَ كَمَا هِيَ وَلَا شَيْءَ فِي ذَلِكَ، وَأَمَّا الْخُفَّانِ فَحَدِيثُ ابْنِ عُمَرَ فِيهِ زِيَادَةُ الْقَطْعِ حَتَّى يَكُونَا أَسْفَلَ مِنْ الْكَعْبَيْنِ عَلَى حَدِيثِ ابْنِ عَبَّاسٍ فَلَا يَحِلُّ خِلَافُهُ، وَلَا تَرْكُ الزِّيَادَةِ.

L12883 It is narrated from Ali ibn Abi Talib: "If one cannot find sandals, they may wear khuffs, and if they cannot find a loincloth, they may wear trousers." This is also authentically reported from Ibn Abbas as his own statement.

وَرُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ " إذَا لَمْ يَجِدْ النَّعْلَيْنِ لَبِسَ الْخُفَّيْنِ، وَإِنْ لَمْ يَجِدْ إزَارًا فَلْيَلْبَسْ السَّرَاوِيلَ " وَصَحَّ أَيْضًا عَنْ ابْنِ عَبَّاسٍ مِنْ قَوْلِهِ.

L12884 It has been reported to us through the chain of Saʿīd ibn Manṣūr → Hushaym → ʿUbaydullāh ibn ʿUmar → Nāfiʿ → Ibn ʿUmar, who said: "If a pilgrim in iḥrām cannot find sandals, let him wear khuffs and cut them so they remain below the ankles."

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ أَنَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ نَا نَافِعٌ عَنْ ابْنِ عُمَرَ قَالَ: إذَا لَمْ يَجِدْ الْمُحْرِمُ النَّعْلَيْنِ فَلْيَلْبَسْ الْخُفَّيْنِ وَلْيَقْطَعْهُمَا حَتَّى يَكُونَا أَسْفَلَ مِنْ الْكَعْبَيْنِ.

L12885 And via the chain of Hishām ibn ʿUrwah, that his father said: If the *muḥrim* cannot find sandals, he may wear leather socks below the ankles.

وَمِنْ طَرِيقِ هِشَامِ بْنِ عُرْوَةَ أَنَّ أَبَاهُ قَالَ: إذَا لَمْ يَجِدْ الْمُحْرِمُ النَّعْلَيْنِ لَبِسَ الْخُفَّيْنِ أَسْفَلَ مِنْ الْكَعْبَيْنِ.

[38] **Hadith references (L12879):** Sahih Muslim 1179.

وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ فِي الْمُحْرِمِ لَا يَجِدُ نَعْلَيْنِ: قَالَ: يَلْبَسُ الْخُفَّيْنِ وَيَقْطَعُهُمَا حَتَّى يَكُونَا مِثْلَ النَّعْلَيْنِ؛ وَهُوَ قَوْلُ إِبْرَاهِيمَ النَّخَعِيِّ، وَسُفْيَانَ، وَقَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَبِهِ نَأْخُذُ.

L12886 And from Sufyan al-Thawri, from Mansur ibn al-Mu'tamir, from Ibrahim al-Nakha'i, that he said regarding a Muhrim who cannot find two sandals: He may wear two leather socks and cut them until they become like two sandals. And this is the opinion of Ibrahim al-Nakha'i and Sufyan, and the opinion of al-Shafi'i and Abu Sulayman, and this is the position we adopt.

وَرُوِّينَا عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَالْمِسْوَرِ بْنِ مَخْرَمَةَ إِبَاحَةَ لِبَاسِ الْخُفَّيْنِ بِلَا ضَرُورَةٍ لِلْمُحْرِمِ مِنَ الرِّجَالِ.

L12887 It has been narrated to us from 'Ā'ishah, the Mother of the Believers, and al-Miswar ibn Makhramah that wearing a pair of khuffs is permissible for a male *muḥrim* without a valid necessity.

وَقَالَ أَبُو حَنِيفَةَ: إِنْ لَمْ يَجِدْ إِزَارًا لَبِسَ سَرَاوِيلَ، فَإِنْ لَبِسَهَا يَوْمًا إِلَى اللَّيْلِ فَعَلَيْهِ دَمٌ وَلَا بُدَّ.

L12888 Abu Hanifah said: If one does not find a waist-wrapper, he may wear trousers. If he wears them from day until night, he must offer a blood sacrifice without fail.

وَإِنْ لَبِسَهُ أَقَلَّ مِنْ ذَلِكَ فَعَلَيْهِ صَدَقَةٌ، وَإِنْ لَبِسَ خُفَّيْنِ لِعَدَمِ النَّعْلَيْنِ يَوْمًا إِلَى اللَّيْلِ فَعَلَيْهِ دَمٌ، وَإِنْ لَبِسَهُمَا أَقَلَّ فَصَدَقَةٌ؛ وَقَالَ مَالِكٌ: مَنْ لَمْ يَجِدْ إِزَارًا لَبِسَ سَرَاوِيلَ وَافْتَدَى، وَإِنْ لَمْ يَجِدْ نَعْلَيْنِ قَطَعَ الْخُفَّيْنِ أَسْفَلَ مِنَ الْكَعْبَيْنِ وَلَبِسَهُمَا وَلَا شَيْءَ عَلَيْهِ.

L12889 If he wears the garment for less than that duration, he must give compensatory charity. If he wears two khuffs due to the absence of sandals for a full day and night, he must offer a sacrificial animal. If he wears them for less than that period, he must give compensatory charity. Mālik said: Whoever cannot find an izar may wear trousers and pay a fidya (redemption). If he cannot find sandals, he may cut the khuffs to below the ankles and wear them, incurring no obligation.

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: يَشُقُّ السَّرَاوِيلَ وَيَتَّزِرُ بِهَا وَلَا شَيْءَ عَلَيْهِ.

L12890 Muhammad ibn al-Hasan said: He splits the trousers [to create a slit] and wears them as an izar, and there is no blame on him.

وَقَالَ أَبُو مُحَمَّدٍ: أَمَّا تَقْسِيمُ أَبِي حَنِيفَةَ بَيْنَ لِبَاسِ السَّرَاوِيلِ وَالْخُفَّيْنِ يَوْمًا إِلَى اللَّيْلِ، وَبَيْنَ لِبَاسِهِمَا أَقَلَّ مِنْ ذَلِكَ فَقَوْلٌ لَا يُحْفَظُ عَنْ أَحَدٍ قَبْلَهُ، وَلَيْتَ شِعْرِي مَاذَا يَقُولُونَ إِنْ لَبِسَهُمَا يَوْمًا غَيْرَ طَرْفَةِ عَيْنٍ، أَوْ غَيْرَ نِصْفِ سَاعَةٍ؟ وَهَكَذَا نَزِيدُهُمْ دَقِيقَةً دَقِيقَةً حَتَّى يَلُوحَ هَذَيَانُهُمْ، وَقَوْلُهُمْ بِالْأَضَالِيلِ فِي الدِّينِ، وَكَذَلِكَ إِيجَابُهُ الدَّمَ فِي ذَلِكَ، أَوْ الصَّدَقَةَ، لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ فَإِنْ قَالُوا: قِسْنَا ذَلِكَ عَلَى الْفِدْيَةِ الْوَاجِبَةِ فِي حَلْقِ الرَّأْسِ؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛

L12891–12892 Abū Muḥammad said: As for Abū Ḥanīfah's distinction between wearing trousers and leather socks for a full day until nightfall versus wearing them for less than that, this is an opinion not reported from anyone before him. I wonder what they would say if one wore them for a day that is not even the blink of an eye or less than half an hour! Thus, we reduce it minute by minute until their absurdity becomes apparent, along with their propagation of misguidances in religion. Similarly, his ruling imposing obligatory blood sacrifice or undefined charity in this matter is unknown from anyone before him. If they argue, "We analogized this to the ransom prescribed for shaving the head," we reply: All analogy is invalid. Even if analogy were valid, this would be sheer falsehood, for the ransom for harm was given as

a choice between fasting, charity, or sacrifice, whereas you mandate here blood sacrifice without exception or undefined charity without exception—especially when you yourselves assert that atonements cannot be established through analogy. How much of this trivialization of religion will persist? As for Mālik's view, his distinction between the ruling on trousers and the ruling on wearing leather socks is erroneous, with no proof for its validity. Mālik is excused, for the ḥadīth of Ibn ʿAbbās did not reach him. The blame lies solely on those who learned it yet opposed it out of blind adherence to Mālik's opinion.

لِأَنَّ فِدْيَةَ الْأَذَى جَاءَتْ بِتَخْيِيرٍ بَيْنَ صِيَامٍ، أَوْ صَدَقَةٍ، أَوْ نُسُكٍ، وَأَنْتُمْ تَجْعَلُونَ هَاهُنَا الدَّمَ وَلَا بُدَّ، أَوْ صَدَقَةً غَيْرَ مَحْدُودَةٍ وَلَا بُدَّ، وَلَا سِيَّمَا وَأَنْتُمْ تَقُولُونَ: إنَّ الْكَفَّارَاتِ لَا يَجُوزُ أَخْذُهَا بِالْقِيَاسِ، فَكَمْ هَذَا التَّلَاعُبُ بِالدِّينِ؟ وَأَمَّا قَوْلُ مَالِكٍ فَتَقْسِيمُهُ بَيْنَ حُكْمِ السَّرَاوِيلِ وَبَيْنَ حُكْمِ لُبْسِ الْخُفَّيْنِ، خَطَأٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ، وَمَالِكٌ مَعْذُورٌ، لِأَنَّهُ لَمْ يَبْلُغْهُ حَدِيثُ ابْنِ عَبَّاسٍ، وَإِنَّمَا الْمَلَامَةُ عَلَى مَنْ بَلَغَهُ وَخَالَفَهُ لِتَقْلِيدِ رَأْيِ مَالِكٍ.

L12893 As for the statement of Muḥammad ibn al-Ḥasan, it is erroneous because he supplemented through his own reasoning what the Messenger of Allah—peace and blessings be upon him—did not command—peace be upon him—and he obligated a fidyah in situations where the Prophet—peace be upon him—did not require it.

وَأَمَّا قَوْلُ مُحَمَّدِ بْنِ الْحَسَنِ فَخَطَأٌ، لِأَنَّهُ اسْتَدْرَكَ بِعَقْلِهِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَأْمُرْ بِهِ - عَلَيْهِ السَّلَامُ - وَأَوْجَبَ فِدْيَةً حَيْثُ لَمْ يُوجِبْهَا النَّبِيُّ - عَلَيْهِ السَّلَامُ -.

L12894 Abu Muhammad said: They magnify the disagreement with the Companion for whom no opponent is known. We have mentioned in this issue what was narrated from Ibn Abbas, Ibn Umar, Aisha, Ali, and Al-Miswar. We know of no statement from any Companion—may Allah be pleased with them—other than the statements we cited regarding this issue. Yet the Hanafis and Malikis opposed them. All these are corrupt opinions with absolutely no evidence to support their validity whatsoever—and success comes only from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: وَهُمْ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ، وَقَدْ ذَكَرْنَا فِي هَذِهِ الْمَسْأَلَةِ مَا رُوِيَ عَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ، وَعَائِشَةَ، وَعَلِيٍّ، وَالْمِسْوَرِ، وَلَا نَعْلَمُ لِأَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - قَوْلًا غَيْرَ الْأَقْوَالِ الَّتِي ذَكَرْنَا فِي هَذِهِ الْمَسْأَلَةِ فَخَالَفَهَا الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ كُلُّهَا آرَاءٌ فَاسِدَةٌ لَا دَلِيلَ عَلَى صِحَّتِهَا أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L12895 And it has been narrated to us from ʿĀ'ishah, the Mother of the Believers, regarding the prohibition of a woman from wearing socks, and from ʿAlī and Ibn ʿUmar as well. This is the view of Ibrāhīm al-Nakhaʿī, al-Ḥasan, ʿAṭā', and others.

وَرُوِّينَا عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ نَهْيَ الْمَرْأَةِ عَنْ الْقُفَّازَيْنِ، وَعَنْ عَلِيٍّ، وَابْنِ عُمَرَ أَيْضًا وَهُوَ قَوْلُ إبْرَاهِيمَ، وَالْحَسَنِ، وَعَطَاءٍ، وَغَيْرِهِمْ.

L12896 And it has been narrated to us from ʿĀ'ishah, Mother of the Believers, and from Ibn ʿAbbās: the permissibility of gloves for women. This is the opinion of al-Ḥakam, Ḥammād, ʿAṭā', Makhūl, Alqama, and others besides them. The ḥadīth of the Messenger of Allah—may Allah bless him and grant him peace—which we have mentioned is the ultimate arbiter over all other opinions.

وَرُوِّينَا عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَعَنْ ابْنِ عَبَّاسٍ: إبَاحَةَ الْقُفَّازَيْنِ لِلْمَرْأَةِ، وَهُوَ قَوْلُ الْحَكَمِ، وَحَمَّادٍ، وَعَطَاءٍ، وَمَكْحُولٍ، وَعَلْقَمَةَ، وَغَيْرِهِمْ؛ وَحَدِيثُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَا هُوَ الْحَاكِمُ عَلَى مَا سِوَاهُ.

وَأَمَّا الْمُعَصْفَرُ فَقَدْ رُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ الْمَنْعَ مِنْهُ جُمْلَةً وَلِلْمُحْرِمِ خَاصَّةً أَيْضًا عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - وَهُوَ قَوْلُ الْحَسَنِ، وَعَطَاءٍ.

L12897–12898 As for safflower-dyed garments, it has been narrated to us that Umar ibn al-Khattab issued a general prohibition against them, and also from Aishah, the Mother of the Believers, a prohibition specifically for those in the state of Ihram. This is the view of al-Hasan, and Ata.

وَرُوِّينَا عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، وَابْنِ عُمَرَ، وَنَافِعِ بْنِ جُبَيْرٍ: إبَاحَتَهُ لِلْمُحْرِمِ، وَلَمْ يُجِزْهُ أَبُو حَنِيفَةَ، وَمَالِكٌ: لِلْمُحْرِمِ، وَأَبَاحَهُ الشَّافِعِيُّ.

L12899 It has been narrated to us from Jābir ibn ʿAbd Allāh, Ibn ʿUmar, and Nāfiʿ ibn Jubayr ibn Mutʿim that they each permitted it for the muḥrim. Abū Ḥanīfah and Mālik prohibited it for the muḥrim, whereas al-Shāfiʿī allowed it.

وَرُوِّينَا عَنْ ابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ، وَعَلِيٍّ، وَعَقِيلِ ابْنَيْ أَبِي طَالِبٍ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ، وَغَيْرِهِمْ، إبَاحَةَ الْمُوَرَّدِ لِلرَّجُلِ الْمُحْرِمِ، وَهُوَ مُبَاحٌ إذَا لَمْ يَكُنْ بِزَعْفَرَانٍ، أَوْ وَرْسٍ، أَوْ عُصْفُرٍ، لِأَنَّهُ لَمْ يَأْتِ عَنْهُ نَهْيٌ فِي قُرْآنٍ وَلَا سُنَّةٍ.

L12900 It has been narrated to us from Ibn Umar, Ibn Abbas, Ali and Aqil—the two sons of Abū Ṭālib—al-Qāsim ibn Muḥammad, and others, that the rosy-dyed garment is permissible for a man in iḥrām, and it remains permissible if it is not dyed with saffron, *wars*, or safflower. This is because no prohibition from him (the Prophet) regarding this is found in the Qur'an or the Sunnah.

[مَسْأَلَةُ الْغُسْلِ عِنْدَ الْإِحْرَامِ]

The ruling on the major ablution, ghusl, upon entering the state of iḥrām.

٨٢٤ - مَسْأَلَةٌ:

L12901

824. Legal Issue:

وَنَسْتَحِبُّ الْغُسْلَ عِنْدَ الْإِحْرَامِ لِلرِّجَالِ وَالنِّسَاءِ، وَلَيْسَ فَرْضًا إلَّا عَلَى النُّفَسَاءِ وَحْدَهَا: لِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ سَلَمَةَ عَنْ ابْنِ الْقَاسِمِ حَدَّثَنِي مَالِكٌ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ عَنْ أَبِيهِ عَنْ «أَسْمَاءَ بِنْتِ عُمَيْسٍ: أَنَّهَا وَلَدَتْ مُحَمَّدَ بْنَ أَبِي بَكْرٍ بِالْبَيْدَاءِ فَذَكَرَ أَبُو بَكْرٍ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: مُرْهَا فَلْتَغْتَسِلْ ثُمَّ تُهِلُّ» .

L12902 824. Legal Issue:

L12903 We recommend the ritual bath at the onset of iḥrām for both men and women, though it is obligatory only for postpartum women. This ruling derives from the narration transmitted by ʿAbdullāh ibn Rabīʿ, from Muḥammad ibn Muʿāwiyah, from Aḥmad ibn Shuʿayb, from Muḥammad ibn Salamah, from Ibn al-Qāsim, from Mālik, from ʿAbd al-Raḥmān ibn al-Qāsim, from his father, from Asmāʾ bint ʿUmays: She gave birth to Muḥammad ibn Abī Bakr at al-Bayḍāʾ. Abū Bakr informed the Messenger of Allah (peace and blessings be upon him) of this, whereupon he instructed: "Direct her to perform the ritual bath and then commence the talbiyah."

[مَسْأَلَةُ التَّطَيُّبُ عِنْدَ الْإِحْرَامِ]

Issue of the Application of Fragrance at the Time of Entering the State of Ihram

٨٢٥ - مَسْأَلَةٌ:

L12904

825 – Question:

L12905

وَيُسْتَحَبُّ لِلْمَرْأَةِ وَالرَّجُلِ التَّطَيُّبُ

L12906 It is recommended for both the woman and the man to perfume themselves

وَنَسْتَحِبُّ لِلْمَرْأَةِ وَالرَّجُلِ أَنْ يَتَطَيَّبَا عِنْدَ الْإِحْرَامِ بِأَطْيَبِ مَا يَجِدَانِهِ مِنَ الْغَالِيَةِ وَالْبَخُورِ بِالْعَنْبَرِ، وَغَيْرِهِ، ثُمَّ لَا يُزِيلَانِهِ عَنْ أَنْفُسِهِمَا مَا بَقِيَ عَلَيْهِمَا - وَكَرِهَ الطِّيبَ لِلْمُحْرِمِ قَوْمٌ -: رُوِّينَا مِنْ طَرِيقِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِ قَالَ: وَجَدَ عُمَرُ بْنُ الْخَطَّابِ رِيحَ طِيبٍ بِالشَّجَرَةِ فَقَالَ: مِمَّنْ هَذِهِ؟ فَقَالَ مُعَاوِيَةُ: مِنِّي طَيَّبَتْنِي أُمُّ حَبِيبَةَ فَتَغَيَّظَ عَلَيْهِ عُمَرُ، وَقَالَ: مِنْك لَعَمْرِي أَقْسَمْت عَلَيْك لَتَرْجِعَن إلَى أُمِّ حَبِيبَةَ، فَلْتَغْسِلْهُ عَنْك كَمَا طَيَّبَتْك، وَأَنَّهُ قَالَ: إنَّمَا الْحَاجُّ الْأَشْعَثُ، الْأَدْفَرُ، الْأَشْعَرُ.

at the time of assuming *iḥrām* with the finest fragrance they possess—such as *ghāliyah* and incense blended with ambergris or other scents—and they must not remove it from themselves as long as it remains on them. A group [of scholars] disapproved of perfume for the pilgrim. It has been narrated to us through the chain of al-Zuhrī, from Sālim ibn ʿAbd Allāh, from his father, who said: ʿUmar ibn al-Khaṭṭāb detected the scent of perfume near the tree and asked, "Whose is this?" Muʿāwiyah replied, "It is mine. Umm Ḥabībah perfumed me." ʿUmar grew furious with him and said, "By my life, from you! I swear you must return to Umm Ḥabībah and have her wash it off you in the same way she applied it." He then stated, "The pilgrim should be disheveled, dusty, and unkempt."

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ: أَنَّ عُثْمَانَ رَأَى رَجُلًا قَدْ تَطَيَّبَ عِنْدَ الْإِحْرَامِ فَأَمَرَهُ أَنْ يَغْسِلَ رَأْسَهُ بِطِينٍ.

L12907 Narrated via the chain of Shuʿbah from Saʿd ibn Ibrāhīm ibn ʿAbd al-Raḥmān, from his father: that ʿUthman saw a man who had applied perfume upon assuming *ihram*, so he ordered him to wash his head with clay.

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ إبْرَاهِيمَ بْنِ مُحَمَّدِ بْنِ الْمُنْتَشِرِ عَنْ أَبِيهِ، قَالَ: سَمِعْت ابْنَ عُمَرَ يَقُولُ: لَأَنْ أُصْبِحَ مَطْلِيًّا بِقَطِرَانٍ أَحَبُّ إلَيَّ مِنْ أَنْ أُصْبِحَ مُحْرِمًا أَنْضَحُ طِيبًا وَهُوَ قَوْلُ عَطَاءٍ، وَالزُّهْرِيِّ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَمُحَمَّدِ بْنِ سِيرِينَ، وَمَالِكٍ، وَمُحَمَّدِ بْنِ الْحَسَنِ إلَّا أَنَّ مَالِكًا قَالَ: إنْ تَطَيَّبَ قَبْلَ إحْرَامِهِ وَقَبْلَ إفَاضَتِهِ، فَلَا شَيْءَ عَلَيْهِ - وَأَبَاحَهُ جُمْهُورُ النَّاسِ كَمَا رُوِّينَا آنِفًا عَنْ أُمِّ حَبِيبَةَ أُمِّ الْمُؤْمِنِينَ، وَمُعَاوِيَةَ - وَرُوِّينَاهُ أَيْضًا عَنْ كَثِيرِ بْنِ الصَّلْتِ.

L12908–12910 Through the chain of Sufyān al-Thawrī from Ibrāhīm ibn Muḥammad ibn al-Muntashir from his father, who said: I heard Ibn ʿUmar say: "I would rather wake up daubed with tar than be in a state of iḥrām while I apply perfume." This is the view of ʿAṭāʾ, al-Zuhrī, Saʿīd ibn Jubayr, Muḥammad ibn Sīrīn, and Mālik. And Muḥammad ibn al-Ḥasan, except that Mālik said: If one applies perfume before entering iḥrām and before ifāḍah, there is no obligation upon him. The majority of people permitted it, as we have just narrated from Umm Ḥabībah, the Mother of the Believers, and Muʿāwiyah. It has also been transmitted from Kathīr ibn al-Ṣalt.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ مُحَمَّدِ بْنِ قَيْسٍ عَنْ بَشِيرِ بْنِ يَسَارٍ الْأَنْصَارِيِّ: أَنَّ عُمَرَ وَجَدَ رِيحَ طِيبٍ فَقَالَ: مِمَّنْ هَذِهِ الرِّيحُ؟ فَقَالَ الْبَرَاءُ بْنُ عَازِبٍ: مِنِّي يَا أَمِيرَ الْمُؤْمِنِينَ، قَالَ: قَدْ عَلِمْنَا أَنَّ امْرَأَتَك عَطِرَةٌ إنَّمَا الْحَاجُّ، الْأَدْفَرُ، الْأَغْبَرُ - وَبِهِ إلَى مُحَمَّدِ بْنِ قَيْسٍ عَنْ الشَّعْبِيِّ: أَنَّهُ قَالَ: كَانَ عَبْدُ اللَّهِ بْنُ جَعْفَرٍ يَتَطَيَّبُ بِالْمِسْكِ عِنْدَ إحْرَامِهِ.

L12911 And through the chain of Waki' from Muhammad ibn Qays from Bashir ibn Yasar al-Ansari: that Umar noticed the scent of perfume and said, "Whose scent is this?" Al-Bara' ibn 'Azib replied, "It is mine, O Commander of the Faithful." He said, "We know your wife is fragrant. Rather, the pilgrim is the one who is dust-covered and dust-laden"—and through him from al-Sha'bi to Muhammad ibn Qays: that he said, "Abdullah ibn Ja'far would apply musk perfume when entering the state of his *iḥrām*."

L12912 And from the narration of Ibn Abi Shaybah through Marwan ibn Mu‘awiyah al-Fazari through Salih ibn Hayyan, who said: I saw Anas ibn Malik’s garment stained with the *khaluq* perfume used on the Kaaba while he was in the state of *Ihram*, and he did not wash it.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ مَرْوَانَ بْنِ مُعَاوِيَةَ الْفَزَارِيِّ عَنْ صَالِحِ بْنِ حَيَّانَ قَالَ: رَأَيْت أَنَسَ بْنَ مَالِكٍ أَصَابَ ثَوْبَهُ مِنْ خَلُوقِ الْكَعْبَةِ وَهُوَ مُحْرِمٌ فَلَمْ يَغْسِلْهُ.

L12913 From the narration of Sufyan, from Ayyub as-Sikhtiyani, from Aishah bint Sa‘d ibn Abi Waqqas, who said: I perfumed my father with musk and adh-dharirah for his Ihram when he assumed it, and for his release from Ihram before performing the visitation (Ziyarah) or Tawaf.

وَمِنْ طَرِيقِ سُفْيَانَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عَائِشَةَ بِنْتِ سَعْدِ بْنِ أَبِي وَقَّاصٍ قَالَتْ: طَيَّبْت أَبِي بِالسُّكِّ، وَالذَّرِيرَةِ لِحَرَمِهِ حِينَ أَحْرَمَ، وَلِحِلِّهِ قَبْلَ أَنْ يَزُورَ، أَوْ يَطُوفَ.

L12914 And through the chain of Ma’mar from Ayyub, from her [Aisha] and others besides him, that she asked, “What was that perfume?” She said, “The excellent al-bān and the adhesive dharīrah.”

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ عَنْهَا وَغَيْرِهِ، أَنَّهَا سَأَلَتْ؟ مَا كَانَ ذَلِكَ الطِّيبُ؟ قَالَتْ: الْبَانُ الْجَيِّدُ، وَالذَّرِيرَةُ الْمُمَسَّكَةُ.

L12915 From the chain of Ibn Abi Shaybah, from Hammad ibn Usamah, from Umar ibn Suwayd al-Thaqafi, from Aisha bint Talha, from Aisha, the Mother of the Believers, who said: “We used to smear our foreheads with perfumed musk before entering the state of Ihram. Then we would enter Ihram while we were with the Messenger of Allah—peace and blessings be upon him—and we would sweat, and it would flow onto our faces. Yet the Prophet—peace and blessings be upon him—never forbade us from it.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ حَمَّادِ بْنِ أُسَامَةَ عَنْ عُمَرَ بْنِ سُوَيْدٍ الثَّقَفِيِّ عَنْ عَائِشَةَ بِنْتِ طَلْحَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: كُنَّا نُضَمِّخُ جِبَاهَنَا بِالْمِسْكِ الْمُطَيَّبِ قَبْلَ أَنْ نُحْرِمَ، ثُمَّ نُحْرِمَ وَنَحْنُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَنَعْرَقُ فَيَسِيلُ عَلَى وُجُوهِنَا فَلَا يَنْهَانَا عَنْهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L12916 From the narration of Ḥammād ibn Salamah: Dharrah narrated to me that she used to wrap ʿĀ’ishah’s head, the Mother of the Believers, with musk and ambergris during iḥrām.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ قَالَ حَدَّثَتْنِي ذَرَّةُ أَنَّهَا كَانَتْ تُغَلِّفُ رَأْسَ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ بِالْمِسْكِ، وَالْعَنْبَرِ عِنْدَ الْإِحْرَامِ.

L12917 And through the transmission of ʿAbd al-Raḥmān ibn al-Qāsim from his mother—the daughter of ʿAbd al-Raḥmān ibn Abī Bakr al-Ṣiddīq—who reported: I saw ʿĀ’ishah applying scented oil to her hair partings, then she would enter ihram. From Abū Saʿīd al-Khudrī: he would have ban tree resin applied to himself at the time of entering ihram.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ عَنْ أُمِّهِ وَهِيَ بِنْتُ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ رَأَيْت عَائِشَةَ تَنْكُثُ فِي مَفَارِقِهَا الطِّيبَ ثُمَّ تُحْرِمُ. وَعَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّهُ كَانَ يُدَهَّنُ بِالْبَانِ عِنْدَ الْإِحْرَامِ.

L12918–12919 And via the isnad of Waki’, from Sufyan, from ’Ammar al-Duhni, from Muslim al-Batin: al-Husayn ibn ’Ali commanded his companions to apply perfume at the time of assuming *ihram*.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ عَمَّارٍ الدُّهْنِيِّ عَنْ مُسْلِمٍ الْبَطِينِ أَنَّ الْحُسَيْنَ بْنَ عَلِيٍّ أَمَرَ أَصْحَابَهُ بِالطِّيبِ عِنْدَ الْإِحْرَامِ.

From the path of Shu’bah via al-Ash’ath ibn Sulaym via Murrah ibn Khālid al-Shaybānī, who said: We asked Abū Dhārr at al-Rabḍah, “With what may a Muḥrim be anointed?” He said: “With oil.”

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْأَشْعَثِ بْنِ سُلَيْمٍ عَنْ مُرَّةَ بْنِ خَالِدٍ الشَّيْبَانِيِّ قَالَ: سَأَلْنَا أَبَا ذَرٍّ بِالرَّبَذَةِ بِأَيِّ شَيْءٍ يُدَهَّنُ الْمُحْرِمُ؟ قَالَ: بِالدُّهْنِ.

And from Abū Muʿāwiyah, from al-Aʿmash, from Abū al-Ḍuḥā, who said: I saw ʿAbdullāh ibn al-Zubayr with hair on his head and beard while in the state of *iḥrām*—so much so that if a man had [hair] like it, he would consider it a capital asset.

وَعَنْ أَبِي مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي الضُّحَى قَالَ: رَأَيْت عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ وَفِي رَأْسِهِ وَلِحْيَتِهِ وَهُوَ مُحْرِمٌ مَا لَوْ كَانَ لِرَجُلٍ لَاتَّخَذَ مِنْهُ رَأْسَ مَالٍ.

Narrated by Waki‘ on the authority of Hishām ibn ‘Urwah, from his father, from Ibn al-Zubayr, that he would apply the new Ghāliyah (a type of perfume) upon entering Iḥrām.

وَعَنْ وَكِيعٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ ابْنِ الزُّبَيْرِ أَنَّهُ كَانَ يَتَطَيَّبُ بِالْغَالِيَةِ الْجَدِيدَةِ عِنْدَ إحْرَامِهِ.

And from the chain of Waki‘ via ‘Uyaynah ibn ‘Abd al-Raḥmān from his father, who said: I asked Ibn ‘Abbās about the perfume prohibited [during iḥrām]. He replied: Indeed, I massage it generously into my head before assuming iḥrām, and I love for it to remain.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عُيَيْنَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ قَالَ: سَأَلْت ابْنَ عَبَّاسٍ عَنْ الطِّيبِ الْمُحَرَّمِ؟ فَقَالَ: إنِّي لَأُسَغْسِغُهُ فِي رَأْسِي قَبْلَ أَنْ أُحْرِمَ ثُمَّ أُحِبُّ بَقَاءَهُ.

It is narrated from Ibn Abbas that he deemed it permissible to apply perfume at the time of assuming the state of ihram and on the Day of Sacrifice (Yawm al-Nahr) before performing Tawaf al-Ziyarah.

وَعَنْ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِالطِّيبِ عِنْدَ الْإِحْرَامِ وَيَوْمَ النَّحْرِ قَبْلَ أَنْ يَزُورَ.

These are the majority of the Companions—may Allah be pleased with them: Sa‘d ibn Abī Waqqāṣ; the Mothers of the Believers, ‘Ā’ishah and Umm Ḥabībah; ‘Abdullāh ibn Ja‘far; al-Ḥusayn ibn ‘Alī; Abū Dharr; Abū Sa‘īd; al-Barā’ ibn ‘Āzib; Anas; Mu‘āwiyah; Kathīr ibn al-Ṣalt; Ibn al-Zubayr; and Ibn ‘Abbās.

فَهَؤُلَاءِ جُمْهُورُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: سَعْدُ بْنُ أَبِي وَقَّاصٍ، وَأُمُّ الْمُؤْمِنِينَ: عَائِشَةُ، وَأُمُّ حَبِيبَةَ، وَعَبْدُ اللَّهِ بْنُ جَعْفَرٍ، وَالْحُسَيْنُ بْنُ عَلِيٍّ، وَأَبُو ذَرٍّ، وَأَبُو سَعِيدٍ، وَالْبَرَاءُ بْنُ عَازِبٍ، وَأَنَسٌ، وَمُعَاوِيَةُ، وَكَثِيرُ بْنُ الصَّلْتِ، وَابْنُ الزُّبَيْرِ، وَابْنُ عَبَّاسٍ.

It is reported from Ibn al-Ḥanafiyyah that he would apply a good-quality perfumed oil (ghāliyah) to his head before entering iḥrām.

وَعَنْ ابْنِ الْحَنَفِيَّةِ: أَنَّهُ كَانَ يُغَلِّفُ رَأْسَهُ بِالْغَالِيَةِ الْجَيِّدَةِ قَبْلَ أَنْ يُحْرِمَ.

From Umar ibn Abd al-Aziz, it is narrated that he used to be anointed with as-Salīkha when assuming Ihram. From Uthman ibn Urwah ibn al-Zubayr, it is narrated that his father would dye his clothes red and enter Ihram in them. Uthman said: “While we were in Ihram, my father would see our beards dripping with al-Ghaliyah, yet he never objected to this.”

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ كَانَ يُدَهَّنُ بِالسَّلِيخَةِ - عِنْدَ الْإِحْرَامِ - وَعَنْ عُثْمَانَ بْنِ عُرْوَةَ بْنِ الزُّبَيْرِ: أَنَّ أَبَاهُ كَانَ يُحَمِّرُ ثِيَابَهُ، وَيُحْرِمُ فِيهَا قَالَ: وَكَانَ يَرَى لِحَانَا تَقْطُرُ مِنْ الْغَالِيَةِ وَنَحْنُ مُحْرِمُونَ فَلَا يُنْكِرُ ذَلِكَ عَلَيْنَا.

From Al-Aswad ibn Yazīd that he would enter iḥrām while the sheen of

perfume was still visible on his head and beard.

وَعَنْ الْأَسْوَدِ بْنِ يَزِيدَ أَنَّهُ كَانَ يُحْرِمُ وَوَبِيصُ الطِّيبِ يُرَى فِي رَأْسِهِ وَلِحْيَتِهِ.

L12929 From Hammad ibn Salamah, from Hisham ibn Urwah, who said: "My father would say to us: 'Apply perfume before entering Ihram (the state of consecration) and before you depart on Yawm al-Nahr (the Day of Sacrifice).'"

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ قَالَ: كَانَ أَبِي يَقُولُ لَنَا: تَطَيَّبُوا قَبْلَ أَنْ تُحْرِمُوا وَقَبْلَ أَنْ تُفِيضُوا يَوْمَ النَّحْرِ.

L12930–12932 Through the chain of Ahmad ibn Shu'ayb: From Ayyub ibn Muhammad al-Wazzan, from Amr ibn Ayyub; Aflah ibn Humayd narrated to us from Abu Bakr—who is Ibn Abd al-Rahman ibn al-Harith ibn Hisham—that... Sulayman ibn Abd al-Malik, in the year he performed Hajj, gathered people of knowledge including Umar ibn Abd al-Aziz, Kharija ibn Zayd ibn Thabit, al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq, Salim and Abdullah, the two sons of Abdullah ibn Umar, Ibn Shihab, and Abu Bakr ibn Abd al-Rahman. He asked them about applying perfume before Ifādah. All instructed him to use perfume - no one differed from him except that Abdullah ibn Abdullah ibn Umar said: "Abdullah was earnest and rigorous. He would stone the Jamarat, slaughter his sacrifice, shave his head, mount his ride, then depart before reaching his lodging?" Salim responded: "He spoke truthfully."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَيُّوبُ بْنُ مُحَمَّدٍ الْوَزَّانُ أَنَا عَمْرُو بْنُ أَيُّوبَ نَا أَفْلَحُ بْنُ حُمَيْدٍ عَنْ أَبِي بَكْرٍ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ - أَنَّ سُلَيْمَانَ بْنَ عَبْدِ الْمَلِكِ عَامَ حَجَّ جَمَعَ أُنَاسًا مِنْ أَهْلِ الْعِلْمِ فِيهِمْ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ، وَخَارِجَةُ بْنُ زَيْدِ بْنِ ثَابِتٍ، وَالْقَاسِمُ بْنُ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ، وَسَالِمٌ، وَعَبْدُ اللَّهِ ابْنَا عَبْدِ اللَّهِ بْنِ عُمَرَ، وَابْنُ شِهَابٍ، وَأَبُو بَكْرِ بْنُ عَبْدِ الرَّحْمَنِ فَسَأَلَهُمْ عَنْ الطِّيبِ قَبْلَ الْإِفَاضَةِ فَكُلُّهُمْ أَمَرَهُ بِالطِّيبِ - فَلَمْ يَخْتَلِفْ عَلَيْهِ أَحَدٌ مِنْهُمْ إِلَّا أَنَّ عَبْدَ اللَّهِ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ لَهُ: كَانَ عَبْدُ اللَّهِ جَادًّا مُجِدًّا وَكَانَ يَرْمِي الْجَمْرَةَ ثُمَّ يَذْبَحُ ثُمَّ يَحْلِقُ ثُمَّ يَرْكَبُ فَيُفِيضُ قَبْلَ أَنْ يَأْتِيَ مَنْزِلَهُ؟ فَقَالَ سَالِمٌ: صَدَقَ.

L12933 And through the chain of Sufyan ibn Uyaynah from Amr ibn Dinar, who said: Salim ibn Abdullah ibn Umar said: Aisha said: "I anointed with perfume the Messenger of Allah (peace be upon him), and the Sunnah of the Messenger of Allah (peace be upon him) is most deserving of being followed." This is the explicit wording of Salim in the hadith, and she did not follow what was reported from his father and grandfather regarding that matter.

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: قَالَ سَالِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ: قَالَتْ عَائِشَةُ: أَنَا طَيَّبْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَسُنَّةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَحَقُّ أَنْ تُتَّبَعَ، هَكَذَا نَصُّ كَلَامِ سَالِمٍ فِي الْحَدِيثِ وَلَمْ تَتَّبِعْ مَا جَاءَ عَنْ أَبِيهِ وَجَدِّهِ فِي ذَلِكَ.

L12934 We have also narrated from Ibrāhīm al-Nakhaʿī and Ibn Jurayj. Sufyān al-Thawrī considered it preferable [to apply perfume], asking: "What perfume is applied at the time of assuming iḥrām—before performing ghusl or after it?"

وَرُوِّينَاهُ أَيْضًا: عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَابْنِ جُرَيْجٍ، وَاسْتَحَبَّهُ سُفْيَانُ الثَّوْرِيُّ أَيُّ طِيبٍ كَانَ عِنْدَ الْإِحْرَامِ قَبْلَ الْغُسْلِ وَبَعْدَهُ؟ .

L12935 Abu Muhammad said: These are the majority of the Followers, the jurists of Medina, and it is the opinion of Abu Hanifah, Abu Yusuf, Zufar, and

Muhammad ibn al-Hasan in the more well-known of his two opinions, as well as the opinion of al-Shafi'i, Ahmad ibn Hanbal, Ishaq, Abu Sulaiman, and all their companions.

قَالَ أَبُو مُحَمَّد: فَهَؤُلَاءِ جُمْهُورُ التَّابِعِينَ، وَفُقَهَاءُ الْمَدِينَةِ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَأَبِي يُوسُفَ، وَزُفَرَ، وَمُحَمَّدِ بْنِ الْحَسَنِ فِي أَشْهَرِ قَوْلَيْهِ، وَقَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِهِمْ.

L12936 Abu Muhammad said: As for Umar, we previously mentioned that when he smelled perfume from Al-Bara' ibn Azib and did not forbid him from it, his dislike and disapproval of it are suspended. As for his son Abdullah, we have narrated it from him via Waki' from Uyaynah ibn Abdur-Rahman from his father, who said: I asked Ibn Umar about applying perfume at the time of entering Ihram. He replied: "I neither command it nor prohibit it."

قَالَ أَبُو مُحَمَّد: أَمَّا عُمَرُ فَقَدْ ذَكَرْنَا آنِفًا إِذْ شَمَّ الطِّيبَ مِنْ الْبَرَاءِ بْنِ عَازِبٍ وَلَمْ يَنْهَهُ عَنْهُ أَنَّهُ قَدْ تُوقِّفَ - كَرَاهِيَتُهُ وَإِنْكَارُهُ - وَأَمَّا عَبْدُ اللَّهِ ابْنُهُ فَإِنَّنَا رُوِّينَاهُ عَنْهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ عُيَيْنَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ قَالَ: سَأَلْت ابْنَ عُمَرَ عَنْ الطِّيبِ عِنْدَ الْإِحْرَامِ؟ فَقَالَ: لَا آمُرُ بِهِ وَلَا أَنْهَى عَنْهُ.

L12937 It has been narrated to us via the chain of Sa'īd ibn Manṣūr: Ya'qūb ibn 'Abd al-Raḥmān narrated to us: "Mūsā ibn 'Uqbah narrated to me, from 'Abdullāh ibn 'Abdullāh ibn 'Umar, who said: 'I summoned a man while sitting beside my father and sent him to 'Ā'ishah to ask about applying perfume when entering iḥrām. Though I already knew her ruling, I wanted my father to hear it. My messenger returned and said: '"Ā'ishah says: 'There is no harm in applying perfume when entering iḥrām. Use what seems appropriate to you.'"' Then 'Abdullāh ibn 'Umar remained silent."

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا يَعْقُوبُ بْنُ عَبْدِ الرَّحْمَنِ حَدَّثَنِي مُوسَى بْنُ عُقْبَةَ عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: دَعَوْت رَجُلًا وَأَنَا جَالِسٌ بِجَنْبِ أَبِي فَأَرْسَلْته إلَى عَائِشَةَ أَسْأَلُهَا عَنْ الطِّيبِ عِنْدَ الْإِحْرَامِ؟ وَقَدْ عَلِمْت قَوْلَهَا وَلَكِنْ أَحْبَبْت أَنْ يَسْمَعَهُ أَبِي فَجَاءَنِي رَسُولِي فَقَالَ: إنَّ عَائِشَةَ تَقُولُ: لَا بَأْسَ بِالطِّيبِ عِنْدَ الْإِحْرَامِ فَأَصِبْ مَا بَدَا لَك؟ فَصَمَتَ عَبْدُ اللَّهِ بْنُ عُمَرَ.

L12938–12939 Ali said: This—with the most authentic chain of transmission—is a clarification that he entirely retracted his initial disapproval and did not reject considering it acceptable (istihsan). Thus their reliance upon Umar and Abdullah ibn Umar becomes invalid, leaving them nothing except Uthman alone. It has been authentically established from him—may Allah be pleased with him—as we shall mention hereafter if Allah the Exalted wills: that he permitted one in iḥrām to cover his face, yet they opposed him. Glory be to Him Who made the jurist's statement an authoritative proof where the Prophetic precedent did not reach him, yet did not make his action a proof regarding matters undisputed among the Sunnahs. This is truly astonishing!

قَالَ عَلِيٌّ: هَذَا - بِأَصَحِّ إسْنَادٍ - بَيَانٌ فِي أَنَّهُ قَدْ رَجَعَ عَنْ كَرَاهَتِهِ جُمْلَةً وَلَمْ يُنْكِرْ اسْتِحْسَانَهُ فَسَقَطَ تَعَلُّقُهُمْ بِعُمَرَ، وَبِعَبْدِ اللَّهِ بْنِ عُمَرَ، وَلَمْ يَبْقَ لَهُمْ إلَّا عُثْمَانُ وَحْدَهُ، وَقَدْ صَحَّ عَنْهُ - رَضِيَ اللَّهُ عَنْهُمْ - مَا سَنَذْكُرُهُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى - مِنْ إجَازَةِ تَغْطِيَةِ الْمُحْرِمِ وَجْهَهُ فَخَالَفُوهُ فَسُبْحَانَ مَنْ جَعَلَ قَوْلَهُ حَيْثُ لَمْ تَبْلُغْهُ السُّنَّةُ حُجَّةً، وَلَمْ يَجْعَلْ فِعْلَهُ حَيْثُ لَا خِلَافَ فِيهِ لِلسُّنَنِ حُجَّةً إنَّ هَذَا لَعَجَبٌ.

L12940 Abū Muḥammad said: When they differed, it became obligatory to revert to what Allah the Exalted has mandated to refer to from the clarifications

of Allah's Messenger (peace be upon him). We found what ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid narrated to us: Ibrāhīm ibn Aḥmad al-Farabrī narrated to us: al-Bukhārī narrated to us: Muḥammad ibn Yūsuf narrated to us: Sufyān narrated from Manṣūr from Saʿīd ibn Jubayr, who said: "Ibn ʿUmar used to have oil applied [to his hair]." I mentioned this to Ibrāhīm—al-Nakhaʿī—whereupon he said: "What do you do with his statement? Al-Aswad narrated to me from ʿĀ'ishah, Mother of the Believers, who said: 'It is as if I see the gleam of perfume in the partings of Allah's Messenger (peace be upon him) while he was in iḥrām.'"

Aḥmad ibn Qāsim narrated to us: Abū Qāsim ibn Muḥammad ibn Qāsim narrated to us: My grandfather Qāsim ibn Aṣbagh narrated to us: Abū Ismāʿīl—Muḥammad ibn Ismāʿīl al-Tirmidhī—narrated to us: al-Ḥumaydī narrated to us: Sufyān ibn ʿUyaynah narrated to us: ʿAṭā' ibn al-Sā'ib narrated from Ibrāhīm al-Nakhaʿī from al-Aswad from ʿĀ'ishah, who said: "I saw the perfume in the parting of Allah's Messenger (peace be upon him) after the third [day] while he was in iḥrām."

L12941–12943 We have also narrated it through the chain of 'Alqamah and Masruq from 'Aishah: Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abd al-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Ahmad ibn Mani' and Ya'qub ad-Dawraqi both said: Hushaym narrated to us from Mansur ibn al-Mu'tamir, from Abd ar-Rahman ibn al-Qasim ibn Muhammad from his father from 'Aishah, the Mother of the Believers, who said: "I used to perfume the Messenger of Allah—peace and blessings be upon him—before he would enter Ihram, and on the Day of Sacrifice, before he would perform Tawaf around the House, with a perfume containing musk." Narrated by 'Abdullāh ibn Rabī', narrated by Muḥammad ibn Mu'āwiyah, narrated by Aḥmad ibn Shu'ayb, narrated by Muḥammad ibn Manṣūr, narrated by Sufyān, narrated by 'Uthmān ibn 'Urwah ibn Az-Zubayr from his father, who said: I said to 'Ā'ishah, "With what did you perfume the Prophet (peace be upon him)?" She said, "With the finest perfume during his Iḥrām and when he was

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا وَجَبَ الرُّجُوعُ إِلَى مَا افْتَرَضَ اللَّهُ تَعَالَى الرُّجُوعَ إِلَيْهِ مِنْ بَيَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَجَدْنَا مَا حَدَّثَنَاهُ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نَا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْفَرَبْرِيُّ نَا الْبُخَارِيُّ نَا مُحَمَّدُ بْنُ يُوسُفَ نَا سُفْيَانُ عَنْ مَنْصُورٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: كَانَ ابْنُ عُمَرَ يُدَهِّنُ بِالزَّيْتِ، فَذَكَرْته لِإِبْرَاهِيمَ هُوَ النَّخَعِيُّ - فَقَالَ: مَا تَصْنَعُ بِقَوْلِهِ: حَدَّثَنِي الْأَسْوَدُ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ كَأَنِّي أَنْظُرُ إلَى وَبِيصِ الطِّيبِ فِي مَفَارِقِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ مُحْرِمٌ؟ نَا أَحْمَدُ بْنُ قَاسِمٍ نَا أَبُو قَاسِمِ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نَا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نَا أَبُو إِسْمَاعِيلَ هُوَ مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيِّ - نَا الْحُمَيْدِيُّ نَا سُفْيَانُ بْنُ عُيَيْنَةَ نَا عَطَاءُ بْنُ السَّائِبِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ الْأَسْوَدِ عَنْ عَائِشَةَ قَالَتْ: رَأَيْت الطِّيبَ فِي مَفْرِقِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْدَ ثَالِثَةٍ وَهُوَ مُحْرِمٌ.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ عَلْقَمَةَ، وَمَسْرُوقٍ عَنْ عَائِشَةَ نَا عَبْدُ اللَّهِ بْنُ يُوسُفَ نَا أَحْمَدُ بْنُ فَتْحٍ نَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نَا أَحْمَدُ بْنُ مُحَمَّدٍ نَا أَحْمَدُ بْنُ عَلِيٍّ نَا مُسْلِمُ بْنُ الْحَجَّاجِ نَا أَحْمَدُ بْنُ مَنِيعٍ، وَيَعْقُوبُ الدَّوْرَقِيُّ قَالَا جَمِيعًا: نَا هُشَيْمٌ أَنَا مَنْصُورٌ هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: كُنْت أُطَيِّبُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَبْلَ أَنْ يُحْرِمَ، وَيَوْمَ النَّحْرِ، قَبْلَ أَنْ يَطُوفَ بِالْبَيْتِ بِطِيبٍ فِيهِ مِسْكٌ -: نَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَنْصُورٍ نَا سُفْيَانُ نَا عُثْمَانُ بْنُ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ قَالَ: قُلْت لِعَائِشَةَ:

not in Iḥrām." It was also narrated by us through the chain of transmission of ʻAmrah bint ʻAbdur-Raḥmān from her.

بِأَيِّ شَيْءٍ طَيَّبْتِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ قَالَتْ: بِأَطْيَبِ الطِّيبِ عِنْدَ حِلِّهِ وَحرمِهِ ورُوِّيناهُ أَيْضًا: مِنْ طَرِيقِ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ عَنْهَا.

L12944 These are successive, mutually supportive narrations from which no one is permitted to depart; they were narrated from the Mother of the Believers by ʻUrwah, al-Qāsim, Sālim ibn ʻAbd Allāh ibn ʻUmar, ʻAbd Allāh ibn ʻAbd Allāh ibn ʻUmar, ʻAmrah, Masrūq, ʻAlqamah, and al-Aswad.

فَهَذِهِ آثَارٌ مُتَوَاتِرَةٌ مُتَظَاهِرَةٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يَخْرُجَ عَنْهَا؛ رَوَاهُ عَنْ أُمِّ الْمُؤْمِنِينَ: عُرْوَةُ، وَالْقَاسِمُ، وَسَالِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ، وَعَبْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ، وَعَمْرَةُ، وَمَسْرُوقٌ، وَعَلْقَمَةُ، وَالْأَسْوَدُ.

L12945 And he narrated it from these: the eminent people.

وَرَوَاهُ عَنْ هَؤُلَاءِ: النَّاسُ الْأَعْلَامُ.

L12946 Abu Muhammad said: Those who adhere to the school of Malik and Muhammad ibn al-Hasan objected to this by stating: You have narrated through the chain of Abi Umayr ibn al-Nahhas from Damrah ibn Rabi'ah from al-Awzaʻi from al-Zuhri from Urwah from ʻAishah, who said: "I applied perfume to the Messenger of Allah (peace and blessings be upon him) for his exit from Ihram and his entry into it with a perfume unlike yours," meaning it left no lasting fragrance.

قَالَ أَبُو مُحَمَّد: فَاعْتَرَضَ مَنْ قَلَّدَ مَالِكًا، وَمُحَمَّدَ بْنَ الْحَسَنِ فِي هَذَا بِأَنْ قَالُوا: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ أَبِي عُمَيْرِ بْنِ النَّحَّاسِ عَنْ ضَمْرَةَ بْنِ رَبِيعَةَ عَنْ الْأَوْزَاعِيِّ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ قَالَتْ: طَيَّبْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِإِحْلَالِهِ وَلِإِحْرَامِهِ طِيبًا لَا يُشْبِهُ طِيبَكُمْ هَذَا - تَعْنِي لَيْسَ لَهُ بَقَاءٌ.

L12947 Ali said: This phrase is undoubtedly not from her speech by the explicit wording of the Hadith—it is merely a conjecture from those below her, and conjecture is the falsest of narrations. It has been authentically established from her through the chains of Masrūq, ʻAlqamah, and al-Aswad—they being the piercing stars—that she said: She saw the perfume on his hair-parting (peace be upon him) after three days. No weakness is feebler than one who rejects the narration of these stars from her—that she saw with her own eyes—as reported by Abū ʻUmayr ibn al-Naḥḥās through a conjecture that whomever Allah the Exalted wills has conjectured. O Allah, so let there not be more! This is indeed a wonder most wondrous.

قَالَ عَلِيٌّ: هَذِهِ لَفْظَةٌ لَيْسَتْ مِنْ كَلَامِهَا بِلَا شَكٍّ بِنَصِّ الْحَدِيثِ وَإِنَّمَا هُوَ ظَنٌّ مِمَّنْ دُونَهَا، وَالظَّنُّ أَكْذَبُ الْحَدِيثِ؛ وَقَدْ صَحَّ عَنْهَا مِنْ طَرِيقِ مَسْرُوقٍ، وَعَلْقَمَةَ، وَالْأَسْوَدِ - وَهُمْ النُّجُومُ الثَّوَاقِبُ - أَنَّهَا قَالَتْ: إنَّهَا رَأَتْ الطِّيبَ فِي مَفْرِقِهِ - عَلَيْهِ السَّلَامُ - بَعْدَ ثَلَاثَةِ أَيَّامٍ وَلَا ضَعْفَ أَضْعَفُ مِمَّنْ يُكَذِّبُ رِوَايَةَ هَؤُلَاءِ عَنْهَا أَنَّهَا رَأَتْ بِعَيْنِهَا بِرِوَايَةِ أَبِي عُمَيْرِ بْنِ النَّحَّاسِ بِظَنٍّ ظَنَّهُ مَنْ شَاءَ اللَّهُ تَعَالَى أَنْ يَظُنَّهُ؛ اللَّهُمَّ فَلَا أَكْثَرَ فَهَذَا عَجَبٌ عَجِيبٌ.

L12948 Some of them said: This is a particularity exclusive to him (peace be upon him).

وَقَالَ بَعْضُهُمْ: هَذَا خُصُوصٌ لَهُ - عَلَيْهِ السَّلَامُ -

L12949 Abu Muhammad said: "He who claims this has lied, for Salim ibn Abdullah ibn Umar narrated from her via the most authentic chain of transmission that she perfumed him - peace be upon him - stating: 'With my own hands.'"

قَالَ أَبُو مُحَمَّد: كَذَبَ قَائِلُ هَذَا لِأَنَّ سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ رَوَى عَنْهَا بِأَصَحِّ إسْنَادٍ أَنَّهَا طَيَّبَتْهُ - عَلَيْهِ السَّلَامُ - قَالَتْ: بِيَدَيَّ.

L12950 We have reported it through the chain of Ḥammād ibn Zayd from ʿAmr ibn Dīnār from Sālim ibn ʿAbd Allāh from ʿĀ'ishah. We previously reported that they [the women] would apply musk to their foreheads, then enter the state of consecration (iḥrām). They would sweat, and it [the musk] would flow onto their faces. The Messenger of Allāh (peace and blessings be upon him) would see this and did not object to it.

L12951–12952 Then, even if all these conjectures were valid for them, this report would remain a proof against them, not in their favor under any circumstance. For it states that he—peace be upon him—applied perfume when entering *Ihram*. Thus, it would be said to them: Let it be whatever perfume he chose—it remains perfume in any case. Yet they consider perfume disliked under all circumstances. How much of this deception is meant to mislead you, while you falsely claim it supports you? Glory be to Him who makes them oppose the manifest truth with conjectures and lies! As for her statement, "This does not resemble your perfume"—if authentically attributed to her: it must be interpreted to mean his perfume was more excellent than ours. No other interpretation is permissible, given her prior statement we cited: "She perfumed him—peace be upon him—with the finest perfume."

L12953 Some meticulous scholars raised an objection to this based on the narration we transmitted through the chain of Ibrāhīm ibn Muḥammad ibn al-Muntashir from his father, that he heard ʿĀ'ishah, the Mother of the Believers, say: "I applied perfume to the Messenger of Allah (may Allah bless him and grant him peace), so he circulated among his wives, then he entered the morning in the state of iḥrām."

L12954 He said: It was confirmed from him that he performed the ritual bath, thereby removing that fragrance from him.

L12955 Abū Muḥammad said: We seek refuge with Allah from base desires and obstinate denial of truth through false conjecture. What refutes the assumption of this speculator is the narration by all those we previously mentioned from ʿĀ'isha—from those with whom Muḥammad ibn al-Muntashir cannot be equated, not even if compared to any one of them individually—how much more when their reports concur? This includes her anointing him

رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ «عَنْ عَائِشَةَ. وَرُوِّينَاهُ قَبْلُ أَنَّهُنَّ كُنَّ يُضَمِّخْنَ جِبَاهَهُنَّ بِالْمِسْكِ ثُمَّ يُحْرِمْنَ ثُمَّ يَعْرَقْنَ فَيَسِيلُ عَلَى وُجُوهِهِنَّ فَيَرَى ذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا يُنْكِرُهُ» .

ثُمَّ لَوْ صَحَّ لَهُمْ كُلُّ هَذِهِ الظُّنُونِ لَكَانَ هَذَا الْخَبَرُ حُجَّةً عَلَيْهِمْ لَا لَهُمْ عَلَى كُلِّ حَالٍ؛ لِأَنَّ فِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - تَطَيَّبَ عِنْدَ الْإِحْرَامِ بِطِيبٍ، فَيُقَالُ لَهُمْ: لِيَكُنْ أَيَّ طِيبٍ شَاءَ، هُوَ طِيبٌ عَلَى كُلِّ حَالٍ، وَأَنَّهُمْ يَكْرَهُونَ الطِّيبَ بِكُلِّ حَالٍ، فَكَمْ هَذَا التَّمْوِيهُ بِمَا هُوَ عَلَيْكُمْ؟ وَتُوهِمُونَ أَنَّهُ لَكُمْ، فَسُبْحَانَ مَنْ جَعَلَهُمْ يُعَارِضُونَ الْحَقَّ الْبَيِّنَ بِالظُّنُونِ وَالتَّكَاذِيبِ وَالَّذِي يَجِبُ أَنْ يُحْمَلَ عَلَيْهِ قَوْلُهَا " لَا يُشْبِهُ طِيبُكُمْ هَذَا " إنْ صَحَّ عَنْهَا: عَلَى أَنَّهُ أَطْيَبُ مِنْ طِيبِنَا، لَا يَجُوزُ غَيْرُ هَذَا لِقَوْلِهَا الَّذِي أَوْرَدْنَاهُ عَنْهَا آنِفًا " أَنَّهَا طَيَّبَتْهُ - عَلَيْهِ السَّلَامُ - بِأَطْيَبِ الطِّيبِ ".

وَاعْتَرَضَ فِي ذَلِكَ مَنْ دَقَّقَ مِنْهُمْ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ إبْرَاهِيمَ بْنِ مُحَمَّدِ بْنِ الْمُنْتَشِرِ عَنْ أَبِيهِ أَنَّهُ سَمِعَ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ تَقُولُ: طَيَّبْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَطَافَ فِي نِسَائِهِ ثُمَّ أَصْبَحَ مُحْرِمًا.

قَالَ: فَصَحَّ عَنْهُ أَنَّهُ اغْتَسَلَ فَزَالَ ذَلِكَ الطِّيبُ عَنْهُ.

قَالَ أَبُو مُحَمَّدٍ: نَعُوذُ بِاَللَّهِ مِنْ الْهَوَى وَمَا يُحْمَلُ عَلَيْهِ مِنْ الْمُكَابَرَةِ لِلْحَقِّ بِالظَّنِّ الْكَاذِبِ، وَيُكَذِّبُ ظَنَّ هَذَا الظَّانِّ مَا رَوَاهُ كُلُّ مَنْ ذَكَرْنَا قَبْلُ عَنْ عَائِشَةَ مِمَّنْ لَا يُعْدَلُ مُحَمَّدُ بْنُ الْمُنْتَشِرِ بِأَحَدٍ مِنْهُمْ لَوْ انْفَرَدَ، فَكَيْفَ إذَا اجْتَمَعُوا؟ مِنْ أَنَّهَا طَيَّبَتْهُ - عَلَيْهِ السَّلَامُ

(peace be upon him) with fragrance at his entering Ihram and upon exiting Ihram before circumambulating the House, as well as what those among them who narrated reported: that she observed the fragrance in his scalp partings (peace be upon him) three days after his entering Ihram.

- عِنْدَ إِحْرَامِهِ وَلِإِحْلَالِهِ قَبْلَ أَنْ يَطُوفَ بِالْبَيْتِ - وَمَا رَوَاهُ مَنْ رَوَاهُ مِنْهُمْ مِنْ أَنَّهَا رَأَتْ الطِّيبَ فِي مَفَارِقِهِ - عَلَيْهِ السَّلَامُ - بَعْدَ ثَالِثَةٍ مِنْ إحْرَامِهِ.

L12956 Moreover, it has been established with certainty, beyond any dispute, that he—peace be upon him—entered the state of consecration during that Hajj after the Dhuhr prayer. Thus, it is confirmed that the perfume mentioned in Ibn Al-Muntashir's narration refers to another perfume used the night before, during which the Prophet—peace be upon him—visited his wives in turn, then awoke the next morning as stated in Ibn Al-Muntashir's hadith. Consequently, their reliance on Ibn Al-Muntashir's narration is invalidated. Ibn Al-Muntashir was from Kufa—how astonishing for the Malikis! They persistently weaken the narrations of the people of Kufa, yet when a narration aligns with their view, they abandon the well-known narrations of the people of Medina. How is it that Ibn Al-Muntashir's narration does not contradict other narrations on the matter? They cited the hadith in which it is reported: "The Prophet—peace and blessings be upon him—was asked, 'Who is the pilgrim, O Messenger of God?' He replied, 'The disheveled, dust-covered one.'"

وَأَيْضًا: فَقَدْ صَحَّ بِيَقِينٍ لَا خِلَافَ فِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - إنَّمَا أَحْرَمَ فِي تِلْكَ الْحَجَّةِ إثْرَ صَلَاةِ الظُّهْرِ، فَصَحَّ أَنَّ الطِّيبَ الَّذِي رَوَى ابْنُ الْمُنْتَشِرِ هُوَ طِيبٌ آخَرُ كَانَ قَبْلَ ذَلِكَ بِلَيْلَةٍ طَافَ فِيهَا - عَلَيْهِ السَّلَامُ - عَلَى نِسَائِهِ ثُمَّ أَصْبَحَ كَمَا فِي حَدِيثِ ابْنِ الْمُنْتَشِرِ، فَبَطَلَ أَنْ يَكُونَ لَهُمْ فِي حَدِيثِ ابْنِ الْمُنْتَشِرِ مُتَعَلَّقٌ، وَابْنُ الْمُنْتَشِرِ كُوفِيٌّ، فَيَا عَجَبًا لِلْمَالِكِيِّينَ لَا يَزَالُونَ يُضَعِّفُونَ رِوَايَةَ أَهْلِ الْكُوفَةِ فَإِذَا وَافَقَتْهُمْ تَرَكُوا لَهَا الْمَشْهُورَ مِنْ رِوَايَاتِ أَهْلِ الْمَدِينَةِ؟ فَكَيْفَ وَلَيْسَتْ رِوَايَةُ ابْنِ الْمُنْتَشِرِ مُخَالِفَةً لِرِوَايَةِ غَيْرِهِ فِي ذَلِكَ؟ وَاحْتَجُّوا بِالْخَبَرِ الَّذِي فِيهِ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قِيلَ: مَنْ الْحَاجُّ يَا رَسُولَ اللَّهِ؟ قَالَ: الْأَشْعَثُ التَّفِلُ» .

L12957–12958 Ali said: This was narrated by Ibrahim ibn Yazid, but he is discredited and his narration is not relied upon. Even if it were authentic, they would have no valid proof in it, because it is implausible for Ash'ath to have violated [the rules] from the first day or after two or three days. We only permitted him to use perfume at the time of entering iḥrām and upon exiting iḥrām. Is this akin to washing the head with khitmi (a fragrant plant) at that time? Some of them stirred controversy using the well-established report we narrated through Muslim's chain from Ali ibn Khashram—I am Isa ibn Yunus—from Ibn Jurayj, who narrated from Ata: "Safwan ibn Ya'la ibn Umayyah informed him that his father was with the Messenger of Allah—peace and blessings be upon him—at Ji'ranah, while the Messenger of Allah—peace and blessings be upon him—had a garment shading him, accompanied by some companions including Umar. A man wearing a woolen cloak saturated with perfume came and said: 'O Messenger of Allah, what do you think of one who entered

قَالَ عَلِيٌّ: وَهَذَا رَوَاهُ إبْرَاهِيمُ بْنُ يَزِيدَ، وَهُوَ سَاقِطٌ لَا يُحْتَجُّ بِحَدِيثِهِ، ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَا يُمْكِنُ أَشْعَثَ تَفِلًا مِنْ أَوَّلِ يَوْمٍ وَلَا بَعْدَ يَوْمَيْنِ وَثَلَاثَةٍ؛ وَإِنَّمَا أَبَحْنَا لَهُ الطِّيبَ عِنْدَ الْإِحْرَامِ، وَعِنْدَ الْإِحْلَالِ كَغَسْلِ الرَّأْسِ بِالْخِطْمِيِّ حِينَئِذٍ؟ وَشَغَبَ بَعْضُهُمْ بِالْخَبَرِ الثَّابِتِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ عَنْ عَلِيِّ بْنِ خَشْرَمٍ أَنَا عِيسَى هُوَ ابْنُ يُونُسَ - عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَطَاءٌ: «أَنَّ صَفْوَانَ بْنَ يَعْلَى بْنِ أُمَيَّةَ أَخْبَرَهُ: أَنَّ أَبَاهُ كَانَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْجِعْرَانَةِ وَعَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَوْبٌ قَدْ أَظَلَّ بِهِ عَلَيْهِ مَعَهُ نَاسٌ مِنْ أَصْحَابِهِ فِيهِمْ عُمَرُ إذْ جَاءَهُ رَجُلٌ عَلَيْهِ جُبَّةُ صُوفٍ مُتَضَمِّخٌ بِطِيبٍ فَقَالَ: يَا رَسُولَ اللَّهِ كَيْفَ تَرَى فِي رَجُلٍ أَحْرَمَ بِعُمْرَةٍ

iḥrām for Umrah in a cloak after applying perfume?' Then divine revelation came to him, and he conveyed the revelation." It states that the Messenger of Allah—peace and blessings be upon him—said: "As for the perfume on you, wash it off three times. As for the cloak, remove it. Then observe in your Umrah the same rites you would observe in your Hajj."[39]

فِي جُبَّةٍ بَعْدَمَا تَضَمَّخَ بِطِيبٍ؟ فَجَاءَهُ الْوَحْيُ فَذَكَرَ الْخَبَرَ. وَفِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ أَمَّا الطِّيبُ الَّذِي بِك فَاغْسِلْهُ ثَلَاثَ مَرَّاتٍ، وَأَمَّا الْجُبَّةُ فَانْزِعْهَا ثُمَّ اصْنَعْ فِي عُمْرَتِكَ مَا تَصْنَعُ فِي حَجِّكَ» .

L12959 And in this manner, it was narrated by us through the chain of Yahya al-Qattān from Ibn Jurayj verbatim.

وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى الْقَطَّانِ عَنْ ابْنِ جُرَيْجٍ نَصًّا.

L12960 Ali said: In their argument citing this report, there is a lesson but no valid proof for them. As for what is astonishing - was not the incident at Ji'ranah as mentioned in the hadith, and was not the Umrah of Ji'ranah immediately following the conquest of Mecca in Dhū al-Qi'dah? For the conquest of Mecca occurred in Ramadan, with Hunayn directly connected to it. Then came the Umrah of Ji'ranah upon his return - peace be upon him - from Hunayn. That same year, 'Attāb ibn Usayd performed Hajj. The following year, Abū Bakr led the people in Hajj. Then in the third year occurred the Farewell Pilgrimage. The Prophet - may Allah bless him and grant him peace - and his wives with him applied perfume during the Farewell Pilgrimage more than two years after this man's report. Who is more astonishing than one who contrasts the Prophet's final actions - peace be upon him - with his initial ones? Even if Ya'lā ibn Umayyah's narration were authentic in containing a prohibition of perfume for those in ihrām - and this is invalid according to them, for reasons we shall mention if Allah wills.

قَالَ عَلِيٌّ: فِي احْتِجَاجِهِمْ بِهَذَا الْخَبَرِ عِبْرَةٌ وَلَا حُجَّةَ لَهُمْ فِيهِ، أَمَّا الْعَجَبُ فَإِنَّهُ كَانَ فِي الْجِعْرَانَةِ كَمَا ذُكِرَ فِي الْحَدِيثِ وَعُمْرَةُ الْجِعْرَانَةِ كَانَتْ إثْرَ فَتْحِ مَكَّةَ مُتَّصِلَةً بِهِ فِي ذِي الْقَعْدَةِ؟ لِأَنَّ فَتْحَ مَكَّةَ كَانَ فِي شَهْرِ رَمَضَانَ، وَكَانَتْ حُنَيْنٌ مُتَّصِلَةً بِهِ، ثُمَّ عُمْرَةُ الْجِعْرَانَةِ مُنْصَرِفُهُ - عَلَيْهِ السَّلَامُ - مِنْ حُنَيْنٍ، ثُمَّ حَجَّ تِلْكَ السَّنَةَ عَتَّابُ بْنُ أُسَيْدٍ، ثُمَّ كَانَ عَامٌ قَابِلٌ فَحَجَّ بِالنَّاسِ أَبُو بَكْرٍ، ثُمَّ كَانَتْ حَجَّةُ الْوَدَاعِ فِي الْعَامِ الثَّالِثِ، وَكَانَ تَطَيُّبُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَزْوَاجُهُ، مَعَهُ فِي حَجَّةِ الْوَدَاعِ بَعْدَ حَدِيثِ هَذَا الرَّجُلِ بِأَزْيَدَ مِنْ عَامَيْنِ، فَمَنْ أَعْجَبُ مِمَّنْ يُعَارِضُ آخِرَ فِعْلِهِ - عَلَيْهِ السَّلَامُ - بِأَوَّلِ فِعْلِهِ هَذَا؟ لَوْ صَحَّ أَنَّ حَدِيثَ يَعْلَى بْنِ أُمَيَّةَ فِيهِ نَهْيٌ عَنْ الطِّيبِ لِلْمُحْرِمِ، وَهَذَا لَا يَصِحُّ لَهُمْ - لِمَا نَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى.

L12961–12963 As for there being no proof for them in it, this report was narrated by one more reliable in memorization and more esteemed than Ibn Jurayj, and he clarified it, as narrated to us by Ḥumām: narrated to us by ʿAbd Allāh ibn Muḥammad al-Bājī; informed us by Aḥmad ibn Khālid; informed us by ʿUbayd ibn Muḥammad al-Kashwarī; informed us by Muḥammad ibn Yūsuf al-Ḥudhāfī; informed us by ʿAbd al-Razzāq; informed us by Ibn ʿUyaynah—who is Sufyān—from ʿAmr ibn Dīnār, from ʿAṭāʾ, from Ṣafwān ibn Yaʿlā, from his father: "That when the Messenger of Allah—peace and blessings be upon him—was..." At Al-Jiʿrānah, a man came to him smeared with khaluq and

وَأَمَّا كَوْنُهُ لَا حُجَّةَ لَهُمْ فِيهِ، فَإِنَّ هَذَا الْخَبَرَ رَوَاهُ مَنْ هُوَ أَحْفَظُ مِنْ ابْنِ جُرَيْجٍ وَأَجَلُّ مِنْهُ فَبَيَّنَهُ كَمَا حَدَّثَنَا حُمَامٌ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ الْبَاجِيِّ نَا أَحْمَدُ بْنُ خَالِدٍ نَا عُبَيْدُ بْنُ مُحَمَّدٍ الْكَشْوَرِيُّ نَا مُحَمَّدُ بْنُ يُوسُفَ الْحُذَافِيُّ نَا عَبْدُ الرَّزَّاقِ نَا ابْنُ عُيَيْنَةَ هُوَ سُفْيَانُ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءٍ عَنْ صَفْوَانَ بْنِ يَعْلَى عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا كَانَ بِالْجِعْرَانَةِ أَتَاهُ رَجُلٌ مُتَضَمِّخٌ بِخَلُوقٍ وَعَلَيْهِ مُقَطَّعَاتٌ فَقَالَ:

[39] **Hadith references (L12958):** Sahih Muslim 1180c.

wearing tattered garments. He said: “O Messenger of Allah, I have entered the state of iḥrām for ʿUmrah. What do you instruct me?” While revelation was descending upon the Messenger of Allah—peace and blessings be upon him—ʿUmar called me [the narrator], and I looked toward the Prophet. When the revelation ceased, he said: “Where is the questioner?” “Here I am, O Messenger of Allah,” [the man] replied. He asked: “What did you do during your Ḥajj?” The man said: “I removed these garments and washed this off me.” He said: “Then do in your ʿUmrah what you do in your Ḥajj.”

يَا رَسُولَ اللَّهِ إِنِّي أَهْلَلْتُ بِعُمْرَةٍ فَكَيْفَ تَأْمُرُنِي؟ وَأُنْزِلَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَدَعَانِي عُمَرُ فَنَظَرْتُ إِلَيْهِ فَلَمَّا سُرِّيَ عَنْهُ قَالَ: أَيْنَ السَّائِلُ؟ هَا أَنَا ذَا يَا رَسُولَ اللَّهِ قَالَ: مَا كُنْتَ تَصْنَعُ فِي حَجِّكَ؟ قَالَ: أَنْزِعُ ثِيَابِي هَذِهِ وَأَغْسِلُ هَذَا عَنِّي؟ قَالَ: فَاصْنَعْ فِي عُمْرَتِكَ مِثْلَ مَا تَصْنَعُ فِي حَجَّتِكَ» .

L12964 Ali said: ‘Amr ibn Dinar, from the Successors, accompanied Jabir ibn Abdullah, Ibn Abbas, and Ibn Umar, and he clarified that that perfume was indeed khalūq.’

قَالَ عَلِيٌّ: عَمْرُو بْنُ دِينَارٍ مِنْ التَّابِعِينَ صَحِبَ جَابِرَ بْنَ عَبْدِ اللَّهِ، وَابْنَ عَبَّاسٍ، وَابْنَ عُمَرَ، فَقَدْ بَيَّنَ أَنَّ ذَلِكَ الطِّيبَ إِنَّمَا كَانَ خَلُوقًا.

L12965 And likewise, we have narrated it through the chain of Muslim who narrated to us: Muḥammad ibn Rāfiʿ narrated to us: Wahb ibn Jarīr ibn Ḥāzim narrated to us: My father said: I heard Qays—he is Ibn Saʿd—narrate from ʿAṭāʾ, from Ṣafwān ibn Yaʿlā ibn Umayyah, from his father: “A man came to the Prophet—peace and blessings be upon him—at Al-Jiʿrānah while in the state of iḥrām for ʿUmrah, having dyed his head and beard with yellow wars and wearing a jubbah cloak. He said: ’O Messenger of Allah, I have entered iḥrām for ʿUmrah in this state you see.’ He replied: ’Remove the jubbah, wash off the yellow stain, and whatever you are required to do in your Hajj, apply it to your ʿUmrah.’”[40]

وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا مُحَمَّدُ بْنُ رَافِعٍ نَا وَهْبُ بْنُ جَرِيرِ بْنِ حَازِمٍ نَا أَبِي قَالَ: سَمِعْت قَيْسًا هُوَ ابْنُ سَعْدٍ - يُحَدِّثُ عَنْ عَطَاءٍ عَنْ صَفْوَانَ بْنِ يَعْلَى بْنِ أُمَيَّةَ عَنْ أَبِيهِ «أَنَّ رَجُلًا أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ بِالْجِعْرَانَةِ قَدْ أَهَلَّ بِالْعُمْرَةِ وَهُوَ مُصَفِّرٌ رَأْسَهُ وَلِحْيَتَهُ وَعَلَيْهِ جُبَّةٌ فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي أَحْرَمْتُ بِعُمْرَةٍ وَأَنَا كَمَا تَرَى؟ فَقَالَ: انْزِعْ عَنْكَ الْجُبَّةَ وَاغْسِلْ عَنْكَ الصُّفْرَةَ، وَمَا كُنْتَ صَانِعًا فِي حَجِّكَ فَاصْنَعْهُ فِي عُمْرَتِكَ» .

L12966 From the chain of Muslim: Shaybān ibn Farrūkh narrated to us, Hammām—who is Ibn Yaḥyā—narrated to us, ʿAṭāʾ—who is Ibn Abī Rabāḥ—narrated to us, from Ṣafwān ibn Yaʿlā ibn Umayyah, from his father, who said: “A man came to the Prophet—peace and blessings of Allah be upon him—at Al-Jiʿrānah, wearing a cloak and having khālūq (a saffron-based perfumed oil) on him—or he said: a trace of yellow dye. He related the incident, which states: The Messenger of Allah—peace and blessings of Allah be upon him—said to him: ’Wash off the trace of yellow dye’ (or he said, ’the trace of khālūq’), ’remove your cloak, and perform your ʿUmrah as you would your Ḥajj.’”

وَمِنْ طَرِيقِ مُسْلِمٍ نَا شَيْبَانُ بْنُ فَرُّوخَ نَا هَمَّامٌ هُوَ ابْنُ يَحْيَى - نَا عَطَاءٌ هُوَ ابْنُ أَبِي رَبَاحٍ - عَنْ صَفْوَانَ بْنِ يَعْلَى بْنِ أُمَيَّةَ عَنْ أَبِيهِ قَالَ: «جَاءَ رَجُلٌ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ بِالْجِعْرَانَةِ - عَلَيْهِ جُبَّةٌ وَعَلَيْهِ خَلُوقٌ أَوْ قَالَ: أَثَرُ الصُّفْرَةِ فَذَكَرَ الْخَبَرَ - وَفِيهِ -: فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اغْسِلْ عَنْكَ أَثَرَ الصُّفْرَةِ، أَوْ قَالَ: أَثَرَ الْخَلُوقِ، وَاخْلَعْ عَنْكَ جُبَّتَكَ وَاصْنَعْ فِي عُمْرَتِكَ مَا أَنْتَ صَانِعٌ فِي حَجِّكَ» .

[40] **Hadith references (L12965):** Sahih Muslim 1180d.

فَاتَّفَقَ عَمْرُو بْنُ دِينَارٍ، وَهَمَّامُ بْنُ يَحْيَى، وَقَيْسُ بْنُ سَعْدٍ كُلُّهُمْ عَنْ عَطَاءٍ فِي هَذِهِ الْقِصَّةِ نَفْسِهَا عَنْ صَفْوَانَ بْنِ يَعْلَى بْنِ أُمَيَّةَ عَنْ أَبِيهِ أَنَّهُ كَانَ مُتَضَمِّخًا بِخَلُوقٍ.

L12967 Amr ibn Dinar, Hammam ibn Yahya, and Qays ibn Sa'd all agreed in narrating from Ata regarding this same incident, from Safwan ibn Ya'la ibn Umayyah, from his father, that he was anointed with khaluq.

وَهُوَ الصُّفْرَةُ نَفْسُهَا، وَهُوَ الزَّعْفَرَانُ - بِلَا خِلَافٍ وَهُوَ مُحْرِمٌ عَلَى الرِّجَالِ عَامَّةً فِي كُلِّ حَالٍ، وَعَلَى الْمُحْرِمِ أَيْضًا بِخِلَافِ سَائِرِ الطِّيبِ كَمَا حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نَا إِبْرَاهِيمُ بْنُ أَحْمَدَ نَا الْفَرَبْرِيُّ نَا الْبُخَارِيُّ نَا مُسَدَّدٌ نَا عَبْدُ الْوَارِثِ عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَتَزَعْفَرَ الرَّجُلُ» .

L12968–12970 It is the yellowness itself, and it is saffron—without disagreement—and it is prohibited for men generally, in every situation, and for those in ritual consecration (iḥrām) as well, unlike the rest of perfumes. As narrated to us by ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid, from Ibrāhīm ibn Aḥmad, from al-Firabrī, from al-Bukhārī, from Musaddad, from ʿAbd al-Wārith, from ʿAbd al-ʿAzīz ibn Ṣuhayb. The Messenger of Allah (may Allah's peace and blessings be upon him) forbade a man from using saffron dye.[41]

نَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نَا أَحْمَدُ بْنُ خَالِدٍ نَا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نَا الْحَجَّاجُ بْنُ الْمِنْهَالِ نَا شُعْبَةُ نَا عَبْدُ اللَّهِ بْنُ دِينَارٍ أَنَّهُ سَمِعَ ابْنَ عُمَرَ يَقُولُ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْوَرْسِ وَالزَّعْفَرَانِ قَالَ: فَقُلْتُ: لِلْمُحْرِمِ؟ قَالَ: نَعَمْ» .

L12971 Abdullah ibn Rabiʿ narrated from Abdullah ibn Muhammad ibn Uthman, who narrated from Ahmad ibn Khalid, who narrated from Ali ibn Abd al-Aziz, who narrated from al-Hajjaj ibn al-Minhāl, who narrated from Shuʿbah, who narrated from Abdullah ibn Dinar, that he heard Ibn Umar say: "Allah's Messenger (peace be upon him) prohibited the use of waras (a type of dye plant) and saffron." Abdullah ibn Dinar asked: "For the *muhrim* (person in ritual consecration)?" Ibn Umar replied: "Yes."

فَبَطَلَ تَشْغِيبُهُمْ بِهَذَا الْخَبَرِ جُمْلَةً لِأَنَّهُ إنَّمَا فِيهِ نَهْيٌ عَنْ الصُّفْرَةِ لَا عَنْ سَائِرِ الطِّيبِ، وَلِأَنَّهُ لَوْ كَانَ فِيهِ نَهْيٌ عَنْ الطِّيبِ وَلَيْسَ ذَلِكَ فِيهِ لَكَانَ مَنْسُوخًا بِآخِرِ فِعْلِهِ - عَلَيْهِ السَّلَامُ - فِي حَجَّةِ الْوَدَاعِ.

L12972 Thus, their objection based on this report is wholly invalid, because it contains only a prohibition against saffron dye, not against other scents. Moreover, even if it had hypothetically contained a prohibition against scents (which it does not), it would have been abrogated by his final actions during the Farewell Pilgrimage, peace be upon him.

وَقَالَ بَعْضُهُمْ: وَجَدْنَا الْمُحْرِمَ مَنْهِيًّا عَنْ ابْتِدَاءِ التَّطَيُّبِ، وَعَنْ ابْتِدَاءِ الصَّيْدِ، ثُمَّ وَجَدْنَاهُ لَوْ أَحْرَمَ وَفِي يَدِهِ صَيْدٌ لَوَجَبَ عَلَيْهِ إرْسَالُهُ فَكَذَلِكَ الطِّيبُ.

L12973 Some of them said: We found that the pilgrim in ihrām is prohibited from initiating the use of perfume or beginning to hunt. Then we held that if he enters ihrām while possessing hunted game, he must relinquish it—and the same applies to perfume.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قِيَاسٌ وَالْقِيَاسُ فَاسِدٌ، ثُمَّ لَوْ صَحَّ لَكَانَ مِنْ الْقِيَاسِ بَاطِلًا لِأَنَّهُ لَا يَلْزَمُ مَنْ أَحْرَمَ وَفِي يَدِهِ صَيْدٌ قَدْ تَصَيَّدَهُ فِي إحْلَالِهِ أَنْ يُطْلِقَهُ فَهُوَ تَشْبِيهٌ لِلْخَطَإِ بِالْخَطَإِ.

L12974 Abu Muhammad said: This is analogy, and analogy is unsound. Moreover,

[41] **Hadith references (L12968):** Sunan an-Nasai 5256; Sahih Muslim 2101b; Mishkat al-Masabih 4434.

even if it were hypothetically valid, it would still be nullified as analogy, because one who enters iḥrām (ritual consecration) while holding game he had already hunted during his non-consecrated state is not obligated to release it. This constitutes likening one wrongful act to another.

L12975 The entire astonishment lies in the statement of this speaker: that if someone enters the state of iḥrām while holding live game in his hand and having live game in a cage at his home, he is obligated to release the one in his hand but not the one in the cage—and this is utterly astonishing. Success is solely from Allah, the Exalted. Moreover, he analogized this to one who enters iḥrām while wearing a shirt, pants, and a turban—how can this comparison hold? Abū Muḥammad countered: This analogy of theirs is contradicted by the fact that it is forbidden for a person in iḥrām to marry; if he marries and then enters iḥrām, his marriage is nullified.

L12976 So if they say, "We do not agree to this."

L12977 We said: This address is directed to us specifically by those Malikis who uphold this position. As for you, your stance is that the Muhrim is prohibited from initiating the slaughter of game and eating it, and you do not differ in holding that if someone slaughters game and then enters Ihrām, his ownership and consumption of it remain lawful for him.

A Matter of Intention in ʿUmrah

L12978

L12979 826: Issue

L12980 Then the pilgrims say: "Labbaik [Here I am] for ʿUmrah," or the two of them mentally affirm this intention within themselves, in accordance with the statement of the Messenger of Allah (may Allah bless him and grant him peace): "Verily, actions are by intentions." We recommend that this declaration follow immediately after an obligatory prayer or a voluntary prayer.

Issue: Touching perfume by a Muhrim.

L12981–12982

L12983 Issue:

وَالْعَجَبُ كُلُّهُ مِنْ قَوْلِ هَذَا الْقَائِلِ: إنَّ مَنْ أَحْرَمَ وَفِي يَدِهِ صَيْدٌ وَفِي قَفَصِهِ فِي مَنْزِلِهِ صَيْدٌ أَنَّهُ يَلْزَمُهُ إطْلَاقُ الَّذِي فِي يَدِهِ وَلَا يَلْزَمُهُ إطْلَاقُ الَّذِي فِي الْقَفَصِ وَهَذَا عَجَبٌ جِدًّا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ، وَقَاسَهُ أَيْضًا عَلَى مَنْ أَحْرَمَ وَعَلَيْهِ قَمِيصٌ، وَسَرَاوِيلُ، وَعِمَامَةٌ؟ قَالَ أَبُو مُحَمَّدٍ: وَيُعَارِضُ قِيَاسَهُمْ هَذَا بِأَنَّهُ لَا يَحِلُّ لِلْمُحْرِمِ أَنْ يَتَزَوَّجَ؛ فَإِنْ تَزَوَّجَ ثُمَّ أَحْرَمَ يَبْطُلُ نِكَاحُهُ.

فَإِنْ قَالُوا: لَا نُوَافِقُ عَلَى هَذَا.

قُلْنَا: إنَّمَا خَاطَبْنَا بِهَذَا مَنْ يَقُولُ بِهِ مِنْ الْمَالِكِيِّينَ، وَأَمَّا أَنْتُمْ فَإِنَّكُمْ تَقُولُونَ: [إنَّ] الْمُحْرِمَ مَمْنُوعٌ مِنْ ابْتِدَاءِ ذَبْحِ الصَّيْدِ وَأَكْلِهِ، وَلَا تَخْتَلِفُونَ فِي أَنَّ مَنْ ذَبَحَ صَيْدًا ثُمَّ أَحْرَمَ فَإِنَّ مِلْكَهُ وَأَكْلَهُ لَهُ حَلَالٌ.

[مَسْأَلَةٌ النِّيَّة فِي الْعُمْرَة]

٨٢٦ - مَسْأَلَةٌ:

ثُمَّ يَقُولُونَ: لَبَّيْكَ بِعُمْرَةٍ، أَوْ يَنْوِيَانِ ذَلِكَ فِي أَنْفُسِهِمَا لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ» وَنَسْتَحِبُّ أَنْ يَكُونَ ذَلِكَ إثْرَ صَلَاةِ فَرْضٍ أَوْ نَافِلَةٍ.

[مَسْأَلَةٌ مس الطِّيب لِلْمُحْرِمِ]

مَسْأَلَةٌ:

ثُمَّ يَجْتَنِبَانِ تَجْدِيدَ قَصْدٍ إلَى الطِّيبِ فَإِنْ مَسَّهُمَا مِنْ طِيبِ الْكَعْبَةِ شَيْءٌ لَمْ يَضُرَّ، أَمَّا اجْتِنَابُ الْقَصْدِ إلَى الطِّيبِ فَلَا نَعْلَمُ فِيهِ خِلَافًا، وَأَمَّا إنْ مَسَّهُ شَيْءٌ مِنْ طِيبِ الْكَعْبَةِ أَوْ غَيْرِهَا عَنْ غَيْرِ قَصْدٍ، فَلِأَنَّهُ لَمْ يَأْتِ فِيهِ نَهْيٌ.

L12984 Then the two of them must avoid renewing the intention to use perfume. If either of them is touched by any of the Ka'bah's perfume, it causes no harm. As for avoiding the intention to use perfume, we do not know of any disagreement on this matter. As for unintended contact with perfume from the Ka'bah or other than it, this is because no prohibition has been mentioned regarding it.

وَقَدْ رُوِّينَا عَنْ أَنَسٍ كَمَا ذَكَرْنَا أَنَّهُ أَصَابَهُ فَلَمْ يَغْسِلْهُ، وَبِهِ قَالَ عَطَاءٌ، وَسُئِلَ عَنْ ذَلِكَ؟ فَقَالَ: لَيْسَ عَلَيْهِ أَنْ يَغْسِلَهُ.

L12985 It has been narrated to us from Anas, as we have mentioned before, that he experienced a nocturnal emission and did not perform ghusl. ʿAṭāʾ held the same opinion. When he was asked about that matter, he said: "He is not required to perform ghusl."

[مَسْأَلَةٌ تَغْطِيَةَ الرأس لِلْمُحْرِمِ]

L12986 **The issue of covering the head for the muḥrim (the pilgrim in iḥrām).**

٨٢٨ - مَسْأَلَةٌ:

وَلَا بَأْسَ أَنْ يُغَطِّيَ الرَّجُلُ وَجْهَهُ بِمَا هُوَ مُلْتَحِفٌ بِهِ أَوْ بِغَيْرِ ذَلِكَ وَلَا كَرَاهَةَ فِي ذَلِكَ، وَلَا بَأْسَ أَنْ تَسْدُلَ الْمَرْأَةُ الثَّوْبَ مِنْ عَلَى رَأْسِهَا عَلَى وَجْهِهَا.

L12987 828 – Question:

L12988 There is no issue if a man covers his face with the garment he is wrapped in or with another item, and there is no religious disapproval (karāhah) in this practice. Likewise, there is no objection to a woman draping her garment from her head over her face.

أَمَّا أَمْرُ الْمَرْأَةِ، فَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا نَهَاهَا عَنْ النِّقَابِ، وَلَا يُسَمَّى السَّدْلُ نِقَابًا فَإِنْ كَانَ " الْبُرْقُعُ " يُسَمَّى نِقَابًا، لَمْ يَحِلَّ لَهَا لِبَاسُهُ، وَأَمَّا اللِّثَامُ فَإِنَّهُ نِقَابٌ بِلَا شَكٍّ، فَلَا يَحِلُّ لَهَا.

L12989 Regarding the ruling on women, it is because the Messenger of Allah (peace be upon him) specifically prohibited her from the niqab. The *sadl* is not called a niqab. If the *burqa* is termed a niqab, it is not permissible for her to wear it. As for the *litham*, it is unquestionably a niqab; therefore, it is not permissible for her.

وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩]

L12990 Allah, the Exalted, has said: "He has made clear to you what He has forbidden to you" [Al-Anʿām 119].[42]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا نَهَيْتُكُمْ عَنْ شَيْءٍ فَدَعُوهُ» .

L12991 The Messenger of Allah - peace be upon him - said: "If I forbid you from something, then leave it."

L12992 And He, the Exalted, said: "And whoever transgresses the limits of Allah

[42] **Qur'an references (L12990):** Qur'an 6:119 (Al-An'am).

has wronged himself” [At-Talaq: 1]. Thus, it is established that whatever He has not explicitly prohibited for us is permissible, and whatever He has not forbidden is lawful. And by Allah, the Exalted, is success. There is sound scholarly disagreement on this matter. We were narrated through the chain of Al-Hajjaj ibn Al-Minhal that Abdul Aziz ibn Abdullah ibn Abi Salamah Al-Majishun reported from Muhammad ibn Al-Munkadir, who said: Ibn Umar saw a woman who had draped her garment over her face while she was in a state of Ihram. He said to her: “Uncover your face, for a woman’s modesty lies in her face.”[43]

وَقَالَ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] فَصَحَّ أَنَّ مَا لَمْ يُفَصِّلْ لَنَا تَحْرِيمَهُ فَمُبَاحٌ، وَمَا لَمْ يَنْهَ عَنْهُ فَحَلَالٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ، وَقَدْ صَحَّ فِي ذَلِكَ خِلَافٌ -: رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي سَلَمَةَ الْمَاجِشُونُ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ قَالَ: رَأَى ابْنُ عُمَرَ امْرَأَةً قَدْ سَدَلَتْ ثَوْبَهَا عَلَى وَجْهِهَا - وَهِيَ مُحْرِمَةٌ - فَقَالَ لَهَا: اكْشِفِي وَجْهَكِ فَإِنَّمَا حُرْمَةُ الْمَرْأَةِ فِي وَجْهِهَا.

L12993 An authentic contrary report to this has been transmitted from others besides the aforementioned scholar, as narrated via Ḥammād ibn Salama, Hishām ibn ʿUrwa, and Fāṭima bint al-Mundhir that Asmāʾ bint Abī Bakr al-Ṣiddīq would cover her face while in a state of iḥrām.

وَصَحَّ خِلَافُ هَذَا عَنْ غَيْرِهِ، كَمَا رُوِّينَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ فَاطِمَةَ بِنْتِ الْمُنْذِرِ أَنَّ أَسْمَاءَ بِنْتَ أَبِي بَكْرٍ الصِّدِّيقِ كَانَتْ تُغَطِّي وَجْهَهَا وَهِيَ مُحْرِمَةٌ.

L12994 From Waki‘, from Shu‘bah, from Yazid al-Rishk, from Mu‘adhah al-‘Adawiyyah, who said: I asked ‘A’ishah, the Mother of the Believers, “What does a woman in iḥrām wear?” She replied, “She does not wear a niqab or a litham, but she drapes the garment over her face.” The same ruling is also narrated from ‘Uthman. The ruling on this matter is based only on what the Messenger of Allah—peace and blessings be upon him—prohibited.

وَعَنْ وَكِيعٍ عَنْ شُعْبَةَ عَنْ يَزِيدَ الرِّشْكِ عَنْ مُعَاذَةَ الْعَدَوِيَّةِ قَالَتْ: سَأَلْت عَائِشَةَ أُمَّ الْمُؤْمِنِينَ مَا تَلْبَسُ الْمُحْرِمَةُ؟ فَقَالَتْ: لَا تَنْتَقِبُ، وَلَا تَلْثِمُ، وَتَسْدُلُ الثَّوْبَ عَلَى وَجْهِهَا - وَعَنْ عُثْمَانَ أَيْضًا ذَلِكَ، فَكَانَ الْمَرْجُوعُ فِي ذَلِكَ إلَى مَا مَنَعَ مِنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ.

L12995–12997 As for the narrator: We have received narrations from Ibn Abī Shaybah, from Abū Muʿāwiyah, from Ibn Jurayj, from... Abd al-Rahman ibn al-Qasim ibn Muhammad reported from his father via al-Furāfiṣah ibn Umayr, who said: “Uthman ibn Affan, Zayd ibn Thabit, and Ibn al-Zubayr would cover their faces while they were in the state of *iḥrām*.”

وَأَمَّا الرَّجُلُ: فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي مُعَاوِيَةَ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ الْفُرَافِصَةِ بْنِ عُمَيْرٍ قَالَ: كَانَ عُثْمَانُ بْنُ عَفَّانَ، وَزَيْدُ بْنُ ثَابِتٍ، وَابْنُ الزُّبَيْرِ يُخَمِّرُونَ وُجُوهَهُمْ وَهُمْ مُحْرِمُونَ.

L12998 And through the chain of Maʿmar and Sufyān ibn ʿUyaynah – both transmitting from ʿAbdullāh ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm – who said: I heard ʿAbdullāh ibn ʿĀmir ibn Rabīʿah say: I saw ʿUthmān ibn ʿAffān covering his face with a purple-dyed quilt at al-ʿArj on a summer day while in the state of iḥrām. Narrated by Muḥammad ibn Saʿīd ibn Nubāt, narrated by Aḥmad ibn ʿAbd al-Baṣīr, narrated by Qāsim ibn Aṣbagh, narrated

وَمِنْ طَرِيقِ مَعْمَرٍ، وَسُفْيَانَ بْنِ عُيَيْنَةَ كِلَيْهِمَا عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ عَامِرِ بْنِ رَبِيعَةَ يَقُولُ: رَأَيْت عُثْمَانَ بْنَ عَفَّانَ مُخَمِّرًا وَجْهَهُ بِقَطِيفَةِ أُرْجُوَانٍ بِالْعَرْجِ فِي يَوْمٍ صَائِفٍ وَهُوَ مُحْرِمٌ -: نَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نَا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نَا قَاسِمُ بْنُ أَصْبَغَ نَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نَا مُحَمَّدُ بْنُ

[43] **Qur’an references (L12992):** Qur’an 65:1 (At-Talaq).

by Muḥammad ibn ʿAbd al-Salām al-Khushanī, narrated by Muḥammad ibn al-Muthannā, narrated by ʿAbd al-Raḥmān ibn Mahdī, narrated by Sufyān al-Thawrī, narrated by Abū al-Zubayr, who said: I heard Jābir ibn ʿAbdullāh say: A muḥrim may cover himself from dust, cover his face when sleeping, perform ghusl (ritual bathing), and wash his garments.

L12999 And through the chain of transmission of Abd al-Razzaq, from Sufyan al-Thawri, from Abu al-Zubayr (who narrated from both Jabir ibn Abdullah and Ibn al-Zubayr) that both of them would cover their faces while in ihram.

الْمُثَنَّى نَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي الزُّبَيْرِ قَالَ: سَمِعْت جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: الْمُحْرِمُ يُغَطِّي مِنْ الْغُبَارِ وَيُغَطِّي وَجْهَهُ إذَا نَامَ وَيَغْتَسِلُ وَيَغْسِلُ ثِيَابَهُ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، وَابْنِ الزُّبَيْرِ أَنَّهُمَا كَانَا يُخَمِّرَانِ وُجُوهَهُمَا وَهُمَا مُحْرِمَانِ.

L13000 And through the chain of Ḥammād ibn Salamah from Qays ibn Saʿd from ʿAṭāʾ from Ibn ʿAbbās, who said: The muḥrim may cover [the area] below the eyebrows, and the woman drapes her garment from the nape of her neck over her head.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: الْمُحْرِمُ يُغَطِّي مَا دُونَ الْحَاجِبِ وَالْمَرْأَةُ تَسْدُلُ ثَوْبَهَا مِنْ قِبَلِ قَفَاهَا عَلَى هَامَتِهَا.

L13001 And from Abd al-Rahman ibn Awf as well: the mere permissibility of a Muhrim covering his face. This is the opinion of Ata ibn Abi Rabah, Tawus ibn Kaysan, Mujahid, Alqama, Ibrahim an-Nakha'i, and al-Qasim ibn Muhammad. All of them ruled that a Muhrim may cover his face. Some of them clarified [this ruling applies] against the sun, dust, flies, and other such harms.

وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَيْضًا: إبَاحَةُ تَغْطِيَةِ الْمُحْرِمِ وَجْهَهُ وَهُوَ قَوْلُ عَطَاءٍ، وَطَاوُسٍ، وَمُجَاهِدٍ، وَعَلْقَمَةَ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ كُلِّهِمْ أَفْتَى الْمُحْرِمَ بِتَغْطِيَةِ وَجْهِهِ وَبَيَّنَ بَعْضُهُمْ مِنْ الشَّمْسِ، وَالْغُبَارِ، وَالذُّبَابِ وَغَيْرِ ذَلِكَ.

L13002 This is the view of Sufyan al-Thawri, al-Shafi'i, Abu Sulayman, and their companions. It is narrated from Ibn Umar that the muhrim must not cover his face. Malik also held this view, but he did not consider anything required of the muhrim if he covers his face with something - neither expiation, nor charity, nor anything else - except that he merely disliked it. However, narrations from him indicate the permissibility of that.

وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ وَرُوِيَ عَنْ ابْنِ عُمَرَ: لَا يُغَطِّي الْمُحْرِمُ وَجْهَهُ - وَقَالَ بِهِ مَالِكٌ، وَلَمْ يَرَ عَلَى الْمُحْرِمِ إنْ غَطَّى وَجْهَهُ شَيْئًا لَا فِدْيَةَ، وَلَا صَدَقَةَ، وَلَا غَيْرَ ذَلِكَ إلَّا أَنَّهُ كَرِهَهُ فَقَطْ، بَلْ قَدْ رَوَى عَنْهُ مَا يَدُلُّ عَلَى جَوَازِ ذَلِكَ.

L13003 We have been narrated through the chain of Saʿīd ibn Manṣūr: Sufyān—he is Ibn ʿUyaynah—narrated to us from ʿUbaydullāh ibn ʿUmar, from Nāfiʿ, from Ibn ʿUmar, who said: "The chin is part of the head, so do not cover it." He said: "A woman's *iḥrām* is in her face, and a man's *iḥrām* is in his head." Abū Ḥanīfah and his companions said: "A person in *iḥrām* must not cover his face. If he does so, he must offer *fidyah*."

رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: الذَّقَنُ مِنْ الرَّأْسِ فَلَا تُغَطِّهِ، وَقَالَ: إحْرَامُ الْمَرْأَةِ فِي وَجْهِهَا، وَإِحْرَامُ الرَّجُلِ فِي رَأْسِهِ - وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: لَا يُغَطِّي الْمُحْرِمُ وَجْهَهُ فَإِنْ فَعَلَ فَعَلَيْهِ الْفِدْيَةُ.

L13004–13005 Abu Muhammad said: We know of no one who held this opinion before Abū Ḥanīfah, though they magnify dissent from the majority. Yet here they have contradicted the positions of ʿAbd al-Raḥmān ibn ʿAwf, ʿUthmān ibn ʿAffān, Zayd ibn Thābit, Jābir ibn ʿAbd Allāh, Ibn ʿAbbās, Ibn al-Zubayr, and the majority of the Successors. If they cling to Ibn ʿUmar, we have already cited in this chapter Ibn ʿUmar's prohibition against women draping cloth over their faces—yet they opposed him. We have also transmitted narrations from him indicating the permissibility of a male in Ihrām covering his face,

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ أَحَدًا قَالَ هَذَا قَبْلَ أَبِي حَنِيفَةَ، وَهُمْ يُعَظِّمُونَ خِلَافَ الْجُمْهُورِ، وَقَدْ خَالَفُوا هَاهُنَا: عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ، وَعُثْمَانَ بْنَ عَفَّانَ وَزَيْدَ بْنَ ثَابِتٍ، وَجَابِرَ بْنَ عَبْدِ اللَّهِ، وَابْنَ عَبَّاسٍ، وَابْنَ الزُّبَيْرِ، وَجُمْهُورَ التَّابِعِينَ؛ فَإِنْ تَعَلَّقُوا بِابْنِ عُمَرَ فَقَدْ ذَكَرْنَا فِي هَذَا الْبَابِ عَنْ ابْنِ عُمَرَ نَهْيَ الْمَرْأَةِ عَنْ أَنْ تَسْدُلَ عَلَى وَجْهِهَا وَقَدْ خَالَفُوهُ، وَرُوِّينَا عَنْهُ مَا يَدُلُّ عَلَى جَوَازِ تَغْطِيَةِ الْمُحْرِمِ وَجْهَهُ كَمَا ذَكَرْنَا آنِفًا؛ فَمَرَّةً هُوَ حُجَّةٌ، وَمَرَّةً لَيْسَ

as mentioned earlier. At times they deem him an authority, at times not—Ugh! Is this how they act?

Abu Muhammad said: The height of astonishment is their claim that since a woman's Ihrām pertains to her face, a man is more deserving of this ruling because his state in Ihrām is stricter. Yet the Sunnah distinguishes between men and women in Ihrām: a man must uncover his head, while a woman need not. They concur on abstaining from gloves but differ regarding garments. From where did they derive the analogy obliging men to cover their faces based on women? This analogy is utterly baseless! Moreover, they have lied—women are not forbidden from covering their faces in Ihrām; it is permissible for them, save for wearing the niqāb. Thus the fallacy of their analogy stands exposed.

What is truly astonishing is their reliance as evidence on the rigorously authenticated report from Allah's Messenger—peace and blessings be upon him—regarding his command about a man who died in Ihrām: that his head and face not be covered. We have transmitted this through numerous chains, including the narration in Muslim: Abū Kurayb narrated to us, Wakīʿ from Sufyān from ʿAmr ibn Dīnār from Saʿīd ibn Jubayr from Ibn ʿAbbās: "A man was thrown by his mount while in Ihrām and died. Allah's Messenger—peace and blessings be upon him—said: 'Wash him with water and lotus leaves, shroud him in his two garments, and do not cover his face or head, for he will be resurrected on the Day of Judgment proclaiming the Talbiyah.'"[1]

L13006 Abū Muḥammad said: Modesty is indeed a virtue, and as the Messenger of Allah—peace and blessings of Allah be upon him—declared, it is part of faith. Yet they are the first contradictors of this Ḥadīth and the foremost disobeyers of the Messenger of Allah—peace and blessings of Allah be upon him—in this matter. They do not consider it permissible to uncover the head and face of one who dies in iḥrām; rather, they cover all of that. Then they cite this as proof that a living muḥrim must not cover his face. We seek refuge in Allah from deprivation of divine aid.

L13007–13009 They say: When a Companion narrates a narration and subsequently con-

هُوَ حُجَّةً، أُفٍّ لِهَذَا عَمَلًا؟ قَالَ أَبُو مُحَمَّدٍ: وَالْعَجَبُ كُلُّ الْعَجَبِ أَنَّهُمْ قَالُوا: لَمَّا كَانَتْ الْمَرْأَةُ إحْرَامُهَا فِي وَجْهِهَا كَانَ الرَّجُلُ بِذَلِكَ أَحَقَّ لِأَنَّهُ أَغْلَظُ حَالًا مِنْهَا فِي الْإِحْرَامِ؟ قَالَ أَبُو مُحَمَّدٍ: وَالسُّنَّةُ قَدْ فَرَّقَتْ بَيْنَ الرَّجُلِ وَالْمَرْأَةِ فِي الْإِحْرَامِ فَوَجَبَ عَلَى الرَّجُلِ فِي الْإِحْرَامِ كَشْفُ رَأْسِهِ وَلَمْ يَجِبْ عَلَى الْمَرْأَةِ، وَاتَّفَقَا فِي أَنْ لَا يَلْبَسَا قُفَّازَيْنِ وَاخْتَلَفَا فِي الثِّيَابِ، فَمِنْ أَيْنَ وَجَبَ أَنْ يُقَاسَ عَلَيْهَا فِي تَغْطِيَةِ وَجْهِهِ؟ إنَّ هَذَا الْقِيَاسَ سَخِيفٌ جِدًّا، وَأَيْضًا: فَقَدْ كَذَبُوا وَمَا نُهِيَتْ الْمَرْأَةُ عَنْ تَغْطِيَةِ وَجْهِهَا، بَلْ هُوَ مُبَاحٌ لَهَا فِي الْإِحْرَامِ - وَإِنْ نُهِيَتْ عَنْ النِّقَابِ فَقَطْ - فَظَهَرَ فَسَادُ قِيَاسِهِمْ؟ وَالْعَجَبُ أَنَّهُمْ احْتَجُّوا فِي ذَلِكَ بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَمْرِهِ فِي الَّذِي مَاتَ مُحْرِمًا أَنْ لَا يُخَمَّرَ رَأْسُهُ، وَلَا وَجْهُهُ رُوِّينَاهُ مِنْ طُرُقٍ جَمَّةٍ -: مِنْهَا مِنْ طَرِيقِ مُسْلِمٍ نَا أَبُو كُرَيْبٍ نَا وَكِيعٌ عَنْ سُفْيَانَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَجُلًا أَوْقَصَتْهُ رَاحِلَتُهُ وَهُوَ مُحْرِمٌ فَمَاتَ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اغْسِلُوهُ بِمَاءٍ وَسِدْرٍ، وَكَفِّنُوهُ فِي ثَوْبَيْهِ، وَلَا تُخَمِّرُوا وَجْهَهُ وَلَا رَأْسَهُ فَإِنَّهُ يُبْعَثُ يَوْمَ الْقِيَامَةِ مُلَبِّيًا» .

قَالَ أَبُو مُحَمَّدٍ: إنَّ الْحَيَاءَ لَفَضِيلَةٌ، وَكَمَا أَخْبَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ مِنْ الْإِيمَانِ، وَهُمْ أَوَّلُ مُخَالِفٍ لِهَذَا الْحَدِيثِ، وَأَوَّلُ عَاصٍ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيهِ فَلَا يَرَوْنَ فِيمَنْ مَاتَ مُحْرِمًا أَنْ يُكْشَفَ رَأْسُهُ وَوَجْهُهُ، بَلْ يُغَطُّونَ كُلَّ ذَلِكَ ثُمَّ يَحْتَجُّونَ بِهِ فِي أَنْ لَا يُغَطِّيَ الْحَيُّ الْمُحْرِمُ وَجْهَهُ وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

[1] **Hadith references (L13005):** Sunan Ibn Majah 3084.

tradicts that narration, this constitutes evidence for the abrogation of that narration. According to them, it is. Ibn Abbas reported this tradition, and this is a juristic opinion stating that a living pilgrim in Ihram must cover his face. So where is that vile principle of yours which you cling to in rejecting the [established] traditions?

L13010 Ali said: And we say: Indeed, the living person in the state of ihram is not obligated to uncover their face; rather, they are only obligated to uncover their head. When they die, Allah the Exalted decrees an additional ruling for them—that neither their face nor their head should be covered. {He is not questioned about what He does} [Al-Anbiya: 23], Exalted is He. Analogical reasoning is misguidance, and any addition to the religion by divine law that Allah the Exalted has not permitted.[2]

L13011 Ali said: If covering the face while in the state of iḥrām were reprehensible or forbidden, the Messenger of Allah, peace be upon him, would have explicitly explained it. Since he did not prohibit this, it is permissible. And with Allah, the Most High, is success.

L13012 ## The Issue of the *Talbiyah*

L13013 ٨٢٩ – Issue:

L13014 We recommend that one should frequently recite the Talbiyah from the moment of entering the state of Ihram onwards, continuously, whether while riding, walking, dismounting, or in every circumstance. Both the man and the woman must raise their voices when reciting it, and it is an obligation—even if only once. The Talbiyah is: "At Your service, O Allah, at Your service, at Your service. Verily, all praise and blessings are Yours, and sovereignty is Yours; You have no partner."

L13015 Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Aḥmad ibn al-Faḍl al-Dīnawarī narrated to us: Muḥammad ibn Jarīr al-Ṭabarī narrated to us: Muḥammad ibn ʿAbd Allāh ibn Saʿīd al-Wāsiṭī narrated to me: Yaʿqūb ibn Muḥammad narrated to us: Muḥammad ibn Mūsā narrated to us: Isḥāq ibn

[2] **Qur'an references (L13010):** Qur'an 21:23 (Al-Anbya).

وَيَقُولُونَ: إِنَّ الصَّاحِبَ إِذَا رَوَى خَبَرًا وَخَالَفَهُ فَهُوَ دَلِيلٌ عَلَى نَسْخِ ذَلِكَ الْخَبَرِ عِنْدَهُمْ هُوَ، وَابْنُ عَبَّاسٍ رَوَى هَذَا الْخَبَرَ وَهُوَ رَأْيٌ لِلْمُحْرِمِ الْحَيِّ أَنْ يُخَمِّرَ وَجْهَهُ، فَأَيْنَ لَك ذَلِكَ الْأَصْلُ الْخَبِيثُ الَّذِي تَعَلَّقُوا بِهِ فِي رَدِّ السُّنَنِ [الثَّابِتَةِ] .

قَالَ عَلِيٌّ: وَنَحْنُ نَقُولُ: إِنَّ الْحَيَّ الْمُحْرِمَ لَا يَلْزَمُهُ كَشْفُ وَجْهِهِ، وَإِنَّمَا يَلْزَمُهُ كَشْفُ رَأْسِهِ فَقَطْ، فَإِذَا مَاتَ أَحْدَثَ اللَّهُ تَعَالَى لَهُ حُكْمًا زَائِدًا وَهُوَ أَنْ لَا يُخَمَّرَ وَجْهُهُ وَلَا رَأْسُهُ {لا يُسْأَلُ عَمَّا يَفْعَلُ} [الأنبياء: ٢٣] تَعَالَى، وَالْقِيَاسُ ضَلَالٌ، وَزِيَادَةٌ فِي الدِّينِ شَرْعًا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى.

قَالَ عَلِيٌّ: لَوْ كَانَ تَغْطِيَةُ الْمُحْرِمِ وَجْهَهُ مَكْرُوهًا أَوْ مُحَرَّمًا، لَبَيَّنَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِذَا لَمْ يَنْهَ عَنْ ذَلِكَ فَهُوَ مُبَاحٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ التَّلْبِيَةِ]

٨٢٩ - مَسْأَلَةٌ:

وَنَسْتَحِبُّ أَنْ يُكْثِرَ مِنْ التَّلْبِيَةِ مِنْ حِينِ الْإِحْرَامِ فَمَا بَعْدَهُ دَائِمًا فِي حَالِ الرُّكُوبِ، وَالْمَشْيِ، وَالنُّزُولِ، وَعَلَى كُلِّ حَالٍ، وَيَرْفَعُ الرَّجُلُ وَالْمَرْأَةُ صَوْتَهُمَا بِهَا وَلَا بُدَّ، وَهُوَ فَرْضٌ - وَلَوْ مَرَّةً - وَهِيَ: لَبَّيْكَ، اللَّهُمَّ لَبَّيْكَ، لَبَّيْكَ إِنَّ الْحَمْدَ وَالنِّعْمَةَ لَك وَالْمُلْكُ لَا شَرِيكَ لَك.

نَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نَا أَحْمَدُ بْنُ الْفَضْلِ الدِّينَوَرِيُّ نَا مُحَمَّدُ بْنُ جَرِيرٍ الطَّبَرِيُّ حَدَّثَنِي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ سَعِيدٍ الْوَاسِطِيُّ نَا يَعْقُوبُ بْنُ مُحَمَّدٍ نَا مُحَمَّدُ بْنُ مُوسَى نَا إِسْحَاقُ بْنُ سَعِيدِ بْنِ جُبَيْرٍ عَنْ جَعْفَرِ بْنِ حَمْزَةَ بْنِ أَبِي دَاوُد الْمَازِنِيِّ عَنْ أَبِيهِ عَنْ جَدِّهِ

Saʿīd ibn Jubayr narrated to us from Jaʿfar ibn Ḥamzah ibn Abī Dāwūd al-Māzinī from his father from his grandfather Abī Dāwūd (a veteran of Badr) who said: “We set out with the Messenger of Allāh—peace and blessings of Allāh be upon him—for Ḥajj. When he reached Dhū al-Ḥulayfah, he prayed four rakʿahs in the mosque, then proclaimed the talbiyah immediately after concluding the prayer. He went out to the mosque’s door, where his mount stood ready. When it set off with him, he proclaimed the talbiyah, then proceeded. When he ascended al-Bayḍāʾ, he renewed the talbiyah.”

L13016–13018 Ali said: “Wherever one begins the talbiyah, it is sufficient for him, as it is an action, not a command.” Abdullah ibn Yusuf narrated to us from Ahmad ibn Fath from Abdul Wahhab ibn Isa from Ahmad ibn Muhammad from Ahmad ibn Ali from Muslim ibn al-Hajjaj; Harmalah ibn Yahya narrated to me from Ibn Wahb, who informed me from Yunus from Ibn Shihab, who said: “Salim ibn Abdullah ibn Umar informed me from his father, who said: ’I heard Allah’s Messenger - peace and blessings be upon him - recite the talbiyah, saying: ”Labbayka, O Allah, Labbayka, Labbayka, You have no partner.“” “At Your service, indeed all praise and blessing are Yours, and the dominion; You have no partner.” One should not add beyond these words.[3]

L13019 Abu Muhammad said: Others have narrated an addition. Whoever increases in mentioning Allah the Exalted, it is good, and whoever shortens to this, it is also good—all of that is good remembrance: From ʿAbdullāh ibn Rabīʿ, from Muḥammad ibn Muʿāwiyah, from Aḥmad ibn Shuʿayb, from Qutaybah ibn Saʿīd, from Ḥumayd ibn ʿAbd al-Raḥmān, from ʿAbd al-ʿAzīz ibn Abī Salamah (he is Ibn al-Mājishūn), from ʿAbdullāh ibn al-Faḍl, from al-Aʿraj, from Abū Hurayrah, who said: “Among the talbiyah of the Messenger of Allah (may Allah bless him and grant him peace) was: *Labbayk, ilāha al-ḥaqq* (Here I am, God of Truth).”

L13020 Aḥmad ibn Shuʿayb said: “We do not know anyone who narrated it with a chain except ʿAbdullāh ibn al-Faḍl - and he is trustworthy -: ʿAbdullāh ibn Rabīʿ narrated to us; Muḥammad ibn Muʿāwiyah narrated to us; Aḥmad

[3]**Hadith references (L13016):** Sunan Abi Dawud 1812; Sunan Abi Dawud 1905; Sahih al-Bukhari 1549.

أَبِي دَاوُد - وَهُوَ بَدْرِيٌّ - قَالَ «خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْحَجِّ، فَلَمَّا كَانَ بِذِي الْحُلَيْفَةِ صَلَّى فِي الْمَسْجِدِ أَرْبَعَ رَكَعَاتٍ، ثُمَّ لَبَّى دُبُرَ الصَّلاَةِ، ثُمَّ خَرَجَ إِلَى بَابِ الْمَسْجِدِ، فَإِذَا رَاحِلَتُهُ قَائِمَةٌ فَلَمَّا انْبَعَثَتْ بِهِ أَهَلَّ ثُمَّ مَضَى، فَلَمَّا عَلاَ الْبَيْدَاءَ أَهَلَّ» .

قَالَ عَلِيٌّ: وَمِنْ حَيْثُ أَهَلَّ أَجْزَأَهُ لِأَنَّهُ فِعْلٌ لَا أَمْرٌ -: نَا عَبْدُ اللَّهِ بْنُ يُوسُفَ نَا أَحْمَدُ بْنُ فَتْحٍ نَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نَا أَحْمَدُ بْنُ مُحَمَّدٍ نَا أَحْمَدُ بْنُ عَلِيٍّ نَا مُسْلِمُ بْنُ الْحَجَّاجِ حَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى أَنَا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنِ ابْنِ شِهَابٍ قَالَ: إِنَّ سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ أَخْبَرَنِي عَنْ أَبِيهِ قَالَ: «سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُهِلُّ مُلَبِّيًا يَقُولُ: لَبَّيْكَ، اللَّهُمَّ لَبَّيْكَ، لَبَّيْكَ لَا شَرِيكَ لَكَ لَبَّيْكَ إِنَّ الْحَمْدَ وَالنِّعْمَةَ لَكَ، وَالْمُلْكَ لَا شَرِيكَ لَكَ» لَا يَزِيدُ عَلَى هَؤُلَاءِ الْكَلِمَاتِ “.

قَالَ أَبُو مُحَمَّد: وَقَدْ رَوَى غَيْرُهُ الزِّيَادَةَ، وَمَنْ زَادَ ذِكْرَ اللَّهِ تَعَالَى فَحَسَنٌ، وَمَنْ اخْتَصَرَ عَلَى هَذِهِ فَحَسَنٌ، كُلُّ ذَلِكَ ذِكْرٌ حَسَنٌ -: نَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ نَا قُتَيْبَةُ بْنُ سَعِيدٍ نَا حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ عَبْدِ الْعَزِيزِ بْنِ أَبِي سَلَمَةَ هُوَ ابْنُ الْمَاجِشُونِ - عَنْ عَبْدِ اللَّهِ بْنِ الْفَضْلِ عَنِ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ قَالَ: «كَانَ مِنْ تَلْبِيَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَبَّيْكَ إِلَهَ الْحَقِّ» .

قَالَ أَحْمَدُ بْنُ شُعَيْبٍ مَا نَعْلَمُ أَحَدًا أَسْنَدَهُ إِلَّا عَبْدُ اللَّهِ بْنُ الْفَضْلِ وَهُوَ ثِقَةٌ -: نَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ رَاهْوَيْهِ نَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي بَكْرِ بْنِ

ibn Shuʿayb narrated to me; Isḥāq ibn Rāhwayh narrated to me; Sufyān ibn ʿUyaynah narrated to us from ʿAbdullāh ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm from ʿAbd al-Malik ibn Abī Bakr ibn ʿAbd al-Raḥmān from Khallād ibn al-Sāʾib from his father from the Messenger of Allah - peace and blessings of Allah be upon him - who said: ʾGabriel came to me and said: "O Muḥammad, command your companions to raise their voices in the talbiyah.""

عَبْدِ الرَّحْمَنِ عَنْ خَلَّادِ بْنِ السَّائِبِ عَنْ أَبِيهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «جَاءَنِي جِبْرِيلُ فَقَالَ لِي: يَا مُحَمَّدُ مُرْ أَصْحَابَكَ فَلْيَرْفَعُوا أَصْوَاتَهُمْ بِالتَّلْبِيَةِ» .

L13021 Abu Muhammad said: "This is a matter," and some people said: "Raising the voice is reprehensible (makrūh)."

قَالَ أَبُو مُحَمَّدٍ: هَذَا أَمْرٌ، وَقَالَ بَعْضُ النَّاسِ: يُكْرَهُ رَفْعُ الصَّوْتِ.

L13022 Ali said, "This is contrary to the Sunnah." Some of them said, "A woman should not raise."

قَالَ عَلِيٌّ: وَهَذَا خِلَافٌ لِلسُّنَّةِ، وَقَالَ بَعْضُهُمْ: لَا تَرْفَعُ الْمَرْأَةُ.

L13023 Abū Muḥammad said: This is an error and an unwarranted specification without evidence, for people would hear the speech of the Mothers of the Believers without any restriction. Narrations have been transmitted from them while they were in their twenties or a few years beyond that, with no disagreement among scholars regarding the validity and recommended status of this practice.

We have been narrated through the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us, Humayd ibn ʿAbd al-Raḥmān narrated to us, from Bakr ibn ʿAbd Allāh al-Muzanī, who said: I heard Ibn ʿUmar raising his voice in the *talbiyah* until I heard the reverberation of his voice echoing between the mountains.

Through the same chain to Hushaym: al-Faḍl ibn ʿAṭiyyah narrated to us, Abū Ḥāzim narrated to us, who said: When the Companions of the Messenger of Allah—peace and blessings be upon him—entered the state of *iḥrām*, they would not reach al-Rawḥāʾ until their voices were strained.

قَالَ أَبُو مُحَمَّدٍ: هَذَا خَطَأٌ وَتَخْصِيصٌ بِلَا دَلِيلٍ، وَقَدْ كَانَ النَّاسُ يَسْمَعُونَ كَلَامَ أُمَّهَاتِ الْمُؤْمِنِينَ وَلَا حَرَجَ فِي ذَلِكَ، وَقَدْ رُوِيَ عَنْهُنَّ وَهُنَّ فِي حُدُودِ الْعِشْرِينَ سَنَةً وَفُوَيْقَ ذَلِكَ، وَلَمْ يَخْتَلِفْ أَحَدٌ فِي جَوَازِ ذَلِكَ وَاسْتِحْبَابِهِ -: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ أَنَا حُمَيْدٌ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ - عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيِّ قَالَ: سَمِعْت ابْنَ عُمَرَ يَرْفَعُ صَوْتَهُ بِالتَّلْبِيَةِ حَتَّى أَنِّي لَأَسْمَعُ دَوِيَّ صَوْتِهِ بَيْنَ الْجِبَالِ -: وَبِهِ إلَى هُشَيْمٍ أَنَا الْفَضْلُ بْنُ عَطِيَّةَ نَا أَبُو حَازِمٍ قَالَ: كَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا أَحْرَمُوا لَمْ يَبْلُغُوا الرَّوْحَاءَ حَتَّى تُبَحَّ أَصْوَاتُهُمْ.

Through the chain of Waki‘, who narrated to us from Ibrāhīm ibn Nāfi‘, who said: A non-Arab woman arrived and went out with the people but did not recite the Talbiyah at all, except that she was invoking Allah, the Exalted. So ‘Aṭā’ said: It is not sufficient for her.

وَمِنْ طَرِيقِ وَكِيعٍ نَا إبْرَاهِيمُ بْنُ نَافِعٍ قَالَ: قَدِمَتْ امْرَأَةٌ أَعْجَمِيَّةٌ فَخَرَجَتْ مَعَ النَّاسِ وَلَمْ تُهِلَّ بِشَيْءٍ إلَّا أَنَّهَا كَانَتْ تَذْكُرُ اللَّهَ تَعَالَى، فَقَالَ عَطَاءٌ: لَا يُجْزِئُهَا.

L13026 And through the chain of Ibn Abi Shaybah: from Abd al-Rahman ibn Mahdi, from Sufyan al-Thawri, from Abd al-Rahman ibn al-Qasim ibn Muhammad,

from his father, who said: Mu‘awiyah went out on the night of Nafar (ritual departure) and heard the sound of the talbiyah. He asked, “Who is this?” It was said, “‘A’ishah, the Mother of the Believers, performed ‘Umrah from Tan‘im.” When this was mentioned to her, she said, “Had he asked me, I would have informed him. This is the Mother of the Believers raising her voice until Mu‘awiyah hears it in the very situation he was in.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ قَالَ: خَرَجَ مُعَاوِيَةُ لَيْلَةَ النَّفَرِ فَسَمِعَ صَوْتَ تَلْبِيَةٍ فَقَالَ: مَنْ هَذَا؟ قِيلَ: عَائِشَةَ أُمَّ الْمُؤْمِنِينَ اعْتَمَرَتْ مِنْ التَّنْعِيمِ فَذُكِرَ ذَلِكَ لِعَائِشَةَ فَقَالَتْ عَائِشَةُ: لَوْ سَأَلَنِي لَأَخْبَرْته، فَهَذِهِ أُمُّ الْمُؤْمِنِينَ تَرْفَعُ صَوْتَهَا حَتَّى يَسْمَعَهَا مُعَاوِيَةُ فِي حَالِهِ الَّتِي كَانَ فِيهَا.

L13027 If it is said: It has been reported from Ibn Abbas that “a woman should not raise her voice in the talbiyah,” and from Ibn Umar that “women are not required to raise their voices in the talbiyah”? We respond: The narration from Ibn Umar is transmitted through Isa ibn Abi Isa al-Hannat, who is weak, and the narration from Ibn Abbas is transmitted through Ibrahim ibn Abi Habibah, who is also weak. Even if both were authentic, the narration of Aisha would be consistent with the textual evidence.

فَإِنْ قِيلَ: قَدْ رُوِيَ عَنْ ابْنِ عَبَّاسٍ: لَا تَرْفَعُ الْمَرْأَةُ صَوْتَهَا بِالتَّلْبِيَةِ - وَعَنْ ابْنِ عُمَرَ: لَيْسَ عَلَى النِّسَاءِ أَنْ يَرْفَعْنَ أَصْوَاتَهُنَّ بِالتَّلْبِيَةِ؟ قُلْنَا: رِوَايَةُ ابْنِ عُمَرَ هِيَ مِنْ طَرِيقِ عِيسَى بْنِ أَبِي عِيسَى الْخَنَّاطِ وَهُوَ ضَعِيفٌ، وَرِوَايَةُ ابْنِ عَبَّاسٍ هِيَ مِنْ طَرِيقِ إبْرَاهِيمَ بْنِ أَبِي حَبِيبَةَ وَهُوَ ضَعِيفٌ وَلَوْ صَحَّا لَكَانَتْ رِوَايَةُ عَائِشَةَ مُوَافِقَةً لِلنَّصِّ.

[مَسْأَلَةُ الْقَصْد إلَى الْحَجَرِ الْأَسْوَدِ وَتَقْبِيله]

L13028 **Issue: Intending to approach the Black Stone and kissing it.**

٨٣٠ - مَسْأَلَةٌ:

L13029 830: Legal Question:

فَإِذَا قَدِمَ الْمُعْتَمِرُ، أَوْ الْمُعْتَمِرَةُ مَكَّةَ فَلْيَدْخُلَا الْمَسْجِدَ وَلَا يَبْدَآ بِشَيْءٍ لَا رَكْعَتَيْنِ وَلَا غَيْرَ ذَلِكَ قَبْلَ الْقَصْدِ إلَى الْحَجَرِ الْأَسْوَدِ فَيُقَبِّلَانِه، ثُمَّ يَلْقَيَانِ الْبَيْتَ عَلَى الْيَسَارِ وَلَا بُدَّ، ثُمَّ يَطُوفَانِ بِالْبَيْتِ مِنْ الْحَجَرِ الْأَسْوَدِ إلَى أَنْ يَرْجِعَا إلَيْهِ سَبْعَ مَرَّاتٍ، مِنْهَا ثَلَاثُ مَرَّاتٍ خَبَبًا وَهُوَ مَشْيٌ فِيهِ سُرْعَةٌ، وَالْأَرْبَعُ طَوَّافَاتِ الْبَوَاقِي مَشْيًا، وَمَنْ شَاءَ أَنْ يَخُبَّ فِي الثَّلَاثِ الطَّوَّافَاتِ، وَهِيَ الْأَشْوَاطُ مِنْ الرُّكْنِ الْأَسْوَدِ مَارًّا عَلَى الْحَجَرِ إلَى الرُّكْنِ الْيَمَانِيِّ، ثُمَّ يَمْشِي رِفْقًا مِنْ الْيَمَانِيِّ إلَى الْأَسْوَدِ فِي كُلِّ شَوْطٍ مِنْ الثَّلَاثَةِ فَذَلِكَ لَهُ وَكُلَّمَا مَرَّا عَلَى

L13030 When the male or female ʿUmrah pilgrim arrives in Makkah, they must enter the Masjid and refrain from initiating any act—including the two rakʿahs or other rituals—before proceeding to the Black Stone to kiss it. They must necessarily position themselves with the Kaaba on their left, then perform seven circuits around the Kaaba, starting and ending at the Black Stone. Three of these circuits should be performed with *ramal* (a ritual brisk walk or jog), while the remaining four are completed at a normal pace. Those who wish to observe *ramal* during the three circuits—moving swiftly from the Black Stone to the Yemeni Corner in each circuit, then walking calmly from the Yemeni Corner back to the Black Stone—may do so. Each time they pass the Black Stone, they kiss it, and they also touch the Yemeni Corner, but no other. Upon completing this circumambulation, they proceed to the Station of Abraham (peace be upon him) to pray two recommended rakʿahs there.

الْحَجَرِ الْأَسْوَدِ قَبَّلَاهُ، وَكَذَلِكَ الرُّكْنُ الْيَمَانِيُّ أَيْضًا فَقَطْ، فَإِذَا تَمَّ الطَّوَافُ الْمَذْكُورُ أَتَيَا إِلَى مَقَامِ إِبْرَاهِيمَ - عَلَيْهِ السَّلَامُ - فَصَلَّيَا هُنَالِكَ رَكْعَتَيْنِ وَلَيْسَتَا فَرْضًا.

L13031 Then the two inevitably proceeded to Safa, ascended it, and descended. When they reached the valley of Mas‘ā, the pilgrim would hasten his pace until exiting it, then walk until arriving at Marwah. He would ascend it, descend, and return to Safa in this manner, repeating this between Safa and Marwah until completing seven trips: three with light jogging (khabb) and four walking. The light jogging between them is not obligatory.

ثُمَّ خَرَجَا وَلَا بُدَّ إِلَى الصَّفَا فَصَعِدَا عَلَيْهِ، ثُمَّ هَبَطَا فَإِذَا صَارَا فِي بَطْنِ الْوَادِي أَسْرَعَ الرَّجُلُ الْمَشْيَ حَتَّى يَخْرُجَ عَنْهُ ثُمَّ يَمْشِي حَتَّى يَأْتِيَ الْمَرْوَةَ فَيَصْعَدَ عَلَيْهَا ثُمَّ يَنْحَدِرَ كَذَلِكَ حَتَّى يَرْجِعَ إِلَى الصَّفَا ثُمَّ يَرْجِعَ كَذَلِكَ إِلَى الْمَرْوَةِ هَكَذَا حَتَّى يُتِمَّ سَبْعَ مَرَّاتٍ: مِنْهَا ثَلَاثٌ خَبَبًا وَأَرْبَعٌ مَشْيًا، وَلَيْسَ الْخَبَبُ بَيْنَهُمَا فَرْضًا.

L13032–13034 Then the man shaves his head or trims some of his hair—and the woman does not shave, but trims her hair. her hair, as the ‘Umrah had been completed, and all that had been forbidden to them both due to iḥrām—including clothing and other restrictions—became permissible.

ثُمَّ يَحْلِقُ الرَّجُلُ رَأْسَهُ، أَوْ يُقَصِّرُ مِنْ شَعْرِهِ - وَلَا تَحْلِقُ الْمَرْأَةُ لَكِنْ تُقَصِّرُ مِنْ شَعْرِهَا، وَقَدْ تَمَّتْ الْعُمْرَةُ وَحَلَّ لَهُمَا كُلُّ مَا كَانَ حَرُمَ عَلَيْهِمَا بِالْإِحْرَامِ مِنْ لِبَاسٍ وَغَيْرِهِ.

L13035 Abu Muhammad said: There is no disagreement regarding what we have mentioned except in certain matters which we will clarify, God the Mighty and Majestic willing. These are: the obligation of *ramal* (brisk walking) during circumambulation, the permissibility of reversing the direction of circumambulation by facing the House on the right side, and the obligation of *Sa‘i* between *al-Ṣafā* and *al-Marwah*. The proof for the validity of our position is what was transmitted to us by ‘Abdullāh ibn Rabī‘: Muḥammad ibn Mu‘āwiyah narrated to us, Aḥmad ibn Shu‘ayb narrated to us, Muḥammad ibn Sulaymān Luwayn informed me from Ḥammād ibn Zayd, from Ayyūb al-Sikhtiyānī, from Sa‘īd ibn Jubayr, from Ibn ‘Abbās, who said: “When the Messenger of God—peace and blessings be upon him—arrived, the polytheists said, ‘A people weakened by the fever of Yathrib are coming to you, having suffered greatly from it.’ God the Mighty and Majestic informed His Prophet—peace be upon him—of this, so he commanded his companions to perform *ramal* and to walk normally between the two corners.” This constitutes an obligatory ruling. Through this chain to Aḥmad ibn Shu‘ayb: ‘Ubaydullāh ibn Sa‘īd ibn Qudāmah narrated to us, Yaḥyā—meaning Ibn Sa‘īd al-Qaṭṭān—narrated from ‘Ubaydullāh—meaning Ibn ‘Umar—from

قَالَ أَبُو مُحَمَّد: لَا خِلَافَ فِيمَا ذَكَرْنَا إِلَّا فِي أَشْيَاءَ نُبَيِّنُهَا إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ، وَهِيَ: وُجُوبُ الْخَبَبِ فِي الطَّوَافِ، وَجَوَازُ تَنْكِيسِ الطَّوَافِ بِأَنْ يَلْقَى الْبَيْتَ عَلَى الْيَمِينِ، وَوُجُوبُ السَّعْيِ بَيْنَ الصَّفَا وَالْمَرْوَةِ -: بُرْهَانُ صِحَّةِ قَوْلِنَا مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ سُلَيْمَانَ لُوَيْنٌ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ «لَمَّا قَدِمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ الْمُشْرِكُونَ إِنَّهُ يَقْدَمُ عَلَيْكُمْ قَوْمٌ وَهَنَتْهُمْ حُمَّى يَثْرِبَ وَلَقُوا مِنْهَا شَرًّا فَأَطْلَعَ اللَّهُ - عَزَّ وَجَلَّ نَبِيَّهُ - عَلَيْهِ السَّلَامُ - عَلَى ذَلِكَ فَأَمَرَ أَصْحَابَهُ أَنْ يَرْمُلُوا وَأَنْ يَمْشُوا مَا بَيْنَ الرُّكْنَيْنِ» فَهَذَا أَمْرٌ وَاجِبٌ -: وَبِهِ إِلَى أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عُبَيْدُ اللَّهِ بْنُ سَعِيدِ بْنِ قُدَامَةَ نَا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ عُبَيْدِ اللَّهِ هُوَ ابْنُ عُمَرَ - عَنْ نَافِعٍ أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ كَانَ يَرْمُلُ الثَّلَاثَ وَيَمْشِي الْأَرْبَعَ وَيَزْعُمُ أَنَّ رَسُولَ اللَّهِ -

Nāfiʿ, that ʿAbdullāh ibn ʿUmar would perform *ramal* for three circuits and walk normally for four circuits, firmly asserting that the Messenger of God—peace and blessings be upon him—used to do this. This clarifies that *ramal* applies specifically to the first three circuits, and that performing *ramal* throughout all the first three circuits is permissible.

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَفْعَلُ ذَلِكَ - فَهَذَا بَيَانُ الرَّمَلِ إِنَّمَا هُوَ فِي الثَّلَاثَةِ الْأَشْوَاطِ الْأُوَلِ، وَأَنَّ الرَّمَلَ فِي جَمِيعِ تِلْكَ الْأَشْوَاطِ جَائِزٌ.

L13036 If it is said: "Indeed, Ibn ʿAbbās stated regarding the *ramal* that it is not a Sunnah, though he is the narrator of the ḥadīth?" We respond: No one's opinion can stand as proof against the Messenger of Allah—peace and blessings be upon him. We ask you: What would you and the people of Islam say about them if, when the Messenger of Allah—peace and blessings be upon him—commanded them to perform the *ramal*, they had replied, "We will not do it"—though Allah the Exalted has protected them from such—would they then be disobedient or obedient? As for its obligation: We have been narrated through chains from Ibn ʿUmar, ʿAṭā, Sulaymān ibn Yasār, and Makhūl that women are not required to perform the *ramal*—via chains which, had we wished, we could have critiqued most of them due to weakness in their transmission.

فَإِنْ قِيلَ: إِنَّ ابْنَ عَبَّاسٍ قَالَ فِي الرَّمَلِ: لَيْسَ سُنَّةً، وَهُوَ رَاوِي الْحَدِيثِ؟ قُلْنَا: لَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنَحْنُ نَسْأَلُكُمْ مَا قَوْلُكُمْ، وَقَوْلُ أَهْلِ الْإِسْلَامِ فِيهِمْ لَوْ أَنَّهُمْ إِذْ أَمَرَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ يَرْمُلُوا؟ يَقُولُونَ لَهُ: لَا نَفْعَلُ - وَقَدْ أَعَاذَهُمْ اللَّهُ تَعَالَى مِنْ ذَلِكَ - أَعُصَاةً كَانُوا يَكُونُونَ أَمْ مُطِيعِينَ؟ وَأَمَّا وُجُوبُهُ -: فَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ عُمَرَ، وَعَطَاءٍ، وَسُلَيْمَانَ بْنِ يَسَارٍ، وَمَكْحُولٍ، لَيْسَ عَلَى النِّسَاءِ رَمَلٌ مِنْ طُرُقٍ لَوْ شِئْنَا لَتَكَلَّمْنَا فِي أَكْثَرِهَا لِضَعْفِهَا.

L13037 It is narrated from Ibn Abbas and Ata that nothing is required of one who omits the *ramal*; whereas it is narrated from Ibrahim that a *fidya* (compensation) is incumbent upon him.

وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ، وَعَطَاءٍ، لَيْسَ عَلَى مَنْ تَرَكَ الرَّمَلَ شَيْءٌ - وَعَنْ إِبْرَاهِيمَ عَلَيْهِ فِدْيَةٌ.

L13038 We received a narration via Ibn Abī Shaybah's chain: he narrated to us [from] al-Thaqafī – who is ʿAbd al-Wahhāb ibn ʿAbd al-Majīd – from Ḥabīb – who is Ibn Abī Thābit – from ʿAṭāʾ: that he asked about the resident near the Sacred Mosque who assumes ihrām in Mecca – must he perform the three circuits of Saʿī? He replied: "They perform Saʿī." As for Ibn ʿAbbās, he said: "This obligation applies only to people from distant regions."

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا الثَّقَفِيُّ هُوَ عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ - عَنْ حَبِيبٍ هُوَ ابْنُ أَبِي ثَابِتٍ - عَنْ عَطَاءٍ: أَنَّهُ سَأَلَ عَنْ الْمُجَاوِرِ إِذَا أَهَلَّ مِنْ مَكَّةَ هَلْ يَسْعَى الْأَشْوَاطَ الثَّلَاثَةَ؟ قَالَ: إِنَّهُمْ يَسْعَوْنَ قَالَ: فَأَمَّا ابْنُ عَبَّاسٍ فَإِنَّهُ قَالَ: إِنَّمَا ذَلِكَ عَلَى أَهْلِ الْآفَاقِ.

L13039–13040 From the narration chain of ʿAbd al-Razzāq, from Zakariyyā ibn Isḥāq, from Ibrāhīm ibn Maysarah, from Mujāhid, who said: Ibn al-Zubayr and Ibn ʿUmar went out to perform ʿUmrah from al-Jiʿrānah after Ibn al-Zubayr had completed the building of the Kaʿbah. Mujāhid said: I was sitting near Zamzam, and when Ibn al-Zubayr entered, Ibn ʿUmar called out to him,

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ زَكَرِيَّا بْنِ إِسْحَاقَ عَنْ إِبْرَاهِيمَ بْنِ مَيْسَرَةَ عَنْ مُجَاهِدٍ قَالَ: خَرَجَ ابْنُ الزُّبَيْرِ، وَابْنُ عُمَرَ فَاعْتَمَرَا مِنْ الْجِعْرَانَةِ لَمَّا فَرَغَ ابْنُ الزُّبَيْرِ مِنْ بِنَاءِ الْكَعْبَةِ قَالَ

"Will you perform the Raml for the first three circuits?" Then Ibn al-Zubayr performed the Raml for the entire seven circuits.

مُجَاهِدٌ: وَكُنْت جَالِسًا عِنْدَ زَمْزَمَ فَلَمَّا دَخَلَ ابْنُ الزُّبَيْرِ نَادَاهُ ابْنُ عُمَرَ أَرْمِلْ الثَّلَاثَ الْأُوَلَ؟ فَرَمَلَ ابْنُ الزُّبَيْرِ السَّبْعَ كُلَّهُ.

L13041 And via the narration of Ibn Abī Shaybah from Abū Usāmah from Hishām from al-Ḥasan and ʿAṭāʾ, they both said: The residents of Mecca are not obligated to perform *ramal*, nor is one who enters the state of Ihrām from Mecca required to do so, unless a Meccan arrives from outside Mecca.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي أُسَامَةَ عَنْ هِشَامٍ عَنْ الْحَسَنِ، وَعَطَاءٍ قَالَا: لَيْسَ عَلَى أَهْلِ مَكَّةَ رَمَلٌ، وَلَا عَلَى مَنْ أَهَلَّ مِنْهَا إلَّا أَنْ يَجِيءَ أَحَدٌ مِنْ أَهْلِ مَكَّةَ مِنْ خَارِجٍ.

L13042 So this is a narration from Ibn Abbas affirming the obligation of ramal (ritual jogging) upon the people of distant lands.

فَهَذِهِ رِوَايَةٌ عَنْ ابْنِ عَبَّاسٍ بِإِيجَابِ الرَّمَلِ عَلَى أَهْلِ الْآفَاقِ.

L13043 And from Al-Hasan and Ata similarly. From Ibn Umar regarding his attribution of that obligation to Ibn Az-Zubayr (who resided in Mecca). At the very least, this represents a divergence between the two opinions of Ibn Abbas and Ata. We have mentioned wherein they opposed the majority and what they uniquely held without any basis in the Sunnah, but rather based on opinion. Yet they esteemed this highly, and we do not reject it if the Sunnah is followed contrary to it.

وَعَنْ الْحَسَنِ، وَعَطَاءٍ مِثْلُ ذَلِكَ - وَعَنْ ابْنِ عُمَرَ بِإِيجَابِهِ ذَلِكَ عَنْ ابْنِ الزُّبَيْرِ وَهُوَ سَاكِنٌ بِمَكَّةَ، وَأَقَلُّ هَذَا أَنْ يَكُونَ اخْتِلَافًا مِنْ قَوْلَيْ ابْنِ عَبَّاسٍ وَعَطَاءٍ، وَقَدْ ذَكَرْنَا مَا تَرَكُوا فِيهِ الْجُمْهُورَ وَمَا انْفَرَدُوا بِهِ بِغَيْرِ سُنَّةٍ لَكِنْ بِرَأْيٍ؛ وَهُمْ يُعَظِّمُونَ ذَلِكَ، وَنَحْنُ لَا نُنْكِرُهُ إذَا اُتُّبِعَتْ السُّنَّةُ فِي خِلَافِهِ.

L13044 As for kissing the two corners, it is a recommended practice (Sunnah) and not an obligation, because there is no command regarding it. Rather, it is solely an action performed by the Messenger of Allah—peace and blessings be upon him—and he—peace and blessings be upon him—performed the circumambulation (Tawaf) while riding, pointing to the corner with a crooked staff in his hand.

وَأَمَّا تَقْبِيلُ الرُّكْنَيْنِ فَسُنَّةٌ وَلَيْسَ فَرْضًا، لِأَنَّهُ لَمْ يَأْتِ بِذَلِكَ أَمْرٌ، وَإِنَّمَا هُوَ عَمَلٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، وَقَدْ طَافَ - عَلَيْهِ السَّلَامُ - رَاكِبًا يُشِيرُ بِمِحْجَنٍ فِي يَدِهِ إلَى الرُّكْنِ.

L13045 As for the reversal of the order in circumambulation, Abū Ḥanīfah permitted the reversal of the order in ablution, the reversal of the order in the *adhan*, the reversal of the order in the *iqamah*, and the reversal of the order in circumambulation.

وَأَمَّا تَنْكِيسُ الطَّوَافِ فَإِنَّ أَبَا حَنِيفَةَ أَجَازَ تَنْكِيسَ الْوُضُوءِ، وَتَنْكِيسَ الْأَذَانِ، وَتَنْكِيسَ الْإِقَامَةِ، وَتَنْكِيسَ الطَّوَافِ.

L13046 Abū Muḥammad said: Since the Messenger of Allah—peace and blessings be upon him—commanded hastening during the mentioned circuits, has he not taught them where to begin and how to walk? Thus this became an injunction, and the Prophet's command—peace and blessings be upon him—is

قَالَ أَبُو مُحَمَّد: إذْ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْخَبَبِ فِي الْأَشْوَاطِ الْمَذْكُورَةِ فَقَدْ عَلَّمَهُمْ مِنْ أَيْنَ يَبْتَدِئُونَ؟ وَكَيْفَ يَمْشُونَ فَصَارَ ذَلِكَ أَمْرًا، وَأَمْرُهُ - عَلَيْهِ السَّلَامُ

obligatory. I am not astonished at those who do not consider ʿUmrah or Ḥajj invalidated by violating what Allah the Exalted and His Messenger—peace and blessings be upon him—have commanded, yet deem them invalid due to matters for which neither Allah the Exalted nor His Messenger—peace and blessings be upon him—issued any command, such as intentionally causing ejaculation through intimate contact with one's wife without intercourse and similar acts.

- فَرْضٌ، وَلَا أَعْجَبُ مِمَّنْ لَا يَرَى الْعُمْرَةَ، أَوْ الْحَجَّ يُبْطِلَانِ بِمُخَالَفَةِ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ يَرَاهُمَا يُبْطِلَانِ بِمَا لَمْ يَأْتِ فِيهِ أَمْرٌ بِذَلِكَ مِنْ اللَّهِ تَعَالَى، وَلَا مِنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَعَمُّدِ الْإِمْنَاءِ فِي مُبَاشَرَةِ امْرَأَتِهِ بِغَيْرِ جِمَاعٍ وَنَحْوِ ذَلِكَ.

L13047 As for the Tawaf between al-Safa and al-Marwah in Umrah, Anas and others said: "It is not obligatory." We received a narration through the chain of Abd al-Razzaq: Sufyan ibn Uyaynah reported to us from Amr ibn Dinar, who said: Ibn Abbas would recite: "So whoever performs Hajj to the House or performs Umrah, there is no blame upon him for not performing Tawaf around them."[4]

وَأَمَّا الطَّوَافُ بَيْنَ الصَّفَا وَالْمَرْوَةِ فِي الْعُمْرَةِ فَإِنَّ أَنَسًا وَغَيْرَهُ قَالُوا: لَيْسَ فَرْضًا -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: كَانَ ابْنُ عَبَّاسٍ يَقْرَأُ: " فَمَنْ حَجَّ الْبَيْتَ أَوْ اعْتَمَرَ فَلَا جُنَاحَ عَلَيْهِ أَنْ لَا يَطَّوَّفَ بِهِمَا.

L13048–13049 Abu Muhammad said: This is a statement from Ibn Abbas, not an addition by him to the Quran. It is also narrated from Ibn Abbas that the ʿUmrah is the circumambulation of the House.

قَالَ أَبُو مُحَمَّد: هَذَا قَوْلٌ مِنْ ابْنِ عَبَّاسٍ لَا إدْخَالٌ مِنْهُ فِي الْقُرْآنِ - وَعَنْ ابْنِ عَبَّاسٍ أَيْضًا: الْعُمْرَةُ الطَّوَافُ بِالْبَيْتِ.

L13050 And via Shu'bah from ʿĀṣim al-Aḥwal, who said: I heard Anas ibn Mālik recite, "There is no blame upon him for not performing Tawaf around them both."

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ عَاصِمٍ الْأَحْوَلِ قَالَ: سَمِعْت أَنَسَ بْنَ مَالِكٍ يَقْرَأُ فَلَا جُنَاحَ عَلَيْهِ أَنْ لَا يَطَّوَّفَ بِهِمَا.

L13051 Reported via the chain of Abd ibn Humaid from al-Dahhak ibn Makhlad from Ibn Juraij from Ata from Ibn Masud - similar to that.

وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ عَنْ الضَّحَّاكِ بْنِ مَخْلَدٍ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ ابْنِ مَسْعُودٍ مِثْلُ ذَلِكَ.

L13052 And through the chain of ʿAbd ibn Ḥumayd from ʿAbdullāh ibn Yazīd al-Muqrī from Abū Ḥanīfah from Maymūn ibn Mihrān from Ubayy ibn Kaʿb - a similar ruling is reported, and this is the opinion of ʿAṭāʾ, Mujāhid, and Maymūn ibn Mihrān. And through the chain of Ḥammād ibn Salamah from Qays ibn Saʿd from ʿAṭāʾ from Ibn al-Zubayr, who said concerning the ṭawāf between al-Ṣafā and al-Marwah: "It is a voluntary act."

وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي عَنْ أَبِي حَنِيفَةَ عَنْ مَيْمُونِ بْنِ مِهْرَانَ عَنْ أُبَيِّ بْنِ كَعْبٍ مِثْلُ ذَلِكَ، وَهُوَ قَوْلُ عَطَاءٍ، وَمُجَاهِدٍ، وَمَيْمُونِ بْنِ مِهْرَانَ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ عَطَاءٍ عَنْ ابْنِ الزُّبَيْرِ قَالَ فِي الطَّوَافِ بَيْنَ الصَّفَا وَالْمَرْوَةِ: هُمَا تَطَوُّعٌ.

[4] **Qur'an references (L13047):** Qur'an 2:158 (Al-Baqarah).

L13053 Those who held this opinion cited as their evidence the statement of Allah, the Exalted: {Indeed, as-Safa and al-Marwah are among the symbols of Allah. So whoever performs Hajj to the House or performs ʻUmrah, there is no blame upon him to traverse between them.} [Al-Baqarah: 158].[5]

وَاحْتَجَّ مَنْ رَأَى هَذَا الْقَوْلَ بِقَوْلِ اللَّهِ تَعَالَى: {إِنَّ الصَّفَا وَالْمَرْوَةَ مِنْ شَعَائِرِ اللَّهِ فَمَنْ حَجَّ الْبَيْتَ أَوِ اعْتَمَرَ فَلا جُنَاحَ عَلَيْهِ أَنْ يَطَّوَّفَ بِهِمَا} [البقرة: ١٥٨] .

L13054 It has been narrated to us from ʻĀ'ishah—may Allah be pleased with her—regarding the establishment of the obligation of performing Sa'i between them. She said concerning this verse: "It was revealed concerning people who did not perform Sa'i between them. When Islam came, the Messenger of Allah—peace and blessings be upon him—performed ṭawaf between them."

وَرُوِّينَا عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - إِيجَابَ فَرْضِ السَّعْيِ بَيْنَهُمَا، وَقَالَتْ فِي هَذِهِ الْآيَةِ: إِنَّمَا نَزَلَتْ فِي نَاسٍ كَانُوا لَا يَطُوفُونَ بَيْنَهُمَا، فَلَمَّا كَانَ الْإِسْلَامُ طَافَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L13055 Abu Muhammad said: If there were only this verse, it would not be an obligation. However, the proof for the obligation of that lies in what was transmitted to us by Abdullah ibn Yusuf from Ahmad ibn Fath from Abdul Wahhab ibn Isa from Ahmad ibn Muhammad from Ahmad ibn Ali from Muslim ibn al-Hajjaj from Muhammad ibn al-Muthanna from Muhammad ibn Ja'far from Shu'bah from Qays ibn Muslim from Tariq ibn Shihab from Abu Musa al-Ash'ari, who said: "I came to the Messenger of Allah - peace and blessings be upon him - while he was camped at al-Batha'. He asked me: 'Have you performed Hajj?' I replied: 'Yes.' He said: 'How did you enter ihram?' I responded: 'I proclaimed Labbayk with an ihram like that of the Messenger of Allah - peace and blessings be upon him.' He said: 'You have done well. Perform tawaf around the House, walk between Safa and Marwah, then end your state of consecration.'"

قَالَ أَبُو مُحَمَّدٍ: لَوْ لَمْ تَكُنْ إِلَّا هَذِهِ الْآيَةُ لَكَانَتْ غَيْرَ فَرْضٍ لَكِنَّ الْحُجَّةَ فِي فَرْضِ ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ نَا أَحْمَدُ بْنُ فَتْحٍ نَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نَا أَحْمَدُ بْنُ مُحَمَّدٍ نَا أَحْمَدُ بْنُ عَلِيٍّ نَا مُسْلِمُ بْنُ الْحَجَّاجِ نَا مُحَمَّدُ بْنُ الْمُثَنَّى نَا مُحَمَّدُ بْنُ جَعْفَرٍ نَا شُعْبَةُ عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ قَالَ «قَدِمْتُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ مُنِيخٌ بِالْبَطْحَاءِ فَقَالَ لِي: أَحَجَجْتَ؟ فَقُلْتُ: نَعَمْ فَقَالَ: بِمَ أَهْلَلْتَ؟ قَالَ قُلْتُ: لَبَّيْتُ بِإِهْلَالٍ كَإِهْلَالِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: فَقَدْ أَحْسَنْتَ طُفْ بِالْبَيْتِ، وَبَيْنَ الصَّفَا وَالْمَرْوَةِ وَأَحِلَّ» .

L13056 ʿAlī said: "Because of this, the Saʿī between al-Ṣafā and al-Marwah in ʿUmrah has become obligatory."

قَالَ عَلِيٌّ: بِهَذَا صَارَ السَّعْيُ بَيْنَ الصَّفَا وَالْمَرْوَةِ فِي الْعُمْرَةِ فَرْضًا.

L13057–13059 As for the *ramal* (rapid walking) between them: ʿAbdullāh ibn Rabīʿ narrated to us, Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us. Mahmud ibn Ghaylan al-Marwazi said: Bishr ibn al-Sarri reported to us, Sufyan, who is al-Thawri, reported to us from Ata ibn al-Sa'ib, from Kathir ibn Jumhan, who said: I saw Ibn Umar walking between al-Safa and al-Marwah. He said: "If I walk, I do so because I saw the Mes-

وَأَمَّا الرَّمَلُ بَيْنَهُمَا -: فَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مَحْمُودُ بْنُ غَيْلَانَ الْمَرْوَزِيُّ نَا بِشْرُ بْنُ السَّرِيِّ نَا سُفْيَانُ هُوَ الثَّوْرِيُّ - عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ كَثِيرِ بْنِ جُمْهَانَ قَالَ: رَأَيْت ابْنَ عُمَرَ يَمْشِي بَيْنَ الصَّفَا وَالْمَرْوَةِ فَقَالَ: إِنْ أَمْشِ فَقَدْ رَأَيْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَمْشِي، وَإِنْ أَسْعَ فَقَدْ رَأَيْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَسْعَى.

[5] **Qur'an references (L13053):** Qur'an 2:158 (Al-Baqarah).

senger of Allah (peace be upon him) walk. If I rush, I do so because I saw the Messenger of Allah (peace be upon him) rush."

L13060 Ali said: As for the report stating "Perform the Sa'i, for Allah has ordained the Sa'i upon you," it was narrated by Safiyyah bint Shaybah from an unnamed woman. It has been said that she is the daughter of Abi Tajrāt, who is of unknown reliability. Had the report been authentic, we would have ruled its obligation. Whoever is incapable of the ritual jogging mentioned may walk normally and incurs no sin, in accordance with Allah's statement: *"Allah does not burden any soul beyond its capacity"* (al-Baqarah 2:286).[6]

L13061 **A Legal Issue Concerning Hunting and Sexual Intercourse for a Person in the State of Ihram.**

L13062 831–Legal Question:

L13063 It is not lawful for the pilgrim in consecration for Umrah or Hajj to hunt any game from what is hunted for consumption, nor to engage in sexual intercourse that was permissible before assuming consecration, nor to wear any of the types of clothing we mentioned earlier—prior to the Prophet's prohibition (peace and blessings be upon him) against the pilgrim in consecration wearing such garments. Allah the Exalted said: "Do not kill game while you are in a state of consecration" [Al-Mā'idah: 95].[7]

L13064 And the Most High said: "There is to be no lewdness, disobedience, or disputing during Hajj." [Al-Baqarah: 197] This too has no disagreement concerning it.[8]

L13065 **An issue regarding someone intending to perform ʿUmrah while in al-Makkah.**

L13066 832 – Issue:

L13067 Whoever intends to perform ʻUmrah while in Mecca—whether a resident or a non-resident—must exit to the Ḥill (the non-sacred territory outside Mecca)

[6] **Qur'an references (L13060):** Qur'an 2:286 (Al-Baqarah).
[7] **Qur'an references (L13063):** Qur'an 5:95 (Al-Ma'idah).
[8] **Qur'an references (L13064):** Qur'an 2:197 (Al-Baqarah).

قَالَ عَلِيٌّ: وَالْخَبَرُ الَّذِي فِيهِ " اسْعَوْا فَإِنَّ اللَّهَ كَتَبَ عَلَيْكُمْ السَّعْيَ " فَإِنَّمَا رَوَتْهُ صَفِيَّةُ بِنْتُ شَيْبَةَ عَنْ امْرَأَةٍ لَمْ تُسَمَّ، وَقَدْ قِيلَ: هِيَ بِنْتُ أَبِي تَجْرَاةَ وَهِيَ مَجْهُولَةٌ، وَلَوْ صَحَّ لَقُلْنَا بِوُجُوبِهِ، وَمَنْ عَجَزَ عَنْ الْخَبَبِ الْمَذْكُورِ مَشَى وَلَا شَيْءَ عَلَيْهِ لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦]

[مَسْأَلَةُ الصَّيْد والوطء لِلْمُحْرِمِ]

٨٣١ - مَسْأَلَةٌ:

وَلَا يَحِلُّ لِلْمُحْرِمِ بِالْعُمْرَةِ أَوْ بِالْحَجِّ تَصَيُّدُ شَيْءٍ مِمَّا يُصَادُ لِيُؤْكَلَ، وَلَا وَطْءٌ كَانَ لَهُ حَلَالًا قَبْلَ إحْرَامِهِ، وَلَا لِبَاسُ شَيْءٍ مِمَّا ذَكَرْنَا قَبْلُ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ لِبَاسِ الْمُحْرِمِ، قَالَ اللَّهُ تَعَالَى: {لا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرُمٌ} [المائدة: ٩٥] .

وَقَالَ تَعَالَى: {فَلا رَفَثَ وَلا فُسُوقَ وَلا جِدَالَ فِي الْحَجِّ} [البقرة: ١٩٧] وَهَذَا أَيْضًا لَا خِلَافَ فِيهِ.

[مَسْأَلَةٌ أَرَادَ الْعُمْرَةَ وَهُوَ بِمَكَّةَ]

٨٣٢ - مَسْأَلَةٌ:

وَمَنْ أَرَادَ الْعُمْرَةَ - وَهُوَ بِمَكَّةَ - إمَّا مِنْ أَهْلِهَا، أَوْ مِنْ غَيْرِ أَهْلِهَا فَفَرْضٌ عَلَيْهِ أَنْ يَخْرُجَ لِلْإِحْرَامِ بِهَا إلَى الْحِلِّ وَلَا بُدَّ فَيَخْرُجُ إلَى أَيِّ الْحِلِّ شَاءَ، وَيُهِلُّ بِهَا «فَلَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ عَبْدَ الرَّحْمَنِ بْنَ أَبِي بَكْرٍ بِالْخُرُوجِ مِنْ مَكَّةَ إلَى التَّنْعِيمِ لِيَعْتَمِرَ

to assume the state of iḥrām for it. He may go to any part of the Ḥill he wishes and recite the Talbiyah for it there. This is because the Messenger of Allah (peace and blessings be upon him) commanded ʻAbd al-Raḥmān ibn Abī Bakr to depart from Mecca to Tanʻīm to perform ʻUmrah from it [Tanʻīm]. The Prophet (peace and blessings be upon him) himself also performed ʻUmrah from al-Jiʻrānah. Thus, this obligation applies specifically to ʻUmrah. And success comes only from Allah, the Most High.

مِنْهُ» «وَاعْتَمَرَ - عَلَيْهِ السَّلَامُ - مِنْ الْجِعْرَانَةِ» فَوَجَبَ ذَلِكَ فِي الْعُمْرَةِ خَاصَّةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L13068 Abdur-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: Al-Farbari narrated to us: Al-Bukhari narrated to us: Amr ibn Ali narrated to us: Abu Asim narrated to us: Uthman ibn Al-Aswad narrated to us: Ibn Abi Mulaikah narrated from Aisha, the Mother of the Believers, that the Messenger of Allah (peace be upon him) commanded Abdur-Rahman, her brother, to perform Umrah on her behalf from Tanʻīm. He (peace be upon him) waited for her in the upper part of Mecca until she arrived.

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نَا إبْرَاهِيمُ بْنُ أَحْمَدَ نَا الْفَرَبْرِيُّ نَا الْبُخَارِيُّ نَا عَمْرُو بْنُ عَلِيٍّ أَنَا أَبُو عَاصِمٍ نَا عُثْمَانُ بْنُ الْأَسْوَدِ نَا ابْنُ أَبِي مُلَيْكَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ عَبْدَ الرَّحْمَنِ أَخَاهَا أَنْ يُعْمِرَهَا مِنْ التَّنْعِيمِ وَانْتَظَرَهَا - عَلَيْهِ السَّلَامُ - بِأَعْلَى مَكَّةَ حَتَّى جَاءَتْ» .

L13069 833 - Question:

٨٣٣ - مَسْأَلَةٌ:

L13070–13072 As for the one who intends to perform Hajj, when he reaches the *Miqat* as we mentioned, he either has a sacrificial animal with him or not. The sacrificial animal is either a camel, a cow, or a sheep or goat. If he has no sacrificial animal with him—and this is the superior option—it is obligatory for him to enter the state of *Ihram* for a single Umrah without fail, and there is no avoiding it not. Otherwise, it is permissible for him. If he enters the state of *ihram* for Hajj or for *Qiran* (combining Hajj and Umrah), it becomes obligatory for him to annul that consecration by performing Umrah. He may exit *ihram* upon completing the Umrah - no other action is valid. Thereafter, when he exits *ihram*, he must renew the consecration for *Ifrad* (Hajj alone) from Makkah. This is termed *Tamattu'*.

وَأَمَّا مَنْ أَرَادَ الْحَجَّ فَإِنَّهُ إذَا جَاءَ إلَى الْمِيقَاتِ كَمَا ذَكَرْنَا فَلَا يَخْلُو مِنْ أَنْ يَكُونَ مَعَهُ هَدْيٌ، أَوْ لَيْسَ مَعَهُ هَدْيٌ، وَالْهَدْيُ إمَّا مِنْ الْإِبِلِ، أَوْ الْبَقَرِ، أَوْ الْغَنَمِ، فَإِنْ كَانَ لَا هَدْيَ مَعَهُ - وَهَذَا هُوَ الْأَفْضَلُ - فَفَرْضٌ عَلَيْهِ أَنْ يُحْرِمَ بِعُمْرَةٍ مُفْرَدَةٍ وَلَا بُدَّ لَا يَجُوزُ لَهُ غَيْرُ ذَلِكَ، فَإِنْ أَحْرَمَ بِحَجٍّ، أَوْ بِقِرَانِ حَجٍّ وَعُمْرَةٍ فَفَرْضٌ عَلَيْهِ أَنْ يَفْسَخَ إهْلَالَهُ ذَلِكَ بِعُمْرَةٍ يَحِلُّ إذَا أَتَمَّهَا، لَا يُجْزِئُهُ غَيْرُ ذَلِكَ، ثُمَّ إذَا أَحَلَّ مِنْهَا ابْتَدَأَ الْإِهْلَالَ بِالْحَجِّ مُفْرَدًا مِنْ مَكَّةَ وَهَذَا يُسَمَّى: مُتَمَتِّعًا.

L13073 If he has a sacrificial animal that he brought with himself, it is recommended for him to mark his sacrificial animal by wounding it if it is a camel - by striking it with an iron tool on the right side of its body until it bleeds - then to garland it by tying a sandal to a rope and hanging it around its neck. If he covers it with a covering, that is good. If the sacrificial animal is a sheep, there is no wounding for it, but he should garland it with a leather patch

وَإِنْ كَانَ مَعَهُ هَدْيٌ سَاقَهُ مَعَ نَفْسِهِ فَنَسْتَحِبُّ لَهُ أَنْ يُشْعِرَ هَدْيَهُ إنْ كَانَ مِنْ الْإِبِلِ، وَهُوَ أَنْ يَضْرِبَهُ بِحَدِيدَةٍ فِي الْجَانِبِ الْأَيْمَنِ مِنْ جَسَدِهِ حَتَّى يُدْمِيَهُ ثُمَّ يُقَلِّدَهُ، وَهُوَ أَنْ يَرْبِطَ نَعْلًا فِي حَبْلٍ وَيُعَلِّقَهَا فِي عُنُقِ الْهَدْيِ وَإِنْ جَلَّلَهُ بِجُلٍّ فَحَسَنٌ، فَإِنْ كَانَ الْهَدْيُ

around its neck. If it is a cow, there is neither wounding nor garlanding, whether it has humps or not.

مِنْ الْغَنَمِ فَلَا إشْعَارَ فِيهِ لَكِنْ يُقَلِّدُهُ رُقْعَةَ جِلْدٍ فِي عُنُقِهِ، فَإِنْ كَانَ مِنْ الْبَقَرِ فَلَا إشْعَارَ فِيهِ وَلَا تَقْلِيدَ كَانَتْ لَهُ أَسْنِمَةٌ أَوْ لَمْ تَكُنْ.

L13074 Then he says: "Here I am for Umrah and Hajj combined." Only this suffices, and it is obligatory. If he says: "Here I am for Hajj and Umrah," or "Here I am for Umrah and Hajj," or "Here I am for Hajj and Umrah," or intends all of that inwardly without uttering it; all of these are permissible. This is called Qirān.

ثُمَّ يَقُولُ: لَبَّيْكَ بِعُمْرَةٍ وَحَجٍّ مَعًا، لَا يُجْزِئُهُ إلَّا ذَلِكَ وَلَا بُدَّ، وَإِنْ قَالَ: لَبَّيْكَ بِحَجٍّ وَعُمْرَةٍ، أَوْ لَبَّيْكَ عُمْرَةً وَحَجًّا، أَوْ حَجَّةً وَعُمْرَةً، أَوْ نَوَى كُلَّ ذَلِكَ فِي نَفْسِهِ، وَلَمْ يَنْطِقْ بِهِ فَكُلُّ ذَلِكَ جَائِزٌ، وَهَذَا يُسَمَّى: الْقِرَانَ.

L13075 Whoever among the performers of Umrah drives the sacrificial animal must apply the marking and collaring as we have mentioned. It is recommended for him in all that we have described to stipulate a condition by saying at the time of entering Ihrām: "O Allah, my exiting Ihrām is wherever You detain me." If he says this and is then afflicted by any impediment preventing the completion of his intended Hajj or Umrah, he may exit Ihrām with no obligation upon him—neither sacrifice nor making up (qada'), unless he has never performed Hajj or Umrah at all. In that case, he must perform the Hajj of Islam and his Umrah.

وَمَنْ سَاقَ مِنْ الْمُعْتَمِرِينَ الْهَدْيَ فَعَلَ فِيهِ مِنْ الْإِشْعَارِ، وَالتَّقْلِيدِ مَا ذَكَرْنَا؛ وَنُحِبُّ لَهُ فِي كُلِّ مَا ذَكَرْنَا أَنْ يَشْتَرِطَ فَيَقُولَ عِنْدَ إهْلَالِهِ: اللَّهُمَّ إنَّ مَحِلِّي حَيْثُ تَحْبِسُنِي، فَإِنْ قَالَ ذَلِكَ فَأَصَابَهُ أَمْرٌ مَا يَعُوقُهُ عَنْ تَمَامِ مَا خَرَجَ لَهُ مِنْ حَجٍّ أَوْ عُمْرَةٍ أَحَلَّ وَلَا شَيْءَ عَلَيْهِ؛ لَا هَدْيَ وَلَا قَضَاءَ إلَّا إنْ كَانَ لَمْ يَحُجَّ قَطُّ وَلَا اعْتَمَرَ فَعَلَيْهِ أَنْ يَحُجَّ حَجَّةَ الْإِسْلَامِ وَعُمْرَتَهُ.

L13076 The evidence for what we have mentioned is what we narrated through the transmission of Muslim: Ibn Abi Umar reported from Sufyan ibn Uyaynah, from al-Zuhri, from Urwah, from Aisha (may Allah be pleased with her), who said: "We set out with the Messenger of Allah (peace be upon him) on the journey, and he said: 'Whoever among you wishes to enter ihram for Hajj, let him do so. Whoever wishes to enter ihram for Hajj, let him enter it. Whoever wishes to enter ihram for Umrah, let him enter it.' Aisha said: 'The Messenger of Allah (peace be upon him) entered ihram for Hajj, and some people entered ihram for it (Hajj) along with him. Others entered ihram for Hajj and Umrah together, while some entered ihram for Umrah alone. I was among those who entered ihram for Umrah.'"

بُرْهَانُ مَا ذَكَرْنَا -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا ابْنُ أَبِي عُمَرَ نَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ قَالَتْ «خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: مَنْ أَرَادَ مِنْكُمْ أَنْ يُهِلَّ بِحَجٍّ، أَوْ عُمْرَةٍ فَلْيَفْعَلْ، وَمَنْ أَرَادَ أَنْ يُهِلَّ بِحَجٍّ فَلْيُهِلَّ، وَمَنْ أَرَادَ أَنْ يُهِلَّ بِعُمْرَةٍ فَلْيُهِلَّ، قَالَتْ عَائِشَةُ: فَأَهَلَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِحَجٍّ، وَأَهَلَّ بِهِ نَاسٌ مَعَهُ وَأَهَلَّ نَاسٌ بِالْحَجِّ وَالْعُمْرَةِ، وَأَهَلَّ نَاسٌ بِعُمْرَةٍ وَكُنْتُ فِيمَنْ أَهَلَّ بِالْعُمْرَةِ» .

L13077–13079 Abu Muhammad said: This is the first of his commands (peace be upon him) concerning Dhū al-Ḥulayfah at the outset of their entering the state of iḥrām and their intention to commence the talbiyah without doubt, as it is the explicit text of the ḥadīth: Abdullah ibn Yūsuf reported; Aḥmad ibn Fatḥ

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا أَوَّلُ أَمْرِهِ - عَلَيْهِ السَّلَامُ - بِذِي الْحُلَيْفَةِ عِنْدَ ابْتِدَاءِ إحْرَامِهِمْ وَإِرَادَتِهِمْ الْإِهْلَالَ بِلَا شَكٍّ، إذْ هُوَ نَصُّ الْحَدِيثِ -: نَا عَبْدُ اللَّهِ بْنُ يُوسُفَ نَا أَحْمَدُ بْنُ فَتْحٍ نَا

reported from him; Abdul-Wahhāb ibn ʿĪsā reported from Aḥmad ibn Fatḥ; Aḥmad ibn Muḥammad reported from Abdul-Wahhāb ibn ʿĪsā. From Ahmad ibn Ali, from Muslim ibn al-Hajjaj, from Ibn Numayr, from Abu Nuʿaym—who is al-Faḍl ibn Dukayn—from Musa ibn Nafiʿ, who said: "I came to Mecca to perform *ʿUmrah* for *Tamattuʿ* four days before al-Tarwiyah. People remarked: 'Your Hajj will now become a resident's Hajj (Qirān).'" I visited 'Ata' ibn Abi Rabah, who said: "Jabir ibn 'Abdullah narrated to me that he performed Hajj with Allah's Messenger (peace and blessings be upon him) during the year he brought the sacrificial animal. They had entered *Ihram* for Hajj as *Ifrad*. Allah's Messenger (peace and blessings be upon him) said: 'Exit your *Ihram*. Perform *Tawaf* around the House and *Sa'i* between Safa and Marwah. Then shorten your hair and remain in a lawful state until the day of al-Tarwiyah, when you must enter *Ihram* for Hajj and transform your current state into *Tamattuʿ*.'"

عَبْدُ الْوَهَّابِ بْنُ عِيسَى نَا أَحْمَدُ بْنُ مُحَمَّدٍ نَا أَحْمَدُ بْنُ عَلِيٍّ نَا مُسْلِمُ بْنُ الْحَجَّاجِ نَا ابْنُ نُمَيْرٍ نَا أَبُو نُعَيْمٍ هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - نَا مُوسَى بْنُ نَافِعٍ قَالَ: (قَدِمْت مَكَّةَ مُتَمَتِّعًا بِعُمْرَةٍ قَبْلَ التَّرْوِيَةِ بِأَرْبَعَةِ أَيَّامٍ فَقَالَ النَّاسُ: تَصِيرُ حَجَّتُك الْآنَ مَكِّيَّةً) فَدَخَلْت عَلَى عَطَاءِ بْنِ أَبِي رَبَاحٍ فَقَالَ: حَدَّثَنِي جَابِرُ بْنُ عَبْدِ اللَّهِ أَنَّهُ حَجَّ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَامَ سَاقَ الْهَدْيَ مَعَهُ، وَقَدْ أَهَلُّوا بِالْحَجِّ مُفْرَدًا فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَحِلُّوا مِنْ إحْرَامِكُمْ فَطُوفُوا بِالْبَيْتِ، وَبَيْنَ الصَّفَا وَالْمَرْوَةِ، وَقَصِّرُوا وَأَقِيمُوا حَلَالًا حَتَّى إذَا كَانَ يَوْمُ التَّرْوِيَةِ فَأَهِلُّوا بِالْحَجِّ وَاجْعَلُوا الَّذِي قَدِمْتُمْ بِهَا مُتْعَةً» .

L13080 And via him [the chain reaches] in Ṣaḥīḥ Muslim: Isḥāq ibn Rāhwayh narrated to us—from Ḥātim ibn Ismāʿīl—from Jaʿfar ibn Muḥammad ibn ʿAlī ibn al-Ḥusayn—from his father—from Jābir ibn ʿAbdullāh, who informed him about the Prophet's pilgrimage—peace be upon him. He said: "When he performed the final circumambulation at al-Marwah, the Prophet—peace be upon him—declared: 'If I had faced [the consequences] of my matter as I now turn away from it, I would not have driven the sacrificial animal and would have made this an ʿUmrah. Let whoever among you has no sacrificial animal exit the state of consecration (iḥrām) and make it an ʿUmrah.' Surāqah ibn Mālik ibn Juʿshum stood and asked: 'O Messenger of God, is this ruling specific to our year or perpetual?' The Messenger of God—peace be upon him—interlaced his fingers and said: 'ʿUmrah has been integrated into Ḥajj on this occasion. No—rather, forever.'" ʿAbd al-Raḥmān ibn ʿAbdullāh ibn Khālid narrated to us—Ibrāhīm ibn Aḥmad narrated to us—al-Farbarī narrated to us—al-Bukhārī narrated to us—Mūsā ibn Ismāʿīl narrated to us—Wuhaib ibn Khālid narrated to us—Ayyūb al-Sakhtiyānī narrated to us—from Abū Qilābah—from Anas ibn Mālik, who said: "God's Messenger—peace be upon him—prayed the noon prayer as four units with us in Medina and the afternoon prayer as two units at Dhū al-Ḥulayfah. He remained there

وَبِهِ إلَى مُسْلِمٍ نَا إسْحَاقُ هُوَ ابْنُ رَاهْوَيْهِ - عَنْ حَاتِمِ بْنِ إسْمَاعِيلَ عَنْ جَعْفَرِ بْنِ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ أَبِيهِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّهُ أَخْبَرَهُ عَنْ حَجَّةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: «حَتَّى إذَا كَانَ آخِرَ طَوَافٍ عَلَى الْمَرْوَةِ، قَالَ - عَلَيْهِ السَّلَامُ -: لَوْ أَنِّي اسْتَقْبَلْتُ مِنْ أَمْرِي مَا اسْتَدْبَرْتُ لَمْ أَسُقْ الْهَدْيَ وَجَعَلْتُهَا عُمْرَةً فَمَنْ كَانَ مِنْكُمْ لَيْسَ مَعَهُ هَدْيٌ فَلْيَحِلَّ وَلْيَجْعَلْهَا عُمْرَةً فَقَامَ سُرَاقَةُ بْنُ مَالِكِ بْنِ جُعْشُمٍ فَقَالَ: يَا رَسُولَ اللَّهِ أَلِعَامِنَا هَذَا أَمْ لِلْأَبَدِ؟ فَشَبَّكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَصَابِعَهُ وَاحِدَةً فِي الْأُخْرَى وَقَالَ: دَخَلَتْ الْعُمْرَةُ فِي الْحَجِّ مَرَّتَيْنِ، لَا بَلْ لِأَبَدِ أَبَدٍ» . نَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نَا إبْرَاهِيمُ بْنُ أَحْمَدَ نَا الْفَرَبْرِيُّ نَا الْبُخَارِيُّ نَا مُوسَى بْنُ إسْمَاعِيلَ نَا وُهَيْبٌ هُوَ ابْنُ خَالِدٍ - نَا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ - عَنْ أَبِي قِلَابَةَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ «صَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنَحْنُ مَعَهُ بِالْمَدِينَةِ - الظُّهْرَ أَرْبَعًا وَالْعَصْرَ بِذِي الْحُلَيْفَةِ رَكْعَتَيْنِ ثُمَّ بَاتَ بِهَا حَتَّى الصُّبْحِ ثُمَّ رَكِبَ حَتَّى اسْتَوَتْ بِهِ رَاحِلَتُهُ عَلَى

overnight until dawn, then mounted until his riding beast stood firmly upon al-Bayḍāʾ. There he praised God, glorified Him, and proclaimed His greatness. He then assumed iḥrām for Ḥajj and ʿUmrah, and the people likewise assumed iḥrām for both. When we arrived [in Mecca], he instructed them to release themselves from iḥrām. On the Day of Tarwiyah [8th Dhū al-Ḥijjah], they assumed iḥrām for Ḥajj."[9]

الْبَيْدَاءِ حَمِدَ اللَّهَ وَسَبَّحَ وَكَبَّرَ ثُمَّ أَهَلَّ بِحَجٍّ وَعُمْرَةٍ وَأَهَلَّ النَّاسُ بِهِمَا، فَلَمَّا قَدِمْنَا أَمَرَ النَّاسَ فَحَلُّوا حَتَّى إِذَا كَانَ يَوْمُ التَّرْوِيَةِ أَهَلُّوا بِالْحَجِّ» .

L13081–13083 Hammām ibn Aḥmad narrated to us: ʿAbd Allāh ibn Muḥammad ibn ʿAlī al-Bājī narrated to us: Aḥmad ibn Khālid narrated to us: ʿUbayd ibn Muḥammad al-Kashwarī narrated to us: Muḥammad ibn Yūsuf al-Ḥudhāfī narrated to us: ʿAbd al-Razzāq narrated to us from Mālik and Maʿmar, from... Az-Zuhri reported from Urwah, from Aisha, who said: "We departed with the Prophet (peace and blessings of Allah be upon him) during the year of the Farewell Hajj, and we entered the state of ihram for Umrah. Then the Prophet (peace and blessings of Allah be upon him) said: 'Whoever has a sacrificial animal with him, let him enter the state of ihram for Hajj along with Umrah, and let him not exit ihram until he has exited from both [Hajj and Umrah] together.'"

نَا حُمَامُ بْنُ أَحْمَدَ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ نَا أَحْمَدُ بْنُ خَالِدٍ نَا عُبَيْدُ بْنُ مُحَمَّدٍ الْكَشْوَرِيُّ نَا مُحَمَّدُ بْنُ يُوسُفَ الْحُذَافِيُّ نَا عَبْدُ الرَّزَّاقِ نَا مَالِكٌ، وَمَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ قَالَتْ: «خَرَجْنَا مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَامَ حَجَّةِ الْوَدَاعِ فَأَهْلَلْنَا بِعُمْرَةٍ، ثُمَّ قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: مَنْ كَانَ مَعَهُ هَدْيٌ فَلْيُهِلَّ بِالْحَجِّ مَعَ الْعُمْرَةِ وَلَا يَحِلَّ حَتَّى يَحِلَّ مِنْهُمَا جَمِيعًا» .

L13084 Abu Muhammad said: In these established narrations is the proof for all we have stated, and all praise belongs to Allah the Exalted. These are four narrations: In the first - transmitted through Jābir - the Prophet (peace and blessings of Allah be upon him) commanded those who had entered the state of iḥrām for Ifrād Hajj without a sacrificial animal to necessarily perform ʿUmrah to exit iḥrām, then enter iḥrām anew for Hajj on the Day of Tarwiyyah, thereby becoming mutamattiʿūn (those performing Tamattuʿ Hajj).

قَالَ أَبُو مُحَمَّدٍ: فَفِي هَذِهِ الْأَحَادِيثِ الثَّابِتَةِ بُرْهَانُ كُلِّ مَا قُلْنَا وَلِلَّهِ تَعَالَى الْحَمْدُ وَهِيَ أَرْبَعَةُ أَحَادِيثَ -: فَفِي الْأَوَّلِ الَّذِي مِنْ طَرِيقِ جَابِرٍ أَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ أَهَلَّ بِحَجٍّ مُفْرَدٍ وَلَا هَدْيَ مَعَهُ بِأَنْ يَحِلَّ بِعُمْرَةٍ وَلَا بُدَّ، ثُمَّ يُهِلَّ بِالْحَجِّ يَوْمَ التَّرْوِيَةِ فَيَصِيرُ مُتَمَتِّعًا.

L13085 In the third ḥadīth transmitted through Anas, the Prophet's command—may Allah bless him and grant him peace—is that whoever enters iḥrām for Ḥajj and ʿUmrah as a Qārin (one combining both) without a sacrificial animal must necessarily begin with ʿUmrah's iḥrām; then he must declare Ḥajj's iḥrām on the Day of Tarwiyah (8th Dhul-Hijjah), thereby becoming a Mutamatti (one performing Tamattuʿ) as well.

وَفِي الْحَدِيثِ الثَّالِثِ الَّذِي مِنْ طَرِيقِ أَنَسٍ أَمْرُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ أَهَلَّ بِحَجٍّ وَعُمْرَةٍ قَارِنًا وَلَا هَدْيَ مَعَهُ أَنْ يُهِلَّ بِعُمْرَةٍ وَلَا بُدَّ؛ ثُمَّ يُهِلَّ بِالْحَجِّ يَوْمَ التَّرْوِيَةِ فَيَصِيرُ أَيْضًا مُتَمَتِّعًا.

L13086 In the second ḥadīth transmitted through Jābir, the Prophet—may Allah bless him and grant him peace—generally commands all those without a sacrifi-

وَفِي الْحَدِيثِ الثَّانِي الَّذِي مِنْ طَرِيقِ جَابِرٍ أَمْرُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلُّ مَنْ لَا هَدْيَ مَعَهُ عُمُومًا بِأَنْ يَحِلَّ بِعُمْرَةٍ، وَأَنَّ هَذَا هُوَ آخِرُ أَمْرِهِ عَلَى الصَّفَا بِمَكَّةَ؛ وَأَنَّهُ - عَلَيْهِ

[9] **Hadith references (L13080):** Sahih Muslim 1218a; Mishkat al-Masabih 2555.

cial animal without exception to exit the state of consecration by performing ʿUmrah. This was his final instruction while on al-Ṣafā in Makkah. He—peace be upon him—declared that the Tamattuʿ is superior to accompanying a sacrificial animal, expressing regret for not having done so himself. This ruling remains valid until the Day of Resurrection; since what is of this description secures us against abrogation forever, whoever permits the abrogation of what has these characteristics effectively permits falsehood against the report of Allah's Messenger—may Allah bless him and grant him peace—and such a deliberate act constitutes pure disbelief. The ḥadīth further confirms that ʿUmrah has become integral to Ḥajj—this being our doctrine, for Ḥajj is only valid when preceded by an ʿUmrah performed specifically for it (thereby becoming Tamattuʿ) or accompanied by a concurrent ʿUmrah, with no additional requirement.

السَّلَامُ - أَخْبَرَ بِأَنَّ التَّمَتُّعَ أَفْضَلُ مِنْ سَوْقِ الْهَدْيِ مَعَهُ، وَتَأَسَّفَ إِذْ لَمْ يَفْعَلْ ذَلِكَ هُوَ، وَأَنَّ هَذَا الْحُكْمَ (هُوَ) بَاقٍ إِلَى يَوْمِ الْقِيَامَةِ، وَمَا كَانَ هَكَذَا فَقَدْ أَمِنَّا أَنْ يُنْسَخَ أَبَدًا، وَمَنْ أَجَازَ نَسْخَ مَا هَذِهِ صِفَتُهُ فَقَدْ أَجَازَ الْكَذِبَ عَلَى خَبَرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا تَعَمُّدُهُ كُفْرٌ مُجَرَّدٌ، وَفِيهِ أَنَّ الْعُمْرَةَ قَدْ دَخَلَتْ فِي الْحَجِّ - وَهَذَا هُوَ قَوْلُنَا لِأَنَّ الْحَجَّ لَا يَجُوزُ إِلَّا بِعُمْرَةٍ مُتَقَدِّمَةٍ لَهُ يَكُونُ بِهَا مُتَمَتِّعًا أَوْ بِعُمْرَةٍ مَقْرُونَةٍ مَعَهُ وَلَا مَزِيدَ.

L13087–13089 In the fourth ḥadīth transmitted through the path of ʿĀ'ishah, the Mother of the Believers, the command of the Prophet (peace be upon him) to those possessing a sacrificial animal to combine Ḥajj and ʿUmrah—and this is the opinion of Ibn ʿAbbās, Mujāhid, ʿAṭā', Isḥāq ibn Rāhūyah, and others—from Aḥmad ibn ʿUmar ibn Anas, from ʿAbdullāh ibn al-Ḥusayn ibn ʿIqāl, from Ibrāhīm ibn Muḥammad al-Dīnawarī, from Muḥammad ibn Aḥmad ibn al-Jahm, from Abū Ismāʿīl Muḥammad ibn Ismāʿīl, from Aḥmad ibn Ṣāliḥ, from ʿAnbasah, who said: Yūnus—he is Ibn Yazīd—from Ibn Shihāb, from Kuraib, that he... It was narrated from Ibn Abbas that he said: No pilgrim performs Tawaf around the House while in the state of Hajj except that he must exit Ihram by converting to Umrah if he has no sacrificial offering, nor does any pilgrim perform Tawaf with a sacrificial offering except that both Hajj and Umrah are combined for him.

وَفِي الْحَدِيثِ الرَّابِعِ الَّذِي مِنْ طَرِيقِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَمْرُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ مَعَهُ هَدْيٌ أَنْ يَقْرُنَ بَيْنَ الْحَجِّ، وَالْعُمْرَةِ -: وَبِهِ يَقُولُ ابْنُ عَبَّاسٍ، وَمُجَاهِدٌ، وَعَطَاءٌ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ، وَغَيْرُهُ -: نَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نَا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ نَا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ نَا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ نَا أَبُو إِسْمَاعِيلَ مُحَمَّدُ بْنُ إِسْمَاعِيلَ نَا أَحْمَدُ بْنُ صَالِحٍ نَا عَنْبَسَةُ حَدَّثَنِي يُونُسُ هُوَ ابْنُ يَزِيدَ - عَنِ ابْنِ شِهَابٍ عَنْ كُرَيْبٍ أَنَّهُ حَدَّثَهُ عَنِ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ يَقُولُ: مَا طَافَ رَجُلٌ بِالْبَيْتِ إِنْ كَانَ حَاجًّا إِلَّا حَلَّ بِعُمْرَةٍ إِذَا لَمْ يَكُنْ مَعَهُ هَدْيٌ، وَلَا طَافَ وَمَعَهُ هَدْيٌ إِلَّا اجْتَمَعَتْ لَهُ: حَجَّةٌ، وَعُمْرَةٌ.

L13090 From the transmission of Muslim ibn al-Ḥajjāj: He informed us Isḥāq—who is Ibn Rāhwayh—I, Muḥammad ibn Bakr; I, Ibn Jurayj, informed me that ʿAṭā' said: Ibn ʿAbbās used to say: No one performs *ṭawāf* around the House—neither a pilgrim nor a non-pilgrim—except that they exit *iḥrām*.

وَمِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نَا إِسْحَاقُ هُوَ ابْنُ رَاهْوَيْهِ - أَنَا مُحَمَّدُ بْنُ بَكْرٍ أَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَطَاءٌ قَالَ: كَانَ ابْنُ عَبَّاسٍ يَقُولُ: لَا يَطُوفُ بِالْبَيْتِ حَاجٌّ وَلَا غَيْرُ حَاجٍّ إِلَّا حَلَّ.

L13091 So I said to 'Aṭā': "From where do you derive that?" He replied: "From the

statement of Allah the Exalted: ‘Then their place of sacrifice is to the Ancient House’ [al-Ḥajj 33].”[10]

L13092 I said: Then, is that after the known period? He said: Ibn Abbas used to say: It is after the known period and before it.

L13093 He took that from the command of the Messenger of Allah (peace and blessings be upon him) when he ordered them to exit Ihrām during the Farewell Pilgrimage. Through the chain of transmission of ʿAṭāʾ and Mujāhid: Ibn ʿAbbās used to instruct the Qārin (combiner of Hajj and Umrah) to convert his Hajj into an Umrah if he had not driven the sacrificial animal. Through the chain of transmission of Ṭāwūs from Ibn ʿAbbās: “By Allah, no man’s Hajj has ever been completed except through Tamattuʿ, except for one who performed Umrah in the middle of the year.” Narrated by ʿAbdullāh ibn Rabīʿ from Muḥammad ibn Muʿāwiyah from Aḥmad ibn Shuʿayb from Muḥammad ibn al-Muthannā from ʿAbd al-Raḥmān ibn Mahdī from Sufyān al-Thawrī – from Qays ibn Muslim from Ṭāriq ibn Shihāb from Abū Mūsā al-Ashʿarī, who said: “I came to the Messenger of Allah (peace and blessings be upon him) while he was at al-Baṭḥāʾ. He asked: ’With what have you entered Ihrām?’ I replied: ’I entered it with the same Ihrām as the Prophet (peace and blessings be upon him).’ He asked: ’Did you bring a sacrificial animal?’ I said: ’No.’ He said: ’Perform Ṭawāf around the House and between al-Ṣafā and al-Marwah, then exit Ihrām.’ I performed Ṭawāf around the House and between al-Ṣafā and al-Marwah, then went to a woman from my people who combed and washed my hair.” I issued fatwas based on this during the caliphates of Abū Bakr and ʿUmar. Once, while I stood at the pilgrimage season, a man came and said: “You do not know what the Commander of the Faithful has newly enacted regarding the rites!” I said: “O people, whoever received our fatwa should hold on, for the Commander of the Faithful approaches – follow him fully.” When he arrived, I asked: “O Commander of the Faithful, what is this new enactment regarding the rites?” He replied: “If we follow the Book of Allah – Exalted is He – He says: ’Fulfill the Hajj and Umrah for Allah’ [Quran

[10]**Qur’an references (L13091):** Qur’an 22:33 (Al-Hajj).

فَقُلْت لِعَطَاءٍ: مِنْ أَيْنَ تَقُولُ ذَلِكَ؟ قَالَ: مِنْ قَوْلِ اللَّهِ تَعَالَى: {ثُمَّ مَحِلُّهَا إِلَى الْبَيْتِ الْعَتِيقِ} [الحج: ٣٣] .

قُلْت: فَإِنَّ ذَلِكَ بَعْدَ الْمَعْرَفِ؟ قَالَ: كَانَ ابْنُ عَبَّاسٍ يَقُولُ: هُوَ بَعْدَ الْمَعْرَفِ وَقَبْلَهُ.

وَكَانَ يَأْخُذُ ذَلِكَ مِنْ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَ أَمَرَهُمْ أَنْ يَحِلُّوا فِي حَجَّةِ الْوَدَاعِ - وَمِنْ طَرِيقِ عَطَاءٍ، وَمُجَاهِدٍ: أَنَّ ابْنَ عَبَّاسٍ كَانَ يَأْمُرُ الْقَارِنَ أَنْ يَجْعَلَهَا عُمْرَةً إِذَا لَمْ يَكُنْ سَاقَ الْهَدْيَ - وَمِنْ طَرِيقِ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ: وَاَللَّهِ مَا تَمَّتْ حَجَّةُ رَجُلٍ قَطُّ إِلَّا بِمُتْعَةٍ إِلَّا رَجُلٌ اعْتَمَرَ فِي وَسَطِ السَّنَةِ -: نَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ نَا مُحَمَّدُ بْنُ الْمُثَنَّى نَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نَا سُفْيَانُ هُوَ الثَّوْرِيُّ - عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ قَالَ: «قَدِمْتُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ بِالْبَطْحَاءِ فَقَالَ: بِمَ أَهْلَلْتَ؟ قُلْتُ: أَهْلَلْتُ بِإِهْلَالِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: هَلْ سُقْتَ مِنْ هَدْيٍ؟ قُلْتُ: لَا، قَالَ: طُفْ بِالْبَيْتِ وَبِالصَّفَا وَالْمَرْوَةِ ثُمَّ حِلَّ، فَطُفْتُ بِالْبَيْتِ وَبِالصَّفَا وَالْمَرْوَةِ ثُمَّ أَتَيْتُ امْرَأَةً مِنْ قَوْمِي فَمَشَطَتْنِي وَغَسَلَتْ رَأْسِي» فَكُنْتُ أُفْتِي النَّاسَ بِذَلِكَ فِي إِمَارَةِ أَبِي بَكْرٍ، وَإِمَارَةِ عُمَرَ، فَإِنِّي لَقَائِمٌ بِالْمَوْسِمِ إِذْ جَاءَنِي رَجُلٌ فَقَالَ: إِنَّكَ لَا تَدْرِي مَا أَحْدَثَ أَمِيرُ الْمُؤْمِنِينَ فِي شَأْنِ النُّسُكِ؟ قُلْتُ: يَا أَيُّهَا النَّاسُ مَنْ كُنَّا أَفْتَيْنَاهُ بِشَيْءٍ فَلْيَتَّئِدْ فَإِنَّ أَمِيرَ الْمُؤْمِنِينَ قَادِمٌ عَلَيْكُمْ فَأَتَمُّوا بِهِ، فَلَمَّا قَدِمَ قُلْتُ: يَا أَمِيرَ الْمُؤْمِنِينَ مَا (هَذَا) الَّذِي أَحْدَثْتَ فِي شَأْنِ النُّسُكِ؟ قَالَ: إِنْ نَأْخُذْ بِكِتَابِ اللَّهِ تَعَالَى فَإِنَّ اللَّهَ تَعَالَى قَالَ: {وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ} [البقرة: ١٩٦] وَإِنْ نَأْخُذْ بِسُنَّةِ نَبِيِّنَا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنَّهُ لَمْ يَحِلَّ حَتَّى نَحَرَ الْهَدْيَ.

2:196]. If we follow the Sunnah of our Prophet (peace and blessings be upon him) – he did not exit Ihrām until he slaughtered the sacrificial animal."[11]

L13094–13096 Abu Muhammad said: This is Abu Musa, who issued fatwas in accordance with our views during the leadership of Abu Bakr and the early phase of the leadership. Umar (may Allah be pleased with them both), and his cessation of what Allah the Exalted decreed to be ceased does not constitute evidence against what was narrated from the Prophet (peace and blessings be upon him). Sufficient for us is his statement to Umar: "What have you innovated concerning the pilgrimage rites?" And Umar did not deny that.

L13097 As for the statement of Umar (may Allah be pleased with him), Allah the Exalted says: {And complete the Hajj and Umrah for Allah} [Al-Baqarah: 196]. There is no completion for them except what the Messenger of Allah (peace and blessings be upon him) taught the people, for he is the one to whom this verse was revealed, and he was commanded to clarify what was revealed to him regarding that.[12]

L13098 As for the fact that he (peace be upon him) did not exit the state of consecration until he sacrificed the sacrificial animal, Umm al-Mu'minin Ḥafṣah, the daughter of ʿUmar (may Allah be pleased with her), narrated from the Prophet (peace be upon him) an explanation of his action, as transmitted to us through Mālik's chain from Nāfiʿ, from Ibn ʿUmar, from Ḥafṣah, who said to the Messenger of Allah (peace be upon him): "Why have the people ended their ritual consecration while you have not ended yours after your ʿUmrah?" He replied: "I have matted my hair and garlanded my sacrificial animal. Thus, I cannot exit consecration until I slaughter it."

L13099 It was also narrated by Ali, as transmitted to us through the chain of Ahmad ibn Shu'ayb: Mu'awiyah ibn Salih al-Ash'ari informed me, Yahya ibn Ma'in narrated to us, Hajjaj—meaning ibn Muhammad al-A'war—narrated to us, Yunus—meaning Abu Ishaq al-Sabi'i—narrated from his father from al-Bara'—he is ibn Azib—from Ali ibn Abi Talib that the Messenger of Allah—peace and blessings be upon him—said to him: "I drove the sacrificial

قَالَ أَبُو مُحَمَّدٍ: هَذَا أَبُو مُوسَى قَدْ أَفْتَى بِمَا قُلْنَا مُدَّةَ إِمَارَةِ أَبِي بَكْرٍ وَصَدْرًا مِنْ إِمَارَةِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا -، وَلَيْسَ تَوَقُّفُهُ لِمَا شَاءَ اللَّهُ تَعَالَى أَنْ يَتَوَقَّفَ لَهُ حُجَّةٌ عَلَى مَا رُوِيَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحَسْبُنَا قَوْلُهُ لِعُمَرَ مَا الَّذِي أَحْدَثْتَ فِي شَأْنِ النُّسُكِ؟ فَلَمْ يُنْكِرْ ذَلِكَ عُمَرُ.

وَأَمَّا قَوْلُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فَيَقُولُ اللَّهُ تَعَالَى: {وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ} [البقرة: ١٩٦] فَلَا إتْمَامَ لَهُمَا إلَّا عَلَّمَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النَّاسَ وَهُوَ الَّذِي أُنْزِلَتْ عَلَيْهِ هَذِهِ الْآيَةُ، وَأُمِرَ بِبَيَانِ مَا أُنْزِلَ عَلَيْهِ مِنْ ذَلِكَ.

وَأَمَّا كَوْنُهُ - عَلَيْهِ السَّلَامُ - لَمْ يَحِلَّ حَتَّى نَحَرَ الْهَدْيَ فَإِنَّ أُمَّ الْمُؤْمِنِينَ ابْنَتَهُ حَفْصَةَ - رَضِيَ اللَّهُ عَنْهَا - رَوَتْ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيَانَ فِعْلِهِ كَمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ «حَفْصَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا قَالَتْ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا شَأْنُ النَّاسِ حَلُّوا وَلَمْ تَحِلَّ أَنْتَ مِنْ عُمْرَتِكَ؟ قَالَ: إنِّي لَبَّدْتُ رَأْسِي وَقَلَّدْت هَدْيِي فَلَا أَحِلُّ حَتَّى أَنْحَرَ» .

وَرَوَاهُ أَيْضًا عَلِيٌّ كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي مُعَاوِيَةُ بْنُ صَالِحٍ الْأَشْعَرِيُّ نَا يَحْيَى بْنُ مَعِينٍ نَا حَجَّاجٌ يَعْنِي ابْنَ مُحَمَّدٍ الْأَعْوَرِ - نَا يُونُسُ يَعْنِي أَبَا إِسْحَاقَ السَّبِيعِيَّ - عَنْ أَبِيهِ عَنْ الْبَرَاءِ هُوَ ابْنُ عَازِبٍ - عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: إنِّي سُقْتُ الْهَدْيَ وَقَرَنْتُ، لَوْ اسْتَقْبَلْتُ مِنْ أَمْرِي مَا اسْتَدْبَرْتُ لَفَعَلْتُ كَمَا فَعَلْتُمْ، وَلَكِنِّي سُقْتُ الْهَدْيَ وَقَرَنْتُ» .

[11] **Qur'an references (L13093):** Qur'an 2:196 (Al-Baqarah).
[12] **Qur'an references (L13097):** Qur'an 2:196 (Al-Baqarah).

animal and performed *qiran*. If I were to start over what I have already concluded, I would do as you have done, but I drove the sacrificial animal and performed *qiran*."[13]

L13100 Therefore, this is more deserving of being followed than an opinion Umar held, since it is authentically established that he retracted it. They also opposed him regarding it, as we will mention later, if Allah, the Most High, wills.

L13101–13103 From the chain of ʿAbd al-Razzāq, from Sufyān ibn ʿUyaynah, from Jaʿfar ibn Muḥammad, from his father, who said in the book of ʿAlī ibn Abī Ṭālib: "Whoever wishes to combine Ḥajj and ʿUmrah, let him drive his sacrificial animal with him." Narrated to us Aḥmad ibn Muḥammad al-Ṭalamankī, from Ibn Mufarrij, from Ibrāhīm ibn Aḥmad ibn Firās, from Muḥammad ibn ʿAlī ibn Zayd al-Ṣāʾigh, from Saʿīd ibn Manṣūr, from Hushaym, from Manṣūr—he is Ibn al-Muʿtamir—who said: "Al-Ḥasan al-Baṣrī performed Ḥajj, and I performed Ḥajj with him that year. When we arrived in Mecca, a man came to al-Ḥasan and said: 'O Abā Saʿīd, I am a man from Khurāsān, far from my homeland, and I arrived having entered Iḥrām for Ḥajj.' Al-Ḥasan replied: 'Change it to ʿUmrah and exit the state of Iḥrām.' The people condemned al-Ḥasan for this, and his statement spread throughout Mecca. The man then went to ʿAṭāʾ ibn Abī Rabāḥ and mentioned this to him. ʿAṭāʾ said: 'The Shaykh spoke truthfully, but we fear to speak such.'" Abū Muḥammad said: "The rejection by the ignorant is no proof against the established practices of Allah, the Exalted, and His Messenger—peace and blessings be upon him." And from the chain of Abd al-Razzaq narrated from Ibn Jurayj from ʿAṭāʾ, who said: Whoever among Allah's servants declares the intention to perform Tamattuʿ with Ḥajj exclusively or with Ḥajj and ʿUmrah together, then this is the Tamattuʿ of the Sunnah of Allah the Exalted and His Messenger (peace be upon him). And through the same chain (وبه), Abd al-Razzaq narrated from Maʿmar from Ibn Ṭāwūs from his father, that he was asked about the statement of the Messenger of Allah (peace be upon him): "Has the ʿUmrah been incorporated into the Ḥajj?" He replied: This refers to the man who

فَهَذَا أَوْلَى أَنْ يُتَّبَعَ مِنْ رَأْيٍ رَآهُ عُمَرُ قَدْ صَحَّ عَنْهُ رُجُوعُهُ عَنْهُ، وَقَدْ خَالَفُوهُ فِيهِ أَيْضًا كَمَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ قَالَ فِي كِتَابِ عَلِيِّ بْنِ أَبِي طَالِبٍ: مَنْ شَاءَ أَنْ يَجْمَعَ بَيْنَ الْحَجِّ وَالْعُمْرَةِ فَلْيَسُقْ هَدْيَهُ مَعَهُ -: نَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ نَا ابْنُ مُفَرِّجٍ نَا إِبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ فِرَاسٍ نَا مُحَمَّدُ بْنُ عَلِيِّ بْنِ زَيْدٍ الصَّائِغُ نَا سَعِيدُ بْنُ مَنْصُورٍ نَا هُشَيْمٌ أَنَا مَنْصُورٌ هُوَ ابْنُ الْمُعْتَمِرِ - قَالَ: حَجَّ الْحَسَنُ الْبَصْرِيُّ وَحَجَجْت مَعَهُ فِي ذَلِكَ الْعَامِ فَلَمَّا قَدِمْنَا مَكَّةَ جَاءَ رَجُلٌ إلَى الْحَسَنِ فَقَالَ: يَا أَبَا سَعِيدٍ إنِّي رَجُلٌ بَعِيدُ الشُّقَّةِ مِنْ أَهْلِ خُرَاسَانَ وَإِنِّي قَدِمْت مُهِلًّا بِالْحَجِّ؟ فَقَالَ لَهُ الْحَسَنُ: اجْعَلْهَا عُمْرَةً وَأَحِلَّ فَأَنْكَرَ ذَلِكَ النَّاسُ عَلَى الْحَسَنِ وَشَاعَ قَوْلُهُ بِمَكَّةَ فَأَتَى عَطَاءَ بْنَ أَبِي رَبَاحٍ فَذَكَرَ ذَلِكَ لَهُ فَقَالَ: صَدَقَ الشَّيْخُ، وَلَكِنَّا نَفْرَقُ أَنْ نَتَكَلَّمَ بِذَلِكَ قَالَ أَبُو مُحَمَّدٍ: لَيْسَ إنْكَارُ أَهْلِ الْجَهْلِ حُجَّةً عَلَى سُنَنِ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: مَنْ أَهَلَّ مِنْ خَلْقِ اللَّهِ تَعَالَى مِمَّنْ لَهُ مُتْعَةٌ بِالْحَجِّ خَالِصًا أَوْ بِحَجَّةٍ وَعُمْرَةٍ فَهِيَ مُتْعَةُ سُنَّةِ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ سَأَلَ عَنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «دَخَلَتْ الْعُمْرَةُ فِي الْحَجِّ؟» فَقَالَ: هُوَ الرَّجُلُ يُفْرِدُ الْحَجَّ وَيَذْبَحُ فَقَدْ دَخَلَتْ لَهُ عُمْرَةٌ فِي الْحَجِّ فَوَجَبَتَا لَهُ جَمِيعًا.

[13] **Hadith references (L13099):** Sunan an-Nasai 2725.

performs Ḥajj alone (Ifrād) and sacrifices - for indeed an ʿUmrah has been incorporated into his Ḥajj, thus making both rituals jointly obligatory for him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا عُمَرُ بْنُ ذَرٍّ: أَنَّهُ سَمِعَ مُجَاهِدًا يَقُولُ: مَنْ جَاءَ حَاجًّا فَأَهْدَى هَدْيًا فَلَهُ عُمْرَةٌ مَعَ حَجَّةٍ.

L13104 Abd al-Razzaq narrated to us: Umar ibn Dharr reported that he heard Mujahid say: Whoever comes as a pilgrim and offers a sacrificial animal (hady), for him is Umrah alongside Hajj.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا عَتَّابُ بْنُ بَشِيرٍ نَا خُصَيْفٌ عَنْ عَطَاءٍ وَمُجَاهِدٍ أَنَّ ابْنَ عَبَّاسٍ كَانَ يَأْمُرُ الْقَارِنَ أَنْ يَجْعَلَهَا عُمْرَةً إِذَا لَمْ يَكُنْ سَاقَ الْهَدْيَ قَالَ خُصَيْفٌ: وَكُنْت مَعَ مُجَاهِدٍ فَأَتَاهُ الضَّحَّاكُ بْنُ سُلَيْمٍ وَقَدْ خَرَجَ حَاجًّا فَسَأَلَ مُجَاهِدًا؟ فَقَالَ لَهُ مُجَاهِدٌ: اجْعَلْهَا عُمْرَةً، فَقَالَ: هَذَا أَوَّلُ مَا حَجَجْت فَلَا تُشَايِعُنِي نَفْسِي فَأَيُّ ذَلِكَ تَرَى أَتَمُّ؟ أَنْ أَمْكُثَ كَمَا أَنَا أَوْ أَجْعَلَهَا عُمْرَةً؟ قَالَ خُصَيْفٌ: فَقُلْت لَهُ: أَظُنُّ هَذَا أَتَمَّ لِحَجِّك أَنْ تَمْكُثَ كَمَا أَنْتَ؟ فَرَفَعَ مُجَاهِدٌ تِبْنَةً مِنْ الْأَرْضِ وَقَالَ: مَا هُوَ بِأَتَمَّ مِنْ هَذَا، وَهُوَ قَوْلُ إِسْحَاقَ بْنِ رَاهْوَيْهِ.

From the narration of Sa‘īd ibn Manṣūr: ‘Aṭṭāb ibn Bashīr reported to us: Khuṣayf reported from ‘Aṭā’ and Mujāhid that Ibn ‘Abbās used to instruct the *qārin* (a pilgrim combining Ḥajj and ‘Umrah) to convert his Ḥajj into ‘Umrah if he had not brought the sacrificial animal. Khuṣayf said: I was in Mujāhid’s company when aḍ-Ḍaḥḥāk ibn Sulaym—who had set out for Ḥajj—came and questioned Mujāhid. Mujāhid told him: “Convert your Ḥajj into ‘Umrah.” He replied: “This is my first Ḥajj, and I am inwardly unsettled. Which do you consider more complete: remaining in my current state or converting it into ‘Umrah?” Khuṣayf added: I told him: “I think remaining as you are would make your Ḥajj more complete.” Mujāhid then lifted a dried stalk from the ground and said: “It is no more complete than this”—and this is the opinion of Isḥāq ibn Rāhawayh.

وَقَالَ عُبَيْدُ اللَّهِ بْنُ الْحَسَنِ الْقَاضِي، وَأَحْمَدُ بْنُ حَنْبَلٍ بِإِبَاحَةِ فَسْخِ الْحَجِّ لَا بِإِيجَابِهِ - وَمَنَعَ مِنْهُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ.

L13106 Ubaydullah ibn al-Hasan, the judge, and Ahmad ibn Hanbal held the permissibility of dissolving the state of Ihrām for Hajj but did not consider it obligatory, while Abu Hanifah, Malik, and al-Shafi’i prohibited it.

قَالَ عَلِيٌّ: رَوَى أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ لَا هَدْيَ لَهُ أَنْ يَفْسَخَ حَجَّهُ بِعُمْرَةٍ وَيَحِلَّ بِأَوْكَدِ أَمْرٍ جَابِرَ بْنَ عَبْدِ اللَّهِ، وَعَائِشَةَ أُمَّ الْمُؤْمِنِينَ، وَحَفْصَةَ أُمَّ الْمُؤْمِنِينَ (كَذَلِكَ) ، وَفَاطِمَةُ بِنْت رَسُول اللَّه - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، وَعَلِيٌّ، وَأَسْمَاءُ بِنْتُ أَبِي بَكْرٍ الصِّدِّيقِ، وَأَبُو مُوسَى الْأَشْعَرِيُّ، وَأَبُو سَعِيدٍ الْخُدْرِيّ، وَأَنَسٌ وَابْنُ عَبَّاسٍ، وَابْنُ عُمَرَ، وَسَبْرَةُ بْنُ مَعْبَدٍ، وَالْبَرَاءُ بْنُ عَازِبٍ، وَسُرَاقَةُ بْنُ مَالِكٍ، وَمَعْقِلُ بْنُ يَسَارٍ خَمْسَةَ

L13107 Ali said: The matter of the Messenger of Allah—may Allah bless him and grant him peace—that one who has no sacrificial animal may transform his Hajj into Umrah and exit the state of consecration through the strongest injunction was narrated by Jabir ibn Abdullah, Aisha the Mother of the Believers, Hafsah the Mother of the Believers (likewise), Fatimah the daughter of the Messenger of Allah, Ali, Asma bint Abi Bakr al-Siddiq, Abu Musa al-Ash‘ari, Abu Sa‘id al-Khudri, Anas, Ibn Abbas, Ibn Umar, Sabrah ibn Ma‘bad, al-Bara’ ibn ‘Azib, Suraqah ibn Malik, and Ma‘qil ibn Yasar—fifteen of the Companions—may Allah be pleased with them—. More than twenty of the Successors narrated it from these, and those who narrated it from them are

countless—none can enumerate them except Allah, the Mighty and Majestic. Thus, no one was permitted to deviate from this.

L13108–13110 Those who differed from all this raised objections wherein they had no valid proof. Among these was their mention of a narration we transmitted through Malik's chain from Abu al-Aswad Muhammad ibn Abd al-Rahman ibn Nawfal, from Urwah, from Aishah: "We set out with Allah's Messenger (peace and blessings be upon him) during the year of the Farewell Hajj. Among us were those who entered ihram for Umrah, those who entered ihram for Hajj and Umrah together, and those who entered ihram for Hajj. Allah's Messenger (peace and blessings be upon him) entered ihram for Hajj. As for those who entered ihram for Umrah..." Then he exited Ihram. As for those who entered Ihram for Hajj or combined Hajj and Umrah, they did not exit Ihram until the Day of Sacrifice.

L13111 And with a narration we transmitted through the chain of Ibn Wahb from ʿAmr ibn al-Ḥārith from Abū al-Aswad Muḥammad ibn ʿAbd al-Raḥmān ibn Nawfal from ʿUrwah—when it was mentioned to him concerning a man who reported "from the Prophet, peace and blessings of Allah be upon him, that he performed Ṭawāf around the House and exited iḥrām"—ʿUrwah narrated from ʿĀ'ishah in a ḥadīth: She said regarding the Messenger of Allah, peace and blessings of Allah be upon him: "The first act he initiated upon arriving in Mecca was performing ablution, then performing Ṭawāf around the House. Then Abū Bakr performed Ḥajj, and the first act he initiated was Ṭawāf around the House, and he did nothing else besides it. Then ʿUmar did likewise. Then ʿUthmān performed Ḥajj, and I saw him initiate Ṭawāf around the House as the first act, and he did nothing else besides it. Then Muʿāwiyah and ʿAbdullāh ibn ʿUmar. Then I performed Ḥajj with al-Zubayr, my father, and the first act he initiated was Ṭawāf around the House, and he did nothing else besides it. Then I observed the Muhājirīn and the Anṣār acting in the same manner, with no deviation. None of the predecessors would commence any act upon setting foot until they first performed Ṭawāf around the House, nor would they exit iḥrām afterward. I witnessed my mother and aunt arriving; they would not initiate any act before circling the House in

عَشَرَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؛ وَرَوَاهُ عَنْ هَؤُلَاءِ نَيِّفٌ وَعِشْرُونَ مِنْ التَّابِعِينَ؛ وَرَوَاهُ عَنْ هَؤُلَاءِ مَنْ لَا يُحْصِيهِ إلَّا اللَّهُ عَزَّ وَجَلَّ، فَلَمْ يَسَعْ أَحَدًا الْخُرُوجُ عَنْ هَذَا.

وَاحْتَجَّ مَنْ خَالَفَ كُلَّ هَذَا بِاعْتِرَاضَاتٍ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهَا؛ مِنْهَا أَنَّهُمْ ذَكَرُوا خَبَرًا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ أَبِي الْأَسْوَدِ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ نَوْفَلٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ «خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَامَ حَجَّةِ الْوَدَاعِ فَمِنَّا مَنْ أَهَلَّ بِعُمْرَةٍ، وَمِنَّا مَنْ أَهَلَّ بِحَجٍّ وَعُمْرَةٍ، وَمِنَّا مَنْ أَهَلَّ بِالْحَجِّ وَأَهَلَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْحَجِّ، فَأَمَّا مَنْ أَهَلَّ بِعُمْرَةٍ فَحَلَّ، وَأَمَّا مَنْ أَهَلَّ بِحَجٍّ أَوْ جَمَعَ بَيْنَ الْحَجِّ وَالْعُمْرَةِ فَلَمْ يَحِلُّوا حَتَّى كَانَ يَوْمُ النَّحْرِ» .

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ أَبِي الْأَسْوَدِ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ نَوْفَلٍ عَنْ عُرْوَةَ، وَقَدْ ذُكِرَ لَهُ عَنْ رَجُلٍ ذَكَرَ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ طَافَ بِالْبَيْتِ وَحَلَّ» فَقَالَ عُرْوَةُ عَنْ عَائِشَةَ فِي حَدِيثٍ: قَالَتْ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " أَنَّهُ أَوَّلُ شَيْءٍ بَدَأَ بِهِ حِينَ قَدِمَ مَكَّةَ أَنَّهُ تَوَضَّأَ ثُمَّ طَافَ بِالْبَيْتِ، ثُمَّ حَجَّ أَبُو بَكْرٍ فَكَانَ أَوَّلُ شَيْءٍ بَدَأَ بِهِ الطَّوَافَ بِالْبَيْتِ ثُمَّ لَمْ يَكُنْ غَيْرُهُ، ثُمَّ عُمَرُ مِثْلُ ذَلِكَ، ثُمَّ حَجَّ عُثْمَانُ فَرَأَيْته أَوَّلُ شَيْءٍ بَدَأَ بِهِ الطَّوَافُ (بِالْبَيْتِ) ، ثُمَّ لَمْ يَكُنْ غَيْرُهُ، ثُمَّ مُعَاوِيَةُ، وَعَبْدُ اللَّهِ بْنُ عُمَرَ، ثُمَّ حَجَجْت مَعَ الزُّبَيْرِ أَبِي فَكَانَ أَوَّلُ شَيْءٍ بَدَأَ بِهِ الطَّوَافَ بِالْبَيْتِ ثُمَّ لَمْ يَكُنْ غَيْرُهُ، ثُمَّ رَأَيْت الْمُهَاجِرِينَ وَالْأَنْصَارَ يَفْعَلُونَ ذَلِكَ، ثُمَّ لَمْ يَكُنْ غَيْرُهُ وَلَا أَحَدٌ مِمَّنْ مَضَى (مَا) كَانُوا يَبْدَءُونَ بِشَيْءٍ حِينَ يَضَعُونَ أَقْدَامَهُمْ أَوَّلَ مِنْ الطَّوَافِ بِالْبَيْتِ ثُمَّ لَا يَحِلُّونَ، وَقَدْ رَأَيْت أُمِّي، وَخَالَتِي تَقْدُمَانِ لَا

Ṭawāf, nor would they exit iḥrām. My mother informed me that she, her sister, al-Zubayr, and so-and-so and so-and-so once came for ʿUmrah. When they touched the Black Stone, they exited iḥrām. The man lied in what was attributed regarding that matter."

تَبْدَآنِ بِشَيْءٍ أَوَّلَ مِنْ الْبَيْتِ تَطُوفَانِ بِهِ ثُمَّ لَا تَحِلَّانِ، وَقَدْ أَخْبَرَتْنِي أُمِّي أَنَّهَا أَقْبَلَتْ هِيَ وَأُخْتُهَا وَالزُّبَيْرُ وَفُلَانٌ وَفُلَانٌ بِعُمْرَةٍ قَطُّ فَلَمَّا مَسَحُوا الرُّكْنَ حَلُّوا، وَقَدْ كَذَبَ فِيمَا ذُكِرَ مِنْ ذَلِكَ ".

L13112 And with a narration we have transmitted through the chain of Ibn Abi Shaybah from Muhammad ibn Bishir al-Abdi from Muhammad ibn Amr ibn Alqamah from Yahya ibn Abd al-Rahman ibn Hatib from Aisha, who said: "We set out with the Messenger of Allah (peace and blessings be upon him) for Hajj. Then I mentioned that those among them who had entered ihram for a single Hajj or for both Umrah and Hajj did not exit ihram until they had completed the ritual acts of Hajj. And whoever had entered ihram for a single Umrah performed Tawaf around the House and Sa'i between Safa and Marwah, then exited ihram so they could perform Hajj."

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ مُحَمَّدِ بْنِ بَشِيرٍ الْعَبْدِيِّ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَلْقَمَةَ عَنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ بْنِ حَاطِبٍ عَنْ عَائِشَةَ قَالَتْ: " خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْحَجِّ ثُمَّ ذَكَرْت أَنَّ مَنْ كَانَ مِنْهُمْ أَهَلَّ بِحَجٍّ مُفْرَدٍ، أَوْ بِعُمْرَةٍ وَحَجٍّ فَلَمْ يَحْلِلْ حَتَّى قَضَى مَنَاسِكَ الْحَجِّ، وَمَنْ أَهَلَّ بِعُمْرَةٍ مُفْرَدَةٍ طَافَ بِالْبَيْتِ وَبِالصَّفَا وَالْمَرْوَةِ ثُمَّ حَلَّ حَتَّى يَسْتَقْبِلَ حَجًّا ".

L13113 Abu Muhammad said: The hadith of Abu al-Aswad from Urwah from Aisha, and the hadith of Yahya ibn Abd al-Rahman ibn Hatib from her are both deemed munkar (rejected) and erroneous according to hadith scholars.

قَالَ أَبُو مُحَمَّدٍ: حَدِيثُ أَبِي الْأَسْوَدِ عَنْ عُرْوَةَ عَنْ عَائِشَةَ، وَحَدِيثُ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ بْنِ حَاطِبٍ عَنْهَا مُنْكَرَانِ، وَخَطَأٌ عِنْدَ أَهْلِ الْعِلْمِ بِالْحَدِيثِ.

L13114 Aḥmad ibn ʿUmar ibn Anas narrated to us from ʿAbdullāh ibn al-Ḥusayn ibn ʿIqāl, who narrated from ʿUbaydullāh ibn Muḥammad al-Saqṭī, who narrated from Aḥmad ibn Jaʿfar, who narrated from Muḥammad ibn Muslim al-Khuttalī, who narrated from ʿUmar ibn Muḥammad ibn ʿĪsā al-Jawharī al-Suddānī, who narrated from Aḥmad ibn Muḥammad al-Athram, who narrated from Aḥmad ibn Ḥanbal. He mentioned Mālik's ḥadīth from Abū al-Aswad that we previously cited. Aḥmad ibn Ḥanbal said: "What is astonishing in this ḥadīth? This is an error!" Al-Athram said: "I asked him: 'Does al-Zuhrī's narration from ʿUrwah from ʿĀ'ishah contradict it?'" Aḥmad ibn Ḥanbal replied: "Yes—and Hishām ibn ʿUrwah."

نَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نَا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ نَا عُبَيْدُ اللَّهِ بْنُ مُحَمَّدٍ السَّقَطِيُّ نَا أَحْمَدُ بْنُ جَعْفَرٍ نَا مُحَمَّدُ بْنُ مُسْلِمٍ الْخُتَّلِيُّ نَا عُمَرُ بْنُ مُحَمَّدِ بْنِ عِيسَى الْجَوْهَرِيُّ السُّدَّانِيُّ نَا أَحْمَدُ بْنُ مُحَمَّدٍ الْأَثْرَمُ نَا أَحْمَدُ بْنُ حَنْبَلٍ فَذَكَرَ حَدِيثَ مَالِكٍ عَنْ أَبِي الْأَسْوَدِ الَّذِي ذَكَرْنَا آنِفًا فَقَالَ أَحْمَدُ: إيشٍ فِي هَذَا الْحَدِيثِ مِنْ الْعَجَبِ؟ هَذَا خَطَأٌ، قَالَ الْأَثْرَمُ: فَقُلْت لَهُ: الزُّهْرِيُّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ بِخِلَافِهِ؟ قَالَ أَحْمَدُ: نَعَمْ، وَهِشَامُ بْنُ عُرْوَةَ.

L13115–13116 Abu Muhammad said: The aforementioned Abu al-Aswad has another hadith in this chapter whose corruption is evident. It is a report we transmitted through al-Bukhari's chain: Ahmad ibn Salih narrated to us, Ibn Wahb narrated to us, Amr ibn al-Harith informed us from Abu al-Aswad Muhammad ibn Abd al-Rahman ibn Nawfal that Abdullah, the freed slave of Asma bint

قَالَ أَبُو مُحَمَّدٍ: وَلِأَبِي الْأَسْوَدِ الْمَذْكُورِ حَدِيثٌ آخَرُ فِي هَذَا الْبَابِ لَا خَفَاءَ بِفَسَادِهِ، وَهُوَ خَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نَا أَحْمَدُ بْنُ صَالِحٍ نَا ابْنُ وَهْبٍ أَنَا عَمْرُو بْنُ الْحَارِثِ

عَنْ أَبِي الْأَسْوَدِ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ نَوْفَلٍ أَنَّ عَبْدَ اللَّهِ مَوْلَى أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ قَالَ: حَدَّثَهُ أَنَّهُ كَانَ يَسْمَعُ أَسْمَاءَ بِنْتَ أَبِي بَكْرٍ تَقُولُ كُلَّمَا مَرَّتْ بِالْحَجُونِ: صَلَّى اللَّهُ عَلَى رَسُولِهِ لَقَدْ نَزَلْنَا مَعَهُ هَاهُنَا، وَنَحْنُ يَوْمَئِذٍ خِفَافٌ قَلِيلٌ ظَهْرُنَا قَلِيلَةٌ أَزْوَادُنَا فَاعْتَمَرْتُ أَنَا وَأُخْتِي عَائِشَةُ، وَالزُّبَيْرُ، وَفُلَانٌ، وَفُلَانٌ، فَلَمَّا مَسَحْنَا الْبَيْتَ أَحْلَلْنَا ثُمَّ أَهْلَلْنَا مِنْ الْعَشِيِّ بِالْحَجِّ.

Abi Bakr, narrated: He used to hear Asma bint Abi Bakr say whenever she passed by al-Hajun: "May Allah bless His Messenger. We alighted here with him when we were lightly equipped - our mounts were few and our provisions scarce. I performed Umrah with my sister Aisha, al-Zubayr, so-and-so, and so-and-so. When we performed Tawaf around the House, we ended our ritual state, then assumed the state of consecration for Hajj in the afternoon."

L13117 قَالَ عَلِيٌّ: وَهَذَا بَاطِلٌ بِلَا خِلَافٍ مِنْ أَحَدٍ، لِأَنَّ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - لَمْ تَعْتَمِرْ فِي عَامِ حَجَّةِ الْوَدَاعِ قَبْلَ الْحَجِّ أَصْلًا، لِأَنَّهَا دَخَلَتْ - وَهِيَ حَائِضٌ - حَاضَتْ بِسَرِفَ وَلَمْ تَطُفْ بِالْبَيْتِ إلَّا بَعْدَ أَنْ طَهُرَتْ يَوْمَ النَّحْرِ هَذَا أَمْرٌ فِي شُهْرَةِ الشَّمْسِ، وَلِذَلِكَ رَغِبَتْ مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَعْمُرَهَا بَعْدَ الْحَجِّ فَأَعْمَرَهَا مِنْ التَّنْعِيمِ بَعْدَ انْقِضَاءِ أَيَّامِ التَّشْرِيقِ كُلِّهَا رَوَاهُ جَابِرُ بْنُ عَبْدِ اللَّهِ، وَرَوَاهُ عَنْ عَائِشَةَ: عُرْوَةُ، وَالْقَاسِمُ بْنُ مُحَمَّدٍ، وَطَاوُسٌ، وَمُجَاهِدٌ، وَالْأَسْوَدُ بْنُ زَيْدٍ وَابْنُ أَبِي مُلَيْكَةَ.

Ali said: This is invalid without any disagreement from anyone, because Aisha—may Allah be pleased with her—did not perform Umrah during the Farewell Pilgrimage before Hajj at all. She had entered Ihram while menstruating—her menstruation began at Saraf—and did not perform Tawaf around the House until after becoming pure on the Day of Sacrifice. This matter is in the clarity of the sun. For this reason, she sought from the Prophet—peace and blessings of Allah be upon him—to permit her to perform Umrah after Hajj, so he permitted her to perform it from al-Tanʿim after the conclusion of all the Days of Tashreeq. This was narrated by Jabir ibn Abdullah, and from Aisha: Urwah, al-Qasim ibn Muhammad, Tawus, Mujahid, al-Aswad ibn Zayd, and Ibn Abi Mulaykah.

L13118 وَبَلِيَّةٌ أُخْرَى فِي هَذَا الْخَبَرِ وَهِيَ قَوْلُهُ فِيهِ: ثُمَّ أَهْلَلْنَا مِنْ الْعَشِيِّ بِالْحَجِّ، وَهَذَا بَاطِلٌ بِلَا خِلَافٍ، لِأَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ، وَجَابِرَ بْنَ عَبْدِ اللَّهِ وَأَنَسُ بْنُ مَالِكٍ، وَابْنَ عَبَّاسٍ، كُلُّهُمْ رَوَوْا: أَنَّ الْإِحْلَالَ كَانَ يَوْمَ دُخُولِهِمْ مَكَّةَ مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّ إهْلَالَهُمْ بِالْحَجِّ كَانَ يَوْمَ التَّرْوِيَةِ - وَهُوَ يَوْمُ مِنًى - وَبَيْنَ يَوْمِ إحْلَالِهِمْ يَوْمَ إهْلَالِهِمْ ثَلَاثَةُ أَيَّامٍ بِلَا شَكٍّ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَخَلَ مَكَّةَ فِي حَجَّةِ الْوَدَاعِ صُبْحَ رَابِعَةٍ مِنْ ذِي الْحِجَّةِ، وَالْأَحَادِيثُ فِي ذَلِكَ مَشْهُورَةٌ قَدْ ذَكَرْنَاهَا فِي كُتُبِنَا وَذَكَرَهَا النَّاسُ وَكُلُّ مَنْ جَمَعَ فِي الْمُسْنَدِ، فَظَهَرَ عَوَارُ رِوَايَةِ أَبِي الْأَسْوَدِ.

Another critical flaw in this narration is his statement within it: "Then we assumed the state of Ihram for Hajj from the afternoon." This is unequivocally invalid, for Aisha, the Mother of the Believers; Jabir ibn Abdullah; Anas ibn Malik; and Ibn Abbas—all of them narrated that their exit from Ihram occurred on the day they entered Makkah with the Prophet—peace and blessings of Allah be upon him—and that their assumption of Ihram for Hajj was on the Day of Tarwiyah, which is the day of Mina. There were three days between their day of exiting Ihram and their day of assuming Ihram without doubt, for the Messenger of Allah—peace and blessings of Allah be upon him—entered Makkah during the Farewell Pilgrimage on the morning of the fourth day of Dhu al-Hijjah. The hadiths concerning this are well-known—we have mentioned them in our books, others have cited them, and every compiler of a Musnad has included them. Thus, the weakness in Abu al-Aswad's narration became evident.

L13119–13121 Az-Zuhri reported from Urwah from Aishah: “The Prophet—peace be upon him—commanded those who had no sacrificial animal to annul their Hajj in favor of ‘Umrah,” and they did so. Abu Al-Aswad should not be equated with Az-Zuhri. We were narrated via Al-Bukhari’s chain: Yahya ibn Bukayr narrated to us, Al-Laith ibn Sa‘d narrated to us, from Uqayl ibn Khalid from Ibn Shihab from Salim ibn Abdullah ibn Umar, who said: Abdullah ibn Umar said concerning the description of the Prophet’s Hajj. When the Prophet (peace be upon him) arrived in Mecca, he (peace be upon him) said to the people: “Whoever among you has brought a sacrificial animal must not consider anything forbidden during Ihram as permissible until he completes his Hajj. Whoever has not brought a sacrificial animal should circumambulate the Kaaba, perform Sa‘ī between Safa and Marwah, shorten his hair, and exit the state of Ihram. Then let him enter the state of Ihram for Hajj. Whoever cannot find a sacrificial animal must fast three days during Hajj and seven days upon returning home.” Az-Zuhri reported from Urwah that ‘Ā’isha informed him about the Prophet (peace be upon him) regarding his practice of combining Umrah with Hajj (Tamattu‘), and the people performed this Tamattu‘ with him in the same manner as what Salim reported from his father.

وَقَدْ رَوَى الزُّهْرِيُّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ «أَمْرَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ لَا هَدْيَ لَهُ بِفَسْخِ الْحَجِّ» وَأَنَّهُمْ فَسَخُوهُ، وَلَا يُعْدَلُ أَبُو الْأَسْوَدِ بِالزُّهْرِيِّ -: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا يَحْيَى بْنُ بُكَيْرٍ نَا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنْ ابْنِ شِهَابٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ عُمَرَ فِي صِفَةِ حَجَّةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمَّا قَدِمَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَكَّةَ قَالَ لِلنَّاسِ: «مَنْ كَانَ مِنْكُمْ أَهْدَى فَإِنَّهُ لَا يَحِلُّ مِنْ شَيْءٍ حَرُمَ مِنْهُ حَتَّى يَقْضِيَ حَجَّهُ، وَمَنْ لَمْ يَكُنْ مِنْكُمْ أَهْدَى فَلْيَطُفْ بِالْبَيْتِ وَبِالصَّفَا وَالْمَرْوَةِ - وَيُقَصِّرْ وَلْيَحْلِلْ ثُمَّ لِيُهِلَّ بِالْحَجِّ فَمَنْ لَمْ يَجِدْ هَدْيًا فَلْيَصُمْ ثَلَاثَةَ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةً إِذَا رَجَعَ إِلَى أَهْلِهِ» ؛ قَالَ الزُّهْرِيُّ عَنْ عُرْوَةَ: إِنَّ عَائِشَةَ أَخْبَرَتْهُ (عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -) فِي تَمَتُّعِهِ بِالْعُمْرَةِ إِلَى الْحَجِّ فَتَمَتَّعَ النَّاسُ مَعَهُ بِمِثْلِ مَا أَخْبَرَ بِهِ سَالِمٌ عَنْ أَبِيهِ.

L13122 It was also narrated from ʿĀ’ishah by those with whom Yaḥyā ibn ʿAbd al-Raḥmān ibn Ḥāṭib is not mentioned in their chains - namely al-Qāsim ibn Muḥammad ibn Abī Bakr, al-Aswad ibn Yazīd, Dhakwān (her freedman who led her in prayer), and ʿAmrah bint ʿAbd al-Raḥmān. Each of these narrators was more closely associated with ʿĀ’ishah, more knowledgeable, precise, and reliable than Yaḥyā ibn ʿAbd al-Raḥmān. We received this through the transmission of Imam Muslim: Sulaymān ibn ʿUbayd Allāh al-Ghaylānī reported to me, Abū ʿĀmir ʿAbd al-Malik ibn ʿUmar al-ʿAqadī reported to us, ʿAbd al-ʿAzīz ibn Abī Salamah al-Mājishūn reported to us from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad from his father, from ʿĀ’ishah, Mother of the Believers, who said: “We departed with the Messenger of Allah (peace be upon him)” - and he narrated the ḥadīth, which included: “When we reached Mecca, the Messenger of Allah (peace be upon him) told his companions: ‘Designate this as ʿUmrah.’ The people then exited their Ihrām except those

وَرَوَاهُ أَيْضًا عَنْ عَائِشَةَ مَنْ لَا يُذْكَرُ مَعَهُ يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ حَاطِبٍ وَهُمْ: الْقَاسِمُ بْنُ مُحَمَّدِ بْنِ أَبِي بَكْرٍ، وَالْأَسْوَدُ بْنُ يَزِيدَ، وَذَكْوَانُ مَوْلَاهَا وَكَانَ يَؤُمُّهَا، وَعَمْرَةُ بِنْتُ عَبْدِ الرَّحْمَنِ، وَكُلُّ وَاحِدٍ مِنْ هَؤُلَاءِ أَخَصُّ بِعَائِشَةَ وَأَعْلَمُ وَأَضْبَطُ وَأَوْثَقُ مِنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي سُلَيْمَانُ بْنُ عُبَيْدِ اللَّهِ الْغَيْلَانِيُّ نَا أَبُو عَامِرٍ عَبْدُ الْمَلِكِ بْنُ عُمَرَ الْعَقَدِيُّ نَا عَبْدُ الْعَزِيزِ بْنُ أَبِي سَلَمَةَ الْمَاجِشُونُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ «عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ الْحَدِيثَ: وَفِيهِ فَلَمَّا قَدِمْنَا مَكَّةَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَصْحَابِهِ: اجْعَلُوهَا عُمْرَةً فَأَحَلَّ النَّاسُ إلَّا مَنْ كَانَ مَعَهُ الْهَدْيُ، فَكَانَ الْهَدْيُ

possessing sacrificial animals. The sacrificial animals remained with the Messenger of Allah (peace be upon him), Abū Bakr, ʿUmar, and those of means. They later resumed Ihrām when they proceeded."

L13123–13125 Sufficient from all this is that these three reports via Abū al-Aswad and Yaḥyā ibn ʿAbd al-Raḥmān are mawqūf (attributed to a Companion) rather than musnad (traceable to the Prophet). No authoritative evidence exists in mawqūf narrations—how then when over twenty Tābiʿūn (successors to the Companions) transmitted from fifteen Companions contradicting it? The most valid interpretations of Abū al-Aswad's two narrations and Yaḥyā ibn ʿAbd al-Raḥmān's narration are to construe the statement: "Those who entered the state of consecration for Ḥajj, or Ḥajj and ʿUmrah, did not exit it until the Day of Sacrifice" as applying specifically to those possessing sacrificial animals who combined both rites in their declaration or subordinated ʿUmrah to Ḥajj, as transmitted by Mālik from... From al-Zuhri, from Aisha, from the Prophet—may Allah bless him and grant him peace—these reports remain intact at that point, for what the group of narrators transmitted from her contains an addition not mentioned by Abu al-Aswad nor Yahya ibn Abd al-Rahman. If their narration were a connected chain, how could that be, given that it is not? We interpret Abu al-Aswad's report from Urwah regarding the Hajj of Abu Bakr, Umar, and all those we mentioned as indicating they would herd the sacrificial animals, thereby harmonizing the reports.

L13126 They also cited the prohibition of ʿUmar and ʿUthmān regarding that matter as evidence.

L13127 Abū Muḥammad said: This is against them, not for them, because if their prohibition—may Allah be pleased with both of them—constitutes proof, then the prohibition of Ḥajj mutʿah has been authentically established from them, yet they contradict them in this matter. Narrated by Aḥmad ibn Muḥammad al-Ṭalamankī, narrated by Ibn Mufarrij, narrated by Ibrāhīm ibn Aḥmad ibn Firās, narrated by Muḥammad ibn ʿAlī ibn Zayd al-Ṣāʾigh, narrated by Saʿīd ibn Manṣūr, narrated by Hushaym and Ḥammād ibn Zayd. Hushaym said: From Khalid—meaning al-Ḥadhdhāʾ—and Ḥammād said: From Ayyūb al-Sikhtiyānī. Then Ayyūb and Khalid concurred, both transmitting from Abū Qilābah, who said: ʿUmar ibn al-Khaṭṭāb said: "Two types

مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبِي بَكْرٍ، وَعُمَرَ، وَذَوِي الْيَسَارَةِ ثُمَّ أَهَلُّوا حِينَ رَاحُوا» .

وَيَكْفِي مِنْ كُلِّ هَذَا أَنَّ هَذِهِ الْأَخْبَارَ الثَّلَاثَةَ مِنْ طَرِيقِ أَبِي الْأَسْوَدِ، وَيَحْيَى بْنِ عَبْدِ الرَّحْمَنِ إنَّمَا هِيَ مَوْقُوفَةٌ لَا مُسْنَدَةٌ، وَلَا حُجَّةَ فِي مَوْقُوفٍ فَكَيْفَ إذَا رَوَى بِضْعَةً وَعِشْرُونَ مِنْ التَّابِعِينَ عَنْ خَمْسَةَ عَشَرَ مِنْ الصَّحَابَةِ خِلَافَ ذَلِكَ؟ وَأَسْلَمُ الْوُجُوهِ لِحَدِيثَيْ أَبِي الْأَسْوَدِ، وَحَدِيثِ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ أَنْ يُخَرَّجَ عَلَى أَنَّ الْمُرَادَ بِقَوْلِهَا: إنَّ الَّذِينَ أَهَلُّوا بِحَجٍّ، أَوْ حَجٍّ وَعُمْرَةٍ لَمْ يَحِلُّوا إلَى يَوْمِ النَّحْرِ إنَّمَا كَانُوا مَنْ كَانَ مَعَهُ هَدْيٌ فَأَهَلَّ بِهِمَا جَمِيعًا أَوْ أَضَافَ الْعُمْرَةَ إلَى الْحَجِّ كَمَا رَوَى مَالِكٌ عَنْ الزُّهْرِيِّ عَنْ عَائِشَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَتَخْرُجُ حِينَئِذٍ هَذِهِ الْأَخْبَارُ سَالِمَةً لِأَنَّ مَا رَوَتْهُ الْجَمَاعَةُ عَنْهَا فِيهِ زِيَادَةٌ لَمْ يَذْكُرْهَا أَبُو الْأَسْوَدِ، وَلَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ لَوْ كَانَ مَا رَوَيَا مُسْنَدًا فَكَيْفَ وَلَيْسَ مُسْنَدًا؟ وَنَحْمِلُ حَدِيثَ أَبِي الْأَسْوَدِ عَنْ عُرْوَةَ فِي حَجِّ أَبِي بَكْرٍ، وَعُمَرَ، وَسَائِرِ مَنْ ذَكَرْنَا عَلَى أَنَّهُمْ كَانُوا يَسُوقُونَ الْهَدْيَ فَتَتَّفِقُ الْأَخْبَارُ.

وَاحْتَجُّوا أَيْضًا بِنَهْيِ عُمَرَ، وَعُثْمَانَ عَنْ ذَلِكَ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا عَلَيْهِمْ لَا لَهُمْ لِأَنَّهُ إنْ كَانَ نَهْيُهُمَا - رَضِيَ اللَّهُ عَنْهُمَا - حُجَّةً فَقَدْ صَحَّ عَنْهُمَا النَّهْيُ عَنْ مُتْعَةِ الْحَجِّ، وَهُمْ يُخَالِفُونَهُمَا فِي ذَلِكَ -: نَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ نَا ابْنُ مُفَرِّجٍ نَا إبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ فِرَاسٍ نَا مُحَمَّدُ بْنُ عَلِيِّ بْنِ زَيْدٍ الصَّائِغُ نَا سَعِيدُ بْنُ مَنْصُورٍ نَا هُشَيْمٌ، وَحَمَّادُ بْنُ زَيْدٍ قَالَ هُشَيْمٌ: أَنَا خَالِدٌ هُوَ الْحَذَّاءُ - وَقَالَ حَمَّادٌ: عَنْ أَيُّوبَ السِّخْتِيَانِيِّ ثُمَّ اتَّفَقَ أَيُّوبُ، وَخَالِدٌ كِلَاهُمَا عَنْ أَبِي قِلَابَةَ قَالَ: قَالَ عُمَرُ بْنُ

of mutʿah existed during the Messenger of Allah's time—peace and blessings be upon him—and I forbid them and impose penalties for them." This is Ayyūb's wording. In Khalid's narration: "I forbid them and punish for them: women's mutʿah and Ḥajj mutʿah."

الْخَطَّابِ: مُتْعَتَانِ كَانَتَا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَا أُنْهِي عَنْهُمَا وَأَضْرِبُ عَلَيْهِمَا، هَذَا لَفْظُ أَيُّوبَ، وَفِي رِوَايَةِ خَالِدٍ: أَنَا أُنْهِي عَنْهُمَا، وَأُعَاقِبُ عَلَيْهِمَا: مُتْعَةُ النِّسَاءِ، وَمُتْعَةُ الْحَجِّ.

L13128 And through him to Saʿīd ibn Manṣūr: Hushaym narrated to us: from ʿAbdullāh ibn ʿAwn from al-Qāsim ibn Muḥammad: that ʿUthmān prohibited the Tamattuʿ—meaning the Tamattuʿ of Ḥajj. And through him to Saʿīd ibn Manṣūr: ʿAbdullāh ibn Wahb narrated to us: ʿAmr ibn al-Ḥārith informed me from ʿAbd al-ʿAzīz ibn Nabīh from his father: that ʿUthmān ibn ʿAffān heard a man proclaiming the intention for ʿUmrah and Ḥajj, so he said: "Bring me the one proclaiming [the intention]!" Then he struck him and shaved him.

وَبِهِ إِلَى سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ أَنَا عَبْدُ اللَّهِ بْنُ عَوْنٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ: أَنَّ عُثْمَانَ نَهَى عَنْ الْمُتْعَةِ - يَعْنِي مُتْعَةَ الْحَجِّ - وَبِهِ إِلَى سَعِيدِ بْنِ مَنْصُورٍ نَا عَبْدُ اللَّهِ بْنُ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ عَبْدِ الْعَزِيزِ بْنِ نَبِيهٍ عَنْ أَبِيهِ أَنَّ عُثْمَانَ بْنَ عَفَّانَ سَمِعَ رَجُلًا يُهِلُّ بِعُمْرَةٍ وَحَجٍّ فَقَالَ: عَلَيَّ بِالْمُهِلِّ، فَضَرَبَهُ وَحَلَقَهُ.

L13129–13131 Abu Muhammad said: They contradict them both and permit the Mut'ah, to the extent that according to Abu Hanifah and Al-Shafi'i, it is superior to Ifrad. Glory be to Him Who considered the prohibition by Umar and Uthman—may Allah be pleased with them—against invalidating Hajj as authoritative evidence, yet did not regard their prohibition against Hajj Mut'ah and their punishment for it as such. This is truly astonishing! If they argue: "Did Sa'd ibn Abi Waqqas and others permit it?" We reply: "Did Ibn Abbas and others obligate invalidation of Hajj? There is no difference." They also cited as evidence what we narrated through Al-Bazzar's chain: 'Umar ibn Al-Khattab Al-Sijistani narrated to us... Al-Firyabi reported to us from Aban ibn Abi Hazim. Abu Bakr ibn Hafs reported to me from Ibn Umar from Umar, who said: "O people, the Messenger of Allah (may Allah's peace and blessings be upon him) permitted mut'ah for us and then prohibited it for us."

قَالَ أَبُو مُحَمَّدٍ: وَهُمْ يُخَالِفُونَهُمَا وَيُجِيزُونَ الْمُتْعَةَ حَتَّى أَنَّهَا عِنْدَ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ أَفْضَلُ مِنْ الْإِفْرَادِ، فَسُبْحَانَ مَنْ جَعَلَ نَهْيَ عُمَرَ، وَعُثْمَانَ - رَضِيَ اللَّهُ عَنْهُمَا - عَنْ فَسْخِ الْحَجِّ حُجَّةً وَلَمْ يَجْعَلْ نَهْيَهُمَا عَنْ مُتْعَةِ الْحَجِّ وَضَرْبَهُمَا عَلَيْهَا حُجَّةً إنَّ هَذَا لَعَجَبٌ فَإِنْ قَالُوا: قَدْ أَبَاحَهَا سَعْدُ بْنُ أَبِي وَقَّاصٍ وَغَيْرُهُ؟ قُلْنَا: وَقَدْ أَوْجَبَ فَسْخَ الْحَجِّ ابْنُ عَبَّاسٍ وَغَيْرُهُ وَلَا فَرْقَ -: وَاحْتَجُّوا بِمَا رُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ الْبَزَّارِ نَا عُمَرُ بْنُ الْخَطَّابِ السِّجِسْتَانِيُّ نَا الْفِرْيَابِيُّ نَا أَبَانُ بْنُ أَبِي حَازِمٍ حَدَّثَنِي أَبُو بَكْرِ بْنُ حَفْصٍ عَنْ ابْنِ عُمَرَ عَنْ عُمَرَ قَالَ: يَا أَيُّهَا النَّاسُ، إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَحَلَّ لَنَا الْمُتْعَةَ ثُمَّ حَرَّمَهَا عَلَيْنَا.

L13132 And from the narration of Abu Dharr: The Tamattuʿ in Hajj was a concession granted to us, the companions of Muhammad (peace be upon him). And from Uthman: The Tamattuʿ in Hajj was for us, not for you.

وَمِنْ طَرِيقِ أَبِي ذَرٍّ كَانَتْ الْمُتْعَةُ فِي الْحَجِّ رُخْصَةً لَنَا أَصْحَابَ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَنْ عُثْمَانَ: كَانَتْ مُتْعَةُ الْحَجِّ لَنَا لَيْسَتْ لَكُمْ.

L13133 Abū Muḥammad said: All of this was opposed by the Ḥanafīs, Mālikīs, and Shāfiʿīs, for they unanimously agree on permitting Ḥajj al-Tamattūʿ. As for

the ḥadīth of ʿUmar, it undoubtedly pertains exclusively to the temporary marriage (mutʿah) of women, since it is authentically established that he returned to the opinion concerning it in Ḥajj. These groups contradict this report if they interpret it as referring to Ḥajj al-Tamattūʿ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّهُ خَالَفَهُ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، لِأَنَّهُمْ مُتَّفِقُونَ عَلَى إبَاحَةِ مُتْعَةِ الْحَجِّ - وَأَمَّا حَدِيثُ عُمَرَ فَإِنَّمَا هُوَ فِي مُتْعَةِ النِّسَاءِ بِلَا شَكٍّ، لِأَنَّهُ قَدْ صَحَّ عَنْهُ الرُّجُوعُ إلَى الْقَوْلِ بِهَا فِي الْحَجِّ، وَهَؤُلَاءِ مُخَالِفُونَ لِهَذَا الْخَبَرِ إنْ كَانَ مَحْمُولًا عِنْدَهُمْ عَلَى مُتْعَةِ الْحَجِّ.

L13134 We have received narrations via the transmission of Shuʿbah from Salamah ibn Kuhayl from Ṭāwus from Ibn ʿAbbās, who said: "'Umar ibn al-Khaṭṭāb stated: 'If you perform two Umrahs in a year and then undertake Hajj, I would combine an Umrah with my Hajj.'"

رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَوْ اعْتَمَرْت فِي سَنَةٍ مَرَّتَيْنِ ثُمَّ حَجَجْت لَجَعَلْت مَعَ حَجَّتِي عُمْرَةً.

L13135 We have also narrated it via Sufyān's chain from Salamah ibn Kuhayl from Ṭāwūs from Ibn ʿAbbās from ʿUmar with a similar narration; we have also narrated it through multiple chains.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ سُفْيَانَ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ عَنْ عُمَرَ بِمِثْلِهِ - وَرُوِّينَاهُ أَيْضًا مِنْ طُرُقٍ.

L13136 They cited as evidence what we have also narrated through the chain of Al-Muraqqaʿ from Abū Dharr, who said: "The annulment of Ḥajj by the Messenger of Allah (may Allah bless him and grant him peace) was specifically for us."

وَاحْتَجُّوا بِمَا رُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ الْمُرَقَّعِ عَنْ أَبِي ذَرٍّ أَنَّهُ قَالَ: كَانَ فَسْخُ الْحَجِّ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَنَا خَاصَّةً.

L13137 Through the chain of Abd al-Rahman ibn al-Aswad from Sulayman or Sulaym ibn al-Aswad, that Abu Dharr said regarding one who performs Hajj then converts it into Umrah: "This was only permitted for the caravan members who accompanied the Messenger of Allah—peace and blessings be upon him." Through the chain of Musa ibn Ubaydah from Yaqub ibn Zayd from Abu Dharr, who said: "No one after us may transform their Hajj into Umrah. This was exclusively a concession granted to us, the companions of Muhammad—peace and blessings be upon him."

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ عَنْ سُلَيْمَانَ أَوْ سُلَيْمِ بْنِ الْأَسْوَدِ أَنَّ أَبَا ذَرٍّ قَالَ فِيمَنْ حَجَّ ثُمَّ فَسَخَهَا عُمْرَةً: لَمْ يَكُنْ ذَلِكَ إلَّا لِلرَّكْبِ الَّذِينَ كَانُوا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؛ وَمِنْ طَرِيقِ مُوسَى بْنِ عُبَيْدَةَ عَنْ يَعْقُوبَ بْنِ زَيْدٍ عَنْ أَبِي ذَرٍّ قَالَ: لَمْ يَكُنْ لِأَحَدٍ بَعْدَنَا أَنْ يَجْعَلَ حَجَّتَهُ عُمْرَةً إنَّمَا كَانَتْ لَنَا رُخْصَةً أَصْحَابَ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L13138 Abu Muhammad said: If the statement of Abu Dharr that the Tamattuʿ Hajj was specific to them does not constitute proof, then his statement that the abrogation of Hajj was specific to them cannot be proof either—especially since that chain of transmission from him is authentic, as it is narrated by Ibrahim al-Taymi from his father. These other chains from him are weak, for

قَالَ أَبُو مُحَمَّدٍ: إنْ لَمْ يَكُنْ قَوْلُ أَبِي ذَرٍّ إنَّ مُتْعَةَ الْحَجِّ خَاصَّةً لَهُمْ حُجَّةً فَلَيْسَ قَوْلُهُ: إنَّ فَسْخَ الْحَجِّ خَاصَّةً لَهُمْ حُجَّةٌ، لَا سِيَّمَا وَذَلِكَ الْإِسْنَادُ عَنْهُ صَحِيحٌ، لِأَنَّهُ مِنْ رِوَايَةِ إبْرَاهِيمَ التَّيْمِيِّ عَنْ أَبِيهِ، وَهَذِهِ الْأَسَانِيدُ عَنْهُ وَاهِيَةٌ، لِأَنَّهَا عَنْ الْمُرَقَّعِ، وَسُلَيْمَانَ أَوْ سُلَيْمٍ، وَهُمَا

مَجْهُولَانِ. وَعَنْ مُوسَى بْنِ عُبَيْدَةَ الرَّبَذِيِّ - وَهُوَ ضَعِيفٌ - فَكَيْفَ وَقَدْ خَالَفَهُ ابْنُ عَبَّاسٍ، وَأَبُو مُوسَى؟ فَلَمْ يَرَيَا ذَلِكَ خَاصَّةً.

وَلَا يَجُوزُ أَنْ يُقَالَ فِي سُنَّةٍ ثَابِتَةٍ أَنَّهَا خَاصَّةٌ لِقَوْمٍ دُونَ قَوْمٍ إِلَّا بِنَصِّ قُرْآنٍ أَوْ سُنَّةٍ صَحِيحَةٍ؛ لِأَنَّ أَوَامِرَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى لُزُومِ الْإِنْسِ، وَالْجِنِّ، الطَّاعَةُ لَهَا وَالْعَمَلُ بِهَا.

فَإِنْ قِيلَ: هَذَا لَا يُقَالُ بِالرَّأْيِ؟ قُلْنَا: فَيَجِبُ عَلَى هَذَا مَتَى وُجِدَ أَحَدٌ مِنْ الصَّحَابَةِ يَقُولُ فِي آيَةٍ أَنَّهَا مَخْصُوصَةٌ أَوْ مَنْسُوخَةٌ أَنْ يُقَالَ بِقَوْلِهِ؛ وَأَقَرَّ بِذَلِكَ قَوْلُهُمْ فِي الْمُتْعَةِ: إنَّهَا خَاصَّةٌ، وَقَدْ خَالَفُوا ذَلِكَ.

وَاحْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ رَبِيعَةَ الرَّأْيِ «عَنْ الْحَارِثِ بْنِ بِلَالِ بْنِ الْحَارِثِ عَنْ أَبِيهِ قُلْتُ: يَا رَسُولَ اللَّهِ أَفَسْخُ الْحَجِّ لَنَا خَاصَّةً أَوْ لِمَنْ بَعْدَنَا؟ قَالَ: لَكُمْ خَاصَّةً» .

قَالَ أَبُو مُحَمَّد الْحَارِثُ بْنُ بِلَالٍ مَجْهُولٌ وَلَمْ يُخَرِّجْ أَحَدٌ هَذَا الْخَبَرَ فِي صَحِيحِ الْحَدِيثِ، وَقَدْ صَحَّ خِلَافُهُ بِيَقِينٍ، كَمَا أَوْرَدْنَا مِنْ طَرِيقِ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ سُرَاقَةَ بْنَ مَالِكٍ قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ أَمَرَهُمْ بِفَسْخِ الْحَجِّ فِي عُمْرَةٍ: يَا رَسُولَ اللَّهِ، لِعَامِنَا هَذَا أَمْ لِأَبَدٍ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَلْ لِأَبَدِ الْأَبَدِ» .

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا أَبُو النُّعْمَانِ هُوَ مُحَمَّدُ بْنُ الْفَضْلِ عَارِمٌ - نَا حَمَّادُ بْنُ زَيْدٍ عَنْ عَبْدِ الْمَلِكِ بْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، وَعَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَا جَمِيعًا: «قَدِمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صُبْحَ رَابِعَةٍ مِنْ ذِي الْحِجَّةِ يُهِلُّونَ

they come through al-Muraqqaʿ and Sulayman or Sulaym, both of whom are unknown, and through Musa ibn ʻUbaydah al-Rabadhi—who is weak. How then, when Ibn ʻAbbas and Abu Musa opposed him and did not consider it specific?

L13139–13140 It is impermissible to assert that an authenticated Sunnah is specific to particular people to the exclusion of others except by a Quranic text or sound Sunnah, for the commands of the Prophet—peace and blessings of Allah be upon him—obligate both humankind and jinn to obey them and implement them.

L13141 If it is said: "Is this not established through personal opinion?" We reply: Then, by this logic, it would necessarily follow that whenever a Companion is found to have stated a verse is particularized or abrogated, their opinion must be adhered to. Yet they affirmed thereby their own statement regarding temporary marriage—that it is particularized—and contradicted this [logic].

L13142 They cited as evidence what we narrated through Rabīʿah al-Raʾy from al-Ḥārith ibn Bilāl ibn al-Ḥārith from his father, who said: "I asked, 'O Messenger of Allāh, is the annulment of Ḥajj exclusively for us or for those who come after us?' He replied, 'Exclusively for you.'"

L13143 Abū Muḥammad al-Ḥārith ibn Bilāl is of unknown reliability, and no compiler has included this report in authentic ḥadīth collections. The opposing position has been definitively confirmed, as we transmitted via the chain of Jābir ibn ʿAbdullāh: "When the Messenger of Allah (peace and blessings be upon him) commanded them during the Farewell Pilgrimage to annul Ḥajj in favor of ʻUmrah, Surāqah ibn Mālik said: 'O Messenger of Allah, is this for our present year or forever?' The Messenger of Allah (peace and blessings be upon him) replied: 'Rather, for eternity of eternities.'"

L13144 From the chain of Al-Bukhari: Abu An-Nu'man—who is Muhammad ibn Al-Fadl 'Arim—informed us, saying: Hammad ibn Zayd narrated to us from 'Abdul-Malik ibn Jurayj from 'Ata' from Jabir ibn 'Abdullah, and from Tawus from Ibn 'Abbas. Both of them jointly stated: "Allah's Messenger—peace and blessings of Allah be upon him—arrived on the morning of the fourth day of Dhul-Hijjah while the people were proclaiming the Talbiyah for Hajj exclu-

sively, without combining it with anything. When we arrived, he commanded us to convert it into 'Umrah and to exit our consecration to approach our wives. This led to widespread talk, which reached the Prophet—peace and blessings of Allah be upon him. He said: 'It has reached me that some people are saying such and such. By Allah, I am more righteous and more God-fearing than them. Had I known at the outset what I came to know later, I would not have brought the sacrificial animal. If I did not have the sacrificial animal with me, I would have exited my consecration.' Suraqah ibn Ju'shum stood up and asked: 'O Messenger of Allah, is this ruling for us alone or permanent?' He replied: 'No, it is permanent.'"

L13145–13147 Abu Muhammad said: And likewise, Mujahid narrated it from Ibn Abbas, and Muhammad ibn Ali ibn al-Husayn from Jabir. Abu Muhammad said: Thus, specification and abrogation are invalidated, and one is forever secured from that. By Allah, whoever hears this report and then opposes the command of Allah's Messenger—peace and blessings of Allah be upon him—with the words of anyone, even if they were the words of the two Mothers of the Believers, Hafsah and Aisha, and their parents—may Allah be pleased with them—would perish. How then can one accept lies as flimsy as a spider's web, which is the weakest of dwellings, from al-Harith ibn Bilal, al-Muraqqa', Sulayman or Sulaym—whose identities among the people are unknown—and Musa al-Rabadhi? And sufficient is He for you, and Allah is sufficient for us, and what an excellent Trustee! No one has the right... That one would restrict oneself to his statement—peace be upon him—"Umrah has been incorporated into Hajj until the Day of Resurrection" by claiming he intended its permissibility during the months of Hajj, disregarding what Jābir and Ibn ʿAbbās clarified—from his denial (peace be upon him)—that the conversion was specific to them alone or to their year rather than others. Whoever does this has openly lied against the Messenger of Allah—peace and blessings be upon him.

L13148 Abu Muhammad said: Some of them committed a grave sin, which is that he cited the authenticated narration from Ibn Abbas stating they considered performing Umrah during the Hajj months to be the most heinous of immoral acts on earth. When the Prophet (peace be upon him) and his com-

بِالْحَجِّ لَا يَخْلِطُهُ شَيْءٌ، فَلَمَّا قَدِمْنَا أَمَرَنَا فَجَعَلْنَاهَا عُمْرَةً، وَأَنْ نَحِلَّ إِلَى نِسَائِنَا فَفَشَتْ فِي ذَلِكَ الْقَالَةُ فَبَلَغَ ذَلِكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: بَلَغَنِي أَنَّ قَوْمًا يَقُولُونَ كَذَا وَكَذَا وَاللَّهِ لَأَنَا أَبَرُّ وَأَتْقَى لِلَّهِ مِنْهُمْ، وَلَوْ أَنِّي اسْتَقْبَلْتُ مِنْ أَمْرِي مَا اسْتَدْبَرْتُ مَا أَهْدَيْتُ، وَلَوْلَا أَنَّ مَعِي الْهَدْيَ لَأَحْلَلْتُ؟ فَقَامَ سُرَاقَةُ بْنُ جُعْشُمٍ فَقَالَ: يَا رَسُولَ اللَّهِ هِيَ لَنَا أَوْ لِلْأَبَدِ؟ قَالَ: لَا بَلْ لِلْأَبَدِ» .

قَالَ أَبُو مُحَمَّد: وَهَكَذَا رَوَاهُ مُجَاهِدٌ عَنْ ابْنِ عَبَّاسٍ، وَمُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ جَابِرٍ -: قَالَ أَبُو مُحَمَّد: فَبَطَلَ التَّخْصِيصُ وَالنَّسْخُ وَأُمِنَ [مِنْ] ذَلِكَ أَبَدًا، وَوَاللَّهِ إِنَّ مَنْ سَمِعَ هَذَا الْخَبَرَ ثُمَّ عَارَضَ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِكَلَامِ أَحَدٍ وَلَوْ أَنَّهُ كَلَامُ أُمَّيْ الْمُؤْمِنِينَ حَفْصَةَ، وَعَائِشَةَ، وَأَبَوَيْهِمَا - رَضِيَ اللَّهُ عَنْهُمْ - لَهَالِكٌ؛ فَكَيْفَ بِأُكْذُوبَاتِ كَنَسْجِ الْعَنْكَبُوتِ الَّذِي هُوَ أَوْهَنُ الْبُيُوتِ؟ عَنْ الْحَارِثِ بْنِ بِلَالٍ، وَالْمُرَقَّعِ، وَسُلَيْمَانَ أَوْ سُلَيْمٍ الَّذِينَ لَا يُدْرَى مَنْ هُمْ فِي الْخَلْقِ، وَمُوسَى الرَّبَذِيِّ، وَكَفَاك وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ، وَلَيْسَ لِأَحَدٍ أَنْ يَقْتَصِرَ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «دَخَلَتْ الْعُمْرَةُ فِي الْحَجِّ إِلَى يَوْمِ الْقِيَامَةِ» عَلَى أَنَّهُ أَرَادَ جَوَازَهَا فِي أَشْهُرِ الْحَجِّ دُونَ مَا بَيَّنَهُ جَابِرٌ، وَابْنُ عَبَّاسٍ مِنْ إنْكَارِهِ - عَلَيْهِ السَّلَامُ - أَنْ يَكُونَ الْفَسْخُ لَهُمْ خَاصَّةً أَوْ لِعَامِهِمْ دُونَ ذَلِكَ، وَمَنْ فَعَلَ ذَلِكَ فَقَدْ كَذَبَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جِهَارًا.

قَالَ أَبُو مُحَمَّد: وَأَتَى بَعْضُهُمْ بِطَامَّةٍ، وَهِيَ أَنَّهُ ذَكَرَ الْخَبَرَ الثَّابِتَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُمْ كَانُوا يَرَوْنَ الْعُمْرَةَ فِي أَشْهُرِ الْحَجِّ مِنْ أَفْجَرِ الْفُجُورِ فِي الْأَرْضِ فَقَدِمَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ

panions arrived on the fourth morning of Dhū al-Ḥijjah, he ordered them to change their pilgrimage to Umrah. They were greatly troubled by this and asked, “O Messenger of Allah, what is the exiting of ihram?” He answered, “Exiting ihram is permissible everywhere.” A speaker among them then said, “He (peace be upon him) only commanded this to demonstrate to them the permissibility of performing Umrah during the Hajj months through both word and deed.”

وَسَلَّمَ - وَأَصْحَابُهُ صَبِيحَةَ رَابِعَةٍ مِنْ ذِي الْحِجَّةِ فَأَمَرَهُمْ أَنْ يَجْعَلُوهَا عُمْرَةً فَتَعَاظَمَ ذَلِكَ عِنْدَهُمْ فَقَالُوا: يَا رَسُولَ اللَّهِ أَيُّ الْحِلِّ؟ قَالَ: الْحِلُّ كُلُّهُ “ فَقَالَ قَائِلُهُمْ: إنَّمَا أَمَرَهُمْ - عَلَيْهِ السَّلَامُ - بِذَلِكَ لِيُوقِفَهُمْ عَلَى جَوَازِ الْعُمْرَةِ فِي أَشْهُرِ الْحَجِّ قَوْلًا وَعَمَلًا.

L13149 Abu Muhammad said: This is a significant matter. The first aspect of it is the lie against the Prophet (peace and blessings of Allah be upon him) in their claim that he commanded them to annul their Hajj and perform Umrah solely to teach them the permissibility of performing Umrah during the months of Hajj.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ عَظِيمَةٌ، أَوَّلُ ذَلِكَ أَنَّهُ كَذِبٌ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي دَعْوَاهُمْ أَنَّهُ إنَّمَا أَمَرَهُمْ بِفَسْخِ الْحَجِّ فِي عُمْرَةٍ لِيُعَلِّمَهُمْ جَوَازَ الْعُمْرَةِ فِي أَشْهُرِ الْحَجِّ.

L13150–13152 Then it is said to them: Suppose that were the case—and we seek refuge in Allah from it being so—was it by truth or by falsehood? If they say: “By falsehood,” they have disbelieved. If they say: “By truth,” we say: Then his instruction—peace be upon him—regarding that matter, for whatever reason it may have been, must be acknowledged as binding and obligatory. Now if this delusion they claim were valid, why would it specifically apply to those who did not bring sacrificial animals rather than those who did? More grievous than all this is that this ignorant claimant knows the Prophet—peace and blessings of Allah be upon him—performed Umrah with them in Dhū al-Qaʿdah year after year in the years before the Conquest, then performed Umrah in Dhū al-Qaʿdah during the Conquest year, and later said to them at Dhū al-Ḥulayfah during the Farewell Pilgrimage: “Whoever wishes to assume iḥrām for Umrah, let him do so; whoever wishes to assume it for Hajj and Umrah, let him do so; and whoever wishes to assume it for Hajj alone, let him do so.” They acted upon all this. O Allah! O Muslims! Could the Companions—may Allah be pleased with them—have reached such depths of obtuseness, foolishness, and ignorance that despite all this, they failed to recognize Umrah’s permissibility during the Hajj months? Yet they performed it with him—peace be upon him—year after year after year [during the Hajj months], until he had to convert their Hajj into Umrah so they would know its permissibility. By Allah, even donkeys discern paths with less

ثُمَّ يُقَالُ لَهُمْ: هَبْكَ لَوْ كَانَ ذَلِكَ وَمَعَاذَ اللَّهِ مِنْ أَنْ يَكُونَ أَبِحَقّ أَمْرٍ أَمْ بِبَاطِلٍ؟ فَإِنْ قَالُوا: بِبَاطِلٍ كَفَرُوا، وَإِنْ قَالُوا: بِحَقٍّ؟ قُلْنَا: فَلْيَكُنْ أَمْرُهُ - عَلَيْهِ السَّلَامُ - بِذَلِكَ لِأَيِّ وَجْهٍ كَانَ قَدْ صَارَ حَقًّا وَاجِبًا، ثُمَّ لَوْ كَانَ هَذَا الْهَوَسُ الَّذِي قَالُوهُ فَلِأَيِّ مَعْنًى كَانَ يَخُصُّ بِذَلِكَ مَنْ لَمْ يَسُقْ الْهَدْيَ دُونَ مَنْ سَاقَ؟ وَأَطَمُّ مِنْ هَذَا كُلِّهِ أَنَّ هَذَا الْجَاهِلَ الْقَائِلَ بِذَلِكَ قَدْ عَلِمَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اعْتَمَرَ بِهِمْ فِي ذِي الْقَعْدَةِ عَامًا بَعْدَ عَامٍ قَبْلَ الْفَتْحِ، ثُمَّ اعْتَمَرَ فِي ذِي الْقَعْدَةِ عَامَ الْفَتْحِ، ثُمَّ قَالَ لَهُمْ فِي حَجَّةِ الْوَدَاعِ فِي ذِي الْحُلَيْفَةِ: مَنْ شَاءَ مِنْكُمْ أَنْ يُهِلَّ بِعُمْرَةٍ فَلْيَفْعَلْ، وَمَنْ شَاءَ أَنْ يُهِلَّ بِحَجٍّ وَعُمْرَةٍ فَلْيَفْعَلْ، وَمَنْ شَاءَ أَنْ يُهِلَّ بِحَجٍّ فَلْيَفْعَلْ، فَفَعَلُوا كُلَّ ذَلِكَ، فَيَا لِلَّهِ وَيَا لِلْمُسْلِمِينَ أَبَلَغَ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - مِنْ الْبَلَادَةِ، وَالْبَلَهِ، وَالْجَهْلِ أَنْ لَا يَعْرِفُوا مَعَ هَذَا كُلِّهِ أَنَّ الْعُمْرَةَ جَائِزَةٌ فِي أَشْهُرِ الْحَجِّ؟ وَقَدْ عَمِلُوهَا مَعَهُ - عَلَيْهِ السَّلَامُ - عَامًا بَعْدَ عَامٍ بَعْدَ عَامٍ [فِي أَشْهُرِ الْحَجِّ] حَتَّى يَحْتَاجَ إلَى أَنْ يَفْسَخَ حَجَّهُمْ فِي عُمْرَةٍ لِيَعْلَمُوا جَوَازَ ذَلِكَ، تَاللَّهِ إنَّ الْحَمِيرَ لَتُمَيِّزُ الطَّرِيقَ مِنْ أَقَلَّ مِنْ هَذَا، فَكَمْ هَذَا الْإِقْدَامُ وَالْجُرْأَةُ عَلَى مُدَافَعَةِ

guidance than this! How immense is this audacity and boldness in contesting the Sunnah! Are these the established in support of tradition? At times with blatant lies, at times with notorious foolishness, and at times with absurdity and coldness—Sufficient is Allah for us, and He is the best Trustee. All praise is due to Allah for safety.

السُّنَنِ الثَّابِتَةِ فِي نَصْرِ التَّقْلِيدِ؟ مَرَّةً بِالْكَذِبِ الْمَفْضُوحِ، وَمَرَّةً بِالْحَمَاقَةِ الْمَشْهُورَةِ، وَمَرَّةً بِالْغَثَاثَةِ وَالْبَرْدِ - حَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ، وَالْحَمْدُ لِلَّهِ عَلَى السَّلَامَةِ.

L13153 Some of them argued for the permissibility of performing Hajj alone (Ifrad) based on the established report narrated through Abū Hurayrah from the Prophet - peace and blessings of Allah be upon him -: “By the One in Whose Hand is my soul, the son of Maryam will undoubtedly pronounce the talbiyah at Fajj al-Rawḥā as a pilgrim performing Hajj or Umrah, or he will most certainly combine them both in Qirān.”[14]

وَاحْتَجَّ بَعْضُهُمْ فِي جَوَازِ الْإِفْرَادِ بِالْحَجِّ بِالْخَبَرِ الثَّابِتِ مِنْ طَرِيقِ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَالَّذِي نَفْسِي بِيَدِهِ لَيُهِلَّنَ ابْنُ مَرْيَمَ بِفَجِّ الرَّوْحَاءِ حَاجًّا أَوْ مُعْتَمِرًا أَوْ لَيَثْنِيَنَّهُمَا» .

L13154 Abu Muhammad said: Every Muslim undoubtedly holds that the Prophet (peace be upon him) knew this solely through revelation from Allah the Almighty - no alternative exists whatsoever. There is no doubt that Allah’s revelation cannot be discarded due to doubt, for He - Exalted and Glorified - does not doubt. Thus, it is confirmed that this doubt stems from Abu Hurayrah or those below him in rank, not from the Messenger of Allah (peace be upon him). Even if it were proven to originate from him (peace be upon him), this would relate to the time when Ifrād was permissible, later abrogated by his command (peace be upon him). Those without sacrificial animals were irrevocably obligated to perform Tamattuʿ, and those possessing sacrificial animals were irrevocably obligated to perform Qirān.

قَالَ أَبُو مُحَمَّد: كُلُّ مُسْلِمٍ فَلَا يَشُكُّ فِي أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَعْلَمْ هَذَا إلَّا بِوَحْيٍ مِنْ اللَّهِ عَزَّ وَجَلَّ إلَيْهِ لَا يُمْكِنُ غَيْرُ هَذَا أَصْلًا، وَلَا شَكَّ فِي أَنَّ وَحْيَ اللَّهِ عَزَّ وَجَلَّ لَا يُتْرَكُ بِشَكٍّ لِأَنَّهُ عَزَّ وَجَلَّ لَا يَشُكُّ، فَصَحَّ أَنَّ هَذَا الشَّكَّ مِنْ قِبَلِ أَبِي هُرَيْرَةَ أَوْ مِمَّنْ دُونَهُ لَا مِنْ قِبَلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، ثُمَّ لَوْ صَحَّ أَنَّهُ مِنْ قِبَلِهِ - عَلَيْهِ السَّلَامُ - لَكَانَ ذَلِكَ إذْ كَانَ الْإِفْرَادُ مُبَاحًا، ثُمَّ نُسِخَ بِأَمْرِهِ - عَلَيْهِ السَّلَامُ - مَنْ لَا هَدْيَ مَعَهُ بِالْمُتْعَةِ وَلَا بُدَّ، وَمَنْ مَعَهُ الْهَدْيُ بِالْقِرَانِ وَلَا بُدَّ.

L13155 Ali said: “The truth became clearly evident, and all praise is due to Allah, Lord of the worlds.” Malik said: “Al-Ifrād (performing Hajj independently of Umrah) is preferable.” Both Malik and Al-Shāfiʿī agreed with us regarding the manner of Tamattuʿ (combining Umrah and Hajj with a separation) and Qirān (combining Hajj and Umrah under a single intention) for those wishing to be Qārin (one performing Qirān) or Mutamattiʿ (one performing Tamattuʿ). All these forms are permissible according to both scholars, whether one has offered the sacrificial animal or not.

قَالَ عَلِيٌّ: فَظَهَرَ الْحَقُّ وَاضِحًا وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، وَقَالَ مَالِكٌ: الْإِفْرَادُ أَفْضَلُ، وَوَافَقَنَا هُوَ وَالشَّافِعِيُّ فِي صِفَةِ التَّمَتُّعِ وَالْقِرَانِ لِمَنْ أَرَادَ أَنْ يَكُونَ قَارِنًا أَوْ مُتَمَتِّعًا، وَكُلُّ ذَلِكَ جَائِزٌ عِنْدَهُمَا لِمَنْ سَاقَ الْهَدْيَ وَلِمَنْ لَمْ يَسُقْهُ.

L13156 And Al-Shāfiʿī said at one time: *Ifrād* is superior; at another time he said:

[14] **Hadith references (L13153):** Sahih Muslim 1252a.

Tamattuʿ is superior; and at another time he said: *Qirān* is superior. All these are permissible in his view, as we have mentioned.

وَقَالَ الشَّافِعِيُّ مَرَّةً: الْإِفْرَادُ أَفْضَلُ، وَمَرَّةً قَالَ: التَّمَتُّعُ أَفْضَلُ، وَمَرَّةً قَالَ: الْقِرَانُ أَفْضَلُ؛ وَكُلُّ ذَلِكَ عِنْدَهُ جَائِزٌ كَمَا ذَكَرْنَا.

L13157 As for Abu Hanifah, he held that Qiran is most virtuous, followed by Tamattuʿ, then Ifrad. All these forms are permissible according to him for those who drove the sacrificial animal and those who did not, except that he differed regarding the manner of Tamattuʿ and Qiran as we will mention after this, Allah the Most High willing.

وَأَمَّا أَبُو حَنِيفَةَ فَإِنَّهُ قَالَ: الْقِرَانُ أَفْضَلُ ثُمَّ التَّمَتُّعُ ثُمَّ الْإِفْرَادُ، وَكُلُّ ذَلِكَ جَائِزٌ عِنْدَهُ لِمَنْ سَاقَ الْهَدْيَ وَلِمَنْ لَمْ يَسُقْهُ إِلَّا أَنَّهُ خَالَفَ فِي صِفَةِ التَّمَتُّعِ وَالْقِرَانِ عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى.

L13158 As for the *Ishʿār*: ʿAbdullāh ibn Rabīʿ reported: Muḥammad ibn Muʿāwiyah reported to us, Aḥmad ibn Shuʿayb reported to us, ʿAmr ibn ʿAlī al-Fallās reported to us, Yaḥyā ibn Saʿīd al-Qaṭṭān reported to us, Shuʿbah reported from Qatādah from Abū Ḥassān al-Aʿraj from Ibn ʿAbbās: "When the Prophet—peace and blessings be upon him—was at Dhū al-Ḥulayfah, he ordered his sacrificial she-camel to be marked. He had an incision made in the right side of its hump, drained the blood from it, and hung two sandals around its neck." Ibn ʿAbbās mentioned the remainder of the narration.

وَأَمَّا الْإِشْعَارُ: فَإِنَّ عَبْدَ اللَّهِ بْنَ رَبِيعٍ نَا قَالَ: نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ الْفَلَّاسُ نَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نَا شُعْبَةُ عَنْ قَتَادَةَ عَنْ أَبِي حَسَّانَ الْأَعْرَجِ عَنِ ابْنِ عَبَّاسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا كَانَ بِذِي الْحُلَيْفَةِ أَمَرَ بِبَدَنَتِهِ فَأَشْعَرَ فِي سَنَامِهَا مِنَ الشِّقِّ الْأَيْمَنِ ثُمَّ سَلَتَ الدَّمَ عَنْهَا وَقَلَّدَهَا نَعْلَيْنِ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

L13159–13160 And through him to ʿAmr ibn ʿAlī: Wakīʿ narrated to us, saying: Aflaḥ ibn Ḥumayd narrated to me from al-Qāsim ibn Muḥammad ibn Abī Bakr, from ʿĀ'ishah, the Mother of the Believers, that the Messenger of Allah (peace be upon him) marked his sacrificial camels with a sign.[15]

وَبِهِ إِلَى عَمْرِو بْنِ عَلِيٍّ نَا وَكِيعٌ حَدَّثَنِي أَفْلَحُ بْنُ حُمَيْدٍ عَنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَشْعَرَ بُدْنَهُ» .

L13161 It has also been narrated to us through the chain of al-Miswar ibn Makhramah from the Prophet—peace and blessings of Allah be upon him—from ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid, from Ibrāhīm ibn Aḥmad, from al-Farbarī, from al-Bukhārī, from Abū al-Nuʿmān (Muḥammad ibn al-Faḍl ʿĀrim), from ʿAbd al-Wāḥid ibn Ziyād, from al-Aʿmash, from Ibrāhīm al-Nakhaʿī, from al-Aswad ibn Yazīd, from ʿĀ'ishah, the Mother of the Believers, who said: "I used to braid garlands for the Prophet—peace and blessings of Allah be upon him—and he would place them on the sheep [for sacrifice] while remaining with his family in a state of ritual purity (ḥalāl)."

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ الْمِسْوَرِ بْنِ مَخْرَمَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نَا إِبْرَاهِيمُ بْنُ أَحْمَدَ نَا الْفَرَبْرِيُّ نَا الْبُخَارِيُّ نَا أَبُو النُّعْمَانِ هُوَ مُحَمَّدُ بْنُ الْفَضْلِ عَارِمٌ - نَا عَبْدُ الْوَاحِدِ هُوَ ابْنُ زِيَادٍ - نَا الْأَعْمَشُ نَا إِبْرَاهِيمُ النَّخَعِيُّ عَنِ الْأَسْوَدِ بْنِ يَزِيدَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: كُنْتُ أَفْتِلُ الْقَلَائِدَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيُقَلِّدُ الْغَنَمَ وَيُقِيمُ فِي أَهْلِهِ حَلَالًا.

L13162 We have also narrated it via the chain of Abū Muʿāwiyah from al-Aʿmash, al-

[15] **Hadith references (L13160):** Sunan an-Nasai 2772; Sunan an-Nasai 2773.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ أَبِي مُعَاوِيَةَ عَنْ الْأَعْمَشِ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَمَنْصُورٍ، كُلِّهِمْ عَنْ إبْرَاهِيمَ عَنْ الْأَسْوَدِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ.

Ḥakam ibn ʿUtaybah, and Manṣūr—all of them from Ibrāhīm, from al-Aswad, from ʿĀ’ishah Umm al-Muʾminīn.

قَالَ أَبُو مُحَمَّد: وَلَمْ يَأْتِ فِي الْبَقَرِ شَيْءٌ مِنْ هَذَا، وَرُوِّينَا كَمَا نَذْكُرُ بَعْدَ هَذَا - إنْ شَاءَ اللَّهُ تَعَالَى - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ عَلِيًّا بِأَنْ يَقْسِمَ لُحُومَ الْبُدْنِ وَجِلَالَهَا، فَصَحَّ التَّجْلِيلُ فِيهَا.

L13163 Abu Muhammad said: None of this applies to cows. It has been narrated to us—as we will mention later, if Allah the Exalted wills—that the Messenger of Allah (peace be upon him) commanded Ali to distribute the meat of the sacrificial camels and their skins. Thus, the validity of their hides was established.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ عَلِيِّ بْنِ مُسْهِرٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: لَا هَدْيَ إلَّا مَا قُلِّدَ وَأُشْعِرَ وَوُقِفَ بِعَرَفَةَ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ: إنْ شِئْت فَأَشْعِرْ، وَإِنْ شِئْت فَلَا تُشْعِرْ، وَإِنْ شِئْت فَقَلِّدْ، وَإِنْ شِئْت فَلَا تُقَلِّدْ.

L13164 It was reported to us through the chain of Ibn Abi Shaybah, from Ali ibn Mishar, from Ubayd Allah ibn Umar, from Nafi’, from Ibn Umar, who said: “There is no valid sacrificial offering unless it is garlanded, branded, and has stood at Arafah.” And through the chain of Hammad ibn Salamah, from Qays ibn Sa’d, from Ata’, from Ibn Abbas: “If you wish, brand it; otherwise, refrain. If you wish, garland it; otherwise, do not.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ عَنْ الْأَسْوَدِ أَنَّهُ أَرْسَلَ إلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فِي إشْعَارِ الْبَدَنَةِ؟ فَقَالَتْ: إنْ شِئْت، إنَّمَا تُشْعِرُ لِيُعْلَمَ أَنَّهَا بَدَنَةٌ.

L13165 And through the chain of Ibn Abī Shaybah from Abū Muʿāwiyah from al-Aʿmash from Ibrāhīm from al-Aswad: that he sent an inquiry to ʿĀ’ishah, the Mother of the Believers, regarding marking the sacrificial camel. She said: “If you wish, then do so; it is only marked to signify that it is a sacrificial camel.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ أَنَّهُ كَانَ يُشْعِرُ فِي الشِّقِّ الْأَيْمَنِ حِينَ يُرِيدُ أَنْ يُحْرِمَ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: تُشْعِرُهَا مِنْ الْأَيْمَنِ - وَمِنْ طَرِيقِ وَكِيعٍ نَا أَفْلَحُ هُوَ ابْنُ حُمَيْدٍ - قَالَ: رَأَيْت الْقَاسِمَ بْنَ مُحَمَّدٍ أَشْعَرَهَا فِي الْجَانِبِ الْأَيْمَنِ -

L13166–13168 And via the chain of ʿAbd al-Razzāq on the authority of Maʿmar, on the authority of al-Zuhrī, on the authority of Sālim ibn ʿAbd Allāh ibn ʿUmar, on the authority of his father, that he would ritually mark the sacrificial animal from the right side when intending to enter the state of ritual consecration. And via the chain of Ḥammād ibn Salamah on the authority of Hishām ibn ʿUrwah, on the authority of his father, who said: “Mark the animal from the right side...” Through the narration of Wakīʿ—Aflaḥ ibn Ḥumayd reported to us—he said: I saw al-Qāsim ibn Muḥammad ritually marking her by cutting hair on the right side.

L13169 This is the opinion of Al-Shafiʿi and Abu Sulayman, and via the chain of Abd al-Razzaq from Umar ibn Dhar ibn Abi Rāḥah, who said: “I saw Aisha, the

Mother of the Believers, braiding garlands for the sheep being driven with her as a sacrificial offering."

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُمَرَ بْنِ ذَرٍّ بْنِ أَبِي رَبَاحٍ قَالَ: رَأَيْت عَائِشَةَ أُمَّ الْمُؤْمِنِينَ تَفْتِلُ الْقَلَائِدَ لِلْغَنَمِ تُسَاقُ مَعَهَا هَدْيًا.

L13170 Via the chain of Ibn Abi Shaybah, from Ibn Abi 'Adiyy, from Muhammad ibn 'Amr, from Muhammad ibn Abbas, who said: I have indeed seen sheep brought in collared.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا ابْنُ أَبِي عَدِيٍّ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ مُحَمَّدِ بْنِ عَبَّاسٍ قَالَ: لَقَدْ رَأَيْت الْغَنَمَ يُؤْتَى بِهَا مُقَلَّدَةً.

L13171 And via the chain of Ibn Abi Shaybah: Ḥātim ibn Wardān narrated to us from Burda from ʿAṭāʾ, who said: "I saw some people from the companions of the Messenger of Allah (peace be upon him) leading sheep that were garlanded for sacrifice."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا حَاتِمُ بْنُ وَرْدَانَ عَنْ بُرْدٍ عَنْ عَطَاءٍ قَالَ: رَأَيْت نَاسًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَسُوقُونَ الْغَنَمَ مُقَلَّدَةً.

L13172 From Hammad ibn Salama through Qays ibn Sa'd through 'Ata, who said: "I saw rams being garlanded." From Waki' through Bassam through Abu Ja'far ibn Muhammad ibn Ali ibn al-Husayn, who said: "I saw rams being garlanded." And via the route of Ibn Tawus through his father, who said: "I saw sheep being garlanded."

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ عَطَاءٍ قَالَ: رَأَيْت الْكِبَاشَ تُقَلَّدُ، وَعَنْ وَكِيعٍ عَنْ بَسَّامٍ عَنْ أَبِي جَعْفَرِ بْنِ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ قَالَ: رَأَيْت الْكِبَاشَ تُقَلَّدُ - وَمِنْ طَرِيقِ ابْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: رَأَيْت الْغَنَمَ تُقَلَّدُ.

L13173 And through the chain of Sa'id ibn Mansur from Sufyan ibn 'Uyaynah from Sufyan al-Thawri from 'Ubayd Allah ibn Abi Yazid, who said: I saw ritually garlanded sheep entering Mecca.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي يَزِيدَ قَالَ: رَأَيْت الْغَنَمَ تَقْدُمُ مَكَّةَ مُقَلَّدَةً.

L13174 Abu Muhammad said: People have differed regarding this. Abu Hanifah said: I disapprove of marking (al-ish'ār), as it constitutes mutilation. Ali said: This is a monumental calamity—that something the Prophet (peace be upon him) practiced should be equated with such! Fie upon any mind that scrutinizes the rulings of Allah's Messenger (peace be upon him)! By this logic, cupping and bloodletting would likewise be deemed mutilation and prohibited. Similarly, retributive punishment involving nasal amputation, tooth extraction, or ear removal would constitute mutilation; amputating the thief or brigand would be mutilation; stoning a married adulterer would be mutilation; and crucifying the brigand would be mutilation. True mutilation is the act of one who presumes to critique the actions of Allah's Messenger (peace be upon him)—such a person has mutilated himself! The marking practice occurred during the Farewell Pilgrimage, while the prohibition of

قَالَ أَبُو مُحَمَّدٍ: وَاخْتَلَفَ النَّاسُ فِي هَذَا فَقَالَ أَبُو حَنِيفَةَ: أَكْرَهُ الْإِشْعَارَ، وَهُوَ مُثْلَةٌ - قَالَ عَلِيٌّ: هَذِهِ طَامَّةٌ مِنْ طَوَامِّ الْعَالَمِ أَنْ يَكُونَ مِثْلُهُ شَيْءٍ فَعَلَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُفٍّ لِكُلِّ عَقْلٍ يَتَعَقَّبُ - حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَيَلْزَمُهُ أَنْ تَكُونَ الْحِجَامَةُ، وَفَتْحُ الْعِرْقِ: مِثْلُهُ فَيُمْنَعُ مِنْ ذَلِكَ، وَأَنْ يَكُونَ الْقِصَاصُ مِنْ قَطْعِ الْأَنْفِ، وَقَلْعِ الْأَسْنَانِ، وَجَدْعِ الْأُذُنَيْنِ: مُثْلَةً، وَأَنْ يَكُونَ قَطْعُ السَّارِقِ وَالْمُحَارِبِ: مُثْلَةً، وَالرَّجْمُ لِلزَّانِي الْمُحْصَنِ: مُثْلَةً، وَالصَّلْبُ لِلْمُحَارِبِ: مُثْلَةً، إنَّمَا الْمُثْلَةُ فِعْلُ مَنْ بَلَغَ نَفْسَهُ مَبْلَغَ انْتِقَادِ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَذَا هُوَ الَّذِي مَثَّلَ بِنَفْسِهِ؛

mutilation was established years prior. Thus, it is evident that marking is not mutilation. This view of Abu Hanifah has no precedent among earlier scholars, nor does any jurist of his era concur except those whom Allah has tested with following him—we seek refuge in Allah from tribulation. Abu Yusuf, Muhammad ibn al-Hasan, and Malik said: The marking should be performed on the left side.

وَالْإِشْعَارُ كَانَ فِي حَجَّةِ الْوَدَاعِ وَالنَّهْيُ عَنْ الْمُثْلَةِ كَانَ قَبْلَ قِيَامِ ذَلِكَ بِأَعْوَامٍ، فَصَحَّ أَنَّهُ لَيْسَ مُثْلَةً وَهَذِهِ قَوْلَةٌ لَا يُعْلَمُ لِأَبِي حَنِيفَةَ فِيهَا مُتَقَدِّمٌ مِنْ السَّلَفِ، وَلَا مُوَافِقٌ مِنْ فُقَهَاءِ أَهْلِ عَصْرِهِ إلَّا مَنْ ابْتَلَاهُ اللَّهُ بِتَقْلِيدِهِ وَنَعُوذُ بِاَللَّهِ مِنْ الْبَلَاءِ - وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَمَالِكٌ: يُشْعِرُ فِي الْجَانِبِ الْأَيْسَرِ.

L13175 Abu Muhammad said: This is contrary to the Sunnah as we have mentioned earlier. If they object: You have transmitted from Nāfiʿ, from Ibn ʿUmar, that when there was a single sacrificial camel, he would make a ritual incision on its left side, and when there were two sacrificial camels, he would place a ritual garland on one on the right side and the other on the left.

قَالَ أَبُو مُحَمَّد: وَهَذَا خِلَافُ السُّنَّةِ كَمَا ذَكَرْنَا فَإِنْ قَالُوا: قَدْ رَوَيْتُمْ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ إذَا كَانَتْ بَدَنَةٌ وَاحِدَةٌ أَشْعَرَهَا فِي الْجَانِبِ الْأَيْسَرِ وَإِذَا كَانَتْ بَدَنَتَيْنِ قَلَّدَ إحْدَاهُمَا فِي الْجَانِبِ الْأَيْمَنِ، وَالْأُخْرَى فِي الْأَيْسَرِ.

L13176–13177 And from Mujāhid: They considered marking preferable on the left side. We said: This is among what has been differed upon regarding Ibn ʾUmar. In any case, it does not align with your view. His son Sālim is more reliable, distinguished, and knowledgeable about this matter than Nāfiʿ, who narrated from him the marking on the right side as we cited. No one's statement holds authority except the Messenger of Allah—peace and blessings be upon him. How astonishing is their argument citing Ibn ʾUmar regarding an action with conflicting reports from him—sometimes undermining their position and other times irrelevant to it—while they contradict his unambiguous statement that "no sacrificial animal is valid except what is collared and marked." This is among the matters where the Mālikīs opposed the practice of Medina's people, as we previously mentioned.

وَعَنْ مُجَاهِدٍ كَانُوا يَسْتَحِبُّونَ الْإِشْعَارَ فِي الْجَانِبِ الْأَيْسَرِ؟ قُلْنَا: هَذَا مِمَّا اُخْتُلِفَ فِيهِ عَنْ ابْنِ عُمَرَ، وَعَلَى كُلِّ حَالٍ فَلَيْسَ هُوَ قَوْلُكُمْ، وَسَالِمٌ ابْنُهُ أَوْثَقُ وَأَجَلُّ وَأَعْلَمُ بِهِ مِنْ نَافِعٍ رَوَى عَنْهُ الْإِشْعَارَ فِي الْجَانِبِ الْأَيْمَنِ كَمَا أَوْرَدْنَا، وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْعَجَبُ مِنْ احْتِجَاجِهِمْ بِابْنِ عُمَرَ فِي فِعْلٍ قَدْ اُخْتُلِفَ عَنْهُ فِيهِ فَمَرَّةً عَلَيْهِمْ وَمَرَّةً لَيْسَ لَهُمْ، وَهُمْ قَدْ خَالَفُوا قَوْلَهُ الَّذِي لَمْ يَخْتَلِفْ عَنْهُ فِيهِ مِنْ أَنَّهُ لَا هَدْيَ إلَّا مَا قُلِّدَ وَأُشْعِرَ، وَهَذَا مِمَّا خَالَفَ فِيهِ الْمَالِكِيُّونَ عَمَلَ أَهْلِ الْمَدِينَةِ كَمَا ذَكَرْنَا.

L13178 If it is said: "Why did you not yourselves assert that the Hady (sacrificial animal for Hajj/ʿUmrah) is not valid unless marked, based on the hadith you previously narrated from the Messenger of Allah—peace be upon him—'that he commanded regarding his female sacrificial camel, and it was marked on its hump'?" We answer: This narration does not contain a command to perform marking. Had it included such a command, we would have swiftly affirmed its obligation. Rather, it merely states that he commanded regarding his female sacrificial camel, and he marked it on its hump. The implication

فَإِنْ قِيلَ: فَلِمَ لَمْ تَقُولُوا أَنْتُمْ: بِأَنَّهُ لَا يَكُونُ هَدْيًا إلَّا مَا أُشْعِرَ؟ لِلْحَدِيثِ الَّذِي رَوَيْتُمْ آنِفًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّهُ أَمَرَ بِبَدَنَتِهِ فَأُشْعِرَ فِي سَنَامِهَا» ؟ قُلْنَا: لَيْسَ فِي هَذَا الْخَبَرِ أَمْرٌ بِالْإِشْعَارِ، وَلَوْ كَانَ فِيهِ لَقُلْنَا بِإِيجَابِهِ مُسَارِعِينَ، وَإِنَّمَا فِيهِ أَنَّهُ أَمَرَ بِبَدَنَتِهِ فَأُشْعِرَ فِي سَنَامِهَا فَمُقْتَضَاهُ أَنَّهُ أَمَرَ بِهَا فَأُدْنِيَتْ إلَيْهِ فَأَشْعَرَ فِي سَنَامِهَا؛ لِأَنَّهُ هُوَ - عَلَيْهِ السَّلَامُ - تَوَلَّى بِيَدِهِ إشْعَارَهَا، بِذَلِكَ صَحَّ الْأَثَرُ عَنْهُ - عَلَيْهِ السَّلَامُ - كَمَا ذَكَرْنَا.

is that he commanded it to be prepared, so it was brought near him, and he marked it on its hump. This is because he—peace be upon him—personally carried out the marking with his own hand. Thus, the report from him—peace be upon him—is authenticated, as we have mentioned.

L13179 And it has been reported to us from Ubayy ibn Kaʿb and Ibn ʿUmar regarding the ritual marking of cows on their humps.

L13180 It is narrated from Ibn ʿUmar that a sheep should not be marked with a garland.

L13181 There is no authoritative proof in anyone besides the Messenger of Allah—may Allah bless him and grant him peace—and they have contradicted Ibn Umar, as we earlier cited regarding his ruling on the sacrificial animal (hady). Thus, their reliance on one whose dissent imposes no obligation on them is invalid.

L13182 It has been narrated to us from Saʿīd ibn Jubayr: Camels are to be garlanded and marked, sheep are neither garlanded nor marked, and cows are garlanded but not marked. Abū Ḥanīfah and Mālik said, "No: sheep are not to be garlanded." Mālik held the opinion of marking cows if they have humps.

L13183 Ali said: This is an error and a reversal. Rather, camels are collared [qilāda] and marked [tashʿīr]; cows are neither collared nor marked; and sheep are collared but not marked.

L13184 Abu Hanifah said: Only the sacrificial animals of Tamattuʿ, Qiran, and voluntary offerings of camels and cows specifically are to be garlanded. The sacrificial animals for [cases of] prevention (iḥṣār), those for intercourse [during Ihrām], and those for expiation of unlawful hunting [during pilgrimage] are not to be garlanded.

L13185 Mālik and al-Shāfiʿī said: Every Hajj sacrificial animal should be garlanded and marked by notching, and this is the correct opinion due to the generality of the Prophet's action—may Allah's blessings and peace be upon him.

L13186–13187 Ali said: Some who were blinded by passion and deafened by desire claimed

وَرُوِّينَا عَنْ أُبَيِّ بْنِ كَعْبٍ، وَابْنِ عُمَرَ إشْعَارَ الْبَقَرِ فِي أَسْنِمَتِهَا.

وَعَنْ ابْنِ عُمَرَ: الشَّاةُ لَا تُقَلَّدُ.

وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ خَالَفُوا ابْنَ عُمَرَ كَمَا أَوْرَدْنَا آنِفًا فِي قَوْلِهِ فِي الْهَدْيِ، فَمِنْ الْبَاطِلِ احْتِجَاجُهُمْ بِمَنْ لَا مُؤْنَةَ عَلَيْهِمْ فِي مُخَالَفَتِهِ.

وَرُوِّينَا عَنْ سَعِيدِ بْنِ جُبَيْرٍ: الْإِبِلُ تُقَلَّدُ، وَتُشْعَرُ، وَالْغَنَمُ لَا تُقَلَّدُ، وَلَا تُشْعَرُ، وَالْبَقَرُ تُقَلَّدُ، وَلَا تُشْعَرُ - وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَا - تُقَلَّدُ الْغَنَمُ - وَرَأَى مَالِكٌ إشْعَارَ الْبَقَرِ إنْ كَانَتْ لَهَا أَسْنِمَةٌ.

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ وَمَقْلُوبٌ، بَلْ الْإِبِلُ: تُقَلَّدُ، وَتُشْعَرُ، وَالْبَقَرُ: لَا تُقَلَّدُ، وَلَا تُشْعَرُ، وَالْغَنَمُ: تُقَلَّدُ، وَلَا تُشْعَرُ.

وَقَالَ أَبُو حَنِيفَةَ: لَا يُقَلَّدُ إلَّا هَدْيُ الْمُتْعَةِ، وَالْقِرَانِ، وَالتَّطَوُّعِ مِنْ الْإِبِلِ، وَالْبَقَرِ فَقَطْ: وَلَا يُقَلَّدُ: هَدْيُ الْإِحْصَارِ، وَلَا الْجِمَاعِ، وَلَا جَزَاءِ الصَّيْدِ.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: يُقَلَّدُ كُلُّ هَدْيٍ وَيُشْعَرُ، وَهَذَا هُوَ الصَّوَابُ لِعُمُومِ فِعْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

that the meaning of what was narrated from ʾĀʾisha regarding garlanded sacrificial sheep is merely that she braided the sacrificial garlands from sheep—i.e., from sheep's wool. Abū Muḥammad said: This is a trivialization of outright falsehood and a contradiction of what people have transmitted from her regarding the Prophet's (peace be upon him) offering of garlanded sheep as sacrifices. We seek refuge with Allah the Almighty from abandonment.

قَالَ عَلِيٌّ: وَقَالَ بَعْضُ مَنْ أَعْمَاهُ الْهَوَى وَأَصَمَّهُ: إِنَّمَا مَعْنَى مَا رُوِيَ عَنْ عَائِشَةَ مِنْ هَدْيِ الْغَنَمِ مُقَلَّدَةً، إِنَّمَا هُوَ أَنَّهَا فَتَلَتْ قَلَائِدَ الْهَدْيِ مِنْ الْغَنَمِ - أَيْ مِنْ صُوفِ الْغَنَمِ -: قَالَ أَبُو مُحَمَّد: وَهَذَا اسْتِسْهَالٌ لِلْكَذِبِ الْبَحْتِ وَخِلَافٌ لِمَا رَوَاهُ النَّاسُ عَنْهَا مِنْ إهْدَائِهِ - عَلَيْهِ السَّلَامُ - الْغَنَمَ مُقَلَّدَةً - وَنَعُوذُ بِاَللَّهِ الْعَظِيمِ مِنْ الْخِذْلَانِ.

L13188 As for stipulating: This is based on what was narrated to us by Abdullah ibn Yusuf, who narrated from Ahmad ibn Fath, who narrated from Abdul Wahhab ibn Isa, who narrated from Ahmad ibn Muhammad, who narrated from Ahmad ibn Ali, who narrated from Muslim ibn al-Hajjaj, who narrated from Abu Kuraib Muhammad ibn al-Ala al-Hamdani, who narrated from Abu Usamah from Hisham ibn Urwah (son of Abd al-Muttalib) from his father from Aishah, who said: "The Messenger of Allah—peace and blessings be upon him—visited Duba'ah bint al-Zubayr and said to her: 'Do you intend to perform Hajj?' She replied: 'By Allah, I am only in pain.' He then said to her: 'Perform Hajj and stipulate a condition, saying: "O Allah, my place of exiting Ihram is wherever You detain me."' And she was married to al-Miqdad."

وَأَمَّا الِاشْتِرَاطُ: فَلِمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ نَا أَحْمَدُ بْنُ فَتْحٍ نَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نَا أَحْمَدُ بْنُ مُحَمَّدٍ نَا أَحْمَدُ بْنُ عَلِيٍّ نَا مُسْلِمُ بْنُ الْحَجَّاجِ نَا أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ الْهَمْدَانِيُّ نَا أَبُو أُسَامَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ: «دَخَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى ضُبَاعَةَ بِنْتِ الزُّبَيْرِ هُوَ ابْنُ عَبْدِ الْمُطَّلِبِ - فَقَالَ لَهَا: أَرَدْتِ الْحَجَّ؟ قَالَتْ: وَاَللَّهِ مَا أَجِدُنِي إلَّا وَجِعَةً؟ فَقَالَ لَهَا: حُجِّي وَاشْتَرِطِي وَقُولِي: اللَّهُمَّ مَحِلِّي حَيْثُ حَبَسْتَنِي، وَكَانَتْ تَحْتَ الْمِقْدَادِ» .

L13189 We have also narrated it through the chain of Isḥāq ibn Rāhawayh from ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from ʿUrwah from ʿĀʾishah, from the Prophet—may Allah's peace and blessings be upon him—that he said to Ḍubāʿah: "Perform Ḥajj and stipulate that my place of exiting the state of Iḥrām is wherever you are prevented."

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ إِسْحَاقَ بْنِ رَاهْوَيْهِ عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ لِضُبَاعَةَ حُجِّي وَاشْتَرِطِي أَنَّ مَحِلِّي حَيْثُ تَحْبِسُنِي» .

L13190 We have also narrated it through the chain of Ṭāwūs, ʿIkrimah, and Saʿīd ibn Jubayr—all of them from Ibn ʿAbbās—from the Messenger of Allah (peace and blessings of Allah be upon him) that he said to Ḍubāʿah: "Assume Ihrām for Ḥajj and stipulate that my exit from Ihrām is wherever you are detained [from proceeding]."

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ طَاوُسٍ، وَعِكْرِمَةَ، وَسَعِيدِ بْنِ جُبَيْرٍ، كُلِّهِمْ عَنْ ابْنِ عَبَّاسٍ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ لِضُبَاعَةَ أَهِّلِي بِالْحَجِّ وَاشْتَرِطِي أَنَّ مَحِلِّي حَيْثُ تَحْبِسُنِي» .

L13191 We have also narrated it via the chain of ʿUrwah ibn al-Zubayr, from Ḍubāʿah, from the Messenger of Allah, peace and blessings be upon him.

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ ضُبَاعَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L13192 And through the narration of Abū al-Zubayr from Jābir from the Prophet (peace be upon him).

وَمِنْ طَرِيقِ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L13193 Thus, these are clear, mutawatir traditions that no one may disregard.

فَهَذِهِ آثَارٌ مُتَظَاهِرَةٌ مُتَوَاتِرَةٌ لَا يَسَعُ أَحَدًا الْخُرُوجُ عَنْهَا.

L13194 And it has been narrated to us through Suwayd ibn Ghafala that ʿUmar ibn al-Khaṭṭāb said to me: “If you perform Hajj and are not a first-time pilgrim, then stipulate: If I am afflicted by an illness, injury, or detention, then I am free.”

وَرُوِّينَا مِنْ طَرِيقِ سُوَيْدِ بْنِ غَفَلَةَ قَالَ لِي عُمَرُ بْنُ الْخَطَّابِ: إنْ حَجَجْت وَلَسْت صَرُورَةً فَاشْتَرَطَ إنْ أَصَابَنِي مَرَضٌ أَوْ كَسْرٌ أَوْ حَبْسٌ فَأَنَا حِلٌّ.

L13195–13196 It has also been narrated to us that the command to stipulate during Hajj was conveyed through the chains of Wakiʿ, ʿAbd al-Raḥmān ibn Mahdī, and Yaḥyā ibn Saʿīd al-Qaṭṭān—all of them transmitting from Sufyān al-Thawrī, from Ibrāhīm ibn ʿAbd al-Aʿlā, from Suwayd ibn Ghafalah, from ʿUmar. In the narration of Ibn Mahdī and Yaḥyā, it states that he said to him: “Observe Hajj as *Ifrād* and stipulate, for you are entitled to what you have stipulated, and Allah’s due upon you is what you have stipulated.”

وَرُوِّينَا أَيْضًا الْأَمْرَ بِالِاشْتِرَاطِ فِي الْحَجِّ مِنْ طَرِيقِ: وَكِيعٍ، وَعَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ، وَيَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ، كُلِّهِمْ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إبْرَاهِيمَ بْنِ عَبْدِ الْأَعْلَى عَنْ سُوَيْدِ بْنِ غَفَلَةَ عَنْ عُمَرَ: أَنَّهُ - وَفِي رِوَايَةِ ابْنِ مَهْدِيٍّ، وَيَحْيَى: أَنَّهُ قَالَ لَهُ: أَفْرِدْ الْحَجَّ وَاشْتَرِطْ، فَإِنَّ لَك مَا اشْتَرَطْت، وَلِلَّهِ عَلَيْك مَا شَرَطْت.

L13197 And via the chain of Ibn Abī Shaybah: al-Faḍl ibn Dukayn narrated to us from Saʿīd ibn ʿAbd al-Raḥmān from Ibn Sīrīn from ʿAbd Allāh ibn ʿUtbah from ʿUthmān ibn ʿAffān, similar to what Ibn al-Mubārak narrated from Hishām ibn Ḥassān from Ibn Sīrīn: that ʿUthmān saw a man who was standing at ʿArafah. He asked him, saying: “Did you stipulate?” The man replied: “Yes.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا الْفَضْلُ بْنُ دُكَيْنٍ عَنْ سَعِيدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ ابْنِ سِيرِينَ عَنْ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ عُثْمَانَ بْنِ عَفَّانَ مِثْلُ مَا رَوَاهُ ابْنُ الْمُبَارَكِ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ ابْنِ سِيرِينَ: أَنَّ عُثْمَانَ رَأَى رَجُلًا وَاقِفًا بِعَرَفَةَ قَالَ لَهُ: أَشَارَطْتَ؟ قَالَ: نَعَمْ.

L13198 And through the chain of Jammah from Muḥammad ibn Fuḍayl from ʿAṭāʾ ibn al-Sāʾib from Maysarah: that ʿAlī ibn Abī Ṭālib, when he intended to perform Ḥajj, would say: “O Allah, a Ḥajj if it is facilitated, or an ʿUmrah if he intends ʿUmrah; otherwise, there is no blame.”

وَمِنْ طَرِيقِ جَمَّةَ عَنْ مُحَمَّدِ بْنِ فُضَيْلٍ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ مَيْسَرَةَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ إذَا أَرَادَ الْحَجَّ قَالَ: اللَّهُمَّ حَجَّةً إنْ تَيَسَّرَتْ، أَوْ عُمْرَةً إنْ أَرَادَ الْعُمْرَةَ وَإِلَّا فَلَا حَرَجَ.

L13199 And through the chain of Sufyan al-Thawri from Abu Ishaq from Umayrah ibn Ziyad, who said: Ibn Mas’ud said to me: “Perform Hajj while stipulating a condition, and say: ’O Allah, I intended Hajj and directed myself toward it. If it becomes possible, [proceed]; otherwise, let it be Umrah.”’

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إسْحَاقَ عَنْ عُمَيْرَةَ بْنِ زِيَادٍ قَالَ: قَالَ لِي ابْنُ مَسْعُودٍ: حُجَّ وَاشْتَرِطْ، وَقُلْ: اللَّهُمَّ الْحَجَّ أَرَدْت وَلَهُ عَمَدْت فَإِنْ تَيَسَّرَ وَإِلَّا فَعُمْرَةٌ.

L13200 From the narration of Hishām ibn ʿUrwah, from his father, from ʿĀ’ishah, the

Mother of the Believers, that she used to say: “O Allah, I have set out for Hajj and intended it. If I fulfill it, then it is Hajj; but if an obstacle intervenes, then it is Umrah.” And she used to instruct ʿUrwah to stipulate [this condition] in the same manner.

وَمِنْ طَرِيقِ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا كَانَتْ تَقُولُ: اللَّهُمَّ لِلْحَجِّ خَرَجْت وَلَهُ عَمَدْت فَإِنْ قَضَيْت فَهُوَ الْحَجُّ وَإِنْ حَالَ دُونَهُ شَيْءٌ فَهِيَ عُمْرَةٌ، وَإِنَّهَا كَانَتْ تَأْمُرُ عُرْوَةَ بِأَنْ يَشْتَرِطَ كَذَلِكَ.

L13201 And via the chain of Abu Ishaq from Al-Minhal from Ammar, the son of Yasir, that he said: If you intend to perform Hajj, then make a stipulation.

وَمِنْ طَرِيقِ أَبِي إِسْحَاقَ عَنْ الْمِنْهَالِ عَنْ عَمَّارٍ هُوَ ابْنُ يَاسِرٍ - أَنَّهُ قَالَ: إذَا أَرَدْت الْحَجَّ فَاشْتَرِطْ.

L13202 And via the chain of Kuraib from Ibn Abbas, that he used to enjoin making conditional stipulations during Hajj.

وَمِنْ طَرِيقِ كُرَيْبٍ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ كَانَ يَأْمُرُ بِالِاشْتِرَاطِ فِي الْحَجِّ.

L13203 These are ʿUmar, ʿUthmān, ʿAlī, ʿĀ’ishah the Mother of the Believers, ʿAmmār ibn Yāsir, Ibn Masʿūd, Ibn ʿAbbās; and among the Followers, ʿUmayrah ibn Ziyād.

فَهَؤُلَاءِ: عُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ وَعَائِشَةُ أُمُّ الْمُؤْمِنِينَ، وَعَمَّارُ بْنُ يَاسِرٍ، وَابْنُ مَسْعُودٍ، وَابْنُ عَبَّاسٍ - وَمِنْ التَّابِعِينَ عُمَيْرَةُ بْنُ زِيَادٍ.

L13204 Narrated through al-Ḥajjāj ibn al-Minhāl, from Abū ʻAwanah, from Manṣūr, from Ibrāhīm al-Nakhaʻī, who said: They used to stipulate conditions for Ḥajj and ʻUmrah, saying: “O Allah, I intend Ḥajj if it is facilitated; otherwise, then ʻUmrah if it is facilitated. O Allah, I intend ʻUmrah if it is facilitated; otherwise, there is no blame on me.”

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ أَبِي عَوَانَةَ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانُوا يَشْتَرِطُونَ فِي الْحَجِّ وَالْعُمْرَةِ يَقُولُ: اللَّهُمَّ إنِّي أُرِيدُ الْحَجَّ إنْ تَيَسَّرَ، وَإِلَّا فَعُمْرَةٌ إنْ تَيَسَّرَتْ، اللَّهُمَّ إنِّي أُرِيدُ الْعُمْرَةَ إنْ تَيَسَّرَتْ وَإِلَّا فَلَا حَرَجَ عَلَيَّ.

L13205–13206 And from the chain of Waki‘: Ar-Rabi‘ narrated to us from Al-Hasan Al-Basri and ‘Ata’ ibn Abi Rabah. They both said regarding the muhrim who stipulates a condition: They both said, “His condition applies to him.”

وَمِنْ طَرِيقِ وَكِيعٍ نَا الرَّبِيعُ عَنْ الْحَسَنِ الْبَصْرِيِّ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ، قَالَا جَمِيعًا فِي الْمُحْرِمِ يَشْتَرِطُ: قَالَا جَمِيعًا: لَهُ شَرْطُهُ.

L13207 And via the chain of Al-A‘mash from ‘Umarah ibn ‘Umayr, who said: “Alqamah and Al-Aswad used to stipulate conditions during Hajj.”

وَمِنْ طَرِيقِ الْأَعْمَشِ عَنْ عُمَارَةَ بْنِ عُمَيْرٍ قَالَ: كَانَ عَلْقَمَةُ، وَالْأَسْوَدُ يَشْتَرِطَانِ فِي الْحَجِّ.

L13208 From the path of Sufyan al-Thawri, from al-Mughirah ibn Miqsam, from al-Musayyib ibn Rafi‘: I intended to perform Hajj, so send ‘Ubaydah—he is al-Salmānī—to me, that I may make a stipulation.

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ الْمُسَيِّبِ بْنِ رَافِعٍ أَرَدْت الْحَجَّ فَأَرْسِلْ إلَيَّ عَبِيدَةَ هُوَ السَّلْمَانِيُّ - أَنْ اشْتَرِطْ.

L13209 From the chain of Ibn Abi Shaybah, via Abu Mu’awiyah, via Al-A’mash, via

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ عُمَارَةَ بْنِ عُمَيْرٍ قَالَ: كَانَ شُرَيْحٌ الْقَاضِي يَشْتَرِطُ فِي الْحَجِّ فَيَقُولُ: اللَّهُمَّ إنَّك قَدْ عَرَفْت نِيَّتِي وَمَا أُرِيدُ، فَإِنْ كَانَ أَمْرًا تُتِمُّهُ فَهُوَ أَحَبُّ إلَيَّ وَإِنْ كَانَ غَيْرَ ذَلِكَ فَلَا حَرَجَ.

'Umarah ibn 'Umayr, who said: Judge Shuraih would stipulate a condition during Hajj, saying: "O Allah, You know my intention and what I aim for. If it is a matter You complete, then it is dearer to me; but if it is otherwise, then there is no harm."

وَعَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ أَنَّهُ كَانَ يَشْتَرِطُ فِي الْعُمْرَةِ، وَجَاءَ أَيْضًا [نَصًّا] عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَعَطَاءِ بْنِ يَسَارٍ، وَعِكْرِمَةَ - وَقَالَ الشَّافِعِيُّ: إنْ صَحَّ الْخَبَرُ قُلْت بِهِ.

L13210 It is reported from Abu Bakr ibn Abd al-Rahman ibn al-Harith ibn Hisham that he stipulated conditions for the Umrah. It is also [explicitly] reported from Sa'id ibn al-Musayyab, 'Ata' ibn Yasar, and 'Ikrimah. Al-Shafi'i said: "If the report is authentic, I endorse it."

قَالَ أَبُو مُحَمَّد: قَدْ صَحَّ الْخَبَرُ وَبَالَغَ فِي الصِّحَّةِ فَهُوَ قَوْلُهُ وَهُوَ قَوْلُ أَحْمَدَ، وَإِسْحَاقَ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ - وَرُوِيَ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ إذَا سَأَلَ عَنْ الِاسْتِثْنَاءِ فِي الْحَجِّ؟ قَالَ: لَا أَعْرِفُهُ.

L13211 Abū Muḥammad said: The report has indeed been authenticated and its authenticity is well-established. Thus, it is his opinion, as well as the opinion of Aḥmad, Isḥāq, Abī Thawr, and Abī Sulaymān. It is narrated from Ibn 'Umar that when he was asked about the exception in Ḥajj, he said: "I do not recognize it."

وَرُوِّينَا عَنْ إبْرَاهِيمَ اضْطِرَابًا فَرُوِّينَا عَنْهُ مِنْ طَرِيقِ الْمُغِيرَةِ أَنَّهُ قَالَ: كَانُوا يَسْتَحِبُّونَ أَنْ يَشْتَرِطُوا عِنْدَ الْإِحْرَامِ وَكَانُوا لَا يَرَوْنَ الشَّرْطَ شَيْئًا لَوْ أَنَّ الرَّجُلَ ابْتُلِيَ - وَرُوِّينَا عَنْهُ مِنْ طَرِيقِ الْأَعْمَشِ أَنَّهُ قَالَ كَانُوا يَكْرَهُونَ أَنْ يَشْتَرِطُوا فِي الْحَجِّ.

L13212 We have received conflicting narrations from Ibrāhīm. In one narration via Al-Mughīrah, it was reported that he said: "They preferred to stipulate conditions upon entering Ihrām, though they did not regard the stipulation as significant—even if a man was afflicted [with hardship]." In another narration via Al-A'mash, it was reported that he said: "They considered stipulating conditions during Ḥajj reprehensible."

قَالَ أَبُو مُحَمَّد: هَذَا تَنَاقُضٌ فَاحِشٌ، مَرَّةً كَانُوا يَسْتَحِبُّونَ الشَّرْطَ، وَمَرَّةً كَانُوا يَكْرَهُونَهُ، فَأَقَلُّ مَا فِي هَذَا تَرْكُ رِوَايَةِ إبْرَاهِيمَ جُمْلَةً لِاضْطِرَابِهَا.

L13213 Abu Muhammad said: This is an egregious contradiction—at one time they deemed the condition recommended, and at another time they deemed it disliked. At the very least, this necessitates abandoning Ibrāhīm's narration as a whole due to its internal contradictions in transmission.

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ جُبَيْرٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ أَنَّهُمَا قَالَا: الْمُشْتَرِطُ وَغَيْرُ الْمُشْتَرِطِ سَوَاءٌ إذَا أُحْصِرَ فَلْيَجْعَلْهَا عُمْرَةً.

L13214 It has been narrated to us through the chain of transmission of Sa'īd ibn Jubayr and Ibrāhīm al-Nakha'ī that they said: The one who stipulates [a condition] and the one who does not are the same. If he is prevented, let him transform it into 'Umrah.

L13215 And through the chain of Al-Ḥajjāj ibn Arṭāh—whose narration is rejected (sāqiṭ)—from 'Aṭā', [there is a report] similar to this statement of Sa'īd ibn

Jubayr. However, the authentic (ṣaḥīḥ) narration from ʿAṭāʾ contradicts the former.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ سَاقِطٌ - عَنْ عَطَاءٍ مِثْلُ قَوْلِ سَعِيدِ بْنِ جُبَيْرٍ هَذَا، وَالصَّحِيحُ عَنْ عَطَاءٍ خِلَافُ هَذَا.

L13216–13217 Via the chain of Hisham ibn Urwah from his father, that he did not consider the stipulation in Hajj as anything.

وَمِنْ طَرِيقِ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ أَنَّهُ كَانَ لَا يَرَى الِاشْتِرَاطَ فِي الْحَجِّ شَيْئًا.

L13218 From Ṭāwus: Stipulating conditions in Ḥajj is not a [valid] matter.

وَعَنْ طَاوُسٍ الِاشْتِرَاطُ فِي الْحَجِّ لَيْسَ شَيْئًا.

L13219 From Ibrāhīm ibn Muhājir (who is weak), from Ibrāhīm al-Nakhaʿī, from ʿAlqamah, who held that stipulations in Hajj were not problematic.

وَعَنْ إبْرَاهِيمَ بْنِ مُهَاجِرٍ - وَهُوَ ضَعِيفٌ - عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ أَنَّهُ كَانَ لَا يَرَى الِاشْتِرَاطَ فِي الْحَجِّ شَيْئًا.

L13220 And from Al-Ḥakam ibn ʿUtaybah and Ḥammād likewise; and this is the view of Mālik and the Ḥanafīs.

وَعَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادٍ مِثْلُ هَذَا، وَهُوَ قَوْلُ مَالِكٍ، وَالْحَنَفِيِّينَ.

L13221 Abu Muhammad said: They objected to opposing the Sunnah traditions in this chapter by arguing: "This hadith contradicts the Quran, for Allah, the Exalted, says: {And complete Hajj and ʿUmrah solely for Allah} [Surah Al-Baqarah 2:196]."[16]

قَالَ أَبُو مُحَمَّد: وَشَغَبُوا فِي مُخَالَفَةِ السُّنَنِ الْوَارِدَةِ فِي هَذَا الْبَابِ بِأَنْ قَالُوا: هَذَا الْخَبَرُ خِلَافٌ لِلْقُرْآنِ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ} [البقرة: ١٩٦] .

L13222 Ali said: This verse is evidence against them, not against us, for they issue rulings permitting those afflicted by an impediment such as illness or the like to dissolve their *ihram* through Umrah if they miss Hajj. Thus, they have contradicted the verse concerning the completion of Hajj. As for us, we affirm that the one upon whom this verse was revealed and who was commanded to clarify *to us* what was revealed to him has instructed us to stipulate conditions during Hajj and that one's point of release is wherever his Lord, the Exalted, detains him through His executed decree. Therefore, we have not contradicted the verse by adhering to the Prophet's (peace be upon him) clarification, whereas you have contradicted it through your corrupt opinions, thereby opposing the Sunnah related to that matter.

قَالَ عَلِيٌّ: هَذِهِ الْآيَةُ حُجَّةٌ عَلَيْهِمْ لَا عَلَيْنَا لِأَنَّهُمْ يُفْتُونَ مَنْ عَرَضَ لَهُ عَارِضٌ مِنْ مَرَضٍ أَوْ نَحْوِهِ أَنْ يَحِلَّ بِعُمْرَةٍ إنْ فَاتَهُ الْحَجُّ، فَقَدْ خَالَفُوا الْآيَةَ فِي إتْمَامِ الْحَجِّ، وَأَمَّا نَحْنُ فَإِنَّا نَقُولُ: إنَّ الَّذِي أُنْزِلَتْ عَلَيْهِ هَذِهِ الْآيَةُ وَأُمِرَ بِبَيَانِ مَا أُنْزِلَ عَلَيْهِ لَنَا قَدْ أَمَرَ بِالِاشْتِرَاطِ فِي الْحَجِّ وَأَنَّ مَحِلَّهُ حَيْثُ حَبَسَهُ رَبُّهُ تَعَالَى بِالْقَدَرِ النَّافِذِ، فَنَحْنُ لَمْ نُخَالِفْ الْآيَةَ إذَا أَخَذْنَا بِبَيَانِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنْتُمْ خَالَفْتُمُوهَا بِآرَائِكُمْ الْفَاسِدَةِ إلَى مُخَالَفَتِكُمْ السُّنَّةَ الْوَارِدَةَ فِي ذَلِكَ.

L13223 They said: "This report contradicts the words of Allah the Exalted: {But if you are prevented, then offer what can be obtained with ease of the sacrificial animal} [Al-Baqarah: 196]." We replied: "Those who claim this report

وَقَالُوا: هَذَا الْخَبَرُ خِلَافٌ لِقَوْلِ اللَّهِ تَعَالَى: {فَإِنْ أُحْصِرْتُمْ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ} [البقرة: ١٩٦] ؟ قُلْنَا: كَذَبَ مَنْ ادَّعَى أَنَّ هَذَا الْخَبَرَ خِلَافٌ لِهَذِهِ الْآيَةِ، بَلْ أَنْتُمْ

[16] **Qur'an references (L13221):** Qur'an 2:196 (Al-Baqarah).

contradicts this verse have lied. Rather, you yourselves contradicted it when you asserted: 'Whoever is prevented by illness may not exit ihram except by performing Umrah' - an opinion lacking textual basis. As for us, we adhere to this verse: If one did not stipulate a condition in their ihram, as commanded by the Prophet - who received this verse and was tasked with its clarification."

خَالَفْتُمُوهَا إِذْ قُلْتُمْ: مَنْ أُحْصِرَ بِمَرَضٍ لَمْ يَحِلَّ إِلَّا بِعُمْرَةٍ بِرَأْيٍ لَا نَصَّ فِيهِ، وَأَمَّا نَحْنُ فَقُلْنَا بِهَذِهِ الْآيَةِ: إِنْ لَمْ يَشْتَرِطْ كَمَا أَمَرَ الَّذِي أُنْزِلَتْ عَلَيْهِ هَذِهِ الْآيَةُ وَأَمَرَ بِبَيَانِهَا لَنَا؟

Abu Muhammad said: "Whoever deems this Sunnah contradictory to the Quran must also consider the narration stipulating hand amputation for [theft of] a quarter dinar or ten dirhams as opposing the Quran, given the Exalted's decree: {As for the thief, male or female, cut their hands} [Al-Ma'idah: 38]."[17]

قَالَ أَبُو مُحَمَّد: وَمَنْ جَعَلَ هَذِهِ السُّنَّةَ مُعَارِضَةً لِلْقُرْآنِ فَالْوَاجِبُ عَلَيْهِ أَنْ يَجْعَلَ الرِّوَايَةَ فِي الْقَطْعِ فِي رُبْعِ دِينَارٍ وَعَشَرَةِ دَرَاهِمَ مُخَالِفَةً لِلْقُرْآنِ إِذْ يَقُولُ تَعَالَى: {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] .

L13224 Because the hadith concerning the stipulation is consistent in its narration from Aisha and is of the utmost authenticity, while there is inconsistency in the hadith concerning amputation for a quarter of a dinar narrated from her. No report has ever been authenticated specifying amputation for ten dirhams; rather, their statement is truly contrary to the Quran, for Allah the Exalted says: "He has not placed upon you in the religion any difficulty" [al-Ḥajj 22:78].[18]

لِأَنَّ حَدِيثَ الِاشْتِرَاطِ لَمْ يُضْطَرَبْ فِيهِ عَنْ عَائِشَةَ وَهُوَ فِي غَايَةِ الصِّحَّةِ، وَقَدْ اضْطَرَبَ فِي حَدِيثِ الْقَطْعِ فِي رُبْعِ دِينَارٍ عَلَيْهَا - وَلَمْ يَصِحَّ قَطُّ خَبَرٌ فِي تَحْدِيدِ الْقَطْعِ فِي عَشَرَةِ دَرَاهِمَ بَلْ قَوْلُهُمْ هُوَ الْمُخَالِفُ لِلْقُرْآنِ حَقًّا، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] .

L13225 And the Exalted said: "Allah does not charge a soul except [with that within] its capacity" [Al-Baqarah 2:286].[19]

وَقَالَ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

L13226 And He, the Exalted, said: "Allah intends ease for you and does not intend hardship for you" [Al-Baqarah 2:185].[20]

وَقَالَ تَعَالَى: {يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلا يُرِيدُ بِكُمُ الْعُسْرَ} [البقرة: ١٨٥] .

L13227–13228 There is no harm, no hardship, and no obligation exceeding one's capacity—more than requiring one to remain in the state of *iḥrām*, prohibiting regular clothing, perfume, and marital relations for someone whom Allah the Exalted has indeed prevented from Hajj or Umrah. If these verses alone existed, they would suffice to establish the obligation of releasing from *iḥrām* anyone hindered by an obstacle from completing Hajj or Umrah—how much

وَلَا حَرَجَ، وَلَا عُسْرَ، وَلَا تَكْلِيفَ مَا لَيْسَ فِي الْوُسْعِ أَكْثَرُ مِنْ إِيجَابِ الْبَقَاءِ عَلَى حَالِ الْإِحْرَامِ، وَمَنْعِ الثِّيَابِ، وَالطِّيبِ، وَالنِّسَاءِ، لِمَنْ قَدْ مَنَعَهُ اللَّهُ تَعَالَى مِنْ الْحَجِّ وَالْعُمْرَةِ؛ فَلَوْ لَمْ يَكُنْ إِلَّا هَذِهِ الْآيَاتُ لَكَفَتْ فِي وُجُوبِ إِحْلَالِ مَنْ عَاقَهُ عَائِقٌ عَنْ إِتْمَامِ الْحَجِّ وَالْعُمْرَةِ، فَكَيْفَ وَالسُّنَّةُ قَدْ جَاءَتْ بِذَلِكَ نَصًّا؟ وَشَغَبَ بَعْضُهُمْ بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ

[17] **Qur'an references (L13223):** Qur'an 2:196 (Al-Baqarah); Qur'an 5:38 (Al-Ma'idah).
[18] **Qur'an references (L13224):** Qur'an 22:78 (Al-Hajj).
[19] **Qur'an references (L13225):** Qur'an 2:286 (Al-Baqarah).
[20] **Qur'an references (L13226):** Qur'an 2:185 (Al-Baqarah).

more compelling is it when the *Sunnah* has explicitly stated this in text? Yet some have clamored by citing the authentically transmitted report from the Messenger of Allah (peace and blessings be upon him): *"Every condition not in the Book of Allah is void, even if it were a hundred conditions. What is the matter with people who stipulate conditions not in the Book of Allah? Whoever stipulates a condition not in the Book of Allah has no right to it. The Book of Allah is more deserving, and Allah's stipulation is more binding."*

وَإِنْ كَانَ مِائَةَ شَرْطٍ مَا بَالُ أَقْوَامٍ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ؟ مَنْ اشْتَرَطَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ فَلَيْسَ لَهُ، كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ» .

L13229 Abu Muhammad said: This is one of the most astonishing things, for they have cited as evidence what constitutes a greater proof against them. The stipulation in Hajj is textually specified in the Book of Allah, the Exalted, as we have mentioned from His saying: {Allah does not burden any soul beyond its capacity} [Al-Baqarah: 286].[21]

قَالَ أَبُو مُحَمَّد: هَذَا مِنْ أَعْجَبْ شَيْءٍ لِأَنَّهُمْ احْتَجُّوا بِمَا هُوَ أَعْظَمُ حُجَّةً عَلَيْهِمْ، وَالِاشْتِرَاطُ فِي الْحَجِّ هُوَ فِي كِتَابِ اللَّهِ تَعَالَى مَنْصُوصٌ مِمَّا ذَكَرْنَا مِنْ قَوْله تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

L13230 "He has not placed any hardship upon you in the religion" [Al-Ḥajj 22:78].[22]

{وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] .

L13231 "Allah intends ease with you and does not intend hardship with you" [2:185].[23]

وَ {يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلا يُرِيدُ بِكُمُ الْعُسْرَ} [البقرة: ١٨٥] .

L13232 And by His saying, the Most High: "To clarify to the people what has been sent down to them" [An-Nahl:44].[24]

وَبِقَوْلِهِ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] .

L13233 The words of the Most High: {Take what the Messenger has given you, and refrain from what he forbids you} [Al-Hashr: 7].[25]

وقَوْله تَعَالَى: {وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا} [الحشر: ٧] .

L13234 The conditions not stipulated in the Book of Allah the Exalted are those permitted by the jurists—such as the condition that if he marries any woman upon [the status of] his existing wife so-and-so, she is thereby divorced, or that if he purchases any female slave upon [the status of] his wife, the purchased slave is thereby freed.

وَإِنَّمَا الشُّرُوطُ الَّتِي لَيْسَتْ فِي كِتَابِ اللَّهِ تَعَالَى فَهِيَ الشُّرُوطُ الَّتِي أَبَاحُوا: مِنْ أَنَّ كُلَّ امْرَأَةٍ يَتَزَوَّجُهَا عَلَى فُلَانَةَ امْرَأَتِهِ فَهِيَ طَالِقٌ، وَكُلَّ أَمَةٍ اشْتَرَاهَا عَلَيْهَا فَهِيَ حُرَّةٌ.

L13235 That part of the dowry is not binding except for such-and-such years, and

وَأَنْ يَكُونَ بَعْضُ الصَّدَاقِ لَا يَلْزَمُ إِلَّا إِلَى كَذَا وَكَذَا عَامًا وَاللَّهُ تَعَالَى يَقُولُ: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] .

[21] **Qur'an references (L13229):** Qur'an 2:286 (Al-Baqarah).
[22] **Qur'an references (L13230):** Qur'an 22:78 (Al-Hajj).
[23] **Qur'an references (L13231):** Qur'an 2:185 (Al-Baqarah).
[24] **Qur'an references (L13232):** Qur'an 16:44 (An-Nahl).
[25] **Qur'an references (L13233):** Qur'an 59:7 (Al-Hashr).

Allah the Exalted says: “Give women their dowers as a gracious obligation” (Quran 4:4).[26]

وَكَبَيْعِ السُّنْبُلِ وَعَلَى الْبَائِعِ دَرْسُهُ.

L13236 Similarly, the sale of unthreshed ears of grain obligates the seller to thresh it.

وَكَنُزُولِ أَهْلِ الْحَرْبِ وَبِأَيْدِيهِمْ الْأَسْرَى مِنْ الْمُسْلِمِينَ بِشَرْطِ أَنْ لَا يُمْنَعُوا مِنْ الْوَطْءِ

L13237 And like the arrival of the people of war with Muslim captives in their possession, on the condition that they are not prevented from engaging in sexual relations with them or returning them to the lands of disbelief—along with all other invalid conditions which they permitted. They argued by citing that this report was narrated by Urwah, Ata, Sa‘id ibn Jubayr, and Tawus—yet contradictory reports were also narrated from those same scholars.

لَهُنَّ وَلَا مِنْ رَدِّهِمْ إلَى بِلَادِ الْكُفْرِ - وَسَائِرُ الشُّرُوطِ الْفَاسِدَةِ الَّتِي أَبَاحُوا؛ وَاحْتَجُّوا بِأَنَّ هَذَا الْخَبَرَ رَوَاهُ عُرْوَةُ، وَعَطَاءٌ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَطَاوُسٌ - وَرُوِيَ عَنْهُمْ خِلَافُهُ.

قَالَ أَبُو مُحَمَّدٍ: فَقُلْنَا: سَمِعْنَا كُمْ تَقْبَلُونَ هَذَا فِي الصَّاحِبِ إذَا رَوَى الْخَبَرَ وَخَالَفَهُ فَأَنْكَرْنَاهُ

L13238–13240 Abu Muhammad said: We then said, “We have heard you accept this regarding the Companion when he narrates a report yet contradicts it. We rejected this until you brought clear proofs by making the Follower’s abandonment of what he narrated a proof for abandoning the Sunnah. If you apply this principle, it will reach us and those after us, so that everyone who receives a ḥadīth from the Prophet—peace and blessings of Allah be upon him—and abandons it, whoever they may be, [will do likewise].” There existed among people an argument for rejecting the Sunnah - and this is the ruling of the accursed Iblis. Allah the Exalted did not command us to follow the opinions of those you mentioned, but rather commanded us to follow their narrations, for they are trustworthy and upright, though not infallible from error in opinion.

حَتَّى أَتَيْتُمْ بِالْآبِدَةِ إذْ جَعَلْتُمْ تَرْكَ التَّابِعِ لِمَا رَوَى حُجَّةً فِي تَرْكِ السُّنَنِ؛ وَهَذَا إنْ أَدْرَجْتُمُوهُ بَلَغَ إلَيْنَا وَإِلَى مَنْ بَعْدَنَا فَصَارَ كُلُّ مَنْ بَلَغَهُ حَدِيثٌ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَتَرَكَهُ كَائِنًا مَنْ كَانَ مِنْ النَّاسِ حُجَّةً فِي رَدِّ السُّنَنِ؛ وَهَذَا حُكْمُ إبْلِيسَ اللَّعِينِ، وَمَا أَمَرَنَا اللَّهُ تَعَالَى بِاتِّبَاعِ رَأْيِ مَنْ ذَكَرْتُمْ؛ وَإِنَّمَا أَمَرَنَا بِاتِّبَاعِ رِوَايَتِهِمْ؛ لِأَنَّهُمْ ثِقَاتٌ عُدُولٌ وَلَيْسُوا مَعْصُومِينَ مِنْ الْخَطَإِ فِي الرَّأْيِ.

L13241 There is no wonder regarding those who object to the rejection of the Sunnahs by citing that Ṭāwūs, ʿAṭāʾ, ʿUrwah, and Saʿīd ibn Jubayr contradicted what they themselves narrated. Furthermore, if he resolved to dye his shirt green and they told him, “Rather, dye it red,” he would not regard their opinion as valid evidence in that matter nor compel himself to act upon it. Yet their opinion is considered evidence in opposing the Messenger of Allah—peace and blessings be upon him. Even if these individuals contradicted what they narrated, others—such as ʿIkrimah and ʿAṭāʾ—narrated it without contradiction. Nothing is authentically reported from ʿAṭāʾ except his adherence

وَلَا عَجَبَ مِمَّنْ يَعْتَرِضُ فِي رَدِّ السُّنَنِ بِأَنَّ طَاوُسًا، وَعَطَاءً، وَعُرْوَةَ، وَسَعِيدَ بْنَ جُبَيْرٍ: خَالَفُوا مَا رَوَوْا مِنْ ذَلِكَ - ثُمَّ لَوْ أَنَّهُ عَزَمَ عَلَى صَبْغِ قَمِيصِهِ أَخْضَرَ فَقَالُوا لَهُ: بَلْ اُصْبُغْهُ أَحْمَرَ؟ لَمْ يَرَ رَأْيَهُمْ فِي ذَلِكَ حُجَّةً وَلَا أَلْزَمَ نَفْسَهُ الْأَخْذَ بِهِ؟ ثُمَّ رَأْيُهُمْ حُجَّةٌ فِي مُخَالَفَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَئِنْ كَانَ خَالَفَ هَؤُلَاءِ مَا رَوَوْا فَقَدْ رَوَاهُ غَيْرُهُمْ وَلَمْ يُخَالِفْهُ: كَعِكْرِمَةَ، وَعَطَاءٍ؛ وَلَا يَصِحُّ عَنْ عَطَاءٍ إلَّا الْقَوْلُ بِهِ - وَقَدْ رَوَاهُ عَنْ عَائِشَةَ، وَابْنِ عَبَّاسٍ، وَأَخَذَ بِهِ.

[26] **Qur’an references (L13235):** Qur’an 4:4 (An-Nisa).

to it, and it was narrated from ʿĀʾishah and Ibn ʿAbbās, both of whom acted upon it.

L13242 They said: "Did Ibn ʿUmar not acknowledge it?" We replied: "What of it? For indeed ʿUmar, ʿUthman, ʿAlī, ʿĀʾishah, Ibn Masʿūd, ʿAmmār, and Ibn ʿAbbās acknowledged it and acted upon it." This is among the matters in which they opposed the majority of the Companions. Rather, Ibn ʿUmar has no disagreement here, for he did not invalidate it; he merely said: "I do not acknowledge it."

L13243 The entire astonishment is that ʿUmar held the view regarding the stipulation in Ḥajj while having the Quran and Sunnah with him, yet they opposed him and clung to the claim that his son ʿAbdullāh was unaware of it.

L13244 It is authentically reported from Abdullah ibn Umar that he would declare Ihram on the Day of Tarwiyah while adhering to the Sunnah, yet they opposed him and clung to a narration attributed to Umar regarding this matter. Umar and Uthman advocated stipulating conditions in Hajj, but they opposed them despite the Sunnah supporting them, while relying on their stance to prohibit annulling Hajj in favor of Umrah since their position contradicts the Prophet's command (peace and blessings be upon him). It is as though they are obsessed with opposing the Sunnah and contradicting the Companions even when their positions align with it. These people are drowning in seas of their desires, clinging to everything that destroys the drowned. They cited Ibrahim's statement: "They used to stipulate conditions during Hajj and did not consider it a problem?" Abu Muhammad said: This is utterly corrupt discourse, revealing nothing but their flawed reasoning and frivolity, for they stipulate what is futile, invalid, and impermissible - a characteristic of those lacking intellect. All this suffices to confirm that when the Sunnah is authentically established, no one may lawfully oppose it, nor can any individual's opinion constitute evidence against it. Success is attained solely through Allah, the Most High.

L13245–13247 This is among the matters in which they contradicted the Quran, the established Sunnah, the majority of the Companions, and analogical deduction; because they They say: Whoever begins prayer and is unable to complete it

وَقَالُوا: لَمْ يَعْرِفْهُ ابْنُ عُمَرَ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ فَقَدْ عَرَفَهُ: عُمَرُ، وَعُثْمَانُ وَعَلِيٌّ، وَعَائِشَةُ، وَابْنُ مَسْعُودٍ، وَعَمَّارٌ، وَابْنُ عَبَّاسٍ، وَأَخَذُوا بِهِ، وَهَذَا مِمَّا خَالَفُوا فِيهِ جُمْهُورَ الصَّحَابَةِ بَلْ لَيْسَ لِابْنِ عُمَرَ هَاهُنَا خِلَافٌ، لِأَنَّهُ لَمْ يَقُلْ بِإِبْطَالِهِ، وَإِنَّمَا قَالَ: لَا أَعْرِفُهُ.

وَالْعَجَبُ كُلُّهُ أَنَّ عُمَرَ رَأَى الِاشْتِرَاطَ فِي الْحَجِّ وَمَعَهُ الْقُرْآنُ وَالسُّنَّةُ فَخَالَفُوهُ وَتَعَلَّقُوا فِي ذَلِكَ بِأَنَّ ابْنَهُ عَبْدَ اللَّهِ لَمْ يَعْرِفْهُ.

وَصَحَّ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ الْإِهْلَالُ يَوْمَ التَّرْوِيَةِ وَمَعَهُ السُّنَّةُ فَخَالَفُوهُ وَتَعَلَّقُوا بِرِوَايَةٍ جَاءَتْ فِي ذَلِكَ عَنْ عُمَرَ - وَقَالَ عُمَرُ، وَعُثْمَانُ، بِالِاشْتِرَاطِ فِي الْحَجِّ فَخَالَفُوهُمَا وَمَعَهُمَا السُّنَّةُ وَتَعَلَّقُوا بِهِمَا فِي الْمَنْعِ مِنْ فَسْخِ الْحَجِّ فِي عُمْرَةٍ إِذْ جَاءَ عَنْهُمَا خِلَافُ أَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَأَنَّهُمْ مُغْرَمُونَ بِمُخَالَفَةِ السُّنَنِ، وَمُخَالَفَةِ الصَّحَابَةِ فِيمَا جَاءَ عَنْهُمْ مِنْ مُوَافَقَةِ السُّنَنِ: وَالْقَوْمُ غَرْقَى فِي بِحَارِ هَوَاهُمْ وَبِكُلِّ مَا يُرْدِي الْغَرِيقَ تَعَلَّقُوا وَذَكَرُوا قَوْلَ إِبْرَاهِيمَ: كَانُوا يَشْتَرِطُونَ فِي الْحَجِّ وَلَا يَرَوْنَهُ شَيْئًا؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كَلَامٌ فِي غَايَةِ الْفَسَادِ وَلَيْسَ فِيهِ أَكْثَرُ مِنْ أَنَّهُ يَصِفُهُمْ بِفَسَادِ الرَّأْيِ وَالتَّلَاعُبِ، إِذْ يَشْتَرِطُونَ مَا لَا فَائِدَةَ فِيهِ، وَلَا يَصِحُّ، وَلَا يَجُوزُ، وَهَذِهِ صِفَةُ مَنْ لَا عَقْلَ لَهُ، وَيَكْفِي مِنْ هَذَا كُلِّهِ أَنَّ السُّنَّةَ إِذَا صَحَّتْ لَمْ يَحِلَّ لِأَحَدٍ خِلَافُهَا، وَلَمْ يَكُنْ قَوْلُ أَحَدٍ حُجَّةً فِي مُعَارَضَتِهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

standing, from bowing, and from prostration – what he is incapable of from that is waived from him.

وَهَذَا مِمَّا خَالَفُوا فِيهِ الْقُرْآنَ، وَالسُّنَّةَ الثَّابِتَةَ، وَجُمْهُورَ الصَّحَابَةِ، وَالْقِيَاسَ؛ لِأَنَّهُمْ يَقُولُونَ: مَنْ دَخَلَ فِي صَلَاةٍ فَعَجَزَ عَنْ إِتْمَامِهَا قَائِمًا، وَعَنْ الرُّكُوعِ، وَعَنْ السُّجُودِ: سَقَطَ عَنْهُ مَا لَا يَقْدِرُ عَلَيْهِ مِنْ ذَلِكَ.

L13248 Whoever begins an obligatory fast then becomes incapable of fulfilling it is exempted and not held accountable; the same applies to voluntary acts. They stated here: whoever enters into obligatory Hajj, a voluntary act, or Umrah and becomes incapable of them is not exempted. Rather, he remains obligated to perform what he is incapable of, namely reaching the House.

وَمَنْ دَخَلَ فِي صَوْمِ فَرْضٍ فَعَجَزَ عَنْ إِتْمَامِهِ: سَقَطَ عَنْهُ وَلَمْ يُكَلَّفْهُ، وَكَذَلِكَ التَّطَوُّعُ، وَقَالُوا هَاهُنَا: مَنْ دَخَلَ فِي حَجِّ فَرْضٍ، أَوْ تَطَوُّعٍ، أَوْ عُمْرَةٍ، كَذَلِكَ فَعَجَزَ عَنْهُمَا: لَمْ يَسْقُطَا عَنْهُ، بَلْ هُوَ مُكَلَّفٌ مَا لَا يَقْدِرُ عَلَيْهِ مِنْ الْوُصُولِ إِلَى الْبَيْتِ.

[مَسْأَلَةُ تَقْدِيمِ لَفْظَةِ الْعُمْرَةِ عَلَى الْحَجِّ أَوْ لَفْظَةِ الْحَجِّ عَلَى الْعُمْرَةِ]

L13249 **The Issue of Whether the Term *ʿUmrah* Precedes *Ḥajj* or Vice Versa.**

٨٣٤ - مَسْأَلَةٌ:

L13250 834 – Question:

وَأَمَّا جَوَازُ تَقْدِيمِ لَفْظَةِ الْعُمْرَةِ عَلَى الْحَجِّ، أَوْ لَفْظَةِ الْحَجِّ عَلَى الْعُمْرَةِ؛ فَلِأَنَّهُ قَالَ تَعَالَى: {وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ} [البقرة: ١٩٦] فَبَدَأَ بِلَفْظَةِ الْحَجِّ، وَصَحَّ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: لَبَّيْكَ عُمْرَةً وَحَجَّةً» وَصَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: «دَخَلَتْ الْعُمْرَةُ فِي الْحَجِّ إِلَى يَوْمِ الْقِيَامَةِ» فَلَا نُبَالِي أَيُّ ذَلِكَ قُدِّمَ فِي اللَّفْظِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L13251 As for the permissibility of placing the term “Umrah” before “Hajj” or “Hajj” before “Umrah,” it is because Allah the Exalted said: {And complete the Hajj and Umrah for Allah} [Al-Baqarah: 196], thus beginning with the term “Hajj.” It is authentically reported from the Messenger of Allah—peace and blessings be upon him—that he said: “Labbayka, Umrah and Hajj!” and it is confirmed that he—peace be upon him—said: “Umrah is included within Hajj until the Day of Resurrection.” Therefore, we do not care which term is prioritized in speech—and success is from Allah the Exalted.[27]

[مَسْأَلَةُ الْقَارِنُ إِذَا جَاءَ إِلَى مَكَّةَ]

L13252 **An issue concerning the Qārin (one combining Umrah and Hajj) when arriving in Makkah.**

٨٣٥ - مَسْأَلَةٌ:

L13253 835 - Issue:

فَإِذَا جَاءَ الْقَارِنُ إِلَى مَكَّةَ عَمِلَ فِي الطَّوَافِ وَالسَّعْيِ بَيْنَ الصَّفَا وَالْمَرْوَةِ كَمَا قُلْنَا فِي الْعُمْرَةِ إِلَّا أَنَّهُ يُسْتَحَبُّ لَهُ أَنْ يَرْمُلَ فِي الثَّلَاثِ، وَلَيْسَ ذَلِكَ فَرْضًا فِي الْحَجِّ ثُمَّ إِذَا أَتَمَّ ذَلِكَ أَقَامَ مُحْرِمًا [كَمَا هُوَ] إِلَى يَوْمِ مِنًى - وَهُوَ الثَّامِنُ مِنْ ذِي الْحِجَّةِ - فَإِذَا كَانَ الْيَوْمُ الْمَذْكُورُ

L13254 When the Qirān pilgrim arrives in Makkah, he performs the ṭawāf and saʿī between Ṣafā and Marwah as we described for the ʿUmrah, except that it is recommended for him to perform ramal during the first three circuits—

[27] **Qur’an references (L13251):** Qur’an 2:196 (Al-Baqarah).

though this is not obligatory in Hajj. Upon completing this, he remains in iḥrām as he is until the day of Minā (the eighth of Dhū al-Ḥijjah). When the aforementioned day arrives, those performing Tamattuʿ assume iḥrām for Hajj. Then the Qirān pilgrim and the Tamattuʿ pilgrim proceed to Minā, remaining there for their day and night. When the following day comes—the ninth of Dhū al-Ḥijjah—they all proceed to ʿArafah. There, the Imam and the people pray Ẓuhr after the Imam delivers a sermon. The mu'adhdhin then gives the adhān, followed by the iqāmah, and the Imam leads the people in Ẓuhr. After concluding Ẓuhr, the prayer is called to prayer with the iqāmah alone, without the adhān, and the Imam leads them in ʿAṣr immediately after the conclusion of Ẓuhr, following the sun's decline, without waiting for ʿAṣr's designated time as on other days. The people then stand in supplication. When the sun sets, they all proceed to Muzdalifah.

أَحْرَمَ بِالْحَجِّ مَنْ كَانَ مُتَمَتِّعًا ثُمَّ نَهَضَ الْقَارِنُ، وَالْمُتَمَتِّعُ إِلَى مِنًى فَيَبْقَيَانِ بِهَا نَهَارَهُمَا وَلَيْلَتَهُمَا فَإِذَا كَانَ مِنْ الْغَدِ - وَهُوَ الْيَوْمُ التَّاسِعُ مِنْ ذِي الْحِجَّةِ - نَهَضُوا كُلُّهُمْ إِلَى عَرَفَةَ فَيُصَلِّي هُنَالِكَ الْإِمَامُ وَالنَّاسُ الظُّهْرَ بَعْدَ أَنْ يَخْطُبَ النَّاسَ ثُمَّ يُؤَذِّنَ الْمُؤَذِّنُ، وَيُقِيمَ وَيُصَلِّيَ الظُّهْرَ بِالنَّاسِ، فَإِذَا سَلَّمَ مِنْ الظُّهْرِ أُقِيمَتْ الصَّلَاةُ إِقَامَةً بِلَا أَذَانٍ وَصَلَّى بِهِمْ الْعَصْرَ إِثْرَ سَلَامِهِ مِنْ الظُّهْرِ بَعْدَ زَوَالِ الشَّمْسِ لَا يَنْتَظِرُ وَقْتَ الْعَصْرِ كَمَا فِي سَائِرِ الْأَيَّامِ، ثُمَّ يَقِفُ النَّاسُ لِلدُّعَاءِ فَإِذَا غَابَتْ الشَّمْسُ نَهَضُوا كُلُّهُمْ إِلَى مُزْدَلِفَةَ.

L13255 If a person proceeds to Muzdalifah before sunset, there is no harm in that. He incurs no obligation—neither a sacrifice nor anything else—and his pilgrimage remains valid.

وَلَوْ نَهَضَ إِنْسَانٌ إِلَى مُزْدَلِفَةَ قَبْلَ غُرُوبِ الشَّمْسِ فَلَا حَرَجَ فِي ذَلِكَ، وَلَا شَيْءَ عَلَيْهِ - لَا دَمَ وَلَا غَيْرَهُ وَحَجُّهُ تَامٌّ.

L13256 When they reach Muzdalifah, the caller to prayer announces the adhan for Maghrib, then gives the iqama, and the imam leads the people in praying Maghrib. It is not valid for anyone to pray that prayer on that night before reaching Muzdalifah or before the twilight disappears. When the imam completes the prayer with the taslīm, the iqama is given without an adhan for the Isha prayer, and he leads the people in praying it. This night is the night of Eid al-Adha, and the people spend the night there. When true dawn emerges, the caller to prayer announces the adhan, the iqama is given, and the imam leads them in praying Fajr.

فَإِذَا أَتَوْا مُزْدَلِفَةَ أَذَّنَ الْمُؤَذِّنُ لِصَلَاةِ الْمَغْرِبِ، ثُمَّ أَقَامَ وَصَلَّى الْإِمَامُ بِالنَّاسِ صَلَاةَ الْمَغْرِبِ وَلَا يُجْزِئُ أَحَدًا أَنْ يُصَلِّيَهَا تِلْكَ اللَّيْلَةَ قَبْلَ مُزْدَلِفَةَ وَلَا قَبْلَ مَغِيبِ الشَّفَقِ، فَإِذَا - سَلَّمَ أُقِيمَ لِصَلَاةِ الْعَتَمَةِ إِقَامَةً بِلَا أَذَانٍ فَيُصَلِّيهَا بِالنَّاسِ، وَهِيَ لَيْلَةُ عِيدِ الْأَضْحَى وَيَبِيتُ النَّاسُ هُنَالِكَ، فَإِذَا انْصَدَعَ الْفَجْرُ أَذَّنَ الْمُؤَذِّنُ وَأُقِيمَتْ الصَّلَاةُ فَصَلَّى بِهِمْ الصُّبْحَ.

L13257–13258 Whoever does not stand at Arafat from after the sun's zenith on the Day of Arafah until the time required to depart from there, and does not attain the Fajr prayer at Muzdalifah with the Imam—his Hajj is invalid if he is a man. And whoever does not attain the Fajr prayer with the Imam at Muzdalifah—his Hajj is invalid if he is a man.

وَمَنْ لَمْ يَقِفْ بِعَرَفَةَ مِنْ بَعْدِ زَوَالِ الشَّمْسِ مِنْ يَوْمِ عَرَفَةَ إِلَى مِقْدَارِ مَا يُدْفَعُ مِنْهَا وَيُدْرِكُ بِمُزْدَلِفَةَ صَلَاةَ الصُّبْحِ مَعَ الْإِمَامِ - فَقَدْ بَطَلَ حَجُّهُ إِنْ كَانَ رَجُلًا، وَمَنْ لَمْ يُدْرِكْ مَعَ الْإِمَامِ بِمُزْدَلِفَةَ صَلَاةَ الصُّبْحِ فَقَدْ بَطَلَ حَجُّهُ إِنْ كَانَ رَجُلًا.

L13259 As for women, if they stay at Arafat until before the rising of dawn on the Day of Sacrifice or depart from Arafat after remembering Allah—Exalted

is He—therein, their Hajj is valid. Whoever among them does not stay at Arafat neither on the day of Arafah nor during the night leading into the Day of Sacrifice until dawn broke, her Hajj is invalid. And whoever among them does not stay at Muzdalifah after staying at Arafat while remembering Allah—Exalted is He—therein until the sun rose on the Day of Sacrifice, her Hajj is invalid.

وَأَمَّا النِّسَاءُ فَإِنْ وَقَفْنَ بِعَرَفَةَ إِلَى قَبْلِ طُلُوعِ الْفَجْرِ مِنْ يَوْمِ النَّحْرِ أَوْ دَفَعْنَ مِنْ عَرَفَةَ بَعْدَ ذِكْرِهِنَّ اللَّهَ - تَعَالَى - فِيهَا أَجْزَأَهُنَّ الْحَجُّ، وَمَنْ لَمْ يَقِفْ مِنْهُنَّ بِعَرَفَةَ لَا يَوْمَ عَرَفَةَ وَلَا لَيْلَةَ يَوْمِ النَّحْرِ حَتَّى طَلَعَ الْفَجْرُ، فَقَدْ بَطَلَ حَجُّهَا، وَمَنْ لَمْ تَقِفْ مِنْهُنَّ بِمُزْدَلِفَةَ بَعْدَ وُقُوفِهَا بِعَرَفَةَ وَتَذْكُرُ اللَّهَ - تَعَالَى - فِيهَا حَتَّى طَلَعَتْ الشَّمْسُ مِنْ يَوْمِ النَّحْرِ، فَقَدْ بَطَلَ حَجُّهَا.

L13260 When the Imam prays the dawn prayer with the people at Muzdalifah as we mentioned, they stand to supplicate. When the sky brightens before sunrise, they all depart to Mina. Upon arriving at Mina, we prefer for them to apply perfume after stoning Jamrah al-ʿAqabah with seven pebbles, declaring *Allāhu Akbar* with each pebble. They must not cease the Talbiyah from when they assume Ihrām for Hajj at Masjid al-Khayf or for Qirān at the Miqāt, except upon completing the stoning of the seven pebbles. When they stone it as we described, their Ihrām is completed, and they shave or cut their hair short, with shaving being superior for men.

فَإِذَا صَلَّى الْإِمَامُ كَمَا ذَكَرْنَا بِمُزْدَلِفَةَ صَلَاةَ الصُّبْحِ بِالنَّاسِ وَقَفُوا لِلدُّعَاءِ، فَإِذَا أَسْفَرَ قَبْلَ طُلُوعِ الشَّمْسِ دَفَعُوا كُلُّهُمْ إِلَى مِنًى، فَإِذَا أَتَوْا مِنًى أَحْبَبْنَا لَهُمْ التَّطَيُّبَ بَعْدَ أَنْ يَرْمُوا جَمْرَةَ الْعَقَبَةِ بِسَبْعِ حَصَيَاتٍ يُكَبِّرُونَ مَعَ كُلِّ حَصَاةٍ، وَلَا يَقْطَعُونَ التَّلْبِيَةَ مُذْ يُهِلُّونَ بِالْحَجِّ مِنْ الْمَسْجِدِ، أَوْ بِالْقِرَانِ مِنْ الْمِيقَاتِ إِلَّا مَعَ تَمَامِ رَمْيِ السَّبْعِ حَصَيَاتٍ، فَإِذَا رَمَوْهَا كَمَا ذَكَرْنَا فَقَدْ تَمَّ إحْرَامُهُمْ وَيَحْلِقُونَ أَوْ يُقَصِّرُونَ، وَالْحَلْقُ أَفْضَلُ لِلرِّجَالِ.

L13261 They slaughter the sacrificial animal if they have one. Thereafter, all garments forbidden to those in Ihrām become permissible for them. They may hunt in areas outside the Haram boundaries and use perfume, except during intercourse itself.

وَيَنْحَرُونَ الْهَدْيَ إِنْ كَانَ مَعَهُمْ، ثُمَّ قَدْ حَلَّ لَهُمْ كُلُّ مَا كَانَ مِنْ اللِّبَاسِ حَرَامًا عَلَى الْمُحْرِمِ، وَحَلَّ لَهُمْ التَّصَيُّدُ فِي الْحِلِّ، وَالتَّطَيُّبُ حَاشَا الْوَطْءَ فَقَطْ.

L13262 If they depart on their day to Makkah, circumambulate the House seven times without *khabab* in any of them, then perform Saʿī between Ṣafā and Marwah seven times—whether they are Tamattuʿ pilgrims or Qirān pilgrims who did not perform Saʿī between them upon their initial entry—then the entire Hajj or Qirān is completed, and sexual intercourse becomes permissible for them.

فَإِنْ نَهَضُوا مِنْ يَوْمِهِمْ إِلَى مَكَّةَ فَطَافُوا بِالْبَيْتِ سَبْعًا لَا خَبَبَ فِي شَيْءٍ مِنْهَا ثُمَّ سَعَى بَيْنَ الصَّفَا وَالْمَرْوَةِ سَبْعًا - إِنْ كَانَ مُتَمَتِّعًا، أَوْ إِنْ كَانَ لَمْ يَسْعَ بَيْنَهُمَا أَوَّلَ دُخُولِهِ إِنْ كَانَ قَارِنًا - فَقَدْ تَمَّ الْحَجُّ كُلُّهُ، أَوْ الْقِرَانُ كُلُّهُ وَحَلَّ لَهُمْ الْوَطْءُ.

L13263 They return to Mina and stay there for three days after the Day of Sacrifice. Each day after midday, they stone the three Jamarat with seven pebbles—seven pebbles, seven pebbles, seven pebbles—beginning with the farthest, then the middle, then Jamrah al-Aqabah, which the pilgrim had stoned on the Day of Sacrifice. The pilgrim stands for supplication at the first two

وَيَرْجِعُونَ إِلَى مِنًى فَيُقِيمُونَ بِهَا ثَلَاثَةَ أَيَّامٍ بَعْدَ يَوْمِ النَّحْرِ يَرْمُونَ كُلَّ يَوْمٍ بَعْدَ زَوَالِ الشَّمْسِ الْجَمَرَاتِ الثَّلَاثَ بِسَبْعِ حَصَيَاتٍ، سَبْعِ حَصَيَاتٍ، سَبْعِ حَصَيَاتٍ: يَبْدَأُ

Jamarat but does not stand at Jamrah al-Aqabah. When this is completed, all the rites of the pilgrim are fully completed.

بِالْقُصْوَى، ثُمَّ بِالَّتِي تَلِيهَا، ثُمَّ جَمْرَةِ الْعَقَبَةِ الَّتِي رَمَى يَوْمَ النَّحْرِ يَقِفُ عِنْدَ الْأُولَيَيْنِ لِلدُّعَاءِ، وَلَا يَقِفُ عِنْدَ جَمْرَةِ الْعَقَبَةِ؛ فَإِذَا تَمَّ ذَلِكَ، فَقَدْ تَمَّ جَمِيعُ [عَمَلِ] الْحَاجِّ.

L13264 The Qārin must eat, and it is obligatory for him to have brought the sacrificial animal with himself. He must also distribute it as ṣadaqah, and this is obligatory.

وَيَأْكُلُ الْقَارِنُ وَلَا بُدَّ مِنْ الْهَدْيِ الَّذِي سَاقَ مَعَ نَفْسِهِ وَيَتَصَدَّقُ مِنْهُ وَلَا بُدَّ.

L13265–13267 As for the *Mutamatti*, if he is not from the people of Mecca or the Sacred Sanctuary, and his household is not residing there with him, it is incumbent upon him to offer a sacrificial animal: either a head of camel or a head of cow, a sheep, or a shared portion in a head of camel or a head of cow among ten individuals or fewer—we do not mind. Whether they were performing Tamattu‘ or not, it is the same whether some of them intended his share for eating, for sale, or for the Hady. It is not valid for him to offer it unless he has entered the state of Ihram for Hajj and slaughters it in Makkah or Mina without fail, or at any time thereafter.

فَأَمَّا الْمُتَمَتِّعُ فَإِنْ كَانَ مِنْ غَيْرِ أَهْلِ مَكَّةَ وَالْحَرَمِ، وَلَمْ يَكُنْ أَهْلُهُ مَعَهُ قَاطِنِينَ هُنَالِكَ: فَفَرْضٌ عَلَيْهِ أَنْ يُهْدِيَ هَدْيًا، وَلَا بُدَّ -: إمَّا رَأْسٌ مِنْ الْإِبِلِ، أَوْ مِنْ الْبَقَرِ، وَإِمَّا شَاةٌ، وَإِمَّا نَصِيبٌ مُشْتَرَكٌ فِي رَأْسٍ مِنْ الْإِبِلِ، أَوْ فِي رَأْسٍ مِنْ الْبَقَرِ بَيْنَ عَشَرَةِ أَنْفُسٍ فَأَقَلَّ - لَا نُبَالِي مُتَمَتِّعِينَ كَانُوا أَوْ غَيْرَ مُتَمَتِّعِينَ، وَسَوَاءٌ أَرَادَ بَعْضُهُمْ حِصَّتَهُ لِلْأَكْلِ، أَوْ لِلْبَيْعِ، أَوْ لِلَّهِ دْيِ، وَلَا يُجْزِئُهُ أَنْ يُهْدِيَهُ إلَّا بَعْدَ أَنْ يُحْرِمَ بِالْحَجِّ وَيَذْبَحَهُ بِمَكَّةَ أَوْ بِمِنًى وَلَا بُدَّ، أَوْ مَتَى شَاءَ بَعْدَ ذَلِكَ.

L13268 If he is unable to offer a sacrificial animal, his obligation is to fast three days between entering the state of consecration for Hajj and the first day of the Day of Sacrifice. If he misses this period, he must delay the Tawaf of Ifadah—which is the Tawaf we mentioned on the Day of Sacrifice—until the Days of Tashreeq have ended. Then he must fast the three days, perform the Tawaf of Ifadah after completing those days of fasting, and then fast seven days once he has returned after completing all Hajj rites entirely with nothing remaining. If his family resides in Mecca and he is performing Hajj al-Tamattu’, he is not obligated to offer a sacrificial animal or fast, and he has acted righteously in all of that.

فَإِنْ لَمْ يَقْدِرْ عَلَى هَدْيٍ فَفَرْضُهُ أَنْ يَصُومَ ثَلَاثَةَ أَيَّامٍ مَا بَيْنَ أَنْ يُحْرِمَ بِالْحَجِّ إلَى أَوَّلِ يَوْمٍ مِنْ النَّحْرِ، فَإِنْ فَاتَهُ ذَلِكَ فَلْيُؤَخِّرْ طَوَافَ الْإِفَاضَةِ - وَهُوَ الطَّوَافُ الَّذِي ذَكَرْنَا يَوْمَ النَّحْرِ - إلَى أَنْ تَنْقَضِيَ أَيَّامُ التَّشْرِيقِ، ثُمَّ يَصُومَ الثَّلَاثَةَ الْأَيَّامَ؛ ثُمَّ يَطُوفَ بَعْدَ تَمَامِ صِيَامِهِنَّ طَوَافَ الْإِفَاضَةِ؛ ثُمَّ يَصُومَ سَبْعَةَ أَيَّامٍ إذَا رَجَعَ مِنْ عَمَلِ الْحَجِّ كُلِّهِ وَلَمْ يَبْقَ مِنْهُ شَيْءٌ؛ فَإِنْ كَانَ أَهْلُهُ بِمَكَّةَ لَمْ يَلْزَمْهُ إنْ كَانَ مُتَمَتِّعًا هَدْيٌ، وَلَا صِيَامٌ، وَهُوَ مُحْسِنٌ فِي كُلِّ ذَلِكَ.

[نسك التَّمَتُّع]

the rite of at-Tamattu‘

L13269

L13270 The Mutamatti’ (one performing Hajj al-Tamattu’) is one who performs Umrah while his household is not among the residents of the Sacred Sanctuary, then performs Hajj in the same year—whether he returns to his homeland,

goes back to the Miqat, or does not return. The validity of the sacrificial animal is not affected even if [the pilgrim] does not halt at Arafah, nor is a sacrificial animal obligatory upon the Qarin (one performing combined Hajj and Umrah)—whether a Meccan resident or otherwise—except for the sacrificial animal that was physically present with him at the time of his Ihram.

L13271 Whoever among those we have mentioned intends to depart from Mecca must ensure that the final act he performs is to circumambulate the Kaaba seven times. He must then depart immediately afterward, with no intervening acts—this is obligatory. If he delays for any reason, he must repeat the circumambulation when he intends to leave Mecca. If he departs without performing it, he is obligated to return without exception—even from the farthest corners of the earth—until his final act in Mecca is the circumambulation of the Kaaba.

L13272 **He omitted part of a shawṭ (circuit) in the Tawāf al-Ifāḍah - the post-return circumambulation - until he exited.**

L13273 Whoever omits any part of the Ifadah Tawaf—even a portion of one circuit—before exiting the ritual area is obligated to return and complete it. If the pilgrim departs before completing it, their Hajj is invalidated.

L13274 **He did not stone Jamrat al-Aqabah on the Day of Sacrifice nor during the remaining days of Dhu al-Hijjah.**

L13275 Whoever does not stone Jamrat al-Aqaba on the Day of Sacrifice or the remainder of Dhu al-Hijjah has invalidated his Hajj. For the *Qarin*, a single Tawaf suffices for both his Umrah and Hajj, just as it does for the *Mufrid* in Hajj, with no difference.

L13276–13280 The proof of this is what was narrated to us by Abdullah ibn Yusuf, from Ahmad ibn Fath, from Abd al-Wahhab ibn Isa, from Ahmad ibn Muhammad, from Ahmad ibn Ali, from Muslim ibn al-Hajjaj, from Abu Bakr ibn Abi Shaybah and Ishaq ibn Ibrahim (Ibn Rahawayh)—all from Hatim ibn Ismail, from Ja'far ibn Muhammad ibn Ali ibn al-Husayn, from his father (...). He said: "I said to Jabir ibn Abdullah: 'Inform me...'" Regarding the Farewell

وَالْمُتَمَتِّعُ هُوَ مَنْ اعْتَمَرَ مِمَّنْ لَيْسَ أَهْلُهُ مِنْ سُكَّانِ الْحَرَمِ ثُمَّ حَجَّ مِنْ عَامِهِ سَوَاءٌ رَجَعَ إِلَى بَلَدِهِ، أَوْ إِلَى الْمِيقَاتِ، أَوْ لَمْ يَرْجِعْ، وَلَا يَضُرُّ الْهَدْيَ أَنْ لَا يُوقَفَ بِعَرَفَةَ، وَلَا هَدْيَ عَلَى الْقَارِنِ - مَكِّيًّا كَانَ أَوْ غَيْرَ مَكِّيٍّ - حَاشَا الْهَدْيَ الَّذِي كَانَ مَعَهُ عِنْدَ إِحْرَامِهِ.

فَمَنْ أَرَادَ مِمَّنْ ذَكَرْنَا أَنْ يَخْرُجَ عَنْ مَكَّةَ فَلْيَجْعَلْ آخِرَ عَمَلٍ يَعْمَلُهُ أَنْ يَطُوفَ بِالْبَيْتِ سَبْعًا، ثُمَّ يَخْرُجَ إِثْرَ تَمَامِهِ مَوْصُولًا بِهِ وَلَا بُدَّ؛ فَإِنْ تَرَدَّدَ لِأَمْرٍ مَا أَعَادَ الطَّوَافَ إِذَا أَرَادَ الْخُرُوجَ عَنْ مَكَّةَ، فَإِنْ خَرَجَ وَلَمْ يَطُفْ فَفَرْضٌ عَلَيْهِ الرُّجُوعُ وَلَا بُدَّ - وَلَوْ مِنْ أَقْصَى الدُّنْيَا - حَتَّى يَجْعَلَ آخِرَ عَمَلِهِ بِمَكَّةَ الطَّوَافَ بِالْبَيْتِ

[تَرَكَ مِنْ طَوَافِ الْإِفَاضَةِ بَعْضَ شَوْطٍ حَتَّى خَرَجَ]

وَمَنْ تَرَكَ مِنْ طَوَافِ الْإِفَاضَةِ - وَلَوْ بَعْضَ شَوْطٍ حَتَّى خَرَجَ -: فَفَرْضٌ عَلَيْهِ الرُّجُوعُ حَتَّى يُتِمَّهُ؛ فَإِنْ خَرَجَ ذُو الْحِجَّةِ قَبْلَ أَنْ يُتِمَّهُ فَقَدْ بَطَلَ حَجُّهُ.

[لَمْ يَرْمِ جَمْرَةَ الْعَقَبَةِ يَوْمَ النَّحْرِ أَوْ بَاقِيَ ذِي الْحِجَّةِ]

وَمَنْ لَمْ يَرْمِ جَمْرَةَ الْعَقَبَةِ يَوْمَ النَّحْرِ أَوْ بَاقِيَ ذِي الْحِجَّةِ فَقَدْ بَطَلَ حَجُّهُ؛ وَيُجْزِئُ الْقَارِنَ طَوَافٌ وَاحِدٌ لِعُمْرَتِهِ وَحَجِّهِ، كَالْمُفْرِدِ بِالْحَجِّ وَلَا فَرْقَ.

بُرْهَانُ ذَلِكَ: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ نَا أَحْمَدُ بْنُ فَتْحٍ نَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نَا أَحْمَدُ بْنُ مُحَمَّدٍ نَا أَحْمَدُ بْنُ عَلِيٍّ نَا مُسْلِمُ بْنُ الْحَجَّاجِ نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - جَمِيعًا عَنْ حَاتِمِ بْنِ إِسْمَاعِيلَ عَنْ جَعْفَرِ بْنِ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ أَبِيهِ (...) قَالَ: قُلْتُ لِجَابِرِ بْنِ عَبْدِ اللَّهِ: أَخْبِرْنِي عَنْ حَجَّةِ الْوَدَاعِ؟

فَقَالَ جَابِرٌ - فَذَكَرَ حَدِيثًا - وَفِيهِ «فَخَرَجْنَا مَعَهُ حَتَّى أَتَيْنَا ذَا الْحُلَيْفَةِ - فَذَكَرَ كَلَامًا - ثُمَّ قَالَ فَصَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمَسْجِدِ، ثُمَّ رَكِبَ الْقَصْوَاءَ - فَذَكَرَ كَلَامًا - ثُمَّ قَالَ: حَتَّى إِذَا أَتَيْنَا الْبَيْتَ مَعَهُ اسْتَلَمَ الرُّكْنَ فَرَمَلَ ثَلَاثًا وَمَشَى أَرْبَعًا، ثُمَّ نَفَذَ إِلَى مَقَامِ إِبْرَاهِيمَ فَقَرَأَ {وَاتَّخِذُوا مِنْ مَقَامِ إِبْرَاهِيمَ مُصَلًّى} [البقرة: ١٢٥] فَجَعَلَ الْمَقَامَ بَيْنَهُ وَبَيْنَ الْبَيْتِ. . . ثُمَّ رَجَعَ إِلَى الرُّكْنِ فَاسْتَلَمَهُ، ثُمَّ خَرَجَ مِنْ الْبَابِ إِلَى الصَّفَا، فَلَمَّا دَنَا مِنْ الصَّفَا قَرَأَ {إِنَّ الصَّفَا وَالْمَرْوَةَ مِنْ شَعَائِرِ اللَّهِ} [البقرة: ١٥٨] أَبْدَأُ بِمَا بَدَأَ اللَّهُ بِهِ، فَبَدَأَ بِالصَّفَا فَرَقِيَ عَلَيْهِ حَتَّى رَأَى الْبَيْتَ فَاسْتَقْبَلَ الْقِبْلَةَ، فَوَحَّدَ اللَّهَ وَكَبَّرَهُ وَقَالَ: لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ، لَهُ الْمُلْكُ، وَلَهُ الْحَمْدُ، وَهُوَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ، لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ، أَنْجَزَ وَعْدَهُ، وَنَصَرَ عَبْدَهُ، وَهَزَمَ الْأَحْزَابَ وَحْدَهُ. ثُمَّ دَعَا بَيْنَ ذَلِكَ قَالَ مِثْلَ هَذَا ثَلَاثَ مَرَّاتٍ، ثُمَّ نَزَلَ إِلَى الْمَرْوَةِ حَتَّى انْصَبَّتْ قَدَمَاهُ فِي بَطْنِ الْوَادِي حَتَّى إِذَا صَعِدَتَا مَشَى حَتَّى أَتَى الْمَرْوَةَ قَالَ: لَوْ أَنِّي اسْتَقْبَلْتُ مِنْ أَمْرِي مَا اسْتَدْبَرْتُ لَمْ أَسُقْ الْهَدْيَ وَجَعَلْتُهَا عُمْرَةً، فَمَنْ كَانَ مِنْكُمْ لَيْسَ مَعَهُ هَدْيٌ فَلْيَحِلَّ وَلْيَجْعَلْهَا عُمْرَةً فَقَامَ سُرَاقَةُ بْنُ مَالِكِ بْنِ جُعْشُمٍ فَقَالَ: يَا رَسُولَ اللَّهِ أَلِعَامِنَا هَذَا أَمْ لِلْأَبَدِ؟ - فَشَبَّكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَصَابِعَهُ وَاحِدَةً فِي الْأُخْرَى وَقَالَ: دَخَلَتْ الْعُمْرَةُ فِي الْحَجِّ مَرَّتَيْنِ - لَا، بَلْ لِأَبَدِ أَبَدٍ، وَقَدِمَ عَلِيٌّ مِنْ الْيَمَنِ بِبُدْنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَجَدَ فَاطِمَةَ مِمَّنْ حَلَّ، وَلَبِسَتْ ثِيَابًا صَبِيغًا فَأَنْكَرَ ذَلِكَ عَلَيْهَا فَقَالَتْ: إِنِّي أُمِرْتُ بِهَذَا. . . فَأَخْبَرَ عَلِيٌّ بِذَلِكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: صَدَقَتْ صَدَقَتْ مَاذَا قُلْتَ حِينَ فَرَضْتَ الْحَجَّ؟ قَالَ: قُلْتُ: اللَّهُمَّ إِنِّي أُهِلُّ بِمَا أَهَلَّ بِهِ رَسُولُكَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: فَإِنَّ مَعِي الْهَدْيَ فَلَا تَحِلُّ. . . فَحَلَّ النَّاسُ كُلُّهُمْ

Pilgrimage? Jābir said—he related a narration—and within it: "We departed with him until we reached Dhul-Hulayfah"—he mentioned some details—then said: "Allah's Messenger (peace be upon him) prayed in the mosque, then mounted Al-Qaṣwā"—he related further—then said: "When we reached the House with him, he touched the Black Stone, performed Ramal three times and walked four times. He then proceeded to the Station of Ibrāhīm and recited: {Take the Station of Ibrāhīm as a place of prayer} [2:125], placing the Station between himself and the Kaʿbah... He returned to the Black Stone, touched it, then exited through the gate toward Ṣafā. As he approached Ṣafā, he recited: {Indeed, Ṣafā and Marwah are among the symbols of Allah} [2:158], saying: 'I begin with what Allah began.' He ascended Ṣafā until he saw the Kaʿbah, faced the qiblah, declared Allah's oneness, glorified Him, and proclaimed: 'There is no deity but Allah alone, with no partner. To Him belongs all sovereignty and praise, and He is omnipotent. There is no deity but Allah alone—He fulfilled His promise, granted victory to His servant, and vanquished the confederates alone.' He supplicated between that similarly three times, then descended to Marwah, hastening until his feet sank into the valley's base. When ascending, he walked until reaching Marwah. He then said: 'Had I known beforehand what I later realized, I would not have driven sacrificial animals and would have made this an ʿUmrah. Let whoever among you has no sacrificial animal exit iḥrām and make it ʿUmrah.' Surāqah ibn Mālik ibn Juʿshum stood and asked: 'O Messenger of Allah, is this for our year alone or forever?' Allah's Messenger (peace be upon him) intertwined his fingers once into the other and said: "ʿUmrah has been incorporated into Ḥajj twice. No, rather it is forever, forever." ʿAlī arrived from Yemen with the Prophet's sacrificial camels and found Fāṭimah among those who had exited iḥrām, wearing dyed garments. He objected to her, and she said: 'I was commanded to do this...' ʿAlī informed the Prophet (peace be upon him), who affirmed: 'She spoke truthfully. What did you say when you undertook Ḥajj?' ʿAlī replied: 'I said: "O Allah, I commence as Your Messenger commenced."' The Prophet said: 'I have sacrificial animals; thus, do not exit iḥrām...' All people exited iḥrām and shortened their hair except the Prophet and those with sacrificial animals. On the Day of Tarwiyah, they departed to Minā, entering iḥrām for Ḥajj. Allah's Messenger (peace be upon him)

وَقَصَّرُوا إِلَّا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَنْ كَانَ مَعَهُ هَدْيٌ، فَلَمَّا كَانَ يَوْمُ التَّرْوِيَةِ تَوَجَّهُوا إِلَى مِنًى فَأَهَلُّوا بِالْحَجِّ وَرَكِبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَصَلَّى بِهَا الظُّهْرَ وَالْعَصْرَ وَالْمَغْرِبَ وَالْعِشَاءَ وَالْفَجْرَ، ثُمَّ مَكَثَ قَلِيلًا حَتَّى طَلَعَتْ الشَّمْسُ وَأَمَرَ بِقُبَّةٍ مِنْ شَعَرٍ فَضُرِبَتْ لَهُ بِنَمِرَةَ فَسَارَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. . . حَتَّى أَتَى عَرَفَةَ. . . فَنَزَلَ فِي الْقُبَّةِ بِنَمِرَةَ حَتَّى إِذَا زَاغَتْ الشَّمْسُ أَمَرَ بِالْقَصْوَاءِ فَرُحِلَتْ لَهُ فَأَتَى بَطْنَ الْوَادِي فَخَطَبَ النَّاسَ فَقَالَ: إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ كَحُرْمَةِ يَوْمِكُمْ هَذَا فِي شَهْرِكُمْ هَذَا فِي بَلَدِكُمْ هَذَا - ثُمَّ ذَكَرَ كَلَامًا كَثِيرًا - ثُمَّ أَذَّنَ، ثُمَّ أَقَامَ فَصَلَّى الظُّهْرَ ثُمَّ أَقَامَ فَصَلَّى الْعَصْرَ وَلَمْ يُصَلِّ بَيْنَهُمَا شَيْئًا، ثُمَّ رَكِبَ - عَلَيْهِ السَّلَامُ - حَتَّى أَتَى الْمَوْقِفَ فَجَعَلَ بَطْنَ نَاقَتِهِ الْقَصْوَاءِ إِلَى الصَّخَرَاتِ، وَجَعَلَ حَبْلَ الْمُشَاةِ بَيْنَ يَدَيْهِ وَاسْتَقْبَلَ الْقِبْلَةَ فَلَمْ يَزَلْ وَاقِفًا حَتَّى غَرَبَتْ الشَّمْسُ وَذَهَبَتْ الصُّفْرَةُ قَلِيلًا. . . وَأَرْدَفَ أُسَامَةَ خَلْفَهُ وَدَفَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ شَنَقَ لِلْقَصْوَاءِ الزِّمَامَ، وَقَالَ: أَيُّهَا النَّاسُ السَّكِينَةَ السَّكِينَةَ، كُلَّمَا أَتَى جَبَلًا مِنْ الْجِبَالِ أَرْخَى لَهَا قَلِيلًا حَتَّى تَصْعَدَ، حَتَّى أَتَى الْمُزْدَلِفَةَ فَصَلَّى بِهَا الْمَغْرِبَ وَالْعِشَاءَ بِأَذَانٍ وَاحِدٍ وَإِقَامَتَيْنِ، وَلَمْ يُسَبِّحْ بَيْنَهُمَا شَيْئًا، ثُمَّ اضْطَجَعَ - عَلَيْهِ السَّلَامُ - حَتَّى طَلَعَ الْفَجْرُ فَصَلَّى الْفَجْرَ حِينَ تَبَيَّنَ لَهُ الصُّبْحُ بِأَذَانٍ وَإِقَامَةٍ، ثُمَّ رَكِبَ الْقَصْوَاءَ حَتَّى أَتَى الْمَشْعَرَ الْحَرَامَ فَاسْتَقْبَلَ الْقِبْلَةَ فَدَعَا اللَّهَ تَعَالَى وَكَبَّرَهُ وَهَلَّلَهُ وَوَحَّدَهُ، فَلَمْ يَزَلْ وَاقِفًا حَتَّى أَسْفَرَ جِدًّا فَدَفَعَ قَبْلَ أَنْ تَطْلُعَ الشَّمْسُ، وَأَرْدَفَ الْفَضْلَ بْنَ الْعَبَّاسِ حَتَّى أَتَى بَطْنَ مُحَسِّرٍ فَحَرَّكَ قَلِيلًا، ثُمَّ سَلَكَ الطَّرِيقَ الْوُسْطَى الَّتِي تَخْرُجُ عَلَى الْجَمْرَةِ الْكُبْرَى حَتَّى أَتَى الْجَمْرَةَ الَّتِي عِنْدَ الشَّجَرَةِ فَرَمَاهَا بِسَبْعِ حَصَيَاتٍ يُكَبِّرُ مَعَ كُلِّ حَصَاةٍ مِنْهَا مِثْلَ حَصَى الْخَذْفِ، رَمَى مِنْ بَطْنِ

rode and prayed Dhuhr, ʿAṣr, Maghrib, ʿIshāʾ, and Fajr there. After sunrise, he ordered a goat-hair tent pitched at Namirah. He then journeyed until reaching ʿArafah... He remained in the tent until the sun passed its zenith, then commanded Al-Qaṣwā be saddled. Proceeding to the valley's center, he addressed the people: 'Your blood and wealth are sacred to you as the inviolability of your day this, in your month this, in your land this...' He continued extensively—then gave the adhān, followed by the iqāmah, and prayed Dhuhr. Then he gave the iqāmah and prayed ʿAṣr." He did not perform any voluntary prayers between them; then he rode—peace be upon him—until he reached *ʻArafah*, positioning the belly of his she-camel Al-Qaṣwā' toward the rocks, placing the path of those on foot before him, and facing the *qiblah*. He remained standing until the sun set and the yellow twilight had subsided slightly… He seated Usāmah behind him, and the Messenger of Allah—may Allah bless him and grant him peace—departed, tightening Al-Qaṣwā's reins, saying, "O people, remain calm! Remain calm!" Whenever he approached a mountain, he slackened the reins slightly for her to ascend until reaching *Muzdalifah*. There he prayed *Maghrib* and *'Ishā'* with one *adhān* and two *iqāmahs*, without performing any voluntary prayers between them. Then he lay down—peace be upon him—until dawn appeared. He prayed *Fajr* when the dawn became distinct to him, with an *adhān* and *iqāmah*. Then he mounted Al-Qaṣwā' until reaching *Mashʿar al-Ḥarām*, faced the *qiblah*, supplicated to Allah the Exalted, uttered *Takbīr* ("Allāhu Akbar"), declared *Tahlīl* ("Lā ilāha illā Allāh"), and affirmed *Tawḥīd* (divine oneness). He remained standing until full daylight emerged, then departed before sunrise, seating Al-Faḍl ibn ʿAbbās behind him until reaching the valley of Muḥassir, where he urged his camel forward briefly. He then took the middle path leading to the major *Jamrah*, arriving at the *Jamrah* near the tree. He stoned it with seven pebbles—the size of those used for pelting—uttering "Allāhu Akbar" with each, throwing from the valley's bed. He proceeded to the slaughtering place, sacrificing sixty-three camels. He instructed ʿAlī to slaughter the remainder, sharing in his offering. He ordered a portion from each camel to be placed in a pot, cooked it, and they ate the meat and drank the broth. The Messenger of Allah—may Allah bless him and grant him peace—then rode and proceeded to the House, praying

Ẓuhr in Mecca. He went to *Zamzam*, took a bucket, and drank from it.[28][29]

الْوَادِي، ثُمَّ انْصَرَفَ إِلَى الْمَنْحَرِ فَنَحَرَ ثَلَاثًا وَسِتِّينَ بَدَنَةً ثُمَّ أَعْطَى عَلِيًّا فَنَحَرَ مَا غَبَرَ وَأَشْرَكَهُ فِي هَدْيِهِ. ثُمَّ أَمَرَ مِنْ كُلِّ بَدَنَةٍ بِبِضْعَةٍ فَجُعِلَتْ فِي قِدْرٍ فَطُبِخَتْ فَأَكَلَا مِنْ لَحْمِهَا وَشَرِبَا مِنْ مَرَقِهَا، ثُمَّ رَكِبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَفَاضَ إِلَى الْبَيْتِ فَصَلَّى بِمَكَّةَ الظُّهْرَ. ثُمَّ أَتَى زَمْزَمَ فَتَنَاوَلَ دَلْوًا فَشَرِبَ مِنْهُ» .

L13281 Abū Muḥammad said: All that is in this narration—supplication, manner of walking, and the like—do not avoid any part of it, for all of it is a recommended Sunnah.

قَالَ أَبُو مُحَمَّد: كُلُّ مَا فِي هَذَا الْخَبَرِ مِنْ دُعَاءٍ، وَصِفَةِ مَشْيٍ، وَغَيْرِ ذَلِكَ لَا تَحَاشَ شَيْئًا، فَهُوَ كُلُّهُ سُنَّةٌ مُسْتَحَبَّةٌ

L13282 ## He departed from ʿArafah before sunset.

[دَفَعَ مِنْ عَرَفَةَ قَبْلَ غُرُوبِ الشَّمْسِ]

L13283 As for our statement: "Whoever proceeds from Arafah before sunset, their Hajj is complete, and no obligation remains upon them," and the obligation of the prescribed standing at Arafah as we mentioned—this is based on what Abdullah ibn Rabīʿ narrated to us, Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us, Isḥāq ibn Ibrāhīm narrated to us, Wakīʿ narrated to us, Sufyān al-Thawrī narrated from Bukayr ibn ʿAṭāʾ, from ʿAbd al-Raḥmān ibn Yaʿmur al-Dīlī, who said: "I witnessed the Messenger of Allah—peace and blessings be upon him—at Arafah when he was asked about Hajj. He replied: 'Hajj is Arafah. Whoever attains the night of Arafah before the dawn of the night of Jamʿ has indeed fulfilled it.'"

وَأَمَّا قَوْلُنَا: مَنْ دَفَعَ مِنْ عَرَفَةَ قَبْلَ غُرُوبِ الشَّمْسِ فَحَجُّهُ تَامٌّ وَلَا شَيْءَ عَلَيْهِ، وَوُجُوبُ فَرْضِ الْوُقُوفِ بِعَرَفَةَ كَمَا ذَكَرْنَا -: فَلِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ أَنَا وَكِيعٌ نَا سُفْيَانُ هُوَ الثَّوْرِيُّ - عَنْ بُكَيْرِ بْنِ عَطَاءٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَعْمُرَ الدِّيلِيِّ قَالَ «شَهِدْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِعَرَفَةَ - وَسُئِلَ عَنْ الْحَجِّ -؟ فَقَالَ: الْحَجُّ عَرَفَةُ فَمَنْ أَدْرَكَ لَيْلَةَ عَرَفَةَ قَبْلَ طُلُوعِ الْفَجْرِ مِنْ لَيْلَةِ جَمْعٍ فَقَدْ أَدْرَكَ» .

L13284–13285 And through him to Aḥmad ibn Shuʿayb: I am Ismāʿīl ibn Masʿūd al-Jaḥdarī, from Khālid—that is, ibn al-Ḥārith—from Shuʿbah, from ʿAbd Allāh ibn Abī al-Safar, who said: I heard al-Shaʿbī say: ʿUrwah ibn Muḍarris ibn Aws ibn Ḥārithah ibn Lām al-Ṭāʾī narrated to me, saying: I came to the Messenger of Allah—peace and blessings be upon him—at Jamʿ and asked him, "Do I have a valid Hajj?" He replied, "Whoever prayed this prayer with us, performed the

وَبِهِ إِلَى أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إِسْمَاعِيلُ بْنُ مَسْعُودٍ الْجَحْدَرِيُّ نَا خَالِدٌ هُوَ ابْنُ الْحَارِثِ - عَنْ شُعْبَةَ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ قَالَ: سَمِعْتُ الشَّعْبِيَّ يَقُولُ: حَدَّثَنِي «عُرْوَةُ بْنُ مُضَرِّسِ بْنِ أَوْسِ بْنِ حَارِثَةَ بْنِ لَامٍ الطَّائِيُّ قَالَ: أَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِجَمْعٍ فَقُلْتُ لَهُ: هَلْ لِي مِنْ حَجٍّ؟ فَقَالَ: مَنْ صَلَّى هَذِهِ الصَّلَاةَ مَعَنَا وَوَقَفَ هَذَا

[28] **Hadith references (L13276):** Sahih Muslim 1218a; Sahih Muslim 2723c; Sunan an-Nasai 1343.

[29] **Qur'an references (L13276):** Qur'an 2:125 (Al-Baqarah); Qur'an 2:158 (Al-Baqarah); Qur'an 64:1 (At-Taghabun).

standing at this site until departing, and had already departed beforehand from Arafat—whether by night or day—his Hajj is complete, and he has fulfilled his ritual obligations." Abū Ḥanīfah and al-Shāfiʿī said: If one departs from Arafat by day, his Hajj is complete, but he must offer a blood sacrifice.[30]

الْمَوْقِفَ حَتَّى يُفِيضَ، وَأَفَاضَ قَبْلَ ذَلِكَ مِنْ عَرَفَاتٍ لَيْلًا أَوْ نَهَارًا فَقَدْ تَمَّ حَجُّهُ وَقَضَى تَفَثَهُ» . وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: إِنْ أَفَاضَ مِنْهَا نَهَارًا فَحَجُّهُ تَامٌّ وَعَلَيْهِ دَمٌ.

L13286 Malik said: "If he does not stand there at night, there is no Hajj for him." Those who followed him argued: "Did the Messenger of Allah—peace and blessings be upon him—not stand there in the first part of the night?" We replied: "But he also performed the standing during the day," so they invalidated the Hajj of anyone who did not stand there during the day.

وَقَالَ مَالِكٌ: إِنْ لَمْ يَقِفْ بِهَا لَيْلًا فَلَا حَجَّ لَهُ، وَاحْتَجَّ لَهُ مَنْ قَلَّدَهُ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَفَ بِهَا فِي أَوَّلِ اللَّيْلِ؟ فَقُلْنَا: وَوَقَفَ نَهَارًا، فَأَبْطَلُوا حَجَّ مَنْ لَمْ يَقِفْ بِهَا نَهَارًا.

L13287 They said: "He (peace be upon him) said, 'Whoever attains the night of Arafah before dawn has indeed attained it'?" We said: "And he (peace be upon him) has said, 'Whoever departs from Arafat before that, whether by night or day, has indeed attained it.'" So they persisted.

فَقَالُوا: قَدْ قَالَ - عَلَيْهِ السَّلَامُ -، «مَنْ أَدْرَكَ لَيْلَةَ عَرَفَةَ قَبْلَ طُلُوعِ الْفَجْرِ فَقَدْ أَدْرَكَ» ؟ فَقُلْنَا: وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «وَأَفَاضَ قَبْلَ ذَلِكَ مِنْ عَرَفَاتٍ لَيْلًا أَوْ نَهَارًا فَقَدْ أَدْرَكَ» فَبَلَّحُوا.

L13288 They presented a rare argument, asserting that the meaning of His statement "by night or by day" is "by night and by day," just as Allah the Exalted said: {And do not obey from among them a sinner or a disbeliever} [Al-Insan 24]. We replied: This is an explicit lie against Allah the Exalted and His Messenger, peace be upon him. Had it been as you interpreted it, the Prophet, peace be upon him, would only be prohibited from obeying a sinner among them if that sinner were also a disbeliever. No Muslim would utter such a claim. Rather, the Prophet, peace be upon him, is prohibited from obeying both the sinner and the disbeliever among them, even if the sinner is not a disbeliever.[31]

فَأَتَوْا بِنَادِرَةٍ، وَهِيَ أَنَّهُمْ قَالُوا: مَعْنَى قَوْلِهِ " لَيْلًا أَوْ نَهَارًا " إِنَّمَا هُوَ لَيْلًا وَنَهَارًا كَمَا قَالَ - تَعَالَى -: {وَلا تُطِعْ مِنْهُمْ آثِمًا أَوْ كَفُورًا} [الإنسان: ٢٤] ؟ فَقُلْنَا: هَذَا الْكَذِبُ عَلَى اللَّهِ - تَعَالَى - وَعَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صُرَاحًا، وَلَوْ كَانَ كَمَا تَأَوَّلْتُمُوهُ لَمَا كَانَ - عَلَيْهِ السَّلَامُ - مَنْهِيًّا عَنْ أَنْ يُطِيعَ مِنْهُمْ آثِمًا إِلَّا حَتَّى يَكُونَ كَفُورًا، وَهَذَا لَا يَقُولُهُ مُسْلِمٌ، بَلْ هُوَ - عَلَيْهِ السَّلَامُ - مَنْهِيٌّ عَنْ أَنْ يُطِيعَ مِنْهُمُ الْآثِمَ، وَالْكَفُورَ، وَإِنْ لَمْ يَكُنِ الْآثِمُ كَفُورًا.

L13289 Moreover, if your invalid interpretation of the narration were valid, then no one's Hajj would be valid unless they stood there during both day and night. Yet this contradicts your own position, given that the Prophet—peace be upon him—only stood there during the day and departed from it immediately after the complete setting of the sun's disk at the onset of night. Departure is not termed standing; rather, it is moving away from it.

ثُمَّ لَوْ صَحَّ لَكُمْ فِي الْخَبَرِ تَأْوِيلُكُمُ الْفَاسِدُ لَكَانَ لَا يَصِحُّ لِأَحَدٍ حَجٌّ حَتَّى يَقِفَ بِهَا نَهَارًا وَلَيْلًا مَعًا، وَهَذَا خِلَافُ قَوْلِكُمْ مَعَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقِفْ بِهَا إِلَّا نَهَارًا وَدَفَعَ مِنْهَا إِثْرَ تَمَامِ غُرُوبِ الْقُرْصِ فِي أَوَّلِ اللَّيْلِ، وَالدَّفْعُ لَا يُسَمَّى وُقُوفًا، بَلْ هُوَ زَوَالٌ عَنْهَا.

[30] **Hadith references (L13285):** Sunan an-Nasai 3042.
[31] **Qur'an references (L13288):** Qur'an 76:24 (Al-Insan).

وَذَكَرُوا خَبَرًا فَاسِدًا رُوِّينَاهُ مِنْ طَرِيقِ إِبْرَاهِيمَ بْنِ حَمَّادٍ عَنْ أَبِي عَوْنٍ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَوْنٍ عَنْ دَاوُد بْنِ جُبَيْرٍ عَنْ أَبِي هَاشِمٍ رَحْمَةَ بْنِ مُصْعَبٍ الْفَرَّاءِ الْوَاسِطِيِّ عَنْ ابْنِ أَبِي لَيْلَى عَنْ عَطَاءٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ وَقَفَ بِعَرَفَاتٍ بِلَيْلٍ فَقَدْ أَدْرَكَ الْحَجَّ وَمَنْ فَاتَهُ عَرَفَاتٌ بِلَيْلٍ فَقَدْ فَاتَهُ الْحَجُّ» .

They mentioned an unsound narration which we have narrated through the chain of Ibrāhīm ibn Ḥammād from Abī ʿAwn Muḥammad ibn ʿAmr ibn ʿAwn from Dāwūd ibn Jubayr from Abū Hāshim Raḥmah ibn Muṣʿab al-Farrāʾ al-Wāsiṭī from Ibn Abī Laylā from ʿAṭāʾ from Nāfiʿ from Ibn ʿUmar, who said: The Messenger of Allah (peace be upon him) said, “Whoever performs Wuqūf at Arafat during the night has fulfilled Hajj, and whoever misses Arafat at night has failed to perform Hajj.”

قَالَ أَبُو مُحَمَّد: هَذَا عَوْرَةٌ لِأَنَّ أَبَا عَوْنِ بْنَ عَمْرٍو، وَرَحْمَةَ بْنَ مُصْعَبٍ، وَدَاوُد بْنَ جُبَيْرٍ مَجْهُولُونَ لَا يُدْرَى مَنْ هُمْ وَابْنُ أَبِي لَيْلَى سَيِّئُ الْحِفْظِ، وَعَلَى هَذَا الْخَبَرِ يَبْطُلُ حَجُّ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّهُ لَمْ يَقِفْ بِعَرَفَةَ بِلَيْلٍ إنَّمَا دَفَعَ مِنْهَا فِي أَوَّلِ أَوْقَاتِ اللَّيْلِ.

Abu Muhammad said: This is a defect because Abu Awn ibn Amr, Rahmah ibn Mus’ab, and Dawud ibn Jubayr are unknown – their identities are unrecognized – and Ibn Abi Layla is weak in memorization. By this report, the Hajj of the Prophet (peace be upon him) becomes invalid, for he did not remain in Arafat during the night but rather moved on from it at the beginning of the night’s timings.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ أَنَا ابْنُ أَبِي لَيْلَى نَا عَطَاءٌ يَرْفَعُ الْحَدِيثَ قَالَ «مَنْ أَدْرَكَ عَرَفَةَ بِلَيْلٍ فَقَدْ أَدْرَكَ الْحَجَّ وَمَنْ فَاتَهُ عَرَفَاتٌ بِلَيْلٍ فَقَدْ فَاتَهُ الْحَجُّ» وَهَذَا مُرْسَلٌ، وَمَعَ ذَلِكَ فَلَيْسَ فِيهِ بَيَانٌ جَلِيٌّ بِأَنَّهُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَابْنُ أَبِي لَيْلَى سَيِّئُ الْحِفْظِ، وَهَذَا مِمَّا تَرَكَ فِيهِ الْحَنَفِيُّونَ الْمُرْسَلَ.

From the narration of Sa’id ibn Mansur: Hushaym reported to us, from Ibn Abi Layla, from ’Ata’, who elevated the hadith [to the Prophet], saying: “Whoever reaches ’Arafah at night has indeed attained Hajj, and whoever misses ’Arafah at night has indeed missed Hajj.” This is a mursal narration, and despite that, it does not contain a clear statement attributing it to the Messenger of Allah (peace be upon him). Ibn Abi Layla is weak in memory, and this is among the instances where the Hanafis rejected the mursal narration.

وَخَبَرٌ مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ، نَا ابْنُ أَبِي نَافِعٍ عَنْ الْمُنْكَدِرِ بْنِ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ أَبِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَدْفَعُوا مِنْ عَرَفَةَ وَمُزْدَلِفَةَ حَتَّى يَدْفَعَ الْإِمَامُ» .

A narration transmitted through the chain of ʿAbd al-Malik ibn Ḥabīb al-Andalusī, who reported to us from Ibn Abī Nāfiʿ, from al-Munkadir ibn Muḥammad ibn al-Munkadir, from his father, that the Messenger of Allah—may Allah bless him and grant him peace—said: “Do not depart from ʿArafah and Muzdalifah until the Imam departs.”

وَهَذَا لَا شَيْءَ، لِوُجُوهٍ -: أَحَدُهَا: أَنَّهُ مُرْسَلٌ، وَالثَّانِي: أَنَّ فِيهِ ثَلَاثَةً ضُعَفَاءَ فِي نَسَقٍ وَثَالِثُهَا: أَنَّهُ لَيْسَ فِيهِ إيجَابُ الْوُقُوفِ بِعَرَفَةَ لَيْلًا أَصْلًا، وَالرَّابِعُ: أَنَّهُ مُخَالِفٌ لِقَوْلِهِمْ؛ لِأَنَّهُمْ لَا يُبْطِلُونَ حَجَّ مَنْ دَفَعَ قَبْلَ الْإِمَامِ مِنْ عَرَفَةَ، وَلَا مِنْ مُزْدَلِفَةَ.

This is baseless for several reasons: First, it is mursal; second, it contains three weak individuals in succession; third, it does not impose any obligation whatsoever to stand at Arafah during the night; fourth, it contradicts their stated view, as they do not invalidate the Hajj of one who moved on from Arafah before the Imam, nor from Muzdalifah.

And among them is a narration from the path of ʿAbd al-Malik ibn Ḥabīb,

from Abū Muʿāwiyah al-Madanī, from. Yazīd ibn ʻIyāḍ—he is the son of Juʿdubah—narrates from ʻAmr ibn Shuʿayb that the Messenger of Allah (peace be upon him) said: "Whoever passes through the valley of ʻUrnah before the sun sets has no Hajj for him." This is a flawed narration, for ʻAbd al-Malik is rejected, Abū Muʿāwiyah is unknown, Yazīd is a liar, and the narration is mursal. Moreover, it contradicts their established position, for the valley of ʻUrnah is part of the sacred precinct—distinct from ʻArafah—and thus there is no obligation at all to stand in ʻArafah at night.

وَمِنْهَا: خَبَرٌ مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ عَنْ أَبِي مُعَاوِيَةَ الْمَدَنِيِّ عَنْ يَزِيدَ بْنِ عِيَاضٍ هُوَ ابْنُ جُعْدُبَةَ - عَنْ عَمْرِو بْنِ شُعَيْبٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَجَازَ بَطْنَ عُرَنَةَ قَبْلَ أَنْ تَغِيبَ الشَّمْسُ فَلَا حَجَّ لَهُ» ؟ وَهَذِهِ بَلِيَّةٌ، لِأَنَّ عَبْدَ الْمَلِكِ سَاقِطٌ وَأَبَا مُعَاوِيَةَ مَجْهُولٌ، وَيَزِيدَ كَذَّابٌ ثُمَّ هُوَ مُرْسَلٌ؛ ثُمَّ إنَّهُ مُخَالِفٌ لِقَوْلِهِمْ؛ لِأَنَّ بَطْنَ عُرَنَةَ مِنْ الْحَرَمِ - وَهُوَ غَيْرُ عَرَفَةَ - فَلَيْسَ فِيهِ وُجُوبُ الْوُقُوفِ لَيْلًا بِعَرَفَةَ أَصْلًا.

L13299 A report we narrated through the chain of ʿAbd al-Razzāq from Maʿmar from a man from Saʿīd ibn Jubayr, who said: The Messenger of Allāh—peace and blessings be upon him—declared: "Indeed, we do not depart until the sun sets—referring to departure from ʿArafāt—while the people of the pre-Islamic era would not depart from Muzdalifah until the sun rose. We depart before that time; our practice contradicts theirs." Abū Muḥammad remarked: This is baseless, as it is a mursal narration transmitted by an unnamed man. Moreover, scholars contradict it, for they do not invalidate the Ḥajj of one who departs from Muzdalifah after sunrise or who never stopped there at all.

وَخَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّا لَا نَدْفَعُ حَتَّى تَغْرُبَ الشَّمْسُ - يَعْنِي مِنْ عَرَفَاتٍ - وَإِنَّ أَهْلَ الْجَاهِلِيَّةِ كَانُوا لَا يُفِيضُونَ مِنْ جَمْعٍ حَتَّى تَطْلُعَ الشَّمْسُ، وَإِنَّا نَدْفَعُ قَبْلَ ذَلِكَ، هَدْيُنَا مُخَالِفٌ لِهَدْيِهِمْ» ؟ قَالَ أَبُو مُحَمَّد: وَهَذَا لَا شَيْءَ، لِأَنَّهُ مُرْسَلٌ، ثُمَّ هُوَ عَنْ رَجُلٍ لَمْ يُسَمَّ، ثُمَّ هُمْ مُخَالِفُونَ لَهُ، لِأَنَّهُمْ لَا يُبْطِلُونَ حَجَّ مَنْ دَفَعَ مِنْ جَمْعٍ بَعْدَ طُلُوعِ الشَّمْسِ أَوْ مَنْ لَمْ يَقِفْ بِهَا أَصْلًا.

L13300–13302 Abū Muḥammad said: We do not know from what basis they established the obligation of standing at 'Arafah during the night and the invalidation of Hajj due to its omission, while they do not invalidate Hajj for contravening all the Prophet's practices (peace be upon him) at 'Arafah, in departing from it, and at Muzdalifah. If they cite what we narrated through Saʿīd ibn Manṣūr – Hushaym – Ibn Abī Laylā – Nāfiʿ – Ibn ʻUmar, who said: "Whoever attains ʻArafah by night has fulfilled Hajj, and whoever fails to attain ʻArafah by night has missed the Hajj," we reply: It is authentically established from Ibn ʻUmar that a ritual offering (hady) is only valid if garlanded and marked, yet you opposed him. Likewise, ʻUmar's ruling that "whoever's heavy belongings arrive from Minā invalidates his Hajj" is authenticated, yet you contradicted him. How then can Ibn ʻUmar be invoked as proof here, while neither he nor his father are deemed authoritative in the matters we mentioned from them

قَالَ أَبُو مُحَمَّد: وَمَا نَدْرِي مِنْ أَيْنَ وَقَعَ إيجَابُ الْوُقُوفِ بِعَرَفَةَ لَيْلًا، وَإِبْطَالُ الْحَجِّ بِتَرْكِهِ؟ وَهُمْ لَا يُبْطِلُونَ الْحَجَّ بِمُخَالَفَةِ عَمَلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلِّهِ فِي عَرَفَةَ، وَفِي الدَّفْعِ مِنْهَا، وَفِي مُزْدَلِفَةَ -: فَإِنْ ذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ أَنَا ابْنُ أَبِي لَيْلَى عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: مَنْ أَدْرَكَ عَرَفَاتٍ بِلَيْلٍ فَقَدْ أَدْرَكَ الْحَجَّ، وَمَنْ لَمْ يُدْرِكْ عَرَفَاتٍ بِلَيْلٍ فَقَدْ فَاتَهُ الْحَجُّ؟ قُلْنَا: قَدْ صَحَّ عَنْ ابْنِ عُمَرَ أَنَّهُ لَا يَكُونُ هَدْيًا إلَّا مَا قُلِّدَ وَأُشْعِرَ فَخَالَفْتُمُوهُ، وَصَحَّ عَنْ عُمَرَ: مَنْ قَدِمَ ثِقْلُهُ مِنْ مِنًى بَطَلَ حَجُّهُ فَخَالَفْتُمُوهُ، فَمِنْ أَيْنَ صَارَ ابْنُ عُمَرَ هَاهُنَا حُجَّةً، وَلَمْ يَصِرْ حُجَّةً هُوَ وَلَا أَبُوهُ فِيمَا ذَكَرْنَا

– matters wherein you took lightly the act of opposing them? We know of no foundational evidence for Mālik's position in this matter. As for imposing an expiation sacrifice (dam) for this, it is erroneous, for it necessarily pertains only to departing from ʻArafah prior to... At sunset, if he performed what was permissible or impermissible for him: if he did what was permissible, there is no blame on him; and if he did what was impermissible, his Hajj is void, and nothing more is required.

L13303 Abu Muhammad said: It was narrated to us through the chain of ʻAta' from Ibn Abbas that he said: The pivotal element of Hajj, to which one must arrive on the night of Arafah, is fulfilled by whoever reaches it before dawn—whether arriving during the night or the preceding day—for such a person has indeed attained Hajj.

L13304 A Tamattuʿ pilgrim may declare the intention for Hajj on the Day of al-Tarwiyah.

L13305 As for our view that it is recommended for the pilgrim performing Tamattuʿ to declare the intention for Hajj on the Day of Tarwiyah when departing to Mina, this is due to the previously mentioned practice of the Prophet's companions—peace and blessings be upon him—in his presence. Mālik held that the Tamattuʿ pilgrim should declare the intention, while the residents of Mecca should do so when the crescent of Dhū al-Ḥijjah is sighted. They argued using a narration attributed to ʿUmar, who said: "O people of Mecca, others arrive disheveled while you remain groomed. When you see the crescent, declare the intention." However, this narration lacks a verified chain to ʿUmar, as we only transmit it through al-Qāsim ibn Muḥammad and Ibrāhīm al-Nakhaʿī—both born years after ʿUmar's death. Even if authentic, the continuous, established practice of the companions during the Prophet's lifetime—peace and blessings be upon him—would take precedence over an opinion attributed to ʿUmar.

We narrate from Saʿīd ibn Manṣūr: Hushaym reported to us from Ibn Abī Laylā, from ʿAṭāʾ ibn Abī Rabāḥ, who said: "I saw Ibn ʿUmar in the Sacred Mosque declaring the intention for Hajj upon sighting the Dhū al-Ḥijjah crescent one year, then another year. In the third year, when told, 'The

عَنْهُمَا مِمَّا اسْتَسْهَلْتُمْ خِلَافَهُمَا فِيهِ، وَمَا نَعْلَمُ لِمَالِكٍ فِي هَذَا الْقَوْلِ حُجَّةً أَصْلًا؟ وَأَمَّا إِيجَابُ الدَّمِ فِي ذَلِكَ فَخَطَأٌ، لِأَنَّهُ لَا يَخْلُو أَنْ يَكُونَ مِنْ دَفْعٍ مِنْ عَرَفَةَ قَبْلَ غُرُوبِ الشَّمْسِ فَعَلَ مَا أُبِيحَ لَهُ أَوْ مَا لَمْ يُبَحْ لَهُ، فَإِنْ كَانَ فَعَلَ مَا أُبِيحَ لَهُ فَلَا شَيْءَ عَلَيْهِ، وَإِنْ كَانَ فَعَلَ مَا لَمْ يُبَحْ لَهُ فَحَجُّهُ بَاطِلٌ وَلَا مَزِيدَ.

قَالَ أَبُو مُحَمَّدٍ: رُوِّينَا مِنْ طَرِيقِ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: مِلَاكُ الْحَجِّ الَّذِي يَصِيرُ إِلَيْهِ لَيْلَةَ عَرَفَةَ مَنْ أَدْرَكَهَا قَبْلَ الْفَجْرِ لَيْلًا أَوْ نَهَارًا فَقَدْ أَدْرَكَ الْحَجَّ.

[لِلْمُتَمَتِّعِ أَنْ يُهِلَّ بِالْحَجِّ يَوْمَ التَّرْوِيَةِ]

وَأَمَّا اسْتِحْبَابُنَا لِلْمُتَمَتِّعِ أَنَّ يُهِلَّ بِالْحَجِّ يَوْمَ التَّرْوِيَةِ فِي أَخْذِهِ فِي النُّهُوضِ إِلَى مِنًى فَلِمَا ذَكَرْنَا مِنْ فِعْلِ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِحَضْرَتِهِ، وَاخْتَارَ مَالِكٌ أَنَّ يُهِلَّ الْمُتَمَتِّعُ، وَأَهْلُ مَكَّةَ إِذَا أَهَلَّ هِلَالُ ذِي الْحِجَّةِ، وَاحْتَجُّوا بِرِوَايَةٍ عَنْ عُمَرَ أَنَّهُ قَالَ: يَا أَهْلَ مَكَّةَ يَقْدَمُ النَّاسُ شُعْثًا وَأَنْتُمْ مُدَّهِنُونَ فَإِذَا رَأَيْتُمْ الْهِلَالَ فَأَهِلُّوا، فَإِنَّ هَذِهِ رِوَايَةٌ لَا نَعْلَمُهَا تَتَّصِلُ إِلَى عُمَرَ، إِنَّمَا نَذْكُرُهَا مِنْ طَرِيقِ الْقَاسِمِ بْنِ مُحَمَّدٍ وَإِبْرَاهِيمَ النَّخَعِيِّ عَنْ عُمَرَ، وَكِلَاهُمَا لَمْ يُولَدْ إِلَّا بَعْدَ مَوْتِ عُمَرَ بِأَعْوَامٍ، ثُمَّ لَوْ صَحَّ عَنْهُ لَكَانَ الثَّابِتُ الْمُتَّصِلُ مِنْ فِعْلِ الصَّحَابَةِ بِحَضْرَةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْلَى مِنْ رَأْيٍ رَآهُ عُمَرُ؟ وَقَدْ رُوِّينَا عَنْ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ نَا ابْنُ أَبِي لَيْلَى عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: رَأَيْت ابْنَ عُمَرَ فِي الْمَسْجِدِ الْحَرَامِ وَقَدْ أَهَلَّ بِالْحَجِّ إِذْ رَأَى هِلَالَ ذِي الْحِجَّةِ عَامًا ثُمَّ عَامًا آخَرَ، فَلَمَّا كَانَ فِي الْعَامِ الثَّالِثِ قِيلَ لَهُ: قَدْ رُئِيَ هِلَالُ ذِي الْحِجَّةِ؟ فَقَالَ: مَا أَنَا إِلَّا

crescent has been sighted,' he replied: 'I am but like one of the companions. I will only act as they acted.' He delayed until the Day of Tarwiyah, then declared the intention for Hajj from al-Baṭḥāʾ when his mount was steadied beneath him."

كَرَجُلٍ مِنْ أَصْحَابِي، وَمَا أَرَانِي أَفْعَلُ إِلَّا كَمَا فَعَلُوا، فَأَمْسَكَ إِلَى يَوْمِ التَّرْوِيَةِ، ثُمَّ أَحْرَمَ مِنْ الْبَطْحَاءِ حِينَ اسْتَوَتْ بِهِ رَاحِلَتُهُ بِالْحَجِّ.

L13306 And through the chain of Sa'id ibn Mansur from 'Attab ibn Abi Bishr from Khusayf from Mujahid from Ibn Umar: that he entered ihram in one year starting from the mosque when the crescent of Dhu al-Hijjah was sighted, then another year likewise. When the third year came, he did not enter ihram until the Day of Tarwiyyah. Mujahid said: "I asked him about that." He replied: "I was a man from the people of Medina, so I wished to proclaim the talbiyah in accordance with their proclamation. Then I went to observe, and I found myself entering and leaving my home while still in ihram. This was improper, because when a person enters ihram, they must depart for the purpose of Hajj." Mujahid said: "I said to Ibn Umar: 'Which of those do you hold?'" He replied: "The Day of Tarwiyyah."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ عَتَّابِ بْنِ أَبِي بِشْرٍ عَنْ خُصَيْفٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ أَحْرَمَ عَامًا مِنْ الْمَسْجِدِ حِينَ أَهَلَّ هِلَالُ ذِي الْحِجَّةِ ثُمَّ عَامًا آخَرَ كَذَلِكَ، فَلَمَّا كَانَ الْعَامُ الثَّالِثُ لَمْ يُحْرِمْ حَتَّى كَانَ يَوْمُ التَّرْوِيَةِ قَالَ مُجَاهِدٌ: فَسَأَلْته عَنْ ذَلِكَ؟ فَقَالَ: إنِّي كُنْت امْرَأً مِنْ أَهْلِ الْمَدِينَةِ فَأَحْبَبْت أَنْ أُهِلَّ بِإِهْلَالِهِمْ ثُمَّ ذَهَبْت أَنْظُرُ فَإِذَا أَنَا أَدْخُلُ عَلَى أَهْلِي وَأَنَا مُحْرِمٌ وَأَخْرُجُ وَأَنَا مُحْرِمٌ، فَإِذَا ذَلِكَ لَا يَصْلُحُ؛ لِأَنَّ الْمُحْرِمَ إذَا أَحْرَمَ خَرَجَ لِوَجْهِهِ. قَالَ مُجَاهِدٌ: فَقُلْت لِابْنِ عُمَرَ: فَأَيَّ ذَلِكَ تَرَى؟ قَالَ: يَوْمَ التَّرْوِيَةِ.

L13307 So here is Ibn 'Umar, who has reported that the practice of the Companions was that the *mutamatti'* pilgrim (performing *Tamattu'*) and the people of Mecca would enter the state of *ihram* on the Day of Tarwiyah, and he disagreed with his father's opinion even if it had been established from him as well.

فَهَذَا ابْنُ عُمَرَ قَدْ أَخْبَرَ أَنَّ فِعْلَ الصَّحَابَةِ أَنْ يُهِلَّ الْمُتَمَتِّعُ وَأَهْلُ مَكَّةَ يَوْمَ التَّرْوِيَةِ، وَرَغِبَ عَنْ رَأْيِ أَبِيهِ لَوْ ثَبَتَ أَيْضًا عَنْهُ.

L13308–13309 If they say, "We chose this for him only to make him disheveled," we respond: "Has neither Allah (Exalted is He) nor His Messenger (peace be upon him) taught us to choose dishevelment for the pilgrim? If you have chosen it, then command them to commence ihrām from the beginning of Shawwāl—would this not achieve greater dishevelment?"

فَإِنْ قَالُوا: إنَّمَا اخْتَرْنَا لَهُ ذَلِكَ لِيَكُونَ أَشْعَثَ؟ قُلْنَا: مَا عَلَّمَنَا اللَّهُ - تَعَالَى - وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اخْتِيَارَ الشَّعْثِ لِلْمُحْرِمِ؟ فَإِنْ اخْتَرْتُمُوهُ فَأْمُرُوهُمْ بِالْإِهْلَالِ مِنْ أَوَّلِ شَوَّالٍ فَهُوَ أَتَمُّ لِلشَّعْثِ؟

L13310 When the Imam completes the khutbah during Arafah.

[الْإِمَامُ إذَا أَتَمَّ الْخُطْبَةَ بِعَرَفَةَ]

L13311 As for our statement that the muezzin should perform the adhan when the imam concludes the sermon at Arafat, then proclaim the iqamah for the Dhuhr prayer, followed by the iqamah for the Asr prayer without performing the adhan for it—this is based on what we previously cited from the report concerning the Messenger of Allah (peace and blessings be upon him). It

وَأَمَّا قَوْلُنَا: أَنْ يُؤَذِّنَ الْمُؤَذِّنُ إذَا أَتَمَّ الْإِمَامُ الْخُطْبَةَ بِعَرَفَةَ، ثُمَّ يُقِيمَ لِصَلَاةِ الظُّهْرِ، ثُمَّ يُقِيمَ لِلْعَصْرِ وَلَا يُؤَذِّنَ لَهَا؛ فَلِمَا ذَكَرْنَاهُ فِي الْخَبَرِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

represents the view of Abu Sulayman and one of the two opinions of Malik. Malik stated on another occasion: "If the muezzin wishes, he may perform the adhan while the imam is actively delivering the sermon, or if he wishes, he may perform it when the imam concludes."

L13312 Abu Hanifah and Abu Thawr said: The adhan should be called when the Imam sits on the pulpit before commencing the sermon. Abu Yusuf said: The adhan should be called before the Imam comes out to the pulpit; then he retracted his view and said: The adhan should be called after the opening portion of the sermon, as reported from a muezzin among the people of Mecca.

L13313 Al-Shafi'i said: The call to prayer begins when the Imam completes the first sermon.

L13314 Abu Muhammad said: These are statements for which there is no valid proof to substantiate any of them. If they say: "We have analogized this to the Friday prayer," we respond: The analogy is invalid. Even if it were valid, this would represent the essence of falsehood, for analogizing the call to prayer at Arafat to the Friday prayer is no more valid than analogizing the Friday prayer to what is reported regarding Arafat—especially when you yourselves state: "There is no Friday prayer at Arafat." If it is objected: "But you say: 'Indeed, the Friday prayer at Arafat is like that in other regions,'" we reply: Yes, but this does not justify contradicting what is authentically established from the Prophet—peace and blessings of Allah be upon him—regarding the manner of the call to prayer there, which differs from other regions. Just as the ruling regarding the combining of Dhuhr and Asr prayers at Arafat differs from other regions. Had we claimed these statements contradict the consensus of all the Companions—may Allah be pleased with them—in their assertion of this position, we would have spoken truthfully.

L13315 ## Combining the Dhuhr and Asr Prayers at Arafat

L13316 As for our statement regarding combining between the prayers of Dhuhr and Asr in Arafah with one adhan and two iqamahs, and likewise between Maghrib and the 'Atamah prayer in Muzdalifah, this is based on what has

آنِفًا وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَحَدِ قَوْلَيْ مَالِكٍ؛ وَقَالَ مَالِكٌ مَرَّةً أُخْرَى: إنْ شَاءَ أَذَّنَ، وَالْإِمَامُ فِي الْخُطْبَةِ، وَإِنْ شَاءَ إذَا أَتَمَّ.

وَقَالَ أَبُو حَنِيفَةَ، وَأَبُو ثَوْرٍ: يُؤَذِّنُ إذَا قَعَدَ الْإِمَامُ عَلَى الْمِنْبَرِ قَبْلَ أَنْ يَأْخُذَ فِي الْخُطْبَةِ - وَقَالَ أَبُو يُوسُفَ: يُؤَذِّنُ قَبْلَ خُرُوجِ الْإِمَامِ، ثُمَّ رَجَعَ فَقَالَ: يُؤَذِّنُ بَعْدَ صَدْرٍ مِنْ الْخُطْبَةِ، وَذَكَرَ ذَلِكَ عَنْ مُؤَذِّنٍ مِنْ أَهْلِ مَكَّةَ.

وَقَالَ الشَّافِعِيُّ: يَأْخُذُ فِي الْأَذَانِ إذَا أَتَمَّ الْإِمَامُ الْخُطْبَةَ الْأُولَى.

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ أَقْوَالٌ لَا حُجَّةَ لِصِحَّةِ شَيْءٍ مِنْهَا؟ فَإِنْ قَالُوا: قِسْنَا ذَلِكَ عَلَى الْجُمُعَةِ؟ قُلْنَا: الْقِيَاسُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّهُ لَيْسَ قِيَاسُ الْأَذَانِ بِعَرَفَةَ عَلَى الْأَذَانِ بِالْجُمُعَةِ بِأَوْلَى مِنْ الْقِيَاسِ لِلْجُمُعَةِ عَلَى مَا رُوِيَ فِي عَرَفَةَ لَا سِيَّمَا وَأَنْتُمْ تَقُولُونَ: لَا جُمُعَةَ بِعَرَفَةَ؟ فَإِنْ قِيلَ: فَأَنْتُمْ تَقُولُونَ: إنَّ الْجُمُعَةَ بِعَرَفَةَ كَمَا هِيَ فِي غَيْرِهَا مِنْ الْبِلَادِ؟ قُلْنَا: نَعَمْ، وَلَيْسَ ذَلِكَ بِمُبِيحٍ مُخَالَفَةَ مَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي صِفَةِ الْأَذَانِ فِيهَا بِخِلَافِهِ فِي سَائِرِ الْبِلَادِ كَمَا كَانَ بِعَرَفَةَ حُكْمُ الصَّلَاةِ فِي الْجَمْعِ بَيْنَ الظُّهْرِ، وَالْعَصْرِ، بِخِلَافِ ذَلِكَ فِي سَائِرِ الْبِلَادِ، وَلَوْ قُلْنَا: إنَّ هَذِهِ الْأَقْوَالَ خِلَافٌ لِإِجْمَاعِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - كُلِّهِمْ فِي الْقَوْلِ بِذَلِكَ لَصَدَقْنَا.

[الْجَمْع بَيْنَ صَلَاتَيْ الظُّهْرِ وَالْعَصْرِ بِعَرَفَةَ]

وَأَمَّا قَوْلُنَا: بِالْجَمْعِ بَيْنَ صَلَاتَيْ الظُّهْرِ، وَالْعَصْرِ بِعَرَفَةَ بِأَذَانٍ وَاحِدٍ وَإِقَامَتَيْنِ وَبِمُزْدَلِفَةَ بَيْنَ الْمَغْرِبِ وَالْعَتَمَةِ كَذَلِكَ أَيْضًا فَلِمَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْخَبَرِ

been authentically reported from the Messenger of Allah—peace and blessings be upon him—in the aforementioned report. People have differed on this matter. Abu Hanifah and Al-Shafi'i held the same view as we have stated regarding the prayer in Arafah.

الْمَذْكُورِ، وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، فِي الصَّلَاةِ بِعَرَفَةَ كَمَا قُلْنَا.

L13317–13318 Malik said: "Two adhans and two iqamahs for each prayer," [whereas] each prayer [ordinarily] has one adhan and one iqamah. We know of no evidence whatsoever for this opinion—neither from an authentic Sunnah, nor a weak narration, nor the practice of a Companion, nor a Follower. If they argue: "We analogize this to combining [Maghrib and Isha] prayers at Muzdalifah?" We reply: "This is an analogy compounding one error with another, and your claim about Muzdalifah is itself erroneous, as we will clarify, if Allah, the Exalted, wills."

وَقَالَ مَالِكٌ: بِأَذَانَيْنِ وَإِقَامَتَيْنِ لِكُلِّ صَلَاةٍ أَذَانٌ وَإِقَامَةٌ، وَمَا نَعْلَمُ لِهَذَا الْقَوْلِ حُجَّةً أَصْلًا لَا مِنْ سُنَّةٍ صَحِيحَةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ عَمَلِ صَاحِبٍ، وَلَا تَابِعٍ، فَإِنْ قَالُوا: قِسْنَا ذَلِكَ عَلَى الْجَمْعِ بِمُزْدَلِفَةَ؟ قُلْنَا: هَذَا قِيَاسٌ لِلْخَطَأِ عَلَى الْخَطَأِ، وَقَوْلُكُمْ هَذَا فِي مُزْدَلِفَةَ خَطَأٌ عَلَى مَا نُبَيِّنُهُ إِنْ شَاءَ اللَّهُ - تَعَالَى.

L13319 If they say: "We have analogized that to the missed prayers," we reply: All analogy is entirely invalid. Moreover, even if analogy were valid, this [case] would constitute the very essence of invalidity within it, because the Ẓuhr and ʿAṣr prayers at ʿArafah are not two missed prayers. It is invalid to analogize a prayer performed within its prescribed time to a missed prayer—particularly since you yourselves do not endorse this ruling for missed prayers. Sufyān and Isḥāq said: One combines Ẓuhr and ʿAṣr at ʿArafah with two iqāmahs only, without any adhān.

فَإِنْ قَالُوا: قِسْنَا ذَلِكَ عَلَى الصَّلَوَاتِ الْفَائِتَاتِ؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ [هَذَا] مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ صَلَاةَ الظُّهْرِ، وَالْعَصْرِ، بِعَرَفَةَ لَيْسَتَا فَائِتَتَيْنِ، وَمِنْ الْبَاطِلِ قِيَاسُ صَلَاةٍ تُصَلَّى فِي وَقْتِهَا عَلَى صَلَاةٍ فَائِتَةٍ لَا سِيَّمَا وَأَنْتُمْ لَا تَقُولُونَ بِهَذَا الْعَمَلِ فِي الْفَائِتَاتِ، وَقَالَ سُفْيَانُ، وَإِسْحَاقُ: يَجْمَعُ بَيْنَ الظُّهْرِ، وَالْعَصْرِ، بِعَرَفَةَ بِإِقَامَتَيْنِ فَقَطْ بِلَا أَذَانٍ.

L13320 The proponents of this opinion argued with a narration we have transmitted through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ: "The Messenger of Allah—peace be upon him—performed every prayer in Makkah and Mina with adhan and iqamah, and he performed every prayer in ʿArafat and Muzdalifah with iqamah."

وَاحْتَجَّ أَهْلُ هَذَا الْقَوْلِ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى بِمَكَّةَ وَبِمِنًى كُلَّ صَلَاةٍ بِأَذَانٍ وَإِقَامَةٍ، وَصَلَّى - بِعَرَفَةَ، وَبِجَمْعٍ - كُلَّ صَلَاةٍ بِإِقَامَةٍ» .

L13321 Abū Muḥammad said: This does not establish a valid proof. Even if it were authentic, it would contain no proof, for Jābir's report included an added mention of the call to prayer. The addition of the reliable narrator must be accepted without exception. As for the standing at Muzdalifah as we mentioned, this is also based on the aforementioned report.

قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا تَقُومُ بِهِ حُجَّةٌ، ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّ خَبَرَ جَابِرٍ وَرَدَ بِزِيَادَةِ ذِكْرِ الْأَذَانِ، وَزِيَادَةُ الْعَدْلِ وَاجِبٌ قَبُولُهَا، وَلَا بُدَّ، وَأَمَّا الْجَمْعُ بِمُزْدَلِفَةَ كَمَا ذَكَرْنَا فَلِلْخَبَرِ الْمَذْكُورِ أَيْضًا.

L13322 There is a disagreement among the *Salaf* regarding this. It was reported

to us via the routes of Ḥammād ibn Zayd and Ḥammād ibn Salamah. Ibn Zayd reported from Nāfiʿ, who said: "I do not recall from Ibn ʿUmar any *Adhān* or *Iqāmah* at Jamʿ"—meaning Muzdalifah.

وَفِي هَذَا خِلَافٌ مِنْ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ، وَحَمَّادِ بْنِ سَلَمَةَ، قَالَ ابْنُ زَيْدٍ: عَنْ نَافِعٍ قَالَ: لَمْ أَحْفَظْ عَنْ ابْنِ عُمَرَ أَذَانًا وَلَا إقَامَةً بِجَمْعٍ - يَعْنِي مُزْدَلِفَةَ.

L13323 Ibn Salamah reported from Anas from Ibn Sīrīn, who said: "I prayed Maghrib with Ibn ʿUmar at Jamʿ (Muzdalifah) without *adhan* or *iqamah*, then prayed ʿIshāʾ at Jamʿ without *adhan* or *iqamah*."

وَقَالَ ابْنُ سَلَمَةَ عَنْ أَنَسٍ عَنْ ابْنِ سِيرِينَ قَالَ: صَلَّيْت مَعَ ابْنِ عُمَرَ بِجَمْعٍ الْمَغْرِبَ بِلَا أَذَانٍ وَلَا إقَامَةٍ، ثُمَّ الْعِشَاءَ بِلَا أَذَانٍ وَلَا إقَامَةٍ.

L13324 A second opinion: that we have also narrated from him that he combined the two prayers with a single iqāmah without an adhān—and we have narrated that from Shuʿbah from al-Ḥakam ibn ʿUtaybah and Salamah ibn Kuhayl, both of whom narrated from Saʿīd ibn Jubayr that he prayed Maghrib and ʿIshāʾ by combining them with a single iqāmah. Saʿīd ibn Jubayr mentioned that Ibn ʿUmar did the same, and that he stated the Messenger of Allah (peace be upon him) did so.

وَقَوْلٌ ثَانٍ -: وَهُوَ أَنَّنَا رُوِّينَا عَنْهُ أَيْضًا أَنَّهُ جَمَعَ بَيْنَهُمَا بِإِقَامَةٍ وَاحِدَةٍ بِلَا أَذَانٍ - وَرُوِّينَا ذَلِكَ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَسَلَمَةَ بْنِ كُهَيْلٍ، كِلَاهُمَا عَنْ سَعِيدِ بْنِ جُبَيْرٍ: أَنَّهُ صَلَّى الْمَغْرِبَ وَالْعِشَاءَ بِجَمْعٍ بِإِقَامَةٍ وَاحِدَةٍ - وَذَكَرَ أَنَّ ابْنَ عُمَرَ فَعَلَ مِثْلَ ذَلِكَ، وَأَنَّ ابْنَ عُمَرَ ذَكَرَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَعَلَ ذَلِكَ.

L13325–13326 It has also been narrated to us via the chain of Mujāhid and others besides him from Ibn ʿUmar: that he did that—this being the opinion of Sufyān and Aḥmad ibn Ḥanbal in one of their two opinions—and Abū Bakr ibn Dāwūd upheld this position.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مُجَاهِدٍ، وَغَيْرِهِ عَنْ ابْنِ عُمَرَ: أَنَّهُ فَعَلَ ذَلِكَ - وَهُوَ قَوْلُ سُفْيَانَ، وَأَحْمَدَ بْنِ حَنْبَلٍ فِي أَحَدِ قَوْلَيْهِمَا - وَبِهِ أَخَذَ أَبُو بَكْرِ بْنُ دَاوُد.

L13327 The proponents of this view cited what we have narrated through the chain of Sufyān al-Thawrī and Yaḥyā ibn Saʿīd al-Qaṭṭān. Sufyān narrated from Maslamah ibn Kuhayl, from Saʿīd ibn Jubayr, from Ibn ʿAbbās. Al-Qaṭṭān narrated from Ibn Abī Dhiʾb, from al-Zuhrī, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father. Then, Ibn ʿAbbās and Ibn ʿUmar agreed that the Messenger of Allāh (peace and blessings be upon him) combined Maghrib and ʿIshāʾ at Muzdalifah with a single iqāmah. This is an authentic report.

وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ، وَيَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ، قَالَ سُفْيَانُ: عَنْ مَسْلَمَةَ بْنِ كُهَيْلٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ؛ وَقَالَ الْقَطَّانُ: عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ؛ ثُمَّ اتَّفَقَ ابْنُ عَبَّاسٍ، وَابْنُ عُمَرَ: عَلَى أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَمَعَ بِمُزْدَلِفَةَ بَيْنَ الْمَغْرِبِ وَالْعِشَاءِ بِإِقَامَةٍ وَاحِدَةٍ، وَهَذَا خَبَرٌ صَحِيحٌ.

L13328 A third opinion is to combine them with two iqāmahs—each prayer being preceded by its own iqāmah without an adhān. We have been narrated through Ḥammād ibn Salamah, from al-Ḥajjāj ibn Arṭāʾah, from Abū Isḥāq al-Sabīʿī, from ʿAbd al-Raḥmān ibn Yazīd that ʿUmar ibn al-Khaṭṭāb combined them with two iqāmahs (i.e., at al-Muzdalifah). Through the narration

وَقَوْلٌ ثَالِثٌ -: وَهُوَ الْجَمْعُ بَيْنَهُمَا بِإِقَامَتَيْنِ - لِكُلِّ صَلَاةٍ إقَامَةٌ دُونَ أَذَانٍ -: رُوِّينَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ أَبِي إسْحَاقَ السَّبِيعِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَمَعَ بَيْنَهُمَا بِإِقَامَتَيْنِ - يَعْنِي بِمُزْدَلِفَةَ - وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ

route of ʿAbd al-Razzāq, from some of his companions, from Sharīk, from Abū Isḥāq, from Abū Jaʿfar: that ʿAlī ibn Abī Ṭālib combined Maghrib and ʿIshā', each prayer being preceded by its own iqāmah (i.e., at al-Muzdalifah).

بَعْضِ أَصْحَابِهِ عَنْ شَرِيكٍ عَنْ أَبِي إِسْحَاقَ عَنْ أَبِي جَعْفَرٍ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ جَمَعَ بَيْنَ الْمَغْرِبِ وَالْعِشَاءِ، كُلُّ وَاحِدَةٍ مِنْهُمَا بِإِقَامَةٍ - يَعْنِي بِمُزْدَلِفَةَ.

L13329 Through the narration of Hammad ibn Salamah: I, ʻAbd al-Karim, was with Salim ibn ʻAbd Allah ibn ʻUmar at Muzdalifah, where he performed the Maghrib and ʻIsha prayers together with two iqamahs. This is the opinion of Sufyan, al-Shafiʻi, and Ahmad—in one of their opinions.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا عَبْدُ الْكَرِيمِ أَنَّهُ كَانَ مَعَ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بِمُزْدَلِفَةَ فَجَمَعَ بَيْنَ الْمَغْرِبِ وَالْعِشَاءِ بِإِقَامَتَيْنِ، وَهُوَ قَوْلُ سُفْيَانَ، وَالشَّافِعِيِّ، وَأَحْمَدَ - فِي أَحَدِ أَقْوَالِهِمْ.

L13330–13332 They cited as evidence what we have narrated through the transmission of Mālik from Mūsā ibn ʿUqbah from Kuraib, the freed slave of Ibn ʿAbbās, from Usāmah ibn Zayd: "The Messenger of Allah—peace and blessings be upon him—arrived at Muzdalifah, performed ablution, then the iqamah was given. He prayed Maghrib, after which each person made his camel kneel at his resting place. Then the iqamah was given again, and he prayed, performing no prayer between the two." Through the transmission of Al-Bukhārī: Asim narrated to us from Ibn Abī Dhīb from Al-Zuhrī from Sālim ibn ʿAbdullāh from Ibn ʿUmar—may Allah be pleased with them both—who said: "The Messenger of Allah—peace and blessings be upon him—combined Maghrib and Isha prayers." He combined each of the two prayers with an iqamah, without performing voluntary prayers between them or immediately after each of them. These are two authentic reports.

وَاحْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ كُرَيْبٍ مَوْلَى ابْنِ عَبَّاسٍ عَنْ أُسَامَةَ بْنِ زَيْدٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَتَى مُزْدَلِفَةَ فَتَوَضَّأَ ثُمَّ أُقِيمَتْ الصَّلَاةُ فَصَلَّى الْمَغْرِبَ ثُمَّ أَنَاخَ كُلُّ إِنْسَانٍ بَعِيرَهُ فِي مَنْزِلِهِ ثُمَّ أُقِيمَتْ الصَّلَاةُ فَصَلَّى، وَلَمْ يُصَلِّ بَيْنَهُمَا شَيْئًا» . وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا عَاصِمٌ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ عَنْ ابْنِ عُمَرَ [- رَضِيَ اللَّهُ عَنْهُمَا -] قَالَ «جَمَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ الْمَغْرِبِ وَالْعِشَاءِ بِجَمْعٍ كُلُّ وَاحِدَةٍ مِنْهُمَا بِإِقَامَةٍ، وَلَمْ يُسَبِّحْ بَيْنَهُمَا، وَلَا عَلَى إثْرِ كُلِّ وَاحِدَةٍ مِنْهُمَا» وَهَذَانِ خَبَرَانِ صَحِيحَانِ.

L13333 The fourth opinion is that combining the two prayers with one adhan and one iqamah. It has been narrated to us through the chain of Sufyān al-Thawrī, from Simāk ibn Ḥarb, from al-Nuʿmān ibn Ḥumayd, that ʿUmar combined the two prayers at Muzdalifah with an adhan and an iqamah.

وَقَوْلٌ رَابِعٌ -: وَهُوَ أَنَّ الْجَمْعَ بَيْنَهُمَا بِأَذَانٍ وَاحِدٍ وَإِقَامَةٍ وَاحِدَةٍ -: رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ النُّعْمَانِ بْنِ حُمَيْدٍ أَنَّ عُمَرَ جَمَعَ بَيْنَ الصَّلَاتَيْنِ بِمُزْدَلِفَةَ بِأَذَانٍ وَإِقَامَةٍ.

L13334 And through the chain of Abū Dāwūd al-Sijistānī: Musaddad narrated to us, from Abū al-Aḥwaṣ, from Ashʿath ibn Sulaym, from his father: Ashʿath's father was with Ibn ʿUmar at Muzdalifah, and Ibn ʿUmar called the adhān and iqāmah or ordered that they be done. Then he prayed Maghrib as three

وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نَا مُسَدَّدٌ نَا أَبُو الْأَحْوَصِ نَا أَشْعَثُ بْنُ سُلَيْمٍ عَنْ أَبِيهِ " أَنَّهُ كَانَ مَعَ ابْنِ عُمَرَ بِمُزْدَلِفَةَ فَأَذَّنَ وَأَقَامَ، أَوْ أَمَرَ بِذَلِكَ ثُمَّ صَلَّى الْمَغْرِبَ ثَلَاثَ رَكَعَاتٍ، ثُمَّ الْتَفَتَ إلَيْنَا فَقَالَ: الصَّلَاةَ، فَصَلَّى الْعِشَاءَ رَكْعَتَيْنِ.

rakʿahs, turned to us, and said: “Establish the prayer.” After which, he prayed ʿIshā’ as two rakʿahs.

L13335 Ash’ath said: And ’Ilaj ibn ’Amr informed me from Ibn ’Umar regarding this, saying: “It was said to Ibn ’Umar concerning that matter?” He replied: “I prayed with the Messenger of Allah - peace and blessings be upon him - in this manner.” Abu Hanifah adopts this position, except he stated: “If one performs a voluntary prayer between them, he should establish another iqamah for the ’Isha prayer.”

L13336 The fifth opinion is combining them with two adhāns and two iqāmahs. This is authentically reported from ʿUmar ibn al-Khaṭṭāb through the chain narrated by Ḥushaym narrated by Ibrāhīm narrated by al-Aswad: “I was with ʿUmar when he came to Muzdalifah and prayed Maghrib and ʿIshā’, each prayer with its own adhān and iqāmah.” Narrated by Ḥammām narrated by al-Bājī narrated by ʿAbdullāh ibn Yūnus narrated by Baqī narrated by Abū Bakr ibn Abī Shaybah narrated by Abū al-Aḥwaṣ from Abū Isḥāq al-Sabīʿī from ʿAbd al-Raḥmān ibn Yazīd, who said: “I prayed Maghrib at Jamʿ (Muzdalifah) with Ibn Masʿūd, each prayer with its own adhān and iqāmah. Then we came to our supper and ate. Afterward, he led us in ʿIshā’ prayer, each prayer with its own adhān and iqāmah.”

L13337 An explicit text from Abu Ja‘far Muhammad ibn Ali ibn al-Husayn via Abu Ishaq al-Sabi‘i states: Ali ibn Abi Talib would combine the two prayers at Muzdalifah, each prayer with adhan and iqamah. This is the statement of Muhammad ibn Ali ibn al-Husayn, and he mentioned it from his household (Ahl al-Bayt); and this is the position held by Malik.

L13338 There is no valid argument in this statement from a report of the Prophet (peace be upon him).

L13339–13341 There is no proof in the statements of Umar, Ibn Masʿūd, and ʿAlī regarding that matter, because others have opposed them. Among the Companions, there are also differences reported from ʿUmar, as we have mentioned. Therefore, the reference in case of dispute is the Qur’an and the Sunnah.

قَالَ أَشْعَثُ: وَأَخْبَرَنِي عِلَاجُ بْنُ عَمْرٍو «عَنْ ابْنِ عُمَرَ بِهَذَا قَالَ: فَقِيلَ لِابْنِ عُمَرَ فِي ذَلِكَ؟ فَقَالَ: صَلَّيْتُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَكَذَا» . وَبِهِ يَأْخُذُ أَبُو حَنِيفَةَ إِلَّا أَنَّهُ قَالَ: فَإِنْ تَطَوَّعَ بَيْنَهُمَا أَقَامَ لِلْعِشَاءِ إِقَامَةً أُخْرَى.

وَقَوْلٌ خَامِسٌ -: وَهُوَ الْجَمْعُ بَيْنَهُمَا بِأَذَانَيْنِ وَإِقَامَتَيْنِ صَحَّ ذَلِكَ عَنْ عُمَرَ بْنِ الْخَطَّابِ مِنْ طَرِيقِ هُشَيْمٍ عَنْ إبْرَاهِيمَ عَنْ الْأَسْوَدِ كُنْت مَعَ عُمَرَ فَأَتَى الْمُزْدَلِفَةَ فَصَلَّى الْمَغْرِبَ وَالْعِشَاءَ، كُلُّ صَلَاةٍ بِأَذَانٍ وَإِقَامَةٍ -: نَا حَمَامٌ نَا الْبَاجِيَّ نَا عَبْدُ اللَّهِ بْنُ يُونُسَ نَا بَقِيٌّ نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نَا أَبُو الْأَحْوَصِ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ قَالَ: صَلَّيْت مَعَ ابْنِ مَسْعُودٍ الْمَغْرِبَ بِجَمْعٍ بِأَذَانٍ وَإِقَامَةٍ، ثُمَّ أَتَيْنَا بِعِشَائِنَا فَتَعَشَّيْنَا، ثُمَّ صَلَّى بِنَا الْعِشَاءَ بِأَذَانٍ وَإِقَامَةٍ.

وَبِهِ نَصًّا إلَى أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ أَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يَجْمَعُ بَيْنَ الصَّلَاتَيْنِ بِمُزْدَلِفَةَ كُلُّ صَلَاةٍ بِأَذَانٍ وَإِقَامَةٍ - وَهُوَ قَوْلُ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ، وَذَكَرَهُ عَنْ أَهْلِ بَيْتِهِ؛ وَبِهِ يَقُولُ مَالِكٌ.

وَلَا حُجَّةَ فِي هَذَا الْقَوْلِ مِنْ خَبَرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَلَا حُجَّةَ فِي قَوْلِ عُمَرَ، وَابْنِ مَسْعُودٍ، وَعَلِيٍّ فِي ذَلِكَ؛ لِأَنَّهُ قَدْ خَالَفَهُمْ غَيْرُهُمْ مِنْ الصَّحَابَةِ، وَاخْتَلَفَ عَنْ عُمَرَ أَيْضًا كَمَا أَوْرَدْنَا، فَالْمَرْجُوعُ إلَيْهِ عِنْدَ التَّنَازُعِ هُوَ الْقُرْآنُ وَالسُّنَّةُ.

وَلَا حُجَّةَ لِأَبِي حَنِيفَةَ فِي دَعْوَاهُ أَنَّ إِعَادَةَ الْأَذَانِ لِلْعِشَاءِ هُوَ مِنْ أَجْلِ أَنَّ عُمَرَ، وَابْنَ مَسْعُودٍ تَعَشَّيَا بَيْنَ الصَّلَاتَيْنِ، لِأَنَّهُمَا لَمْ يَذْكُرَا ذَلِكَ، وَلَا أَخْبَرَا: أَنَّ إِعَادَتَهُمَا الْأَذَانَ إِنَّمَا هُوَ مِنْ أَجْلِ الْعِشَاءِ، فَهِيَ دَعْوَى فَاسِدَةٌ؟ فَإِنْ قِيلَ: قِسْنَا ذَلِكَ عَلَى الْجَمْعِ بَيْنَ سَائِرِ الصَّلَوَاتِ إِذَا صُلِّيَتْ الْأُولَى فِي آخِرِ وَقْتِهَا، وَالْأُخْرَى فِي أَوَّلِ وَقْتِهَا، فَلَا بُدَّ مِنْ أَذَانٍ وَإِقَامَةٍ لِكُلِّ صَلَاةٍ؟ قُلْنَا: الْقِيَاسُ بَاطِلٌ، وَلَا يَجُوزُ أَنْ يُعَارَضَ مَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقِيَاسٍ فَاسِدٍ قَالَ أَبُو مُحَمَّدٍ: وَقَدْ رُوِيَ مِثْلُ قَوْلِنَا عَنْ ابْنِ عُمَرَ، وَسَالِمٍ ابْنِهِ، وَعَطَاءٍ، كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ الْفَضْلِ بْنِ دُكَيْنٍ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ عَبْدِ الْكَرِيمِ قَالَ: صَلَّيْت خَلْفَ سَالِمٍ: الْمَغْرِبَ، وَالْعِشَاءَ بِجَمْعٍ بِأَذَانٍ وَإِقَامَتَيْنِ، فَلَقِيت نَافِعًا فَقُلْت لَهُ: هَكَذَا كَانَ يَصْنَعُ عَبْدُ اللَّهِ؟ قَالَ: نَعَمْ، فَلَقِيت عَطَاءً فَقُلْت لَهُ؟ فَقَالَ: قَدْ كُنْت أَقُولُ لَهُمْ: لَا صَلَاةَ إلَّا بِإِقَامَةٍ - وَهُوَ قَوْلُ الشَّافِعِيِّ مِنْ رِوَايَةِ أَبِي ثَوْرٍ عَنْهُ، فَهِيَ سِتَّةُ أَقْوَالٍ -: أَحَدُهُمَا: الْجَمْعُ بَيْنَهُمَا بِلَا أَذَانٍ وَلَا إقَامَةٍ، وَصَحَّ عَنْ ابْنِ عُمَرَ. وَالثَّانِي:

There is no valid proof for Abū Ḥanīfah in his claim that repeating the *adhān* for the ʿIshā’ prayer is due to ʿUmar and Ibn Masʿūd having eaten their evening meal between the two prayers, for they neither mentioned that nor reported that their repetition of the *adhān* was specifically for the ʿIshā’ prayer. Thus, his claim is baseless. If it is argued: “We analogize this to combining other prayers when the first is performed at the end of its time and the second at the beginning of its time, requiring an *adhān* and *iqāmah* for each prayer,” we reply: The analogy is invalid, and it is impermissible to oppose what is authentically established from the Prophet (peace and blessings of Allāh be upon him) with a flawed analogy. Abū Muḥammad said: A report aligning with our view has been narrated from Ibn ʿUmar, his son Sālim, and ʿAṭā’, as was narrated to us through Ibn Abī Shaybah from al-Faḍl ibn Dukayn from Misʿar ibn Kidām from ʿAbd al-Karīm, who said: “I prayed Maghrib and ʿIshā’ together behind Sālim with one *adhān* and two *iqāmahs*. I met Nāfiʿ and asked him: ‘Did ʿAbdullāh ibn ʿUmar used to do this?’ He replied: ‘Yes.’ Then I met ʿAṭā’ and asked him, to which he responded: ‘I would tell them: There is no prayer without an *iqāmah*.’” This is the opinion of al-Shāfiʿī according to the narration of Abū Thawr from him. There are six opinions on this matter: The first is combining the prayers without an *adhān* or *iqāmah*, which is authentically reported from Ibn ʿUmar. The second...

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الْجَمْعُ بَيْنَهُمَا بِإِقَامَةٍ وَاحِدَةٍ فَقَطْ - وَصَحَّ أَيْضًا: عَنْ ابْنِ عُمَرَ -: وَهُوَ قَوْلُ سُفْيَانَ، وَأَحْمَدَ، وَأَبِي بَكْرِ بْنِ دَاوُد - وَصَحَّ بِهِ خَبَرٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَالثَّالِثُ: الْجَمْعُ بَيْنَهُمَا بِإِقَامَتَيْنِ فَقَطْ؛ رُوِيَ عَنْ عُمَرَ، وَعَلِيٍّ، وَصَحَّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ - وَهُوَ أَحَدُ قَوْلَيْ سُفْيَانَ، وَأَحْمَدَ، وَالشَّافِعِيِّ؛ وَصَحَّ بِهِ خَبَرٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَالرَّابِعُ:

Combining the two prayers with only one iqāmah—and it is also authenticated from Ibn ʿUmar. This is the opinion of Sufyān, Aḥmad, and Abū Bakr ibn Dāwūd, and a report from the Messenger of Allah (peace be upon him) is authenticated through it. The third view: combining the two prayers with only two iqāmahs—narrated from ʿUmar and ʿAlī, and authenticated from Sālim ibn ʿAbdillāh. This is one of the two opinions held by Sufyān, Aḥmad, and al-Shāfiʿī, and a report from the Messenger of Allah (peace be upon him) is authenticated through it. The fourth view:

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الْجَمْعُ بَيْنَهُمَا بِأَذَانٍ وَاحِدٍ وَإِقَامَةٍ وَاحِدَةٍ - رُوِيَ عَنْ عُمَرَ؛ وَصَحَّ عَنْ ابْنِهِ عَبْدِ اللَّهِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ - وَصَحَّ بِهِ خَبَرٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَالْخَامِسُ:

Combining the two prayers with one adhan and one iqamah - narrated from ’Umar and authenticated from his son ’Abdullah - this being the opinion of

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Abu Hanifah - with a sound report from the Messenger of Allah (peace be upon him) affirming it. The fifth:

L13345 Combining the two prayers with one adhān and two iqāmahs is established from Ibn ʿUmar, his son Salim ibn ʿUmar, and ʿAṭāʾ. This is one of the two doctrinal positions of Al-Shāfiʿī, and it is the view we adopt. A sound narration from the Messenger of Allah (may Allah bless him and grant him peace) has been authenticated with this ruling. The sixth:

L13346–13348 Combining the two prayers [e.g., Maghrib and ʿIshāʾ] with two adhāns (calls to prayer) and two iqāmahs (calls to commence prayer) is authentically reported from ʿUmar and Ibn Masʿūd, and it has been narrated. From Ali, Muhammad ibn Ali ibn al-Ḥusayn, and the members of his household—this is the view of Mālik.

L13349 As for the narrations regarding this matter, some mention one iqama through the chain of Ibn Umar and Ibn Abbas, while others mention two iqamas through the chain of Ibn Umar and Usama ibn Zayd. Some narrations mention one adhan and one iqama through the chain of Ibn Umar, and others mention one adhan and two iqamas through the chain of Jabir. The narrations from Ibn Umar are conflicting, except that one narration from him—along with those from Usama ibn Zayd and Jabir ibn Abdullah—includes an addition over the others. In the narration of Ibn Abbas, there is an additional iqama, so it is obligatory to adopt the version with the addition. One narration from Ibn Umar and Jabir includes an addition over the others and over the narration of Usama an adhan, making it obligatory to adopt the version with the addition, since it is an independently authentic narration that cannot be contradicted. When combining the narrations transmitted by Salim and ʿAlaq from Ibn Umar, it is established from both that there is one adhan and two iqamas, as explicitly stated in the hadith of Jabir. This is the position that cannot be opposed, and no valid argument exists for those who contradict it. With Allah, the Exalted, lies success.

L13350 As for our statement: The Maghrib prayer on that night is not valid unless performed in Muzdalifah—necessarily—and after the disappearance of twilight—necessarily—this is based on what we transmitted through al-Bukhari's

الْجَمْعُ بَيْنَهُمَا بِأَذَانٍ وَاحِدٍ وَإِقَامَتَيْنِ صَحَّ عَنْ ابْنِ عُمَرَ، وَسَالِمِ ابْنِهِ، وَعَطَاءٍ، وَهُوَ أَحَدُ قَوْلَيْ الشَّافِعِيِّ، وَبِهِ نَأْخُذُ - وَصَحَّ بِذَلِكَ خَبَرٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَالسَّادِسُ:

الْجَمْعُ بَيْنَهُمَا بِأَذَانَيْنِ وَإِقَامَتَيْنِ صَحَّ عَنْ عُمَرَ، وَابْنِ مَسْعُودٍ، وَرُوِيَ عَنْ عَلِيٍّ، وَعَنْ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ وَأَهْلِ بَيْتِهِ - وَهُوَ قَوْلُ مَالِكٍ.

فَأَمَّا الْأَخْبَارُ فِي ذَلِكَ فَبَعْضُهَا بِإِقَامَةٍ وَاحِدَةٍ مِنْ طَرِيقِ ابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ، وَبَعْضُهَا بِإِقَامَتَيْنِ مِنْ طَرِيقِ ابْنِ عُمَرَ، وَأُسَامَةَ بْنِ زَيْدٍ - وَبَعْضُهَا بِأَذَانٍ وَاحِدٍ، وَإِقَامَةٍ وَاحِدَةٍ مِنْ طَرِيقِ ابْنِ عُمَرَ - وَبَعْضُهَا بِأَذَانٍ وَاحِدٍ وَإِقَامَتَيْنِ مِنْ طَرِيقِ جَابِرٍ؛ فَاضْطَرَبَتْ الرِّوَايَةُ عَنْ ابْنِ عُمَرَ إلَّا أَنَّ إحْدَى الرِّوَايَاتِ عَنْهُ، وَعَنْ أُسَامَةَ بْنِ زَيْدٍ، وَعَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ: زَادَتْ عَلَى الْأُخْرَى؛ وَعَلَى رِوَايَةِ ابْنِ عَبَّاسٍ إقَامَةٌ فَوَجَبَ الْأَخْذُ بِالزِّيَادَةِ، وَإِحْدَى الرِّوَايَاتِ عَنْهُ، وَعَنْ جَابِرٍ تَزِيدُ عَلَى الْأُخْرَى، وَعَلَى رِوَايَةِ أُسَامَةَ أَذَانًا، فَوَجَبَ الْأَخْذُ بِالزِّيَادَةِ لِأَنَّهَا رِوَايَةٌ قَائِمَةٌ بِنَفْسِهَا صَحِيحَةٌ فَلَا يَجُوزُ خِلَافُهَا، فَإِذَا جَمَعْت رِوَايَةَ سَالِمٍ، وَعِلَاجٍ عَنْ ابْنِ عُمَرَ صَحَّ مِنْهُمَا أَذَانٌ، وَإِقَامَتَانِ كَمَا جَاءَ بَيِّنًا فِي حَدِيثِ جَابِرٍ، وَهَذَا هُوَ الَّذِي لَا يَجُوزُ خِلَافُهُ، وَلَا حُجَّةَ لِمَنْ خَالَفَ ذَلِكَ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

وَأَمَّا قَوْلُنَا: لَا تُجْزِئُ صَلَاةُ الْمَغْرِبِ تِلْكَ اللَّيْلَةَ إلَّا بِمُزْدَلِفَةَ وَلَا بُدَّ، وَبَعْدَ غُرُوبِ الشَّفَقِ وَلَا بُدَّ، فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نَا ابْنُ سَلَّامٍ نَا يَزِيدُ بْنُ هَارُونَ عَنْ يَحْيَى بْنِ

chain: Ibn Sallam narrated to us, [who] narrated to us from Yazīd ibn Hārūn, from Yaḥyā ibn Saʿīd al-Anṣārī, from Mūsā ibn ʿUqbah, from Kurayb—the mawlā of Ibn ʿAbbās—from Usāmah ibn Zayd, who said: "When Allah's Messenger (peace be upon him) departed from ʿArafāt, he turned toward the mountain pass to relieve himself. I poured water for him as he performed ablution. I asked: 'O Messenger of Allah, will you pray?' He replied: 'The prayer site lies ahead of you.'" The rest of the ḥadīth is mentioned.

سَعِيدٍ الْأَنْصَارِيِّ عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ كُرَيْبٍ مَوْلَى ابْنِ عَبَّاسٍ عَنْ أُسَامَةَ بْنِ زَيْدٍ قَالَ «لَمَّا أَفَاضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ عَرَفَاتٍ عَدَلَ إِلَى الشِّعْبِ فَقَضَى حَاجَتَهُ فَجَعَلْتُ أَصُبُّ عَلَيْهِ وَيَتَوَضَّأُ فَقُلْتُ: يَا رَسُولَ اللَّهِ أَتُصَلِّي؟ قَالَ: الْمُصَلَّى أَمَامَكَ» وَذَكَرَ بَاقِيَ الْحَدِيثِ.

L13351 And through the chain of Muslim: From Yahya ibn Ayyub, from Qutaybah ibn Saʿid, from Ibn Hujr, who said: Ismaʿil reported to us, from Yahya ibn Yahya—and the wording is his—from Ismaʿil ibn Jaʿfar, from Muhammad ibn Abi Harmalah, from Kurayb the freedman of Ibn ʿAbbas, from Usamah ibn Zayd that he was seated behind the Messenger of Allah (PBUH) on the same mount from ʿArafat. When the Messenger of Allah (PBUH) reached the left mountain path below Muzdalifah, he dismounted by making his camel kneel and urinated. Then he came, and I poured water over him for ablution. He performed a brief ablution, whereupon I said: "Shall we pray, O Messenger of Allah?" He replied: "The prayer is ahead of you." Kurayb then related the remainder of the hadith.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا يَحْيَى بْنُ أَيُّوبَ، وَقُتَيْبَةُ بْنُ سَعِيدٍ، وَابْنُ حُجْرٍ قَالُوا: نَا إِسْمَاعِيلُ نَا يَحْيَى بْنُ يَحْيَى - وَاللَّفْظُ لَهُ - نَا إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ مُحَمَّدِ بْنِ أَبِي حَرْمَلَةَ عَنْ كُرَيْبٍ مَوْلَى ابْنِ عَبَّاسٍ «عَنْ أُسَامَةَ بْنِ زَيْدٍ أَنَّهُ كَانَ رِدْفَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ عَرَفَاتٍ فَلَمَّا بَلَغَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الشِّعْبَ الْأَيْسَرَ الَّذِي دُونَ الْمُزْدَلِفَةِ أَنَاخَ فَبَالَ، ثُمَّ جَاءَ فَصَبَبْتُ عَلَيْهِ الْوَضُوءَ فَتَوَضَّأَ وُضُوءًا خَفِيفًا، ثُمَّ قُلْتُ: الصَّلَاةَ يَا رَسُولَ اللَّهِ فَقَالَ: الصَّلَاةُ أَمَامَكَ» وَذَكَرَ الْحَدِيثَ.

L13352–13354 Abu Muhammad said: Since the Imam (peace be upon him) had intended to omit the Maghrib prayer and informed that the prayer place... From the front, and that prayer is from the front, the *musalla* is the place of prayer. It has been informed that the place of prayer and the time of prayer are established beforehand. Thus, it is conclusively certain that whatever precedes that time or precedes that place is not a valid prayer space, nor is a prayer performed there considered prayer.

قَالَ أَبُو مُحَمَّد: فَإِذْ قَدْ قَصَدَ - عَلَيْهِ السَّلَامُ - تَرْكَ صَلَاةِ الْمَغْرِبِ وَأَخْبَرَ بِأَنَّ الْمُصَلَّى مِنْ أَمَامٍ، وَأَنَّ الصَّلَاةَ مِنْ أَمَامٍ، فَالْمُصَلَّى هُوَ مَوْضِعُ الصَّلَاةِ فَقَدْ أَخْبَرَ بِأَنَّ مَوْضِعَ الصَّلَاةِ وَوَقْتَ الصَّلَاةِ مِنْ أَمَامٍ، فَصَحَّ يَقِينًا أَنَّ مَا قَبْلَ ذَلِكَ الْوَقْتِ، وَمَا قَبْلَ ذَلِكَ الْمَكَانِ لَيْسَ مُصَلًّى، وَلَا الصَّلَاةُ فِيهِ صَلَاةٌ.

L13355 It was narrated to us through the chain of Abd al-Razzaq from Ibn Jurayj, who reported to me that Abu al-Zubayr heard Jabir ibn Abdullah saying: "There is no prayer except with congregational prayer." And it was narrated to us through the chain of Hajjaj ibn al-Minhal from Yazid ibn Ibrahim al-Tustari from Abdullah ibn Abi Mulaikah, who said: "Ibn al-Zubayr would deliver sermons to us, saying: 'Is there no prayer except with congregational prayer?'" repeating it three times.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: لَا صَلَاةَ إِلَّا بِجَمْعٍ - وَرُوِّينَا مِنْ طَرِيقِ حَجَّاجِ بْنِ الْمِنْهَالِ نَا يَزِيدُ بْنُ إِبْرَاهِيمَ هُوَ التُّسْتَرِيُّ - نَا عَبْدُ اللَّهِ بْنُ أَبِي مُلَيْكَةَ قَالَ: كَانَ ابْنُ الزُّبَيْرِ يَخْطُبُنَا فَيَقُولُ: أَلَا لَا صَلَاةَ إِلَّا بِجَمْعٍ؟ يُرَدِّدُهَا ثَلَاثًا.

L13356 From the chain of Abd al-Rahman ibn Mahdi, from Sufyan al-Thawri, from Layth, from Mujahid, who said: “There is no prayer [valid] except in congregation, even if it extends until midnight.” It is narrated from Ibn Umar and Ibn Abbas that the Maghrib prayer is performed without congregation, and no authoritative evidence exists except based on the statement of the Messenger of Allah (peace and blessings be upon him).

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ لَيْثٍ عَنْ مُجَاهِدٍ قَالَ: لَا صَلَاةَ إِلَّا بِجَمْعٍ، وَلَوْ إِلَى نِصْفِ اللَّيْلِ - وَرُوِيَ عَنْ ابْنِ عُمَرَ وَابْنِ عَبَّاسٍ: صَلَاةُ الْمَغْرِبِ دُونَ جَمْعٍ، وَلَا حُجَّةَ إِلَّا فِي قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L13357 Hajj of One Who Did Not Join the imam in the Fajr Prayer at Muzdalifah

[حَجّ مَنْ لَمْ يُدْرِكْ مَعَ الْإِمَامِ صَلَاةَ الصُّبْحِ بِمُزْدَلِفَةَ]

L13358 As for the invalidity of the Hajj of any man who did not attend the Fajr prayer with the Imam at Muzdalifah, this is based on what ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us, Muḥammad ibn Qudāmah al-Miṣīṣī informed me, Jarīr ibn Ḥāzim narrated to us from Muṭarrif ibn Ṭarīf from al-Shaʿbī from ʿUrwah ibn Muḍarris, who said: The Messenger of Allah—peace and blessings be upon him—said, “Whoever attains the gathering with the Imam and the people until they move onward collectively from it has indeed attained Hajj, and whoever does not attain it with the Imam and the people has not attained it.”

وَأَمَّا بُطْلَانُ حَجِّ مَنْ لَمْ يُدْرِكْ مَعَ الْإِمَامِ صَلَاةَ الصُّبْحِ بِمُزْدَلِفَةَ مِنَ الرِّجَالِ، فَلِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ قُدَامَةَ الْمِصِّيصِيّ نَا جَرِيرُ بْنُ حَازِمٍ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ عَنِ الشَّعْبِيِّ عَنْ عُرْوَةَ بْنِ مُضَرِّسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أَدْرَكَ جَمْعًا مَعَ الْإِمَامِ وَالنَّاسِ حَتَّى يُفِيضُوا مِنْهَا فَقَدْ أَدْرَكَ الْحَجَّ، وَمَنْ لَمْ يُدْرِكْ مَعَ الْإِمَامِ وَالنَّاسِ فَلَمْ يُدْرِكْ».

L13359 And with his chain to Aḥmad ibn Shuʿayb: I am ʿAmr ibn ʿAlī - from Yaḥyā ibn Saʿīd al-Qaṭṭān - from Ismāʿīl ibn Abī Khālid, who informed me: ʿĀmir al-Shaʿbī informed me - ʿUrwah ibn Muḍarris al-Ṭāʾī said: I said: “O Messenger of Allah, I have come to you from the two mountains of Ṭayy, having exhausted my mount and fatigued myself. By Allah, no mountain remains except that I stood upon it. Do I have any Hajj?” The Messenger of Allah - peace and blessings of Allah be upon him - said: “Whoever prays the dawn prayer here, then remains with us, and had already stood at ʿArafah before that - whether by night or day - his Hajj is complete.”

وَبِهِ إِلَى أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نَا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ أَخْبَرَنِي عَامِرٌ الشَّعْبِيُّ أَخْبَرَنِي «عُرْوَةُ بْنُ مُضَرِّسٍ الطَّائِيُّ قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ أَتَيْتُكَ مِنْ جَبَلَيْ طَيِّئٍ أَكْلَلْتُ مَطِيَّتِي وَأَتْعَبْتُ نَفْسِي، وَاللَّهِ مَا بَقِيَ مِنْ جَبَلٍ إِلَّا وَقَفْتُ عَلَيْهِ فَهَلْ لِي مِنْ حَجٍّ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: مَنْ صَلَّى الْغَدَاةَ هَاهُنَا، ثُمَّ أَقَامَ مَعَنَا، وَقَدْ وَقَفَ قَبْلَ ذَلِكَ بِعَرَفَةَ لَيْلًا أَوْ نَهَارًا فَقَدْ تَمَّ حَجُّهُ».

L13360–13362 And He, the Exalted, said: {When you depart from ʿArafāt, remember Allah at the Sacred Monument} [Al-Baqarah: 198]. Thus, the standing at Muzdalifah—which is the Sacred Monument—is obligatory, and the remembrance of Allah, the Exalted, near it is a binding obligation. Whoever contravenes this disobeys and has no Hajj for him, because he failed to fulfill what he was

وَقَالَ تَعَالَى: {فَإِذَا أَفَضْتُمْ مِنْ عَرَفَاتٍ فَاذْكُرُوا اللَّهَ عِنْدَ الْمَشْعَرِ الْحَرَامِ} [البقرة: ١٩٨] فَوَجَبَ الْوُقُوفُ بِمُزْدَلِفَةَ - وَهِيَ الْمَشْعَرُ الْحَرَامُ - وَذِكْرُ اللَّهِ - تَعَالَى - عِنْدَهَا فَرْضٌ يَعْصِي مَنْ خَالَفَهُ وَلَا حَجَّ لَهُ، لِأَنَّهُ لَمْ يَأْتِ بِمَا أُمِرَ، إِلَّا أَنَّ إِدْرَاكَ صَلَاةِ الْفَجْرِ فِيهَا

commanded—except that attaining the Fajr prayer... The obligatory recitation performed with the Imam in the prayer is as established through the statement of the Messenger of Allah (peace and blessings be upon him). Whoever joins any part of the Imam's prayer has caught up with the prayer, in accordance with the statement of the Messenger of Allah (peace and blessings be upon him): "What you join, pray it, and what you miss, complete it."[32]

مَعَ الْإِمَامِ هُوَ الذِّكْرُ الْمُفْتَرَضُ بِبَيَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَذْكُورِ، وَمَنْ أَدْرَكَ شَيْئًا مِنْ صَلَاةِ الْإِمَامِ فَقَدْ أَدْرَكَ الصَّلَاةَ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَمَا أَدْرَكْتُمْ فَصَلُّوا وَمَا فَاتَكُمْ فَأَتِمُّوا» .

L13363 Abu Muhammad said: How astonishing that one would claim the Messenger of Allah's statement (peace be upon him) regarding pastured camels, "For every five, a sheep," serves as evidence that non-pastured camels differ from pastured ones.

قَالَ أَبُو مُحَمَّدٍ: وَالْعَجَبُ مِمَّنْ يَقُولُ: إنَّ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَائِمَةِ الْإِبِلِ «فِي كُلِّ خَمْسٍ شَاةٌ» دَلِيلٌ عَلَى أَنَّ غَيْرَ السَّائِمَةِ بِخِلَافِ السَّائِمَةِ.

L13364 Among those who assert that the Prophet's statement (peace be upon him)—"When he says, 'Allāh hears those who praise Him,' respond with, 'Our Lord, to You is all praise'"—indicates that the Imam does not say "Our Lord, to You is all praise" and that the congregant does not say "Allāh hears those who praise Him," yet they do not regard his statement (peace be upon him)—"Whoever prays Fajr here with us after having reached Arafat beforehand has completed his Hajj"—as evidence that one who fails to pray Fajr there with the Imam has not completed his Hajj. How can this be, when the Prophet's explicit text (peace be upon him) suffices us [from all of that]? For if one fails to fulfill this, he has not attained Hajj.

وَمِمَّنْ يَقُولُ: إنَّ قَوْلَهُ - عَلَيْهِ السَّلَامُ - «وَإِذَا قَالَ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ فَقُولُوا: رَبَّنَا وَلَكَ الْحَمْدُ» دَلِيلٌ أَنَّ الْإِمَامَ لَا يَقُولُ: رَبَّنَا وَلَكَ الْحَمْدُ، وَأَنَّ الْمَأْمُومَ لَا يَقُولُ: سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ ثُمَّ لَا يَرَى قَوْلَهُ - عَلَيْهِ السَّلَامُ -: «مَنْ صَلَّى الْغَدَاةَ هَاهُنَا مَعَنَا، وَقَدْ أَتَى عَرَفَةَ قَبْلَ ذَلِكَ فَقَدْ تَمَّ حَجُّهُ» دَلِيلًا عَلَى أَنَّ مَنْ لَمْ يُصَلِّ الْغَدَاةَ هُنَالِكَ مَعَ الْإِمَامِ لَمْ يَتِمَّ حَجُّهُ، فَكَيْفَ وَقَدْ غُنِينَا [عَنْ ذَلِكَ كُلِّهِ] بِنَصِّهِ - عَلَيْهِ السَّلَامُ -؟ عَلَى أَنَّهُ إنْ لَمْ يُدْرِكْ ذَلِكَ فَلَمْ يُدْرِكْ الْحَجَّ.

L13365 Some of them argued using the Prophet's statement (peace and blessings be upon him): "Ḥajj is ʿArafah." ʿAlī responded: Yet they themselves are the first to nullify this argument, for according to their rulings, there are obligatory acts whose abandonment invalidates Ḥajj besides ʿArafah—such as abandoning ihrām, neglecting Tawāf al-Ifāḍah, and omitting Saʿy between al-Ṣafā and al-Marwah. How contradictory is this? The Prophet's statement (peace be upon him)—"Ḥajj is ʿArafah"—does not prevent other elements from being Ḥajj as well when supported by textual evidence. Indeed, the Almighty has said: {And [due] to Allah from the people is pilgrimage to the

وَاحْتَجَّ بَعْضُهُمْ بِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْحَجُّ عَرَفَةَ» ؟ قَالَ عَلِيٌّ: وَهُمْ أَوَّلُ مُبْطِلٍ لِهَذَا الِاحْتِجَاجِ لِأَنَّ عِنْدَهُمْ فَرَائِضَ يَبْطُلُ الْحَجُّ بِتَرْكِهَا سِوَى عَرَفَةَ كَتَرْكِ الْإِحْرَامِ وَتَرْكِ طَوَافِ الْإِفَاضَةِ. وَتَرْكِ الصَّفَا وَالْمَرْوَةِ. فَكَمْ هَذَا التَّنَاقُضُ؟ وَلَيْسَ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «وَالْحَجُّ عَرَفَةَ» بِمَانِعٍ مِنْ أَنْ يَكُونَ غَيْرُ عَرَفَةَ الْحَجَّ أَيْضًا إذَا جَاءَ بِذَلِكَ نَصٌّ، وَقَدْ قَالَ تَعَالَى: {وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلا} [آل عمران: ٩٧] وَالْبَيْتُ غَيْرُ عَرَفَةَ بِلَا شَكٍّ.

[32] **Qur'an references (L13360):** Qur'an 2:198 (Al-Baqarah).

House—for whoever is able to find thereto a way} [Āl ʿImrān 3:97], and the House is undoubtedly other than ʿArafah.[33]

وَسَوَّى - تَعَالَى - بَيْنَ الْأَمْرِ بِعَرَفَةَ، وَالْأَمْرِ بِمُزْدَلِفَةَ فِي الْقُرْآنِ، وَقَدْ قَالَ - تَعَالَى -: {وَأَذَانٌ مِنَ اللَّهِ وَرَسُولِهِ إِلَى النَّاسِ يَوْمَ الْحَجِّ الأَكْبَرِ} [التوبة: ٣] .

L13366 He (Exalted is He) equated the commands concerning ʿArafah and Muzdalifah in the Quran, and He said: *"A declaration from Allah and His Messenger to the people on the Day of the Greater Pilgrimage"* (Quran 9:3).[34]

وَأَخْبَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ يَوْمَ الْحَجِّ الْأَكْبَرِ - هُوَ يَوْمُ النَّحْرِ - وَلَا يَكُونُ يَوْمُ الْحَجِّ الْأَكْبَرِ إِلَّا وَغَيْرُهُ يَوْمُ الْحَجِّ الْأَصْغَرِ، وَمُحَالٌ مُمْتَنِعٌ أَنْ يَكُونَ - هُوَ يَوْمَ الْحَجِّ الْأَكْبَرِ - وَلَا يَكُونَ فِيهِ مِنْ فَرَائِضِ الْحَجِّ شَيْءٌ وَيَكُونَ فَرْضُ الْحَجِّ فِي غَيْرِهِ.

L13367 The Messenger of Allah, peace and blessings be upon him, stated that the Day of the Greater Hajj is the Day of Sacrifice. The Day of the Greater Hajj cannot exist unless another day is the Day of the Lesser Hajj (ʿUmrah). It is utterly inconceivable and impossible for it to be the Day of the Greater Hajj without there being any of the obligatory rites of Hajj in it, and for the obligation of Hajj to be in a day other than it.

فَصَحَّ أَنَّ جُمْلَةَ فَرَائِضِ الْحَجِّ فِي يَوْمِ الْحَجِّ الْأَكْبَرِ، وَهِيَ الْوُقُوفُ بِمُزْدَلِفَةَ الَّذِي لَا يَكُونُ فِي غَيْرِهِ، وَرَمْيُ الْجَمْرَةِ، وَالْإِفَاضَةُ؛ وَقَدْ يَكُونَانِ فِيمَا بَعْدَهُ كَمَا عَرَفَةُ فِيمَا قَبْلَهُ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنِ الْحَسَنِ الْعُرَنِيِّ عَنِ ابْنِ عَبَّاسٍ قَالَ " مَنْ أَفَاضَ مِنْ عَرَفَةَ فَلَا حَجَّ لَهُ ".

L13368–13369 It has been established that the totality of Hajj obligations on the Day of the Greater Pilgrimage comprises standing at Muzdalifah - which does not occur at any other time - stoning the Jamrah, and the Ifādah ritual procession. These latter two may take place afterward, similar to how the standing at Arafat precedes it. We have been narrated through the chain of Abd al-Rahman ibn Mahdi, who narrated to us Sufyan al-Thawri, from Salamah ibn Kuhayl, from al-Ḥasan al-ʿUrnī, from Ibn Abbas, who said: "Whoever departs prematurely from Arafat has no valid Hajj."

وَقَدْ ذَكَرْنَا عَنِ ابْنِ الزُّبَيْرِ أَنَّهُ كَانَ يَقُولُ فِي خُطْبَتِهِ: أَلَا لَا صَلَاةَ إِلَّا بِجَمْعٍ، فَإِذَا أَبْطَلَ الصَّلَاةَ إِلَّا بِمُزْدَلِفَةَ فَقَدْ جَعَلَهَا مِنْ فَرَائِضِ الْحَجِّ.

L13370 We have related from Ibn al-Zubayr that he would declare in his sermon: "Know that there is no prayer except at Jam' (Muzdalifah). If one invalidates the prayer except at Muzdalifah, he has indeed made it one of the obligatory rites of Hajj."

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ دَاوُد بْنِ يَزِيدَ الْأَزْدِيِّ عَنْ أَبِي الضُّحَى قَالَ: سَأَلْت عَلْقَمَةَ عَمَّنْ لَمْ يُدْرِكْ عَرَفَاتٍ، أَوْ جَمْعًا، أَوْ وَقَعَ بِأَهْلِهِ يَوْمَ النَّحْرِ قَبْلَ أَنْ يَزُورَ؟ فَقَالَ: عَلَيْهِ الْحَجُّ.

L13371 From the narration of Shu'bah from Dāwūd ibn Yazīd al-Azdī from Abū al-Ḍuḥā, who said: I asked 'Alqamah about one who did not reach Arafat or Jam' (Muzdalifah), or violated marital restrictions on the day of sacrifice before performing the visitation (Tawaf). He replied: He must perform Hajj again.

وَمِنْ طَرِيقِ شُعْبَةَ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ يُقَالُ: مَنْ فَاتَهُ جَمْعٌ أَوْ عَرَفَةُ فَقَدْ فَاتَهُ الْحَجُّ.

L13372 From the narration of Shu'bah, from al-Mughīrah ibn Miqsam, from Ibrāhīm

[33] **Qur'an references (L13365):** Qur'an 3:97 (Ali 'Imran).
[34] **Qur'an references (L13366):** Qur'an 9:3 (At-Tawbah).

al-Nakha‘ī, who said: It was said, “Whoever misses the gathering [at Muzdalifah] or Arafat has indeed missed Hajj.”

وَمِنْ طَرِيق عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: مَنْ فَاتَهُ عَرَفَةُ، أَوْ جَمْعٌ، أَوْ جَامَعَ قَبْلَ أَنْ يَزُورَ فَقَدْ فَسَدَ حَجُّهُ.

L13373 From the narration of Abdur-Rahman ibn Mahdi, from Sufyan al-Thawri, from Mansur ibn al-Mu‘tamir, from Ibrahim al-Nakha‘i, who said: Whoever misses the standing at Arafah, fails to reach Muzdalifah (al-Jam‘), or engages in marital relations before performing the Tawaf al-Ziyarah (visitation rite), their Hajj is invalid.

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ أَيْضًا عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ عَنْ الشَّعْبِيِّ أَنَّهُ قَالَ: مَنْ فَاتَهُ جَمْعٌ جَعَلَهَا عُمْرَةً.

L13374 Narrated via Sufyan al-Thawri as well, from Abdullah ibn Abi al-Safar, from al-Sha‘bi, that he said: Whoever misses the gathering (jam‘), let him convert his pilgrimage into umrah.

وَعَنْ الْحَسَنِ الْبَصْرِيِّ مَنْ لَمْ يَقِفْ بِجَمْعٍ فَلَا حَجَّ لَهُ.

L13375 It is reported from al-Ḥasan al-Baṣrī: Whoever does not stand at Jam‘ (Muzdalifah), he has no Hajj.

وَعَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ قَالَ: مَنْ فَاتَهُ الْإِفَاضَةُ مِنْ جَمْعٍ فَقَدْ فَاتَهُ الْحَجُّ فَلْيَحِلَّ بِعُمْرَةٍ ثُمَّ لِيَحُجَّ مِنْ قَابِلٍ - وَمِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي بِشْرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: يَوْمُ الْحَجِّ الْأَكْبَرِ - هُوَ يَوْمُ النَّحْرِ - أَلَا تَرَى أَنَّهُ إِذَا فَاتَهُ عَرَفَةُ لَمْ يَفُتْهُ الْحَجُّ وَإِذَا فَاتَهُ يَوْمُ النَّحْرِ فَاتَهُ الْحَجُّ؟ قَالَ أَبُو مُحَمَّد: صَدَقَ سَعِيدٌ، لِأَنَّ مَنْ فَاتَتْهُ عَرَفَةُ يَوْمَ عَرَفَةَ لَمْ يَفُتْهُ الْحَجُّ لِأَنَّهُ يَقِفُ بِعَرَفَةَ لَيْلَةَ يَوْمِ النَّحْرِ، وَأَمَّا يَوْمُ النَّحْرِ فَإِنَّمَا سَمَّاهُ اللَّهُ - تَعَالَى -: {يَوْمَ الْحَجِّ الْأَكْبَرِ} [التوبة: ٣] لِأَنَّ فِيهِ فَرَائِضَ ثَلَاثًا مِنْ فَرَائِضِ الْحَجِّ، وَهُوَ الْوُقُوفُ بِمُزْدَلِفَةَ لَا يَكُونُ جَازِئًا إِلَّا غَدَاةَ يَوْمِ النَّحْرِ، وَجَمْرَةُ الْعَقَبَةِ، وَطَوَافُ الْإِفَاضَةِ، وَيَجُوزُ تَأْخِيرُهُ، فَصَحَّ أَنَّ مُزْدَلِفَةَ أَشَدُّ فُرُوضِ الْحَجِّ تَأْكِيدًا وَأَضْيَقُهَا وَقْتًا، وَقَدْ رُوِيَ عَنْ ابْنِ عُمَرَ خِلَافُ هَذَا.

L13376–13378 Hammad ibn Abi Sulayman said: “Whoever misses the Ifāḍah from Jam‘ has missed Hajj. Let him exit the state of consecration by performing Umrah, then perform Hajj the following year.” Through the chain of Shu‘bah from Abu Bishr from Sa‘id ibn Jubayr, he said: “The Greatest Day of Hajj is the Day of Sacrifice. Do you not see that if one misses Arafah, he does not miss Hajj, but if he misses the Day of Sacrifice, he misses Hajj?” Abu Muhammad said: “Sa‘id spoke truthfully, for whoever misses standing at Arafah on its day does not miss Hajj because he can stand at Arafah during the night of the Day of Sacrifice. As for the Day of Sacrifice, Allah the Exalted named it ’the Greatest Day of Hajj’ [9:3] because it contains three obligatory rites of Hajj: standing at Muzdalifah—which is not acceptable unless performed at the dawn of the Day of Sacrifice—stoning Jamrah al-‘Aqabah, and the Ifāḍah circumambulation, though it may be delayed. Thus it is confirmed that...” Muzdalifah is the most strictly mandated of Hajj’s obligations and the most time-constrained. A contrary opinion to this has been narrated from Ibn ‘Umar.[35]

L13379 As for our statement that women, children, and the weak are treated differently from this ruling, it is due to what was narrated to us through Muslim’s chain: Muhammad ibn Abi Bakr al-Muqaddami narrated to us, Yahya—the

وَأَمَّا قَوْلُنَا: إِنَّ النِّسَاءَ، وَالصِّبْيَانَ، وَالضُّعَفَاءَ بِخِلَافِ هَذَا، فَلِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا مُحَمَّدُ بْنُ أَبِي بَكْرٍ الْمُقَدَّمِيُّ نَا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ ابْنِ جُرَيْجٍ حَدَّثَنِي «عَبْدُ

[35] **Qur’an references (L13376):** Qur’an 9:3 (At-Tawbah).

son of Sa'īd al-Qaṭṭān—from Ibn Jurayj, who said: 'Abdullāh, the freed slave of Asmā' bint Abī Bakr al-Ṣiddīq, narrated to me that Asmā' said to him at Muzdalifah: "Has the moon set?" I replied: "No." She prayed for an hour, then asked: "My son, has the moon set?" I said: "Yes." She said: "Take me away." So we departed until she threw pebbles at the Jamrah, then prayed at her camp. I said to her: "O dear one, we departed in the early darkness!" She replied: "No, my son! The Messenger of Allah (peace and blessings be upon him) permitted women in litters."

اللَّهِ مَوْلَى أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ أَنَّ أَسْمَاءَ قَالَتْ لَهُ بِمُزْدَلِفَةَ: هَلْ غَابَ الْقَمَرُ؟ قُلْتُ: لَا، فَصَلَّتْ سَاعَةً ثُمَّ قَالَتْ يَا بُنَيَّ هَلْ غَابَ الْقَمَرُ؟ قُلْتُ: نَعَمْ، قَالَتْ: ارْحَلْ بِي فَارْتَحَلْنَا حَتَّى رَمَتْ الْجَمْرَةَ ثُمَّ صَلَّتْ فِي مَنْزِلِهَا فَقُلْتُ لَهَا أَيْ هَنْتَاهُ لَقَدْ غَلَّسْنَا، قَالَتْ: كَلَّا أَيْ بُنَيَّ إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَذِنَ لِلظُّعُنِ» .

L13380 From the narration of Ibn Wahb, Yunus reported to me from Ibn Shihāb that Sālim ibn ʿAbdullāh ibn ʿUmar informed him that ʿAbdullāh ibn ʿUmar would send the weak members of his household ahead. They would stand at al-Mashʿar al-Haram in Muzdalifah during the night, mentioning Allah the Exalted, then depart before the Imam stands. Ibn ʿUmar would say: The Messenger of Allah, peace and blessings of Allah be upon him, granted a concession for such people.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ أَنَّ سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ أَخْبَرَهُ أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ كَانَ يُقَدِّمُ ضَعَفَةَ أَهْلِهِ فَيَقِفُونَ عِنْدَ الْمَشْعَرِ الْحَرَامِ بِالْمُزْدَلِفَةِ بِاللَّيْلِ فَيَذْكُرُونَ اللَّهَ - تَعَالَى - ثُمَّ يَدْفَعُونَ قَبْلَ أَنْ يَقِفَ الْإِمَامُ وَيَقُولُ ابْنُ عُمَرَ أَرْخَصَ فِي أُولَئِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L13381 And through the chain of Muslim, Ali ibn Khashram narrated to me: Isa ibn Yunus informed us from Ibn Jurayj, who informed me that Ata' informed me: Ibn Shawwal reported to him that he visited Umm Habibah, the Mother of the Believers, and she informed him, "The Messenger of Allah (may Allah's peace and blessings be upon him) sent her from Muzdalifah at night."

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي عَلِيُّ بْنُ خَشْرَمٍ أَنَا عِيسَى بْنُ يُونُسَ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَطَاءٌ: أَنَّ ابْنَ شَوَّالٍ أَخْبَرَهُ أَنَّهُ دَخَلَ عَلَى أُمِّ حَبِيبَةَ أُمِّ الْمُؤْمِنِينَ فَأَخْبَرَتْهُ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ بِهَا مِنْ جَمْعٍ بِلَيْلٍ» .

L13382 And through the chain of Muslim: Yahya ibn Yahya narrated to us from Hammad ibn Yazid from Ubayd Allah ibn Abi Yazid, who said: I heard Ibn Abbas say: The Messenger of Allah—peace be upon him—sent me with those needing assistance and the vulnerable individuals from Jam' (Muzdalifah) at night.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا يَحْيَى بْنُ يَحْيَى عَنْ حَمَّادِ بْنِ يَزِيدَ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي يَزِيدَ قَالَ: سَمِعْت «ابْنَ عَبَّاسٍ يَقُولُ: بَعَثَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الثَّقَلِ وَفِي الضَّعَفَةِ مِنْ جَمْعٍ بِلَيْلٍ» .

L13383–13385 Abu Muhammad said: At that time, Ibn Abbas was approaching the age of puberty but had not yet experienced nocturnal emission. This is how he mentioned about himself in the report which states that he came to Mina on a she-donkey while the Messenger of Allah—may Allah's peace and blessings be upon him—was leading the people in prayer. He said: "I was a boy who had neared puberty." Thus, these individuals were exempt from the obligation of attending the Fajr prayer at Muzdalifah with the Imam leading them, yet

قَالَ أَبُو مُحَمَّد: كَانَ ابْنُ عَبَّاسٍ حِينَئِذٍ قَدْ نَاهَزَ الِاحْتِلَامَ وَلَمْ يَحْتَلِمْ بَعْدُ، هَكَذَا ذَكَرَ عَنْ نَفْسِهِ فِي الْخَبَرِ الَّذِي فِيهِ: أَنَّهُ أَتَى مِنًى عَلَى أَتَانٍ، وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُصَلِّي بِالنَّاسِ قَالَ: وَأَنَا غُلَامٌ قَدْ نَاهَزْت الِاحْتِلَامَ فَخَرَجَ هَؤُلَاءِ عَنْ وُجُوبِ حُضُورِ

the obligation of standing at Muzdalifah and remembering Allah—Exalted is He—there on that night remained incumbent upon them. The slaughtering is necessary due to the generality of Allah's statement, the Exalted: {When you depart from ʿArafat, remember Allah at al-Mashʿar al-Ḥarām (Muzdalifah)} [al-Baqarah 2:198].[36]

صَلَاةِ الصُّبْحِ بِمُزْدَلِفَةَ مَعَ الْإِمَامِ عَلَيْهِمْ وَبَقِيَ عَلَيْهِمْ فَرْضُ الْوُقُوفِ بِمُزْدَلِفَةَ، وَذِكْرِ اللَّهِ - تَعَالَى - هُنَالِكَ لَيْلَةَ النَّحْرِ وَلَا بُدَّ لِعُمُومِ قَوْلِه تَعَالَى: {فَإِذَا أَفَضْتُمْ مِنْ عَرَفَاتٍ فَاذْكُرُوا اللَّهَ عِنْدَ الْمَشْعَرِ الْحَرَامِ} [البقرة: ١٩٨] .

Stoning Jamrat al-Aqabah

[رَمْيِ جَمْرَةِ الْعَقَبَةِ]

L13386

L13387 As for the obligation of stoning Jamrat al-ʿAqaba, this is based on what we have narrated through the chain of Abū Dāwūd: Naṣr ibn ʿAlī al-Jahḍamī informed us, Yazīd ibn Zuraiʿ informed us, from Khālid - who is al-Ḥadhāʾ - from ʿIkrimah, from Ibn ʿAbbās: "A man said to the Messenger of Allah - peace and blessings be upon him - 'I spent the evening without stoning.' He said: 'Stone, and there is no harm.'"

وَأَمَّا وُجُوبُ رَمْيِ جَمْرَةِ الْعَقَبَةِ، فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نَا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ نَا يَزِيدُ بْنُ زُرَيْعٍ أَنَا خَالِدٌ هُوَ الْحَذَّاءُ - عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَجُلًا قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِنِّي أَمْسَيْتُ، وَلَمْ أَرْمِ قَالَ: ارْمِ وَلَا حَرَجَ» .

L13388 And through the chain of Al-Bukhārī from ʿAbdullāh ibn Yūsuf who narrated to us from Mālik, from Ibn Shihāb, from ʿĪsā ibn Ṭalḥah, from ʿUbaydullāh, from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ: "The Messenger of Allah (peace and blessings be upon him) paused during the Farewell Pilgrimage, and people began to question him. A man said: 'I was unaware, so I slaughtered before throwing the stones?' He replied: 'Throw them now; there is no blame.'" Thus, he (peace be upon him) ordered the throwing of stones, and it became obligatory.

وَمِنْ طَرِيقِ الْبُخَارِيِّ عَنْ عَبْدِ اللَّهِ بْنِ يُوسُفَ نَا مَالِكٌ عَنِ ابْنِ شِهَابٍ عَنْ عِيسَى بْنِ طَلْحَةَ عَنْ عُبَيْدِ اللَّهِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَفَ فِي حَجَّةِ الْوَدَاعِ فَجَعَلُوا يَسْأَلُونَهُ؟ فَقَالَ لَهُ رَجُلٌ: لَمْ أُشْعِرْ فَنَحَرْتُ قَبْلَ أَنْ أَرْمِيَ؟ قَالَ: ارْمِ وَلَا حَرَجَ» فَأَمَرَ - عَلَيْهِ السَّلَامُ - بِرَمْيِهَا فَوَجَبَ فَرْضًا.

L13389 If it is said: "In this report, he—peace be upon him—stated, 'Slaughter, and there is no harm,' so they ruled the slaughter as obligatory?" We respond: If that slaughter was a vowed act or an obligatory sacrifice, then yes, it is obligatory. But if it was voluntary, sufficient proof that slaughtering it is not obligatory lies in the certain knowledge that it is voluntary, not obligatory.

فَإِنْ قِيلَ: إنَّ فِي هَذَا الْخَبَرِ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: «اذْبَحْ وَلَا حَرَجَ» فَأَوْجَبُوا الذَّبْحَ فَرْضًا؟ قُلْنَا: إنْ كَانَ ذَلِكَ الذَّبْحُ مَنْذُورًا أَوْ هَدْيًا وَاجِبًا؟ فَنَعَمْ هُوَ فَرْضٌ، وَإِنْ كَانَ تَطَوُّعًا فَيَكْفِي مِنَ الْبُرْهَانِ عَلَى أَنَّهُ لَيْسَ ذَبْحُهُ فَرْضًا تَيَقُّنُ الْعِلْمِ بِأَنَّهُ تَطَوُّعٌ لَا فَرْضٌ.

L13390–13392 It has been reported to us through the chain of al-Ḥudhāfī from ʿAbd al-Razzāq from Maʿmar, who said: Al-Zuhrī stated concerning one who failed to stone the jamrah: If he remembers while in Mina, he should stone it. If this opportunity passes until the *nafar* departure, he must perform Hajj

رُوِّينَا مِنْ طَرِيقِ الْحُذَافِيِّ عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: قَالَ الزُّهْرِيُّ فِيمَنْ لَمْ يَرْمِ الْجَمْرَةَ: إنْ ذَكَرَ وَهُوَ بِمِنًى رَمَى، وَإِنْ فَاتَهُ ذَلِكَ حَتَّى نَفَرَ فَإِنَّهُ يَحُجُّ مِنْ قَابِلٍ وَيُحَافِظُ عَلَى الْمَنَاسِكِ - وَبِهِ يَقُولُ دَاوُد، وَأَصْحَابُنَا، وَلَا يُجْزِئُ الرَّمْيُ إلَّا بِحَصًى كَحَصَى الْخَذْفِ لَا

[36] **Qur'an references (L13383):** Qur'an 2:198 (Al-Baqarah).

أَصْغَرَ، وَلَا أَكْبَرَ، لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ -: نَا مُحَمَّدُ بْنُ رُمْحٍ عَنْ اللَّيْثِ هُوَ ابْنُ سَعْدٍ - عَنْ أَبِي الزُّبَيْرِ عَنْ أَبِي مَعْبَدٍ مَوْلَى ابْنِ عَبَّاسٍ عَنْ الْفَضْلِ بْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «عَلَيْكُمْ بِحَصَى الْخَذْفِ الَّذِي تُرْمَى بِهِ الْجَمْرَةُ» .

the following year and carefully adhere to the rites. This opinion is held by Dāwūd and our companions. Stoning is only valid with pebbles resembling those used for fingertip casting—neither smaller nor larger. As reported through the chain of Muslim: Muḥammad ibn Rumḥ narrated to us from al-Layth ibn Saʿd from Abū al-Zubayr from Abū Maʿbad, the freedman of Ibn ʿAbbās, from... Al-Fadl ibn Abbas reported that the Messenger of Allah (peace be upon him) said: "It is incumbent upon you to use the pebbles the size of fingertips used for flicking, with which Jamrah is stoned."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا يَعْقُوبُ بْنُ إبْرَاهِيمَ هُوَ الدَّوْرَقِيُّ - نَا إسْمَاعِيلُ بْنُ إبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ - نَا عَوْفٌ هُوَ ابْنُ أَبِي جَمِيلَةَ - نَا زِيَادُ بْنُ حُصَيْنٍ عَنْ أَبِي الْعَالِيَةِ قَالَ: «قَالَ ابْنُ عَبَّاسٍ: قَالَ لِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَدَاةَ الْعَقَبَةِ وَهُوَ عَلَى رَاحِلَتِهِ هَاتِ الْقُطْ لِي؟ فَلَقَطْتُ لَهُ حَصَيَاتٍ، هِيَ حَصَى الْخَذْفِ، فَلَمَّا وَضَعْتُهُنَّ فِي يَدِهِ قَالَ: بِأَمْثَالِ هَؤُلَاءِ بِأَمْثَالِ هَؤُلَاءِ وَإِيَّاكُمْ وَالْغُلُوَّ فِي الدِّينِ فَإِنَّمَا أَهْلَكَ مَنْ كَانَ قَبْلَكُمْ الْغُلُوُّ فِي الدِّينِ» .

L13393 From the path of Ahmad ibn Shuʿayb: I am Yaʿqub ibn Ibrāhīm ad-Dawraqī; from Ismāʿīl ibn Ibrāhīm, the son of ʿUlayyah; from ʿAwf ibn Abī Jamīlah; from Ziyād ibn Ḥuṣayn; from Abū al-ʿĀliyah, who said: Ibn ʿAbbās said: The Messenger of Allah—peace and blessings of Allah be upon him—said to me on the morning of ʿAqabah while mounted on his riding animal, "Bring me pebbles." I gathered pebbles for him—pebbles for throwing. When I placed them in his hand, he said, "Like these, like these. Beware of extremism in religion, for it was extremism in religion that destroyed those who came before you."[37]

وَقَالَ مَالِكٌ: أُحِبُّ أَكْبَرَ مِنْ حَصَى الْخَذْفِ، وَهَذَا قَوْلٌ فِي غَايَةِ الْفَسَادِ لِتَعَرِّيهِ مِنْ الْبُرْهَانِ وَمُخَالَفَةِ الْأَثَرِ الثَّابِتِ -: رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ ابْنِ جُرَيْجٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ عَنْ عَبْدِ اللَّهِ، وَابْنِ الزُّبَيْرِ، قَالَا جَمِيعًا: مِثْلُ حَصَى الْخَذْفِ، وَلَا مُخَالِفَ لَهُمَا لَا مِنْ صَاحِبٍ، وَلَا مِنْ تَابِعٍ، وَهَذَانِ الْأَثَرَانِ يُبْطِلَانِ قَوْلَ مَنْ قَالَ: يُجْزِئُ الرَّمْيُ بِغَيْرِ الْحَصَى

L13394 Mālik said: "I hold [stones] larger than the pebbles used in stoning (ḥaṣā al-khadhf)." This opinion is utterly invalid due to its lack of evidence and contradiction of the established narration. We have received through Ibn Abī Shaybah's transmission: from us Abū Khālid al-Aḥmar narrated from Ibn Jurayj, from Abū al-Zubayr, from Jābir, from ʿAbdullāh and Ibn al-Zubayr, both of whom said: "Like the pebbles used in stoning," with no opposition from any Companion or Successor. These two narrations invalidate the view of those who claim: "Stoning with non-standard pebbles is valid."

[عَدَد الْحَصَى]

L13395 ## The number of pebbles.

وَأَمَّا الْعَدَدُ فَاخْتَلَفَ النَّاسُ فِيهِ - رُوِّينَا عَنْ ابْنِ عُيَيْنَةَ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ أَنَّ سَعْدَ بْنَ أَبِي وَقَّاصٍ قَالَ:

L13396 As for the number, the people differed—it was reported to us via Ibn 'Uyaynah from Ibn Abī Najīḥ from Mujāhid that Sa'd ibn Abī Waqqāṣ said: "We

[37] **Hadith references (L13393):** Sunan an-Nasai 3057.

sat down. Some of us said, 'I threw six,' while others said, 'I threw seven,' yet none of us criticized the others."

وَأَمَّا الْعَدَدُ فَإِنَّ النَّاسَ اخْتَلَفُوا - رُوِّينَا مِنْ طَرِيقِ ابْنِ عُيَيْنَةَ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ: أَنَّ سَعْدَ بْنَ أَبِي وَقَّاصٍ قَالَ: جَلَسْنَا فَقَالَ بَعْضُنَا: رَمَيْت بِسِتٍّ، وَقَالَ بَعْضُنَا: رَمَيْت بِسَبْعٍ؛ فَلَمْ يَعِبْ بَعْضُنَا عَلَى بَعْضٍ.

L13397 And through the chain of Abd al-Razzaq from Ibn Jurayj, Muhammad ibn Yusuf informed me that Abdullah ibn Amr ibn Uthman reported to him: He heard Abu Habbah al-Ansari issuing a fatwa that there is no harm in the number of pebbles a person throws. Then Abdullah ibn Amr came to Ibn Umar and informed him, whereupon Ibn Umar said: "Abu Habbah has spoken truthfully."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي مُحَمَّدُ بْنُ يُوسُفَ: أَنَّ عَبْدَ اللَّهِ بْنَ عَمْرِو بْنِ عُثْمَانَ أَخْبَرَهُ: أَنَّهُ سَمِعَ أَبَا حَبَّةَ الْأَنْصَارِيَّ يُفْتِي بِأَنَّهُ لَا بَأْسَ بِمَا رَمَى بِهِ الْإِنْسَانُ مِنْ عَدَدِ الْحَصَى فَجَاءَ عَبْدُ اللَّهِ بْنُ عَمْرٍو إلَى ابْنِ عُمَرَ فَأَخْبَرَهُ فَقَالَ: صَدَقَ أَبُو حَبَّةَ.

L13398 Abu Muhammad said: Abu Habbah al-Badri – and it has been narrated to us from Tāwus: "Whoever omits a pebble must feed [someone] a date or a morsel" – and from ʿAṭāʾ: "Whoever fails to perform the stoning rites for a day must give a dirham in charity, and whoever delays it until the days of Mina conclude must slaughter an animal."

قَالَ أَبُو مُحَمَّد: أَبُو حَبَّةَ بَدْرِيٌّ - وَرُوِّينَا عَنْ طَاوُسٍ مَنْ تَرَكَ حَصَاةً فَإِنَّهُ يُطْعِمُ تَمْرَةً أَوْ لُقَيْمَةً - وَعَنْ عَطَاءٍ: مَنْ فَاتَتْهُ الْجِمَارُ يَوْمًا تَصَدَّقَ بِدِرْهَمٍ، وَمَنْ فَاتَتْهُ حَتَّى تَنْقَضِيَ أَيَّامُ مِنًى فَعَلَيْهِ دَمٌ.

L13399–13401 Ali said: It was narrated to us via the chain from 'Abd al-Razzaq, from Ma'mar, from Sulayman at-Taymi, from Abu Mijlaz: I said to Ibn Umar, "I forgot to throw a pebble from the Jamrah's stones." Ibn Umar said to me, "Go to..." That is the Sheikh—ask him, then return and inform me of what he says. He said: So I asked him, and he replied to me: If I had forgotten anything during my prayer, I would have repeated it. Then Ibn 'Umar said: He was correct.

قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا مَعْمَرٌ عَنْ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَبِي مِجْلَزٍ قُلْت لِابْنِ عُمَرَ: نَسِيت أَنْ أَرْمِيَ بِحَصَاةٍ مِنْ حَصَى الْجَمْرَةِ فَقَالَ لِي ابْنُ عُمَرَ: اذْهَبْ إلَى ذَلِكَ الشَّيْخِ فَسَلْهُ ثُمَّ ارْجِعْ فَأَخْبِرْنِي بِمَا يَقُولُ، قَالَ: فَسَأَلْته؟ فَقَالَ لِي: لَوْ نَسِيت شَيْئًا مِنْ صَلَاتِي لَأَعَدْت، فَقَالَ ابْنُ عُمَرَ: أَصَابَ.

L13402 Abu Muhammad said: This Sheikh—he is Muhammad ibn al-Hanafiyyah—we have narrated it thus through the chain of al-Mu'tamir ibn Sulayman from his father. It was narrated to us from Ibn 'Umar, who said: "Whoever forgets the jamarah, he should stone it at night when he remembers."

قَالَ أَبُو مُحَمَّد: هَذَا الشَّيْخُ - هُوَ مُحَمَّدُ ابْنُ الْحَنَفِيَّةِ - هَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ عَنْ أَبِيهِ - وَرُوِّينَا عَنْ ابْنِ عُمَرَ قَالَ: مَنْ نَسِيَ الْجَمْرَةَ رَمَاهَا بِاللَّيْلِ حِينَ يَذْكُرُ.

L13403 From Tawus, Urwah ibn al-Zubayr, al-Nakhaʿī, and al-Ḥasan - they all said: "He may perform the pebble-throwing (*rami*) at night." This is the view of Sufyan; they did not consider it obligatory in that matter.

وَعَنْ طَاوُسٍ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَالنَّخَعِيِّ، وَالْحَسَنِ قَالُوا كُلُّهُمْ: يَرْمِي بِاللَّيْلِ - هُوَ قَوْلُ سُفْيَانَ، وَلَمْ يُوجِبُوا فِي ذَلِكَ شَيْئًا.

L13404 Abu Muhammad said: The Prophet (PBUH) only prohibited throwing peb-

bles before sunrise on the Day of Sacrifice and permitted it thereafter, even if one remains until evening. This ruling applies to both the night and the late afternoon together, as we previously mentioned.

قَالَ أَبُو مُحَمَّد: إنَّمَا نَهَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ رَمْيِهَا مَا لَمْ تَطْلُعْ الشَّمْسُ مِنْ يَوْمِ النَّحْرِ، وَأَبَاحَ رَمْيَهَا بَعْدَ ذَلِكَ، وَإِنْ أَمْسَى؛ وَهَذَا يَقَعُ عَلَى اللَّيْلِ وَالْعَشِيِّ مَعًا كَمَا ذَكَرْنَا قَبْلُ.

L13405 Abu Ḥanīfah said: Upon him is half a ṣāʿ of wheat as food for a poor person for every pebble he forgot, unless that amount reaches [the obligation of] a sacrificial animal.

قَالَ أَبُو حَنِيفَةَ: عَلَيْهِ فِي كُلِّ حَصَاةٍ نَسِيَهَا طَعَامُ مِسْكِينٍ نِصْفَ صَاعِ حِنْطَةٍ إلَّا أَنْ يَبْلُغَ ذَلِكَ دَمًا.

L13406 Malik said: If one forgets a single pebble or more, he must offer a blood sacrifice. If he omits seven pebbles, he must offer a camel; if he cannot afford or procure it, then a cow; if unable, then a sheep or goat; and if still unable, he must fast.

وَقَالَ مَالِكٌ: عَلَيْهِ فِي الْحَصَاةِ الْوَاحِدَةِ فَأَكْثَرَ إنْ نَسِيَهَا دَمٌ، فَإِنْ تَرَكَ سَبْعَ حَصَيَاتٍ فَعَلَيْهِ بَدَنَةٌ، فَإِنْ لَمْ يَجِدْ فَبَقَرَةٌ، فَإِنْ لَمْ يَجِدْ فَشَاةٌ، فَإِنْ لَمْ يَجِدْ فَصِيَامٌ.

L13407 As for Al-Shafiʿī, he once stated: Upon him is a mudd of food for a single stone, two mudds for two stones, and starting from three stones, the blood sacrifice obligation. It has also been narrated from him that for one stone, a third of the blood sacrifice obligation is required; for two stones, two-thirds of it; and starting from three stones, the full blood sacrifice obligation. Another narration from him mentions that starting from one stone, the blood sacrifice obligation applies.

وَأَمَّا الشَّافِعِيُّ فَمَرَّةً قَالَ: عَلَيْهِ فِي حَصَاةٍ وَاحِدَةٍ مُدُّ طَعَامٍ، وَفِي حَصَاتَيْنِ مُدَّانِ، وَفِي ثَلَاثٍ فَصَاعِدًا دَمٌ - وَقَدْ رُوِيَ عَنْهُ فِي حَصَاةٍ ثُلُثُ دَمٍ، وَفِي الْحَصَاتَيْنِ ثُلُثَا دَمٍ، وَفِي الثَّلَاثِ فَصَاعِدًا دَمٌ - وَرُوِيَ عَنْهُ لِلْحَصَاةِ الْوَاحِدَةِ فَصَاعِدًا دَمٌ.

L13408 Abu Muhammad said: All these mentioned opinions—none of them are supported by a scriptural text, a corrupt narration, a Companion's statement, a follower's view, analogy, nor has anyone we know of upheld any of these opinions before the proponents we cited—those we mentioned? As for throwing pebbles before sunrise, it is not valid for anyone: neither woman nor man. It was narrated to us through the chain of Ahmad ibn Shuʿayb → Mahmud ibn Ghaylan al-Marwazi → Bishr ibn al-Sari → Sufyan al-Thawri → Habib (ibn Abi Thabit) → ʿAta' → Ibn Abbas: "The Prophet—peace and blessings be upon him—sent his family ahead and commanded them not to throw pebbles at Jamrat al-ʿAqaba until the sun rises."

قَالَ أَبُو مُحَمَّد: وَهَذِهِ الْأَقْوَالُ الْمَذْكُورَةُ كُلُّهَا لَيْسَ شَيْءٌ مِنْهَا جَاءَ بِهِ نَصٌّ، وَلَا رِوَايَةٌ فَاسِدَةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا قِيَاسٌ، وَلَا قَالَ بِشَيْءٍ مِنْهَا أَحَدٌ نَعْلَمُهُ قَبْلَ الْقَائِلِ بِكُلِّ قَوْلٍ ذَكَرْنَاهُ عَمَّنْ ذَكَرْنَاهُ عَنْهُ؟ وَأَمَّا الرَّمْيُ قَبْلَ طُلُوعِ الشَّمْسِ فَلَا يُجْزِئُ أَحَدًا: لَا امْرَأَةً وَلَا رَجُلًا -: رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مَحْمُودُ بْنُ غَيْلَانَ الْمَرْوَزِيِّ نَا بِشْرُ بْنُ السَّرِيِّ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ حَبِيبٍ هُوَ ابْنُ أَبِي ثَابِتٍ - عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدَّمَ أَهْلَهُ وَأَمَرَهُمْ أَنْ لَا يَرْمُوا جَمْرَةَ الْعَقَبَةِ حَتَّى تَطْلُعَ الشَّمْسُ» .

L13409 And it has been narrated to us from a group of the Successors [to the Prophet's Companions] that it is permissible to perform the ritual throwing [of pebbles] before sunrise.

L13410–13411 There is no valid argument for anyone in the presence of the Messenger of Allah, peace and blessings be upon him. Sufyan said: "Whoever performs the ritual throwing of stones before sunrise must repeat it after sunrise." This is the position held by our companions.

L13412 The Talbiyah should not be discontinued until the time of throwing the final pebble at Jamrat al-'Aqabah.

L13413 As for our statement: "One does not cease the Talbiyah except with the last pebble at Jamrah al-Aqabah"—Mālik said: "One ceases the Talbiyah when departing for ʿArafah." They cited narrations regarding this from ʿĀ'ishah, the Mother of the Believers, Ibn ʿUmar, and ʿAlī. They argued by stating: "The Talbiyah is an act of answering [the divine call], so when one has reached ʿArafah, the Talbiyah becomes meaningless."

L13414 Abū Muḥammad said: As for the narration attributed to ʿAlī, it is not valid because it has an interrupted chain to him. The authentic report from him contradicts that. As for the narrations from Umm al-Muʾminīn and Ibn ʿUmar, other Companions besides them—may Allah be pleased with them—disagreed. When disagreement occurs, the matter must be referred back to what Allah—Exalted is He—has mandated recourse to: the Qurʾān and the Sunnah.

L13415 As for their statement that the *talbiyah* is a response, this is an unsubstantiated claim. Had their assertion been valid, the *talbiyah* would have been obligatory upon hearing the call to prayer, and likewise required for fulfilling the obligation to proceed to Friday prayer and other such duties. The *talbiyah* is nothing but a divinely ordained law commanded by Allah, with no cause for it except what He, the Exalted, stated: "to test which of you is best in deed" (Quran 11:7).[38]

L13416 Then, if it were an acceptance of the call as they claimed, he would not

[38] **Qur'an references (L13415):** Qur'an 11:7 (Hud); Qur'an 67:2 (Al-Mulk).

وَرُوِّينَا عَنْ طَائِفَةٍ مِنْ التَّابِعِينَ: إبَاحَةَ - الرَّمْيِ قَبْلَ طُلُوعِ الشَّمْسِ.

وَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ سُفْيَانُ: مَنْ رَمَى قَبْلَ طُلُوعِ الشَّمْسِ أَعَادَ الرَّمْيَ بَعْدَ طُلُوعِهَا - وَهُوَ قَوْلُ أَصْحَابِنَا.

[لَا يَقْطَعُ التَّلْبِيَةَ إلَّا مَعَ آخِرِ حَصَاةٍ مِنْ جَمْرَةِ الْعَقَبَةِ]

وَأَمَّا قَوْلُنَا: لَا يَقْطَعُ التَّلْبِيَةَ إلَّا مَعَ آخِرِ حَصَاةٍ مِنْ جَمْرَةِ الْعَقَبَةِ؛ فَإِنَّ مَالِكًا قَالَ: يَقْطَعُ التَّلْبِيَةَ إذَا نَهَضَ إلَى عَرَفَةَ، وَذَكَرُوا فِي ذَلِكَ رِوَايَةً عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَابْنِ عُمَرَ، وَعَنْ عَلِيٍّ، وَاحْتَجُّوا بِأَنْ قَالُوا: التَّلْبِيَةُ اسْتِجَابَةٌ فَإِذَا وَصَلَ فَلَا مَعْنَى لِلتَّلْبِيَةِ.

قَالَ أَبُو مُحَمَّد: أَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ فَلَا تَصِحُّ؛ لِأَنَّهَا مُنْقَطِعَةٌ إلَيْهِ، وَالصَّحِيحُ عَنْهُ خِلَافُ ذَلِكَ، وَأَمَّا عَنْ أُمِّ الْمُؤْمِنِينَ، وَابْنِ عُمَرَ فَقَدْ خَالَفَهُمَا غَيْرُهُمَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَإِذَا وَقَعَ التَّنَازُعُ فَالْمَرْجُوعُ فِيهِ إلَى مَا افْتَرَضَ اللَّهُ - تَعَالَى - الرُّجُوعَ إلَيْهِ مِنْ الْقُرْآنِ وَالسُّنَّةِ.

وَأَمَّا قَوْلُهُمْ: إنَّ التَّلْبِيَةَ اسْتِجَابَةٌ فَدَعْوَى لَا بُرْهَانَ عَلَى صِحَّتِهَا، وَلَوْ كَانَ مَا قَالُوا: لَوَجَبَتْ التَّلْبِيَةُ عِنْدَ سَمَاعِ الْأَذَانِ، وَوُجُوبِ النُّهُوضِ إلَى الْجُمُعَةِ وَغَيْرِهَا، وَمَا التَّلْبِيَةُ إلَّا شَرِيعَةٌ أَمَرَ اللَّهُ بِهَا لَا عِلَّةَ لَهَا إلَّا مَا قَالَ تَعَالَى: {لِيَبْلُوَكُمْ أَيُّكُمْ أَحْسَنُ عَمَلًا} [هود: ٧] .

yet have attained what he was commanded to fulfill, because there remained upon him obligatory rites of Hajj which he could only attain by completing them, such as standing at ‘Arafah and Tawaf al-Ifadah. It has been narrated to us through the transmission of Abu Dawud: Ahmad ibn Hanbal narrated to us from Waki‘ from Ibn Jurayj from ‘Ata’ from Ibn ‘Abbas from al-Fadl ibn ‘Abbas that “the Prophet (peace and blessings be upon him) recited the Talbiyah until he pelted Jamrat al-‘Aqabah.” This has also been authenticated through the transmission of Usamah ibn Zayd from the Prophet (peace and blessings be upon him).[39]

ثُمَّ لَوْ كَانَتْ اسْتِجَابَةً كَمَا قَالُوا: لَكَانَ لَمْ يَصِلْ بَعْدُ إِلَى مَا دُعِيَ إِلَيْهِ لِأَنَّهُ قَدْ بَقِيَتْ عَلَيْهِ فُرُوضٌ مِنْ فُرُوضِ الْحَجِّ لَا يَكُونُ وَاصِلًا إِلَى مَا دُعِيَ إِلَيْهِ إِلَّا بِتَمَامِهَا كَعَرَفَةَ، وَطَوَافِ الْإِفَاضَةِ -: رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا أَحْمَدُ بْنُ حَنْبَلٍ نَا وَكِيعٌ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ عَنْ الْفَضْلِ بْنِ عَبَّاسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَبَّى حَتَّى رَمَى جَمْرَةَ الْعَقَبَةِ» . وَصَحَّ أَيْضًا مِنْ طَرِيقِ أُسَامَةَ بْنِ زَيْدٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L13417 From the path of Muslim: Shuraih ibn Yunus narrated to us, Hushaym said: I narrate from Husayn ibn Abd al-Rahman, from Kathir ibn Mudrik al-Ashja’i, from Abd al-Rahman ibn Yazid: “Abdullah ibn Mas’ud recited the Talbiyah when he departed from Jam‘. It was said to him: ’Regarding what is this?’ He replied: ’Have people forgotten or gone astray? I heard the one upon whom Surah al-Baqarah was revealed say in this place: Labbayka Allahumma Labbayka.”’

وَمِنْ طَرِيقِ مُسْلِمٍ نَا شُرَيْحُ بْنُ يُونُسَ نَا هُشَيْمٌ أَنَا حُصَيْنٌ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ - عَنْ كَثِيرِ بْنِ مُدْرِكٍ الْأَشْجَعِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ «أَنَّ عَبْدَ اللَّهِ بْنَ مَسْعُودٍ لَبَّى حِينَ أَفَاضَ مِنْ جَمْعٍ فَقِيلَ لَهُ: عَنْ أَيِّ هَذَا؟ فَقَالَ: أَنَسِيَ النَّاسُ أَمْ ضَلُّوا؟ سَمِعْتُ الَّذِي أُنْزِلَتْ عَلَيْهِ سُورَةُ الْبَقَرَةِ يَقُولُ فِي هَذَا الْمَكَانِ: لَبَّيْكَ اللَّهُمَّ لَبَّيْكَ» .

L13418–13419 And through the chain of Yahya ibn Sa’id al-Qattan from Sufyan al-Thawri from Ibrahim ibn ’Uqbah from Kuraib, the freedman of Ibn Abbas, that Maymunah, the Mother of the Believers, continuously recited the talbiyah when she performed the stoning of the pillar (jamrah).

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إبْرَاهِيمَ بْنِ عُقْبَةَ عَنْ كُرَيْبٍ مَوْلَى ابْنِ عَبَّاسٍ أَنَّ مَيْمُونَةَ أُمَّ الْمُؤْمِنِينَ لَبَّتْ حِينَ رَمَتْ الْجَمْرَةَ.

L13420 And from him [the preceding narrator] to Sufyan, from Amir ibn Shaqiq: I heard Abu Wa’il say: Ibn Mas’ud said: “The pilgrim must not stop reciting the talbiyah until they have stoned Jamrat al-‘Aqabah.”

وَبِهِ إلَى سُفْيَانَ عَنْ عَامِرِ بْنِ شَقِيقٍ سَمِعْت أَبَا وَائِلٍ يَقُولُ: قَالَ ابْنُ مَسْعُودٍ: لَا يُمْسِكُ الْحَاجُّ عَنْ التَّلْبِيَةِ حَتَّى يَرْمِيَ جَمْرَةَ الْعَقَبَةِ.

L13421 And from the chain of Hammad ibn Zayd, Ayyub al-Sikhtiyānī reported to us that he heard Abd al-Rahman ibn al-Aswad ibn Yazid say: My father narrated to me that he heard Umar ibn al-Khattab reciting the talbiyah at ʿArafah.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ نَا أَيُّوبُ السِّخْتِيَانِيُّ أَنَّهُ سَمِعَ عَبْدَ الرَّحْمَنِ بْنَ الْأَسْوَدِ بْنِ يَزِيدَ يَقُولُ: حَدَّثَنِي أَبِي أَنَّهُ سَمِعَ عُمَرَ بْنَ الْخَطَّابِ يُلَبِّي بِعَرَفَةَ.

L13422 And it is narrated through the chain of Hammad ibn Salamah via Qays

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: سَمِعْت عُمَرَ يُلَبِّي غَدَاةَ الْمُزْدَلِفَةِ.

[39] **Hadith references (L13416):** Sunan Ibn Majah 3039.

ibn Saʿd via ʿAta ibn Abi Rabah via Ibn Abbas, who said: I heard ʿUmar proclaiming the Talbiyah at dawn in al-Muzdalifah.

L13423 From Ibn Abi Shaybah: Abd al-A'la narrated to us from Muhammad ibn Ishaq, who said, "I heard Ikrimah say: 'The Messenger of Allah (peace be upon him) entered Ihram until he threw pebbles at the Jamrah, as did Abu Bakr and Umar.'"

L13424 It is narrated that Ali ibn Abi Talib proclaimed the Talbiyah until he began stoning Jamrah al-ʿAqabah.

L13425 From al-Qāsim ibn Muḥammad, from Umm al-Mu'minīn ʿĀ'ishah: She would proclaim the Talbiyah after ʿArafah. From Sufyān ibn ʿUyaynah: He heard Saʿd ibn Ibrāhīm narrate to al-Zuhrī, from ʿAbd al-Raḥmān ibn al-Aswad, that ʿAbd al-Raḥmān's father ascended to Ibn al-Zubayr's pulpit on the day of ʿArafah and said to him, "What prevents you from proclaiming the Talbiyah? I have seen ʿUmar in this same position proclaiming it." Thereupon Ibn al-Zubayr proclaimed the Talbiyah.

L13426 And from Ibn ʿUyaynah, from ʿUbayd Allāh ibn Abī Yazīd, who said: Continue the talbiyah until your iḥrām ends when you throw at the Jamrah. And from Sufyān al-Thawrī, from ʿAbd Allāh ibn al-Ḥasan, from ʿIkrimah, who said: I was with al-Ḥusayn ibn ʿAlī, and he maintained the talbiyah until he threw at Jamrat al-ʿAqabah.

L13427 Abu Muhammad said that Mu'awiyah used to prohibit from that.

L13428 From the narration of Mālik via Yaḥyā ibn Saʿīd, who said: "'Umar ibn ʿAbd al-ʿAzīz departed early from Minā to ʿArafat and heard people generally reciting the *Takbīr*. He then sent guards to proclaim: 'O people, it is the *Talbiyah*!'"

L13429 Through the chain of Saʿīd ibn Manṣūr, Jarīr narrated to us from al-Mughīrah, who said: A matter was raised before Ibrāhīm al-Nakhaʿī: When the pilgrim arrives, should he cease the talbiyah while circumambulating the House? Ibrāhīm replied: No. Rather, he should make the talbiyah before the circumambulation, during it, and after it, and he must not discontinue

وَعَنْ ابْنِ أَبِي شَيْبَةَ نَا عَبْدُ الْأَعْلَى عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ سَمِعْت عِكْرِمَةَ يَقُولُ: «أَهَلَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى رَمَى الْجَمْرَةَ، وَأَبُو بَكْرٍ، وَعُمَرُ» .

وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ لَبَّى حَتَّى رَمَى جَمْرَةَ الْعَقَبَةِ.

وَعَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أُمِّ الْمُؤْمِنِينَ عَائِشَةَ كَانَتْ تُلَبِّي بَعْدَ عَرَفَةَ - وَعَنْ سُفْيَانَ بْنِ عُيَيْنَةَ سَمِعَ سَعْدَ بْنَ إبْرَاهِيمَ يُحَدِّثُ الزُّهْرِيَّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ أَنَّ أَبَاهُ صَعِدَ إلَى ابْنِ الزُّبَيْرِ الْمِنْبَرَ يَوْمَ عَرَفَةَ فَقَالَ لَهُ: مَا يَمْنَعُك أَنْ تُهِلَّ؟ فَقَدْ رَأَيْت عُمَرَ فِي مَكَانِك هَذَا يُهِلُّ؟ فَأَهَلَّ ابْنُ الزُّبَيْرِ.

وَعَنْ ابْنِ عُيَيْنَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي يَزِيدَ يَقُولُ: تُلَبِّي حَتَّى يَنْقَضِيَ حَرَمُك إذَا رَمَيْت الْجَمْرَةَ - وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ الْحَسَنِ عَنْ عِكْرِمَةَ قَالَ: كُنْت مَعَ الْحُسَيْنِ بْنِ عَلِيٍّ فَلَبَّى حَتَّى رَمَى جَمْرَةَ الْعَقَبَةِ.

قَالَ أَبُو مُحَمَّدٍ: وَكَانَ مُعَاوِيَةُ يَنْهَى عَنْ ذَلِكَ.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ قَالَ: غَدَا عُمَرُ بْنُ عَبْدِ الْعَزِيزِ مِنْ مِنًى إلَى عَرَفَةَ فَسَمِعَ التَّكْبِيرَ عَامًّا فَبَعَثَ الْحَرَسَ يَصِيحُونَ: أَيُّهَا النَّاسُ إنَّهَا التَّلْبِيَةُ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا جَرِيرٌ عَنْ الْمُغِيرَةِ قَالَ: ذُكِرَ عِنْدَ إبْرَاهِيمَ النَّخَعِيِّ إذَا قَدِمَ الْحَاجُّ أَمْسَكَ عَنْ التَّلْبِيَةِ مَا دَامَ يَطُوفُ بِالْبَيْتِ فَقَالَ إبْرَاهِيمُ: لَا، بَلْ يُلَبِّي قَبْلَ

it until he stones the Jamrah. This is the view of Abū Ḥanīfah, al-Shāfiʿī, Aḥmad, Isḥāq, and Abī Sulaymān.

الطَّوَافِ، وَفِي الطَّوَافِ، وَبَعْدَ الطَّوَافِ، وَلَا يَقْطَعُهَا حَتَّى يَرْمِيَ الْجَمْرَةَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ.

L13430–13431 Abu Muhammad said: However, Abu Hanifah and Al-Shafiʿi stated that one ceases the Talbiyah with the first stone he throws at the Jamrah. This is incorrect; rather, it is with the last stone of the Jamrah, because this is the explicit text of the Messenger of Allah's action (peace be upon him), as reported by Ibn ʿAbbas and Usamah: "He (peace be upon him) continued the Talbiyah until he stoned Jamrat al-ʿAqabah." Had it been as Abu Hanifah and Al-Shafiʿi claimed, they would have said: "until he began stoning Jamrat al-ʿAqabah."

قَالَ أَبُو مُحَمَّدٍ: إلَّا أَنَّ أَبَا حَنِيفَةَ، وَالشَّافِعِيَّ قَالَا: يَقْطَعُ التَّلْبِيَةَ مَعَ أَوَّلِ حَصَاةٍ يَرْمِيهَا فِي الْجَمْرَةِ؟ وَلَيْسَ كَذَلِكَ بَلْ مَعَ آخِرِ حَصَاةٍ مِنْ الْجَمْرَةِ لِأَنَّهُ نَصُّ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا «حَكَى ابْنُ عَبَّاسٍ، وَأُسَامَةُ: أَنَّهُ - عَلَيْهِ السَّلَامُ - لَبَّى حَتَّى رَمَى جَمْرَةَ الْعَقَبَةِ» وَلَوْ كَانَ مَا قَالَهُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، لَقَالَا: حَتَّى بَدَأَ رَمْيَ جَمْرَةِ الْعَقَبَةِ.

L13432 It has been narrated to us through the chain of Al-Ḥudhāfī from ʿAbdur-Razzāq from Sufyān ibn ʿUyaynah from Zayd ibn Aslam from ʿAbdullāh ibn Ibrāhīm ibn Ḥunayn from Ibn ʿAbbās, who said: I heard ʿUmar ibn Al-Khaṭṭāb in the state of ihrām while stoning Jamrah al-ʿAqabah. I asked him: "Why have you entered ihrām, O Commander of the Believers?" He replied: "Have we completed our rites yet?" This reflects the apparent and unambiguous meaning inferred from the practice of all the Companions—may Allah be pleased with them—we have mentioned.

رُوِّينَا مِنْ طَرِيقِ الْحُذَافِيِّ عَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ عَبْدِ اللَّهِ بْنِ إبْرَاهِيمَ بْنِ حُنَيْنٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: سَمِعْت عُمَرَ بْنَ الْخَطَّابِ يُهِلُّ وَهُوَ يَرْمِي جَمْرَةَ الْعَقَبَةِ فَقُلْت لَهُ: فِيمَا الْإِهْلَالُ يَا أَمِيرَ الْمُؤْمِنِينَ؟ فَقَالَ: وَهَلْ قَضَيْنَا نُسُكَنَا بَعْدُ؟ وَهُوَ الْمَفْهُومُ الظَّاهِرُ مِنْ فِعْلِ كُلِّ مَنْ ذَكَرْنَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L13433 A group among them, including Mālik, said: The pilgrim ceases the talbiyah when performing the circumambulation of the House and at al-Ṣafā and al-Marwah. When he completes that, he renews it.

وَقَالَ قَوْمٌ مِنْهُمْ مَالِكٌ: إنَّ الْحَاجَّ يَقْطَعُ التَّلْبِيَةَ إذَا طَافَ بِالْبَيْتِ، وَبِالصَّفَا وَالْمَرْوَةِ، فَإِذَا أَتَمَّ ذَلِكَ عَاوَدَهَا.

L13434 Abu Muhammad said: Abu Hanifah and al-Shafi'i said: He does not cease it—and this is the correct view; due to what we have mentioned—that the Prophet, peace and blessings be upon him, continued reciting the talbiyah until he stoned Jamrat al-Aqabah. It was narrated to us via the chain from Abu Dawud's transmission: Abd Allah ibn Muhammad al-Nufayli and Uthman ibn Abi Shaybah said: Hatim ibn Isma'il narrated to us: Ja'far ibn Muhammad narrated from his father that Jabir ibn Abd Allah informed him, and he mentioned the hadith of the Prophet's Hajj, peace and blessings be upon him, and said: The Messenger of Allah, peace and blessings be upon him, entered the state of ihram with the declaration of divine oneness: "Here I

قَالَ أَبُو مُحَمَّدٍ: وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: لَا يَقْطَعُهَا - وَهَذَا هُوَ الْحَقُّ؛ لِمَا ذَكَرْنَا مِنْ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَبَّى حَتَّى رَمَى جَمْرَةَ الْعَقَبَةِ -: رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ النُّفَيْلِيُّ، وَعُثْمَانُ بْنُ أَبِي شَيْبَةَ قَالَا: نَا حَاتِمُ بْنُ إسْمَاعِيلَ نَا جَعْفَرُ بْنُ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّ جَابِرَ بْنَ عَبْدِ اللَّهِ أَخْبَرَهُ فَذَكَرَ «حَدِيثَ حَجَّةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ: فَأَهَلَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالتَّوْحِيدِ: لَبَّيْكَ اللَّهُمَّ

am, O Allah, here I am; here I am, You have no partner, here I am; here I am. Indeed, all praise, blessings, and sovereignty are Yours. You have no partner." The people entered the state of ihram with this declaration, and the Messenger of Allah, peace and blessings be upon him, did not object to any part of it, and he persisted in his talbiyah. Thus, it is confirmed that he, peace and blessings be upon him, did not cease it. From the chain of Sufyan al-Thawri: Mansur ibn al-Mu'tamir narrated from Abu Wa'il from Masruq that he saw Abd Allah ibn Mas'ud circumambulate the House seven times, then proceed to al-Safa. He said: I asked him, "O Abu Abd al-Rahman, some people prohibit entering the state of ihram in this place." He replied, "But I instruct you to do so;" and he mentioned the rest of the report.[40]

لَبَّيْكَ، لَبَّيْكَ لَا شَرِيكَ لَكَ لَبَّيْكَ، إِنَّ الْحَمْدَ وَالنِّعْمَةَ لَكَ وَالْمُلْكَ لَا شَرِيكَ لَكَ، فَأَهَلَّ النَّاسُ بِهَذَا الَّذِي يُهِلُّونَ بِهِ فَلَمْ يَرُدَّ عَلَيْهِمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَيْئًا مِنْهُ وَلَزِمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَلْبِيَتَهُ» فَصَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَقْطَعْهَا -: وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ أَبِي وَائِلٍ عَنْ مَسْرُوقٍ أَنَّهُ رَأَى عَبْدَ اللَّهِ بْنَ مَسْعُودٍ طَافَ بِالْبَيْتِ سَبْعًا ثُمَّ خَرَجَ إلَى الصَّفَا قَالَ: فَقُلْتُ لَهُ: يَا أَبَا عَبْدَ الرَّحْمَنِ إنَّ نَاسًا يَنْهَوْنَ عَنْ الْإِهْلَالِ فِي هَذَا الْمَكَانِ؟ فَقَالَ: لَكِنِّي آمُرُك بِهِ، وَذَكَرَ بَاقِيَ الْخَبَرِ.

L13435–13437 If they mention: What has been narrated to us through the chain of Ibn Abi Shaybah—Safwan ibn Isa reported to us from... Al-Harith ibn Abd al-Rahman ibn Abi Dhubab reported from Mujahid, from Abdullah ibn Sakhbara, from Abdullah ibn Mas'ud, who said: "I went out with the Messenger of Allah—peace and blessings of Allah be upon him—and he did not cease the talbiyah until he reached Jamrat al-Aqabah, except that he mixed it with takbir or tahlil."

Through another chain: Ibn Abi Shaybah narrated to us, from Abd al-A'la, from Muhammad ibn Ishaq, from Ikrimah, who said: "I heard al-Hasan ibn Ali proclaiming the talbiyah until he reached Jamrat al-Aqabah. He told me: 'I heard my father, Ali ibn Abi Talib, proclaiming the talbiyah until he reached Jamrat al-Aqabah, and he narrated to me that the Messenger of Allah—peace and blessings of Allah be upon him—proclaimed the talbiyah until he reached it.'"

فَإِنْ ذَكَرُوا: مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا صَفْوَانُ بْنُ عِيسَى عَنْ الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي ذُبَابٍ عَنْ مُجَاهِدٍ عَنْ عَبْدِ اللَّهِ بْنِ سَخْبَرَةَ عَنْ «عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: خَرَجْتُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَا تَرَكَ التَّلْبِيَةَ حَتَّى أَتَى جَمْرَةَ الْعَقَبَةِ إلَّا أَنْ يَخْلِطَهَا بِتَكْبِيرٍ أَوْ بِتَهْلِيلٍ -: وَمِنْ طَرِيقٍ» ابْنِ أَبِي شَيْبَةَ نَا عَبْدُ الْأَعْلَى عَنْ مُحَمَّدِ بْنِ إسْحَاقَ عَنْ عِكْرِمَةَ قَالَ: «سَمِعْتُ الْحَسَنَ بْنَ عَلِيٍّ يُلَبِّي حَتَّى انْتَهَى إلَى الْجَمْرَةِ وَقَالَ لِي: سَمِعْتُ أَبِي عَلِيَّ بْنَ أَبِي طَالِبٍ يُهِلُّ حَتَّى انْتَهَى إلَى الْجَمْرَةِ، وَحَدَّثَنِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَهَلَّ حَتَّى انْتَهَى إلَيْهَا» .

L13438 We said: Al-Harith is weak, and Aban ibn Salih is not strong. Even if their reports were sound, the reports of Al-Fadl ibn Abbas and Usamah ibn Zayd would still represent two additional reports beyond these two—an addition that it is impermissible to discard out of aversion toward them or preference

قُلْنَا: الْحَارِثُ ضَعِيفٌ، وَأَبَانُ بْنُ صَالِحٍ لَيْسَ بِالْقَوِيِّ، ثُمَّ لَوْ صَحَّا لَكَانَ خَبَرُ الْفَضْلِ بْنِ عَبَّاسٍ، وَأُسَامَةَ بْنِ زَيْدٍ: زَائِدَيْنِ عَلَى هَذَيْنِ الْخَبَرَيْنِ زِيَادَةً لَا يَحِلُّ تَرْكُهَا رَغْبَةً عَنْهَا وَاخْتِيَارًا لِغَيْرِهَا عَلَيْهَا، وَلَيْسَ فِي هَذَيْنِ الْخَبَرَيْنِ نَهْيٌ عَمَّا فِي خَبَرِ ابْنِ عَبَّاسٍ، وَأُسَامَةَ.

[40] **Hadith references (L13434):** Sunan Abi Dawud 1812; Sunan Abi Dawud 1905; Sahih al-Bukhari 1549.

for others over them. Moreover, these two reports contain no prohibition against what is mentioned in the report of Ibn Abbas and Usamah.

L13439 And a group held: The Umrah pilgrim ceases the talbiyah when he enters the Sacred Precinct.

L13440 A group held the opinion: One may not exit Ihram unless he sees the houses of Makkah.

L13441 A group said: Until he enters the houses of Mecca.

L13442 Abu Hanifah said: He does not conclude the Tawaf until he touches the Black Stone. Once he touches it, he concludes the Tawaf.

L13443 And al-Layth said: When he reaches the Kaʿbah, he ceases the talbiyah.

L13444 Al-Shafiʿi said: One does not stop the talbiyah until commencing the circumambulation. Malik said: Whoever assumes iḥrām from the miqāt stops the talbiyah upon entering the Ḥaram area. If one assumes iḥrām from al-Jiʿrānah or al-Tanʿīm, he stops it either upon entering the houses of Mecca or upon entering the Sacred Mosque. It was narrated to us from Wakīʿ, from ʿUmar ibn Dhar, from Mujāhid, who said: Ibn ʿAbbās stated: The person performing ʿUmrah should not stop the talbiyah until touching the Black Stone. Ibn ʿUmar used to stop it upon seeing the houses of Mecca. Wakīʿ said: Sufyān al-Thawrī narrated to us from ʿAbdullāh ibn Dīnār, who said: Ibn ʿUmar stated: One stops the talbiyah upon entering the Ḥaram.

L13445–13447 Abū Muḥammad said: The position we uphold is the view of Ibn Masʿūd that we mentioned earlier—that one should not cease the talbiyah until completing all rites of ʿUmrah. If they cite what was transmitted to us from Saʿīd ibn Manṣūr: Hushaym narrated to us, Ibn Abī Laylā narrated to us, from ʿAṭāʾ, from Ibn ʿAbbās: "The Messenger of Allah—peace and blessings be upon him—continued the talbiyah during his ʿUmrah until he touched the Stone." From the narration of Hafs ibn Ghiyath, from al-Hajjaj ibn Arta'ah, from ʿAmr ibn Shuʿayb, from his father, from his grandfather, who said: "The Messenger of Allah—peace and blessings be upon him and his family—performed three Umrahs, never ceasing the Talbiyah until he touched the

وَقَالَ قَوْمٌ: يَقْطَعُ الْمُعْتَمِرُ التَّلْبِيَةَ إِذَا دَخَلَ الْحَرَمَ.

وَقَالَتْ طَائِفَةٌ: لَا يَقْطَعُهَا إِلَّا حَتَّى يَرَى بُيُوتَ مَكَّةَ.

وَقَالَتْ طَائِفَةٌ: حَتَّى يَدْخُلَ بُيُوتَ مَكَّةَ.

وَقَالَ أَبُو حَنِيفَةَ: لَا يَقْطَعُهَا حَتَّى يَسْتَلِمَ الْحَجَرَ فَإِذَا اسْتَلَمَهُ قَطَعَهَا.

وَقَالَ اللَّيْثُ: إِذَا بَلَغَ الْكَعْبَةَ قَطَعَ التَّلْبِيَةَ.

وَقَالَ الشَّافِعِيُّ: لَا يَقْطَعُهَا حَتَّى يَفْتَتِحَ الطَّوَافَ - وَقَالَ مَالِكٌ: مَنْ أَحْرَمَ مِنْ الْمِيقَاتِ قَطَعَ التَّلْبِيَةَ إِذَا دَخَلَ أَوَّلَ الْحَرَمِ فَإِنْ أَحْرَمَ مِنْ الْجِعْرَانَةِ، أَوْ مِنْ التَّنْعِيمِ قَطَعَهَا إِذَا دَخَلَ بُيُوتَ مَكَّةَ، أَوْ إِذَا دَخَلَ الْمَسْجِدَ -: رُوِّينَا عَنْ وَكِيعٍ عَنْ عُمَرَ بْنِ ذَرٍّ عَنْ مُجَاهِدٍ قَالَ: قَالَ ابْنُ عَبَّاسٍ: لَا يَقْطَعُ الْمُعْتَمِرُ التَّلْبِيَةَ حَتَّى يَسْتَلِمَ الرُّكْنَ، وَكَانَ ابْنُ عُمَرَ يَقْطَعُهَا إِذَا رَأَى بُيُوتَ مَكَّةَ - قَالَ وَكِيعٌ: وَحَدَّثَنَا سُفْيَانُ هُوَ الثَّوْرِيُّ - عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ قَالَ: قَالَ ابْنُ عُمَرَ: يَقْطَعُ التَّلْبِيَةَ إِذَا دَخَلَ الْحَرَمَ.

قَالَ أَبُو مُحَمَّدٍ: وَالَّذِي نَقُولُ بِهِ فَهُوَ قَوْلُ ابْنِ مَسْعُودٍ الَّذِي ذَكَرْنَا آنِفًا أَنَّهُ لَا يَقْطَعُهَا حَتَّى يُتِمَّ جَمِيعَ عَمَلِ الْعُمْرَةِ، فَإِنْ ذَكَرُوا: مَا رُوِّينَا عَنْ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ نَا ابْنُ أَبِي لَيْلَى عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَبَّى فِي عُمْرَتِهِ حَتَّى اسْتَلَمَ الْحَجَرَ» : وَمِنْ طَرِيقِ حَفْصِ بْنِ غِيَاثٍ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ: «اعْتَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

Black Stone." These are two weak narrations—in one of them is Ibn Abi Laylah, who had poor retention, and in the other is al-Hajjaj—and his mention alone suffices as a flaw, for he was also a narrator reliant on written notes.

ثَلَاثَ عُمَرَ، كُلُّ ذَلِكَ لَا يَقْطَعُ التَّلْبِيَةَ حَتَّى يَسْتَلِمَ الْحَجَرَ» ؟ فَهَذَانِ أَثَرَانِ ضَعِيفَانِ - فِي أَحَدِهِمَا: ابْنُ أَبِي لَيْلَى - وَهُوَ سَيِّئُ الْحِفْظِ - وَفِي الْآخَرِ: الْحَجَّاجُ، وَنَاهِيكَ بِهِ؛ وَهُوَ أَيْضًا صَحِيفَةٌ.

L13448 If they were to ask: "Do you have any objection regarding what you narrated through the chain of Aḥmad ibn Shuʿayb from Yaʿqūb ibn Ibrāhīm from Ibn ʿUlayyah from Ayyūb from Nāfiʿ, who said: 'When Ibn ʿUmar entered the nearest part of the Ḥaram (sacred precinct), he would cease the talbiyah, spend the night at Dhū Ṭuwā, pray the dawn prayer therein, and relate that the Messenger of Allah—peace and blessings be upon him and his family—used to do that'?" We respond: No valid objection applies to it, and it is authentic. However, it provides no evidence for your position. The first point is that this narration does not include what you mention—that this occurred during ʿUmrah. Thus, it contradicts the positions chosen by Abū Ḥanīfah and al-Shāfiʿī concerning Ḥajj, and it also contradicts what Abū Ḥanīfah chose regarding ʿUmrah.

فَإِنْ قَالُوا: فَهَلْ عِنْدَكُمْ اعْتِرَاضٌ؟ فِيمَا رَوَيْتُمْ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ عَنْ يَعْقُوبَ بْنِ إِبْرَاهِيمَ عَنْ ابْنِ عُلَيَّةَ عَنْ أَيُّوبَ عَنْ نَافِعٍ قَالَ: «كَانَ ابْنُ عُمَرَ إِذَا دَخَلَ أَدْنَى الْحَرَمِ أَمْسَكَ عَنْ التَّلْبِيَةِ ثُمَّ يَبِيتُ بِذِي طُوًى، ثُمَّ يُصَلِّي بِهِ الصُّبْحَ، وَيُحَدِّثُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ يَفْعَلُ ذَلِكَ» ؟ قُلْنَا: لَا مُعْتَرَضَ فِيهِ وَهُوَ صَحِيحٌ، إلَّا أَنَّهُ لَا حُجَّةَ لَكُمْ فِيهِ، أَوَّلُ ذَلِكَ: أَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ مَا تَذْكُرُونَ مِنْ أَنَّ ذَلِكَ كَانَ فِي الْعُمْرَةِ، فَهُوَ مُخَالِفٌ لِمَا اخْتَارَهُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ فِي الْحَجِّ، وَلِمَا اخْتَارَهُ أَبُو حَنِيفَةَ فِي الْعُمْرَةِ أَيْضًا.

L13449 Then we say to those who follow Mālik's opinion in this matter: This report offers you no conclusive proof, for it is possible that Ibn 'Umar's statement "Indeed, the Messenger of Allah (peace and blessings be upon him) used to do that" referred only to staying overnight at Dhū Ṭuwā and performing the dawn prayer there. Thus we say.[41]

ثُمَّ نَقُولُ لِمَنْ ذَهَبَ إلَى قَوْلِ مَالِكٍ فِي هَذَا: إنَّ هَذَا خَبَرٌ لَا حُجَّةَ لَكُمْ فِيهِ، لِأَنَّهُ قَدْ يُمْكِنُ أَنَّ ابْنَ عُمَرَ إنَّمَا أَشَارَ بِقَوْلِهِ «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَفْعَلُ ذَلِكَ» إلَى الْمَبِيتِ بِذِي طُوًى وَصَلَاةِ الصُّبْحِ بِهَا فَقَطْ، وَهَكَذَا نَقُولُ.

L13450 Or he may have indicated thereby the cessation of the Talbiyah as you assert. If this is the case, then the narration of Jābir ibn 'Abdullāh, Usāmah, and Ibn 'Abbās—"that the Messenger of Allah (peace and blessings of Allah be upon him) maintained the Talbiyah and did not cease it until he threw pebbles at Jamrah al-'Aqabah"—constitutes an addition to what is in the narration of Ibn 'Umar. The addition by a reliable narrator must not be disregarded, for he mentioned knowledge he possessed that Ibn 'Umar, who did not mention it, was unaware of—and success is from Allah, the Exalted.

أَوْ يَكُونُ أَشَارَ بِذَلِكَ إلَى قَطْعِ التَّلْبِيَةِ كَمَا تَقُولُونَ، فَإِنْ كَانَ هَذَا فَخَبَرُ جَابِرِ بْنِ عَبْدِ اللَّهِ، وَأُسَامَةَ، وَابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَزِمَ التَّلْبِيَةَ وَلَمْ يَقْطَعْهَا حَتَّى رَمَى جَمْرَةَ الْعَقَبَةِ» زَائِدٌ عَلَى مَا فِي خَبَرِ ابْنِ عُمَرَ، وَزِيَادَةُ الْعَدْلِ لَا يَجُوزُ تَرْكُهَا، لِأَنَّهُ ذَكَرَ عِلْمًا كَانَ عِنْدَهُ لَمْ يَكُنْ عِنْدَ ابْنِ عُمَرَ الَّذِي لَمْ يَذْكُرْهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[41] **Hadith references (L13449):** Sunan Abi Dawud 1128; Sahih Muslim 392f; Sunan an-Nasai 2940.

[الطِّيب بِمِنًى قَبْلَ رَمْيِ الْجَمْرَةِ]

وَأَمَّا اخْتِيَارُنَا الطِّيبَ بِمِنًى قَبْلَ رَمْيِ الْجَمْرَةِ، فَلِمَا قَدْ ذَكَرْنَا قَبْلُ فِي اخْتِيَارِ التَّطَيُّبِ لِلْإِحْرَامِ مِنْ النَّصِّ - وَمِمَّنْ قَالَ بِذَلِكَ مِنْ الصَّحَابَةِ، وَغَيْرِهِمْ - رَضِيَ اللَّهُ عَنْهُمْ -، فَأَغْنَى عَنْ إعَادَتِهِ.

وَأَمَّا قَوْلُنَا: أَنْ يَرْمِيَ الْجَمْرَةَ، وَبِدُخُولِ وَقْتِهَا يَحِلُّ لِلْمُحْرِمِ بِالْحَجِّ أَوْ الْقِرَانِ كُلُّ مَا كَانَ عَلَيْهِ حَرَامًا مِنْ اللِّبَاسِ، وَالطِّيبِ، وَالتَّصَيُّدِ فِي الْحِلِّ، وَعَقْدِ النِّكَاحِ لِنَفْسِهِ، وَلِغَيْرِهِ حَاشَا الْجِمَاعَ فَقَطْ، فَإِنَّهُ حَرَامٌ عَلَيْهِ بَعْدُ حَتَّى يَطُوفَ بِالْبَيْتِ -: فَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

وَقَالَ مَالِكٌ، وَسُفْيَانُ: إذَا رَمَى الْجَمْرَةَ حَلَّ لَهُ كُلُّ شَيْءٍ إلَّا النِّسَاءَ، وَالتَّصَيُّدَ، وَالطِّيبَ - قَالَ: فَإِنْ تَطَيَّبَ فَلَا شَيْءَ عَلَيْهِ لِمَا جَاءَ فِي ذَلِكَ، وَإِنْ تَصَيَّدَ فَعَلَيْهِ الْجَزَاءُ.

وَذَكَرُوا فِي ذَلِكَ رِوَايَةً عَنْ عُمَرَ، وَابْنِهِ عَبْدِ اللَّهِ: أَنَّهُ حَلَّ لَهُ كُلُّ شَيْءٍ إلَّا النِّسَاءَ وَالطِّيبَ - وَعَنْ سَالِمٍ، وَعُرْوَةَ مِثْلُ هَذَا.

قَالَ أَبُو مُحَمَّد: أَمَّا ابْنُ عُمَرَ فَقَدْ رُوِيَ عَنْهُ الرُّجُوعُ، وَقَدْ خَالَفَ فِي ذَلِكَ عُمَرُ: عَائِشَةَ وَغَيْرَهَا، كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا سُفْيَانُ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: قَالَ عُمَرُ: «إذَا رَمَيْتُمْ الْجَمْرَةَ بِسَبْعِ حَصَيَاتٍ، وَذَبَحْتُمْ، وَحَلَقْتُمْ، فَقَدْ حَلَّ لَكُمْ كُلُّ شَيْءٍ، إلَّا الطِّيبَ، وَالنِّسَاءَ، فَقَالَتْ عَائِشَةُ: أَنَا طَيَّبْتُ

The use of perfume in Mina before the stoning of the Jamrah.

As for our preference to apply fragrance in Mina before stoning the Jamrah, this is due to what we have previously mentioned regarding the choice of applying fragrance for entering the state of consecration from the textual sources—and from those who held this opinion among the Companions, may Allah be pleased with them, and others. This suffices without need for repetition.

As for our statement: that he casts pebbles at the Jamrah, and upon the commencement of its time, everything that was forbidden to the pilgrim in Hajj or Qirān becomes permissible—such as wearing stitched garments, applying perfume, hunting within the non-sacred territory, and entering into a marriage contract for oneself. And for other than him, except sexual intercourse alone, it is forbidden for him thereafter until he performs *Tawaf* around the Kaaba: this is the opinion of Abu Hanifah, Al-Shafi'i, Abu Sulayman, and their companions.

Mālik and Sufyān said: When one stones the Jamrah, all things become lawful for him except women, hunting, and [using] perfume. It was added: If he uses perfume, there is no penalty upon him due to the transmitted ruling, and if he hunts, he must offer expiation.

They mentioned regarding this a narration from ʿUmar and his son ʿAbd Allāh: that all things were lawful for him except women and perfume. The same is also reported from Sālim and ʿUrwa.

Abu Muhammad said: As for Ibn Umar, reports indicate he retracted his position. Umar's opinion was contradicted by Aisha and others, as narrated to us through the chain of Sa'id ibn Mansur – from Sufyan, from Amr ibn Dinar, from Salim ibn Abdullah ibn Umar, from his father, who said: Umar stated, "When you have thrown pebbles at the Jamrah (the ritual pillar) with seven stones, performed your sacrifice, and shaved your heads, all things become permissible for you except using perfume and [relations with] women." Thereupon Aisha responded: "I applied perfume to the Messenger of Allah

(peace be upon him), thus the Sunnah of the Messenger of Allah (peace be upon him) is far more deserving to be followed."

L13459 Abu Muhammad said: This is the statement of Ibn Umar (which if they had followed it, they would have been granted success) - via the chain of Waki' from Sufyan, from Salamah ibn Kuhayl, from al-Hasan al-'Urani, from Ibn Abbas who said: "When you throw pebbles at the Jamrah, all things become permissible for you except women." A man asked: "And perfume?" Ibn Abbas replied: "As for me, I saw the Messenger of Allah - may Allah's peace and blessings be upon him - anointing his head with musk. Is that not the most fragrant?" - via the chain of Waki' from Hisham ibn 'Urwah, from his father, from 'A'ishah - may Allah be pleased with her - who said: "When you throw pebbles at the Jamrah, all things become permissible for you except women."

L13460 From Sufyan ibn 'Uyaynah, from Muhammad ibn al-Munkadir: I heard Ibn al-Zubayr say, "When you have stoned the Jamrah, everything becomes permissible for you except sexual relations."

L13461 And this is the opinion of ʿAṭāʾ, Ṭāwūs, ʿAlqamah, and Khārijah ibn Zayd ibn Thābit.

L13462 Abu Muhammad said: Allah, the Exalted, said: "Forbidden to you is the game of the land as long as you remain in a state of Iḥrām" [Al-Mā'idah: 96].[42]

L13463 And He, the Most High, said: {When you have ended the state, then hunt} [al-Mā'idah 5:2].[43]

L13464 The textual evidence and the consensus of opposing scholars regarding its implication establish that for the pilgrim in Ihram, it is forbidden to wear shirts, turbans, hooded cloaks, leather socks, trousers, or to shave the head. They have concurred with our position despite the presence of the textual

رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسُنَّةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَحَقُّ أَنْ تُتَّبَعَ» .

قَالَ أَبُو مُحَمَّدٍ: هَذَا قَوْلُ ابْنِ عُمَرَ الَّذِي لَوْ اتَّبَعُوهُ لَوُفِّقُوا -: وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ الْحَسَنِ الْعُرَنِيِّ عَنْ «ابْنِ عَبَّاسٍ قَالَ: إذَا رَمَيْتُمْ الْجَمْرَةَ فَقَدْ حَلَّ لَكُمْ كُلُّ شَيْءٍ إلَّا النِّسَاءَ، فَقَالَ رَجُلٌ: وَالطِّيبُ؟ فَقَالَ ابْنُ عَبَّاسٍ: أَمَّا أَنَا فَقَدْ رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُضَمِّخُ رَأْسَهُ بِالْمِسْكِ أَطِيبُ ذَلِكَ أَمْ لَا» ؟ -: وَمِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - قَالَتْ: إذَا رَمَيْت الْجَمْرَةَ فَقَدْ حَلَّ لَك كُلُّ شَيْءٍ إلَّا النِّسَاءَ.

وَعَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ سَمِعْت ابْنَ الزُّبَيْرِ يَقُولُ: إذَا رَمَيْت الْجَمْرَةَ فَقَدْ حَلَّ لَك كُلُّ شَيْءٍ مَا وَرَاءَ النِّسَاءِ.

وَهُوَ قَوْلُ عَطَاءٍ، وَطَاوُسٍ، وَعَلْقَمَةَ، وَخَارِجَةَ بْنِ زَيْدِ بْنِ ثَابِتٍ.

قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ تَعَالَى: {وَحُرِّمَ عَلَيْكُمْ صَيْدُ الْبَرِّ مَا دُمْتُمْ حُرُمًا} [المائدة: ٩٦] .

وَقَالَ تَعَالَى: {وَإِذَا حَلَلْتُمْ فَاصْطَادُوا} [المائدة: ٢] .

وَجَاءَ النَّصُّ وَإِجْمَاعُ الْمُخَالِفِينَ مَعْنَاهُ عَلَى أَنَّ الْمُحْرِمَ حَرَامٌ عَلَيْهِ لِبَاسُ الْقُمُصِ، وَالْعَمَائِمِ، وَالْبَرَانِسِ، وَالْخِفَّيْنِ، وَالسَّرَاوِيلِ، وَحَلْقُ الرَّأْسِ؛ وَوَافَقُونَا مَعَ مَجِيءِ النَّصِّ عَلَى جَوَازِ لِبَاسِ كُلِّ ذَلِكَ إذَا رَمَى وَنَحَرَ.

[42] **Qur'an references (L13462):** Qur'an 5:96 (Al-Ma'idah).
[43] **Qur'an references (L13463):** Qur'an 5:2 (Al-Ma'idah).

evidence permitting the wearing of all such garments when one has thrown the pebbles and slaughtered the sacrificial animal.

L13465–13466 It has been authentically reported from the Prophet—may the peace and blessings of Allah be upon him—as we will mention after this, if Allah, the Exalted, wills—that it is permissible to perform the circumambulation (ṭawāf), slaughtering (dhabḥ), stoning (ramy), and shaving (ḥalq) with some preceding others.

L13467 It has been established that ihram is invalidated by the arrival of the time for ritual stoning, shaving, and sacrificing—whether one has performed the stoning or not, shaved or not, sacrificed or not, performed tawaf or not. When shaving, which was prohibited during ihram, becomes permissible for him, there is no doubt that the ihram has been invalidated and its ruling nullified. Since this is the case, he is now released, so hunting—which was only prohibited due to ihram—becomes lawful for him through the release. Similarly, marriage and arranging marriages are permitted, because the textual ruling only prohibits the one in ihram from marrying, arranging marriages, or proposing. Thus, it is confirmed that these acts are prohibited for the one in ihram, but whoever is permitted to wear shirts, hooded cloaks, or shave his head without necessity is lawful and not prohibited. Therefore, marriage, arranging marriages, and proposing are lawful for him, as they are not prohibited. As for sexual intercourse, it differs in this regard, because Allah the Exalted said: "There shall be no intercourse, nor wickedness, nor quarreling during Hajj" (Al-Baqarah 2:197). Thus, intercourse is prohibited during Hajj in general, not specifically for the one in ihram. As long as any obligatory rites of Hajj remain, one is still considered to be in Hajj even if not in ihram, and intercourse remains prohibited for him as long as he is in Hajj.[44]

L13468 Abū Muḥammad said: Mālik acknowledges the requirement of expiation for impermissible scents during iḥrām, just as he affirms the penalty for hunting during iḥrām. Yet here, he upheld the penalty for hunting but rejected the expiation for using scents—this is perplexing. If they defend his view by

وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَا نَذْكُرُ بَعْدَ هَذَا - إنْ شَاءَ اللَّهُ تَعَالَى - جَوَازُ تَقْدِيمِ الطَّوَافِ، وَالذَّبْحِ، وَالرَّمْيِ، وَالْحَلْقِ، بَعْضِهَا عَلَى بَعْضٍ.

فَصَحَّ أَنَّ الْإِحْرَامَ قَدْ بَطَلَ بِدُخُولِ وَقْتِ الرَّمْيِ، وَالْحَلْقِ، وَالنَّحْرِ، رَمَى أَوْ لَمْ يَرْمِ، حَلَقَ أَوْ لَمْ يَحْلِقْ، نَحَرَ أَوْ لَمْ يَنْحَرْ، طَافَ أَوْ لَمْ يَطُفْ؛ وَإِذَا حَلَّ لَهُ الْحَلْقُ الَّذِي كَانَ حَرَامًا فِي الْإِحْرَامِ، فَبِلَا شَكٍّ أَنَّهُ قَدْ بَطَلَ الْإِحْرَامُ، وَبَطَلَ حُكْمُهُ؛ وَإِذَا كَانَ ذَلِكَ فَقَدْ حَلَّ، فَحَلَّ لَهُ الصَّيْدُ الَّذِي لَمْ يُحَرَّمْ عَلَيْهِ إلَّا بِالْإِحْرَامِ، وَحَلَّ لَهُ بِالْإِحْلَالِ، وَكَذَلِكَ الزَّوَاجُ وَالتَّزْوِيجُ؛ لِأَنَّ النَّصَّ إنَّمَا جَاءَ بِأَنْ لَا يَنْكِحَ الْمُحْرِمُ، وَلَا يُنْكِحَ، وَلَا يَخْطُبَ، فَصَحَّ أَنَّ هَذَا حَرَامٌ عَلَى الْمُحْرِمِ، وَمَنْ حَلَّ لَهُ لِبَاسُ الْقُمُصِ، وَالْبَرَانِسِ، وَحَلْقُ الرَّأْسِ لِغَيْرِ ضَرُورَةٍ فَهُوَ حَلَالٌ لَا مُحَرَّمٌ فَالنِّكَاحُ، وَالْإِنْكَاحُ، وَالْخُطْبَةُ حَلَالٌ لَهُ؛ إذْ لَيْسَ مُحَرَّمًا، وَأَمَّا الْجِمَاعُ فَبِخِلَافِ هَذَا؛ لِأَنَّ اللَّهَ تَعَالَى قَالَ: {فَلا رَفَثَ وَلا فُسُوقَ وَلا جِدَالَ فِي الْحَجِّ} [البقرة: ١٩٧] فَحُرِّمَ الرَّفَثُ، وَهُوَ الْجِمَاعُ فِي الْحَجِّ جُمْلَةً لَا عَلَى الْمُحْرِمِ خَاصَّةً، وَمَا دَامَ يَبْقَى مِنْ فَرَائِضِ الْحَجِّ شَيْءٌ فَهُوَ بَعْدُ فِي الْحَجِّ وَإِنْ لَمْ يَكُنْ مُحْرِمًا، وَالْوَطْءُ حَرَامٌ عَلَيْهِ مَا دَامَ فِي الْحَجِّ.

قَالَ أَبُو مُحَمَّدٍ: وَمَالِكٌ يَرَى فِي الطِّيبِ الْمُحَرَّمِ عَلَى الْمُحْرِمِ الْفِدْيَةُ، كَمَا يَرَى الْجَزَاءَ عَلَى الْمُحْرِمِ فِي الصَّيْدِ - ثُمَّ رَأَى هَاهُنَا الْجَزَاءَ فِي الصَّيْدِ وَلَمْ يَرَ الْفِدْيَةَ فِي التَّطَيُّبِ، وَهَذَا عَجَبٌ فَإِنْ احْتَجُّوا لَهُ بِالْأَثَرِ الْوَارِدِ فِي طِيبِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَبْلَ أَنْ

[44] **Qur'an references (L13467):** Qur'an 2:197 (Al-Baqarah).

يَطُوفَ بِالْبَيْتِ؟ قُلْنَا لَهُمْ: لَا يَخْلُو هَذَا الْأَثَرُ مِنْ أَنْ يَكُونَ صَحِيحًا فَفَرْضٌ عَلَيْكُمْ أَنْ لَا تُخَالِفُوهُ، وَأَنْتُمْ قَدْ خَالَفْتُمُوهُ، أَوْ يَكُونَ غَيْرَ صَحِيحٍ فَلَا تُرَاعُوهُ، وَأَوْجَبُوا الْفِدْيَةَ عَلَى مَنْ تَطَيَّبَ كَمَا أَوْجَبْتُمُوهَا عَلَى مَنْ تَصَيَّدَ، وَلَا فَرْقَ.

citing the narration about the Prophet—peace and blessings be upon him—using scented substances before circumambulating the Kaaba, we respond: This narration must either be authentic, obligating you not to oppose it—yet you have opposed it—or inauthentic, obligating you to disregard it. You mandated expiation for using scents just as you mandated it for hunting, drawing no distinction.

L13469 ثُمَّ نَقُولُ لَهُمْ: أَخْبِرُونَا عَنْ إِيجَابِكُمُ الْجَزَاءَ عَلَى مَنْ تَصَيَّدَ فِي الْحِلِّ بَعْدَ رَمْيِ جَمْرَةِ الْعَقَبَةِ، أَحَرَمٌ هُوَ أَمْ غَيْرُ حَرَمٍ؟ وَلَا سَبِيلَ إِلَى ثَالِثٍ.

Then we say to them: Explain to us your ruling on obliging the penalty for one who hunted in al-Ḥill (the non-sacred precincts) after stoning Jamrat al-Aqabah - is he in a state of Ihram or not? There is no third possibility.

L13470 فَإِنْ قُلْتُمْ: هُوَ حَرَمٌ؟ قُلْنَا لَكُمْ: فَحَرِّمُوا عَلَيْهِ اللِّبَاسَ الَّذِي يَحْرُمُ عَلَى الْمُحْرِمِينَ وَحَرِّمُوا عَلَيْهِ حَلْقَ رَأْسِهِ.

If you say, “Is he in the Haram?” We reply to you, “Then prohibit him from wearing the garments forbidden to those in Ihrām, and prohibit him from shaving his head.”

L13471–13472 وَإِنْ قَالُوا: لَيْسَ حَرَامًا؟ قُلْنَا: فَلَا جَزَاءَ عَلَيْهِ فِي التَّصَيُّدِ.

And if they say, “It is not forbidden?” We say, “Then there is no penalty upon him for the hunting.”

L13473 فَإِنْ قَالُوا: قَدْ جَاءَ النَّصُّ وَالْإِجْمَاعُ بِأَمْرِهِ بِحَلْقِ رَأْسِهِ، وَبِلِبَاسِ مَا يَحْرُمُ عَلَى الْمُحْرِمِينَ؟ قُلْنَا: فَهَذَا بُرْهَانٌ كَافٍ فِي أَنَّهُ لَيْسَ مُحْرِمًا، وَهَذَا مَا لَا مُخَلِّصَ [لَهُمْ] مِنْهُ؛ وَأَيْضًا فَإِنَّهُمْ أَوْهَمُوا أَنَّهُمْ تَعَلَّقُوا بِعُمَرَ، وَابْنِ عُمَرَ؛ وَإِنَّمَا عَنْهُمَا الْمَنْعُ مِنَ التَّطَيُّبِ لَا مِنَ الصَّيْدِ، وَهَذَا عَجَبٌ جِدًّا.

If they say: “The textual evidence and consensus have commanded him to shave his head and wear what is prohibited for those in the sacral state (iḥrām),” we reply: This constitutes sufficient proof that he is not in the state of iḥrām, and this is a matter from which they have no deliverance. Furthermore, they have misleadingly implied that they relied upon the positions of ʿUmar and Ibn ʿUmar, whereas the prohibition transmitted from both of them concerns the application of perfume—not hunting—and this is very astonishing.

L13474 وَأَيْضًا فَالْقَوْمُ أَصْحَابُ قِيَاسٍ، وَهُمْ قَدْ أَبَاحُوا لِبَاسَ الْقُمُصِ، وَالسَّرَاوِيلَ وَغَيْرَ ذَلِكَ بَعْدَ رَمْيِ جَمْرَةِ الْعَقَبَةِ، وَحَلْقِ الرَّأْسِ، وَمَنَعُوا مِنَ الصَّيْدِ، وَالطِّيبِ.

Moreover, the scholars—who are proponents of analogy—permitted the wearing of shirts, trousers, and other garments after throwing pebbles at Jamrat al-ʿAqabah and shaving the head, but prohibited from hunting and using perfume.

L13475 فَإِنْ قَالُوا: قِسْنَاهُ عَلَى الْجِمَاعِ؟ قُلْنَا: هَذَا قِيَاسٌ فَاسِدٌ، لِأَنَّ اللِّبَاسَ، وَالْحَلْقَ، وَالطِّيبَ، وَالصَّيْدَ عِنْدَكُمْ خَبَرٌ وَاحِدٌ، وَحُكْمٌ وَاحِدٌ فِي أَنَّهُ لَا يَبْطُلُ بِهِ الْحَجُّ فِي الْإِحْرَامِ، وَكَانَ لِلْجِمَاعِ خَبَرٌ آخَرُ، لِأَنَّهُ لَا يَبْطُلُ بِهِ الْحَجُّ فِي الْإِحْرَامِ؛ فَلَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ

If they say: “We have analogized it to intercourse?” We say: This is an invalid analogy, for clothing, shaving, perfume, and hunting—according to your position—are based on a single narration and a single ruling, in that they do not invalidate the pilgrimage during the state of consecration. Intercourse has a distinct narration because it does not invalidate the pilgrimage during

the state of consecration. Thus, if analogical reasoning were valid, it would be more appropriate to analogize perfume and hunting to clothing and shaving than to analogize them to intercourse. And success is from Allah, the Exalted.

L13476 As for our statement: If he proceeded to Mecca, performed seven circumambulations of the House without performing *raml* in them, and—if he was performing *Tamattu‘* Hajj—performed *sa‘i* between al-Ṣafā and al-Marwah, or abstained from *sa‘i* (if performing *Qirān* Hajj) having already completed it between them during his initial entry, then his Hajj **and** Qirān are complete, and marital relations become lawful for him. This is an established consensus without dispute, supported by the explicit text in God’s words: {Let them perform the circumambulation of the Ancient House} [Al-Ḥajj: 29].[45]

L13477 As for our statement that they return to Mina and stay there for three days and nights—stoning the three jamarat each day after the sun passes the zenith, using seven pebbles for each jamrah, beginning with the farthest one, then the middle one, then Jamrat al-Aqabah, the same one stoned on the Day of Sacrifice—by this, their Hajj and all their rites are fully completed. This is a consensus with no disagreement from anyone.

L13478 **He stands and supplicates at the first two Jamrahs but does not stand at the third Jamrah.**

L13479–13481 As for our statement: one stands for supplication at the two initial Jamrahs and does not stand at the third; this is due to what we have narrated through the chain of al-Bukhari: ‘Uthman ibn Abi Shaybah narrated to us, Talhah ibn Yahya al-Ansari narrated to us, Yunus narrated to us from al-Zuhri, from Salim ibn ‘Abdullah ibn ‘Umar, from his father—may Allah be pleased with both of them—that he would stone the nearest Jamrah with seven pebbles, proclaiming “Allahu Akbar” after each one. He would then advance until reaching an open area facing the Qiblah, where he would stand for supplication. He stands for a long time, then supplicates and raises his hands. Then

[45] **Qur’an references (L13476):** Qur’an 22:29 (Al-Hajj).

قِيَاسُ الطِّيبِ، وَالصَّيْدِ، عَلَى اللِّبَاسِ، وَالْحَلْقُ أَوْلَى مِنْ قِيَاسِهِ عَلَى الْجِمَاعِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا قَوْلُنَا -: إنْ نَهَضَ إلَى مَكَّةَ فَطَافَ بِالْبَيْتِ سَبْعًا - لَا رَمَلَ فِيهَا - وَسَعَى بَيْنَ الصَّفَا وَالْمَرْوَةِ، إنْ كَانَ مُتَمَتِّعًا، أَوْ لَمْ يَسْعَ إنْ كَانَ قَارِنًا، وَكَانَ قَدْ سَعَى بَيْنَهُمَا فِي أَوَّلِ دُخُولِهِ فَقَدْ تَمَّ حَجُّهُ وَقِرَانُهُ، وَحَلَّ لَهُ النِّسَاءُ - فَإِجْمَاعٌ لَا خِلَافَ فِيهِ مَعَ النَّصِّ فِي قَوْله تَعَالَى: {وَلْيَطَّوَّفُوا بِالْبَيْتِ الْعَتِيقِ} [الحج: ٢٩] .

وَأَمَّا قَوْلُنَا -: إنَّهُمْ يَرْجِعُونَ إلَى مِنًى فَيُقِيمُونَ بِهَا ثَلَاثَ لَيَالٍ بِأَيَّامِهَا - يَرْمُونَ فِي كُلِّ يَوْمٍ مِنْ الْأَيَّامِ الثَّلَاثَةِ الْجَمَرَاتِ الثَّلَاثَ بَعْدَ زَوَالِ الشَّمْسِ بِسَبْعِ حَصَيَاتٍ سَبْعِ حَصَيَاتٍ كُلُّ جَمْرَةٍ يَبْدَأُ بِالْقُصْوَى، ثُمَّ الَّتِي تَلِيهَا، ثُمَّ جَمْرَةِ الْعَقَبَةِ الَّتِي رَمَى يَوْمَ النَّحْرِ، وَقَدْ تَمَّ حَجُّهُ وَعَمَلُهُ كُلُّهُ - فَإِجْمَاعٌ لَا خِلَافَ فِيهِ مِنْ أَحَدٍ.

[يَقِفُ لِلدُّعَاءِ عِنْدَ الْجَمْرَتَيْنِ الْأُولَيَيْنِ وَلَا يَقِفُ عِنْدَ الثَّالِثَةِ]

وَأَمَّا قَوْلُنَا: يَقِفُ لِلدُّعَاءِ عِنْدَ الْجَمْرَتَيْنِ الْأُولَيَيْنِ وَلَا يَقِفُ عِنْدَ الثَّالِثَةِ، فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نَا طَلْحَةُ بْنُ يَحْيَى الْأَنْصَارِيُّ نَا يُونُسُ عَنْ الزُّهْرِيِّ «عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ - رَضِيَ اللَّهُ عَنْهُمَا - أَنَّهُ كَانَ يَرْمِي الْجَمْرَةَ الدُّنْيَا بِسَبْعِ حَصَيَاتٍ يُكَبِّرُ عَلَى إثْرِ كُلِّ حَصَاةٍ ثُمَّ يَتَقَدَّمُ حَتَّى يُسْهِلَ مُسْتَقْبِلَ الْقِبْلَةِ فَيَقُومُ طَوِيلًا، وَيَدْعُو وَيَرْفَعُ يَدَيْهِ، ثُمَّ يَرْمِي الْجَمْرَةَ الْوُسْطَى، ثُمَّ يَأْخُذُ ذَاتَ الشِّمَالِ فَيُسْهِلُ وَيَقُومُ مُسْتَقْبِلَ الْقِبْلَةِ فَيَقُومُ طَوِيلًا ثُمَّ يَدْعُو، وَيَرْفَعُ يَدَيْهِ، ثُمَّ يَقُومُ

he throws pebbles at the middle Jamrah. He moves to the left side, proceeds smoothly, and stands facing the Qiblah. He stands for a long time, then supplicates and raises his hands. Then he stands again for a long time, after which he throws pebbles at Jamrah al-Aqabah from the valley bed without pausing there. He then departs and said: "This is how I saw the Messenger of Allah—peace and blessings be upon him—perform it."

طَوِيلًا ثُمَّ يَرْمِي جَمْرَةَ الْعَقَبَةِ مِنْ بَطْنِ الْوَادِي وَلَا يَقِفُ عِنْدَهَا، ثُمَّ يَنْصَرِفُ، وَيَقُولُ: هَكَذَا رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَفْعَلُهُ» .

L13482 Through the narration chain of Abū Dāwūd: ʿAlī ibn Baḥr and ʿAbdullāh ibn Saʿīd al-Maʿnā—both said together—narrated from Abū Khālid al-Aḥmar, from Muḥammad ibn Isḥāq, from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad, from his father, from ʿĀ'ishah, Mother of the Believers, who said: "Allah's Messenger—peace and blessings of Allah be upon him—proceeded at the conclusion of his Hajj on the final day after praying the Dhuhr prayer. He then returned to Minā and stayed there during the nights of the Days of Tashrīq, stoning the Jamrah when the sun declined, casting seven pebbles at each Jamrah and pronouncing 'Allāhu Akbar' with every pebble."[46]

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا عَلِيُّ بْنُ بَحْرٍ، وَعَبْدُ اللَّهِ بْنُ سَعِيدٍ الْمَعْنَى قَالَا [جَمِيعًا] نَا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «أَفَاضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ آخِرِ يَوْمِهِ حِينَ صَلَّى الظُّهْرَ، ثُمَّ رَجَعَ إِلَى مِنًى فَمَكَثَ بِهَا لَيَالِيَ أَيَّامِ التَّشْرِيقِ يَرْمِي الْجَمْرَةَ إِذَا زَالَتْ الشَّمْسُ كُلُّ جَمْرَةٍ بِسَبْعِ حَصَيَاتٍ يُكَبِّرُ مَعَ كُلِّ حَصَاةٍ» .

The Qārin pilgrim performing combined Hajj may eat from his sacrificial offering and give charity.

[يَأْكُلُ الْقَارِنُ مِنْ هَدْيِهِ وَيَتَصَدَّقُ]

L13483

L13484 As for our statement: "The qārin (one combining Ḥajj with ʿUmrah) must eat from his hady and give charity, and likewise from a voluntary hady?" This is based on Allah's statement: "We have made the sacrificial camels among Allah's rites for you – there is good in them for you. So proclaim Allah's name over them as they stand in rows. When they have fallen on their sides, eat from them and feed both the contented and the one who asks openly" [al-Ḥajj: 36]. "Allah's Messenger (peace and blessings be upon him) and ʿAlī (may Allah be pleased with him) both performed qirān, ate from their hady animals, and gave charity."[47]

وَأَمَّا قَوْلُنَا: وَيَأْكُلُ الْقَارِنُ مِنْ هَدْيِهِ وَلَا بُدَّ وَيَتَصَدَّقُ، وَكَذَلِكَ مِنْ هَدْيِ التَّطَوُّعِ؟ فَلِقَوْلِ اللَّهِ تَعَالَى: {وَالْبُدْنَ جَعَلْنَاهَا لَكُمْ مِنْ شَعَائِرِ اللَّهِ لَكُمْ فِيهَا خَيْرٌ فَاذْكُرُوا اسْمَ اللَّهِ عَلَيْهَا صَوَافَّ فَإِذَا وَجَبَتْ جُنُوبُهَا فَكُلُوا مِنْهَا وَأَطْعِمُوا الْقَانِعَ وَالْمُعْتَرَّ} [الحج: ٣٦] «وَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلِيٌّ رِضْوَانُ اللَّهِ عَلَيْهِ قَارِنِينَ، وَأَكَلَا مِنْ هَدْيِهِمَا وَتَصَدَّقَا» .

L13485 Abu Muhammad said: A narration has been reported stating, "Whoever does not perform ṭawāf around the House on the Day of Sacrifice reverts to the state of iḥrām as he was until he performs ṭawāf." This was reported by Abu Ubaydah ibn Abdallah ibn Wahb ibn Zamʿah from his father and

قَالَ أَبُو مُحَمَّدٍ: وَرُوِيَ أَثَرٌ: «أَنَّ مَنْ لَمْ يَطُفْ بِالْبَيْتِ يَوْمَ النَّحْرِ فَإِنَّهُ يَعُودُ مُحْرِمًا كَمَا كَانَ حَتَّى يَطُوفَ بِهِ» رَوَاهُ أَبُو عُبَيْدَةَ بْنُ عَبْدِ اللَّهِ بْنِ وَهْبِ بْنِ زَمْعَةَ عَنْ أَبِيهِ وَأُمِّهِ زَيْنَبَ بِنْتِ أُمِّ سَلَمَةَ عَنْ أُمِّهَا عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَلَا

[46] **Hadith references (L13482):** Sunan Abi Dawud 1973; Mishkat al-Masabih 2676.
[47] **Qur'an references (L13484):** Qur'an 22:36 (Al-Hajj).

his mother Zaynab bint Umm Salamah, from her mother, the daughter of Umm Salamah, from Umm Salamah, the Mother of the Believers, from the Prophet—peace and blessings be upon him. It is not authentic, for though Abu Ubaydah was renowned for nobility and eminence in authority, he is not known for transmitting ḥadīth or for memorization. Had it been authentic, we would have hastened to adopt it. Urwah ibn al-Zubayr held this opinion.

يَصِحُّ، لِأَنَّ أَبَا عُبَيْدَةَ وَإِنْ كَانَ مَشْهُورَ الشَّرَفِ وَالْجَلَالَةِ فِي الرِّيَاسَةِ فَلَيْسَ مَعْرُوفًا بِنَقْلِ الْحَدِيثِ، وَلَا مَعْرُوفًا بِالْحِفْظِ، وَلَوْ صَحَّ لَقُلْنَا بِهِ مُسَارِعِينَ إِلَى ذَلِكَ، وَقَدْ قَالَ بِهِ عُرْوَةُ بْنُ الزُّبَيْرِ.

[الْمُتَمَتِّعُ إِذَا كَانَ مِنْ غَيْرِ أَهْلِ الْحَرَمِ أَوْ لَمْ يَكُنْ أَهْلُهُ مَعَهُ]

The *mutamatti*, if he is neither from the residents of the Haram nor accompanied by his family...

L13486

L13487 As for our statement: "If the Tamattuʿ pilgrim is not a resident of the Haram or his household is not residing there with him, he is obligated to offer a sacrificial animal. This offering is not valid unless he offers it after entering the state of Iḥram for Hajj."

وَأَمَّا قَوْلُنَا -: فَأَمَّا الْمُتَمَتِّعُ فَإِنْ كَانَ مِنْ غَيْرِ أَهْلِ الْحَرَمِ أَوْ لَمْ يَكُنْ أَهْلُهُ مَعَهُ قَاطِنِينَ هُنَالِكَ فَفَرْضٌ عَلَيْهِ أَنْ يُهْدِيَ هَدْيًا وَلَا بُدَّ، وَلَا يُجْزِئُهُ أَنْ يُهْدِيَهُ إِلَّا بَعْدَ أَنْ يُحْرِمَ بِالْحَجِّ.

L13488–13489 If he does not find a sacrificial animal nor the means to do so, he must fast three days starting from the day he enters *Ihram* for *Hajj* and concluding by the end of the day of *Arafah*, followed by seven days after the days of *Tashreeq* have concluded.

فَإِنْ لَمْ يَجِدْ هَدْيًا وَلَا مَا يَبْتَاعُهُ بِهِ فَلْيَصُمْ ثَلَاثَةَ أَيَّامٍ مِنْ يَوْمٍ يُحْرِمُ بِالْحَجِّ إِلَى انْقِضَاءِ يَوْمِ عَرَفَةَ وَسَبْعَةَ أَيَّامٍ إِذَا انْقَضَتْ أَيَّامُ التَّشْرِيقِ.

L13490 If he does not fast the three days as we mentioned, he must delay Tawaf al-Ifadah until the days of Tashreeq have ended. Then he must fast the three days. Once he completes them all, he must perform Tawaf al-Ifadah on the fourth day, then he must begin fasting the seven days.

فَإِنْ لَمْ يَصُمِ الثَّلَاثَةَ الْأَيَّامِ كَمَا ذَكَرْنَا فَلْيُؤَخِّرْ طَوَافَ الْإِفَاضَةِ حَتَّى تَنْقَضِيَ أَيَّامُ التَّشْرِيقِ، ثُمَّ يَصُومَ الثَّلَاثَةَ الْأَيَّامِ، فَإِذَا أَتَمَّهَا كُلَّهَا طَافَ طَوَافَ الْإِفَاضَةِ فِي الْيَوْمِ الرَّابِعِ، ثُمَّ ابْتَدَأَ بِصِيَامِ السَّبْعَةِ الْأَيَّامِ.

L13491 If he does not do so until the time for Hajj acts has passed, he must fast only seven days and seek forgiveness from Allah if he deliberately neglected to fast the three days.

فَإِنْ لَمْ يَفْعَلْ حَتَّى خَرَجَ عَنْ عَمَلِ الْحَجِّ صَامَ السَّبْعَةَ الْأَيَّامِ فَقَطْ وَاسْتَغْفَرَ اللَّهَ إِنْ كَانَ تَعَمَّدَ تَرْكَ صِيَامِ الثَّلَاثَةِ الْأَيَّامِ.

L13492 If he finds a sacrificial animal after entering the state of iḥrām for Ḥajj, it does not suffice him, and fasting becomes obligatory for him without exception. But if he finds it before entering the state of iḥrām for Ḥajj, his obligation is the sacrificial animal - based on the words of Allah, the Exalted: "Whoever performs Tamattuʿ with ʿUmrah to Ḥajj must offer what is feasible as a sacrificial animal. But whoever cannot find it must fast three days dur-

وَلَوْ وَجَدَ هَدْيًا بَعْدَ إِحْرَامِهِ بِالْحَجِّ لَمْ يُجْزِهِ وَفَرْضُهُ الصَّوْمُ وَلَا بُدَّ، فَإِنْ وَجَدَهُ قَبْلَ أَنْ يُحْرِمَ بِالْحَجِّ فَفَرْضُهُ الْهَدْيُ - فَلِقَوْلِ اللَّهِ تَعَالَى: {فَمَنْ تَمَتَّعَ بِالْعُمْرَةِ إِلَى الْحَجِّ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ فَمَنْ لَمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةٍ إِذَا رَجَعْتُمْ تِلْكَ عَشَرَةٌ كَامِلَةٌ

ing Ḥajj and seven days upon returning. That is ten complete days. This is for those whose families are not present at the Sacred Mosque" [al-Baqarah 2:196]. This is the explicit text of what we have stated - and to Allah belongs all praise in abundance.[48]

L13493 Some people have permitted fasting the three days before entering the state of ihram for Hajj. This is erroneous, as it opposes Allah's command—Exalted is He—to fast them during the Hajj rites. Since a person has not entered ihram, they are neither in Hajj nor within the prescribed timeframe for fasting the three days.

L13494 Moreover, the mentioned sacrifice and fasting are not obligatory upon him except by his Tamattuʿ—which is performing Umrah followed by Hajj—as per the explicit text of Allah's words. If he has not assumed Ihram for Hajj, he does not yet qualify as one who has performed Umrah followed by Hajj through Tamattuʿ. Nor is the fulfillment of any obligation validly discharged except within its prescribed time, which Allah the Exalted has decreed for it.

L13495 Some people have permitted fasting the three days on the days of Tashreeq, but this is erroneous. We have mentioned the decisive evidence demonstrating the invalidity of [this view] in the Book of Fasting within this *Dīwān*, and the Prophet—may Allah bless him and grant him peace—prohibited fasting entirely on the days of Tashreeq altogether.

L13496 This is also the opinion of Al-Shāfiʿī, Abū Ḥanīfah, Abū Sulaymān, and others.

L13497 It has been narrated to us through the chain of Ibn Abī Shaybah from Yaḥyā ibn Saʿīd al-Qaṭṭān from Ibn Jurayj from Nāfiʿ from Ibn ʿUmar, who said: The one performing Tamattuʿ should only fast while in the state of Ihrām, and he may not make up for it except in that state.

L13498–13499 It has been narrated to us from ʿĀ'ishah and Ibn ʿUmar as well regarding the permissibility of fasting the Days of Tashrīq for the one performing Tamattu'. There is no valid proof in the presence of differing opinions except what is

ذَلِكَ لِمَنْ لَمْ يَكُنْ أَهْلُهُ حَاضِرِي الْمَسْجِدِ الْحَرَامِ} [البقرة: ١٩٦] وَهَذَا نَصُّ مَا قُلْنَاهُ - وَلِلَّهِ الْحَمْدُ كَثِيرًا.

وَقَدْ أَجَازَ قَوْمٌ أَنْ يَصُومَ الثَّلَاثَةَ الْأَيَّامِ قَبْلَ أَنْ يُحْرِمَ بِالْحَجِّ، وَهَذَا خَطَأٌ، لِأَنَّهُ خِلَافُ أَمْرِ اللَّهِ - تَعَالَى - بِأَنْ يَصُومَهَا فِي الْحَجِّ، وَمَا لَمْ يُحْرِمْ الْمَرْءُ فَلَيْسَ هُوَ فِي الْحَجِّ فَلَيْسَ هُوَ فِي وَقْتِ صِيَامِ الثَّلَاثَةِ الْأَيَّامِ.

وَأَيْضًا فَإِنَّهُ لَا يَجِبُ عَلَيْهِ الْهَدْيُ الْمَذْكُورُ وَلَا الصِّيَامُ الْمَذْكُورُ إلَّا بِتَمَتُّعِهِ بِالْعُمْرَةِ إلَى الْحَجِّ بِنَصِّ كَلَامِ اللَّهِ تَعَالَى، وَهُوَ مَا لَمْ يُحْرِمْ بِالْحَجِّ فَلَيْسَ هُوَ بَعْدُ مِمَّنْ تَمَتَّعَ بِالْعُمْرَةِ إلَى الْحَجِّ، وَلَا يُجْزِئُ [أَدَاءُ] فَرْضٍ إلَّا فِي وَقْتِهِ الَّذِي أَوْجَبَهُ اللَّهُ - تَعَالَى - فِيهِ.

وَأَجَازَ قَوْمٌ أَنْ يَصُومَ الثَّلَاثَةَ الْأَيَّامَ فِي أَيَّامِ التَّشْرِيقِ وَهَذَا خَطَأٌ، وَقَدْ ذَكَرْنَا الْبُرْهَانَ عَلَى بُطْلَانِ [هَذَا الْقَوْلِ] فِي كِتَابِ الصِّيَامِ مِنْ هَذَا الدِّيوَانِ، وَنَهَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ صِيَامِ أَيَّامِ التَّشْرِيقِ جُمْلَةً.

وَبِهِ يَقُولُ الشَّافِعِيُّ، وَأَبُو حَنِيفَةَ، وَأَبُو سُلَيْمَانَ، وَغَيْرُهُمْ.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ ابْنِ جُرَيْجٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: لَا يَصُومُ الْمُتَمَتِّعُ إلَّا وَهُوَ مُحْرِمٌ لَا يَقْضِي عَنْهُ إلَّا ذَلِكَ.

وَرُوِّينَا عَنْ عَائِشَةَ وَابْنِ عُمَرَ أَيْضًا جَوَازَ صِيَامِ أَيَّامِ التَّشْرِيقِ لِلْمُتَمَتِّعِ، وَلَا حُجَّةَ مَعَ التَّنَازُعِ إلَّا فِيمَا صَحَّ عَنْ اللَّهِ - تَعَالَى، أَوْ عَنْ رَسُولِهِ - عَلَيْهِ السَّلَامُ -.

[48] **Qur'an references (L13492):** Qur'an 2:196 (Al-Baqarah).

authentically established from Allah, the Exalted, or from His Messenger, peace be upon him.

L13500 It has been narrated to us from ʿAlī through a disconnected chain from Jaʿfar ibn Muḥammad, from his father, that ʿAlī said regarding the Tamattuʿ pilgrim: He misses the fasting during the ten days. He should take the pre-dawn meal on the night of the stoning (Ramy al-Jamarat), then fast three days followed by seven days when he returns.

وَرُوِّينَا عَنْ عَلِيٍّ مِنْ طَرِيقٍ مُنْقَطِعَةٍ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّ عَلِيًّا قَالَ فِي الْمُتَمَتِّعِ: يَفُوتُهُ الصَّوْمُ فِي الْعَشْرِ: أَنَّهُ يَتَسَحَّرُ لَيْلَةَ الْحَصْبَةِ فَيَصُومُ ثَلَاثَةَ أَيَّامٍ وَسَبْعَةً إِذَا رَجَعَ.

L13501 Abu Muhammad said: The Night of al-Ḥaṣbah is the fourteenth night of Dhu al-Hijjah following the last day of the Tashrīq days. It has been narrated to us from ʿUmar and Ibn ʿAbbās that whoever does not fast the three days during the ten days of Dhu al-Hijjah has no right to fast them afterward.

قَالَ أَبُو مُحَمَّد: لَيْلَةُ الْحَصْبَةِ هِيَ اللَّيْلَةُ الرَّابِعَةَ عَشَرَ مِنْ ذِي الْحِجَّةِ التَّالِيَةُ لِآخِرِ أَيَّامِ التَّشْرِيقِ - وَرُوِّينَا عَنْ عُمَرَ، وَابْنِ عَبَّاسٍ: أَنَّ مَنْ لَمْ يَصُمْ الثَّلَاثَةَ الْأَيَّامَ فِي عَشْرِ ذِي الْحِجَّةِ لَمْ يَكُنْ لَهُ أَنْ يَصُومَهَا بَعْدُ.

L13502 Ali said: The statement of Allah—the Most High—"He is the Sovereign over all things," and He—the Most High—only obligated fasting the three days during Ḥajj. Therefore, it is not permissible to fast them either before or after Ḥajj, for this would contravene Allah's command—the Most High—in this matter. He—the Almighty and Majestic—obligated fasting them during Ḥajj, not during Ihrām. Whoever has not performed Ṭawāf al-Ifāḍah remains in Ḥajj.

قَالَ عَلِيٌّ: قَوْلُ اللَّهِ تَعَالَى - هُوَ الْحَاكِمُ عَلَى كُلِّ شَيْءٍ - وَلَمْ يُوجِبْ - تَعَالَى - صِيَامَ الثَّلَاثَةِ الْأَيَّامِ إلَّا فِي الْحَجِّ، فَلَيْسَ لَهُ أَنْ يَصُومَهَا لَا قَبْلَ الْحَجِّ وَلَا بَعْدَ الْحَجِّ، لِأَنَّهُ يَكُونُ مُخَالِفًا لِأَمْرِ اللَّهِ - تَعَالَى - فِي ذَلِكَ، وَلَمْ يُوجِبْ - عَزَّ وَجَلَّ - صِيَامَهَا فِي الْإِحْرَامِ لَكِنْ فِي الْحَجِّ، وَهُوَ مَا لَمْ يَطُفْ طَوَافَ الْإِفَاضَةِ فَهُوَ فِي الْحَجِّ بَعْدُ.

L13503 Abu Hanifa said: If one fasts the three days after assuming ihram for Umrah—whether before performing tawaf for it or after completing it—and before assuming ihram for Hajj, that suffices him. However, fasting the seven days during the ten days of Dhu al-Hijjah does not suffice. This was an unmistakable contradiction and contrary to the Quran as we have mentioned, without evidence.

وَقَالَ أَبُو حَنِيفَةَ: إنْ صَامَ الثَّلَاثَةَ الْأَيَّامِ بَعْدَ أَنْ أَحْرَمَ بِالْعُمْرَةِ، وَقَبْلَ أَنْ يَطُوفَ لَهَا أَوْ بَعْدَ تَمَامِهَا، وَقَبْلَ أَنْ يُحْرِمَ بِالْحَجِّ أَجْزَأَهُ ذَلِكَ، وَلَا يُجْزِئُهُ أَنْ يَصُومَ السَّبْعَةَ الْأَيَّامِ فِي عَشْرِ ذِي الْحِجَّةِ؛ فَكَانَ هَذَا تَنَاقُضًا لَا خَفَاءَ بِهِ، وَخِلَافًا لِلْقُرْآنِ كَمَا ذَكَرْنَا بِلَا دَلِيلٍ.

L13504 Some of them said: The meaning of the statement of the Exalted "in Hajj" [Al-Baqarah:196] refers to the months of Hajj. We responded: This is a lie against the Quran, for if it were as you claim, then you should permit him to fast them during the months of Hajj before performing Umrah - otherwise you have contradicted yourselves. It is authentically reported from Umm al-Mu'minīn ʿĀ'ishah, the Mother of the Believers, and Ibn ʿUmar that one does not fast the three days except after entering the state of consecration for Hajj. This is the opinion of Mālik, al-Shāfiʿī, Aḥmad, and Abū Sulaymān, with no dissenting opinion from the Companions being known in that matter. Al-Shāfiʿī said: He fasts them after the days of Tashrīq (the days of drying meat)

وَقَالَ بَعْضُهُمْ: مَعْنَى قَوْله تَعَالَى: {فِي الْحَجِّ} [البقرة: ١٩٦] أَيْ فِي أَشْهُرِ الْحَجِّ؟ فَقُلْنَا: هَذَا كَذِبٌ عَلَى الْقُرْآنِ، فَإِنْ كَانَ كَمَا تَزْعُمُونَ فَأَجِيزُوا لَهُ صِيَامَهَا فِي أَشْهُرِ الْحَجِّ قَبْلَ أَنْ يَعْتَمِرَ، وَإِلَّا فَقَدْ تَنَاقَضْتُمْ، وَصَحَّ عَنْ أُمِّ الْمُؤْمِنِينَ عَائِشَةَ، وَعَنْ ابْنِ عُمَرَ أَنَّهُ لَا يَصُومُ الثَّلَاثَةَ الْأَيَّامِ إلَّا بَعْدَ إحْرَامِهِ بِالْحَجِّ، وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي

and separates the three fasting days from the seven total days, even by a single day.[1]

سُلَيْمَانَ، وَلَا يُعْرَفُ لَهُمْ مُخَالِفٌ مِنْ الصَّحَابَةِ فِي ذَلِكَ، وَقَالَ الشَّافِعِيُّ: يَصُومُهُنَّ بَعْدَ أَيَّامِ التَّشْرِيقِ وَيُفَرِّقُ بَيْنَ الثَّلَاثَةِ وَالسَّبْعَةِ وَلَوْ بِيَوْمٍ.

L13505 Ali said: And this is an error and contrary to the Quran as we have mentioned, and there is no distinction between advancing the obligation before its time and delaying it after its time without an explicit text.

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ وَخِلَافٌ لِلْقُرْآنِ كَمَا ذَكَرْنَا، وَلَا فَرْقَ بَيْنَ تَقْدِيمِ الْفَرْضِ قَبْلَ وَقْتِهِ، وَبَيْنَ تَأْخِيرِهِ بَعْدَ وَقْتِهِ بِغَيْرِ نَصٍّ

L13506 ʻAṭāʼ said: The *Tamattuʻ* sacrificial offering is only valid after the stationing at ʻArafah.

وَقَالَ عَطَاءٌ: لَا يُجْزِئُ هَدْيُ الْمُتْعَةِ إلَّا بَعْدَ الْوُقُوفِ بِعَرَفَةَ.

L13507 And ʻAmr ibn Dīnār said: "It suffices from the time one enters the state of iḥrām for Ḥajj, and this is what we adopt based on what we mentioned earlier."

وَقَالَ عَمْرُو بْنُ دِينَارٍ يُجْزِئُ مُذْ يُحْرِمُ بِالْحَجِّ، وَبِهِ نَأْخُذُ لِمَا ذَكَرْنَا آنِفًا.

L13508–13509 They differed regarding the interpretation of His words, the Most High: {And seven animals when you have returned} [Al-Baqarah: 196].[2]

وَاخْتَلَفُوا فِي مَعْنَى قَوْله تَعَالَى: {وَسَبْعَةٍ إِذَا رَجَعْتُمْ} [البقرة: ١٩٦] .

L13510 Some people said: "When you return to your lands," while others said: "When you return from performing Hajj"—which is the opinion of Sufyan and Abū Ḥanīfah, and it is the correct view. This is because it is impermissible to particularize the Qur'an's general ruling without a textual basis or compelling necessity requiring such particularization. Allah the Exalted mentioned fasting three days during Hajj, then the Almighty and Majestic said: {and seven days when you return} [Al-Baqarah 2:196]. Thus, it is established that the verse is to be understood according to its apparent and general meaning—referring to after returning from the Hajj that makes such fasting obligatory. And success is from Allah, the Most High.[3]

فَقَالَ قَوْمٌ: إذَا رَجَعْتُمْ إلَى بِلَادِكُمْ، وَقَالَ آخَرُونَ: إذَا رَجَعْتُمْ مِنْ عَمَلِ الْحَجِّ - وَهُوَ قَوْلُ سُفْيَانَ، وَأَبِي حَنِيفَةَ، وَهُوَ الصَّحِيحُ؛ لِأَنَّهُ لَا يَجُوزُ تَخْصِيصُ الْقُرْآنِ بِلَا نَصٍّ وَلَا ضَرُورَةَ مُوجِبَةٌ لِتَخْصِيصِهِ، وَقَدْ ذَكَرَ - تَعَالَى - صِيَامَ الثَّلَاثَةِ الْأَيَّامِ فِي الْحَجِّ، ثُمَّ قَالَ عَزَّ وَجَلَّ: {وَسَبْعَةٍ إِذَا رَجَعْتُمْ} [البقرة: ١٩٦] فَصَحَّ أَنَّهُ عَلَى ظَاهِرِهِ وَعُمُومِهِ بَعْدَ رُجُوعِهِ مِنْ الْحَجِّ الْمُوجِبِ عَلَيْهِ ذَلِكَ الصِّيَامَ وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L13511 If it is said: You have narrated through the chain of Al-Bukhari from Yahya ibn Bukayr from Al-Laith from Uqayl from Al-Zuhri from Urwa from Aisha that the Messenger of Allah—peace and blessings be upon him—said: "Whoever among you has not brought a sacrificial animal should perform Tawaf

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ يَحْيَى بْنِ بُكَيْرٍ عَنْ اللَّيْثِ عَنْ عُقَيْلٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «وَمَنْ لَمْ يَكُنْ مِنْكُمْ أَهْدَى فَلْيَطُفْ بِالْبَيْتِ وَبَيْنَ الصَّفَا وَالْمَرْوَةِ، وَيُقَصِّرْ، وَيَحِلَّ، ثُمَّ لِيُهِلَّ بِالْحَجِّ فَمَنْ لَمْ يَجِدْ هَدْيًا فَلْيَصُمْ ثَلَاثَةَ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةً إِذَا رَجَعَ إِلَى أَهْلِهِ» .

[1] **Qur'an references (L13504):** Qur'an 2:196 (Al-Baqarah).
[2] **Qur'an references (L13509):** Qur'an 2:196 (Al-Baqarah).
[3] **Qur'an references (L13510):** Qur'an 2:196 (Al-Baqarah).

around the House and between Safa and Marwah, cut their hair short, exit Ihram, then assume Ihram anew for Hajj. Whoever cannot find a sacrificial animal must fast three days during Hajj and seven days when they return home."[4]

L13512 We said: Yes, and returning to one's family occurs in two forms: the first is traveling to his homeland, and the second is returning to his family—even if what was prohibited to him due to the acts of Hajj becomes permissible in them.

L13513 It is not permissible to specify the wording except through an explicit text or consensus. Therefore, it is obligatory to apply it to all cases encompassed by the term "return." If one fasts the seven designated days upon the lifting of their prohibition from him when returning to his family, this is permissible. Likewise, if one fasts them when returning by walking, this is permissible.

L13514 Abu Muhammad said: If he does not fast the three days until completing Hajj, we have transmitted narrations from Umar ibn al-Khattab that the sacrificial obligation reverts to him. This position has been authenticated through Ibn Abbas, and it represents the view of Ata, Tawus, Mujahid, al-Nakhaʿī, and al-Hakam.

L13515 It was also narrated from him that one must offer two sacrificial animals: the sacrificial animal for tamattuʿ and a sacrificial animal for its delay. And it was not authenticated from him—and this is the opinion adopted by Abū Ḥanīfa and his companions.

L13516 Mālik and al-Shāfiʿī said: He fasts those days after Ḥajj (and this is a statement narrated from ʿAlī, though not authentically established from him). Saʿīd ibn Jubayr said: He feeds as compensation for the three days and fasts the seven days.

L13517 Ali said: No one may validly argue against Allah—the Exalted—and His Messenger—may Allah bless him and grant him peace—for Allah, the Almighty and Majestic, has stipulated that whoever cannot find the sacrificial animal must fast three days during Hajj and seven days upon returning.

قُلْنَا: نَعَمْ وَالرُّجُوعُ إِلَى أَهْلِهِ يَقَعُ عَلَى وَجْهَيْنِ: أَحَدُهُمَا الْمَشْيُ إِلَى بَلَدِهِ، وَالْآخَرُ الرُّجُوعُ إِلَى أَهْلِهِ؛ وَإِنْ حَلَّ لَهُ فِيهَا مَا كَانَ لَهُ حَرَامًا بِالْعَمَلِ لِلْحَجِّ.

وَلَا يَجُوزُ تَخْصِيصُ اللَّفْظِ إِلَّا بِنَصٍّ أَوْ إِجْمَاعٍ فَحَمْلُهُ عَلَى كُلِّ مَا يَقَعُ عَلَيْهِ اسْمُ رُجُوعٍ هُوَ الْوَاجِبُ، فَإِنْ صَامَ السَّبْعَةَ إِذَا رَجَعَ إِلَى أَهْلِهِ مِنْ تَحْرِيمِهَا عَلَيْهِ فَذَلِكَ جَائِزٌ، وَإِنْ صَامَهَا إِذَا رَجَعَ بِالْمَشْيِ فَذَلِكَ جَائِزٌ.

قَالَ أَبُو مُحَمَّد: فَإِنْ لَمْ يَصُمْ الثَّلَاثَةَ الْأَيَّامِ حَتَّى أَتَمَّ الْحَجَّ فَقَدْ رُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ يَعُودُ عَلَيْهِ الْهَدْيُ وَصَحَّ ذَلِكَ عَنْ ابْنِ عَبَّاسٍ وَهُوَ قَوْلُ عَطَاءٍ، وَطَاوُسٍ، وَمُجَاهِدٍ، وَالنَّخَعِيِّ، وَالْحَكَمِ.

وَرُوِيَ عَنْهُ أَيْضًا أَنَّ عَلَيْهِ هَدْيَيْنِ: هَدْيَ الْمُتْعَةِ، وَهَدْيًا لِتَأْخِيرِهِ، وَلَمْ يَصِحَّ عَنْهُ - وَبِهِ يَأْخُذُ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: يَصُومُهُنَّ بَعْدَ الْحَجِّ - وَهَذَا قَوْلٌ رُوِيَ عَنْ عَلِيٍّ وَلَمْ يَصِحَّ عَنْهُ - وَقَالَ سَعِيدُ بْنُ جُبَيْرٍ: يُطْعِمُ عَنْ الثَّلَاثَةِ الْأَيَّامِ وَيَصُومُ السَّبْعَةَ.

قَالَ عَلِيٌّ: وَلَا حُجَّةَ فِي أَحَدٍ مَعَ اللَّهِ - تَعَالَى - وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ نَصَّ - عَزَّ وَجَلَّ - عَلَى أَنَّ مَنْ لَمْ يَجِدْ الْهَدْيَ صَامَ ثَلَاثَةَ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةً إِذَا رَجَعَ.

[4] **Qur'an references (L13511):** Qur'an 2:196 (Al-Baqarah).

L13518–13519 Thus, it is established with certainty that whoever can neither find a sacrificial animal nor its price, his obligation is the aforementioned fasting, and that no sacrificial animal is required of him. Therefore, since this is the case with certainty and without any disagreement from any scholar, it is impermissible for his incumbent obligation to be dropped.

فَصَحَّ يَقِينًا أَنَّ مَنْ لَمْ يَجِدْ هَدْيًا، وَلَا ثَمَنَهُ أَنَّ فَرْضَهُ الصَّوْمُ الْمَذْكُورُ، وَأَنَّهُ لَا هَدْيَ عَلَيْهِ، فَإِذَا هُوَ كَذَلِكَ بِيَقِينٍ، وَبِلَا خِلَافٍ مِنْ أَحَدٍ فَلَا يَجُوزُ سُقُوطُ فَرْضِهِ الْوَاجِبِ عَلَيْهِ.

L13520 The Qur'an has established the exemption from the obligation of a ritual offering, but this exemption is claimed through a disputed opinion unvalidated by the Qur'an or Sunnah. Likewise, it is insufficient for one to fast the three days outside the time ordained by Allah—Exalted is He—for their fasting, based on a contested view unvalidated by scriptural evidence. Umar and Ibn Abbas state: "He may not fast after that." Ali asserts: "He may not offer the ritual offering after that." Sa'id ibn Jubayr declares: "He neither offers the ritual offering nor fasts those days, but should provide food." Others do not recognize feeding [as a valid substitute]. Thus, the rulings obligating fasting, a ritual offering, or feeding lack validity in the absence of consensus or explicit textual evidence. Rather, the text precludes both fasting and the ritual offering, while not mandating feeding.

وَإِيجَابُ هَدْيٍ قَدْ جَاءَ الْقُرْآنُ بِسُقُوطِهِ عَنْهُ بِقَوْلٍ مُخْتَلَفٍ فِيهِ لَا يُصَحِّحُهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا يُجْزِئُهُ أَيْضًا أَنْ يَصُومَ الثَّلَاثَةَ الْأَيَّامِ فِي غَيْرِ الْوَقْتِ الَّذِي افْتَرَضَ اللَّهُ - تَعَالَى - عَلَيْهِ صِيَامَهَا فِيهِ بِقَوْلٍ مُخْتَلَفٍ فِيهِ لَا يُصَحِّحُهُ قُرْآنٌ، وَلَا سُنَّةٌ - وَعُمَرُ، وَابْنُ عَبَّاسٍ يَقُولَانِ: لَا يَصُومُ بَعْدُ - وَعَلِيٌّ يَقُولُ: لَا يُهْدِي بَعْدُ - وَسَعِيدُ بْنُ جُبَيْرٍ يَقُولُ: لَا يُهْدِي وَلَا يَصُومُهُنَّ، لَكِنْ يُطْعِمُ - وَغَيْرُهُ لَا يَرَى الْإِطْعَامَ، فَلَمْ يَصِحَّ إيجَابُ صَوْمٍ، أَوْ هَدْيٍ، أَوْ إطْعَامٍ بِغَيْرِ إجْمَاعٍ وَلَا نَصٍّ، بَلْ النَّصُّ مَانِعٌ مِنْهُمَا، وَغَيْرُ مُوجِبٍ لِلْإِطْعَامِ.

L13521 We have found Allah—Exalted is He—saying: {Allah does not charge a soul except [with that within] its capacity} [Al-Baqarah: 286]. Since fasting the three days during an elapsed time is beyond one's capacity, it is valid that he is not obligated to what exceeds his capacity in that matter. The Messenger of Allah—peace and blessings be upon him—said: "When I command you with a matter, fulfill from it what you are able." Thus, fasting the three days is lifted from him due to his inability to observe them as commanded, while fasting seven days remains obligatory upon him because he is capable of it. He is obliged to fulfill it perpetually, and it suffices as valid compensation for him. If he dies without fasting them, his legal guardian must fast them on his behalf as we detailed in the Book of Fasting. The three days are not to be fasted on his behalf since they are no longer incumbent upon him. However, he becomes a transgressor against Allah—Exalted is He—if he intentionally neglected fasting them until their time elapsed. In that case, he must seek forgiveness from Allah—Almighty and Majestic—repent, and must increase in doing good deeds. There is no blame upon him if he neglected them

وَقَدْ وَجَدْنَا اللَّهَ - تَعَالَى - يَقُولُ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] . وَهُوَ لَيْسَ فِي وُسْعِهِ أَنْ يَصُومَ الثَّلَاثَةَ الْأَيَّامِ فِي وَقْتٍ قَدْ فَاتَ، فَصَحَّ أَنَّهُ لَيْسَ مُكَلَّفًا بَعْدُ مَا لَيْسَ فِي وُسْعِهِ مِنْ ذَلِكَ. وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» فَسَقَطَ عَنْهُ صَوْمُ الثَّلَاثَةِ الْأَيَّامِ لِعَجْزِهِ عَنْ أَدَائِهَا كَمَا أُمِرَ وَبَقِيَ عَلَيْهِ صِيَامُ السَّبْعَةِ الْأَيَّامِ، لِأَنَّهُ مُسْتَطِيعٌ عَلَيْهَا فَعَلَيْهِ أَنْ يَأْتِيَ بِهَا أَبَدًا وَتُجْزِئُ عَنْهُ، فَإِنْ مَاتَ، وَلَمْ يَصُمْهَا صَامَهَا عَنْهُ وَلِيُّهُ عَلَى مَا ذَكَرْنَا فِي كِتَابِ الصِّيَامِ وَلَا تُصَامُ عَنْهُ الثَّلَاثَةُ الْأَيَّامِ لِأَنَّهَا لَيْسَتْ عَلَيْهِ بَعْدُ، إلَّا أَنَّهُ عَاصٍ لِلَّهِ - تَعَالَى - إنْ كَانَ تَعَمَّدَ تَرْكَ صِيَامِهَا حَتَّى فَاتَ وَقْتُهَا فَلْيَسْتَغْفِرْ اللَّهَ - عَزَّ وَجَلَّ - وَلْيَتُبْ وَلْيُكْثِرْ مِنْ

due to a legitimate excuse, in accordance with Allah's statement—Exalted is He—: {Allah does not charge a soul except [with that within] its capacity} [Al-Baqarah: 286].[5]

فِعْلِ الْخَيْرِ، وَلَا حَرَجَ عَلَيْهِ إِنْ كَانَ تَرَكَهَا لِعُذْرٍ لِقَوْلِ اللَّهِ - تَعَالَى -: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

L13522 Abū Muḥammad said: Abū Ḥanīfa stated: If he finds a sacrificial animal before completing the three days of fasting or after completing them and before exiting the state of iḥrām during the days of sacrifice, his fasting is invalidated and the ruling reverts to offering the sacrificial animal. If he finds the sacrificial animal after the days of sacrifice have ended—whether he has exited iḥrām or not—his fasting remains valid, and no sacrificial animal is required of him.

قَالَ أَبُو مُحَمَّد: وَقَالَ أَبُو حَنِيفَةَ: إِنْ وَجَدَ هَدْيًا قَبْلَ أَنْ يُتِمَّ صِيَامَ الثَّلَاثَةِ الْأَيَّامِ أَوْ بَعْدَ أَنْ أَتَمَّهُنَّ، وَقَبْلَ أَنْ يَحِلَّ فِي أَيَّامِ النَّحْرِ فَقَدْ بَطَلَ صَوْمُهُ وَعَادَ حُكْمُهُ إِلَى الْهَدْيِ، وَإِنْ وَجَدَ الْهَدْيَ بَعْدَ انْقِضَاءِ أَيَّامِ النَّحْرِ - وَقَدْ حَلَّ أَوْ لَمْ يَحِلَّ - فَصَوْمُهُ تَامٌّ، وَلَا هَدْيَ عَلَيْهِ.

L13523–13525 Malik and Al-Shāfiʿī said: If he finds the Hady after commencing the fast, his obligation is fasting [and no Hady is incumbent upon him]. But if he finds the Hady before undertaking the fast, his ruling reverts to the Hady. ʿAlī said: Both statements lack evidence, and no valid proof exists for either despite the words of Allah, the Exalted. The Exalted obligated what He obligated of the Hady or fasting — if he could not find the Hady due to being a Tamattuʿ pilgrim. If one combines Umrah with Hajj but has not yet entered the state of consecration for Hajj, they are not considered a Tamattuʿ pilgrim (combining Umrah and Hajj). Thus, neither a sacrificial offering nor fasting has become incumbent upon them up to that stage.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: إِنْ وَجَدَ الْهَدْيَ بَعْدَ أَنْ دَخَلَ فِي الصَّوْمِ فَفَرْضُهُ الصَّوْمُ [وَلَا هَدْيَ عَلَيْهِ] وَإِنْ وَجَدَ الْهَدْيَ قَبْلَ أَنْ يَأْخُذَ فِي الصَّوْمِ عَادَ حُكْمُهُ إِلَى الْهَدْيِ -: قَالَ عَلِيٌّ: كِلَا الْقَوْلَيْنِ لَا دَلِيلَ عَلَيْهِ وَلَا حُجَّةَ فِي أَحَدٍ مَعَ كَلَامِ اللَّهِ - تَعَالَى - وَإِنَّمَا أَوْجَبَ - تَعَالَى - مَا أَوْجَبَ مِنَ الْهَدْيِ، أَوْ مِنَ الصَّوْمِ إِنْ لَمْ يَجِدِ الْهَدْيَ بِأَنْ يَكُونَ مُتَمَتِّعًا بِالْعُمْرَةِ إِلَى الْحَجِّ فَهُوَ مَا لَمْ يُحْرِمْ بِالْحَجِّ، فَلَيْسَ مُتَمَتِّعًا بِالْعُمْرَةِ إِلَى الْحَجِّ فَلَمْ يَجِبْ عَلَيْهِ - حَتَّى الْآنَ - هَدْيٌ، وَلَا صَوْمٌ.

L13526 There is no disagreement among any Muslim scholars that if a Muslim performs ʿUmrah intending Tamattuʿ but fails to perform Hajj in that same year, neither a sacrificial animal nor fasting is required of him. This certainly confirms that such obligations only become obligatory upon his entry into Hajj, for it is at that point he becomes a Mutamattiʿ by transitioning from ʿUmrah to Hajj. Thus, there remains no doubt in this matter. The ruling applies precisely when the ruling of Tamattuʿ takes effect – neither preceding this moment nor applying afterward.

وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ فِي أَنَّ الْمُسْلِمَ إِنْ اعْتَمَرَ، وَهُوَ يُرِيدُ التَّمَتُّعَ ثُمَّ لَمْ يَحُجَّ مِنْ عَامِهِ ذَلِكَ فَإِنَّهُ لَا هَدْيَ عَلَيْهِ وَلَا صَوْمَ، فَصَحَّ يَقِينًا أَنَّهُ لَا يَجِبُ عَلَيْهِ ذَلِكَ إِلَّا بِدُخُولِهِ فِي الْحَجِّ، فَإِنَّهُ حِينَئِذٍ يَصِيرُ مُتَمَتِّعًا بِالْعُمْرَةِ إِلَى الْحَجِّ، فَإِذًا لَا شَكَّ فِي هَذَا فَإِنَّمَا حُكْمُهُ حِينَ وَجَبَ عَلَيْهِ ذَلِكَ الْحُكْمُ بِالتَّمَتُّعِ لَا قَبْلَ ذَلِكَ وَلَا بَعْدَ ذَلِكَ.

L13527 If, at the time of entering the state of Ihram for Hajj, he was capable of offering a sacrificial animal, then his obligation is to offer it by the explicit

فَإِنْ كَانَ فِي أَثَرِ حِينِ إِحْرَامِهِ بِالْحَجِّ قَادِرًا عَلَى هَدْيٍ فَفَرْضُهُ الْهَدْيُ بِنَصِّ الْقُرْآنِ سَوَاءٌ أَعْسَرَ بَعْدَ ذَلِكَ أَوْ كَانَ مُعْسِرًا قَبْلَ ذَلِكَ، وَلَا يَسْقُطُ عَنْهُ مَا أَوْجَبَهُ اللَّهُ - تَعَالَى -

[5] **Qur'an references (L13521):** Qur'an 2:286 (Al-Baqarah).

عَلَيْهِ مِنْ الْهَدْيِ بِدَعْوَى لَا بُرْهَانَ عَلَى صِحَّتِهَا مِنْ قُرْآنٍ وَلَا سُنَّةٍ، وَعَلَيْهِ أَنْ يُهْدِيَ مَتَى وَجَدَ.

text of the Quran—whether he later becomes impoverished or was already impoverished beforehand. The obligation imposed by Allah—Exalted is He—to offer the sacrificial animal is not waived based on a claim unsupported by evidence from the Quran or the Sunnah. He must offer the sacrifice whenever he is able.

فَإِنْ كَانَ فِي أَثَرِ حِينِ إحْرَامِهِ بِالْحَجِّ لَا يَقْدِرُ عَلَى هَدْيٍ فَفَرْضُهُ الصَّوْمُ بِنَصِّ الْقُرْآنِ سَوَاءٌ كَانَ قَبْلَ ذَلِكَ قَادِرًا عَلَى هَدْيٍ أَوْ قَدَرَ عَلَيْهِ بَعْدَ ذَلِكَ لَا يَسْقُطُ عَنْهُ مَا أَوْجَبَ اللَّهُ - تَعَالَى - عَلَيْهِ بِالْقُرْآنِ بِدَعْوَى لَا بُرْهَانَ عَلَى صِحَّتِهَا مِنْ قُرْآنٍ وَلَا سُنَّةٍ.

L13528 If, during the time of entering the state of *iḥrām* for Ḥajj, he is unable to provide a sacrificial animal, then fasting becomes obligatory for him by the explicit text of the Quran—whether he was previously capable of offering it or became capable afterward. What Allah—Exalted is He—has obligated upon him in the Quran is not waived based on a claim unsupported by evidence from the Quran or Sunnah.

وَقَاسَهُ الْحَنَفِيُّونَ عَلَى الْمُطَلَّقَةِ الَّتِي لَمْ تَحِضْ تَعْتَدُّ بِالشُّهُورِ فَتَحِيضُ قَبْلَ إتْمَامِ عِدَّتِهَا فَإِنَّهَا تَنْتَقِلُ إلَى الْعِدَّةِ بِالْأَقْرَاءِ، أَوْ بِالْمُطَلَّقَةِ يَمُوتُ زَوْجُهَا قَبْلَ تَمَامِ عِدَّتِهَا فَتَنْتَقِلُ إلَى عِدَّةِ الْوَفَاةِ.

L13529 The Hanafis analogized this ruling to the case of a divorced woman who has not yet menstruated—she observes her waiting period by months, then menstruates before completing her iddah, in which case she switches to observing the waiting period by menstrual cycles—or to the case of a divorced woman whose husband dies during her waiting period, causing her to switch to the widow's waiting period.

قَالَ أَبُو مُحَمَّد: وَهَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ لِأَنَّهُ لَا نِسْبَةَ بَيْنَ الْحَجِّ وَبَيْنَ الطَّلَاقِ، وَإِنَّمَا انْتَقَلَتْ الَّتِي لَمْ تَحِضْ إلَى الْعِدَّةِ بِالْأَقْرَاءِ؛ لِأَنَّ الْقُرْآنَ جَاءَ بِذَلِكَ نَصًّا، وَبِأَنَّ عِدَّةَ الْمُطَلَّقَةِ الْأَقْرَاءُ إلَّا أَنَّ الَّتِي لَمْ تَحِضْ أَوْ يَئِسَتْ مِنْ الْحَيْضِ عِدَّتُهَا الشُّهُورُ، فَإِذَا حَاضَتْ فَبِيَقِينٍ نَدْرِي أَنَّهَا لَيْسَتْ مِنْ اللَّوَاتِي لَمْ يَحِضْنَ، وَلَا مِنْ اللَّائِي يَئِسْنَ مِنْ الْمَحِيضِ فَوَجَبَ أَنْ تَعْتَدَّ بِمَا أَمَرَهَا اللَّهُ - تَعَالَى - أَنْ تَعْتَدَّ بِهِ مِنْ الْأَقْرَاءِ، وَإِنَّمَا انْتَقَلَتْ الْمُتَوَفَّى عَنْهَا زَوْجُهَا إلَى عِدَّةِ الْوَفَاةِ؛ لِأَنَّهَا مَا دَامَتْ فِي الْعِدَّةِ فَهِيَ زَوْجَةٌ لَهُ، وَجَمِيعُ أَحْكَامِ الزَّوْجِيَّةِ بَاقٍ عَلَيْهَا، وَتَرِثُهُ وَيَرِثُهَا، فَإِذَا مَاتَ زَوْجُهَا لَزِمَهَا أَنْ تَعْتَدَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا كَمَا أَمَرَهَا اللَّهُ - تَعَالَى، فَظَهَرَ تَخْلِيطُ هَؤُلَاءِ الْقَوْمِ، وَجَهْلُهُمْ بِالْقِيَاسِ، وَخِلَافُهُمْ الْقُرْآنَ بِآرَائِهِمْ.

L13530 Abū Muḥammad said: This is *qiyas*, and all *qiyas* is invalid. Moreover, even if it were valid, this would represent the very essence of falsehood, for there is no correlation between Ḥajj and divorce. The woman who has not menstruated transitions to a waiting period based on menstrual cycles solely because the Qur'an explicitly stipulates this, and because the waiting period for a divorced woman is determined by menstrual cycles—except that the waiting period for one who has not menstruated or has despaired of menstruation is months. When she menstruates, we know for certain that she is neither among those who have not menstruated nor those who have despaired of menstruation, thus she must observe the waiting period mandated by Allah, Exalted is He, through menstrual cycles. The woman whose husband has died transitions to the widow's waiting period because she remains his wife throughout this period, with all marital rulings intact: she inherits him, and he inherits from her. When her husband dies, she must observe four months and ten days as ordained by Allah, Exalted is He. Thus, the con-

fusion of these people, their ignorance of *qiyas*, and their contradiction of the Qur'an with their opinions becomes evident.

L13531–13533 As for our statement, "This is the ruling pertaining to one whose household is settled within the Sacred Precinct of Makkah," it is because Allah, the Exalted, has decreed... He said: {That is for one whose family is not resident at the Sacred Mosque} [Al-Baqarah: 196]. We found that the scholars differed in opinion. Abū Ḥanīfah said: "Residents of the Sacred Mosque are those residing at one of the mawaqit and what lies between them and Mecca." This is a view narrated from ʿAṭāʾ though unconfirmed from him, but confirmed from Makhūl. Al-Shāfiʿī said: "They are those at a distance of four burud from Mecca such that they do not shorten prayers when traveling to Mecca." This is confirmed from ʿAṭāʾ. Mālik said: "They are the residents of Mecca and Dhū Ṭuwā." Sufyān and Dāwūd said: "They are exclusively the residents of Mecca's dwellings." This is confirmed from Nāfiʿ, the freed slave of Ibn ʿUmar, and from Al-Aʿraj. It was narrated from ʿAṭāʾ and Ṭāwus that they are the residents of Mecca, except that Ṭāwus said: "If a Meccan performs ʿUmrah from one of the mawaqit and then performs Ḥajj in the same year, he must fulfill what is obligatory for the mutamatti." This was narrated through the chain of Wakīʿ from Sufyān from ʿAbdullāh ibn Ṭāwus from his father.[6]

L13534 It was reported to us through the chain of Abd al-Razzaq from Ma'mar from al-Zuhri concerning the residents near the Sacred Mosque. He said: "Whoever's family resides within a day's journey of Mecca or thereabouts."

L13535 Others said: They are the people of the Ḥaram, as narrated via the chain of Saʿīd ibn Manṣūr from Ismāʿīl ibn ʿAyyāsh from Ibn Jurayj from ʿAṭāʾ from Ibn ʿAbbās, who said: "Al-Masjid al-Ḥaram is the entire Ḥaram."

L13536 And through the chain of Al-Ḥudhāfī from ʿAbd al-Razzāq: Maʿmar narrated to us, as did Sufyān ibn ʿUyaynah. Maʿmar said from a man from Ibn ʿAbbās, and from ʿAbd Allāh ibn Ṭāwus from his father. Sufyān said: from Ibn Abī Najīḥ from Mujāhid. Then Ibn ʿAbbās, Ṭāwus, and Mujāhid concurred

وَأَمَّا قَوْلُنَا: إِنَّ هَذَا حُكْمُ مَنْ كَانَ أَهْلُهُ قَاطِنِينَ فِي الْحَرَمِ بِمَكَّةَ فَلِأَنَّ اللَّهَ - تَعَالَى قَالَ: {ذَلِكَ لِمَنْ لَمْ يَكُنْ أَهْلُهُ حَاضِرِي الْمَسْجِدِ الْحَرَامِ} [البقرة: ١٩٦] وَوَجَدْنَا النَّاسَ اخْتَلَفُوا - فَقَالَ أَبُو حَنِيفَةَ: حَاضِرُو الْمَسْجِدِ الْحَرَامِ هُوَ مَنْ كَانَ سَاكِنًا فِي أَحَدِ الْمَوَاقِيتِ فَمَا بَيْنَ ذَلِكَ إلَى مَكَّةَ وَهُوَ قَوْلٌ رُوِيَ عَنْ عَطَاءٍ وَلَمْ يَصِحَّ عَنْهُ، وَصَحَّ عَنْ مَكْحُولٍ. وَقَالَ الشَّافِعِيُّ: هُمْ مَنْ كَانَ مِنْ مَكَّةَ عَلَى أَرْبَعَةِ بُرُدٍ بِحَيْثُ لَا يَقْصُرُ الصَّلَاةَ إلَى مَكَّةَ، وَصَحَّ هَذَا عَنْ عَطَاءٍ. وَقَالَ مَالِكٌ: هُمْ أَهْلُ مَكَّةَ، وَذِي طُوًى. وَقَالَ سُفْيَانُ، وَدَاوُد: هُمْ أَهْلُ دُورِ مَكَّةَ فَقَطْ، وَصَحَّ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ، وَعَنْ الْأَعْرَجِ. وَرُوِّينَا عَنْ عَطَاءٍ، وَطَاوُسٍ: أَنَّهُمْ أَهْلُ مَكَّةَ إلَّا أَنَّ طَاوُسًا قَالَ: إذَا اعْتَمَرَ الْمَكِّيُّ مِنْ أَحَدِ الْمَوَاقِيتِ ثُمَّ حَجَّ مِنْ عَامِهِ فَعَلَيْهِ مَا عَلَى الْمُتَمَتِّعِ - رُوِّينَا ذَلِكَ مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي حَاضِرِي الْمَسْجِدِ الْحَرَامِ قَالَ: مَنْ كَانَ أَهْلُهُ مِنْ مَكَّةَ عَلَى يَوْمٍ أَوْ نَحْوِهِ.

وَقَالَ آخَرُونَ: هُمْ أَهْلُ الْحَرَمِ كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: الْمَسْجِدُ الْحَرَامُ: الْحَرَمُ كُلُّهُ.

وَمِنْ طَرِيقِ الْخُذَافِيِّ عَنْ عَبْدِ الرَّزَّاقِ نَا مَعْمَرٌ، وَسُفْيَانُ بْنُ عُيَيْنَةَ قَالَ مَعْمَرٌ، عَنْ رَجُلٍ عَنْ ابْنِ عَبَّاسٍ، وَعَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ، وَقَالَ سُفْيَانُ: عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ، ثُمَّ اتَّفَقَ ابْنُ عَبَّاسٍ، وَطَاوُسٌ، وَمُجَاهِدٌ فِي قَوْلِ اللَّهِ - تَعَالَى -: {ذَلِكَ لِمَنْ

[6] **Qur'an references (L13531):** Qur'an 2:196 (Al-Baqarah).

regarding the statement of Allah—Exalted is He—: “That is for those whose families are not among the attendees of the Sacred Mosque” [Al-Baqarah: 196]. They all said: This is for one whose family is not within the Haram.[7]

L13537–13539 Abu Muhammad said: As for the statement of Abu Hanifa and his companions, it is utterly baseless. We know of no argument for them except their claim: “We found that those residing within the area short of the miqat are not permitted when intending to perform Hajj or...” It is impermissible for those performing ‘Umrah to cross the Mawaqit except in a state of Ihram, nor may they enter Ihram before them. This confirms that the Mawaqit have a legal ruling distinct from what precedes them.

L13540 Ali said: This argument is utterly feeble. It should be said to them: “Yes – so what? From where does it become obligatory by this reasoning that the people of the appointed boundaries (mawaqit) and those beyond them up to Mecca are considered present at the Sacred Mosque? Is this confusion not akin to one who argues: ’We hold that everyone in the land of Islam may not unsheathe his sword against those he encounters or initiate his raid, while we hold that whoever is in the abode of war may unsheathe his sword and initiate his raid’ – thus it is established that the people of the abode of Islam have rulings distinct from others. Therefore, this necessitates that all people of the abode of Islam are considered present at the Sacred Mosque.”

L13541 Then it is said to them: The resident among you performs prayer in full, while the traveler shortens it. If the inhabitants of Dhū al-Ḥulayfah and al-Juḥfah are considered residents of the Sacred Mosque—while in your view they shorten prayers and break fasts toward Mecca—how can a resident be permitted to shorten prayers and break fasts? What is utterly astonishing is that those settled in Dhū al-Ḥulayfah, nearly two hundred miles from Mecca, are deemed residents of the Sacred Mosque, while those settled south of Yalamlam, merely thirty-three miles away, are not considered residents. Is there any greater confusion than this? Truly, to Allah we belong and to Him we return, when religious rulings are legislated based on such opinions! As for Mālik’s view: His specification of Dhū Ṭuwā is an assertion without

[7] **Qur’an references (L13536):** Qur’an 2:196 (Al-Baqarah).

لَمْ يَكُنْ أَهْلُهُ حَاضِرِي الْمَسْجِدِ الْحَرَامِ} [البقرة: ١٩٦] قَالُوا كُلُّهُمْ: هِيَ لِمَنْ لَمْ يَكُنْ أَهْلُهُ فِي الْحَرَمِ.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ أَبِي حَنِيفَةَ وَأَصْحَابِهِ فَفِي غَايَةِ الْفَسَادِ، وَمَا نَعْلَمُ لَهُمْ حُجَّةً إِلَّا أَنَّهُمْ قَالُوا: وَجَدْنَا مَنْ كَانَ مِنْ أَهْلِ مَا دُونَ الْمَوَاقِيتِ لَا يَجُوزُ لَهُمْ إِذَا أَرَادُوا الْحَجَّ أَوْ الْعُمْرَةَ أَنْ يَتَجَاوَزُوا الْمَوَاقِيتَ إِلَّا مُحْرِمِينَ، وَلَيْسَ لَهُمْ أَنْ يُحْرِمُوا قَبْلَهَا، فَصَحَّ أَنَّ لِلْمَوَاقِيتِ حُكْمًا غَيْرَ حُكْمِ مَا قَبْلَهَا.

قَالَ عَلِيٌّ: وَهَذَا الِاحْتِجَاجُ فِي غَايَةِ الْغَثَاثَةِ، وَيُقَالُ لَهُمْ: [نَعَمْ] فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ وَجَبَ مِنْ هَذَا أَنْ يَكُونَ أَهْلُ الْمَوَاقِيتِ فَمَا وَرَاءَهَا إلَى مَكَّةَ هُمْ حَاضِرُو الْمَسْجِدِ الْحَرَامِ؟ وَهَلْ هَذَا التَّخْلِيطُ إلَّا كَمَنْ قَالَ: وَجَدْنَا كُلَّ مَنْ كَانَ فِي أَرْضِ الْإِسْلَامِ لَيْسَ لَهُ أَنْ يُطْلِقَ سَيْفَهُ - فِيمَنْ لَقِيَ - وَغَارَتَهُ؟ وَوَجَدْنَا مَنْ كَانَ فِي دَارِ الْحَرْبِ لَهُ أَنْ يُطْلِقَ سَيْفَهُ وَغَارَتَهُ، فَصَحَّ أَنَّ لِأَهْلِ [دَارِ] الْإِسْلَامِ حُكْمًا غَيْرَ حُكْمِ غَيْرِهَا فَوَجَبَ مِنْ ذَلِكَ أَنْ يَكُونَ جَمِيعُ أَهْلِ دَارِ الْإِسْلَامِ حَاضِرِي الْمَسْجِدِ الْحَرَامِ.

ثُمَّ يُقَالُ لَهُمْ: إنَّ الْحَاضِرَ عِنْدَكُمْ يُتِمُّ الصَّلَاةَ، وَالْمُسَافِرُ يَقْصُرُهَا فَإِذَا كَانَ أَهْلُ ذِي الْحُلَيْفَةِ، وَالْجُحْفَةِ حَاضِرِي الْمَسْجِدِ الْحَرَامِ - وَهُمْ عِنْدَكُمْ يَقْصُرُونَ إلَى مَكَّةَ وَيُفْطِرُونَ - فَكَيْفَ يَكُونُ الْحَاضِرُ يَقْصُرُ وَيُفْطِرُ؟ وَالْعَجَبُ كُلُّهُ أَنْ جَعَلَ مَنْ كَانَ فِي ذِي الْحُلَيْفَةِ سَاكِنًا مِنْ حَاضِرِي الْمَسْجِدِ الْحَرَامِ وَبَيْنَهُمْ وَبَيْنَ مَكَّةَ نَحْوُ مِائَتَيْ مِيلٍ، وَجَعَلَ مَنْ كَانَ سَاكِنًا خَلْفَ يَلَمْلَمَ لَيْسَ مِنْ حَاضِرِي الْمَسْجِدِ الْحَرَامِ وَلَيْسَ بَيْنَهُ وَبَيْنَهَا إلَّا ثَلَاثَةٌ وَثَلَاثُونَ مِيلًا، فَهَلْ فِي التَّخْلِيطِ أَكْثَرُ مِنْ هَذَا؟ وَإِنَّا لِلَّهِ وَإِنَّا إلَيْهِ رَاجِعُونَ، إذْ صَارَتْ الشَّرَائِعُ فِي دِينِ اللَّهِ - تَعَالَى - تُشَرَّعُ بِمِثْلِ هَذَا الرَّأْيِ وَأَمَّا قَوْلُ مَالِكٍ: فَتَخْصِيصُهُ ذَا

evidence, and we know of no one before him who held this opinion. As for al-Shāfiʿī's view: He built his ruling here upon his earlier erroneous position regarding where prayer may be shortened, thus compounding error upon error. It is said to them: You claim that tayammum is fundamentally impermissible for a settled resident, yet permissible for one who is a mile or so from their residence. Why then do you not analogize the residents of the Sacred Mosque to those permitted tayammum? This contradiction is inescapable. Herein, the Ḥanafīs, Mālikīs, and Shāfiʿīs have opposed a Companion—a stance with no known dissent among the Companions—yet they themselves vocally condemn others for this.

L13542–13544 As for the statement of Sufyan and Dawud, it is a mistaken notion on their part, for Allah—Exalted be He—did not say "those present in Mecca," but rather He said: {those present in the Sacred Mosque} [Al-Baqarah: 196]. Thus, the obligation to consider Mecca is nullified here. It has been established that the focus here pertains exclusively to the Sacred Mosque. Since this is the case, we must seek Allah the Exalted's intent in His words {those present at the Sacred Mosque} [Al-Baqarah:196] to distinguish those whom Allah has obligated to offer the sacrificial animal or fast - if performing Tamattuʿ - from those He has not obligated. Upon examination, we determined the term "the Sacred Mosque" must correspond to one of three aspects with no fourth possibility: either Allah the Exalted meant the Kaaba alone, the area enclosed by the mosque's walls alone, or the entire Sanctuary. This is because the designation "Sacred Mosque" applies exclusively to these three aspects.[8]

L13545 Thus, it is incorrect to assert that Allah the Exalted intended only the Kaaba, for if that were the case, the sacrificial offering would not be waived except for one whose family is at the Kaaba, and this is nonexistent and not found.

L13546 It is invalid to claim that Allah, the Exalted and Majestic, intended only what is enclosed by the walls of the Sacred Mosque; for the Sacred Mosque has

[8] **Qur'an references (L13542):** Qur'an 2:196 (Al-Baqarah).

طُوًى قَوْلٌ لَا دَلِيلَ عَلَيْهِ وَلَا نَعْلَمُ هَذَا الْقَوْلَ عَنْ أَحَدٍ قَبْلَ مَالِكٍ؟ وَأَمَّا قَوْلُ الشَّافِعِيِّ: فَإِنَّهُ بَنَى قَوْلَهُ هَاهُنَا عَلَى قَوْلِهِ فِيمَا تُقْصَرُ فِيهِ الصَّلَاةُ، وَقَوْلُهُ هُنَالِكَ خَطَأٌ فَبَنَى الْخَطَأَ عَلَى الْخَطَأِ - وَيُقَالُ لَهُمْ: أَنْتُمْ تَقُولُونَ: لَا يَجُوزُ التَّيَمُّمُ لِلْحَاضِرِ الْمُقِيمِ أَصْلًا وَيَجُوزُ لِمَنْ كَانَ عَلَى مِيلٍ وَنَحْوِهِ مِنْ مَنْزِلِهِ، فَهَلَّا جَعَلْتُمْ حَاضِرِي الْمَسْجِدِ الْحَرَامِ قِيَاسًا عَلَى مَنْ يَجُوزُ لَهُ التَّيَمُّمُ؟ وَهَذَا مَا لَا انْفِكَاكَ مِنْهُ، وَهَذَا مِمَّا خَالَفَ فِيهِ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: صَاحِبًا، لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ، وَهُمْ يُشَنِّعُونَ بِهَذَا.

وَأَمَّا قَوْلُ سُفْيَانَ، وَدَاوُد: فَوَهْمٌ مِنْهُمَا، لِأَنَّ اللَّهَ - تَعَالَى - لَمْ يَقُلْ: حَاضِرِي مَكَّةَ، وَإِنَّمَا قَالَ تَعَالَى: {حَاضِرِي الْمَسْجِدِ الْحَرَامِ} [البقرة: ١٩٦] فَسَقَطَتْ مُرَاعَاةُ مَكَّةَ هَاهُنَا، وَصَحَّ أَنَّ الْمُرَاعَى هَاهُنَا إنَّمَا هُوَ الْمَسْجِدُ الْحَرَامُ فَقَطْ، فَإِذْ ذَلِكَ كَذَلِكَ فَوَاجِبٌ أَنْ نَطْلُبَ مُرَادَ اللَّهِ تَعَالَى بِقَوْلِهِ: {حَاضِرِي الْمَسْجِدِ الْحَرَامِ} [البقرة: ١٩٦] لِنَعْرِفَ مَنْ أَلْزَمَهُ اللَّهُ تَعَالَى الْهَدْيَ أَوْ الصَّوْمَ - إنْ تَمَتَّعَ - مِمَّنْ لَمْ يُلْزِمْهُ اللَّهُ - تَعَالَى - ذَلِكَ؟ فَنَظَرْنَا فَوَجَدْنَا لَفْظَةَ " الْمَسْجِدِ الْحَرَامِ " لَا تَخْلُو مِنْ أَحَدِ ثَلَاثَةِ وُجُوهٍ لَا رَابِعَ لَهَا: إمَّا أَنْ يَكُونَ اللَّهُ - تَعَالَى - أَرَادَ الْكَعْبَةَ فَقَطْ، أَوْ مَا أَحَاطَتْ بِهِ جُدْرَانُ الْمَسْجِدِ فَقَطْ، أَمْ أَرَادَ الْحَرَمَ كُلَّهُ، لِأَنَّهُ لَا يَقَعُ اسْمُ " مَسْجِدٍ حَرَامٍ " إلَّا عَلَى هَذِهِ الْوُجُوهِ فَقَطْ.

فَبَطَلَ أَنْ يَكُونَ اللَّهُ تَعَالَى أَرَادَ الْكَعْبَةَ فَقَطْ، لِأَنَّهُ لَوْ كَانَ ذَلِكَ لَكَانَ لَا يَسْقُطُ الْهَدْيُ إلَّا عَمَّنْ أَهْلُهُ فِي الْكَعْبَةِ وَهَذَا مَعْدُومٌ وَغَيْرُ مَوْجُودٍ.

وَبَطَلَ أَنْ يَكُونَ - عَزَّ وَجَلَّ - أَرَادَ مَا أَحَاطَتْ بِهِ جُدْرَانُ الْمَسْجِدِ الْحَرَامِ فَقَطْ، لِأَنَّ الْمَسْجِدَ الْحَرَامَ قَدْ زِيدَ فِيهِ مَرَّةً بَعْدَ مَرَّةً فَكَانَ لَا يَكُونُ هَذَا الْحُكْمُ يَنْتَقِلُ وَلَا يَثْبُتُ.

been expanded time after time, and thus this ruling would neither transfer nor be established.

L13547 Moreover, this ruling applies only to one whose household is within the Sacred Mosque—a scenario that is nonexistent and absent. Since these two interpretations have been invalidated, the third position is validated, as no alternative remains.

L13548 Moreover, if the term "the Sacred Mosque" refers to the entire sanctuary, it is impermissible to restrict this ruling to only part of what the term designates, excluding the rest of what it encompasses, without proof.

L13549 Moreover, Allah, the Exalted, has made matters clear to us, as He says: *"Allah intends to make [His guidance] clear to you"* [An-Nisa: 26]. Thus, if Allah, the Exalted, had intended only some of what is encompassed by the term 'Sacred Mosque'—to the exclusion of others—He would not have neglected to specify it. Otherwise, Allah, the Exalted, would have been burdening us unnecessarily by failing to clarify what He has obligated us to do. Far be it from Allah that any Muslim should entertain such a thought![9]

L13550 Thus, it is valid because Allah Exalted is He did not specify that He intended only some of what falls under the name of the Sacred Mosque to the exclusion of others. Therefore, there is no doubt that He Exalted is He intended all that falls under the name of the Sacred Mosque.

L13551 Furthermore, Allah—the Exalted—says: {Indeed, the polytheists are impure, so they must not approach the Sacred Mosque after this year of theirs} [9:28]. There was no disagreement among them that He—the Exalted—intended the entire Sanctuary. Thus, it is impermissible to specify this ruling through mere claims.[10]

L13552 It is authentically established from the Messenger of Allah (peace be upon him) through the narrations of Abu Hurairah, Jabir, and Hudhayfah: "The earth has been made for me a place for prostration and a means of purification."

وَأَيْضًا فَكَانَ لَا يَكُونُ هَذَا الْحُكْمُ إلَّا لِمَنْ أَهْلُهُ فِي الْمَسْجِدِ الْحَرَامِ، وَهَذَا مَعْدُومٌ غَيْرُ مَوْجُودٍ، فَإِذْ قَدْ بَطَلَ هَذَانِ الْوَجْهَانِ فَقَدْ صَحَّ الثَّالِثُ إذْ لَمْ يَبْقَ غَيْرُهُ.

وَأَيْضًا فَإِنَّهُ إذَا كَانَ اسْمُ الْمَسْجِدِ الْحَرَامِ يَقَعُ عَلَى الْحَرَمِ كُلِّهِ فَغَيْرُ جَائِزٍ أَنْ يُخَصَّ بِهَذَا الْحُكْمِ بَعْضُ مَا يَقَعُ عَلَيْهِ هَذَا الِاسْمُ دُونَ سَائِرِ مَا يَقَعُ عَلَيْهِ بِلَا بُرْهَانٍ.

وَأَيْضًا فَإِنَّ اللَّهَ - تَعَالَى - قَدْ بَيَّنَ عَلَيْنَا فَقَالَ: {يُرِيدُ اللَّهُ لِيُبَيِّنَ لَكُمْ} [النساء: ٢٦] فَلَوْ أَرَادَ اللَّهُ - تَعَالَى - بَعْضَ مَا يَقَعُ عَلَيْهِ اسْمُ الْمَسْجِدِ الْحَرَامِ دُونَ بَعْضٍ لَمَا أَهْمَلَ ذَلِكَ وَلَبَيَّنَهُ، أَوْ لَكَانَ اللَّهُ - تَعَالَى - مُعَنِّتًا لَنَا غَيْرَ مُبَيِّنٍ عَلَيْنَا مَا أَلْزَمَنَا، وَمَعَاذَ اللَّهِ مِنْ أَنْ يَظُنَّ هَذَا مُسْلِمٌ.

فَصَحَّ إذْ لَمْ يُبَيِّنْ اللَّهُ - تَعَالَى - أَنَّهُ أَرَادَ بَعْضَ مَا يَقَعُ عَلَيْهِ اسْمُ الْمَسْجِدِ الْحَرَامِ دُونَ بَعْضٍ فَلَا شَكَّ فِي أَنَّهُ - تَعَالَى - أَرَادَ كُلَّ مَا يَقَعُ عَلَيْهِ اسْمُ الْمَسْجِدِ الْحَرَامِ.

وَأَيْضًا فَإِنَّ اللَّهَ - تَعَالَى - يَقُولُ: {إنَّمَا الْمُشْرِكُونَ نَجَسٌ فَلَا يَقْرَبُوا الْمَسْجِدَ الْحَرَامَ بَعْدَ عَامِهِمْ هَذَا} [التوبة: ٢٨] فَلَمْ يَخْتَلِفُوا فِي أَنَّهُ - تَعَالَى - أَرَادَ الْحَرَمَ كُلَّهُ، فَلَا يَجُوزُ تَخْصِيصُ ذَلِكَ بِالدَّعْوَى.

وَصَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ أَبِي هُرَيْرَةَ، وَجَابِرٍ، وَحُذَيْفَةَ «جُعِلَتْ لِي الْأَرْضُ مَسْجِدًا وَطَهُورًا» .

[9] **Qur'an references (L13549):** Qur'an 4:26 (An-Nisa).
[10] **Qur'an references (L13551):** Qur'an 9:28 (At-Tawbah).

L13553–13554 Thus, it is valid that the Ḥaram is a place of worship, for being part of the earth, all of it is a sacred place of worship—hence it is the Sacred Mosque without doubt. Those present are the inhabitants who do not depart. Thus, is it valid that those whose households are present at the Sacred Mosque are those whose households inhabit the Ḥaram? If it is argued: "Those who reside outside it but near it are considered present," we say: This is incorrect. The proof of this claim's invalidity is that we ask you to define the proximity that renders one present versus not present. There is no way to specify this except through a false assertion, for the entire earth consists of successive boundaries extending to its outermost limits.

فَصَحَّ أَنَّ الْحَرَمَ مَسْجِدٌ لِأَنَّهُ مِنَ الْأَرْضِ فَهُوَ كُلُّهُ مَسْجِدٌ حَرَامٌ فَهُوَ الْمَسْجِدُ الْحَرَامُ بِلَا شَكٍّ، وَالْحَاضِرُونَ هُمُ الْقَاطِنُونَ غَيْرُ الْخَارِجِينَ؛ فَصَحَّ أَنَّ مَنْ كَانَ أَهْلُهُ حَاضِرِي الْمَسْجِدِ الْحَرَامِ هُمْ مَنْ كَانَ أَهْلُهُ قَاطِنِينَ الْحَرَمَ؟ فَإِنْ قِيلَ: فَإِنَّ مَنْ سَكَنَ خَارِجًا مِنْهُ بِقُرْبِهِ هُمْ حَاضِرُوهُ؟ قُلْنَا: هَذَا خَطَأٌ: وَبُرْهَانُ فَسَادِ هَذَا الْقَوْلِ أَنَّا نَسْأَلُكُمْ عَنْ تَحْدِيدِ ذَلِكَ الْقُرْبِ الَّذِي يَكُونُ مَنْ هُوَ فِيهِ حَاضِرًا مِمَّا يَكُونُ مَنْ هُوَ فِيهِ غَيْرَ حَاضِرٍ، وَهَذَا لَا سَبِيلَ إِلَى تَفْصِيلِهِ إِلَّا بِدَعْوَى كَاذِبَةٍ؛ لِأَنَّ الْأَرْضَ كُلَّهَا خَطٌّ بَعْدَ خَطٍّ إِلَى مُنْقَطَعِهَا.

L13555 It was narrated to us through the chain of Muslim: Ali ibn Hujr narrated to us, Ali ibn Mushir narrated to us from al-A'mash from Ibrahim ibn Yazid al-Taymi that his father said to him: "I heard Abu Dharr say: 'I asked the Messenger of Allah (peace and blessings be upon him) about the first mosque placed on earth?' He said, 'The Sacred Mosque.'"

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا عَلِيُّ بْنُ حُجْرٍ نَا عَلِيُّ بْنُ مُسْهِرٍ عَنِ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ بْنِ يَزِيدَ التَّيْمِيِّ أَنَّ أَبَاهُ قَالَ لَهُ: «سَمِعْتُ أَبَا ذَرٍّ يَقُولُ: سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ عَنْ أَوَّلِ مَسْجِدٍ وُضِعَ فِي الْأَرْضِ؟ فَقَالَ: الْمَسْجِدُ الْحَرَامُ» .

L13556 Abu Muhammad said: It was confirmed that the entire Haram is certain beyond doubt, for the Kaaba had not been built at that time. Rather, Ibrahim and Ismail (peace be upon them) built it, as Allah the Almighty said: "And [mention] when Ibrahim was raising the foundations of the House and Ismail" [Al-Baqarah 2:127]. The mosque around the Kaaba was not constructed until a long time after that.[11]

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ أَنَّهُ الْحَرَمُ كُلُّهُ بِيَقِينٍ لَا شَكَّ فِيهِ لِأَنَّ الْكَعْبَةَ لَمْ تُبْنَ فِي ذَلِكَ الْوَقْتِ، وَإِنَّمَا بَنَاهَا إِبْرَاهِيمُ، وَإِسْمَاعِيلُ - عَلَيْهِمَا السَّلَامُ -، قَالَ - عَزَّ وَجَلَّ -: {وَإِذْ يَرْفَعُ إِبْرَاهِيمُ الْقَوَاعِدَ مِنَ الْبَيْتِ وَإِسْمَاعِيلُ} [البقرة: ١٢٧] وَلَمْ يُبْنَ الْمَسْجِدُ حَوْلَ الْكَعْبَةِ إِلَّا بَعْدَ ذَلِكَ بِدَهْرٍ طَوِيلٍ.

L13557 There is no disagreement among anyone in the Ummah that if the Mosque were permanently expanded within its boundaries until it encompassed the entire Haram precinct, it would still be called the Haram Mosque. Likewise, if expanded with additions from al-Hill (the non-sacred area), the newly added portions would not be designated as part of the Haram Mosque. Thus, every difficulty is resolved, and all praise in abundance belongs to Allah.

وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنَ الْأُمَّةِ فِي أَنَّهُ لَوْ زِيدَ فِي الْمَسْجِدِ أَبَدًا حَتَّى يَعُمَّ بِهِ جَمِيعَ الْحَرَمِ يُسَمَّى مَسْجِدًا حَرَامًا، وَأَنَّهُ لَوْ زِيدَ فِيهِ مِنَ الْحِلِّ لَمْ يُسَمَّ مَا زِيدَ فِيهِ مَسْجِدًا حَرَامًا، فَارْتَفَعَ كُلُّ إِشْكَالٍ وَلِلَّهِ الْحَمْدُ كَثِيرًا.

L13558 **Issue: If a pilgrim performing Tamattuʿ has family mem-**

[مَسْأَلَةٌ المتمتع كَانَ لَهُ أَهْلٌ حَاضِرُو الْمَسْجِدِ الْحَرَامِ وَأَهْلٌ غَيْرُ حَاضِرِينَ]

[11] **Qur'an references (L13556):** Qur'an 2:127 (Al-Baqarah).

bers residing near the Sacred Mosque and family members not residing near it.

L13559 Issues from this chapter: 836. Issue: If one has family members present within the precincts of the Sacred Mosque and others not present there, neither sacrifice nor fasting is required, because his family members are present within the precincts of the Sacred Mosque. Whoever performs Hajj with his family through Tamattu‘: if he stays with them within the precincts of the Sacred Mosque for more than four days, his family is considered present within the precincts of the Sacred Mosque. If he stays there only four days or less, his family is not considered present within the precincts of the Sacred Mosque, so he must offer a sacrifice or fast.

مَسَائِلُ مِنْ هَذَا الْبَابِ ٨٣٦ - مَسْأَلَةٌ: مَنْ كَانَ لَهُ أَهْلٌ حَاضِرُو الْمَسْجِدِ الْحَرَامِ وَأَهْلٌ غَيْرُ حَاضِرِينَ فَلَا هَدْيَ عَلَيْهِ وَلَا صَوْمَ؛ لِأَنَّ أَهْلَهُ حَاضِرُو الْمَسْجِدِ الْحَرَامِ فَمَنْ حَجَّ بِأَهْلِهِ فَتَمَتَّعَ، فَإِنْ أَقَامَ أَكْثَرَ مِنْ أَرْبَعَةِ أَيَّامٍ بِأَهْلِهِ بِمَكَّةَ فَأَهْلُهُ حَاضِرُو الْمَسْجِدِ الْحَرَامِ، وَإِنْ لَمْ يُقِمْ بِهَا إِلَّا أَرْبَعَةَ أَيَّامٍ فَأَقَلَّ فَلَيْسَ أَهْلُهُ حَاضِرِي الْمَسْجِدِ الْحَرَامِ فَعَلَيْهِ الْهَدْيُ أَوْ الصَّوْمُ.

L13560–13562 The family of the Messenger of Allah—may the peace and blessings of Allah be upon him—and a group of his companions—may Allah be pleased with them—performed Ḥajj with their families, and it became obligatory upon those among them who performed Tamattu‘ to offer a sacrificial animal or to fast. Thus, it is established that whoever fits this description, his family is not [obligated]. Those present at the Sacred Mosque. Verily, the Messenger of Allah—peace be upon him—stayed in Mecca for four days during the Farewell Pilgrimage. Then we retracted from this opinion to the view that if one resides with his family in Mecca for twenty days or fewer, he is not among those whose family are present at the Sacred Mosque. But if he remains more than twenty days from the time he enters Mecca until he assumes Ihram for Hajj, then he is among those whose family are present at the Sacred Mosque. This is because the Messenger of Allah—peace be upon him—stayed in Tabuk for twenty nights while shortening the prayer.

وَقَدْ حَجَّ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَهْلُهُ وَجَمَاعَةٌ مِنْ أَصْحَابِهِ - رَضِيَ اللَّهُ عَنْهُمْ - بِأَهْلِهِمْ فَوَجَبَ عَلَى مَنْ تَمَتَّعَ مِنْهُمْ الْهَدْيُ أَوْ الصَّوْمُ، فَصَحَّ أَنَّ مَنْ هَذِهِ صِفَتُهُ فَلَيْسَ أَهْلُهُ حَاضِرِي الْمَسْجِدِ الْحَرَامِ، وَإِنَّمَا أَقَامَ [رَسُولُ اللَّهِ]- عَلَيْهِ السَّلَامُ - بِمَكَّةَ أَرْبَعًا فِي حَجَّةِ الْوَدَاعِ، ثُمَّ رَجَعْنَا عَنْ هَذَا الْقَوْلِ إلَى أَنَّهُ إنْ أَقَامَ بِأَهْلِهِ بِمَكَّةَ عِشْرِينَ يَوْمًا فَأَقَلَّ فَلَيْسَ مِمَّنْ أَهْلُهُ حَاضِرُو الْمَسْجِدِ الْحَرَامِ فَإِنْ بَقِيَ أَكْثَرَ مِنْ عِشْرِينَ يَوْمًا مُذْ يَدْخُلُ مَكَّةَ إلَى أَنْ يُهِلَّ بِالْحَجِّ فَهُوَ مِمَّنْ أَهْلُهُ حَاضِرُوا الْمَسْجِدِ الْحَرَامِ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَقَامَ بِتَبُوكَ عِشْرِينَ لَيْلَةً يُقْصِرُ الصَّلَاةَ.

L13563 If a Meccan has no family at all, or has family outside the Sacred Precinct, and he performs Tamattu‘, he must offer a sacrifice or fast, because he is not among those whose family is present in the Sacred Mosque.

وَإِنْ كَانَ مَكِّيٌّ لَا أَهْلَ لَهُ أَصْلًا، أَوْ لَهُ أَهْلٌ فِي غَيْرِ الْحَرَمِ فَتَمَتَّعَ فَعَلَيْهِ الْهَدْيُ أَوْ الصَّوْمُ، لِأَنَّهُ لَيْسَ مِمَّنْ أَهْلُهُ حَاضِرُوا الْمَسْجِدِ الْحَرَامِ.

L13564 The family (ahl) here specifically refers to dependents (‘iyāl) in this context, because all those from Quraysh who performed Hajj with the Messenger of Allah—peace and blessings of Allah be upon him—had their ahl—that is, their relatives—in Mecca. This did not exempt them from the obligation of the

hadyy sacrifice or the fasting required of the mutamattiʾ. And success comes from Allah, the Exalted.

وَالْأَهْلُ: هُمْ الْعِيَالُ خَاصَّةً هَاهُنَا، لِأَنَّ كُلَّ مَنْ حَجَّ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قُرَيْشٍ فَإِنَّ أَهْلَهُمْ كَانُوا بِمَكَّةَ - يَعْنِي أَقَارِبَهُمْ - فَلَمْ يُسْقِطْ هَذَا عَنْهُمْ حُكْمَ الْهَدْيِ أَوْ الصَّوْمِ الَّذِي عَلَى الْمُتَمَتِّعِ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L13565 As for our statement: The obligatory sacrificial animal required of the one performing Tamattuʿ is a head from sheep or goats, camels, or cattle, or a share in a cow or she-camel shared among ten or fewer people—whether all are performing Tamattuʿ or some of them, or if among them is someone who intends his share as meat for consumption, sale, for a vow, or for voluntary offering—this is based on the words of Allah—Exalted is He—: {Whoever performs the Tamattuʿ by combining Umrah with Hajj must offer what is feasible of the sacrificial animal} [Al-Baqarah: 196]. The term "sacrificial animal" applies to a sheep, a cow, and a camel.[12]

وَأَمَّا قَوْلُنَا: إنَّ الْهَدْيَ الْوَاجِبَ عَلَى الْمُتَمَتِّعِ رَأْسٌ مِنْ الْغَنَمِ أَوْ مِنْ الْإِبِلِ أَوْ مِنْ الْبَقَرِ، أَوْ شِرْكٌ فِي بَقَرَةٍ أَوْ نَاقَةٍ بَيْنَ عَشَرَةٍ فَأَقَلَّ سَوَاءٌ كَانُوا مُتَمَتِّعِينَ أَوْ بَعْضُهُمْ، أَوْ كَانَ فِيهِمْ مَنْ يُرِيدُ نَصِيبَهُ لَحْمًا لِلْأَكْلِ أَوْ الْبَيْعِ أَوْ لِنَذْرٍ أَوْ لِتَطَوُّعٍ فَلِقَوْلِ اللَّهِ - تَعَالَى -: {فَمَنْ تَمَتَّعَ بِالْعُمْرَةِ إلَى الْحَجِّ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ} [البقرة: ١٩٦] وَاسْمُ الْهَدْيِ يَقَعُ عَلَى الشَّاةِ، وَالْبَقَرَةِ، وَالْبَدَنَةِ.

L13566 It has been narrated to us from Ibn Masʿūd that he used to permit a sheep in that.

وَرُوِّينَا عَنْ ابْنِ مَسْعُودٍ أَنَّهُ كَانَ يُجِيزُ فِي ذَلِكَ الشَّاةَ.

L13567 And the like of that is from Ibn Abbas.

وَعَنْ ابْنِ عَبَّاسٍ مِثْلَ ذَلِكَ.

L13568 There were differing opinions reported from Umm al-Muʾminīn ʿĀʾishah regarding it; a statement similar to that of Ibn ʿAbbās was narrated from her, and it was also narrated from her and from Ibn ʿUmar that a sheep does not suffice for this ruling, and that only a she-camel or a cow suffices for it.

وَاخْتُلِفَ فِيهِ عَنْ أُمِّ الْمُؤْمِنِينَ عَائِشَةَ فَرُوِيَ عَنْهَا مِثْلُ قَوْلِ ابْنِ عَبَّاسٍ - وَرُوِيَ عَنْهَا أَيْضًا، وَعَنْ ابْنِ عُمَرَ أَنَّهُ لَا يُجْزِئُ فِي ذَلِكَ شَاةٌ وَأَنَّهُ إنَّمَا فِي ذَلِكَ النَّاقَةُ أَوْ الْبَقَرَةُ.

L13569 As has been narrated to us from Abū Bakr ibn Abī Shaybah from Abū al-Aḥwaṣ from Abū Isḥāq (he is al-Sabīʿī) from Wabarah ibn ʿAbd al-Raḥmān, who said: Ibn ʿUmar said to me: "Fasting three days during Ḥajj and seven days when you return to your family is more beloved to me than a ewe."

كَمَا رُوِّينَا عَنْ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ عَنْ أَبِي الْأَحْوَصِ عَنْ أَبِي إسْحَاقَ هُوَ السَّبِيعِيِّ - عَنْ وَبَرَةَ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: قَالَ لِي ابْنُ عُمَرَ: صَوْمُ ثَلَاثَةِ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةٍ إذَا رَجَعْت إلَى أَهْلِك أَحَبُّ إلَيَّ مِنْ شَاةٍ.

L13570 And from the narration of Hammad ibn Zayd, from Ghaylan ibn Jarir, who said: I heard Ibn Umar being asked about the sacrificial animal of the tamattu' pilgrimage—while they were mentioning a sheep—so Ibn Umar said: "A

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ غَيْلَانَ بْنِ جَرِيرٍ قَالَ: سَمِعْت ابْنَ عُمَرَ يَسْأَلُ عَنْ هَدْيِ الْمُتْعَةِ - وَهُمْ يَذْكُرُونَ الشَّاةَ - فَقَالَ ابْنُ عُمَرَ: شَاةٌ شَاةٌ، وَرَفَعَ بِهَا صَوْتَهُ؛ لَا، بَلْ بَقَرَةٌ، أَوْ نَاقَةٌ - وَعَنْ عُرْوَةَ بْنِ الزُّبَيْرِ مِثْلُ قَوْلِ ابْنِ عُمَرَ.

[12] **Qur'an references (L13565):** Qur'an 2:196 (Al-Baqarah).

sheep, a sheep!" raising his voice over it, "No! Rather, a cow or a camel." And from Urwah ibn al-Zubayr the same as Ibn Umar's statement.

L13571–13572 It has been narrated to us from Ṭāwus with the following chain: through Ismāʿīl ibn Isḥāq al-Qāḍī, from ʿAlī ibn ʿAbd Allāh (Ibn al-Madīnī), from Hishām ibn Yūsuf, from Ibn Jurayj, who said: I heard Ibn Ṭāwus assert from his father that he would say: "According to the extent of a man's wealth: if a sacrificial camel is affordable, then a camel; if a cow is affordable, then a cow; and if only a sheep is affordable, then a sheep." He said: "My father would distinguish between what one can afford and what becomes easily attainable." He said: "If the sacrifice is affordable according to his means, then it becomes easily attainable as required."

وَرُوِّينَا عَنْ طَاوُسٍ التَّرْتِيبَ - رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نَا عَلِيُّ بْنُ عَبْدِ اللَّهِ هُوَ ابْنُ الْمَدِينِيِّ - نَا هِشَامُ بْنُ يُوسُفَ أَنَا ابْنُ جُرَيْجٍ قَالَ: سَمِعْتُ ابْنَ طَاوُسٍ يَزْعُمُ عَنْ أَبِيهِ أَنَّهُ كَانَ يَقُولُ: بِقَدْرِ يَسَارِ الرَّجُلِ إِنْ اسْتَيْسَرَ جَزُورٌ فَجَزُورٌ، وَإِنْ اسْتَيْسَرَ بَقَرَةٌ فَبَقَرَةٌ، وَإِنْ لَمْ يَسْتَيْسِرْ إِلَّا شَاةٌ فَشَاةٌ. قَالَ: وَكَانَ أَبِي يُفَرِّقُ بَيْنَ مَا اسْتَيْسَرَ وَتَيَسَّرَ. قَالَ: فَإِنْ اسْتَيْسَرَ عَلَى قَدْرِ يَسَارِهِ، وَتَيَسَّرَ مَا شَاءَ.

L13573 Abū Muḥammad said: We have been narrated from the chain of al-Bukhārī: from Isḥāq ibn Manṣūr, from al-Naḍr ibn Shumayl, from Shuʿbah, from Abū Jamrah—who is Naṣr ibn ʿImrān al-Ḍubaʿī—who said: I asked Ibn ʿAbbās (may Allah be pleased with them both) about mutʿah, and he instructed me to perform it. I asked him about the sacrificial animal, and he replied: "It can be a camel, a cow, a sheep, or a share in a blood sacrifice." Likewise, we have narrated this in the explanation of the sacrificial ruling for mutʿah through the chain of al-Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salamah, from Abi Jamrah, from Ibn ʿAbbās. This is the position we uphold.

قَالَ أَبُو مُحَمَّدٍ: وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا النَّضْرُ بْنُ شُمَيْلٍ أَنَا شُعْبَةُ نَا أَبُو جَمْرَةَ هُوَ نَصْرُ بْنُ عِمْرَانَ الضُّبَعِيُّ - قَالَ: سَأَلْت ابْنَ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا - عَنْ الْمُتْعَةِ؟ فَأَمَرَنِي بِهَا وَسَأَلْته عَنْ الْهَدْيِ؟ فَقَالَ: فِيهَا جَزُورٌ، أَوْ بَقَرَةٌ، أَوْ شَاةٌ، أَوْ شِرْكٌ فِي دَمٍ، وَهَكَذَا رُوِّينَاهُ فِي تَفْسِيرِ هَدْيِ الْمُتْعَةِ أَيْضًا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي جَمْرَةَ عَنْ ابْنِ عَبَّاسٍ، وَبِهَذَا نَأْخُذُ.

L13574 As for the permissibility of a sheep in this matter, this is the opinion of Abū Ḥanīfah, Mālik, and al-Shāfiʿī. As for shared ownership of the sacrificial animal, this is the view of Abū Ḥanīfah, al-Shāfiʿī, al-Awzāʿī, Sufyān al-Thawrī, Aḥmad ibn Ḥanbal, Isḥāq, Abū Thawr, and Abū Sulaymān. However, Abū Ḥanīfah said: "Shared ownership of the sacrifice is only permissible if all participants intend it for the sacrificial offering, even if their reasons differ."

فَأَمَّا إجَازَةُ الشَّاةِ فِي ذَلِكَ فَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ: وَأَمَّا الشِّرْكُ فِي الدَّمِ فَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَالْأَوْزَاعِيُّ، وَسُفْيَانُ الثَّوْرِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ؛ إلَّا أَنَّ أَبَا حَنِيفَةَ قَالَ: لَا يَجُوزُ الشِّرْكُ فِي الدَّمِ إلَّا بِأَنْ يَكُونُوا كُلُّهُمْ يُرِيدُونَهُ لِلْهَدْيِ، وَإِنْ اخْتَلَفَتْ أَسْبَابُهُمْ.

L13575 His companion Zufar ibn al-Hudhayl said: It is impermissible unless their legal causes are identical, such as all being *mutamattiʿīn* (those performing Tamattuʿ pilgrimage) or *muftadīn* (those redeeming through compensatory offerings), and similar cases.

وَقَالَ صَاحِبُهُ زُفَرُ بْنُ الْهُذَيْلِ: لَا يَجُوزُ إلَّا بِأَنْ تَكُونَ أَسْبَابُهُمْ وَاحِدَةً، مِثْلُ أَنْ يَكُونُوا كُلُّهُمْ مُتَمَتِّعِينَ، أَوْ كُلُّهُمْ مُفْتَدِينَ، وَنَحْوُ هَذَا.

L13576 Al-Shafi'i and Abu Sulaiman said as we have said, except that they all stated

that it is impermissible for more than seven to be made partners in it.

وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: كَمَا قُلْنَا، إِلَّا أَنَّهُمْ [كُلَّهُمْ] قَالُوا: لَا يَجُوزُ أَنْ يُشْرَكَ فِيهِ أَكْثَرُ مِنْ سَبْعَةٍ.

L13577 As for Mālik's opinion, they used as proof a narration we have narrated through the chain of Abū al-ʻĀliyah, Saʻīd ibn Jubayr, and Ibn Sīrīn—all of whom reported from Ibn ʻUmar.

فَأَمَّا قَوْلُ مَالِكٍ: فَإِنَّهُمْ احْتَجُّوا بِرِوَايَةٍ رُوِّينَاهَا مِنْ طَرِيقِ أَبِي الْعَالِيَةِ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَابْنِ سِيرِينَ، كُلُّهُمْ عَنْ ابْنِ عُمَرَ.

L13578 Abu Al-Aliyah said: I heard Ibn Umar say, "They say: A sacrificial camel suffices for seven, and a cow suffices for seven. But I do not know of any person being validly covered except by their own sacrifice."

قَالَ أَبُو الْعَالِيَةِ: سَمِعْت ابْنَ عُمَرَ يَقُولُ: يَقُولُونَ: الْبَدَنَةُ عَنْ سَبْعَةٍ. وَالْبَقَرَةُ عَنْ سَبْعَةٍ، مَا أَعْلَمُ النَّفْسَ تُجْزِئُ إِلَّا عَنْ النَّفْسِ.

L13579–13581 Sa'id ibn Jubayr reported from Ibn Abbas that he said: "I did not realize that a soul could suffice as compensation except for a soul." Ibn Sirin reported from him that he said: "I am not aware, nor is blood money paid on behalf of more than one person."

وَقَالَ سَعِيدُ بْنُ جُبَيْرٍ عَنْهُ أَنَّهُ قَالَ: مَا كُنْت أَشْعُرُ أَنَّ النَّفْسَ تُجْزِئُ إِلَّا عَنْ النَّفْسِ وَقَالَ ابْنُ سِيرِينَ عَنْهُ أَنَّهُ قَالَ: لَا أَعْلَمُ وَمَا يُرَاقُ عَنْ أَكْثَرَ مِنْ إنْسَانٍ وَاحِدٍ.

L13582 This is the view of Ibn Sirin. Al-Hakam and Hammad ibn Abi Sulayman disapproved of it. We know of no basis for their objection except this - and this contains no valid evidence, for Ibn Umar recanted this position and endorsed shared sacrifice. He merely stated here that he had no knowledge of it nor awareness, and one who lacks knowledge cannot constitute proof over one who possesses knowledge. Yusuf ibn ʿAbd Allah al-Namarī reported to us; from ʿAbd Allah ibn Muhammad ibn Yusuf al-Azdi, the judge; from Ishaq ibn Ahmad; from Ahmad ibn ʿAmr ibn Musa al-ʿUqayli; from Muhammad ibn ʿIsa al-Hashimi; from ʿAmr ibn ʿAli; from Wakiʿ ibn al-Jarrah; from ʿArīf ibn Dirham, through Jabalah ibn Suhaym, from Ibn Umar, who said: "A camel or cow [is sacrificed] on behalf of seven."

وَهُوَ رَأْيُ ابْنِ سِيرِينَ، وَكَرِهَ ذَلِكَ الْحَكَمُ، وَحَمَّادُ بْنُ أَبِي سُلَيْمَانَ، مَا نَعْلَمُ لَهُمْ شُبْهَةً غَيْرَ هَذَا - وَهَذَا لَا حُجَّةَ فِيهِ، لِأَنَّ ابْنَ عُمَرَ قَدْ رَجَعَ عَنْ هَذَا إلَى إجَازَةِ الِاشْتِرَاكِ، وَإِنَّمَا أَخْبَرَ هَاهُنَا بِأَنَّهُ لَمْ يَعْلَمْ بِذَلِكَ وَلَا شَعَرَ بِهِ، وَلَيْسَ مَنْ لَمْ يَعْلَمْ حُجَّةً عَلَى مَنْ عَلِمَ حَدَّثَنَا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ يُوسُفَ الْأَزْدِيُّ الْقَاضِي نَا إِسْحَاقُ بْنُ أَحْمَدَ نَا أَحْمَدُ بْنُ عَمْرِو بْنِ مُوسَى الْعُقَيْلِيُّ نَا مُحَمَّدُ بْنُ عِيسَى الْهَاشِمِيُّ نَا عَمْرُو بْنُ عَلِيٍّ نَا وَكِيعُ بْنُ الْجَرَّاحِ نَا عَرِيفُ بْنُ دِرْهَمٍ عَنْ جَبَلَةَ بْنِ سُحَيْمٍ عَنْ ابْنِ عُمَرَ قَالَ: الْجَزُورُ، وَالْبَقَرَةُ، عَنْ سَبْعَةٍ.

L13583 Abu Muhammad said: His ruling of permissibility regarding that matter serves as clear evidence that he came to know the Sunnah concerning it after having been unaware. This has been transmitted as an explicit textual report from him, as narrated through the chain of Ibn Abi Shaybah: via Ibn Numayr from Mujalid from al-Shaʻbi, who said: I asked Ibn ʻUmar, "Does a cow or

قَالَ أَبُو مُحَمَّدٍ: إجَازَتُهُ عَنْ ذَلِكَ دَلِيلٌ بَيِّنٌ عَلَى أَنَّهُ عَلِمَ بِالسُّنَّةِ فِي ذَلِكَ بَعْدَ أَنْ لَمْ يَكُنْ عَلِمَهَا، وَقَدْ جَاءَ هَذَا نَصًّا عَنْهُ كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا ابْنُ نُمَيْرٍ نَا مُجَالِدٌ عَنْ «الشَّعْبِيِّ قَالَ: قُلْتُ لِابْنِ عُمَرَ: الْبَقَرَةُ، وَالْبَعِيرُ تُجْزِئُ عَنْ سَبْعَةٍ؟ فَقَالَ: وَكَيْفَ؟

camel suffice for seven people?" He replied, "How so? Does it count for seven shares?" I said, "The Companions of Muhammad (peace and blessings of Allah be upon him) in Kufa gave me this ruling." The people present affirmed, "Indeed, the Messenger of Allah (peace and blessings of Allah be upon him), Abu Bakr, and 'Umar all stated this." Ibn 'Umar responded, "I was unaware [of this]." Thus, their attribution of this opinion to Ibn 'Umar was invalidated. Hammad and al-Hakam did not prohibit it but merely expressed dislike for it, thereby establishing soundly that they permitted it. As for Ibn Sirin, his view was a personal opinion unsupported by any transmitted precedent. Consequently, this position holds no valid basis whatsoever.

أَلَهَا سَبْعَةُ أَنْفُسٍ؟ فَقُلْتُ لَهُ: إِنَّ أَصْحَابَ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِينَ بِالْكُوفَةِ أَفْتَوْنِي، فَقَالَ الْقَوْمُ: نَعَمْ قَدْ قَالَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبُو بَكْرٍ وَعُمَرُ فَقَالَ ابْنُ عُمَرَ: مَا شَعَرْتُ» ، فَبَطَلَ تَعَلُّقُهُمْ بِابْنِ عُمَرَ، وَلَمْ يَمْنَعْ مِنْ ذَلِكَ حَمَّادٌ، وَالْحَكَمُ، لَكِنْ كَرِهَاهُ فَقَطْ، فَصَحَّ أَنَّهُمَا مُجِيزَانِ لِذَلِكَ، وَإِنَّمَا هُوَ ابْنُ سِيرِينَ رَأْيٌ لَا عَنْ أَثَرٍ - فَبَطَلَ أَنْ يَكُونَ لِهَذَا الْقَوْلِ مُتَعَلَّقٌ أَصْلًا.

L13584 We have recently mentioned from Ibn Umar that he held the opinion that fasting is required during the Tamattu' pilgrimage but did not permit the use of a sheep as a sacrificial offering (hady) in that context. It has been narrated to us via Abd al-Rahman ibn Mahdi, from Sufyan al-Thawri, from Zayd ibn Jubayr, who said: "I heard Ibn Umar being asked about someone who offers a camel as a sacrificial animal, and he replied: 'I have not seen anyone do that.'"

وَقَدْ ذَكَرْنَا عَنْ ابْنِ عُمَرَ آنِفًا أَنَّهُ رَأَى الصَّوْمَ فِي التَّمَتُّعِ وَلَمْ يُجِزْ الشَّاةَ فِي ذَلِكَ - وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ زَيْدِ بْنِ جُبَيْرٍ قَالَ: سَمِعْت ابْنَ عُمَرَ سَأَلَ عَمَّنْ يُهْدِي جَمَلًا؟ فَقَالَ: مَا رَأَيْتُ أَحَدًا فَعَلَ ذَلِكَ.

L13585 Ali said: It is a blatant falsehood that Ibn Umar or another could be considered an authority in one place but not considered an authority in another place. It has been narrated to us through the chain of Abd al-Razzaq from Sufyan al-Thawri from Hammad ibn Abi Sulayman from Ibrahim al-Nakha'i, who said: The companions of Muhammad—peace be upon him—used to say: A sacrificial camel is sufficient for seven people, and a sacrificial cow is sufficient for seven people.

قَالَ عَلِيٌّ: مِنْ الْبَاطِلِ الْفَاحِشِ أَنْ يَكُونَ ابْنُ عُمَرَ، أَوْ غَيْرُهُ حُجَّةً فِي مَكَان غَيْرَ حُجَّةٍ فِي [مَكَان] آخَرَ - وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ أَصْحَابُ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُونَ: الْبَدَنَةُ عَنْ سَبْعَةٍ، وَالْبَقَرَةُ عَنْ سَبْعَةٍ.

L13586 From Qatadah, from Anas: The companions of Muhammad (peace be upon him) would share a sacrificial camel among seven people.

وَعَنْ قَتَادَةَ عَنْ أَنَسٍ كَانَ أَصْحَابُ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُشْرِكُونَ السَّبْعَةَ فِي الْبَدَنَةِ مِنْ الْإِبِلِ.

L13587–13588 From Sufyan al-Thawri, from Muslim al-Qarri, from Ḥabbah al-'Uraniyy, from Ali ibn Abi Talib, who said: "A sacrificial camel is valid on behalf of seven, and a cow is valid on behalf of seven."

وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُسْلِمٍ الْقَرِّيِّ عَنْ حَبَّةَ الْعُرَنِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: الْبَدَنَةُ عَنْ سَبْعَةٍ، وَالْبَقَرَةُ عَنْ سَبْعَةٍ.

L13589 On the authority of Sufyan al-Thawri, from Zuhayr ibn Abi Thabit, from

Sulayman ibn Zafir al-Absi, who said: “I and my mother took a share from a cow with Hudhayfah ibn al-Yaman for seven people during al-Adha.”

وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ زُهَيْرِ بْنِ أَبِي ثَابِتٍ عَنْ سُلَيْمَانَ بْنِ زَافِرٍ الْعَبْسِيِّ قَالَ: أَنَا وَأُمِّي أَخَذْنَا مَعَ حُذَيْفَةَ بْنِ الْيَمَانِ مِنْ بَقَرَةٍ عَنْ سَبْعَةٍ فِي الْأَضْحَى.

L13590 From Sufyan al-Thawri, from Abu Husayn, from Khalid ibn Sa’d, from Abu Mas’ud al-Badri, who said: A camel is slaughtered for seven, and a cow is slaughtered for seven.

وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي حُصَيْنٍ عَنْ خَالِدِ بْنِ سَعْدٍ عَنْ أَبِي مَسْعُودٍ الْبَدْرِيِّ قَالَ: تُنْحَرُ الْبَدَنَةُ عَنْ سَبْعَةٍ، وَالْبَقَرَةُ عَنْ سَبْعَةٍ.

L13591 Through the chain of Ibn Abi Shaybah: It was narrated by Ibn ’Ulayyah from Sa’id ibn Abi ’Arubah from Qatadah from Sulayman ibn Yasar from ’Aishah, the Mother of the Believers, who said: “A cow or a sacrificial camel suffices as a sacrifice for seven [people].”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا ابْنُ عُلَيَّةَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: الْبَقَرَةُ، وَالْجَزُورُ عَنْ سَبْعَةٍ.

L13592 And with it (the narration) to Ibn Abī Shaybah from Ibn Fudayl from Muslim from Ibrāhīm al-Nakhaʿī from ʿAlqamah from Ibn Masʿūd, who said: A cow and a camel are for seven.

وَبِهِ إِلَى ابْنِ أَبِي شَيْبَةَ عَنِ ابْنِ فُضَيْلٍ عَنْ مُسْلِمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ عَنِ ابْنِ مَسْعُودٍ قَالَ: الْبَقَرَةُ، وَالْجَزُورُ عَنْ سَبْعَةٍ.

L13593 From Yahya ibn Saʿīd al-Qaṭṭān, from Saʿīd ibn Abī ʿArūbah, from Qatādah, from Anas, who said: “A mature camel and a cow are for seven [people].”

وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ أَنَسٍ قَالَ: الْجَزُورُ، وَالْبَقَرَةُ عَنْ سَبْعَةٍ.

L13594 The soundness of this opinion is also affirmed by ʿAṭāʾ, Ṭāwus, Sulaymān al-Taymiyy, Abī ʿUthmān al-Nahdiyy, al-Ḥasan al-Baṣrī, Qatādah, Sālim ibn ʿAbd Allāh ibn ʿUmar, ʿAmr ibn Dīnār, and others.

وَصَحَّ الْقَوْلُ بِذَلِكَ أَيْضًا عَنْ عَطَاءٍ، وَطَاوُسٍ، وَسُلَيْمَانَ التَّيْمِيِّ، وَأَبِي عُثْمَانَ النَّهْدِيِّ، وَالْحَسَنِ الْبَصْرِيِّ، وَقَتَادَةَ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، وَعَمْرِو بْنِ دِينَارٍ، وَغَيْرِهِمْ.

L13595 The evidence for this opinion is what we reported through the chain of Mālik from Abū az-Zubayr al-Makkī from Jābir ibn ʿAbdullāh, who said: “We slaughtered by nahr with the Messenger of Allāh—peace and blessings be upon him—on the day of Ḥudaybiyyah a camel for seven and a cow for seven.”

وَالْحُجَّةُ لِهَذَا الْقَوْلِ مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ أَبِي الزُّبَيْرِ الْمَكِّيِّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّهُ قَالَ: «نَحَرْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ الْحُدَيْبِيَةِ الْبَدَنَةَ عَنْ سَبْعَةٍ، وَالْبَقَرَةَ عَنْ سَبْعَةٍ» .

L13596–13598 From the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān: Jaʿfar ibn Muḥammad narrated to us: Ubayy (who is Muḥammad ibn ʿAlī ibn al-Ḥusayn) narrated to us: Jābir ibn ʿAbd Allāh mentioned the Prophet’s pilgrimage (peace be upon him), stating that he (peace be upon him) slaughtered sixty-three camels, then gave ʿAlī the remaining animals to slaughter, and made him a partner in his sacrifice.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نَا جَعْفَرُ بْنُ مُحَمَّدٍ نَا أُبَيٌّ هُوَ مُحَمَّدُ بْنُ عَلِيِّ بْنِ الْحُسَيْنِ - نَا «جَابِرُ بْنُ عَبْدِ اللَّهِ فَذَكَرَ حَجَّةَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِيهَا فَنَحَرَ - عَلَيْهِ

السَّلَامُ - ثَلَاثًا وَسِتِّينَ، فَأَعْطَى عَلِيًّا فَنَحَرَ مَا غَبَرَ، وَأَشْرَكَهُ فِي هَدْيِهِ» وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَبُو دَاوُد هُوَ الطَّيَالِسِيُّ - نَا عَفَّانَ بْنُ مُسْلِمٍ نَا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَحَرَ الْبَدَنَةَ عَنْ سَبْعَةٍ، وَالْبَقَرَةَ عَنْ سَبْعَةٍ» قَالَ أَبُو مُحَمَّد: فَصَحَّ هَذَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ إجْمَاعٌ مِنْ الصَّحَابَةِ كَمَا أَوْرَدْنَا - وَأَمَّا قَوْلُ مَنْ لَمْ يُجِزْ ذَلِكَ إلَّا عَنْ سَبْعَةٍ فَإِنَّهُ تَعَلَّقَ بِمَا ذَكَرْنَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

From the chain of Aḥmad ibn Shuʿayb: Abū Dāwūd al-Ṭayālisī narrated to us: ʿAffān ibn Muslim narrated to us: Ḥammād ibn Salamah narrated from Qays ibn Saʿd from ʿAṭāʾ ibn Abī Rabāḥ from Jābir ibn ʿAbd Allāh: "The Messenger of Allah (peace be upon him) slaughtered a sacrificial camel on behalf of seven people and a cow on behalf of seven people." Abu Muhammad said: This has been confirmed from the Prophet—peace and blessings be upon him—and it is a consensus among the companions, as we have cited. As for the statement of those who permit it only from seven, they based their position on what we mentioned from the Messenger of Allah—peace and blessings be upon him—and from the companions—may Allah be pleased with them.

فَأَمَّا الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - وَمَنْ بَعْدَهُمْ فَقَدْ اخْتَلَفُوا -: رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إسْحَاقُ بْنُ إبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - أَنَا الْفَضْلُ بْنُ مُوسَى نَا الْحُسَيْنُ بْنُ وَاقِدٍ عَنْ عُلْيَاءَ بْنِ أَحْمَرَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: «كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَحَضَرَ النَّحْرُ فَنَحَرْنَا الْبَعِيرَ عَنْ عَشَرَةٍ» .

L13599 As for the Companions—may Allah be pleased with them—and those after them, they differed. It was narrated to us through the chain of Aḥmad ibn Shuʿayb: I, Isḥāq ibn Ibrāhīm (Ibn Rāhwayh), inform you—al-Faḍl ibn Mūsā informed us, al-Ḥusayn ibn Wāqid informed us from ʿAlāʾ ibn Aḥmar, from ʿIkrimah, from Ibn ʿAbbās—who said: "We were with the Messenger of Allah (peace and blessings be upon him) when the sacrificial time came, and we sacrificed a camel on behalf of ten."

وَمِنْ طَرِيقِ الْحُذَافِيِّ عَنْ عَبْدِ الرَّزَّاقِ نَا مَعْمَرٌ نَا قَتَادَةُ قَالَ: قَالَ سَعِيدُ بْنُ الْمُسَيِّبِ: الْبَدَنَةُ عَنْ عَشَرَةٍ -: فَهَذَا اخْتِلَافٌ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ، عَلَى أَنَّنَا إذَا تَأَمَّلْنَا فِعْلَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَقَوْلَهُمْ فِي ذَلِكَ فَإِنَّمَا هُوَ أَنَّ الْبَقَرَةَ عَنْ سَبْعَةٍ، وَالْبَدَنَةَ عَنْ سَبْعَةٍ، وَهَذَا قَوْلٌ صَحِيحٌ، وَلَيْسَ فِيهِ مَنْعٌ مِنْ جَوَازِهِمَا عَنْ أَكْثَرَ مِنْ سَبْعَةٍ.

L13600 From the path of Al-Ḥudhāfī, from ʿAbd al-Razzāq: Maʿmar narrated to us, Qatādah narrated to us, saying: Saʿīd ibn al-Musayyab said: "A sacrificial camel is valid on behalf of ten." This constitutes a disagreement among the Companions and the Successors. When we contemplate the actions and statements of the Companions—may Allah be pleased with them—regarding this matter, it is only that a sacrificial cow is valid on behalf of seven, and a sacrificial camel is valid on behalf of seven. This is a sound opinion, and there is no restriction preventing both from being permissible for more than seven.

L13601 Similarly, the narration from the Messenger of Allah—peace be upon him—states: "He—peace be upon him—sacrificed a badanah on behalf of seven people and a cow likewise." This is an established ruling and a religious

practice, and it does not prohibit sacrificing them on behalf of more than seven people or fewer than seven people.

وَكَذَلِكَ الْأَثَرُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَيْضًا إنَّمَا فِيهِ «أَنَّهُ - عَلَيْهِ السَّلَامُ -: نَحَرَ الْبَدَنَةَ عَنْ سَبْعَةٍ، وَالْبَقَرَةَ عَنْ سَبْعَةٍ» ، وَهَذَا حَقٌّ وَدِينٌ، وَلَيْسَ فِيهِ مَنْعُ مَنْ نَحَرَهُمَا عَنْ أَكْثَرَ مِنْ سَبْعَةٍ، أَوْ عَنْ أَقَلَّ مِنْ سَبْعَةٍ ".

L13602 Similarly, what we have related through the chain of Abū Dāwūd: Mūsā ibn Ismāʿīl narrated to us, from Ḥammād ibn Salamah, from Qays ibn Saʿd, from ʿAṭāʾ ibn Abī Rabāḥ, from Jābir ibn ʿAbd Allāh: that the Messenger of Allāh—peace and blessings be upon him—said, "A cow is for seven, and a camel is for seven."

وَكَذَلِكَ مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نَا مُوسَى بْنُ إسْمَاعِيلَ نَا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْبَقَرَةُ عَنْ سَبْعَةٍ، وَالْجَزُورُ عَنْ سَبْعَةٍ» .

L13603 Yes, he said: The Truth, and His word is the truth, and there is no prohibition in this ruling against permitting both for more than seven if evidence is provided for that; otherwise, exceeding that number through unsubstantiated claim is impermissible.

فَنَعَمْ، قَالَ: الْحَقُّ وَقَوْلُهُ الْحَقُّ، وَلَيْسَ فِي هَذَا مَنْعٌ مِنْ جَوَازِهِمَا عَنْ أَكْثَرَ مِنْ سَبْعَةٍ إنْ جَاءَ بُرْهَانٌ بِذَلِكَ، وَإِلَّا فَلَا تَجُوزُ الزِّيَادَةُ عَلَى ذَلِكَ بِالدَّعْوَى.

L13604 We examined that matter and found what we have narrated through the chain of Abu Dawud al-Sijistani, from Amr ibn Uthman and Muhammad ibn Mihran al-Razi—both said: Al-Walid ibn Muslim narrated to us from al-Awzaʿi, from Yahya ibn Abi Kathir, from Abu Salamah ibn Abd al-Rahman ibn Awf, from Abu Hurayrah that "the Messenger of Allah (peace and blessings be upon him) sacrificed a cow on behalf of his wives who performed Umrah, sharing it among them."

فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نَا عَمْرُو بْنُ عُثْمَانَ، وَمُحَمَّدُ بْنُ مِهْرَانَ الرَّازِيّ قَالَا [جَمِيعًا] : ثنا الْوَلِيدُ بْنُ مُسْلِمٍ عَنْ الْأَوْزَاعِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَبَحَ عَمَّنْ اعْتَمَرَ مِنْ أَزْوَاجِهِ بَقَرَةً بَيْنَهُنَّ» .

L13605–13606 Via the chain of al-Bukhārī: ʻUthmān (Ibn Abī Shaybah) narrated to us; Jarīr (Ibn ʻAbd al-Ḥamīd) narrated to us; from Manṣūr ibn al-Muʻtamir; from Ibrāhīm al-Nakhaʻī; from al-Aswad; from ʻĀ'ishah, the Mother of the Believers (may Allah be pleased with her), who said: "We set out with the Messenger of Allah (peace and blessings of Allah be upon him) believing it was exclusively Ḥajj. When we arrived, we performed Ṭawāf around the House. The Prophet (peace and blessings of Allah be upon him) then ordered those who had not brought the sacrificial animal to terminate their iḥrām. Thus those who had not brought the sacrificial animal were released from iḥrām, and his wives – who had likewise not brought it – were also released."

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا عُثْمَانُ هُوَ ابْنُ أَبِي شَيْبَةَ - نَا جَرِيرٌ هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ الْأَسْوَدِ عَنْ «عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - قَالَتْ: خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا نَرَى إلَّا أَنَّهُ الْحَجُّ فَلَمَّا قَدِمْنَا تَطَوَّفْنَا بِالْبَيْتِ فَأَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ لَمْ يَكُنْ سَاقَ الْهَدْيَ أَنْ يَحِلَّ فَحَلَّ مَنْ لَمْ يَكُنْ سَاقَ الْهَدْيَ وَنِسَاؤُهُ لَمْ يَسُقْنَ فَأَحْلَلْنَ» .

L13607 Abu Muhammad said: There were nine women—may Allah be pleased with

them all—from whom ʿĀ’ishah was excepted, for she did not exit the state of ihram but rather added Hajj to her Umrah, as mentioned in another narration. Thus eight remained who had not driven the sacrificial animals, so they exited the state of ihram as you have heard. The Prophet—peace be upon him—slaughtered a single cow on behalf of all of them. This concerns more than seven.

قَالَ أَبُو مُحَمَّد: كُنَّ رِضْوَانُ اللَّهِ عَلَيْهِنَّ تِسْعًا خَرَجَتْ مِنْهُنَّ عَائِشَةُ لِأَنَّهَا لَمْ تَحِلَّ لَكِنَّهَا أَرْدَفَتْ حَجًّا عَلَى عُمْرَتِهَا كَمَا جَاءَ فِي أَثَرٍ آخَرَ فَبَقِيَ ثَمَانٍ لَمْ يَسُقْنَ الْهَدْيَ فَأَحْلَلْنَ كَمَا تَسْمَعُ وَنَحَرَ - عَلَيْهِ السَّلَامُ - عَنْهُنَّ كُلِّهِنَّ بَقَرَةً وَاحِدَةً فَهَذَا عَنْ أَكْثَرَ مِنْ سَبْعَةٍ.

L13608 If it is said: It has been narrated that he (peace be upon him) sacrificed cattle for his wives? We say: This is what we have narrated through the chain of ʿAbd al-ʿAzīz ibn Abī Salamah al-Mājishūn, from ʿAbd al-Raḥmān ibn al-Qāsim, from his father, from ʿĀ’ishah, the Mother of the Believers. She mentioned a ḥadīth containing: “Meat was brought to us, so I asked: ’What is this?’ They answered: ’The Messenger of Allah (may Allah’s blessings and peace be upon him) sacrificed cattle for his wives.’”

فَإِنْ قِيلَ: قَدْ رُوِيَ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَهْدَى عَنْ نِسَائِهِ الْبَقَرَ؟ قُلْنَا: هَذَا لَفْظٌ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الْعَزِيزِ بْنِ أَبِي سَلَمَةَ الْمَاجِشُونِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَذَكَرَتْ حَدِيثًا، وَفِيهِ: «فَأُتِينَا بِلَحْمٍ، فَقُلْتُ: مَا هَذَا؟ قَالُوا: أَهْدَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ نِسَائِهِ الْبَقَرَ» .

L13609 And indeed, this very report has been transmitted to us through a narrator more reliable in memorization and precise in transmission than Ibn al-Mājishūn—via ʿAbd al-Raḥmān ibn al-Qāsim, from his father, from ʿĀ’ishah, the Mother of the Believers—thereby elucidating what Ibn al-Mājishūn had summarized.

وَقَدْ رُوِّينَا هَذَا الْخَبَرَ نَفْسَهُ عَمَّنْ هُوَ أَحْفَظُ وَأَضْبَطُ مِنْ ابْنِ الْمَاجِشُونِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَبَيَّنَ مَا أَجْمَلَهُ ابْنُ الْمَاجِشُونِ.

L13610 We have narrated it through the chain of Al-Bukhārī from Musaddad from Sufyān ibn ʿUyaynah from ʿAbd al-Raḥmān ibn al-Qāsim from his father from ʿĀ’ishah, Mother of the Believers, and she mentioned the ḥadīth. It states: She said, “When we were in Minā, I was brought cow meat. I asked, ’What is this?’ They replied, ’The Messenger of Allah (peace be upon him) sacrificed cows on behalf of his wives.’”

وَرُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ مُسَدَّدٍ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَذَكَرَتْ الْحَدِيثَ " وَفِيهِ «قَالَتْ: فَلَمَّا كُنَّا بِمِنًى أُتِيتُ بِلَحْمِ بَقَرٍ، فَقُلْتُ: مَا هَذَا؟ قَالُوا: ضَحَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَزْوَاجِهِ بِالْبَقَرِ» .

L13611 Sufyan clarified in this report—which was narrated by ʿAbd al-ʿAzīz ibn al-Mājishūn himself—that those cows were *aḍāḥī* (sacrificial animals), and *aḍāḥī* are distinct from the obligatory *hady* required in the *Tamattuʿ* of performing Umrah followed by Hajj, without any doubt.

فَبَيَّنَ سُفْيَانُ فِي هَذَا الْخَبَرِ - وَهُوَ الَّذِي رَوَاهُ عَبْدُ الْعَزِيزِ بْنُ الْمَاجِشُونِ نَفْسُهُ - أَنَّ تِلْكَ الْبَقَرَ كَانَتْ أَضَاحِيَ، وَالْأَضَاحِيُّ غَيْرُ الْهَدْيِ الْوَاجِبِ فِي التَّمَتُّعِ بِالْعُمْرَةِ إلَى الْحَجِّ بِلَا شَكٍّ.

L13612 The Messenger of Allah—peace and blessings be upon him—commanded us, when exiting *Ihram*, to offer a sacrifice and contribute collectively as

a group to the *fidyah*. This occurred when he instructed them to exit *Ihram* during their sacrifice in their Hajj.

وَمِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ حَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمٍ نَا مُحَمَّدُ بْنُ بَكْرٍ أَنَا ابْنُ جُرَيْجٍ أَنَا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يُحَدِّثُ عَنْ حَجَّةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فَأَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا أَحْلَلْنَا أَنْ نُهْدِيَ وَنَجْمَعَ النَّفَرَ مِنَّا فِي الْفِدْيَةِ وَذَلِكَ حِينَ أَمَرَهُمْ أَنْ يَحِلُّوا فِي هَدْيِهِمْ مِنْ حَجِّهِمْ» .

L13613–13615 Abu Muhammad said: This is an unparalleled chain [of transmission], a clarification free from ambiguity, and the ruling of the Cow [Quranic chapter] applies to the ten [cases]. He mentioned the minimum and maximum quantities—so we examined the verse and found Allah, the Most High, also states: {Whoever performs Tamattuʿ [by combining Umrah with Hajj] must offer what is readily available of the sacrificial animal} [Al-Baqarah: 196]. The particle "of" here denotes a portion, thus joint participation in the sacrificial animal is permissible according to the literal meaning of the verse.[13]

قَالَ أَبُو مُحَمَّد: هَذَا سَنَدٌ لَا نَظِيرَ لَهُ، وَبَيَانٌ لَا إشْكَالَ فِيهِ، وَالْبَقَرُ يَقَعُ عَلَى الْعَشَرَةِ وَأَقَلَّ وَأَكْثَرَ، فَنَظَرْنَا فِي الْآيَةِ فَوَجَدْنَا اللَّهَ - تَعَالَى - أَيْضًا يَقُولُ: {فَمَنْ تَمَتَّعَ بِالْعُمْرَةِ إِلَى الْحَجِّ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ} [البقرة: ١٩٦] وَ " مِنْ " لِلتَّبْعِيضِ فَجَازَ الِاشْتِرَاكُ فِي الْهَدْيِ بِظَاهِرِ الْآيَةِ.

L13616 If it is asked: "From where have you restricted it to only ten?" We say: For two reasons. The first is that no one has ever asserted the permissibility of more than ten sharing in an obligatory hady sacrifice. The second is what we narrated via Al-Bukhārī's chain: From Musaddad, from Abū al-Aḥwaṣ, from Saʿīd ibn Masrūq, from ʿAbāyah ibn Rifāʿah ibn Rāfiʿ ibn Khadīj, from his father, from his grandfather Rāfiʿ ibn Khadīj, who mentioned the ḥadīth of Hunayn—wherein it states: "The Prophet (peace be upon him) distributed among them and established a camel as equivalent to ten sheep."

فَإِنْ قِيلَ: فَمِنْ أَيْنَ اقْتَصَرْتُمْ عَلَى الْعَشَرَةِ فَقَطْ؟ قُلْنَا: لِوَجْهَيْنِ: أَحَدُهُمَا: أَنَّهُ لَمْ يَقُلْ أَحَدٌ بِأَنَّهُ يَجُوزُ أَنْ يَشْتَرِكَ فِي هَدْيِ فَرْضٍ أَكْثَرُ مِنْ عَشَرَةٍ؟ وَالثَّانِي: مَا رُوِّينَاهُ عَنْ طَرِيقِ الْبُخَارِيِّ نَا مُسَدَّدٌ نَا أَبُو الْأَحْوَصِ نَا سَعِيدُ بْنُ مَسْرُوقٍ عَنْ عَبَايَةَ بْنِ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ عَنْ أَبِيهِ عَنْ جَدِّهِ رَافِعِ بْنِ خَدِيجٍ فَذَكَرَ حَدِيثَ حُنَيْنٍ " وَفِيهِ: «أَنَّهُ - عَلَيْهِ السَّلَامُ - قَسَمَ بَيْنَهُمْ وَعَدَلَ بَعِيرًا بِعَشْرِ شِيَاهٍ» .

L13617 Ali said: The consensus of our opponents has been confirmed in accordance with the apparent meaning of the Quranic verse, affirming that a sheep suffices for the obligatory offering in Tamattuʿ (a type of Hajj), in cases of prevention (during Hajj), and for voluntary offerings. The Messenger of Allah—peace be upon him—considered ten sheep equivalent in value to one camel.

قَالَ عَلِيٌّ: قَدْ صَحَّ إجْمَاعُ الْمُخَالِفِينَ لَنَا مَعَ ظَاهِرِ الْآيَةِ بِأَنَّ شَاةً تُجْزِئُ فِي الْهَدْيِ الْوَاجِبِ فِي التَّمَتُّعِ، وَالْإِحْصَارِ، وَالتَّطَوُّعِ، وَقَدْ عَدَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَشْرَ شِيَاهٍ بِبَعِيرٍ.

L13618 Thus, it is established that a sheep equates to a tenth of a camel as a whole,

فَصَحَّ أَنَّ الشَّاةَ بِإِزَاءِ عُشْرِ الْبَعِيرِ جُمْلَةً، وَأَنَّ الْبَقَرَةَ كَالْبَعِيرِ فِي جَوَازِ الِاشْتِرَاكِ فِيهَا فِي الْهَدْيِ الْوَاجِبِ فِيمَا ذَكَرْنَا.

[13] **Qur'an references (L13613):** Qur'an 2:196 (Al-Baqarah).

and that a cow shares the same ruling as a camel regarding the permissibility of joint participation in obligatory offerings, as we have mentioned.

فَصَحَّ أَنَّ الْبَعِيرَ وَالْبَقَرَةَ يُجْزِئَانِ عَمَّا يُجْزِئُ عَنْهُ عَشْرُ شِيَاهٍ، وَعَشْرُ شِيَاهٍ تُجْزِئُ عَنْ عَشْرَةٍ، فَالْبَعِيرُ، وَالْبَقَرَةُ يُجْزِئُ كُلُّ وَاحِدٍ مِنْهُمَا عَنْ عَشَرَةٍ، وَهُوَ قَوْلُ ابْنِ عَبَّاسٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ.

L13619 Thus, it is established that a camel and a cow suffice for what ten sheep suffice, and ten sheep suffice for ten. Hence, a camel and a cow each suffice for ten, and this is the view of Ibn Abbas, Sa'id ibn al-Musayyib, and Ishaq ibn Rāhawayh.

وَبِهِ نَقُولُ لِمَا ذَكَرْنَا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L13620 By Him, we state what we have mentioned - and success is by Allah, the Exalted.

وَأَمَّا مَنْ مَنَعَ مِنْ اخْتِلَافِ أَغْرَاضِ الْمُشْتَرِكِينَ فِي الْهَدْيِ فَإِنَّهُمْ احْتَجُّوا بِأَنْ قَالُوا: إذَا كَانَ فِيهِمْ مَنْ يُرِيدُ نَصِيبَهُ لِلْبَيْعِ، أَوْ لِلْأَكْلِ لَا لِلْهَدْيِ فَلَمْ تَحْصُلْ الْبَدَنَةُ، وَلَا الْبَقَرَةُ مُذَكَّاةً لِلْهَدْيِ الْمَقْصُودِ بِهِ إلَى اللَّهِ - عَزَّ وَجَلَّ -.

L13621 As for those who disallowed differing intentions among partners in the sacrificial offering, they argued: If there exists among them one who intends his share for sale or eating—not for sacrificial offering—then neither the camel nor the cow becomes properly slaughtered as a valid sacrificial offering intended for Allah, the Almighty and Majestic.

وَحُجَّةُ زُفَرَ: أَنَّهُ لَمْ يَحْصُلْ الْهَدْيُ الْمَذْكُورُ إذَا اشْتَرَكَ فِيهِ الْمُحْصِرُ، وَالْمُتَمَتِّعُ، وَالْمُتَطَوِّعُ، وَالْقَارِنُ، فَلَمْ يَحْصُلْ مُذَكًّى لِمَا قَصَدَهُ بِهِ كُلُّ وَاحِدٍ مِنْهُمْ، وَالذَّكَاةُ لَا تَتَبَعَّضُ.

L13622 The argument of Zufar is that the aforementioned sacrificial animal is not valid if the prevented pilgrim, the pilgrim performing *tamattuʿ*, the voluntary pilgrim, and the pilgrim performing *qirān* share in it, for the ritual slaughter intended for each of them was not fulfilled, and ritual slaughtering cannot be divided.

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا يَحِلُّ الِاحْتِجَاجُ بِهِ، لِأَنَّهُ قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا أَوْرَدْنَا أَنَّهُ أَمَرَ أَنْ يَجْتَمِعَ النَّفَرُ مِنْهُمْ فِي الْهَدْيِ وَأَنَّهُ قَالَ - عَلَيْهِ السَّلَامُ -: «الْبَقَرَةُ عَنْ سَبْعَةٍ، وَالْجَزُورُ عَنْ سَبْعَةٍ» فَعَمَّ - عَلَيْهِ السَّلَامُ - وَلَمْ يَخُصَّ مَنْ اتَّفَقَتْ أَغْرَاضُهُمْ مِمَّنْ اخْتَلَفَتْ، وَإِنَّمَا أُمِرْنَا فِي الْهَدْيِ بِالتَّذْكِيَةِ وَبِالنِّيَّةِ عَمَّا يَقْصِدُهُ الْمَرْءُ، وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «وَلِكُلِّ امْرِئٍ مَا نَوَى» فَحَصَلَتْ الْبَدَنَةُ، وَالْبَقَرَةُ مُذَكَّاةً إذْ ذُكِّيَتْ كَمَا أَمَرَ اللَّهُ - تَعَالَى - بِأَمْرِ مَالِكِهَا وَسَمَّى اللَّهَ - تَعَالَى - عَلَيْهَا، ثُمَّ لِكُلِّ وَاحِدٍ مِنْهُمْ فِي حِصَّتِهِ مِنْهَا نِيَّةٌ، قَالَ - عَزَّ وَجَلَّ -: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام:

L13623–13625 Abu Muhammad said: "It is not permissible to cite this as evidence; for it has been authentically reported from the Messenger of Allah (peace and blessings be upon him) as..." We have conveyed that he—peace be upon him—commanded a group of them to combine their shares in the sacrificial animal and said: "A cow suffices for seven, and a camel suffices for seven." Thus, he—peace be upon him—applied a universal ruling without specifying whether their purposes aligned or differed. We are commanded regarding the sacrificial animal to perform lawful slaughter and to intend what one seeks, for he—peace be upon him—stated: "Each person shall have what he intended." Thus, the camel is duly offered, and the cow is ritually slaughtered when slaughtered as Allah—Exalted is He—commanded, under the owner's authority with Allah's name invoked over it. Thereafter, each participant holds a specific intention for his allotted share. Allah—Exalted is He—declared:

{No soul bears a burden except its own} [6:164]. The ruling for the entire sacrificial animal is that it is lawfully slaughtered, while the ruling for each portion corresponds to what its owner intended. There is thus no distinction between seven shares of a cow or camel and seven sheep. There is no disagreement among them that even if their purposes align and their motive is unified, each individual is subject to his own ruling. It remains possible that Allah—Exalted is He—may accept from some and not others, without this affecting the acceptance of the one whose offering is granted. And success comes from Allah, the Exalted.[14]

١٦٤] فَأَحْكَامُ جُمْلَتِهَا أَنَّهَا مُذَكَّاةٌ، وَحُكْمُ كُلِّ جُزْءٍ مِنْهَا مَا نَوَاهُ فِيهِ مَالِكُهُ، وَلَا فَرْقَ حِينَئِذٍ بَيْنَ أَجْزَاءِ سَبْعَةٍ مِنْ الْبَقَرَةِ، أَوْ الْبَعِيرِ وَبَيْنَ سَبْعِ شِيَاهٍ وَلَا يَخْتَلِفُونَ فِي أَنَّهُمْ، وَإِنْ كَانَتْ أَغْرَاضُهُمْ مُتَّفِقَةً وَكَانَ سَبَبُهُمْ كُلُّهُمْ وَاحِدًا، فَإِنَّ لِكُلِّ وَاحِدٍ حُكْمَهُ وَأَنَّهُ قَدْ يُمْكِنُ أَنْ يَقْبَلَ اللَّهُ - تَعَالَى - مِنْ بَعْضِهِمْ، وَلَا يَقْبَلُ مِنْ بَعْضِهِمْ؛ وَلَا يَقْدَحُ ذَلِكَ فِي حِصَّةِ الْمُتَقَبَّلِ مِنْهُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L13626 As for our statement: It does not suffice him to offer the hady except after entering the state of ritual consecration for Hajj, and that he may slaughter it or sacrifice it whenever he wishes thereafter. Nor does it suffice him to offer it or sacrifice it except in Mina or Mecca. This is because Allah, the Exalted, said: {But whoever performs Tamattu‘ by combining Umrah with Hajj must offer what is readily available of the hady} [2:196]. The Exalted obligated it only upon those who perform Tamattu‘ by combining Umrah with Hajj, not upon those who do not perform Tamattu‘ by combining Umrah with Hajj [without doubt]. Thus, if one has not entered the state of consecration for Hajj, he has not yet performed Tamattu‘ by combining Umrah with Hajj. Since he has not performed Tamattu‘ by combining Umrah with Hajj, the hady is not obligatory upon him, and a non-obligatory act cannot suffice for an obligatory one except through explicit textual evidence. There is no disagreement among scholars that if he changes his mind and does not perform Hajj in that year, no hady is required of him. This confirms that no hady is yet obligatory upon him. Since it is not obligatory, what is not obligatory cannot suffice for what becomes obligatory afterward. This is the view of al-Shafi‘i and Abu Sulayman.[15]

وَأَمَّا قَوْلُنَا: لَا يُجْزِئُهُ أَنْ يُهْدِيَهُ إلَّا بَعْدَ أَنْ يُحْرِمَ بِالْحَجِّ، وَأَنَّ لَهُ أَنْ يَذْبَحَهُ أَوْ يَنْحَرَهُ مَتَى شَاءَ بَعْدَ ذَلِكَ وَلَا يُجْزِئُهُ أَنْ يُهْدِيَهُ، وَيَنْحَرَهُ إلَّا بِمِنًى أَوْ بِمَكَّةَ؛ فَلِأَنَّ اللَّهَ - تَعَالَى - قَالَ: {فَمَنْ تَمَتَّعَ بِالْعُمْرَةِ إلَى الْحَجِّ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ} [البقرة: ١٩٦] فَإِنَّمَا أَوْجَبَهُ - تَعَالَى - عَلَى مَنْ تَمَتَّعَ بِالْعُمْرَةِ إلَى الْحَجِّ، لَا عَلَى مَنْ لَمْ يَتَمَتَّعْ بِالْعُمْرَةِ إلَى الْحَجِّ [بِلَا شَكٍّ] فَهُوَ مَا لَمْ يُحْرِمْ بِالْحَجِّ فَلَمْ يَتَمَتَّعْ بَعْدُ بِالْعُمْرَةِ إلَى الْحَجِّ، وَإِذْ لَمْ يَتَمَتَّعْ بَعْدُ بِالْعُمْرَةِ إلَى الْحَجِّ فَالْهَدْيُ غَيْرُ وَاجِبٍ عَلَيْهِ، وَلَا يُجْزِئُ غَيْرُ وَاجِبٍ عَنْ وَاجِبٍ إلَّا بِنَصٍّ وَارِدٍ فِي ذَلِكَ؛ وَلَا خِلَافَ بَيْنَ أَحَدٍ فِي أَنَّهُ إنْ بَدَا لَهُ فَلَمْ يَحُجَّ مِنْ عَامِهِ ذَلِكَ فَإِنَّهُ لَا هَدْيَ عَلَيْهِ؛ فَصَحَّ أَنَّهُ لَيْسَ [عَلَيْهِ] هَدْيٌ بَعْدُ، وَإِذَا لَمْ يَكُنْ عَلَيْهِ فَلَا يُجْزِئُهُ مَا لَيْسَ عَلَيْهِ عَمَّا يَكُونُ عَلَيْهِ بَعْدَ ذَلِكَ؛ وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L13627–13629 As for slaughtering it or sacrificing it thereafter, this is because Allah—Exalted is He—has clarified to us the initial time of obligation for this sacrificial offering but did not set a definitive end time for its obligation. Whatever is thus remains an enduring obligation that persists perpetually until fulfilled,

وَأَمَّا ذَبْحُهُ وَنَحْرُهُ بَعْدَ ذَلِكَ فَلِأَنَّ هَذَا الْهَدْيَ قَدْ بَيَّنَ اللَّهُ - تَعَالَى - لَنَا أَوَّلَ وَقْتِ وُجُوبِهِ، وَلَمْ يُحَدَّ آخِرَ وَقْتَ وُجُوبِهِ بِحَدٍّ، وَمَا كَانَ هَكَذَا فَهُوَ دَيْنٌ بَاقٍ أَبَدًا حَتَّى يُؤَدَّى؛ وَالْأَمْرُ بِهِ ثَابِتٌ حَتَّى يُؤَدَّى؛ وَمَنْ خَصَّهُ بِوَقْتٍ مَحْدُودٍ فَقَدْ قَالَ عَلَى اللَّهِ -

[14] **Qur’an references (L13623):** Qur’an 6:164 (Al-An’am).
[15] **Qur’an references (L13626):** Qur’an 2:196 (Al-Baqarah).

and the command for it remains binding until executed. Whoever restricts it to a limited timeframe has ascribed to Allah—Exalted is He—what He never declared—Majestic and Exalted is He—and this is profoundly grave. Abu Hanifah and Malik said: One's sacrificial offering does not suffice before the Day of Sacrifice. This opinion lacks any evidence for its validity—rather, it is a baseless claim without proof. Whatever stands thus is invalid. It is astonishing that Abu Hanifah endorsed this. The permissibility of advancing Zakāh and the ruling granted by his Companions that one who vowed to fast on Thursday but fasted the preceding Wednesday has fulfilled his obligation. However, they do not permit the *hady* of *tamattuʿ* to be offered before the Day of Sacrifice. As for our position that it is only valid in Makkah or Minā, some scholars have argued it is valid in any location, since Allah, Exalted is He, has not designated a specific place for its offering. Had Allah, Exalted is He, intended to restrict it to a particular place, He would have clarified it—just as He specified regarding the expiation for hunting by His saying, Exalted is He: "a *hady* that reaches the Kaaba" (5:95). Yet He did not stipulate this for the *hady* of *tamattuʿ* or the *hady* of the *muḥṣar*, as "And your Lord is not forgetful" (19:64).[16]

L13630 If it is asked: "Should we analogize the ritual sacrifice to another ritual sacrifice in that matter?" We say: All analogy is invalid. Furthermore, even if analogy were valid, this instance would be the epitome of invalidity. For if you validate your analogy of the *mutʿah* ritual sacrifice to the ritual sacrifice compensating for hunting, you would be obliged to analogize it further by substituting feeding the poor or fasting in place of the ritual sacrifice in the case of *mutʿah* — yet you do not hold this view. Thus, the corruption and contradiction of your analogy are evident. Abū Muḥammad said: The proof here is that Allah — Exalted is He — said: *"Whoever venerates the rites of Allah, it is indeed from the piety of hearts"* (Quran 22:32), and *"For you in them are benefits until a specified term; then their destination is the Ancient House"* (Quran 22:33).[17]

L13631 And He—Exalted is He—said: "The sacrificial camels—We have appointed

تَعَالَى - مَا لَمْ يَقُلْهُ - عَزَّ وَجَلَّ - وَهَذَا عَظِيمٌ جِدًّا وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَا يُجْزِئُ هَدْيُهُ قَبْلَ يَوْمِ النَّحْرِ، وَهَذَا قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ بَلْ هُوَ دَعْوَى بِلَا بُرْهَانٍ، وَمَا كَانَ هَكَذَا فَهُوَ سَاقِطٌ، وَالْعَجَبُ مِنْ تَجْوِيزِ أَبِي حَنِيفَةَ تَقْدِيمَ الزَّكَاةِ وَإِجَازَةِ أَصْحَابِهِ لِمَنْ نَذَرَ صِيَامَ يَوْمِ الْخَمِيسِ فَصَامَ يَوْمَ الْأَرْبِعَاءِ قَبْلَهُ أَجْزَأَهُ ثُمَّ لَا يُجِيزُونَ هَدْيَ الْمُتْعَةِ قَبْلَ يَوْمِ النَّحْرِ وَأَمَّا قَوْلُنَا: إنَّهُ لَا يُجْزِئُ إلَّا بِمَكَّةَ أَوْ مِنًى فَإِنَّ قَوْمًا قَالُوا: يُجْزِئُ فِي كُلِّ بَلَدٍ؛ لِأَنَّ اللَّهَ - تَعَالَى - لَمْ يَحُدَّ مَوْضِعَ أَدَائِهِ فَهُوَ جَائِزٌ فِي كُلِّ مَوْضِعٍ، وَلَوْ أَرَادَ اللَّهُ - تَعَالَى - قَصْرَهُ عَلَى مَكَانٍ دُونَ مَكَانٍ لَبَيَّنَهُ كَمَا بَيَّنَ ذَلِكَ فِي جَزَاءِ الصَّيْدِ بِقَوْلِهِ - تَعَالَى -: {هَدْيًا بَالِغَ الْكَعْبَةِ} [المائدة: ٩٥] وَلَمْ يَقُلْ فِي هَدْيِ الْمُتْعَةِ، وَلَا فِي هَدْيِ الْمُحْصِرِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

فَإِنْ قِيلَ: نَقِيسُ الْهَدْيَ عَلَى الْهَدْيِ فِي ذَلِكَ؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّهُ إنْ صَحَّحْتُمْ قِيَاسَكُمْ هَدْيَ الْمُتْعَةِ عَلَى هَدْيِ جَزَاءِ الصَّيْدِ لَزِمَكُمْ أَنْ تَقِيسُوهُ عَلَيْهِ فِي تَعْوِيضِ الْإِطْعَامِ مِنْ الْهَدْيِ وَالصِّيَامِ فِي هَدْيِ الْمُتْعَةِ وَأَنْتُمْ لَا تَقُولُونَ هَذَا، فَظَهَرَ فَسَادُ قِيَاسِكُمْ وَتَنَاقُضُهُ قَالَ أَبُو مُحَمَّد: لَكِنَّ الْحُجَّةَ فِي ذَلِكَ أَنَّ اللَّهَ - تَعَالَى - قَالَ: {وَمَنْ يُعَظِّمْ شَعَائِرَ اللَّهِ فَإِنَّهَا مِنْ تَقْوَى الْقُلُوبِ} [الحج: ٣٢] {لَكُمْ فِيهَا مَنَافِعُ إِلَى أَجَلٍ مُسَمًّى ثُمَّ مَحِلُّهَا إِلَى الْبَيْتِ الْعَتِيقِ} [الحج: ٣٣] .

وَقَالَ - تَعَالَى -: {وَالْبُدْنَ جَعَلْنَاهَا لَكُمْ مِنْ شَعَائِرِ اللَّهِ لَكُمْ فِيهَا خَيْرٌ} [الحج: ٣٦] .

[16] **Qur'an references (L13627):** Qur'an 5:95 (Al-Ma'idah); Qur'an 19:64 (Maryam).
[17] **Qur'an references (L13630):** Qur'an 22:32 (Al-Hajj); Qur'an 22:33 (Al-Hajj).

them for you among the rites of Allah, in which there is good for you." [al-Ḥajj 22:36][18]

L13632 The text states that the rites of Allah (Exalted is He) "their time [for slaughter] is until they reach the Ancient House" (Quran 22:33), and that sacrificial camels are among Allah's rites. Thus, it was confirmed with certainty that the aforementioned verse applies, and no one disputes that the ruling for all sacrificial animals corresponds to that of sacrificial camels. We have been narrated through the chain of Abu Dawud: Ahmad ibn Hanbal via Yahya ibn Sa'id al-Qattan via Ja'far ibn Muhammad ibn Ali, on the authority of his father, that Jabir ibn Abdullah reported: The Messenger of Allah (peace and blessings be upon him) said, "I have ritually slaughtered here, and all of Mina is a place of slaughter."[19]

L13633–13635 From Ahmad ibn Umar ibn Anas, Narrated by Ubayd Allah ibn al-Husayn ibn Iqal, Narrated by Ibrāhīm ibn Muhammad al-Dīnawarī, Narrated by Muhammad ibn Ahmad ibn al-Jahm, Narrated by Muʿādh ibn al-Muthannā, Narrated by Musaddad, Narrated by Hafs ibn Ghiyāth, Narrated by Jaʿfar ibn Muhammad, Narrated by his father, Narrated by Jābir: "The Messenger of Allah (peace and blessings of Allah be upon him) said at the place of sacrifice: 'This is the place of sacrifice, and all the open spaces of Mecca are places of sacrifice.'" And he—peace be upon him—said in Mina: "This is the place of sacrifice, and all the open spaces of Mina are places of sacrifice." Thus, it is established that wherever the camels are ritually sacrificed within the open spaces of Mecca and Mina—which are part of the entire sacred precinct—the sacrificer has fulfilled the requirement properly. It is not permissible to slaughter camels and offerings outside the sacred precinct except what the text specifically specifies: the offering of the prevented pilgrim and the voluntary offering if it becomes impaired before reaching Mecca.

L13636 It was narrated to us from Ṭāwus and ʿAṭāʾ, the two said: All that pertains to the sacrificial rites is in Mecca, while fasting and feeding [the needy] may

فَجَاءَ النَّصُّ بِأَنَّ شَعَائِرَ اللَّهِ - تَعَالَى - {مَحِلُّهَا إِلَى الْبَيْتِ الْعَتِيقِ} [الحج: ٣٣] وَأَنَّ الْبُدْنَ مِنْ شَعَائِرِ اللَّهِ - تَعَالَى - فَصَحَّ يَقِينًا أَنَّ {مَحِلُّهَا إِلَى الْبَيْتِ الْعَتِيقِ} [الحج: ٣٣] وَلَا خِلَافَ بَيْنَ أَحَدٍ فِي أَنَّ حُكْمَ الْهَدْيِ كُلِّهِ كَحُكْمِ الْبُدْنِ -: رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا أَحْمَدُ بْنُ حَنْبَلٍ نَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نَا جَعْفَرُ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ عَنْ أَبِيهِ أَنَّ جَابِرَ بْنَ عَبْدِ اللَّهِ حَدَّثَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «قَدْ نَحَرْتُ هُنَا، وَمِنًى كُلُّهَا مَنْحَرٌ» .

نَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نَا عُبَيْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ نَا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ نَا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ نَا مُعَاذُ بْنُ الْمُثَنَّى نَا مُسَدَّدٌ نَا حَفْصُ بْنُ غِيَاثٍ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ جَابِرٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ عِنْدَ الْمَنْحَرِ: هَذَا الْمَنْحَرُ، وَفِجَاجُ مَكَّةَ كُلُّهَا مَنْحَرٌ» «وَقَالَ - عَلَيْهِ السَّلَامُ - فِي مِنًى: هَذَا الْمَنْحَرُ، وَفِجَاجُ مِنًى كُلُّهَا مَنْحَرٌ» فَصَحَّ أَنَّهُ حَيْثُمَا نُحِرَتْ الْبُدْنُ، وَالْإِهْدَاءُ مِنْ فِجَاجِ مَكَّةَ وَمِنًى - وَهُوَ الْحَرَمُ كُلُّهُ - فَقَدْ أَصَابَ النَّاحِرُ، وَأَنَّهُ لَا يَجُوزُ نَحْرُ الْبُدْنِ وَالْهَدْيِ فِي غَيْرِ الْحَرَمِ إلَّا مَا خَصَّهُ النَّصُّ مِنْ هَدْيِ الْمُحْصِرِ، وَهَدْيِ التَّطَوُّعِ إذَا عَطِبَ قَبْلَ بُلُوغِهِ مَكَّةَ.

وَرُوِّينَا عَنْ طَاوُسٍ، وَعَطَاءٍ قَالَا: كُلُّ مَا كَانَ مِنْ هَدْيٍ فَهُوَ بِمَكَّةَ، وَالصِّيَامُ وَالْإِطْعَامُ حَيْثُ شِئْتَ - وَعَنْ مُجَاهِدٍ: انْحَرْ حَيْثُ شِئْتَ.

[18] **Qur'an references (L13631):** Qur'an 22:36 (Al-Hajj).
[19] **Qur'an references (L13632):** Qur'an 22:33 (Al-Hajj).

be observed wherever you wish. It is also narrated from Mujāhid: Slaughter wherever you wish.

L13637 As for our statement: "What about one whose family resides within the Haram?" He is not required to offer a sacrifice or fast during his *Tamattuʿ*, and he is performing commendably in his *Tamattuʿ*—though some have said: "He is acting wrongly in his *Tamattuʿ*"—Abū Muḥammad said: Allāh—Exalted is He—states: {Whoever performs the ʿUmrah as part of the *Tamattuʿ* Hajj must offer whatever sacrifice is feasible. But whoever cannot afford it must fast three days during Hajj and seven days upon returning—making ten complete days. This is for those whose family is not present within the Sacred Mosque's precincts} [Al-Baqarah 2:196].[20]

L13638 Ali said: The dissenters argued, "If Allah, the Exalted, had intended what you assert, He would have specified this ruling for those whose relatives were not present in the vicinity of the Sacred Mosque." Thus, it was established that temporary marriage is solely permissible for non-Meccans.

L13639 Abū Muḥammad said: It is not as they have claimed, for the sacrificial animal or fasting made obligatory by Allah, the Exalted, in the tamattuʿ [pilgrimage] is an additional rite and merit—not a compensation for a shortcoming, as supposed by those who do not scrutinize [the matter]. Thus, it is for their sake, not imposed on them.

L13640 The proof of the validity of this is the statement of Allah's Messenger—peace and blessings be upon him—: "If I were to face my affair again what I had left behind, I would not have driven the Hady, would have made it an Umrah, and would have ended my state of Ihrām" or as he—peace be upon him—said. He thereby informed us of the excellence of Tamattu', confirming it as the most superior of Hajj's acts. Allah—Exalted is He—exempted Makkah's residents from offering the Hady and fasting in it for reasons known to His wisdom, though the apparent rationale is His kindness toward them. For undoubtedly, had Allah obligated this upon them, it would have caused hardship—for Umrah is easily accessible to them, being performable daily, unlike pilgrims from distant regions.

وَأَمَّا قَوْلُنَا: وَمَنْ كَانَ أَهْلُهُ سَاكِنِينَ فِي الْحَرَمِ؟ فَلَا يَلْزَمُهُ فِي تَمَتُّعِهِ هَدْيٌ وَلَا صَوْمٌ، وَهُوَ مُحْسِنٌ فِي تَمَتُّعِهِ - وَقَالَ قَوْمٌ: هُوَ مُسِيءٌ فِي تَمَتُّعِهِ -: قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ - تَعَالَى -: {فَمَنْ تَمَتَّعَ بِالْعُمْرَةِ إِلَى الْحَجِّ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ فَمَنْ لَمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةٍ إِذَا رَجَعْتُمْ تِلْكَ عَشَرَةٌ كَامِلَةٌ ذَلِكَ لِمَنْ لَمْ يَكُنْ أَهْلُهُ حَاضِرِي الْمَسْجِدِ الْحَرَامِ} [البقرة: ١٩٦] .

قَالَ عَلِيٌّ: فَقَالَ الْمُخَالِفُونَ: لَوْ أَنَّ اللَّهَ - تَعَالَى - أَرَادَ مَا قُلْتُمْ لَقَالَ ذَلِكَ عَلَى مَنْ لَمْ يَكُنْ أَهْلُهُ حَاضِرِي الْمَسْجِدِ الْحَرَامِ، فَصَحَّ أَنَّ الْمُتْعَةَ إِنَّمَا هِيَ لِغَيْرِ أَهْلِ مَكَّةَ.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ كَمَا قَالُوا، لِأَنَّ الْهَدْيَ أَوْ الصَّوْمَ الَّذِي أَوْجَبَهُ اللَّهُ - تَعَالَى - فِي التَّمَتُّعِ إِنَّمَا هُوَ نُسُكٌ زَائِدٌ وَفَضِيلَةٌ وَلَيْسَ جَبْرًا لِنَقْصٍ كَمَا ظَنَّ مَنْ لَا يُحَقِّقُ، فَهُوَ لَهُمْ لَا عَلَيْهِمْ.

بُرْهَانُ صِحَّةِ ذَلِكَ -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَوْ اسْتَقْبَلْتُ مِنْ أَمْرِي مَا اسْتَدْبَرْتُ مَا سُقْتُ الْهَدْيَ، وَلَجَعَلْتُهَا عُمْرَةً، وَلَأَحْلَلْتُ» أَوْ كَمَا قَالَ - عَلَيْهِ السَّلَامُ -، فَأَخْبَرَ - عَلَيْهِ السَّلَامُ - بِفَضْلِ الْمُتْعَةِ، وَأَنَّهَا أَفْضَلُ أَعْمَالِ الْحَجِّ، وَأَسْقَطَ اللَّهُ - عَزَّ وَجَلَّ - الْهَدْيَ عَنْ أَهْلِ مَكَّةَ وَالصَّوْمَ فِيهَا لِمَا هُوَ أَعْلَمُ بِهِ، وَظَاهِرُهُ الرِّفْقُ بِهِمْ، لِأَنَّهُ لَا شَكَّ فِي أَنَّ اللَّهَ - تَعَالَى - لَوْ كَلَّفَهُمْ ذَلِكَ لَكَانَ حَرَجًا عَلَيْهِمْ لِسُهُولَةِ الْعُمْرَةِ عَلَيْهِمْ وَلِإِمْكَانِهَا لَهُمْ كُلَّ يَوْمٍ بِخِلَافِ أَهْلِ الْآفَاقِ.

[20] **Qur'an references (L13637):** Qur'an 2:196 (Al-Baqarah).

L13641 And Allah (Exalted is He) said: “Allah desires ease for you and does not will hardship upon you” [Al-Baqarah: 185].[21]

وَقَالَ اللَّهُ - تَعَالَى -: {يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلا يُرِيدُ بِكُمُ الْعُسْرَ} [البقرة: ١٨٥] .

L13642–13644 And it invalidates the opponent’s assertion that if the verse had been as he supposed, then Umrah would have been prohibited during the months of Hajj. For the people of Makkah and the Sacred Precinct, this is contrary to what the Sunnah has conveyed regarding the encouragement of Umrah and that it serves as expiation for what occurs between them. Thus, the people of Makkah and others are included in that.

وَيُبْطِلُ قَوْلَ الْمُخَالِفِ: أَنَّ الْآيَةَ لَوْ كَانَتْ كَمَا ظَنَّ لَحُرِّمَتْ الْعُمْرَةُ فِي أَشْهُرِ الْحَجِّ عَلَى أَهْلِ مَكَّةَ وَالْحَرَمِ، وَهَذَا خِلَافُ مَا جَاءَتْ بِهِ السُّنَّةُ مِنْ الْحَضِّ عَلَى الْعُمْرَةِ، وَأَنَّهَا كَفَّارَةٌ لِمَا بَيْنَهُمَا، فَدَخَلَ فِي ذَلِكَ أَهْلُ مَكَّةَ وَغَيْرُهُمْ.

L13645 It was narrated to us from Sa’īd ibn Manṣūr; he informed us from Hushaym; he informed us from al-Ḥajjāj, from al-Ḥakam, from Miqsam, from Ibn ’Abbās, who said: The people of Mecca are not obligated to offer a sacrificial animal in the Tamattu’ pilgrimage.

رُوِّينَا عَنْ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ نَا الْحَجَّاجُ عَنْ الْحَكَمِ عَنْ مِقْسَمٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَيْسَ عَلَى أَهْلِ مَكَّةَ هَدْيٌ فِي الْمُتْعَةِ.

L13646 From the chain of Saʿīd ibn Manṣūr: Hushaym and Wakīʿ reported to us. Hushaym said: al-Mughīrah ibn Miqsam and Yūnus ibn ʿUbayd narrated to us. Al-Mughīrah said: From al-Nakhaʿī, while Yūnus said: From al-Ḥasan. Wakīʿ said: From al-Ḥasan ibn Ḥayy, from Layth, from ʿAṭāʾ, Ṭāwūs, and Mujāhid; then ʿAṭāʾ, Ṭāwūs, Mujāhid, al-Ḥasan, and al-Nakhaʿī unanimously agreed, stating: “There is no sacrificial obligation upon the Meccan resident performing tamattuʿ.” From the chain of al-Ḥudhāfī: From ʿAbd al-Razzāq, from Ibn Jurayj and Maʿmar. Ibn Jurayj said: From ʿAṭāʾ, while Maʿmar said: From al-Zuhrī; then al-Zuhrī and ʿAṭāʾ jointly declared regarding the Meccan who passes the miqāt and performs ʿUmrah from it: “He is not a mutamattiʿ.” This is the opinion we uphold.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ، وَوَكِيعٌ، قَالَ هُشَيْمٌ: نَا الْمُغِيرَةُ بْنُ مِقْسَمٍ، وَيُونُسُ بْنُ عُبَيْدٍ، قَالَ الْمُغِيرَةُ: عَنْ النَّخَعِيِّ، وَقَالَ يُونُسُ: عَنْ الْحَسَنِ، وَقَالَ وَكِيعٌ: عَنْ الْحَسَنِ بْنِ حَيٍّ عَنْ لَيْثٍ عَنْ عَطَاءٍ، وَطَاوُسٍ، وَمُجَاهِدٍ، ثُمَّ اتَّفَقَ عَطَاءٌ، وَطَاوُسٌ، وَمُجَاهِدٌ، وَالْحَسَنُ، وَالنَّخَعِيُّ، قَالُوا كُلُّهُمْ: لَيْسَ عَلَى الْمَكِّيِّ هَدْيٌ فِي الْمُتْعَةِ وَمِنْ طَرِيقِ الْحُذَّاقِيِّ عَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ، وَمَعْمَرٍ قَالَ ابْنُ جُرَيْجٍ: عَنْ عَطَاءٍ، وَقَالَ مَعْمَرٌ، عَنْ الزُّهْرِيِّ، ثُمَّ اتَّفَقَ الزُّهْرِيُّ، وَعَطَاءٌ قَالَا جَمِيعًا فِي الْمَكِّيِّ يَمُرُّ بِالْمِيقَاتِ فَيَعْتَمِرُ مِنْهُ: إنَّهُ لَيْسَ بِمُتَمَتِّعٍ - وَبِهَذَا نَقُولُ.

L13647 And it has been narrated to us through the chain of Ibn Abi Shaybah: Waki‘ narrated to us from Sufyān, from Ibn Ṭāwūs, from his father, who said: When a resident of Makkah departs to the Miqat and performs *tamattu‘* [after leaving it], the sacrificial offering becomes obligatory upon him.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا وَكِيعٌ عَنْ سُفْيَانَ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: إذَا خَرَجَ الْمَكِّيُّ إلَى الْمِيقَاتِ فَتَمَتَّعَ مِنْهُ فَعَلَيْهِ الْهَدْيُ.

L13648 Abu Muhammad held: There is nothing incumbent upon him because his family members are present at the Sacred Mosque. The Malikis maintained

قَالَ أَبُو مُحَمَّدٍ: لَا شَيْءَ عَلَيْهِ، لِأَنَّ أَهْلَهُ حَاضِرُو الْمَسْجِدِ الْحَرَامِ - وَزَعَمَ الْمَالِكِيُّونَ: أَنَّ الْهَدْيَ إنَّمَا جُعِلَ عَلَى الْمُتَمَتِّعِ لِإِسْقَاطِهِ سَفَرَ الْحَجِّ إلَى مَكَّةَ.

[21] **Qur’an references (L13641):** Qur’an 2:185 (Al-Baqarah).

that the sacrificial animal was only imposed on the one performing Tamattuʿ due to his forgoing the Hajj journey to Mecca.

L13649–13651 Ali said: This is utterly invalid. It is astonishing how they make it easy for themselves to accept such a corrupt statement that will soon bring them disgrace. It is said to them: This very same cause exists for one who performs Umrah on the last day of Ramadan, then stays in Mecca until performing Hajj—thus waiving one of the two journeys—yet you do not deem a sacrifice or fasting obligatory for him. Then you claim regarding one who performs Umrah during the Hajj months, then departs beyond the furthest Miqats and assumes the pilgrim's state of consecration for Hajj from there—even if he is a resident of Egypt, Syria, or Iraq—that no sacrifice or fasting is required, and neither journey is omitted. They also say regarding a resident of these lands who travels for a need unrelated to Hajj—and his need was in Usfan or Batn Marr—but upon arriving there, he decides to perform Hajj and Umrah after having performed Umrah outside the Hajj months: No sacrifice is required for him, and he has indeed waived both journeys. Regarding Hajj and Umrah as well. By my oath! It is not fitting for one who has faith or intellect to ascribe to Allah—Exalted is He—what he has no knowledge of, and by Allah—Exalted is He—we seek strength.

قَالَ عَلِيٌّ: وَهَذَا بَاطِلٌ بَحْتٌ، وَالْعَجَبُ مِنْ تَسْهِيلِهِمْ عَلَى أَنْفُسِهِمْ مِثْلَ هَذَا الْقَوْلِ الْفَاسِدِ الَّذِي يَفْتَضِحُونَ بِهِ مِنْ قُرْبٍ، وَيُقَالُ لَهُمْ: هَذِهِ الْعِلَّةُ نَفْسُهَا مَوْجُودَةٌ فِيمَنْ اعْتَمَرَ فِي آخِرِ يَوْمٍ مِنْ رَمَضَانَ، ثُمَّ أَقَامَ بِمَكَّةَ حَتَّى حَجَّ فَقَدْ أَسْقَطَ أَحَدَ السَّفَرَيْنِ، وَأَنْتُمْ لَا تَرَوْنَ عَلَيْهِ هَدْيًا وَلَا صَوْمًا، ثُمَّ تَقُولُونَ فِيمَنْ اعْتَمَرَ فِي أَشْهُرِ الْحَجِّ ثُمَّ خَرَجَ إلَى مَا وَرَاءَ أَبْعَدِ الْمَوَاقِيتِ فَأَهَلَّ بِالْحَجِّ مِنْهُ، وَهُوَ مِنْ أَهْلِ مِصْرَ، أَوْ الشَّامِ، أَوْ الْعِرَاقِ: أَنَّهُ لَا هَدْيَ عَلَيْهِ وَلَا صَوْمَ، وَلَمْ يَسْقُطْ أَحَدُ السَّفَرَيْنِ، وَيَقُولُونَ فِيمَنْ كَانَ مِنْ أَهْلِ هَذِهِ الْبِلَادِ فَخَرَجَ لِحَاجَتِهِ لَا يُرِيدُ حَجًّا، وَكَانَتْ حَاجَتُهُ بِعُسْفَانَ، أَوَبِبَطْنِ؛ فَلَمَّا صَارَ بِهَا بَدَا لَهُ فِي الْحَجِّ وَالْعُمْرَةِ فَحَجَّ بَعْدَ أَنْ اعْتَمَرَ فِي غَيْرِ أَشْهُرِ الْحَجِّ: فَلَا هَدْيَ عَلَيْهِ، وَهُوَ قَدْ أَسْقَطَ السَّفَرَيْنِ إلَى الْحَجِّ، وَإِلَى الْعُمْرَةِ أَيْضًا؛ وَلَعَمْرِي مَا يَنْبَغِي لِمَنْ لَهُ دِينٌ، أَوْ عَقْلٌ أَنْ يُطْلِقَ عَنْ اللَّهِ - تَعَالَى - مَا لَا عِلْمَ لَهُ بِهِ، وَبِاَللَّهِ - تَعَالَى - نَتَأَيَّدُ.

The Tamattuʿ pilgrim who is obligated to fast or offer a sacrificial animal.

[الْمُتَمَتِّعُ الَّذِي يَجِبُ عَلَيْهِ الصَّوْمُ أَوْ الْهَدْيُ]

L13652

L13653 As for our statement: "The Mutamattiʿ obligated to fast or offer a sacrificial animal is one who initiates his Umrah by entering iḥrām for it during the months of Hajj—not prior to them at all—completes his Umrah, then performs Hajj in the same year, whether he returns during that period to the Miqat, his residence, a region equidistant to his residence, farther, or nearer; or remains in Makkah; whether he performs numerous Umrahs in between or none. If he enters iḥrām for Umrah before the crescent of Shawwāl appears, he is not a Mutamattiʿ. No sacrificial animal or fasting is incumbent upon him if he performs Hajj in that year—whether he resides in Makkah or not—regardless of whether he performed some, most, or less of his Umrah during the Hajj months, or none of it during those months, unless he later

وَأَمَّا قَوْلُنَا -: وَالْمُتَمَتِّعُ الَّذِي يَجِبُ عَلَيْهِ الصَّوْمُ أَوْ الْهَدْيُ هُوَ مَنْ ابْتَدَأَ عُمْرَتَهُ بِأَنْ يُحْرِمَ لَهَا فِي أَحَدِ أَشْهُرِ الْحَجِّ لَا قَبْلَ ذَلِكَ أَصْلًا، وَيُتِمَّ عُمْرَتَهُ ثُمَّ يَحُجَّ مِنْ عَامِهِ سَوَاءٌ رَجَعَ فِيمَا بَيْنَ ذَلِكَ إلَى الْمِيقَاتِ أَوْ إلَى مَنْزِلِهِ أَوْ إلَى أُفُقٍ أَبْعَدَ مِنْ مَنْزِلِهِ، أَوْ مِثْلِهِ أَوْ أَقْرَبَ مِنْهُ، أَوْ أَقَامَ بِمَكَّةَ، اعْتَمَرَ فِيمَا بَيْنَ ذَلِكَ عُمَرًا كَثِيرَةً أَوْ لَمْ يَعْتَمِرْ؛ فَإِنْ أَحْرَمَ بِالْعُمْرَةِ قَبْلَ هِلَالِ شَوَّالٍ فَلَيْسَ بِمُتَمَتِّعٍ، وَلَا هَدْيَ عَلَيْهِ، وَلَا صَوْمَ إنْ حَجَّ مِنْ عَامِهِ، أَقَامَ بِمَكَّةَ أَوْ لَمْ يُقِمْ عَمِلَ بَعْضَ عُمْرَتِهِ أَكْثَرَهَا أَوْ أَقَلَّهَا فِي أَشْهُرِ الْحَجِّ، أَوْ لَمْ يَعْمَلْ مِنْهَا

performs an Umrah within the Hajj months, thereby becoming a Mutamattiʿ." People have differed regarding this. A group stated—as transmitted to us via Ḥammād ibn Salamah from Isḥāq ibn Suwayd, who said: "I heard Ibn al-Zubayr proclaim: 'O people, the Mutamattiʿ is not as you understand it, where one of you combines Umrah with Hajj. Rather, it applies to a pilgrim who misses Hajj, loses his mount, or whose mount is incapacitated such that Hajj becomes impossible. He must convert it to an Umrah, and he is obligated to perform Hajj the following year along with whatever sacrificial animal is feasible.'"

شَيْئًا فِي أَشْهُرِ الْحَجِّ إِلَّا أَنْ يَعْتَمِرَ بَعْدَ ذَلِكَ مِنْ أَشْهُرِ الْحَجِّ فَيَكُونَ مُتَمَتِّعًا -: فَإِنَّ النَّاسَ اخْتَلَفُوا فِي هَذَا -: فَقَالَتْ طَائِفَةٌ: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نَا إِسْحَاقُ بْنُ سُوَيْدٍ قَالَ: سَمِعْتُ ابْنَ الزُّبَيْرِ يَقُولُ: أَيُّهَا النَّاسُ إِنَّ الْمُتَمَتِّعَ لَيْسَ بِالَّذِي تَصْنَعُونَ يَتَمَتَّعُ أَحَدُكُمْ بِالْعُمْرَةِ قَبْلَ الْحَجِّ، وَلَكِنَّ الْحَاجَّ إِذَا فَاتَهُ الْحَجُّ أَوْ ضَلَّتْ رَاحِلَتُهُ أَوْ كُسِرَ حَتَّى يَفُوتَهُ الْحَجُّ فَإِنَّهُ يَجْعَلُهَا عُمْرَةً، وَعَلَيْهِ الْحَجُّ مِنْ قَابِلٍ، وَمَا اسْتَيْسَرَ مِنْ الْهَدْيِ.

L13654 Through the chain of ʿAbd al-Razzāq, from Maʿmar, from Ibn Abī Najīḥ, from ʿAṭāʾ, who said: Ibn al-Zubayr would say, "Tamattuʿ is for those who are prevented [from completing Hajj]."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ عَطَاءٍ قَالَ: كَانَ ابْنُ الزُّبَيْرِ يَقُولُ: الْمُتْعَةُ لِمَنْ أُحْصِرَ.

L13655 A group has said: The one performing tamattuʿ is he who performs ʿUmrah in any [i.e., whichever] months of the year—whether his ʿUmrah was before the months of Ḥajj or during the months of Ḥajj—then stays in consecration until performing Ḥajj that same year. Such a person must sacrifice or fast. Likewise, one who performs ʿUmrah during the months of Ḥajj then stays [in consecration] until performing Ḥajj that year or does not perform Ḥajj must sacrifice or fast. We were narrated via the isnād of Wakiʿ, who narrated from Sufyān al-Thawrī, from Layth ibn Abī Sulaym, from Ṭāwūs, who said: If one enters ihrām for ʿUmrah during the months of Ḥajj, he must sacrifice—even if he does not perform Ḥajj.

وَقَالَتْ طَائِفَةٌ: الْمُتَمَتِّعُ هُوَ مَنْ اعْتَمَرَ فِي أَيِّ - أَشْهُرِ السَّنَةِ كَانَتْ عُمْرَتُهُ قَبْلَ أَشْهُرِ الْحَجِّ أَوْ فِي أَشْهُرِ الْحَجِّ، ثُمَّ أَقَامَ حَتَّى حَجَّ مِنْ عَامِهِ، فَهَذَا عَلَيْهِ الْهَدْيُ أَوْ الصَّوْمُ، وَكَذَلِكَ مَنْ اعْتَمَرَ فِي أَشْهُرِ الْحَجِّ ثُمَّ أَقَامَ حَتَّى حَجَّ مِنْ عَامِهِ أَوْ لَمْ يَحُجَّ فَعَلَيْهِ الْهَدْيُ أَوْ الصَّوْمُ -: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ طَاوُسٍ قَالَ: إذَا أَهَلَّ بِالْعُمْرَةِ فِي أَشْهُرِ الْحَجِّ فَعَلَيْهِ الْهَدْيُ، وَإِنْ لَمْ يَحُجَّ.

L13656 From the path of Abd al-Razzaq, from Sufyan al-Thawri, from Layth, from Abdullah ibn Tawus, from his father, who said: If one performs Umrah outside the months of Hajj and then resides until Hajj, he is considered a *Mutamatti*.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ لَيْثٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: إنْ اعْتَمَرَ فِي غَيْرِ أَشْهُرِ الْحَجِّ ثُمَّ أَقَامَ إلَى الْحَجِّ فَهُوَ مُتَمَتِّعٌ.

L13657–13658 From the transmission of Waki' from Sufyān from Ibn Ṭāwus from his father, who said, "When a Meccan travels to the mīqāt and performs ʿUmrah therefrom, they must offer a ritual sacrifice."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: إذَا خَرَجَ الْمَكِّيُّ إلَى الْمِيقَاتِ فَاعْتَمَرَ مِنْهُ فَعَلَيْهِ الْهَدْيُ.

L13659 A group held that a *tamattuʿ* pilgrim is only one who initiates *ihram* for ʿUmrah during the Hajj months, then resides in Mecca until he performs

Hajj in the same year. If he returns to his family between ʿUmrah and Hajj, he is not a *tamattuʿ* pilgrim.

وَقَالَتْ طَائِفَةٌ: لَيْسَ الْمُتَمَتِّعُ إِلَّا مِنْ أَهَلَّ بِالْعُمْرَةِ فِي أَشْهُرِ الْحَجِّ ثُمَّ أَقَامَ بِمَكَّةَ حَتَّى حَجَّ مِنْ عَامِهِ فَإِنْ رَجَعَ إِلَى أَهْلِهِ بَيْنَ الْعُمْرَةِ وَالْحَجِّ فَلَيْسَ مُتَمَتِّعًا.

L13660 It has been narrated to us through Waki‘ via our teacher al-‘Umari, from Nafi‘, from Ibn ‘Umar, from ‘Umar ibn al-Khaṭṭāb, who said: If someone enters the state of ihram for Umrah during the Hajj months, then remains until performing Hajj, he is considered a mutamatti. If he returns to his family and then performs Hajj, he is not considered a mutamatti.

رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نَا الْعُمَرِيُّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: إِذَا أَهَلَّ بِالْعُمْرَةِ فِي أَشْهُرِ الْحَجِّ ثُمَّ أَقَامَ حَتَّى يَحُجَّ فَهُوَ مُتَمَتِّعٌ، وَإِذَا رَجَعَ إِلَى أَهْلِهِ ثُمَّ حَجَّ فَلَيْسَ مُتَمَتِّعًا.

L13661 From the chain of Ibn Abi Shaybah: He narrated to us through Waki‘ and Hafs ibn Ghiyath. Hafs said, from Yahya ibn Sa‘id, from Nafi‘, from Ibn ‘Umar. Waki‘ said, from Yahya ibn Sa‘id, from Sa‘id ibn al-Musayyib. Both agreed: Whoever performs ‘Umrah during the months of Hajj and then returns is not considered a _Mutamatti‘_. That is the one who remains and does not return.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا وَكِيعٌ، وَحَفْصُ بْنُ غِيَاثٍ قَالَ حَفْصٌ: عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ، وَقَالَ وَكِيعٌ: عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَا جَمِيعًا: مَنِ اعْتَمَرَ فِي أَشْهُرِ الْحَجِّ ثُمَّ رَجَعَ فَلَيْسَ بِمُتَمَتِّعٍ، ذَاكَ مَنْ أَقَامَ وَلَمْ يَرْجِعْ.

L13662 And via him to Waki‘: Sufyān al-Thawrī narrated to us from al-Mughīrah, and Yaḥyā ibn Sa‘īd al-Anṣārī. Al-Mughīrah narrated from Ibrāhīm al-Nakha‘ī, while Yaḥyā narrated from Sa‘īd ibn al-Musayyib. They both unanimously stated: Similar to the statement of ʿUmar.

وَبِهِ إِلَى وَكِيعٍ نَا سُفْيَانُ الثَّوْرِيُّ عَنِ الْمُغِيرَةِ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ قَالَ الْمُغِيرَةُ: عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَقَالَ يَحْيَى: عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَا جَمِيعًا: مِثْلَ قَوْلِ عُمَرَ.

L13663 A group held that the Tamattuʿ pilgrim is one who enters iḥrām for ʿUmrah during the months of Hajj—not before them—then remains in Mecca until performing Hajj in the same year. If he departs between the ʿUmrah and Hajj from Mecca to a place where prayer is shortened, he is not considered a Tamattuʿ pilgrim.

وَقَالَتْ طَائِفَةٌ: الْمُتَمَتِّعُ هُوَ مَنْ أَهَلَّ بِالْعُمْرَةِ فِي أَشْهُرِ الْحَجِّ لَا قَبْلَهَا، ثُمَّ أَقَامَ بِمَكَّةَ حَتَّى حَجَّ مِنْ عَامِهِ، فَإِنْ خَرَجَ بَيْنَ الْعُمْرَةِ وَالْحَجِّ إِلَى مَا تُقْصَرُ فِيهِ الصَّلَاةُ مِنْ مَكَّةَ فَلَيْسَ مُتَمَتِّعًا.

L13664 It has been narrated to us through the chain of ʿAbd al-Razzāq: Sufyān al-Thawrī informed us from Layth, from ʿAṭāʾ, who said: “No one becomes a *mutamatti* until they perform ʿUmrah within the months of Ḥajj.”

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ لَيْثٍ عَنْ عَطَاءٍ قَالَ: لَيْسَ بِمُتَمَتِّعٍ حَتَّى يَعْتَمِرَ فِي أَشْهُرِ الْحَجِّ.

L13665 From Waki‘’s transmission: Sufyan al-Thawri reported to us from Ibn Jurayj, who said: ʿAṭāʾ said: His ʿUmrah is in the month when he enters iḥrām. If he undertakes a journey that requires shortening the prayer, he is not a muṭamattiʿ.

وَمِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ الثَّوْرِيُّ عَنِ ابْنِ جُرَيْجٍ قَالَ: قَالَ عَطَاءٌ عُمْرَتُهُ فِي الشَّهْرِ الَّذِي يُهِلُّ فِيهِ فَإِذَا سَافَرَ سَفَرًا تُقْصَرُ فِيهِ الصَّلَاةُ فَلَيْسَ بِمُتَمَتِّعٍ.

L13666 And from the route of Waki‘, he narrated to us from Sufyān from Layth from ‘Aṭā’ regarding one who assumes Ihrām for Umrah during the months of Hajj then does not perform Hajj in that year: He said, “There is nothing upon him.”

وَمِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ عَنْ لَيْثٍ عَنْ عَطَاءٍ فِيمَنْ أَهَلَّ بِالْعُمْرَةِ فِي أَشْهُرِ الْحَجِّ ثُمَّ لَمْ يَحُجَّ مِنْ عَامِهِ؟ قَالَ: لَا شَيْءَ عَلَيْهِ.

L13667–13669 A group said: The *Mutamatti‘* is one who performs Tawaf during the months of Ḥajj and then undertakes Ḥajj in the same year. This has been narrated. Through the chain of Sufyān from some of his companions, from Ibrāhīm al-Nakha‘ī, who said: His Umrah is in the month during which he performs the ṭawāf.

وَقَالَتْ طَائِفَةٌ: إِنَّ الْمُتَمَتِّعَ مَنْ طَافَ فِي أَشْهُرِ الْحَجِّ، ثُمَّ حَجَّ مِنْ عَامِهِ، رُوِيَ ذَلِكَ مِنْ طَرِيقِ سُفْيَانَ عَنْ بَعْضِ أَصْحَابِهِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: عُمْرَتُهُ فِي الشَّهْرِ الَّذِي يَطُوفُ فِيهِ.

L13670 From the narration via Abd al-Razzaq, from Hisham, from Hafsa bint Sirin, she said: We entered the state of ihram for Umrah in Ramadan and arrived in Mecca during Shawwal. We asked the jurists—while people were present in large numbers—and all of them said: This is considered Tamattu’.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هِشَامٍ عَنْ حَفْصَةَ بِنْتِ سِيرِينَ قَالَتْ: أَحْرَمْنَا بِالْعُمْرَةِ فِي رَمَضَانَ فَقَدِمْنَا مَكَّةَ فِي شَوَّالٍ فَسَأَلْنَا الْفُقَهَاءَ - وَالنَّاسُ مُتَوَافِرُونَ - فَكُلُّهُمْ قَالَ: هِيَ مُتْعَةٌ.

L13671 And from the narration of Abd al-Razzaq, from Uthman ibn Matar, from Matar in his prayer, from al-Hasan and al-Hakam ibn Utaybah regarding one who entered *iḥrām* in Ramadan and performed the circumambulation in Shawwal—they both said together, “His *‘Umrah* is in the month in which he performed the circumambulation.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُثْمَانَ بْنِ مَطَرٍ عَنْ مَطَرٍ بِصَلَاتِهِ عَنِ الْحَسَنِ وَالْحَكَمِ بْنِ عُتَيْبَةَ فِيمَنْ أَهَلَّ فِي رَمَضَانَ وَطَافَ فِي شَوَّالٍ قَالَا جَمِيعًا: عُمْرَتُهُ فِي الشَّهْرِ الَّذِي طَافَ فِيهِ.

L13672 From Abd al-Razzaq, from Sufyan al-Thawri, from al-Mughira, from Ibrahim, who said: If one returns to his family before performing Hajj after having performed Umrah during the Hajj months, he is not a mutamatti‘. If he remains until he performs Hajj, he is a mutamatti‘. All of this is the opinion of Sufyan.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنِ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ قَالَ: إِذَا رَجَعَ إِلَى أَهْلِهِ قَبْلَ أَنْ يَحُجَّ وَبَعْدَ أَنْ اعْتَمَرَ فِي أَشْهُرِ الْحَجِّ فَلَيْسَ مُتَمَتِّعًا، فَإِنْ أَقَامَ حَتَّى يَحُجَّ فَهُوَ مُتَمَتِّعٌ، وَهُوَ كُلُّهُ قَوْلُ سُفْيَانَ.

L13673 A group of scholars stated: If one entered *ihram* for ‘Umrah during Ramadan and then entered the Haram before the sighting of the Shawwāl crescent, he is not a *mutamatti‘*. But if he entered the Haram after the sighting of the Shawwāl crescent, he is a *mutamatti‘* if he performed Hajj in the same year.

وَقَالَتْ طَائِفَةٌ: إِنْ أَحْرَمَ بِالْعُمْرَةِ فِي رَمَضَانَ فَدَخَلَ الْحَرَمَ قَبْلَ هِلَالِ شَوَّالٍ فَلَيْسَ مُتَمَتِّعًا، وَإِنْ دَخَلَ الْحَرَمَ بَعْدَ هِلَالِ شَوَّالٍ فَهُوَ مُتَمَتِّعٌ إِذَا حَجَّ مِنْ عَامِهِ.

L13674 As narrated via the chain of ʿAbd al-Razzāq from Maʿmar and Ibn Jurayj - Maʿmar said: From Ibn Abī Najīḥ from ʿAṭāʾ, and Ibn Jurayj said: From ʿAṭāʾ, who said: If a muḥrim enters the Haram before sighting the Shawwal

crescent, he is not performing Tamattuʿ. But if he enters the Haram after sighting the Shawwal crescent and remains there until the time of ḥajj, he is performing Tamattuʿ. This is the opinion of al-Awzāʿī.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَابْنِ جُرَيْجٍ قَالَ مَعْمَرٌ: عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ عَطَاءٍ، وَقَالَ ابْنُ جُرَيْجٍ: عَنْ عَطَاءٍ قَالَ: إذَا دَخَلَ الْمُحْرِمُ الْحَرَمَ قَبْلَ أَنْ يَرَى هِلَالَ شَوَّالٍ فَلَيْسَ مُتَمَتِّعًا، وَإِنْ دَخَلَ الْحَرَمَ بَعْدَ أَنْ يَرَى هِلَالَ شَوَّالٍ فَهُوَ مُتَمَتِّعٌ إذَا مَكَثَ إلَى الْحَجِّ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ.

L13675 A group held an opinion like ours—as narrated through Mālik's chain from ʿAbdullāh ibn Dīnār, who said: I heard Ibn ʿUmar state: "Whoever performs ʿUmrah during the Ḥajj months—in Shawwāl, Dhū al-Qaʿdah, or Dhū al-Ḥijjah before Ḥajj—has indeed performed *tamattuʿ*, and the *hady* is obligatory upon them, or fasting if they cannot find a *hady*." Similarly, through ʿAbd al-Razzāq's chain: Sayf → Yazīd al-Faqīr reported that some people performed ʿUmrah during the Ḥajj months, then departed for Medina and assumed iḥrām for Ḥajj. Ibn ʿAbbās stated: "The *hady* is obligatory upon them."

وَقَالَتْ طَائِفَةٌ مِثْلَ قَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ قَالَ: سَمِعْت ابْنَ عُمَرَ يَقُولُ: مَنْ اعْتَمَرَ فِي أَشْهُرِ الْحَجِّ فِي شَوَّالٍ أَوْ ذِي الْقَعْدَةِ أَوْ فِي ذِي الْحِجَّةِ قَبْلَ الْحَجِّ فَقَدْ اسْتَمْتَعَ، وَوَجَبَ عَلَيْهِ الْهَدْيُ، أَوْ الصِّيَامُ إذَا لَمْ يَجِدْ هَدْيًا -: وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سَيْفٍ عَنْ يَزِيدَ الْفَقِيرِ أَنَّ قَوْمًا اعْتَمَرُوا فِي أَشْهُرِ الْحَجِّ ثُمَّ خَرَجُوا إلَى الْمَدِينَةِ فَأَهَلُّوا بِالْحَجِّ؟ فَقَالَ ابْنُ عَبَّاسٍ: عَلَيْهِمْ الْهَدْيُ.

L13676 From the narration of Abd al-Razzaq, from Ibn Jurayj, from Ataa regarding one who arrives outside the months of Hajj to perform Umrah, then decides to perform Umrah during the months of Hajj: He said, "He does not become a Mutamatti' until he enters Ihram at his Miqat during the months of Hajj." I asked him, "Is this your opinion or knowledge?" He replied, "Rather, it is knowledge."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِي مَنْ قَدِمَ فِي غَيْرِ أَشْهُرِ الْحَجِّ مُعْتَمِرًا ثُمَّ بَدَا لَهُ أَنْ يَعْتَمِرَ فِي أَشْهُرِ الْحَجِّ؟ قَالَ: لَا يَكُونُ مُتَمَتِّعًا حَتَّى يَأْتِيَ مِنْ مِيقَاتِهِ فِي أَشْهُرِ الْحَجِّ، قُلْت لَهُ: أَرَأْيٌ أَمْ عِلْمٌ؟ قَالَ: بَلْ عِلْمٌ.

L13677–13678 Abu Muhammad said: We only agreed with 'Ata' regarding the view that the Muttamatti' is none other than one who enters Ihram during the Hajj months. We disagree with his statement that one who arrives in a state of Ihram outside the Hajj months, performs Umrah, exits his Ihram, then performs another Umrah during the Hajj months is not a Muttamatti'. Rather, he is a Muttamatti' if he performs Hajj within the same year. Through the chain of 'Abd al-Razzaq from Ma'mar from Qatadah, who said: "His Umrah is in the month during which he entered the state of Ihram."

قَالَ أَبُو مُحَمَّدٍ: إنَّمَا وَافَقْنَا عَطَاءً فِي أَنَّهُ لَا يَكُونُ الْمُتَمَتِّعُ إلَّا مَنْ أَحْرَمَ فِي أَشْهُرِ الْحَجِّ لَا فِي قَوْلِهِ: إنَّ مَنْ قَدِمَ فِي غَيْرِ أَشْهُرِ الْحَجِّ مُحْرِمًا ثُمَّ اعْتَمَرَ ثُمَّ حَلَّ ثُمَّ اعْتَمَرَ فِي أَشْهُرِ الْحَجِّ أَنَّهُ لَيْسَ مُتَمَتِّعًا، بَلْ هُوَ مُتَمَتِّعٌ إنْ حَجَّ مِنْ عَامِهِ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: عُمْرَتُهُ فِي الشَّهْرِ الَّذِي أَهَلَّ فِيهِ.

L13679 And from the chain of Saʿīd ibn Manṣūr: Hushaym and Abū ʿAwānah informed us. Abū ʿAwānah said: From Qatādah, from Saʿīd ibn al-Musayyib. Hushaym said: I narrate from Yūnus, from al-Ḥasan. Then al-Ḥasan and

Sa‘īd came to agreement, both stating: The pilgrim performing Tamattu‘ must offer the sacrificial animal, even if he returns to his homeland.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ، وَأَبُو عَوَانَةَ، قَالَ أَبُو عَوَانَةَ: عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَقَالَ هُشَيْمٌ: أَنَا يُونُسُ عَنْ الْحَسَنِ، ثُمَّ اتَّفَقَ الْحَسَنُ وَسَعِيدٌ قَالَا: فِي الْمُتَمَتِّعِ عَلَيْهِ الْهَدْيُ، وَإِنْ رَجَعَ إلَى بِلَادِهِ.

L13680 Another group said: If someone entered the state of iḥrām outside the pilgrimage months, performed four circuits of his ‘umrah, then the crescent of Shawwāl was sighted and he completed his ‘umrah—whether he stayed in Mecca or did not stay there but also did not return to his homeland—or if he entered iḥrām for his ‘umrah in the same manner during the pilgrimage months, and was not among those required to observe the mawāqīt but was within the area closer to Mecca than them, then he is a mutamatti‘ pilgrim obligated to a sacrifice or fasting. If he entered iḥrām for his ‘umrah outside the pilgrimage months, performed three circuits of his ‘umrah, then the crescent of Shawwāl was sighted, he is not considered a mutamatti‘ pilgrim—this is the opinion of Abū Ḥanīfah. Abū Yūsuf agreed with him except that he said: If he returned to a place beyond one of the mawāqīt, he is not a mutamatti‘ pilgrim. They said: A mutamatti‘ pilgrim without a sacrifice may exit iḥrām upon completing his ‘umrah. If he had brought his sacrifice, he may not exit iḥrām until exiting from the ḥajj on the Day of Sacrifice. If he exited iḥrām, another sacrifice becomes obligatory for exiting.

وَقَالَتْ طَائِفَةٌ [أُخْرَى] : إنْ أَحْرَمَ فِي غَيْرِ أَشْهُرِ الْحَجِّ فَطَافَ مِنْ عُمْرَتِهِ أَرْبَعَةَ أَشْوَاطٍ ثُمَّ أَهَلَّ هِلَالُ شَوَّالٍ فَأَتَمَّ عُمْرَتَهُ ثُمَّ أَقَامَ بِمَكَّةَ أَوْ لَمْ يُقِمْ إلَّا أَنَّهُ لَمْ يَرْجِعْ إلَى بَلَدِهِ أَوْ أَهَلَّ بِعُمْرَتِهِ كَذَلِكَ فِي أَشْهُرِ الْحَجِّ، وَلَمْ يَكُنْ مِنْ أَهْلِ الْمَوَاقِيتِ، فَمَا دُونَهَا فَهُوَ مُتَمَتِّعٌ عَلَيْهِ الْهَدْيُ أَوْ الصَّوْمُ، فَإِنْ أَهَلَّ بِعُمْرَتِهِ فِي غَيْرِ أَشْهُرِ الْحَجِّ، وَطَافَ مِنْ عُمْرَتِهِ ثَلَاثَةَ أَشْوَاطٍ، ثُمَّ أَهَلَّ هِلَالُ شَوَّالٍ فَلَيْسَ مُتَمَتِّعًا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَوَافَقَهُ أَبُو يُوسُفَ عَلَى ذَلِكَ إلَّا أَنَّهُ قَالَ: إذَا رَجَعَ إلَى مَا وَرَاءَ مِيقَاتٍ مِنْ الْمَوَاقِيتِ فَلَيْسَ مُتَمَتِّعًا، وَقَالُوا: مَنْ كَانَ مُتَمَتِّعًا وَلَا هَدْيَ مَعَهُ فَإِنَّهُ يَحِلُّ إذَا أَتَمَّ عُمْرَتَهُ، فَإِنْ كَانَ أَتَى بِهَدْيِهِ فَإِنَّهُ لَا يَحِلُّ حَتَّى يَحِلَّ مِنْ الْحَجِّ يَوْمَ النَّحْرِ، فَإِنْ حَلَّ فَعَلَيْهِ هَدْيٌ آخَرُ لِإِحْلَالِهِ.

L13681 A group has stated: If someone performs ‘Umrah during the months of Hajj or assumes Ihram for ‘Umrah in Ramadan but has any part of the Tawaf between Al-Ṣafā and Al-Marwah remaining, even if minor, and then the crescent of Shawwāl appears—whether he remains in Mecca or returns to a region nearer than his original region—then performs Hajj in the same year, he is considered a *mutamatti‘*. If he completes his ‘Umrah in Ramadan, he is not a *mutamatti‘*. Similarly, one who performs ‘Umrah in a month from the months of Hajj, then returns to his original region or a region equally distant as his original region, is not considered a *mutamatti‘* even if he performs Hajj in the same year. This is the opinion of Mālik.

وَقَالَتْ طَائِفَةٌ: مَنْ اعْتَمَرَ فِي أَشْهُرِ الْحَجِّ أَوْ أَهَلَّ بِعُمْرَةٍ فِي رَمَضَانَ ثُمَّ بَقِيَ عَلَيْهِ مِنْ الطَّوَافِ بَيْنَ الصَّفَا وَالْمَرْوَةِ شَيْءٌ وَإِنْ قَلَّ فَأَهَلَّ هِلَالُ شَوَّالٍ ثُمَّ أَقَامَ بِمَكَّةَ أَوْ رَجَعَ إلَى أُفُقٍ دُونَ أُفُقِهِ فِي الْبُعْدِ ثُمَّ حَجَّ مِنْ عَامِهِ فَهُوَ مُتَمَتِّعٌ، فَإِنْ أَتَمَّ عُمْرَتَهُ فِي رَمَضَانَ فَلَيْسَ مُتَمَتِّعًا - وَكَذَلِكَ الَّذِي يَعْتَمِرُ فِي شَهْرٍ مِنْ شُهُورِ الْحَجِّ، ثُمَّ يَرْجِعُ إلَى أُفُقِهِ أَوْ أُفُقٍ مِثْلِ أُفُقِهِ فِي الْبُعْدِ فَلَيْسَ مُتَمَتِّعًا، وَإِنْ حَجَّ مِنْ عَامِهِ - وَهُوَ قَوْلُ مَالِكٍ.

L13682–13684 A group has said: Whoever performs the majority of his Umrah during the months of Hajj, then remains or departs to a location short of one of the

miqats, he is considered a Tamattuʿ pilgrim if he performs Hajj in the same year. If he departs to one of the miqats or performs Umrah outside the Hajj months, he is not a Tamattuʿ pilgrim: this is the opinion of al-Shāfiʿī.

Abū Muḥammad said: As for Abū Ḥanīfah's division between the four circuits and the minimum required to be a Tamattuʿ pilgrim, this is an opinion not known from anyone before him. He provides no evidence for it from either the Qur'ān or the Sunnah. Neither a sound narration, nor a weak narration, nor a saying of a Companion, nor a Follower; nor analogy.

L13685 Some of his emulators argued in his defense by citing his reliance on ʿAṭāʾ's opinion regarding a woman who menstruates after performing four circuits of circumambulation. Abū Muḥammad said: This is a separate issue from Tamattuʿ, and ʿAṭāʾ's opinion here is also erroneous, for it contradicts the command of the Messenger of Allah—peace and blessings be upon him—that a menstruating woman must not circumambulate the House, and because it constitutes an arbitrary division without any foundational evidence. As for Abū Ḥanīfah's opinion that a person performing ʿUmrah with a sacrificial animal who intends to perform Ḥajj does not exit the state of iḥrām until he exits iḥrām for his Hajj, he based this on narrations from the Prophet—peace and blessings be upon him—commanding those with sacrificial animals to remain in iḥrām and those without sacrificial animals to exit iḥrām. However, to cite these narrations as evidence for Abū Ḥanīfah's opinion reflects profound ignorance, an assertion devoid of knowledge, or a deliberate fabrication by one who knowingly lies against the Messenger of Allah—peace and blessings be upon him. Both alternatives are calamitous, for all these narrations merely indicate that the Prophet—peace and blessings be upon him—commanded those without sacrificial animals among pilgrims performing Ifrād (single Ḥajj) or Qirān (combined Ḥajj and ʿUmrah) to exit iḥrām, while ordering those with sacrificial animals to combine Ḥajj and ʿUmrah. None of these narrations state that he—peace and blessings be upon him—commanded a person performing ʿUmrah who did not combine it to remain

وَقَالَتْ طَائِفَةٌ: مَنْ اعْتَمَرَ أَكْثَرَ عُمْرَتِهِ فِي أَشْهُرِ الْحَجِّ، ثُمَّ أَقَامَ أَوْ خَرَجَ إِلَى مَا دُونَ مِيقَاتٍ مِنْ الْمَوَاقِيتِ فَهُوَ مُتَمَتِّعٌ إذَا حَجَّ مِنْ عَامِهِ، فَإِنْ خَرَجَ إِلَى مِيقَاتٍ مِنْ الْمَوَاقِيتِ أَوْ اعْتَمَرَ فِي غَيْرِ أَشْهُرِ الْحَجِّ فَلَيْسَ مُتَمَتِّعًا - وَهُوَ قَوْلُ الشَّافِعِيِّ -: قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فِي تَقْسِيمِهِ بَيْنَ الْأَرْبَعَةِ الْأَشْوَاطِ وَالْأَقَلِّ فِيمَا يَكُونُ بِهِ مُتَمَتِّعًا، فَقَوْلٌ لَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُ، وَلَا حُجَّةَ لَهُ فِيهِ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا قِيَاسٍ.

وَاحْتَجَّ لَهُ بَعْضُ مُقَلِّدِيهِ بِأَنَّهُ عَوَّلَ عَلَى قَوْلِ عَطَاءٍ فِي الْمَرْأَةِ تَحِيضُ بَعْدَ أَنْ طَافَتْ أَرْبَعَةَ أَشْوَاطٍ -: قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ مَسْأَلَةٌ غَيْرُ الْمُتْعَةِ، وَقَوْلُ عَطَاءٍ أَيْضًا فِيهَا خَطَأٌ؛ لِأَنَّهُ خِلَافُ «أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: الْحَائِضَ أَنْ لَا تَطُوفَ بِالْبَيْتِ» وَلِأَنَّهُ تَقْسِيمٌ بِلَا دَلِيلٍ أَصْلًا وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ: إنَّ الْمُعْتَمِرَ - الَّذِي مَعَهُ الْهَدْيُ - الْمُرِيدَ الْحَجَّ فَإِنَّهُ لَا يَحِلُّ حَتَّى يَحِلَّ مِنْ حَجِّهِ فَإِنَّهُ بَنَى عَلَى الْآثَارِ الْوَارِدَةِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَمْرِهِ مَنْ مَعَهُ الْهَدْيُ بِالْبَقَاءِ عَلَى إحْرَامِهِ، وَمَنْ لَا هَدْيَ مَعَهُ بِالْإِحْلَالِ، وَالِاحْتِجَاجُ بِهَذِهِ الْآثَارِ لِقَوْلِ أَبِي حَنِيفَةَ جَهْلٌ مُظْلِمٌ وَقَوْلٌ بِغَيْرِ عِلْمٍ، أَوْ تَعَمُّدٌ - مِمَّنْ يَعْلَمُ الْكَذِبَ - عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكِلَاهُمَا بَلِيَّةٌ، لِأَنَّ جَمِيعَ تِلْكَ الْآثَارِ إنَّمَا وَرَدَتْ بِأَنَّهُ - عَلَيْهِ السَّلَامُ - أَمَرَ مَنْ لَا هَدْيَ مَعَهُ مِنْ الْمُفْرِدِينَ لِلْحَجِّ وَالْقَارِنِينَ بِالْإِحْلَالِ، وَأَمَرَ مَنْ مَعَهُ الْهَدْيُ بِأَنْ يَقْرِنَ بَيْنَ حَجٍّ وَعُمْرَةٍ؛ وَلَيْسَ فِي شَيْءٍ مِنْهَا أَنَّهُ - عَلَيْهِ السَّلَامُ - أَمَرَ مُعْتَمِرًا لَمْ يُقْرِنْ بِالْبَقَاءِ عَلَى إحْرَامِهِ، وَقَدْ ذَكَرْنَاهَا فِي ذِكْرِنَا عَمَلَ الْحَجِّ مِنْ دِيوَانِنَا هَذَا.

in iḥrām. We have previously mentioned these narrations in our account of Hajj rites within this compilation of ours.

L13686–13688 As for Mālik's statement regarding his distinction concerning the continuation of part of the *sa'y* for his 'Umrah until the crescent of Shawwāl appears, it is not preserved from anyone before him, nor does he have any basis for it—neither from the Quran, nor the Sunnah, nor a sound or weak narration, nor the statement of a Companion, nor a Follower, nor analogy. Al-Shāfi'ī also said: "There is absolutely no evidence for this; it is sheer opinions." Therefore, it is necessary to examine the other opinions regarding four aspects of this ruling: 1. One who enters *iḥrām* for 'Umrah outside the months of Ḥajj. 2. One who resides in Mecca until performing Ḥajj, returns to their hometown, or travels farther away and then performs Ḥajj in the same year. 3. One who performs 'Umrah outside the months of Ḥajj, stays in Mecca, then performs another 'Umrah during the months of Ḥajj, and subsequently performs Ḥajj in the same year. 4. Whether the *mutamatti'* is someone who missed Ḥajj, as Ibn al-Zubayr stated, or if such a person is not considered a *mutamatti'*. When we examined Ibn al-Zubayr's statement, we found that other Companions (may Allah be pleased with them) disagreed with him. We also found his opinion to be baseless, as evidence points to its error. For Allah—Exalted is He—refers to one prevented from reaching Ḥajj until its time passes as a *muḥṣar*, not a *mutamatti'*, and distinguishes between their rulings. And regarding the ruling of the one performing Tamattu', the Exalted said: "{But if you are prevented, then [offer] what can be feasibly obtained of the sacrifice}" [Al-Baqarah: 196]. And the Exalted said: "{Whoever performs Tamattu' by combining Umrah with Hajj must offer what can be feasibly obtained of the sacrifice. But whoever cannot find [it] must fast three days during Hajj and seven upon returning—making ten complete days in total. This is for those whose families are not present at the Sacred Mosque}" [Al-Baqarah: 196]. Thus, the Exalted differentiated between their two names and their two rulings; therefore, it is impermissible to say they are one and the same—and with Allah, the Exalted, lies all success.[22]

وَأَمَّا قَوْلُ مَالِكٍ فِي تَفْرِيقِهِ بَيْنَ بَقَاءِ شَيْءٍ مِنْ السَّعْيِ لِعُمْرَتِهِ حَتَّى يَهُلَّ هِلَالُ شَوَّالٍ فَلَا يُحْفَظُ عَنْ أَحَدٍ قَبْلَهُ، وَلَا لَهُ أَيْضًا مُتَعَلَّقٌ فِي ذَلِكَ لَا بِقُرْآنٍ، وَلَا بِسُنَّةٍ، وَلَا بِرِوَايَةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا بِقَوْلِ صَاحِبٍ، وَلَا تَابِعٍ وَلَا قِيَاسٍ وَقَوْلُ الشَّافِعِيِّ أَيْضًا: لَا حُجَّةَ لَهُ فِيهِ أَصْلًا، وَإِنَّمَا هِيَ آرَاءٌ مَحْضَةٌ فَوَجَبَ النَّظَرُ فِي سَائِرِ الْأَقْوَالِ فِي أَرْبَعَةِ مَوَاضِعَ مِنْ هَذَا الْحُكْمِ -: أَحَدُهَا: مَنْ أَهَلَّ بِعُمْرَةٍ فِي غَيْرِ أَشْهُرِ الْحَجِّ، وَالثَّانِي: مَنْ أَقَامَ بِمَكَّةَ حَتَّى حَجَّ أَوْ رَجَعَ إلَى بَلَدِهِ أَوْ أَبْعَدَ مِنْ بَلَدِهِ ثُمَّ حَجَّ مِنْ عَامِهِ، وَالثَّالِثُ: مَنْ اعْتَمَرَ فِي غَيْرِ أَشْهُرِ الْحَجِّ وَأَقَامَ بِمَكَّةَ ثُمَّ اعْتَمَرَ فِي أَشْهُرِ الْحَجِّ ثُمَّ حَجَّ مِنْ عَامِهِ، وَالرَّابِعُ: هَلْ الْمُتَمَتِّعُ مَنْ فَاتَهُ الْحَجُّ كَمَا قَالَ ابْنُ الزُّبَيْرِ أَمْ لَيْسَ هَذَا مُتَمَتِّعًا؟ -: فَنَظَرْنَا فِي قَوْلِ ابْنِ الزُّبَيْرِ هَذَا فَوَجَدْنَا غَيْرَهُ مِنْ الصَّحَابَةِ [- رَضِيَ اللَّهُ عَنْهُمْ -] قَدْ خَالَفُوهُ، وَوَجَدْنَاهُ قَوْلًا بِلَا دَلِيلٍ، بَلْ الدَّلِيلُ قَائِمٌ عَلَى خَطَئِهِ، لِأَنَّ اللَّهَ - تَعَالَى - سَمَّى مَنْ حَالَ بَيْنَهُ وَبَيْنَ إدْرَاكِ الْحَجِّ حَتَّى فَاتَ وَقْتُهُ: مُحْصَرًا، وَلَمْ يُسَمِّهِ: مُتَمَتِّعًا - وَفَرَّقَ بَيْنَ حُكْمِهِ وَبَيْنَ حُكْمِ الْمُتَمَتِّعِ، قَالَ - تَعَالَى -: {فَإِنْ أُحْصِرْتُمْ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ} [البقرة: ١٩٦] وَقَالَ - تَعَالَى -: {فَمَنْ تَمَتَّعَ بِالْعُمْرَةِ إِلَى الْحَجِّ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ فَمَنْ لَمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةٍ إِذَا رَجَعْتُمْ تِلْكَ عَشَرَةٌ كَامِلَةٌ ذَلِكَ لِمَنْ لَمْ يَكُنْ أَهْلُهُ حَاضِرِي الْمَسْجِدِ الْحَرَامِ} [البقرة: ١٩٦] فَفَرَّقَ - تَعَالَى - بَيْنَ اسْمَيْهِمَا وَبَيْنَ حُكْمَيْهِمَا، فَلَمْ يَجُزْ أَنْ يُقَالَ: هُمَا شَيْءٌ وَاحِدٌ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[22] **Qur'an references (L13686):** Qur'an 2:196 (Al-Baqarah).

ثُمَّ نَظَرْنَا فِي قَوْلِ طَاوُسٍ: إنَّ مَنْ اعْتَمَرَ فِي أَشْهُرِ الْحَجِّ فَهُوَ مُتَمَتِّعٌ، وَإِنْ لَمْ يَحُجَّ مِنْ عَامِهِ ذَلِكَ، فَوَجَدْنَاهُ خَطَأً، لِأَنَّ اللَّهَ - تَعَالَى - يَقُولُ: {فَمَنْ تَمَتَّعَ بِالْعُمْرَةِ إِلَى الْحَجِّ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ فَمَنْ لَمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةٍ إِذَا رَجَعْتُمْ} [البقرة: ١٩٦] فَصَحَّ بِنَصِّ الْقُرْآنِ أَنَّهُ لَيْسَ مُتَمَتِّعًا إلَّا مَنْ حَجَّ بَعْدَ عُمْرَتِهِ لِوُجُوبِ الصِّيَامِ عَلَيْهِ فِي الْحَجِّ إنْ لَمْ يَجِدْ هَدْيًا.

L13689 Then we examined the statement of Ṭāwus: "Whoever performs ʿUmrah during the months of Ḥajj is a mutamattiʿ, even if he does not perform Ḥajj in that same year." We found this erroneous, for Allah—Exalted is He—states: "Whoever combines ʿUmrah with Ḥajj should offer what is readily available as a sacrificial offering. Whoever cannot afford it must fast three days during the days of Ḥajj and seven when you return" [Al-Baqarah: 196]. Thus, the Quranic text definitively confirms that none is considered a mutamattiʿ except one who performs Ḥajj after his ʿUmrah, due to the obligation of fasting during the days of Ḥajj upon him if he cannot find an offering.[23]

ثُمَّ نَظَرْنَا فِيمَنْ اعْتَمَرَ فِي غَيْرِ أَشْهُرِ الْحَجِّ، أَوْ فِي أَشْهُرِ الْحَجِّ، أَوْ اعْتَمَرَ بَعْضَ عُمْرَتِهِ فِي غَيْرِ أَشْهُرِ الْحَجِّ أَقَلَّهَا أَوْ أَكْثَرَهَا، وَبَعْضَهَا فِي أَشْهُرِ الْحَجِّ أَقَلَّهَا أَوْ أَكْثَرَهَا، وَفِيمَنْ أَقَامَ مِنْ هَؤُلَاءِ بِمَكَّةَ حَتَّى حَجَّ مِنْ عَامِهِ أَوْ لَمْ يُقِمْ لَكِنْ خَرَجَ إلَى مَسَافَةٍ تُقْصَرُ فِيهَا الصَّلَاةُ أَوْ لَا تُقْصَرُ، أَوْ إلَى مِيقَاتٍ أَوْ وَرَاءَ مِيقَاتٍ إلَى بَلَدِهِ أَوْ مِثْلِ بَلَدِهِ أَوْ أَبْعَدَ مِنْ بَلَدِهِ، ثُمَّ حَجَّ مِنْ عَامِهِ فَكَانَ كُلُّ هَؤُلَاءِ مُمْكِنًا فِي اللُّغَةِ أَنْ يَقَعَ عَلَيْهِ اسْمُ: مُتَمَتِّعٌ بِالْعُمْرَةِ إلَى الْحَجِّ، وَمُمْكِنًا أَنْ لَا يَقَعَ عَلَيْهِ أَيْضًا اسْمُ: مُتَمَتِّعٌ - فَلَمْ يَجُزْ أَنْ يُوقِعَ عَلَى أَحَدٍ إيجَابَ غَرَامَةِ هَدْيٍ أَوْ إيجَابَ صَوْمٍ بِالظَّنِّ إلَّا بِبَيَانٍ جَلِيٍّ أَنَّ اللَّهَ - تَعَالَى - أَلْزَمَهُ ذَلِكَ، فَوَجَبَ الرُّجُوعُ إلَى بَيَانِ سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ -: فَوَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نَا يَحْيَى بْنُ بُكَيْرٍ نَا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ عُمَرَ «تَمَتَّعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَجَّةِ الْوَدَاعِ بِالْعُمْرَةِ إلَى الْحَجِّ، وَأَهْدَى وَسَاقَ مَعَهُ الْهَدْيَ مِنْ ذِي الْحُلَيْفَةِ وَبَدَأَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَهَلَّ بِالْعُمْرَةِ ثُمَّ أَهَلَّ بِالْحَجِّ فَتَمَتَّعَ النَّاسُ مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْعُمْرَةِ إلَى الْحَجِّ، فَكَانَ مِنْ النَّاسِ مَنْ أَهْدَى، فَسَاقَ الْهَدْيَ وَمِنْهُمْ مَنْ لَمْ يُهْدِ، فَلَمَّا قَدِمَ رَسُولُ اللَّهِ - صَلَّى

L13690–13692 Then we examined those who performed Umrah outside the Hajj months, during the Hajj months, or performed part of their Umrah—whether a smaller or larger part—outside the Hajj months and another part during the Hajj months—whether a smaller or larger part. We also considered those among them who resided in Mecca until performing Hajj in the same year, or did not reside but traveled a distance where prayer is shortened or not shortened, or to a miqat boundary, beyond a miqat to their hometown, a distance equivalent to their hometown, or farther than their hometown, then performed Hajj in the same year. All these scenarios could linguistically fall under the term "one performing *Tamattuʿ* (combining Umrah with Hajj)," or they might not. Thus, it is impermissible to impose the obligation of a sacrificial animal or fasting on anyone through mere speculation unless there is clear evidence that Allah—Exalted is He—has mandated it. Consequently, we must refer to the clarification in the Sunnah of Allah's Messenger—peace and blessings be upon him. We found what we narrated via Bukhari's chain: Yahya ibn Bukayr narrated to us; al-Layth—he is Ibn Sa'd—narrated to us, from 'Uqayl ibn Khalid, from al-Zuhri, from Salim ibn 'Abdullah ibn 'Umar, who said: 'Abdullah ibn 'Umar stated, "Allah's Messenger—peace and blessings be upon him—performed *Tamattuʿ* during the Farewell Hajj by combining Umrah with Hajj. He presented a sacrificial animal and drove it with him from Dhul-Hulayfah. The Messenger—peace and blessings be upon him—first entered *Ihram* for Umrah, then entered *Ihram* for Hajj. The people performed *Tamattuʿ* with the Prophet—peace and

[23] **Qur'an references (L13689):** Qur'an 2:196 (Al-Baqarah).

blessings be upon him—by combining Umrah with Hajj. Some brought sacrificial animals, while others did not. When Allah's Messenger—peace and blessings be upon him—arrived in Mecca, he said to the people: 'Whoever among you has presented a sacrificial animal must not cease from anything he was prohibited from.'" until he completes his Hajj. Whoever among you lacks a sacrificial animal must perform Tawaf around the House and between Safa and Marwah, shorten his hair, and exit Ihrām. Then he must assume Ihrām for Hajj. Whoever cannot procure a sacrificial animal must fast three days during Hajj and seven days upon returning home." The remainder of the authentic hadith was narrated. This text clarifies: *Who is the Tamattuʿ pilgrim (undertaking Umrah followed by Hajj in the same journey) obligated to offer the sacrifice or observe the prescribed fasting?* This is because the Prophet (peace be upon him) issued this ruling exclusively to his companions who performed *Tamattuʿ* by undertaking Umrah followed by Hajj in the same journey (after exiting Ihrām). They were people who initiated Ihrām for Umrah during the Hajj months and performed Hajj within those same months. This established narration thereby excludes from *Tamattuʿ* status anyone who performed any portion of their Umrah outside *all*, *most*, or even *fewer* of the Hajj months. This is because the Prophet (peace be upon him) indubitably did not address anyone possessing these characteristics in this ruling, thus resolving all ambiguity regarding their status with certainty.

اللَّهُ عَلَيْهِ وَسَلَّمَ - مَكَّةَ قَالَ لِلنَّاسِ: مَنْ كَانَ مِنْكُمْ أَهْدَى فَإِنَّهُ لَا يَحِلُّ مِنْ شَيْءٍ حُرِمَ مِنْهُ حَتَّى يَقْضِيَ حَجَّهُ، وَمَنْ لَمْ يَكُنْ مِنْكُمْ أَهْدَى فَلْيَطُفْ بِالْبَيْتِ وَبِالصَّفَا وَالْمَرْوَةِ وَيُقَصِّرْ وَيَحِلَّ ثُمَّ لِيُهِلَّ بِالْحَجِّ فَمَنْ لَمْ يَجِدْ هَدْيًا فَلْيَصُمْ ثَلَاثَةَ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةً إِذَا رَجَعَ إِلَى أَهْلِهِ» وَذَكَرَ بَاقِيَ الْحَدِيثِ، فَكَانَ فِي هَذَا الْخَبَرِ بَيَانُ مَنْ هُوَ الْمُتَمَتِّعُ الَّذِي يَجِبُ عَلَيْهِ الْهَدْيُ أَوْ الصَّوْمُ الْمَذْكُورُ؟ وَهُوَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا أَمَرَ بِهَذَا أَصْحَابَهُ الْمُتَمَتِّعِينَ بِالْعُمْرَةِ إلَى الْحَجِّ، وَهُمْ قَوْمٌ ابْتَدَءُوا الْإِحْرَامَ لِعُمْرَتِهِمْ فِي أَشْهُرِ الْحَجِّ ثُمَّ حَجُّوا فِي تِلْكَ الْأَشْهُرِ - نَخْرُجُ بِهَذَا الْخَبَرِ الثَّابِتِ عَنْ أَنْ يَكُونَ مُتَمَتِّعًا بِالْعُمْرَةِ إلَى الْحَجِّ كُلُّ مَنْ عَمِلَ شَيْئًا مِنْ عُمْرَتِهِ فِي غَيْرِ أَشْهُرِ الْحَجِّ كُلِّهَا أَوْ أَكْثَرِهَا أَوْ أَقَلِّهَا؛ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُخَاطِبْ بِهَذَا الْحُكْمِ أَحَدًا مِنْ أَهْلِ هَذِهِ الصِّفَاتِ بِلَا شَكٍّ وَارْتَفَعَ الْإِشْكَالُ فِي أَمْرِ هَؤُلَاءِ بِيَقِينٍ.

L13693 Additionally, it is said to the one who claims: "If one performs the majority of his Umrah during the months of Hajj, then he is a Mutamatti'": From where do you derive this ruling? This is stated without him asserting: "Whoever performs any part of it during the months of Hajj is a Mutamatti'," and is there no way to evidence this? It is also said to him: From where do you conclude that four circuits of the Umrah's circumambulation constitute the majority? Rather, this is part of the minority, for Umrah — according to your view and ours — entails assuming the state of ihram, followed by seven circuits, then seven rounds between Safa and Marwah. Thus, the remainder after the four circuits may constitute a greater portion of the Umrah's rites than what preceded.

وَأَيْضًا فَيُقَالُ لِمَنْ قَالَ: إنْ عَمِلَ الْأَكْثَرَ مِنْ عُمْرَتِهِ فِي أَشْهُرِ الْحَجِّ فَهُوَ مُتَمَتِّعٌ: مِنْ أَيْنَ لَك هَذَا؟ دُونَ أَنْ يَقُولَ: إنَّ مَنْ عَمِلَ مِنْهَا شَيْئًا فِي أَشْهُرِ الْحَجِّ فَهُوَ مُتَمَتِّعٌ، وَلَا سَبِيلَ إلَى دَلِيلٍ عَلَى ذَلِكَ؟ وَيُقَالُ لَهُ أَيْضًا: مِنْ أَيْنَ لَكَ أَنَّ أَرْبَعَةَ أَشْوَاطٍ مِنْ طَوَافِ الْعُمْرَةِ هُوَ الْأَكْثَرُ؟ بَلْ هُوَ مِنْ جُمْلَةِ الْأَقَلِّ، لِأَنَّ الْعُمْرَةَ عِنْدَك وَعِنْدَنَا إحْرَامُ مُدَّةٍ ثُمَّ سَبْعَةِ أَشْوَاطٍ، ثُمَّ سَبْعَةِ أَطْوَافٍ بَيْنَ الصَّفَا وَالْمَرْوَةِ، فَالْبَاقِي بَعْدَ الْأَرْبَعَةِ الْأَشْوَاطِ قَدْ يَكُونُ أَكْثَرَ مِمَّا مَضَى لَهُ مِنْ عَمَلِ الْعُمْرَةِ.

L13694 And it is said to one who asserts, "If someone performs any part of their

Umrah during the months of Hajj, they are a *Mutamatti'*": On what basis do you make this assertion? Unless you specify, "If they perform the majority of it during the months of Hajj, they are a *Mutamatti'*," there is absolutely no evidence whatsoever. Both positions contradict one another, and both are entirely baseless. And success comes from Allah, the Most High.

وَيُقَالُ لِمَنْ قَالَ: إنْ عَمِلَ مِنْ عُمْرَتِهِ شَيْئًا فِي أَشْهُرِ الْحَجِّ فَهُوَ مُتَمَتِّعٌ: مِنْ أَيْنَ قُلْتَ هَذَا؟ دُونَ أَنْ تَقُولَ: إنْ عَمِلَ الْأَكْثَرَ مِنْهَا فِي أَشْهُرِ الْحَجِّ فَهُوَ مُتَمَتِّعٌ، وَلَا سَبِيلَ إلَى دَلِيلٍ أَصْلًا، وَكِلْتَا الدَّعْوَتَيْنِ تُعَارِضُ الْأُخْرَى، وَكِلْتَاهُمَا لَا شَيْءَ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L13695–13697 There remains the issue of one who departs after performing Umrah during the months of Hajj to his homeland, to a land similar in distance to his homeland, beyond one of the designated Miqats, to one of the designated Miqats, or to a place where prayer is shortened. We find this narration from the Messenger of Allah—peace and blessings be upon him—who clarifies Allah's intent, the Exalted. He did not stipulate that those addressed by this ruling must reside in Mecca or refrain from departing from it entirely. "He does not speak from whim. It is but revelation inspired" (53:3-4). "Your Lord is never forgetful" (19:64). Even if this were... Among the conditions of *tamattu'*, since the Messenger of Allah (peace and blessings be upon him) did not clarify it, we now need to resort to invalid reasoning, false conjecture, and contradictory statements without evidence.[24]

وَبَقِيَ أَمْرُ مَنْ خَرَجَ بَعْدَ اعْتِمَارِهِ فِي أَشْهُرِ الْحَجِّ إلَى بَلَدِهِ أَوْ إلَى بَلَدٍ فِي الْبُعْدِ مِثْلِ بَلَدِهِ، أَوْ إلَى وَرَاءِ مِيقَاتٍ مِنْ الْمَوَاقِيتِ، أَوْ إلَى مِيقَاتٍ مِنْ الْمَوَاقِيتِ، أَوْ إلَى مَا تُقْصَرُ فِيهِ الصَّلَاةُ -: فَوَجَدْنَا هَذَا الْخَبَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُبَيِّنِ عَنْ اللَّهِ - تَعَالَى - مُرَادَهُ لَمْ يَشْتَرِطْ فِيهِ عَلَى مَنْ خَاطَبَهُ بِذَلِكَ الْحُكْمِ إقَامَةً بِمَكَّةَ وَتَرْكَ خُرُوجٍ مِنْهَا أَصْلًا {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَلَوْ كَانَ هَذَا مِنْ شَرْطِ التَّمَتُّعِ لَمَا أَغْفَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيَانَهُ حَتَّى نَحْتَاجَ فِي ذَلِكَ إلَى بَيَانٍ بِرَأْيٍ فَاسِدٍ، وَظَنٍّ كَاذِبٍ، وَتَدَافُعٍ مِنْ الْأَقْوَالِ بِلَا بُرْهَانٍ.

L13698 The statement of the Prophet—may Allah's peace and blessings be upon him—in this authentic report: "He may exit iḥlāl (exit the state of consecration), then he should enter ihlāl (assume the state of consecration) specifically for Hajj," clarifies the permissibility of the period between exiting iḥlāl and entering ihlāl. There is no restriction for those among them—may Allah be pleased with them—who have a need requiring departure from Mecca for it. Thus, it is invalid to consider residing in Mecca until performing Hajj as one of the conditions of tamattuʿ (a form of Hajj combining Umrah and Hajj with a break). And with Allah, the Most High, lies all success.

وَقَوْلُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي هَذَا الْخَبَرِ الثَّابِتِ: «وَيَحِلَّ ثُمَّ لِيُهِلَّ بِالْحَجِّ» بَيَانٌ بِإِبَاحَةِ الْمُهْلَةِ بَيْنَ الْإِحْلَالِ وَالْإِهْلَالِ، وَلَا مَانِعَ لِمَنْ عَرَضَتْ لَهُ مِنْهُمْ - رَضِيَ اللَّهُ عَنْهُمْ - حَاجَةٌ مِنْ الْخُرُوجِ عَنْ مَكَّةَ لَهَا - فَبَطَلَ أَنْ تَكُونَ الْإِقَامَةُ بِمَكَّةَ حَتَّى يَحُجَّ مِنْ شُرُوطِ التَّمَتُّعِ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[24] **Qur'an references (L13695):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 19:64 (Maryam).

وَصَحَّ أَنَّ الْمُتَمَتِّعَ بِنَصِّ الْخَبَرِ الْمَذْكُورِ هُوَ مَنْ أَهَلَّ بِالْعُمْرَةِ فِي أَشْهُرِ الْحَجِّ ثُمَّ حَجَّ فِي تِلْكَ الْأَشْهُرِ فَقَطْ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L13699 It has been established that the *mutamattiʿ*, according to the explicit text of the aforementioned report, is one who assumes *ihram* for ʿUmrah during the months of Hajj and then performs Hajj only within those same months. And success is by Allah, the Exalted.

L13700 Then it is said to those who assert: "If one departs to their homeland, the obligation of sacrifice or fasting—which God, Exalted, has mandated upon the *mutamatti*—is waived." What is your evidence for this? What distinction exists between your claim and those who say: "If one departs to a land as distant as their homeland, they cease to be a *mutamatti*?" Similarly, it is said to those who argue: "If one departs to a land equally distant as their homeland, they are not a *mutamatti*"—what proof supports this? Why did you not limit the waiver of obligation exclusively to those returning to their homeland? And why do you not both instead declare: "Whoever departs beyond a *miqat* is no longer a *mutamatti*?"

Abu Muḥammad said: They have no escape from this question whatsoever unless one retorts: "They were required to perform Hajj from their homeland or from one of the designated ritual boundaries (*mawaqit*)." To such claimants, we respond: You have uttered falsehood. God, Exalted, has never obligated any Muslim to perform Hajj from their homeland, nor from a land equally distant, nor strictly from a *miqat*. Indeed, you yourselves agree with us that a Muslim, upon first attaining the means for Hajj, if they depart for trade or other purposes prior to the Hajj season—and later resolve to perform Hajj—retains sufficient time between their departure and the Hajj period to reach it without constraint. They are not compelled to journey to Mecca at that initial time. If they approach Mecca for their needs and the Hajj period arrives while they remain capable, performing Hajj from that location fulfills their obligation completely. They bear no blame whatsoever for not having initiated Hajj from their homeland.

L13701–13703 Similarly, there is no disagreement that one who passes by a miqat without intending Hajj, Umrah, or entry into Makkah—but rather for a need of his in Rihāṭ or in the garden of Ibn ʿĀmir (Bustān Ibn ʿĀmir)—is not obligated to initiate ihram from that point, and that if he... When he intends to perform

ثُمَّ يُقَالُ لِمَنْ قَالَ: إنْ خَرَجَ إلَى بَلَدِهِ سَقَطَ عَنْهُ الْهَدْيُ وَالصَّوْمُ اللَّذَانِ افْتَرَضَ اللَّهُ - تَعَالَى - أَحَدَهُمَا عَلَى الْمُتَمَتِّعِ: مِنْ أَيْنَ لَك هَذَا؟ وَمَا الْفَرْقُ بَيْنَ مَنْ قَالَ: إنْ خَرَجَ إلَى بَلَدٍ مِثْلِ بَلَدِهِ فِي الْبُعْدِ فَلَيْسَ بِمُتَمَتِّعٍ؟ وَهَكَذَا يُقَالُ أَيْضًا لِمَنْ قَالَ: إنْ خَرَجَ إلَى بَلَدٍ فِي الْبُعْدِ مِثْلِ بَلَدِهِ فَلَيْسَ بِمُتَمَتِّعٍ مِنْ أَيْنَ قُلْتَ هَذَا؟ وَهَلَّا خَصَّصْتَ بِسُقُوطِ التَّمَتُّعِ مَنْ خَرَجَ إلَى بَلَدِهِ فَقَطْ، وَيُقَالُ لَهُمَا جَمِيعًا: هَلَّا قُلْتُمَا مَنْ خَرَجَ إلَى وَرَاءِ مِيقَاتٍ فَلَيْسَ بِمُتَمَتِّعٍ؟ -: قَالَ أَبُو مُحَمَّدٍ: لَا مَخْلَصَ لَهُمْ مِنْ هَذَا السُّؤَالِ أَصْلًا إلَّا أَنْ يَقُولَ قَائِلُهُمْ: كَانَ عَلَيْهِ أَنْ يَأْتِيَ بِالْحَجِّ مِنْ بَلَدِهِ أَوْ مِنْ مِيقَاتٍ مِنْ الْمَوَاقِيتِ؟ فَنَقُولُ لِمَنْ قَالَ هَذَا: قُلْت الْبَاطِلَ، وَمَا أَوْجَبَ اللَّهُ - تَعَالَى - قَطُّ عَلَى أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ أَنْ يَأْتِيَ بِالْحَجِّ مِنْ بَلَدِهِ وَلَا مِنْ مِثْلِ بَلَدِهِ فِي الْبُعْدِ وَلَا مِنْ مِيقَاتٍ وَلَا بُدَّ، بَلْ أَنْتُمْ مُجْمِعُونَ مَعَنَا عَلَى أَنَّ الْمُسْلِمَ فِي أَوَّلِ أَوْقَاتِ الِاسْتِطَاعَةِ لِلْحَجِّ لَوْ خَرَجَ تَاجِرًا أَوْ مُسَافِرًا لِبَعْضِ الْأَمْرِ قَبْلَ مِقْدَارِ مَا إنْ أَرَادَ الْحَجَّ كَانَتْ لَهُ مُهْلَةٌ بَيْنَهُ وَبَيْنَ الْوَقْتِ الَّذِي إذَا أَهَلَّ [فِيهِ] أَدْرَكَ الْحَجَّ عَلَى سَعَةٍ وَمَهْلٍ، فَإِنَّهُ لَا يَلْزَمُهُ الْخُرُوجُ إلَى مَكَّةَ حِينَئِذٍ أَصْلًا، وَأَنَّهُ إنْ قَرُبَ مِنْ مَكَّةَ لِحَاجَتِهِ فَقَرُبَ وَقْتُ الْحَجِّ وَهُوَ بِمُسْتَطِيعٍ لَهُ فَحَجَّ مِنْ ذَلِكَ الْمَكَانِ أَنَّهُ قَدْ أَدَّى مَا عَلَيْهِ بِأَتَمِّ مَا يَلْزَمُهُ، وَأَنَّهُ لَا شَيْءَ عَلَيْهِ إذْ لَمْ يَأْتِ لِلْحَجِّ مِنْ بَلَدِهِ أَصْلًا.

وَكَذَلِكَ لَا خِلَافَ فِيمَنْ جَازَ عَلَى مِيقَاتٍ لَا يُرِيدُ حَجًّا، وَلَا عُمْرَةً، وَلَا دُخُولَ مَكَّةَ لَكِنْ لِحَاجَةٍ لَهُ فِي رِهَاطٍ أَوْ فِي بُسْتَانِ ابْنِ عَامِرٍ أَنَّهُ لَا يَلْزَمُهُ الْإِهْلَالُ مِنْ هُنَالِكَ،

وَأَنَّهُ إِنْ بَدَا لَهُ فِي الْحَجِّ وَالْعُمْرَةِ، وَقَدْ تَجَاوَزَ الْمِيقَاتَ فَإِنَّهُ يُهِلُّ مِنْ مَكَانِهِ ذَلِكَ، وَحَجُّهُ تَامٌّ وَعُمْرَتُهُ تَامَّةٌ، وَأَنَّهُ غَيْرُ مُقَصِّرٍ فِي شَيْءٍ مِمَّا يَلْزَمُهُ.

Ḥajj and ʿUmrah after passing the Miqāt, he must assume iḥrām from his current location. His Ḥajj will be valid, his ʿUmrah will be valid, and that he has not neglected any of his obligatory duties.

فَصَحَّ أَنَّ الْقَصْدَ لِلْحَجِّ أَوْ الْعُمْرَةِ مِنْ بَلَدِ الْإِنْسَانِ، أَوْ مِنْ مِثْلِ بَلَدِهِ فِي الْبُعْدِ، أَوْ مِنْ الْمِيقَاتِ لِمَنْ لَمْ يَمُرَّ بِهِ، وَهُوَ يُرِيدُ حَجًّا أَوْ عُمْرَةً لَيْسَ شَيْءٌ مِنْ ذَلِكَ مِنْ شُرُوطِ الْحَجِّ، وَلَا الْعُمْرَةِ - فَبَطَلَتْ هَذِهِ الْأَقْوَالُ الْفَاسِدَةُ جِدًّا، وَكَانَ تَعَارُضُهَا وَتَوَافُقُهَا بُرْهَانًا فِي فَسَادِ جَمِيعِهَا، فَإِنْ قَالَ مَنْ قَالَ: إنَّهُ إنْ خَرَجَ إلَى الْمِيقَاتِ فَلَيْسَ بِمُتَمَتِّعٍ؛ لِأَنَّ أَهْلَ الْمَوَاقِيتِ لَيْسَ لَهُمْ التَّمَتُّعُ؟ قُلْنَا لَهُ: قَدْ قُلْتَ الْبَاطِلَ، وَاحْتَجَجْت لِلْخَطَأِ بِالْخَطَأِ، وَلِدَعْوَى كَاذِبَةٍ، وَكَفَى بِهَذَا مَقْتًا.

L13704 It has thus been established that the intention to perform Hajj or *ʿUmrah* from one's city of residence, from a place equally distant as one's city, or from the *miqat* for those who do not pass by it while intending Hajj or *ʿUmrah*—none of these are among the conditions of Hajj or *ʿUmrah*. Thus, these utterly baseless claims have been nullified, and both their contradictions and their agreement stand as proof against all of them. If someone argues: "If one proceeds to the *miqat*, they cannot be a *mutamattiʿ*, for the people of the *miqat* are not permitted *Tamattuʿ*," we reply: You have spoken falsely, defending error with error and advancing a groundless claim—this alone suffices to condemn it.

فَإِنْ قَالَ: إنَّ أَهْلَ الْمَوَاقِيتِ فَمَا دُونَهَا إلَى مَكَّةَ لَا هَدْيَ عَلَيْهِمْ وَلَا صَوْمَ فِي التَّمَتُّعِ؟ قُلْنَا: قُلْت الْبَاطِلَ وَادَّعَيْت مَا لَا يَصِحُّ، ثُمَّ لَوْ صَحَّ لَك لَكَانَ حُجَّةً عَلَيْك؛ لِأَنَّ أَهْلَ مَكَّةَ لَا هَدْيَ عَلَيْهِمْ، وَلَا صَوْمَ فِي التَّمَتُّعِ وَلَمْ يَكُنْ الْمُقِيمُ بِهَا حَتَّى يَحُجَّ كَذَلِكَ، بَلْ الْهَدْيُ عَلَيْهِ، أَوْ الصَّوْمُ؛ فَهَلَّا إذْ كَانَ عِنْدَك مَنْ خَرَجَ إلَى مِيقَاتٍ فَمَا دُونَهُ إلَى مَكَّةَ يَصِيرُ فِي حُكْمِ مَنْ هُوَ مِنْ أَهْلِ ذَلِكَ الْمَوْضِعِ فِي سُقُوطِ الْهَدْيِ وَالصَّوْمِ عَلَيْهِ، جَعَلْت أَيْضًا الْمُقِيمَ بِمَكَّةَ حَتَّى يَحُجَّ فِي حُكْمِ أَهْلِ مَكَّةَ فِي سُقُوطِ الْهَدْيِ وَالصَّوْمِ عَنْهُمَا - فَظَهَرَ تَنَاقُضُ هَذَا الْقَوْلِ الْفَاسِدِ أَيْضًا.

L13705 If he says: "Indeed, the people of the *miqāts* and the areas between them and Mecca are not obligated to offer a sacrificial animal nor to fast during Tamattuʿ?" We respond: You have uttered falsehood and claimed what is invalid. Furthermore, even if this were valid for you, it would still serve as evidence against you. For while the people of Mecca are exempt from offering a sacrificial animal or fasting during Tamattuʿ, the resident there until performing Hajj was not similarly exempt. Rather, the sacrificial animal or fasting remains obligatory upon him. Why then—given that you assert one who travels to a *miqāt* or areas between it and Mecca assumes the legal status of that location's inhabitants regarding exemption from the sacrificial animal and fasting—do you not also place the resident of Mecca until he performs Hajj under the ruling of Mecca's inhabitants in exempting them from both obligations? Thus, the contradiction within this invalid statement has also become evident.

ثُمَّ يُقَالُ لِمَنْ قَالَ: إنْ خَرَجَ إلَى مَكَان تُقْصَرُ فِيهِ الصَّلَاةُ، سَقَطَ عَنْهُ الْهَدْيُ وَالصَّوْمُ: مِنْ أَيْنَ قُلْت هَذَا؟ وَلَا دَلِيلَ عَلَى صِحَّةِ هَذَا الْقَوْلِ أَصْلًا.

L13706 Then it is said to the one who claims, "If one travels to a place where prayer is shortened, the sacrificial offering and fasting are no longer required of him": On what grounds do you make this claim? There is no evidence whatsoever to support the validity of this statement.

فَإِنْ قَالَ: لِأَنَّهُ قَدْ سَافَرَ إِلَى الْحَجِّ؟ قُلْنَا: نَعَمْ فَكَانَ مَاذَا؟ وَمَا الَّذِي جَعَلَ سَفَرَهُ مُسْقِطًا لِلْهَدْيِ، وَالصَّوْمِ اللَّذَيْنِ أَوْجَبَ اللَّهُ - تَعَالَى - عَلَيْهِ؟ هَاتُوا شَيْئًا غَيْرَ هَذِهِ الدَّعْوَى وَلَا سَبِيلَ إِلَى ذَلِكَ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L13707 If he says: "Because he has traveled for Hajj?" We respond: "Yes—so what then? What has rendered his journey a cause to nullify the sacrificial offering and the fasting, both of which Allah—the Most High—has obligated upon him? Bring forth something beyond this mere assertion, for there is no path to validating it—and success comes only from Allah, the Most High."

قَالَ أَبُو مُحَمَّد: وَمِنْ هَذَا الْخَبَرِ الَّذِي ذَكَرْنَا غَلِطَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ فِي إيجَابِهِمْ عَلَى الْمُتَمَتِّعِ الَّذِي سَاقَ الْهَدْيَ: أَنْ يَبْقَى عَلَى إحْرَامِهِ حَتَّى يَقْضِيَ حَجَّهُ -: قَالَ أَبُو مُحَمَّد: وَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ ابْنَ عُمَرَ رَاوِي الْخَبَرِ - رَضِيَ اللَّهُ عَنْهُ - وَإِنْ كَانَ قَالَ فِي أَوَّلِهِ: تَمَتَّعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَجَّةِ الْوَدَاعِ فِي الْعُمْرَةِ إلَى الْحَجِّ فَإِنَّهُ بَيَّنَ إثْرَ هَذَا الْكَلَامِ صِفَةَ «عَمَلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ أَنَّهُ - عَلَيْهِ السَّلَامُ - بَدَأَ فَأَهَلَّ بِالْعُمْرَةِ ثُمَّ أَهَلَّ بِالْحَجِّ» فَذَكَرَ صِفَةَ الْقِرَانِ.

L13708–13710 And based on this report we have mentioned, Abu Hanifa and his companions erred in their ruling obliging the Tamattuʿ pilgrim (mutamatti) who brought the sacrificial animal to remain in his state of iḥrām until completing his Hajj. Abu Muhammad said: They have no valid proof for this position, because Ibn Umar - the narrator of this report, may Allah be pleased with him - even if... He said at the beginning: "The Messenger of Allah (peace and blessings of Allah be upon him) performed Tamattuʿ during the Farewell Pilgrimage through combining ʿUmrah with Hajj." Following this statement, he clarified the description of 'the Prophet's practice' (peace and blessings of Allah be upon him), mentioning that he (peace and blessings of Allah be upon him) initiated by entering the state of ihram for ʿUmrah, then entered the state of ihram for Hajj - thereby describing the manner of Qirān.

وَهَكَذَا صَحَّ فِي سَائِرِ الْأَخْبَارِ مِنْ رِوَايَةِ الْبَرَاءِ، وَعَائِشَةَ، وَحَفْصَةَ أُمَّيْ الْمُؤْمِنِينَ، وَأَنَسٍ، وَغَيْرِهِمْ: أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ قَارِنًا.

L13711 And thus, it has been authentically established through all other reports narrated by Al-Barāʾ, ʿĀishah, Ḥafṣah (the two Mothers of the Believers), Anas, and others: that he (peace be upon him) was a *qirān* performer—the combination of Ḥajj and ʿUmrah.

فَصَحَّ أَنَّ الَّذِينَ أَمَرَهُمْ - عَلَيْهِ السَّلَامُ - إذْ أَهْدَوْا بِأَنْ لَا يَحِلُّوا إنَّمَا كَانُوا قَارِنِينَ - وَهَكَذَا رَوَتْ عَائِشَةُ أُمُّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - «أَنَّهُ - عَلَيْهِ السَّلَامُ - أَمَرَ مَنْ مَعَهُ الْهَدْيُ بِأَنْ يُهِلَّ بِحَجٍّ مَعَ عُمْرَتِهِ» فَعَادَ احْتِجَاجُهُمْ عَلَيْهِمْ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L13712 Thus, it is established that those whom he—peace be upon him—commanded, when they offered the sacrificial animal, not to terminate Ihrām were indeed performing *Qirān*. Similarly, ʿĀ'ishah, the Mother of the Believers—may Allah be pleased with her—narrated that he—peace be upon him—commanded those with him who had the sacrificial animal to enter Ihrām for Hajj concurrently with his Umrah. Thus, their argument rebounded against them—and success comes only from Allah, the Exalted.

فَإِنْ قَالَ قَائِلٌ: قَدْ صَحَّ الْإِجْمَاعُ عَلَى أَنَّ مَنْ تَمَتَّعَ بِالْعُمْرَةِ إلَى الْحَجِّ فَابْتَدَأَ عُمْرَتَهُ فِي أَشْهُرِ الْحَجِّ، ثُمَّ أَقَامَ بِمَكَّةَ إلَى أَنْ حَجَّ لَمْ يَخْرُجْ عَنْهَا أَنَّهُ مُتَمَتِّعٌ عَلَيْهِ الْهَدْيُ، أَوْ الصَّوْمُ -

L13713 If someone says: A consensus has been established that whoever performs Tamattuʿ by entering *Ihram* for Umrah during the Hajj months, then remains in Mecca until performing Hajj without departing is a *mutamattiʿ* obligated to offer a sacrificial animal or fast—but they differed regarding one

who enters *Ihram* for Umrah before the Hajj months or departs Mecca between Umrah and Hajj: Is he a *mutamattiʿ* or not? Thus, the obligation of the sacrificial animal or fasting would apply only if there is unanimous agreement that he is subject to the *mutamattiʿ* ruling. We say: This is erroneous. People have never agreed upon your claim. It has been narrated to us from Ibn al-Zubayr that the *mutamattiʿ* refers to the *muḥṣar* (one prevented [from completing Hajj]), not one who performs Hajj after Umrah. There is no validity in observing consensus when the Prophet's (peace be upon him) clarification exists, for this claim necessitates contradicting his commands (peace be upon him) in matters lacking unanimous agreement—this is pure falsehood. Rather, when people dispute, we refer to what Allah (Exalted is He) obligated us to refer: the Quran and Sunnah. We do not consider their consensus when a Prophetic clarification exists in one of the disputants' positions. Success is by Allah, the Exalted.

L13714 **The ritual standing at Arafat pertaining to the sacrificial offering.**

L13715 As for our statement that it is not obligatory to halt the sacrificial animal at Arafah—if one does so, it is acceptable, and if not, that too is acceptable—this is because Malik and his followers assert that a sacrificial animal purchased within the sacred precincts does not suffice unless it is necessarily halted at Arafah. Otherwise, it remains invalid if the sacrifice was obligatory. If it is a supererogatory offering not halted at Arafah, it must be slaughtered in Mecca without exception, and it is impermissible to slaughter it in Mina. If the sacrificial animal is purchased outside the sacred precincts and then brought into them, it suffices even if not halted at Arafah. Camels, cattle, and sheep are treated equally in all these rulings according to their school.

L13716–13718 Al-Layth said: It is not considered a *hady* [a sacrificial animal during Hajj] unless it has been garlanded and marked, and the offerer has stood at Arafah. Abu Hanifah, al-Shāfiʿī, Sufyān, and Abū Sulaymān held: There is no significance to identifying the hady, whether purchased within the Sacred Precinct or in al-Ḥill [non-sacred territory]. If it is identified, it is permissible, and if it is not identified, it is permissible.

وَاخْتَلَفُوا فِيهِ إذَا أَهَلَّ بِعُمْرَةٍ قَبْلَ أَشْهُرِ الْحَجِّ، وَإِذَا خَرَجَ بَيْنَ عُمْرَتِهِ، وَحَجِّهِ مِنْ مَكَّةَ أَمُتَمَتِّعٌ [هُوَ] أَمْ لَا؟ فَوَجَبَ أَنْ لَا يَلْزَمَهُ الْهَدْيُ أَوْ الصَّوْمُ إلَّا مَنْ أَجْمَعَ عَلَى أَنَّهُ يَلْزَمُهُ حُكْمُ الْمُتَمَتِّعِ؟ قُلْنَا: هَذَا خَطَأٌ، وَمَا أَجْمَعَ النَّاسُ قَطُّ عَلَى مَا قُلْتُمْ، وَقَدْ رُوِّينَا عَنْ ابْنِ الزُّبَيْرِ أَنَّ الْمُتَمَتِّعَ هُوَ الْمُحْصَرُ لَا مَنْ حَجَّ بَعْدَ أَنْ اعْتَمَرَ، وَلَا مَعْنَى لِمُرَاعَاةِ الْإِجْمَاعِ مَعَ وُرُودِ بَيَانِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؛ لِأَنَّ فِي الْقَوْلِ بِهَذَا إيجَابَ مُخَالَفَةِ أَوَامِرِهِ - عَلَيْهِ السَّلَامُ - مَا لَمْ يُجْمِعْ النَّاسُ عَلَيْهَا، وَهَذَا عَيْنُ الْبَاطِلِ بَلْ إذَا تَنَازَعَ النَّاسُ رَدَدْنَا ذَلِكَ إلَى مَا افْتَرَضَ اللَّهُ - تَعَالَى - عَلَيْنَا الرَّدَّ إلَيْهِ مِنْ الْقُرْآنِ، وَالسُّنَّةِ لَا نُرَاعِي مَا أَجْمَعُوا عَلَيْهِ مَعَ وُجُودِ بَيَانِ السُّنَّةِ فِي أَحَدِ أَقْوَالِ الْمُتَنَازِعِينَ وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[الْوُقُوفُ بِالْهَدْيِ بِعَرَفَةَ]

وَأَمَّا قَوْلُنَا: لَا يَجِبُ الْوُقُوفُ بِالْهَدْيِ بِعَرَفَةَ فَإِنْ وَقَفَ بِهَا فَحَسَنٌ، وَإِلَّا فَحَسَنٌ؛ فَإِنَّ مَالِكًا وَمَنْ قَلَّدَهُ قَالَ: لَا يُجْزِئُ مِنْ الْهَدْيِ الَّذِي يُبْتَاعُ فِي الْحَرَمِ إلَّا أَنْ يُوقَفَ بِعَرَفَةَ وَلَا بُدَّ، وَإِلَّا فَلَا يُجْزِئُ إنْ كَانَ وَاجِبًا، فَإِنْ كَانَ تَطَوُّعًا فَلَمْ يُوقَفْ بِعَرَفَةَ فَإِنَّهُ يُنْحَرُ بِمَكَّةَ وَلَا بُدَّ، وَلَا يَجُوزُ أَنْ يُنْحَرَ بِمِنًى، فَإِنْ ابْتِيعَ الْهَدْيُ فِي الْحِلِّ ثُمَّ أُدْخِلَ الْحَرَمَ أَجْزَأَ، وَإِنْ لَمْ يُوقَفْ بِعَرَفَةَ - وَالْإِبِلُ، وَالْبَقَرُ، وَالْغَنَمُ عِنْدَهُمْ سَوَاءٌ فِي كُلِّ ذَلِكَ.

وَقَالَ اللَّيْثُ: لَا يَكُونُ هَدْيًا إلَّا مَا قَلَّدَ وَأَشْعَرَ وَوَقَفَ بِعَرَفَةَ -: وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَسُفْيَانُ، وَأَبُو سُلَيْمَانَ: لَا مَعْنَى لِلتَّعْرِيفِ بِالْهَدْيِ سَوَاءٌ اُبْتِيعَ فِي الْحَرَمِ أَوْ فِي الْحِلِّ، إنْ عَرَّفَ فَجَائِزٌ، وَإِنْ لَمْ يُعَرِّفْ فَجَائِزٌ.

L13719 Abu Muhammad said: As for Mālik's statement, we do not know it from any scholar—neither before him nor among his contemporaries—nor do we recognize any basis for it whatsoever, neither from a sound Sunnah, nor a weak hadith narration, nor the statement of the Salaf, nor analogical reasoning, nor a meaningful opinion.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مَالِكٍ فَمَا نَعْلَمُهُ عَنْ أَحَدٍ مِنْ الْعُلَمَاءِ لَا قَبْلَهُ وَلَا مَعَهُ، وَلَا نَعْرِفُ لَهُ وَجْهًا أَصْلًا لَا مِنْ سُنَّةٍ صَحِيحَةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ سَلَفٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ مَعْنًى.

L13720 As for the statement of al-Layth, it is argued for by what we have reported through the chains of Ḥajjāj ibn Arṭāh, Isrā'īl, and Yūnus ibn Yūnus. Ḥajjāj said: from ʿAṭāʾ. Isrā'īl said: from Thuwayr ibn Abī Fākhitah, from Ṭāwus: "That the Messenger of Allah (peace be upon him) declared the sacrificial camels." ʿAlī said: These are two mursal narrations (narrations with interrupted chains), and there is no valid proof in a mursal narration. Moreover, Ḥajjāj, Isrā'īl, and Thuwayr are all deemed weak.

وَأَمَّا قَوْلُ اللَّيْثِ فَإِنَّهُ يُحْتَجُّ لَهُ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ حَجَّاجِ بْنِ أَرْطَاةَ، وَإِسْرَائِيلَ، وَيُونُسَ بْنِ يُونُسَ، قَالَ حَجَّاجٌ: عَنْ عَطَاءٍ، وَقَالَ إِسْرَائِيلُ: عَنْ ثُوَيْرِ بْنِ أَبِي فَاخِتَةَ عَنْ طَاوُسٍ " «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَرَّفَ بِالْبُدْنِ» . قَالَ عَلِيٌّ: وَهَذَانِ مُرْسَلَانِ، وَلَا حُجَّةَ فِي مُرْسَلٍ، ثُمَّ إنَّ الْحَجَّاجَ، وَإِسْرَائِيلَ، وَثُوَيْرًا كُلُّهُمْ ضُعَفَاءُ،

L13721 Then, even if it were authentic, it would not constitute proof, because this is an action rather than a command, and it contains no evidence for Mālik since he stipulated conditions none of which are present in this report. The Prophet's (peace and blessings be upon him) sacrificial animals were unquestionably led from Medina. Moreover, Mālik does not require reliance on textual evidence at ʿArafah regarding what is brought into the sacred precincts from the non-sacred area.

ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ فِيهِ حُجَّةٌ، لِأَنَّ هَذَا فِعْلٌ لَا أَمْرٌ، وَلَا حُجَّةَ فِيهِ لِمَالِكٍ لِأَنَّهُ شَرَطَ شُرُوطًا لَيْسَ فِي هَذَا الْخَبَرِ شَيْءٌ مِنْهَا، وَهَدْيُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا سِيقَ مِنْ الْمَدِينَةِ بِلَا خِلَافٍ، وَمَالِكٌ لَا يُوجِبُ التَّوْقِيفَ بِعَرَفَةَ فِيمَا أُدْخِلَ مِنْ الْحِلِّ.

L13722 An argument is also presented in support of al-Layth's opinion based on what we have reported through the chain narrated by Saʿīd ibn Manṣūr, narrated by ʿĪsā ibn Yūnus, narrated by ʿUbaydullāh—who is Ibn ʿUmar—narrated by Nāfiʿ, narrated by Ibn ʿUmar, who said: "There is no sacrificial animal except that which is garlanded, driven, and presented at Arafah."

وَيُحْتَجُّ لِقَوْلِ اللَّيْثِ أَيْضًا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا عِيسَى بْنُ يُونُسَ نَا عُبَيْدُ اللَّهِ هُوَ ابْنُ عُمَرَ - عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: لَا هَدْيَ إلَّا مَا قُلِّدَ، وَسِيقَ، وَوُقِفَ بِعَرَفَةَ.

L13723 And through the chain of Sufyān ibn ʿUyaynah from Ayyūb from Nāfiʿ from Ibn ʿUmar, who said: Any sacrificial animal that has not been ritually marked, garlanded, and driven away from ʿArafat is not valid as a Hajj offering; it is merely an ordinary sacrifice.

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: كُلُّ هَدْيٍ لَمْ يُشْعَرْ وَيُقَلَّدْ وَيُفَضْ بِهِ مِنْ عَرَفَةَ فَلَيْسَ بِهَدْيٍ إنَّمَا هِيَ ضَحَايَا.

L13724 Ali said: This cannot be cited as evidence for Mālik, because he does not consider omission for the sake of adherence to a legal school and ritual marking as an impediment to its status as a sacrificial offering.

قَالَ عَلِيٌّ: مَالِكٌ لَا يُحْتَجُّ [لَهُ] بِهَذَا، لِأَنَّهُ لَا يَرَى التَّرْكَ لِلتَّقْلِيدِ وَلِلْإِشْعَارِ مَانِعًا مِنْ أَنْ يَكُونَ هَدْيًا.

L13725 Ali said: “No one besides the Messenger of Allah—may Allah bless him and grant him peace—holds conclusive authority, for Ibn Umar differed with other Companions regarding this matter. As we narrate through the chain of Sa‘īd ibn Manṣūr: ‘Īsā ibn Yūnus narrated to us: Rabāḥ ibn Abī Ma‘rūf narrated to us from ‘Aṭā’ from Ibn ‘Abbās, who said: ’Mark the sacrificial animal if you wish, or refrain from doing so. People only instituted the practice of herding them out of fear of thieves.’”

قَالَ عَلِيٌّ: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ خَالَفَ ابْنُ عُمَرَ فِي هَذَا غَيْرَهُ - مِنْ الصَّحَابَةِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا عِيسَى بْنُ يُونُسَ نَا رَبَاحُ بْنُ أَبِي مَعْرُوفٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: إنْ شِئْت فَعَرِّفْ الْهَدْيَ، وَإِنْ شِئْت فَلَا تُعَرِّفْ بِهِ إنَّمَا أَحْدَثَ النَّاسُ السِّيَاقَ مَخَافَةَ السُّرَّاقِ.

L13726–13728 From Sa‘īd ibn Manṣūr, who narrated from ‘Īsā ibn Yūnus, who narrated from al-A‘mash, from Ibrāhīm, who said: Al-Aswad summoned... His master ordered him to inform me of what ʿĀ’ishah had said to him. He replied, “Yes. I asked ʿĀ’ishah, the Mother of the Believers. Then I said: ’Shall I mark the sacrificial animal?’ She said: ’There is no harm if you do not mark it.’”

وَعَنْ سَعِيدِ بْنِ مَنْصُورٍ نَا عِيسَى بْنُ يُونُسَ نَا الْأَعْمَشُ عَنْ إبْرَاهِيمَ قَالَ: دَعَا الْأَسْوَدُ مَوْلًى لَهُ فَأَمَرَهُ أَنْ يُخْبِرَنِي بِمَا قَالَتْ لَهُ عَائِشَةُ، فَقَالَ: نَعَمْ سَأَلْتُ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ؟ فَقُلْت: أُعَرِّفُ بِالْهَدْيِ؟ فَقَالَتْ: لَا عَلَيْك أَنْ لَا تُعَرِّفَ بِهِ.

L13729 And from ʿAṭā’ and Ṭāwūs: There is no harm if you do not declare it [your intention].

وَعَنْ عَطَاءٍ، وَطَاوُسٍ: لَا يَضُرُّك أَنْ لَا تُعَرِّفَ بِهِ.

L13730 And it is narrated from Ibn al-Ḥanafiyyah that he commanded a sacrificial camel brought into the sacred precincts from the non-sacred area to be marked.

وَعَنْ ابْنِ الْحَنَفِيَّةِ أَنَّهُ أَمَرَ بِتَعْرِيفِ بَدَنَةٍ أُدْخِلَتْ مِنْ الْحِلِّ.

L13731 From Sa‘īd ibn Jubayr: He did not consider any Hajj sacrificial animal valid except those designated specifically from camels and cattle.

وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ: أَنَّهُ لَمْ يَرَ هَدْيًا إلَّا مَا عُرِّفَ بِهِ مِنْ الْإِبِلِ وَالْبَقَرِ خَاصَّةً.

L13732 Abu Muhammad said: No command has come in the Quran or the Sunnah requiring the specification of any of that, nor is anything obligatory except what Allah, the Exalted, has made obligatory in either of them, nor is there any analogical reasoning that necessitates that as well; because the rites of Hajj are only incumbent upon people, not camels. And success is from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: لَمْ يَأْتِ أَمْرٌ بِتَعْرِيفِ شَيْءٍ مِنْ ذَلِكَ فِي قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا يَجِبُ إلَّا مَا أَوْجَبَهُ اللَّهُ - تَعَالَى - فِي أَحَدِهِمَا، وَلَا قِيَاسَ يُوجِبُ ذَلِكَ أَيْضًا؛ لِأَنَّ مَنَاسِكَ الْحَجِّ إنَّمَا تَلْزَمُ النَّاسَ لَا الْإِبِلَ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L13733 As for our statement: “There is no sacrificial offering incumbent upon the Qārin other than the sacrifice he brought with himself before entering the state of consecration - being a voluntary sacrifice, whether he is a Meccan resident or not” - Mālik and al-Shāfiʿī held that the Qārin is obligated to offer a sacrifice, and its ruling is wholly identical to that of the Mutamattiʿ regarding substitution by fasting if unable to procure a sacrifice. According

وَأَمَّا قَوْلُنَا: وَلَا هَدْيَ عَلَى الْقَارِنِ غَيْرُ الْهَدْيِ الَّذِي سَاقَ مَعَ نَفْسِهِ قَبْلَ أَنْ يُحْرِمَ، وَهُوَ هَدْيُ تَطَوُّعٍ سَوَاءٌ مَكِّيًّا كَانَ أَوْ غَيْرَ مَكِّيٍّ فَإِنَّ مَالِكًا، وَالشَّافِعِيَّ قَالَا: عَلَى الْقَارِنِ هَدْيٌ وَحُكْمُهُ كَحُكْمِ الْمُتَمَتِّعِ سَوَاءً سَوَاءً فِي تَعْوِيضِ الصَّوْمِ مِنْهُ إنْ لَمْ يَجِدْ هَدْيًا، وَلَيْسَ عَلَى الْمَكِّيِّ عِنْدَهُمَا هَدْيٌ، وَلَا صَوْمٌ إنْ قَرَنَ، كَمَا لَا شَيْءَ عَلَيْهِ فِي التَّمَتُّعِ.

to their view, neither a sacrifice nor fasting is required of a Meccan resident who performs Qirān, just as no obligation rests upon him in the case of Tamattuʿ.

وَقَالَ مَالِكٌ: لَمْ أَسْمَعْ قَطُّ أَنَّ مَكِّيًّا قَرَنَ. وَقَالَ أَبُو حَنِيفَةَ: إِنْ تَمَتَّعَ الْمَكِّيُّ فَلَا شَيْءَ عَلَيْهِ - لَا هَدْيَ، وَلَا صَوْمَ - وَإِنْ قَرَنَ فَعَلَيْهِ هَدْيٌ وَلَا بُدَّ، وَلَا يَجُوزُ أَنْ يُعَوَّضَ مِنْهُ صَوْمٌ - وَجَدَ هَدْيًا أَوْ لَمْ يَجِدْ - وَلَا يَجُوزُ لَهُ أَنْ يَأْكُلَ مِنْهُ شَيْئًا.

L13734 Mālik said: I have never heard of any Meccan performing *Qirān*. Abū Ḥanīfa said: If a Meccan performs *Tamattuʿ*, nothing is required of him—neither sacrificial offering nor fasting—but if he performs *Qirān*, he must necessarily offer a sacrificial offering. It is not permissible to substitute fasting for it, whether he found an offering or did not find one, nor is it permissible for him to consume any portion of it.

قَالَ: وَالْمَكِّيُّ عِنْدَهُ مَنْ كَانَ سَاكِنًا فِي أَحَدِ الْمَوَاقِيتِ فَمَا دُونَهَا إِلَى مَكَّةَ - قَالَ: فَإِنْ تَمَتَّعَ مَنْ هُوَ سَاكِنٌ فِيمَا وَرَاءَ الْمَوَاقِيتِ أَوْ قَرَنَ، فَعَلَيْهِ هَدْيٌ - وَلَهُ أَنْ يَأْكُلَ مِنْهُ، فَإِنْ لَمْ يَجِدْ فَصَوْمُ ثَلَاثَةِ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةٍ إِذَا رَجَعَ قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفِيهِ وُجُوهٌ جَمَّةٌ مِنْ الْخَطَأِ -: أَوَّلُهَا - أَنَّهُ تَقْسِيمٌ لَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُ.

L13735 He said: According to al-Makki, whoever is resident within any of the designated boundaries or areas closer to Mecca—he stated that if someone residing beyond the boundaries or at Qarn performs Tamattuʿ, a sacrificial offering becomes obligatory upon him. The pilgrim may consume part of it. If he cannot find it, he must fast three days during Hajj and seven upon returning. Abu Muhammad said: As for Abu Hanifa's position, it contains numerous aspects of error. The first is that it constitutes a classification unattested from anyone before him.

وَالثَّانِي - تَفْرِيقُهُ بَيْنَ قِرَانِ الْمَكِّيِّ وَبَيْنَ تَمَتُّعِهِ، وَتَسْوِيَتُهُ بَيْنَ قِرَانِ غَيْرِ الْمَكِّيِّ وَبَيْنَ تَمَتُّعِهِ بِلَا بُرْهَانٍ.

L13736 The second is his differentiation between the Qirān of a Meccan and his Tamattuʿ, and his equating of the Qirān of a non-Meccan with his Tamattuʿ without justification.

الثَّالِثُ - تَعْوِيضُهُ الصَّوْمَ مِنْ هَدْيِ غَيْرِ الْمَكِّيِّ، وَمَنْعُهُ مِنْ تَعْوِيضِهِ الصَّوْمَ مِنْ هَدْيِ الْمَكِّيِّ؛ كُلُّ ذَلِكَ رَأْيٌ فَاسِدٌ لَا سَلَفَ لَهُ فِيهِ، وَلَا دَلِيلَ أَصْلًا.

L13737 The third matter is substituting fasting for the sacrificial offering of non-Makkan residents and preventing him from substituting fasting for the sacrificial offering of Makkan residents - all of this constitutes a corrupt opinion having no precedent in this matter and no supporting evidence whatsoever.

فَقَالُوا: إِنَّ الْمَكِّيَّ إِذَا قَرَنَ فَهُوَ دَاخِلٌ فِي إِسَاءَةٍ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ وَأَيْنَ وَجَدْتُمْ أَنَّ مَنْ دَخَلَ فِي إِسَاءَةٍ لَمْ يَجُزْ لَهُ أَنْ يُعَوِّضَ مِنْ هَدْيِهِ دَمٌ؟ وَهَذَا قَاتِلُ الصَّيْدِ مُحْرِمًا دَاخِلٌ فِي أَعْظَمِ الْإِسَاءَةِ وَأَشَدِّ الْإِثْمِ، وَقَدْ عَوَّضَ اللَّهُ - تَعَالَى - مِنْ هَدْيِهِ صَوْمًا وَإِطْعَامًا وَخَيَّرَهُ فِي أَيِّ ذَلِكَ شَاءَ؟ وَهَذَا الْمُحْصَرُ غَيْرُ دَاخِلٍ فِي إِسَاءَةٍ بَلْ مَأْجُورٌ مَعْذُورٌ وَلَمْ

L13738–13739 They said: If a Meccan performs qirān (combining Hajj and Umrah), does he commit transgression? We replied: What then? Where have you found that one who commits transgression is not permitted to substitute his sacrificial offering with a blood sacrifice? This killer of game while in a state of ihram has entered into the gravest transgression and most severe sin, yet Allah, Exalted is He, required him to compensate for his sacrificial offering with fasting or feeding the poor, allowing him to choose whichever he wishes. This prevented pilgrim has not committed transgression but is de-

serving reward and excused, yet Allah, Exalted is He, has not required him to compensate for his sacrificial offering with fasting or feeding the poor. What great confusion and disorder is this in the religion of Allah, Exalted is He, by legislating corrupt rulings? Additionally, according to them, if a Meccan performs tamattuʿ, is he committing transgression or not? One of the two must apply. If he is committing transgression, why have they not imposed upon him a sacrificial offering like the one they imposed for qirān? If he is not committing transgression, then on what basis is he obligated to be deemed committing transgression for performing qirān? Can there be more than this in the contradictions of those who are misguided? As for us, neither the Meccan nor others are committing transgression in their qirān or tamattuʿ; rather, both are acting rightly in all of that, like the rest of the people, with no distinction. Thus, the opinion of Abu Hanifah is invalidated due to its profound contradictions and corruption. As for Malik and Al-Shafiʿi, they analogized qirān to tamattuʿ for the Meccan and others.

يُعَوِّضْ اللَّهُ - تَعَالَى - مِنْ هَدْيِهِ صَوْمًا وَلَا إطْعَامًا، فَكَمْ هَذَا التَّخْلِيطُ وَالْخَبْطُ فِي دِينِ اللَّهِ - تَعَالَى - بِشَرْعِ الشَّرَائِعِ الْفَاسِدَةِ فِيهِ؟ وَأَيْضًا: فَالْمَكِّيُّ عِنْدَهُمْ إذَا تَمَتَّعَ فَهُوَ دَاخِلٌ فِي إسَاءَةٍ أَوْ غَيْرُ دَاخِلٍ فِي إسَاءَةٍ لَا بُدَّ مِنْ أَحَدِهِمَا، فَإِنْ كَانَ دَاخِلًا فِي إسَاءَةٍ فَلِمَ لَمْ يَجْعَلُوا عَلَيْهِ هَدْيًا كَالَّذِي جَعَلُوا فِي الْقِرَانِ عَلَيْهِ؟ وَإِنْ كَانَ لَيْسَ دَاخِلًا فِي إسَاءَةٍ فَمِنْ أَيْنَ وَجَبَ أَنْ يَدْخُلَ إذَا قَرَنَ فِي إسَاءَةٍ؟ فَهَلْ فِيمَا يَأْتِي بِهِ الْمَمْرُورُونَ أَكْثَرُ مِنْ هَذَا؟ وَأَمَّا نَحْنُ فَلَيْسَ الْمَكِّيُّ وَلَا غَيْرُهُ مُسِيئًا فِي قِرَانِهِ وَلَا فِي تَمَتُّعِهِ بَلْ هُمَا مُحْسِنَانِ فِي كُلِّ ذَلِكَ كَسَائِرِ النَّاسِ وَلَا فَرْقَ؛ فَسَقَطَ قَوْلُ أَبِي حَنِيفَةَ لِعِظَمِ تَنَاقُضِهِ وَفَسَادِهِ، وَأَمَّا مَالِكٌ، وَالشَّافِعِيُّ، فَإِنَّهُمَا قَاسَا الْقِرَانَ عَلَى الْمُتْعَةِ فِي الْمَكِّيِّ وَغَيْرِهِ.

L13740 Abu Muhammad said: All analogical reasoning is erroneous. Even if analogical reasoning were valid, this case would itself be the very error, for there is no similarity between the pilgrim combining Hajj and Umrah (Qārin) and the pilgrim performing Umrah and Hajj with a break between them (Mutamattiʿ). This is because the Mutamattiʿ releases Iḥrām between their Umrah and Hajj, while the Qārin does not release Iḥrām between their Umrah and Hajj.

قَالَ أَبُو مُحَمَّدٍ: الْقِيَاسُ كُلُّهُ خَطَأٌ ثُمَّ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْخَطَأِ، لِأَنَّهُ لَا شَبَهَ بَيْنَ الْقَارِنِ وَالْمُتَمَتِّعِ، لِأَنَّ الْمُتَمَتِّعَ يَجْعَلُ بَيْنَ عُمْرَتِهِ وَحَجِّهِ إحْلَالًا وَلَا يَجْعَلُ الْقَارِنُ بَيْنَ عُمْرَتِهِ وَحَجِّهِ إحْلَالًا.

L13741 Moreover, the one performing *Qirān*, according to both them and us, performs only one Tawāf and one Saʿy, whereas the one performing *Tamattuʿ* performs two Tawāfs and two Saʿys.

وَأَيْضًا: فَإِنَّ الْقَارِنَ عِنْدَهُمَا وَعِنْدَنَا لَا يَطُوفُ إلَّا طَوَافًا وَاحِدًا وَلَا يَسْعَى إلَّا سَعْيًا وَاحِدًا وَالْمُتَمَتِّعُ يَطُوفُ طَوَافَيْنِ وَيَسْعَى سَعْيَيْنِ.

L13742 Furthermore, the Qārin—who combines Hajj and Umrah—must necessarily perform the rites of Hajj alongside his Umrah, while the Mutamattiʿ—who performs the Tamattuʿ Hajj—is not obligated to perform Hajj if he does not intend to. According to the two scholars, analogy is only valid when based on an effective cause uniting the two rulings, and no such effective cause exists that unites the Qārin and the Mutamattiʿ.

وَأَيْضًا: فَإِنَّ الْقَارِنَ لَا بُدَّ لَهُ مِنْ عَمَلِ الْحَجِّ مَعَ عُمْرَتِهِ وَالْمُتَمَتِّعُ إنْ لَمْ يُرِدْ أَنْ يَحُجَّ لَمْ يَلْزَمْهُ أَنْ يَحُجَّ، وَالْقِيَاسُ عِنْدَهُمَا لَا يَكُونُ إلَّا عَلَى عِلَّةٍ جَامِعَةٍ بَيْنَ الْحُكْمَيْنِ وَلَا عِلَّةَ تَجْمَعُ بَيْنَ الْقَارِنِ وَالْمُتَمَتِّعِ.

L13743–13745 If they say: "The legal cause for this is the waiver of one of the two journeys?"

فَإِنْ قَالُوا: الْعِلَّةُ فِي ذَلِكَ هِيَ إِسْقَاطُ أَحَدِ السَّفَرَيْنِ؟ قُلْنَا: هَذِهِ عِلَّةٌ مَوْضُوعَةٌ لَا دَلِيلَ لَكُمْ عَلَى صِحَّتِهَا وَقَدْ أَرَيْنَاكُمْ بُطْلَانَهَا مِرَارًا، وَأَقْرَبُ ذَلِكَ أَنَّ مَنْ أَحْرَمَ وَعَمِلَ عُمْرَتَهُ فِي آخِرِ يَوْمٍ مِنْ رَمَضَانَ ثُمَّ أَهَلَّ هِلَالُ شَوَّالٍ إثْرَ إحْلَالِهِ مِنْهَا ثُمَّ أَقَامَ بِمَكَّةَ وَلَمْ يَبْرَحْ حَتَّى حَجَّ مِنْ عَامِهِ ذَلِكَ فَلَا هَدْيَ عَلَيْهِ عِنْدَهُمَا وَلَا صَوْمَ، وَقَدْ أَسْقَطَ أَحَدَ السَّفَرَيْنِ.

We respond: "This is a fabricated justification for which you possess no valid evidence, and we have repeatedly shown its invalidity. A more pertinent illustration would be one who enters iḥrām and completes their ʿUmrah on Ramadan's final day, after which the Shawwāl crescent appears immediately..." his exiting the state of iḥrām from it, then he resided in Mecca and did not depart until he performed the pilgrimage in that same year. Thus, neither a sacrificial animal nor fasting is required of him according to them, and he has waived one of the two journeys.

وَكَذَلِكَ مَنْ قَصَدَ إلَى مَا دُونَ التَّنْعِيمِ دَاخِلَ الْعَامِ لِحَاجَةٍ فَلَمَّا صَارَ هُنَالِكَ - وَهُوَ لَا يُرِيدُ حَجًّا وَلَا عُمْرَةً - بَدَا لَهُ فِي الْعُمْرَةِ فَاعْتَمَرَ مِنْ التَّنْعِيمِ فِي آخِرِ يَوْمٍ مِنْ رَمَضَانَ، ثُمَّ أَقَامَ حَتَّى حَجَّ مِنْ عَامِهِ فَلَا هَدْيَ عَلَيْهِ وَلَا صَوْمَ عِنْدَهُمَا، وَهُوَ قَدْ أَسْقَطَ السَّفَرَيْنِ جَمِيعًا سَفَرَ الْحَجِّ وَسَفَرَ الْعُمْرَةِ.

L13746 Similarly, if someone intended to go to a place closer than al-Tanʿīm within the same year for a need, and when he arrived there—without initially intending Ḥajj or ʿUmrah—it then occurred to him to perform ʿUmrah, so he assumed Ihrām from al-Tanʿīm and performed ʿUmrah on the last day of Ramaḍān, then remained [in Mecca] until performing Ḥajj in that same year, there is no Hady required from him nor is there any fasting, according to both opinions—since he has eliminated both journeys entirely: the Ḥajj journey and the ʿUmrah journey.

ثُمَّ يَقُولَانِ فِيمَنْ حَجَّ بَعْدَهُ بِسَاعَةٍ إثْرَ ظُهُورِ هِلَالِ شَوَّالٍ فَاعْتَمَرَ، ثُمَّ خَرَجَ إلَى الْبَيْدَاءِ عَلَى أَقَلَّ مِنْ بَرِيدٍ مِنْ الْمَدِينَةِ عِنْدَ الشَّافِعِيِّ، أَوْ إلَى مَدِينَةِ الْفُسْطَاطِ، وَهُوَ مِنْ أَهْلِ الْإِسْكَنْدَرِيَّةِ عِنْدَ مَالِكٍ ثُمَّ حَجَّ مِنْ عَامِهِ: فَعَلَيْهِ الْهَدْيُ أَوْ الصَّوْمُ، وَهُوَ لَمْ يُسْقِطْ سَفَرًا أَصْلًا، فَظَهَرَ فَسَادُ هَذِهِ الْعِلَّةِ الَّتِي لَا عِلَّةَ أَفْسَدَ مِنْهَا، وَلَا أَبْطَلَ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L13747 Then they both state regarding one who performed Hajj after him by an hour following the appearance of the Shawwāl crescent, then performed ʿUmrah, then departed to al-Baydāʾ—a distance less than a barīd from Medina according to al-Shāfiʿī—or to the city of Fusṭāṭ, being a resident of Alexandria according to Mālik, then performed Hajj in the same year: he must offer a ritual sacrifice or fast, for he did not omit any travel at all. Thus the corruption of this reasoning—a reasoning than which none is more corrupt or void—becomes evident. And by Allah, the Exalted, is success.

وَاحْتَجَّ بَعْضُ أَهْلِ الْمَعْرِفَةِ مِمَّنْ يَرَى الْهَدْيَ فِي الْقِرَانِ بِأَنْ قَالَ: قَدْ صَحَّ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَعَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَعِمْرَانَ بْنَ الْحُصَيْنِ، وَعَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّهُمْ سَمَّوْا الْقِرَانَ: تَمَتُّعًا، وَهُمْ الْحُجَّةُ فِي اللُّغَةِ، فَإِذْ الْقِرَانُ تَمَتُّعٌ فَالْهَدْيُ فِيهِ، أَوْ الصَّوْمُ بِنَصِّ الْقُرْآنِ فِي إيجَابِ ذَلِكَ عَلَى الْمُتَمَتِّعِ.

L13748 Some people of knowledge who uphold the view requiring the sacrificial animal in Qirān argued by stating: It is authentically established from Sa'd ibn Abī Waqqāṣ, ʻAlī ibn Abī Ṭālib, ʻĀ'ishah the Mother of the Believers, ʻImrān ibn al-Ḥuṣayn, and ʻAbdullāh ibn ʻUmar that they linguistically termed Qirān as Tamattu'. They are the definitive references in linguistic matters. Thus, since Qirān is [designated] Tamattu', the sacrificial animal in it, or fasting, becomes obligatory by the Quranic text stipulating this obligation upon the Mutamatti'.

L13749 Abū Muḥammad said: There is no disagreement among these individuals—may Allah be pleased with them—or others that the act of one entering *ihram* for both Ḥajj and ʿUmrah together differs from the act of one entering *ihram* for ʿUmrah alone, then performing Ḥajj in the same year through another newly initiated *ihlāl* (entering *ihram*). Since this is so, the reference point is the clarification provided by the Messenger of Allah—peace and blessings be upon him. Granted that both are termed *tamattuʿ*, they are nevertheless two distinct acts.

قَالَ أَبُو مُحَمَّد: لَا يَخْتَلِفُ هَؤُلَاءِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا غَيْرُهُمْ فِي أَنَّ عَمَلَ الْمُهِلِّ بِحَجٍّ وَعُمْرَةٍ مَعًا هُوَ عَمَلٌ غَيْرُ عَمَلِ الْمُهِلِّ بِعُمْرَةٍ فَقَطْ، ثُمَّ يَحُجُّ مِنْ عَامِهِ بِإِهْلَالٍ آخَرَ مُبْتَدَأٍ؛ فَإِذْ ذَلِكَ كَذَلِكَ فَالْمَرْجُوعُ إلَيْهِ هُوَ بَيَانُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَبْكَ أَنَّ كِلَيْهِمَا يُسَمَّى تَمَتُّعًا إلَّا أَنَّهُمَا عَمَلَانِ مُتَغَايِرَانِ.

L13750–13752 We examined that matter and found the Hadith we previously mentioned, narrated by Al-Bukhari from Yahya ibn Bukayr from Al-Layth from Uqayl ibn Khalid from Al-Zuhri from Salim ibn Abdullah ibn Umar from his father: "The Messenger of Allah—peace and blessings of Allah be upon him—assumed Ihram for Umrah, then assumed Ihram for Hajj. The people, along with him—peace be upon him—performed Tamattuʿ by combining Umrah with Hajj. Some among them had brought along the sacrificial animals, while others had not. When the Messenger of Allah—peace and blessings of Allah be upon him—arrived in Makkah, he said to the people: 'Whoever among you has offered a sacrifice must not release himself from any restriction of Ihram until...'" "He should complete his Hajj. Whoever among you has not brought a sacrificial animal must perform Tawaf around the Kaaba, perform Sa'y between Safa and Marwah, shorten his hair, leave Ihram and resume normal acts, then enter Ihram for Hajj. Whoever cannot find a sacrificial animal must fast three days during Hajj and seven days upon returning home.""

فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا الْحَدِيثَ الَّذِي ذَكَرْنَا قَبْلُ مِنْ رِوَايَةِ الْبُخَارِيِّ عَنْ يَحْيَى بْنِ بُكَيْرٍ عَنْ اللَّيْثِ عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَهَلَّ بِالْعُمْرَةِ ثُمَّ أَهَلَّ بِالْحَجِّ فَتَمَتَّعَ النَّاسُ مَعَهُ - عَلَيْهِ السَّلَامُ - بِالْعُمْرَةِ إلَى الْحَجِّ، فَكَانَ مِنْ النَّاسِ مَنْ أَهْدَى فَسَاقَ الْهَدْيَ وَمِنْهُمْ مَنْ لَمْ يُهْدِ، فَلَمَّا قَدِمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَكَّةَ قَالَ لِلنَّاسِ: مَنْ كَانَ مِنْكُمْ أَهْدَى فَإِنَّهُ لَا يَحِلُّ مِنْ شَيْءٍ حُرِمَ مِنْهُ حَتَّى يَقْضِيَ حَجَّهُ، وَمَنْ لَمْ يَكُنْ مِنْكُمْ أَهْدَى فَلْيَطُفْ بِالْبَيْتِ وَبَيْنَ الصَّفَا وَالْمَرْوَةِ وَيُقَصِّرْ وَيَحِلَّ؛ ثُمَّ لِيُهِلَّ بِالْحَجِّ فَمَنْ لَمْ يَجِدْ هَدْيًا فَلْيَصُمْ ثَلَاثَةَ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةً إذَا رَجَعَ إلَى أَهْلِهِ» .

L13753 We have previously mentioned through the chain of Mālik and Maʿmar from al-Zuhrī from ʿUrwah from ʿĀ'ishah, the Mother of the Believers, that the Messenger of Allah—peace and blessings be upon him—commanded those accompanying him with sacrificial animals to combine their Umrah with Hajj. Thus, the Prophet's ruling—peace and blessings be upon him—was confirmed for those performing Tamattuʿ by combining Umrah with Hajj through offering a sacrificial animal or fasting, while he did not command the Qārin to do anything from that.

وَقَدْ ذَكَرْنَا قَبْلُ مِنْ طَرِيقِ مَالِكٍ وَمَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ مَنْ مَعَهُ الْهَدْيُ بِأَنْ يَجْعَلَ مَعَ عُمْرَتِهِ حَجًّا، فَصَحَّ أَمْرُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ تَمَتَّعَ بِالْعُمْرَةِ إلَى الْحَجِّ بِالْهَدْيِ، أَوْ الصَّوْمِ وَلَمْ يَأْمُرْ الْقَارِنَ بِشَيْءٍ مِنْ ذَلِكَ» .

L13754 We found what was narrated to us through Muslim: Abu Bakr ibn Abi Shaybah narrated to us, ʿAbdah ibn Sulaymān narrated to us, from Hisham

ibn Urwah, from his father, from Aisha, who said: “We departed with the Messenger of Allah (peace be upon him) during the Farewell Pilgrimage coinciding with the sighting of the Dhul-Hijjah crescent. I was among those who assumed iḥrām for Umrah. When we reached Mecca, the day of Arafah overtook me while I was menstruating and had not yet been released from the state of iḥrām for my Umrah. I complained of this to the Prophet (peace be upon him), and he said: ’Abandon your Umrah, untie your hair, comb it, and assume iḥrām for Hajj.’ She said: I did so. When it was the night of departure from Mina, after Allah had enabled us to complete our Hajj, he sent Abd al-Rahman ibn Abi Bakr with me. He let me ride behind him and took me out to Tan’im, where I assumed iḥrām for Umrah. Thus Allah ordained both our Hajj and Umrah as complete, with no requirement for a sacrificial animal, charity, or fasting in that matter.”

وَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نَا عَبْدَةُ بْنُ سُلَيْمَانَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ «خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَجَّةِ الْوَدَاعِ مُوَافِينَ لِهِلَالِ ذِي الْحِجَّةِ فَكُنْتُ فِيمَنْ أَهَلَّ بِعُمْرَةٍ فَقَدِمْنَا مَكَّةَ فَأَدْرَكَنِي يَوْمُ عَرَفَةَ وَأَنَا حَائِضٌ لَمْ أَحِلَّ مِنْ عُمْرَتِي فَشَكَوْتُ ذَلِكَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: دَعِي عُمْرَتَكِ وَانْقُضِي رَأْسَكِ وَامْتَشِطِي وَأَهِلِّي بِالْحَجِّ قَالَتْ: فَفَعَلْتُ فَلَمَّا كَانَتْ لَيْلَةُ الْحَصْبَةِ وَقَدْ قَضَى اللَّهُ حَجَّنَا أَرْسَلَ مَعِي عَبْدَ الرَّحْمَنِ بْنَ أَبِي بَكْرٍ فَأَرْدَفَنِي، وَخَرَجَ بِي إلَى التَّنْعِيمِ فَأَهْلَلْتُ بِعُمْرَةٍ، وَقَضَى اللَّهُ حَجَّنَا وَعُمْرَتَنَا وَلَمْ يَكُنْ فِي ذَلِكَ هَدْيٌ، وَلَا صَدَقَةٌ، وَلَا صَوْمٌ» .

L13755 Through the chain of Abū Dāwūd: Al-Rabīʿ ibn Sulaymān al-Muʾadhdhin reported to us, from Muḥammad ibn Idrīs al-Shāfiʿī, from Sufyān ibn ʿUyaynah, from Ibn Abī Najīḥ, from ʿAṭāʾ, from ʿĀʾishah, the Mother of the Believers, that the Messenger of Allah, peace and blessings be upon him, said to her: “Your circumambulation of the House and [ritual] between al-Ṣafā and al-Marwah suffice for your Ḥajj and your ʿUmrah.” This confirms that she was a *qārina*, and the Prophet, peace and blessings be upon him, did not require for this a sacrificial animal or fasting.

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا الرَّبِيعُ بْنُ سُلَيْمَانَ الْمُؤَذِّنُ أَنَا مُحَمَّدُ بْنُ إدْرِيسَ الشَّافِعِيُّ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ عَطَاءٍ «عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهَا: طَوَافُكِ بِالْبَيْتِ وَبَيْنَ الصَّفَا وَالْمَرْوَةِ يَكْفِيكِ لِحَجِّكِ وَعُمْرَتِكِ» فَصَحَّ أَنَّهَا كَانَتْ قَارِنَةً، وَلَمْ يَجْعَلْ - عَلَيْهِ السَّلَامُ - فِي ذَلِكَ هَدْيًا وَلَا صَوْمًا.

L13756 If it is said that she—may Allah be pleased with her—annulled her ʿUmrah...

فَإِنْ قِيلَ: إنَّهَا - رَضِيَ اللَّهُ عَنْهَا -: رَفَضَتْ عُمْرَتَهَا.

L13757 We said: If you intend that she exited iḥrām from her Umrah, then whoever claimed this has lied, for the Messenger of Allah—may Allah bless him and grant peace—informed her that her circumambulation and saʿy would suffice for her Hajj and Umrah. It is baseless that these rites would suffice for an Umrah from which she had already exited iḥrām. If you intend that she left it and postponed it—in the sense that she delayed the Umrah rites of circumambulation and saʿy until performing the ifāḍah on the Day of Sacrifice, when she then performed circumambulation and saʿy jointly for her Hajj and Umrah—then yes, this is our position.

قُلْنَا: إنْ كُنْتُمْ تُرِيدُونَ أَنَّهَا حَلَّتْ مِنْهَا فَقَدْ كَذَبَ مَنْ قَالَ ذَلِكَ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخْبَرَهَا أَنَّ طَوَافَهَا وَسَعْيَهَا يَكْفِيهَا لِحَجَّتِهَا وَعُمْرَتِهَا، وَمِنْ الْبَاطِلِ أَنْ يَكْفِيَهَا عَنْ عُمْرَةٍ قَدْ أَحَلَّتْ مِنْهَا، وَإِنْ كُنْتُمْ تُرِيدُونَ أَنَّهَا رَفَضَتْهَا وَتَرَكَتْهَا بِمَعْنَى أَخَّرَتْ عَمَلَ الْعُمْرَةِ مِنْ الطَّوَافِ وَالسَّعْيِ حَتَّى أَفَاضَتْ يَوْمَ النَّحْرِ فَطَافَتْ وَسَعَتْ لِحَجَّتِهَا وَعُمْرَتِهَا مَعًا فَنَعَمْ، وَهَذَا قَوْلُنَا.

L13758–13759 If it is said: "But Waki' narrated this narration, attributing her statement—'There was no sacrificial offering nor fasting in that matter'—to Hisham's words?" We respond: Indeed, 'Abdullah ibn Numayr and 'Abdah attributed it to 'Ā'ishah's speech, and Ibn Numayr is no less than Waki' in memorization and reliability—and likewise 'Abdah. Both narrations are correct: she said it, Hisham said it, and we too affirm it.

فَإِنْ قِيلَ: فَإِنَّ وَكِيعًا رَوَى هَذَا الْخَبَرَ فَجَعَلَ قَوْلَهَا، وَلَمْ يَكُنْ فِي ذَلِكَ هَدْيٌ وَلَا صَوْمٌ مِنْ قَوْلِ هِشَامٍ؟ قُلْنَا: فَإِنَّ عَبْدَ اللَّهِ بْنَ نُمَيْرٍ، وَعَبْدَةَ جَعَلَاهُ مِنْ كَلَامِ عَائِشَةَ، وَمَا ابْنُ نُمَيْرٍ دُونَ وَكِيعٍ فِي الْحِفْظِ، وَالثِّقَةِ، وَكَذَلِكَ عَبْدَةُ، وَكِلَا الرِّوَايَتَيْنِ حَقٌّ قَالَتْهُ هِيَ، وَقَالَهُ هِشَامٌ، وَنَحْنُ أَيْضًا نَقُولُهُ.

L13760 If it is said: It has been established that he—peace be upon him—offered cows as sacrifices on behalf of his wives? We say: Yes. Sufyān ibn ʿUyaynah clarified the meaning of this offering via ʿAbd al-Raḥmān ibn al-Qāsim, from his father, from ʿĀ'ishah: that these were Eid al-Adha sacrifices, not the sacrificial offering of *tamattuʿ*, nor the sacrificial offering of *qirān*.

فَإِنْ قِيلَ: قَدْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَهْدَى عَنْ نِسَائِهِ الْبَقَرَ؟ قُلْنَا: نَعَمْ، وَقَدْ بَيَّنَ مَعْنَى ذَلِكَ الْإِهْدَاءِ سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ عَنْ أَبِيهِ عَنْ عَائِشَةَ أَنَّهُ كَانَ أَضَاحِيَ، لَا هَدْيَ مُتْعَةٍ، وَلَا هَدْيًا عَنْ قِرَانٍ.

L13761 Abū Muḥammad said: They said, "It has been reported from ʿUmar and Jābir that the sacrificial animal is obligatory upon the qārin?" We responded, "As for the narration from ʿUmar, it is transmitted through the chain of ʿAbd al-Salām ibn Ḥarb, from Saʿīd, from Abū Maʿshar, from Ibrāhīm, from ʿUmar. ʿAbd al-Salām is weak, Abū Maʿshar is likewise, and Ibrāhīm was not born except after the death of ʿUmar—may Allāh be pleased with him."

قَالَ أَبُو مُحَمَّدٍ: وَقَالُوا: قَدْ رُوِيَ عَنْ عُمَرَ، وَجَابِرٍ وُجُوبُ الْهَدْيِ عَلَى الْقَارِنِ؟ قُلْنَا: أَمَّا الرِّوَايَةُ عَنْ عُمَرَ فَإِنَّهَا مِنْ طَرِيقِ عَبْدِ السَّلَامِ بْنِ حَرْبٍ عَنْ سَعِيدٍ عَنْ أَبِي مَعْشَرٍ عَنْ إبْرَاهِيمَ عَنْ عُمَرَ، فَعَبْدُ السَّلَامِ ضَعِيفٌ، وَأَبُو مَعْشَرٍ مِثْلُهُ، وَإِبْرَاهِيمُ لَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ -.

L13762 As for the narration from Jābir, we have reported it through the chain of Mūsā ibn 'Ubaydah from some of his companions that he asked Jābir ibn 'Abdullāh about combining Ḥajj and 'Umrah without a sacrificial offering. He replied: "I have not seen any of us do such a thing." Now, Mūsā is a weak narrator, and some of his companions were utterly astonished. Furthermore, even if it were authentic, it would align with our position, for its apparent meaning is prohibiting the combination [of Ḥajj and 'Umrah] unless one brings a sacrificial offering with him - and this is our position.

وَأَمَّا الرِّوَايَةُ عَنْ جَابِرٍ فَرُوِّينَاهَا مِنْ طَرِيقِ مُوسَى بْنِ عُبَيْدَةَ عَنْ بَعْضِ أَصْحَابِهِ أَنَّهُ سَأَلَ جَابِرَ بْنَ عَبْدِ اللَّهِ أَنْ يَقْرِنَ بَيْنَ حَجٍّ وَعُمْرَةٍ بِغَيْرِ هَدْيٍ؟ فَقَالَ: مَا رَأَيْتُ أَحَدًا مِنَّا فَعَلَ مِثْلَ ذَلِكَ، فَمُوسَى ضَعِيفٌ، وَبَعْضُ أَصْحَابِهِ عَجِبَ أَلْبَتَّةَ، ثُمَّ لَوْ صَحَّتْ لَكَانَتْ مُوَافِقَةً لِقَوْلِنَا، لِأَنَّ ظَاهِرَهَا الْمَنْعُ مِنْ الْقِرَانِ دُونَ أَنْ يَسُوقَ مَعَ نَفْسِهِ هَدْيًا، وَهَكَذَا نَقُولُ.

L13763 Moreover, if that [statement] from both of them were valid, there would be no decisive proof in the statement of anyone apart from the Messenger of Allah (peace and blessings be upon him), and other Companions besides them would have opposed them both, as we mentioned earlier from the Mother of the Believers.

ثُمَّ لَوْ صَحَّ ذَلِكَ عَنْهُمَا لَكَانَ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَكَانَ قَدْ خَالَفَهُمَا غَيْرُهُمَا مِنْ الصَّحَابَةِ كَمَا ذَكَرْنَا آنِفًا عَنْ أُمِّ الْمُؤْمِنِينَ.

L13764 It has been narrated to us from Saʿīd ibn Manṣūr: Abū ʿAwānah narrated from ʿAṭāʾ ibn as-Sāʾib from Kathīr ibn Jumhān that he asked Ibn ʿUmar in the company of people about a man who assumed iḥrām for combined pilgrimage (Qirān) – what is his expiation? Ibn ʿUmar said: "His expiation is to return with two rewards, while they return with one reward. If a sacrifice had been required, would he not have instructed them about it?" From Ibn Abī Shaybah's chain: Wakīʿ narrated from Shuʿbah from al-Ḥakam ibn ʿUtaybah that al-Ḥasan ibn ʿAlī ibn Abī Ṭālib combined Ḥajj and ʿUmrah (Qirān) without offering a sacrifice. Al-Ḥakam said: "Shurayḥ also combined Ḥajj and ʿUmrah (Qirān) without offering a sacrifice."

وَرُوِّينَا عَنْ سَعِيدِ بْنِ مَنْصُورٍ نَا أَبُو عَوَانَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ كَثِيرِ بْنِ جُمْهَانَ أَنَّهُ سَأَلَ ابْنَ عُمَرَ مَعَ قَوْمٍ عَنْ رَجُلٍ أَحْرَمَ بِالْقِرَانِ مَا كَفَّارَتُهُ؟ فَقَالَ ابْنُ عُمَرَ: كَفَّارَتُهُ أَنْ يَرْجِعَ بِأَجْرَيْنِ، وَيَرْجِعُونَ بِأَجْرٍ - فَلَوْ كَانَ عَلَيْهِ هَدْيٌ لَأَفْتَاهُمْ بِهِ؟ وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا وَكِيعٌ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّ الْحَسَنَ بْنَ عَلِيِّ بْنِ أَبِي طَالِبٍ قَرَنَ بَيْنَ حَجٍّ، وَعُمْرَةٍ، وَلَمْ يُهْدِ قَالَ الْحَكَمُ: وَقَرَنَ أَيْضًا شُرَيْحٌ بَيْنَ الْحَجِّ وَالْعُمْرَةِ، وَلَمْ يُهْدِ.

L13765–13766 If it is said: You have narrated from Ibn Abi Shaybah – Abdullah ibn Numayr reported to us from Isma'il (who is Ibn Abi Khalid) – from Wabarah ibn Abd al-Rahman – from Ibn Umar, who said: "If a man combines Hajj and Umrah, he must offer a she-camel." It was said to him: "Indeed, Ibn Mas'ud says: 'A sheep.'" Ibn Umar responded: "Is fasting dearer to me than a sheep?" We said: "Yes, and you were the first to oppose Ibn Umar in this matter. Among the trifling with religion is that you deem a Companion's statement authoritative evidence [that cannot be opposed] when it aligns with Abu Hanifah, Malik, or al-Shafi'i – yet consider it non-authoritative when it contradicts them. We absolve ourselves before Allah, the Exalted, from such conduct."

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ عَنْ ابْنِ أَبِي شَيْبَةَ نَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ عَنْ إسْمَاعِيلَ هُوَ ابْنُ أَبِي خَالِدٍ - عَنْ وَبَرَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ ابْنِ عُمَرَ قَالَ: إذَا قَرَنَ الرَّجُلُ بَيْنَ الْحَجِّ وَالْعُمْرَةِ فَعَلَيْهِ بَدَنَةٌ فَقِيلَ لَهُ: إنَّ ابْنَ مَسْعُودٍ يَقُولُ: شَاةٌ، فَقَالَ ابْنُ عُمَرَ: الصِّيَامُ أَحَبُّ إلَيَّ مِنْ شَاةٍ؟ قُلْنَا: نَعَمْ، وَأَنْتُمْ أَوَّلُ مَنْ خَالَفَ ابْنَ عُمَرَ فِي هَذَا، وَمِنْ التَّلَاعُبِ فِي الدِّينِ أَنْ تُوجِبُوا قَوْلَ الصَّاحِبِ حُجَّةً [لَا يَجُوزُ خِلَافُهَا] إذَا وَافَقَ قَوْلَ أَبِي حَنِيفَةَ، أَوْ مَالِكٍ، أَوْ الشَّافِعِيِّ، وَغَيْرَ حُجَّةٍ إذَا خَالَفَهُمْ - نَبْرَأُ إلَى اللَّهِ - تَعَالَى - مِنْ هَذَا الْعَمَلِ.

When a muḥrim intends to leave Makkah.

[الْمُحْرِم إذَا أَرَادَ أَنْ يَخْرُجَ مِنْ مَكَّةَ]

L13768 As for our statement: Whoever intends to depart from Mecca—whether as a pilgrim performing ʻUmrah, a Qārin (combining Hajj and ʻUmrah), or a Mutamatti' (performing ʻUmrah followed by Hajj)—is obligated to make his final act the circumambulation of the House. If he remains in Mecca thereafter, he must repeat the circumambulation without exception. Should he depart without performing the circumambulation of the House, he is obligated to return even if his homeland lies at the farthest reaches of the world, until he performs the circumambulation. If he departs beyond Mecca's dwellings and lingers outside while traveling, he need not repeat the circumambula-

وَأَمَّا قَوْلُنَا -: مَنْ أَرَادَ أَنْ يَخْرُجَ مِنْ مَكَّةَ، مِنْ مُعْتَمِرٍ، أَوْ قَارِنٍ، أَوْ مُتَمَتِّعٍ بِالْعُمْرَةِ إلَى الْحَجِّ، فَفَرَضَ عَلَيْهِ أَنْ يَجْعَلَ آخِرَ عَمَلِهِ الطَّوَافَ بِالْبَيْتِ، فَإِنْ تَرَدَّدَ بِمَكَّةَ بَعْدَ ذَلِكَ أَعَادَ الطَّوَافَ وَلَا بُدَّ، فَإِنْ خَرَجَ وَلَمْ يَطُفْ بِالْبَيْتِ فَفَرَضَ عَلَيْهِ الرُّجُوعَ، وَلَوْ كَانَ بَلَدُهُ بِأَقْصَى الدُّنْيَا حَتَّى يَطُوفَ بِالْبَيْتِ، فَإِنْ خَرَجَ عَنْ مَنَازِلِ مَكَّةَ فَتَرَدَّدَ خَارِجًا مَاشِيًا، فَلَيْسَ عَلَيْهِ أَنْ يُعِيدَ الطَّوَافَ إلَّا الَّتِي تَحِيضُ بَعْدَ أَنْ تَطُوفَ طَوَافَ الْإِفَاضَةِ فَلَيْسَ

tion. However, a woman who menstruates after performing Tawaf al-Ifāḍah is not required to await ritual purity to perform the farewell circumambulation (Tawaf al-Wadā‘); she may depart without performing it. But if she menstruates before Tawaf al-Ifāḍah, she must wait until she becomes pure, perform the circumambulation, and the rental mounts and travel companions must be retained for her. As narrated by Muslim: Sa‘īd ibn Manṣūr reported to us, Sufyān reported from Sulaymān al-Aḥwal from Ṭāwūs from Ibn ‘Abbās, who said: “People would disperse in every direction, so Allah’s Messenger—peace and blessings be upon him—declared: ’Let no one depart until his final act is at the House.’”[25]

L13769 And through the chain of Muslim: Muhammad ibn Rumh narrated to us, Al-Layth narrated to us from Ibn Shihab from Abu Salama - he is the son of Abd al-Rahman ibn Awf - that Aisha, the Mother of the Believers, said: “Safiyyah bint Huyayy menstruated after performing the Ifadah. She mentioned her menstruation to the Messenger of Allah - peace and blessings be upon him - and he - peace be upon him - said: ’Is she detaining us?’ I said: ’O Messenger of Allah, she had already performed the Ifadah tawaf and circumambulated the House, then menstruated after the Ifadah.’ The Messenger of Allah - peace and blessings be upon him - said: ’Then let her depart.’”

L13770–13771 Abū Muḥammad said: Whoever departs without bidding farewell, except the menstruating woman, has indeed neglected a binding obligation, so he must fulfill it. It has been narrated to us through the chain of Wakiʿ from Ibrāhīm ibn Yazīd from Abū al-Zubayr ibn ʿAbdullāh that a group set out without bidding farewell, so ʿUmar ibn al-Khaṭṭāb ordered them to return and bid farewell.

L13772 Ali said: And Umar did not single out any place from another.

L13773 Malik said: Regarding the specification of a place that, once reached, one must not turn back from it; this is an opinion not established as obligatory by any text, consensus, analogy, or statement of a Maliki disciple.

عَلَيْهَا أَنْ تَنْتَظِرَ طُهْرَهَا لِتَطُوفَ لَكِنْ تَخْرُجُ كَمَا هِيَ، فَإِنْ حَاضَتْ قَبْلَ طَوَافِ الْإِفَاضَةِ فَلَا بُدَّ لَهَا أَنْ تَنْتَظِرَ حَتَّى تَطْهُرَ، وَتَطُوفَ، وَتُحْبَسُ عَلَيْهَا الْكِرَى وَالرُّفْقَةُ -: فَلَمَّا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ قَالَ: نَا سَعِيدُ بْنُ مَنْصُورٍ نَا سُفْيَانُ عَنْ سُلَيْمَانَ الْأَحْوَلِ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ «كَانَ النَّاسُ يَنْصَرِفُونَ فِي كُلِّ وَجْهٍ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَا يَنْفِرَنَّ أَحَدٌ حَتَّى يَكُونَ آخِرُ عَهْدِهِ بِالْبَيْتِ» .

وَمِنْ طَرِيقِ مُسْلِمٍ نَا مُحَمَّدُ بْنُ رُمْحٍ نَا اللَّيْثُ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي سَلَمَةَ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ قَالَتْ «حَاضَتْ صَفِيَّةُ بِنْتُ حُيَيٍّ بَعْدَمَا أَفَاضَتْ فَذَكَرَتْ حَيْضَتَهَا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ - عَلَيْهِ السَّلَامُ -: أَحَابِسَتُنَا هِيَ؟ فَقُلْتُ: يَا رَسُولَ اللَّهِ إِنَّهَا قَدْ كَانَتْ أَفَاضَتْ وَطَافَتْ بِالْبَيْتِ ثُمَّ حَاضَتْ بَعْدَ الْإِفَاضَةِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: فَلْتَنْفِرْ» .

قَالَ أَبُو مُحَمَّدٍ: فَمَنْ خَرَجَ وَلَمْ يُوَدِّعْ مِنْ غَيْرِ الْحَائِضِ فَقَدْ تَرَكَ فَرْضًا لَازِمًا فَعَلَيْهِ أَنْ يُؤَدِّيَهُ -: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ إبْرَاهِيمَ بْنِ يَزِيدَ عَنْ أَبِي الزُّبَيْرِ بْنِ عَبْدِ اللَّهِ أَنَّ قَوْمًا نَفَرُوا وَلَمْ يُوَدِّعُوا فَرَدَّهُمْ عُمَرُ بْنُ الْخَطَّابِ حَتَّى وَدَّعُوا.

قَالَ عَلِيٌّ: وَلَمْ يَخُصَّ عُمَرُ مَوْضِعًا مِنْ مَوْضِعٍ.

وَقَالَ مَالِكٌ: بِتَحْدِيدِ مَكَانٍ إذَا بَلَغَهُ لَمْ يَرْجِعْ مِنْهُ - وَهَذَا قَوْلٌ لَمْ يُوجِبْهُ نَصٌّ، وَلَا إجْمَاعٌ، وَلَا قِيَاسٌ، وَلَا قَوْلُ صَاحِبٍ.

[25] **Hadith references (L13768):** Sahih Muslim 1327.

L13774 From the narration of Abd al-Razzaq, who reported from Muhammad ibn Rashid, from Sulayman ibn Musa, from Nafi', who said: Umar ibn al-Khattab turned back women of Thaniyyat Harsha who had performed Tawaf al-Ifadah on the Day of Sacrifice, then began menstruating and departed from Mina. He ordered them to return until they attained ritual purity and performed Tawaf around the Kaaba. Later, a hadith contradicting his action reached Umar, so he abandoned his initial practice.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا مُحَمَّدُ بْنُ رَاشِدٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنْ نَافِعٍ قَالَ: رَدَّ عُمَرُ بْنُ الْخَطَّابِ نِسَاءً مِنْ ثَنِيَّةِ هَرْشَى كُنَّ أَفَضْنَ يَوْمَ النَّحْرِ ثُمَّ حِضْنَ فَنَفَرْنَ فَرَدَّهُنَّ حَتَّى يَطْهُرْنَ وَيَطُفْنَ بِالْبَيْتِ، ثُمَّ بَلَغَ عُمَرَ بَعْدَ ذَلِكَ حَدِيثٌ غَيْرُ مَا صَنَعَ فَتَرَكَ صُنْعَهُ الْأَوَّلَ.

L13775 Abu Muhammad said: Hirshā is the midpoint on the route from Medina to Mecca, between al-Abwā and al-Juhfah, at two leagues from al-Abwā. It has two erected markers as a sign, because it is the midpoint of the route.

قَالَ أَبُو مُحَمَّدٍ: هَرْشَى هِيَ نِصْفُ الطَّرِيقِ مِنْ الْمَدِينَةِ إلَى مَكَّةَ بَيْنَ الْأَبْوَاءِ وَالْجُحْفَةِ عَلَى فَرْسَخَيْنِ مِنْ الْأَبْوَاءِ وَبِهَا عَلَمَانِ مَبْنِيَّانِ عَلَامَةً، لِأَنَّهُ نِصْفُ الطَّرِيقِ.

L13776 It has been reported through the chain of Abu 'Awanah from Ya'la ibn 'Ata', from al-Walid ibn 'Abd al-Rahman, from al-Harith ibn 'Abd Allah ibn Aws that the Messenger of Allah (peace and blessings of Allāh be upon him) and 'Umar ibn al-Khattab gave him a ruling concerning a woman who performs tawaf around the House on the Day of Sacrifice and then menstruates, that her last contact with the House be the final one.

وَقَدْ رُوِيَ أَثَرٌ مِنْ طَرِيقِ أَبِي عَوَانَةَ عَنْ يَعْلَى بْنِ عَطَاءٍ عَنْ الْوَلِيدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الْحَارِثِ بْنِ عَبْدِ اللَّهِ بْنِ أَوْسٍ " «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعُمَرَ بْنَ الْخَطَّابِ أَفْتَيَاهُ فِي الْمَرْأَةِ تَطُوفُ بِالْبَيْتِ يَوْمَ النَّحْرِ، ثُمَّ تَحِيضُ أَنْ يَكُونَ آخِرُ عَهْدِهَا بِالْبَيْتِ» ".

L13777 Abu Muhammad said: Al-Walid ibn Abd al-Rahman is unknown. Furthermore, even if it were authentic, it would fall under the general scope of his command (peace be upon him) that no one should depart until their final act is with the House. Its universal application stands, as though his instruction (peace be upon him) to the menstruating woman who completed the ritual departure (ifadah) to depart constitutes an additional ruling built upon the aforementioned prohibition but exempted from it, so that both reports may be utilized together without any contradiction between them. And success comes from Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ: الْوَلِيدُ بْنُ عَبْدِ الرَّحْمَنِ غَيْرُ مَعْرُوفٍ، ثُمَّ لَوْ صَحَّ لَكَانَ دَاخِلًا فِي جُمْلَةِ أَمْرِهِ - عَلَيْهِ السَّلَامُ - أَنْ لَا يَنْفِرَ أَحَدٌ حَتَّى يَكُونَ آخِرُ عَهْدِهِ بِالْبَيْتِ - وَعُمُومُهُ، وَكَأَنْ يَكُونَ أَمْرُهُ - عَلَيْهِ السَّلَامُ - الْحَائِضَ الَّتِي أَفَاضَتْ بِأَنْ تَنْفِرَ حُكْمًا زَائِدًا مَبْنِيًّا عَلَى النَّهْيِ الْمَذْكُورِ مُسْتَثْنًى مِنْهُ لِيُسْتَعْمَلَ الْخَبَرَانِ مَعًا وَلَا يُخَالَفَ شَيْءٌ مِنْهُمَا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

Omitting any part of the Tawaf al-Ifadah or the Sa'ī.

[تَرْكُ شَيْءٍ مِنْ طَوَافِ الْإِفَاضَةِ أَوْ السَّعْيِ]

L13778–13781 As for our statement: whoever intentionally or forgetfully omits any part of the Tawaf al-Ifadah or any part of the obligatory Sa'i between Safa and Marwah must also return—as we mentioned—and abstain from sexual relations with their wives until he performs the Tawaf [around the House (the Kaaba)].

وَأَمَّا قَوْلُنَا: مَنْ تَرَكَ عَمْدًا أَوْ بِنِسْيَانٍ شَيْئًا مِنْ طَوَافِ الْإِفَاضَةِ أَوْ مِنْ السَّعْيِ الْوَاجِبِ بَيْنَ الصَّفَا وَالْمَرْوَةِ فَلْيَرْجِعْ أَيْضًا - كَمَا ذَكَرْنَا - مُمْتَنِعًا مِنْ النِّسَاءِ حَتَّى يَطُوفَ [بِالْبَيْتِ]

What remains incumbent upon him: if Dhul-Hijjah ends before he performs the circumambulation, his pilgrimage is invalidated. Upon returning for the farewell circumambulation (Tawaf al-Wada), he is not required to abstain from women, for indeed, Tawaf al-Ifadah - the obligatory post-pilgrimage circumambulation - is obligatory.

مَا بَقِيَ عَلَيْهِ، فَإِنْ خَرَجَ ذُو الْحِجَّةِ قَبْلَ أَنْ يَطُوفَ فَقَدْ بَطَلَ حَجُّهُ، وَلَيْسَ عَلَيْهِ فِي رُجُوعِهِ لِطَوَافِ الْوَدَاعِ أَنْ يَمْتَنِعَ مِنْ النِّسَاءِ فَلِأَنَّ طَوَافَ الْإِفَاضَةِ فَرْضٌ.

L13782 And He, the Most High, said: *"Hajj is observed during well-known months"* [Al-Baqarah 2:197]. We have mentioned that these are Shawwāl, Dhu al-Qaʿdah, and Dhu al-Hijjah. Since these are the months, it is not permissible for anyone to perform any of the rites of Hajj outside the months of Hajj, thereby opposing the command of Allah, the Most High.[26]

وَقَالَ - تَعَالَى -: {الْحَجُّ أَشْهُرٌ مَعْلُومَاتٌ} [البقرة: ١٩٧] وَقَدْ ذَكَرْنَا أَنَّهَا شَوَّالٌ، وَذُو الْقَعْدَةِ، وَذُو الْحِجَّةِ، فَإِذْ هُوَ كَذَلِكَ فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَعْمَلَ شَيْئًا مِنْ أَعْمَالِ الْحَجِّ فِي غَيْرِ أَشْهُرِ الْحَجِّ فَيَكُونَ مُخَالِفًا لِأَمْرِ اللَّهِ - تَعَالَى -.

L13783 As for abstaining from women, it is based on Allah's statement—Exalted is He—: "There is to be no sexual relations, sinfulness, or disputing during Hajj" [Al-Baqarah 2:197]. Therefore, until he fulfills the obligations of Hajj, he is still in the state of Hajj.[27]

وَأَمَّا امْتِنَاعُهُ مِنْ النِّسَاءِ فَلِقَوْلِ اللَّهِ - تَعَالَى -: {فَلا رَفَثَ وَلا فُسُوقَ وَلا جِدَالَ فِي الْحَجِّ} [البقرة: ١٩٧] فَهُوَ مَا لَمْ يُتِمَّ فَرَائِضَ الْحَجِّ فَهُوَ فِي الْحَجِّ بَعْدُ.

L13784 As for his return for the Farewell Tawaf, it is neither part of Hajj nor Umrah. Therefore, he is not required to enter Ihram or refrain from sexual relations, because neither Allah—Exalted is He—nor the Messenger of Allah has obligated this. There is no Ihram except for Hajj or Umrah—not even for a mere Tawaf. Hence, it does not require it.

وَأَمَّا رُجُوعُهُ لِطَوَافِ الْوَدَاعِ فَلَيْسَ هُوَ فِي حَجٍّ، وَلَا فِي عُمْرَةٍ فَلَيْسَ عَلَيْهِ أَنْ يُحْرِمَ، وَلَا أَنْ يَمْتَنِعَ مِنْ النِّسَاءِ، لِأَنَّ اللَّهَ - تَعَالَى - لَمْ يُوجِبْ ذَلِكَ، وَلَا رَسُولُ اللَّهِ، وَلَا إحْرَامَ إلَّا بِحَجٍّ أَوْ عُمْرَةٍ - أَوْ لِطَوَافٍ مُجَرَّدٍ فَلَا.

L13785 He did not perform the stoning of Jamrat al-Aqabah until the days of stoning in Dhu al-Hijjah had passed or he had intentionally engaged in sexual intercourse (thereby invalidating his Hajj).

[لَمْ يَرْمِ جَمْرَةَ الْعَقَبَةِ حَتَّى خَرَجَ ذُو الْحِجَّةِ أَوْ وَطِئَ عَمْدًا]

L13786 As for our statement that whoever does not cast at Jamrat al-'Aqaba until Dhul-Hijjah passes, or until he intentionally engages in intercourse, his Hajj is invalid—this is based on what was narrated to us through Abu Dawud al-Sijistani's chain: Nasr ibn 'Ali al-Jahdhami narrated to us, from Yazid ibn Zurai', from Khalid al-Hadhdha', from 'Ikrimah, from Ibn 'Abbas: "A man said to the Messenger of Allah (peace and blessings be upon him), 'I reached

وَأَمَّا قَوْلُنَا: إنَّ مَنْ لَمْ يَرْمِ جَمْرَةَ الْعَقَبَةِ حَتَّى خَرَجَ ذُو الْحِجَّةِ، أَوْ حَتَّى وَطِئَ عَمْدًا فَحَجُّهُ بَاطِلٌ، فَلِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نَا نَصْرُ بْنُ عَلِيٍّ هُوَ الْجَهْضَمِيُّ - نَا يَزِيدُ بْنُ زُرَيْعٍ أَنَا خَالِدٌ هُوَ الْحَذَّاءُ - عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَجُلًا قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إنِّي أَمْسَيْتُ وَلَمْ أَرْمِ قَالَ: ارْمِ وَلَا حَرَجَ» فَأَمَرَ

[26] **Qur'an references (L13782):** Qur'an 2:197 (Al-Baqarah).
[27] **Qur'an references (L13783):** Qur'an 2:197 (Al-Baqarah).

evening without casting.' He (peace be upon him) said, 'Cast, and there is no sin.'" Thus, he (peace be upon him) commanded this casting, and his command is obligatory. He (peace be upon him) indicated that there is no sin in delaying it, so the obligation remains as long as any portion of the Hajj months persists. It is not valid outside the Hajj months, for it is among Hajj's obligations as we previously stated. It was narrated to us through 'Abd al-Razzaq's chain, from Ma'mar, from al-Zuhri, who said: "If he remembers while in Mina, he casts. But if he misses it until departing, he must perform Hajj the following year while observing the rites."

L13787 Abū Muḥammad said: Utterly astonishing are those who invalidate a Muslim's Hajj for merely engaging in intimacy with his wife to the point of ejaculation without penetration—while there exists no prohibition of this act whatsoever, neither in the Quran, nor in the Sunnah, nor any explicit text, consensus, or analogy that nullifies the Hajj's validity for such an act. Then they do not invalidate his Hajj for abandoning the stoning of Jamarat al-ʿAqabah or neglecting to stay at Muzdalifah, despite the clear command for both being established in the Quran and the authentically established Sunnah.

L13788 **Both a single Tawaf and a single Saʿī suffice for the qārin (a pilgrim combining Hajj and Umrah).**

L13789–13791 As for our statement: It suffices for the Qarin (one combining Ḥajj and ʿUmrah) to perform a single seven-circuit circumambulation for both together, and a single seven-circuit saʿī between Ṣafā and Marwah for both together - the same as the Mufrid (one performing Ḥajj alone). Uniform Practice: Regarding what we have narrated through Muslim's chain: Qutaybah reported to us, al-Layth—that is, Ibn Saʿd—reported to us from Nāfiʿ that Ibn ʿUmar said to them: "Bear witness that I have made Hajj obligatory alongside my Umrah." Then he set out entering *ihram* for both by pronouncing the talbiyah together until he reached Mecca. He performed Tawaf around the House and Saʿy between as-Ṣafā and al-Marwah, and he did not do more than that. He did not sacrifice, shave, shorten his hair, or exit the state of *ihram* from anything he was prohibited from during it until the Day of Nahr ar-

- عَلَيْهِ السَّلَامُ - بِالرَّمْيِ الْمَذْكُورِ، وَأَمْرُهُ فَرْضٌ، وَأَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّهُ لَا حَرَجَ فِي تَأْخِيرِهِ فَهُوَ بَاقٍ مَا دَامَ مِنْ أَشْهُرِ الْحَجِّ شَيْءٌ، وَلَا يُجْزِئُ فِي غَيْرِ أَشْهُرِ الْحَجِّ، لِأَنَّهُ مِنْ فَرَائِضِ الْحَجِّ لِمَا ذَكَرْنَاهُ آنِفًا -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: إنْ ذَكَرَ، وَهُوَ بِمِنًى رَمَى، وَإِنْ فَاتَهُ ذَلِكَ حَتَّى يَنْفِرَ فَإِنَّهُ يَحُجُّ مِنْ قَابِلٍ وَيُحَافِظُ عَلَى الْمَنَاسِكِ.

قَالَ أَبُو مُحَمَّد: وَالْعَجَبُ كُلُّهُ مِمَّنْ يُبْطِلُ حَجَّ الْمُسْلِمِ بِأَنْ بَاشَرَ امْرَأَتَهُ حَتَّى أَمْنَى مِنْ غَيْرِ إيلَاجٍ، وَلَا نَهْيَ عَنْ ذَلِكَ أَصْلًا لَا فِي قُرْآنٍ، وَلَا فِي سُنَّةٍ، وَلَا جَاءَ بِإِبْطَالِ حَجَّةٍ بِذَلِكَ نَصٌّ، وَلَا إجْمَاعٌ، وَلَا قِيَاسٌ، ثُمَّ لَا يُبْطِلُ حَجَّهُ بِتَرْكِ رَمْيِ جَمْرَةِ الْعَقَبَةِ، وَتَرْكِ مُزْدَلِفَةَ، وَقَدْ صَحَّ الْأَمْرُ بِهِمَا فِي الْقُرْآنِ وَالسُّنَّةِ الثَّابِتَةِ.

[يُجْزِئُ الْقَارِنَ بَيْنَ طَوَافٌ وَاحِدٌ وَسَعْيٌ وَاحِدٌ]

وَأَمَّا قَوْلُنَا -: إنَّهُ يُجْزِئُ الْقَارِنَ بَيْنَ الْحَجِّ وَالْعُمْرَةِ طَوَافٌ وَاحِدٌ سَبْعَةَ أَشْوَاطٍ لَهُمَا جَمِيعًا، وَسَعْيٌ وَاحِدٌ بَيْنَ الصَّفَا وَالْمَرْوَةِ سَبْعَةَ أَشْوَاطٍ لَهُمَا جَمِيعًا، كَالْمُفْرِدِ سَوَاءً سَوَاءً -: فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا قُتَيْبَةُ نَا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ قَالَ لَهُمْ: اشْهَدُوا أَنِّي قَدْ أَوْجَبْت حَجًّا مَعَ عُمْرَتِي، ثُمَّ انْطَلَقَ يُهِلُّ بِهِمَا جَمِيعًا حَتَّى قَدِمَ مَكَّةَ فَطَافَ بِالْبَيْتِ وَبِالصَّفَا وَالْمَرْوَةِ، وَلَمْ يَزِدْ عَلَى ذَلِكَ [وَلَمْ يَنْحَرْ] وَلَمْ يَحْلِقْ، وَلَا قَصَّرَ، وَلَا أَحَلَّ مِنْ شَيْءٍ حَرُمَ مِنْهُ حَتَّى كَانَ يَوْمُ النَّحْرِ فَنَحَرَ وَحَلَقَ وَرَأَى أَنَّهُ قَدْ

rived, when he sacrificed, shaved, and held the view that he had fulfilled the Tawaf required for Hajj and Umrah through his initial Tawaf. He said: “This is how the Messenger of Allah—peace and blessings be upon him—did it.”

قَضَى طَوَافَ الْحَجِّ وَالْعُمْرَةِ بِطَوَافِهِ الْأَوَّلِ، وَقَالَ: هَكَذَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L13792 From the path of Muslim: from Muhammad ibn Hatim, from Bahz ibn Asad, from Wuhaib—who is Ibn Khalid—from Abdullah ibn Tawus, from his father that Aisha entered the state of ihram for Umrah. When she arrived, she did not perform Tawaf around the House until she menstruated. She completed all the rites, having already entered the state of ihram for Hajj. The Messenger of Allah—peace and blessings be upon him—said to her on the day of departure: “Your Tawaf will suffice for both your Hajj and your Umrah.” But she refused. He then sent her with Abdurrahman ibn Abi Bakr to al-Tan’im, where she performed Umrah after Hajj.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا مُحَمَّدُ بْنُ حَاتِمٍ نَا بَهْزُ بْنُ أَسَدٍ نَا وُهَيْبٌ هُوَ ابْنُ خَالِدٍ - نَا عَبْدُ اللَّهِ بْنُ طَاوُسٍ عَنْ أَبِيهِ عَنْ «عَائِشَةَ أَنَّهَا أَهَلَّتْ بِعُمْرَةٍ فَقَدِمَتْ، وَلَمْ تَطُفْ بِالْبَيْتِ حَتَّى حَاضَتْ فَنَسَكَتْ الْمَنَاسِكَ كُلَّهَا، وَقَدْ أَهَلَّتْ بِالْحَجِّ، فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ النَّفْرِ: يَسَعُكِ طَوَافُكِ لِحَجِّكِ وَعُمْرَتِكِ فَأَبَتْ، فَبَعَثَ بِهَا مَعَ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ إلَى التَّنْعِيمِ فَاعْتَمَرَتْ بَعْدَ الْحَجِّ» .

L13793 From the narration of Muslim: Hasan ibn Ali al-Hulwani narrated to me, Zayd ibn al-Hubab narrated to us, Ibrahim ibn Nafi‘ narrated to me, Abdullah ibn Abi Najih narrated to me, from Mujahid, from Aisha, the Mother of the Believers, that she menstruated at Sarif and purified herself at Arafah. The Messenger of Allah (peace and blessings be upon him) said to her: “Your Tawaf between Safa and Marwah will suffice for your Hajj and Umrah.”

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي حَسَنُ بْنُ عَلِيٍّ الْحُلْوَانِيُّ نَا زَيْدُ بْنُ الْحُبَابِ حَدَّثَنِي إبْرَاهِيمُ بْنُ نَافِعٍ حَدَّثَنِي عَبْدُ اللَّهِ بْنُ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ «عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا حَاضَتْ بِسَرِفَ فَتَطَهَّرَتْ بِعَرَفَةَ، فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: يُجْزِي عَنْكِ طَوَافُكِ بِالصَّفَا وَالْمَرْوَةِ عَنْ حَجِّكِ وَعُمْرَتِكِ» .

L13794 From the chain of Muslim, Qutaybah narrated to us, al-Layth narrated to us from Abu al-Zubayr, from Jabir ibn Abdullah, who said: Aisha arrived to perform Umrah. He mentioned the ḥadīth, which states that the Messenger of Allah—peace and blessings be upon him—entered upon her while she was weeping. He asked, “What troubles you?” She replied, “I have menstruated. The people have undone their *ihram*, but I have not undone mine, nor performed the circumambulation of the House. Now the people are beginning their Hajj?” The Messenger of Allah—peace and blessings be upon him—said to her, “This is a matter Allah has ordained for the daughters of Adam. Perform *ghusl*, then enter *ihram* for Hajj.” She complied, stood at the Hajj stations until she became pure, then performed the circumambulation of the Kaaba and the *sa‘ī* between al-Ṣafā and al-Marwah. The Messenger

وَمِنْ طَرِيقِ مُسْلِمٍ نَا قُتَيْبَةُ نَا اللَّيْثُ عَنْ أَبِي الزُّبَيْرِ «عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: أَقْبَلَتْ عَائِشَةُ بِعُمْرَةٍ فَذَكَرَ الْحَدِيثَ، وَفِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَخَلَ عَلَيْهَا، وَهِيَ تَبْكِي فَقَالَ: مَا شَأْنُكِ؟ قَالَتْ شَأْنِي أَنِّي قَدْ حِضْتُ، وَقَدْ حَلَّ النَّاسُ، وَلَمْ أَحْلِلْ، وَلَمْ أَطُفْ بِالْبَيْتِ وَالنَّاسُ يَذْهَبُونَ إلَى الْحَجِّ الْآنَ؟ فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إنَّ هَذَا أَمْرٌ كَتَبَهُ اللَّهُ عَلَى بَنَاتِ آدَمَ فَاغْتَسِلِي، ثُمَّ أَهِلِّي بِالْحَجِّ فَفَعَلَتْ وَوَقَفَتْ الْمَوَاقِفَ حَتَّى إذَا طَهُرَتْ طَافَتْ بِالْكَعْبَةِ وَبَيْنَ الصَّفَا وَالْمَرْوَةِ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: قَدْ حَلَلْتِ مِنْ حَجِّكِ وَعُمْرَتِكِ جَمِيعًا» .

of Allah—peace and blessings be upon him—declared, “You have now exited the state of *ihram* for both your Hajj and Umrah.”[28]

L13795–13797 And through the chain of Aḥmad ibn Shuʿayb, Muḥammad ibn ʿAbd Allāh ibn ʿAbd al-Ḥakam informed me: I am Ashhab. Malik reported to them that Ibn Shihāb and Hishām ibn ʿUrwah related to him from ʿUrwah, from ʿĀ’ishah, who said: “We departed with the Messenger of Allāh—peace and blessings be upon him—during the year of the Farewell Pilgrimage. When we reached Mecca, those who had entered iḥrām for ʿUmrah performed ṭawāf around the House [Kaaba] and the Saʿī between Ṣafā and Marwah, then they dissolved their iḥrām. They performed another ṭawāf after returning from Minā for their Hajj; as for those who had undertaken *Qirān* (combining Hajj and ʿUmrah), they performed only one ṭawāf.”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ أَنَا أَشْهَبُ أَنَّ مَالِكًا حَدَّثَهُمْ أَنَّ ابْنَ شِهَابٍ وَهِشَامَ بْنَ عُرْوَةَ حَدَّثَاهُ عَنْ عُرْوَةَ «عَنْ عَائِشَةَ قَالَتْ خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَامَ حَجَّةِ الْوَدَاعِ فَقَدِمْنَا مَكَّةَ فَطَافَ الَّذِينَ أَهَلُّوا بِالْعُمْرَةِ بِالْبَيْتِ وَبَيْنَ الصَّفَا وَالْمَرْوَةِ، ثُمَّ حَلُّوا، ثُمَّ طَافُوا طَوَافًا آخَرَ بَعْدَ أَنْ رَجَعُوا مِنْ مِنًى لِحَجِّهِمْ، وَأَمَّا الَّذِينَ كَانُوا جَمَعُوا الْحَجَّ وَالْعُمْرَةَ فَإِنَّمَا طَافُوا طَوَافًا وَاحِدًا» .

L13798 Aḥmad ibn ʿUmar ibn Anas narrated to us: ʿAbd Allāh ibn al-Ḥusayn ibn ʿIqāl narrated to us: Ibrāhīm ibn Muḥammad al-Dīnawarī narrated to us: Muḥammad ibn Aḥmad ibn al-Jahm narrated to us: Muḥammad ibn Bishr ibn Maṭar narrated to us: Abū al-Musʿab and Jaʿfar ibn Muḥammad al-Warakānī both said together: al-Darāwardī (he is ʿAbd al-ʿAzīz ibn Muḥammad) narrated to us: ʿUbayd Allāh ibn ʿUmar narrated to us from Nāfiʿ from Ibn ʿUmar, who said: The Messenger of Allāh, peace and blessings be upon him, said: “Whoever combines Ḥajj and ʿUmrah (Qirān), let him perform a single circumambulation and a single Saʿī for both.”

حَدَّثَنَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نَا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ نَا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ نَا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ نَا مُحَمَّدُ بْنُ بِشْرِ بْنِ مَطَرٍ نَا أَبُو الْمُصْعَبِ، وَجَعْفَرُ بْنُ مُحَمَّدٍ الْوَرَكَانِيُّ قَالَا جَمِيعًا: نَا الدَّرَاوَرْدِيُّ هُوَ عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ - نَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ قَرَنَ بَيْنَ الْحَجِّ وَالْعُمْرَةِ فَلْيَطُفْ لَهُمَا طَوَافًا وَاحِدًا وَسَعْيًا وَاحِدًا» .

L13799 Hence, these successive, mutually corroborating narrations compel indispensable certainty.

فَهَذِهِ آثَارٌ مُتَوَاتِرَةٌ مُتَظَاهِرَةٌ تُوجِبُ الْعِلْمَ الضَّرُورِيَّ.

L13800 From the chain of ʿAbd al-Razzāq: ʿUbayd Allāh ibn ʿUmar reported from Nāfiʿ that Ibn ʿUmar would say: “Does the Qārin have one Saʿī, and the Mutamattiʿ have two Saʿīs?” From the chain of Sufyān ibn ʿUyaynah, from ʿAmr ibn Dīnār, from Ṭāwus, from Ibn ʿAbbās, who said: “Your first ṭawāf between al-Ṣafā and al-Marwah suffices for both—referring to the Qārin combining Ḥajj and ʿUmrah.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ كَانَ يَقُولُ: لِلْقَارِنِ سَعْيٌ وَاحِدٌ، وَلِلْمُتَمَتِّعِ سَعْيَانِ؟ وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: يَكْفِيكَ لَهُمَا طَوَافُكَ الْأَوَّلُ بَيْنَ الصَّفَا وَالْمَرْوَةِ - يَعْنِي الْقَارِنَ بَيْنَ الْحَجِّ وَالْعُمْرَةِ.

[28] **Hadith references (L13794):** Sunan Abi Dawud 1785; Sahih Muslim 1213a; Sunan an-Nasai 2763.

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ قَالَ: حَلَفَ لِي طَاوُسٍ مَا طَافَ أَحَدٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِحَجِّهِ وَعُمْرَتِهِ إِلَّا طَوَافًا وَاحِدًا.

L13801 Through the chain of Sufyan al-Thawri from Salamah ibn Kuhayl, who said: Tāwūs swore to me that none of the Companions of the Messenger of Allah (peace be upon him) performed Tawaf for their Hajj and Umrah except a single Tawaf.

وَمِنْ طَرِيقِ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّهُ كَانَ يَحْفَظُ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ لِلْقَارِنِ طَوَافًا وَاحِدًا بَيْنَ الصَّفَا وَالْمَرْوَةِ خِلَافَ مَا يَحْفَظُ أَهْلُ الْعِرَاقِ.

L13802 And through the chain of Jaʿfar ibn Muḥammad, who narrated from his father that he transmitted from ʿAlī ibn Abī Ṭālib a ruling requiring the Qārin (one combining Hajj and Umrah) to perform one Tawaf (circumambulation) between al-Ṣafā and al-Marwah, contrary to what the people of Iraq had transmitted.

وَمِنْ طَرِيقِ هُشَيْمِ بْنِ بَشِيرٍ نَا أَبُو بِشْرٍ عَنْ سُلَيْمَانَ الْيَشْكُرِيِّ أَنَّ جَابِرَ بْنَ عَبْدِ اللَّهِ قَالَ: لَوْ أَهْلَلْتُ بِالْحَجِّ وَالْعُمْرَةِ جَمِيعًا تُخُصَّ لَهُمَا طَوَافًا وَاحِدًا وَلَكُنْتُ مُهْدِيًا - يَعْنِي سُوقَ الْهَدْيِ قَبْلَ الْإِحْرَامِ -.

L13803 From the narration of Hushaym ibn Bashir: Abu Bishr reported to us from Sulayman al-Yashkuri that Jabir ibn Abdullah said: “If I were to enter Ihram for Hajj and Umrah together as Qirān, I would designate a single circumambulation for both, and I would sacrifice the hady”—meaning the driving of the sacrificial animal before entering Ihram.

وَهُوَ قَوْلُ مُحَمَّدِ بْنِ سِيرِينَ، وَالْحَسَنِ الْبَصْرِيِّ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَعَطَاءٍ، وَطَاوُسٍ، وَمُجَاهِدٍ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، وَمُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ، وَالزُّهْرِيِّ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي ثَوْرٍ، وَدَاوُد، وَأَصْحَابِهِمْ.

L13804 This is the opinion of Muḥammad ibn Sīrīn, al-Ḥasan al-Baṣrī, Saʿīd ibn Jubayr, ʿAṭāʾ, Ṭāwūs, Mujāhid, Sālim ibn ʿAbd Allāh ibn ʿUmar, Muḥammad ibn ʿAlī ibn al-Ḥusayn, al-Zuhrī, Mālik, al-Shāfiʿī, Aḥmad, Isḥāq, Abū Thawr, Dāwūd, and their companions.

وَقَالَتْ طَائِفَةٌ: بَلْ يَطُوفُ طَوَافَيْنِ، وَيَسْعَى سَعْيَيْنِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّ الصُّبَيَّ بْنَ مَعْبَدٍ قَرَنَ بَيْنَ الْحَجِّ وَالْعُمْرَةِ فَطَافَ لَهُمَا طَوَافَيْنِ وَسَعَى سَعْيَيْنِ، وَلَمْ يَحِلَّ بَيْنَهُمَا وَأَهْدَى، وَأَخْبَرَ بِذَلِكَ عُمَرُ بْنُ الْخَطَّابِ، فَقَالَ عُمَرُ: هُدِيتَ لِسُنَّةِ نَبِيِّكَ.

L13805–13806 A group said: Rather, he performs two circumambulations and two saʿys—as narrated through the chain of Ḥammād ibn Salamah from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakhaʿī that al-Ṣubayy ibn Maʿbad combined Ḥajj and ʿUmrah, so he performed two circumambulations for them and two saʿys, did not exit Iḥrām between them, sacrificed a *hady*, and informed ʿUmar ibn al-Khaṭṭāb of that. ʿUmar said: “You have been guided to the Sunnah of your Prophet.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عَبَّادِ بْنِ كَثِيرٍ، وَيس الزَّيَّاتِ قَالَ يس: عَنْ رَجُلٍ عَنْ ابْنِ الْأَصْبَهَانِيِّ وَقَالَ عَبَّادٌ: عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَصْبَهَانِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى أَنَّ الْحُسَيْنَ بْنَ عَلِيٍّ قَرَنَ بَيْنَ الْحَجِّ وَالْعُمْرَةِ فَطَافَ بِالْبَيْتِ وَسَعَى بَيْنَ الصَّفَا وَالْمَرْوَةِ

L13807 And from the chain of ʿAbd al-Razzāq, from ʿAbbād ibn Kathīr and Yas al-Zayyāt. Yas said: From a man on the authority of Ibn al-Aṣbahānī. ʿAbbād said: From ʿAbd al-Raḥmān ibn al-Aṣbahānī, from ʿAbd al-Raḥmān ibn Abī Laylā, that al-Ḥusayn ibn ʿAlī performed Qirān Hajj (combining Hajj and ʿUmrah). He performed ṭawāf around the House and saʿī between Ṣafā and Marwah for his ʿUmrah, then sat in the Ḥijr for an hour. He then stood and

performed seven circuits of ṭawāf around the House and seven rounds of saʿī between Ṣafā and Marwah for his Hajj, saying: “This is how the Messenger of Allah (peace and blessings be upon him) did it.”

لِعُمْرَتِه، ثُمَّ قَعَدَ فِي الْحِجْرِ سَاعَةً، ثُمَّ قَامَ فَطَافَ بِالْبَيْتِ سَبْعًا وَبَيْنَ الصَّفَا وَالْمَرْوَةِ سَبْعًا لِحَجِّهِ، ثُمَّ قَالَ: هَكَذَا صَنَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L13808 And from the narration of Abd al-Razzaq, from al-Hasan ibn Umarah, from al-Hakam ibn Utayba, from Abd al-Rahman ibn Abi Layla: “The Prophet performed Hajj al-Qirān (combining Hajj and Umrah), so he performed two Tawafs and two Sa’ys for both rituals.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْحَسَنِ بْنِ عُمَارَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى «أَنَّ النَّبِيَّ جَمَعَ بَيْنَ الْحَجِّ وَالْعُمْرَةِ فَطَافَ لَهُمَا طَوَافَيْنِ وَسَعَى لَهُمَا سَعْيَيْنِ» .

L13809 It has been narrated from some of the Companions, as transmitted via the chain of Mansūr ibn al-Muʿtamir from Mālik ibn al-Ḥārith from Abū Naṣr—who is Ibn ʿAmr al-Sulamī—and via the chain of Mansūr from a man of the Banū Sulaym; via the chain of Abū ʿAwānah from al-Aʿmash from Ibrāhīm al-Nakhaʿī from ʿAbd al-Raḥmān ibn Udhaynah; via the chain of Wakīʿ from Misʿar from Bukayr ibn ʿAṭāʾ al-Laythī from a man of the Banū ʿUdhrah; via the chain of Mansūr ibn Zādhān from both al-Ḥakam ibn ʿUtaybah and Ziyād ibn Mālik; and via the chain of Ibn Samʿān from Ibn Shubrumah. Then the chains converged: Abū Naṣr ibn ʿAmr, the man from the Banū Sulaym, the man from the Banū ʿUdhrah, ʿAbd al-Raḥmān ibn Udhaynah, al-Ḥakam ibn ʿUtaybah, Ziyād ibn Mālik, and Ibn Shubrumah—all narrating from ʿAlī that he said: “The pilgrim performing combined Hajj and ʿUmrah (Qārin) must perform two circumambulations and two Saʿīs.” Via the chain of Mansūr ibn Zādhān from Ziyād ibn Mālik, and via the chain of Sufyān from Abū Isḥāq al-Sabīʿī—then both Ziyād ibn Mālik and Abū Isḥāq concurred in narrating from Ibn Masʿūd: “The pilgrim performing combined Hajj and ʿUmrah is to perform two circumambulations and two Saʿīs.”

وَرُوِيَ عَنْ بَعْضِ الصَّحَابَةِ، كَمَا رُوِّينَا مِنْ طَرِيقِ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ مَالِكِ بْنِ الْحَارِثِ عَنْ أَبِي نَصْرٍ هُوَ ابْنُ عَمْرٍو السُّلَمِيُّ - وَمِنْ طَرِيقِ مَنْصُورٍ عَنْ رَجُلٍ مِنْ بَنِي سُلَيْمٍ؛ وَمِنْ طَرِيقِ أَبِي عَوَانَةَ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أُذَيْنَةَ؛ وَمِنْ طَرِيقِ وَكِيعٍ عَنْ مِسْعَرٍ عَنْ بُكَيْرِ بْنِ عَطَاءٍ اللَّيْثِيِّ عَنْ رَجُلٍ مِنْ بَنِي عُذْرَةَ، وَمِنْ طَرِيقِ مَنْصُورِ بْنِ زَاذَانَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَزِيَادِ بْنِ مَالِكٍ، وَمِنْ طَرِيقِ ابْنِ سَمْعَانَ عَنْ ابْنِ شُبْرُمَةَ، ثُمَّ اتَّفَقَ أَبُو نَصْرِ بْنُ عَمْرٍو، وَالرَّجُلُ السُّلَمِيُّ، وَالرَّجُلُ الْعُذْرِيُّ، وَعَبْدُ الرَّحْمَنِ بْنُ أُذَيْنَةَ، وَالْحَكَمُ بْنُ عُتَيْبَةَ، وَزِيَادُ بْنُ مَالِكٍ، وَابْنُ شُبْرُمَةَ كُلُّهُمْ عَنْ عَلِيٍّ أَنَّهُ قَالَ: يَطُوفُ الْقَارِنُ طَوَافَيْنِ وَيَسْعَى سَعْيَيْنِ - وَمِنْ طَرِيقِ مَنْصُورِ بْنِ زَاذَانَ عَنْ زِيَادِ بْنِ مَالِكٍ - وَمِنْ طَرِيقِ سُفْيَانَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ، ثُمَّ اتَّفَقَ زِيَادُ بْنُ مَالِكٍ، وَأَبُو إِسْحَاقَ كِلَاهُمَا عَنْ ابْنِ مَسْعُودٍ عَلَى الْقَارِنِ طَوَافَانِ، وَسَعْيَانِ.

L13810–13812 Narrated via the chain of al-Ḥajjāj ibn Arṭāh, from al-Ḥakam ibn ʿAmr ibn al-Aswad, from al-Ḥusayn ibn ʿAlī, who said: “When you combine Ḥajj and ʿUmrah as Qirān, perform two Tawafs and two Saʿys.” This is the view of Mujāhid, Jābir ibn Zayd, Shurayḥ the Judge, al-Shaʿbī, Muḥammad ibn ʿAlī ibn al-Ḥusayn, and Ibrāhīm al-Nakhaʿī. And Hammad ibn Abi Sulayman, al-Hakam ibn ʻUtaybah, and it is reported from al-Aswad ibn Yazid—this being the opinion of Abu Hanifah, Sufyan, and al-Hasan ibn Hayy. Al-Awzaʿi inclined to a similar view. Here, there is a third opinion transmitted through

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ الْحَكَمِ بْنِ عَمْرِو بْنِ الْأَسْوَدِ عَنْ الْحُسَيْنِ بْنِ عَلِيٍّ قَالَ: إذَا قَرَنْتَ بَيْنَ الْحَجِّ وَالْعُمْرَةِ فَطُفْ طَوَافَيْنِ وَاسْعَ سَعْيَيْنِ - وَهُوَ قَوْلُ مُجَاهِدٍ، وَجَابِرِ بْنِ زَيْدٍ، وَشُرَيْحٍ الْقَاضِي، وَالشَّعْبِيِّ، وَمُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ وَإِبْرَاهِيمَ النَّخَعِيِّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَرُوِيَ عَنْ الْأَسْوَدِ بْنِ يَزِيدَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ،

وَسُفْيَانَ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَشَارَ نَحْوَهُ الْأَوْزَاعِيُّ وَهَا هُنَا قَوْلٌ ثَالِثٌ رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ قَالَ: نَا جَهْمُ بْنُ وَاقِدٍ الْأَنْصَارِيُّ سَأَلَتْ عَطَاءَ بْنَ أَبِي رَبَاحٍ فَقُلْتُ: قَرَنْتُ الْحَجَّ وَالْعُمْرَةَ فَقَالَ: تَطُوفُ طَوَافَيْنِ بِالْبَيْتِ وَيُجْزِئُك سَعْيٌ وَاحِدٌ بَيْنَ الصَّفَا وَالْمَرْوَةِ.

Sa‘id ibn Mansur, who reported: Jahm ibn Waqid al-Ansari narrated to us: “I asked ‘Ata’ ibn Abi Rabah, saying: ‘I combined Hajj and Umrah.’ He responded: ‘Perform two circumambulations of the House and let one _sa‘i_ between Safa and Marwah suffice for you.’”

L13813 قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ عَطَاءٍ هَذَا فَإِنَّهُ كَانَ لَا يَرَى السَّعْيَ بَيْنَ الصَّفَا وَالْمَرْوَةِ مِنْ فَرَائِضِ الْحَجِّ، فَلِذَلِكَ أَجْزَأَهُ عِنْدَهُ سَعْيٌ وَاحِدٌ بَيْنَهُمَا، لِأَنَّهُ لِلْحَجِّ وَحْدَهُ.

Abu Muhammad said: As for this statement of ʿAṭāʾ, he did not consider the Saʿī between al-Ṣafā and al-Marwah to be among the obligatory rites of Hajj. Therefore, in his view, a single Saʿī between them sufficed because it is prescribed for Hajj alone.

L13814 قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَا شَغَبَ بِهِ، مَنْ يَرَى أَنْ يَطُوفَ الْقَارِنُ طَوَافَيْنِ وَيَسْعَى سَعْيَيْنِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَاقِطٌ كُلُّهُ لَا يَجُوزُ الِاحْتِجَاجُ بِهِ.

Abu Muhammad said: As for the contention raised by those who assert that the Qarin should perform two circumambulations and two saʿys—attributed to the Prophet (peace and blessings of Allah be upon him)—all of it is invalid, and it is impermissible to cite it as evidence.

L13815 وَكَذَلِكَ كُلُّ مَا رَوَوْا فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يَصِحُّ مِنْهُ، وَلَا كَلِمَةٌ وَاحِدَةٌ، وَلَكِنَّهُ عَمَّنْ ذَكَرْنَا مِنْ التَّابِعِينَ صَحِيحٌ إلَّا عَنْ الْأَسْوَدِ وَحْدَهُ فَإِنَّهُ مِنْ رِوَايَةِ جَابِرٍ الْجُعْفِيِّ.

Similarly, every narration they reported regarding that from the Companions—may Allah be pleased with them—none of it is authentic, not even a single word. However, what is narrated from those we mentioned among the Successors is authentic, except from al-Aswad alone, for it is from the narration of Jābir al-Juʿfī.

L13816 أَمَّا حَدِيثُ الضَّبِّيِّ بْنِ مَعْبَدٍ فَإِنَّ إبْرَاهِيمَ لَمْ يُدْرِكْ الضَّبِّيَّ، وَلَا سَمِعَ مِنْهُ، وَلَا أَدْرَكَ عُمَرَ فَهُوَ مُنْقَطِعٌ، وَقَدْ رَوَاهُ الثِّقَاتُ: مُجَاهِدٌ، وَمَنْصُورٌ عَنْ أَبِي وَائِلٍ شَقِيقِ بْنِ سَلَمَةَ عَنْ الضَّبِّيِّ - فَلَمْ يَذْكُرُوا فِيهِ طَوَافًا، وَلَا طَوَافَيْنِ، وَلَا سَعْيًا، وَلَا سَعْيَيْنِ أَصْلًا، وَإِنَّمَا فِيهِ أَنَّهُ قَرَنَ بَيْنَ الْحَجِّ وَالْعُمْرَةِ فَقَطْ.

As for the ḥadīth of al-Ḍabbī ibn Maʿbad, Ibrāhīm did not meet al-Ḍabbī, nor hear from him, nor meet ʿUmar, rendering the chain interrupted. Moreover, trustworthy narrators—Mujāhid and Manṣūr—narrated it from Abū Wāʾil Shaqīq ibn Salamah, from al-Ḍabbī. They did not mention any *tawaf*, two *tawafs*, *saʿy*, or two *saʿys* whatsoever. The narration only states that he performed *Qirān* between Ḥajj and ʿUmrah and nothing else.

L13817 وَأَمَّا حَدِيثُ ابْنِ أَبِي لَيْلَى فَمُرْسَلٌ، ثُمَّ هُوَ أَيْضًا عَنْ الْحَسَنِ بْنِ عُمَارَةَ، وَلَا يَجُوزُ الِاحْتِجَاجُ بِرِوَايَتِهِ.

As for the ḥadīth of Ibn Abī Laylā, it is *mursal*. Furthermore, it is narrated from al-Ḥasan ibn ʿUmārah, and it is impermissible to cite his narration as evidence.

L13818 As for the ḥadīth of Al-Ḥusayn ibn ʿAlī, it is narrated through ʿAbbād ibn

Kathīr and Yas—both of whom are very weak narrators, to the point of being utterly discarded. Thus, all of that is discarded, and the narration transmitted from ʿAmr from Al-Ḥusayn ibn ʿAlī is rejected by its discarding.

وَأَمَّا حَدِيثُ الْحُسَيْنِ بْنِ عَلِيٍّ، فَعَنْ عَبَّادِ بْنِ كَثِيرٍ، وَيس، وَكِلَاهُمَا ضَعِيفٌ جِدًّا فِي غَايَةِ السُّقُوطِ، فَسَقَطَ كُلُّ ذَلِكَ، وَتَسْقُطُ بِسُقُوطِهِ الرِّوَايَةُ عَنْ عَمْرٍو عَنْ الْحُسَيْنِ بْنِ عَلِيٍّ.

L13819 By Allah, Allah the Exalted has not granted any excuse to one who opposes the narrations of ‘Aṭā’, Ṭāwūs, Mujāhid, and ‘Urwah—from the Mother of the Believers, from the Prophet (peace be upon him)—nor the narration of Nāfi‘ from Ibn ‘Umar, and that of Abū al-Zubayr from Jābir, both of them tracing back to the Prophet (peace be upon him), regarding the likes of these foul-smelling abominations. We seek refuge in Allah from being forsaken.

وَوَاللَّهِ مَا جَعَلَ اللَّهُ - تَعَالَى - عُذْرًا لِمَنْ يُعَارِضُ رِوَايَةَ عَطَاءٍ، وَطَاوُسٍ، وَمُجَاهِدٍ، وَعُرْوَةَ، عَنْ أُمِّ الْمُؤْمِنِينَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرِوَايَةَ نَافِعٍ عَنْ ابْنِ عُمَرَ وَأَبِي الزُّبَيْرِ عَنْ جَابِرٍ، كِلَاهُمَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِ هَذِهِ الْعُفُونَاتِ الذَّفِرَةِ، وَنَعُوذُ بِاللَّهِ مِنْ الْخِذْلَانِ.

L13820–13821 As for the narrators from Ali, they include Abu Nasr ibn Amr, Abd al-Rahman ibn Udhaynah, Ziyad ibn Malik, a man from Banu Udhrah, and a man from Banu Sulaym—none of Allah—Exalted is He—’s creation knows who they are? As for al-Hakam ibn Utaybah and Ibn Shubrumah, they did not meet Ali or his son except after his death. As for the narration from his son al-Husayn, it is transmitted through al-Hajjaj ibn Arṭā’ah, who is in the utmost unreliability.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ فَأَبُو نَصْرِ بْنِ عَمْرٍو، وَعَبْدُ الرَّحْمَنِ بْنُ أُذَيْنَةَ، وَزِيَادُ بْنُ مَالِكٍ، وَرَجُلٌ مِنْ بَنِي عُذْرَةَ، وَرَجُلٌ مِنْ بَنِي سُلَيْمٍ لَا يَدْرِي أَحَدٌ مِنْ خَلْقِ اللَّهِ - تَعَالَى - مَنْ هُمْ؟ وَأَمَّا الْحَكَمُ بْنُ عُتَيْبَةَ، وَابْنُ شُبْرُمَةَ فَلَمْ يُدْرِكْهُ عَلِيًّا وَلَا وَلَدًا إلَّا بَعْدَ مَوْتِهِ، وَأَمَّا الرِّوَايَةُ عَنْ الْحُسَيْنِ ابْنِهِ، فَعَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ وَهُوَ فِي غَايَةِ السُّقُوطِ.

L13822 As for the narration from Ibn Masʿūd concerning Ziyād ibn Mālik, his identity is unknown (*majhūl*).

وَأَمَّا الرِّوَايَةُ عَنْ ابْنِ مَسْعُودٍ فَزِيَادُ بْنُ مَالِكٍ لَا يُدْرَى مَنْ هُوَ.

L13823 As for Abū Isḥāq, he was not born except in the year of Ibn Masʿūd’s death or after it.

وَأَمَّا أَبُو إِسْحَاقَ فَلَمْ يُولَدْ إلَّا سَنَةَ مَوْتِ ابْنِ مَسْعُودٍ أَوْ بَعْدَهَا.

L13824 Who is more astonishing than one who opposes the narration of Abdullah ibn Umar from Nafi‘ from Ibn Umar, the narration of Amr ibn Dinar from Tawus from Ibn Abbas, the narration of Salamah ibn Kuhayl from Tawus in a general transmission from the Companions collectively, the narration of Abu Bishr from Sulayman al-Yashkuri from Jabir, the narration of Malik from al-Zuhri, and the narration of Hisham ibn Urwah from Urwah from Aishah, the Mother of the Believers, from every Companion who accompanied the Messenger of Allah (peace and blessings be upon him) with these

فَمَنْ أَعْجَبُ مِمَّنْ يُعَارِضُ رِوَايَةَ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ، وَرِوَايَةَ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ، وَرِوَايَةَ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ طَاوُسٍ عَنْ الصَّحَابَةِ جُمْلَةً، وَرِوَايَةَ أَبِي بِشْرٍ عَنْ سُلَيْمَانَ الْيَشْكُرِيِّ عَنْ جَابِرٍ، وَرِوَايَةَ مَالِكٍ عَنْ الزُّهْرِيِّ، وَهِشَامِ بْنِ عُرْوَةَ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنْ كُلِّ مَنْ قَرَنَ مِنْ الصَّحَابَةِ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهَذِهِ النَّطَائِحِ الْمُتَرَدِّيَاتِ، وَهَذَا - لِمَنْ تَأَمَّلَهُ

clashing and discredited [narrations]? This, for whoever reflects, constitutes a valid consensus from all the Companions—may Allah be pleased with them—established in the presence of the Messenger of Allah (peace and blessings be upon him). It is not weakened by anything that might emerge afterward—if such were to emerge—how much more so when all of it is baseless and discarded? Abu Muhammad said: The statement of the Messenger of Allah (peace and blessings be upon him)—narrated by Tawus and Mujahid from Ibn Abbas, narrated by Ata and Muhammad ibn Ali from Jabir, and narrated by Tawus from Suraqah, all of them narrating from the Prophet (peace and blessings be upon him)—is: "The rites of Umrah have been merged into Hajj until the Day of Resurrection."

- إجْمَاعٌ صَحِيحٌ مِنْ جَمِيعِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بِحَضْرَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَكْدَحُ فِيهِ مَا جَاءَ بَعْدَهُ - لَوْ جَاءَ - فَكَيْفَ وَكُلُّهُ بَاطِلٌ مُطْرَحٌ؟ قَالَ أَبُو مُحَمَّد: وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي رَوَاهُ طَاوُسٍ، وَمُجَاهِدٌ عَنْ ابْنِ عَبَّاسٍ، وَرَوَاهُ عَطَاءٌ، وَمُحَمَّدُ بْنُ عَلِيٍّ عَنْ جَابِرٍ، وَرَوَاهُ طَاوُسٍ عَنْ سُرَاقَةَ، كُلُّهُمْ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «دَخَلَتْ الْعُمْرَةُ فِي الْحَجِّ إلَى يَوْمِ الْقِيَامَةِ» .

L13825 Ali said: It is invalid for Umrah to require any rite beyond the rites of Hajj, since Umrah is subsumed within it. Among the wonders of the world is their reliance in their arguments on those we previously mentioned from the despicable individuals whose absence from good brings comfort, and whose presence in it causes unease.

قَالَ عَلِيٌّ: وَمِنْ الْبَاطِلِ أَنْ تَحْتَاجَ الْعُمْرَةُ إلَى عَمَلٍ غَيْرِ عَمَلِ الْحَجِّ، وَقَدْ دَخَلَتْ فِيهِ، وَمِنْ عَجَائِبِ الدُّنْيَا احْتِجَاجُهُمْ بِمَنْ ذَكَرْنَا مِنْ السُّقَّاطِ الَّذِينَ يُؤْنَسُ بِالْخَيْرِ فَقْدُهُمْ مِنْهُ، وَيُوحَشُ مِنْهُ وُجُودُهُمْ فِيهِ.

L13826 They then comment regarding what is authenticated from the Prophet—may God's blessings and peace be upon him—concerning his instruction that whoever combines Hajj and Umrah by performing a single circumambulation and a single Sa'i for both: "This is from the narration of Al-Darawardi. Yes, it is indeed from the narration of Al-Darawardi, the trustworthy and reliable, not from the narration of Al-Hajjaj ibn Artāh, 'Abbad ibn Kathir, or Yas[ir] al-Zayyāt, who are rejected and abandoned."

ثُمَّ يَقُولُونَ فِي الثَّابِتِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَمْرِهِ مَنْ قَرَنَ بَيْنَ الْحَجِّ وَالْعُمْرَةِ بِأَنْ يَطُوفَ لَهُمَا طَوَافًا وَاحِدًا وَسَعْيًا وَاحِدًا: هَذَا مِنْ رِوَايَةِ الدَّرَاوَرْدِيِّ، نَعَمْ، إنَّهُ لَمِنْ رِوَايَةِ الدَّرَاوَرْدِيِّ الثِّقَةِ الْمَأْمُونِ، لَا مِنْ رِوَايَةِ الْحَجَّاجِ بْنِ أَرْطَاةَ، وَعَبَّادِ بْنِ كَثِيرٍ، وَيس الزَّيَّاتِ، الْمُطْرَحَيْنِ الْمَتْرُوكَيْنِ.

L13827–13829 Then, the most astonishing matter is that in the report of the aforementioned 'Abd al-Raḥmān ibn Udhaynah, on the authority of 'Alī: that he does not... It is permissible for one who initiates the declaration of intent for Ḥajj to append ʿUmrah to it. Then Abū Ḥanīfah treated the narration transmitted by Ibn Udhaynah from ʿAlī – which states that the Qārin (combiner) performs two circumambulations and two Saʿys – as valid evidence, though this narration itself contradicts the established Sunnah and the Companions' consensus. Conversely, he did not consider the narration transmitted by Ibn Udhaynah from ʿAlī – which states that one who initiates the declaration

ثُمَّ أَعْجَبُ شَيْءٍ: أَنَّ فِي رِوَايَةِ عَبْدِ الرَّحْمَنِ بْنِ أُذَيْنَةَ الْمَذْكُورِ عَنْ عَلِيٍّ: أَنَّهُ لَا يَجُوزُ لِمَنْ بَدَأَ بِالْإِهْلَالِ بِالْحَجِّ أَنْ يُرْدِفَ عَلَيْهِ عُمْرَةً فَجَعَلَ أَبُو حَنِيفَةَ مَا رَوَى ابْنُ أُذَيْنَةَ عَنْ عَلِيٍّ مِنْ أَنَّ الْقَارِنَ يَطُوفُ طَوَافَيْنِ وَيَسْعَى سَعْيَيْنِ حُجَّةً خَالَفَ لَهَا السُّنَنَ الثَّابِتَةَ وَإِجْمَاعَ الصَّحَابَةِ، وَلَمْ يَجْعَلْ مَا رَوَاهُ ابْنُ أُذَيْنَةَ عَنْ عَلِيٍّ -: مِنْ أَنَّهُ لَا يَجُوزُ لِمَنْ بَدَأَ بِالْإِهْلَالِ بِالْحَجِّ أَنْ يُضِيفَ إلَيْهِ عُمْرَةً -: حُجَّةً، فَمَا هَذَا التَّلَاعُبُ؟ وَلَئِنْ كَانَتْ رِوَايَةُ ابْنِ أُذَيْنَةَ

of intent for Ḥajj may not append ʿUmrah to it – as valid evidence. What capriciousness is this? If Ibn Udhaynah's narration from ʿAlī constitutes valid evidence for one juristic aspect, it is indeed equally valid evidence for the other aspect. If it is not valid evidence for one of the two aspects, how can it be valid evidence for the other?

عَنْ عَلِيٍّ فِي أَحَدِ الْوَجْهَيْنِ حُجَّةً: إِنَّهَا لَحُجَّةٌ فِي الْوَجْهِ الْآخَرِ، وَلَئِنْ لَمْ تَكُنْ حُجَّةً فِي أَحَدِ الْوَجْهَيْنِ فَمَا هِيَ حُجَّةٌ فِي الْآخَرِ.

L13830 If only the one who cited this as evidence had felt shame from those present around him among the people before progressing to feeling shame before the angels, and ultimately before the One to Whom is his return—the Almighty and Majestic—it would have restrained him from this disgraceful brazenness.

ثُمَّ اعْتَرَضُوا فِي الْآثَارِ الْوَارِدَةِ عَنِ ابْنِ عُمَرَ بِمَا رُوِيَ عَنْهُ مِنْ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ مُتَمَتِّعًا، وَلَوْ أَنَّ الَّذِي احْتَجَّ بِهَذَا يَسْتَحْيِي مِمَّنْ حَضَرَهُ مِنَ النَّاسِ [مِنْ] قَبْلِ أَنْ يَبْلُغَ إِلَى الْحَيَاءِ مِنَ الْمَلَائِكَةِ، ثُمَّ مِنَ الَّذِي إِلَيْهِ مَعَادُهُ - عَزَّ وَجَلَّ -: لَرَدَعَهُ عَنْ هَذِهِ الْمُجَاهَرَةِ الْقَبِيحَةِ.

L13831 We have already mentioned this report, and in it [from] "The Tamattuʿ of the Messenger of Allah—peace and blessings be upon him—he began by entering Ihrām for Umrah, then assumed Ihrām for Hajj." Thus he described the action of Qirān and named it Tamattuʿ.

وَهَذَا الْخَبَرُ قَدْ ذَكَرْنَاهُ وَفِيهِ [مِنْ] «تَمَتُّعِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَدَأَ فَأَهَلَّ بِالْعُمْرَةِ، ثُمَّ أَهَلَّ بِالْحَجِّ» فَوَصَفَ عَمَلَ الْقِرَانِ وَسَمَّاهُ: تَمَتُّعًا.

L13832 It is astonishing that this individual, who brazenly persists in this grave error, once vehemently argued to prove that the Prophet—peace and blessings of Allah be upon him—performed Hajj as a *Qārin* (combining Hajj and Umrah), yet now he abandons that stance and insinuates the Prophet was a *Mutamattiʿ* (one performing Umrah followed by Hajj in the same year with a break). This epitomizes the height of folly and blameworthy conduct. He contests the narrations from ʿĀ'ishah, the Mother of the Believers, by citing the report in which the Prophet—peace and blessings of Allah be upon him—instructed her: *"Abandon the Umrah, relinquish the Umrah, leave the Umrah, comb your hair, loosen it, and proclaim the Hajj."* This obstinate denier misleadingly asserts through these phrases that they released her from the Umrah. This is false, for the meaning of *"Abandon the Umrah, relinquish the Umrah, leave the Umrah, and proclaim the Hajj"* is that she should suspend the *ṭawāf*—the essential rite of Umrah—due to her menstruation, pause the Umrah rites, and attach Hajj to her Umrah, thereby becoming a female *Qārin*. When she became pure, she then performed the *ṭawāf* around the House, fulfilling both her Umrah and Hajj.

وَالْعَجَبُ أَنَّ هَذَا الْمُجَاهِرَ بِهَذِهِ الْعَظِيمَةِ يُنَاظِرُ الدَّهْرَ فِي إِثْبَاتِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ قَارِنًا، ثُمَّ أَضْرَبَ عَنْ ذَلِكَ الْآنَ وَجَعَلَ يُوهِمُ: أَنَّهُ كَانَ مُتَمَتِّعًا، وَهَذَا مِنَ الْغَايَةِ فِي السَّمَاجَةِ وَالصِّفَةِ الْمَذْمُومَةِ، وَاعْتَرَضَ فِي الْآثَارِ الْمَذْكُورَةِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ بِمَا رُوِيَ فِي ذَلِكَ الْخَبَرِ مِنْ «قَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اُرْفُضِي الْعُمْرَةَ، وَدَعِي الْعُمْرَةَ، وَاتْرُكِي الْعُمْرَةَ، وَامْتَشِطِي، وَانْقُضِي رَأْسَكِ، وَأَهِلِّي بِالْحَجِّ» وَأَوْهَمَ هَذَا الْمُكَابِرُ بِهَذِهِ الْأَلْفَاظِ: أَنَّهَا أَحَلَّتْ مِنَ الْعُمْرَةِ، وَهَذَا بَاطِلٌ لِأَنَّ - مَعْنَى «اُرْفُضِي الْعُمْرَةَ، وَدَعِي الْعُمْرَةَ، وَاتْرُكِي الْعُمْرَةَ، وَأَهِلِّي بِالْحَجِّ» أَنْ تَدَعَ الطَّوَافَ الَّذِي هُوَ عَمَلُ الْعُمْرَةِ وَتَتْرُكَهُ، وَتَرْفُضَ عَمَلَ الْعُمْرَةِ مِنْ أَجْلِ حَيْضِهَا، وَتُدْخِلَ حَجًّا عَلَى عُمْرَتِهَا، فَتَكُونَ قَارِنَةً، فَإِذَا طَهُرَتْ طَافَتْ بِالْبَيْتِ حِينَئِذٍ لِلْعُمْرَةِ وَلِلْحَجِّ.

L13833 As for unbraiding the hair and combing, these are not considered reprehensible during the state of *iḥrām*; rather, they are absolutely permissible—the proof of this is the statement of the Messenger of Allah—may Allah's peace and blessings be upon him—to her at that time: "Your circumambulation of the House (*ṭawāf*) and your *saʿy* between Ṣafā and Marwah suffice for your Ḥajj and your ʿUmrah."

وَأَمَّا نَقْضُ الرَّأْسِ وَالِامْتِشَاطُ فَلَا يُكْرَهُ ذَلِكَ فِي الْإِحْرَامِ بَلْ هُوَ مُبَاحٌ مُطْلَقٌ -: بُرْهَانُ ذَلِكَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهَا حِينَئِذٍ «طَوَافُكِ بِالْبَيْتِ وَسَعْيُكِ بَيْنَ الصَّفَا وَالْمَرْوَةِ يَكْفِيكِ لِحَجِّكِ وَعُمْرَتِكِ» .

L13834–13835 So how can her *ṭawāf* and *saʿy* suffice for an *ʿumrah* after having exited the state of *iḥrām* from it? Were it not for the blinding, deafening, plunging desire that thrusts into the seas of misguidance by openly proclaiming falsehood, this error would hold no ground.

فَكَيْفَ يُمْكِنُ أَنْ يَكْفِيَهَا طَوَافُهَا وَسَعْيُهَا لِعُمْرَةٍ قَدْ أَحَلَّتْ مِنْهَا؟ لَوْلَا الْهَوَى الْمُعْمِي الْمُصِمُّ الْمُقْحِمُ فِي بِحَارِ الضَّلَالَةِ بِالْمُجَاهَرَةِ بِالْبَاطِلِ.

L13836 It was conclusively established that her Tawaf and Sa'i sufficed for both her Hajj and Umrah - the two rites she had combined through Qiran. This presents no implausibility to anyone possessing the slightest understanding, nor did anyone find grounds to obscure the meaning in Jabir's narration or Urwa's report from Aisha: that the Companions who combined Umrah with Hajj performed a single Tawaf for both rites.

فَصَحَّ يَقِينًا أَنَّهُ إنَّمَا كَفَاهَا طَوَافُهَا وَسَعْيُهَا لِحَجِّهَا وَعُمْرَتِهَا اللَّذَيْنِ كَانَتْ قَارِنَةً بَيْنَهُمَا، هَذَا مَا لَا يَحِيلُ عَلَى مَنْ لَهُ أَدْنَى فَهْمٍ، وَلَمْ يَجِدْ مَا يُمَوِّهُ بِهِ فِي حَدِيثِ جَابِرٍ، وَلَا فِي حَدِيثِ عُرْوَةَ عَنْ عَائِشَةَ: أَنَّ الَّذِينَ جَمَعُوا بَيْنَ الْعُمْرَةِ وَالْحَجِّ مِنْ الصَّحَابَةِ طَافُوا لَهُمَا طَوَافًا وَاحِدًا.

L13837 He returned to say: "Indeed, Ali was with the Messenger of Allah (peace and blessings be upon him) during his Hajj and shared in his sacrificial offering. Did he not speak except based on knowledge?" Thus, it is said to whoever makes this claim: "You ascribe falsehood to Ali and attribute a statement never authentically established from him. Even if it were established, the Mother of the Believers was in that Hajj more privy to the Prophet's private matters (peace and blessings be upon him) and more knowledgeable about him than Ali or others. Since Ali's position here is presented as necessitating following him and discarding established Sunnah and the statements of the other Companions for an unverified statement from him, why was it not obligatory to follow him in what is authentically reported from him—such as permitting the sale of slave mothers who bore children, his ruling that twenty-five camels require five sheep, and other matters where they opposed him regarding issues less significant than what they abandoned here? Is not desire an idol worshipped? Our observation shows them declaring regarding the narration from the Mother of the Believers when she said to the slave

فَرَجَعَ إلَى أَنْ قَالَ: إنَّ عَلِيًّا كَانَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَجِّهِ وَأَشْرَكَهُ فِي هَدْيِهِ، فَلَمْ يَقُلْ مَا قَالَ إلَّا عَنْ عِلْمٍ؟ فَيُقَالُ لِمَنْ قَالَ هَذَا الْقَوْلَ: إنَّك تَنْسِبُ إلَى عَلِيٍّ الْبَاطِلَ، وَقَوْلًا لَمْ يَثْبُتْ عَنْهُ قَطُّ، ثُمَّ لَوْ ثَبَتَ عَنْهُ فَأُمُّ الْمُؤْمِنِينَ كَانَتْ فِي تِلْكَ الْحَجَّةِ أَبْطَنَ بِالنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَعْلَمَ بِهِ مِنْ عَلِيٍّ وَغَيْرِ عَلِيٍّ، وَإِذْ صَارَ عَلِيٌّ هَاهُنَا يَجِبُ تَقْلِيدُهُ وَإِطْرَاحُ السُّنَنِ الثَّابِتَةِ، وَأَقْوَالِ سَائِرِ الصَّحَابَةِ لِقَوْلٍ لَمْ يَصِحَّ عَنْهُ، فَهَلَّا وَجَبَ تَقْلِيدُهُ فِي الثَّابِتِ عَنْهُ مِنْ بَيْعِ أُمَّهَاتِ الْأَوْلَادِ، وَمِنْ قَوْلِهِ: إنَّ فِي خَمْسٍ وَعِشْرِينَ مِنْ الْإِبِلِ خَمْسَ شِيَاهٍ، وَسَائِرِ مَا خَالَفُوهُ فِيهِ لِمَا هُوَ أَقَلُّ مِمَّا تَرَكُوا هَاهُنَا؟ وَلَكِنَّ الْهَوَى إلَهٌ مَعْبُودٌ؟ وَعَهْدُنَا بِهِمْ يَقُولُونَ فِيمَا رُوِيَ عَنْ أُمِّ الْمُؤْمِنِينَ إذْ

mother of Zayd ibn Arqam's child concerning her sale of Zayd's slave for eight hundred dirhams on credit, then repurchasing him for six hundred dirhams in cash: 'Inform Zayd he has nullified his jihad with the Messenger of Allah (peace and blessings be upon him) unless he repents'—asserting: 'Such a ruling cannot stem from personal opinion.' Why then do they not say here regarding the statements of Aisha, Jabir, Ibn Umar, and Ibn Abbas that one performing *Qirān* Hajj suffices with a single circumambulation: 'Such a ruling cannot stem from personal opinion'? Yet they suffice with supporting the current issue by whatever means possible. Success comes solely from Allah, the Exalted."

Issue: The Defective Among Sacrificial Offerings

837. Issue: A defective animal suffices as a sacrificial offering, but a sound one is more preferable to us. A jadhaʿah from camels, cows, or sheep and goats does not suffice except only as compensation for hunting.

The proof of that is that the Prophet (peace and blessings be upon him) prohibited [sacrificing] a clearly lame animal, a clearly one-eyed animal, a clearly sick animal, an emaciated animal not cleared of defects, and that one should not sacrifice an animal with a split ear, nor... A torn-eared [animal], nor one with a front-slit ear, nor one with a back-slit ear—the ruling is explicitly stated in the texts regarding sacrifices (al-aḍāḥī). The sacrificial offering (al-uḍḥiyah) differs from the pilgrimage offering (al-hady), and analogy is invalid.

We have agreed with the dissenting scholars regarding the difference in rulings between the hady (sacrificial animal) and udhiyah (Eid sacrifice) concerning marking and garlanding, and the ruling applicable if it becomes unfit before reaching its designated slaughtering place.

It is invalid to analogize the ruling of *hady* to *udhiyah* in one context without analogizing it in another, absent differentiating evidence. The *hady* is permissible throughout the entire year, whereas *udhiyah*—according to their view—is only permissible during the three days of Dhul-

قَالَتْ لِأُمِّ وَلَدِ زَيْدِ بْنِ أَرْقَمَ فِي بَيْعِهَا غُلَامًا مِنْ زَيْدٍ بِثَمَانِمَائَةِ دِرْهَمٍ إِلَى الْعَطَاءِ، ثُمَّ ابْتَاعَتْهُ مِنْهُ بِسِتِّمَائَةِ دِرْهَمٍ نَقْدًا: أَبْلِغْ زَيْدًا أَنَّهُ قَدْ أَبْطَلَ جِهَادَهُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنْ لَمْ يَتُبْ: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ - فَهَلَّا قَالُوا هَاهُنَا فِي قَوْلِ عَائِشَةَ، وَجَابِرٍ، وَابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ: إِنَّ الْقَارِنَ يُجْزِئُهُ طَوَافٌ وَاحِدٌ: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، وَلَكِنْ حَسْبُهُمْ وَنَصْرُ الْمَسْأَلَةِ الْحَاصِلَةِ الْحَاضِرَةِ بِمَا يُمْكِنُ وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ

[مَسْأَلَةٌ الْمَعِيبُ مِنْ الْهَدْيِ]

٨٣٧ - مَسْأَلَةٌ: وَيُجْزِئُ فِي الْهَدْيِ: الْمَعِيبُ، وَالسَّالِمُ أَحَبُّ إلَيْنَا - وَلَا تُجْزِئُ جَذَعَةٌ مِنْ الْإِبِلِ، وَلَا مِنْ الْبَقَرِ، وَلَا مِنْ الْغَنَمِ، إلَّا فِي جَزَاءِ الصَّيْدِ فَقَطْ.

بُرْهَانُ ذَلِكَ -: أَنَّ «نَهْيَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْعَرْجَاءِ الْبَيِّنِ عَرَجُهَا، وَالْعَوْرَاءِ الْبَيِّنِ عَوَرُهَا، وَالْمَرِيضَةِ الْبَيِّنِ مَرَضُهَا، وَالْعَجْفَاءِ الَّتِي لَا تُنَقِّي، وَأَنْ لَا يُضَحَّى بِشَرْقَاءَ، وَلَا خَرْقَاءَ، وَلَا مُقَابَلَةٍ، وَلَا مُدَابَرَةٍ» ، إنَّمَا جَاءَ فِي الْأَضَاحِيِّ نَصًّا، وَالْأُضْحِيَّةُ غَيْرُ الْهَدْيِ، وَالْقِيَاسُ بَاطِلٌ.

وَقَدْ وَافَقْنَا الْمُخَالِفَ عَلَى اخْتِلَافِ حُكْمِ الْهَدْيِ وَالْأُضْحِيَّةِ فِي الْإِشْعَارِ وَالتَّقْلِيدِ، وَحُكْمُهُ إذَا عَطِبَ قَبْلَ مَحِلِّهِ.

فَمِنْ الْبَاطِلِ أَنْ يُقَاسَ حُكْمُ الْهَدْيِ عَلَى الْأَضَاحِيِّ فِي مَكَانٍ، وَلَا يُقَاسُ عَلَيْهِ فِي مَكَانٍ آخَرَ بِغَيْرِ بُرْهَانٍ مُفَرِّقٍ بَيْنَ ذَلِكَ، وَالْهَدْيُ جَائِزٌ فِي جَمِيعِ السَّنَةِ، وَلَا تَجُوزُ الْأُضْحِيَّةُ

Hijjah. Thus, equating them is invalid. And divine facilitation is by Allah, the Most High.

عِنْدَهُمْ إِلَّا فِي ثَلَاثَةِ أَيَّامٍ مِنْ ذِي الْحِجَّةِ، فَبَطَلَتْ التَّسْوِيَةُ بَيْنَهُمَا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L13845 As for the six-month-old sheep or goat (al-jadhaʿah), this ruling is based on what was transmitted to us through Muslim's chain: Yahya ibn Yahya narrated to us from Hushaym, from Dawud ibn Abi Hind, from Al-Shaʿbi, from Al-Bara' ibn ʿAzib that his maternal uncle Abu Burdah ibn Niyar slaughtered his sacrificial animal before the Prophet (peace be upon him) had slaughtered. He said: "O Messenger of Allah, meat is disliked on this day. I hastened my ritual sacrifice to feed my family, neighbors, and household." The Messenger of Allah (peace be upon him) said: "Offer another sacrifice." He replied: "O Messenger of Allah, I have a milking young she-goat that is better than two meat-bearing sheep." The Prophet (peace be upon him) said: "It is the best of your two sacrifices. But no six-month-old sheep or goat will ever be valid as a sacrifice for anyone after you."

وَأَمَّا الْجَذَعَةُ -: فَلِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا يَحْيَى بْنُ يَحْيَى أَنَا هُشَيْمٌ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ الشَّعْبِيِّ «عَنْ الْبَرَاءِ بْنِ عَازِبٍ: أَنَّ خَالَهُ أَبَا بُرْدَةَ بْنَ نِيَارٍ ذَبَحَ قَبْلَ أَنْ يَذْبَحَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إنَّ هَذَا الْيَوْمَ اللَّحْمُ فِيهِ مَكْرُوهٌ، وَإِنِّي عَجَّلْتُ نَسِيكَتِي لِأُطْعِمَ أَهْلِي، وَجِيرَانِي، وَأَهْلَ دَارِي؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعِدْ نُسُكًا؟ فَقَالَ: يَا رَسُولَ اللَّهِ إنَّ عِنْدِي عِنَاقَ لَبَنٍ هِيَ خَيْرٌ مِنْ شَاتَيْ لَحْمٍ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -: هِيَ خَيْرُ نَسِيكَتَيْكَ، وَلَا تُجْزِئُ جَذَعَةٌ عَنْ أَحَدٍ بَعْدَكَ» .

L13846 This is a general ruling from him (peace be upon him) and the commencement of a self-contained legal matter. This would have been confined to the Udhiyah only had he (peace be upon him) stated: "It does not suffice for anyone after your time," in which case the pronoun would refer back to the Udhiyah. However, he (peace be upon him) commenced by declaring that a Jadhaʿah (a one-year-old sheep) does not suffice for anyone after her, thereby generalizing the ruling without restriction.

وَهَذَا عُمُومٌ مِنْهُ - عَلَيْهِ السَّلَامُ - وَابْتِدَاءُ قَضِيَّةٍ قَائِمَةٍ بِذَاتِهَا وَإِنَّمَا كَانَ يَكُونُ هَذَا مَقْصُورًا عَلَى الْأُضْحِيَّةِ لَوْ قَالَ - عَلَيْهِ السَّلَامُ -: وَلَا تُجْزِئُ عَنْ أَحَدٍ بَعْدَك، فَكَانَ يَكُونُ الضَّمِيرُ مَرْدُودًا إلَى الْأُضْحِيَّةِ، لَكِنْ ابْتَدَأَ - عَلَيْهِ السَّلَامُ - فَأَخْبَرَ: أَنَّهُ لَا يُجْزِئُ جَذَعَةٌ عَنْ أَحَدٍ بَعْدَهَا، فَعَمَّ وَلَمْ يَخُصَّ.

L13847 We specified the compensation for hunting based on the explicit statement of Allah, the Exalted: *"So the compensation is an equivalent of what he killed of livestock"* [Al-Mā'idah: 95]. Thus, He, the Exalted, made it a general ruling, obligating that the compensation must suffice as an equivalent: a yearling camel, a young animal, or a defective animal, each according to its counterpart, as per the explicit text of the Quran. And success comes from Allah alone.[29]

وَإِنَّمَا خَصَّصْنَا جَزَاءَ الصَّيْدِ بِنَصِّ قَوْله تَعَالَى: {فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ} [المائدة: ٩٥] فَعَمَّ - تَعَالَى - أَيْضًا، وَوَجَبَ أَنْ يُجْزِئَ الْجَذَعُ بِمِثْلِهِ، وَالصَّغِيرُ بِمِثْلِهِ، وَالْمَعِيبُ بِمِثْلِهِ بِنَصِّ الْقُرْآنِ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L13848 **A case concerning someone who circumambulated the**

[مَسْأَلَةٌ طَافَ بِالْبَيْتِ عُرْيَانًا]

[29] **Qur'an references (L13847):** Qur'an 5:95 (Al-Ma'idah).

Kaaba while naked.

L13849 838 – Issue: It is not permissible for anyone to perform circumambulation around the Sacred House while naked. If one does so, their circumambulation is invalid. However, if they cover their front and rear private parts, they are not considered naked. If their covering is unintentionally exposed, it does not harm its validity. Allah—Exalted and Glorified is He—says: "Take your adornment at every mosque" (Quran 7:31).[30]

L13850–13852 It has been narrated to us via the chain of Shuʿbah from Al-Mughīrah from Ash-Shaʿbī, from Al-Muḥarrir ibn Abī Hurayrah from his father. He said: I was with Ali ibn Abi Talib when the Messenger of Allah—peace and blessings be upon him—sent him to Mecca with Barā'ah (the Declaration of Disavowal). We would proclaim: "No one will enter Paradise except a Muslim soul, nor may a naked person perform circumambulation around the Kaaba."

L13853 And He, the Most High, said: "There is no sin upon you for that in which you have erred unintentionally" [Al-Ahzab: 5].[31]

The issue of circumambulating the Sacred House without ablution.

L13854

L13855 Issue 839: Circumambulation around the Sacred House without ritual purity is permissible, including for women in postnatal bleeding (nifās). It is prohibited exclusively for the menstruating woman, as the Messenger of Allah (peace be upon him) forbade the Mother of the Believers from performing circumambulation around the Sacred House during her menstruation, as we previously mentioned.

L13856 Asma bint Umays gave birth at Dhu al-Hulayfa, and the Prophet—peace be upon him—commanded her to perform ritual purification (ghusl) and commence the talbiyah, yet he did not prohibit her from performing tawaf. Had ritual purification been a condition for tawaf, the Messenger of Allah—peace and blessings be upon him—would have clarified it explicitly, just as

٨٣٨ - مَسْأَلَةٌ: وَلَا يَجُوزُ لِأَحَدٍ أَنْ يَطُوفَ بِالْبَيْتِ عُرْيَانَ، فَإِنْ فَعَلَ لَمْ يُجْزِهِ، فَإِنْ غَطَّى قُبُلَهُ وَدُبُرَهُ، فَلَا يُسَمَّى: عُرْيَانَ، فَإِنْ انْكَشَفَ سَاهِيًا لَمْ يَضُرَّهُ، قَالَ اللَّهُ - عَزَّ وَجَلَّ -: {خُذُوا زِينَتَكُمْ عِنْدَ كُلِّ مَسْجِدٍ} [الأعراف: ٣١] .

رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ الْمُغِيرَةِ عَنْ الشَّعْبِيِّ «عَنْ الْمُحَرِّرِ بْنِ أَبِي هُرَيْرَةَ عَنْ أَبِيهِ قَالَ: كُنْت مَعَ عَلِيِّ بْنِ أَبِي طَالِبٍ حِينَ بَعَثَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى مَكَّةَ بِبَرَاءَةَ كُنَّا نُنَادِي: أَنَّهُ لَا يَدْخُلُ الْجَنَّةَ إلَّا نَفْسٌ مُسْلِمَةٌ، وَلَا يَطُوفُ بِالْبَيْتِ عُرْيَانُ» .

وَقَالَ - تَعَالَى -: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ} [الأحزاب: ٥] .

[مَسْأَلَةُ الطَّوَافُ بِالْبَيْتِ عَلَى غَيْرِ طَهَارَةٍ]

٨٣٩ - مَسْأَلَةٌ: وَالطَّوَافُ بِالْبَيْتِ عَلَى غَيْرِ طَهَارَةٍ جَائِزٌ، وَلِلنُّفَسَاءِ، وَلَا يَحْرُمُ إلَّا عَلَى الْحَائِضِ فَقَطْ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنَعَ أُمَّ الْمُؤْمِنِينَ - إذْ حَاضَتْ - مِنْ الطَّوَافِ بِالْبَيْتِ كَمَا ذَكَرْنَا قَبْلُ.

وَوَلَدَتْ أَسْمَاءُ بِنْتُ عُمَيْسٍ بِذِي الْحُلَيْفَةِ فَأَمَرَهَا - عَلَيْهِ السَّلَامُ - بِأَنْ تَغْتَسِلَ وَتُهِلَّ، وَلَمْ يَنْهَهَا عَنْ الطَّوَافِ، فَلَوْ كَانَتْ الطَّهَارَةُ مِنْ شُرُوطِ الطَّوَافِ لَبَيَّنَهُ [رَسُولُ اللَّهِ]- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا بَيَّنَ أَمْرَ الْحَائِضِ، {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَلَا فَرْقَ بَيْنَ

[30] **Qur'an references (L13849):** Qur'an 7:31 (Al-A'raf).
[31] **Qur'an references (L13853):** Qur'an 33:5 (Al-Ahzab).

he clarified the ruling regarding menstruating women. *“He does not speak from whim; it is but revelation revealed”* (53:3-4). *“And your Lord is never forgetful”* (19:64). There is no distinction between their permitting standing at Arafat, Muzdalifah, performing Saʿi between Safa and Marwah, and stoning of the Jamrah without ritual purification, and the permissibility of tawaf without ritual purification—except where explicitly prohibited by scriptural evidence alone.[32]

إِجَازَتِهِمْ الْوُقُوفَ بِعَرَفَةَ، وَالْمُزْدَلِفَةِ، وَالسَّعْيَ بَيْنَ الصَّفَا وَالْمَرْوَةِ، وَرَمْيِ الْجَمْرَةِ عَلَى غَيْرِ طَهَارَةٍ، وَبَيْنَ جَوَازِ الطَّوَافِ عَلَى غَيْرِ طَهَارَةٍ إلَّا حَيْثُ مَنَعَ مِنْهُ النَّصُّ فَقَطْ.

L13857 It has been narrated to us by Saʿīd ibn Manṣūr, who reported to us from Abū ʿAwānah, from Abī Bishr, from ʿAṭāʾ, who said: A woman began menstruating while performing circumambulation (ṭawāf) with ʿĀʾishah, the Mother of the Believers, so ʿĀʾishah completed the remainder of her circumambulation with her. This indicates that the Mother of the Believers did not regard ritual purity (ṭahārah) among the conditions for circumambulation. We do not hold this opinion specifically for menstruation due to the explicit text (naṣṣ) reported regarding that matter.

رُوِّينَا عَنْ سَعِيدِ بْنِ مَنْصُورٍ نَا أَبُو عَوَانَةَ عَنْ أَبِي بِشْرٍ عَنْ عَطَاءٍ قَالَ: حَاضَتْ امْرَأَةٌ وَهِيَ تَطُوفُ مَعَ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَأَتَمَّتْ بِهَا عَائِشَةُ بَقِيَّةَ طَوَافِهَا - فَهَذِهِ أُمُّ الْمُؤْمِنِينَ لَمْ تَرَ الطَّهَارَةَ مِنْ شُرُوطِ الطَّوَافِ - وَلَا نَقُولُ بِهَذَا فِي الْحَيْضِ خَاصَّةً لِلنَّصِّ الْوَارِدِ فِي ذَلِكَ.

L13858 **A case: A woman began menstruating when only a round (or part of it) of the ṭawāf remained for her to complete.**

[مَسْأَلَةٌ حَاضَتْ امْرَأَةٌ وَلَمْ يَبْقَ لَهَا مِنْ الطَّوَافِ إلَّا شَوْطٌ أَوْ بَعْضُهُ]

L13859 Issue 840: If a woman begins menstruating while only one circuit, part of a circuit, or multiple circuits of the Tawaf remain unfinished, all such cases are equivalent. She must cease immediately. When she purifies herself, she resumes the Tawaf from where she left off. She may perform Sa’i between Safa and Marwah, as the prohibition applies solely to the Tawaf [around the House].

٨٤٠ - مَسْأَلَةٌ: فَلَوْ حَاضَتْ امْرَأَةٌ وَلَمْ يَبْقَ لَهَا مِنْ الطَّوَافِ إلَّا شَوْطٌ أَوْ بَعْضُهُ، أَوْ أَشْوَاطٌ، فَكُلُّ ذَلِكَ سَوَاءٌ، وَتَقْطَعُ وَلَا بُدَّ، فَإِذَا طَهُرَتْ بَنَتْ عَلَى مَا كَانَتْ طَافَتْهُ، وَلَهَا أَنْ تَطُوفَ بَيْنَ الصَّفَا وَالْمَرْوَةِ؛ لِأَنَّهَا لَمْ تُنْهَ إلَّا عَنْ الطَّوَافِ [بِالْبَيْتِ] فَقَطْ.

L13860 They have agreed with us on permitting all of that for the menstruating woman because the Prophet—peace and blessings of Allah be upon him—did not forbid her from it. Similarly, he did not forbid the sexually impure or postpartum women from circumambulation, and there is no distinction. [And success is by Allah, the Most High.]

وَقَدْ وَافَقُونَا عَلَى إجَازَةِ كُلِّ ذَلِكَ لِلْحَائِضِ، لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَنْهَهَا عَنْ ذَلِكَ، فَكَذَلِكَ لَمْ يَنْهَ الْجُنُبَ، وَلَا النُّفَسَاءَ، عَنْ الطَّوَافِ، وَلَا فَرْقَ [وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ] .

L13861 **Issue: Interruption of One’s Circumambulation Due to an**

[مَسْأَلَةٌ قَطَعَ طَوَافَهُ لِعُذْرٍ أَوْ لِكَلَلٍ]

[32] **Qur’an references (L13856):** Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm); Qur’an 19:64 (Maryam).

Excuse or Exhaustion.

L13862 Issue 841: If one interrupts their circumambulation (*ṭawāf*) due to an excuse or fatigue, they must resume from where they left off. The same applies to the *saʿy* (ritual pacing), for they have performed the completed portion in compliance with the command, and it is impermissible to nullify it. But if they interrupt it frivolously, their circumambulation becomes invalid, as they did not perform it as commanded.

٨٤١ - مَسْأَلَةٌ: وَمَنْ قَطَعَ طَوَافَهُ لِعُذْرٍ أَوْ لِكَلَلٍ بَنَى عَلَى مَا طَافَ، وَكَذَلِكَ السَّعْيُ؛ لِأَنَّهُ قَدْ طَافَ مَا طَافَ كَمَا أُمِرَ فَلَا يَجُوزُ إبْطَالُهُ، فَلَوْ قَطَعَهُ عَابِثًا فَقَدْ بَطَلَ طَوَافُهُ، لِأَنَّهُ لَمْ يَطُفْ كَمَا أُمِرَ.

Issue: Performing the Tawaf and the Sa'i on a Mount.

L13863

[مَسْأَلَةُ الطَّوَافُ وَالسَّعْيُ رَاكِبًا]

L13864–13866 842 - Issue: Performing Tawaf and Sa'i while mounted is permissible, and likewise stoning the Jamrah—whether due to a valid reason or otherwise. It has been narrated to us through Imam Muslim's chain of transmission: from Thani Abu al-Tahir and Harmala ibn Yahya, from Ibn Wahb, who said: "I am Ibn Wahb; he informed me." Yunus from Ibn Shihab from 'Ubayd Allah ibn 'Abd Allah ibn 'Utbah from Ibn 'Abbas: "The Messenger of Allah—peace and blessings of Allah be upon him—performed Tawaf during the Farewell Pilgrimage on a camel, touching the Corner with a staff."[33]

٨٤٢ - مَسْأَلَةٌ: وَالطَّوَافُ وَالسَّعْيُ رَاكِبًا جَائِزٌ، وَكَذَلِكَ رَمْيُ الْجَمْرَةِ -: لِعُذْرٍ وَلِغَيْرِ عُذْرٍ رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ ثَنِيّ أَبُو الطَّاهِرِ وَحَرْمَلَةُ بْنُ يَحْيَى أَنَا ابْنُ وَهْبٍ: أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَافَ فِي حَجَّةِ الْوَدَاعِ عَلَى بَعِيرٍ يَسْتَلِمُ الرُّكْنَ بِمِحْجَنٍ» .

L13867 It was also narrated to us through the chain of ʿĀ'ishah and Jābir ibn ʿAbd Allāh.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ عَائِشَةَ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ.

L13868 From the chain of Muslim: Abd ibn Humaid informed us, Muhammad ibn Bakr informed us, Ibn Jurayj reported: Abu al-Zubayr informed me that he heard Jabir ibn Abdullah saying: "The Prophet - peace and blessings of Allah be upon him - performed Tawaf during the Farewell Pilgrimage on his mount around the House and between al-Safa and al-Marwah so that the people could see him, so he could be elevated, and so they could question him."[34]

وَمِنْ طَرِيقِ مُسْلِمٍ نَا عَبْدُ بْنُ حُمَيْدٍ أَنَا مُحَمَّدُ بْنُ بَكْرٍ أَنَا ابْنُ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «طَافَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَجَّةِ الْوَدَاعِ عَلَى رَاحِلَتِهِ بِالْبَيْتِ وَبِالصَّفَا وَالْمَرْوَةِ لِيَرَاهُ النَّاسُ وَلِيُشْرِفَ وَلِيَسْأَلُوهُ» .

L13869 And through the chain of Muslim: Ahmad ibn Hanbal narrated to us, saying: Muhammad ibn Salamah narrated to us from Abu Abd al-Rahim—he is the maternal uncle of Muhammad ibn Salamah, and his name is Khalid

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي أَحْمَدُ بْنُ حَنْبَلٍ نَا مُحَمَّدُ بْنُ سَلَمَةَ عَنْ أَبِي عَبْدِ الرَّحِيمِ هُوَ خَالُ مُحَمَّدِ بْنِ سَلَمَةَ وَاسْمُهُ خَالِدُ بْنُ أَبِي يَزِيدَ عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ عَنْ يَحْيَى بْنِ الْحُصَيْنِ عَنْ جَدَّتِهِ «أُمِّ الْحُصَيْنِ قَالَتْ: حَجَجْتُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَجَّةَ

[33] **Hadith references (L13864):** Sunan Abi Dawud 1877; Sunan an-Nasai 713; Sahih Muslim 1272.

[34] **Hadith references (L13868):** Sunan Abi Dawud 1880; Sahih Muslim 1273b.

ibn Abi Yazid—from Zayd ibn Abi Unaysah from Yahya ibn al-Husayn from his grandmother Umm al-Husayn, who said: "I performed Hajj with the Messenger of Allah—peace and blessings be upon him—during the Farewell Pilgrimage. I saw Usamah ibn Zayd and Bilal; one of them was holding the reins of the she-camel of the Messenger of Allah—peace and blessings be upon him—and the other was lifting his garment to shield him from the heat, until he stoned Jamrat al-Aqabah."

L13870 It has been narrated to us from 'Umar and 'Urwah concerning the prohibition of that [act], for no one's argument holds valid against the Messenger of Allah (peace be upon him).

L13871 **The issue of distancing from the House during Tawaf.**

L13872 It is not permissible to distance oneself from the Kaaba during circumambulation except in crowded conditions, because distancing oneself from it is an act that contradicts the practice of the Messenger of Allah (peace and blessings of Allah be upon him) and a senseless act with no purpose, thus it is impermissible.

L13873 **Issue: Circumambulating the House [Kaaba] is lawful at all times.**

L13874 844. Issue: Circumambulating the House at every hour is permissible - including at sunrise and sunset - and one may perform rukūʿ during those times. It has been transmitted to us through the chain of Aḥmad ibn Shuʿayb: From ʿAbdullāh ibn Muḥammad ibn ʿAbd al-Raḥmān al-Zuhrī, from Sufyān - meaning Ibn ʿUyaynah - from Abū al-Zubayr, from ʿAbdullāh ibn Bābāh, from Jubayr ibn Muṭʿim: "The Prophet, peace and blessings be upon him, said: 'O Banī ʿAbd Manāf! Do not prevent anyone who circumambulates this House and prays at whatever hour they wish, whether night or day.'"[35]

L13875 It has been narrated to us through the chain of Ibn Abī Najīḥ from ʿAbdullāh ibn Bābāh with his isnād. It has been narrated to us from al-Ḥasan and al-

[35]**Hadith references (L13874):** Sunan an-Nasai 2924.

الْوَدَاعِ فَرَأَيْتُ أُسَامَةَ بْنَ زَيْدٍ وَبِلَالًا أَحَدُهُمَا آخِذٌ بِخِطَامِ نَاقَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْآخَرُ رَافِعٌ ثَوْبَهُ يَسْتُرُهُ مِنْ الْحَرِّ حَتَّى رَمَى جَمْرَةَ الْعَقَبَةِ» .

وَقَدْ رُوِّينَا عَنْ عُمَرَ، وَعُرْوَةَ: الْمَنْعَ مِنْ ذَلِكَ، وَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَةُ التَّبَاعُدُ عَنْ الْبَيْتِ عِنْدَ الطَّوَافِ]

٨٤٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ التَّبَاعُدُ عَنْ الْبَيْتِ عِنْدَ الطَّوَافِ إلَّا فِي الزِّحَامِ، لِأَنَّ التَّبَاعُدَ عَنْهُ عَمَلٌ بِخِلَافِ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَبَثٌ لَا مَعْنَى لَهُ فَلَا يَجُوزُ.

[مَسْأَلَةُ الطَّوَافُ بِالْبَيْتِ جَائِزٌ فِي كُلِّ سَاعَةٍ]

٨٤٤ - مَسْأَلَةٌ: وَالطَّوَافُ بِالْبَيْتِ فِي كُلِّ سَاعَةٍ جَائِزٌ، وَعِنْدَ طُلُوعِ الشَّمْسِ، وَعِنْدَ غُرُوبِهَا، وَيَرْكَعُ عِنْدَ ذَلِكَ -: رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ الزُّهْرِيُّ نَا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - نَا أَبُو الزُّبَيْرِ عَنْ عَبْدِ اللَّهِ بْنِ بَابَاهُ عَنْ جُبَيْرِ بْنِ مُطْعِمٍ: " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يَا بَنِي عَبْدِ مَنَافٍ لَا تَمْنَعُنَّ أَحَدًا طَافَ بِهَذَا الْبَيْتِ وَصَلَّى أَيَّ سَاعَةٍ شَاءَ مِنْ لَيْلٍ أَوْ نَهَارٍ» .

Ḥusayn, the two sons of ʿAlī, and ʿAbdullāh ibn ʿUmar: circumambulation after ʿAṣr, with the prayer at that time following the circumambulation.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ ابْنِ أَبِي نَجِيحٍ عَنْ عَبْدِ اللَّهِ بْنِ بَابَاهُ بِإِسْنَادِهِ -: وَرُوِّينَا عَنْ الْحَسَنِ، وَالْحُسَيْنِ ابْنَيْ عَلِيٍّ، وَعَبْدِ اللَّهِ بْنِ عُمَرَ: الطَّوَافُ بَعْدَ الْعَصْرِ وَالصَّلَاةُ حِينَئِذٍ إثْرَ الطَّوَافِ.

L13876–13878 It is narrated from Ibn Abbas that he performed Tawaf after ʻAsr. It is narrated from Ibn al-Zubayr that he performed Tawaf after the Fajr prayer and prayed the two rakʿahs then. Abu Muhammad said: The prohibition against prayer after ʿAṣr was stated as a comprehensive ruling. Thus, whoever permits *Tawaf* after ʿAṣr before the sun turns yellow has ruled arbitrarily without evidence.

وَعَنْ ابْنِ عَبَّاسٍ أَنَّهُ طَافَ بَعْدَ الْعَصْرِ -: وَعَنْ ابْنِ الزُّبَيْرِ أَنَّهُ طَافَ بَعْدَ صَلَاةِ الصُّبْحِ وَصَلَّى الرَّكْعَتَيْنِ حِينَئِذٍ قَالَ أَبُو مُحَمَّد: إنَّمَا جَاءَ النَّهْيُ عَنْ الصَّلَاةِ بَعْدَ الْعَصْرِ جُمْلَةً فَمَنْ أَجَازَ الطَّوَافَ بَعْدَ الْعَصْرِ مَا لَمْ تَصْفَرَّ الشَّمْسُ فَقَدْ تَحَكَّمَ بِلَا دَلِيلٍ.

Issue: The Ruling on Shaving Before the Pelting.

[مَسْأَلَةٌ حُكْم الْحَلْق قَبْل الرَّمْي]

L13879

L13880 845 - Issue: It is permissible to perform the following acts in any order you wish—there is no harm in any of them: stoning at the Jamrah, shaving, sacrificing, slaughtering, the Ifāḍah circumambulation, circumambulating the Kaʿbah, and the Saʿī between Ṣafā and Marwah. It was narrated to us through the chain of Muslim ibn al-Ḥajjāj: Muḥammad ibn ʿAbdullāh ibn Qahzād narrated to us, from ʿAlī ibn al-Ḥasan, from ʿAbdullāh ibn al-Mubārak, from Muḥammad ibn Abī Ḥafṣah, from al-Zuhrī, from ʿĪsā ibn Ṭalḥah, from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ, who said: "I heard the Messenger of Allah—peace and blessings be upon him—when a man came to him on the Day of Sacrifice while he was standing near the Jamrah and said: 'O Messenger of Allah, I shaved before stoning?' He replied: 'Stone the Jamrah—there is no harm.' Another man came and said: 'I slaughtered before stoning?' He replied: 'Stone the Jamrah—there is no harm.' Another came and said: 'I performed the Ifāḍah circumambulation of the House before stoning?' He replied: 'Stone the Jamrah—there is no harm.' He added: 'I did not see him asked about anything that day except that he responded: "Do it, all of you—there is no harm."'"

٨٤٥ - مَسْأَلَةٌ: وَجَائِزٌ فِي - رَمْيِ الْجَمْرَةِ، وَالْحَلْقِ، وَالنَّحْرِ، وَالذَّبْحِ، وَطَوَافِ الْإِفَاضَةِ، وَالطَّوَافِ بِالْبَيْتِ وَالسَّعْيِ بَيْنَ الصَّفَا وَالْمَرْوَةِ، أَنْ تُقَدِّمَ أَيَّهَا شِئْت عَلَى أَيُّهَا شِئْت لَا حَرَجَ فِي شَيْءٍ مِنْ ذَلِكَ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ قَهْزَادَ نَا عَلِيُّ بْنُ الْحَسَنِ عَنْ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ أَنَا مُحَمَّدُ بْنُ أَبِي حَفْصَةَ عَنْ الزُّهْرِيِّ عَنْ عِيسَى بْنِ طَلْحَةَ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ قَالَ «سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَتَاهُ رَجُلٌ يَوْمَ النَّحْرِ وَهُوَ وَاقِفٌ عِنْدَ الْجَمْرَةِ فَقَالَ: يَا رَسُولَ اللَّهِ إنِّي حَلَقْتُ قَبْلَ أَنْ أَرْمِيَ؟ قَالَ: ارْمِ، وَلَا حَرَجَ، وَأَتَاهُ آخَرُ فَقَالَ: إنِّي ذَبَحْتُ قَبْلَ أَنْ أَرْمِيَ؟ قَالَ: ارْمِ وَلَا حَرَجَ، وَأَتَاهُ آخَرُ وَقَالَ: إنِّي أَفَضْت إلَى الْبَيْتِ قَبْلَ أَنْ أَرْمِيَ؟ قَالَ: ارْمِ وَلَا حَرَجَ قَالَ فَمَا رَأَيْته يُسْأَلُ يَوْمَئِذٍ عَنْ شَيْءٍ إلَّا قَالَ: افْعَلُوا وَلَا حَرَجَ» .

L13881 And through the chain of Malik, from Ibn Shihab, from Isa ibn Talhah, from Abdullah ibn Amr ibn al-As: "The Messenger of Allah (peace be upon him) stood at Mina during the Farewell Pilgrimage. A man came and said:

وَمِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ عِيسَى بْنِ طَلْحَةَ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَفَ بِمِنًى فِي حَجَّةِ الْوَدَاعِ فَجَاءَ رَجُلٌ

’O Messenger of Allah, I did not realize I had shaved before throwing the pebbles.’ He said: ’Throw, and there is no blame.’ Another man came and said: ’O Messenger of Allah, I did not realize I had sacrificed before throwing the pebbles.’ He said: ’Throw, and there is no blame.’ He said: The Messenger of Allah (peace be upon him) was not asked anything that day regarding a matter done earlier or later except that he replied: ’Do it, and there is no blame.’”

فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي لَمْ أُشْعِرْ فَحَلَقْتُ قَبْلَ أَنْ أَرْمِيَ؟ قَالَ: ارْمِ وَلَا حَرَجَ، وَجَاءَ آخَرُ فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي لَمْ أُشْعِرْ فَنَحَرْتُ قَبْلَ أَنْ أَرْمِيَ؟ قَالَ: ارْمِ وَلَا حَرَجَ - قَالَ: فَمَا سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ شَيْءٍ يَوْمَئِذٍ قُدِّمَ أَوْ أُخِّرَ إِلَّا قَالَ: اصْنَعْ وَلَا حَرَجَ» .

L13882 And through the chain of Ibn al-Jahm, from Ismāʿīl ibn Ishāq, from Abū al-Muṣʿab, from Mālik, from Ibn Shihāb, from ʿĪsā ibn Ṭalḥah ibn ʿUbayd Allāh, from ʿAbd Allāh ibn ʿAmr ibn al-ʿĀṣ, who said: “The Messenger of Allāh (peace be upon him) paused at Minā during the Farewell Pilgrimage. A man came and said: ’O Messenger of Allāh, I did not realize, so I shaved before slaughtering.’ He replied: ’Slaughter, and there is no harm.’ Another said: ’O Messenger of Allāh, I did not realize, so I shaved before performing the stoning.’ He said: ’Perform the stoning, and there is no harm.’ He was not asked about anything—whether done earlier or later—except that he responded: ’Do it, and there is no harm.’”

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ عَنْ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا أَبُو الْمُصْعَبِ عَنْ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ عِيسَى بْنِ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ قَالَ: «وَقَفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَجَّةِ الْوَدَاعِ بِمِنًى فَجَاءَ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ لَمْ أُشْعِرْ فَحَلَقْتُ قَبْلَ أَنْ أَذْبَحَ؟ قَالَ: اذْبَحْ وَلَا حَرَجَ، فَقَالَ آخَرُ: يَا رَسُولَ اللَّهِ لَمْ أُشْعِرْ فَحَلَقْتُ قَبْلَ أَنْ أَرْمِيَ؟ قَالَ: ارْمِ وَلَا حَرَجَ، فَمَا سُئِلَ عَنْ شَيْءٍ قُدِّمَ، وَلَا أُخِّرَ إِلَّا قَالَ: افْعَلْ وَلَا حَرَجَ» .

L13883 Through Muslim’s chain: Muḥammad ibn Ḥātim narrated to us: Bahz ibn Asad narrated to us: Wuhaib—that is, ibn Khālid—narrated to us: ʿAbdullāh ibn Ṭāwūs narrated from his father from Ibn ʿAbbās that the Prophet (peace and blessings of Allāh be upon him) was asked about slaughtering, shaving, stone-throwing, advancing [rites], and delaying [rites]. He replied, “There is no harm.”[36]

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمٍ نَا بَهْزُ بْنُ أَسَدٍ نَا وُهَيْبٌ هُوَ ابْنُ خَالِدٍ - نَا عَبْدُ اللَّهِ بْنُ طَاوُسٍ عَنْ أَبِيهِ عَنِ ابْنِ عَبَّاسٍ، «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قِيلَ لَهُ فِي الذَّبْحِ، وَالْحَلْقِ وَالرَّمْيِ، وَالتَّقْدِيمِ، وَالتَّأْخِيرِ؟ فَقَالَ: لَا حَرَجَ» .

L13884–13885 And through the chain of Abū Dāwūd: ʿUthmān ibn Abī Shaybah narrated to us, Jarīr ibn ʿAbd al-Ḥamīd narrated to us from al-Shaybānī (who is Abū Isḥāq), from Ziyād ibn ʿIlāqah from Usāmah ibn Sharīk, who said: “I set out with the Messenger of Allah—peace be upon him—for Hajj. People would come to him, and some would say: ’O Messenger of Allah, I performed Saʿī before Ṭawāf,’ or ’I delayed something,’ or ’I did something earlier.’ He would respond: ’There is no harm, there is no harm.’” The narrator omitted the rest of the hadith.

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نَا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنِ الشَّيْبَانِيِّ هُوَ أَبُو إِسْحَاقَ - عَنْ زِيَادِ بْنِ عِلَاقَةَ عَنْ «أُسَامَةَ بْنِ شَرِيكٍ قَالَ: خَرَجْتُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَاجًّا فَكَانَ النَّاسُ يَأْتُونَهُ فَمِنْ قَائِلٍ يَا رَسُولَ اللَّهِ سَعَيْتُ قَبْلَ أَنْ أَطُوفَ أَوْ أَخَّرْتُ شَيْئًا أَوْ قَدَّمْتُ شَيْئًا فَكَانَ يَقُولُ: لَا حَرَجَ لَا حَرَجَ» ، ذَكَرَ بَاقِيَ الْحَدِيثِ.

[36] **Hadith references (L13883):** Sahih Muslim 1307.

L13886 Abu Muhammad said: The majority of the *Salaf* upheld this opinion, as narrated to us through the chain of Sa'īd ibn Manṣūr: Sufyān narrated to us—Ayyūb (al-Sakhtiyānī) narrated to us—from Nāfi', from Ibn 'Umar, that he saw a man among his Hajj companions proceed from Muzdalifah before shaving his head, so he ordered him to shave.

قَالَ أَبُو مُحَمَّد: فَأَخَذَ بِهَذَا جُمْهُورٌ مِنْ السَّلَفِ كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا سُفْيَانُ نَا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ - عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ رَأَى رَجُلًا مِنْ أَهْلِهِ أَفَاضَ قَبْلَ أَنْ يَحْلِقَ فَأَمَرَهُ أَنْ يَحْلِقَ.

L13887 It was narrated to us from him other than this through the chain of Sa'īd as well: Ibn Wahb reported from 'Amr ibn al-Ḥārith from Yaḥyā ibn Sa'īd from Nāfi' that Ibn 'Umar met his nephew 'Abd al-Raḥmān ibn 'Abd al-Ḥakam ibn 'Umar, who had performed Ifāḍah before shaving or shortening his hair. He instructed him to shorten his hair, then return and perform Ifāḍah again.

وَرُوِّينَا عَنْهُ غَيْرَ هَذَا مِنْ طَرِيقِ سَعِيدٍ أَيْضًا -: نَا ابْنُ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ لَقِيَ ابْنَ أَخِيهِ عَبْدَ الرَّحْمَنِ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عُمَرَ قَدْ أَفَاضَ قَبْلَ أَنْ يَحْلِقَ أَوْ يُقَصِّرَ فَأَمَرَهُ أَنْ يُقَصِّرَ، ثُمَّ يَرْجِعَ فَيَفِيضَ.

L13888 From the path of Ibn al-Jahm: Abdullah ibn al-Hasan al-Hashimi narrated to us, from Rawh, from Sa'id, from Qatadah, from Muwarriq al-'Ijli: I said to Ibn Umar, "What about a man who shaved his head before slaughtering?" He said, "He opposed the Sunnah." I asked, "What is incumbent upon him?" He replied, "You indeed have a thick beard, and nothing has been imposed upon him."

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نَا عَبْدُ اللَّهِ بْنُ الْحَسَنِ الْهَاشِمِيّ نَا رَوْحٌ نَا سَعِيدٌ عَنْ قَتَادَةَ عَنْ مُوَرِّقٍ الْعِجْلِيِّ قُلْت لِابْنِ عُمَرَ: رَجُلٌ حَلَقَ قَبْلَ أَنْ يَذْبَحَ؟ قَالَ: خَالَفَ السُّنَّةَ، قُلْت: مَاذَا عَلَيْهِ؟ قَالَ: إنَّك لَضَخْمُ اللِّحْيَةِ، وَلَمْ يَجْعَلْ عَلَيْهِ شَيْئًا.

L13889 From the chain of Ibn al-Jahm: Ibrāhīm ibn Ḥammād reported to us, al-Ṣāghānī reported to us, from Saʿīd ibn ʿĀmir, from Saʿīd ibn Abī ʿArūbah, from Muqātil: They asked Anas ibn Mālik about people who shaved their heads before slaughtering their sacrificial animals. He said: "You have opposed the Sunnah, but there is no sin upon you."

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نَا إبْرَاهِيمُ بْنُ حَمَّادٍ نَا الصَّاغَانِيُّ نَا سَعِيدُ بْنُ عَامِرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ مُقَاتِلٍ: أَنَّهُمْ سَأَلُوا أَنَسَ بْنَ مَالِكٍ عَنْ قَوْمٍ حَلَقُوا قَبْلَ أَنْ يَذْبَحُوا؟ قَالَ: أَخْطَأْتُمْ السُّنَّةَ وَلَا شَيْءَ عَلَيْكُمْ.

L13890 Ali said: They did not err against the Sunnah nor oppose it, for whatever the Messenger of Allah—may Allah bless him and grant him peace—permitted and saw no harm in, that is Sunnah. However, they merely neglected the superior action.

قَالَ عَلِيٌّ: مَا أَخْطَئُوا السُّنَّةَ وَلَا خَالَفُوهَا، لِأَنَّ مَا أَبَاحَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَرَ فِيهِ حَرَجًا فَهُوَ سُنَّةٌ لَكِنْ تَرَكُوا الْأَفْضَلَ فَقَطْ.

L13891 From the chain of Al-Ḥudhāfī: ʿAbd al-Razzāq narrated to us; Sufyān al-Thawrī narrated to us from ʿAbd al-Malik ibn Abī Sulaymān from ʿAṭāʾ regarding one who performed the pelting at the Middle Jamrah (Jamrat al-Wusṭā) before the First (Jamrat al-Ūlā). He said: He must throw the one he omitted, and that sufficed him [wa-ajza'ahu].

وَمِنْ طَرِيقِ الْحُذَافِيِّ نَا عَبْدُ الرَّزَّاقِ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي سُلَيْمَانَ عَنْ عَطَاءٍ فِيمَنْ رَمَى الْجَمْرَةَ الْوُسْطَى قَبْلَ الْأُولَى قَالَ: يَرْمِي الَّتِي تَرَكَ (وَأَجْزَأَهُ) .

L13892 In the text directed to Sufyan, he said: Ibn Jurayj informed me from Ata that

he said: “What of one who begins with Safa and Marwah before the House?” Verily he performs Tawaf around the House, and it suffices for him—and this is the position maintained by Sufyan.

وَبِهِ نَصًّا إِلَى سُفْيَانَ، قَالَ: أَخْبَرَنِي ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ أَنَّهُ قَالَ: مَنْ بَدَأَ بِالصَّفَا وَالْمَرْوَةِ قَبْلَ الْبَيْتِ؟ أَنَّهُ يَطُوفُ بِالْبَيْتِ، وَقَدْ أَجْزَأَ عَنْهُ - وَبِهِ يَقُولُ سُفْيَانُ.

L13893–13895 From the chain of Hammad ibn Salama, from Humaid, that he approached al-Hasan al-Basri in Makkah on the day after the Day of Sacrifice. He began by stoning Jamrat al-ʿAqabah, then the middle pillar, then the last one. He said: I asked the jurists of Makkah about that, and they did not disapprove of it. Through the chain of Ibn Abi Shaybah: Al-Fuḍayl ibn ʿIyāḍ narrated to us from Layth ibn Abi Sulaym from Ṣadaqah, who said: I asked Ṭāwus and Mujāhid about one who shaved before slaughtering the sacrifice. They said, “There is no blame upon him,” and this is the opinion of Sufyān, Al-Awzāʿī, Dāwūd, and his followers.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ أَنَّهُ أَتَى الْحَسَنَ الْبَصْرِيَّ بِمَكَّةَ ثَانِيَ يَوْمِ النَّحْرِ قَدْ بَدَأَ يَرْمِي جَمْرَةَ الْعَقَبَةِ، ثُمَّ الْوُسْطَى، ثُمَّ الْأُخْرَى قَالَ: فَسَأَلْت فُقَهَاءَ مَكَّةَ عَنْ ذَلِكَ فَلَمْ يُنْكِرُوهُ؟ وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا الْفُضَيْلُ بْنُ عِيَاضٍ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ صَدَقَةَ قَالَ: سَأَلْت طَاوُسًا، وَمُجَاهِدًا عَمَّنْ حَلَقَ قَبْلَ أَنْ يَنْحَرَ؟ قَالَا: لَا شَيْءَ عَلَيْهِ - وَهُوَ قَوْلُ سُفْيَانَ، وَالْأَوْزَاعِيِّ، وَدَاوُد، وَأَصْحَابِهِ.

L13896 It has been narrated from some of the Salaf contrary to this: It was narrated to us through the chain of Ibn Abī Shaybah—Sallām ibn Muṭīʿ, and he is Abū al-Aḥwaṣ—from Ibrāhīm ibn Muhājir, from Mujāhid, from Ibn ʿAbbās, who said: “Whoever advances any part of their pilgrimage or delays it must shed blood as compensation for that.”

وَقَدْ رُوِيَ عَنْ بَعْضِ السَّلَفِ غَيْرُ هَذَا -: رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا سَلَّامُ بْنُ مُطِيعٍ وَهُوَ أَبُو الْأَحْوَصِ - عَنْ إبْرَاهِيمَ بْنِ مُهَاجِرٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: مَنْ قَدَّمَ شَيْئًا مِنْ حَجِّهِ أَوْ أَخَّرَهُ فَلْيُهْرِقْ لِذَلِكَ دَمًا.

L13897 And via the narration of Ibn Abi Shaybah: Jarir reported from Mansur, from Saʿid ibn Jubayr, who said: Whoever performs a ritual before its designated time in Hajj or shaves his head before slaughtering the sacrifice, upon him is a compensatory sacrifice (dam).

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: مَنْ قَدَّمَ شَيْئًا قَبْلَ شَيْءٍ مِنْ حَجِّهِ أَوْ حَلَقَ قَبْلَ أَنْ يَذْبَحَ فَعَلَيْهِ دَمٌ.

L13898 Through the chain of Ibn Abi Shaybah, narrated to us Abū Muʿāwiyah from Al-Aʿmash, from Ibrāhīm, who said: “Whoever shaves [his head] before slaughtering [the sacrificial animal] has thereby incurred the obligation of a compensatory sacrifice,” and he recited: *“And do not shave your heads until the sacrificial offering has reached its destination”* [Al-Baqarah: 196].[37]

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ، عَنْ إبْرَاهِيمَ قَالَ: مَنْ حَلَقَ قَبْلَ أَنْ يَذْبَحَ أَهْرَقَ دَمًا، وَقَرَأَ {وَلا تَحْلِقُوا رُءُوسَكُمْ حَتَّى يَبْلُغَ الْهَدْيُ مَحِلَّهُ} [البقرة: ١٩٦] .

L13899 From the transmission of Ibn Abi Shaybah: Fudayl ibn Iyad reported to us from Layth from Sadaqah from Jabir ibn Zayd, who said: “Whoever shaves [his head] before sacrificing [the animal] must offer expiation (fidya).”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا فُضَيْلُ بْنُ عِيَاضٍ عَنْ لَيْثٍ عَنْ صَدَقَةَ عَنْ جَابِرِ بْنِ زَيْدٍ قَالَ: مَنْ حَلَقَ قَبْلَ أَنْ يَنْحَرَ فَعَلَيْهِ الْفِدْيَةُ.

L13900 Abū Muḥammad said: As for the narration from Ibn ʿAbbās, it is weak be-

[37] **Qur’an references (L13898):** Qur’an 2:196 (Al-Baqarah).

cause it is reported through Ibrāhīm ibn Muhājir, who is a weak narrator. As for the statement of Ibrāhīm and Jābir ibn Zayd that whoever shaves before slaughtering and sacrificing must offer a blood sacrifice or expiation, and their argument based on Allah's words – Exalted is He – {Do not shave your heads until the sacrificial animal reaches its designated place} [Al-Baqarah: 196] – this reflects negligence on the part of those who cite it as evidence. For the designated place of the sacrificial animal is the Day of Sacrifice at Mina, whether one has slaughtered or sacrificed or not. Once the Day of Sacrifice begins and the sacrificial animal is in Mina or Mecca, it has reached its designated place, and shaving becomes permissible. Allah did not say, "until you sacrifice or slaughter," and the Messenger of Allah – peace and blessings be upon him – clarified that all of this is permissible. There is no proof in anyone's opinion other than his – peace be upon him.[38]

قَالَ أَبُو مُحَمَّد: أَمَّا الرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ فَوَاهِيَةٌ؛ لِأَنَّهَا عَنْ إبْرَاهِيمَ بْنِ مُهَاجِرٍ، وَهُوَ ضَعِيفٌ - وَأَمَّا قَوْلُ إبْرَاهِيمَ، وَجَابِرِ بْنِ زَيْدٍ فِي أَنَّ مَنْ حَلَقَ قَبْلَ الذَّبْحِ وَالنَّحْرِ: فَعَلَيْهِ دَمٌ أَوْ الْفِدْيَةُ، وَاحْتِجَاجُهُمْ بِقَوْلِ اللَّهِ - تَعَالَى -: {وَلا تَحْلِقُوا رُءُوسَكُمْ حَتَّى يَبْلُغَ الْهَدْيُ مَحِلَّهُ} [البقرة: ١٩٦] فَغَفْلَةٌ مِمَّنْ احْتَجَّ بِهَذَا؛ لِأَنَّ مَحِلَّ الْهَدْيِ هُوَ يَوْمُ النَّحْرِ بِمِنًى ذَبَحَ أَوْ نَحَرَ، أَوْ لَمْ يَذْبَحْ وَلَا نَحَرَ إذَا دَخَلَ يَوْمُ النَّحْرِ وَالْهَدْيُ بِمِنًى أَوْ بِمَكَّةَ فَقَدْ بَلَغَ مَحِلَّهُ فَحَلَّ الْحَلْقُ، وَلَمْ يَقُلْ - تَعَالَى -: حَتَّى تَنْحَرُوا أَوْ تَذْبَحُوا، وَبَيَّنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ كُلَّ ذَلِكَ مُبَاحٌ وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ سِوَاهُ - عَلَيْهِ السَّلَامُ -.

L13901 As for the later scholars after those we mentioned, Abū Ḥanīfah said: Whoever shaves before casting stones incurs no obligation. If he shaves before slaughtering or sacrificing, then if he is performing Ifrād, he must offer one sacrifice, but if performing Qirān, he must offer two sacrifices.

وَأَمَّا الْمُتَأَخِّرُونَ عَمَّنْ ذَكَرْنَا -: فَإِنَّ أَبَا حَنِيفَةَ قَالَ: مَنْ حَلَقَ قَبْلَ أَنْ يَرْمِيَ فَلَا شَيْءَ عَلَيْهِ، فَإِنْ حَلَقَ قَبْلَ أَنْ يَنْحَرَ أَوْ يَذْبَحَ فَإِنْ كَانَ مُفْرِدًا فَعَلَيْهِ دَمٌ، وَإِنْ كَانَ قَارِنًا فَعَلَيْهِ دَمَانِ.

L13902–13903 And his companion Zufar said: If the *Qārin* shaves before slaughtering or sacrificing, he must offer three blood offerings. If he is a *Mutamatti'*, he must offer one blood offering. If he is a *Mufrid*, he owes nothing.

وَقَالَ زُفَرُ صَاحِبُهُ: إنْ حَلَقَ الْقَارِنُ قَبْلَ أَنْ يَذْبَحَ أَوْ يَنْحَرَ فَعَلَيْهِ ثَلَاثَةُ دِمَاءٍ، فَإِنْ كَانَ مُتَمَتِّعًا فَعَلَيْهِ دَمٌ وَاحِدٌ، فَإِنْ كَانَ مُفْرِدًا فَلَا شَيْءَ عَلَيْهِ.

L13904 Abū Yūsuf said: If one shaves before slaughtering as a *qārin* or *mutamatti'*, a single *dam* is due from him. If he is a *mufrid*, there is no obligation upon him. Then he retracted and said—he and Muḥammad ibn al-Ḥasan—"There is no obligation upon him in all of that."

وَقَالَ أَبُو يُوسُفَ: إنْ حَلَقَ قَبْلَ أَنْ يَذْبَحَ قَارِنًا أَوْ مُتَمَتِّعًا فَعَلَيْهِ دَمٌ وَاحِدٌ، فَإِنْ كَانَ مُفْرِدًا فَلَا شَيْءَ عَلَيْهِ، ثُمَّ رَجَعَ فَقَالَ هُوَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: لَا شَيْءَ عَلَيْهِ فِي كُلِّ ذَلِكَ.

L13905 Malik said: If one shaves before slaughtering (dhabh) or slaughtering (nahr), there is nothing required of him. However, if he shaves before throwing [the stones], a sacrificial animal [dam] is required of him.

وَقَالَ مَالِكٌ: إنْ حَلَقَ قَبْلَ أَنْ يَذْبَحَ أَوْ يَنْحَرَ فَلَا شَيْءَ عَلَيْهِ، فَإِنْ حَلَقَ قَبْلَ أَنْ يَرْمِيَ فَعَلَيْهِ دَمٌ.

L13906 Al-Shafi'i said: There is no obligation for altering the sequence, except for

وَقَالَ الشَّافِعِيُّ: لَا شَيْءَ عَلَيْهِ فِيمَا أَخَّرَ أَوْ قَدَّمَ إلَّا مَنْ طَافَ بَيْنَ الصَّفَا وَالْمَرْوَةِ قَبْلَ الطَّوَافِ بِالْبَيْتِ فَعَلَيْهِ دَمٌ.

[38] **Qur'an references (L13900):** Qur'an 2:196 (Al-Baqarah).

one who performs Tawaf between al-Ṣafā and al-Marwah before circumambulating the House; upon him is a sacrificial animal.

L13907 Abū Muḥammad said: All these statements are utterly corrupt, for they are all claims without evidence—neither from the Qur'ān, nor the Sunnah, nor the statement of a Companion, nor analogical reasoning, nor sound opinion. As for Abū Ḥanīfah's differentiation between the ruling for the solitary pilgrim (Mufrid) and the combined pilgrim (Qārin); Zufar's requirement of three sacrifices on the Qārin and one sacrifice on the Mutamatti'; Mālik's differentiation between performing the shaving before the stoning of the jamarāt, and performing it before the ritual slaughter (naḥr) and sacrificial slaughter (dhabḥ); and Al-Shāfi'ī's differentiation between performing the Sa'y before the Ṭawāf, and other cases where acts are prioritized or delayed—these are statements not reported from any scholar prior to those who asserted them among those we have mentioned. And success comes only from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: كُلُّ هَذِهِ أَقْوَالٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّهَا كُلَّهَا دَعَاوَى بِلَا دَلِيلٍ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ سَدِيدٍ فَأَمَّا تَفْرِيقُ - أَبِي حَنِيفَةَ بَيْنَ حُكْمِ الْمُفْرِدِ وَالْقَارِنِ، وَإِيجَابُ زُفَرَ ثَلَاثَةَ دِمَاءَ عَلَى الْقَارِنِ، وَدَمًا عَلَى الْمُتَمَتِّعِ، وَتَفْرِيقُ مَالِكٍ بَيْنَ تَقْدِيمِ الْحَلْقِ عَلَى الرَّمْيِ، وَتَقْدِيمُهُ عَلَى النَّحْرِ، وَالذَّبْحِ، وَتَفْرِيقُ الشَّافِعِيِّ بَيْنَ تَقْدِيمِ السَّعْيِ عَلَى الطَّوَافِ، وَبَيْنَ سَائِرِ مَا قُدِّمَ وَأُخِّرَ -: فَأَقْوَالٌ لَا تُحْفَظُ عَنْ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ قَبْلَ الْقَائِلِ بِهَا مِمَّنْ ذَكَرْنَا - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

The ruling on spending the night outside Mina during the days at Mina.

[مَسْأَلَةٌ الْمَبِيت بِغَيْرِ مِنًى أَيَّامَ مِنًى]

L13908

L13909 846 – Issue: Whoever does not spend the nights of Mina in Mina has done wrong, but there is no obligation upon him except for the shepherds and those responsible for al-ʿAbbās's water provision. We do not disapprove of them spending the night outside Mina; rather, the shepherds may stone [the Jamarāt] one day and omit [the stoning] the next day.

٨٤٦ - مَسْأَلَةٌ: وَمَنْ لَمْ يَبِتْ لَيَالِيَ مِنًى بِمِنًى فَقَدْ أَسَاءَ وَلَا شَيْءَ عَلَيْهِ إلَّا الرِّعَاءَ وَأَهْلَ سِقَايَةِ الْعَبَّاسِ فَلَا نَكْرَهُ لَهُمْ الْمَبِيتُ فِي غَيْرِ مِنًى؛ بَلْ لِلرِّعَاءِ أَنْ يَرْمُوا يَوْمًا وَيَدَعُوا يَوْمًا.

L13910 It was narrated to us through the chain of Abū Dāwūd: Musaddad narrated to us; Sufyān—that is, Ibn ʿUyaynah—from ʿAbdullāh and Muḥammad, the two sons of Abū Bakr, son of Muḥammad ibn ʿAmr ibn Ḥazm, from their father, from Abū al-Baddāḥ ibn ʿAdiyy, from his father, that "the Messenger of Allah—may Allah's blessings and peace be upon him—permitted the shepherds to throw stones [at the jamarāt] on one day and forgo it on another day."

رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا مُسَدَّدٌ نَا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَبْدِ اللَّهِ، وَمُحَمَّدِ ابْنَيْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِمَا عَنْ أَبِي الْبَدَّاحِ بْنِ عَدِيٍّ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَخَّصَ لِلرِّعَاءِ أَنْ يَرْمُوا يَوْمًا وَيَدَعُوا يَوْمًا» .

L13911 Thus, this valid report establishes that performing the stoning ritual on each of the days of Mina is not obligatory.

فَصَحَّ بِهَذَا الْخَبَرِ أَنَّ الرَّمْيَ فِي كُلِّ يَوْمٍ مِنْ أَيَّامِ مِنًى لَيْسَ فَرْضًا.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا ابْنُ نُمَيْرٍ هُوَ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ - نَا أَبِي نَا عُبَيْدُ اللَّهِ هُوَ ابْنُ عُمَرَ حَدَّثَنِي نَافِعٌ عَنْ ابْنِ عُمَرَ قَالَ: «إنَّ الْعَبَّاسَ بْنَ عَبْدِ الْمُطَّلِبِ اسْتَأْذَنَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَجْلِ سِقَايَتِهِ أَنْ يَبِيتَ بِمَكَّةَ لَيَالِيَ مِنًى فَأَذِنَ لَهُ» .

L13912–13914 And from the chain of Muslim: Ibn Numayr—Muḥammad ibn ʿAbd Allāh—narrated to us; my father narrated to us; ʿUbayd Allāh—son of ʿUmar—narrated to us. Nafiʿ reported to me from Ibn ʿUmar that he said: "Al-ʿAbbās ibn ʿAbd al-Muṭṭalib sought permission from the Messenger of Allah—may Allah bless him and grant him peace—because of his siqāyah to stay overnight in Mecca during the nights of Mina, and he permitted him."

قَالَ أَبُو مُحَمَّد: فَأَهْلُ السِّقَايَةِ مَأْذُونٌ لَهُمْ مِنْ أَجْلِ السِّقَايَةِ، وَبَاتَ - عَلَيْهِ السَّلَامُ - بِمِنًى وَلَمْ يَأْمُرْ بِالْمَبِيتِ بِهَا، فَالْمَبِيتُ بِهَا سُنَّةٌ، وَلَيْسَ فَرْضًا، لِأَنَّ الْفَرْضَ إنَّمَا هُوَ أَمْرُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ.

L13915 Abu Muhammad said: Those responsible for providing water to pilgrims are granted permission due to their water distribution duties. He (peace and blessings be upon him) spent the night at Minā but did not command others to stay there. Thus, staying overnight there is a Sunnah and not an obligation, for an obligation is only established by his explicit command (peace and blessings be upon him).

فَإِنْ قِيلَ: إنَّ إذْنَهُ لِلرِّعَاءِ وَتَرْخِيصَهُ لَهُمْ وَإِذْنَهُ لِلْعَبَّاسِ دَلِيلٌ عَلَى أَنَّ غَيْرَهُمْ بِخِلَافِهِمْ؟ قُلْنَا: لَا وَإِنَّمَا كَانَ يَكُونُ هَذَا لَوْ تَقَدَّمَ مِنْهُ - عَلَيْهِ السَّلَامُ - أَمْرٌ بِالْمَبِيتِ وَالرَّمْيِ، فَكَانَ يَكُونُ هَؤُلَاءِ مُسْتَثْنَيْنَ مِنْ سَائِرِ مَنْ أُمِرُوا، وَأَمَّا إذَا لَمْ يَتَقَدَّمْ مِنْهُ أَمْرٌ - عَلَيْهِ السَّلَامُ - فَنَحْنُ نَدْرِي أَنَّ هَؤُلَاءِ مَأْذُونٌ لَهُمْ، وَلَيْسَ غَيْرُهُمْ مَأْمُورًا بِذَلِكَ وَلَا مَنْهِيًّا فَهُمْ عَلَى الْإِبَاحَةِ -: رُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ " لَا يَبِيتَنَّ أَحَدٌ مِنْ وَرَاءِ الْعَقَبَةِ أَيَّامَ مِنًى " وَصَحَّ هَذَا عَنْهُ - رَضِيَ اللَّهُ عَنْهُ - وَعَنْ ابْنِ عَبَّاسٍ مِثْلُ هَذَا، وَعَنْ ابْنِ عُمَرَ أَنَّهُ كَرِهَ الْمَبِيتَ بِغَيْرِ مِنًى أَيَّامَ مِنًى، وَلَمْ يَجْعَلْ وَاحِدٌ مِنْهُمْ فِي ذَلِكَ فِدْيَةً أَصْلًا.

L13916 If it is said: His permission to the shepherds, his dispensation for them, and his authorization to al-ʿAbbās indicate that others are subject to different rulings? We reply: No. This reasoning would only hold if he (peace be upon him) had previously issued a general command to stay overnight and perform the ritual stoning, thereby making these groups exceptions from the originally commanded people. However, since no prior command was issued by him (peace be upon him), we understand that these were specifically permitted while others were neither commanded nor prohibited in this matter—they remain in a state of inherent permissibility. It is narrated from ʿUmar ibn al-Khaṭṭāb (may Allah be pleased with him): "Let no one spend the night beyond al-ʿAqaba during the days of staying at Mina in Hajj"—an authentic report. The same ruling is transmitted from Ibn ʿAbbās. From Ibn ʿUmar, it is related that he disapproved of staying overnight outside Mina during its days, though none of them imposed any fidya (ritual expiation) for this whatsoever.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا سُفْيَانُ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا بَأْسَ لِمَنْ كَانَ لَهُ مَتَاعٌ بِمَكَّةَ أَنْ يَبِيتَ بِهَا لَيَالِيَ مِنًى.

L13917 From the chain of Saʿīd ibn Manṣūr, who narrated to us: Sufyān narrated from Ibn Jurayj from ʿAṭāʾ from Ibn ʿAbbās, who said: There is no harm for one who possesses belongings in Mecca to spend the nights of Mina there.

L13918 From the chain of Ibn Abi Shaybah: Zayd ibn al-Hubab narrated to us, Ibrahim ibn Nafiʿ narrated to us, on the authority of Amr ibn Dinar, from

Ikrimah, from Ibn Abbas, who said: When you stone the Jamarat [pillars], stay overnight wherever you wish.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا زَيْدُ بْنُ الْحُبَابِ نَا إِبْرَاهِيمُ بْنُ نَافِعٍ أَنَا عَمْرُو بْنُ دِينَارٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: إِذَا رَمَيْت الْجِمَارَ فَبِتْ حَيْثُ شِئْت.

L13919 And from him to Ibrāhīm ibn Nāfiʿ: Ibn Abī Najīḥ reported to us from ʿAṭāʾ, who said: "There is no harm in staying in Makkah during the nights designated for Mina at his rural estate."

وَبِهِ إِلَى إِبْرَاهِيمَ بْنِ نَافِعٍ نَا ابْنُ أَبِي نَجِيحٍ عَنْ عَطَاءٍ قَالَ: لَا بَأْسَ أَنْ يَبِيتَ بِمَكَّةَ لَيَالِيَ مِنًى فِي ضَيْعَتِهِ.

L13920 From Mujahid: There is no harm in spending the first part of the night in Makkah and the latter part in Mina, or the first part in Mina and the latter part in Makkah. Narrated to us via the chain of Ibn Abi Shaybah: Abu Muʿawiyah reported from Ibn Jurayj, from ʿAtaa, that he used to say: Whoever spends the nights [obligatory] for Mina in Makkah should give a dirham in charity or something similar.

وَعَنْ مُجَاهِدٍ لَا بَأْسَ بِأَنْ يَكُونَ أَوَّلَ اللَّيْلِ بِمَكَّةَ وَآخِرَهُ بِمِنًى أَوْ أَوَّلَ اللَّيْلِ بِمِنًى وَآخِرَهُ بِمَكَّةَ - وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا أَبُو مُعَاوِيَةَ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ أَنَّهُ كَانَ يَقُولُ: مَنْ بَاتَ لَيَالِيَ مِنًى بِمَكَّةَ تَصَدَّقَ بِدِرْهَمٍ أَوْ نَحْوِهِ.

L13921 From Bukayr ibn Mismār, from Sālim, from Ibn Jurayj, from ʿAṭāʾ: likewise similar to this - he gives a dirham in charity if he does not spend the night in Minā.

وَعَنْ بُكَيْرِ بْنِ مِسْمَارٍ عَنْ سَالِمٍ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ مِثْلُ هَذَا أَيْضًا يَتَصَدَّقُ بِدِرْهَمٍ إِذَا لَمْ يَبِتْ بِمِنًى.

L13922–13923 From the chain of Abū Bakr ibn ʿAyyāsh, via al-Mughīrah, via Ibrāhīm, who said: If someone spends the night short of al-ʿAqabah, they are to sacrifice an animal.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ عَيَّاشٍ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ قَالَ: إذَا بَاتَ دُونَ الْعَقَبَةِ أَهْرَقَ دَمًا.

L13924 Abu Hanifah held the same opinion as ours. Sufyan said: "He must give food in charity as expiation." Malik said: "Whoever stays overnight during the days of Mina outside Mina, or for most of the night, must offer a sacrificial animal. If he remains there for the shorter duration of the night, nothing is required of him."

وَقَالَ أَبُو حَنِيفَةَ: بِمِثْلِ قَوْلِنَا، وَقَالَ سُفْيَانُ: يُطْعِمُ شَيْئًا، وَقَالَ مَالِكٌ: مَنْ بَاتَ لَيْلَةً مِنْ لَيَالِي مِنًى بِغَيْرِ مِنًى أَوْ أَكْثَرَ لَيْلَتِهِ فَعَلَيْهِ دَمٌ، فَإِنْ بَاتَ الْأَقَلَّ مِنْ لَيْلَتِهِ فَلَا شَيْءَ عَلَيْهِ.

L13925 Al-Shāfiʿī said: "Whoever spends a night of the Nights of Tashreeq outside Mina must give a mudd as charity. If he spends two nights, two mudds; if he spends three nights, a blood sacrifice." It is narrated from him: "For one night, a third of a blood sacrifice; for two nights, two-thirds of a blood sacrifice; and for three nights, a full blood sacrifice." Abū Muḥammad said: "These opinions have no evidence for their validity—referring to charity with a dirham, providing food to someone, obligating a blood sacrifice, a mudd,

وَقَالَ الشَّافِعِيُّ: مَنْ بَاتَ لَيْلَةً مِنْ لَيَالِي التَّشْرِيقِ فِي غَيْرِ مِنًى فَلْيَتَصَدَّقْ بِمُدٍّ فَإِنْ بَاتَ لَيْلَتَيْنِ، فَمُدَّانِ فَإِنْ بَاتَ ثَلَاثًا فَدَمٌ - وَرُوِيَ عَنْهُ فِي لَيْلَةٍ ثُلُثُ دَمٍ، وَفِي لَيْلَتَيْنِ ثُلُثَا دَمٍ وَفِي ثَلَاثِ لَيَالٍ دَمٌ قَالَ أَبُو مُحَمَّدٍ: هَذِهِ الْأَقْوَالُ لَا دَلِيلَ عَلَى صِحَّتِهَا يَعْنِي الصَّدَقَةَ بِدِرْهَمٍ أَوْ بِإِطْعَامِ شَيْءٍ أَوْ بِإِيجَابِ دَمٍ، أَوْ بُدٍّ، أَوْ مُدَّيْنِ، أَوْ ثُلُثِ دَمٍ، أَوْ ثُلُثَيْ دَمٍ، أَوْ الْفَرْقَ

two mudds, a third of a blood sacrifice, two-thirds of a blood sacrifice, or distinguishing between spending most of the night or a small portion of it. In such cases, holding such an opinion is impermissible. We know of no predecessors at all for Mālik or Al-Shāfiʿī in these specific statements of theirs—neither from a Companion nor a Follower."

L13926 **An Issue: He stoned on two days, then dispersed from Mina and did not stone on the third day.**

L13927 Issue 847: Whoever throws for two days and then departs without performing the third day's throwing - there is no harm in that. But whoever performs the third day's throwing, it is better.

L13928 The evidence for this is the statement of Allah, the Exalted: {So whoever hastens departure within two days - there is no sin upon him, and whoever delays - there is no sin upon him} [2:203]. Abu Hanifah said: "If one departs on the second day before nightfall, they must throw pebbles on the third day." Ali said: "This is incorrect, a ruling without evidence and in contradiction to the Quran."[39]

L13929 **Issue: If a woman performing 'Umrah as part of Tamattu' Hajj menstruates before circumambulating the Kaaba...**

L13930 848 – Issue: If a woman performing Tamattuʿ (combining Umrah and Hajj) menstruates before circumambulating the Kaaba, her obligation is to add Hajj to her Umrah if she intends to perform Hajj in the same year. She must perform all rituals of Hajj except the circumambulation of the Kaaba. When she purifies [from menstruation], she should then perform the circumambulation. This ruling is based on the command of the Messenger of Allah (peace be upon him) to ʿĀ'ishah in this matter, as mentioned earlier.

L13931 **A case wherein a woman assumes *ihram* for Umrah intending *Tamattuʿ*, then menstruates before performing the circumambulation of the House.**

بَيْنَ الْمَبِيتِ أَكْثَرَ اللَّيْلِ، أَوْ أَقَلَّهُ، وَمَا كَانَ هَكَذَا فَالْقَوْلُ بِهِ لَا يَجُوزُ، وَمَا نَعْلَمُ لِمَالِكٍ، وَلَا لِلشَّافِعِيِّ فِي أَقْوَالِهِمْ هَذِهِ سَلَفًا أَصْلًا، لَا مِنْ صَاحِبٍ، وَلَا مِنْ تَابِعٍ.

[مَسْأَلَةٌ رَمَى يَوْمَيْنِ ثُمَّ نَفَرَ وَلَمْ يَرْمِ الثَّالِثَ]

٨٤٧ - مَسْأَلَةٌ: وَمَنْ رَمَى يَوْمَيْنِ، ثُمَّ نَفَرَ، وَلَمْ يَرْمِ الثَّالِثَ فَلَا بَأْسَ بِهِ، وَمَنْ رَمَى الثَّالِثَ فَهُوَ أَحْسَنُ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ - تَعَالَى -: {فَمَنْ تَعَجَّلَ فِي يَوْمَيْنِ فَلا إِثْمَ عَلَيْهِ وَمَنْ تَأَخَّرَ فَلا إِثْمَ عَلَيْهِ} [البقرة: ٢٠٣] وَقَالَ أَبُو حَنِيفَةَ: إنْ نَفَرَ الْيَوْمَ الثَّانِيَ إلَى اللَّيْلِ لَزِمَهُ أَنْ يَرْمِيَ الثَّالِثَ -: قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، وَحُكْمٌ بِلَا دَلِيلٍ وَخِلَافٌ لِلْقُرْآنِ.

[مَسْأَلَةٌ الْمُتَمَتِّعَةُ بِعُمْرَةٍ إنْ حَاضَتْ قَبْلَ الطَّوَافِ بِالْبَيْتِ]

٨٤٨ - مَسْأَلَةٌ: وَالْمَرْأَةُ الْمُتَمَتِّعَةُ بِعُمْرَةٍ إنْ حَاضَتْ قَبْلَ الطَّوَافِ بِالْبَيْتِ فَفَرْضُهَا أَنْ تُضِيفَ حَجًّا إلَى عُمْرَتِهَا إنْ كَانَتْ تُرِيدُ الْحَجَّ مِنْ عَامِهَا وَتَعْمَلَ عَمَلَ الْحَجِّ حَاشَا الطَّوَافَ بِالْبَيْتِ، فَإِذَا طَهُرَتْ طَافَتْ، وَهَذَا لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَائِشَةَ بِذَلِكَ قَدْ ذَكَرْنَاهُ قَبْلُ.

[مَسْأَلَةٌ تُهِلُّ بِعُمْرَةٍ وَهِيَ تُرِيدُ التَّمَتُّعَ فَتَحِيضُ قَبْلَ الطَّوَافِ بِالْبَيْتِ]

[39] **Qur'an references (L13928):** Qur'an 2:203 (Al-Baqarah).

L13932–13934 Issue 849: The ritual bath is not obligatory in Hajj except in two cases: 1) A woman who enters ihram for Umrah intending Tamattu‘, then menstruates before performing circumambulation of the House. She must perform the ritual bath and combine Hajj with her Umrah (Qiran). 2) A woman who gives birth before initiating ihram for Umrah or Qiran. She is obligated to perform the ritual bath and must enter ihram for Hajj. What has been narrated to us through Muslim’s chain: narrated to us by Qutaybah from Al-Layth, from Abu Al-Zubayr, from Jabir, who said: “‘Ā’ishah came to perform ‘Umrah.” He related the ḥadīth, in which she said to Allah’s Messenger - peace and blessings of Allah be upon him - “I have menstruated while the people have exited ihrām, but I have not exited ihrām nor performed ṭawāf around the House. Now the people are going for Ḥajj.” Allah’s Messenger - peace and blessings of Allah be upon him - responded: “This is a matter Allah has ordained for the daughters of Ādam. Perform ghusl and enter ihrām for Ḥajj.”

٨٤٩ - مَسْأَلَةٌ - وَلَا يَلْزَمُ الْغُسْلُ فِي الْحَجِّ فَرْضًا إِلَّا الْمَرْأَةَ تُهِلُّ بِعُمْرَةٍ تُرِيدُ التَّمَتُّعَ فَتَحِيضُ قَبْلَ الطَّوَافِ بِالْبَيْتِ فَهَذِهِ تَغْتَسِلُ وَلَا بُدَّ وَتُقْرِنُ حَجًّا إِلَى عُمْرَتِهَا؛ وَالْمَرْأَةُ تَلِدُ قَبْلَ أَنْ تُهِلَّ بِالْعُمْرَةِ، أَوْ بِالْقِرَانِ: فَفُرِضَ عَلَيْهَا أَنْ تَغْتَسِلَ، وَلْتُهِلَّ بِالْحَجِّ -: لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا قُتَيْبَةُ نَا اللَّيْثُ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ «أَقْبَلَتْ عَائِشَةُ بِعُمْرَةٍ فَذَكَرَ الْحَدِيثَ وَفِيهِ أَنَّهَا قَالَتْ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ حِضْتُ وَقَدْ حَلَّ النَّاسُ وَلَمْ أَحِلَّ وَلَمْ أَطُفْ بِالْبَيْتِ وَالنَّاسُ يَذْهَبُونَ إِلَى الْحَجِّ الْآنَ فَقَالَ لَهَا رَسُولُ اللَّهِ: - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّ هَذَا أَمْرٌ كَتَبَهُ اللَّهُ عَلَى بَنَاتِ آدَمَ فَاغْتَسِلِي وَأَهِلِّي بِالْحَجِّ» .

L13935 And for his command—peace be upon him—to Asmā’ bint ‘Umays, when she gave birth to Muḥammad ibn Abī Bakr at al-Shajarah, that she perform the ritual bath and proclaim the talbiyah (the pilgrimage invocation). We are certain of her compliance with his command—peace be upon him—and that had the two women not performed the ritual bath, they would have been disobedient. And Allah—the Almighty and Majestic—protected them both from such disobedience.

«وَلِأَمْرِهِ - عَلَيْهِ السَّلَامُ -، أَسْمَاءَ بِنْتَ عُمَيْسٍ إِذْ وَلَدَتْ مُحَمَّدَ بْنَ أَبِي بَكْرٍ بِالشَّجَرَةِ أَنْ تَغْتَسِلَ وَتُهِلَّ» ؛ وَنَحْنُ قَاطِعُونَ بِائْتِمَارِهَا لَهُ - عَلَيْهِ السَّلَامُ -، وَأَنَّهُمَا لَوْ لَمْ يَغْتَسِلَا لَكَانَتَا عَاصِيَتَيْنِ، وَقَدْ أَعَاذَهُمَا اللَّهُ - عَزَّ وَجَلَّ - مِنْ ذَلِكَ.

A ruling on one who deliberately commits a ritual violation while in the state of consecration for Hajj (Iḥrām).

[مَسْأَلَةٌ تَعَمَّدَ مَعْصِيَةً وَهُوَ ذَاكِرٌ لِحَجِّهِ]

L13937 850. Issue: Anyone who intentionally commits any sin—while being mindful of his Hajj from the moment he enters Ihram until he completes his Tawaf al-Ifadah around the House and throws the pebbles—invalidates his Hajj. If he commits it out of forgetfulness of the sin itself, or forgetfulness of his Ihram and entry into Hajj or ‘Umrah, there is no penalty for such forgetfulness, and his Hajj and ‘Umrah are complete despite his unawareness of being in them. This is based on Allah’s statement—Exalted is He—: “So whoever has made Hajj obligatory upon himself in them [the months], there is to be

٨٥٠ - مَسْأَلَةٌ: وَكُلُّ مَنْ تَعَمَّدَ مَعْصِيَةً أَيَّ مَعْصِيَةٍ كَانَتْ - وَهُوَ ذَاكِرٌ لِحَجِّهِ مُذْ يُحْرِمُ إِلَى أَنْ يُتِمَّ طَوَافَهُ بِالْبَيْتِ لِلْإِفَاضَةِ وَيَرْمِيَ الْجَمْرَةَ - فَقَدْ بَطَلَ حَجُّهُ، فَإِنْ أَتَاهَا نَاسِيًا لَهَا، أَوْ نَاسِيًا لِإِحْرَامِهِ وَدُخُولِهِ فِي الْحَجِّ أَوْ الْعُمْرَةِ: فَلَا شَيْءَ عَلَيْهِ فِي نِسْيَانِهَا، وَحَجُّهُ وَعُمْرَتُهُ تَامَّانِ فِي نِسْيَانِهِ كَوْنَهُ فِيهِمَا، وَذَلِكَ لِقَوْلِ اللَّهِ - تَعَالَى -: {فَمَنْ فَرَضَ فِيهِنَّ الْحَجَّ فَلَا

no sexual intimacy, no disobedience, and no disputing during Hajj" [2:197]. Thus, Allah's condition for Hajj is purification from sexual intimacy and disobedience. Whoever fails to purify himself from these has not performed Hajj as commanded, and whoever does not perform Hajj as commanded has no valid Hajj. The Messenger of Allah—peace and blessings of Allah be upon him—said: "The 'Umrah is incorporated into Hajj until the Day of Resurrection." Among the absurdities of this world is their invalidation of Hajj for a man kissing his lawful wife—an act which causes him to ejaculate—even though Allah, Exalted is He, never prohibited this. Yet they do not invalidate Hajj for acts of disobedience such as unlawful killing, abandoning prayer, or other sins—this is truly astonishing. Even more bewildering is Abū Ḥanīfah's invalidation of Hajj for a man who has intercourse with his wife while forgetful of his Ihram, despite the established principle that Allah, Exalted is He, does not hold accountable for forgetfulness. He—Exalted is He—said: "There is no blame upon you for what you do by mistake, but only for what your hearts deliberately intend" [33:5]. Moreover, they do not invalidate Hajj for intentionally seeking sodomy during Ihram or being subjected to it. Is there any vile calamity greater than this? The most astonishing thing is their claim of consensus on this matter, though they cannot cite a single narration from any Companion—may Allah be pleased with them—stating that intentional disobedience does not invalidate Hajj. Rather, reports from the predecessors testify to our position.[40]

L13938–13940 It is narrated from Mujāhid that he said: "Truly, we enter iḥrām from the mīqāt, and I fear that I will not depart from it until..." My ihram has been exited, or words with this meaning - and indeed Shuraih, when entering ihram, would become like a deaf serpent[851] - Issue: If one can renew the ihram, he must do so and perform Hajj or Umrah even if he has already fulfilled his duty, for his initial ihram has been nullified and invalid. Persisting in it is impermissible according to Allah's word, Exalted is He: "Allah does not set right the work of those who cause corruption" (Quran 10:81).[41]

رَفَثَ وَلا فُسُوقَ وَلا جِدَالَ فِي الْحَجِّ} [البقرة: ١٩٧] فَكَانَ مِنْ شَرْطِ اللَّهِ - تَعَالَى - فِي الْحَجِّ بَرَاءَتُهُ مِنْ الرَّفَثِ وَالْفُسُوقِ، فَمَنْ لَمْ يَتَبَرَّأْ مِنْهُمَا فَلَمْ يَحُجَّ كَمَا أُمِرَ، وَمَنْ لَمْ يَحُجَّ كَمَا أُمِرَ فَلَا حَجَّ لَهُ وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «دَخَلَتْ الْعُمْرَةُ فِي الْحَجِّ إلَى يَوْمِ الْقِيَامَةِ» وَمِنْ عَجَائِبِ الدُّنْيَا إبْطَالُهُمْ الْحَجَّ بِتَقْبِيلِهِ امْرَأَتَهُ الْمُبَاحَةَ لَهُ فَيُمْنِي وَلَمْ يَنْهَهُ اللَّهُ - تَعَالَى - قَطُّ عَنْ هَذَا، ثُمَّ لَا يُبْطِلُونَهُ بِالْفُسُوقِ مِنْ قَتْلِ النَّفْسِ الْمُحَرَّمَةِ، وَتَرْكِ الصَّلَاةِ، وَسَائِرِ الْفُسُوقِ إنَّ هَذَا لَعَجَبٌ وَأَعْجَبُ مِنْ ذَلِكَ إبْطَالُ أَبِي حَنِيفَةَ الْحَجَّ بِوَطْءِ الرَّجُلِ امْرَأَتَهُ نَاسِيًا لِإِحْرَامِهِ وَقَدْ صَحَّ أَنَّ اللَّهَ - تَعَالَى - لَا يُؤَاخِذُ بِالنِّسْيَانِ، قَالَ - تَعَالَى -: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] ثُمَّ لَا يُبْطِلُ الْحَجَّ بِتَعَمُّدِ الْقَصْدِ إلَى أَنْ يَلُوطَ فِي إحْرَامِهِ أَوْ يُلَاطَ بِهِ، فَهَلْ فِي الْفَضَائِحِ وَالْقَبَائِحِ أَكْثَرُ مِنْ هَذِهِ الْمُصِيبَةِ؟ وَأَعْجَبُ شَيْءٍ دَعْوَاهُمْ الْإِجْمَاعَ عَلَى هَذَا وَلَا سَبِيلَ إلَى أَنْ يَأْتُوا بِرِوَايَةٍ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي أَنَّ تَعَمُّدَ الْفُسُوقِ لَا يُبْطِلُ بَلْ الرِّوَايَاتُ عَنْ السَّلَفِ تَشْهَدُ لِقَوْلِنَا.

وَرُوِيَ عَنْ مُجَاهِدٍ أَنَّهُ قَالَ: إنَّا لَنُحْرِمُ مِنْ الْمِيقَاتِ وَأَخْشَى أَنْ لَا أَخْرُجَ مِنْهُ حَتَّى أُخْرِجَ إحْرَامِي، أَوْ كَلَامًا هَذَا مَعْنَاهُ - وَإِنَّ شُرَيْحًا كَانَ إذَا أَحْرَمَ فَكَأَنَّهُ حَيَّةٌ صَمَّاءُ ٨٥١ - مَسْأَلَةٌ: فَإِنْ أَمْكَنَهُ تَجْدِيدُ الْإِحْرَامِ فَلْيَفْعَلْ وَيَحُجَّ أَوْ يَعْتَمِرَ وَقَدْ أَدَّى فَرْضَهُ لِأَنَّ إحْرَامَهُ الْأَوَّلَ قَدْ بَطَلَ وَأَفْسَدَهُ، وَالتَّمَادِي عَلَيْهِ لَا يَجُوزُ لِقَوْلِ اللَّهِ - تَعَالَى -: {إِنَّ اللَّهَ لا يُصْلِحُ عَمَلَ الْمُفْسِدِينَ} [يونس: ٨١] .

[40] **Qur'an references (L13937):** Qur'an 2:197 (Al-Baqarah); Qur'an 33:5 (Al-Ahzab).

[41] **Qur'an references (L13938):** Qur'an 10:81 (Yunus).

L13941 Al-Awzāʿī said: Blood money is required for insulting a muḥrim. Yet they impose blood money for acts deemed permissible, such as staying overnight outside Mina and other similar matters, but they do not apply it to insulting a muḥrim during Ḥajj.

وَقَالَ الْأَوْزَاعِيُّ: فِي سِبَابِ الْمُحْرِمِ دَمٌ، وَهُمْ يَجْعَلُونَ الدَّمَ فِيمَا لَا يُكْرَهُ فِيهِ مِنَ الْمَبِيتِ فِي غَيْرِ مِنًى وَغَيْرِ ذَلِكَ وَلَا يَجْعَلُونَهُ فِي السِّبَابِ لِلْمُحْرِمِ فِي الْحَجِّ.

L13942 **A case: He performed the Wuquf at Arafah on a stolen camel or a camel used for carrying impurities.**

[مَسْأَلَةٌ وَقَفَ بِعَرَفَةَ عَلَى بَعِيرٍ مَغْصُوبٍ أَوْ جَلَّالٍ]

L13943 Issue 852: If someone stands at Arafat on a stolen camel or a baggage camel, their Hajj is invalid if they were aware of this. As for one who performs Hajj with unlawful wealth and spent it on Hajj—without having handled it himself—their Hajj is complete.

٨٥٢ - مَسْأَلَةٌ: وَمَنْ وَقَفَ بِعَرَفَةَ عَلَى بَعِيرٍ مَغْصُوبٍ، أَوْ جَلَّالٍ بَطَلَ حَجُّهُ إِذَا كَانَ عَالِمًا بِذَلِكَ، وَأَمَّا مَنْ حَجَّ بِمَالٍ حَرَامٍ فَأَنْفَقَهُ فِي الْحَجِّ - وَلَمْ يَتَوَلَّ هُوَ حَمْلَهُ بِنَفْسِهِ - فَحَجُّهُ تَامٌّ.

L13944 As for the usurped one, it is because he acted contrary to what Allah—Exalted is He—commanded and did not perform Hajj as he was ordered. As for his standing on a jallala camel (camels that consume filth), this relates to what is authentically reported from the Prophet—peace and blessings be upon him—through what was narrated to us by Abdullah ibn Rabiʿ: Umar ibn Abd al-Malik narrated to us, Muhammad ibn Bakr narrated to us, Abu Dawud narrated to us, Ahmad ibn Abi Suraij al-Razi narrated to us, Abdullah ibn al-Jahm narrated to us, Amr (Ibn Abi Qays) from Ayyub al-Sakhtiyani from Nafiʿ from Ibn Umar, who said: "The Messenger of Allah—peace and blessings be upon him—forbade riding jallala camels."[42]

أَمَّا الْمَغْصُوبُ، فَلِأَنَّهُ مُخَالِفٌ لِمَا أَمَرَهُ اللَّهُ - تَعَالَى - بِهِ وَلَمْ يَحُجَّ كَمَا أُمِرَ - وَأَمَّا وُقُوفُهُ عَلَى بَعِيرٍ جَلَّالٍ فَلِمَا صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِمَّا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نَا مُحَمَّدُ بْنُ بَكْرٍ نَا أَبُو دَاوُد نَا أَحْمَدُ بْنُ أَبِي سُرَيْجٍ الرَّازِيّ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ الْجَهْمِ نَا عَمْرٌو هُوَ ابْنُ أَبِي قَيْسٍ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنِ الْجَلَّالَةِ فِي الْإِبِلِ أَنْ يُرْكَبَ عَلَيْهَا» .

L13945 Reported to Abu Dawud through him: Musaddad ibn Musarhad narrated to us; Abdul-Warith (he is al-Tannuri) narrated to us; from Ayyub al-Sakhtiyānī, from Nafi', from Ibn Umar, who said: "The Messenger of Allah (peace and blessings be upon him) forbade riding al-jallalah [filth-eating animals]."

وَبِهِ إِلَى أَبِي دَاوُد نَا مُسَدَّدٌ نَا عَبْدُ الْوَارِثِ هُوَ التَّنُّورِيُّ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ رُكُوبِ الْجَلَّالَةِ» .

L13946 Abū Muḥammad said: The jallalah (camel fed filth) is an animal whose fodder consists of impurities. Whoever fulfills the standing at ʻArafah while mounted on a jallalah camel has not fulfilled the standing as commanded, for

قَالَ أَبُو مُحَمَّد: وَالْجَلَّالَةُ هِيَ الَّتِي عَلَفُهَا الْجُلَّةُ وَهِيَ الْعَذِرَةُ، فَمَنْ وَقَفَ بِعَرَفَةَ عَلَى بَعِيرٍ جَلَّالٍ فَلَمْ يَقِفْ كَمَا أُمِرَ، لِأَنَّهُ عَاصٍ فِي وُقُوفِهِ [عَلَيْهِ] وَالْوُقُوفُ بِعَرَفَةَ طَاعَةٌ وَفَرْضٌ، وَمِنَ الْمُحَالِ أَنْ تَنُوبَ الْمَعْصِيَةُ عَنِ الطَّاعَةِ وَقَالَ - عَلَيْهِ السَّلَامُ -: «إِنَّ دِمَاءَكُمْ

[42] **Hadith references (L13944):** Sunan Abi Dawud 2558; Sunan Abi Dawud 3787; Riyad as-Salihin 1692.

he is disobedient in his standing upon such a camel, given that the standing at ʻArafah constitutes obedience and an obligatory duty. It is inconceivable that disobedience could substitute for obedience. The Prophet (peace be upon him) said: "Your blood and your wealth are forbidden to you." Thus, whoever stands there while possessing forbidden wealth has not stood as commanded but rather stood in disobedience. If he was unaware of this, Allah the Exalted states: "There is no blame upon you for that in which you erred, but only for what your hearts deliberately intended" (33:5). Whoever does not intentionally engage in forbidden acts while aware of them is not considered disobedient. If he is not disobedient, he is counted among the virtuous. Allah says: "There is no recourse against the virtuous" (9:91). Thus, he has fulfilled the standing as commanded, and Allah the Exalted has pardoned him for what he did not know.[43]

وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَمَنْ وَقَفَ بِهَا حَامِلًا لِمَالٍ حَرَامٍ، فَلَمْ يَقِفْ كَمَا أُمِرَ بَلْ وَقَفَ عَاصِيًا، فَإِنْ لَمْ يَعْلَمْ بِذَلِكَ فَقَدْ قَالَ - تَعَالَى -: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] وَمَنْ لَمْ يَتَعَمَّدْ لِلْحَرَامِ عَالِمًا بِهِ فَلَيْسَ عَاصِيًا، وَإِذَا لَمْ يَكُنْ عَاصِيًا فَهُوَ مُحْسِنٌ قَالَ - تَعَالَى -: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] فَقَدْ وَقَفَ كَمَا أُمِرَ، وَعَفَا اللَّهُ - تَعَالَى - لَهُ عَمَّا لَمْ يَعْلَمْهُ.

L13947–13948 As for the expenditure of unlawful wealth in Hajj and its journey: he, if he was sinful in that but did not engage in sin during his state of Ihram nor in any of the acts of his Hajj—and did not mix any forbidden action with his obligatory act—then success is from Allah, the Exalted.

وَأَمَّا نَفَقَةُ الْمَالِ الْحَرَامِ فِي الْحَجِّ وَطَرِيقُهُ -: فَهُوَ إِنْ كَانَ عَاصِيًا بِذَلِكَ فَلَمْ يُبَاشِرْ الْمَعْصِيَةَ فِي حَالِ إحْرَامِهِ وَلَا فِي شَيْءٍ مِنْ أَعْمَالِ حَجِّهِ فَلَمْ يَخْلِطْ فِي عَمَلِهِ الْوَاجِبِ عَمَلًا مُحَرَّمًا وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L13949 Similarly, if someone rides a jallāla animal (one fed impure substances) during any part of his ritual state (Iḥrām) or during the performance of his Hajj, based on Allah's statement—Exalted is He—: *"There is to be no lewdness, transgression, or disputing during Hajj"* [Al-Baqarah: 197]. Sin constitutes transgression. They have agreed with us that the prayer of one who performs an obligatory prayer while riding without necessity is invalid, and there is no distinction between the two matters, for both are prohibited acts.[44]

وَكَذَلِكَ لَوْ رَكِبَ الْجَلَّالَ فِي شَيْءٍ مِنْ إحْرَامِهِ أَوْ عَمَلِ حَجِّهِ لِقَوْلِ اللَّهِ - تَعَالَى -: {فَلا رَفَثَ وَلا فُسُوقَ وَلا جِدَالَ فِي الْحَجِّ} [البقرة: ١٩٧] وَالْمَعْصِيَةُ: فُسُوقٌ، وَقَدْ وَافَقُونَا عَلَى بُطْلَانِ صَلَاةِ مَنْ صَلَّى الْفَرْضَ رَاكِبًا لِغَيْرِ ضَرُورَةٍ وَلَا فَرْقَ بَيْنَ الْأَمْرَيْنِ؛ لِأَنَّ كِلَيْهِمَا عَمَلٌ مُحَرَّمٌ.

L13950 **Issue: The entire area of Arafah is a valid standing place.**

[مَسْأَلَةٌ عَرَفَةُ كُلُّهَا مَوْقِفٌ]

L13951 853. Issue: All of ʻArafah is a standing place except the valley of ʻUranat, and all of Muzdalifah is a standing place except the valley of Muḥassir. This is because ʻArafah is part of the non-sacred territory (al-Ḥill), while the valley

٨٥٣ - مَسْأَلَةٌ: وَعَرَفَةُ كُلُّهَا مَوْقِفٌ إلَّا بَطْنَ عُرَنَةَ، وَمُزْدَلِفَةُ كُلُّهَا مَوْقِفٌ إلَّا بَطْنَ مُحَسِّرٍ؛ لِأَنَّ عَرَفَةَ مِنْ الْحِلِّ، وَبَطْنَ عُرَنَةَ مِنْ الْحَرَمِ فَهُوَ غَيْرُ عَرَفَةَ؛ وَأَمَّا مُزْدَلِفَةُ فَهِيَ الْمَشْعَرُ الْحَرَامُ وَهِيَ مِنْ الْحَرَمِ؛ وَبَطْنُ مُحَسِّرٍ مِنْ الْحِلِّ فَهُوَ غَيْرُ مُزْدَلِفَةَ.

[43] **Qur'an references (L13946):** Qur'an 33:5 (Al-Ahzab); Qur'an 9:91 (At-Tawbah).
[44] **Qur'an references (L13949):** Qur'an 2:197 (Al-Baqarah).

of ʻUranat is part of the sacred precinct (al-Ḥaram), and thus excluded from ʻArafah. As for Muzdalifah, it is the Sacred Ritual Site (al-Mashʻar al-Ḥaram) and is part of the sacred precinct (al-Ḥaram), while the valley of Muḥassir is part of the non-sacred territory (al-Ḥill), and thus excluded from Muzdalifah.

L13952 Aḥmad ibn ʻUmar ibn Anas narrated to us from ʻAbd Allāh ibn Ḥusayn ibn ʻIqāl, from Ibrāhīm ibn Muḥammad al-Dīnawarī, from Muḥammad ibn Aḥmad ibn al-Jahm, from Jaʻfar al-Ṣāʾigh, from Abū Naṣr al-Nimār (who is ʻAbd al-Malik ibn ʻAbd al-ʻAzīz), from Sulaymān ibn Mūsā, from ʻAbd al-Raḥmān ibn Abī Ḥusayn, from Jubayr ibn Muṭʻim, who said: The Messenger of Allah—peace be upon him—said: "All of ʻArafāt is a valid standing place, but avoid the valley of ʻUranah. All of Muzdalifah is a valid standing place, but avoid the valley of Muhassir."

L13953 A juristic issue regarding casting pebbles at the Jamarat with ones that had already been used for this purpose.

L13954 854. Issue: Throwing pebbles at the jamarat (stone pillars) with pebbles previously used for throwing is permissible. Similarly, performing this act while mounted is acceptable. As for using previously thrown pebbles, this is because neither the Quran nor the Sunnah prohibits it. This is the opinion of Abū Ḥanīfah and his companions. If it is objected: It has been narrated from Ibn ʻAbbās that the pebbles of the jamarat which are accepted [by God] are elevated, while those not accepted remain, for otherwise they would form mounds that would obstruct the path. We respond: Indeed, so what? If ʻAmr's throwing of these pebbles is not accepted, Zayd's use of the same pebbles may be accepted. Just as a person may give charity which Allah—Exalted—does not accept from him, then another person comes to possess those very pebbles and gives them in charity, and they may then be accepted from him.

L13955–13957 As for throwing while riding: ʻAbdullāh ibn Rabīʻ narrated to us via Muḥammad ibn Muʻāwiyah, Aḥmad ibn Shuʻayb, Isḥāq ibn Ibrāhīm (Ibn Rāhawayh), Wakīʻ, and Ayman ibn Nābil—from Qudāmah ibn ʻAbdullāh. He said: "I saw the Messenger of Allah—peace and blessings be upon him—stoning Jam-

نَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نَا عَبْدُ اللَّهِ بْنُ حُسَيْنِ بْنِ عِقَالٍ نَا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ نَا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ نَا جَعْفَرُ الصَّائِغُ نَا أَبُو نَصْرٍ النَّمَّارُ هُوَ عَبْدُ الْمَلِكِ بْنُ عَبْدِ الْعَزِيزِ - عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي حُسَيْنٍ عَنْ جُبَيْرِ بْنِ مُطْعِمٍ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ عَرَفَاتٍ مَوْقِفٌ وَارْفَعُوا عَنْ بَطْنِ عُرَنَةَ، وَالْمُزْدَلِفَةُ كُلُّهَا مَوْقِفٌ وَارْفَعُوا عَنْ بَطْنِ مُحَسِّرٍ» .

[مَسْأَلَةُ رَمْيُ الْجِمَارِ بِحَصًى قَدْ رُمِيَ بِهِ قَبْلَ ذَلِكَ]

٨٥٤ - مَسْأَلَةٌ: وَرَمْيُ الْجِمَارِ بِحَصًى قَدْ رُمِيَ بِهِ قَبْلَ ذَلِكَ جَائِزٌ، وَكَذَلِكَ رَمْيُهَا رَاكِبًا حَسَنٌ؛ أَمَّا رَمْيُهَا بِحَصًى قَدْ رُمِيَ بِهِ فَلِأَنَّهُ لَمْ يَنْهَ عَنْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَأَصْحَابِهِ -: فَإِنْ قِيلَ: قَدْ رُوِيَ عَنْ ابْنِ عَبَّاسٍ أَنَّ حَصَى الْجِمَارِ مَا تُقُبِّلَ مِنْهُ رُفِعَ، وَمَا لَمْ يُتَقَبَّلْ مِنْهُ تُرِكَ وَلَوْلَا ذَلِكَ لَكَانَ هِضَابًا تَسُدُّ الطَّرِيقَ؟ قُلْنَا: نَعَمْ فَكَانَ مَاذَا؟ وَإِنْ لَمْ يُتَقَبَّلْ - رَمْيُ هَذِهِ الْحَصَى مِنْ عَمْرٍو فَيُسْتَقْبَلُ مِنْ زَيْدٍ، وَقَدْ يَتَصَدَّقُ الْمَرْءُ بِصَدَقَةٍ فَلَا يَقْبَلُهَا اللَّهُ - تَعَالَى - مِنْهُ، ثُمَّ يَمْلِكُ تِلْكَ الْعَيْنَ آخَرُ فَيَتَصَدَّقُ بِهَا فَتُقْبَلُ مِنْهُ.

وَأَمَّا رَمْيُهَا رَاكِبًا -: نَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - نَا وَكِيعٌ نَا أَيْمَنُ بْنُ نَابِلٍ عَنْ قُدَامَةَ بْنِ عَبْدِ اللَّهِ قَالَ:

rat al-ʿAqabah on the Day of Sacrifice while mounted on his reddish-brown she-camel, neither striking her, driving her forcefully, nor urging her onward with shouts."[45]

L13958 And Abū Yūsuf said less than an hour before his death: Throwing at the last two jamarat while mounted is superior, and throwing at Jamrat al-ʿAqabah on foot is superior. This is a baseless categorization without proof; rather, throwing at it while mounted is superior, in emulation of the Messenger of Allāh—peace and blessings of Allāh be upon him.

L13959 **Issue: Deliberate sexual intercourse in lawful circumstances while being aware of his Hajj or Umrah.**

L13960 Issue 855: Hajj is invalidated by intentionally engaging in sexual intercourse with one's lawful wife or bondmaid while mindful of his Hajj or Umrah. If he does so forgetfully - because he is in the state of Hajj or Umrah - he incurs no penalty. Similarly, the Hajj and Umrah of the woman with whom he intentionally had intercourse are also invalidated. Allah the Exalted says: "There shall be no obscenity (al-rafath), nor disobedience, nor quarreling during Hajj" (Al-Baqarah 2:197). Al-rafath refers to sexual intercourse (copulation). Thus, whoever engages in it has invalidated his Hajj or Umrah as he was commanded. The Messenger of Allah (peace be upon him) said: "Umrah is part of Hajj until the Day of Judgment."[46]

L13961 As for the one who forgets and the coerced person, there is no obligation upon them, based on the saying of Allah's Messenger (peace be upon him): "The consequences of error, forgetfulness, and what they were compelled to do have been lifted from my nation."

L13962 And based on the saying of Allāh—may He be exalted—: {There is no blame upon you for what you have erred in, but what your hearts deliberately intended} [Al-Aḥzāb: 5]. This is the view of our companions.[47]

L13963 **Case: He engaged in sexual intercourse without complet-**

«رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَرْمِي جَمْرَةَ الْعَقَبَةِ يَوْمَ النَّحْرِ عَلَى نَاقَةٍ لَهُ صَهْبَاءَ، لَا ضَرْبَ، وَلَا طَرْدَ، وَلَا إِلَيْكَ إِلَيْكَ» .

وَقَالَ أَبُو يُوسُفَ قَبْلَ مَوْتِهِ بِأَقَلَّ مِنْ سَاعَةٍ: رَمْيُ الْجَمْرَتَيْنِ الْآخِرَتَيْنِ رَاكِبًا أَفْضَلُ وَرَمْيُ جَمْرَةِ الْعَقَبَةِ رَاجِلًا أَفْضَلُ، وَهَذَا تَقْسِيمٌ فَاسِدٌ بِلَا بُرْهَانٍ بَلْ رَمْيُهَا رَاكِبًا أَفْضَلُ اقْتِدَاءً بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَةٌ تَعَمُّدُ الْوَطْءِ فِي الْحَلَالِ ذَاكِرًا لِحَجِّهِ أَوْ عُمْرَتِهِ]

٨٥٥ - مَسْأَلَةٌ: وَيُبْطِلُ الْحَجَّ تَعَمُّدُ الْوَطْءِ فِي الْحَلَالِ مِنَ الزَّوْجَةِ وَالْأَمَةِ ذَاكِرًا لِحَجِّهِ أَوْ عُمْرَتِهِ فَإِنْ وَطِئَهَا نَاسِيًا، لِأَنَّهُ فِي عَمَلِ حَجٍّ أَوْ عُمْرَةٍ فَلَا شَيْءَ عَلَيْهِ، وَكَذَلِكَ يَبْطُلُ بِتَعَمُّدِهِ أَيْضًا حَجُّ الْمَوْطُوءَةِ وَعُمْرَتُهَا قَالَ - تَعَالَى -: {فَلا رَفَثَ وَلا فُسُوقَ وَلا جِدَالَ فِي الْحَجِّ} [البقرة: ١٩٧] وَالرَّفَثُ الْجِمَاعُ، فَمَنْ جَامَعَ فَلَمْ يَحُجَّ، وَلَا اعْتَمَرَ كَمَا أُمِرَ، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «دَخَلَتْ الْعُمْرَةُ فِي الْحَجِّ إلَى يَوْمِ الْقِيَامَةِ» .

وَأَمَّا النَّاسِي، وَالْمُكْرَهُ فَلَا شَيْءَ عَلَيْهِ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» .

وَلِقَوْلِ اللَّهِ - تَعَالَى -: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] وَهُوَ قَوْلُ أَصْحَابِنَا.

[مَسْأَلَةٌ وَطِئَ وَعَلَيْهِ بَقِيَّةٌ مِنْ طَوَافِ الْإِفَاضَةِ أَوْ رَمْيِ الْجَمْرَةِ]

[45] **Hadith references (L13955):** Sunan an-Nasai 3061.
[46] **Qur'an references (L13960):** Qur'an 2:197 (Al-Baqarah).
[47] **Qur'an references (L13962):** Qur'an 33:5 (Al-Ahzab).

ing the remainder of Tawaf al-Ifadah or the stoning of Jamrah.

856 – Issue:

If he engages in intercourse while he still owes remaining acts of Ṭawāf al-Ifāḍah or any portion of the stoning of the Jamarāt, his Hajj becomes invalid as we have stated. Allah the Exalted said: “There is to be no lewdness, nor wickedness, nor disputing during Hajj” [al-Baqarah 2:197].[48]

Thus, it is established that whoever engaged in sexual intercourse during Ihram and did not complete his Hajj did not perform Hajj as he was obligated to do. This is the opinion of Ibn ʻUmar and the scholars of our school.

Ibn Abbas said: Hajj is not invalidated by intercourse after Arafah; this being the opinion of Abu Hanifah. Malik said: If intercourse occurs on the day of sacrifice before stoning the Jamrah, his Hajj is invalidated. If it occurs on the day of sacrifice after stoning the Jamrah, his Hajj is not invalidated. If it occurs after the day of sacrifice before stoning the Jamrah, his Hajj is not invalidated.

As for Mālik’s statement, it is a division for which there is absolutely no evidence to validate it.

Abu Hanifah invoked as proof the statement of the Messenger of Allah (peace and blessings be upon him): “Hajj is [standing at] Arafat.”

Ali said: “There is no authoritative evidence for them in this, for the one who said this is the same one who informed us from Allah, the Most High.” That He said, “And let them perform *ṭawāf* around the Ancient House” [al-Ḥajj: 29] and that He said, “And when you depart from ʻArafāt, remember Allah at *al-Mashʻar al-Ḥarām*” [al-Baqarah: 198].[49]

He is the One who commanded the throwing of the Jamrah, so it is impermissible to adopt part of His ruling while excluding another part.

Allah the Exalted has said: {Hajj to the House is a duty owed to Allah upon

[48] **Qur’an references (L13965):** Qur’an 2:197 (Al-Baqarah).

[49] **Qur’an references (L13970):** Qur’an 22:29 (Al-Hajj); Qur’an 2:198 (Al-Baqarah).

٨٥٦ - مَسْأَلَةٌ:

وَإِنْ وَطِئَ وَعَلَيْهِ بَقِيَّةٌ مِنْ طَوَافِ الْإِفَاضَةِ أَوْ شَيْءٌ مِنْ رَمْيِ الْجَمْرَةِ فَقَدْ بَطَلَ حَجُّهُ كَمَا قُلْنَا، قَالَ تَعَالَى: {فَلا رَفَثَ وَلا فُسُوقَ وَلا جِدَالَ فِي الْحَجِّ} [البقرة: ١٩٧] .

فَصَحَّ أَنَّ مَنْ رَفَثَ وَلَمْ يُكْمِلْ حَجَّهُ فَلَمْ يَحُجَّ كَمَا أُمِرَ، وَهُوَ قَوْلُ ابْنِ عُمَرَ وَقَوْلُ أَصْحَابِنَا.

وَقَالَ ابْنُ عَبَّاسٍ: لَا يَبْطُلُ الْحَجُّ بِالْوَطْءِ بَعْدَ عَرَفَةَ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَقَالَ مَالِكٌ: إِنْ وَطِئَ يَوْمَ النَّحْرِ قَبْلَ رَمْيِ الْجَمْرَةِ بَطَلَ حَجُّهُ، وَإِنْ وَطِئَ يَوْمَ النَّحْرِ بَعْدَ رَمْيِ الْجَمْرَةِ لَمْ يَبْطُلْ حَجُّهُ، وَإِنْ وَطِئَ بَعْدَ يَوْمِ النَّحْرِ قَبْلَ رَمْيِ الْجَمْرَةِ لَمْ يَبْطُلْ حَجُّهُ.

فَأَمَّا قَوْلُ مَالِكٍ فَتَقْسِيمٌ لَا دَلِيلَ عَلَى صِحَّتِهِ أَصْلًا.

وَاحْتَجَّ أَبُو حَنِيفَةَ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْحَجُّ عَرَفَةَ» .

قَالَ عَلِيٌّ: وَلَا حُجَّةَ لَهُمْ فِي هَذَا لِأَنَّ الَّذِي قَالَ هَذَا هُوَ الَّذِي أَخْبَرَنَا عَنْ اللَّهِ تَعَالَى بِأَنَّهُ قَالَ: {وَلْيَطَّوَّفُوا بِالْبَيْتِ الْعَتِيقِ} [الحج: ٢٩] وَبِأَنَّهُ قَالَ: {فَإِذَا أَفَضْتُمْ مِنْ عَرَفَاتٍ فَاذْكُرُوا اللَّهَ عِنْدَ الْمَشْعَرِ الْحَرَامِ} [البقرة: ١٩٨] .

وَهُوَ الَّذِي أَمَرَ بِرَمْيِ الْجَمْرَةِ فَلَا يَجُوزُ الْأَخْذُ بِبَعْضِ قَوْلِهِ دُونَ بَعْضٍ.

وَقَدْ قَالَ تَعَالَى: {وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلا} [آل عمران: ٩٧] فَكَانَ الطَّوَافُ بِالْبَيْتِ هُوَ الْحَجُّ كَعَرَفَةَ وَلَا فَرْقَ.

those who are able to undertake the journey} [Āl ʿImrān: 97]. Thus, the Tawaf around the House and the standing at Arafah are both integral to Hajj, with equal obligation in its validity.[50]

L13975 The statement of the Prophet—peace be upon him—"Ḥajj is ʿArafah" does not preclude Ḥajj from encompassing rites beyond ʿArafah. Our opponent agrees with us that if a person were to set out for ʿArafah and stand there without entering iḥrām, without proclaiming the talbiyah, without performing ṭawāf, and without performing saʿī, he has no valid Ḥajj. Thus, their reliance on the Prophet's statement—peace be upon him—"Ḥajj is ʿArafah" is nullified.

L13976 **Issue: He engaged in sexual intercourse intentionally, so his Hajj became invalid.**

L13977 857 – Issue

L13978 Whoever intentionally has intercourse as we mentioned, thereby invalidating his Hajj, is not obligated to persist in a corrupt and void act that will not suffice for him. Rather, he must assume ihram from his current location. If he attains the completion of Hajj, nothing is required of him beyond that. But if he cannot attain the completion of Hajj, he has disobeyed, and his matter is referred to Allah, the Exalted. There is no animal sacrifice and nothing else required in this case – unless he has never performed Hajj at all, in which case he must perform both Hajj and Umrah.

L13979 The Salaf differed regarding this matter. It has been reported to us from ʿUmar—may Allah be pleased with him—that the two pilgrims should continue their Hajj, then perform Hajj the following year and separate from the place where intercourse occurred, with him required to offer a sacrificial animal and her likewise. This is a mursal report from ʿUmar, as it is transmitted from Mujāhid from ʿUmar, and Mujāhid did not meet ʿUmar.

L13980 It has been narrated to us from Ali that each of the two must offer a camel sacrifice, and they must part ways when they have performed Hajj in the following year. This is a mursal narration attributed to Ali, as it is transmitted

[50] **Qur'an references (L13974):** Qur'an 3:97 (Ali 'Imran).

وَقَوْلُهُ - عَلَيْهِ السَّلَامُ -: «الْحَجُّ عَرَفَةَ» لَا يَمْنَعُ مِنْ أَنْ يَكُونَ الْحَجُّ غَيْرَ عَرَفَةَ أَيْضًا، وَقَدْ وَافَقَنَا الْمُخَالِفُ عَلَى أَنَّ امْرَأً لَوْ قَصَدَ عَرَفَةَ فَوَقَفَ بِهَا فَلَمْ يُحْرِمْ وَلَا لَبَّى، وَلَا طَافَ، وَلَا سَعَى فَلَا حَجَّ لَهُ، فَبَطَلَ تَعَلُّقُهُمْ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «الْحَجُّ عَرَفَةَ» .

[مَسْأَلَةٌ وَطِئَ عَامِدًا فَبَطَلَ حَجُّهُ]

٨٥٧ - مَسْأَلَةٌ:

فَمَنْ وَطِئَ عَامِدًا كَمَا قُلْنَا فَبَطَلَ حَجُّهُ فَلَيْسَ عَلَيْهِ أَنْ يَتَمَادَى عَلَى عَمَلٍ فَاسِدٍ بَاطِلٍ لَا يُجْزِئُ عَنْهُ لَكِنْ يُحْرِمُ مِنْ مَوْضِعِهِ، فَإِنْ أَدْرَكَ تَمَامَ الْحَجِّ فَلَا شَيْءَ عَلَيْهِ غَيْرَ ذَلِكَ وَإِنْ كَانَ لَا يُدْرِكُ تَمَامَ الْحَجِّ فَقَدْ عَصَى، وَأَمْرُهُ إِلَى اللَّهِ تَعَالَى، وَلَا هَدْيَ فِي ذَلِكَ، وَلَا شَيْءَ؛ إِلَّا أَنْ يَكُونَ لَمْ يَحُجَّ قَطُّ، فَعَلَيْهِ الْحَجُّ وَالْعُمْرَةُ.

وَقَدْ اخْتَلَفَ السَّلَفُ فِي هَذَا -: فَرُوِّينَا عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - أَنْ يَتَمَادَيَا فِي حَجِّهِمَا، ثُمَّ يَحُجَّانِ مِنْ قَابِلٍ وَيَتَفَرَّقَانِ مِنْ الْمَوْضِعِ الَّذِي جَامَعَ فِيهِ وَعَلَيْهِ هَدْيٌ وَعَلَيْهَا، وَهَذَا مُرْسَلٌ عَنْ عُمَرَ؛ لِأَنَّهُ عَنْ مُجَاهِدٍ عَنْ عُمَرَ وَلَمْ يُدْرِكْ مُجَاهِدٌ عُمَرَ.

وَرُوِّينَا عَنْ عَلِيٍّ عَلَى كُلِّ وَاحِدٍ مِنْهُمَا بَدَنَةٌ وَيَتَفَرَّقَانِ إذَا حَجَّا مِنْ قَابِلٍ وَهَذَا مُرْسَلٌ عَنْ عَلِيٍّ، لِأَنَّهُ عَنْ الْحَكَمِ عَنْ عَلِيٍّ، وَالْحَكَمُ لَمْ يُدْرِكْ عَلِيًّا.

through Al-Hakam who claims narration from Ali, though Al-Hakam never met him.

وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ أَقْوَالًا مِنْهَا: أَنْ يَتَمَادَيَا عَلَى حَجِّهِمَا ذَلِكَ وَعَلَيْهِمَا هَدْيٌ وَحَجٌّ قَابِلٌ وَيَتَفَرَّقَانِ مِنْ الْمَوْضِعِ الَّذِي جَامَعَهَا فِيهِ.

L13981 It has been narrated to us from Ibn Abbas several statements, among them: that they should continue with their pilgrimage as they began it, and they are obligated to offer a sacrificial animal and perform a subsequent pilgrimage, and they must separate from the location in which he engaged in intercourse with her.

وَعَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو، وَعَبْدِ اللَّهِ بْنِ عُمَرَ مِثْلُهُ قَالُوا: فَإِنْ لَمْ يَجِدْ هَدْيًا صَامَ صِيَامَ الْمُتَمَتِّعِ، وَقَوْلٌ آخَرُ مِثْلُ هَذَا سَوَاءً سَوَاءً إلَّا أَنَّهُ لَمْ يُعَوِّضْ مِنْ الدَّمِ صِيَامًا.

L13982 From Abdullah ibn Amr and similarly from Abdullah ibn Umar, they said: If he does not find a sacrificial animal, he must observe the fast prescribed for the *Tamattu‘* pilgrim. Another statement is identical to this one, except that it does not replace the sacrificial offering with fasting.

وَعَنْ ابْنِ عَمْرٍو، وَابْنِ عُمَرَ مِثْلُهُ، وَلَمْ يَذْكُرُوا تَفْرِيقًا.

L13983 And a similar narration is reported from Ibn ʿAmr and Ibn ʿUmar, and their narrations did not mention any distinction.

وَرُوِيَ عَنْ ابْنِ عَبَّاسٍ أَيْضًا أَنَّهُ عَلَيْهِ بَدَنَةٌ، وَيَتَفَرَّقَانِ مِنْ قَابِلٍ قَبْلَ الْمَوْضِعِ الَّذِي جَامَعَهَا فِيهِ - وَعَنْ ابْنِ عَبَّاسٍ عَلَى كُلِّ وَاحِدٍ مِنْهُمَا هَدْيٌ.

L13984 It has been reported from Ibn Abbas as well that a sacrificial she-camel is incumbent upon him, and the two are to separate in the following year before reaching the place where he had intercourse with her. From Ibn Abbas: each one of them is required to provide a sacrificial animal.

وَعَنْ جُبَيْرِ بْنِ مُطْعِمٍ أَنَّهُ قَالَ لِلْمُجَامِعِ: أُفٍّ لَا أُفْتِيكَ بِشَيْءٍ؟ وَأَمَّا مَنْ جَامَعَ بَعْدَ عَرَفَةَ -: فَعَنْ ابْنِ عُمَرَ مَنْ وَطِئَ قَبْلَ أَنْ يَطُوفَ بِالْبَيْتِ فَعَلَيْهِ الْحَجُّ وَالْهَدْيُ - وَرُوِيَ عَنْهُ أَيْضًا: عَلَيْهِ الْحَجُّ مِنْ قَابِلٍ وَبَدَنَةٌ. وَعَنْ ابْنِ عَبَّاسٍ عَلَى كُلِّ وَاحِدٍ مِنْهُمَا جَزُورٌ.

L13985–13986 From Jubayr ibn Muṭʿim that he said to the one who had sexual intercourse: “Uff! Should I not give you a fatwa?” As for the one who had sexual intercourse after the Day of ʿArafah: From Ibn ʿUmar: Whoever has intercourse before performing the circumambulation of the House must perform Hajj and offer a sacrificial animal. It is also narrated from him: He must perform Hajj the following year and offer a sacrificial camel. From Ibn ʿAbbās: Each one of them must offer a camel.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ ابْنِ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ: مَنْ وَاقَعَ امْرَأَتَهُ قَبْلَ أَنْ يَطُوفَ بِالْبَيْتِ فَعَلَيْهِ دَمٌ.

L13987 From the chain of narration of Ibn Abī Shaybah, from Ibn ʿUlayyah, from Ayyūb al-Sakhtiyānī, from Saʿīd ibn Jubayr, from Ibn ʿAbbās: Whoever has intercourse with his wife before performing the circumambulation of the House must offer a *dam*, a sacrificial animal.

وَعَنْ ابْنِ عَبَّاسٍ أَيْضًا عَلَيْهِ وَعَلَيْهَا بَدَنَةٌ.

L13988 It is also narrated from Ibn Abbas: A sacrificial camel is incumbent upon both him and her.

وَرُوِّينَا عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ لَا هَدْيَ إلَّا عَلَى الْمُحْصَرِ.

L13989 It has been reported to us from ʿĀʾishah, the Mother of the Believers, that

no hady (sacrificial offering) is required except for the one prevented [from completing pilgrimage].

وَقَالَ أَبُو حَنِيفَةَ: إنْ وَطِئَ قَبْلَ عَرَفَةَ تَمَادَيَا عَلَى حَجِّهِمَا ذَلِكَ وَعَلَيْهِمَا حَجٌّ، قَابِلٌ وَهَدْيٌ وَيُجْزِئُ فِي ذَلِكَ شَاةٌ وَلَا يَتَفَرَّقَانِ، فَإِنْ وَطِئَ بَعْدَ عَرَفَةَ فَحَجُّهُ تَامٌّ وَعَلَيْهِ بَدَنَةٌ.

L13990 Abu Hanifah said: If he engages in intercourse before the day of Arafah, they must continue with that Hajj of theirs, and upon them both is a Hajj the following year and a sacrificial animal—a sheep suffices—and they must not separate. If he engages in intercourse after the day of Arafah, his Hajj remains complete, and upon him is a camel as sacrifice.

قَالَ أَبُو مُحَمَّد: فَكَانَ مِنْ الْعَجَبِ أَنَّهُ إذَا بَطَلَ حَجُّهُ أَجْزَأَهُ هَدْيُ شَاةٍ وَإِذَا تَمَّ حَجُّهُ لَمْ يُجْزِهُ إلَّا بَدَنَةٌ، وَهَذَا تَقْسِيمٌ مَا رُوِيَ عَنْ أَحَدٍ، فَإِنْ تَعَلَّقَ بِابْنِ عَبَّاسٍ فَقَدْ اخْتَلَفَ عَنْ ابْنِ عَبَّاسٍ كَمَا ذَكَرْنَا وَعَنْ غَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَيْسَ قَوْلُ بَعْضِهِمْ أَوْلَى مِنْ بَعْضٍ، وَهَذَا جُبَيْرُ بْنُ مُطْعِمٍ لَمْ يُوجِبْ فِي ذَلِكَ هَدْيًا أَصْلًا وَلَا أَمَرَ بِالتَّمَادِي عَلَى الْحَجِّ.

L13991 Abu Muhammad said: It was astonishing that if one's pilgrimage was invalidated, a sheep sufficed as a sacrificial animal, but if it was validly completed, only a camel would suffice. This distinction is not reported from any authority. If one relies on Ibn Abbas, differing reports have indeed come from him, as we mentioned, and from other Companions—raḍiya Allāhu ʿanhum—and the view of one is no more authoritative than another. And this is Jubayr ibn Muṭʿim: he did not deem any sacrificial animal obligatory in that matter at all, nor did he instruct persisting in the pilgrimage.

قَالَ عَلِيٌّ: قَالَ اللَّهُ تَعَالَى: {إنَّ اللَّهَ لا يُصْلِحُ عَمَلَ الْمُفْسِدِينَ} [يونس: ٨١] فَمِنْ الْخَطَأِ تَمَادِيهِ عَلَى عَمَلٍ لَا يُصْلِحُهُ اللَّهُ عَزَّ وَجَلَّ؛ لِأَنَّهُ مُفْسِدٌ بِلَا خِلَافٍ مِنَّا وَمِنْهُمْ، فَاَللَّهُ تَعَالَى لَا يُصْلِحُ عَمَلَهُ بِنَصِّ الْقُرْآنِ.

L13992 Ali said: Allah, the Exalted, said: *"Indeed, Allah does not rectify the work of the corrupters"* [Yūnus: 81]. Therefore, it is an error to persist in a deed that Allah, the Exalted, does not rectify, for it is corrupting without disagreement from us and them. Thus, by the Quran's explicit text, He does not rectify his deed.[51]

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ الْحَجَّ إنَّمَا يَجِبُ مَرَّةً، وَمَنْ أَلْزَمَهُ التَّمَادِي عَلَى ذَلِكَ الْحَجِّ الْفَاسِدِ، ثُمَّ أَلْزَمَهُ حَجًّا آخَرَ فَقَدْ أَلْزَمَهُ حَجَّتَيْنِ، وَهَذَا خِلَافُ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L13993 It has been authentically established from the Messenger of Allah—may the peace and blessings of Allah be upon him—that Hajj is obligatory only once. Whoever compels someone to persist in that ritually invalid Hajj and then obliges him to perform another Hajj has required him to perform two Hajj pilgrimages, and this contradicts the command of the Messenger of Allah—may the peace and blessings of Allah be upon him.

وَالْعَجَبُ أَنَّهُمْ يَدَّعُونَ أَنَّهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ مَنْ أَبْطَلَ صَلَاتَهُ أَنَّهُ لَا يَتَمَادَى عَلَيْهَا فَلِمَ أَلْزَمُوهُ التَّمَادِي عَلَى الْحَجِّ؟ وَقَدْ خَالَفَ أَبُو حَنِيفَةَ ابْنَ عَبَّاسٍ، وَعُمَرَ، وَعَلِيًّا فِيمَا رُوِيَ عَنْهُمْ مِنْ التَّفَرُّقِ فَلَا نَكِرَةَ فِيمَنْ خَالَفَ ابْنَ عَبَّاسٍ

L13994–13996 It is astonishing that they claim by their own assertion to be proponents of analogy, yet they unanimously agree that whoever invalidates their prayer must cease performing it. Why then do they compel persistence in Hajj?

[51] **Qur'an references (L13992):** Qur'an 10:81 (Yunus).

Abū Ḥanīfah opposed Ibn ʿAbbās, ʿUmar ibn al-Khaṭṭāb, and ʿAlī ibn Abī Ṭālib regarding what has been reported from them concerning divergent practices. There is no reproach against those who oppose Ibn ʿAbbās in a matter where authentic reports establish disagreement with his position. Only six Companions—may Allah be pleased with them—differed, as we mentioned. Therefore, it is obligatory to revert to the Quran and the Sunnah. The Prophet—peace and blessings of Allah be upon him—authentically stated: "Indeed, your blood..." Your wealth is forbidden to be taken unjustly, so it is impermissible to obligate a sacrificial offering without a Quranic injunction or an explicit directive from the Messenger of Allah—peace be upon him.

فِي قَوْلٍ قَدْ صَحَّ عَنْهُ خِلَافُهُ، وَإِنَّمَا هُمْ سِتَّةٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخْتَلِفُونَ كَمَا ذَكَرْنَا، فَالْوَاجِبُ الرُّجُوعُ إلَى الْقُرْآنِ، وَالسُّنَّةِ، وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَجُوزُ أَنْ يُوجَبَ هَدْيٌ بِغَيْرِ قُرْآنٍ، وَلَا عَهْدٍ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L13997 It has been narrated to us via Mujāhid and Ṭāwus regarding one who has intercourse with his wife while in a state of iḥrām: his Hajj becomes an ʿUmrah, he is obligated to perform a Hajj the following year and offer a budn (sacrificial she-camel). They did not deem it incumbent upon him to persist in performing the rites of Hajj.

وَرُوِّينَا مِنْ طَرِيقِ مُجَاهِدٍ، وَطَاوُسٍ فِيمَنْ وَطِئَ امْرَأَتَهُ وَهُوَ مُحْرِمٌ: أَنَّ حَجَّهُ يَصِيرُ عُمْرَةً وَعَلَيْهِ حَجٌّ قَابِلٌ وَبَدَنَةٌ - فَلَمْ يَرَيَا عَلَيْهِ التَّمَادِي فِي عَمَلِ الْحَجِّ.

L13998 It is reported from Qatādah that the two of them return to their designated boundary—the *miqat*—assume Ihram for Umrah, part ways, and each offer a sacrificial animal.

وَرُوِّينَا عَنْ قَتَادَةَ: أَنَّهُمَا يَرْجِعَانِ إلَى حَدِّهِمَا - يَعْنِي الْمِيقَاتَ - وَيُهِلَّانِ بِعُمْرَةٍ، وَيَتَفَرَّقَانِ، وَيُهْدِيَانِ هَدْيًا هَدْيًا.

L13999 And from al-Ḥasan regarding one who engaged in sexual relations before performing Ṭawāf al-Ifāḍah (the obligatory post-Hajj circumambulation): He stated, "He must perform a subsequent Hajj," and he did not mention any sacrificial offering whatsoever.

وَعَنْ الْحَسَنِ فِيمَنْ وَطِئَ قَبْلَ طَوَافِ الْإِفَاضَةِ؟ قَالَ: عَلَيْهِ حَجٌّ قَابِلٌ وَلَمْ يَذْكُرْ هَدْيًا أَصْلًا.

L14000 Malik said: If one has intercourse before stoning Jamrah on the Day of Sacrifice, they must offer a sacrificial animal, perform Hajj the following year, and the two must separate from the place where the act occurred. If one has intercourse after stoning Jamrah, their Hajj remains valid but they must perform Umrah, sacrifice a camel. If unable, a cow; if not, a sheep; if not, fast as prescribed for the one performing Hajj al-Tamattu‘. The obligation of Umrah here is a matter of wonder—its meaning unclear? Similarly, his categorization of the sacrifice and his categorization of the timing of intercourse are unknown from any Companion—may Allah be pleased with them.

وَقَالَ مَالِكٌ: إنْ وَطِئَ قَبْلَ رَمْيِ الْجَمْرَةِ يَوْمَ النَّحْرِ فَعَلَيْهِ هَدْيٌ وَحَجٌّ قَابِلٌ وَيَتَفَرَّقَانِ مِنْ حَيْثُ جَامَعَهَا، فَإِنْ وَطِئَ بَعْدَ رَمْيِ الْجَمْرَةِ فَحَجُّهُ تَامٌّ وَعَلَيْهِ عُمْرَةٌ وَهَدْيُ بَدَنَةٍ، فَإِنْ لَمْ يَجِدْ فَبَقَرَةٌ، فَإِنْ لَمْ يَجِدْ فَشَاةٌ، فَإِنْ لَمْ يَجِدْ صَامَ صِيَامَ الْمُتَمَتِّعِ، فَكَانَ إيجَابُ الْعُمْرَةِ، هَاهُنَا عَجَبًا لَا يُدْرَى مَعْنَاهُ؟ وَكَذَلِكَ تَقْسِيمُهُ الْهَدْيَ وَتَقْسِيمُهُ وَقْتَ الْوَطْءِ وَلَا يُعْرَفُ هَذَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L14001 Al-Shafi‘i said: If one engages in sexual intercourse from the moment of entering ihram until stoning Jamrah al-‘Aqabah, his Hajj becomes invalid and he must offer a she-camel as expiation. If he cannot find a she-camel, then a cow; if he cannot find a cow, then seven sheep. If he cannot find sheep, the value of a she-camel is appraised in Makkah in dirhams, then the dirhams are converted into food, and he must give each poor person one Mudd of food. If he is unable to provide this, he must fast one day for every Mudd. If the intercourse occurs after stoning Jamrah al-‘Aqabah, his Hajj remains valid but he must still offer a she-camel. This opinion likewise lacks support from the Qur’an, the Sunnah, the statement of a Companion, analogical reasoning, or any trace of precedent from the Companions whatsoever. And with Allah the Exalted lies all success.

وَقَالَ الشَّافِعِيُّ: إنْ وَطِئَ مَا بَيْنَ أَنْ يُحْرِمَ إلَى أَنْ يَرْمِيَ جَمْرَةَ الْعَقَبَةِ فَسَدَ حَجُّهُ وَعَلَيْهِ بَدَنَةٌ، فَإِنْ لَمْ يَجِدْ بَدَنَةً فَبَقَرَةٌ، فَإِنْ لَمْ يَجِدْ بَقَرَةً فَسَبْعٌ مِنْ الْغَنَمِ، فَإِنْ لَمْ يَجِدْ قُوِّمَتْ الْبَدَنَةُ بِمَكَّةَ دَرَاهِمَ، ثُمَّ قُوِّمَتْ الدَّرَاهِمُ طَعَامًا فَأَطْعَمَ كُلَّ مِسْكِينٍ مُدًّا، فَإِنْ لَمْ يَجِدْ صَامَ عَنْ كُلِّ مُدٍّ يَوْمًا، فَإِنْ وَطِئَ بَعْدَ رَمْيِ جَمْرَةِ الْعَقَبَةِ فَحَجُّهُ تَامٌّ وَعَلَيْهِ بَدَنَةٌ - فَكَانَ هَذَا أَيْضًا قَوْلًا لَا يُؤَيِّدُهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَلَا يُوجَدُ هَذَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A case where there was an error in the sighting of the crescent moon for Dhul-Ḥijjah.

[مَسْأَلَةٌ أَخْطَأَ فِي رُؤْيَةِ الْهِلَالِ لِذِي الْحِجَّةِ]

L14003 858 – Legal Issue:

٨٥٨ - مَسْأَلَةٌ:

L14004 Whoever erred in sighting the crescent for Dhul-Hijjah and consequently stood at Arafah on the tenth day, believing it was the ninth, and stood at Muzdalifah on the eleventh night, thinking it was the tenth—his Hajj is complete and there is nothing required of him, because the Messenger of Allah—peace and blessings be upon him—did not state that standing at Arafah occurs only on the ninth day of Dhul-Hijjah or the tenth night of it. Rather, he—peace be upon him—obligated standing there during night or day.

وَمَنْ أَخْطَأَ فِي رُؤْيَةِ الْهِلَالِ لِذِي الْحِجَّةِ فَوَقَفَ بِعَرَفَةَ الْيَوْمَ الْعَاشِرَ وَهُوَ يَظُنُّهُ التَّاسِعَ، وَوَقَفَ بِمُزْدَلِفَةَ اللَّيْلَةَ الْحَادِيَةَ عَشْرَةَ وَهُوَ يَظُنُّهَا الْعَاشِرَةَ -: فَحَجُّهُ تَامٌّ وَلَا شَيْءَ عَلَيْهِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقُلْ: إنَّ الْوُقُوفَ بِعَرَفَةَ لَا يَكُونُ إلَّا

فِي الْيَوْمِ التَّاسِعِ مِنْ ذِي الْحِجَّةِ أَوْ اللَّيْلَةِ الْعَاشِرَةِ مِنْهَا، وَإِنَّمَا أَوْجَبَ - عَلَيْهِ السَّلَامُ - الْوُقُوفَ بِهَا لَيْلًا أَوْ نَهَارًا.

L14005–14006 It is thus established that whoever prays during these times, his prayer suffices him, provided he does not pray during a time wherein two [jurists] unanimously agree that it does not suffice him in that time.

فَصَحَّ أَنَّ كُلَّ مَنْ وَقَفَ بِهَا أَجْزَأَهُ مَا لَمْ يَقِفْ فِي وَقْتٍ لَا يَخْتَلِفُ اثْنَانِ فِي أَنَّهُ لَا يُجْزِيهِ فِيهِ.

L14007 The consensus is firmly established among junior scholars, senior scholars, dissenting scholars, and predecessors: that whoever stands at Arafah before noon on the ninth day of Dhū al-Ḥijjah or after the dawn of the eleventh night of Dhū al-Ḥijjah, no Hajj is counted for them. Similarly, if one stands there after the dawn of the tenth night (i.e., the morning of the tenth day) while knowing it is the tenth night, this is the position held by the majority of scholars.

وَقَدْ تَيَقَّنَ الْإِجْمَاعُ مِنَ الصَّغِيرِ، وَالْكَبِيرِ، وَالْخَالِفِ، وَالسَّالِفِ: أَنَّ مَنْ وَقَفَ بِهَا قَبْلَ الزَّوَالِ مِنَ الْيَوْمِ التَّاسِعِ مِنْ ذِي الْحِجَّةِ أَوْ بَعْدَ طُلُوعِ الْفَجْرِ مِنَ اللَّيْلَةِ الْحَادِيَةَ عَشْرَةَ مِنْ ذِي الْحِجَّةِ فَلَا حَجَّ لَهُ، وَكَذَلِكَ إِنْ وَقَفَ بِهَا بَعْدَ طُلُوعِ الْفَجْرِ مِنَ اللَّيْلَةِ الْعَاشِرَةِ وَهُوَ يَدْرِي أَنَّهَا الْعَاشِرَةُ، وَهَذَا قَوْلُ جُمْهُورِ النَّاسِ.

L14008 **A juristic issue was validated in his view that this is the ninth day of Dhu al-Hijjah.**

[مَسْأَلَةٌ صَحَّ عِنْدَهُ أَنَّ هَذَا هُوَ الْيَوْمُ التَّاسِعُ مِنْ ذِي الْحِجَّةِ]

L14009 859 - Issue:

٨٥٩ - مَسْأَلَةٌ:

L14010 If it is confirmed to him through knowledge or a truthful report that this is the ninth day, though people have not observed a sighting that establishes it as the eighth day, then he must perform the *wuqūf* on the day confirmed to him as the ninth day. Otherwise, his Hajj is invalid for the reason we mentioned.

فَإِنْ صَحَّ عِنْدَهُ بِعِلْمٍ أَوْ بِخَبَرِ صَادِقٍ: أَنَّ هَذَا هُوَ الْيَوْمُ التَّاسِعُ إِلَّا أَنَّ النَّاسَ لَمْ يَرَوْهُ رُؤْيَةً تُوجِبُ أَنَّهَا الْيَوْمُ الثَّامِنُ فَفَرَضَ عَلَيْهِ الْوُقُوفَ فِي الْيَوْمِ الَّذِي صَحَّ عِنْدَهُ أَنَّهُ الْيَوْمُ التَّاسِعُ، وَإِلَّا فَحَجُّهُ بَاطِلٌ لِمَا ذَكَرْنَا.

L14011 It has been narrated to us through the chain of Abd al-Razzaq from Sufyan al-Thawri from Umar ibn Muhammad, who said: A group testified that they had sighted the crescent of Dhul-Hijjah. Salim brought them to Ibn Hisham, the Commander of the Hajj, but he did not accept them. Salim then performed the standing at Arafah at the time corresponding to their reported sighting, then proceeded to Muzdalifah. When the second day came, he performed the standing at Arafah with the people.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عُمَرَ بْنِ مُحَمَّدٍ قَالَ: شَهِدَ نَفَرٌ أَنَّهُمْ رَأَوْا هِلَالَ ذِي الْحِجَّةِ فَذَهَبَ بِهِمْ سَالِمٌ إِلَى ابْنِ هِشَامٍ وَهُوَ أَمِيرُ الْحَجِّ فَلَمْ يَقْبَلْهُمْ فَوَقَفَ سَالِمٌ بِعَرَفَةَ لِوَقْتِ شَهَادَتِهِمْ، ثُمَّ دَفَعَ، فَلَمَّا كَانَ فِي الْيَوْمِ الثَّانِي وَقَفَ مَعَ النَّاسِ.

L14012 **Legal issue regarding a person who lost consciousness during his *ihram* or became insane after having entered it.**

[مَسْأَلَةٌ أُغْمِيَ عَلَيْهِ فِي إِحْرَامِهِ أَوْ جُنَّ بَعْدَ أَنْ أَحْرَمَ]

L14013 860 - Question:

٨٦٠ - مَسْأَلَةٌ:

L14014 Whoever faints during his ihram or becomes insane after entering ihram in a state of sanity, his ihram remains valid. Similarly, if one faints or becomes insane after standing at Arafat—even for the blink of an eye—or after catching any part of the prayer at Muzdalifah with the imam, his pilgrimage is complete. This is because fainting and insanity do not invalidate any prior act fundamentally, nor has any textual proof or consensus been established to this effect. The statement of Allah's Messenger—peace and blessings be upon him—"The pen is raised from three: the sleeper until he awakens, the afflicted until he recovers, and the child until he reaches maturity," does not necessitate the invalidation of their prior acts. It merely indicates that during such states, they are not held accountable. When they regain consciousness, they revert to their prior legal standing. And with Allah, the Exalted, we seek support.

وَمَنْ أُغْمِيَ عَلَيْهِ فِي إِحْرَامِهِ، أَوْ جُنَّ بَعْدَ أَنْ أَحْرَمَ فِي عَقْلِهِ فَإِحْرَامُهُ صَحِيحٌ، وَكَذَلِكَ لَوْ أُغْمِيَ عَلَيْهِ، أَوْ جُنَّ بَعْدَ أَنْ وَقَفَ بِعَرَفَةَ وَلَوْ طَرْفَةَ عَيْنٍ أَوْ بَعْدَ أَنْ أَدْرَكَ شَيْئًا مِنْ الصَّلَاةِ بِمُزْدَلِفَةَ مَعَ الْإِمَامِ فَحَجُّهُ تَامٌّ، لِأَنَّ الْإِغْمَاءَ وَالْجُنُونَ لَا يُبْطِلَانِ عَمَلًا تَقَدَّمَ أَصْلًا، وَلَا جَاءَ بِذَلِكَ نَصٌّ أَصْلًا وَلَا إجْمَاعٌ، وَلَيْسَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ: فَذَكَرَ النَّائِمَ حَتَّى يَنْتَبِهَ وَالْمُبْتَلَى حَتَّى يُفِيقَ وَالصَّبِيَّ حَتَّى يَبْلُغَ» بِمُوجِبِ بُطْلَانِ مَا تَقَدَّمَ مِنْ عَمَلِهِ، وَإِنَّمَا فِيهِ: أَنَّهُمْ فِي هَذِهِ الْحَالِ غَيْرُ مُخَاطَبِينَ فَقَطْ، فَإِذَا أَفَاقُوا صَارُوا عَلَى حُكْمِهِمْ الَّذِي كَانُوا عَلَيْهِ قَبْلُ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

[مَسْأَلَةٌ نَامَ قَبْلَ الزَّوَالِ مِنْ يَوْمِ عَرَفَةَ فَلَمْ يَسْتَيْقِظْ إلَّا بَعْدَ الْفَجْرِ]

Issue: A person slept before the zenith on the day of ʿArafah and did not wake until after the dawn of the following day.

L14016 861 – Issue:

٨٦١ - مَسْأَلَةٌ:

L14017 Whoever faints, becomes insane, or sleeps before noon on the day of ʿArafah and does not regain consciousness or wake up except after the dawn of the night preceding the Day of Sacrifice, his Hajj is nullified, regardless of whether he stood at ʿArafah or not.

وَمَنْ أُغْمِيَ عَلَيْهِ، أَوْ جُنَّ، أَوْ نَامَ قَبْلَ الزَّوَالِ مِنْ يَوْمِ عَرَفَةَ فَلَمْ يُفِقْ، وَلَا اسْتَيْقَظَ إلَّا بَعْدَ طُلُوعِ الْفَجْرِ مِنْ لَيْلَةِ يَوْمِ النَّحْرِ، فَقَدْ بَطَلَ حَجُّهُ، سَوَاءٌ وَقَفَ بِهِ بِعَرَفَةَ أَوْ لَمْ يَقِفْ بِهِ.

L14018 Likewise, whoever fainted, became insane, or slept before attaining any portion of the Fajr prayer at Muzdalifah with the Imam, and did not regain consciousness or awaken until after the Imam's *salam* of the Fajr prayer—indeed, their Hajj is nullified.

وَكَذَلِكَ مَنْ أُغْمِيَ عَلَيْهِ أَوْ جُنَّ، أَوْ نَامَ قَبْلَ أَنْ يُدْرِكَ شَيْئًا مِنْ صَلَاةِ الصُّبْحِ بِمُزْدَلِفَةَ مَعَ الْإِمَامِ فَلَمْ يُفِقْ وَلَا اسْتَيْقَظَ إلَّا بَعْدَ سَلَامِ الْإِمَامِ مِنْ صَلَاةِ الصُّبْحِ؛ فَقَدْ بَطَلَ حَجُّهُ.

L14019–14021 If there was a woman who slept, became insane, or fainted before she stood at Muzdalifah and did not regain consciousness. She did not realize until

فَإِنْ كَانَتْ امْرَأَةٌ فَنَامَتْ، أَوْ جُنَّتْ، أَوْ أُغْمِيَ عَلَيْهَا قَبْلَ أَنْ تَقِفَ بِمُزْدَلِفَةَ فَلَمْ تُفِقْ، وَلَا انْتَبَهَتْ حَتَّى طَلَعَتْ الشَّمْسُ مِنْ يَوْمِ النَّحْرِ، فَقَدْ بَطَلَ حَجُّهَا، وَسَوَاءٌ وَقَفَ بِهَا بِمُزْدَلِفَةَ، أَوْ لَمْ يَقِفْ، لِأَنَّ الْأَعْمَالَ الْمَذْكُورَةَ فَرْضٌ مِنْ فَرَائِضِ الْحَجِّ.

the sun had risen on the Day of Sacrifice, invalidating her Hajj—whether he performed the Wuqūf with her at Muzdalifah or not—because the aforementioned acts are obligatory rites of Hajj.

وَقَالَ اللَّهُ تَعَالَى: {وَمَا أُمِرُوا إِلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ حُنَفَاءَ} [البينة: ٥] وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» .

L14022 Allah the Exalted said: {They were commanded only to worship Allah, sincere in religion to Him, devoutly upright} [Al-Bayyinah: 5]. The Messenger of Allah (peace be upon him) said: “Actions are but by intentions, and every person will have only what he intended.”[1]

فَصَحَّ أَنَّهُ لَا يَجْزِي عَمَلٌ مَأْمُورٌ بِهِ إِلَّا بِنِيَّةِ الْقَصْدِ إِلَيْهِ مُؤَدًّى بِإِخْلَاصٍ لِلَّهِ تَعَالَى فِيهِ كَمَا أَمَرَ عَزَّ وَجَلَّ؛ وَكُلُّ مَنْ ذَكَرْنَا فَلَمْ يَعْبُدْ اللَّهَ فِي الْأَعْمَالِ الْمَذْكُورَةِ مُخْلِصًا لَهُ الدِّينَ بِهَا فَلَمْ يَأْتِ بِهَا، وَلَا حَجَّ لِمَنْ لَمْ يَأْتِ بِهَا، وَلَا يُجْزِي أَنْ يَقِفَ بِهِ غَيْرُهُ هُنَالِكَ لِقَوْلِ اللَّهِ تَعَالَى: {كُلُّ نَفْسٍ بِمَا كَسَبَتْ رَهِينَةٌ} [المدثر: ٣٨] وَقَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

L14023 It is established that no commanded act is valid except with intention of purpose, performed with sincerity for Allah the Exalted, as the Almighty has ordained. Every individual who does not worship Allah in the specified acts—sincerely devoting his religion to Him through them—has not performed them. There is no valid Hajj for one who fails to fulfill them, nor is it valid for another to substitute for him there, based on Allah’s statement: “Every soul is held in pledge for what it has earned” (Al-Muddaththir 74:38), and His saying: “No soul bears the burden of another, and no soul earns except against itself” (Al-An‘am 6:164).[2]

وَكَذَلِكَ لَوْ أَنَّ امْرَأً مَرَّ بِعَرَفَةَ مُجْتَازًا لَيْلَةَ النَّحْرِ - نَزَلَ بِهَا أَوْ لَمْ يَنْزِلْ - وَهُوَ لَا يَدْرِي أَنَّهَا عَرَفَةُ - فَلَا يُجْزِئُهُ ذَلِكَ وَلَا حَجَّ لَهُ حَتَّى يَقِفَ بِهَا قَاصِدًا إِلَى الْوُقُوفِ بِهَا كَمَا أَمَرَهُ اللَّهُ تَعَالَى.

L14024 Similarly, if a person were to pass through ‘Arafah while traversing it on the Night of Sacrifice—whether he stayed there or not—without knowing it is ‘Arafah, that would not suffice him, nor does his Hajj count until he intentionally stands there with the intention of standing there as Allah, the Most High, has commanded him.

وَاخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَ مَالِكٌ: لَا يُجْزِئُ أَنْ يُحْرِمَ أَحَدٌ عَنْ غَيْرِهِ فَإِذَا أَحْرَمَ بِنِيَّةِ الْحَجِّ أَجْزَأَ كُلُّ عَمَلٍ فِي الْحَجِّ بِلَا نِيَّةٍ.

L14025 People have differed regarding this. Mālik said: It is not valid for anyone to enter the state of ritual consecration (iḥrām) on behalf of another. If one enters iḥrām with the intention of performing the pilgrimage (ḥajj), every act in the pilgrimage suffices without [further] intention.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: أَعْمَالُ الْحَجِّ كُلُّهَا تَجْزِي بِلَا نِيَّةٍ، وَلَوْ أَنَّ مَنْ لَمْ يَحُجَّ قَطُّ حَجَّ وَلَا يَنْوِي إِلَّا التَّطَوُّعَ أَجْزَأَهُ عَنْ حَجَّةِ الْفَرْضِ.

L14026 Abu Hanifah and Al-Shafi‘i said: All rites of Hajj are valid without formal

[1] **Qur’an references (L14022):** Qur’an 98:5 (Al-Bayyinah).

[2] **Qur’an references (L14023):** Qur’an 74:38 (Al-Muddaththir); Qur’an 6:164 (Al-An’am).

intention. Even if one who has never performed Hajj were to undertake it intending only a voluntary act, it would suffice as their obligatory Hajj.

L14027 Abu Muhammad said: These are statements rife with corruption and contradiction. The scholars have unanimously agreed that if a man obligated to perform the dawn prayer prays two units voluntarily, or one obligated to perform the noon prayer prays four units voluntarily, this does not suffice for the obligatory prayer. Similarly, if someone liable for the zakāt due on five dirhams gives five dirhams as voluntary charity, this does not suffice for the obligatory zakāt.

L14028 They unanimously agreed—except Zufar—that whoever fasts a day of Ramadan intending only a voluntary act, or without any specific intention, it does not count toward the obligatory fast. I wish I knew: what distinction exists between fasting, prayer, zakat, and Hajj if they truly reflected? If they argue: It has been narrated that the Messenger of Allah—peace and blessings be upon him—declared a child's Hajj valid, and he heard a man who had not performed Hajj making the Talbiyah on behalf of Shubruma, so he told him, "First dedicate this Hajj of yours to yourself, then perform Hajj on behalf of Shubruma."

L14029–14030 We said: As for his report—peace be upon him—that a child has a Hajj, it is an authentic, established report with which you have no grounds. This is because he—peace be upon him—did not consider that Hajj as counting toward the obligatory Hajj. Thus, it serves as evidence for our position against yours. We affirm that a child may perform Hajj, as stated by the Prophet—peace be upon him—but it remains a voluntary act that does not suffice for the obligation. Similarly, we hold that a child may pray and fast—all such acts being voluntary acts on his part and for his benefit. Indeed, children used to attend prayers with the Messenger of Allah—peace and blessings of Allah be upon him—just as he performed Hajj with them, with no distinction.

L14031 As for the narration of Shubrumah, it is not authentic. Even if it were authentic, they would have no argument based on it, for it does not state that his Hajj performed on behalf of Shubrumah suffices for the person he represented. Rather, it constitutes proof against them, because it establishes

قَالَ أَبُو مُحَمَّد: وَهَذِهِ أَقْوَالٌ فِي غَايَةِ الْفَسَادِ وَالتَّنَاقُضِ، وَقَدْ أَجْمَعُوا لَوْ أَنَّ امْرَأً عَلَيْهِ صَلَاةُ الصُّبْحِ فَصَلَّى رَكْعَتَيْنِ تَطَوُّعًا، أَوْ عَلَيْهِ الظُّهْرُ فَصَلَّى أَرْبَعًا تَطَوُّعًا أَنَّ ذَلِكَ لَا يُجْزِئُهُ مِنْ الْفَرْضِ، وَأَنَّ مَنْ عَلَيْهِ زَكَاةُ خَمْسَةِ دَرَاهِمَ فَتَصَدَّقَ بِخَمْسَةِ دَرَاهِمَ تَطَوُّعًا أَنَّهَا لَا تُجْزِئُهُ مِنْ الْفَرْضِ.

وَأَجْمَعُوا إلَّا زُفَرَ: أَنَّ مَنْ صَامَ يَوْمًا مِنْ رَمَضَانَ يَنْوِي بِهِ التَّطَوُّعَ فَقَطْ، أَوْ لَا يَنْوِي بِهِ شَيْئًا فَإِنَّهُ لَا يُجْزِئُهُ مِنْ صَوْمِ الْفَرْضِ - فَلَيْتَ شِعْرِي أَيُّ فَرْقٍ بَيْنَ الصَّوْمِ، وَالصَّلَاةِ، وَالزَّكَاةِ، وَالْحَجِّ لَوْ نَصَحُوا أَنْفُسَهُمْ؟ فَإِنْ قَالُوا: قَدْ رُوِيَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخْبَرَ أَنَّ لِلصَّبِيِّ حَجًّا، وَسَمِعَ إنْسَانًا لَمْ يَكُنْ حَجَّ يُلَبِّي عَنْ شُبْرُمَةَ فَقَالَ [لَهُ] «اجْعَلْ حَجَّكَ هَذَا عَنْ نَفْسِكَ ثُمَّ حُجَّ عَنْ شُبْرُمَةَ» .

قُلْنَا: أَمَّا إخْبَارُهُ - عَلَيْهِ السَّلَامُ - أَنَّ لِلصَّبِيِّ حَجًّا فَخَبَرٌ صَحِيحٌ ثَابِتٌ وَلَا مُتَعَلَّقَ لَكُمْ بِهِ؛ لِأَنَّهُ لَمْ يَجْعَلْ - عَلَيْهِ السَّلَامُ - ذَلِكَ الْحَجَّ جَازِيًا مِنْ حَجِّ الْفَرِيضَةِ، فَهُوَ حُجَّةٌ لَنَا عَلَيْكُمْ، وَنَحْنُ نَقُولُ: إنَّ لِلصَّبِيِّ حَجًّا كَمَا قَالَ - عَلَيْهِ السَّلَامُ - وَهُوَ تَطَوُّعٌ لَا يُجْزِئُ عَنْ الْفَرْضِ، وَنَحْنُ نَقُولُ: إنَّ لِلصَّبِيِّ صَلَاةً وَصَوْمًا وَكُلُّ ذَلِكَ تَطَوُّعٌ مِنْهُ وَلَهُ، وَقَدْ كَانَ الصِّبْيَانُ يَشْهَدُونَ الصَّلَوَاتِ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا حَجَّ بِهِمْ مَعَهُ وَلَا فَرْقَ.

the argument against himself. This entails the requirement to intend the Hajj for oneself, thus it is proof against them—and success is from Allah, the Most High.

وَأَمَّا خَبَرُ شُبْرُمَةَ فَلَا يَصِحُّ، وَلَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَيْسَ فِيهِ أَنَّ حَجَّهُ عَنْ شُبْرُمَةَ يُجْزِي عَنْ الَّذِي حَجَّ عَنْهُ، بَلْ هُوَ حُجَّةٌ عَلَيْهِمْ؛ لِأَنَّ فِيهِ أَنْ يَجْعَلَ الْحَجَّةَ عَلَى نَفْسِهِ، وَفِي هَذَا إيجَابٌ لِلنِّيَّةِ بِهَا عَنْ نَفْسِهِ فَهُوَ حُجَّةٌ عَلَيْهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L14032 It has been narrated to us from Al-Hasan concerning one who owes two consecutive months of expiation for dhihār or a vow, and is also obligated to perform a Hajj he vowed without having fulfilled the obligatory Hajj: if he fasted Shaʿbān and Ramadan and performed Hajj, this would suffice him from all that he owed and from the obligation of Ramadan. That Hajj would suffice him for his vow and the Obligatory Hajj of Islam. This is incorrect due to what we mentioned earlier—the opinion of our companions—and success is from Allah, the Exalted.

وَرُوِّينَا عَنْ الْحَسَنِ فِيمَنْ عَلَيْهِ شَهْرَانِ مُتَتَابِعَانِ مِنْ كَفَّارَةِ ظِهَارٍ، أَوْ نَذْرٍ، وَعَلَيْهِ حَجٌّ نَذَرَهُ وَلَمْ يَكُنْ حَجَّ حَجَّةَ الْفَرِيضَةِ فَصَامَ شَعْبَانَ وَرَمَضَانَ وَحَجَّ فَإِنَّ ذَلِكَ يُجْزِئُهُ عَمَّا كَانَ عَلَيْهِ، وَعَنْ فَرْضِ رَمَضَانَ، وَتِلْكَ الْحَجَّةُ تُجْزِئُهُ عَنْ نَذْرِهِ وَفَرْضِ الْإِسْلَامِ، وَهَذَا خَطَأٌ لِمَا ذَكَرْنَا قَبْلُ - وَهُوَ قَوْلُ أَصْحَابِنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L14033 If a Mālikī were to say: "Is Ḥajj analogous to fasting a day—if one enters into it with an intention, then their intention ceases, does it suffice?" We would respond: This is not valid, for Ḥajj consists of numerous distinct acts interspersed with actions not intrinsic to it—such as the *talbiyah*, the *wuqūf* at ʿArafah and Muzdalifah, the stoning of the *jamarāt*, the *ṭawāf al-ifāḍah*, and the *saʿī* between Ṣafā and Marwah. Thus, each act requires its own specific intention.

فَإِنْ قَالَ مَالِكِيٌّ: الْحَجُّ كَصَوْمِ الْيَوْمِ إذَا دَخَلَ فِيهِ بِنِيَّةٍ، ثُمَّ عَزَبَتْ نِيَّتُهُ أَجْزَأَهُ؟ قُلْنَا: لَيْسَ كَذَلِكَ، لِأَنَّ الْحَجَّ أَعْمَالٌ كَثِيرَةٌ مُتَغَايِرَةٌ يَحُولُ بَيْنَهَا مَا لَيْسَ مِنْهَا كَالتَّلْبِيَةِ، وَالْوُقُوفِ بِعَرَفَةَ، وَمُزْدَلِفَةَ، وَرَمْيِ الْجِمَارِ، وَطَوَافِ الْإِفَاضَةِ وَالسَّعْيِ بَيْنَ الصَّفَا وَالْمَرْوَةِ، فَلَا بُدَّ لِكُلِّ عَمَلٍ مِنْ نِيَّةٍ لَهُ.

L14034 As for the iḥrām, it is a continuous act that remains unbroken. Therefore, the intention to enter into it suffices as long as one does not deliberately divert their intention or invalidate their iḥrām—and in God the Exalted we place our trust.

وَأَمَّا الْإِحْرَامُ فَهُوَ عَمَلٌ مُتَّصِلٌ لَا يَنْفَصِلُ فَيُجْزِئُهُ نِيَّةُ الدُّخُولِ فِيهِ مَا لَمْ يَتَعَمَّدْ إحَالَةَ نِيَّتِهِ أَوْ إبْطَالَ إحْرَامِهِ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

[مَسْأَلَةٌ أَدْرَكَ صَلَاةَ الصُّبْحِ بِمُزْدَلِفَةَ فَلَمَّا سَلَّمَ ذَكَرَ أَنَّهُ غَيْرُ طَاهِرٍ]

L14035 **A case: He caught the Fajr prayer at Muzdalifah, and when he concluded it, he remembered that he was not in a state of ritual purity.**

٨٦٢ - مَسْأَلَةٌ:

L14036 862 - Issue:

L14037 And whoever among the men catches up with the Fajr prayer behind the Imam at Muzdalifah, then when the Imam concludes the prayer, this person

remembers that he is not in a state of ritual purity—his Hajj is nullified because he did not join the prayer with the Imam. We have previously mentioned our reference to the mention of the Messenger of Allah—peace and blessings of Allah be upon him—concerning this, and with Allah, the Exalted, lies all success.

L14038 **A case where one killed game while mindful of their Iḥrām and with deliberate intent to kill it.**

L14039 863 – Issue:

L14040–14042 Whoever kills game while engaged in hunting, being aware of his state of ihram and intending to kill it, invalidates his Hajj or Umrah because his ihram is nullified. He remains obligated to provide expiation regardless, based on Allah the Exalted's statement: "Do not kill game while you are in ihram. Whoever among you kills it intentionally, his expiation shall be livestock equivalent to what he killed, as determined by two just persons among you" [Al-Mā'idah:95]. Thus Allah the Exalted prohibited the intentional killing of game during ihram. If he does so, then [...] He should enter iḥrām as he was commanded, for God Almighty only commanded him with an iḥrām that does not involve intentional killing of the game. This iḥrām is undoubtedly distinct from the iḥrām that involves intentional killing of the game. Thus, he has not fulfilled the iḥrām that God Almighty commanded him to perform.[3]

L14043 Moreover, Allah the Exalted said: {Hajj is well-known months, so whoever undertook Hajj therein, there shall be no lewdness, no transgression, and no disputing during Hajj} [Al-Baqarah: 197]. There is no disagreement that intentionally killing game while in Ihram constitutes transgression. Whoever transgresses during his Hajj has not performed Hajj as commanded, and whoever does not perform Hajj as commanded: he has not performed Hajj—he has not performed Hajj. We narrate via the chain of Ismail ibn Ishaq al-Qadi → Ibrahim ibn al-Hajjaj narrated to us → Abd al-Warith ibn Sa'id al-Tannuri narrated to us → al-Layth → Mujahid, who said: "Whoever intentionally kills game, his Hajj is invalidated, and he must offer a sacrifi-

[3] **Qur'an references (L14040):** Qur'an 5:95 (Al-Ma'idah).

وَمَنْ أَدْرَكَ مَعَ الْإِمَامِ صَلَاةَ الصُّبْحِ بِمُزْدَلِفَةَ مِنْ الرِّجَالِ فَلَمَّا سَلَّمَ الْإِمَامُ ذَكَرَ هَذَا الْإِنْسَانُ أَنَّهُ عَلَى غَيْرِ طَهَارَةٍ فَقَدْ بَطَلَ حَجُّهُ، لِأَنَّهُ لَمْ يُدْرِكْ الصَّلَاةَ مَعَ الْإِمَامِ، وَقَدْ تَقَدَّمَ ذِكْرُنَا لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَتَلَ صَيْدًا ذَاكِرًا لِإِحْرَامِهِ عَامِدًا لِقَتْلِهِ]

٨٦٣ - مَسْأَلَةٌ:

وَمَنْ قَتَلَ صَيْدًا مُتَصَيِّدًا لَهُ ذَاكِرًا لِإِحْرَامِهِ عَامِدًا لِقَتْلِهِ فَقَدْ بَطَلَ حَجُّهُ أَوْ عُمْرَتُهُ لِبُطْلَانِ إحْرَامِهِ وَعَلَيْهِ الْجَزَاءُ مَعَ ذَلِكَ لِقَوْلِ اللَّهِ تَعَالَى: {لا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرُمٌ وَمَنْ قَتَلَهُ مِنْكُمْ مُتَعَمِّدًا فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ يَحْكُمُ بِهِ ذَوَا عَدْلٍ مِنْكُمْ} [المائدة: ٩٥] الْآيَةَ، فَحَرَّمَ اللَّهُ تَعَالَى عَلَيْهِ أَنْ يَقْتُلَ الصَّيْدَ مُتَعَمِّدًا فِي إحْرَامِهِ فَإِذَا فَعَلَ فَلَمْ يُحْرِمْ كَمَا أُمِرَ؛ لِأَنَّ اللَّهَ تَعَالَى إنَّمَا أَمَرَهُ بِإِحْرَامٍ لَيْسَ فِيهِ تَعَمُّدُ قَتْلِ صَيْدٍ، وَهَذَا الْإِحْرَامُ هُوَ بِلَا شَكٍّ غَيْرُ الْإِحْرَامِ الَّذِي فِيهِ تَعَمُّدُ قَتْلِ الصَّيْدِ فَلَمْ يَأْتِ بِالْإِحْرَامِ الَّذِي أَمَرَهُ اللَّهُ تَعَالَى بِهِ.

وَأَيْضًا فَإِنَّ اللَّهَ تَعَالَى قَالَ: {الْحَجُّ أَشْهُرٌ مَعْلُومَاتٌ فَمَنْ فَرَضَ فِيهِنَّ الْحَجَّ فَلا رَفَثَ وَلا فُسُوقَ وَلا جِدَالَ فِي الْحَجِّ} [البقرة: ١٩٧] وَلَا خِلَافَ فِي أَنَّ تَعَمُّدَ قَتْلِ الصَّيْدِ فِي الْإِحْرَامِ فُسُوقٌ، وَمَنْ فَسَقَ فِي حَجِّهِ فَلَمْ يَحُجَّ كَمَا أُمِرَ، وَمَنْ لَمْ يَحُجَّ كَمَا أُمِرَ فَلَمْ يَحُجَّ -: رُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي نَا إبْرَاهِيمُ بْنُ الْحَجَّاجِ نَا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ التَّنُّورِيُّ عَنْ اللَّيْثِ عَنْ مُجَاهِدٍ قَالَ: مَنْ قَتَلَ صَيْدًا مُتَعَمِّدًا فَقَدْ بَطَلَ حَجُّهُ وَعَلَيْهِ الْهَدْيُ - وَاعْتَرَضَ بَعْضُهُمْ بِأَنْ قَالَ: إنَّ اللَّهَ تَعَالَى يَقُولُ: {لا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرُمٌ}

cial animal." Some objected by saying: Allah states {Do not kill game while you are in Ihram} [Al-Ma'idah: 95], thus calling them "those in Ihram." Abu Muhammad said: This constitutes grave audacity on their part—attributing to Allah the Exalted what He never uttered. Allah only named them "those in Ihram" before killing game, prohibiting them from killing game while in that state. He never designated them as "those in Ihram" after killing game. Disgrace upon every blind allegiance to a school of thought that brazenly drives one to lie against Allah the Exalted![4]

L14044 Allah the Exalted has said: {There is to be no sexual intercourse, nor disobedience, nor quarreling during Hajj} [Al-Baqarah: 197]. Thus, He prescribed Hajj and prohibited sexual intercourse within it. Therefore, they are bound by this ruling not to invalidate Hajj through sexual intercourse, which is the prohibited act. This [prohibition] is akin to the earlier prohibition, with no distinction. Indeed, Allah the Exalted only deems their Hajj valid if they refrain from sexual intercourse and do not commit acts of disobedience.[5]

L14045 Some of them said: "He (peace be upon him) obligated a ram for the hyena, yet did he not indicate that his pilgrimage state was invalidated?" We responded: "You have uttered falsehood. Rather, he did indicate that his pilgrimage state was invalidated through his statement: 'Whoever performs an action not in accordance with our command, it is rejected.'"

L14046 Moreover, he (peace be upon him) never ever asserted: "Indeed, his *Ihram* has not been invalidated," nor has any evidence ever substantiated this—and success is attained only through Allah, the Most High.

Issue: The intentional commission of a religious violation by the pilgrim while fully aware of his state of ihram.

L14047–14048

L14049 Issue:

L14050 Abū Muḥammad said: Every act of transgression that the *muhrim* intentionally commits while mindful of his *ihram* invalidates his *ihram*, his

[4]**Qur'an references (L14043):** Qur'an 2:197 (Al-Baqarah); Qur'an 5:95 (Al-Ma'idah).
[5]**Qur'an references (L14044):** Qur'an 2:197 (Al-Baqarah).

[المائدة: ٩٥] فَسَمَّاهُمْ: حُرُمًا؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا إقْدَامٌ مِنْهُمْ عَظِيمٌ عَلَى تَقْوِيلِ اللَّهِ تَعَالَى مَا لَمْ يَقُلْهُ قَطُّ، وَإِنَّمَا سَمَّاهُمْ اللَّهُ تَعَالَى: حُرُمًا، قَبْلَ قَتْلِ الصَّيْدِ، وَنَهَاهُمْ إذَا كَانُوا حُرُمًا عَنْ قَتْلِ الصَّيْدِ، وَمَا سَمَّاهُمْ تَعَالَى قَطُّ بَعْدَ قَتْلِ الصَّيْدِ: حُرُمًا فَأُفٍّ لِكُلِّ عَصَبِيَّةٍ لِمَذْهَبٍ تَحْدُو إلَى الْكَذِبِ عَلَى اللَّهِ تَعَالَى جِهَارًا.

وَقَدْ قَالَ تَعَالَى: {فَلا رَفَثَ وَلا فُسُوقَ وَلا جِدَالَ فِي الْحَجِّ} [البقرة: ١٩٧] فَأَثْبَتَ الْحَجَّ وَنَهَى فِيهِ عَنْ الرَّفَثِ فَيَلْزَمُهُمْ عَلَى هَذَا أَنْ لَا يُبْطِلُوا الْحَجَّ بِالْجِمَاعِ الَّذِي هُوَ الرَّفَثُ، وَهَذِهِ كَالَّتِي قَبْلَهَا وَلَا فَرْقَ: وَإِنَّمَا جَعَلَهُمْ تَعَالَى فِي الْحَجِّ مَا لَمْ يَرْفُثُوا وَلَا فَسَقُوا.

وَقَالَ بَعْضُهُمْ: قَدْ أَوْجَبَ - عَلَيْهِ السَّلَامُ - فِي الضَّبُعِ كَبْشًا وَلَمْ يُخْبِرْ بِأَنَّ إحْرَامَهُ بَطَلَ؟ قُلْنَا لَهُمْ: قُلْتُمْ الْبَاطِلَ، بَلْ قَدْ أَخْبَرَ - عَلَيْهِ السَّلَامُ - بِأَنَّ إحْرَامَهُ قَدْ بَطَلَ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

وَأَيْضًا: فَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ - قَطُّ: إنَّ إحْرَامَهُ لَمْ يَبْطُلْ، وَلَا دَلَّ دَلِيلٌ عَلَى ذَلِكَ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فُسُوق تَعَمَّدَهُ الْمُحْرِمُ ذَاكِرًا لِإِحْرَامِهِ]

مَسْأَلَةٌ:

قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ فُسُوقٍ تَعَمَّدَهُ الْمُحْرِمُ ذَاكِرًا لِإِحْرَامِهِ فَقَدْ بَطَلَ إحْرَامُهُ، وَحَجُّهُ، وَعُمْرَتُهُ، لِقَوْلِ اللَّهِ تَعَالَى: {فَلا رَفَثَ وَلا فُسُوقَ وَلا جِدَالَ فِي الْحَجِّ} [البقرة: ١٩٧]

Ḥajj, and his ʿUmrah, due to Allāh the Exalted's statement: "So there is to be no lewdness, nor transgression, nor disputing during Ḥajj" [al-Baqarah: 197]. It is established that whoever intentionally commits transgression while conscious of his Ḥajj or his ʿUmrah has not performed his Ḥajj as he was commanded. The Prophet (peace be upon him) stated: "Indeed, ʿUmrah is incorporated into Ḥajj until the Day of Resurrection."[6]

فَصَحَّ أَنَّ مَنْ تَعَمَّدَ الْفُسُوقَ ذَاكِرًا لِحَجِّهِ، أَوْ عُمْرَتِهِ، فَلَمْ يَحُجَّ كَمَا أُمِرَ، وَقَدْ أَخْبَرَ - عَلَيْهِ السَّلَامُ -: «أَنَّ الْعُمْرَةَ دَخَلَتْ فِي الْحَجِّ إلَى يَوْمِ الْقِيَامَةِ» .

L14051 And he (peace be upon him) said, "Whoever performs an act not in accordance with our command, it is rejected."

وَقَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L14052 Among the wonders of this world is that the verse was revealed as we recite it, yet they invalidated Hajj due to obscene speech but not due to transgression. Stranger still is Abū Ḥanīfa's statement: "Whoever in the state of Ihram—forgetfully, without intent nor mindful of being in Ihram—engages with his wife whom Allah the Exalted permitted him before or after Ihram, his Hajj is invalidated. Yet if one deliberately commits sodomy with a male, or is subjected to it while conscious of his Ihram, his Hajj remains complete and his Ihram valid—Uff! Disgust for this statement, as countless as the grains of sand, pebbles, and dust?" If they argue: "Ihram is invalidated only by what is prohibited during its state, not by what was forbidden before, during, or after it," we respond: "Is it not this corrupt classification that we have questioned you about? You possess no proof for it, yet you invalidate prayer by every prohibited act—before it, during it, or after it—just as you invalidate it by what is forbidden during prayer alone?"

وَمِنْ عَجَائِبِ الدُّنْيَا: أَنَّ الْآيَةَ وَرَدَتْ كَمَا تَلَوْنَا فَأَبْطَلُوا الْحَجَّ بِالرَّفَثِ وَلَمْ يُبْطِلُوهُ بِالْفُسُوقِ، وَأَعْجَبُ مِنْ هَذَا: أَنَّ أَبَا حَنِيفَةَ قَالَ: مَنْ وَطِئَ فِي إحْرَامِهِ - نَاسِيًا غَيْرَ عَامِدٍ وَلَا ذَاكِرٍ لِأَنَّهُ مُحْرِمٌ - امْرَأَتَهُ الَّتِي أَبَاحَ اللَّهُ تَعَالَى لَهُ وَطْأَهَا قَبْلَ الْإِحْرَامِ أَوْ بَعْدَهُ فَقَدْ بَطَلَ حَجُّهُ، فَلَوْ تَعَمَّدَ اللِّيَاطَةَ بِذَكَرٍ، أَوْ أَنْ يُلَاطَ بِهِ ذَاكِرًا لِإِحْرَامِهِ فَحَجُّهُ تَامٌّ وَإِحْرَامُهُ مَبْرُورٌ - فَأُفٍّ لِهَذَا الْقَوْلِ عَدَدَ الرَّمْلِ، وَالْحَصَى، وَالتُّرَابِ؟ فَإِنْ قَالُوا: إنَّمَا يَبْطُلُ إحْرَامُهُ بِأَنْ يَأْتِيَ مَا حُرِّمَ فِي حَالِ الْإِحْرَامِ فَقَطْ، لَا بِمَا هُوَ حَرَامٌ قَبْلَ الْإِحْرَامِ، وَفِي الْإِحْرَامِ وَبَعْدَ الْإِحْرَامِ؟ قُلْنَا: وَعَنْ هَذَا التَّقْسِيمِ الْفَاسِدِ سَأَلْنَاكُمْ؟ وَلَا حُجَّةَ لَكُمْ فِيهِ، وَأَنْتُمْ تُبْطِلُونَ الصَّلَاةَ بِكُلِّ عَمَلٍ مُحَرَّمٍ، قَبْلَهَا، وَفِيهَا، وَبَعْدَهَا، كَمَا تُبْطِلُونَهَا بِمَا حُرِّمَ فِيهَا فَقَطْ.

L14053 You have violated this corrupt principle, thereby failing to invalidate the state of consecration (iḥrām) by deliberately wearing prohibited garments—those which are lawful before and after it. Thus, you have annulled this false division. Where then is the analogy (qiyās) which you falsely claim to follow? Allah the Exalted has affirmed Ḥajj and specifically prohibited immoral conduct within it, just as He prohibited obscenity therein—with no distinction between them? Muḥammad ibn al-Ḥasan ibn ʿAbd al-Wārith al-Rāzī

وَقَدْ نَقَضْتُمْ هَذَا الْأَصْلَ الْفَاسِدَ فَلَمْ تُبْطِلُوا الْإِحْرَامَ بِتَعَمُّدِ لِبَاسِ مَا حُرِّمَ فِيهِ مِمَّا هُوَ حَلَالٌ قَبْلَهُ وَبَعْدَهُ، فَقَدْ أَبْطَلْتُمْ هَذَا التَّقْسِيمَ الْفَاسِدَ فَأَيْنَ الْقِيَاسُ الَّذِي تَنْتَسِبُونَ إلَيْهِ بِزَعْمِكُمْ؟ وَاَللَّهُ تَعَالَى قَدْ أَكَّدَ الْحَجَّ وَخَصَّهُ بِتَحْرِيمِ الْفُسُوقِ فِيهِ، كَمَا خَصَّهُ بِتَحْرِيمِ الرَّفَثِ فِيهِ وَلَا فَرْقَ؟ أَخْبَرَنَا مُحَمَّدُ بْنُ الْحَسَنِ بْنِ عَبْدِ الْوَارِثِ الرَّازِيّ نَا عَبْدُ الرَّحْمَنِ بْنِ عُمَرَ بْنِ مُحَمَّدِ بْنِ النَّحَّاسِ بِمِصْرَ نَا أَبُو سَعِيدِ بْنُ الْأَعْرَابِيِّ نَا عُبَيْدُ بْنُ غَنَّامِ بْنِ حَفْصِ بْنِ

[6] **Qur'an references (L14050):** Qur'an 2:197 (Al-Baqarah).

narrated to us; ʿAbd al-Raḥmān ibn ʿUmar ibn Muḥammad ibn al-Naḥḥās in Egypt narrated to us; Abū Saʿīd ibn al-Aʿrābī narrated to us; ʿUbayd ibn Ghannām ibn Ḥafṣ ibn Ghayyāth al-Nakhaʿī narrated to us; Muḥammad ibn ʿAbd Allāh ibn Numayr narrated to us; Aḥmad ibn Bishr narrated from ʿAbd al-Salām ibn ʿAbd Allāh ibn Jābir al-Aḥmasī, from his father, from Zaynab bint Jābir al-Aḥmasiyyah: "The Messenger of Allah—peace and blessings be upon him—said to her regarding a woman who performed Ḥajj accompanied by a mute girl: 'Tell her: She should speak, for there is no Ḥajj for one who does not speak.'"

L14054 We have mentioned the narration of Aḥmad ibn Shuʿayb from Nūḥ ibn Ḥabīb al-Qūmisī that the Messenger of Allah—peace be upon him—commanded the one who assumed iḥrām while wearing a *jubbah* to renew [their] iḥrām.

L14055–14056 Abū Muḥammad said: They have no means to cite from any of the Companions—may Allah be pleased with them—that major sins do not invalidate the state of iḥrām. As for one who commits sin while unmindful of his iḥrām, his iḥrām is not invalidated by that, because he did not intend to nullify it nor did he intentionally perform his iḥrām in a way that contravenes what he was commanded. And success is by Allah, the Most High.

L14057 A legal question: Deliberately engaging in argumentation using falsehood or in falsehood while remembering his state of ritual consecration (iḥrām).

L14058 865 - Question:

L14059 Argumentation is divided into two types: that pertaining to an obligatory duty and truth, and that pertaining to falsehood. As for argumentation in [the service of] truth, it is obligatory both during the state of iḥrām and otherwise. Allah the Exalted said: "Invite to the way of your Lord with wisdom and good exhortation, and argue with them in the best manner" [an-Nahl 16:125].[7]

غِيَاثٍ النَّخَعِيُّ نَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ نَا أَحْمَدُ بْنُ بِشْرٍ عَنْ عَبْدِ السَّلَامِ بْنِ عَبْدِ اللَّهِ بْنِ جَابِرٍ الْأَحْمَسِيِّ عَنْ أَبِيهِ عَنْ زَيْنَبَ بِنْتِ جَابِرٍ الْأَحْمَسِيَّةِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهَا فِي امْرَأَةٍ حَجَّتْ مَعَهَا مُصْمِتَةً: قُولِي لَهَا: تَتَكَلَّمُ فَإِنَّهُ لَا حَجَّ لِمَنْ لَمْ يَتَكَلَّمْ» .

وَقَدْ ذَكَرْنَا رِوَايَةَ أَحْمَدَ بْنِ شُعَيْبٍ عَنْ نُوحِ بْنِ حَبِيبٍ الْقُومِسِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. أَمَرَ الَّذِي أَحْرَمَ فِي جُبَّةٍ أَنْ يُجَدِّدَ إحْرَامًا» .

قَالَ أَبُو مُحَمَّدٍ: وَلَا سَبِيلَ لَهُمْ إلَى أَنْ يُوجِدُوا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّ الْفُسُوقَ لَا يُبْطِلُ الْإِحْرَامَ، وَأَمَّا مَنْ فَسَقَ غَيْرَ ذَاكِرٍ لِإِحْرَامِهِ فَإِنَّهُ لَا يَبْطُلُ بِذَلِكَ إحْرَامُهُ، لِأَنَّهُ لَمْ يَقْصِدْ إبْطَالَهُ وَلَا أَتَى بِإِحْرَامِهِ بِخِلَافِ مَا أُمِرَ بِهِ عَامِدًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْجَدَلُ بِالْبَاطِلِ وَفِي الْبَاطِلِ عَمْدًا ذَاكِرًا لِإِحْرَامِهِ]

٨٦٥ - مَسْأَلَةٌ:

وَالْجِدَالُ قِسْمَانِ: قِسْمٌ فِي وَاجِبٍ وَحَقٍّ، وَقِسْمٌ فِي بَاطِلٍ، فَالَّذِي فِي الْحَقِّ وَاجِبٌ فِي الْإِحْرَامِ وَغَيْرِ الْإِحْرَامِ قَالَ تَعَالَى: {ادْعُ إلَى سَبِيلِ رَبِّكَ بِالْحِكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَادِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ} [النحل: ١٢٥] .

[7] **Qur'an references (L14059):** Qur'an 16:125 (An-Nahl).

L14060 Whoever argues in pursuit of his right has indeed called to the path of his Lord, the Exalted, and striven to make truth evident and forbid falsehood. Similarly, anyone who argues for a right of others or for Allah, the Exalted, [does the same].

L14061 Intentionally engaging in disputation using falsehood or arguing about falsehood while mindful of one's Ihram invalidates both the Ihram and the Hajj, due to the statement of Allah, the Exalted: "There shall be no lewdness, disobedience, or quarreling during Hajj" [Al-Baqarah: 197]. And success is by Allah, the Exalted.[8]

L14062 An issue regarding one who did not recite the Talbiyah at any point during their Hajj or ʿUmrah.

L14063 866 - Legal Question:

L14064 Whoever does not recite the Talbiyah at all during any part of their Hajj or Umrah invalidates their Hajj and Umrah. Then if they recite it even once, it suffices them. Frequent recitation is superior. If they recited the Talbiyah but did not raise their voice, then their Hajj and Umrah are invalid due to Allah's command—conveyed by Gabriel, the Messenger of Allah (peace be upon him)—to instruct his companions to raise their voices in the Talbiyah. Thus, whoever did not recite it at all or recited it without raising their voice despite being capable did not perform Hajj or Umrah as commanded by Allah, the Exalted. The Prophet (peace be upon him) said: "Whoever performs a deed not in accordance with our command, it is rejected." Had the companions (may Allah be pleased with them) refused when he (peace be upon him) commanded them to raise their voices in the Talbiyah, they would undoubtedly have been disobedient. Disobedience is transgression without any disagreement. Allah, the Mighty and Majestic, has protected them from that. He, the Exalted, says: "So there is to be no lewdness, no transgression, and no dis-

[8] **Qur'an references (L14061):** Qur'an 2:197 (Al-Baqarah).

وَمَنْ جَادَلَ فِي طَلَبِ حَقٍّ لَهُ فَقَدْ دَعَا إِلَى سَبِيلِ رَبِّهِ تَعَالَى، وَسَعَى فِي إِظْهَارِ الْحَقِّ وَالْمَنْعِ مِنْ الْبَاطِلِ، وَهَكَذَا كُلُّ مَنْ جَادَلَ فِي حَقٍّ لِغَيْرِهِ أَوْ لِلَّهِ تَعَالَى.

وَالْجَدَلُ بِالْبَاطِلِ وَفِي الْبَاطِلِ عَمْدًا ذَاكِرًا لِإِحْرَامِهِ مُبْطِلٌ لِلْإِحْرَامِ وَلِلْحَجِّ لِقَوْلِهِ تَعَالَى: {فَلا رَفَثَ وَلا فُسُوقَ وَلا جِدَالَ فِي الْحَجِّ} [البقرة: ١٩٧] وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَنْ لَمْ يُلَبِّ فِي شَيْءٍ مِنْ حَجِّهِ أَوْ عُمْرَتِهِ]

٨٦٦ - مَسْأَلَةٌ:

وَمَنْ لَمْ يُلَبِّ فِي شَيْءٍ مِنْ حَجِّهِ أَوْ عُمْرَتِهِ بَطَلَ حَجُّهُ وَعُمْرَتُهُ فَإِنْ لَبَّى وَلَوْ مَرَّةً وَاحِدَةً أَجْزَأَهُ، وَالِاسْتِكْثَارُ أَفْضَلُ؛ فَلَوْ لَبَّى وَلَمْ يَرْفَعْ صَوْتَهُ فَلَا حَجَّ لَهُ وَلَا عُمْرَةَ لِأَمْرِ جِبْرِيلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ اللَّهِ عَزَّ وَجَلَّ بِأَنْ يَأْمُرَ أَصْحَابَهُ أَنْ يَرْفَعُوا أَصْوَاتَهُمْ بِالتَّلْبِيَةِ، فَمَنْ لَمْ يُلَبِّ أَصْلًا أَوْ لَبَّى وَلَمْ يَرْفَعْ صَوْتَهُ وَهُوَ قَادِرٌ عَلَى ذَلِكَ فَلَمْ يَحُجَّ وَلَا اعْتَمَرَ كَمَا أَمَرَهُ اللَّهُ تَعَالَى، وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَلَوْ أَنَّهُمْ - رَضِيَ اللَّهُ عَنْهُمْ - إذْ أَمَرَهُمْ - عَلَيْهِ السَّلَامُ - بِرَفْعِ أَصْوَاتِهِمْ بِالتَّلْبِيَةِ أَبَوْا لَكَانُوا عُصَاةً بِلَا شَكٍّ، وَالْمَعْصِيَةُ فُسُوقٌ بِلَا خِلَافٍ، وَقَدْ أَعَاذَهُمْ اللَّهُ عَزَّ وَجَلَّ مِنْ ذَلِكَ قَالَ تَعَالَى: {فَلا رَفَثَ وَلا فُسُوقَ وَلا جِدَالَ فِي الْحَجِّ} [البقرة: ١٩٧] وَقَدْ بَيَّنَّا أَنَّ الْفُسُوقَ يُبْطِلُ الْحَجَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

puting during Hajj" (Al-Baqarah 2:197). We have clarified that transgression invalidates Hajj—and success is from Allah, the Exalted.[9][10]

وَمَنْ لَبَّى مَرَّةً وَاحِدَةً رَافِعًا صَوْتَهُ فَقَدْ لَبَّى كَمَا أَمَرَهُ اللَّهُ تَعَالَى وَوَقَعَ عَلَيْهِ اسْمُ: مُلَبٍّ وَعَلَى فِعْلِهِ اسْمُ: التَّلْبِيَةِ، فَقَدْ أَدَّى مَا عَلَيْهِ، وَمَنْ أَدَّى مَا عَلَيْهِ لَمْ يَلْزَمْهُ فَرْضًا أَنْ يُؤَدِّيَ مَا لَيْسَ عَلَيْهِ، وَالْفَرَائِضُ لَا تَكُونُ إِلَّا مَحْدُودَةً لِيَعْلَمَ النَّاسُ مَا يَلْزَمُهُمْ مِنْهَا، وَمَا لَا حَدَّ لَهُ فَلَيْسَ فَرْضًا عَلَيْهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ؛ لِأَنَّ فِي إِلْزَامِهِ تَكْلِيفَ مَا لَا يُطَاقُ - وَقَدْ أَمَّنَنَا اللَّهُ تَعَالَى مِنْ ذَلِكَ.

L14065 Whoever proclaims the talbiyah once while raising their voice has indeed fulfilled it as Allah the Exalted commanded. The designation "one who has proclaimed the talbiyah" applies to him, and the designation "talbiyah" applies to his act. Thus, he has discharged his obligation. Whoever fulfills what is incumbent upon them is not obligated to perform what is not incumbent. Obligations are necessarily defined so people may know what is incumbent upon them among them, while that which has no defined limit is not an obligation—and with Allah, the Exalted, lies success, for imposing it would entail obligating what is beyond capacity, and Allah the Exalted has secured us from that.

[مَسْأَلَةٌ لِلْمُحْرِمِينَ مِنْ الرِّجَالِ وَالنِّسَاءِ أَنْ يَتَظَلَّلُوا فِي الْمَحَامِلِ]

مَسْأَلَةٌ:

وَجَائِزٌ لِلْمُحْرِمِينَ مِنْ الرِّجَالِ وَالنِّسَاءِ أَنْ يَتَظَلَّلُوا فِي الْمَحَامِلِ وَإِذَا نَزَلُوا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَصْحَابِنَا.

L14066–14067 **A jurisprudential question for those in iḥrām (men and women alike) is whether they may seek shade in covered litters used for transport.**

L14068 Issue:

L14069 It is permissible for those in the state of iḥrām—both men and women—to seek shade in litters and when they dismount—this is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and our companions.

وَقَالَ مَالِكٌ: يَتَظَلَّلُونَ إِذَا نَزَلُوا وَلَا يَتَظَلَّلُونَ فِي الْمَحَامِلِ وَلَا رِكَابًا، وَهَذَا تَقْسِيمٌ لَا دَلِيلَ عَلَى صِحَّتِهِ فَهُوَ خَطَأٌ.

L14070 Malik said: They may seek shade when they dismount, but not in palanquins nor on mounts. This categorization has no evidence for its validity and is therefore erroneous.

فَإِنْ قِيلَ: قَدْ نَهَى عَنْ ذَلِكَ ابْنُ عُمَرَ؟ قُلْنَا: نَعَمْ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ صَحَّ عَنْ عُمَرَ مَنْ قَدَّمَ ثِقْلَهُ مِنْ مِنًى فَلَا حَجَّ لَهُ، فَمَا الَّذِي جَعَلَ قَوْلَ ابْنِ عُمَرَ فِي النَّهْيِ عَنْ التَّظَلُّلِ حُجَّةً وَلَمْ يَجْعَلْ قَوْلَ أَبِيهِ فِي النَّهْيِ عَنْ تَقَدُّمِ

L14071 If it is said: Did Ibn ʿUmar prohibit that? We respond: Yes, but no authoritative proof lies with anyone apart from the Messenger of Allah—peace and blessings be upon him. It is authentically established from ʿUmar that "Whoever sends their belongings ahead from Mina has no valid Hajj." What

[9] **Hadith references (L14064):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[10] **Qur'an references (L14064):** Qur'an 2:197 (Al-Baqarah).

then justifies accepting Ibn ʿUmar's prohibition against seeking shade as authoritative, while rejecting ʿUmar's prohibition against advancing one's belongings from Mina and his severity in that matter? It is also authentically reported from Ibn ʿUmar regarding one who breaks their fast during Ramadan's daytime out of forgetfulness that their fast remains valid, requiring no compensatory observance.

الثِّقَلِ مِنْ مِنًى وَتَشَدُّدِهِ فِي ذَلِكَ حُجَّةٌ؟ وَقَدْ صَحَّ عَنْ ابْنِ عُمَرَ فِيمَنْ أَفْطَرَ فِي نَهَارِ رَمَضَانَ نَاسِيًا أَنَّ صِيَامَهُ تَامٌّ وَلَا قَضَاءَ عَلَيْهِ.

L14072 It is authentically reported from the Prophet ﷺ that marking a camel by incision is permissible for one in the state of *Iḥrām*.

وَصَحَّ عَنْهُ إِبَاحَةُ تَقْرِيدِ الْبَعِيرِ لِلْمُحْرِمِ.

L14073 It is authentically reported from Ibn Umar that whoever engages in sexual intercourse before performing Tawaf al-Ifadah invalidates his Hajj. None of the Companions opposed him in any of what we mentioned except Ibn Abbas, for he held that the Hajj of one who had intercourse after the ritual stay at Arafah is valid. They opposed him in this. Why then is Ibn Umar's opinion regarded as binding evidence in some instances but not others? It has been narrated to us through the chain of Imam Muslim: Salamah ibn Shabib reported to us, Al-Hasan ibn Aʿyan reported to us, Maʿqil reported from Zayd ibn Abi Unaysah from Yahya ibn al-Husayn, who said: I heard my grandmother Umm al-Husayn say, "I performed Hajj with Allah's Messenger (peace and blessings be upon him) during the Farewell Pilgrimage. I saw him when he stoned Jamrat al-ʿAqabah; he departed while mounted on his riding animal. Bilal and Usamah were with him—one of them was leading his mount, while the other was raising his garment over the head of Allah's Messenger (peace and blessings be upon him) to shield him from the sun."

وَصَحَّ عَنْ ابْنِ عُمَرَ مَنْ وَطِئَ قَبْلَ أَنْ يَطُوفَ طَوَافَ الْإِفَاضَةِ بَطَلَ حَجُّهُ وَلَا مُخَالِفَ لَهُ مِنَ الصَّحَابَةِ فِي شَيْءٍ مِمَّا ذَكَرْنَا إِلَّا ابْنَ عَبَّاسٍ فَإِنَّهُ رَأَى حَجَّ مَنْ وَطِئَ بَعْدَ الْوُقُوفِ بِعَرَفَةَ تَامًّا فَخَالَفُوهُ، فَمَا الَّذِي جَعَلَ قَوْلَ ابْنِ عُمَرَ فِي بَعْضِ الْمَوَاضِعِ حُجَّةً، وَفِي بَعْضِهَا لَيْسَ حُجَّةً؟ رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا سَلَمَةُ بْنُ شَبِيبٍ نَا الْحَسَنُ بْنُ أَعْيَنَ نَا مَعْقِلٌ عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ عَنْ يَحْيَى بْنِ الْحُصَيْنِ قَالَ: سَمِعْتُ جَدَّتِي أُمَّ الْحُصَيْنِ تَقُولُ «حَجَجْتُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَجَّةَ الْوَدَاعِ فَرَأَيْته حِينَ رَمَى جَمْرَةَ الْعَقَبَةِ انْصَرَفَ وَهُوَ عَلَى رَاحِلَتِهِ، وَمَعَهُ بِلَالٌ، وَأُسَامَةُ، أَحَدُهُمَا يَقُودُ رَاحِلَتَهُ، وَالْآخَرُ رَافِعٌ ثَوْبَهُ عَلَى رَأْسِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ الشَّمْسِ» .

L14074–14076 And from the chain of Muslim: Aḥmad ibn Ḥanbal narrated to me, Muḥammad ibn Salamah narrated to us from Abū ʿAbd al-Raḥīm, from Zayd ibn Abī ʾUnaysah, from Yaḥyā ibn al-Ḥuṣayn, from Umm al-Ḥuṣayn, his grandmother, who said: "I performed Ḥajj with" During the Farewell Pilgrimage of the Messenger of Allah (peace and blessings be upon him), I saw Usāmah and Bilāl—one of them holding the reins of the she-camel of the Messenger of Allah (peace and blessings be upon him), and the other lifting his garment to shield him from the heat—until he stoned Jamrat al-ʿAqabah.

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي أَحْمَدُ بْنُ حَنْبَلٍ نَا مُحَمَّدُ بْنُ سَلَمَةَ عَنْ أَبِي عَبْدِ الرَّحِيمِ عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ عَنْ يَحْيَى بْنِ الْحُصَيْنِ عَنْ أُمِّ الْحُصَيْنِ جَدَّتِهِ قَالَتْ «حَجَجْتُ مَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَجَّةَ الْوَدَاعِ فَرَأَيْتُ أُسَامَةَ، وَبِلَالًا وَأَحَدُهُمَا آخِذٌ بِخِطَامِ نَاقَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْآخَرُ رَافِعٌ ثَوْبَهُ يَسْتُرُهُ مِنْ الْحَرِّ حَتَّى رَمَى جَمْرَةَ الْعَقَبَةِ» .

L14077 Thus, this is the proof, not anything else. And Ibn Umar opposed Bilāl and

Usāmah in this opinion - which is the opinion of ʿAṭā, al-Aswad, and others besides these two.

Chapter: On Circumambulation

868 - Issue:

Speaking with people during Tawaf is permissible, and the remembrance of Allah is more virtuous, as the text did not come with a prohibition of that. He, the Most High, said: {He has already detailed for you what He has forbidden upon you} [Al-An'am: 119]. Therefore, whatever He has not detailed as forbidden is permissible—and success comes from Allah, the Most High.[11]

Issue: The Marriage of a Muhrim.

869: Issue

It is not permissible for a man or a woman to marry or be married, nor for a man to arrange the marriage of another from those under his guardianship, nor to propose marriage from the time the two enter the state of consecration (Ihram) until the sun rises on the Day of Sacrifice and the time for stoning Jamrat al-'Aqabah begins—any marriage contracted before this specified time is annulled, whether consummation occurred, a lengthy period elapsed, a child was born, or not. When the aforementioned time arrives, marriage and the act of marriage become permissible for them. A man may take back his divorced wife only during her waiting period, and her husband may likewise take her back during this period. A man may purchase female slaves for intercourse but must not engage in intercourse during the state of consecration (Ihram). We have been narrated through Malik's transmission from Nafi' from Nabih ibn Wahb: Aban ibn 'Uthman ibn 'Affan said, "I heard 'Uthman ibn 'Affan state: The Messenger of Allah—peace and bless-

[11] **Qur'an references (L14080):** Qur'an 6:119 (Al-An'am).

فَهَذَا هُوَ الْحُجَّةُ لَا مَا سِوَاهُ، وَقَدْ خَالَفَ ابْنُ عُمَرَ فِي هَذَا الْقَوْلِ بِلَالًا وَأُسَامَةَ - وَهُوَ قَوْلُ عَطَاءٍ، وَالْأَسْوَدِ، وَغَيْرِهِمَا.

[مَسْأَلَةُ الْكَلَامُ فِي الطَّوَافِ]

٨٦٨ - مَسْأَلَةٌ:

وَالْكَلَامُ مَعَ النَّاسِ فِي الطَّوَافِ جَائِزٌ، وَذِكْرُ اللَّهِ أَفْضَلُ؛ لِأَنَّ النَّصَّ لَمْ يَأْتِ بِمَنْعٍ مِنْ ذَلِكَ، وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] فَمَا لَمْ يُفَصِّلْ تَحْرِيمَهُ فَهُوَ حَلَالٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ نِكَاحُ الْمُحْرِمِ]

٨٦٩ - مَسْأَلَةٌ:

وَلَا يَحِلُّ لِرَجُلٍ، وَلَا لِامْرَأَةٍ، أَنْ يَتَزَوَّجَ أَوْ تَتَزَوَّجَ، وَلَا أَنْ يُزَوِّجَ الرَّجُلُ غَيْرَهُ مِنْ وَلِيَّتِهِ، وَلَا أَنْ يَخْطُبَ خُطْبَةَ نِكَاحٍ مُذْ يُحْرِمَانِ إلَى أَنْ تَطْلُعَ الشَّمْسُ مِنْ يَوْمِ النَّحْرِ وَيَدْخُلَ وَقْتُ - رَمْيِ جَمْرَةِ الْعَقَبَةِ، وَيُفْسَخُ النِّكَاحُ قَبْلَ الْوَقْتِ الْمَذْكُورِ، كَانَ فِيهِ دُخُولٌ وَطُولُ مُدَّةٍ وَوِلَادَةٌ، أَوْ لَمْ يَكُنْ؛ فَإِذَا دَخَلَ الْوَقْتُ الْمَذْكُورُ حَلَّ لَهُمَا النِّكَاحُ وَالْإِنْكَاحُ، وَلَهُ أَنْ يُرَاجِعَ زَوْجَتَهُ الْمُطَلَّقَةَ مَا دَامَتْ فِي الْعِدَّةِ فَقَطْ، وَلَهَا أَنْ يُرَاجِعَهَا زَوْجُهَا كَذَلِكَ أَيْضًا مَا دَامَتْ فِي الْعِدَّةِ، وَلَهُ أَنْ يَبْتَاعَ الْجَوَارِيَ لِلْوَطْءِ وَلَا يَطَأُ -: رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ نَبِيهِ بْنِ وَهْبٍ: أَنَّ أَبَانَ بْنَ عُثْمَانَ بْنِ عَفَّانَ قَالَ: سَمِعْت عُثْمَانَ بْنَ عَفَّانَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَنْكِحُ الْمُحْرِمُ وَلَا يُنْكَحُ وَلَا يَخْطُبُ» وَهَذَا لَفْظٌ يَقْتَضِي كُلَّ مَا قُلْنَاهُ.

ings be upon him—declared, 'A person in Ihram must not marry, nor can someone marry him, nor propose marriage.'" This wording entails all we have explained.

وَالْمُحْرِمُ اسْمٌ يَقَعُ عَلَى الْجِنْسِ وَيَعُمُّ الرِّجَالَ وَالنِّسَاءَ، وَمُرَاجَعَةُ الْمَرْأَةِ [الْمُطَلَّقَةِ] فِي عِدَّتِهَا لَا يُسَمَّى نِكَاحًا؛ لِأَنَّهَا امْرَأَتُهُ، كَمَا كَانَتْ تَرِثُهُ وَيَرِثُهَا وَتَلْزَمُهُ نَفَقَتُهَا وَإِسْكَانُهَا، وَلَا صَدَاقَ فِي ذَلِكَ، وَلَا يُرَاعَى إِذْنُهَا، وَلَا حُكْمَ لِلْوَلِيِّ فِي ذَلِكَ، وَأَمَّا بَعْدَ انْقِضَاءِ الْعِدَّةِ فَهُوَ نِكَاحٌ لَا مُرَاجَعَةٌ، وَلَا يَكُونُ إِلَّا بِرِضَاهُمَا وَبِصَدَاقٍ وَوَلِيٍّ.

L14084–14088 The term in question is a general designation that applies to both men and women. Revoking the divorce with the [divorced] woman during her waiting period is not termed a new marriage, for she remains his wife—just as she inherits him and he inherits her, and her maintenance remains his obligation. And providing her residence, and no dower is due in such a case, her consent is not taken into account, and the guardian (walī) has no authority in this regard. As for after... Upon the expiration of the waiting period, it is a marriage, not a revocation [of divorce], and it cannot occur except with the consent of both parties, a dowry (mahr), and a guardian.

وَابْتِيَاعُ الْجَوَارِي لِلْوَطْءِ لَا يُسَمَّى نِكَاحًا، وَإِنَّمَا حَرَّمَ اللَّهُ تَعَالَى مَا ذَكَرْنَا مِنْ النِّكَاحِ وَالْإِنْكَاحِ وَالْخِطْبَةِ عَلَى الْمُحْرِمِ.

L14089 Purchasing female slaves for sexual intercourse is not termed marriage. Rather, Allah the Exalted has prohibited the Muhrim from what we have mentioned of marriage, arranging marriages, and marriage proposals.

وَالْمُحْرِمُ هُوَ الَّذِي يَحْرُمُ عَلَيْهِ لِبَاسُ الْقُمُصِ، وَالْعَمَائِمِ، وَالْبَرَانِسِ، وَحَلْقُ رَأْسِهِ إِلَّا لِضَرُورَةٍ بِالنَّصِّ وَالْإِجْمَاعِ؛ فَإِذَا صَارَ فِي حَالٍ يَجُوزُ لَهُ كُلُّ ذَلِكَ فَلَيْسَ مُحْرِمًا بِلَا شَكٍّ، فَقَدْ تَمَّ إحْرَامُهُ، وَإِذَا لَمْ يَكُنْ مُحْرِمًا حَلَّ لَهُ النِّكَاحُ وَالْإِنْكَاحُ وَالْخُطْبَةُ.

L14090 The one in the state of iḥrām is prohibited from wearing shirts, turbans, hooded cloaks, and shaving his head except out of necessity, according to the explicit text and consensus. When he enters a state where all these actions become permissible for him, he is unquestionably no longer in the state of iḥrām, as his iḥrām has been completed. If he is not in the state of iḥrām, marriage, facilitating marriage contracts, and marriage proposals become permissible for him.

وَبِدُخُولِ وَقْتِ رَمْيِ الْجَمْرَةِ يَحِلُّ لَهُ كُلُّ مَا ذَكَرْنَا، رَمَى أَوْ لَمْ يَرْمِ، عَلَى مَا ذَكَرْنَا قَبْلُ مِنْ إبَاحَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - تَقْدِيمَ الْحَلْقِ عَلَى - الرَّمْيِ.

L14091 Upon the entry of the time for pelting the *Jamrah*, all that we have mentioned becomes lawful for him, whether he has thrown or not, based on what we previously mentioned regarding the permissibility established by the Messenger of Allah—peace be upon him—of doing the shaving before the pelting.

فَإِنْ نَكَحَ الْمُحْرِمُ أَوْ الْمُحْرِمَةُ فُسِخَ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَكَذَلِكَ إنْ أَنْكَحَ مَنْ لَا نِكَاحَ لَهَا إلَّا بِإِنْكَاحِهِ

L14092 If a person in the state of iḥrām (male or female) marries, the marriage is annulled, based on the statement of Allah's Messenger (peace and blessings of Allah be upon him): "Whoever performs an action not in accordance with our command, it is rejected." Similarly, if one conducts the marriage of a woman whose marriage cannot be valid except through his authorization,

such a marriage is annulled for the reasons mentioned—due to the invalidity of the marriage contract through which alone the marriage can be valid, and because there is no validity for that which cannot be valid except through what is itself invalid.[12]

فَهُوَ نِكَاحٌ مَفْسُوخٌ لِمَا ذَكَرْنَا، وَلِفَسَادِ الْإِنْكَاحِ الَّذِي لَا يَصِحُّ النِّكَاحُ إِلَّا بِهِ، وَلَا صِحَّةَ لِمَا لَا يَصِحُّ إِلَّا بِمَا يَصِحُّ.

L14093 As for the proposal, if he proposes, he is sinning—yet the marriage remains valid, for proposals have no bearing on the marriage contract. One might propose without finalizing the marriage if the proposal is rejected, and a marriage may be validly contracted without any prior proposal. For instance, by him saying to her: "Give yourself in marriage to me," to which she responds: "Yes, I have done so," and he states: "I have accepted," provided the legal guardian consents to this. Success is through Allah, the Exalted.

وَأَمَّا الْخِطْبَةُ فَإِنْ خَطَبَ فَهُوَ عَاصٍ وَلَا يَفْسُدُ النِّكَاحُ، لِأَنَّ الْخِطْبَةَ لَا مُتَعَلَّقَ لَهَا بِالنِّكَاحِ، وَقَدْ يَخْطُبُ وَلَا يُتِمُّ النِّكَاحَ إِذَا رُدَّ الْخَاطِبُ، وَقَدْ يَتِمُّ نِكَاحٌ بِلَا خِطْبَةٍ أَصْلًا، لَكِنْ بِأَنْ يَقُولَ لَهَا: انْكِحِينِي نَفْسَكِ؟ فَتَقُولُ: نَعَمْ قَدْ فَعَلْتُ، وَيَقُولُ هُوَ: قَدْ رَضِيتُ وَيَأْذَنُ الْوَلِيُّ فِي ذَلِكَ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L14094 The Salaf differed regarding this matter. A group permitted the marriage of a pilgrim in consecration—this is authentically established from Ibn Abbas. It was narrated from Ibn Masʿūd and Muʿādh, and the opinion was held by ʿAṭāʾ, al-Qāsim ibn Muḥammad ibn Abī Bakr, ʿIkrimah, and Ibrāhīm al-Nakhaʿī.

وَاخْتَلَفَ السَّلَفُ فِي هَذَا فَأَجَازَ نِكَاحَ الْمُحْرِمِ طَائِفَةٌ صَحَّ ذَلِكَ عَنْ ابْنِ عَبَّاسٍ، وَرُوِيَ عَنْ ابْنِ مَسْعُودٍ، وَمُعَاذٍ - وَقَالَ بِهِ عَطَاءٌ، وَالْقَاسِمُ بْنُ مُحَمَّدِ بْنِ أَبِي بَكْرٍ، وَعِكْرِمَةُ، وَإِبْرَاهِيمُ النَّخَعِيُّ.

L14095 And with this, Abu Hanifah and Sufyan state, and it is authentically established from Umar ibn al-Khattab and Zayd ibn Thabit that the marriage of the person in the state of ritual consecration (ihram) is annulled if he marries.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَسُفْيَانُ، وَصَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَزَيْدِ بْنِ ثَابِتٍ فَسْخُ نِكَاحِ الْمُحْرِمِ إِذَا نَكَحَ.

L14096 It has been authentically reported from Ibn Umar through the chain of Hammad ibn Salamah, from Ayyub al-Sakhtiyani, from Nafi', from Ibn Umar, who said: "A person in the state of *iḥrām* does not marry nor is married. He does not arrange a marriage for himself nor for anyone else."

وَصَحَّ عَنِ ابْنِ عُمَرَ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْهُ قَالَ: الْمُحْرِمُ لَا يَنْكِحُ وَلَا يُنْكَحُ لَا يَخْطُبُ عَلَى نَفْسِهِ وَلَا عَلَى مَنْ سِوَاهُ.

L14097 It has been transmitted to us from ʿAlī ibn Abī Ṭālib that the marriage of a person in *iḥrām* is invalid. If he marries, we remove his wife from him. This is the opinion of Saʿīd ibn al-Musayyab: a view upheld by Mālik, al-Shāfiʿī, Abū Sulaymān, and their adherents.

وَرُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ لَا يَجُوزُ نِكَاحُ الْمُحْرِمِ إِنْ نَكَحَ نَزَعْنَا مِنْهُ امْرَأَتَهُ، وَهُوَ قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ - وَبِهِ يَقُولُ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L14098–14099 Those who deemed his marriage permissible cited as evidence what we have narrated through the chain of Al-Awzaʿī from ʿAṭāʾ, from Ibn ʿAbbās, who

وَاحْتَجَّ مَنْ رَأَى نِكَاحَهُ جَائِزًا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْأَوْزَاعِيِّ عَنْ عَطَاءٍ عَنِ ابْنِ عَبَّاسٍ قَالَ «تَزَوَّجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ مُحْرِمٌ» .

[12] **Hadith references (L14092):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

said: “The Messenger of Allah (peace and blessings be upon him) married while in the state of *ihram*.”

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ قَالَ «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَزَوَّجَ مَيْمُونَةَ وَهُمَا مُحْرِمَانِ» وَكَذَلِكَ رُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ جَابِرِ بْنِ زَيْدٍ، وَعِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ.

L14100 And by what we have reported through the chain of Ḥammād ibn Salamah from Ḥumayd from Mujāhid from Ibn ʿAbbās, who said: “Indeed, the Messenger of Allāh—peace and blessings be upon him—married Maymūnah while both were in the state of iḥrām.” In the same manner, we have also reported it through the chain of Jābir ibn Zayd and ʿIkrimah from Ibn ʿAbbās.[13]

قَالَ عَلِيٌّ: فَعَارَضَهُمْ الْآخَرُونَ بِأَنْ ذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نَا حَبِيبُ بْنُ الشَّهِيدِ عَنْ مَيْمُونِ بْنِ مِهْرَانٍ عَنْ زَيْدِ بْنِ الْأَصَمِّ ابْنِ أُخْتِ مَيْمُونَةَ أُمِّ الْمُؤْمِنِينَ «عَنْ مَيْمُونَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: تَزَوَّجَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنَحْنُ حَلَالَانِ بِسَرِفَ» .

L14101 Ali said: The others opposed them by citing the narration we transmitted via the chain of Hammad ibn Salamah, who reported from Habib ibn Shahid, from Maymun ibn Mihran, from Zayd ibn al-Asamm, the nephew of Maymunah, the Mother of the Believers, from her, who said: “The Messenger of Allah, peace and blessings be upon him, married me while we were both in a permissible state at Sarif.”

قَالَ أَبُو مُحَمَّدٍ: فَقَالَ مَنْ أَجَازَ نِكَاحَ الْمُحْرِمِ: لَا يَعْدِلُ يَزِيدُ بْنُ الْأَصَمِّ أَعْرَابِيٌّ بَوَّالٌ عَلَى عَقِبَيْهِ بِعَبْدِ اللَّهِ بْنِ عَبَّاسٍ - وَقَالُوا: قَدْ يَخْفَى عَلَى مَيْمُونَةَ كَوْنُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُحْرِمًا، فَالْمُخْبِرُ عَنْ كَوْنِهِ - عَلَيْهِ السَّلَامُ - مُحْرِمًا زَائِدٌ عِلْمًا، وَقَالُوا: خَبَرُ ابْنِ عَبَّاسٍ وَارِدٌ بِحُكْمٍ زَائِدٍ فَهُوَ أَوْلَى، وَقَالُوا فِي خَبَرِ عُثْمَانَ «لَا يَنْكِحُ الْمُحْرِمُ وَلَا يُنْكَحُ» : إنَّمَا مَعْنَاهُ لَا يُوطِئُ غَيْرَهُ وَلَا يَطَأُ، ثُمَّ اعْتَرَضُوا بِوَسَاوِسَ مِنْ الْقِيَاسِ عُورِضُوا بِمِثْلِهَا لَا فَائِدَةَ فِي ذِكْرِهَا، لِأَنَّهَا حَمَاقَاتٌ؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا شَغَبُوا بِهِ وَكُلُّهُ لَيْسَ بِشَيْءٍ، أَمَّا تَأْوِيلُهُمْ فِي خَبَرِ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - أَنَّ مَعْنَاهُ لَا يَطَأُ وَلَا يُوطِئُ: فَبَاطِلٌ وَتَخْصِيصٌ لِلْخَبَرِ بِالدَّعْوَى الْكَاذِبَةِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ صَرَفُوا كَلَامَهُ - عَلَيْهِ السَّلَامُ - إلَى بَعْضِ مَا يَقْتَضِيهِ دُونَ بَعْضٍ وَهَذَا لَا يَجُوزُ، قَالَ تَعَالَى: {يُحَرِّفُونَ الْكَلِمَ عَنْ مَوَاضِعِهِ} [النساء: ٤٦] .

L14102 Abu Muhammad said: Those who permit the marriage of a pilgrim in consecration argue: Yazeed ibn al-Aṣamm—a foolish Bedouin—does not equate to Abdullah ibn Abbas. They claim: It is plausible that Maymunah remained unaware of the Messenger of Allah—peace and blessings of Allah be upon him—being in consecration, hence the narrator who informed of his consecration has additional knowledge. They assert: The report of Ibn Abbas includes an additional legal ruling, thus it takes precedence. Regarding Uthman’s narration, “A pilgrim in consecration neither marries nor is married,” they claim its meaning is: He neither causes others to engage in intercourse nor engages in it himself. Then they raised specious arguments derived from analogy, which were rebutted by similar ones—though mentioning them is pointless, as they are sheer foolishness. Abu Muhammad said: This constitutes all their clamorous objections, none of which holds validity. As for their interpretation of Uthman’s narration—may Allah be pleased with him—that it signifies “he neither engages in intercourse nor is made to engage in it,” this is false—an arbitrary restriction of the narration through a base-

[13] **Hadith references (L14100):** Sunan an-Nasai 2839.

less claim against the Messenger of Allah—peace and blessings of Allah be upon him—for they selectively interpreted his speech—peace be upon him—emphasizing some implications while ignoring others, which is impermissible. Allah the Exalted says: "They distort words from their proper contexts" (Quran 4:46).[14]

L14103 The misguidance of this interpretation is clarified by his statement (peace be upon him) - "nor shall he propose marriage" - whereby it is established that he (peace be upon him) intended the marriage which is the contract. It is impermissible to restrict this wording without clear textual evidence.

L14104–14106 As for their favoring Ibn Abbas's report over Maymunah's report due to their claim, "Yazid should not be equated with Ibn Abbas"—by God, we do not equate him with Ibn Abbas, nor is there any honor in doing so. This is their obfuscation, for Yazid narrated from Maymunah, while Ibn Abbas's companions narrated from Ibn Abbas. Let them now hear the truth—We declare: We do not equate Ibn Abbas, a child among the children of the Messenger of God's companions—peace and blessings be upon him—to... Maymunah, reclining with the Messenger of Allah (peace and blessings of Allah be upon him) upon shared bedding in the presence of the Most High, among the earliest in Islam and in companionship. However, we link Yazīd ibn al-Aṣam to the companions of Ibn ʿAbbās, and no definitive precedence is established for them over him.

L14107 As for their statement: "It is possible that the state of ihram of the Messenger of Allah - peace and blessings be upon him - was unknown to Maymunah when he married her," this is an absurd argument. They may be refuted by responding: "It is equally possible that the dissolution of the Messenger of Allah's ihram was unknown to Ibn Abbas." The one who reported his dissolution of ihram possessed additional knowledge. Thus, do we conclude that it might have been unknown or not unknown? As for their claim that Ibn Abbas's narration introduces an additional legal ruling - this is incorrect. Rather, Uthman's narration is the one that introduces the additional ruling, as we shall clarify if Allah the Exalted wills. Thus, all their specious arguments

وَيُبَيِّنُ ضَلَالَ هَذَا التَّأْوِيلِ قَوْلُهُ - عَلَيْهِ السَّلَامُ - «وَلَا يَخْطُبُ» فَصَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَرَادَ النِّكَاحَ الَّذِي هُوَ الْعَقْدُ، وَلَا يَجُوزُ أَنْ يَخُصَّ هَذَا اللَّفْظَ بِلَا نَصٍّ بَيِّنٍ.

وَأَمَّا تَرْجِيحُهُمْ خَبَرَ ابْنِ عَبَّاسٍ عَلَى خَبَرِ مَيْمُونَةَ بِقَوْلِهِمْ: لَا يُقْرَنُ يَزِيدُ إلَى ابْنِ عَبَّاسٍ فَنَعَمْ وَاَللَّهِ لَا نَقْرِنُهُ إلَيْهِ وَلَا كَرَامَةَ، وَهَذَا تَمْوِيهٌ مِنْهُمْ إنَّمَا رَوَى يَزِيدُ عَنْ مَيْمُونَةَ، وَرَوَى أَصْحَابُ ابْنِ عَبَّاسٍ عَنْ ابْنِ عَبَّاسٍ، فَلْيَسْمَعُوا الْآنَ إلَى الْحَقِّ -: نَحْنُ نَقُولُ: لَا نَقْرِنُ ابْنَ عَبَّاسٍ صَبِيًّا مِنْ صِبْيَانِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى مَيْمُونَةَ الْمُتَّكِئَةِ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى فِرَاشٍ وَاحِدٍ فِي الرَّفِيقِ الْأَعْلَى، الْقَدِيمَةِ الْإِسْلَامِ وَالصُّحْبَةِ، وَلَكِنْ نَقْرِنُ يَزِيدَ بْنَ الْأَصَمِّ إلَى أَصْحَابِ ابْنِ عَبَّاسٍ، وَلَا يُقْطَعُ بِفَضْلِهِمْ عَلَيْهِ.

وَأَمَّا قَوْلُهُمْ: قَدْ يَخْفَى عَلَى مَيْمُونَةَ إحْرَامُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ تَزَوَّجَهَا فَكَلَامٌ سَخِيفٌ، وَيُعَارَضُونَ بِأَنْ يُقَالَ لَهُمْ: قَدْ يَخْفَى عَلَى ابْنِ عَبَّاسٍ إحْلَالُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ إحْرَامِهِ، فَالْمُخْبِرَةُ عَنْ كَوْنِهِ قَدْ أَحَلَّ زَائِدَةٌ عِلْمًا، فَحَصَلْنَا عَلَى: قَدْ يَخْفَى وَقَدْ لَا يَخْفَى؟ وَأَمَّا قَوْلُهُمْ: خَبَرُ ابْنِ عَبَّاسٍ وَارِدٌ بِحُكْمٍ زَائِدٍ فَلَيْسَ كَذَلِكَ، بَلْ خَبَرُ عُثْمَانَ هُوَ الْوَارِدُ بِالْحُكْمِ الزَّائِدِ عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى؛ فَبَطَلَ

[14] **Qur'an references (L14102):** Qur'an 4:46 (An-Nisa); Qur'an 5:13 (Al-Ma'idah).

are invalidated, leaving us to prefer Uthman's narration and Maymunah's narration over Ibn Abbas's narration - may Allah be pleased with them all.

كُلُّ مَا شَغَبُوا بِهِ، فَبَقِيَ أَنْ نُرَجِّحَ خَبَرَ عُثْمَانَ، وَخَبَرَ مَيْمُونَةَ عَلَى خَبَرِ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمْ جَمِيعِهِمْ.

L14108 We say—and with Allah, the Exalted, is the tawfīq—: The report transmitted by Yazīd from Maymūnah is correct, while Ibn ʿAbbās's statement is undoubtedly an error on his part, due to clear aspects. The first of these: She—may Allah be pleased with her—knows better about herself than Ibn ʿAbbās due to her exclusive connection to that incident, from which he is excluded. This is beyond any doubt. The second aspect:

فَنَقُولُ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ -: خَبَرُ يَزِيدَ عَنْ مَيْمُونَةَ هُوَ الْحَقُّ، وَقَوْلُ ابْنِ عَبَّاسٍ وَهْمٌ مِنْهُ بِلَا شَكٍّ لِوُجُوهٍ بَيِّنَةٍ -: أَوَّلُهَا: أَنَّهَا - رَضِيَ اللَّهُ عَنْهَا - أَعْلَمُ بِنَفْسِهَا مِنْ ابْنِ عَبَّاسٍ لِاخْتِصَاصِهَا بِتِلْكَ الْقِصَّةِ دُونَهُ، هَذَا مَا لَا يَشُكُّ فِيهِ أَحَدٌ. وَثَانِيهَا:

L14109 that she—may Allah be pleased with her—was at that time a woman in her full maturity, while Ibn Abbas—may Allah be pleased with him—was then ten years and months old. Thus, there is a distinction that cannot be overlooked between the two narrations. The third matter:

أَنَّهَا - رَضِيَ اللَّهُ عَنْهَا - كَانَتْ حِينَئِذٍ امْرَأَةً كَامِلَةً وَكَانَ ابْنُ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُ - يَوْمَئِذٍ ابْنَ عَشْرَةِ أَعْوَامٍ وَأَشْهُرٍ فَبَيْنَ الضَّبْطَيْنِ فَرْقٌ لَا يَخْفَى. وَالثَّالِثُ:

L14110 He—peace be upon him—married her during the Umrah al-Qaḍāʾ, a matter on which no two disagree. Mecca at that time was an abode of war, and he had only concluded a truce stipulating his entry to perform umrah and remain there for only three days before departing. He came from Medina in the state of ihram for umrah without prior preparations, proceeding to ṭawāf and saʿi while fulfilling the rites of his ihram within the prescribed time. None dispute that he married her in Mecca while physically present there, not in Medina.

أَنَّهُ - عَلَيْهِ السَّلَامُ - إِنَّمَا تَزَوَّجَهَا فِي عُمْرَةِ الْقَضَاءِ، هَذَا مَا لَا يَخْتَلِفُ فِيهِ اثْنَانِ وَمَكَّةُ يَوْمَئِذٍ دَارُ حَرْبٍ، وَإِنَّمَا هَادَنَهُمْ - عَلَيْهِ السَّلَامُ - عَلَى أَنْ يَدْخُلَهَا مُعْتَمِرًا وَيَبْقَى بِهَا ثَلَاثَةَ أَيَّامٍ فَقَطْ ثُمَّ يَخْرُجَ، فَأَتَى مِنَ الْمَدِينَةِ مُحْرِمًا بِعُمْرَةٍ وَلَمْ يُقَدِّمْ شَيْئًا، إِذْ دَخَلَ عَلَى الطَّوَافِ وَالسَّعْيِ وَتَمَّ إِحْرَامُهُ فِي الْوَقْتِ، وَلَمْ يَخْتَلِفْ أَحَدٌ فِي أَنَّهُ إِنَّمَا تَزَوَّجَهَا بِمَكَّةَ حَاضِرًا بِهَا لَا بِالْمَدِينَةِ.

L14111 Thus, it was established without doubt that he married her only after his Iḥrām was fully in effect, not during his Ṭawāf or Saʿī. Consequently, the ambiguity was entirely lifted, and the narration of Maymunah and the narration of ʿUthmān stood unchallenged. All praise is due to Allah, Lord of the worlds.

فَصَحَّ أَنَّهُ بِلَا شَكٍّ إِنَّمَا تَزَوَّجَهَا بَعْدَ تَمَامِ إِحْرَامِهِ لَا فِي حَالِ طَوَافِهِ وَسَعْيِهِ فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً، وَبَقِيَ خَبَرُ مَيْمُونَةَ، وَخَبَرُ عُثْمَانَ، لَا مُعَارِضَ لَهُمَا وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L14112–14113 Then, if the narration of Ibn Abbas were definitively authenticated while Maymunah's narration remained unauthenticated, the narration of Uthman would stand as the supplementary report that establishes a ruling which it is impermissible to contradict—because marriage has been lawful in all circumstances since God Almighty permitted it for the fasting person, the

ثُمَّ لَوْ صَحَّ خَبَرُ ابْنِ عَبَّاسٍ بِيَقِينٍ وَلَمْ يَصِحَّ خَبَرُ مَيْمُونَةَ لَكَانَ خَبَرُ عُثْمَانَ هُوَ الزَّائِدُ الْوَارِدُ بِحُكْمٍ لَا يَحِلُّ خِلَافُهُ، لِأَنَّ النِّكَاحَ مُذْ أَبَاحَهُ اللَّهُ تَعَالَى حَلَالٌ فِي كُلِّ حَالٍ لِلصَّائِمِ، وَالْمُحْرِمِ، وَالْمُجَاهِدِ، وَالْمُعْتَكِفِ، وَغَيْرِهِمْ، هَذَا مَا لَا شَكَّ فِيهِ.

pilgrim in a state of consecration, the one engaged in jihad, the one observing itikaf, and others. There is no doubt about this.

ثُمَّ لَمَّا أَمَرَ - عَلَيْهِ السَّلَامُ - بِأَنْ لَا يَنْكِحَ الْمُحْرِمُ، وَلَا يُنْكَحَ، وَلَا يَخْطُبَ كَانَ ذَلِكَ بِلَا شَكٍّ نَاسِخًا لِلْحَالِ الْمُتَقَدِّمَةِ مِنْ الْإِبَاحَةِ، لَا يُمْكِنُ غَيْرُ هَذَا أَصْلًا، وَكَانَ يَكُونُ خَبَرُ ابْنِ عَبَّاسٍ مَنْسُوخًا بِلَا شَكٍّ لِمُوَافَقَتِهِ لِلْحَالَةِ الْمَنْسُوخَةِ بِيَقِينٍ.

L14114 Then when he—peace be upon him—commanded that a muḥrim must not marry, nor be married off, nor propose marriage, this was undoubtedly an abrogation of the previous ruling of permissibility. No alternative to this is fundamentally possible. The narration of Ibn ʿAbbās would likewise be abrogated without doubt, as it certainly aligns with the abrogated ruling by definitive correspondence.

وَمَنْ ادَّعَى فِي حُكْمٍ قَدْ صَحَّ نَسْخُهُ وَبُطْلَانُهُ أَنَّهُ قَدْ عَادَ حُكْمُهُ وَبَطَلَ نَسْخُهُ فَقَدْ كَذَبَ أَوْ قَطَعَ بِالظَّنِّ إنْ لَمْ يُحَقِّقْ ذَلِكَ، وَكِلَاهُمَا لَا يَحِلُّ الْقَوْلُ بِهِ، وَلَا يَجُوزُ تَرْكُ الْيَقِينِ لِلظُّنُونِ.

L14115 Whoever claims regarding a ruling whose abrogation and nullification have been established as valid that its ruling has been reinstated and its abrogation nullified has either lied or - if he has not verified this - asserted definitively based on conjecture. Both claims are impermissible to uphold, and it is not permissible to abandon certainty for conjectures.

قَالَ أَبُو مُحَمَّدٍ: وَقَالُوا: لَمَّا حَلَّ لَهُ شِرَاءُ جَارِيَةٍ لِلْوَطْءِ وَلَا يَطَأُ: حَلَّ لَهُ نِكَاحُ زَوْجَةٍ لِلْوَطْءِ وَلَا يَطَأُ؟ فَقُلْنَا لَهُمْ: لَوْ اسْتَعْمَلْتُمْ هَذَا فِي قَوْلِكُمْ: لَا يَكُونُ صَدَاقٌ يُسْتَبَاحُ بِهِ الْفَرْجُ أَقَلَّ مِنْ عَشَرَةِ دَرَاهِمَ، فَهَلَّا قُلْتُمْ: كَمَا حَلَّ لَهُ اسْتِبَاحَةُ فَرْجِ جَارِيَةٍ مُحْرِمَةٍ بِأَنْ يَبْتَاعَهَا بِدِرْهَمٍ حَلَّ لَهُ فَرْجُ زَوْجَةٍ مُحْرِمَةٍ بِأَنْ يَصْدُقَهَا دِرْهَمًا؟ وَالْقِيَاسَاتُ لَا يُعَارَضُ بِهَا الْحَقُّ؛ لِأَنَّ الْقِيَاسَ كُلَّهُ بَاطِلٌ.

L14116 Abū Muḥammad said: They argued: Since it is permissible for him to purchase an enslaved woman in iḥrām for intercourse without engaging in it, does it then become permissible for him to marry a wife in iḥrām for intercourse without engaging in it? We replied to them: If you applied this reasoning to your claim that no dower permitting lawful sexual intercourse may be less than ten dirhams, then why did you not argue: Just as it is permissible for him to lawfully access the sexual intercourse of an enslaved woman in iḥrām by purchasing her for a dirham, it is permissible for him to access the sexual intercourse of a wife in iḥrām by stipulating a dirham as her dower? Analogies cannot oppose the divine truth, for all analogy is invalid.

وَقَالُوا: كَمَا جَازَ لَهُ أَنْ يُرَاجِعَ الْمُطَلَّقَةَ فِي عِدَّتِهَا جَازَ لَهُ ابْتِدَاءُ النِّكَاحِ؟ فَقُلْنَا: هَذَا بَاطِلٌ؛ لِأَنَّهُ لَوْ كَانَ قِيَاسُ النِّكَاحِ عَلَى الْمُرَاجَعَةِ حَقًّا لَوَجَبَ أَنْ يَقُولُوا: كَمَا جَازَتْ الْمُرَاجَعَةُ بِغَيْرِ إذْنِهَا وَلَا إذْنِ وَلِيِّهَا، وَبِغَيْرِ صَدَاقٍ: وَجَبَ أَنْ يَجُوزَ النِّكَاحُ بِغَيْرِ إذْنِهَا وَلَا إذْنِ وَلِيِّهَا وَبِغَيْرِ صَدَاقٍ، وَهُمْ لَا يَقُولُونَهُ، وَهَذِهِ صِفَةُ قِيَاسَاتِهِمْ السَّخِيفَةِ؟ وَأَمَّا

L14117 They argued: Just as it is permissible for him to reconcile with the divorced woman during her waiting period, should it not likewise be permissible for him to initiate a new marriage? We responded: This is invalid, for if the analogy between marriage and reconciliation were valid, they would necessarily have to say: Just as reconciliation is permissible without her consent or her guardian's consent, and without mahr, marriage should likewise be permissible without her consent, her guardian's consent, or mahr - yet they do not hold this view. Does this not characterize their absurd analogies? As

for the Malikis, they permitted the marriage of a gifted woman when mahr was specified, prohibited the marriage of a pilgrim in the state of consecration, and continue to assert regarding divine commands: "This is merely recommended."

L14118 As for their [the scholars'] interpretation of the Prophet's saying—peace be upon him—"None of you should urinate in stagnant water and then perform ablution from it," they assert that it is merely a recommendation (nadb).

L14119 Why, then, did they not say here regarding the Prophet's statement (peace be upon him), "A pilgrim in sacred state may neither marry nor be married": is this a recommendable act? Yet they proceed only upon what is superficially apparent—and success comes solely from Allah, the Most High.

[An Issue Regarding the Drinking of Zamzam Water]

L14120–14121

L14122 Issue:

L14123 It is recommended to drink Zamzam water abundantly, to draw it with one's own hand, and to partake of the water provided by its custodians. This is based on what was transmitted in Ṣaḥīḥ Muslim: Isḥāq ibn Rāhawayh narrated to us from Ḥātim ibn Ismāʿīl, the Medinan, from Jaʿfar ibn Muḥammad, from his father, from Jābir ibn ʿAbdullāh, who recounted the ḥadīth of the Prophet's Hajj (peace be upon him). He said: "Then the Messenger of Allah (peace be upon him) mounted his ride and departed after performing the ṭawāf of the House. He prayed the noon prayer in Mecca and approached Banū ʿAbd al-Muṭṭalib, who were providing Zamzam water. He said: 'Draw water, Banū ʿAbd al-Muṭṭalib! Were it not that people might overwhelm you in your custodianship, I would draw it alongside you.' They handed him a bucket, and he drank from it."[15]

L14124 Through the chain in Muslim: Muhammad ibn al-Minhal al-Darir narrated to us, Yazid ibn Zurayʿ narrated to us from Humaid al-Tawil from Bakr ibn Abdullah al-Muzani that he heard Ibn Abbas say: "The Prophet (peace and

[15] **Hadith references (L14123):** Sunan Abi Dawud 1905; Sahih Muslim 1218a; Mishkat al-Masabih 2555.

الْمَالِكِيُّونَ فَإِنَّهُمْ أَجَازُوا نِكَاحَ الْمَوْهُوبَةِ إِذَا ذُكِرَ فِيهِ صَدَاقٌ، وَمَنَعُوا مِنْ نِكَاحِ الْمُحْرِمِ، وَهُمْ لَا يَزَالُونَ يَقُولُونَ فِي الْأَوَامِرِ: هَذَا نَدْبٌ.

كَقَوْلِهِمْ فِي قَوْلِهِ - عَلَيْهِ السَّلَامُ - «لَا يَبُولَنَّ أَحَدُكُمْ فِي الْمَاءِ الدَّائِمِ، ثُمَّ يَتَوَضَّأُ مِنْهُ» إِنَّمَا هُوَ نَدْبٌ.

فَهَلَّا قَالُوا: هَاهُنَا فِي قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «لَا يَنْكِحُ الْمُحْرِمُ وَلَا يُنْكَحُ» : هَذَا نَدْبٌ؟ وَلَكِنَّهُمْ إِنَّمَا يَجْرُونَ عَلَى مَا سَنَحَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ شُرْبِ مَاءِ زَمْزَمَ]

مَسْأَلَةٌ:

وَيُسْتَحَبُّ الْإِكْثَارُ مِنْ شُرْبِ مَاءِ زَمْزَمَ، وَأَنْ يَسْتَقِيَ بِيَدِهِ مِنْهَا، وَأَنْ يَشْرَبَ مِنْ نَبِيذِ السِّقَايَةِ -: لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا إِسْحَاقُ بْنُ رَاهَوَيْهِ عَنْ حَاتِمِ بْنِ إِسْمَاعِيلَ الْمَدَنِيِّ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ فَذَكَرَ حَدِيثَ حَجَّةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «ثُمَّ رَكِبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَفَاضَ بِالْبَيْتِ فَصَلَّى بِمَكَّةَ الظُّهْرَ وَأَتَى بَنِي عَبْدِ الْمُطَّلِبِ يَسْقُونَ عَلَى زَمْزَمَ فَقَالَ: انْزِعُوا بَنِي عَبْدِ الْمُطَّلِبِ فَلَوْلَا أَنْ يَغْلِبَكُمْ النَّاسُ عَلَى سِقَايَتِكُمْ لَنَزَعْتُ مَعَكُمْ فَنَاوَلُوهُ دَلْوًا فَشَرِبَ مِنْهُ» .

وَمِنْ طَرِيقِ مُسْلِمٍ نَا مُحَمَّدُ بْنُ الْمِنْهَالِ الضَّرِيرُ نَا يَزِيدُ بْنُ زُرَيْعٍ عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيِّ أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ يَقُولُ: «قَدِمَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى رَاحِلَتِهِ وَخَلْفَهُ أُسَامَةُ فَاسْتَسْقَى فَأَتَيْنَاهُ بِإِنَاءٍ مِنْ نَبِيذٍ فَشَرِبَ وَسَقَى فَضْلَهُ أُسَامَةَ

blessings of Allah be upon him) arrived on his mount with Usama behind him. He requested water, so we brought him a vessel of nabidh. He drank and gave the remainder to Usama, saying: 'You have done well and excelled. Do thus.' Ibn Abbas said: 'We do not wish to change anything the Messenger of Allah (peace and blessings of Allah be upon him) commanded.'"

L14125 And through the chain of Abd al-Razzaq, who narrated to us from Ma'mar and Sufyan ibn Uyaynah, from Abdullah ibn Tawus, from his father—and he [Tawus] mentioned the matter of the Prophet's (peace be upon him) drinking from Zamzam water and from the drink of the water provision of Abbas, the aforementioned nabidh. Tawus said: "It is from the completion of Hajj."

L14126 Abu Muhammad said: Allah said: "In the Messenger of Allah there is indeed an excellent model for you" [al-Aḥzāb: 21].[16]

L14127 A legal issue: When one misses the congregational prayer behind the Imam at Arafah or Muzdalifah.

L14128 871: Issue

L14129 Whoever misses the prayer with the Imam at 'Arafah or Muzdalifah during Maghrib and 'Ishā', he is obligated to combine the two prayers, just as if he had prayed the two prayers with the Imam at 'Arafah.

L14130 If one joins the Imam during the ʿAṣr prayer, it becomes obligatory for him to enter [the prayer] with him and intend Ẓuhr for it. Nothing else suffices him.

L14131–14132 When the Imam performs the Taslim, the worshiper should complete their prayer if any part of it remains unfinished, then pray the ʿAṣr prayer in congregation if possible; otherwise, they should pray it individually.

L14133 Similarly, if he finds the Imam at Muzdalifah during the later Isha prayer

[16] **Qur'an references (L14126):** Qur'an 33:21 (Al-Ahzab).

وَقَالَ: أَحْسَنْتُمْ وَأَجْمَلْتُمْ هَكَذَا فَاصْنَعُوا، قَالَ ابْنُ عَبَّاسٍ: فَنَحْنُ لَا نُرِيدُ أَنْ نُغَيِّرَ مَا أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا مَعْمَرٌ وَسُفْيَانَ بْنِ عُيَيْنَةَ «عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ فَذَكَرَ أَمْرَ شُرْبِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ مَاءِ زَمْزَمَ وَمِنْ شَرَابِ سِقَايَةِ الْعَبَّاسِ النَّبِيذِ الْمَذْكُورِ فَقَالَ طَاوُسٍ: هُوَ مِنْ تَمَامِ الْحَجِّ» .

قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ تَعَالَى: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] .

[مَسْأَلَةٌ فَائِتَهُ الصَّلَاةُ مَعَ الْإِمَامِ بِعَرَفَةَ أَوْ مُزْدَلِفَةَ]

٨٧١ - مَسْأَلَةٌ:

وَمَنْ فَاتَتْهُ الصَّلَاةُ مَعَ الْإِمَامِ بِعَرَفَةَ أَوْ مُزْدَلِفَةَ فِي الْمَغْرِبِ وَالْعِشَاءِ فَفَرْضٌ عَلَيْهِ أَنْ يَجْمَعَ بَيْنَهُمَا كَمَا لَوْ صَلَّاهُمَا مَعَ الْإِمَامِ بِعَرَفَةَ.

فَلَوْ أَدْرَكَ الْإِمَامَ فِي الْعَصْرِ لَزِمَهُ أَنْ يَدْخُلَ مَعَهُ وَيَنْوِيَ بِهَا الظُّهْرَ وَلَا بُدَّ، لَا يُجْزِيه غَيْرُ ذَلِكَ.

فَإِذَا سَلَّمَ الْإِمَامُ أَتَمَّ صَلَاتَهُ إِنْ كَانَ بَقِيَ عَلَيْهِ مِنْهَا شَيْءٌ، ثُمَّ صَلَّى الْعَصْرَ إِنْ أَمْكَنَهُ فِي جَمَاعَةٍ وَإِلَّا فَوَحْدَهُ.

وَكَذَلِكَ لَوْ وَجَدَ الْإِمَامَ بِمُزْدَلِفَةَ فِي الْعِشَاءِ الْآخِرَةِ فَلْيَدْخُلْ مَعَهُ وَلْيَنْوِ بِهَا الْمَغْرِبَ وَلَا بُدَّ، لَا يُجْزِئُهُ غَيْرُ ذَلِكَ.

time, he must join him and include the intention for Maghrib in it; no other action is valid.

أَمَّا الْجَمْعُ فَإِنَّهُ حُكْمُ هَذِهِ الصَّلَوَاتِ هُنَالِكَ فِي ذَلِكَ الْيَوْمِ، وَتِلْكَ اللَّيْلَةِ بِالنَّصِّ، وَالْإِجْمَاعِ فَلَا يَجُوزُ لَهُ خِلَافُ ذَلِكَ.

L14134 As for combining prayers, the ruling regarding these prayers in that location during that day and that night is established by scriptural text and scholarly consensus. Therefore, it is not permissible for anyone to act contrary to this ruling.

وَأَمَّا تَقْدِيمُ الظُّهْرِ وَالْمَغْرِبِ فَلِأَنَّهُمَا قَبْلَ الْعَصْرِ وَالْعَتَمَةِ وَلَا يَحِلُّ تَقْدِيمُ مُؤَخَّرَةٍ مِنْهُمَا وَلَا تَأْخِيرُ مُقَدَّمَةٍ، وَقَدْ ذَكَرْنَا فِي كِتَابِ الصَّلَاةِ جَوَازَ اخْتِلَافِ نِيَّةِ الْإِمَامِ وَالْمَأْمُومِ.

L14135 As for advancing the Ẓuhr and Maghrib prayers, this is because they precede the ʿAṣr and ʿIshāʾ prayers. It is impermissible to advance a delayed prayer into the time of the former or to delay an advanced prayer into the time of the latter. We have mentioned in the Chapter on Prayer the permissibility of differing intentions between the Imam and the congregant.

فَإِنْ أَدْرَكَهَا مِنْ أَوَّلِهَا فَلْيَقْعُدْ فِي الثَّالِثَةِ وَلَا يَقُمْ حَتَّى يَقَعَ الْإِمَامُ، فَإِذَا سَلَّمَ الْإِمَامُ سَلَّمَ مَعَهُ، وَإِنْ أَدْرَكَ مَعَهُ ثَلَاثَ رَكَعَاتٍ فَلْيَقُمْ فِي الثَّانِيَةِ بِقِيَامِ الْإِمَامِ وَلَا بُدَّ، وَلْيَقْعُدْ فِي الْأُولَى بِقُعُودِهِ وَلْيُسَلِّمْ بِسَلَامِهِ.

L14136 If he catches the prayer from its beginning, he should sit in the third rak'ah and not rise until the Imam has settled into sitting. When the Imam gives the salutation, he should give the salutation with him. If he joins the Imam for three rak'ahs of a four-rak'ah prayer, he must necessarily stand for his own second rak'ah when the Imam stands, sit during his first sitting when the Imam sits, and give the salutation with the Imam's salutation.

أَمَّا قُعُودُهُ فِي الثَّالِثَةِ، فَلِأَنَّهُ لَوْ قَامَ لَصَلَّى الْمَغْرِبَ أَرْبَعًا عَامِدًا، وَهَذَا حَرَامٌ وَفَسَادٌ لِلصَّلَاةِ وَكُفْرٌ مِمَّنْ دَانَ بِهِ.

L14137 As for his sitting in the third [rakʿah], it is because if he were to stand, he would intentionally pray Maghrib as four [rakʿahs]. This is forbidden, a nullification of the prayer, and disbelief (kufr) by whoever professes it.

وَأَمَّا إِنْ أَدْرَكَ ثَلَاثًا فَقَطْ فَقُعُودُهُ فِي الْأُولَى لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّمَا جُعِلَ الْإِمَامُ لِيُؤْتَمَّ بِهِ» وَلَا خِلَافَ فِي نَصٍّ وَلَا بَيْنَ الْأُمَّةِ فِي أَنَّ الْمَأْمُومَ إِنْ وَجَدَ الْإِمَامَ جَالِسًا جَلَسَ مَعَهُ، وَكَذَلِكَ مَنْ أَدْرَكَ رَكْعَةً مِنْ أَيِّ الصَّلَوَاتِ كَانَتْ فَإِنَّهُ يَجْلِسُ وَلَوْ كَانَ مُنْفَرِدًا أَوْ إِمَامًا لَقَامَ.

L14138 As for one who catches only three rakʿahs, his sitting in the first sitting position is based on the Prophet's statement—peace and blessings of Allah be upon him—"The Imam is appointed to be followed." There is no disagreement in any explicit textual source or within the Ummah that if the follower finds the Imam sitting, he sits with him. Similarly, whoever joins the prayer in one rakʿah of any prayer sits [with the Imam]—but if he were praying alone or leading as Imam, he would stand.

وَأَمَّا قِيَامُهُ مِنْ الثَّانِيَةِ، فَلِلنَّصِّ الْوَارِدِ وَالْإِجْمَاعِ فِي أَنَّ الْإِمَامَ إِنْ قَامَ مِنْ اثْنَتَيْنِ سَاهِيًا فَفَرْضٌ عَلَى الْمَأْمُومِينَ اتِّبَاعُهُ فِي ذَلِكَ.

L14139 As for his standing up from the second unit, this ruling is based on the transmitted text and consensus, which state that if the Imam rises from two units due to forgetfulness, it is obligatory upon the congregation to follow him in standing for that action.

L14140 All of this applies if the Imam completes it or the follower is among those who complete it; otherwise, no.

هَذَا كُلُّهُ إِنْ أَتَمَّ الْإِمَامُ أَوْ كَانَ الْمَأْمُومُ مِمَّنْ يُتِمُّ وَإِلَّا فَلَا.

L14141 When he completes the Maghrib prayer, he must pray the ‘atamah prayer in congregation or alone if he cannot find a congregation. And success is from Allah, the Most High.

فَإِذَا أَتَمَّ صَلَاةَ الْمَغْرِبِ صَلَّى الْعَتَمَةَ فِي جَمَاعَةٍ أَوْ وَحْدَهُ إِنْ لَمْ يَجِدْ جَمَاعَةً وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L14142 **Case: He was in Tawaf when the iqamah for the prayer was established.**

[مَسْأَلَةٌ كَانَ فِي طَوَافٍ فَأُقِيمَتْ الصَّلَاةُ]

L14143 872 - Issue:

٨٧٢ - مَسْأَلَةٌ:

L14144 If someone is performing an obligatory or voluntary *ṭawāf* and the *iqāmah* is called, a funeral prayer occurs, or he feels the need to relieve himself, he should pray, leave to attend to his need, then resume and complete his *ṭawāf*.

وَمَنْ كَانَ فِي طَوَافِ فَرْضٍ أَوْ تَطَوُّعٍ فَأُقِيمَتْ الصَّلَاةُ أَوْ عَرَضَتْ لَهُ صَلَاةُ جِنَازَةٍ، أَوْ عَرَضَ لَهُ بَوْلٌ، أَوْ حَاجَةٌ، فَلْيُصَلِّ وَلْيَخْرُجْ لِحَاجَتِهِ، ثُمَّ لِيَبْنِ عَلَى طَوَافِهِ وَيُتِمَّهُ.

L14145–14146 Similarly, whoever is afflicted by any of the things we have mentioned during his Sa’i between Safa and Marwah, and there is no difference—this is the opinion of Abu Hanifah and Al-Shafi’i.

وَكَذَلِكَ مَنْ عَرَضَ لَهُ شَيْءٌ مِمَّا ذَكَرْنَا فِي سَعْيِهِ بَيْنَ الصَّفَا وَالْمَرْوَةِ وَلَا فَرْقَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ.

L14147 Mālik said: As for the obligatory circumambulation, one must begin except only in the case of the prescribed prayer, for one prays it and then resumes. As for voluntary circumambulation, one resumes in all such cases.

وَقَالَ مَالِكٌ: أَمَّا فِي الطَّوَافِ الْوَاجِبِ فَيَبْتَدِئُ وَلَا بُدَّ إلَّا فِي الصَّلَاةِ الْمَكْتُوبَةِ فَقَطْ، فَإِنَّهُ يُصَلِّيهَا ثُمَّ يَبْنِي؛ وَأَمَّا فِي طَوَافِ التَّطَوُّعِ فَيَبْنِي فِي كُلِّ ذَلِكَ.

L14148 Abu Muhammad said: This categorization has absolutely no proof of its validity whatsoever. No textual evidence or consensus exists obligating the restart of Tawaf and Sa‘i if interrupted for a legitimate need, nor invalidating the circuits and Sa‘i already performed. Allah the Exalted said: “And do not nullify your deeds” [47:33]. He only prescribed Tawaf and Sa‘i as seven circuits, and no text mandates their uninterrupted continuity. This is solely an action of the Prophet—peace and blessings be upon him. As for one who interrupts them frivolously, there is no validity to the deeds of one who acts frivolously, and they do not suffice him. From Muhammad ibn Sa‘id ibn Nubat, from Ahmad ibn ‘Abd al-Basir, from Qasim ibn Asbagh, from Muhammad ibn ‘Abd al-Salam al-Khushani, from Muhammad ibn al-Muthanna, from Mu’ammal ibn Isma‘il al-Himyari, from Sufyan al-Thawri,

قَالَ أَبُو مُحَمَّدٍ: هَذَا تَقْسِيمٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ أَصْلًا، وَلَمْ يَأْتِ نَصٌّ وَلَا إجْمَاعٌ عَلَى وُجُوبِ ابْتِدَاءِ الطَّوَافِ وَالسَّعْيِ إنْ قَطَعَ لِحَاجَةٍ، وَلَا بِإِبْطَالِ مَا طَافَ مِنْ أَشْوَاطِهِ وَسَعَى، وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَلا تُبْطِلُوا أَعْمَالَكُمْ} [محمد: ٣٣] وَإِنَّمَا افْتَرَضَ الطَّوَافَ وَالسَّعْيَ سَبْعًا، وَلَمْ يَأْتِ نَصٌّ بِوُجُوبِ اتِّصَالِهِ وَإِنَّمَا هُوَ عَمَلٌ مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، وَأَمَّا مَنْ فَعَلَ ذَلِكَ عَبَثًا فَلَا عَمَلَ لِعَابِثٍ وَلَا يُجْزِئُهُ -: نَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نَا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نَا قَاسِمُ بْنُ أَصْبَغَ نَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نَا

from Jamil ibn Zayd, who said: I saw Ibn ʿUmar perform three circuits on a hot day. When overcome by heat, he entered the Hijr to rest, then emerged and resumed his Tawaf from where he had left off.[17]

مُحَمَّدُ بْنُ الْمُثَنَّى نَا مُؤَمَّلُ بْنُ إِسْمَاعِيلَ الْحِمْيَرِيُّ نَا سُفْيَانُ الثَّوْرِيُّ نَا جَمِيلُ بْنُ زَيْدٍ قَالَ: رَأَيْت ابْنَ عُمَرَ طَافَ فِي يَوْمٍ حَارٍّ ثَلَاثَةَ أَطْوَافٍ، ثُمَّ أَصَابَهُ حَرٌّ فَدَخَلَ الْحِجْرَ فَجَلَسَ، ثُمَّ خَرَجَ فَبَنَى عَلَى مَا كَانَ طَافَ.

L14149 From ʿAṭāʾ: There is no harm in a person sitting during Ṭawāf to rest. As for one who encounters a need during his Ṭawāf, he may leave to fulfill it, then continue from where he had performed Ṭawāf—and with Allah, the Exalted, is all success.

وَعَنْ عَطَاءٍ: لَا بَأْسَ بِأَنْ يَجْلِسَ الْإِنْسَانُ فِي الطَّوَافِ لِيَسْتَرِيحَ وَفِيمَنْ عَرَضَتْ لَهُ حَاجَةٌ فِي طَوَافِهِ لِيَذْهَبَ وَلِيَقْضِ حَاجَتَهُ، ثُمَّ يَبْنِي عَلَى مَا كَانَ طَافَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَنْ عَرَضَ لَهُ مَا يَمْنَعُهُ مِنْ إتْمَامِ حَجِّهِ أَوْ عُمْرَتِهِ]

L14150 **Issue: One who encounters something that prevents the completion of his Ḥajj or ʿUmrah.**

٨٧٣ - مَسْأَلَةٌ:

L14151 873: Issue:

وَأَمَّا الْإِحْصَارُ فَإِنَّ كُلَّ مَنْ عَرَضَ لَهُ مَا يَمْنَعُهُ مِنْ إتْمَامِ حَجِّهِ أَوْ عُمْرَتِهِ، قَارِنًا كَانَ، أَوْ مُتَمَتِّعًا، مِنْ عَدُوٍّ، أَوْ مَرَضٍ، أَوْ كَسْرٍ، أَوْ خَطَأِ طَرِيقٍ، أَوْ خَطَأٍ فِي رُؤْيَةِ الْهِلَالِ، أَوْ سِجْنٍ، أَوْ أَيِّ شَيْءٍ كَانَ: فَهُوَ مُحْصِرٌ.

L14152 As for al-Iḥṣār, indeed anyone prevented from completing his Hajj or Umrah—whether as a Qārin or Mutamattiʿ—by any obstacle such as an enemy, illness, fracture, route error, mistaken crescent sighting, imprisonment, or any impediment whatsoever becomes a muḥṣir.

فَإِنْ كَانَ اشْتَرَطَ عِنْدَ إحْرَامِهِ كَمَا قَدَّمْنَا أَنَّ مَحَلَّهُ حَيْثُ حَبَسَهُ اللَّهُ عَزَّ وَجَلَّ فَلْيَحِلَّ مِنْ إحْرَامِهِ وَلَا شَيْءَ عَلَيْهِ، سَوَاءٌ شَرَعَ فِي عَمَلِ الْحَجِّ، أَوْ الْعُمْرَةِ، أَوْ لَمْ يَشْرَعْ بَعْدُ، قَرِيبًا كَانَ أَوْ بَعِيدًا، مَضَى لَهُ أَكْثَرُ فَرْضِهِمَا أَوْ أَقَلُّهُ، كُلُّ ذَلِكَ سَوَاءٌ وَلَا هَدْيَ فِي ذَلِكَ وَلَا غَيْرِهِ، وَلَا قَضَاءَ عَلَيْهِ فِي شَيْءٍ مِنْ ذَلِكَ إلَّا أَنْ يَكُونَ لَمْ يَحُجَّ قَطُّ وَلَا اعْتَمَرَ، فَعَلَيْهِ أَنْ يَحُجَّ وَيَعْتَمِرَ وَلَا بُدَّ.

L14153 If he stipulated at the time of entering iḥrām—as we earlier established that its place is where Allah the Exalted has detained him—he must exit his iḥrām with no obligation upon him. This applies equally whether he had begun performing the acts of Ḥajj or ʿUmrah or not yet started, whether near or far, whether most or few of their obligatory acts had been completed. All these scenarios are equivalent, requiring no sacrificial offering nor anything else, nor is he required to make up anything from these—except if he has never performed Ḥajj or ʿUmrah at all, in which case he must necessarily perform both Ḥajj and ʿUmrah.

فَإِنْ كَانَ لَمْ يَشْتَرِطْ كَمَا ذَكَرْنَا فَإِنَّهُ يَحِلُّ أَيْضًا كَمَا ذَكَرْنَا سَوَاءٌ سَوَاءٌ وَلَا فَرْقَ، وَعَلَيْهِ هَدْيٌ وَلَا بُدَّ، كَمَا قُلْنَا فِي هَدْيِ الْمُتْعَةِ سَوَاءٌ سَوَاءٌ إلَّا أَنَّهُ لَا يُعَوَّضُ مِنْ هَذَا الْهَدْيِ

L14154–14156 If he did not stipulate as we mentioned, then it becomes permissible as stated, exactly the same, exactly the same, with no difference whatsoever,

[17] **Qur'an references (L14148):** Qur'an 47:33 (Muhammad).

and he remains obligated. The sacrificial offering is necessarily required, as we previously explained regarding the sacrificial offering for Tamattuʿ—entirely the same—except that neither fasting nor any substitute can compensate for this offering. Whoever cannot afford it retains this as an outstanding obligation until they acquire it. No compensatory act is required unless one has never performed Hajj or ʿUmrah at all; in that case, they must perform Hajj and ʿUmrah for the first time.

صَوْمٌ وَلَا غَيْرُهُ، فَمَنْ لَمْ يَجِدْهُ فَهُوَ عَلَيْهِ دَيْنٌ حَتَّى يَجِدَهُ، وَلَا قَضَاءَ عَلَيْهِ إِلَّا إِنْ كَانَ لَمْ يَحُجَّ قَطُّ وَلَا اعْتَمَرَ، فَعَلَيْهِ أَنْ يَحُجَّ وَيَعْتَمِرَ.

L14157 The Companions and those after them differed concerning al-ihsar. It has been narrated to us through the narration of Waki‘, Sufyan al-Thawri from Musa ibn ‘Uqbah from Nafi‘ from Ibn ‘Umar, who said: “There is no ihsar except by an enemy.”

وَاخْتَلَفَ الصَّحَابَةُ وَمَنْ بَعْدَهُمْ فِي الْإِحْصَارِ -: فَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ: نَا سُفْيَانُ الثَّوْرِيُّ عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ، قَالَ: لَا إِحْصَارَ إِلَّا مِنْ عَدُوٍّ.

L14158 From the chain of Muslim: Ishaq ibn Ibrahim—that is, Ibn Rahawayh—reported to us; Isa ibn Yunus reported to us from Zakariyya—that is, Ibn Abi Za’ida—from Abu Ishaq al-Sabi’i, from Al-Bara’ ibn Azib, who said: “When the Prophet—peace and blessings of Allah be upon him—was prevented from entering Mecca near the Kaaba, its people reconciled with him on the condition that he would enter it and remain for three days, entering only with sheathed weapons—the sword and its scabbard. He would not take any of its inhabitants with him when departing, nor prevent any of his companions from choosing to stay there.” Thus, Al-Bara’ termed the enemy’s prevention as iḥṣār (detainment).

وَمِنْ طَرِيقِ مُسْلِمٍ نَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - أَنَا عِيسَى بْنُ يُونُسَ نَا زَكَرِيَّا هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنِ الْبَرَاءِ بْنِ عَازِبٍ، قَالَ: «لَمَّا أُحْصِرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِنْدَ الْبَيْتِ صَالَحَهُ أَهْلُ مَكَّةَ عَلَى أَنْ يَدْخُلَهَا فَيُقِيمَ بِهَا ثَلَاثًا وَلَا يَدْخُلَهَا إِلَّا بِجُلُبَّانِ السِّلَاحِ السَّيْفِ وَقِرَابِهِ، وَلَا يَخْرُجُ بِأَحَدٍ مَعَهُ مِنْ أَهْلِهَا، وَلَا يَمْنَعُ أَحَدًا يَمْكُثُ بِهَا مِمَّنْ كَانَ مَعَهُ» فَسَمَّى الْبَرَاءُ مَنْعَ الْعَدُوِّ: إِحْصَارًا.

L14159 It has been narrated to us from Ibrāhīm al-Nakhaʿī that prevention [from completing the pilgrimage] (al-iḥṣār) can result from fear, illness, or physical incapacitation. Through Ibn Jurayj’s transmission from ʿAṭāʾ, it is stated: Al-iḥṣār applies to anything that prevents one [from continuing the rites].

وَرُوِّينَا عَنْ إِبْرَاهِيمَ النَّخَعِيِّ: الْإِحْصَارُ مِنَ الْخَوْفِ وَالْمَرَضِ، وَالْكَسْرِ؛ وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: الْإِحْصَارُ مِنْ كُلِّ شَيْءٍ يَحْبِسُهُ.

L14160 As for al-ḥaṣr (confinement): It has been narrated to us from Mujāhid, from Ibn Masʿūd, that he said: “Confinement, illness, fracture, and the like.”

وَأَمَّا الْحَصْرُ -: فَرُوِّينَا عَنْ مُجَاهِدٍ عَنِ ابْنِ مَسْعُودٍ أَنَّهُ قَالَ: الْحَصْرُ، وَالْمَرَضُ، وَالْكَسْرُ، وَشِبْهُهُ.

L14161 And through the chain of Ibn Jurayj from Ibn Tāwūs from his father from Ibn ʿAbbās, who said: There is no preclusion except for someone prevented by an enemy.

وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنِ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنِ ابْنِ عَبَّاسٍ قَالَ: لَا حَصْرَ إِلَّا مَنْ حَبَسَهُ عَدُوٌّ.

L14162 Tawus said: “There is no restriction now; the restriction has indeed ended.”

وَعَنْ طَاوُسٍ قَالَ: لَا حَصْرَ الْآنَ، قَدْ ذَهَبَ الْحَصْرُ.

L14163 And from ʿAlqamah: Al-ḥaṣr is fear and sickness.

وَعَنْ عَلْقَمَةَ: الْحَصْرُ الْخَوْفُ وَالْمَرَضُ.

L14164 From Hisham ibn Urwah, from his father, who said: Hindrance refers to what detains a person, such as illness, fear, or seeking a lost item.

وَعَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: الْحَصْرُ مَا حَبَسَهُ مِنْ حَابِسٍ مِنْ وَجَعٍ، أَوْ خَوْفٍ، أَوْ ابْتِغَاءِ ضَالَّةٍ.

L14165 From Ma’mar, on the authority of al-Zuhri, who said: Al-ḥaṣr is what prevents him due to pain or an enemy until Hajj becomes impossible for him.

وَعَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: الْحَصْرُ مَا مَنَعَهُ مِنْ وَجَعٍ، أَوْ عَدُوٍّ حَتَّى يَفُوتَهُ الْحَجُّ.

L14166–14167 A group of scholars differentiated between prevention (al-iḥṣār) and detention (al-ḥaṣr). It has been narrated to us from al-Kisāʾī that he said: “If it is due to illness, the term used is ’he was prevented’ (uḥṣira), making him muḥṣir (one prevented). As for what pertains to detention, the term used is ḥaṣr.”

وَفَرَّقَ قَوْمٌ بَيْنَ الْإِحْصَارِ، وَالْحَصْرِ -: فَرُوِّينَا عَنْ الْكِسَائِيِّ قَالَ: مَا كَانَ مِنْ الْمَرَضِ فَإِنَّهُ يُقَالُ فِيهِ: أُحْصِرَ، فَهُوَ مُحْصِرٌ، وَمَا كَانَ مِنْ حَبْسٍ قِيلَ: حَصْرٌ.

L14168 Abū ʿUbayd said: Abū ʿUbaydah stated: Any circumstance involving illness or loss of financial means is described by the term “uḥṣira” (to be prevented), making them “muḥṣir” (a person prevented [from proceeding]). Any circumstance involving detention is termed “ḥaṣr” (confinement) – and this is the opinion of Abū ʿUbayd.

وَقَالَ أَبُو عُبَيْدٍ: قَالَ أَبُو عُبَيْدَةَ: مَا كَانَ مِنْ مَرَضٍ، أَوْ ذَهَابِ نَفَقَةٍ، قِيلَ فِيهِ: أُحْصِرَ، فَهُوَ مُحْصِرٌ، وَمَا كَانَ مِنْ حَبْسٍ قِيلَ: حَصْرٌ - وَبِهِ يَقُولُ أَبُو عُبَيْدٍ.

L14169 Abu Muhammad said: This is meaningless, for the statement of Allah the Exalted constitutes the definitive proof in language and sacred law. Allah the Exalted said: {If you are blockaded, then offer what is readily available of the sacrificial animal} [Al-Baqarah: 196]. This verse was revealed concerning the matter of Al-Ḥudaybiyah when the disbelievers prevented the Messenger of Allah—peace and blessings be upon him—from completing his Umrah. Allah the Exalted designated the enemy’s blockade as _iḥṣār_ [a state of constraint].[18]

قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا مَعْنَى لَهُ، قَوْلُ اللَّهِ تَعَالَى هُوَ الْحُجَّةُ فِي اللُّغَةِ وَالشَّرِيعَةِ قَالَ تَعَالَى: {فَإِنْ أُحْصِرْتُمْ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ} [البقرة: ١٩٦] وَإِنَّمَا نَزَلَتْ هَذِهِ الْآيَةُ فِي أَمْرِ الْحُدَيْبِيَةِ إذْ مَنَعَ الْكُفَّارُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ إتْمَامِ عُمْرَتِهِ، وَسَمَّى اللَّهُ تَعَالَى مَنْعَ الْعَدُوِّ إحْصَارًا.

L14170 Similarly, Al-Barāʾ ibn ʿĀzib, Ibn ʿUmar, and Ibrāhīm al-Nakhaʿī said, stating that they surpassed Abū Ubaydah, Abū Ubayd, and Al-Kisaʾī in linguistic expertise.

وَكَذَلِكَ قَالَ الْبَرَاءُ بْنُ عَازِبٍ، وَابْنُ عُمَرَ، وَإِبْرَاهِيمُ النَّخَعِيُّ - وَهُمْ فِي اللُّغَةِ فَوْقَ أَبِي عُبَيْدَةَ، وَأَبِي عُبَيْدٍ، وَالْكِسَائِيِّ.

[18] **Qur’an references (L14169):** Qur’an 2:196 (Al-Baqarah).

L14171 And He, the Exalted, said: “For the poor who are constrained in the cause of Allah, unable to move about the earth; an ignorant person deems them wealthy due to their self-restraint—you recognize them by their appearance; they do not beg people insistently” [Al-Baqarah: 273].[19]

وَقَالَ تَعَالَى: {لِلْفُقَرَاءِ الَّذِينَ أُحْصِرُوا فِي سَبِيلِ اللَّهِ لا يَسْتَطِيعُونَ ضَرْبًا فِي الأَرْضِ يَحْسَبُهُمُ الْجَاهِلُ أَغْنِيَاءَ مِنَ التَّعَفُّفِ تَعْرِفُهُمْ بِسِيمَاهُمْ لا يَسْأَلُونَ النَّاسَ إِلْحَافًا} [البقرة: ٢٧٣] .

L14172 This is undoubtedly the prevention by the enemy, for undoubtedly the disbelievers prevented the Muhajirun from traveling in the land. The Most High has clarified this in His statement, “in the path of Allah” [Al-Baqarah: 273].[20]

فَهَذَا هُوَ مَنْعُ الْعَدُوِّ بِلَا شَكٍّ، لِأَنَّ الْمُهَاجِرِينَ إِنَّمَا مَنَعَهُمْ مِنَ الضَّرْبِ فِي الْأَرْضِ الْكُفَّارُ بِلَا شَكٍّ، وَبَيَّنَ ذَلِكَ تَعَالَى بِقَوْلِهِ {فِي سَبِيلِ اللَّهِ} [البقرة: ٢٧٣] .

L14173 It has been established that “al-ihsar” and “al-hasr” share a single meaning, being two terms applicable to every obstacle - whether an enemy, illness, or anything else. Scholars differed regarding the ruling for the prevented person (muhsir) who is obstructed from completing their Hajj or Umrah. It has been narrated to us from Ibn Mas’ud that he issued a legal verdict concerning a pilgrim in ihram for Hajj who fell ill and could not proceed: he must send a sacrificial animal, and when it reaches its designated place, he may exit the state of ihrām. If he performs Umrah from his current location after recovery, then performs Hajj in the following year, no sacrifice is required. But if he does not visit the Sacred House until performing Hajj and combines both as a single journey, he must offer another sacrifice: either two journeys with one sacrifice or one journey with two sacrifices. This narration from him has an interrupted chain of transmission and is therefore unreliable.

فَصَحَّ أَنَّ الْإِحْصَارَ، وَالْحَصْرَ بِمَعْنًى وَاحِدٍ، وَأَنَّهُمَا اسْمَانِ يَقَعَانِ عَلَى كُلِّ مَانِعٍ مِنْ عَدُوٍّ، أَوْ مَرَضٍ، أَوْ غَيْرِ ذَلِكَ، أَيِّ شَيْءٍ كَانَ ثُمَّ اخْتَلَفُوا فِي حُكْمِ الْمُحْصِرِ الْمَمْنُوعِ مِنْ إِتْمَامِ حَجِّهِ، أَوْ عُمْرَتِهِ. فَرُوِّينَا عَنِ ابْنِ مَسْعُودٍ: أَنَّهُ أَفْتَى فِي مُحْرِمٍ بِحَجٍّ مَرِضَ فَلَمْ يَقْدِرْ عَلَى النُّهُوضِ: أَنَّهُ يَبْعَثُ بِهَدْيٍ، فَإِذَا بَلَغَ مَحَلَّهُ حَلَّ؛ فَإِنْ اعْتَمَرَ مِنْ وَجْهِهِ ذَلِكَ إِذَا بَرَأَ، ثُمَّ حَجَّ مِنْ قَابِلٍ فَلَيْسَ عَلَيْهِ هَدْيٌ، فَإِنْ لَمْ يَزُرِ الْبَيْتَ حَتَّى يَحُجَّ وَيَجْعَلَهُمَا سَفَرًا وَاحِدًا فَعَلَيْهِ هَدْيٌ آخَرُ: سَفَرَانِ وَهَدْيٌ أَوْ هَدْيَانِ وَسَفَرٌ - وَهَذَا عَنْهُ مُنْقَطِعٌ لَا يَصِحُّ.

L14174 It has been authentically reported that he issued a fatwa regarding a pilgrim in ihram for Umrah who was bitten and could not proceed further: he should dispatch a sacrificial animal and designate a meeting point with his companions. When the sacrificial animal reaches the Haram, he is released from ihram.

وَصَحَّ عَنْهُ: أَنَّهُ أَفْتَى فِي مُحْرِمٍ بِعُمْرَةٍ لُدِغَ فَلَمْ يَقْدِرْ عَلَى النُّفُوذِ: أَنَّهُ يَبْعَثُ بِهَدْيٍ وَيُوَاعِدُ أَصْحَابَهُ، فَإِذَا بَلَغَ الْهَدْيُ أَحَلَّ.

L14175–14176 It has also been authentically reported from him that he issued a legal ruling regarding a sick person in the state of ritual consecration (ihram) who could not proceed: that a sacrificial camel should be slaughtered on his behalf, then

وَصَحَّ عَنْهُ أَيْضًا: أَنَّهُ أَفْتَى فِي مَرِيضٍ مُحْرِمٍ لَا يَقْدِرُ عَلَى النُّفُوذِ: بِأَنْ يُنْحَرَ عَنْهُ بَدَنَةٌ، ثُمَّ لِيُهِلَّ عَامًا قَابِلًا بِمِثْلِ إِهْلَالِهِ الَّذِي أَهَلَّ بِهِ.

[19] **Qur’an references (L14171):** Qur’an 2:273 (Al-Baqarah).
[20] **Qur’an references (L14172):** Qur’an 2:273 (Al-Baqarah).

he must redeclare ihram the following year in the same manner as his initial declaration.

وَصَحَّ عَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ فِي مُحْرِمٍ بِعُمْرَةٍ مَرِضَ بِوَقْعَةٍ مِنْ رَاحِلَتِهِ، قَالَا جَمِيعًا: لَيْسَ لَهَا وَقْتٌ كَوَقْتِ الْحَجِّ، يَكُونُ عَلَى إحْرَامِهِ حَتَّى يُصَلِّ إلَى الْبَيْتِ - وَعَنْ ابْنِ الزُّبَيْرِ مِثْلُ هَذَا أَيْضًا.

L14177 It is authentically reported from Ibn Abbas and Ibn Umar regarding a person in the state of _ihram_ for Umrah who was injured in a fall from his mount and became ill. They both said: "There is no fixed time for it [Umrah] like the time of Hajj. He must remain in his state of _ihram_ until he performs the prayer at the House." A similar statement was also reported from Ibn al-Zubayr.

وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ فِيمَنْ أُحْصِرَ: يَبْعَثُ بِهَدْيِهِ فَإِذَا نَحَرَ فَقَدْ حَلَّ مِنْ كُلِّ شَيْءٍ.

L14178 It has been narrated from Ibn Abbas concerning one who is prevented from completing the pilgrimage: he should send forth his sacrificial animal to be slaughtered, and once it has been ritually slaughtered, he is released from all restrictions [of the consecrated state].

وَرُوِّينَا مِنْ طَرِيقِ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ قِيلَ لَهُ: لَا يَضُرُّكَ أَنْ لَا تَحُجَّ الْعَامَ فَإِنَّا نَخْشَى أَنْ يَكُونَ بَيْنَ النَّاسِ قِتَالٌ يُحَالُ بَيْنَكَ وَبَيْنَ الْبَيْتِ وَذَلِكَ حِينَ نَزَلَ الْحَجَّاجُ بِابْنِ الزُّبَيْرِ فَقَالَ ابْنُ عُمَرَ: إنْ حِيلَ بَيْنِي وَبَيْنَهُ فَعَلْت كَمَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَا مَعَهُ حِينَ حَالَتْ كُفَّارُ قُرَيْشٍ بَيْنَهُ وَبَيْنَ الْبَيْتِ: أُشْهِدُكُمْ أَنِّي قَدْ أَوْجَبْت عُمْرَةً، ثُمَّ قَالَ: مَا أَمْرُهُمَا إلَّا وَاحِدٌ إنْ حِيلَ بَيْنِي وَبَيْنَ الْعُمْرَةِ حِيلَ بَيْنِي وَبَيْنَ الْحَجِّ: أُشْهِدُكُمْ أَنِّي قَدْ أَوْجَبْت حَجَّةً مَعَ عُمْرَتِي.

L14179 It has been reported to us through the chain of 'Ubayd Allāh ibn 'Umar from Nāfi' from Ibn 'Umar that it was said to him: "It will not harm you if you do not perform Hajj this year, for we fear there may be fighting among the people that would prevent you from reaching the House." This occurred when Al-Ḥajjāj besieged Ibn al-Zubayr. Ibn 'Umar responded: "If I am prevented from reaching it, I will do as the Messenger of Allāh (peace and blessings be upon him) did when the Quraysh polytheists prevented him from reaching the House, and I was with him. I call you to witness that I have made 'Umrah obligatory upon myself." He then said: "The ruling for both is the same. If I am prevented from performing 'Umrah, then I am prevented from performing Hajj. I call you to witness that I have made Hajj obligatory upon myself along with my 'Umrah."

قَالَ أَبُو مُحَمَّدٍ: وَلَمْ يَخْتَلِفْ اثْنَانِ فِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ حَالَ كُفَّارُ قُرَيْشٍ بَيْنَهُ وَبَيْنَ الْعُمْرَةِ - وَكَانَ مُهِلًّا بِعُمْرَةٍ هُوَ وَأَصْحَابُهُ - رَضِيَ اللَّهُ عَنْهُمْ - نَحَرَ وَحَلَّ وَانْصَرَفَ مِنْ الْحُدَيْبِيَةِ.

L14180 Abu Muhammad said: No two scholars have differed regarding the fact that when the disbelievers of Quraysh prevented the Messenger of Allah (may Allah bless him and grant him peace) from performing *Umrah*—while he and his companions (may Allah be pleased with them) had declared the intention for *Umrah*—he slaughtered a sacrificial animal, exited the state of *Ihram*, and departed from Al-Hudaybiyah.

L14181 From the transmission of Mālik, from Yaḥyā ibn Saʿīd al-Anṣārī, from Yaʿqūb ibn Khālid ibn al-Musayyab al-Makhzūmī, from Abū Asmā', the client of

ʿAbdullāh ibn Jaʿfar, that Abū Asmā’ informed him that he was with ʿAbdullāh ibn Jaʿfar when he departed from Medina. They passed by al-Ḥusayn ibn ʿAlī, who was ill at Sukyā. ʿAbdullāh ibn Jaʿfar remained with him until he feared missing his departure; then he left and sent for ʿAlī ibn Abī Ṭālib and Asmā’ bint ʿUmays, who were in Medina. They came to him. Al-Ḥusayn gestured toward his head, so ʿAlī ordered his head to be shaved. Then he performed a ritual sacrifice on his behalf at Sukyā by slaughtering a camel in the prescribed manner.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ يَعْقُوبَ بْنِ خَالِدٍ بْنِ الْمُسَيَّبِ الْمَخْزُومِيِّ عَنْ أَبِي أَسْمَاءَ مَوْلَى عَبْدِ اللَّهِ بْنِ جَعْفَرٍ، " أَنَّهُ أَخْبَرَهُ أَنَّهُ كَانَ مَعَ عَبْدِ اللَّهِ بْنِ جَعْفَرٍ فَخَرَجَ مَعَهُ مِنْ الْمَدِينَةِ فَمَرُّوا عَلَى الْحُسَيْنِ بْنِ عَلِيٍّ وَهُوَ مَرِيضٌ بِالسُّقْيَا فَأَقَامَ عَلَيْهِ عَبْدُ اللَّهِ بْنُ جَعْفَرٍ حَتَّى إذَا خَافَ الْفَوَاتَ خَرَجَ وَبَعَثَ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ وَأَسْمَاءَ بِنْتِ عُمَيْسٍ وَهُمَا بِالْمَدِينَةِ فَقَدِمَا عَلَيْهِ، وَأَنَّ حُسَيْنًا أَشَارَ إلَى رَأْسِهِ فَأَمَرَ عَلِيٌّ بِرَأْسِهِ فَحُلِقَ، ثُمَّ نَسَكَ عَنْهُ بِالسُّقْيَا فَنَحَرَ عَنْهُ بَعِيرًا ".

L14182–14184 And from the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, Yaḥyā ibn Saʿīd al-Anṣārī informed me from Yaʿqūb ibn Khālid, from Abū Asmā’, the client of ʿAbd Allāh ibn Jaʿfar, who said: Verily, al-Ḥusayn ibn ʿAlī set out. He was performing ʿUmrah with ʿUthmān ibn ʿAffān, and when he reached Al-ʿAraj, he fell ill. When they arrived at As-Suqyā according to custom, the first sign of his regaining consciousness was that he gestured toward his head. His head was shaved and a camel was slaughtered on his behalf there.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ أَخْبَرَنِي يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ يَعْقُوبَ بْنِ خَالِدٍ عَنْ أَبِي أَسْمَاءَ مَوْلَى عَبْدِ اللَّهِ بْنِ جَعْفَرٍ قَالَ: إنَّ الْحُسَيْنَ بْنَ عَلِيٍّ خَرَجَ مُعْتَمِرًا مَعَ عُثْمَانَ بْنِ عَفَّانَ فَلَمَّا كَانَ بِالْعَرَجِ مَرِضَ، فَلَمَّا أَتَى السُّقْيَا بِرَسْمٍ فَكَانَ أَوَّلُ إفَاقَتِهِ أَنْ أَشَارَ إلَى رَأْسِهِ فَحُلِقَ عَلَى رَأْسِهِ وَنُحِرَ عَنْهُ بِهَا جَزُورًا.

L14185 Abu Muhammad said: We have cited this report solely due to what it contains - that he was in the state of iḥram for ʿUmrah. Thus, ʿAlī, al-Ḥusayn, and Asmā’ held that he should dissolve his iḥram for his ʿUmrah and offer a hady in his current location where he was situated. This is our position.

قَالَ أَبُو مُحَمَّد: إنَّمَا أَتَيْنَا بِهَذَا الْخَبَرِ لِمَا فِيهِ مِنْ أَنَّهُ كَانَ مُعْتَمِرًا فَهَذَا عَلِيٌّ، وَالْحُسَيْنُ، وَأَسْمَاءُ رَأَوْا أَنْ يَحِلَّ مِنْ عُمْرَتِهِ وَيُهْدِيَ فِي مَوْضِعِهِ الَّذِي كَانَ فِيهِ، وَهُوَ قَوْلُنَا.

L14186 Narrated from ʻAlqamah concerning the muḥṣir (one prevented from completing the pilgrimage): He sends his sacrificial animal, and once it is slaughtered, he is permitted to exit the state of ihram.

وَعَنْ عَلْقَمَةَ فِي الْمُحْصِرِ قَالَ: يَبْعَثُ بِهَدْيِهِ فَإِذَا ذُبِحَ حَلَّ.

L14187 It was narrated to us from ʿAlqamah: “Consecration is only terminated by circumambulating the Kaʿbah.” It was further narrated from him: “If one ends their consecration before slaughtering their sacrificial animal (hady), a dam (sacrificial animal) is required of them.”

وَرُوِّينَا عَنْ عَلْقَمَةَ أَيْضًا: لَا يُحِلُّهُ إلَّا الطَّوَافُ بِالْبَيْتِ. وَرُوِّينَا عَنْهُ أَيْضًا إنْ حَلَّ قَبْلَ نَحْرِ هَدْيِهِ فَعَلَيْهِ دَمٌ.

L14188 It has been narrated to us from Ibrahim, Ata’, Al-Hasan, and Al-Sha’bi that it is not rendered lawful except by circumambulating the House.

وَرُوِّينَا عَنْ إبْرَاهِيمَ، وَعَطَاءٍ، وَالْحَسَنِ، وَالشَّعْبِيِّ: لَا يُحِلُّهُ إلَّا الطَّوَافُ بِالْبَيْتِ.

L14189 And it has also been narrated to us from them—excluding Ash-Sha‘bi—that

if one stops short of the House, he must offer another sacrifice besides the one he was obligated to send, and he may only exit the state of consecration on the day he agreed upon with them for his reaching Mecca and performing his sacrifice.

وَرُوِّينَا عَنْهُمْ أَيْضًا: حَاشَا الشَّعْبِيَّ: إِنْ حَلَّ دُونَ الْبَيْتِ فَعَلَيْهِ هَدْيٌ آخَرُ سِوَى الَّذِي لَزِمَهُ أَنْ يَبْعَثَ بِهِ، وَلَا يَحِلُّ إِلَّا فِي الْيَوْمِ الَّذِي وَاعَدَهُمْ لِبُلُوغِهِ مَكَّةَ وَنَحْرِهِ.

L14190 And it was conveyed to us from Ibrāhīm as well concerning the Qārin who is prevented: he said, “Two sacrifices are required of him.”

وَرُوِّينَا عَنْ إِبْرَاهِيمَ أَيْضًا فِي الْقَارِنِ يُحْصِرُ قَالَ: عَلَيْهِ هَدْيَانِ.

L14191 We have also received narrations from him: From Sa‘īd ibn Jubayr concerning the *qārin* (one combining Hajj and Umrah) who is prevented—they both said: “He must perform two Umrahs and one Hajj.” It is narrated from ‘Aṭā’ and Ṭāwus that the *qārin* is only obligated to offer one sacrifice.

وَرُوِّينَا عَنْهُ أَيْضًا: وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ فِي الْقَارِنِ يُحْصِرُ قَالَا جَمِيعًا: عَلَيْهِ عُمْرَتَانِ وَحَجَّةٌ - وَعَنْ عَطَاءٍ، وَطَاوُسٍ لَيْسَ عَلَى الْقَارِنِ إِلَّا هَدْيٌ وَاحِدٌ.

L14192 And from Al-Sha‘bi also: If the muḥṣir terminates iḥrām before slaughtering his sacrificial animal, he must offer the expiation for harm - feeding six needy people, fasting three days, or sacrificing a sheep.

وَعَنْ الشَّعْبِيِّ أَيْضًا: إِنْ أَحَلَّ الْمُحْصِرُ قَبْلَ نَحْرِ هَدْيِهِ فَعَلَيْهِ فِدْيَةُ الْأَذَى - إِطْعَامُ سِتَّةِ مَسَاكِينَ، أَوْ صِيَامُ ثَلَاثَةِ أَيَّامٍ، أَوْ شَاةٌ.

L14193 From Mujāhid regarding the Qārin (one combining Hajj and Umrah) who is prevented? He said: He sends a sacrificial animal, which permits him to exit the state of Ihram, then he assumes Ihram anew the following year with the same combined Hajj and Umrah he had originally intended.

وَعَنْ مُجَاهِدٍ فِي الْقَارِنِ يُحْصِرُ؟ قَالَ: يَبْعَثُ بِهَدْيٍ يَحِلُّ بِهِ، ثُمَّ يُهِلُّ مِنْ قَابِلٍ بِمَا كَانَ أَهَلَّ بِهِ.

L14194 From Hammad ibn Abi Sulayman regarding the *Qārin* (combiner of *Hajj* and *Umrah*) who is prevented: he must dispatch the sacrificial animal. When it reaches its designated place, he exits the state of *ihram*, required to perform one *Umrah* and one *Hajj*. Al-Hakam ibn Utaybah said: he is obligated to perform one *Hajj* and three *Umrahs*.

وَعَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ فِي الْقَارِنِ يُحْصَرُ: أَنَّهُ يَبْعَثُ بِالْهَدْيِ فَإِذَا بَلَغَ مَحَلَّهُ حَلَّ وَعَلَيْهِ عُمْرَةٌ وَحَجَّةٌ - قَالَ الْحَكَمُ بْنُ عُتَيْبَةَ: عَلَيْهِ حَجَّةٌ وَثَلَاثُ عُمَرَ.

L14195 From ʿUrwah ibn al-Zubayr concerning the prevented pilgrim: When he returns, nothing of him is released except his head. From al-Zuhrī: Whoever is prevented by warfare must slaughter a camel as a sacrificial animal where he is detained and becomes released from the prohibition of marital relations and from everything.

وَعَنْ عُرْوَةَ بْنِ الزُّبَيْرِ فِي الْمُحْصِرِ إِذَا رَجَعَ لَا يَحِلُّ مِنْهُ إِلَّا رَأْسُهُ - وَعَنْ الزُّهْرِيِّ مَنْ أُحْصِرَ بِالْحَرْبِ نَحَرَ حَيْثُ حُبِسَ وَحَلَّ مِنْ النِّسَاءِ وَمِنْ كُلِّ شَيْءٍ.

L14196–14198 From Al-Qasim ibn Muhammad, Salim, and Ibn Sirin: He designates his sacrificial animal, and once he slaughters it, he is freed from. In every case. Mujāhid also narrated that if a person prevented from completing the pil-

وَعَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَسَالِمٍ، وَابْنُ سِيرِينَ: يَبْعَثُ هَدْيَهُ فَإِذَا نَحَرَ فَقَدْ حَلَّ مِنْ كُلِّ شَيْءٍ - وَعَنْ مُجَاهِدٍ أَيْضًا إِذَا حَلَّ الْمُحْصِرُ قَبْلَ نَحْرِ هَدْيِهِ فَعَلَيْهِ هَدْيٌ آخَرُ.

grimage releases themselves from iḥrām before slaughtering their sacrificial animal, they must offer another sacrificial animal.

L14199 Abu Hanifah said regarding one who enters the state of ihrām for Hajj and is prevented: He must send the value of a sacrificial animal to be purchased for him in Makkah, which is then slaughtered on his behalf on the Day of Sacrifice, whereupon he exits the state of ihrām. He remains obligated to perform both Umrah and Hajj. If he cannot procure a sacrificial animal, he must remain in ihrām until obtaining one, though he may coordinate with others regarding its slaughter before the Day of Sacrifice. He stated: The person performing Umrah may slaughter his sacrificial animal whenever he wishes. In his view, prevention applies equally to enemy obstruction, illness, and any other impediment besides these two - all being exactly the same. If his illness persists until the Day of Sacrifice, the ruling applies as we have outlined. If he recovers before the time of Hajj, this does not suffice him, and he remains in the state of ihrām for Hajj as previously. If he was performing Umrah and then recovers, and is able to reach the sacrificial animal he had dispatched, he may proceed to fulfill his Umrah. If he is unable to do this, he exits the state of ihrām once the sacrificial animal has been slaughtered on his behalf.

وَقَالَ أَبُو حَنِيفَةَ فِيمَنْ أَهَلَّ بِالْحَجِّ فَأُحْصِرَ: عَلَيْهِ أَنْ يَبْعَثَ بِثَمَنِ هَدْيٍ فَيُشْتَرَى لَهُ بِمَكَّةَ فَيُذْبَحُ عَنْهُ يَوْمَ النَّحْرِ، وَيَحِلُّ، وَعَلَيْهِ عُمْرَةٌ وَحَجَّةٌ، فَإِنْ لَمْ يَجِدْ هَدْيًا أَقَامَ مُحْرِمًا حَتَّى يَجِدَ هَدْيًا وَلَهُ أَنْ يُوَاعِدَهُمْ بِنَحْرِهِ قَبْلَ يَوْمِ النَّحْرِ قَالَ: وَالْمُعْتَمِرُ يَنْحَرُ هَدْيَهُ مَتَى شَاءَ، وَالْإِحْصَارُ عِنْدَهُ بِالْعَدُوِّ، وَالْمَرَضِ، وَبِكُلِّ مَانِعٍ سِوَاهُمَا سَوَاءٌ سَوَاءٌ، فَإِنْ تَمَادَى مَرَضُهُ إِلَى يَوْمِ النَّحْرِ فَكَمَا قُلْنَا - وَإِنْ هُوَ أَفَاقَ قَبْلَ وَقْتِ الْحَجِّ لَمْ يَجْزِهِ ذَلِكَ وَهُوَ مُحْرِمٌ بِالْحَجِّ كَمَا كَانَ، فَإِنْ كَانَ مُعْتَمِرًا فَأَفَاقَ فَإِنْ قَدَرَ عَلَى إِدْرَاكِ الْهَدْيِ الَّذِي بَعَثَ مَضَى وَقَضَى عُمْرَتَهُ، فَإِنْ لَمْ يَقْدِرْ عَلَى ذَلِكَ حَلَّ إِذَا نُحِرَ عَنْهُ الْهَدْيُ.

L14200 Malik said: If a person is prevented by an enemy, he must slaughter his sacrificial animal where he is detained, exit the state of consecration, and is not required to compensate—unless he has never performed the Hajj of Islam, in which case he must perform Hajj. If he did not have a sacrificial animal, nothing is binding upon him, unless the animal was present with him, having been driven by himself. If he is prevented by something other than an enemy, such as imprisonment, illness, or similar causes, he cannot exit the state of consecration except by performing circumambulation of the House—even if the impediment persists until the following Hajj year.

وَقَالَ مَالِكٌ: إِنْ أُحْصِرَ بِعَدُوٍّ فَإِنَّهُ يَنْحَرُ هَدْيَهُ حَيْثُ حُبِسَ وَيَحِلُّ وَلَا قَضَاءَ عَلَيْهِ، إِلَّا أَنْ يَكُونَ لَمْ يَحُجَّ قَطُّ حَجَّةَ الْإِسْلَامِ فَعَلَيْهِ أَنْ يَحُجَّ، فَإِنْ لَمْ يُهْدِ فَلَا شَيْءَ عَلَيْهِ، لَا يَلْزَمُهُ الْهَدْيُ إِلَّا أَنْ يَكُونَ حَاضِرًا مَعَهُ قَدْ سَاقَهُ مَعَ نَفْسِهِ، فَإِنْ أُحْصِرَ بِغَيْرِ عَدُوٍّ لَكِنْ بِحَبْسٍ، أَوْ مَرَضٍ، أَوْ غَيْرِ ذَلِكَ، فَإِنَّهُ لَا يَحِلُّ إِلَّا بِالطَّوَافِ بِالْبَيْتِ، وَلَوْ بَقِيَ كَذَلِكَ إِلَى عَامٍ آخَرَ.

L14201 Al-Shāfiʿī said: If someone is prevented by an enemy or imprisonment, they must offer a Hady and exit the state of iḥrām wherever they are, whether in Hill, non-sacred territory, or Haram, the sacred precinct. There is no obligation to repeat the pilgrimage unless they have never performed Hajj or ʿUmrah; in that case, they must perform Hajj and ʿUmrah. If they are

وَقَالَ الشَّافِعِيُّ: إِذَا أُحْصِرَ بِعَدُوٍّ، أَوْ بِسِجْنٍ فَإِنَّهُ يُهْدِي وَيَحِلُّ حَيْثُ كَانَ مِنْ حِلٍّ، أَوْ حَرَمٍ وَلَا قَضَاءَ عَلَيْهِ إِلَّا إِنْ كَانَ لَمْ يَحُجَّ قَطُّ وَلَا اعْتَمَرَ فَعَلَيْهِ أَنْ يَحُجَّ وَيَعْتَمِرَ؛

فَإِنْ لَمْ يَقْدِرْ عَلَى هَدْيٍ فَفِيهَا قَوْلَانِ - أَحَدُهُمَا: لَا يَحِلُّ إِلَّا حَتَّى يُهْدِيَ، وَالْآخَرُ يُحِلُّ، وَالْهَدْيُ دَيْنٌ عَلَيْهِ - وَقَدْ قِيلَ: عَلَيْهِ إِطْعَامٌ، أَوْ صِيَامٌ - إِنْ لَمْ يَقْدِرْ عَلَى الْهَدْيِ - فَإِنْ أُحْصِرَ بِغَيْرِ عَدُوٍّ أَوْ حَبْسٍ لَمْ يُحِلَّهُ إِلَّا الطَّوَافُ بِالْبَيْتِ، فَإِنْ لَمْ يُفِقْ حَتَّى فَاتَهُ الْحَجُّ طَافَ، وَسَعَى، وَحَلَّ، وَعَلَيْهِ الْهَدْيُ.

L14202 Abū Muḥammad said: As for distinguishing between one prevented by an enemy and one prevented by other causes, this is invalid based on what we have established before. As for waiving the sacrificial animal's obligation from one prevented by an enemy or otherwise, this contradicts the Quran; for Allah the Exalted says: {If you are prevented, then sacrifice what is feasible of the sacrificial animal} [Al-Baqarah: 196]. As for requiring the compensatory performance of Hajj, this is erroneous because no scriptural proof mandates it.[21]

قَالَ أَبُو مُحَمَّدٍ: أَمَّا التَّفْرِيقُ بَيْنَ الْمُحْصَرِ بِعَدُوٍّ، وَبِغَيْرِ عَدُوٍّ فَفَاسِدٌ عَلَى مَا قَدَّمْنَا قَبْلُ وَأَمَّا إِسْقَاطُ الْهَدْيِ عَنْ الْمُحْصَرِ بِعَدُوٍّ، أَوْ غَيْرِهِ فَخِلَافٌ لِلْقُرْآنِ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {فَإِنْ أُحْصِرْتُمْ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ} [البقرة: ١٩٦] وَأَمَّا إِيجَابُ الْقَضَاءِ فَخَطَأٌ، لِأَنَّهُ لَمْ يَأْتِ بِذَلِكَ نَصٌّ.

L14203 If it is said, "Verily, the Messenger of Allah—may Allah bless him and grant him peace—performed Umrah after the year of Ḥudaybiyyah," we reply: Yes. We do not prohibit making it up in another year for whoever wishes to do so. Rather, we prohibit imposing it as a compulsory duty, because Allah the Exalted did not command that, nor did His Messenger—may Allah bless him and grant him peace—command it.

فَإِنْ قِيلَ: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ اعْتَمَرَ بَعْدَ عَامِ الْحُدَيْبِيَةِ؟ قُلْنَا: نَعَمْ، وَنَحْنُ لَمْ نَمْنَعْ مِنْ الْقَضَاءِ عَامًا آخَرَ لِمَنْ أَحَبَّ، وَإِنَّمَا نَمْنَعُ مِنْ إِيجَابِهِ فَرْضًا، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَأْمُرْ بِذَلِكَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L14204–14205 It has been authentically established that Allah the Exalted has obligated upon a Muslim only one Hajj and one Umrah in their lifetime. Therefore, it is impermissible to obligate another Hajj or Umrah except through a Quranic injunction or an authentic Sunnah that mandates it, and one must adhere strictly to that.

وَقَدْ صَحَّ أَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ عَلَى الْمُسْلِمِ إِلَّا حَجَّةً وَاحِدَةً وَعُمْرَةً فِي الدَّهْرِ، فَلَا يَجُوزُ إِيجَابُ أُخْرَى، إِلَّا بِقُرْآنٍ، أَوْ سُنَّةٍ صَحِيحَةٍ تُوجِبُ ذَلِكَ فَيُوقَفُ عِنْدَ ذَلِكَ.

L14206 As for the assertion that the muḥṣir (prevented pilgrim) due to illness remains in their iḥrām until performing the circumambulation of the Kaaba, this is a claim with no evidence for its validity. It is not mandated by the Quran, the Sunnah, or consensus—rather, it contradicts the Quran as we have presented.

وَأَمَّا الْقَوْلُ بِبَقَاءِ الْمُحْصَرِ بِمَرَضٍ عَلَى إِحْرَامِهِ حَتَّى يَطُوفَ بِالْبَيْتِ، فَقَوْلٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ، وَلَا أَوْجَبَهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إِجْمَاعٌ بَلْ هُوَ خِلَافُ الْقُرْآنِ كَمَا أَوْرَدْنَا -

[21] **Qur'an references (L14202):** Qur'an 2:196 (Al-Baqarah).

The Companions differed on this matter specifically regarding ʿUmrah, and it is not reported from any of them that they issued a fatwa regarding this in the context of Ḥajj at all.

L14207 If it is said: "But Allah, the Exalted, says: {Then their lawful place is to the Ancient House} [22:33]?" We said: Yes, and the Exalted did not state that the restricted person may only exit *ihram* by performing circumambulation.[22]

L14208 And the One who said, "And whoever honors the rites of Allah—it is from the piety of hearts" [Al-Hajj: 32], "There are benefits for you in them until a specified term; then their destination is the Ancient House" [Al-Hajj: 33]—He is the One who said, "If you are detained, then offer what is readily available of the offerings" [Al-Baqarah: 196].[23]

L14209 He is the One who commanded His Messenger—peace and blessings be upon him—to exit iḥrām and return before circumambulating the House during his Umrah, when he was barred from reaching the House. It is not permissible to pit His commands against one another. As for the claim that he sent a Hady—a ritual sacrificial animal—to exit iḥrām by offering it, this is an assertion unattested in the Quran, the Sunnah, or consensus. The Companions themselves differed regarding this matter, as we have mentioned.

L14210 If it is said: Indeed, Allah, the Exalted, says: {And do not shave your heads until the sacrificial animal reaches its designated place} [Al-Baqarah: 196].[24]

L14211 We said: Yes, and this is not restricted to the prevented pilgrim alone, but rather it is the ruling for all who drive a sacrificial animal in Hajj or Umrah according to the generality of the verse. Thus, the pilgrim and the pilgrim combining Hajj and Umrah—when the Day of Sacrifice has arrived—the sacrificial animal has reached its designated time and place in Mecca or Mina, so the pilgrim may shave his head.

وَالصَّحَابَةُ قَدْ اخْتَلَفُوا فِي ذَلِكَ فِي الْعُمْرَةِ خَاصَّةً وَلَمْ يُرْوَ عَنْ أَحَدٍ مِنْهُمْ أَنَّهُ أَفْتَى بِذَلِكَ فِي الْحَجِّ أَصْلًا.

فَإِنْ قِيلَ: فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {ثُمَّ مَحِلُّهَا إِلَى الْبَيْتِ الْعَتِيقِ} [الحج: ٣٣] ؟ قُلْنَا نَعَمْ، وَلَمْ يَقُلْ تَعَالَى: إِنَّ الْمُحْصِرَ لَا يُحِلُّ إِلَّا بِالطَّوَافِ.

وَالَّذِي قَالَ {وَمَنْ يُعَظِّمْ شَعَائِرَ اللَّهِ فَإِنَّهَا مِنْ تَقْوَى الْقُلُوبِ} [الحج: ٣٢] {لَكُمْ فِيهَا مَنَافِعُ إِلَى أَجَلٍ مُسَمًّى ثُمَّ مَحِلُّهَا إِلَى الْبَيْتِ الْعَتِيقِ} [الحج: ٣٣] هُوَ الَّذِي قَالَ {فَإِنْ أُحْصِرْتُمْ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ} [البقرة: ١٩٦] .

وَهُوَ الَّذِي أَمَرَ رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُحِلَّ وَيَرْجِعَ قَبْلَ أَنْ يَطُوفَ بِالْبَيْتِ فِي عُمْرَتِهِ الَّتِي صُدَّ فِيهَا عَنْ الْبَيْتِ، وَلَا يَحِلُّ ضَرْبُ أَوَامِرِهِ بَعْضُهَا بِبَعْضٍ؟ وَأَمَّا الْقَوْلُ: بِبَعْثِهِ هَدْيًا يَحِلُّ بِهِ، فَقَوْلٌ لَا يُؤَيِّدُهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، وَالصَّحَابَةُ قَدْ اخْتَلَفُوا فِي ذَلِكَ كَمَا أَوْرَدْنَا.

فَإِنْ قِيلَ: فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَلا تَحْلِقُوا رُءُوسَكُمْ حَتَّى يَبْلُغَ الْهَدْيُ مَحِلَّهُ} [البقرة: ١٩٦] .

قُلْنَا: نَعَمْ، وَلَيْسَ هَذَا فِي الْمُحْصَرِ وَحْدَهُ، بَلْ هُوَ حُكْمُ كُلِّ مَنْ سَاقَ هَدْيًا فِي حَجٍّ أَوْ عُمْرَةٍ عَلَى عُمُومِ الْآيَةِ -: فَالْحَاجُّ، وَالْقَارِنُ إذَا كَانَ يَوْمَ النَّحْرِ فَقَدْ بَلَغَ الْهَدْيُ مَحِلَّهُ مِنْ الزَّمَانِ وَالْمَكَانِ بِمَكَّةَ أَوْ بِمِنًى، فَلَهُ أَنْ يَحْلِقَ رَأْسَهُ.

[22] **Qur'an references (L14207):** Qur'an 22:33 (Al-Hajj).

[23] **Qur'an references (L14208):** Qur'an 22:32 (Al-Hajj); Qur'an 22:33 (Al-Hajj); Qur'an 2:196 (Al-Baqarah).

[24] **Qur'an references (L14210):** Qur'an 2:196 (Al-Baqarah).

L14212 When the Umrah performer completes his Tawaf and Sa'i, his sacrificial offering has reached its designated time and place in Mecca, and he may then shave his head.

وَالْمُعْتَمِرُ إِذَا أَتَمَّ طَوَافَهُ وَسَعْيَهُ فَقَدْ بَلَغَ هَدْيُهُ مَحِلَّهُ مِنْ الزَّمَانِ وَالْمَكَانِ بِمَكَّةَ فَلَهُ أَنْ يَحْلِقَ رَأْسَهُ.

L14213–14214 The prevented pilgrim, when barred, then indeed his sacrificial animal has reached its designated place, so he may shave his head if there is a sacrificial animal with these people. Allah, the Almighty and Majestic, has never said that the prevented pilgrim cannot exit iḥrām until his sacrificial animal reaches Makkah. Rather, it is a falsehood against Allah, the Exalted, from those who attributed it to Him, the Almighty and Majestic. Thus, the error of these assertions has become evident.

وَالْمُحْصَرُ إِذَا صُدَّ فَقَدْ بَلَغَ هَدْيُهُ مَحِلَّهُ فَلَهُ أَنْ يَحْلِقَ رَأْسَهُ إِنْ كَانَ مَعَ هَؤُلَاءِ هَدْيٌ، وَلَمْ يَقُلْ اللَّهُ عَزَّ وَجَلَّ قَطُّ: إنَّ الْمُحْصَرَ لَا يَحِلُّ حَتَّى يَبْلُغَ هَدْيُهُ مَكَّةَ، بَلْ هُوَ الْكَذِبُ عَلَى اللَّهِ تَعَالَى مِمَّنْ نَسَبَهُ إلَيْهِ عَزَّ وَجَلَّ؛ فَظَهَرَ خَطَأُ هَذِهِ الْأَقَاوِيلِ.

L14215 As for the views of Abu Hanifah, Malik, and Al-Shafi'i concerning al-iḥṣār [prevention during pilgrimage], no complete and systematically categorized statement of theirs—at all—is preserved from any of the Companions, may Allah be pleased with them.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، فِي الْإِحْصَارِ، فَلَا يُحْفَظُ قَوْلٌ مِنْهَا - بِتَمَامِهِ وَتَقْسِيمِهِ - عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَصْلًا.

L14216 Abu Muhammad said: It is obligatory to revert disputes to that which Allah the Exalted has mandated as the referent, for Almighty He states: *"If you dispute concerning anything, refer it back to Allah and the Prophet, if you believe in Allah and the Last Day"* (4:59).[25]

قَالَ أَبُو مُحَمَّدٍ: فَوَجَبَ الرُّجُوعُ عِنْدَ التَّنَازُعِ إلَى مَا افْتَرَضَ اللَّهُ تَعَالَى الرُّجُوعَ إلَيْهِ إذْ يَقُولُ عَزَّ وَجَلَّ: {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ إنْ كُنْتُمْ تُؤْمِنُونَ بِاَللَّهِ وَالْيَوْمِ الآخِرِ} [النساء: ٥٩] .

L14217 We found the ruling concerning prevention (iḥṣār) derives: from the words of Allah, the Exalted: {But if you are prevented, then offer what is feasible of the sacrificial animal (hady)} [Al-Baqarah: 196]. This verse establishes a general obligation to offer the sacrificial animal (hady) upon everyone prevented, regardless of the manner of prevention.[26]

فَوَجَدْنَا حُكْمَ الْإِحْصَارِ يَرْجِعُ -: إلَى قَوْلِ اللَّهِ تَعَالَى: {فَإِنْ أُحْصِرْتُمْ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ} [البقرة: ١٩٦] فَكَانَ فِي هَذِهِ الْآيَةِ عُمُومُ إيجَابِ الْهَدْيِ عَلَى كُلِّ مَنْ أُحْصِرَ بِأَيِّ وَجْهٍ أُحْصِرَ.

L14218 And to the act of the Messenger of Allah—peace be upon him—when the polytheists prevented him from reaching the Kaaba, whereupon he slaughtered the sacrificial animal and shaved his head (he and his companions doing the same), and they ritually exited the state of consecration (Ihram) at Ḥudaybiyyah.

وَإِلَى «فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ صَدَّهُ الْمُشْرِكُونَ عَنْ الْبَيْتِ فَنَحَرَ وَحَلَقَ هُوَ وَأَصْحَابُهُ وَحَلُّوا بِالْحُدَيْبِيَةِ» .

[25] **Qur'an references (L14216):** Qur'an 4:59 (An-Nisa).
[26] **Qur'an references (L14217):** Qur'an 2:196 (Al-Baqarah).

وَإِلَى «أَمْرِهِ - عَلَيْهِ السَّلَامُ - مَنْ حَجَّ أَنْ يَقُولَ: اللَّهُمَّ إِنَّ مَحِلِّي حَيْثُ حَبَسْتَنِي» وَقَدْ ذَكَرْنَاهُ قَبْلُ.

L14219 And regarding his command—peace be upon him—for whoever performs Hajj to say: "O Allāh, the place where I exit iḥrām is wherever You have detained me," as we previously mentioned.

وَإِلَى مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا حُمَيْدُ بْنُ مَسْعَدَةَ الْبَصْرِيُّ نَا سُفْيَانُ هُوَ ابْنُ حَبِيبٍ عَنْ الْحَجَّاجِ الصَّوَّافِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عِكْرِمَةَ عَنْ الْحَجَّاجِ بْنِ عَمْرٍو الْأَنْصَارِيِّ قَالَ " سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ كُسِرَ أَوْ عَرَجَ فَقَدْ حَلَّ وَعَلَيْهِ حَجَّةٌ أُخْرَى» فَسَأَلْت ابْنَ عَبَّاسٍ، وَأَبَا هُرَيْرَةَ؟ فَقَالَا: صَدَقَ ".

L14220 Abdullah ibn Rabīʿ narrated to us: from Muḥammad ibn Muʿāwiyah, from Aḥmad ibn Shuʿayb, from Ḥumayd ibn Masʿadah al-Baṣrī, from Sufyān—he is the son of Ḥabīb—from al-Ḥajjāj al-Ṣawwāf, from Yaḥyā ibn Abī Kathīr, from ʿIkrimah, from al-Ḥajjāj ibn ʿAmr al-Anṣārī, who said: "I heard the Messenger of Allah (peace and blessings be upon him) say: 'Whoever breaks a bone or becomes lame has become permissible to exit ihrām, and upon him is a compensatory Hajj.'" I asked Ibn ʿAbbās and Abū Hurayrah, and they both said: "He spoke truthfully."[27]

فَهَذِهِ النُّصُوصُ تَنْتَظِمُ كُلَّ مَا قُلْنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L14221–14222 Thus, these texts encompass all that we have said—and all praise is to Allah, Lord of the worlds.

فَإِنْ قِيلَ: فَفِي هَذَا الْخَبَرِ أَنَّ عَلَيْهِ حَجَّةً أُخْرَى، وَلَيْسَ فِيهِ ذِكْرُ هَدْيٍ؟ قُلْنَا: إنَّ الْقُرْآنَ جَاءَ بِإِيجَابِ الْهَدْيِ، فَهُوَ زَائِدٌ عَلَى مَا فِي هَذَا الْخَبَرِ، وَلَيْسَ فِي هَذَا الْخَبَرِ ذِكْرٌ لِإِسْقَاطِ الْهَدْيِ وَلَا لِإِيجَابِهِ، فَوَجَبَ إضَافَةُ مَا زَادَهُ الْقُرْآنُ إلَيْهِ، وَقَدْ قَدَّمْنَا أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخْبَرَ بِأَنَّ اللَّازِمَ لِلنَّاسِ حَجَّةٌ وَاحِدَةٌ فَكَانَ هَذَا الْخَبَرُ مَحْمُولًا عَلَى مَنْ لَمْ يَحُجَّ قَطُّ، وَبِهَذَا تَتَأَلَّفُ الْأَخْبَارُ.

L14223 If it is said: In this report, there is an obligation upon him to perform another Hajj, yet no mention of a sacrificial offering? We respond: The Quran established the obligation of the sacrificial offering, thereby supplementing this report. This text neither mentions omitting the offering nor imposing it, which necessitates adding what the Quran has introduced. We previously stated that the Prophet—peace and blessings of Allah be upon him—declared that only one Hajj is obligatory for people. Thus, this report pertains to those who have never performed Hajj, thereby reconciling the reports.

فَإِنْ قِيلَ: إنَّ ابْنَ عَبَّاسٍ قَدْ رُوِيَ عَنْهُ خِلَافُ مَا رُوِيَ مِنْ هَذَا؟ قُلْنَا: الْحُجَّةُ إنَّمَا هِيَ فِيمَا رَوَى لَا فِي رَأْيِهِ وَقَدْ يَنْسَى، أَوْ يَتَأَوَّلُ، وَأَيْضًا فَإِنَّ التَّوْهِينَ بِمَا رَوَى لِمَا رُوِيَ عَنْهُ مِمَّا يُخَالِفُ مَا رَوَى - أَوْلَى مِنْ تَوْهِينِ مَا رَوَى بِمَا رُوِيَ عَنْهُ مِنْ خِلَافِهِ لِمَا رَوَى، لِأَنَّ الطَّاعَةَ عَلَيْنَا إنَّمَا هِيَ لِمَا رَوَى لَا لِمَا رَأَى بِرَأْيِهِ.

L14224 If it is objected: "Reports attributed to Ibn ʿAbbās contradict what is narrated here?" We reply: The valid proof lies solely in what he narrated, not in his personal opinion—for he may have forgotten or engaged in interpretation. Furthermore, discrediting contradictions [to his narrations] by citing other reports from him is more valid than discrediting his narrations by citing contradictory reports attributed to him, since obedience is incumbent on us only for what he narrated, not for what he opined by his own judgment.

[27] **Hadith references (L14220):** Sunan Ibn Majah 3077; Sunan an-Nasai 2861; Jami at-Tirmidhi 940.

L14225 Furthermore, if a position contradicting what was narrated were authentically attributed to Ibn ʿAbbās, then al-Hajjaj and Abū Hurayrah would have narrated it and would not have contradicted it.

وَأَيْضًا فَلَوْ صَحَّ عَنْ ابْنِ عَبَّاسٍ خِلَافُ مَا رُوِيَ لَكَانَ الْحَجَّاجُ، وَأَبُو هُرَيْرَةَ، قَدْ رَوَيَاهُ وَلَمْ يُخَالِفَاهُ.

L14226 Abu Hanifah said: The sacrificial animal for being prevented (from completing Hajj) must only be slaughtered within the Haram. He argued that Nājiyah ibn Kaʿb took charge of the sacrificial animal on the day of the Treaty of Ḥudaybiyyah, traversing mountain passes and valleys until he could slaughter it within the Haram.

وَقَالَ أَبُو حَنِيفَةَ: لَا يَنْحَرُ هَدْيَ الْإِحْصَارِ إِلَّا فِي الْحَرَمِ، وَاحْتَجَّ بِأَنَّ نَاجِيَةَ بْنَ كَعْبٍ نَهَضَ بِالْهَدْيِ يَوْمَ الْحُدَيْبِيَةِ فِي شِعَابٍ وَأَوْدِيَةٍ حَتَّى نَحَرَهُ فِي الْحَرَمِ.

L14227 Abu Muhammad said: If this were valid, there would be no proof in it, because he - peace be upon him - did not command that nor make it obligatory. Rather, it would merely be an action he performed. Obedience is solely for his command - peace be upon him.

قَالَ أَبُو مُحَمَّد: لَوْ صَحَّ هَذَا لَمَا كَانَتْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَمْ يَأْمُرْ بِذَلِكَ - عَلَيْهِ السَّلَامُ - وَلَا أَوْجَبَهُ، وَإِنَّمَا كَانَ يَكُونُ عَمَلًا عَمِلَهُ، وَإِنَّمَا الطَّاعَةُ لِأَمْرِهِ - عَلَيْهِ السَّلَامُ -.

L14228 A report has been transmitted to us stating that he—peace be upon him—commanded his companions regarding the camels for the sacrificial offering. This is invalid because its narrator is Abu Hazir al-Azdi, who is of unknown reliability. And with Allah, the Most High, is success.

وَرُوِّينَا خَبَرًا فِيهِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - أَمَرَ أَصْحَابَهُ بِالْبُدْنِ لِلْهَدْيِ - وَهَذَا لَا يَصِحُّ، لِأَنَّ رَاوِيَهُ أَبُو حَاضِرٍ الْأَزْدِيُّ وَهُوَ مَجْهُولٌ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ احْتَاجَ إلَى حَلْقِ رَأْسِهِ وَهُوَ مُحْرِمٌ]

L14229 **A case involving one who needed to shave his head while he was a muḥrim.**

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٨٧٤ - مَسْأَلَةٌ:

L14231 Whoever needs to shave his head while in the state of consecration (ihram) due to an illness, headache, lice, a wound, or similar harm—let him shave it. He must perform one of three things, being free to choose whichever he wishes, for he is necessarily required to undertake one of them.

وَمَنْ احْتَاجَ إلَى حَلْقِ رَأْسِهِ - وَهُوَ مُحْرِمٌ لِمَرَضٍ، أَوْ صُدَاعٍ، أَوْ لِقَمْلٍ، أَوْ لِجُرْحٍ بِهِ، أَوْ نَحْوِ ذَلِكَ مِمَّا يُؤْذِيهِ - فَلْيَحْلِقْهُ، وَعَلَيْهِ أَحَدُ ثَلَاثَةِ أَشْيَاءَ هُوَ مُخَيَّرٌ فِي أَيِّهَا شَاءَ لَا بُدَّ لَهُ مِنْ أَحَدِهَا.

L14232 He must either fast three days, or feed six separate needy individuals—each of whom must unfailingly receive half a ṣāʿ of dates—or sacrifice a sheep as ṣadaqah to the needy. The sacrifice may be performed in the place where he shaved his head or elsewhere.

إمَّا أَنْ يَصُومَ ثَلَاثَةَ أَيَّامٍ، وَإِمَّا أَنْ يُطْعِمَ سِتَّةَ مَسَاكِينَ مُتَغَايِرِينَ لِكُلِّ مِسْكِينٍ مِنْهُمْ نِصْفُ صَاعِ تَمْرٍ وَلَا بُدَّ، وَإِمَّا أَنْ يُهْدِيَ شَاةً يَتَصَدَّقُ بِهَا عَلَى الْمَسَاكِينِ، أَوْ يَصُومَ، أَوْ يُطْعِمَ، أَوْ يَنْسُكَ الشَّاةَ فِي الْمَكَانِ الَّذِي حَلَقَ فِيهِ أَوْ فِي غَيْرِهِ.

L14233–14235 If he shaves his head without necessity, or shaves part of his head and

leaves the rest unshaven intentionally and with full awareness of the ruling concerning that act... It is not permissible; his Hajj is invalid. If he cuts from the hair of his head an amount that does not amount to shaving part of his head, there is nothing upon him—neither sin nor expiation—regardless of the manner in which he cut or plucked it.

فَإِنْ حَلَقَ رَأْسَهُ لِغَيْرِ ضَرُورَةٍ، أَوْ حَلَقَ بَعْضَ رَأْسِهِ دُونَ بَعْضٍ عَامِدًا عَالِمًا أَنَّ ذَلِكَ لَا يَجُوزُ بَطَلَ حَجُّهُ، فَلَوْ قَطَعَ مِنْ شَعْرِ رَأْسِهِ مَا لَا يُسَمَّى بِهِ حَالِقًا بَعْضَ رَأْسِهِ فَلَا شَيْءَ عَلَيْهِ، لَا إِثْمَ وَلَا كَفَّارَةَ بِأَيِّ وَجْهٍ قَطَعَهُ، أَوْ نَزَعَهُ.

L14236 The proof of this is Allah's statement, the Almighty and Majestic: {But whoever among you is ill or has an affliction of the head, then a fidya is required—consisting of fasting, charity, or sacrifice} [Al-Baqarah: 196]. In this verse, there is a choice of whichever of these three acts he prefers. It does not clarify how much to fast, with how much to give in charity, or with what to offer as sacrifice. The verse also contains an omission clarified by consensus and the Sunnah: that he shaved his head.[28]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ {فَمَنْ كَانَ مِنْكُمْ مَرِيضًا أَوْ بِهِ أَذًى مِنْ رَأْسِهِ فَفِدْيَةٌ مِنْ صِيَامٍ أَوْ صَدَقَةٍ أَوْ نُسُكٍ} [البقرة: ١٩٦] فَكَانَ فِي هَذِهِ الْآيَةِ التَّخْيِيرُ فِي أَيِّ هَذِهِ الثَّلَاثَةِ الْأَعْمَالِ أَحَبَّ، وَلَيْسَ فِيهَا بَيَانُ كَمْ يَصُومُ؟ وَلَا بِكَمْ يَتَصَدَّقُ؟ وَلَا بِمَاذَا يَنْسُكُ؟ وَفِي الْآيَةِ أَيْضًا حَذْفٌ بَيَّنَهُ الْإِجْمَاعُ، وَالسُّنَّةُ وَهُوَ: فَحَلَقَ رَأْسَهُ.

L14237 It has been narrated to us through the chain of Ḥammād ibn Salamah from Dāwūd ibn Abī Hind from al-Shaʿbī from ʿAbd al-Raḥmān ibn Abī Laylā from Kaʿb ibn ʿUjrah in this report: "The Messenger of Allah (peace be upon him) said to him: If you wish, slaughter a sheep as a sacrifice; if you wish, fast three days; if you wish, give three ṣāʿs of dates to six needy people."[29]

وَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد بْنِ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ كَعْبِ بْنِ عُجْرَةَ فِي هَذَا الْخَبَرِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: إنْ شِئْتَ فَانْسُكْ نَسِيكَةً، وَإِنْ شِئْتَ فَصُمْ ثَلَاثَةَ أَيَّامٍ، وَإِنْ شِئْتَ فَأَطْعِمْ ثَلَاثَةَ آصُعَ مِنْ تَمْرٍ لِسِتَّةِ مَسَاكِينَ» .

L14238 It has been narrated to us via Muslim's chain: Yahya ibn Yahya narrated to us, Khalid ibn Abdullah al-Tahhan narrated to us from Khalid al-Ḥadhdhā' from Abu Qilabah from Abd al-Rahman ibn Abi Layla from Ka'b ibn Ujrah: "Allah's Messenger—peace be upon him—passed by him during the time of Hudaybiyah and said: 'Is the vermin in your head harming you?' He replied: 'Yes.' The Prophet—peace be upon him—then said: 'Shave your head, then slaughter a sheep as sacrifice, or fast three days, or feed three ṣuʿs of dates to six needy people.'"[30]

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي يَحْيَى بْنُ يَحْيَى نَا خَالِدُ بْنُ عَبْدِ اللَّهِ الطَّحَّانُ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ كَعْبِ بْنِ عُجْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَرَّ بِهِ زَمَنَ الْحُدَيْبِيَةِ فَقَالَ لَهُ: آذَاكَ هَوَامُّ رَأْسِكَ؟ قَالَ: نَعَمْ، فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - احْلِقْ، ثُمَّ اذْبَحْ شَاةً نُسُكًا، أَوْ صُمْ ثَلَاثَةَ أَيَّامٍ، أَوْ اطْعَمْ ثَلَاثَةَ آصُعَ مِنْ تَمْرٍ: عَلَى سِتَّةِ مَسَاكِينَ» .

L14239 Abu Muhammad said: This is the most complete and clearest of the hadiths,

قَالَ أَبُو مُحَمَّد: هَذَا أَكْمَلُ الْأَحَادِيثِ وَأَبْيَنُهَا، وَقَدْ جَاءَ هَذَا الْخَبَرُ مِنْ طُرُقٍ -: فِي بَعْضِهَا «أَوْ نُسُكٍ مَا تَيَسَّرَ» .

[28] **Qur'an references (L14236):** Qur'an 2:196 (Al-Baqarah).
[29] **Hadith references (L14237):** Sunan Abi Dawud 1857.
[30] **Hadith references (L14238):** Sunan Abi Dawud 1856.

and this narration has been transmitted through multiple chains. In some of them is [the wording]: “or the ritual sacrifice of what can be afforded.”

L14240 Some of them we have narrated via Muḥammad ibn Jaʿfar from Shuʿbah from ʿAbd al-Raḥmān ibn al-Aṣbahānī from ʿAbdullāh ibn Maʿqil: that Kaʿb ibn ʿUjrah informed him of this report, which states: “The Messenger of Allah—peace and blessings of Allah be upon him—said to him at that time: ‘Or feed six needy people half a ṣāʿ of food for each needy person.’”

وَبَعْضُهَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ عَنْ شُعْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَصْبَهَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مَعْقِلٍ: أَنَّ كَعْبَ بْنَ عُجْرَةَ أَخْبَرَهُ بِهَذَا الْخَبَرِ، وَفِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ حِينَئِذٍ: أَوْ أَطْعِمْ سِتَّةَ مَسَاكِينَ نِصْفَ صَاعٍ طَعَامًا لِكُلِّ مِسْكِينٍ» .

L14241–14243 And it was also narrated via Bishr ibn ʿUmar al-Zahrānī from Shuʿbah from… Abd al-Rahman ibn al-Aṣbahānī from Abdullah ibn Ma’qil from Kaʿb ibn ʿUjrah, wherein he mentioned half a *saʿ* of wheat for every needy person.

وَرُوِيَ أَيْضًا مِنْ طَرِيقِ بِشْرِ بْنِ عُمَرَ الزَّهْرَانِيِّ عَنْ شُعْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَصْبَهَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مَعْقِلٍ عَنْ كَعْبِ بْنِ عُجْرَةَ، فَذَكَرَ فِيهِ نِصْفَ صَاعِ حِنْطَةٍ لِكُلِّ مِسْكِينٍ.

L14244 A report via the chain of Abū Dāwūd: Muḥammad ibn Manṣūr narrated to us, Yaʿqūb ibn Ibrāhīm ibn Saʿd narrated to us, from his father, from Muḥammad ibn Isḥāq, from Abān ibn Ṣāliḥ, from al-Ḥakam ibn ʿUtaybah, from ʿAbd al-Raḥmān ibn Abī Laylā, from Kaʿb ibn ʿUjrah, from the Prophet—peace and blessings be upon him—who mentioned therein: “or feeding six needy people a farq of raisins.”

وَخَبَرٌ مِنْ طَرِيقِ أَبِي دَاوُد -: نَا مُحَمَّدُ بْنُ مَنْصُورٍ نَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ نَا أَبِي عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ [قَالَ] حَدَّثَنِي أَبَانُ هُوَ ابْنُ صَالِحٍ - عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ كَعْبِ بْنِ عُجْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ فِيهِ «أَوْ إطْعَامَ سِتَّةِ مَسَاكِينَ فَرْقًا مِنْ زَبِيبٍ» .

L14245 A report through the chain of Ibn Abī Shaybah: ʿAbdullāh ibn Numayr narrated to us from Zakariyyā ibn Abī Zāʾidah from ʿAbd al-Raḥmān ibn al-Aṣbahānī from ʿAbdullāh ibn Maʿqil—Kaʿb ibn ʿUjrah informed me, from the Messenger of Allah (peace be upon him). He mentioned the ḥadīth, which states: “The Prophet (peace be upon him) said to him: ’Do you have an offering?’ He replied: ’I cannot afford it.’ So he commanded him to fast three days or feed six poor people, giving each half a ṣāʿ.”

وَخَبَرٌ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ -: نَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ زَكَرِيَّا بْنُ أَبِي زَائِدَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَصْبَهَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مَعْقِلٍ أَخْبَرَنِي كَعْبُ بْنُ عُجْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ الْحَدِيثَ، وَفِيهِ «أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ لَهُ: هَلْ عِنْدَكَ نُسُكٌ؟ قَالَ: مَا أَقْدِرُ عَلَيْهِ، فَأَمَرَهُ أَنْ يَصُومَ ثَلَاثَةَ أَيَّامٍ، أَوْ يُطْعِمَ سِتَّةَ مَسَاكِينَ، لِكُلِّ مِسْكِينٍ نِصْفُ صَاعٍ» .

L14246 From the narration chain of Saʿīd ibn Manṣūr: He reported to us; Abū ʿAwānah narrated from ʿAbd al-Raḥmān ibn al-Iṣbahānī from ʿAbd Allāh ibn Maʿqil that Kaʿb ibn ʿUjrah informed him: The Messenger of Allāh—peace and blessings be upon him—said to him in this narration: “Do you possess

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا أَبُو عَوَانَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَصْبَهَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مَعْقِلٍ «أَنَّ كَعْبَ بْنَ عُجْرَةَ أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ

any sacrificial animal?" He replied: "No." The Prophet then asked: "Is it a sheep?" He answered: "No." He said: "Then fast three days or feed three ṣāʿs of food to six needy persons."

L14247 And through the chain of Abū Dāwūd, Muḥammad ibn al-Muthannā narrated from ʿAbd al-Wahhāb, who is Ibn ʿAbd al-Majīd al-Thaqafī, from Dāwūd ibn Abī Hind, from al-Shaʿbī, from Kaʿb ibn ʿUjrah, that the Messenger of Allāh—peace and blessings be upon him—said to him in this same hadith: "Do you possess a sacrificial animal?" He replied: "No." Then Kaʿb mentioned the hadith, which includes that the Prophet—peace be upon him—said to him: "Fast three days, or give three ṣāʿs of dates as charity distributed among six needy people." Al-Shaʿbī did not hear this directly from Kaʿb according to what we mentioned before.

L14248 We now mention, if Allah the Exalted wills, as narrated through the chain from Muḥammad ibn al-Jahm, from Jaʿfar al-Ṣāʾigh, from Muḥammad ibn al-Ṣabbāḥ, from Ismāʿīl ibn Zakariyyā, from Ashʿath, from al-Shaʿbī, from ʿAbdullāh ibn Maʿqil, from Kaʿb ibn ʿUjrah, who said: "The Messenger of Allah—peace be upon him—said to him in this narration: 'Do you have a sacrificial animal with you?' I replied: 'I do not have one.' He said: 'Is there not something within your means?' I said: 'I cannot find one.' He said: 'Then fast three days, or feed six poor persons—for each poor person, a *ṣāʿ* of dates.'"

L14249–14251 Abū Muḥammad said: So all these contradictory hadiths are solely in the narration of... From Abdullah ibn Maʿqil, from Kaʿb ibn ʿUjrah—and the report we first mentioned through the chain of ʿAbd al-Raḥmān ibn Abī Laylā from Kaʿb ibn ʿUjrah is the authentic and agreed-upon one—as for this report containing "a ṣāʿ of dates for every poor person," it is from Ashʿath al-Kūfī through al-Shaʿbī, and it is wholly weak. In the earlier report discussed before, transmitted through Dāwūd from al-Shaʿbī from Kaʿb, there is an obligation to follow the prescribed order, and that fasting and charity are only permissible if the ritual offering is unavailable. We have already clarified that al-Shaʿbī did not hear this from Kaʿb, resulting in a disconnected chain. Thus, both are thereby discarded together.

فِي هَذَا الْخَبَرِ: هَلْ تَجِدُ مِنْ نَسِيكَةٍ؟ قَالَ: لَا، قَالَ: وَهِيَ شَاةٌ؟ قَالَ: فَصُمْ ثَلَاثَةَ أَيَّامٍ، أَوْ أَطْعِمْ ثَلَاثَةَ آصُعَ بَيْنَ سِتَّةِ مَسَاكِينَ» .

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا مُحَمَّدُ بْنُ الْمُثَنَّى نَا عَبْدُ الْوَهَّابِ هُوَ ابْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ - أَنَا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ «عَنْ كَعْبِ بْنِ عُجْرَةَ، أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ فِي هَذَا الْحَدِيثِ نَفْسِهِ أَمَعَكَ دَمٌ؟ قَالَ: لَا فَذَكَرَ الْحَدِيثَ وَفِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ لَهُ: فَصُمْ ثَلَاثَةَ أَيَّامٍ، أَوْ تَصَدَّقْ بِثَلَاثَةِ آصُعَ مِنْ تَمْرٍ بَيْنَ سِتَّةِ مَسَاكِينَ» لَمْ يَسْمَعْهُ الشَّعْبِيُّ مِنْ كَعْبٍ عَلَى مَا ذَكَرْنَا قَبْلُ.

وَنَذْكُرُ الْآنَ إنْ شَاءَ اللَّهُ تَعَالَى كَمَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْجَهْمِ نَا جَعْفَرُ الصَّائِغُ نَا مُحَمَّدُ بْنُ الصَّبَّاحِ نَا إسْمَاعِيلُ بْنُ زَكَرِيَّا عَنْ أَشْعَثَ عَنْ الشَّعْبِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مَعْقِلٍ عَنْ كَعْبِ بْنِ عُجْرَةَ قَالَ: «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ فِي هَذَا الْخَبَرِ: أَمَعَكَ هَدْيٌ؟ قُلْتُ: مَا أَجِدُهُ، قَالَ: إنَّهُ مَا اسْتَيْسَرَ؟ قُلْتُ: مَا أَجِدُهُ؟ قَالَ: فَصُمْ ثَلَاثَةَ أَيَّامٍ، أَوْ أَطْعِمْ سِتَّةَ مَسَاكِينَ لِكُلِّ مِسْكِينٍ صَاعًا مِنْ تَمْرٍ» .

قَالَ أَبُو مُحَمَّد: فَهَذِهِ الْأَحَادِيثُ الْمُضْطَرِبَةُ كُلُّهَا إنَّمَا هِيَ فِي رِوَايَةِ عَبْدِ اللَّهِ بْنِ مَعْقِلٍ عَنْ كَعْبِ بْنِ عُجْرَةَ، وَالَّذِي ذَكَرْنَاهُ أَوَّلًا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ كَعْبِ بْنِ عُجْرَةَ هُوَ الصَّحِيحُ الْمُتَّفَقُ عَلَيْهِ -: أَمَّا هَذَا الْخَبَرُ الَّذِي فِيهِ لِكُلِّ مِسْكِينٍ صَاعُ تَمْرٍ فَهُوَ عَنْ أَشْعَثَ الْكُوفِيِّ عَنْ الشَّعْبِيِّ وَهُوَ ضَعِيفٌ أَلْبَتَّةَ، وَفِي هَذَا الْخَبَرِ الَّذِي قَبْلَهُ مِنْ طَرِيقِ دَاوُد عَنْ الشَّعْبِيِّ عَنْ كَعْبٍ: إيجَابُ التَّرْتِيبِ، وَأَنْ لَا يَجْزِيَ الصِّيَامُ، وَلَا

الصَّدَقَةُ إِلَّا عِنْدَ عَدَمِ النُّسُكِ، وَذَلِكَ الْخَبَرُ قَدْ بَيَّنَّا أَنَّ الشَّعْبِيَّ لَمْ يَسْمَعْهُ مِنْ كَعْبٍ، فَخَصَلَ مُنْقَطِعًا: فَسَقَطَا مَعًا.

L14252 وَأَمَّا رِوَايَةُ ابْنِ أَبِي زَائِدَةَ، وَأَبِي عَوَانَةَ عَنِ الْأَصْبَهَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مَعْقِلٍ فَفِيهَا أَيْضًا: إِيجَابُ التَّرْتِيبِ، وَقَدْ خَالَفَهُمَا شُعْبَةُ عَنِ ابْنِ الْأَصْبَهَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مَعْقِلٍ فَذَكَرَهُ بِالتَّخْيِيرِ بَيْنَ النُّسُكِ أَوِ الصَّوْمِ، أَوِ الصَّدَقَةِ، ثُمَّ وَجَدْنَا شُعْبَةَ قَدِ اخْتَلَفَ عَلَيْهِ أَيْضًا فِي هَذَا الْخَبَرِ -: فَرَوَى عَنْهُ مُحَمَّدُ بْنُ جَعْفَرٍ: نِصْفَ صَاعٍ طَعَامًا لِكُلِّ مِسْكِينٍ.

L14253 وَرَوَى عَنْهُ بِشْرُ بْنُ عُمَرَ: نِصْفَ صَاعٍ حِنْطَةً لِكُلِّ مِسْكِينٍ.

L14254 وَرَوَى عَنْهُ أَبُو دَاوُد الطَّيَالِسِيُّ: ثَلَاثَةَ آصُعٍ بَيْنَ سِتَّةِ مَسَاكِينَ، وَلَمْ يَذْكُرْ لِمَاذَا.

L14255 قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كُلُّهُ خَبَرٌ وَاحِدٌ فِي قِصَّةٍ وَاحِدَةٍ بِلَا خِلَافٍ مِنْ أَحَدٍ، وَبِنُصُوصِ هَذِهِ الْأَخْبَارِ كُلِّهَا أَيْضًا، فَصَحَّ أَنَّ جَمِيعَهَا وَهْمٌ إِلَّا وَاحِدًا فَقَطْ -: فَوَجَدْنَا أَصْحَابَ شُعْبَةَ قَدِ اخْتَلَفُوا عَلَيْهِ، فَوَجَبَ تَرْكُ مَا اضْطَرَبُوا فِيهِ، إِذْ لَيْسَ بَعْضُهُ أَوْلَى مِنْ بَعْضٍ، وَوَجَبَ الرُّجُوعُ إِلَى رِوَايَةِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى الَّذِي لَمْ يَضْطَرِبِ الثِّقَاتُ مِنْ رُوَاتِهِ فِيهِ، وَلَوْ كَانَ مَا ذَكَرَ فِي هَذِهِ الْأَخْبَارِ عَنْ قَضَايَا شَتَّى لَوَجَبَ الْأَخْذُ بِجَمِيعِهَا وَضَمُّ بَعْضِهَا إِلَى بَعْضٍ، وَأَمَّا فِي قَضِيَّةٍ وَاحِدَةٍ فَلَا يُمْكِنُ ذَلِكَ أَصْلًا.

L14256 ثُمَّ وَجَدْنَا أَبَانَ بْنَ صَالِحٍ قَدْ ذَكَرَ فِي رِوَايَتِهِ «فَرْقًا مِنْ زَبِيبٍ» وَأَبَانُ لَا يُعْدَلُ فِي الْحِفْظِ بِدَاوُد بْنِ أَبِي هِنْدٍ عَنِ الشَّعْبِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى، وَلَا بِأَبِي قِلَابَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى، وَلَا بُدَّ مِنْ أَخْذِ إِحْدَى هَاتَيْنِ الرِّوَايَتَيْنِ، إِذْ لَا يُمْكِنُ جَمْعُهُمَا؛ لِأَنَّهَا كُلَّهَا فِي قَضِيَّةٍ وَاحِدَةٍ، فِي مَقَامٍ وَاحِدٍ، فِي رَجُلٍ وَاحِدٍ، فِي وَقْتٍ وَاحِدٍ، فَوَجَبَ

As for the narration of Ibn Abī Zā'idah and Abū ʻAwānah from al-Aṣbahānī via ʻAbd Allāh ibn Maʻqil, it also contains the obligation of sequence. However, Shuʻbah contradicted them in his narration from Ibn al-Aṣbahānī, who narrated from ʻAbd Allāh ibn Maʻqil, by mentioning the option to choose between sacrifice, fasting, or charity. Subsequently, we found there were also discrepancies in narrations from Shuʻbah regarding this report: Muḥammad ibn Jaʻfar narrated from him "half a ṣāʻ of food for each needy person."

Bishr ibn ʿUmar narrated from him: half a ṣāʿ of wheat for every poor person.

Abū Dāwūd al-Ṭayālisī narrated from him that three ṣāʿs are to be distributed among six needy individuals, but he did not mention why.

Abū Muḥammad said: All of this is a single report concerning one incident without any disagreement from anyone. According to the texts of all these reports, it has been established that all are erroneous except one alone. We found that Shuʻbah's companions conflicted in their narrations from him, making it obligatory to discard the parts where they were inconsistent, since none of their narrations are more valid than others. It became obligatory to rely on the narration of ʻAbd al-Raḥmān ibn Abī Laylā, in which the trustworthy among his transmitters showed no inconsistency. Had these reports addressed multiple cases, it would have been obligatory to accept all of them and integrate them together. But in a single case, this is not possible at all.

Then we found that Abān ibn Ṣāliḥ mentioned in his narration "a farq of raisins," and Abān's memorization cannot be compared to that of Dāwūd ibn Abī Hind from al-Shaʿbī from ʿAbd al-Raḥmān ibn Abī Laylā, nor to that of Abū Qilābah from ʿAbd al-Raḥmān ibn Abī Laylā. It is necessary to accept one of these two narrations, as reconciling them is impossible, for they all pertain to a single incident, context, individual, and moment. Therefore, it is obligatory to accept what was narrated by Abū Qilābah and al-

Shaʿbī from ʿAbd al-Raḥmān ibn Abī Laylā from Kaʿb ibn ʿUjrah, due to their trustworthiness and because this narration clarifies the rest of the ahadith. And with Allah, the Most High, lies success.

أَخْذُ مَا رَوَاهُ أَبُو قِلَابَةَ، وَالشَّعْبِيُّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ كَعْبِ بْنِ عُجْرَةَ، لِثِقَتِهِمَا وَلِأَنَّهَا مُبَيِّنَةٌ لِسَائِرِ الْأَحَادِيثِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L14257–14258 As for one who shaves his entire head without necessity, knowingly and deliberately, aware that this is impermissible, or shaves part of his head while leaving the rest, knowing that it is impermissible: he has indeed disobeyed Allah the Exalted. Every act of disobedience is transgression, and we have established that transgression invalidates the state of ihrām—and with Allah the Exalted is success. There is nothing required for that, because Allah the Exalted has only obligated expiation upon one who shaves his head due to illness or harm therein only. "And your Lord is never forgetful" [Maryam 19:64].[31]

وَأَمَّا مَنْ حَلَقَ رَأْسَهُ لِغَيْرِ ضَرُورَةٍ عَالِمًا عَامِدًا بِأَنَّ ذَلِكَ لَا يَجُوزُ، أَوْ حَلَقَ بَعْضَ رَأْسِهِ وَخَلَّى الْبَعْضَ عَالِمًا بِأَنَّ ذَلِكَ لَا يَجُوزُ: فَقَدْ عَصَى اللَّهَ تَعَالَى، وَكُلُّ مَعْصِيَةٍ فُسُوقٌ، وَقَدْ بَيَّنَّا أَنَّ الْفُسُوقَ يُبْطِلُ الْإِحْرَامَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ - وَلَا شَيْءَ فِي ذَلِكَ؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ الْكَفَّارَةَ إلَّا عَلَى مَنْ حَلَقَ رَأْسَهُ لِمَرَضٍ، أَوْ أَذًى بِهِ فَقَطْ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L14259 It is not permissible to impose a ransom, fine, or fasting that Allah the Exalted has not obligated nor His Messenger—may Allah bless him and grant him peace—for this constitutes legislation in the religion that Allah the Exalted has not permitted. Nor is it permissible to analogize the disobedient to the obedient even if analogy were hypothetically valid—how much more so when it is entirely invalid? As for one who cuts hair from his head in a manner not deemed shaving—by cutting part of the head—he has neither disobeyed nor committed a wrongful act, for Allah the Exalted has only prohibited the one in iḥrām from shaving his head. Through His Messenger—may Allah bless him and grant him peace—He has prohibited shaving parts of the head while leaving others, which is al-qazaʿ.

وَلَا يَجُوزُ أَنْ يُوجَبَ فِدْيَةٌ، أَوْ غَرَامَةٌ، أَوْ صِيَامٌ، لَمْ يُوجِبْهُ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ شَرْعٌ فِي الدِّينِ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى، وَلَا يَجُوزُ قِيَاسُ الْعَاصِي عَلَى الْمُطِيعِ لَوْ كَانَ الْقِيَاسُ حَقًّا فَكَيْفَ وَهُوَ كُلُّهُ بَاطِلٌ؟ وَأَمَّا مَنْ قَطَعَ مِنْ شَعْرِ رَأْسِهِ مَا لَا يُسَمَّى بِذَلِكَ حَالِقًا بَعْضَ رَأْسِهِ فَإِنَّهُ لَمْ يَعْصِ وَلَا أَتَى مُنْكَرًا؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يَنْهَ الْمُحْرِمَ إلَّا عَنْ حَلْقِ رَأْسِهِ وَنَهَى جُمْلَةً عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ حَلْقِ بَعْضِ الرَّأْسِ دُونَ بَعْضٍ وَهُوَ الْقَزَعُ.

L14260 It was narrated to us through the chain of Abī Dāwūd: Aḥmad ibn Ḥanbal informed us from ʿAbd al-Razzāq, from Maʿmar, from Ayyūb al-Sikhtiyānī, from Nāfiʿ, from Ibn ʿUmar, who said: "The Prophet—peace and blessings of Allah be upon him—saw a child who had shaved part of his hair and left part of it. He forbade them from doing so and said: 'Shave it all or leave it all.'"

رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا أَحْمَدُ بْنُ حَنْبَلٍ نَا عَبْدُ الرَّزَّاقِ نَا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: «رَأَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَبِيًّا قَدْ حَلَقَ بَعْضَ شَعْرِهِ وَتَرَكَ بَعْضَهُ فَنَهَاهُمْ عَنْ ذَلِكَ، وَقَالَ: احْلِقُوا كُلَّهُ، أَوْ اُتْرُكُوا كُلَّهُ» .

L14261 Abu Muhammad said: There are reports that are inauthentic, including one transmitted via al-Layth, from Nāfiʿ, from an Ansari man—"that the

[31] **Qur'an references (L14258):** Qur'an 19:64 (Maryam).

Messenger of Allah (peace be upon him) ordered Kaʿb ibn ʿUjrah to shave and offer a cow." This is a *mursal* narration from an unknown narrator.

قَالَ أَبُو مُحَمَّد: وَجَاءَتْ أَخْبَارٌ لَا تَصِحُّ، مِنْهَا -: مِنْ طَرِيقِ اللَّيْثِ عَنْ نَافِعٍ عَنْ رَجُلٍ أَنْصَارِيٍّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ كَعْبَ بْنَ عُجْرَةَ أَنْ يَحْلِقَ وَيُهْدِيَ بَقَرَةً» وَهَذَا مُرْسَلٌ عَنْ مَجْهُولٍ.

L14262 And through the chain of ʿAbd al-Razzāq from ʿAbdullāh ibn ʿUmar from Nāfiʿ from Sulaymān ibn Muḥammad ibn Kaʿb ibn ʿUjrah: that Kaʿb slaughtered a cow at al-Ḥudaybiyah (ʿAbdullāh ibn ʿUmar is very weak).

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ سُلَيْمَانَ بْنِ مُحَمَّدِ بْنِ كَعْبِ بْنِ عُجْرَةَ: أَنَّ كَعْبًا ذَبَحَ بَقَرَةً بِالْحُدَيْبِيَةِ - عَبْدُ اللَّهِ بْنُ عُمَرَ ضَعِيفٌ جِدًّا.

L14263 And through the narration of Isma'il ibn Umayyah from Muhammad ibn Yahya ibn Hibban: A man was afflicted with the same affliction that befell Ka'b ibn 'Ujrah. Umar asked a son of Ka'b ibn 'Ujrah about what his father had slaughtered at Hudaybiyyah as the ransom for his head. He replied: "A cow." Muhammad ibn Yahya did not meet Umar.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ مُحَمَّدِ بْنِ يَحْيَى بْنِ حِبَّانَ: أَنَّ رَجُلًا أَصَابَهُ مِثْلُ الَّذِي أَصَابَ كَعْبَ بْنَ عُجْرَةَ فَسَأَلَ عُمَرُ ابْنًا لِكَعْبِ بْنِ عُجْرَةَ عَمَّا كَانَ أَبُوهُ ذَبَحَ بِالْحُدَيْبِيَةِ فِي فِدْيَةِ رَأْسِهِ؟ فَقَالَ: بَقَرَةً - مُحَمَّدُ بْنُ يَحْيَى لَمْ يُدْرِكْ عُمَرَ.

L14264 And through the chain of Nāfiʿ and others from Sulaymān ibn Yasār, who said: 'Umar asked a son of Kaʿb ibn 'Ujrah, "What did his father redeem with?" He replied, "A cow"—Sulaymān did not meet 'Umar.

وَمِنْ طَرِيقِ نَافِعٍ، وَغَيْرِهِ، عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: سَأَلَ عُمَرُ ابْنًا لِكَعْبِ بْنِ عُجْرَةَ بِمَاذَا افْتَدَى أَبُوهُ؟ فَقَالَ بِبَقَرَةٍ - سُلَيْمَانُ لَمْ يُدْرِكْ عُمَرَ.

L14265–14266 From the narration of Abū Maʿshar al-Madanī, from Nāfiʿ, from Ibn 'Umar, who said: Kaʿb ibn 'Ujrah redeemed himself from an affliction affecting his head by shaving it in exchange for a cow he garlanded and marked for sacrifice by slitting its hump (Abū Maʿshar is a weak narrator).

وَمِنْ طَرِيقِ أَبِي مَعْشَرٍ الْمَدَنِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: افْتَدَى كَعْبُ بْنُ عُجْرَةَ مِنْ أَذًى كَانَ بِرَأْسِهِ فَحَلَقَهُ بِبَقَرَةٍ قَلَّدَهَا وَأَشْعَرَهَا - أَبُو مَعْشَرٍ ضَعِيفٌ.

L14267 Abū Muḥammad said: The predecessors differed. It has been narrated to us from Ibn ʿAbbās, ʿAlqamah, Mujāhid, Ibrāhīm al-Nakhaʿī, Qatādah, Ṭāwūs, and ʿAṭāʾ—all of them stated regarding the expiation for harm: fasting three days, sacrificing a sheep, or feeding six poor persons by giving each one half a *saʿ* (a traditional measure) of food.

قَالَ أَبُو مُحَمَّد: وَاخْتَلَفَ السَّلَفُ فَرُوِّينَا عَنِ ابْنِ عَبَّاسٍ، وَعَلْقَمَةَ، وَمُجَاهِدٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَقَتَادَةَ، وَطَاوُسٍ، وَعَطَاءٍ، كُلُّهُمْ قَالَ فِي فِدْيَةِ الْأَذَى: صِيَامُ ثَلَاثَةِ أَيَّامٍ، أَوْ نُسُكُ شَاةٍ، أَوْ إِطْعَامُ سِتَّةِ مَسَاكِينَ لِكُلِّ مِسْكِينٍ نِصْفُ صَاعٍ.

L14268 It is authentically reported from Al-Hasan Al-Basri, Nāfiʿ the client of Ibn ʿUmar, and ʿIkrimah concerning the expiation for harm [during *ihram*]: sacrificing a sheep; fasting for ten days; or feeding ten needy people.

وَصَحَّ عَنِ الْحَسَنِ الْبَصْرِيِّ، وَنَافِعٍ مَوْلَى ابْنِ عُمَرَ، وَعِكْرِمَةَ فِي فِدْيَةِ الْأَذَى: نُسُكُ شَاةٍ، أَوْ صِيَامُ عَشَرَةِ أَيَّامٍ، أَوْ إِطْعَامُ عَشَرَةِ مَسَاكِينَ.

L14269 That has been narrated to us - from the chain of Sa'īd ibn Manṣūr, from

Hushaym: “I am Manṣūr ibn al-Mu’tamir, from al-Ḥasan” - and he [Mansur] mentioned it.

رُوِّينَا ذَلِكَ -: مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ هُشَيْمٍ: أَنَا مَنْصُورَ بْنَ الْمُعْتَمِرِ عَنْ الْحَسَنِ فَذَكَرَهُ.

L14270 And through the chain of Bishr ibn ʿUmar from Shuʿbah from Qatādah from al-Ḥasan and ʿIkrimah, and he mentioned it.

وَمِنْ طَرِيقِ بِشْرِ بْنِ عُمَرَ عَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ، وَعِكْرِمَةَ فَذَكَرَهُ.

L14271 And via Hammad ibn Zayd, from Ayyub al-Sakhtiyānī, from Nāfiʿ and Ikrimah - and he related it.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ، وَعِكْرِمَةَ فَذَكَرَهُ.

L14272 Abu Muhammad said: As for the later scholars, Abu Ḥanīfa stated: If one shaves less than a quarter of their head due to necessity, they must give charity according to what is readily available. If they shave a quarter of their head, they may choose between offering a sacrificial animal of their choice - and a sheep suffices for this - fasting three days, or providing food to six needy persons, giving each needy person half a ṣāʿ of wheat, wheat flour, or a full ṣāʿ of dates, barley, or raisins.

قَالَ أَبُو مُحَمَّد: وَأَمَّا الْمُتَأَخِّرُونَ فَإِنَّ أَبَا حَنِيفَةَ قَالَ: إنْ حَلَقَ مِنْ رَأْسِهِ أَقَلَّ مِنْ الرُّبُعِ لِضَرُورَةٍ فَعَلَيْهِ صَدَقَةُ مَا تَيَسَّرَ، فَإِنْ حَلَقَ رُبُعَ رَأْسِهِ فَهُوَ مُخَيَّرٌ بَيْنَ نُسُكٍ مَا شَاءَ، وَيُجْزِئُهُ شَاةٌ، أَوْ صِيَامُ ثَلَاثَةِ أَيَّامٍ، أَوْ إطْعَامُ سِتَّةِ مَسَاكِينَ لِكُلِّ مِسْكِينٍ نِصْفُ صَاعٍ حِنْطَةٍ، أَوْ دَقِيقُ حِنْطَةٍ، أَوْ صَاعًا مِنْ تَمْرٍ، أَوْ مِنْ شَعِيرٍ، أَوْ مِنْ زَبِيبٍ.

L14273 Abu Yusuf said: It suffices to provide them with the morning and evening meals.

قَالَ أَبُو يُوسُفَ: وَيُجْزِئُ أَنْ يُغَدِّيَهُمْ وَيُعَشِّيَهُمْ.

L14274 Muhammad ibn al-Hasan said: It will not suffice him unless he hands it over to them.

قَالَ مُحَمَّدُ بْنُ الْحَسَنُ: لَا يُجْزِئُهُ إلَّا أَنْ يُعْطِيَهُمْ إيَّاهُ.

L14275 Abu Yusuf stated in another opinion: If one shaves half or less of his head, he must give charity; if he shaves more than half, the expiation applies as previously stated.

وَقَالَ أَبُو يُوسُفَ فِي قَوْلٍ لَهُ آخَرَ: إنْ حَلَقَ نِصْفَ رَأْسِهِ فَأَقَلَّ صَدَقَةٌ، وَإِنْ حَلَقَ أَكْثَرَ مِنْ النِّصْفِ فَالْفِدْيَةُ كَمَا ذَكَرْنَا.

L14276 It is narrated from Muḥammad ibn al-Ḥasan in another statement of his: If one shaves a tenth of his head, charity is due; and if he shaves more than a tenth, then the aforementioned expiation applies.

وَرُوِيَ عَنْ مُحَمَّدِ بْنِ الْحَسَنِ فِي قَوْلٍ لَهُ آخَرَ إنْ حَلَقَ عُشْرَ رَأْسِهِ فَصَدَقَةٌ - فَإِنْ حَلَقَ أَكْثَرَ مِنْ الْعُشْرِ فَالْفِدْيَةُ الْمَذْكُورَةُ.

L14277 They all said: If he shaves his entire head without necessity, then a sacrificial animal is obligatory upon him. Neither fasting nor feeding (a specified number of) the poor suffices him as a substitute. Al-Ṭaḥāwī said: No expiation is required for shaving part of the head.

قَالُوا كُلُّهُمْ: فَإِنْ حَلَقَ رَأْسَهُ لِغَيْرِ ضَرُورَةٍ فَعَلَيْهِ دَمٌ لَا يُجْزِئُهُ بَدَلُهُ صِيَامٌ، وَلَا إطْعَامٌ - وَقَالَ الطَّحَاوِيَّ: لَيْسَ فِي حَلْقِ بَعْضِ الرَّأْسِ شَيْءٌ.

L14278–14279 Abu Muhammad said: These are whisperings, mockery, and akin to

frivolity—we seek refuge in Allah from calamity. Such absurdities are not attributed to any of the creation of Allah, the Exalted, before them.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ وَسَاوِسُ وَاسْتِهْزَاءٌ وَشَبِيهٌ بِالْهَزْلِ، نَعُوذُ بِاللَّهِ مِنْ الْبَلَاءِ، وَلَا يُحْفَظُ هَذَا السُّخَامُ عَنْ أَحَدٍ مِنْ خَلْقِ اللَّهِ تَعَالَى قَبْلَهُمْ.

L14280 Mālik said: If one shaves or plucks hairs—whether forgetfully, unknowingly, or intentionally—he must give a measure of food as expiation. If he shaves or plucks hair that entails removing a source of harm, then upon him is the specific expiation mentioned in the ḥadīth of Kaʿb ibn ʿUjrah.

وَقَالَ مَالِكٌ: إنْ حَلَقَ، أَوْ نَتَفَ شَعَرَاتٍ نَاسِيًا، أَوْ جَاهِلًا أَوْ عَامِدًا فَيُطْعِمُ شَيْئًا مِنْ طَعَامٍ - فَإِنْ حَلَقَ، أَوْ نَتَفَ مَا يَكُونُ فِيهِ إمَاطَةَ أَذًى فَعَلَيْهِ الْفِدْيَةُ الْمَذْكُورَةُ فِي حَدِيثِ كَعْبِ بْنِ عُجْرَةَ.

L14281 Ali said: And this is also an opinion for which there is no evidence of its soundness, nor is it known to have been held by anyone before them.

قَالَ عَلِيٌّ: وَهَذَا أَيْضًا قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ وَلَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُمْ.

L14282 Al-Shāfiʿī and al-Awzāʿī ruled regarding plucking or shaving a single hair, whether done intentionally or unintentionally: the expiation is one mudd. For two hairs, the expiation is likewise two mudds. For three hairs or more, the expiation is likewise the sacrifice of an animal.

وَقَالَ الشَّافِعِيُّ، وَالْأَوْزَاعِيُّ فِي نَتْفِ شَعْرَةٍ أَوْ حَلْقِهَا عَامِدًا وَنَاسِيًا: مُدٌّ، وَفِي الشَّعْرَتَيْنِ كَذَلِكَ مُدَّانِ، وَفِي الثَّلَاثِ شَعَرَاتٍ فَصَاعِدًا كَذَلِكَ دَمٌ.

L14283 Al-Shafi'i said: If he wishes, he may slaughter a sheep; if he prefers, he may feed six poor persons, giving each two *mudds* of the food he himself consumes; or if he wishes, he may fast for three days.

قَالَ الشَّافِعِيُّ: إنْ أَحَبَّ فَشَاةٌ، وَإِنْ شَاءَ أَطْعَمَ سِتَّةَ مَسَاكِينَ لِكُلِّ مِسْكِينٍ مُدَّانِ مُدَّانِ مِمَّا يَأْكُلُ، وَإِنْ شَاءَ صَامَ ثَلَاثَةَ أَيَّامٍ.

L14284 Abū Muḥammad said: It has been transmitted to us from ʿAṭāʾ: No expiation is due for two hairs or a single hair, but for three hairs—a sacrificial offering (dam) is required. Al-Layth ibn Saʿd inclined toward this position. It has also been transmitted to us from Ibn Abī Shaybah, from Ḥafṣ ibn Ghiyāth, from Hishām ibn Ḥassān, who reported from al-Ḥasan and ʿAṭāʾ—both of whom said together regarding three hairs removed by a person in iḥrām: a sacrificial offering (dam) is required, whether done forgetfully or intentionally—they incur the same ruling.

قَالَ أَبُو مُحَمَّد: رُوِّينَا عَنْ عَطَاءٍ: لَيْسَ فِي الشَّعْرَتَيْنِ وَلَا فِي الشَّعْرَةِ شَيْءٌ، وَفِي ثَلَاثِ شَعَرَاتٍ دَمٌ - وَكَانَ اللَّيْثُ بْنُ سَعْدٍ نَحَا إلَى هَذَا - وَرُوِّينَا عَنْ ابْنِ أَبِي شَيْبَةَ عَنْ حَفْصِ بْنِ غِيَاثٍ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ الْحَسَنِ، وَعَطَاءٍ قَالَا جَمِيعًا فِي ثَلَاثِ شَعَرَاتٍ لِلْمُحْرِمِ: دَمٌ، النَّاسِي وَالْعَامِدُ سَوَاءٌ.

L14285 Through the chain of Saʿīd ibn Manṣūr, from al-Muʿtamir ibn Sulaymān, from Abū Ismāʿīl al-Makkī: He said, "I asked ʿAṭāʾ about a pilgrim in iḥrām who shaved two hairs for medical treatment." He replied, "He must offer a ransom (dam)."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ عَنْ أَبِي إسْمَاعِيلَ الْمَكِّيِّ: قَالَ: سَأَلْت عَطَاءً عَنْ مُحْرِمٍ حَلَقَ شَعْرَتَيْنِ لِدَوَاءٍ؟ قَالَ: عَلَيْهِ دَمٌ.

L14286 Abu Muhammad said: It was narrated to us from Abu Bakr ibn Abi Shaybah,

from Abu Usamah—who is Hammad ibn Usamah—from Jarir ibn Hazim, from Al-Zubayr ibn Al-Khirrit, from Ikrimah, who said: Ibn Abbas saw no issue with a person in the state of ihram shaving hair due to a head wound. Ali said: Ibn Abbas permitted that, seeing nothing objectionable in it, and no dissenting opinion is known from any of the Companions—may Allah the Exalted be pleased with them.

قَالَ أَبُو مُحَمَّدٍ: رُوِّينَا عَنْ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ: نَا أَبُو أُسَامَةَ هُوَ حَمَّادُ بْنُ أُسَامَةَ - عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ الزُّبَيْرِ بْنِ الْخِرِّيتِ عَنْ عِكْرِمَةَ قَالَ: كَانَ ابْنُ عَبَّاسٍ لَا يَرَى بَأْسًا لِلْمُحْرِمِ أَنْ يَحْلِقَ عَنْ الشَّجَّةِ -: قَالَ عَلِيٌّ: فَأَبَاحَ ذَلِكَ لَمْ يَرَ فِيهِ شَيْئًا وَلَا يُعْرَفُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمْ -.

L14287–14289 Abu Muhammad said: As for the legal context of the rituals, feeding, and fasting, we have mentioned in the chapter on the muḥṣir (prevented pilgrim) the rituals of Ali ibn Abi Talib—as narrated by Al-Husayn (may Allah the Exalted be pleased with both of them)—concerning the shaving of his head due to illness. He was present at Sukya, and we know of no opposition from the Companions—may Allah the Exalted be pleased with them—regarding the two of them. The act of worship involving shaving the head is not termed a sacrificial offering; therefore, if it is not designated as such, it becomes permissible in every location, since neither the Quran, the Sunnah, nor consensus mandates that this act of worship be performed in Mecca.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا مَوْضِعُ النُّسُكِ وَالْإِطْعَامِ وَالصِّيَامِ فَقَدْ ذَكَرْنَا فِي بَابِ الْمُحْصِرِ نُسُكَ عَلِيِّ بْنِ أَبِي طَالِبٍ عَنْ الْحُسَيْنِ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمَا - فِي حَلْقِ رَأْسِهِ لِمَرَضٍ كَانَ بِهِ بِالسُّقْيَا وَلَا نَعْلَمُ لَهُمَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمْ - مُخَالِفًا وَنُسُكُ حَلْقِ الرَّأْسِ لَا يُسَمَّى هَدْيًا، فَإِذَا لَمْ يَكُنْ فَهُوَ جَائِزٌ فِي كُلِّ مَوْضِعٍ، إذْ لَمْ يُوجِبْ كَوْنَ النُّسُكِ بِمَكَّةَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ.

L14290 It has been narrated to us from Ṭāwūs that he said: “Whatever pertains to blood or food must be in Makkah, but as for fasting, it may be observed wherever one wishes.” ʿAṭāʾ and Ibrāhīm al-Nakhaʿī said: “Whatever pertains to blood must be in Makkah, but whatever pertains to food or fasting may be done wherever one wishes.”

وَرُوِّينَا عَنْ طَاوُسٍ قَالَ: مَا كَانَ مِنْ دَمٍ أَوْ طَعَامٍ فَبِمَكَّةَ، وَأَمَّا الصَّوْمُ فَحَيْثُ شَاءَ - وَقَالَ عَطَاءٌ وَإِبْرَاهِيمُ النَّخَعِيُّ مَا كَانَ مِنْ دَمٍ فَبِمَكَّةَ وَمَا كَانَ مِنْ طَعَامٍ أَوْ صِيَامٍ فَحَيْثُ شَاءَ.

L14291 Al-Hasan said: Every obligatory blood sacrifice—therefore, you are not permitted to slaughter it except in Makkah.

وَقَالَ الْحَسَنُ: كُلُّ دَمٍ وَاجِبٍ فَلَيْسَ لَك أَنْ تَذْبَحَهُ إلَّا بِمَكَّةَ.

L14292 It has been narrated to us from Saʿīd ibn Manṣūr, who narrated to us from Jarīr, from Manṣūr, from Mujāhid, who said: “Place the *fidya* wherever you wish.” Abū Muḥammad said: It is not permissible to designate specific places for acts of worship to the exclusion of others except by the Quran or an established Sunnah.

رُوِّينَا عَنْ سَعِيدِ بْنِ مَنْصُورٍ نَا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ قَالَ: اجْعَلْ الْفِدْيَةَ حَيْثُ شِئْت -: قَالَ أَبُو مُحَمَّدٍ: لَا يَجُوزُ أَنْ يَخُصَّ بِالنُّسُكِ مَكَانًا دُونَ مَكَانٍ إلَّا بِقُرْآنٍ، أَوْ سُنَّةٍ ثَابِتَةٍ.

L14293 **A juristic issue: A muḥrim shaving his head with nūrah.**

[مَسْأَلَةٌ حَلَقَ الْمُحْرِمِ رَأْسَهُ بِنُورَةٍ]

875 – Issue:

If he shaves his head with nuura, he is linguistically deemed to have shaved, so all the rulings mentioned for one who shaves apply to him regardless of what he used to shave it. If he plucks it, there is no liability in that, because he did not shave it, for plucking is not shaving: *"And your Lord is not forgetful"* [19:64]. The prohibition and expiation pertain specifically to shaving, not to plucking.[32]

A jurisprudential question: If someone hunts game and kills it while in the state of *iḥrām*.

876 - Issue:

Whoever hunts game and kills it while in a state of consecration (iḥrām) for ʿUmrah, Qirān, or Tamattuʿ Hajj—from the beginning of their consecration until the time begins for stoning Jamrat al-ʿAqabah—or if the game is killed by someone in iḥrām or by a person who has exited the state of consecration within the sacred precinct (Ḥaram): If one intentionally kills it while unmindful of their consecration or because the killing occurred within the Ḥaram, or kills it unintentionally—whether mindful of their consecration or not—then nothing is required of them: no expiation nor sin. That game is carrion forbidden for consumption. If one intentionally kills it while mindful of their consecration or because the act occurred within the Ḥaram, they have disobeyed Allah the Exalted, their Hajj becomes invalid, and their ʿUmrah likewise. They are obligated to fulfill what will be mentioned hereafter, if Allah the Almighty wills.

Allah the Exalted said: "Do not kill game while you are in iḥrām. Whoever among you kills it intentionally must atone by offering livestock equivalent to what he killed, as judged by two just men among you—either a sacrificial animal to reach the Kaaba, or expiation through feeding the poor or fasting equivalent to that feeding—so he may taste the consequence of his deed.

[32] **Qur'an references (L14295):** Qur'an 19:64 (Maryam).

٨٧٥ - مَسْأَلَةٌ:

فَإِنْ حَلَقَ رَأْسَهُ بِنُورَةٍ فَهُوَ حَالِقٌ فِي اللُّغَةِ فَفِيهِ مَا فِي الْحَالِقِ مِنْ كُلِّ مَا ذَكَرْنَا بِأَيِّ شَيْءٍ - حَلَقَهُ؟ فَإِنْ نَتَفَهُ فَلَا شَيْءَ فِي ذَلِكَ، لِأَنَّهُ لَمْ يَحْلِقْهُ، وَالنَّتْفُ غَيْرُ الْحَلْقِ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَإِنَّمَا جَاءَ النَّهْيُ وَالْفِدْيَةُ فِي الْحَلْقِ لَا فِي النَّتْفِ.

[مَسْأَلَةٌ تَصَيَّدَ صَيْدًا فَقَتَلَهُ وَهُوَ مُحْرِمٌ]

٨٧٦ - مَسْأَلَةٌ:

وَمَنْ تَصَيَّدَ صَيْدًا فَقَتَلَهُ وَهُوَ مُحْرِمٌ بِعُمْرَةٍ أَوْ بِقِرَانٍ أَوْ بِحَجَّةِ تَمَتُّعٍ مَا بَيْنَ أَوَّلِ إِحْرَامِهِ إِلَى دُخُولِ وَقْتِ رَمْيِ جَمْرَةِ الْعَقَبَةِ، أَوْ قَتَلَهُ مُحْرِمٌ، أَوْ مُحِلٌّ فِي الْحَرَمِ -: فَإِنْ فَعَلَ ذَلِكَ عَامِدًا لِقَتْلِهِ غَيْرَ ذَاكِرٍ لِإِحْرَامِهِ أَوْ؛ لِأَنَّهُ فِي الْحَرَمِ، أَوْ غَيْرَ عَامِدٍ لِقَتْلِهِ - سَوَاءٌ كَانَ ذَاكِرًا لِإِحْرَامِهِ أَوْ لَمْ يَكُنْ -: فَلَا شَيْءَ عَلَيْهِ، لَا كَفَّارَةَ وَلَا إِثْمَ؛ وَذَلِكَ الصَّيْدُ جِيفَةٌ لَا يَحِلُّ أَكْلُهُ، فَإِنْ قَتَلَهُ عَامِدًا لِقَتْلِهِ ذَاكِرًا لِإِحْرَامِهِ، أَوْ؛ لِأَنَّهُ فِي الْحَرَمِ فَهُوَ عَاصٍ لِلَّهِ تَعَالَى، وَحَجُّهُ بَاطِلٌ وَعُمْرَتُهُ كَذَلِكَ - وَعَلَيْهِ مَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ.

قَالَ اللَّهُ تَعَالَى: {لا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرُمٌ وَمَنْ قَتَلَهُ مِنْكُمْ مُتَعَمِّدًا فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ يَحْكُمُ بِهِ ذَوَا عَدْلٍ مِنْكُمْ هَدْيًا بَالِغَ الْكَعْبَةِ أَوْ كَفَّارَةٌ طَعَامُ مَسَاكِينَ أَوْ عَدْلُ ذَلِكَ صِيَامًا لِيَذُوقَ وَبَالَ أَمْرِهِ عَفَا اللَّهُ عَمَّا سَلَفَ وَمَنْ عَادَ فَيَنْتَقِمُ اللَّهُ مِنْهُ} [المائدة: ٩٥].

Allah has pardoned what preceded, but whoever returns to it, Allah will exact vengeance from him." [Al-Mā'idah: 95][33]

فَصَحَّ يَقِينًا لَا إشْكَالَ فِيهِ أَنَّ هَذَا الْحُكْمَ كُلَّهُ إنَّمَا هُوَ عَلَى الْعَامِدِ لِقَتْلِهِ، الذَّاكِرِ لِإِحْرَامِهِ، أَوْ؛ لِأَنَّهُ فِي الْحَرَمِ، لِأَنَّ إذَاقَةَ اللَّهِ تَعَالَى وَبَالَ الْأَمْرِ وَعَظِيمِ وَعِيدِهِ بِالِانْتِقَامِ مِنْهُ لَا يَخْتَلِفُ اثْنَانِ مِنْ أَهْلِ الْإِسْلَامِ فِي أَنَّهُ لَيْسَ عَلَى الْمُخْطِئِ أَلْبَتَّةَ، وَلَا عَلَى غَيْرِ الْعَامِدِ لِلْمَعْصِيَةِ الْقَاصِدِ إلَيْهَا؛ فَبَطَلَ يَقِينًا أَنْ يَكُونَ فِي الْقُرْآنِ، وَلَا فِي السُّنَّةِ إيجَابُ حُكْمٍ فِي هَذَا الْمَكَانِ عَلَى غَيْرِ الْعَامِدِ الذَّاكِرِ الْقَاصِدِ إلَى الْمَعْصِيَةِ.

L14300–14301 It is thus definitively established beyond doubt that this entire ruling applies solely to one who intentionally kills while conscious of his state of consecration (ihram) or due to being within the sacred precinct. For Allah the Exalted's subjecting him to the dire consequence of the act and the magnitude of His threat to exact vengeance—no two Muslims disagree that no ruling whatsoever applies to the one who errs unintentionally, nor to one who does not deliberately intend the sin yet commits it. It is therefore invalidated with certainty that the Quran or the Sunnah could impose a ruling in this context upon anyone other than the intentional, conscious, and deliberate perpetrator of the sin.

قَالَ اللَّهُ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» .

L14302 Allah the Exalted said: {There is no blame upon you for what you err in, but only for what your hearts deliberately intended} [Al-Ahzab: 5]. And the Messenger of Allah—peace and blessings of Allah be upon him—said: "Has been lifted from my ummah are error, forgetfulness, and what they are compelled to do."[34]

وَاخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ الْمَسْعُودِيِّ هُوَ عُتْبَةُ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ - عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ عَنْ قَبِيصَةَ بْنِ جَابِرٍ الْأَسَدِيِّ: أَنَّهُ سَمِعَ عُمَرَ بْنَ الْخَطَّابِ، وَمَعَهُ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ، وَعُمَرُ: يَسْأَلُ رَجُلًا قَتَلَ ظَبْيًا وَهُوَ مُحْرِمٌ؟ فَقَالَ لَهُ عُمَرُ: عَمْدًا قَتَلْتَهُ أَمْ خَطَأً؟ فَقَالَ لَهُ الرَّجُلُ: لَقَدْ تَعَمَّدْت رَمْيَهُ وَمَا أَرَدْت قَتْلَهُ، فَقَالَ لَهُ عُمَرُ: مَا أَرَاك إلَّا أَشْرَكْت بَيْنَ الْعَمْدِ وَالْخَطَأِ، أَعْمِدْ إلَى شَاةٍ فَاذْبَحْهَا فَتَصَدَّقْ بِلَحْمِهَا وَأَسِقْ إهَابَهَا.

L14303 People have differed regarding this matter. It has been narrated to us through the chain of Wakiʿ from al-Masʿūdī—who is ʿUtbah ibn ʿAbdullāh ibn ʿUtbah ibn ʿAbdullāh ibn Masʿūd—from ʿAbd al-Malik ibn ʿUmayr from Qabīṣah ibn Jābir al-Asadī: that he heard ʿUmar ibn al-Khaṭṭāb, accompanied by ʿAbd al-Raḥmān ibn ʿAwf, while Umar was questioning a man who had killed a gazelle while in a state of iḥrām. ʿUmar said to him: "Did you kill it intentionally or unintentionally?" The man replied: "I deliberately shot at it, but I did not intend to kill it." ʿUmar said to him: "It seems you have conflated intentional and unintentional action. Proceed to slaughter a sheep, distribute its meat as charity, and soak its hide [for tanning]."

قَالَ أَبُو مُحَمَّدٍ: فَلَوْ كَانَ الْعَمْدُ وَالْخَطَأُ فِي ذَلِكَ سَوَاءً عِنْدَ عُمَرَ، وَعَبْدِ الرَّحْمَنِ لَمَا سَأَلَهُ عُمَرُ أَعَمْدًا قَتَلْتَهُ أَمْ خَطَأً؟ وَلَمْ يُنْكِرْ ذَلِكَ عَبْدُ الرَّحْمَنِ؛ لِأَنَّهُ كَانَ يَكُونُ فُضُولًا مِنْ

L14304 Abū Muḥammad said: If intentional and accidental killing had been equivalent in this matter according to ʿUmar and ʿAbd al-Raḥmān, ʿUmar would not have asked him, "Did you kill him intentionally or accidentally?" nor

[33] **Qur'an references (L14299):** Qur'an 5:95 (Al-Ma'idah).
[34] **Qur'an references (L14302):** Qur'an 33:5 (Al-Ahzab).

would ʿAbd al-Raḥmān have denied this—for that would have been a superfluous and meaningless question. Through the chain of Ibn Abī Shaybah from Ismāʿīl ibn ʿUlayyah, from al-Ḥusayn al-Muʿallim, from Qatādah, from Abī Madīnah, from Ibn ʿAbbās—that he said regarding a pilgrim in iḥrām who kills game: He incurs no penalty for accidental killing. Abū Madīnah is ʿAbd Allāh ibn Ḥiṣn al-Sadūsī, a *Tābiʿī*, who heard Abū Mūsā, Ibn ʿAbbās, and Ibn al-Zubayr—may Allāh be pleased with them.

السُّؤَالِ لَا مَعْنَى لَهُ؟ وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ إِسْمَاعِيلَ ابْنِ عُلَيَّةَ عَنْ الْحُسَيْنِ الْمُعَلِّمِ عَنْ قَتَادَةَ عَنْ أَبِي مَدِينَةَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ فِي الْمُحْرِمِ يَقْتُلُ الصَّيْدَ: لَيْسَ عَلَيْهِ فِي الْخَطَأِ شَيْءٌ - أَبُو مَدِينَةَ هُوَ عَبْدُ اللَّهِ بْنُ حِصْنٍ السَّدُوسِيُّ تَابِعِيٌّ -، سَمِعَ أَبَا مُوسَى، وَابْنَ عَبَّاسٍ، وَابْنَ الزُّبَيْرِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L14305 From the narration of Shuʿbah from Abi Bishr Jaʿfar ibn Abi Waḥshiyyah from Saʿīd ibn Jubayr: He was asked, “What about a muḥrim who kills game by mistake?” He replied, “Is there nothing upon him?” I asked, “From whom?” He said, “The Sunnah.”

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي بِشْرٍ جَعْفَرِ بْنِ أَبِي وَحْشِيَّةَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ: أَنَّهُ سُئِلَ عَنْ الْمُحْرِمِ يَقْتُلُ الصَّيْدَ خَطَأً؟ قَالَ: لَيْسَ عَلَيْهِ شَيْءٌ؟ قَالَ: فَقُلْت لَهُ: عَمَّنْ؟ قَالَ: السُّنَّةُ.

L14306–14307 Abu Muhammad said: Our understanding of the Malikis is that they consider the statement of Sa’id ibn al-Musayyib when Rabi’ah asked him about his statement regarding a woman: if three fingers are severed for her, she receives thirty camels, but if four fingers are severed for her, does she receive only twenty camels? Sa’id said to him: “Sunnah, O my nephew.” Thus they took this as an incontrovertible proof.

قَالَ أَبُو مُحَمَّد: عَهْدُنَا بِالْمَالِكِيِّينَ يَجْعَلُونَ قَوْلَ سَعِيدِ بْنِ الْمُسَيِّبِ إذْ سَأَلَهُ رَبِيعَةُ عَنْ قَوْلِهِ فِي الْمَرْأَةِ يُقْطَعُ لَهَا ثَلَاثُ أَصَابِعَ لَهَا ثَلَاثُونَ مِنْ الْإِبِلِ فَإِنْ قُطِعَتْ لَهَا أَرْبَعُ أَصَابِعَ فَلَيْسَ لَهَا إلَّا عِشْرُونَ مِنْ الْإِبِلِ؟ فَقَالَ لَهُ سَعِيدٌ: السُّنَّةُ يَا ابْنَ أَخِي، فَجَعَلُوهُ حُجَّةً لَا يَجُوزُ خِلَافُهَا.

L14308 Sa’id ibn Jubayr opposed Umar ibn al-Khattab, Ali ibn Abi Talib, and others in that matter. Yet later scholars did not regard Sa’id ibn Jubayr’s opinion as authoritative here, despite his assertion that the Sunnah dictates no penalty is incurred by a muhrim who kills game by mistake—supported by the Quran and the Companions. This is truly astonishing.

وَقَدْ خَالَفَ سَعِيدٌ فِي ذَلِكَ عُمَرَ بْنَ الْخَطَّابِ، وَعَلِيَّ بْنَ أَبِي طَالِبٍ وَغَيْرَهُمَا، ثُمَّ لَمْ يَجْعَلُوا هَاهُنَا حُجَّةَ قَوْلِ سَعِيدِ بْنِ جُبَيْرٍ: إنَّ السُّنَّةَ هِيَ أَنَّ لَيْسَ عَلَى الْمُحْرِمِ يَقْتُلُ الصَّيْدَ خَطَأً، وَمَعَهُ الْقُرْآنُ، وَالصَّحَابَةُ - وَهَذَا عَجَبٌ جِدًّا.

L14309 And through the chain of Ḥammād ibn Zayd, from Ayyūb al-Sakhtiyānī, from Ṭāwūs, who said: “Judgment is only passed upon one who intentionally killed him, as Allah, the Exalted and Majestic, said.”

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ طَاوُسٍ قَالَ: لَا يُحْكَمُ إلَّا عَلَى مَنْ قَتَلَهُ مُتَعَمِّدًا كَمَا قَالَ اللَّهُ عَزَّ وَجَلَّ.

L14310 And from Al-Qasim ibn Muhammad, Salim ibn Abdullah, Ata, and Mujahid regarding one who kills locusts unintentionally: they said, “No ruling is imposed on him. But if he kills them intentionally, a ruling is imposed on him.” This view is held by Abu Sulayman and our companions.

وَعَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ، وَعَطَاءٍ، وَمُجَاهِدٍ فِيمَنْ أَصَابَ الْجَنَادِبَ خَطَأً؟ قَالُوا: لَا يُحْكَمُ عَلَيْهِ فَإِنْ أَصَابَهَا مُتَعَمِّدًا حُكِمَ عَلَيْهِ وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ وَأَصْحَابِنَا.

L14311 Another valid statement is reported from Mujāhid: that the penalty is im-

posed only on one who kills game while in a state of iḥrām unintentionally, whereas one who kills it intentionally while conscious of their iḥrām is not subject to this ruling.

وَصَحَّ عَنْ مُجَاهِدٍ قَوْلٌ آخَرُ وَهُوَ أَنَّهُ إنَّمَا يُحْكَمُ عَلَى مَنْ قَتَلَ الصَّيْدَ وَهُوَ مُحْرِمٌ خَطَأً، وَأَمَّا مَنْ قَتَلَهُ عَامِدًا ذَاكِرًا لِإِحْرَامِهِ فَلَا يُحْكَمُ عَلَيْهِ.

L14312 Abu Hanifah, Malik, and al-Shafiʿi said: Intentional and unintentional are equal; the ruling applies to him in all such cases—and this opinion has also been narrated from ʿUmar, ʿAbd al-Rahman, Saʿd, al-Nakhaʿī, and al-Shaʿbi.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: الْعَمْدُ وَالْخَطَأُ سَوَاءٌ يُحْكَمُ عَلَيْهِ فِي كُلِّ ذَلِكَ - وَقَدْ رُوِيَ هَذَا الْقَوْلُ أَيْضًا عَنْ عُمَرَ، وَعَبْدِ الرَّحْمَنِ، وَسَعْدٍ، وَالنَّخَعِيِّ، وَالشَّعْبِيِّ.

L14313 Abu Muhammad said: The ultimate recourse in disputes is what Allah, the Exalted and Majestic, has obligated upon us—to refer back to Allah, the Exalted, and His Messenger, peace and blessings be upon him.

قَالَ أَبُو مُحَمَّد: الْمَرْجُوعُ إلَيْهِ عِنْدَ التَّنَازُعِ هُوَ مَا افْتَرَضَهُ اللَّهُ عَزَّ وَجَلَّ عَلَيْنَا مِنْ الرُّجُوعِ إلَى اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L14314 Proponents of this view objected, arguing: "Allah the Exalted has mandated expiation for one who kills a believer by mistake. Should we then analogize this ruling to require it for one who kills game animals by mistake?"

وَشَغَبَ أَهْلُ هَذِهِ الْمَقَالَةِ بِأَنْ قَالُوا: قَدْ أَوْجَبَ اللَّهُ تَعَالَى الْكَفَّارَةَ عَلَى قَاتِلِ الْمُؤْمِنِ خَطَأً فَقِسْنَا عَلَيْهِ قَاتِلَ الصَّيْدِ خَطَأً؟

L14315–14316 Ali said: This is analogy, and all analogy is invalid. Furthermore, even if it were valid, this would constitute sheer invalidity. They have also diverged from the ruling of analogy in this statement of theirs. As for its being erroneous, this is because one of their foundational principles which they do not differ about states that whatever diverges from the ruling of its foundational principle as explicitly specified cannot be made subject to analogy. The foundational principle holds that no obligation falls upon the forgetful or the mistaken. Yet in their view, the obligation of expiation and blood money upon one who kills a believer by mistake constitutes a departure from this principle. Therefore, it necessarily follows that no analogy should be made upon it.

قَالَ عَلِيٌّ: هَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ وَلَكَانُوا أَيْضًا قَدْ فَارَقُوا حُكْمَ الْقِيَاسِ فِي قَوْلِهِمْ هَذَا، أَمَّا كَوْنُهُ خَطَأً، فَلِأَنَّ مِنْ أَصْلِهِمْ الَّذِي لَا يَخْتَلِفُونَ فِيهِ أَنَّ مَا خَرَجَ عَنْ حُكْمِ أَصْلِهِ مَخْصُوصًا أَنَّهُ لَا يُقَاسُ عَلَيْهِ، وَالْأَصْلُ أَنْ لَا شَيْءَ عَلَى النَّاسِي وَالْمُخْطِئِ فَخَرَجَ عِنْدَهُمْ إيجَابُ الْكَفَّارَةِ وَالدِّيَةِ عَلَى قَاتِلِ الْمُؤْمِنِ خَطَأً عَنْ أَصْلِهِ، فَوَجَبَ أَنْ لَا يُقَاسَ عَلَيْهِ.

L14317 Moreover, they are unanimously agreed not to analogize the ruling upon one who engages in sexual intercourse during Ramadan's daytime while forgetful to the ruling upon one who does so intentionally regarding the obligation of expiation upon both of them. Killing game bears closer resemblance to sexual intercourse than to killing a believer, for killing a believer was never permissible at any point, then was prohibited; rather, it has perpetually been forbidden since embracing faith, or since birth if born a Muslim.

وَأَيْضًا فَإِنَّهُمْ مُتَّفِقُونَ عَلَى أَنْ لَا يَقِيسُوا حُكْمَ الْوَاطِئِ فِي نَهَارِ رَمَضَانَ نَاسِيًا عَلَى الْوَاطِئِ فِيهِ عَمْدًا فِي إيجَابِ الْكَفَّارَةِ عَلَيْهِمَا، وَقَتْلُ الصَّيْدِ أَشْبَهُ بِالْوَطْءِ مِنْهُ بِقَتْلِ الْمُؤْمِنِ؛ لِأَنَّ قَتْلَ الْمُؤْمِنِ لَمْ يَحِلَّ قَطُّ ثُمَّ حُرِّمَ، بَلْ لَمْ يَزَلْ حَرَامًا مُذْ آمَنَ، أَوْ مُذْ وُلِدَ إنْ كَانَ وُلِدَ عَلَى الْإِسْلَامِ.

وَأَمَّا الْوَطْءُ وَقَتْلُ الصَّيْدِ فَكَانَا حَلَالَيْنِ، ثُمَّ حُرِّمَا بِالصَّوْمِ وَبِالْإِحْرَامِ فَجَمَعَتْهُمَا هَذِهِ الْعِلَّةُ فَأَخْطَئُوا فِي قِيَاسِ قَاتِلِ الصَّيْدِ خَطَأً عَلَى مَا لَا يُشْبِهُ.

L14318 As for sexual intercourse and hunting, they were initially permissible but later prohibited during fasting and in the state of Ihrām. This effective cause united them under a single ruling, yet they erred in applying legal analogy to the case of killing game by likening it to what bears no resemblance.

وَأَمَّا مُخَالَفَتُهُمْ لِلْقِيَاسِ هُنَا فَإِنَّ الْحَنَفِيِّينَ مِنْ أَصْلِهِمْ أَنَّ الْكَفَّارَاتِ لَا يَجُوزُ أَنْ تُوجَبَ بِالْقِيَاسِ ثُمَّ أَوْجَبُوهَا هَاهُنَا بِالْقِيَاسِ، وَأَيْضًا فَإِنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ قَاسُوا الْخَطَأَ فِي قَتْلِ الصَّيْدِ عَلَى الْخَطَأِ فِي قَتْلِ الْمُؤْمِنِ فَأَوْجَبُوا الْجَزَاءَ فِي كِلَيْهِمَا وَلَمْ يَقِيسُوا قَتْلَ الْمُؤْمِنِ عَمْدًا عَلَى قَتْلِ الصَّيْدِ عَمْدًا فَأَوْجَبُوا الْكَفَّارَةَ فِي قَتْلِ الصَّيْدِ عَمْدًا وَلَمْ يُوجِبُوهَا فِي قَتْلِ الْمُؤْمِنِ عَمْدًا وَهَذَا تَنَاقُضٌ وَبَاطِلٌ.

L14319 As for their contradiction of analogy here, the Ḥanafīs—despite their foundational principle that expiations cannot be legislated through analogy—obligated them here via analogy. Moreover, the Ḥanafīs and Mālikīs analogized negligent killing in the case of hunted game to negligent killing of a Muslim, imposing retribution in both instances. Yet they did not analogize the intentional killing of a Muslim to the intentional killing of hunted game, thereby requiring expiation for the latter while exempting it for the former. This is a contradiction and invalid.

وَأَيْضًا فَلَمْ يَقِيسُوا نَاسِيَ التَّسْمِيَةِ فِي التَّذْكِيَةِ عَلَى الْمُتَعَمِّدِ لِتَرْكِهَا فِيهَا مَعَ مَجِيءِ الْقُرْآنِ بِالتَّسْوِيَةِ بَيْنَ الْأَمْرَيْنِ هُنَالِكَ، وَتَفْرِيقِ الْحُكْمِ هَاهُنَا.

L14320 Moreover, they did not analogize the one who forgot the tasmiyah in ritual slaughter to the intentional omitter of it in it, despite the Quran establishing parity between the two matters in that context, and the differentiation of the legal ruling in this context.

وَالشَّافِعِيُّونَ فَرَّقُوا بَيْنَ النَّاسِي فِيمَا تَبْطُلُ بِهِ الصَّلَاةُ وَبَيْنَ الْعَامِدِ، وَكَذَلِكَ فِي الصَّوْمِ وَسَاوَوْا هَاهُنَا بَيْنَ النَّاسِي وَالْعَامِدِ، وَهَذَا اضْطِرَابٌ شَدِيدٌ.

L14321 The Shafi'i scholars distinguished between the forgetful person in matters that invalidate prayer and the intentional one, and similarly regarding fasting. Yet they treated the forgetful and the intentional in fasting as equal. This is a grave inconsistency.

وَقَالُوا: لَيْسَ تَخْصِيصُ اللَّهِ تَعَالَى الْمُتَعَمِّدَ بِإِيجَابِ الْكَفَّارَةِ عَلَيْهِ بِمُوجِبٍ أَنَّ الْمُخْطِئَ بِخِلَافِهِ وَذَكَرُوا مَا نَحْتَجُّ بِهِ نَحْنُ وَمَنْ وَافَقَنَا مِنْهُمْ مِنَ النُّصُوصِ فِي إبْطَالِ الْقَوْلِ بِدَلِيلِ الْخِطَابِ -: قَالَ أَبُو مُحَمَّد: وَهَذَا جَهْلٌ شَدِيدٌ مِنْ هَذَا الْقَائِلِ، لِأَنَّنَا إذَا أَبْطَلْنَا الْقَوْلَ بِدَلِيلِ الْخِطَابِ لَمْ نُوجِبْ الْقَوْلَ بِالْقِيَاسِ بَلْ أَبْطَلْنَاهُمَا جَمِيعًا، وَالْقِيَاسُ: هُوَ أَنْ يُحْكَمَ لِلْمَسْكُوتِ عَنْهُ بِحُكْمِ الْمَنْصُوصِ عَلَيْهِ، وَدَلِيلُ الْخِطَابِ: هُوَ أَنْ يُحْكَمَ لِلْمَسْكُوتِ عَنْهُ بِخِلَافِ الْمَنْصُوصِ عَلَيْهِ.

L14322–14324 They said: Allah the Exalted's specification of the one who acts intentionally by obligating expiation upon him does not entail that the mistaken person is subject to an opposing ruling. They mentioned the texts that we and those who agree with us among them cite to invalidate the assertion of *dalīl al-khiṭāb*. Abu Muhammad said: This is profound ignorance from this proponent, for when we invalidate the assertion of *dalīl al-khiṭāb*, we do not necessitate the validity of *qiyās*; rather, we invalidate both entirely. *Qiyās* is that a ruling is made... For the matter left unaddressed, the ruling is that of what is explicitly stated. The implication of the text refers to applying a ruling to the unaddressed matter contrary to what is explicitly stated.

L14325 As for them, they have varied here as they wished: at times, they extend the

ruling of the explicitly stipulated case to the unmentioned one via analogy, and at times, they rule contrary to it by invoking the implication of the address—and each of these two rulings directly contradicts the other.

وَأَمَّا هُمْ فَتَلَوَّنُوا هَاهُنَا مَا شَاءُوا، فَمَرَّةً يَحْكُمُونَ لِلْمَسْكُوتِ عَنْهُ بِحُكْمِ الْمَنْصُوصِ عَلَيْهِ قِيَاسًا، وَمَرَّةً يَحْكُمُونَ عَلَيْهِ بِخِلَافِ حُكْمِهِ أَخْذًا بِدَلِيلِ الْخِطَابِ - وَكُلُّ وَاحِدٍ مِنْ هَذَيْنِ الْحُكْمَيْنِ مُضَادٌّ لِلْآخَرِ.

L14326 As for us, we do not transgress the Quran nor the Sunnah, and we suspend judgment on matters left unaddressed, neither ruling for them by the ruling of what is explicitly stated nor by another ruling contrary to the explicit ruling. Instead, we seek its ruling in another text, for it must exist. We have never asserted in this matter: "Since Allah the Exalted imposed compensation and expiation on one who intentionally kills game, the inadvertent offender must be the opposite." We seek refuge in Allah from saying this! Rather, we stated: This verse pertains solely to the intentional offender and makes no mention of the inadvertent offender—neither obligating compensation upon him nor exempting him. Thus, it is obligatory to seek its ruling in another text, for not every ruling is found in a single verse. This is the only position a person of understanding can hold. When we find its ruling, we judge by it, whether it aligns with the explicit ruling or diverges from it. So we acted and found that Allah the Exalted has absolved the inadvertent offender of blame.

وَأَمَّا نَحْنُ فَلَا نَتَعَدَّى الْقُرْآنَ وَلَا السُّنَّةَ وَنُوقِفُ أَمْرَ الْمَسْكُوتِ عَنْهُ فَلَا نَحْكُمُ لَهُ بِحُكْمِ الْمَنْصُوصِ وَلَا بِحُكْمٍ آخَرَ، بِخِلَافِ حُكْمِ الْمَنْصُوصِ؛ لَكِنْ نَطْلُبُ حُكْمَهُ فِي نَصٍّ آخَرَ فَلَا بُدَّ مِنْ وُجُودِهِ وَلَمْ نَقُلْ قَطُّ هَاهُنَا: إنَّهُ لَمَّا نَصَّ اللَّهُ تَعَالَى عَلَى إيجَابِ الْجَزَاءِ وَالْكَفَّارَةِ عَلَى قَاتِلِ الصَّيْدِ عَمْدًا وَجَبَ أَنْ يَكُونَ الْمُخْطِئُ بِخِلَافِهِ، وَمَعَاذَ اللَّهِ أَنْ نَقُولَ هَذَا، لَكِنْ قُلْنَا: لَيْسَ فِي هَذِهِ الْآيَةِ إلَّا الْمُتَعَمِّدُ وَحْدُهُ وَلَيْسَ فِيهَا ذِكْرٌ لِلْمُخْطِئِ لَا بِإِيجَابِ جَزَاءٍ عَلَيْهِ وَلَا بِإِسْقَاطِهِ عَنْهُ فَوَجَبَ طَلَبُ حُكْمِهِ فِي نَصٍّ آخَرَ، إذْ لَيْسَ حُكْمُ كُلِّ شَيْءٍ مَوْجُودًا فِي آيَةٍ وَاحِدَةٍ، وَهَذَا هُوَ الَّذِي لَا يَعْقِلُ أَحَدٌ سِوَاهُ؛ فَإِذَا وَجَدْنَا حُكْمَهُ حَكَمْنَا بِهِ، إمَّا مُوَافِقًا لِهَذَا الْحُكْمِ الْآخَرِ، وَإِمَّا مُخَالِفًا لَهُ، فَفَعَلْنَا -: فَوَجَدْنَا اللَّهَ تَعَالَى قَدْ أَسْقَطَ الْجُنَاحَ عَنْ الْمُخْطِئِ.

L14327 We found that the Messenger of Allah—may Allah, the Exalted, bless him and grant him peace—said: "Indeed, your blood and your wealth are forbidden to you," and that He has pardoned error and forgetfulness. He, the Exalted, censured those who legislate in the religion what He did not permit.[35]

وَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَأَنَّهُ قَدْ عَفَا عَنْ الْخَطَأِ وَالنِّسْيَانِ، وَذَمَّ تَعَالَى مَنْ شَرَعَ فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ.

L14328 By these texts, it is established that one who kills game mistakenly or forgetfully due to being in a state of ihrām is not legally obligated to fast, nor is there a penalty of offering a sacrificial animal, nor any obligation to provide food at all. Thus, the invalidity of their argument is clear—and all praise is due to God, the Exalted.

فَوَجَبَ بِهَذِهِ النُّصُوصِ أَنْ لَا يَلْزَمَ قَاتِلَ الصَّيْدِ خَطَأً أَوْ نَاسِيًا لِإِحْرَامِهِ شَرْعُ صَوْمٍ، وَلَا غَرَامَةُ هَدْيٍ، أَوْ إطْعَامٌ أَصْلًا؛ فَظَهَرَ فَسَادُ احْتِجَاجِهِمْ - وَلِلَّهِ تَعَالَى الْحَمْدُ.

[35] **Qur'an references (L14327):** Qur'an 42:21 (Ash-Shuraa).

وَاحْتَجُّوا أَيْضًا: بِأَنْ قَالُوا: لَمَّا كَانَ مُتْلِفُ أَمْوَالِ النَّاسِ يَلْزَمُهُ ضَمَانُهَا بِالْخَطَأِ وَالْعَمْدِ وَكَانَ الصَّيْدُ مِلْكًا لِلَّهِ تَعَالَى وَجَبَ ضَمَانُهُ بِالْعَمْدِ وَالْخَطَأِ.

L14329 They further argued: Since one who causes loss to people's property is liable to compensate for it—whether the act was accidental or deliberate—and since game belongs to God Almighty, compensation for it is obligatory whether the act was accidental or deliberate.

قَالَ أَبُو مُحَمَّد: وَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنُ الْبَاطِلِ، وَلَكَانُوا أَيْضًا قَدْ أَخْطَئُوا فِيهِ.

L14330 Abu Muhammad said: This is analogy, and all analogy is invalid. Moreover, even if it were valid, this would be the very essence of invalidity from it, and they would have also erred in applying it.

أَمَّا كَوْنُهُ خَطَأً فَإِنَّ اللَّهَ تَعَالَى فَرَّقَ بَيْنَ حُكْمِ مَا أُصِيبَ مِنْ أَمْوَالِ النَّاسِ وَبَيْنَ حُكْمِ مَا أُصِيبَ مِنْ الصَّيْدِ فِي الْإِحْرَامِ فَجَعَلَ فِي أَمْوَالِ النَّاسِ الْمِثْلَ، أَوْ الْقِيمَةَ عِنْدَ عَدَمِ الْمِثْلِ، وَجَعَلَ فِي الصَّيْدِ جَزَاءً مِنْ النَّعَمِ لَا مِنْ مِثْلِهِ مِنْ الصَّيْدِ الْمُبَاحِ فِي الْإِحْلَالِ، أَوْ إطْعَامًا، أَوْ صِيَامًا، وَلَيْسَ شَيْءٌ مِنْ هَذَا فِي أَمْوَالِ النَّاسِ؛ فَسَوَّوْا بَيْنَ حُكْمَيْنِ قَدْ فَرَّقَ اللَّهُ تَعَالَى بَيْنَهُمَا - وَهَذِهِ جُرْأَةٌ شَدِيدَةٌ وَخَطَأٌ لَائِحٌ؛ وَأَمَّا خَطَؤُهُمْ فِيهِ فَإِنَّ الْحَنَفِيِّينَ مُجْمِعُونَ عَلَى أَنَّ الْكَفَّارَاتِ لَا يَجُوزُ أَنْ تُؤْخَذَ قِيَاسًا، وَأَوْجَبُوا هَاهُنَا قِيَاسًا، وَالْقَوْمُ لَيْسُوا فِي شَيْءٍ، وَإِنَّمَا هُمْ فِي شَبَهِ اللَّعِبِ وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L14331–14333 As for it being an inadvertent act, Allah the Exalted has distinguished between the ruling concerning compensation for harm caused to people's property and the ruling concerning game hunted while in the sacred state of iḥrām, mandating for people's property the equivalent (mithl, like-for-like) or the market value when no equivalent exists. He ordained for hunting an expiation from livestock - not from its equivalent in permissible game upon release from ihram - or feeding the poor, or fasting, none of these being part of people's wealth. Thus they equated two rulings that Allah the Exalted had distinguished - this being grave presumption and evident error. As for their mistake herein: the Hanafis unanimously hold that expiations cannot be established through analogy, yet they prescribed analogy here. The people are not upon anything valid; rather, they are immersed in an illusion of frivolity. We seek refuge with Allah from forsakenness.

وَأَمَّا الْمَالِكِيُّونَ فَإِنَّهُمْ قَاسُوا مُتْلِفَ الصَّيْدِ خَطَأً عَلَى مُتْلِفِ أَمْوَالِ النَّاسِ عَمْدًا، وَإِنَّمَا يَجِبُ عِنْدَهُمْ فِي أَمْوَالِ النَّاسِ الْقِيمَةُ فَقَطْ، وَيَجِبُ عِنْدَهُمْ فِي الصَّيْدِ الْمِثْلُ مِنْ النَّعَمِ، أَوْ الْإِطْعَامُ، أَوْ الصِّيَامُ، فَقَدْ تَرَكُوا قِيَاسَهُمْ الْفَاسِدَ.

L14334 As for the Mālikī jurists, they analogized accidental destruction of game to intentional destruction of people's property. Yet in cases of damaging property, they require only monetary value, while in game cases they mandate equivalent grazing livestock, feeding, or fasting. Indeed, they have abandoned their flawed analogy.

فَإِنْ قَالُوا: اتَّبَعْنَا الْقُرْآنَ؟ قُلْنَا: فَالْتَزِمُوا اتِّبَاعَهُ فِي الْعَامِدِ خَاصَّةً وَإِسْقَاطُ الْجُنَاحِ عَنْ الْمُخْطِئِ، وَأَوْجَبُوا فِي الصَّيْدِ: الْقِيمَةَ كَمَا فَعَلَ أَبُو حَنِيفَةَ وَطَرَدَ قِيَاسَهُ الْفَاسِدَ.

L14335 If they say, "We follow the Qur'an?" We respond, "Then adhere strictly to its rulings: absolving the one who errs from sin and holding the intentional one specifically accountable." They imposed compensation for hunting, as Abū Ḥanīfah did, but rejected his invalid analogy.

وَأَيْضًا: فَإِنَّ الْحَنَفِيِّينَ لَا يَرَوْنَ ضَمَانَ مَا وَلَدَتْ الْمَاشِيَةُ الْمَغْصُوبَةُ إلَّا أَنْ تُسْتَهْلَكَ الْأَوْلَادُ، وَيَرَى عَلَى مَنْ أَخَذَ صَيْدًا وَهُوَ مُحْرِمٌ فَوَلَدَ عِنْدَهُ، ثُمَّ مَاتَ الْوَلَدُ مِنْ غَيْرِ فِعْلِهِ: أَنْ يَضْمَنَ

L14336 Moreover, the Hanafis do not deem one liable for the offspring of usurped livestock unless the offspring are disposed of. Yet they hold that if someone takes game while in a state of ritual consecration (iḥrām) and it gives birth in

الْأُمَّ وَالْأَوْلَادَ، فَأَيْنَ قِيَاسُهُ الصَّيْدَ عَلَى أَمْوَالِ النَّاسِ؟ وَأَمَّا الشَّافِعِيُّونَ فَإِنَّ اللَّهَ تَعَالَى قَدْ حَرَّمَ الْخِنْزِيرَ، وَكُلَّ ذِي نَابٍ مِنْ السِّبَاعِ، وَكُلَّ ذِي مِخْلَبٍ مِنْ الطَّيْرِ كَمَا حَرَّمَ الصَّيْدَ فِي الْإِحْرَامِ، وَكُلُّ ذَلِكَ مِلْكٌ لِلَّهِ تَعَالَى، ثُمَّ لَا يُوجِبُونَ عَلَى مَنْ قَتَلَ شَيْئًا مِنْ ذَلِكَ جَزَاءً، فَنَقَضُوا قِيَاسَهُمْ.

فَإِنْ قَالُوا: لَمْ يُحَرِّمْ قَتْلَ شَيْءٍ مِنْ هَذِهِ؟ قُلْنَا: وَلَا أَوْجَبَ اللَّهُ تَعَالَى الْجَزَاءَ إلَّا عَلَى الْمُتَعَمِّدِ فَإِمَّا الْتَزَمُوا النُّصُوصَ كَمَا وَرَدَتْ وَلَا تَتَعَدَّوْا حُدُودَ اللَّهِ، وَإِمَّا اطَّرَدُوا قِيَاسَكُمْ فَأَوْجِبُوا الْجَزَاءَ فِي الْخِنْزِيرِ، وَفِي السِّبَاعِ، وَفِي ذَوَاتِ الْمَخَالِبِ، كَمَا فَعَلَ أَبُو حَنِيفَةَ - فَظَهَرَ أَيْضًا فَسَادُ أَقْوَالِهِمْ جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَالَ بَعْضُهُمْ: إنَّمَا نَصَّ عَلَى الْمُتَعَمِّدِ لِيَعْلَمَ أَنَّ حُكْمَ الْمُخْطِئِ مِثْلُهُ -: قَالَ أَبُو مُحَمَّد: وَهَذِهِ مِنْ أَسْخَفِ كَلَامٍ فِي الْأَرْضِ، وَيَلْزَمُهُ أَنْ يَقُولَ: إنَّ اللَّهَ تَعَالَى إنَّمَا نَصَّ عَلَى أَنَّ جَزَاءَ قَاتِلِ الْمُؤْمِنِ عَامِدًا فِي جَهَنَّمَ خَالِدًا فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ، لِيَعْلَمَ أَنَّ حُكْمَ قَاتِلِهِ مُخْطِئٌ مِثْلُهُ، وَإِلَّا فَقَدْ ظَهَرَ كَذِبُ هَذَا الْقَائِلِ عَلَى اللَّهِ عَزَّ وَجَلَّ، وَافْتِرَاؤُهُ عَلَى خَالِقِهِ لِإِخْبَارِهِ عَنْهُ بِالْكَذِبِ وَالْبَاطِلِ.

فَإِنْ قَالَ: قَدْ فَرَّقَ اللَّهُ تَعَالَى بَيْنَ قَاتِلِ الْعَمْدِ وَقَاتِلِ الْخَطَأِ.

قُلْنَا: وَقَدْ فَرَّقَ اللَّهُ عَزَّ وَجَلَّ بَيْنَ كُلِّ مُخْطِئٍ وَكُلِّ عَامِدٍ بِقَوْلِهِ عَزَّ وَجَلَّ: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

his possession, then the offspring dies through no fault of his own, he is liable for both the mother and the offspring. So where is his analogy of game to people's property? As for the Shafi'is, Allah the Exalted has prohibited pigs, every predatory beast with fangs, and every bird of prey with talons, just as He prohibited hunting during ritual consecration. All of this is the exclusive property of Allah the Exalted, yet they do not impose any expiation on one who kills any of these, thereby nullifying their own analogy.

L14337 If they say: "Did He not prohibit killing any of these?" We reply: Allah the Exalted has not mandated the prescribed penalty except upon the intentional offender. Therefore, they must either adhere to the texts as revealed without transgressing Allah's boundaries, or consistently apply their analogy and impose the penalty upon pigs, predatory animals, and clawed animals - as Abū Ḥanīfa applied it. Thus, the invalidity of their arguments becomes entirely evident. And success comes only from Allah, the Exalted.

L14338–14340 Some of them said: The explicit textual mention of the intentional [act] is only to clarify that the ruling for the mistaken [act] is the same as it. Abū Muḥammad said: This is among the most absurd statements on earth, for it would logically compel him to assert: "Allah the Exalted only explicitly stated that the punishment for one who intentionally kills a believer is eternal abode in Hell—wherein they remain perpetually—and that he has incurred Allah's wrath." He cursed him so that he would know that the judgment regarding his killer is mistaken, just as he is; otherwise, the lie of this claimant against Allah, the Almighty, has become evident, and his fabrication against his Creator for informing lies and falsehood about Him.[36]

L14341 If he says: Allah, the Exalted, has legally distinguished between the intentional killer and the unintentional killer.

L14342 We said: Indeed, Allah, the Mighty and Majestic, has distinguished between every person who errs and every person who acts deliberately through His words: "There is no blame upon you for that in which you have erred, but only for what your hearts have deliberately intended" [al-Aḥzāb 33:5].[37]

[36] **Qur'an references (L14338):** Qur'an 4:93 (An-Nisa).
[37] **Qur'an references (L14342):** Qur'an 33:5 (Al-Ahzab).

L14343 Ali said: “We know of no obfuscation on their part except this, and all of it is manifestly corrupt” - and with Allah, the Exalted, is success.

قَالَ عَلِيٌّ: مَا نَعْلَمُ لَهُمْ تَمْوِيهًا غَيْرَ هَذَا وَهُوَ كُلُّهُ ظَاهِرُ الْفَسَادِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L14344 As for our statement that eating that hunted game is prohibited, it is because Allah the Exalted has termed it killing and forbidden it. He, the Almighty and Majestic, has not permitted us to eat any animal except by the ritual slaughter He has commanded. There is no doubt in the mind of anyone of wholesome and sound intellect that what Allah the Exalted has commanded regarding ritual slaughter differs from the killing He prohibited. Since the commanded slaughter differs from the prohibited killing, the prohibited killing is not valid ritual slaughter. As it is not valid ritual slaughter, it is impermissible to eat the animal thereby. And by Allah, the Exalted, is success.

وَأَمَّا قَوْلُنَا: إنَّ ذَلِكَ الصَّيْدَ حَرَامٌ أَكْلُهُ، فَلِأَنَّ اللَّهَ تَعَالَى سَمَّاهُ قَتْلًا وَنَهَى عَنْهُ وَلَمْ يُبِحْ لَنَا عَزَّ وَجَلَّ أَكْلَ شَيْءٍ مِنْ الْحَيَوَانِ إلَّا بِالذَّكَاةِ الَّتِي أَمَرَ بِهَا عَزَّ وَجَلَّ، وَلَا شَكَّ عِنْدَ كُلِّ ذِي حَسَنٍ سَلِيمٍ أَنَّ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ مِنْ الذَّكَاةِ هُوَ غَيْرُ مَا نَهَى عَنْهُ مِنْ الْقَتْلِ، فَإِذْ هُوَ غَيْرُهُ فَالْقَتْلُ الْمَنْهِيُّ عَنْهُ لَيْسَ ذَكَاةً، وَإِذْ لَيْسَ هُوَ ذَكَاةً فَلَا يَحِلُّ أَكْلُ الْحَيَوَانِ بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L14345 If it is said: “Why did you not restrict that to those who act intentionally?” We respond: The explicit text of the verse prevents that, for Allah the Exalted said: {O you who have believed, do not kill game while you are in the state of iḥrām} [5:95]. Thus, He spoke in general terms without specification, and He termed the killing of game during the sacred precincts as killing and prohibited it.[38]

فَإِنْ قِيلَ: فَهَلَّا خَصَّصْتُمْ الْعَامِدَ بِذَلِكَ؟ قُلْنَا: نَصُّ الْآيَةِ مَانِعٌ مِنْ ذَلِكَ، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرُمٌ} [المائدة: ٩٥] فَعَمَّ تَعَالَى وَلَمْ يَخُصَّ، وَسَمَّى إتْلَافَ الصَّيْدِ فِي حَالِ الْحَرَمِ قَتْلًا وَحَرَّمَهُ.

L14346 Then He said: {And whoever among you intentionally kills game [while in the sacred state of iḥrām] must offer a grazing livestock animal equivalent to what he killed} [Al-Mā’idah: 95]. Thus, He restricted the ruling of compensation to one who acts intentionally, in contrast to the general prohibition [against hunting during iḥrām] stated at the beginning of the verse.[39]

ثُمَّ قَالَ: {وَمَنْ قَتَلَهُ مِنْكُمْ مُتَعَمِّدًا فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ} [المائدة: ٩٥] فَأَوْجَبَ حُكْمَ الْجَزَاءِ عَلَى الْعَامِدِ خَاصَّةً بِخِلَافِ النَّهْيِ الْعَامِّ فِي أَوَّلِ الْآيَةِ.

L14347 As for the invalidation of his _Ihram_ due to that—it is because, without disagreement, it constitutes a sin. All sins are acts of disobedience, and the _Ihram_ is invalidated by such acts of disobedience as mentioned earlier.

وَأَمَّا بُطْلَانُ إحْرَامِهِ بِذَلِكَ -: فَلِأَنَّهُ بِلَا خِلَافٍ مَعْصِيَةٌ، وَالْمَعَاصِي كُلُّهَا فُسُوقٌ، وَالْإِحْرَامُ يَبْطُلُ بِالْفُسُوقِ كَمَا ذَكَرْنَا قَبْلُ.

L14348 Among the egregious and corrupt statements is the Mālikīs’ invalidation of Hajj through premature departure from ʿArafah before sunset, though Allah the Exalted never prohibited this nor did His Messenger—peace be upon him.

وَمِنْ شَنَعِ الْأَقْوَالِ وَفَاسِدِهَا إبْطَالُ الْمَالِكِيِّينَ الْحَجَّ بِالدَّفْعِ مِنْ عَرَفَةَ قَبْلَ غُرُوبِ الشَّمْسِ وَلَمْ يَمْنَعْ اللَّهُ تَعَالَى قَطُّ مِنْ ذَلِكَ وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -، ثُمَّ لَمْ يُبْطِلُوهُ بِالْفُسُوقِ الْكَبِيرِ الَّذِي تَوَعَّدَ اللَّهُ تَعَالَى أَشَدَّ الْوَعِيدِ فِيهِ وَهُوَ قَتْلُ الصَّيْدِ عَمْدًا.

[38] **Qur’an references (L14345):** Qur’an 5:95 (Al-Ma’idah).
[39] **Qur’an references (L14346):** Qur’an 5:95 (Al-Ma’idah).

Yet they did not invalidate it by the major transgression for which Allah the Exalted threatened the severest punishment - the intentional killing of game.

L14349 They—the Hanafis—invalidated the state of Ihram due to sexual intercourse performed forgetfully, yet Allah the Exalted did not invalidate it by that act, nor did His Messenger (peace and blessings of Allah be upon him), nor did they invalidate it by the Muhrim's killing of game.

L14350–14351 They invalidated the Hajj due to coercion into sexual intercourse, and the Shafi'is invalidated it, though Allah the Exalted never invalidated it for this reason at any time, nor did His Messenger—peace be upon him. Nor did they invalidate it for intentionally killing game. Success comes solely from Allah the Exalted.

L14352 A legal question: A man of the Book killed game within the sacred precincts of Al-Haram.

L14353 877. Issue:

L14354 If a person from the People of the Book were to kill game within the Sanctuary, it would not be lawful to eat it, due to the command of Allah the Most High: {And judge between them by what Allah has revealed} [5:49]. Therefore, it is obligatory to judge them by the ruling of Allah the Most High as is incumbent upon Muslims. And with Allah the Most High is success.[40]

L14355 The issue of one who deliberately kills game while in the state of *ihram*.

L14356 878. Question:

L14357 As for one who intentionally kills game while in the sacred state of iḥrām, he may choose between three options—whichever he chooses, he has fulfilled his obligation. He must either offer livestock equivalent to the game he killed, which includes camels, cattle, or sheep (specifically fat-tailed sheep) and goats. He must provide from this livestock what resembles the killed game, based on the judgment established by two just arbiters from the Companions—may

[40] **Qur'an references (L14354):** Qur'an 5:49 (Al-Ma'idah).

وَأَبْطَلُوا هُمْ، وَالْحَنَفِيُّونَ الْإِحْرَامَ بِالْوَطْءِ نَاسِيًا وَلَمْ يُبْطِلْهُ اللَّهُ تَعَالَى بِذَلِكَ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يُبْطِلُوهُ بِقَتْلِ الصَّيْدِ الْمُحْرِمِ.

وَأَبْطَلُوا هُمْ، وَالشَّافِعِيُّونَ الْحَجَّ بِالْإِكْرَاهِ عَلَى الْوَطْءِ وَلَمْ يُبْطِلْهُ اللَّهُ تَعَالَى قَطُّ بِهِ وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -، وَلَمْ يُبْطِلُوهُ بِقَتْلِ الصَّيْدِ عَمْدًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ كِتَابِيٌّ قَتَلَ صَيْدًا فِي الْحَرَمِ]

٨٧٧ - مَسْأَلَةٌ:

فَلَوْ أَنَّ كِتَابِيًّا قَتَلَ صَيْدًا فِي الْحَرَمِ لَمْ يَحِلَّ أَكْلُهُ لِقَوْلِ اللَّهِ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] فَوَجَبَ أَنْ يَحْكُمَ عَلَيْهِمْ بِحُكْمِ اللَّهِ تَعَالَى عَلَى الْمُسْلِمِينَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْمُتَعَمِّدُ لِقَتْلِ الصَّيْدِ وَهُوَ مُحْرِمٌ]

٨٧٨ - مَسْأَلَةٌ:

وَأَمَّا الْمُتَعَمِّدُ لِقَتْلِ الصَّيْدِ وَهُوَ مُحْرِمٌ فَهُوَ مُخَيَّرٌ بَيْنَ ثَلَاثَةِ أَشْيَاءَ أَيُّهَا شَاءَ فَعَلَهُ؟ وَقَدْ أَدَّى مَا عَلَيْهِ إمَّا أَنْ يُهْدِيَ مِثْلَ الصَّيْدِ الَّذِي قَتَلَ مِنْ النَّعَمِ وَهِيَ: الْإِبِلُ، وَالْبَقَرُ، وَالْغَنَمُ - ضَأْنُهَا، وَمَاعِزُهَا - وَعَلَيْهِ مِنْ ذَلِكَ مَا يُشْبِهُ الصَّيْدَ الَّذِي قَتَلَ مِمَّا قَدْ حَكَمَ بِهِ عَدْلَانِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، أَوْ مِنْ التَّابِعِينَ - رَحِمَهُمُ اللَّهُ -، وَلَيْسَ عَلَيْهِ أَنْ

يَسْتَأْنِفَ تَحْكِيمَ حُكْمَيْنِ الْآنَ وَإِنْ شَاءَ أَطْعَمَ مَسَاكِينَ، وَأَقَلُّ ذَلِكَ ثَلَاثَةٌ، وَإِنْ شَاءَ نَظَرَ إِلَى مَا يُشْبِعُ ذَلِكَ الصَّيْدَ مِنَ النَّاسِ، فَصَامَ بَدَلَ كُلِّ إِنْسَانٍ يَوْمًا.

Allah be pleased with them—or the Successors—may Allah have mercy on them. He is not required to seek new arbitration from two arbiters now. If he chooses, he may feed poor people—with a minimum of three individuals—or determine how many people that game could have fed, then fast one day for each person.

L14358 بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ يَحْكُمُ بِهِ ذَوَا عَدْلٍ مِنْكُمْ هَدْيًا بَالِـغَ الْكَعْبَةِ أَوْ كَفَّارَةٌ طَعَامُ مَسَاكِينَ أَوْ عَدْلُ ذَلِكَ صِيَامًا} [المائدة: ٩٥] .

The proof of that is the statement of Allah, the Most High: "The recompense for that is the equivalent of what he killed from the game, as determined by two just persons among you—either a sacrificial animal to be offered at the Kaaba, expiation by feeding the needy, or fasting equivalent to that feeding." [Al-Ma'idah: 95][41]

L14359 فَأَوْجَبَ اللَّهُ تَعَالَى التَّخْيِيرَ فِي ذَلِكَ بِلَفْظَةِ " أَوْ " وَأَوْجَبَ مِنَ الْمِثْلِ مَا حَكَمَ بِهِ ذَوَا عَدْلٍ مِنَّا.

Thus, Allah, the Exalted, prescribed the choice in that matter by the word "or," and mandated the equivalent (like-for-like) determined by two upright assessors from among us.

L14360 فَصَحَّ أَنَّ الصَّاحِبَيْنِ إِذَا حَكَمَا بِمِثْلٍ فِي ذَلِكَ فَقَدْ صَارَ فَرْضًا لَازِمًا لَا يَحِلُّ تَعَدِّيهِ، وَكَذَلِكَ الصَّاحِبُ وَالتَّابِعُ إِنْ لَمْ يُوجَدْ فِيهِ حُكْمُ صَاحِبَيْنِ، وَكَذَلِكَ حُكْمُ التَّابِعِينَ إِنْ لَمْ يُوجَدْ فِي حُكْمِ صَاحِبٍ، وَأَوْجَبَ تَعَالَى طَعَامَ مَسَاكِينَ، وَهَذَا بِنَاءٌ لَا يَقَعُ عَلَى أَقَلَّ مِنْ ثَلَاثَةٍ فِي اللُّغَةِ الَّتِي بِهَا نَزَلَ الْقُرْآنُ، وَيَقَعُ عَلَى ثَلَاثَةٍ فَصَاعِدًا إِلَى مَا لَا يَقْدِرُ عَلَى إِحْصَائِهِ إِلَّا اللَّهُ عَزَّ وَجَلَّ، فَكَانَ إِيجَابُ عَدَدٍ أَكْثَرَ مِنْ ثَلَاثَةٍ قَوْلًا عَلَى اللَّهِ تَعَالَى بِلَا بُرْهَانٍ، وَهَذَا لَا يَجُوزُ وَوَجَبَ إِطْعَامُ الثَّلَاثَةِ بِنَصِّ الْقُرْآنِ لَا أَقَلَّ، فَإِنْ زَادَ فَهُوَ تَطَوُّعُ خَيْرٍ.

Thus, it is established that if the two companions issue an equivalent ruling in such matters, it becomes a binding obligation that must not be transgressed. Similarly, the ruling of a companion or a Successor applies if no ruling exists from the two companions; likewise, the ruling of Successors applies if no ruling exists from a companion. The Exalted has mandated feeding the poor, and this principle—according to the language in which the Qur'an was revealed—does not apply to fewer than three individuals, but applies to three and beyond, up to a number none can count except Allah, the Almighty. To mandate a number exceeding three would constitute making a statement about Allah, the Exalted, without evidence—an impermissible act. Feeding three individuals is obligatory by the Qur'an's explicit text, no fewer, while giving more constitutes a supererogatory act of charity.

L14361–14363 وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ وَنَقْطَعُ بِأَنَّهُ تَعَالَى لَوْ أَرَادَ أَنْ يُلْزِمَ فِي هَذَا عَدَدًا مَحْدُودًا مِنَ الْمَسَاكِينِ لَا يُوجِبُهُ ظَاهِرُ الْآيَةِ أَوْ صِفَةً مِنَ الْإِطْعَامِ لَا يَقْتَضِيهِ وَظَاهِرُ الْآيَةِ لَمَا أَغْفَلَهُ عَمْدًا وَلَا نَسِيَهُ، وَلَبَيَّنَهُ لَنَا فِي كِتَابِهِ أَوْ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا بَيَّنَ عَدَدَ الْمَسَاكِينِ فِي كَفَّارَةِ قَتْلِ الْخَطَأِ، وَكَفَّارَةِ الْعَوْدِ لِلظِّهَارِ، وَكَفَّارَةِ

We bear witness by the testimony of Allah—the Mighty and Majestic—and decisively affirm that had He, Exalted is He, intended to impose a limited number of poor people in this matter, the apparent meaning of the verse or a manner of feeding that does not necessitate it would not have made this obligatory. The apparent meaning of the verse would not have omitted it

[41] **Qur'an references (L14358):** Qur'an 5:95 (Al-Ma'idah).

deliberately nor neglected to mention it, and He would have explicitly elucidated it for us in His Book or upon the tongue of His Messenger—may Allah's blessings and peace be upon him—just as He clarified the number of poor people in the expiation for unintentional killing, the expiation for reverting to ẓihār, the expiation for breaking oaths, the expiation for intercourse during Ramadan, and the expiation... Shaving the head due to harm during the state of Ihram: If the Exalted did not specify here a particular number nor a specific description, we testify by Allah's truthful decree that He imposed nothing in this matter beyond what the literal meaning of the verse necessitates with absolute certainty—leaving no room for doubt—and no alternative is permissible—and all praise is due to Allah, Lord of the worlds. Some people said something similar to our statement, except that they said: "Whatever they feed them, regardless of the amount, is sufficient to fulfill the obligation."

الْأَيْمَانِ، وَكَفَّارَةِ الْوَطْءِ فِي رَمَضَانَ، وَكَفَّارَةِ حَلْقِ الرَّأْسِ لِلْأَذَى فِي الْإِحْرَامِ، فَإِذَا لَمْ يَنُصَّ تَعَالَى هُنَا عَلَى عَدَدٍ بِعَيْنِهِ وَلَا عَلَى صِفَةٍ بِعَيْنِهَا فَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ الصَّادِقَةِ أَنَّهُ لَمْ يُلْزِمْ فِي ذَلِكَ غَيْرَ مَا اقْتَضَاهُ ظَاهِرُ الْآيَةِ بِيَقِينٍ لَا مَجَالَ لِلشَّكِّ فِيهِ، وَلَا يُمْكِنُ سِوَاهُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - وَقَالَ بَعْضُ النَّاسِ: كَقَوْلِنَا إلَّا أَنَّهُ قَالَ: مَا أَطْعِمُهُمْ وَأَيُّ مِقْدَارٍ أَطْعِمُهُمْ أَجْزَأَهُ.

L14364 Abu Muhammad said: This is invalid because Allah, the Exalted, said: {Food for the poor} [Al-Ma'idah: 95]. If it were taken according to the literal meaning of the wording, it would suffice to feed a single grain of barley to a poor person, or a mustard seed, or the weight of an aloe seed, or the fatty part of a colocynth. But this is invalid - because Allah, the Exalted, said: {Who fed them from hunger and secured them from fear} [Quraysh: 4].[42]

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {طَعَامُ مَسَاكِينَ} [المائدة: ٩٥] فَلَوْ حُمِلَ عَلَى ظَاهِرِ اللَّفْظِ لَأَجْزَأَ إطْعَامُ حَبَّةِ بُرَّةٍ لِمِسْكِينٍ، أَوْ حَبَّةَ خَرْدَلَةٍ، أَوْ وَزْنَ حَبَّةِ صَبْرٍ، أَوْ شَحْمَ حَنْظَلٍ، وَهَذَا بَاطِلٌ - لِأَنَّ اللَّهَ تَعَالَى قَالَ: {الَّذِي أَطْعَمَهُمْ مِنْ جُوعٍ وَآمَنَهُمْ مِنْ خَوْفٍ} [قريش: ٤] .

L14365 The Exalted mentioned from Abraham that he recounted from his Lord, the Almighty and Majestic, in praising Him: "He feeds me and gives me drink" [Ash-Shu'arā': 79]. By this, the Almighty and Majestic undoubtedly intended what sustains life and repels hunger from what is lawful to eat, not from what is forbidden nor from what makes no difference whether present or absent. Thus, it is valid with certainty that one must satiate three needy people from what is lawful to eat - and this is our position regarding feeding in the atonement for accidental killing. As for other cases involving feeding, the prescribed manner of feeding has been textually established in four cases only: feeding for intentionally engaging in intercourse with one's spouse during the daytime of Ramadan, feeding in ẓihār, feeding in the atonement

وَذَكَرَ تَعَالَى عَنْ إبْرَاهِيمَ أَنَّهُ ذَكَرَ عَنْ رَبِّهِ عَزَّ وَجَلَّ فِي حَمْدِهِ إيَّاهُ هُوَ {يُطْعِمُنِي وَيَسْقِينِ} [الشعراء: ٧٩] فَإِنَّمَا أَرَادَ عَزَّ وَجَلَّ بِذَلِكَ بِلَا شَكٍّ مَا أَمْسَكَ الْحَيَاةَ وَطَرَدَ الْجُوعَ مِمَّا يَحِلُّ أَكْلُهُ لَا مِمَّا يَحْرُمُ وَلَا مِمَّا هُوَ وَعَدَمُهُ سَوَاءٌ، فَصَحَّ يَقِينًا أَنَّهُ يُشْبِعُ ثَلَاثَ مَسَاكِينَ مِمَّا يَحِلُّ أَكْلُهُ - وَهَكَذَا نَقُولُ فِي الْإِطْعَامِ فِي كَفَّارَةِ قَتْلِ الْخَطَأِ، وَأَمَّا سَائِرُ مَا فِيهِ الْإِطْعَامُ فَقَدْ جَاءَ مِقْدَارُ مَا يُطْعَمُ فِيهِ مَنْصُوصًا وَهِيَ: أَرْبَعَةُ مَوَاضِعَ فَقَطْ، الْإِطْعَامُ فِي وَطْءِ الْأَهْلِ فِي نَهَارِ رَمَضَانَ عَمْدًا، وَالْإِطْعَامُ فِي الظِّهَارِ، وَالْإِطْعَامُ فِي كَفَّارَةِ الْأَيْمَانِ، وَالْإِطْعَامُ فِي حَلْقِ الرَّأْسِ لِلْمَرِيضِ الْمُحْرِمِ قَبْلَ مَحِلِّهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[42] **Qur'an references (L14364):** Qur'an 106:4 (Quraysh); Qur'an 5:95 (Al-Ma'idah).

for oaths, and feeding for shaving the head of an ill pilgrim in the state of iḥrām before its designated time - and success is from Allah, the Exalted.[43]

وَأَمَّا قَوْلُنَا فِي الصِّيَامِ: فَإِنَّ الْإِشَارَةَ بِلَفْظَةِ ذَلِكَ إِنَّمَا تَقَعُ فِي اللِّسَانِ الْعَرَبِيِّ الَّذِي بِهِ نَزَلَ الْقُرْآنُ عَلَى أَبْعَدِ مَذْكُورٍ، وَكَانَ الصَّيْدُ فِي هَذِهِ الْآيَةِ أَبْعَدَ مَذْكُورٍ فَلَزِمَ بِذَلِكَ عَدْلُهُ صِيَامًا، وَلَا يَكُونُ عَدْلُهُ أَصْلًا إِلَّا كَمَا ذَكَرْنَا.

L14366 As for our statement regarding fasting: the demonstrative reference with the term “that” in the Arabic language in which the Quran was revealed pertains specifically to the most distant referent mentioned. Since hunted game in this verse was the most distant referent mentioned, the obligation to compensate through fasting is thereby necessitated. Such compensation cannot be at all except in the manner we have explained.

وَأَمَّا مَنْ قَوَّمَهُ قِيمَةً، ثُمَّ قَوَّمَ الْقِيمَةَ طَعَامًا، ثُمَّ رَأَى عَدْلَ ذَلِكَ صِيَامًا فَلَمْ يُوجِبْ عَدْلَ الصَّيْدِ وَإِنَّمَا أَوْجَبَ عَدْلَ قِيمَتِهِ وَلَيْسَ هَذَا فِي الْآيَةِ فَبَطَلَ الْقَوْلُ بِهِ [جُمْلَةً] .

L14367 As for one who assesses it with a value, then estimates the value as food, and considers the equivalent in fasting: he required not the equivalent of the game animal but the equivalent of its value. This is not mentioned in the verse, and thus the opinion asserting it is invalidated entirely.

ثُمَّ نَسْأَلُ مَنْ قَالَ بِتَقْوِيمِ الْهَدْيِ دَرَاهِمَ، أَوْ طَعَامًا، أَيُّ الْهَدْيِ تُقَوِّمُ؟ وَقَدْ يَخْتَلِفُ قِيَمُ النُّوقِ، وَالْبَقَرِ، وَالْغَنَمِ، فَأَيُّ نَاقَةٍ تُقَوَّمُ؟ أَمْ أَيِّ بَقَرَةٍ تُقَوَّمُ؟ أَمْ أَيِّ شَاةٍ؟ وَهَذَا إِلْزَامٌ مُضْمَحِلٌّ بِلَا بُرْهَانٍ.

L14368 Then we ask those who claim that the sacrificial animal should be appraised in dirhams or food: Which sacrificial animal is to be appraised? The values of camels, cattle, and sheep may vary—so which camel is to be appraised? Which cow? Which sheep? This is an invalid obligation lacking evidence.

ثُمَّ نَقُولُ لِمَنْ قَالَ بِتَقْوِيمِ الصَّيْدِ: مَتَى تُقَوِّمُهُ؟ أَحَيًّا أَمْ مَقْتُولًا؟

L14369 Then we ask those who uphold the valuation of hunted game: When do you valuate it—while alive or after being killed?

فَإِنْ قَالُوا: مَقْتُولًا؟ قُلْنَا: هُوَ عِنْدَكُمْ جِيفَةٌ مَيِّتَةٌ، وَلَا قِيمَةَ لِلْمَيْتَةِ، ثُمَّ هُوَ أَيْضًا مِنْكُمْ قَوْلٌ بِلَا بُرْهَانٍ.

L14370–14371 If they say: “Killed?” We say: “In your view, it is a dead carcass, and carrion holds no value.” Moreover, this is also from you a statement without proof.

وَإِنْ قَالُوا: بَلْ يُقَوَّمُ حَيًّا؟ قُلْنَا: وَمَا بُرْهَانُكُمْ عَلَى ذَلِكَ وَقِيمَتُهُ حَيًّا تَخْتَلِفُ فَيَكُونُ حِمَارُ وَحْشٍ يَرْغَبُ فِيهِ الْمُلُوكُ حَيًّا فَيُغَالُونَ بِهِ فَإِذَا ذُكِّيَ لَمْ يَكُنْ لَهُ كَبِيرُ قِيمَةٍ، ثُمَّ فِي أَيِّ الْمَوَاضِعِ يُقَوَّمُ؟ فَإِنْ قَالُوا: حَيْثُ أُصِيبَ؟ قُلْنَا: فَإِنْ أُصِيبَ بِفَلَاةٍ لَا قِيمَةَ لَهُ فِيهَا أَصْلًا؟ وَكُلُّ مَا قَالُوهُ فَبِلَا دَلِيلٍ.

L14372 If they say, “Rather, it should be appraised alive?” We respond: “What proof supports this when its living value fluctuates? Take a wild donkey that kings desire alive—it becomes overvalued, but once ritually slaughtered, it holds no significant value. Moreover, in which locations is it appraised?” If they answer, “Where it was seized,” we counter: “What if seized in a barren land where it has no value there whatsoever?” All their claims lack any evidence.

[43] **Qur’an references (L14365):** Qur’an 26:79 (Ash-Shu’ara).

قَالَ أَبُو مُحَمَّد: وَاخْتَلَفَ النَّاسُ هَاهُنَا فِي مَوَاضِعَ، أَحَدُهَا التَّخْيِيرُ -: فَقَالَ قَوْمٌ: هَذَا عَلَى التَّرْتِيبِ وَلَا يُجْزِئُهُ إِلَّا الْهَدْيُ فَإِنْ لَمْ يَجِدْ فَالْإِطْعَامُ فَإِنْ لَمْ يَجِدْ فَالصِّيَامُ -: رُوِّينَا هَذَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ مَنْصُورٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ مِقْسَمٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: إذَا أَصَابَ الْمُحْرِمُ الصَّيْدَ فَإِنْ كَانَ عِنْدَهُ جَزَاءُ ذَبْحِهِ، فَإِنْ لَمْ يَكُنْ عِنْدَهُ جَزَاءُ قُوِّمَ جَزَاؤُهُ دَرَاهِمَ، ثُمَّ قُوِّمَتْ الدَّرَاهِمُ طَعَامًا فَصَامَ مَكَانَ كُلِّ نِصْفِ صَاعٍ يَوْمًا، وَإِنَّمَا جُعِلَ الطَّعَامَ لِلصَّائِمِ، لِأَنَّهُ إذَا وُجِدَ الطَّعَامُ وُجِدَ جَزَاؤُهُ.

L14373 Abū Muḥammad said: People have differed here regarding several matters, one being the principle of choice. Some said: This follows a sequential order where only the sacrificial animal (*hady*) suffices. If he does not find it, then feeding the poor is required. If he cannot find it, then fasting. This was narrated to us via Saʿīd ibn Manṣūr: Jarīr ibn ʿAbd al-Ḥamīd reported to us from Manṣūr, from al-Ḥakam ibn ʿUtaybah, from Miqsam, from Ibn ʿAbbās, who said: If a person in *iḥrām* hunts game and possesses the expiation for slaughtering it, he must offer it. If he lacks the expiation, its value is assessed in dirhams. The dirhams are then converted into food, and he fasts one day for every half *ṣāʿ* of food. The food is allocated for the one who fasts because when food is available, his expiation is fulfilled.

وَرُوِّينَاهُ أَيْضًا عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَعَطَاءٍ، وَمُجَاهِدٍ، وَمَيْمُونِ بْنِ مِهْرَانٍ - وَهُوَ قَوْلُ زُفَرَ، وَسُفْيَانَ الثَّوْرِيِّ.

L14374 We have also reported it from Ibrāhīm al-Nakhaʿī, ʿAṭāʾ, Mujāhid, and Maymūn ibn Mihrān - this being the opinion of Zufar and Sufyān al-Thawrī.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ اللَّيْثِ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ كُلُّ شَيْءٍ فِي الْقُرْآنِ " أَوْ " فَهُوَ مُخَيَّرٌ وَكُلُّ شَيْءٍ {فَمَنْ لَمْ يَجِدْ} [البقرة: ١٩٦] فَهُوَ الْأَوَّلُ فَالْأَوَّلُ.

L14375 It has been narrated to us through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from al-Layth from Mujāhid from Ibn ʿAbbās: Every mention of "or" in the Quran denotes a choice, and every case of *"so whoever cannot find"* (Quran 2:196) refers to the first [option], and again the first [if needed].[44]

وَرُوِّينَا التَّخْيِيرَ أَيْضًا: عَنْ عَطَاءٍ، وَمُجَاهِدٍ، وَإِبْرَاهِيمَ، وَالزُّهْرِيِّ، وَقَتَادَةَ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ.

L14376 The legal option has also been reported to us from ʿAṭāʾ, Mujāhid, Ibrāhīm, al-Zuhrī, and Qatādah—and this is...

L14377 The opinion of Abū Ḥanīfah, Mālik, al-Shāfiʿī, Aḥmad ibn Ḥanbal, and Abū Sulaymān.

وَإِذَا تَنَازَعَ النَّاسُ فَالْمَرْجِعُ إلَى الْقُرْآنِ، وَحُكْمُ الْقُرْآنِ التَّخْيِيرُ، وَلَقَدْ كَانَ يَلْزَمُ مَنْ قَاسَ قَاتِلَ الصَّيْدِ خَطَأً عَلَى الْعَامِدِ فِي إيجَابِ الْكَفَّارَةِ، أَوْ عَلَى قَاتِلِ الْخَطَأِ أَنْ يَقِيسَ حُكْمَ كَفَّارَةِ الصَّيْدِ عَلَى كَفَّارَةِ الْقَتْلِ فَيَجْعَلُهَا عَلَى التَّرْتِيبِ كَمَا كَفَّارَةُ الْقَتْلِ عَلَى التَّرْتِيبِ وَإِلَّا فَقَدْ تَنَاقَضُوا؟ وَمِنْهَا اسْتِئْنَافُ التَّحْكِيمِ فَإِنَّ الرِّوَايَةَ جَاءَتْ عَنْ طَاوُسٍ: أَنَّهُ يَسْتَأْنِفُ الْحُكْمَ وَيَحْكُمَانِ بِحُكْمِ يَوْمِهِمَا وَلَا يَنْظُرَانِ إلَى حُكْمِ مَنْ مَضَى، فَإِنَّ مَالِكًا،

L14378–14380 When people dispute, the recourse is to the Quran, and the ruling of the Quran entails the option of choice. Indeed, it would be incumbent upon those who analogize the one who accidentally kills game to the intentional killer in imposing expiation, or to the accidental human killer, to analogize the ruling of expiation for game (hunted animals) to the expiation for human killing—thereby making it follow the same sequence as the expiation for killing follows the sequence. Otherwise, would they not contradict

[44] **Qur'an references (L14375):** Qur'an 2:196 (Al-Baqarah).

themselves? Among these issues is the appeal of arbitration, for the report transmitted from Tāwūs states that he appeals the judgment. They both rule according to the rulings of their time and do not consider prior rulings. For Mālik, Ibn Abī Laylā, al-Ḥasan ibn Ḥayy, and al-Thawrī stated: The defendant must initiate a new arbitration by two arbitrators. They later disagreed, however. Mālik said: The choice lies with the one against whom the ruling is issued, not the arbitrators. He instructs them: "Do not rule against me except through feeding the needy if he so chooses, or fasting if he chooses, or kaffārah if he chooses."

وَابْنَ أَبِي لَيْلَى، وَالْحَسَنَ بْنَ حَيٍّ، وَالثَّوْرِيَّ قَالُوا: لَا بُدَّ لَهُ مِنْ اسْتِئْنَافِ تَحْكِيمِ حَكَمَيْنِ، ثُمَّ اخْتَلَفُوا فَقَالَ مَالِكٌ: الْخِيَارُ إلَى الْمَحْكُومِ عَلَيْهِ لَا إلَى الْحَكَمَيْنِ، وَيَقُولُ لَهُمَا: لَا تَحْكُمَا عَلَيَّ إلَّا بِالْإِطْعَامِ إنْ شَاءَ أَوْ بِالصِّيَامِ إنْ شَاءَ، أَوْ بِالْجَزَاءِ إنْ شَاءَ.

L14381 Ibn Abī Laylā, Sufyān al-Thawrī, al-Ḥasan, and Ibn Ḥayyān said: The choice in this matter rests with the two arbitrators, not with the party against whom judgment is passed.

وَقَالَ ابْنُ أَبِي لَيْلَى، وَسُفْيَانُ الثَّوْرِيُّ، وَالْحَسَنُ، وَابْنُ حَيٍّ: الْخِيَارُ فِي ذَلِكَ إلَى الْحَكَمَيْنِ لَا إلَى الْمَحْكُومِ عَلَيْهِ.

L14382 Mālik said: It is not permissible for the two arbitrators to rule by other than the ruling of those who preceded [them].

وَقَالَ مَالِكٌ: لَا يَجُوزُ لِلْحَكَمَيْنِ أَنْ يَحْكُمَا بِغَيْرِ حُكْمِ مَنْ مَضَى.

L14383 Ibn Hayy said: If the rulings of today are more numerous than the rulings of those who passed, judgment is given according to the rulings of today. But if the rulings of today are fewer than the rulings of those who passed, judgment is given according to the rulings of those who passed.

قَالَ ابْنُ حَيٍّ: إنْ كَانَ حُكْمُ الْيَوْمِ أَكْثَرَ مِنْ حُكْمِ مَنْ مَضَى؛ حُكِمَ بِحُكْمِ الْيَوْمِ، وَإِنْ كَانَ حُكْمُ الْيَوْمِ أَقَلَّ مِنْ حُكْمِ مَنْ مَضَى: حُكِمَ بِحُكْمِ مَنْ مَضَى.

L14384 Abū Ḥanīfah, Al-Shāfiʿī, and Abū Sulaymān held that the judgment cannot be renewed today.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، أَبُو سُلَيْمَانَ: لَا يَسْتَأْنِفُ الْحُكْمَ الْيَوْمَ.

L14385 Al-Shāfiʿī and Abū Sulaymān said: It is strictly limited to what the pious predecessors ruled; one may not deviate from it.

قَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: إنَّمَا هُوَ مَا حَكَمَ بِهِ السَّلَفُ لَا يَجُوزُ تَجَاوُزُهُ.

L14386 Abu Muhammad said: Allah the Exalted has obligated [adherence to] what two just individuals among us have ruled in that matter. Thus, if two from the Salaf have ruled, Allah the Exalted has mandated obedience to their judgment. Resuming arbitration with two others is meaningless, for it has not been obligated by the Quran, the Sunnah, nor consensus. It is a void and invalid act with no benefit whatsoever.

قَالَ أَبُو مُحَمَّدٍ: وَاَللَّهُ تَعَالَى أَوْجَبَ مَا حَكَمَ بِهِ فِي ذَلِكَ ذَوَا عَدْلٍ مِنَّا فَإِذَا حَكَمَ اثْنَانِ مِنْ السَّلَفِ فَقَدْ أَوْجَبَ اللَّهُ تَعَالَى الطَّاعَةَ لِمَا حَكَمَا بِهِ فَاسْتِئْنَافُ تَحْكِيمِ آخَرَيْنِ لَا مَعْنَى لَهُ، لِأَنَّهُ لَمْ يُوجِبْهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ -: فَهُوَ عَمَلٌ فَارِغٌ فَاسِدٌ لَا فَائِدَةَ فِيهِ أَصْلًا.

L14387 Then the statement of Mālik: Verily, the option lies with the one against whom a judgment was passed erroneously and repeatedly, for if appointing two arbitrators were obligatory while obedience to them in matters over

which Allah, Exalted be He, has granted authority to judge is not obligatory, this would constitute a void act.

ثُمَّ قَوْلُ مَالِكٍ: إنَّ الْخِيَارَ إلَى الْمَحْكُومِ عَلَيْهِ خَطَأً مُكَرَّرٌ، إذْ لَوْ وَجَبَ تَحْكِيمُ حَكَمَيْنِ لَا تَجِبُ طَاعَتُهُمَا فِيمَا حَكَمَا بِهِ مِمَّا جَعَلَ اللَّهُ تَعَالَى إلَيْهِمَا الْحُكْمَ بِهِ لَكَانَ ذَلِكَ عَمَلًا فَاسِدًا.

L14388 If they deceptively appointed the two arbitrators between the spouses, Allah the Exalted has never ever granted them authority to enforce a divorce or impose a financial penalty. Rather, He has only empowered them to mediate for conciliation, so that Allah the Exalted may alone reconcile them.

فَإِنْ مَوَّهُوا بِالْحَكَمَيْنِ بَيْنَ الزَّوْجَيْنِ فَلَمْ يَجْعَلْ اللَّهُ تَعَالَى قَطُّ إلَيْهِمَا فُرْقَةً وَلَا إيجَابَ غَرَامَةٍ، وَإِنَّمَا جَعَلَ تَعَالَى إلَيْهِمَا الْإِصْلَاحَ لِيُوَفِّقَ اللَّهُ تَعَالَى بَيْنَهُمَا فَقَطْ.

L14389 Among these is that some of those we mentioned advocated arbitration regarding feeding and fasting, and this is erroneous, for Allah the Exalted did not mandate arbitration in that except in expiation by means of the ritual sacrificial offering alone - this is the explicit text of the verse. Moreover, the one who holds this view has contradicted what is reported from Ibn Abbas and others concerning the ruling on feeding and fasting, thereby becoming inconsistent.

وَمِنْهَا أَنَّ بَعْضَ مَنْ ذَكَرْنَا رَأَى التَّحْكِيمَ فِي الْإِطْعَامِ، وَالصِّيَامِ، وَهَذَا خَطَأٌ؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ التَّحْكِيمَ فِي ذَلِكَ إلَّا فِي الْجَزَاءِ بِالْهَدْيِ فَقَطْ هَذَا هُوَ نَصُّ الْآيَةِ، ثُمَّ الْقَائِلُ بِهَذَا قَدْ خَالَفَ مَا جَاءَ عَنْ ابْنِ عَبَّاسٍ، وَغَيْرِهِ مِنْ الْحُكْمِ فِي الْإِطْعَامِ، وَالصِّيَامِ فَتَنَاقَضَ.

L14390–14392 And among them are the specified amounts for feeding and fasting (from Ibn Abbas, as we have previously mentioned) that the expiation is to be assessed. Instead of [offering] livestock, [one may give] dirhams. These dirhams are then converted to the value of food, requiring them to fast one day for every half ṣāʿ of food [not provided]. A similar ruling is narrated from Ibn ʿUmar. Neither report is authentically attributed to them. This indicates that the feeding obligation consists of half a ṣāʿ of food for every needy person.

وَمِنْهَا مِقْدَارُ الْإِطْعَامِ، وَالصِّيَامِ -: فَعَنْ ابْنِ عَبَّاسٍ كَمَا ذَكَرْنَا آنِفًا أَنْ يُقَوَّمَ الْجَزَاءُ مِنْ النَّعَمِ دَرَاهِمَ، ثُمَّ تُقَوَّمُ الدَّرَاهِمُ طَعَامًا فَيَصُومُ بَدَلَ كُلِّ نِصْفِ صَاعٍ يَوْمًا؛ وَعَنْ ابْنِ عُمَرَ أَيْضًا كَذَلِكَ، وَكِلَاهُمَا لَا يَصِحُّ عَنْهُمَا، فَدَلَّ هَذَا عَلَى أَنَّ الْإِطْعَامَ يَكُونُ لِكُلِّ مِسْكِينٍ نِصْفُ صَاعٍ.

L14393 Another opinion from Ibn Abbas states: If one kills an ostrich or a wild donkey, the atonement is a she-camel. If he cannot procure it, he must feed thirty poor people with exactly one mudd of food. If he cannot procure this, he must fast thirty days. If one kills a stag or similar animal, the atonement is a cow. If he cannot procure it, he must feed twenty poor people. If he cannot procure this, he must fast twenty days. If one kills a gazelle, the atonement is a sheep or goat. If he cannot procure it, he must feed six poor people. If he cannot procure this, he must fast three days.

عَنْ ابْنِ عَبَّاسٍ أَيْضًا قَوْلٌ آخَرُ وَهُوَ إنْ قَتَلَ نَعَامَةً، أَوْ حِمَارَ وَحْشٍ فَبَدَنَةٌ مِنْ الْإِبِلِ فَإِنْ لَمْ يَجِدْ أَطْعَمَ ثَلَاثِينَ مِسْكِينًا، فَإِنْ لَمْ يَجِدْ صَامَ ثَلَاثِينَ يَوْمًا وَالْإِطْعَامُ مُدُّ مُدٍّ فَقَطْ، فَإِنْ قَتَلَ أُيَّلًا أَوْ نَحْوَهُ فَبَقَرَةٌ، فَإِنْ لَمْ يَجِدْ أَطْعَمَ عِشْرِينَ مِسْكِينًا، فَإِنْ لَمْ يَجِدْ صَامَ عِشْرِينَ يَوْمًا، فَإِنْ قَتَلَ ظَبْيًا فَشَاةٌ، فَإِنْ لَمْ يَجِدْ فَإِطْعَامُ سِتَّةِ مَسَاكِينَ، فَإِنْ لَمْ يَجِدْ صَامَ ثَلَاثَةَ أَيَّامٍ.

L14394 Abu Muhammad said: We do not know of anyone from the Companions

- may Allah be pleased with them - having a saying other than the one we have mentioned.

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - قَوْلَةً غَيْرَ هَذِهِ الَّتِي ذَكَرْنَا.

L14395 It has been narrated to us from Mujāhid that one should judge in that matter by offering a sacrificial animal. If one cannot find it, the sacrificial animal is commuted to food. Then the food is commuted to fasting - two mudd per needy person, with each needy person's [share] being a day of fasting.

وَرُوِّينَا عَنْ مُجَاهِدٍ: أَنْ يَحْكُمَ فِي ذَلِكَ بِهَدْيٍ فَإِنْ لَمْ يَجِدْ قُوِّمَ الْهَدْيُ طَعَامًا، ثُمَّ قُوِّمَ الطَّعَامُ صِيَامًا لِكُلِّ مِسْكِينٍ مُدَّانِ، وَمَكَانُ كُلِّ مِسْكِينٍ صَوْمُ يَوْمٍ.

L14396 Something similar to this is reported from Ibrāhīm.

وَعَنْ إبْرَاهِيمَ نَحْوَ هَذَا.

L14397 A similar ruling is also narrated from Al-Ḥasan.

وَعَنْ الْحَسَنِ مِثْلُهُ أَيْضًا.

L14398 And from 'Aṭā': The expiation is assessed as food. Then one fasts a day for each mudd. If he finds the food before completing the fast, he must feed.

وَعَنْ عَطَاءٍ يُقَوَّمُ الْجَزَاءُ طَعَامًا، ثُمَّ يَصُومُ بَدَلَ كُلِّ مُدٍّ يَوْمًا، فَإِنْ وَجَدَ الطَّعَامَ قَبْلَ أَنْ يَفْرُغَ مِنْ الصَّوْمِ أَطْعَمَ.

L14399 It has also been narrated from him that fasting a day is a substitute for every half ṣāʿ.

وَرُوِّينَا عَنْهُ أَيْضًا بَدَلَ كُلِّ نِصْفِ صَاعٍ صِيَامَ يَوْمٍ.

L14400 It is narrated from Maymūn ibn Mihrān that fasting one day serves as compensation for feeding a poor person for each day.

عَنْ مَيْمُونِ بْنِ مِهْرَانٍ: أَنَّ صِيَامَ يَوْمٍ بَدَلَ كُلِّ مِسْكِينٍ يَوْمًا.

L14401 From Abū ʿIyāḍ—and he was a Tābiʿī—who narrated from Muʿāwiyah that he said: "The maximum fasting observed in that matter is twenty-one days."

وَعَنْ أَبِي عِيَاضٍ - وَهُوَ تَابِعِيٌّ - رَوَى عَنْ مُعَاوِيَةَ قَالَ: أَكْثَرُ الصَّوْمِ فِي ذَلِكَ وَاحِدٌ وَعِشْرُونَ يَوْمًا.

L14402 It has been authentically reported from Saʿīd ibn Jubayr that he said: "Fasting in expiation for hunting is from three days to ten days. We do not know of any Tābiʿī who has mentioned anything regarding this matter other than what we have mentioned."

وَصَحَّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ أَنَّهُ قَالَ: الصَّوْمُ فِي فِدْيَةِ الصَّيْدِ مِنْ ثَلَاثَةِ أَيَّامٍ إلَى عَشَرَةِ أَيَّامٍ مَا نَعْلَمُ عَنْ تَابِعٍ فِي هَذَا غَيْرَ مَا ذَكَرْنَا.

L14403 Al-Layth said: One should not exceed sixty days of fasting in such cases.

وَقَالَ اللَّيْثُ: لَا يَتَجَاوَزُ فِي ذَلِكَ بِالصَّوْمِ سِتِّينَ يَوْمًا.

L14404 Abu Hanifah said: The value of the hunted game is assessed in dirhams, then food is purchased with them. He feeds each poor person half a saʿ of wheat, a saʿ of dates, a saʿ of barley, or raisins. Alternatively, he may fast one day in place of feeding each poor person. This is the opinion of al-Thawri.

وَقَالَ أَبُو حَنِيفَةَ: يُقَوِّمُ الصَّيْدَ دَرَاهِمَ فَيَبْتَاعُ بِهَا طَعَامًا فَيُطْعِمُ كُلَّ مِسْكِينٍ نِصْفَ صَاعٍ مِنْ بُرٍّ أَوْ صَاعًا مِنْ تَمْرٍ أَوْ صَاعَ شَعِيرٍ أَوْ زَبِيبٍ، أَوْ يَصُومُ بَدَلَ كُلِّ مِسْكِينٍ يَوْمًا، وَهُوَ قَوْلُ الثَّوْرِيِّ.

L14405–14406 Mālik also held this view, except he said: "He should feed each poor person one mudd [of food] or fast one day in place of each mudd." As for their opinion regarding the appraisal of hunted game, we know of no one before them who maintained this position. Those we mentioned earlier spoke only of appraising the sacrificial animal, which constitutes the compensation.

وَبِهِ قَالَ مَالِكٌ، إِلَّا أَنَّهُ قَالَ: يُطْعِمُ [لِكُلِّ مِسْكِينٍ] مُدًّا مُدًّا أَوْ يَصُومُ بَدَلَ كُلِّ مُدٍّ يَوْمًا، وَقَوْلُهُمْ بِتَقْوِيمِ الصَّيْدِ لَا نَعْلَمُهُ قَبْلَهُمْ عَنْ أَحَدٍ وَإِنَّمَا قَالَ مَنْ ذَكَرْنَا قَبْلُ بِتَقْوِيمِ الْهَدْيِ وَهُوَ الْجَزَاءُ.

L14407 Al-Shafiʿi said: The compensation is appraised in dirhams, not the game. The dirhams are then appraised in terms of food, requiring one to give a mudd of food for each resulting mudd or fast one day in place of each mudd.

وَقَالَ الشَّافِعِيُّ: يُقَوَّمُ الْجَزَاءُ لَا الصَّيْدُ دَرَاهِمَ، ثُمَّ تُقَوَّمُ الدَّرَاهِمُ طَعَامًا فَيُطْعِمُ مُدًّا مُدًّا أَوْ يَصُومُ بَدَلَ كُلِّ مُدٍّ يَوْمًا.

L14408 Abu Thawr said: The feeding is three sa's for six poor people, half a sa' per individual, and the fasting is three days only.

وَقَالَ أَبُو ثَوْرٍ: الْإِطْعَامُ ثَلَاثَةُ آصُعٍ لِسِتَّةِ مَسَاكِينَ لِكُلِّ مِسْكِينٍ نِصْفُ صَاعٍ، وَالصِّيَامُ ثَلَاثَةُ أَيَّامٍ فَقَطْ.

L14409 Abu Muhammad said: As for Ibn Abbas, his statements on that matter have varied, and none is more preferable than the others. Abu Hanifa, Malik, and Al-Shafiʿi opposed all of them. Yet they hold in high regard a Companion's divergent opinion when it aligns with their adherence to *taqlīd*, because one of his two opinions includes the sequential order, which they do not uphold.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا ابْنُ عَبَّاسٍ فَقَدْ اخْتَلَفَتْ أَقْوَالُهُ فِي ذَلِكَ وَلَيْسَ بَعْضُهَا أَوْلَى مِنْ بَعْضٍ، وَكُلُّهَا قَدْ خَالَفَهَا أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَهُمْ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ إذَا وَافَقَ تَقْلِيدَهُمْ، لِأَنَّ فِي أَحَدِ قَوْلَيْهِ التَّرْتِيبَ وَهُمْ لَا يَقُولُونَ بِهِ.

L14410 In this ruling, it is stipulated that the compensation be assessed, and neither Abū Ḥanīfah nor Mālik uphold this opinion.

وَفِيهِ: أَنْ يُقَوَّمَ الْجَزَاءَ، وَلَا يَقُولُ أَبُو حَنِيفَةَ، وَلَا مَالِكٌ بِهِ.

L14411 In it: The ruling attributed to him and Ibn ʿUmar is that half a ṣāʿ per day serves as a substitute. Neither Mālik nor Al-Shāfiʿī hold this opinion. As for his second opinion, all of them wholly oppose him, and no dissenting opinion among the Companions (may Allah be pleased with them) is known regarding the positions we attributed to Ibn ʿAbbās and Ibn ʿUmar.

وَفِيهِ: عَنْهُ وَعَنْ ابْنِ عُمَرَ مَكَانُ كُلِّ نِصْفِ صَاعٍ يَوْمًا، وَلَا يَقُولُ مَالِكٌ، وَلَا الشَّافِعِيُّ بِهِ - وَأَمَّا قَوْلُهُ الثَّانِي فَكُلُّهُمْ مُخَالِفُونَ لَهُ جُمْلَةً، وَلَا يُعْرَفُ فِيمَا ذَكَرْنَا لِابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L14412 Ali said: We have found no proof from the Quran, nor the Sunnah, nor

any decisive evidence supporting these statements except within these two sources. No speech is more offensive than that of one who dismissively contradicts Ibn Abbas based on personal opinion or the view of a follower whom other followers have opposed, then condemns those who contradict him even as they adhere to the Quran. We are satisfied and delighted with this apportionment from Allah the Exalted for us and for them. May Allah the Exalted never deprive us of this through His grace [and bounty]. Amen.

قَالَ عَلِيٌّ: لَمْ نَجِدْ لِشَيْءٍ مِنْ هَذِهِ الْأَقْوَالِ بُرْهَانًا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا حُجَّةٍ إِلَّا فِيهِمَا، وَلَا أَفْحَشُ قَوْلًا مِمَّنْ اسْتَسْهَلَ خِلَافَ ابْنِ عَبَّاسٍ بِرَأْيِ نَفْسِهِ أَوْ بِرَأْيِ تَابِعٍ قَدْ خَالَفَهُ غَيْرُهُ مِنَ التَّابِعِينَ، ثُمَّ يُنْكِرُ عَلَى مَنْ خَالَفَهُ الْتِزَامًا لِلْقُرْآنِ، وَنَحْنُ رَاضُونَ مَسْرُورُونَ بِهَذِهِ الْقِسْمَةِ مِنَ اللَّهِ تَعَالَى لَنَا وَلَهُمْ لَا أَعْدَمَنَا اللَّهُ تَعَالَى ذَلِكَ بِمَنِّهِ [وَفَضْلِهِ] آمِينَ.

L14413 The Followers differ, as we have mentioned. Whoever adheres to a statement by any one of them without textual evidence in that matter has deviated from himself and others among the mentioned Followers by another statement in the very same issue. They are only seven who differ and dispute: Mujāhid, ʿAṭāʾ, Ibrāhīm, al-Ḥasan, Abū ʿUyayyah, Saʿīd ibn Jubayr, and Maymūn ibn Mihrān.

وَالتَّابِعُونَ مُخْتَلِفُونَ كَمَا ذَكَرْنَا فَمَنْ تَعَلَّقَ بِبَعْضِ قَوْلَةِ لِوَاحِدٍ مِنْهُمْ بِلَا نَصٍّ فِي ذَلِكَ فَقَدْ خَالَفَهُ نَفْسَهُ وَغَيْرُهُ مِنَ التَّابِعِينَ الْمَذْكُورِينَ فِي قَوْلَةٍ أُخْرَى فِي الْمَسْأَلَةِ بِعَيْنِهَا، وَإِنَّمَا هُمْ سَبْعَةٌ فَقَطْ مُخْتَلِفُونَ مُتَنَازِعُونَ: مُجَاهِدٌ، وَعَطَاءٌ، وَإِبْرَاهِيمُ، وَالْحَسَنُ، وَأَبُو عِيَاضٍ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَمَيْمُونُ بْنُ مِهْرَانٍ.

L14414 As for the statements of Abū Ḥanīfah, Sufyān, Mālik, and Al-Shāfiʿī (despite their differences and disputes), none of them possesses any proof for the validity of his claim—neither from the Quran, nor from the Sunnah, nor from a weak narration, nor from the statement of a Companion, nor from analogy, nor from a Follower who fully agrees with any one of them in the entirety of his position regarding that matter.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ، وَمَالِكٍ، وَالشَّافِعِيِّ، فَمَعَ اخْتِلَافِهِمْ وَتَنَازُعِهِمْ فَلَا بُرْهَانَ لِوَاحِدٍ مِنْهُمْ عَلَى صِحَّةِ دَعْوَاهُ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا مِنْ تَابِعٍ مُوَافِقٍ لِلْوَاحِدِ مِنْهُمْ فِي قَوْلِهِ كُلِّهِ فِي ذَلِكَ.

L14415–14416 As for Al-Layth, he analogized fasting in this matter to fasting for accidental homicide. He would require those who analogized the obligation of expiation in accidental game killing to its obligation in accidental killing of a believer to similarly analogize fasting in this case to fasting in that one, as Al-Layth did. This applies particularly to those who did not raise the blood money for male and female slaves to reach that of free men and women, those who allocated a share for the horse while declaring "I do not prefer beasts over humans," yet then gave preference to beasts here over people by prescribing fasting as expiation for their killing.

وَأَمَّا اللَّيْثُ فَإِنَّهُ قَاسَ الصِّيَامَ فِي ذَلِكَ عَلَى الصِّيَامِ فِي قَتْلِ النَّفْسِ، وَلَقَدْ كَانَ يَلْزَمُ مَنْ قَاسَ إِيجَابَ الْكَفَّارَةِ فِي قَتْلِ الصَّيْدِ خَطَأً عَلَى وُجُوبِهَا فِي قَتْلِ الْمُؤْمِنِ خَطَأً أَنْ يَقِيسَ الصِّيَامَ فِي هَذِهِ عَلَى الصِّيَامِ فِي ذَلِكَ كَمَا فَعَلَ اللَّيْثُ، وَلَا سِيَّمَا مَنْ لَمْ يُبْلِغْ دِيَةَ الْعَبْدِ وَالْأَمَةِ إِلَى دِيَةِ الْحُرِّ وَالْحُرَّةِ، وَمَنْ جَعَلَ لِلْفَرَسِ سَهْمًا، وَقَالَ: لَا أُفَضِّلُ بَهِيمَةً عَلَى إِنْسَانٍ، ثُمَّ فَضَّلَ الْبَهَائِمَ هَاهُنَا عَلَى النَّاسِ فِي الصِّيَامِ عَنْ نُفُوسِهَا.

L14417 Abū Muḥammad said: All analogy is entirely invalid, and even if it were valid, it would be invalid in this context. For Allah the Exalted mandated,

in the case of hunting, compensation with equivalent livestock or feeding, yet He did not impose any of that for the accidental killing of a believer. Rather, He mandated in that case *diyah* and the freeing of a slave, but He did not mandate it here. How then could anyone consider it permissible to analogize one matter to another when Allah the Exalted has distinguished between their rulings?

قَالَ أَبُو مُحَمَّد: وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، وَلَوْ كَانَ حَقًّا لَكَانَ هَاهُنَا بَاطِلًا؛ لِأَنَّ اللَّهَ تَعَالَى أَوْجَبَ فِي جَزَاءِ الصَّيْدِ مِثْلًا مِنْ النَّعَمِ أَوْ إطْعَامًا وَلَمْ يُوجِبْ شَيْئًا مِنْ ذَلِكَ فِي قَتْلِ الْمُؤْمِنِ خَطَأً بَلْ أَوْجَبَ هُنَالِكَ دِيَةً. وَعِتْقَ رَقَبَةٍ وَلَمْ يُوجِبْهَا هَاهُنَا، فَكَيْفَ يَسْتَجِيزُ أَحَدٌ قِيَاسَ شَيْءٍ عَلَى شَيْءٍ قَدْ فَرَّقَ اللَّهُ تَعَالَى بَيْنَ حُكْمَيْهِمَا.

L14418 As for Abū Thawr, he analogized the feeding and fasting in the expiation for hunting to the feeding and fasting in the ransom for a person in iḥrām shaving his head due to harm present in him (such as lice) and illness.

وَأَمَّا أَبُو ثَوْرٍ فَإِنَّهُ قَاسَ الْإِطْعَامَ، وَالصِّيَامَ فِي جَزَاءِ الصَّيْدِ عَلَى الْإِطْعَامِ وَالصِّيَامِ فِي فِدْيَةِ حَلْقِ الْمُحْرِمِ رَأْسَهُ لِلْأَذَى يَكُونُ بِهِ وَالْمَرَضِ.

L14419 Ali said: This is analogy (qiyas), and all analogy is invalid. Moreover, even if it were valid, this particular case would be the very essence of invalidity, because the killer of game is disobedient to Allah the Exalted—a transgressor and sinner—and faces the severest threat, while the one who shaves his head due to an illness afflicting him is obedient, virtuous, and rewarded. How, then, can it be permissible to analogize one of them to the other when they are not alike? Furthermore, Allah the Exalted has distinguished between them by ordaining, in the penalty for game, the judgment of two judges, while not ordaining this for the one who shaves his head. This is evident—and success is from Allah the Exalted.

قَالَ عَلِيٌّ: وَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنُ الْبَاطِلِ؛ لِأَنَّ قَاتِلَ الصَّيْدِ عَاصٍ لِلَّهِ تَعَالَى فَاسِقٌ آثِمٌ، ثُمَّ مُتَوَعَّدٌ أَشَدَّ الْوَعِيدِ، وَحَالِقُ رَأْسِهِ لِمَرَضٍ بِهِ: مُطِيعٌ مُحْسِنٌ مَأْجُورٌ، فَكَيْفَ يَجُوزُ قِيَاسُ أَحَدِهِمَا عَلَى الْآخَرِ وَلَيْسَ مِثْلُهُ؟ ثُمَّ إنَّ اللَّهَ تَعَالَى قَدْ فَرَّقَ بَيْنَهُمَا فَجَعَلَ فِي جَزَاءِ الصَّيْدِ تَحْكِيمَ حَكَمَيْنِ وَلَمْ يَجْعَلْ ذَلِكَ فِي حَالِقِ رَأْسِهِ، وَهَذَا بَيِّنٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L14420 We have been narrated from Isḥāq ibn Rāhawayh that when Aḥmad's statement on a matter was mentioned to him, he said: "The best of what I had assumed was that anyone would agree with me on it, yet Abū Ya'qūb—may Allah have mercy on him—did not reject a statement unattributed to any prior scholar, provided it agrees with the Quran or the Sunnah, unlike one who rejects this. Such a person then puts forth opinions based on his own reasoning that contradict the Quran and the Sunnahs, unaware that anyone has asserted them before him. In the statements of all those we mentioned—Abū Ḥanīfah, Mālik, al-Layth, and al-Shāfi'ī—there are positions unknown to have been held by anyone before them, each within the classification they established. Thus, the follower of the Quran and the Sunnah is most deserving of the truth."

وَقَدْ رُوِّينَا عَنْ إسْحَاقَ بْنِ رَاهْوَيْهِ أَنَّهُ ذُكِرَ لَهُ قَوْلُ أَحْمَدَ فِي مَسْأَلَةٍ فَقَالَ: أَحْسَنُ مَا كُنْت أَظُنُّ أَنَّ أَحَدًا يُوَافِقُنِي عَلَيْهَا، فَلَمْ يُنْكِرْ أَبُو يَعْقُوبَ - رَحِمَهُ اللَّهُ - الْقَوْلَ بِمَا لَا يَعْلَمُ بِهِ قَائِلٌ إذَا وَافَقَ الْقُرْآنَ، أَوْ السُّنَّةَ لَا كَمَنْ يُنْكِرُ هَذَا - ثُمَّ يَأْتِي بِأَقْوَالٍ مِنْ رَأْيِهِ مُخَالِفَةٍ لِلْقُرْآنِ وَالسُّنَنِ لَا يَعْرِفُ أَنَّ أَحَدًا قَالَ بِهَا قَبْلَهُ، وَفِي قَوْلِ كُلِّ مَنْ ذَكَرْنَا مِنْ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَاللَّيْثِ، وَالشَّافِعِيِّ، مَا لَا يُعْرَفُ أَنَّ أَحَدًا قَالَ بِهِ قَبْلُ كُلُّ وَاحِدٍ مِنْهُمْ مِنْ التَّقْسِيمِ الَّذِي قَسَّمُوهُ، فَمُتَّبِعُ الْقُرْآنِ، وَالسُّنَّةِ أَوْلَى بِالْحَقِّ.

وَمِنْهَا: مَا هُوَ الْمِثْلُ الَّذِي يُجْزِئُ بِهِ الصَّيْدُ مِنْ النَّعَمِ فَإِنَّ الرِّوَايَةَ جَاءَتْ كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَائِذُ بْنُ حَبِيبٍ عَنْ عَطَاءٍ، وَمُجَاهِدٍ، وَإِبْرَاهِيمَ قَالُوا جَمِيعًا: إذَا أَصَابَ الْمُحْرِمُ صَيْدًا حُكِمَ عَلَيْهِ بِثَمَنِهِ فَاشْتَرَى بِهِ هَدْيًا فَإِنْ لَمْ يَجِدْ قُوِّمَ طَعَامًا فَتَصَدَّقَ بِهِ عَلَى كُلِّ مِسْكِينٍ نِصْفُ صَاعٍ، فَإِنْ لَمْ يَجِدْ صَامَ لِكُلِّ صَاعٍ يَوْمَيْنِ.

L14421–14423 Among them is the equivalent among livestock that suffices for the hunted animal, for the narration has been transmitted as we were told via the chain of Ibn Abī Shaybah: ʿĀʾidh ibn Ḥabīb narrated from ʿAṭāʾ, Mujāhid, and Ibrāhīm. They all said: When... If a pilgrim in the state of iḥrām hunts game, he must pay its compensation value to purchase a sacrificial animal. If he cannot procure the animal, he must convert the compensation into food and distribute half a ṣāʿ of that food to each needy person. If he cannot distribute the food, he must fast two days for every full ṣāʿ owed.

وَقَدْ صَحَّ عَنْ عَطَاءٍ، وَمُجَاهِدٍ، وَإِبْرَاهِيمَ غَيْرُ هَذَا، وَهُوَ أَنَّهُمْ قَالُوا: الْجَزَاءُ بِالْمِثْلِ مِنْ النَّعَمِ لَا بِالْقِيمَةِ - وَهَكَذَا رُوِّينَا عَنْ عُثْمَانَ، وَعُمَرَ، وَعَلِيٍّ، وَعَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَسَعْدِ بْنِ أَبِي وَقَّاصٍ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ، وَابْنِ عَبَّاسٍ، وَمُعَاوِيَةَ، وَابْنِ مَسْعُودٍ، وَطَارِقِ بْنِ شِهَابٍ، وَعَبْدِ اللَّهِ بْنِ عُمَرَ، وَعَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ.

L14424 It has been authentically reported from ʿAṭāʾ, Mujāhid, and Ibrāhīm a ruling other than this, namely that they said: "The recompense is in kind for livestock, not by monetary value." Similarly, it has been narrated to us from ʿUthmān, ʿUmar, ʿAlī, ʿAbd al-Raḥmān ibn ʿAwf, Saʿd ibn Abī Waqqāṣ, Jābir ibn ʿAbd Allāh, Ibn ʿAbbās, Muʿāwiyah, Ibn Masʿūd, Ṭāriq ibn Shihāb, ʿAbd Allāh ibn ʿUmar, and ʿAbd Allāh ibn ʿAmr ibn al-ʿĀṣ—may Allah be pleased with them—with no dissenting opinion among the Companions—may Allah be pleased with them—in that matter.

وَكَذَلِكَ أَيْضًا عَمَّنْ ذَكَرْنَا مِنْ التَّابِعِينَ، وَعَنْ شُرَيْحٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَغَيْرِهِمْ - وَهُوَ قَوْلُ مَالِكٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَالشَّافِعِيِّ، وَابْنِ حَيٍّ، وَابْنِ أَبِي لَيْلَى، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ.

L14425 Similarly, also from those we have mentioned among the Successors, and from Shurayh, Saʿīd ibn Jubayr, and others: this is the opinion held by Mālik, Sufyān al-Thawrī, al-Shāfiʿī, Ibn Ḥabīb, Ibn Abī Laylā, Aḥmad, Isḥāq, Abū Thawr, Abū Sulaymān, and others.

فَأَتَى أَبُو حَنِيفَةَ بِقَوْلٍ لَمْ يُسْمَعْ بِأَوْحَشَ مِنْهُ فِي هَذَا الْبَابِ، وَهُوَ أَنَّهُ قَالَ: مَنْ قَتَلَ صَيْدًا وَهُوَ مُحْرِمٌ فَإِنَّهُ يُقَوِّمُ الصَّيْدَ دَرَاهِمَ، ثُمَّ يَبْتَاعُ بِتِلْكَ الدَّرَاهِمِ مَا بَلَغَتْ مِنْ الْهَدْيِ وَلَا يُجْزِئُ فِي ذَلِكَ إلَّا الْجَذَعُ مِنْ الضَّأْنِ فَصَاعِدًا وَالثَّنِيُّ مِنْ الْإِبِلِ، وَالْبَقَرُ، وَالْمَاعِزُ، فَصَاعِدًا.

L14426 Abu Hanifah issued a ruling harsher than any known in this matter, declaring: Whoever kills game while in a state of iḥrām must appraise the game's value in dirhams and use those dirhams to purchase sacrificial animals equivalent to that value. Only a jadhaʿ (sheep aged six to twelve months) or older, a thani (camel that has entered its third year), a cow or older, or a goat or older is valid for this purpose.

L14427 If he finds two sacrificial animals of that value, or three or four, he is obligated to offer all of them. This ruling applies to the gazelle, the ostrich, the

wild donkey, the camel, the wild ox, the dhabb lizard, the jerboa, the dove, and others.

فَإِنْ وَجَدَ بِتِلْكَ الْقِيمَةِ هَدْيَيْنِ أَوْ ثَلَاثَةً أَوْ أَرْبَعَةً: لَزِمَهُ أَنْ يُهْدِيَ كُلَّ ذَلِكَ - هَكَذَا يَفْعَلُ فِي الظَّبْيِ وَالنَّعَامَةِ، وَحِمَارِ الْوَحْشِ، وَالْإِبِلِ، وَالْبَقَرَةِ الْوَحْشِيَّةِ، وَالضَّبِّ، وَالْيَرْبُوعِ وَالْحَمَامَةِ، وَغَيْرِ ذَلِكَ.

L14428 If the value of that does not equal the value of a sacrificial animal, he should buy food with it and feed the poor, as we mentioned from him earlier.

فَإِنْ لَمْ يَبْلُغْ قِيمَةُ ذَلِكَ هَدْيًا ابْتَاعَ بِهِ طَعَامًا فَأَطْعَمَ كَمَا ذَكَرْنَا عَنْهُ قَبْلُ.

L14429 "If he kills an elephant, the sacrificial offering required in its expiation does not exceed a single sheep - and similarly, if he kills a monkey."

فَإِنْ قَتَلَ فِيلًا لَمْ يَتَجَاوَزْ بِالْهَدْيِ فِي جَزَائِهِ شَاةً وَاحِدَةً - وَكَذَلِكَ إِنْ قَتَلَ قِرْدًا.

L14430–14432 A wild boar suffices as compensation if killed. How I wish I knew how the boar is valued! His companion Zufar said: The game is valued. If the value of an ostrich exceeds that of a she-camel, compensation is capped at one she-camel. If the value of a wild donkey, wild ox, deer, or Barbary sheep exceeds that of a cow, compensation is capped at one cow. If the value of an addax, gazelle, antelope, rabbit, hyrax, jerboa, spiny-tailed lizard, dove, partridge, sandgrouse, Dusky eagle-owl, houbara bustard, stone curlew, crane, or guinea fowl exceeds that of a sheep, compensation is capped at one sheep. First: If none of that reaches the price of a sacrificial animal, he should buy food with it, as Abu Hanifah said.

وَيُجْزِئُ الْخِنْزِيرُ الْبَرِّيُّ إِنْ قَتَلَهُ، فَلَيْتَ شِعْرِي كَيْفَ يُقَوَّمُ الْخِنْزِيرُ؟ وَقَالَ صَاحِبُهُ زُفَرُ: يُقَوَّمُ الصَّيْدُ فَإِنْ بَلَغَتْ قِيمَةُ النَّعَامَةِ أَكْثَرَ مِنْ بَدَنَةٍ لَمْ يَتَجَاوَزْ بِهَا بَدَنَةً وَاحِدَةً، فَإِنْ بَلَغَتْ قِيمَةُ حِمَارِ الْوَحْشِ، وَثَوْرِ الْوَحْشِ، وَالْأَيِّلِ، وَالْأَرْوِيِّ أَكْثَرَ مِنْ بَقَرَةٍ لَمْ يَتَجَاوَزْ بِهَا بَقَرَةً وَاحِدَةً، فَإِنْ بَلَغَتْ قِيمَةُ الثَّيْتَلِ وَالْغَزَالِ، وَالظَّبْيِ، وَالْأَرْنَبِ، وَالْوَبَرِ، وَالْيَرْبُوعِ، وَالضَّبِّ، وَالْحَمَامَةِ، وَالْحَجَلَةِ، وَالْقَطَاةِ، وَالدُّبْسِيِّ، وَالْحُبَارَيْ، وَالْكَرَوَانِ، وَالْكَرَاكِيِّ، وَالدَّجَاجَةِ الْحَبَشِيَّةِ، أَكْثَرَ مِنْ شَاةٍ وَاحِدَةٍ لَمْ يَتَجَاوَزْ بِهَا شَاةً وَاحِدَةً، فَإِنْ لَمْ يَبْلُغْ شَيْءٌ مِنْ ذَلِكَ ثَمَنَ هَدْيٍ ابْتَاعَ بِهِ طَعَامًا كَمَا قَالَ أَبُو حَنِيفَةَ.

L14433 Abu Yusuf and Muhammad ibn al-Hasan disagreed with both of them, advocating recompense in kind, as the majority of scholars held.

وَخَالَفَهُمَا أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، فَرَأَيَا الْجَزَاءَ بِالْمِثْلِ كَمَا قَالَ سَائِرُ النَّاسِ.

L14434 Abu Muhammad said: The opinions of Abu Hanifah and Zufar are utterly flawed and contradict the Qur'an and Sunnah, for Allah the Exalted said: *"'The expiation is equivalent to what he killed of livestock'"* [al-Mā'idah: 95], meaning: the expiation is the value equivalent to what he killed of livestock. But the verse does not indicate this at all, nor does it allow for it in any way.[45]

قَالَ أَبُو مُحَمَّدٍ: قَوْلُ أَبِي حَنِيفَةَ، وَزُفَرَ فِي غَايَةِ الْفَسَادِ، وَمُخَالِفٌ لِلْقُرْآنِ وَالسُّنَّةِ؛ لِأَنَّ اللَّهَ تَعَالَى قَالَ: {فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ} [المائدة: ٩٥] يَقُولُ تَعَالَى: فَجَزَاءُ قِيمَةِ مِثْلِ مَا قَتَلَ مِنَ النَّعَمِ، وَلَا تَدُلُّ الْآيَةُ عَلَى ذَلِكَ أَصْلًا وَلَا تَحْتَمِلُهُ بِوَجْهٍ مِنَ الْوُجُوهِ.

L14435 It has been authentically reported from the Prophet (peace be upon him) re-

وَصَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الضَّبُعِ: كَبْشٌ، وَلَمْ يَجْعَلْ فِيهَا قِيمَةً، وَقَدْ وَجَدْنَا قِيمَةَ الْحَمَامَةِ الْهَادِيَةِ، وَالْمُقِلِّينَ الْمُغَرِّدِ يَبْلُغُ عَشَرَاتِ الدَّنَانِيرِ، فَعَلَى قَوْلِ أَبِي حَنِيفَةَ

[45] **Qur'an references (L14434):** Qur'an 5:95 (Al-Ma'idah).

garding the hyena: “A ram,” without assigning a fixed value to it. Yet we have found the value of a homing pigeon and muqillīn warbling birds reaching tens of dinars. According to Abū Ḥanīfah’s view, the compensation for each of these birds from the ritual offerings would exceed the compensation for the wild donkey and ostrich. This constitutes a grave inconsistency alongside contradicting the Quran.

يَكُونُ جَزَاءُ كُلِّ وَاحِدٍ مِنْهُمَا مِنْ الْهَدْيِ أَكْثَرَ مِنْ جَزَاءِ الْحِمَارِ الْوَحْشِيِّ - وَالنَّعَامَةِ مِنْ الْهَدْيِ، فَهَذَا مَعَ خِلَافِ الْقُرْآنِ تَخْلِيطٌ فَاحِشٌ.

L14436 The remainder of his aforementioned categorization is something never preserved from any Muslim scholar before him. Abu Yusuf had made Abu Hanifah aware that this legal issue contained time-specific narrations, yet this was disregarded. Abu Hanifah retorted: “Do we not follow the Quran?” Abu Muhammad declared: “By Allah, he was not granted success in this matter to follow the Quran nor to follow any of the early predecessors. Yet they freely claimed that this ruling had reached them from Ibn Abbas and Ibrahim.”

ثُمَّ سَائِرُ تَقْسِيمِهِ الْمَذْكُورِ فَهُوَ شَيْءٌ لَمْ يُحْفَظْ عَنْ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ قَبْلَهُ، وَقَدْ وَقَفَ أَبُو يُوسُفَ أَبَا حَنِيفَةَ عَلَى أَنَّ هَذَا الْبَابَ قَدْ رُوِيَتْ فِيهِ آثَارٌ مُؤَقَّتَةٌ، فَلَمْ يُلْتَفَتْ إلَى ذَلِكَ وَقَالَ: إنَّمَا نَتْبَعُ لِلْقُرْآنِ؟ قَالَ أَبُو مُحَمَّدٍ: فَوَاَللَّهِ مَا وُفِّقَ فِي هَذَا لِاتِّبَاعِ الْقُرْآنِ، وَلَا لِاتِّبَاعِ أَحَدٍ مِنْ السَّلَفِ، وَقَدْ أَطْلَقُوا الْقَوْلَ بِأَنَّهُ قَدْ بَلَغَهُمْ ذَلِكَ عَنْ ابْنِ عَبَّاسٍ، وَإِبْرَاهِيمَ.

L14437 Abū Muḥammad said: This is an invalid absolute ruling. It has been reported only from Ibrāhīm, ʿAṭāʾ, and Mujāhid that one must appraise the game exclusively, and contrary reports are also attributed to them.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا إطْلَاقٌ فَاسِدٌ إنَّمَا جَاءَ عَنْ إبْرَاهِيمَ، وَعَطَاءٍ، وَمُجَاهِدٍ: أَنْ يُقَوِّمَ الصَّيْدَ فَقَطْ وَجَاءَ عَنْهُمْ خِلَافُهُ.

L14438 As for Ibn Abbas, nothing has been reported from him except what we previously mentioned—all of which they opposed. Indeed, some of them ventured to say: “Is the monetary equivalent more just?” Ali said: “The sinful liar has lied (no honor whatsoever) that the monetary equivalent could be more just than the equivalent in kind from the grazing livestock which Allah the Exalted has commanded. Rather, the monetary equivalent in that constitutes injustice and tyranny.” It is a principle they constructed based on another corrupt principle of theirs: ruling that destroyed property—which is not measured by volume or weight—should be compensated by monetary value, not by equivalent in kind. This constitutes their responding to error with error, for the only obligation in all such cases is the equivalent in kind, as per the explicit texts of the Quran and Sunnahs.

وَأَمَّا ابْنُ عَبَّاسٍ فَلَمْ يَأْتِ عَنْهُ إلَّا مَا ذَكَرْنَا قَبْلُ فَقَطْ مِمَّا قَدْ خَالَفُوهُ كُلَّهُ - وَلَقَدْ أَقْدَمَ بَعْضُهُمْ فَقَالَ: الْقِيمَةُ أَعْدَلُ؟ قَالَ عَلِيٌّ: كَذَبَ الْآفِكُ الْآثِمُ - وَلَا كَرَامَةَ - أَنْ تَكُونَ الْقِيمَةُ أَعْدَلَ مِنْ الْمِثْلِ مِنْ النَّعَمِ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ، بَلْ الْقِيمَةُ فِي ذَلِكَ جَوْرٌ وَظُلْمٌ، وَإِنَّمَا هُوَ أَصْلٌ بَنَوْهُ عَلَى أَصْلٍ آخَرَ لَهُمْ فَاسِدٌ وَهُوَ أَنْ يَحْكُمَ فِيمَا أَتْلَفَ مِنْ أَمْوَالِ النَّاسِ مِمَّا لَا يُكَالُ، وَلَا يُوزَنُ بِالْقِيمَةِ لَا بِالْمِثْلِ - وَهَذَا رَدٌّ مِنْهُمْ لِلْخَطَأِ عَلَى الْخَطَأِ، وَمَا الْوَاجِبُ فِي كُلِّ ذَلِكَ إلَّا الْمِثْلُ بِنَصِّ الْقُرْآنِ وَالسُّنَنِ.

L14439–14440 Abu Muhammad said: Since these confused notions have been invalidated, it is obligatory to return to the Quran, to what the Messenger of Allah,

may Allah bless him and grant him peace, has ruled, and to what the upright among the Companions and the Successors, may Allah be pleased with them, have ruled, as the Exalted has commanded us to follow them here. And divine enablement comes only from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: فَإِذْ قَدْ بَطَلَتْ هَذِهِ التَّخَالِيطُ فَالْوَاجِبُ الرُّجُوعُ إِلَى الْقُرْآنِ وَمَا حَكَمَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَا حَكَمَ بِهِ الْعُدُولُ مِنْ الصَّحَابَةِ، وَالتَّابِعِينَ - رَضِيَ اللَّهُ عَنْهُمْ - كَمَا أَمَرَ تَعَالَى بِاتِّبَاعِهِمْ هَاهُنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A legal issue: Is an ostrich equivalent to a sacrificial camel (badanah)?

[مَسْأَلَةٌ فِي النَّعَامَةِ بَدَنَةٌ مِنْ الْإِبِلِ]

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٨٧٩ - مَسْأَلَةٌ:

In the case of an ostrich, the offering is a she-camel; for a wild donkey, wild ox, large ibex, and deer: a cow. For a gazelle, ibex, and antelope: a female goat. For a spiny-tailed lizard, jerboa, rabbit, and desert rodent: a young goat. For the rock badger, monitor lizard, and hyena: a sheep. For a dove and any bird that utters a low or resonant call: a sheep, and similarly for the houbara bustard, crane, grey heron, wild goose, sea coot, Abyssinian chicken, and stone curlew.

وَفِي النَّعَامَةِ بَدَنَةٌ مِنْ الْإِبِلِ، وَفِي حِمَارِ الْوَحْشِ، وَثَوْرِ الْوَحْشِ، وَالْأُرْوِيَّةِ الْعَظِيمَةِ، وَالْأَيَّلِ: بَقَرَةٌ، وَفِي الْغَزَالِ، وَالْوَعِلِ وَالظَّبْيِ: عَنْزٌ، وَفِي الضَّبِّ، وَالْيَرْبُوعِ، وَالْأَرْنَبِ وَأُمِّ حُبَيْنٍ جَدْيٌ، وَفِي الْوَبْرِ: شَاةٌ، وَكَذَلِكَ فِي الْوَرَلِ وَالضَّبُعِ، وَفِي الْحَمَامَةِ، وَكُلِّ مَا عَبَّ وَهَدَرَ مِنْ الطَّيْرِ: شَاةٌ، وَكَذَلِكَ الْحُبَارَى وَالْكُرْكِيُّ، والبلدج، وَالْإِوَزُّ الْبَرِّيُّ، وَالْبُرَكُ الْبَحْرِيُّ، وَالدَّجَاجُ الْحَبَشِيُّ، وَالْكَرَوَانُ.

The proof of this is the statement of Allah, the Mighty and Majestic: {"The atonement is the equivalent of what he killed of livestock"} [Al-Mā'idah: 95]. The equivalent cannot exist except in one of three categories: either from all aspects, from a single aspect, or from the predominant aspects. We find that equivalence from all aspects is entirely absent from the world altogether, for any two distinct entities cannot be identical in all respects due to their mutual differences. Thus, this category is invalidated.[46]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ} [المائدة: ٩٥] فَلَا يَخْلُو الْمِثْلُ مِنْ أَنْ يَكُونَ مِنْ جَمِيعِ الْوُجُوهِ، أَوْ مِنْ وَجْهٍ وَاحِدٍ، أَوْ مِنْ أَغْلَبِ الْوُجُوهِ؛ فَوَجَدْنَا الْمُمَاثَلَةَ مِنْ جَمِيعِ الْوُجُوهِ مَعْدُومَةً مِنْ الْعَالَمِ جُمْلَةً لِأَنَّ كُلَّ غَيْرَيْنِ فَلَيْسَا مِثْلَيْنِ فِي تَغَايُرِهِمَا فَبَطَلَ هَذَا الْقِسْمُ.

Then we considered resemblance from the least of the aspects, which is a single one, and found that everything in the world—excluding nothing—must necessarily resemble all that exists in the world from one aspect without exception, namely its createdness. For everything in the world—meaning all that is other than Allah, the Exalted—is created. Thus this category too becomes invalid.

ثُمَّ نَظَرْنَا فِي الْمُمَاثَلَةِ مِنْ أَقَلِّ الْوُجُوهِ، وَهُوَ وَجْهٌ وَاحِدٌ فَوَجَدْنَا كُلَّ مَا فِي الْعَالَمِ لَا تَحَاشَ شَيْئًا، فَهُوَ يُمَاثِلُ كُلَّ مَا فِي الْعَالَمِ مِنْ وَجْهٍ وَلَا بُدَّ وَهُوَ الْخَلْقُ، لِأَنَّ كُلَّ مَا فِي الْعَالَمِ - وَهُوَ مَا دُونَ اللَّهِ تَعَالَى - فَهُوَ مَخْلُوقٌ فَبَطَلَ هَذَا الْقِسْمُ أَيْضًا.

[46] **Qur'an references (L14444):** Qur'an 5:95 (Al-Ma'idah).

L14446 If it were used, the female goat would suffice in place of the wild donkey and the ostrich, because they are two animals created together; and this is what no one would say.

وَلَوْ اُسْتُعْمِلَ لَأَجْزَأَتْ الْعَنْزُ بَدَلَ الْحِمَارِ الْوَحْشِيِّ، وَالنَّعَامَةِ؛ لِأَنَّهُمَا حَيَّانِ مَخْلُوقَانِ مَعًا، وَهَذَا مَا لَا يَقُولُهُ أَحَدٌ.

L14447 There remains only the third category: equivalence in the predominant and most evident aspects. If the issue involves only limited opinions, all of which are invalidated save one, then that one is undoubtedly the truth. This is the necessary conclusion derived from the Quran.

فَلَمْ يَبْقَ إلَّا الْقِسْمُ الثَّالِثُ وَهُوَ الْمُمَاثَلَةُ مِنْ أَغْلَبِ الْوُجُوهِ، وَأَظْهَرِهَا، وَإِذَا لَمْ يَكُنْ فِي الْمَسْأَلَةِ إلَّا أَقْوَالٌ مَحْصُورَةٌ فَبَطَلَتْ كُلُّهَا إلَّا وَاحِدًا فَهُوَ الْحَقُّ بِلَا شَكٍّ؛ فَهَذَا مُوجَبُ الْقُرْآنِ.

L14448 We found that the Messenger of Allah (peace be upon him) had ruled regarding the hyena with a ram, so we came to know with certainty that he (peace be upon him) made clear to us that equivalence is solely in size and bodily form, for the ram is the livestock most resembling the hyena—and with this came the ruling of the righteous predecessors (may Allah be pleased with them).

وَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ حَكَمَ فِي الضَّبُعِ بِكَبْشٍ، فَعَلِمْنَا يَقِينًا أَنَّهُ - عَلَيْهِ السَّلَامُ - إنَّمَا بَيَّنَ لَنَا أَنَّ الْمُمَاثَلَةَ إنَّمَا هِيَ فِي الْقَدِّ وَهَيْئَةِ الْجِسْمِ، لِأَنَّ الْكَبْشَ أَشْبَهُ النَّعَمِ بِالضَّبُعِ - وَبِهَذَا جَاءَ حُكْمُ السَّلَفِ الطَّيِّبِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L14449–14451 It was narrated to us through the chain of Jarīr ibn Ḥāzim from ʻAbdullāh ibn ʻUbayd ibn ʻUmayr from ʻAbd al-Raḥmān ibn Abī ʻAmmār. Narrated by Jabir ibn Abdullah: "I asked the Messenger of Allah—peace and blessings be upon him—about the hyena. He replied, 'It is lawful game, and He has decreed a ram as expiation if a pilgrim in the state of ihram hunts it.'"

رُوِّينَا مِنْ طَرِيقِ جَرِيرِ بْنِ حَازِمٍ عَنْ عَبْدِ اللَّهِ بْنِ عُبَيْدِ بْنِ عُمَيْرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي عَمَّارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ " قَالَ: «سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الضَّبُعِ فَقَالَ: هُوَ صَيْدٌ وَجَعَلَ فِيهِ كَبْشًا إذَا صَادَهُ الْمُحْرِمُ» .

L14452 Narrated through the chain of Sufyān ibn ʻUyaynah: Abū al-Zubayr reported to us that he heard Jābir ibn ʻAbdillāh say: "Umar ibn al-Khattāb ruled regarding the hyena as a ram."

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ نَا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: حَكَمَ عُمَرُ بْنُ الْخَطَّابِ فِي الضَّبُعِ كَبْشًا.

L14453 Narrated via Hammad ibn Salamah from ʿAmmar ibn Abi ʿAmmar from Rabāḥ: ʿAbdullāh ibn ʿUmar ruled that the compensatory ruling for a hyena is a ram.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَمَّارِ بْنِ أَبِي عَمَّارٍ عَنْ رَبَاحٍ أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ حَكَمَ فِي الضَّبُعِ كَبْشًا.

L14454 Via the narration of Abd al-Razzaq, from Ibn Jurayj, from Ata: that he [Ata] heard Ibn Abbas say regarding the hyena: "It requires the expiation of a ram."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ يَقُولُ: فِي الضَّبُعِ كَبْشٌ.

L14455 From Ali ibn Abi Talib and Jabir ibn Abdullah, both said together: "Regarding the hyena [as permissible game], the ruling is equivalent to that of a ram."

The holders of this opinion are Umar, Ali, Jabir, Ibn Umar, and Ibn Abbas. Ibn al-Zubayr became aware of Umar's statement on this matter and did not disagree with him. This is the opinion of Ikrimah, al-Shafi'i, and Abu Sulayman.

وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ قَالَا جَمِيعًا: فِي الضَّبُعِ كَبْشٌ فَهُمْ: عُمَرُ، وَعَلِيٌّ، وَجَابِرٌ، وَابْنُ عُمَرَ، وَابْنُ عَبَّاسٍ، وَقَدْ بَلَغَ ابْنَ الزُّبَيْرِ قَوْلُ عُمَرَ هَذَا فَلَمْ يُخَالِفْهُ - وَهُوَ قَوْلُ عِكْرِمَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L14456 Via the chain of Ibn Jurayj from ʻAṭāʾ al-Khurāsānī, who reported from Ibn ʻAbbās: ʻUmar ibn al-Khaṭṭāb, ʻUthmān, ʻAlī ibn Abī Ṭālib, and Zayd ibn Thābit ruled regarding the ostrich (al-naʿāmah): "It requires a sacrificial camel (badanah)."

وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ الْخُرَاسَانِيِّ عَنْ ابْنِ عَبَّاسٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ، وَعُثْمَانَ، وَعَلِيَّ بْنَ أَبِي طَالِبٍ، وَزَيْدَ بْنَ ثَابِتٍ قَالُوا فِي النَّعَامَةِ: بَدَنَةٌ مِنْ الْإِبِلِ.

L14457 Narrated by Ibn Jurayj from ʿAṭāʾ: Ibn ʿAbbās and Muʿāwiyah said regarding the ostrich that it requires a badanah (a sacrificial camel)—and this is the opinion of Ṭāwūs, ʿAṭāʾ, Mujāhid, ʿUrwah ibn al-Zubayr, Ibrāhīm al-Nakhaʿī, Mālik, al-Shāfiʿī, and Abū Sulaymān. There is nothing more similar to the ostrich than the she-camel in the length of its neck, physical structure, and appearance.

وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: أَنَّ ابْنَ عَبَّاسٍ، وَمُعَاوِيَةَ، قَالَا: فِي النَّعَامَةِ بَدَنَةٌ يَعْنِي مِنْ الْإِبِلِ - وَهُوَ قَوْلُ طَاوُسٍ، وَعَطَاءٍ، وَمُجَاهِدٍ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَإِبْرَاهِيمَ النَّخَعِيِّ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَلَا شَيْءَ أَشْبَهُ بِالنَّعَامَةِ مِنْ النَّاقَةِ فِي طُولِ الْعُنُقِ، وَالْهَيْئَةِ وَالصُّورَةِ.

L14458 It has been reported to us from Ibn Masʿūd regarding the wild ass: a camel or a cow. From Ibn ʻAbbās: a camel. From Ibrāhīm: a camel. From ʻAṭāʾ: a camel. It has also been reported from ʻAṭāʾ that it is a cow. The narration from Ibn ʻAbbās is not authentic, nor is the one from Ibn Masʿūd, because his narration is mursal.

وَرُوِّينَا عَنْ ابْنِ مَسْعُودٍ فِي حِمَارِ الْوَحْشِ بَدَنَةٌ أَوْ بَقَرَةٌ، وَعَنْ ابْنِ عَبَّاسٍ فِيهِ بَدَنَةٌ - وَعَنْ إبْرَاهِيمَ فِيهِ بَدَنَةٌ - وَعَنْ عَطَاءٍ فِيهِ بَدَنَةٌ، وَقَدْ رُوِيَ عَنْ عَطَاءٍ أَيْضًا فِيهِ بَقَرَةٌ - وَالرِّوَايَةُ فِي ذَلِكَ عَنْ ابْنِ عَبَّاسٍ لَا تَصِحُّ، وَلَا عَنْ ابْنِ مَسْعُودٍ لِأَنَّهُ مُرْسَلٌ عَنْهُ.

L14459–14461 Ibn Abī Najīḥ narrated from Mujāhid, and Ibn Jurayj narrated from ʿAṭāʾ; both said: For a wild donkey, a cow is due; for a wild cow, a cow is due. ʿAṭāʾ said: For the *arwā*, a cow is due. Mujāhid said: For a mature, large *arwā*, a cow is due. This is a sound narration from both of them, and they are two reliable authorities among us. We found that the wild donkey resembles the cow more than the camel, because cows and the wild donkey both possess hair and flowing tails with no humps, whereas the camel has wool, a short tail, and a hump. Thus, the ruling applies to the cow due to the pronounced resemblance.

وَرَوَى ابْنُ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ - وَرَوَى ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ قَالَا جَمِيعًا: فِي حِمَارِ الْوَحْشِ: بَقَرَةٌ، وَفِي بَقَرَةِ الْوَحْشِ: بَقَرَةٌ، قَالَ عَطَاءٌ: وَفِي الْأَرْوَى بَقَرَةٌ، وَقَالَ مُجَاهِدٌ: فِي الْقَادِرِ الْعَظِيمِ مِنْ الْأَرْوَى بَقَرَةٌ، وَهَذَا صَحِيحٌ عَنْهُمَا وَهُمَا ذَوَا عَدْلٍ مِنَّا - فَوَجَدْنَا حِمَارَ الْوَحْشِ أَشْبَهَ بِالْبَقَرَةِ مِنْهُ بِالنَّاقَةِ، لِأَنَّ الْبَقَرَ، وَحِمَارَ الْوَحْشِ، ذَوَا شَعْرٍ وَذَنَبٍ سَابِغٍ وَلَيْسَ لَهُمَا سَنَامٌ، وَالنَّاقَةُ ذَاتُ وَبَرٍ وَذَنَبٍ قَصِيرٍ وَسَنَامٍ فَوَجَبَ الْحُكْمُ بِالْبَقَرَةِ لِقُوَّةِ الْمُمَاثَلَةِ.

وَرُوِيَ عَنْ ابْنِ عَبَّاسٍ فِي الْأُيَّلِ: بَقَرَةٌ - وَبِهِ يَقُولُ الشَّافِعِيُّ.

L14462 It has been reported from Ibn Abbas regarding the deer: "It is ruled equivalent to a cow," and this is the opinion held by Al-Shafi'i.

وَفِي الثَّيْتَلِ: بَقَرَةٌ، وَهُوَ قَوْلُ جَمَاعَةٍ مِنْ السَّلَفِ.

L14463 Regarding the thaythal (a type of cow): a cow, and this is the view held by a group of the Salaf.

وَفِي الْوَبْرِ: شَاةٌ - وَهُوَ قَوْلُ عَطَاءٍ، وَالشَّافِعِيِّ، وَعَنْ عُمَرَ بْنِ الْخَطَّابِ وَعَطَاءٍ فِي الْغَزَالِ: شَاةٌ.

L14464 And concerning the hyrax: a sheep—this is the opinion of ʿAṭāʾ and al-Shāfiʿī. And regarding the gazelle: a sheep, as narrated from ʿUmar ibn al-Khaṭṭāb and ʿAṭāʾ.

قَالَ أَبُو مُحَمَّدٍ: الشَّاةُ تَقَعُ عَلَى الْمَاعِزَةِ كَمَا تَقَعُ عَلَى الضَّأْنِيَّةِ.

L14465 Abu Muhammad said: The ewe mounts the she-goat just as it mounts the ewe.

وَعَنْ سَعْدٍ، وَعَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ فِي الظَّبْيِ: تَيْسٌ.

L14466 From Saʿd and ʿAbd al-Raḥmān ibn ʿAwf regarding the gazelle: [it is equivalent to] a male goat (tays).

وَعَنْ عُمَرَ بْنِ الْخَطَّابِ، وَزَيْدٍ عَنْ جَابِرٍ فِي الضَّبِّ: جَدْيُ رَاعٍ.

L14467 From Umar ibn al-Khattab, and from Zayd—from Jabir—regarding the spiny-tailed lizard: a herder's goat.

وَعَنْ زَيْدِ بْنِ عَبْدِ اللَّهِ، وَطَارِقِ بْنِ شِهَابٍ مِثْلُهُ أَيْضًا؟ فَقَالَ مَالِكٌ، وَأَبُو حَنِيفَةَ: لَا يَجُوزُ هَذَا.

L14468 It is narrated from Zayd ibn Abdullah and Tariq ibn Shihab likewise. Then Mālik and Abū Ḥanīfah said: This is not permissible.

وَرُوِيَ عَنْ عَطَاءٍ فِي الضَّبِّ: شَاةٌ.

L14469 And it was narrated from 'Aṭā' regarding the ḍabb: a sheep.

وَعَنْ مُجَاهِدٍ فِي الضَّبِّ: حُفْنَةٌ مِنْ طَعَامٍ.

L14470 It is narrated from Mujāhid concerning the ḍabb [spiny-tailed lizard]: a handful of food.

وَهَذَا كُلُّهُ لَا شَيْءَ لِأَنَّ خِلَافَ حُكْمِ عُمَرَ، وَطَارِقٍ، وَمَنْ مَعَهُمَا لَا يُجَوِّزُ خِلَافَهُ، لِأَنَّهُمْ ذَوُو عَدْلٍ مِنَّا مَعَ مُوَافَقَتِهِمْ الْقُرْآنَ فِي الْمُمَاثَلَةِ؛ وَقَوْلُ عَطَاءٍ حَادِثٌ بَعْدَهُمْ، وَقَوْلُ مُجَاهِدٍ كَذَلِكَ مَعَ خِلَافِ قَوْلِهِمَا، وَقَوْلِ مَالِكٍ لِلْقُرْآنِ.

L14471 All of this is baseless, for opposing the rulings of 'Umar, Ṭāriq, and those with them is impermissible, as they are people of justice among us whose positions align with the Qur'an in equivalence. 'Aṭā's opinion is a later development, and Mujāhid's view is likewise a later development, while also contradicting the rulings of both groups and Mālik's statement regarding the Qur'an.

وَبِقَوْلِ عُمَرَ يَقُولُ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ وَأَحْمَدُ، وَغَيْرُهُمْ.

L14472 And by 'Umar's statement, al-Shāfiʿī, Abū Sulaymān, Abū Yūsuf, Muḥammad ibn al-Ḥasan, Aḥmad, and others state.

L14473 And from 'Umar concerning the rabbit: it is termed ʿanāq (a young she-goat),

which is the male kid (jady).

وَعَنْ عُمَرَ فِي الْأَرْنَبِ: عَنَاقٌ، وَهِيَ الْجَدْيُ.

L14474 Narrated by Abdullah ibn Amr ibn al-As, Amr ibn Habashi, and Ibn Abbas: the same view as his. This is the opinion of al-Shafiʿi, Ahmad, Abu Yusuf, Muhammad ibn al-Hasan, Abu Sulayman, and others. Abu Hanifa and Malik said: "It is not permissible," thus opposing all those we have mentioned and the equivalence commanded in the Quran.

وَعَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ، وَعَمْرِو بْنِ حَبَشِيٍّ، وَابْنِ عَبَّاسٍ مِثْلُهُ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ، قَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَا يَجُوزُ - فَخَالَفُوا كُلَّ مَنْ ذَكَرْنَا، وَالْمُمَاثَلَةَ الْمَأْمُورَ بِهَا فِي الْقُرْآنِ.

L14475–14477 From ʿUmar, Ibn Masʿūd, and Mujāhid concerning the jerboa: It is equivalent to a suckling lamb or an unweaned kid, both. It is the same—this being the opinion of al-Shāfiʿī, Aḥmad, Abū Yūsuf, Muḥammad ibn al-Ḥasan, Abū Sulaymān, and others.

وَعَنْ عُمَرَ، وَابْنِ مَسْعُودٍ، وَمُجَاهِدٍ فِي الْيَرْبُوعِ: سَخْلَةٌ، أَوْ جَفْرَةٌ، وَهُمَا سَوَاءٌ - وَهُوَ قَوْلُ الشَّافِعِيِّ وَأَحْمَدَ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ.

L14478 It has been narrated to us from ʿAṭāʾ that he said, "I have not heard anything about it," and from al-Zuhrī that he said, "It requires arbitration."

وَرُوِّينَا عَنْ عَطَاءٍ: لَمْ أَسْمَعْ فِيهِ بِشَيْءٍ، وَعَنْ الزُّهْرِيِّ: فِيهِ حُكُومَةٌ.

L14479 And from Ibrāhīm: In it lies its value—and all of this is invalid.

وَعَنْ إبْرَاهِيمَ: فِيهِ قِيمَتُهُ - وَهَذَا كُلُّهُ لَيْسَ بِشَيْءٍ.

L14480 Malik said regarding the rabbit, the spiny-tailed lizard, and the jerboa: "Food is to be bought with its value." This is an error, for it has not been established by the Qur'an, the Sunnah, the statement of a Companion, Ijma (consensus), or Qiyas (analogy).

وَقَالَ مَالِكٌ فِي الْأَرْنَبِ، وَالضَّبِّ، وَالْيَرْبُوعِ قِيمَتُهُ يُبْتَاعُ بِهِ طَعَامٌ - وَهَذَا خَطَأٌ لَمْ يُوجِبْهُ الْقُرْآنُ، وَلَا السُّنَّةُ، وَلَا قَوْلُ صَاحِبٍ، وَلَا إجْمَاعٌ، وَلَا قِيَاسٌ.

L14481 If they say, "We have analogized based on sacrificial animals, where a *jadha'* from non-sheep is impermissible in them, nor anything below a *jadha'* in sheep?" We reply: The analogy is invalid. Moreover, even if it were valid, you would be the first to contradict this analogy, for you state that rams and male goats are superior to camels and cows for sacrificial animals, and that males are superior to females in them. Yet you state regarding all *hady* that camels and cows are superior to sheep and goats, and that females are superior to males in them. At times, you analogize rulings between these categories, and at times, you differentiate their rulings without textual evidence or proof.

فَإِنْ قَالُوا: قِسْنَا عَلَى الْأَضَاحِيِّ لَا يَجُوزُ فِيهِ الْجَذَعُ مِنْ غَيْرِ الضَّأْنِ وَلَا مَا دُونَ الْجَذَعِ مِنْ الضَّأْنِ؟ قُلْنَا: الْقِيَاسُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكُنْتُمْ أَوَّلَ مُخَالِفٍ لِهَذَا الْقِيَاسِ لِأَنَّكُمْ تَقُولُونَ: إنَّ الْكَبْشَ، وَالتَّيْسَ، أَفْضَلُ فِي الْأَضَاحِيِّ مِنْ الْإِبِلِ، وَالْبَقَرِ، وَإِنَّ الذَّكَرَ فِيهَا أَفْضَلُ مِنْ الْأُنْثَى، وَتَقُولُونَ فِي الْهَدْيِ كُلِّهِ: إنَّ الْإِبِلَ، وَالْبَقَرَ: أَفْضَلُ مِنْ الضَّأْنِ، وَالْمَاعِزِ، وَإِنَّ الْإِنَاثَ أَفْضَلُ فِيهَا مِنْ الذُّكُورِ، فَمَرَّةً تَقِيسُونَ حُكْمَ بَعْضِ ذَلِكَ عَلَى بَعْضٍ، وَمَرَّةً تُفَرِّقُونَ بَيْنَ أَحْكَامِهَا بِلَا نَصٍّ وَلَا دَلِيلٍ.

L14482 If they say: It has been authentically reported from the Prophet—peace

فَإِنْ قَالُوا: قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «لَا تُجْزِئُ جَذَعَةٌ عَنْ أَحَدٍ بَعْدَ أَبِي بُرْدَةَ» .

قُلْنَا: نَعَمْ، وَالَّذِي أَخْبَرَ بِهَذَا هُوَ الَّذِي أَخْبَرَنَا عَنْ رَبِّهِ تَعَالَى بِإِيجَابِ مِثْلِ الصَّيْدِ الْمَقْتُولِ مِنْ النَّعَمِ، وَلَيْسَ بَعْضُ كَلَامِهِ أَوْلَى بِالطَّاعَةِ مِنْ بَعْضٍ، بَلْ كُلُّهُ فُرِضَ اسْتِعْمَالُهُ، وَلَا يَجُوزُ تَرْكُ شَيْءٍ مِنْهُ لِشَيْءٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَلَمْ يَنْهَ قَطُّ - عَلَيْهِ السَّلَامُ - عَنْ مَا دُونَ الْجَذَعِ بِاسْمِهِ، لَكِنْ لَمَّا كَانَ بَعْضُ مَا دُونَ الْجَذَعِ لَا يَقَعُ عَلَيْهِ اسْمُ شَاةٍ لَمْ يُجْزِ فِيمَا جَاءَ فِيهِ النَّصُّ بِإِيجَابِ شَاةٍ فَقَطْ.

وَأَمَّا الْجَذَعَةُ فَلَا تُجْزِئُ فِي جَزَاءِ الصَّيْدِ أَيْضًا، لِأَنَّ النَّهْيَ عَنْهَا عُمُومٌ، إلَّا حَيْثُ أُوجِبَتْ بِاسْمِهَا وَلَيْسَ ذَلِكَ إلَّا فِي زَكَاةِ الْإِبِلِ، وَالْبَقَرِ، فَقَطْ، مَعَ أَنَّ الْجَذَعَ مِنْ الضَّأْنِ، وَالْمَاعِزِ، وَالْإِبِلِ، وَالْبَقَرِ: لَا مَعْنَى لِمُرَاعَاتِهِ فِي جَزَاءِ الصَّيْدِ إنَّمَا يُرَاعَى الْمِثْلُ فِي الْقَدِّ وَالصُّورَةِ لَا مَا لَا يُعْرَفُ إلَّا بَعْدَ فَرِّ الْأَسْنَانِ - فَصَحَّ أَنَّ الْجَذَعَةَ لَا تُجْزِئُ فِي جَزَاءِ الصَّيْدِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - وَرُوِّينَا عَنْ عَطَاءٍ فِي الْوَرَلِ: شَاةٌ.

قَالَ أَبُو مُحَمَّدٍ: إنْ كَانَ عَظِيمًا فِي مِقْدَارِ الشَّاةِ فَكَذَلِكَ، وَإِلَّا فَفِيهِ، وَفِي الْقُنْفُذِ: جَدْيٌ صَغِيرٌ.

وَعَنْ عُمَرَ، وَعُثْمَانَ، وَابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ فِي الْحَمَامَةِ: شَاةٌ.

وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَحْمَدَ.

and blessings be upon him—that he said: "A jadhʿah (young camel) does not suffice from anyone after Abu Burda."

L14483 We said: Yes, and He who informed us of this is the same who informed us from his Lord, the Exalted, by obligating compensation with the equivalent from livestock for slaughtered game. No part of His speech holds greater claim to obedience than another. Rather, the application of all of it is mandated, and it is impermissible to abandon any portion of it in favor of another part. And success comes only through Allah, the Exalted.

L14484 The Prophet—peace be upon him—never prohibited the use of sheep below the jadhaʿ stage by name. However, since some sheep beneath the jadhaʿ stage are not classified as sheep, they were not deemed valid for cases where the textual ruling explicitly requires only a sheep.

L14485 As for the jadhaʿah (young camel), it is likewise invalid as expiation for hunting, since the prohibition concerning it is general except where explicitly mandated by its specific designation—and this applies solely to the zakah of camels and cows. Moreover, the jadhaʿ of sheep, goats, camels, and cows has no legal significance in hunting compensation, for what is evaluated is equivalence in physical stature and form—not traits discernible only after the shedding of teeth. Thus, it is confirmed that the jadhaʿah is invalid as expiation for hunting. And success is from Allah, the Exalted. It has been narrated to us from ʿAṭāʾ regarding the monitor lizard: a sheep.

L14486–14487 Abu Muhammad said: If it is large, comparable in size to a sheep, the same ruling applies; otherwise, the prescribed ruling applies. As for the hedgehog, the required compensation is a young male goat.

L14488 It is reported from ʿUmar, ʿUthmān, Ibn ʿAbbās, and Ibn ʿUmar regarding the dove: a sheep.

L14489 And this is the opinion of Mālik, al-Shāfiʿī, Abī Sulaymān, and Aḥmad.

L14490 Al-Shafi'i and Abu Sulayman said: For every [domesticated] animal that grazes as sheep do, a sheep is required as an equivalent offering by this

equivalence [in kind]. It has been narrated to us from Ibn Abbas regarding the ringdove, turtle dove, bustard, sandgrouse, and partridge: a sheep for each.

وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: كُلُّ مَا يَعُبُّ كَمَا تَعُبُّ الشَّاةُ فَفِيهِ شَاةٌ بِهَذِهِ الْمُمَاثَلَةِ - وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ فِي الدُّبْسِيِّ، وَالْقُمْرِيِّ، وَالْحُبَارَى، وَالْقَطَاةِ، وَالْحَجَلَةِ شَاةٌ شَاةٌ.

L14491 It has been narrated to us from ʿAṭāʾ regarding all of that: the same as this also. And likewise regarding the curlew and the son of water (ibn al-māʾ).

وَرُوِّينَا عَنْ عَطَاءٍ فِي كُلِّ ذَلِكَ مِثْلَ هَذَا أَيْضًا. وَكَذَلِكَ فِي الْكَرَوَانِ، وَابْنِ الْمَاءِ.

L14492 It has been narrated to us from Al-Qāsim and Sālim that they asked, "Is a third of a mudd better than a ḥajalah?" Abū Muḥammad said: It is impermissible here to oppose the ruling issued by Ibn ʾAbbās, and ʾAṭāʾ.

وَرُوِّينَا عَنِ الْقَاسِمِ، وَسَالِمٍ: ثُلُثُ مُدٍّ: خَيْرٌ مِنْ حَجَلَةٍ؟ قَالَ أَبُو مُحَمَّدٍ: لَا يَجُوزُ هَاهُنَا خِلَافُ مَا حَكَمَ بِهِ ابْنُ عَبَّاسٍ، وَعَطَاءٌ.

L14493 Ali said: And it is narrated from Ata' that concerning the hoopoe, a dirham; concerning the bat, two-thirds of a dirham; and concerning the sparrow, half a dirham.

قَالَ عَلِيٌّ: وَعَنْ عَطَاءٍ فِي الْهُدْهُدِ: دِرْهَمٌ، وَفِي الْوَطْوَاطِ: ثُلُثَا دِرْهَمٍ، وَفِي الْعُصْفُورِ: نِصْفُ دِرْهَمٍ.

L14494 From ʿUmar regarding the locust: it is a date. From Saʿīd ibn Jubayr: the same as that.

وَعَنْ عُمَرَ فِي الْجَرَادَةِ: تَمْرَةٌ، وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ مِثْلُ ذَلِكَ.

L14495 Others said: There is no prohibition regarding it because it is from sea game. This is incorrect, for if it is immersed in seawater, it dies.

وَقَالَ آخَرُونَ: لَا شَيْءَ فِيهَا؛ لِأَنَّهَا مِنْ صَيْدِ الْبَحْرِ، وَهَذَا خَطَأٌ؛ لِأَنَّهَا إِنْ غُمِسَتْ فِي الْبَحْرِ مَاتَتْ.

L14496 And on the authority of Kaʿb concerning the locust: a dirham.

وَعَنْ كَعْبٍ فِي الْجَرَادَةِ دِرْهَمٌ.

L14497–14499 Abu Muhammad said: Allah the Exalted has commanded arbitration only regarding compensation through livestock, not through feeding or fasting. Therefore, it is impermissible to apply arbitration to these two acts. Rather, it is only what Allah the Exalted has ordained in this matter - which we previously mentioned. Thus, whatever has an equivalent among small livestock must be compensated with its like. As for what has no equivalent among large or small livestock, the expiation is feeding the poor, as Allah, the Mighty and Majestic, stated: {or the equivalent of that in fasting} [al-Ma'idah: 95]. For it is inconceivable that Allah the Exalted would obligate compensation for game with its equivalent from livestock when no equivalent exists among them, as this would impose what is beyond one's capacity, while Allah the Exalted

قَالَ أَبُو مُحَمَّدٍ: إِنَّمَا أَمَرَ اللَّهُ تَعَالَى بِتَحْكِيمٍ فِي الْجَزَاءِ مِنَ النَّعَمِ لَا فِي الْإِطْعَامِ وَلَا فِي الصِّيَامِ، فَلَا يَجُوزُ التَّحْكِيمُ فِي هَذَيْنِ الْعَمَلَيْنِ، وَإِنَّمَا هُوَ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ فِي ذَلِكَ وَهُوَ مَا ذَكَرْنَا قَبْلُ، فَكُلُّ مَا كَانَ لَهُ مِثْلٌ مِنْ صِغَارِ النَّعَمِ جُزِيَ بِهِ وَمَا لَمْ يَكُنْ لَهُ مِثْلٌ مِنْ كِبَارِ النَّعَمِ وَلَا صِغَارِهِ فَإِنَّمَا فِيهِ فِدْيَةٌ طَعَامُ مَسَاكِينَ كَمَا قَالَ عَزَّ وَجَلَّ: {أَوْ عَدْلُ ذَلِكَ صِيَامًا} [المائدة: ٩٥] لِأَنَّ مِنَ الْمُحَالِ أَنْ يُوجِبَ اللَّهُ تَعَالَى جَزَاءَ صَيْدٍ بِمِثْلِهِ مِنَ النَّعَمِ وَهُوَ لَا مِثْلَ لَهُ مِنْهَا، لِأَنَّ هَذَا تَكْلِيفُ مَا لَيْسَ فِي الْوُسْعِ وَاللَّهُ تَعَالَى يَقُولُ: {لا يُكَلِّفُ

says: {Allah does not burden any soul beyond its capacity} [al-Baqarah: 286]. Since there is no doubt about this, there is likewise no doubt that Allah the Exalted knew the compensation for game created exceedingly small - such as tiny birds and locusts - and thus ordained nothing for large or small game except expiation through feeding the poor or its equivalent in fasting. Therefore, the obligation applies to a locust and what exceeds it up to... Regarding the ostrich, the offspring of the smallest bird species up to the wild donkey: the feeding of three poor people only.[47]

اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] فَإِذْ لَا شَكَّ فِي هَذَا فَلَا شَكَّ أَيْضًا فِي أَنَّ اللَّهَ تَعَالَى قَدْ عَلِمَ أَنَّ مِنْ جَزَاءِ الصَّيْدِ الَّذِي خُلِقَ صَغِيرًا جِدًّا كَصِغَارِ الْعَصَافِيرِ وَالْجَرَادِ فَلَمْ يَجْعَلْ فِي كَبِيرِ الصَّيْدِ وَصَغِيرِهِ إِلَّا فِدْيَةً طَعَامَ مَسَاكِينَ أَوْ عَدْلَهُ صِيَامًا -: فَوَجَبَ فِي الْجَرَادَةِ فَمَا فَوْقَهَا إِلَى النَّعَامَةِ، وَفِي وَلَدِ أَصْغَرِ الطَّيْرِ إِلَى حِمَارِ الْوَحْشِ: إِطْعَامُ ثَلَاثَةِ مَسَاكِينَ فَقَطْ.

[47] **Qur'an references (L14497):** Qur'an 5:95 (Al-Ma'idah); Qur'an 2:286 (Al-Baqarah).

وَأَمَّا الصِّيَامُ فَلَا صِيَامَ فِي الْإِسْلَامِ أَقَلُّ مِنْ صَوْمِ يَوْمٍ، فَفِي كُلِّ صَغِيرٍ مِنْهَا صَوْمُ يَوْمٍ فَقَطْ، فَإِنْ كَانَ يُشْبِعُ بِكِبَرِ جِسْمِهِ إنْسَانَيْنِ أَوْ ثَلَاثَةً فَأَكْثَرَ: فَلِكُلِّ آكِلٍ صَوْمُ يَوْمٍ كَمَا نَصَّ اللَّهُ تَعَالَى.

L14500 As for fasting, there is no act of fasting in Islam shorter than fasting a single day. For each minor offense among them, only one day of fasting is required. If someone's body size is equivalent to feeding two or three people or more, then a day of fasting is obligated for each person fed, as Allah the Exalted has stipulated.

فَإِنْ قِيلَ: إنَّ هَذَا قَوْلٌ لَا يُحْفَظُ عَنْ أَحَدٍ مِمَّنْ سَلَفَ؟ قُلْنَا: نَحْنُ لَا نَدَّعِي الْإِحَاطَةَ بِأَقْوَالِ الصَّحَابَةِ جَمِيعِهِمْ وَالتَّابِعِينَ كُلِّهِمْ فَمَنْ بَعْدَهُمْ مِنْ الْعُلَمَاءِ؟ بَلْ نَقُولُ وَنَقْطَعُ: أَنَّ مَنْ ادَّعَى الْإِحَاطَةَ بِأَقْوَالِهِمْ فَقَدْ كَذَبَ كَذِبًا مُتَيَقَّنًا لَا خَفَاءَ بِهِ، وَلَا نُنْكِرُ الْقَوْلَ بِمَا أَوْجَبَهُ الْقُرْآنُ أَوْ السُّنَّةُ وَإِنْ لَمْ تُعْرَفْ رِوَايَةٌ عَنْ إنْسَانٍ بِعَيْنِهِ بِمِثْلِ ذَلِكَ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَقُلْ لَنَا قَطُّ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا تَقُولُوا بِمَا فِي الْقُرْآنِ وَالسُّنَّةِ حَتَّى تَعْلَمُوا أَنَّ إنْسَانًا قَالَ بِمَا فِيهِمَا، بَلْ هَذَا الْقَوْلُ عِنْدَنَا ضَلَالٌ وَبِدْعَةٌ وَكَبِيرَةٌ مِنْ أَكْبَرِ الْكَبَائِرِ، وَإِنَّمَا قَالَ تَعَالَى: {اتَّبِعُوا مَا أُنْزِلَ إِلَيْكُمْ مِنْ رَبِّكُمْ وَلا تَتَّبِعُوا مِنْ دُونِهِ أَوْلِيَاءَ قَلِيلا مَا تَذَكَّرُونَ} [الأعراف: ٣] .

L14501 If it is said: "This is a statement not attributed to any of the early predecessors," we respond: We do not claim to encompass all the statements of every Companion, every Follower, and the scholars after them. Rather, we declare and assert decisively: Whoever claims comprehensive knowledge of their statements has undoubtedly lied—a lie that is utterly evident. We do not reject the position necessitated by the Quran or the Sunnah merely because no narration is known from any specific person endorsing what they contain. For Allah the Exalted has never told us—nor has His Messenger, peace be upon him—'Do not act upon what is in the Quran and the Sunnah until you know that a person has affirmed their contents.' On the contrary, such a claim is, in our view, misguidance, innovation, and a major sin—one of the greatest sins. Allah the Exalted has said: "Follow what has been revealed to you from your Lord, and do not follow protectors besides Him. How seldom you reflect!" [Al-A'raf 7:3].[1]

وَالنَّاسُ قَدْ اخْتَلَفُوا فِي الْجَرَادِ -: فَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي الْمُهَزِّمِ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْجَرَادُ مِنْ صَيْدِ الْبَحْرِ» .

L14502 People have differed regarding locusts. It has been narrated to us through the chain of Ḥammād ibn Salamah, from Abi al-Muhazzim, from Abū Hurayrah, from the Messenger of Allah (peace be upon him), "Locusts are among the game of the sea."

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا مُحَمَّدُ بْنُ عِيسَى عَنْ حَمَّادٍ عَنْ مَيْمُونِ بْنِ جَابَانَ عَنْ أَبِي رَافِعٍ عَنْ أَبِي هُرَيْرَةَ مُسْنَدًا مِثْلَهُ.

L14503 And via the chain of Abū Dāwūd: Muḥammad ibn ʿĪsā narrated to us from Ḥammād, from Maymūn ibn Jābān, from Abu Rāfiʿ, from Abu Hurayrah - *musnad* similar to it.

وَعَنْ كَعْبٍ أَنَّهُ قَالَ لِعُمَرَ: يَا أَمِيرَ الْمُؤْمِنِينَ إنَّ الْجَرَادَ نَثْرُ حُوتٍ يَنْثُرُهُ فِي كُلِّ عَامٍ مَرَّتَيْنِ، وَأَبَاحَ أَكْلَهُ لِلْمُحْرِمِ وَصَيْدَهُ، فَهَذَا قَوْلٌ.

L14504 Kaʿb reported that he said to 'Umar, "O Commander of the Faithful, locusts are the scattered spawn of a whale that scatters it twice every year, and He permitted consuming it and hunting it for the one in iḥrām." This is an opinion.

[1] **Qur'an references (L14501):** Qur'an 7:3 (Al-A'raf).

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ نَا أَبُو بِشْرٍ عَنْ يُوسُفَ بْنِ مَاهَكَ قَالَ كَعْبٌ: ذُكِرَ لِعُمَرَ أَنِّي أَصَبْت جَرَادَتَيْنِ وَأَنَا مُحْرِمٌ فَقَالَ لِي عُمَرُ: مَا نَوَيْت فِي نَفْسِك؟ قُلْت: دِرْهَمَيْنِ، فَقَالَ عُمَرُ: تَمْرَتَانِ خَيْرٌ مِنْ جَرَادَتَيْنِ، امْضِ لِمَا نَوَيْت فِي نَفْسِك.

L14505 It has been narrated to us through the chain of Saʿīd ibn Manṣūr, who narrated from Hushaym, who narrated from Abū Bishr, who narrated from Yūsuf ibn Māhak, who said: Kaʿb said, "'Umar was informed that I had caught two locusts while in a state of iḥrām. 'Umar said to me, 'What did you intend in your heart?' I replied, 'Two dirhams.' 'Umar then said, 'Two dates are superior to two locusts. Proceed with what you intended in your heart.'"

فَهَذَا عُمَرُ، وَكَعْبٌ: جَعَلَا فِي الْجَرَادَةِ دِرْهَمًا - فَهَذَا قَوْلٌ آخَرُ.

L14506 Thus, 'Umar and Kaʿb: they set one dirham for the locust – this represents another juristic view.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: نَا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ عَنْ الْأَسْوَدِ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ فِي مُحْرِمٍ أَصَابَ جَرَادَةً: تَمْرَةٌ خَيْرٌ مِنْ جَرَادَةٍ.

L14507 From the chain of Ibn Abī Shaybah: Abū Muʿāwiyah narrated to us from al-Aʿmash from Ibrāhīm from al-Aswad from ʿUmar ibn al-Khaṭṭāb that he said regarding a muḥrim who killed a locust: "Giving a date in charity is better than killing a locust."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا خَالِدِ بْنِ عَبْدِ اللَّهِ الطَّحَّانِ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَلْقَمَةَ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّهُ حَكَمَ فِي الْجَرَادَةِ تَمْرَةٌ - فَهَذَا قَوْلٌ ثَالِثٌ.

L14508–14509 Through the chain of Saʿīd ibn Manṣūr: Khālid ibn ʿAbdullāh al-Ṭaḥḥān narrated to us from Muḥammad ibn ʿAmr ibn ʿAlqamah, from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ that he ruled a locust to be equivalent to a date in value. Thus, this constitutes a third legal opinion.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ قَالَ: أَفْتَى ابْنُ عَبَّاسٍ فِي جَرَادَةٍ يُصِيبُهَا الْمُحْرِمُ بِأَنْ يَقْصِدَ بِقَبْضَةٍ مِنْ طَعَامٍ - وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ عَنْ شُعَيْبٍ عَنْ عَلِيِّ بْنِ عَبْدِ اللَّهِ الْبَارِقِيِّ عَنْ ابْنِ عُمَرَ قَالَ: فِي الْجَرَادَةِ إذَا صَادَهَا الْمُحْرِمُ: قَبْضَةٌ مِنْ طَعَامٍ.

L14510 And through the chain of Ibn Wahb from Amr ibn al-Harith from Bukayr ibn al-Ashajj from al-Qasim ibn Muhammad, who said: Ibn Abbas issued a legal verdict regarding a locust killed by a Muhrim, to give a handful of food. And through the chain of Ibn Abi Shaybah reported from Abdul Wahhab al-Thaqafi from Shu'ayb from Ali ibn Abdullah al-Bariqi from Ibn Umar, who said: If a Muhrim hunts a locust, a handful of food.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا حَمَّادُ بْنُ خَالِدٍ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ فِي الْجَرَادَةِ: قَبْضَةٌ مِنْ طَعَامٍ - فَهَذَا قَوْلٌ رَابِعٌ.

L14511 Via the chain of Ibn Abi Shaybah: He narrated to us – Hammad ibn Khalid from Ibn Abi Dhib from al-Zuhri from Saʿid ibn al-Musayyab, who said regarding a locust: "A handful of food." This is a fourth opinion.

L14512 And via the transmission of Ibn Abī Shaybah: Ibn Abī Zā'idah reported to us from Ibn Jurayj, on the authority of 'Aṭā', who said concerning the locust: a handful or a mouthful.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا ابْنُ أَبِي زَائِدَةَ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ فِي الْجَرَادَةِ: قَبْضَةٌ أَوْ لُقْمَةٌ.

L14513 From the chain of Ibn Abi Shaybah, from Waki‘, from Isra’il, from Jabir - who reported from Muhammad ibn Ali, as well as ‘Ata’, Tawus, and Mujahid - all of whom said: Regarding the locust, there is no liability in accidental [cases]. But if one kills it intentionally, he must provide something to feed.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ إِسْرَائِيلَ عَنْ جَابِرٍ عَنْ مُحَمَّدِ بْنِ عَلِيٍّ، وَعَطَاءٍ، وَطَاوُسٍ، وَمُجَاهِدٍ، قَالُوا كُلُّهُمْ: فِي الْجَرَادَةِ لَيْسَ فِيهَا فِي الْخَطَأِ شَيْءٌ فَإِنْ قَتَلَهَا عَمْدًا أَطْعَمَ شَيْئًا.

L14514 And through the chain of Waki‘ from ‘Imrān ibn Ḥudayr from ‘Ikrimah regarding the locust, he said: “One should feed a piece.” This is a fifth opinion.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عِمْرَانَ بْنِ حُدَيْرٍ عَنْ عِكْرِمَةَ فِي الْجَرَادَةِ قَالَ: يُطْعِمُ كِسْرَةً - فَهَذَا قَوْلٌ خَامِسٌ.

L14515 From the narration of Sa‘īd ibn Manṣūr, who reported to us: Abū al-Aḥwaṣ narrated from Simāk, from ‘Ikrimah, from Ibn ‘Abbās, who said regarding a pilgrim in iḥrām who kills game with no equivalent in kind among livestock: He must send its value to Mecca as a ransom.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا أَبُو الْأَحْوَصِ عَنْ سِمَاكٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ فِي مُحْرِمٍ أَصَابَ صَيْدًا لَيْسَ لَهُ نِدٌّ مِنْ النَّعَمِ: إنَّهُ يُهْدِي ثَمَنَهُ إلَى مَكَّةَ.

L14516 And it has also been narrated to us from ‘Ikrimah: in it is its price—thus, this is the sixth opinion.

وَرُوِّينَا أَيْضًا عَنْ عِكْرِمَةَ فِيهِ ثَمَنُهُ - فَهَذَا قَوْلٌ سَادِسٌ.

L14517 From the chain of Sa’id ibn Mansur: Hushaym reported to us: “I am Mansur” - from Al-Hasan, who said: “Locusts are among the lawful game of land and sea.” This is the seventh opinion.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ أَنَا مَنْصُورٌ عَنْ الْحَسَنِ قَالَ: الْجَرَادُ مِنْ صَيْدِ الْبَرِّ وَالْبَحْرِ - فَهَذَا قَوْلٌ سَابِعٌ.

L14518 And from the chain of Sa‘īd ibn Manṣūr: Ḥafṣ ibn Maysarah al-San‘ānī narrated to us, from Zayd ibn Aslam, from ‘Aṭā’ ibn Yasār, from Ka‘b al-Aḥbār, that ‘Umar considered reprehensible the eating of locusts for a pilgrim (muḥrim) and did not assign any penalty for it.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا حَفْصُ بْنُ مَيْسَرَةَ الصَّنْعَانِيُّ نَا زَيْدُ بْنُ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ كَعْبِ الْأَحْبَارِ أَنَّ عُمَرَ كَرِهَ أَكْلَ الْجَرَادِ لِلْمُحْرِمِ وَلَمْ يَجْعَلْ فِيهِ جَزَاءً.

L14519–14521 And through the chain of Sa‘īd from Hushaym - who said, “I am Abū Bishr” - from Yūsuf ibn Māhak, who said: Ibn ‘Abbās forbade. Regarding the taking of locusts within the Sacred Precinct, he said: “If they knew the ruling regarding it, they would not have taken it.” These are eight opinions, as we have presented. So what makes some of them more preponderant than others? As for the report concerning that from the Messenger of Allah—peace

وَمِنْ طَرِيقِ سَعِيدٍ عَنْ هُشَيْمٍ أَنَا أَبُو بِشْرٍ عَنْ يُوسُفَ بْنِ مَاهَكَ قَالَ: نَهَى ابْنُ عَبَّاسٍ عَنْ أَخْذِ الْجَرَادِ فِي الْحَرَمِ قَالَ: لَوْ عَلِمُوا مَا فِيهِ مَا أَخَذُوهُ، فَهِيَ ثَمَانِيَةُ أَقْوَالٍ كَمَا أَوْرَدْنَا، فَمَا الَّذِي جَعَلَ بَعْضَهَا أَوْلَى مِنْ بَعْضٍ؟ وَأَمَّا الْخَبَرُ فِي ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى

and blessings of Allah be upon him—it is fabricated without doubt, because one chain includes Abu al-Muhazzim, who is abandoned, while the other includes Maymun ibn Jaban, who is unknown.

L14522 By visible observation, people see locusts laying eggs on land, and on land the eggs hatch from them, and on land they remain until they die. If it is submerged in fresh or salt water, it dies in the same duration that all land animals die when submerged in water. Since the Messenger of Allah – peace and blessings of Allah be upon him – does not speak falsehood, this claim is dismissed with certainty.

L14523 And it has been established that this is among the land game prohibited both for the one in *ihram* and within the Haram, without doubt.

L14524 The extant opinions of ʿUmar ibn al-Khaṭṭāb and Kaʿb regarding a locust [state its value as] one dirham.

L14525 It is narrated from Abdullah ibn Amr ibn al-As concerning the locust: it is considered a date.

L14526 And Umar said: A date is better than a locust.

L14527 From Ibn Abbas, Ibn Umar, and Ibn al-Musayyib regarding locusts: A handful of food.

L14528 Reported from ʿAṭāʾ: a handful or a morsel.

L14529 It is narrated from ʿIkrimah: A piece.

L14530 From Muhammad ibn Ali, ʿAṭāʾ, Ṭāwūs, and Mujāhid: If he hits her intentionally, he provides food; otherwise, there is none.

L14531 From Ibn Abbas regarding livestock for which there is no substitute: its value must be used to send a sacrificial animal (هدي) to Makkah.

L14532 And from Ikrimah: The locust's value is such because it has no equivalent among grazing livestock.

L14533 And from al-Ḥasan al-Baṣrī: It pertains to lawful game of land and sea.

اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَوْضُوعٌ بِلَا شَكٍّ لِأَنَّ فِي أَحَدِ طَرِيقَيْهِ أَبَا الْمُهَزِّمِ وَهُوَ هَالِكٌ - وَفِي الْأُخْرَى مَيْمُونُ بْنُ جَابَانَ وَهُوَ مَجْهُولٌ.

وَبِالْعِيَانِ يَرَى النَّاسُ الْجَرَادَ يَبِيضُ فِي الْبَرِّ وَفِي الْبَرِّ يَفْقِسُ عَنْهُ الْبَيْضُ وَفِي الْبَرِّ يَبْقَى حَتَّى يَمُوتَ، وَأَنَّهُ لَوْ غُمِسَ فِي مَاءٍ عَذْبٍ أَوْ مِلْحٍ لَمَاتَ فِي مِقْدَارِ مَا يَمُوتُ فِيهِ سَائِرُ حَيَوَانِ الْبَرِّ إذَا غُمِسَ فِي الْمَاءِ، وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَقُولُ الْكَذِبَ؛ فَسَقَطَ هَذَا الْقَوْلُ بِيَقِينٍ.

وَصَحَّ أَنَّهُ مِنْ صَيْدِ الْبَرِّ الْمُحَرَّمِ عَلَى الْمُحْرِمِ وَفِي الْحَرَمِ بِلَا شَكٍّ.

وَالْأَقْوَالُ الْبَاقِيَةُ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَكَعْبٍ فِي الْجَرَادَةِ: دِرْهَمٌ.

وَعَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ فِي الْجَرَادَةِ: تَمْرَةٌ.

وَقَالَ عُمَرُ: تَمْرَةٌ خَيْرٌ مِنْ جَرَادَةٍ.

وَعَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ، وَابْنِ الْمُسَيِّبِ فِي الْجَرَادَةِ: قَبْضَةٌ مِنْ طَعَامٍ.

وَعَنْ عَطَاءٍ: قَبْضَةٌ أَوْ لُقْمَةٌ.

وَعَنْ عِكْرِمَةَ: كِسْرَةٌ.

وَعَنْ مُحَمَّدِ بْنِ عَلِيٍّ، وَعَطَاءٍ، وَطَاوُسٍ، وَمُجَاهِدٍ: يُطْعِمُ شَيْئًا إنْ أَصَابَهَا عَمْدًا وَإِلَّا فَلَا.

وَعَنْ ابْنِ عَبَّاسٍ فِيمَا لَا نِدَّ لَهُ مِنْ النَّعَمِ: ثَمَنُهُ يُهْدِيهِ إلَى مَكَّةَ.

وَعَنْ عِكْرِمَةَ: ثَمَنُهُ - وَالْجَرَادَةُ مِمَّا لَا نِدَّ لَهَا مِنْ النَّعَمِ.

وَعَنْ الْحَسَنِ: هِيَ مِنْ صَيْدِ الْبَرِّ وَالْبَحْرِ.

وَعَنْ عُمَرَ، وَابْنِ عَبَّاسٍ: الْمَنْعُ مِنْ صَيْدِهَا - وَلَمْ يَجْعَلَا فِيهَا شَيْئًا.

From ʿUmar and Ibn ʿAbbās: Preventing [others] from hunting its game, and they did not establish anything therein.

فَالْمَرْجُوعُ إلَيْهِ عِنْدَ التَّنَازُعِ هُوَ مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا الرُّجُوعَ إلَيْهِ إذْ يَقُولُ تَعَالَى: {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [النساء: ٥٩] .

The ultimate authority in disputes is what Allah, the Exalted, has obligated us to refer back to, as He says: “If you dispute about something, refer it back to Allah and the Messenger, if you believe in Allah and the Last Day” [*al-Nisāʾ* 4:59].[2]

وَالْقُرْآنُ يُوجِبُ مَا قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The Quran obligates what we have said—and with Allah alone is all success, the Exalted.

وَقَدْ خَالَفَ أَبُو حَنِيفَةَ، وَمَالِكٌ فِي بَيْضِ الصَّيْدِ كُلَّ مَا رُوِيَ فِيهِ عَنْ أَحَدٍ مِنْ الْمُتَقَدِّمِينَ فَأَنَّى لَهُمْ إنْكَارُ ذَلِكَ عَلَى غَيْرِهِمْ؟ وَفِي صِغَارِ الصَّيْدِ: مَا كَانَ مِنْهُ مِنْ ذَوَاتِ الْأَرْبَعِ، أَوْ الطَّيْرِ صِغَارُهَا فِي صِغَارِهِ، وَكِبَارُهَا فِي كِبَارِهِ، فَفِي رَأْلِ النَّعَمِ: فَصِيلٌ مِنْ الْإِبِلِ.

Abu Hanifah and Malik held differing opinions on the eggs of hunted game compared to all that was reported from the predecessors—so how can they object to others doing the same? Regarding the young of hunted animals: if they belong to quadrupeds or birds, their young are classified as such, and their adults likewise. In the case of camels past weaning age (raʾl), the term is faṣīl (weaned young camel).

وَفِي وَلَدِ كُلِّ مَا فِيهِ بَقَرَةٌ عُجَيْلٌ مِثْلُ ذَلِكَ الصَّغِيرِ، وَفِيمَا فِيهِ شَاةٌ، حَمَلٌ، أَوْ جَدْيٌ: عَلَى مَا ذَكَرْنَا قَبْلُ.

For the offspring of any cow, a weaned calf similar to the small one; and for the offspring of any sheep, a lamb or a kid: the ruling follows what we have previously mentioned.

وَقَالَ مَالِكٌ: فِي صِغَارِهَا مَا فِي كِبَارِهَا - وَهَذَا خَطَأٌ لِأَنَّ الْكَبِيرَ لَيْسَ مِثْلًا لِلصَّغِيرِ. وَرُوِّينَا عَنْ ابْنِ عُمَرَ أَنَّهُ حَكَمَ فِي فَرْخَيْ حَمَامَةٍ وَأُمِّهِمَا بِثَلَاثَةٍ مِنْ الْغَنَمِ - وَقَدْ خَالَفُوا ابْنَ عُمَرَ وَغَيْرَهُ فِي كَثِيرٍ مِمَّا ذَكَرْنَا قَبْلُ.

Malik said: The ruling for their young is the same as for their adult counterparts – but this is incorrect, for the adult is not analogous to the young. It has been narrated to us from Ibn Umar that he ruled regarding two pigeon chicks and their mother as equivalent to three head of small livestock. Yet the scholars have disagreed with Ibn Umar and others in many of the matters we previously mentioned.

وَيُفْدَى الْمَعِيبُ بِمَعِيبٍ مِثْلِهِ، وَالسَّالِمُ بِسَالِمٍ، وَالذَّكَرُ بِالذَّكَرِ وَالْأُنْثَى بِالْأُنْثَى لِقَوْلِهِ تَعَالَى: {فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ} [المائدة: ٩٥] .

A defective [animal] is redeemed with a defective one like it, a sound [animal] with a sound one, a male with a male and a female with a female, in accordance with the words of the Most High: “The atonement is equivalent to what was killed of livestock” [Al-Māʾidah: 95].[3]

رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَبِيبٍ عَنْ عَطَاءٍ قَالَ: فِي الظَّبْيَةِ الْوَالِدِ: شَاةٌ وَالِدٌ. وَفِي الْحِمَارَةِ الْوَحْشِ النَّتُوجِ بَقَرَةٌ نَتُوجٌ.

It was narrated to us via the chain of Ḥammād ibn Salamah from Ḥabīb from

[2] **Qur’an references (L14535):** Qur’an 4:59 (An-Nisa).
[3] **Qur’an references (L14541):** Qur’an 5:95 (Al-Ma’idah).

ʿAṭāʾ that he said: For a pregnant gazelle: a pregnant ewe. For a pregnant female wild donkey: a cow among the pregnant ones.

L14543 From the narration of Yahyā ibn Saʿīd al-Qaṭṭān, from Ibn Jurayj: I said to ʿAṭāʾ ibn Abī Rabāḥ, "What do you think—if I hunted game with a deficiency or defect, must I pay its equivalent?" He said, "Yes." I asked, "Is the full [equivalent] preferable to you?" He replied, "Yes." And concerning the offspring of the hyena: the offspring of the ram, for the young of hyenas is not called a hyena; rather, it is called a *farghal*.

L14544 The tortoise is classified as land game because it permanently inhabits land; therefore, the expiation for it is a young sheep of a specified age.

L14545 What always dwells in water and does not leave it is then permissible for the one in Ihram (a pilgrim in the sacred state).

L14546 It has been narrated to us from 'Aṭā' regarding living beings of land and sea—what is the ruling? In it: half the penalty.

L14547–14549 Ali said: "This is incorrect, for Allah, the Exalted, permitted sea hunting for one in ihram and prohibited it for him." The game of the land is exclusively either ḥarām (forbidden) or ḥalāl (permissible). It cannot be both ḥalāl and ḥarām simultaneously, nor can it be neither permissible nor forbidden. And with Allah, the Most High, is success.

L14550 **Issue: Ostrich eggs and other game are lawful for a pilgrim in iḥrām and lawful within the sacred sanctuary (al-ḥaram).**

L14551 880 - Issue:

L14552 Ostrich eggs and the rest of game are permissible for one in iḥrām and within the sacred precincts—this is the position of Abū Ḥanīfah, Abū Sulaymān, and their followers. This is because eggs are not considered game, nor are they classified as game, nor is it permissible to kill game for them. Allah the Exalted only prohibited the one in iḥrām from killing land game. If one finds a dead chick within an egg, no expiation is required, as it is not game

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءِ بْنِ أَبِي رَبَاحٍ أَرَأَيْت لَوْ أَصَبْت صَيْدًا فِيهِ نَقْصٌ أَوْ عَوَرٌ أَغْرَمُ مِثْلَهُ؟ قَالَ: نَعَمْ، قُلْت: الْوَفِيُّ أَحَبُّ إلَيْك؟ قَالَ: نَعَمْ وَفِي وَلَدِ الضَّبُعِ وَلَدُ الْكَبْشِ لِأَنَّ الصَّغِيرَ مِنْ الضِّبَاعِ لَا يُسَمَّى ضَبُعًا إنَّمَا يُسَمَّى الْفَرْغَلَ.

وَالسُّلَحْفَاةُ هِيَ مِنْ صَيْدِ الْبَرِّ، لِأَنَّ عَيْشَهَا الدَّائِمَ فِي الْبَرِّ فَفِيهَا الْجَزَاءُ بِصَغِيرٍ مِنْ الْغَنَمِ.

وَمَا كَانَ سَاكِنًا فِي الْمَاءِ أَبَدًا لَا يُفَارِقُهُ فَهُوَ مُبَاحٌ لِلْمُحْرِمِ.

وَقَدْ رُوِّينَا عَنْ عَطَاءٍ فِيمَا عَاشَ فِي الْبَرِّ وَالْبَحْرِ؟ فِيهِ: نِصْفُ الْجَزَاءِ.

قَالَ عَلِيٌّ: وَلَيْسَ هَذَا بِشَيْءٍ، لِأَنَّ اللَّهَ تَعَالَى أَبَاحَ لِلْمُحْرِمِ صَيْدَ الْبَحْرِ وَحَرَّمَ عَلَيْهِ صَيْدَ الْبَرِّ فَلَيْسَ إلَّا حَرَامٌ أَوْ حَلَالٌ، وَلَا يَجُوزُ أَنْ يَكُونَ حَلَالٌ حَرَامٌ مَعًا، وَلَا لَا حَلَالٌ وَلَا حَرَامٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ بَيْضُ النَّعَامِ وَسَائِرِ الصَّيْدِ حَلَالٌ لِلْمُحْرِمِ وَفِي الْحَرَمِ]

٨٨٠ - مَسْأَلَةٌ:

وَبَيْضُ النَّعَامِ وَسَائِرِ الصَّيْدِ حَلَالٌ لِلْمُحْرِمِ وَفِي الْحَرَمِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا: لِأَنَّ الْبَيْضَ لَيْسَ صَيْدًا، وَلَا يُسَمَّى صَيْدًا، وَلَا يُقْتَلُ، وَإِنَّمَا حَرَّمَ اللَّهُ تَعَالَى عَلَى الْمُحْرِمِ قَتْلَ صَيْدِ الْبَرِّ فَقَطْ، فَإِنْ وَجَدَ فِيهَا فَرْخَ مَيِّتٍ فَلَا جَزَاءَ لَهُ، لِأَنَّهُ

and he did not kill it. If one finds a live chick inside an egg and it dies due to their action, the expiation is an embryo of the same species, because it constitutes game that he killed.

L14553 Mālik said: For an ostrich egg, [the atonement is] a tenth of a camel, and for a dove's egg, a tenth of a sheep. He said: It is not permissible for a person in iḥrām to eat it, nor for a non-Muḥrim if the Muḥrim roasted or broke it.

L14554 Al-Shāfiʿī said, "In it is only its value."

L14555 Abu Muhammad said: As for the statement of al-Shāfiʿī, it is incorrect due to what we have mentioned - that it is not considered game. He also erred in another error as well, and it is that its compensation is with its monetary value, for compensation through monetary value is not found in the Qur'ān or the Sunnah.

L14556 As for Mālik's statement – he compiled within it aspects of the error. The first of these:

L14557 that it is an opinion not known to have been held by anyone before him - and they reject such an opinion with the utmost severity, as we mentioned earlier in our statement concerning locusts. And the second of them is:

L14558 that it is a statement not found in the Qur'an nor in the Sunnah. And its third point:

L14559 They do not permit sharing in the sacrificial offering despite the valid consensus of the Companions and the Sunnah's explicit affirmation of its permissibility, yet they permit it here where no known scholar before them held this view? If they argue: "The sacrificial camel or sheep is appraised, then we take a tenth of its appraised value to purchase food for distribution?" We respond: This constitutes the fourth egregious error, for you impose upon him what you yourselves prohibit in your juristic rulings - obligating a tenth of a camel's value or a tenth of a sheep's value which he cannot ritually offer. He is only required to provide food equivalent to that tenth's value. This represents utmost confusion and manifest contradiction. Fifthly:

لَيْسَ صَيْدًا وَلَمْ يَقْتُلْهُ، فَإِنْ وَجَدَ فِيهَا فَرْخَ حَيٍّ فَمَاتَ فَجَزَاؤُهُ بِجَنِينٍ مِنْ مِثْلِهِ، لِأَنَّهُ صَيْدٌ قَتَلَهُ.

وَقَالَ مَالِكٌ: فِي بَيْضَةِ النَّعَامَةِ: عُشْرُ الْبَدَنَةِ، وَفِي بَيْضَةِ الْحَمَامَةِ، عُشْرُ الشَّاةِ، قَالَ: لَا يَحِلُّ أَكْلُهُ لِلْمُحْرِمِ، وَلَا لِلْحَلَالِ إِذَا شَوَاهُ الْمُحْرِمُ أَوْ كَسَرَهُ.

وَقَالَ الشَّافِعِيُّ: فِيهِ قِيمَتُهُ فَقَطْ.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ الشَّافِعِيِّ فَخَطَأٌ لِمَا ذَكَرْنَا مِنْ أَنَّهُ لَيْسَ صَيْدًا، وَأَخْطَأَ خَطَأً آخَرَ أَيْضًا وَهُوَ أَنَّهُ جَزَاؤُهُ بِثَمَنِهِ وَالْجَزَاءُ بِالثَّمَنِ لَا يُوجَدُ فِي قُرْآنٍ وَلَا سُنَّةٍ.

وَأَمَّا قَوْلُ مَالِكٍ فَجَمَعَ فِيهِ مِنْ الْخَطَأِ وُجُوهًا -: أَوَّلُهَا:

أَنَّهُ قَوْلٌ لَا يُعْرَفُ أَنَّ أَحَدًا قَالَ بِهِ قَبْلَهُ - وَهُمْ يُنْكِرُونَ مِثْلَ هَذَا أَشَدَّ الْإِنْكَارِ كَمَا ذَكَرْنَا آنِفًا فِي قَوْلِنَا فِي الْجَرَادِ. وَثَانِيهَا:

أَنَّهُ قَوْلٌ لَا يُوجَدُ فِي الْقُرْآنِ، وَلَا فِي السُّنَّةِ. وَثَالِثُهَا:

أَنَّهُمْ لَا يُجِيزُونَ الِاشْتِرَاكَ فِي الْهَدْيِ حَيْثُ صَحَّ إجْمَاعُ الصَّحَابَةِ وَالسُّنَّةِ عَلَى جَوَازِهِ، ثُمَّ أَجَازُوهُ هَاهُنَا حَيْثُ لَمْ يَقُلْ بِهِ أَحَدٌ يُعْرَفُ قَبْلَهُمْ؟ فَإِنْ قَالُوا: إنَّمَا تُقَوَّمُ الْبَدَنَةُ، أَوْ الشَّاةُ، ثُمَّ نَأْخُذُ عُشْرَ تِلْكَ الْقِيمَةِ فَنُطْعِمُ بِهِ؟ قُلْنَا: هَذَا خَطَأٌ رَابِعٌ فَاحِشٌ لِأَنَّكُمْ تُلْزِمُونَهُ وَتَأْمُرُونَهُ بِمَا تَنْهَوْنَهُ عَنْهُ مِنْ وَقْتِكُمْ فَتُوجِبُونَ عَلَيْهِ عُشْرَ بَدَنَةٍ، وَعُشْرَ شَاةٍ وَلَا يَجُوزُ لَهُ إهْدَاؤُهُ، إنَّمَا يَلْزَمُهُ طَعَامٌ بِقِيمَةِ ذَلِكَ الْعُشْرِ، وَهَذَا تَخْلِيطٌ نَاهِيكَ بِهِ، وَتَنَاقُضٌ ظَاهِرٌ. وَخَامِسُهَا:

L14560 Their argument is that they said this by way of analogy to the fetus of a free woman, in which there is a tenth of its mother's diyah?

احْتِجَاجُهُمْ بِأَنَّهُمْ قَالُوا ذَلِكَ قِيَاسًا عَلَى جَنِينِ الْحُرَّةِ الَّذِي فِيهِ عُشْرُ دِيَةِ أُمِّهِ؟

L14561–14562 We said: This is an analogy of error upon error and a comparison of falsehood to falsehood that is itself compared to falsehood. Allah the Exalted has never decreed—neither for the fetus of a free woman nor the fetus of a slave woman—a tenth of its mother's diya nor a tenth of its mother's value. Rather, Allah the Exalted established through His Messenger's declaration (peace be upon him) only a ghurrah equivalent to the value of a male or female slave for the fetus. He did not assign a value to the diya, but established it as one hundred camels.

فَقُلْنَا: هَذَا قِيَاسٌ لِلْخَطَأِ عَلَى الْخَطَأِ وَتَشْبِيهٌ لِلْبَاطِلِ بِالْبَاطِلِ الْمُشَبَّهِ بِالْبَاطِلِ وَمَا جَعَلَ اللَّهُ تَعَالَى قَطُّ فِي جَنِينِ الْحُرَّةِ وَلَا فِي جَنِينِ الْأَمَةِ: عُشْرَ دِيَةِ أُمِّهِ، وَلَا عُشْرَ قِيمَةِ أُمِّهِ، وَإِنَّمَا جَعَلَ اللَّهُ تَعَالَى «فِي الْجَنِينِ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ -: غُرَّةً عَبْدًا، أَوْ أَمَةً فَقَطْ» ، وَلَا جَعَلَ فِي الدِّيَةِ قِيمَةً؛ بَلْ جَعَلَهَا مِائَةً مِنْ الْإِبِلِ.

L14563 Abu Muhammad said: As for the disagreement among the people regarding this matter—it has been narrated to us through the chain of Hammad ibn Salamah: from Ammar ibn Abi Ammar, from Abdullah ibn al-Harith ibn Nawfal, that a Bedouin presented to the Messenger of Allah—may Allah bless him and grant him peace—eggs and dried dates. He said to him: "Feed them to your family, for we are in the state of ihram."

قَالَ أَبُو مُحَمَّد: وَأَمَّا اخْتِلَافُ النَّاسِ فِي هَذَا فَإِنَّنَا -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا عَمَّارُ بْنُ أَبِي عَمَّارٍ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ بْنِ نَوْفَلٍ «أَنَّ أَعْرَابِيًّا أَهْدَى إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْضًا وَتَمْرِ وَحْشٍ؟ فَقَالَ لَهُ: أَطْعِمْهُ أَهْلَكَ فَإِنَّا حُرُمٌ» .

L14564 From the narration of Hammad ibn Salamah, from Ali ibn Zayd ibn Judʿān, from Abdullah ibn al-Harith ibn Nawfal, from Ali ibn Abi Talib, from the Messenger of Allah - may Allah bless him and grant him peace - conveying it identically, word for word.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَلِيِّ بْنِ زَيْدِ بْنِ جُدْعَانَ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ بْنِ نَوْفَلٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلُهُ حَرْفًا حَرْفًا.

L14565 Abū Muḥammad said: The first is a mursal (interrupted-chain) report, and in the second is ʿAlī ibn Zayd ibn Judʿān—and he is weak. Furthermore, even if both were authentic, there would be no prohibition in them against eating it. Rather, it is his abandonment (peace be upon him) of it, and he may abandon what is not prohibited, just as he abandoned the dabb (spiny-tailed lizard).

قَالَ أَبُو مُحَمَّد: الْأَوَّلُ مُرْسَلٌ، وَفِي الثَّانِي عَلِيُّ بْنُ زَيْدِ بْنِ جُدْعَانَ وَهُوَ ضَعِيفٌ، ثُمَّ لَوْ صَحَّا لَمَا كَانَ فِيهِمَا نَهْيٌ عَنْ أَكْلِهَا وَإِنَّمَا هُوَ تَرْكٌ مِنْهُ - عَلَيْهِ السَّلَامُ - وَقَدْ يَتْرُكُ مَا لَيْسَ حَرَامًا كَمَا تَرَكَ الضَّبَّ.

L14566 Through the chain of Ibn Abi Shaybah, who narrated to us via Hafs ibn Ghiyath and Abu Khalid al-Ahmar - both transmitting from Ibn Jurayj, from Abdullah ibn Dhakwan (who is Abu al-Zinad) - from Aisha, the Mother of the Believers: "The Messenger of Allah (peace and blessings be upon him) was asked about the ostrich eggs killed by a Muhrim. He (peace be upon him) said: 'For each egg, [one must] fast for a day or feed a poor person.'"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا حَفْصُ بْنُ غِيَاثٍ. وَأَبُو خَالِدٍ الْأَحْمَرُ كِلَاهُمَا عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ اللَّهِ بْنِ ذَكْوَانَ هُوَ أَبُو الزِّنَادِ - عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ رَسُولَ اللَّهِ

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ عَنْ بَيْضِ نَعَامٍ أَصَابَهَا مُحْرِمٌ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -: فِي كُلِّ بَيْضَةٍ صِيَامُ يَوْمٍ أَوْ إِطْعَامُ مِسْكِينٍ» .

L14567 Ali said: Abū al-Zināد did not live to meet ʿĀʾisha—may Allah be pleased with her—so the chain is disconnected. Had it been authentic, we would have upheld it. Some of the Salaf held this.

قَالَ عَلِيٌّ: أَبُو الزِّنَادِ لَمْ يُدْرِكْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - فَهُوَ مُنْقَطِعٌ، وَلَوْ صَحَّ لَقُلْنَا بِهِ، وَقَالَ بِهَذَا بَعْضُ السَّلَفِ.

L14568 As we have been narrated through the chain of Ḥammād ibn Salamah from Qatādah from Abī al-Malīḥ from Abū ʿUbaydah ibn ʿAbdullāh ibn Masʿūd, who said regarding a pilgrim in iḥrām who destroys an ostrich egg: "A day's fasting or feeding a needy person."

كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ أَبِي الْمَلِيحِ عَنْ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ فِي بَيْضَةِ النَّعَامَةِ يُصِيبُهَا الْمُحْرِمُ: صَوْمُ يَوْمٍ، أَوْ إِطْعَامُ مِسْكِينٍ.

L14569 From the chain of Ibn Abī Shaybah: Abdah narrated to us from Saʿīd from Qatādah from Abi Mijlaz from Abū Ubaydah ibn ʿAbd Allāh ibn Masʿūd regarding ostrich eggs encountered by a pilgrim in the state of iḥrām. Abū Ubaydah said: Ibn Masʿūd would say concerning it: "Fasting for a day or providing food to a needy person."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَبْدَةُ عَنْ سَعِيدٍ عَنْ قَتَادَةَ عَنْ أَبِي مِجْلَزٍ عَنْ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ فِي بَيْضِ النَّعَامِ يُصِيبُهَا الْمُحْرِمُ قَالَ أَبُو عُبَيْدَةَ: كَانَ ابْنُ مَسْعُودٍ يَقُولُ فِيهِ: صَوْمُ يَوْمٍ، أَوْ إِطْعَامُ مِسْكِينٍ.

L14570–14571 Through the chain of Hammad ibn Salamah from Qatadah, that Abu Musa al-Ash'ari said: For every egg from ostrich eggs, [there is] the fasting of a day or the feeding of a needy person. This is likewise the view of Abd al-Rahman ibn Abdullah ibn Mas'ud.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ قَالَ: فِي كُلِّ بَيْضَةٍ مِنْ بَيْضِ النَّعَامِ صِيَامُ يَوْمٍ، أَوْ إِطْعَامُ مِسْكِينٍ - وَهُوَ قَوْلُ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَيْضًا.

L14572 And it is the statement of Ibn Sirin, who issued a legal ruling to a pilgrim in sacred state who indicated that ostrich eggs are permissible. This is an opinion.

وَهُوَ قَوْلُ ابْنِ سِيرِينَ أَفْتَى بِذَلِكَ عَلَى مُحْرِمٍ أَشَارَ لِحَلَالٍ إِلَى بَيْضِ نَعَامٍ فَهَذَا قَوْلٌ.

L14573 Via the chain of Abd al-Razzaq from Ma'mar, from Ibn Jurayj, from Abd al-Hamid ibn Jubayr, who reported: Ikrimah reported from Ibn Abbas, who said: Ali ibn Abi Talib ruled regarding ostrich eggs taken by a pilgrim in ihram: "If you release the male ostrich to your camels, and once their fertilization becomes evident, you specify the number of eggs you collected by declaring: 'This is a sacrificial offering' - then you bear no liability for any spoiled eggs." Ibn Abbas said: Muawiyah marveled at Ali's ruling. Ibn Abbas

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْحَمِيدِ بْنِ جُبَيْرٍ أَخْبَرَنِي عِكْرِمَةُ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَضَى عَلِيُّ بْنُ أَبِي طَالِبٍ فِي بَيْضِ النَّعَامَةِ يُصِيبُهَا الْمُحْرِمُ تُرْسِلُ الْفَحْلَ عَلَى إِبِلِكَ فَإِذْ تَبَيَّنَ لِقَاحُهَا سَمَّيْتَ عَدَدَ مَا أَصَبْتَ مِنَ الْبَيْضِ فَقُلْتَ: هَذَا هَدْيٌ ثُمَّ لَيْسَ عَلَيْكَ ضَمَانُ مَا فَسَدَ. قَالَ ابْنُ عَبَّاسٍ: فَعَجِبَ مُعَاوِيَةُ مِنْ قَضَاءِ عَلِيٍّ.

added: “Muawiyah’s astonishment was nothing but regarding the price for which the eggs are sold in the market, which must be given as charity.”

قَالَ ابْنُ عَبَّاسٍ: لَمْ يَعْجَبْ مُعَاوِيَةُ مِنْ عَجَبٍ مَا هُوَ إِلَّا مَا يُبَاعُ بِهِ الْبَيْضُ فِي السُّوقِ يُتَصَدَّقُ بِهِ.

L14574 Ibn Jurayj reported: ʿAṭāʾ said, “For one who owns camels, the ruling is what ʿAlī stated. For those without camels, two dirhams are due for every bayḍah.” This is another opinion; then a third and a fourth.

قَالَ ابْنُ جُرَيْجٍ: وَقَالَ عَطَاءٌ: مَنْ كَانَتْ لَهُ إِبِلٌ فَإِنَّ فِيهِ مَا قَالَ عَلِيٌّ وَمَنْ لَمْ يَكُنْ لَهُ إِبِلٌ فَفِي كُلِّ بَيْضَةٍ دِرْهَمَانِ - فَهَذَا قَوْلٌ آخَرُ، وَثَالِثٌ وَرَابِعٌ.

L14575 From the chain of Wākiʿ, who narrated to us from al-Aʿmash, from Ibrāhīm al-Nakhaʿī: that ʿUmar ibn al-Khaṭṭāb said concerning ostrich eggs: “its value or its price.”

وَمِنْ طَرِيقِ وَكِيعٍ نَا الْأَعْمَشُ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي بَيْضِ النَّعَامِ: قِيمَتُهُ. أَوْ ثَمَنُهُ.

L14576 Via Wakiʿ, from Khusayf, from Abū ʿUbaydah ibn ʿAbdullāh ibn Masʿūd, from his father, who said regarding ostrich eggs: *its assessed value or its market price.*

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ خُصَيْفٍ عَنْ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ أَبِيهِ قَالَ فِي بَيْضِ النَّعَامِ: قِيمَتُهُ، أَوْ ثَمَنُهُ.

L14577 This is the view of Ibrāhīm al-Nakhaʿī, al-Shaʿbī, al-Zuhrī, and al-Shāfiʿī. As for pigeon eggs: We have been narrated through the chain of transmission of ʿAbd al-Razzāq from Ibn Mujāhid from his father and from ʿAṭāʾ—both of whom said: “‘Alī ibn Abī Ṭālib stated, ’In every two eggs there is a dirham.’”

وَهُوَ قَوْلُ إِبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَالزُّهْرِيِّ، وَالشَّافِعِيِّ. وَأَمَّا بَيْضُ الْحَمَامِ -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ مُجَاهِدٍ عَنْ أَبِيهِ وَعَطَاءٍ كِلَاهُمَا قَالَ: إِنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: فِي كُلِّ بَيْضَتَيْنِ دِرْهَمٌ.

L14578 And through the chain of ʿAbd al-Razzāq from Muḥammad ibn ʿUbayd Allāh from ʿAṭāʾ from Ibn ʿAbbās, who said: “For every egg from the eggs of the pigeons of Mecca, there is a dirham.” This is the statement of ʿAṭāʾ. He further said: “If there is a chick within it, there is a dirham.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: فِي كُلِّ بَيْضَةٍ مِنْ بَيْضِ حَمَامِ مَكَّةَ دِرْهَمٌ - وَهُوَ قَوْلُ عَطَاءٍ، وَقَالَ: فَإِنْ كَانَ فِيهَا فَرْخٌ فَدِرْهَمٌ.

L14579 Ubayd ibn ʿUmayr said: He acquires food with half a dirham and donates it as charity.

وَقَالَ عُبَيْدُ بْنُ عُمَيْرٍ: بِنِصْفِ دِرْهَمٍ طَعَامٌ وَيَتَصَدَّقُ بِهِ.

L14580–14581 From Abd al-Razzaq via Ma’mar; and from Qatadah, who said regarding the eggs of the pigeons of Mecca: a dirham is due, and for an egg of the pigeons of al-Ḥill: a mudd is due.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَعَنْ قَتَادَةَ قَالَ فِي بَيْضِ حَمَامِ مَكَّةَ: دِرْهَمٌ وَفِي بَيْضَةٍ مِنْ بَيْضِ حَمَامِ الْحِلِّ: مُدٌّ.

L14582 Ma’mar said: Al-Zuhri said, “In it is its price”—and this is the opinion of al-Shafi’i.

قَالَ مَعْمَرٌ: وَقَالَ الزُّهْرِيُّ: فِيهِ ثَمَنُهُ - وَهُوَ قَوْلُ الشَّافِعِيِّ.

From the narration of Sa‘id ibn Mansur: He narrated to us from ‘Attab ibn Bashir, from Khusayf, from Ibn ‘Abbas, who said regarding the egg: “A dirham. There are differing opinions as you see—one of them states that for an ostrich egg, one must fast a day or feed a needy person, and there is a musnad (authenticated) report about this. This is the opinion of Abu Musa al-Ash‘ari, Ibn Mas‘ud, his two sons Abu Ubaydah and ‘Abd al-Rahman, and Ibn Sirin. The second opinion is:”

that in each of their testicles is the sperm of a she-camel—and this is the statement of ʿAlī, Muʿāwiyah, and ʿAṭāʾ. The third of them is:

That the value of an ostrich egg is its price - this is the opinion of ’Umar, Ibn Mas’ud, Ibn Abbas, Ibrahim, al-Sha’bi, al-Zuhri, and al-Shafi’i. And its fourth:

Whoever owns camels must give a pregnant she-camel (liqāḥ) for every bayḍah (1–2-year-old camel), and whoever owns no camels must give two dirhams for every bayḍah—this is the opinion of ʿAṭāʾ.

And concerning pigeon eggs, there are opinions: one of them is

For an egg, a dirham—this is the view of Ibn Abbas. The second [case]:

For an egg, half a dirham is due – as held by Ibn ʿAbbās and ʿUbayd ibn ʿUmayr. The third opinion: half a dirham is due for it. If it contains a chick, then a dirham is due – according to ʿAṭāʾ. The fourth opinion: a dirham is due for an egg from Mecca’s pigeons, while a _mudd_ is due for an egg from pigeons of al-Ḥill (non-sacred territory) – as stated by Qatādah. The fifth opinion:

Its price is in it—this is the view of al-Zuhri and al-Shafi’i.

Thus, the two opinions of Malik and Abu Hanifah emerged without anyone from the Salaf being known to have advocated those opinions. They magnify this when it contradicts their _taqlīd_. And success is from Allah, the Most High.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا عَتَّابُ بْنُ بَشِيرٍ عَنْ خُصَيْفٍ عَنْ ابْنِ عَبَّاسٍ قَالَ فِي الْبَيْضَةِ: دِرْهَمٌ فَهِيَ أَقْوَالٌ كَمَا تَرَى -: أَحَدُهَا: أَنَّ فِي بَيْضَةِ النَّعَامَةِ صَوْمَ يَوْمٍ، أَوْ إِطْعَامَ مِسْكِينٍ فِيهِ خَبَرٌ مُسْنَدٌ، وَهُوَ قَوْلُ أَبِي مُوسَى الْأَشْعَرِيِّ، وَابْنِ مَسْعُودٍ، وَابْنَيْهِ أَبِي عُبَيْدَةَ، وَعَبْدِ الرَّحْمَنِ، وَابْنِ سِيرِينَ. وَثَانِيهَا:

أَنَّ فِي كُلِّ بَيْضَةٍ مِنْهَا لِقَاحَ نَاقَةٍ - وَهُوَ قَوْلُ عَلِيٍّ، وَمُعَاوِيَةَ، وَعَطَاءٍ. وَثَالِثُهَا:

أَنَّ فِي بَيْضَةِ النَّعَامَةِ ثَمَنَهَا - هُوَ قَوْلُ عُمَرَ، وَابْنِ مَسْعُودٍ، وَابْنِ عَبَّاسٍ، وَإِبْرَاهِيمَ، وَالشَّعْبِيِّ، وَالزُّهْرِيِّ، وَالشَّافِعِيِّ. وَرَابِعُهَا:

أَنَّ مَنْ لَهُ إِبِلٌ فَفِي كُلِّ بَيْضَةٍ لِقَاحُ نَاقَةٍ وَمَنْ لَا إِبِلَ لَهُ فَفِي كُلِّ بَيْضَةٍ دِرْهَمَانِ - وَهُوَ قَوْلُ عَطَاءٍ.

وَفِي بَيْضِ الْحَمَامِ أَقْوَالٌ -: أَحَدُهَا:

فِي الْبَيْضَةِ دِرْهَمٌ - وَهُوَ قَوْلُ ابْنِ عَبَّاسٍ. وَثَانِيهَا:

فِي الْبَيْضَةِ نِصْفُ دِرْهَمٍ - وَهُوَ قَوْلُ ابْنِ عَبَّاسٍ، وَعُبَيْدِ بْنِ عُمَيْرٍ، وَثَالِثُهَا: فِيهَا نِصْفُ دِرْهَمٍ، فَإِنْ كَانَ فِيهَا فَرْخٌ فَدِرْهَمٌ - وَهُوَ قَوْلُ عَطَاءٍ، وَرَابِعُهَا: فِي بَيْضَةٍ مِنْ حَمَامِ مَكَّةَ دِرْهَمٌ، وَفِي بَيْضَةٍ مِنْ حَمَامِ الْحِلِّ مُدٌّ - وَهُوَ قَوْلُ قَتَادَةَ. وَخَامِسُهَا:

فِيهَا ثَمَنُهَا - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَالشَّافِعِيِّ.

فَخَرَجَ قَوْلَا: مَالِكٍ، وَأَبِي حَنِيفَةَ عَنْ أَنْ يُعْرَفَ لَهُمَا قَائِلٌ مِنْ السَّلَفِ. وَهُمْ يُعَظِّمُونَ هَذَا إذَا خَالَفَ تَقْلِيدَهُمْ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A ruling: The sacrificial animal is not valid unless it is stationed at the Sacred Mosque.

881. Issue:

The sacrificial animal is not valid in that case unless it is stationed at the Sacred Mosque and then slaughtered in Makkah or Mina, as stated in the words of Allah, the Exalted: “Let two just men among you judge regarding it as expiation - a sacrificial animal that reaches the Kaaba” [Al-Mā’idah: 95].[4]

Issue:

As for feeding the poor and fasting, they may be performed as one chooses, because Allah, the Exalted, has not designated a specific location for them.

The ruling on sea game for the muḥrim [a person in ritual consecration].

883: Issue

The hunting of any creature that inhabits water—whether in ponds, rivers, the sea, springs, or wells—is permissible for the pilgrim in iḥrām to hunt and eat, according to the words of Allah the Exalted: *“Lawful for you is the game of the sea and its provision as sustenance for you and for travelers, but forbidden to you is the game of the land as long as you remain in iḥrām”* [al-Mā’idah 5:96].[5]

And He, the Exalted, said: _“The two seas are not alike: this one is fresh, sweet, and pleasant to drink, while this one is salty and briny. Yet from each you eat tender meat”_ [35:12]. Thus, the Exalted named all waters—whether fresh or salty—a “sea.” Even if this verse had not been revealed, the game of the land, sea, and river, and all we have mentioned would have been permissible without dispute by the Quran’s explicit text.[6]

[مَسْأَلَةٌ لَا يُجْزَى الْهَدْيُ إِلَّا مُوقَفًا عِنْدَ الْمَسْجِدِ الْحَرَامِ]

٨٨١ - مَسْأَلَةٌ:
وَلَا يُجْزَى الْهَدْيُ فِي ذَلِكَ إِلَّا مُوقَفًا عِنْدَ الْمَسْجِدِ الْحَرَامِ ثُمَّ يُنْحَرُ بِمَكَّةَ أَوْ بِمِنًى لِقَوْلِ اللَّهِ تَعَالَى: {يَحْكُمُ بِهِ ذَوَا عَدْلٍ مِنْكُمْ هَدْيًا بَالِـغَ الْكَعْبَةِ} [المائدة: ٩٥] .

مَسْأَلَةٌ:
وَأَمَّا الْإِطْعَامُ وَالصِّيَامُ فَحَيْثُ شَاءَ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَحُدَّ لَهُمَا مَوْضِعًا.

[مَسْأَلَةٌ صَيْدُ الْبَحْرِ لِلْمُحْرِمِ]

٨٨٣ - مَسْأَلَةٌ:
وَصَيْدُ كُلِّ مَا سَكَنَ الْمَاءَ مِنْ الْبِرَكِ، أَوْ الْأَنْهَارِ، أَوْ الْبَحْرِ، أَوْ الْعُيُونِ أَوْ الْآبَارِ حَلَالٌ لِلْمُحْرِمِ صَيْدُهُ وَأَكْلُهُ، لِقَوْلِ اللَّهِ تَعَالَى: {أُحِلَّ لَكُمْ صَيْدُ الْبَحْرِ وَطَعَامُهُ مَتَاعًا لَكُمْ وَلِلسَّيَّارَةِ وَحُرِّمَ عَلَيْكُمْ صَيْدُ الْبَرِّ مَا دُمْتُمْ حُرُمًا} [المائدة: ٩٦] .

وَقَالَ تَعَالَى: {وَمَا يَسْتَوِي الْبَحْرَانِ هَذَا عَذْبٌ فُرَاتٌ سَائِغٌ شَرَابُهُ وَهَذَا مِلْحٌ أُجَاجٌ وَمِنْ كُلٍّ تَأْكُلُونَ لَحْمًا طَرِيًّا} [فاطر: ١٢] فَسَمَّى تَعَالَى كُلَّ مَاءٍ عَذْبٍ أَوْ مِلْحٍ بَحْرًا، وَحَتَّى لَوْ لَمْ تَأْتِ هَذِهِ الْآيَةُ لَكَانَ صَيْدُ الْبَرِّ وَالْبَحْرِ وَالنَّهْرِ وَكُلِّ مَا ذَكَرْنَا حَلَالًا بِلَا خِلَافٍ بِنَصِّ الْقُرْآنِ.

[4] **Qur’an references (L14594):** Qur’an 5:95 (Al-Ma’idah).
[5] **Qur’an references (L14600):** Qur’an 5:96 (Al-Ma’idah).
[6] **Qur’an references (L14601):** Qur’an 35:12 (Fatir).

ثُمَّ حُرِّمَ بِالْإِحْرَامِ وَفِي الْحَرَمِ صَيْدُ الْبَرِّ وَلَمْ يُحَرَّمْ صَيْدُ الْبَحْرِ فَكَانَ مَا عَدَا صَيْدَ الْبَرِّ حَلَالًا كَمَا كَانَ إذْ لَمْ يَأْتِ مَا يُحَرِّمُهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L14602 Then, upon entering the state of *iḥrām* and within the sacred precincts, land-game hunting was prohibited, while sea-game hunting was not prohibited. Thus, all other game remained permissible as it had been, since nothing had come to prohibit it—and success is from Allah, the Exalted.

[مَسْأَلَةٌ مَا أُصِيبَ فِي حَرَمِ مَكَّةَ أَوْ فِي حَرَمِ الْمَدِينَةِ]

L14603 **An issue regarding what is incurred within the sacred precincts of Mecca or the sacred precincts of Medina.**

٨٨٤ - مَسْأَلَةٌ:

L14604 884 - Issue:

وَالْجَزَاءُ وَاجِبٌ كَمَا ذَكَرْنَا سَوَاءٌ سَوَاءٌ فِيمَا أُصِيبَ فِي حَرَمِ مَكَّةَ، أَوْ فِي حَرَمِ الْمَدِينَةِ أَصَابَهُ حَلَالٌ، أَوْ مُحْرِمٌ، لِقَوْلِ اللَّهِ تَعَالَى: {لا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرُمٌ وَمَنْ قَتَلَهُ مِنْكُمْ مُتَعَمِّدًا فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ} [المائدة: ٩٥] الْآيَةَ.

L14605 The expiation is obligatory, as we mentioned, the same whether the game was killed in the sanctuary of Mecca or the sanctuary of Medina, or whether it was struck by a non-*Muḥrim* (a person not in state of consecration) or a *Muḥrim*, based on Allah's statement: "Do not kill game while you are in the state of consecration. Whoever among you kills it intentionally, the expiation is the equivalent of what he killed from livestock..." [Al-Mā'idah 5:95].[7]

فَمَنْ كَانَ فِي حَرَمِ مَكَّةَ، أَوْ فِي حَرَمِ الْمَدِينَةِ فَاسْمُ " حَرَمٍ " يَقَعُ عَلَيْهِ.

L14606 So whoever is within the Haram of Mecca or the Haram of Medina - the name 'Haram' applies to him.

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا وَكِيعٌ عَنْ الْحَسَنِ بْنِ حَيٍّ قَالَ: سَأَلْت ابْنَ أَبِي لَيْلَى عَمَّنْ أَصَابَ صَيْدًا بِالْمَدِينَةِ؟ فَقَالَ: يُحْكَمُ عَلَيْهِ - وَهُوَ قَوْلُ ابْنِ أَبِي ذِئْبٍ، وَمُحَمَّدِ بْنِ إبْرَاهِيمَ النَّيْسَابُورِيِّ، وَبَعْضِ كِبَارِ أَصْحَابِ مَالِكٍ.

L14607 It has been narrated to us through the chain of Ibn Abi Shaybah, who reported to us from Waki', from al-Hasan ibn Hayy, who said: I asked Ibn Abi Layla about someone who hunted wild game in Medina. He replied: A ruling is imposed upon him - and this is the view of Ibn Abi Dhi'b, Muhammad ibn Ibrahim al-Naysaburi, and some senior disciples of Malik.

وَقَدْ صَحَّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَرَّمَ مَا بَيْنَ لَابَتَيْ الْمَدِينَةِ وَهُمَا حَرَّتَانِ بِهَا مَعْرُوفَتَانِ، وَحَرَمُ الْمَدِينَةِ مَعْرُوفٌ كَحَرَمِ مَكَّةَ» .

L14608 It has been authentically established that the Messenger of Allah—peace and blessings be upon him—declared the area between the two Harrahs (volcanic fields) of Medina as inviolable, which are two well-known regions within it. The sacred precinct of Medina is established as a sanctuary, like the sanctuary of Mecca.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَا جَزَاءَ فِيهِ - وَهُوَ خَطَأٌ لِمَا ذَكَرْنَا، وَاحْتَجَّ بَعْضُ مَنْ امْتُحِنَ بِتَقْلِيدِهِمَا بِخَبَرَيْنِ -: فِي أَحَدِهِمَا: أَنَّ عَمْرَو بْنَ أُمَيَّةَ كَانَ يَتَصَيَّدُ بِالْعَقِيقِ - وَهَذَا لَا حُجَّةَ

L14609–14610 Abu Hanifah and Malik said: There is no expiation for it – and this is erroneous due to our earlier explanation. Some who were challenged for rigid adherence to their positions cited two narrations: The first claims that 'Amr

[7] **Qur'an references (L14605):** Qur'an 5:95 (Al-Ma'idah).

ibn Umayyah used to hunt in the valley of al-ʻAqiq – this holds no validity for their argument, as it is an unreliable narration. Even if authentic, it could plausibly refer to a time preceding the prohibition of Medina's sacred precinct and the ban on hunting its game. The second narration states: "Allah's Messenger – peace and blessings be upon him – owned a wild animal that would playfully move about, but would crouch upon seeing him." This too is an unreliable narration. Moreover, even if verified, it would not constitute proof, since game lawfully hunted in non-consecrated land remains permissible when brought into the sacred precinct – as we shall elucidate hereafter, Allah the Exalted willing.

L14611 **A legal issue regarding the intentional killing of game in the Ḥill by one who is within the Ḥaram.**

L14612 885. Issue:

L14613 Whoever intentionally kills game in the non-sacred area while being within the sacred precincts must offer expiation, because he killed the game while situated in the sacred precincts. If the game is within the sacred precincts and the killer is in the non-sacred area, he has disobeyed Allah Almighty. That game may not be consumed, and no expiation is required. The absence of expiation applies because the killer is not within the sacred precincts. As for his disobedience and the prohibition against eating the game, this is because it constitutes game of the sacred precincts, for which no expiation is prescribed - only its prohibition is established. Expiation is required only if the killer is within the sacred precincts.

L14614 We have been narrated through the chain of Al-Bukhari: from Uthman ibn Abi Shaybah, from Jarir ibn Abd al-Hamid, from Mansur, from Mujahid, from Tawus, from Ibn Abbas, who said: "The Messenger of Allah—peace and blessings be upon him—said on the day he conquered Mecca," and he mentioned the following words: "This is a city Allah—the Almighty and Majestic—declared inviolable on the day He created the heavens and the earth. It remains sacred through Allah's inviolability until the Day of Resurrection. Its thorny bushes are not to be cut down, nor may its game be disturbed." And he related the rest of the hadith.

لَهُمْ فِيهِ، لِأَنَّهُ خَبَرٌ لَا يَصِحُّ، وَلَوْ صَحَّ لَكَانَ ذَلِكَ مُمْكِنًا [أَنْ يَكُونَ] قَبْلَ تَحْرِيمِ الْحَرَمِ بِالْمَدِينَةِ وَالنَّهْيِ عَنْ صَيْدِهَا. وَالثَّانِي: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ لَهُ وَحْشٌ فَكَانَ يَلْعَبُ فَإِذَا رَأَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَبَعَ» وَهُوَ خَبَرٌ لَا يَصِحُّ، ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّ الصَّيْدَ إذَا صِيدَ فِي الْحِلِّ، ثُمَّ أُدْخِلَ فِي الْحَرَمِ حَلَّ مِلْكُهُ عَلَى مَا نُبَيِّنُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

[مَسْأَلَةٌ تَعَمَّدَ قَتْلَ صَيْدٍ فِي الْحِلِّ وَهُوَ فِي الْحَرَمِ]

٨٨٥ - مَسْأَلَةٌ:

وَمَنْ تَعَمَّدَ قَتْلَ صَيْدٍ فِي الْحِلِّ وَهُوَ فِي الْحَرَمِ فَعَلَيْهِ الْجَزَاءُ لِأَنَّهُ قَتَلَ الصَّيْدَ وَهُوَ حَرَمٌ، فَإِنْ كَانَ الصَّيْدُ فِي الْحَرَمِ وَالْقَاتِلُ فِي الْحِلِّ فَهُوَ عَاصٍ لِلَّهِ عَزَّ وَجَلَّ وَلَا يُؤْكَلُ ذَلِكَ الصَّيْدُ وَلَا جَزَاءَ فِيهِ، أَمَّا سُقُوطُ الْجَزَاءِ فَلِأَنَّهُ لَيْسَ حَرَمًا وَأَمَّا عِصْيَانُهُ وَالْمَنْعُ مِنْ أَكْلِ الصَّيْدِ فَلِأَنَّهُ مِنْ صَيْدِ الْحَرَمِ وَلَمْ يَأْتِ فِيهِ جَزَاءٌ إنَّمَا جَاءَ تَحْرِيمُهُ فَقَطْ، وَإِنَّمَا جَاءَ الْجَزَاءُ عَلَى الْقَاتِلِ إذَا كَانَ حَرَمًا.

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نَا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ افْتَتَحَ مَكَّةَ فَذَكَرَ كَلَامًا فِيهِ: هَذَا بَلَدٌ حَرَّمَهُ اللَّهُ - عَزَّ وَجَلَّ - يَوْمَ خَلَقَ السَّمَاوَاتِ وَالْأَرْضَ، وَهُوَ حَرَامٌ بِحُرْمَةِ اللَّهِ إلَى يَوْمِ الْقِيَامَةِ لَا يُعْضَدُ شَوْكُهُ وَلَا يُنَفَّرُ صَيْدُهُ» وَذَكَرَ الْحَدِيثَ.

L14615 In the chain narrated by Muslim: Abu Bakr ibn Abi Shaybah reported to us from Abdullah ibn Numayr, from his father [Numayr], from Uthman ibn Hakim, from Amir ibn Sa'd ibn Abi Waqqas, from his father, that the Messenger of Allah (peace and blessings of Allah be upon him) said: "I declare sacred the area between the two lava fields of Medina, forbidding the cutting of its thorny trees or the killing of its game."[8]

وَمِنْ طَرِيقِ مُسْلِمٍ نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ نَا أَبِي نَا عُثْمَانُ بْنُ حَكِيمٍ نَا عَامِرُ بْنُ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: " أَنَّهُ قَالَ: «إنِّي أُحَرِّمُ مَا بَيْنَ لَابَتَيْ الْمَدِينَةِ أَنْ يُقْطَعَ عِضَاهُهَا أَوْ يُقْتَلَ صَيْدُهَا» .

L14616–14618 And from the chain of Muslim: Qutaybah ibn Saʿīd narrated to us from ʿAbd al-ʿAzīz—he is the son of Muḥammad—ad-Darāwardī— From Amr ibn Yahya al-Mazini, from Abbad ibn Tamim, from his uncle Abdullah ibn Zayd ibn Asim: "The Messenger of Allah — may Allah bless him and grant him peace — said: 'Indeed, Ibrahim made Mecca inviolable and supplicated for its people, and I have made Medina inviolable just as Ibrahim made Mecca inviolable.'" Abu Muhammad said: Thus, the prohibition against killing the game of Medina is confirmed, and that this ruling is identical in every respect to the ruling of the inviolable sanctuary of Mecca. Therefore, it is confirmed that any game killed within the sacred precincts of Medina or Mecca is not lawfully slaughtered, and success is from Allah, the Exalted.[9]

وَمِنْ طَرِيقِ مُسْلِمٍ نَا قُتَيْبَةُ بْنُ سَعِيدٍ نَا عَبْدُ الْعَزِيزِ هُوَ ابْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ - عَنْ عَمْرِو بْنِ يَحْيَى الْمَازِنِيِّ عَنْ عَبَّادِ بْنِ تَمِيمٍ عَنْ عَمِّهِ عَبْدِ اللَّهِ بْنِ زَيْدِ بْنِ عَاصِمٍ: " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّ إبْرَاهِيمَ حَرَّمَ مَكَّةَ وَدَعَا لِأَهْلِهَا وَإِنِّي حَرَّمْتُ الْمَدِينَةَ كَمَا حَرَّمَ إبْرَاهِيمُ مَكَّةَ» . قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ تَحْرِيمُ قَتْلِ صَيْدِ الْمَدِينَةِ وَأَنَّ ذَلِكَ حُكْمٌ حَرَمِ مَكَّةَ سَوَاءٌ سَوَاءٌ، فَصَحَّ أَنَّ كُلَّ صَيْدٍ قُتِلَ فِي حَرَمِ الْمَدِينَةِ، أَوْ مَكَّةَ فَهُوَ غَيْرُ ذَكِيٍّ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L14619 It has been narrated to us from 'Aṭā' and Qatādah: "Whoever shoots at game in the Hill while located in the Haram must offer expiation." And with Allah alone is success, the Most High.

رُوِّينَا عَنْ عَطَاءٍ، وَقَتَادَةَ: مَنْ رَمَى صَيْدًا فِي الْحِلِّ، وَالرَّامِي فِي الْحَرَمِ فَعَلَيْهِ الْجَزَاءُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L14620 Issue: Those performing Qirān, ʿUmrah, or Tamattuʿ are equally required to make expiation for killing game.

[مَسْأَلَةٌ الْقَارِنُ وَالْمُعْتَمِرُ وَالْمُتَمَتِّعُ سَوَاءٌ فِي جَزَاءِ قَتْلِ الصَّيْدِ]

L14621 886 – Issue:

٨٨٦ - مَسْأَلَةٌ:

L14622 The qārin pilgrim, the ʿUmrah pilgrim, and the tamattuʿ pilgrim are equally liable for the penalty mentioned—whether the violation occurred outside the state of consecration or within the sacred precincts. There is only one penalty for all such cases. This is the doctrine of Mālik and al-Shāfiʿī.

وَالْقَارِنُ، وَالْمُعْتَمِرُ، وَالْمُتَمَتِّعُ: سَوَاءٌ فِي الْجَزَاءِ فِيمَا ذَكَرْنَا سَوَاءٌ فِي حِلٍّ أَصَابُوهُ، أَوْ فِي حَرَمٍ - إنَّمَا فِي كُلِّ ذَلِكَ جَزَاءٌ وَاحِدٌ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ.

L14623 Abu Hanifah said: A Qārin (combining Hajj and Umrah) is liable for two compensations. If he kills game within the sacred precincts while in iḥrām,

وَقَالَ أَبُو حَنِيفَةَ: عَلَى الْقَارِنِ جَزَاءَانِ فَإِنْ قَتَلَهُ فِي الْحَرَمِ وَهُوَ مُحْرِمٌ فَجَزَاءٌ وَاحِدٌ - وَهَذَا تَنَاقُضٌ شَدِيدٌ، ثُمَّ قَالَ: إنْ قَتَلَ الْمُحِلُّ صَيْدًا فِي الْحَرَمِ فَإِنَّمَا فِيهِ الْهَدْيُ، أَوْ الصَّدَقَةُ

[8] **Hadith references (L14615):** Sahih Muslim 1363a; Mishkat al-Masabih 2729.
[9] **Hadith references (L14616):** Sahih Muslim 1360a; Bulugh al-Maram 740.

فَقَطْ، وَلَا يُجْزِئُهُ صِيَامٌ - وَهَذَا تَخْلِيطٌ آخَرُ، وَقَوْلٌ لَا يُعْرَفُ أَحَدٌ قَالَ بِهِ قَبْلَهُ، وَإِنَّمَا أَوْجَبَ اللَّهُ تَعَالَى عَلَى قَاتِلِ الصَّيْدِ وَهُوَ حَرَمٌ جَزَاءَ مِثْلِ مَا قَتَلَ، لَا جَزَاءَ مِثْلَيْ مَا قَتَلَ؛ فَخَالَفَ الْقُرْآنَ فِي كِلَا الْمَوْضِعَيْنِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

he must offer one compensation - and this is a severe contradiction. He further stated: If a muḥill [one not in the ritual state of iḥrām] kills game within the sacred precincts, only a sacrificial animal or charity is required, as fasting does not suffice for him - this represents another confusion, a position unknown to have been held by any predecessor. Indeed, Allah the Exalted obligated upon one who kills game within the sacred precincts compensation equivalent to what he killed, not equivalent to twice what he killed. Thus he contradicted the Quran in both rulings - and with Allah the Exalted lies all success.

وَقَدْ جَاءَتْ آثَارٌ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّهُمْ سُئِلُوا عَنْ الصَّيْدِ يُصِيبُهُ الْمُحْرِمُ؟ فَمَا سَأَلُوا فِي شَيْءٍ مِنْ ذَلِكَ أَقَارِنٌ هُوَ، أَمْ مُفْرِدٌ، أَمْ مُعْتَمِرٌ؟ فَبَطَلَ مَا قَالُوهُ جُمْلَةً - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L14624 There have come reports from the Companions—may Allah be pleased with them—that they were asked about game killed by a Muhrim. Yet they did not inquire in any of those instances whether the Muhrim was a *qārin*, *mufrid*, or *muʿtamir*. Thus, what they claimed is entirely invalidated—and success comes from Allah, the Exalted.

[مَسْأَلَةٌ اشْتَرَكَ جَمَاعَةٌ فِي قَتْلِ صَيْدٍ عَامِدِينَ]

A juristic issue regarding a group who jointly and intentionally killed game.

٨٨٧ - مَسْأَلَةٌ:

فَإِنْ اشْتَرَكَ جَمَاعَةٌ فِي قَتْلِ صَيْدٍ عَامِدِينَ لِذَلِكَ كُلُّهُمْ، فَلَيْسَ عَلَيْهِمْ كُلِّهِمْ إلَّا جَزَاءٌ وَاحِدٌ لِقَوْلِ اللَّهِ تَعَالَى: {فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ} [المائدة: ٩٥] فَلَيْسَ فِي الصَّيْدِ إلَّا مِثْلُهُ لَا أَمْثَالُهُ.

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If a group jointly kills game, all of them acting intentionally, only one compensation is required from them, as decreed by Allah, the Exalted: {The compensation is the equivalent of what he killed from the livestock} [Al-Ma'idah 95]. Thus, for the game, only its equivalent is due, not multiples thereof.[10]

رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَمَّارِ بْنِ أَبِي عَمَّارٍ أَنَّ مَوَالِيَ لِابْنِ الزُّبَيْرِ قَتَلُوا ضَبُعًا وَهُمْ مُحْرِمُونَ فَسَأَلُوا ابْنَ عُمَرَ؟ فَقَالَ: اذْبَحُوا كَبْشًا فَقَالُوا عَنْ كُلِّ إنْسَانٍ مِنَّا؟ فَقَالَ: بَلْ كَبْشٌ وَاحِدٌ جَمِيعَكُمْ - وَهَذَا فِي أَوَّلِ دَوْلَةِ ابْنِ الزُّبَيْرِ، وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ.

It was narrated to us through the chain of Ḥammād ibn Salamah from ʿAmmār ibn Abī ʿAmmār that some clients of Ibn al-Zubayr killed a hyena while in the state of ritual consecration (iḥrām). They consulted Ibn ʿUmar, who said: "Sacrifice a ram." They asked: "For each one of us?" He replied: "Rather, one ram for all of you." This occurred during the initial reign of Ibn al-Zubayr, and no opposing view from the Companions—may Allah be pleased with them—is known regarding his ruling.

L14625 L14626 L14627 L14628–14629

[10] **Qur'an references (L14627):** Qur'an 5:95 (Al-Ma'idah).

L14630 This is the view of ʿAṭāʾ, al-Zuhrī, Mujāhid, al-Nakhaʿī, Muḥammad ibn ʿAlī, al-Ḥārith al-ʿUklī, Ḥammād ibn Abī Sulaymān, al-Awzāʿī, al-Shāfiʿī, and Abū Sulaymān. It is also narrated from al-Ḥasan al-Baṣrī, Saʿīd ibn Jubayr, and al-Shaʿbī that expiation is required for each individual.

وَهُوَ قَوْلُ عَطَاءٍ، وَالزُّهْرِيِّ، وَمُجَاهِدٍ، وَالنَّخَعِيِّ، وَمُحَمَّدِ بْنِ عَلِيٍّ، وَالْحَارِثِ الْعُكْلِيِّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَالْأَوْزَاعِيِّ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَرُوِيَ عَنْ الْحَسَنِ الْبَصْرِيِّ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَالشَّعْبِيِّ: عَلَى كُلِّ وَاحِدٍ مِنْهُمْ جَزَاءٌ.

L14631 This has also been reported from al-Nakhaʿī and al-Ḥārith al-ʿUklī—the view of Mālik.

وَرُوِيَ هَذَا أَيْضًا عَنْ النَّخَعِيِّ، وَالْحَارِثِ الْعُكْلِيِّ - وَهُوَ قَوْلُ مَالِكٍ.

L14632 Abu Hanifah said: As for those in iḥrām, it makes no difference whether they slay game within the Sacred Precinct or outside it—each incurs full expiation. As for two or more individuals not in iḥrām who slay game within the Sacred Precinct, a single expiation is incumbent upon all of them. This distinction is remarkably novel, undocumented from any predecessor. They argued this by asserting: "The iḥrām of each pilgrim differs from another's, but is the Haram not a single entity?" It was countered: "Rather, each pilgrim's location within the Haram differs from another's. Every location within the Haram constitutes a distinct sacred entity separate from others, while iḥrām remains a unified legal ruling binding upon all pilgrims."

وَقَالَ أَبُو حَنِيفَةَ: أَمَّا الْمُحْرِمُونَ فَسَوَاءٌ أَصَابُوهُ فِي الْحَرَمِ، أَوْ الْحِلِّ عَلَى كُلِّ وَاحِدٍ مِنْهُمْ جَزَاءٌ كَامِلٌ، وَأَمَّا الْحَلَالَانِ فَصَاعِدًا يُصِيبُونَ الصَّيْدَ فِي الْحَرَمِ فَعَلَيْهِمْ كُلِّهِمْ جَزَاءٌ وَاحِدٌ، فَكَانَ هَذَا الْفَرْقُ طَرِيفًا جِدًّا لَا يُحْفَظُ عَنْ أَحَدٍ قَبْلَهُ -: وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّ إحْرَامَ كُلِّ وَاحِدٍ مِنْ الْمُحْرِمِينَ غَيْرُ إحْرَامِ صَاحِبِهِ، وَالْحَرَمُ شَيْءٌ وَاحِدٌ؟ فَقِيلَ لَهُمْ: بَلْ مَوْضِعُ كُلِّ وَاحِدٍ مِنْهُمْ مِنْ الْحَرَمِ غَيْرُ مَوْضِعِ الْآخَرِ، وَكُلُّ مَكَانٍ مِنْ الْحَرَمِ فَهُوَ حَرَمٌ آخَرُ، غَيْرُ الْمَكَانِ الثَّانِي، وَالْإِحْرَامُ حُكْمٌ وَاحِدٌ لَازِمٌ لِجَمِيعِ الْمُحْرِمِينَ.

L14633 Some of those who held that each individual is obligated to provide an expiation argued by stating: It is an expiation. Just as each accidental killer must provide an expiation if they collectively caused the death of a believer, and each intentional oath-breaker must provide an expiation if they jointly committed a single violation, this case is analogous. Others rebutted them, arguing that since a single blood compensation is collectively incumbent upon all of them, likewise a single expiation and a single feeding obligation are collectively incumbent upon them.

وَاحْتَجَّ بَعْضُ مَنْ رَأَى عَلَى كُلِّ وَاحِدٍ جَزَاءٌ بِأَنْ قَالَ: هِيَ كَفَّارَةٌ، فَكَمَا عَلَى كُلِّ قَاتِلِ خَطَأٍ إذَا اشْتَرَكُوا فِي دَمِ الْمُؤْمِنِ كَفَّارَةٌ، وَعَلَى كُلِّ حَانِثٍ إذَا اشْتَرَكُوا فِي فِعْلٍ وَاحِدٍ كَفَّارَةٌ فَهَذَا مِثْلُهُ - فَعَارَضَهُمْ الْآخَرُونَ بِأَنَّهُ لَمَّا كَانَ عَلَيْهِمْ كُلِّهِمْ دِيَةٌ وَاحِدَةٌ فَكَذَلِكَ عَلَيْهِمْ جَزَاءٌ وَاحِدٌ وَإِطْعَامٌ وَاحِدٌ.

L14634 Abu Muhammad said: This is analogy, and all analogy is invalid. The correct view is that people's wealth is protected; thus, it is impermissible to impose financial penalties upon them without explicit textual evidence or consensus. Similarly, neither compensation among them nor feeding is permissible without explicit text or consensus.

قَالَ أَبُو مُحَمَّد: وَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، وَالصَّحِيحُ أَنَّ أَمْوَالَ النَّاسِ مَحْظُورَةٌ فَلَا يَجُوزُ إلْزَامُهُمْ غَرَامَةً بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ، فَالْجَزَاءُ بَيْنَهُمْ وَالْإِطْعَامُ كَذَلِكَ.

L14635 As for fasting, if they choose it, then each one of them must fast in full,

because fasting cannot be shared—and that is impossible—unlike financial matters.

وَأَمَّا الصِّيَامُ فَإِنْ اخْتَارُوهُ: فَعَلَى كُلِّ وَاحِدٍ مِنْهُمْ الصِّيَامُ كُلُّهُ لِأَنَّ الصَّوْمَ لَا يُشْتَرَكُ فِيهِ وَلَا يُمْكِنُ ذَلِكَ، بِخِلَافِ الْأَمْوَالِ.

L14636–14638 If they differ: whoever opts for compensation must provide a full equivalent - not a portion of the equivalent - and whoever... If one chose to provide food (as expiation), it did not suffice for fewer than three needy individuals, because this would constitute opposition to the textual ruling. And with Allah alone is success, the Exalted.

فَإِنْ اخْتَلَفُوا: فَمَنْ اخْتَارَ مِنْهُمْ الْجَزَاءَ لَمْ يُجْزِهِ إلَّا بِمِثْلٍ كَامِلٍ لَا بِبَعْضِ مِثْلٍ - وَمَنْ اخْتَارَ الْإِطْعَامَ لَمْ يُجْزِهِ أَقَلُّ مِنْ ثَلَاثَةِ مَسَاكِينَ، لِأَنَّهُ كَانَ يَكُونُ خِلَافَ النَّصِّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْمُحْرِم إذَا قَتَلَ الصَّيْدَ مَرَّةً بَعْدَ مَرَّةٍ]

Issue: If a مُحْرِم (person in the state of *ihram*) kills game animals time after time.

٨٨٨ - مَسْأَلَةٌ:

L14640 888. Issue:

وَمَنْ قَتَلَ الصَّيْدَ مَرَّةً بَعْدَ مَرَّةٍ فَعَلَيْهِ لِكُلِّ مَرَّةٍ جَزَاءٌ وَلَيْسَ قَوْلُ اللَّهِ تَعَالَى: {وَمَنْ عَادَ فَيَنْتَقِمُ اللَّهُ مِنْهُ} [المائدة: ٩٥] بِمُسْقِطٍ لِلْجَزَاءِ عَنْهُ لِأَنَّ اللَّهَ تَعَالَى لَمْ يَقُلْ: لَا جَزَاءَ عَلَيْهِ، بَلْ قَدْ أَوْجَبَ الْجَزَاءَ عَلَى الْقَاتِلِ لِلصَّيْدِ عَمْدًا، فَهُوَ عَلَى كُلِّ قَاتِلٍ مَعَ النِّقْمَةِ عَلَى الْعَائِدِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L14641 Whoever kills game repeatedly, upon him is an expiation for each instance. The statement of Allah, the Exalted: {And whoever returns [to hunting], then Allah will inflict punishment upon him} [Al-Mā'idah: 95] does not nullify the expiation incumbent upon him, for Allah, the Exalted, did not say: "There is no expiation upon him." Rather, He has mandated the expiation for one who intentionally kills game. Thus, it applies to everyone who kills game, alongside punishment upon the repeat offender – and with Allah, the Exalted, lies all divine assistance.[11]

[مَسْأَلَةٌ لِلْمُحْرِمِ ذَبْحُ مَا عَدَا الصَّيْدَ]

A question regarding whether a person in ritual consecration (iḥrām) may slaughter anything other than game.

٨٨٩ - مَسْأَلَةٌ:

L14643 889. Question:

وَحَلَالٌ لِلْمُحْرِمِ ذَبْحُ مَا عَدَا الصَّيْدَ مِمَّا يَأْكُلُهُ النَّاسُ مِنْ الدَّجَاجِ، وَالْإِوَزِّ الْمُتَمَلَّكِ، وَالْبُرَكِ الْمُتَمَلَّكِ، وَالْحَمَامِ الْمُتَمَلَّكِ، وَالْإِبِلِ، وَالْبَقَرِ، وَالْغَنَمِ، وَالْخَيْلِ، وَكُلِّ مَا لَيْسَ صَيْدًا - الْحِلُّ وَالْحَرَمُ سَوَاءٌ - وَهَذَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ مَعَ أَنَّ النَّصَّ لَمْ يُحَرِّمْهُ،

L14644 It is permissible for one in the state of iḥrām to slaughter any non-game animals that people consume, including chickens, owned geese, owned ducks, owned pigeons, camels, cows, sheep, horses, and all non-game creatures - the ruling applies equally in both sacred and non-sacred areas. There is no disagreement among scholars about this, despite the scriptural texts not ex-

[11] **Qur'an references (L14641):** Qur'an 5:95 (Al-Ma'idah).

plicitly prohibiting it. Similarly, slaughtering all the aforementioned animals deemed permissible within the sacred precincts is lawful without any dissent, even though they did not prohibit that?

وَكَذَلِكَ يَذْبَحُ كُلَّ مَا ذَكَرْنَا الْحَلَالُ فِي الْحَرَمِ بِلَا خِلَافٍ أَيْضًا مَعَ أَنَّ النَّصَّ لَمْ يَمْنَعْ مِنْ ذَلِكَ؟

Issue: The ruling concerning a *muḥrim* who kills something that is not considered game.

[مَسْأَلَةٌ الْمُحْرِمِ إِذَا قَتَلَ مَا لَيْسَ بِصَيْدٍ]

890 - Issue:

٨٩٠ - مَسْأَلَةٌ:

It is permissible for the one in ritual consecration (muḥrim) within non-sacred and sacred territories, and for the unconsecrated person (muḥill) within sacred and non-sacred territories, to kill all creatures not classified as game—among them pigs, lions, predatory beasts, lice, fleas, ticks on his camel or another's camel, and mites.

وَجَائِزٌ لِلْمُحْرِمِ فِي الْحِلِّ وَالْحَرَمِ، وَلِلْمُحِلِّ فِي الْحَرَمِ وَالْحِلِّ قَتْلُ كُلِّ مَا لَيْسَ بِصَيْدٍ مِنْ الْخَنَازِيرِ، وَالْأُسْدِ وَالسِّبَاعِ، وَالْقَمْلِ، وَالْبَرَاغِيثِ، وَقِرْدَانِ بَعِيرِهِ أَوْ غَيْرِ بَعِيرِهِ، وَالْحَلَمِ كَذَلِكَ.

It is recommended to kill snakes, mice, kite birds, crows, scorpions, and vicious dogs—the young and adults of all these are equal—and likewise geckos and all creeping pests. There is no compensation for anything we have mentioned, nor is there compensation for lice.

وَنَسْتَحِبُّ لَهُمْ قَتْلَ الْحَيَّاتِ، وَالْفِئْرَانِ، وَالْحِدَأِ وَالْغِرْبَانِ، وَالْعَقَارِبِ، وَالْكِلَابِ الْعَقُورَةِ، صِغَارُ كُلِّ ذَلِكَ وَكِبَارُهُ سَوَاءٌ، وَكَذَلِكَ الْوَزَغُ وَسَائِرُ الْهَوَامِّ - وَلَا جَزَاءَ فِي شَيْءٍ مِنْ كُلِّ مَا ذَكَرْنَا وَلَا فِي الْقَمْلِ.

If one kills what has been prohibited to kill, such as a hoopoe, a shrike, a frog, or ants, they have disobeyed, and there is no expiation required for that.

فَإِنْ قَتَلَ مَا نُهِيَ عَنْ قَتْلِهِ مِنْ هُدْهُدٍ، أَوْ صُرَدٍ، أَوْ ضُفْدَعٍ، أَوْ نَمْلٍ: فَقَدْ عَصَى وَلَا جَزَاءَ فِي ذَلِكَ.

The proof of what we have mentioned is that Allah the Exalted permitted the killing of what we have mentioned. He forbade the pilgrim only from killing game, prohibited only the game of the sanctuary, and imposed expiation only for game.

بُرْهَانُ مَا ذَكَرْنَا -: أَنَّ اللَّهَ تَعَالَى أَبَاحَ قَتْلَ مَا ذَكَرْنَا، ثُمَّ لَمْ يَنْهَ الْمُحْرِمَ إلَّا عَنْ قَتْلِ الصَّيْدِ فَقَطْ، وَلَا نَهَى إلَّا عَنْ صَيْدِ الْحَرَمِ فَقَطْ، وَلَا جَعَلَ الْجَزَاءَ إلَّا فِي الصَّيْدِ فَقَطْ.

Whoever prohibits what the divine text has not forbidden, or prescribes a punishment for matters where the divine text has not ordained punishment, has legislated in the religion what Allah has not permitted.

فَمَنْ حَرَّمَ مَا لَمْ يَأْتِ النَّصُّ بِتَحْرِيمِهِ، أَوْ جَعَلَ جَزَاءً فِيمَا لَمْ يَأْتِ النَّصُّ بِالْجَزَاءِ فِيهِ: فَقَدْ شَرَّعَ فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ.

Abu Hanifah said: A person in the state of ritual consecration (iḥrām) must not kill any animal except the following: the vicious dog, the snake, the

وَقَالَ أَبُو حَنِيفَةَ: لَا يَقْتُلُ الْمُحْرِمُ شَيْئًا مِنْ الْحَيَوَانِ إلَّا الْكَلْبَ الْعَقُورَ، وَالْحَيَّةَ، وَالْعَقْرَبَ، وَالْحِدَأَةَ، وَالْغُرَابَ، وَالذِّئْبَ فَقَطْ، وَلَا جَزَاءَ عَلَيْهِ فِيهَا.

scorpion, the kite, the crow, and the wolf only. No atonement is required for killing them.

فَأَمَّا الْأَسَدُ، وَالنَّمِرُ، وَالسَّبُعُ، وَالدُّبُّ، وَالْخِنْزِيرُ، وَسَائِرُ سِبَاعِ ذَوَاتِ الْأَرْبَعِ، وَجَمِيعُ سِبَاعِ الطَّيْرِ فَفِيهَا الْجَزَاءُ إِلَّا أَنْ تَكُونَ ابْتَدَأَتْهُ فَلَا جَزَاءَ عَلَيْهِ فِيهَا، وَجَزَاؤُهَا عِنْدَهُ الْأَقَلُّ مِنْ قِيمَةِ كُلِّ ذَلِكَ أَوْ شَاةٌ، وَلَا يَتَجَاوَزُ بِجَزَاءِ شَيْءٍ مِنْ ذَلِكَ شَاةً وَاحِدَةً، وَيَقْتُلُ الْقِرْدَانَ عَنْ بَعِيرِهِ وَلَا شَيْءَ عَلَيْهِ، وَلَا يَقْتُلُ الْقُمَّلَ، فَإِنْ قَتَلَهَا أَطْعَمَ شَيْئًا، وَلَهُ قَتْلُ الْبُرْغُوثِ، وَالذَّرِّ، وَالْبَعُوضِ، وَلَا جَزَاءَ فِي ذَلِكَ.

L14653–14654 As for the lion, tiger, wild beast, bear, pig, all other four-legged predators, and all predatory birds, compensation is due unless the animal initiated the attack, in which case no compensation is required. The compensation, according to his view, is the lesser of the value [of the attacked animal] or a sheep, and the compensation for any of them must not exceed a single sheep. One may kill two monkeys to protect their camel without liability. Lice should not be killed; if one kills them, he must give something in charity. It is permissible to kill fleas, gnats, and mosquitoes, and no compensation is required for that.

وَقَالَ زُفَرُ: سَوَاءٌ ابْتَدَأَتْ الْمُحْرِمَ السِّبَاعُ أَوْ لَمْ تَبْتَدِئْهُ عَلَيْهِ الْجَزَاءُ فِيمَا قَتَلَ مِنْهَا، وَقَالَ الطَّحَاوِيُّ: لَا يَقْتُلُ الْمُحْرِمُ الْحَيَّةَ، وَلَا الْوَزَغَ، وَلَا شَيْئًا غَيْرَ الْحِدَأَةِ، وَالْغُرَابِ، وَالْكَلْبِ الْعَقُورِ، وَالْفَأْرَةِ وَالْعَقْرَبِ.

L14655 Zufar said: Whether predatory animals initiate an attack against the pilgrim or not, upon him is the expiation for whatever he kills among them. Al-Tahawi said: The pilgrim must not kill snakes, geckos, or any creature except the kite, the crow, the vicious dog, the rat, and the scorpion.

وَقَالَ مَالِكٌ: يَقْتُلُ الْمُحْرِمُ الْفَأْرَةَ، وَالْعَقْرَبَ، وَالْحِدَأَةَ، وَالْغُرَابَ، وَالْكَلْبَ الْعَقُورَ، وَالْحَيَّةَ، وَجَمِيعَ سِبَاعِ ذَوَاتِ الْأَرْبَعِ، إِلَّا أَنَّهُ كَرِهَ قَتْلَ الْغُرَابِ، وَالْحِدَأَةِ، إِلَّا أَنْ يُؤْذِيَاهُ.

L14656 Mālik said: A pilgrim in *ihram* may kill mice, scorpions, kites, crows, vicious dogs, snakes, and all four-legged predatory animals. However, he disliked (makruh) the killing of crows and kites unless they cause harm to him.

وَلَا يَجُوزُ لَهُ قَتْلُ الثَّعْلَبِ، وَلَا الْهِرِّ الْوَحْشِيِّ، وَفِيهِمَا الْجَزَاءُ عَلَى مَنْ قَتَلَهُمَا، إِلَّا إِنْ ابْتَدَآهُ بِالْأَذَى.

L14657 It is not permissible to kill the fox or the wildcat, and a retribution is imposed on whoever kills them unless they initiate harm.

وَلَا يَجُوزُ لَهُ قَتْلُ صِغَارِ السِّبَاعِ أَصْلًا وَلَا قَتْلُ الْوَزَغِ، وَلَا قَتْلُ الْبَعُوضِ، وَلَا قِرْدَانِ بَعِيرِهِ خَاصَّةً، فَإِنْ قَتَلَهُ أَطْعَمَ شَيْئًا، وَلَا يَقْتُلُ شَيْئًا مِنْ سِبَاعِ الطَّيْرِ، فَإِنْ فَعَلَ فَفِيهَا الْجَزَاءُ، وَلَهُ قَتْلُ الْقُرَادِ إِذَا وَجَدَهُ عَلَى نَفْسِهِ.

L14658 It is not permissible for him to kill young predators at all, nor to kill the gecko, nor the mosquito, nor two lice specifically found on his camel. If he kills any of these, he is to give a measure of food as expiation. He must not kill any predatory birds; if he does so, he incurs a prescribed penalty. However, he may kill ticks when he finds them on himself.

L14659 It is not permissible for him to kill the young of crows or the young of kites. There is a differing opinion narrated from him regarding the young

of mice—should he kill them or not? He said: "He should not kill lice, but if he kills them, he must give food [as charity]."

L14660 The opinion of Al-Shāfiʿī corresponds to our view except concerning the fox, for he deemed compensation obligatory for it.

L14661 It has been reported to us from Mujāhid: "Kill the kite, throw stones at the crow, but do not kill it."

L14662 And via the chain of Wakiʿ, from Sufyān, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm, who said: "The muḥrim (one in the state of iḥrām) must not kill mice."

L14663–14665 Abu Muhammad said: All that we have mentioned constitutes invalid and contradictory opinions, and even if predatory beasts were forbidden for [believers]... The ruling concerning the one in the state of ritual consecration (iḥrām) and within the sacred precincts (ḥaram): Abū Ḥanīfah's distinction between the expiation for hunted game—wherein he deemed it necessary to pay its value by purchasing sacrificial offerings equivalent to it, even if three or four—and the expiation for predatory animals, in which he considered only the lesser of their value or a single sheep, not exceeding one, is an astonishing distinction without parallel? It is a heretical innovation from which we disassociate ourselves before Allah, the Exalted and Majestic—a claim without proof, neither from the Qur'ān nor the Sunnah, nor a weak narration, nor the statement of any recognized predecessor.

L14666 Nor analogical reasoning. Nor any opinion possessing a share of correctness.

L14667 Similarly, Malik differentiates between the young of crows and kites; between the young of scorpions and snakes; regarding predatory birds; and regarding four-legged predators.

L14668 If they say: "We analogized the four-legged predators to the vicious dog," we respond: "Why did you not analogize the bird predators to the kite? Or why did you not analogize the four-legged predators to the hyena or the fox

وَلَا يَجُوزُ لَهُ قَتْلُ صِغَارِ الْغِرْبَانِ، وَلَا صِغَارِ الْحِدَأَةِ، وَاخْتُلِفَ عَنْهُ فِي صِغَارِ الْفِئْرَانِ أَيَقْتُلُهَا أَمْ لَا؟ قَالَ: وَلَا يَقْتُلُ الْقُمَّلَ، فَإِنْ قَتَلَهَا أَطْعَمَ شَيْئًا.

وَقَوْلُ الشَّافِعِيِّ كَقَوْلِنَا إِلَّا فِي الثَّعْلَبِ فَإِنَّهُ رَأَى فِيهِ الْجَزَاءَ.

وَرُوِّينَا عَنْ مُجَاهِدٍ: قَتِّلْ الْحِدَأَةَ، وَارْمِ الْغُرَابَ، وَلَا تَقْتُلْهُ.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ قَالَ: لَا يَقْتُلُ الْمُحْرِمُ الْفَأْرَةَ.

قَالَ أَبُو مُحَمَّدٍ: كُلُّ مَا ذَكَرْنَا آرَاءٌ فَاسِدَةٌ مُتَنَاقِضَةٌ، وَلَئِنْ كَانَتْ السِّبَاعُ مُحَرَّمَةً عَلَى الْمُحْرِمِ وَفِي الْحَرَمِ فَإِنَّ تَفْرِيقَ أَبِي حَنِيفَةَ بَيْنَ جَزَاءِ الصَّيْدِ، فَرَأَى فِيهِ قِيمَتَهُ يَبْتَاعُ مَا بَلَغَتْ مِنْ الْإِهْدَاءِ وَلَوْ ثَلَاثَةً، أَوْ أَرْبَعَةً وَبَيْنَ جَزَاءِ السِّبَاعِ فَلَمْ يَرَ فِيهَا إِلَّا الْأَقَلَّ مِنْ قِيمَتِهَا أَوْ شَاةً فَقَطْ لَا يَزِيدُ عَلَى وَاحِدَةٍ: عَجَبٌ لَا نَظِيرَ لَهُ؟ ، وَدِينٌ جَدِيدٌ نَبْرَأُ إلَى اللَّهِ تَعَالَى عَزَّ وَجَلَّ مِنْهُ، وَقَوْلٌ بِلَا بُرْهَانٍ لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ. وَلَا رِوَايَةٍ سَقِيمَةٍ. وَلَا قَوْلِ أَحَدٍ يُعْرَفُ قَبْلَهُ.

وَلَا قِيَاسٍ. وَلَا رَأْيٍ لَهُ نَصِيبٌ مِنْ السَّدَادِ.

وَكَذَلِكَ تَفْرِيقُ مَالِكٍ بَيْنَ صِغَارِ الْغِرْبَانِ، وَالْحُدَيَّا، وَبَيْنَ صِغَارِ الْعَقَارِبِ، وَالْحَيَّاتِ، وَبَيْنَ سِبَاعِ الطَّيْرِ، وَبَيْنَ سِبَاعِ ذَوَاتِ الْأَرْبَعِ.

in your own view?" They argued regarding monkeys that they are derived from the camel.

فَإِنْ قَالُوا: قِسْنَا سِبَاعَ ذَوَاتِ الْأَرْبَعِ عَلَى الْكَلْبِ الْعَقُورِ؟ قُلْنَا: فَهَلَّا قِسْتُمْ سِبَاعَ الطَّيْرِ عَلَى الْحِدَأَةِ؟ أَوْ هَلَّا قِسْتُمْ سِبَاعَ ذَوَاتِ الْأَرْبَعِ عَلَى الضَّبُعِ وَعَلَى الثَّعْلَبِ عِنْدَكُمْ؟ وَاحْتَجُّوا فِي الْقِرْدَانِ بِأَنَّهَا مِنْ الْبَعِيرِ؟ .

L14669–14671 Ali said: This statement is grossly corrupt due to two reasons. First: It is invalid, for monkeys have never been born from camels. Second: No ruling in Allah's religion establishes ihram restrictions for camels. Even if a pilgrim caused his camel to mate with a she-camel or caused a camel to mate with his she-camel, he would incur no penalty. How then could he be punished for monkeys eating it? This is truly astonishing. They argued regarding a louse that it originates from humans. We responded, "What follows from that?" They do not dispute that yellow bile comes from humans, yet if a pilgrim kills it, they maintain there is no penalty. They said: "It is removing harm from oneself." We replied, "Granted, but what is the consequence?" Allah never commanded anything for removing harm besides shaving the head. Yet you yourselves consider squeezing boils, scratching skin, washing eye discharge, or killing fleas as harm removal—imposing no penalty. If you arbitrarily equate harm removal wherever you wish to harm removal through shaving the head, then apply the same rulings. Otherwise, you have confused principles, contradicted yourselves, and invalidated your analogy.

قَالَ عَلِيٌّ: هَذَا كَلَامٌ فَاحِشُ الْفَسَادِ لِوَجْهَيْنِ، أَحَدُهُمَا: أَنَّهُ بَاطِلٌ وَمَا كَانَتْ الْقِرْدَانُ قَطُّ مُتَوَلِّدَةً مِنْ الْإِبِلِ، وَالثَّانِي: أَنَّهُ مَا عُلِمَ فِي دِينِ اللَّهِ تَعَالَى إحْرَامٌ عَلَى بَعِيرٍ وَلَوْ أَنَّ مُحْرِمًا أَنْزَى بَعِيرَهُ عَلَى نَاقَةٍ أَوْ أَنْزَى بَعِيرًا عَلَى نَاقَتِهِ مَا كَانَ عَلَيْهِ فِي ذَلِكَ شَيْءٌ، فَكَيْفَ أَنْ يُعَذَّبَ بِأَكْلِ الْقِرْدَانِ لَهُ؟ إنَّ هَذَا لَعَجَبٌ وَاحْتَجُّوا فِي الْقَمْلَةِ بِأَنَّهَا مِنْ الْإِنْسَانِ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ وَهُمْ لَا يَخْتَلِفُونَ أَنَّ الصُّفَارَ مِنْ الْإِنْسَانِ وَلَوْ قَتَلَهَا الْمُحْرِمُ لَمْ يَكُنْ فِيهَا عِنْدَهُمْ شَيْءٌ، وَقَالُوا: هُوَ إمَاطَةُ الْأَذَى عَنْ نَفْسِهِ؟ فَقُلْنَا: نَعَمْ فَكَانَ مَاذَا؟ وَمَا أَمَرَ اللَّهُ تَعَالَى قَطُّ فِي إمَاطَةِ الْأَذَى بِغَيْرِ حَلْقِ الرَّأْسِ بِشَيْءٍ وَأَنْتُمْ لَا تَخْتَلِفُونَ فِي أَنَّ تَعْصِيرَ الدُّمَّلِ وَحَكَّ الْجِلْدِ وَغَسْلَ الْقَذَى عَنْ الْعَيْنِ وَقَتْلَ الْبَرَاغِيثِ إمَاطَةُ أَذًى وَلَا شَيْءَ عَلَيْهِ فِي ذَلِكَ عِنْدَكُمْ، وَإِذْ قِسْتُمْ إمَاطَةَ الْأَذَى حَيْثُ اشْتَهَيْتُمْ عَلَى إمَاطَةِ الْأَذَى بِحَلْقِ الرَّأْسِ فَاجْعَلُوا فِيهَا مَا فِي إمَاطَةِ الْأَذَى بِحَلْقِ الرَّأْسِ وَإِلَّا فَقَدْ خَلَطْتُمْ وَتَنَاقَضْتُمْ وَأَبْطَلْتُمْ قِيَاسَكُمْ؟ قَالَ عَلِيٌّ: وَهَذَا الْبَابُ كُلُّهُ مَرْجِعُهُ إلَى شَيْئَيْنِ، أَحَدُهُمَا: قَوْلُ اللَّهِ تَعَالَى: {لا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرُمٌ وَمَنْ قَتَلَهُ مِنْكُمْ مُتَعَمِّدًا فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ} [المائدة: ٩٥] الْآيَةَ - وَإِلَى مَا رُوِّينَاهُ مِنْ طَرِيقِ نَافِعٍ عَنْ ابْنِ عُمَرَ قِيلَ: «يَا رَسُولَ اللَّهِ مَا نَقْتُلُ مِنْ الدَّوَابِّ إذَا أَحْرَمْنَا؟ قَالَ: خَمْسٌ لَا جُنَاحَ عَلَى مَنْ قَتَلَهُنَّ: الْحِدَأَةُ، وَالْغُرَابُ، وَالْعَقْرَبُ، وَالْفَأْرَةُ، وَالْكَلْبُ الْعَقُورُ» وَمِنْ طَرِيقِ سَالِمِ بْنِ عَبْدِ اللَّهِ

Ali said: This entire matter rests on two foundations. First: Allah's statement: *"Do not kill game while you are in ihram. Whoever kills it intentionally, the recompense is livestock equivalent to what he killed"* (Quran 5:95). Second: What we narrated through Nāfiʿ from Ibn ʿUmar, who asked: "O Messenger of Allah, what creatures may we kill while in ihram?" He replied: *"Five: No blame attaches to one who kills them—the kite, the crow, the scorpion, the mouse, and the rabid dog."* Via the chain of Salim ibn Abdullah ibn Umar from his father from the Prophet, peace and blessings of Allah be upon him: "There is no blame upon one who kills five creatures within the sacred precincts and during the state of consecration: the mouse, the crow, the kite, the scorpion, and the vicious dog."[12]

[12] **Qur'an references (L14669):** Qur'an 5:95 (Al-Ma'idah).

بْنِ عُمَرَ عَنْ أَبِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «خَمْسٌ لَا جُنَاحَ عَلَى مَنْ قَتَلَهُنَّ فِي الْحَرَمِ وَالْإِحْرَامِ: الْفَأْرَةُ، وَالْغُرَابُ، وَالْحِدَأَةُ وَالْعَقْرَبُ، وَالْكَلْبُ الْعَقُورُ» .

L14672 Ali said: Some people said, "Allah the Exalted commanded His Messenger, peace be upon him, to clarify. He was asked: 'What may a pilgrim in sacred state kill?' He answered them, peace be upon him, with these five, and informed that there is no sin in killing them within the sacred precincts and during the state of pilgrimage. Had there been a sixth, he, peace be upon him, would have clarified it. It is inconceivable for him to neglect any matter of the religion about which he was questioned." Thus, it is confirmed that killing any creature other than these five is not permissible.

قَالَ عَلِيٌّ: فَقَالَ قَائِلُونَ: قَدْ أَمَرَ اللَّهُ تَعَالَى رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْبَيَانِ وَسُئِلَ: مَاذَا يَقْتُلُ الْمُحْرِمُ؟ فَأَجَابَهُمْ - عَلَيْهِ السَّلَامُ - بِهَذِهِ الْخَمْسِ، وَأَخْبَرَ أَنَّهُ لَا جُنَاحَ فِي قَتْلِهِنَّ فِي الْحَرَمِ وَالْإِحْرَامِ، فَلَوْ كَانَ هُنَالِكَ سَادِسٌ لَبَيَّنَهُ - عَلَيْهِ السَّلَامُ - وَحَاشَا لَهُ مِنْ أَنْ يُغْفِلَ شَيْئًا مِنْ الدِّينِ سُئِلَ عَنْهُ، فَصَحَّ أَنَّ مَا عَدَا هَذِهِ الْخَمْسَةَ لَا يَجُوزُ قَتْلُهُنَّ.

L14673 Abu Muhammad said: This argument does not enable the followers of Abu Hanifa to cite it as evidence, for all of them have added to these five what was not mentioned among them. Abu Hanifa added to them: wolves, snakes, beetles, geckos, ants, ticks, and mosquitoes.

قَالَ أَبُو مُحَمَّد: وَهَذَا الِاحْتِجَاجُ لَا يُمْكِنُ الْمُقَلِّدِينَ لِأَبِي حَنِيفَةَ أَنْ يَحْتَجُّوا بِهِ لِأَنَّهُمْ كُلَّهُمْ قَدْ زَادُوا إلَى هَذِهِ الْخَمْسِ مَا لَمْ يُذْكَرْ فِيهِنَّ، فَأَضَافَ أَبُو حَنِيفَةَ إلَيْهِنَّ: الذِّئْبَ، وَالْحَيَّاتِ، وَالْجِعْلَانَ وَالْوَزَغَ، وَالنَّمْلَ، وَالْقُرَادَ وَالْبَعُوضَ.

L14674 If they say: We added the wolf only due to the report we narrated through the chain of Waki' from Sufyan from Ibn Harmalah from Sa'id ibn al-Musayyab from the Prophet—peace and blessings be upon him—who said: "A pilgrim in the state of ihram may kill the wolf," and are the mursal and musnad reports considered equal? We say: Then say according to what we narrated through the chain of Abu Dawud from Ahmad ibn Hanbal from Hushaym, who said: Yazid ibn Abi Ziyad narrated to us from 'Abd al-Rahman ibn Abi Nu'm al-Bajali from Abu Sa'id al-Khudri: "The Messenger of Allah—peace and blessings be upon him—was asked about what a pilgrim in the state of ihram may kill. He replied: The snake, the scorpion, the harmful vermin; he may throw stones at the crow to drive it away but not kill it; the vicious dog, the kite, and the attacking predator. So kill every attacking predator."[13]

فَإِنْ قَالُوا: إنَّمَا زِدْنَا الذِّئْبَ لِلْخَبَرِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ ابْنِ حَرْمَلَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يَقْتُلُ الْمُحْرِمُ الذِّئْبَ» وَالْمُرْسَلُ وَالْمُسْنَدُ سَوَاءٌ؟ قُلْنَا: فَقُولُوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد عَنْ أَحْمَدَ بْنِ حَنْبَلٍ عَنْ هُشَيْمٍ قَالَ: أَنَا يَزِيدُ بْنُ أَبِي زِيَادٍ نَا عَبْدُ الرَّحْمَنِ بْنُ أَبِي نُعْمٍ الْبَجَلِيُّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ عَمَّا يَقْتُلُ الْمُحْرِمُ؟ فَقَالَ: الْحَيَّةُ، وَالْعَقْرَبُ، وَالْفُوَيْسِقَةُ، وَيَرْمِي الْغُرَابَ وَلَا يَقْتُلُهُ، وَالْكَلْبُ الْعَقُورُ، وَالْحِدَأَةُ، وَالسَّبُعُ الْعَادِي» فَاقْتُلُوا كُلَّ سَبُعٍ عَادٍ.

L14675 And he did not say—peace be upon him—"the predatory animal that attacks him," but rather stated it in an unrestricted manner.

وَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ -: السَّبُعُ الْعَادِي عَلَيْهِ بَلْ أَطْلَقَهُ إطْلَاقًا.

[13] **Hadith references (L14674):** Sunan Abi Dawud 1848.

وَأَمَّا نَحْنُ فَلَمْ نَأْخُذْ بِمَا فِي هَذَا الْخَبَرِ مِنْ النَّهْيِ عَنْ قَتْلِ الْغُرَابِ، لِأَنَّ رَاوِيَهُ يَزِيدُ بْنُ أَبِي زِيَادٍ - وَقَدْ قَالَ فِيهِ ابْنُ الْمُبَارَكِ: ارْمِ بِهِ، عَلَى جُمُودِ لِسَانِ ابْنِ الْمُبَارَكِ وَشِدَّةِ تَوَقِّيهِ - وَتَكَلَّمَ فِيهِ شُعْبَةُ، وَأَحْمَدُ - وَقَالَ فِيهِ يَحْيَى: لَا يُحْتَجُّ بِحَدِيثِهِ - وَكَذَّبَهُ أَبُو أُسَامَةَ، وَقَالَ: لَوْ حَلَفَ خَمْسِينَ يَمِينًا مَا صَدَّقْته.

L14676–14678 As for us, we did not adopt the prohibition against killing crows mentioned in this report because its narrator, Yazīd ibn Abī Ziyād—about whom Ibn al-Mubārak remarked: “Reject it”—is dismissed due to Ibn al-Mubārak’s harshness in speech and severity in criticism [text incomplete]... Scholars exercised caution about him—Shu‘bah and Ahmad criticized him, and Yahya said regarding him: “His hadith is not admissible as evidence”—while Abū Usāmah declared him a liar, stating: “Even if he swore fifty oaths, I would not believe him.”

فَإِنْ قَالُوا: قَدْ جَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الضَّبُعِ الْجَزَاءَ - وَهِيَ سَبُعٌ ذُو نَابٍ -؟ قُلْنَا: نَعَمْ، وَهِيَ حَلَالٌ مِنْ بَيْنِ السِّبَاعِ فَهِيَ صَيْدٌ فَمَا الَّذِي أَوْجَبَ أَنْ تَقِيسُوا سَائِرَ السِّبَاعِ الْمُحَرَّمَةِ عَلَى الضَّبُعِ الْحَلَالِ أَكْلُهَا؟ وَلَمْ تَقِيسُوهَا عَلَى الذِّئْبِ الَّذِي هُوَ حَرَامٌ عِنْدَكُمْ؟ وَقَدْ صَحَّ عَنْ أَبِي هُرَيْرَةَ أَنَّ الْأَسَدَ: هُوَ الْكَلْبُ الْعَقُورُ، وَأَبُو هُرَيْرَةَ حُجَّةٌ فِي اللُّغَةِ، وَلَا مُخَالِفَ لَهُ مِنْ الصَّحَابَةِ يُعْرَفُ فِي ذَلِكَ.

L14679 If they say: The Messenger of Allah—peace and blessings be upon him—prescribed an expiation for the hyena—which is a predatory beast with fangs—? We say: Yes, and it is permissible among predatory beasts, so it is game. Then what obliges you to analogize all prohibited predatory beasts to the hyena, which is permissible to eat, and why did you not analogize them to the wolf, which you consider forbidden? It has been authentically reported from Abu Hurairah that the lion is regarded as the ferocious dog, and Abu Hurairah is an authority in language, with no opposing opinion from the Companions known regarding this matter.

قَالَ أَبُو مُحَمَّد: أَمَّا هَذِهِ الْأَقْوَالُ فَظَاهِرَةُ الْفَسَادِ، وَلَمْ يَبْقَ الْكَلَامُ إلَّا فِي تَخْصِيصِ الْخَبَرِ الْمَذْكُورِ مِنْ [هَذِهِ] الْآيَةِ وَإِلْحَاقِ مَا عَدَا مَا ذَكَرَ فِي هَذَا الْخَبَرِ بِالتَّحْرِيمِ، أَوْ تَخْصِيصِ الْآيَةِ وَإِلْحَاقِ مَا عَدَا مَا ذَكَرَ فِيهَا بِالْخَبَرِ الْمَذْكُورِ، أَوْ أَنْ نَحْكُمَ بِمَا فِي الْآيَةِ وَبِمَا فِي الْخَبَرِ وَنَطْلُبَ حُكْمَ مَا لَمْ يُذْكَرْ فِيهِمَا مِنْ غَيْرِ هَذَيْنِ النَّصَّيْنِ.

L14680 Abū Muḥammad said: As for these statements, they are inherently flawed. The discussion now remains confined to either particularizing the aforementioned report from this verse and subsuming what is excluded from the report under prohibition, or particularizing the verse and subsuming what is excluded from it under the aforementioned report, or ruling by what is in the verse and what is in the report while seeking the ruling for what is not mentioned in either of them from sources other than these two texts.

قَالَ عَلِيٌّ: فَكَانَ الْوَجْهَانِ الْأَوَّلَانِ مُتَعَارِضَيْنِ لَيْسَ أَحَدُهُمَا أَوْلَى مِنْ الْآخَرِ، وَأَيْضًا: فَإِنَّ إلْحَاقَ مَا لَمْ يَذْكُرْ فِي الْآيَةِ بِمَا ذَكَرَ فِيهَا، أَوْ إلْحَاقَ مَا لَمْ يَذْكُرْ فِي الْخَبَرِ بِمَا ذَكَرَ فِيهِ قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، وَتَعَدٍّ لِحُدُودِ اللَّهِ: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] وَشَرَّعَ فِي الدِّينِ بِمَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى، وَهَذَا لَا يَحِلُّ، فَلَمْ يَبْقَ إلَّا

L14681 Ali said: The first two aspects were contradictory, neither being more valid than the other. Moreover, linking what is unmentioned in the verse to what is mentioned therein, or attaching what is omitted in the hadith to what is stated within it constitutes analogy – and all analogy is invalid. This transgresses Allah’s boundaries: *“And whoever transgresses Allah’s boundaries has wronged himself”* (65:1), while legislating in religion what Allah the Exalted has not permitted – this is impermissible. Thus, only the third aspect remained, which was the truth, for it entails compliance with Allah

الْوَجْهُ الثَّالِثُ، فَكَانَ هُوَ الْحَقَّ لِأَنَّهُ هُوَ الِائْتِمَارُ لِلَّهِ تَعَالَى وَلِرَسُولِهِ - عَلَيْهِ السَّلَامُ - وَتَرْكُ تَعَدِّ لِحُدُودِهِمَا.

the Exalted and His Messenger – peace be upon him – and refraining from transgressing their boundaries.[14]

فَنَظَرْنَا فِي ذَلِكَ -: فَوَجَدْنَا اللَّهَ تَعَالَى إنَّمَا حَرَّمَ فِي الْإِحْرَامِ وَالْحَرَمِ قَتْلَ الصَّيْدِ، وَجَعَلَ عَلَى مَنْ قَتَلَهُ وَهُوَ حَرَمٌ بِالْعَمْدِ الْجَزَاءَ، فَوَجَبَ الْقَوْلُ بِذَلِكَ.

L14682 So we examined this matter and found that Allah, the Exalted, prohibited specifically during the state of consecration (Iḥrām) and within the sacred precinct (Ḥaram) the killing of game, and He ordained expiation for one who deliberately kills it while in the sacred precinct (Ḥaram). Thus, it becomes obligatory to affirm this ruling.

وَوَجَدْنَا رَسُولَ اللَّهِ - عَلَيْهِ السَّلَامُ - قَدْ أَخْبَرَ بِأَنَّ الْمُحْرِمَ يَقْتُلُ الْخَمْسَ الْمَذْكُورَاتِ، وَأَنَّهُ لَا جُنَاحَ فِي قَتْلِهِنَّ فِي حَرَمٍ، أَوْ إحْرَامٍ فَوَجَبَ الْقَوْلُ بِذَلِكَ.

L14683 We have found the Messenger of Allah—peace be upon him—to have informed that a person in the state of ritual consecration may kill the five mentioned [creatures], and that there is no sin in killing them within the sacred precinct or while in the state of ritual consecration. Therefore, it is obligatory to affirm this view.

ثُمَّ نَظَرْنَا فِيمَا عَدَا الْخَمْسَ الْمَذْكُورَاتِ مِمَّا لَيْسَ صَيْدًا -: فَوَجَدْنَا الْكَلَامَ فِيهِمَا فِي مَوْضِعَيْنِ أَحَدُهُمَا: قَتْلُهَا، وَالثَّانِي: هَلْ فِي قَتْلِهَا جَزَاءٌ أَمْ لَا؟ فَنَظَرْنَا فِي إيجَابِ الْجَزَاءِ فِي ذَلِكَ -: فَوَجَدْنَاهُ بَاطِلًا لَا إشْكَالَ فِيهِ، لِأَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ دَلِيلٌ عَلَى إيجَابِ جَزَاءٍ فِي ذَلِكَ أَصْلًا وَلَا شَيْءٌ مِنْ النُّصُوصِ كُلِّهَا، فَكَانَ الْقَوْلُ بِذَلِكَ شَرْعًا فِي الدِّينِ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى، فَبَطَلَ جُمْلَةً وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L14684–14686 Then we considered what is besides the five mentioned [categories] that are not game. We found the discussion regarding them addressed in two contexts: the first concerns their killing, and the second whether killing them entails a compensation or not. Then we examined the obligation of... As for the recompense in that matter—we found it invalid with no ambiguity in it, because this report contains no evidence whatsoever indicating the obligation of any recompense, nor anything from all the texts. Thus, establishing this as religious law is something Allah the Exalted has not sanctioned. Therefore, it is invalid completely, and all praise is due to Allah, Lord of the worlds.

ثُمَّ نَظَرْنَا فِي قَتْلِهَا -: فَوَجَدْنَا مَنْ مَنَعَ مِنْهُ يَقُولُ: اقْتِصَارُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى جَوَابِ السَّائِلِ عَمَّا يَقْتُلُ الْمُحْرِمُ عَلَى هَذِهِ الْخَمْسِ دَلِيلٌ عَلَى أَنَّ مَا عَدَاهَا بِخِلَافِهَا؟ وَلَوْلَا ذَلِكَ لَكَانَ كَلَامُهُ - عَلَيْهِ السَّلَامُ - غَيْرَ مُسْتَوْعِبٍ لِجَوَابِ السَّائِلِ وَلَا مُبَيِّنٍ لَهُ حُكْمَ مَا سَأَلَ عَنْهُ، وَحَاشَا لَهُ مِنْ هَذَا، وَوَجَدْنَا مَنْ أَبَاحَ قَتْلَهَا يَقُولُ: اقْتِصَارُ اللَّهِ تَعَالَى عَلَى الْمَنْعِ مِنْ قَتْلِ الصَّيْدِ خَاصَّةً بِقَوْلِهِ تَعَالَى: {وَحُرِّمَ عَلَيْكُمْ صَيْدُ الْبَرِّ مَا دُمْتُمْ حُرُمًا} [المائدة: ٩٦] دَلِيلٌ عَلَى أَنَّ مَا عَدَا الصَّيْدَ بِخِلَافِ الصَّيْدِ فِي ذَلِكَ، وَلَوْلَا ذَلِكَ لَكَانَ

L14687 Then we examined the issue of killing them: We found those who prohibit it argue that the Prophet's (peace be upon him) restriction of his answer regarding what a pilgrim in ihram may kill to these five creatures emphatically permitted indicates differing rulings for other animals. If this were not so, his speech (peace be upon him) would have been non-comprehensive in answering the questioner or clarifying the ruling he inquired about—He is far above such inadequacy. Conversely, those who permit it argue that Allah's restriction in His verse "Forbidden to you is the game of the land while you are in a state of consecration" (Quran 5:96), specifically prohibiting game

[14] **Qur'an references (L14681):** Qur'an 65:1 (At-Talaq).

كَلَامُهُ تَعَالَى غَيْرَ مُسْتَوْعِبٍ لِمَا يُحَرَّمُ عَلَيْنَا وَلَا مُبَيِّنٍ لَنَا حُكْمَ مَا أَلْزَمَنَا إِيَّاهُ، وَحَاشَا لَهُ مِنْ ذَلِكَ فَكَانَ هَذَانِ الِاسْتِدْلَالَانِ مُتَقَابِلَيْنِ فَلَا بُدَّ مِنَ النَّظَرِ فِيهِمَا؟ فَأَوَّلُ مَا نَقُولُ: أَنَّ الْيَقِينَ مِنْ كُلِّ مُسْلِمٍ قَدْ صَحَّ بِأَنَّ اللَّهَ تَعَالَى قَدْ بَيَّنَ لَنَا مَا أَلْزَمَنَا، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ بَيَّنَ لَنَا مَا أَلْزَمَنَا اللَّهُ تَعَالَى، وَلَمْ يَجُزْ لَنَا تَعَدِّي مَا نَصَّهُ عَلَيْنَا رَبُّنَا تَعَالَى وَنَبِيُّنَا - عَلَيْهِ السَّلَامُ -، فَوَجَدْنَا الْآيَةَ فِيهَا حُكْمُ الصَّيْدِ وَلَيْسَ فِيهَا حُكْمُ غَيْرِهِ لَا بِتَحْرِيمٍ، وَلَا بِإِبَاحَةٍ، وَوَجَدْنَا الْخَبَرَ الَّذِي فِيهِ ذِكْرُ الْخَمْسِ الْمَحْضُوضِ عَلَى قَتْلِهَا فِي الْحَرَمِ وَالْإِحْرَامِ وَالْحِلِّ لَيْسَ فِيهِ حُكْمُ غَيْرِهَا لَا بِتَحْرِيمٍ، وَلَا بِإِبَاحَةٍ؛ فَلَمْ يَجُزْ أَنْ يُضَافَ إِلَى هَذِهِ الْآيَةِ وَلَا إِلَى هَذَا الْحَدِيثِ مَا لَيْسَ فِيهِمَا، فَوَجَبَ النَّظَرُ فِيمَا لَمْ يُذْكَرْ فِيهِمَا وَطَلَبُ حُكْمِهِ مِنْ غَيْرِهِمَا؛ فَوَجَدْنَا الْحَيَوَانَ قِسْمَيْنِ سِوَى مَا ذُكِرَ فِي الْآيَةِ وَالْخَبَرِ -: فَقِسْمٌ مُبَاحٌ قَتْلُهُ: كَجَمِيعِ سِبَاعِ الطَّيْرِ، وَذَوَاتِ الْأَرْبَعِ، وَالْخَنَازِيرِ، وَالْهَوَامِّ، وَالْقَمْلِ، وَالْقِرْدَانِ، وَالْحَيَّاتِ، وَالْوَزَغِ، وَغَيْرِ ذَلِكَ مِمَّا لَا يُخْتَلَفُ أَنَّهُ لَا حَرَجَ فِي قَتْلِهِ.

وَقِسْمٌ مُحَرَّمٌ قَتْلُهُ بِنُصُوصٍ وَارِدَةٍ فِيهِ: كَالْهُدْهُدِ، وَالصُّرَدِ، وَالضَّفَادِعِ، وَالنَّحْلِ، وَالنَّمْلِ؛ فَوَجَبَ أَنْ يُحْمَلَ كُلُّ ذَلِكَ عَلَى حُكْمِهِ كَمَا كَانَ، وَأَنْ لَا يُنْقَلَ بِظَنٍّ قَدْ عَارَضَهُ ظَنٌّ آخَرُ، وَبِغَيْرِ نَصٍّ جَلِيٍّ؛ فَهَذَا هُوَ الْحَقُّ الَّذِي لَا يَجُوزُ تَعَدِّيهِ.

فَإِنْ قِيلَ: فَإِنَّ مَا لَا يَحِلُّ أَكْلُهُ قَدْ يَصِيدُهُ الْمَرْءُ لِيُطْعِمَهُ جَوَارِحَهُ؟

قُلْنَا: هَذَا بَاطِلٌ لِأَنَّ اللَّهَ تَعَالَى قَدْ نَصَّ عَلَيْنَا حُكْمَ الصَّيْدِ بِقَوْلِهِ تَعَالَى: {لَيَبْلُوَنَّكُمُ اللَّهُ بِشَيْءٍ مِنَ الصَّيْدِ تَنَالُهُ أَيْدِيكُمْ وَرِمَاحُكُمْ لِيَعْلَمَ اللَّهُ مَنْ يَخَافُهُ بِالْغَيْبِ فَمَنِ اعْتَدَى بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ} [المائدة: ٩٤] .

animals, indicates differing rulings for non-game creatures. If this were not the case, His speech would have inadequately defined our obligations—He is exalted above such deficiency. These two opposing arguments necessitated resolution.

First, we affirm every Muslim's certainty that Allah has clarified our obligations, and that His Messenger (peace be upon him) has elucidated what Allah ordained. We may not overstep the explicit rulings established by our Lord and Prophet. The Quranic verse addresses game animals without mentioning others, neither prohibiting nor permitting them. Similarly, the ḥadīth specifying five creatures permitted for killing in the sacred precinct, during ihram, or outside the sacred precinct mentions no rulings for other animals. Thus, we cannot ascribe unstated rulings to these texts. We must instead examine unmentioned cases through other sources.

Animals other than those mentioned in the verse and ḥadīth fall into two categories: Those permissible to kill—including all predatory birds, wild beasts, swine, creeping pests, lice, monkeys, snakes, wall lizards, and others about which there is no disagreement that killing them entails no sin.[15]

L14688 A prohibited category is those whose killing is forbidden by explicit texts mentioning them, such as the hoopoe, shrikes, frogs, bees, and ants. Thus, all such rulings must be applied as they were originally ordained. They may not be altered based on conjecture opposed by other assumptions or in the absence of a clear textual basis. This is the correct ruling that must not be transgressed.

L14689 If it is said: "May a person hunt what is unlawful to eat in order to feed it to his predatory animals?"

L14690–14691 We said: This is null and void because Allah, the Exalted, has clearly specified for us the ruling on hunting through His statement: "Allah will surely test you with something from the game that your hands and weapons can reach,

[15] **Qur'an references (L14687):** Qur'an 5:96 (Al-Ma'idah).

so that Allah may know who fears Him unseen. Whoever transgresses after that will have a painful punishment." [Al-Ma'idah: 94][16]

L14692 And by His Exalted statement: {Allah will surely test you with something from the hunt that your hands and spears obtain, so that Allah may make evident who fears Him unseen. Whoever transgresses after that will have a painful punishment} [Al-Mā'idah: 94]. Thus, it is established that what is lawful for us in the state of permissibility (ḥalāl) becomes forbidden when we enter iḥrām, and that it is the hunting of what Allah Almighty has taught us its ruling - through adherence to which He distinguishes those who fear their Lord, Exalted is He, by obeying His commands regarding hunting and avoiding His prohibitions therein, from those who do not fear their Lord and thus transgress His commandments. This is not established with certainty except in what is hunted for consumption, and we have never known in any language or religious law that pursuing swine and lions, or killing them, is termed "hunting."[17]

L14693 If it is asked: What is the rationale for the Messenger of Allah—may Allah bless him and grant him peace—restricting [the ruling] to these five? We respond: Success is from Allah, the Exalted. The apparent meaning of the report indicates that killing them is emphatically urged—a recommended act—while the killing of others besides them remains permissible. This report does not preclude that creatures beyond these five—such as geckos, vipers, common snakes, scorpions, and venomous serpents—are likewise commanded to be killed.

L14694 It is possible that he—peace be upon him—had already clarified this matter here and thus refrained from repeating it when mentioning the five specified harmful creatures, as their mention had not preceded. Were it not for this report, we would not have known the injunction to kill crows, the prohibition against eating it (the crow), the mouse, or the scorpion. In it lies the greatest benefit—and all praise is due to Allah, the Exalted.

L14695 We have stated: Indeed, this entire argument has no bearing on any posi-

وَبِقَوْلِهِ تَعَالَى: {لَيَبْلُوَنَّكُمُ اللَّهُ بِشَيْءٍ مِنَ الصَّيْدِ تَنَالُهُ أَيْدِيكُمْ وَرِمَاحُكُمْ لِيَعْلَمَ اللَّهُ مَنْ يَخَافُهُ بِالْغَيْبِ فَمَنِ اعْتَدَى بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ} [المائدة: ٩٤] فَصَحَّ أَنَّ الْمُحَلَّلَ لَنَا إذَا حَلَلْنَا هُوَ الْمُحَرَّمُ عَلَيْنَا إذَا أَحْرَمْنَا، وَأَنَّهُ تَصَيُّدُ مَا عَلَّمَنَا اللَّهُ عَزَّ وَجَلَّ حُكْمَهُ الَّذِي بِالْتِزَامِهِ يَتَبَيَّنُ مَنْ يَخَافُ رَبَّهُ تَعَالَى فَيَلْتَزِمُ مَا أَمَرَ بِهِ فِي صَيْدِهِ وَيَجْتَنِبُ مَا نَهَى عَنْهُ فِيهِ مِمَّنْ لَا يَخَافُ رَبَّهُ فَيَعْتَدِي مَا أَمَرَهُ تَعَالَى، وَلَيْسَ هَذَا بِيَقِينٍ إلَّا فِيمَا تُصُيِّدَ لِلْأَكْلِ، وَمَا عَلِمْنَا قَطُّ فِي لُغَةٍ وَلَا شَرِيعَةٍ أَنَّ الْجَرْيَ خَلْفَ الْخَنَازِيرِ، وَالْأُسْدِ، وَقَتْلَهَا يُطْلَقُ عَلَيْهِ اسْمُ: صَيْدٍ.

فَإِنْ قِيلَ: فَمَا وَجْهُ اقْتِصَارِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى هَذِهِ الْخَمْسِ؟ قُلْنَا: وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: ظَاهِرُ الْخَبَرِ يَدُلُّ عَلَى أَنَّهَا مَحْضُوضٌ عَلَى قَتْلِهِنَّ مَنْدُوبٌ إلَيْهِ وَيَكُونُ غَيْرُهُنَّ مُبَاحًا قَتْلُهُ أَيْضًا وَلَيْسَ هَذَا الْخَبَرُ مِمَّا يَمْنَعُ أَنْ يَكُونَ غَيْرُ الْخَمْسِ مَأْمُورًا بِقَتْلِهِ أَيْضًا: كَالْوَزَغِ، وَالْأَفَاعِي، وَالْحَيَّاتِ، وَالرُّتَيْلَا وَالثَّعَابِينِ.

وَقَدْ يَكُونُ - عَلَيْهِ السَّلَامُ - تَقَدَّمَ بَيَانُهُ فِي هَذِهِ فَاكْتَفَى عَنْ إعَادَتِهَا عِنْدَ ذِكْرِهِ الْخَمْسَ الْفَوَاسِقَ، وَلَمْ يَكُنْ تَقَدَّمَ ذِكْرُهُ لَهُنَّ، فَلَوْلَا هَذَا الْخَبَرُ مَا عَلِمْنَا الْحَضَّ عَلَى قَتْلِ الْغُرَابِ وَلَا تَحْرِيمَ أَكْلِهِ، وَأَكْلِ الْفَأْرَةِ، وَالْعَقْرَبِ، فَلَهُ أَعْظَمُ الْفَائِدَةِ - وَلِلَّهِ تَعَالَى الْحَمْدُ.

[16] **Qur'an references (L14691):** Qur'an 5:94 (Al-Ma'idah).
[17] **Qur'an references (L14692):** Qur'an 5:94 (Al-Ma'idah).

tion of Abū Ḥanīfa or Mālik, for they added many animals beyond the five [specified] and prohibited the killing of numerous animals based on corrupt and baseless opinion. Thus, they neither relied on the verse nor the ḥadīth.

وَقَدْ قُلْنَا: إِنَّ هَذَا الْحَجَاجَ كُلَّهُ لَا مَدْخَلَ فِي شَيْءٍ لِأَبِي حَنِيفَةَ، وَلَا لِمَالِكٍ لِأَنَّهُمْ زَادُوا عَلَى الْخَمْسِ دَوَابَّ كَثِيرَةً، وَمَنَعُوا مِنْ قَتْلِ دَوَابَّ كَثِيرَةٍ بِالرَّأْيِ الْفَاسِدِ الْمُجَرَّدِ، فَلَا بِالْآيَةِ تَعَلَّقُوا وَلَا بِالْحَدِيثِ.

L14696 As for Al-Shāfiʿī: Indeed, he contradicted himself regarding the fox, for it is a fanged beast of prey - thus unlawful, as its permissibility has never been mentioned in any text whatsoever, nor is it considered game.

وَأَمَّا الشَّافِعِيُّ: فَإِنَّهُ تَنَاقَضَ فِي الثَّعْلَبِ، لِأَنَّهُ ذُو نَابٍ مِنْ السِّبَاعِ فَهُوَ حَرَامٌ لَمْ يَأْتِ تَحْلِيلُهُ فِي نَصٍّ قَطُّ وَلَيْسَ صَيْدًا.

L14697–14698 It is utterly astonishing that some companions of Abū Ḥanīfah's school cited the hadith about the five vermin while falsely claiming the ruling applies strictly to it without extending beyond it - yet they lied in that very claim, as we have previously clarified.

وَالْعَجَبُ كُلُّهُ مِمَّنْ احْتَجَّ مِنْ أَصْحَابِ أَبِي حَنِيفَةَ بِحَدِيثِ الْخَمْسِ الْفَوَاسِقِ وَأَوْهَمَ أَنَّهُ مُتَعَلِّقٌ بِهِ غَيْرُ مُتَعَدٍّ لَهُ، وَقَدْ كَذَبُوا فِي ذَلِكَ كَمَا ذَكَرْنَا.

L14699 Then they did not hesitate to add a thousand types beyond the six categories mentioned in the hadith on usury—types unmentioned neither in that report nor in any other: It has been narrated to us through Waki'ʿ's chain: Sufyān reported from Ibn Jurayj from ʿAṭāʾ, who said: "Kill among the wild predators both those that have attacked you and those that have not attacked you while you are in iḥrām." ʿAṭāʾ added: "There is no harm in a muḥrim killing a wolf, a wildcat, or a vulture."

ثُمَّ لَمْ يُبَالُوا بِأَنْ يَزِيدُوا عَلَى حَدِيثِ الْأَصْنَافِ السِّتَّةِ فِي الرِّبَا أَلْفَ صِنْفٍ لَا يُذْكَرُ، لَا فِي ذَلِكَ الْخَبَرِ، وَلَا فِي غَيْرِهِ: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: اُقْتُلْ مِنْ السِّبَاعِ مَا عَدَا عَلَيْك وَمَا لَمْ يَعْدُ عَلَيْك وَأَنْتَ مُحْرِمٌ - قَالَ: وَلَا بَأْسَ بِأَنْ يَقْتُلَ الْمُحْرِمُ: الذِّئْبَ، وَالسِّنَّوْرَ الْبَرِّيَّ، وَالنَّسْرَ.

L14700 Abu Muhammad said: As for the eagle, compensation applies to it because it is lawful game whose consumption is permitted, since no explicit prohibition has been stipulated. Through the chain of ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAmr ibn Dīnār, who said: "We have not heard that a fox requires compensation." From Maʿmar, from Ibn Abī Najīḥ: "The fox is a predatory animal," and he denied that compensation applies to it or that it qualifies as game.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا النَّسْرُ فَفِيهِ الْجَزَاءُ، لِأَنَّهُ صَيْدٌ حَلَالٌ أَكْلُهُ، إذْ لَمْ يُنَصَّ عَلَى تَحْرِيمِهِ -: وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: مَا سَمِعْنَا أَنَّ الثَّعْلَبَ يُفْدَى - وَعَنْ مَعْمَرٍ عَنْ ابْنِ أَبِي نَجِيحٍ: أَنَّ الثَّعْلَبَ سَبُعٌ، وَأَنْكَرَ أَنْ يَكُونَ فِيهِ جَزَاءٌ، أَوْ أَنْ يَكُونَ صَيْدًا.

L14701 From the chain of ʿAbd al-Raḥmān ibn Mahdī, he informed us: Sufyān al-Thawrī reported from Ibrāhīm ibn ʿAbd al-Aʿlā from Suwayd ibn Ghafalah, who said: "'Umar ibn al-Khaṭṭāb commanded us to kill the snake, the scorpion, the mouse, and the wasp while we were in the state of iḥrām."

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ إبْرَاهِيمَ بْنِ عَبْدِ الْأَعْلَى عَنْ سُوَيْدِ بْنِ غَفَلَةَ قَالَ: أَمَرَنَا عُمَرُ بْنُ الْخَطَّابِ بِقَتْلِ الْحَيَّةِ، وَالْعَقْرَبِ، وَالْفَأْرِ، وَالزُّنْبُورِ، وَنَحْنُ مُحْرِمُونَ.

L14702 Narrated via the chain of Ḥammād ibn Salamah from Ḥabīb al-Muʿallim from ʿAṭāʾ ibn Abī Rabāḥ, who said: “There is no liability for harm caused by a hornet.”

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَبِيبٍ الْمُعَلِّمِ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: لَيْسَ فِي الزُّنْبُورِ جَزَاءٌ.

L14703 And through the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Habib ibn Abi Amra, from Sa‘id ibn Jubayr, from Ibn Abbas, who said: Whoever kills a house gecko, for him is a charitable deed (sadaqah).

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَبِيبِ بْنِ أَبِي عَمْرَةَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: مَنْ قَتَلَ وَزَغًا فَلَهُ بِهِ صَدَقَةٌ.

L14704 And on the authority of Ibn Umar: Kill the gecko, for indeed it is a devil.

وَعَنِ ابْنِ عُمَرَ: اُقْتُلُوا الْوَزَغَ فَإِنَّهُ شَيْطَانٌ.

L14705 From the narration of Waki‘, from Hanzalah ibn Abī Sufyān al-Jumaḥī, from al-Qāsim ibn Muḥammad ibn Abī Bakr, from ʿĀʾishah, the Mother of the Believers, that she used to kill geckos in the House of Allah, the Exalted.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ حَنْظَلَةَ بْنِ أَبِي سُفْيَانَ الْجُمَحِيِّ عَنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا كَانَتْ تَقْتُلُ الْوَزَغَ فِي بَيْتِ اللَّهِ تَعَالَى.

L14706–14707 Through the chain of Wakī‘, Ibrāhīm ibn Nāfi‘ said: I asked ʿAṭāʾ, “Is the lizard to be killed in the Haram?” He replied, “There is no harm in that, and no opposing view from the Companions is known (may Allah be pleased with them).”

وَمِنْ طَرِيقِ وَكِيعٍ قَالَ إِبْرَاهِيمُ بْنُ نَافِعٍ: سَأَلْتُ عَطَاءً أَيُقْتَلُ الْوَزَغُ فِي الْحَرَمِ؟ قَالَ: لَا بَأْسَ، وَلَا مُخَالِفَ لَهُمْ يُعْرَفُ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L14708 On the authority of Hammad ibn Salamah, from Yahya ibn Sa’id al-Ansari, from Muhammad ibn Ibrahim al-Taymi, from Rabi’ah ibn Abdullah ibn al-Hudayr, who said: I saw Umar ibn al-Khattab cutting the fat of his camel while he was in ihram.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ التَّيْمِيِّ عَنْ رَبِيعَةَ بْنِ عَبْدِ اللَّهِ بْنِ الْهُدَيْرِ قَالَ: رَأَيْتُ عُمَرَ بْنَ الْخَطَّابِ يُقَرِّدُ بَعِيرَهُ وَهُوَ مُحْرِمٌ.

L14709 From Waki‘, who narrated to us: ‘Abd al-Ḥamīd ibn Ja‘far reported from ‘Īsā ibn ‘Alī al-Ansārī that ‘Alī ibn Abī Ṭālib granted a concession to a person in the state of *ihram* to cut his camel into strips for drying.

وَمِنْ طَرِيقِ وَكِيعٍ نَا عَبْدُ الْحَمِيدِ بْنُ جَعْفَرٍ عَنْ عِيسَى بْنِ عَلِيٍّ الْأَنْصَارِيِّ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ رَخَّصَ فِي الْمُحْرِمِ أَنْ يُقَرِّدَ بَعِيرَهُ.

L14710 And through the chain of Muḥammad ibn al-Muthannā, narrated from Muḥammad ibn Fuḍayl, narrated from al-ʿAlāʾ—who is ibn al-Musayyib—he said: ʿAṭāʾ was asked, “May a pilgrim in the state of iḥrām apply qarḍ ointment to his camel?” He replied, “Yes, for Ibn ʿUmar used to apply qarḍ ointment to his camel while he was in the state of iḥrām.”

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نَا مُحَمَّدُ بْنُ فُضَيْلٍ نَا الْعَلَاءُ هُوَ ابْنُ الْمُسَيَّبِ - قَالَ: سُئِلَ عَطَاءٌ أَيُقَرِّدُ الْمُحْرِمُ بَعِيرَهُ؟ قَالَ: نَعَمْ، قَدْ كَانَ ابْنُ عُمَرَ يُقَرِّدُ بَعِيرَهُ وَهُوَ مُحْرِمٌ.

L14711 From the chain of Ibn Abī Shaybah: he narrated to us from Rawḥ bin ʿUbādah, from Zakariyyā bin Isḥāq; Abū az-Zubayr narrated to us that he

heard Jābir bin ʿAbdullāh say: “There is no harm in a Muḥrim trimming the hair around the hump of his camel.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا رَوْحُ بْنُ عُبَادَةَ عَنْ زَكَرِيَّا بْنِ إِسْحَاقَ نَا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: لَا بَأْسَ أَنْ يُقَرِّدَ الْمُحْرِمُ بَعِيرَهُ.

L14712 And through the chain of Saʿīd ibn Manṣūr: Sufyān reported to us from Yaḥyā ibn Saʿīd al-Anṣārī from ʿIkrimah that Ibn ʿAbbās ordered him to cut a camel into strips [for drying] while he was in the state of iḥrām. ʿIkrimah disapproved, so Ibn ʿAbbās said to him, “Then rise and slaughter it properly,” and he slaughtered it. Ibn ʿAbbās then said to him, “Fie on you! How many ticks, mites, and grubs have you killed?” No disagreement is known from the Companions regarding this except a narration from Ibn ʿUmar - we have already presented his contradiction of it.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا سُفْيَانُ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ عِكْرِمَةَ أَنَّ ابْنَ عَبَّاسٍ أَمَرَهُ أَنْ يُقَرِّدَ بَعِيرًا وَهُوَ مُحْرِمٌ؟ فَكَرِهَ عِكْرِمَةُ، فَقَالَ لَهُ ابْنُ عَبَّاسٍ: قُمْ فَانْحَرْهُ فَنَحَرَهُ، فَقَالَ لَهُ ابْنُ عَبَّاسٍ: لَا أُمَّ لَك كَمْ قَتَلْت مِنْ قُرَادٍ وَحَلَمَةٍ وَحَمْنَانَةٍ؟ - لَا يُعْرَفُ لَهُمْ مِنْ الصَّحَابَةِ مُخَالِفٌ إلَّا رِوَايَةً عَنْ ابْنِ عُمَرَ قَدْ أَوْرَدْنَا عَنْهُ خِلَافَهَا.

L14713 From Sufyān ibn ʻUyaynah, from ʻAmr ibn Dīnār, from Jābir ibn Zayd, who said: A pilgrim in the state of *iḥrām* (muḥrim) may trim his camel’s hair and apply tar to it—there is no harm in that—and this is the opinion of Mujāhid. However, conflicting reports contrary to this have been narrated to us from some of the Followers.

وَعَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ جَابِرِ بْنِ زَيْدٍ قَالَ: يُقَرِّدُ الْمُحْرِمُ بَعِيرَهُ، وَيَطْلِيهِ بِالْقَطْرَانِ، لَا بَأْسَ بِذَلِكَ - وَهُوَ قَوْلُ مُجَاهِدٍ - وَقَدْ رُوِّينَا خِلَافَ ذَلِكَ عَنْ بَعْضِ التَّابِعِينَ.

L14714–14716 As for the ant: it is not permissible to kill it, nor the hoopoe, the shrike, the bee, or the frog—due to what has been reported to us through the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah. Ibn Abbas reported: The Messenger of Allah—peace and blessings be upon him—prohibited the killing of four animals: ants, bees, hoopoes, and shrike. And via the chain of Abu Dawud, Muhammad ibn Kathir narrated from Sufyan, from Ibn Abi Dhi’b, from Saʿid ibn Khalid, from Saʿid ibn al-Musayyib, from ʻAbd al-Rahman ibn ʻUthman: A physician asked the Messenger of Allah—peace and blessings be upon him—about using a frog in medicine. The Prophet—peace be upon him—forbade him from killing it.[18]

وَأَمَّا النَّمْلُ: فَلَا يَحِلُّ قَتْلُهُ، وَلَا قَتْلُ الْهُدْهُدِ، وَلَا الصُّرَدِ، وَلَا النَّحْلَةِ، وَلَا الضُّفْدَعِ -: لِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ قَتْلِ أَرْبَعٍ مِنْ الدَّوَابِّ: النَّمْلَةِ، وَالنَّحْلَةِ، وَالْهُدْهُدِ وَالصُّرَدِ» . وَمِنْ طَرِيقِ أَبِي دَاوُد نَا مُحَمَّدُ بْنُ كَثِيرٍ نَا سُفْيَانُ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ سَعِيدِ بْنِ خَالِدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عُثْمَانَ: «أَنَّ طَبِيبًا سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ضُفْدَعٍ يَجْعَلُهَا فِي دَوَاءٍ؟ فَنَهَاهُ النَّبِيُّ - عَلَيْهِ السَّلَامُ - عَنْ قَتْلِهَا» .

L14717 Abū Muḥammad said: It is not permissible to kill any of these creatures—neither for one in a state of non-Iḥrām (muḥill) nor for one in Iḥrām

[18] **Hadith references (L14714):** Mishkat al-Masabih 4145.

(muḥrim). If someone intentionally kills any of them while in the state of Iḥrām, knowingly violating the prohibition, he is a sinful transgressor and disobedient to Allah the Almighty, and no expiation is required of him, because they are not game.

قَالَ أَبُو مُحَمَّد: فَلَا يَحِلُّ قَتْلُ شَيْءٍ مِنْ هَذِهِ لَا لِمُحِلٍّ، وَلَا لِمُحْرِمٍ، فَإِنْ قَتَلَ شَيْئًا مِنْهَا عَامِدًا وَهُوَ مُحْرِمٌ عَالِمًا بِالنَّهْيِ: فَهُوَ فَاسِقٌ عَاصٍ لِلَّهِ عَزَّ وَجَلَّ، وَلَا جَزَاءَ عَلَيْهِ لِأَنَّهَا لَيْسَتْ صَيْدًا.

L14718 It was narrated to us through Hammad ibn Salamah from Abu al-Muhazzim, who heard Ibn al-Zubayr being asked by a muhrim about killing ants. Ibn al-Zubayr said to him: “There is no sin upon you.”

رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي الْمُهَزِّمِ: سَمِعَ ابْنَ الزُّبَيْرِ وَسَأَلَهُ مُحْرِمٌ عَنْ قَتْلِهِ نَمْلًا؟ فَقَالَ لَهُ ابْنُ الزُّبَيْرِ: لَيْسَ عَلَيْك شَيْءٌ.

L14719 As for mosquitoes and flies: It has been narrated to us from Saʿīd ibn Jubayr that he said: “I would see no issue if I killed twenty flies while in iḥrām,” and that there is no harm in one in iḥrām killing pests—here referring to mosquitoes.

وَأَمَّا الْبَعُوضُ، وَالذُّبَابُ: فَرُوِّينَا عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: مَا أُبَالِي لَوْ قَتَلْت عِشْرِينَ ذُبَابَةً وَأَنَا مُحْرِمٌ، وَأَنَّهُ لَا بَأْسَ بِقَتْلِ الْبَقِّ لِلْمُحْرِمِ - يَعْنِي الْبَعُوضَ.

L14720 From ʻAṭāʼ: There is no harm for a pilgrim in sacred state to kill flies. From Mujāhid: There is no blame for a pilgrim in sacred state who kills Egyptian vultures, eagles, falcons, and kites.

وَعَنْ عَطَاءٍ: لَا بَأْسَ بِقَتْلِ الذُّبَابِ لِلْمُحْرِمِ. وَعَنْ مُجَاهِدٍ لَا شَيْءَ فِي الرَّخَمِ وَالْعُقَابِ، وَالصَّقْرِ، وَالْحِدَأِ، يُصِيبُهَا الْمُحْرِمُ.

L14721 As for lice: We have been narrated via the chain of ʿAbd al-Razzāq from Ibn al-Taymī from his father—who is al-Muʿtamir ibn Sulaymān—from Abī Mijlaz, who said, “I witnessed a woman asking Ibn ʿUmar about a louse she killed while in the state of iḥrām.” He replied, “We do not regard the louse as wild game,” and he mentioned the rest of the report.

وَأَمَّا الْقَمْلُ: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ التَّيْمِيِّ عَنْ أَبِيهِ - هُوَ الْمُعْتَمِرُ بْنُ سُلَيْمَانَ - عَنْ أَبِي مِجْلَزٍ قَالَ: شَهِدْت امْرَأَةً سَأَلَتْ ابْنَ عُمَرَ عَنْ قَمْلَةٍ قَتَلَتْهَا وَهِيَ مُحْرِمَةٌ؟ فَقَالَ: مَا نَعْلَمُ الْقَمْلَةَ مِنْ الصَّيْدِ، وَذَكَرَ بَاقِيَ الْخَبَرِ.

L14722 From the chain of Wakiʿ, who narrated to us from ʿĪsā ibn Ḥafṣ, from his father, who said: Ibn ʿUmar saw me lightly tapping my head while I was in _iḥrām_. He said, “Like this, scrubbing vigorously.”

وَمِنْ طَرِيقِ وَكِيعٍ نَا عِيسَى بْنُ حَفْصٍ عَنْ أَبِيهِ قَالَ: رَآنِي ابْنُ عُمَرَ وَأَنَا أَنْقُرُ رَأْسِي وَأَنَا مُحْرِمٌ فَقَالَ: هَكَذَا حَكًّا شَدِيدًا.

L14723–14725 From the chain of Wakiʿ, from ʿUyaynah ibn ʿAbd al-Raḥmān, from his father, who said: I was with Ibn ʿAbbās, and he [the narrator] asked him... A man asked, “May I scratch my head while in a state of *iḥrām*?” Ibn ʿAbbās vigorously scratched his head and said, “Far from you! What is a louse that it should prevent me from scratching my head? I intended to kill it, and you are only prohibited from hunting game.” The man then asked, “Have you considered if I killed a louse?”

وَمِنْ طَرِيقِ وَكِيعٍ نَا عُيَيْنَةَ بْنُ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ قَالَ: كُنْت عِنْدَ ابْنِ عَبَّاسٍ فَسَأَلَهُ رَجُلٌ أَحُكُّ رَأْسِي وَأَنَا مُحْرِمٌ؟ فَحَكَّ ابْنُ عَبَّاسٍ رَأْسَهُ حَكًّا شَدِيدًا، فَقَالَ الرَّجُلُ: أَفَرَأَيْت إنْ قَتَلْت قَمْلَةً، قَالَ: بَعُدْت مَا الْقَمْلَةُ مَانِعَتِي أَنْ أَحُكَّ رَأْسِي وَإِيَّاهَا أَرَدْت، وَمَا نُهِيتُمْ إلَّا عَنْ الصَّيْدِ.

L14726 From Ibn Jurayj from ‘Ata’: All that is not eaten - if you kill it while in a state of *ihram*, there is no financial penalty upon you for it, though it is forbidden to kill it unless it is an enemy or harms you.

وَعَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ كُلُّ مَا لَا يُؤْكَلُ فَإِنْ قَتَلْته وَأَنْت مُحْرِمٌ فَلَا غُرْمَ عَلَيْك فِيهِ، مَعَ أَنَّهُ يُنْهَى عَنْ قَتْلِهِ إلَّا أَنْ يَكُونَ عَدُوًّا أَوْ يُؤْذِيك.

L14727 From Hammad ibn Salama, from Habib al-Mu‘allim, from ‘Ata’ ibn Abi Rabah: He saw no harm in a *muḥrim* killing a louse.

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَبِيبٍ الْمُعَلِّمِ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِقَتْلِ الْمُحْرِمِ الْقَمْلَةَ.

L14728 From the chain of Sa‘īd ibn Manṣūr: From Hushaym: I heard Abū Bishr, and he was asked about a louse killed by a person in *iḥrām*. He said: Sa‘īd ibn Jubayr stated, “The expiation is the equivalent of what he killed of livestock” (Quran 5:95), for there is no expiation for a louse.[19]

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ سَمِعْت أَبَا بِشْرٍ وَقَدْ سَأَلْته عَنْ الْقَمْلَةِ يَقْتُلُهَا الْمُحْرِمُ، فَقَالَ: قَالَ سَعِيدُ بْنُ جُبَيْرٍ: {فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ} [المائدة: ٩٥] لَيْسَ لِلْقَمْلَةِ جَزَاءٌ.

L14729 It was narrated to us through the narration of Sufyan al-Thawri from Jabir from Ata’ from Aisha, the Mother of the Believers, who said: “The Muhrim should kill all creeping harmful creatures except the louse, for it is part of him.” Abu Muhammad said: He did not make any exception regarding it.

وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ عَنْ عَطَاءٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: يَقْتُلُ الْمُحْرِمُ الْهَوَامَّ كُلَّهَا إلَّا الْقَمْلَةَ فَإِنَّهَا مِنْهُ؟ قَالَ أَبُو مُحَمَّدٍ: لَمْ يَجْعَلْ فِيهَا شَيْئًا.

L14730 Abu Hanifah said: If one kills a louse, he must provide something [as food]; and he permitted the muḥrim to wash his clothes and wash his head—and this is a contradiction.

وَقَالَ أَبُو حَنِيفَةَ: إنْ قَتَلَ قَمْلَةً أَطْعَمَ شَيْئًا، وَأَبَاحَ لِلْمُحْرِمِ غَسْلَ ثِيَابِهِ، وَغَسْلَ رَأْسِهِ - وَهَذَا تَنَاقُضٌ.

L14731 Malik was asked about mosquitoes and fleas—is a person in the state of ihram required to offer an expiation for killing them? He replied, “I disapprove of that”—this being the narration transmitted by Ibn Wahb from him. Ibn al-Qasim reported that he was asked about a person in ihram who reflexively killed a hornet that stung him, without conscious intent. He responded, “He must give some food in expiation,” applying the same ruling to one who kills lice.

وَسُئِلَ مَالِكٌ عَنْ الْبَعُوضِ، وَالْبَرَاغِيثِ، يَقْتُلُهَا الْمُحْرِمُ أَعَلَيْهِ كَفَّارَةٌ؟ فَقَالَ: إنِّي لَا أُحِبُّ ذَلِكَ - هَذِهِ رِوَايَةُ ابْنِ وَهْبٍ عَنْهُ، وَرَوَى عَنْهُ ابْنُ الْقَاسِمِ أَنَّهُ قَالَ فِي مُحْرِمٍ لَدَغَتْهُ دَبْرَةٌ فَقَتَلَهَا وَهُوَ لَا يَشْعُرُ؟ فَقَالَ: يُطْعِمُ شَيْئًا، وَكَذَلِكَ مَنْ قَتَلَ قَمْلَةً.

L14732 Al-Shafi‘i said: If one removes a louse from his head and kills it, he must provide expiation by giving a portion of food.

وَقَالَ الشَّافِعِيُّ: إنْ أَخَذَهَا مِنْ رَأْسِهِ فَقَتَلَهَا فَلْيُطْعِمْ لُقْمَةً.

L14733–14735 Ali said: “If they argue by citing what ’the Messenger of Allah—peace and blessings be upon him—commanded Ka‘b ibn ‘Ujrah when he saw lice falling

[19] **Qur’an references (L14728):** Qur’an 5:95 (Al-Ma’idah).

upon his face, so he ordered him to shave his head and offer a fidya?' We replied: Yes, this is correct, but we do not uphold shaving the head as you do; we are only concerned with killing lice, and we did not..." He - peace be upon him - said: "This expiation applies solely to killing lice. Whoever attributed this to him has lied against him. If the louse is not considered wild game, it requires no expiation. If it were considered wild game, its equivalent would be neither a morsel nor a handful of food - its equivalent would be a single sesame seed. We do not know on what basis they have relied for this ruling. And success comes only from Allah, the Exalted."

قَالَ عَلِيٌّ: فَإِنْ احْتَجُّوا بِمَا «أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَعْبَ بْنَ عُجْرَةَ إذْ رَآهُ يَتَنَاثَرُ الْقَمْلُ عَلَى وَجْهِهِ فَأَمَرَهُ بِحَلْقِ رَأْسِهِ، وَأَنْ يَفْتَدِيَ؟» قُلْنَا: نَعَمْ هَذَا حَقٌّ وَلَسْنَا مَعَكُمْ فِي حَلْقِ الرَّأْسِ إنَّمَا نَحْنُ فِي قَتْلِ الْقَمْلِ، وَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ -: إنَّ هَذِهِ الْفِدْيَةَ إنَّمَا هِيَ لِقَتْلِ الْقَمْلِ؛ وَمَنْ قَوَّلَهُ هَذَا فَقَدْ كَذَبَ عَلَيْهِ، وَلَئِنْ كَانَتْ الْقَمْلَةُ لَيْسَتْ مِنْ الصَّيْدِ فَمَا لَهَا جَزَاءٌ، وَلَئِنْ كَانَتْ مِنْ الصَّيْدِ فَمَا مِثْلُهَا لُقْمَةٌ، وَلَا قَبْضَةَ طَعَامٍ، وَإِنَّمَا مِثْلُهَا حَبَّةَ سِمْسِمَةٍ. فَمَا نَدْرِي بِمَاذَا تَعَلَّقُوا؟ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The ruling on a muḥrim entering a bathhouse.

[مَسْأَلَةُ دُخُولُ الْحَمَّامِ لِلْمُحْرِمِ]

L14736

L14737 891 - Legal Issue:

٨٩١ - مَسْأَلَةٌ:

L14738 It is permissible for a muḥrim to enter bathhouses, scrub themselves, wash their head with clay or khitmī (marshmallow plant), apply kohl, use a siwak, look in a mirror, smell basil, wash their clothes, trim their nails and mustache, pluck underarm hair, and enter a tandoor (clay oven). There is no sin in any of this, nor any obligation upon them regarding it, because neither Quranic verses nor Prophetic traditions prohibit what we have mentioned. Whoever claims consensus on any of these matters falsely attributes it to the entire Ummah—asserting what they have no knowledge of. As for those who impose fines for such acts: have they not imposed religious rulings in matters of faith that Allah the Exalted has not permitted? The early scholars differed regarding this. It is narrated through the narration chain of Ayyūb al-Sikhtiyānī from Ikrimah that Ibn ʿAbbās entered the bathhouse of al-Juḥfah while in iḥram and said: "Allah the Exalted does not act upon the filth of the muḥrim." He also stated: "A muḥrim may enter bathhouses, extract a tooth, discard a broken nail—remove harm from yourselves, for Allah does not act upon your harm." He saw no issue with a muḥrim smelling basil, trimming a broken nail, or extracting a painful tooth.

وَجَائِزٌ لِلْمُحْرِمِ دُخُولُ الْحَمَّامِ، وَالتَّدَلُّكُ، وَغَسْلُ رَأْسِهِ بِالطِّينِ، وَالْخِطْمِيِّ، وَالِاكْتِحَالُ، وَالتَّسْوِيكُ، وَالنَّظَرُ فِي الْمِرْآةِ، وَشَمُّ الرَّيْحَانِ، وَغَسْلُ ثِيَابِهِ، وَقَصُّ أَظْفَارِهِ وَشَارِبِهِ، وَنَتْفُ إبْطِهِ، وَالتَّنَوُّرُ، وَلَا حَرَجَ فِي شَيْءٍ مِنْ ذَلِكَ، وَلَا شَيْءَ عَلَيْهِ فِيهِ؛ لِأَنَّهُ لَمْ يَأْتِ فِي مَنْعِهِ مِنْ كُلِّ مَا ذَكَرْنَا قُرْآنٌ، وَلَا سُنَّةٌ، وَمُدَّعِي الْإِجْمَاعِ فِي شَيْءٍ مِنْ ذَلِكَ: كَاذِبٌ عَلَى جَمِيعِ الْأُمَّةِ، قَائِلٌ مَا لَا عِلْمَ بِهِ - وَمَنْ أَوْجَبَ فِي ذَلِكَ غَرَامَةً فَقَدْ أَوْجَبَ شَرْعًا فِي الدِّينِ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى؟ وَقَدْ اخْتَلَفَ السَّلَفُ فِي هَذَا -: رُوِّينَا مِنْ طَرِيقِ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ أَنَّ ابْنَ عَبَّاسٍ دَخَلَ حَمَّامَ الْجُحْفَةِ وَهُوَ مُحْرِمٌ وَقَالَ: إنَّ اللَّهَ تَعَالَى لَا يَصْنَعُ بِوَسَخِ الْمُحْرِمِ شَيْئًا. وَأَنَّهُ قَالَ: الْمُحْرِمُ يَدْخُلُ الْحَمَّامَ، وَيَنْزِعُ ضِرْسَهُ، إنْ انْكَسَرَ ظُفْرُهُ طَرَحَهُ، أَمِيطُوا عَنْكُمْ الْأَذَى إنَّ اللَّهَ لَا يَصْنَعُ بِأَذَاكُمْ شَيْئًا. وَأَنَّهُ كَانَ لَا يَرَى بِشَمِّ الرَّيْحَانِ لِلْمُحْرِمِ بَأْسًا، وَأَنْ يَقْطَعَ ظُفْرَهُ إذَا انْكَسَرَ، وَيَقْلَعَ ضِرْسَهُ إذَا آذَاهُ.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: رَأَى عُمَرُ بْنُ الْخَطَّابِ بَعْضَ بَنِيهِ - أَحْسَبُهُ قَالَ عَاصِمُ بْنُ عُمَرَ - وَعَبْدُ الرَّحْمَنِ بْنُ زَيْدِ بْنِ الْخَطَّابِ، وَهُوَ جَالِسٌ عَلَى ضِفَّةِ الْبَحْرِ، وَهُمَا يَتَمَاقَلَانِ وَهُمْ مُحْرِمُونَ: يُغَيِّبُ هَذَا رَأْسَ هَذَا وَيُغَيِّبُ هَذَا رَأْسَ هَذَا: فَلَمْ يَعِبْ عَلَيْهِمَا.

L14739 Through the chain of Ma'mar from al-Zuhri from Salim ibn Abdullah ibn Umar, he said: Umar ibn al-Khattab saw some of his sons - I think he said Asim ibn Umar - and Abd al-Rahman ibn Zayd ibn al-Khattab, while he was sitting on the seashore. The two were quarreling in the state of *ihram*: each would submerge the other's head, and the other would submerge the former's head, yet he did not criticize them.

وَعَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: كُنْت أُطَاوِلُ عُمَرَ بْنَ الْخَطَّابِ النَّفَسَ وَنَحْنُ مُحْرِمَانِ فِي الْحِيَاضِ.

L14740 From Ikrimah, from Ibn Abbas, who said: "I would prolong my breath toward Umar ibn al-Khattab while we were in the state of ihram at the water reservoirs."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ نَا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ - عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَقَدْ رَأَيْتنِي أُمَاقِلُ عُمَرَ بْنَ الْخَطَّابِ بِالْجُحْفَةِ وَنَحْنُ مُحْرِمَانِ - الْمُمَاقَلَةُ: التَّغْطِيسُ فِي الْمَاءِ.

L14741–14743 From the transmission via Hammad ibn Zayd: Ayyub, that is, al-Sakhtiyani, narrated to us from Ikrimah, from Ibn Abbas, who said: "You have certainly seen me guiding Umar ibn al-Khattab at al-Juhfah while we were both in the state of ihram." al-Mumāqalah: Immersing [goods, e.g., grains] in water [to verify quantity/quality in commercial transactions].

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ كَانَ هُوَ وَابْنُ عُمَرَ بِإِخَاذٍ بِالْجُحْفَةِ يَتَرَامَسَانِ وَهُمَا مُحْرِمَانِ -: قَالَ أَبُو مُحَمَّدٍ: الْإِخَاذُ الْغَدِيرُ - وَالتَّرَامُسُ التَّغَاطُسُ.

L14744 Reported through the chain of Ḥammād ibn Salamah from Khālid al-Ḥadhdhā' from 'Ikrimah from Ibn 'Abbās: that he and Ibn 'Umar were at a seasonal pool (al-ikhādh, ghadeer) in al-Juḥfah repeatedly immersing their heads while in the state of iḥrām – Abū Muḥammad said: "Al-ikhādh" means a rainwater pool, and "al-tarāmus" means complete immersion.

وَرَأَى مَالِكٌ عَلَى مَنْ غَيَّبَ رَأْسَهُ فِي الْمَاءِ: الْفِدْيَةَ، وَخَالَفَ كُلَّ مَنْ ذَكَرْنَا، وَاخْتَلَفَ عَنْ ابْنِ عَبَّاسٍ، وَالْمِسْوَرِ بْنِ مَخْرَمَةَ فِي غَسْلِ الْمُحْرِمِ رَأْسَهُ فَاحْتَكَمَا إلَى أَبِي أَيُّوبَ الْأَنْصَارِيِّ، وَوَجَّهَا إلَيْهِ عَبْدَ اللَّهِ بْنَ حُنَيْنٍ فَوَجَدَهُ يَغْسِلُ رَأْسَهُ وَهُوَ مُحْرِمٌ، وَأَخْبَرَهُ: أَنَّهُ «رَأَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَغْسِلُ رَأْسَهُ وَهُوَ مُحْرِمٌ» وَقَدْ ذَكَرْنَا «أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَائِشَةَ أُمَّ الْمُؤْمِنِينَ بِأَنْ تَنْقُضَ رَأْسَهَا وَتَمْتَشِطَ وَهِيَ مُحْرِمَةٌ» .

L14745 Malik maintained that a compensatory offering (fidyah) is incumbent upon one who submerges his head in water, opposing all the scholars we previously mentioned. Differing opinions were reported from Ibn 'Abbās and al-Miswar ibn Makhramah concerning a person in the state of consecration (iḥrām) washing his head. They sought arbitration from Abū Ayyūb al-Anṣārī, dispatching 'Abdullāh ibn Ḥunayn to him. 'Abdullāh found Abū Ayyūb washing his head while in iḥrām, and Abū Ayyūb informed him: "I saw the Messenger of God—peace and blessings of God be upon him—wash his head while in the state of consecration." We have already mentioned "the command of the Messenger of God—peace and blessings of God be upon him—to 'Ā'ishah, the Mother of the Believers, to loosen her hair and comb it while she was in iḥrām."

L14746 Via the chain of Waki‘, al-‘Umarī reported to us from Nāfi‘ from Ibn ‘Umar, who said: “There is no harm in a *muḥrim* washing his clothes.”

وَمِنْ طَرِيقِ وَكِيعٍ نَا الْعُمَرِيُّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: لَا بَأْسَ أَنْ يَغْسِلَ الْمُحْرِمُ ثِيَابَهُ.

L14747 From the path of Waki‘: Sufyan al-Thawri reported from Mansur, from Salim, from Abu al-Ja‘d, who said: Ibn ‘Umar was asked about that—meaning a person in ihram washing their clothes—and he said: “There is no harm in it. Indeed, Allah is not concerned with your dirt.” From the path of ‘Amr ibn Dinar, from ‘Ikrimah, who said: “There is no harm if a woman in ihram combs another woman in ihram and kills lice on someone else.”

وَمِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورٍ عَنْ سَالِمٍ عَنْ أَبِي الْجَعْدِ قَالَ: سُئِلَ ابْنُ عُمَرَ عَنْ ذَلِكَ؟ - يَعْنِي عَنْ غَسْلِ الْمُحْرِمِ ثِيَابَهُ - فَقَالَ: لَا بَأْسَ بِهِ إِنَّ اللَّهَ لَا يَصْنَعُ بِدَرَنِك شَيْئًا؟ وَمِنْ طَرِيقِ عَمْرِو بْنِ دِينَارٍ عَنْ عِكْرِمَةَ قَالَ: لَا بَأْسَ أَنْ تُمَشِّطَ الْمَرْأَةُ الْحَرَامُ الْمَرْأَةَ الْحَرَامَ وَتَقْتُلَ قَمْلَ غَيْرِهَا.

L14748 On the authority of ‘Aṭā’ and Ibrāhīm al-Nakha‘ī, who both said: There is no harm in a *muḥrim* entering a bathhouse. This is also the view of Abū Ḥanīfah, Sufyān al-Thawrī, al-Shāfi‘ī, and Abū Sulaymān.

وَعَنْ عَطَاءٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ قَالَا: لَا بَأْسَ بِدُخُولِ الْمُحْرِمِ الْحَمَّامَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L14749 If they mention the statement of Allah Almighty: {Then let them complete their remaining rites} [Al-Hajj: 29], we say: It has been narrated to us from Ibn Umar that he said: “The remaining rites pertain to their Hajj obligations.” The Messenger of Allah (peace and blessings be upon him) informed: “Among the fitrah are trimming the nails, plucking the armpit hair, shaving the pubic hair, and trimming the mustache.” The fitrah is a Sunnah that should not be exceeded, and he (peace be upon him) did not distinguish between those in ihram and others: {And your Lord is never forgetful} [Maryam: 64].[20]

فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {ثُمَّ لْيَقْضُوا تَفَثَهُمْ} [الحج: ٢٩] ؟ قُلْنَا: رُوِّينَا عَنْ ابْنِ عُمَرَ قَالَ: التَّفَثُ مَا عَلَيْهِمْ مِنْ الْحَجِّ، وَقَدْ أَخْبَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مِنْ الْفِطْرَةِ: قَصُّ الْأَظْفَارِ، وَنَتْفُ الْإِبْطِ، وَحَلْقُ الْعَانَةِ وَقَصُّ الشَّارِبِ» ، وَالْفِطْرَةُ سُنَّةٌ لَا يَجُوزُ تَعَدِّيهَا، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - مُحْرِمًا مِنْ غَيْرِهِ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L14750 It is utterly astonishing that those who impose a kaffārah or penalty upon one who has done what he was commanded in that matter, or what was permitted for him without prohibition, yet assign neither ransom nor penalty upon the pilgrim in consecration for his transgressions, sins, and deliberate commission of major sins—how can they deem that pilgrimage complete and accepted? Allah suffices us, and He is the best Disposer of affairs.

وَالْعَجَبُ كُلُّهُ مِمَّنْ يَجْعَلُ فِيمَنْ فَعَلَ مَا أُمِرَ بِهِ مِنْ ذَلِكَ، أَوْ أُبِيحَ لَهُ وَلَمْ يُنْهَ عَنْهُ: كَفَّارَةً أَوْ غَرَامَةً، ثُمَّ لَا يَجْعَلُ عَلَى الْمُحْرِمِ فِي فُسُوقِهِ وَمَعَاصِيهِ، وَارْتِكَابِهِ الْكَبَائِرَ شَيْئًا، لَا فِدْيَةً، وَلَا غَرَامَةً، بَلْ يَرَى حَجَّهُ ذَلِكَ تَامًّا مَبْرُورًا؟ وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

L14751–14752 And via the chain of Abd al-Razzaq from Ma’mar from Ayyub al-Sakhtiyani

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ يَنْظُرُ فِي الْمِرْآةِ وَهُوَ مُحْرِمٌ.

[20] **Qur’an references (L14749):** Qur’an 22:29 (Al-Hajj); Qur’an 19:64 (Maryam).

from Nafi’ from Ibn Umar: that he used to look into the mirror while he was in the state of ihram.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا بَأْسَ أَنْ يَنْظُرَ الْمُحْرِمُ فِي الْمِرْآةِ - وَلَا يُعْرَفُ لَهُمَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L14753 From the chain of ʿAbd al-Razzāq, from Hishām ibn Ḥassān, from ʿIkrimah, from Ibn ʿAbbās, who said: “There is no harm in a muḥrim looking in the mirror” - and no opposing view from the Companions concerning this ruling is known (may Allah be pleased with them).

وَهُوَ قَوْلُ الْحَسَنِ، وَابْنِ سِيرِينَ، وَعَطَاءٍ، وَطَاوُسٍ، وَعِكْرِمَةَ.

L14754 And it is the opinion of Al-Ḥasan, Ibn Sīrīn, ʿAṭāʾ, Ṭāwus, and ʿIkrimah.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ - وَقَالَ مَالِكٌ: يُكْرَهُ ذَلِكَ - وَقَدْ رُوِيَتْ كَرَاهَةُ ذَلِكَ عَنْ ابْنِ عَبَّاسٍ، وَالْإِبَاحَةُ عَنْهُ أَصَحُّ.

L14755 This is the view of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān. - Mālik said: That is disliked - and the dislike of that has been narrated from Ibn ʿAbbās; the permissibility [attributed to him] is more authentic.

وَقَالَ أَبُو حَنِيفَةَ: إنْ قَلَّمَ الْمُحْرِمُ أَظْفَارَ أَرْبَعِ أَصَابِعَ، أَرْبَعَ أَصَابِعَ مِنْ كُلِّ يَدٍ مِنْ يَدَيْهِ، وَمِنْ كُلِّ رِجْلٍ مِنْ رِجْلَيْهِ: فَعَلَيْهِ إطْعَامٌ مَا شَاءَ، فَإِنْ قَلَّمَ أَظْفَارَ كَفٍّ وَاحِدَةٍ فَقَطْ، أَوْ رِجْلٍ وَاحِدَةٍ فَقَطْ: فَعَلَيْهِ دَمٌ. وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: إنْ قَلَّمَ خَمْسَةَ أَظْفَارٍ مِنْ يَدٍ وَاحِدَةٍ، أَوْ مِنْ رِجْلٍ وَاحِدَةٍ، أَوْ مِنْ يَدَيْنِ، أَوْ مِنْ رِجْلَيْنِ، أَوْ مِنْ يَدَيْهِ، وَرِجْلَيْهِ مَعًا: فَعَلَيْهِ دَمٌ، فَإِنْ قَلَّمَ أَرْبَعَةَ أَظْفَارٍ كَذَلِكَ: فَعَلَيْهِ إطْعَامٌ.

L14756 Abu Hanifah said: If a person in the state of consecration (ihram) trims the nails of four fingers from each of his two hands and four toes from each of his two feet, he must feed as he wills. If he trims the nails of only one hand or only one foot, he must offer a sacrifice. Muhammad ibn al-Hasan said: If he trims five nails from one hand, one foot, both hands, both feet, or both hands and feet together, he must offer a sacrifice. If he trims four nails in the same manner, he must feed as he wills.

وَقَالَ أَبُو يُوسُفَ: كَقَوْلِ أَبِي حَنِيفَةَ، إلَّا أَنَّهُ قَالَ: يُطْعِمُ عَنْ كُلِّ ظُفْرٍ نِصْفَ صَاعٍ.

L14757 Abu Yusuf held the same opinion as Abu Hanifah, except he stated: one must give half a *ṣāʿ* for each nail.

وَقَالَ زُفَرُ، وَالْحَسَنُ بْنُ زِيَادٍ: إنْ قَلَّمَ ثَلَاثَةَ أَظْفَارٍ مِنْ يَدٍ وَاحِدَةٍ، أَوْ مِنْ رِجْلٍ وَاحِدَةٍ، أَوْ مِنْ يَدَيْنِ وَرِجْلٍ، أَوْ مِنْ رِجْلَيْنِ وَيَدٍ: فَعَلَيْهِ دَمٌ - فَإِنْ قَلَّمَ أَقَلَّ فَعَلَيْهِ أَنْ يُطْعِمَ عَنْ كُلِّ أُصْبُعٍ نِصْفَ صَاعٍ.

L14758 Zufar and al-Ḥasan ibn Ziyād said: If one trims three nails in total from one hand; one foot; two hands and one foot; or two feet and one hand, he must offer a sacrificial animal (dam). If he trims fewer than this, he must give half a ṣāʿ of food for each finger/toe.

وَقَالَ الطَّحَاوِيُّ: لَا شَيْءَ عَلَيْهِ حَتَّى يُقَلِّمَ جَمِيعَ أَظْفَارِ يَدَيْهِ وَرِجْلَيْهِ: فَتَجِبُ عَلَيْهِ الْفِدْيَةُ.

L14759 And Al-Ṭaḥāwī said: There is no obligation upon him until he trims all the nails on his hands and feet, at which point the *fidyah* becomes obligatory upon him.

وَقَالَ مَالِكٌ: مَنْ قَلَّمَ مِنْ أَظْفَارِهِ مَا يُمِيطُ بِهِ عَنْ نَفْسِهِ أَذًى فَالْفِدْيَةُ الْمَذْكُورَةُ فِي حَلْقِ الرَّأْسِ عَلَيْهِ.

L14760 Malik said: Whoever trims from his nails that which removes harm from himself, the expiation mentioned for shaving the head is incumbent upon him.

وَقَالَ الشَّافِعِيُّ: مَنْ قَلَّمَ ظُفْرًا وَاحِدًا فَلْيُطْعِمْ مُدًّا، فَإِنْ قَلَّمَ ظُفْرَيْنِ فَمُدَّيْنِ، فَإِنْ قَلَّمَ ثَلَاثَةَ أَظْفَارٍ فَعَلَيْهِ دَمٌ؟ فَاعْجَبُوا لِهَذِهِ الْأَقْوَالِ الشَّنِيعَةِ الَّتِي لَا حَظَّ لَهَا فِي شَيْءٍ مِنْ وُجُوهِ الصَّوَابِ وَلَا نَعْلَمُ أَحَدًا قَالَهَا قَبْلَهُمْ - وَقَدْ ذَكَرْنَا عَنْ ابْنِ عَبَّاسٍ آنِفًا: لَا بَأْسَ عَلَى الْمُحْرِمِ إذَا انْكَسَرَ ظُفْرُهُ أَنْ يَطْرَحَهُ عَنْهُ وَأَنْ يُمِيطَ عَنْ نَفْسِهِ الْأَذَى.

L14761–14763 Al-Shafi'i said: Whoever trims a single nail must give a *mudd* of food; if two nails, then two *mudds*; and if three nails, a dam [sacrificial animal] is obligatory. Marvel at these absurd rulings, which have no basis in any aspect of valid principles, nor do we know of any justification for them. No one has stated this before them, as we have just mentioned from Ibn Abbas: There is no harm upon a pilgrim in *ihram* if his nail breaks; he may remove it and eliminate harm from himself.

وَهُوَ قَوْلُ عِكْرِمَةَ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَمُجَاهِدٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، لَيْسَ مِنْهُمْ أَحَدٌ جَعَلَ فِي ذَلِكَ شَيْئًا.

L14764 This is the position of 'Ikrimah, Ibrāhīm al-Nakha'ī, Mujāhid, Sa'īd ibn Jubayr, Sa'īd ibn al-Musayyib, and Ḥammād ibn Abī Sulaymān—not a single one of them established anything concerning that matter.

وَعَنْ عَطَاءٍ: إنْ قَصَّ أَظْفَارَهُ لِأَذًى بِهِ فَلَا شَيْءَ عَلَيْهِ، فَإِنْ قَصَّهَا لِغَيْرِ أَذًى فَعَلَيْهِ دَمٌ - وَعَنْهُ، وَعَنْ الْحَسَنِ: إنْ قَلَّمَ ظُفْرَهُ الْمُنْكَسِرَ فَلَا شَيْءَ عَلَيْهِ، فَإِنْ قَلَّمَهُ مِنْ غَيْرِ أَنْ يَنْكَسِرَ: فَعَلَيْهِ دَمٌ.

L14765 Narrated from 'Ataa: If one trims his nails due to harm he is experiencing, there is no blame on him. But if he trims them without experiencing harm, he must offer a dam. Narrated from him ('Ataa) and from Al-Hasan: If one trims his broken nail, there is no blame on him. But if he trims it when it is not broken, he must offer a dam.

وَعَنْ الشَّعْبِيِّ: إنْ نَزَعَ الْمُحْرِمُ ضِرْسَهُ: فَعَلَيْهِ دَمٌ.

L14766 From al-Sha'bī: If a pilgrim in the state of iḥrām pulls out his molar, he must offer a blood sacrifice (dam).

قَالَ أَبُو مُحَمَّد: وَلَا مُخَالِفَ لِابْنِ عَبَّاسٍ فِي هَذَا يُعْرَفُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَيَلْزَمُ مَنْ رَأَى فِي إمَاطَةِ الْأَذَى الدَّمَ أَنْ يَقُولَ بِقَوْلِ الشَّعْبِيِّ فِي إيجَابِ إمَاطَةِ الْأَذَى بِقَلْعِ الضِّرْسِ، وَنَعَمْ، وَفِي الْبَوْلِ، وَفِي الْغَائِطِ لِأَنَّ كُلَّ ذَلِكَ إمَاطَةُ أَذًى.

L14767 Abu Muhammad said: There is no known opponent of Ibn Abbas among the Companions—may Allah be pleased with them—regarding this matter. Whoever holds that removing harm entails blood must adopt Al-Sha'bi's position on the obligation of removing harm through extracting a molar—and excellent!—as well as in cases of urine and feces, for all of these constitute the removal of harm.

وَعَنْ ابْنِ عَبَّاسٍ: يَغْسِلُ الْمُحْرِمُ ثِيَابَهُ.

L14768 It is narrated from Ibn Abbas that a pilgrim in the state of iḥrām should wash his garments.

L14769 Among the chains of narration transmitted by Waki' from Sufyan, from Mansur, from Salim ibn Abdullah ibn Umar, from his father, is his statement

concerning a pilgrim in sacred state washing his garments: “Allah does not concern Himself with your dirt.”

وَمِنْ طُرُقٍ وَكِيعٍ عَنْ سُفْيَانَ عَنْ مَنْصُورٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ أَنَّهُ قَالَ فِي غَسْلِ الْمُحْرِمِ ثِيَابَهُ: إنَّ اللَّهَ لَا يَصْنَعُ بِدَرَنِك شَيْئًا.

L14770 And via the same chain to Sufyān, from Abū al-Zubayr, from Jābir, who said: There is no harm in a person in *iḥrām* washing his clothes, and no opposing view from the Companions is known regarding it.

- وَبِهِ إلَى سُفْيَانَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: لَا بَأْسَ بِغَسْلِ الْمُحْرِمِ ثِيَابَهُ، وَلَا يُعْرَفُ لَهُمْ مِنْ الصَّحَابَةِ مُخَالِفٌ.

L14771 This is also the view of Abū Ḥanīfah, Al-Shāfiʿī, and Abū Sulaymān.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ.

L14772 A case concerning game hunted by a pilgrim released from the state of iḥrām in the Ḥill (non-sacred area) and subsequently brought into the Ḥaram (sacred precincts).

[مَسْأَلَةٌ مَا صَادَهُ الْمُحِلُّ فِي الْحِلِّ فَأَدْخَلَهُ الْحَرَمَ]

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L14774 Any game hunted by a non-Muḥrim in a permissible area and brought into the Sacred Precinct, gifted to a Muḥrim, or purchased by a Muḥrim is lawful for the Muḥrim and those within the Sacred Precinct to own, slaughter, and consume. Similarly, if someone enters the state of iḥrām while possessing game he owned previously, whether in his nearby or distant residence, or in a cage with him, it remains lawful for him to eat, slaughter, own, and sell it as it was. The prohibition applies solely to initiating the hunting of game, acquiring it, or slaughtering it while in iḥrām. If he slaughters it in this state, it becomes carrion (maytah). If someone not in iḥrām seizes it from him, it becomes the property of the one who seizes it. The Muḥrim cannot own it even after exiting iḥrām unless a new ownership occurs after his exit.

وَكُلُّ مَا صَادَهُ الْمُحِلُّ فِي الْحِلِّ فَأَدْخَلَهُ الْحَرَمَ، أَوْ وَهَبَهُ لِمُحْرِمٍ، أَوْ اشْتَرَاهُ مُحْرِمٌ: فَحَلَالٌ لِلْمُحْرِمِ، وَلِمَنْ فِي الْحَرَمِ مِلْكُهُ، وَذَبْحُهُ، وَأَكْلُهُ - وَكَذَلِكَ مَنْ أَحْرَمَ وَفِي يَدِهِ صَيْدٌ قَدْ مَلَكَهُ قَبْلَ ذَلِكَ، أَوْ فِي مَنْزِلِهِ قَرِيبًا، أَوْ بَعِيدًا، أَوْ فِي قَفَصٍ مَعَهُ فَهُوَ حَلَالٌ لَهُ - كَمَا كَانَ - أَكْلُهُ، وَذَبْحُهُ وَمِلْكُهُ، وَبَيْعُهُ، وَإِنَّمَا يُحَرَّمُ عَلَيْهِ ابْتِدَاءُ التَّصَيُّدِ لِلصَّيْدِ وَتَمَلُّكُهُ وَذَبْحُهُ حِينَئِذٍ فَقَطْ، فَلَوْ ذَبَحَهُ لَكَانَ مَيْتَةً، وَلَوْ انْتَزَعَهُ حَلَالٌ مِنْ يَدِهِ لَكَانَ لِلَّذِي انْتَزَعَهُ، وَلَا يَمْلِكُهُ الْمُحْرِمُ وَإِنْ أَحَلَّ، إلَّا بِأَنْ يَحْدُثَ لَهُ تَمَلُّكًا بَعْدَ إحْلَالِهِ.

L14775 The proof for this is that Allah, the Exalted, said: “The game of the earth is forbidden to you as long as you remain in a state of consecration” [Al-Ma’idah: 96].[21]

بُرْهَانُ ذَلِكَ -: أَنَّ اللَّهَ تَعَالَى قَالَ: {وَحُرِّمَ عَلَيْكُمْ صَيْدُ الْبَرِّ مَا دُمْتُمْ حُرُمًا} [المائدة: ٩٦] .

L14776–14777 And He said: “Do not kill the game while you are in the state of ihram.”

وَقَالَ: {لا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرُمٌ} [المائدة: ٩٥] .

[21] **Qur’an references (L14775):** Qur’an 5:96 (Al-Ma’idah).

[Quran 5:95][22]

L14778 A group stated: These two verses apply in their general sense, and the hunted game refers to what is prohibited regarding ownership, slaughtering, and consumption under any circumstances. Thus, they prohibited the *muhrim* absolutely from eating any hunted meat – even if he hunted it for himself when it is permissible, and even if it was slaughtered by someone in a lawful state.

فَقَالَتْ طَائِفَةٌ: هَاتَانِ الْآيَتَانِ عَلَى عُمُومِهِمَا، وَالشَّيْءُ الْمُتَصَيَّدُ هُوَ الْمُحَرَّمُ مِلْكُهُ وَذَبْحُهُ وَأَكْلُهُ كَيْفَ كَانَ؟ فَحَرَّمُوا عَلَى الْمُحْرِمِ أَكْلَ كُلِّ شَيْءٍ مِنْ لَحْمِ الصَّيْدِ جُمْلَةً وَإِنْ صَادَهُ لِنَفْسِهِ حَلَالٌ وَإِنْ ذَبَحَهُ الْحَلَالُ.

L14779 They prohibited him from slaughtering any of it, even if he owned it before entering the state of Ihram. They obliged anyone who entered Ihram while game was in his home, in his possession, or with him in a cage to release it, nullifying his ownership entirely. They did not permit any residents of Mecca and Medina to eat game meat, own it, or slaughter it.

وَحَرَّمُوا عَلَيْهِ ذَبْحَ شَيْءٍ مِنْهُ، وَإِنْ كَانَ قَدْ مَلَكَهُ قَبْلَ إِحْرَامِهِ، وَأَوْجَبُوا عَلَى مَنْ أَحْرَمَ وَفِي دَارِهِ صَيْدٌ أَوْ فِي يَدِهِ، أَوْ مَعَهُ فِي قَفَصٍ أَنْ يُطْلِقَهُ، وَأَسْقَطُوا عَنْهُ مِلْكَهُ أَلْبَتَّةَ، وَلَمْ يُبِيحُوا لِأَحَدٍ مِنْ سُكَّانِ مَكَّةَ وَالْمَدِينَةِ أَكْلَ شَيْءٍ مِنْ لَحْمِ الصَّيْدِ، أَوْ تَمَلُّكَهُ، أَوْ ذَبْحَهُ.

L14780 A group said: The statement of Allah the Exalted, "And forbidden to you is the hunting of land game as long as you are in the state of iḥrām" [Al-Mā'idah: 96]—Allah the Exalted intended only the act, which is hunting, not the hunted game—it being the verbal noun of "ṣāda yaṣīdu ṣaydan"—thus, what is prohibited upon him is his hunting of what he hunts alone.[23]

وَقَالَتْ طَائِفَةٌ: قَوْلُ اللَّهِ تَعَالَى: {وَحُرِّمَ عَلَيْكُمْ صَيْدُ الْبَرِّ مَا دُمْتُمْ حُرُمًا} [المائدة: ٩٦] إِنَّمَا أَرَادَ اللَّهُ تَعَالَى الْفِعْلَ الَّذِي هُوَ التَّصَيُّدُ لَا الشَّيْءَ الْمُتَصَيَّدَ - وَهُوَ مَصْدَرُ صَادَ يَصِيدُ صَيْدًا - فَإِنَّمَا حُرِّمَ عَلَيْهِ صَيْدُهُ لِمَا يَتَصَيَّدُ فَقَطْ.

L14781 They said: Allāh's statement (سبحانه وتعالى), "Do not kill game while you are in a state of ihrām" [Al-Mā'idah 95], refers to the very act of hunting itself—the same prohibition stated in the other verse.[24]

وَقَالُوا: قَوْله تَعَالَى: {لا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرُمٌ} [المائدة: ٩٥] هُوَ التَّصَيُّدُ أَيْضًا نَفْسُهُ الْمُحَرَّمُ فِي الْآيَةِ الْأُخْرَى.

L14782 This group supported their opinion by citing Allah's statement: "When you have exited iḥrām, then hunt" [Al-Mā'idah 5:2]. They said: "What Allah has permitted us through the termination of iḥrām is undoubtedly precisely what had been prohibited to us during iḥrām, nothing else."[25]

وَاسْتَدَلَّتْ هَذِهِ الطَّائِفَةُ عَلَى مَا قَالَتْهُ بِقَوْلِ اللَّهِ تَعَالَى: {وَإِذَا حَلَلْتُمْ فَاصْطَادُوا} [المائدة: ٢] قَالُوا: فَالَّذِي أَبَاحَهُ اللَّهُ تَعَالَى لَنَا بِالْإِحْلَالِ هُوَ بِلَا شَكٍّ الْمُحَرَّمُ عَلَيْنَا بِالْإِحْرَامِ لَا غَيْرُهُ.

[22]**Qur'an references (L14777):** Qur'an 5:95 (Al-Ma'idah).
[23]**Qur'an references (L14780):** Qur'an 5:96 (Al-Ma'idah).
[24]**Qur'an references (L14781):** Qur'an 5:95 (Al-Ma'idah).
[25]**Qur'an references (L14782):** Qur'an 5:2 (Al-Ma'idah).

وَقَالُوا: لَا يُطْلَقُ فِي اللُّغَةِ اسْمُ الصَّيْدِ إلَّا عَلَى مَا كَانَ فِي الْبَرِّيَّةِ وَحْشِيًّا غَيْرَ مُتَمَلَّكٍ فَإِذَا تُمُلِّكَ لَمْ يَقَعْ عَلَيْهِ اسْمُ صَيْدٍ بَعْدُ.

L14783 They said: The term “game” is not applied linguistically except to what is wild, unowned, and in its natural habitat. Once it comes into ownership, the name “game” no longer applies to it.

قَالَ أَبُو مُحَمَّد: فَهَذَانِ الْقَوْلَانِ هُمَا اللَّذَانِ لَا يَجُوزُ أَنْ يُفْهَمَ مِنْ الْآيَةِ غَيْرُهُمَا وَكُلُّ مَا عَدَاهُمَا فَقَوْلٌ فَاسِدٌ مُتَنَاقِضٌ لَا يَدُلُّ عَلَى صِحَّتِهِ دَلِيلٌ أَصْلًا فَوَجَبَ أَنْ نَنْظُرَ فِي أَيِّ الْقَوْلَيْنِ يَقُومُ عَلَى صِحَّتِهِ الْبُرْهَانُ -: فَوَجَدْنَا أَهْلَ الْمَقَالَةِ الْأُولَى يَحْتَجُّونَ بِحَدِيثِ ابْنِ عَبَّاسٍ عَنْ الصَّعْبِ بْنِ جَثَّامَةَ اللَّيْثِيِّ «أَنَّهُ أَهْدَى لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَجُلٌ حِمَارَ وَحْشٍ فَرَدَّهُ عَلَيْهِ، وَقَالَ: إنَّا حُرُمٌ لَا نَأْكُلُ الصَّيْدَ» .

L14784 Abu Muhammad said: These two opinions are the only permissible interpretations derived from the verse, and any view other than them is invalid, contradictory, and entirely lacking any evidence to indicate its validity. It thus becomes obligatory to examine which of the two opinions has definitive proof establishing its correctness. We found proponents of the first position citing the hadith narrated by Ibn Abbas from al-Sa‘b ibn Jaththama al-Laythi: “A man offered the Messenger of Allah—peace and blessings be upon him—a wild donkey as a gift, but he returned it saying: ’We are in consecration (iḥrām) and do not eat game.’”

وَرُوِيَ هَذَا الْحَدِيثُ أَيْضًا بِلَفْظِ: «أَنَّهُ أَهْدَى لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِمَارَ وَحْشٍ فَرَدَّهُ عَلَيْهِ وَقَالَ: لَوْلَا أَنَّا مُحْرِمُونَ لَقَبِلْنَاهُ مِنْكَ» .

L14785–14786 This ḥadīth has also been narrated with the wording: “He gifted a wild donkey to the Messenger of Allah (peace and blessings of Allah be upon him), and the Prophet returned it to him and said: ’Were it not that we are in a state of iḥrām, we would have accepted it from you.’”

رُوِّينَا اللَّفْظَ الْأَوَّلَ: مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ صَالِحِ بْنِ كَيْسَانَ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ: عَنْ الصَّعْبِ بْنِ جَثَّامَةَ.

L14787 The first wording was narrated to us through the route of Ḥammād ibn Zayd, from Ṣāliḥ ibn Kaysān, from ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah, from Ibn ʿAbbās, from Ṣa‘b ibn Jaththāmah.

وَاللَّفْظَ الثَّانِيَ: مِنْ طَرِيقِ الْأَعْمَشِ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ: أَهْدَى الصَّعْبُ بْنُ جَثَّامَةَ.

L14788 The second wording: via Al-A‘mash, on the authority of Habib ibn Abi Thabit, from Sa‘id ibn Jubayr, from Ibn Abbas: Al-Sa‘b ibn Jaththāmah offered [as a gift].

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ نَا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي الْحَسَنُ بْنُ مُسْلِمٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ أَنَّ زَيْدَ بْنَ أَرْقَمَ أَخْبَرَهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُهْدِيَ لَهُ عُضْوٌ مِنْ لَحْمِ صَيْدٍ فَرَدَّهُ وَقَالَ: إنَّا لَا نَأْكُلُهُ إنَّا حُرُمٌ» .

L14789 And via the transmission of Muslim: Zuhayr ibn Harb narrated to us: Yahya—that is, Ibn Sa‘īd al-Qaṭṭān—narrated to us from Ibn Jurayj, who informed me that al-Ḥasan ibn Muslim informed me from Ṭāwūs from Ibn ʿAbbās that Zayd ibn Arqam informed him: “The Messenger of Allah—peace and blessings be upon him—was presented with a piece of hunted game meat, but he declined it and said: ’We do not eat it, for we are all in iḥram (as muḥrimūn).’”

L14790–14792 These are two narrations that were transmitted to us through entirely au-

thentic chains. This opinion was narrated from Ali, Mu'adh, and Ibn Umar, and it is the view held by Abu Bakr ibn Dawud. It was narrated to us via Abd al-Razzaq's chain from Ma'mar from Ayyub from Nafi', who said: "A slaughtered gazelle was presented to Ibn Umar in Mecca, but he refused to accept it, for Ibn Umar disapproved of a pilgrim in ihram consuming game meat under any circumstances."

We then examined the evidence cited by the opposing group and found them relying on what was narrated to us through Muslim's chain: Ibn Abi Umar narrated to us, Sufyan ibn Uyayna narrated to us, Salih ibn Kaysan narrated to us, saying: "I heard Abu Muhammad, the client of Abu Qatadah, say: 'I heard Abu Qatadah say: "We journeyed with Allah's Messenger (peace be upon him) until we reached al-Qaʿah. Some of us were in ihram while others were not. Suddenly I noticed my companions gazing at something. When I looked, I saw a wild ass. I saddled my horse, took my spear, and mounted. My whip fell, so I asked my companions—who were in ihram—to hand it to me, but they refused, declaring: 'No, by Allah! We will not assist you in hunting.'"" Having something with me, I dismounted and retrieved it. Then I rode again and caught up with the donkey from behind as it was behind a hillock - I stabbed it with a spear and hamstrung it. I brought it to my companions, whereupon some said: "Eat it," while others said: "Do not eat it." The Prophet (peace be upon him) was ahead of us, so I spurred my horse and reached him. He said: "It is ḥalāl - eat it."

L14793 Abu Muhammad, the client of Abu Qatadah, is trustworthy, and his name is Nafi'. Abu al-Nadr and others narrated from him.

L14794 From the path of Muslim: Ahmad ibn 'Abdah al-Dabbī narrated to us, Fudayl ibn Sulaymān al-Numayrī narrated to us, Abū Ḥāzim narrated to us from 'Abdullāh ibn Abī Qatādah from his father: "They departed with the Messenger of God - peace and blessings be upon him - while they were in the state of ritual consecration (iḥrām), whereas Abū Qatādah was not in iḥrām." He cited the ḥadīth, which includes: "The Messenger of God - peace be upon him - asked: 'Do you possess any portion of it?' They responded:

وَهَذَانِ خَبَرَانِ رُوِّينَاهُمَا مِنْ طُرُقٍ كُلُّهَا صِحَاحٌ - وَهَذَا قَوْلٌ رُوِيَ عَنْ عَلِيٍّ وَمُعَاذٍ، وَابْنِ عُمَرَ - وَبِهِ يَقُولُ أَبُو بَكْرِ بْنُ دَاوُد -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ نَافِعٍ قَالَ: أُهْدِيَ إِلَى ابْنِ عُمَرَ ظَبْيٌ مَذْبُوحَةٌ بِمَكَّةَ فَلَمْ يَقْبَلْهَا، وَكَانَ ابْنُ عُمَرَ يَكْرَهُ لِلْمُحْرِمِ أَنْ يَأْكُلَ مِنْ لَحْمِ الصَّيْدِ عَلَى كُلِّ حَالٍ -: فَنَظَرْنَا فِيمَا احْتَجَّتْ بِهِ الطَّائِفَةُ الْأُخْرَى -: فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا ابْنُ أَبِي عُمَرَ نَا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - نَا صَالِحُ بْنُ كَيْسَانَ قَالَ: سَمِعْت أَبَا مُحَمَّدٍ مَوْلَى أَبِي قَتَادَةَ يَقُولُ: سَمِعْت أَبَا قَتَادَةَ يَقُولُ: «خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى إذَا كُنَّا بِالْقَاحَةِ فَمِنَّا الْمُحْرِمُ وَمِنَّا غَيْرُ الْمُحْرِمِ إذْ بَصُرْت بِأَصْحَابِي يَتَرَاءَوْنَ شَيْئًا فَنَظَرْتُ فَإِذَا حِمَارُ وَحْشٍ فَأَسْرَجْتُ فَرَسِي وَأَخَذْتُ رُمْحِي ثُمَّ رَكِبْتُ فَسَقَطَ مِنِّي سَوْطِي فَقُلْتُ لِأَصْحَابِي: نَاوِلُونِي سَوْطِي وَكَانُوا مُحْرِمِينَ فَقَالُوا: لَا وَاَللَّهِ لَا نُعِينُكَ عَلَيْهِ بِشَيْءٍ فَنَزَلْتُ فَتَنَاوَلْتُهُ، ثُمَّ رَكِبْتُ فَأَدْرَكْتُ الْحِمَارَ مِنْ خَلْفِهِ وَهُوَ وَرَاءَ أَكَمَةٍ فَطَعَنْتُهُ بِرُمْحٍ فَعَقَرْتُهُ فَأَتَيْتُ بِهِ أَصْحَابِي فَقَالَ بَعْضُهُمْ: كُلُوهُ، وَقَالَ بَعْضُهُمْ: لَا تَأْكُلُوهُ، وَكَانَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - أَمَامَنَا فَحَرَّكْتُ فَرَسِي فَأَدْرَكْتُهُ فَقَالَ: هُوَ حَلَالٌ فَكُلُوهُ» .

أَبُو مُحَمَّدٍ مَوْلَى أَبِي قَتَادَةَ ثِقَةٌ اسْمُهُ نَافِعٌ رَوَى عَنْهُ أَبُو النَّضْرِ وَغَيْرُهُ.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا أَحْمَدُ بْنُ عَبْدَةَ الضَّبِّيُّ نَا فُضَيْلُ بْنُ سُلَيْمَانَ النُّمَيْرِيُّ نَا أَبُو حَازِمٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ عَنْ أَبِيهِ «أَنَّهُمْ خَرَجُوا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُمْ مُحْرِمُونَ وَأَبُو قَتَادَةَ مُحِلٌّ» فَذَكَرَ الْحَدِيثَ وَفِيهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ

'We have its leg.' The Messenger of God - peace be upon him - took it and consumed it."[26]

عَلَيْهِ وَسَلَّمَ - قَالَ: «هَلْ مَعَكُمْ مِنْهُ شَيْءٌ؟ قَالُوا: مَعَنَا رِجْلُهُ فَأَخَذَهَا رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ - فَأَكَلَهَا» .

L14795 From the chain of Muslim: Zuhayr ibn Harb narrated to me; Yahya narrated to us—that is, Ibn Saʿīd al-Qaṭṭān—from Ibn Jurayj, who informed me: Muḥammad ibn al-Munkadir reported to me on the authority of Muʿādh ibn ʿAbd al-Raḥmān ibn ʿUthmān al-Taymī, from his father, who said: "We were with Ṭalḥah ibn ʿUbayd Allāh while we were in the state of iḥrām. A bird was presented to us while Ṭalḥah was asleep. Some of us abstained out of scrupulousness, while others ate it. When Ṭalḥah awoke, he approved those who ate it, saying: 'We ate it with the Messenger of Allāh (peace and blessings be upon him)."'

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ نَا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي مُحَمَّدُ بْنُ الْمُنْكَدِرِ عَنْ مُعَاذِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عُثْمَانَ التَّيْمِيِّ عَنْ أَبِيهِ قَالَ: «كُنَّا مَعَ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ، وَنَحْنُ حُرُمٌ فَأُهْدِيَ لَنَا طَيْرٌ وَطَلْحَةُ رَاقِدٌ، فَمِنَّا مَنْ تَوَرَّعَ، وَمِنَّا مَنْ أَكَلَ فَلَمَّا اسْتَيْقَظَ طَلْحَةُ وَفَّقَ مَنْ أَكَلَهُ، وَقَالَ: أَكَلْنَاهُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

L14796 And via the narration of Al-Layth ibn Sa'd, from Ibn al-Hād, from Muḥammad ibn Ibrāhīm al-Taymī, from 'Īsā ibn Ṭalḥah ibn 'Ubayd Allāh, from 'Umayr ibn Salamah al-Ḍamrī, who said: "While we were traveling with the Messenger of Allah—peace be upon him—at Al-Rawḥā while we were in the state of iḥrām, there appeared a hamstrung donkey. The Messenger of Allah—peace be upon him—said: 'Leave it, for its owner will soon come.' Then a man from the tribe of Bahz—the one who had hamstrung the donkey—arrived and said: 'O Messenger of Allah, see to this donkey.' Thereupon the Messenger of Allah—peace be upon him—ordered Abū Bakr to distribute it among the people."

وَمِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ ابْنِ الْهَادِ عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ التَّيْمِيِّ عَنْ عِيسَى بْنِ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ عَنْ عُمَيْرِ بْنِ سَلَمَةَ الضَّمْرِيِّ قَالَ: «بَيْنَمَا نَحْنُ نَسِيرُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالرَّوْحَاءِ وَهُمْ حُرُمٌ إذَا حِمَارٌ مَعْقُورٌ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَعُوهُ فَيُوشِكُ صَاحِبُهُ أَنْ يَأْتِيَ فَجَاءَ رَجُلٌ مِنْ بَهْزٍ هُوَ الَّذِي عَقَرَ الْحِمَارَ فَقَالَ: يَا رَسُولَ اللَّهِ شَأْنُكُمْ بِهَذَا الْحِمَارِ، فَأَمَرَ - عَلَيْهِ السَّلَامُ - أَبَا بَكْرٍ فَقَسَّمَهُ بَيْنَ النَّاسِ» .

L14797 This is the opinion of Umar, Talha—as we mentioned—and Abu Hurairah: as we have transmitted through Abd al-Razzaq's chain from Ma'mar, from al-Zuhri, from Salim ibn Abdullah ibn Umar, who heard Abu Hurairah narrating to Salim's father, Abdullah ibn Umar. He said: "Some people in Ihram asked me about those who had exited Ihram gifting them hunted game." He said: "I commanded them to eat it. Then I met Umar and informed him, whereupon Umar said: 'Had you given them a ruling contrary to this, I would have made you suffer pain."'

وَهُوَ قَوْلُ عُمَرَ بْنِ الْخَطَّابِ، وَطَلْحَةَ كَمَا ذَكَرْنَا، وَأَبِي هُرَيْرَةَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يُحَدِّثُ أَبَاهُ عَبْدَ اللَّهِ بْنَ عُمَرَ قَالَ: سَأَلَنِي قَوْمٌ مُحْرِمُونَ عَنْ مُحِلِّينَ أَهْدَوْا لَهُمْ صَيْدًا؟ قَالَ: فَأَمَرْتهمْ بِأَكْلِهِ، ثُمَّ لَقِيت عُمَرَ فَأَخْبَرْته، فَقَالَ عُمَرُ: لَوْ أَفْتَيْتهمْ بِغَيْرِ هَذَا لَأَوْجَعْتُك.

[26] **Hadith references (L14794):** Sahih Muslim 1196h.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ ابْنِ جُرَيْجٍ حَدَّثَنِي يُوسُفُ بْنُ مَاهَكَ أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ أَبِي عَمَّارٍ قَالَ: أَقْبَلْنَا مَعَ مُعَاذِ بْنِ جَبَلٍ مُحْرِمِينَ بِعُمْرَةٍ مِنْ بَيْتِ الْمَقْدِسِ وَأَمِيرُنَا مُعَاذُ بْنُ جَبَلٍ فَأَتَى رَجُلٌ بِحِمَارٍ وَحْشٍ قَدْ عَقَرَهُ فَابْتَاعَهُ كَعْبُ بْنُ مُسْلِمٍ فَجَاءَ مُعَاذٌ وَالْقُدُورُ تَغْلِي بِهِ، فَقَالَ مُعَاذٌ: لَا يُطِيعُنِي أَحَدٌ إِلَّا أَكْفَأَ قِدْرَهُ فَأَكْفَأَ الْقَوْمُ قُدُورَهُمْ فَلَمَّا وَافَوْا عُمَرَ قَصَّ عَلَيْهِ كَعْبٌ قِصَّةَ الْحِمَارِ، قَالَ عُمَرُ: مَا بَأْسُ ذَلِكَ؟ وَمَنْ نَهَى عَنْ ذَلِكَ؟ لَعَلَّك أَفْتَيْت بِذَلِكَ يَا مُعَاذُ؟ قَالَ: نَعَمْ - فَلَامَهُ عُمَرُ.

L14798–14799 From the chain of Yahyā ibn Saʿīd al-Qaṭṭān, from Ibn Jurayj: Yūsuf ibn Māhak narrated to me that he heard ʿAbdullāh ibn Abī ʿAmmār say: We set out with Muʿādh ibn Jabal while in the state of iḥrām for ʿUmrah from Bayt al-Maqdis, our leader being Muʿādh ibn Jabal. A man came with a wild donkey he had hamstrung, and Kaʿb ibn Muslim purchased it. When Muʿādh approached while the cauldrons were boiling with its meat, he declared: "Let no one obey me unless he overturns his cauldron!" The people then overturned their cauldrons. When they met ʿUmar, Kaʿb related the incident of the donkey. ʿUmar asked: "What harm is in that? Who prohibited it? Did you issue a fatwā on this, O Muʿādh?" He replied: "Yes." ʿUmar then rebuked him.

وَهُوَ أَيْضًا قَوْلُ ابْنِ عُمَرَ، وَابْنِ مَسْعُودٍ، وَأَبِي ذَرٍّ، وَمُجَاهِدٍ، وَاللَّيْثِ، وَأَبِي حَنِيفَةَ، وَغَيْرِهِمْ.

L14800 This is also the view of Ibn Umar, Ibn Mas'ud, Abu Dharr, Mujahid, al-Layth, Abu Hanifah, and others besides them.

قَالَ أَبُو مُحَمَّد: فَكَانَتْ هَذِهِ الْأَخْبَارُ وَالَّتِي قَبْلَهَا صِحَاحًا كُلُّهَا، فَالْوَاجِبُ فِي ذَلِكَ الْأَخْذُ بِجَمِيعِهَا وَاسْتِعْمَالُهَا كَمَا هِيَ دُونَ أَنْ يُزَادَ فِي شَيْءٍ مِنْهَا مَا لَيْسَ فِيهِ، فَيَقَعُ فَاعِلُ ذَلِكَ فِي الْكَذِبِ، فَنَظَرْنَا فِي هَذِهِ الْأَخْبَارِ فَوَجَدْنَا فِيهَا إبَاحَةَ أَكْلِ مَا صَادَهُ الْحَلَالُ لِلْمُحْرِمِ.

L14801 Abu Muhammad said: All these reports and those preceding them are entirely authentic. Therefore, it is obligatory to adhere to all of them and implement them exactly as they are, without adding anything to them that is not part of them, thereby causing the one who does so to fall into falsehood. We examined these reports and found within them the permissibility of a Muhrim consuming what a non-Muhrim has hunted.

ثُمَّ نَظَرْنَا فِي الَّتِي قَبْلَهَا فَوَجَدْنَاهَا لَيْسَ فِيهَا نَهْيُ الْمُحْرِمِ عَنْ أَكْلِ مَا صَادَهُ الْمُحِلُّ أَصْلًا وَإِنَّمَا فِيهَا قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «إنَّا لَا نَأْكُلُهُ إنَّا حُرُمٌ، وَلَوْلَا أَنَّنَا مُحْرِمُونَ لَقَبِلْنَاهُ» فَإِنَّمَا فِيهِ رَدُّ الصَّيْدِ عَلَى مُهْدِيهِ، لِأَنَّهُمْ حُرُمٌ وَتَرْكُ أَكْلِهِ لِأَنَّهُمْ حُرُمٌ، وَهَذَا فِعْلٌ مِنْهُ - عَلَيْهِ السَّلَامُ - وَلَيْسَ أَمْرًا، وَإِنَّمَا الْوَاجِبُ أَمْرُهُ وَإِنَّمَا فِي فِعْلِهِ الِائْتِسَاءُ بِهِ فَقَطْ.

L14802 Then we examined the preceding text and found it contains no original prohibition against a pilgrim eating game hunted by someone not in Ihram. Rather, it includes his statement—peace be upon him—: "We do not eat it, for we are in the state of Ihram. Had we not been in this state, we would have accepted it." This merely involves returning the hunted animal to the one who presented it and refraining from eating it because they were in the state of Ihram. This constitutes an action from him—peace be upon him—not a command. Only his explicit commands are obligatory, while his actions permit emulation alone.

وَهَذَا مِثْلُ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «أَمَّا أَنَا فَلَا آكُلُ مُتَّكِئًا» .

L14803 This is similar to his saying — peace be upon him —: "As for me, I do not eat while reclining."

وَتَرْكِهِ أَكْلَ الضَّبِّ - فَلَمْ يُحَرِّمْ بِذَلِكَ الْأَكْلَ مُتَّكِئًا لَكِنْ هُوَ الْأَفْضَلُ.

L14804 His abstention from eating the *dab*—he did not thereby declare it forbid-

den based on that act, but [abstaining] remains the superior course.

L14805 The consumption by a *Muhrim* of game hunted by a *Muhill* was also not prohibited, based on the Prophet's statement—peace be upon him—"We do not eat it, for we are *Muhrims*." However, abstaining from eating it was more virtuous.

وَلَمْ يُحَرَّمْ أَيْضًا أَكْلُ الْمُحْرِمِ الصَّيْدَ يَصِيدُهُ الْمُحِلُّ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «إِنَّا لَا نَأْكُلُهُ إِنَّا حُرُمٌ» لَكِنْ كَانَ تَرْكُ أَكْلِهِ أَفْضَلَ.

L14806 Similarly, it is narrated from Aisha that there is no restriction whatsoever in eating it, nor is it disliked, because the Prophet - peace be upon him - permitted it and ate it. At times he ate it, at times he did not eat it, at times he accepted it, and at times he did not accept it – all of these actions are praiseworthy and permissible.

وَهَكَذَا رُوِيَ عَنْ عَائِشَةَ وَلَا حَرَجَ فِي أَكْلِهِ أَصْلًا وَلَا كَرَاهَةَ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ أَبَاحَهُ وَأَكَلَهُ أَيْضًا، فَمَرَّةً أَكَلَهُ، وَمَرَّةً لَمْ يَأْكُلْهُ، وَمَرَّةً قَبِلَهُ، وَمَرَّةً لَمْ يَقْبَلْهُ - فَكُلُّ ذَلِكَ حَسَنٌ مُبَاحٌ.

L14807–14809 And such is the ruling concerning the ḥadīth which states: "Ostrich eggs and wild dates were presented to the Messenger of Allah—peace and blessings be upon him—and he said: 'Give them to your family to eat, for we are in a state of ihram.'" Even if it were authentic—but how could that be? It is not authentic! Since there is no doubt about this, it follows that... It is authentically established that the statement of Allah, the Exalted, {Forbidden to you is the game of the land while you are in a state of iḥrām} [Al-Mā'idah: 96], intends by it solely the act of hunting within the land.[27]

وَهَكَذَا الْقَوْلُ فِي الْحَدِيثِ الَّذِي فِيهِ «أُهْدِيَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْضُ نَعَامٍ وَتَمْرٍ وَحْشٍ فَقَالَ: أَطْعِمْهُ أَهْلَكَ فَإِنَّا حُرُمٌ» لَوْ صَحَّ فَكَيْفَ وَلَا يَصِحُّ؟ فَإِذْ لَا شَكَّ فِي هَذَا فَقَدْ صَحَّ أَنَّ قَوْلَ اللَّهِ تَعَالَى: {وَحُرِّمَ عَلَيْكُمْ صَيْدُ الْبَرِّ مَا دُمْتُمْ حُرُمًا} [المائدة: ٩٦] إِنَّمَا أَرَادَ بِهِ التَّصَيُّدَ فِي الْبَرِّ فَقَطْ.

L14810 And it is established that the statement of the Exalted: "Do not kill game while you are in a state of ihram" [Al-Mā'idah:95] constitutes a prohibition against killing it during the state of ihram. Ritual slaughter is not killing—there is no disagreement in the Sharīʿah on this—and killing is not ritual slaughter. Thus, it is established that He did not prohibit its ritual slaughter. Since this is confirmed, and the scriptural text did not forbid owning game without hunting, it is permissible (ḥalāl).[28]

وَصَحَّ أَنَّ قَوْلَه تَعَالَى: {لا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرُمٌ} [المائدة: ٩٥] نَهْيٌ عَنْ قَتْلِهِ فِي حَالِ كَوْنِ الْمَرْءِ حَرَمًا، وَالذَّكَاةُ لَيْسَتْ قَتْلًا بِلَا خِلَافٍ فِي الشَّرِيعَةِ، وَالْقَتْلُ لَيْسَ ذَكَاةً، فَصَحَّ أَنَّهُ لَمْ يَنْهَ عَنْ تَذْكِيَتِهِ، وَإِذَا ثَبَتَ هَذَا فَلَمْ يَأْتِ النَّصُّ بِنَهْيٍ عَنْ تَمَلُّكِ الصَّيْدِ بِغَيْرِ التَّصَيُّدِ فَهُوَ حَلَالٌ.

L14811 A decisive proof is that the Prophet—peace be upon him—resided in Medina until his death, and it is a sanctuary like Mecca, entirely equal. His Companions after him also upheld this. The Prophet—peace be upon him—continuously received game gifted to him and his Companions, which was brought alive into Medina, where it was bought, slaughtered, eaten, and

وَبُرْهَانٌ قَاطِعٌ -: وَهُوَ أَنَّ النَّبِيَّ - عَلَيْهِ السَّلَامُ - سَكَنَ الْمَدِينَةَ إِلَى أَنْ مَاتَ، وَهِيَ حَرَمٌ كَمَكَّةَ سَوَاءً سَوَاءً وَأَصْحَابُهُ بَعْدَهُ، وَلَمْ يَزَلْ - عَلَيْهِ السَّلَامُ - يُهْدَى لَهُ الصَّيْدُ وَلِأَصْحَابِهِ وَيَدْخُلُ بِهِ الْمَدِينَةَ حَيًّا فَيُبْتَاعُ وَيُذْبَحُ وَيُؤْكَلُ وَيُتَمَلَّكُ، وَمُذَكًّى فَيُبَاعُ وَيُؤْكَلُ، هَذَا أَمْرٌ لَا يَقْدِرُ عَلَى إِنْكَارِهِ أَحَدٌ جِيلًا بَعْدَ جِيلٍ، وَكَذَلِكَ بِمَكَّةَ وَهِيَ حَرَمٌ -: حَدَّثَنَا يُوسُفُ

[27] **Qur'an references (L14807):** Qur'an 5:96 (Al-Ma'idah).
[28] **Qur'an references (L14810):** Qur'an 5:95 (Al-Ma'idah).

owned. Similarly, properly slaughtered game was sold and consumed. This is a matter that no one, generation after generation, can deny. The same applies to Mecca as a sanctuary.

بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَرِّ النَّمَرِيُّ نَا عَبْدُ الْوَارِثِ بْنُ سُفْيَانَ نَا قَاسِمُ بْنُ أَصْبَغَ نَا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ هُوَ ابْنُ أَبِي خَيْثَمَةَ - نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ نا حَمَّادُ بْنُ زَيْدٍ قَالَ: سَمِعْتُ دَاوُد بْنَ أَبِي هِنْدٍ يُحَدِّث هِشَامَ بْنَ عُرْوَةَ أَنَّ عَطَاءً يَكْرَهُ مَا أُدْخِلَ مِنْ الصَّيْدِ مِنْ الْحِلِّ أَنْ يُذْبَحَ فِي الْحَرَامِ، فَقَالَ هِشَامٌ: وَمَا عِلْمُ عَطَاءٍ، وَمَنْ يَأْخُذُ عَنْ ابْنِ رَبَاحٍ كَانَ أَمِيرُ الْمُؤْمِنِينَ بِمَكَّةَ - يَعْنِي عَمَّهُ ابْنَ الزُّبَيْرِ - تِسْعَ سِنِينَ يَرَاهَا فِي الْأَقْفَاصِ وَأَصْحَابُ رَسُولِ اللَّهِ - عَلَيْهِ السَّلَامُ - يُقَدِّمُونَ بِهَا الْقَمَارِيَّ وَالْيَعَاقِيبَ لَا يَنْهَوْنَ عَنْ ذَلِكَ.

Yusuf ibn ʿAbd Allāh ibn ʿAbd al-Barr al-Namarī reported to us: ʿAbd al-Wārith ibn Sufyān reported to us: Qāsim ibn Aṣbagh reported to us: Aḥmad ibn Zuhayr ibn Ḥarb—the son of Abī Khaythamah—reported to us: ʿUbayd Allāh ibn ʿUmar reported to us: Ḥammād ibn Zayd said: I heard Dāwūd ibn Abī Hind narrating to Hishām ibn ʿUrwah that ʿAṭāʾ disliked game brought from outside the sanctuary being slaughtered within it. Hishām responded: "What does ʿAṭāʾ know? Who would learn from Ibn Rabāḥ? The Commander of the Believers in Mecca"—referring to his uncle Ibn al-Zubayr—"ruled for nine years, seeing them in cages, while the Companions of the Messenger of Allah—peace be upon him—brought quails and hawks, and none forbade that."

L14812 Abū Muḥammad said: What the sacred precinct does not prohibit, the state of iḥrām does not prohibit either, since the text makes no distinction between them whatsoever—thus the ambiguity is resolved (and success is from Allah, the Exalted). However, Abū Ḥanīfah stated: If someone enters the state of iḥrām while there is game in his residence or with him in a cage, he is not obligated to release it. But if it is in his hand, he must release it. If, after ending his iḥrām, he finds it in the possession of someone who has taken it, he may reclaim and wrest it away from the holder. This is confusion enough to suffice. For if his ownership over it ceases due to his iḥrām, how does he have the right to take it from one who has lawfully acquired it? There is no means for his ownership to revert to him after its cessation except through definitive proof. But if his ownership does not cease due to his iḥrām, then he is not obligated to release it.

قَالَ أَبُو مُحَمَّدٍ: مَا لَمْ يَمْنَعْ مِنْهُ الْحَرَمُ لَمْ يَمْنَعْ مِنْهُ الْإِحْرَامُ إذْ لَمْ يُفَرِّقْ بَيْنَ ذَلِكَ النَّصُّ أَصْلًا فَارْتَفَعَ الْإِشْكَالُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - إلَّا أَنَّ أَبَا حَنِيفَةَ قَالَ: مَنْ أَحْرَمَ وَفِي مَنْزِلِهِ صَيْدٌ أَوْ مَعَهُ فِي قَفَصٍ لَمْ يَلْزَمْهُ إرْسَالُهُ فَإِنْ كَانَ فِي يَدِهِ لَزِمَهُ إرْسَالُهُ فَإِنْ وَجَدَهُ بَعْدَ إحْلَالِهِ فِي يَدِ إنْسَانٍ قَدْ أَخَذَهُ كَانَ لَهُ ارْتِجَاعُهُ وَانْتِزَاعُهُ مِنْ الَّذِي هُوَ بِيَدِهِ، وَهَذَا تَخْلِيطٌ نَاهِيكَ بِهِ، وَلَئِنْ كَانَ يَسْقُطُ مِلْكُهُ عَنْهُ بِإِحْرَامِهِ فَمَا لَهُ أَنْ يَأْخُذَهُ مِمَّنْ مَلَكَهُ وَلَا سَبِيلَ إلَى عَوْدَةِ مِلْكِهِ عَلَيْهِ بَعْدَ سُقُوطِهِ إلَّا بِبُرْهَانٍ، وَإِنْ كَانَ مِلْكُهُ لَمْ يَسْقُطْ عَنْهُ بِإِحْرَامِهِ فَلَا يَلْزَمُهُ إرْسَالُهُ.

L14813–14815 He also said: If a non-Muhrim hunts game and brings it alive into the Ḥaram of Mecca, he must release it, but if he sells it... His sale is rescinded. If he sells it to someone who will slaughter it or if he slaughtered it, the expiation becomes obligatory for him - and this is a muddling [of rulings] and contradicts what we stated earlier.

وَقَالَ أَيْضًا: إنْ صَادَ مُحِلٌّ صَيْدًا فَأَدْخَلَهُ حَرَمَ مَكَّةَ حَيًّا فَعَلَيْهِ أَنْ يُرْسِلَهُ فَإِنْ بَاعَهُ فُسِخَ بَيْعُهُ، فَإِنْ بَاعَهُ مِمَّنْ يَذْبَحُهُ أَوْ ذَبَحَهُ فَعَلَيْهِ الْجَزَاءُ - وَهَذَا تَخْلِيطٌ وَتَنَاقُضٌ لِمَا ذَكَرْنَا قَبْلُ.

L14816 It has been reported to us from Mujāhid that there is no harm in game being brought into the Haram alive and then slaughtered.

وَرُوِّينَا عَنْ مُجَاهِدٍ لَا بَأْسَ أَنْ يُدْخَلَ الصَّيْدُ فِي الْحَرَمِ حَيًّا - ثُمَّ يُذْبَحَ.

L14817 And from ʿAṭāʾ, ʿAmr ibn Dīnār, and Saʿīd ibn Jubayr as well is narrated the like of this.

وَعَنْ عَطَاءٍ، وَعَمْرِو بْنِ دِينَارٍ، وَسَعِيدِ بْنِ جُبَيْرٍ أَيْضًا مِثْلُ هَذَا.

L14818 And from the chain of ʿAbd al-Razzāq, from Maʿmar, from Ṣāliḥ ibn Kayṣān, who said: I saw live game being sold alive in Mecca during the emirate of Ibn al-Zubayr.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ صَالِحِ بْنِ كَيْسَانَ قَالَ: رَأَيْت الصَّيْدَ يُبَاعُ بِمَكَّةَ حَيًّا فِي إمَارَةِ ابْنِ الزُّبَيْرِ.

L14819 Abu Muhammad said: There is no distinction between one who is within the Haram (sacred precincts) and a person in the state of Ihram (Muhrim), whether the latter is in the Hill (non-sacred area) or the Haram, for both are bound by the rulings of the Haram—and success is from Allah, the Exalted. Since this is established, the obligation upon one who kills owned game while in the state of Ihram or within the Haram is to provide the owner with an equivalent animal by purchasing it on their behalf or to pay its value if no equivalent is found. No expiation is required in this case, and the slain animal may not be consumed because it is considered maytah (improperly slaughtered meat), as it was killed without the owner's permission.

قَالَ أَبُو مُحَمَّد: وَلَا فَرْقَ بَيْنَ مَنْ كَانَ فِي الْحَرَمِ، وَبَيْنَ الْمُحْرِمِ فِي الْحِلِّ وَالْحَرَمِ، لِأَنَّ كِلَيْهِمَا يَقَعُ عَلَيْهِ اسْمُ حَرَمٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - فَإِذْ قَدْ صَحَّ هَذَا فَالْوَاجِبُ فِيمَنْ قَتَلَ صَيْدًا مُتَمَلَّكًا وَهُوَ مُحْرِمٌ أَوْ فِي الْحَرَمِ أَنْ يُؤَدِّيَ لِصَاحِبِهِ صَيْدًا مِثْلَهُ يَبْتَاعُهُ لَهُ أَوْ قِيمَتَهُ إنْ لَمْ يُوجَدْ مِثْلُهُ، وَلَا جَزَاءَ فِيهِ وَلَا يُؤْكَلُ الَّذِي قُتِلَ لِأَنَّهُ مَيْتَةٌ، إذْ قَتْلُهُ بِغَيْرِ إذْنِ صَاحِبِهِ.

L14820 Abu Muhammad said: There are two other opinions here. One of them is a group who said: The meat of game is permissible for the one in the state of ihram provided he did not hunt it himself or have it hunted for him. They cited as evidence what we have narrated through the chain of ʿAbd al-Razzāq from Maʿmar from Yaḥyā ibn Abī Kathīr from ʿAbd Allāh ibn Abī Qatādah from his father, who said: I went out with the Messenger of Allāh—peace and blessings be upon him—during the time of Ḥudaybiyyah. My companions had assumed the state of ihram, but I had not. I saw a wild donkey, pursued it, and hunted it. I mentioned the matter to the Prophet—peace be upon him—and informed him I had not assumed the state of ihram. He ordered his companions to eat, and they ate. However, he did not eat from it when I told him I had hunted it for his sake.

قَالَ أَبُو مُحَمَّد: وَهَا هُنَا قَوْلَانِ آخَرَانِ، أَحَدُهُمَا: قَوْمٌ قَالُوا: لَحْمُ الصَّيْدِ حَلَالٌ لِلْمُحْرِمِ مَا لَمْ يَصِدْهُ هُوَ أَوْ يُصَدْ لَهُ، وَاحْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ «عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ عَنْ أَبِيهِ قَالَ: خَرَجْتُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَمَنَ الْحُدَيْبِيَةِ فَأَحْرَمَ أَصْحَابِي وَلَمْ أُحْرِمْ فَرَأَيْتُ حِمَارَ وَحْشٍ فَحَمَلْتُ عَلَيْهِ فَاصْطَدْتُهُ فَذَكَرْتُ شَأْنَهُ لِلنَّبِيِّ - عَلَيْهِ السَّلَامُ - وَذَكَرْتُ أَنِّي لَمْ أَكُنْ أَحْرَمْتُ فَأَمَرَ أَصْحَابَهُ فَأَكَلُوا وَلَمْ يَأْكُلْ مِنْهُ حِينَ أَخْبَرْتُهُ أَنِّي اصْطَدْتُهُ لَهُ» .

L14821 And based on what we have narrated through the chain of ʿAmr ibn Abī ʿAmr from al-Muṭṭalib ibn Ḥanṭab from Jābir ibn ʿAbd Allāh, who said: The Messenger of Allah - upon him be peace - said: "The game of the land is

lawful for you while in the state of ihram, except what you hunted and was hunted on your behalf."

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَمْرِو بْنِ أَبِي عَمْرٍو عَنْ الْمُطَّلِبِ بْنِ حَنْطَبٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ -: «صَيْدُ الْبَرِّ لَكُمْ حَلَالٌ وَأَنْتُمْ حُرُمٌ إلَّا مَا اصْطَدْتُمْ وَصِيدَ لَكُمْ» .

L14822 This has been narrated to us from Uthman: that game was brought to him while he and his companions were in ihram. He commanded them to eat it, but he himself did not eat. Amr ibn al-As said to him: "How strange of you! You order us to eat what you yourself do not eat?" Uthman replied: "I think it was hunted on my account." So they ate, and he did not eat. That is the opinion of Malik.

فَرُوِّينَا هَذَا عَنْ عُثْمَانَ وَأَنَّهُ أُتِيَ بِصَيْدٍ وَهُوَ وَأَصْحَابُهُ مُحْرِمُونَ فَأَمَرَهُمْ بِأَكْلِهِ وَلَمْ يَأْكُلْهُ هُوَ فَقَالَ لَهُ عَمْرُو بْنُ الْعَاصِ: يَا عَجَبًا لَك تَأْمُرُنَا أَنْ نَأْكُلَ مِمَّا لَسْت آكِلًا؟ فَقَالَ عُثْمَانُ: إنِّي أَظُنُّ إنَّمَا صِيدَ مِنْ أَجْلِي، فَأَكَلُوا وَلَمْ يَأْكُلْ - وَهُوَ قَوْلُ مَالِكٍ.

L14823–14825 Abū Muḥammad said: As for the report of Jābir, it is rejected because it is from ʿAmr ibn Abī ʿAmr, who is weak. As for the report of Abū Qatādah, Maʿmar narrated it as we have mentioned. Muʿāwiyah ibn Sallām narrated it from Yaḥyā ibn Abī Kathīr, as did Hishām al-Dastawā'ī, both of whom narrate: In it, from Yaḥyā: ʿAbdullāh ibn Abī Qatādah narrated to me. Yaḥyā and ʿAbdullāh do not mention what Maʿmar mentioned, nor does Maʿmar mention in his narration that Yaḥyā heard directly from ʿAbdullāh ibn Abī Qatādah for his own chain.

قَالَ أَبُو مُحَمَّد: أَمَّا خَبَرُ جَابِرٍ فَسَاقِطٌ، لِأَنَّهُ عَنْ عَمْرِو بْنِ أَبِي عَمْرٍو وَهُوَ ضَعِيفٌ. وَأَمَّا خَبَرُ أَبِي قَتَادَةَ فَإِنَّ مَعْمَرًا رَوَاهُ كَمَا ذَكَرْنَا. وَرَوَاهُ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ مُعَاوِيَةُ بْنُ سَلَّامٍ، وَهِشَامٌ الدَّسْتُوَائِيُّ كِلَاهُمَا يَقُولُ فِيهِ: عَنْ يَحْيَى حَدَّثَنِي عَبْدُ اللَّهِ بْنُ أَبِي قَتَادَةَ، وَلَا يَذْكُرَانِ مَا ذَكَرَ مَعْمَرٌ، وَلَمْ يَذْكُرْ فِيهِ مَعْمَرٌ سَمَاعَ يَحْيَى لَهُ مِنْ عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ.

L14826 It was also narrated by Shuʿbah from ʿUthman ibn ʿAbdullah ibn Mawhab, from ʿAbdullah ibn Abi Qatadah, from Abu Qatadah—in accordance with what we will mention after this, if Allah the Exalted wills—wherein Shuʿbah did not include the details mentioned by Maʿmar.

وَرَوَاهُ أَيْضًا: شُعْبَةُ عَنْ عُثْمَانَ بْنِ عَبْدِ اللَّهِ بْنِ مَوْهَبٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ عَنْ أَبِي قَتَادَةَ عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى فَلَمْ يَذْكُرْ فِيهِ مَا ذَكَرَ مَعْمَرٌ.

L14827 It was also narrated by Abu Muhammad, the freed slave of Abu Qatadah, from Abu Qatadah—though he did not mention in it what Ma'mar mentioned. Another narration by Abu Hazim from Abdullah ibn Abi Qatadah from Abu Qatadah states that the Messenger of Allah, peace be upon him, ate from it.

وَرَوَاهُ أَيْضًا: أَبُو مُحَمَّدٍ مَوْلَى أَبِي قَتَادَةَ عَنْ أَبِي قَتَادَةَ - فَلَمْ يَذْكُرْ فِيهِ مَا ذَكَرَ مَعْمَرٌ، وَرَوَاهُ أَبُو حَازِمٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ عَنْ أَبِي قَتَادَةَ فَذَكَرَ: أَنَّ رَسُولَ اللَّهِ - عَلَيْهِ السَّلَامُ - أَكَلَ مِنْهُ.

L14828 The action in this matter must be understood in one of three scenarios: first, that the narration of the group is given precedence over Ma'mar's narration—particularly since among them is one who attributes Yaḥyā's report to Ibn Abī Qatādah without mentioning Ma'mar.

فَلَا يَخْلُو الْعَمَلُ فِي هَذَا مِنْ ثَلَاثَةِ أَوْجُهٍ -: إمَّا أَنْ تُغَلَّبَ رِوَايَةُ الْجَمَاعَةِ عَلَى رِوَايَةِ مَعْمَرٍ لَا سِيَّمَا وَفِيهِمْ مَنْ يَذْكُرُ سَمَاعَ يَحْيَى مِنْ ابْنِ أَبِي قَتَادَةَ وَلَمْ يَذْكُرْ مَعْمَرًا.

وَتَسْقُطَ رِوَايَةُ يَحْيَى بْنِ أَبِي كَثِيرٍ جُمْلَةً لِأَنَّهُ اضْطَرَبَ عَلَيْهِ وَيُؤْخَذَ بِرِوَايَةِ أَبِي حَازِمٍ، وَأَبِي مُحَمَّدٍ، وَابْنِ مَوْهَبٍ، الَّذِينَ لَمْ يَضْطَرِبْ عَلَيْهِمْ لِأَنَّهُ لَا يَشُكُّ ذُو حِسٍّ أَنَّ إِحْدَى الرِّوَايَتَيْنِ وَهْمٌ.

L14829 The narration of Yaḥyā ibn Abī Kathīr is categorically dismissed due to his inconsistency, while the narrations of Abū Ḥāzim, Abū Muḥammad, and Ibn Mawhab—who were not inconsistent—are adopted, for no discerning person doubts that one of the two narrations contains an error.

إِذْ لَا يَجُوزُ أَنْ تَصِحَّ الرِّوَايَةُ فِي أَنَّهُ - عَلَيْهِ السَّلَامُ - أَكَلَ مِنْهُ، وَتَصِحَّ الرِّوَايَةُ فِي أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَأْكُلْ مِنْهُ، وَهِيَ قِصَّةٌ وَاحِدَةٌ فِي وَقْتٍ وَاحِدٍ، فِي مَكَانٍ وَاحِدٍ فِي صَيْدٍ وَاحِدٍ، وَيُؤْخَذُ بِالزَّائِدِ وَهُوَ الْحَقُّ الَّذِي لَا يَجُوزُ تَعَدِّيهِ؟ فَنَظَرْنَا فِي ذَلِكَ -: فَوَجَدْنَا مَنْ رَوَى عَنْ عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَكَلَ مِنْهُ» قَدْ أَثْبَتَ خَبَرًا وَزَادَ عِلْمًا عَلَى مَا رُوِيَ عَنْهُ أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَأْكُلْ مِنْهُ، فَوَجَبَ الْأَخْذُ بِالزَّائِدِ وَلَا بُدَّ وَتَرْكُ رِوَايَةِ مَنْ لَمْ يُثْبِتْ مَا أَثْبَتَهُ غَيْرُهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L14830 For it is not permissible that both narrations be authentic—one stating he (peace be upon him) ate from it and another stating he (peace be upon him) did not eat from it—when it concerns a single incident occurring at one time, in one place, involving one hunted animal. How then can the additional narration be taken as the truth that cannot be transgressed? We examined this matter and found that those who narrated from ʿAbdullāh ibn Abī Qatādah—"The Messenger of Allah (may Allah's blessings and peace be upon him) ate from it"—affirmed a report and provided supplementary knowledge beyond what was narrated about him (peace be upon him) not eating from it. Thus, it becomes obligatory to adopt the additional narration, necessarily disregarding the narration of those who did not affirm what others affirmed. And with Allah, the Exalted, lies all success.

وَأَمَّا فِعْلُ عُثْمَانَ فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا ابْنُ وَهْبٍ أَنَا عَمْرُو بْنُ الْحَارِثِ أَنَّ أَبَا النَّضْرِ مَوْلَى عُمَرَ بْنِ عُبَيْدِ اللَّهِ حَدَّثَهُ أَنَّ بُسْرَ بْنَ سَعِيدٍ أَخْبَرَهُ أَنَّ عُثْمَانَ بْنَ عَفَّانَ كَانَ يُصَادُ لَهُ الْوَحْشُ عَلَى الْمَنَازِلِ ثُمَّ يُذْبَحُ فَيَأْكُلُهُ وَهُوَ مُحْرِمٌ سَنَتَيْنِ مِنْ خِلَافَتِهِ، ثُمَّ إِنَّ الزُّبَيْرَ كَلَّمَهُ، فَقَالَ: مَا أَدْرِي مَا هَذَا يُصَادُ لَنَا وَمِنْ أَجْلِنَا؟ لَوْ تَرَكْنَاهُ؟ فَتَرَكَهُ.

L14831 As for the action of ʿUthmān, it has been narrated to us through the chain of Saʿīd ibn Manṣūr: from Ibn Wahb, from ʿAmr ibn al-Ḥārith, that Abū al-Naḍr – the freed slave of ʿUmar ibn ʿUbayd Allāh – reported to him that Busr ibn Saʿīd informed him that ʿUthmān ibn ʿAffān would have wild game hunted for him at the stopping points during travel, then slaughtered, and he would eat it while in the state of ritual consecration, iḥrām, during two years of his caliphate. Then al-Zubayr spoke to him, saying: "I do not know what this is – hunted on our behalf and for our sake. What if we were to abandon it?" So ʿUthmān abandoned it.

فَصَحَّ أَنَّهُ رَأْيٌ مِنْ عُثْمَانَ، وَالزُّبَيْرِ، وَاسْتِحْسَانٌ، لَا مَنْعٌ، وَلَا عَنْ أَثَرٍ عِنْدَهُمَا، وَمِثْلُ هَذَا لَا تَقُومُ بِهِ حُجَّةٌ، وَلَا يَشُكُّ أَحَدٌ فِي أَنَّ أَبَا قَتَادَةَ لَمْ يَصِدْ الْحِمَارَ إِلَّا لِنَفْسِهِ وَأَصْحَابِهِ وَهُمْ مُحْرِمُونَ فَلَمْ يَمْنَعْهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَكْلِهِ فَسَقَطَ هَذَا الْقَوْلُ.

L14832–14834 Thus, it is confirmed that this was an opinion from Uthman and Zubayr, and a juristic discretion—not a prohibition—and not from any transmitted precedent in their possession. Such a scenario cannot constitute valid evidence, and no one doubts that Abū Qatādah hunted the wild donkey exclusively for himself and his companions while they were in the state of iḥrām. Yet the

Messenger of Allah (peace and blessings be upon him) did not prohibit them from consuming it. Therefore, this argument is invalidated.

وَقَوْلٌ آخَرُ: وَهُوَ أَنَّهُ حَلَالٌ لِلْمُحْرِمِ مَا صَادَهُ الْحَلَالُ مَا لَمْ يُشِرْ لَهُ إلَيْهِ أَوْ يَأْمُرْهُ بِصَيْدِهِ وَاحْتَجَّ هَؤُلَاءِ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ شُعْبَةَ أَنَا عُثْمَانُ بْنُ عَبْدِ اللَّهِ بْنِ مَوْهَبٍ قَالَ: سَمِعْتُ «عَبْدَ اللَّهِ بْنَ أَبِي قَتَادَةَ يُحَدِّثُ عَنْ أَبِيهِ: أَنَّهُمْ كَانُوا فِي مَسِيرٍ لَهُمْ بَعْضُهُمْ مُحْرِمٌ وَبَعْضُهُمْ لَيْسَ بِمُحْرِمٍ فَرَأَيْتُ حِمَارَ وَحْشٍ فَرَكِبْتُ فَرَسِي وَأَخَذْتُ رُمْحِي فَاسْتَعَنْتُهُمْ فَأَبَوْا أَنْ يُعِينُونِي فَاخْتَلَسْتُ سَوْطًا مِنْ بَعْضِهِمْ وَشَدَدْتُ عَلَى الْحِمَارِ فَأَصَبْتُهُ فَأَكَلُوا مِنْهُ فَأَشْفَقُوا مِنْهُ، فَسُئِلَ عَنْ ذَلِكَ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ -؟ فَقَالَ: هَلْ أَشَرْتُمْ أَوْ أَعَنْتُمْ؟ قَالُوا: لَا، قَالَ: فَكُلُوهُ» .

L14835 Another opinion is that it is permissible for the Muḥrim to consume what a person permitted to hunt has caught, provided the Muḥrim neither directed attention to it nor commanded its hunting. These proponents cite the narration we transmitted through Shu'bah's chain: "I am 'Uthmān ibn 'Abdullāh ibn Mawhab. He said: I heard 'Abdullāh ibn Abī Qatādah narrate from his father: 'We were on a journey - some of us in the state of iḥrām and others not. I saw a wild donkey, mounted my horse, took my spear, and sought their help, but they refused to assist me. I stealthily snatched a whip from one of them, pursued the donkey, struck it, and they ate from it though they feared it. The Messenger of Allah (peace be upon him) was asked about this and said: 'Did any of you direct attention to it or assist¿' They replied: 'No.' He said: 'Then eat it.'"

وَمِنْ طَرِيقِ أَبِي عَوَانَةَ عَنْ عَبْدِ اللَّهِ بْنِ عُثْمَانَ بْنِ مَوْهَبٍ عَنْ ابْنِ أَبِي قَتَادَةَ عَنْ أَبِيهِ بِمِثْلِهِ إلَّا أَنَّهُ قَالَ: هَلْ مِنْكُمْ أَحَدٌ أَمَرَهُ أَوْ أَشَارَ إلَيْهِ بِشَيْءٍ؟ قَالُوا: لَا.

L14836 And via the narration of Abū 'Awānah from 'Abdullāh ibn 'Uthmān ibn Mawhab from the son of Abī Qatādah from his father with a similar wording, except that he said, "Did any of you command him or gesture to him with anything?" They said, "No."

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّنَا لَا نَدْرِي مَاذَا كَانَ يَقُولُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَوْ قَالَ لَهُ: نَعَمْ؟ إلَّا أَنَّ الْيَقِينَ عِنْدَنَا أَنَّ كُلَّ مَا لَمْ يَقُلْهُ - عَلَيْهِ السَّلَامُ - وَلَا حَكَمَ بِهِ فَإِنَّهُ غَيْرُ لَازِمٍ وَلَا تُؤْخَذُ الدِّيَانَةُ بِالتَّكَهُّنِ، وَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهُ لَوْ لَزِمَ بِإِشَارَتِهِمْ إلَيْهِ، أَوْ أَمْرِهِمْ إيَّاهُ، أَوْ عَوْنِهِمْ لَهُ حُكْمُ تَحْرِيمٍ لَبَيَّنَهُ - عَلَيْهِ السَّلَامُ -، فَإِذْ لَمْ يَفْعَلْ فَلَا حُكْمَ لِذَلِكَ.

L14837 Abū Muḥammad said: This contains no proof for them, because we do not know what the Messenger of Allah—peace and blessings of Allah be upon him—would have said had they responded to him with "Yes?" However, our certain conviction is that anything he—peace and blessings of Allah be upon him—did not explicitly state or rule upon is not binding, for religious rulings cannot be founded upon conjecture. We are absolutely certain that had a prohibition been necessitated by their pointing to it, their commanding him, or their assisting him, he—peace and blessings of Allah be upon him—would have clarified it. Since he did not do so, there is no valid ruling for that matter.

وَقَدْ رُوِّينَا عَنْ عَطَاءٍ فِي مُحْرِمٍ كَانَ بِمَكَّةَ فَاشْتَرَى حَجَلَةً فَأَمَرَ مُحِلًّا بِذَبْحِهَا أَنَّهُ لَا شَيْءَ عَلَيْهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L14838 And it has been narrated to us from 'Aṭā' regarding a person in the state of ritual consecration (muḥrim) who was in Makkah, purchased a partridge, and instructed a person in the state of permissibility (muḥill) to undertake

its slaughter, that there is no blame on him—and with Allah, the Exalted, lies success.

[مَسْأَلَةٌ أَمَرَ مُحْرِمٌ حَلَالًا بِالتَّصَيُّدِ]

L14839 **A legal issue: A person in iḥrām commanded a person not in the sacred state to hunt.**

٨٩٣ - مَسْأَلَةٌ:

L14840 893 – Question:

فَلَوْ أَمَرَ مُحْرِمٌ حَلَالًا بِالتَّصَيُّدِ فَإِنْ كَانَ مِمَّنْ يُطِيعُهُ وَيَأْتَمِرُ لَهُ فَالْمُحْرِمُ هُوَ الْقَاتِلُ لِلصَّيْدِ فَهُوَ حَرَامٌ، وَإِنْ كَانَ مِمَّنْ لَا يَأْتَمِرُ لَهُ وَلَا يُطِيعُهُ فَلَيْسَ الْمُحْرِمُ هَاهُنَا قَاتِلًا، بَلْ أَمَرَ بِمُبَاحٍ حَلَالٍ لِلْمَأْمُورِ.

L14841 If a Muhrim commands someone lawfully permitted to perform hunting, and the commanded person obeys and acts upon his instruction, then the Muhrim is deemed responsible for killing the prey, thus making it forbidden [for him]. But if the commanded person neither obeys nor heeds him, the Muhrim is not considered responsible here; rather, he merely issued a lawful and permissible command that the person was permitted to carry out.

وَلَوْ اشْتَرَكَ حَلَالٌ وَمُحْرِمٌ فِي قَتْلِ صَيْدٍ كَانَ مَيْتَةً لَا يَحِلُّ أَكْلُهُ؛ لِأَنَّهُ لَمْ تَصِحَّ فِيهِ الذَّكَاةُ خَالِصَةً، وَعَلَى الْمُحْرِمِ جَزَاؤُهُ كُلُّهُ لِأَنَّهُ قَاتِلٌ وَلَا جَزَاءَ عَلَى الْمُحِلِّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L14842 If a person in the state of consecration (Muhrim) and one not in the state of consecration jointly kill game, it becomes carrion that is unlawful to eat, because a valid slaughter was not purely performed for it. The Muhrim bears full expiation as the killer, while the non-consecrated person incurs none—and success comes from Allah, the Exalted.

[مَسْأَلَةٌ لِلْمُحْرِمِ أَنْ يُقَبِّلَ امْرَأَتَهُ وَيُبَاشِرَهَا مَا لَمْ يُولِجْ]

L14843 **A jurisprudential issue for a person in iḥrām is whether he may kiss his wife and engage in non-penetrative intimacy, provided there is no penetration.**

٨٩٤ - مَسْأَلَةٌ:

L14844 Issue 894:

وَمُبَاحٌ لِلْمُحْرِمِ أَنْ يُقَبِّلَ امْرَأَتَهُ وَيُبَاشِرَهَا مَا لَمْ يُولِجْ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَنْهَ إِلَّا عَنْ الرَّفَثِ، وَالرَّفَثُ: الْجِمَاعُ، فَقَطْ.

L14845 It is permissible for a person in iḥrām to kiss his wife and engage in intimate contact with her without penetration, for Allah the Exalted only prohibited al-rafath. Al-rafath is sexual intercourse, only.

وَلَا عَجَبَ أَعْجَبُ مِمَّنْ يَنْهَى عَنْ ذَلِكَ وَلَمْ يَنْهَ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - قَطُّ عَنْ ذَلِكَ، وَيُبْطِلُ الْحَجَّ بِالْإِمْنَاءِ فِي مُبَاشَرَتِهَا الَّتِي لَمْ يَنْهَ قَطُّ قُرْآنٌ وَلَا سُنَّةٌ عَنْهَا، ثُمَّ لَا يُبْطِلُ حَجَّهُ بِالْفُسُوقِ الَّذِي صَحَّ نَهْيُ اللَّهِ تَعَالَى فِي الْقُرْآنِ عَنْهُ فِي الْحَجِّ مِنْ تَرْكِ

L14846–14847 No wonder is greater than that of one who prohibits what Allah the Exalted and His Messenger (peace be upon him) never prohibited. Such a person invalidates Hajj due to ejaculation during physical contact with his wife—an act neither the Quran nor the Sunnah ever forbade—yet does not invalidate Hajj for committing transgressions whose prohibition Allah has established in the Quran during Hajj: abandoning prayer, killing a soul Allah has for-

bidden without right, and all other transgressions. Is this not astonishing? It has been narrated to us through Al-Ḥudhayfī's chain from Abd al-Razzaq, who narrated from Muhammad ibn Rashid, from a narrator named Abu Harim, who said: I heard Abu Hurayrah state, "Everything is permissible for a Muhrim regarding his wife except this"—and he gestured with his index finger between two fingers of his hand, meaning intercourse.

الصَّلَاةِ، وَقَتْلِ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ تَعَالَى بِغَيْرِ الْحَقِّ وَسَائِرِ الْفُسُوقِ، إِنَّ هَذَا لَعَجَبٌ؟ رُوِّينَا مِنْ طَرِيقِ الْحُذَافِيِّ عَنْ عَبْدِ الرَّزَّاقِ نَا مُحَمَّدُ بْنُ رَاشِدٍ عَنْ شَيْخٍ يُقَالُ لَهُ: أَبُو هَرِمٍ قَالَ: سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: يَحِلُّ لِلْمُحْرِمِ مِنْ امْرَأَتِهِ كُلُّ شَيْءٍ إلَّا هَذَا وَأَشَارَ بِإِصْبَعِهِ السَّبَّابَةِ بَيْنَ أُصْبُعَيْنِ مِنْ أَصَابِعِ يَدِهِ - يَعْنِي الْجِمَاعَ.

L14848 From ʿAbd al-Razzāq, from Ibn Jurayj: ʿUthmān ibn ʿAbd al-Raḥmān informed me that he kissed his wife while in the state of Iḥrām. I asked Saʿīd ibn Jubayr, and he said: "We have no ruling on this; he should seek forgiveness from Allah, the Mighty and Majestic."

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عُثْمَانُ بْنُ عَبْدِ الرَّحْمَنِ أَنَّهُ قَبَّلَ امْرَأَتَهُ وَهُوَ مُحْرِمٌ فَسَأَلْت سَعِيدَ بْنَ جُبَيْرٍ؟ فَقَالَ: مَا نَعْلَمُ فِيهَا شَيْئًا فَلْيَسْتَغْفِرْ اللَّهَ عَزَّ وَجَلَّ.

L14849 Ibn Jurayj said: And I heard ʿAṭāʾ say: the same as Saʿīd ibn Jubayr's statement.

قَالَ ابْنُ جُرَيْجٍ: وَسَمِعْت عَطَاءً يَقُولُ: مِثْلَ قَوْلِ سَعِيدِ بْنِ جُبَيْرٍ.

L14850 And from the narration of Ibn Jurayj as well, from ʿAṭāʾ: "Only the contact of the two circumcised parts invalidates the pilgrimage. When the circumcised parts meet, the pilgrimage becomes nullified, and an obligatory sacrifice is required."

وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ أَيْضًا عَنْ عَطَاءٍ لَا يُفْسِدُ الْحَجَّ إلَّا الْتِقَاءُ الْخِتَانَيْنِ فَإِذَا الْتَقَى الْخِتَانَانِ فَسَدَ الْحَجُّ وَوَجَبَ الْغُرْمُ.

L14851 From the narration of Ibn Abi Shaybah: Ibn ʿUlayyah reported from Ghaylan ibn Jarir, who said: "'Ali ibn 'Abdullah and Halim ibn al-Duraym asked me while in the state of iḥrām. One of them said: 'I placed my hand on my wife's private part and did not withdraw it until I became junub.'" We all said: "We have no knowledge regarding this." He then went to Abu al-Shaʿtha' Jabir ibn Zayd and consulted him. When he returned to us, his face showed evident joy. We asked: "What ruling did he give you?" He replied: "He enjoined me to secrecy—" Thus all these scholars found no issue with the matter. If they then cite the narration from 'Ā'ishah: "Everything is forbidden to the muḥrim concerning his wife except speech."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ عُلَيَّةَ عَنْ غَيْلَانَ بْنِ جَرِيرٍ قَالَ: سَأَلَنِي وَعَلِيُّ بْنُ عَبْدِ اللَّهِ، وَحَلِيمُ بْنُ الدُّرَيْمِ مُحْرِمٌ؟ فَقَالَ: وَضَعْت يَدِي مِنْ امْرَأَتِي مَوْضِعًا فَلَمْ أَرْفَعْهَا حَتَّى أَجْنَبْت؟ ؟ فَقُلْنَا كُلُّنَا: مَا لَنَا بِهَذَا عِلْمٌ؟ فَمَضَى إلَى أَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ فَسَأَلَهُ، ثُمَّ رَجَعَ إلَيْنَا يُعْرَفُ الْبِشْرُ فِي وَجْهِهِ؟ فَسَأَلْنَاهُ مَاذَا أَفْتَاك؟ فَقَالَ: إنَّهُ اسْتَكْتَمَنِي - فَهَؤُلَاءِ كُلُّهُمْ لَمْ يَرَوْا فِي ذَلِكَ شَيْئًا؟ فَإِنْ ذَكَرُوا الرِّوَايَةَ عَنْ عَائِشَةَ: يُحَرَّمُ عَلَى الْمُحْرِمِ مِنْ امْرَأَتِهِ كُلُّ شَيْءٍ إلَّا الْكَلَامَ.

L14852 And from Ibn Abbas: "Lewd speech is what is uttered in the presence of women." Thus, they are the first to contradict this, as they permit gazing. Moreover, she and Ibn Abbas did not attribute any significance to that matter.

وَعَنْ ابْنِ عَبَّاسٍ إنَّمَا الرَّفَثُ مَا تَكَلَّمَ بِهِ عِنْدَ النِّسَاءِ - فَهُمْ أَوَّلُ مُخَالِفٍ لِهَذَا لِأَنَّهُمْ يُبِيحُونَ لَهُ النَّظَرَ، ثُمَّ إنَّهَا وَابْنَ عَبَّاسٍ لَمْ يَجْعَلَا فِي ذَلِكَ شَيْئًا.

L14853 Abu Hanifa and al-Shafiʿi said: If someone engages in intercourse outside the vagina and ejaculates, he must offer only a sacrificial animal—and a goat suffices—and his pilgrimage remains complete.

L14854 And it has been reported to us from Ibn Abbas (though it is not confirmed) regarding one who looked and emitted pre-seminal fluid or semen: a blood sacrifice is required of him.

L14855 It is narrated from Ali (though not authentically established) that he said: "Whoever kisses [during Ihram] must offer a dam (sacrificial offering) as expiation."

L14856 As for the narration of Ibn Abbas, it is transmitted from Sharik, from Ibrāhīm ibn Muhājir.

L14857–14858 As for the narration of Ali, it is from Sharik from Jabir al-Juʿfi—and all of them are nothing?

L14859 Abu Muhammad said: The obligation of blood money in that matter is an opinion not mandated by the Qur'an, the Sunnah, analogical reasoning, or a unanimously agreed-upon scholarly opinion—and success is from Allah, the Exalted.

L14860 Issue: If a person in the state of iḥrām (ritual consecration) forgetfully applies perfume or uses it medicinally...

L14861 895: Question

L14862 If someone applies perfume forgetfully, uses perfume for medicinal purposes, is touched by the Kaaba's perfume, touches perfume intended for sale or purchase, or wears garments forbidden to a pilgrim forgetfully or out of necessity—whether all that he did lasted long or was brief for him—there is no sin upon him, and this does not invalidate his Hajj. He must remove all such things from himself immediately upon remembering or when no longer needing them. Similarly, one who shaves his head forgetfully incurs no sin. He may undergo cupping and shave cupping areas without penalty, and may apply any oil he wishes. But whoever intentionally wears forbidden

وَقَالَ أَبُو حَنِيفَةَ: وَالشَّافِعِيُّ: مَنْ جَامَعَ دُونَ الْفَرْجِ فَأَنْزَلَ فَلَيْسَ عَلَيْهِ إِلَّا دَمٌ وَتُجْزِئُهُ شَاةٌ وَحَجُّهُ تَامٌّ.

وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ وَلَمْ يَصِحَّ فِيمَنْ نَظَرَ فَأَمْذَى، أَوْ أَمْنَى: عَلَيْهِ دَمٌ.

وَعَنْ عَلِيٍّ وَلَا يَصِحُّ: مَنْ قَبَّلَ فَعَلَيْهِ دَمٌ.

أَمَّا رِوَايَةُ ابْنِ عَبَّاسٍ فَعَنْ شَرِيكٍ عَنْ إِبْرَاهِيمَ بْنِ مُهَاجِرٍ.

وَأَمَّا رِوَايَةُ عَلِيٍّ فَعَنْ شَرِيكٍ عَنْ جَابِرٍ الْجُعْفِيِّ - وَكُلُّهُمْ لَا شَيْءٌ؟

قَالَ أَبُو مُحَمَّدٍ: إِيجَابُ الدَّمِ فِي ذَلِكَ قَوْلٌ لَمْ يُوجِبْهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قِيَاسٌ، وَلَا قَوْلٌ مُجْمَعٌ عَلَيْهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْمُحْرِمِ إِذَا تَطَيَّبَ نَاسِيًا أَوْ تَدَاوَى بِطِيبٍ]

٨٩٥ - مَسْأَلَةٌ:

وَمَنْ تَطَيَّبَ نَاسِيًا، أَوْ تَدَاوَى بِطِيبٍ، أَوْ مَسَّهُ طِيبُ الْكَعْبَةِ، أَوْ مَسَّ طِيبًا لِبَيْعٍ، أَوْ شِرَاءٍ، أَوْ لَبِسَ مَا يُحَرَّمُ عَلَى الْمُحْرِمِ لِبَاسُهُ نَاسِيًا، أَوْ لِضَرُورَةٍ طَالَ كُلُّ ذَلِكَ مِنْهُ، أَوْ قَصُرَ فَلَا شَيْءَ عَلَيْهِ، وَلَا يَكْدَحُ ذَلِكَ فِي حَجِّهِ، وَعَلَيْهِ أَنْ يُزِيلَ عَنْ نَفْسِهِ كُلَّ ذَلِكَ سَاعَةَ يَذْكُرُهُ أَوْ سَاعَةَ يَسْتَغْنِي عَنْهُ، وَكَذَلِكَ مَنْ حَلَقَ رَأْسَهُ نَاسِيًا فَلَا شَيْءَ عَلَيْهِ، وَلَهُ

garments or performs prohibited acts without necessity invalidates his Hajj and ihram.

أَنْ يَحْتَجِمَ وَيَحْلِقَ مَوَاضِعَ الْمَحَاجِمِ، وَلَا شَيْءَ عَلَيْهِ، وَلَهُ أَنْ يَدْهُنَ بِمَا شَاءَ، فَلَوْ تَعَمَّدَ لِبَاسَ مَا حُرِّمَ عَلَيْهِ أَوْ فِعْلَ مَا حُرِّمَ لِغَيْرِ ضَرُورَةٍ: بَطَلَ حَجُّهُ وَإِحْرَامُهُ.

L14863 The proof of that is the statement of Allah, the Most High: “There is no blame upon you for that in which you have erred, but only for what your hearts deliberately intended” [Al-Ahzab: 5]. And the Messenger of Allah - peace and blessings be upon him - said: “My nation has been pardoned for mistakes, forgetfulness, and what they were compelled to do.” Thus, the one compelled in the aforementioned cases, including the woman forced into intercourse, bears no blame, nor upon those who were compelled to do what we mentioned. Their Hajj and their state of consecration (Ihram) remain valid and complete.[29]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «عُفِيَ لِأُمَّتِي عَنْ الْخَطَأِ وَالنِّسْيَانِ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» فَالْمُسْتَكْرَهُ عَلَى كُلِّ مَا ذَكَرْنَا وَالْمَرْأَةُ الْمُكْرَهَةُ عَلَى الْجِمَاعِ لَا شَيْءَ عَلَيْهَا، وَلَا عَلَى مَنْ أُكْرِهَ عَلَى مَا ذَكَرْنَا، وَحَجُّهُمْ تَامٌّ، وَإِحْرَامُهُمْ تَامٌّ.

L14864 Abu Hanifa said: Whoever covers his head or face, or wears what is prohibited—whether intentionally, out of forgetfulness, or under compulsion—for a full day until nightfall must offer a sacrificial animal (dam). If he does so for less than a day, he must give charitable expiation (ṣadaqah). If he shaves the back of his head to facilitate cupping, he must offer a sacrificial animal (dam); if he shaves part of a limb, he must give charitable expiation (ṣadaqah).

وَقَالَ أَبُو حَنِيفَةَ: مَنْ غَطَّى رَأْسَهُ، أَوْ وَجْهَهُ، أَوْ لَبِسَ مَا نُهِيَ عَامِدًا، أَوْ نَاسِيًا، أَوْ مُكْرَهًا يَوْمًا إلَى اللَّيْلِ فَعَلَيْهِ دَمٌ، فَإِنْ فَعَلَ ذَلِكَ أَقَلَّ مِنْ يَوْمٍ فَعَلَيْهِ صَدَقَةٌ، فَإِنْ حَلَقَ قَفَاهُ لِلْحِجَامَةِ فَعَلَيْهِ دَمٌ، فَإِنْ حَلَقَ بَعْضَ عُضْوٍ فَعَلَيْهِ صَدَقَةٌ.

L14865 Mālik said: Whoever does any of that to thereby remove harm from himself must offer the ransom required for shaving one’s head. Such a person should not perform cupping unless out of necessity. If they shave the areas where cupping is performed, they must offer the ransom.

وَقَالَ مَالِكٌ: مَنْ فَعَلَ شَيْئًا مِنْ ذَلِكَ فَأَمَاطَ بِهِ عَنْ نَفْسِهِ أَذًى فَعَلَيْهِ الْفِدْيَةُ الَّتِي عَلَى مَنْ حَلَقَ رَأْسَهُ، وَلَا يَحْتَجِمُ إلَّا مِنْ ضَرُورَةٍ، فَإِنْ حَلَقَ مَوَاضِعَ الْمَحَاجِمِ فَعَلَيْهِ الْفِدْيَةُ.

L14866 Al-Shafi’i said: There is no liability for forgetfulness in all of that except in shaving the head alone—so in it is the expiation. He said: One should not shave the areas where cupping is applied, and he did not mention any expiation for that.

وَقَالَ الشَّافِعِيُّ: لَا شَيْءَ فِي النِّسْيَانِ فِي كُلِّ ذَلِكَ إلَّا فِي حَلْقِ الرَّأْسِ فَقَطْ فَفِيهِ الْفِدْيَةُ - قَالَ: وَلَا يَحْلِقُ مَوْضِعَ الْمَحَاجِمِ، وَلَمْ يَذْكُرْ فِي ذَلِكَ فِدْيَةً.

L14867 Abu Muhammad said: As for the statements of Abu Hanifa, they are manifestly corrupt and contradictory. We do not know of them being attributed to anyone before him, nor is there evidence for the validity of anything

[29] **Qur’an references (L14863):** Qur’an 33:5 (Al-Ahzab).

therein—neither from the Quran, nor the Sunnah, nor a weak narration, nor the opinion of a companion, nor analogy. This is because his differentiation between such matters for a day or less than a day is a baseless assertion.

قَالَ أَبُو مُحَمَّد: أَمَّا أَقْوَالُ أَبِي حَنِيفَةَ فَظَاهِرَةُ الْفَسَادِ وَالتَّنَاقُضِ وَلَا نَعْلَمُهَا عَنْ أَحَدٍ قَبْلَهُ، وَلَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ؛ لِأَنَّ تَفْرِيقَهُ بَيْنَ ذَلِكَ يَوْمًا أَوْ أَقَلَّ مِنْ يَوْمٍ: دَعْوَى فَاسِدَةٌ.

L14868 And some of them said, "This is the customary clothing of the people."

وَقَالَ بَعْضُهُمْ: هَذَا هُوَ الْمَعْهُودُ مِنْ لِبَاسِ النَّاسِ.

L14869–14871 Ali said: He has lied about that. On the contrary, Allah the Exalted says: {And when you remove your clothes [for rest] at midday and after the Isha prayer} [An-Nur: 58]. The Exalted has clarified that clothing is not reduced during the day, though it may be adjusted for the midday rest. He further clarified that clothing is reduced until after the ʿIshāʾ prayer and may remain so until midnight.[30]

قَالَ عَلِيٌّ: كَذَبَ فِي ذَلِكَ بَلْ قَدْ قَالَ اللَّهُ تَعَالَى: {وَحِينَ تَضَعُونَ ثِيَابَكُمْ مِنَ الظَّهِيرَةِ وَمِنْ بَعْدِ صَلَاةِ الْعِشَاءِ} [النور: ٥٨] فَأَخْبَرَ تَعَالَى أَنَّ اللِّبَاسَ لَا يَقِلُّ فِي النَّهَارِ بَلْ قَدْ يُوضَعُ لِلْقَائِلَةِ، وَأَخْبَرَ أَنَّ اللِّبَاسَ يَقِلُّ إِلَى بَعْدِ صَلَاةِ الْعِشَاءِ وَقَدْ يَكُونُ إِلَى نِصْفِ اللَّيْلِ.

L14872 If they mention what was narrated from Ibn Abbas and al-Nakhaʿī - that whoever omits something from their rites should shed blood - we say: You are the first to oppose this, for you stipulate charity instead of blood in most such cases. Nothing is more astonishing than one who cites as proof something he considers true, then becomes the first to oppose it.

فَإِنْ ذَكَرُوا مَا رُوِيَ عَنِ ابْنِ عَبَّاسٍ، وَالنَّخَعِيِّ، أَنَّ مَنْ تَرَكَ مِنْ نُسُكِهِ شَيْئًا فَلْيُرِقْ دَمًا؟ قُلْنَا: أَنْتُمْ أَوَّلُ مَنْ خَالَفَ ذَلِكَ لِأَنَّكُمْ تَجْعَلُونَ فِي أَكْثَرِ ذَلِكَ صَدَقَةً لَا دَمًا، وَلَا عَجَبَ أَعْجَبُ مِمَّنْ يَحْتَجُّ بِشَيْءٍ يَرَاهُ حَقًّا، ثُمَّ هُوَ أَوَّلُ مُخَالِفٍ لَهُ.

L14873 As for Mālik's statement, it is qiyās, and all qiyās is invalid. If removing harm without shaving the head obligated fidya, then fidya would also be obligated for: urination; defecation; eating; drinking; performing ghusl for heat and seeking coolness; warming oneself against cold; extracting a molar due to pain: for all of these constitute removal of harm.

وَأَمَّا قَوْلُ مَالِكٍ فَإِنَّهُ قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، وَلَوْ كَانَتْ إِمَاطَتُهُ الْأَذَى بِغَيْرِ حَلْقِ الرَّأْسِ تُوجِبُ الْفِدْيَةَ لَأَوْجَبَ الْفِدْيَةَ: الْبَوْلُ، وَالْغَائِطُ، وَالْأَكْلُ، وَالشُّرْبُ، وَالْغُسْلُ لِلْحَرِّ وَالتَّرَوُّحِ، وَالتَّدَفُّؤُ لِلْبَرْدِ، وَقَلْعُ الضِّرْسِ لِلْوَجَعِ، فَكُلُّ هَذَا إِمَاطَةُ أَذًى.

L14874 If they say: "Have the people unanimously agreed to waive the expiation in cases exceeding that?" We reply: Sufficient for us and for you is your acknowledgment of the consensus' validity in nullifying your legal cause, and that not every removal of harm necessitates expiation, and that obligating fasting, almsgiving, and sacrificial offerings constitutes divine law - none may

فَإِنْ قَالُوا: قَدْ أَجْمَعَ النَّاسُ عَلَى إِسْقَاطِهِ الْفِدْيَةَ فِي أَكْثَرَ مِنْ ذَلِكَ؟ قُلْنَا: حَسْبُنَا وَإِيَّاكُمْ إِقْرَارُكُمْ بِصِحَّةِ الْإِجْمَاعِ عَلَى إِبْطَالِ عِلَّتِكُمْ، وَعَلَى أَنَّهُ لَيْسَ كُلُّ إِمَاطَةِ أَذًى تَجِبُ فِيهِ فِدْيَةٌ، وَإِلْزَامُ الصِّيَامِ وَالصَّدَقَةِ وَالْهَدْيِ شَرْعٌ لَا يُجَوِّزُ إِلْزَامَهُ أَحَدٌ حَيْثُ لَمْ يُلْزِمْهُ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -.

[30] **Qur'an references (L14869):** Qur'an 24:58 (An-Nur).

permit the imposition of such obligations where neither Allah the Exalted nor His Messenger (peace be upon him) have obligated them.

فَإِنْ ادَّعَوْا إِجْمَاعًا كَذَبُوا، لِأَنَّهُمْ لَا يَقْدِرُونَ عَلَى أَنْ يُورِدُوا فِي ذَلِكَ قَوْلَ عَشَرَةٍ مِنْ صَاحِبٍ، وَتَابِعٍ فِي ذَلِكَ مَعَ اخْتِلَافِهِمْ فِي أَقْوَالِهِمْ.

L14875 If they claimed consensus, they lied, for they cannot produce ten statements from a Companion and a Follower on that matter—along with the differences in their statements.

وَأَمَّا الشَّافِعِيُّ فَإِنَّهُ احْتَجَّ لَهُ مُقَلِّدُهُ بِأَنَّ كُلَّ مَنْ ذَكَرْنَا يَقْدِرُ النَّاسُ عَلَى إِزَالَتِهِ عَنْ نَفْسِهِ إِلَّا حَلْقَ الشَّعْرِ فَلَا يَقْدِرُ عَلَى إِنْبَاتِهِ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ وَأَيُّ شَيْءٍ فِي هَذَا مِمَّا يُوجِبُ الْفِدْيَةَ؟ وَهَلْ زِدْتُمْ إِلَّا دَعْوَى لَا بُرْهَانَ لَهَا؟

L14876 As for al-Shāfiʿī, his follower argued on his behalf that all that we have mentioned people can remove themselves from except shaving the hair, for they cannot regrow it? We responded: What does that prove? What in this necessitates the fidya? Have you produced anything beyond a claim without proof?

وَرُوِّينَا مِنْ طَرِيقِ نَافِعٍ أَنَّ ابْنَ عُمَرَ كَانَ يَأْكُلُ الْخَبِيصَ الْأَصْفَرَ وَهُوَ مُحْرِمٌ - يَعْنِي الْمُزَعْفَرَ.

L14877–14878 It was narrated through Nafiʿ that Ibn ʿUmar would eat yellow khabīṣ—meaning saffron-dyed—while in iḥrām.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: يَكْتَحِلُ الْمُحْرِمُ بِأَيِّ كُحْلٍ شَاءَ مَا لَمْ يَكُنْ فِيهِ طِيبٌ.

L14879 And via the route of Ibn Abi Shaybah, ʿAbdullāh ibn Numayr narrated to us from ʿUbaydullāh ibn ʿUmar from Nāfiʿ from Ibn ʿUmar, who said: “A person in *ihrām* (state of consecration) may apply any *kohl* they wish, as long as it does not contain any fragrance.”

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ شُمَيْسَةَ الْأَزْدِيَّةِ أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ قَالَتْ لَهَا: اكْتَحِلِي بِأَيِّ كُحْلٍ شِئْتِ غَيْرَ الْإِثْمِدِ أَمَا إِنَّهُ لَيْسَ بِحَرَامٍ وَلَكِنَّهُ زِينَةٌ، وَنَحْنُ نَكْرَهُهُ.

L14880 From the chain of Shuʿbah via Shumaysah al-Azdiyyah that ʿĀʾishah, the Mother of the Believers, said to her: “Use any kohl you wish except ithmid (antimony kohl). Indeed, it is not forbidden, but it is [merely] an adornment, and we disapprove of it.”

وَمِنْ الْخِلَافِ فِي ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ نَا يَزِيدُ بْنُ إِبْرَاهِيمَ عَنْ قَتَادَةَ: أَنَّ عَبْدَ الرَّحْمَنِ بْنَ أَبِي بَكْرٍ أَمَرَ امْرَأَةً مُحْرِمَةً اكْتَحَلَتْ بِإِثْمِدٍ أَنْ تُهْرِقَ دَمًا.

L14881 Among the disagreements concerning this matter is what we have transmitted as recorded in the narration from Ibn Abi Shaybah through Abd al-Rahman ibn Mahdi, who narrated from Yazid ibn Ibrahim, from Qatadah: that Abd al-Rahman ibn Abi Bakr commanded a woman in the state of ihram who had applied ithmid (antimony-based kohl) to spill blood as expiation.

L14882 From the chain of Saʿīd ibn Manṣūr: He narrated to us from Marwān—who is Ibn Muʿāwiyah al-Fazārī—who narrated to us from Ṣāliḥ ibn Ḥayy, who said: “I saw Anas ibn Mālik when the Kaʿbah’s sacred perfume (khalūq) touched his garment, and he did not wash it—while he was in a state of

iḥrām." The same is reported identically from ʿAṭāʾ and Saʿīd ibn Jubayr, without any difference.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا مَرْوَانُ هُوَ ابْنُ مُعَاوِيَةَ الْفَزَارِيّ - نَا صَالِحُ بْنُ حَيّ قَالَ: رَأَيْت أَنَسَ بْنَ مَالِكٍ أَصَابَ ثَوْبَهُ خَلُوقُ الْكَعْبَةِ فَلَمْ يَغْسِلْهُ - وَكَانَ مُحْرِمًا - وَعَنْ عَطَاءٍ، وَسَعِيدِ بْنِ جُبَيْرٍ مِثْلُهُ سَوَاءً سَوَاءً.

L14883 And through the chain of Al-Ḥajjāj ibn Arṭāh, from Abī az-Zubayr, from Jābir: If a pilgrim in iḥrām smells a fragrant plant or touches any perfume, he must spill blood as sacrifice.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ: إنْ شَمَّ الْمُحْرِمُ رَيْحَانًا، أَوْ مَسَّ طِيبًا: أَهْرَقَ دَمًا.

L14884 And it has been narrated to us through the chain of ʿĀʾishah, the Mother of the Believers, that the Messenger of Allāh (may Allāh bless him and grant him peace) underwent cupping while he was in the state of iḥram.[31]

وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - احْتَجَمَ وَهُوَ مُحْرِمٌ» .

L14885 And from the route of Sufyān ibn ʿUyaynah: from ʿAmr ibn Dīnār from ʿAṭāʾ; and through Ṭāwūs from Ibn ʿAbbās: "The Prophet—peace be upon him—was cupped while in a state of *iḥrām*."

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءٍ، وَطَاوُسٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ النَّبِيَّ - عَلَيْهِ السَّلَامُ - احْتَجَمَ وَهُوَ مُحْرِمٌ» .

L14886 Narrated through the chain of Muslim: From Abu Bakr ibn Abi Shaybah, from Al-Mu'alla ibn Mansur, from Sulayman ibn Bilal, from Alqamah ibn Abi Alqamah, from Abd al-Rahman al-A'raj, from Ibn Buhaynah, who said: "The Messenger of God (peace be upon him) was cupped along the Meccan route while in a state of ritual consecration, on the middle of his head."

وَمِنْ طَرِيقِ مُسْلِمٍ عَنْ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نَا الْمُعَلَّى بْنُ مَنْصُورٍ نَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ عَلْقَمَةَ بْنِ أَبِي عَلْقَمَةَ عَنْ عَبْدِ الرَّحْمَنِ الْأَعْرَجِ عَنْ ابْنِ بُحَيْنَةَ قَالَ «احْتَجَمَ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ - بِطَرِيقِ مَكَّةَ وَهُوَ مُحْرِمٌ وَسَطَ رَأْسِهِ» .

L14887–14889 Abu Muhammad said: The Prophet (peace be upon him) did not state that there was any financial penalty or expiatory payment in that matter, and had it been obligatory, it would not have... He omitted this, "And he (peace be upon him) had abundant thick hair. However, we were prohibited from shaving the head during Ihram," and the nape is neither the head nor part of the head.

قَالَ أَبُو مُحَمَّدٍ: لَمْ يُخْبِرْ - عَلَيْهِ السَّلَامُ - أَنَّ فِي ذَلِكَ غَرَامَةً وَلَا فِدْيَةً وَلَوْ وَجَبَتْ لَمَا أَغْفَلَ ذَلِكَ، «وَكَانَ - عَلَيْهِ السَّلَامُ - كَثِيرَ الشَّعْرِ أَفْرَعَ وَإِنَّمَا نُهِينَا عَنْ حَلْقِ الرَّأْسِ فِي الْإِحْرَامِ» وَالْقَفَا لَيْسَ رَأْسًا وَلَا هُوَ مِنْ الرَّأْسِ.

L14890 If they cite what has been narrated to us from Ma'mar through Ayyūb, from Nāfiʿ, from Ibn 'Umar that he commanded a pilgrim in the state of iḥrām who

فَإِنْ ذَكَرُوا مَا رُوِّينَا عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ أَمَرَ مُحْرِمًا احْتَجَمَ أَنْ يَفْتَدِيَ بِصِيَامٍ، أَوْ صَدَقَةٍ، أَوْ نُسُكٍ، فَإِنْ اُضْطُرَّ إلَى ذَلِكَ فَلَا شَيْءَ عَلَيْهِ، فَهَذَا عَلَيْهِمْ، لِأَنَّهُمْ خَالَفُوهُ فِي مَوْضِعَيْنِ -: أَحَدُهُمَا:

[31] **Hadith references (L14884):** Sunan an-Nasai 2845; Sunan Abi Dawud 1836; Sunan an-Nasai 2849.

underwent cupping to pay expiation through fasting, charity, or a sacrificial offering - though if compelled to do so, he incurs no obligation - then they are accountable for this ruling, for they contradicted him on two points: the first being...

أَنَّهُ أَوْجَبَ الدَّمَ وَلَمْ يَشْتَرِطْ إِنْ حَلَقَ لَهَا شَعْرًا. وَالثَّانِي:

L14891 He decreed the blood sacrifice obligatory and did not stipulate whether one shaved any hair for it. The second:

أَنَّهُ لَمْ يُوجِبْ شَيْئًا عَلَى مَنْ اُضْطُرَّ إِلَيْهَا - وَهُمْ لَا يَقُولُونَ بِهَذَا.

L14892 that He did not impose anything upon those compelled to it—and they do not say this.

وَرُوِّينَا عَنْ مَسْرُوقٍ أَنَّهُ قَالَ: يَحْتَجِمُ الْمُحْرِمُ، وَلَا يَحْتَجِمُ الصَّائِمُ، وَلَمْ يَشْتَرِطْ تَرْكَ حَلْقِ الْقَفَا.

L14893 It was narrated to us from Masrūq that he said: “One in iḥrām may undergo cupping, but a fasting person may not.” He did not specify refraining from shaving the nape.

وَعَنْ طَاوُسٍ يَحْتَجِمُ الْمُحْرِمُ إِذَا كَانَ وَجِعًا وَمَا نَعْلَمُ مَنْ أَوْجَبَ فِي ذَلِكَ حُكْمًا مِنَ التَّابِعِينَ إِلَّا الْحَسَنَ فَإِنَّهُ قَالَ: مَنْ احْتَجَمَ وَهُوَ مُحْرِمٌ أَرَاقَ دَمًا.

L14894 Tawus stated that a person in the state of Ihrām may perform cupping if afflicted by pain. We know none among the Successors who imposed a ruling regarding this except al-Ḥasan, for he said: “Whoever performs cupping while in Ihrām has shed blood.”

وَعَنْ إِبْرَاهِيمَ، وَعَطَاءٍ: إِنْ حَلَقَ مَوَاضِعَ الْمَحَاجِمِ فَعَلَيْهِ كَفَّارَةٌ.

L14895 From Ibrāhīm al-Nakhaʿī and ʿAṭāʾ ibn Abī Rabāḥ: If one shaves the areas where cupping is applied, he incurs a kaffārah—a religious expiation.

وَأَمَّا الِادِّهَانُ -: فَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا أَبُو عَوَانَةَ عَنْ أَشْعَثَ بْنِ سُلَيْمٍ وَهُوَ ابْنُ أَبِي الشَّعْثَاءِ - عَنْ مُرَّةِ بْنِ خَالِدٍ قَالَ: رَآنَا أَبُو ذَرٍّ وَنَحْنُ مُحْرِمُونَ فَقَالَ: اُدْهُنُوا أَيْدِيَكُمْ.

L14896 As for applying oil: It has been narrated to us through the chain of Saʿīd ibn Manṣūr: Abū ʿAwānah reported from Ashʿath ibn Sulaym—son of Abī al-Shaʿthāʾ—from Murrah ibn Khālid, who said: Abū Dharr saw us while we were in the state of ritual consecration (iḥrām) and said, “Apply oil to your hands.”

وَصَحَّ عَنِ ابْنِ عُمَرَ أَنَّهُ كَرِهَ أَنْ يُعَالِجَ الْمُحْرِمُ يَدَيْهِ بِالدَّسَمِ، وَأَنْ يَدْهُنَ بِالسَّمْنِ رَأْسَهُ لِصُدَاعٍ أَصَابَهُ وَلَمْ يَجْعَلْ فِي ذَلِكَ شَيْئًا.

L14897 It has been authentically reported from Ibn Umar that he disliked for a person in the state of consecration (iḥrām) to treat his hands with animal fat or rub ghee on his head to alleviate a headache he suffered, and he did not assign any legal consequence to that.

وَرُوِّينَا عَنْ عَطَاءٍ: مَنْ تَدَاوَى بِدَوَاءٍ فِيهِ طِيبٌ فَعَلَيْهِ الْكَفَّارَةُ وَلَا بَأْسَ بِالْأَدْهَانِ الْفَارِسِيَّةِ.

L14898 It has been narrated to us from ʿAṭāʾ: Whoever uses a medicine containing aromatic substances must perform expiation, but there is no harm in using Persian oils.

وَعَنْ إِبْرَاهِيمَ: فِي الطِّيبِ الْفِدْيَةُ.

L14899 And from Ibrahim: Expiation is required for using perfume.

وَعَنْ مُجَاهِدٍ: إذَا تَدَاوَى الْمُحْرِمُ بِالسَّمْنِ، أَوْ الزَّيْتِ، أَوْ الْبَنَفْسَجِ فَعَلَيْهِ الْكَفَّارَةُ.

L14900 From Mujāhid: If a person in the state of iḥram medicates himself with ghee, oil, or violet, expiation is required of him.

وَعَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ: كَانَ الْحَكَمُ، وَأَصْحَابُنَا يَقُولُونَ فِي الْمُحْرِمِ يُدَاوِي قُرُوحًا بِرَأْسِهِ وَجَسَدِهِ: إنَّ عَلَيْهِ كَفَّارَتَيْنِ.

L14901 From Al-Ḥajjāj ibn Arṭa'ah: Al-Ḥakam and our companions held the opinion regarding a *muḥrim* [in ritual consecration] who treats wounds by applying substances to his head or body: Two acts of expiation are incumbent upon him.

وَأَمَّا اللِّبَاسُ نَاسِيًا -: فَعَنْ عَطَاءٍ فِي الْمُحْرِمِ يُغَطِّي رَأْسَهُ نَاسِيًا لَا شَيْءَ عَلَيْهِ فَإِنْ لَبِسَ قَمِيصًا نَاسِيًا فَلَا شَيْءَ عَلَيْهِ وَلْيَسْتَغْفِرْ اللَّهَ تَعَالَى؛ فَإِنْ تَعَمَّدَ ذَلِكَ فَالْكَفَّارَةُ.

L14902–14904 As for clothing [worn] forgetfully, it is reported from ʿAṭā' regarding a pilgrim in iḥrām: if he covers his head forgetfully, he bears no liability. But if he [...] If someone wears a shirt in a state of forgetfulness, there is no sin upon him, and let him seek forgiveness from Allah, the Exalted. But if he does so intentionally, then expiation is obligatory.

وَعَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ بِمِثْلِهِ لَا شَيْءَ فِي ذَلِكَ عَلَى النَّاسِي.

L14905 From Ḥammād ibn Abī Sulaymān similarly: There is no blame upon the one who forgets in that matter.

وَعَنْ مُجَاهِدٍ، وَسَعِيدِ بْنِ جُبَيْرٍ: أَنَّهُمَا أَجَازَا لِلْمُحْرِمِ أَكْلَ الطَّعَامِ، وَفِيهِ الزَّعْفَرَانُ - وَكَرِهَهُ عَطَاءٌ، وَأَخْبَرَ أَنَّهُ لَا يَأْثُرُ قَوْلَهُ عَنْ أَحَدٍ.

L14906 From Mujāhid and Saʿīd ibn Jubayr: They permitted a person in the state of consecration (*iḥrām*) to eat food containing saffron. ʿAṭā' disliked it and informed that his statement was not traced back to anyone.

وَعَنْ طَاوُسٍ، وَعَطَاءٍ: إبَاحَةُ الْخَبِيصِ الْمُزَعْفَرِ لِلْمُحْرِمِ.

L14907 And from Ṭāwus and ʿAṭā': the permissibility of saffron-infused *khabīṣ*, a date-based sweet dish, for a *muḥrim*, a person in iḥrām.

وَمِثْلُهُ عَنْ الْحَسَنِ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَجَابِرِ بْنِ زَيْدٍ، وَمُحَمَّدِ بْنِ عَلِيٍّ.

L14908 And something similar is narrated from Al-Ḥasan, Ibrāhīm al-Nakhaʿī, Jābir ibn Zayd and Muḥammad ibn ʿAlī.

وَعَنْ إبْرَاهِيمَ، وَعَطَاءٍ، وَالْحَسَنِ، فِي لِبَاسِ الْقَمِيصِ، وَالْقَلَنْسُوَةِ، وَالْخُفَّيْنِ لِلْمُحْرِمِ أَنَّهُ يُهْرِقُ دَمًا -: وَهَذِهِ كُلُّهَا أَقْوَالٌ مُخَالِفَةٌ لِأَقْوَالِ أَبِي حَنِيفَةَ، وَمَالِكٍ.

L14909 Concerning the opinions of Ibrāhīm, ʿAṭā', and al-Ḥasan on a Muhrim wearing a shirt, cap, or leather socks, they ruled that it requires a blood sacrifice. All these opinions contradict the views of Abū Ḥanīfah and Mālik.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا مَنْ تَعَمَّدَ مَا حُرِّمَ عَلَيْهِ فَقَدْ فَسَقَ، وَالْفُسُوقُ يُبْطِلُ الْحَجَّ كَمَا قَدَّمْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L14910 Abu Muhammad said: As for whoever deliberately commits what is forbidden to him, he has indeed transgressed, and the transgressions invalidate the Hajj as we have previously stated. And success is from Allah, the Exalted.

[مَسْأَلَةٌ لَا يَعْصِبُ الْمُحْرِمُ رَأْسَهُ بِسَيْرٍ وَلَا بِخِرْقَةٍ]

L14911 **Legal Ruling: A person in the state of *ihram* (ritual consecration) must not tie anything around his head, whether a strap or a piece of cloth.**

L14912 896 – Issue:

٨٩٦ - مَسْأَلَةٌ:

L14913 A Muhrim may tighten a belt around his izar if he wishes, or around his body, and gird himself with whatever he chooses. He may carry his bag on his head, tie his izar and ridā' over the belt if he wishes, carry any load he desires on his head, bind his head for a headache or wound, set a broken arm or lower leg, bandage his injuries, abscesses, or sores, and he incurs no blame for any of that. He may assume iḥrām wearing any color he wishes, except garments dyed with wars or saffron, because nothing of what we have mentioned has been prohibited by the Quran or the Sunnah. {And your Lord is not forgetful} [Maryam: 64]. However, it has been narrated to us through the chain of Wakīʿ from Ibn Abī Dhi'b from Ṣāliḥ from Abū Ḥassān that "the Messenger of Allah—peace and blessings be upon him—saw a Muhrim girded with a rope and said: 'O man with the rope, cast it away!'"[32]

وَلِلْمُحْرِمِ أَنْ يَشُدَّ الْمِنْطَقَةَ عَلَى إزَارِهِ إنْ شَاءَ أَوْ عَلَى جِلْدِهِ وَيَحْتَزِمَ بِمَا شَاءَ، وَيَحْمِلَ خُرْجَهُ عَلَى رَأْسِهِ، وَيَعْقِدَ إزَارَهُ عَلَيْهِ وَرِدَاءَهُ إنْ شَاءَ، وَيَحْمِلَ مَا شَاءَ مِنْ الْحُمُولَةِ عَلَى رَأْسِهِ، وَيَعْصِبَ عَلَى رَأْسِهِ لِصُدَاعٍ، أَوْ لِجَرْحٍ، وَيَجْبُرَ كَسْرَ ذِرَاعِهِ، أَوْ سَاقِهِ، وَيَعْصِبَ عَلَى جِرَاحِهِ، وَخُرَّاجِهِ، وَقُرُوحِهِ، وَلَا شَيْءَ عَلَيْهِ فِي كُلِّ شَيْءٍ مِنْ ذَلِكَ، وَيُحْرِمُ فِي أَيِّ لَوْنٍ شَاءَ حَاشَا مَا صُبِغَ بِوَرْسٍ، أَوْ زَعْفَرَانٍ لِأَنَّهُ لَمْ يَنْهَ عَنْ شَيْءٍ مِمَّا ذَكَرْنَا قُرْآنٌ، وَلَا سُنَّةٌ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] إلَّا أَنَّنَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ صَالِحٍ عَنْ أَبِي حَسَّانَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَأَى مُحْرِمًا مُحْتَزِمًا بِحَبْلٍ فَقَالَ: يَا صَاحِبَ الْحَبْلِ أَلْقِهِ» .

L14914 And via him from Muslim ibn Jundub to Ibn Abī Dhī'b: I heard Ibn ʿUmar say, "Do not tie anything to yourself while in *iḥrām*."

وَبِهِ إلَى ابْنِ أَبِي ذِئْبٍ عَنْ مُسْلِمِ بْنِ جُنْدُبٍ: سَمِعْتُ ابْنَ عُمَرَ يَقُولُ: لَا تَعْقِدْ عَلَيْكَ شَيْئًا وَأَنْتَ مُحْرِمٌ.

L14915 Through the chain of Ibn Abī Shaybah, he informed us from Ḥafṣ ibn Ghīyāth from Yaḥyā ibn Saʿīd from Nāfiʿ from Ibn ʿUmar that he disapproved of the money belt for one in the state of *iḥrām*. As for the report, it is *mursal* and holds no legal weight.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا حَفْصُ بْنُ غِيَاثٍ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ كَرِهَ الْهِمْيَانَ لِلْمُحْرِمِ - فَأَمَّا الْأَثَرُ فَمُرْسَلٌ لَا حُجَّةَ فِيهِ.

L14916–14917 It has been narrated to us via ʿAbd al-Razzāq, from al-Aslamī, on the authority of one who heard Ṣāliḥ—the client of al-Taw'ama—that he heard Ibn ʿAbbās say: "The Messenger of God, peace be upon him, permitted the use of a money belt for one in iḥrām."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْأَسْلَمِيِّ عَمَّنْ سَمِعَ صَالِحًا مَوْلَى التَّوْأَمَةِ أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ يَقُولُ: «رَخَّصَ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ - فِي الْهِمْيَانِ لِلْمُحْرِمِ» .

L14918 Abu Muhammad said: Both of them and a date. As for Ibn 'Umar, it has been reported from him and from other Companions—Allah was pleased with them—contrary to this.

قَالَ أَبُو مُحَمَّدٍ: كِلَاهُمَا وَتَمْرَةٌ - وَأَمَّا ابْنُ عُمَرَ فَقَدْ رُوِيَ عَنْهُ وَعَنْ غَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافُ هَذَا.

[32] **Qur'an references (L14913):** Qur'an 19:64 (Maryam).

L14919 It was reported to us through the chain of Ibn Abī Shaybah → Ibn Fuḍayl narrated to us → Layth → ʿAṭāʾ and Ṭāwus, who both said: "We saw Ibn ʿUmar tying both sides of his waist with a turban while in the state of iḥram."

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا ابْنُ فُضَيْلٍ عَنْ لَيْثٍ عَنْ عَطَاءٍ، وَطَاوُسٍ قَالَا جَمِيعًا: رَأَيْنَا ابْنَ عُمَرَ قَدْ شَدَّ حَقْوَيْهِ بِعِمَامَةٍ وَهُوَ مُحْرِمٌ.

L14920 And through the chain of Saʿīd ibn Manṣūr from Hushaym: I am Yaḥyā ibn Saʿīd al-Anṣārī, narrating from al-Qāsim ibn Muḥammad from ʿĀʾishah, the Mother of the Believers, that she granted concession for the himyān (which a pilgrim in iḥrām fastens around his hips) and also the belt.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ هُشَيْمٍ: أَنَا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّهَا كَانَتْ تُرَخِّصُ فِي الْهِمْيَانِ يَشُدُّهُ الْمُحْرِمُ عَلَى حَقْوَيْهِ، وَفِي الْمِنْطَقَةِ أَيْضًا.

L14921 Through the chain of Wakīʿ, from Sufyān, from Ḥumayd al-Aʿraj, from ʿAṭāʾ, from Ibn ʿAbbās, who said regarding the money belt for one in iḥrām: There is no blame in it.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ حُمَيْدٍ الْأَعْرَجِ عَنْ عَطَاءٍ عَنِ ابْنِ عَبَّاسٍ قَالَ فِي الْهِمْيَانِ لِلْمُحْرِمِ: لَا بَأْسَ بِهِ.

L14922 And from the narration of Shuʿbah from Manṣūr from Mujāhid, who said: I saw Ibn al-Zubayr come for Ḥajj and perform *ramal* (rapid walking during circumambulation) to the extent that his waist belt had worn through from rubbing against his stomach.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ قَالَ: رَأَيْت ابْنَ الزُّبَيْرِ جَاءَ حَاجًّا فَرَمَلَ حَتَّى رَأَيْت مِنْطَقَتَهُ قَدْ انْقَطَعَتْ عَلَى بَطْنِهِ.

L14923 Abu Muhammad said: There is no doubt that Ibn al-Zubayr was not compelled to secure his sustenance, and Ibn Umar did not stipulate anything regarding that matter. Malik held the opinion that whoever bandaged his head must offer an expiation.

قَالَ أَبُو مُحَمَّدٍ: لَا شَكَّ أَنَّ ابْنَ الزُّبَيْرِ لَمْ يَكُنْ مُضْطَرًّا إلَى إحْرَازِ نَفَقَتِهِ، وَابْنُ عُمَرَ لَمْ يَجْعَلْ فِي ذَلِكَ شَيْئًا - وَرَأَى مَالِكٌ عَلَى مَنْ عَصَبَ رَأْسَهُ فِدْيَةً.

L14924 And via the narration of Ibn ʿUmar: A muḥrim must not tie a strap or a rag around his head.

وَمِنْ طَرِيقِ ابْنِ عُمَرَ: لَا يَعْصِبُ الْمُحْرِمُ رَأْسَهُ بِسَيْرٍ وَلَا بِخِرْقَةٍ.

L14925 Narrated by Ibn Abi Shaybah from Abu Dawud al-Tayalisi from Abu Ma'shar from Abd al-Rahman ibn Yasar, who said: I saw Ibn Abbas tie his hair with a strap while in the state of ihram, and both of them did not place anything in it.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي دَاوُد الطَّيَالِسِيِّ عَنْ أَبِي مَعْشَرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَسَارٍ قَالَ: رَأَيْت ابْنَ عَبَّاسٍ قَدْ شَدَّ شَعْرَهُ بِسَيْرٍ وَهُوَ مُحْرِمٌ وَكِلَاهُمَا لَمْ يَجْعَلْ فِيهِ شَيْئًا.

L14926 From the chain of Saʿīd ibn Manṣūr: Sufyān (he is Ibn ʿUyaynah) narrated to us from ʿAmr ibn Dīnār: I asked Jābir ibn Zayd, Abū al-Shaʿthāʾ, "Does my izār come undone on the day of ʿArafah?" He replied, "Tie it."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ قُلْت لِجَابِرِ بْنِ زَيْدٍ أَبِي الشَّعْثَاءِ: يَنْحَلُّ إزَارِي يَوْمَ عَرَفَةَ؟ قَالَ: اعْقِدْهُ.

L14927 And via the chain of Saʿīd ibn Manṣūr: Khālid ibn ʿAbdullāh reported to us from al-ʿAlāʾ ibn al-Musayyib, from al-Ḥakam ibn ʿUtaybah: that he saw

no issue with a muḥrim draping his garment over his shoulders and tying it into a knot on his nape.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا خَالِدُ بْنُ عَبْدِ اللَّهِ عَنْ الْعَلَاءِ بْنِ الْمُسَيِّبِ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يَتَوَشَّحَ الْمُحْرِمُ بِثَوْبِهِ وَيَعْقِدَهُ عَلَى قَفَاهُ.

L14928–14929 From Saʿīd ibn Manṣūr, who narrated to us from Hushaym, from Yūnus, from al-Ḥasan al-Baṣrī, that he did not see any harm in a pilgrim in iḥrām tying a knot in his garment upon himself.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ عَنْ يُونُسَ عَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ لَمْ يَرَ بَأْسًا أَنْ يَعْقِدَ الْمُحْرِمُ ثَوْبَهُ عَلَى نَفْسِهِ.

L14930 The following permitted wearing the money belt for a person in iḥrām: Muḥammad ibn Kaʿb, ʿAṭāʾ, Ṭāwus, Muḥammad ibn ʿAlī, Ibrāhīm, Saʿīd ibn Jubayr, Mujāhid, and al-Qāsim ibn Muḥammad; others considered it disliked (makrūh).

وَأَبَاحَ لِبَاسَ الْهِمْيَانِ لِلْمُحْرِمِ: مُحَمَّدُ بْنُ كَعْبٍ، وَعَطَاءٌ، وَطَاوُسٌ، وَمُحَمَّدُ بْنُ عَلِيٍّ، وَإِبْرَاهِيمُ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَمُجَاهِدٌ، وَالْقَاسِمُ بْنُ مُحَمَّدٍ - وَكَرِهَهُ آخَرُونَ.

L14931 From Saʿīd ibn Jubayr: He permitted a person in iḥrām with a broken nail to apply gall to it and did not mandate anything further in that regard.

وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ أَنَّهُ أَبَاحَ لِلْمُحْرِمِ يَنْكَسِرُ ظُفْرُهُ: أَنْ يَجْعَلَ عَلَيْهِ مُرَارَةً وَلَمْ يَأْمُرْ فِي ذَلِكَ بِشَيْءٍ.

L14932 Through the chain of Sa'id ibn Mansur: Abu al-Ahwas reported to us, Mansur reported to us from Ibrāhīm and Mujāhid—both said: "A Muhrim (one in the state of Ihram) may splint his bone if it breaks." They stated: "No expiation is required of him for this."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا أَبُو الْأَحْوَصِ نَا مَنْصُورٌ عَنْ إبْرَاهِيمَ وَمُجَاهِدٍ قَالَا جَمِيعًا: يَجْبُرُ الْمُحْرِمُ عَظْمَهُ إذَا انْكَسَرَ، قَالَا: وَلَيْسَ عَلَيْهِ فِي ذَلِكَ كَفَّارَةٌ.

L14933 From the chain of Sa'id ibn Mansur: Jarir ibn Abd al-Hamid narrated to us from Mansur from Mujahid, who said: If a pilgrim in the state of ihram suffers a broken hand or sustains a head wound, he should bandage the injury (whether the fracture or head wound), secure it with a knot, and not apply any substance to it.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ ثنا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ قَالَ: إذَا انْكَسَرَتْ يَدُ الْمُحْرِمِ، أَوْ شُجَّ عَصَبَ عَلَى الشَّجِّ وَالْكَسْرِ وَعَقَدَ عَلَيْهِ، وَلَمْ يَجْعَلْ فِي ذَلِكَ شَيْئًا.

L14934 From Muhammad ibn Ali and Saʿīd ibn al-Musayyib: There is no harm in a Muhrim [pilgrim in ritual state] tying. Muhammad [ibn Ali] added: "For a sore."

وَعَنْ مُحَمَّدِ بْنِ عَلِيٍّ، وَسَعِيدِ بْنِ الْمُسَيِّبِ: لَا بَأْسَ أَنْ يَعْقِدَ الْمُحْرِمُ -: قَالَ مُحَمَّدٌ: عَلَى الْقَرْحَةِ.

L14935 Ibn al-Musayyib said: The ruling applies to the wound.

وَقَالَ ابْنُ الْمُسَيِّبِ: عَلَى الْجَرْحِ.

L14936 Abu Hanifah, Al-Shafi'i, and Abu Sulayman permitted the one in *ihram* to wear a money belt and a belt, to carry a travel bag on his head, and similar items, and they deemed it permissible.

وَأَبَاحَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ لِلْمُحْرِمِ: الْهِمْيَانَ وَالْمِنْطَقَةَ، وَأَنْ يَحْمِلَ الْخُرْجَ عَلَى رَأْسِهِ، وَنَحْوَ ذَلِكَ، وَلَمْ يَرَوْا فِيهِ بَأْسًا.

L14937 Malik permitted the wearing of the waistband for one in iḥrām if it contained his essentials, but forbade him from wearing it if it contained the essentials of another.

وَأَبَاحَ مَالِكٌ لِبَاسَ الْمِنْطَقَةِ لِلْمُحْرِمِ إِذَا كَانَتْ فِيهَا نَفَقَتُهُ، وَمَنَعَهُ لِبَاسَهَا إِذَا كَانَتْ فِيهَا نَفَقَةُ غَيْرِهِ.

L14938 Ibn al-Qasim held his colleague responsible for the ransom in that matter.

وَجَعَلَ ابْنُ الْقَاسِمِ صَاحِبَهُ فِي ذَلِكَ الْفِدْيَةَ.

L14939 Mālik prohibited tightening the band on the upper arm for a person in iḥrām, permitted tightening it directly against the skin, and prohibited tightening it over the izar (lower garment).

وَمَنَعَ مَالِكٌ مِنْ شَدِّ الْمِنْطَقَةِ عَلَى الْعَضُدِ لِلْمُحْرِمِ، وَأَبَاحَ شَدَّهَا عَلَى جِلْدِهِ، وَمَنَعَ مِنْ شَدِّهَا فَوْقَ الْإِزَارِ.

L14940 Ibn al-Qāsim deemed his companion's involvement in that matter to require an expiation—these are contradictory statements with no evidence supporting the validity of any of them, and we know of no one who held such positions before the two of them.

وَجَعَلَ ابْنُ الْقَاسِمِ صَاحِبَهُ فِي ذَلِكَ فِدْيَةً - فَأَقْوَالٌ مُتَنَاقِضَةٌ لَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا، وَلَا نَعْلَمُ أَحَدًا قَالَ بِهَا قَبْلَهُمَا.

L14941 Malik prohibited the one in the state of ihram from carrying a saddlebag belonging to another on his head and deemed a ransom due for that, but permitted him to carry it on his head if it was his own. This distinction is baseless, and we are not aware of it from anyone before him.

وَمَنَعَ مَالِكٌ الْمُحْرِمَ مِنْ حَمْلِ خُرْجٍ لِغَيْرِهِ عَلَى رَأْسِهِ، وَرَأَى عَلَيْهِ فِي ذَلِكَ فِدْيَةً، وَأَبَاحَ لَهُ حَمْلَهُ عَلَى رَأْسِهِ إِذَا كَانَ لَهُ - وَهَذَا فَرْقٌ فَاسِدٌ لَا نَعْلَمُهُ أَيْضًا عَنْ أَحَدٍ قَبْلَهُ.

L14942–14943 It has been reported from ʿAṭāʾ that the permissibility for a pilgrim in the state of consecration (iḥrām) to carry the basket on his head.

وَقَدْ رُوِيَ عَنْ عَطَاءٍ إِبَاحَةُ حَمْلِ الْمُحْرِمِ الْمِكْتَلَ عَلَى رَأْسِهِ.

L14944 From the path of Sufyān ibn ʿUyaynah, from ʿAmr ibn Dīnār, from Muḥammad ibn ʿAlī ibn al-Ḥusayn, who said: ʿUmar saw ʿAbdullāh ibn Jaʿfar wearing two garments dyed with stripes while he was in the state of *iḥrām*. He said, "What is this?" ʿAlī ibn Abī Ṭālib said, "I do not think anyone could teach *us* the *Sunnah*." So ʿUmar fell silent.

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ قَالَ: رَأَى عُمَرُ عَلَى عَبْدِ اللَّهِ بْنِ جَعْفَرٍ ثَوْبَيْنِ مُضَرَّجَيْنِ وَهُوَ مُحْرِمٌ فَقَالَ: مَا هَذَا؟ فَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: مَا أَخَالُ أَحَدًا يُعَلِّمُنَا السُّنَّةَ؟ فَسَكَتَ عُمَرُ.

L14945 Sālim ibn ʿAbdullāh ibn ʿUmar wore a reddish-yellow garment dyed with wars while he was a muḥrim.

وَعَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّهُ لَبِسَ ثَوْبًا مُوَرَّدًا وَهُوَ مُحْرِمٌ.

L14946 If it is said: It has been reported that ʿUmar disapproved of Ṭalḥa wearing a dyed garment for a pilgrim in iḥrām, we respond: You are the first to oppose ʿUmar in that matter, yet you did not disapprove of it? Nor did you deem it objectionable—and this is among the matters where they abandoned analogy, permitting dyed garments without applying analogy to wars or safflower

فَإِنْ قِيلَ: قَدْ رُوِيَ عَنْ عُمَرَ أَنَّهُ أَنْكَرَ عَلَى طَلْحَةَ لِبَاسَ ثَوْبٍ مَصْبُوغٍ لِلْمُحْرِمِ؟ قُلْنَا: أَنْتُمْ أَوَّلُ مَنْ خَالَفَ عُمَرَ فِي ذَلِكَ فَلَمْ تُنْكِرُوهُ؟ وَلَا رَأَيْتُمْ فِيهِ شَيْئًا - وَهَذَا مِمَّا تَرَكُوا فِيهِ الْقِيَاسَ فَأَبَاحُوا الْمُصَبَّغَاتِ وَلَمْ يَقِيسُوهَا عَلَى الْوَرْسِ وَالْمُعَصْفَرِ، كَمَا قَاسُوا كُلَّ مَنْ

dyes. Just as they analogized one who removes harm by it (i.e., shaving his head) to one who shaves his head, analogized one who wounds game to one who kills it, and obligated the same ruling upon one who wears a shirt or turban.

أَمَاطَ بِهِ أَذًى عَلَى حَالِقِ رَأْسِهِ، وَكَمَا قَاسُوا جَارِحَ الصَّيْدِ عَلَى قَاتِلِهِ، وَكَمَا أَوْجَبُوهَا عَلَى مَنْ لَبِسَ قَمِيصًا أَوْ عِمَامَةً.

A Legal Issue: The Cutting of the Haram's Trees.

[مَسْأَلَةٌ قَطْعُ شَجَرِ الْحَرَمِ]

L14947

897 - Issue:

٨٩٧ - مَسْأَلَةٌ:

L14948

It is not permissible for anyone to cut anything from the trees of the sacred precinct in Mecca and Medina—not a thorn or anything greater—nor to cut any of its grass, except for al-idhkhir, for gathering it is permissible within the sacred precinct. It is permissible for one to graze camels, a camel, or livestock in the sacred precinct. If one finds a branch another has cut or that has fallen and detached from its root, they may take it at that time.

وَلَا يَحِلُّ لِأَحَدٍ قَطْعُ شَيْءٍ مِنْ شَجَرِ الْحَرَمِ بِمَكَّةَ، وَالْمَدِينَةِ وَلَا شَوْكَةٍ فَمَا فَوْقَهَا، وَلَا مِنْ حَشِيشِهِ حَاشَا الْإِذْخِرَ فَإِنَّ جَمْعَهُ مُبَاحٌ فِي الْحَرَمِ - وَمُبَاحٌ لَهُ أَنْ يَرْعَى إِبِلَهُ أَوْ بَعِيرَهُ أَوْ مَوَاشِيَهُ فِي الْحَرَمِ - فَإِنْ وَجَدَ غُصْنًا قَدْ قَطَعَهُ غَيْرُهُ أَوْ وَقَعَ فَفَارَقَ جِذْمَهُ فَلَهُ أَخْذُهُ حِينَئِذٍ.

L14949

If someone gathers firewood specifically within the sanctuary of Medina, then it is permissible for whoever finds it to seize it.

فَإِنْ احْتَطَبَ فِي حَرَمِ الْمَدِينَةِ خَاصَّةً فَإِنَّ سَلْبَهُ حَلَالٌ لِمَنْ وَجَدَهُ.

L14950

It has been narrated to us through the chain of Muslim ibn al-Ḥajjāj, who received from Isḥāq ibn Ibrāhīm—known as Ibn Rāhwayh—who received from Jarīr, from Manṣūr, from Mujāhid, from Ṭāwūs, from Ibn ʿAbbās, who said: The Messenger of Allah—peace and blessings be upon him—declared on the day of Mecca's conquest: "Allah the Exalted made this land inviolable on the day He created the heavens and the earth. Thus, it remains inviolable by Allah's sanctity until the Day of Resurrection. Fighting within it was not lawful for anyone before me, nor was it lawful for me except for a short time during the day. It remains inviolable by Allah's sanctity until the Day of Resurrection: its trees are not to be felled, its game is not to be disturbed, no lost property is to be taken except by one who announces it publicly, and its green herbage is not to be harvested." Al-ʿAbbās said: "O Messenger of Allah, except for al-idhkhir, for it is used for their fuel and homes." He replied: "Except for al-idhkhir."

رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - أَنَا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ فَتْحِ مَكَّةَ: «إِنَّ هَذَا الْبَلَدَ حَرَّمَهُ اللَّهُ تَعَالَى يَوْمَ خَلَقَ السَّمَاوَاتِ وَالْأَرْضَ فَهُوَ حَرَامٌ بِحُرْمَةِ اللَّهِ تَعَالَى إِلَى يَوْمِ الْقِيَامَةِ وَإِنَّهُ لَمْ يَحِلَّ الْقِتَالُ فِيهِ لِأَحَدٍ قَبْلِي، وَلَمْ يَحِلَّ لِي إِلَّا سَاعَةً مِنْ نَهَارٍ، فَهُوَ حَرَامٌ بِحُرْمَةِ اللَّهِ إِلَى يَوْمِ الْقِيَامَةِ لَا يُعْضَدُ شَجَرُهُ وَلَا يُنَفَّرُ صَيْدُهُ، وَلَا يَلْتَقِطُ لُقَطَتَهُ إِلَّا مَنْ عَرَّفَهَا وَلَا يُخْتَلَى خَلَاهَا قَالَ الْعَبَّاسُ: يَا رَسُولَ اللَّهِ إِلَّا الْإِذْخِرَ فَإِنَّهُ لِقَيْنِهِمْ وَلِبُيُوتِهِمْ فَقَالَ: إِلَّا الْإِذْخِرَ» .

L14951

From the narration of Muslim: Qutaybah ibn Sa'id narrated to us; Laith—that is, Ibn Sa'd—narrated to us from Sa'id ibn Abi Sa'id al-Maqburi, from

L14952–14953

Abu Shurayh al-‘Adawi, that he heard the Messenger of Allah—peace be upon him—say: “Allah has made Mecca inviolable, not the people. Therefore, it is not lawful for anyone who believes in Allah and the Last Day to shed blood therein or cut down its trees. If anyone seeks to justify fighting therein by citing the permission granted to the Messenger of Allah—peace be upon him—then say to them: ’Allah permitted His Messenger but has not permitted you. He only permitted me therein for an hour of daytime, and its inviolability has now been restored today as it was inviolable yesterday. Let those present convey this to those absent.”’

وَمِنْ طَرِيقِ مُسْلِمٍ نَا قُتَيْبَةُ بْنُ سَعِيدٍ نَا لَيْثٌ هُوَ ابْنُ سَعْدٍ - عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي شُرَيْحٍ الْعَدَوِيِّ " أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - عَلَيْهِ السَّلَامُ - يَقُولُ: «إِنَّ مَكَّةَ حَرَّمَهَا اللَّهُ وَلَمْ يُحَرِّمْهَا النَّاسُ فَلَا يَحِلُّ لِامْرِئٍ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ يَسْفِكَ بِهَا دَمًا وَلَا يَعْضِدَ بِهَا شَجَرَةً فَإِنْ أَحَدٌ تَرَخَّصَ بِقِتَالِ رَسُولِ اللَّهِ - عَلَيْهِ السَّلَامُ - فِيهَا فَقُولُوا لَهُ: إِنَّ اللَّهَ أَذِنَ لِرَسُولِهِ وَلَمْ يَأْذَنْ لَكُمْ؟ وَإِنَّمَا أَذِنَ لِي فِيهَا سَاعَةً مِنْ نَهَارٍ وَقَدْ عَادَتْ حُرْمَتُهَا الْيَوْمَ كَحُرْمَتِهَا بِالْأَمْسِ، وَلْيُبَلِّغْ الشَّاهِدُ الْغَائِبَ» .

L14954 Abu Muhammad said: This is what God, the Exalted, has prohibited through the words of His Messenger (peace be upon him), and He did not prohibit the herding of livestock: “Your Lord is not forgetful” (Quran 19:64).[33]

قَالَ أَبُو مُحَمَّدٍ: هَذَا مَا نَهَى اللَّهُ تَعَالَى عَنْهُ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - وَلَمْ يَنْهَ عَنْ إرْعَاءِ الْمَوَاشِي: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L14955 Abū Ḥanīfa held the view that grazing within the sacred precinct of Mecca is disliked, as this constitutes an encroachment on Allah’s boundaries, the Exalted. Mālik, however, permitted taking fodder and all other vegetation of the sacred precinct—a stance that is also contrary to the command of the Messenger of Allah, peace be upon him. There is no distinction between fodder and the rest of the sacred precinct’s vegetation.

قَالَ أَبُو حَنِيفَةَ: بِكَرَاهِيَةِ الرَّعْيِ فِي حَرَمِ مَكَّةَ - وَهَذَا تَعَدٍّ لِحُدُودِ اللَّهِ تَعَالَى - وَأَبَاحَ مَالِكٌ أَخْذَ السَّنَى وَسَائِرِ حَشِيشِ الْحَرَمِ - وَهَذَا أَيْضًا خِلَافُ أَمْرِ رَسُولِ اللَّهِ - عَلَيْهِ السَّلَامُ -، وَلَا فَرْقَ بَيْنَ السَّنَى وَبَيْنَ سَائِرِ حَشِيشِ الْحَرَمِ.

L14956 Abu Hanifah, al-Shafi’i, and Sufyan ruled that compensation is obligatory for one who cuts a tree in the Sacred Precinct. Abu Hanifah stated regarding a branch and anything above it up to the entire tree: the value of that [must be paid]. If it reaches the value of a pilgrimage sacrifice, he must ritually offer it. If it does not reach the value of a pilgrimage sacrifice, then its equivalent value is to be given as charity in the form of food—half a sa‘ of wheat, a sa‘ of dates, or a sa‘ of barley—to each needy person. Expiatory fasting does not suffice as compensation in this case.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَسُفْيَانُ: بِإِيجَابِ الْجَزَاءِ عَلَى قَاطِعِ شَجَرِ الْحَرَمِ - قَالَ أَبُو حَنِيفَةَ فِي الْغُصْنِ فَمَا فَوْقَهُ إلَى الدَّوْحَةِ: قِيمَةُ ذَلِكَ، فَإِنْ بَلَغَ هَدْيًا أَهْدَاهُ، فَإِنْ لَمْ يَبْلُغْ هَدْيًا فَقِيمَتُهُ طَعَامًا يَتَصَدَّقُ بِهِ لِكُلِّ مِسْكِينٍ نِصْفُ صَاعِ حِنْطَةٍ، أَوْ صَاعُ تَمْرٍ، أَوْ شَعِيرٍ، وَلَا يُجْزِئُ فِي ذَلِكَ صِيَامٌ.

L14957 Zufar said: He must give charity of equivalent value, and neither a sacrificial animal nor fasting suffices for this obligation.

وَقَالَ زُفَرُ: يَتَصَدَّقُ بِالْقِيمَةِ وَلَا يُجْزِئُ فِي ذَلِكَ هَدْيٌ وَلَا صِيَامٌ.

L14958 Abū Muḥammad said: It has been related to us from some of the Salaf: In

قَالَ أَبُو مُحَمَّدٍ: رُوِّينَا عَنْ بَعْضِ السَّلَفِ فِي الدَّوْحَةِ بَدَنَةٌ.

[33] **Qur’an references (L14954):** Qur’an 19:64 (Maryam).

the large tree there is a sacrificial camel.

وَعَنْ عَطَاءٍ فِيهَا بَقَرَةٌ، وَفِي الْوَتَدِ مُدٌّ.

L14959 And from ʻAṭāʼ: In it is a cow, and in the stake is a *mudd*.

وَعَنْ عَبْدِ اللَّهِ بْنِ عَامِرٍ فِي الدَّوْحَةِ: بَقَرَةٌ.

L14960 It is narrated from Abdullah ibn Amir regarding the tree: a cow.

وَعَنْ ابْنِ أَبِي نَجِيحٍ فِي الدَّوْحَةِ سِتَّةُ دَنَانِيرَ، أَوْ خَمْسَةٌ، أَوْ سَبْعَةٌ يَتَصَدَّقُ بِهَا بِمَكَّةَ - وَمَا نَعْلَمُ لِأَبِي حَنِيفَةَ وَزُفَرَ فِي قَوْلِهِمَا سَلَفًا.

L14961 And from Ibn Abi Najīḥ regarding al-Dawḥah—six dinars, five dinars, or seven dinars—he is to give as charity in Mecca. We know of no precedent for the opinion of Abū Ḥanīfah and Zufar.

وَقَالَ مَالِكٌ، وَأَبُو سُلَيْمَانَ: لَا شَيْءَ فِي ذَلِكَ - وَهُوَ الْحَقُّ لِأَنَّهُ لَوْ كَانَ فِي ذَلِكَ شَيْءٌ لَبَيَّنَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا يَجُوزُ شَرْعُ هَدْيٍ، وَلَا إيجَابُ صِيَامٍ، وَلَا إلْزَامُ غَرَامَةِ إطْعَامٍ، وَلَا صَدَقَةٍ، إلَّا بِقُرْآنٍ، أَوْ سُنَّةٍ، وَهَذَا مِمَّا تَرَكَتْ فِيهِ الطَّوَائِفُ الْمَذْكُورَةُ الْقِيَاسَ.

L14962–14964 Mālik and Abū Sulaymān said: "There is nothing in that"—and this is the correct opinion, because if there were anything in that. The Messenger of Allah—peace and blessings be upon him—has clarified it, and it is not permissible to legislate a sacrificial offering, nor to obligate fasting, nor to impose a penalty of feeding, nor charity, except through the Qur'an or the Sunnah. This is one of the matters in which the aforementioned sects have abandoned analogy.

فَإِنَّ أَبَا حَنِيفَةَ، وَالشَّافِعِيَّ قَاسَا إيجَابَ الْجَزَاءِ فِي شَجَرِ الْحَرَمِ عَلَى إيجَابِ الْجَزَاءِ فِي صَيْدِهِ وَلَمْ يَقِيسَا إيجَابَ الْجَزَاءِ فِي حَرَمِ الْمَدِينَةِ عَلَى إيجَابِهِ فِي حَرَمِ مَكَّةَ وَكِلَاهُمَا حَرَمٌ مُحَرَّمٌ صَيْدُهُ.

L14965 Indeed, Abū Ḥanīfah and al-Shāfiʻī analogized the imposition of compensation for the trees of the Sacred Precinct to the imposition of compensation for its game. Yet they did not analogize the imposition of compensation in Medina's Sacred Precinct to its imposition in Mecca's Sacred Precinct, though both are a sacred precinct where hunting is prohibited.

وَقَاسَ مَالِكٌ إيجَابَ الْفِدْيَةِ عَلَى اللَّابِسِ وَالْمُتَطَيِّبِ عَلَى وُجُوبِهَا عَلَى حَالِقِ رَأْسِهِ، وَلَمْ يَقِسْ إيجَابَ الْجَزَاءِ فِي شَجَرِ حَرَمِ مَكَّةَ، وَفِي صَيْدِ حَرَمِ الْمَدِينَةِ عَلَى وُجُوبِهِ فِي صَيْدِ حَرَمِ مَكَّةَ.

L14966 Malik drew an analogy between imposing the ransom on one who wears [sewn garments] or applies perfume and its imposition on one who shaves his head, but he did not extend the analogy to impose compensation for cutting trees in the Sanctuary of Mecca or for hunting game in the Sanctuary of Medina, as he upheld its obligation for hunting game in the Sanctuary of Mecca.

وَكُلُّ ذَلِكَ تَنَاقُضٌ لَا وَجْهَ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L14967 All of that is an indefensible contradiction, and success lies solely with Allah, the Exalted.

[مَسْأَلَةٌ سفك الدِّمَاء فِي الْحَرَمِ]

A Legal Inquiry Regarding Shedding Blood in the Sacred Precinct.

L14968

L14969 898 - Issue:

L14970 It is fundamentally impermissible to shed blood as legal retribution (qiṣāṣ) within the Ḥaram of Mecca, nor to implement any ḥadd punishment therein, nor to imprison anyone therein. Whoever becomes liable for any of these [penalties] must be taken out of the Ḥaram, where the ḥadd punishment shall then be enforced against them, due to what we have mentioned of the Messenger of Allah's prohibition—peace be upon him—against bloodshed therein, and in accordance with Allah's declaration: *"The station of Abraham; whoever enters it shall be secure"* (Quran 3:97). This is a universal ruling from which no exception may be made.[34]

L14971 As for expelling the disobedient one from it, this is based on the statement of Allah, the Most High: "Both of you purify My House for those who circumambulate, those who seclude themselves in worship, and those who bow and prostrate." [Al-Baqarah: 125] Thus, purifying it from the disobedient is obligatory. This ruling does not apply to the Haram of Medina, because no explicit text has come regarding this matter. Moreover, slaughtering lawfully owned animals, cupping, or opening a vein is not termed bloodshed.[35]

L14972 We have been narrated via the chain of Ibn ʿUyaynah: Ibrāhīm ibn Maysarah—who was trustworthy and reliable—said: I heard Ṭāwūs say: I heard Ibn ʿAbbās state: "Whoever commits a ḥadd offense and then enters the Ḥaram (Sacred Precinct), he is not to be sat with nor pledged allegiance to"—and Ṭāwūs mentioned further remarks—"including: 'Once he leaves the Ḥaram (Sacred Precinct), the ḥadd punishment is to be enforced upon him.'" This is the opinion of Saʿīd ibn Jubayr and al-Ḥakam ibn ʿUtaybah, and it is also the opinion of ʿUmar ibn al-Khaṭṭāb.

L14973–14974 "From the narration of Ibn Jurayj, Abū al-Zubayr said: Ibn ʿUmar said, 'If I found the killer of ʿUmar therein, I would not assault him'—meaning the Ḥaram of Mecca."

L14975 Ibn Abbas said: If I were to find my father's killer in the Ḥaram, I would

[34] **Qur'an references (L14970):** Qur'an 3:97 (Ali 'Imran).
[35] **Qur'an references (L14971):** Qur'an 2:125 (Al-Baqarah).

٨٩٨ - مَسْأَلَةٌ:

وَلَا يَحِلُّ أَنْ يُسْفَكَ فِي حَرَمِ مَكَّةَ دَمٌ بِقِصَاصٍ أَصْلًا، وَلَا أَنْ يُقَامَ فِيهَا حَدٌّ، وَلَا يُسْجَنَ فِيهَا أَحَدٌ، فَمَنْ وَجَبَ عَلَيْهِ شَيْءٌ مِنْ ذَلِكَ أُخْرِجَ عَنْ الْحَرَمِ وَأُقِيمَ عَلَيْهِ الْحَدُّ لِمَا ذَكَرْنَا مِنْ نَهْيِ رَسُولِ اللَّهِ - عَلَيْهِ السَّلَامُ - أَنْ يُسْفَكَ بِهَا دَمٌ، وَلِقَوْلِ اللَّهِ تَعَالَى: {مَقَامُ إِبْرَاهِيمَ وَمَنْ دَخَلَهُ كَانَ آمِنًا} [آل عمران: ٩٧] وَهَذَا عُمُومٌ لَا يَجُوزُ أَنْ يُخَصَّ مِنْهُ شَيْءٌ.

وَأَمَّا إخْرَاجُ الْعَاصِي مِنْهُ فَلِقَوْلِ اللَّهِ تَعَالَى: {أَنْ طَهِّرَا بَيْتِيَ لِلطَّائِفِينَ وَالْعَاكِفِينَ وَالرُّكَّعِ السُّجُودِ} [البقرة: ١٢٥] فَتَطْهِيرُهُ مِنْ الْعُصَاةِ وَاجِبٌ، وَلَيْسَ هَذَا فِي حَرَمِ الْمَدِينَةِ، لِأَنَّهُ لَمْ يَأْتِ بِذَلِكَ نَصٌّ وَلَا يُسَمَّى ذَبْحُ الْحَيَوَانِ الْمُتَمَلَّكِ وَلَا الْحِجَامَةُ، وَلَا فَتْحُ الْعِرْقِ: سَفْكَ دَمٍ.

رُوِّينَا مِنْ طَرِيقِ ابْنِ عُيَيْنَةَ أَنَا إبْرَاهِيمُ بْنُ مَيْسَرَةَ - وَكَانَ ثِقَةً مَأْمُونًا - قَالَ: سَمِعْت طَاوُسًا يَقُولُ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ: مَنْ أَصَابَ حَدًّا، ثُمَّ دَخَلَ الْحَرَمَ لَمْ يُجَالَسْ وَلَمْ يُبَايَعْ - وَذَكَرَ كَلَامًا - وَفِيهِ: فَإِذَا خَرَجَ أُقِيمَ عَلَيْهِ الْحَدُّ - وَهُوَ قَوْلُ سَعِيدِ بْنِ جُبَيْرٍ، وَالْحَكَمِ بْنِ عُتَيْبَةَ - وَهُوَ قَوْلُ عُمَرَ بْنِ الْخَطَّابِ.

وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ قَالَ أَبُو الزُّبَيْرِ: قَالَ ابْنُ عُمَرَ: لَوْ وَجَدْتُ فِيهِ قَاتِلَ عُمَرَ مَا نَدَهْتُهُ يَعْنِي حَرَمَ مَكَّةَ.

وَقَالَ ابْنُ عَبَّاسٍ: لَوْ وَجَدْت قَاتِلَ أَبِي فِي الْحَرَمِ مَا عَرَضْت لَهُ.

not confront him.

L14976 Abu Muhammad said: They did not distinguish between one who committed an offense incurring a prescribed punishment within the Sacred Precinct and one who committed it outside, then sought refuge therein; and ʻAṭāʼ and Mujāhid differentiated between the two.

قَالَ أَبُو مُحَمَّدٍ: فَلَمْ يَخُصُّوا مَنْ أَصَابَ حَدًّا فِي الْحَرَمِ مِمَّنْ أَصَابَهُ خَارِجَ الْحَرَمِ، ثُمَّ لَجَأَ إِلَى الْحَرَمِ - وَفَرَّقَ عَطَاءٌ، وَمُجَاهِدٌ بَيْنَهُمَا.

L14977 And it has been narrated to us through the chain of Ibn al-Zubayr that he expelled a group from the sacred sanctuary to the profane area and crucified them.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ الزُّبَيْرِ أَنَّهُ خَرَّجَ قَوْمًا مِنْ الْحَرَمِ إِلَى الْحِلِّ فَصَلَبَهُمْ.

L14978 Through the chain of Shuʻbah from Ḥammād ibn Abī Sulaymān regarding someone who commits murder then seeks refuge in the sacred sanctuary (Ḥaram). He said: "He must be expelled from it and executed."

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ فِيمَنْ قَتَلَ، ثُمَّ لَجَأَ إِلَى الْحَرَمِ؟ قَالَ: يُخْرَجُ مِنْهُ فَيُقْتَلُ.

L14979 Abu Hanifa said: Hadd punishments are enforced in the Haram except for killing alone. Neither the hadd punishment for killing nor qisas is carried out within the Haram until the offender departs of his own volition.

وَقَالَ أَبُو حَنِيفَةَ: تُقَامُ الْحُدُودُ فِي الْحَرَمِ إلَّا الْقَتْلَ وَحْدَهُ فَإِنَّهُ لَا يُقَامُ فِيهِ حَدُّ قَتْلٍ وَلَا قَوَدٍ حَتَّى يَخْرُجَ بِاخْتِيَارِهِ.

L14980 Abu Yusuf said: He is brought out, then the hadd of death is imposed upon him.

وَقَالَ أَبُو يُوسُفَ: يُخْرَجُ فَيُقَامُ عَلَيْهِ حَدُّ الْقَتْلِ.

L14981 Ali said: The categorization of Abu Hanifa is invalid, and we know of no argument at all—nor any precedent—for those who permitted killing within the sacred precinct, except al-Husayn ibn Numayr and those he dispatched, al-Hajjaj and those he dispatched.

قَالَ عَلِيٌّ: تَقْسِيمُ أَبِي حَنِيفَةَ فَاسِدٌ وَمَا نَعْلَمُ لِمَنْ أَبَاحَ الْقَتْلَ فِي الْحَرَمِ حُجَّةً أَصْلًا، وَلَا سَلَفًا، إلَّا الْحُصَيْنَ بْنَ نُمَيْرٍ، وَمَنْ بَعَثَهُ، وَالْحَجَّاجَ، وَمَنْ بَعَثَهُ.

L14982 Abu Muhammad said: As for one who is aggressed against in al-Haram, he should defend himself. Allah the Exalted has said: {Do not fight them at the Sacred Mosque unless they fight you there. But if they fight you, then kill them} [Al-Baqarah: 191]. And with Allah, the Exalted, is success.[36]

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا مَنْ تُعُدِّيَ عَلَيْهِ فِي الْحَرَمِ فَلْيَدْفَعْ عَنْ نَفْسِهِ قَالَ تَعَالَى: {وَلا تُقَاتِلُوهُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ حَتَّى يُقَاتِلُوكُمْ فِيهِ فَإِنْ قَاتَلُوكُمْ فَاقْتُلُوهُمْ} [البقرة: ١٩١] وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L14983 **An issue: Nothing may be removed from the soil of the Sacred Precinct or its stones to the Hill (areas outside the Sacred Precinct).**

[مَسْأَلَةٌ لَا يُخْرَجُ شَيْءٌ مِنْ تُرَابِ الْحَرَمِ وَلَا حِجَارَتِهِ إلَى الْحِلِّ]

[36] **Qur'an references (L14982):** Qur'an 2:191 (Al-Baqarah).

899 – Issue

No soil of the Ḥaram nor any of its stones must be taken out to the Ḥill.

It has been narrated to us through the chain of Sa'īd ibn Manṣūr: Hushaym informed us, from Ḥajjāj, from 'Aṭā', who said: It is reprehensible for soil to be taken out from the Ḥaram to the Ḥill or for soil of the Ḥill to be brought into the Ḥaram — this is the opinion of Ibn Abī Laylā and others.

There is no harm in removing Zamzam water because the sanctity of the Ḥaram pertains solely to the earth, its soil, and its stones. Therefore, it is not permissible for one to nullify its sanctity, and no prohibition has been established regarding the water.

The Legal Question of Ownership, Sale, and Leasing of Properties in Makkah

900 - Issue:

Owning houses in Makkah, selling them, and leasing them are permissible.

It has been narrated to us from Abdullah ibn Amr ibn al-As that he said: It is not permissible to sell the houses [of mosques] nor to lease them.

Umar ibn Abd al-Aziz forbade its rental.

It has been reported to us that Umar prohibited the codification [of rulings] according to their juristic positions. Two disconnected (mursal) narrations on this matter have been transmitted to us, but they are unsound—this being the opinion of Ishaq ibn Rahawayh.

Ali said: The Companions thereby owned their homes through the knowledge of the Messenger of Allah (peace be upon him), and he did not prohibit that. Whoever owns a share, for Allah the Exalted has said: "Allah has per-

٨٩٩ - مَسْأَلَةٌ

: وَلَا يُخْرَجُ شَيْءٌ مِنْ تُرَابِ الْحَرَمِ وَلَا حِجَارَتِهِ إِلَى الْحِلِّ

رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ أَنَا حَجَّاجٌ عَنْ عَطَاءٍ قَالَ: يُكْرَهُ أَنْ يُخْرَجَ مِنْ تُرَابِ الْحَرَمِ إِلَى الْحِلِّ، أَوْ يُدْخَلَ تُرَابُ الْحِلِّ إِلَى الْحَرَمِ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى وَغَيْرِهِ.

وَلَا بَأْسَ بِإِخْرَاجِ مَاءِ زَمْزَمَ لِأَنَّ حُرْمَةَ الْحَرَمِ إِنَّمَا هِيَ لِلْأَرْضِ وَتُرَابِهَا وَحِجَارَتِهَا، فَلَا يَجُوزُ لَهُ إِزَالَةُ حُرْمَتِهَا وَلَمْ يَأْتِ فِي الْمَاءِ تَحْرِيمٌ.

[مَسْأَلَةُ مِلْكُ دُورِ مَكَّةَ وَبَيْعُهَا وَإِجَارَتُهَا]

٩٠٠ - مَسْأَلَةٌ:

وَمِلْكُ دُورِ مَكَّةَ وَبَيْعُهَا وَإِجَارَتُهَا جَائِزٌ.

وَقَدْ رُوِّينَا عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّهُ قَالَ: لَا يَحِلُّ بَيْعُ دُورِهَا وَلَا إِجَارَتُهَا.

وَمَنَعَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ مِنْ كِرَائِهَا.

وَرُوِّينَا عَنْ عُمَرَ الْمَنْعَ مِنَ التَّبْوِيبِ عَلَى دُورِهَا، وَرُوِّينَا فِي ذَلِكَ خَبَرَيْنِ مُرْسَلَيْنِ لَا يَصِحَّانِ - وَهُوَ قَوْلُ إِسْحَاقَ بْنِ رَاهْوَيْهِ.

قَالَ عَلِيٌّ: قَدْ مَلَكَ الصَّحَابَةُ بِهَا دُورَهُمْ بِعِلْمِ رَسُولِ اللَّهِ - عَلَيْهِ السَّلَامُ - فَلَمْ يَمْنَعْ مِنْ ذَلِكَ، وَكُلُّ مَنْ مَلَكَ رَبْعًا فَقَدْ قَالَ اللَّهُ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥] وَأَمَرَ بِالْمُؤَاجَرَةِ رَسُولُهُ - عَلَيْهِ السَّلَامُ - فَكُلُّ ذَلِكَ مُبَاحٌ فِيهَا.

mitted trade and forbidden usury" [Al-Baqarah: 275]. His Messenger (peace be upon him) commanded renting, and all of that is permissible within it.[37]

Issue: Gathering Firewood in the Ḥaram of Medina

901 - Issue:

As for one who gathers firewood in the sacred precinct of Medina, it is lawful to seize all he carries in that state and strip him entirely except for what merely covers his private parts. This ruling derives from what we were narrated through Muslim's chain: Isḥāq ibn Ibrāhīm—Ibn Rāhawayh—from Abū ʿĀmir al-ʿAqadī via ʿAbdullāh ibn Jaʿfar, from Ismāʿīl ibn Muḥammad ibn Saʿd ibn Abī Waqqāṣ, from his uncle ʿĀmir ibn Saʿd, who said: Saʿd rode to his estate at al-ʿAqīq and found a slave cutting a tree or stripping its branches. He stripped him of his belongings. When Saʿd returned, the slave's kin came asking him to restore what he had taken from their slave, whether to them or to the slave himself. He declared: "By Allah! I shall never return anything the Messenger of Allah—peace be upon him—granted me as a special portion!" and he refused to restore it to them.

From Umar ibn al-Khaṭṭāb: He said to a freedman of ʿUthmān ibn Maẓʿūn, "I have appointed you over this area. If you see anyone hacking a tree or pruning it, take his rope and axe?" I said, "Should I take his cloak?" He said, "No"—and a similar report is narrated from Ibn ʿUmar.

[37] **Qur'an references (L14995):** Qur'an 2:275 (Al-Baqarah).

[مَسْأَلَة احْتَطَبَ فِي حَرَمِ الْمَدِينَةِ]

٩٠١ - مَسْأَلَةٌ:

وَأَمَّا مَنْ احْتَطَبَ فِي حَرَمِ الْمَدِينَةِ فَحَلَالٌ سَلْبُهُ كُلَّ مَا مَعَهُ فِي حَالِهِ تِلْكَ وَتَجْرِيدُهُ إِلَّا مَا يَسْتُرُ عَوْرَتَهُ فَقَطْ؛ فَلِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - عَنْ أَبِي عَامِرٍ الْعَقَدِيِّ نَا عَبْدُ اللَّهِ بْنُ جَعْفَرٍ عَنْ إِسْمَاعِيلَ بْنِ مُحَمَّدِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ عَمِّهِ عَامِرِ بْنِ سَعْدٍ قَالَ: إِنَّ سَعْدًا أَبَاهُ رَكِبَ إِلَى قَصْرِهِ بِالْعَقِيقِ فَوَجَدَ عَبْدًا يَقْطَعُ شَجَرًا أَوْ يَخْبِطُهُ فَسَلَبَهُ فَلَمَّا رَجَعَ سَعْدٌ جَاءَهُ أَهْلُ الْعَبْدِ فَسَأَلُوهُ أَنْ يَرُدَّ عَلَى غُلَامِهِمْ أَوْ عَلَيْهِمْ مَا أَخَذَ مِنْ غُلَامِهِمْ فَقَالَ: مَعَاذَ اللَّهِ أَنْ أَرُدَّ شَيْئًا نَفَّلَنِيهِ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ - وَأَبَى أَنْ يَرُدَّ عَلَيْهِمْ.

وَعَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ لِمَوْلًى لِعُثْمَانَ بْنِ مَظْعُونٍ: إِنِّي اسْتَعْمَلْتُكَ عَلَى مَا هَاهُنَا فَمَنْ رَأَيْتُهُ يَخْبِطُ شَجَرًا أَوْ يَعْضِدُهُ: فَخُذْ حَبْلَهُ وَفَأْسَهُ؟ قُلْت: آخُذُ رِدَاءَهُ؟ قَالَ: لَا - وَعَنْ ابْنِ عُمَرَ نَحْوُ هَذَا.

L15000 Abū Muḥammad said: No opposing Companion is known [to contradict them], and this ruling does not apply to dry vegetation, for the precedent only pertains to gathering firewood. Moreover, covering the private parts is obligatory in all circumstances.

قَالَ أَبُو مُحَمَّدٍ: وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ يُعْرَفُ وَلَيْسَ هَذَا فِي الْحَشِيشِ لِأَنَّ الْأَثَرَ إنَّمَا جَاءَ فِي الِاحْتِطَابِ - وَسِتْرُ الْعَوْرَةِ فَرْضٌ بِكُلِّ حَالٍ.

L15001 **A legal issue: He vowed to walk to Mecca as a means of seeking closeness to God.**

[مَسْأَلَةُ نَذَرَ أَنْ يَمْشِيَ إلَى مَكَّةَ عَلَى سَبِيلِ التَّقَرُّبِ]

L15002 902 - Issue:

٩٠٢ - مَسْأَلَةٌ:

L15003 Whoever vows to walk to Mecca, Arafat, Mina, or a specified place within the Ḥaram as an act of devotion to Allah—the Almighty—or gratitude to Him—Exalted is He—not as an oath, becomes obligated to walk to the vowed location to pray there or solely to circumambulate the Kaaba. They are not required to perform Hajj or Umrah unless they explicitly vow to do so.

وَمَنْ نَذَرَ أَنْ يَمْشِيَ إلَى مَكَّةَ أَوْ إلَى عَرَفَةَ أَوْ إلَى مِنًى أَوْ إلَى مَكَان ذَكَرَهُ مِنْ الْحَرَمِ عَلَى سَبِيلِ التَّقَرُّبِ إلَى اللَّهِ - عَزَّ وَجَلَّ - أَوْ الشُّكْرِ لَهُ - تَعَالَى - لَا عَلَى سَبِيلِ الْيَمِينِ فَفَرْضٌ عَلَيْهِ الْمَشْيُ إلَى حَيْثُ نَذَرَ لِلصَّلَاةِ هُنَالِكَ، أَوْ الطَّوَافِ بِالْبَيْتِ فَقَطْ - وَلَا يَلْزَمُهُ أَنْ يَحُجَّ، وَلَا أَنْ يَعْتَمِرَ إلَّا أَنْ يَنْذِرَ ذَلِكَ وَإِلَّا فَلَا.

L15004–15005 If walking to the place he vowed becomes difficult for him, he may ride without incurring any obligation. However, if he rides the entire journey without experiencing hardship during the journey, he must offer a ritual sacrifice (hady), and he cannot substitute it with fasting or feeding the poor.

فَإِنْ شَقَّ عَلَيْهِ الْمَشْيُ إلَى حَيْثُ نَذَرَ مِنْ ذَلِكَ فَلْيَرْكَبْ وَلَا شَيْءَ عَلَيْهِ؛ فَإِنْ رَكِبَ الطَّرِيقَ كُلَّهُ لِغَيْرِ مَشَقَّةٍ فِي طَرِيقٍ فَعَلَيْهِ هَدْيٌ وَلَا يُعَوِّضُ مِنْهُ صِيَامًا وَلَا إطْعَامًا.

L15006 If one vows to perform Hajj on foot, one must walk from the Miqat until completing one's Hajj.

فَإِنْ نَذَرَ أَنْ يَحُجَّ مَاشِيًا فَلْيَمْشِ مِنْ الْمِيقَاتِ حَتَّى يُتِمَّ حَجَّهُ.

L15007 Whoever vows to ride for that purpose must ride. This is imperative due to Allah's statement—Exalted is He—: "They will come to you on foot and on every emaciated camel, arriving from every distant pass" [Al-Hajj: 27]. Thus, walking and riding toward all that we have mentioned constitute obedience to Allah—the Mighty and Majestic.[1]

وَمَنْ نَذَرَ أَنْ يَرْكَبَ فِي ذَلِكَ فَعَلَيْهِ أَنْ يَرْكَبَ وَلَا بُدَّ لِقَوْلِ اللَّهِ - تَعَالَى -: {يَأْتُوكَ رِجَالا وَعَلَى كُلِّ ضَامِرٍ يَأْتِينَ مِنْ كُلِّ فَجٍّ عَمِيقٍ} [الحج: ٢٧] فَالْمَشْيُ وَالرُّكُوبُ إلَى كُلِّ مَا ذَكَرْنَا طَاعَةٌ لِلَّهِ - عَزَّ وَجَلَّ -.

L15008 It has been narrated to us through the narration of Mālik from Ṭalḥa ibn ʿAbd al-Malik, from al-Qāsim ibn Muḥammad, from ʿĀ'isha, the Mother of the Believers, who said: The Messenger of Allah (ṣallā Allāhu ʿalayhi wa-

رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ طَلْحَةَ بْنِ عَبْدِ الْمَلِكِ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ - «مَنْ نَذَرَ أَنْ يُطِيعَ اللَّهَ فَلْيُطِعْهُ وَمَنْ نَذَرَ أَنْ يَعْصِيَ اللَّهَ فَلَا يَعْصِهِ» .

[1] **Qur'an references (L15007):** Qur'an 22:27 (Al-Hajj).

sallam) said, “Whoever vows to obey Allah, let him obey Him, and whoever vows to disobey Allah, let him not disobey Him.”[2]

L15009 And He—the Exalted—said: “They fulfill vows” [Al-Insān 76:7], and He—the Exalted—said: “Fulfill covenants” [al-Mā’idah 5:1]. Indeed, He—the Exalted—commands the fulfillment of covenants pertaining to obedience, not covenants pertaining to sins.[3]

L15010 A group of scholars maintained that the ritual walking (Sa’ī) is only permissible during Ḥajj or ʿUmrah.

L15011 Abu Muhammad said: This is erroneous, for it imposes an obligation which one has not vowed upon himself without any Quran or Sunnah. Malik said: If one vows to walk to the mosque, to the Kaaba, or to the Sacred Precinct, it becomes binding upon him. But if one vows to walk to Arafat, to Muzdalifah, to Mina, or to As-Safa and Al-Marwah, it does not become binding upon him. This is a division without evidence.

L15012–15014 It has been narrated to us through the chain of al-Bukhārī: Muḥammad ibn Sallām narrated to us, al-Fazārī narrated from Ḥumayd al-Ṭawīl, Thābit al-Bunānī narrated to me from Anas, from the Prophet (peace be upon him), that he saw an elderly man struggling to walk while supported by his sons. He said, “What is the matter with this man?” They replied, “He vowed to walk.” He said, “Allāh is certainly free from any need for this man’s self-imposed suffering,” and commanded him. That he rode, so the Prophet—peace be upon him—imposed no obligation on him for his riding.

L15015 Allah, the Exalted, has said, “Allah does not burden a soul beyond its capacity” [Al-Baqarah: 286]. Thus, whoever does not have the capacity to walk, Allah has not obligated them to walk. Their vow to what is not within their capacity constitutes an act of disobedience, and it is not permissible for them to fulfill it.[4]

L15016 Ali said: This al-Fazari is Abu Ishaq—or Marwan ibn Mu’awiyah—and both

وَقَالَ - تَعَالَى - {يُوفُونَ بِالنَّذْرِ} [الإنسان: ٧] وَقَالَ - تَعَالَى - {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] فَإِنَّمَا أَمَرَ - تَعَالَى - بِالْوَفَاءِ بِعُقُودِ الطَّاعَةِ لَا بِعُقُودِ الْمَعَاصِي.

وَقَالَ قَوْمٌ: لَا يَمْشِي إِلَّا فِي حَجٍّ، أَوْ عُمْرَةٍ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ، لِأَنَّهُ إِلْزَامُ مَا لَمْ يَنْذِرْهُ عَلَى نَفْسِهِ بِغَيْرِ قُرْآنٍ، وَلَا سُنَّةٍ. وَقَالَ مَالِكٌ: إِنْ نَذَرَ الْمَشْيَ إِلَى الْمَسْجِدِ، أَوْ إِلَى الْكَعْبَةِ، أَوْ إِلَى الْحَرَمِ لَزِمَهُ، فَإِنْ نَذَرَ إِلَى عَرَفَةَ، أَوْ إِلَى مُزْدَلِفَةَ، أَوْ مِنًى، أَوْ الصَّفَا وَالْمَرْوَةِ لَمْ يَلْزَمْهُ - وَهَذَا تَقْسِيمٌ بِلَا بُرْهَانٍ.

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا مُحَمَّدُ بْنُ سَلَّامٍ نَا الْفَزَارِيّ عَنْ حُمَيْدٍ الطَّوِيلِ أَخْبَرَنِي ثَابِتٌ هُوَ الْبُنَانِيُّ - عَنْ أَنَسٍ «عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ -: أَنَّهُ رَأَى شَيْخًا يُهَادَي بَيْنَ بَنِيهِ فَقَالَ: مَا بَالُ هَذَا؟ قَالُوا: نَذَرَ أَنْ يَمْشِيَ قَالَ: إنَّ اللَّهَ لَغَنِيٌّ عَنْ تَعْذِيبِ هَذَا نَفْسَهُ، وَأَمَرَهُ أَنْ يَرْكَبَ» فَلَمْ يُوجِبْ عَلَيْهِ النَّبِيُّ - عَلَيْهِ السَّلَامُ - شَيْئًا لِرُكُوبِهِ.

وَقَالَ - تَعَالَى - {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] فَمَنْ لَيْسَ الْمَشْيُ فِي وُسْعِهِ فَلَمْ يُكَلِّفْهُ اللَّهُ - تَعَالَى - الْمَشْيَ، وَكَانَ نَذْرُهُ لِمَا لَيْسَ فِي وُسْعِهِ مَعْصِيَةً لَا يَجُوزُ لَهُ الْوَفَاءُ بِهَا.

قَالَ عَلِيٌّ: الْفَزَارِيّ هَذَا هُوَ أَبُو إِسْحَاقَ - أَوْ مَرْوَانُ بْنُ مُعَاوِيَةَ، وَكِلَاهُمَا ثِقَةٌ إمَامٌ.

[2] **Hadith references (L15008):** Sunan an-Nasai 3806; Sunan Abi Dawud 3289; Jami at-Tirmidhi 1526.

[3] **Qur’an references (L15009):** Qur’an 76:7 (Al-Insan); Qur’an 5:1 (Al-Ma’idah).

[4] **Qur’an references (L15015):** Qur’an 2:286 (Al-Baqarah).

of them are trustworthy imams.

L15017 From the path of al-Bukhari: Ibrāhīm ibn Mūsā narrated to us, Hishām ibn Yūsuf narrated to us that Ibn Jurayj informed them, saying: Saʿīd ibn Abī Ayyūb informed me that Yazīd ibn Abī Ḥabīb informed him that Abū al-Khayr related to him from ʿUqbah ibn ʿĀmir al-Juhanī, who said: "My sister vowed to walk to the House of Allah (Exalted is He) and commanded me to seek a legal verdict for her from the Prophet (peace and blessings be upon him). So I sought the verdict from the Prophet (peace be upon him). He said: 'Let her walk and let her ride.' Thus, he commanded her to do both and did not make obligatory upon her anything in that regard."

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا إِبْرَاهِيمُ بْنُ مُوسَى نَا هِشَامُ بْنُ يُوسُفَ أَنَّ ابْنَ جُرَيْجٍ أَخْبَرَهُمْ قَالَ: أَخْبَرَنِي سَعِيدُ بْنُ أَبِي أَيُّوبَ أَنَّ يَزِيدَ بْنَ أَبِي حَبِيبٍ أَخْبَرَهُ أَنَّ أَبَا الْخَيْرِ حَدَّثَهُ «عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ قَالَ نَذَرَتْ أُخْتِي أَنْ تَمْشِيَ إِلَى بَيْتِ اللَّهِ - تَعَالَى - وَأَمَرَتْنِي أَنْ أَسْتَفْتِيَ لَهَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاسْتَفْتَيْتُ النَّبِيَّ - عَلَيْهِ السَّلَامُ -؟ فَقَالَ: لِتَمْشِ وَلْتَرْكَبْ فَأَمَرَهَا بِكِلَا الْأَمْرَيْنِ وَلَمْ يُوجِبْ عَلَيْهَا فِي ذَلِكَ شَيْئًا» .

L15018 We have known with certainty that the Messenger of Allah (peace be upon him) did not command her to walk except when she was capable of it, in accordance with the words of Allah (Exalted is He): "Allah does not burden any soul beyond its capacity" [Al-Baqarah: 286].[5]

وَقَدْ عَلِمْنَا ضَرُورَةً أَنَّ رَسُولَ اللَّهِ - عَلَيْهِ السَّلَامُ - لَمْ يَأْمُرْهَا بِالْمَشْيِ إلَّا وَهِيَ قَادِرَةٌ عَلَيْهِ لِقَوْلِ اللَّهِ - تَعَالَى -: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

L15019 Through the chain of Abu Dawud: Muhammad ibn al-Muthanna narrated to us, Abu al-Walid (who is al-Tayalisi) narrated to us, Hisham (who is al-Dastawā'ī) narrated to us from Qatadah from Ikrimah from Ibn Abbas that the sister of Uqbah ibn Amir vowed to walk to the House. The Prophet, peace be upon him, commanded her to ride and offer a sacrificial animal.

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا مُحَمَّدُ بْنُ الْمُثَنَّى نَا أَبُو الْوَلِيدِ هُوَ الطَّيَالِسِيُّ - نَا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ - نَا قَتَادَةُ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ أُخْتَ عُقْبَةَ بْنِ عَامِرٍ نَذَرَتْ أَنْ تَمْشِيَ إلَى الْبَيْتِ فَأَمَرَهَا النَّبِيُّ - عَلَيْهِ السَّلَامُ - أَنْ تَرْكَبَ وَتُهْدِيَ هَدْيًا» .

L15020 These are two commands from the Messenger of Allah (peace be upon him). One of them is that you may ride and walk without requiring anything to be obligatory in that regard, and the other is that you may ride and offer a ritual sacrifice without walking in that regard - and this is our position.

فَهَذَانِ أَمْرَانِ مِنْ رَسُولِ اللَّهِ - عَلَيْهِ السَّلَامُ -، أَحَدُهُمَا: أَنْ تَرْكَبَ وَتَمْشِيَ دُونَ إلْزَامِ شَيْءٍ فِي ذَلِكَ، وَالْآخَرُ: أَنْ تَرْكَبَ وَتُهْدِيَ هَدْيًا دُونَ مَشْيٍ فِي ذَلِكَ - وَهَذَا هُوَ قَوْلُنَا.

L15021–15022 Abu Muhammad said: It has been narrated to us through a chain containing Ubayd Allāh ibn Zuḥar (who is weak) from Abū Saʿīd al-Ruʿaynī (who is obscure) that the Prophet (peace and blessings be upon him) commanded her to fast three days.

قَالَ أَبُو مُحَمَّد: وَرُوِّينَا مِنْ طَرِيقٍ فِيهَا عُبَيْدُ اللَّهِ بْنُ زُحَرَ - وَهُوَ ضَعِيفٌ - عَنْ أَبِي سَعِيدٍ الرُّعَيْنِيِّ وَهُوَ مَجْهُولٌ " أَنَّهُ - عَلَيْهِ السَّلَامُ - أَمَرَهَا أَنْ تَصُومَ ثَلَاثَةَ أَيَّامٍ ".

L15023 It has also been similarly reported through a chain that includes Ḥayy ibn ʿAbd Allāh—who is unknown—and likewise through a chain with Sharīk—who is weak. We have noted these to ensure one is not deceived by them.

وَرُوِيَ أَيْضًا مِثْلُ هَذَا مِنْ طَرِيقٍ فِيهَا حَيُّ بْنُ عَبْدِ اللَّهِ - وَهُوَ مَجْهُولٌ - وَمِثْلُهُ مِنْ طَرِيقٍ فِيهَا شَرِيكٌ - وَهُوَ ضَعِيفٌ - نَبَّهْنَا عَلَيْهَا لِئَلَّا يُغْتَرَّ بِهَا.

[5] **Qur'an references (L15018):** Qur'an 2:286 (Al-Baqarah).

L15024 Some scholars objected to the two hadiths we cited by arguing: “Matar al-Warraq narrated it from Ikrimah from Uqbah, though Ikrimah never met Uqbah.” Others attributed it as mawquf to Ibn Abbas, while a contradictory narration has been transmitted from Ibn Abbas himself.

وَقَدْ اعْتَرَضَ قَوْمٌ فِي الْحَدِيثَيْنِ اللَّذَيْنِ أَوْرَدْنَا بِأَنْ قَالُوا: قَدْ رَوَاهُ مَطَرُ الْوَرَّاقُ عَنْ عِكْرِمَةَ عَنْ عُقْبَةَ، وَعِكْرِمَةُ لَمْ يَلْقَ عُقْبَةَ؛ وَأَوْقَفَهُ بَعْضُ النَّاسِ عَلَى ابْنِ عَبَّاسٍ - وَقَدْ رُوِيَ عَنْ ابْنِ عَبَّاسٍ خِلَافُهُ.

L15025 Ali said: This is among what Allah, the Exalted, detests him for, because the necessary implication of his statement—that the *mursal* and *munqati‘* are equivalent to the *musnad*—is that he then faults here a sound *musnad* transmitted by one who related it as *munqati‘* or *mawquf* if it contradicts his uncritical adherence (taqlīd). This is the act of one devoid of piety and sincerity. None objects to a *musnad* that constitutes authoritative evidence with such criticism except an ignorant person, for it is an objection lacking proof of its validity—an invalid claim—since the *musnad* constitutes authoritative evidence, while the *mursal* is rejected. What deficiency can there be upon the truth from another’s narration of what lacks authoritative evidence?

قَالَ عَلِيٌّ: وَهَذَا مِمَّا يَمْقُتُ اللَّهُ - تَعَالَى - عَلَيْهِ؛ لِأَنَّ الْمُفْتَرَضَ بِهَذَا مِنْ قَوْلِهِ: إنَّ الْمُرْسَلَ وَالْمُنْقَطِعَ كَالْمُسْنَدِ ثُمَّ يَعِيبُ هُنَا مُسْنَدًا صَحِيحًا بِرِوَايَةِ مَنْ رَوَاهُ مُنْقَطِعًا أَوْ مَوْقُوفًا إنْ خَالَفَ تَقْلِيدَهُ، وَهَذَا فِعْلُ مَنْ لَا وَرَعَ لَهُ وَلَا صِدْقَ وَلَا يَعْتَرِضُ عَلَى الْمُسْنَدِ الَّذِي تَقُومُ بِهِ الْحُجَّةُ بِمِثْلِ هَذَا إلَّا جَاهِلٌ؛ لِأَنَّهُ اعْتِرَاضٌ لَا دَلِيلَ عَلَى صِحَّتِهِ وَدَعْوَى فَاسِدَةٌ؛ لِأَنَّ الْمُسْنَدَ تَقُومُ بِهِ الْحُجَّةُ، وَالْمُرْسَلُ مُطَّرَحٌ، وَأَيُّ نَقِيصَةٍ عَلَى الْحَقِّ مِنْ رِوَايَةِ آخَرَ مِمَّا لَا حُجَّةَ فِيهِ.

L15026 As for their claim that a narration contradicting this has been transmitted from Ibn Abbas, the narrations from Ibn Abbas indeed vary: It has been reported to us through Abd al-Razzāq’s chain from Ibn Jurayj via Aṭāʾ that Ibn Abbas said: “Walk as far as you are able, then ride, sacrifice, or give charity.” This corresponds with other narrations, differing only in its exclusive mention of charity.

وَأَمَّا قَوْلُهُمْ: إنَّهُ قَدْ رُوِيَ عَنْ ابْنِ عَبَّاسٍ خِلَافُ مَا رُوِيَ مِنْ ذَلِكَ، فَإِنَّ الرِّوَايَةَ عَنْ ابْنِ عَبَّاسٍ اخْتَلَفَتْ -: فَرُوِّينَا عَنْهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ أَنَّ ابْنَ عَبَّاسٍ قَالَ: امْشِ مَا اسْتَطَعْت وَارْكَبْ وَاذْبَحْ، أَوْ تَصَدَّقْ - وَهَذَا مُوَافِقٌ لِمَا رُوِيَ إلَّا ذِكْرُ الصَّدَقَةِ فَقَطْ.

L15027 It has been narrated to us from him through the chain of Hammad ibn Salamah, from Humaid, from Bakr (Ibn Abdullah al-Muzani), that Ibn Abbas instructed a woman who vowed to perform Hajj on foot to purchase a slave and walk. If she becomes unable, then she should ride and the slave walks. If the slave becomes exhausted, then the slave should ride and the woman who vowed walks. When she completes her Hajj, she must emancipate her.

وَرُوِّينَا عَنْهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ بَكْرٍ هُوَ ابْنُ عَبْدِ اللَّهِ الْمُزَنِيِّ - أَنَّ ابْنَ عَبَّاسٍ أَمَرَ امْرَأَةً نَذَرَتْ أَنْ تَحُجَّ مَاشِيَةً بِأَنْ تَشْتَرِيَ رَقَبَةً وَلْتَمْشِ فَإِذَا عَجَزَتْ فَلْتَرْكَبْ وَلْتَمْشِ الرَّقَبَةُ فَإِذَا أَعْيَتْ الرَّقَبَةُ فَلْتَرْكَبْ وَلْتَمْشِ النَّاذِرَةُ فَإِذَا قَضَتْ حَجَّهَا فَلْتُعْتِقْهَا.

L15028–15030 Narrated by Abd al-Razzaq, from Ma’mar, from Abu Ishaq al-Sabi’i, from Umm Ḥabba: She vowed to walk to the Kaaba. She walked until she became exhausted, then rode. She came to Ibn Abbas and asked him. He said: “Are you able to perform Hajj next year, riding until you reach the place where you

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي إسْحَاقَ السَّبِيعِيِّ عَنْ أُمِّ مَحَبَّةَ أَنَّهَا نَذَرَتْ أَنْ تَمْشِيَ إلَى الْكَعْبَةِ فَمَشَتْ حَتَّى أَعْيَتْ فَرَكِبَتْ، ثُمَّ أَتَتْ ابْنَ عَبَّاسٍ فَسَأَلَتْهُ؟ فَقَالَ:

began riding, then walk the remaining distance?" He asked, "Did you ride [during the pilgrimage]?" She said, "No." He said, "Do you have a daughter to walk [the required rites] on your behalf?" She said, "I have two daughters; they are too dignified for that." He said, "Then seek Allah's forgiveness and repent to Him."

أَتَسْتَطِيعِينَ أَنْ تَحُجِّي قَابِلًا وَتَرْكَبِي حَتَّى تَنْتَهِي إِلَى الْمَكَانِ الَّذِي رَكِبْتِ فِيهِ فَتَمْشِي مَا رَكِبْتِ؟ قَالَتْ: لَا، قَالَ: أَلَكِ ابْنَةٌ تَمْشِي عَنْكِ؟ قَالَتْ: لِي ابْنَتَانِ هُمَا فِي أَنْفُسِهِمَا أَعْظَمُ مِنْ ذَلِكَ، قَالَ: فَاسْتَغْفِرِي اللَّهَ وَتُوبِي إِلَيْهِ.

L15031 Abu Muhammad said: This is Umm Mahabbah whose narration they relied upon regarding the sale of a slave from Zayd ibn Arqam on deferred terms for eight hundred dirhams and her purchase of him from him for six hundred dirhams. At times they adopt her narration when it suits them, and at times they discard it. The valid proof lies solely in Ibn Abbas's narration, not in his personal opinion, for he could err or forget. We have mentioned what they adhered to from the narrations of the Companion even when contradicted, such as Aisha's narration prohibiting fosterage through a male's milk, after which she would not receive into her presence anyone nursed by the wives of her brothers.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ أُمُّ مَحَبَّةَ الَّتِي عَوَّلُوا عَلَى رِوَايَتِهَا فِي بَيْعِ الْعَبْدِ مِنْ زَيْدِ بْنِ أَرْقَمَ إِلَى أَجَلٍ بِثَمَانِمِائَةٍ وَابْتِيَاعِهَا إِيَّاهُ مِنْهُ بِسِتِّمِائَةِ دِرْهَمٍ، فَمَرَّةً يُقَلِّدُونَ رِوَايَتَهَا حَيْثُ اشْتَهَوْا، وَمَرَّةً يَطْرَحُونَهَا، وَالْحُجَّةُ إِنَّمَا هِيَ فِي رِوَايَةِ ابْنِ عَبَّاسٍ لَا فِي رَأْيِهِ وَقَدْ يَهِمُ وَيَنْسَى، وَقَدْ ذَكَرْنَا مَا أَخَذُوا بِهِ مِمَّا رَوَاهُ الصَّاحِبُ وَخَالَفَهُ كَرِوَايَةِ عَائِشَةَ تَحْرِيمَ الرَّضَاعِ بِلَبَنِ الْفَحْلِ، ثُمَّ كَانَتْ لَا تُدْخِلُ عَلَيْهَا مَنْ أَرْضَعَهُ نِسَاءُ إِخْوَتِهَا.

L15032 It has been narrated to us from Ali: Whoever vows to walk to the House of Allah, let him ride and offer a sacrificial animal.

وَرُوِّينَا عَنْ عَلِيٍّ: مَنْ نَذَرَ أَنْ يَمْشِيَ إِلَى بَيْتِ اللَّهِ فَلْيَرْكَبْ وَلْيُهْدِ هَدْيًا -.

L15033 It was also narrated to us from him that he offered a hady (sacrificial camel).

وَرُوِّينَا عَنْهُ أَيْضًا يُهْدِي بَدَنَةً.

L15034 From Ibn Az-Zubayr and Ibn Umar: He walks, and when fatigued, he rides. When he returns the following year, he rides the distance he previously walked and walks the distance he previously rode.

وَعَنْ ابْنِ الزُّبَيْرِ، وَابْنِ عُمَرَ: يَمْشِي فَإِذَا أَعْيَا يَرْكَبُ وَيَعُودُ مِنْ قَابِلٍ فَيَرْكَبُ مَا مَشَى وَيَمْشِي مَا رَكِبَ.

L15035 Abu Hanifah said: He should walk. If he rides, he must sacrifice a ewe or what is above it.

وَقَالَ أَبُو حَنِيفَةَ: يَمْشِي فَإِنْ رَكِبَ فَلْيُهْدِ شَاةً فَمَا فَوْقَهَا.

L15036 In a narration from Ibn Wahb, Mālik said: He should walk, but if unable, he may ride and offer a sheep or a more valuable animal. Ibn al-Qāsim narrated from him that he should walk, and if exhausted, he may ride. He must identify the place from which he rode. When the next year arrives, he must return and walk the distance he had ridden and ride the distance he had walked. If his riding lasted a day or shorter, he need not return for it, but he must offer a sacrificial animal. If he rode from Mecca to Minā, to ʿArafah, to Muzdalifah, to Minā, to Mecca, he must return the following

وَقَالَ مَالِكٌ فِي رِوَايَةِ ابْنِ وَهْبٍ عَنْهُ: يَمْشِي، فَإِنْ عَجَزَ رَكِبَ وَأَهْدَى شَاةً فَمَا فَوْقَهَا - وَرَوَى عَنْهُ ابْنُ الْقَاسِمِ أَنَّهُ يَمْشِي فَإِذَا أَعْيَا رَكِبَ وَيَعْرِفُ الْمَوْضِعَ الَّذِي رَكِبَ مِنْهُ فَإِذَا كَانَ مِنْ قَابِلٍ رَجَعَ فَمَشَى مَا رَكِبَ وَرَكِبَ مَا مَشَى فَإِنْ كَانَ رُكُوبُهُ يَوْمًا فَأَقَلَّ لَمْ يَرْجِعْ لِذَلِكَ وَلَكِنْ عَلَيْهِ الْهَدْيُ، فَإِنْ رَكِبَ مِنْ مَكَّةَ إِلَى مِنًى إِلَى عَرَفَةَ

year and walk all that distance, unlike riding for a day on the road, while still offering a sacrificial animal. If he is an elderly man, he should walk even half a mile, then ride, offer a sacrificial animal, and need not return again.

إِلَى مُزْدَلِفَةَ إِلَى مِنًى إِلَى مَكَّةَ رَجَعَ مِنْ قَابِلٍ فَمَشَى كُلَّ ذَلِكَ بِخِلَافِ الرُّكُوبِ يَوْمًا فِي الطَّرِيقِ وَعَلَيْهِ مَعَ ذَلِكَ هَدْيٌ - فَإِنْ كَانَ شَيْخًا كَبِيرًا مَشَى وَلَوْ نِصْفَ مِيلٍ؛ ثُمَّ رَكِبَ وَيُهْدِي وَلَا يَرْجِعُ ثَانِيَةً.

L15037 Al-Shafi'i said: He is to walk, but if exhausted, let him ride. In such case, a sacrificial offering becomes incumbent upon him - not obligatory but precautionary.

وَقَالَ الشَّافِعِيُّ: يَمْشِي فَإِنْ أَعْيَا رَكِبَ وَعَلَيْهِ هَدْيٌ غَيْرُ وَاجِبٍ، وَلَكِنْ احْتِيَاطًا.

L15038 Ibn Shubrumah said, as per our opinion: If one is unable, he should ride, and there is nothing required of him.

وَقَالَ ابْنُ شُبْرُمَةَ كَقَوْلِنَا: إِنْ عَجَزَ رَكِبَ وَلَا شَيْءَ عَلَيْهِ.

L15039 As for Mālik's opinion, it is a division unknown among any of the predecessors before him, contrary to all that has been reported from the Companions on the matter, and an opinion lacking evidence for its soundness.

فَأَمَّا قَوْلُ مَالِكٍ فَتَقْسِيمٌ لَا يُعْرَفُ عَنْ أَحَدٍ مِنْ الْمُتَقَدِّمِينَ قَبْلَهُ، وَخِلَافٌ لِكُلِّ مَا رُوِيَ فِي ذَلِكَ عَنْ الصَّحَابَةِ، وَقَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ.

L15040 It has been narrated to us from Hammad ibn Salamah, from Habib, from 'Ataa, regarding one who imposes on himself the obligation to walk to the House: He should walk from where he intended. If he did not specify any intention, he should ride. When he enters the sanctuary (Haram), he should walk to the House.

وَرُوِّينَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَبِيبٍ عَنْ عَطَاءٍ فِيمَنْ جَعَلَ عَلَى نَفْسِهِ الْمَشْيَ إِلَى الْبَيْتِ قَالَ: يَمْشِي مِنْ حَيْثُ نَوَى فَإِنْ لَمْ يَنْوِ شَيْئًا فَلْيَرْكَبْ فَإِذَا دَخَلَ الْحَرَمَ مَشَى إِلَى الْبَيْتِ

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٩٠٣ - مَسْأَلَةٌ:

L15043 If one vows to perform Hajj on foot or to perform Umrah on foot, then as we have mentioned, he is not bound to walk except from the time he enters the state of Ihram until he completes the rites of his pilgrimage, because this period constitutes Hajj. If one vows to walk to Mecca, then as 'Ata said: from where he intended [to begin walking]. If he did not specify an intention, then he should walk a distance that qualifies as walking, ride otherwise, and there is no obligation upon him, because he has fulfilled what he vowed. And with Allah, the Exalted, lies all success.

فَإِنْ نَذَرَ أَنْ يَحُجَّ مَاشِيًا، أَوْ يَعْتَمِرَ مَاشِيًا فَكَمَا ذَكَرْنَا وَلَا يَلْزَمُهُ الْمَشْيُ إِلَّا مُذْ يُحْرِمُ إِلَى أَنْ يُتِمَّ مَنَاسِكَ عَمَلِهِ؛ لِأَنَّ هَذَا هُوَ الْحَجُّ، فَإِنْ نَذَرَ الْمَشْيَ إِلَى مَكَّةَ فَكَمَا قَالَ عَطَاءٌ: مِنْ حَيْثُ نَوَى، فَإِنْ لَمْ يَنْوِ فَلْيَمْشِ مَا يَقَعُ عَلَيْهِ اسْمُ مَشْيٍ وَلْيَرْكَبْ غَيْرَ ذَلِكَ وَلَا شَيْءَ عَلَيْهِ؛ لِأَنَّهُ قَدْ أَوْفَى بِمَا نَذَرَ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[An Issue of Entering Makkah Without Ihram]

[مَسْأَلَةٌ دُخُولُ مَكَّةَ بِلَا إِحْرَامٍ]

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٩٠٤ - مَسْأَلَةٌ:

وَدُخُولُ مَكَّةَ بِلَا إحْرَامٍ جَائِزٌ، لِأَنَّ النَّبِيَّ - عَلَيْهِ السَّلَامُ - إنَّمَا جَعَلَ الْمَوَاقِيتَ لِمَنْ مَرَّ بِهِنَّ يُرِيدُ حَجًّا، أَوْ عُمْرَةً، وَلَمْ يَجْعَلْهَا لِمَنْ لَمْ يُرِدْ حَجًّا وَلَا عُمْرَةً، فَلَمْ يَأْمُرْ اللَّهُ - تَعَالَى - قَطُّ، وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - بِأَنْ لَا يَدْخُلَ مَكَّةَ إلَّا بِإِحْرَامٍ فَهُوَ إلْزَامُ مَا لَمْ يَأْتِ فِي الشَّرْعِ إلْزَامُهُ.

L15046 Entering Mecca without entering the state of Ihram is permissible, because the Prophet (peace be upon him) only designated the Miqats for those passing through them while intending Hajj or Umrah, and did not designate them for those not intending Hajj or Umrah. Thus, neither Allah the Exalted nor His Messenger (peace be upon him) ever commanded that one must not enter Mecca except in a state of Ihram. Therefore, this constitutes imposing an obligation that the Sharia did not prescribe as obligatory.

وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ: لَا يَدْخُلُ أَحَدٌ مَكَّةَ إلَّا مُحْرِمًا.

L15047 It has been reported to us from Ibn Abbas that no one may enter Makkah except as a muḥrim.

وَعَنْ ابْنِ عُمَرَ أَنَّهُ رَجَعَ مِنْ بَعْضِ الطَّرِيقِ فَدَخَلَ مَكَّةَ غَيْرَ مُحْرِمٍ.

L15048 It is narrated from Ibn ʻUmar that he returned from part of the route and entered Makkah without being in the state of ihram.

وَعَنْ ابْنِ شِهَابٍ: لَا بَأْسَ بِدُخُولِ مَكَّةَ بِغَيْرِ إحْرَامٍ.

L15049 There is no harm in entering Makkah without iḥrām.

وَقَالَ أَبُو حَنِيفَةَ: أَمَّا مَنْ كَانَ مَنْزِلُهُ بِحَيْثُ يَكُونُ الْمِيقَاتُ بَيْنَهُ وَبَيْنَهَا فَلَا يَدْخُلُهَا إلَّا بِإِحْرَامِ بِعُمْرَةٍ أَوْ حَجَّةٍ، وَأَمَّا مَنْ كَانَ مَنْزِلُهُ بَيْنَ الْمِيقَاتِ وَمَكَّةَ أَوْ كَانَ مِنْ أَهْلِ الْمِيقَاتِ فَلَهُ دُخُولُ مَكَّةَ وَلَا إحْرَامَ.

L15050 Abu Hanifah said: As for one whose residence is such that the Miqat lies between him and Mecca, he may not enter Mecca except by assuming Ihram for Umrah or Hajj. As for one whose residence is between the Miqat and Mecca, or who is a resident of the Miqat, he may enter Mecca and is not required to assume Ihram.

وَقَالَ مَالِكٌ: لَا يَدْخُلُ أَحَدٌ مَكَّةَ إلَّا بِإِحْرَامٍ إلَّا مَنْ اخْتَلَفَ مِنْ الطَّائِفِ وَعُسْفَانَ، بِالْحَطَبِ، وَالْفَاكِهَةِ: فَلَهُ دُخُولُهَا بِلَا إحْرَامٍ، وَإِلَّا الْعَبِيدَ فَلَهُمْ دُخُولُهَا بِلَا إحْرَامٍ، وَإِلَّا مَنْ خَرَجَ مِنْهَا، ثُمَّ رَجَعَ مِنْ قُرْبٍ فَلَهُ دُخُولُهَا بِلَا إحْرَامٍ.

L15051 Malik said: No one may enter Mecca without being in the state of Ihram, except those who come from Ta'if and Usfan with fuelwood and fruits—they may enter without Ihram; except slaves—they may enter without Ihram; and except those who depart Mecca and return shortly afterward—they may enter without Ihram.

وَقَالَ الشَّافِعِيُّ: لَا يَدْخُلُهَا أَحَدٌ إلَّا بِإِحْرَامٍ.

L15052 Al-Shafiʻi said: No one may enter it except in a state of *Ihram*.

فَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفِي غَايَةِ الْفَسَادِ، لِأَنَّهُ تَقْسِيمٌ لَا يُعْقَلُ وَلَا لَهُ وَجْهٌ، وَفِيهِ إيجَابُ حَجٍّ وَعُمْرَةٍ لَمْ يُوجِبْهَا اللَّهُ - تَعَالَى - وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -، وَإِنَّمَا يَجِبُ فِي الدِّينِ

L15053 As for the statement of Abū Ḥanīfah, it is utterly baseless because it constitutes an irrational division with no valid basis, and it wrongly imposes repeated Ḥajj and ʻUmrah (acts which Allah the Exalted and His Messenger—peace be upon him—never mandated). In the religion, these are obligatory only once in a lifetime, except for one who vows them, in which case ful-

مَرَّةً فِي الدَّهْرِ إِلَّا مَنْ نَذَرَ ذَلِكَ فَيَجِبُ أَنْ يَفِيَ بِنَذْرِهِ بِالنَّصِّ، وَقَوْلُ مَالِكٍ أَيْضًا: كَذَلِكَ سَوَاءٌ سَوَاءٌ - وَمَا نَعْرِفُ لَهُمَا فِي هَذَيْنِ الْقَوْلَيْنِ سَلَفًا أَصْلًا.

filling the vow becomes obligatory by explicit textual injunction. Mālik's ruling is equally invalid, equally invalid—and we find no precedent or foundational basis whatsoever from the early scholars to support either of these two positions.

وَالْعَجَبُ مِنْ احْتِجَاجِ مَنْ احْتَجَّ فِي ذَلِكَ «بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي مَكَّةَ إنَّهَا حَرَامٌ بِحُرْمَةِ اللَّهِ إلَى يَوْمِ الْقِيَامَةِ لَمْ تَحِلَّ لِأَحَدٍ قَبْلِي وَلَا تَحِلُّ لِأَحَدٍ بَعْدِي وَإِنَّمَا أُحِلَّتْ لِي سَاعَةً مِنْ نَهَارٍ، ثُمَّ عَادَتْ كَحُرْمَتِهَا بِالْأَمْسِ» .

L15054–15056 It is astonishing how some argue in this matter by citing the Messenger of Allah—peace be upon him—who said, "Mecca is a sanctuary." "By the sanctity of Allah until the Day of Resurrection, it was not permissible for anyone before me, nor will it be permissible for anyone after me. It was only made lawful for me for a moment of daylight, then it reverted to its former sanctity."

فَلَيْتَ شِعْرِي بِأَيِّ شَيْءٍ اسْتَحَلُّوا أَنْ يُوهِمُوا فِي هَذَا الْخَبَرِ مَا لَيْسَ فِيهِ أَثَرٌ وَلَا دَلِيلٌ؟ وَإِنَّمَا أَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّ سَفْكَ الدِّمَاءِ وَالْقِتَالَ حَرَامٌ لَمْ يَحِلَّ لِأَحَدٍ قَبْلَهُ كَمَا ذَكَرْنَا قَبْلَ هَذَا وَلَيْسَ فِي هَذَا الْحَدِيثِ لِلْإِحْرَامِ مَعْنًى.

L15057 If only I knew by what means they deemed it permissible to insinuate into this report claims that lack any supporting narration or evidence? He—peace be upon him—merely informed that bloodshed and combat are forbidden, for they were not lawful for anyone before him as we previously mentioned, and this hadith contains no indication whatsoever related to iḥrām.

وَقَدْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - دَخَلَهَا وَعَلَى رَأْسِهِ الْمِغْفَرُ أَوْ عِمَامَةٌ سَوْدَاءُ، وَهُوَ غَيْرُ مُحْرِمٍ - وَحَتَّى لَوْ لَمْ يَأْتِ هَذَا لَكَانَ فِي أَنَّهُ لَمْ يَأْتِ بِإِيجَابِ الْإِحْرَامِ عَلَى مَنْ قَصَدَهَا لِغَيْرِ حَجٍّ، أَوْ عُمْرَةٍ كِفَايَةٌ. وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ. .

L15058 It has been authentically established that he (peace be upon him) entered it wearing a helmet or a black turban while not in a state of iḥrām. Even if this had not been transmitted, it would suffice to prove he did not obligate iḥrām upon those who intended to visit it for reasons other than performing Ḥajj or ʿUmrah. And success is from Allah, the Exalted.

[مَسْأَلَةٌ نَذَرَ أَنْ يَحُجَّ أَوْ يَعْتَمِرَ وَلَمْ يَكُنْ حَجَّ وَلَا اعْتَمَرَ قَطُّ]

A ruling regarding one who made a vow to perform Ḥajj or ʿUmrah and had never performed Ḥajj or ʿUmrah at all.

٩٠٥ - مَسْأَلَةٌ:

L15060 905 – Issue:

وَمَنْ نَذَرَ أَنْ يَحُجَّ، أَوْ يَعْتَمِرَ، وَلَمْ يَكُنْ حَجَّ وَلَا اعْتَمَرَ قَطُّ فَلْيَبْدَأْ بِحَجَّةِ الْإِسْلَامِ وَعُمْرَتِهِ، وَلَا يُجْزِيهِ إلَّا ذَلِكَ، وَلَا يُجْزِيه أَنْ يَحُجَّ نَاوِيًا لِلْفَرْضِ وَلِنَذْرِهِ، وَلَا لِحَجَّةِ فَرْضٍ وَعُمْرَةِ نَذْرٍ، وَلَا لِحَجَّةِ نَذْرٍ وَعُمْرَةِ فَرْضٍ، لِأَنَّ عَقْدَ اللَّهِ ثَابِتٌ عَلَيْهِ قَبْلَ نَذْرِهِ، فَإِنْ أَخَّرَ مَا قَدَّمَهُ اللَّهُ - تَعَالَى - فَهُوَ عَاصٍ وَالْمَعْصِيَةُ لَا تَنُوبُ عَنْ الطَّاعَةِ وَلَا يُجْزِي عَمَلٌ وَاجِدٌ

L15061 Whoever vows to perform Hajj or Umrah, having never performed either pilgrimage at all, must begin with the obligatory Hajj of Islam (Hajjat al-Islam) and its Umrah. Nothing suffices him except this. It does not suffice him to perform Hajj intending both the obligatory duty and his vow, nor [to perform] an obligatory Hajj and a vowed Umrah, nor a vowed Hajj and an obligatory Umrah, for Allah's binding obligation remains established upon him prior to his vow. If he delays what Allah—Exalted is He—has prioritized, he becomes

disobedient. Disobedience cannot substitute for obedience, nor can a single act fulfill two obligations except where the textual proof explicitly permits it. We previously established that whoever drives the sacrificial animal is obligated to perform Qirān. The Umrah required of him due to driving the sacrificial animal is distinct from the one he vowed; thus nothing other than what he was commanded suffices him. No single act fulfills two obligations except where the text permits it. Analogical reasoning here is invalid.

عَنْ عَمَلَيْنِ مُفْتَرَضَيْنِ إِلَّا حَيْثُ أَجَازَهُ النَّصُّ وَقَدْ قَدَّمْنَا أَنَّ مَنْ سَاقَ الْهَدْيَ فَفَرْضٌ عَلَيْهِ أَنْ يَقْرِنَ فَالْعُمْرَةُ الْمُوجَبَةُ عَلَيْهِ لَسَوْقِ الْهَدْيِ هِيَ غَيْرُ الَّتِي نَذَرَ، فَلَا يُجْزِئُهُ غَيْرُ مَا أُمِرَ بِهِ وَلَا يُجْزِئُهُ عَمَلٌ عَنْ عَمَلَيْنِ إِلَّا حَيْثُ أَجَازَهُ النَّصُّ، وَالْقِيَاسُ بَاطِلٌ.

L15062 They have unanimously agreed that one prayer cannot suffice for two prayers, and they concurred with us—we mean those present from our interlocutors—that fasting one day cannot suffice for two days, nor freeing one enslaved person for two enslaved persons, nor one zakat payment for two zakat obligations. Thus, they contradicted themselves, and success comes from Allah, the Most High.

وَقَدْ أَجْمَعُوا أَنَّهُ لَا تُجْزِئُ صَلَاةٌ عَنْ صَلَاتَيْنِ، وَوَافَقُونَا - نَعْنِي الْحَاضِرِينَ مِنْ خُصُومِنَا - عَلَى أَنَّهُ لَا يُجْزِئُ صَوْمُ يَوْمٍ عَنْ يَوْمَيْنِ، وَلَا رَقَبَةٌ عَنْ رَقَبَتَيْنِ وَلَا زَكَاةٌ عَنْ زَكَاتَيْنِ، فَتَنَاقَضُوا، وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

L15063 It has been transmitted to us from Ibn ʾUmar that a woman asked him about someone who vowed to perform Hajj but had not yet performed Hajj. He said: “This [Hajj] counts as the Hajj of Islam and fulfills your vow.”

وَرُوِّينَا عَنْ ابْنِ عُمَرَ أَنَّهُ سَأَلَتْهُ امْرَأَةٌ عَمَّنْ نَذَرَ أَنْ يَحُجَّ وَلَمْ يَكُنْ حَجَّ بَعْدُ؟ فَقَالَ: هَذِهِ حَجَّةُ الْإِسْلَامِ وَفِي بِنَذْرِك.

L15064 From Anas, he said: “One should begin with the obligatory Hajj regarding one who has made a vow and has not yet performed Hajj. There is scholarly disagreement regarding this.”

وَعَنْ أَنَسٍ قَالَ: يَبْدَأُ بِالْفَرِيضَةِ فِيمَنْ نَذَرَ وَلَمْ يَكُنْ حَجَّ بَعْدُ. وَفِي هَذَا خِلَافٌ.

L15065–15066 It has been narrated to us from Mujāhid and Saʿīd ibn Jubayr regarding one who vowed to perform Hajj but had not yet fulfilled the obligatory Hajj. Both said together: “The obligatory Hajj suffices him for both [the vowed act and the obligatory Hajj].”

رُوِّينَا عَنْ مُجَاهِدٍ، وَسَعِيدِ بْنِ جُبَيْرٍ فِيمَنْ نَذَرَ أَنْ يَحُجَّ وَلَمْ يَكُنْ حَجَّ حَجَّةَ الْإِسْلَامِ، قَالَا جَمِيعًا: تُجْزِئُهُ حَجَّةُ الْإِسْلَامِ عَنْهُمَا جَمِيعًا.

L15067 Muhammad ibn al-Hasan and Abu Yusuf stated: If someone performs the obligatory Hajj and intends through their act to combine their religious obligation with a voluntary [Hajj] simultaneously, it suffices as their obligatory Hajj, and the voluntary intention becomes void.

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ، وَأَبُو يُوسُفَ: مَنْ حَجَّ حَجَّةَ الْإِسْلَامِ فَنَوَى بِعَمَلِهِ فَرْضَهُ، وَالتَّطَوُّعَ مَعًا: أَنَّهُ يُجْزِئُهُ عَنْ حَجَّةِ الْإِسْلَامِ، وَتَبْطُلُ نِيَّةُ التَّطَوُّعِ.

L15068 If someone vows to perform Hajj and then performs it intending to fulfill both his vow and the voluntary Hajj simultaneously, Abu Yusuf said, “It suffices only for his vow.”

فَلَوْ نَذَرَ أَنْ يَحُجَّ فَحَجَّ يَنْوِي نَذْرَهُ وَالتَّطَوُّعَ مَعًا؟ قَالَ أَبُو يُوسُفَ: يُجْزِئُهُ عَنْ نَذْرِهِ فَقَطْ.

L15069 Muḥammad said: It is a voluntary act and does not suffice as a substitute

وَقَالَ مُحَمَّدٌ: هِيَ تَطَوُّعٌ وَلَا تُجْزِي عَنْ النَّذْرِ.

for the vowed obligation.

L15070 Abu Muhammad said: All deeds are void because he did not sincerely intend what was obligatory upon him in the manner he was commanded.

قَالَ أَبُو مُحَمَّدٍ: الْعَمَلُ كُلُّهُ بَاطِلٌ؛ لِأَنَّهُ لَمْ يُخْلِصْ النِّيَّةَ لِمَا لَزِمَهُ كَمَا أُمِرَ.

[مَسْأَلَةٌ أَهْدَى هَدْيَ تَطَوُّعٍ فَعَطِبَ فِي الطَّرِيقِ]

L15071 **Issue: A person voluntarily offered a sacrificial animal, and it became unfit during the journey.**

L15072 906 – Issue:

٩٠٦ - مَسْأَلَةٌ:

L15073 Whoever offers a voluntary sacrificial animal that becomes unfit on the way before reaching Mecca or Mina must slaughter it, throw its garlands into the blood, make it accessible to the people. If he distributes it among them, he must provide a replacement of the same kind as what he distributed.

مَنْ أَهْدَى هَدْيَ تَطَوُّعٍ فَعَطِبَ فِي الطَّرِيقِ قَبْلَ بُلُوغِهِ مَكَّةَ، أَوْ مِنًى فَلْيَنْحَرْهُ، وَلْيُلْقِ قَلَائِدَهُ فِي دَمِهِ وَلْيُخْلِ بَيْنَ النَّاسِ وَبَيْنَهُ؛ وَإِنْ قَسَّمَهُ بَيْنَ النَّاسِ ضَمِنَ مِثْلَ مَا قَسَّمَ.

L15074 If he says, “Your responsibility is with it” or similar wording, there is no objection. It is unlawful for him or his companions to consume any part of it. Whoever among them eats from it must give to the poor only an amount of meat equivalent to what he consumed. Sheep and goats, cows, and camels are all treated equally in these rulings.

فَلَوْ قَالَ: شَأْنُكُمْ بِهِ أَوْ نَحْوَ هَذَا فَلَا بَأْسَ، وَلَا يَحِلُّ لَهُ أَنْ يَأْكُلَ هُوَ وَلَا رُفَقَاؤُهُ مِنْهُ شَيْئًا، فَمَنْ أَكَلَ مِنْهُمْ مِنْهُ أَدَّى إلَى الْمَسَاكِينِ لَحْمًا مِثْلَ مَا أَكَلَ فَقَطْ - الْغَنَمُ، وَالْبَقَرُ، وَالْإِبِلُ فِي كُلِّ ذَلِكَ سَوَاءٌ.

L15075 If it reaches its due time, it becomes obligatory upon him to necessarily eat from it and necessarily give charity from it, and thus it has been narrated to us from a group of the Salaf.

فَإِنْ بَلَغَ مَحَلَّهُ فَفَرْضٌ عَلَيْهِ أَنْ يَأْكُلَ مِنْهُ وَلَا بُدَّ، وَيَتَصَدَّقُ مِنْهُ وَلَا بُدَّ - وَهَكَذَا رُوِّينَا عَنْ طَائِفَةٍ مِنْ السَّلَفِ.

L15076 It has been reported to us through the chain of ʻAbd al-Razzāq from Sufyān and Maʻmar—both narrating from ʻAbd al-Karīm al-Jazarī from ʻIkrimah from Ibn ʻAbbās—that he said regarding a voluntary *hady* that becomes unfit: Let him slaughter it, dip his sandal in its blood, then strike it against its flank. If he eats from it or orders it to be eaten, he is liable to compensate. If it is an obligatory sacrifice and becomes unfit, let him slaughter it, dip his sandal in its blood, then strike it against its flank. He may eat from it, offer it as a hady, or apply its value toward the cost of another sacrifice.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ، وَمَعْمَرٍ، كِلَيْهِمَا عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ فِي هَدْيِ التَّطَوُّعِ يَعْطَبُ: لِيَنْحَرْهُ، ثُمَّ لِيَغْمِسْ نَعْلَهُ فِي دَمِهِ، ثُمَّ لِيَضْرِبْ بِالنَّعْلِ صَفْحَتَهُ فَإِنْ أَكَلَ مِنْهُ، أَوْ أَمَرَ بِأَكْلِهِ غَرِمَ. فَإِنْ كَانَ وَاجِبًا فَعَطِبَ فَلْيَنْحَرْهُ، ثُمَّ لِيَغْمِسْ نَعْلَهُ فِي دَمِهِ، ثُمَّ لِيَضْرِبْ بِالنَّعْلِ صَفْحَتَهُ فَإِنْ شَاءَ أَكَلَ، وَإِنْ شَاءَ أَهْدَى، وَإِنْ شَاءَ تَقَوَّى بِهِ فِي ثَمَنِ أُخْرَى

L15077 The same as all of this is narrated from ʻAṭāʼ – and from Ibn al-Musayyib regarding voluntary acts, the like of it.

- وَعَنْ عَطَاءٍ مِثْلُ هَذَا كُلِّهِ - وَعَنْ ابْنِ الْمُسَيِّبِ فِي التَّطَوُّعِ مِثْلُهُ.

وَرُوِّينَا خِلَافَ هَذَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ: أَخْبَرَنِي حَمَّادٌ هُوَ ابْنُ أَبِي سُلَيْمَانَ - عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنِ الْأَسْوَدِ بْنِ يَزِيدَ أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ قَالَتْ فِي الْهَدْيِ يَعْطَبُ فِي الطَّرِيقِ: كُلُوهُ وَلَا تَدَعُوهُ لِلْكِلَابِ، وَالسِّبَاعِ، فَإِنْ كَانَ وَاجِبًا فَأَهْدُوا مَكَانَهُ هَدْيًا، وَإِنْ كَانَ تَطَوُّعًا فَإِنْ شِئْتُمْ فَلَا تُهْدُوا وَإِنْ شِئْتُمْ فَأَهْدُوا.

L15078–15080 It has been narrated to us with a variant version concerning this via the transmission of Ḥammād ibn Salamah: Ḥammād—that is, the son of Abī Sulaymān—reported to me on the authority of Ibrāhīm al-Nakhaʿī, from al-Aswad ibn Yazīd, that ʿĀʾishah, the Mother of the Believers, said regarding the sacrificial animal. If an animal becomes defective on the journey, eat it and do not abandon it for dogs and wild beasts. If it was obligatory, replace it with a sacrificial animal. If it was voluntary, then if you wish, do not offer; and if you wish, offer a sacrificial animal.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ أَنَّهُ عَطِبَتْ لَهُ بَدَنَةُ تَطَوُّعٍ فَنَحَرَهَا ابْنُ عُمَرَ وَأَكَلَهَا وَلَمْ يُهْدِ مَكَانَهَا. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: إِذَا أَهْدَيْتَ هَدْيًا - وَهُوَ تَطَوُّعٌ - فَعَطِبَ فَانْحَرْهُ، ثُمَّ اغْمِسِ النَّعْلَ فِي دَمِهِ، ثُمَّ اضْرِبْ بِهِ صَفْحَتَهُ، ثُمَّ كُلْهُ إِنْ شِئْتَ، وَاهْدِهِ إِنْ شِئْتَ وَتَقَوَّ بِهِ فِي هَدْيٍ آخَرَ.

L15081 From the chain of Ḥammād ibn Salama, from Ayyūb al-Sikhtiyānī, from Nāfiʿ, from Ibn ʿUmar: A she-camel he had designated for voluntary sacrifice became unfit, so Ibn ʿUmar slaughtered it, ate it, and did not substitute another sacrificial animal in its place. From the chain of Saʿīd ibn Manṣūr: He narrated to us from Sufyān—that is, Ibn ʿUyayna—from ʿAbd al-Karīm al-Jazarī, from ʿIkrima, from Ibn ʿAbbās, who said: If you designate a sacrificial animal—as a voluntary act—and it becomes unfit, slaughter it, dip a sandal in its blood, then strike the animal's side with the bloodied sandal. You may eat it if you wish, offer it as a sacrificial animal if you wish, or replace it with another sacrificial animal.

وَعَنِ ابْنِ مَسْعُودٍ إِذَا سَاقَ الْهَدْيَ تَطَوُّعًا فَعَطِبَ: كُلْ وَأَطْعِمْ وَلَيْسَ عَلَيْكَ الْبَدَلُ - وَهُوَ قَوْلُ نَافِعٍ أَيْضًا.

L15082 On the authority of Ibn Masʿūd: If one drives the sacrificial animal as a supererogatory act and it becomes defective, let him eat it and feed others; there is no obligation to replace it. This is also the view of Nāfiʿ.

وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ إِذَا عَطِبَ الْهَدْيُ قَبْلَ مَحِلِّهِ فَكُلْ مِنَ التَّطَوُّعِ، وَلَا تَأْكُلْ مِنَ الْوَاجِبِ.

L15083 From Saʿīd ibn Jubayr: If the sacrificial animal becomes unfit before its designated time or place, eat of the voluntary sacrifice, but do not eat of the obligatory one.

وَرُوِّينَا قَوْلًا آخَرَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: يَدَعُهَا تَمُوتُ فَرَجَعْنَا إِلَى السُّنَّةِ فَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا مُسَدَّدٌ نَا حَمَّادٌ عَنْ أَبِي التَّيَّاحِ عَنْ مُوسَى بْنِ سَلَمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعَ فُلَانٍ الْأَسْلَمِيِّ ثَمَانِ عَشْرَةَ بَدَنَةً فَقَالَ: أَرَأَيْتَ إِنْ أُزْحِفَ عَلَيَّ مِنْهَا شَيْءٌ؟ فَقَالَ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ

L15084–15086 We have been narrated another statement from Sa'id ibn al-Musayyab, who said: "He leaves her to die." So we returned to the Sunnah and found what was narrated to us through the chain of Abu Dawud: Musaddad narrated to us, Hammad narrated to us from Abu al-Tayyah from Musa ibn Salama from Ibn Abbas, who said: "The Messenger of Allah—peace and blessings be upon him—sent with so-and-so al-Aslami eighteen sacrificial camels. The companion asked: 'What do you think if one of them becomes lame?' The Messenger of Allah—peace and blessings be upon him—replied: 'Slaughter

her, then dye her hoof in her blood, then smear her side with it, and do not eat from her yourself nor let anyone from your travel companions eat from her.'" And through another chain of Abu Dawud: Muhammad ibn Kathir narrated to us, Sufyan—who is al-Thawri—narrated to us from Hisham ibn Urwah from his father from Najiyah al-Aslami that the Messenger of Allah—peace and blessings be upon him—sent with him sacrificial animals. He said: "If it becomes disabled..." If there is anything from it, slaughter it, then dye its hoof with its blood, then leave it available to the people. This is a general rule for all sacrificial offerings.[6]

L15087 Abū Muḥammad said: Abū Ḥanīfah said: He may give it as charity—and this contradicts the command of the Messenger of Allāh, peace be upon him—because when he takes charge of its allocation, he does not leave it to the people to handle.

L15088 And Malik said: If he eats any part of it, he is liable for the entire sacrificial animal.

L15089 This is erroneous because Allah, the Exalted, said: "The requital of an evil deed is its equivalent" [Ash-Shura 40]. Among the false and impossible claims is that one who eats a morsel should be held liable to repay it with a she-camel from its origin - an indisputable act of transgression.[7]

L15090 Abu Hanifa, Al-Shafi'i, and Abu Sulayman said: He is not liable except for the equivalent of what he ate.

L15091 This is among the matters where contradictions occur between Abū Ḥanīfah and Mālik, so they both adopted the narration of Ibn ʿAbbās and abandoned their own opinions that contradicted what was reported—and by Allāh, the Exalted, is success.

L15092 907. Issue:

L15093 If the sacrifice is for an obligatory act—and these are six obligatory sacrifices only, with no seventh—they are: either compensation for hunting, the Tamattuʿ pilgrim's sacrifice, the sacrifice for prevention, the ritual expiation

-: تَنْحَرُهَا ثُمَّ تَصْبِغُ نَعْلَهَا فِي دَمِهَا ثُمَّ اضْرِبْ بِهَا عَلَى صَفْحَتِهَا وَلَا تَأْكُلْ مِنْهَا أَنْتَ وَلَا أَحَدٌ مِنْ أَهْلِ رُفْقَتِكَ» وَمِنْ طَرِيقِ أَبِي دَاوُد نَا مُحَمَّدُ بْنُ كَثِيرٍ نَا سُفْيَانُ هُوَ الثَّوْرِيُّ - عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ «عَنْ نَاجِيَةَ الْأَسْلَمِيِّ أَنَّ رَسُولَ اللَّهِ - عَلَيْهِ السَّلَامُ - بَعَثَ مَعَهُ بِهَدْيٍ فَقَالَ: إنْ عَطِبَ مِنْهَا شَيْءٌ فَانْحَرْهُ، ثُمَّ اُصْبُغْ نَعْلَهُ فِي دَمِهِ، ثُمَّ خَلِّ بَيْنَهُ وَبَيْنَ النَّاسِ» فَهَذَا عُمُومٌ لِكُلِّ هَدْيٍ.

قَالَ أَبُو مُحَمَّد: قَالَ أَبُو حَنِيفَةَ: لَهُ أَنْ يَتَصَدَّقَ بِهَا - وَهَذَا خِلَافُ أَمْرِ رَسُولِ اللَّهِ - عَلَيْهِ السَّلَامُ -، لِأَنَّهُ إذَا تَوَلَّى تَوْزِيعَهَا -: فَلَمْ يُخَلِّ بَيْنَ النَّاسِ وَبَيْنَهَا.

وَقَالَ مَالِكٌ: إنْ أَكَلَ مِنْهَا شَيْئًا ضَمِنَ الْهَدْيَ كُلَّهُ.

وَهَذَا خَطَأٌ، لِأَنَّ اللَّهَ - تَعَالَى - قَالَ: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] وَمِنْ الْبَاطِلِ الْمُحَالِ أَنْ يَأْكُلَ لُقْمَةً فَيَغْرَمُ عَنْهَا نَاقَةً مِنْ أَصْلِهَا، وَهَذَا عُدْوَانٌ لَا شَكَّ فِيهِ.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: لَا يَغْرَمُ إلَّا مِثْلَ مَا أَكَلَ.

وَهَذَا مِمَّا يَتَنَاقَضُ فِيهِ أَبُو حَنِيفَةَ، وَمَالِكٌ، فَأَخَذَا فِيهِ بِرِوَايَةِ ابْنِ عَبَّاسٍ وَتَرَكَا رَأْيَهُ الَّذِي خَالَفَ فِيهِ مَا رُوِيَ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

٩٠٧ - مَسْأَلَةٌ:

فَإِنْ كَانَ الْهَدْيُ عَنْ وَاجِبٍ - وَهِيَ سِتَّةُ أَهْدَاءٍ فَقَطْ لَا سَابِعَ لَهَا -: إمَّا جَزَاءُ صَيْدٍ، وَإِمَّا هَدْيُ الْمُتَمَتِّعِ، وَإِمَّا هَدْيُ الْإِحْصَارِ، وَإِمَّا نُسُكُ فِدْيَةِ الْأَذَى، وَإِمَّا هَدْيُ مَنْ نَذَرَ مَشْيًا إلَى الْكَعْبَةِ فَرَكِبَ، وَإِمَّا نَذْرُ هَدْيٍ.

[6] **Hadith references (L15084):** Sunan Abi Dawud 1762.
[7] **Qur'an references (L15089):** Qur'an 42:40 (Ash-Shuraa).

for harm, the sacrifice of one who vowed to walk to the Kaaba but rode, or a vowed sacrifice.

وَهَذَا الْهَدْيُ يَنْقَسِمُ قِسْمَيْنِ -: قِسْمٌ بِغَيْرِ عَيْنِهِ، وَقِسْمٌ مَنْذُورٌ بِعَيْنِهِ - فَإِنْ عَطِبَ الْوَاجِبُ قَبْلَ بُلُوغِهِ مَحِلَّهُ فَعَلَ بِهِ صَاحِبُهُ مَا شَاءَ مِنْ بَيْعٍ أَوْ أَكْلٍ أَوْ هَدِيَّةٍ أَوْ صَدَقَةٍ وَيُهْدِي مَا وَجَبَ عَلَيْهِ وَلَا بُدَّ حَاشَا الْمَنْذُورِ بِعَيْنِهِ فَإِنَّهُ يَنْحَرُهُ وَيَتْرُكُهُ وَلَا يُبَدِّلُهُ؛ لِأَنَّهُ إِنَّمَا عَلَيْهِ فِي كُلِّ مَا ذَكَرْنَا هَدْيٌ وَاجِبٌ فِي مَالِهِ وَذِمَّتِهِ فَعَلَيْهِ أَنْ يَأْتِيَ بِهِ أَبَدًا وَمَا لَمْ يُؤَدِّهِ عَمَّا عَلَيْهِ فَهُوَ مَالٌ مِنْ مَالِهِ يَفْعَلُ فِيهِ مَا شَاءَ عَطِبَ أَوْ لَمْ يَعْطَبْ.

L15094 This sacrificial offering is divided into two categories: a category not tied to a specific entity and a vowed specific offering. If the obligated animal becomes unfit before reaching its designated place, its owner may do with it as he wishes—sell it, consume it, gift it, or give it in charity—and he must offer what is obligated upon him without fail, except for the vowed specific offering. For this, he must slaughter it and leave it without substitution. This is because, in all the cases we have mentioned, there is an obligatory offering—a duty binding on his wealth and liability—which he must fulfill in perpetuity. As for what he has not yet discharged of his obligation, it remains property from his wealth, which he may use as he wishes, whether it has become unfit or not.

وَأَمَّا الْمَنْذُورُ بِعَيْنِهِ فَهُوَ خَارِجٌ عَنْ مَالِهِ لَا حَقَّ لَهُ فِيهِ وَلَيْسَ عَلَيْهِ أَنْ يُبَدِّلَهُ إِلَّا أَنْ يَتَعَدَّى عَلَيْهِ فَيُهْلِكَهُ فَيَضْمَنُهُ بِالْوَجْهِ الَّذِي نَذَرَهُ لَهُ؛ لِأَنَّهُ اعْتَدَى عَلَى حَقِّ غَيْرِهِ فَعَلَيْهِ مِثْلُهُ.

L15095 As for the specifically designated vowed item, it is excluded from his wealth; he has no right to it, nor is he obligated to replace it unless he transgresses against it and destroys it. In that case, he must compensate for it in the manner he vowed, because he violated another's right and is therefore liable for its equivalent.

وَأَمَّا مَنْ مَنَعَ مِنْ تَحَكُّمِ الْمَرْءِ فِي هَدْيِهِ مَا لَمْ يَبْلُغْهُ مَحِلَّهُ فَمُبْطِلٌ بِلَا دَلِيلٍ، وَإِنَّمَا خَرَجَ مِنْ ذَلِكَ التَّطَوُّعُ يَعْطَبُ قَبْلَ مَحِلِّهِ بِالنَّصِّ الَّذِي أَوْرَدْنَا.

L15096–15097 As for whoever prohibits an individual's discretionary control over his Hajj sacrificial animal before it reaches its designated place (Mina), he nullifies without proof. Rather, the voluntary sacrifice that becomes ritually unfit before reaching its designated place is excluded from that ruling by the textual evidence we have presented.

وَالتَّطَوُّعُ ثَلَاثَةُ أَهْدَاءٍ لَا رَابِعَ لَهَا -: مَنْ سَاقَ هَدْيًا فِي قِرَانٍ أَوْ فِي عُمْرَةٍ وَهُوَ لَا يُرِيدُ أَنْ يَحُجَّ مِنْ عَامِهِ، أَوْ أَهْدَى وَهُوَ لَا يُرِيدُ حَجًّا وَلَا عُمْرَةً.

L15098 The voluntary act comprises three types of offerings—there is no fourth: one who brings a sacrificial animal while performing *Qirān* Hajj, one who brings it during Umrah without intending to perform Hajj in the same year, or one who offers a sacrificial animal without intending to perform Hajj or Umrah.

[مَسْأَلَةٌ يَأْكُلُ مِنْ هَدْيِ التَّطَوُّعِ إِذَا بَلَغَ مَحِلَّهُ]

L15099 **Issue: One may eat from the voluntary hady once it reaches its designated place of sacrifice.**

908. Issue: He may eat from the voluntary sacrificial offering once it reaches

L15100

its designated place, as we have stated and by necessity. It is impermissible for him to eat anything from the obligatory sacrificial offerings once they reach their designated place. If he does eat from them, he must compensate exactly and only what he consumed. He must not be given any portion of the sacrificial offering at all as compensation for slaughtering it. He is obligated to donate its wool and skins, and this is obligatory.

٩٠٨ - مَسْأَلَةٌ: وَيَأْكُلُ مِنْ هَدْيِ التَّطَوُّعِ إذَا بَلَغَ مَحِلَّهُ وَلَا بُدَّ كَمَا قُلْنَا وَلَا يَحِلُّ لَهُ أَنْ يَأْكُلَ مِنْ شَيْءٍ مِنْ الْأَهْدَاءِ الْوَاجِبَةِ إذَا بَلَغَتْ مَحِلَّهَا فَإِنْ أَكَلَ ضَمِنَ مِثْلَ مَا أَكَلَ فَقَطْ، وَلَا يُعْطَى فِي جِزَارَةِ الْهَدْيِ شَيْءٌ مِنْهُ أَصْلًا وَيَتَصَدَّقُ بِجِلَالِهِ وَجُلُودِهِ وَلَا بُدَّ.

L15101 As for voluntary sacrificial offerings, this is based on Allah's statement—Exalted is He—: {We have made the sacrificial camels among Allah's sacred rites. There is benefit for you in them, so proclaim Allah's Name over them while they stand in rows. When their sides have fallen lifeless, eat thereof and feed the contented poor and the destitute who asks.} [Al-Ḥajj: 36]. Allah's command—Exalted is He—is an obligation.[8]

أَمَّا التَّطَوُّعُ فَلِقَوْلِ اللَّهِ - تَعَالَى -: {وَالْبُدْنَ جَعَلْنَاهَا لَكُمْ مِنْ شَعَائِرِ اللَّهِ لَكُمْ فِيهَا خَيْرٌ فَاذْكُرُوا اسْمَ اللَّهِ عَلَيْهَا صَوَافَّ فَإِذَا وَجَبَتْ جُنُوبُهَا فَكُلُوا مِنْهَا وَأَطْعِمُوا الْقَانِعَ وَالْمُعْتَرَّ} [الحج: ٣٦] ، وَأَمْرُ اللَّهِ - تَعَالَى - فَرْضٌ.

L15102 And through the chain of Muslim: Ishaq ibn Ibrahim narrated to us from Hatim ibn Isma'il from Ja'far ibn Muhammad from his father from Jabir ibn Abdullah, who mentioned the Hajj of the Messenger of Allah—peace and blessings be upon him. Jabir said: "Then the Messenger of Allah—peace and blessings be upon him—went to the slaughtering place and sacrificed sixty-three camels. He then gave Ali the remaining camels to slaughter, including him in his sacrificial act. He then commanded that a piece be taken from each camel, placed in a pot, and cooked. They both ate from its meat and drank from its broth." This constitutes an instruction from him—peace and blessings be upon him—to take the piece, cook it, and not restrict consumption to certain portions of the sacrifice while excluding others.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا إِسْحَاقُ بْنُ إبْرَاهِيمَ عَنْ حَاتِمِ بْنِ إسْمَاعِيلَ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ «عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ فَذَكَرَ حَجَّةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ جَابِرٌ ثُمَّ انْصَرَفَ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ - إلَى الْمَنْحَرِ فَنَحَرَ ثَلَاثًا وَسِتِّينَ بَدَنَةً، ثُمَّ أَعْطَى عَلِيًّا فَنَحَرَ مَا غَبَرَ وَأَشْرَكَهُ فِي هَدْيِهِ، ثُمَّ أَمَرَ فِي كُلِّ بَدَنَةٍ بِبِضْعَةٍ فَجُعِلَتْ فِي قِدْرٍ فَطُبِخَتْ فَأَكَلَا مِنْ لَحْمِهَا وَشَرِبَا مِنْ مَرَقِهَا» فَهَذَا أَمْرٌ مِنْهُ - عَلَيْهِ السَّلَامُ - بِأَخْذِ الْبِضْعَةِ وَطَبْخِهَا وَلَمْ يَقْتَصِرْ عَلَى الْأَكْلِ مِنْ بَعْضِ الْهَدْيِ دُونَ بَعْضٍ.

L15103 Through the chain of Muḥammad ibn Muʿāwiyah: Aḥmad ibn Shuʿayb narrated to us, from ʿImrān ibn Yazīd, from Shuʿayb ibn Isḥāq, from Ibn Jurayj, from al-Ḥasan ibn Muslim, that Mujāhid informed him, that ʿAbd al-Raḥmān ibn Abī Laylā informed him, that ʿAlī ibn Abī Ṭālib informed him: "The Messenger of Allah—peace and blessings be upon him—commanded him to distribute all of his sacrificial camels—their meat, hides, and coverings—to the poor, and not to give anything from them as payment for their slaughtering."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ مُعَاوِيَةَ نَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عِمْرَانُ بْنُ يَزِيدَ نَا شُعَيْبُ بْنُ إِسْحَاقَ نَا ابْنُ جُرَيْجٍ نَا الْحَسَنُ بْنُ مُسْلِمٍ أَنَّ مُجَاهِدًا أَخْبَرَهُ أَنَّ عَبْدَ الرَّحْمَنِ بْنَ أَبِي لَيْلَى أَخْبَرَهُ «أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَهُ أَنْ يُقَسِّمَ بُدْنَهُ كُلَّهَا لُحُومَهَا وَجُلُودَهَا وَجِلَالَهَا فِي الْمَسَاكِينِ وَلَا يُعْطِي فِي جِزَارَتِهَا مِنْهَا شَيْئًا» .

L15104–15105 Abu Muhammad said: Whoever deems some of the Prophet's commands

[8] **Qur'an references (L15101):** Qur'an 22:36 (Al-Ḥajj).

(peace be upon him) in all that we have mentioned as obligatory and others as recommended has arbitrarily judged in Allah's religion—Exalted is He—with falsehood and assertions that are impermissible.

قَالَ أَبُو مُحَمَّد: مَنْ جَعَلَ بَعْضَ أَوَامِرِهِ - عَلَيْهِ السَّلَامُ - فِي كُلِّ مَا ذَكَرْنَا فَرْضًا وَبَعْضَهَا نَدْبًا فَقَدْ تَحَكَّمَ فِي دِينِ اللَّهِ - تَعَالَى - بِالْبَاطِلِ وَبِمَا لَا يَحِلُّ مِنْ الْقَوْلِ.

L15106 We received a narration via ʿAbd al-Razzāq from Sufyān al-Thawrī from Ḥammād ibn Abī Sulaymān from Ibrāhīm from ʿAlqamah from Ibn Masʿūd that he dispatched a pilgrimage sacrificial animal and said: "Eat one-third yourself and with your companions, donate one-third as charity, and send one-third to the family of ʿUtbah."

وَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ عَنْ عَلْقَمَةَ عَنْ ابْنِ مَسْعُودٍ أَنَّهُ بَعَثَ بِهَدْيٍ وَقَالَ: كُلْ أَنْتَ وَأَصْحَابَك ثُلُثًا وَتَصَدَّقْ بِثُلُثٍ وَابْعَثْ إلَى آلِ عُتْبَةَ ثُلُثًا.

L15107 And from the chain of Waki', from Ibn Abī Rawwād, from Nāfi', from Ibn 'Umar, who said: Sacrificial animals and ritual offerings are divided into thirds—one-third for your family, one-third for you, and one-third for the poor.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ ابْنِ أَبِي رَوَّادٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: الضَّحَايَا وَالْهَدَايَا: ثُلُثٌ لِأَهْلِك، وَثُلُثٌ لَك، وَثُلُثٌ لِلْمَسَاكِينِ.

L15108 Narrated by Maʿmar, on the authority of ʿAsim, from Abu Mijlaz: Ibn ʿUmar ordered that a portion of his sacrificial animal be allocated for himself and the remainder donated as charity.

وَعَنْ مَعْمَرٍ عَنْ عَاصِمٍ عَنْ أَبِي مِجْلَزٍ: أَنَّ ابْنَ عُمَرَ أَمَرَ أَنْ يُدْفَعَ لَهُ مِنْ أُضْحِيَّتِهِ بِضْعَةٌ وَيُتَصَدَّقَ بِسَائِرِهَا.

L15109 People differed regarding what may be eaten of the sacrificial animal. Narrated via the chain of Yahya ibn Sa'id al-Qattan, from Ubayd Allah ibn Umar, from Nafi', from Ibn Umar, who said: "Everything may be eaten except from the compensation for hunted game and vowed offerings."

وَاخْتَلَفَ النَّاسُ فِيمَا يُؤْكَلُ مِنْ الْهَدْيِ -: فَرُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: يُؤْكَلُ مِنْ كُلِّ شَيْءٍ إلَّا مِنْ جَزَاءِ صَيْدٍ وَنَذْرٍ.

L15110 Narrated from Ali: It is forbidden to eat from the compensation for hunting during pilgrimage (ihram), nor from vowed sacrifices, nor from what is designated for the poor.

وَعَنْ عَلِيٍّ: لَا يُؤْكَلُ مِنْ جَزَاءِ الصَّيْدِ وَلَا مِنْ النَّذْرِ وَلَا مِمَّا جُعِلَ لِلْمَسَاكِينِ.

L15111 From Maʿmar, from Qatāda, from Al-Ḥasan: All sacrificial animals may be eaten except those offered as expiation for hunted game. Al-Awzāʿī said: Five types from the sacrificial animals may be eaten: the vowed offering, the Tamattuʿ Hajj sacrifice, the voluntary offering, the bequest, and the sacrifice for one prevented from completing Hajj – but all expiatory sacrifices are excluded.

وَعَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ الْحَسَنِ: يُؤْكَلُ مِنْ الْهَدْيِ كُلِّهِ إلَّا مِنْ جَزَاءِ الصَّيْدِ - وَقَالَ الْأَوْزَاعِيُّ يُؤْكَلُ مِنْ الْهَدْيِ خَمْسَةٌ: النَّذْرُ، وَالْمُتْعَةُ، وَالتَّطَوُّعُ، وَالْوَصِيَّةُ، وَالْمُحْصَرُ، إلَّا الْكَفَّارَاتِ كُلَّهَا.

L15112 Abu Hanifa said: None of the sacrificial animals may be eaten except the

Tamattuʿ sacrifice, the Qirān sacrifice, and voluntary offerings provided they have reached their designated time. Malik said: All types of sacrificial animals may be eaten except voluntary offerings that have not reached their designated time, the expiation for hunting during pilgrimage, the ransom for harm, and vowed sacrifices for the poor.

وَقَالَ أَبُو حَنِيفَةَ: لَا يُؤْكَلُ مِنْ شَيْءٍ مِنْ الْهَدْيِ إلَّا الْمُتْعَةُ، وَالْقِرَانُ، وَالتَّطَوُّعُ إذَا بَلَغَ مَحِلَّهُ - وَقَالَ مَالِكٌ: يُؤْكَلُ مِنْ كُلِّ شَيْءٍ مِنْ الْهَدْيِ إلَّا التَّطَوُّعَ إذَا لَمْ يَبْلُغْ مَحِلَّهُ، وَجَزَاءَ الصَّيْدِ، وَفِدْيَةَ الْأَذَى، وَنَذْرَ الْمَسَاكِينِ.

L15113 Abu Muhammad said: These are mere opinions; there is no proof to support any of them.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ آرَاءٌ مُجَرَّدَةٌ لَا دَلِيلَ عَلَى شَيْءٍ مِنْهَا.

L15114 Some of them argued that one may eat from every sacrificial animal except what is designated for the poor. We responded: On what basis do you claim that the compensation for hunting [during iḥrām] is for the poor, and that the sacrificial animals mandated for tamattuʿ (the combined pilgrimage) and iḥṣār (being prevented from completing Hajj) are not for the poor?

وَاحْتَجَّ بَعْضُهُمْ بِأَنْ يُؤْكَلَ مِنْ كُلِّ هَدْيٍ إلَّا مَا جُعِلَ لِلْمَسَاكِينِ. فَقُلْنَا: وَأَيْنَ وَجَدْتُمْ أَنَّ جَزَاءَ الصَّيْدِ لِلْمَسَاكِينِ، وَأَنَّ هَدْيَ الْمُتْعَةِ وَالْإِحْصَارِ لَيْسَ لِلْمَسَاكِينِ؟

L15115 Some of them said, "We analogized the sacrificial offering of tamattuʿ pilgrimage upon that of qirān pilgrimage."

وَقَالَ بَعْضُهُمْ: قِسْنَا هَدْيَ الْمُتْعَةِ عَلَى هَدْيِ الْقِرَانِ.

L15116–15117 We said: Where did you derive that the Qārin (one combining Umrah and Hajj) is required to offer a sacrificial animal after his Qirān (combining Umrah and Hajj)? This matter has already been discussed—and success is from Allah, the Exalted.

فَقُلْنَا: أَيْنَ وَجَدْتُمْ أَنَّ عَلَى الْقَارِنِ هَدْيًا يَلْزَمُهُ بَعْدَ قِرَانِهِ؟ وَقَدْ مَضَى الْكَلَامُ فِي هَذَا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L15118 Ali said: Every sacrificial offering that Allah—Exalted is He—has mandated as a binding obligation requires its owner to completely sever it from his wealth. Since this is the case, it is not permissible for him to take anything from that which he no longer owns except by an explicit scriptural injunction. However, his family and children may eat from it if they wish, as they are not legally considered part of him—except what is explicitly designated for the poor; they may not eat from it unless they are poor. And success is only by Allah, the Exalted.

قَالَ عَلِيٌّ: كُلُّ هَدْيٍ أَوْجَبَهُ اللَّهُ - تَعَالَى - فَرْضًا فَقَدْ أَلْزَمَ صَاحِبَهُ إخْرَاجَهُ مِنْ مَالِهِ وَقَطْعَهُ مِنْهُ، فَإِذْ هُوَ كَذَلِكَ فَلَا يَحِلُّ لَهُ مَا قَدْ سَقَطَ مِلْكُهُ عَنْهُ إلَّا بِنَصٍّ، لَكِنْ يَأْكُلُ مِنْهُ أَهْلُهُ وَوَلَدُهُ إنْ شَاءُوا؛ لِأَنَّهُمْ غَيْرُهُ إلَّا مَا سُمِّيَ لِلْمَسَاكِينِ فَلَا يَأْكُلُوا مِنْهُ إنْ لَمْ يَكُونُوا مَسَاكِينَ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

A Jurisprudential Issue: The Udḥiyyah for the Pilgrim

[مَسْأَلَةٌ الْأُضْحِيَّةُ لِلْحَاجِّ]

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٩٠٩ - مَسْأَلَةٌ:

L15121 The Udhiyah (sacrificial animal) is recommended for the pilgrim, just as it

وَالْأُضْحِيَّةُ لِلْحَاجِّ مُسْتَحَبَّةٌ كَمَا هِيَ لِغَيْرِ الْحَاجِّ.

is for the one not performing Hajj.

L15122 And a group said: The pilgrim does not offer the udhiyah (sacrificial animal).

وَقَالَ قَوْمٌ: لَا يُضَحِّي الْحَاجُّ.

L15123 It has been narrated to us via the chain reported in Muslim's collection: Amr an-Naqid narrated to us, from Sufyan ibn Uyaynah, from Abd ar-Rahman ibn al-Qasim ibn Muhammad, from his father, from Aisha, the Mother of the Believers, who said: "We set out with the Messenger of Allah—peace and blessings be upon him—intending nothing but Hajj." She mentioned the hadith, and in it the Messenger of Allah—upon him be peace—sacrificed a cow on behalf of his wives.

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا عَمْرُو النَّاقِدُ نَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا نَرَى إلَّا الْحَجَّ فَذَكَرَتْ الْحَدِيثَ، وَفِيهِ فَضَحَّى رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ - عَنْ نِسَائِهِ بِالْبَقَرِ» .

L15124 Through the chain of Al-Bukhari: Musaddad reported to us, Sufyan reported to us from ʻAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad from his father, from ʻĀ'ishah, the Mother of the Believers—may Allah be pleased with her—that the Prophet—peace be upon him—visited her when she menstruated at Sarif before entering Mecca. She informed him of her condition, and he said to her—peace be upon him: "Fulfill all rites a pilgrim performs except circumambulating the House." She said: When we were at Mina, I was brought a large quantity of cow meat. I asked: "What is this?" They replied: "The Messenger of Allah—peace be upon him—sacrificed cows on behalf of his wives."

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا مُسَدَّدٌ نَا سُفْيَانُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ «عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - أَنَّ النَّبِيَّ - عَلَيْهِ السَّلَامُ - دَخَلَ عَلَيْهَا وَقَدْ حَاضَتْ بِسَرِفَ قَبْلَ أَنْ تَدْخُلَ مَكَّةَ فَأَخْبَرَتْهُ أَنَّهَا حَاضَتْ، فَقَالَ لَهَا - عَلَيْهِ السَّلَامُ -: فَاقْضِي مَا يَقْضِي الْحَاجُّ غَيْرَ أَنْ لَا تَطُوفِي بِالْبَيْتِ قَالَتْ: فَلَمَّا كُنَّا بِمِنًى أُتِيتُ بِلَحْمِ بَقَرٍ كَثِيرٍ فَقُلْتُ: مَا هَذَا؟ فَقَالُوا: ضَحَّى رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ - عَنْ نِسَائِهِ بِالْبَقَرِ» .

L15125 From the chain of Ḥammād ibn Zayd, from Ayyūb al-Sikhtiyānī, from Nāfiʻ, from Ibn ʻUmar, that he would say: "The *hady* is that which is garlanded, marked, and presented at ʻArafah; otherwise, it is considered ordinary sacrifices (ḍaḥāyā)."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ يَقُولُ: الْهَدْيُ مَا قُلِّدَ وَأُشْعِرَ وَوُقِفَ بِهِ بِعَرَفَةَ وَإِلَّا فَإِنَّمَا هِيَ ضَحَايَا.

L15126 From the chain of Ismāʻīl ibn Isḥāq: Sulaymān ibn Ḥarb narrated to us, Ḥammād ibn Zayd narrated to us, ʻAbdullāh ibn al-Ḥasan ibn Abī al-Ḥasan al-Baṣrī reported to me that his father al-Ḥasan performed the *tamattuʻ*, so he slaughtered two sheep: one sheep for his *tamattuʻ* and one sheep for his *uḍḥiyah*.

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ نَا سُلَيْمَانُ بْنُ حَرْبٍ نَا حَمَّادُ بْنُ زَيْدٍ حَدَّثَنِي عَبْدُ اللَّهِ بْنُ الْحَسَنِ بْنِ أَبِي الْحَسَنِ الْبَصْرِيُّ أَنَّ الْحَسَنَ أَبَاهُ تَمَتَّعَ فَذَبَحَ شَاتَيْنِ شَاةً لِمُتْعَتِهِ وَشَاةً لِأُضْحِيَّتِهِ.

L15127–15128 The Messenger of Allah (peace be upon him) urged the sacrificial offering. Therefore, it is impermissible to deprive the pilgrim of [Allah's] grace and nearness to Him—the Exalted—without textual evidence on the matter.

وَقَدْ حَضَّ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ - عَلَى الْأُضْحِيَّةِ فَلَا يَجُوزُ أَنْ يُمْنَعَ الْحَاجُّ مِنْ الْفَضْلِ وَالْقُرْبَةِ إلَى اللَّهِ - تَعَالَى - بِغَيْرِ نَصٍّ فِي ذَلِكَ.

[مَسْأَلَةٌ وَافَقَ الْإِمَامُ يَوْمَ عَرَفَةَ يَوْمَ جُمُعَةٍ]

٩١٠ - مَسْأَلَةٌ:

وَإِنْ وَافَقَ الْإِمَامُ يَوْمَ عَرَفَةَ يَوْمَ جُمُعَةٍ: جَهَرَ، وَهِيَ صَلَاةُ جُمُعَةٍ، وَيُصَلِّي الْجُمُعَةَ أَيْضًا بِمِنًى وَبِمَكَّةَ؛ لِأَنَّ النَّصَّ لَمْ يَأْتِ بِالنَّهْيِ عَنْ ذَلِكَ.

وَقَالَ - تَعَالَى - {إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ} [الجمعة: ٩] فَلَمْ يَخُصَّ اللَّهُ - تَعَالَى - بِذَلِكَ غَيْرَ يَوْمِ عَرَفَةَ وَمِنًى مِنْ عَرَفَةَ وَمِنًى.

وَرُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ الْخُشَنِيِّ نَا مُحَمَّدُ بْنُ الْمُثَنَّى نَا مُسْلِمُ بْنُ إبْرَاهِيمَ نَا بِشْرُ بْنُ مَنْصُورٍ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: إذَا وَافَقَ يَوْمُ جُمُعَةٍ يَوْمَ عَرَفَةَ: جَهَرَ الْإِمَامُ بِالْقِرَاءَةِ.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ مِثْلُهُ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ.

فَإِنْ ذَكَرُوا خَبَرًا رُوِّينَاهُ مِنْ طَرِيقِ إبْرَاهِيمَ بْنِ أَبِي يَحْيَى عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ عَنْ الْحَسَنِ بْنِ مُسْلِمٍ قَالَ: «وَافَقَ يَوْمُ التَّرْوِيَةِ يَوْمَ الْجُمُعَةِ وَحَجَّةَ النَّبِيِّ - عَلَيْهِ السَّلَامُ - فَقَالَ: مَنْ اسْتَطَاعَ مِنْكُمْ أَنْ يُصَلِّيَ الظُّهْرَ بِمِنًى فَلْيَفْعَلْ، فَصَلَّى الظُّهْرَ بِمِنًى وَلَمْ يَخْطُبْ» قَالَ عَبْدُ الْعَزِيزِ: وَفَعَلَ عُمَرُ بْنُ الْخَطَّابِ مِثْلَ ذَلِكَ.

A legal issue: the Day of ʿArafah coinciding with a Friday according to the Imam's ruling.

910 – Issue:

If the Imam's determination of the day of Arafah coincides with Friday, he should recite the prayer aloud, and this prayer is valid as the Friday prayer. He should also lead the Friday prayer in Mina and Mecca, because there is no prohibition in the textual evidence regarding this.

And He, the Exalted, said, "When the call is made for prayer on Friday, hasten to the remembrance of Allah and leave trade." [Al-Jumuʿah: 9] Thus, Allah, the Exalted, did not restrict this ruling exclusively to Friday but included the Day of ʿArafah and the days at Minā—from ʿArafah and Minā.[9]

It was narrated to us through the chain of Muḥammad ibn ʿAbd al-Salām al-Khushanī: Muḥammad ibn al-Muthannā narrated to us, Muslim ibn Ibrāhīm narrated to us, Bishr ibn Manṣūr narrated to us, from Ibn Jurayj, from ʿAṭāʾ ibn Abī Rabāḥ, who said: "If Friday coincides with the Day of ʿArafah, the Imām should recite aloud."

And from ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAṭāʾ – the same as it. This is the view of Abū Sulaymān.

If they mentioned a report that was narrated by us via the route of Ibrāhīm ibn Abī Yaḥyā from ʿAbd al-ʿAzīz ibn ʿUmar from al-Ḥasan ibn Muslim, who said: "The Day of al-Tarwiyah coincided with both Friday and the Prophet (peace be upon him)'s Hajj, so he said: 'Whoever among you is able to pray Dhuhr in Minā, let him do so.' He then prayed Dhuhr in Minā and did not deliver a khutbah." ʿAbd al-ʿAzīz said: "'Umar ibn al-Khaṭṭāb did the same."

[9] **Qur'an references (L15132):** Qur'an 62:9 (Al-Jumu'ah).

L15136 And through him to Ibrāhīm ibn Abī Yaḥyā, from al-Ḥajjāj ibn Arṭāʾa, from Wabara, who said: “The Day of ʿArafah coincided with a Friday, so Ibn al-Zubayr prayed the Ẓuhr prayer without audible recitation.” This is a fabricated report containing every defect. Ibrāhīm ibn Abī Yaḥyā is denounced for lying and universally abandoned. Moreover, it is a disconnected report, and the report combines Ibn al-Zubayr with Ibn Abī Yaḥyā and al-Ḥajjāj ibn Arṭāʾa—who is discarded. Furthermore, its falsehood is manifest, for the Day of Tarwiyah during the Prophet’s Ḥajj—peace be upon him—was on a Thursday, while the Day of ʿArafah was on a Friday. We have been narrated this through al-Bukhārī’s chain: Al-Ḥasan ibn al-Ṣabbāḥ reported to us; he heard Jaʿfar ibn ʿAwf, who reported from Abū al-ʿAmīs, who reported from Qays ibn Muslim, from Ṭāriq ibn Shihāb, from ʿUmar ibn al-Khaṭṭāb: “That this verse, {This day I have perfected for you your religion} [5:3], was revealed to the Messenger of Allah—peace be upon him—while he stood at ʿArafah on a Friday.”[10]

وَبِهِ إِلَى إِبْرَاهِيمَ بْنِ أَبِي يَحْيَى عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ وَبَرَةَ قَالَ: وَافَقَ يَوْمُ عَرَفَةَ يَوْمَ جُمُعَةٍ فَصَلَّى ابْنُ الزُّبَيْرِ الظُّهْرَ وَلَمْ يَجْهَرْ بِالْقِرَاءَةِ -: فَهَذَا خَبَرٌ مَوْضُوعٌ فِيهِ كُلُّ بَلِيَّةٍ. إِبْرَاهِيمُ بْنُ أَبِي يَحْيَى مَذْكُورٌ بِالْكَذِبِ مَتْرُوكٌ مِنْ الْكُلِّ، ثُمَّ هُوَ مُرْسَلٌ، وَفِيهِ عَنْ ابْنِ الزُّبَيْرِ مَعَ ابْنِ أَبِي يَحْيَى الْحَجَّاجِ بْنِ أَرْطَاةَ وَهُوَ سَاقِطٌ، ثُمَّ الْكَذِبُ فِيهِ ظَاهِرٌ، لِأَنَّ يَوْمَ التَّرْوِيَةِ فِي حَجَّةِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - إِنَّمَا كَانَ يَوْمَ الْخَمِيسِ وَكَانَ يَوْمُ عَرَفَةَ يَوْمَ الْجُمُعَةِ -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ الْبُخَارِيِّ نَا الْحَسَنُ بْنُ الصَّبَّاحِ سَمِعَ جَعْفَرَ بْنَ عَوْفٍ نَا أَبُو الْعَمِيسِ نَا قَيْسُ بْنُ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ " أَنَّ هَذِهِ الْآيَةَ {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] نَزَلَتْ عَلَى رَسُولِ اللَّهِ - عَلَيْهِ السَّلَامُ - وَهُوَ قَائِمٌ بِعَرَفَةَ يَوْمَ جُمُعَةٍ ".

L15137–15138 If it is said: Do all the reports state that the Messenger of Allah—peace be upon him—combined Dhuhr and Asr prayers in Arafah? We reply: Yes, and the Friday prayer is the Dhuhr prayer itself. None of the reports indicate that he—peace be upon him—did not recite aloud in it, and reciting aloud is not obligatory. The legal distinction lies in the fact that the Dhuhr prayer on Friday—whether in residence or travel—consists of two *rakʿahs* when prayed in congregation.

فَإِنْ قِيلَ: إنَّ الْآثَارَ كُلَّهَا إنَّمَا فِيهَا جَمَعَ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ - بِعَرَفَةَ بَيْنَ الظُّهْرِ وَالْعَصْرِ؟ قُلْنَا: نَعَمْ، وَصَلَاةُ الْجُمُعَةِ هِيَ صَلَاةُ الظُّهْرِ نَفْسُهَا وَلَيْسَ فِي شَيْءٍ مِنْ الْآثَارِ أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَجْهَرْ فِيهَا، وَالْجَهْرُ أَيْضًا لَيْسَ فَرْضًا وَإِنَّمَا يَفْتَرِقُ الْحُكْمُ فِي أَنَّ ظُهْرَ يَوْمِ الْجُمُعَةِ فِي الْحَضَرِ وَالسَّفَرِ لِلْجَمَاعَةِ رَكْعَتَانِ.

The issue of delaying Hajj and Umrah beyond the earliest times of capability.

[مَسْأَلَةُ تَأْخِيرُ الْحَجِّ وَالْعُمْرَةِ عَنْ أَوَّلِ أَوْقَاتِ الِاسْتِطَاعَةِ]

L15140 911 – Issue:

٩١١ - مَسْأَلَةٌ:

L15141 It is impermissible to delay Hajj and Umrah beyond the earliest time of capability for them both. Whoever does so has sinned, and it is incumbent upon him to perform Umrah and Hajj—this being the position of Mālik and Abū Sulaymān. Al-Shāfiʿī said: One may delay until the end of his life.

وَلَا يَجُوزُ تَأْخِيرُ الْحَجِّ وَالْعُمْرَةِ عَنْ أَوَّلِ أَوْقَاتِ الِاسْتِطَاعَةِ لَهُمَا، فَمَنْ فَعَلَ ذَلِكَ فَقَدْ عَصَى وَعَلَيْهِ أَنْ يَعْتَمِرَ وَيَحُجَّ - وَهُوَ قَوْلُ مَالِكٍ، وَأَبِي سُلَيْمَانَ - وَقَالَ الشَّافِعِيُّ: هُوَ فِي سَعَةٍ إلَى آخِرِ عُمْرِهِ.

[10] **Qur’an references (L15136):** Qur’an 5:3 (Al-Ma’idah).

L15142 The proof for the validity of our position is Allah's statement - the Almighty and Majestic: {And hasten towards forgiveness from your Lord} [Āl ʿImrān: 133], and His declaration - Exalted is He: {Pilgrimage to the House is an obligation from Allah upon all people who are able to undertake it} [Āl ʿImrān: 97]. There is no disagreement that this directive is directed at every capable person. A capable individual must either have Hajj obligated upon them or not. If Hajj is obligated upon them, they are commanded to perform it in the same year - which is our position - and whoever fails to perform Hajj would be neglecting an obligation. If Hajj is not obligated upon them, this contradicts the Quran.[11]

L15143 Moreover, if he is permitted to act freely until the end of his life, reproach would only apply to him after death. Yet reproach does not apply to anyone after death. Therefore, it is valid to conclude that he is blameworthy during his lifetime.

L15144 If they argue, "Did the Prophet (peace be upon him) reside in Medina for ten years yet only perform Hajj at their end?" we respond: You possess no clear explanation regarding when God the Exalted ordained Hajj. It remains plausible that its obligation was decreed solely in the year he performed Hajj (peace be upon him). Matters lacking explicit textual clarification hold no proof, save that we are certain the Messenger of God (may God's blessings and peace be upon him) would never neglect a superior act except due to a preventing impediment. They do not dispute with us that hastening [to fulfill obligations] holds greater merit.

L15145 If they cite the delay of prayer until the end of its time, we respond: This is what the scriptural text explicitly addresses. Present us with a clear scriptural text permitting the delay of Hajj—which constitutes your claim in this instance—for there is no valid basis for this position. And by Allah—the Exalted—is success attained.

L15146 Issue 912:

L15147–15149 The consideration of ability is only taken into account such that if one

[11] **Qur'an references (L15142):** Qur'an 3:133 (Ali 'Imran); Qur'an 3:97 (Ali 'Imran).

بُرْهَانُ صِحَّةِ قَوْلِنَا قَوْلُ اللَّهِ - عَزَّ وَجَلَّ -: {وَسَارِعُوا إِلَى مَغْفِرَةٍ مِنْ رَبِّكُمْ} [آل عمران: ١٣٣] وَقَالَ - تَعَالَى - {وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلا} [آل عمران: ٩٧] وَلَا خِلَافَ فِي أَنَّ هَذَا مُتَوَجِّهٌ إلَى كُلِّ مُسْتَطِيعٍ، فَلَا يَخْلُو الْمُسْتَطِيعُ مِنْ أَنْ يَكُونَ مُفْتَرَضًا عَلَيْهِ الْحَجُّ أَوْ لَا يَكُونُ مُفْتَرَضًا عَلَيْهِ الْحَجُّ، فَإِنْ كَانَ مُفْتَرَضًا عَلَيْهِ فَهُوَ مَأْمُورٌ بِهِ فِي عَامِهِ - وَهُوَ قَوْلُنَا، وَهُوَ إنْ لَمْ يَحُجَّ مُعَطِّلُ فَرْضٍ وَإِنْ كَانَ لَيْسَ مُفْتَرَضًا عَلَيْهِ الْحَجُّ فَهَذَا خِلَافُ الْقُرْآنِ.

وَأَيْضًا فَإِنْ كَانَ مَفْسُوحًا لَهُ إلَى آخِرِ عُمْرِهِ فَإِنَّمَا تَلْحَقُهُ الْمَلَامَةُ بَعْدَ الْمَوْتِ، وَالْمَلَامَةُ لَا تَلْحَقُ أَحَدًا بَعْدَ الْمَوْتِ، فَصَحَّ أَنَّهُ مَلُومٌ فِي حَيَاتِهِ.

فَإِنْ احْتَجُّوا بِأَنَّ النَّبِيَّ - عَلَيْهِ السَّلَامُ - أَقَامَ بِالْمَدِينَةِ عَشْرَ سِنِينَ لَمْ يَحُجَّ إلَّا فِي آخِرِهَا؟ قُلْنَا: لَا بَيَانَ عِنْدَكُمْ مَتَى افْتَرَضَ اللَّهُ - تَعَالَى - الْحَجَّ، وَمُمْكِنٌ أَنْ لَا يَكُونَ افْتُرِضَ إلَّا عَامَ حَجَّ - عَلَيْهِ السَّلَامُ -، وَمَا لَا نَصَّ بَيِّنًا فِيهِ فَلَا حُجَّةَ فِيهِ، إلَّا أَنَّا مُوقِنُونَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَدَعُ الْأَفْضَلَ إلَّا لِعُذْرٍ مَانِعٍ، وَلَا يَخْتَلِفُونَ مَعَنَا فِي أَنَّ التَّعْجِيلَ أَفْضَلُ.

فَإِنْ ذَكَرُوا تَأْخِيرَ الصَّلَاةِ إلَى آخِرِ وَقْتِهَا. قُلْنَا: هَذَا جَاءَ بِهِ النَّصُّ فَأَوْجِدُونَا نَصًّا بَيِّنًا فِي جَوَازِ تَأْخِيرِ الْحَجِّ وَهُوَ قَوْلُكُمْ حِينَئِذٍ، وَلَا سَبِيلَ إلَى هَذَا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

٩١٢ - مَسْأَلَةٌ:

departs from the place where the ability was acquired, they can perform Hajj within its designated time and Umrah [at any time]. If the ability arises before the entirety of that year [i.e., its Hajj season], it becomes invalidated. If he was not capable during the mentioned time, nor is Hajj obligatory upon him, because he was only commanded to undertake Umrah and Hajj during the time of Hajj, so he becomes either a qārin or a mutamatti'.

وَإِنَّمَا تُرَاعَى الِاسْتِطَاعَةُ بِحَيْثُ لَوْ خَرَجَ مِنَ الْمَكَانِ الَّذِي حَدَثَتْ لَهُ فِيهِ الِاسْتِطَاعَةُ فَيُدْرِكُ الْحَجَّ فِي وَقْتِهِ وَالْعُمْرَةَ، فَإِنْ اسْتَطَاعَ قَبْلَ ذَلِكَ الْعَامِ كُلِّهِ وَبَطَلَتْ اسْتِطَاعَتُهُ فِي الْوَقْتِ الْمَذْكُورِ لَمْ يَكُنْ مُسْتَطِيعًا وَلَا لَزِمَهُ الْحَجُّ؛ لِأَنَّهُ لَمْ يُكَلَّفِ الْعُمْرَةَ وَالْحَجَّ إِلَّا فِي وَقْتِ الْحَجِّ فَيَكُونُ قَارِنًا، أَوْ مُتَمَتِّعًا.

A case in which no one could be found to perform Hajj on his behalf except for a fee.

[مَسْأَلَةٌ لَمْ يُوجَدْ مِنْ يَحُجُّ عَنْهُ إِلَّا بِأُجْرَةٍ]

913. Issue:

٩١٣ - مَسْأَلَةٌ:

Whoever is able as we have mentioned, then if his ability ceases or does not cease, Hajj and Umrah are obligatory upon him. He must perform them from his principal wealth before [paying] debts owed to people, according to what we stated at the beginning of this Book of Hajj in which we are engaged.

فَمَنِ اسْتَطَاعَ كَمَا ذَكَرْنَا، ثُمَّ بَطَلَتْ اسْتِطَاعَتُهُ أَوْ لَمْ تَبْطُلْ فَالْحَجُّ وَالْعُمْرَةُ عَلَيْهِ وَيَلْزَمُ أَدَاؤُهُمَا عَنْهُ مِنْ رَأْسِ مَالِهِ قَبْلَ دُيُونِ النَّاسِ عَلَى مَا ذَكَرْنَا فِي أَوَّلِ كِتَابِ الْحَجِّ الَّذِي نَحْنُ فِيهِ.

If no one is found to perform Hajj on his behalf except for a fee, someone must be hired to do so, based on the Prophet's (peace be upon him) statement: "Allah's debt is most deserving of settlement." Whoever performs Hajj and Umrah on his behalf must do so from one of the designated miqats. There is no obligation beyond this unless the deceased stipulated that Hajj be performed from his hometown. In that case, the extra cost incurred by performing Hajj from his hometown instead of a miqat must be paid from the third of the estate, as this constitutes an act that is not obligatory.

فَإِنْ لَمْ يُوجَدْ مِنْ يَحُجُّ عَنْهُ إِلَّا بِأُجْرَةٍ اُسْتُؤْجِرَ عَنْهُ لِقَوْلِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - " دَيْنُ اللَّهِ أَحَقُّ بِالْقَضَاءِ " مَنْ يَحُجُّ عَنْهُ وَيَعْتَمِرُ مِنْ مِيقَاتٍ مِنَ الْمَوَاقِيتِ لَا يَلْزَمُ غَيْرُ هَذَا، إِلَّا أَنْ يُوصِيَ بِأَنْ يَحُجَّ عَنْهُ مِنْ بَلَدِهِ، فَتَكُونُ الْإِجَارَةُ الزَّائِدَةُ عَلَى الْحَجِّ مِنْ مِيقَاتِ مَا مِنَ الثُّلُثِ، لِأَنَّهُ عَمَلٌ لَا يَلْزَمُ.

If a person leaves his home for a personal need without intending Hajj or Umrah, then, upon reaching the Miqat, he must enter ihram and begin the acts of Hajj—not before that.

وَلَوْ خَرَجَ الْمَرْءُ مِنْ مَنْزِلِهِ لِحَاجَةِ نَفْسِهِ لَا يَنْوِي حَجًّا، وَلَا عُمْرَةً فَأَتَى الْمِيقَاتَ فَحِينَئِذٍ لَزِمَهُ الْإِحْرَامُ وَالدُّخُولُ فِي عَمَلِ الْحَجِّ لَا قَبْلَ ذَلِكَ.

It is permissible for a woman to perform Hajj on behalf of a man or woman, and for a man to perform Hajj on behalf of a woman or man, based on the Prophet's command (peace be upon him) to the woman from Khath'am to perform Hajj for her father, his command (peace be upon him) to a man to perform Hajj for his mother and father, and the absence of any explicit

وَجَائِزٌ أَنْ تَحُجَّ الْمَرْأَةُ عَنِ الرَّجُلِ وَالْمَرْأَةِ، وَالرَّجُلُ عَنِ الْمَرْأَةِ وَالرَّجُلِ، لِأَمْرِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - الْخَثْعَمِيَّةَ أَنْ تَحُجَّ عَنْ أَبِيهَا، وَأَمْرِهِ - عَلَيْهِ السَّلَامُ - الرَّجُلَ أَنْ يَحُجَّ عَنْ

prohibition in sacred texts regarding such acts. Allah the Most High said: {And do good} [Al-Ḥajj: 77] – and this is an act of goodness. Thus, it becomes permissible for every person to perform Hajj on behalf of any other person.[12]

أُمِّهِ، وَالرَّجُلَ أَنْ يَحُجَّ عَنْ أَبِيهِ، وَلَمْ يَأْتِ نَصٌّ يَنْهَى عَنْ شَيْءٍ مِنْ ذَلِكَ، وَقَالَ - تَعَالَى -: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] وَهَذَا خَيْرٌ، فَجَائِزٌ أَنْ يَفْعَلَهُ كُلُّ أَحَدٍ عَنْ كُلِّ أَحَدٍ.

L15156 Our view is that of Abū Sulaymān, al-Shāfiʿī, and others.

وَقَوْلُنَا هُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَالشَّافِعِيِّ، وَغَيْرِهِمَا.

L15157 Abu Hanifah said: Hiring someone to perform Hajj is not permissible. Rather, it is only permissible to give money for someone to perform Hajj with that money solely on behalf of the one requiring it. He argued against the permissibility of hiring in this matter by citing their statement: "Hiring is not permissible for acts of obedience nor for acts of disobedience."

وَقَالَ أَبُو حَنِيفَةَ: لَا تَجُوزُ الْإِجَارَةُ عَلَى الْحَجِّ، وَإِنَّمَا يَجُوزُ أَنْ يُعْطِيَ مَالًا لِيَحُجَّ عَنْ الْمَحْجُوجِ عَنْهُ بِهِ فَقَطْ، وَاحْتَجَّ فِي مَنْعِ الْإِجَارَةِ فِي ذَلِكَ بِأَنْ قَالَ قَائِلُهُمْ: لَا تَجُوزُ الْإِجَارَةُ عَلَى الطَّاعَةِ وَلَا عَلَى الْمَعْصِيَةِ.

L15158–15160 Abu Muhammad said: As for the contract of hiring to commit sin, it is invalid; but as for the contract of hiring for acts of obedience, their claim about its invalidity is false. Rather, the contract of hiring is permissible for obedience, and the Prophet—peace be upon him—commanded hiring, permitted it, and urged giving the worker his wage. Thus, this permissibility applies to all matters except what is prohibited solely by an explicit text. They unanimously agree with us on the validity of hiring for constructing mosques and on the permissibility of hiring camels for Hajj. Upon it, and upon the evacuation of the strivers' weapons—all in obedience to Allah, the Exalted—their hypocrisy became apparent. The rental contract is established by giving silver currency for the sacrificial animal of Tamattuʿ or for an animal provided before assuming Ihram to become a Qarin (a pilgrim combining Hajj and Umrah). The contracted Hajj obligations are then fully detailed, including specifying the Miqat (designated entry point), the number of Talbiyah invocations, the designated time at Arafat, the method of performing the two Rakʿahs at the Maqam (Station of Ibrahim), and hastening completion within two days or delaying it. If he performs Hajj in the specified year, it is valid. If he fails to perform Hajj in that year, he receives no payment and the contract is void. If he defers Hajj to a later year, it remains valid, but he

قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْإِجَارَةُ عَلَى الْمَعْصِيَةِ فَنَعَمْ، وَأَمَّا عَلَى الطَّاعَةِ فَقَوْلُهُمْ فِيهِ بَاطِلٌ، بَلْ الْإِجَارَةُ جَائِزَةٌ عَلَى الطَّاعَةِ، وَقَدْ أَمَرَ - عَلَيْهِ السَّلَامُ - بِالْمُؤَاجَرَةِ وَأَبَاحَهَا وَحَضَّ عَلَى إعْطَاءِ الْأَجِيرِ أَجْرَهُ، فَكَانَ هَذَا جَائِزًا عَلَى كُلِّ شَيْءٍ إلَّا مَا مَنَعَ مِنْهُ نَصٌّ فَقَطْ، وَهُمْ مُجْمِعُونَ مَعَنَا عَلَى جَوَازِ الْإِجَارَةِ فِي بُنْيَانِ الْمَسَاجِدِ، وَعَلَى جَوَازِ الْإِجَارَةِ لِلْإِبِلِ لِلْحَجِّ عَلَيْهَا، وَعَلَى جَلَاءِ سِلَاحِ الْمُجَاهِدِينَ، وَكُلُّ ذَلِكَ طَاعَةٌ لِلَّهِ - تَعَالَى -، فَظَهَرَ تَنَاقُضُهُمْ. وَتُعْقَدُ الْإِجَارَةُ فِي كُلِّ ذَلِكَ بِأَنْ تُعْطَى دَرَاهِمُ فِي هَدْيِ الْمُتْعَةِ، أَوْ فِي هَدْيٍ يَسُوقُهُ قَبْلَ الْإِحْرَامِ لِيَكُونَ قَارِنًا، ثُمَّ يُوصَفُ لَهُ عَمَلُ الْحَجِّ الَّذِي اُسْتُؤْجِرَ عَلَيْهِ كُلُّهُ مِنْ تَحْدِيدِ الْمِيقَاتِ وَعَدَدِ التَّلْبِيَةِ، وَوَقْتِ الْمِيقَاتِ بِعَرَفَةَ، وَصِفَةِ الرَّكْعَتَيْنِ عِنْدَ الْمَقَامِ وَالتَّعْجِيلِ فِي يَوْمَيْنِ أَوْ التَّأْخِيرِ، فَإِنْ حَجَّ الْعَامَ فَحَسَنٌ، فَإِنْ لَمْ يَحُجَّ فِيهِ لَمْ يَكُنْ لَهُ مِنْ الْإِجَارَةِ شَيْءٌ وَبَطَلَ الْعَقْدُ، وَإِنْ لَمْ يَحُجَّ الْعَامَ فَحَسَنٌ، وَعَلَيْهِ أَنْ يَحُجَّ فِي أَوَّلِ أَوْقَاتِ إمْكَانِ الْحَجِّ لَهُ وَيُجْزِي مَتَى حَجَّ عَنْهُ كَسَائِرِ الْأَعْمَالِ الْمَوْصُوفَةِ مِنْ الْخِيَاطَةِ وَغَيْرِهَا.

[12] **Qur'an references (L15155):** Qur'an 22:77 (Al-Hajj).

must perform it at the earliest possible opportunity. It suffices whenever he performs Hajj on behalf [of the employer], like other specified tasks such as tailoring services or similar obligations.

وَكُلُّ مَا أَصَابَ الْأَجِيرَ مِنْ فِدْيَةِ الْأَذَى فَهُوَ عَلَيْهِ لَا عَلَى الْمَحْجُوجِ عَنْهُ فَإِنْ تَعَمَّدَ إبْطَالَ الْحَجِّ، أَوْ عُمْرَتِهِ فَلَا شَيْءَ لَهُ مِنْ الْأُجْرَةِ؛ لِأَنَّهُ لَمْ يَعْمَلْ شَيْئًا مِمَّا أُمِرَ بِهِ.

L15161 Any expiation for harm caused by the substitute pilgrim is his own obligation, not that of the person for whom the Hajj is performed. If he intentionally invalidates the Hajj or Umrah, he receives none of the fee, as he has not fulfilled any of the duties he was entrusted with.

فَلَوْ عَمِلَ بَعْضَ عَمَلِ الْحَجِّ، أَوْ الْعُمْرَةِ، ثُمَّ مَرِضَ أَوْ مَاتَ، أَوْ صُدَّ كَانَ لَهُ بِمِقْدَارِ مَا عَمِلَ، وَلَا يَكُونُ لَهُ الْبَاقِي؛ لِأَنَّهُ قَدْ عَمِلَ بَعْضَ مَا أُمِرَ بِهِ كَمَا أُمِرَ وَلَمْ يَتَعَمَّدْ تَرْكَ الْبَاقِي، وَيَكُونُ هَدْيُ الْإِحْصَارِ فِي مَالِ الْمُحْصَرِ؛ لِأَنَّهُ لَيْسَ مِمَّا يُعْمَلُ عَنْ الْمَيِّتِ فَيَسْتَأْجِرُ عَنْهُ مَنْ يَرْمِي الْجِمَارَ، أَوْ يَطُوفُ عَنْهُ، وَيَسْعَى مِمَّنْ قَدْ رَمَى عَنْ نَفْسِهِ، وَطَافَ عَنْ نَفْسِهِ، وَمِمَّنْ يُحْرِمُ عَنْهُ وَيَقِفُ بِعَرَفَةَ وَالْمُزْدَلِفَةِ، وَيُوَفِّي عَنْهُ بَاقِيَ عَمَلِ الْحَجِّ إنْ كَانَ لَمْ يَعْمَلْ مِنْ ذَلِكَ شَيْئًا.

L15162 If a person performs some of the acts of Ḥajj or ʿUmrah, then falls ill, dies, or is prevented, he receives according to the measure of what he performed and does not receive the remainder. This is because he performed part of what he was commanded as he was commanded and did not intentionally abandon the remainder. The prevention sacrifice (hady al-iḥṣār) must come from the prevented person's wealth, as it is not among the acts performed on behalf of the deceased. He must hire someone to throw the pebbles or perform Ṭawāf on his behalf and perform Saʿī from among those who have thrown the pebbles and performed Ṭawāf for themselves. He must also hire someone to assume Iḥrām on his behalf, stand at ʿArafah and Muzdalifah, and complete the remaining acts of Ḥajj on his behalf if he had not performed any of them.

وَلَا يَجُوزُ إعْطَاءُ مَالٍ لِيَحُجَّ بِهِ عَنْ الْمَيِّتِ بِغَيْرِ أُجْرَةٍ؛ لِأَنَّ الْمَالَ قَدْ يَضِيعُ فَلَا يَلْزَمُ الْمَدْفُوعَ إلَيْهِ ضَمَانُ مَالٍ وَلَا عَمَلُ حَجٍّ، فَهُوَ تَضْيِيعٌ لِمَالِ الْمَيِّتِ وَهَذَا لَا يَجُوزُ.

L15163 It is not permissible to give money for someone to perform Hajj with it on behalf of the deceased without payment, as the money may be lost, and the recipient is neither liable for safeguarding the money nor held responsible for the performance of Hajj. This constitutes squandering the deceased's wealth, and such an act is impermissible.

فَلَوْ أَعْطَاهُ حَيٌّ لِيَحُجَّ بِهِ عَنْهُ كَانَ عَقْدًا غَيْرَ لَازِمٍ حَتَّى يُتِمَّ الْحَجَّ، فَإِذَا تَمَّ حِينَئِذٍ اسْتَحَقَّ مَا أُعْطِيَ وَأَجْزَأَ عَنْ الْمُعْطِي - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L15164 If a living person gave him to perform Hajj on his behalf, it constitutes a non-binding contract until the Hajj is fully completed. When it is completed, he becomes entitled to what was given, and it suffices for the giver. And by Allah, the Most High, is success.

L15165 It is not sufficient to hire someone who has not performed Hajj or Umrah unless he lacks the means to do so when hired. In that case, it becomes permissible, as he is incapable of performing Hajj for himself due to lacking the means and is therefore not obligated. However, he remains capable of

performing Hajj for others by means of the payment he takes. Thus, hiring him for what he is capable of performing is permissible—and success comes only from Allah, the Exalted.

وَلَا يُجْزِئُ أَنْ يَسْتَأْجِرَ مَنْ لَمْ يَحُجَّ وَلَا اعْتَمَرَ إِلَّا أَنْ يَكُونَ غَيْرَ مُسْتَطِيعٍ حِينَ اُسْتُؤْجِرَ فَيَجُوزُ حِينَئِذٍ، لِأَنَّهُ غَيْرُ مُسْتَطِيعٍ لِلْحَجِّ عَنْ نَفْسِهِ فَلَا يَلْزَمُهُ وَهُوَ مُسْتَطِيعٌ لِلْحَجِّ عَنْ غَيْرِهِ مِمَّا يَأْخُذُ مِنَ الْأُجْرَةِ فَاسْتِئْجَارُهُ لِمَا يَسْتَطِيعُ عَلَيْهِ جَائِزٌ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

Issue: The Counted Days and the Designated Days.

[مَسْأَلَةُ الْأَيَّامُ الْمَعْدُودَاتُ وَالْمَعْلُومَاتُ]

914 - Issue:

٩١٤ - مَسْأَلَةٌ:

The counted days and the known days refer to the same period - being the Day of Sacrifice and three days following it - based on the statement of Allah, Exalted is He: {And remember Allah during the counted days. Then whoever hastens to depart in two days, there is no sin upon him, and whoever delays, there is no sin upon him} [Sūrat al-Baqarah 2:203]. The aforementioned hastening and delaying are only done without fear of anyone during the days of throwing pebbles at the Jamarāt. The days of throwing pebbles at the Jamarāt (without dispute) are the Day of Sacrifice and the three days following it.[13]

وَالْأَيَّامُ الْمَعْدُودَاتُ وَالْمَعْلُومَاتُ وَاحِدَةٌ، وَهِيَ يَوْمُ النَّحْرِ، وَثَلَاثَةُ أَيَّامٍ بَعْدَهُ لِقَوْلِ اللَّهِ - تَعَالَى -: {وَاذْكُرُوا اللَّهَ فِي أَيَّامٍ مَعْدُودَاتٍ فَمَنْ تَعَجَّلَ فِي يَوْمَيْنِ فَلا إِثْمَ عَلَيْهِ وَمَنْ تَأَخَّرَ فَلا إِثْمَ عَلَيْهِ} [البقرة: ٢٠٣] وَالتَّعْجِيلُ الْمَذْكُورُ وَالتَّأْخِيرُ الْمَذْكُورُ إِنَّمَا هُوَ بِلَا خَوْفٍ مِنْ أَحَدٍ فِي أَيَّامِ رَمْيِ الْجِمَارِ. وَأَيَّامُ رَمْيِ الْجِمَارِ بِلَا خِلَافٍ هُوَ يَوْمُ النَّحْرِ وَثَلَاثَةُ أَيَّامٍ بَعْدَهُ.

And He—Exalted is He—said: {That they may witness benefits for themselves and mention the name of Allah on appointed days over what He has provided them of livestock} [Al-Hajj: 28]. These are undoubtedly the days of sacrifice during which livestock are slaughtered: the Day of Sacrifice and the three days following it.[14]

وَقَالَ - تَعَالَى - {لِيَشْهَدُوا مَنَافِعَ لَهُمْ وَيَذْكُرُوا اسْمَ اللَّهِ فِي أَيَّامٍ مَعْلُومَاتٍ عَلَى مَا رَزَقَهُمْ مِنْ بَهِيمَةِ الأَنْعَامِ} [الحج: ٢٨] فَهَذِهِ بِلَا شَكٍّ أَيَّامُ النَّحْرِ الَّتِي تُنْحَرُ فِيهَا بَهِيمَةُ الْأَنْعَامِ، وَهِيَ يَوْمُ النَّحْرِ وَثَلَاثَةُ أَيَّامٍ بَعْدَهُ.

It was narrated to us via Muḥammad ibn al-Muthannā from ʿUbayd Allāh ibn Mūsā from Ibn Abī Laylā from al-Ḥakam ibn ʿUtaybah from Miqsam from Ibn ʿAbbās, who said: "The appointed days are the Day of Sacrifice and the three days following it: these are the days of Tashrīq."

رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نَا عُبَيْدُ اللَّهِ بْنُ مُوسَى نَا ابْنُ أَبِي لَيْلَى عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ مِقْسَمٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: الْأَيَّامُ الْمَعْلُومَاتُ: يَوْمُ النَّحْرِ وَثَلَاثَةُ أَيَّامٍ بَعْدَهُ: أَيَّامَ التَّشْرِيقِ.

From the chain of Ibn Abi Shaybah, he narrated to us, from Ali ibn Hashim,

[13] **Qur'an references (L15168):** Qur'an 2:203 (Al-Baqarah).
[14] **Qur'an references (L15171):** Qur'an 22:28 (Al-Hajj).

from Ibn Abi Layla, from al-Hakam, from Miqsam, from Ibn Abbas concerning the verse of Allah, the Exalted: "in numbered days" [Al-Baqarah 2:203], he stated: "The Day of Sacrifice and three days after it—the Days of Tashriq: and this is the view we uphold."[15]

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَلِيُّ بْنُ هَاشِمٍ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الْحَكَمِ عَنْ مِقْسَمٍ عَنْ ابْنِ عَبَّاسٍ فِي وقَوْله تَعَالَى: {فِي أَيَّامٍ مَعْدُودَاتٍ} [البقرة: ٢٠٣] قَالَ: يَوْمُ النَّحْرِ، وَثَلَاثَةُ أَيَّامٍ بَعْدَهُ: أَيَّامُ التَّشْرِيقِ - وَهَذَا قَوْلُنَا.

L15174 Other narrations have been reported besides this, both earlier and later. Therefore, the remembrance of Allah—the Exalted—is obligatory every day. Hence, it is impermissible to restrict this obligation [to specific times] except through scriptural evidence. As for relying on mere assertions or the statements of someone whose opinion has been contradicted, this is not permissible.

وَقَدْ رُوِيَ غَيْرُ هَذَا، وَقَبْلُ وَبَعْدُ، فَذِكْرُ اللَّهِ - تَعَالَى - وَاجِبٌ فِي كُلِّ يَوْمٍ فَلَا يَجُوزُ تَخْصِيصُ ذَلِكَ إلَّا بِنَصٍّ، وَأَمَّا بِالدَّعْوَى وَقَوْلِ قَائِلٍ قَدْ خُولِفَ فَلَا.

L15175 It has been authentically reported from Ibn ʿAbbās, Saʿīd ibn Jubayr, Ibrāhīm al-Nakhaʿī, Mujāhid, ʿAṭāʾ, and al-Ḥasan al-Baṣrī that the "known days" are the ten days of Dhū al-Ḥijjah, culminating in the Day of Sacrifice (Yawm al-Naḥr), and that the "appointed days" are the three days of Tashrīq following the Day of Sacrifice.

صَحَّ عَنْ ابْنِ عَبَّاسٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَمُجَاهِدٍ، وَعَطَاءٍ، وَالْحَسَنِ الْبَصْرِيِّ أَنَّ الْأَيَّامَ الْمَعْلُومَاتِ عَشْرُ ذِي الْحِجَّةِ، آخِرُهَا يَوْمُ النَّحْرِ، وَأَنَّ الْمَعْدُودَاتِ ثَلَاثَةُ أَيَّامٍ بَعْدَ يَوْمِ النَّحْرِ.

L15176 This has been transmitted to us through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān: from Hushaym, from Abī Bishr, from Saʿīd ibn Jubayr, from Ibn ʿAbbās; and from Abī ʿAwānah, from Abī Bishr, from Saʿīd ibn Jubayr; and from Yaḥyā ibn Saʿīd al-Qaṭṭān, from Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm; and from Sufyān, from Ibn Abī Najīḥ, from Mujāhid; and from Ḥammād ibn Salamah, from Qays ibn Saʿd, from ʿAṭāʾ; and from Ḥammād ibn Salamah, from Ḥumayd, from al-Ḥasan. This ruling is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān.

رُوِّينَا ذَلِكَ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ هُشَيْمٍ نَا أَبُو بِشْرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ، وَعَنْ أَبِي عَوَانَةَ عَنْ أَبِي بِشْرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ، وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ، عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ، وَعَنْ سُفْيَانَ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ، وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ عَطَاءٍ، وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L15177–15179 It has been narrated to us through the chain of Ismāʿīl ibn Isḥāq: ʿAlī ibn ʿAbd Allāh narrated to us, ʿUbayd Allāh ibn Mūsā narrated to us, from Ibn Abī Laylā, from Zirr and Nāfiʿ. Zirr reported from ʿAlī ibn Abī Ṭālib, while Nāfiʿ reported from Ibn ʿUmar. Then ʿAlī and Ibn ʿUmar concurred, both stating: "The counted days are the Day of Sacrifice and the two days following it. Sacrifice on whichever of them you wish, and the most virtuous among them

وَرُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ نَا عَلِيُّ بْنُ عَبْدِ اللَّهِ نَا عُبَيْدُ اللَّهِ بْنُ مُوسَى عَنْ ابْنِ أَبِي لَيْلَى عَنْ زِرٍّ، وَنَافِعٍ، قَالَ زِرٌّ: عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَقَالَ نَافِعٌ: عَنْ ابْنِ عُمَرَ، ثُمَّ اتَّفَقَ عَلِيٌّ، وَابْنُ عُمَرَ، قَالَا جَمِيعًا: الْأَيَّامُ الْمَعْدُودَاتُ يَوْمُ النَّحْرِ وَيَوْمَانِ بَعْدَهُ، اذْبَحْ فِي أَيِّهَا شِئْت، وَأَفْضَلُهَا أَوَّلُهَا وَرُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نَا حَمَّادُ بْنُ عِيسَى

[15] **Qur'an references (L15173):** Qur'an 2:203 (Al-Baqarah).

الْجُهَنِيُّ نَا جَعْفَرُ بْنُ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ فِي أَيَّامٍ مَعْدُودَاتٍ: أَيَّامُ التَّشْرِيقِ.

وَرُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نَا ابْنُ عَجْلَانَ نَا نَافِعٌ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ يَقُولُ: الْأَيَّامُ الْمَعْلُومَاتُ: يَوْمُ النَّحْرِ وَيَوْمَانِ بَعْدَهُ، وَالْمَعْدُودَاتُ: ثَلَاثَةُ أَيَّامٍ بَعْدَ النَّحْرِ، فَمَنْ تَعَجَّلَ فِي يَوْمَيْنِ فَلَا إِثْمَ عَلَيْهِ وَمَنْ تَأَخَّرَ فَلَا إِثْمَ عَلَيْهِ - وَبِهِ يَقُولُ مَالِكٌ.

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ لَهُ حُجَّةً إِلَّا تَعَلُّقَهُ بِابْنِ عُمَرَ، وَقَدْ رُوِّينَا عَنْ ابْنِ عُمَرَ خِلَافَ هَذَا، وَخَالَفَهُ ابْنُ عَبَّاسٍ، وَعَلِيٌّ، فَلَيْسَ التَّعَلُّقُ بِبَعْضِهِمْ أَوْلَى مِنْ بَعْضٍ.

وَاحْتَجَّ الْآخَرُونَ بِأَنْ قَالُوا: قَدْ فَرَّقَ اللَّهُ - تَعَالَى - بَيْنَ اسْمَيْهِمَا؟ قُلْنَا: نَعَمْ وَجَمَعَ بَيْنَ حُكْمَيْهِمَا فِي أَنَّهُ أَمَرَ بِذِكْرِهِ - عَزَّ وَجَلَّ - فَقَطْ وَذِكْرُ اللَّهِ - تَعَالَى - لَا يَجُوزُ أَنْ يُخَصَّ بِهِ يَوْمٌ دُونَ يَوْمٍ، وَكَذَلِكَ لَا يَجُوزُ أَنْ يُخَصَّ بِالنَّحْرِ لِلَّهِ - تَعَالَى - يَوْمٌ دُونَ يَوْمٍ، لِأَنَّهُ فِعْلُ خَيْرٍ وَبِرٍّ إِلَّا بِنَصٍّ، وَلَا نَصَّ فِي تَخْصِيصِ ذَلِكَ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَةُ حَجِّ الصَّبِيِّ]

٩١٥ - مَسْأَلَةٌ:

وَنَسْتَحِبُّ الْحَجَّ بِالصَّبِيِّ وَإِنْ كَانَ صَغِيرًا جِدًّا أَوْ كَبِيرًا وَلَهُ حَجٌّ وَأَجْرٌ، وَهُوَ تَطَوُّعٌ، وَلِلَّذِي يَحُجُّ بِهِ أَجْرٌ، وَيَجْتَنِبُ مَا يَجْتَنِبُ الْمُحْرِمُ، وَلَا شَيْءَ عَلَيْهِ إِنْ وَاقَعَ مِنْ ذَلِكَ مَا لَا يَحِلُّ لَهُ، وَيُطَافُ بِهِ، وَيُرْمَى عَنْهُ الْجِمَارُ إِنْ لَمْ يُطِقْ ذَلِكَ. وَيُجْزِي الطَّائِفَ بِهِ طَوَافُهُ ذَلِكَ عَنْ نَفْسِهِ.

is the first day." We have been narrated through the chain of Muḥammad ibn al-Muthannā → Ḥammād ibn ʿĪsā al-Juhanī → Jaʿfar ibn Muḥammad → his father → ʿAlī ibn Abī Ṭālib, who said about the "counted days": "They are the Days of Tashrīq [the three days following Eid al-Adha]."

L15180 We have been narrated through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān: from Ibn ʿAjlān, from Nāfiʿ, from Ibn ʿUmar, that he would say: The known days are the Day of Sacrifice and two days following it, and the counted days are three days after the Sacrifice. Whoever hastens in two days incurs no sin, nor does whoever delays. This is the view of Mālik.[16]

L15181 Abu Muhammad said: We do not know any proof for him except his reliance on Ibn Umar. And it has been narrated to us from Ibn Umar contrary to this, and Ibn Abbas and Ali opposed him. Thus, adhering to some of them is no more preferable than adhering to others.

L15182 The others argued by stating: "Did Allah (Exalted is He) not distinguish between their two names?" We replied: "Yes, but He united their rulings in that He commanded only the remembrance of Him (Exalted and Majestic). The remembrance of Allah (Exalted is He) must not be restricted to certain days to the exclusion of others. Likewise, it is impermissible to restrict sacrificing for Allah (Exalted is He) to certain days to the exclusion of others, as it is an act of goodness and righteousness—unless by a text, and there is no text specifying that—and with Allah (Exalted is He) is success."

L15183 ## Issue: The Hajj of the Male Child

L15184 915 – Issue:

L15185 We recommend performing Hajj with a child, even if he is very young or old, and he has a valid Hajj and reward. This is a voluntary act, and the one who facilitates his Hajj receives reward. The child must avoid what a pilgrim in ihram avoids, though no blame falls on him if he commits prohibited acts. He is carried during circumambulation if needed, and pebbles are thrown on his

[16] **Qur'an references (L15180):** Qur'an 2:203 (Al-Baqarah).

behalf if incapable. The circumambulation performed by the one performing it with him on his behalf suffices for the performer's own obligation.

وَكَذَلِكَ يَنْبَغِي أَنْ يُدَرَّبُوا وَيُعَلَّمُوا الشَّرَائِعَ مِنَ الصَّلَاةِ، وَالصَّوْمِ إِذَا أَطَاقُوا ذَلِكَ وَيُجَنَّبُوا الْحَرَامَ كُلَّهُ، وَاللَّهُ - تَعَالَى - يَتَفَضَّلُ بِأَنْ يَأْجُرَهُمْ، وَلَا يَكْتُبُ عَلَيْهِمْ إِثْمًا حَتَّى يَبْلُغُوا.

L15186 Similarly, it is proper that they be trained and taught the religious injunctions such as prayer and fasting once they are capable of bearing it, and be kept away from all that is forbidden. Allah the Exalted graciously bestows reward upon them and does not record sin against them until they attain maturity.

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نَا سُفْيَانُ عَنْ إِبْرَاهِيمَ بْنِ عُقْبَةَ عَنْ كُرَيْبٍ مَوْلَى ابْنِ عَبَّاسٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ امْرَأَةً رَفَعَتْ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَبِيًّا فَقَالَتْ: أَلِهَذَا حَجٌّ؟ قَالَ: نَعَمْ وَلَكِ أَجْرٌ» .

L15187 It was narrated to us through the chain of Muslim: Abu Bakr ibn Abi Shaybah narrated to us, from Sufyan, from Ibrahim ibn Uqbah, from Kuraib—the freed slave of Ibn Abbas—from Ibn Abbas: "A woman presented a child to the Messenger of Allah (peace and blessings of Allah be upon him) and said: 'Is there Hajj for this child?' He replied: 'Yes, and you will have a reward.'"

قَالَ أَبُو مُحَمَّدٍ: وَالْحَجُّ عَمَلٌ حَسَنٌ، وَقَالَ اللَّهُ - تَعَالَى -: {إِنَّا لا نُضِيعُ أَجْرَ مَنْ أَحْسَنَ عَمَلا} [الكهف: ٣٠] .

L15188 Abu Muhammad said: "The Hajj is a virtuous act, for Allah, Exalted is He, says: 'Indeed, We do not let the reward of those who excel in righteous deeds go to waste' [al-Kahf 18:30]."[17]

فَإِنْ قِيلَ: لَا نِيَّةَ لِلصَّبِيِّ؟ قُلْنَا: نَعَمْ، وَلَا تَلْزَمُهُ إِنَّمَا تَلْزَمُ النِّيَّةُ الْمُخَاطَبَ الْمَأْمُورَ الْمُكَلَّفَ، وَالصَّبِيُّ لَيْسَ مُخَاطَبًا وَلَا مُكَلَّفًا وَلَا مَأْمُورًا وَإِنَّمَا أَجْرُهُ تَفَضُّلٌ مِنَ اللَّهِ - تَعَالَى - مُجَرَّدٌ عَلَيْهِ كَمَا يَتَفَضَّلُ عَلَى الْمَيِّتِ بَعْدَ مَوْتِهِ وَلَا نِيَّةَ لَهُ وَلَا عَمَلَ بِأَنْ يَأْجُرَهُ بِدُعَاءِ ابْنِهِ لَهُ بَعْدَهُ وَبِمَا يَعْمَلُهُ غَيْرُهُ عَنْهُ مِنْ حَجٍّ، أَوْ صِيَامٍ، أَوْ صَدَقَةٍ، وَلَا فَرْقَ، وَيَفْعَلُ اللَّهُ مَا يَشَاءُ.

L15189–15191 If it is said: "Does the minor have no intention?" We respond: "Yes [they have none], and it is not incumbent upon them. The intention is only incumbent upon the legally accountable person obligated by the command." The legally responsible person is addressed and obligated, whereas the prepubescent boy is neither addressed, nor obligated, nor commanded. Rather, his reward is a mere favor from Allah—the Exalted—bestowed solely upon him, just as He bestows favor upon the deceased after death. He has no intention of his own or action of his own that would merit reward through his son's supplication for him after his death, nor through what others perform on his behalf, such as Ḥajj, fasting, or charity, for there is no difference. And Allah does whatever He wills.

وَإِذَا الصَّبِيُّ قَدْ رُفِعَ عَنْهُ الْقَلَمُ فَلَا جَزَاءَ عَلَيْهِ فِي صَيْدٍ إِنْ قَتَلَهُ فِي الْحَرَمِ أَوْ فِي إِحْرَامِهِ، وَلَا فِي حَلْقِ رَأْسِهِ لِأَذًى بِهِ، وَلَا عَنْ تَمَتُّعِهِ، وَلَا لِإِحْصَارِهِ، لِأَنَّهُ غَيْرُ مُخَاطَبٍ بِشَيْءٍ مِنْ ذَلِكَ، وَلَوْ لَزِمَهُ هَدْيٌ لَلَزِمَهُ أَنْ يُعَوِّضَ مِنْهُ الصِّيَامَ وَهُوَ فِي الْمُتْعَةِ، وَحَلْقِ الرَّأْسِ،

L15192 And when the pen is lifted from the minor, there is no expiation upon him for killing a game animal within the sacred precinct or during his state of consecration, nor for shaving his head due to harm he is suffering from such as lice or injury, nor for his Tamattu', nor for his being prevented from

[17] **Qur'an references (L15188):** Qur'an 18:30 (Al-Kahf).

completing Hajj. This is because he is not subject to legal rulings regarding any of that. If a sacrifice were required of him, he would have to substitute fasting in the cases of Tamattu‘, shaving the head, or the expiation for game animals, but the scholars do not affirm this ruling. His Hajj is not invalidated by any of what we have mentioned. Rather, he is rewarded for his own actions or those performed on his behalf, while for what he did not do, there is no sin upon him.

وَجَزَاءِ الصَّيْدِ، وَهُمْ لَا يَقُولُونَ هَذَا وَلَا يَفْسُدُ حَجُّهُ بِشَيْءٍ مِمَّا ذَكَرْنَا، إِنَّمَا هُوَ مَا عَمِلَ، أَوْ عُمِلَ بِهِ أُجِرَ، وَمَا لَمْ يَعْمَلْ فَلَا إِثْمَ عَلَيْهِ.

L15193 Children used to attend prayers with the Messenger of Allah—peace be upon him—as confirmed by numerous narrations: such as his leading Umamah bint Abi Waqqas in prayer, Ibn Abbas's presence with him during prayer, his hearing an infant's cry during prayer, and other instances. The circumambulation of one who carries another [e.g., a child] suffices for the carrier himself, for he is both circumambulating and carrying. These are two distinct acts, each with its own ruling, just as one may circumambulate while riding [an animal]—and there is no distinction [between the two cases].

وَقَدْ كَانَ الصِّبْيَانُ يَحْضُرُونَ الصَّلَاةَ مَعَ رَسُولِ اللَّهِ - عَلَيْهِ السَّلَامُ -، صَحَّتْ بِذَلِكَ آثَارٌ كَثِيرَةٌ: كَصَلَاتِهِ بِأُمَامَةَ بِنْتِ أَبِي وَقَّاصٍ، وَحُضُورِ ابْنِ عَبَّاسٍ مَعَهُ الصَّلَاةَ، وَسَمَاعِهِ بُكَاءَ الصَّبِيِّ فِي الصَّلَاةِ وَغَيْرِ ذَلِكَ، وَيُجْزِي الطَّائِفَ بِهِ طَوَافُهُ عَنْ نَفْسِهِ، لِأَنَّهُ طَائِفٌ وَحَامِلٌ، فَهُمَا عَمَلَانِ مُتَغَايِرَانِ لِكُلِّ وَاحِدٍ مِنْهُمَا حُكْمٌ، كَمَا هُوَ طَائِفٌ وَرَاكِبٌ، وَلَا فَرْقَ.

L15194 916 – Issue:

٩١٦ - مَسْأَلَةٌ:

L15195 If a minor reaches puberty while in the state of *ihrām*, he must renew his *ihrām* and commence the Hajj rites. If he misses Arafat or Muzdalifah, his Hajj is invalidated, and no sacrificial offering is required of him nor anything else.

فَإِنْ بَلَغَ الصَّبِيُّ فِي حَالِ إِحْرَامِهِ لَزِمَهُ أَنْ يُجَدِّدَ إِحْرَامًا وَيَشْرَعَ فِي عَمَلِ الْحَجِّ، فَإِنْ فَاتَتْهُ عَرَفَةُ، أَوْ مُزْدَلِفَةُ، فَقَدْ فَاتَهُ الْحَجُّ وَلَا هَدْيَ عَلَيْهِ وَلَا شَيْءَ.

L15196 As for renewing his ihram, it is because he has been commanded to perform Hajj while being capable of it, making it incumbent upon him to initiate it, since his initial ihram was voluntary, and the obligatory act takes precedence over the voluntary.

أَمَّا تَجْدِيدُهُ الْإِحْرَامَ فَلِأَنَّهُ قَدْ صَارَ مَأْمُورًا بِالْحَجِّ وَهُوَ قَادِرٌ عَلَيْهِ فَلَزِمَهُ أَنْ يَبْتَدِئَهُ، لِأَنَّ إِحْرَامَهُ الْأَوَّلَ كَانَ تَطَوُّعًا وَالْفَرْضُ أَوْلَى مِنْ التَّطَوُّعِ.

L15197 **Issue: He performed Hajj and ʿUmrah, then apostatized, then embraced Islam.**

[مَسْأَلَةٌ حَجَّ وَاعْتَمَرَ ثُمَّ ارْتَدَّ ثُمَّ أَسْلَمَ]

L15198 917 – Issue:

٩١٧ - مَسْأَلَةٌ:

L15199 Whoever performed Hajj and Umrah, then apostatized, then Allah—the Exalted—guided him and rescued him from the Fire, so he embraced Islam, is

not required to repeat the Hajj or the Umrah. This is the opinion of Al-Shāfiʿī and one of the two opinions of Al-Layth.

مَنْ حَجَّ وَاعْتَمَرَ، ثُمَّ ارْتَدَّ، ثُمَّ هَدَاهُ اللَّهُ - تَعَالَى - وَاسْتَنْقَذَهُ مِنَ النَّارِ فَأَسْلَمَ فَلَيْسَ عَلَيْهِ أَنْ يُعِيدَ الْحَجَّ وَلَا الْعُمْرَةَ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَحَدُ قَوْلَيْ اللَّيْثِ.

L15200 Abu Hanifah, Malik, and Abu Sulayman said: One must repeat the Hajj and Umrah. They cited as evidence the words of Allah - the Exalted -: "If you commit shirk, your deeds will surely be rendered void and you will surely be among the losers" (39:65). We know no other evidence for them besides this, nor do they possess any valid proof in it. For Allah - the Exalted - did not state therein: "If you commit shirk, the deeds you performed before shirk will be rendered void." This constitutes an impermissible addition to Allah's words. The Exalted merely informed that one's deeds become void after committing shirk if one also dies persisting in that shirk - not if one embraces Islam. This is undoubtedly true.[18]

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَأَبُو سُلَيْمَانَ: يُعِيدُ الْحَجَّ وَالْعُمْرَةَ، وَاحْتَجُّوا بِقَوْلِ اللَّهِ - تَعَالَى -: {لَئِنْ أَشْرَكْتَ لَيَحْبَطَنَّ عَمَلُكَ وَلَتَكُونَنَّ مِنَ الْخَاسِرِينَ} [الزمر: ٦٥] مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَهَا، وَلَا حُجَّةَ لَهُمْ فِيهَا؛ لِأَنَّ اللَّهَ - تَعَالَى - لَمْ يَقُلْ فِيهَا: لَئِنْ أَشْرَكْتَ لَيَحْبَطَنَّ عَمَلُكَ الَّذِي عَمِلْتَ قَبْلَ أَنْ تُشْرِكَ، وَهَذِهِ زِيَادَةٌ عَلَى اللَّهِ - تَعَالَى - لَا تَجُوزُ، وَإِنَّمَا أَخْبَرَ - تَعَالَى - أَنَّهُ يَحْبَطُ عَمَلُهُ بَعْدَ الشِّرْكِ إِذَا مَاتَ أَيْضًا عَلَى شِرْكِهِ لَا إِذَا أَسْلَمَ وَهَذَا حَقٌّ بِلَا شَكٍّ.

L15201–15203 If a polytheist were to perform Hajj or ʿUmrah, or pray, or fast, or pay zakāh, none of those acts would be accepted from him. The obligatory ruling, and also—Allah's words in the verse: *And you will surely be among the losers* [Az-Zumar: 65] clarify that if the apostate returns to Islam, his prior deeds performed during his adherence to Islam are not invalidated at all. Rather, they remain recorded for him, and he will be rewarded for them with Paradise. This is because there is no disagreement among anyone in the Muslim community (Ummah)—neither they nor we—that when an apostate returns to Islam, he is not among the losers, but among those who profit, the successful, and the victorious.[19]

وَلَوْ حَجَّ مُشْرِكٌ أَوْ اعْتَمَرَ، أَوْ صَلَّى، أَوْ صَامَ، أَوْ زَكَّى، لَمْ يُجْزِهِ شَيْءٌ مِنْ ذَلِكَ عَنِ الْوَاجِبِ، وَأَيْضًا فَإِنَّ - قَوْله تَعَالَى - فِيهَا: {وَلَتَكُونَنَّ مِنَ الْخَاسِرِينَ} [الزمر: ٦٥] بَيَانُ أَنَّ الْمُرْتَدَّ إِذَا رَجَعَ إِلَى الْإِسْلَامِ لَمْ يَحْبَطْ مَا عَمِلَ قَبْلُ فِي إِسْلَامِهِ أَصْلًا بَلْ هُوَ مَكْتُوبٌ لَهُ وَمُجَازًى عَلَيْهِ بِالْجَنَّةِ؛ لِأَنَّهُ لَا خِلَافَ بَيْنَ أَحَدٍ مِنَ الْأُمَّةِ - لَا هُمْ وَلَا نَحْنُ - فِي أَنَّ الْمُرْتَدَّ إِذَا رَاجَعَ الْإِسْلَامَ لَيْسَ مِنَ الْخَاسِرِينَ، بَلْ مِنَ الْمُرْبِحِينَ الْمُفْلِحِينَ الْفَائِزِينَ.

L15204 It is established that the one whose deeds are rendered null is he who dies persisting in disbelief, whether having apostatized or not, and this person is undoubtedly among the losers. This does not apply to one who embraced Islam after disbelief or returned to Islam after his apostasy. Allah the Exalted says: {Whoever among you reverts from his religion and dies while a disbeliever - their deeds are rendered null} [Al-Baqarah 2:217]. Thus, the

فَصَحَّ أَنَّ الَّذِي يَحْبَطُ عَمَلُهُ هُوَ الْمَيِّتُ عَلَى كُفْرِهِ مُرْتَدًّا أَوْ غَيْرَ مُرْتَدٍّ، وَهَذَا هُوَ مِنَ الْخَاسِرِينَ بِلَا شَكٍّ، لَا مَنْ أَسْلَمَ بَعْدَ كُفْرِهِ أَوْ رَاجَعَ الْإِسْلَامَ بَعْدَ رِدَّتِهِ، وَقَالَ - تَعَالَى - {وَمَنْ يَرْتَدِدْ مِنْكُمْ عَنْ دِينِهِ فَيَمُتْ وَهُوَ كَافِرٌ فَأُولَئِكَ حَبِطَتْ أَعْمَالُهُمْ} [البقرة: ٢١٧] فَصَحَّ نَصُّ قَوْلِنَا: مِنْ أَنَّهُ لَا يَحْبَطُ عَمَلُهُ إِنْ ارْتَدَّ إِلَّا بِأَنْ يَمُوتَ وَهُوَ كَافِرٌ.

[18] **Qur'an references (L15200):** Qur'an 39:65 (Az-Zumar).
[19] **Qur'an references (L15201):** Qur'an 39:65 (Az-Zumar).

text of our statement is validated: that one's deeds are not rendered null by apostasy unless he dies while disbelieving.[20]

L15205 We have found Allah, the Most High, says: {I will never let the deed of any worker among you be lost, whether male or female} [Quran 3:195].[21]

L15206 And He—the Most High—said: "So whoever does the weight of a speck of good will see it" (Az-Zalzalah 7).[22]

L15207 And this is a generality that it is not permissible to particularize.

L15208 Thus, it is established that if he reverts to Islam, his Hajj and Umrah will be regarded as valid, and they will not be lost for him.

L15209 And it has been narrated to us through chains like the sun—from Ṣāliḥ ibn Kaysān, Yūnus, and Maʿmar, all of them from al-Zuhrī.

L15210 We have also been narrated from Hisham ibn Urwah in meaning, then Az-Zuhri and Hisham agreed—both transmitting from Urwah, with the wording belonging to Az-Zuhri. He said: Urwah ibn Az-Zubayr narrated to us that Hakim ibn Hizam informed him he said to Allah's Messenger - peace be upon him: "O Messenger of Allah, tell me about acts I performed as devotion during the pre-Islamic era—charity, emancipating slaves, or upholding kinship ties. Is there reward for them?" Allah's Messenger - peace be upon him - responded: "You have embraced Islam with the good you forwarded." Abu Muhammad said: Thus it is confirmed that when an apostate re-embraces Islam, or a disbeliever who never previously embraced Islam accepts it, they have entered Islam with the good they formerly accomplished. Moreover, when the apostate had performed Hajj while he was a Muslim, he fulfilled his obligation—what he was ordered and obligated to do as commanded. Therefore, he has now embraced Islam upon it, and it remains valid for him as originally established.

L15211–15213 As for the disbeliever performing Hajj like the Sabians who consider the Hajj

وَوَجَدْنَا اللَّهَ - تَعَالَى - يَقُولُ {أَنِّي لا أُضِيعُ عَمَلَ عَامِلٍ مِنْكُمْ مِنْ ذَكَرٍ أَوْ أُنْثَى} [آل عمران: ١٩٥] .

وَقَالَ - تَعَالَى - {فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ} [الزلزلة: ٧] .

وَهَذَا عُمُومٌ لَا يَجُوزُ تَخْصِيصُهُ.

فَصَحَّ أَنَّ حَجَّهُ وَعُمْرَتَهُ إذَا رَاجَعَ الْإِسْلَامَ سَيَرَاهُمَا وَلَا يَضِيعَانِ لَهُ.

وَرُوِّينَا مِنْ طُرُقٍ كَالشَّمْسِ عَنْ صَالِحِ بْنِ كَيْسَانَ، وَيُونُسَ، وَمَعْمَرٍ كُلُّهُمْ عَنْ الزُّهْرِيِّ.

وَرُوِّينَا أَيْضًا عَنْ هِشَامِ بْنِ عُرْوَةَ الْمَعْنَى، ثُمَّ اتَّفَقَ الزُّهْرِيُّ، وَهِشَامٌ كِلَاهُمَا عَنْ عُرْوَةَ وَاللَّفْظُ لِلزُّهْرِيِّ، قَالَ: نَا عُرْوَةُ بْنُ الزُّبَيْرِ «أَنَّ حَكِيمَ بْنَ حِزَامٍ أَخْبَرَهُ أَنَّهُ قَالَ لِرَسُولِ اللَّهِ - عَلَيْهِ السَّلَامُ -: أَيْ رَسُولَ اللَّهِ أَرَأَيْتَ أُمُورًا كُنْتُ أَتَحَنَّثُ بِهَا فِي الْجَاهِلِيَّةِ مِنْ صَدَقَةٍ، أَوْ عَتَاقَةٍ، أَوْ صِلَةِ رَحِمٍ، أَفِيهَا أَجْرٌ؟ فَقَالَ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ -: أَسْلَمْتَ عَلَى مَا أَسْلَفْتَ مِنْ خَيْرٍ» ، قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ أَنَّ الْمُرْتَدَّ إذَا أَسْلَمَ، وَالْكَافِرُ الَّذِي لَمْ يَكُنْ أَسْلَمَ قَطُّ، إذَا أَسْلَمَا فَقَدْ أَسْلَمَا عَلَى مَا أَسْلَفَا مِنْ الْخَيْرِ، وَقَدْ كَانَ الْمُرْتَدُّ إذَا حَجَّ وَهُوَ مُسْلِمٌ قَدْ أَدَّى مَا أُمِرَ بِهِ، وَمَا كُلِّفَ كَمَا أُمِرَ بِهِ فَقَدْ أَسْلَمَ الْآنَ عَلَيْهِ، فَهُوَ لَهُ كَمَا كَانَ.

وَأَمَّا الْكَافِرُ يَحُجُّ كَالصَّابِئِينَ الَّذِينَ يَرَوْنَ الْحَجَّ إلَى مَكَّةَ فِي دِينِهِمْ، فَإِنْ أَسْلَمَ بَعْدَ ذَلِكَ لَمْ يُجْزِهِ؛ لِأَنَّهُ لَمْ يُؤَدِّهِ كَمَا أَمَرَ اللَّهُ - تَعَالَى - بِهِ؛ لِأَنَّ مِنْ فَرْضِ الْحَجِّ وَسَائِرِ الشَّرَائِعِ

[20] **Qur'an references (L15204):** Qur'an 2:217 (Al-Baqarah).
[21] **Qur'an references (L15205):** Qur'an 3:195 (Ali 'Imran).
[22] **Qur'an references (L15206):** Qur'an 99:7 (Az-Zalzalah).

to Mecca as part of their religion, if he embraces Islam after... That did not suffice him because he did not perform it as Allah, the Exalted, commanded. For among the obligations of Hajj and all legislations in their entirety is that they are not performed except as the Messenger of Allah, Muhammad ibn Abdullah (peace be upon him), commanded in the religion he brought—a religion other than which Allah, the Exalted, accepts none. He (peace be upon him) said: "Whoever does a deed not in accordance with what we have commanded, it is rejected."[23]

كُلِّهَا أَنْ لَا تُؤَدَّى إِلَّا كَمَا أَمَرَ بِهَا رَسُولُ اللَّهِ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ - عَلَيْهِ السَّلَامُ - فِي الدِّينِ الَّذِي جَاءَ بِهِ، الَّذِي لَا يَقْبَلُ اللَّهُ - تَعَالَى - دِينًا غَيْرَهُ، وَقَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L15214 The Ṣābiʾ only performed ḥajj as commanded by Yūrasf or Hermes, so it does not suffice him—and by Allah, the Exalted, success is granted. It becomes obligatory for one who invalidates his ḥajj through apostasy to invalidate his being muhsan, his triple divorce, his sales, his purchases, and his gifts given during his time in Islam. Yet they do not hold this opinion, thus the invalidity of their opinion becomes evident—and by Allah, the Exalted, we are supported.

وَالصَّابِئُ إِنَّمَا حَجَّ كَمَا أَمَرَهُ يوراسف، أَوْ هُرْمُسُ فَلَا يُجْزِئُهُ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ. وَيَلْزَمُ مَنْ أَسْقَطَ حَجَّهُ بِرِدَّتِهِ أَنْ يُسْقِطَ إِحْصَانَهُ، وَطَلَاقَهُ الثَّلَاثَ، وَبَيْعَهُ، وَابْتِيَاعَهُ، وَعَطَايَاهُ الَّتِي كَانَتْ فِي الْإِسْلَامِ، وَهُمْ لَا يَقُولُونَ بِهَذَا، فَظَهَرَ فَسَادُ قَوْلِهِمْ - وَبِاللَّهِ - تَعَالَى - نَتَأَيَّدُ.

L15215 ## The Issue of Found Property in the Sacred Precinct

[مَسْأَلَةُ لُقَطَةِ الْحَرَمِ]

L15216 918: Issue

٩١٨ - مَسْأَلَةٌ:

L15217 It is not permissible to take possession of a lost item within the sacred precincts of Mecca, nor the lost item of one who has entered the state of consecration (iḥrām) for Hajj or Umrah, from the moment they assume iḥrām until they complete all the rites of their Hajj.

وَلَا تَحِلُّ لُقَطَةٌ فِي حَرَمِ مَكَّةَ، وَلَا لُقَطَةُ مَنْ أَحْرَمَ بِحَجٍّ، أَوْ عُمْرَةٍ، مُذْ يُحْرِمُ إِلَى أَنْ يُتِمَّ جَمِيعَ عَمَلِ حَجِّهِ.

L15218 Except for one who publicly announces it indefinitely; its declaration is not restricted to a year, neither more nor less. If the finder conclusively and with certainty despairs of identifying its owner, it becomes permissible for them at that point, unlike other lost items which become permissible after a year.

إِلَّا لِمَنْ يَنْشُدُهَا أَبَدًا لَا يُحَدُّ تَعْرِيفُهَا بِعَامٍ وَلَا بِأَكْثَرَ وَلَا بِأَقَلَّ، فَإِنْ يَئِسَ مِنْ مَعْرِفَةِ صَاحِبِهَا قَطْعًا مُتَيَقِّنًا حَلَّتْ حِينَئِذٍ لِوَاجِدِهَا، بِخِلَافِ سَائِرِ اللُّقَطَاتِ الَّتِي تَحِلُّ لَهُ بَعْدَ الْعَامِ.

L15219 It has been narrated to us through the chain of transmission from Muslim: Zuhayr ibn Harb narrated to us, Al-Walid ibn Muslim narrated to us, Al-

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا زُهَيْرِ بْنِ حَرْبٍ نَا الْوَلِيدُ بْنُ مُسْلِمٍ نَا الْأَوْزَاعِيُّ نَا يَحْيَى بْنُ أَبِي كَثِيرٍ حَدَّثَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ حَدَّثَنِي أَبُو هُرَيْرَةَ " أَنَّ رَسُولَ

[23] **Hadith references (L15211):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

Awzāʿī narrated to us, Yahyā ibn Abī Kathīr reported to me, Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf reported to me, Abū Hurayrah reported that the Messenger of Allah—peace be upon him—said: “Allah prevented the Elephant from reaching Mecca and entrusted His Messenger and the believers with authority over it. It was not lawful for anyone before me, and Allah made it lawful for me only for an hour of daylight. It will never be lawful for anyone after me. Therefore, its game must not be driven away, its thorny plants must not be cut, and its lost property is not lawful except for one who publicly proclaims it.” He mentioned the remainder of the hadith.

L15220 Abū Muḥammad said: This is none other than an attribute of the Ḥaram, not the Ḥill.

L15221 Through Al-Bukhari’s chain: Uthman ibn Abi Shaybah narrated to us, from Jarir, from Mansur, from Mujahid, from Tawus, from Ibn Abbas, that the Messenger of God (PBUH) said on the Day of Mecca’s conquest: “This is a city that God declared inviolable when He created the heavens and the earth. It remains inviolable by God’s sanctity until the Day of Resurrection.” Then he mentioned some words, in which he stated: “None may pick up its lost item except one who makes public announcement of it,” and he related the hadith. The Prophet permitted it for the public crier and mandated its public declaration without restriction.[24]

L15222–15223 He, peace be upon him, said: “Indeed, your blood and your wealth are forbidden to you.” Found property does not belong to the one who finds it; thus, it is forbidden for him.

L15224 The purpose of publicizing is solely to enable the discovery of one who can identify it or its owner. This ruling remains binding until one loses all hope with certainty of ascertaining ownership. At this point, publicizing ceases to be obligatory - for it is invalid to publicize what is confirmed to be unrecognizable. When the obligation of publicizing ceases, the item becomes permissible for its discoverer at that time by the explicit textual ruling.

L15225 And through the chain of Abī Dāwūd: From Aḥmad ibn Ṣāliḥ, from Ibn

[24] **Qur’an references (L15221):** Qur’an 9:36 (At-Tawbah).

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِنَّ اللَّهَ حَبَسَ عَنْ مَكَّةَ الْفِيلَ، وَسَلَّطَ عَلَيْهَا رَسُولَهُ وَالْمُؤْمِنِينَ، وَإِنَّهَا لَمْ تَحِلَّ لِأَحَدٍ قَبْلِي، وَإِنَّمَا أُحِلَّتْ لِي سَاعَةً مِنْ نَهَارٍ، وَإِنَّهَا لَنْ تَحِلَّ لِأَحَدٍ بَعْدِي، فَلَا يُنَفَّرُ صَيْدُهَا وَلَا يُخْتَلَى شَوْكُهَا، وَلَا تَحِلُّ سَاقِطَتُهَا إِلَّا لِمُنْشِدٍ» وَذَكَرَ بَاقِيَ الْحَدِيثِ.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَتْ هَذِهِ إِلَّا صِفَةَ الْحَرَمِ لَا الْحِلِّ.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نَا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - عَلَيْهِ السَّلَامُ - قَالَ يَوْمَ فَتْحِ مَكَّةَ: هَذَا بَلَدٌ حَرَّمَهُ اللَّهُ يَوْمَ خَلَقَ السَّمَاوَاتِ وَالْأَرْضَ وَهُوَ حَرَامٌ بِحُرْمَةِ اللَّهِ إِلَى يَوْمِ الْقِيَامَةِ» ثُمَّ ذَكَرَ كَلَامًا وَفِيهِ «فَلَا يَلْتَقِطُ لُقَطَتَهُ إِلَّا مَنْ عَرَّفَهَا» وَذَكَرَ الْحَدِيثَ، فَأَحَلَّهَا - عَلَيْهِ السَّلَامُ - لِلْمُنْشِدِ وَأَوْجَبَ تَعْرِيفَهَا بِغَيْرِ تَحْدِيدٍ.

وَقَالَ - عَلَيْهِ السَّلَامُ -: " إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ ". وَاللُّقَطَةُ هِيَ غَيْرُ مَالِ الْمُلْتَقِطِ فَهِيَ عَلَيْهِ حَرَامٌ.

وَالتَّعْرِيفُ إنَّمَا هُوَ لِيُوجَدَ مَنْ يَعْرِفُهَا أَوْ صَاحِبُهَا فَهَذَا الْحُكْمُ لَازِمٌ، فَإِذَا يَئِسَ بِيَقِينٍ عَنْ مَعْرِفَةِ صَاحِبِهَا سَقَطَ التَّعْرِيفُ، إذْ مِنْ الْبَاطِلِ تَعْرِيفُ مَا يُوقَنُ أَنَّهُ لَا يُعْرَفُ، وَإِذَا سَقَطَ التَّعْرِيفُ حَلَّتْ حِينَئِذٍ بِالنَّصِّ لِمُنْشِدِهَا.

Wahb, from ʿAmr ibn al-Ḥārith, from Bukayr—who is Ibn ʿAbd Allāh ibn al-Ashajj—from Yaḥyā ibn ʿAbd al-Raḥmān ibn Ḥāṭib, from ʿAbd al-Raḥmān ibn ʿUthmān al-Taymī, that the Messenger of Allah—peace be upon him—prohibited taking the lost property of a pilgrim.

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا أَحْمَدُ بْنُ صَالِحٍ نَا ابْنُ وَهْبٍ نَا عَمْرُو بْنُ الْحَارِثِ عَنْ بُكَيْرٍ هُوَ ابْنُ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ - عَنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ بْنِ حَاطِبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عُثْمَانَ التَّيْمِيِّ " أَنَّ رَسُولَ اللَّهِ - عَلَيْهِ السَّلَامُ - «نَهَى عَنْ لُقَطَةِ الْحَاجِّ»

L15226 Abū Muḥammad said: The pilgrim (ḥājj) is one actively performing the acts of Hajj. As for before commencing these acts, he is merely intending Hajj and is not yet considered a pilgrim. After completing the acts of Hajj, he has completed Hajj but is no longer a pilgrim. He is only called a pilgrim metonymically, just as the fasting person, the praying person, or the mujahid are only described as such while actively engaged in those acts. The same principle applies to all such matters.

قَالَ أَبُو مُحَمَّدٍ: الْحَاجُّ هُوَ مَنْ هُوَ فِي عَمَلِ الْحَجِّ، وَأَمَّا قَبْلَ أَنْ يَشْرَعَ فِي الْعَمَلِ فَهُوَ مُرِيدٌ لِلْحَجِّ وَلَيْسَ حَاجًّا بَعْدُ، وَأَمَّا بَعْدَ إتْمَامِهِ عَمَلَ الْحَجِّ فَقَدْ حَجَّ وَلَيْسَ حَاجًّا الْآنَ، وَإِنَّمَا سُمِّيَ حَاجًّا مَجَازًا، كَمَا أَنَّ الصَّائِمَ، أَوْ الْمُصَلِّيَ، أَوْ الْمُجَاهِدَ، إنَّمَا هُوَ صَائِمٌ، وَمُصَلٍّ، وَمُجَاهِدٌ، مَا دَامَ فِي عَمَلِ ذَلِكَ، وَكَذَلِكَ كُلُّ ذَلِكَ.

L15227 His prohibition (peace be upon him) regarding a lost item can only be understood in one of two ways, with no third option: either he prohibited picking it up or prohibited claiming ownership of it. As for picking it up, Allah the Exalted says: {And cooperate in righteousness and piety} [5:2]. The Prophet (peace be upon him) also prohibited the waste of wealth. Leaving it would unquestionably amount to wasting it, while safeguarding it is cooperation in righteousness and piety.[25]

وَنَهْيُهُ - عَلَيْهِ السَّلَامُ - عَنْ لُقَطَةٍ لَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا، إمَّا أَنْ يَكُونَ نَهَى - عَلَيْهِ السَّلَامُ - عَنْ أَخْذِهَا، أَوْ نَهَى عَنْ تَمَلُّكِهَا، فَأَمَّا أَخْذُهَا فَقَدْ قَالَ - تَعَالَى -: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢] وَنَهَى - عَلَيْهِ السَّلَامُ - عَنْ إضَاعَةِ الْمَالِ، وَتَرْكُهَا إضَاعَةٌ لَهَا بِلَا شَكٍّ، وَحِفْظُهَا تَعَاوُنٌ عَلَى الْبِرِّ وَالتَّقْوَى.

L15228 Thus, it is established that the Prophet, peace be upon him, only forbade owning them. Moreover, he, peace be upon him, did not forbid preserving them nor identifying them; rather, he prohibited the objects themselves specifically. This is the explicit text of the hadith.

فَصَحَّ أَنَّهُ إنَّمَا نَهَى - عَلَيْهِ السَّلَامُ - عَنْ تَمَلُّكِهَا وَأَيْضًا فَإِنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَنْهَ عَنْ حِفْظِهَا وَلَا عَنْ تَعْرِيفِهَا، وَإِنَّمَا نَهَى عَنْهَا بِعَيْنِهَا، هَذَا نَصُّ الْحَدِيثِ.

L15229 It is correct that He prohibited ownership only when one has despaired of identifying its owner with certainty. Thus, any property whose owner is unknown belongs to Allah (Exalted is He), then [its use] lies in the public interests of His servants. The finder—being one of them and holding it—is most entitled to it. He may not extend his claim to others without evidence. The ruling for the performer of *ʿUmrah* equates to that of the *Ḥajj* pilgrim, in accordance with the Prophet's statement (peace be upon him): **"*ʿUmrah*

فَصَحَّ أَنَّهُ إنَّمَا نَهَى عَنْ تَمَلُّكِهَا فَإِذَا يَئِسَ عَنْ مَعْرِفَةِ صَاحِبِهَا بِيَقِينٍ فَكُلُّ مَالٍ لَا يُعْرَفُ صَاحِبُهُ فَهُوَ لِلَّهِ - تَعَالَى -، ثُمَّ فِي مَصَالِحِ عِبَادِهِ، وَالْمُلْتَقِطُ أَحَدُهُمْ وَهِيَ فِي يَدِهِ فَهُوَ أَحَقُّ بِهَا، وَلَا يَتَعَدَّى بِهِ إلَى غَيْرِهِ إلَّا بِبُرْهَانٍ، وَحُكْمُ الْمُعْتَمِرِ كَحُكْمِ الْحَاجِّ لِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «دَخَلَتْ الْعُمْرَةُ فِي الْحَجِّ إلَى يَوْمِ الْقِيَامَةِ» وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[25] **Qur'an references (L15227):** Qur'an 5:2 (Al-Ma'idah).

is incorporated into *Ḥajj* until the Day of Resurrection."** And success is from Allah alone.

A juristic point: Mecca is the best of Allah's lands.

Issue:

Makkah is the best of Allah's lands—Exalted is He—we mean the Haram alone and only the area designated as ʿArafat.

And after it is the city of the Prophet—peace be upon him—by which we mean its sacred precinct alone.

Then Bayt al-Maqdis—by which we mean the mosque alone—this is the opinion of the majority of scholars.

Mālik said: Madīnah is superior to Makkah, and those who emulate him cited authentic reports as evidence.

Among them is his statement, peace be upon him: "Indeed, Abraham declared Mecca inviolable and supplicated for it, and I have declared Medina inviolable just as Abraham declared Mecca inviolable. And I have supplicated for its ṣāʿ and mudd with a supplication like that which Abraham supplicated with for the people of Mecca."

Abu Muhammad said: There is no proof for them in this, because it contains no evidence at all of Medina's superiority over Mecca in the first place. Rather, it only indicates that he—peace be upon him—made it inviolable as Ibrahim made Mecca inviolable, and prayed for it in the same manner Ibrahim prayed for Mecca, nothing more. This is true. He—peace be upon him—also prayed for all Muslims, just as he prayed for Abu Bakr, Umar, and his companions—may Allah be pleased with them. Does this imply our superiority over them, or our equality in merit? No rational person would make such a claim.

He, peace be upon him, forbade bloodshed, [violations of] honor, and [misappropriation of] wealth, and there is no evidence of virtue in that. They cited another authentic report: that he, peace be upon him, used to say: "O

[مَسْأَلَةٌ مَكَّةُ أَفْضَلُ بِلَادِ اللَّهِ]

مَسْأَلَةٌ:

وَمَكَّةُ أَفْضَلُ بِلَادِ اللَّهِ - تَعَالَى -، نَعْنِي الْحَرَمَ وَحْدَهُ وَمَا وَقَعَ عَلَيْهِ اسْمُ عَرَفَاتٍ فَقَطْ.

وَبَعْدَهَا مَدِينَةُ النَّبِيِّ - عَلَيْهِ السَّلَامُ - نَعْنِي حَرَمَهَا وَحْدَهُ.

ثُمَّ بَيْتُ الْمَقْدِسِ، نَعْنِي الْمَسْجِدَ وَحْدَهُ - هَذَا قَوْلُ جُمْهُورِ الْعُلَمَاءِ.

وَقَالَ مَالِكٌ: الْمَدِينَةُ أَفْضَلُ مِنْ مَكَّةَ، وَاحْتَجَّ مُقَلِّدُوهُ بِأَخْبَارٍ ثَابِتَةٍ.

مِنْهَا: قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «إنَّ إبْرَاهِيمَ حَرَّمَ مَكَّةَ وَدَعَا لَهَا، وَإِنِّي حَرَّمْتُ الْمَدِينَةَ كَمَا حَرَّمَ إبْرَاهِيمُ مَكَّةَ، وَإِنِّي دَعَوْتُ فِي صَاعِهَا وَمُدِّهَا بِمِثْلِ مَا دَعَا بِهِ إبْرَاهِيمُ لِأَهْلِ مَكَّةَ».

قَالَ أَبُو مُحَمَّد: هَذَا لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّهُ لَا دَلِيلَ فِيهِ عَلَى فَضْلِ الْمَدِينَةِ عَلَى مَكَّةَ أَصْلًا، وَإِنَّمَا فِيهِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - حَرَّمَهَا كَمَا حَرَّمَ إبْرَاهِيمُ مَكَّةَ وَدَعَا لَهَا كَمَا دَعَا إبْرَاهِيمُ لِمَكَّةَ فَقَطْ، وَهَذَا حَقٌّ، وَقَدْ دَعَا - عَلَيْهِ السَّلَامُ - لِلْمُسْلِمِينَ كُلِّهِمْ كَمَا دَعَا لِأَبِي بَكْرٍ، وَعُمَرَ، وَلِأَصْحَابِهِ - رَضِيَ اللَّهُ عَنْهُمْ - فَهَلْ فِي ذَلِكَ دَلِيلٌ عَلَى فَضْلِنَا عَلَيْهِمْ أَوْ عَلَى مُسَاوَاتِنَا فِي الْفَضْلِ؟ هَذَا مَا لَا يَقُولُهُ ذُو عَقْلٍ.

وَقَدْ حَرَّمَ - عَلَيْهِ السَّلَامُ -: الدِّمَاءَ، وَالْأَعْرَاضَ، وَالْأَمْوَالَ، وَلَيْسَ فِي ذَلِكَ دَلِيلٌ عَلَى فَضْلٍ؛ وَاحْتَجُّوا بِخَبَرٍ آخَرَ صَحِيحٍ: أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يَقُولُ: «اللَّهُمَّ بَارِكْ

Allah, bless us in our dates, bless us in Madinah, and bless us in our ṣāʿ and mudd. O Allah, indeed Abraham is Your servant, Your friend, and Your prophet, and he supplicated for Mecca. I supplicate to You for Madinah as he supplicated to You for Mecca, and the same again in addition to it."

L15240 And with an authentic report therein: "O Allah, grant Medina double the blessing You placed in Mecca." This contains no proof for Medina's superiority over Mecca, but rather a supplication for blessing upon Medina. Yes, indeed, by Allah, it is blessed. Yet Abraham supplicated for Mecca with what He, Exalted is He, revealed when He says: "So make the hearts of people incline toward them and provide them with fruits" (Ibrahim 14:37).[26]

L15241 There is no doubt that the fruits in Medina are more abundant than what is in Mecca.

L15242–15243 There is no doubt that the Prophet—peace be upon him—did not supplicate for Medina to attract people's hearts more than the inclination toward Mecca, for pilgrimage is to Mecca, not to Medina.

L15244 Thus, it is established that his supplication—peace be upon him—for Medina was equivalent to what Abraham made for Mecca, and a similar supplication was also made by him, specifically regarding sustenance from fruits. This does not relate to superiority in any respect.

L15245 Among them is his statement—peace be upon him—: "Medina is like a blacksmith's bellows: it expels its impurities while its goodness becomes pure. Indeed, it expels people just as the blacksmith's bellows expel the dross of iron." This contains no proof of its superiority over Mecca, for this report applies only to a specific period rather than all times, to particular people rather than all mankind, and to specific instances rather than general ones.

L15246 The proof of this is that he—peace be upon him—speaks nothing but the truth, and whoever condones falsehood about the Prophet—peace be upon him—is a disbeliever. Allah, the Exalted, says: *"Among the people of Medina

[26] **Qur'an references (L15240):** Qur'an 14:37 (Ibrahim).

لَنَا فِي ثَمَرِنَا وَبَارِكْ لَنَا فِي مَدِينَتِنَا وَبَارِكْ لَنَا فِي صَاعِنَا وَمُدِّنَا، اللَّهُمَّ إِنَّ إِبْرَاهِيمَ عَبْدُكَ وَخَلِيلُكَ وَنَبِيُّكَ وَإِنَّهُ دَعَا لِمَكَّةَ، وَإِنِّي أَدْعُوكَ لِلْمَدِينَةِ بِمِثْلِ مَا دَعَاكَ بِهِ لِمَكَّةَ وَمِثْلِهِ مَعَهُ» .

وَبِخَبَرٍ صَحِيحٍ فِيهِ: «اللَّهُمَّ اجْعَلْ بِالْمَدِينَةِ ضِعْفَيْ مَا جَعَلْتَ بِمَكَّةَ مِنْ الْبَرَكَةِ» وَهَذَا لَا حُجَّةَ فِيهِ فِي فَضْلِ الْمَدِينَةِ عَلَى مَكَّةَ وَإِنَّمَا فِيهِ الدُّعَاءُ لِلْمَدِينَةِ بِالْبَرَكَةِ، وَنَعَمْ، هِيَ وَاَللَّهِ مُبَارَكَةٌ، وَإِنَّمَا دَعَا إبْرَاهِيمُ لِمَكَّةَ بِمَا أَخْبَرَ بِهِ - تَعَالَى - إذْ يَقُولُ: {فَاجْعَلْ أَفْئِدَةً مِنَ النَّاسِ تَهْوِي إلَيْهِمْ وَارْزُقْهُمْ مِنَ الثَّمَرَاتِ} [إبراهيم: ٣٧] .

وَلَا شَكَّ فِي أَنَّ الثِّمَارَ بِالْمَدِينَةِ أَكْثَرُ مِمَّا بِمَكَّةَ.

وَلَا شَكَّ فِي أَنَّ النَّبِيَّ - عَلَيْهِ السَّلَامُ - لَمْ يَدْعُ لِلْمَدِينَةِ بِأَنْ تَهْوِي أَفْئِدَةُ النَّاسِ إلَيْهَا أَكْثَرَ مِنْ هَوِيِّهَا إلَى مَكَّةَ؛ لِأَنَّ الْحَجَّ إلَى مَكَّةَ لَا إلَى الْمَدِينَةِ.

فَصَحَّ أَنَّ دُعَاءَهُ - عَلَيْهِ السَّلَامُ - لِلْمَدِينَةِ بِمِثْلِ مَا دَعَا بِهِ إبْرَاهِيمُ لِمَكَّةَ وَمِثْلِهِ مَعَهُ إنَّمَا هُوَ فِي الرِّزْقِ مِنْ الثَّمَرَاتِ وَلَيْسَ هَذَا مِنْ بَابِ الْفَضْلِ فِي شَيْءٍ.

وَمِنْهَا قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «الْمَدِينَةُ كَالْكِيرِ تَنْفِي خَبَثَهَا وَيَنْصَعُ طِيبُهَا، وَإِنَّمَا تَنْفِي النَّاسَ كَمَا يَنْفِي الْكِيرُ خَبَثَ الْحَدِيدِ» وَلَا حُجَّةَ فِيهِ فِي فَضْلِهَا عَلَى مَكَّةَ؛ لِأَنَّ هَذَا الْخَبَرَ إنَّمَا هُوَ فِي وَقْتٍ دُونَ وَقْتٍ، وَفِي قَوْمٍ دُونَ قَوْمٍ، وَفِي خَاصٍّ لَا فِي عَامٍّ.

بُرْهَانُ ذَلِكَ أَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يَقُولُ إلَّا الْحَقَّ، وَمَنْ أَجَازَ عَلَى النَّبِيِّ - عَلَيْهِ السَّلَامُ - الْكَذِبَ فَهُوَ كَافِرٌ، وَقَالَ اللَّهُ - تَعَالَى -: {وَمِنْ أَهْلِ الْمَدِينَةِ مَرَدُوا عَلَى النِّفَاقِ لا تَعْلَمُهُمْ نَحْنُ نَعْلَمُهُمْ} [التوبة: ١٠١] .

are those who have grown stubborn in hypocrisy. You do not know them, but We know them"* [Quran 9:101].[27]

وَقَالَ - تَعَالَى - {إِنَّ الْمُنَافِقِينَ فِي الدَّرْكِ الأَسْفَلِ مِنَ النَّارِ} [النساء: ١٤٥] .

L15247 And Allah, the Exalted, said, "Indeed, the hypocrites will be in the lowest level of the Fire" (Quran 4:145).[28]

فَصَحَّ أَنَّ الْمُنَافِقِينَ أَخْبَثُ الْخَلْقِ بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ الْمُسْلِمِينَ وَكَانُوا بِالْمَدِينَةِ، وَكَذَلِكَ قَدْ خَرَجَ: عَلِيٌّ، وَطَلْحَةُ، وَالزُّبَيْرُ، وَأَبُو عُبَيْدَةَ بْنُ الْجَرَّاحِ، وَمُعَاذٌ، وَابْنُ مَسْعُودٍ، عَنْ الْمَدِينَةِ، وَهُمْ مِنْ أَطْيَبِ الْخَلْقِ - رَضِيَ اللَّهُ عَنْهُمْ - بِلَا خِلَافٍ مِنْ مُسْلِمٍ حَاشَا الْخَوَارِجَ فِي بُغْضِهِمْ.

L15248 It is established without any disagreement from any Muslim that the hypocrites are the most wicked of creation, and they were in Medina. Likewise, Ali, Talha, Al-Zubayr, Abu Ubaydah ibn Al-Jarrah, Muadh, and Ibn Masud have left Medina, and they are among the best of creation (may Allah be pleased with them) with no disagreement from any Muslim, except for the Kharijites due to their hatred of them.

فَصَحَّ يَقِينًا لَا يَمْتَرِي فِيهِ إلَّا مُسْتَخِفٌّ بِالنَّبِيِّ - عَلَيْهِ السَّلَامُ - أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَعْنِ بِالْمَدِينَةِ تَنْفِي الْخُبْثَ إلَّا فِي خَاصٍّ مِنْ النَّاسِ، وَفِي خَاصٍّ مِنْ الزَّمَانِ لَا عَامٍّ.

L15249 It was firmly established beyond doubt—none would question this except one who belittles the Prophet (peace be upon him)—that he (peace be upon him) did not intend by "the city" that it removes impurities except in specific cases involving certain people and times, not as a universal ruling.

وَقَدْ جَاءَ كَلَامُنَا هَذَا نَصًّا كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا قُتَيْبَةُ بْنُ سَعِيدٍ نَا عَبْدُ الْعَزِيزُ يَعْنِي الدَّرَاوَرْدِيَّ عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي حَدِيثٍ «أَلَا إنَّ الْمَدِينَةَ كَالْكِيرِ يُخْرِجُ الْخَبَثَ لَا تَقُومُ السَّاعَةُ حَتَّى تَنْفِيَ الْمَدِينَةُ شِرَارَهَا كَمَا يَنْفِي الْكِيرُ خَبَثَ الْحَدِيدِ» .

L15250 This statement of ours has been transmitted verbatim as was narrated to us via Muslim's compilation: Qutaybah ibn Sa'īd reported to us, 'Abd al-'Azīz—al-Darāwardī—reported to us from al-'Alā' ibn 'Abd al-Raḥmān, from his father, from Abū Hurayrah, that the Messenger of Allāh—peace and blessings be upon him—said in a ḥadīth: "Behold! Verily, Medina is like a bellows that expels dross. The Hour will not be established until Medina expels its wicked people, just as the bellows expel the dross of iron."[29]

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نَا إِسْحَاقُ بْنُ إبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - نَا عُمَرُ بْنُ عَبْدِ الْوَاحِدِ عَنْ الْأَوْزَاعِيِّ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ عَنْ أَنَسِ بْنِ مَالِكٍ " أَنَّ رَسُولَ اللَّهِ - عَلَيْهِ السَّلَامُ - قَالَ: «لَيْسَ بَلَدٌ إلَّا سَيَطَؤُهُ الدَّجَّالُ، إلَّا الْمَدِينَةَ، وَمَكَّةَ، عَلَى كُلِّ نَقْبٍ مِنْ أَنْقَابِ الْمَدِينَةِ الْمَلَائِكَةُ صَافِّينَ يَحْرُسُونَهَا فَيَنْزِلُ بِالسَّبْخَةِ فَتَرْجُفُ

L15251–15253 And from the chain of Aḥmad ibn Shuʿayb: He narrated to us from Isḥāq ibn Ibrāhīm - he is Ibn Rāhawayh - who narrated to us from ʿUmar ibn ʿAbd al-Wāḥid from al-Awzāʿī from Isḥāq ibn ʿAbd Allāh ibn Abī Ṭalḥah from Anas ibn Mālik that... The Messenger of Allah (peace be upon him) said: "There is no city the Dajjal will not tread upon except Madinah and Makkah. At every mountain pass of Madinah, angels stand in ranks guarding it. He will descend at the barren plain, and Madinah will quake three times, whereupon

[27] **Qur'an references (L15246):** Qur'an 9:101 (At-Tawbah).
[28] **Qur'an references (L15247):** Qur'an 4:145 (An-Nisa).
[29] **Hadith references (L15250):** Mishkat al-Masabih 2740.

every hypocrite and disbeliever will come out to him." This is precisely our position. Yet in all of this—neither through text nor evidence—is there any indication that Madinah holds superiority over Makkah.

L15254 The meaning of his statement (peace be upon him) - "There is no city that the Dajjal will not overrun except Mecca and Medina" - is that his authority and forces will overrun it, for no other interpretation is possible. The current inhabitants of Medina today are the worst of the worst, and verily to Allah we belong and to Him we shall return in the face of this calamity. Thus their deception through this narration becomes invalid.

L15255 Among them is his saying—peace be upon him—: "Yemen will be conquered, then a people will come hastening with their families and those who obey them, and Medina is better for them if only they knew." He mentioned something identical to this, word for word, regarding the conquest of al-Sham and the conquest of Iraq.

L15256 And his saying (peace be upon him): "A time will come upon the people when a man will call his cousin and relative: 'Come to ease, come to ease,' and Medina is better for them, if only they knew. By Him in whose Hand is my soul, no one among them will leave it out of desire to abandon it except that Allah will replace him therein with someone better."

L15257 Abu Muhammad said: The Prophet, peace be upon him, merely indicated that Medina is more beneficial for them than Yemen, Syria, Iraq, and the lands of ease and abundance. This is undoubtedly true, but there is nothing in it about its superiority over Mecca, nor does it mention Mecca at all.

L15258 As for his (peace be upon him) statement that Medina is better for them than these lands, this too pertains to a specific context rather than a general ruling - referring to those who left it seeking worldly prosperity or fleeting worldly gains. But as for those who departed for jihad, to administer justice through governance, or to teach people their religion, this is not the case. Rather, the purpose for which they left is superior to remaining in Medina.

الْمَدِينَةُ ثَلَاثَ رَجَفَاتٍ يَخْرُجُ إِلَيْهِ مِنْهَا كُلُّ مُنَافِقٍ وَكَافِرٍ» وَهَذَا نَفْسُ قَوْلِنَا وَلَيْسَ فِي هَذَا كُلِّهِ أَنَّهَا أَفْضَلُ مِنْ مَكَّةَ لَا بِنَصٍّ، وَلَا بِدَلِيلٍ.

وَمَعْنَى قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «مَا مِنْ بَلَدٍ إِلَّا سَيَطَؤُهُ الدَّجَّالُ إِلَّا مَكَّةَ وَالْمَدِينَةَ» إِنَّمَا هُوَ سَيَطَؤُهُ أَمْرُهُ وَبعوثُهُ لَا يُمْكِنُ غَيْرُ هَذَا، وَسُكَّانُ الْمَدِينَةِ الْيَوْمَ أَخْبَثُ الْخُبْثِ، وَإِنَّا لِلَّهِ وَإِنَّا إِلَيْهِ رَاجِعُونَ عَلَى مُصِيبَتِنَا فِي ذَلِكَ؛ فَبَطَلَ تَمْوِيهُهُمْ بِهَذَا الْخَبَرِ.

وَمِنْهَا: قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «يُفْتَحُ الْيَمَنُ فَيَأْتِي قَوْمٌ يبُسُّونَ بِأَهْلِيهِمْ وَمَنْ أَطَاعَهُمْ، وَالْمَدِينَةُ خَيْرٌ لَهُمْ لَوْ كَانُوا يَعْلَمُونَ» وَذَكَرَ مِثْلَ هَذَا حَرْفًا حَرْفًا فِي فَتْحِ الشَّامِ، وَفَتْحِ الْعِرَاقِ.

وَقَوْلُهُ - عَلَيْهِ السَّلَامُ -: «يَأْتِي عَلَى النَّاسِ زَمَانٌ يَدْعُو الرَّجُلُ ابْنَ عَمِّهِ وَقَرِيبَهُ: هَلُمَّ إِلَى الرَّخَاءِ، هَلُمَّ إِلَى الرَّخَاءِ، وَالْمَدِينَةُ خَيْرٌ لَهُمْ لَوْ كَانُوا يَعْلَمُونَ، وَالَّذِي نَفْسِي بِيَدِهِ لَا يَخْرُجُ أَحَدٌ مِنْهُمْ رَغْبَةً عَنْهَا إِلَّا أَخْلَفَ اللَّهُ فِيهَا خَيْرًا مِنْهُ» .

قَالَ أَبُو مُحَمَّد: إِنَّمَا أَخْبَرَ - عَلَيْهِ السَّلَامُ - بِأَنَّ الْمَدِينَةَ خَيْرٌ لَهُمْ مِنْ الْيَمَنِ، وَالشَّامِ، وَالْعِرَاقِ، وَبِلَادِ الرَّخَاءِ، وَهَذَا لَا شَكَّ فِيهِ، وَلَيْسَ فِيهِ فَضْلُهَا عَلَى مَكَّةَ، وَلَا ذِكْرَ لِمَكَّةَ أَصْلًا.

وَأَمَّا إِخْبَارُهُ - عَلَيْهِ السَّلَامُ - أَيْضًا بِأَنَّ الْمَدِينَةَ خَيْرٌ مِنْ هَذِهِ الْبِلَادِ لَهُمْ فَإِنَّمَا هُوَ أَيْضًا فِي خَاصٍّ لَا عَامٍّ وَهُوَ مَنْ خَرَجَ عَنْهَا طَلَبَ رَخَاءٍ، أَوْ لِعَرَضِ دُنْيَا؛ وَأَمَّا مَنْ خَرَجَ عَنْهَا لِجِهَادٍ، أَوْ لِحُكْمٍ بِالْعَدْلِ، أَوْ لِتَعْلِيمِ النَّاسِ دِينَهُمْ فَلَا، بَلْ الَّذِي خَرَجُوا لَهُ أَفْضَلُ مِنْ مُقَامِهِمْ بِالْمَدِينَةِ.

L15259–15261 The proof of that is his departure—peace be upon him—from there for jihad, his commanding the people to go out with him, and the threat against whoever remained in Medina without valid excuse. This is indisputable, and likewise his dispatch—peace be upon him—. He dispatched his companions to Yemen, Bahrain, and Oman to invite people to Islam, teach the Quran and the Sunnah. He—peace be upon him—said: "Religion is sincerity." Thus, without doubt, he sincerely advised them in sending them out for that purpose. Therefore, our statement stands validated, and their claim of Medina's superiority over Mecca has no basis in this matter.

بُرْهَانُ ذَلِكَ خُرُوجُهُ - عَلَيْهِ السَّلَامُ - عَنْهَا لِلْجِهَادِ وَأَمْرُهُ النَّاسَ بِالْخُرُوجِ مَعَهُ وَالْوَعِيدُ عَلَى مَنْ تَخَلَّفَ بِالْمَدِينَةِ لِغَيْرِ عُذْرٍ هَذَا مَا لَا شَكَّ فِيهِ، وَكَذَلِكَ بَعْثُهُ - عَلَيْهِ السَّلَامُ - أَصْحَابَهُ إِلَى الْيَمَنِ، وَالْبَحْرَيْنِ، وَعُمَانَ لِلدُّعَاءِ إِلَى الْإِسْلَامِ، وَتَعْلِيمِ الْقُرْآنِ، وَالسُّنَنِ، وَهُوَ - عَلَيْهِ السَّلَامُ - يَقُولُ: «الدِّينُ النَّصِيحَةُ» فَبِلَا شَكٍّ أَنَّهُ قَدْ نَصَحَهُمْ فِي إِخْرَاجِهِمْ لِذَلِكَ، فَصَحَّ قَوْلُنَا: وَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ فِي هَذَا فِي دَعْوَاهُمْ فَضْلَ الْمَدِينَةِ عَلَى مَكَّةَ.

L15262 As for his statement (peace be upon him) - "None of them leaves out of desire to abandon it" - this is the truth. Upon whoever rejects Medina falls Allah's curse - he is not a Muslim. Without doubt, the same applies to whoever rejects Mecca. This does not grant it superiority over Mecca.

وَأَمَّا قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «لَا يَخْرُجُ أَحَدٌ مِنْهُمْ رَغْبَةً عَنْهَا» فَهَذَا الْحَقُّ وَعَلَى مَنْ يَرْغَبُ عَنْ الْمَدِينَةِ لَعْنَةُ اللَّهِ فَمَا هُوَ بِمُسْلِمٍ، وَكَذَلِكَ بِلَا شَكٍّ مَنْ رَغِبَ عَنْ مَكَّةَ وَلَيْسَ فِي هَذَا فَضْلٌ لَهَا عَلَى مَكَّةَ.

L15263 Among them is his saying (peace be upon him): "I have been commanded regarding a village that subdues the villages." This only signifies that from Medina the world is conquered, and there is no superiority in this for it over Mecca. Khurasan, Sijistan, Fars, and Kerman were conquered from Basra, yet this is not proof of Basra's superiority over Mecca.

وَمِنْهَا: قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «أُمِرْتُ بِقَرْيَةٍ تَأْكُلُ الْقُرَى» وَهَذَا إِنَّمَا فِيهِ: أَنَّ مِنْ الْمَدِينَةِ تُفْتَحُ الدُّنْيَا وَلَيْسَ فِي هَذَا فَضْلٌ لَهَا عَلَى مَكَّةَ وَقَدْ فُتِحَتْ خُرَاسَانُ، وَسِجِسْتَانُ، وَفَارِسُ، وَكَرْمَانُ، مِنْ الْبَصْرَةِ، وَلَيْسَ ذَلِكَ دَلِيلًا عَلَى فَضْلِ الْبَصْرَةِ عَلَى مَكَّةَ.

L15264 Among them is his statement—peace be upon him—"Verily, faith withdraws swiftly to Medina just as a snake withdraws to its hole." This does not indicate its superiority over Mecca; rather, it is only a report about a specific time as opposed to another, without doubt.

وَمِنْهَا: قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «إِنَّ الْإِيمَانَ يَأْرِزُ إِلَى الْمَدِينَةِ كَمَا تَأْرِزُ الْحَيَّةُ إِلَى جُحْرِهَا» وَهَذَا لَيْسَ فِيهِ فَضْلُهَا عَلَى مَكَّةَ وَإِنَّمَا هُوَ خَبَرٌ عَنْ وَقْتٍ دُونَ وَقْتٍ بِلَا شَكٍّ.

L15265 The proof of that is that he—peace be upon him—speaks nothing but the truth, while today's reality contradicts this. Alas for our grief! Alas for our sorrow! Islam manifests outwardly only in places other than its [true abode], and we ask Allah to restore it to the finest state it was in after him—peace be upon him—.

وَبُرْهَانُ ذَلِكَ أَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يَقُولُ إِلَّا الْحَقَّ وَهُوَ الْيَوْمَ بِخِلَافِ ذَلِكَ فَوَا حُزْنَاهُ وَوَا أَسَفَاهُ وَمَا الْإِسْلَامُ ظَاهِرًا إِلَّا فِي غَيْرِهَا وَنَسْأَلُ اللَّهُ إِعَادَتَهَا إِلَى أَفْضَلِ مَا كَانَتْ عَلَيْهِ بَعْدَهُ - عَلَيْهِ السَّلَامُ -.

L15266 This report includes an addition, as we have narrated it via the transmission route of Imam Muslim: Muhammad ibn Rafi' narrated to us: Shababah ibn Sawwar narrated to us: 'Asim (the son of Muhammad ibn Zayd ibn

وَقَدْ جَاءَ هَذَا الْخَبَرُ بِزِيَادَةٍ كَمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا مُحَمَّدُ بْنُ رَافِعٍ نَا شَبَابَةُ بْنُ سَوَّارٍ نَا عَاصِمُ هُوَ ابْنُ مُحَمَّدِ بْنِ زَيْدِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ - عَنْ أَبِيهِ عَنْ جَدِّهِ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ الْإِسْلَامَ بَدَأَ غَرِيبًا وَسَيَعُودُ غَرِيبًا كَمَا بَدَأَ وَهُوَ يَأْرِزُ بَيْنَ الْمَسْجِدَيْنِ كَمَا تَأْرِزُ الْحَيَّةُ إلَى جُحْرِهَا» فَفِي هَذَا أَنَّ الْإِيمَانَ يَأْرِزُ بَيْنَ مَسْجِدِ مَكَّةَ، وَمَسْجِدِ الْمَدِينَةِ.

Abdillah ibn ‘Umar ibn al-Khattab) narrated to us: from his father: from his grandfather ‘Abdullah ibn ‘Umar, who said: The Messenger of Allah—peace and blessings be upon him—said: “Islam began as something strange and will return to being strange as it began, and it will withdraw between the two mosques just as a snake withdraws into its hole.” This indicates that faith will withdraw between the Sacred Mosque [of Mecca] and the Prophet’s Mosque [of Medina].

وَمِنْهَا: حَدِيثُ أَنَسٍ «أَنَّ رَسُولَ اللَّهِ - عَلَيْهِ السَّلَامُ - كَانَ إذَا قَدِمَ مِنْ سَفَرٍ فَنَظَرَ إلَى جُدُرَاتِ الْمَدِينَةِ أَوْضَعَ رَاحِلَتَهُ مِنْ حُبِّهَا» وَهَذَا لَيْسَ فِيهِ إلَّا أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يُحِبُّهَا.

L15267 Among them is the hadith of Anas: “When the Messenger of Allah (peace be upon him) would return from a journey and behold the walls of Medina, he would make his riding camel hasten out of love for her.” This contains nothing except that he (peace be upon him) loved her.

وَنَعَمْ هَذَا حَقٌّ وَلَيْسَ فِيهِ أَنَّهُ كَانَ يُحِبُّهَا أَكْثَرَ مِنْ حُبِّهِ مَكَّةَ، وَلَا أَنَّهَا أَفْضَلُ مِنْ مَكَّةَ.

L15268–15269 Yes, this is correct, and there is nothing in it [to indicate] that he loved it more than his love of Mecca, nor that it is more virtuous than Mecca.

وَمِنْهَا: قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «لَا يَكِيدُ أَحَدٌ أَهْلَ الْمَدِينَةِ إلَّا انْمَاعَ كَمَا يَنْمَاعُ الْمِلْحُ فِي الْمَاءِ» .

L15270 Among them is his statement, peace be upon him: “No one plots against the people of Medina except that he melts away, just as salt melts away in water.”

وَمِنْهَا: قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «لَا يُرِيدُ أَحَدٌ أَهْلَ الْمَدِينَةِ بِسُوءٍ إلَّا أَذَابَهُ اللَّهُ فِي النَّارِ ذَوْبَ الرَّصَاصِ، أَوْ ذَوْبَ الْمِلْحِ فِي الْمَاءِ، وَمَنْ أَخَافَ أَهْلَ الْمَدِينَةِ أَخَافَهُ اللَّهُ، وَعَلَيْهِ لَعْنَةُ اللَّهِ، وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ، لَا يَقْبَلُ اللَّهُ مِنْهُ صَرْفًا وَلَا عَدْلًا» .

L15271 Among them is his saying - peace be upon him -: “No one harbors ill will toward the people of Medina except that Allah will melt him in the Fire like the melting of lead or the dissolving of salt in water. Whoever causes fear among the people of Medina, Allah will terrify him, and upon him is the curse of Allah, the angels, and all people collectively. Allah will not accept from him any voluntary or obligatory deed.”

وَقَوْلُهُ - عَلَيْهِ السَّلَامُ - مَثَلُ هَذَا فِيمَنْ أَحْدَثَ فِيهَا حَدَثًا أَوْ آوَى مُحْدِثًا وَهَذَا صَحِيحٌ، وَإِنَّمَا فِيهِ الْوَعِيدُ عَلَى مَنْ كَادَ أَهْلَهَا وَلَا يَحِلُّ كَيْدُ مُسْلِمٍ، فَلَيْسَ فِيهِ أَنَّهَا أَفْضَلُ مِنْ مَكَّةَ.

L15272 And his statement—peace be upon him—“The example of this applies to one who causes corruption therein or harbors an innovator”—and this is authentic. It merely serves as a warning against those who plot against its people, for it is impermissible to scheme against a Muslim. This does not establish that it is superior to Makkah.

L15273 The Most High has said concerning Mecca: “And whoever intends therein [to commit] deviation accompanied by injustice, We will make him taste a

painful punishment" [Al-Hajj: 25]. Thus, the threat is established against whoever commits wrong therein, just as the threat is established against whoever schemes against the people of Medina.[30]

L15274 Among them is his saying—peace be upon him—: "No one remains steadfast in the face of its hardships and severity except that I will be an intercessor or a witness for him on the Day of Resurrection." This serves only to encourage steadfastness in enduring its severity and to indicate that he will intercede for them. There is no evidence in this of its superiority over Mecca.

L15275 Indeed, it has been authentically established that he (peace be upon him) intercedes for his entire Ummah.

L15276 The Prophet - peace be upon him - said: "From one Umrah to the next is an expiation for what lies between them, and the righteous Hajj has no reward except Paradise." This can only be fulfilled in Makkah, so it is superior to the intercession that includes every righteous and sinful person among the Muslims.

L15277 Among them is his statement—peace be upon him—: "O Allah, endear Medina to us as our love for Mecca or more intensely." There is no proof in this of its superiority over Mecca. Rather, he—peace be upon him—supplicated with this as you see in one of two matters: either to endear it to them as their love for Mecca, or to endear it to them more intensely than their love for Mecca. Allah knows best which of the two his supplication—peace be upon him—was answered in. The love of a land arises from compatibility and familiarity, and this contains no superiority over Mecca.

L15278 Among them is his saying—peace be upon him—: "The span of a bow in Paradise for any one of you, or the space it occupies, is better than all worldly riches and what they contain."

L15279–15281 And his saying (peace be upon him): "Between my House and my pulpit lies a garden from the gardens of Paradise, and my pulpit rests upon my Pond."

[30]**Qur'an references (L15273):** Qur'an 22:25 (Al-Hajj).

وَقَدْ قَالَ - تَعَالَى - عَنْ مَكَّةَ: {وَمَنْ يُرِدْ فِيهِ بِإِلْحَادٍ بِظُلْمٍ نُذِقْهُ مِنْ عَذَابٍ أَلِيمٍ} [الحج: ٢٥] فَصَحَّ الْوَعِيدُ عَلَى مَنْ ظَلَمَ بِمَكَّةَ كَالْوَعِيدِ عَلَى مَنْ كَادَ أَهْلَ الْمَدِينَةِ.

وَمِنْهَا: قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «لَا يَثْبُتُ أَحَدٌ عَلَى لَأْوَائِهَا وَشَدَّتِهَا إِلَّا كُنْتُ لَهُ شَفِيعًا أَوْ شَهِيدًا يَوْمَ الْقِيَامَةِ» فَإِنَّمَا فِي هَذَا الْحَضِّ عَلَى الثَّبَاتِ عَلَى شِدَّتِهَا وَأَنَّهُ يَكُونُ لَهُمْ شَفِيعًا وَلَيْسَ فِي هَذَا دَلِيلٌ عَلَى فَضْلِهَا عَلَى مَكَّةَ.

وَقَدْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - يَشْفَعُ لِجَمِيعِ أُمَّتِهِ.

وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: " الْعُمْرَةُ إِلَى الْعُمْرَةِ كَفَّارَةٌ لِمَا بَيْنَهُمَا، وَالْحَجُّ الْمَبْرُورُ لَيْسَ لَهُ جَزَاءٌ إِلَّا الْجَنَّةَ " وَهَذَا لَا يَكُونُ إِلَّا بِمَكَّةَ فَهَذَا أَفْضَلُ مِنْ الشَّفَاعَةِ الَّتِي يَدْخُلُ فِيهَا كُلُّ بَرٍّ وَفَاجِرٍ مِنْ الْمُسْلِمِينَ.

وَمِنْهَا: قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «اللَّهُمَّ حَبِّبْ إِلَيْنَا الْمَدِينَةَ كَحُبِّنَا مَكَّةَ أَوْ أَشَدَّ» فَلَيْسَ فِي هَذَا دَلِيلٌ عَلَى فَضْلِهَا عَلَى مَكَّةَ وَإِنَّمَا دَعَا - عَلَيْهِ السَّلَامُ - بِهَذَا كَمَا تَرَى فِي أَحَدِ الْأَمْرَيْنِ: إمَّا أَنْ يُحَبِّبَهَا إلَيْهِمْ كَحُبِّهِمْ مَكَّةَ، وَإِمَّا أَشَدُّ مِنْ حُبِّهِمْ مَكَّةَ، وَاَللَّهُ أَعْلَمُ أَيُّ الْأَمْرَيْنِ أُجِيبَ بِهِ دُعَاؤُهُ - عَلَيْهِ السَّلَامُ -، وَحُبُّ الْبَلَدِ يَكُونُ لِلْمُوَافَقَةِ وَالْأُلْفَةِ وَلَيْسَ فِي هَذَا فَضْلٌ عَلَى مَكَّةَ.

وَمِنْهَا: قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «لَقَابُ قَوْسِ أَحَدِكُمْ مِنْ الْجَنَّةِ أَوْ مَوْضِعُ قِيدٍ - يَعْنِي سَوْطَهُ - خَيْرٌ مِنْ الْأَنْبَاطِ وَمَا فِيهَا» .

وَقَوْلُهُ - عَلَيْهِ السَّلَامُ -: «بَيْنَ بَيْتِي وَمِنْبَرِي رَوْضَةٌ مِنْ رِيَاضِ الْجَنَّةِ وَمِنْبَرِي عَلَى حَوْضِي» وَأَرَادُوا أَنْ يُثْبِتُوا مِنْ هَذَا أَنَّ مَكَّةَ مِنْ الدُّنْيَا فَمَوْضِعُ قَابِ قَوْسٍ مِنْ تِلْكَ

They sought to establish from this that Mecca belongs to this world, thus its location lies at the measure of a bow's length from that garden. Better than Mecca—so this is not as they supposed. If it were so, then Egypt and Kufa would be [so]. Our doctrine holds that it is better than Mecca and Medina.

L15282 It was narrated to us by Muslim: from Muḥammad ibn Numayr, from Muḥammad ibn Bishr, from ʿUbayd Allāh—Ibn ʿUmar—from Khubayb ibn ʿAbd al-Raḥmān, from Ḥafṣ ibn ʿĀṣim, from Abū Hurayrah, who said: The Messenger of Allah (peace be upon him) said: "The Sayḥān, Jayḥān, Euphrates, and Nile—all are among the rivers of Paradise." This is not something [Imam] Muslim would assert: that these lands, due to containing rivers of Paradise, are better than Makkah and Madinah.[31]

L15283 Abu Muhammad said: These two hadiths are not as the ignorant people suppose - that the Rawdah is a severed fragment from Paradise, or that these rivers were sent down from Paradise. This is falsehood and a lie, for Allah the Exalted says about Paradise: "You will neither hunger therein nor go naked, nor thirst therein nor suffer from the sun's glare" [20:118-119]. This is undoubtedly the description of Paradise, and it does not apply to these mentioned rivers nor to that Rawdah. The Messenger of Allah (upon him be peace) utters only the truth.[32]

L15284 It has thus been established that describing that Rawdah as being "from Paradise" is merely a matter of its wording, that prayer within it leads to Paradise, and that those rivers were ascribed to Paradise because of its blessing—just as one might say of a pleasant day: "This is among the days of Paradise," or as it is said of sheep: "They are among the creatures of Paradise," or as the Prophet (peace be upon him) stated: "Paradise lies beneath the shade of swords." This saying pertains to the land of disbelief without doubt, and it does not confer any superiority upon it over Mecca. Furthermore, even if their claim and assumption were valid, the virtue would apply

الرَّوْضَةِ خَيْرٌ مِنْ مَكَّةَ فَلَيْسَ هَذَا كَمَا ظَنُّوهُ، وَلَوْ كَانَ كَذَلِكَ لَكَانَتْ مِصْرُ، وَالْكُوفَةُ، وَرَاؤُنَا: خَيْرًا مِنْ مَكَّةَ، وَالْمَدِينَةِ.

وَرُوِّينَا عَنْ مُسْلِمٍ نَا مُحَمَّدُ بْنُ نُمَيْرٍ نَا مُحَمَّدُ بْنُ بِشْرٍ نَا عُبَيْدُ اللَّهِ هُوَ ابْنُ عُمَرَ - عَنْ خُبَيْبِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ حَفْصِ بْنِ عَاصِمٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ -: «سَيْحَانُ، وَجَيْحَانُ، وَالْفُرَاتُ، وَالنِّيلُ، كُلٌّ مِنْ أَنْهَارِ الْجَنَّةِ» وَهَذَا مَا لَا يَقُولُهُ مُسْلِمٌ: أَنَّ هَذِهِ الْبِلَادَ مِنْ أَجْلِ مَا فِيهَا مِنْ أَنْهَارِ الْجَنَّةِ، خَيْرٌ مِنْ مَكَّةَ، وَالْمَدِينَةِ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَانِ الْحَدِيثَانِ لَيْسَ عَلَى مَا يَظُنُّهُ أَهْلُ الْجَهْلِ مِنْ أَنَّ تِلْكَ الرَّوْضَةَ قِطْعَةٌ مُنْقَطِعَةٌ مِنْ الْجَنَّةِ، وَأَنَّ هَذِهِ الْأَنْهَارَ مُهْبَطَةٌ مِنْ الْجَنَّةِ، هَذَا بَاطِلٌ وَكَذِبٌ، لِأَنَّ اللَّهَ - تَعَالَى - يَقُولُ فِي الْجَنَّةِ {إِنَّ لَكَ أَلا تَجُوعَ فِيهَا وَلا تَعْرَى - وَأَنَّكَ لا تَظْمَأُ فِيهَا وَلا تَضْحَى} [طه: ١١٨ - ١١٩] فَهَذِهِ صِفَةُ الْجَنَّةِ بِلَا شَكٍّ وَلَيْسَتْ هَذِهِ صِفَةَ الْأَنْهَارِ الْمَذْكُورَةِ وَلَا تِلْكَ الرَّوْضَةِ، وَرَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ - لَا يَقُولُ إلَّا الْحَقَّ.

فَصَحَّ أَنَّ كَوْنَ تِلْكَ الرَّوْضَةِ مِنْ الْجَنَّةِ إنَّمَا هُوَ لَفْظُهَا، وَأَنَّ الصَّلَاةَ فِيهَا تُؤَدِّي إلَى الْجَنَّةِ، وَأَنَّ تِلْكَ الْأَنْهَارَ لِبَرَكَتِهَا أُضِيفَتْ إلَى الْجَنَّةِ، كَمَا تَقُولُ فِي الْيَوْمِ الطَّيِّبِ: هَذَا مِنْ أَيَّامِ الْجَنَّةِ، وَكَمَا قِيلَ فِي الضَّأْنِ: إنَّهَا مِنْ دَوَابِّ الْجَنَّةِ، وَكَمَا قَالَ - عَلَيْهِ السَّلَامُ -: «إنَّ الْجَنَّةَ تَحْتَ ظِلَالِ السُّيُوفِ» فَهَذَا فِي أَرْضِ الْكُفْرِ بِلَا شَكٍّ وَلَيْسَ فِي هَذَا فَضْلٌ لَهَا عَلَى مَكَّةَ، ثُمَّ لَوْ صَحَّ مَا ادَّعُوهُ وَظَنُّوهُ لَمَا كَانَ الْفَضْلُ إلَّا لِتِلْكَ الرَّوْضَةِ خَاصَّةً لَا لِسَائِرِ الْمَدِينَةِ وَهَذَا خِلَافُ قَوْلِهِمْ.

[31] **Hadith references (L15282):** Sahih Muslim 2839; Mishkat al-Masabih 5628; Riyad as-Salihin 1853.

[32] **Qur'an references (L15283):** Qur'an 20:118 (Taha); Qur'an 20:119 (Taha).

solely to that Rawdah itself, not to the rest of Medina—and this contradicts their assertion.

فَإِنْ قَالُوا: مَا قَرُبَ مِنْهَا أَفْضَلُ مِمَّا بَعُدَ. قُلْنَا: يَلْزَمُكُمْ عَلَى هَذَا أَنَّ الْجُحْفَةَ، وَخَيْبَرَ، وَوَادِيَ الْقُرَى أَفْضَلُ مِنْ مَكَّةَ؛ لِأَنَّهَا أَقْرَبُ إِلَى تِلْكَ الرَّوْضَةِ مِنْ مَكَّةَ، وَهَذَا لَا يَقُولُونَهُ، وَلَا يَقُولُهُ ذُو عَقْلٍ، فَبَطَلَ تَظَنُّنُهُمْ، وَلِلَّهِ الْحَمْدُ.

L15285 If they say: "What is nearer to it is superior to what is farther," we reply: By this reasoning, you must necessarily hold that al-Juhfah, Khaybar, and Wadi al-Qura are superior to Mecca, for they are closer to that ar-Rawdah (the Prophet's sacred precinct) than Mecca. This they do not claim, nor would any rational person claim it. Thus their groundless speculation is invalidated, and all praise belongs to Allah.

وَسُبْحَانَ مَنْ جَعَلَ هَؤُلَاءِ الْقَوْمَ يَتَأَوَّلُونَ الْأَخْبَارَ الصِّحَاحَ بِلَا بُرْهَانٍ مِثْلُ «الْبَيِّعَانِ بِالْخِيَارِ حَتَّى يَتَفَرَّقَا» وَمِثْلُ «لَا صَلَاةَ لِمَنْ لَا يُقِيمُ صُلْبَهُ فِي الرُّكُوعِ وَالسُّجُودِ» وَغَيْرُ ذَلِكَ، ثُمَّ يَأْتُونَ إِلَى الْأَخْبَارِ الَّتِي قَدْ صَحَّ الْبُرْهَانُ مِنَ الْقُرْآنِ، وَمِنْ ضَرُورَةِ الْحِسِّ عَلَى أَنَّهَا لَيْسَتْ عَلَى ظَاهِرِهَا فَيُرِيدُونَ حَمْلَهَا عَلَى ظَاهِرِهَا، إِنَّ هَذَا لَعَجَبٌ لَا نَظِيرَ لَهُ؛ فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ، وَلِلَّهِ الْحَمْدُ.

L15286–15288 Glory be to the One who has made these people misinterpret the authentic narrations without evidence, such as "The buyer and seller retain the right to annul the sale until they part ways," and "There is no prayer for one who does not straighten his back during bowing and prostration," and other similar narrations. That being the case, they then come to narrations for which conclusive evidence from the Quran and inescapable sensory necessity has established they cannot be taken literally, yet insist on adhering to their apparent meaning. This is truly an astonishment without parallel. Thus their reliance on these narrations is invalidated, and all praise is due to Allah.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي إِبْرَاهِيمُ بْنُ يَعْقُوبَ الْجُوزَجَانِيُّ نَا مُوسَى بْنُ دَاوُد عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللهِ - عَلَيْهِ السَّلَامُ - قَالَ: «الْحَجَرُ الْأَسْوَدُ مِنَ الْجَنَّةِ» فَهَذَا بِمَكَّةَ فَالَّذِي بِمَكَّةَ مِنْ هَذَا كَالَّذِي لِلْمَدِينَةِ، إِذْ فِي كُلِّ وَاحِدَةٍ مِنْهُمَا شَيْءٌ مِنَ الْجَنَّةِ.

L15289 It has been narrated to us through the chain of Ahmad ibn Shu'ayb: Ibrahim ibn Ya'qub al-Juzajani informed me, narrating from Musa ibn Dawud, from Hammad ibn Salamah, from 'Ata' ibn al-Sa'ib, from Sa'id ibn Jubayr, from Ibn 'Abbas, that the Messenger of God—peace be upon him—said: "The Black Stone is from Paradise." This is in Mecca. Thus, what is in Mecca from this [stone] is akin to what is in Medina, for in each of them lies something from Paradise.

وَمِنْهَا: قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «صَلَاةٌ فِي مَسْجِدِي هَذَا أَفْضَلُ مِنْ أَلْفِ صَلَاةٍ فِيمَا سِوَاهُ إِلَّا الْمَسْجِدَ الْحَرَامَ» .

L15290 Among them is his statement—peace be upon him—: "A prayer in this mosque of mine is better than a thousand prayers in any other mosque except the Sacred Mosque."

قَالَ أَبُو مُحَمَّدٍ: تَأَوَّلُوا هُمْ أَنَّ الصَّلَاةَ فِي مَسْجِدِ الْمَدِينَةِ أَفْضَلُ مِنَ الصَّلَاةِ فِي مَسْجِدِ مَكَّةَ بِدُونِ الْأَلْفِ، وَقُلْنَا نَحْنُ: بَلْ هَذَا الِاسْتِثْنَاءُ؛ لِأَنَّ الصَّلَاةَ فِي الْمَسْجِدِ الْحَرَامِ أَفْضَلُ مِنَ الصَّلَاةِ فِي مَسْجِدِ الْمَدِينَةِ.

L15291 Abu Muhammad said: They interpreted that prayer in the mosque of Medina is superior to prayer in the mosque of Mecca without the thousand. But we say: Rather, this is the exception, because prayer in the Sacred Mosque is superior to prayer in the mosque of Medina.

قَالَ عَلِيٌّ: فَكِلَا التَّأْوِيلَيْنِ مُحْتَمَلٌ. نَعَمْ، تَأْوِيلٌ ثَالِثٌ وَهُوَ إِلَّا الْمَسْجِدَ الْحَرَامَ فَإِنَّ الصَّلَاةَ فِي كِلَيْهِمَا سَوَاءٌ، وَلَا يَجُوزُ الْمَصِيرُ إِلَى أَحَدِ هَذِهِ التَّأْوِيلَاتِ دُونَ الْآخَرِ إِلَّا بِنَصٍّ آخَرَ، وَبَطَلَ أَنْ يَكُونَ فِي هَذَا الْخَبَرِ بَيَانٌ فِي فَضْلِ الْمَدِينَةِ عَلَى مَكَّةَ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

L15292 Ali said: Both interpretations are plausible. Yes, there is a third interpretation: except in the Sacred Mosque, prayer in both of them is equal. It is impermissible to adopt any one of these interpretations over another except through another text. Thus, the claim that this narration establishes the superiority of Medina over Mecca is invalid. And success is from Allah, the Exalted.

وَمِنْهَا: قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «عَلَى أَنْقَابِ الْمَدِينَةِ مَلَائِكَةٌ لَا يَدْخُلُهَا الطَّاعُونُ وَلَا الدَّجَّالُ» وَهَذَا لَيْسَ فِيهِ فَضْلُهَا عَلَى مَكَّةَ؛ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ أَخْبَرَ أَنَّ مَكَّةَ لَا يَدْخُلُهَا الدَّجَّالُ أَيْضًا، وَاَللَّهُ - تَعَالَى - يَصْرِفُهُ عَنْهَا كَمَا يَصْرِفُهُ عَنْ الْمَدِينَةِ وَالْمَلَائِكَةُ تَنْزِلُ عَلَى الْمُصَلِّينَ فِي كُلِّ بَلَدٍ كَمَا أَخْبَرَ - عَلَيْهِ السَّلَامُ -: " أَنَّهُ يَتَعَاقَبُ فِينَا مَلَائِكَةٌ بِاللَّيْلِ وَالنَّهَارِ ".

L15293 Among them is his statement—peace be upon him—"There are angels at the gates of Medina; neither plague nor the Dajjal will enter it." This does not indicate its superiority over Mecca, for he—peace be upon him—had already reported that the Dajjal will not enter Mecca either. Allah—Exalted—diverts him from it, just as He diverts him from Medina. Angels descend upon those who pray in every city, as he—peace be upon him—reported: "Angels succeed one another among us by night and day."

وَمِنْهَا: قَوْلُهُ - عَلَيْهِ السَّلَامُ - «هِيَ طَيِّبَةٌ» وَنَعَمْ، هِيَ وَاَللَّهِ طَيِّبَةٌ، وَلَيْسَ فِي هَذَا فَضْلٌ لَهَا عَلَى مَكَّةَ أَصْلًا.

L15294 Among them is his statement—peace be upon him—"It is Ṭayyibah." Yes, by Allah, it is Ṭayyibah, but this does not grant it any superiority over Makkah whatsoever.

فَهَذَا كُلُّ مَا احْتَجُّوا بِهِ مِنْ الْأَخْبَارِ الصِّحَاحِ مَا لَهُمْ خَبَرٌ صَحِيحٌ سِوَى هَذِهِ، وَكُلُّهَا لَا حُجَّةَ فِي شَيْءٍ مِنْهَا عَلَى فَضْلِ الْمَدِينَةِ عَلَى مَكَّةَ أَصْلًا عَلَى مَا بَيَّنَّا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L15295 This is all the authentic reports they have cited; they possess no authentic report besides these. All of them contain no proof whatsoever regarding the superiority of Medina over Mecca in any aspect, as we have clarified - and all praise belongs to Allah, Lord of the worlds.

وَاحْتَجُّوا عَمَّنْ دُونَ رَسُولِ اللَّهِ - عَلَيْهِ السَّلَامُ - بِالْخَبَرِ الصَّحِيحِ أَنَّ عُمَرَ قَالَ لِعَبْدِ اللَّهِ بْنِ عَيَّاشِ بْنِ أَبِي رَبِيعَةَ: أَنْتَ الْقَائِلُ: لَمَكَّةَ خَيْرٌ مِنْ الْمَدِينَةِ؟ فَقَالَ لَهُ عَبْدُ اللَّهِ: هِيَ حَرَمُ اللَّهِ وَأَمْنُهُ، وَفِيهَا بَيْتُهُ، فَقَالَ لَهُ عُمَرُ: لَا أَقُولُ فِي حَرَمِ اللَّهِ وَأَمْنِهِ شَيْئًا، أَنْتَ الْقَائِلُ: لَمَكَّةَ خَيْرٌ مِنْ الْمَدِينَةِ؟ فَقَالَ لَهُ عَبْدُ اللَّهِ: هِيَ حَرَمُ اللَّهِ وَأَمْنُهُ، وَفِيهَا بَيْتُهُ؟ فَقَالَ لَهُ عُمَرُ: لَا أَقُولُ فِي حَرَمِ اللَّهِ وَأَمْنِهِ شَيْئًا، ثُمَّ انْصَرَفَ.

L15296–15297 They cited as evidence—from those other than the Messenger of Allah (peace be upon him)—the authentic report that Umar said to Abdullah ibn Ayyash ibn Abi Rabi'ah: "Are you the one who said that Mecca is better than Medina?" Abdullah replied to him: "It is Allah's sanctuary and His security, and in it is His House." Umar said to him: "I do not say anything about Allah's sanctuary and His security. Are you the one who said that Mecca is better than Medina?" Abdullah said to him: "It is Allah's sanctuary and His security, and in it is His House." Umar said to him: "I do not say anything about Allah's sanctuary and His security." Then he left.

L15298 Abu Muhammad said: This is a proof against them, not for them, because Abdullah ibn Ayyash did not deny that Umar had affirmed the statement he made to him, but rather cited Umar's silence as evidence for his own position. It confirms that Abdullah ibn Ayyash – a Companion – maintained Mecca's superiority over Medina. This report from Umar neither asserts Mecca's superiority nor Medina's superiority, but merely documents his endorsement of Abdullah's view alone. Yet we find them attributing to Umar an explicit declaration that Mecca is superior to Medina.

قَالَ أَبُو مُحَمَّد: هَذَا حُجَّةٌ عَلَيْهِمْ لَا لَهُمْ، لِأَنَّ عَبْدَ اللَّهِ بْنَ عَيَّاشٍ لَمْ يُنْكِرْ لِعُمَرَ أَنَّهُ قَالَ مَا قَرَّرَهُ عَلَيْهِ بَلْ احْتَجَّ لِقَوْلِهِ ذَلِكَ بِمَا لَمْ يَعْتَرِضْ فِيهِ عُمَرُ، فَصَحَّ أَنَّ عَبْدَ اللَّهِ بْنَ عَيَّاشٍ - وَهُوَ صَاحِبٌ - كَانَ يَقُولُ: مَكَّةُ أَفْضَلُ مِنْ الْمَدِينَةِ وَلَيْسَ فِي هَذَا الْخَبَرِ عَنْ عُمَرَ: لَا أَنَّ مَكَّةَ أَفْضَلُ، وَلَا أَنَّ الْمَدِينَةَ أَفْضَلُ؛ وَإِنَّمَا فِيهِ تَقْرِيرُهُ لِعَبْدِ اللَّهِ عَلَى هَذَا الْقَوْلِ فَقَطْ، وَنَحْنُ نُوجِدُهُمْ عَنْ عُمَرَ تَصْرِيحًا بِأَنَّ مَكَّةَ أَفْضَلُ مِنْ الْمَدِينَةِ.

L15299 Yusuf ibn ʻAbd Allah ibn ʻAbd al-Barr al-Namari narrated to us: Saʻid ibn Nasr narrated to us: Qasim ibn Asbagh narrated to us: Muhammad ibn Waddah narrated to us: Hamid ibn Yahya al-Balkhi narrated to us: Sufyan ibn ʻUyaynah narrated from Ziyad ibn Saʻd: Sulayman ibn ʻAtiq said: I heard ʻAbd Allah ibn al-Zubayr say: I heard ʻUmar ibn al-Khattab say: "A prayer in the Sacred Mosque is superior to a hundred prayers in the Mosque of the Prophet, peace and blessings be upon him." This chain is as clear as the sun in authenticity. These two Companions have no known opposition from other Companions, and such a narration is a valid proof according to them.

حَدَّثَنَا يُوسُفُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَرِّ النَّمَرِيُّ نَا سَعِيدُ بْنُ نَصْرٍ نَا قَاسِمُ بْنُ أَصْبَغَ نَا مُحَمَّدُ بْنُ وَضَّاحٍ نَا حَامِدُ بْنُ يَحْيَى الْبَلْخِيّ نَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ زِيَادِ بْنِ سَعْدٍ نَا سُلَيْمَانُ بْنُ عَتِيقٍ قَالَ: سَمِعْتُ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ يَقُول: سَمِعْتُ عُمَرَ بْنَ الْخَطَّابِ يَقُول: " صَلَاةٌ فِي الْمَسْجِدِ الْحَرَامِ أَفْضَلُ مِنْ مِائَةِ صَلَاةٍ فِي مَسْجِدِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - " وَهَذَا سَنَدٌ كَالشَّمْسِ فِي الصِّحَّةِ، فَهَذَانِ صَاحِبَانِ لَا يُعْرَفُ لَهُمَا مِنْ الصَّحَابَةِ مُخَالِفٌ، وَمِثْلُ هَذَا حُجَّةٌ عِنْدَهُمْ.

L15300 From the path of Abd al-Razzaq, from Ma'mar, from Abd al-Karim al-Jazari, from Sa'id ibn al-Musayyab, who said: Whoever vows to observe iʻtikāf in the Mosque of Jerusalem (Al-Aqsa) but instead observes it in the Mosque of the Prophet, peace be upon him, in Medina, fulfills his vow. Whoever vows to observe iʻtikāf in the Mosque of the Prophet, peace be upon him, but instead observes it in the Sacred Mosque, fulfills his vow.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: مَنْ نَذَرَ أَنْ يَعْتَكِفَ فِي مَسْجِدِ إيلِيَا فَاعْتَكَفَ فِي مَسْجِدِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - بِالْمَدِينَةِ أَجْزَأَ عَنْهُ، وَمَنْ نَذَرَ أَنْ يَعْتَكِفَ فِي مَسْجِدِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - فَاعْتَكَفَ فِي الْمَسْجِدِ الْحَرَامِ أَجْزَأَ عَنْهُ.

L15301 Thus, this Saʿīd—the jurist of the people of Medina—explicitly declares the preeminence of Mecca over Medina.

فَهَذَا سَعِيدٌ فَقِيهُ أَهْلِ الْمَدِينَةِ يُصَرِّحُ بِفَضْلِ مَكَّةَ عَلَى الْمَدِينَةِ.

L15302 Abu Muhammad said: They argued using fabricated reports, and it is obligatory to alert about them and warn against them.

قَالَ أَبُو مُحَمَّد: وَاحْتَجُّوا بِأَخْبَارٍ مَوْضُوعَةٍ يَجِبُ التَّنْبِيهُ عَلَيْهَا وَالتَّحْذِيرُ مِنْهَا.

L15303–15305 Among them is a narration we transmitted: "The Prophet (peace be upon him) said regarding a deceased person he saw: 'He was buried in the soil

from which he was created.”’ They said: “The Prophet (peace be upon him) was buried in Medina, so he was created from its soil, and he is the most excellent of creation; thus, it is the most excellent of places.” This narration is fabricated, for one of its two chains of transmission contains Muḥammad ibn al-Ḥasan ibn Zubālah, who is a discredited narrator. In general, Yahya ibn Maʿin said regarding him: He is not trustworthy, and there is consensus overall on rejecting him. Moreover, the narration from Unays ibn Yahya is disconnected (mursal), and Unays ibn Yahya’s identity is unknown. The other chain is through the narration of Abu Khalid—who is unknown—from Yahya al-Bakkāʾ, who is weak. Even if the narration were authentic, it would not constitute evidence, for the virtue would have been exclusively for his grave—peace be upon him. Otherwise, hypocrites were buried therein. Prophets such as Ibrahim, Ishaq, Yaʿqub, Musa, Harun, Sulayman, Dawud (peace be upon them), and others were buried in the Levant (al-Sham), yet no Muslim would claim it is superior to Mecca.

مِنْهَا: خَبَرٌ رُوِّينَاهُ «أَنَّ النَّبِيَّ - عَلَيْهِ السَّلَامُ - قَالَ فِي مَيِّتٍ رَآهُ: دُفِنَ فِي التُّرْبَةِ الَّتِي خُلِقَ مِنْهَا» ، قَالُوا: وَالنَّبِيُّ - عَلَيْهِ السَّلَامُ - دُفِنَ بِالْمَدِينَةِ فَمِنْ تُرْبَتِهَا خُلِقَ وَهُوَ أَفْضَلُ الْخَلْقِ فَهِيَ أَفْضَلُ الْبِقَاعِ. وَهَذَا خَبَرٌ مَوْضُوعٌ؛ لِأَنَّ فِي أَحَدِ طَرِيقَيْهِ مُحَمَّدُ بْنُ الْحَسَنِ بْنِ زُبَالَةَ وَهُوَ سَاقِطٌ بِالْجُمْلَةِ، قَالَ فِيهِ يَحْيَى بْنُ مَعِينٍ: لَيْسَ بِثِقَةٍ وَهُوَ بِالْجُمْلَةِ مُتَّفَقٌ عَلَى اطِّرَاحِهِ - ثُمَّ هُوَ أَيْضًا عَنْ أُنَيْسِ بْنِ يَحْيَى مُرْسَلٌ وَلَا يُدْرَى مَنْ أُنَيْسُ بْنُ يَحْيَى وَالطَّرِيقُ الْأُخْرَى مِنْ رِوَايَةِ أَبِي خَالِدٍ وَهُوَ مَجْهُولٌ عَنْ يَحْيَى الْبَكَّاءِ وَهُوَ ضَعِيفٌ - ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ إنَّمَا كَانَ يَكُونُ الْفَضْلُ لِقَبْرِهِ - عَلَيْهِ السَّلَامُ - فَقَطْ، وَإِلَّا فَقَدْ دُفِنَ فِيهَا الْمُنَافِقُونَ، وَقَدْ دُفِنَ الْأَنْبِيَاءُ - عَلَيْهِمْ السَّلَامُ - مِنْ إبْرَاهِيمَ، وَإِسْحَاقَ، وَيَعْقُوبَ، وَمُوسَى، وَهَارُونَ، وَسُلَيْمَانَ، وَدَاوُد - عَلَيْهِمْ السَّلَامُ -، وَغَيْرِهِمْ بِالشَّامِ، وَلَا يَقُولُ مُسْلِمٌ: إنَّهَا أَفْضَلُ مِنْ مَكَّةَ.

L15306 Among them is the statement: “Cities were opened by the sword, yet Medina was opened by the Quran.” This too is among the narrations of Muḥammad ibn al-Ḥasan ibn Zubālah—notorious for forging ḥadīth. This is undoubtedly his fabrication, as he narrated it from Mālik, from Hishām ibn ʿUrwah, from his father, from ʿĀʾishah, from the Prophet (peace be upon him). Such an anomalous path could only be followed by a figure as vile as this dung heap, for this chain is uniquely transmitted by Ibn Zubālah alone—contrary to all other trustworthy narrators who transmitted from Mālik. Even if this narration were authentic, it would not constitute proof of Medina’s superiority over Mecca. For regions like Bahrain and most Yemeni cities—such as Ṣanʿāʾ, Al-Jund, and others—were likewise opened not by the sword but solely by the Quran. Yet no Muslim considers this method of conquest a basis for their superiority over Mecca.

وَمِنْهَا «افْتُتِحَتْ الْمَدَائِنُ بِالسَّيْفِ وَفُتِحَتْ الْمَدِينَةُ بِالْقُرْآنِ» وَهَذَا أَيْضًا مِنْ رِوَايَةِ مُحَمَّدِ بْنِ الْحَسَنِ بْنِ زُبَالَةَ الْمَذْكُورِ بِوَضْعِ الْحَدِيثِ، وَهَذَا مِنْ وَضْعِهِ بِلَا شَكٍّ؛ لِأَنَّهُ رَوَاهُ عَنْ مَالِكٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ -، وَمِثْلُ هَذَا الشَّارِعِ الْعَجِيبِ لَا يَجُوزُ أَنْ يَسْلُكَ إلَيْهِ إلَّا مِثْلُ هَذِهِ الْمَزْبَلَةِ، وَهَذَا إسْنَادٌ لَا يَنْفَرِدُ بِمِثْلِهِ إلَّا ابْنُ زُبَالَةَ دُونَ سَائِرِ مَنْ رَوَى عَنْ مَالِكٍ مِنْ الثِّقَاتِ - ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ فِي فَضْلِهَا عَلَى مَكَّةَ؛ لِأَنَّ الْبَحْرَيْنِ وَأَكْثَرَ مَدَائِنِ الْيَمَنِ كَصَنْعَاءَ وَالْجُنْدِ وَغَيْرِهَا لَمْ تُفْتَحْ بِسَيْفٍ إلَّا بِالْقُرْآنِ فَقَطْ وَلَيْسَ ذَلِكَ بِمُوجِبٍ فَضْلَهَا عَلَى مَكَّةَ عِنْدَ أَحَدٍ مِنْ الْمُسْلِمِينَ.

L15307 Among them is the statement: “There is no spot on earth more beloved to

me for my grave to be in than it." This is from the narration of the fabricator Muḥammad ibn al-Ḥasan ibn Zubāla, from Mālik, from Yaḥyā ibn Saʿīd, as a mursal report. Even if it were authentic, it would not constitute proof of Medina's superiority over Mecca, for the Messenger of Allah—peace be upon him—disliked that the Emigrants—while he was their leader—should return to Mecca and be resurrected as strangers expelled from their homeland for Allah's sake—Exalted is He. He even—peace be upon him—lamented Saʿd ibn Khawlah's death in Mecca, and he did not permit the Emigrants after completing their rites to remain in Mecca beyond three nights. Since Mecca is thereby excluded as a burial place for the Prophet—peace be upon him—Medina is without doubt the most superior place after it.

وَمِنْهَا «مَا عَلَى الْأَرْضِ بُقْعَةٌ أَحَبُّ إِلَيَّ أَنْ يَكُونَ قَبْرِي فِيهَا مِنْهَا» وَهَذَا مِنْ رِوَايَةِ الْكَذَّابِ مُحَمَّدِ بْنِ الْحَسَنِ بْنِ زُبَالَةَ عَنْ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ مُرْسَلٌ - ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ فِي فَضْلِهَا عَلَى مَكَّةَ، لِأَنَّ رَسُولَ اللَّهِ - عَلَيْهِ السَّلَامُ - كَرِهَ لِلْمُهَاجِرِينَ وَهُوَ سَيِّدُهُمْ أَنْ يَرْجِعُوا إِلَى مَكَّةَ لِيُحْشَرُوا غُرَبَاءَ مَطْرُودِينَ عَنْ وَطَنِهِمْ فِي اللَّهِ - تَعَالَى - حَتَّى إِنَّهُ - عَلَيْهِ السَّلَامُ - رَثَا لِسَعْدِ بْنِ خَوْلَةَ أَنْ مَاتَ بِمَكَّةَ وَلَمْ يَجْعَلْ لِلْمُهَاجِرِينَ بَعْدَ تَمَامِ نُسُكِهِ أَنْ يَبْقَى بِمَكَّةَ إِلَّا ثَلَاثَ لَيَالٍ فَقَطْ، فَإِذَا خَرَجَتْ مَكَّةُ بِهَذِهِ الْعِلَّةِ عَنْ أَنْ يُدْفَنَ فِيهَا النَّبِيُّ - عَلَيْهِ السَّلَامُ - فَالْمَدِينَةُ أَفْضَلُ الْبِقَاعِ بَعْدَهَا بِلَا شَكٍّ.

L15308 It has been narrated to us via the chain of Al-Bazzar: Muḥammad ibn ʿUmar ibn Hayyāj from Al-Fuḍayl ibn Dukayn (Abū Nuʿaym) from Muḥammad ibn Qays from Abū Burdah ibn Abī Mūsā al-Ashʿarī from his father Abū Mūsā, who said: "Saʿd fell ill in Mecca, so the Prophet (peace be upon him) came to visit him. Saʿd said: 'O Messenger of God, do you not dislike that a man should die in the land from which he emigrated?' He replied: 'Yes.'" The narrator mentioned the rest of the report. This is the verbatim account of our position - all praise is due to God, Lord of all worlds.

رُوِّينَا مِنْ طَرِيقِ الْبَزَّارِ نَا مُحَمَّدُ بْنُ عُمَرَ بْنِ هَيَّاجٍ نَا الْفُضَيْلُ بْنُ دُكَيْنٍ أَبُو نُعَيْمٍ نَا مُحَمَّدُ بْنُ قَيْسٍ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ أَبِي مُوسَى قَالَ: «مَرِضَ سَعْدٌ بِمَكَّةَ فَأَتَاهُ النَّبِيُّ - عَلَيْهِ السَّلَامُ - يَعُودُهُ فَقَالَ لَهُ يَا رَسُولَ اللَّهِ أَلَيْسَ تَكْرَهُ أَنْ يَمُوتَ الرَّجُلُ فِي الْأَرْضِ الَّتِي هَاجَرَ مِنْهَا؟ قَالَ: بَلَى» وَذَكَرَ بَاقِيَ الْخَبَرِ، فَهَذَا نَصُّ مَا قُلْنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L15309–15311 "O Allah, verily You have brought me out from the most beloved of Your lands to me, so settle me in the most beloved of the lands to You." And this is a fabricated report from the narration of Muḥammad ibn al-Ḥasan ibn Zubālah (the aforementioned), from Muḥammad ibn Ismāʿīl, from Sulaymān ibn Buraydah and others; it is a mursal report (with an incomplete chain of transmission).

وَمِنْهَا: «اللَّهُمَّ إِنَّكَ أَخْرَجْتَنِي مِنْ أَحَبِّ بِلَادِكَ إِلَيَّ فَأَسْكِنِي أَحَبَّ الْبِلَادِ إِلَيْكَ» وَهَذَا مَوْضُوعٌ مِنْ رِوَايَةِ مُحَمَّدِ بْنِ الْحَسَنِ بْنِ زُبَالَةَ الْمَذْكُورِ عَنْ مُحَمَّدِ بْنِ إِسْمَاعِيلَ عَنْ سُلَيْمَانَ بْنِ بُرَيْدَةَ وَغَيْرِهِ مُرْسَلٌ.

L15312 Among them is: "Madinah is better than Makkah"—this is an explicit statement that has been narrated to us through chains of transmission.

وَمِنْهَا: الْمَدِينَةُ خَيْرٌ مِنْ مَكَّةَ - هَكَذَا تَصْرِيحٌ رُوِّينَا مِنْ طُرُقٍ.

L15313 One of the following:

أَحَدُهَا:

L15314 From the narration of Muḥammad ibn al-Ḥasan ibn Zubālata—the fabricator of all these fabrications who single-handedly forged them—from Yaḥyā ibn

ʿAbd al-Raḥmān, from ʿAmrah bint ʿAbd al-Raḥmān, from Rāfiʿ ibn Khadīj, who said: The Messenger of Allah (peace and blessings be upon him) said:

مِنْ رِوَايَةِ مُحَمَّدِ بْنِ الْحَسَنِ بْنِ زُبَالَةَ صَاحِبِ هَذِهِ الْفَضَائِحِ كُلِّهَا الْمُنْفَرِدِ بِوَضْعِهَا عَنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ عَنْ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ عَنْ رَافِعِ بْنِ خَدِيجٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L15315 The second:

وَالثَّانِي:

L15316 From the chain of Muḥammad ibn ʿAbd al-Raḥmān ibn al-Raddād ibn ʿAbd Allāh ibn Shurayḥ ibn Mālik al-Qurashī, from Yaḥyā ibn Saʿīd al-Anṣārī, from ʿAmrah bint ʿAbd al-Raḥmān, from Rāfiʿ ibn Khadīj, from the Prophet (peace be upon him). This Muḥammad ibn ʿAbd al-Raḥmān is unknown; no one knows him.

مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الرَّدَّادِ بْنِ عَبْدِ اللَّهِ بْنِ شُرَيْحِ بْنِ مَالِكٍ الْقُرَشِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ عَنْ رَافِعِ بْنِ خَدِيجٍ عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ -، وَمُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ هَذَا مَجْهُولٌ لَا يَدْرِيه أَحَدٌ.

L15317 And the third.

وَالثَّالِثُ:

L15318 From the path of ʿAbdullāh ibn Nāfiʿ al-Ṣāʾigh, a companion of Mālik, from the aforementioned Muḥammad ibn ʿAbd al-Raḥmān ibn al-Raddād, from Yaḥyā ibn Saʿīd, from ʿAmrah, Rāfiʿ reported that the Messenger of Allāh (peace be upon him) said. This ʿAbdullāh ibn Nāfiʿ is unanimously deemed weak, and Ibn al-Raddād is unknown. Such an anomalous path cannot be legitimately relied upon except through these repulsively deviant routes.

مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ نَافِعٍ الصَّائِغِ صَاحِبِ مَالِكٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الرَّدَّادِ الْمَذْكُورِ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ عَمْرَةَ قَالَ رَافِعٌ: قَالَ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ -، وَعَبْدُ اللَّهِ بْنُ نَافِعٍ هَذَا ضَعِيفٌ بِلَا خِلَافٍ، وَابْنُ الرَّدَّادِ مَجْهُولٌ - وَمِثْلُ هَذَا الشَّارِعِ الْعَجِيبِ لَا يَجُوزُ أَنْ يُسْلَكَ عَلَيْهِ إلَّا عَلَى هَذِهِ الزَّوَايِغِ الْوَحْشَةِ.

L15319 This report we have narrated through Muslim with a chain of transmission of the highest authenticity. Muslim said: “Abdullah ibn Maslamah al-Qaʿnabi narrated to us, Sulayman ibn Bilal narrated to us from ʿUtbah ibn Muslim from Nafiʿ ibn Jubayr ibn Mutʿim, who said: Marwan delivered a sermon and mentioned Mecca, its people, and its sanctity, [but did not mention Medina, its people, and its sanctity]. Rafiʿ ibn Khadij [and said] called out to him: I hear you mention Mecca, its people, and its sanctity, yet you do not mention Medina, its people, and its sanctity, even though the Messenger of Allah, peace be upon him, declared sacred what lies between its two lava fields. That is with us on a Khulani leather parchment; if you wish, I can recite it to you.” Marwan replied: “I have heard some of that.” Abu Muhammad said:

وَهَذَا الْخَبَرُ رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ بِإِسْنَادٍ فِي غَايَةِ الصِّحَّةِ، قَالَ مُسْلِمٌ " نَا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ الْقَعْنَبِيُّ نَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ عُتْبَةَ بْنِ مُسْلِمٍ عَنْ نَافِعِ بْنِ جُبَيْرِ بْنِ مُطْعِمٍ قَالَ: خَطَبَ مَرْوَانُ فَذَكَرَ مَكَّةَ وَأَهْلَهَا وَحُرْمَتَهَا [وَلَمْ يَذْكُرْ الْمَدِينَةَ وَأَهْلَهَا وَحُرْمَتَهَا] فَنَادَاهُ رَافِعُ بْنُ خَدِيجٍ [فَقَالَ] أَسْمَعُك ذَكَرْت مَكَّةَ وَأَهْلَهَا وَحُرْمَتَهَا وَلَمْ تَذْكُرْ الْمَدِينَةَ وَأَهْلَهَا وَحُرْمَتَهَا، وَقَدْ حَرَّمَ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ - مَا بَيْنَ لَابَتَيْهَا وَذَلِكَ عِنْدَنَا فِي أَدِيمٍ خُولَانِيٍّ إنْ شِئْتُمْ أَقْرَأْتُكُمْ فَقَالَ مَرْوَانُ: قَدْ سَمِعْت بَعْضَ ذَلِكَ ". قَالَ أَبُو مُحَمَّدٍ: فَهَكَذَا

كَانَ الْحَدِيثُ فَبَدَّلَهُ أَهْلُ الزَّيْغِ عَصَبِيَّةً عَجَّلَ اللَّهُ - تَعَالَى - لَهُمْ بِهَا الْفَضِيحَةَ فِي الْكَذِبِ عَلَى رَسُولِ اللَّهِ - عَلَيْهِ السَّلَامُ - وَصِفَةِ الْحَمَاقَةِ، وَنَعُوذُ بِاللَّهِ مِنْ كُلِّ ذَلِكَ.

Thus was the original narration, but the people of deviation altered it out of partisanship—may Allah Almighty hasten for them through it their exposure in the lies they attribute to the Messenger of Allah, peace be upon him, and the attribute of foolishness. We seek refuge in Allah from all of that.

قَالَ عَلِيٌّ: هَذَا كُلُّ مَا مَوَّهُوا بِهِ قَدْ أَوْضَحْنَاهُ، وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

L15320 Ali said: This is all that they have disguised; we have clarified it. And with Allah, the Exalted, lies success.

ثُمَّ نُورِدُ الْآثَارَ الصَّحِيحَةَ وَالْبَرَاهِينَ الْوَاضِحَةَ فِي فَضْلِ مَكَّةَ عَلَى الْمَدِينَةِ وَغَيْرِهَا، أَوَّلُ ذَلِكَ: حَبْسُ اللَّهِ - تَعَالَى - الْفِيلَ عَنْهَا وَإِهْلَاكُهُ جَيْشَ رَاكِبِهِ إِذْ أَرَادَ غَزْوَ مَكَّةَ.

L15321–15322 Then we present the authentic narrations and clear proofs regarding the superiority of Mecca over Medina and others. The first of these is God—Exalted is He—preventing the elephant from reaching it and His destruction of the army accompanying its rider when he intended to invade Mecca.

ثُمَّ «قَوْلُ رَسُولِ اللَّهِ - عَلَيْهِ السَّلَامُ - فِي غَزْوَةِ الْحُدَيْبِيَةِ إِذْ بَرَكَتْ نَاقَتُهُ فَقَالَ النَّاسُ: خَلَأَتْ فَقَالَ النَّبِيُّ - عَلَيْهِ السَّلَامُ -: مَا خَلَأَتْ وَلَا هُوَ لَهَا بِخُلُقٍ وَلَكِنْ حَبَسَهَا حَابِسُ الْفِيلِ» ، وَقَالَ - تَعَالَى - {وَمَنْ دَخَلَهُ كَانَ آمِنًا} [آل عمران: ٩٧] ، وَقَالَ - تَعَالَى - {إِنَّ أَوَّلَ بَيْتٍ وُضِعَ لِلنَّاسِ لَلَّذِي بِبَكَّةَ مُبَارَكًا وَهُدًى لِلْعَالَمِينَ} [آل عمران: ٩٦] ، وَقَالَ - تَعَالَى - {إِنَّ الصَّفَا وَالْمَرْوَةَ مِنْ شَعَائِرِ اللَّهِ} [البقرة: ١٥٨] ، وَقَالَ - تَعَالَى - {ثُمَّ مَحِلُّهَا إِلَى الْبَيْتِ الْعَتِيقِ} [الحج: ٣٣] ، وَقَالَ - تَعَالَى - {أَنْ طَهِّرَا بَيْتِيَ لِلطَّائِفِينَ وَالْعَاكِفِينَ وَالرُّكَّعِ السُّجُودِ} [البقرة: ١٢٥] ، ثُمَّ جَعَلَ اللَّهُ - تَعَالَى - فِيهَا تَمَامَ الصَّلَاةِ، وَالْحَجِّ، وَالْعُمْرَةِ، فَهِيَ الْقِبْلَةُ الَّتِي لَا تُقْبَلُ صَلَاةٌ إِلَّا بِالْقَصْدِ نَحْوَهَا، وَإِلَيْهَا الْحَجُّ الْمُفْتَرَضُ، وَالْعُمْرَةُ الْمُفْتَرَضَةُ، وَإِنَّمَا فُرِضَتْ الْهِجْرَةُ إِلَى الْمَدِينَةِ مَا لَمْ تُفْتَحْ مَكَّةُ فَلَمَّا فُتِحَتْ بَطَلَتْ الْهِجْرَةُ، فَهَذِهِ الْفَضِيلَةُ لِمَكَّةَ ثُمَّ لِلْمَدِينَةِ، وَأَمَرَ - عَلَيْهِ السَّلَامُ - أَنْ لَا يُسْفَكَ فِيهَا دَمٌ، وَأَخْبَرَ أَنَّ اللَّهَ - تَعَالَى - حَرَّمَهَا يَوْمَ خَلَقَ السَّمَوَاتِ وَالْأَرْضَ، وَلَمْ يُحَرِّمْهَا النَّاسُ وَنَهَى - عَلَيْهِ السَّلَامُ - أَنْ يَسْتَقْبِلَهَا أَحَدٌ أَوْ يَسْتَدْبِرَهَا بِبَوْلٍ أَوْ غَائِطٍ.

L15323 Then the statement of the Messenger of Allah—peace be upon him—during the Expedition of Ḥudaybiyyah, when his she-camel knelt down, and the people said, “It has balked.” The Prophet—peace be upon him—said, “It has not balked, nor is that in its nature, but it has been restrained by the Restrainer of the elephant.” And Allah—the Most High—said, {And whoever enters it shall be secure} [Āl ʿImrān: 97], and He—the Most High—said, {Indeed, the first House established for mankind was that at Bakkah—blessed and a guidance for the worlds} [Āl ʿImrān: 96], and He—the Most High—said, {Indeed, Ṣafā and Marwah are among the symbols of Allah} [Al-Baqarah: 158], and He—the Most High—said, {Then their place of sacrifice is to the Ancient House} [Al-Ḥajj: 33], and He—the Most High—said, {Purify My House for those who perform circumambulation, those who stay in devotion, and those who bow and prostrate} [Al-Baqarah: 125]. Then Allah—the Most High—established in it the validity of prayer, Ḥajj, and ʿUmrah. It is the direction of prayer, the qiblah, without which no prayer is accepted unless one faces it. To it is the obligatory Ḥajj and the obligatory ʿUmrah. The obligation of Hijrah to Madīnah applied only until Makkah was conquered. When Makkah was conquered, the obligation of Hijrah ceased. Thus, this sacred virtue belongs to Makkah, then to Madīnah. He—peace be upon him—commanded that no bloodshed is permitted there and informed that Allah—the Most High—made it inviolable on the day He created the heavens and the earth, and it

was not people who rendered it sacred. He also forbade anyone to face it or turn one's back toward it during urination or defecation.[33]

L15324–15326 We have been narrated through the chain of al-Bukhārī: From Muḥammad ibn ʿAbdullāh, from ʿĀṣim ibn ʿAlī, from ʿĀṣim ibn Muḥammad (son of Zayd ibn ʿAbdullāh ibn ʿUmar ibn al-Khaṭṭāb), from Wāqid ibn Muḥammad (ʿĀṣim's brother), who said: I heard my father Muḥammad ibn Zayd say: ʿAbdullāh ibn ʿUmar reported: The Messenger of Allah—peace and blessings be upon him—said during the Farewell Pilgrimage: "Behold! Which month do you consider most sacred?" They answered: "Is it not this month of ours?" He said: "Behold! Which land do you consider most sacred?" They replied: "Is it not this land of ours?" He said: "Behold! Which day do you consider most sacred?" They responded: "Is it not this day of ours?" He said: "Verily, Allah the Exalted has made your blood, your wealth, and your honor sacred to you—except by their just due—as sacred as this day of yours in this land of yours during this month of yours. Behold! Have I not..." "Have I conveyed [it]? Three times. Each instance, they answer him: 'Is it not? Yes!'"

L15327 From the narration of Ibn Abi Shaybah: Abu Mu'awiyah—Muhammad ibn Khazim the Blind—narrated to us from al-A'mash, from Abi Salih al-Samman (the oil merchant), from Jabir ibn Abdullah, who said: "The Messenger of Allah (peace be upon him) said during his Hajj: 'Do you know which day holds the greatest sanctity?' We replied: 'This day.' He asked: 'Which land holds the greatest sanctity?' We said: 'This land.'" Then he cited a narration similar to that of Ibn Umar.

L15328 These two, Jābir and Ibn ʿUmar, testify that the Messenger of Allah (peace be upon him) asked the people to confirm which land holds the greatest sanctity. They answered him that it is Makkah, and he affirmed their response. This constitutes a consensus from all the Companions in their reply to him (peace be upon him) that their city was indeed Makkah, while they themselves were in Makkah. Therefore, whoever contradicts this has contradicted the consensus.

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ نَا عَاصِمُ بْنُ عَلِيٍّ نَا عَاصِمُ بْنُ مُحَمَّدٍ هُوَ ابْنُ زَيْدِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ - عَنْ وَاقِدِ بْنِ مُحَمَّدٍ - هُوَ أَخُوهُ - قَالَ: سَمِعْت أَبِي - هُوَ مُحَمَّدُ بْنُ زَيْدٍ - قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ عُمَرَ «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَجَّةِ الْوَدَاعِ: أَلَا أَيُّ شَهْرٍ تَعْلَمُونَهُ أَعْظَمَ حُرْمَةً؟ قَالُوا: أَلَا شَهْرُنَا هَذَا. قَالَ: أَلَا أَيُّ بَلَدٍ تَعْلَمُونَهُ أَعْظَمَ حُرْمَةً؟ قَالُوا: أَلَا بَلَدُنَا هَذَا. قَالَ: أَلَا أَيُّ يَوْمٍ تَعْلَمُونَهُ أَعْظَمَ حُرْمَةً؟ قَالُوا: أَلَا يَوْمُنَا هَذَا. قَالَ: فَإِنَّ اللَّهَ - تَعَالَى - حَرَّمَ عَلَيْكُمْ دِمَاءَكُمْ، وَأَمْوَالَكُمْ، وَأَعْرَاضَكُمْ، إلَّا بِحَقِّهَا كَحُرْمَةِ يَوْمِكُمْ هَذَا، فِي بَلَدِكُمْ هَذَا مِنْ شَهْرِكُمْ هَذَا أَلَا هَلْ بَلَّغْتُ؟ ثَلَاثًا، كُلُّ ذَلِكَ يُجِيبُونَهُ: أَلَا نَعَمْ» .

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا أَبُو مُعَاوِيَةَ هُوَ مُحَمَّدُ بْنُ خَازِمٍ الضَّرِيرُ - عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ السَّمَّانِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «قَالَ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ - فِي حَجَّتِهِ: أَتَدْرُونَ أَيُّ يَوْمٍ أَعْظَمُ حُرْمَةً؟ فَقُلْنَا: يَوْمُنَا هَذَا قَالَ: فَأَيُّ بَلَدٍ أَعْظَمُ حُرْمَةً؟ فَقُلْنَا: بَلَدُنَا هَذَا» ثُمَّ ذَكَرَ مِثْلَ حَدِيثِ ابْنِ عُمَرَ.

فَهَذَانِ: جَابِرٌ، وَابْنُ عُمَرَ يَشْهَدَانِ: أَنَّ رَسُولَ اللَّهِ - عَلَيْهِ السَّلَامُ - قَرَّرَ النَّاسَ عَلَى أَيِّ بَلَدٍ أَعْظَمُ حُرْمَةً فَأَجَابُوهُ بِأَنَّهُ مَكَّةُ وَصَدَّقَهُمْ فِي ذَلِكَ، وَهَذَا إجْمَاعٌ مِنْ جَمِيعِ الصَّحَابَةِ فِي إجَابَتِهِمْ إيَّاهُ - عَلَيْهِ السَّلَامُ - بِأَنَّ بَلَدَهُمْ ذَلِكَ، وَهُمْ بِمَكَّةَ، فَمَنْ خَالَفَ هَذَا فَقَدْ خَالَفَ الْإِجْمَاعَ.

[33] **Qur'an references (L15323):** Qur'an 3:97 (Ali 'Imran); Qur'an 3:96 (Ali 'Imran); Qur'an 2:158 (Al-Baqarah); Qur'an 22:33 (Al-Hajj); Qur'an 2:125 (Al-Baqarah).

فَصَحَّ بِالنَّصِّ وَالْإِجْمَاعِ أَنَّ مَكَّةَ أَعْظَمُ حُرْمَةً مِنْ الْمَدِينَةِ، وَإِذَا كَانَتْ أَعْظَمَ حُرْمَةً مِنْ الْمَدِينَةِ فَهِيَ أَفْضَلُ بِلَا شَكٍّ، لِأَنَّ أَعْظَمَ الْحُرْمَةِ لَا يَكُونُ إلَّا لِلْأَفْضَلِ وَلَا بُدَّ، لَا لِلْأَقَلِّ فَضْلًا.

L15329 It has been established through textual evidence and consensus that Mecca possesses greater sanctity than Medina. Since it holds greater sanctity than Medina, it is unquestionably superior, for the highest degree of sanctity can only belong to the most excellent by necessity - not to what holds lesser merit.

رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - عَلَيْهِ السَّلَامُ - كَانَ بِالْحَجُونِ فَقَالَ: وَاَللَّهِ إنَّكِ لَخَيْرُ أَرْضِ اللَّهِ وَأَحَبُّ أَرْضِ اللَّهِ إلَيَّ وَلَوْ لَمْ أُخْرَجْ مِنْكِ مَا خَرَجْتُ، لَمْ تَحِلَّ لِأَحَدٍ قَبْلِي، وَلَا تَحِلُّ لِأَحَدٍ بَعْدِي» وَذَكَرَ بَاقِيَ الْحَدِيثِ.

L15330 It has been narrated to us through Hammad ibn Salamah, from Muhammad ibn 'Amr, from Abu Salamah ibn 'Abd al-Rahman ibn 'Awf, from Abu Hurayrah: "The Messenger of Allah (peace be upon him) was at Hajun when he said: 'By Allah, you are truly the best land of Allah and the most beloved land of Allah to me. Had I not been expelled from you, I would not have left. It was not permissible for anyone before me, nor will it be permissible for anyone after me.'" The rest of the hadith was mentioned.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا عَبْدُ الْعَزِيزِ بْنِ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَلْقَمَةَ بْنِ وَقَّاصٍ عَنْ أَبِي سَلَمَةَ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - عَلَيْهِ السَّلَامُ - وَقَفَ بِالْحَجُونِ فَقَالَ: إنَّكِ خَيْرُ أَرْضِ اللَّهِ وَأَحَبُّ أَرْضِ اللَّهِ إلَى اللَّهِ، وَلَوْ تُرِكْتُ فِيكِ مَا خَرَجْتُ مِنْكِ» وَذَكَرَ بَاقِيَ الْحَدِيثِ.

L15331 And through the chain of Saʿīd ibn Manṣūr, who narrated to us ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī, from Muḥammad ibn ʿAmr ibn ʿAlqāmah ibn Waqqāṣ, from Abū Salamah – he is the son of ʿAbd al-Raḥmān ibn ʿAwf – from Abū Hurayrah: "The Messenger of Allah – peace be upon him – stood at al-Ḥajūn and said: 'You are the best land of Allah and the most beloved land of Allah to Him. If I had been allowed to stay in you, I would never have departed from you.'" And he [Saʿīd] mentioned the remainder of the Ḥadīth.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نَا سَلَمَةُ بْنُ شَبِيبٍ، وَقُتَيْبَةُ بْنُ سَعِيدٍ، وَإِسْحَاقَ بْنِ مَنْصُورٍ قَالَ سَلَمَةُ: عَنْ إبْرَاهِيمَ بْنِ خَالِدٍ قَالَ: سَمِعْت مَعْمَرًا عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: «قَالَ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ - وَهُوَ فِي سُوقِ الْحَزُورَةِ بِمَكَّةَ: وَاَللَّهِ إنَّكِ لَخَيْرُ أَرْضِ اللَّهِ وَأَحَبُّ الْبِلَادِ إلَى اللَّهِ، وَلَوْلَا أَنِّي أُخْرِجْتُ مِنْكِ مَا خَرَجْتُ» .

L15332–15334 Via the chain of Aḥmad ibn Shuʿayb: Salamah ibn Shabīb, Quṭaybah ibn Saʿīd, and Isḥāq ibn Manṣūr narrated to us. Salamah said: From Ibrāhīm ibn Khālid, who said: I heard Maʿmar from al-Zuhrī from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf from Abū Hurayrah, who said: "The Messenger of Allah—peace be upon him—said, while he was in the market..." While in the region of Makkah: "By Allah, you are indeed the best of Allah's lands and the most beloved of territories to Allah. Had I not been expelled from you, I would never have departed."

وَقَالَ قُتَيْبَةُ: نَا اللَّيْثُ وَهُوَ ابْنُ سَعْدٍ - عَنْ عَقِيلِ بْنِ خَالِدٍ، وَقَالَ إسْحَاقُ: نَا يَعْقُوبُ وَهُوَ ابْنُ إبْرَاهِيمَ بْنِ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ نَا أَبِي عَنْ صَالِحِ بْنِ كَيْسَانَ؛

L15335 Qutaybah said: Al-Layth—who is Ibn Saʿd—narrated to us from ʿAqil ibn Khalid. Ishaq said: Yaʿqub—who is Ibn Ibrahim ibn Saʿd ibn Ibrahim ibn ʿAbd al-Rahman ibn ʿAwf—narrated to us from my father from Salih ibn

Kaysan. Then ʻAqil and Salih concurred, both narrating from al-Zuhri: Abu Salamah ibn ʻAbd al-Rahman ibn ʻAwf informed me that ʻAbdullah ibn ʻAdi ibn al-Hamraʼ informed him that he heard the Messenger of Allah—peace be upon him—while standing on his mount at al-Jazūrah, a part of Mecca, saying to Mecca: "By Allah, you are indeed the best of Allah's lands and the most beloved to Him. Were I not expelled from you, I would never have departed."[34]

ثُمَّ اتَّفَقَ عُقَيْلٌ، وَصَالِحٌ، وَكِلَاهُمَا عَنْ الزُّهْرِيِّ: أَخْبَرَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: «أَنَّ عَبْدَ اللَّهِ بْنَ عَدِيِّ ابْنِ الْحَمْرَاءِ أَخْبَرَهُ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - عَلَيْهِ السَّلَامُ - وَهُوَ وَاقِفٌ عَلَى رَاحِلَتِهِ بِالْجَزُورَةِ مِنْ مَكَّةَ يَقُولُ لِمَكَّةَ: وَاَللَّهِ إِنَّكِ لَخَيْرُ أَرْضِ اللَّهِ، وَأَحَبُّ أَرْضِ اللَّهِ إِلَى اللَّهِ، وَلَوْلَا أَنِّي أُخْرِجْتُ مِنْكِ مَا خَرَجْتُ» .

L15336 Uqayl and Salih did not differ in any of his wording—peace be upon him—except that Uqayl said: From al-Zuhri, from Abu Salama ibn Abd al-Rahman ibn Awf, from Abdullah ibn Adiyy ibn al-Hamraʼ—and this Abdullah is a well-known Companion of Zuhri lineage.

لَمْ يَخْتَلِفْ عُقَيْلٌ، وَصَالِحٌ، فِي شَيْءٍ مِنْ لَفْظِهِ - عَلَيْهِ السَّلَامُ -، إلَّا أَنَّ عَقِيلًا قَالَ: عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ عَبْدِ اللَّهِ بْنِ عَدِيِّ ابْنِ الْحَمْرَاءِ - وَعَبْدُ اللَّهِ هَذَا مَشْهُورٌ مِنْ الصَّحَابَةِ زُهْرِيُّ النَّسَبِ.

L15337 Narrated by Ahmad ibn Umar ibn Anas, narrated by Abu Dharr al-Harawi, narrated by Abu al-Fadl Muhammad ibn Abdullah ibn Ḥumayrawayh, narrated by Ali ibn Muhammad ibn Isa, narrated by Abu al-Yaman—he is al-Hakam ibn Nafiʻ—reported to me by Shuʻayb (he is ibn Abi Hamzah) from al-Zuhri, reported to me by Abu Salamah ibn Abd al-Rahman ibn Awf that Abdullah ibn Adiy ibn al-Hamra reported: He heard the Messenger of Allah—peace be upon him—say while standing at al-Jazurah in the market of Mecca, "By Allah, you are indeed the best land of Allah and the most beloved land of Allah to Allah. Had I not been expelled from you, I would not have left." Thus, the ambiguity was entirely resolved—and all praise is due to Allah.[35]

نَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نَا أَبُو ذَرٍّ الْهَرَوِيُّ نَا أَبُو الْفَضْلِ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ حُمَيْرَوَيْهِ نَا عَلِيُّ بْنُ مُحَمَّدِ بْنِ عِيسَى نَا أَبُو الْيَمَانِ هُوَ الْحَكَمُ بْنُ نَافِعٍ - أَخْبَرَنِي شُعَيْبٌ هُوَ ابْنُ أَبِي حَمْزَةَ - عَنْ الزُّهْرِيِّ أَخْبَرَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَّ عَبْدَ اللَّهِ بْنَ عَدِيِّ بْنِ الْحَمْرَاءِ أَخْبَرَهُ: أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - عَلَيْهِ السَّلَامُ - يَقُولُ وَهُوَ وَاقِفٌ بِالْجَزُورَةِ فِي سُوقِ مَكَّةَ: «وَاَللَّهِ إِنَّكِ لَخَيْرُ أَرْضِ اللَّهِ وَأَحَبُّ أَرْضِ اللَّهِ إِلَى اللَّهِ، وَلَوْلَا أَنِّي أُخْرِجْتُ مِنْكِ مَا خَرَجْتُ» فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً - وَلِلَّهِ الْحَمْدُ.

L15338 This is a narration of the highest authenticity, narrated from the Prophet (peace be upon him) by Abū Hurayrah and ʿAbdullāh ibn ʿAdī. It was narrated from both of them by Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, and from Abū Salamah by al-Zuhrī and Muḥammad ibn ʿAmr ibn ʿAlqamah.

وَهَذَا خَبَرٌ فِي غَايَةِ الصِّحَّةِ رَوَاهُ عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ - أَبُو هُرَيْرَةَ، وَعَبْدُ اللَّهِ بْنُ عَدِيٍّ - وَرَوَاهُ عَنْهُمَا أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ وَرَوَاهُ عَنْ أَبِي سَلَمَةَ الزُّهْرِيُّ وَمُحَمَّدُ بْنُ عَمْرِو بْنِ عَلْقَمَةَ.

L15339 Narrated it from Muhammad ibn ʻAmr are Hammad ibn Salamah and al-Darawardi. Narrated from al-Zuhri are his trustworthy students: Maʻmar,

[34] **Hadith references (L15335):** Jami at-Tirmidhi 3925.

[35] **Hadith references (L15337):** Jami at-Tirmidhi 3925.

Shu'ayb ibn Abi Hamzah, 'Uqayl, and Salih ibn Kaysan. It was also narrated from him by Yunus ibn Zayd and 'Abd al-Rahman ibn Khalid.

وَرَوَاهُ عَنْ مُحَمَّدِ بْنِ عَمْرٍو حَمَّادُ بْنُ سَلَمَةَ، والدراوردي - وَرَوَاهُ عَنِ الزُّهْرِيِّ أَصْحَابُهُ الثِّقَاتُ: مَعْمَرٌ، وَشُعَيْبُ بْنُ أَبِي حَمْزَةَ، وَعُقَيْلٌ، وَصَالِحُ بْنُ كَيْسَانَ - وَرَوَاهُ أَيْضًا عَنْهُ يُونُسُ بْنُ زَيْدٍ، وَعَبْدُ الرَّحْمَنِ بْنُ خَالِدٍ.

L15340–15341 And he narrated it from this vast gathering, and there is no statement for anyone after this.

وَرَوَاهُ عَنْ هَؤُلَاءِ الْجَمْعِ الْغَفِيرِ، وَلَا مَقَالَ لِأَحَدٍ بَعْدَ هَذَا.

L15342 Yusuf ibn Abdullah ibn Abd al-Barr al-Namari narrated to us, on the authority of Abdul-Warith ibn Sufyan ibn Jabrun, on the authority of Qasim ibn Asbagh, on the authority of Ahmad ibn Zuhayr and Abu Yahya ibn Abi Murrah, both of whom said together: Sulayman ibn Harb narrated to us, on the authority of Hammad ibn Zayd, on the authority of Habib the Teacher, on the authority of Ata ibn Abi Rabah, on the authority of Abdullah ibn al-Zubayr, who said: The Messenger of Allah - peace be upon him - said: "A prayer in my mosque is superior to a thousand prayers in other mosques except the Sacred Mosque; a prayer in the Sacred Mosque is superior to a hundred prayers in this mosque of mine."[36]

حَدَّثَنَا يُوسُفُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَرِّ النَّمَرِيُّ نَا عَبْدُ الْوَارِثِ بْنُ سُفْيَانَ بْنِ جَبْرُونَ نَا قَاسِمُ بْنُ أَصْبَغَ نَا أَحْمَدُ بْنُ زُهَيْرٍ، وَأَبُو يَحْيَى بْنُ أَبِي مُرَّةَ قَالَا جَمِيعًا: نَا سُلَيْمَانُ بْنُ حَرْبٍ نَا حَمَّادُ بْنُ زَيْدٍ عَنْ حَبِيبٍ الْمُعَلِّمِ نَا عَطَاءُ بْنُ أَبِي رَبَاحٍ عَنْ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ قَالَ: قَالَ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ -: «صَلَاةٌ فِي مَسْجِدِي أَفْضَلُ مِنْ أَلْفِ صَلَاةٍ فِيمَا سِوَاهُ مِنَ الْمَسَاجِدِ إِلَّا الْمَسْجِدَ الْحَرَامَ وَصَلَاةٌ فِي الْمَسْجِدِ الْحَرَامِ أَفْضَلُ مِنْ صَلَاةٍ فِي مَسْجِدِي هَذَا بِمِائَةِ صَلَاةٍ» .

L15343 Ahmad ibn Zuhayr said: I asked Yaḥyā ibn Maʿīn about Ḥabīb al-Muʿallim, and he replied: "Trustworthy." And Ahmad ibn Ḥanbal said: "Ḥabīb al-Muʿallim is trustworthy. How authentic his ḥadīth is!" This is the wording of Ahmad ibn Zuhayr.

قَالَ أَحْمَدُ بْنُ زُهَيْرٍ: سَأَلْتُ يَحْيَى بْنَ مَعِينٍ عَنْ حَبِيبٍ الْمُعَلِّمِ فَقَالَ: ثِقَةٌ، وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: حَبِيبٌ الْمُعَلِّمُ ثِقَةٌ مَا أَصَحَّ حَدِيثَهُ، هَذَا لَفْظُ أَحْمَدَ بْنِ زُهَيْرٍ.

L15344 Ibn Abi Murrah said in his narration: "A prayer in my mosque is superior to a thousand prayers in any other mosque except Al-Masjid al-Haram. And a prayer in Al-Masjid al-Haram is superior to a hundred prayers in my mosque."

وَقَالَ ابْنُ أَبِي مُرَّةَ فِي رِوَايَتِهِ «صَلَاةٌ فِي مَسْجِدِي هَذَا أَفْضَلُ مِنْ أَلْفِ صَلَاةٍ فِيمَا سِوَاهُ إِلَّا الْمَسْجِدَ الْحَرَامَ، وَصَلَاةٌ فِي الْمَسْجِدِ الْحَرَامِ أَفْضَلُ مِنْ مِائَةِ صَلَاةٍ فِي مَسْجِدِي» .

L15345 We have also transmitted it through the route of Muḥammad ibn ʿUbayd ibn Ḥisān from Ḥammād ibn Zayd with its wording and chain of transmission. We have also transmitted it through the route of Abū Muʿāwiyah from Mūsā al-Juhanī from Nāfiʿ from Ibn ʿUmar from the Prophet (peace be upon him).

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مُحَمَّدِ بْنِ عُبَيْدِ بْنِ حِسَابٍ عَنْ حَمَّادِ بْنِ زَيْدٍ بِلَفْظِهِ وَإِسْنَادِهِ - وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ أَبِي مُعَاوِيَةَ عَنْ مُوسَى الْجُهَنِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ - عَلَيْهِ السَّلَامُ -.

[36] **Hadith references (L15342):** Sunan an-Nasai 2897.

L15346 The narration of Ibn al-Zubayr is authentic, thus the ambiguity has been entirely lifted, and all praise is due to Allah.

حَدِيثُ ابْنِ الزُّبَيْرِ صَحِيحٌ فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً، وَالْحَمْدُ لِلَّهِ.

L15347 It has been decisively narrated that Mecca holds superiority over Medina, as transmitted from the Prophet (peace be upon him) by Jābir, Abū Hurayrah, Ibn ʿUmar, Ibn al-Zubayr, and ʿAbdullāh ibn ʿAdiyy (may Allah the Exalted be pleased with them) - five Companions, among whom three were Medinans - with chains of transmission in the utmost soundness.

فَرُوِيَ الْقَطْعُ بِفَضْلِ مَكَّةَ عَلَى الْمَدِينَةِ كَمَا أَوْرَدْنَا عَنِ النَّبِيِّ - عَلَيْهِ السَّلَامُ -: جَابِرٌ، وَأَبُو هُرَيْرَةَ، وَابْنُ عُمَرَ، وَابْنُ الزُّبَيْرِ، وَعَبْدُ اللَّهِ بْنُ عَدِيٍّ. خَمْسَةٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمْ -، مِنْهُمْ ثَلَاثَةٌ مَدَنِيُّونَ بِأَسَانِيدَ فِي غَايَةِ الصِّحَّةِ.

L15348 He narrated these from the following individuals: Abū Ṣāliḥ al-Sammān, Muḥammad ibn Zayd ibn ʿAbd Allāh ibn ʿUmar, Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, and ʿAṭāʾ ibn Abī Rabāḥ. Three of them were Madani.

وَرَوَاهَا عَنْ هَؤُلَاءِ: أَبُو صَالِحٍ السَّمَّانُ، وَمُحَمَّدُ بْنُ زَيْدِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَعَطَاءُ بْنُ أَبِي رَبَاحٍ، مِنْهُمْ ثَلَاثَةٌ مَدَنِيُّونَ.

L15349 And it was narrated from these: ʿĀṣim ibn Muḥammad, al-Aʿmash, Muḥammad ibn ʿAmr ibn ʿAlqamah, al-Zuhrī, and Ḥabīb al-Muʿallam. Three of them are Medinans.

وَرَوَاهُ عَنْ هَؤُلَاءِ: عَاصِمُ بْنُ مُحَمَّدٍ، وَالْأَعْمَشُ، وَمُحَمَّدُ بْنُ عَمْرِو بْنِ عَلْقَمَةَ، وَالزُّهْرِيُّ، وَحَبِيبُ الْمُعَلِّمُ، مِنْهُمْ ثَلَاثَةٌ مَدَنِيُّونَ.

L15350–15352 It was narrated by these individuals: Wāqid ibn Muḥammad, Abū Muʿāwiyah Muḥammad ibn Ḥāzim (the Blind), Ḥammād ibn Salamah, Ḥammād ibn Zayd, ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī, Maʿmar, and Shuʿayb ibn Abī Ḥamzah. And ʿUqayl ibn Khālid, Ṣāliḥ ibn Kaysān, ʿAbd al-Raḥmān ibn Khālid, and Yūnus ibn Zayd: from them, three are Medinan.

وَرَوَاهُ عَنْ هَؤُلَاءِ: وَاقِدُ بْنُ مُحَمَّدٍ، وَأَبُو مُعَاوِيَةَ مُحَمَّدُ بْنُ حَازِمٍ الضَّرِيرُ، وَحَمَّادُ بْنُ سَلَمَةَ، وَحَمَّادُ بْنُ زَيْدٍ، وَعَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ، وَمَعْمَرٌ، وَشُعَيْبُ بْنُ أَبِي حَمْزَةَ وَعُقَيْلُ بْنُ خَالِدٍ، وَصَالِحُ بْنُ كَيْسَانَ، وَعَبْدُ الرَّحْمَنِ بْنِ خَالِدٍ، وَيُونُسُ بْنُ زَيْدٍ مِنْهُمْ: ثَلَاثَةٌ مَدَنِيُّونَ.

L15353 And it was narrated from these by countless narrators—and all praise is due to Allah, the Lord of the worlds.

وَرَوَاهُ عَنْ هَؤُلَاءِ مَنْ لَا يُحْصَى كَثْرَةً - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L15354 We have stated that this is the view of all the Companions, and that of ʿUmar ibn al-Khaṭṭāb is narrated from him.

وَقَدْ ذَكَرْنَا أَنَّهُ قَوْلُ جَمِيعِ الصَّحَابَةِ، وَقَوْلُ عُمَرَ بْنِ الْخَطَّابِ مَرْوِيًّا عَنْهُ.

L15355 It was narrated to us through the chain of Yahya ibn Saʿid al-Qattan from Sufyan al-Thawri from Aslam al-Munqiri: I said to ʿAta', "Should I go to the Mosque of the Prophet - may Allah bless him and grant him peace - to pray there?" ʿAta' replied to me, "One *tawaf* is dearer to me than your journey to Medina."

وَرُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَسْلَمَ الْمُنْقِرِيِّ: قُلْت لِعَطَاءٍ: آتِي مَسْجِدَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأُصَلِّي فِيهِ؟ قَالَ: فَقَالَ لِي عَطَاءٌ: طَوَافٌ وَاحِدٌ أَحَبُّ إلَيَّ مِنْ سَفَرِك إلَى الْمَدِينَةِ.

L15356 This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, Sufyān, Aḥmad, Abū Sulaymān, and others—and with Allah, the Most High, is the divine success.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَسُفْيَانَ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ - وَبِاللَّهِ تَعَالَى - التَّوْفِيقُ.



AL-MUHALLA

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Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْجِهَادِ] [مَسْأَلَةٌ الْجِهَادُ فَرْضٌ عَلَى الْمُسْلِمِينَ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ بِك اللَّهُمَّ أَسْتَعِينُ كِتَابُ الْجِهَادِ ٩٢٠ - مَسْأَلَةٌ:

وَالْجِهَادُ فَرْضٌ عَلَى الْمُسْلِمِينَ فَإِذَا قَامَ بِهِ مَنْ يَدْفَعُ الْعَدُوَّ وَيَغْزُوهُمْ فِي عُقْرِ دَارِهِمْ وَيَحْمِي ثُغُورَ الْمُسْلِمِينَ سَقَطَ فَرْضُهُ عَنْ الْبَاقِينَ وَإِلَّا فَلَا، قَالَ اللَّهُ - تَعَالَى -: {انْفِرُوا خِفَافًا وَثِقَالا وَجَاهِدُوا بِأَمْوَالِكُمْ وَأَنْفُسِكُمْ} [التوبة: ٤١] .

رُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ نَا مُحَمَّدُ بْنُ خِدَاشٍ نَا إسْمَاعِيلُ بْنُ إبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ - نَا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: كَانَ أَبُو أَيُّوبَ الْأَنْصَارِيُّ يَقُولُ: قَالَ اللَّهُ - تَعَالَى -: {انْفِرُوا خِفَافًا وَثِقَالا} [التوبة: ٤١] فَلَا أَحَدَ مِنْ النَّاسِ إلَّا خَفِيفٌ أَوْ ثَقِيلٌ.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ سَهْمٍ الْأَنْطَاكِيُّ أَخْبَرَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ وُهَيْبٍ الْمَكِّيِّ عَنْ عُمَرَ بْنِ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ سُمَيٍّ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: " مَنْ مَاتَ وَلَمْ يَغْزُ وَلَمْ يُحَدِّثْ [بِهِ] نَفْسَهُ مَاتَ عَلَى شُعْبَةٍ مِنْ نِفَاقٍ "

قَالَ أَبُو مُحَمَّدٍ: هَذَا وَعِيدٌ شَدِيدٌ نَعُوذُ بِاَللَّهِ مِنْهُ.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا إسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ عَلِيِّ بْنِ الْمُبَارَكِ نَا يَحْيَى بْنُ أَبِي كَثِيرٍ نَا أَبُو سَعِيدٍ مَوْلَى الْمَهْرِيِّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

L15357–15358 ****[Book of Jihad]** **[Issue]** Jihad is an obligatory duty on the Muslims.**

L15359 In the name of Allah, the Most Gracious, the Most Merciful. Through You, O Allah, I seek assistance. Book of the Jihad: Legal Question 920 -

L15360 Jihad is an obligation upon Muslims. If those who undertake it [jihad]—by repelling the enemy, conducting expeditions against them in the core of their homeland, and safeguarding the frontiers of the Muslims—fulfill this duty, the obligation ceases to bind the rest. Otherwise, it remains incumbent. Allah—Exalted is He—says: “Go forth, whether lightly or heavily equipped, and strive with your wealth and your lives in the cause of Allah” [Surah al-Tawbah 9:41].[1]

L15361 It was narrated to us through the chain of Ismāʿīl ibn Isḥāq, from Muḥammad ibn Khidāsh, from Ismāʿīl ibn Ibrāhīm (Ibn ʿUlayyah), from Ayyūb (al-Sikhtiyānī), from Muḥammad ibn Sīrīn, who said: Abū Ayyūb al-Anṣārī used to say: Allāh—Exalted is He—said: {Go forth, whether light or heavy} [At-Tawbah: 41]. Thus, there is no one among the people except that he is either light or heavy.[2]

L15362 From the chain of Muslim: Muḥammad ibn ʿAbd al-Raḥmān ibn Sahm al-Anṭākī narrated to us, reporting from ʿAbd Allāh ibn al-Mubārak, from Wuḥayb al-Makkī, from ʿUmar ibn Muḥammad ibn al-Munkadir, from Sumayy, from Abu Ṣāliḥ, from Abu Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him) said: “Whoever dies without having fought and without speaking to himself [about it] dies upon a branch of hypocrisy.”[3]

L15363 Abu Muhammad said: This is a stern warning—we seek refuge in Allah from it.

L15364–15365 From the transmission of Muslim, he informed us: Ismāʿīl ibn Ulayyah narrated from ʿAlī ibn al-Mubārak, who narrated from Yaḥyā ibn Abī Kathīr,

[1] **Qur’an references (L15360):** Qur’an 9:41 (At-Tawbah).
[2] **Qur’an references (L15361):** Qur’an 9:41 (At-Tawbah).
[3] **Hadith references (L15362):** Sahih Muslim 1910.

who narrated from Abū Saʿīd (the client of al-Mahrī) from Abū Saʿīd al-Khudrī: “The Messenger of Allah (peace and blessings be upon him) sent a military detachment to Banū Lihyān of Hudhayl and said: ’One of every two men should set out, and the reward shall be shared between them.”’[4]

L15366 **Issue: The commander ordered him to engage in jihad against the Abode of War.**

L15367 921 – Issue:

L15368 Whoever is commanded by the ruler to wage jihad toward the abode of war, it becomes a compulsory duty upon him to obey him in that, except one who has a decisive excuse.

L15369 It was narrated to us via the chain recorded by Al-Bukhārī: from ʿAlī ibn ʿAbdullāh, from Yaḥyā ibn Saʿīd al-Qaṭṭān, from Sufyān (al-Thawrī), from Manṣūr (ibn al-Muʿtamir), from Mujāhid, from Ṭāwūs, from Ibn ʿAbbās (may Allāh be pleased with them both), who said: The Messenger of Allāh (peace and blessings of Allāh be upon him) said: “There is no emigration after the Conquest, but only jihad and intention remain. When you are summoned to arms, then go forth.”[5]

L15370 **Chapter: Jihad Is Impermissible Without the Permission of Both Parents**

L15371 ٩٢٢ - Issue:

L15372 It is not permissible to undertake jihad except with the permission of both parents, unless the enemy attacks a group of Muslims. In that case, it becomes an obligatory duty upon everyone capable of aiding them to go to their assistance as rescuers—whether the parents have granted permission or not—unless both parents or one of them would be neglected after his departure. In

[4]**Hadith references (L15365):** Sahih Muslim 1896a; Mishkat al-Masabih 3800; Riyad as-Salihin 178.

[5]**Hadith references (L15369):** Sahih al-Bukhari 2783; Sahih al-Bukhari 2825; Sahih Muslim 1864.

- بَعَثَ بَعْثًا إِلَى بَنِي لَحْيَانَ مِنْ هُذَيْلٍ فَقَالَ: لِيَنْبَعِثْ مِنْ كُلِّ رَجُلَيْنِ أَحَدُهُمَا وَالْأَجْرُ بَيْنَهُمَا» .

[مَسْأَلَةٌ أَمَرَهُ الْأَمِيرُ بِالْجِهَادِ إِلَى دَارِ الْحَرْبِ]

٩٢١ - مَسْأَلَةٌ:

وَمَنْ أَمَرَهُ الْأَمِيرُ بِالْجِهَادِ إِلَى دَارِ الْحَرْبِ فَفَرْضٌ عَلَيْهِ أَنْ يُطِيعَهُ فِي ذَلِكَ إِلَّا مَنْ لَهُ عُذْرٌ قَاطِعٌ.

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا عَلِيُّ بْنُ عَبْدِ اللَّهِ نَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نَا سُفْيَانُ هُوَ الثَّوْرِيُّ - حَدَّثَنِي مَنْصُورٌ هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ مُجَاهِدٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ [- رَضِيَ اللَّهُ عَنْهُمَا -] قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا هِجْرَةَ بَعْدَ الْفَتْحِ وَلَكِنْ جِهَادٌ وَنِيَّةٌ وَإِذَا اُسْتُنْفِرْتُمْ فَانْفِرُوا» .

[مَسْأَلَةٌ لَا يَجُوزُ الْجِهَادُ إِلَّا بِإِذْنِ الْأَبَوَيْنِ]

٩٢٢ - مَسْأَلَةٌ:

وَلَا يَجُوزُ الْجِهَادُ إِلَّا بِإِذْنِ الْأَبَوَيْنِ إِلَّا أَنْ يَنْزِلَ الْعَدُوُّ بِقَوْمٍ مِنْ الْمُسْلِمِينَ فَفَرْضٌ عَلَى كُلِّ مَنْ يُمْكِنُهُ إعَانَتُهُمْ أَنْ يَقْصِدَهُمْ مُغِيثًا لَهُمْ أَذِنَ الْأَبَوَانِ أَمْ لَمْ يَأْذَنَا - إلَّا أَنْ يَضِيعَا أَوْ أَحَدُهُمَا بَعْدَهُ، فَلَا يَحِلُّ لَهُ تَرْكُ مَنْ يَضِيعُ مِنْهُمَا.

such a case, it is impermissible for him to neglect whichever of them would be left uncared for.

L15373–15375 It has been narrated to us via Al-Bukhārī's transmission: Adam narrated to us, Shu'bah narrated to us, Habīb ibn Abī Thābit narrated: I heard Abū al-'Abbās al-Shā'ir (a narrator not accused of fabrication in hadith) say: I heard 'Abdullāh ibn 'Amr ibn al-'Āṣ say: "A man came to the Messenger of Allah (peace and blessings be upon him) seeking permission to engage in jihad. He (peace and blessings be upon him) said: 'Are your parents alive?' The man replied: 'Yes.' He said: 'Then strive in jihad by serving them.'" Through the chain of al-Bukhārī: Musaddad narrated to us, from Yaḥyā ibn Sa'īd al-Qaṭṭān, from 'Ubayd Allāh ibn 'Umar, from Nāfi', from Ibn 'Umar, from the Prophet—peace and blessings of Allah be upon him—who said: "Listening and obedience are an obligation so long as one is not commanded to disobey Allah. If commanded to disobey, there shall be no listening and no obedience."

L15376 And it has been narrated to us from Ali ibn Abi Talib—may Allah be pleased with him—that he said: "Obedience applies solely to what is right."

L15377 From 'Alqamah, from Ibn Mas'ud (may Allah be pleased with him), who said: "There is no obedience to anyone in disobedience to Allah, the Most High."

L15378 **Ruling: It is not permissible for a Muslim to flee from a polytheist.**

L15379 923 – Question:

L15380 It is impermissible for a Muslim to flee from one polytheist or two polytheists, even if their numbers are fundamentally large. However, during retreat, he must intend either to join the Muslim forces if he anticipates reaching them or to counterattack. If his sole intention is to expose his back in flight, he becomes a transgressor unless he repents.

L15381 Allah, the Mighty and Sublime, said: "O you who have believed, when you encounter the disbelievers advancing, do not turn your backs to them." [Al-

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا آدَم نَا شُعْبَةُ نَا حَبِيبُ بْنُ أَبِي ثَابِتٍ قَالَ: سَمِعْت أَبَا الْعَبَّاسِ الشَّاعِرَ وَكَانَ لَا يُتَّهَمُ فِي الْحَدِيثِ قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ عَمْرِو بْنِ الْعَاصِ يَقُولُ «جَاءَ رَجُلٌ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاسْتَأْذَنَهُ فِي الْجِهَادِ فَقَالَ لَهُ - عَلَيْهِ السَّلَامُ -: أَحَيٌّ وَالِدَاكَ؟ قَالَ: نَعَمْ. قَالَ: فَفِيهِمَا فَجَاهِدْ» وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا مُسَدَّدٌ نَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «السَّمْعُ وَالطَّاعَةُ حَقٌّ مَا لَمْ يُؤْمَرْ بِمَعْصِيَةٍ فَإِذَا أُمِرَ بِمَعْصِيَةٍ فَلَا سَمْعَ وَلَا طَاعَةَ» .

وَرُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ قَالَ: «إنَّمَا الطَّاعَةُ فِي الْمَعْرُوفِ» .

وَعَنْ عَلْقَمَةَ عَنْ ابْنِ مَسْعُودٍ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ قَالَ «لَا طَاعَةَ لِأَحَدٍ فِي مَعْصِيَةِ اللَّهِ - تَعَالَى -» .

[مَسْأَلَةٌ لَا يَحِلُّ لِمُسْلِمٍ أَنْ يَفِرَّ عَنْ مُشْرِكٍ]

٩٢٣ - مَسْأَلَةٌ:

وَلَا يَحِلُّ لِمُسْلِمٍ أَنْ يَفِرَّ عَنْ مُشْرِكٍ، وَلَا عَنْ مُشْرِكَيْنِ وَلَوْ كَثُرَ عَدَدُهُمْ أَصْلًا؛ لَكِنْ يَنْوِي فِي رُجُوعِهِ التَّحَيُّزَ إلَى جَمَاعَةِ الْمُسْلِمِينَ إنْ رَجَا الْبُلُوغَ إلَيْهِمْ، أَوْ يَنْوِي الْكَرَّ إلَى الْقِتَالِ، فَإِنْ لَمْ يَنْوِ إلَّا تَوْلِيَةَ دُبُرِهِ هَارِبًا فَهُوَ فَاسِقٌ مَا لَمْ يَتُبْ.

Anfal: 15] “Whoever turns his back to them on that day - unless maneuvering for battle or regrouping with a unit - has indeed incurred wrath from Allah, and his refuge will be Hellfire.” [Al-Anfal: 16].[6]

قَالَ اللَّهُ عَزَّ وَجَلَّ: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا زَحْفًا فَلا تُوَلُّوهُمُ الأَدْبَارَ} [الأنفال: ١٥] {وَمَنْ يُوَلِّهِمْ يَوْمَئِذٍ دُبُرَهُ إِلا مُتَحَرِّفًا لِقِتَالٍ أَوْ مُتَحَيِّزًا إِلَى فِئَةٍ فَقَدْ بَاءَ بِغَضَبٍ مِنَ اللَّهِ وَمَأْوَاهُ جَهَنَّمُ} [الأنفال: ١٦] .

L15382 A group held: Fleeing is permissible for one against three or more—and this is incorrect.

قَالَ قَوْمٌ: إِنَّ الْفِرَارَ لَهُ مُبَاحٌ مِنْ ثَلَاثَةٍ فَصَاعِدًا - وَهَذَا خَطَأٌ.

L15383 They argued in that regard by citing Allah’s statement—Exalted is He—: “Now Allah has lightened for you, and He knew that there is weakness in you. So if there are among you a hundred steadfast ones, they would overcome two hundred; and if there are among you a thousand, they would overcome two thousand by the leave of Allah” [Al-Anfal: 66].[7]

وَاحْتَجُّوا فِي ذَلِكَ بِقَوْلِ اللَّهِ - تَعَالَى -: {الآنَ خَفَّفَ اللَّهُ عَنْكُمْ وَعَلِمَ أَنَّ فِيكُمْ ضَعْفًا فَإِنْ يَكُنْ مِنْكُمْ مِائَةٌ صَابِرَةٌ يَغْلِبُوا مِائَتَيْنِ وَإِنْ يَكُنْ مِنْكُمْ أَلْفٌ يَغْلِبُوا أَلْفَيْنِ بِإِذْنِ اللَّهِ} [الأنفال: ٦٦] .

L15384 It has been narrated to us from Ibn Abbas that he said: “If a man flees from two opponents, he has indeed fled, but if he flees from three opponents, he has not fled.”

وَرُوِّينَا عَنِ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ " إِنْ فَرَّ رَجُلٌ مِنْ رَجُلَيْنِ فَقَدْ فَرَّ، وَإِنَّ فَرَّ مِنْ ثَلَاثَةٍ فَلَمْ يَفِرَّ ".

L15385–15387 Abu Muhammad said: As for Ibn Abbas, they differed with him in numerous legal rulings, including the recitation of Umm al-Qur’an. Reciting the Quran aloud during the funeral prayer, his declaration that no prayer exists except with it [the Quran], and much else besides—there is no proof except in the Speech of Allah, the Most High, or the speech of His Messenger (peace and blessings be upon him).

قَالَ أَبُو مُحَمَّدٍ: أَمَّا ابْنُ عَبَّاسٍ فَقَدْ خَالَفُوهُ فِي مِئِينَ مِنَ الْقَضَايَا، مِنْهَا قِرَاءَةُ أُمِّ الْقُرْآنِ جَهْرًا فِي صَلَاةِ الْجَنَازَةِ، وَإِخْبَارُهُ: أَنَّهُ لَا صَلَاةَ إِلَّا بِهَا وَغَيْرُ ذَلِكَ كَثِيرٌ، وَلَا حُجَّةَ إِلَّا فِي كَلَامِ اللَّهِ - تَعَالَى -، أَوْ كَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L15388 As for the verse, they have no valid claim to it, for it contains neither an explicit text nor proof permitting fleeing from the mentioned number. It merely states that Allah—Glorified and Exalted is He—knew there is weakness within us. This is true: truly, weakness exists within us. There is no strong one except that he has weakness relative to what is stronger than him—except Allah, Glorified and Exalted is He, alone. He is the All-Powerful, who neither weakens nor is defeated.

وَأَمَّا الْآيَةُ فَلَا مُتَعَلَّقَ لَهُمْ فِيهَا؛ لِأَنَّهُ لَيْسَ فِيهَا لَا نَصٌّ وَلَا دَلِيلٌ بِإِبَاحَةِ الْفِرَارِ عَنْ الْعَدَدِ الْمَذْكُورِ، وَإِنَّمَا فِيهَا: أَنَّ اللَّهَ - تَعَالَى - عَلِمَ أَنَّ فِينَا ضَعْفًا، وَهَذَا حَقٌّ إنَّ فِينَا لَضَعْفًا وَلَا قَوِيَّ إلَّا وَفِيهِ ضَعْفٌ بِالْإِضَافَةِ إلَى مَا هُوَ أَقْوَى مِنْهُ إلَّا اللَّهُ - تَعَالَى - وَحْدَهُ فَهُوَ الْقَوِيُّ الَّذِي لَا يَضْعُفُ وَلَا يُغْلَبُ.

[6] **Qur’an references (L15381):** Qur’an 8:15 (Al-Anfal); Qur’an 8:16 (Al-Anfal).
[7] **Qur’an references (L15383):** Qur’an 8:66 (Al-Anfal).

وَفِيهَا: أَنَّ اللَّهَ - تَعَالَى - خَفَّفَ عَنَّا فَلَهُ الْحَمْدُ وَمَا زَالَ رَبُّنَا - تَعَالَى - رَحِيمًا بِنَا يُخَفِّفُ عَنَّا فِي جَمِيعِ الْأَعْمَالِ الَّتِي أَلْزَمَنَا.

L15389 And in this is that Allah—the Exalted—has lightened [the burden] for us, so all praise is due to Him. Our Lord—the Exalted—never ceases to be merciful to us, continually lightening for us all the deeds He has enjoined upon us.

وَفِيهَا: أَنَّهُ إنْ كَانَ مِنَّا مِائَةٌ صَابِرُونَ يَغْلِبُوا مِائَتَيْنِ، وَإِنْ يَكُنْ مِنَّا أَلْفٌ يَغْلِبُوا أَلْفَيْنِ بِإِذْنِ اللَّهِ، وَهَذَا حَقٌّ، وَلَيْسَ فِيهِ أَنَّ الْمِائَةَ لَا تَغْلِبُ أَكْثَرَ مِنْ مِائَتَيْنِ وَلَا أَقَلَّ أَصْلًا؛ بَلْ قَدْ تَغْلِبُ ثَلَاثَمِائَةٍ، نَعَمْ وَأَلْفَيْنِ وَثَلَاثَ آلَافٍ وَلَا أَنَّ الْأَلْفَ لَا يَغْلِبُونَ إلَّا أَلْفَيْنِ فَقَطْ لَا أَكْثَرَ وَلَا أَقَلَّ، وَمَنْ ادَّعَى هَذَا فِي الْآيَةِ فَقَدْ أَبْطَلَ وَادَّعَى مَا لَيْسَ فِيهَا مِنْهُ أَثَرٌ، وَلَا إشَارَةٌ، وَلَا نَصٌّ، وَلَا دَلِيلٌ، بَلْ قَدْ قَالَ - عَزَّ وَجَلَّ -: {كَمْ مِنْ فِئَةٍ قَلِيلَةٍ غَلَبَتْ فِئَةً كَثِيرَةً بِإِذْنِ اللَّهِ وَاللَّهُ مَعَ الصَّابِرِينَ} [البقرة: ٢٤٩] ، فَظَهَرَ أَنَّ قَوْلَهُمْ لَا دَلِيلَ عَلَيْهِ أَصْلًا، وَنَسْأَلُهُمْ عَنْ فَارِسٍ بَطَلٍ شَاكِي السِّلَاحِ قَوِيٍّ لَقِيَ ثَلَاثَةً مِنْ شُيُوخِ الْيَهُودِ الْحَرْبِيِّينَ هَرْمَى مَرْضَى رِجَالَةً عُزَّلًا أَوْ عَلَى حَمِيرٍ، أَلَهُ أَنْ يَفِرَّ عَنْهُمْ؟ لَئِنْ قَالُوا: نَعَمْ - لَيَأْتِيَنَّ بِطَامَّةٍ يَأْبَاهَا اللَّهُ وَالْمُؤْمِنُونَ وَكُلُّ ذِي عَقْلٍ، وَإِنْ قَالُوا: لَا لَيَتْرُكُنَّ قَوْلَهُمْ.

L15390 And in this verse: that if there are a hundred steadfast ones among us, they would overcome two hundred, and if there are a thousand of us, they would overcome two thousand by Allah's permission—and this is the truth. It does not state that a hundred cannot overcome more than two hundred or fewer in principle; rather, they might overcome three hundred, indeed even two thousand or three thousand. Nor does it state that a thousand cannot overcome except two thousand exactly, neither more nor less. Whoever claims this in the verse has made a false claim and asserted something for which there is no trace, indication, explicit text, or evidence. Rather, Allah—Exalted and Majestic—has said: *"How many a small company has overcome a large force by Allah's permission! And Allah is with the steadfast"* (Surah Al-Baqarah 2:249). Thus, it becomes clear that their claim has no basis whatsoever. Ask them about a champion warrior, fully equipped and strong, who encounters three elderly Jewish hostile combatants—frail, sick, on foot, unarmed, or mounted on donkeys: Is he permitted to flee from them? If they say yes, they have brought forth an abomination rejected by Allah, the believers, and every rational being. If they say no, they must abandon their claim.[8]

وَكَذَلِكَ نَسْأَلُهُمْ عَنْ أَلْفِ فَارِسٍ، نُخْبَةٍ، أَبْطَالٍ، أَمْجَادٍ، مُسَلَّحِينَ، ذَوِي بَصَائِرَ، لَقَوْا ثَلَاثَةَ آلَافٍ، مِنْ مَحْشُودَةِ بَادِيَةِ النَّصَارَى، رِجَالَةً، مُسَخَّرِينَ أَلَهُمْ أَنْ يَفِرُّوا عَنْهُمْ؟ وَرُوِّينَا عَنْ وَكِيعٍ عَنْ الرَّبِيعِ بْنِ صُبَيْحٍ عَنْ الْحَسَنِ قَالَ: لَيْسَ الْفِرَارُ مِنْ الزَّحْفِ مِنْ الْكَبَائِرِ، إنَّمَا كَانَ ذَلِكَ يَوْمَ بَدْرٍ خَاصَّةً. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَخْصِيصٌ لِلْآيَةِ بِلَا دَلِيلٍ.

L15391 And likewise, we ask them about a thousand elite horsemen: champions, glorious warriors, fully armed, and possessing discernment, who encountered three thousand from the mobilized forces of the Christian desert-dwellers - conscripted men. Did He inspire them to flee from them? It has been narrated to us from Waki' from Al-Rabi' ibn Subayh from Al-Hasan, who said: Fleeing from battle is not among the major sins; that occurred specifically on the day of Badr. Abu Muhammad said: This restricts the verse's generality without evidence.

L15392–15394 It was narrated to us via Al-Bazzar: Amr ibn Ali and Muhammad ibn Muthanna both narrated to us, from Yahya, who narrated to us... Ibn Sa'īd

[8] **Qur'an references (L15390):** Qur'an 2:249 (Al-Baqarah).

al-Qaṭṭān narrated to us: ʿAwf al-Aʿrābī narrated to us from Yazīd al-Fārisī, who narrated to us Ibn ʿAbbās that ʿUthmān said to him: “Al-Anfāl was among the first revelations sent down in Medina.”

رُوِّينَا مِنْ طَرِيقِ الْبَزَّارِ نَا عَمْرُو بْنُ عَلِيٍّ، وَمُحَمَّدُ بْنُ مُثَنَّى، قَالَا جَمِيعًا: نَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نَا عَوْفٌ الْأَعْرَابِيُّ عَنْ يَزِيدَ الْفَارِسِيِّ نَا ابْنُ عَبَّاسٍ أَنَّ عُثْمَانَ قَالَ لَهُ: كَانَتْ (الْأَنْفَالُ) مِنْ أَوَّلِ مَا أُنْزِلَ بِالْمَدِينَةِ.

L15395 We have been narrated through the chain of Muslim: Hārūn ibn Saʿīd al-Abulī narrated to us, Ibn Wahb narrated to us, Sulaymān ibn Bilāl narrated from Thawr ibn Zayd from Abū al-Ghayth from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said: “Avoid the seven ruinous sins.” It was said: “O Messenger of Allah, what are they?” He said: “Associating partners with Allah, sorcery, killing a soul which Allah has forbidden except by right, consuming the wealth of the orphan, consuming usury, fleeing during the military advance, and accusing chaste, unaware, believing women of adultery.” Thus, he—peace be upon him—spoke in general terms and did not specify.[9][10]

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا هَارُونُ بْنُ سَعِيدٍ الْأُبُلِّيُّ نَا ابْنُ وَهْبٍ أَخْبَرَنَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ ثَوْرِ بْنِ زَيْدٍ عَنْ أَبِي الْغَيْثِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «اجْتَنِبُوا السَّبْعَ الْمُوبِقَاتِ قِيلَ يَا رَسُولَ اللَّهِ وَمَا هُنَّ؟ قَالَ: الشِّرْكُ بِاللَّهِ وَالسِّحْرُ وَقَتْلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ، وَأَكْلُ مَالِ الْيَتِيمِ، وَأَكْلُ الرِّبَا، وَالتَّوَلِّي يَوْمَ الزَّحْفِ، وَقَذْفُ الْمُحْصَنَاتِ الْغَافِلَاتِ الْمُؤْمِنَاتِ» فَعَمَّ - عَلَيْهِ السَّلَامُ - وَلَمْ يَخُصَّ.

L15396 From the path of Al-Bukhārī: ʿAbdullāh ibn Muḥammad narrated to us, Muʿāwiyah ibn ʿAmr narrated to us, Abū Isḥāq—who is Al-Fazārī—from Mūsā ibn ʿUqbah, from Sālim Abū al-Naḍr, the freed slave of ʿUmar ibn ʿUbaydillāh, who said: ʿAbdullāh ibn Abī Awfā wrote to him, and he read it—that the Messenger of Allah—peace be upon him—said: “O people, do not wish to meet the enemy, and ask Allah for safety. But if you do meet them, then be patient and know that Paradise is beneath the shades of swords.” Thus, he—peace be upon him—spoke generally and did not specify. The conversion of Abū Hurayrah and ʿAbdullāh ibn Abī Awfā occurred without doubt after the revelation of Sūrah al-Anfāl, which contains the verse they cited as evidence for something of which there is nothing in it.[11]

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ نَا مُعَاوِيَةُ بْنُ عَمْرٍو نَا أَبُو إِسْحَاقَ هُوَ الْفَزَارِيُّ - عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ سَالِمٍ أَبِي النَّضْرِ مَوْلَى عُمَرَ بْنِ عُبَيْدِ اللَّهِ قَالَ: كَتَبَ إِلَيْهِ عَبْدُ اللَّهِ بْنُ أَبِي أَوْفَى فَقَرَأْتُهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يَا أَيُّهَا النَّاسُ لَا تَتَمَنَّوْا لِقَاءَ الْعَدُوِّ وَاسْأَلُوا اللَّهَ الْعَافِيَةَ؟ فَإِذَا لَقِيتُمُوهُمْ فَاصْبِرُوا وَاعْلَمُوا أَنَّ الْجَنَّةَ تَحْتَ ظِلَالِ السُّيُوفِ» فَعَمَّ - عَلَيْهِ السَّلَامُ - وَلَمْ يَخُصَّ، وَإِسْلَامُ أَبِي هُرَيْرَةَ وَابْنِ أَبِي أَوْفَى بِلَا شَكٍّ بَعْدَ نُزُولِ " سُورَةِ الْأَنْفَالِ " الَّتِي فِيهَا الْآيَةُ الَّتِي احْتَجُّوا بِهَا فِيمَا لَيْسَ فِيهَا مِنْهُ شَيْءٌ.

L15397 Ibn ʿAbbās differed from others as narrated to us by ʿAbdullāh ibn Rabīʿ at-

وَقَدْ خَالَفَ ابْنُ عَبَّاسٍ غَيْرَهُ كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ التَّيْمِيُّ نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ الْمَرْوَانِيُّ أَخْبَرَنَا أَبُو خَلِيفَةَ الْفَضْلُ بْنُ الْحُبَابِ الْجُمَحِيُّ، نَا عَبْدُ اللَّهِ بْنُ عَبْدِ الْوَهَّابِ

[9] **Hadith references (L15395):** Sahih Muslim 89.

[10] **Qur’an references (L15395):** Qur’an 6:151 (Al-An’am); Qur’an 17:33 (Al-Isra); Qur’an 25:68 (Al-Furqan).

[11] **Hadith references (L15396):** Sahih Muslim 1742a; Riyad as-Salihin 53.

Tamīmī, who narrated to us from Muḥammad ibn Muʿāwiyah al-Marwānī, who informed us from Abū Khalīfah al-Faḍl ibn al-Ḥubāb al-Jumaḥī, who narrated to us from ʿAbdullāh ibn ʿAbd al-Wahhāb al-Ḥajabī, who narrated to us from Khālid ibn al-Ḥārith al-Hujaymī, who narrated to us from Shuʿbah, from Abū Isḥāq as-Sabīʿī, who said: I heard a man ask al-Barāʾ ibn ʿĀzib: "What is your view if a man were to charge into a detachment of a thousand, would he be casting himself into destruction?" Al-Barāʾ replied: "No. Rather, destruction is when a man commits a sin and casts his hand, saying: 'There is no repentance for me.'"

الْحَجَبِيُّ نَا خَالِدُ بْنُ الْحَارِثِ الْهُجَيْمِيُّ نَا شُعْبَةُ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ قَالَ: سَمِعْت رَجُلًا سَأَلَ الْبَرَاءَ بْنَ عَازِبٍ: أَرَأَيْت لَوْ أَنَّ رَجُلًا حَمَلَ عَلَى الْكَتِيبَةِ وَهُمْ أَلْفٌ، أَلْقَى بِيَدِهِ إلَى التَّهْلُكَةِ؟ قَالَ الْبَرَاءُ لَا، وَلَكِنَّ التَّهْلُكَةَ: أَنْ يُصِيبَ الرَّجُلُ الذَّنْبَ فَيُلْقِي بِيَدِهِ وَيَقُولُ: لَا تَوْبَةَ لِي.

L15398 Narrated by Umar ibn al-Khattab: When you meet, do not flee.

وَعَنْ عُمَرَ بْنِ الْخَطَّابِ: إذَا لَقِيتُمْ فَلَا تَفِرُّوا.

L15399 Narrated by Ali and Ibn Umar: Fleeing from battle is one of the major sins.

وَعَنْ عَلِيٍّ، وَابْنِ عُمَرَ: الْفِرَارُ مِنْ الزَّحْفِ مِنْ الْكَبَائِرِ.

L15400 They did not specify a particular number, and neither Abū Ayyūb al-Ansārī nor Abū Mūsā al-Ashʿarī denied that a man alone should charge into the vast, advancing army and stand firm until he is killed.

وَلَمْ يَخُصُّوا عَدَدًا مِنْ عَدَدٍ، وَلَمْ يُنْكِرْ أَبُو أَيُّوبَ الْأَنْصَارِيُّ، وَلَا أَبُو مُوسَى الْأَشْعَرِيُّ أَنْ يَحْمِلَ الرَّجُلُ وَحْدَهُ، عَلَى الْعَسْكَرِ الْجَرَّارِ وَيَثْبُتَ حَتَّى يُقْتَلَ.

L15401–15402 They mentioned a mursal hadith through the chain of Al-Hasan: "The Muslims encountered the polytheists, and a man said, 'O Messenger of Allah, shall I press the assault against them or charge at them?' The Messenger of Allah—peace and blessings be upon him—said to him, 'Do you think you can kill all of them? Sit. When your companions rise, rise with them, and when they intensify their attack, intensify yours.'" This is a mursal narration holding no legal authority. Rather, the authenticated report from the Prophet—peace be upon him—states: "A man among his companions asked, 'What causes Allah to laugh at His servant?' He replied, 'His plunging into the enemy without armor.' Thereupon the man removed his armor and charged into the enemy ranks until he was slain—may Allah be pleased with him."

وَقَدْ ذَكَرُوا حَدِيثًا مُرْسَلًا مِنْ طَرِيقِ الْحَسَنِ «أَنَّ الْمُسْلِمِينَ لَقُوا الْمُشْرِكِينَ فَقَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ أَشُدُّ عَلَيْهِمْ، أَوْ أَحْمِلُ عَلَيْهِمْ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَتُرَاكَ قَاتِلٌ هَؤُلَاءِ كُلَّهُمْ اجْلِسْ، فَإِذَا نَهَضَ أَصْحَابُكَ فَانْهَضْ وَإِذَا شَدُّوا فَشُدَّ» وَهَذَا مُرْسَلٌ لَا حُجَّةَ فِيهِ، بَلْ قَدْ صَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ -: «أَنَّ رَجُلًا مِنْ أَصْحَابِهِ سَأَلَهُ مَا يُضْحِكُ اللَّهُ مِنْ عَبْدِهِ؟ قَالَ: غَمْسُهُ يَدَهُ فِي الْعَدُوِّ حَاسِرًا فَنَزَعَ الرَّجُلُ دِرْعَهُ وَدَخَلَ فِي الْعَدُوِّ حَتَّى قُتِلَ - رَضِيَ اللَّهُ عَنْهُ -» .

[An Issue Regarding the Burning and Demolition of the Polytheists' Trees and Houses]

[مَسْأَلَةُ تَحْرِيقُ أَشْجَارِ الْمُشْرِكِينَ وَدُورِهِمْ وَهَدْمُهَا]

L15404 924 – Issue:

٩٢٤ - مَسْأَلَةٌ:

L15405 It is permissible to burn the trees of the polytheists, their provisions, their crops, and their dwellings, and to demolish them. Allah the Exalted said: "Whatever palm trees you cut down or left standing on their roots, it was by Allah's permission, so that He might disgrace the defiantly disobedient" [59:5]. And He the Exalted said: "Nor do they set foot in any place that angers the disbelievers, nor do they gain any advantage over an enemy except that a righteous deed is recorded for them because of it" [9:120]. The Messenger of Allah—peace and blessings of Allah be upon him—burned the date palms of Banu al-Nadir, which were on the outskirts of Medina, and he knew they would come into the possession of the Muslims in a day or two.[12]

وَجَائِزٌ تَحْرِيقُ أَشْجَارِ الْمُشْرِكِينَ، وَأَطْعِمَتِهِمْ، وَزَرْعِهِمْ وَدُورِهِمْ، وَهَدْمُهَا، قَالَ اللَّهُ - تَعَالَى -: {مَا قَطَعْتُمْ مِنْ لِينَةٍ أَوْ تَرَكْتُمُوهَا قَائِمَةً عَلَى أُصُولِهَا فَبِإِذْنِ اللَّهِ وَلِيُخْزِيَ الْفَاسِقِينَ} [الحشر: ٥] وَقَالَ - تَعَالَى - {وَلا يَطَئُونَ مَوْطِئًا يَغِيظُ الْكُفَّارَ وَلا يَنَالُونَ مِنْ عَدُوٍّ نَيْلا إِلا كُتِبَ لَهُمْ بِهِ عَمَلٌ صَالِحٌ} [التوبة: ١٢٠] وَقَدْ أَحْرَقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَخْلَ بَنِي النَّضِيرِ - وَهِيَ فِي طَرَفِ دُورِ الْمَدِينَةِ - وَقَدْ عَلِمَ أَنَّهَا تَصِيرُ لِلْمُسْلِمِينَ فِي يَوْمٍ أَوْ غَدِهِ.

L15406 We have been narrated from Abu Bakr al-Siddiq, may Allah be pleased with him: "Do not ever cut down a fruit-bearing tree nor destroy a thriving structure." No one has a valid argument against the Messenger of Allah, peace and blessings be upon him. Abu Bakr may prohibit such actions voluntarily, because refraining from such actions is also permissible as indicated in the aforementioned verse. The Prophet, peace and blessings be upon him, did not cut down the palm trees of Khaybar either. All of this is commendable—and with Allah, the Exalted, lies all success.

وَقَدْ رُوِّينَا عَنْ أَبِي بَكْرٍ الصِّدِّيقِ - رَضِيَ اللَّهُ عَنْهُ -: لَا تَقْطَعَنَّ شَجَرًا مُثْمِرًا وَلَا تُخَرِّبَنَّ عَامِرًا، وَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ يَنْهَى أَبُو بَكْرٍ عَنْ ذَلِكَ اخْتِيَارًا، لِأَنَّ تَرْكَ ذَلِكَ أَيْضًا مُبَاحٌ كَمَا فِي الْآيَةِ الْمَذْكُورَةِ، وَلَمْ يَقْطَعْ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَيْضًا نَخْلَ خَيْبَرَ، فَكُلُّ ذَلِكَ حَسَنٌ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L15407 925 – Issue:

٩٢٥ - مَسْأَلَةٌ:

L15408 It is impermissible to maim any of their animals whatsoever—neither camels, cattle, sheep, horses, chickens, pigeons, geese, wild ducks, nor others—except solely for consumption. Pigs are wholly excluded and must be maimed (killed) without exception. Horses are excluded exclusively during combat. This applies whether Muslims have captured them or not, whether the enemy overtakes them and Muslims cannot prevent their seizure, or if the enemy does not reach them. All such animals must inevitably be left untouched if it is not possible to prevent their seizure or drive them away. None of their bees may be maimed, drowned, or have their hives burned.

وَلَا يَحِلُّ عَقْرُ شَيْءٍ مِنْ حَيَوَانِهِمْ أَلْبَتَّةَ لَا إبِلٍ، وَلَا بَقَرٍ، وَلَا غَنَمٍ، وَلَا خَيْلٍ، وَلَا دَجَاجٍ، وَلَا حَمَامٍ، وَلَا أَوَزٍّ، وَلَا بَرَكٍ، وَلَا غَيْرِ ذَلِكَ إلَّا لِلْأَكْلِ فَقَطْ، حَاشَا الْخَنَازِيرَ جُمْلَةً فَتُعْقَرُ، وَحَاشَا الْخَيْلَ فِي حَالِ الْمُقَاتَلَةِ فَقَطْ، وَسَوَاءٌ أَخَذَهَا الْمُسْلِمُونَ، أَوْ لَمْ يَأْخُذُوهَا أَدْرَكَهَا الْعَدُوُّ وَلَمْ يَقْدِرْ الْمُسْلِمُونَ عَلَى مَنْعِهَا، أَوْ لَمْ يُدْرِكُوهَا وَيُخَلَّى كُلُّ ذَلِكَ وَلَا بُدَّ إنْ لَمْ يُقْدَرْ عَلَى مَنْعِهِ، وَلَا عَلَى سَوْقِهِ، وَلَا يُعْقَرُ شَيْءٌ مِنْ نَحْلِهِمْ، وَلَا يُغَرَّقُ، وَلَا تُحَرَّقُ خَلَايَاهُ.

L15409 Similarly, if someone's animal falls into the Domain of War (Dār al-Ḥarb), it

[12] **Qur'an references (L15405):** Qur'an 59:5 (Al-Hashr); Qur'an 9:120 (At-Tawbah).

is not permissible for him to slaughter it. Rather, he must leave it as it is, and it remains his property perpetually, as part of his wealth, just as it originally was. No ruling lacking textual evidence can invalidate his ownership of it.

وَكَذَلِكَ مَنْ وَقَعَتْ دَابَّتُهُ فِي دَارِ الْحَرْبِ فَلَا يَحِلُّ لَهُ عَقْرُهَا لَكِنْ يَدَعُهَا كَمَا هِيَ وَهِيَ لَهُ أَبَدًا مَالٌ مِنْ مَالِهِ كَمَا كَانَتْ لَا يُزِيلُ مِلْكَهُ عَنْهَا حُكْمٌ بِلَا نَصٍّ.

L15410 This is the opinion of Mālik and Abū Sulaymān.

وَهُوَ قَوْلُ مَالِكٍ، وَأَبِي سُلَيْمَانَ.

L15411–15412 The Hanafis and Malikis said: All such animals are to be slaughtered. As for camels, cattle, and sheep, they are to be slaughtered and then burned. As for horses, mules, and donkeys, they are only to be slaughtered.

وَقَالَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ: يُعْقَرُ كُلُّ ذَلِكَ، فَأَمَّا الْإِبِلُ، وَالْبَقَرُ، وَالْغَنَمُ، فَتُعْقَرُ، ثُمَّ تُحْرَقُ، وَأَمَّا الْخَيْلُ، وَالْبِغَالُ، وَالْحَمِيرُ فَتُعْقَرُ فَقَطْ.

L15413 The Malikis said: As for mules and donkeys, they are to be slaughtered. As for horses, they are not to be slaughtered nor hamstrung, but rather they are to be disabled by cutting their tendons or have their bellies split.

وَقَالَ الْمَالِكِيُّونَ: أَمَّا الْبِغَالُ، وَالْحَمِيرُ، فَتُذْبَحُ، وَأَمَّا الْخَيْلُ فَلَا تُذْبَحُ، وَلَا تُعْقَرُ، لَكِنْ تُعَرْقَبُ، أَوْ تُشَقُّ أَجْوَافُهَا.

L15414 Abu Muhammad said: In this speech lies confusion unmistakable to a person of understanding. The first issue is that it is an unsubstantiated claim and a differentiation unattested before them. Their argument was that they occasionally ate camels, cattle, sheep, and horses if they found them slaughtered by nahr. This argument, however, caused greater confusion than the position it sought to defend.

قَالَ أَبُو مُحَمَّدٍ: فِي هَذَا الْكَلَامِ مِنَ التَّخْلِيطِ مَا لَا خَفَاءَ بِهِ عَلَى ذِي فَهْمٍ، أَوَّلُ ذَلِكَ: أَنَّهُ دَعْوَى بِلَا بُرْهَانٍ، وَتَفْرِيقٌ لَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُمْ، وَكَانَتْ حُجَّتُهُمْ فِي ذَلِكَ أَنَّهُمْ رُبَّمَا أَكَلُوا الْإِبِلَ، وَالْبَقَرَ، وَالْغَنَمَ، وَالْخَيْلَ إِذَا وَجَدُوهَا مَنْحُورَةً فَكَانَ هَذَا الِاحْتِجَاجُ أَدْخَلَ فِي التَّخْلِيطِ مِنَ الْقَوْلَةِ الْمُحْتَجِّ لَهَا.

L15415 I wish I knew when the Christians, Zoroastrians, or idol worshippers ever avoided eating donkeys or mules and restricted themselves to eating livestock and horses. And all these people eat carrion while prohibiting no animal whatsoever. As for the Jews and the Sabians: they do not eat anything at all that was ritually slaughtered by others - and this is most astonishing.

وَلَيْتَ شِعْرِي مَتَى كَانَتِ النَّصَارَى، أَوِ الْمَجُوسُ، أَوْ عُبَّادُ الْأَوْثَانِ يَتَجَنَّبُونَ أَكْلَ حِمَارٍ، أَوْ بَغْلٍ، وَيَقْتَصِرُونَ عَلَى أَكْلِ الْأَنْعَامِ، وَالْخَيْلِ، وَكُلُّ هَؤُلَاءِ يَأْكُلُونَ الْمَيْتَةَ، وَلَا يُحَرِّمُونَ حَيَوَانًا أَصْلًا - وَأَمَّا الْيَهُودُ، وَالصَّابِئُونَ: فَلَا يَأْكُلُونَ شَيْئًا ذَكَّاهُ غَيْرُهُمْ أَصْلًا - وَهَذَا عَجَبٌ جِدًّا.

L15416 They argued for permitting the killing of all such individuals based on the statement of Allah, the Exalted: “Nor do they tread any ground that enrages the disbelievers, nor do they strike any blow against an enemy except that a good deed is thereby recorded for them.” [At-Tawbah: 120][13]

وَاحْتَجُّوا فِي إِبَاحَتِهِمْ قَتْلَ كُلِّ ذَلِكَ بِقَوْلِ اللَّهِ - تَعَالَى -: {وَلا يَطَئُونَ مَوْطِئًا يَغِيظُ الْكُفَّارَ وَلا يَنَالُونَ مِنْ عَدُوٍّ نَيْلا إِلا كُتِبَ لَهُمْ بِهِ عَمَلٌ صَالِحٌ} [التوبة: ١٢٠] .

[13] **Qur’an references (L15416):** Qur’an 9:120 (At-Tawbah).

L15417 Abū Muḥammad said: So we said to them: “Then kill their children, their infants, and their women by this juridical reasoning - would this not undoubtedly provoke them more than killing their animals?” They replied: “The Messenger of God - peace and blessings of God be upon him - prohibited killing women and children.” We said to them: “And he (peace be upon him) likewise prohibited killing animals except for consumption, and there is no distinction. Indeed, God - Exalted is He - has commanded us to provoke them through what He has not forbidden, not by means of what He has prohibited us from doing.”

قَالَ أَبُو مُحَمَّد: فَقُلْنَا لَهُمْ: فَاقْتُلُوا أَوْلَادَهُمْ، وَصِغَارَهُمْ، وَنِسَاءَهُمْ، بِهَذَا الِاسْتِدْلَالِ فَهُوَ بِلَا شَكٍّ أَغِيظُ لَهُمْ مِنْ قَتْلِ حَيَوَانِهِمْ؟ فَقَالُوا: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ قَتْلِ النِّسَاءِ، وَالصِّبْيَانِ. فَقُلْنَا لَهُمْ: وَهُوَ - عَلَيْهِ السَّلَامُ - نَهْيٌ عَنْ قَتْلِ الْحَيَوَانِ، إلَّا لِمَأْكَلِهِ، وَلَا فَرْقَ؛ وَإِنَّمَا أَمَرَنَا اللَّهُ - تَعَالَى - أَنْ نَغِيظَهُمْ فِيمَا لَمْ يَنْهَ عَنْهُ لَا بِمَا حُرِّمَ عَلَيْنَا فِعْلُهُ.

L15418 It was narrated to us through the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn ʿAbdullāh ibn Yazīd al-Muqrī narrated to us: Sufyān ibn ʿUyaynah narrated to us from ʿAmr (he is Ibn Dīnār) from Ṣuhayb, the freedman of Ibn ʿĀmir, from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ that the Messenger of Allah—peace and blessings be upon him—said: “No person kills a sparrow or anything beyond that unjustly but Allah—the Mighty and Majestic—will hold him accountable for it.” They asked: “O Messenger of Allah, what is its rightful due?” He replied: “Slaughter it properly to eat it, and do not cut off its head to throw it away.”

رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي نَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرٍو هُوَ ابْنُ دِينَارٍ - عَنْ صُهَيْبٍ مَوْلَى ابْنِ عَامِرٍ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَا مِنْ إنْسَانٍ يَقْتُلُ عُصْفُورًا فَمَا فَوْقَهَا بِغَيْرِ حَقِّهَا إلَّا سَأَلَهُ اللَّهُ - عَزَّ وَجَلَّ - عَنْهَا. قِيلَ: يَا رَسُولَ اللَّهِ وَمَا حَقُّهَا؟ قَالَ يَذْبَحُهَا فَيَأْكُلُهَا وَلَا يَقْطَعُ رَأْسَهَا يَرْمِي بِهِ» .

L15419–15420 From the chain of Muslim ibn al-Ḥajjāj: Muḥammad ibn Ḥātim reported to us, Yaḥyā ibn Saʿīd al-Qaṭṭān reported to us from Ibn Jurayj, who narrated to me from Abū al-Zubayr that he heard Jābir ibn ʿAbd Allāh say: “The Prophet—peace and blessings be upon him—forbade killing any animal by immobilization.”

وَمِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نَا مُحَمَّدُ بْنُ حَاتِمٍ نَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ ابْنِ جُرَيْجٍ حَدَّثَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ «نَهَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَنْ يُقْتَلَ شَيْءٌ مِنْ الدَّوَابِّ صَبْرًا»

L15421 Through the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn Zunbur al-Makkī informed us, [saying:] Ibn Abī Ḥāzim informed us, from Yazīd ibn al-Hādī, from Muʿāwiyah ibn ʿAbdillāh ibn Jaʿfar, from his father, who said: The Messenger of Allāh (peace be upon him) said: “Do not disfigure the bodies of animals.”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنَا مُحَمَّدُ بْنُ زُنْبُورٍ الْمَكِّيُّ نَا ابْنُ أَبِي حَازِمٍ عَنْ يَزِيدَ بْنِ الْهَادِ عَنْ مُعَاوِيَةَ بْنِ عَبْدِ اللَّهِ بْنِ جَعْفَرٍ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُمَثِّلُوا بِالْبَهَائِمِ» .

L15422 From the narration of Malik, from Yahya ibn Saʿid al-Ansari, that Abu Bakr al-Siddiq—may Allah be pleased with him—said to the military commander he dispatched to Syria: “Do not hamstring a sheep or a camel except for con-

sumption, do not burn beehives or drown them." None of the Companions are known to have disagreed with him on this matter.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ - رَضِيَ اللَّهُ عَنْهُ - قَالَ لِأَمِيرِ جَيْشٍ بَعَثَهُ إِلَى الشَّامِ: لَا تَعْقِرَنَّ شَاةً وَلَا بَعِيرًا إِلَّا لِمَأْكَلَةٍ وَلَا تُحَرِّقَنَّ نَحْلًا وَلَا تُغْرِقَنَّهُ، وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مِنْ الصَّحَابَةِ مُخَالِفٌ.

L15423 As for pigs, we have been narrated through the chain of Al-Bukhārī: From Isḥāq ibn Rāhwayh, from Yaʿqūb ibn Ibrāhīm ibn Saʿd, from his father, from Ṣāliḥ ibn Kayṣān, from Ibn Shihāb, that Saʿīd ibn al-Musayyib heard Abū Hurayrah say: The Messenger of Allah, peace and blessings be upon him, said, "By the One in whose hand my soul rests, it is imminent that Jesus son of Mary will descend among you as a just arbiter. He will break the cross and kill the pig." Thus, he, peace be upon him, informed that killing the pig is part of the firmly established justice in his religion, which his brother in faith ʿĪsā, peace be upon them both, will revive.[14]

وَأَمَّا الْخَنَازِيرُ فَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا إِسْحَاقُ هُوَ ابْنُ رَاهْوَيْهِ - نَا يَعْقُوبُ بْنُ إبْرَاهِيمَ بْنِ سَعْدٍ نَا أَبِي عَنْ صَالِحِ بْنِ كَيْسَانَ عَنْ ابْنِ شِهَابٍ أَنَّ سَعِيدَ بْنَ الْمُسَيِّبِ سَمِعَ أَبَا هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَالَّذِي نَفْسِي بِيَدِهِ لَيُوشِكَنَّ أَنْ يَنْزِلَ فِيكُمْ ابْنُ مَرْيَمَ حَكَمًا عَدْلًا فَيَكْسِرَ الصَّلِيبَ، وَيَقْتُلَ الْخِنْزِيرَ» فَأَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّ قَتْلَ الْخِنْزِيرِ مِنْ الْعَدْلِ الثَّابِتِ فِي مِلَّتِهِ الَّتِي يُحْيِيهَا عِيسَى أَخُوهُ - عَلَيْهِمَا السَّلَامُ -.

L15424 Some people mentioned an unsubstantiated report stating that Jaʿfar ibn Abī Ṭālib hamstrung his horse on the day he was killed. This is a narration transmitted by ʿAbbād ibn ʿAbdullāh ibn al-Zubayr from an unnamed man of Banū Murrah. Even if it were authentic, it would not constitute evidence, for it contains no indication that the Prophet—peace be upon him—knew of this act and approved it.

وَذَكَرَ بَعْضُ النَّاسِ خَبَرًا لَا يَصِحُّ، فِيهِ: أَنَّ جَعْفَرَ بْنَ أَبِي طَالِبٍ عَرْقَبَ فَرَسَهُ يَوْمَ قُتِلَ - وَهَذَا خَبَرٌ رَوَاهُ عَبَّادُ بْنُ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ عَنْ رَجُلٍ مِنْ بَنِي مُرَّةَ لَمْ يُسَمِّهِ، وَلَوْ صَحَّ لَمَا كَانَ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَيْسَ فِيهِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَرَفَ ذَلِكَ فَأَقَرَّهُ.

L15425 In defensive situations, a Muslim may defend his horse against anyone seeking to kill it or seize it by whatever means available.

وَأَمَّا الْفَرَسُ فِي الْمُدَافَعَةِ فَإِنَّ لِلْمُسْلِمِ أَنْ يَدْفَعَ عَنْهُ مَنْ أَرَادَ قَتْلَهُ أَوْ أَسْرَهُ بِأَيِّ شَيْءٍ أَمْكَنَهُ.

L15426 Issue: The Killing of the Women of the Polytheists and Those Who Have Not Attained Maturity Among Them

[مَسْأَلَةٌ قَتْلُ نِسَاءِ الْمُشْرِكِينَ وَمَنْ لَمْ يَبْلُغْ مِنْهُمْ]

L15427 Issue 926:

٩٢٦ - مَسْأَلَةٌ:

L15428 It is not permissible to kill their women nor those among them who have

[14] **Hadith references (L15423):** Mishkat al-Masabih 5505.

not reached the age of discernment, unless one of those we mentioned takes up arms, leaving the Muslim no means of escape from him except by killing him, in which case the Muslim is permitted to kill him at that point.

L15429–15431 It was narrated to us through the chain of Al-Bukhārī: Aḥmad ibn Yūnus narrated to us, Al-Layth ibn Saʿd narrated to us, from Nāfiʿ that... Ibn ʿUmar reported that a woman was found killed during some of the military expeditions of the Prophet (peace and blessings be upon him), and he rejected the killing of women and boys.

L15432 927 - Issue:

L15433 If they are harmed without intent during night raids or in the chaos of intense battle, there is no blame in that.

L15434 It was narrated to us through the chain of Al-Bukhārī: ʿAlī ibn ʿAbdullāh narrated to us, Sufyān narrated to us, Al-Zuhrī narrated to us from ʿUbaydullāh ibn ʿAbdullāh ibn ʿUtbah from Ibn ʿAbbās from Al-Ṣaʿb ibn Jaththāmah al-Laythī that "the Messenger of Allah, peace and blessings be upon him, was asked about the people of a household from among the polytheists who are attacked by night, leading to harm of their offspring and women. He said: 'They are reckoned with their fathers.'"

L15435 928. Issue:

L15436 It is permissible to kill all others besides those we have mentioned among the polytheists—whether combatants or non-combatants, merchants, hired laborers (the laborer bound by contract), elderly men whether of sound judgment or not, farmers, bishops, priests, monks, blind persons, or disabled persons confined to seats. Do not exclude anyone.

L15437 It is also permissible to spare them. Allah, the Exalted, said: {So kill the polytheists wherever you find them, seize them, besiege them, and lie in wait for them at every lookout. But if they repent, establish prayer, and give Zakāh, then release them} [Al-Tawbah: 5]. Thus, the Almighty and Majestic

وَلَا يَحِلُّ قَتْلُ نِسَائِهِمْ وَلَا قَتْلُ مَنْ لَمْ يَبْلُغْ مِنْهُمْ، إِلَّا أَنْ يُقَاتِلَ أَحَدٌ مِمَّنْ ذَكَرْنَا فَلَا يَكُونُ لِلْمُسْلِمِ مَنْجًى مِنْهُ إِلَّا بِقَتْلِهِ فَلَهُ قَتْلُهُ حِينَئِذٍ.

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا أَحْمَدُ بْنُ يُونُسَ نَا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ أَخْبَرَهُ " أَنَّ [امْرَأَةً وُجِدَتْ فِي بَعْضِ مَغَازِي النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَقْتُولَةً فَأَنْكَرَ] رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَتْلَ النِّسَاءِ وَالصِّبْيَانِ ".

٩٢٧ - مَسْأَلَةٌ:

فَإِنْ أُصِيبُوا فِي الْبَيَاتِ أَوْ فِي اخْتِلَاطِ الْمَلْحَمَةِ عَنْ غَيْرِ قَصْدٍ فَلَا حَرَجَ فِي ذَلِكَ.

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا عَلِيُّ بْنُ عَبْدِ اللَّهِ نَا سُفْيَانُ نَا الزُّهْرِيُّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ الصَّعْبِ بْنِ جَثَّامَةَ اللَّيْثِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ عَنْ أَهْلِ الدَّارِ يُبَيَّتُونَ مِنْ الْمُشْرِكِينَ فَيُصَابُ مِنْ ذَرَارِيِّهِمْ وَنِسَائِهِمْ؟ فَقَالَ: هُمْ مِنْ آبَائِهِمْ» .

٩٢٨ - مَسْأَلَةٌ:

وَجَائِزٌ قَتْلُ كُلِّ مَنْ عَدَا مِنْ ذَكَرْنَا مِنْ الْمُشْرِكِينَ مِنْ مُقَاتِلٍ، أَوْ غَيْرِ مُقَاتِلٍ، أَوْ تَاجِرٍ، أَوْ أَجِيرٍ - وَهُوَ الْعَسِيفُ - أَوْ شَيْخٍ كَبِيرٍ كَانَ ذَا رَأْيٍ، أَوْ لَمْ يَكُنْ، أَوْ فَلَّاحٍ، أَوْ أُسْقُفٍ، أَوْ قِسِّيسٍ، أَوْ رَاهِبٍ، أَوْ أَعْمَى، أَوْ مُقْعَدٍ لَا تُحَاشِ أَحَدًا.

وَجَائِزٌ اسْتِبْقَاؤُهُمْ أَيْضًا قَالَ اللَّهُ - تَعَالَى -: {فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصَدٍ فَإِنْ تَابُوا وَأَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ} [التوبة: ٥] فَعَمَّ - عَزَّ وَجَلَّ - كُلَّ مُشْرِكٍ بِالْقَتْلِ إِلَّا أَنْ يُسْلِمَ.

has encompassed all polytheists with the ruling of killing unless they embrace Islam.[15]

L15438 A group said: None of those we mentioned should be killed. They argued using a report we narrated through the chain of Ahmad ibn Shu'ayb—who informed us—from Qutaybah, from al-Mughirah, from Abu al-Zinad, from al-Muraqqaʿ, from his grandfather Rabah ibn al-Rabiʿ, who said: "We were with the Messenger of Allah—peace and blessings be upon him—when he told a man: 'Overtake Khalid and say to him: Do not kill any offspring or hired worker.'"

وَقَالَ قَوْمٌ: لَا يُقْتَلُ أَحَدٌ مِمَّنْ ذَكَرْنَا، وَاحْتَجُّوا بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنَا قُتَيْبَةُ نَا الْمُغِيرَةُ عَنْ أَبِي الزِّنَادِ عَنْ الْمُرَقَّعِ عَنْ جَدِّهِ رَبَاحِ بْنِ الرَّبِيعِ قَالَ «كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لِرَجُلٍ: أَدْرِكْ خَالِدًا وَقُلْ لَهُ: لَا تَقْتُلَنَّ ذُرِّيَّةً، وَلَا عَسِيفًا» .

L15439 And by the narration of Sufyān from ʿAbdullāh ibn Dhakwān from al-Muraqqiʿ ibn Ṣayfī from his uncle Ḥanẓalah the scribe: "The Messenger of Allah, peace and blessings be upon him, said: 'Do not kill children or hired workers.'"

وَمِنْ طَرِيقِ سُفْيَانَ عَنْ عَبْدِ اللَّهِ بْنِ ذَكْوَانَ عَنْ الْمُرَقَّعِ بْنِ صَيْفِيٍّ عَنْ عَمِّهِ حَنْظَلَةَ الْكَاتِبِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَقْتُلُوا الذُّرِّيَّةَ وَلَا عَسِيفًا» .

L15440–15442 From the path of Abū Bakr ibn Abī Shaybah, who narrated to us: Yaḥyā ibn Ādam narrated to us, al-Ḥasan ibn Ṣāliḥ ibn Ḥuyayy narrated to us, from Khālid ibn al-Firr, from Anas ibn Mālik that the Messenger of Allāh—may Allāh's peace and blessings be upon him—said to them: "Depart in the name of Allāh and in the path of Allāh; you will fight the enemies of Allāh. Do not kill a frail elderly man, a child, or a woman." Through the chain of Ibn Abi Shaybah, who informed us: From Humaid, from a sheikh among the people of Medina—a client of Banī Abd al-Ashhal—from Dāwūd ibn al-Husayn, from Ikrimah, from Ibn Abbās: "The Messenger of Allah (may Allah bless him and grant him peace), when dispatching his armies, would say: 'Do not kill the dwellers of the hermitages.'"

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نَا يَحْيَى بْنُ آدَمَ نَا الْحَسَنُ بْنُ صَالِحِ بْنِ حُيَيٍّ عَنْ خَالِدِ بْنِ الْفِرْزِ «عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُمْ: انْطَلِقُوا بِاسْمِ اللَّهِ وَفِي سَبِيلِ اللَّهِ تُقَاتِلُونَ عَدُوَّ اللَّهِ لَا تَقْتُلُوا شَيْخًا فَانِيًا، وَلَا طِفْلًا، وَلَا امْرَأَةً» وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا حُمَيْدٌ عَنْ شَيْخٍ مِنْ أَهْلِ الْمَدِينَةِ مَوْلًى لِبَنِي عَبْدِ الْأَشْهَلِ عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ إذَا بَعَثَ جُيُوشَهُ قَالَ: لَا تَقْتُلُوا أَصْحَابَ الصَّوَامِعِ» .

L15443 And through the path of al-Qaʿnabī, who narrated to us: Ibrāhīm ibn Ismāʿīl from Dāwūd ibn al-Ḥuṣayn from ʿIkrimah, who said: The Messenger of Allah (peace be upon him) said, "Do not kill the inhabitants of monasteries."

وَمِنْ طَرِيقِ الْقَعْنَبِيِّ نَا إبْرَاهِيمُ بْنُ إسْمَاعِيلَ عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ عِكْرِمَةَ " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تَقْتُلُوا أَصْحَابَ الصَّوَامِعِ» .

L15444 Through the transmission of Hammad ibn Salamah, Ubaydullah ibn Umar reported to us, saying: "Umar ibn Abd al-Aziz wrote to some of his gover-

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَخْبَرَنَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ قَالَ: «كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ إلَى بَعْضِ أُمَرَائِهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: لَا تَقْتُلُوا صَغِيرًا وَلَا امْرَأَةً وَلَا شَيْخًا كَبِيرًا» .

[15] **Qur'an references (L15437):** Qur'an 9:5 (At-Tawbah).

nors: 'The Messenger of Allah (peace and blessings be upon him) said: Do not kill a child, a woman, or an elderly man.'"

L15445 From Hammad ibn Salamah, from an elder in Mina, from his father: "The Messenger of Allah (peace and blessings be upon him) forbade the killing of small ants and lizards."

L15446 And narrated via the chain of Qays ibn al-Rabiʿ, from ʿUmar, the freed slave of ʿAnbasah, from Zayd ibn ʿAli ibn al-Ḥusayn, from his father, from ʿAli ibn Abī Ṭālib: "The Prophet—peace and blessings of Allah be upon him—prohibited killing an elder or uprooting a tree, except a tree that harms them [i.e., the Muslims]."

L15447 And via the chain of Ibn Abi Shaybah from Isa ibn Yunus, from al-Ahwas, from Rashid ibn Sa'd: "The Prophet (peace be upon him) prohibited the killing of the elderly man who is unable to move."

L15448 They narrated from Abu Bakr—may Allah be pleased with him—that he said to one of his commanders: "Do not kill a woman, a child, or a feeble old man. You will encounter people who have secluded themselves in monasteries, claiming devotion to Allah—leave them and what they have devoted themselves to. You will also encounter people who have scraped the centers of their heads, leaving headband-like strips of hair in those areas—strike the scraped regions with the sword."

L15449 On the authority of Jābir ibn ʿAbdullāh, he said: They would not kill the merchants of the polytheists, saying, "We only kill those who fight us—and these do not fight." This was the full extent of their contentious claim, and none of it is valid.

L15450 As for the hadith of al-Muraqqa', al-Muraqqa' is unknown. As for the hadith of Ibn Abbas, it is narrated from an unnamed Medinan shaykh. Some of them named him, mentioning Ibrāhīm ibn Ismāʿīl ibn Abī Ḥabībah, and he is weak (ḍaʿīf).

L15451–15452 The other two reports are mursal. Similarly, the hadith of Rashid is mursal, and there is no valid proof in a mursal narration. As for the hadith of

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ شَيْخٍ بِمِنًى عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ قَتْلِ الْعُسَفَاءِ وَالْوُصَفَاءِ» .

وَمِنْ طَرِيقِ قَيْسِ بْنِ الرَّبِيعِ عَنْ عُمَرَ مَوْلَى عَنْبَسَةَ عَنْ زَيْدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ أَبِيهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ نَهَى أَنْ يُقْتَلَ شَيْخٌ كَبِيرٌ أَوْ يُعْقَرَ شَجَرٌ إلَّا شَجَرٌ يَضُرُّ بِهِمْ» .

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ عِيسَى بْنِ يُونُسَ عَنْ الْأَحْوَصِ عَنْ رَاشِدِ بْنِ سَعْدٍ «نَهَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ قَتْلِ الشَّيْخِ الَّذِي لَا حَرَاكَ بِهِ» .

وَذَكَرُوا عَنْ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ قَالَ لِأَمِيرٍ لَهُ: لَا تَقْتُلَنَّ امْرَأَةً، وَلَا صَبِيًّا، وَلَا كَبِيرًا هَرِمًا، إنَّك سَتَمُرُّ عَلَى قَوْمٍ قَدْ حَبَسُوا أَنْفُسَهُمْ فِي الصَّوَامِعِ زَعَمُوا لِلَّهِ فَدَعْهُمْ وَمَا حَبَسُوا أَنْفُسَهُمْ لَهُ، وَسَتَمُرُّ عَلَى قَوْمٍ قَدْ فَحَصُوا مِنْ أَوْسَاطِ رُءُوسِهِمْ وَتَرَكُوا فِيهَا مِنْ شُعُورِهِمْ أَمْثَالَ الْعَصَائِبِ فَاضْرِبْ مَا فَحَصُوا عَنْهُ بِالسَّيْفِ.

وَعَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: كَانُوا لَا يَقْتُلُونَ تُجَّارَ الْمُشْرِكِينَ وَقَالُوا: إنَّمَا نَقْتُلُ مَنْ قَاتَلَ - وَهَؤُلَاءِ لَا يُقَاتِلُونَ. هَذَا كُلُّ مَا شَغَبُوا بِهِ، وَكُلُّ ذَلِكَ لَا يَصِحُّ.

أَمَّا حَدِيثُ الْمُرَقَّعِ فَالْمُرَقَّعُ مَجْهُولٌ. وَأَمَّا حَدِيثُ ابْنِ عَبَّاسٍ فَعَنْ شَيْخٍ مَدَنِيٍّ لَمْ يُسَمِّ، وَقَدْ سَمَّاهُ بَعْضُهُمْ فَذَكَرَ إبْرَاهِيمَ بْنَ إسْمَاعِيلَ بْنِ أَبِي حَبِيبَةَ وَهُوَ ضَعِيفٌ.

وَالْخَبَرَانِ الْآخَرَانِ، مُرْسَلَانِ. وَكَذَلِكَ حَدِيثُ رَاشِدٍ مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ. وَأَمَّا حَدِيثُ أَنَسٍ فَعَنْ خَالِدِ بْنِ الْفَرْزِ وَهُوَ مَجْهُولٌ. وَحَدِيثُ حَمَّادِ بْنِ سَلَمَةَ عَنْ شَيْخٍ بِمِنًى عَنْ أَبِيهِ - وَهَذَا عَجَبٌ جِدًّا وَأَعْجَبُ مِنْهُ أَنْ يُتْرَكَ لَهُ الْقُرْآنُ وَأَمَّا حَدِيثُ قَيْسِ بْنِ الرَّبِيعِ فَلَيْسَ قَيْسٌ بِالْقَوِيِّ، وَلَا عُمَرُ مَوْلَى عَنْبَسَةَ مَعْرُوفًا، وَعَلِيُّ بْنُ الْحُسَيْنِ لَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ جَدِّهِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَسَقَطَ كُلُّ مَا مَوَّهُوا بِهِ.

Anas, it is narrated from Khalid ibn al-Faraz—who is unknown. The hadith of Hammad ibn Salamah is from a sheikh in Mina [who narrated] from his father—this is exceedingly strange, and even more astonishing is that the Qur'an is disregarded in favor of it. As for the hadith of Qays ibn al-Rabi', Qays is not a strong narrator, nor is 'Umar—the mawlā of 'Anbasah—known. Moreover, 'Ali ibn al-Husayn—may Allah be pleased with them—was not born until after his grandfather's death. Thus, all their embellished arguments collapse.

وَأَمَّا الرِّوَايَةُ عَنْ أَبِي بَكْرٍ فَمِنْ عَجَائِبِهِمْ هَذَا الْخَبَرُ نَفْسُهُ: عَنْ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - فِيهِ جَاءَ نَهْيُ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - عَنْ عَقْرِ شَيْءٍ مِنْ الْإِبِلِ، أَوْ الشَّاةِ إلَّا لِمَأْكَلَةٍ.

L15453 As for the narration from Abū Bakr (RA), this very report is among their marvels: it contains Abū Bakr's (RA) prohibition against hamstringing any camels or sheep except for consumption.

وَفِيهِ جَاءَ: أَنْ لَا يُقْطَعَ الشَّجَرُ وَلَا يُغَرَّقُ النَّحْلُ - فَخَالَفُوهُ كَمَا اشْتَهَوْا حَيْثُ لَا يَحِلُّ خِلَافُهُ، لِأَنَّ السُّنَّةَ مَعَهُ، وَحَيْثُ لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ.

L15454 In it, it was stipulated that trees should not be cut down and bee colonies should not be submerged. Yet they opposed him according to their whims in matters where opposition is impermissible—because the Sunnah supports it, and no dissent from the Companions is recorded.

ثُمَّ احْتَجُّوا بِهِ حَيْثُ خَالَفَهُ غَيْرُهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهَذَا عَجَبٌ جِدًّا فِي خَبَرٍ وَاحِدٍ وَأَمَّا قَوْلُ جَابِرٍ لَمْ يَكُونُوا يَقْتُلُونَ تُجَّارَ الْمُشْرِكِينَ فَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَمْ يَقُلْ: إنَّ تَرْكَهُمْ قَتْلَهُمْ كَانَ فِي دَارِ الْحَرْبِ وَإِنَّمَا أَخْبَرَ عَنْ جُمْلَةِ أَمْرِهِمْ.

L15455 Then they cited it as evidence where other Companions—may Allah be pleased with them—disagreed with him, and this is utterly astonishing regarding a single narration. As for Jābir's statement, "They did not kill the traders of the polytheists," there is no proof for them in it, because he did not say that their abstention from killing them was in the abode of war. Rather, he merely reported about the general context of their matter.

ثُمَّ لَوْ صَحَّ مُبَيِّنًا عَنْهُ لَمَا كَانَ لَهُمْ فِيهِ مُتَعَلَّقٌ، لِأَنَّهُ لَيْسَ فِيهِ نَهْيٌ عَنْ قَتْلِهِمْ، وَإِنَّمَا فِيهِ اخْتِيَارُهُمْ لِتَرْكِهِمْ فَقَطْ.

L15456 Then, had it been valid as an explicit statement from him, they would have had no legal grounds to rely on, since it contains no prohibition against killing them, but rather only their choice to leave them.

وَرُوِّينَا عَنْ الْحَسَنِ، وَمُجَاهِدٍ، وَالضَّحَّاكِ النَّهْيَ عَنْ قَتْلِ الشَّيْخِ الْكَبِيرِ وَلَا يَصِحُّ عَنْ مُجَاهِدٍ، وَالضَّحَّاكِ، لِأَنَّهُ مِنْ طَرِيقِ جُوَيْبِرٍ، وَلَيْثِ بْنِ أَبِي سُلَيْمٍ وَكَذَلِكَ أَيْضًا هَذَا الْخَبَرُ

L15457–15459 It has been narrated to us from al-Ḥasan, Mujāhid, and al-Ḍaḥḥāk the prohibition against killing elderly individuals. However, the narrations from Mujāhid and al-Ḍaḥḥāk are not authentic, as they are transmitted via the chain of Juwaybir and Layth ibn Abī Sulaym. Likewise, this report con-

cerning Abū Bakr—may Allah be pleased with him—is also inauthentic, for it is narrated through Yaḥyā ibn Saʿīd, ʿAṭāʾ, and Thābit ibn al-Ḥajjāj—none of whom were born except after Abū Bakr's death a long time afterward. Another chain includes al-Ḥajjāj ibn Arṭāʾah—who is rejected (as a narrator)—and if we wished to adduce as a juridical proof the report of al-Ḥasan from Samurah from the Prophet—peace and blessings be upon him—and the Musnad report of al-Ḥajjāj: "Kill the elderly polytheists and spare the youths." "Their flaw" — had we followed it, we would have sunk deeper into illusion than they. But Allah, the Exalted and Majestic, protects us from citing as evidence what we deem unsound, for in the Quran and the authentic Sunan there is sufficiency.

عَنْ أَبِي بَكْرٍ لَا يَصِحُّ؛ لِأَنَّهُ عَنْ يَحْيَى بْنِ سَعِيدٍ، وَعَطَاءٍ، وَثَابِتِ بْنِ الْحَجَّاجِ، وَكُلُّهُمْ لَمْ يُولَدْ إِلَّا بَعْدَ مَوْتِ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - بِدَهْرٍ. وَمِنْ طَرِيقٍ فِيهَا الْحَجَّاجُ بْنُ أَرْطَاةَ - وَهُوَ هَالِكٌ - وَلَوْ شِئْنَا أَنْ نَحْتَجَّ بِخَبَرِ الْحَسَنِ عَنْ سَمُرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِخَبَرِ الْحَجَّاجِ مُسْنَدًا «اُقْتُلُوا شُيُوخَ الْمُشْرِكِينَ وَاسْتَبْقُوا شَرْخَهُمْ» لَكُنَّا أَدْخَلَ مِنْهُمْ فِي الْإِيهَامِ؛ وَلَكِنْ يُعِيذُنَا اللَّهُ - عَزَّ وَجَلَّ - مِنْ أَنْ نَحْتَجَّ بِمَا لَا نَرَاهُ صَحِيحًا، وَفِي الْقُرْآنِ وَصَحِيحِ السُّنَنِ كِفَايَةٌ.

L15460 As for their claim, "We only kill those who fight," it is false. Rather, we kill every one among them who is called to Islam until he believes or pays the jizya if he is from the People of the Book, as God—Exalted is He—has commanded in the Quran, not as Abū Ḥanīfa ruled when he said: "If a woman apostatizes, she is not killed, but if she kills, she is killed," and "If the polytheists among the protected non-Muslim subjects (dhimmis) insult the Prophet—peace and blessings be upon him—they are spared, and he allows their insults toward him until they vent their rancor, thereby causing the Muslims to be humiliated." Perish this statement and its speaker!

وَأَمَّا قَوْلُهُمْ: إِنَّمَا نَقْتُلُ مَنْ قَاتَلَ، فَبَاطِلٌ؛ بَلْ نَقْتُلُ كُلَّ مَنْ يُدْعَى إِلَى الْإِسْلَامِ مِنْهُمْ حَتَّى يُؤْمِنَ أَوْ يُؤَدِّيَ الْجِزْيَةَ إِنْ كَانَ كِتَابِيًّا كَمَا أَمَرَ اللَّهُ - تَعَالَى - فِي الْقُرْآنِ لَا كَمَا أَمَرَ أَبُو حَنِيفَةَ إِذْ يَقُولُ: إِنْ ارْتَدَّتْ الْمَرْأَةُ لَمْ تُقْتَلْ، فَإِنْ قَتَلَتْ قُتِلَتْ، وَإِنْ سَبَّ الْمُشْرِكُونَ أَهْلُ الذِّمَّةِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تُرِكُوا، وَسَبُّهُمْ لَهُ حَتَّى يَشْفُوا صُدُورَهُمْ وَيَخْزَى الْمُسْلِمُونَ بِذَلِكَ. تَبًّا لِهَذَا الْقَوْلِ وَقَائِلِهِ.

L15461 It was narrated to us through the chain of Waki', from Sufyān, from 'Abd al-Malik ibn 'Umayr al-Quraẓī, from 'Aṭiyyah al-Quraẓī, who said: "I was presented on the Day of Qurayẓah before the Messenger of Allah (peace be upon him). Those who had reached puberty were killed, and those who had not were released. I was among those who had not reached puberty."

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ نَا عَبْدُ الْمَلِكِ بْنُ عُمَيْرٍ الْقُرَظِيّ نَا «عَطِيَّةُ الْقُرَظِيّ قَالَ: عُرِضْتُ يَوْمَ قُرَيْظَةَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَانَ مَنْ أَنْبَتَ قُتِلَ، وَمَنْ لَمْ يُنْبِتْ خُلِّيَ سَبِيلُهُ، فَكُنْتُ فِيمَنْ لَمْ يُنْبِتْ» .

L15462 This is a general ruling from the Prophet—peace and blessings of Allah be upon him—in which he did not spare any of them: neither a hired laborer, nor a merchant, nor a farmer, nor an old man. This constitutes a sound and definitive consensus from them—may Allah be pleased with them—because they were in an area among the areas of Medina, a fact not hidden from any of its inhabitants.

فَهَذَا عُمُومٌ مِنَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَسْتَبْقِ مِنْهُمْ عَسِيفًا، وَلَا تَاجِرًا، وَلَا فَلَّاحًا، وَلَا شَيْخًا كَبِيرًا، وَهَذَا إِجْمَاعٌ صَحِيحٌ مِنْهُمْ - رَضِيَ اللَّهُ عَنْهُمْ - مُتَيَقَّنٌ؛ لِأَنَّهُمْ فِي عَرَضٍ مِنْ أَعْرَاضِ الْمَدِينَةِ لَمْ يَخْفَ ذَلِكَ عَلَى أَحَدٍ مِنْ أَهْلِهَا.

L15463 From the path of Ḥammād ibn Salamah: Ayyūb al-Sakhtiyānī and Ubayd

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ: أَخْبَرَنَا أَيُّوبُ السِّخْتِيَانِيُّ، وَعُبَيْدُ اللَّهِ بْنُ عُمَرَ كِلَاهُمَا عَنْ نَافِعٍ عَنْ أَسْلَمَ مَوْلَى عُمَرَ بْنِ الْخَطَّابِ قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إِلَى أُمَرَاءِ الْأَجْنَادِ: أَنْ لَا يَجْلِبُوا إِلَيْنَا مِنَ الْعُلُوجِ أَحَدًا، اقْتُلُوهُمْ، وَلَا تَقْتُلُوا مِنْ جَرَتْ عَلَيْهِمُ الْمُوَاسِي وَلَا تَقْتُلُوا صَبِيًّا، وَلَا امْرَأَةً.

Allāh ibn Umar informed us, from Nāfiʿ, from Aslam—the freed slave of Umar ibn al-Khaṭṭāb—who said: Umar ibn al-Khaṭṭāb wrote to the commanders of the armies: “Do not bring any hostile combatants to us—kill them. But do not kill those under the protection of treaties, nor any non-combatant child or woman.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنِ ابْنِ نُمَيْرٍ نَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: كَتَبَ عُمَرُ إِلَى الْأَجْنَادِ: لَا تَقْتُلُوا امْرَأَةً، وَلَا صَبِيًّا، وَأَنْ يَقْتُلُوا كُلَّ مَنْ جَرَتْ عَلَيْهِ الْمُوَاسِي.

L15464 From the path of Ibn Abi Shaybah from Ibn Numayr, narrated to us by ’Ubayd Allah ibn ’Umar from Nafi’ from Ibn ’Umar, who said: ’Umar wrote to the soldiers: “Do not kill a woman or a child, and kill everyone upon whom the razor has passed.”

فَهَذَا عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - لَمْ يَسْتَثْنِ شَيْخًا، وَلَا رَاهِبًا، وَلَا عَسِيفًا، وَلَا أَحَدًا إِلَّا النِّسَاءَ، وَالصِّبْيَانَ فَقَطْ، وَلَا يَصِحُّ عَنْ أَحَدٍ مِنَ الصَّحَابَةِ خِلَافُهُ - وَقَدْ قُتِلَ دُرَيْدُ بْنُ الصِّمَّةِ وَهُوَ شَيْخٌ هَرِمٌ قَدِ اهْتَزَّ عَقْلُهُ فَلَمْ يُنْكِرِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: لِأَنَّهُ كَانَ ذَا رَأْيٍ؟ فَقُلْنَا لَهُمْ: وَمَنْ ذَا الَّذِي قَسَّمَ لَكُمْ ذَا الرَّأْيَ مِنْ غَيْرِهِ، فَلَا سَمْعًا لَهُ وَلَا طَاعَةً - وَمِثْلُ هَذِهِ التَّقَاسِيمِ لَا تُؤْخَذُ إِلَّا مِنَ الْقُرْآنِ، أَوْ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِاللَّهِ - تَعَالَى - نَتَأَيَّدُ.

L15465 So this ʿUmar—may Allah be pleased with him—did not exclude elders, monks, hired workers, or anyone except women and children alone. No authentic report from any Companion contradicts him. Indeed, Duraīd ibn al-Ṣimmah was killed while being a decrepit elder whose mind had weakened, yet the Prophet—peace and blessings be upon him—did not disapprove. They argued: “Because he was a man of judgment?” We countered: “Who is it that has designated for you those possessing judgment apart from others, so that there is no hearing or obedience for him?” Such classifications are taken only from the Quran or the Prophet—peace and blessings be upon him—and we seek support through Allah—Exalted is He.

[مَسْأَلَةُ يُغْزَى أَهْلُ الْكُفْرِ مَعَ كُلِّ فَاسِقٍ مِنَ الْأُمَرَاءِ وَغَيْرِ فَاسِقٍ]

A jurisprudential issue: The people of disbelief are to be fought under the leadership of every ruler, whether sinful or righteous.

مَسْأَلَةٌ:

Issue:

وَيُغْزَى أَهْلُ الْكُفْرِ مَعَ كُلِّ فَاسِقٍ مِنَ الْأُمَرَاءِ، وَغَيْرِ فَاسِقٍ، وَمَعَ الْمُتَغَلِّبِ وَالْمُحَارِبِ، كَمَا يُغْزَى مَعَ الْإِمَامِ، وَيَغْزُوهُمُ الْمَرْءُ وَحْدَهُ إِنْ قَدَرَ أَيْضًا، قَالَ اللَّهُ - تَعَالَى -: {وَتَعَاوَنُوا

L15469 The people of disbelief are to be fought alongside every sinful ruler among the commanders, and non-sinful ones, and alongside usurpers and aggressors, just as they are fought alongside the Imam. A person may fight them alone if capable as well. Allah the Exalted said: {Cooperate in righteous-

ness and piety, and do not cooperate in sin and transgression} [Al-Mā'idah: 2]. We previously mentioned from the Prophet—peace be upon him—at the beginning of the Jihad chapter here: "Hearing and obeying are obligatory unless commanded to sin." Allah the Exalted said: {Go forth, whether lightly or heavily equipped} [At-Tawbah: 41]. Allah the Exalted knew there would be sinful rulers yet did not exclude them from others. Whoever calls to obedience to Allah through prayer performed as He commanded, charity properly placed in its due positions and rightfully taken for its rightful purposes, fasting likewise, pilgrimage likewise, jihad likewise, and all other acts of obedience in their entirety—responding to him becomes obligatory based on the aforementioned texts. Whoever calls—whether a rightful Imam or otherwise—to sin must neither be heard nor obeyed. The Book of Allah holds greater authority, and Allah's stipulation is more binding. The Prophet—peace be upon him—said: "Every person shall have what they intended."[16]

عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] ، وَقَدْ ذَكَرْنَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَوَّلِ بَابٍ مِنْ كِتَابِ الْجِهَادِ هَاهُنَا: السَّمْعُ وَالطَّاعَةُ حَقٌّ مَا لَمْ يُؤْمَرْ بِمَعْصِيَةٍ وَقَالَ - تَعَالَى - {انْفِرُوا خِفَافًا وَثِقَالا} [التوبة: ٤١] ، وَقَدْ عَلِمَ اللَّهُ - تَعَالَى - أَنَّهُ سَتَكُونُ أُمَرَاءُ فُسَّاقٌ فَلَمْ يَخُصَّهُمْ مِنْ غَيْرِهِمْ، وَكُلُّ مَنْ دَعَا إلَى طَاعَةِ اللَّهِ فِي الصَّلاةِ الْمُؤَدَّاةِ كَمَا أَمَرَ اللَّهُ - تَعَالَى -، وَالصَّدَقَةِ الْمَوْضُوعَةِ مَوَاضِعَهَا، وَالْمَأْخُوذَةِ فِي حَقِّهَا، وَالصِّيَامِ كَذَلِكَ، وَالْحَجِّ كَذَلِكَ، وَالْجِهَادِ كَذَلِكَ، وَسَائِرِ الطَّاعَاتِ كُلِّهَا، فَفَرْضٌ إجَابَتُهُ لِلنُّصُوصِ الْمَذْكُورَةِ. وَكُلُّ مَنْ دَعَا مِنْ إمَامٍ - حَقٍّ، أَوْ غَيْرِهِ -، إلَى مَعْصِيَةٍ فَلا سَمْعَ، وَلا طَاعَةَ، كِتَابُ اللَّهِ أَحَقُّ، وَشَرْطُ اللَّهِ أَوْثَقُ - وَقَالَ - عَلَيْهِ السَّلامُ -: «لِكُلِّ امْرِئٍ مَا نَوَى» .

L15470 It was narrated to us through the chain reported by Al-Bukhārī: Abū Al-Yamān informed us that Shu'ayb—who is Ibn Abī Ḥamzah—narrated to us, from Az-Zuhrī, from Sa'īd ibn Al-Musayyib: that Abū Hurayrah said, "Allah's Messenger—peace be upon him—commanded Bilāl to proclaim to the people: 'No soul shall enter Paradise except a Muslim soul, and verily Allah upholds this religion through an immoral man.'"

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا أَبُو الْيَمَانِ أَخْبَرَنَا شُعَيْبٌ هُوَ ابْنُ أَبِي حَمْزَةَ - عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ أَبَا هُرَيْرَةَ قَالَ «أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِلالًا فَنَادَى فِي النَّاسِ: إنَّهُ لا يَدْخُلُ الْجَنَّةَ إلَّا نَفْسٌ مُسْلِمَةٌ، وَإِنَّ اللَّهَ لَيُؤَيِّدُ هَذَا الدِّينَ بِالرَّجُلِ الْفَاجِرِ» .

L15471 930 – Issue:

٩٣٠ - مَسْأَلَةٌ:

L15472 Whoever wages jihad alongside a sinful Muslim must kill the disbelievers, destroy their crops, demolish their homes, and ruin their produce, and must necessarily take captive their women and children. For extracting them from the darkness of disbelief into the light of Islam is an obligation—whoever neglects it while capable disobeys Allah. The sin of embezzling them (the spoils) falls upon those who misappropriate them, and every sin is lesser than abandoning them in disbelief and aiding their persistence therein. Could any

فَمَنْ غَزَا مَعَ فَاسِقٍ فَلْيَقْتُلْ الْكُفَّارَ وَلْيُفْسِدْ زُرُوعَهُمْ وَدُورَهُمْ وَثِمَارَهُمْ، وَلْيَجْلِبْ النِّسَاءَ وَالصِّبْيَانَ وَلا بُدَّ، فَإِنَّ إخْرَاجَهُمْ مِنْ ظُلُمَاتِ الْكُفْرِ إلَى نُورِ الإِسْلامِ فَرْضٌ يَعْصِي اللَّهَ مَنْ تَرَكَهُ قَادِرًا عَلَيْهِ، وَإِثْمُهُمْ عَلَى مَنْ غَلَّهُمْ، وَكُلُّ مَعْصِيَةٍ فَهِيَ أَقَلُّ مِنْ تَرْكِهِمْ فِي الْكُفْرِ وَعَوْنِهِمْ عَلَى الْبَقَاءِ فِيهِ، وَلا إثْمَ بَعْدَ الْكُفْرِ أَعْظَمُ مِنْ إثْمِ مَنْ نَهَى عَنْ جِهَادِ

[16] **Qur'an references (L15469):** Qur'an 5:2 (Al-Ma'idah); Qur'an 9:41 (At-Tawbah).

sin after disbelief be greater than the sin of one who forbids jihad against the disbelievers and commands surrendering the protected families of Muslims to them merely due to the transgression of a Muslim man, when others are not held accountable for his sin?

الْكُفَّارِ وَأَمَرَ بِإِسْلَامِ حَرِيمِ الْمُسْلِمِينَ [إِلَيْهِمْ] مِنْ أَجْلِ فِسْقِ رَجُلٍ مُسْلِمٍ لَا يُحَاسَبُ غَيْرُهُ بِفِسْقِهِ؟

L15473 **Issue: Warring disbelievers (ḥarbī) do not own the property of a Muslim nor the property of a protected non-Muslim (dhimmī).**

[مَسْأَلَةٌ لَا يَمْلِكُ أَهْلُ الْكُفْرِ الْحَرْبِيُّونَ مَالَ مُسْلِمٍ وَلَا مَالَ ذِمِّيٍّ]

L15474 931 – Issue

٩٣١ - مَسْأَلَةٌ:

L15475–15477 The warring disbelievers do not own the property of a Muslim or a Dhimmi under any circumstances, except through a valid purchase, a valid gift, an inheritance from a disbelieving Dhimmi, or a transaction. In the sound principles of Islam, whatever they acquire from the wealth of a *dhimmi*, Muslim, or fugitive slave seeking their protection remains the owner's property. Whenever recovered, it must be restored to its owner before or after distribution, whether taken into enemy territory or not. The owner incurs no obligation to provide compensation or payment. However, the commander compensates those entitled to shares from the collective wealth of the Muslim community. Neither is the emancipation of a slave allotted to someone's share valid, nor their charity, gift, sale, or transfer. The female slave does not attain the status of *umm walad* for her master. The ruling here equates to property a Muslim usurps from another Muslim, without distinction.

وَلَا يَمْلِكُ أَهْلُ الْكُفْرِ الْحَرْبِيُّونَ مَالَ مُسْلِمٍ، وَلَا مَالَ ذِمِّيٍّ أَبَدًا إِلَّا بِالِابْتِيَاعِ الصَّحِيحِ، أَوْ الْهِبَةِ الصَّحِيحَةِ، أَوْ بِمِيرَاثٍ مِنْ ذِمِّيٍّ كَافِرٍ، أَوْ بِمُعَامَلَةٍ صَحِيحَةٍ فِي دِينِ الْإِسْلَامِ، فَكُلُّ مَا غَنِمُوهُ مِنْ مَالِ ذِمِّيٍّ أَوْ مُسْلِمٍ، أَوْ آبِقٍ إِلَيْهِمْ، فَهُوَ بَاقٍ عَلَى مِلْكِ صَاحِبِهِ، فَمَتَى قُدِرَ عَلَيْهِ رُدَّ عَلَى صَاحِبِهِ قَبْلَ الْقِسْمَةِ وَبَعْدَهَا، دَخَلُوا بِهِ أَرْضَ الْحَرْبِ، أَوْ لَمْ يَدْخُلُوا وَلَا يُكَلَّفُ مَالِكُهُ عِوَضًا وَلَا ثَمَنًا، لَكِنْ يُعَوِّضُ الْأَمِيرُ مَنْ كَانَ صَارَ فِي سَهْمِهِ مِنْ كُلِّ مَالٍ لِجَمَاعَةِ الْمُسْلِمِينَ، وَلَا يَنْفُذُ فِيهِ عِتْقُ مَنْ وَقَعَ فِي سَهْمِهِ، وَلَا صَدَقَتُهُ، وَلَا هِبَتُهُ، وَلَا بَيْعُهُ، وَلَا تَكُونُ لَهُ الْأَمَةُ أُمَّ وَلَدٍ، وَحُكْمُهُ حُكْمُ الشَّيْءِ الَّذِي يَغْصِبُهُ الْمُسْلِمُ مِنْ الْمُسْلِمِ، وَلَا فَرْقَ.

L15478 This is the opinion of al-Shafi'i and Abu Sulayman—and as for those who preceded them, there are three opinions other than this one.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ - وَلِمَنْ سَلَفَ أَقْوَالٌ ثَلَاثَةٌ سِوَى هَذَا.

L15479 One of them is that none of that may be returned to its owner—neither before the partition nor after it, whether with payment or without—and it belongs to the one in whose share it has fallen.

أَحَدُهَا: - أَنَّهُ لَا يُرَدُّ شَيْءٌ مِنْ ذَلِكَ إلَى صَاحِبِهِ لَا قَبْلَ الْقِسْمَةِ، وَلَا بَعْدَهَا، لَا بِثَمَنٍ، وَلَا بِغَيْرِ ثَمَنٍ، وَهُوَ لِمَنْ صَارَ فِي سَهْمِهِ.

L15480 It was reported to us through the chain of Ibn Abi Shaybah, from Mu'tamir ibn Sulayman al-Taymi, from his father: that Ali ibn Abi Talib said, "Whatever

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ مُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَبِيهِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: مَا أَحْرَزَهُ الْعَدُوُّ مِنْ أَمْوَالِ الْمُسْلِمِينَ فَهُوَ بِمَنْزِلَةِ أَمْوَالِهِمْ.

wealth the enemy acquires from Muslims is equivalent to the enemy's own property."

L15481 Al-Hasan al-Baṣrī would issue rulings in accordance with that.

وَكَانَ الْحَسَنُ الْبَصْرِيُّ يَقْضِي بِذَلِكَ.

L15482 From Qatadah: A mukātab was captured by the enemy, and a man bought him from them. Bakr ibn Qirwash asked Ali ibn Abi Talib about him, and Ali said: "If his master ransoms him, he continues under his kitābah contract. But if he refuses to ransom him, he belongs to the one who purchased him."

وَعَنْ قَتَادَةَ: أَنَّ مُكَاتَبًا أَسَرَهُ الْعَدُوُّ فَاشْتَرَاهُ رَجُلٌ فَسَأَلَ بَكْرُ بْنُ قِرْوَاشَ عَنْهُ عَلِيَّ بْنَ أَبِي طَالِبٍ، فَقَالَ لَهُ عَلِيٌّ: إِنْ افْتَكَّهُ سَيِّدُهُ فَهُوَ عَلَى كِتَابَتِهِ، وَإِنْ أَبَى أَنْ يَفْتَكَّهُ فَهُوَ لِلَّذِي اشْتَرَاهُ.

L15483 Narrated by Qatādah, from Khilāṣ, from ʿAlī: Whatever the enemy has seized is permissible.

وَعَنْ قَتَادَةَ عَنْ خِلَاسٍ عَنْ عَلِيٍّ: مَا أَحْرَزَهُ الْعَدُوُّ فَهُوَ جَائِزٌ.

L15484 Narrated by Qatādah from ʿAlī: "It constitutes the fayʾ of the Muslims and cannot be reclaimed."

وَعَنْ قَتَادَةَ عَنْ عَلِيٍّ: هُوَ فَيْءُ الْمُسْلِمِينَ لَا يُرَدُّ.

L15485 From Maʿmar, from al-Zuhrī: Whatever the polytheists have captured, then the Muslims seized, it belongs to them unless the captive is a free person or a covenanted person.

وَعَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ: مَا أَحْرَزَهُ الْمُشْرِكُونَ ثُمَّ أَصَابَهُ الْمُسْلِمُونَ فَهُوَ لَهُمْ مَا لَمْ يَكُنْ حُرًّا أَوْ مُعَاهَدًا.

L15486 And from Maʿmar, from a man, from al-Ḥasan: similar to this.

وَعَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ الْحَسَنِ مِثْلُ هَذَا.

L15487–15489 The second opinion—that if it is recovered before division, it is returned to its owner. If it is not recovered until after division, then it belongs to the one to whom it was allotted in his share and is not returned to its owner, neither for payment nor otherwise. This is explicitly transmitted from ʿUmar through the chain of Saʿīd ibn Abī ʿArūbah from Qatādah from Rajāʾ ibn Ḥaywah from Qabīṣah ibn Dhuʾayb: that ʿUmar ibn al-Khaṭṭāb said, "What the polytheists have seized from [...]" In the case of Muslims' wealth: If a man identifies his property intact before the shares are distributed, he is most entitled to it. But if the shares have already been distributed, he has no right to it.

وَالْقَوْلُ الثَّانِي - أَنَّهُ إِنْ أُدْرِكَ قَبْلَ الْقِسْمَةِ رُدَّ إِلَى صَاحِبِهِ، فَإِنْ لَمْ يُدْرَكْ حَتَّى قُسِمَ فَهُوَ لِلَّذِي وَقَعَ فِي سَهْمِهِ لَا يُرَدُّ إِلَى صَاحِبِهِ لَا بِثَمَنٍ، وَلَا بِغَيْرِهِ. هَكَذَا رُوِّينَاهُ عَنْ عُمَرَ نَصًّا مِنْ طَرِيقِ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ رَجَاءِ بْنِ حَيْوَةُ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: مَا أَحْرَزَ الْمُشْرِكُونَ مِنْ أَمْوَالِ الْمُسْلِمِينَ فَوَجَدَ رَجُلٌ مَالَهُ بِعَيْنِهِ قَبْلَ أَنْ تُقْسَمَ السِّهَامُ فَهُوَ أَحَقُّ بِهِ، وَإِنْ كَانَ قُسِمَ فَلَا شَيْءَ لَهُ.

L15490 And through the chain of Ibn Abi Shaybah from Isa ibn Yunus from Thawr from Abu Awn from Zuhrah ibn Yazid al-Muradi: A slave woman belonging to a Muslim man fled to the enemy, and the Muslims seized her as war

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ عِيسَى بْنِ يُونُسَ عَنْ ثَوْرٍ عَنْ أَبِي عَوْنٍ عَنْ زُهْرَةَ بْنِ يَزِيدَ الْمُرَادِيِّ أَنَّ أَمَةً لِرَجُلٍ مُسْلِمٍ أَبَقَتْ إِلَى الْعَدُوِّ فَغَنِمَهَا الْمُسْلِمُونَ فَعَرَفَهَا أَهْلُهَا فَكَتَبَ

فِيهَا أَبُو عُبَيْدَةَ بْنُ الْجَرَّاحِ إِلَى عُمَرَ، فَكَتَبَ إِلَيْهِ عُمَرُ: إِنْ كَانَتْ لَمْ تُخَمَّسْ وَلَمْ تُقْسَمْ فَهِيَ رَدٌّ عَلَى أَهْلِهَا، وَإِنْ كَانَتْ قَدْ خُمِّسَتْ وَقُسِمَتْ فَأَمْضِهَا لِسَبِيلِهَا.

spoils. Her owner recognized her, so Abu Ubaydah ibn al-Jarrah wrote to Umar regarding her case. Umar responded: If the *khums* had not been taken from her and she had not been divided [among the soldiers], she must be returned to her owner. But if the *khums* had been taken and she had been divided, then her status must stand according to its established course.

وَرُوِيَ نَحْوُهُ أَيْضًا عَنْ زَيْدِ بْنِ ثَابِتٍ.

L15491 Something similar to it was also narrated from Zayd ibn Thabit.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ أَبِي إِسْحَاقَ عَنْ سُلَيْمَانَ بْنِ رَبِيعَةَ فِيمَا أَحْرَزَ الْعَدُوُّ، قَالَ: صَاحِبُهُ أَحَقُّ بِهِ مَا لَمْ يُقْسَمْ.

L15492 And through the chain of Al-Ḥajjāj ibn Arṭāʾah from Abū Isḥāq from Sulaymān ibn Rabīʿah regarding that which the enemy has seized, he said: Its owner has a prior right to it, as long as it has not been distributed.

وَمِنْ طَرِيقِ هُشَيْمٍ عَنْ الْمُغِيرَةِ، وَيُونُسَ قَالَ الْمُغِيرَةُ عَنْ إبْرَاهِيمَ، وَقَالَ يُونُسُ عَنْ الْحَسَنِ، قَالَا جَمِيعًا: مَا غَنِمَهُ الْعَدُوُّ مِنْ مَالِ الْمُسْلِمِينَ فَغَنِمَهُ الْمُسْلِمُونَ فَصَاحِبُهُ أَحَقُّ بِهِ، فَإِنْ قُسِمَ فَقَدْ مَضَى.

L15493 Through the chain of Hushaym from al-Mughīrah and Yunus: al-Mughīrah reported from Ibrāhīm, and Yunus reported from al-Ḥasan. Both said in agreement: Whatever the enemy seizes as spoils from the Muslims' wealth, and the Muslims later reclaim as spoils—the original owner holds the strongest claim to it. But if it has been distributed [by the Muslims], the distribution stands irrevocably.

وَذَكَرَ ابْنُ أَبِي الزِّنَادِ عَنْ أَبِيهِ هَذَا الْقَوْلَ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَخَارِجَةَ بْنِ زَيْدِ بْنِ ثَابِتٍ، وَعُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ، وَأَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ، وَسُلَيْمَانَ بْنِ يَسَارٍ فِي مَشْيَخَةٍ مِنْ نُظَرَائِهِمْ، وَقَالُوا: مَا غَنِمَ الْعَدُوُّ مِنْ الْمُسْلِمِينَ ثُمَّ غَنِمَهُ الْمُسْلِمُونَ فَصَاحِبُهُ أَحَقُّ بِهِ مَا لَمْ يَقَعْ فِيهِ السُّهْمَانُ فَإِذَا قُسِمَ فَلَا سَبِيلَ لَهُ إلَيْهِ. وَصَحَّ عَنْ عَطَاءٍ أَيْضًا، وَأَخْبَرَ عَطَاءٌ أَنَّهُ رَأْيٌ مِنْهُ. وَهُوَ قَوْلُ اللَّيْثِ، وَأَحْمَدَ بْنِ حَنْبَلٍ.

L15494 Ibn Abī al-Zinād reported this opinion from his father, who narrated it from al-Qāsim ibn Muḥammad, ʿUrwah ibn al-Zubayr, Khārijah ibn Zayd ibn Thābit, ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah, Abū Bakr ibn ʿAbd al-Raḥmān, and Sulaymān ibn Yasār—a group of their contemporaries. They said: "Whatever the enemy seizes as spoils from the Muslims, which the Muslims later recover as spoils, the original owner is most entitled to it provided the shares have not been allocated. Once they are divided, he has no claim to it." This is authentically reported from ʿAṭāʾ, who stated it was his own opinion. It is likewise the view of al-Layth and Aḥmad ibn Ḥanbal.

وَالْقَوْلُ الثَّالِثُ -

L15495 The third view -

L15496 If it is recovered before division, it is returned to its owner without payment. If it is not recovered until after division, then its owner has the greater right to it for its value—We have reported it through the chain of ʿAbd al-Razzāq from Muḥammad ibn Rāshid from Makhūl from ʿUmar ibn al-Khaṭṭāb, and through the chain of Sufyān from al-Mughīrah from Ibrāhīm al-Nakhaʿī.

أَنَّهُ إِنْ أُدْرِكَ قَبْلَ الْقِسْمَةِ رُدَّ إِلَى صَاحِبِهِ بِغَيْرِ ثَمَنٍ، وَإِنْ لَمْ يُدْرَكْ إِلَّا بَعْدَ الْقِسْمَةِ فَصَاحِبُهُ أَحَقُّ بِهِ بِقِيمَتِهِ -: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ رَاشِدٍ عَنْ مَكْحُولٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ. وَمِنْ طَرِيقِ سُفْيَانَ عَنْ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ.

L15497 From the chain of Ibn Sīrīn from Shurayḥ. And from the chain of ʿAbd Allāh ibn Idrīs from his father, from Mujāhid.

وَمِنْ طَرِيقِ ابْنِ سِيرِينَ عَنْ شُرَيْحٍ. وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ إِدْرِيسَ عَنْ أَبِيهِ عَنْ مُجَاهِدٍ.

L15498 So, the first opinion is—

فَالْقَوْلُ الْأَوَّلُ -

L15499–15501 What the polytheists have taken from our wealth is not returned to their rightful owners, nor before they... It is not to be divided before it is divided nor after it is divided, neither for a price nor anything else. This was narrated from Ali and authentically reported from Al-Hasan, Az-Zuhri, and Amr ibn Dinar.

لَا يُرَدُّ مَا أَخَذَهُ الْمُشْرِكُونَ مِنْ أَمْوَالِنَا إِلَى أَرْبَابِهَا، لَا قَبْلَ أَنْ تُقْسَمَ وَلَا بَعْدَ أَنْ تُقْسَمَ، لَا بِثَمَنٍ وَلَا بِغَيْرِهِ، رُوِيَ عَنْ عَلِيٍّ، وَصَحَّ عَنْ الْحَسَنِ، وَالزُّهْرِيِّ، وَعَمْرِو بْنِ دِينَارٍ.

وَلَمْ يَصِحَّ عَنْ عَلِيٍّ لِأَنَّهُ مِنْ طَرِيقِ سُلَيْمَانَ التَّيْمِيِّ، وَقَتَادَةَ عَنْ عَلِيٍّ وَلَمْ يُدْرِكَاهُ، وَرِوَايَةُ خِلَاسٍ عَنْ عَلِيٍّ صَحِيحَةٌ إِلَّا أَنَّهُ لَا بَيَانَ فِيهَا إِنَّمَا هِيَ مَا أَحْرَزَهُ الْعَدُوُّ فَهُوَ جَائِزٌ وَلَا نَدْرِي مَا مَعْنَى: فَهُوَ جَائِزٌ، وَلَعَلَّهُ أَرَادَ: أَنَّهُ جَائِزٌ لِأَصْحَابِهِ إِذَا ظُفِرَ بِهِ.

No authentic narration is established from Ali, as it is transmitted through Sulayman al-Taymi and Qatadah, who did not meet him. The narration of Khilas from Ali is authentic, except that it lacks clarification, merely stating: "What the enemy has seized is permissible." We do not understand the intended meaning of "it is permissible." Perhaps he meant that it becomes permissible for his companions if they prevail over them [and seize it].

وَالْقَوْلُ الثَّانِي -

And the second opinion:

أَنَّهُ يُرَدُّ إِلَى أَصْحَابِهِ قَبْلَ الْقِسْمَةِ، وَلَا يُرَدُّ بَعْدَ الْقِسْمَةِ، رُوِيَ عَنْ عُمَرَ، وَأَبِي عُبَيْدَةَ، وَزَيْدِ بْنِ ثَابِتٍ، وَلَا يَصِحُّ عَنْ أَحَدٍ مِنْهُمْ، لِأَنَّهُ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ وَلَمْ يُدْرِكْ عُمَرَ، وَمِنْ طَرِيقِ أَبِي عَوْنٍ، أَوْ ابْنِ عَوْنٍ، وَلَمْ يُدْرِكَا أَبَا عُبَيْدَةَ، وَلَا عُمَرَ، وَلَا نَدْرِي مَنْ رَوَاهُ عَنْ زَيْدِ بْنِ ثَابِتٍ - وَرُوِيَ عَنْ فُقَهَاءِ الْمَدِينَةِ السَّبْعَةِ، وَلَا يَصِحُّ عَنْهُمْ، لِأَنَّهُ مِنْ طَرِيقِ ابْنِ أَبِي الزِّنَادِ هُوَ ضَعِيفٌ - وَعَنْ سُلَيْمَانَ بْنِ رَبِيعَةَ، وَلَمْ يَصِحَّ عَنْهُ لِأَنَّهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ. وَصَحَّ عَنْ إِبْرَاهِيمَ [وَشُرَيْحٍ] وَالْحَسَنِ وَعَطَاءٍ.

That it is to be returned to their owners before division, and not returned after division. It was narrated from ʿUmar, Abū ʿUbaydah, and Zayd ibn Thābit – but none of these narrations are authentic. The report from ʿUmar is through Qabīṣah ibn Dhuʾayb, who did not meet him. It is reported through either Abū ʿAwn or Ibn ʿAwn, neither of whom met Abū ʿUbaydah nor ʿUmar, and we do not know who transmitted it from Zayd ibn Thābit. It was narrated from the Seven Jurists of Medina, but these reports are inauthentic, as they come through Ibn Abī al-Zinād, who is a weak narrator. It was also narrated from Sulaymān ibn Rabīʿah, but this is unauthentic as it comes through al-Ḥajjāj ibn Arṭāh. Authentic reports exist from Ibrāhīm [and Shurayḥ], al-Ḥasan, and ʿAṭāʾ.

وَالْقَوْلُ الثَّالِثُ -

The third opinion:

أَنَّهُ إِنْ أُدْرِكَ قَبْلَ الْقِسْمَةِ رُدَّ إِلَى صَاحِبِهِ بِغَيْرِ ثَمَنٍ، وَإِنْ لَمْ يُدْرَكْ إِلَّا بَعْدَ الْقِسْمَةِ فَصَاحِبُهُ أَحَقُّ بِهِ بِقِيمَتِهِ رُوِيَ عَنْ عُمَرَ وَلَمْ يَصِحَّ عَنْهُ، لِأَنَّهُ مِنْ رِوَايَةِ مَكْحُولٍ، وَلَمْ يُدْرِكْ عُمَرَ.

If it is recovered before division, it is returned to its owner without payment. But if it is only recovered after division, the owner has the rightful claim to it with its value. This was narrated from ʿUmar, though it is not authentically attributed to him, as it is from the narration of Makhūl—who did not meet ʿUmar.

وَصَحَّ عَنْ إِبْرَاهِيمَ وَشُرَيْحٍ، وَمُجَاهِدٍ - وَهُوَ قَوْلُ مَالِكٍ، وَالْأَوْزَاعِيِّ.

It has been authentically reported from Ibrāhīm, Shuraih, and Mujāhid—and this is the opinion of Mālik and al-Awzāʿī.

وَمِنْ قَوْلِ مَالِكٍ: إِنَّ الْآبِقَ وَالْمَغْنُومَ سَوَاءٌ فِي ذَلِكَ، وَإِنَّ الْمُدَبَّرَ، وَالْمُكَاتَبَ، وَأُمَّ الْوَلَدِ سَوَاءٌ فِي ذَلِكَ، إِلَّا أَنَّ سَيِّدَ أُمِّ الْوَلَدِ يُجْبَرُ عَلَى أَنْ يَفُكَّهَا.

Among the opinions of Mālik are that the runaway slave and the enslaved spoils of war are treated equally in this ruling, and that the mudabbar—a slave promised manumission after the master's death—the mukatab—a slave contracted for self-manumission—and the umm al-walad—mother of the mas-

ter's child—are similarly regarded in this ruling, except that the master of the umm al-walad is obligated by law to emancipate her.

وَهَا هُنَا قَوْلٌ خَامِسٌ - لَا يُعْرَفُ عَنْ أَحَدٍ مِنْ السَّلَفِ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ - وَلَا يُحْفَظُ أَنَّ أَحَدًا قَالَهُ قَبْلَهُ، وَهُوَ أَنَّ مَا أَبَقَ إلَى الْمُشْرِكِينَ مِنْ عَبْدٍ لِمُسْلِمٍ فَإِنَّهُ مَرْدُودٌ إلَى صَاحِبِهِ قَبْلَ الْقِسْمَةِ، وَبَعْدَهَا بِلَا ثَمَنٍ، وَكَذَلِكَ مَا غَنِمُوهُ مِنْ مُدَبَّرٍ، وَمُكَاتَبٍ، وَأُمِّ وَلَدٍ، وَلَا فَرْقَ. وَوَافَقَهُ فِي هَذَا سُفْيَانُ.

L15509 Here, there is a fifth opinion - not reported from any of the early predecessors - which is the view of Abū Ḥanīfa. It is not preserved that anyone articulated this before him. He held that any Muslim-owned slave who absconds to polytheists must be restored to their owner both before and after the division of war spoils without compensation. Similarly, whatever spoils they capture from among slaves designated for gradual emancipation (mudabbar), contracted manumission seekers (mukatab), or mothers bearing their owner's child (umm walad) must also be returned without any distinction among them. Sufyān aligned with him in this ruling.

قَالَ أَبُو حَنِيفَةَ: وَأَمَّا مَا غَنِمُوهُ مِنْ الْإِمَاءِ، وَالْعَبِيدِ، وَالْحَيَوَانِ، وَالْمَتَاعِ، فَإِنْ أُدْرِكَ قَبْلَ أَنْ يَدْخُلُوا بِهِ دَارَ الْحَرْبِ ثُمَّ غَنِمْنَاهُ رُدَّ إلَى صَاحِبِهِ قَبْلَ الْقِسْمَةِ وَبَعْدَهَا بِلَا ثَمَنٍ. وَإِنْ دَخَلُوا بِهِ دَارَ الْحَرْبِ ثُمَّ غَنِمْنَاهُ رُدَّ إلَى صَاحِبِهِ قَبْلَ الْقِسْمَةِ وَأَمَّا بَعْدَ الْقِسْمَةِ فَصَاحِبُهُ أَحَقُّ بِهِ بِالْقِيمَةِ إنْ شَاءَ؛ وَإِلَّا فَلَا يُرَدُّ إلَيْهِ.

L15510–15512 Abu Hanifah said: As for the spoils they seize—consisting of female captives, male slaves, animals, or possessions—if these are recovered before the captors bring them into the abode of war, then if we take them as spoils, they must be returned to their owner, whether before the distribution or after it, without... If they take something paid for with a price into the abode of war and we then seize it as booty, it must be returned to its owner before distribution. As for after distribution, the owner has the right to reclaim it by paying its value if he wishes; otherwise, it is not restored to him.

قَالَ أَبُو مُحَمَّد: وَهَذَا قَوْلٌ فِي غَايَةِ التَّخْلِيطِ وَالْفَسَادِ فِي التَّقْسِيمِ، لَا دَلِيلَ عَلَى صِحَّةِ تَقْسِيمِهِ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ.

L15513 Abu Muhammad said: This statement represents the height of confusion and corruption in categorization. There is no evidence to validate his division—neither from the Quran, nor the Sunnah, nor an unsound narration, nor the statement of a Companion, nor a Follower, nor analogical reasoning, nor sound judgment.

وَقَالَ بَعْضُهُمْ: إنَّمَا يَمْلِكُونَ عَلَيْنَا مَا يَمْلِكُهُ بَعْضُنَا عَلَى بَعْضٍ. قَالَ أَبُو مُحَمَّد: وَصَدَقَ هَذَا الْقَائِلُ وَلَا يَمْلِكُ بَعْضُنَا عَلَى بَعْضٍ مَالًا بِالْبَاطِلِ، وَلَا بِالْغَصْبِ أَصْلًا، وَلَا بَاطِلَ، وَلَا غَصْبَ أَحْرَمُ وَلَا أَبْطَلُ مِنْ أَخْذِ حَرْبِيٍّ مَالَ مُسْلِمٍ - فَسَقَطَ هَذَا الْقَوْلُ الْفَاسِدُ جُمْلَةً

L15514 Some of them said: "They only hold authority over us as some of us hold authority over others." Abū Muḥammad said: "This speaker has spoken truthfully, for none of us may own another's wealth through falsehood or usurpation at all. No wrongful act or usurpation is more forbidden or invalid than a ḥarbī taking a Muslim's property." Thus, this false claim is wholly invalidated.

L15515 Then we examined all opinions. We considered Mālik's view and found that if they rely on what is narrated from ʿUmar, it is contradicted by another

narration from ʿUmar that is better than the one they relied upon, and another from ʿAlī that is similar to the one they relied upon. What then renders some of these narrations more authoritative than others? Some said: The meaning of ʿUmar's statement in the other narration, "He has no right to it, and let it proceed on its way," implies "except for the price." We replied: What prevents someone without piety from lying? It may be said to you: The meaning of ʿUmar's statement "He has a greater right to it for its value" is conditional upon mutual agreement; otherwise, no. What then distinguishes one lie from another?

ثُمَّ نَظَرْنَا فِي سَائِرِ الْأَقْوَالِ. فَنَظَرْنَا فِي قَوْلِ مَالِكٍ فَوَجَدْنَاهُمْ إِنْ تَعَلَّقُوا بِمَا رُوِيَ عَنْ عُمَرَ، فَقَدْ عَارَضَتْهُ رِوَايَةٌ أُخْرَى عَنْ عُمَرَ هِيَ عَنْهُ أَمْثَلُ مِنْ الَّتِي تَعَلَّقُوا بِهَا - وَأُخْرَى عَنْ عَلِيٍّ هِيَ مِثْلُ الَّتِي تَعَلَّقُوا بِهَا، فَمَا الَّذِي جَعَلَ بَعْضَ هَذِهِ الرِّوَايَاتِ أَحَقَّ مِنْ بَعْضٍ؟ وَقَالَ بَعْضُهُمْ: مَعْنَى قَوْلِ عُمَرَ فِي الرِّوَايَةِ الْأُخْرَى: فَلَا شَيْءَ لَهُ وَأَمْضِهَا لِسَبِيلِهَا - أَيْ إِلَّا بِالثَّمَنِ. فَقُلْنَا: مَا يَعْجِزُ مَنْ لَا دِينَ لَهُ عَنْ الْكَذِبِ، وَيُقَالُ لَكُمْ: مَعْنَى قَوْلِ عُمَرَ إِنَّهُ أَحَقُّ بِهَا بِالْقِيمَةِ - أَيْ إِنْ تَرَاضَيَا جَمِيعًا عَلَى ذَلِكَ، وَإِلَّا فَلَا، فَمَا الْفَرْقُ بَيْنَ كَذِبٍ وَكَذِبٍ؟ ثُمَّ وَجَدْنَاهُمْ يَحْتَجُّونَ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ وَغَيْرِهِ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ تَمِيمِ بْنِ طُرْفَةَ: «أَنَّ عُثْمَانَ اشْتَرَى بَعِيرًا مِنْ الْعَدُوِّ فَعَرَفَهُ صَاحِبُهُ فَخَاصَمَهُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِنْ شِئْتَ أَعْطَيْتَهُ الثَّمَنَ الَّذِي اشْتَرَاهُ بِهِ وَهُوَ لَكَ، وَإِلَّا فَهُوَ لَهُ» وَهَذَا مُنْقَطِعٌ لَا حُجَّةَ فِيهِ، وَسِمَاكٌ ضَعِيفٌ يَقْبَلُ التَّلْقِينَ، شَهِدَ بِهِ عَلَيْهِ شُعْبَةُ، وَغَيْرُهُ - وَأَسْنَدَهُ يَاسِينُ الزَّيَّاتُ عَنْ سِمَاكٍ عَنْ تَمِيمِ بْنِ طُرْفَةَ عَنْ جَابِرِ بْنِ سَمُرَةَ. وَيَاسِينُ لَا تَحِلُّ الرِّوَايَةُ عَنْهُ، وَسِمَاكٌ قَدْ ذَكَرْنَاهُ.

Next, we found them citing a report we have narrated through the chain of Ḥammād ibn Salamah and others from Simāk ibn Ḥarb from Tamīm ibn Ṭurfah: "'Uthmān bought a camel from the enemy, and its owner recognized it. He brought the case to the Messenger of Allāh (peace be upon him), who said: 'If you wish, give him the price he paid for it, and it is yours; otherwise, it belongs to him.'" This chain is disconnected and thus invalid as evidence. Simāk is weak and accepts talqīn, as testified against him by Shuʿbah and others. Yāsīn al-Zayyāt ascribed it through a connected chain from Simāk from Tamīm ibn Ṭurfah from Jābir ibn Samurah. Yet Yāsīn is impermissible to narrate from, and Simāk's status has already been stated.

L15516 And some people narrated it from Ibrāhīm ibn Muḥammad al-Hamadhānī or al-Anbārī from Ziyād ibn ʿIlāqah from Jābir ibn Samurah as a musnad. As for Ibrāhīm ibn Muḥammad al-Anbārī or al-Hamadhānī, no one among the people knows who he is.

وَرَوَاهُ بَعْضُ النَّاسِ عَنْ إِبْرَاهِيمَ بْنِ مُحَمَّدٍ الْهَمَذَانِيِّ أَوْ الْأَنْبَارِيِّ عَنْ زِيَادِ بْنِ عِلَاقَةَ عَنْ جَابِرِ بْنِ سَمُرَةَ مُسْنَدًا، وَإِبْرَاهِيمُ بْنُ مُحَمَّدٍ الْأَنْبَارِيُّ أَوْ الْهَمَذَانِيُّ لَا يَدْرِي أَحَدٌ مَنْ هُوَ فِي الْخَلْقِ؟

L15517–15518 Al-Ḥasan ibn ʿUmārah and Ismāʿīl ibn ʿAyyāsh both narrated from ʿAbd al-Malik ibn Maysarah, from Ṭāwūs, from Ibn ʿAbbās: "The Prophet—peace and blessings be upon him—said regarding a camel seized by the enemy that Muslims later regained control of: 'If you recover it before distribution, you have the foremost right to it without compensation. If you recover it after

وَأَسْنَدَهُ أَيْضًا الْحَسَنُ بْنُ عُمَارَةَ وَإِسْمَاعِيلُ بْنُ عَيَّاشٍ كِلَاهُمَا: عَنْ عَبْدِ الْمَلِكِ بْنِ مَيْسَرَةَ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي بَعِيرٍ أَحْرَزَهُ

distribution, you have the right to reclaim it by paying its price, if you wish.'" Al-Ḥasan ibn ʿUmārah is discredited, and Ismāʿīl ibn ʿAyyāsh is deemed weak.

الْعَدُوُّ، ثُمَّ غَلَبَ عَلَيْهِ الْمُسْلِمُونَ إِنْ وَجَدْتَهُ قَبْلَ الْقِسْمَةِ فَأَنْتَ أَحَقُّ بِهِ بِغَيْرِ شَيْءٍ، وَإِنْ وَجَدْتَهُ بَعْدَ الْقِسْمَةِ فَأَنْتَ أَحَقُّ بِهِ بِالثَّمَنِ إِنْ شِئْتَ» وَالْحَسَنُ بْنُ عُمَارَةَ هَالِكٌ، وَإِسْمَاعِيلُ بْنُ عَيَّاشٍ ضَعِيفٌ.

L15519 Some people narrated it through the chain of ʿAlī ibn al-Madīnī and Aḥmad ibn Ḥanbal. ʿAlī said: "Yāḥyā ibn Saʿīd al-Qaṭṭān informed us," while Aḥmad said: "On the authority of Isḥāq al-Azraq"; then Yāḥyā and Isḥāq both narrated from Misʿar from ʿAbd al-Malik ibn Maysarah. This chain is disconnected and unsupported, given that the chain leading to ʿAlī and Aḥmad is invalid. Moreover, this report is entirely unknown in the authentic ḥadīth transmitted from Yāḥyā ibn Saʿīd al-Qaṭṭān. If they obstinately argue, claiming, "The mursal report constitutes valid proof, and the narration of al-Ḥasan ibn ʿUmārah and Ismāʿīl ibn ʿAyyāsh is evidence," we respond: "No obligation rests upon you."

وَرَوَاهُ بَعْضُ النَّاسِ مِنْ طَرِيقِ عَلِيِّ بْنِ الْمَدِينِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ. قَالَ عَلِيٌّ: نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ، وَقَالَ أَحْمَدُ: عَنْ إِسْحَاقَ الْأَزْرَقِ، ثُمَّ اتَّفَقَ يَحْيَى وَإِسْحَاقُ عَنْ مِسْعَرٍ عَنْ عَبْدِ الْمَلِكِ بْنِ مَيْسَرَةَ، وَهَذَا مُنْقَطِعٌ غَيْرُ مُسْنَدٍ، عَلَى أَنَّ الطَّرِيقَ إِلَى عَلِيٍّ وَأَحْمَدَ تَالِفَةٌ، وَلَا يُعْرَفُ هَذَا الْخَبَرُ فِي حَدِيثِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ الصَّحِيحِ عَنْهُ أَصْلًا، فَإِنْ لَجُّوا وَقَالُوا: الْمُرْسَلُ حُجَّةٌ - وَرِوَايَةُ الْحَسَنِ بْنِ عُمَارَةَ، وَإِسْمَاعِيلَ بْنِ عَيَّاشٍ حُجَّةٌ. قُلْنَا: لَا عَلَيْكُمْ

L15520 It has been narrated to us through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ, who informed me that ʿIkrimah ibn Khālid said: "Usayd ibn Ẓuhayr al-Anṣārī—who governed Yamāmah during Muʿāwiyah's reign—informed me that the Prophet, peace and blessings be upon him, ruled regarding theft: 'If the purchaser of the stolen item from the thief is not under suspicion, the owner may choose: if he wishes, he may reclaim what was stolen by compensating its value, or if he wishes, he may pursue the thief.'" After him, Abū Bakr, ʿUmar, and ʿUthmān ruled according to this, as did Usayd ibn Ẓuhayr. Abū Muḥammad said: "'Umayrah ibn Yathrā, ʿUmar's appointed judge of Baṣrah, also ruled by this, and Isḥāq ibn Rāhwayh upholds it. This report is sounder than yours, more correct, and consistent in meaning. Adhere to it—otherwise, you are merely playing games."

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ أَخْبَرَنِي عِكْرِمَةُ بْنُ خَالِدٍ قَالَ: أَخْبَرَنِي أُسَيْدُ بْنُ ظُهَيْرٍ الْأَنْصَارِيُّ وَكَانَ وَالِيَ الْيَمَامَةِ أَيَّامَ مُعَاوِيَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِي السَّرِقَةِ: إِنْ كَانَ الَّذِي ابْتَاعَهَا مِنَ الَّذِي سَرَقَهَا غَيْرَ مُتَّهَمٍ يُخَيَّرُ سَيِّدُهَا إِنْ شَاءَ أَخَذَ الَّذِي سُرِقَ مِنْهُ بِثَمَنِهِ وَإِنْ شَاءَ اتَّبَعَ سَارِقَهُ» ثُمَّ قَضَى بِذَلِكَ بَعْدَهُ: أَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ - وَقَضَى بِهِ أُسَيْدُ بْنُ ظُهَيْرٍ. قَالَ أَبُو مُحَمَّدٍ: وَقَدْ قَضَى بِهِ أَيْضًا: عُمَيْرَةُ بْنُ يَثْرَى قَاضِي الْبَصْرَةِ لِعُمَرَ - وَبِهِ يَقُولُ إِسْحَاقُ بْنُ رَاهْوَيْهِ. فَهَذَا خَبَرٌ أَحْسَنُ مِنْ خَبَرِكُمْ وَأَقْوَمُ، وَهُوَ فِي مَعْنَاهُ فَخُذُوا بِهِ وَإِلَّا فَأَنْتُمْ مُتَلَاعِبُونَ.

L15521 As for us, we have abandoned his narration because 'Ikrimah ibn Khālid is not strong. Yet in any case—by Allah, with no one disputing this—he is more similar to Yāsīn than to al-Ḥasan ibn Umārah or Ismāʿīl ibn ʿAyyāsh, and he is not inferior to Simāk in any way whatsoever.

وَأَمَّا نَحْنُ فَتَرَكْنَاهُ، لِأَنَّ عِكْرِمَةَ بْنَ خَالِدٍ لَيْسَ بِالْقَوِيِّ، وَعَلَى كُلِّ حَالٍ، فَهُوَ وَاللَّهِ بِلَا خِلَافٍ مِنْ أَحَدٍ أَشْبَهَ مِنْ يَاسِينَ وَالْحَسَنِ بْنِ عُمَارَةَ وَإِسْمَاعِيلَ بْنِ عَيَّاشٍ، وَمَا هُوَ بِدُونِ سِمَاكٍ أَصْلًا.

L15522 The utmost astonishment is that the companions of Abū Ḥanīfah rejected the ḥadīth: “Whoever finds his commodity in its original form with a bankrupt person is more entitled to it than the creditors,” and this is an established, authentic ḥadīth.

وَالْعَجَبُ كُلُّ الْعَجَبِ أَنَّ أَصْحَابَ أَبِي حَنِيفَةَ رَدُّوا حَدِيثَ " مَنْ وَجَدَ سِلْعَتَهُ بِعَيْنِهَا عِنْدَ مُفْلِسٍ فَهُوَ أَحَقُّ مِنْ الْغُرَمَاءِ " وَهَذَا حَدِيثٌ ثَابِتٌ صَحِيحٌ.

L15523–15525 If they say: This contradicts the foundational principles (uṣūl), and the bankrupt person cannot be free from having [or having had]... Whether he had ownership of it or did not have ownership; if he had not owned it, then you do not uphold this position; and if he had owned it, then the seller has no right to what the buyer has acquired from him by his own choice. Yet they abandoned this very objection here and adhered to a fabricated narration contradicting the foundational principles, the Quran, and the Sunnah. For the hostile forces must either have ownership of what they seized from us or not have ownership of it. If they did not own it, then this is our position, which contradicts their position. It is obligatory to return it to its owner under all circumstances, before and after distribution, without imposing any cost upon him. If they did own it, then the one from whom it was taken has no claim against it, neither through payment nor otherwise, neither before distribution nor after it, for it is like the rest of the war spoils with no distinction. What wonder is there to marvel at in this?

فَإِنْ قَالُوا: هَذَا خِلَافُ الْأُصُولِ وَلَا يَخْلُو الْمُفْلِسُ مِنْ أَنْ يَكُونَ [كَانَ] قَدْ مَلَكَهَا أَوْ لَمْ يَكُنْ مَلَكَهَا، فَإِنْ كَانَ لَمْ يَمْلِكْهَا فَأَنْتُمْ لَا تَقُولُونَ بِهَذَا، وَإِنْ كَانَ قَدْ مَلَكَهَا فَلَا حَقَّ لِبَائِعِهَا فِيمَا قَدْ مَلَكَهُ مِنْهُ الْمُشْتَرِي بِاخْتِيَارِهِ وَتَرَكُوا هَذَا الِاعْتِرَاضَ بِعَيْنِهِ هُنَا وَأَخَذُوا بِخَبَرٍ مَكْذُوبٍ مُخَالِفٍ لِلْأُصُولِ وَلِلْقُرْآنِ وَلِلسُّنَنِ لِأَنَّهُ لَا يَخْلُو الْحَرْبِيُّونَ مِنْ أَنْ يَكُونُوا مَلَكُوا مَا أَخَذُوا مِنَّا أَوْ لَمْ يَمْلِكُوهُ، فَإِنْ كَانُوا لَمْ يَمْلِكُوهُ فَهَذَا قَوْلُنَا وَهُوَ خِلَافُ قَوْلِهِمْ، وَالْوَاجِبُ أَنْ يُرَدَّ إلَى مَالِكِهِ بِكُلِّ حَالٍ قَبْلَ الْقِسْمَةِ وَبَعْدَهَا بِلَا ثَمَنٍ يُكَلَّفُهُ، وَإِنْ كَانُوا قَدْ مَلَكُوهُ فَلَا سَبِيلَ لِلَّذِي أُخِذَ مِنْهُ عَلَيْهِ لَا بِثَمَنٍ وَلَا بِغَيْرِ ثَمَنٍ لَا قَبْلَ الْقِسْمَةِ وَلَا بَعْدَ الْقِسْمَةِ، لِأَنَّهُ كَسَائِرِ الْغَنِيمَةِ وَلَا فَرْقَ، فَأَيُّ عَجَبٍ أَعْجَبُ مِنْ هَذَا

L15526 Furthermore, the person to whose share it was allocated can only be either one who owned it or one who did not own it. If he did not own it, then that is our view, and it is obligatory to return it to its owner.

وَأَيْضًا: فَإِنَّهُ لَا يَخْلُو الَّذِي وَقَعَ فِي سَهْمِهِ مِنْ أَنْ يَكُونَ مَلَكَهُ أَوْ لَمْ يَمْلِكْهُ، فَإِنْ كَانَ لَمْ يَمْلِكْهُ فَهُوَ قَوْلُنَا وَالْوَاجِبُ رَدُّهُ إلَى مَالِكِهِ.

L15527 If they say, “Rather, he owned it,” we respond: Then it is impermissible to remove his property from his possession without his willing consent—neither for a price nor without compensation. Has there ever been clearer corruption than these corrupt assertions, flagrant contradictions, and arbitrary control over the religion of Allah Almighty and people’s wealth through falsehood

وَإِنْ قَالُوا: بَلْ مَلَكَهُ. قُلْنَا: فَمَا يَحِلُّ إخْرَاجُ مِلْكِهِ عَنْ يَدِهِ بِغَيْرِ طِيبِ نَفْسٍ مِنْهُ لَا بِثَمَنٍ وَلَا بِغَيْرِ ثَمَنٍ؛ فَهَلْ سُمِعَ بِأَبْيَنَ فَسَادٍ مِنْ هَذِهِ الْأَقْوَالِ الْفَاسِدَةِ وَالتَّنَاقُضِ الْفَاحِشِ

that is unconcealed? Thus, this claim is wholly invalidated, as no transmitted evidence substantiates it, nor does rational analysis confirm it.

L15528 As for the statement of those who say, “It must be rejected before division but not after”—this claim also lacks any foundation for its validity whatsoever: neither through an explicit textual source, nor via a weak ḥadīth report, nor through legal reasoning, nor any juristic basis of any kind.

L15529 As for the statement of those who say, “It cannot be rejected before division nor after,” this is the least contradictory statement. The foundation of their argument is that the people of war have acquired ownership over what they seized from us. Had their foundational principle been valid, their claim would have been true. However, we say to them: Allah the Exalted declared, *“Do not consume your wealth among yourselves wrongfully”* [Al-Baqarah 2:188], and the Messenger of Allah—peace be upon him—said, *“Your blood and your wealth are inviolable to you,”* and he—peace be upon him—said, *“There is no right for an unjust basis,”* and he—peace be upon him—said, *“Whoever performs an act contrary to our command, it is rejected.”*[1][2]

L15530 Inform us regarding what the enemy combatants have taken from us: did they seize it legitimately or illegitimately? Is our wealth part of what Allah the Exalted has permitted them, or part of what He has forbidden them? Are they wrongdoers in this, or are they not?

L15531–15532 Have they performed any deed from that in accordance with the command of Allah the Exalted and the command of His Prophet—peace be upon him—or a deed contrary to the command of Allah the Exalted and the command of His Messenger—peace and blessings of Allah be upon him? Are they obligated by the religion of Islam and destined to abide eternally in the Fire due to their opposition to it, or not? One of these must necessarily be the case. The claim that they took it rightfully—that it is among what Allah the Exalted has

[1] **Hadith references (L15529):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[2] **Qur’an references (L15529):** Qur’an 2:188 (Al-Baqarah).

وَالتَّحَكُّمِ فِي دِينِ اللَّهِ تَعَالَى وَفِي أَمْوَالِ النَّاسِ بِالْبَاطِلِ الَّذِي لَا خَفَاءَ بِهِ؟ فَسَقَطَ هَذَا الْقَوْلُ جُمْلَةً؛ إِذْ لَمْ يَصِحَّ فِيهِ أَثَرٌ وَلَا صَحَّحَهُ نَظَرٌ.

وَأَمَّا قَوْلُ مَنْ قَالَ: يُرَدُّ قَبْلَ الْقِسْمَةِ وَلَا يُرَدُّ بَعْدَهَا. فَقَوْلٌ أَيْضًا لَا يَقُومُ عَلَى صِحَّتِهِ دَلِيلٌ أَصْلًا، لَا مِنْ نَصٍّ وَلَا مِنْ رِوَايَةٍ ضَعِيفَةٍ، وَلَا مِنْ نَظَرٍ، وَلَا مِنْ وَجْهٍ مِنْ الْوُجُوهِ.

وَأَمَّا قَوْلُ مَنْ قَالَ: لَا يُرَدُّ قَبْلَ الْقِسْمَةِ وَلَا بَعْدَهَا فَهُوَ أَقَلُّهَا تَنَاقُضًا، وَعُمْدَتُهُمْ أَنَّ أَهْلَ الْحَرْبِ قَدْ مَلَكُوا مَا أَخَذُوا مِنَّا، وَلَوْ صَحَّ لَهُمْ هَذَا الْأَصْلُ لَكَانَ قَوْلُهُمْ هُوَ الْحَقَّ، لَكِنْ نَقُولُ لَهُمْ: قَالَ اللَّهُ تَعَالَى: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] ، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» ، وَقَالَ - عَلَيْهِ السَّلَامُ - «لَيْسَ لِعِرْقٍ ظَالِمٍ حَقٌّ» ، وَقَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

فَأَخْبِرُونَا عَمَّا أَخَذَهُ مِنَّا أَهْلُ الْحَرْبِ أَبِحَقٍّ أَخَذُوهُ أَمْ بِبَاطِلٍ؟ وَهَلْ أَمْوَالُنَا مِمَّا أَحَلَّهُ اللَّهُ تَعَالَى لَهُمْ أَوْ مِمَّا حَرَّمَهُ عَلَيْهِمْ؟ وَهَلْ هُمْ ظَالِمُونَ فِي ذَلِكَ أَوْ غَيْرُ ظَالِمِينَ؟

وَهَلْ عَمِلُوا مِنْ ذَلِكَ عَمَلًا مُوَافِقًا لِأَمْرِ اللَّهِ تَعَالَى وَأَمْرِ نَبِيِّهِ - عَلَيْهِ السَّلَامُ -، أَوْ عَمَلًا مُخَالِفًا لِأَمْرِهِ تَعَالَى وَأَمْرِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ وَهَلْ يَلْزَمُهُمْ دِينُ الْإِسْلَامِ وَيَخْلُدُونَ فِي النَّارِ لِخِلَافِهِمْ لَهُ أَمْ لَا؟ وَلَا بُدَّ مِنْ أَحَدِهَا. فَالْقَوْلُ بِأَنَّهُمْ أَخَذُوهُ بِحَقٍّ أَنَّهُ مِمَّا أَحَلَّهُ اللَّهُ تَعَالَى لَهُمْ وَأَنَّهُمْ غَيْرُ ظَالِمِينَ فِي ذَلِكَ، وَأَنَّهُمْ لَمْ يَعْمَلُوا بِذَلِكَ عَمَلًا مُخَالِفًا لِأَمْرِ اللَّهِ تَعَالَى وَأَمْرِ رَسُولِهِ - عَلَيْهِ السَّلَامُ -، وَأَنَّهُ لَا يَلْزَمُهُمْ دِينُ الْإِسْلَامِ: كُفْرٌ صُرَاحٌ بَرَاحٌ لَا مِرْيَةَ فِيهِ، فَسَقَطَ هَذَا الْقَوْلُ، وَإِذْ قَدْ سَقَطَ فَلَمْ يَبْقَ إِلَّا الْآخَرُ، وَهُوَ

permitted for them, that they are not wrongdoers in that, that they did not act contrary to the command of Allah the Exalted and the command of His Messenger—peace be upon him—and that they are not obligated to adhere to the religion of Islam is utterly manifest and unequivocal disbelief, leaving no doubt. Thus, this claim is nullified. Since it is nullified, only the other remains, which is the certain truth: that they took it unjustly, took what is forbidden to them, and in doing so, they are the most unjust of wrongdoers; that they acted in a manner not in accordance with the command of Allah the Exalted or the command of His Messenger—peace and blessings of Allah be upon him; and that adherence to the religion of Islam is an obligation upon them.

الْحَقُّ الْيَقِينُ مِنْ أَنَّهُمْ إِنَّمَا أَخَذُوهُ بِالْبَاطِلِ وَأَخَذُوا حَرَامًا عَلَيْهِمْ، وَهُمْ فِي ذَلِكَ أَظْلَمُ الظَّالِمِينَ، وَأَنَّهُمْ عَمِلُوا بِذَلِكَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُ اللَّهِ تَعَالَى: وَأَمْرُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّ الْتِزَامَ دِينِ الْإِسْلَامِ فَرْضٌ عَلَيْهِمْ.

L15533 Since there is no doubt about this, their taking of what they took is invalid and rejected - an injustice that is nullified. They have no right, nor does anyone resembling them in this matter; thus, it remains perpetually under the ownership of its owner. This is a matter we do not know how it could be concealed from anyone, especially since those present among the dissenters have unanimously agreed that they hold no ownership whatsoever over our free people, and that they are released before and after distribution without being required to pay a price. What difference is there between owning a free person and owning property through injustice and falsehood, if they were just to themselves? They have agreed that a Muslim does not gain ownership over another Muslim through usurpation, so how has this concern for the disbelievers occurred in this matter, given their profound contradiction in claiming ownership over us when they do not own over us? Some of them have made a grave statement that reveals the corruption of his religion, saying: "It is an enforceable injustice," likening it to favoring some of his children over others. Thus, this ignorant one has attained falsehood and disbelief.

فَإِذْ لَا شَكَّ فِي هَذَا فَأَخْذُهُمْ لِمَا أَخَذُوا بَاطِلٌ مَرْدُودٌ، وَظُلْمٌ مَفْسُوخٌ وَلَا حَقَّ لَهُمْ وَلَا لِأَحَدٍ يُشْبِهُهُمْ فِيهِ؛ فَهُوَ عَلَى مِلْكِ مَالِكِهِ أَبَدًا. وَهَذَا أَمْرٌ مَا نَدْرِي كَيْفَ يَخْفَى عَلَى أَحَدٍ، وَقَدْ أَجْمَعَ الْحَاضِرُونَ مِنْ الْمُخَالِفِينَ عَلَى أَنَّهُمْ لَا يَمْلِكُونَ أَحْرَارَنَا أَصْلًا، وَأَنَّهُمْ مُسَرَّحُونَ قَبْلَ الْقِسْمَةِ وَبَعْدَهَا بِلَا تَكْلِيفِ ثَمَنٍ، فَأَيُّ فَرْقٍ بَيْنَ تَمَلُّكِ الْحُرِّ، وَبَيْنَ تَمَلُّكِ الْمَالِ بِالظُّلْمِ وَالْبَاطِلِ لَوْ أَنْصَفُوا أَنْفُسَهُمْ؟ وَقَدْ اتَّفَقُوا عَلَى أَنَّ الْمُسْلِمَ لَا يَمْلِكُ عَلَى الْمُسْلِمِ بِالْغَصْبِ، فَكَيْف وَقَعَتْ لَهُمْ هَذِهِ الْعِنَايَةُ بِالْكُفَّارِ فِي ذَلِكَ مَعَ عَظِيمِ تَنَاقُضِهِمْ فِي أَنَّهُمْ يَمْلِكُونَ عَلَيْنَا لَا يَمْلِكُونَ عَلَيْنَا؟ وَقَدْ قَالَ بَعْضُهُمْ عَظِيمَةً دَلَّتْ عَلَى فَسَادِ دِينِهِ، وَهُوَ أَنَّهُ قَالَ: هُوَ جَوْرٌ يَنْفُذُ، وَنَظَرُهُ بِمُفَضِّلِ بَعْضِ وَلَدِهِ عَلَى بَعْضٍ - فَجَعَلَ هَذَا الْجَاهِلُ عَلَى الْكَذِبِ وَالْكُفْرِ

L15534 He attributed to the Prophet—peace and blessings be upon him—that he implemented Bashīr's preferential treatment of some of his children over others. And he indeed lied about that; rather, the Prophet—peace be upon him—explicitly commanded Bashīr to retract it.

وَهُوَ أَنَّهُ نَسَبَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَنْفَذَ تَفْضِيلَ بَشِيرٍ لِبَعْضِ وَلَدِهِ عَلَى بَعْضٍ - وَقَدْ كَذَبَ فِي ذَلِكَ؛ بَلْ أَمَرَهُ - عَلَيْهِ السَّلَامُ - بِرَدِّهِ نَصًّا.

L15535 Then it was ascribed to the Prophet—peace and blessings be upon him—

that he enacted injustice and implemented it. This constitutes disbelief by the one who said it—and we seek refuge in Allah from being forsaken.

ثُمَّ نَسَبَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَنْفَذَ الْجَوْرَ وَأَمْضَاهُ، وَهَذَا كُفْرٌ مِنْ قَائِلِهِ - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L15536 Abu Muhammad said: Then all these statements were dismissed.

قَالَ أَبُو مُحَمَّدٍ: فَسَقَطَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا.

L15537–15538 We have stated: There is no statement among them authentically reported from any of the Companions; rather, it has been authentically reported only from some of the Followers. As for error, no one after the Prophet—peace be upon him—is protected from it.

وَقَدْ قُلْنَا: إنَّهُ لَيْسَ مِنْهَا قَوْلٌ يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ وَإِنَّمَا صَحَّتْ عَنْ بَعْضِ التَّابِعِينَ فَقَطْ، وَالْخَطَأُ لَمْ يُعْصَمْ مِنْهُ أَحَدٌ بَعْدَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L15539 When all of them are dismissed, nothing remains except our stance—which is the undeniable truth that cannot be opposed, as we previously stated: they have no right to our wealth except what Allah the Exalted has permitted through what He wills to be transferred from some of us to others. He the Exalted said: "Fight them until there is no strife and all religion belongs wholly to Allah" [8:39]. And this is what has been established from the Messenger of Allah—peace and blessings of Allah be upon him.[3]

فَإِذْ سَقَطَتْ كُلُّهَا، فَلَمْ يَبْقَ إلَّا قَوْلُنَا وَهُوَ الْحَقُّ الَّذِي لَا يَحِلُّ خِلَافُهُ بِمَا ذَكَرْنَا آنِفًا مِنْ أَنَّهُمْ لَا يَحِلُّ لَهُمْ شَيْءٌ مِنْ أَمْوَالِنَا إلَّا بِمَا أَحَلَّهُ اللَّهُ تَعَالَى فِيمَا يَشَاءُ مِنْ بَعْضِنَا لِبَعْضٍ قَالَ تَعَالَى: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] ثُمَّ هُوَ الثَّابِتُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L15540 It was reported to us through the chain of Abū Dāwūd: Ṣāliḥ ibn Suhayl narrated to us, who narrated from Yaḥyā—meaning ibn Abī Zā'idah—from 'Ubaydullāh ibn 'Umar, from Nāfi', from Ibn 'Umar, who said: "A slave absconded to the enemy. When the Muslims prevailed over them, the Messenger of Allāh—peace and blessings be upon him—returned him to Ibn 'Umar, and he was not included in the spoils distribution."

رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا صَالِحُ بْنُ سُهَيْلٍ نَا يَحْيَى يَعْنِي ابْنَ أَبِي زَائِدَةَ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «إنَّ غُلَامًا أَبَقَ إلَى الْعَدُوِّ فَظَهَرَ عَلَيْهِ الْمُسْلِمُونَ فَرَدَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى ابْنِ عُمَرَ وَلَمْ يُقْسَمْ» .

L15541 Abu Muhammad said: The Prophet's (peace be upon him) prohibition against dividing it constitutes proof that dividing it is impermissible and that the two participants in the spoils have no right to it. Had they possessed any right to it, he would have divided it among them. From the transmission of Abd al-Razzaq via Ibn Jurayj: I heard Nafi', the freed slave of Ibn Umar, assert that Abdullah ibn Umar's horse was seized by the enemy. When the enemy was routed, Khalid ibn al-Walid found the horse and restored it to Abdullah ibn Umar.

قَالَ أَبُو مُحَمَّدٍ: مَنْعُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قِسْمَتِهِ بُرْهَانٌ بِأَنَّهُ لَا يَجُوزُ قِسْمَتُهُ وَأَنَّهُ لَا حَقَّ فِيهِ لِلْغَانِمِينَ، وَلَوْ كَانَ لَهُمْ فِيهِ حَقٌّ لَقَسَمَهُ - عَلَيْهِ السَّلَامُ - فِيهِمْ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ سَمِعْتُ نَافِعًا مَوْلَى ابْنِ عُمَرَ يَزْعُمُ أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ ذَهَبَ الْعَدُوُّ بِفَرَسِهِ فَلَمَّا هُزِمَ الْعَدُوُّ وَجَدَ خَالِدُ بْنُ الْوَلِيدِ فَرَسَهُ فَرَدَّهُ إلَى عَبْدِ اللَّهِ بْنِ عُمَرَ.

[3] **Qur'an references (L15539):** Qur'an 8:39 (Al-Anfal).

L15542 And through him to ʿAbd al-Razzāq from Maʿmar from Ayyūb from Nāfiʿ from Ibn ʿUmar, who said: A slave of mine absconded on the day of Yarmouk. Then the Muslims overcame him and returned him to me.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: أَبَقَ لِي غُلَامٌ يَوْمَ الْيَرْمُوكِ، ثُمَّ ظَهَرَ عَلَيْهِ الْمُسْلِمُونَ فَرَدُّوهُ إِلَيَّ.

L15543 Narrated to us via the chain of Ibn Abi Shaybah: Shariq narrated from al-Rukayn from his father or uncle, who said: A horse of mine was detained, and the enemy seized it. When the Muslims prevailed over him, I found it in Sa'd's stable. I said, "This is my horse." He said, "Provide evidence." I said, "If I call it, it will neigh." Sa'd said, "If it responds to you, we will not demand evidence from you." This ruling applies only after the division [of spoils], and this is the practice of the Muslims: Khalid ibn al-Walid and Ibn 'Umar did not differentiate between the state following division and what preceded it. We have transmitted this opinion from al-Hakam ibn 'Utaybah. And success is from Allah alone.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا شَرِيكٌ عَنْ الرُّكَيْنِ عَنْ أَبِيهِ أَوْ عَمِّهِ قَالَ: حُبِسَ لِي فَرَسٌ فَأَخَذَهُ الْعَدُوُّ فَظَهَرَ عَلَيْهِ الْمُسْلِمُونَ فَوَجَدْته فِي مَرْبِطِ سَعْدٍ فَقُلْت: فَرَسِي. فَقَالَ: بَيِّنَتُك، فَقُلْت: أَنَا أَدْعُوهُ فَيُحْمِحِمُ. فَقَالَ سَعْدٌ: إنْ أَجَابَك فَإِنَّا لَا نُرِيدُ مِنْك بَيِّنَةً - فَهَذَا لَيْسَ إلَّا بَعْدَ الْقِسْمَةِ، فَهَذَا فِعْلُ الْمُسْلِمِينَ، وَخَالِدِ بْنِ الْوَلِيدِ، وَابْنِ عُمَرَ: لَمْ يُفَرِّقُوا بَيْنَ حَالِ الْقِسْمَةِ وَمَا قَبْلَ الْقِسْمَةِ. وَرُوِّينَا هَذَا الْقَوْلَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ أَهْلُ الْحَرْبِ لَوْ نَزَلُوا عِنْدَك تُجَّارًا بِأَمَانٍ]

A legal question: If inhabitants of the abode of war (ahl al-ḥarb) were to reside with you as traders under a safe conduct (amān)...

L15544

L15545 932: Issue

٩٣٢ - مَسْأَلَةٌ:

L15546–15548 Similarly, if the people of war come to you as merchants under security, or as envoys, or as musta'mins, or as asylum-seekers, or as those undertaking the *dhimma* covenant with us, and we found Muslim captives in their possession, or... Protected non-Muslims, male slaves, female slaves belonging to Muslims, property of a Muslim, or of a Dhimmi: all such possessions shall be seized from them without compensation, whether they like it or not. The property shall be returned to its owners, and it is not permissible for us to honor any covenant they made contrary to this principle, in accordance with the words of Allah's Messenger—peace and blessings be upon him: "Every condition not in Allah's Book is invalid."[4]

وَكَذَلِكَ لَوْ نَزَلَ أَهْلُ الْحَرْبِ عِنْدَك تُجَّارًا بِأَمَانٍ، أَوْ رُسُلًا، أَوْ مُسْتَأْمِنِينَ مُسْتَجِيرِينَ، أَوْ مُلْتَزِمِينَ لَأَنْ يَكُونُوا ذِمَّةً لَنَا فَوَجَدْنَا بِأَيْدِيهِمْ أَسْرَى مُسْلِمِينَ، أَوْ أَهْلَ ذِمَّةٍ، أَوْ عَبِيدًا، أَوْ إمَاءً لِلْمُسْلِمِينَ، أَوْ مَالًا لِمُسْلِمٍ، أَوْ لِذِمِّيٍّ: فَإِنَّهُ يُنْتَزَعُ كُلُّ ذَلِكَ مِنْهُمْ بِلَا عِوَضٍ أَحَبُّوا أَمْ كَرِهُوا. وَيُرَدُّ الْمَالُ إلَى أَصْحَابِهِ، وَلَا يَحِلُّ لَنَا الْوَفَاءُ بِكُلِّ عَهْدٍ أُعْطُوهُ عَلَى خِلَافِ هَذَا؛ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» .

L15549 We ask those who differ with us: What would they say if we made a covenant

[4] **Hadith references (L15546):** Sunan Ibn Majah 2521.

with them that we would not pray or fast? Similarly, if they were to embrace Islam or enter the *dhimma* covenant, all property in their possession - whether it belongs to a free Muslim or a *dhimmi*, or is held for a Muslim or a *dhimmi* - must be taken and returned to its rightful owners without compensation. They bear no responsibility for what they consumed while they were *ḥarbīyīn* (enemy combatants).

وَنَسْأَلُ مَنْ خَالَفَنَا مَا يَقُولُ لَوْ عَاهَدْنَاهُمْ عَلَى أَنْ لَا نُصَلِّيَ، أَوْ لَا نَصُومَ وَكَذَلِكَ لَوْ أَسْلَمُوا، أَوْ تَذَمَّمُوا فَإِنَّهُ يُؤْخَذُ كُلُّ مَا فِي أَيْدِيهِمْ مِنْ حُرِّ مُسْلِمٍ أَوْ ذِمِّيٍّ، أَوْ لِمُسْلِمٍ، أَوْ لِذِمِّيٍّ، وَيُرَدُّ إِلَى أَصْحَابِهِ بِلَا عِوَضٍ وَلَا شَيْءَ عَلَيْهِمْ فِيمَا اسْتَهْلَكُوا فِي حَالِ كَوْنِهِمْ حَرْبِيِّينَ.

L15550 If a merchant or an envoy enters the abode of war and ransoms a captive, or they give him the captive, or he purchases property for a Muslim or a dhimmi, or they gift the property to him, then returns to the abode of Islam. All such possessions shall be confiscated from him and restored to their original owner, with the loss borne by the purchaser. The captive shall be released without any penalty, as we mentioned in the preceding chapter, for the utmost invalidity and gravest injustice is the taking by a polytheist of a Muslim, his property, a dhimmi, or his property. Injustice cannot be ratified; rather, it must be revoked and nullified.

وَلَوْ أَنَّ تَاجِرًا، أَوْ رَسُولًا دَخَلَ إِلَى دَارِ الْحَرْبِ فَافْتَدَى أَسِيرًا، أَوْ أَعْطَوْهُ إِيَّاهُ، أَوْ ابْتَاعَ مَتَاعًا لِمُسْلِمٍ أَوْ لِذِمِّيٍّ أَوْ وَهَبُوهُ لَهُ، فَخَرَجَ إِلَى دَارِ الْإِسْلَامِ: انْتُزِعَ مِنْهُ كُلُّ ذَلِكَ، وَرُدَّ إِلَى صَاحِبِهِ، وَهُوَ مِنْ خَسَارَةِ الْمُشْتَرِي، وَأُطْلِقَ الْأَسِيرُ بِلَا غَرَامَةٍ لِمَا ذَكَرْنَا فِي الْبَابِ الَّذِي قَبْلَ هَذَا مِنْ أَنَّ أَبْطَلَ الْبَاطِلِ، وَأَظْلَمَ الظُّلْمِ: أَخْذُ الْمُشْرِكِ لِلْمُسْلِمِ، أَوْ لِمَالِهِ، أَوْ لِذِمِّيٍّ أَوْ لِمَالِهِ، وَالظُّلْمُ لَا يَجُوزُ إِمْضَاؤُهُ بَلْ يُرَدُّ وَيُفْسَخُ.

L15551 If a captive were to say to a Muslim or a protected non-Muslim who has entered the abode of war: “Ransom me from them, and whatever you give them is a debt you hold against me,” then it is as he declared, and it is a debt upon him. This is because he requested to borrow from him, and he lent it to him, and this is a right.

فَلَوْ أَنَّ الْأَسِيرَ قَالَ لِمُسْلِمٍ، أَوْ لِذِمِّيٍّ دَخَلَ دَارَ الْحَرْبِ: افْدِنِي مِنْهُمْ، وَمَا تُعْطِيهِمْ دَيْنٌ لَكَ عَلَيَّ، فَهُوَ كَمَا قَالَ، وَهُوَ دَيْنٌ عَلَيْهِ، لِأَنَّهُ اسْتَقْرَضَهُ فَأَقْرَضَهُ، وَهَذَا حَقٌّ.

L15552 Mālik and Ibn al-Qāsim said: If Ḥarbīs encamp under an amān (pledge of safe conduct) while they have captive Muslim women in their possession, the women are not to be seized from them, nor may the Ḥarbīs be barred from having sexual relations with them.

وَقَالَ مَالِكٌ، وَابْنُ الْقَاسِمِ: لَوْ نَزَلَ حَرْبِيُّونَ بِأَمَانٍ وَعِنْدَهُمْ مُسْلِمَاتٌ مَأْسُورَاتٌ: لَمْ يُنْتَزَعْنَ مِنْهُمْ، وَلَا يُمْنَعُونَ مِنَ الْوَطْءِ لَهُنَّ.

L15553 Ibn al-Qasim said: If the Harbis were to enter into the covenant of dhimma while holding free Muslims as captives, those Muslims would remain in the hands of the Dhimmis as slaves to them, just as they were [under the Harbis].

وَقَالَ ابْنُ الْقَاسِمِ: لَوْ تَذَمَّمَ حَرْبِيُّونَ وَبِأَيْدِيهِمْ أَسْرَى مُسْلِمُونَ أَحْرَارٌ: فَهُمْ بَاقُونَ فِي أَيْدِي أَهْلِ الذِّمَّةِ عَبِيدٌ لَهُمْ كَمَا كَانُوا.

L15554 These two opinions—we know of none more corrupt than them, and we seek refuge in Allah from them. If only I knew what the ruling would be if they had Muslim elders in their possession while legalizing the acts of Lot’s

وَهَذَانِ الْقَوْلَانِ لَا نَعْلَمُ قَوْلًا أَعْظَمَ فَسَادًا مِنْهُمَا، وَنَعُوذُ بِاللَّهِ مِنْهُمَا، وَلَيْتَ شِعْرِي مَا الْقَوْلُ لَوْ كَانَ بِأَيْدِيهِمْ شُيُوخٌ مُسْلِمُونَ وَهُمْ يَسْتَحِلُّونَ فِعْلَ قَوْمِ لُوطٍ أَيُتْرَكُونَ وَذَلِكَ؟

أَوْ لَوْ أَنَّ بِأَيْدِيهِمْ مَصَاحِفَ أَيُتْرَكُونَ يَمْسَحُونَ بِهَا الْعَذِرَ عَنْ أَسْتَاهِهِمْ؟ نَبْرَأُ إِلَى اللَّهِ تَعَالَى مِنْ هَذَا الْقَوْلِ أَتَمَّ الْبَرَاءَةِ - وَنَعُوذُ بِاللَّهِ مِنْ الْخِذْلَانِ. ٩٣٣ - مَسْأَلَةٌ:

people? How could they be left to that? Or if they had copies of the Quran in their possession, how could they be left to wipe excrement from their buttocks with them? We disavow to Allah, the Exalted, this opinion with the most complete disavowal—and we seek refuge in Allah from being forsaken. Issue 933:

فَإِنْ ذَكَرُوا حَدِيثَ أَبِي جَنْدَلٍ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَدَّهُ عَلَى الْمُشْرِكِينَ - فَلَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ.

L15555 If they cite the hadith of Abū Jandal and that the Messenger of Allah—may Allah bless him and grant him peace—returned him to the polytheists, there is no valid argument for them in this matter for several considerations.

أَوَّلُهَا - أَنَّهُ - عَلَيْهِ السَّلَامُ - رَدَّهُ وَلَمْ يَكُنْ الْعَهْدُ تَمَّ بَيْنَهُمْ، وَهُمْ لَا يَقُولُونَ بِهَذَا.

L15556–15557 The first of them is that he—peace be upon him—rejected it, and the covenant had not been completed between them, and they do not say this.

وَالثَّانِي - أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَرُدَّهُ حَتَّى أَجَارَهُ لَهُ مُكْرَزُ بْنُ حَفْصٍ مِنْ أَنْ يُؤْذَى.

L15558 The second [point] is that he—peace be upon him—did not turn him away until Mukarraz ibn Ḥafṣ granted him protection to ensure he would not be harmed.

وَالثَّالِثُ - أَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ كَانَ اللَّهُ تَعَالَى أَعْلَمَهُ أَنَّهُ سَيَجْعَلُ اللَّهُ لَهُ فَرَجًا وَمَخْرَجًا وَنَحْنُ لَا نَعْلَمُ ذَلِكَ.

L15559 The third is that he—peace be upon him—had been informed by Allah, the Exalted, that He will grant him deliverance and an escape, whereas we have no such knowledge.

وَالرَّابِعُ -

L15560 And the fourth:

أَنَّهُ خَبَرٌ مَنْسُوخٌ نَسَخَهُ قَوْلُ اللَّهِ تَعَالَى بَعْدَ قِصَّةِ أَبِي جَنْدَلٍ: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ اللَّهُ أَعْلَمُ بِإِيمَانِهِنَّ فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لا هُنَّ حِلٌّ لَهُمْ وَلا هُمْ يَحِلُّونَ لَهُنَّ} [الممتحنة: ١٠] فَأَبْطَلَ اللَّهُ تَبَارَكَ وَتَعَالَى بِهَذِهِ الْآيَةِ عَهْدَهُمْ فِي رَدِّ النِّسَاءِ، ثُمَّ أَنْزَلَ اللَّهُ تَعَالَى: (بَرَاءَةٌ) بَعْدَ ذَلِكَ فَأَبْطَلَ الْعَهْدَ كُلَّهُ وَنَسَخَهُ بِقَوْلِهِ تَعَالَى: {بَرَاءَةٌ مِنَ اللَّهِ وَرَسُولِهِ إِلَى الَّذِينَ عَاهَدْتُمْ مِنَ الْمُشْرِكِينَ} [التوبة: ١] {فَسِيحُوا فِي الأَرْضِ أَرْبَعَةَ أَشْهُرٍ} [التوبة: ٢] ٠ وَبِقَوْلِهِ تَعَالَى فِي (بَرَاءَةٌ) أَيْضًا: {كَيْفَ يَكُونُ لِلْمُشْرِكِينَ عَهْدٌ عِنْدَ اللَّهِ وَعِنْدَ رَسُولِهِ إِلا الَّذِينَ

L15561 That it is an abrogated report superseded by the statement of Allah, the Exalted, after the account of Abū Jandal: “O you who believe, when believing women come to you as emigrants, test them. Allah knows best about their faith. If you verify them as believers, do not return them to the disbelievers - neither are they lawful for the disbelievers, nor are the disbelievers lawful for them” [Al-Mumtaḥanah: 10]. Through this verse, Allah, Blessed and Exalted is He, invalidated their pact concerning the return of women. Then Allah, the Exalted, revealed Surah At-Tawbah (Bara’ah) thereafter, thereby nullifying the entire pact and abrogating it with His statement: “A repudiation from Allah and His Messenger to those polytheists with whom you made a pact” [At-Tawbah: 1] “So move freely in the land for four months” [At-Tawbah: 2]. And through His statement in At-Tawbah: “How can there be any pact with the polytheists with Allah and His Messenger, except for those with whom you made a pact at the Sacred Mosque?” [At-Tawbah: 7]. Thus the

Exalted invalidated every pact with the polytheists except those with whom a covenant was made at the Sacred Mosque.[5]

L15562 And by His saying, the Exalted: "When the sacred months have passed, then kill the polytheists wherever you find them, seize them, besiege them, and lie in wait for them at every strategic position. But if they repent, establish prayer, and give *Zakat*, then release them freely" [At-Tawbah: 5]. And He, the Exalted, said: "Fight those who do not believe in Allah nor in the Last Day, nor forbid what Allah and His Messenger have forbidden, nor adhere to the religion of truth—from among those given the Scripture—until they pay the *jizyah* personally while they are humbled" [At-Tawbah: 29]. Thus, Allah the Exalted nullified every treaty and did not validate it, and did not make for the polytheists except killing or Islam. For the People of the Scripture specifically, there is the payment of *jizyah* while they are humbled. He granted security to the asylum-seeker and the Messenger until he delivers his message, and the asylum-seeker hears the words of Allah. Then both are to be returned to their respective lands, with no further obligation. Therefore, every treaty other than this is invalid and annulled; it is impermissible to honor it, for it contradicts the stipulation of Allah, the Mighty and Majestic, and opposes His command.[6]

L15563–15564 We have been narrated via the chain of Al-Bukhari: Abdullah ibn Muhammad narrated to us, from Abd al-Razzaq who informed us, from Ma'mar who informed me from Al-Zuhri, who said: "Urwah ibn al-Zubayr informed me from al-Miswar ibn Makhramah and others," mentioning the incident of al-Hudaybiyah. And in it, the Muslims exclaimed: "Glory be to Allah! How can he be returned to the polytheists when he has come as a Muslim?" While they were in this state, suddenly Abu Jandal ibn Suhayl ibn Amr entered, shackled in his chains, having emerged from the lower part of Mecca until he threw himself into the midst of the Muslims. Suhayl declared: "This is the first condition I stipulate against you—that you return him to me."

عَاهَدْتُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ} [التوبة: ٧] الْآيَةَ فَأَبْطَلَ تَعَالَى كُلَّ عَهْدٍ لِلْمُشْرِكِينَ حَاشَا الَّذِينَ عَاهَدُوا عِنْدَ الْمَسْجِدِ الْحَرَامِ.

وَبِقَوْلِهِ تَعَالَى: {فَإِذَا انْسَلَخَ الأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصَدٍ فَإِنْ تَابُوا وَأَقَامُوا الصَّلاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ} [التوبة: ٥] ، وَقَالَ تَعَالَى: {قَاتِلُوا الَّذِينَ لا يُؤْمِنُونَ بِاللَّهِ وَلا بِالْيَوْمِ الآخِرِ وَلا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] ، فَأَبْطَلَ اللَّهُ تَعَالَى كُلَّ عَهْدٍ وَلَمْ يُقِرَّهُ، وَلَمْ يَجْعَلْ لِلْمُشْرِكِينَ إِلَّا الْقَتْلَ، أَوْ الْإِسْلَامَ، وَلِأَهْلِ الْكِتَابِ خَاصَّةً إِعْطَاءُ الْجِزْيَةِ وَهُمْ صَاغِرُونَ وَأَمَّنَ الْمُسْتَجِيرَ وَالرَّسُولَ حَتَّى يُؤَدِّيَ رِسَالَتَهُ وَيَسْمَعَ الْمُسْتَجِيرُ كَلَامَ اللَّهِ ثُمَّ يُرَدَّانِ إِلَى بِلَادِهِمَا وَلَا مَزِيدَ، فَكُلُّ عَهْدٍ غَيْرِ هَذَا فَهُوَ بَاطِلٌ مَفْسُوخٌ لَا يَحِلُّ الْوَفَاءُ بِهِ؛ لِأَنَّهُ خِلَافُ شَرْطِ اللَّهِ عَزَّ وَجَلَّ وَخِلَافُ أَمْرِهِ.

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ نَا عَبْدُ الرَّزَّاقِ أَخْبَرَنَا مَعْمَرٌ أَخْبَرَنِي الزُّهْرِيُّ قَالَ: أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ «عَنْ الْمِسْوَرِ بْنِ مَخْرَمَةَ وَغَيْرِهِ فَذَكَرَ حَدِيثَ الْحُدَيْبِيَةِ، وَفِيهِ فَقَالَ الْمُسْلِمُونَ: سُبْحَانَ اللَّهِ كَيْفَ يُرَدُّ إِلَى الْمُشْرِكِينَ وَقَدْ جَاءَ مُسْلِمًا؟ فَبَيْنَمَا هُمْ كَذَلِكَ إِذْ دَخَلَ أَبُو جَنْدَلِ بْنُ سُهَيْلِ بْنِ عَمْرٍو يَرْسُفُ فِي قُيُودِهِ وَقَدْ خَرَجَ مِنْ أَسْفَلِ مَكَّةَ حَتَّى رَمَى بِنَفْسِهِ بَيْنَ أَظْهُرِ الْمُسْلِمِينَ فَقَالَ سُهَيْلٌ: هَذَا أَوَّلُ مَا أُقَاضِيكَ عَلَيْهِ أَنْ تَرُدَّهُ إِلَيَّ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِنَّا لَمْ نَقْضِ الْكِتَابَ بَعْدُ، قَالَ: فَوَاَللَّهِ إِذًا لَا أُصَالِحُكَ عَلَى شَيْءٍ أَبَدًا، فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -:

[5] **Qur'an references (L15561):** Qur'an 60:10 (Al-Mumtahanah); Qur'an 9:1 (At-Tawbah); Qur'an 9:2 (At-Tawbah); Qur'an 9:7 (At-Tawbah).

[6] **Qur'an references (L15562):** Qur'an 9:5 (At-Tawbah); Qur'an 9:29 (At-Tawbah).

فَأَجِزْهُ لِي قَالَ: مَا أَنَا بِمُجِيزِهِ لَكَ قَالَ: بَلَى فَافْعَلْ. قَالَ: مَا أَنَا بِفَاعِلٍ، قَالَ مُكَرَّزٌ - هُوَ ابْنُ حَفْصِ بْنِ الْأَحْنَفِ: بَلْ قَدْ أَجَزْنَاهُ لَكَ» فَهَذَا خِلَافُ قَوْلِهِمْ كُلِّهِمْ وَحَدِيثُ أَبِي جَنْدَلٍ حُجَّةٌ عَلَيْهِمْ كَمَا أَوْرَدْنَا.

The Prophet—peace and blessings be upon him—responded: "We have not yet finalized the treaty." Suhayl retorted: "By Allah, then I shall never make peace with you on anything ever!" The Prophet—peace and blessings be upon him—entreated: "Permit him to me." He answered: "I will not permit him to you." The Prophet urged: "Indeed, do so." He insisted: "I will not." Mukarraz—Ibn Hafs ibn al-Ahnaf—interjected: "Rather, we have permitted him to you." This contradicts all their claims, and Abu Jandal's narration stands as decisive evidence against them, as we have presented.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نَا عَفَّانُ هُوَ ابْنُ مُسْلِمٍ نَا حَمَّادُ بْنُ سَلَمَةَ عَنْ ثَابِتٍ عَنْ أَنَسٍ: «أَنَّ قُرَيْشًا صَالَحُوا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاشْتَرَطُوا عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّ مَنْ جَاءَ مِنْكُمْ لَمْ نَرُدَّهُ عَلَيْكُمْ وَمَنْ جَاءَ مِنَّا رَدَدْتُمُوهُ عَلَيْنَا. فَقَالُوا يَا رَسُولَ اللَّهِ أَتَكْتُبُ هَذَا؟ قَالَ: نَعَمْ، إنَّهُ مَنْ ذَهَبَ مِنَّا إلَيْهِمْ فَأَبْعَدَهُ اللَّهُ، وَمَنْ جَاءَنَا مِنْهُمْ فَسَيَجْعَلُ اللَّهُ لَهُ فَرَجًا وَمَخْرَجًا» وَهَذَا خَبَرٌ مِنْهُ - عَلَيْهِ السَّلَامُ - مَقْطُوعٌ بِصِدْقِهِ.

L15565 From the chain of Muslim: Abu Bakr ibn Abi Shaybah narrated to us, Affan—who is Ibn Muslim—narrated to us, Hammad ibn Salamah narrated from Thabit from Anas: "The Quraysh made a peace treaty with the Prophet—peace and blessings be upon him—and stipulated upon the Prophet—peace and blessings be upon him—that anyone who comes to them from your side will not be returned to you, and anyone who comes to you from our side must be returned to us. They said, 'O Messenger of Allah, will you write this?' He said, 'Yes. Indeed, whoever leaves us to join them, Allah will banish him utterly, and whoever comes to us from them, Allah will grant him relief and a way out.'" This is a report from him—peace and blessings be upon him—decisively authenticated in its truthfulness.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا يَحْيَى بْنُ بُكَيْرٍ نَا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ أَنَّهُ سَمِعَ الْمِسْوَرَ بْنَ مَخْرَمَةَ، وَآخَرَ: يُخْبِرَانِ عَنْ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَا «حَدِيثَ الْحُدَيْبِيَةِ، وَفِيهِ: فَرَدَّ يَوْمَئِذٍ أَبَا جَنْدَلٍ إلَى أَبِيهِ سُهَيْلِ بْنِ عَمْرٍو، وَلَمْ يَأْتِهِ أَحَدٌ مِنْ الرِّجَالِ إلَّا رَدَّهُ فِي تِلْكَ الْمُدَّةِ وَإِنْ كَانَ مُسْلِمًا، وَجَاءَتْ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ، وَجَاءَتْ أُمُّ كُلْثُومِ بِنْتُ عُقْبَةَ بْنِ أَبِي مُعَيْطٍ مِمَّنْ خَرَجَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَئِذٍ وَهِيَ عَاتِقٌ فَجَاءَ أَهْلُهَا يَسْأَلُونَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُرْجِعَهَا إلَيْهِمْ فَلَمْ يُرْجِعْهَا إلَيْهِمْ لِمَا أَنْزَلَ اللَّهُ تَعَالَى فِيهِنَّ:

L15566 And through the chain of Al-Bukhārī: Yahyā ibn Bukayr narrated to us, Al-Layth—that is, Ibn Saʿd—narrated to us from ʿUqayl ibn Khālid from Ibn Shihāb, who informed me that ʿUrwah ibn Al-Zubayr heard Al-Miswar ibn Makhramah and another person informing him about the Companions of the Prophet (ﷺ). They mentioned the narration of Al-Ḥudaybiyyah, in which it states: "On that day, he returned Abu Jandal to his father Suhayl ibn ʿAmr. Whenever a man came to him during that period, the Prophet would return him, even if he was Muslim. The believing women came as female emigrants, including Umm Kulthūm bint ʿUqbah ibn Abī Muʿayṭ from among those who came to the Messenger of Allah (ﷺ) on that day as a young woman of mature age. Her family came asking the Prophet to return her to them, but he refused due to what Allah the Exalted had revealed concerning them:

{When the believing women come to you as female emigrants, test them. Allah knows best about their faith} [Al-Mumtaḥanah 60:10]."[7]

The ruling regarding a captive held by disbelievers who made a pact with him for ransom and released him.

934. - Legal Question:

Whoever is a captive with the disbelievers, and they make a pact with him for ransom and release him, then it is not permissible. He has the right to return to them and not to give them anything, nor is it permissible for the imam to compel him to give them anything. If he cannot depart except through ransom, then it becomes obligatory upon the Muslims to ransom him if he lacks wealth sufficient for his ransom. Allah the Exalted says: "And do not consume one another's wealth unjustly" [Al-Baqarah: 188]. The captivity of a Muslim constitutes the most wrongful of wrongs, and the taking of a disbeliever's or tyrant's wealth as ransom represents the most wrongful of wrongs. Therefore, it is impermissible to give wrongful things or assist in them. Those covenants and oaths he granted them impose no obligation upon him, for he was coerced into them when no means of escape existed except through such pledges. It is unlawful for him to remain in the land of disbelief while capable of leaving. The Messenger of Allah—peace and blessings be upon him—said: "There has been lifted from my ummah [responsibility for] error, forgetfulness, and what they are compelled to do." Similarly, every covenant we grant them remains valid only until we gain the capacity to rescue Muslims and their possessions from their control. If we cannot achieve their liberation except through ransom, then ransoming them becomes obligatory upon us, in accordance with the narration of the Messenger of Allah—peace and blessings be upon him—reported through Abū Mūsā al-Ash'ari: "Feed the hungry and free the captive." This constitutes the opinion of Abū Sulaymān and al-Shāfi'ī.[8]

[7] **Qur'an references (L15566):** Qur'an 60:10 (Al-Mumtahanah).

[8] **Qur'an references (L15569):** Qur'an 2:188 (Al-Baqarah).

{إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ اللَّهُ أَعْلَمُ بِإِيمَانِهِنَّ} [الممتحنة: ١٠] » الْآيَةَ

[مَسْأَلَةٌ مَنْ كَانَ أَسِيرًا عِنْدَ الْكُفَّارِ فَعَاهَدُوهُ عَلَى الْفِدَاءِ وَأَطْلَقُوهُ]

٩٣٤ - مَسْأَلَةٌ:

وَمَنْ كَانَ أَسِيرًا عِنْدَ الْكُفَّارِ فَعَاهَدُوهُ عَلَى الْفِدَاءِ وَأَطْلَقُوهُ فَلَا يَحِلُّ لَهُ أَنْ يَرْجِعَ إِلَيْهِمْ، وَلَا أَنْ يُعْطِيَهُمْ شَيْئًا، وَلَا يَحِلُّ لِلْإِمَامِ أَنْ يُجْبِرَهُ عَلَى أَنْ يُعْطِيَهُمْ شَيْئًا، فَإِنْ لَمْ يَقْدِرْ عَلَى الِانْطِلَاقِ إِلَّا بِالْفِدَاءِ فَفَرْضٌ عَلَى الْمُسْلِمِينَ أَنْ يَفْدُوهُ إِنْ لَمْ يَكُنْ لَهُ مَالٌ يَفِي بِفِدَائِهِ. قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] وَإِسَارُ الْمُسْلِمِ أَبْطَلُ الْبَاطِلِ، وَأَخْذُ الْكَافِرِ أَوْ الظَّالِمِ مَالَهُ فِدَاءً مِنْ أَبْطَلِ الْبَاطِلِ، فَلَا يَحِلُّ إعْطَاءُ الْبَاطِلِ، وَلَا الْعَوْنُ عَلَيْهِ، وَتِلْكَ الْعُهُودُ وَالْأَيْمَانُ الَّتِي أَعْطَاهُمْ لَا شَيْءَ عَلَيْهِ فِيهَا، لِأَنَّهُ مُكْرَهٌ عَلَيْهَا، إذْ لَا سَبِيلَ لَهُ إلَى الْخَلَاصِ إلَّا بِهَا، وَلَا يَحِلُّ لَهُ الْبَقَاءُ فِي أَرْضِ الْكُفْرِ وَهُوَ قَادِرٌ عَلَى الْخُرُوجِ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» وَهَكَذَا كُلُّ عَهْدٍ أَعْطَيْنَاهُمْ، حَتَّى نَتَمَكَّنَ مِنْ اسْتِنْقَاذِ الْمُسْلِمِينَ وَأَمْوَالِهِمْ مِنْ أَيْدِيهِمْ، فَإِنْ عَجَزْنَا عَنْ اسْتِنْقَاذِهِ إلَّا بِالْفِدَاءِ فَفَرْضٌ عَلَيْنَا فِدَاؤُهُ لِخَبَرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ أَبِي مُوسَى الْأَشْعَرِيِّ «أَطْعِمُوا الْجَائِعَ وَفُكُّوا الْعَانِيَ» وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَالشَّافِعِيِّ

[مَسْأَلَةٌ فِدَاءُ الْأَسِيرِ الْمُسْلِمِ]

A Legal Question: The Redemption of Muslim Captives

935. Question:

It is not permissible to ransom a Muslim captive except either with wealth or with a non-Muslim captive. It is also impermissible to return a minor taken as a war captive from the territory of war to the enemy, whether for ransom or without ransom, because the rulings of Islam have become binding upon him due to the Muslims' ownership over him. Thus, he and Muslim minors are equal, with no distinction—and this is the opinion of Al-Muzani.

Issue: What is the ruling on gifts granted by the People of War to a Muslim envoy to them or a merchant residing among them?

936: Issue

What the people of war grant to the Muslim envoy sent to them or the trader residing among them is lawful—a valid gift—provided it is not the property of a Muslim or a protected non-Muslim. Likewise, what a Muslim purchases from them constitutes a valid purchase, provided it is not the property of a Muslim or a protected non-Muslim. This is because they retain ownership of their wealth until Muslims seize it from them, based on Allah's statement: {He made you inherit their land, their homes, and their wealth} [Al-Aḥzāb: 27]. Thus, Allah decreed their property to remain theirs until He made us inherit it. Inheritance occurs only through seizure and acquisition; otherwise, it is not inherited after we have been unable to attain it. For Allah has designated their wealth exclusively for those who seize it as spoils, not for everyone who did not acquire it through conquest.[9]

A Question: The Ḥarbī Disbeliever When He Embraces Islam

937: Question

٩٣٥٠ - مَسْأَلَةٌ:

وَلَا يَحِلُّ فِدَاءُ الْأَسِيرِ الْمُسْلِمِ إِلَّا إِمَّا بِمَالٍ، وَإِمَّا بِأَسِيرٍ كَافِرٍ، وَلَا يَحِلُّ أَنْ يُرَدَّ صَغِيرٌ سُبِيَ مِنْ أَرْضِ الْحَرْبِ إِلَيْهِمْ لَا بِفِدَاءٍ وَلَا بِغَيْرِ فِدَاءٍ، لِأَنَّهُ قَدْ لَزِمَهُ حُكْمُ الْإِسْلَامِ بِمِلْكِ الْمُسْلِمِينَ لَهُ، فَهُوَ وَأَوْلَادُ الْمُسْلِمِينَ سَوَاءٌ وَلَا فَرْقَ - وَهُوَ قَوْلُ الْمُزَنِيِّ.

[مَسْأَلَةٌ مَا وَهَبَ أَهْلُ الْحَرْبِ لِلْمُسْلِمِ الرَّسُولِ إِلَيْهِمْ أَوْ التَّاجِرِ عِنْدَهُمْ]

٩٣٦ - مَسْأَلَةٌ:

وَمَا وَهَبَ أَهْلُ الْحَرْبِ لِلْمُسْلِمِ الرَّسُولِ إِلَيْهِمْ، أَوْ التَّاجِرِ عِنْدَهُمْ فَهُوَ حَلَالٌ، وَهِبَةٌ صَحِيحَةٌ مَا لَمْ يَكُنْ مَالَ مُسْلِمٍ، أَوْ ذِمِّيٍّ، وَكَذَلِكَ مَا ابْتَاعَهُ الْمُسْلِمُ مِنْهُمْ فَهُوَ ابْتِيَاعٌ صَحِيحٌ مَا لَمْ يَكُنْ مَالًا لِمُسْلِمٍ، أَوْ ذِمِّيٍّ، لِأَنَّهُمْ مَالِكُونَ لِأَمْوَالِهِمْ مَا لَمْ يَنْتَزِعْهَا الْمُسْلِمُ مِنْهُمْ بِقَوْلِ اللَّهِ تَعَالَى: {وَأَوْرَثَكُمْ أَرْضَهُمْ وَدِيَارَهُمْ وَأَمْوَالَهُمْ} [الأحزاب: ٢٧] فَجَعَلَهَا اللَّهُ تَعَالَى لَهُمْ إِلَى أَنْ أَوْرَثَنَا إِيَّاهَا، وَالتَّوْرِيثُ لَا يَكُونُ إِلَّا بِالْأَخْذِ وَالتَّمَلُّكِ، وَإِلَّا فَلَمْ يُورَثْ بَعْدَمَا لَمْ تَقْدِرْ أَيْدِينَا عَلَيْهِ، وَإِنَّمَا جَعَلَ اللَّهُ تَعَالَى أَمْوَالَهُمْ لِلْغَانِمِ لَهَا، لَا لِكُلِّ مَنْ لَمْ يَغْنَمْهَا.

[مَسْأَلَةٌ الْكَافِرُ الْحَرْبِيُّ إِذَا أَسْلَمَ]

٩٣٧ - مَسْأَلَةٌ:

[9] **Qur'an references (L15577):** Qur'an 33:27 (Al-Ahzab).

L15580 When a ḥarbī disbeliever embraces Islam, it is the same whether he embraces Islam in the territory of war (dār al-ḥarb) and then leaves for the abode of Islam (dār al-Islām), remains in dār al-ḥarb without leaving, or leaves for dār al-Islām first and then embraces Islam: all these cases are equivalent.

وَإِذَا أَسْلَمَ الْكَافِرُ الْحَرْبِيُّ فَسَوَاءٌ أَسْلَمَ فِي دَارِ الْحَرْبِ، ثُمَّ خَرَجَ إِلَى دَارِ الْإِسْلَامِ، أَوْ لَمْ يَخْرُجْ، أَوْ خَرَجَ إِلَى دَارِ الْإِسْلَامِ ثُمَّ أَسْلَمَ، كُلُّ ذَلِكَ سَوَاءٌ.

L15581–15582 And all his property that is with him in the land of Islam, or in the abode of war, or that he left behind in the abode of war—of immovable property, or a house, or land, or animals, or cash, or movable property in his residence, or deposited items, or a debt—all of it is his; no one has any right to it, nor do the Muslims own it if they acquire it as war spoils or conquer that land.

وَجَمِيعُ مَالِهِ الَّذِي مَعَهُ فِي أَرْضِ الْإِسْلَامِ، أَوْ فِي دَارِ الْحَرْبِ، أَوْ الَّذِي تَرَكَ وَرَاءَهُ فِي دَارِ الْحَرْبِ مِنْ عَقَارٍ، أَوْ دَارٍ، أَوْ أَرْضٍ، أَوْ حَيَوَانٍ، أَوْ نَاضٍّ، أَوْ مَتَاعٍ فِي مَنْزِلِهِ، أَوْ مُودَعًا، أَوْ كَانَ دَيْنًا: هُوَ كُلُّهُ لَهُ، لَا حَقَّ لِأَحَدٍ فِيهِ، وَلَا يَمْلِكُهُ الْمُسْلِمُونَ إنْ غَنِمُوهُ أَوْ افْتَتَحُوا تِلْكَ الْأَرْضَ.

L15583 And whoever usurps anything from it—whether from a non-Muslim belonging to hostile territory (ḥarbī), a Muslim, or a protected non-Muslim (dhimmī)—it must be returned to its owner. If the usurper dies, his heirs are obligated to return it, and his minor children are free Muslims. The same applies to the fetus in his wife's womb.

وَمَنْ غَصَبَهُ مِنْهَا شَيْئًا مِنْ حَرْبِيٍّ، أَوْ مُسْلِمٍ، أَوْ ذِمِّيٍّ: رُدَّ إلَى صَاحِبِهِ وَيَرِثُهُ وَرَثَتُهُ إنْ مَاتَ، وَأَوْلَادُهُ الصِّغَارُ مُسْلِمُونَ أَحْرَارٌ - وَكَذَلِكَ الَّذِي فِي بَطْنِ امْرَأَتِهِ.

L15584 As for his wife and adult children, they are deemed fay' (booty) if captured. He remains married to her, and she becomes a slave belonging to the one allotted her as his share.

وَأَمَّا امْرَأَتُهُ وَأَوْلَادُهُ الْكِبَارُ فَفَيْءٌ إنْ سُبُوا وَهُوَ بَاقٍ عَلَى نِكَاحِهِ مَعَهَا، وَهِيَ رَقِيقٌ لِمَنْ وَقَعَتْ لَهُ سَهْمَهُ.

L15585 The proof thereof is that when he embraces Islam, he is—without doubt or dispute and by the definitive text of the Quran and Sunnah—a Muslim. Since he is a Muslim, he is like all other Muslims. The Messenger of Allah, peace and blessings be upon him, said: "Your blood, wealth, and honors are inviolable to you." Thus, it is established that his blood, body, honor, and wealth are inviolable to all except himself. The marriages of disbelievers are valid, for the Prophet, peace and blessings be upon him, upheld their marriages. Had they been invalid, he would not have upheld them. Moreover, he—peace and blessings be upon him—was created from a valid marriage, for he was not created except from a valid marriage. Thus, the two spouses remain bound by their marriage; nothing whatsoever, nor anything else invalidates it except what is explicitly nullified by the explicit text.

بُرْهَانُ ذَلِكَ - أَنَّهُ إذَا أَسْلَمَ فَهُوَ بِلَا شَكٍّ، وَبِلَا خِلَافٍ، وَبِنَصِّ الْقُرْآنِ وَالسُّنَّةِ: مُسْلِمٌ، وَإِذْ هُوَ مُسْلِمٌ، فَهُوَ كَسَائِرِ الْمُسْلِمِينَ - وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ عَلَيْكُمْ حَرَامٌ» ، فَصَحَّ أَنَّ دَمَهُ، وَبَشَرَتَهُ، وَعِرْضَهُ، وَمَالَهُ حَرَامٌ عَلَى كُلِّ أَحَدٍ سِوَاهُ، وَنِكَاحُ أَهْلِ الْكُفْرِ صَحِيحٌ، لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَقَرَّهُمْ عَلَى نِكَاحِهِمْ، وَلَوْ كَانَ فَاسِدًا لَمَا أَقَرَّهُ، وَمِنْهُ خُلِقَ - عَلَيْهِ السَّلَامُ -، وَلَمْ يُخْلَقْ إلَّا مِنْ نِكَاحٍ صَحِيحٍ، فَهُمَا بَاقِيَانِ عَلَى نِكَاحِهِمَا لَا يَفْسُدُ شَيْءٌ، وَلَا غَيْرُهُ إلَّا مَا جَاءَ فِيهِ النَّصُّ بِفَسَادِهِ.

L15586 What is astonishing is that the present opponents do not dispute with us

that his blood, honor, and skin are forbidden - yet they vacillate regarding the matter of his wealth. This is truly astonishing. All of this statement of ours constitutes the statement of Al-Awzāʿī, Al-Shāfiʿī, and Abū Sulaymān.

وَالْعَجَبُ أَنَّ الْحَاضِرِينَ مِنْ الْمُخَالِفِينَ لَا يُنَازِعُونَنَا فِي أَنَّ دَمَهُ، وَعِرْضَهُ، وَبَشَرَتَهُ، حَرَامٌ - ثُمَّ يَضْطَرِبُونَ فِي أَمْرِ مَالِهِ، وَهَذَا عَجَبٌ جِدًّا وَقَوْلُنَا هَذَا كُلُّهُ هُوَ قَوْلُ الْأَوْزَاعِيِّ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L15587 Abu Hanifa said: If someone embraces Islam in the abode of war and remains there until the Muslims gain control over it, he is free, and all his wealth belongs to him—nothing is taken as spoils from it, nor from what he had entrusted to a Muslim or a *dhimmi*. His minor children are free Muslims, except his land and the fetus in his wife's womb, all of which is spoils and *fay'*. However, the fetus is Muslim.

وَقَالَ أَبُو حَنِيفَةَ: إنْ أَسْلَمَ فِي دَارِ الْحَرْبِ وَأَقَامَ هُنَاكَ حَتَّى تَغَلَّبَ الْمُسْلِمُونَ عَلَيْهَا فَإِنَّهُ حُرٌّ، وَأَمْوَالُهُ كُلُّهَا لَهُ، لَا يُغْنَمُ مِنْهَا شَيْئًا، وَلَا مِمَّا كَانَ لَهُ وَدِيعَةً عِنْدَ مُسْلِمٍ، أَوْ ذِمِّيٍّ، وَأَوْلَادُهُ الصِّغَارُ مُسْلِمُونَ أَحْرَارٌ، حَاشَا أَرْضَهُ - وَحَمْلَ امْرَأَتِهِ فَكُلُّ ذَلِكَ غَنِيمَةٌ وَفَيْءٌ وَيَكُونُ الْجَنِينُ مَعَ ذَلِكَ مُسْلِمًا.

L15588 As for his wife and his adult children, they are fay'.

وَأَمَّا امْرَأَتُهُ وَأَوْلَادُهُ الْكِبَارُ فَفَيْءٌ.

L15589 And Abū Yūsuf said: His land also belongs to him.

وَقَالَ أَبُو يُوسُفَ: وَأَرْضُهُ لَهُ أَيْضًا.

L15590–15592 Abu Hanifa said: If someone embraces Islam in the abode of war and then departs to the abode of Islam, his minor children... Free Muslims are not to be seized as spoils. All that is deposited with a Muslim or a protected non-Muslim (dhimmi) belongs to the owner and is not subject to confiscation. As for all other possessions left behind in enemy territory—whether land, real estate, furnishings, or animals—they are considered *fay'* yet deemed seized spoils. Likewise, the belongings of his wife are treated in the same manner, provided he remains a Muslim.

قَالَ أَبُو حَنِيفَةَ: فَإِنْ أَسْلَمَ فِي دَارِ الْحَرْبِ ثُمَّ خَرَجَ إلَى دَارِ الْإِسْلَامِ فَأَوْلَادُهُ الصِّغَارُ أَحْرَارٌ مُسْلِمُونَ لَا يُغْنَمُونَ، وَكُلُّ مَا أَوْدَعَ عِنْدَ مُسْلِمٍ، أَوْ ذِمِّيٍّ فَلَهُ، وَلَا يُغْنَمُ - وَأَمَّا سَائِرُ مَا تَرَكَ فِي أَرْضِ الْحَرْبِ مِنْ أَرْضٍ، أَوْ عَقَارٍ، أَوْ أَثَاثٍ، أَوْ حَيَوَانٍ فَفَيْءٌ مَغْنُومٌ - وَكَذَلِكَ حَمْلُ امْرَأَتِهِ، وَهُوَ مَعَ ذَلِكَ مُسْلِمٌ.

L15593 If he departs to the Abode of Islam as a disbeliever and then embraces Islam there, he becomes a free Muslim. As for all the land, real estate, possessions, livestock, or minor children he leaves behind, these are designated as fay' and constitute booty; his minor children do not become Muslims through his conversion.

فَإِنْ خَرَجَ إلَى دَارِ الْإِسْلَامِ كَافِرًا، ثُمَّ أَسْلَمَ فِيهَا فَهُوَ حُرٌّ مُسْلِمٌ - وَأَمَّا كُلُّ مَا تَرَكَ مِنْ أَرْضٍ، أَوْ عَقَارٍ، أَوْ مَتَاعٍ، أَوْ حَيَوَانٍ، أَوْ أَوْلَادِهِ الصِّغَارِ فَفَيْءٌ مَغْنُومٌ، وَلَا يَكُونُونَ مُسْلِمِينَ بِإِسْلَامِهِ.

L15594 Abu Muhammad said: If one were told to demean oneself and strive, they could not do more than this. These classifications are unknown to any Muslim before him, nor are they connected to any Quranic verse, Sunnah, defec-

قَالَ أَبُو مُحَمَّدٍ: لَوْ قِيلَ لِإِنْسَانٍ أَسْخِفْ وَاجْتَهِدْ مَا قَدَرَ عَلَى أَكْثَرَ مِنْ هَذَا، وَلَا تُعْرَفُ هَذِهِ التَّقَاسِيمُ لِأَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ قَبْلَهُ، وَمَا تَعَلَّقَ فِيهَا لَا بِقُرْآنٍ، وَلَا بِسُنَّةٍ، وَلَا

tive narration, opinion of a Companion, a Successor, analogy, or rationally sound view. We seek refuge in Allah from being forsaken. Rather, this opposes the Quran and the Sunnah by permitting the wrongful seizure of a Muslim's wealth and young children as unlawful spoils, and contradicts reason, for he deems one's personal flight to the land of Islam and embracing Islam there a grave sin, warranting that his young children be permitted for captivity and disbelief, and all his wealth be seized as spoils. This is his recompense according to Abu Hanifah. He considered remaining in the land of disbelief an attribute that renders all his wealth prohibited except his land, and his young children prohibited except the fetus—despite permitting disbelievers and belligerents to appropriate Muslims' wealth as we previously outlined, and despite prohibiting striking or killing them if they openly revile the Messenger of Allah—peace and blessings be upon him—with the basest insults and publicly deny him in markets. Yet if a Muslim kills one of them, he is subject to retaliation. How do you judge this? It also opposes definitive consensus, for no believer, disbeliever, ignorant person, or scholar doubts that the Companions of the Messenger of Allah—peace and blessings be upon him—went through distinct phases.

بِرِوَايَةٍ فَاسِدَةٍ، وَلَا بِقَوْلِ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا بِقِيَاسٍ، وَلَا بِرَأْيٍ يُعْقَلُ، وَنَعُوذُ بِاللَّهِ مِنْ الْخِذْلَانِ، بَلْ هُوَ خِلَافُ الْقُرْآنِ، وَالسُّنَنِ: فِي إبَاحَتِهِ مَالَ الْمُسْلِمِ وَوَلَدِهِ الصِّغَارِ لِلْغَنِيمَةِ بِالْبَاطِلِ، وَخِلَافُ الْمَعْقُولِ، إذْ صَارَ عِنْدَهُ فِرَارُهُ إلَى أَرْضِ الْإِسْلَامِ بِنَفْسِهِ وَإِسْلَامُهُ فِيهَا: ذَنْبًا عَظِيمًا يَسْتَحِقُّ بِهِ مِنْهُ إبَاحَةَ صِغَارِ أَوْلَادِهِ لِلْإِسَارِ وَالْكُفْرِ، وَإِبَاحَةَ جَمِيعِ مَالِهِ لِلْغَنِيمَةِ، هَذَا جَزَاؤُهُ عِنْدَ أَبِي حَنِيفَةَ، وَجَعَلَ بَقَاءَهُ فِي دَارِ الْكُفْرِ خَصْلَةً حَرَّمَ بِهَا أَمْوَالَهُ كُلَّهَا حَاشَا أَرْضِهِ، وَحَرَّمَ بِهَا صِغَارَ أَوْلَادِهِ حَاشَا الْجَنِينِ، هَذَا مَعَ إبَاحَتِهِ لِلْكُفَّارِ وَالْحَرْبِيِّينَ: تَمَلُّكَ أَمْوَالِ الْمُسْلِمِينَ كَمَا قَدَّمْنَا قَبْلُ، وَتَحْرِيمِهِ ضَرْبَهُمْ وَقَتْلَهُمْ إنْ أَعْلَنُوا بِسَبِّ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَقْزَعِ السَّبِّ، وَتَكْذِيبِهِ فِي الْأَسْوَاقِ، فَإِنْ قَتَلَ مُسْلِمٌ مِنْهُمْ قَتِيلًا قُتِلَ بِهِ فَكَيْفَ تَرَوْنَ؟ وَهُوَ أَيْضًا خِلَافُ الْإِجْمَاعِ الْمُتَيَقَّنِ؛ لِأَنَّهُ لَا يَشُكُّ مُؤْمِنٌ، وَلَا كَافِرٌ، وَلَا جَاهِلٌ، وَلَا عَالِمٌ فِي أَنَّ أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانُوا أَطْوَارًا.

L15595 A group embraced Islam in Mecca, then fled to preserve their faiths, including Abu Bakr, Umar, Uthman, and other Companions (may Allah be pleased with them all).

فَطَائِفَةٌ أَسْلَمُوا بِمَكَّةَ، ثُمَّ فَرُّوا عَنْهَا بِأَدْيَانِهِمْ: كَأَبِي بَكْرٍ وَعُمَرَ، وَعُثْمَانَ وَغَيْرِهِمْ - رَضِيَ اللَّهُ عَنْهُمْ -.

L15596 And a group left as disbelievers, then embraced Islam: such as Amr ibn al-As, who embraced Islam while with the Negus, and Abu Sufyan, who did so in the camp of the Prophet (peace and blessings be upon him).

وَطَائِفَةٌ خَرَجُوا كُفَّارًا، ثُمَّ أَسْلَمُوا: كَعَمْرِو بْنِ الْعَاصِ أَسْلَمَ عِنْدَ النَّجَاشِيِّ، وَأَبِي سُفْيَانَ أَسْلَمَ فِي عَسْكَرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L15597–15599 And a group embraced Islam and remained in Mecca, like all the oppressed among the women and others. Allah the Exalted said: "He is the One who restrained their hands from you and your hands from them within Mecca after He had granted you victory over them" [48:24] to His saying: "Were it not for believing men and believing women whom you did not recognize—lest you trample them and thereby incur harm for something you did not know—so that Allah might admit into His mercy whom He wills. If they

وَطَائِفَةٌ أَسْلَمُوا وَبَقُوا بِمَكَّةَ كَجَمِيعِ الْمُسْتَضْعَفِينَ مِنْ النِّسَاءِ، وَغَيْرِهِمْ، قَالَ اللَّهُ تَعَالَى: {وَهُوَ الَّذِي كَفَّ أَيْدِيَهُمْ عَنْكُمْ وَأَيْدِيَكُمْ عَنْهُمْ بِبَطْنِ مَكَّةَ مِنْ بَعْدِ أَنْ أَظْفَرَكُمْ عَلَيْهِمْ} [الفتح: ٢٤] إلَى قَوْلِهِ: {وَلَوْلا رِجَالٌ مُؤْمِنُونَ وَنِسَاءٌ مُؤْمِنَاتٌ لَمْ تَعْلَمُوهُمْ أَنْ تَطَئُوهُمْ

had been separated, We would have punished those who disbelieved among them with a painful punishment" [48:25]. All these individuals, when the Messenger of God — may God bless him and grant him peace — conquered Mecca, the emigrant returned to his home, his real estate, and his community's farms in Ta'if and elsewhere, while the vulnerable one remained in his home, his real estate, and his furnishings as well. So where would these people go if they had heeded their own counsel? Some of them advanced a baseless argument here, claiming that God Almighty said: "For the poor emigrants who were expelled from their homes and their property" (59:8). He cited what was narrated to us through the chain of Abu 'Ubaydah from Abu al-Aswad al-Misri from Ibn Lahī'ah from Yazīd ibn Abī Habīb that 'Umar wrote to Sa'd ibn Abī Waqqās: "Whoever embraced Islam before the battle is among the Muslims; he has what the Muslims have and a share in the community's spoils. But whoever embraced Islam after the battle or the defeat, his property becomes fay' for the Muslims, as they had already secured it before his conversion." He said: "Thus, God named them 'poor' — does this confirm that their property had been seized by the disbelievers from them?" Abu Muhammad said: "He ought to have been restrained by shame from this disgraceful public assertion. What in this verse points to his claim? Rather, it disproves his falsehood, for God Almighty preserved their property and homes as their rightful ownership by attributing these to them, and condemned their unjust expulsion. Yes, they were undoubtedly poor, as they possessed no wealth."[10]

فَتُصِيبَكُمْ مِنْهُمْ مَعَرَّةٌ بِغَيْرِ عِلْمٍ لِيُدْخِلَ اللَّهُ فِي رَحْمَتِهِ مَنْ يَشَاءُ لَوْ تَزَيَّلُوا لَعَذَّبْنَا الَّذِينَ كَفَرُوا مِنْهُمْ عَذَابًا أَلِيمًا} [الفتح: ٢٥] وَكُلُّ هَؤُلَاءِ إِذْ فَتَحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَكَّةَ رَجَعَ الْخَارِجُ إِلَى دَارِهِ، وَعَقَارِهِ وَضِيَاعِهِمْ بِالطَّائِفِ وَغَيْرِهَا، وَبَقِيَ الْمُسْتَضْعَفُ فِي دَارِهِ وَعَقَارِهِ وَأَثَاثِهِ كَذَلِكَ، فَأَيْنَ يَذْهَبُ بِهَؤُلَاءِ الْقَوْمِ لَوْ نَصَحُوا أَنْفُسَهُمْ؟ وَأَتَى بَعْضُهُمْ هَاهُنَا بِآبِدَةٍ هِيَ أَنَّهُ قَالَ: قَالَ اللَّهُ عَزَّ وَجَلَّ: {لِلْفُقَرَاءِ الْمُهَاجِرِينَ الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ وَأَمْوَالِهِمْ} [الحشر: ٨] وَذَكَرَ مَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدَةَ عَنْ أَبِي الْأَسْوَدِ الْمِصْرِيِّ عَنِ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ أَنَّ عُمَرَ كَتَبَ إِلَى سَعْدِ بْنِ أَبِي وَقَّاصٍ: مَنْ أَسْلَمَ قَبْلَ الْقِتَالِ فَهُوَ مِنَ الْمُسْلِمِينَ لَهُ مَا لِلْمُسْلِمِينَ وَلَهُ سَهْمٌ فِي الْإِسْلَامِ، وَمَنْ أَسْلَمَ بَعْدَ الْقِتَالِ، أَوْ الْهَزِيمَةِ فَمَالُهُ فَيْءٌ لِلْمُسْلِمِينَ، لِأَنَّهُمْ قَدْ أَحْرَزُوهُ قَبْلَ إِسْلَامِهِ، قَالَ: فَسَمَّاهُمْ تَعَالَى فُقَرَاءَ، فَصَحَّ أَنَّ أَمْوَالَهُمْ قَدْ مَلَكَهَا الْكُفَّارُ عَلَيْهِمْ؟ قَالَ أَبُو مُحَمَّدٍ: لَقَدْ كَانَ يَنْبَغِي أَنْ يَرْدَعَهُ الْحَيَاءُ عَنْ هَذِهِ الْمُجَاهَرَةِ الْقَبِيحَةِ وَأَيُّ إِشَارَةٍ فِي هَذِهِ الْآيَةِ إِلَى مَا قَالَ؟ بَلْ هِيَ دَالَّةٌ عَلَى كَذِبِهِ فِي قَوْلِهِ، لِأَنَّهُ تَعَالَى أَبْقَى أَمْوَالَهُمْ وَدِيَارَهُمْ فِي مِلْكِهِمْ، بِأَنْ نَسَبَهَا إِلَيْهِمْ، وَجَعَلَهَا لَهُمْ، وَعَظَّمَ بِالْإِنْكَارِ إِخْرَاجَهُمْ ظُلْمًا مِنْهَا - وَنَعَمْ، هُمْ فُقَرَاءُ بِلَا شَكٍّ، إِذْ لَا يَجِدُونَ غِنًى.

L15600 They unanimously agree with us that if a man from the Maghreb or the Mashriq performs Hajj and depletes all the funds he has with him in Mecca or Medina—even though he owns estates in his homeland worth a million dinars and furnishings of equivalent value, and is unable to secure a loan, purchase, or sell—he is considered poor and eligible for Zakat. His wealth in

وَهُمْ مُجْمِعُونَ مَعَنَا عَلَى أَنَّ رَجُلًا مِنْ أَهْلِ الْمَغْرِبِ، أَوْ الْمَشْرِقِ لَوْ حَجَّ فَفَرَغَ مَا فِي يَدِهِ بِمَكَّةَ أَوْ بِالْمَدِينَةِ، وَلَهُ فِي بِلَادِهِ ضِيَاعٌ بِأَلْفِ أَلْفِ دِينَارٍ، وَأَثَاثٌ بِمِثْلِ ذَلِكَ، وَهُوَ حَيْثُ لَا يَقْدِرُ عَلَى قَرْضٍ، وَلَا عَلَى ابْتِيَاعٍ، وَلَا بَيْعٍ فَإِنَّهُ فَقِيرٌ تَحِلُّ لَهُ الزَّكَاةُ الْمَفْرُوضَةُ، وَمَالُهُ فِي بِلَادِهِ مُنْطَلِقَةٌ عَلَيْهِ يَدُهُ.

[10] **Qur'an references (L15597):** Qur'an 48:24 (Al-Fath); Qur'an 48:25 (Al-Fath); Qur'an 59:8 (Al-Hashr).

his homeland remains under his legal ownership but is inaccessible to him in practice.

L15601 Similarly, whoever is barred from their wealth due to persecution or unlawful seizure—and there is no distinction—grave indeed is the calamity that has afflicted the weak among the Muslims, those deceived by others within their community. We praise Allah, the Exalted, for guiding us to the truth.

وَكَذَلِكَ مَنْ حَالَ بَيْنَهُ وَبَيْنَ مَالِهِ فِتْنَةٌ، أَوْ غَصْبٌ، وَلَا فَرْقَ، وَلَقَدْ عَظُمَتْ مُصِيبَةُ ضُعَفَاءِ الْمُسْلِمِينَ الْمُغْتَرِّينَ بِهِمْ مِنْهُمْ - وَنَحْمَدُ اللَّهَ تَعَالَى عَلَى مَا هَدَانَا لَهُ مِنَ الْحَقِّ.

L15602 As for the narration attributed to Umar (may Allah be pleased with him), it is rejected because its chain is interrupted, for Yazīd ibn Abī Ḥabīb was not born until a very long time had passed after the death of Umar (may Allah be pleased with him), and it includes Ibn Lahīʿah, who is deemed worthless.

وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فَسَاقِطَةٌ، لِأَنَّهَا مُنْقَطِعَةٌ - لَمْ يُولَدْ يَزِيدُ بْنُ أَبِي حَبِيبٍ إِلَّا بَعْدَ مَوْتِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - بِدَهْرٍ طَوِيلٍ - وَفِيهَا: ابْنُ لَهِيعَةَ، وَهُوَ لَا شَيْءَ.

L15603–15605 Then, if it were valid, they would have no claim to it; rather, it aligns with our position and contradicts their position, because the text states: "Whoever embraces Islam before combat is among the Muslims and has the same rights as Muslims." This confirms that all his property, wherever it may be, remains his own, just as it does for every Muslim. Furthermore, in it [the text]: "If he embraces Islam after..." In the case of combat or retreat, his property becomes fay' for the Muslims, because they had taken possession of it before his conversion to Islam. This is our position, since his property had already become the rightful possession of the Muslims before he embraced Islam. Be astonished at their obfuscation and deceit in using what is inherently against them to mislead those deluded by them.

ثُمَّ لَوْ صَحَّتْ لَمَا كَانَ لَهُمْ فِيهَا مُتَعَلَّقٌ، بَلْ هِيَ مُوَافِقَةٌ لِقَوْلِنَا وَخِلَافٌ لِقَوْلِهِمْ لِأَنَّ نَصَّهَا، مَنْ أَسْلَمَ قَبْلَ الْقِتَالِ فَهُوَ مِنَ الْمُسْلِمِينَ لَهُ مَا لِلْمُسْلِمِينَ، فَصَحَّ بِهَذَا أَنَّ مَالَهُ كُلَّهُ حَيْثُ كَانَ لَهُ كَمَا كَانَ لِكُلِّ مُسْلِمٍ، ثُمَّ فِيهَا إِنْ أَسْلَمَ بَعْدَ الْقِتَالِ، أَوْ الْهَزِيمَةِ فَمَالُهُ لِلْمُسْلِمِينَ فَيْءٌ، لِأَنَّهُ قَدْ أَحْرَزَهُ الْمُسْلِمُونَ قَبْلَ إِسْلَامِهِ - فَهَذَا قَوْلُنَا، لِأَنَّهُ قَدْ صَارَ مَالُهُ لِلْمُسْلِمِينَ قَبْلَ أَنْ يُسْلِمَ، فَاعْجَبُوا لِتَمْوِيهِهِمْ وَتَدْلِيسِهِمْ بِمَا هُوَ عَلَيْهِمْ لِيُضِلُّوا بِهِ مِنِ اغْتَرَّ بِهِمْ

[مَسْأَلَةٌ مِنْ نُفِخَ فِيهِ الرُّوحُ قَبْلَ إِسْلَامِ أَبِيهِ]

L15606 **A legal issue concerning a fetus that was ensouled before its father embraced Islam.**

L15607 938. Issue: If the soul has not yet been blown into the fetus, his wife is free and cannot be enslaved, for the fetus at that stage is part of her and cannot be enslaved, as it is a Muslim fetus.

٩٣٨ - مَسْأَلَةٌ: فَإِنْ كَانَ الْجَنِينُ لَمْ يُنْفَخْ فِيهِ الرُّوحُ بَعْدُ فَامْرَأَتُهُ حُرَّةٌ لَا تُسْتَرَقُّ، لِأَنَّ الْجَنِينَ حِينَئِذٍ بَعْضُهَا، وَلَا يُسْتَرَقُّ، لِأَنَّهُ جَنِينٌ مُسْلِمٌ.

L15608 If any part of her is free, then all of her is free, due to what we will mention in the Book of Manumission, if Allah the Exalted wills—contrary to its ruling when the soul is breathed into it before the father's acceptance of Islam, for

at that point it is distinct from her, and it may be male while she is female. And success is from Allah the Exalted.

A case of a woman who embraced Islam while married to a disbelieving husband.

939 - Question:

Any woman who embraces Islam while married to a disbeliever—whether a *dhimmi* or a *ḥarbī*—her marriage to him is dissolved upon her conversion. This applies whether he embraces Islam in the blink of an eye after her, after a longer period, or never. He has no claim over her unless through initiating a new marriage with her consent; otherwise, none.

If they both embrace Islam together, their marriage remains valid. If he embraces Islam before her, then if she is a woman of the Book, their marriage persists whether she embraces Islam afterward or not. But if she is not a woman of the Book, their marriage is annulled immediately upon his embrace of Islam—even if she embraces Islam an instant later or beyond. He has no recourse to retain her except by initiating a new marriage with her consent, provided she embraces Islam; otherwise, he has no right whatsoever. This ruling applies uniformly, whether they were both ḥarbīs or both dhimmīs.

This is the opinion of ʿUmar ibn al-Khaṭṭāb, Jābir ibn ʿAbdullāh, and Ibn ʿAbbās (may Allah be pleased with them), and it is also held by Ḥammād ibn Zayd, al-Ḥakam ibn ʿUtaybah, Saʿīd ibn Jubayr, ʿUmar ibn ʿAbd al-ʿAzīz, ʿAdiyy ibn ʿAdiyy al-Kindī, al-Ḥasan al-Baṣrī, Qatādah, al-Shaʿbī, and others.

Abu Hanifah said: Whichever of the two embraced Islam before the other in the abode of Islam, the one who embraced Islam first must offer Islam to the other. If the latter embraces Islam, they remain married. If he refuses, then

وَمَنْ كَانَ بَعْضُهَا حُرًّا فَهِيَ كُلُّهَا حُرَّةٌ لِمَا نَذْكُرُ فِي كِتَابِ الْعِتْقِ إِنْ شَاءَ اللَّهُ تَعَالَى بِخِلَافِ حُكْمِهَا إِذَا نُفِخَ فِيهِ الرُّوحُ قَبْلَ إِسْلَامِ أَبِيهِ لِأَنَّهُ حِينَئِذٍ غَيْرُهَا، وَهُوَ رُبَّمَا كَانَ ذَكَرًا وَهِيَ أُنْثَى - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ أَسْلَمَتْ وَلَهَا زَوْجٌ كَافِرٌ]

٩٣٩ - مَسْأَلَةٌ:

وَأَيُّمَا امْرَأَةٍ أَسْلَمَتْ وَلَهَا زَوْجٌ كَافِرٌ ذِمِّيٌّ، أَوْ حَرْبِيٌّ فَحِينَ إِسْلَامِهَا انْفَسَخَ نِكَاحُهَا مِنْهُ - سَوَاءٌ أَسْلَمَ بَعْدَهَا بِطَرْفَةِ عَيْنٍ، أَوْ أَكْثَرَ أَوْ لَمْ يُسْلِمْ. لَا سَبِيلَ لَهُ عَلَيْهَا إِلَّا بِابْتِدَاءِ نِكَاحٍ بِرِضَاهَا وَإِلَّا فَلَا.

فَلَوْ أَسْلَمَا مَعًا بَقِيَا عَلَى نِكَاحِهِمَا، فَإِنْ أَسْلَمَ هُوَ قَبْلَهَا، فَإِنْ كَانَتْ كِتَابِيَّةً بَقِيَا عَلَى نِكَاحِهِمَا أَسْلَمَتْ هِيَ، أَمْ لَمْ تُسْلِمْ وَإِنْ كَانَتْ غَيْرَ كِتَابِيَّةٍ فَسَاعَةَ إِسْلَامِهِ قَدْ انْفَسَخَ نِكَاحُهَا مِنْهُ، أَسْلَمَتْ بَعْدَهُ بِطَرْفَةِ عَيْنٍ فَأَكْثَرَ. لَا سَبِيلَ لَهُ عَلَيْهَا إِلَّا بِابْتِدَاءِ نِكَاحٍ بِرِضَاهَا إِنْ أَسْلَمَتْ، وَإِلَّا فَلَا، سَوَاءٌ حَرْبِيَّيْنِ أَوْ ذِمِّيَّيْنِ كَانَا.

وَهُوَ قَوْلُ عُمَرَ بْنِ الْخَطَّابِ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ، وَابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمْ - وَبِهِ يَقُولُ حَمَّادُ بْنُ زَيْدٍ، وَالْحَكَمُ بْنُ عُتَيْبَةَ وَسَعِيدُ بْنُ جُبَيْرٍ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ، وَعَدِيُّ بْنُ عَدِيٍّ الْكِنْدِيِّ، وَالْحَسَنُ الْبَصْرِيُّ، وَقَتَادَةُ، وَالشَّعْبِيُّ، وَغَيْرُهُمْ.

separation occurs immediately, and there is no consideration for observing the ʿiddah (waiting period) in this case.

وَقَالَ أَبُو حَنِيفَةَ: أَيُّهُمَا أَسْلَمَ قَبْلَ الْآخَرِ فِي دَارِ الْإِسْلَامِ فَإِنَّهُ يَعْرِضُ الْإِسْلَامَ عَلَى الَّذِي لَمْ يُسْلِمْ مِنْهُمَا، فَإِنْ أَسْلَمَ بَقِيَا عَلَى نِكَاحِهِمَا، وَإِنْ أَبَى فَحِينَئِذٍ تَقَعُ الْفُرْقَةُ، وَلَا مَعْنَى لِمُرَاعَاةِ الْعِدَّةِ فِي ذَلِكَ.

L15615 He said: If she embraces Islam in the abode of war and departs as a Muslim or a dhimmī, the annulment between them occurs at the moment she enters the abode of Islam—not before that. If she does not leave the abode of war and experiences three menstrual cycles before he embraces Islam, the dissolution occurs at that point, obliging her to begin three additional menstrual cycles as a mandatory waiting period from him. But if he embraces Islam before that occurs, the marriage remains valid between them.

قَالَ: فَإِنْ أَسْلَمَتْ فِي دَارِ الْحَرْبِ فَخَرَجَتْ مُسْلِمَةً أَوْ ذِمِّيَّةً فَسَاعَةَ حُصُولِهَا فِي دَارِ الْإِسْلَامِ يَقَعُ الْفَسْخُ بَيْنَهُمَا لَا قَبْلَ ذَلِكَ، فَإِنْ لَمْ تَخْرُجْ مِنْ دَارِ الْحَرْبِ فَإِنْ حَاضَتْ ثَلَاثَ حِيَضٍ قَبْلَ أَنْ يُسْلِمَ هُوَ وَقَعَتْ الْفُرْقَةُ حِينَئِذٍ وَعَلَيْهَا أَنْ تَبْتَدِئَ ثَلَاثَ حِيَضٍ أُخَرَ عِدَّةً مِنْهُ، وَإِنْ أَسْلَمَ هُوَ قَبْلَ ذَلِكَ فَهُوَ عَلَى نِكَاحِهِ مَعَهَا.

L15616–15617 He said: If either of them apostatizes, the marriage is annulled from the moment of apostasy.

قَالَ: فَلَوْ ارْتَدَّ أَحَدُهُمَا انْفَسَخَ النِّكَاحُ مِنْ وَقْتِهِ.

L15618 Mālik said: If a woman converts to Islam while her husband does not, then if he converts during her waiting period, they remain married. But if he does not convert until her waiting period has ended, she is divorced from him.

وَقَالَ مَالِكٌ: إِنْ أَسْلَمَتْ الْمَرْأَةُ وَلَمْ يُسْلِمْ زَوْجُهَا، فَإِنْ أَسْلَمَ فِي عِدَّتِهَا فَهُمَا عَلَى نِكَاحِهِمَا، وَإِنْ لَمْ يُسْلِمْ حَتَّى انْقَضَتْ عِدَّتُهَا فَقَدْ بَانَتْ مِنْهُ.

L15619 He said: If he embraced Islam while she is not a Kitabi woman, Islam is presented to her; if she embraced Islam, they both remain in their marriage. But if she refused, the marriage is annulled at the moment of her refusal. Should either of them apostatize, the marriage is annulled at that very moment.

قَالَ: فَلَوْ أَسْلَمَ هُوَ، وَهِيَ غَيْرُ كِتَابِيَّةٍ عُرِضَ الْإِسْلَامُ عَلَيْهَا، فَإِنْ - أَسْلَمَتْ بَقِيَا عَلَى نِكَاحِهِمَا، وَإِنْ أَبَتْ انْفَسَخَ النِّكَاحُ سَاعَةَ إبَائِهَا، فَلَوْ ارْتَدَّ أَحَدُهُمَا انْفَسَخَ النِّكَاحُ سَاعَتَئِذٍ.

L15620 Ibn Shubrumah held an opinion contrary to Malik's view: If a man accepts Islam while his wife remains an idolatress, she remains his wife provided she converts before the iddah is completed. Otherwise, the separation occurs upon its completion. If she converts at the very moment of the separation, it takes effect instantaneously.

وَقَالَ ابْنُ شُبْرُمَةَ عَكْسَ قَوْلِ مَالِكٍ إِنْ أَسْلَمَ هُوَ وَهِيَ وَثَنِيَّةٌ، فَإِنْ أَسْلَمَتْ قَبْلَ تَمَامِ الْعِدَّةِ فَهِيَ امْرَأَتُهُ، وَإِلَّا فَبِتَمَامِهَا تَقَعُ الْفُرْقَةُ، وَإِنْ أَسْلَمَتْ هِيَ وَقَعَتْ الْفُرْقَةُ فِي الْحِينِ.

L15621 Al-Awza'i, Al-Layth, and Al-Shafi'i said: All of that is equivalent, and the waiting period is observed. If the disbeliever of the two accepts Islam before the completion of the waiting period, their marriage remains intact. If the disbeliever does not accept Islam until the waiting period is completed, the

وَقَالَ الْأَوْزَاعِيُّ، وَاللَّيْثُ، وَالشَّافِعِيُّ: وَكُلُّ ذَلِكَ سَوَاءٌ، وَتُرَاعَى الْعِدَّةُ، فَإِنْ أَسْلَمَ الْكَافِرُ مِنْهُمَا قَبْلَ انْقِضَاءِ الْعِدَّةِ فَهُمَا عَلَى نِكَاحِهِمَا، وَإِنْ لَمْ يُسْلِمْ حَتَّى تَمَّتْ الْعِدَّةُ

separation takes effect. This is the opinion of Al-Zuhri, Ahmad ibn Hanbal, Ishaq, and one of the two views of Al-Ḥasan ibn Ḥayy.

وَقَعَتْ الْفُرْقَةُ - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَأَحَدُ قَوْلَيِّ الْحَسَنِ بْنِ حَيٍّ.

L15622 Abū Muḥammad said: Woe to Abū Ḥanīfah's opinion—it is manifestly invalid, for he has no proof from the Qur'ān, the Sunnah, or consensus. They ought to define a period for proselytizing Islam, but this can only be done through flawed reasoning. This is also a view whose division is unknown to any Muslim scholar before him. Similarly, Mālik's opinion is equally invalid, equally invalid. Some have obscured the matter with what silence would have been wiser for, had he truly advised himself—as we shall elaborate, God, the Exalted, willing.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَظَاهِرُ الْفَسَادِ، لِأَنَّهُ لَا حُجَّةَ لَهُ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إجْمَاعٍ، وَيَنْبَغِي لَهُمْ أَنْ يُحَدُّوا وَقْتَ عَرْضِ الْإِسْلَامِ وَلَا سَبِيلَ إلَى ذَلِكَ إلَّا بِرَأْيٍ فَاسِدٍ، وَهُوَ أَيْضًا قَوْلٌ لَا يُعْرَفُ مِثْلُ تَقْسِيمِهِ لِأَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ قَبْلَهُ - وَكَذَلِكَ قَوْلُ مَالِكٍ سَوَاءٌ سَوَاءٌ، وَقَدْ مَوَّهَ بَعْضُهُمْ بِمَا كَانَ السُّكُوتُ أَوْلَى بِهِ لَوْ نَصَحَ نَفْسَهُ، مِمَّا سَنَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى.

L15623 It has been narrated to us through the chain of Ibn Abī Shaybah: Muḥammad ibn Faḍl reported to us from Muṭarrif ibn Ṭarīf from al-Shaʿbī from ʿAlī ibn Abī Ṭālib, who said: If the wife of a Jew or a Christian embraces Islam, he has the greater right to her conjugal relations, because he has a covenant.

[وَرُوِّينَا] مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا مُحَمَّدُ بْنُ فَضْلٍ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ عَنْ الشَّعْبِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إذَا أَسْلَمَتْ امْرَأَةُ الْيَهُودِيِّ، أَوْ النَّصْرَانِيِّ -: كَانَ أَحَقَّ بِبُضْعِهَا، لِأَنَّ لَهُ عَهْدًا.

L15624 It has been narrated to us through the chain of Shuʿbah from al-Ḥakam ibn ʿUtaybah that Hāni' ibn Hāni' ibn Qabīṣah al-Shaybānī—who was a Christian—had four wives who embraced Islam. He then came to Medina and stayed with ʿAbd al-Raḥmān ibn ʿAwf, and ʿUmar allowed the wives to remain with Hāni'. Shuʿbah said: "I asked al-Ḥakam: 'From whom is this?' He replied: 'This is something well-known.'"

وَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّ هَانِئَ بْنَ هَانِئِ بْنِ قَبِيصَةَ الشَّيْبَانِيَّ - وَكَانَ نَصْرَانِيًّا - عِنْدَهُ أَرْبَعُ نِسْوَةٍ فَأَسْلَمْنَ فَقَدِمَ الْمَدِينَةَ وَنَزَلَ عَلَى عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ فَأَقَرَّهُنَّ عُمَرُ عِنْدَهُ - قَالَ شُعْبَةُ: قُلْت لِلْحَكَمِ: عَمَّنْ هَذَا؟ قَالَ: هَذَا شَيْءٌ مَعْرُوفٌ.

L15625–15627 It has been narrated to us through the chain of Abd al-Rahman ibn Mahdi and Ibn Jaʿfar Ghundar. Abd al-Rahman narrated: From Sufyan al-Thawri, from Mansur ibn al-Muʿtamir and al-Mughira ibn Miqsam. Ghundar narrated: He informed us. Shuʿbah narrated to us from Ḥammād ibn Abī Sulaymān. Then al-Mughīrah, Manṣūr, and Ḥammād all concurred in their narration from Ibrāhīm al-Nakhaʿī regarding a *dhimmi* woman who embraced Islam while married to a *dhimmi* man. He said: "She is to remain with him"—this being the fatwā issued by Ḥammād ibn Abī Sulaymān, which reflects the opinion of Abī Sulaymān except that he stated: "He is to

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ، وَابْنِ جَعْفَرٍ غُنْدَرَ قَالَ عَبْدُ الرَّحْمَنِ: عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ، وَالْمُغِيرَةِ بْنِ مِقْسَمٍ وَقَالَ غُنْدَرُ: نَا شُعْبَةُ نَا حَمَّادُ بْنُ أَبِي سُلَيْمَانَ، ثُمَّ اتَّفَقَ الْمُغِيرَةُ، وَمَنْصُورٌ، وَحَمَّادٌ، كُلُّهُمْ: عَنْ إبْرَاهِيمَ النَّخَعِيِّ: فِي ذِمِّيَّةٍ أَسْلَمَتْ تَحْتَ ذِمِّيٍّ، قَالَ: تُقَرُّ عِنْدَهُ - وَبِهِ أَفْتَى حَمَّادُ بْنُ أَبِي سُلَيْمَانَ. وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ إلَّا أَنَّهُ قَالَ: يُمْنَعُ مِنْ وَطْئِهَا - فَهَذَا قَوْلٌ. وَعَنْ عُمَرَ أَيْضًا قَوْلٌ آخَرُ: صَحَّ

be barred from having intercourse with her." This constitutes one opinion. Another opinion is authentically reported from ʿUmar, transmitted through two chains: via Ḥammād ibn Salamah from Ayyūb al-Sikhtiyānī, and via Qatādah from Muḥammad ibn Sīrīn from ʿAbdullāh ibn Yazīd al-Khiṭmī—that when a Christian's wife embraced Islam, ʿUmar ibn al-Khaṭṭāb granted her the choice: to separate from him if she wished, or to remain with him if she so desired.

عَنْهُ رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، وَقَتَادَةَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْخِطْمِيِّ: أَنَّ نَصْرَانِيًّا أَسْلَمَتْ امْرَأَتُهُ فَخَيَّرَهَا عُمَرُ بْنُ الْخَطَّابِ إِنْ شَاءَتْ فَارَقَتْهُ، وَإِنْ شَاءَتْ أَقَامَتْ عَلَيْهِ.

L15628 We have also narrated through the chain of Ma'mar from Ayyūb, from Ibn Sīrīn, from ʿAbdullāh ibn Yazīd al-Khuṭmī, from ʿUmar with a similar narration—and this ʿAbdullāh ibn Yazīd was a Companion of the Prophet.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ عَنِ ابْنِ سِيرِينَ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْخِطْمِيِّ عَنْ عُمَرَ بِمِثْلِهِ - وَعَبْدُ اللَّهِ بْنُ يَزِيدَ هَذَا لَهُ صُحْبَةٌ.

L15629 And from Umar also comes a third opinion: We have transmitted it through the chain of Hammad ibn Salamah from Dawud al-Ta'i from Ziyad ibn Abd al-Rahman that Hanzalah ibn Bishr married off his daughter, who was Muslim, to a Christian nephew of his. Awf ibn al-Qa'qa' then went to Umar ibn al-Khattab and informed him of this. Umar wrote concerning the matter: "If he embraces Islam, she is his wife; but if he does not embrace Islam, they are to be separated." He did not embrace Islam, so they were separated, and Awf ibn al-Qa'qa' married her. However, they do not endorse this opinion, as they do not permit under any circumstances the initiation of a marriage contract between a Muslim woman and a non-Muslim, whether he embraced Islam afterward or not.

وَعَنْ عُمَرَ أَيْضًا قَوْلٌ ثَالِثٌ: رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد الطَّائِيِّ عَنْ زِيَادِ بْنِ عَبْدِ الرَّحْمَنِ أَنَّ حَنْظَلَةَ بْنَ بِشْرٍ زَوَّجَ ابْنَتَهُ وَهِيَ مُسْلِمَةٌ مِنِ ابْنِ أَخٍ لَهُ نَصْرَانِيٍّ فَرَكِبَ عَوْفُ بْنُ الْقَعْقَاعِ إِلَى عُمَرَ بْنِ الْخَطَّابِ فَأَخْبَرَهُ بِذَلِكَ، فَكَتَبَ عُمَرُ فِي ذَلِكَ: إِنْ أَسْلَمَ فَهِيَ امْرَأَتُهُ، وَإِنْ لَمْ يُسْلِمْ فُرِّقَ بَيْنَهُمَا، فَلَمْ يُسْلِمْ، فَفُرِّقَ بَيْنَهُمَا، فَتَزَوَّجَهَا عَوْفُ بْنُ الْقَعْقَاعِ - وَهُمْ لَا يَقُولُونَ بِهَذَا، لِأَنَّهُمْ لَا يُجِيزُونَ أَلْبَتَّةَ ابْتِدَاءَ عَقْدِ نِكَاحِ مُسْلِمَةٍ مِنْ كَافِرٍ أَسْلَمَ إِثْرَ ذَلِكَ أَوْ لَمْ يُسْلِمْ.

L15630 And from ʿUmar also comes a fourth statement not authentically attributed to him: We have narrated it through the route of ʿAbd al-Razzāq from Sufyān al-Thawrī from Abū Isḥāq al-Shaybānī, who said: The son of the woman between whom ʿUmar had effected separation informed me, "Islam was presented to him, but he refused."

وَعَنْ عُمَرَ أَيْضًا قَوْلٌ رَابِعٌ لَا يَصِحُّ عَنْهُ: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ قَالَ: أَنْبَأَنِي ابْنُ الْمَرْأَةِ الَّتِي فَرَّقَ بَيْنَهُمَا عُمَرُ، عُرِضَ عَلَيْهِ الْإِسْلَامُ فَأَبَى.

L15631 From the chain of Ibn Abī Shaybah: He narrated to us from ʿAbbād ibn al-ʿAwwām from Abū Isḥāq al-Shaybānī from Yazīd ibn ʿAlqamah that ʿUbādah ibn al-Nuʿmān al-Taghlibī was married to a woman from Banū Tamīm. She embraced Islam, so ʿUmar ibn al-Khaṭṭāb said to him: "Either you embrace Islam, or we will take her away from you." He refused, so ʿUmar took her away from him.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَبَّادُ بْنُ الْعَوَّامِ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ يَزِيدَ بْنِ عَلْقَمَةَ أَنَّ عُبَادَةَ بْنَ النُّعْمَانِ التَّغْلِبِيَّ كَانَ نَاكِحًا بِامْرَأَةٍ مِنْ بَنِي تَمِيمٍ فَأَسْلَمَتْ فَقَالَ لَهُ عُمَرُ بْنُ الْخَطَّابِ: إِمَّا أَنْ تُسْلِمَ وَإِمَّا أَنْ نَنْتَزِعَهَا مِنْكَ؟ فَأَبَى، فَنَزَعَهَا عُمَرُ مِنْهُ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَلِيُّ بْنُ مُسْهِرٍ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ السَّفَّاحِ بْنِ مُضَرَ التَّغْلِبِيِّ عَنْ دَاوُد بْنِ كُرْدُوسٍ أَنَّ عُبَادَةَ بْنَ النُّعْمَانِ بْنِ زُرْعَةَ أَسْلَمَتْ امْرَأَتُهُ التَّمِيمِيَّةُ، وَأَبَى أَنْ يُسْلِمَ، فَفَرَّقَ عُمَرُ بَيْنَهُمَا.

L15632 And from the narration of Ibn Abi Shaybah: narrated to us Ali ibn Mushir; from Abu Ishaq al-Shaybani; from al-Saffah ibn Mudar al-Taghlibi; from Dawud ibn Kurdus that the Tamimi wife of Ubadah ibn Nu'man ibn Zur'ah embraced Islam and he refused to embrace Islam, so Umar separated them.

أَبُو إِسْحَاقَ لَمْ يُدْرِكْ عُمَرَ - وَالسَّفَّاحُ، وَدَاوُد بْنُ كُرْدُوسٍ مَجْهُولَانِ.

L15633 Abu Ishaq did not meet Umar—Al-Saffah and Dawud ibn Kurdūs are both unknown.

وَكَذَلِكَ يَزِيدُ بْنُ عَلْقَمَةَ، وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَوْلٌ آخَرُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الزَّوْجَيْنِ الْكَافِرِينَ يُسْلِمُ أَحَدُهُمَا: هُوَ أَمْلَكُ بِبُضْعِهَا مَا دَامَتْ فِي دَارِ هِجْرَتِهَا.

L15634–15636 Similarly, Yazīd ibn ʿAlqamah; another opinion is narrated from ʿAlī ibn Abī Ṭālib via the narration of Ḥammād ibn Salama. From Qatādah, from Saʿīd ibn al-Musayyab, that ʿAlī ibn Abī Ṭālib said concerning two disbelieving spouses when one of them embraces Islam: The one who embraces Islam retains greater authority over the conjugal rights of the spouse who remains, so long as they remain in the abode of their emigration (Hijrah).

وَرُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ عَنْ الشَّعْبِيِّ عَنْ عَلِيٍّ: هُوَ أَحَقُّ بِهَا مَا لَمْ يَخْرُجْ مِنْ مِصْرِهَا.

L15637 We narrated it via the chain of Sufyān ibn ʻUyaynah from Muṭarrif ibn Ṭarīf from Al-Shaʻbī from ʻAlī: He has a greater right to it as long as he has not departed from its city.

وَقَوْلٌ آخَرُ: رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا مُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ: إنْ أَسْلَمَتْ وَلَمْ يُسْلِمْ زَوْجُهَا، فَهُمَا عَلَى نِكَاحِهِمَا إلَّا أَنْ يُفَرِّقَ بَيْنَهُمَا سُلْطَانٌ.

L15638 Another opinion: We have transmitted it via the route of Ibn Abi Shaybah - he narrated to us (nā) from Muʿtamir ibn Sulaymān, from Maʿmar, from al-Zuhrī: If she accepts Islam while her husband does not embrace it, their marriage persists unless a ruling authority effects separation between them.

وَأَمَّا مَنْ رَاعَى عَرْضَ الْإِسْلَامِ فَكَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَبْدَةُ بْنُ سُلَيْمَانَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ قَالَ: إذَا أَسْلَمَتْ وَأَبِي أَنْ يُسْلِمَ فَإِنَّهَا تَبِينُ مِنْهُ بِوَاحِدَةٍ - وَقَالَهُ عِكْرِمَةُ.

L15639 As for the one who safeguards the dignity of Islam, as narrated to us through the chain from Ibn Abī Shaybah, from Abdah ibn Sulaymān, from Saʿīd ibn Abī ʿArūbah, from Qatādah, from al-Ḥasan, who said: If she embraces Islam and her husband refuses to embrace Islam, she is immediately separated from him in marriage—and this was also stated by ʿIkrimah.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ فِي هَذَا بَيَانُ إبَايَتِهِ بَعْدَ إسْلَامِهَا وَقَدْ يُرِيدُ أَنْ يُسْلِمَ مَعَهَا.

L15640 Abu Muhammad said: This does not contain a clarification of his repudiation after her conversion to Islam, and he may intend to convert to Islam along with her.

وَأَمَّا مَنْ رَاعَى الْعِدَّةَ - فَصَحَّ عَنْ عَطَاءٍ، وَمُجَاهِدٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

L15641 As for the one who observed the waiting period, then it is authentically reported from ʿAṭāʾ, Mujāhid, and ʿUmar ibn ʿAbd al-ʿAzīz.

وَأَمَّا قَوْلُنَا فَمَرْوِيٌّ عَنْ طَائِفَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - كَمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ أَخْبَرَنِي أَبُو إِسْحَاقَ الشَّيْبَانِيُّ قَالَ: سَمِعْتُ يَزِيدَ بْنَ عَلْقَمَةَ أَنَّ جَدَّهُ وَجَدَّتَهُ كَانَا نَصْرَانِيَّيْنِ فَأَسْلَمَتْ جَدَّتُهُ، فَفَرَّقَ عُمَرُ بْنُ الْخَطَّابِ بَيْنَهُمَا.

L15642 As for our statement, it is narrated from a group of the Companions—may Allah be pleased with them—as was narrated to us via Shu'bah's chain: Abu Ishaq al-Shaybani reported to me, saying: I heard Yazid ibn Alqamah that Yazid's grandfather and grandmother were Christians, then his grandmother embraced Islam, so 'Umar ibn al-Khattab legally separated them.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ فِي الْيَهُودِيَّةِ، أَوْ النَّصْرَانِيَّةِ تُسْلِمُ تَحْتَ الْيَهُودِيِّ، أَوْ النَّصْرَانِيِّ. قَالَ: يُفَرَّقُ بَيْنَهُمَا، الْإِسْلَامُ يَعْلُو وَلَا يُعْلَى عَلَيْهِ - وَبِهِ يُفْتِي حَمَّادُ بْنُ زَيْدٍ.

L15643 Through the chain of Hammad ibn Zayd, from Ayyub al-Sakhtiyānī, from Ikrimah, from Ibn Abbas concerning a Jewish or Christian woman who embraces Islam while married to a Jewish or Christian man. He said: They are to be separated, for Islam prevails and is not to be surpassed. Hammad ibn Zayd issues fatwas based on this ruling.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: نِسَاءُ أَهْلِ الْكِتَابِ لَنَا حِلٌّ، وَنِسَاؤُنَا عَلَيْهِمْ حَرَامٌ.

L15644 Via the transmission of Abd al-Razzaq from Abu al-Zubayr, who heard Jabir ibn Abdillah say: "The women of the People of the Book are lawful for us, and our women are unlawful for them."

وَصَحَّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّهُ قَالَ فِي الْمَجُوسِيَّيْنِ يُسْلِمُ أَحَدُهُمَا، قَالَ: قَدْ انْقَطَعَ مَا بَيْنَهُمَا - وَصَحَّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ فِي نَصْرَانِيَّةٍ أَسْلَمَتْ تَحْتَ نَصْرَانِيٍّ؟ قَالَ: قَدْ فَرَّقَ الْإِسْلَامُ بَيْنَهُمَا.

L15645 It is authentically established from Al-Hakam ibn Utaybah that he ruled regarding two Magians when one of them embraces Islam, saying: "The bond between them is severed." It is likewise authentically established from Sa'id ibn Jubayr when asked about a Christian woman who embraced Islam while married to a Christian husband. He said: "Islam has separated them."

وَصَحَّ عَنْ عَطَاءٍ، وَطَاوُسٍ، وَمُجَاهِدٍ، وَالْحَكَمِ بْنِ عُتَيْبَةَ فِي كَافِرَةٍ تُسْلِمُ تَحْتَ كَافِرٍ. قَالُوا: قَدْ فَرَّقَ الْإِسْلَامُ بَيْنَهُمَا.

L15646 It has been authentically reported from ʿAṭāʾ, Ṭāwūs, Mujāhid, and al-Ḥakam ibn 'Utaybah regarding a disbelieving woman who embraces Islam under a disbeliever. They said: "Islam has annulled the marriage between them."

وَصَحَّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَعَدِيِّ بْنِ عَدِيٍّ: هَذَا بِعَيْنِهِ أَيْضًا.

L15647–15648 It is authentically narrated from ʿUmar ibn ʿAbd al-ʿAzīz and ʿAdī ibn ʿAdī: "This very same thing also."

وَعَنْ الْحَسَنِ، ثَابِتٌ أَيْضًا: أَيُّهُمَا أَسْلَمَ فَرَّقَ الْإِسْلَامُ بَيْنَهُمَا.

L15649 From al-Ḥasan and also Thābit: Whichever of the two embraces Islam, Islam separates between them.

وَرُوِيَ أَيْضًا عَنْ الشَّعْبِيِّ.

L15650 And it has also been reported from al-Sha'bi.

L15651 Abū Muḥammad said: As for all these opinions we have presented, we do not know of any valid evidence for them whatsoever, except those who maintained that she should remain with him while he is prohibited from

having intercourse with her. They argued by stating: “A marriage contracted in disbelief remains valid, and it is impermissible to nullify a valid marriage without definitive proof.” They also cited as evidence what was narrated to us through Abū Dāwūd al-Sijistānī, who said: “‘Abdullāh ibn Muḥammad al-Nufaylī, Muḥammad ibn ʿAmr al-Rāzī, and al-Ḥasan ibn ʿAlī, known as al-Ḥulwānī, narrated to us.” Al-Nufaylī said: “Muḥammad ibn Salamah narrated to us,” al-Rāzī said: “Salamah ibn al-Faḍl narrated to us,” and al-Ḥulwānī said: “Yazīd – either ibn Zuraiʿ or ibn Hārūn, one of them without doubt – narrated to us.” Then the chains of transmission converged through Salamah, Ibn Salamah, and Yazīd, all of whom narrated from Muḥammad ibn Isḥāq, from Dāwūd ibn al-Ḥuṣayn, from ʿIkrimah, from Ibn ʿAbbās: “The Messenger of Allāh – peace and blessings be upon him – reinstated his daughter Zaynab to her husband Abū al-ʿĀṣ through the original marriage.”

قَالَ أَبُو مُحَمَّد: أَمَّا جَمِيعُ هَذِهِ الْأَقْوَالِ الَّتِي قَدَّمْنَا فَمَا نَعْلَمُ لِشَيْءٍ مِنْهَا حُجَّةً أَصْلًا إِلَّا مَنْ قَالَ بِأَنَّهَا تُقَرُّ عِنْدَهُ وَيُمْنَعُ مِنْ وَطْئِهَا؛ فَإِنَّهُمْ احْتَجُّوا بِأَنْ قَالُوا: نِكَاحُ الْكُفْرِ صَحِيحٌ فَلَا يَجُوزُ إِبْطَالُ نِكَاحٍ صَحِيحٍ بِغَيْرِ يَقِينٍ وَاحْتَجُّوا أَيْضًا بِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ قَالَ: نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ النُّفَيْلِيُّ، وَمُحَمَّدُ بْنُ عَمْرٍو الرَّازِيّ، وَالْحَسَنُ بْنُ عَلِيٍّ هُوَ الْحُلْوَانِيُّ - قَالَ النُّفَيْلِيُّ: نَا مُحَمَّدُ بْنُ سَلَمَةَ، وَقَالَ الرَّازِيّ: نَا سَلَمَةُ بْنُ الْفَضْلِ، وَقَالَ الْحُلْوَانِيُّ: نَا يَزِيدُ هُوَ ابْنُ زُرَيْعٍ أَوْ ابْنُ هَارُونَ أَحَدُهُمَا بِلَا شَكٍّ، ثُمَّ اتَّفَقَ سَلَمَةُ، وَابْنُ سَلَمَةَ، وَيَزِيدُ، كُلُّهُمْ: عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَدَّ ابْنَتَهُ زَيْنَبَ عَلَى أَبِي الْعَاصِ بِالنِّكَاحِ الْأَوَّلِ» .

L15652 Muhammad ibn Salamah added: Nothing happened.

زَادَ مُحَمَّدُ بْنُ سَلَمَةَ: لَمْ يَحْدُثْ شَيْءٌ.

L15653 And Salamah added: after six years.

وَزَادَ سَلَمَةُ: بَعْدَ سِتِّ سِنِينَ.

L15654 And Yazīd added: after two years had passed.

وَزَادَ يَزِيدُ: بَعْدَ سَنَتَيْنِ.

L15655 They said: The Prophet—peace and blessings be upon him—ratified all Arab disbelievers regarding their women. Among them were women who embraced Islam before their husbands, and among them were men who embraced Islam before their wives.

وَقَالُوا: قَدْ أَقَرَّ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَمِيعَ كُفَّارِ الْعَرَبِ عَلَى نِسَائِهِمْ، وَفِيهِمْ مَنْ أَسْلَمَتْ قَبْلَهُ، وَفِيهِمْ مَنْ أَسْلَمَ قَبْلَهَا.

L15656 Abu Muhammad said: They have no proof except what we have mentioned. As for their claim that the marriage contract of people of disbelief is valid and it is not permissible to annul it without certainty—they are indeed correct, and certainty has been established as we shall mention after this, if Allah the Almighty and Majestic wills.

قَالَ أَبُو مُحَمَّد: لَا حُجَّةَ لَهُمْ غَيْرُ مَا ذَكَرْنَا، فَأَمَّا قَوْلُهُمْ: إِنَّ نِكَاحَ أَهْلِ الْكُفْرِ صَحِيحٌ فَلَا يَجُوزُ فَسْخُهُ بِغَيْرِ يَقِينٍ - فَصَدَقُوا، وَالْيَقِينُ قَدْ جَاءَ كَمَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ.

L15657 As for the narration, it is authentic—referring to the hadith of Zainab with

وَأَمَّا الْخَبَرُ فَصَحِيحٌ - يَعْنِي حَدِيثَ زَيْنَبَ مَعَ أَبِي الْعَاصِ - رَضِيَ اللَّهُ عَنْهُمَا - وَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ إسْلَامَ أَبِي الْعَاصِ كَانَ قَبْلَ الْحُدَيْبِيَةِ، وَلَمْ يَكُنْ نَزَلَ بَعْدُ تَحْرِيمُ الْمُسْلِمَةِ عَلَى الْمُشْرِكِ، وَأَمَّا احْتِجَاجُهُمْ - بِإِسْلَامِ الْعَرَبِ فَلَا سَبِيلَ لَهُمْ إلَى خَبَرٍ صَحِيحٍ بِأَنَّ إسْلَامَ رَجُلٍ تَقَدَّمَ إسْلَامَ امْرَأَتِهِ، أَوْ تَقَدَّمَ إسْلَامُهَا فَأَقَرَّهُمَا - عَلَيْهِ السَّلَامُ - عَلَى النِّكَاحِ الْأَوَّلِ، فَإِذْ لَا سَبِيلَ إلَى هَذَا فَلَا يَجُوزُ أَنْ يُطْلَقَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّهُ إطْلَاقُ الْكَذِبِ، وَالْقَوْلُ بِغَيْرِ عِلْمٍ.

Abū al-ʻĀṣ—may Allah be pleased with them both—but they have no valid argument therein. This is because Abū al-ʻĀṣ's acceptance of Islam occurred before Ḥudaybiyah, and the prohibition of a Muslim woman [marrying] a polytheist had not yet been revealed. As for their argument regarding the Arabs' acceptance of Islam, they have no valid basis for an authentic narration stating that a man's acceptance of Islam preceded his wife's acceptance of Islam, or that her acceptance of Islam preceded his, and that the Prophet—peace be upon him—allowed them to remain in their original marriage. Since there is no basis for this, it is impermissible to attribute such a claim to the Messenger of Allah—peace and blessings be upon him—for that would be attributing falsehood and speaking without knowledge.

فَإِنْ قِيلَ: قَدْ رُوِيَ أَنَّ أَبَا سُفْيَانَ أَسْلَمَ قَبْلَ هِنْدٍ، وَامْرَأَةَ صَفْوَانَ أَسْلَمَتْ قَبْلَ صَفْوَانَ؟ قُلْنَا: وَمِنْ أَيْنَ لَكُمْ أَنَّهُمَا بَقِيَا عَلَى نِكَاحِهِمَا وَلَمْ يُجَدِّدَا عَقْدًا؟ وَهَلْ جَاءَ ذَلِكَ قَطُّ بِإِسْنَادٍ صَحِيحٍ مُتَّصِلٍ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ عَرَفَ ذَلِكَ فَأَقَرَّهُ؟ حَاشَا لِلَّهِ مِنْ هَذَا.

L15658–15659 If it is said: It has been narrated that Abū Sufyān accepted Islam before Hind, and Ṣafwān's wife accepted Islam before Ṣafwān? We respond: From where do you derive that they remained upon their marriage bond without renewing it? Has this ever been conveyed through a sound, unbroken chain of transmission reaching the Prophet—peace and blessings of Allāh be upon him—indicating his awareness and approval of it? Allāh is utterly free from this!

قَالَ أَبُو مُحَمَّد: وَهُنَا شَغَبَ الْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ -: فَأَمَّا الشَّافِعِيُّونَ فَاحْتَجُّوا بِهَذَا كُلِّهِ وَبِحَدِيثِ أَبِي الْعَاصِ وَجَعَلُوا الْمُرَاعَى فِي ذَلِكَ الْعِدَّةَ.

L15660 Abu Muhammad said: At this point, the Malikis and the Shafiʻis raised objections: As for the Shafiʻis, they cited all of this along with the hadith of Abu al-ʻAs as evidence, holding that the consideration in such cases was the waiting period.

فَيُقَالُ لَهُمْ: هَبْكُمْ أَنَّهُ قَدْ صَحَّ كُلُّ مَا ذَكَرْنَا مِنْ أَيْنَ لَكُمْ أَنَّ الْمُرَاعَى فِي أَمْرِ أَبِي الْعَاصِ، وَأَمْرِ هِنْدٍ، وَامْرَأَةِ صَفْوَانَ، وَسَائِرِ مَنْ أَسْلَمَ: إنَّمَا هُوَ الْعِدَّةُ؟ وَمَنْ أَخْبَرَكُمْ بِهَذَا؟ وَلَيْسَ فِي شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ كُلِّهَا ذِكْرُ عِدَّةٍ وَلَا دَلِيلَ عَلَيْهَا أَصْلًا، وَلَا عِدَّةَ فِي دِينِ اللَّهِ تَعَالَى إلَّا مِنْ طَلَاقٍ، أَوْ وَفَاةٍ، وَالْمُعْتَقَةُ تَخْتَارُ نَفْسَهَا، وَلَيْسَتْ الْمُسْلِمَةُ تَحْتَ كَافِرٍ، وَلَا الْبَاقِيَةُ عَلَى الْكُفْرِ تَحْتَ الْمُسْلِمِ، وَلَا الْمُرْتَدَّةُ وَاحِدَةً مِنْهُنَّ، فَمِنْ أَيْنَ جِئْتُمُونَا بِهَذِهِ الْعِدَّةِ؟ وَلَا سَبِيلَ لَهُمْ إلَى وُجُودِ ذَلِكَ أَبَدًا إلَّا بِالدَّعْوَى الْكَاذِبَةِ، فَكَيْفَ وَقَدْ

L15661 It will be said to them: Suppose all we have mentioned is valid—from where do you claim that the consideration in the matter of Abū al-ʻĀṣ, Hind, Ṣafwān's wife, and all who embraced Islam was specifically the waiting period? Who informed you of this? None of these reports mention a waiting period whatsoever, nor provide any evidence for it. There is no waiting period in God's religion except after divorce or death. An emancipated woman may choose for herself, a Muslim woman cannot remain wed to a disbeliever, nor may a woman persisting in disbelief remain with a Muslim husband, nor can a single apostate woman among them. From where then have you produced this waiting period? They can never substantiate this except through false claims. How can this be, when Zaynab embraced Islam at the dawn

of her father's mission—peace be upon him—there being no disagreement about this—then migrated to Medina while her husband remained a disbeliever? Over eighteen years passed between her embracing Islam and his embracing it, during which she bore her son ʿAlī ibn Abī al-ʿĀṣ. Where then is this waiting period—if you were to reason?

أَسْلَمَتْ زَيْنَبُ فِي أَوَّلِ بَعْثِ أَبِيهَا - عَلَيْهِ السَّلَامُ -؟ لَا خِلَافَ فِي ذَلِكَ، ثُمَّ هَاجَرَتْ إِلَى الْمَدِينَةِ - وَزَوْجُهَا كَافِرٌ - وَكَانَ بَيْنَ إِسْلَامِهَا وَإِسْلَامِهِ أَزْيَدُ مِنْ ثَمَانِي عَشْرَةَ سَنَةً وَقَدْ وَلَدَتْ فِي خِلَالِ هَذَا ابْنَهَا عَلِيَّ بْنَ أَبِي الْعَاصِ فَأَيْنَ الْعِدَّةُ لَوْ عَقَلْتُمْ؟

L15662 As for the Mālikīs, if they obscured [the ruling] by citing the case of Ṣafwān's wife, they were countered with this [argument] and the precedent of Abū Sufyān's marital status. If they invoked as evidence Allah's words: {Do not hold fast to marriage bonds with disbelieving women} [Quran 60:10], they were reminded of His verse: {They are not lawful for them, nor are they lawful for them} [Quran 60:10]. Thus, the corruption of all these opinions became evident—and with Allah the Exalted lies all success.[11]

وَأَمَّا الْمَالِكِيُّونَ فَإِنْ مَوَّهُوا بِامْرَأَةِ صَفْوَانَ. عُورِضُوا بِهَذَا، وَأَبِي سُفْيَانَ، وَإِنْ احْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {وَلا تُمْسِكُوا بِعِصَمِ الْكَوَافِرِ} [الممتحنة: ١٠] ذُكِّرُوا بِقَوْلِ اللَّهِ تَعَالَى: {لا هُنَّ حِلٌّ لَهُمْ وَلا هُمْ يَحِلُّونَ لَهُنَّ} [الممتحنة: ١٠] ، فَظَهَرَ فَسَادُ هَذِهِ الْأَقْوَالِ كُلِّهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L15663 Abu Muhammad said: The proof of the validity of our position is the statement of Allah the Exalted: {O you who have believed, when believing women come to you as emigrants} [Al-Mumtahanah: 10], up to His words: {That is the judgment of Allah by which He judges between you} [Al-Mumtahanah: 10]. This is the judgment of Allah, which no one may defy, for Allah the Exalted has prohibited a believing woman from returning to the disbeliever.[12]

قَالَ أَبُو مُحَمَّدٍ: بُرْهَانُ صِحَّةِ قَوْلِنَا قَوْلُ اللَّهِ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ} [الممتحنة: ١٠] الْآيَةَ إِلَى قَوْلِهِ: {ذَلِكُمْ حُكْمُ اللَّهِ يَحْكُمُ بَيْنَكُمْ} [الممتحنة: ١٠] فَهَذَا حُكْمُ اللَّهِ الَّذِي لَا يَحِلُّ لِأَحَدٍ أَنْ يَخْرُجَ عَنْهُ، فَقَدْ حَرَّمَ اللَّهُ تَعَالَى رُجُوعَ الْمُؤْمِنَةِ إِلَى الْكَافِرِ.

L15664–15665 It has been authentically reported from the Prophet—peace and blessings of Allah be upon him—that he said: "The muhājir is one who abandons what Allah has forbidden." Thus, everyone who submits to Islam has indeed abandoned the disbelief that was forbidden; therefore, he is a muhājir.

وَصَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «الْمُهَاجِرُ مَنْ هَجَرَ مَا نَهَى اللَّهُ عَنْهُ» فَكُلُّ مَنْ أَسْلَمَ فَقَدْ هَجَرَ الْكُفْرَ الَّذِي قَدْ نُهِيَ عَنْهُ فَهُوَ مُهَاجِرٌ.

L15666 The Most High has explicitly decreed that her marriage is permissible for us, thus the severance of the marital bond is valid by her embracing Islam.

وَنَصَّ تَعَالَى عَلَى أَنَّ نِكَاحَهَا مُبَاحٌ لَنَا، فَصَحَّ انْقِطَاعُ الْعِصْمَةِ بِإِسْلَامِهَا.

L15667 It has been established that the one who embraces Islam is commanded not to maintain a disbelieving marital bond. Thus, it is established that at the moment Islam is embraced or apostasy occurs, the Muslim woman's marital bond with the unbeliever is severed, and the unbelieving woman's marital bond with the Muslim is severed—whether one of them embraces Islam

وَصَحَّ أَنَّ الَّذِي يُسْلِمُ مَأْمُورٌ بِأَنْ لَا يُمْسِكَ عِصْمَةً كَافِرَةً، فَصَحَّ أَنَّ سَاعَةَ يَقَعُ الْإِسْلَامُ، أَوْ الرِّدَّةُ، فَقَدْ انْقَطَعَتْ عِصْمَةُ الْمُسْلِمَةِ مِنَ الْكَافِرِ، وَعِصْمَةُ الْكَافِرَةِ مِنَ الْمُسْلِمِ - سَوَاءٌ أَسْلَمَ أَحَدُهُمَا وَكَانَا كَافِرَيْنِ، أَوِ ارْتَدَّ أَحَدُهُمَا وَكَانَا مُسْلِمَيْنِ - وَالْفَرْقُ بَيْنَ ذَلِكَ تَخْلِيطٌ، وَقَوْلٌ فِي الدِّينِ بِلَا بُرْهَانٍ.

[11] **Qur'an references (L15662):** Qur'an 60:10 (Al-Mumtahanah).
[12] **Qur'an references (L15663):** Qur'an 60:10 (Al-Mumtahanah).

while they were both unbelievers, or one apostatizes while they were both Muslims. Distinguishing between these cases is confusion and a baseless assertion in religion.

L15668 And with Allah, the Exalted, is the success.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L15669 **A legal question regarding one from among the disbelievers who says, "There is no deity but Allah."**

[مَسْأَلَةٌ مِنْ قَالَ مِنْ أَهْلِ الْكُفْرِ لَا إِلَهَ إِلَّا اللَّهُ]

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٩٤٠ - مَسْأَلَةٌ:

L15671 And whoever among the people of disbelief other than the Jews, Christians, or Zoroastrians says, "There is no god but Allah," or says, "Muhammad is the Messenger of Allah," is thereby a Muslim, and the laws of Islam become binding upon him. If he refuses Islam, he is to be killed.

وَمَنْ قَالَ مِنْ أَهْلِ الْكُفْرِ مِمَّا سِوَى الْيَهُودِ، وَالنَّصَارَى، أَوْ الْمَجُوسِ: لَا إِلَهَ إِلَّا اللَّهُ، أَوْ قَالَ: مُحَمَّدٌ رَسُولُ اللَّهِ، كَانَ بِذَلِكَ مُسْلِمًا تَلْزَمُهُ شَرَائِعُ الْإِسْلَامِ، فَإِنْ أَبَى الْإِسْلَامَ قُتِلَ.

L15672 As for the Jews, Christians, and Magians, one does not become a Muslim by declaring "There is no god but Allah, Muhammad is the Messenger of Allah" unless he also says: "I am a Muslim," "I have embraced Islam," or "I renounce every religion except Islam." It has been narrated to us through the chain of Imam Muslim: Haramala ibn Yaḥyā narrated to us, Ibn Wahb narrated to us, Yunus narrated to us from Ibn Shihab, who narrated that Sa'īd ibn al-Musayyab reported from his father, who said: "When Abu Ṭālib's death approached, the Messenger of Allah (peace and blessings be upon him) said to him: 'O uncle, say: There is no god but Allah - a word by which I will testify for you before Allah.'" And he mentioned the ḥadīth.[13]

وَأَمَّا مِنْ الْيَهُودِ، وَالنَّصَارَى، وَالْمَجُوسِ، فَلَا يَكُونُ مُسْلِمًا بِقَوْلِ: لَا إِلَهَ إِلَّا اللَّهُ مُحَمَّدٌ رَسُولُ اللَّهِ، إِلَّا حَتَّى يَقُولَ: وَأَنَا مُسْلِمٌ، أَوْ قَدْ أَسْلَمْتُ، أَوْ أَنَا بَرِيءٌ مِنْ كُلِّ دِينٍ حَاشَا الْإِسْلَامِ. رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا حَرْمَلَةُ بْنُ يَحْيَى نَا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيِّبِ عَنْ أَبِيهِ قَالَ «لَمَّا حَضَرَتْ أَبَا طَالِبٍ الْوَفَاةُ قَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: يَا عَمِّ قُلْ: لَا إِلَهَ إِلَّا اللَّهُ كَلِمَةً أَشْهَدُ لَكَ بِهَا عِنْدَ اللَّهِ» وَذَكَرَ الْحَدِيثَ.

L15673–15675 Through the chain of Muslim: Ya'qub al-Dawraqi reported to us; Hushaym reported to us; Husayn ibn 'Abd al-Rahman reported to us, from Abu Ẓabyan who informed us: I heard Usamah ibn Zayd ibn Harithah narrating, saying: "The Messenger of Allah—peace and blessings be upon him—sent us with a detachment. We reached al-Ḥurqāt of Juhaynah at dawn and routed them. A man from the Ansar and I pursued one of their men. When we overtook him, he declared: 'There is no god but Allah.' The Ansari refrained from

وَمِنْ طَرِيقِ مُسْلِمٍ نَا يَعْقُوبُ الدَّوْرَقِيُّ نَا هُشَيْمٌ نَا حُصَيْنٌ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ أَخْبَرَنَا أَبُو ظَبْيَانَ سَمِعْتُ أُسَامَةَ بْنَ زَيْدِ بْنِ حَارِثَةَ يُحَدِّثُ قَالَ: «بَعَثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَرِيَّةٍ فَصَبَّحْنَا الْحُرُقَاتِ مِنْ جُهَيْنَةَ فَهَزَمْنَاهُمْ وَلَحِقْتُ أَنَا وَرَجُلٌ مِنْ الْأَنْصَارِ رَجُلًا مِنْهُمْ فَلَمَّا غَشِينَاهُ قَالَ: لَا إِلَهَ إِلَّا اللَّهُ، فَكَفَّ عَنْهُ الْأَنْصَارِيُّ، وَطَعَنْتُهُ

[13] **Hadith references (L15672):** Sahih Muslim 24a.

attacking him, but I stabbed and killed him. When this was conveyed to the Messenger of Allah—peace and blessings be upon him—he said to me: 'O Usamah, did you kill him after he uttered: "There is no god but Allah"?' I responded: 'O Messenger of Allah...'" "Was he merely seeking refuge?" He then said, "Did you kill him after he said, 'There is no god but Allah?'" He kept repeating this to me until I wished I had not embraced Islam before that day."

فَقَتَلْتُهُ فَبَلَغَ ذَلِكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لِي: يَا أُسَامَةُ أَقَتَلْتَهُ بَعْدَمَا قَالَ: لَا إِلَهَ إِلَّا اللَّهُ؟ قُلْتُ: يَا رَسُولَ اللَّهِ إِنَّمَا كَانَ مُتَعَوِّذًا؟ فَقَالَ: أَقَتَلْتَهُ بَعْدَمَا قَالَ: لَا إِلَهَ إِلَّا اللَّهُ؟ فَمَا زَالَ يُكَرِّرُهَا عَلَيَّ حَتَّى تَمَنَّيْتُ أَنِّي لَمْ أَكُنْ أَسْلَمْتُ قَبْلَ ذَلِكَ الْيَوْمِ» .

L15676 Abu Muhammad said: This pertains to the final period of Islam, while the hadith regarding Abu Talib concerns the main phase of Islam after several years into it. The Ansari refrained from killing him - as you observe - when he declared, "There is no deity but Allah," and Usama was not obligated for retribution because he killed him while presuming him to be a disbeliever, thus he was not deemed a deliberate killer.

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا فِي آخِرِ الْإِسْلَامِ، وَحَدِيثُ أَبِي طَالِبٍ فِي مُعْظَمِ الْإِسْلَامِ بَعْدَ أَعْوَامٍ مِنْهُ، وَقَدْ كَفَّ الْأَنْصَارِيُّ كَمَا تَرَى عَنْ قَتْلِهِ إِذْ قَالَ: لَا إِلَهَ إِلَّا اللَّهُ وَلَمْ يَلْزَمْ أُسَامَةَ قَوَدٌ لِأَنَّهُ قَتَلَهُ وَهُوَ يَظُنُّهُ كَافِرًا فَلَيْسَ قَاتِلَ عَمْدٍ.

L15677 From the path of Muslim: Al-Hasan ibn Ali Al-Hulwani narrated to us, Abu Taubah—that is, Ar-Rabi' ibn Nafi'—narrated to us, Muawiyah—meaning Ibn Salam—related from Zaid—meaning his brother—that he heard Abu Salam say: Abu Asma' Ar-Rahabi narrated to us that Thawban, the freed slave of Allah's Messenger (peace be upon him), narrated that he said: "I was standing near Allah's Messenger (peace be upon him) when a Jewish scholar came and said: 'Peace be upon you, O Muhammad!' I pushed him so forcefully that he almost fell. He asked: 'Why do you push me?' I replied: 'Will you not say "O Messenger of Allah"?' The Jew responded: 'We only call him by the name his family gave him.' Thereupon Allah's Messenger (peace be upon him) said: 'My name is indeed Muhammad—the name my family gave me.'" Then he mentioned the hadith, and at its end: The Jew said to him: "You have spoken truthfully, and you are certainly a prophet," then departed. This account demonstrates that Thawban (may Allah be pleased with him) struck the Jew for failing to say "Messenger of Allah," while Allah's Messenger (peace be upon him) did not disapprove. This confirms that such correction is an obligatory duty, for had it been impermissible, he would have prohibited it. It further shows that though the Jew acknowledged his prophethood, the Prophet (peace be upon him) did not compel him to abandon his religion.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا الْحَسَنُ بْنُ عَلِيٍّ الْحُلْوَانِيُّ نَا أَبُو تَوْبَةَ هُوَ الرَّبِيعُ بْنُ نَافِعٍ - نَا مُعَاوِيَةُ يَعْنِي ابْنَ سَلَامٍ - عَنْ زَيْدٍ يَعْنِي أَخَاهُ أَنَّهُ سَمِعَ أَبَا سَلَامٍ قَالَ: نَا أَبُو أَسْمَاءَ الرَّحَبِيُّ «أَنَّ ثَوْبَانَ مَوْلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَدَّثَهُ قَالَ: كُنْتُ قَائِمًا عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَاءَ حَبْرٌ مِنْ أَحْبَارِ الْيَهُودِ فَقَالَ: السَّلَامُ عَلَيْكَ يَا مُحَمَّدُ، فَدَفَعْتُهُ دَفْعَةً كَادَ يُصْرَعُ مِنْهَا، فَقَالَ: لِمَ تَدْفَعُنِي؟ قُلْتُ: أَلَا تَقُولُ: يَا رَسُولَ اللَّهِ؟ فَقَالَ الْيَهُودِيُّ: إِنَّمَا نَدْعُوهُ بِاسْمِهِ الَّذِي سَمَّاهُ بِهِ أَهْلُهُ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّ اسْمِي مُحَمَّدٌ الَّذِي سَمَّانِي بِهِ أَهْلِي ثُمَّ ذَكَرَ الْحَدِيثَ، وَفِي آخِرِهِ إِنَّ الْيَهُودِيَّ قَالَ لَهُ: لَقَدْ صَدَقْتَ وَإِنَّكَ لَنَبِيٌّ، ثُمَّ انْصَرَفَ» . فَفِي هَذَا الْخَبَرِ ضَرَبَ ثَوْبَانُ - رَضِيَ اللَّهُ عَنْهُ - الْيَهُودِيَّ إِذْ لَمْ يَقُلْ: رَسُولَ اللَّهِ، وَلَمْ يُنْكِرْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَصَحَّ أَنَّهُ حَقٌّ وَاجِبٌ، إِذْ لَوْ كَانَ غَيْرَ جَائِزٍ لَأَنْكَرَهُ عَلَيْهِ - وَفِيهِ أَنَّ الْيَهُودِيَّ قَالَ لَهُ: إِنَّكَ لَنَبِيٌّ، وَلَمْ يُلْزِمْهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ تَرْكَ دِينِهِ.

L15678 From the chain of Al-Bukhari: Abdullah ibn Muhammad narrated to us, Abu Rawh Harami ibn Umara narrated to us, Shu'bah narrated from Waqid—who is the son of Muhammad ibn Zayd ibn Abdullah ibn Umar ibn Al-Khattab—who said: "I heard my father narrating from Ibn Umar, who said: The Messenger of Allah, peace and blessings be upon him, said: 'I have been commanded to fight the people until they testify that there is no god but Allah and that Muhammad is the Messenger of Allah, establish the prayer, and give the zakat. When they do that, they have safeguarded their blood and wealth from me, except by the right of Islam, and their reckoning rests with Allah.'" All of this is the statement of Al-Shafi'i and Abu Sulayman.[14]

L15679 **The ruling is that Jizya is not to be accepted from a Jew, a Christian, or a Zoroastrian.**

L15680 941– *Mas'ala*:

L15681–15683 Neither from a Jew, nor a Christian, nor a Magian is jizya accepted, save upon the stipulation that... They must acknowledge that Muhammad is the Messenger of Allah to us and refrain from attacking him or disparaging any aspect of the religion of Islam, due to the hadith of Thawban mentioned earlier and the words of Allah Almighty: "If they violate your religion, then fight the leaders of disbelief—indeed, their oaths are meaningless" (Quran 9:12).[15]

L15684 This is the opinion of Mālik. He said regarding the hypothetical case: If a dhimmi says, "Muhammad was only sent to you, not to us," he bears no penalty. Then if he says, "He was not a prophet," he is to be executed.

L15685 **An issue concerning one who claims there exists a hidden aspect in any part of Islam, other than the apparent.**

L15686 Mas'ala 942 -:

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ نَا أَبُو رَوْحٍ حَرَمِيُّ بْنُ عُمَارَةَ نَا شُعْبَةُ عَنْ وَاقِدٍ هُوَ ابْنُ مُحَمَّدِ بْنِ زَيْدِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ قَالَ " سَمِعْتُ أَبِي يُحَدِّثُ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، وَيُقِيمُوا الصَّلَاةَ، وَيُؤْتُوا الزَّكَاةَ، فَإِذَا فَعَلُوا ذَلِكَ عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ إِلَّا بِحَقِّ الْإِسْلَامِ وَحِسَابُهُمْ عَلَى اللَّهِ» . وَهَذَا كُلُّهُ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

[مَسْأَلَةٌ لَا يُقْبَلُ مِنْ يَهُودِيٍّ وَلَا نَصْرَانِيٍّ وَلَا مَجُوسِيٍّ جِزْيَةٌ]

٩٤١ - مَسْأَلَةٌ:

وَلَا يُقْبَلُ مِنْ يَهُودِيٍّ، وَلَا نَصْرَانِيٍّ، وَلَا مَجُوسِيٍّ: جِزْيَةٌ، إِلَّا بِأَنْ يُقِرُّوا بِأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ إِلَيْنَا، وَأَنْ لَا يَطْعَنُوا فِيهِ، وَلَا فِي شَيْءٍ مِنْ دِينِ الْإِسْلَامِ، لِحَدِيثِ ثَوْبَانَ الَّذِي ذَكَرْنَا آنِفًا وَلِقَوْلِ اللَّهِ تَعَالَى: {وَطَعَنُوا فِي دِينِكُمْ فَقَاتِلُوا أَئِمَّةَ الْكُفْرِ إِنَّهُمْ لا أَيْمَانَ لَهُمْ} [التوبة: ١٢]

وَهُوَ قَوْلُ مَالِكٍ، قَالَ فِي الْمُسْتَخْرَجَةِ: مَنْ قَالَ مِنْ أَهْلِ الذِّمَّةِ: إِنَّمَا أُرْسِلَ مُحَمَّدٌ إِلَيْكُمْ لَا إِلَيْنَا فَلَا شَيْءَ عَلَيْهِ، قَالَ: فَإِنْ قَالَ لَمْ يَكُنْ نَبِيًّا قُتِلَ.

[مَسْأَلَةٌ مَنْ قَالَ إِنَّ فِي شَيْءٍ مِنْ الْإِسْلَامِ بَاطِنًا غَيْرَ الظَّاهِرِ]

٩٤٢ - مَسْأَلَةٌ:

[14] **Hadith references (L15678):** Sahih al-Bukhari 25; Riyad as-Salihin 1076; Riyad as-Salihin 1209.

[15] **Qur'an references (L15681):** Qur'an 9:12 (At-Tawbah).

L15687 Whoever asserts that there is a hidden aspect in any part of Islam other than the apparent [meaning] known to all people is a disbeliever who must be killed without exception, due to Allah's statement: "Our Messenger's duty is only to convey clearly" [At-Taghabun 64:12] and His saying: "To make clear to mankind what was sent down to them" [An-Nahl 16:44]. Thus, whoever contradicts this has denied the Quran.[16]

L15688 **Issue: Every male or female slave owned by two disbelievers who embrace Islam in the Abode of War...**

L15689 943. Chapter:

L15690 Every male or female slave owned by two disbelievers or one disbeliever—if both slaves embrace Islam, whether in the abode of war or outside it—they are both freed immediately. If two such slaves belong to a *dhimmī* and embrace Islam, they are freed at the moment of their conversion. Similarly, the *mudabbar* (a slave promised emancipation) of a *dhimmī* or a *ḥarbī*, their *mukatab* (a slave under a manumission contract), or their *umm walad* (mother of the owner's child)—whichever of these embraces Islam becomes free at the moment of conversion. The manumission contract or its remaining portion is annulled. The convert does not forfeit anything they had paid toward it before conversion but may reclaim what they paid after Islamization and take it back. This is based on Allah's decree: "Allah will never grant the disbelievers authority over the believers" [4:141]. Allah the Exalted undoubtedly meant by this the rulings of the religion, not worldly dominance through tyranny. Enslavement constitutes the greatest form of authority, which Allah has abolished through Islam. We ask the one who sells them: Why do you sell them? Are they owned by him or not? There is no alternative to one of these two [options].[17]

L15691 If he says, "The two are not enslaved by him," he is truthful—and this is our opinion—and since the two are not enslaved by him, they are both free. And if he says, "The two are enslaved by him."

وَمَنْ قَالَ: إِنَّ فِي شَيْءٍ مِنْ الْإِسْلَامِ بَاطِنًا غَيْرَ الظَّاهِرِ الَّذِي يَعْرِفُهُ الْأَسْوَدُ وَالْأَحْمَرُ، فَهُوَ كَافِرٌ يُقْتَلُ وَلَا بُدَّ، لِقَوْلِ اللَّهِ تَعَالَى: {فَإِنَّمَا عَلَى رَسُولِنَا الْبَلاغُ الْمُبِينُ} [التغابن: ١٢] وَقَالَ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] فَمَنْ خَالَفَ هَذَا فَقَدْ كَذَّبَ بِالْقُرْآنِ.

[مَسْأَلَةٌ كُلُّ عَبْدٍ أَوْ أَمَةٍ كَانَا لِكَافِرَيْنِ أَسْلَمَا فِي دَارِ الْحَرْبِ]

٩٤٣ - مَسْأَلَةٌ:

وَكُلُّ عَبْدٍ، أَوْ أَمَةٍ كَانَا لِكَافِرَيْنِ، أَوْ أَحَدِهِمَا أَسْلَمَا فِي دَارِ الْحَرْبِ، أَوْ فِي غَيْرِ دَارِ الْحَرْبِ: فَهُمَا حُرَّانِ، فَلَوْ كَانَا كَذَلِكَ لِذِمِّيٍّ فَأَسْلَمَا: فَهُمَا حُرَّانِ سَاعَةَ إِسْلَامِهِمَا، وَكَذَلِكَ مُدَبَّرُ الذِّمِّيِّ، أَوْ الْحَرْبِيِّ، أَوْ مُكَاتَبُهُمَا، أَوْ أُمُّ وَلَدِهِمَا، أَيُّهُمْ أَسْلَمَ فَهُوَ حُرٌّ سَاعَةَ إِسْلَامِهِ وَتَبْطُلُ الْكِتَابَةُ، أَوْ مَا بَقِيَ مِنْهَا، وَلَا يَرْجِعُ الَّذِي أَسْلَمَ بِشَيْءٍ مِمَّا كَانَ أَعْطَى مِنْهَا قَبْلَ إِسْلَامِهِ، وَيَرْجِعُ بِمَا أَعْطَى مِنْهَا بَعْدَ إِسْلَامِهِ فَيَأْخُذُهُ لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلا} [النساء: ١٤١] وَإِنَّمَا عَنَى تَعَالَى بِهَذَا أَحْكَامَ الدِّينِ بِلَا شَكٍّ، وَأَمَّا تَسَلُّطُ الدُّنْيَا بِالظُّلْمِ فَلَا، وَالرِّقُّ أَعْظَمُ السَّبِيلِ، وَقَدْ أَسْقَطَهُ اللَّهُ تَعَالَى بِالْإِسْلَامِ، وَنَسْأَلُ مَنْ بَاعَهُمَا عَلَيْهِ: لِمَ تَبِيعُهُمَا؟ أَهُمَا مَمْلُوكَانِ لَهُ أَمْ غَيْرُ مَمْلُوكَيْنِ؟ وَلَا بُدَّ مِنْ أَحَدِهِمَا.

فَإِنْ قَالَ: لَيْسَا مَمْلُوكَيْنِ لَهُ صَدَقَ - وَهُوَ قَوْلُنَا - وَإِذْ لَمْ يَكُونَا مَمْلُوكَيْنِ لَهُ فَهُمَا حُرَّانِ، وَإِنْ قَالَ: هُمَا مَمْلُوكَانِ لَهُ.

[16] **Qur'an references (L15687):** Qur'an 64:12 (At-Taghabun); Qur'an 16:44 (An-Nahl).
[17] **Qur'an references (L15690):** Qur'an 4:141 (An-Nisa).

قُلْنَا: فَلِمَ تُبْطِلُ مِلْكَهُ الَّذِي أَنْتَ تُصَحِّحُهُ بِلَا نَصٍّ وَلَا إِجْمَاعٍ؟ وَأَيُّ فَرْقٍ بَيْنَ إِقْرَارِك لَهُمَا فِي مِلْكِهِ سَاعَةً، أَوْ سَاعَتَيْنِ، أَوْ يَوْمًا، أَوْ يَوْمَيْنِ، أَوْ جُمُعَةً، أَوْ جُمُعَتَيْنِ، أَوْ شَهْرًا، أَوْ شَهْرَيْنِ، أَوْ عَامًا، أَوْ عَامَيْنِ، أَوْ بَاقِيَ عُمُرِهَا، أَوْ عُمُرِهِ، وَكَيْفَ صَحَّ إقْرَارُك لَهُمَا فِي مِلْكِهِ مُدَّةَ تَعْرِيضِهِمَا لِلْبَيْعِ؟ وَلَمْ يَصِحَّ، وَلَمْ يَصِحَّ إبْقَاؤُهُمَا فِي مِلْكِهِ أَكْثَرَ، وَلَعَلَّهُمَا لَا يَسْتَبِيعَانِ فِي شَهْرٍ، أَوْ أَكْثَرَ، وَهَلَّا أَقْرَرْتُمُوهُمَا فِي مِلْكِهِ وَحُلْتُمْ بَيْنَهُ وَبَيْنَهُمَا كَمَا فَعَلْتُمْ فِي الْمُدَبَّرِ، وَأُمِّ الْوَلَدِ، وَالْمُكَاتَبِ إذَا أَسْلَمُوا؟ وَلَئِنْ كَانَ يَجُوزُ إبْقَاؤُهُمْ فِي مِلْكِهِ إنَّ ذَلِكَ لَجَائِزٌ فِي الْعَبْدِ، وَلَئِنْ حَرُمَ إبْقَاءُ الْعَبْدِ فِي مِلْكِهِ لَيَحْرُمُ ذَلِكَ فِي أُمِّ الْوَلَدِ، وَالْمُدَبَّرِ، وَالْمُكَاتَبِ وَلَا فَرْقَ - وَهَذَا تَنَاقُضٌ ظَاهِرٌ لَا خَفَاءَ بِهِ، وَقَوْلٌ فَاسِدٌ لَا مِرْيَةَ فِيهِ، وَنَسْأَلُهُمْ أَيْضًا عَنْ كَافِرٍ اشْتَرَى عَبْدًا مُسْلِمًا، أَوْ أَمَةً مُسْلِمَةً، فَمِنْ قَوْلِهِمْ: إنَّهُمْ يُفْسَخُونَ ذَلِكَ الشِّرَاءَ. فَنَقُولُ لَهُمْ: وَلِمَ فَسَخْتُمُوهُ؟ وَهَلَّا بِعْتُمُوهُمَا عَلَيْهِ كَمَا تَفْعَلُونَ إذَا أَسْلَمَ فِي مِلْكِهِ؟ وَمَا الْفَرْقُ؟ فَإِنْ قَالُوا: لِأَنَّ هَذَا ابْتِدَاءُ تَمَلُّكٍ. قُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ وَلَا يَخْلُو ابْتِيَاعُهُ لَهُمَا مِنْ أَنْ يَكُونَ ابْتِدَاءَ تَمَلُّكٍ لِمَا يَحِلُّ تَمَلُّكُهُ، وَلَا سَبِيلَ إلَى ثَالِثٍ.

L15692–15694 We said: Then why do you invalidate his ownership—which you yourself validate—without any textual proof or consensus? What distinction exists between your legal acknowledgment for them both in his ownership for an hour, two hours, a day, two days, a week, two weeks, a month, two months, a year, two years, the remainder of her lifespan, or his lifespan? How can your legal acknowledgment for them both in his ownership be valid during their being put up for sale, while it is invalid—and equally invalid—to retain them both in his ownership longer? Perhaps they will not succeed in selling within a month or more. Why do you not legally acknowledge them both in his ownership, and why do you intervene between him and them? Just as you have done concerning the *mudabbar*, the *umm al-walad*, and the *mukatab* when they embraced Islam? If retaining them in his ownership is permissible, then this is permissible for the *slave*. And if retaining the *slave* in his ownership is prohibited, then this is prohibited for the *umm al-walad*, the *mudabbar*, and the *mukatab*—there is no distinction. This is an evident contradiction, unmistakably clear, and a corrupt opinion without doubt. We also ask them about a disbeliever who purchased a Muslim male slave or a Muslim female slave. According to their doctrine, they nullify such a purchase. We say to them: Why did you nullify it? Why do you not sell them to him, as you do when a slave embraces Islam under his ownership? What is the difference? If they say: “Because this is an initial acquisition,” we reply: Yes—so what? His purchase of them can only be either an initial acquisition of what is lawfully ownable, or it is not. There is no third possibility.

فَإِنْ قَالُوا: بَلْ لِمَا لَا يَحِلُّ تَمَلُّكُهُ. قُلْنَا: صَدَقْتُمْ، فَكَيْفَ أَحْلَلْتُمْ تَمَلُّكَهُ لَهُمَا مُدَّةَ تَعْرِيضِكُمْ إيَّاهُمَا لِلْبَيْعِ إذَا أَسْلَمَا فِي مِلْكِهِ؟ وَإِنْ قَالُوا: بَلْ لِمَا يَحِلُّ تَمَلُّكُهُ. قُلْنَا: فَلِمَ فَسَخْتُمْ ابْتِيَاعَهُ لِمَا يَحِلُّ لَهُ تَمَلُّكُهُ؟ بَلْ لِمَ تَبِيعُونَ عَلَيْهِ مَا يَحِلُّ لَهُ تَمَلُّكُهُ؟ فَإِنْ قَالُوا: إنَّهُمَا كَانَا فِي مِلْكِهِ قَبْلَ أَنْ يُسْلِمَا فَلِمَ يَبْطُلُ مِلْكُهُ بِإِسْلَامِهِمَا. قُلْنَا: نَعَمْ، فَلِمَ بِعْتُمُوهُمَا عَلَيْهِ؟ وَهَذَا تَنَاقُضٌ فَاحِشٌ لَا إشْكَالَ فِيهِ، وَقَوْلٌ بَاطِلٌ بِلَا بُرْهَانٍ، وَالْعَجَبُ كُلُّ الْعَجَبِ أَنَّهُمْ يُنْكِرُونَ

L15695 If they say: “No, because it is impermissible to own them,” we reply: “You are correct. Then how did you permit their ownership by him during the time you offered them for sale if they embraced Islam while in his possession?” If they say: “Rather, because it is permissible to own them,” we say: “Then why did you invalidate his purchase of what he is permitted to own? Why do you sell him what he may rightfully own?” If they argue: “They were his property before embracing Islam, so why should his ownership cease through their conversion?” we counter: “True—then why did you sell them to him?”

This constitutes a blatant contradiction without ambiguity—a baseless claim devoid of proof.

What is utterly astonishing is their objection against Allah Almighty and His Messenger (peace be upon him) regarding his marriage to Safiyyah, Mother of the Believers—making her manumission her dowry—by asserting: "It must either be that he married her before her emancipation, which is unlawful for a man to marry his own slave, or after her emancipation—but then the manumission preceded the marriage, so where is the dowry?" They raise similar invalid objections concerning manumission by lottery and the recovery of goods from a bankrupt debtor. None of these matters entail the corrupt objections they have inserted into them.

Yet they do not censure themselves where censure is truly warranted, for they speak and rule by their corrupt opinions, while he (peace be upon him) only speaks and judges by the authority of Allah Almighty—He who "is not questioned about what He does, but they will be questioned" [21:23].[18]

L15696–15697 If they say: "We sell the slave to a disbeliever just as you sell a Muslim's male and female slaves when harm is complained of and in cases of insolvency," we respond to them—and with Allah's success—that we do not sell a Muslim's male or female slave under any circumstance except in the case of a binding, obligatory right that we cannot possibly attain by any means whatsoever except through their sale; otherwise, we refrain. The primary principle is that we only sell them to settle his debt that has become legally binding upon him, for obligatory maintenance required for himself, his male or female slave, or those he is obligated to support, or for legally established harm. Regarding the obligatory right: As long as we find dirhams or dinars to settle his debt, we do not sell them. If we find no alternative and no way to fulfill that right except by selling them, then they constitute part of his property that may be sold at that point, as Allah—Exalted is He—says: {Be steadfast in justice, as witnesses for Allah} [An-Nisa: 135]. Upholding justice includes granting every rightful claimant their due. The Messenger of Allah—peace

[18] **Qur'an references (L15695):** Qur'an 21:23 (Al-Anbya).

مِثْلَ هَذَا عَلَى اللَّهِ تَعَالَى، وَعَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيَقُولُونَ فِي تَزَوُّجِهِ - عَلَيْهِ السَّلَامُ - صَفِيَّةَ أُمِّ الْمُؤْمِنِينَ وَجَعْلِ عِتْقِهَا صَدَاقَهَا: لَا يَخْلُو أَنْ يَكُونَ تَزَوَّجَهَا قَبْلَ عِتْقِهَا، أَوْ بَعْدَ عِتْقِهَا، فَإِنْ كَانَ تَزَوَّجَهَا قَبْلَ عِتْقِهَا فَزَوَاجُ الرَّجُلِ أَمَتَهُ لَا يَحِلُّ، وَإِنْ كَانَ تَزَوَّجَهَا بَعْدَ عِتْقِهَا، فَقَدْ مَضَى عِتْقُهَا فَأَيْنَ الصَّدَاقُ؟ وَقَالُوا مِثْلَ هَذَا فِي الْعِتْقِ بِالْقُرْعَةِ، وَفِي وُجُودِ الْمَرْءِ سِلْعَتَهُ عِنْدَ مُفْلِسٍ، وَكُلُّ هَذَا لَا يَدْخُلُ فِيهِ مَا أَدْخَلُوهُ فِيهِ مِنْ هَذِهِ الِاعْتِرَاضَاتِ الْفَاسِدَةِ، ثُمَّ لَا يُنْكِرُونَ هَذَا عَلَى أَنْفُسِهِمْ وَهُوَ مَوْضِعُ الْإِنْكَارِ حَقًّا، لِأَنَّهُمْ إنَّمَا يَتَكَلَّمُونَ وَيَقْضُونَ بِرَأْيِهِمْ الْفَاسِدِ، وَهُوَ - عَلَيْهِ السَّلَامُ - إنَّمَا يَتَكَلَّمُ وَيَقْضِي عَنْ اللَّهِ تَعَالَى الَّذِي {لا يُسْأَلُ عَمَّا يَفْعَلُ وَهُمْ يُسْأَلُونَ} [الأنبياء: ٢٣] .

فَإِنْ قَالُوا: نَبِيعُهُ عَلَى الْكَافِرِ كَمَا تَبِيعُونَ أَنْتُمْ عَبْدَ الْمُسْلِمِ وَأَمَتَهُ إذْ شَكَوْا الضَّرَرَ، وَفِي التَّفْلِيسِ. قُلْنَا لَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: لَا نَبِيعُ عَبْدًا لِمُسْلِمٍ وَلَا أَمَتَهُ أَصْلًا إلَّا فِي حَقٍّ وَاجِبٍ لَازِمٍ لَا يُمْكِنُنَا التَّوَصُّلُ إلَيْهِ أَلْبَتَّةَ بِوَجْهٍ مِنْ الْوُجُوهِ إلَّا بِبَيْعِهِمَا وَإِلَّا فَلَا، أَوَّلُ ذَلِكَ: أَنَّا لَا نَبِيعُهُمَا عَلَيْهِ إلَّا فِي دَيْنٍ لَزِمَهُ، أَوْ فِي نَفَقَةٍ لَزِمَتْهُ لِنَفْسِهِ أَوْ لِلْمَمْلُوكِ وَالْمَمْلُوكَةِ، أَوْ لِمَنْ تَلْزَمُهُ نَفَقَتُهُ، أَوْ لِضَرَرٍ ثَابِتٍ، فَأَمَّا الْحَقُّ الْوَاجِبُ فَمَا دُمْنَا نَجِدُ لَهُ دَرَاهِمَ أَوْ دَنَانِيرَ لَمْ نَبِعْهُمَا عَلَيْهِ، فَإِنْ لَمْ نَجِدْ لَهُ غَيْرَهُمَا وَلَمْ يَكُنْ سَبِيلٌ إلَى أَدَاءِ ذَلِكَ الْحَقِّ إلَّا بِبَيْعِهِمَا فَهُمَا مَالٌ مِنْ مَالِهِ يُبَاعُ عِنْدَ ذَلِكَ لِقَوْلِ اللَّهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥] وَمِنْ الْقِيَامِ بِالْقِسْطِ: إعْطَاءُ كُلِّ ذِي حَقٍّ حَقَّهُ، وَصَوَّبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ - هَذَا الْقَوْلَ، إذْ قَالَهُ سَلْمَانُ لِأَبِي الدَّرْدَاءِ - رَضِيَ اللَّهُ عَنْهُمَا -.

and blessings be upon him and his family—endorsed this ruling when Salman said it to Abu Ad-Darda—may Allah be pleased with them both.[19]

وَأَمَّا الضَّرَرُ الثَّابِتُ فَإِنْ أَمْكَنَنَا مَنْعُ الضَّرَرِ بِأَنْ نَحُولَ بَيْنَهُ وَبَيْنَ الْأَمَةِ، وَالْعَبْدِ، بِأَنْ يُؤَاجَرَا، أَوْ يُجْعَلَا عِنْدَ ثِقَةٍ يَمْنَعُ مِنَ الْإِضْرَارِ بِهِمَا لَمْ نَبِعْهُمَا، فَإِذَا لَمْ يُقْدَرْ عَلَى ذَلِكَ أَلْبَتَّةَ بِعْنَاهُمَا، لِأَنَّنَا لَا نَقْدِرُ عَلَى الْمَنْعِ مِنَ الظُّلْمِ وَالْعُدْوَانِ وَالْإِثْمِ إِلَّا بِذَلِكَ، وَقَالَ تَعَالَى: {وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L15698 As for the established harm, if we can interpose between it and the female slave or male slave by renting them out or placing them with a trustworthy guardian who prevents harm to them, we do not sell either. If it is entirely impossible to do so, we sell them both, for we cannot prevent oppression, transgression, and sin except through this means. Allah, the Exalted, said: "And do not cooperate in sin and transgression" [Surah Al-Mā'idah 5:2].[20]

فَإِنْ قَالُوا: كَذَلِكَ تَحَكُّمُ الْكَافِرِ عَلَى الْمُسْلِمِ مِنْ عَبِيدِهِمْ ضَرَرٌ. قُلْنَا: فَإِنْ صَحَّ أَنَّهُ لَا ضَرَرَ عَلَى الْأَمَةِ وَالْعَبْدِ مِنْ سَيِّدِهِمَا الْكَافِرِ، أَوْ سَيِّدَتِهِمَا الْكَافِرَةِ، بَلْ هُمَا مُعْتَرِفَانِ بِالْإِحْسَانِ وَالرِّفْقِ جُمْلَةً، أَلَيْسَ قَدْ بَطَلَ تَعَلُّقُكُمْ بِالضَّرَرِ؟ هَذَا مَا لَا شَكَّ فِيهِ.

L15699 If they say: "Similarly, the non-Muslim's control over a Muslim from among their slaves is harm," we say: "If it is established that no harm befalls the female slave or male slave from their non-Muslim master or non-Muslim mistress—rather, they both acknowledge kindness and gentleness entirely—does this not invalidate your reliance on harm? This is without doubt."

فَإِنْ قَالُوا: نَخَافُ أَنْ يُفْسِدَا دِينَهُمَا بِطُولِ الصُّحْبَةِ. قُلْنَا: فَفَرِّقُوا بَيْنَهُمَا وَبَيْنَ ابْنَيْهِمَا إِذَا أَسْلَمَ خَوْفَ أَنْ يَفْسُدَ دِينُهُ، وَبِيعُوا عَبْدَ الْمُسْلِمِ الْفَاسِقِ وَأَمَتَهُ بِهَذَا الِاعْتِلَالِ، لِأَنَّهُ مَظْنُونٌ مِنْهُ تَدْرِيبُهُمَا عَلَى شُرْبِ الْخَمْرِ، وَإِضَاعَةِ الصَّلَاةِ وَالظُّلْمِ، وَلَا فَرْقَ، وَهَذَا مَا لَا مُخَلَّصَ مِنْهُ أَصْلًا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L15700 If they say: "We fear that the two of them will corrupt the two's religion through prolonged companionship," we respond: Then separate the two of them from their two sons if the parent embraces Islam, fearing that his religion may be corrupted. And sell the slave of a sinful Muslim and his slave woman for this reason, for he is suspected of training the two of them to drink wine, neglect prayer, and commit oppression—and there is no difference. This is a matter from which there is absolutely no escape—and all praise is to Allah, Lord of the worlds.

وَقَوْله تَعَالَى: {إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ اللَّهُ أَعْلَمُ بِإِيمَانِهِنَّ فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لا هُنَّ حِلٌّ لَهُمْ وَلا هُمْ يَحِلُّونَ لَهُنَّ وَآتُوهُمْ مَا أَنْفَقُوا وَلا جُنَاحَ عَلَيْكُمْ أَنْ تَنْكِحُوهُنَّ إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ} [الممتحنة: ١٠] بُرْهَانٌ قَاطِعٌ فِي وُجُوبِ عِتْقِ أَمَةِ الذِّمِّيِّ، أَوِ الْحَرْبِيِّ إِذَا أَسْلَمَتْ لِأَنَّهُ تَعَالَى أَمَرَ أَنْ لَا نَرْجِعَهَا إِلَى الْكُفَّارِ وَأَنَّهُنَّ لَا يَحِلِّينَ لَهُمْ وَأَبَاحَ لَنَا نِكَاحَهُنَّ، وَهَذَا عُمُومٌ يُوجِبُ الْحُرِّيَّةَ ضَرُورَةً.

L15701–15703 And His statement, the Exalted: "When believing women come to you as emigrant women (for faith), test them; Allah knows best concerning their faith. If you ascertain that they are believers, do not return them to the disbelievers. They are not lawful for the disbelievers, nor are the disbelievers lawful for them. Reimburse the disbelievers for what they spent [on them]. There is no sin upon you if you marry them when you have given them their bridal dues (mahr)." [Al-Mumtahanah: 10] is proof. A decisive ruling obligating the emancipation of a female slave belonging to a dhimmi or harbi

[19] **Qur'an references (L15697):** Qur'an 4:135 (An-Nisa).
[20] **Qur'an references (L15698):** Qur'an 5:2 (Al-Ma'idah).

upon her conversion to Islam, for He, the Exalted, has commanded that she not be returned to the disbelievers, established that they are no longer lawful for them [as wives], and permitted us to marry them. This general principle necessarily entails granting freedom as an imperative.[21]

فَإِنْ قِيلَ: قَوْله تَعَالَى فِي هَذِهِ الْآيَةِ: {وَآتُوهُمْ مَا أَنْفَقُوا} [الممتحنة: ١٠] دَلِيلٌ عَلَى أَنَّهُ تَعَالَى أَرَادَ الزَّوْجَاتِ. قُلْنَا: الْآيَةُ كُلُّهَا عَامَّةٌ لِكُلِّ مُؤْمِنَةٍ هَاجَرَتْ بِالْإِيمَانِ لِتَدْخُلَ فِي جُمْلَةِ الْمُسْلِمِينَ، وَهَذَا الْحُكْمُ فِي إيتَاءِ مَا أَنْفَقُوا خَاصٌّ فِي الزَّوْجَاتِ، وَلَا يُوجِبُ أَنْ يَكُونَ سَائِرُ عُمُومِ الْآيَةِ خُصُوصًا، إذْ لَمْ يُوجِبْ ذَلِكَ لُغَةٌ وَلَا شَرِيعَةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L15704 If it is said: The saying of Allah, the Most High, in this verse: {And give them what they have spent} [60:10] indicates that He, the Most High, intended wives. We respond: The entire verse is general, applying to every believing woman who emigrated out of faith to join the community of Muslims. This ruling regarding the obligation to return what was spent is specific to wives. This does not necessitate that the remaining general applicability of the verse be made specific, as neither linguistic convention nor divine law requires this—and all success is by Allah, the Most High.[22]

وَقَدْ صَحَّ أَنَّ أَبَا بَكْرَةَ خَرَجَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُسْلِمًا فَعَتَقَ.

L15705 It has been authentically established that Abu Bakrah went out to the Messenger of Allah (peace be upon him) as a Muslim and was emancipated.

فَإِنْ قَالُوا: هَذَا حُكْمُ مَنْ خَرَجَ مِنْ دَارِ الْحَرْبِ إلَى دَارِ الْإِسْلَامِ. قُلْنَا: مَا الْفَرْقُ بَيْنَكُمْ وَبَيْنَ مَنْ قَالَ: بَلْ هَذَا حُكْمُ مَنْ خَرَجَ مِنْ الطَّائِفِ خَاصَّةً؟ وَهَلْ بَيْنَ الْحُكْمَيْنِ فَرْقٌ؟ ثُمَّ نَقُولُ لَهُمْ: وَمَا دَلِيلُكُمْ عَلَى هَذَا؟ وَإِنَّمَا جَاءَ مُسْلِمًا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ عَبْدٌ لِكَافِرٍ فَأَعْتَقَهُ، وَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ -: إنِّي إنَّمَا أَعْتَقْته، لِأَنَّهُ خَرَجَ مِنْ دَارِ الْحَرْبِ، فَمَنْ نَسَبَ هَذَا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ كَذَبَ عَلَيْهِ، وَقَالَ عَلَيْهِ بِلَا بُرْهَانٍ، وَأَنْتُمْ تَقِيسُونَ الْجِصَّ عَلَى التَّمْرِ، السَّقَمُونْيَا عَلَى الْبُرِّ، وَالْكَمُّونَ عَلَيْهِمَا بِلَا بُرْهَانٍ، وَفَرْجَ الْمُسْلِمَةِ الْمُتَزَوِّجَةِ عَلَى يَدِ السَّارِقِ، ثُمَّ تُفَرِّقُونَ بَيْنَ عَبْدٍ مُسْلِمٍ وَعَبْدٍ مُسْلِمٍ كِلَاهُمَا أَسْلَمَ فِي مِلْكِ كَافِرٍ، إنَّ هَذَا لَعَوَجٌ مَا شِئْتُمْ.

L15706 If they say: "This is the ruling concerning one who departs from the abode of war to the abode of Islam," we respond: What distinguishes your position from those who assert: "Rather, this is the ruling concerning one who departs from Ṭā'if exclusively"? Is there any distinction between the two rulings? Then we ask them: What is your evidence for this? He came as a Muslim to the Messenger of Allah—peace and blessings be upon him—while being a slave owned by a disbeliever, so he freed him. Yet he—peace and blessings be upon him—did not state: "I freed him solely because he departed from the abode of war." Thus, whoever attributes this claim to the Messenger of Allah—peace and blessings be upon him—has lied against him and spoken without proof. You liken gypsum to dates, scammony to wheat, and cumin to both of them without proof, and equate the private part of a married Muslim woman to the thief's hand. Then you distinguish between one Muslim slave and another Muslim slave, both of whom embraced Islam under the ownership of a disbeliever. This is indeed sheer distortion, plain and simple.

[21] **Qur'an references (L15701):** Qur'an 60:10 (Al-Mumtahanah).
[22] **Qur'an references (L15704):** Qur'an 60:10 (Al-Mumtahanah).

فَإِنْ ذَكَرُوا أَمْرَ بِلَالٍ، وَسَلْمَانَ، - رَضِيَ اللَّهُ عَنْهُمَا - أَنَّ كِلَيْهِمَا أَسْلَمَ وَهُمَا مَمْلُوكَانِ لِوَثَنِيٍّ وَيَهُودِيٍّ، فَابْتَاعَ بِلَالًا أَبُو بَكْرٍ، وَكَاتَبَ سَلْمَانَ سَيِّدُهُ، فَلَوْ كَانَا حُرَّيْنِ بِنَفْسِ إِسْلَامِهِمَا لَمَا كَانَ أَبُو بَكْرٍ مَالِكَ وَلَاءِ بِلَالٍ، وَلَا صَحِيحَ الْعِتْقِ فِيهِ؟ قُلْنَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: أَمَّا أَمْرُ بِلَالٍ فَكَانَ فِي أَوَّلِ الْإِسْلَامِ بِلَا خِلَافٍ مِنْ أَحَدٍ، وَقَبْلَ نُزُولِ الْآيَةِ الَّتِي ذَكَرْنَا بِبِضْعَ عَشْرَةَ سَنَةً، لِأَنَّ الْآيَةَ مَدَنِيَّةٌ فِي " سُورَةِ النِّسَاءِ " وَلَمْ تَكُنْ الصَّلَاةُ يَوْمَئِذٍ لَازِمَةً، وَلَا الزَّكَاةُ، وَلَا الصِّيَامُ، وَلَا الْحَجُّ، وَلَا الْمَوَارِيثُ، وَلَا كَانَ حَرَامًا نِكَاحُ الْوَثَنِيِّ الْمُسْلِمَةَ، وَلَا نِكَاحُ الْمُسْلِمِ الْوَثَنِيَّةَ، وَلَا مِلْكُ الْوَثَنِيِّ لِلْمُسْلِمِ، فَلَا حُجَّةَ فِي أَمْرِ بِلَالٍ.

L15707

If they cite the case of Bilāl and Salmān—may Allah be pleased with them—that both embraced Islam while enslaved to a polytheist and a Jew, whereupon Abū Bakr purchased Bilāl, and Salmān's master entered into a *kitābah* contract with him, then [argue] had they been free by mere conversion, Abū Bakr would not have held Bilāl's patronage nor would Bilāl's emancipation have been legally valid? We answer—and with Allah, the Exalted, lies all success—: As for Bilāl's case, it occurred in Islam's earliest period without dispute, roughly ten years before the revelation of the cited verse, for the verse is Medinan in *Sūrat al-Nisāʾ*. At that time, prayer was not yet obligatory, nor *zakāh*, nor fasting, nor pilgrimage, nor inheritances, nor was a polytheist permitted to marry a Muslim woman, nor a Muslim permitted to marry a polytheist woman, nor prohibited a polytheist from owning a Muslim slave. Thus Bilāl's case cannot be cited as evidence.

وَأَمَّا أَمْرُ سَلْمَانَ فَكَانَ بِالْمَدِينَةِ وَكَانَ مَمْلُوكًا لِرَجُلٍ مِنْ بَنِي قُرَيْظَةَ، وَهُمْ مُمْتَنِعُونَ لَا يَجْرِي عَلَيْهِمْ حُكْمُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَلْ هُمْ فِي حُصُونِهِمْ مَالِكُونَ لِأَنْفُسِهِمْ، وَكَانَ إِسْلَامُ سَلْمَانَ - رَضِيَ اللَّهُ عَنْهُ - بِلَا خِلَافٍ قَبْلَ الْخَنْدَقِ، وَهُوَ أَوَّلُ مَشَاهِدِهِ، وَهَلَاكُ بَنِي قُرَيْظَةَ وَقَتْلُهُمْ، وَحِصَارُهُمْ، بَعْدَ الْخَنْدَقِ بِلَا خِلَافٍ مِنْ أَحَدٍ.

L15708–15709

As for the matter of Salmān—may Allah be pleased with him—he was in Medina, enslaved to a man from the Banū Qurayẓah, who were resistant and not under the jurisdiction of the Messenger of Allah—may Allah bless him and grant him peace—rather, they remained in their fortresses, retaining autonomy. His acceptance of Islam occurred unquestionably before the Battle of the Trench, which marked the first battle he participated in. The annihilation, killing, and siege of the Banū Qurayẓah occurred after the Trench without any disagreement from anyone.

وَمِنْ الْبُرْهَانِ الْقَاطِعِ عَلَى أَنَّ مِلْكَ سَيِّدِهِ لَهُ بَطَلَ عَنْهُ بِإِسْلَامِهِ أَنَّهُ كَانَ مُكَاتَبًا لَهُ بِلَا شَكٍّ وَمَا انْتَمَى قَطُّ إِلَى وَلَاءِ ذَلِكَ لُقُرَظِيِّ بَلْ انْتَمَى مَوْلَى اللَّهِ تَعَالَى وَرَسُولِهِ، وَهَذَا كُلُّهُ مُتَّفَقٌ عَلَيْهِ مِنْ الْمُؤَالِفِ، وَالْمُخَالِفِ، وَالصَّالِحِ وَالطَّالِحِ، فَلَوْ كَانَ مِلْكُهُ لَهُ صَحِيحًا وَكِتَابَتُهُ لَهُ صَحِيحَةً بِحَقِّ الْمِلْكِ لَكَانَ وَلَاؤُهُ لَهُ، وَلَوْ كَانَ وَلَاؤُهُ لَهُ لَمَا تَرَكَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْتَفِي عَنْ وَلَائِهِ - وَفِي هَذَا حُجَّةٌ لِمَنْ نَصَحَ نَفْسَهُ وَكِفَايَةٌ، وَكَيْفَ وَلَوْ

L15710

And among the decisive proofs that his master's ownership of him became invalid due to his embracing Islam is that he was undoubtedly a mukatab slave belonging to him, yet he never ascribed himself to the allegiance of that Qurayẓī. Rather, he ascribed himself as a client of Allah, the Exalted, and of His Messenger. All of this is agreed upon by both supporters and opponents, the righteous and the corrupt. If the master's ownership of him had been valid and his mukatab contract had been valid by right of ownership, his allegiance would have been to him. And if his allegiance had been to him, the Prophet—peace and blessings of Allah be upon him—would not have allowed him to renounce his allegiance. In this lies a sufficient argument for whoever reflects sincerely upon himself and a sufficiency. How could it be

otherwise? For if this proof had not been established, they would have no argument in the matter, as they have no evidence that he had commanded him after the revelation of the aforementioned verse. And success is from Allah, the Exalted.

لَمْ يَقُمْ هَذَا الْبُرْهَانُ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ؟ لِأَنَّهُمْ لَا دَلِيلَ لَهُمْ عَلَى أَنَّهُ كَانَ أَمَرَهُ بَعْدَ نُزُولِ الْآيَةِ الْمَذْكُورَةِ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L15711 Some of Mālik's companions uphold this opinion (as Ibn Shaʿbān cited from them) that the slave owned by a dhimmī is free the moment he converts to Islam.

وَبِهَذَا الْقَوْلِ يَقُولُ بَعْضُ أَصْحَابِ مَالِكٍ - ذَكَرَ ذَلِكَ ابْنُ شَعْبَانَ عَنْهُمْ أَنَّ عَبْدَ الذِّمِّيِّ سَاعَةَ يُسْلِمْ فَهُوَ حُرٌّ.

L15712 Ashhab said: The moment a ḥarbī slave converts to Islam, he is emancipated, whether he departs or remains.

وَقَالَ أَشْهَبُ: سَاعَةَ يُسْلِمُ عَبْدُ الْحَرْبِيِّ فَهُوَ حُرٌّ، خَرَجَ أَوْ لَمْ يَخْرُجْ.

L15713 And Malik said: If the umm walad (slave woman who has borne her master a child) of the Dhimmi converts to Islam, she is freed.

وَقَالَ مَالِكٌ: إذَا أَسْلَمَتْ أُمُّ وَلَدِ الذِّمِّيِّ فَهِيَ حُرَّةٌ.

L15714 Abu Hanifa and his companions said: If a slave from the abode of war embraces Islam while in the abode of war, he remains under the ownership of his [original] owner. If his owner sells or gifts him to a Muslim or disbeliever, he becomes free at the moment of sale or gift, and the sale and gift are rendered null and void.

وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: إنْ أَسْلَمَ عَبْدُ الْحَرْبِيِّ فِي دَارِ الْحَرْبِ فَهُوَ بَاقٍ عَلَى مِلْكِهِ، فَإِنْ بَاعَهُ أَوْ وَهَبَهُ مِنْ مُسْلِمٍ، أَوْ كَافِرٍ، أَوْ لِمُسْلِمٍ، أَوْ كَافِرٍ فَهُوَ حُرٌّ سَاعَةَ بَيْعِهِ أَوْ هِبَتِهِ، وَبَطَلَ الْبَيْعُ وَالْهِبَةُ.

L15715 He said: If a harbī (non-Muslim from hostile territory) purchases a Muslim slave, he retains ownership over him. But when he takes him to the abode of war (dār al-ḥarb), the moment he enters it, he becomes free. Has anything more shocking or outrageous than this muddled reasoning ever been heard? These are opinions unknown to have been stated by anyone before his time.

قَالَ: فَإِنْ اشْتَرَى الْحَرْبِيُّ عَبْدًا مُسْلِمًا فَهُوَ عَلَى مِلْكِهِ، فَإِذَا حَمَلَهُ إلَى أَرْضِ الْحَرْبِ فَسَاعَةَ دُخُولِهِ إلَى أَرْضِ الْحَرْبِ فَهُوَ حُرٌّ - فَهَلْ سُمِعَ بِأَوْحَشَ أَوْ أَفْحَشَ مِنْ هَذَا التَّخْلِيطِ؟ وَهِيَ أَقْوَالٌ لَا يُعْرَفُ أَنَّ أَحَدًا قَالَهَا قَبْلَهُ.

L15716 As for Imam Malik: If he manumits his *umm walad* [a slave woman who has borne her master a child] upon her embracing Islam while she is his slave, he has contradicted himself, since he did not free male or female slaves upon their embracing Islam, and there is no distinction between these cases.

وَأَمَّا مَالِكٌ: فَإِذَا أَعْتَقَ أُمَّ وَلَدِهِ بِإِسْلَامِهَا، وَهِيَ أَمَةٌ لَهُ فَقَدْ نَاقَضَ، إذْ لَمْ يُعْتِقْ الْعَبْدَ وَالْأَمَةَ بِإِسْلَامِهِمَا، وَلَا فَرْقَ بَيْنَ ذَلِكَ.

L15717 It has been narrated to us through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who informed us that he heard Sulaymān ibn Mūsā saying: A non-Muslim cannot enslave a Muslim—and this is the same as our opinion, because the ruling entirely invalidates his enslavement of the Muslim.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنَا أَنَّهُ سَمِعَ سُلَيْمَانَ بْنَ مُوسَى يَقُولُ: لَا يَسْتَرِقُّ الْكَافِرُ الْمُسْلِمَ - وَهَذَا نَفْسُ قَوْلِنَا؛ لِأَنَّهُ أَبْطَلَ اسْتِرْقَاقَهُ إيَّاهُ جُمْلَةً.

L15718–15719 Ibn Jurayj said: Ibn Shihab was asked about the Christian's *umm walad*

who embraced Islam. Ibn Shihab replied: Islam separates them, and she is freed.

قَالَ ابْنُ جُرَيْجٍ: وَسُئِلَ ابْنُ شِهَابٍ عَنْ أُمِّ وَلَدِ النَّصْرَانِيِّ أَسْلَمَتْ؟ فَقَالَ ابْنُ شِهَابٍ: يُفَرِّقُ الْإِسْلَامُ بَيْنَهُمَا وَتَعْتِقُ.

L15720 Ibn Jurayj said: She is not to be freed until her owner is invited to Islam. If he refuses, she is to be freed.

قَالَ ابْنُ جُرَيْجٍ: لَا تَعْتِقُ حَتَّى يُدْعَى هُوَ إِلَى الْإِسْلَامِ، فَإِنْ أَبَى عَتَقَتْ.

L15721 Abu Muhammad said: Each of them has made her emancipation obligatory, and there is no justification for delaying the presentation of Islam to him.

قَالَ أَبُو مُحَمَّدٍ: كِلَاهُمَا قَدْ أَوْجَبَ عِتْقَهَا، وَلَا مَعْنَى لِتَأَنِّي عَرْضِ الْإِسْلَامِ عَلَيْهِ.

L15722 And through the chain of Ibn Abī Shaybah, Maʿn ibn ʿĪsā narrated to us from Ibn Abī Dhi'b from al-Zuhrī, who said: The Sunnah has decreed that it is not permissible for a disbeliever to enslave a Muslim.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا مَعْنُ بْنُ عِيسَى عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ الزُّهْرِيِّ قَالَ: مَضَتْ السُّنَّةُ أَنْ لَا يَسْتَرِقَّ كَافِرٌ مُسْلِمًا.

L15723 From the narration of Abd al-Razzaq through Ma'mar from Amr ibn Maymun, who said: Umar ibn Abd al-Aziz decreed regarding slaves of protected non-Muslims who embrace Islam that they must be sold and not left to be re-enslaved by their owners. The proceeds from their sale shall be given to them. If you apprehend someone who, after prior notice from you, enslaves any captives [held by Muslims] from among those who have embraced Islam and performed the prayer, you must free those captives.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَمْرِو بْنِ مَيْمُونٍ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِيمَنْ أَسْلَمَ مِنْ رَقِيقِ أَهْلِ الذِّمَّةِ أَنْ يُبَاعُوا وَلَا يُتْرَكُونَ يَسْتَرِقُّونَهُمْ، وَيُدْفَعُ أَثْمَانُهُمْ إلَيْهِمْ، فَمَنْ قَدَرْت عَلَيْهِ بَعْدَ تَقَدُّمِك إلَيْهِ اسْتَرَقَّ شَيْئًا مِنْ سَبْيِ الْمُسْلِمِينَ مِمَّنْ قَدْ أَسْلَمَ وَصَلَّى فَأَعْتِقْهُ.

L15724 From the chain of Abd al-Razzaq, from Ibn Jurayj, who said: A certain man from our land reported to me that a Christian emancipated a Muslim. Umar ibn Abd al-Aziz said: "Pay him his monetary value from the public treasury, and his patronage rights belong to the Muslims."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي بَعْضُ أَهْلِ أَرْضِنَا أَنَّ نَصْرَانِيًّا أَعْتَقَ مُسْلِمًا فَقَالَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَعْطُوهُ قِيمَتَهُ مِنْ بَيْتِ الْمَالِ، وَوَلَاؤُهُ لِلْمُسْلِمِينَ.

L15725 Abu Muhammad stated: He deemed his manumission for him as non-effective and ruled that his allegiance belonged to the Muslims. This is the explicit text of our opinion. As for giving him the slave's value from the public treasury, we do not uphold this, for disbelievers have no right to the public treasury of Muslims.

قَالَ أَبُو مُحَمَّدٍ: قَدْ رَأَى عِتْقَهُ لَهُ غَيْرَ نَافِذٍ وَرَأَى وَلَاءَهُ لِلْمُسْلِمِينَ وَهَذَا هُوَ نَصُّ قَوْلِنَا، وَأَمَّا إعْطَاؤُهُ قِيمَتَهُ مِنْ بَيْتِ الْمَالِ فَلَا نَقُولُ بِهَذَا: فَإِنَّهُ لَا حَقَّ لِلْكُفَّارِ فِي بَيْتِ مَالِ الْمُسْلِمِينَ.

[مَسْأَلَةٌ مِنْ سُبِيَ مِنْ أَهْلِ الْحَرْبِ مِنْ الرِّجَالِ وَلَهُ زَوْجَةٌ]

L15726 **A legal question regarding a male captive from the people of war who has a wife.**

٩٤٤ - مَسْأَلَةٌ:

L15727 944 - Issue:

وَمَنْ سُبِيَ مِنْ أَهْلِ الْحَرْبِ مِنَ الرِّجَالِ وَلَهُ زَوْجَةٌ، أَوْ مِنَ النِّسَاءِ وَلَهَا زَوْجٌ فَسَوَاءٌ سُبِيَ مَعَهَا، أَوْ لَمْ يُسْبَ مَعَهَا، وَلَا سُبِيَتْ مَعَهُ فَهُمَا عَلَى زَوْجِيَّتِهِمَا فَإِنْ أَسْلَمَتْ انْفَسَخَ نِكَاحُهَا حِينَ تُسْلِمُ لِمَا قَدَّمْنَا

L15728 If a man from the enemy combatants who has a wife, or a woman who has a husband, is taken captive—whether he was captured with her, without her, or she was not captured with him—the two spouses remain bound in their marriage. If the woman converts to Islam, her marriage is annulled at the moment of her conversion, as we have previously established.

وَأَمَّا بَقَاءُ الزَّوْجِيَّةِ فَلِأَنَّ نِكَاحَ أَهْلِ الشِّرْكِ صَحِيحٌ قَدْ أَقَرَّهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَيْهِ، وَلَمْ يَأْتِ نَصٌّ بِأَنَّ سِبَاءَهُمَا، أَوْ سَبَاءَ أَحَدِهِمَا يَفْسَخُ نِكَاحَهُمَا.

L15729 As for the continuation of the marriage, this is because the marriage of polytheists remains valid—as the Messenger of Allah (peace be upon him) affirmed it for them—and no textual evidence exists indicating that the enslavement of both spouses, or either spouse, nullifies their marriage.

فَإِنْ قِيلَ: فَقَدْ قَالَ اللَّهُ تَعَالَى: {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] قُلْنَا: نَعَمْ، إِذَا أَسْلَمَتْ حَلَّتْ لِسَيِّدِهَا الْمُسْلِمِ، وَلَوْ كَانَتْ هَذِهِ الْآيَةُ عَلَى عُمُومِهَا لَكَانَ مَنْ لَهُ أَمَةٌ نَاكِحٌ تَحِلُّ لَهُ؛ لِأَنَّهَا مِلْكُ يَمِينِهِ، وَهَذَا مَا لَا يَقُولُهُ الْحَاضِرُونَ مِنْ خُصُومِنَا.

L15730 If it is said: "But Allah the Exalted has stated: {And chaste free women are forbidden to you except those whom your right hands possess} [Quran 4:24]," we respond: Yes, if she converts to Islam, she becomes lawful for her Muslim master. Were this verse to apply according to its general meaning, then anyone owning a female slave married to another would find her lawful for him, since she is among those whom his right hand possesses; yet this is a position none of those present among our opponents uphold.[23]

وَقَدْ قَالَ بِهِ ابْنُ عَبَّاسٍ وَغَيْرُهُ: مَنِ ابْتَاعَ أَمَةً ذَاتَ زَوْجٍ فَبَيْعُهَا طَلَاقُهَا - وَلَا نَقُولُ بِهَذَا، لِمَا سَنَذْكُرُهُ فِي كِتَابِ النِّكَاحِ إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ

L15731–15732 Ibn Abbas and others held the opinion that whoever purchases a slave woman with a husband, the sale itself results in her divorce. But we do not hold this opinion because of what we will mention in the Book of Nikah, God willing.

[مَسْأَلَةُ الْأَبَوَانِ الْكَافِرَانِ إِذَا أَسْلَمَ أَحَدهُمَا]

A Legal Issue Concerning Two Disbelieving Parents When One of Them Embraces Islam

٩٤٥٠ - مَسْأَلَةٌ:

945 – Issue:

وَأَيُّ الْأَبَوَيْنِ الْكَافِرَيْنِ أَسْلَمَ؟ فَكُلُّ مَنْ لَمْ يَبْلُغْ مِنْ أَوْلَادِهِمَا مُسْلِمٌ بِإِسْلَامِ مَنْ أَسْلَمَ مِنْهُمَا - الْأُمُّ أَسْلَمَتْ أَوْ الْأَبُ - وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ، وَالْأَوْزَاعِيِّ، وَاللَّيْثِ بْنِ سَعْدٍ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمْ كُلِّهِمْ.

L15733 **A Legal Issue Concerning Two Disbelieving Parents When One of Them Embraces Islam**

L15734 945 – Issue:

L15735 Which of the two disbelieving parents embraced Islam? Every child of theirs who has not reached puberty is Muslim by the Islam of whichever of them converted—whether the mother or the father. This is the opinion of ʿUthmān al-Battī, al-Awzāʿī, al-Layth ibn Saʿd, al-Ḥasan ibn Ḥayyin, Abū Ḥanīfah, al-Shāfiʿī, and all their companions.

وَقَالَ مَالِكٌ، وَأَبُو سُلَيْمَانَ: لَا يَكُونُونَ مُسْلِمِينَ إِلَّا بِإِسْلَامِ الْأَبِ، لَا بِإِسْلَامِ الْأُمِّ.

L15736 Malik and Abu Sulayman said: They are not considered Muslims except

[23] **Qur'an references (L15730):** Qur'an 4:24 (An-Nisa).

through the father's Islam, not the mother's Islam.

L15737 Some jurists of Medina said: They do not become Muslims except through the mother's Islam. As for the father's Islam, then no; because they are dependent upon the mother, not the father, in freedom and slavery.

وَقَالَ بَعْضُ فُقَهَاءِ الْمَدِينَةِ: لَا يَكُونُونَ مُسْلِمِينَ إِلَّا بِإِسْلَامِ الْأُمِّ، وَأَمَّا بِإِسْلَامِ الْأَبِ فَلَا؛ لِأَنَّهُمْ تَبَعٌ لِلْأُمِّ فِي الْحُرِّيَّةِ، وَالرِّقِّ لَا لِلْأَبِ.

L15738 Abū Muḥammad said: We know of no valid argument at all for those who consider children Muslim solely based on the father's conversion. We ask them about their ruling regarding a child born to a Muslim woman through adultery under coercion – for they assert such a child is Muslim by her Islam, thereby abandoning their own position. They agree with us that if both parents embrace Islam, or one of them, while having sons and daughters who have indeed reached the age of men and women, those children remain upon their religion and cannot be compelled to accept Islam – this is our view, based on Allah's decree: {No soul bears the burden of another} [6:164]. A mature individual is legally accountable and bound by rulings pertaining to disbelief or dhimmi status, whereas a minor is not accountable, as we previously established. Mālik said: Yes, even if the child is a ḥazawwar (one nearing puberty) but has not yet reached maturity, he remains upon his religion.[24]

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ لِمَنْ جَعَلَهُمْ بِإِسْلَامِ الْأَبِ خَاصَّةً مُسْلِمِينَ حُجَّةً أَصْلًا، وَنَسْأَلُهُمْ عَنْ قَوْلِهِمْ فِي ابْنِ الْمُسْلِمَةِ مِنْ زِنَا اسْتِكْرَاهٍ فَمِنْ قَوْلِهِمْ: إِنَّهُ مُسْلِمٌ بِإِسْلَامِهَا وَهَذَا تَرْكٌ مِنْهُمْ لِقَوْلِهِمْ، وَوَافَقُونَا أَنَّهُ إِنْ أَسْلَمَ الْأَبَوَانِ، أَوْ أَحَدُهُمَا، وَلَهُمَا بُنُونَ وَبَنَاتٌ قَدْ بَلَغُوا مَبْلَغَ الرِّجَالِ وَالنِّسَاءِ فَإِنَّهُمْ عَلَى دِينِهِمْ لَا يُجْبَرُونَ عَلَى الْإِسْلَامِ - وَبِهِ نَقُولُ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَالْبَالِغُ مُخَاطَبٌ قَدْ لَزِمَهُ حُكْمُ الْكُفْرِ أَوْ الذِّمَّةِ، وَلَيْسَ غَيْرُ الْبَالِغِ مُخَاطَبًا كَمَا قَدَّمْنَا قَالَ مَالِكٌ: نَعَمْ، وَلَوْ كَانَ الْوَلَدُ حَزَوَّرًا قَدْ قَارَبَ الْبُلُوغَ وَلَمْ يَبْلُغْ فَهُوَ عَلَى دِينِهِ.

L15739 Abū Muḥammad said: This is a grave error, for he has not attained puberty. Whoever has not attained puberty is subject to the rulings applicable to those who have not reached puberty, not those who have attained it—and success is from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ فَاحِشٌ؛ لِأَنَّهُ لَيْسَ بَالِغًا، وَمَا لَمْ يَكُنْ بَالِغًا فَحُكْمُهُ حُكْمُ مَنْ لَمْ يَبْلُغْ لَا مَنْ بَلَغَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L15740 As for those who analogize religion with freedom and slavery, the entire analogy is invalid. Allah the Exalted said: "So direct your face toward the religion as a Hanif - adhering to the natural disposition Allah has instilled in mankind at creation. There is no alteration to the creation of Allah. That is the upright religion, but most people do not know" [Ar-Rum 30:30].[25]

وَأَمَّا مَنْ قَاسَ الدِّينَ عَلَى الْحُرِّيَّةِ وَالرِّقِّ فَالْقِيَاسُ كُلُّهُ بَاطِلٌ قَالَ اللَّهُ تَعَالَى: {فَأَقِمْ وَجْهَكَ لِلدِّينِ حَنِيفًا فِطْرَتَ اللَّهِ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا لا تَبْدِيلَ لِخَلْقِ اللَّهِ ذَلِكَ الدِّينُ الْقَيِّمُ وَلَكِنَّ أَكْثَرَ النَّاسِ لا يَعْلَمُونَ} [الروم: ٣٠] .

L15741–15743 It is established that it is not permissible for anyone to alter the religion of Islam, nor should anyone be left who alters it except those whom Allah

فَصَحَّ أَنَّهُ لَا يَجُوزُ تَبْدِيلُ دِينِ الْإِسْلَامِ لِأَحَدٍ وَلَا يُتْرَكُ أَحَدٌ يُبَدِّلُهُ إِلَّا مَنْ أَمَرَ اللَّهُ تَعَالَى بِتَرْكِهِ عَلَى تَبْدِيلِهِ فَقَطْ، وَقَالَ تَعَالَى: {وَمَنْ يَبْتَغِ غَيْرَ الإِسْلامِ دِينًا فَلَنْ يُقْبَلَ

[24] **Qur'an references (L15738):** Qur'an 6:164 (Al-An'am).
[25] **Qur'an references (L15740):** Qur'an 30:30 (Ar-Rum).

the Exalted has commanded to be left upon their changing it only. Allah the Exalted said: “Whoever seeks a religion other than Islam, it will never be accepted from him” [Āl ʿImrān: 85]. Thus, it is established that no religion other than Islam may be accepted in this world or the Hereafter from anyone, except those whom Allah has commanded to accept their faith and sanctioned it for them.[26]

L15744 And through the chain of Muslim: Abu Bakr ibn Abi Shaybah narrated to us, Abu Muʿawiyah narrated from Al-Aʿmash from Abu Salih from Abu Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said, “No child is born except upon this religion until he expresses himself.” Thus, it is established that no one is born except upon Islam until he expresses himself. Therefore, whoever Allah the Exalted permits to affirm his departure from Islam—the religion he was born upon—we acknowledge him, and whoever He does not permit, we do not acknowledge his adherence to anything other than Islam.

L15745 And through the chain of Muslim: Ḥājib ibn al-Walīd narrated to us, Muḥammad ibn Ḥarb from al-Zubaydī from al-Zuhrī, who informed me that Saʿīd ibn al-Musayyab reported from Abū Hurayrah, who said: The Messenger of Allāh (peace and blessings of Allāh be upon him) said: “No child is born except upon the innate monotheistic disposition. It is his parents who make him a Jew, a Christian, or a Magian, just as an animal gives birth to a sound offspring. Do you find in it any defect?”

L15746 Abu Muhammad said: Thus, it is established that none remain in opposition to Islam except only those whose parents jointly agreed to raise him as a Jew, Christian, or Zoroastrian. If either parent embraces Islam, and his parents do not raise him as a Jew, Christian, or Zoroastrian, he remains upon what he was born upon—Islam—necessarily, by the explicit text of the Quran and Sunnah.

L15747 And indeed, some people have erred concerning this verse and these reports, and it is clear, and it is the covenant that Allah the Exalted made with the souls when He created them, as He the Exalted said: “And when your Lord

[26] **Qur’an references (L15741):** Qur’an 3:85 (Ali ’Imran); Qur’an 40:43 (Ghafir).

مِنْهُ} [آل عمران: ٨٥] ، فَصَحَّ أَنَّهُ لَا يَجُوزُ أَنْ يُقْبَلَ فِي الدُّنْيَا وَلَا فِي الْآخِرَةِ دِينٌ مِنْ أَحَدٍ غَيْرَ دِينِ الْإِسْلَامِ إِلَّا مَنْ أَمَرَ اللَّهُ تَعَالَى بِأَنْ يُقْبَلَ مِنْهُ وَيُقَرَّ عَلَيْهِ.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نَا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا مِنْ مَوْلُودٍ يُولَدُ إِلَّا عَلَى هَذِهِ الْمِلَّةِ حَتَّى يُبِينَ عَنْهُ لِسَانُهُ» فَصَحَّ أَنَّهُ لَا يَكُونُ أَحَدٌ إِلَّا عَلَى الْإِسْلَامِ حَتَّى يُعَبِّرَ عَنْ نَفْسِهِ، فَمَنْ أَذِنَ اللَّهُ تَعَالَى فِي إقْرَارِهِ عَلَى مُفَارَقَةِ الْإِسْلَامِ الَّذِي وُلِدَ عَلَيْهِ أَقْرَرْنَاهُ، وَمَنْ لَا لَمْ نُقِرَّهُ عَلَى غَيْرِ الْإِسْلَامِ.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا حَاجِبُ بْنُ الْوَلِيدِ نَا مُحَمَّدُ بْنُ حَرْبٍ عَنْ الزُّبَيْدِيِّ عَنْ الزُّهْرِيِّ أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا مِنْ مَوْلُودٍ إِلَّا يُولَدُ عَلَى الْفِطْرَةِ أَبَوَاهُ يُهَوِّدَانِهِ وَيُنَصِّرَانِهِ وَيُمَجِّسَانِهِ كَمَا تُنْتَجُ الْبَهِيمَةُ بَهِيمَةً جَمْعَاءَ هَلْ تُحِسُّ فِيهَا مِنْ جَدْعَاءَ» .

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ أَنَّهُ لَا يَتْرُكُ أَحَدٌ عَلَى مُخَالَفَةِ الْإِسْلَامِ إِلَّا مَنْ اتَّفَقَ أَبَوَاهُ عَلَى تَهْوِيدِهِ، أَوْ تَنْصِيرِهِ، أَوْ تَمْجِيسِهِ فَقَطْ، فَإِذَا أَسْلَمَ أَحَدُهُمَا فَلَمْ يُمَجِّسْهُ أَبَوَاهُ، وَلَا نَصَّرَاهُ، وَلَا هَوَّدَاهُ فَهُوَ بَاقٍ عَلَى مَا وُلِدَ عَلَيْهِ مِنْ الْإِسْلَامِ وَلَا بُدَّ بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ.

وَقَدْ وَهَلَ قَوْمٌ فِي هَذِهِ الْآيَةِ وَهَذِهِ الْأَخْبَارِ وَهِيَ بَيِّنَةٌ وَهِيَ الْعَهْدُ الَّذِي أَخَذَهُ اللَّهُ تَعَالَى عَلَى الْأَنْفُسِ حِينَ خَلَقَهَا كَمَا قَالَ تَعَالَى: {وَإِذْ أَخَذَ رَبُّكَ مِنْ بَنِي آدَمَ مِنْ ظُهُورِهِمْ

took from the children of Adam—from their loins—their descendants and made them testify against themselves, [saying], 'Am I not your Lord?' They said, 'Yes, we testify'—lest you should say on the Day of Resurrection, 'Indeed, we were unaware of this.'" [Al-A'raf 7:172][27]

L15748 The statements of ʿAṭāʾ differed regarding this matter. At times, he stated in accordance with our opinion: He is a Muslim by virtue of whichever of his two parents embraced Islam.

L15749 And on one occasion he said: They are Muslims by virtue of their mother's embracing Islam, not their father's.

L15750–15751 And once he said: "When a minor child of theirs dies, which of the two [parents] embraced Islam [first], so they both inherit jointly from the deceased child? And their minor children inherit from them [the parents]."

L15752 All these statements have been reported to us through the chain of ʿAbd al-Razzāq from Ibn Jurayj from him; it has been reported to us from Shuʿbah from al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān that both of them stated regarding a minor when one of his parents is Muslim, then he dies: the Muslim inherits him, and the funeral prayer is performed for him.

L15753 And from the narration of Maʾmar on the authority of ʿAmr and al-Mughīrah: ʿAmr narrated from al-Ḥasan, while al-Mughīrah narrated from Ibrāhīm al-Nakhaʿī. They both said regarding two Christians who had young children together, then one of them embraced Islam: "The Muslim parent is the most entitled of the two to them. He inherits from them and they inherit from him."

L15754 Al-Awzaʾi said: If the grandfather or uncle of a minor embraces Islam, the child becomes Muslim by the Islam of whichever of them embraces it. Sulayman ibn Musa said: The established ruling among our predecessors, which is acted upon without doubt and which we follow now, is that when Christian parents have minor children and the mother embraces Islam, she inherits them according to the Book of Allah (the Quran), and what remains belongs to the Muslims. If both parents are Christian while the child is a

ذُرِّيَّتَهُمْ وَأَشْهَدَهُمْ عَلَى أَنْفُسِهِمْ أَلَسْتُ بِرَبِّكُمْ قَالُوا بَلَى شَهِدْنَا أَنْ تَقُولُوا يَوْمَ الْقِيَامَةِ إِنَّا كُنَّا عَنْ هَذَا غَافِلِينَ} [الأعراف: ١٧٢]

وَقَدْ اخْتَلَفَ قَوْلُ عَطَاءٍ فِي هَذَا. فَمَرَّةً قَالَ كَقَوْلِنَا: إِنَّهُ مُسْلِمٌ بِإِسْلَامِ أَيِّ أَبَوَيْهِ أَسْلَمَ.

وَمَرَّةً قَالَ: هُمْ مُسْلِمُونَ بِإِسْلَامِ أُمِّهِمْ لَا بِإِسْلَامِ أَبِيهِمْ.

وَمَرَّةً قَالَ: أَيُّهُمَا أَسْلَمَ وَرِثَا جَمِيعًا مَنْ مَاتَ مِنْ صِغَارِ وَلَدِهِمَا وَوَرِثَهُمَا صِغَارُ وَلَدِهِمَا.

رُوِّينَا هَذِهِ الْأَقْوَالَ كُلَّهَا عَنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْهُ - رُوِّينَا عَنْ شُعْبَةَ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ أَنَّهُمَا قَالَا جَمِيعًا فِي الصَّغِيرِ يَكُونُ أَحَدُ أَبَوَيْهِ مُسْلِمًا فَيَمُوتُ: إِنَّهُ يَرِثُهُ الْمُسْلِمُ وَيُصَلَّى عَلَيْهِ.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ عَمْرٍو وَالْمُغِيرَةِ قَالَ عَمْرٌو: عَنِ الْحَسَنِ، وَقَالَ الْمُغِيرَةُ: عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَا جَمِيعًا فِي نَصْرَانِيَّيْنِ بَيْنَهُمَا وَلَدٌ صِغَارٌ فَأَسْلَمَ أَحَدُهُمَا: إِنَّ أَوْلَاهُمَا بِهِمُ الْمُسْلِمُ يَرِثُهُمْ وَيَرِثُونَهُ.

وَقَالَ الْأَوْزَاعِيُّ: إِنْ أَسْلَمَ جَدُّ الصَّغِيرِ، أَوْ عَمُّهُ فَهُوَ مُسْلِمٌ بِإِسْلَامِ أَيِّهِمَا أَسْلَمَ، وَقَالَ سُلَيْمَانُ بْنُ مُوسَى: الْأَمْرُ فِيمَا مَضَى فِي أَوَّلِينَا الَّذِي يُعْمَلُ بِهِ وَلَا يُشَكُّ فِيهِ وَنَحْنُ عَلَيْهِ الْآنَ أَنَّ النَّصْرَانِيَّيْنِ بَيْنَهَا وَلَدٌ صِغَارٌ فَأَسْلَمَتِ الْأُمُّ وَرِثَتْهُ كِتَابَ اللَّهِ تَعَالَى وَمَا بَقِيَ فَلِلْمُسْلِمِينَ، فَإِنْ كَانَ أَبَوَاهُ نَصْرَانِيَّيْنِ وَهُوَ صَغِيرٌ وَلَهُ أَخٌ مِنْ أُمٍّ مُسْلِمٍ، أَوْ أُخْتٌ مُسْلِمَةٌ وَرِثَهُ أَخُوهُ، أَوْ أُخْتُهُ كِتَابَ اللَّهِ، ثُمَّ كَانَ مَا بَقِيَ لِلْمُسْلِمِينَ. رُوِّينَا هَذَا عَنْهُ مِنْ طَرِيقِ

[27] **Qur'an references (L15747):** Qur'an 7:172 (Al-A'raf).

minor and he has a maternal Muslim brother or Muslim sister, his brother or sister inherits him according to the Book of Allah, then what remains belongs to the Muslims. This was narrated to us through Abd al-Razzaq from Ibn Jurayj, who heard Sulayman ibn Musa stating this to ʻAṭāʼ ibn Abī Rabāḥ. Sulayman was the jurist of the people of Syria who lived during the time of the eminent Tabi'un (successors). We do not consider the child a Muslim by the Islam of a grandfather, uncle, brother, or sister if both parents agree to make him Jewish, Christian, or Magian, as the Messenger of Allah—peace and blessings be upon him—said [as the Prophet said].

L15755 **Issue: The child of the disbelieving woman who is a Dhimmi or Harbi, born as a result of fornication or coerced intercourse.**

L15756 946 – Issue:

L15757 The child of a non-Muslim woman—whether a dhimmi or ḥarbī—born as a result of fornication or coercion is necessarily Muslim, because he is born into the Islamic faith as previously stated, and he has no two parents to remove him from Islam; thus, he is Muslim. And with Allah, the Exalted, is success.

L15758 **An issue regarding minors captured from among the people of war.**

L15759 947 – Issue:

L15760 As for a minor captured from the people of war, it makes no difference whether they were captured with both parents, one parent, or neither parent—they must remain Muslim. This is because the legal ruling pertaining to their parents no longer applies to them, and their master holds a stronger claim over them. Consequently, the parents' act of removing them from Islam—the faith upon which they were born—is rendered void.

L15761–15763 It has been narrated to us via the chain of ʻAbd al-Razzāq from Ibn Jurayj: Khallād informed us, saying: ʻAmr ibn Shuʻayb reported to me that ʻUmar

عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَنَّهُ سَمِعَ سُلَيْمَانَ بْنَ مُوسَى يَقُولُ هَذَا لِعَطَاءٍ، وَسُلَيْمَانُ فَقِيهُ أَهْلِ الشَّامِ أَدْرَكَ التَّابِعِينَ الْأَكَابِرَ. وَلَسْنَا نَرَاهُ مُسْلِمًا بِإِسْلَامِ جَدٍّ، وَلَا عَمٍّ، وَلَا أَخٍ، وَلَا أُخْتٍ، إِذَا اجْتَمَعَ أَبَوَاهُ عَلَى تَهْوِيدِهِ، أَوْ تَنْصِيرِهِ، أَوْ تَمْجِيسِهِ كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

[مَسْأَلَةٌ وَلَدُ الْكَافِرَةِ الذِّمِّيَّةِ أَوْ الْحَرْبِيَّةِ مِنْ زِنًا أَوْ إكْرَاهٍ]

٩٤٦ - مَسْأَلَةٌ:

وَوَلَدُ الْكَافِرَةِ الذِّمِّيَّةِ، أَوْ الْحَرْبِيَّةِ مِنْ زِنًا، أَوْ إكْرَاهٍ مُسْلِمٌ، وَلَا بُدَّ؛ لِأَنَّهُ وُلِدَ عَلَى مِلَّةِ الْإِسْلَامِ كَمَا ذَكَرْنَا وَلَا أَبَوَيْنِ لَهُ يُخْرِجَانِهِ مِنْ الْإِسْلَامِ فَهُوَ مُسْلِمٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقِ.

[مَسْأَلَةٌ مِنْ سُبِيَ مِنْ صِغَارِ أَهْلِ الْحَرْبِ]

٩٤٧ - مَسْأَلَةٌ:

وَمَنْ سُبِيَ مِنْ صِغَارِ أَهْلِ الْحَرْبِ فَسَوَاءٌ سُبِيَ مَعَ أَبَوَيْهِ أَوْ مَعَ أَحَدِهِمَا، أَوْ دُونَهُمَا هُوَ مُسْلِمٌ، وَلَا بُدَّ؛ لِأَنَّ حُكْمَ أَبَوَيْهِ قَدْ زَالَ عَنْ النَّظَرِ لَهُ، وَصَارَ سَيِّدُهُ أَمْلَكَ بِهِ، فَبَطَلَ إخْرَاجُهُمَا لَهُ عَنْ الْإِسْلَامِ الَّذِي وُلِدَ عَلَيْهِ.

ibn al-Khaṭṭāb would not permit any Jew or Christian to raise their child as Jewish, nor... He grants him victory in the dominion of the Arabs - this being the explicit text of our position, with no dissenting opinion known among the Companions (may Allah be pleased with them) concerning this matter. It is the view of Sufyan al-Thawri, al-Awzaʿi, and al-Muzani - success is by Allah, the Exalted.

A juristic case: He found buried wealth (rikāz) from the property buried by a disbeliever not under protection (non-dhimmi).

948. Legal Issue:

Whoever finds a treasure buried by a disbeliever not under protection (dhimma)—whether the burier belonged to the era of ignorance (Jāhiliyya) or otherwise—may lawfully keep four-fifths of it. He must distribute the fifth portion where the fifth of war spoils is allocated. Nothing from this treasure is given to the ruling authority unless it is a just Imam, in which case only the fifth is given to him. This ruling applies equally whether the treasure is found in Arab wilderness, tax land, conquered territory, treaty land, one's own home, a Muslim's house, a protected non-Muslim's dwelling, or any other location—the ruling remains consistent as outlined. It also applies whether the finder is a free person, slave, or woman. Allah Almighty said: "Know that whatever you acquire as spoils, one-fifth belongs to Allah and the Messenger" [Al-Anfāl:41], the verse. He the Exalted also said: "So consume what you have taken as spoils, lawful and wholesome" [Al-Anfāl:69]. The property of a disbeliever not under protection constitutes spoils for whoever finds it.[28]

It has been reported to us through the chain of Mālik from Ibn Shihāb from Saʿīd ibn al-Musayyib from Abū Hurayrah that the Messenger of Allāh—may Allāh's blessings and peace be upon him—said: "And in the rikāz (buried treasure) is the khums (one-fifth)."

[28] **Qur'an references (L15766):** Qur'an 8:41 (Al-Anfal); Qur'an 8:69 (Al-Anfal).

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنَا خَلَّادٌ قَالَ: أَخْبَرَنِي عَمْرُو بْنُ شُعَيْبٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَانَ لَا يَدَعُ يَهُودِيًّا، وَلَا نَصْرَانِيًّا يُهَوِّدُ وَلَدَهُ، وَلَا يُنَصِّرُهُ فِي مِلْكِ الْعَرَبِ - وَهَذَا نَصُّ قَوْلِنَا، وَلَا نَعْلَمُ لَهُ مُخَالِفًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ. وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَالْمُزَنِيِّ - بِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ وَجَدَ كَنْزًا مِنْ دَفْنِ كَافِرٍ غَيْرِ ذِمِّيٍّ]

٩٤٨ - مَسْأَلَةٌ:

وَمَنْ وَجَدَ كَنْزًا مِنْ دَفْنِ كَافِرٍ غَيْرِ ذِمِّيٍّ - جَاهِلِيًّا كَانَ الدَّافِنُ، أَوْ غَيْرَ جَاهِلِيٍّ - فَأَرْبَعَةُ أَخْمَاسِهِ لَهُ حَلَالٌ، وَيَقْسِمُ الْخُمُسَ حَيْثُ يُقْسَمُ خُمُسُ الْغَنِيمَةِ، وَلَا يُعْطِي لِلسُّلْطَانِ مِنْ كُلِّ ذَلِكَ شَيْئًا إلَّا إنْ كَانَ إمَامَ عَدْلٍ فَيُعْطِيه الْخُمُسَ فَقَطْ، وَسَوَاءٌ وَجَدَهُ فِي فَلَاةٍ فِي أَرْضِ الْعَرَبِ، أَوْ فِي أَرْضِ خَرَاجٍ، أَوْ أَرْضِ عَنْوَةٍ، أَوْ أَرْضِ صُلْحٍ، أَوْ فِي دَارِهِ، أَوْ فِي دَارِ مُسْلِمٍ، أَوْ فِي دَارِ ذِمِّيٍّ، أَوْ حَيْثُ مَا وَجَدَهُ حُكْمُهُ سَوَاءٌ كَمَا ذَكَرْنَا، وَسَوَاءٌ وَجَدَهُ حُرٌّ، أَوْ عَبْدٌ، أَوْ امْرَأَةٌ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ} [الأنفال: ٤١] الْآيَةَ، وَقَالَ تَعَالَى: {فَكُلُوا مِمَّا غَنِمْتُمْ حَلَالا طَيِّبًا} [الأنفال: ٦٩] ، وَمَالُ الْكَافِرِ غَيْرِ الذِّمِّيِّ غَنِيمَةٌ لِمَنْ وَجَدَهُ.

وَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «وَفِي الرِّكَازِ الْخُمُسُ»

وَمِنْ حَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نَا شُعْبَةُ حَدَّثَنِي إبْرَاهِيمُ بْنُ مُحَمَّدِ بْنِ الْمُنْتَشِرِ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - " أَنَّ رَجُلًا قَالَ لَهَا: أَصَبْت كَنْزًا فَرَفَعْته إلَى السُّلْطَانِ فَقَالَتْ عَائِشَةُ: بِفِيك الْكَثْكَثُ " الْكَثْكَثُ التُّرَابُ وَقَوْلُنَا هَذَا هُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَلَا يَكُونُ وُجُودُهُ فِي أَرْضٍ مُمْتَلَكَةٍ لِمُسْلِمٍ، أَوْ ذِمِّيٍّ مُوجِبًا لِمِلْكِ صَاحِبِ الْأَرْضِ لَهُ لِأَنَّهُ غَيْرُ الْأَرْضِ، فَلَا يَكُونُ مِلْكُ الْأَرْضِ مِلْكًا لِمَا فِيهَا مِنْ غَيْرِهَا مِنْ صَيْدٍ، أَوْ لُقَطَةٍ، أَوْ دَفِينَةٍ، أَوْ غَيْرِ ذَلِكَ.

L15768 And from a hadith we have narrated through the chain of Yahya ibn Sa'id al-Qattan: Shu'bah narrated to us, saying: Ibrahim ibn Muhammad ibn al-Muntashir related to me from his father from 'A'ishah, the Mother of the Believers—may Allah be pleased with her—that a man said to her: "I found a treasure and reported it to the ruler." 'A'ishah replied: "May your mouth be filled with dust!" Al-Kathkath means dust. Our position here aligns with the statement of Abu Sulayman. The presence of such treasure in land owned by a Muslim or a protected non-Muslim does not grant ownership rights to the landholder, for it is distinct from the land itself. Ownership of land does not entail ownership of what lies within it apart from the soil—whether game, found property, buried treasure, or anything else.

وَقَالَ الشَّافِعِيُّ كَقَوْلِنَا، إلَّا أَنَّهُ قَالَ: إنْ ادَّعَى صَاحِبُ الْأَرْضِ الَّتِي وُجِدَ فِيهَا أَنَّهُ قَدْ وَجَدَهُ ثُمَّ أَقَرَّهُ فَهُوَ لَهُ - وَهَذَا لَيْسَ بِشَيْءٍ لِأَنَّهَا دَعْوَى لَا بَيِّنَةَ لَهُ عَلَيْهَا فَهُوَ لِمَنْ وَجَدَهُ، لِأَنَّهُ فِي يَدِهِ وَهُوَ غَانِمُهُ إلَّا أَنْ يُوجَدَ أَثَرُ اسْتِخْرَاجِهِ، ثُمَّ رَدِّهِ فَيَكُونُ حِينَئِذٍ قَوْلُ صَاحِبِ الْأَرْضِ حَقًّا، وَأَمَّا إذَا وُجِدَ كَمَا وُضِعَ أَوَّلَ مَرَّةٍ فَكَذِبُ مُدَّعِيهِ ظَاهِرٌ بِلَا شَكٍّ.

L15769–15771 Al-Shafi'i maintained the same position as ours, except that he said: If the owner of the land where the lost property was found alleges that he discovered it and then acknowledges it, it belongs to him—but this holds no validity, for it is a claim without legal evidence to support it. It belongs to the one who found it, as it is in his possession and he is its rightful claimant unless there is a trace of its extraction and subsequent return. In that case, the landowner's claim becomes valid. However, if it is found as it was originally deposited, the claimant's dishonesty is incontrovertibly clear.

وَقَالَ مَالِكٌ: لَا يَكُونُ لِوَاجِدِهِ إلَّا أَنْ يَجِدَهُ فِي صَحَارَى أَرْضِ الْعَرَبِ فَهُوَ لَهُ بَعْدَ الْخُمُسِ، فَإِنْ وَجَدَهُ فِي أَرْضِ عَنْوَةٍ فَهُوَ كُلُّهُ لِبَقَايَا مُفْتَتِحِي تِلْكَ الْبِلَادِ، وَفِيهِ الْخُمُسُ؛ فَإِنْ وَجَدَهُ فِي أَرْضِ صُلْحٍ فَهُوَ كُلُّهُ لِأَهْلِ الصُّلْحِ، وَلَا خُمُسَ فِيهِ.

L15772 Malik said: A finder has no right to it unless he finds it in the deserts of Arab lands—in which case it belongs to him after deducting the khums. If he finds it in land seized by conquest, all of it belongs to the remaining descendants of the conquerors of those lands, and the khums is taken from it. If he finds it in land governed by a peace treaty, all of it belongs to the people of the peace treaty, and no khums is taken.

وَهَذَا خَطَأٌ ظَاهِرٌ مِنْ وُجُوهٍ: أَوَّلُهَا: أَنَّهُ أَسْقَطَ الْخُمُسَ عَمَّا وُجِدَ مِنْ ذَلِكَ فِي أَرْضِ صُلْحٍ، وَهَذَا خِلَافُ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَفِي الرِّكَازِ الْخُمُسُ» فَعَمَّ - عَلَيْهِ السَّلَامُ - وَلَمْ يَخُصَّ أَرْضَ صُلْحٍ مِنْ غَيْرِهَا.

L15773 This is a manifest error for multiple reasons. The first: he neglected to apply the khums (one-fifth) to that which was found in treaty land (arḍ ṣulḥ), contradicting the statement of Allah's Messenger - peace be upon him - "In rikāz lies the khums." He - peace be upon him - applied it universally and did not specifically exclude treaty land from other lands.

L15774 The second [point] is that they only agreed to peace terms concerning what

they own—that is, what is in their possession—not what they do not own, nor what is not in their hands, nor what they do not recognize.

وَثَانِيهَا: أَنَّهُمْ إِنَّمَا صَالَحُوا عَلَى مَا يَمْلِكُونَهُ مِمَّا بِأَيْدِيهِمْ لَا عَلَى مَا لَا يَمْلِكُونَهُ وَلَا هُوَ بِأَيْدِيهِمْ وَلَا يَعْرِفُونَهُ.

L15775 The third is that if they were to own every buried treasure in the land they made peace over, it would logically follow that the Arabs who submitted to Islam over their lands would likewise own it. Thus, any buried treasure found therein would belong to those who embraced Islam in relation to that land—and this contradicts their stated position.

وَثَالِثُهَا: أَنَّهُمْ لَوْ مَلَكُوا كُلَّ رِكَازٍ فِي الْأَرْضِ الَّتِي صَالَحُوا عَلَيْهَا لَوَجَبَ أَنْ تَمْلِكَهُ أَيْضًا الْعَرَبُ الَّذِينَ أَسْلَمُوا عَلَى بِلَادِهِمْ فَيَكُونُ مَا وُجِدَ فِيهَا مِنْ رِكَازٍ لِلَّذِينَ أَسْلَمُوا عَلَى تِلْكَ الْأَرْضِ - وَهَذَا خِلَافُ قَوْلِهِمْ.

L15776 As for his statement regarding what is found in the land of ʻanwah (territory conquered by force) that it belongs to the heirs of the conquerors: this is erroneous. The conquerors of the land only own what they seized as spoils, not what they did not seize. Pre-Islamic buried wealth (rikāz) falls among what they neither seized, nor obtained, nor took possession of. Therefore, they have no right to it.

وَأَمَّا قَوْلُهُ: فِيمَا وُجِدَ فِي أَرْضِ الْعَنْوَةِ أَنَّهُ لِوَرَثَةِ الْمُفْتَتِحِينَ. فَخَطَأٌ لِأَنَّ الْمُفْتَتِحِينَ لِلْأَرْضِ إِنَّمَا يَمْلِكُونَ مَا غَنِمُوا، لَا مَا لَمْ يَغْنَمُوا، وَالرِّكَازُ مِمَّا لَمْ يَغْنَمُوا، وَلَا حَصَلُوا عَلَيْهِ، وَلَا أَخَذُوهُ، فَلَا حَقَّ لَهُمْ فِيهِ.

L15777 The utmost wonder is that they do not assign the land of *ʻanwah* (seized by force) as rightful ownership to the conquerors, while they seized it as spoils; then they assign the *rikāz* (buried treasures) within it as rightful ownership to themselves, even though they did not seize it as spoils.

وَالْعَجَبُ كُلُّهُ أَنَّهُمْ لَا يَجْعَلُونَ الْأَرْضَ حَقًّا لِلْمُفْتَتِحِينَ أَرْضَ الْعَنْوَةِ وَهُمْ غَنِمُوهَا ثُمَّ يَجْعَلُونَ الرِّكَازَ الَّذِي فِيهَا حَقًّا لَهُمْ وَهُمْ لَمْ يَغْنَمُوهُ.

L15778 The Hanafis said: It belongs to the finder, and the fifth is due from it. He may take the fifth if he is in need, unless he finds it in a settlement demarcated by a Muslim or in the land of war. If he finds it in a settlement demarcated by a Muslim, it belongs to the plot owner with the fifth due from it; if he finds it in the land of war after entering under safe conduct, all of it belongs to the enemy resident; if he finds it in an open wilderness within the land of war, all of it belongs to the finder with no fifth obligation upon him.

وَقَالَ الْحَنَفِيُّونَ: هُوَ لِوَاجِدِهِ وَعَلَيْهِ فِيهِ الْخُمُسُ، وَلَهُ أَنْ يَأْخُذَ الْخُمُسَ إِنْ كَانَ مُحْتَاجًا إِلَّا أَنْ يَجِدَهُ فِي دَارٍ اخْتَطَّهَا مُسْلِمٌ، أَوْ فِي دَارِ الْحَرْبِ، فَإِنَّهُ إِنْ وَجَدَهُ فِي دَارٍ اخْتَطَّهَا مُسْلِمٌ فَهُوَ لِصَاحِبِ الْخُطَّةِ وَفِيهِ الْخُمُسُ؛ وَإِنْ وَجَدَهُ فِي دَارِ حَرْبِيٍّ وَقَدْ دَخَلَهَا بِأَمَانٍ فَهُوَ كُلُّهُ لِلْحَرْبِيِّ، وَإِنْ وَجَدَهُ فِي صَحْرَاءَ فِي دَارِ الْحَرْبِ فَهُوَ كُلُّهُ لِوَاجِدِهِ وَلَا خُمُسَ عَلَيْهِ فِيهِ.

L15779–15780 This division is utterly corrupt and contrary to the command of Allah's Messenger—peace and blessings be upon him—who stated generally (peace be upon him) that one-fifth is due on buried wealth without specifying exceptions. This division was unknown to anyone before Abū Ḥanīfah, and it remains a baseless opinion despite existing narrations from the early gen-

وَهَذَا تَقْسِيمٌ فِي غَايَةِ الْفَسَادِ، وَخِلَافٌ لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ فِي الرِّكَازِ الْخُمُسَ - فَعَمَّ - عَلَيْهِ السَّلَامُ - وَلَمْ يَخُصَّ؛ وَلَا يُعْرَفُ هَذَا التَّقْسِيمُ عَنْ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ، وَهُوَ مَعَ ذَلِكَ قَوْلٌ بِلَا بُرْهَانٍ، وَفِيهِ عَنْ السَّلَفِ آثَارٌ. مِنْهَا: مَا رُوِّينَاهُ

erations. Among these is what we narrated through Ibn ʾUyaynah's chain from Ismāʾīl ibn Abī Khālid, from al-Shaʿbī: A man came to ʿAlī with fifteen hundred dirhams he found in a ruined structure in Sawād. ʿAlī said: "If you found it in an abandoned village whose land tax is maintained by an inhabited village, then it belongs to them. If its tax is not maintained by any village, then four-fifths of it are yours and one-fifth is ours. And I will make the entire amount lawful for you."

مِنْ طَرِيقِ ابْنِ عُيَيْنَةَ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ: أَنَّ عَلِيًّا أَتَاهُ رَجُلٌ بِأَلْفٍ وَخَمْسِمِائَةِ دِرْهَمٍ وَجَدَهَا فِي خَرِبَةٍ بِالسَّوَادِ، فَقَالَ عَلِيٌّ: إنْ كُنْت وَجَدْتَهَا فِي قَرْيَةٍ خَرِبَةٍ تَحْمِلُ خَرَاجَهَا قَرْيَةٌ عَامِرَةٌ فَهِيَ لَهُمْ، وَإِنْ كَانَتْ لَا تَحْمِلُ خَرَاجَهَا فَلَك أَرْبَعَةُ أَخْمَاسِهِ وَلَنَا خُمُسُهُ، وَسَأُطَيِّبُهُ لَك جَمِيعًا.

L15781 This is contrary to the opinion of the Hanafis and Malikis, because the Sawad was seized by conquest, not through a peace treaty, and it had been part of the abode of Islam during the era of Ali and long before that. Something we have narrated through Qatadah: Abu Musa found Daniel in Susa when he conquered it, with wealth alongside him. People would borrow from it for a fixed term, and when the term arrived and the borrower failed to repay, he was afflicted with leprosy. He wrote to Umar regarding this matter. Umar responded: Shroud him, embalm him, pray over him, and bury him as prophets are buried. Deposit the wealth in the public treasury of the Muslims. This ruling is sound, for it was not rikāz but rather known and visible property. It did not belong to the disbelievers' wealth to be subjected to khums tax and war booty; rather, it was the wealth of a prophet, thus belonging to the Muslims for their communal interests.

وَهَذَا خِلَافُ قَوْلِ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، لِأَنَّ السَّوَادَ أُخِذَ عَنْوَةً لَا صُلْحًا، وَكَانَ فِي أَيَّامِ عَلِيٍّ دَارَ إسْلَامٍ، وَقَبْلَ ذَلِكَ بِدَهْرٍ، وَشَيْءٌ رُوِّينَاهُ مِنْ طَرِيقِ قَتَادَةَ: أَنَّ أَبَا مُوسَى وَجَدَ دَانْيَالَ بِالسُّوسِ إذْ فَتَحَهَا وَمَعَهُ مَالٌ إلَى جَنْبِهِ، كَانُوا يَسْتَقْرِضُونَ مِنْهُ مَا احْتَاجُوا إلَى أَجَلٍ مُسَمًّى، فَإِذَا جَاءَ ذَلِكَ الْأَجَلُ وَلَمْ يَرُدَّهُ الْمُسْتَقْرِضُ بَرِصَ فَكَتَبَ إلَى عُمَرَ بِذَلِكَ. فَكَتَبَ إلَيْهِ عُمَرُ: كَفِّنْهُ، وَحَنِّطْهُ، وَصَلِّ عَلَيْهِ، وَادْفِنْهُ كَمَا دُفِنَتْ الْأَنْبِيَاءُ وَاجْعَلْ الْمَالَ فِي بَيْتِ مَالِ الْمُسْلِمِينَ، وَهَذَا صَحِيحٌ، لِأَنَّهُ لَمْ يَكُنْ رِكَازًا، إنَّمَا كَانَ مَعْلُومًا ظَاهِرًا، وَلَمْ يَكُنْ مِنْ أَمْوَالِ الْكُفَّارِ فَيُخَمَّسَ وَيُغْنَمَ؛ بَلْ كَانَ مَالَ نَبِيٍّ فَهُوَ لِلْمُسْلِمِينَ فِي مَصَالِحِهِمْ.

L15782 Among them is a report from ʿUmar through the chain of Simāk ibn Ḥarb from Jarīr ibn Riyāḥ from his father: that they discovered a grave in Al-Madāʾin containing a deceased person wearing garments woven with gold, and with him was wealth. ʿAmmār ibn Yāsir wrote to ʿUmar about it, and ʿUmar replied: "Give it to them and do not strip it from them"—this is our position, not theirs. However, there is no mention of Khums; yet Khums remains obligatory according to both our view and theirs.

وَمِنْهَا: خَبَرٌ عَنْ عُمَرَ مِنْ طَرِيقِ سِمَاكِ بْنِ حَرْبٍ عَنْ جَرِيرِ بْنِ رِيَاحٍ عَنْ أَبِيهِ: أَنَّهُمْ أَصَابُوا قَبْرًا بِالْمَدَائِنِ، وَفِيهِ مَيِّتٌ عَلَيْهِ ثِيَابٌ مَنْسُوجَةٌ بِالذَّهَبِ، وَمَعَهُ مَالٌ؟ فَكَتَبَ فِيهِ عَمَّارُ بْنُ يَاسِرٍ إلَى عُمَرَ؟ فَكَتَبَ إلَيْهِ عُمَرُ أَعْطِهِمْ إيَّاهُ وَلَا تَنْزِعْهُ مِنْهُمْ - وَهَذَا قَوْلُنَا لَا قَوْلُهُمْ، إلَّا أَنَّهُ لَيْسَ فِيهِ ذِكْرُ خُمُسٍ، وَلَا بُدَّ مِنْ الْخُمُسِ عِنْدَنَا وَعِنْدَهُمْ.

L15783 A report from the chain of Hushaym from Mujālid from Al-Shaʿbī: A man found one thousand dinars buried outside the city and brought them to ʿUmar. ʿUmar took one-fifth of them—two hundred dinars—and gave him the remainder. Then ʿUmar began distributing the two hundred among the

وَخَبَرٌ مِنْ طَرِيقِ هُشَيْمٍ عَنْ مُجَالِدٍ عَنْ الشَّعْبِيِّ: أَنَّ رَجُلًا وَجَدَ أَلْفَ دِينَارٍ مَدْفُونَةً خَارِجَ الْمَدِينَةِ، فَأَتَى بِهَا عُمَرَ، فَأَخَذَ خُمُسَهَا مِائَتَيْ دِينَارٍ وَدَفَعَ إلَيْهِ الْبَاقِيَ؛ ثُمَّ جَعَلَ عُمَرُ يَقْسِمُ

Muslims present until a portion remained from it, which he gave to the finder. This is our opinion, except regarding the manner of the division of the fifth.

الْمِائَتَيْنِ بَيْنَ مَنْ حَضَرَ مِنْ الْمُسْلِمِينَ إلَى أَنْ فَضَلَ مِنْهَا فَضْلَةٌ فَدَفَعَهَا إلَى وَاجِدِهَا - وَهَذَا قَوْلُنَا، إلَّا فِي صِفَةِ قِسْمَتِهِ الْخُمُسَ.

L15784 And through the chain of Ibn Jurayj: that ʻAmr ibn Shuʻayb reported to him that a slave found a rikaz during the era of ʻUmar, so he manumitted him from a portion of it, gave him a share from it, and placed the remainder into the public treasury—though other scholars do not uphold this opinion. In our view, whether a free person or a slave finds the rikaz, the ruling remains one in our view, as we established previously.

وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ: أَنَّ عَمْرَو بْنَ شُعَيْبٍ أَخْبَرَهُ أَنَّ عَبْدًا وَجَدَ رِكْزَةً عَلَى عَهْدِ عُمَرَ فَأَعْتَقَهُ مِنْهَا، وَأَعْطَاهُ مِنْهَا، وَجَعَلَ سَائِرَهَا فِي بَيْتِ الْمَالِ - وَهُمْ لَا يَقُولُونَ بِهَذَا، وَسَوَاءٌ عِنْدَنَا وَجَدَ الرِّكَازَ حُرٌّ، أَوْ عَبْدٌ، الْحُكْمُ [عِنْدَنَا] وَاحِدٌ عَلَى مَا قَدَّمْنَا.

L15785–15786 We have been transmitted two accounts: One of them - through the chain of al-Zamʻī from his aunt Quraibah bint ʻAbd Allāh ibn Wahb, from her mother Karīmah bint al-Miqdād ibn al-Aswad, from Ḍubāʻah bint al-Zubayr ibn ʻAbd al-Muṭṭalib: "Al-Miqdād went out to relieve himself at Baqīʻ al-Khabkhabah, where a rat began pulling out dinar after dinar from a burrow, then brought out a red cloth—amounting to eighteen dinars. He took them and brought them to the Prophet (peace and blessings of Allah be upon him). The Messenger of Allah (peace and blessings of Allah be upon him) asked him: 'Did you reach into the burrow?' He replied: 'No.' The Messenger of Allah said: 'May Allah bless you in it.'" This account does not align with the position of any scholar we have mentioned, and its chain is obscure. Al-Zamʻī's narration from his aunt Quraibah—who is unknown—is problematic. It is plausible that those dinars were from the buried wealth of an unknown Muslim with no hope of identification; thus, in our view, they belong wholly to whoever finds them.

وَرُوِّينَا خَبَرَيْنِ: أَحَدُهُمَا - مِنْ طَرِيقِ الزَّمْعِيِّ عَنْ عَمَّتِهِ قُرَيْبَةَ بِنْتِ عَبْدِ اللَّهِ بْنِ وَهْبٍ عَنْ أُمِّهَا كَرِيمَةَ بِنْتِ الْمِقْدَادِ بْنِ الْأَسْوَدِ عَنْ ضُبَاعَةَ بِنْتِ الزُّبَيْرِ بْنِ عَبْدِ الْمُطَّلِبِ: «أَنَّ الْمِقْدَادَ خَرَجَ إلَى حَاجَتِهِ بِبَقِيعِ الْخَبْخَبَةِ فَإِذَا جُرَذٌ يُخْرِجُ مِنْ جُحْرٍ دِينَارًا بَعْدَ دِينَارٍ، ثُمَّ أَخْرَجَ خِرْقَةً حَمْرَاءَ فَكَانَتْ ثَمَانِيَةَ عَشَرَ دِينَارًا فَأَخَذَهَا وَحَمَلَهَا إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: هَلْ أَهْوَيْتَ الْجُحْرَ؟ قَالَ: لَا، قَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: بَارَكَ اللَّهُ لَكَ فِيهَا» وَهَذَا خَبَرٌ لَيْسَ مُوَافِقًا لِقَوْلِ أَحَدٍ مِمَّنْ ذَكَرْنَا وَإِسْنَادُهُ مُظْلِمٌ، الزَّمْعِيُّ عَنْ عَمَّتِهِ قُرَيْبَةَ وَهِيَ مَجْهُولَةٌ؛ وَلَعَلَّ تِلْكَ الدَّنَانِيرَ مِنْ دَفْنِ مُسْلِمٍ مَجْهُولٍ مَيْئُوسٍ عَنْ مَعْرِفَتِهِ فَهِيَ لِمَنْ وَجَدَهَا عِنْدَنَا كُلَّهَا.

L15787 Another report: Through the chain of Yahya ibn Maʻin from Wahb ibn Jarir ibn Hazim from his father from Muhammad ibn Ishaq from Yahya ibn Abi Bujayr: "Abdullah ibn Amr ibn al-As reported that he was with the Messenger of Allah (peace and blessings be upon him) during his journey to Ta'if. They passed by a grave, and the Messenger of Allah (peace and blessings be upon him) said: 'This is the grave of Abu Righal. He was protected by this sanctuary, but when he left, the punishment that befell his people struck him in this place, and he was buried here. A sign of this is that a golden branch was buried with him. If you dig it up, you will find it.' People hastened to

وَخَبَرٌ آخَرُ: مِنْ طَرِيقِ يَحْيَى بْنِ مَعِينٍ عَنْ وَهْبِ بْنِ جَرِيرِ بْنِ حَازِمٍ عَنْ أَبِيهِ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ يَحْيَى بْنِ أَبِي بُجَيْرٍ «عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّهُ كَانَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي خُرُوجِهِ إلَى الطَّائِفِ فَمَرُّوا بِقَبْرٍ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: هَذَا قَبْرُ أَبِي رِغَالٍ وَكَانَ بِهَذَا الْحَرَمِ يَدْفَعُ عَنْهُ، فَلَمَّا خَرَجَ أَصَابَتْهُ النِّقْمَةُ الَّتِي أَصَابَتْ قَوْمَهُ بِهَذَا الْمَكَانِ فَدُفِنَ فِيهِ، وَآيَةُ ذَلِكَ أَنَّهُ دُفِنَ مَعَهُ غُصْنٌ مِنْ

dig it up and found the branch." This narration is not authentic, as it is from Yahya ibn Abi Bujayr, a narrator of unknown status. Moreover, it contains no valid proof to support the opinion of any of those we previously mentioned. It merely concerns the exhumation of polytheists' graves exclusively. And with Allah alone is success.

A legal issue: The fifth of the buried treasure and the fifth of the spoils of war is to be divided into five shares.

949: Question

The fifth of mineral wealth and the fifth of spoils of war are divided into five shares, each allocated by the Imam to all endeavors that inherently embody welfare and righteousness for Muslims.

The second share is for Banū Hāshim and al-Muṭṭalib, the descendants of ʿAbd Manāf—the rich and poor among them, their males and females, young and old, righteous and sinful, are equal in it. There is no portion in it for their clients, nor their allies, nor the sons of their daughters [from non-lineage], nor for any of Allah's creation besides them, nor for a disbeliever among them.

And the third share is for the orphans from the Muslims, likewise.

The fourth share is allocated for the poor among the Muslims.

The fifth share is for the wayfarer among the Muslims.

We have already explained the poor and the wayfarer in the Book of Zakāh, rendering repetition unnecessary. The orphans are those whose fathers have died only; once they reach puberty, the designation of "orphan" is lifted from them, and they cease to be entitled to the share.

The proof of this is Allah the Exalted's statement: {And know that what-

ذَهَبٍ إِنْ أَنْتُمْ نَبَشْتُمْ عَنْهُ وَجَدْتُمُوهُ، فَابْتَدَرَهُ النَّاسُ فَوَجَدُوا الْغُصْنَ» وَهَذَا لَا يَصِحُّ، لِأَنَّهُ عَنْ يَحْيَى بْنِ أَبِي بُجَيْرٍ وَهُوَ مَجْهُولٌ، ثُمَّ لَا حُجَّةَ فِيهِ لِقَوْلِ أَحَدٍ مِمَّنْ ذَكَرْنَا، وَإِنَّمَا فِيهِ نَبْشُ قُبُورِ الْمُشْرِكِينَ فَقَطْ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ يُقْسَمُ خُمُسُ الرِّكَازِ وَخُمُسُ الْغَنِيمَةِ عَلَى خَمْسَةِ أَسْهُمٍ]

٩٤٩ - مَسْأَلَةٌ:

وَيُقْسَمُ خُمُسُ الرِّكَازِ وَخُمُسُ الْغَنِيمَةِ عَلَى خَمْسَةِ أَسْهُمٍ: فَسَهْمٌ يَضَعُهُ الْإِمَامُ حَيْثُ يَرَى مِنْ كُلِّ مَا فِيهِ صَلَاحٌ وَبِرٌّ لِلْمُسْلِمِينَ.

وَسَهْمٌ ثَانٍ لِبَنِي هَاشِمٍ، وَالْمُطَّلِبِ بَنِي عَبْدِ مَنَافٍ، غَنِيُّهُمْ وَفَقِيرُهُمْ، وَذَكَرُهُمْ وَأُنْثَاهُمْ، وَصَغِيرُهُمْ وَكَبِيرُهُمْ، وَصَالِحُهُمْ وَطَالِحُهُمْ فِيهِ سَوَاءٌ - وَلَا حَظَّ فِيهِ لِمَوَالِيهِمْ، وَلَا لِحُلَفَائِهِمْ، وَلَا لِبَنِي بَنَاتِهِمْ [مِنْ غَيْرِهِمْ] وَلَا لِأَحَدٍ مِنْ خَلْقِ اللَّهِ تَعَالَى سِوَاهُمْ، وَلَا لِكَافِرٍ مِنْهُمْ.

وَسَهْمٌ ثَالِثٌ لِلْيَتَامَى مِنْ الْمُسْلِمِينَ كَذَلِكَ أَيْضًا.

وَسَهْمٌ رَابِعٌ لِلْمَسَاكِينِ مِنْ الْمُسْلِمِينَ.

وَسَهْمٌ خَامِسٌ لِابْنِ السَّبِيلِ مِنْ الْمُسْلِمِينَ.

وَقَدْ فَسَّرْنَا الْمَسَاكِينَ، وَابْنَ السَّبِيلِ فِي كِتَابِ الزَّكَاةِ فَأَغْنَى عَنْ إعَادَةِ ذَلِكَ وَالْيَتَامَى هُمْ الَّذِينَ قَدْ مَاتَ آبَاؤُهُمْ فَقَطْ، فَإِذَا بَلَغُوا فَقَدْ سَقَطَ عَنْهُمْ اسْمُ الْيُتْمِ وَخَرَجُوا مِنْ السَّهْمِ.

ever you acquire as spoils of war, indeed one-fifth of it belongs to Allah, the Messenger, the near relatives, the orphans, the poor, and the wayfarer} [8:41], and His saying: {So that wealth does not circulate exclusively among the affluent from you} [59:7]. Thus, it is impermissible for anyone to deviate from the division ordained by Allah the Exalted as He explicitly decreed. Through the chain of Abu Dawud: Musaddad narrated to us, Hushaym narrated from Muhammad ibn Ishaq from al-Zuhri from Sa'id ibn al-Musayyab, who said: Jubayr ibn Mut'im informed me, stating: "On the day of Khaybar, the Messenger of Allah (peace and blessings of Allah be upon him) allocated the share designated for near relatives to Banu Hashim and Banu al-Muttalib, excluding Banu Nawfal and Banu 'Abd Shams." He said: "'Uthman ibn 'Affan and I went to the Messenger of Allah (peace and blessings of Allah be upon him) and said: 'O Messenger of Allah, we do not contest the superiority of Banu Hashim due to the noble position Allah has granted you among them. But why have you given our brothers from Banu al-Muttalib their share while excluding us, though our degree of kinship is the same?' The Messenger of Allah (peace and blessings of Allah be upon him) replied: 'We and Banu al-Muttalib do not separate in pre-Islamic ignorance or in Islam. We and they are one and the same'—and he interlaced his fingers to demonstrate." This is unequivocally clear, and its chain of transmission is of the highest authenticity. Ahmad ibn Muhammad al-Ṭalamankī narrated to us: Muhammad ibn Ahmad ibn Faraj narrated to us: Ibrāhīm ibn Ahmad ibn Firās al-'Abqasī al-Makkī narrated to us: Ahmad ibn Muhammad ibn Sālim al-Naysābūrī narrated to us: Isḥāq ibn Rāhawayh narrated to us: Wahb ibn Jarīr ibn Ḥāzim narrated to us: My father said: I heard Muhammad ibn Isḥāq say: al-Zuhrī narrated to me from Sa'īd ibn al-Musayyab from Jubayr ibn Mut'im from the Prophet (peace and blessings of Allah be upon him) a similar narration to the one we mentioned, which states: "The Messenger of Allah (peace and blessings of Allah be upon him) distributed among them a fifth of the fifth from the wheat, dates, and date pits."[29][30]

L15798 This is also a chain of transmission in the utmost authenticity and clarity; it

بُرْهَانُ ذَلِكَ قَوْله تَعَالَى: {وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ} [الأنفال: ٤١] ، وَلِقَوْلِهِ تَعَالَى: {كَيْ لا يَكُونَ دُولَةً بَيْنَ الأَغْنِيَاءِ مِنْكُمْ} [الحشر: ٧] ، فَلَا يَسَعُ أَحَدًا الْخُرُوجُ عَنْ قِسْمَةِ اللَّهِ تَعَالَى الَّتِي نَصَّ عَلَيْهَا: وَمِنْ طَرِيقِ أَبِي دَاوُد نَا مُسَدَّدٌ نَا هُشَيْمٌ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: أَخْبَرَنِي «جُبَيْرُ بْنُ مُطْعِمٍ قَالَ لَمَّا كَانَ يَوْمُ خَيْبَرَ وَضَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَهْمَ ذِي الْقُرْبَى فِي بَنِي هَاشِمٍ، وَبَنِي الْمُطَّلِبِ، وَتَرَكَ: بَنِي نَوْفَلٍ، وَبَنِي عَبْدِ شَمْسٍ، قَالَ: فَانْطَلَقْتُ أَنَا وَعُثْمَانُ بْنُ عَفَّانَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْنَا: يَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَنُو هَاشِمٍ لَا نُنْكِرُ فَضْلَهُمْ لِلْمَوْضِعِ الَّذِي وَضَعَكَ اللَّهُ بِهِ مِنْهُمْ، فَمَا بَالُ إخْوَانِنَا بَنِي الْمُطَّلِبِ أَعْطَيْتَهُمْ وَتَرَكْتَنَا، وَقَرَابَتُنَا وَاحِدَةٌ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّا وَبَنُو الْمُطَّلِبِ لَا نَفْتَرِقُ فِي جَاهِلِيَّةٍ وَلَا إسْلَامٍ، وَإِنَّمَا نَحْنُ وَهُمْ شَيْءٌ وَاحِدٌ - وَشَبَّكَ بَيْنَ أَصَابِعِهِ» وَهَذَا بَيِّنٌ جَلِيٌّ وَإِسْنَادٌ فِي غَايَةِ الصِّحَّةِ. نَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ نَا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ فَرَجٍ نَا إبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ فِرَاسٍ الْعَبْقَسِيُّ الْمَكِّيُّ نَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ سَالِمٍ النَّيْسَابُورِيُّ نَا إِسْحَاقُ بْنُ رَاهْوَيْهِ نَا وَهْبُ بْنُ جَرِيرِ بْنِ حَازِمٍ نَا أَبِي قَالَ: سَمِعْتُ مُحَمَّدَ بْنَ إِسْحَاقَ يَقُولُ: حَدَّثَنِي الزُّهْرِيُّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ جُبَيْرِ بْنِ مُطْعِمٍ عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ - مِثْلَ الْحَدِيثِ الَّذِي ذَكَرْنَا، وَفِيهِ " قَالَ: «فَقَسَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمْ خُمُسَ الْخُمُسِ مِنْ الْقَمْحِ وَالتَّمْرِ وَالنَّوَى» .

وَهَذَا أَيْضًا إسْنَادٌ فِي غَايَةِ الصِّحَّةِ وَالْبَيَانِ، وَهُوَ يُبَيِّنُ أَنَّ سَهْمَ اللَّهِ تَعَالَى، وَسَهْمَ رَسُولِهِ وَاحِدٌ، وَهُوَ خُمُسُ الْخُمُسِ.

[29] **Hadith references (L15797):** Sunan Abi Dawud 2980; Mishkat al-Masabih 4027.
[30] **Qur'an references (L15797):** Qur'an 8:41 (Al-Anfal); Qur'an 59:7 (Al-Hashr).

clarifies that the share of Allah, the Exalted, and the share of His Messenger are one, and it constitutes a fifth of the fifth.

L15799–15800 Yusuf ibn Abdullah al-Namari narrated to us; Abd al-Warith ibn Sufyan ibn Jabrun narrated to us; Qasim ibn Asbagh narrated to us; Ahmad ibn Zuhayr ibn Harb narrated to us; my father narrated to us; Rawh ibn Ubada narrated to us; Ali ibn Suwayd ibn Manjuf narrated to us; Abdullah ibn Buraidah al-Aslami narrated from his father: "The Messenger of Allah—may Allah bless him and grant him peace—sent Ali to Khalid to distribute the Khums. Ali selected a female captive from them, and the next morning his head was dripping. Khalid said to Buraidah: 'Do you not see what this man has done?' Buraidah said: 'I hated Ali, so I went to the Prophet of Allah—may Allah bless him and grant him peace. When I informed him, he said: 'Do you hate Ali?' I said: 'Yes.' He said: 'Then love him, for he has more in the Khums than that.'"

L15801 This is a chain of transmission of utmost authenticity and clarity, demonstrating that the apportioned share for each person among relatives with close kinship is precisely defined and quantifiable. Through the narration of Abu Dawud: 'Ubayd Allah ibn 'Umar ibn Maysarah reported to us, from 'Abd al-Rahman ibn Mahdi, from 'Abd Allah ibn al-Mubarak, from Yunus ibn Zayd, from al-Zuhri, who said: Sa'id ibn al-Musayyab informed me, narrating: Jubayr ibn Mut'im recounted that he and 'Uthman ibn 'Affan approached the Messenger of Allah (peace and blessings be upon him) to question his distribution of the Khums among Banu Hashim and Banu al-Muttalib. I said, "O Messenger of Allah, you granted portions to our brethren Banu al-Muttalib but allotted us nothing, though our degree of relation and theirs to you is identical?" The Prophet (peace and blessings be upon him) responded, "Banu Hashim and Banu al-Muttalib are indeed one and the same." Jubayr added, "He did not allocate any portion from that Khums to Banu 'Abd Shams or Banu Nawfal, as he did for Banu Hashim and Banu al-Muttalib." He further stated: Abu Bakr maintained the same method of distributing the Khums as

نَا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نَا عَبْدُ الْوَارِثِ بْنُ سُفْيَانَ بْنِ جَبْرُونَ نَا قَاسِمُ بْنُ أَصْبَغَ نَا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ نَا أَبِي نَا رَوْحُ بْنُ عُبَادَةَ نَا عَلِيُّ بْنُ سُوَيْدِ بْنِ مَنْجُوفٍ نَا عَبْدُ اللَّهِ بْنُ بُرَيْدَةَ الْأَسْلَمِيُّ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ عَلِيًّا إِلَى خَالِدٍ لِيَقْسِمَ الْخُمُسَ فَاصْطَفَى عَلِيٌّ مِنْهَا سَبِيَّةً فَأَصْبَحَ يَقْطُرُ رَأْسُهُ، فَقَالَ خَالِدٌ لِبُرَيْدَةَ: أَلَا تَرَى مَا صَنَعَ هَذَا الرَّجُلُ؟ قَالَ بُرَيْدَةَ: وَكُنْتُ أُبْغِضُ عَلِيًّا، فَأَتَيْتُ نَبِيَّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمَّا أَخْبَرْتُهُ، قَالَ: أَتُبْغِضُ عَلِيًّا؟ قُلْتُ: نَعَمْ، قَالَ: فَأَحِبَّهُ، فَإِنَّ لَهُ فِي الْخُمُسِ أَكْثَرَ مِنْ ذَلِكَ» .

وَهَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ، وَفِي غَايَةِ الْبَيَانِ فِي أَنَّ نَصِيبَ كُلِّ امْرِئٍ مِنْ ذَوِي الْقُرْبَى مَحْدُودٌ مَعْرُوفُ الْقَدْرِ. وَمِنْ طَرِيقِ أَبِي دَاوُد نَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ بْنِ مَيْسَرَةَ نَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ يُونُسَ بْنِ زَيْدٍ عَنْ الزُّهْرِيِّ (قَالَ) أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيِّبِ أَخْبَرَنِي «جُبَيْرُ بْنُ مُطْعِمٍ أَنَّهُ جَاءَ هُوَ وَعُثْمَانُ بْنُ عَفَّانَ يُكَلِّمَانِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَا قَسَمَ مِنْ الْخُمُسِ بَيْنَ بَنِي هَاشِمٍ، وَبَنِي الْمُطَّلِبِ فَقُلْتُ يَا رَسُولَ اللَّهِ قَسَمْتَ لِإِخْوَانِنَا بَنِي الْمُطَّلِبِ وَلَمْ تُعْطِنَا شَيْئًا، وَقَرَابَتُنَا وَقَرَابَتُهُمْ مِنْكَ وَاحِدَةٌ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِنَّمَا بَنُو هَاشِمٍ وَبَنُو الْمُطَّلِبِ شَيْءٌ وَاحِدٌ، قَالَ جُبَيْرٌ: وَلَمْ يَقْسِمْ لِبَنِي عَبْدِ شَمْسٍ، وَلَا لِبَنِي نَوْفَلٍ مِنْ ذَلِكَ الْخُمُسِ كَمَا قَسَمَ لِبَنِي هَاشِمٍ وَبَنِي الْمُطَّلِبِ» ، قَالَ: وَكَانَ أَبُو بَكْرٍ يَقْسِمُ الْخُمُسَ نَحْوَ قَسْمِ رَسُولِ

the Messenger of Allah, except that he withheld the specific allocation the Prophet had granted to his own kinsfolk.[31]

L15802–15804 Umar ibn al-Khattab used to give them from it, as did Uthman after him. This is a chain of narration of the highest authenticity and clarity. As for Abu Bakr not giving them, it was like the Prophet—peace and blessings be upon him—who would give them from his own share. It was what he—peace be upon him—would return to them from his portion, and it was the need... The Muslims during the days of Abu Bakr were stricter. As for preventing them from the ordained right that Allah and His Messenger—peace be upon him—named for them, then Allah the Exalted protects Abu Bakr—may Allah be pleased with him—from that.

L15805 From the chain of Abu Dawud, from Abbas ibn Abd al-Azim al-Anbari, from Yahya Abi Bukayr, from Abu Ja'far—who is Abdullah ibn Abdullah al-Razi, the judge of Ray—from Mutarrif, who is the son of Tarif, from Abd al-Rahman ibn Abi Layla, who said: "I heard Ali say: 'The Messenger of Allah—peace and blessings be upon him—appointed me in charge of the fifth of the fifth. I placed it in its rightful places during the lifetime of the Messenger of Allah—peace and blessings be upon him—, the lifetime of Abu Bakr, and the lifetime of Umar. Then wealth was brought, and he summoned me saying: 'Take it." I replied: 'I do not want it." He said: 'Take it, for you [all] are more deserving of it." I said: 'We have no need of it." So he placed it in the public treasury.'"[32]

L15806 Abu Ja'far al-Razi is trustworthy. Abd al-Rahman bin Mahdi and other scholars narrated from him.

L15807 Through Muslim's narration: Ibn Abi 'Umar narrated to us; Sufyan ibn 'Uyaynah from Isma'il ibn Umayyah ibn 'Amr ibn Sa'id ibn al-'As, from Sa'id ibn Abi Sa'id al-Maqburi, from Yazid ibn Hurmuz, who said: "Ibn 'Abbas ordered him to write to Najdah. I wrote: 'You ask me about the close

[31] **Hadith references (L15801):** Sunan Abi Dawud 2978.
[32] **Hadith references (L15805):** Sunan Abi Dawud 2983.

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَيْرَ أَنَّهُ لَمْ يَكُنْ يُعْطِي قُرْبَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُعْطِيهِمْ.

وَكَانَ عُمَرُ بْنُ الْخَطَّابِ يُعْطِيهِمْ مِنْهُ، وَعُثْمَانُ بَعْدَهُ ". فَهَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ وَالْبَيَانِ، وَإِنَّمَا كَانَ الَّذِي لَمْ يُعْطِهِمْ أَبُو بَكْرٍ كَمَا كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُعْطِيهِمْ، فَهُوَ مَا كَانَ - عَلَيْهِ السَّلَامُ - يَعُودُ بِهِ عَلَيْهِمْ مِنْ سَهْمِهِ، وَكَانَتْ حَاجَةُ الْمُسْلِمِينَ أَيَّامَ أَبِي بَكْرٍ أَشَدَّ، وَأَمَّا أَنْ يَمْنَعَهُمْ الْحَقَّ الْمَفْرُوضَ الَّذِي سَمَّاهُ اللَّهُ وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهُمْ فَيُعِيذُ اللَّهُ تَعَالَى أَبَا بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - مِنْ ذَلِكَ.

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا عَبَّاسُ بْنُ عَبْدِ الْعَظِيمِ الْعَنْبَرِيُّ نَا يَحْيَى أَبِي بُكَيْرٍ نَا أَبُو جَعْفَرٍ هُوَ عَبْدُ اللَّهِ بْنِ عَبْدِ اللَّهِ الرَّازِيّ قَاضِي الرَّيِّ عَنْ مُطَرِّفٍ هُوَ ابْنُ طَرِيفٍ - عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى قَالَ: " سَمِعْتُ «عَلِيًّا يَقُولُ: وَلَّانِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خُمُسَ الْخُمُسِ فَوَضَعْتُهُ مَوَاضِعَهُ حَيَاةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحَيَاةَ أَبِي بَكْرٍ وَحَيَاةَ عُمَرَ، فَأَتَى بِمَالٍ فَدَعَانِي فَقَالَ: خُذْهُ فَقُلْتُ: لَا أُرِيدُهُ، قَالَ: خُذْهُ فَأَنْتُمْ أَحَقُّ بِهِ، قُلْتُ: قَدْ اسْتَغْنَيْنَا عَنْهُ، فَجَعَلَهُ فِي بَيْتِ الْمَالِ» .

أَبُو جَعْفَرٍ الرَّازِيّ ثِقَةٌ رَوَى عَنْهُ عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ وَغَيْرُهُ.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا ابْنُ أَبِي عُمَرَ نَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ بْنِ عَمْرِو بْنِ سَعِيدِ بْنِ الْعَاصِ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ يَزِيدَ بْنِ هُرْمُزَ قَالَ: إِنَّ ابْنَ عَبَّاسٍ أَمَرَهُ أَنْ يَكْتُبَ إِلَى نَجْدَةَ: وَكَتَبْت تَسْأَلُنِي عَنْ ذَوِي الْقُرْبَى مَنْ هُمْ؛ وَإِنَّا زَعَمْنَا أَنَّا هُمْ، فَأَبَى ذَلِكَ عَلَيْنَا قَوْمُنَا.

relatives – who are they? We claimed that we are the ones, but our people denied that from us.'"

L15808 These authentic, clear reports are not contradicted by what is unsound or what has been falsified in matters where there is nothing of them present. Our position in this is the position of Abu al-ʻAliyah - and it has also been reported from Umar ibn Abd al-ʻAziz.

فَهَذِهِ الْأَخْبَارُ الصِّحَاحُ الْبَيِّنَةُ وَلَا يُعَارِضُهَا مَا لَا يَصِحُّ، أَوْ مَا مَوَّهَ بِهِ فِيمَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ، وَقَوْلُنَا فِي هَذَا هُوَ قَوْلُ أَبِي الْعَالِيَةِ - وَقَدْ رُوِيَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَيْضًا.

L15809 And it has been narrated to us through the chain of ʿAbd ibn Ḥumayd, from Abū Nuʿaym, from Zuhayr, from al-Ḥasan ibn al-Ḥurr, from al-Ḥakam, from ʿAmr ibn Shuʿayb, from his father, who said: The fifth portion of the *khums* is the share of Allah, the Exalted, and the share of His Messenger – peace and blessings of Allah be upon him –.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ نَا أَبُو نُعَيْمٍ عَنْ زُهَيْرٍ عَنْ الْحَسَنِ بْنِ الْحُرِّ نَا الْحَكَمُ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ قَالَ: خُمُسُ الْخُمُسِ سَهْمُ اللَّهِ تَعَالَى، وَسَهْمُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L15810 And from the path of Abd ibn Humaid as well, Amr ibn Awn informed us from Hushaym from al-Mughirah from Ibrahim an-Nakhaʿī {And know that whatever you take as spoils, then indeed, one-fifth of it is for Allah, and for the Messenger, the near relatives, the orphans, and the needy} [Al-Anfal:41]. He said: Everything belongs to Allah the Exalted, and the fifth of Allah the Exalted and His Messenger—peace and blessings of Allah be upon him—is a single portion. The remaining four-fifths are divided into four shares.[33]

وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ أَيْضًا أَخْبَرَنَا عَمْرُو بْنُ عَوْنٍ عَنْ هُشَيْمٍ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ {وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ} [الأنفال: ٤١] ، قَالَ: كُلُّ شَيْءٍ لِلَّهِ تَعَالَى، وَخُمُسُ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاحِدٌ، وَيُقْسَمُ مَا سِوَى ذَلِكَ عَلَى أَرْبَعَةِ أَسْهُمٍ.

L15811–15812 From the path of Abd ibn Humaid: Abdullah—son of Abdul-Majid ath-Thaqafi—informed us, from Saʿid—son of Abu Arubah—from Qatadah, who said: The spoils are divided into five fifths. Four fifths are for those who fought for them. Then the remainder is divided into five fifths: one fifth for Allah the Exalted and the Messenger, one fifth for the relatives of the Messenger—peace and blessings of Allah be upon him—one fifth for orphans, one fifth for wayfarers, and one fifth for the poor.

وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ: أَخْبَرَنَا عَبْدُ اللَّهِ هُوَ ابْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ - عَنْ سَعِيدٍ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ قَالَ: تُقْسَمُ الْغَنَائِمُ خَمْسَةَ أَخْمَاسٍ، فَأَرْبَعَةُ أَخْمَاسٍ لِمَنْ قَاتَلَ عَلَيْهَا، ثُمَّ يُقْسَمُ الْبَاقِي عَلَى خَمْسَةِ أَخْمَاسٍ، فَخُمُسٌ مِنْهَا لِلَّهِ تَعَالَى وَلِلرَّسُولِ، وَخُمُسٌ لِقَرَابَةِ الرَّسُولِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَخُمُسٌ لِلْيَتَامَى، وَخُمُسٌ لِابْنِ السَّبِيلِ، وَخُمُسٌ لِلْمَسَاكِينِ.

L15813 Abu Muhammad said: This is the opinion of Al-Awzaʿī, Sufyān al-Thawrī, Al-Shāfiʿī, Abu Thawr, Isḥāq, Abu Sulaymān, An-Nasā'ī, the majority of ḥadīth scholars, and the latter of Judge Abū Yūsuf's two opinions, to which he reverted.

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَالنَّسَائِيُّ، وَجُمْهُورِ أَصْحَابِ الْحَدِيثِ، وَآخِرُ قَوْلَيْ أَبِي يُوسُفَ الْقَاضِي الَّذِي رَجَعَ إلَيْهِ.

[33] **Qur'an references (L15810):** Qur'an 8:41 (Al-Anfal).

L15814 However, Al-Shāfiʿī stated that a male among **two close relatives** receives a share equivalent to that of two females—but this is a mistake, as there is **no explicit scriptural basis** for it whatsoever, nor is it an inheritance **[which would necessitate]** dividing it in such a manner. Rather, it is **a discretionary grant** from Allah, **Exalted is He**, and they are equal in it.

إِلَّا أَنَّ الشَّافِعِيَّ قَالَ: لِلذَّكَرِ مِنْ ذَوِي الْقُرْبَى مِثْلُ حَظِّ الْأُنْثَيَيْنِ - وَهَذَا خَطَأٌ، لِأَنَّهُ لَمْ يَأْتِ بِهِ نَصٌّ أَصْلًا وَلَيْسَ مِيرَاثًا فَيُقْسَمُ كَذَلِكَ، وَإِنَّمَا هِيَ عَطِيَّةٌ مِنَ اللَّهِ تَعَالَى، فَهُمْ فِيهَا سَوَاءٌ.

L15815 Mālik said: The entire fifth is to be placed in the public treasury, and the kin of the Messenger of Allah—may Allah bless him and grant him peace—are to be given as the Imam judges, there being no specific or defined limit for that.

وَقَالَ مَالِكٌ: يُجْعَلُ الْخُمُسُ كُلُّهُ فِي بَيْتِ الْمَالِ، وَيُعْطَى أَقْرِبَاءُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَا يَرَى الْإِمَامُ لَيْسَ فِي ذَلِكَ حَدٌّ مَحْدُودٌ.

L15816 His relatives—peace be upon him—are the entire Quraysh tribe.

قَالَ أَصْبَغُ بْنُ فَرَجٍ: أَقْرِبَاؤُهُ - عَلَيْهِ السَّلَامُ - هُمْ جَمِيعُ قُرَيْشٍ.

L15817 Abū Ḥanīfa said: The khums is divided into three shares: the destitute, the impoverished, and the stranded traveler.

وَقَالَ أَبُو حَنِيفَةَ: يُقْسَمُ الْخُمُسُ عَلَى ثَلَاثَةِ أَسْهُمٍ: الْفُقَرَاءِ، وَالْمَسَاكِينِ، وَابْنِ السَّبِيلِ.

L15818 Ali said: These statements are utterly invalid, as they explicitly contradict the Quran, oppose the established Sunnah, and no opinion of Abū Ḥanīfah is known to have been held by any of the people of Islam before him. We have exhaustively examined all they disputed in the book *Al-Iṣāl*, and the sum total of this for anyone who reflects is that they only argued with fabricated narrations transmitted by al-Zubayrī and his peers, disconnected reports, or authentic narrations containing no evidence whatsoever for their claims, or statements from a companion contradicted by others among them—and nothing more. And success is from Allah, the Most High.

قَالَ عَلِيٌّ: هَذِهِ أَقْوَالٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّهَا خِلَافُ الْقُرْآنِ نَصًّا، وَخِلَافُ السُّنَنِ الثَّابِتَةِ، وَلَا يُعْرَفُ قَوْلُ أَبِي حَنِيفَةَ عَنْ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ قَبْلَهُ، وَقَدْ تَقَصَّيْنَا كُلَّ مَا شَغَبُوا بِهِ فِي كِتَابِ الْإِيصَالِ، وَجِمَاعُ كُلِّ ذَلِكَ لِكُلِّ مَنْ تَأَمَّلَهُ أَنَّهُمْ إِنَّمَا احْتَجُّوا بِأَحَادِيثَ مَوْضُوعَةٍ مِنْ رِوَايَةِ الزُّبَيْرِيِّ، وَنُظَرَائِهِ، أَوْ مُرْسَلَةٍ، أَوْ صِحَاحٍ لَيْسَ فِيهَا دَلِيلٌ عَلَى مَا ادَّعَوْهُ أَصْلًا، أَوْ قَوْلٍ عَنْ صَاحِبٍ قَدْ خَالَفَهُ غَيْرُهُ مِنْهُمْ وَلَا مَزِيدَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L15819 950 – Issue:

٩٥٠ - مَسْأَلَةٌ:

L15820 The remaining four-fifths after the deduction of the fifth (khums) are distributed among those present at the battle or the acquisition of spoils. The owner of a horse receives three shares: one share for himself and two shares for his horse. The foot soldier, the rider of a mule, the rider of a donkey, and the rider of a camel are each entitled to only one share. This is the position of Malik, Al-Shāfiʿī, and Abū Sulaymān.

وَتُقْسَمُ الْأَرْبَعَةُ الْأَخْمَاسُ الْبَاقِيَةُ بَعْدَ الْخُمُسِ عَلَى مَنْ حَضَرَ الْوَقْعَةَ، أَوْ الْغَنِيمَةَ، لِصَاحِبِ الْفَرَسِ ثَلَاثَةُ أَسْهُمٍ: لَهُ سَهْمٌ، وَلِفَرَسِهِ سَهْمَانِ، وَلِلرَّاجِلِ، وَرَاكِبِ الْبَغْلِ، وَالْحِمَارِ، وَالْجَمَلِ: سَهْمٌ وَاحِدٌ فَقَطْ. وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L15821–15822 Abū Ḥanīfah said: A horseman receives two shares—one for himself and one for his horse—and the rest of the aforementioned receive one share each—this is the opinion of Abū Mūsā al-Ashʿarī.

وَقَالَ أَبُو حَنِيفَةَ: لِلْفَارِسِ سَهْمَانِ: لَهُ سَهْمٌ، وَلِفَرَسِهِ سَهْمٌ، وَلِسَائِرِ مَنْ ذَكَرْنَا سَهْمٌ - وَهُوَ قَوْلُ أَبِي مُوسَى الْأَشْعَرِيِّ.

L15823 Aḥmad said: The horseman receives three shares, the camel-mounted warrior two shares, and others besides these two one share.

وَقَالَ أَحْمَدُ: لِلْفَارِسِ ثَلَاثَةُ أَسْهُمٍ، وَلِرَاكِبِ الْبَعِيرِ سَهْمَانِ، وَلِغَيْرِهِمَا سَهْمٌ.

L15824 Abu Muhammad said: As for the opinion of Ahmad, we do not know of any valid legal argument for it.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَحْمَدَ فَمَا نَعْلَمُ لَهُ حُجَّةً.

L15825 As for the statement of Abū Ḥanīfah, they cited weak narrations as evidence for it. Among them is a report transmitted through the chain of Mujammiʿ ibn Yaʿqūb ibn Mujammiʿ ibn Yazīd ibn Jāriyah al-Anṣārī, from his father, from his uncle ʿAbd al-Raḥmān ibn Yazīd, from his uncle Mujammiʿ ibn Jāriyah al-Anṣārī—who was one of the Qur'an reciters—"that the Messenger of Allāh (peace and blessings of Allāh be upon him) gave two shares to the horseman and one share to the foot soldier." Mujammiʿ is unknown, and his father is likewise.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَإِنَّهُمْ احْتَجُّوا لَهُ بِآثَارٍ ضَعِيفَةٍ. مِنْهَا: مِنْ طَرِيقِ مُجَمِّعِ بْنِ يَعْقُوبَ بْنِ مُجَمِّعِ بْنِ يَزِيدَ بْنِ جَارِيَةَ الْأَنْصَارِيِّ عَنْ أَبِيهِ عَنْ عَمِّهِ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ عَنْ عَمِّهِ مُجَمِّعِ بْنِ جَارِيَةَ الْأَنْصَارِيِّ - وَكَانَ أَحَدَ الْقُرَّاءِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَى لِلْفَارِسِ سَهْمَيْنِ، وَالرَّاجِلِ سَهْمًا» . مُجَمِّعٌ مَجْهُولٌ وَأَبُوهُ كَذَلِكَ.

L15826 Through the chain of ʿAbdullāh ibn ʿUmar, from Nāfiʿ, from Ibn ʿUmar: "The Messenger of Allah (peace be upon him) assigned two shares for the horseman and one share for the foot soldier."

وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ لِلْفَارِسِ سَهْمَيْنِ، وَلِلرَّاجِلِ سَهْمًا» .

L15827 Abdullah ibn Umar, who narrates from Nāfiʿ, is graded as extremely weak.

عَبْدُ اللَّهِ بْنُ عُمَرَ الَّذِي يَرْوِي عَنْ نَافِعٍ فِي غَايَةِ الضَّعْفِ.

L15828 From a sheikh of the people of Ash-Sham (the Levant), from Makḥūl, the like of that.

وَعَنْ شَيْخٍ مِنْ أَهْلِ الشَّامِ عَنْ مَكْحُولٍ مِثْلُ ذَلِكَ.

L15829 This is a scandalous [matter]—unknown (majhūl) and disconnected (mursal).

وَهَذِهِ فَضِيحَةٌ مَجْهُولٌ، وَمُرْسَلٌ.

L15830 Abu Hanifah argued by stating: "I do not prefer an animal over a human." It is said to him: "Yet you equate between them? This is truly astonishing! If equating them is permissible, what prohibits preferential treatment?" Moreover, he allocates a war share for the horse even if it does not fight, yet denies shares to Muslim traders or hired workers unless they fight. Thus he has preferred animals over humans. Furthermore, he rules regarding a person who kills a Muslim's dog, a distinguished Muslim slave, or a Dhimmi's pig: the value of each of them is twenty thousand dirhams. He therefore pays

وَاحْتَجَّ أَبُو حَنِيفَةَ بِأَنْ قَالَ: لَا أُفَضِّلُ بَهِيمَةً عَلَى إنْسَانٍ، فَيُقَالُ لَهُ: وَتُسَاوِي بَيْنَهُمَا إنَّ هَذَا لَعَجَبٌ، فَإِذَا جَازَتْ الْمُسَاوَاةُ فَمَا مَنَعَ التَّفْضِيلَ؟ ثُمَّ هُوَ يُسْهِمُ لِلْفَرَسِ وَإِنْ لَمْ يُقَاتَلْ عَلَيْهِ، وَلَا يُسْهِمُ لِلْمُسْلِمِ التَّاجِرِ، وَلَا الْأَجِيرِ إلَّا أَنْ يُقَاتِلَا، فَقَدْ فَضَّلَ بَهِيمَةً عَلَى إنْسَانٍ، ثُمَّ هُوَ يَقُولُ فِي إنْسَانٍ قَتَلَ كَلْبًا لِمُسْلِمٍ، وَعَبْدًا مُسْلِمًا فَاضِلًا، وَخِنْزِيرًا لِذِمِّيٍّ:

twenty thousand dirhams for the dog, the same for the pig, but gives only ten thousand dirhams minus ten dirhams (9,990) for the Muslim slave. Marvel at this invalid opinion and praise Allah the Exalted for granting safety, for he has indeed preferred animals over humans.

- قِيمَةُ كُلِّ وَاحِدٍ مِنْهُمْ عِشْرُونَ أَلْفَ دِرْهَمٍ، فَإِنَّهُ يُؤَدِّي فِي الْكَلْبِ عِشْرِينَ أَلْفَ دِرْهَمٍ، وَفِي الْخِنْزِيرِ ذَلِكَ، وَلَا يُعْطِي فِي الْعَبْدِ الْمُسْلِمِ إِلَّا عَشَرَةَ آلَافِ دِرْهَمٍ غَيْرَ عَشَرَةِ دَرَاهِمَ، فَاعْجَبُوا لِهَذَا الرَّأْيِ السَّاقِطِ وَاحْمَدُوا اللَّهَ تَعَالَى عَلَى السَّلَامَةِ، فَقَدْ فَضَّلَ الْبَهِيمَةَ عَلَى الْإِنْسَانِ.

L15831–15833 They said: "Has consensus truly been established regarding the two shares?" We replied to them: "If you do not accept what is authentically established from the Prophet (peace be upon him), we addressed you on that matter. How then can your claim of consensus here be anything but false? We do not know; perhaps those who erred did so as you did. Then who could possibly say 'No'?" A horseman is preferred over a pedestrian, just as a mule rider is not preferred over a pedestrian, nor is the brave, heroic, and seasoned warrior preferred over the cowardly, weak, or sick individual.

قَالُوا: قَدْ صَحَّ الْإِجْمَاعُ عَلَى السَّهْمَيْنِ؟ فَقُلْنَا لَهُمْ: إِنْ كُنْتُمْ لَا تَقُولُونَ بِمَا صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَلَّمْنَاكُمْ فِي ذَلِكَ فَكَيْفَ وَدَعْوَاكُمُ الْإِجْمَاعَ هَاهُنَا كَذِبٌ؟ وَمَا نَدْرِي لَعَلَّ فِيمَنْ أَخْطَأَ نَخْطِئُكُمْ، ثُمَّ مَنْ يَقُولُ: لَا يُفَضَّلُ فَارِسٌ عَلَى رَاجِلٍ، كَمَا لَا يُفَضَّلُ رَاكِبُ الْبَغْلِ عَلَى الرَّاجِلِ، وَكَمَا لَا يُفَضَّلُ الشُّجَاعُ الْبَطَلُ الْمُبْلِي، عَلَى الْجَبَانِ الضَّعِيفِ الْمَرِيضِ.

L15834 Then, if you were to consistently apply your principle, it would necessitate abolishing zakah on everything you have imposed it upon—such as honey and other items—and your position regarding blood money pertaining to the unbeliever would be invalidated, as there is no consensus on any of that. This would demolish the majority of your jurisprudential schools of thought.

ثُمَّ لَوْ طَرَدْتُمْ أَصْلَكُمْ هَذَا لَوَجَبَ أَنْ تُسْقِطُوا الزَّكَاةَ عَنْ كُلِّ مَا أَوْجَبْتُمُوهَا فِيهِ مِنَ الْعَسَلِ وَغَيْرِ ذَلِكَ، وَلَبَطَلَ قَوْلُكُمْ فِي دِيَةِ الْكَافِرِ لِأَنَّهُ لَمْ يُجْمَعْ عَلَى شَيْءٍ مِنْ ذَلِكَ، وَهَذَا يَهْدِمُ عَلَيْكُمْ أَكْثَرَ مَذَاهِبِكُمْ.

L15835 They reported that the first to assign two shares to the horse was 'Umar ibn al-Khaṭṭāb via the *isnad* of Layth from al-Ḥakam—though this chain is disconnected. Yet they consider 'Umar's ruling of eighty lashes as the ḥadd punishment for intoxicants to be a sunnah. Therefore, they should likewise make this act of assigning two shares to the horse a sunnah.

وَرَوَوْا: أَنَّ أَوَّلَ مَنْ جَعَلَ لِلْفَرَسِ سَهْمَيْنِ عُمَرُ بْنُ الْخَطَّابِ، مِنْ طَرِيقِ لَيْثٍ عَنِ الْحَكَمِ - وَهَذَا مُنْقَطِعٌ، وَهُمْ يَرَوْنَ حُكْمَ عُمَرَ فِي حَدِّ الْخَمْرِ ثَمَانِينَ سُنَّةً، فَهَذَا يَنْبَغِي أَنْ يَجْعَلُوهُ سُنَّةً أَيْضًا.

L15836 It was narrated to us via Al-Bukhārī's transmission: Ubayd ibn Ismāʿīl → Abū Usāmah → Ubaydullāh ibn ʿUmar → Nāfiʿ → Ibn ʿUmar, who said: "The Messenger of Allah (peace be upon him) assigned two shares for [maintaining] the horse and one share for its rider."

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا عُبَيْدُ بْنُ إِسْمَاعِيلَ عَنْ أَبِي أُسَامَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: «جَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْفَرَسِ سَهْمَيْنِ، وَلِصَاحِبِهِ سَهْمًا» .

L15837 Through the chain of al-Bukhārī: Al-Ḥasan ibn Isḥāq narrated to us,

Muḥammad ibn Sābiq narrated to us, Zā'idah narrated to us from ʿUbayd Allāh ibn ʿUmar, from Nāfiʿ, from Ibn ʿUmar, who said: "The Messenger of Allāh (peace be upon him) allocated two shares to the horse and one share to the footman on the day of Khaybar."

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا الْحَسَنُ بْنُ إِسْحَاقَ نَا مُحَمَّدُ بْنُ سَابِقٍ نَا زَائِدَةُ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «قَسَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْفَرَسِ سَهْمَيْنِ وَلِلرَّاجِلِ سَهْمًا يَوْمَ خَيْبَرَ» .

L15838 This is what must not be opposed due to its soundness, and because if those reports were authentic, this would be an addition to them, and the addition of a just person may not be rejected. This is the opinion of Saʿd ibn Abī Waqqāṣ, al-Ḥasan, and Ibn Sīrīn. This has been narrated from the Companions—and this is the view of ʿUmar ibn ʿAbd al-ʿAzīz [and by Allah, the Exalted, is all success].

فَهَذَا هُوَ الَّذِي لَا يَجُوزُ خِلَافُهُ لِصِحَّتِهِ، وَلِأَنَّهُ لَوْ صَحَّتْ تِلْكَ الْأَخْبَارُ لَكَانَ هَذَا زَائِدًا عَلَيْهَا، وَزِيَادَةُ الْعَدْلِ لَا يَجُوزُ رَدُّهَا. وَهُوَ قَوْلُ سَعْدِ بْنِ أَبِي وَقَّاصٍ، وَالْحَسَنِ، وَابْنِ سِيرِينَ، ذُكِرَ ذَلِكَ عَنْ الصَّحَابَةِ - وَبِهِ يَقُولُ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ [وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ] .

L15839 951 - Issue:

٩٥١ - مَسْأَلَةٌ:

L15840 Whoever is present with horses is not allocated any shares except three only. Some have said that shares are allocated for two horses only.

وَمَنْ حَضَرَ بِخَيْلٍ لَمْ يُسْهَمْ لَهُ إلَّا ثَلَاثَةُ أَسْهُمٍ فَقَطْ، وَقَدْ قَالَ قَوْمٌ: يُسْهَمُ لِفَرَسَيْنِ فَقَطْ.

L15841 Others said: A share is allotted to each horse from them [the spoils], and this lacks any conclusive proof.

وَقَالَ آخَرُونَ: يُسْهَمُ لِكُلِّ فَرَسٍ مِنْهَا - وَهَذَا لَا يَقُومُ بِهِ بُرْهَانٌ.

L15842 If it is asked, "It is narrated that the Prophet—peace and blessings of Allah be upon him—granted al-Zubayr a share because he had two horses?"

فَإِنْ قِيلَ: قَدْ رُوِيَ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَسْهَمَ لِلزُّبَيْرِ لِفَرَسَيْنِ؟

L15843–15844 We said: This is a *mursal* narration that is not authentic. The most authentic narration on this matter is the one we transmitted via Ibn Wahb's chain from Saʿīd ibn ʿAbd al-Raḥmān, from Hishām ibn ʿUrwah, from Yaḥyā ibn ʿAbbād ibn ʿAbd Allāh ibn al-Zubayr, from his grandfather, who said: "During the year of Khaybar, the Messenger of Allah (may Allah bless him and grant him peace) apportioned four shares for al-Zubayr: a share for al-Zubayr himself, a kinship share for Ṣafiyyah bint ʿAbd al-Muṭṭalib, and two shares for the warhorse."

قُلْنَا: هَذَا مُرْسَلٌ لَا يَصِحُّ، وَأَصَحُّ حَدِيثٍ فِيهِ هُوَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ سَعِيدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ يَحْيَى بْنِ عَبَّادِ بْنِ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ عَنْ جَدِّهِ قَالَ «ضَرَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَامَ خَيْبَرَ لِلزُّبَيْرِ بِأَرْبَعَةِ أَسْهُمٍ: سَهْمٍ لِلزُّبَيْرِ، وَسَهْمٍ الْقُرْبَى لِصَفِيَّةَ بِنْتِ عَبْدِ الْمُطَّلِبِ، وَسَهْمَيْنِ لِلْفَرَسِ» .

L15845 952. Issue:

٩٥٢ - مَسْأَلَةٌ:

L15846 Shares are allocated equally to the hired worker, the merchant, the slave, the free person, the sick, and the healthy—they are all equal. This is based on Allah's statement, the Exalted: *"So consume what you have gained as

وَيُسْهَمُ لِلْأَجِيرِ، وَلِلتَّاجِرِ، وَلِلْعَبْدِ، وَلِلْحُرِّ، وَالْمَرِيضِ، وَالصَّحِيحِ سَوَاءٌ سَوَاءٌ كُلُّهُمْ؛ لِقَوْلِ اللَّهِ تَعَالَى: {فَكُلُوا مِمَّا غَنِمْتُمْ حَلالا طَيِّبًا} [الأنفال: ٦٩] وَلِلْأَثَرِ الَّذِي أَوْرَدْنَا آنِفًا مِنْ

spoils, lawful and good”* (Al-Anfal 8:69), and the narration we previously mentioned that the Prophet (peace be upon him) *“assigned three shares to the horseman and one share to the foot soldier.”* The Prophet (peace be upon him) did not distinguish between a free person and a slave, a hired worker and others, or a merchant and others. It is therefore impermissible to restrict any of this through baseless conjecture.[34]

L15847 If they cite as evidence the statement of Ibn Abbas in his letter to Najdah, where he wrote: “You asked me about the slave and the woman present during the distribution of spoils—is a share apportioned to them, or do they receive nothing except what they can personally acquire?”—then this is the statement of Ibn Abbas.

L15848 It has been narrated to us through the chain of ʿAmr ibn Shuʿayb from Saʿīd ibn al-Musayyib that ʿUmar said: “A slave has no share of the spoils, nor does anyone besides the Messenger of Allah (peace be upon him) possess decisive authority.”

L15849 And how many cases have they disagreed with Ibn Abbas on? Such as opinions on the sale of ummahāt al-awlād (enslaved mothers who bore children to their masters), rulings regarding ṣarf (exchange of currencies under Islamic jurisprudence), the share of near relatives (dhī al-qurbā) in inheritance, and other such matters.

L15850 If they mention what was narrated to us through the chain of Ahmad ibn Hanbal—Bishr ibn al-Mufaḍḍal narrated to us from Muḥammad ibn Zayd ibn al-Muhājir, who narrated to me that ‘Umayr, the freedman of Abi al-Lahm, said: “I was present at Khaybar with my masters. They petitioned the Messenger of Allah—peace and blessings be upon him—regarding me. He ordered that I be girded with a sword, but I began dragging it. When it was reported that I was a slave, he commanded that I be given some old belongings.”

L15851 This [report] provides no valid proof because Muḥammad ibn Zayd is not established as reliable.

أَنَّهُ - عَلَيْهِ السَّلَامُ - «قَسَمَ لِلْفَارِسِ ثَلَاثَةَ أَسْهُمٍ وَلِلرَّاجِلِ سَهْمًا» ، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - حُرًّا مِنْ عَبْدٍ، وَلَا أَجِيرًا مِنْ غَيْرِهِ، وَلَا تَاجِرًا مِنْ سِوَاهُ، فَلَا يَجُوزُ تَخْصِيصُ شَيْءٍ مِنْ ذَلِكَ بِالظَّنِّ الْكَاذِبِ.

فَإِنْ احْتَجُّوا بِقَوْلِ ابْنِ عَبَّاسٍ فِي كِتَابِهِ إِلَى نَجْدَةَ تَسْأَلُنِي عَنْ الْعَبْدِ وَالْمَرْأَةِ يَحْضُرَانِ الْمَغْنَمَ، هَلْ يُقْسَمُ لَهُمَا؟ أَوْ أَنَّهُ لَيْسَ لَهُمَا شَيْءٌ إلَّا أَنْ يَحْذِيَا فَهَذَا قَوْلُ ابْنِ عَبَّاسٍ.

وَقَدْ رُوِّينَا أَيْضًا مِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُمَرَ لَيْسَ لِلْعَبْدِ مِنْ الْغَنِيمَةِ شَيْءٌ، وَلَا حُجَّةَ فِيمَنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا ابْنَ عَبَّاسٍ؟ كَقَوْلٍ فِي بَيْعِ أُمَّهَاتِ الْأَوْلَادِ، وَالصَّرْفِ، وَسَهْمِ ذِي الْقُرْبَى، وَغَيْرِ ذَلِكَ.

فَإِنْ ذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ: نَا بِشْرُ بْنُ الْمُفَضَّلِ عَنْ مُحَمَّدِ بْنِ زَيْدِ بْنِ الْمُهَاجِرِ حَدَّثَنِي «عُمَيْرٌ مَوْلَى آبِي اللَّحْمِ قَالَ شَهِدْتُ خَيْبَرَ مَعَ سَادَاتِي فَكَلَّمُوا فِي رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَ بِي فَقُلِّدْتُ السَّيْفَ فَإِذَا أَنَا أَجُرُّهُ، فَأُخْبِرَ أَنِّي مَمْلُوكٌ، فَأَمَرَ لِي بِشَيْءٍ مِنْ خُرْثِيِّ الْمَتَاعِ» .

فَهَذَا لَا حُجَّةَ فِيهِ، لِأَنَّ مُحَمَّدَ بْنَ زَيْدٍ غَيْرُ مَشْهُورٍ.

[34] **Qur’an references (L15846):** Qur’an 8:69 (Al-Anfal).

وَقَدْ رُوِّينَاهُ مِنْ طَرِيقِ حَفْصِ بْنِ غِيَاثٍ فَقَالَ مُحَمَّدُ بْنُ زَيْدٍ وَأَيْضًا فَإِنَّهُ ذَكَرَ أَنَّهُ كَانَ يَجُرُّ السَّيْفَ، وَهَذَا صِفَةُ مَنْ لَمْ يَبْلُغْ.

L15852 We have narrated it through the chain of Ḥafṣ ibn Ghiyāth. Muḥammad ibn Zayd also stated, for he [the subject] mentioned that he used to drag the sword, and this is a characteristic of one who has not attained maturity.

وَهَكَذَا نَقُولُ: إِنَّ مَنْ لَمْ يَبْلُغْ لَا يُسْهَمُ لَهُ.

L15853–15854 And thus we say: Indeed, no share is allocated to one who has not reached puberty.

فَإِنْ ذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ الثَّوْرِيِّ عَنْ ابْنِ أَبِي لَيْلَى «عَنْ فَضَالَةَ بْنِ عُبَيْدٍ أَنَّهُمْ كَانُوا مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي غَزْوَةٍ وَفِينَا مَمْلُوكُونَ فَلَمْ يَقْسِمْ لَهُمْ» ، وَهَذَا مُنْقَطِعٌ؛ لِأَنَّهُ إِنْ كَانَ ابْنُ أَبِي لَيْلَى هُوَ مُحَمَّدٌ - فَلَمْ يُدْرِكْ فَضَالَةَ؛ وَلَا وُلِدَ إِلَّا بَعْدَ مَوْتِهِ بِدَهْرٍ طَوِيلٍ؛ وَإِنْ كَانَ - هُوَ عَبْدُ الرَّحْمَنِ - فَالثَّوْرِيُّ لَمْ يُدْرِكْهُ وَلَا وُلِدَ إِلَّا بَعْدَ مَوْتِهِ بِسِنِينَ.

L15855 If they cite what has been narrated to us via the chain of al-Thawrī from Ibn Abī Laylā: “from Faḍāla ibn ʻUbayd that they were with the Prophet, peace and blessings of Allah be upon him, in a ghazwa—a military expedition—and among us were slaves, yet he did not apportion a share for them”—this chain is disconnected (munqaṭiʻ). For if Ibn Abī Laylā is Muḥammad, he never met Faḍāla and was born only a very long time after his death. If it is ʻAbd al-Raḥmān, then al-Thawrī never met him either and was born only years after his death.

رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا إِبْرَاهِيمُ بْنُ مُوسَى الرَّازِيّ أَخْبَرَنَا عِيسَى أَخْبَرَنَا ابْنُ أَبِي ذِئْبٍ عَنْ الْقَاسِمِ بْنِ عَبَّاسٍ الْهُبَلِيِّ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارَ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: كَانَ أَبِي يَقْسِمُ لِلْحُرِّ وَلِلْعَبْدِ.

L15856 It was narrated to us via Abu Dawud, who narrated to us: Ibrahim ibn Musa al-Razi informed us; Isa reported; Ibn Abi Dhi'b conveyed—narrating from al-Qasim ibn Abbas al-Lahbi, from Abdullah ibn Dinar, from Urwah, from Aisha, the Mother of the Believers, who said: “My father used to allocate portions to the free person and the slave.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا وَكِيعُ بْنُ أَبِي ذِئْبٍ عَنْ خَالِهِ الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي قُرَّةَ قَالَ: قَسَمَ لِي أَبُو بَكْرٍ الصِّدِّيقُ كَمَا قَسَمَ لِسَيِّدِي.

L15857 On the authority of Ibn Abi Shaybah who reported to us: Wakiʻ ibn Abi Dhi'b narrated from his maternal uncle al-Harith ibn Abd al-Rahman, from Abu Qurrah, who said: “Abu Bakr al-Siddiq allocated to me just as he allocated to my master.”

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا حَفْصُ بْنُ غِيَاثٍ عَنْ أَشْعَثَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَالْحَسَنِ الْبَصْرِيِّ، وَمُحَمَّدِ بْنِ سِيرِينَ، قَالُوا: مَنْ شَهِدَ الْبَأْسَ مِنْ حُرٍّ، أَوْ عَبْدٍ، أَوْ أَجِيرٍ، فَلَهُ سَهْمٌ.

L15858 It has been narrated to us through the chain of Ibn Abi Shaybah: Hafs ibn Ghiyath narrated to us from Ash'ath, from al-Hakam ibn 'Utaybah; al-Hasan al-Basri; and Muhammad ibn Sirin - all of whom said: Whoever witnesses combat as a free person, a slave, or a hired worker shall receive a share.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا جَرِيرٌ عَنْ الْمُغِيرَةِ عَنْ حَمَّادٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ فِي الْغَنَائِمِ يَسْبِيهَا الْجَيْشُ قَالَ: إنْ أَعَانَهُمْ التَّاجِرُ، وَالْعَبْدُ: ضُرِبَ لَهُ بِسِهَامِهِمْ مَعَ الْجَيْشِ.

L15859 And from the narration of Ibn Abi Shaybah: Jarir narrated from al-Mughira from Hammad from Ibrahim al-Nakha'i concerning spoils seized by the army.

He said: If a merchant and a slave assist them, a share is allotted to them with their shares with the army.

L15860 Abu Bakr said: It was narrated to us by Muhammad ibn Fudayl from al-Mughirah from Hammad from Ibrahim al-Nakha'i, who said: If the merchant and the slave are present, a share is allocated to the merchant, and a share is allocated to the slave.

L15861 And via the chain of Ibn Abī Shaybah: Ibn Abī Shaybah informed us from Ghundar from Ibn Jurayj from ʻAmr ibn Shuʻayb, who said: A share is assigned to the slave, and this is the position of Abū Sulaymān.

L15862 Abū Muḥammad said: They concur with us that a share is allotted for the horse, though they claim to be proponents of analogy. Why then do they not allot a share for the slave by analogy to this? If they cite two reports—wherein it is stated that "a hired worker was contracted during the Prophet's time, peace and blessings be upon him, for a military expedition for three dinars, and he, peace and blessings be upon him, did not assign him a share beyond this"—then these are not authentic.

L15863–15864 Because one of them is through the chain of ʻAbd al-ʻAzīz ibn Abī Rawwād from Abū Salama al-Ḥimṣī: "that the Messenger of Allāh (peace and blessings of Allāh be upon him)" – and Abū Salama is unknown, while the chain is also interrupted. The second is through the chain of Ibn Wahb from ʻĀṣim ibn Ḥakīm ibn Yaḥyā ibn Abī ʻAmr al-Shaybānī from ʻAbdullāh ibn al-Daylamī that Yaʻlā ibn Munyah narrated. However, ʻĀṣim ibn Ḥakīm and ʻAbdullāh ibn al-Daylamī are both unknown.

L15865 Al-Hasan, Ibn Sīrīn, Al-Awzaʿī, and Al-Layth held the view: No share is allotted to a hired laborer.

L15866 Abu Hanifa and Malik said: No war booty share is allotted to the two of them unless they fight.

L15867 Sufyan al-Thawri said: A share is allotted to the merchant – Al-Hasan ibn Hayy said: A share is allotted to the hired worker.

L15868 953 – Issue:

قَالَ أَبُو بَكْرٍ: وَحَدَّثَنَاهُ مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ الْمُغِيرَةِ عَنْ حَمَّادٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إذَا شَهِدَ التَّاجِرُ، وَالْعَبْدُ، قُسِمَ لَهُ، وَقُسِمَ لِلْعَبْدِ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا غُنْدَرُ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: يُسْهَمُ لِلْعَبْدِ، وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ.

قَالَ أَبُو مُحَمَّدٍ: وَهُمْ مُوَافِقُونَ لَنَا عَلَى أَنْ يُسْهَمَ لِلْفَرَسِ، وَهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، فَهَلَّا أَسْهَمُوا لِلْعَبْدِ قِيَاسًا عَلَى ذَلِكَ؟ فَإِنْ ذَكَرُوا فِي الْأَجِيرِ خَبَرَيْنِ - فِيهِمَا «أَنَّ أَجِيرًا اُسْتُؤْجِرَ فِي زَمَانِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي غَزْوَةٍ بِثَلَاثَةِ دَنَانِيرَ فَلَمْ يَجْعَلْ لَهُ - عَلَيْهِ السَّلَامُ - سَهْمًا غَيْرَهَا» فَلَا يَصِحَّانِ.

لِأَنَّ أَحَدَهُمَا مِنْ طَرِيقِ عَبْدِ الْعَزِيزِ بْنِ أَبِي رَوَّادٍ عَنْ أَبِي سَلَمَةَ الْحِمْصِيِّ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " وَأَبُو سَلَمٍ مَجْهُولٌ، وَهُوَ مُنْقَطِعٌ أَيْضًا. وَالثَّانِي مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَاصِمِ بْنِ حَكِيمِ بْنِ يَحْيَى بْنِ أَبِي عَمْرٍو الشَّيْبَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ الدَّيْلَمِيِّ أَنَّ يَعْلَى بْنَ مُنْيَةَ - وَعَاصِمَ بْنَ حَكِيمٍ، وَعَبْدَ اللَّهِ بْنَ الدَّيْلَمِيِّ مَجْهُولَانِ.

وَقَالَ الْحَسَنُ، وَابْنُ سِيرِينَ وَالْأَوْزَاعِيُّ، وَاللَّيْثُ: لَا يُسْهَمُ لِلْأَجِيرِ.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَا يُسْهَمُ لَهُمَا إلَّا أَنْ يُقَاتِلَا.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: يُسْهَمُ لِلتَّاجِرِ - وَقَالَ الْحَسَنُ بْنُ حَيٍّ: يُسْهَمُ لِلْأَجِيرِ.

٩٥٣ - مَسْأَلَةٌ:

L15869 No share is allocated to a woman or to one who has not reached puberty—whether they fought or not—and they receive additional spoils without a foot soldier's share. A disbeliever may not accompany the military campaigns of the Muslims. If he does accompany them, no share is allocated to him whatsoever, nor is he granted additional spoils—whether he fought or not. It has been narrated to us through the chain of Muslim ibn Ibrāhīm: Ibn Qa'nab narrated to us; Sulaymān—that is, Ibn Bilāl—narrated to us from Ja'far ibn Muḥammad ibn 'Alī ibn al-Ḥusayn, from his father, from Yazīd ibn Hurmuz, from Ibn 'Abbās.

وَلَا يُسْهَمُ لِامْرَأَةٍ، وَلَا لِمَنْ لَمْ يَبْلُغْ - قَاتَلَا، أَوْ لَمْ يُقَاتِلَا - وَيُنْفَلَانِ دُونَ سَهْمِ رَاجِلٍ؛ وَلَا يَحْضُرُ مَغَازِيَ الْمُسْلِمِينَ كَافِرٌ فَإِنْ حَضَرَ لَمْ يُسْهَمْ لَهُ أَصْلًا، وَلَا يُنْفَلُ - قَاتَلَ أَوْ لَمْ يُقَاتِلْ. رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا ابْنُ قَعْنَبٍ نَا سُلَيْمَانُ هُوَ ابْنُ بِلَالٍ - عَنْ جَعْفَرِ بْنِ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ أَبِيهِ عَنْ يَزِيدَ بْنِ هُرْمُزَ عَنْ ابْنِ عَبَّاسٍ.

L15870 That the Messenger of Allah (peace be upon him) would take women on military campaigns where they would treat the wounded and were granted a portion from the spoils, but as for a share, he did not assign one to them.

«أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَغْزُو بِالنِّسَاءِ فَيُدَاوِينَ الْجَرْحَى وَيُحْذَيْنَ مِنْ الْغَنِيمَةِ وَأَمَّا بِسَهْمٍ فَلَمْ يَضْرِبْ لَهُنَّ» .

L15871 Abu Muhammad said: If the discretionary portion (nafl) for her had amounted to a foot soldier's share, he would have assigned shares to them—and this is the view of Sa'īd ibn al-Musayyab, Abū Ḥanīfah, al-Shāfi'ī, Sufyān al-Thawrī, al-Laith, and Abū Sulaymān.

قَالَ أَبُو مُحَمَّد: لَوْ بَلَغَ بِالنَّفْلِ لَهَا سَهْمَ رَاجِلٍ لَكَانَ قَدْ أَسْهَمَ لَهُنَّ - وَهُوَ قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَاللَّيْثِ، وَأَبِي سُلَيْمَانَ.

L15872 Mālik said: "No grant is allocated to them"—and this is an error, contradicting the aforementioned tradition. Abū Muḥammad said: It has been reported through the chain of Abū Dāwūd: Ibrāhīm ibn Sa'īd narrated to us, Zayd ibn al-Ḥubāb narrated from Rufay' ibn Salamah ibn Ziyād, who said: Ḥashraj ibn Ziyād narrated to me from his paternal grandmother that she campaigned with the Messenger of Allah—peace be upon him—among six women. She said: "He—peace be upon him—allocated shares of the spoils to us just as he allocated shares of the spoils to the men."

وَقَالَ مَالِكٌ: لَا يُرْضَخُ لَهُنَّ - وَهَذَا خَطَأٌ، وَخِلَافُ الْأَثَرِ الْمَذْكُورِ. قَالَ أَبُو مُحَمَّد: وَقَدْ رُوِيَ مِنْ طَرِيقِ أَبِي دَاوُد نَا إبْرَاهِيمُ بْنُ سَعِيدٍ أَخْبَرَنِي زَيْدُ بْنُ الْحُبَابِ نَا رُفَيْعُ بْنُ سَلَمَةَ بْنِ زِيَادٍ [قَالَ] حَدَّثَنِي «حَشْرَجُ بْنُ زِيَادٍ عَنْ جَدَّتِهِ أُمِّ أَبِيهِ أَنَّهَا غَزَتْ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سِتِّ نِسْوَةٍ قَالَتْ: فَأَسْهَمَ لَنَا - عَلَيْهِ السَّلَامُ - كَمَا أَسْهَمَ لِلرِّجَالِ» .

L15873–15874 And this is an obscure chain of transmission, Rāfi' and Ḥashraj: both are unknown.

وَهَذَا إسْنَادٌ مُظْلِمٌ، رَافِعٌ، وَحَشْرَجٌ: مَجْهُولَانِ.

L15875 From the path of Waki': Muḥammad ibn 'Abdullāh al-Shu'aythī narrated to us via Waki', from Khālid ibn Ma'dān, who said: "The Messenger of Allah—peace and blessings be upon him—granted shares for women, children, and horses." This is mursal. From the path of Ibn Abī Shaybah: Muḥammad ibn Rāshid narrated to us via Waki', from an unverified narrator, who said: "The

وَمِنْ طَرِيقِ وَكِيعٍ نَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الشُّعَيْثِيُّ عَنْ خَالِدِ بْنِ مَعْدَانَ قَالَ: «أَسْهَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلنِّسَاءِ وَلِلصِّبْيَانِ وَالْخَيْلِ» وَهَذَا مُرْسَلٌ. وَمِنْ طَرِيقِ ابْنِ

Messenger of Allah—peace and blessings be upon him—granted shares for women, children, and horses." This is also mursal.

أَبِي شَيْبَةَ نَا وَكِيعٌ نَا مُحَمَّدُ بْنُ رَاشِدٍ عَنْ مَجْهُولٍ قَالَ: «أَسْهَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلنِّسَاءِ وَالصِّبْيَانِ وَالْخَيْلِ» وَهَذَا أَيْضًا مُرْسَلٌ.

L15876 From the chain of Ibn Abī Shaybah: Abū Khālid al-Aḥmar narrated to us from ʿAbd al-Ḥamīd ibn Jaʿfar from Yazīd ibn Abī Ḥabīb from Sufyān ibn Wahb al-Khawlānī, who said: "'Umar ibn al-Khaṭṭāb distributed the spoils among the people, giving each person a dinar, and made the share of the man and the woman equal."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ عَبْدِ الْحَمِيدِ بْنِ جَعْفَرٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ سُفْيَانَ بْنِ وَهْبٍ الْخَوْلَانِيِّ قَالَ: قَسَمَ عُمَرُ بْنُ الْخَطَّابِ بَيْنَ النَّاسِ غَنَائِمَهُمْ فَأَعْطَى كُلَّ إنْسَانٍ دِينَارًا وَجَعَلَ سَهْمَ الرَّجُلِ وَالْمَرْأَةِ سَوَاءً.

L15877 From the narration of Wakīʿ: Shuʿbah reported from al-ʿAwwām ibn Muzāḥim, from Khālid ibn Sayḥān, who said: Four women, including Umm Majzaʾah ibn Thawr, were present with Abū Mūsā, and Abū Mūsā al-Ashʿarī assigned war spoils shares to them. This is the opinion of al-Awzāʿī, and it logically compelled the proponents of qiyās to adopt this position, for when a share is assigned to a horse—a mere beast—then a woman has a stronger right to a share if qiyās is truly valid.

وَمِنْ طَرِيقِ وَكِيعٍ نَا شُعْبَةُ عَنْ الْعَوَّامِ بْنِ مُزَاحِمٍ عَنْ خَالِدِ بْنِ سَيْحَانَ قَالَ: شَهِدَ مَعَ أَبِي مُوسَى أَرْبَعُ نِسْوَةٍ مِنْهُنَّ أُمُّ مَجْزَأَةَ بْنِ ثَوْرٍ فَأَسْهَمَ لَهُنَّ أَبُو مُوسَى الْأَشْعَرِيُّ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَقَدْ كَانَ يَلْزَمُ أَهْلَ الْقِيَاسِ أَنْ يَقُولُوا بِهَذَا لِأَنَّهُ إذَا أَسْهَمَ لِلْفَرَسِ - وَهُوَ بَهِيمَةٌ - فَالْمَرْأَةُ أَحَقُّ بِالسَّهْمِ إنْ كَانَ الْقِيَاسُ حَقًّا.

L15878 Abu Muhammad said: The action of the Messenger of Allah - peace and blessings of Allah be upon him - is decisive over all else. As for children, they are not legally obligated. As for granting extra shares to children from the fifth of the fifth share, there is no harm, for this falls under the general welfare of Muslims. As for disbelievers, it has been narrated to us through Waki', who narrated to us from Sufyan al-Thawri, from Ibn Jurayj, from al-Zuhri: "The Messenger of Allah - peace and blessings of Allah be upon him - would conduct military campaigns with Jews and allocate shares to them equivalent to those of the Muslims."

قَالَ أَبُو مُحَمَّدٍ: فِعْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ الْقَاضِي عَلَى مَا سِوَاهُ، وَأَمَّا الصِّبْيَانُ فَغَيْرُ مُخَاطَبِينَ، وَأَمَّا النَّفَلُ لِلصِّبْيَانِ أَيْضًا مِنْ خُمُسِ الْخُمُسِ فَلَا بَأْسَ، لِأَنَّهُ فِي جَمِيعِ مَصَالِحِ الْمُسْلِمِينَ، وَأَمَّا الْكَافِرُ فَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ ابْنِ جُرَيْجٍ عَنْ الزُّهْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَغْزُو بِالْيَهُودِ فَيُسْهِمُ لَهُمْ كَسِهَامِ الْمُسْلِمِينَ» .

L15879 We have narrated it from al-Zuhrī through various chains, all of which are authentic. From the chain of Wakīʿ—via al-Ḥasan ibn Ḥayy, from al-Shaybānī (who is Abū Isḥāq)—that Saʿd ibn Mālik, who is Ibn Abī Waqqāṣ, conducted a military campaign with a group of Jews and granted them a portion of the spoils.

وَرُوِّينَاهُ عَنْ الزُّهْرِيِّ مِنْ طُرُقٍ كُلُّهَا صِحَاحٍ عَنْهُ. وَمِنْ طَرِيقِ وَكِيعٍ نَا الْحَسَنُ بْنُ حَيٍّ عَنْ الشَّيْبَانِيِّ هُوَ أَبُو إِسْحَاقَ - أَنَّ سَعْدَ بْنَ مَالِكٍ هُوَ ابْنُ أَبِي وَقَّاصٍ - غَزَا بِقَوْمٍ مِنْ الْيَهُودِ فَرَضَخَ لَهُمْ.

L15880 And through the chain of Waki', who narrated to us from Sufyan, from Jābir, who said: I asked Al-Sha'bī about Muslims including dhimmis in their

military campaigns. Al-Sha'bī replied: I encountered the Imams—those who were jurists and those who were not—conducting campaigns with dhimmis, allocating shares for them and reducing a portion of their jizya. This constituted a generous additional share for them. —Al-Sha'bī was born during the early days of 'Alī's caliphate and met companions who lived afterward (may Allah be pleased with them)—.

وَمِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ عَنْ جَابِرٍ قَالَ: سَأَلْتُ الشَّعْبِيَّ عَنْ الْمُسْلِمِينَ يَغْزُونَ بِأَهْلِ الْكِتَابِ؟ فَقَالَ الشَّعْبِيُّ: أَدْرَكْت الْأَئِمَّةَ الْفَقِيهَ مِنْهُمْ وَغَيْرَ الْفَقِيهِ يَغْزُونَ بِأَهْلِ الذِّمَّةِ فَيَقْسِمُونَ لَهُمْ، وَيَضَعُونَ عَنْهُمْ مِنْ جِزْيَتِهِمْ؛ فَذَلِكَ لَهُمْ نَفْلٌ حَسَنٌ - وَالشَّعْبِيُّ وُلِدَ فِي أَوَّلِ أَيَّامِ عَلِيٍّ وَأَدْرَكَ مَنْ بَعْدَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L15881 And this is the opinion of Al-Awza'i. Sufyan Al-Thawri held that he should apportion to the polytheist, if he is present, a share like that of a Muslim.

وَهُوَ قَوْلُ الْأَوْزَاعِيِّ. وَسُفْيَانُ الثَّوْرِيُّ: أَنَّهُ يَقْسِمُ لِلْمُشْرِكِ إذَا حَضَرَ كَسَهْمِ الْمُسْلِمِ.

L15882–15883 It has been narrated to us through the chain via ʿAbd al-Razzāq, from Maʿmar. I heard Qatādah was asked about the people under covenant fighting alongside the Muslims. He said: "They are entitled to what they covenanted for; whatever was stipulated for them is theirs."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ: سَمِعْتُ قَتَادَةَ سُئِلَ عَنْ أَهْلِ الْعَهْدِ يَغْزُونَ مَعَ الْمُسْلِمِينَ؟ قَالَ: لَهُمْ مَا صَالَحُوا عَلَيْهِ مَا جُعِلَ لَهُمْ فَهُوَ لَهُمْ.

L15884 Abu Hanifah, Malik, al-Shafi'i, and Abu Sulayman all said: "They are not assigned a sahm." Abu Sulayman added: "Nor are they granted a raḍḥ, nor should assistance be sought from them."

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: لَا يُسْهَمُ لَهُمْ - قَالَ أَبُو سُلَيْمَانَ: وَلَا يُرْضَخُ لَهُمْ، وَلَا يُسْتَعَانُ بِهِمْ.

L15885 Abu Muhammad said: The hadith of al-Zuhri is mursal, and there is no proof in a mursal report. It would indeed obligate the Hanafis and Malikis – those who accept mursal narrations – to adopt this position, for it is among the finest mursal reports, particularly when combined with al-Sha'bi's statement that he encountered people following this practice. We know of no dissenting opinion among the Companions against Sa'd regarding this matter. Salman ibn Rabi'ah used to seek help from polytheists against polytheists. However, the proof in this matter is what we narrated through Malik's chain from al-Fuḍayl ibn Abī ʿAbd Allāh, from ʿAbd Allāh ibn Dīnār, from ʿUrwah, from ʿĀ'ishah, that the Messenger of Allah (PBUH) said: "We do not seek assistance from polytheists."

قَالَ أَبُو مُحَمَّدٍ: حَدِيثُ الزُّهْرِيِّ مُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ، وَلَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ الْقَائِلِينَ بِالْمُرْسَلِ أَنْ يَقُولُوا بِهَذَا، لِأَنَّهُ مِنْ أَحْسَنِ الْمَرَاسِيلِ لَا سِيَّمَا مَعَ قَوْلِ الشَّعْبِيِّ: أَنَّهُ أَدْرَكَ النَّاسَ عَلَى هَذَا، وَلَا نَعْلَمُ لِسَعْدٍ مُخَالِفًا فِي ذَلِكَ مِنْ الصَّحَابَةِ وَكَانَ سَلْمَانُ بْنُ رَبِيعَةَ يَسْتَعِينُ بِالْمُشْرِكِينَ عَلَى الْمُشْرِكِينَ، لَكِنَّ الْحُجَّةَ فِي هَذَا هُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ الْفُضَيْلِ بْنِ أَبِي عَبْدِ اللَّهِ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّا لَا نَسْتَعِينُ بِمُشْرِكٍ» .

L15886 From the chain of Muslim: Muḥammad ibn Rāfiʿ narrated to us, ʿAbd al-Razzāq narrated to us, Maʿmar ibn Hammām ibn Munabbiḥ informed us, Abū Hurayrah narrated to us from the Messenger of Allah—peace and blessings be upon him—in a ḥadīth that he said: "The spoils were not made lawful for

وَمِنْ طَرِيقِ مُسْلِمٍ نَا مُحَمَّدُ بْنُ رَافِعٍ نَا عَبْدُ الرَّزَّاقِ أَخْبَرَنَا مَعْمَرُ بْنُ هَمَّامِ بْنِ مُنَبِّهٍ نَا أَبُو هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثٍ أَنَّهُ قَالَ: «فَلَمْ تَحِلَّ الْغَنَائِمُ لِأَحَدٍ مِنْ قَبْلِنَا» . فَصَحَّ أَنَّهُ لَا حَقَّ فِي الْغَنَائِمِ لِغَيْرِ الْمُسْلِمِينَ.

anyone before us." Thus, it is confirmed that non-Muslims have no rightful claim to the spoils.

An issue where we were compelled to seek directions from a polytheist concerning the road.

954 – Question:

If we are compelled to seek a polytheist to show the way on a path, he may be hired for this with a specified payment from other than war spoils. This is based on what has been transmitted via Al-Bukhari's narration: Ibrāhīm ibn Mūsā narrated to us; Hishām, he is ibn Yūsuf, narrated to us; from Maʿmar, from Az-Zuhrī, from ʿUrwah ibn Az-Zubayr, from ʿĀ'ishah [may Allah be pleased with her], who said: "The Prophet [peace be upon him] and Abū Bakr hired a man from Banī al-Dīl, who adhered to the religion of the disbelievers of Quraysh, as a guide for the path."

Issue: He who slays a person from among the polytheists

955 - Issue:

Whoever kills a polytheist shall retain the slain's spoils—whether or not the Imam has declared it—regardless of the manner of killing, be it after capture or during combat. The spoils are exempt from the fifth levy whether little or much, and the claim to them is not valid except with evidence. In a legal ruling, if he has no evidence, fears it may be forcibly seized from him, or fears it may be subject to Khums (a fifth as an Islamic tax), he may conceal it and hide its matter.

The spoils of the slain combatant include: his horse, saddle, bridle, all clothing on him, ornaments, spurs (or riding equipment), every weapon in his possession, and all wealth carried in his girdle, held in his hand, or however it is transported with him.

Narrated to us via the chain of Mālik from Yaḥyā ibn Saʿīd al-Ansārī, from

[مَسْأَلَةٌ اُضْطُرِرْنَا إِلَى الْمُشْرِكِ فِي الدَّلَالَةِ فِي الطَّرِيقِ]

٩٥٤ - مَسْأَلَةٌ:

فَإِنْ اُضْطُرِرْنَا إِلَى الْمُشْرِكِ فِي الدَّلَالَةِ فِي الطَّرِيقِ اُسْتُؤْجِرَ لِذَلِكَ بِمَالٍ مُسَمًّى مِنْ غَيْرِ الْغَنِيمَةِ. لَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا إِبْرَاهِيمُ بْنُ مُوسَى نَا هِشَامٌ هُوَ ابْنُ يُوسُفَ - نَا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ [- رَضِيَ اللَّهُ عَنْهَا -] قَالَتْ «وَاسْتَأْجَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبُو بَكْرٍ رَجُلًا مِنْ بَنِي الدِّيلِ وَهُوَ عَلَى دِينِ كُفَّارِ قُرَيْشٍ هَادِيًا» يَعْنِي بِالطَّرِيقِ ".

[مَسْأَلَةٌ مَنْ قَتَلَ قَتِيلًا مِنْ الْمُشْرِكِينَ]

٩٥٥ - مَسْأَلَةٌ:

وَكُلُّ مَنْ قَتَلَ قَتِيلًا مِنْ الْمُشْرِكِينَ فَلَهُ سَلَبُهُ قَالَ ذَلِكَ الْإِمَامُ، أَوْ لَمْ يَقُلْهُ كَيْفَمَا قَتَلَهُ صَبْرًا، أَوْ فِي الْقِتَالِ؟ وَلَا يُخَمَّسُ السَّلَبُ قَلَّ، أَوْ كَثُرَ، وَلَا يُصَدَّقُ إلَّا بِبَيِّنَةٍ فِي الْحُكْمِ، فَإِنْ لَمْ تَكُنْ لَهُ بَيِّنَةٌ، أَوْ خَشِيَ أَنْ يُنْتَزَعَ مِنْهُ، أَوْ أَنْ يُخَمَّسَ فَلَهُ أَنْ يُغَيِّبَهُ، وَيُخْفِيَ أَمْرَهُ.

وَالسَّلَبُ: فَرَسُ الْمَقْتُولِ، وَسَرْجُهُ، وَلِجَامُهُ، وَكُلُّ مَا عَلَيْهِ مِنْ لِبَاسٍ، وَحِلْيَةٍ، وَمَهَامِيزَ وَكُلُّ مَا مَعَهُ مِنْ سِلَاحٍ، وَكُلُّ مَا مَعَهُ مِنْ مَالٍ فِي نِطَاقِهِ أَوْ فِي يَدِهِ، أَوْ كَيْفَمَا كَانَ مَعَهُ.

Ibn Aflaḥ—who is ʿUmar ibn Kathīr ibn Aflaḥ—from Abū Muḥammad, the freed slave of Abū Qatādah, from Abū Qatādah: "After the conclusion of battle on the Day of Ḥunayn, the Messenger of Allāh—peace and blessings be upon him—said: 'Whoever kills an enemy combatant and can substantiate it with evidence, their spoils belong to him.'" This is reported as part of a ḥadīth.

رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ ابْنِ أَفْلَحَ هُوَ عُمَرُ بْنُ كَثِيرِ بْنِ أَفْلَحَ - عَنْ أَبِي مُحَمَّدٍ مَوْلَى أَبِي قَتَادَةَ عَنْ أَبِي قَتَادَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ بَعْدَ انْقِضَاءِ الْقِتَالِ يَوْمَ حُنَيْنٍ: مَنْ قَتَلَ قَتِيلًا لَهُ عَلَيْهِ بَيِّنَةٌ فَلَهُ سَلَبُهُ» فِي حَدِيثٍ.

L15897 From the chain of Al-Bukhari: Abu Nuʿaym narrated to us → Abu Al-ʿUmayṣ (who is ʿUtbah ibn ʿAbdullāh ibn ʿUtbah ibn ʿAbdullāh ibn Masʿūd) → Iyās ibn Salamah ibn Al-Akwaʿ → his father, who said: "A spy from the polytheists came to the Prophet (peace and blessings of Allah be upon him) while he was traveling. He sat near the companions conversing, then turned away. The Prophet (peace and blessings of Allah be upon him) said: 'Seek him and kill him?' Salamah said: 'I killed him, and Allah's Messenger (peace and blessings of Allah be upon him) awarded me his spoils.'"

From the chain of Abū Dāwūd: Mūsā ibn Ismāʿīl narrated to us → Ḥammād (who is Ibn Zayd) → Isḥāq ibn ʿAbdullāh ibn Abī Ṭalḥah → Anas ibn Mālik: "Allah's Messenger (peace and blessings of Allah be upon him) said on the day of Ḥunayn: 'Whoever kills a disbeliever shall have his spoils.' Abū Ṭalḥah killed twenty men that day and took their spoils."

These narrations establish what we have stated, being mass-transmitted as you observe. We were narrated from the chain of Wakiʿ → Sufyān → Al-Aswad ibn Qays Al-ʿAbdī: that Bishr ibn ʿAlqamah killed a prominent Persian commander in single combat during the battle of Al-Qādisiyyah and took his spoils. He brought them to Saʿd ibn Abī Waqqāṣ, who appraised them at twelve thousand. Saʿd then awarded them to him.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا أَبُو نُعَيْمٍ نَا أَبُو الْعُمَيْسِ هُوَ عُتْبَةُ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ - عَنْ إِيَاسِ بْنِ سَلَمَةَ بْنِ الْأَكْوَعِ عَنْ أَبِيهِ قَالَ «أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَيْنٌ مِنْ الْمُشْرِكِينَ وَهُوَ فِي سَفَرٍ فَجَلَسَ عِنْدَ أَصْحَابِهِ يَتَحَدَّثُ ثُمَّ انْفَتَلَ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: اُطْلُبُوهُ وَاقْتُلُوهُ؟ قَالَ سَلَمَةُ: فَقَتَلْتُهُ، فَنَفَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَلَبَهُ» . وَمِنْ طَرِيقِ أَبِي دَاوُد نَا مُوسَى بْنُ إِسْمَاعِيلَ نَا حَمَّادٌ هُوَ ابْنُ زَيْدٍ - عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ يَوْمَ حُنَيْنٍ: مَنْ قَتَلَ كَافِرًا فَلَهُ سَلَبُهُ فَقَتَلَ أَبُو طَلْحَةَ يَوْمَئِذٍ عِشْرِينَ رَجُلًا وَأَخَذَ أَسْلَابَهُمْ» . فَهَذِهِ الْأَحَادِيثُ تُوجِبُ مَا قُلْنَاهُ وَهِيَ مَنْقُولَةٌ نَقْلَ التَّوَاتُرِ كَمَا تَرَى. رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ الْأَسْوَدِ بْنِ قَيْسٍ الْعَبْدِيِّ: أَنَّ بِشْرَ بْنَ عَلْقَمَةَ قَتَلَ يَوْمَ الْقَادِسِيَّةِ عَظِيمًا مِنْ الْفُرْسِ مُبَارَزَةً وَأَخَذَ سَلَبَهُ فَأَتَى بِهِ إلَى سَعْدِ بْنِ أَبِي وَقَّاصٍ فَقَوَّمَهُ اثْنَيْ عَشَرَ أَلْفًا، فَنَفَلَهُ إيَّاهُ سَعْدٌ.

L15898–15899 From the account of Wāthila ibn al-Asqaʿ is that he rode alone until he reached the gate of Damascus. Horsemen from the city came out to him, so he killed three of them and seized their horses. He brought them to Khālid ibn al-Walīd, and with him was a prominent Byzantine leader. The Byzantine leader purchased the saddle of one of the horses from him for ten thousand dirhams, and Khālid ibn al-Walīd granted him all that he had taken from

وَمِنْ طَرِيقِ وَاثِلَةَ بْنِ الْأَسْقَعِ أَنَّهُ رَكِبَ وَحْدَهُ حَتَّى أَتَى بَابَ دِمَشْقَ فَخَرَجَتْ إلَيْهِ خَيْلٌ مِنْهَا فَقَتَلَ مِنْهُمْ ثَلَاثَةً وَأَخَذَ خَيْلَهُمْ فَأَتَى بِهَا خَالِدَ بْنَ الْوَلِيدِ وَعِنْدَهُ عَظِيمُ الرُّومِ فَابْتَاعَ مِنْهُ سَرْجَ أَحَدِهَا بِعَشَرَةِ آلَافٍ وَنَفَلَهُ خَالِدُ بْنُ الْوَلِيدِ كُلَّ مَا أَخَذَ مِنْ ذَلِكَ، فَهَذَا وَاثِلَةُ، وَخَالِدٌ وَسَعِيدٌ بِحَضْرَةِ الصَّحَابَةِ.

that encounter. This account involves Wāthila, Khālid, and Saʿīd, all in the presence of the Companions.

L15900 From the narration of Ibn Abi Shaybah: Abd al-Rahim ibn Sulayman narrated from Hisham ibn Hassan, from Muhammad ibn Sirin, from Anas ibn Malik, who said: The spoils were not subjected to the fifth. The first spoils from which the fifth was taken in Islam were those of al-Barā' ibn Malik. He had killed Marzubān al-Za'rah and cut off his belt and bracelets. When we arrived in Medina, Umar led the dawn prayer, then came to us and said: "Peace be upon you. Is Abu Talha present?" They replied: "Yes." He came out to him, and Umar said: "We did not previously take the fifth from spoils, but al-Barā's spoils constitute wealth, so I will take the fifth of it." He summoned appraisers, who valued it at thirty thousand, and he took six thousand from it.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَبْدُ الرَّحِيمِ بْنُ سُلَيْمَانَ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: كَانَ السَّلَبُ لَا يُخَمَّسُ وَكَانَ أَوَّلُ سَلَبٍ خُمِّسَ فِي الْإِسْلَامِ سَلَبَ الْبَرَاءَ بْنَ مَالِكٍ، وَكَانَ قَتَلَ مَرْزُبَانَ الزَّأْرَةِ وَقَطَعَ مِنْطَقَتَهُ وَسِوَارَيْهِ، فَلَمَّا قَدِمْنَا الْمَدِينَةَ صَلَّى عُمَرُ الصُّبْحَ، ثُمَّ أَتَانَا فَقَالَ: السَّلَامُ عَلَيْكُمْ أَثَمَّ أَبُو طَلْحَةَ؟ فَقَالُوا: نَعَمْ، فَخَرَجَ إِلَيْهِ فَقَالَ عُمَرُ: إِنَّا كُنَّا لَا نُخَمِّسُ السَّلَبَ وَإِنَّ سَلَبَ الْبَرَاءِ مَالٌ وَإِنِّي خَامِسُهُ، فَدَعَا الْمُقَوِّمِينَ فَقَوَّمُوا ثَلَاثِينَ أَلْفًا، فَأَخَذَ مِنْهَا سِتَّةَ آلَافٍ.

L15901 From the narration of Ibn Jurayj: "I heard Nāfi' say: 'We have always heard since the earliest times that when Muslims and disbelievers meet in battle, if a Muslim kills a polytheist, he is entitled to his spoils - unless this occurs in the thick of combat, for then it cannot be ascertained whether anyone killed anyone.'" This relates to what was practiced before.

وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ سَمِعْت نَافِعًا يَقُولُ: لَمْ نَزَلْ نَسْمَعُ مُنْذُ قَطُّ إذَا الْتَقَى الْمُسْلِمُونَ وَالْكُفَّارُ فَقَتَلَ مُسْلِمٌ مُشْرِكًا فَلَهُ سَلَبُهُ إلَّا أَنْ يَكُونَ فِي مَعْمَعَةِ الْقِتَالِ فَإِنَّهُ لَا يُدْرَى أَحَدٌ قَتَلَ أَحَدًا - فَهَذَا يُخْبِرُ عَمَّا سَلَفَ.

L15902 Thus, it has been established that this was the practice of Abū Bakr, those who came after him, and all their leaders.

فَصَحَّ أَنَّهُ فِعْلُ أَبِي بَكْرٍ وَمَنْ بَعْدَهُ وَجَمِيعِ أُمَرَائِهِمْ.

L15903 This Nāfi' reports that he consistently heard this while having encountered the Companions, thereby confirming it as the statement of all of them in Medina. It is impermissible to presume that 'Umar deliberately opposed the Messenger of Allah—peace be upon him—thus affirming that he deemed al-Barāʾ himself valid.

وَهَذَا نَافِعٌ يُخْبِرُ: أَنَّهُ لَمْ يَزَلْ يَسْمَعُ ذَلِكَ وَهُوَ قَدْ أَدْرَكَ الصَّحَابَةَ، فَصَحَّ أَنَّهُ قَوْلُ جَمِيعِهِمْ بِالْمَدِينَةِ، وَلَا يَجُوزُ أَنْ يُظَنَّ بِعُمَرَ تَعَمُّدُ خِلَافِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَصَحَّ أَنَّهُ اسْتَطَابَ نَفْسَ الْبَرَاءِ.

L15904 This is a sound and good position which we do not deny—and it is the view of Al-Awza'i, Sa'id ibn 'Abd al-'Aziz, Al-Layth ibn Sa'd, Al-Shafi'i, Ahmad, Abu Thawr, Abu 'Ubayd, Abu Sulayman, and all the hadith scholars, except that Al-Shafi'i and Ahmad said: If he killed him when it was not impossible, the killer does not receive his spoils—but this is incorrect due to the hadith of Salamah ibn al-Akwa' which we mentioned, for he killed him when it was

وَهَذَا صَحِيحٌ حَسَنٌ لَا نُنْكِرُهُ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَسَعِيدِ بْنِ عَبْدِ الْعَزِيزِ وَاللَّيْثِ بْنِ سَعْدٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي ثَوْرٍ، وَأَبِي عُبَيْدٍ وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِ الْحَدِيثِ، إلَّا أَنَّ الشَّافِعِيَّ، وَأَحْمَدَ قَالَا: إنْ قَتَلَهُ غَيْرَ مُمْتَنِعٍ فَلَا يَكُونُ لَهُ سَلَبُهُ - وَهَذَا خَطَأٌ لِحَدِيثِ

not impossible and not in combat, yet took his spoils by the command of the Messenger of Allah—peace and blessings be upon him.

L15905–15907 If it is said: "If you adhere to the generality of his hadith—peace be upon him—in this matter, then give his spoils to one who kills a Muslim rightfully in retaliation, stoning, waging war, or rebellion." We say: Had Allah the Exalted not forbidden a Muslim's wealth through the words of His Prophet—peace and blessings of Allah be upon him—and in the Qur'an, we would have done what... You said: Thus, the personal effects of the Muslim were removed from the entirety of this report through this, while the personal effects of the disbeliever remained subject to the ruling of Allah, the Exalted, as stated by His Messenger, may Allah's peace and blessings be upon him.

L15908 It was narrated to us through the chain of Ibn Abi Shaybah—from al-Dahhak ibn Makhlad, who is Abu Asim al-Nabil—from al-Awza'i, from al-Zuhri, from al-Qasim ibn Muhammad, who said: Ibn Abbas was asked about the spoils. He replied: "There are no spoils except from the spoils of war, and the khums (one-fifth) applies to the spoils of war." Thus, Ibn Abbas asserts that spoils are solely from the spoils of war, making this a statement in line with those we cited, except that he held the khums applies to it—and this is the position of Ishaq ibn Rāhawayh.

L15909 Abu Hanifah, Sufyan, and Malik held that the slain's personal effects do not belong to the killer unless the commander declares before combat: "Whoever kills a slain person shall take his personal effects." If such a declaration is made, it stands as stated, and the effects are exempt from the fifth share. Abu Muhammad said: This is an invalid opinion, for they gave the false impression of following the ḥadīth but did not do so; rather, they contradicted it, since the Messenger of Allah—peace and blessings be upon him—only uttered this after battle. Thus, this plainly contradicts their own opinion.

L15910 And some of them said: The Messenger of Allah (peace and blessings be upon him) did not say that except on the day of Hunayn.

L15911 Abu Muhammad said: "This was truly astonishing!"

سَلَمَةَ بْنِ الْأَكْوَعِ الَّذِي ذَكَرْنَا فَإِنَّهُ قَتَلَهُ غَيْرَ مُمْتَنِعٍ، وَفِي غَيْرِ قِتَالٍ، وَأَخَذَ سَلَبَهُ بِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

فَإِنْ قِيلَ: فَإِنْ أَخَذْتُمْ بِعُمُومِ حَدِيثِهِ - عَلَيْهِ السَّلَامُ - فِي ذَلِكَ فَأَعْطُوا مَنْ قَتَلَ مُسْلِمًا بِحَقٍّ فِي قَوَدٍ، أَوْ رَجْمٍ، أَوْ مُحَارَبَةٍ، أَوْ بَغْيٍ، سَلَبَهُ. قُلْنَا: لَوْلَا أَنَّ اللَّهَ تَعَالَى حَرَّمَ عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي الْقُرْآنِ مَالَ الْمُسْلِمِ لَفَعَلْنَا مَا قُلْتُمْ؛ فَخَرَجَ سَلَبُ الْمُسْلِمِ بِهَذَا عَنْ جُمْلَةِ هَذَا الْخَبَرِ، وَبَقِيَ سَلَبُ الْكَافِرِ عَلَى حُكْمِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا الضَّحَّاكُ بْنُ مَخْلَدٍ هُوَ أَبُو عَاصِمٍ النَّبِيلُ - عَنْ الْأَوْزَاعِيِّ عَنْ الزُّهْرِيِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ قَالَ: سُئِلَ ابْنُ عَبَّاسٍ عَنْ السَّلَبِ؟ فَقَالَ: لَا سَلَبَ إلَّا مِنْ النَّفْلِ وَفِي النَّفْلِ الْخُمُسُ. فَهَذَا ابْنُ عَبَّاسٍ يَمْنَعُ أَنْ يَكُونَ السَّلَبُ إلَّا نَفْلًا، فَقَوْلٌ كَقَوْلِ مَنْ ذَكَرْنَا، إلَّا أَنَّهُ رَأَى فِيهِ الْخُمُسَ - وَهُوَ قَوْلُ إسْحَاقَ بْنِ رَاهْوَيْهِ.

وَذَهَبَ أَبُو حَنِيفَةَ، وَسُفْيَانُ، وَمَالِكٌ: إلَى أَنَّهُ لَا يَكُونُ السَّلَبُ لِلْقَاتِلِ إلَّا أَنْ يَقُولَ الْأَمِيرُ قَبْلَ الْقِتَالِ: مَنْ قَتَلَ قَتِيلًا فَلَهُ سَلَبُهُ، فَإِذَا قَالَ ذَلِكَ فَهُوَ كَمَا قَالَ، وَلَا يُخَمَّسُ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قَوْلٌ فَاسِدٌ؛ لِأَنَّهُمْ أَوْهَمُوا أَنَّهُمْ اتَّبَعُوا الْحَدِيثَ وَلَمْ يَفْعَلُوا، بَلْ خَالَفُوهُ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا قَالَ ذَلِكَ بَعْدَ الْقِتَالِ، فَهَذَا خِلَافُ قَوْلِهِمْ صُرَاحًا.

وَقَالَ بَعْضُهُمْ: لَمْ يَقُلْ ذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا يَوْمَ حُنَيْنٍ.

قَالَ أَبُو مُحَمَّدٍ: فَكَانَ هَذَا عَجَبًا

نَعَمْ، فَهَبْكَ أَنَّهُ لَمْ يَقُلْهُ - عَلَيْهِ السَّلَامُ - قَطُّ إِلَّا يَوْمَئِذٍ، أَوْ قَالَهُ قَبْلُ وَبَعْدُ، أَتَرَى يَجِدُونَ فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَى بِهِ مَرَّةً، أَوْ يَرَوْنَهُ بَاطِلًا حَتَّى يُكَرِّرَ الْقَضَاءَ بِهِ؟ حَاشَا لِلَّهِ مِنْ هَذَا الضَّلَالِ، وَلَا فَرْقَ بَيْنَ مَا قَالَ مَرَّةً، أَوْ أَلْفَ أَلْفَ مَرَّةٍ، كُلُّهُ دِينٌ، وَكُلُّهُ حَقٌّ، وَكُلُّهُ حُكْمُ اللَّهِ تَعَالَى، وَكُلُّهُ لَا يَحِلُّ لِأَحَدٍ خِلَافُهُ.

L15912 Yes, suppose he—peace be upon him—never uttered it except on that day, or had said it before that day and after. Do you think they would harbor any unease in their souls concerning what he decreed once, or would consider it invalid until he reiterates the decree? Far be it from Allah—He is exalted above such misguidance! There is no distinction between what he pronounced once or a thousand thousand times. All of it is religion; all of it is truth; all of it is the judgment of Allah the Exalted; all of it is impermissible for anyone to oppose.

وَمَوَّهُوا بِفِعْلِ عُمَرَ، وَهُمْ مُخَالِفُونَ لَهُ، لِأَنَّ عُمَرَ قَضَى بِالسَّلَبِ لِلْقَاتِلِ دُونَ أَنْ يَقُولَ ذَلِكَ قَبْلَ الْقِتَالِ، إِلَّا أَنَّهُ خَمَّسَهُ وَلَمْ يُمَانِعْهُ الْبَرَاءُ، فَصَحَّ أَنَّهُ طَابَتْ بِهِ نَفْسُهُ، وَهَذَا حَسَنٌ لَا نُنْكِرُهُ.

L15913 They justified their position by citing ʿUmar's action while contradicting his ruling, for ʿUmar had judged that the spoils belonged to the killer without declaring this before the battle. However, he deducted the khums from it, and al-Barā' did not oppose him. Thus, it was established that ʿUmar was content with it, and this is a valid position—we do not reject it.

وَشَغَبُوا أَيْضًا بِأَشْيَاءَ نَذْكُرُهَا إِنْ شَاءَ اللَّهُ تَعَالَى، فَمَوَّهَ بَعْضُ الْمُخَالِفِينَ فِي نَصْرِ تَقْلِيدِهِمْ بِقَوْلِ اللَّهِ تَعَالَى: {وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ} [الأنفال: ٤١] . قَالَ أَبُو مُحَمَّدٍ: وَهَذَا عَلَيْهِمْ لَا لَهُمْ، لِأَنَّ الَّذِي أَمَرَنَا بِهَذَا هُوَ الَّذِي أَوْحَى إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ السَّلَبَ لِلْقَاتِلِ، ثُمَّ يُقَالُ لَهُمْ: فَأَبْطِلُوا بِهَذَا الدَّلِيلِ قَوْلَكُمْ: إِنَّ الْإِمَامَ إِذَا قَالَ: السَّلَبُ لِلْقَاتِلِ كَانَ لَهُ. فَقَدْ جَعَلْتُمْ قَوْلَ إِمَامٍ لَعَلَّهُ لَا تَجِبُ طَاعَتُهُ حُجَّةً عَلَى الْآيَةِ، وَلَمْ تَجْعَلُوا قَوْلَ الْإِمَامِ الَّذِي لَا إِمَامَةَ لِأَحَدٍ إِلَّا بِطَاعَتِهِ بَيَانًا لِلْآيَةِ، وَهَذَا عَجَبٌ جِدًّا ثُمَّ أَعْجَبُ شَيْءٍ أَنَّهُمْ لَا يَحْتَجُّونَ بِهَذِهِ الْآيَةِ عَلَى أَنْفُسِهِمْ فِي قَوْلِهِمْ: إِنَّ الْأَرْضَ الْمَغْنُومَةَ لَا خُمُسَ فِيهَا، وَهَذَا مَوْضِعُ الِاحْتِجَاجِ بِالْآيَةِ حَقًّا

L15914–15916 They also raised objections regarding certain matters, which we shall mention if God Almighty wills. Some opponents deceptively justified defending their adherence to their school of thought (taqlīd) by citing God's statement: "And know that whatever spoils of war you seize, indeed one-fifth of it is for Allah and for the Messenger" [Al-Anfāl: 41]. Abū Muḥammad said: This argument works against them, not in their favor, for the One who commanded us this is the same who revealed to the Messenger of Allah—peace and blessings be upon him—that the spoils [taken from the slain] belong to the killer. Then they are told: Invalidate with this evidence your claim that the Imam... If he said, "The slain's personal belongings belong to the killer," they become his. You have considered the statement of an imam—whose obedience it is possible is not obligatory—as a valid proof against the verse, yet you have not deemed the statement of the imam for whom no one's leadership is valid unless they obey him as an elucidation of the verse. This is truly astonishing. What is even more astonishing is that they do not invoke this verse as a valid proof against their own position in their claim that there is no fifth due on conquered land, though this is indeed the rightful context to invoke the verse as proof.[35]

[35] **Qur'an references (L15914):** Qur'an 8:41 (Al-Anfal).

وَذَكَرُوا خَبَرًا رُوِّينَاهُ مِنْ طَرِيقِ عَوْفِ بْنِ مَالِكٍ الْأَشْجَعِيِّ فِي «أَنَّ رَجُلًا قَتَلَ فَارِسًا مِنْ الرُّومِ يَوْمَ مُؤْتَةَ وَأَخَذَ سِلَاحَهُ وَفَرَسَهُ؟ فَبَعَثَ إلَيْهِ خَالِدُ بْنُ الْوَلِيدِ فَأَخَذَ مِنْ السَّلَبِ قَالَ عَوْفٌ: فَأَتَيْتُ خَالِدًا فَقُلْتُ لَهُ: أَمَا عَلِمْتَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالسَّلَبِ لِلْقَاتِلِ؟ قَالَ: بَلَى، وَلَكِنِّي اسْتَكْثَرْتُهُ، قُلْتُ: لَتَرُدَّنَّهُ أَوْ لَأُعَرِّفَنَّكَهُ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَبَى أَنْ يَرُدَّ عَلَيْهِ، قَالَ عَوْفٌ: فَاجْتَمَعْنَا عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرْتُ ذَلِكَ لَهُ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: يَا خَالِدُ مَا حَمَلَكَ عَلَى مَا صَنَعْتَ؟ فَقَالَ: يَا رَسُولَ اللَّهِ اسْتَكْثَرْتُهُ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -: يَا خَالِدُ رُدَّ عَلَيْهِ مَا أَخَذْتَ مِنْهُ، قَالَ عَوْفٌ: فَقُلْتُ لَهُ: دُونَكَ يَا خَالِدُ، أَلَمْ أَفِ لَكَ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَا ذَلِكَ؟ قَالَ: فَأَخْبَرْتُهُ فَغَضِبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ: يَا خَالِدُ لَا تَرُدَّ عَلَيْهِ، هَلْ أَنْتُمْ تَارِكُونَ لِي أُمَرَائِي؟ لَكُمْ صَفْوَةُ أَمْرِهِمْ وَعَلَيْهِمْ كَدَرُهُ» .

L15917 They mentioned a report we have narrated through the chain of Awf ibn Malik al-Ashja'i: "A man killed a horseman from the Romans during the Battle of Mu'tah and took his weapon and horse? Khalid ibn al-Walid sent for him and took the spoils. Awf said: I went to Khalid and said to him: Do you not know that the Messenger of Allah—peace and blessings of Allah be upon him—ruled that the spoils belong to the killer? He said: Yes, but I considered it excessive. I said: You must return it, or I will bring your matter to the attention of the Messenger of Allah—peace and blessings of Allah be upon him. But he refused to return it. Awf said: We gathered before the Messenger of Allah—peace and blessings of Allah be upon him—and I mentioned this to him. The Prophet—peace and blessings of Allah be upon him—said: O Khalid, what compelled you to do what you did? He replied: O Messenger of Allah, I considered it excessive. He—peace be upon him—said: O Khalid, return to him what you took. Awf said: I said to him: There you go, O Khalid! Did I not keep my word to you? The Prophet—peace and blessings of Allah be upon him—said: And what is that? I informed him, and the Messenger of Allah—peace and blessings of Allah be upon him—became angry and said: O Khalid, do not return it to him. Will you not leave my commanders alone? For you is the purity of their affairs, and upon them is its hardship."[36]

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ لَهُمْ فِي هَذَا، بَلْ هُوَ حُجَّةٌ عَلَيْهِمْ لِوُجُوهٍ.

L15918 Abu Muhammad stated: There is no proof for them in this; rather, it serves as proof against them for various aspects.

أَوَّلُهَا: أَنَّ فِيهِ نَصًّا جَلِيًّا أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالسَّلَبِ لِلْقَاتِلِ - وَهَذَا قَوْلُنَا.

L15919 The first is that it contains a clear text that the Prophet (may Allah bless him and grant him peace) ruled regarding the spoils of the slain belonging to the killer—and this is our position.

وَثَانِيهَا: أَنَّهُ - عَلَيْهِ السَّلَامُ - أَمَرَ خَالِدًا بِالرَّدِّ عَلَيْهِ.

L15920 The second point is that he—peace be upon him—commanded Khalid to refute him.

وَثَالِثُهَا: أَنَّ فِي نَصِّهِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا أَمَرَهُ بِأَنْ لَا يَرُدَّ عَلَيْهِ، لِأَنَّهُ عَلِمَ أَنَّ الْقَاتِلَ صَاحِبَ السَّلَبِ أَعْطَاهُ بِطَيِّبِ نَفْسٍ وَلَمْ يَطْلُبْ خَالِدًا بِهِ، وَأَنَّ عَوْفًا يَتَكَلَّمُ فِيمَا لَا حَقَّ لَهُ فِيهِ وَهَذَا هُوَ نَصُّ الْخَبَرِ.

L15921 The third point is that the text states the Prophet—peace and blessings be upon him—instructed him (as stated in the text) not to return it, because he knew the killer—being the owner of the spoils—had given it willingly with a contented heart and had not demanded it from Khalid, and that 'Awf was

[36] **Hadith references (L15917):** Sunan Abi Dawud 2719.

speaking about a matter in which he had no right. This is the exact text of the report.

L15922–15924 The fourth is that if it were as they suggest, they would have no argument regarding it, because the day of Hunayn—on which the Prophet (peace be upon him) said, "Whoever kills a disbeliever, his spoils belong to him"—occurred after the day of Mu'tah without any dispute, and the day of Hunayn. This occurred after the conquest of Mecca, while the killing of Ja'far, Zayd ibn Ḥārithah, and Ibn Rawāḥah—may Allah be pleased with them—had taken place before the conquest of Mecca on the Day of Mu'tah. Thus, the ruling of the Day of Ḥunayn abrogates what preceded if there was any contradiction therein.

وَرَابِعُهَا: أَنَّهُ لَوْ كَانَ كَمَا يُوهِمُونَ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّ يَوْمَ حُنَيْنٍ الَّذِي قَالَ فِيهِ - عَلَيْهِ السَّلَامُ -: «مَنْ قَتَلَ كَافِرًا فَلَهُ سَلَبُهُ» كَانَ بَعْدَ يَوْمِ مُؤْتَةَ، بِلَا خِلَافٍ، وَيَوْمَ حُنَيْنٍ كَانَ بَعْدَ فَتْحِ مَكَّةَ، وَقَدْ كَانَ قَتْلُ جَعْفَرٍ، وَزَيْدِ بْنِ حَارِثَةَ، وَابْنِ رَوَاحَةَ - رَضِيَ اللَّهُ عَنْهُمْ - قَبْلَ فَتْحِ مَكَّةَ يَوْمَ مُؤْتَةَ، فَيَوْمُ حُنَيْنٍ حُكْمُهُ نَاسِخٌ لِمَا تَقَدَّمَ لَوْ كَانَ خِلَافَهُ.

L15925 They also obscured matters with the report about the killing of Abū Jahl during the Battle of Badr, asserting that the Messenger of Allah—peace be upon him—awarded his spoils to Muʿādh ibn ʿAmr ibn al-Jamūḥ, who was one of his two killers—the second being Muʿādh ibn ʿAfrāʾ—and that Ibn Masʿūd likewise killed him. Consequently, the Messenger of Allah—peace be upon him—granted Ibn Masʿūd Abū Jahl's sword as a discretionary war grant.

وَمَوَّهُوا أَيْضًا بِخَبَرِ قَتْلِ أَبِي جَهْلٍ يَوْمَ بَدْرٍ وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِسَلَبِهِ لِمُعَاذِ بْنِ عَمْرِو بْنِ الْجُمُوحِ وَهُوَ أَحَدُ قَاتِلَيْهِ، وَالثَّانِي: مُعَاذُ ابْنُ عَفْرَاءَ، وَأَنَّ ابْنَ مَسْعُودٍ قَتَلَهُ أَيْضًا فَنَفَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَيْفَهُ.

L15926 Abu Muhammad said: They possess no valid argument in any of this. What comparison is there between the day of Badr and the day of Ḥunayn, when years lie between them? The ruling concerning spoils was only divinely revealed after Badr—so how could the spoils of the slain be granted to the killer?

قَالَ أَبُو مُحَمَّد: وَلَا حُجَّةَ لَهُمْ فِي هَذَا كُلِّهِ، وَأَيْنَ يَوْمُ بَدْرٍ مِنْ يَوْمِ حُنَيْنٍ وَبَيْنَهُمَا أَعْوَامٌ؟ وَمَا نَزَلَ حُكْمُ الْغَنَائِمِ إِلَّا بَعْدَ يَوْمِ بَدْرٍ فَكَيْفَ يَكُونُ السَّلَبُ لِلْقَاتِلِ؟

L15927 They embellished their argument with a rejected report we narrated through the chain of Ḥammād ibn Salama from Budayl ibn Maysara from ʿAbdullāh ibn Shaqīq from a man from Bulqīn, who said: "I asked, 'O Messenger of God, does anyone have a greater right to a portion of the spoils than another?' He replied, 'No. Even the arrow one of you takes from his quiver - he has no more right to it than his brother.'"

Abū Muḥammad said: This is narrated from an unknown man whose reliability in claiming to be a companion of the Prophet is undetermined. Even if it were authentic, it would not serve as proof for their argument, because

وَمَوَّهُوا بِخَبَرٍ سَاقِطٍ رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ بُدَيْلِ بْنِ مَيْسَرَةَ عَنْ عَبْدِ اللَّهِ بْنِ شَقِيقٍ «عَنْ رَجُلٍ مِنْ بُلْقِينَ، قُلْتُ: يَا رَسُولَ اللَّهِ هَلْ أَحَدٌ أَحَقُّ بِشَيْءٍ مِنْ الْمَغْنَمِ مِنْ أَحَدٍ؟ قَالَ: لَا، حَتَّى السَّهْمُ يَأْخُذُهُ أَحَدُكُمْ مِنْ جَنْبِهِ فَلَيْسَ أَحَقَّ مِنْ أَخِيهِ بِهِ» . قَالَ أَبُو مُحَمَّدٍ: هَذَا عَنْ رَجُلٍ مَجْهُولٍ لَا يُدْرَى أَصَدَقَ فِي ادِّعَائِهِ الصُّحْبَةَ أَمْ لَا؟ ثُمَّ

the fifth portion is part of the total spoils and is rightfully allocated to those who did not participate in the battle without disagreement. The spoils of the slain (السَّلَبُ) are explicitly incorporated into that fifth by textual injunction.

L15928 Then it is said to them: Why do you not use this narration as evidence against your own claim that the killer is more entitled to the salb than others when the Imam says: "Whoever kills someone, his salb belongs to him?" Yet you regard this narration as restricted to the statement of one who holds no weight with Allah the Exalted, while you do not confine it to the words of those you yourselves disbelieve in—if you refuse to submit to His command and decree. Perish these scheming minds!

L15929 They obscured the issue by citing what was narrated through 'Amr ibn Wāqid from Mūsā ibn Yasār from Makḥūl from Junādah ibn Abī Umayyah: "Habīb ibn Maslamah killed a man, and Abū 'Ubaydah intended to take one-fifth of his spoils. Habīb said to him: 'The Messenger of Allah—peace and blessings of Allah be upon him—ruled that spoils belong to the slayer.' Mu'ādh then said: 'Hold back, O Habīb! I heard the Messenger of Allah—peace and blessings of Allah be upon him—say: A person possesses only what his leader's soul is pleased with.'"

L15930–15931 Abu Muhammad said: This is undoubtedly a false and reprehensible report, for it originates in the narration of Amr ibn Waqid—a transmitter denounced in hadith criticism, as stated by al-Bukhari and others on the authority of Musa ibn Yasar. Yahya al-Qattan has abandoned him.

L15932 And it has been narrated to us from this Mūsā that he said: "The Companions of Allah's Messenger Muḥammad (may Allah's blessings and peace be upon him) were barefoot Bedouins. Then we, the sons of Persia, came and condensed this religion. So observe whom they invoke to argue against the established Sunnahs."

L15933 Then from Makḥūl, from Junādah—though Makḥūl did not meet Junādah. Furthermore, if it were authentic, it would be evidence against them, because it invalidates their claim that "the one who finds buried pre-Islamic wealth

لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ لِأَنَّ الْخُمُسَ مِنْ جُمْلَةِ الْغَنِيمَةِ يَسْتَحِقُّهُ دُونَ أَهْلِ الْغَنِيمَةِ مَنْ لَمْ يَشْهَدْ الْغَنِيمَةَ بِلَا خِلَافٍ، فَالسَّلَبُ مَضْمُومٌ إلَى ذَلِكَ بِالنَّصِّ.

ثُمَّ يُقَالُ لَهُمْ: هَلَّا احْتَجَجْتُمْ بِهَذَا الْخَبَرِ عَلَى أَنْفُسِكُمْ فِي قَوْلِكُمْ: إنَّ الْقَاتِلَ أَحَقُّ بِالسَّلَبِ مِنْ غَيْرِهِ إذَا قَالَ الْإِمَامُ: مَنْ قَتَلَ قَتِيلًا فَلَهُ سَلَبُهُ؟ فَكَانَ هَذَا الْخَبَرُ عِنْدَكُمْ مَخْصُوصًا بِقَوْلِ مَنْ لَا وَزْنَ لَهُ عِنْدَ اللَّهِ تَعَالَى وَلَمْ تَخُصُّوهُ بِقَوْلِ مَنْ لَا إيمَانَ لَكُمْ إنْ لَمْ تُسَلِّمُوا لِأَمْرِهِ وَقَضَائِهِ، تَبًّا لِهَذِهِ الْعُقُولِ الْمَكِيدَةِ.

وَمَوَّهُوا بِمَا رُوِيَ مِنْ طَرِيقِ عَمْرِو بْنِ وَاقِدٍ عَنْ مُوسَى بْنِ يَسَارٍ عَنْ مَكْحُولٍ عَنْ جُنَادَةَ بْنِ أَبِي أُمَيَّةَ «أَنَّ حَبِيبَ بْنَ مَسْلَمَةَ قَتَلَ قَتِيلًا فَأَرَادَ أَبُو عُبَيْدَةَ أَنْ يُخَمِّسَ سَلَبَهُ، فَقَالَ لَهُ حَبِيبٌ إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالسَّلَبِ لِلْقَاتِلِ، فَقَالَ لَهُ مُعَاذٌ: مَهْلًا يَا حَبِيبُ، سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: إنَّمَا لِلْمَرْءِ مَا طَابَتْ بِهِ نَفْسُ إمَامِهِ» .

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَبَرُ سُوءٍ مَكْذُوبٌ بِلَا شَكٍّ، لِأَنَّهُ مِنْ رِوَايَةِ عَمْرِو بْنِ وَاقِدٍ، وَهُوَ مُنْكَرُ الْحَدِيثِ قَالَهُ الْبُخَارِيُّ وَغَيْرُهُ: عَنْ مُوسَى بْنِ يَسَارٍ، وَقَدْ تَرَكَهُ يَحْيَى الْقَطَّانُ.

وَقَدْ رُوِّينَا عَنْ مُوسَى هَذَا أَنَّهُ قَالَ: كَانَ أَصْحَابُ رَسُولِ اللَّهِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْرَابًا حُفَاةً جِئْنَا نَحْنُ أَبْنَاءَ فَارِسٍ فَلَخَّصْنَا هَذَا الدِّينَ - فَانْظُرُوا بِمَنْ يَحْتَجُّونَ عَلَى السُّنَنِ الثَّابِتَةِ.

ثُمَّ عَنْ مَكْحُولٍ عَنْ جُنَادَةَ - وَمَكْحُولٌ لَمْ يُدْرِكْ جُنَادَةَ. ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ، لِأَنَّهُ مُبْطِلٌ لِقَوْلِهِمْ: إنَّ الَّذِي وَجَدَ الرِّكَازَ لَهُ أَنْ يَنْفَرِدَ بِجَمِيعِهِ دُونَ طِيبِ نَفْسِ إمَامِهِ.

has the right to claim exclusive ownership of all of it without the voluntary approval of his Imam."

L15934 Then we say to the one citing this report as proof: Tell me - if the Imam is not personally content toward some soldiers regarding their share of the spoils, does this invalidate their right? This is truly astonishing, yet they themselves do not accept this. Thus they became the first to contradict what they themselves established and argued with - and this is the act of one devoid of scrupulousness.

ثُمَّ نَقُولُ لِلْمُحْتَجِّ بِهَذَا الْخَبَرِ: أَرَأَيْت إنْ لَمْ تَطِبْ نَفْسُ الْإِمَامِ لِبَعْضِ الْجَيْشِ بِسَهْمِهِمْ مِنْ الْغَنِيمَةِ أَيَبْطُلُ بِذَلِكَ حَقَّهُمْ؟ إنَّ هَذَا لَعَجِيبٌ وَهُمْ لَا يَقُولُونَ بِهَذَا، فَصَارُوا أَوَّلَ مُخَالِفٍ لِمَا حَقَّقُوهُ وَاحْتَجُّوا بِهِ، وَهَذَا فِعْلُ مَنْ لَا وَرَعَ لَهُ.

L15935 They said: It has been narrated via Ghālib ibn Ḥijrah from Umm ʿAbdil-lāh bint al-Milqām ibn al-Talib, from her father [from his father], that the Messenger of Allah—peace be upon him—said: "Whoever kills a freed slave (mawlā), his spoils belong to him." They said: "Therefore, adhere to this ruling as well."

وَقَالُوا: قَدْ رُوِيَ مِنْ طَرِيقِ غَالِبِ بْنِ حَجْرَةَ عَنْ أُمِّ عَبْدِ اللَّهِ بِنْتِ الْمِلْقَامِ بْنِ التَّلِبِ عَنْ أَبِيهَا [عَنْ أَبِيهِ] أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَتَى بِمَوْلًى فَلَهُ سَلَبُهُ» قَالُوا: فَقُولُوا بِهَذَا أَيْضًا ".

L15936 Abu Muhammad said: We stated that this opinion applies only to those who uphold the hadith of Mubashshir ibn ʻUbayd al-Himsi—"There is no valid dowry less than ten dirhams"—and those who uphold the hadith of Abu Zayd, the client of ʻAmr ibn Hurayth, permitting ablution with wine, as well as those who affirm the rulings concerning goring animals and accidental falls. This narration is to be considered alongside those authoritative precedents.

قَالَ أَبُو مُحَمَّد: فَقُلْنَا إنَّمَا يَلْزَمُ الْقَوْلُ بِهَذَا مَنْ يَقُولُ بِحَدِيثِ مُبَشِّرِ بْنِ عُبَيْدٍ الْحِمْصِيِّ لَا صَدَاقَ أَقَلَّ مِنْ عَشَرَةِ دَرَاهِمَ، وَمَنْ يَقُولُ بِحَدِيثِ أَبِي زَيْدٍ مَوْلَى عَمْرِو بْنِ حُرَيْثٍ فِي إبَاحَةِ الْوُضُوءِ بِالْخَمْرِ، وَتِلْكَ النَّطَائِحُ وَالْمُتَرَدِّيَاتُ. فَهَذَا الْخَبَرُ مُضَافٌ إلَى تِلْكَ.

L15937 As for one who accepts only what a trustworthy narrator has transmitted from another trustworthy narrator, he is not bound to accept the narration of the unknown Ghalib ibn Hajrah from Umm ʿAbd Allāh bint al-Milqām—an obscure figure (who is she?)—from her unidentified father. These people wander in blindness—we seek refuge in Allah from the test He has subjected them to. By Allah, were this narration authentic, we would have upheld it without the slightest reservation in our hearts.

وَأَمَّا مَنْ لَا يَأْخُذُ إلَّا بِمَا رَوَى الثِّقَةُ عَنْ الثِّقَةِ فَلَيْسَ يَلْزَمُهُ أَنْ يَأْخُذَ بِمَا رَوَاهُ غَالِبُ بْنُ حَجْرَةَ الْمَجْهُولُ عَنْ أُمِّ عَبْدِ اللَّهِ بِنْتِ الْمِلْقَامِ الَّتِي لَا يُدْرَى مَنْ هِيَ؟ عَنْ أَبِيهَا الَّذِي لَا يُعْرَفُ، وَالْقَوْمُ فِي عَمًى نَعُوذُ بِاَللَّهِ مِمَّا ابْتَلَاهُمْ بِهِ، وَتَاَللَّهِ لَوْ صَحَّ لَقُلْنَا بِهِ وَلَمْ نَجِدْ فِي أَنْفُسِنَا حَرَجًا مِنْهُ.

L15938 If they mention what we have narrated through the chain of Saʻīd from Qatādah—and it has been said that ʻAmr ibn Shuʻayb narrated it from his father from his grandfather regarding the occasion of revelation for Al-Anfāl: "The Prophet—peace and blessings of Allah be upon him—used to award a Muslim the spoils of a disbeliever he slew as a special grant, then he commanded them to return some of the spoils to one another. He said, *'So fear

فَإِنْ ذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدٍ عَنْ قَتَادَةَ وَقَدْ قِيلَ: إنَّ عَمْرَو بْنَ شُعَيْبٍ رَوَاهُ عَنْ أَبِيهِ عَنْ جَدِّهِ فِي سَبَبِ نُزُولِ الْأَنْفَالِ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ

Allah and set things right between yourselves'* [Al-Anfāl:1]—meaning, 'Some of you must return the spoils to others.'"[37]

L15939–15940 Abu Muhammad said: This is nothing, for it is a written record and a *mursal* narration. Even if it were authentic, it would pertain to the Battle of Badr, and we have stated that the ruling granting the spoils of the slain to the killer was established during Hunayn six years, or so, after that.

L15941 Then they obscured [the matter] with frivolous analogies—all binding upon them yet not binding upon us. Among these is their claim: "Since the spoils do not rightfully belong to the one who seizes them, the killer is likewise not entitled to the salb. If the salb were truly the killer's right, then salb items—when the killers of their owners are unknown—would be held in custody like lost property." Abū Muḥammad said: "The analogy is invalid. Such analogies bind only those who validate them, and since they validate them, let them invalidate their own doctrine—that the salb belongs to the killer if the Imam declares [before battle], 'Whoever kills an enemy may take his salb'—using these two absurdities, for this now binds them by their own logic. As for us, we say: Any property of unknown ownership is allocated to the public interests of the Muslims, and any salb for which there is no clear evidence identifying its killer is included in the general spoils by the ruling of Allah's Messenger—peace and blessings be upon him—and his explicit statement, which we do not overstep. All praise is to Allah, Lord of all the worlds."[38]

L15942 Abu Muhammad said: What suffices in this regard is that Allah the Exalted stated: {It is not for a believing man or a believing woman, when Allah and His Messenger have decided a matter, to have any choice in their affair} [Al-Ahzab: 36]. The Messenger of Allah—peace and blessings be upon him—ruled that the salb (spoils) belong to the killer if clear evidence is established for him. If obedience to him—peace be upon him—is obligatory, then the salb is a right for the killer whenever evidence is established, and no one—neither an Imam nor anyone else—has any choice in their matter, by the explicit text

يُنْفِلُ الرَّجُلَ مِنْ الْمُسْلِمِينَ سَلَبَ الْكَافِرِ إذَا قَتَلَهُ، فَأَمَرَهُمْ أَنْ يَرُدَّ بَعْضُهُمْ عَلَى بَعْضٍ، قَالَ {فَاتَّقُوا اللَّهَ وَأَصْلِحُوا ذَاتَ بَيْنِكُمْ} [الأنفال: ١] أَيْ لِيَرُدَّنَّ بَعْضَكُمْ عَلَى بَعْضٍ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا شَيْءَ لِأَنَّهَا صَحِيفَةٌ وَمُرْسَلٌ، وَلَوْ صَحَّ لَكَانَ فِي أَمْرِ بَدْرٍ وَقَدْ قُلْنَا: إنَّ الْقَضَاءَ بِالسَّلَبِ لِلْقَاتِلِ كَانَ فِي حُنَيْنٍ بَعْدَ ذَلِكَ بِأَعْوَامٍ سِتَّةٍ أَوْ نَحْوِهَا.

ثُمَّ مَوَّهُوا بِقِيَاسَاتٍ سَخِيفَةٍ كُلُّهَا لَازِمٌ لَهُمْ وَغَيْرُ لَازِمٍ لَنَا. مِنْهَا: أَنْ قَالُوا: لَمَّا كَانَ الْغَانِمُ لَيْسَ أَحَقَّ بِمَا غَنِمَ كَانَ الْقَاتِلُ فِي السَّلَبِ كَذَلِكَ، وَلَوْ كَانَ السَّلَبُ حَقًّا لِلْقَاتِلِ لَكَانَتْ الْأَسْلَابُ - إذَا لَمْ يُعْرَفْ قَاتِلُو أَهْلِهَا - مُوقَفَةً كَاللُّقَطَةِ. قَالَ أَبُو مُحَمَّدٍ: الْقِيَاسُ بَاطِلٌ، وَإِنَّمَا يَلْزَمُ الْقِيَاسُ مَنْ صَحَّحَهُ، وَهُمْ يُصَحِّحُونَهُ فَهُوَ لَهُمْ لَازِمٌ فَلْيُبْطِلُوا بِهَاتَيْنِ الْأُحْمُوقَتَيْنِ قَوْلَهُمْ: [إنَّ السَّلَبَ] لِلْقَاتِلِ إذَا قَالَ الْإِمَامُ [قَبْلَ الْقِتَالِ] : مَنْ قَتَلَ قَتِيلًا فَلَهُ سَلَبُهُ - فَهَذَا يَلْزَمُهُمْ إذْ عَدَلُوا هَذَا الْإِلْزَامَ عَلَى أَنْفُسِهِمْ. وَأَمَّا نَحْنُ فَنَقُولُ: إنَّ كُلَّ مَالٍ لَا يُعْرَفُ صَاحِبُهُ فَهُوَ فِي مَصَالِحِ الْمُسْلِمِينَ، وَكُلُّ سَلَبٍ لَا تَقُومُ لَقَاتَلَهُ بَيِّنَةٌ فَهُوَ فِي جُمْلَةِ الْغَنِيمَةِ بِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنَصِّ قَوْلِهِ لَا نَتَعَدَّاهُ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

قَالَ أَبُو مُحَمَّدٍ: وَيَكْفِي مِنْ هَذَا أَنَّ اللَّهَ تَعَالَى قَالَ: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] وَقَدْ قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ السَّلَبَ لِلْقَاتِلِ إذَا قَامَتْ لَهُ بَيِّنَةٌ، فَإِنْ كَانَتْ طَاعَتُهُ - عَلَيْهِ السَّلَامُ - وَاجِبَةً فَالسَّلَبُ حَقٌّ لِلْقَاتِلِ مَتَى قَامَتْ لَهُ بِهِ بَيِّنَةٌ وَلَا خِيَرَةَ لِأَحَدٍ - لَا إمَامٍ وَلَا غَيْرِهِ - فِي خِلَافِ ذَلِكَ، لِنَصِّ كَلَامِ اللَّهِ تَعَالَى، وَإِنْ كَانَتْ طَاعَتُهُ - عَلَيْهِ السَّلَامُ - لَيْسَتْ وَاجِبَةً فَهَذَا كُفْرٌ مِنْ قَائِلِهِ، وَإِذَا لَمْ يَكُنْ السَّلَبُ مِنْ حَقِّ الْقَاتِلِ

[37] **Qur'an references (L15938):** Qur'an 8:1 (Al-Anfal).
[38] **Qur'an references (L15941):** Qur'an 37:182 (As-Saffat).

بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: إنَّهُ لَهُ إذَا قَامَتْ لَهُ بِهِ بَيِّنَةٌ، فَمِنْ أَيْنَ خَرَجَ لَهُمْ؟ وَأَيْنَ وَجَدُوا مَا يُوجِبُ قَوْلَهُمْ الْفَاسِدَ؟ : فِي أَنَّ الْإِمَامَ إذَا قَالَ: مَنْ قَتَلَ قَتِيلًا فَلَهُ سَلَبُهُ. كَانَ السَّلَبُ حِينَئِذٍ لِلْقَاتِلِ، وَلَا نُعْمَى عَيْنٍ لِلْإِمَامِ أَنْ يَكُونَ قَوْلُهُ تَحْرِيمًا أَوْ إيجَابًا.

of Allah the Exalted's words. If obedience to him—peace be upon him—is not obligatory, then this constitutes disbelief from its proponent. If the salb does not rightfully belong to the killer by the Prophet's statement—peace and blessings be upon him—that it is his when evidence is established, then from where did they derive this? Where did they find what necessitates their invalid claim? This concerns the view that if the Imam says, "Whoever kills someone, their salb is his," then the salb at that point belongs to the killer. The Imam has no authority to declare his statement a ruling of prohibition or obligation.[39]

فَظَهَرَ فَسَادُ قَوْلِهِمْ جُمْلَةً وَتَعَرِّيه مِنْ الدَّلِيلِ، وَهُوَ قَوْلٌ لَمْ يُحْفَظْ قَطُّ قَبْلَهُمْ لَا عَنْ صَاحِبٍ، وَلَا عَنْ تَابِعٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L15943 Thus, the invalidity of their statement has become evident in its entirety, and it is stripped of evidence. This is a statement that has never been preserved before their time, neither from a Companion nor from a Follower—and with Allah, the Exalted, is success.

[مَسْأَلَةٌ تنفيل الْإِمَام مِنْ رَأْسِ الْغَنِيمَةِ بَعْدَ الْخُمُسِ وَقَبْلَ الْقِسْمَةِ]

An issue regarding the leader's receipt of a bonus share from the principal portion of the spoils after allocating the fifth (khums) and before distribution.

٩٥٦ - مَسْأَلَةٌ:

956 – Question

وَإِنْ نَفَّلَ الْإِمَامُ مِنْ رَأْسِ الْغَنِيمَةِ - بَعْدَ الْخُمُسِ وَقَبْلَ الْقِسْمَةِ - مَنْ رَأَى أَنْ يُنَفِّلَهُ مِمَّنْ أَغْنَى عَنْ الْمُسْلِمِينَ، وَمِمَّنْ مَعَهُ مِنْ النِّسَاءِ اللَّوَاتِي يَنْتَفِعُ بِهِنَّ أَهْلُ الْجَيْشِ، وَمَنْ قَاتَلَ مِمَّنْ لَمْ يَبْلُغْ: فَحَسَنٌ.

L15946 If the leader grants an extra portion from the principal spoils - after deducting the fifth share and before division - to those he decides to grant from those who sufficed the Muslims, to the women accompanying him whom the army benefits from, and to those who fought from those who have not reached [the age of maturity]: this is commendable.

وَإِنْ رَأَى أَنْ يُنَفِّلَ مَنْ أَتَى بِمَغْنَمٍ فِي الدُّخُولِ رُبْعَ مَا سَاقَ بَعْدَ الْخُمُسِ فَأَقَلَّ، أَوْ ثُلُثَ مَا سَاقَ بَعْدَ الْخُمُسِ فَأَقَلَّ، لَا أَكْثَرَ أَصْلًا: فَحَسَنٌ، لِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا عَبْدُ الْمَلِكِ بْنُ شُعَيْبِ بْنِ اللَّيْثِ حَدَّثَنِي أَبِي عَنْ جَدِّي حَدَّثَنِي عُقَيْلُ بْنُ خَالِدٍ عَنْ ابْنِ شِهَابٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ

L15947–15948 If he deems it appropriate to grant a discretionary bonus to those who brought spoils in battle—a quarter of what they collected after deducting the obligatory fifth (khums) or less, or a third of what they collected after the khums or less, with no excess whatsoever—this is sound, as transmitted in Imam Muslim's collection via the chain: 'Abd al-Malik ibn Shu'ayb ibn al-Layth narrated to us, reporting: My father narrated to me from my grandfather, who narrated to me from 'Uqayl ibn Khālid, from Ibn Shihāb, from Sālim ibn 'Abd Allāh ibn 'Umar, from his father, who said: "The Mes-

[39] **Qur'an references (L15942):** Qur'an 33:36 (Al-Ahzab).

senger of Allāh—peace and blessings of Allāh be upon him—would grant a discretionary bonus specifically to some of those he dispatched on military expeditions, separate from the army's general share, while the entire khums remained obligatory in that matter."

وَسَلَّمَ - يُنَفِّلُ بَعْضَ مَنْ يَبْعَثُ مِنْ السَّرَايَا لِأَنْفُسِهِمْ خَاصَّةً سِوَى قِسْمَةِ عَامَّةِ الْجَيْشِ، وَالْخُمُسُ فِي ذَلِكَ وَاجِبٌ كُلُّهُ»

L15949 Through the chain of Abū Dāwūd: Mahmūd ibn Khālid → Marwān ibn Muḥammad → Yaḥyā ibn Ḥamzah, who said: [I heard Abū Wahb say]: I heard Makhūl say: I heard Ziyād ibn Jāriyah say: I heard Ḥabīb ibn Maslamah say: "I witnessed the Messenger of Allāh, peace and blessings of Allāh be upon him, grant one-fourth at the outset and one-third upon return."

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا مَحْمُودُ بْنُ خَالِدٍ نَا مَرْوَانُ بْنُ مُحَمَّدٍ نَا يَحْيَى بْنُ حَمْزَةَ قَالَ: [سَمِعْت: أَبَا وَهْبٍ يَقُولُ] : سَمِعْت مَكْحُولًا قَالَ: سَمِعْتُ زِيَادَ بْنَ جَارِيَةَ سَمِعْتُ حَبِيبَ بْنَ مَسْلَمَةَ يَقُولُ «شَهِدْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَفَلَ الرُّبْعَ فِي الْبَدَاءَةِ وَالثُّلُثَ فِي الرَّجْعَةِ»

L15950 Through the chain of transmission of Muḥammad ibn ʿAbd al-Salām al-Khushanī: Muḥammad ibn al-Muthannā reported to us via ʿAbd al-Raḥmān ibn Mahdī via Sufyān al-Thawrī from ʿAbd al-Raḥmān ibn al-Ḥārith from Sulaymān ibn Mūsā from Makhūl from Abū Salām Mammṭūr al-Ḥabashī from Abū Umāmah al-Bāhilī from ʿUbādah ibn al-Ṣāmit: "The Messenger of Allah (peace and blessings be upon him) would grant an additional quarter during the initial expedition and a third during the return journey."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ الْخُشَنِيِّ نَا مُحَمَّدُ بْنُ الْمُثَنَّى نَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنْ مَكْحُولٍ عَنْ أَبِي سَلَّامٍ مَمْطُورٍ الْحَبَشِيِّ عَنْ أَبِي أُمَامَةَ الْبَاهِلِيِّ عَنْ عُبَادَةَ بْنِ الصَّامِتِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُنَفِّلُ فِي الْبَدَاءَةِ الرُّبْعَ وَفِي الْقُفُولِ الثُّلُثَ»

L15951 From the chain of Ibn Abī Shaybah, who narrated to us: ʿAffān ibn Muslim narrated from Abū ʿAwanah from ʿĀṣim ibn Kulayb from Abū al-Juwayriyah, who said: Maʿn ibn Yazīd al-Sulamī said to me, "I heard the Messenger of Allah (peace and blessings be upon him) say: 'There is no additional share except after the _khums_.'"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَفَّانَ بْنُ مُسْلِمٍ عَنْ أَبِي عَوَانَةَ عَنْ عَاصِمِ بْنِ كُلَيْبٍ عَنْ أَبِي الْجُوَيْرِيَةِ قَالَ لِي مَعْنُ بْنُ يَزِيدَ السُّلَمِيُّ " سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا نَفْلَ إلَّا مِنْ بَعْدِ الْخُمُسِ»

L15952 A group of the Salaf said this. It has been narrated to us through the chain of Hammad ibn Salamah, from Dawud ibn Abi Hind, from al-Sha'bi, that Jarir ibn 'Abdullah al-Bajali came to 'Umar ibn al-Khattab among his own people intending to go to Syria. 'Umar said to him: "Would you like to come to Kufa, and I will allocate you a third, after the fifth has been deducted from every land and item?"

وَقَالَ بِهَذَا طَائِفَةٌ مِنْ السَّلَفِ. رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نَا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ أَنَّ جَرِيرَ بْنَ عَبْدِ اللَّهِ الْبَجَلِيَّ قَدِمَ عَلَى عُمَرَ بْنِ الْخَطَّابِ فِي قَوْمِهِ يُرِيدُ الشَّامَ فَقَالَ لَهُ عُمَرُ: هَلْ لَك أَنْ تَأْتِيَ الْكُوفَةَ وَأُنْفِلُكَ الثُّلُثَ مِنْ بَعْدِ الْخُمُسِ مِنْ كُلِّ أَرْضٍ وَشَيْءٍ؟

L15953–15954 From the chain of Abd al-Razzaq, from Ibn Jurayj, who reported to me:

Sulayman ibn Musa said, “People used to grant extra allocations beyond a third. When Umar ibn Abd al-Aziz assumed authority, he wrote that no report had reached us indicating the Messenger of Allah—peace and blessings be upon him—granted extra allocations beyond a third.” This is the opinion of al-Awza’i and Abu Sulayman.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي سُلَيْمَانُ بْنُ مُوسَى قَالَ: كَانَ النَّاسُ يُنَفِّلُونَ أَكْثَرَ مِنْ الثُّلُثِ حَتَّى إذَا كَانَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ كَتَبَ أَنَّهُ لَمْ يَبْلُغْنَا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَفَّلَ بِأَكْثَرَ مِنْ الثُّلُثِ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَأَبِي سُلَيْمَانَ.

L15955 Abu Muhammad said: Allah the Exalted has ordained the khums for its designated recipients whom He named. The extra grant from it pertains exclusively to the share of the Prophet (peace be upon him), constituting one-fifth of the fifth (of the total spoils). The remainder of the spoils belongs to the combatants. It is unlawful to remove anything from it except what Allah has permitted or obligated through the decree of His Messenger (peace be upon him). Nothing is permitted except granting the spoils stripped from the slain entirely to the killer, and granting an extra portion of a quarter or less (of the total spoils), or a third or less upon return (from battle).

قَالَ أَبُو مُحَمَّدٍ: الْخُمُسُ قَدْ جَعَلَهُ اللَّهُ تَعَالَى لِأَهْلِهِ الَّذِينَ سَمَّى، فَالنَّفَلُ مِنْهُ مِنْ سَهْمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَاصَّةً، وَهُوَ خُمُسُ الْخُمُسِ، وَسَائِرُ الْغَنِيمَةِ لِلْغَانِمِينَ، فَلَا يَحِلُّ أَنْ يَخْرُجَ مِنْهُ شَيْءٌ إلَّا مَا أَبَاحَ اللَّهُ تَعَالَى إخْرَاجَهُ، أَوْ أَوْجَبَ إخْرَاجَهُ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَيْسَ إلَّا السَّلَبُ جُمْلَةً لِلْقَاتِلِ، وَتَنْفِيلُ مَا ذَكَرْنَا مِنْ الرُّبْعِ فَأَقَلَّ، أَوْ الثُّلُثِ فِي الْقُفُولِ فَأَقَلَّ.

L15956 And similarly, as narrated to us from Anas and Sa‘īd ibn al-Musayyib: There is no supererogatory prayer except after the five [prayers], and success is from Allah, the Most High.

وَكَذَلِكَ كَمَا رُوِّينَا عَنْ أَنَسٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، لَا نَفْلَ إلَّا بَعْدَ الْخُمْسِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L15957 A legal issue: Spoils are to be divided as they are by their value and are not to be sold.

[مَسْأَلَةٌ تُقْسَمُ الْغَنَائِمُ كَمَا هِيَ بِالْقِيمَةِ وَلَا تُبَاعُ]

L15958 957 – Issue:

٩٥٧ - مَسْأَلَةٌ:

L15959 The spoils are divided according to their value without being sold, as no textual evidence permits their sale. The division is expedited in the abode of war (dār al-ḥarb). Land is divided and subjected to khums (the fifth), like all other spoils, without distinction. If all combatants willingly agree to relinquish their shares, the Imam dedicates it as a waqf for Muslims; otherwise, he does not. If one surrenders their share, those who retain theirs preserve their rightful entitlement. No alternative is permissible—this being the doctrine of Al-Shāfi‘ī and Abū Sulaymān.

وَتُقْسَمُ الْغَنَائِمُ كَمَا هِيَ بِالْقِيمَةِ وَلَا تُبَاعُ، لِأَنَّهُ لَمْ يَأْتِ نَصٌّ بِبَيْعِهَا، وَتُعَجَّلُ الْقِسْمَةُ فِي دَارِ الْحَرْبِ، وَتُقْسَمُ الْأَرْضُ وَتُخَمَّسُ، كَسَائِرِ الْغَنَائِمِ، وَلَا فَرْقَ، فَإِنْ طَابَتْ نُفُوسُ جَمِيعِ أَهْلِ الْعَسْكَرِ عَلَى تَرْكِهَا أَوْقَفَهَا الْإِمَامُ حِينَئِذٍ لِلْمُسْلِمِينَ وَإِلَّا فَلَا، وَمَنْ أَسْلَمَ نَصِيبَهُ كَانَ مَنْ لَمْ يُسَلِّمْ عَلَى حَقِّهِ، لَا يَجُوزُ غَيْرُ ذَلِكَ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L15960 Mālik said: The spoils are sold, their proceeds are distributed, and the land

is designated as a waqf—it is neither to be divided nor does it become owned by anyone.

وَقَالَ مَالِكٌ: تُبَاعُ الْغَنِيمَةُ وَتُقْسَمُ أَثْمَانُهَا وَتُوقَفُ الْأَرْضُ وَلَا تُقْسَمُ وَلَا تَكُونُ مِلْكًا لِأَحَدٍ.

L15961 Abu Hanifah said: The Imam may choose—if he wills, he distributes the spoils, and if he wills, he places them in waqf. If he places them in waqf, they become the property of the disbelievers to whom they originally belonged. The spoils are not distributed except after departing from Dār al-Ḥarb (enemy territory). Abu Muhammad said: What we have stated is clarified by the words of Allah the Exalted: {So consume what you have taken as lawful and good} [8:69], for He did not say "from the prices of what you have taken."[40]

وَقَالَ أَبُو حَنِيفَةَ: الْإِمَامُ مُخَيَّرٌ إِنْ شَاءَ قَسَّمَهَا وَإِنْ شَاءَ أَوْقَفَهَا، فَإِنْ أَوْقَفَهَا فَهِيَ مِلْكٌ لِلْكُفَّارِ الَّذِينَ كَانَتْ لَهُمْ، وَلَا تُقْسَمُ الْغَنَائِمُ إِلَّا بَعْدَ الْخُرُوجِ مِنْ دَارِ الْحَرْبِ. قَالَ أَبُو مُحَمَّد: يُبَيِّنُ مَا قُلْنَا قَوْلُ اللَّهِ تَعَالَى: {فَكُلُوا مِمَّا غَنِمْتُمْ حَلالا طَيِّبًا} [الأنفال: ٦٩] وَلَمْ يَقُلْ مِنْ أَثْمَانِ مَا غَنِمْتُمْ.

L15962 And through the chain of Al-Bukhārī: Musaddad narrated to us, Abū al-Aḥwaṣ narrated to us, Saʿīd ibn Masrūq narrated from ʿAbāyah ibn Rifāʿah ibn Rāfiʿ from his father, from his grandfather Rāfiʿ ibn Khadīj, "that they acquired spoils of war, and the Prophet—may Allah's peace and blessings be upon him—distributed them among them, equating one camel to ten sheep."

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا مُسَدَّدٌ نَا أَبُو الْأَحْوَصِ نَا سَعِيدُ بْنُ مَسْرُوقٍ عَنْ عَبَايَةَ بْنِ رِفَاعَةَ بْنِ رَافِعٍ عَنْ أَبِيهِ عَنْ جَدِّهِ رَافِعِ بْنِ خَدِيجٍ «أَنَّهُمْ أَصَابُوا غَنَائِمَ فَقَسَمَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمْ فَعَدَلَ بَعِيرًا بِعَشْرِ شِيَاهٍ» .

L15963–15964 Thus, it was confirmed that he (peace be upon him) apportioned only the specific items of the spoils of war.

فَصَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - إِنَّمَا قَسَّمَ أَعْيَانَ الْغَنِيمَةِ.

L15965 Moreover, their right pertains solely to what they acquired as spoils. Therefore, selling their rights and property without the consent of all of them—or the first of them instead of the last—is unlawful, based on the statement of Allah's Messenger (peace and blessings of Allah be upon him): "Your blood and your property are sacred to one another."

وَأَيْضًا فَإِنَّ حَقَّهُمْ إِنَّمَا هُوَ فِيمَا غَنِمُوا، فَبَيْعُ حُقُوقِهِمْ وَأَمْوَالِهِمْ بِغَيْرِ رِضًا مِنْ جَمِيعِهِمْ أَوَّلِهِمْ عَنْ آخِرِهِمْ لَا يَحِلُّ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L15966 If the entire army consents to the sale except one individual, then that is valid for him, and he is given his due share from the spoils in kind. His share may be sold if he wishes to sell, as Allah, the Exalted, said: "No soul earns [a sin] except against itself" [Al-Anʿām 6:164].[41]

فَإِنْ رَضِيَ الْجَيْشُ كُلُّهُمْ بِالْبَيْعِ إِلَّا وَاحِدًا فَلَهُ ذَلِكَ وَيُعْطَى حَقَّهُ مِنْ عَيْنِ الْغَنِيمَةِ، وَيُبَاعُ إِنْ أَرَادَ الْبَيْعَ قَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

L15967 This is supported by the narrations concerning Hunayn, Badr, these two and others, such as the statement of Ali: "An old she-camel from the spoils

وَبِهَذَا جَاءَتْ الْآثَارُ فِي حُنَيْنٍ، وَبَدْرٍ، وَغَيْرِهِمَا، كَقَوْلِ عَلِيٍّ: إنَّهُ وَقَعَ لِي شَارِفٌ مِنْ الْمَغْنَمِ، وَكَوُقُوعِ جُوَيْرِيَةَ أُمِّ الْمُؤْمِنِينَ فِي سَهْمِ ثَابِتِ بْنِ قَيْسِ بْنِ الشَّمَّاسِ، وَغَيْرُ ذَلِكَ

[40] **Qur'an references (L15961):** Qur'an 8:69 (Al-Anfal).
[41] **Qur'an references (L15966):** Qur'an 6:164 (Al-An'am).

was allotted to me," and the assignment of Juwayriyah, the Mother of the Believers, to the share of Thabit ibn Qays ibn al-Shammās, among many other instances. Similarly, after the Prophet (may Allah bless him and grant him peace), as in the statement of Ibn Umar: "A female captive was allotted to my share on the day of Jalula." This is the statement of Sa'id ibn al-Musayyib and others.

كَثِيرٌ، وَكَذَلِكَ بَعْدَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَقَوْلِ ابْنِ عُمَرَ، وَقَعَتْ فِي سَهْمِي يَوْمَ جَلُولَاءَ جَارِيَةٌ وَهُوَ قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ - وَغَيْرِهِ.

L15968 And through the chain of Abd al-Razzaq from Ibn Jurayj: Abu al-Zubayr reported to me that he heard Jabir ibn Abdullah saying: "I disapprove of the sale of the *khums* before its distribution, and we do not know of any opponent to their opinion among the Companions whatsoever."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: أَكْرَهُ بَيْعَ الْخُمْسِ حَتَّى يُقْسَمَ، وَلَا نَعْرِفُ لَهُمْ مُخَالِفًا مِنْ الصَّحَابَةِ أَصْلًا

L15969 As for hastening the division: delaying the right-holder's right is an injustice, while hastening to give each right-holder their right is a duty. The Ḥanafīs say: Whoever among the members of the army dies before departing to the abode of Islam or is killed in war has no share.

وَأَمَّا تَعْجِيلُ الْقِسْمَةِ فَإِنَّ مَطْلَ ذِي الْحَقِّ لِحَقِّهِ ظُلْمٌ، وَتَعْجِيلَ إعْطَاءِ كُلِّ ذِي حَقٍّ حَقَّهُ فَرْضٌ، وَالْحَنَفِيُّونَ يَقُولُونَ: مَنْ مَاتَ مِنْ أَهْلِ الْجَيْشِ قَبْلَ الْخُرُوجِ إلَى دَارِ الْإِسْلَامِ، أَوْ قُتِلَ فِي الْحَرْبِ فَلَا سَهْمَ لَهُ.

L15970 He said: If they departed from the abode of war and reinforcements joined them before they left for the abode of Islam, their share of the spoils remains with them—and this is an unmistakable injustice, a statement reaching the pinnacle of corruption without proof. Rather, anyone who participated in any part of the combat that led to the spoils, or took part in gathering them, their share in it is inherited from them. But whoever did not participate in any of that has no share in it. Has there ever been a more vile injustice than depriving those who fought and acquired spoils while giving to those who neither fought nor acquired? As for the land, the Companions disagreed. It has been narrated that Ibn al-Zubayr, Bilāl, and others called for dividing the land, while 'Umar, 'Alī, Mu'ādh, and Abū 'Ubaydah held the opinion of leaving it intact. When they disputed, the matter must be referred back to what Allah the Exalted has ordained to be referred to Him, as He says: *"If you disagree over something, refer it to Allah and the Messenger, if you believe in Allah and the Last Day"* (Quran 4:59).[42]

قَالَ: فَلَوْ خَرَجُوا عَنْ دَارِ الْحَرْبِ فَلَحِقَ بِهِمْ مَدَدٌ قَبْلَ خُرُوجِهِمْ إلَى دَارِ الْإِسْلَامِ فَحَقُّهُمْ مَعَهُمْ فِي الْغَنِيمَةِ - وَهَذَا ظُلْمٌ لَا خَفَاءَ بِهِ، وَقَوْلٌ فِي غَايَةِ الْفَسَادِ بِغَيْرِ بُرْهَانٍ، بَلْ كُلُّ مَنْ شَهِدَ شَيْئًا مِنْ الْقِتَالِ الَّذِي كَانَ سَبَبَ الْغَنِيمَةِ، أَوْ شَهِدَ شَيْئًا مِنْ جَمْعِ الْغَنِيمَةِ فَحَقُّهُ فِيهَا يُورَثُ عَنْهُ، وَمَنْ لَمْ يَشْهَدْ مِنْ ذَلِكَ شَيْئًا فَلَا حَقَّ لَهُ فِيهَا - فَهَلْ سُمِعَ بِظُلْمٍ أَقْبَحَ مِنْ مَنْعِ مَنْ قَاتَلَ وَغَنِمَ وَإِعْطَاءِ مَنْ لَمْ يُقَاتِلْ وَلَا غَنِمَ؟ وَأَمَّا الْأَرْضُ، فَإِنَّ الصَّحَابَةَ اخْتَلَفُوا. فَرُوِّينَا أَنَّ ابْنَ الزُّبَيْرِ، وَبِلَالًا، وَغَيْرَهُمْ دَعَوْا إلَى قِسْمَةِ الْأَرْضِ، وَأَنَّ عُمَرَ، وَعَلِيًّا، وَمُعَاذًا، وَأَبَا عُبَيْدَةَ، رَأَوْا إبْقَاءَهَا رَأْيًا مِنْهُمْ، وَإِذْ تَنَازَعُوا فَالْمَرْدُودُ إلَيْهِ هُوَ مَا افْتَرَضَ اللَّهُ تَعَالَى الرَّدَّ إلَيْهِ إذْ يَقُولُ: {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ إنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [النساء: ٥٩]

[42] **Qur'an references (L15970):** Qur'an 4:59 (An-Nisa).

فَوَجَدْنَا مَنْ قَلَّدَ عُمَرَ فِي ذَلِكَ يَذْكُرُ مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ أَبِيهِ قَالَ: قَالَ عُمَرُ: لَوْلَا آخِرُ الْمُسْلِمِينَ مَا افْتَتَحْت قَرْيَةً إلَّا قَسَّمْتهَا كَمَا قَسَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْبَرَ. قَالَ أَبُو مُحَمَّد: وَهَذَا أَعْظَمُ حُجَّةً عَلَيْهِمْ لِوُجُوهٍ. أَوَّلُهَا: إقْرَارُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَسَّمَ خَيْبَرَ. وَالثَّانِي: أَنَّهُ قَدْ أَخْبَرَ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ إنَّمَا فَعَلَ ذَلِكَ نَظَرًا لِآخِرِ الْمُسْلِمِينَ، وَالَّذِي لَا شَكَّ فِيهِ [فَهُوَ] أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ أَنْظَرَ لِأَوَّلِ الْمُسْلِمِينَ وَلِآخِرِهِمْ مِنْ عُمَرَ، فَمَا رَأَى هَذَا الرَّأْيَ؛ بَلْ أَبْقَى لِآخِرِ الْمُسْلِمِينَ مَا أَبْقَى لِأَوَّلِهِمْ الْجِهَادَ فِي سَبِيلِ اللَّهِ، فَإِمَّا الْغَنِيمَةُ وَإِمَّا الشَّهَادَةُ، وَأَبْقَى لَهُمْ مَوَارِيثَ مَوْتَاهُمْ، وَالتِّجَارَةَ، وَالْمَاشِيَةَ، وَالْحَرْثَ. وَالثَّالِثُ: أَنَّهُ قَدْ خَالَفَ عُمَرَ الزُّبَيْرُ، وَلَيْسَ بَعْضُهُمْ أَحَقَّ بِالِاتِّبَاعِ مِنْ بَعْضٍ؛ فَحَتَّى لَوْ صَحَّ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - مَا ظَنُّوهُ بِهِ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، وَلَكَانَ رَأْيًا مِنْهُ غَيْرُهُ خَيْرٌ مِنْهُ، وَهُوَ مَا أَخْبَرَ بِهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَيْفَ وَعُمَرُ قَوْلُهُ كَقَوْلِنَا فِي هَذِهِ الْمَسْأَلَةِ؟ كَمَا نُبَيِّنُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

L15971–15973 We found those who practiced *taqlīd* of Umar in that matter mentioning what we have narrated through the chain of transmission of Malik from Zayd ibn Aslam from [narrators]. His father said: Umar said: "Were it not for later Muslims, I would not conquer any village without dividing it as Allah's Messenger—peace be upon him—divided Khaybar." Abu Muhammad said: "This constitutes the greatest proof against them for multiple reasons. First: Umar's acknowledgment—may Allah be pleased with him—that Allah's Messenger—peace be upon him—divided Khaybar. Second: He—may Allah be pleased with him—stated that he only took this action out of consideration for later Muslims. What is certain is that Allah's Messenger—peace be upon him—possessed greater foresight for both the earliest and latest Muslims than Umar. Therefore, he did not adopt this view; rather, he preserved for later Muslims what he preserved for the earliest: jihad in Allah's path—either spoils or martyrdom—while also preserving for them the inheritance of their deceased, commerce, livestock, and cultivation. Third: Al-Zubayr opposed Umar, and none of them is more entitled to be followed than another. Even if what they assumed about Umar—may Allah be pleased with him—were valid, it would not constitute proof for them, for his opinion would remain one where others' opinions are better than his—namely, what he transmitted from the Prophet—peace be upon him. How then could Umar's opinion accord with ours in this matter? We shall clarify this subsequently, Allah the Exalted willing."

وَهَذَا الْخَبَرُ مِنْ عُمَرَ يُكَذِّبُ كُلَّ مَا مَوَّهُوا بِهِ مِنْ أَحَادِيثَ مَكْذُوبَةٍ مِنْ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُقَسِّمْ خَيْبَرَ كُلَّهَا، فَهُمْ دَأَبًا يَسْعَوْنَ فِي تَكْذِيبِ قَوْلِ عُمَرَ نَصْرًا لِرَأْيِهِمْ الْفَاسِدِ وَظَنِّهِمْ الْكَاذِبِ.

L15974 This report from ʿUmar refutes all the embellished fabricated ḥadīths they have circulated - those claiming that the Messenger of Allah, peace and blessings of Allah be upon him, did not divide the entirety of Khaybar. Thus, they persistently strive to discredit ʿUmar's statement to support their corrupt opinion and false assumption.

وَقَدْ رُوِّينَا عَنْ عُمَرَ أَنَّهُ قَالَ: إنْ عِشْت إلَى قَابِلٍ لَا تُفْتَحُ قَرْيَةٌ إلَّا قَسَّمْتهَا كَمَا قَسَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْبَرَ -، فَهَذَا رُجُوعٌ مِنْ عُمَرَ إلَى الْقِسْمَةِ.

L15975 It has been narrated to us on the authority of ʿUmar that he said: "If I live until the coming year, no village will be conquered without me dividing it as the Messenger of Allah (may Allah bless him and grant him peace) divided Khaybar." This is a reversion by ʿUmar to division.

L15976 They cited an authentic report we narrated through the chain of Abū Hurayrah that the Messenger of Allah (peace be upon him) said: «Iraq withheld

its dirham and qafīz, Syria withheld its mudd and dinar, Egypt withheld its irdabb and dinar, and you have returned as you began.»

وَاحْتَجُّوا بِخَبَرٍ صَحِيحٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنَعَتْ الْعِرَاقُ دِرْهَمَهَا وَقَفِيزَهَا، وَمَنَعَتْ الشَّامُ مُدَّهَا وَدِينَارَهَا، وَمَنَعَتْ مِصْرُ إرْدَبَّهَا وَدِينَارَهَا وَعُدْتُمْ كَمَا بَدَأْتُمْ» .

L15977 They said: "So, this is the kharaj levied upon the land, and it necessitates its suspension."

قَالُوا: فَهَذَا هُوَ الْخَرَاجُ الْمَضْرُوبُ عَلَى الْأَرْضِ، وَهُوَ يُوجِبُ إيقَافَهَا.

L15978 Abu Muhammad said: This is their distortion of the report through falsehood and a baseless assertion of what it does not contain—devoid of any textual basis or evidence. This report cannot exist except within one of two aspects only, or it may encompass both together through its apparent wording.

قَالَ أَبُو مُحَمَّد: وَهَذَا تَحْرِيفٌ مِنْهُمْ لِلْخَبَرِ بِالْبَاطِلِ وَادِّعَاءُ مَا لَيْسَ فِي الْخَبَرِ بِلَا نَصٍّ وَلَا دَلِيلٍ، وَلَا يَخْلُو هَذَا الْخَبَرُ مِنْ أَحَدِ وَجْهَيْنِ فَقَطْ، أَوْ قَدْ يَجْمَعُهُمَا جَمِيعًا بِظَاهِرِ لَفْظِهِ.

L15979–15981 One of them is that he—peace be upon him—reported about the jizyah imposed upon the people of this land when it is conquered— And this is our statement—because the *jizya* is undoubtedly obligatory by the explicit text of the Qur'an, and there is no text that obligates the *kharaj* which they claim.

أَحَدُهُمَا: أَنَّهُ أَخْبَرَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْجِزْيَةِ الْمَضْرُوبَةِ عَلَى أَهْلِ هَذِهِ الْبِلَادِ إذَا فُتِحَتْ - وَهُوَ قَوْلُنَا - لِأَنَّ الْجِزْيَةَ بِلَا شَكٍّ وَاجِبَةٌ بِنَصِّ الْقُرْآنِ، وَلَا نَصَّ يُوجِبُ الْخَرَاجَ الَّذِي يَدَّعُونَ.

L15982 The second is that it is a warning from him—peace be upon him—of an evil consequence in the final outcome, and that Muslims will be denied their rights in these lands and will revert to their initial state. This, too, is a truth that has become evident—*Indeed, to Allah we belong, and to Him we shall return*—thus this report became an authoritative argument against them.

وَالثَّانِي: أَنَّهُ إنْذَارٌ مِنْهُ - عَلَيْهِ السَّلَامُ - بِسُوءِ الْعَاقِبَةِ فِي آخِرِ الْأَمْرِ، وَأَنَّ الْمُسْلِمِينَ سَيُمْنَعُونَ حُقُوقَهُمْ فِي هَذِهِ الْبِلَادِ وَيَعُودُونَ كَمَا بَدَءُوا، وَهَذَا أَيْضًا حَقٌّ قَدْ ظَهَرَ - وَإِنَّا لِلَّهِ وَإِنَّا إلَيْهِ رَاجِعُونَ - فَعَادَ هَذَا الْخَبَرُ حُجَّةً عَلَيْهِمْ

L15983 Abu Muhammad said: Since there is no evidence to validate their assertion, let us now mention the conclusive proofs supporting the correctness of our view. Allah the Exalted said: "And He made you inherit their land, their dwellings, and their wealth" [Al-Ahzab: 27]. Thus, the Exalted equated all these without distinction, so it is impermissible to differentiate between the rulings concerning wealth or land that has come to us from combatants, by the Quranic text. And the Exalted said: "And know that whatever you obtain

قَالَ أَبُو مُحَمَّد: فَإِذْ لَا دَلِيلَ عَلَى صِحَّةِ قَوْلِهِمْ فَلْنَذْكُرْ الْآنَ الْبَرَاهِينَ عَلَى صِحَّةِ قَوْلِنَا. قَالَ اللَّهُ تَعَالَى: {وَأَوْرَثَكُمْ أَرْضَهُمْ وَدِيَارَهُمْ وَأَمْوَالَهُمْ} [الأحزاب: ٢٧] فَسَوَّى تَعَالَى بَيْنَ كُلِّ ذَلِكَ وَلَمْ يُفَرِّقْ، فَلَا يَجُوزُ أَنْ يُفَرَّقَ بَيْنَ حُكْمِ مَا صَارَ إلَيْنَا مِنْ أَهْلِ الْحَرْبِ مِنْ مَالٍ، أَوْ أَرْضٍ بِنَصِّ الْقُرْآنِ، وَقَالَ تَعَالَى: {وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي الْقُرْبَى} [الأنفال: ٤١] .

as spoils, then indeed one-fifth of it is for Allah, the Messenger, and the near relatives" [Al-Anfal: 41].[43]

L15984 And it was narrated to us through the chain of Al-Bukhārī: from ʿAbdullāh ibn Muḥammad (Al-Musnadī), from Muʿāwiyah ibn ʿAmr, from Abū Isḥāq (Al-Fazārī), from Mālik ibn Anas, who said: "Thawr narrated to me from Sālim, the freed slave of Ibn Muṭīʿ, that he heard Abū Hurayrah say: 'We conquered Khaybar but took no gold or silver as booty. We only took as booty camels, cattle, household goods, and enclosed orchards.'"

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ هُوَ الْمُسْنَدِيُّ نَا مُعَاوِيَةُ بْنُ عَمْرٍو نَا أَبُو إِسْحَاقَ هُوَ الْفَزَارِيُّ - عَنْ مَالِكِ بْنِ أَنَسٍ حَدَّثَنِي ثَوْرٌ عَنْ سَالِمٍ مَوْلَى ابْنِ مُطِيعٍ " أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: افْتَتَحْنَا خَيْبَرَ فَلَمْ نَغْنَمْ ذَهَبًا، وَلَا فِضَّةً إِنَّمَا غَنِمْنَا الْإِبِلَ، وَالْبَقَرَ، وَالْمَتَاعَ، وَالْحَوَائِطَ ".

L15985 Thus, it is established that enclosed gardens—namely estates and orchards—are considered spoils like all other goods. They are subject to the fifth (khums) by the Quran's explicit ruling, and this portion is to be divided without disagreement.

فَصَحَّ أَنَّ الْحَوَائِطَ، وَهِيَ: الضِّيَاعُ، وَالْبَسَاتِينُ: مَغْنُومَةٌ كَسَائِرِ الْمَتَاعِ فَهِيَ مُخَمَّسَةٌ بِنَصِّ الْقُرْآنِ، وَالْمُخَمَّسُ مَقْسُومٌ بِلَا خِلَافٍ

L15986 It was narrated to us through the chain of Aḥmad ibn Ḥanbal and Isḥāq ibn Rāhawayh, both from ʿAbd al-Razzāq, who narrated to us from Maʿmar, from Hammām ibn Munabbih, from Abū Hurayrah, who said: The Messenger of Allāh—peace and blessings of Allāh be upon him—said: "Whichever village you approach and settle in, your share is therein. Whichever village disobeys Allāh and His Messenger, its khums belongs to Allāh and His Messenger, then it is yours." This constitutes an explicit text from which there is no escape.

رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، كِلَاهُمَا عَنْ عَبْدِ الرَّزَّاقِ نَا مَعْمَرٌ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ نَا أَبُو هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَيُّمَا قَرْيَةٍ أَتَيْتُمُوهَا، وَأَقَمْتُمْ فِيهَا فَسَهْمُكُمْ فِيهَا، وَأَيُّمَا قَرْيَةٍ عَصَتْ اللَّهَ وَرَسُولَهُ فَإِنَّ خُمُسَهَا لِلَّهِ وَرَسُولِهِ، ثُمَّ هِيَ لَكُمْ» وَهَذَا نَصٌّ جَلِيٌّ لَا مَحِيصَ عَنْهُ.

L15987 It has been authentically established that the Prophet—may Allah bless him and grant him peace—divided the land of Banu Qurayẓah and Khaybar.

وَقَدْ صَحَّ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَسَّمَ أَرْضَ بَنِي قُرَيْظَةَ، وَخَيْبَرَ.

L15988–15989 Then the height of all astonishment is that Malik here followed Umar's precedent, yet in what you mentioned is a waqf - for he did not clarify how to administer its land tax. He acknowledged he did not know Umar's practice in that matter. Is there anything on earth more astounding than ignorance being taken as a proof?

ثُمَّ الْعَجَبُ كُلُّهُ: أَنَّ مَالِكًا قَلَّدَ هَاهُنَا عُمَرَ، ثُمَّ فِيمَا ذَكَرْتُمْ وَقْفٌ، فَلَمْ يُخْبِرْ كَيْفَ يَعْمَلُ فِي خَرَاجِهَا، وَأَقَرَّ أَنَّهُ لَا يَدْرِي فِعْلَ عُمَرَ فِي ذَلِكَ، فَهَلْ فِي الْأَرْضِ أَعْجَبُ مِنْ جَهَالَةٍ تُجْعَلُ حُجَّةً؟

L15990 As for Abū Ḥanīfah, he adopted a weak narration attributed to ʿUmar regarding this matter while disregarding other reports from him. They imposed their judgment erroneously without proof, though we have exhaustively an-

وَأَمَّا أَبُو حَنِيفَةَ فَأَخَذَ فِي ذَلِكَ بِرِوَايَةٍ غَيْرِ قَوِيَّةٍ جَاءَتْ عَنْ عُمَرَ، وَتَرَكَ سَائِرَ مَا رُوِيَ عَنْهُ، وَتَحَكَّمُوا فِي الْخَطَأِ بِلَا بُرْهَانٍ، وَقَدْ تَقَصَّيْنَا ذَلِكَ فِي كِتَابِ الْإِيصَالِ - وَاَللَّهُ

[43] **Qur'an references (L15983):** Qur'an 33:27 (Al-Ahzab); Qur'an 8:41 (Al-Anfal).

alyzed this in *Al-Iṣāl*—and Allah is the One whose help is sought [and all praise belongs to Allah, the Exalted]. How could this stand when the authentic narration from ʿUmar aligns with our position? As transmitted to us by Aḥmad ibn Muḥammad ibn Al-Jasūr—from Muḥammad ibn ʿĪsā ibn Rifāʿah, from ʿAlī ibn ʿAbd al-ʿAzīz, from Abū ʿUbayd, from Hushaym, from Ismāʿīl ibn Abī Khālid, from Qays ibn Abī Ḥāzim—who said: The Bajīlah tribe constituted a quarter of the forces at Al-Qādisiyyah. ʿUmar granted them a quarter of the Sawād lands, which they retained for two or three years. When ʿAmmār ibn Yāsir came to ʿUmar ibn Al-Khaṭṭāb as an envoy, accompanied by Jarīr ibn ʿAbdullāh, ʿUmar said: "O Jarīr, were I not an accountable distributor, you would retain your allotted share. But seeing the population has increased, I deem it fit for you to return it to them." Jarīr complied. Then Umm Kurz Al-Bajaliyyah protested: "O Commander of the Faithful, my father died while his share in the Sawād remained valid, yet I have not become Muslim." ʿUmar replied: "O Umm Kurz, your people have acted as you well know." She retorted: "Even if they did so, I shall not embrace Islam until you provide me with a trained she-camel bearing a red covering and fill my palms with gold." ʿUmar fulfilled her demand, the gold amounting to roughly eighty dinars. This constitutes the most authentic report from ʿUmar on this issue—and it affirms our stance. For he did not cease until he appeased the minds of the combatants entitled to spoils and the heirs of the deceased among them. This is what must be presumed of ʿUmar, and it is impermissible to presume otherwise. There are many cases where they contradicted ʿUmar, as we previously detailed—such as his deduction of the fifth from personal spoils, his allocation of the remainder to the slayer, and other rulings. Is it not among their absurdities that they exempted the jizya from those liable for the land tax? We have received a narration through Ibn Abī Shaybah—from Ḥafṣ ibn Ghiyāth, from Muḥammad ibn Qays, from Abū ʿAwn Muḥammad ibn ʿUbaydullāh Al-Thaqafī—that ʿUmar and ʿAlī declared: "When a landowner embraces Islam, we lift the jizya from him while collecting the land tax."

L15991–15993 It was narrated to us by Ibn Abī Shaybah from Hushaym, from Ḥuṣayn, that two men from the people of Ullays embraced Islam, so he wrote... Umar

الْمُسْتَعَانُ [وَلِلَّهِ تَعَالَى الْحَمْدُ] فَكَيْفَ وَالرِّوَايَةُ عَنْ عُمَرَ الصَّحِيحَةُ هِيَ قَوْلُنَا؟ كَمَا حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نَا مُحَمَّدُ بْنُ عِيسَى بْنِ رِفَاعَةَ نَا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نَا أَبُو عُبَيْدٍ نَا هُشَيْمٌ نَا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ قَالَ: كَانَتْ بَجِيلَةُ رُبْعَ النَّاسِ يَوْمَ الْقَادِسِيَّةِ فَجَعَلَ لَهُمْ عُمَرُ رُبْعَ السَّوَادِ فَأَخَذُوا سَنَتَيْنِ، أَوْ ثَلَاثًا، فَوَفَدَ عَمَّارُ بْنُ يَاسِرٍ إِلَى عُمَرَ بْنِ الْخَطَّابِ وَمَعَهُ جَرِيرُ بْنُ عَبْدِ اللَّهِ، فَقَالَ عُمَرُ: يَا جَرِيرُ لَوْلَا أَنِّي قَاسِمٌ مَسْئُولٌ لَكُنْتُمْ عَلَى مَا جُعِلَ لَكُمْ، وَأَرَى النَّاسَ قَدْ كَثُرُوا فَأَرَى أَنْ تَرُدَّهُ عَلَيْهِمْ. فَفَعَلَ جَرِيرٌ ذَلِكَ، فَقَالَتْ أُمُّ كُرْزٍ الْبَجَلِيَّةُ: يَا أَمِيرَ الْمُؤْمِنِينَ إِنَّ أَبِي هَلَكَ وَسَهْمُهُ ثَابِتٌ فِي السَّوَادِ وَإِنِّي لَمْ أُسْلِمْ. فَقَالَ لَهَا عُمَرُ: يَا أُمَّ كُرْزٍ إِنَّ قَوْمَكِ قَدْ صَنَعُوا مَا قَدْ عَلِمْتِ، فَقَالَتْ: إِنْ كَانُوا صَنَعُوا مَا صَنَعُوا فَإِنِّي لَسْتُ أُسْلِمُ حَتَّى تَحْمِلَنِي عَلَى نَاقَةٍ ذَلُولٍ عَلَيْهَا قَطِيفَةٌ حَمْرَاءُ وَتَمْلَأُ كَفَّيَّ ذَهَبًا. فَفَعَلَ عُمَرُ ذَلِكَ، فَكَانَتْ الذَّهَبُ نَحْوَ ثَمَانِينَ دِينَارًا، فَهَذَا أَصَحُّ مَا جَاءَ عَنْ عُمَرَ فِي ذَلِكَ - وَهُوَ قَوْلُنَا، فَإِنَّهُ لَمْ يُوقِفْ حَتَّى اسْتَطَابَ نُفُوسَ الْغَانِمِينَ وَوَرَثَةَ مَنْ مَاتَ مِنْهُمْ، وَهَذَا الَّذِي لَا يَجُوزُ أَنْ يُظَنَّ بِعُمَرَ غَيْرُهُ، وَرُبَّ قَضِيَّةٍ خَالَفُوا فِيهَا عُمَرَ مِمَّا قَدْ ذَكَرْنَاهُ قَبْلُ مِنْ تَخْمِيسِهِ السَّلَبَ وَإِمْضَائِهِ سَائِرَهُ لِلْقَاتِلِ وَغَيْرِ ذَلِكَ، وَمِنْ عَجَائِبِهِمْ إِسْقَاطُهُمْ الْجِزْيَةَ عَنْ أَهْلِ الْخَرَاجِ؟ وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا حَفْصُ بْنُ غِيَاثٍ عَنْ مُحَمَّدِ بْنِ قَيْسٍ عَنْ أَبِي عَوْنٍ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ الثَّقَفِيِّ عَنْ عُمَرَ، وَعَلِيٍّ أَنَّهُمَا قَالَا: إِذَا أَسْلَمَ وَلَهُ أَرْضٌ وَضَعْنَا عَنْهُ الْجِزْيَةَ وَأَخَذْنَا مِنْهُ خَرَاجَهَا.

instructed Uthman ibn Hunayf to lift the jizya from the two of them and to take the fixed agricultural tax from their two lands.

حَدَّثَنَا ابْنُ أَبِي شَيْبَةَ عَنْ هُشَيْمٍ عَنْ حُصَيْنٍ أَنَّ رَجُلَيْنِ مِنْ أَهْلِ أُلَّيْسٍ أَسْلَمَا فَكَتَبَ عُمَرُ إِلَى عُثْمَانَ بْنِ حُنَيْفٍ أَنْ يَرْفَعَ الْجِزْيَةَ عَنْ رُءُوسِهِمَا وَأَنْ يَأْخُذَ الطَّسْقَ مِنْ أَرْضَيْهِمَا.

L15994 Ibn Abi Shaybah → Waki‘ → Sufyan → Qays ibn Muslim → Tariq ibn Shihab: A female dihqān from Nahr al-Malik embraced Islam. Umar said: “Return her land to her so she may pay its kharaj.”

حَدَّثَنَا ابْنُ أَبِي شَيْبَةَ نَا وَكِيعٌ نَا سُفْيَانُ عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ أَنَّ دُهْقَانَةً مِنْ نَهْرِ الْمَلِكِ أَسْلَمَتْ فَقَالَ عُمَرُ: ادْفَعُوا إِلَيْهَا أَرْضَهَا تُؤَدِّي عَنْهَا الْخَرَاجَ.

Ibn Abi Shaybah → Waki‘ → Sufyan → Jabir → al-Sha‘bi: Al-Rafayl, the dihqān of al-Nahrayn (the Two Rivers), embraced Islam. Umar assigned him two thousand, lifted the jizya from his person, and obligated him to pay the kharaj on his land.

نَا ابْنُ أَبِي شَيْبَةَ نَا وَكِيعٌ عَنْ سُفْيَانَ عَنْ جَابِرٍ عَنِ الشَّعْبِيِّ أَنَّ الرَّفَيْلَ دُهْقَانَ النَّهْرَيْنِ أَسْلَمَ فَفَرَضَ لَهُ عُمَرُ فِي أَلْفَيْنِ، وَوَضَعَ عَنْ رَأْسِهِ الْجِزْيَةَ، وَأَلْزَمَهُ خَرَاجَ أَرْضِهِ.

L15995 If it is said: “The ḥadīth of Ibn ‘Awn is mursal?” We respond: Glory be to Allah! When the mursal narration transmitted from Mu‘ādh concerning independent legal reasoning was considered valid evidence, yet now it is not considered as such, nor is any dissent known from the Companions concerning those we have mentioned.

فَإِنْ قِيلَ: حَدِيثُ ابْنِ عَوْنٍ مُرْسَلٌ؟ قُلْنَا: سُبْحَانَ اللَّهِ وَإِذْ رُوِيَ الْمُرْسَلُ عَنْ مُعَاذٍ فِي اجْتِهَادِ الرَّأْيِ كَانَ حُجَّةً وَالْآنَ لَيْسَ بِحُجَّةٍ، وَلَا يُعْرَفُ لِمَنْ ذَكَرْنَا مُخَالِفٌ مِنَ الصَّحَابَةِ.

L15996 A legal ruling: Nothing is accepted from a disbeliever except Islam or the sword.

[مَسْأَلَةٌ لَا يُقْبَلُ مِنْ كَافِرٍ إِلَّا الْإِسْلَامُ أَوْ السَّيْفُ]

L15997 958 – Question:

٩٥٨ - مَسْأَلَةٌ:

L15998 Nothing is accepted from a disbeliever except Islam or the sword [i.e., forced submission]—this ruling applies equally to men and women—except the People of the Book specifically: the Jews, Christians, and Zoroastrians alone. If they pay the *jizya* (poll tax), they are permitted to retain their status under humiliation.

وَلَا يُقْبَلُ مِنْ كَافِرٍ إِلَّا الْإِسْلَامُ، أَوْ السَّيْفُ - الرِّجَالُ وَالنِّسَاءُ فِي ذَلِكَ سَوَاءٌ - حَاشَا أَهْلَ الْكِتَابِ خَاصَّةً، وَهُمْ الْيَهُودُ، وَالنَّصَارَى، وَالْمَجُوسُ فَقَطْ، فَإِنَّهُمْ إِنْ أَعْطُوا الْجِزْيَةَ أُقِرُّوا عَلَى ذَلِكَ مَعَ الصَّغَارِ.

L15999 Abu Hanifa and Malik said: As for those who are Arabs and not People of the Book specifically, [the choice is] Islam or the sword.

وَقَالَ أَبُو حَنِيفَةَ وَمَالِكٌ: أَمَّا مَنْ لَمْ يَكُنْ كِتَابِيًّا مِنَ الْعَرَبِ خَاصَّةً فَالْإِسْلَامُ أَوْ السَّيْفُ.

L16000 As for non-Arabs, the People of the Book and others are equally obliged, and all of them are required to pay the *jizya*.

وَأَمَّا الْأَعَاجِمُ فَالْكِتَابِيُّ وَغَيْرُهُ سَوَاءٌ، وَيُقَرُّ جَمِيعُهُمْ عَلَى الْجِزْيَةِ.

L16001 Abū Muḥammad said: This is false due to Allah the Most High's statement: "Fight the polytheists wherever you find them, capture them, besiege them, and lie in wait for them at every vantage point. But if they repent, establish ṣalāh, and give zakāh, then let them go free" [9:5], and His statement: "Combat those among the People of the Scripture who do not believe in Allah nor in the Last Day, nor forbid what Allah and His Messenger have forbidden, nor embrace the religion of truth, until they pay the jizyah willingly while they are subdued" [9:29]. Thus, the Most High did not specify any distinction between Arab and non-Arab in either of these two rulings.[1]

قَالَ أَبُو مُحَمَّد: هَذَا بَاطِلٌ لِقَوْلِ اللَّهِ تَعَالَى: {فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصَدٍ فَإِنْ تَابُوا وَأَقَامُوا الصَّلاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ} [التوبة: ٥] ، وَقَالَ تَعَالَى: {قَاتِلُوا الَّذِينَ لا يُؤْمِنُونَ بِاللَّهِ وَلا بِالْيَوْمِ الآخِرِ وَلا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] فَلَمْ يَخُصَّ تَعَالَى عَرَبِيًّا مِنْ عَجَمِيٍّ فِي كِلَا الْحُكْمَيْنِ.

L16002–16003 It has been authentically established that he—peace be upon him—took the jizya from the Zoroastrians of Hijr, thus confirming they are among the People of the Book. Were this not the case, the Messenger of Allah—may Allah's blessings and peace be upon him—would not have acted contrary to the Book of his Lord, the Most High.

وَصَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَخَذَ الْجِزْيَةَ مِنْ مَجُوسِ هَجَرٍ، فَصَحَّ أَنَّهُمْ مِنْ أَهْلِ الْكِتَابِ، وَلَوْلَا ذَلِكَ مَا خَالَفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كِتَابَ رَبِّهِ تَعَالَى.

L16004 If they cite what is narrated from the Prophet—peace and blessings of Allah be upon him—regarding his saying, "I only intend for them to uphold a declaration to which the Arabs will submit, then the non-Arabs will submit by paying the jizya," this constitutes no valid argument for them. For they do not dispute that the People of the Book among the Arabs pay the jizya, nor that non-Arabs who embrace Islam do not pay the jizya.

فَإِنْ ذَكَرُوا مَا رُوِيَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ: «إِنَّمَا أُرِيدُهُمْ عَلَى كَلِمَةٍ تَدِينُ لَهُمْ بِهَا الْعَرَبُ ثُمَّ تُؤَدِّي إِلَيْهَا الْعَجَمُ الْجِزْيَةَ» فَلَا حُجَّةَ لَهُمْ فِي هَذَا؛ لِأَنَّهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ أَهْلَ الْكِتَابِ مِنَ الْعَرَبِ يُؤَدُّونَ الْجِزْيَةَ، وَأَنَّ مَنْ أَسْلَمَ مِنَ الْعَجَمِ لَا يُؤَدِّي الْجِزْيَةَ.

L16005 It has thus been established that this narration is not to be taken in its general sense, and that he—peace be upon him—only intended the imposition of jizyah to apply to certain non-Arabs, not all of them. Exalted is He has clarified who they are: they are the People of the Book alone.

فَصَحَّ أَنَّ هَذَا الْخَبَرَ لَيْسَ عَلَى عُمُومِهِ، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - إِنَّمَا عَنَى بِأَدَاءِ الْجِزْيَةِ بَعْضَ الْعَجَمِ لَا كُلَّهُمْ، وَبَيَّنَ تَعَالَى مَنْ هُمْ، وَأَنَّهُمْ أَهْلُ الْكِتَابِ فَقَطْ.

L16006 The greatest wonder is that they deemed Allah's statement, the Exalted: {Then either grant favor or take ransom} [Muhammad: 4] as abrogated by

[1] **Qur'an references (L16001):** Qur'an 9:5 (At-Tawbah); Qur'an 9:29 (At-Tawbah).

وَالْعَجَبُ كُلُّهُ أَنَّهُمْ جَعَلُوا قَوْلَ اللَّهِ تَعَالَى: {فَإِمَّا مَنًّا بَعْدُ وَإِمَّا فِدَاءً} [محمد: ٤] مَنْسُوخًا بِقَوْلِهِ تَعَالَى: {فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ} [التوبة: ٥] وَلَمْ يَجْعَلُوا ذَلِكَ مُبَيِّنًا لِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «تُؤَدِّي إلَيْكُمْ الْجِزْيَةَ» وَلَوْ قَلَبُوا لَأَصَابُوا وَهَذَا تَحَكُّمٌ بِالْبَاطِلِ.

وَقَالُوا: قَالَ اللَّهُ تَعَالَى: {لا إِكْرَاهَ فِي الدِّينِ} [البقرة: ٢٥٦] ؟ فَقُلْنَا: أَنْتُمْ أَوَّلُ مَنْ يَقُولُ: إنَّ الْعَرَبَ الْوَثَنِيِّينَ يُكْرَهُونَ عَلَى الْإِسْلَامِ، وَإِنَّ الْمُرْتَدَّ يُكْرَهُ عَلَى الْإِسْلَامِ.

وَقَدْ صَحَّ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَكْرَهَ مُشْرِكِي الْعَرَبِ عَلَى الْإِسْلَامِ، فَصَحَّ أَنَّ [هَذِهِ] الْآيَةَ لَيْسَتْ عَلَى ظَاهِرِهَا وَإِنَّمَا هِيَ فِيمَنْ نَهَانَا اللَّهُ تَعَالَى أَنْ نُكْرِهَهُ، وَهُمْ أَهْلُ الْكِتَابِ خَاصَّةً - وَقَوْلُنَا هَذَا هُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

٩٥٩ - مَسْأَلَةٌ:

وَالصَّغَارُ هُوَ أَنْ يَجْرِيَ حُكْمُ الْإِسْلَامِ عَلَيْهِمْ، وَأَنْ لَا يُظْهِرُوا شَيْئًا مِنْ كُفْرِهِمْ، وَلَا مِمَّا يُحَرَّمُ فِي دِينِ الْإِسْلَامِ قَالَ عَزَّ وَجَلَّ: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] وَبَنُو تَغْلِبَ وَغَيْرُهُمْ سَوَاءٌ لِأَنَّ اللَّهَ تَعَالَى وَرَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُفَرِّقَا بَيْنَ أَحَدٍ مِنْهُمْ، وَيَجْمَعُ الصَّغَارَ شُرُوطُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - عَلَيْهِمْ.

نَا مُحَمَّدُ بْنُ الْحَسَنِ بْنِ عَبْدِ الْوَارِثِ نَا عَبْدُ الرَّحْمَنِ بْنُ عُمَرَ بْنِ مُحَمَّدِ بْنِ النَّحَّاسِ نَا أَبُو الْعَبَّاسِ مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ أَبِي إِسْحَاقَ الصَّفَّارُ نَا أَبُو الْفَضْلِ الرَّبِيعُ بْنُ تَغْلِبَ نَا يَحْيَى بْنُ عُقْبَةَ عَنْ أَبِي الْعَيْزَارِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ طَلْحَةَ بْنِ مُصَرِّفٍ عَنْ مَسْرُوقٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ غَنْمٍ قَالَ: كَتَبْت لِعُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - حِينَ صَالَحَ نَصَارَى الشَّامِ وَشَرَطَ عَلَيْهِمْ فِيهِ: أَنْ لَا يُحْدِثُوا فِي مَدِينَتِهِمْ وَلَا مَا حَوْلَهَا دَيْرًا، وَلَا كَنِيسَةً، وَلَا

His statement: {Then kill the polytheists wherever you find them} [At-Tawbah: 5], yet they did not consider this as a clarification of the Prophet's statement (peace be upon him): «They will pay you the jizyah». Had they reversed their approach, they would have been correct. This is an arbitrary judgment based on falsehood.[2]

L16007 "They said, 'Allah the Exalted has said, "There is no compulsion in religion"? [Al-Baqarah: 256].' We replied, 'It is you who assert that the polytheist Arabs are compelled to Islam and that the apostate is compelled to Islam!'"[3]

L16008 It has been authenticated that the Prophet—peace and blessings of Allah be upon him—coerced the Arab polytheists to accept Islam. Thus, it is authenticated that [this] verse is not to be understood according to its apparent meaning, but rather concerns those whom Allah the Exalted has forbidden us to coerce—specifically the People of the Book. This is the position of Al-Shāfiʿī and Abū Sulaymān. And with Allah the Exalted is success.

L16009 959: Legal Question

L16010–16012 Humiliation entails that the ruling of Islam is applied to them and that they do not manifest anything of their disbelief or anything prohibited in the religion of Islam. Allah the Exalted said: "Fight them until there is no idolatrous strife and the religion is entirely for Allah" (8:39). Banu Taghlib and others are alike, for Allah the Exalted and His Messenger—peace and blessings be upon him—made no distinction among any of them. Umar's conditions (may Allah be pleased with him) collectively establish humiliation. Muhammad ibn al-Hasan ibn Abd al-Warith reported to us from Abd al-Rahman ibn Umar ibn Muhammad ibn al-Nahhas. Abu al-Abbas Muhammad ibn Ishaq ibn Abi Ishaq al-Saffar narrated to us: Abu al-Fadl al-Rabi' ibn Taghlib narrated to us: Yahya ibn 'Uqbah narrated to us from Abu al-'Ayzār from Sufyan al-Thawri from Talhah ibn Musarrif from Masruq from 'Abd al-Rahman ibn Ghanm, who said: I wrote for 'Umar ibn al-Khattab — may Allah be pleased with him — when he made peace with the Christians of Syria and

[2] **Qur'an references (L16006):** Qur'an 47:4 (Muhammad); Qur'an 9:5 (At-Tawbah).
[3] **Qur'an references (L16007):** Qur'an 2:256 (Al-Baqarah).

imposed upon them the conditions that they shall not build in their city or its surroundings a monastery, church, fortress, or monk's cell; nor renovate any ruined structures among them; nor prevent Muslims from lodging in their churches for three nights while providing them food; nor shelter spies; nor conceal deceit against Muslims; nor teach their children the Quran; nor manifest polytheism; nor prevent their close relatives from embracing Islam if they desire it; that they shall honor Muslims and rise from their seats for them when Muslims wish to sit; nor imitate Muslims in any element of their dress — neither in caps, turbans, sandals, nor hairstyles; nor part their hair as Muslims do; nor speak using Arabic phrases; nor adopt Muslim kunyas; nor ride with saddles; nor carry swords; nor possess weapons; nor engrave Arabic script on their signet rings; nor sell wine; that they shall shave the front of their heads; maintain their distinctive attire wherever they reside; fasten belts around their waists; nor display crosses or religious texts in Muslim thoroughfares; nor reside near Muslims with their dead; nor ring bells except softly; nor raise their voices during church services in Muslim presence; nor hold Palm Sunday processions; nor raise voices during funerals; nor display fire in their presence; nor purchase slaves designated as spoils for Muslims. Should they breach any condition, their protected status is void, and Muslims may treat them as people of obstinacy and discord. From 'Umar also: that they shall not keep pigs near us. Abu Muhammad said: Among their humiliations is that they shall not harm Muslims, nor employ them, nor shall any of them hold governmental authority enabling them to exercise power over Muslims.[4]

قَلِيَّةً وَلَا صَوْمَعَةَ رَاهِبٍ، وَلَا يُجَدِّدُوا مَا خَرِبَ مِنْهَا، وَلَا يَمْنَعُوا كَنَائِسَهُمْ أَنْ يَنْزِلَهَا أَحَدٌ مِنَ الْمُسْلِمِينَ ثَلَاثَ لَيَالٍ يُطْعِمُونَهُمْ، وَلَا يُؤْوُوا جَاسُوسًا، وَلَا يَكْتُمُوا غِشًّا لِلْمُسْلِمِينَ، وَلَا يُعَلِّمُوا أَوْلَادَهُمُ الْقُرْآنَ، وَلَا يُظْهِرُوا شِرْكًا، وَلَا يَمْنَعُوا ذَوِي قَرَابَاتِهِمْ مِنَ الْإِسْلَامِ إِنْ أَرَادُوهُ، وَأَنْ يُوَقِّرُوا الْمُسْلِمِينَ، وَيَقُومُوا لَهُمْ مِنْ مَجَالِسِهِمْ إِذَا أَرَادُوا الْجُلُوسَ، وَلَا يَتَشَبَّهُوا بِالْمُسْلِمِينَ فِي شَيْءٍ مِنْ لِبَاسِهِمْ: فِي قَلَنْسُوَةٍ، وَلَا عِمَامَةٍ، وَلَا نَعْلَيْنِ، وَلَا فَرْقِ شَعْرٍ، وَلَا يَتَكَلَّمُوا بِكَلَامِ الْمُسْلِمِينَ، وَلَا يَتَكَنَّوْا بِكُنَاهُمْ، لَا يَرْكَبُوا سُرُجًا، وَلَا يَتَقَلَّدُوا سَيْفًا، وَلَا يَتَّخِذُوا شَيْئًا مِنَ السِّلَاحِ، وَلَا يَنْقُشُوا خَوَاتِيمَهُمْ بِالْعَرَبِيَّةِ، وَلَا يَبِيعُوا الْخُمُورَ، وَأَنْ يَجُزُّوا مَقَادِمَ رُءُوسِهِمْ، وَأَنْ يَلْزَمُوا زِيَّهُمْ حَيْثُمَا كَانُوا، وَأَنْ يَشُدُّوا الزَّنَانِيرَ عَلَى أَوْسَاطِهِمْ، وَلَا يُظْهِرُوا صَلِيبًا وَلَا شَيْئًا مِنْ كُتُبِهِمْ فِي شَيْءٍ مِنْ طُرُقِ الْمُسْلِمِينَ، وَلَا يُجَاوِرُوا الْمُسْلِمِينَ بِمَوْتَاهُمْ، وَلَا يَضْرِبُوا نَاقُوسًا إِلَّا ضَرْبًا خَفِيفًا، وَلَا يَرْفَعُوا أَصْوَاتَهُمْ بِالْقِرَاءَةِ فِي كَنَائِسِهِمْ فِي شَيْءٍ مِنْ حَضْرَةِ الْمُسْلِمِينَ وَلَا يُخْرِجُوا سَعَانِينَ وَلَا يَرْفَعُوا مَعَ مَوْتَاهُمْ أَصْوَاتَهُمْ، وَلَا يُظْهِرُوا النِّيرَانَ مَعَهُمْ، وَلَا يَشْتَرُوا مِنَ الرَّقِيقِ مَا جَرَتْ عَلَيْهِ سِهَامُ الْمُسْلِمِينَ. فَإِنْ خَالَفُوا شَيْئًا مِمَّا شَرَطُوهُ فَلَا ذِمَّةَ لَهُمْ، وَقَدْ حَلَّ لِلْمُسْلِمِينَ مِنْهُمْ مَا يَحِلُّ مِنْ أَهْلِ الْمُعَانَدَةِ وَالشِّقَاقِ. وَعَنْ عُمَرَ أَيْضًا: أَنْ لَا يُجَاوِرُونَا بِخِنْزِيرٍ. قَالَ أَبُو مُحَمَّدٍ: وَمِنَ الصَّغَارِ أَنْ لَا يُؤْذُوا مُسْلِمًا، وَلَا يَسْتَخْدِمُوهُ، وَلَا يَتَوَلَّى أَحَدٌ مِنْهُمْ شَيْئًا مِنْ أُمُورِ السُّلْطَانِ يَجْرِي لَهُمْ فِيهِ أَمْرٌ عَلَى مُسْلِمٍ

[مَسْأَلَةٌ الْجِزْيَةُ لَازِمَةٌ لِلْحُرِّ وَالْعَبْدِ وَالذَّكَرِ وَالْأُنْثَى]

L16013 **A legal ruling: Jizyah is obligatory for the free, the slave, the male, and the female.**

L16014 960. Issue. The jizyah is obligatory equally upon the free and the enslaved,

[4]**Qur'an references (L16010):** Qur'an 8:39 (Al-Anfal).

male and female, the settled poor and the wealthy monastic, specifically from those who have reached puberty, due to the statement of Allah, the Exalted: “Until they give the jizyah from hand while they are humbled” [At-Tawbah: 29].[5]

٩٦٠ - مَسْأَلَةٌ وَالْجِزْيَةُ لَازِمَةٌ لِلْحُرِّ مِنْهُمْ وَالْعَبْدِ، وَالذَّكَرِ، وَالْأُنْثَى، وَالْفَقِيرِ الْبَاتِّ، وَالْغَنِيِّ الرَّاهِبِ سَوَاءٌ مِنْ الْبَالِغِينَ خَاصَّةً، لِقَوْلِ اللَّهِ تَعَالَى: {حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] .

L16015–16017 There is no disagreement that religion is obligatory for women as it is obligatory for men, and no textual evidence has come indicating a distinction between women and men in this regard. It is authentically reported from Umar ibn Abd al-Aziz that he imposed the jizya upon the monks of the monasteries, requiring two dinar from every monk.

وَلَا خِلَافَ فِي أَنَّ الدِّينَ لَازِمٌ لِلنِّسَاءِ كَلُزُومِهِ لِلرِّجَالِ وَلَمْ يَأْتِ نَصٌّ بِالْفَرْقِ بَيْنَهُمْ فِي الْجِزْيَةِ صَحَّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ فَرَضَ الْجِزْيَةَ عَلَى رُهْبَانِ الدِّيَارَاتِ، عَلَى كُلِّ رَاهِبٍ دِينَارَيْنِ.

L16018 Via the chain of Sufyān al-Thawrī: ʿUmar ibn ʿAbd al-ʿAzīz levied jizya from the Jews and Christians among the freed slaves of the Muslims.

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَخَذَ الْجِزْيَةَ مِنْ عُتَقَاءِ الْمُسْلِمِينَ مِنْ الْيَهُودِ وَالنَّصَارَى

L16019 Mālik said: Jizya is not taken from one manumitted by a Muslim or a disbeliever.

وَقَالَ مَالِكٌ: لَا تُؤْخَذُ الْجِزْيَةُ مِمَّنْ أَعْتَقَهُ مُسْلِمٌ، أَوْ كَافِرٌ.

L16020 Abu Hanifah, al-Shafi’i, and Abu Sulayman said: The jizyah is taken from them, and we know of no argument for Malik’s opinion at all.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: تُؤْخَذُ الْجِزْيَةُ مِنْهُمْ وَمَا نَعْلَمُ لِقَوْلِ مَالِكٍ حُجَّةً أَصْلًا.

L16021 If it is said: It has been authentically reported from ʿUmar—may Allah be pleased with him—that jizyah is to be taken from everyone upon whom the age of legal responsibility has commenced, except women? We respond: You were the first to oppose this ruling and abolish it for freed slaves and monks. As for us, we recognize no proof in the statement of anyone other than the Messenger of Allah—peace and blessings be upon him.

فَإِنْ قِيلَ: قَدْ صَحَّ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - أَنْ تُؤْخَذَ الْجِزْيَةُ مِنْ كُلِّ مَنْ جَرَتْ عَلَيْهِ الْمَوَاسِي إلَّا النِّسَاءَ؟ قُلْنَا: أَنْتُمْ أَوَّلُ مَنْ خَالَفْتُمْ هَذَا الْحُكْمَ فَأَسْقَطْتُمُوهَا عَنْ الْمُعْتَقِينَ، وَالرُّهْبَانِ، وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ غَيْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L16022 Numerous mursal reports have been narrated regarding this matter. Among them is what was transmitted to us through the chain of ʿAbd al-Razzāq, who reported from Maʿmar, from al-Aʿmash, from Abū Wā’il Shaqīq ibn Salama, from Masrūq, who said: “The Messenger of Allah—peace and blessings be upon him—sent Muʿādh ibn Jabal to Yemen and commanded him to take

وَقَدْ جَاءَتْ فِي هَذَا آثَارٌ مُرْسَلَةٌ وَهِيَ كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَخْبَرَنَا مَعْمَرٌ عَنْ الْأَعْمَشِ عَنْ أَبِي وَائِلٍ شَقِيقِ بْنِ سَلَمَةَ عَنْ مَسْرُوقٍ قَالَ: «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُعَاذَ بْنَ جَبَلٍ إلَى الْيَمَنِ وَأَمَرَهُ أَنْ يَأْخُذَ مِنْ كُلِّ حَالِمٍ وَحَالِمَةٍ مِنْ أَهْلِ الذِّمَّةِ دِينَارًا أَوْ قِيمَتَهُ مِنْ الْمَعَافِرِ» قَالَ أَبُو مُحَمَّدٍ: عَلَى هَذَا الْإِسْنَادِ عَوَّلُوا فِي

[5] **Qur’an references (L16014):** Qur’an 9:29 (At-Tawbah).

one dinar or its equivalent value in Maʿāfir from every pubescent male and female among the people of the Dhimmah." Abū Muḥammad said: They relied on this chain in taking a one-year-old calf for every thirty cattle and a two-year-old cow for every forty. It is absurd for a report to be valid as evidence for one matter but invalid for another.

أَخْذِ التَّبِيعِ مِنْ الثَّلَاثِينَ مِنْ الْبَقَرِ وَالْمُسِنَّةِ مِنْ الْأَرْبَعِينَ، وَمِنْ الْمُحَالِ أَنْ يَكُونَ خَبَرٌ حُجَّةٌ فِي شَيْءٍ غَيْرَ حُجَّةٍ فِي غَيْرِهِ.

L16023 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: "In the letter of the Messenger of Allah—may the peace and blessings of Allah be upon him—to the people of Yemen: If any Jew or Christian dislikes Islam, he shall not be compelled to abandon his religion, but he must pay the jizya, levied upon every pubescent male or female, free or enslaved; one full dinar according to the value of Maʿāfir cloth or its equivalent in merchandise."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ «فِي كِتَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى أَهْلِ الْيَمَنِ: مَنْ كَرِهَ الْإِسْلَامَ مِنْ يَهُودِيٍّ، أَوْ نَصْرَانِيٍّ فَإِنَّهُ لَا يُحَوَّلُ عَنْ دِينِهِ وَعَلَيْهِ الْجِزْيَةُ عَلَى كُلِّ حَالِمٍ ذَكَرٍ، أَوْ أُنْثَى، حُرٍّ أَوْ عَبْدٍ: دِينَارٌ وَافٍ مِنْ قِيمَةِ الْمَعَافِرِ أَوْ عَرَضِهِ» .

L16024–16026 And through the chain of Abū ʿUbayd: Jarīr ibn ʿAbd al-Ḥamīd narrated to us from Manṣūr (who is Ibn al-Muʿtamir) from al-Ḥakam ibn ʿUtaybah, who said: "The Messenger of Allah—peace and blessings be upon him—wrote to Muʿādh while he was in Yemen concerning the male or female who experiences a nocturnal emission: a dinar or its equivalent from the Maʿāfir." Abu Muhammad said: The Hanafis and Malikis maintain that the mursal report is stronger than the musnad and adopt it when it conforms to their position. Thus, it is obligatory for them to adopt it in this case, for no mursal report is superior to these mursal reports. As for us, our reliance is solely on the generality of the verse.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نَا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ مَنْصُورٍ هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: «كَتَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى مُعَاذٍ وَهُوَ بِالْيَمَنِ: فِي الْحَالِمِ، أَوْ الْحَالِمَةِ دِينَارٌ، أَوْ عِدْلُهُ مِنْ الْمَعَافِرِ» قَالَ أَبُو مُحَمَّدٍ: الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ يَقُولُونَ: إنَّ الْمُرْسَلَ أَقْوَى مِنْ الْمُسْنَدِ وَيَأْخُذُونَ بِهِ إذَا وَافَقَهُمْ، فَالْفَرْضُ عَلَيْهِمْ أَنْ يَأْخُذُوا هَاهُنَا بِهَا فَلَا مُرْسَلَ أَحْسَنُ مِنْ هَذِهِ الْمَرَاسِيلِ، وَأَمَّا نَحْنُ فَإِنَّمَا مُعَوَّلُنَا عَلَى عُمُومِ الْآيَةِ فَقَطْ.

L16027 If they say, "Is the jizya only taken from those who fight?" We reply: Then do not take it from the sick, nor from the people of a town in the territories of disbelief who stayed in their homes and markets and did not fight Muslims.

فَإِنْ قَالُوا: إنَّمَا تُؤْخَذُ الْجِزْيَةُ مِمَّنْ يُقَاتِلُ؟ قُلْنَا: فَلَا تَأْخُذُوهَا مِنْ الْمَرْضَى، وَلَا مِنْ أَهْلِ بَلْدَةٍ مِنْ بِلَادِ الْكُفْرِ لَزِمُوا بُيُوتَهُمْ وَأَسْوَاقَهُمْ وَلَمْ يُقَاتِلُوا مُسْلِمًا.

L16028 If they say: The opening part of the verse states {Fight those who do not believe in Allah nor in the Last Day, nor forbid what Allah and His Messenger have forbidden, nor adhere to the religion of truth from among those who were given the Scripture until they pay the *jizyah* by hand while they are humbled} [At-Tawbah: 29]? We say: Yes, we are commanded to fight them **if they fight us** until all of them pay the *jizyah* by hand as ex-

فَإِنْ قَالُوا: أَوَّلُ الْآيَةِ {قَاتِلُوا الَّذِينَ لا يُؤْمِنُونَ بِاللَّهِ وَلا بِالْيَوْمِ الآخِرِ وَلا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ

plicitly stated in the verse, because the pronoun refers back to the nearest antecedent.[6]

L16029 It is astonishing that the Ḥanafīs impose multiples of the ṣadaqah upon Banū Taghlib in place of the jizya, then impose these multiples upon women, yet refuse to take the jizya from women.

L16030 If they say: "Umar prohibited taking it from women," we reply: "It is authentically established that Umar commanded the separation of those with mahram relations from the Magians, yet you contradict him. In a thousand cases—many of which we have mentioned—we do not know when Umar is a proof and when he is not a proof. If they claim consensus, they are lying, for they cannot find any prohibition of this from anyone other than Umar. Masrūq met Mu'ādh and witnessed his judicial decisions in Yemen, reporting that the Prophet—peace and blessings of Allah be upon him—instructed him to collect jizyah from women. It is inconceivable that Mu'ādh would oppose what the Messenger of Allah—peace and blessings of Allah be upon him—wrote to him. And success is from Allah, the Exalted."

L16031 It has been narrated to us via the transmission of Ibn Abi Shaybah: from Waki', from Al-Fuḍayl ibn Iyāḍ, from Layth, from Mujāhid, who said: The idol-worshippers are fought **to compel them to accept Islam**, and the People of the Book are fought **to compel them to pay the *jizyah***. This **is general in application to men and women** - and this is **our opinion**.

L16032 Al-Shafi'i and Abu Sulayman said: The jizya is not accepted except from a Scripturary person.

L16033–16034 As for those other than them: Islam or killing—men and women—and this is the explicit injunction of the Qur'an.

L16035 Therefore, it is impermissible to make any distinction among all these. Moreover, it is entirely unlawful for a legally accountable addressee (who

[6]**Qur'an references (L16028):** Qur'an 9:29 (At-Tawbah).

يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] ؟ قُلْنَا: نَعَمْ، أُمِرْنَا بِقِتَالِهِمْ إنْ قَاتَلُونَا حَتَّى يُعْطِيَ جَمِيعُهُمْ الْجِزْيَةَ عَنْ يَدٍ كَمَا فِي نَصِّ الْآيَةِ؛ لِأَنَّ الضَّمِيرَ رَاجِعٌ إلَى أَقْرَبِ مَذْكُورٍ.

وَالْعَجَبُ أَنَّ الْحَنَفِيِّينَ يُقِيمُونَ أَضْعَافَ الصَّدَقَةِ عَلَى بَنِي تَغْلِبَ مَقَامَ الْجِزْيَةِ، ثُمَّ يَضَعُونَهَا عَلَى النِّسَاءِ، ثُمَّ يَأْبَوْنَ مِنْ أَخْذِ الْجِزْيَةِ مِنْ النِّسَاءِ.

فَإِنْ قَالُوا: قَدْ نَهَى عُمَرُ عَنْ أَخْذِهَا مِنْ النِّسَاءِ؟ قُلْنَا: قَدْ صَحَّ عَنْ عُمَرَ الْأَمْرُ بِالتَّفْرِيقِ بَيْنَ كُلِّ ذِي مَحْرَمٍ مِنْ الْمَجُوسِ وَأَنْتُمْ تُخَالِفُونَهُ، وَفِي أَلْفِ قَضِيَّةٍ قَدْ ذَكَرْنَا مِنْهَا كَثِيرًا، فَلَا نَدْرِي مَتَى هُوَ عُمَرُ حُجَّةٌ، وَلَا مَتَى هُوَ لَيْسَ حُجَّةً؟ فَإِنْ ادَّعَوْا إجْمَاعًا كُذِّبُوا، وَلَا سَبِيلَ إلَى أَنْ يَجِدُوا نَهْيًا عَنْ ذَلِكَ عَنْ غَيْرِ عُمَرَ - وَمَسْرُوقٌ أَدْرَكَ مُعَاذًا وَشَاهَدَ حُكْمَهُ بِالْيَمَنِ، وَذَكَرَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَاطَبَهُ بِأَخْذِ الْجِزْيَةِ مِنْ النِّسَاءِ، وَمِنْ الْمُحَالِ أَنْ يُخَالِفَ مُعَاذٌ مَا كَتَبَ إلَيْهِ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا وَكِيعٌ نَا الْفُضَيْلُ بْنُ عِيَاضٍ عَنْ لَيْثٍ عَنْ مُجَاهِدٍ قَالَ: يُقَاتَلُ أَهْلُ الْأَوْثَانِ عَلَى الْإِسْلَامِ، وَيُقَاتَلُ أَهْلُ الْكِتَابِ عَلَى الْجِزْيَةِ، وَهَذَا عُمُومٌ لِلرِّجَالِ وَالنِّسَاءِ - وَهُوَ قَوْلُنَا.

وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: لَا تُقْبَلُ الْجِزْيَةُ إلَّا مِنْ كِتَابِيٍّ.

وَأَمَّا غَيْرُهُمْ: فَالْإِسْلَامُ، أَوْ الْقَتْلُ - الرِّجَالُ وَالنِّسَاءُ - وَهُوَ نَصُّ الْقُرْآنِ.

فَالتَّفْرِيقُ بَيْنَ [كُلِّ] ذَلِكَ لَا يَجُوزُ، وَلَا يَحِلُّ أَلْبَتَّةَ أَنْ يَبْقَى مُخَاطَبٌ مُكَلَّفٌ لَا يُسْلِمُ، وَلَا يُؤَدِّي الْجِزْيَةَ، وَلَا يُقْتَلُ؛ لِأَنَّهُ خِلَافُ الْقُرْآنِ وَالسُّنَنِ.

neither embraces Islam, nor pays the jizyah, nor is killed) to remain, as this contradicts the Quran and the Sunnah.

L16036 There is no disagreement among anyone in the Ummah regarding women being obligated by the religion of Islam to renounce disbelief, for the same obligations incumbent upon men apply to women completely equally. It is impermissible to leave them in disbelief without either killing or jizya.

L16037 It has been authentically reported from the Prophet—may Allah's blessings and peace be upon him—as we have previously mentioned with its chain of transmission: "I have been commanded to fight people until they testify that there is no deity but Allah and that I am the Messenger of Allah, establish the prayer, give zakāh, and believe in what I have been sent with. When they do that, they protect their blood and wealth from me, except for its rightful claim, and their reckoning rests with Allah."[7]

L16038 They do not differ in that all these obligations apply to women as they do to men, and that their wealth as non-Muslims is forfeitable as spoils of war like men's wealth. Thus, it is conclusively established that women cannot protect their blood and wealth except by the same means that protect men's wealth and blood, or the jizyah if they are women of the People of the Book, necessarily. And success is by Allah alone, the Most High.

L16039 An Issue Regarding Traveling with the Muṣḥaf to the Land of War.

L16040 961 – Issue:

L16041 It is not permissible to travel with the muṣḥaf (physical copy of the Quran) to the land of war, whether in a military camp or outside of it. It has been narrated to us via the chain of Maʿmar from Ayyūb al-Sikhtiyānī from Nāfiʿ from Ibn ʿUmar, who said: "The Messenger of Allah (may Allah bless him

[7] **Hadith references (L16037):** Sunan Ibn Majah 71; Sunan Ibn Majah 72; Sunan an-Nasai 3094.

وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي النِّسَاءِ مُكَلَّفَاتٍ مِنْ دِينِ الْإِسْلَامِ وَمُفَارَقَةِ الْكُفْرِ مَا يَلْزَمُ الرِّجَالَ سَوَاءً سَوَاءً، فَلَا يَحِلُّ إبْقَاؤُهُنَّ عَلَى الْكُفْرِ بِغَيْرِ قَتْلٍ وَلَا جِزْيَةٍ.

وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا [قَدْ] ذَكَرْنَاهُ قَبْلُ بِإِسْنَادِهِ: «أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إلَهَ إلَّا اللَّهُ وَأَنِّي رَسُولُ اللَّهِ، وَيُقِيمُوا الصَّلَاةَ، وَيُؤْتُوا الزَّكَاةَ، وَيُؤْمِنُوا بِمَا أُرْسِلْتُ بِهِ - فَإِذَا فَعَلُوا ذَلِكَ عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ، إلَّا بِحَقِّهَا وَحِسَابُهُمْ عَلَى اللَّهِ» .

وَلَا يَخْتَلِفُونَ فِي أَنَّ هَذِهِ اللَّوَازِمَ كُلَّهَا هِيَ عَلَى النِّسَاءِ كَمَا هِيَ عَلَى الرِّجَالِ، وَأَنَّ أَمْوَالَهُنَّ فِي الْكُفْرِ مَغْنُومَةٌ كَأَمْوَالِ الرِّجَالِ؛ فَثَبَتَ يَقِينًا أَنَّهُنَّ لَا يَعْصِمْنَ دِمَاءَهُنَّ وَأَمْوَالَهُنَّ إلَّا بِمَا يَعْصِمُ الرِّجَالُ بِهِ أَمْوَالَهُمْ وَدِمَاءَهُمْ، أَوْ الْجِزْيَةِ إنْ كُنَّ كِتَابِيَّاتٍ وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ السَّفَرُ بِالْمُصْحَفِ إلَى أَرْضِ الْحَرْبِ]

٩٦١ - مَسْأَلَةٌ:

وَلَا يَحِلُّ السَّفَرُ بِالْمُصْحَفِ إلَى أَرْضِ الْحَرْبِ لَا فِي عَسْكَرٍ وَلَا فِي غَيْرِ عَسْكَرٍ. رُوِّينَا مِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُسَافَرَ بِالْقُرْآنِ إلَى أَرْضِ الْعَدُوِّ مَخَافَةَ أَنْ يَنَالَهُ الْعَدُوُّ» .

and grant him peace) forbade traveling with the Quran [as a physical book] to the land of the enemy, fearing that the enemy might seize it."[8]

L16042 And Malik said: If there is a trustworthy army, there is no harm in it.

L16043 Abu Muhammad said: This is a mistake, for even a reliable army may be defeated. It is impermissible to challenge the command of the Messenger of Allah — may Allah bless him and grant him peace — and thus restrict it without scriptural proof.

L16044 ## The issue of trading to the land of war.

L16045 962 - Issue:

L16046 Trade is not permissible with the abode of war if their laws are enforced upon the traders, nor is it permissible to convey to them weapons, horses, or anything they might use to strengthen themselves against the Muslims.

L16047–16048 This is the statement of ʿUmar ibn ʿAbd al-ʿAzīz, ʿAṭāʾ, ʿAmr ibn Dīnār, and others. We have reported through the chain of narration from Abū Dāwūd: Hannād ibn al-Sarri narrated to us, Abū Muʿāwiyah narrated from Ismāʿīl ibn Abī Khālid, from Qays ibn Abī Ḥāzim, from Jarīr ibn ʿAbd Allāh al-Bajalī, who said: The Messenger of Allah—peace and blessings be upon him—said: "I am free from every Muslim who resides among polytheists."[9]

L16049 Abū Muḥammad said: Whoever enters among them without engaging in jihad or being sent as a messenger by the ruler, then even staying an hour constitutes valid residency. Allah the Exalted said: "Cooperate in righteousness and piety, and do not cooperate in sin and aggression" (Qur'an 5:2). He also said: "Prepare against them whatever strength you can muster and cavalry forces to instill fear thereby in the enemy of Allah and your enemy" (Qur'an 8:60). Thus, He obligated us to instill fear in them. Whoever aids

[8] **Hadith references (L16041):** Riyad as-Salihin 1794.
[9] **Hadith references (L16048):** Jami at-Tirmidhi 1604; Sunan Abi Dawud 2645.

وَقَالَ مَالِكٌ: إنْ كَانَ عَسْكَرٌ مَأْمُونٌ فَلَا بَأْسَ بِهِ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ، وَقَدْ يُهْزَمُ الْعَسْكَرُ الْمَأْمُونُ، وَلَا يَجُوزُ أَنْ يُعْتَرَضَ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيُخَصَّ بِلَا نَصٍّ.

[مَسْأَلَةٌ التِّجَارَةُ إلَى أَرْضِ الْحَرْبِ]

٩٦٢ - مَسْأَلَةٌ:

وَلَا تَحِلُّ التِّجَارَةُ إلَى أَرْضِ الْحَرْبِ إذَا كَانَتْ أَحْكَامُهُمْ تَجْرِي عَلَى التُّجَّارِ، وَلَا يَحِلُّ أَنْ يُحْمَلَ إلَيْهِمْ سِلَاحٌ، وَلَا خَيْلٌ، وَلَا شَيْءٌ يَتَقَوَّوْنَ بِهِ عَلَى الْمُسْلِمِينَ.

وَهُوَ قَوْلُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَعَطَاءٍ، وَعَمْرِو بْنِ دِينَارٍ، وَغَيْرِهِمْ. رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا هَنَّادُ بْنُ السَّرِيِّ نَا أَبُو مُعَاوِيَةَ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ الْبَجَلِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَا بَرِيءٌ مِنْ كُلِّ مُسْلِمٍ يُقِيمُ بَيْنَ أَظْهُرِ الْمُشْرِكِينَ»

قَالَ أَبُو مُحَمَّدٍ: مَنْ دَخَلَ إلَيْهِمْ لِغَيْرِ جِهَادٍ، أَوْ رِسَالَةٍ مِنْ الْأَمِيرِ فَإِقَامَةُ سَاعَةٍ إقَامَةٌ، قَالَ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] ، وَقَالَ تَعَالَى: {وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ} [الأنفال: ٦٠] فَفَرَضَ عَلَيْنَا إرْهَابَهُمْ، وَمَنْ أَعَانَهُمْ بِمَا يَحْمِلُ إلَيْهِمْ فَلَمْ يُرْهِبْهُمْ؛ بَلْ أَعَانَهُمْ عَلَى الْإِثْمِ وَالْعُدْوَانِ.

them by supplying them with anything he carries—thereby failing to instill fear—instead assists them in sin and aggression.[10]

L16050 **Legal Ruling: It is not permissible for anyone to take anything from the spoils that the army has seized.**

L16051 963: Issue

L16052 It is not permissible for anyone to take anything from the spoils captured by an army or detachment—not even a thread or anything beyond it.

L16053 As for food, all that can be carried is forbidden for Muslims except what they are compelled to eat out of necessity and could not find anything else.

L16054 As for that which can be carried, it is permissible to spoil and eat it, even if they are not compelled to do so. This applies only to what they own. As for what they do not own—such as game, stones, hair sticks, fruits, or other items—all of it is permissible, just as it is in Islamic lands, with no distinction. The Almighty has said: "Whoever embezzles will bring what he has misappropriated on the Day of Resurrection" [Quran 3:161].[11]

L16055–16057 It was narrated through Malik's chain from Thawr ibn Zayd al-Dili from Abu al-Ghayth, the client of Ibn Mut'i, from Abu Hurayrah, who said: A black slave named Mid'am was gifted to the Messenger of Allah (PBUH). When they reached Wadi al-Qura, while Mid'am was unloading the saddlebag of the Messenger of Allah (PBUH), a stray arrow struck and killed him. The people exclaimed, "Paradise is his reward!" But the Messenger of Allah (PBUH) declared: "No! By the One who holds my soul in His hand, the cloak he took from Khaybar's spoils—which were not allocated by the divisions—will indeed blaze upon him as fire." When they heard that, a man brought one or two sandal straps to the Messenger of Allah—peace and blessings be upon

[10] **Qur'an references (L16049):** Qur'an 5:2 (Al-Ma'idah); Qur'an 8:60 (Al-Anfal).

[11] **Qur'an references (L16054):** Qur'an 3:161 (Ali 'Imran).

[مَسْأَلَةٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يَأْخُذَ شَيْئًا مِمَّا غَنِمَ الْجَيْشُ]

٩٦٣ - مَسْأَلَةٌ:

وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَأْخُذَ مِمَّا غَنِمَ جَيْشٌ، أَوْ سَرِيَّةٌ شَيْئًا خَيْطًا فَمَا فَوْقَهُ

وَأَمَّا الطَّعَامُ فَكُلُّ مَا أَمْكَنَ حَمْلُهُ فَحَرَامٌ عَلَى الْمُسْلِمِينَ إلَّا مَا اُضْطُرُّوا إلَى أَكْلِهِ وَلَمْ يَجِدُوا شَيْئًا غَيْرَهُ.

وَأَمَّا مَا يُقْدَرُ عَلَى حَمْلِهِ فَجَائِزٌ إفْسَادُهُ وَأَكْلُهُ، وَإِنْ لَمْ يُضْطَرُّوا إلَيْهِ. وَإِنَّمَا هَذَا فِيمَا مَلَكُوهُ، وَأَمَّا مَا لَمْ يَمْلِكُوهُ مِنْ صَيْدٍ، أَوْ حَجَرٍ، أَوْ عَوْدِ شَعْرٍ، أَوْ ثِمَارٍ، أَوْ غَيْرِ ذَلِكَ، فَهُوَ كُلُّهُ مُبَاحٌ كَمَا هُوَ فِي أَرْضِ الْإِسْلَامِ وَلَا فَرْقَ، قَالَ عَزَّ وَجَلَّ: {وَمَنْ يَغْلُلْ يَأْتِ بِمَا غَلَّ يَوْمَ الْقِيَامَةِ} [آل عمران: ١٦١] .

رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ ثَوْرِ بْنِ زَيْدٍ الدِّيلِيِّ عَنْ أَبِي الْغَيْثِ مَوْلَى ابْنِ مُطِيعٍ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ «أُهْدِيَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَبْدٌ أَسْوَدُ يُقَالُ لَهُ: مِدْعَمٌ، حَتَّى إذَا كَانُوا بِوَادِي الْقُرَى فَبَيْنَا مِدْعَمٌ يَحُطُّ رَحْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ جَاءَهُ سَهْمٌ عَائِرٌ فَأَصَابَهُ فَقَتَلَهُ، فَقَالَ النَّاسُ: هَنِيئًا لَهُ الْجَنَّةُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَلَّا وَالَّذِي نَفْسِي بِيَدِهِ إنَّ الشَّمْلَةَ الَّتِي أَخَذَهَا يَوْمَ خَيْبَرَ مِنْ الْغَنَائِمِ لَمْ تُصِبْهَا الْمَقَاسِمُ لَتَشْتَعِلُ عَلَيْهِ نَارًا، فَلَمَّا سَمِعُوا ذَلِكَ جَاءَ رَجُلٌ

him. The Prophet—peace be upon him—said to him: “A strap or two from the Fire.” And the food was among their wealth.

بِشِرَاكٍ، أَوْ شِرَاكَيْنِ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ - عَلَيْهِ السَّلَامُ -: شِرَاكٌ، أَوْ شِرَاكَانِ مِنْ نَارٍ» وَالطَّعَامُ مِنْ جُمْلَةِ أَمْوَالِهِمْ.

L16058 If someone mentions what we have narrated through the chain of Ibn Umar—“An army obtained spoils of food and honey during the time of Allah’s Messenger (peace be upon him), and the fifth was not taken from them”—this position applies to their school of thought, for they assert: “If such spoils are abundant and transportable, the fifth must necessarily be taken.” As for our position, the Quranic verse exceeds what is mentioned in this report, which is Allah’s statement: “Know that whatever spoils you obtain, a fifth is allocated to Allah, the Messenger, the near relatives, the orphans…” (8:41).[12]

فَإِنْ ذَكَرَ ذَاكِرٌ مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ عُمَرَ «غَنِمَ جَيْشٌ فِي زَمَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَعَامًا وَعَسَلًا فَلَمْ يُؤْخَذْ مِنْهُمُ الْخُمُسُ» فَهَذَا عَلَيْهِمْ؛ لِأَنَّهُمْ يَقُولُونَ: إِنْ كَثُرَ ذَلِكَ وَأَمْكَنَ حَمْلُهُ خُمِّسَ وَلَا بُدَّ، وَأَمَّا نَحْنُ فَإِنَّ الْآيَةَ زَائِدَةٌ عَلَى مَا فِي هَذَا الْخَبَرِ، وَهِيَ قَوْله تَعَالَى: {وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي الْقُرْبَى وَالْيَتَامَى} [الأنفال: ٤١] .

L16059 The hadith concerning misappropriation is additional to it. This report therefore indicates that before the revelation of *Khums*, only this was permissible, because taking the surplus is an obligatory duty whose abandonment is unlawful. We are certain that the verse and the hadith on misappropriation have not been abrogated since their revelation.

وَحَدِيثُ الْغُلُولِ زَائِدٌ عَلَيْهِ، فَيَخْرُجُ هَذَا الْخَبَرُ عَلَى أَنَّهُ كَانَ قَبْلَ نُزُولِ الْخُمْسِ لَا يَجُوزُ إِلَّا هَذَا، لِأَنَّ الْأَخْذَ بِالزَّائِدِ فَرْضٌ لَا يَحِلُّ تَرْكُهُ، وَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ الْآيَةَ، وَحَدِيثَ الْغُلُولِ غَيْرُ مَنْسُوخَيْنِ مُذْ نَزَلَا.

L16060 If they also cite the ḥadīth of Ibn Umar: “During our military campaigns, we would acquire grapes and honey and eat them without preserving them,” this is clear—it shows it was impossible to transport them. Since they did not store them, consuming them was better than letting them spoil or leaving them [to perish]. Thus we hold.

فَإِنْ ذَكَرُوا أَيْضًا حَدِيثَ ابْنِ عُمَرَ " كُنَّا نُصِيبُ فِي مَغَازِينَا الْعِنَبَ وَالْعَسَلَ فَنَأْكُلُهُ وَلَا نَرْفَعُهُ " فَهَذَا بَيِّنٌ وَهُوَ أَنَّهُ كَانَ لَا يُمْكِنُ حَمْلُهُ؛ إِذْ لَمْ يَرْفَعُوهُ فَأَكْلُهُ خَيْرٌ مِنْ إِفْسَادِهِ، أَوْ تَرْكِهِ، وَهَكَذَا نَقُولُ.

L16061 If they cite the ḥadīth of Ibn Mughaffal regarding the grease container, they have no valid proof in this matter, for they are the first to contradict it. They claim: “Taking the container is impermissible, though only the grease itself is permissible according to some of them.” This narration we have transmitted with additional clarification through the chain of Muḥammad ibn ʿAbd al-Malik ibn Ayman from Aḥmad ibn Zuhayr ibn Ḥarb from ʿAffān ibn Muslim and Muslim ibn Ibrāhīm, who both said: Shuʿbah narrated from Ḥumayd ibn Hilāl from ʿAbd Allāh ibn Mughaffal, who said: “We were besieging Khaybar when a container of grease was lowered to us. I wanted to take it, having

فَإِنْ ذَكَرُوا حَدِيثَ ابْنِ مُغَفَّلٍ فِي جِرَابِ الشَّحْمِ، فَلَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّهُمْ أَوَّلُ مُخَالِفٍ لَهُ فَيَقُولُونَ: لَا يَحِلُّ أَخْذُ الْجِرَابِ وَإِنَّمَا يَحِلُّ عِنْدَ بَعْضِهِمْ الشَّحْمُ فَقَطْ. وَهَذَا خَبَرٌ قَدْ رُوِّينَاهُ بِزِيَادَةِ بَيَانٍ، كَمَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نَا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ نَا عَفَّانُ بْنُ مُسْلِمٍ، وَمُسْلِمُ بْنُ إِبْرَاهِيمَ قَالَا: نَا شُعْبَةُ عَنْ حُمَيْدِ بْنِ هِلَالٍ عَنْ عَبْدِ اللَّهِ بْنِ مُغَفَّلٍ قَالَ «كُنَّا مُحَاصِرِي خَيْبَرَ فَدُلِّيَ إِلَيْنَا جِرَابٌ فِيهِ شَحْمٌ فَأَرَدْتُ

[12] **Qur’an references (L16058):** Qur’an 8:41 (Al-Anfal).

resolved with my companions not to give anyone any portion of it. When I turned around, the Messenger of Allāh (peace be upon him) was behind me smiling. I felt too ashamed to take it."

L16062–16064 Then, if it were valid that he took it, it would align with what we mentioned regarding the need for it. This is clarified by that which... We have narrated it through the chain of Al-Bukhari: Ali ibn al-Hakam al-Ansari reported to us, Abu Awanah reported to us, from Sa'id ibn Masruq, from Abayah ibn Rifa'ah ibn Rafi' ibn Khadij, from his grandfather, who said: "We were with the Messenger of Allah—peace be upon him (PBUH)—at Dhu al-Hulayfah when the people suffered hunger. They found camels and sheep, while the Prophet—peace be upon him (PBUH)—was at the rear of the people. They hastened, slaughtered them, and set up the cooking pots. The Prophet—peace be upon him (PBUH)—ordered the pots to be emptied. Then he divided [the animals], equating ten sheep to one camel. He did not permit them to eat anything since the distribution had been finalized, so that every entitled person attains their right. And success is from Allah, the Most High."

L16065 964 - Issue:

L16066 Every Muslim who enters into enemy territory and acquires spoils—whether he acts alone or with others, whether with the ruler's permission or without it—the same ruling applies to all such cases. One-fifth of what is acquired is designated [for Allah], and the remainder belongs to those who seized it, in accordance with the decree of Allah, the Exalted: "Know that whatever spoils you acquire, a fifth is for Allah" (8:41), and His decree: "So consume what you have acquired as spoils" (8:69).[13]

L16067 Abu Hanifah said: There is no khums except on what a group has acquired.

L16068 Abū Yūsuf said: Nine or more—and these opinions are utterly corrupt for contradicting the Qur'ān, the Sunnah, and reason. The Almighty has indeed said: *"Fight those of the disbelievers who are close to you, and let them find harshness in you"* [9:123]. He did not specify [the need for] the Imam's

أَنْ آخُذَهُ وَنَوَيْنَا أَنْ لَا نُعْطِيَ أَحَدًا مِنْهُ شَيْئًا فَالْتَفَتُّ فَإِذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَلْفِي يَبْتَسِمُ، فَاسْتَحْيَيْتُ أَنْ آخُذَهُ» .

ثُمَّ لَوْ صَحَّ أَنَّهُ أَخَذَهُ لَكَانَ عَلَى مَا ذَكَرْنَا مِنْ الْحَاجَةِ إلَيْهِ. يُبَيِّنُ ذَلِكَ مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نَا عَلِيُّ بْنُ الْحَكَمِ الْأَنْصَارِيُّ نَا أَبُو عَوَانَةَ عَنْ سَعِيدِ بْنِ مَسْرُوقٍ عَنْ عَبَايَةَ بْنِ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ عَنْ جَدِّهِ قَالَ: «كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذِي الْحُلَيْفَةِ فَأَصَابَ النَّاسَ جُوعٌ فَأَصَابُوا إبِلًا وَغَنَمًا وَالنَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أُخْرَيَاتِ النَّاسِ فَعَجَّلُوا فَذَبَحُوا وَنَصَبُوا الْقُدُورَ فَأَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقُدُورِ فَأُكْفِئَتْ، ثُمَّ قَسَّمَ فَعَدَلَ عَشَرَةً مِنْ الْغَنَمِ بِبَعِيرٍ» فَلَمْ يُبِحْ لَهُمْ أَكْلَ شَيْءٍ إذْ قَدْ كَانَتْ الْقِسْمَةُ قَدْ حَضَرَتْ فَيَصِلُ كُلُّ ذِي حَقٍّ إلَى حَقِّهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

٩٦٤ - مَسْأَلَةٌ:

وَكُلُّ مَنْ دَخَلَ مِنْ الْمُسْلِمِينَ فَغَنِمَ فِي أَرْضِ الْحَرْبِ سَوَاءٌ كَانَ وَحْدَهُ أَوْ فِي أَكْثَرَ مِنْ وَاحِدٍ بِإِذْنِ الْإِمَامِ وَبِغَيْرِ إذْنِهِ فَكُلُّ ذَلِكَ سَوَاءٌ، وَالْخُمُسُ فِيمَا أُصِيبَ، وَالْبَاقِي لِمَنْ غَنِمَهُ؛ لِقَوْلِ اللَّهِ تَعَالَى: {وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ} [الأنفال: ٤١] ، وقَوْله تَعَالَى: {فَكُلُوا مِمَّا غَنِمْتُمْ} [الأنفال: ٦٩] .

وَقَالَ أَبُو حَنِيفَةَ: لَا خُمُسَ إلَّا فِيمَا أَصَابَتْهُ جَمَاعَةٌ.

قَالَ أَبُو يُوسُفَ: تِسْعَةٌ فَأَكْثَرُ - وَهَذِهِ أَقْوَالٌ فِي غَايَةِ الْفَسَادِ لِمُخَالَفَتِهَا الْقُرْآنَ، وَالسُّنَنَ، وَالْمَعْقُولَ، وَقَدْ قَالَ تَعَالَى: {قَاتِلُوا الَّذِينَ يَلُونَكُمْ مِنَ الْكُفَّارِ وَلْيَجِدُوا فِيكُمْ غِلْظَةً}

[13] **Qur'an references (L16066):** Qur'an 8:41 (Al-Anfal); Qur'an 8:69 (Al-Anfal).

command or the absence of it. If an imam were to prohibit fighting against those at war [with Muslims], it would be obligatory to disobey him in that, for he would be enjoining disobedience [to God]. Thus, there is no [duty to] hear or obey him.[14]

L16069 And He, the Exalted, said: {So fight in the cause of Allah; you are only tasked with your own soul} [An-Nisa: 84]. This is an address directed to every Muslim, for each person is commanded to strive in jihad even if no one else is with him. He, the Exalted, said: {Go forth, whether light or heavy} [At-Tawbah: 41], and He, the Exalted, said: {Go forth in detachments or go forth all together} [An-Nisa: 71].[15]

L16070 ## Legal Question on Setting Out for Travel on Thursday

L16071 965 - Issue:

L16072–16074 We recommend departing for travel on Thursday. It has been narrated to us through the chain of transmission of al-Bukhārī: ʻAbdullāh ibn Muḥammad narrated to us, Hishām ibn Yūsuf narrated to us, who informed us... Maʼmar narrated via al-Zuhri via ʼAbd al-Rahman ibn Kaʼb ibn Malik from his father: "The Messenger of Allah (peace be upon him) preferred to set out on journeys every Thursday."

L16075 966. Question:

L16076 Whoever arrives from a journey during the day should not enter until night, and whoever arrives at night should not enter until daytime, unless there is an excuse. It has been narrated to us through Shuʻbah from Yasār from Al-Shaʻbī from Jābir ibn ʻAbdullāh, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said: "When any of you returns at night,

[14] **Qur'an references (L16068):** Qur'an 9:123 (At-Tawbah).

[15] **Qur'an references (L16069):** Qur'an 4:84 (An-Nisa); Qur'an 9:41 (At-Tawbah); Qur'an 4:71 (An-Nisa).

[التوبة: ١٢٣] فَلَمْ يَخُصَّ بِأَمْرِ الْإِمَامِ وَلَا بِغَيْرِ أَمْرِهِ وَلَوْ أَنَّ إمَامًا نَهَى عَنْ قِتَالِ أَهْلِ الْحَرْبِ لَوَجَبَتْ مَعْصِيَتُهُ فِي ذَلِكَ، لِأَنَّهُ أَمَرَ بِمَعْصِيَةٍ فَلَا سَمْعَ وَلَا طَاعَةَ لَهُ.

وَقَالَ تَعَالَى: {فَقَاتِلْ فِي سَبِيلِ اللَّهِ لا تُكَلَّفُ إِلا نَفْسَكَ} [النساء: ٨٤] وَهَذَا خِطَابٌ مُتَوَجِّهٌ إلَى كُلِّ مُسْلِمٍ، فَكُلُّ أَحَدٍ مَأْمُورٌ بِالْجِهَادِ وَإِنْ لَمْ يَكُنْ مَعَهُ أَحَدٌ، وَقَالَ تَعَالَى: {انْفِرُوا خِفَافًا وَثِقَالا} [التوبة: ٤١] ، وَقَالَ تَعَالَى: {فَانْفِرُوا ثُبَاتٍ أَوِ انْفِرُوا جَمِيعًا} [النساء: ٧١] .

[مَسْأَلَةُ الْخُرُوجِ لِلسَّفَرِ يَوْمَ الْخَمِيسِ]

٩٦٥ - مَسْأَلَةٌ:

وَنَسْتَحِبُّ الْخُرُوجَ لِلسَّفَرِ يَوْمَ الْخَمِيسِ. رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ نَا هِشَامُ بْنُ يُوسُفَ أَخْبَرَنَا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ كَعْبِ بْنِ مَالِكٍ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُحِبُّ أَنْ يَخْرُجَ يَوْمَ الْخَمِيسِ» .

٩٦٦ - مَسْأَلَةٌ:

وَمَنْ قَدِمَ مِنْ سَفَرٍ نَهَارًا فَلَا يَدْخُلُ إلَّا لَيْلًا، وَمَنْ قَدِمَ لَيْلًا فَلَا يَدْخُلُ إلَّا نَهَارًا إلَّا لِعُذْرٍ. رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ يَسَارٍ عَنْ الشَّعْبِيِّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا قَدِمَ أَحَدُكُمْ لَيْلًا فَلَا يَأْتِيَنَّ أَهْلَهُ طُرُوقًا حَتَّى تَسْتَحِدَّ الْمُغِيبَةُ وَتَمْتَشِطَ الشَّعِثَةُ» .

do not come upon your family suddenly until the wife who stayed behind has removed her pubic hair and combed her disheveled hair."[16]

L16077 We arrived with the Messenger of Allah—peace and blessings be upon him—in Medina and proceeded to enter. He—peace and blessings be upon him—said: "Wait until we enter at night, so that secluded women may groom themselves and disheveled women may comb their hair."

وَمِنْ طَرِيقِ هُشَيْمٍ عَنْ يَسَارٍ عَنْ الشَّعْبِيِّ عَنْ جَابِرٍ «قَدِمْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَدِينَةَ فَذَهَبْنَا لِنَدْخُلَ فَقَالَ - عَلَيْهِ السَّلَامُ -: أَمْهِلُوا حَتَّى نَدْخُلَ لَيْلًا كَيْ تَسْتَحِدَّ الْمُغِيبَةُ وَتَمْتَشِطَ الشَّعِثَةُ»

L16078 An issue: Camels must not be adorned with collars, nor may bells be used within the caravan.

[مَسْأَلَةٌ لَا تُقَلَّدُ الْإِبِلُ وَلَا يُسْتَعْمَلُ الْجَرَسُ فِي الرِّفَاقِ]

L16079 967 – Issue:

٩٦٧ - مَسْأَلَةٌ:

L16080 It is not permissible to hang collars on camels' necks, nor may bells be used in caravans. It has been narrated to us through Malik's chain from Abdullah ibn Abi Bakr ibn Muhammad ibn Amr ibn Hazm, from Abbad ibn Tamim, that Abu Bashir al-Ansari informed him [Abbad] that he [Abu Bashir] was with the Messenger of Allah—peace be upon him—on a journey, whereupon he—peace be upon him—sent a messenger proclaiming: "Do not leave a collar made of bowstring on any camel's neck, or any [other] collar—you must cut them all off."

وَلَا يَجُوزُ أَنْ تُقَلَّدَ الْإِبِلُ فِي أَعْنَاقِهَا شَيْئًا، وَلَا أَنْ يُسْتَعْمَلُ الْجَرَسُ فِي الرِّفَاقِ. رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَبَّادِ بْنِ تَمِيمٍ «أَنَّ أَبَا بَشِيرٍ الْأَنْصَارِيَّ أَخْبَرَهُ أَنَّهُ كَانَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَفَرٍ فَأَرْسَلَ - عَلَيْهِ السَّلَامُ - رَسُولًا: لَا تُبْقِيَنَّ فِي رَقَبَةِ بَعِيرٍ قِلَادَةً مِنْ وَتَرٍ، أَوْ قِلَادَةً إِلَّا قَطَعْتَ»

L16081 From the chain of Abū Dāwūd: Aḥmad ibn Yūnus reported to us from Zuhayr—that is, Ibn Muʿāwiyah—who reported from Suhayl ibn Abī Ṣāliḥ, from his father, from Abū Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him) said, "Angels do not accompany a traveling group that includes a dog or a bell."[17]

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا أَحْمَدُ بْنُ يُونُسَ نَا زُهَيْرٌ هُوَ ابْنُ مُعَاوِيَةَ - نَا سُهَيْلُ بْنُ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَصْحَبُ الْمَلَائِكَةُ رُفْقَةً فِيهَا كَلْبٌ، أَوْ جَرَسٌ» .

L16082 The prohibition of bells has been authentically established from Aisha and Umm Salamah, the Mothers of the Believers, and Abu Hurairah, with no known opposition to them in that matter from the Companions—may Allah be pleased with them—and no authentic report has been established regarding the prohibition of hanging items around the necks of horses and others.

وَصَحَّ النَّهْيُ عَنْ الْجَرَسِ عَنْ عَائِشَةَ، وَأُمِّ سَلَمَةَ أُمَّيْ الْمُؤْمِنِينَ وَأَبِي هُرَيْرَةَ وَلَا يُعْرَفُ لَهُمْ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَمْ يَصِحَّ فِي النَّهْيِ عَنْ تَقْلِيدِ أَعْنَاقِ الْخَيْلِ وَغَيْرِهَا أَثَرٌ

[16] **Hadith references (L16076):** Sahih Muslim 715x.
[17] **Hadith references (L16081):** Sunan Abi Dawud 2555.

[مَسْأَلَةُ تَحْلِيَةُ السُّيُوفِ وَالرُّمْحِ وَالسَّرْجِ وَاللِّجَامِ بِالْفِضَّةِ وَالْجَوْهَرِ]

مَسْأَلَةٌ:

وَجَائِزٌ تَحْلِيَةُ السُّيُوفِ، وَالدَّوَاةِ، وَالرُّمْحِ، وَالْمِهَامِيزِ، وَالسَّرْجِ، وَاللِّجَامِ، وَغَيْرِ ذَلِكَ بِالْفِضَّةِ وَالْجَوْهَرِ وَلَا شَيْءَ مِنْ الذَّهَبِ فِي شَيْءٍ مِنْ ذَلِكَ، قَالَ عَزَّ وَجَلَّ: {وَمِنْ كُلٍّ تَأْكُلُونَ لَحْمًا طَرِيًّا وَتَسْتَخْرِجُونَ حِلْيَةً تَلْبَسُونَهَا} [فاطر: ١٢] فَأَبَاحَ لَنَا لِبَاسَ اللُّؤْلُؤِ، وَقَالَ تَعَالَى: {خَلَقَ لَكُمْ مَا فِي الأَرْضِ جَمِيعًا} [البقرة: ٢٩] ، وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] ، فَكُلُّ شَيْءٍ فَهُوَ حَلَالٌ إِلَّا مَا فُصِّلَ لَنَا تَحْرِيمُهُ وَلَمْ يُفَصَّلْ تَحْرِيمُ الْفِضَّةِ أَصْلًا إِلَّا فِي الْآنِيَةِ فَقَطْ. رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا مُسْلِمُ بْنُ إِبْرَاهِيمَ نَا جَرِيرُ بْنُ حَازِمٍ نَا قَتَادَةُ عَنْ أَنَسٍ قَالَ «كَانَتْ قَبِيعَةُ سَيْفِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِضَّةً»

قَالَ أَبُو مُحَمَّدٍ: فَقَاسَ قَوْمٌ عَلَى السَّيْفِ وَالْخَاتَمِ الْمُصْحَفَ وَالْمِنْطَقَةَ وَمَنَعُوا مِنْ سَائِرِ ذَلِكَ، فَلَا الْقِيَاسَ طَرَدُوا وَلَا النُّصُوصَ اتَّبَعُوا.

وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ تَحْرِيمِهِمْ التَّحَلِّي بِالْفِضَّةِ فِي السَّرْجِ وَاللِّجَامِ وَلَا نَهْيَ فِي ذَلِكَ وَإِبَاحَتِهِمْ لِبَاسَ الْحَرِيرِ فِي الْحَرْبِ، وَقَدْ صَحَّ تَحْرِيمُهُ جُمْلَةً

[مَسْأَلَةُ الرِّبَاطُ فِي الثُّغُورِ]

٩٦٩ - مَسْأَلَةٌ: وَالرِّبَاطُ فِي الثُّغُورِ حَسَنٌ، وَلَا يَحِلُّ الرِّبَاطُ إلَى مَا لَيْسَ ثَغْرًا - كَانَ فِيمَا مَضَى ثَغْرًا أَوْ لَمْ يَكُنْ - وَهُوَ بِدْعَةٌ عَظِيمَةٌ.

An issue pertaining to the adornment of swords, spears, saddles, and bridles with silver and jewels.

Issue:

It is permissible to adorn swords, inkwells, spears, stirrups, saddles, bridles, and other such items with silver and jewels, but no gold is permitted in any of these things. Almighty God said: {And from both you eat fresh meat and extract ornaments that you wear} [35:12], thus permitting us to wear pearls. He also said: {He created for you all that is on the earth} [2:29], and said: {And He has detailed for you what He has forbidden upon you} [6:119]. Therefore, all things are lawful except what has been explicitly prohibited for us, and the prohibition of silver has not been detailed at all except solely for vessels. It has been narrated to us through the chain of Abu Dawud: Muslim ibn Ibrahim narrated to us, Jarir ibn Hazim narrated to us, Qatadah narrated from Anas, who said: "The pommel of the sword of the Messenger of God—peace and blessings be upon him—was made of silver."[18][19]

Abu Muhammad said: Some people analogized the Quranic codex and the belt to the sword and the ring, while prohibiting the rest of such items. Thus they neither applied analogy systematically nor adhered to the textual rulings.

What is utterly astonishing is their prohibition of adorning lamps and bridles with silver—despite there being no injunction against it—while permitting the donning of silk in war, even though its prohibition has been categorically established in totality.

The issue of maintaining vigilance at the border outposts.

Issue 969: Maintaining frontier posts in border regions is praiseworthy, but it is impermissible to establish such posts in locations that are not frontier

[18] **Hadith references (L16086):** Sunan Abi Dawud 2583; Sunan Abi Dawud 2584.

[19] **Qur'an references (L16086):** Qur'an 35:12 (Fatir); Qur'an 2:29 (Al-Baqarah); Qur'an 6:119 (Al-An'am).

regions—whether it was formerly a frontier region or not—as this constitutes a grave innovation.

L16091 It was narrated to us through the chain of Muslim: ʿAbdullāh ibn ʿAbd al-Raḥmān ibn Bahram al-Dārimī → Abū al-Walīd al-Ṭayālisī → Layth (Ibn Saʿd) → Ayyūb ibn Mūsā → Makhūl → Shuraḥbīl ibn al-Simṭ → Salmān al-Fārisī, who said: I heard the Messenger of Allāh (peace and blessings be upon him) say: "Maintaining a vigil (ribāṭ) on the frontier for a day and night is better than fasting a month and performing its night prayers. If one dies, the deeds he used to perform will continue to be recorded for him, his provision will be sustained, and he will be secured from the tempter."

L16092–16094 Abu Muhammad said: Every place besides Medina, the city of the Messenger of Allah (may Allah bless him and grant him peace), is both a frontier and a territory. War and the purpose of jihad; thus to single out a specific place from the entire earth with intent - because the enemy has struck there while excluding the rest of the entire earth - is misguidance, folly, sin, sedition, and innovation.

L16095 If it is for a mosque therein, then this constitutes a more severe form of misguidance due to the Prophet's prohibition - peace be upon him - against traveling to any mosque except the Mosque of Mecca, his own mosque in Medina, and Al-Aqsa Mosque.

L16096 If it is a seacoast, the entire coast of it from the east of the earth to its west is equal. There is no distinction between the coast of a sea and the shore of a river in the religion, nor does any part of it hold superiority.

L16097 If it is a trace of a prophet from among the prophets, then intending to visit it is commendable. The Companions of the Prophet—peace and blessings be upon him—sought blessings through the place where he prayed. They invited him to pray in a designated prayer area within their homes, and he—peace and blessings be upon him—responded favorably to this.

L16098 **A legal issue concerning teaching archery and frequent**

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا عَبْدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ بَهْرَامَ الدَّارِمِيُّ نَا أَبُو الْوَلِيدِ الطَّيَالِسِيُّ نَا لَيْثٌ هُوَ ابْنُ سَعْدٍ - عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ مَكْحُولٍ عَنْ شُرَحْبِيلَ بْنِ السِّمْطِ عَنْ سَلْمَانَ الْفَارِسِيِّ سَمِعْتُ: رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «رِبَاطُ يَوْمٍ وَلَيْلَةٍ خَيْرٌ مِنْ صِيَامِ شَهْرٍ وَقِيَامِهِ، وَإِنَّ مَنْ مَاتَ جَرَى عَلَيْهِ عَمَلُهُ الَّذِي كَانَ يَعْمَلُهُ، وَأُجْرِيَ عَلَيْهِ رِزْقُهُ، وَأَمِنَ مِنْ الْفَتَّانِ» .

قَالَ أَبُو مُحَمَّد: وَكُلُّ مَوْضِعٍ سِوَى مَدِينَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ كَانَ ثَغْرًا وَدَارَ حَرْبٍ، وَمَغْزَى جِهَادٍ، فَتَخْصِيصُ مَكَانٍ مِنْ الْأَرْضِ كُلِّهَا بِالْقَصْدِ لِأَنَّ الْعَدُوَّ ضَرَبَ فِيهِ دُونَ سَائِرِ الْأَرْضِ كُلِّهَا ضَلَالٌ، وَحُمْقٌ، وَإِثْمٌ، وَفِتْنَةٌ، وَبِدْعَةٌ.

فَإِنْ كَانَ لِمَسْجِدٍ فِيهِ فَهَذَا أَشَدُّ فِي الضَّلَالِ لِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ السَّفَرِ إلَى شَيْءٍ مِنْ الْمَسَاجِدِ حَاشَا مَسْجِدَ مَكَّةَ، وَمَسْجِدَهُ بِالْمَدِينَةِ، وَمَسْجِدَ بَيْتِ الْمَقْدِسِ.

فَإِنْ كَانَ سَاحِلَ بَحْرٍ فَسَاحِلُ الْبَحْرِ كُلِّهِ مِنْ شَرْقِ الْأَرْضِ إلَى غَرْبِهَا سَوَاءٌ، وَلَا فَرْقَ بَيْنَ سَاحِلِ بَحْرٍ وَسَاحِلِ نَهْرٍ فِي الدِّينِ، وَلَا فَضْلَ لِشَيْءٍ مِنْ ذَلِكَ.

فَإِنْ كَانَ أَثَرُ نَبِيٍّ مِنْ الْأَنْبِيَاءِ فَالْقَصْدُ إلَيْهِ حَسَنٌ، قَدْ تَبَرَّكَ أَصْحَابُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَوْضِعِ مُصَلَّاهُ وَاسْتَدْعُوهُ لِيُصَلِّيَ فِي بُيُوتِهِمْ فِي مَوْضِعٍ يَتَّخِذُونَهُ مُصَلًّى فَأَجَابَ إلَى ذَلِكَ - عَلَيْهِ السَّلَامُ -

practice of it.

[مَسْأَلَةٌ تَعْلِيمُ الرَّمْيِ عَلَى الْقَوْسِ وَالْإِكْثَارُ مِنْهُ]

L16099 970. Issue:

٩٧٠ - مَسْأَلَةٌ:

L16100 Learning archery with the bow and practicing it frequently is an excellent virtue, equally applicable to Arabic and non-Arabic bows. It has been narrated to us through Muslim's chain: Hārūn ibn Maʿrūf narrated to us, from Ibn Wahb, from ʿAmr ibn al-Ḥārith, from Abū ʿAlī Thumāmah ibn Shufayy, from ʿUqbah ibn ʿĀmir, who said: I heard Allah's Messenger (peace be upon him) say: "Prepare against them whatever force you can muster and horses tethered for battle, striking terror thereby in Allah's enemy and your enemy" [8:60]. Know that strength lies in archery! Know that strength lies in archery! Lands shall be opened for you, and Allah will suffice you. Let none of you fail to occupy himself with practicing his archery.[20]

وَتَعْلِيمُ الرَّمْيِ عَلَى الْقَوْسِ وَالْإِكْثَارُ مِنْهُ فَضْلٌ حَسَنٌ سَوَاءٌ الْعَرَبِيَّةُ وَالْعَجَمِيَّةُ. رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا هَارُونُ بْنُ مَعْرُوفٍ نَا ابْنُ وَهْبٍ نَا عَمْرُو بْنُ الْحَارِثِ عَنْ أَبِي عَلِيٍّ ثُمَامَةَ بْنِ شُفَيٍّ عَنْ عُقْبَةَ بْنِ عَامِرٍ يَقُولُ سَمِعْتُ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: {وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ} [الأنفال: ٦٠] أَلَا إِنَّ الْقُوَّةَ الرَّمْيُ أَلَا إِنَّ الْقُوَّةَ الرَّمْيُ سَتُفْتَحُ عَلَيْكُمْ أَرَضُونَ وَيَكْفِيكُمْ اللَّهُ فَلَا يَعْجِزُ أَحَدُكُمْ أَنْ يَلْهُوَ بِسَهْمِهِ» .

L16101 Narrated through Al-Layth, from Al-Hārith ibn Yaʿqūb, from ʿAbd al-Raḥmān ibn Shimāsah: ʿUqbah ibn ʿĀmir said, "The Messenger of Allah - may Allah bless him and grant him peace - said: 'Whoever learns archery then abandons it is not one of us, or it is as if he has disobeyed.'"[21]

وَمِنْ طَرِيقِ اللَّيْثِ عَنْ الْحَارِثِ بْنِ يَعْقُوبَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ شِمَاسَةَ قَالَ عُقْبَةُ بْنُ عَامِرٍ " إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ عَلِمَ الرَّمْيَ، ثُمَّ تَرَكَهُ فَلَيْسَ مِنَّا أَوْ قَدْ عَصَى»

[مَسْأَلَةٌ الْمُسَابَقَةُ بِالْخَيْلِ وَالْبِغَالِ وَالْحَمِيرِ وَعَلَى الْأَقْدَامِ]

L16102 ****Issue: Racing involving horses, mules, donkeys, and races on foot.****

٩٧١ - مَسْأَلَةٌ:

L16103 971 – Issue:

L16104 Racing with horses, mules, donkeys, and on foot is commendable, and competitions involving spears, arrows, and swords are commendable.

وَالْمُسَابَقَةُ بِالْخَيْلِ، وَالْبِغَالِ، وَالْحَمِيرِ، وَعَلَى الْأَقْدَامِ: حَسَنٌ، وَالْمُنَاضَلَةُ بِالرِّمَاحِ، وَالنِّبَلِ، وَالسُّيُوفِ: حَسَنٌ.

L16105–16106 It has been narrated to us through the chain of Abū Dāwūd: Abū Ṣāliḥ Maḥbūb ibn Mūsā al-Anṭākī narrated to us, who informed us: Abū Isḥāq al-Fazārī reported from Hishām ibn 'Urwah, from his father, from 'Ā'ishah the

رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا أَبُو صَالِحٍ مَحْبُوبُ بْنُ مُوسَى الْأَنْطَاكِيُّ أَخْبَرَنَا أَبُو إِسْحَاقَ الْفَزَارِيّ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ «عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا كَانَتْ مَعَ النَّبِيِّ

[20] **Qur'an references (L16100):** Qur'an 8:60 (Al-Anfal).

[21] **Hadith references (L16101):** Sahih Muslim 1919; Mishkat al-Masabih 3863.

Mother of the Believers, that she was with the Prophet—peace and blessings of Allah be upon him—on a journey. She said: "I raced the Messenger of Allah—peace and blessings of Allah be upon him—on foot and outran him. Then when I had gained weight, I raced him again and he outran me. He said: 'This victory compensates for that race.'"

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَفَرٍ قَالَتْ سَابَقْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَبَقْتُهُ عَلَى رِجْلِي فَلَمَّا حَمَلْتُ اللَّحْمَ سَابَقْتُهُ فَسَبَقَنِي، فَقَالَ: هَذِهِ بِتِلْكَ السَّبْقَةِ» .

L16107 From the chain of Abu Dawud: Ahmad ibn Yunus informed us, from Ibn Abi Dhi'b, from Nafi' ibn Abi Nafi'—the client of Abu Ahmad—from Abu Hurayrah, that the Messenger of Allah—peace and blessings be upon him—said: "There is no competition except in a horse's hoof, a camel's hoof, or an arrowhead."

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا أَحْمَدُ بْنُ يُونُسَ نَا ابْنُ أَبِي ذِئْبٍ عَنْ نَافِعِ بْنِ أَبِي نَافِعٍ هُوَ مَوْلَى أَبِي أَحْمَدَ - عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا سَبَقَ إلَّا فِي حَافِرٍ، أَوْ خُفٍّ، أَوْ نَصْلٍ» .

L16108 Abu Muhammad said: Al-Khuff is a term that applies to camels in the Arabic language.

قَالَ أَبُو مُحَمَّدٍ: الْخُفُّ اسْمٌ يَقَعُ عَلَى الْإِبِلِ فِي اللُّغَةِ الْعَرَبِيَّةِ.

L16109 The term *al-ḥāfir* in the Arabic language applies exclusively to horses, mules, and donkeys. *Al-naṣl* applies exclusively to swords, spears, and arrows. *As-sabaq* refers to what is given to the winner. 972 - Issue: *As-sabaq* occurs when a ruler or another person allocates wealth as a prize for the winner in one of these categories, and this is commendable. If one of two competitors in the aforementioned scenarios offers wealth and tells his counterpart, "If you outperform me, it is yours; but if I outperform you, you have no claim against me, nor do I have any claim against you," this is also commendable.

وَالْحَافِرُ فِي اللُّغَةِ لَا يَقَعُ إلَّا عَلَى الْخَيْلِ، وَالْبِغَالِ، وَالْحَمِيرِ. وَالنَّصْلُ لَا يَقَعُ إلَّا عَلَى السَّيْفِ، وَالرُّمْحِ، وَالنَّبْلِ. وَالسَّبَقُ هُوَ مَا يُعْطَاهُ السَّابِقُ. ٩٧٢ - مَسْأَلَةٌ: وَالسَّبَقُ هُوَ أَنْ يُخْرِجَ الْأَمِيرُ، أَوْ غَيْرُهُ مَالًا يَجْعَلُهُ لِمَنْ سَبَقَ فِي أَحَدِ هَذِهِ الْوُجُوهِ، فَهَذَا حَسَنٌ. وَيُخْرِجُ أَحَدُ الْمُتَسَابِقَيْنِ فِيمَا ذَكَرْنَا مَالًا فَيَقُولُ لِصَاحِبِهِ: إنْ سَبَقْتنِي فَهُوَ لَك، وَإِنْ سَبَقْتُك فَلَا شَيْءَ لَك عَلَيَّ، وَلَا شَيْءَ لِي عَلَيْك، فَهَذَا حَسَنٌ.

L16110 Thus, these two opinions are valid in all that we have mentioned.

فَهَذَانِ الْوَجْهَانِ يَجُوزَانِ فِي كُلِّ مَا ذَكَرْنَا

L16111 It is not permissible at all to give money in any race other than this one, because of the narration we previously cited.

وَلَا يَجُوزُ إعْطَاءُ مَالٍ فِي سَبَقٍ غَيْرِ هَذَا أَصْلًا لِلْخَبَرِ الَّذِي ذَكَرْنَا آنِفًا.

L16112 If each of them intends to contribute property that would belong to the one who precedes first, this is categorically impermissible except in the case of horses only.

فَإِنْ أَرَادَ أَنْ يُخْرِجَ كُلُّ وَاحِدٍ مِنْهُمَا مَالًا يَكُونُ لِلسَّابِقِ مِنْهُمَا لَمْ يَحِلَّ ذَلِكَ أَصْلًا إلَّا فِي الْخَيْلِ فَقَطْ.

L16113–16115 Furthermore, this is also impermissible regarding horses unless the two include with them a rider mounted on a suitable horse. That he may outpace both of them, and it is possible he does not outpace them. This arbitrator does not contribute any money at all. Whichever of the two contributors of

ثُمَّ لَا يَجُوزُ ذَلِكَ فِي الْخَيْلِ أَيْضًا إلَّا بِأَنْ يُدْخِلَا مَعَهَا فَارِسًا عَلَى فَرَسٍ يُمْكِنُ أَنْ يَسْبِقَهُمَا، وَيُمْكِنُ أَنْ لَا يَسْبِقَهُمَا، وَلَا يُخْرِجُ هَذَا الْفَارِسُ مَالًا أَصْلًا فَأَيُّ الْمُخْرِجَيْنِ

wealth outpaces the other retains his own money and takes what his companion contributed as permissible (ḥalāl). If the arbitrator whom the two appointed - who is termed the resolver (al-muḥallil) - outpaces both of them, he takes both sums entirely. If he is outpaced, he owes nothing. Whatever differs from this is prohibited (ḥarām).

L16116 It is not permissible to stipulate upon the winner the feeding of those present. We have transmitted through the chain of Abū Dāwūd: Musaddad → al-Ḥuṣayn ibn Numayr → Sufyān ibn Ḥusayn → al-Zuhrī → Saʿīd ibn al-Musayyib → Abū Hurayrah → the Prophet—peace and blessings of Allah be upon him—who said: "Whoever introduces a horse between two horses—meaning while he is not certain it will be surpassed—then it is not gambling. But whoever introduces a horse between two horses while being certain it will not be surpassed, then it is gambling." Abū Muḥammad said: Whatever exceeds this is wrongful consumption of wealth. And with Allah, the Exalted, is all success.[22]

[22] **Hadith references (L16116):** Sunan Abi Dawud 2579.

لِلْمَالِ سَبَقَ أَمْسَكَ مَالَهُ نَفْسَهُ وَأَخَذَ مَا أَخْرَجَ صَاحِبُهُ حَلَالًا، وَإِنْ سَبَقَهُمَا الْفَارِسُ الَّذِي أَدْخَلَا وَهُوَ يُسَمَّى الْمُحَلِّلَ أَخَذَ الْمَالَيْنِ جَمِيعًا فَإِنْ سُبِقَ فَلَا شَيْءَ عَلَيْهِ - وَمَا عَدَا هَذَا فَحَرَامٌ.

وَلَا يَجُوزُ أَنْ يُشْتَرَطَ عَلَى السَّابِقِ إطْعَامُ مَنْ حَضَرَ. رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا مُسَدَّدٌ نَا الْحُصَيْنُ بْنُ نُمَيْرٍ نَا سُفْيَانُ بْنُ حُسَيْنٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَدْخَلَ فَرَسًا بَيْنَ فَرَسَيْنِ - يَعْنِي - وَهُوَ لَا يُؤْمِنُ أَنْ يُسْبَقَ فَلَيْسَ بِقِمَارٍ، وَمَنْ أَدْخَلَ فَرَسًا بَيْنَ فَرَسَيْنِ وَقَدْ أَمِنَ أَنْ يُسْبَقَ فَهُوَ قِمَارٌ» . قَالَ أَبُو مُحَمَّدٍ: مَا عَدَا هَذَا فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

AL-MUHALLA

كِتَابُ الْأَضَاحِيِّ

The Book of Sacrificial Offerings

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْأَضَاحِيِّ] [مَسْأَلَةٌ الْأُضْحِيَّةُ سُنَّةٌ حَسَنَةٌ]

[Book of Sacrifices] [Issue: The sacrificial offering is a confirmed Sunnah]

٩٧٣ - مَسْأَلَةٌ: الْأُضْحِيَّةُ سُنَّةٌ حَسَنَةٌ، وَلَيْسَتْ فَرْضًا، وَمَنْ تَرَكَهَا غَيْرَ رَاغِبٍ عَنْهَا فَلَا حَرَجَ عَلَيْهِ فِي ذَلِكَ. وَمَنْ ضَحَّى عَنْ امْرَأَتِهِ، أَوْ وَلَدِهِ، أَوْ أَمَتِهِ فَحَسَنٌ، وَمَنْ لَا فَلَا حَرَجَ فِي ذَلِكَ.

Issue 973: The sacrificial offering (Uḍḥiyyah) is a commendable Sunnah and is not obligatory. Whoever refrains from it without aversion to the practice incurs no blame. Whoever sacrifices on behalf of his wife, child, or maidservant has done well, and whoever does not do so incurs no blame in this matter.

وَمَنْ أَرَادَ أَنْ يُضَحِّيَ فَفَرْضٌ عَلَيْهِ إِذَا أَهَلَّ هِلَالُ ذِي الْحِجَّةِ أَنْ لَا يَأْخُذَ مِنْ شَعْرِهِ وَلَا مِنْ أَظْفَارِهِ شَيْئًا حَتَّى يُضَحِّيَ، لَا بِحَلْقٍ، وَلَا بِقَصٍّ وَلَا بِنُورَةٍ وَلَا بِغَيْرِ ذَلِكَ، وَمَنْ لَمْ يُرِدْ أَنْ يُضَحِّيَ لَمْ يَلْزَمْهُ ذَلِكَ.

Whoever intends to perform Udhiyah, it becomes obligatory upon him once the crescent of Dhu al-Hijjah appears to refrain from removing anything from his hair or nails—not by shaving, trimming, using depilatory paste (nūrah), or any other means—until he performs Udhiyah. Whoever does not intend to perform Udhiyah is not bound by this obligation.

رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا عُبَيْدُ اللَّهِ بْنُ مُعَاذِ بْنِ مُعَاذٍ الْعَنْبَرِيُّ نَا أَبِي نَا مُحَمَّدُ بْنُ عَمْرٍو نَا عُمَرُ بْنُ مُسْلِمٍ سَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ: سَمِعْت أُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ تَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ كَانَ لَهُ ذِبْحٌ يَذْبَحُهُ فَأَهَلَّ هِلَالُ ذِي الْحِجَّةِ فَلَا يَأْخُذَنَّ مِنْ شَعْرِهِ، وَلَا مِنْ أَظْفَارِهِ شَيْئًا حَتَّى يُضَحِّيَ» .

It has been reported to us through the chain of Abū Dāwūd: Ubaydullāh ibn Muʿādh ibn Muʿādh al-ʿAnbarī reported from his father, from Muḥammad ibn ʿAmr, from ʿUmar ibn Muslim, who said: I heard Saʿīd ibn al-Musayyab say: I heard Umm Salamah, the Mother of the Believers, say: The Messenger of Allah—peace and blessings be upon him—said, "Whoever has a sacrificial animal he intends to slaughter, and the crescent of Dhul-Ḥijjah is sighted, let him not remove anything from his hair or nails until he performs the Udḥiyah."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا سُلَيْمَانُ بْنُ سَلْمٍ الْبَلْخِيّ ثِقَةٌ أَنَا النَّضْرُ بْنُ شُمَيْلٍ أَنَا شُعْبَةُ عَنْ مَالِكِ بْنِ أَنَسٍ عَنْ ابْنِ مُسْلِمٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أُمِّ سَلَمَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ رَأَى هِلَالَ ذِي الْحِجَّةِ فَأَرَادَ أَنْ يُضَحِّيَ فَلَا يَأْخُذَنَّ مِنْ شَعْرِهِ وَلَا مِنْ أَظْفَارِهِ حَتَّى يُضَحِّيَ» .

From the narration chain of Aḥmad ibn Shuʿayb: Sulaymān ibn Salm al-Balkhī (reliable) narrated to us; al-Naḍr ibn Shumayl narrated to us; Shuʿbah reported from Mālik ibn Anas, from Ibn al-Muslim, from Saʿīd ibn al-Musayyib, from Umm Salamah, from the Prophet—peace be upon him—who said: "Whoever sights the crescent of Dhū al-Ḥijjah and intends to perform the sacrifice, he must not cut his hair or clip his nails until he performs the sacrifice."

فَقَوْلُهُ - عَلَيْهِ السَّلَامُ -: " فَأَرَادَ أَنْ يُضَحِّيَ بُرْهَانٌ بِأَنَّ الْأُضْحِيَّةَ مَرْدُودَةٌ إلَى إرَادَةِ الْمُسْلِمِ، وَمَا كَانَ هَكَذَا فَلَيْسَ فَرْضًا.

His statement—peace be upon him—"So he intended to sacrifice" is evidence that the sacrificial offering is contingent upon the Muslim's intention, and whatever is like this is not an obligation.

Abu Hanifah said: The sacrificial offering is an obligation, and a person is

required to sacrifice on behalf of his wife. His position encompasses various aspects of error. The first is imposing it as obligatory upon himself, secondly imposing it upon his wife. Since it is an obligation, it is... Such as Zakah: no one is obligated to pay Zakah on behalf of his wife, nor to offer the tamattuʿ sacrificial animal on her behalf, nor to pay the compensation for hunting [game], nor the expiation for shaving the head to remove harm.

وَقَالَ أَبُو حَنِيفَةَ: الْأُضْحِيَّةُ فَرْضٌ، وَعَلَى الْمَرْءِ أَنْ يُضَحِّيَ عَنْ زَوْجَتِهِ - فَجَمَعَ وُجُوهًا مِنَ الْخَطَأِ، أَوَّلُهَا: إِيجَابُهَا عَلَيْهِ، ثُمَّ إِيجَابُهَا عَلَى امْرَأَتِهِ، وَإِذْ هِيَ فَرْضٌ فَهِيَ كَالزَّكَاةِ، وَمَا يَلْزَمُ أَحَدٌ أَنْ يُزَكِّيَ عَنْ امْرَأَتِهِ، وَلَا أَنْ يُهْدِيَ عَنْهَا هَدْيَ مُتْعَةٍ، وَلَا جَزَاءَ صَيْدٍ، وَلَا فِدْيَةَ حَلْقِ الرَّأْسِ مِنَ الْأَذَى.

L16128 The Prophet—may Allah's peace and blessings be upon him—commanded that whoever intends to perform the udḥiyah must not cut or trim anything from their hair or nails, as we have mentioned.

ثُمَّ خِلَافُ أَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ أَرَادَ أَنْ يُضَحِّيَ أَنْ لَا يَمَسَّ مِنْ شَعْرِهِ، وَلَا مِنْ ظُفْرِهِ شَيْئًا كَمَا ذَكَرْنَا.

L16129 If it is said: How is it not an obligation when you deem it obligatory for one who intends to sacrifice that he must not touch any of his hair or nails once the crescent of Dhul-Hijjah appears until he sacrifices? We say: Yes, because the Prophet—peace and blessings of Allah be upon him—commanded this for whoever intended to sacrifice, but he did not command us to perform the Udhiyah. Thus, we do not exceed what he prescribed. Every recommended practice that is not obligatory has ordained boundaries that are not valid except through them, just as one who intends to perform voluntary prayer is obligated to pray only with ablution, facing the qiblah—unless he is riding—and to recite in it, bow, prostrate, and must necessarily sit. Similarly, one who intends to fast is obligated to avoid what a fasting person avoids; otherwise, it is not fasting.

فَإِنْ قِيلَ: كَيْفَ لَا تَكُونُ فَرْضًا وَأَنْتُمْ تَرَوْنَ فَرْضًا عَلَى مَنْ أَرَادَ أَنْ يُضَحِّيَ: أَنْ لَا يَمَسَّ مِنْ شَعْرِهِ، وَلَا مِنْ ظُفْرِهِ إِذَا أَهَلَّ هِلَالُ ذِي الْحِجَّةِ حَتَّى يُضَحِّيَ؟ قُلْنَا: نَعَمْ، لِأَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِذَلِكَ مَنْ أَرَادَ أَنْ يُضَحِّيَ، وَلَمْ يَأْمُرْنَا بِالْأُضْحِيَّةِ، فَلَمْ نَتَعَدَّ مَا حَدَّ، وَكُلُّ سُنَّةٍ لَيْسَتْ فَرْضًا، فَإِنَّ لَهَا حُدُودًا مَفْرُوضَةً لَا تَكُونُ إِلَّا بِهَا كَمَنْ أَرَادَ أَنْ يَتَطَوَّعَ بِصَلَاةٍ فَفَرْضٌ عَلَيْهِ أَلَّا يُصَلِّيَهَا إِلَّا بِوُضُوءٍ، وَإِلَى الْقِبْلَةِ، إِلَّا أَنْ يَكُونَ رَاكِبًا، وَأَنْ يَقْرَأَ فِيهَا وَيَرْكَعَ، وَيَسْجُدَ، وَيَجْلِسَ وَلَا بُدَّ، وَكَمَنْ أَرَادَ أَنْ يَصُومَ فَفَرْضٌ عَلَيْهِ أَنْ يَجْتَنِبَ مَا يَجْتَنِبُهُ الصَّائِمُ وَإِلَّا فَلَيْسَ صَوْمًا.

L16130 Similarly, every supererogatory act in religious practice—the Uḍḥiyah (ritual sacrifice) follows this same principle. If one fulfills it as prescribed, it remains valid; otherwise, it becomes merely a sheep slaughtered for meat and not a valid Uḍḥiyah.

وَهَكَذَا كُلُّ تَطَوُّعٍ فِي الدِّيَانَةِ، وَالْأُضْحِيَّةُ كَذَلِكَ إِنْ أَدَّاهَا كَمَا أُمِرَ وَإِلَّا فَهِيَ شَاةُ لَحْمٍ وَلَيْسَتْ أُضْحِيَّةً.

L16131–16133 If it is objected: "There has come the hadith, 'What right does a person have who owns something he wishes to bequeath...' [to the end of the narration]. Yet this wording from him—peace be upon him—does not constitute evidence for you that bequest is not obligatory? Rather, you hold it to be obligatory!" We reply: Yes, because another explicit text has been estab-

فَإِنْ قِيلَ: فَقَدْ جَاءَ «مَا حَقُّ امْرِئٍ لَهُ شَيْءٌ يُرِيدُ أَنْ يُوصِيَ فِيهِ» إِلَى آخِرِ الْحَدِيثِ، وَلَمْ يَكُنْ هَذَا اللَّفْظُ مِنْهُ - عَلَيْهِ السَّلَامُ - دَلِيلًا عِنْدَكُمْ عَلَى أَنَّ الْوَصِيَّةَ لَيْسَتْ فَرْضًا، بَلْ هِيَ عِنْدَكُمْ فَرْضٌ؟ قُلْنَا: نَعَمْ، لِأَنَّهُ قَدْ جَاءَ نَصٌّ آخَرُ بِإِيجَابِ الْوَصِيَّةِ فِي الْقُرْآنِ وَالسُّنَّةِ

lished in the Quran and Sunnah obligating bequest. Allah, the Most High, said: “Prescribed for you when death approaches any of you, if he leaves wealth, is a will for parents and close relatives” [Al-Baqarah: 180]. So we have adopted this, and no textual evidence has come obligating the Uḍḥiyah. Had it come, we would have adhered to it.[1]

قَالَ تَعَالَى: {كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةُ لِلْوَالِدَيْنِ وَالأَقْرَبِينَ} [البقرة: ١٨٠] الْآيَةَ فَأَخَذْنَا بِهَذَا وَلَمْ يَأْتِ نَصٌّ بِإِيجَابِ الْأُضْحِيَّةِ، وَلَوْ جَاءَ لَأَخَذْنَا بِهِ.

L16134 They adduced as proof a report from it—a narration transmitted through the chain of Aḥmad ibn Zuhayr ibn Ḥarb from Yaḥyā ibn Ayyūb from Muʿādh ibn Muʿādh from Ibn ʿAwn from Abu Ramlah from Mikhnaf ibn Sulaym: “Indeed, the Messenger of Allah—peace and blessings be upon him—said while in Arafah: ’Every household must offer an Uḍḥiyah and an ʿAtīrah every year. Do you know what the ʿAtīrah is? It is what people call the Rajabīyah.’”

وَاحْتَجُّوا بِأَشْيَاءَ مِنْهَا - خَبَرٌ مِنْ طَرِيقِ أَحْمَدَ بْنِ زُهَيْرِ بْنِ حَرْبٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنْ مُعَاذِ بْنِ مُعَاذٍ عَنِ ابْنِ عَوْنٍ عَنْ أَبِي رَمْلَةَ عَنْ مِخْنَفِ بْنِ سُلَيْمٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ بِعَرَفَةَ: إِنَّ عَلَى كُلِّ أَهْلِ بَيْتٍ فِي كُلِّ عَامٍ أَضْحَى وَعَتِيرَةً، أَتَدْرُونَ مَا الْعَتِيرَةُ؟ هِيَ الَّتِي يُسَمِّيهَا النَّاسُ الرَّجَبِيَّةَ» .

L16135 From the chain of Abd al-Razzaq, from Ibn Jurayj, from Abd al-Karim, from Habib ibn Mikhnaf, from his father, that he heard the Messenger of Allah—peace and blessings be upon him—say at Arafat: “It is obligatory upon every household to slaughter a sheep in every Rajab and a sheep in every Eid al-Adha.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْكَرِيمِ عَنْ حَبِيبِ بْنِ مِخْنَفٍ عَنْ أَبِيهِ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ بِعَرَفَةَ «عَلَى كُلِّ أَهْلِ بَيْتٍ أَنْ يَذْبَحُوا فِي كُلِّ رَجَبٍ شَاةً وَفِي كُلِّ أَضْحَى شَاةً» .

L16136–16138 From the path of Muḥammad ibn Jarīr al-Ṭabarī: Ibn Sinān al-Qazzāz informed us, Abū ʿĀṣim informed us, from Yaḥyā ibn Zurārah ibn Karīm ibn al-Ḥārith. My father narrated to me from his grandfather that he heard the Messenger of Allah (peace be upon him) say during the Farewell Pilgrimage: “Whoever wishes may offer the Fara‘ sacrifice or not, and whoever wishes may offer the ‘Atīrah sacrifice or not. As for sheep, their Udhiyah is valid.”

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ جَرِيرٍ الطَّبَرِيِّ نَا ابْنُ سِنَانٍ الْقَزَّازُ نَا أَبُو عَاصِمٍ عَنْ يَحْيَى بْنِ زُرَارَةَ بْنِ كَرِيمِ بْنِ الْحَارِثِ حَدَّثَنِي أَبِي عَنْ جَدِّهِ أَنَّهُ «سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ فِي حَجَّةِ الْوَدَاعِ مَنْ شَاءَ فَرَّعَ، وَمَنْ شَاءَ لَمْ يُفَرِّعْ وَمَنْ شَاءَ عَتَرَ، وَمَنْ شَاءَ لَمْ يَعْتِرْ، وَفِي الْغَنَمِ أُضْحِيَتُهَا» .

L16139 And also through the chain of al-Ṭabarī: Abū ʿĀṣim Marwān ibn Muḥammad al-Anṣārī informed us: Yaḥyā ibn Saʿīd al-Qaṭṭān narrated to me, Muḥammad ibn Abī Yaḥyā narrated to me, my mother narrated to me from Umm Bilāl al-Aslamiyyah, who said: The Messenger of Allah (peace and blessings be upon him) said, “Sacrifice a jadhaʿ from the sheep.”

وَمِنْ طَرِيقِ الطَّبَرِيِّ أَيْضًا -: حَدَّثَنِي أَبُو عَاصِمٍ مَرْوَانُ بْنُ مُحَمَّدٍ الْأَنْصَارِيُّ نَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ حَدَّثَنِي مُحَمَّدُ بْنُ أَبِي يَحْيَى حَدَّثَتْنِي أُمِّي عَنْ أُمِّ بِلَالٍ الْأَسْلَمِيَّةِ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «ضَحُّوا بِالْجَذَعِ مِنَ الضَّأْنِ» .

[1] **Qur’an references (L16131):** Qur’an 2:180 (Al-Baqarah).

L16140 And through the chain of Waki‘ from Isra’il from Jabir al-Ju‘fi from ‘Ikrimah from Ibn ‘Abbas that the Prophet (peace be upon him) said: “I have been commanded regarding the Udhiyah, but it was not made obligatory.”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْرَائِيلَ عَنْ جَابِرٍ الْجُعْفِيُّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أُمِرْتُ بِالْأَضْحَى وَلَمْ تُكْتَبْ» .

L16141 From the chain of Ibn Lahīʿah, from Ibn Anʿum, from ʿUtbah ibn Ḥumayd al-Ḍabbī, from ʿUbādah ibn Nusayy, from ʿAbd al-Raḥmān ibn Ghanm al-Ashʿarī, from Muʿādh ibn Jabal, who said: “The Messenger of Allah (peace and blessings be upon him) would command that we sacrifice, and command that we feed from its meat the neighbor and the needy.”

وَمِنْ طَرِيقِ ابْنِ لَهِيعَةَ عَنْ ابْنِ أَنْعُمٍ عَنْ عُتْبَةَ بْنِ حُمَيْدٍ الضَّبِّيِّ عَنْ عُبَادَةَ بْنِ نُسَيٍّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ غَنْمٍ الْأَشْعَرِيِّ عَنْ مُعَاذِ بْنِ جَبَلٍ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُ أَنْ نُضَحِّيَ وَيَأْمُرُ أَنْ نُطْعِمَ مِنْهَا الْجَارَ وَالسَّائِلَ» .

L16142 Through the chain of Waki‘, al-Rabi’ narrated to us from al-Hasan that the Messenger of Allah—may Allah bless him and grant him peace—commanded the Uḍḥiyah.

وَمِنْ طَرِيقِ وَكِيعٍ نَا الرَّبِيعُ عَنْ الْحَسَنِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِالْأَضْحَى» .

L16143 And via the chain of Ibn Wahb’s nephew from his uncle, from Abdullah ibn Ayyash ibn Abbas al-Qitbani, from Isa ibn Abd al-Rahman, from al-Zuhri, from Ibn al-Musayyib, from Abu Hurayrah, that the Messenger of Allah - peace and blessings be upon him - said: “Whoever has the means, let him offer a sacrifice.”

وَمِنْ طَرِيقِ ابْنِ أَخِي ابْنِ وَهْبٍ عَنْ عَمِّهِ عَنْ عَبْدِ اللَّهِ بْنِ عَيَّاشِ بْنِ عَبَّاسٍ الْقِتْبَانِيِّ عَنْ عِيسَى بْنِ عَبْدِ الرَّحْمَنِ عَنْ الزُّهْرِيِّ عَنْ ابْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ وَجَدَ سَعَةً فَلْيُضَحِّ» .

L16144 From the chain of Muḥammad ibn ʿAbd al-Malik ibn Ayman, from Abū Yaḥyā ibn Abī Masarra, from ʿAbdullāh ibn Yazīd the Quran reciter, from ʿAbdullāh ibn ʿAyyāsh ibn ʿAbbās al-Qitbānī: ʿAbd al-Raḥmān ibn Hurmuz al-Aʿraj narrated to me from Abū Hurayrah, who said, “The Messenger of Allāh - peace and blessings be upon him - said: ’Whoever has the means but does not sacrifice, let him not approach our prayer space.”’ All of this is unreliable.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نَا أَبُو يَحْيَى بْنُ أَبِي مَسَرَّةَ نَا عَبْدُ اللَّهِ بْنُ يَزِيدَ الْمُقْرِي نَا عَبْدِ اللَّهِ بْنِ عَيَّاشِ بْنِ عَبَّاسٍ الْقِتْبَانِيِّ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ هُرْمُزٍ الْأَعْرَجُ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ وَجَدَ سَعَةً فَلَمْ يُضَحِّ فَلَا يَقْرَبْ مُصَلَّانَا» وَكُلُّ هَذَا لَيْسَ بِشَيْءٍ.

L16145–16146 As for the hadith of Mikhnaf, it is narrated by Abu Ramlah al-Ghamidi and Habib ibn Mikhnaf—both are unknown and not known. As for the hadith of al-Harith, it is narrated by Yahya ibn Zurarah from his father—both are likewise unknown and not known. As for the hadith of Umm Bilal, in it is Umm Muhammad ibn Abi Yahya—she is unknown.

أَمَّا حَدِيثُ مِخْنَفٍ فَعَنْ أَبِي رَمْلَةَ الْغَامِدِيِّ، وَحَبِيبِ بْنِ مِخْنَفٍ - وَكِلَاهُمَا مَجْهُولٌ لَا يُدْرَى. وَأَمَّا حَدِيثُ الْحَارِثِ فَهُوَ عَنْ يَحْيَى بْنِ زُرَارَةَ عَنْ أَبِيهِ - وَكِلَاهُمَا مَجْهُولٌ لَا يُدْرَى. وَأَمَّا حَدِيثُ أُمِّ بِلَالٍ فَفِيهِ أُمُّ مُحَمَّدِ بْنِ أَبِي يَحْيَى - هِيَ مَجْهُولَةٌ.

L16147 As for the *ḥadīth* of Ibn ʿAyyāsh, in its chain is Jābir al-Juʿfī—who is a fabricator.

وَأَمَّا حَدِيثُ ابْنِ عَيَّاشٍ فَفِيهِ جَابِرُ الْجُعْفِيُّ - وَهُوَ كَذَّابٌ.

As for the ḥadīth of Muʿādh, its chain includes Ibn Lahīʿah and Ibn Anʿam—both of whom are in the utmost weakness.

وَأَمَّا حَدِيثُ مُعَاذٍ فَفِيهِ ابْنُ لَهِيعَةَ، وَابْنُ أَنْعُمٍ - وَكِلَاهُمَا فِي غَايَةِ السُّقُوطِ.

As for the ḥadīth of al-Ḥasan, it is mursal (a ḥadīth with an incomplete chain of transmission).

وَأَمَّا حَدِيثُ الْحَسَنِ فَمُرْسَلٌ.

As for the ḥadīth of Abū Hurayrah—both its chains are transmitted via the narration of ʿAbdullāh ibn ʿAyyāsh ibn ʿAbbās al-Qitbānī, who is not recognized as trustworthy—all they embellished in this matter has thereby collapsed.

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ - فَكِلَا طَرِيقَيْهِ مِنْ رِوَايَةِ عَبْدِ اللَّهِ بْنِ عَيَّاشِ بْنِ عَبَّاسٍ الْقِتْبَانِيِّ فَلَيْسَ مَعْرُوفًا بِالثِّقَةِ - فَسَقَطَ كُلُّ مَا مَوَّهُوا بِهِ فِي ذَلِكَ.

They mentioned the words of Allah, the Most High: “So pray to your Lord and sacrifice” [Surah Al-Kawthar: 2], and they said, “It is the Uḍḥiyah.”[2]

وَذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {فَصَلِّ لِرَبِّكَ وَانْحَرْ} [الكوثر: ٢] فَقَالُوا: هُوَ الْأُضْحِيَّةُ.

Abū Muḥammad said: This is ascribing to Allah, the Exalted, without knowledge, and He, the Exalted, said: “To associate with Allah what He has not sent down any authority for, and to ascribe to Allah what you do not know” [Al-Aʿrāf: 33].[3]

قَالَ أَبُو مُحَمَّد: وَهَذَا قَوْلٌ عَلَى اللَّهِ تَعَالَى بِغَيْرِ عِلْمٍ، وَقَالَ تَعَالَى: {وَأَنْ تُشْرِكُوا بِاللَّهِ مَا لَمْ يُنَزِّلْ بِهِ سُلْطَانًا وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لا تَعْلَمُونَ} [الأعراف: ٣٣] .

It has been reported to us from Ali, Ibn Abbas, and others that “he placed his hand near the throat [or upper chest] during prayer,” and it may refer to the slaughtering of sacrificial animals at the throat in contexts where it is obligatory.

وَقَدْ رُوِّينَا عَنْ عَلِيٍّ، وَابْنِ عَبَّاسٍ، وَغَيْرِهِمَا: «أَنَّهُ وَضَعَ الْيَدَ عِنْدَ النَّحْرِ فِي الصَّلَاةِ» ، وَلَعَلَّهُ نَحْرُ الْبُدْنِ فِيمَا وَجَبَتْ فِيهِ.

It was narrated from Mujāhid and Ismāʿīl ibn Abī Khālid—and we do not know of anyone before them who said—that they are the sacrificial animals (al-Adāḥī).

كَمَا رُوِّينَا عَنْ مُجَاهِدٍ، وَإِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ - وَمَا نَعْلَمُ أَحَدًا قَبْلَهُمْ قَالَ: إنَّهَا الْأَضَاحِيُّ.

They also referenced the verse of the Exalted: {For every community We have ordained an act of worship} [al-Ḥajj 22:34]. This provides no evidence for it being obligatory; it only signifies that the act of worship is designated for us, making it a divine grace, not an obligation.[4]

وَذَكَرُوا أَيْضًا قَوْله تَعَالَى: {وَلِكُلِّ أُمَّةٍ جَعَلْنَا مَنْسَكًا} [الحج: ٣٤] وَهَذَا لَا دَلِيلَ فِيهِ عَلَى الْفَرْضِ، وَإِنَّمَا فِيهِ أَنَّ النُّسُكَ لَنَا فَهُوَ فَضْلٌ لَا فَرْضٌ.

They mentioned the authentic narration from the Messenger of Allah—peace and blessings be upon him—: “Whoever sacrifices before the prayer

وَذَكَرُوا الْخَبَرَ الصَّحِيحَ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَمَنْ ذَبَحَ قَبْلَ الصَّلَاةِ فَلْيُعِدْ ذَبْحًا، وَمَنْ لَمْ يَذْبَحْ فَلْيَذْبَحْ عَلَى اسْمِ اللَّهِ» .

[2] **Qur’an references (L16151):** Qur’an 108:2 (Al-Kawthar).
[3] **Qur’an references (L16152):** Qur’an 7:33 (Al-A’raf).
[4] **Qur’an references (L16155):** Qur’an 22:34 (Al-Hajj).

must sacrifice again, and whoever does not sacrifice must do so in the name of Allah."

L16157–16158 Ali said: As for his command—peace be upon him—to repeat the slaughter for one who slaughtered before the prayer, it is obligatory upon him because it is a command from him—peace be upon him—and there is no objection to the existence of a command in the religion that is not obligatory, while the making up for it becomes obligatory. Thus, they agree with us regarding one who voluntarily fasts a day and then intentionally breaks it, that making up (qada) for it is obligatory upon him.

قَالَ عَلِيٌّ: أَمَّا أَمْرُهُ - عَلَيْهِ السَّلَامُ - بِإِعَادَةِ الذَّبْحِ مَنْ ذَبَحَ قَبْلَ الصَّلَاةِ فَفَرْضٌ عَلَيْهِ لِأَنَّهُ أَمْرٌ مِنْهُ - عَلَيْهِ السَّلَامُ -، وَلَا نَكِرَةَ فِي وُجُودِ أَمْرٍ فِي الدِّينِ لَيْسَ فَرْضًا وَيَكُونُ الْعِوَضُ مِنْهُ فَرْضًا - فَهُمْ مُوَافِقُونَ لَنَا فِيمَنْ تَطَوَّعَ بِيَوْمٍ لَيْسَ فَرْضًا فَأَفْطَرَ عَمْدًا أَنَّ قَضَاءَهُ عَلَيْهِ فَرْضٌ.

L16159 They say concerning one who performed a voluntary Hajj and invalidated it: "He must make it up as an obligation." But rather, one must reference the command of Allah, the Exalted, and the command of His Messenger—peace be upon him. Thus, whatever is stipulated therein becomes obligatory, and whatever is not stipulated therein is not obligatory.

وَيَقُولُونَ فِيمَنْ حَجَّ تَطَوُّعًا فَأَفْسَدَهُ: أَنَّ قَضَاءَهُ فَرْضٌ، وَإِنَّمَا يُرَاعِي أَمْرَ اللَّهِ تَعَالَى وَأَمْرَ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَا وُجِدَ فِيهِ فَهُوَ فَرْضٌ، وَمَا لَمْ يُوجَدْ فِيهِ فَلَيْسَ فَرْضًا.

L16160 As for his statement—peace be upon him—"Whoever does not slaughter, let him slaughter in the name of Allah," the evidence that this is not an obligatory injunction lies in the validity of the Consensus that whoever sacrifices a camel by nahr (the prescribed method for camels) is not obligated to perform slaughter—thus it is established that it is a recommended injunction—and by Allah, the Exalted, is success.

وَأَمَّا قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «وَمَنْ لَمْ يَذْبَحْ فَلْيَذْبَحْ عَلَى اسْمِ اللَّهِ» فَالدَّلِيلُ عَلَى أَنَّهُ لَيْسَ أَمْرَ فَرْضٍ صِحَّةُ الْإِجْمَاعِ عَلَى أَنَّ مَنْ ضَحَّى بِبَعِيرٍ فَنَحَرَهُ فَلَيْسَ عَلَيْهِ فَرْضًا أَنْ يَذْبَحَ - فَصَحَّ أَنَّهُ أَمْرُ نَدْبٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L16161 Among those from whom we have received narrations regarding the obligation of the Udḥiyyah are Mujāhid and Makḥūl.

وَمِمَّنْ رُوِّينَا عَنْهُ إِيجَابَ الْأُضْحِيَّةِ: مُجَاهِدٌ، وَمَكْحُولٌ.

L16162 From Al-Shaʿbī: They did not permit abandoning the sacrifice (Uḍḥiyah) except for a pilgrim or a traveler.

وَعَنْ الشَّعْبِيِّ: لَمْ يَكُونُوا يُرَخِّصُونَ فِي تَرْكِ الْأُضْحِيَّةِ إِلَّا لِحَاجٍّ، أَوْ مُسَافِرٍ.

L16163 And it was narrated from Abū Hurayrah but it is not authentic.

وَرُوِيَ عَنْ أَبِي هُرَيْرَةَ وَلَا يَصِحُّ.

L16164 It has been narrated to us through the chain of ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Muṭarrif ibn Ṭarīf, from al-Shaʿbī, from Abū Surayḥah Ḥudhayfah ibn Usayd al-Ghifārī, who said: "I indeed saw Abū Bakr and ʿUmar—they did not perform Udhiyah, disliking that others might imitate them."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ عَنْ الشَّعْبِيِّ عَنْ أَبِي سُرَيْحَةَ حُذَيْفَةَ بْنَ أُسَيْدَ الْغِفَارِيِّ قَالَ: لَقَدْ رَأَيْت أَبَا بَكْرٍ، وَعُمَرَ وَمَا يُضَحِّيَانِ كَرَاهِيَةَ أَنْ يُقْتَدَى بِهِمَا.

L16165 And through the chain of Sufyan al-Thawri from Mansur ibn al-Mu'tamir from Abu Wa'il (who is Shaqiq ibn Salama) from Abu Mas'ud 'Uqbah ibn 'Amr al-Badri, the Companion of the Battle of Badr, that he said: "I thought of refraining from offering the *udhiyah* sacrifice, though I am among those most able to afford it, fearing people might consider it an absolute obligation."

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ أَبِي وَائِلٍ هُوَ شَقِيقُ بْنِ سَلَمَةَ - عَنْ أَبِي مَسْعُودٍ عُقْبَةَ بْنِ عَمْرٍو الْبَدْرِيِّ أَنَّهُ قَالَ: لَقَدْ هَمَمْت أَنْ أَدَعَ الْأُضْحِيَّةَ وَإِنِّي لَمِنْ أَيْسَرِكُمْ مَخَافَةَ أَنْ يَحْسِبَ النَّاسُ أَنَّهَا حَتْمٌ وَاجِبٌ.

L16166 From the chain of Sa'īd ibn Manṣūr: Abū al-Aḥwaṣ informed us: 'Imrān ibn Muslim—al-Ju'fī—from Suwayd ibn Ghafalah, who said: Bilāl said to me: "I would not mind if I sacrificed a rooster. Indeed, taking the price of the Udhiyah and giving it in charity to a destitute person is more beloved to me than performing the sacrifice."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا أَبُو الْأَحْوَصِ أَنَا عِمْرَانُ بْنُ مُسْلِمٍ هُوَ الْجُعْفِيُّ - عَنْ سُوَيْدِ بْنِ غَفَلَةَ قَالَ: قَالَ لِي بِلَالٌ: مَا كُنْت أُبَالِي لَوْ ضَحَّيْت بِدِيكٍ، وَلَأَنْ آخُذَ ثَمَنَ الْأُضْحِيَّةِ فَأَتَصَدَّقَ بِهِ عَلَى مِسْكِينٍ مُقْتِرٍ فَهُوَ أَحَبُّ إلَيَّ مِنْ أَنْ أُضَحِّيَ.

L16167 And through the chain of Ḥammād ibn Salamah from ʿAqīl ibn Ṭalḥah from Ziyād ibn ʿAbd al-Raḥmān from Ibn ʿUmar, who said: The *Udhiyah* is a recommended practice (Sunnah).

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَقِيلِ بْنِ طَلْحَةَ عَنْ زِيَادِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ ابْنِ عُمَرَ قَالَ: الْأُضْحِيَّةُ سُنَّةٌ.

L16168–16169 And through the chain of Shuʿbah from Tamīm ibn Ḥuwayṣ al-Azdī, who said: "My sacrificial animal went missing before I could slaughter it, so I asked Ibn ʿAbbās." He replied: "It does not harm you." All of this is authentic. And through the chain of Wakīʿ, who narrated to us from Abū Maʿshar al-Madanī, from ʿAbdullāh ibn ʿUmayr, the freed slave of Ibn ʿAbbās, from Ibn ʿAbbās, that he gave his freed slave two dirhams and said: "Purchase meat with these. Whoever you meet, say: 'This is the sacrifice of Ibn ʿAbbās.'"

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ تَمِيمِ بْنِ حُوَيْصٍ الْأَزْدِيُّ قَالَ: ضَلَّتْ أُضْحِيَتِي قَبْلَ أَنْ أَذْبَحَهَا فَسَأَلْت ابْنَ عَبَّاسٍ؟ فَقَالَ: لَا يَضُرُّك - هَذَا كُلُّهُ صَحِيحٌ -: وَمِنْ طَرِيقِ وَكِيعٍ نَا أَبُو مَعْشَرٍ الْمَدِينِيُّ عَنْ عَبْدِ اللَّهِ بْنِ عُمَيْرٍ مَوْلَى ابْنِ عَبَّاسٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ أَعْطَى مَوْلًى لَهُ دِرْهَمَيْنِ وَقَالَ: اشْتَرِ بِهِمَا لَحْمًا وَمَنْ لَقِيَك فَقُلْ: هَذِهِ أُضْحِيَّةُ ابْنِ عَبَّاسٍ.

L16170 Abu Muhammad said: It is not authentically reported from any of the Companions that the Uḍḥiyah is obligatory.

قَالَ أَبُو مُحَمَّدٍ: لَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ أَنَّ الْأُضْحِيَّةَ وَاجِبَةٌ.

L16171 It has been established that the Udhiyah (ritual sacrifice) is not obligatory according to Sa'īd ibn al-Musayyab and al-Sha'bī, and that al-Sha'bī said: "To give three silver dirhams in charity is more beloved to me than to perform the Udhiyah."

وَصَحَّ أَنَّ الْأُضْحِيَّةَ لَيْسَتْ وَاجِبَةً عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ وَالشَّعْبِيِّ وَأَنَّهُ قَالَ: لَأَنْ أَتَصَدَّقَ بِثَلَاثَةِ دَرَاهِمَ أَحَبُّ إلَيَّ مِنْ أَنْ أُضَحِّيَ.

L16172 From Sa'īd ibn Jubayr, 'Aṭā', al-Ḥasan, Ṭāwūs, and Abū al-Sha'thā' Jābir ibn Zayd; and it is also reported from 'Alqamah and Muḥammad ibn 'Alī ibn al-Ḥusayn.

وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ، وَعَنْ عَطَاءٍ، وَعَنْ الْحَسَنِ، وَعَنْ طَاوُسٍ، وَعَنْ أَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ - وَرُوِيَ أَيْضًا عَنْ عَلْقَمَةَ، وَمُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ.

L16173 This is the opinion of Sufyan, Ubayd Allāh ibn al-Ḥasan, al-Shāfiʿī, Aḥmad ibn Ḥanbal, Isḥāq, and Abū Sulaymān—and this is among the matters in which the Ḥanafīs differed from the majority of scholars.

وَهُوَ قَوْلُ سُفْيَانَ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ، وَالشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ - وَهَذَا مِمَّا خَالَفَ فِيهِ الْحَنَفِيُّونَ جُمْهُورَ الْعُلَمَاءِ.

L16174 **Issue: The lame female animal is not permissible as the sacrificial offering (al-Uḍḥiyah).**

[مَسْأَلَةٌ لَا تَجْزِي الْعَرْجَاءُ فِي الْأُضْحِيَّةِ]

L16175 Issue 974: A lame animal with evident lameness does not suffice for sacrificial offering, whether it has met the required conditions [for sacrifice] or not, and whether it can walk or not.

٩٧٤ - مَسْأَلَةٌ: وَلَا تَجْزِي فِي الْأُضْحِيَّةِ الْعَرْجَاءُ الْبَيِّنُ عَرَجُهَا، بَلَغَتْ الْمَنْسَكَ أَوْ لَمْ تَبْلُغْ، مَشَتْ أَوْ لَمْ تَمْشِ.

L16176 Nor the sick woman whose disease is evident - and mange is a disease - if all that we mentioned does not manifest, then it suffices.

وَلَا الْمَرِيضَةُ الْبَيِّنُ مَرَضُهَا - وَالْجَرَبُ مَرَضٌ - فَإِنْ كَانَ كُلُّ مَا ذَكَرْنَا لَا يَبِينُ أَجْزَأَ.

L16177 The emaciated animal that is not free of flaws does not suffice, nor one with a deficiency, severed part, or perforating hole in its ear, nor one with a defect in its eye or likewise in both eyes, nor the animal with a docked tail.

وَلَا تَجْزِي الْعَجْفَاءُ الَّتِي لَا تُنْقِي وَلَا تَجْزِي الَّتِي فِي أُذُنِهَا شَيْءٌ مِنْ النَّقْصِ أَوْ الْقَطْعِ، أَوْ الثَّقْبِ النَّافِذِ، وَلَا الَّتِي فِي عَيْنِهَا شَيْءٌ مِنْ الْعَيْبِ، أَوْ فِي عَيْنَيْهَا كَذَلِكَ، وَلَا الْبَتْرَاءُ فِي ذَنَبِهَا.

L16178 Then, every defect other than what we have mentioned does not invalidate the sacrificial animal, such as a castrated animal, a broken horn (whether it bled or not), an animal with worn or broken teeth, a tail-docked animal, and similar defects. Do not avoid any defect except those we have specified.

ثُمَّ كُلُّ عَيْبٍ سِوَى مَا ذَكَرْنَا فَإِنَّهَا تَجْزِي بِهِ الْأُضْحِيَّةُ كَالْخَصِيِّ، وَكَسْرِ الْقَرْنِ دَمِيَ، أَوْ لَمْ يَدْمَ - وَالْهَتْمَاءُ وَالْمَقْطُوعَةُ الْأَلْيَةِ، وَغَيْرُ ذَلِكَ لَا تَحَاشَ شَيْئًا غَيْرَ مَا ذَكَرْنَا.

L16179–16181 It was transmitted to us via the route of ʿAbd al-Raḥmān ibn Mahdī, Yaḥyā al-Qaṭṭān, and others from them—all being disciples of Shuʿbah. Shuʿbah reported: I heard Sulaymān ibn ʿAbd al-Raḥmān say: I heard ʿUbayd ibn Fayrūz relate that... The Messenger of Allah, peace and blessings be upon him, said to Al-Barāʾ ibn ʿĀzib: "Four defects make an animal unacceptable for sacrifice: the one-eyed animal whose defect is evident, the sick animal whose sickness is evident, the lame animal whose lameness is evident, and the animal with a broken bone devoid of marrow."

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ، وَيَحْيَى الْقَطَّانِ، وَغَيْرِهِمَا مِنْ أَصْحَابِ شُعْبَةَ كُلِّهِمْ: نَا شُعْبَةُ سَمِعْت سُلَيْمَانَ بْنَ عَبْدِ الرَّحْمَنِ قَالَ: سَمِعْت عُبَيْدَ بْنَ فَيْرُوزَ أَنَّ الْبَرَاءَ بْنَ عَازِبٍ قَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَرْبَعٌ لَا تُجْزِي فِي الْأَضَاحِيِّ: الْعَوْرَاءُ الْبَيِّنُ عَوَرُهَا، وَالْمَرِيضَةُ الْبَيِّنُ مَرَضُهَا، وَالْعَرْجَاءُ الْبَيِّنُ ظَلْعُهَا، وَالْكَسِيرُ الَّتِي لَا تُنْقِي» .

L16182 Al-Barāʾ said: Whatever you disliked thereof, leave it, and do not declare it forbidden upon anyone.

قَالَ الْبَرَاءُ: فَمَا كَرِهْت مِنْهُ فَدَعْهُ، وَلَا تُحَرِّمْهُ عَلَى أَحَدٍ.

قَالَ عَلِيٌّ: الَّتِي لَا تُنْقِي هِيَ الَّتِي لَا شَيْءَ مِنَ الشَّحْمِ لَهَا، فَإِنْ كَانَ لَهَا مِنْهُ شَيْءٌ - وَإِنْ قَلَّ - أَجْزَأَتْ عَنْهُ - وَإِنْ كَانَتْ عَجْفَاءَ -: رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ آدَمَ عَنْ عَبْدِ الرَّحِيمِ هُوَ ابْنُ سُلَيْمَانَ - عَنْ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ شُرَيْحِ بْنِ النُّعْمَانِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَسْتَشْرِفَ الْعَيْنَ وَالْأُذُنَ وَأَنْ لَا نُضَحِّيَ بِمُقَابَلَةٍ، وَلَا بِمُدَابَرَةٍ، وَلَا بَتْرَاءَ، وَلَا خَرْقَاءَ» .

L16183 Ali said: “The unfit [for sacrifice] is one that has no fat at all. If it has any fat—even a small amount—it suffices for sacrifice, even if the animal is emaciated.” It was narrated to us through the chain of Ahmad ibn Shuʿayb: Muḥammad ibn Ādam narrated to us from ʿAbd al-Raḥīm (son of Sulaymān) from Zakariyyā ibn Abī Zāʾida, from Abū Isḥāq al-Sabīʿī, from Shurayḥ ibn al-Nuʿmān, from ʿAlī ibn Abī Ṭālib, who said: “The Messenger of Allah—peace and blessings be upon him—commanded us to inspect rigorously the eye and the ear, and not to sacrifice an animal with a front-slit ear, a back-slit ear, a docked tail, or a torn ear.”

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ النُّفَيْلِيُّ نَا زُهَيْرٌ هُوَ ابْنُ مُعَاوِيَةَ - نَا أَبُو إِسْحَاقَ هُوَ السَّبِيعِيِّ - عَنْ شُرَيْحِ بْنِ النُّعْمَانِ - وَكَانَ رَجُلَ صِدْقٍ - عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ " قَالَ: «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَسْتَشْرِفَ الْعَيْنَ، وَالْأُذُنَ، وَلَا نُضَحِّيَ بِعَوْرَاءَ، وَلَا مُقَابَلَةٍ، وَلَا مُدَابَرَةٍ، وَلَا خَرْقَاءَ، وَلَا شَرْقَاءَ» .

L16184 From the narration of Abū Dāwūd: ʿAbdullāh ibn Muḥammad al-Nufaylī narrated to us, from Zuhayr—that is, Ibn Muʿāwiyah—from Abū Isḥāq—that is, al-Sabiʿī—from Shurayḥ ibn al-Nuʿmān—and he was a truthful man—from ʿAlī ibn Abī Ṭālib, who said: “The Messenger of Allāh—peace and blessings be upon him—commanded us to inspect the eyes and ears, and not to sacrifice an animal that is blind, nor one with a front-cut ear, nor a rear-cut ear, nor one with a slit ear, nor one with a split ear.”

قَالَ زُهَيْرٌ: قُلْت لِأَبِي إِسْحَاقَ: مَا الْمُقَابَلَةُ؟ قَالَ: تُقْطَعُ طَرَفُ الْأُذُنِ، قُلْت: فَمَا الْمُدَابَرَةُ؟ قَالَ تُقْطَعُ مُؤَخَّرُ الْأُذُنِ، قُلْت فَمَا الشَّرْقَاءُ؟ قَالَ: تُشَقُّ الْأُذُنُ، قُلْت: فَمَا الْخَرْقَاءُ؟ قَالَ: تُخْرَقُ أُذُنُهَا السِّمَةُ.

L16185 Zuhayr said: I asked Abū Isḥāq, “What is al-muqābala?” He replied, “Cutting the tip of the ear.” I asked, “What is al-mudābara?” He said, “Cutting the back of the ear.” I asked, “What is al-sharqāʾ?” He answered, “Splitting the ear.” I inquired, “What is al-kharqāʾ?” He responded, “The branding mark pierces her ear.”

نَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نَا أَبُو ذَرٍّ الْهَرَوِيُّ نَا عَلِيُّ بْنُ عُمَرَ الدَّارَقُطْنِيّ نَا يَحْيَى بْنُ مُحَمَّدِ بْنِ صَاعِدٍ نَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْمَخْزُومِيُّ نَا أَبُو كَامِلٍ مُظَفَّرُ بْنُ مُدْرِكٍ نَا قَيْسُ بْنُ الرَّبِيعِ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ شُرَيْحِ بْنِ النُّعْمَانِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ فِي الْأَضَاحِيِّ قَالَ قَيْسٌ: قُلْت لِأَبِي إِسْحَاقَ: سَمِعْته مِنْ شُرَيْحٍ قَالَ: حَدَّثَنِي عَنْهُ سَعِيدُ بْنُ أَشْوَعَ.

L16186 Aḥmad ibn ʿUmar ibn Anas narrated to us; Abū Dharr al-Harawī narrated to us; ʿAlī ibn ʿUmar al-Dāraquṭnī narrated to us; Yaḥyā ibn Muḥammad ibn Ṣāʿid narrated to us; Muḥammad ibn ʿAbd Allāh al-Makhzūmī narrated to us; Abū Kāmil Muẓaffar ibn Mudrik narrated to us; Qays ibn al-Rabīʿ narrated to us from Abū Isḥāq al-Sabīʿī from Shurayḥ ibn al-Nuʿmān from ʿAlī ibn Abī Ṭālib concerning the sacrificial animals. Qays said: I said to Abū Isḥāq: “Did you hear this from Shurayḥ?” He said: “Saʿīd ibn Ashwaʿ narrated it to me from him.”

L16187–16189 Al-Daraqutni said: From Ali ibn Ibrahim, from Ibn Faris, from Muhammad

ibn Isma’il al-Bukhari, the author of *Sahih*; Shurayh ibn al-Nu’man al-Ṣāyidī said: He heard Ali ibn Abi Talib say. Abu Nu’aym and Waki’ reported from Sufyan al-Thawri, from Sa’id ibn Ashwa’, from Shurayh ibn al-Nu’man: I heard Ali ibn Abi Talib say, “The soundness is in the eye and the ear”—and Sa’id ibn Ashwa’ is trustworthy and well-known. Thus, this report is authentic, and a group of the Salaf affirm it.

قَالَ الدَّارَقُطْنِيّ: نَا عَلِيُّ بْنُ إِبْرَاهِيمَ عَنْ ابْنِ فَارِسٍ عَنْ مُحَمَّدِ بْنِ إِسْمَاعِيل الْبُخَارِيِّ مُؤَلِّفِ الصَّحِيحِ قَالَ شُرَيْحُ بْنُ النُّعْمَانِ الصَّايِدِيُّ: سَمِعَ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ أَبُو نُعَيْمٍ، وَوَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سَعِيدِ بْنِ أَشْوَعَ عَنْ شُرَيْحِ بْنِ النُّعْمَانِ سَمِعْت عَلِيَّ بْنَ أَبِي طَالِبٍ يَقُولُ: سَلِيمَةُ الْعَيْنِ وَالْأُذُنِ - وَسَعِيدُ بْنُ أَشْوَعَ ثِقَةٌ مَشْهُورٌ. فَصَحَّ هَذَا الْخَبَرُ، وَبِهِ يَقُولُ طَائِفَةٌ مِنْ السَّلَفِ.

L16190 It has been narrated to us through the chain of ʿAlī ibn Abī Ṭālib that he issued a legal ruling on this matter and said regarding the sacrificial animal: “No animal with a frontally cut ear, no animal with a posteriorly cut ear, no animal with a split ear; it must be sound in its eye and ear.”

رُوِّينَا مِنْ طَرِيقِ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ أَفْتَى بِهَذَا وَقَالَ فِي الْأُضْحِيَّةِ: لَا مُقَابَلَةَ، وَلَا مُدَابَرَةَ، وَلَا شَرْقَاءَ، سَلِيمَةُ الْعَيْنِ وَالْأُذُنِ.

L16191 Narrated via ʿAmr ibn Murrah, from Shaqīq ibn Salamah, from ʿAbdullāh ibn Masʿūd, who said: “The soundness of the eye and the ear.”

وَمِنْ طَرِيقِ عَمْرِو بْنِ مُرَّةٍ عَنْ شَقِيقِ بْنِ سَلَمَةَ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: سَلِيمُ الْعَيْنِ وَالْأُذُنِ.

L16192 From the transmission of Abū Bakr ibn Abī Shaybah, who narrated to us from Ibn ‘Ulayyah, from Ayyūb, from Nāfiʿ, from Ibn ‘Umar regarding sacrificial animals: he disliked sacrificing those with physical defects or those not having reached the required age.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نَا ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ فِي الْأُضْحِيَّةِ أَنَّهُ كَرِهَ نَاقِصَ الْخَلْقِ وَالسِّنِّ.

L16193 It is reported through the chain of Shu‘bah, from Ḥammād ibn Abī Sulaymān, that he considered it disliked to sacrifice a tailless animal.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ أَنَّهُ كَرِهَ أَنْ يُضَحَّى بِالْأَبْتَرِ.

L16194 And from Shu’bah, from al-Mughīrah, from Ibrāhīm: that he disapproved of sacrificing a short-tailed animal.

وَعَنْ شُعْبَةَ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ أَنَّهُ كَرِهَ أَنْ يُضَحَّى بِالْأَبْتَرِ.

L16195 And it is related from Ibn Sīrīn that he deemed it reprehensible to sacrifice a congenitally tailless animal.

وَعَنْ ابْنِ سِيرِينَ أَنَّهُ كَرِهَ أَنْ يُضَحَّى بِالْأَبْتَرِ.

L16196 A group deemed it permissible to sacrifice a tailless animal, citing two weak narrations. The first is through the chain of Jābir al-Juʿfī from Muḥammad ibn Qaraẓa from Abū Saʿīd, who said: “I bought a ram to sacrifice, but a wolf attacked its tail and severed it. I asked the Prophet (peace be upon him), and he said: ’Sacrifice it.’” The second is through the chain of al-Ḥajjāj ibn Arṭāʾa

وَأَجَازَ قَوْمٌ أَنْ يُضَحَّى بِالْأَبْتَرِ، وَاحْتَجُّوا بِأَثَرَيْنِ رَدِيئَيْنِ - أَحَدُهُمَا: مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ عَنْ مُحَمَّدِ بْنِ قَرَظَةَ عَنْ أَبِي سَعِيدٍ قَالَ: «اشْتَرَيْتُ كَبْشًا لِأُضَحِّيَ بِهِ فَعَدَا الذِّئْبُ عَلَى ذَنَبِهِ فَقَطَعَهُ فَسَأَلْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَقَالَ: ضَحِّ بِهِ» ، وَالْآخَرُ:

from some of his teachers: “The Prophet (peace be upon him) was asked: ’Can one sacrifice a tailless ewe?’ He said: ’There is no harm in it.’” Jābir is a liar, al-Ḥajjāj is rejected, and the narration from “some of his teachers” is unreliable.

مِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ بَعْضِ شُيُوخِهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ أَيُضَحَّى بِالْبَتْرَاءِ؟ قَالَ: لَا بَأْسَ بِهَا» . جَابِرٌ كَذَّابٌ، وَحَجَّاجٌ سَاقِطٌ، وَعَنْ بَعْضِ شُيُوخِهِ رِيبٌ.

L16197 It has been reported from Ibn ʿUmar, Saʿīd ibn al-Musayyib, ʿAṭāʾ, Saʿīd ibn Jubayr, al-Ḥasan, and al-Ḥakam that the permissibility of the *batrāʾ* (an animal born without ears or a tail) applies to the Udḥiyah sacrifice.

وَرُوِيَ عَنْ ابْنِ عُمَرَ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَعَطَاءٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَالْحَسَنِ، وَالْحَكَمِ: إجَازَةُ الْبَتْرَاءِ فِي الْأُضْحِيَّةِ.

L16198 It is reported from Al-Hasan that he established the ḥadd punishment as cutting half of the ear and was excessive in doing so.

وَعَنْ الْحَسَنِ أَنَّهُ حَدَّ الْقَطْعَ فِي الْأُذُنِ بِالنِّصْفِ فَأَكْثَرَ.

L16199–16201 Abu Hanifa has two opinions: one is that if less than a third from the eye, ear, tail, or rump is lost: The sacrificial offering was valid; however, if a third or upwards of it was lost, it became invalid.

وَلِأَبِي حَنِيفَةَ قَوْلَانِ -: أَحَدُهُمَا: إنْ ذَهَبَ مِنْ الْعَيْنِ أَوْ الْأُذُنِ، أَوْ الذَّنَبِ، أَوْ الْأَلْيَةِ أَقَلُّ مِنْ الثُّلُثِ: أَجْزَأَتْ فِي الْأُضْحِيَّةِ، فَإِنْ ذَهَبَ الثُّلُثُ فَصَاعِدًا لَمْ تُجْزِ.

L16202 And the other is that he legally prescribed it as half in place of the third.

وَالْآخَرُ - أَنَّهُ حَدَّ ذَلِكَ بِالنِّصْفِ مَكَانَ الثُّلُثِ.

L16203 He said: If [the animal] is born without an ear, it suffices. However, it is reported from him that it does not suffice.

قَالَ: فَإِنْ خُلِقَتْ بِلَا أُذُنٍ أَجْزَأَتْ - وَرُوِيَ عَنْهُ لَا تُجْزِي.

L16204 Malik said: If the horn is missing and does not bleed, it is sufficient [for the sacrifice]; but if it bleeds, it is not sufficient. Abu Hanifah and Malik said regarding the lame animal: If it reaches the ritual place of sacrifice, it is sufficient.

وَقَالَ مَالِكٌ: إنْ كَانَ الْقَرْنُ ذَاهِبًا لَا يَدْمَى أَجْزَأَتْ، فَإِنْ كَانَ يَدْمَى لَمْ تُجْزِ، وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ فِي الْعَرْجَاءِ: إذَا بَلَغَتْ الْمَنْسَكَ: أَجْزَأَتْ.

L16205 Ali said: These are statements for which there is no evidence to authenticate any of them, nor is the determination of a third or half known in all of this to have been mentioned by anyone before Abū Ḥanīfah.

قَالَ عَلِيٌّ: هَذِهِ أَقْوَالٌ لَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا، وَلَا يُعْرَفُ التَّحْدِيدُ الْمَذْكُورُ بِالثُّلُثِ، أَوْ النِّصْفِ فِي كُلِّ ذَلِكَ عَنْ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ.

L16206 And it has been reported from ʿAlī through a weak chain concerning the lame animal (invalid for sacrifice) when it reaches the place of sacrifice.

وَرُوِيَ عَنْ عَلِيٍّ مِنْ طَرِيقٍ لَا تَصِحُّ فِي الْعَرْجَاءِ إذَا بَلَغَتْ الْمَنْسَكَ.

L16207 It has been reported from ʿUmar that there is a general prohibition against lame animals.

وَرُوِيَ عَنْ عُمَرَ الْمَنْعُ مِنْ الْعَرْجَاءِ جُمْلَةً.

L16208 It is said to those who validated this: Indeed, the sacrificial site may extend a cubit or less, or it may extend a league—so which of these do you uphold?

وَيُقَالُ لِمَنْ صَحَّحَ هَذَا: إِنَّ الْمَنْسَكَ قَدْ يَكُونُ عَلَى ذِرَاعٍ وَأَقَلَّ وَيَكُونُ عَلَى فَرْسَخٍ فَأَيَّ ذَلِكَ تُرَاعُونَ؟ وَرُوِيَ فِي الْأَعْضَبِ أَثَرٌ: أَنَّهُ لَا يُجْزِي - وَلَا يَصِحُّ، لِأَنَّهُ مِنْ طَرِيقِ جَرِيِّ بْنِ كُلَيْبٍ، وَلَيْسَ مَشْهُورًا عَمَّنْ لَمْ يُسَمَّ عَنْ عَلِيٍّ.

A report is narrated concerning al-Aʿḍab stating that it does not suffice—nor is it valid—because it is transmitted through Jarī ibn Kulayb, and it is not well-known from the unnamed narrator who reported from Ali.

وَجَاءَ خَبَرٌ فِي أَنَّهُ لَا تُجْزِي الْمُسْتَأْصَلَةُ قَرْنُهَا - وَلَا يَصِحُّ؛ لِأَنَّهُ مِنْ طَرِيقِ أَبِي حُمَيْدٍ الرُّعَيْنِيِّ عَنْ أَبِي مُضَرَ - وَهُمَا مَجْهُولَانِ.

L16209 A report states that a female animal with a completely removed horn is not valid. This ruling is invalid, as the report is transmitted through the chain of Abū Ḥumayd al-Ruʿaynī from Abū Muḍar—and both of them are unknown narrators.

وَحَدِيثٌ آخَرُ فِي أَنَّهُ لَا تُجْزِي الْجَدْعَاءُ - وَلَا يَصِحُّ؛ لِأَنَّهُ مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ.

L16210 Another hadith concerning that the ear-slit ewe is not valid; and it is not authentic because it is narrated through Jābir al-Juʿfī.

[مَسْأَلَةُ الْجَذَعِ مِنَ الضَّأْنِ فِي الْأُضْحِيَّةِ]

L16211 **The legal issue of the jadhaʿ - a one-year-old sheep - as a valid sacrificial animal for Eid al-Adha.**

٩٧٥ - مَسْأَلَةٌ:

L16212 975: Issue

وَلَا تُجْزِي فِي الْأَضَاحِيِّ جَذَعَةٌ وَلَا جَذَعٌ أَصْلًا لَا مِنَ الضَّأْنِ وَلَا مِنْ غَيْرِ الضَّأْنِ - وَيُجْزِي مَا فَوْقَ الْجَذَعِ، وَمَا دُونَ الْجَذَعِ، وَالْجَذَعُ مِنَ الضَّأْنِ، وَالْمَاعِزِ، وَالظِّبَاءِ، وَالْبَقَرِ: هُوَ مَا أَتَمَّ عَامًا كَامِلًا وَدَخَلَ فِي الثَّانِي مِنْ أَعْوَامِهِ، فَلَا يَزَالُ جَذَعًا حَتَّى يُتِمَّ عَامَيْنِ وَيَدْخُلَ فِي الثَّالِثِ فَيَكُونُ ثَنِيًّا حِينَئِذٍ.

L16213 In sacrificial animals, neither a jadhaʿah (female yearling) nor a jadhaʿ (male yearling) is acceptable at all—whether from sheep or other species. What suffices is what is above the jadhaʿ stage and what is below the jadhaʿ stage. The jadhaʿ among sheep, goats, camels, and cattle refers to that which has completed one full year and entered its second year. It remains a jadhaʿ until completing two full years and entering its third year, at which point it becomes a _thani_.

هَكَذَا قَالَ فِي الضَّأْنِ وَالْمَاعِزِ الْكِسَائِيُّ، وَالْأَصْمَعِيُّ، وَأَبُو عُبَيْدٍ، وَهَؤُلَاءِ عُدُولُ أَهْلِ الْعِلْمِ فِي اللُّغَةِ، وَقَالَهُ ابْنُ قُتَيْبَةَ وَهُوَ ثِقَةٌ فِي دِينِهِ وَعِلْمِهِ.

L16214 Thus stated Al-Kisāʾī, Al-Aṣmaʿī, and Abū ʿUbayd regarding sheep and goats. These are trustworthy authorities among scholars of language. Ibn Qutaybah also stated it, and he is trustworthy in both his religious commitment and scholarly knowledge.

وَقَالَهُ الْعَدَبَّسُ الْكِلَابِيُّ، وَأَبُو فَقْعَسٍ الْأَسَدِيُّ، وَهُمَا ثِقَتَانِ فِي اللُّغَةِ.

L16215 Al-ʿAdabbas al-Kilābī and Abū Faqʿas al-Asadī also stated it, and both are trustworthy authorities in the language.

وَقَالَ ذَلِكَ فِي الْبَقَرِ وَالظِّبَاءِ أَبُو فَقْعَسٍ، وَلَا نَعْلَمُ لَهُ مُخَالِفًا مِنْ أَهْلِ الْعِلْمِ بِاللُّغَةِ.

L16216–16217 Abu Faqʿaṣ made this statement about cows and gazelles, and we do not know of any linguistic scholars who oppose him.

L16218 The jadhaʿ of camels is that which has completed four years and entered the

fifth. It remains a jadhaʿ until it enters its sixth year, whereupon it becomes a thaniyy (six-year-old camel). There is no disagreement about this.

وَالْجَذَعُ مِنْ الْإِبِلِ مَا أَكْمَلَ أَرْبَعَ سِنِينَ وَدَخَلَ فِي الْخَامِسَةِ، فَهُوَ جَذَعٌ إلَى أَنْ يَدْخُلَ السَّادِسَةَ فَيَكُونُ ثَنِيًّا - هَذَا مَا لَا خِلَافَ فِيهِ.

L16219 It has been narrated to us through the chain of Wakīʿ **who narrated to us**, from Sufyān al-Thawrī, from Abī Isḥāq al-Sabīʿī, from Hubayrah ibn Yarīm, from ʿAlī ibn Abī Ṭālib, who said: When you purchase a sacrificial animal, **fatten it**, for **if you eat [from it], you eat wholesome**, and **if you feed [others], you feed wholesome**. Purchase **a mature animal (at least two years old) or older**.

رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ هُبَيْرَةَ بْنِ يَرِيمَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إذَا اشْتَرَيْت أُضْحِيَّةً فَاسْتَسْمِنْ فَإِنْ أَكَلْت أَكَلْت طَيِّبًا، وَإِنْ أَطْعَمْت أَطْعَمْت طَيِّبًا، وَاشْتَرِ ثَنِيًّا فَصَاعِدًا.

L16220 Through the chain of ʿAbd al-Razzāq: Maʿmar reported from Abī Isḥāq al-Sabīʿī, who reported from Hubayrah ibn Yarīm, who said: ʿAlī ibn Abī Ṭālib said: “Sacrifice a *thaniyy* or older animal, free from defects in the eyes and ears.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا مَعْمَرٌ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ نَا هُبَيْرَةُ بْنُ يَرِيمَ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: ضَحُّوا بِثَنِيٍّ فَصَاعِدًا، وَسَلِيمِ الْعَيْنِ وَالْأُذُنِ.

L16221 Through the chain of Abd al-Razzaq, he informed us that Sufyan al-Thawri narrated from Jabala ibn Suhaym, who heard Ibn Umar say: “Sacrifice an animal that is *thani* (two-year-old) or older, and do not sacrifice a one-eyed animal.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ جَبَلَةَ بْنِ سُحَيْمٍ سَمِعْت ابْنَ عُمَرَ يَقُولُ: ضَحُّوا بِثَنِيٍّ فَصَاعِدًا، وَلَا تُضَحُّوا بِأَعْوَرَ.

L16222 Through the chain of ʿAbd al-Razzāq: He narrated from Mālik, from Nāfiʿ, from Ibn ʿUmar, who said: “Only an animal that has reached the *thaniyya* stage (specific to its kind) or older is acceptable.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا مَالِكٌ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: لَا تُجْزِي إلَّا الثَّنِيَّةُ فَصَاعِدًا.

L16223 From the chain of Saʿeed ibn Mansoor: Hushaym reported from Husayn ibn ʿAbdur-Rahman, who said: “I saw Hilāl ibn Yasaf sacrificing a six-month-old sheep. I asked: ’Do you do this?’ He replied: ’I saw Abū Hurayrah sacrificing a six-month-old sheep.’”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا حُصَيْنٌ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ قَالَ: رَأَيْت هِلَالَ بْنَ يَسَافٍ يُضَحِّي بِجَذَعٍ مِنْ الضَّأْنِ فَقُلْت: أَتَفْعَلُ هَذَا؟ فَقَالَ: رَأَيْت أَبَا هُرَيْرَةَ يُضَحِّي بِجَذَعٍ مِنْ الضَّأْنِ.

L16224 Thus, Ḥuṣayn has rejected the jadhaʿ (a sheep aged six months to one year) from sheep as valid for the sacrificial offering (udhiyah).

فَهَذَا حُصَيْنٌ قَدْ أَنْكَرَ الْجَذَعَ مِنْ الضَّأْنِ فِي الْأُضْحِيَّةِ.

L16225 And through the chain of Ibn Abī Shaybah: Ibn ʿUlayyah narrated to us from Yūnus ibn ʿUbayd from al-Ḥasan al-Baṣrī, who said: Camels younger than the jadhaʿ suffice as a sacrificial offering on behalf of one person.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا ابْنُ عُلَيَّةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: يُجْزِي مَا دُونَ الْجَذَعِ مِنْ الْإِبِلِ عَنْ وَاحِدٍ فِي الْأُضْحِيَّةِ.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نَا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي مُعَاذٍ عَنْ الْحَسَنِ قَالَ: يُجْزِي الْحُوَارُ عَنْ وَاحِدٍ يَعْنِي الْأُضْحِيَّةَ وَالْحُوَارُ هُوَ وَلَدُ النَّاقَةِ سَاعَةَ تَلِدُهُ.

L16226–16228 And via the chain of transmission of Abu Bakr ibn Abi Shaybah, Waki' narrated to us from Sufyan al-Thawri from Abu Mu'adh from... Al-Ḥasan said: A camel in its first year suffices for one as an Eid sacrifice, and al-ḥuwār refers to the she-camel's offspring at the moment she gives birth to it.

وَبُرْهَانُ صِحَّةِ قَوْلِنَا هَذَا مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا يَحْيَى بْنُ يَحْيَى أَنَا هُشَيْمٌ عَنْ دَاوُد بْنِ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ عَنْ الْبَرَاءِ بْنِ عَازِبٍ فَذَكَرَ الْحَدِيثَ وَفِيهِ «أَنَّ خَالَهُ أَبَا بُرْدَةَ قَالَ: يَا رَسُولَ اللَّهِ إنَّ عِنْدِي عَنَاقَ لَبَنٍ، وَهِيَ خَيْرٌ مِنْ شَاتَيْ لَحْمٍ قَالَ: هِيَ خَيْرُ نَسِيكَتَيْكَ وَلَا تُجْزِي جَذَعَةٌ عَنْ أَحَدٍ بَعْدَكَ» .

L16229 The evidence supporting the validity of our position is what we have narrated through Muslim's chain: Yahyā ibn Yahyā narrated to us, [saying]: Hushaym narrated to us from Dāwūd ibn Abī Hind from al-Sha'bī from al-Barā' ibn 'Āzib. He related the ḥadīth which states: "His maternal uncle Abū Burdah said: 'O Messenger of God, I have a lactating young she-goat, which is better than two meat sheep.' He replied: 'It is the finest of your two sacrificial offerings, but a sheep that has reached the age of jadha'ah (six to twelve months) will not suffice for anyone after you.'"

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ زُبَيْدِ بْنِ الْحَارِثِ الْيَامِيِّ عَنْ الشَّعْبِيِّ عَنْ الْبَرَاءِ: «أَنَّ أَبَا بُرْدَةَ قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: عِنْدِي جَذَعَةٌ خَيْرٌ مِنْ مُسِنَّتَيْنِ قَالَ: اذْبَحْهَا وَلَنْ تُجْزِيَ عَنْ أَحَدٍ بَعْدَكَ» .

L16230 From the path of Shu'bah from Zubayd ibn al-Ḥārith al-Yāmī from al-Sha'bī from al-Barā': "Abū Burdah said to the Messenger of Allah (peace and blessings of Allah be upon him): 'I have a one-year-old sheep *jadha'ah* that is better than two two-year-old sheep *musinnatayn*.' He said: 'Sacrifice it, but it will not suffice for anyone after you.'"

وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ عَاصِمٍ الْأَحْوَلِ عَنْ الشَّعْبِيِّ أَنَّ الْبَرَاءَ حَدَّثَهُ بِذَلِكَ.

L16231–16232 And similarly, we have received this narration through the route of ʿĀṣim al-Aḥwal, from al-Shaʿbī, that al-Barāʾ narrated it to al-Shaʿbī.

وَمِنْ طَرِيقِ أَبِي عَوَانَةَ عَنْ فِرَاسٍ عَنْ الشَّعْبِيِّ عَنْ الْبَرَاءِ أَيْضًا.

L16233 And via the chain of Abū 'Awanah, on the authority of Firās, on the authority of al-Sha'bī, on the authority of al-Barā' also.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ أَبِي جُحَيْفَةَ عَنْ الْبَرَاءِ بْنِ عَازِبٍ فَقَطَعَ - عَلَيْهِ السَّلَامُ - أَنْ لَا تُجْزِيَ جَذَعَةٌ عَنْ أَحَدٍ بَعْدَ أَبِي بُرْدَةَ، فَلَا يَحِلُّ لِأَحَدٍ تَخْصِيصُ نَوْعٍ دُونَ نَوْعٍ بِذَلِكَ، وَلَوْ أَنَّ مَا دُونَ الْجَذَعَةِ لَا يُجْزِي لَبَيَّنَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَأْمُورُ بِالْبَيَانِ مِنْ رَبِّهِ تَعَالَى: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] . وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16234 And through the narration of Shu'bah from Salamah ibn Kuhayl from Abū Juḥayfah from al-Barā' ibn 'Āẓib, he (peace be upon him) ruled that a jadha'ah does not suffice as a sacrifice on behalf of anyone after Abū Burdah. Thus, it is impermissible for anyone to specify one type [of animal] to the exclusion of another in this matter. Had animals younger than the jadha'ah not sufficed, the Messenger of Allah (peace and blessings be upon him)—commanded by his Lord, the Exalted, to clarify—would have clarified it: {And your Lord is never forgetful} [19:64]. Success comes solely from Allah, the Exalted.[5]

L16235 If some overly rigid critics were to object and say: "This ḥadīth of Abū

[5] **Qur'an references (L16234):** Qur'an 19:64 (Maryam).

فَإِنْ اعْتَرَضَ بَعْضُ الْمُتَعَسِّفِينَ فَقَالَ: إِنَّ حَدِيثَ أَبِي بُرْدَةَ هَذَا قَدْ رَوَاهُ مَنْصُورُ بْنُ الْمُعْتَمِرِ عَنْ الشَّعْبِيِّ عَنْ الْبَرَاءِ فَقَالَ فِيهِ «إِنَّ عِنْدِي عَنَاقًا جَذَعَةً فَهَلْ تُجْزِي عَنِّي؟ قَالَ: نَعَمْ، وَلَنْ تُجْزِيَ عَنْ أَحَدٍ بَعْدَكَ» ؟ . قُلْنَا: نَعَمْ، وَالْعَنَاقُ اسْمٌ يَقَعُ عَلَى الضَّانِيَةِ كَمَا يَقَعُ عَلَى الْمَاعِزَةِ وَلَا فَرْقَ.

Burdah was narrated by Manṣūr ibn al-Muʿtamir from al-Shaʿbī from al-Barāʾ, who reported in it: ‘I have a jadhaʿah she-goat; will it suffice for me?’ He said: ‘Yes, and it will never suffice for anyone after you.’” We reply: Yes, and the term ʿanāq applies to ewes just as it applies to goats, with no distinction.

وَقَالَ الْعَدَبَّسُ الْكِلَابِيُّ، وَأَبُو فَقْعَسٍ الْأَسَدِيُّ، وَكِلَاهُمَا مِمَّا نَقَلَ الْأَئِمَّةُ عَنْهُمَا اللُّغَةَ: الْجَفْرُ، وَالْعَنَاقُ، وَالْجَدْيُ، مِنْ أَوْلَادِ الْمَاعِزِ إذَا بَلَغَ أَرْبَعَةَ أَشْهُرٍ، وَكَذَلِكَ مِنْ أَوْلَادِ الضَّأْنِ.

L16236 Al-ʻAdabbās al-Kilābī and Abū Faʻqas al-Asadī—both of whom were sources for the Imams’ transmission of linguistic terminology—stated: Al-Jafr, al-ʻAnāq, and al-Jady refer to those among the offspring of goats when they reach four months of age, and likewise those among the offspring of ewes.

فَإِنْ قَالُوا: فَإِنَّ مُطَرِّفَ بْنَ طَرِيفٍ رَوَاهُ عَنْ الشَّعْبِيِّ عَنْ الْبَرَاءِ فَذَكَرَ فِيهِ «أَنَّ أَبَا بُرْدَةَ قَالَ: يَا رَسُولَ اللَّهِ إنَّ عِنْدِي دَاجِنًا جَذَعَةً مِنْ الْمَعْزِ، قَالَ: اذْبَحْهَا وَلَا تَصْلُحُ لِغَيْرِكَ» . قُلْنَا: نَعَمْ، وَلَا خِلَافَ فِي أَنَّ هَذَا كُلَّهُ خَبَرٌ وَاحِدٌ عَنْ قِصَّةٍ وَاحِدَةٍ فِي مَوْطِنٍ وَاحِدٍ، فَرِوَايَةُ مَنْ رَوَى عَنْ الْبَرَاءِ قَوْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُجْزِي جَذَعَةٌ عَنْ أَحَدٍ بَعْدَكَ» هِيَ الزَّائِدَةُ مَا لَمْ يَرْوِهِ مَنْ لَمْ يَرْوِ هَذِهِ اللَّفْظَةَ، وَزِيَادَةُ الْعَدْلِ خَبَرٌ قَائِمٌ بِنَفْسِهِ وَحُكْمٌ وَارِدٌ لَا يَسَعُ أَحَدًا تَرْكُهُ.

L16237–16239 If they say: Indeed, Mutarrif ibn Tarif narrated it from al-Sha’bi from al-Bara’, wherein al-Bara’ related that Abu Burdah said: “O Messenger of Allah, I possess a domesticated jadhʿah (a one-year-old goat).” He replied: “Slaughter it, for it is not valid for anyone else.” We respond: Indeed, and there is no disagreement that all this constitutes a single report concerning one incident in one setting. Thus, the narration of the one who transmitted from al-Bara’ regarding the Prophet’s statement—peace and blessings be upon him—“A jadhʿah shall not be acceptable for anyone after you” is... The addition is what was not narrated by those who did not narrate this wording, and the addition from a reliable narrator constitutes a standalone narration—an established ruling that no one is permitted to neglect.

وَإِنَّمَا يَحْتَجُّ بِرِوَايَةِ مُطَرِّفٍ هَذَا مَنْ لَمْ يَمْنَعْ مِنْ الْجَذَعِ إلَّا مِنْ الْمَاعِزِ فَقَطْ، وَأَمَّا مَنْ مَنَعَ مِنْ الْجِذَاعِ كُلِّهَا مِمَّا عَدَا الضَّأْنِ فَلَا حُجَّةَ لَهُ فِي شَيْءٍ مِنْ هَذَا الْخَبَرِ، بَلْ هُوَ حُجَّةٌ عَلَيْهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16240–16241 Only those who prohibit goats alone from being classified as jadhaʿ (young sheep/goat) can rely on this narration of Muṭarrif. As for those who prohibit all jidhāʿ (young animals) other than sheep, they have no valid basis in any part of this report. Rather, it constitutes evidence against them—and by Allah, the Exalted, is success.

L16242–16243 Just as this very report was narrated by Zakariyā from Firās from al-Shaʻbī from al-Barā’: “Abū Burdah said to the Messenger of Allah (peace be upon him): ‘Is a sheep I have better than two sheep?’ He replied: ‘Sacrifice it, for

it is the finest sacrificial animal,'" without mentioning the phrase "it will not suffice for anyone after you."

كَمَا أَنَّ هَذَا الْخَبَرَ نَفْسَهُ قَدْ رَوَاهُ زَكَرِيَّا عَنْ فِرَاسٍ عَنْ الشَّعْبِيِّ عَنْ الْبَرَاءِ: «أَنَّ أَبَا بُرْدَةَ قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إنَّ عِنْدِي شَاةً خَيْرٌ مِنْ شَاتَيْنِ؟ قَالَ: ضَحِّ بِهَا فَإِنَّهَا خَيْرُ نَسِيكَةٍ» وَلَمْ يَذْكُرْ أَنَّهَا «لَا تُجْزِي عَنْ أَحَدٍ بَعْدَكَ» .

L16244 Similarly, our narration through Sufyan ibn Uyaynah, from Ayyub al-Sikhtiyani, from Muhammad ibn Sirin, from Anas ibn Malik—he cited this same report, mentioning that the questioner said: "O Messenger of Allah, I have a young she-camel (jadhaʿah) which I value more than two sheep for slaughter. Should I sacrifice it?" So he gave him a concession.

وَكَذَلِكَ رِوَايَتُنَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَنَسِ بْنِ مَالِكٍ فَذَكَرَ هَذَا الْخَبَرَ نَفْسَهُ وَأَنَّ ذَلِكَ الْقَائِلَ قَالَ «يَا رَسُولَ اللَّهِ عِنْدِي جَذَعَةٌ هِيَ أَحَبُّ إلَيَّ مِنْ شَاتَيْ لَحْمٍ أَفَأَذْبَحُهَا؟ فَرَخَّصَ لَهُ» .

L16245 Anas said: "So I do not know whether a concession from someone other than him was conveyed or not?" The opponents did not consider Zakariyya's silence regarding what others added to him as indicating its specificity, nor Anas's silence about that either — and the absence of that from him serves as proof for rejecting the addition mentioned by others besides them. So what makes this addition obligatory to accept, while the addition of those who included the term 'al-Jadhaʿah' is not obligatory to accept? Truly, this is an arbitrary imposition of falsehood in religion, and we seek refuge with Allah from this."

قَالَ أَنَسٌ: فَلَا أَدْرِي أَبْلَغَتْ رُخْصَةٌ مِنْ سِوَاهُ أَمْ لَا؟ فَلَمْ يَجْعَلْ الْمُخَالِفُونَ سُكُوتَ زَكَرِيَّا عَمَّا زَادَهُ غَيْرُهُ مِنْ بَيَانِ أَنَّهُ خُصُوصٌ، وَلَا سُكُوتَ أَنَسٍ عَنْ ذَلِكَ أَيْضًا - وَمَغِيبُ ذَلِكَ عَنْهُ حُجَّةٌ فِي رَدِّ الزِّيَادَةِ الَّتِي ذَكَرَهَا غَيْرُهُمَا فَمَا الَّذِي جَعَلَ هَذِهِ الزِّيَادَةَ وَاجِبًا أَخْذُهَا، وَزِيَادَةُ مَنْ زَادَ لَفْظَةَ " الْجَذَعَةِ " لَا يَجِبُ أَخْذُهَا؟ إنَّ هَذَا لَتَحَكُّمٌ فِي الدِّينِ بِالْبَاطِلِ، وَنَعُوذُ بِاَللَّهِ مِنْ هَذَا.

L16246 Abu Muhammad said: A report has come that could be used to stir dispute, which is what we transmitted through the chain of Muslim Nasr ibn Ali al-Jahdhami, who narrated to us: Yazid ibn Zurai' narrated to us: Abdullah ibn Awn narrated from Muhammad ibn Sirin, from Abd al-Rahman ibn Abi Bakrah, from his father, who said: "When that day came, the Prophet (peace be upon him) mounted his camel and said: 'Do you know what day this is?'" He mentioned the hadith, in which he (peace be upon him) said: "Is this not the Day of Sacrifice?" They replied: "Indeed it is." He then continued the narration, stating: "He then turned to two white rams and slaughtered them, and to a yearling she-goat from the sheep which he divided among us."

قَالَ أَبُو مُحَمَّد: وَقَدْ جَاءَ خَبَرٌ يُمْكِنُ أَنْ يُشْغَبَ بِهِ، وَهُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَصْرِ بْنِ عَلِيٍّ الْجَهْضَمِيِّ نَا يَزِيدُ بْنُ زُرَيْعٍ نَا عَبْدُ اللَّهِ بْنُ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرَةَ عَنْ أَبِيهِ قَالَ «لَمَّا كَانَ ذَلِكَ الْيَوْمُ قَعَدَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى بَعِيرِهِ وَقَالَ: أَتَدْرُونَ أَيُّ يَوْمٍ هَذَا؟ وَذَكَرَ الْحَدِيثَ وَفِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: أَلَيْسَ بِيَوْمِ النَّحْرِ؟ قَالُوا: بَلَى ثُمَّ ذَكَرَ الْحَدِيثَ وَفِيهِ ثُمَّ انْكَفَأَ إلَى كَبْشَيْنِ أَمْلَحَيْنِ فَذَبَحَهُمَا وَإِلَى جَذِيعَةٍ مِنْ الْغَنَمِ فَقَسَّمَهَا بَيْنَنَا» .

L16247 Ali said: There is no mention in the report that he gave it to them for them

to sacrifice it, nor that they sacrificed it. Rather, it only states that he (peace be upon him) distributed it among them, and lying is impermissible.

قَالَ عَلِيٌّ: لَيْسَ فِيهِ أَنَّهُ أَعْطَاهُمْ إيَّاهَا لِيُضَحُّوا بِهَا، وَلَا أَنَّهُمْ ضَحَّوْا بِهَا وَإِنَّمَا فِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَسَّمَهَا بَيْنَهُمْ، وَالْكَذِبُ لَا يَحِلُّ.

L16248–16250 Moreover, the term “ghanam” (sheep and goats) applies to goats just as it applies to sheep. If it serves as proof for them to permit sacrificing the jadhʿa of sheep, then it is proof to permit sacrificing the jadhʿa of goats, and if... The evidence does not justify permitting the sacrifice of a one-year-old goat, and thus cannot justify permitting the sacrifice of a six-month-old sheep. The prohibition was upheld for one year, establishing that a six-month-old sheep does not suffice as a valid sacrifice after [the case of] Abu Burdah.

وَأَيْضًا فَاسْمُ الْغَنَمِ يَقَعُ عَلَى الْمَاعِزِ كَمَا يَقَعُ عَلَى الضَّأْنِ، فَإِنْ كَانَ حُجَّةً لَهُمْ فِي إبَاحَةِ التَّضْحِيَةِ بِالْجَذَاعِ مِنْ الضَّأْنِ فَهُوَ حُجَّةٌ فِي إبَاحَةِ التَّضْحِيَةِ بِالْجَذَاعِ مِنْ الْمَعْزِ، وَإِنْ لَمْ يَكُنْ حُجَّةً فِي إبَاحَةِ التَّضْحِيَةِ بِالْجَذَاعِ مِنْ الْمَاعِزِ فَلَيْسَ حُجَّةً فِي إبَاحَةِ التَّضْحِيَةِ بِجَذَاعِ الضَّأْنِ، وَالنَّهْيُ قَدْ صَحَّ عَامًّا فِي أَنْ لَا تُجْزِئَ جَذَعَةٌ بَعْدَ أَبِي بُرْدَةَ.

L16251 And another narration we mention is what we transmitted via Imam Muslim’s compilation: Ahmad ibn Yunus reported to us, Zuhayr ibn Muʿawiyah reported to us, Abu al-Zubayr reported to us from Jabir, who said: The Messenger of Allah—peace and blessings be upon him—said: “Do not slaughter except a musinnah (mature animal), unless it becomes difficult for you, then slaughter a jadhaʿah (young sheep).”

وَخَبَرٌ آخَرُ نَذْكُرُهُ أَيْضًا وَهُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا أَحْمَدُ بْنُ يُونُسَ نَا زُهَيْرُ بْنُ مُعَاوِيَةَ نَا أَبُو الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَذْبَحُوا إلَّا مُسِنَّةً إلَّا أَنْ تَعْسُرَ عَلَيْكُمْ فَتَذْبَحُوا جَذَعَةً مِنْ الضَّأْنِ» .

L16252 Abu Muhammad said: This is a proof against the present opponents among the dissenters, for they permit sacrificing a six-month-old sheep from the flock despite the presence of mature ones, thereby opposing him [the Prophet] while they validate it [the practice]. As for us, we do not validate it, because Abu al-Zubayr is a mudallis (a narrator known for concealing transmission defects) unless he states in the report that he heard it from Jabir - he himself admitted to this, as we have received this narration from him through the chain of al-Layth ibn Sa’d.

قَالَ أَبُو مُحَمَّد: هَذَا حُجَّةٌ عَلَى الْحَاضِرِينَ مِنْ الْمُخَالِفِينَ لِأَنَّهُمْ يُجِيزُونَ الْجَذَعَ مِنْ الضَّأْنِ مَعَ وُجُودِ الْمُسِنَّاتِ فَقَدْ خَالَفُوهُ وَهُمْ يُصَحِّحُونَهُ، وَأَمَّا نَحْنُ فَلَا نُصَحِّحُهُ، لِأَنَّ أَبَا الزُّبَيْرِ مُدَلِّسٌ مَا لَمْ يَقُلْ فِي الْخَبَرِ أَنَّهُ سَمِعَهُ مِنْ جَابِرٍ، هُوَ أَقَرَّ بِذَلِكَ عَلَى نَفْسِهِ، رُوِّينَا ذَلِكَ عَنْهُ مِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ.

L16253 Then, if it were valid, the narration of Al-Barā’ would have abrogated it. For the Prophet’s statement—peace and blessings be upon him: “A jidhaʿah does not suffice for anyone after you,” constitutes a decisive, established report enduring as long as the world exists—abrogating all that preceded it. It is impermissible to abrogate this, as that would constitute falsehood. Who would attribute falsehood to the Messenger of Allah—peace and blessings be upon him—except a disbeliever? Those who permitted the jidhāʿ of sheep cited a narration we transmitted through Ibn Wahb’s chain from ‘Amr ibn

ثُمَّ لَوْ صَحَّ لَكَانَ خَبَرُ الْبَرَاءِ نَاسِخًا لَهُ، لِأَنَّ قَوْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُجْزِي جَذَعَةٌ عَنْ أَحَدٍ بَعْدَكَ» خَبَرٌ قَاطِعٌ ثَابِتٌ مَا دَامَتْ الدُّنْيَا، نَاسِخٌ لِكُلِّ مَا تَقَدَّمَ لَا يَجُوزُ نَسْخُهُ، لِأَنَّهُ كَانَ يَكُونُ كَذِبًا، وَلَا يَنْسُبُ الْكَذِبَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا كَافِرٌ؟ وَاحْتَجَّ مَنْ أَجَازَ الْجِذَاعَ مِنْ الضَّأْنِ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ

al-Ḥārith, from Bukayr ibn al-Ashajj, from Muʿādh ibn ʿAbdullāh ibn Ḥabīb, from ʿUqbah ibn ʿĀmir, who said: "We sacrificed along with the Messenger of Allah—peace and blessings be upon him—using jidhāʿ of sheep."

وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ مُعَاذِ بْنِ عَبْدِ اللَّهِ بْنِ حَبِيبٍ عَنْ عُقْبَةَ بْنِ عَامِرٍ قَالَ: «ضَحَّيْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِجِذَاعٍ مِنْ الضَّأْنِ» .

L16254 And through the chain of Waki‘ from Usāmah ibn Zayd from Muʿādh ibn ʿAbdullāh ibn Ḥabīb from Saʿīd ibn al-Musayyib from ʿUqbah ibn ʿĀmir: "I asked the Messenger of Allah (peace be upon him) about the jadha‘ of the sheep. He said, 'Sacrifice it.'"

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ أُسَامَةَ بْنِ زَيْدٍ عَنْ مُعَاذِ بْنِ عَبْدِ اللَّهِ بْنِ حَبِيبٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُقْبَةَ بْنِ عَامِرٍ «سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْجَذَعِ مِنْ الضَّأْنِ؟ فَقَالَ: ضَحِّ بِهِ» .

L16255–16257 And with a report we have related via Yaḥyā ibn Saʿīd al-Qaṭṭān from Muḥammad ibn Abī Yaḥyā from his mother from Umm Bilāl al-Aslamiyyah—whose father witnessed Ḥudaybiyah with the Prophet (may Allah bless him and grant him peace)—who reported that the Messenger of Allah (may Allah bless him and grant him peace) said: Sacrifice a jadhaʿ (a six-month-old sheep) of the sheep, for it is valid.

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ مُحَمَّدِ بْنِ أَبِي يَحْيَى عَنْ أُمِّهِ عَنْ أُمِّ بِلَالٍ الْأَسْلَمِيَّةِ شَهِدَ أَبُوهَا الْحُدَيْبِيَةَ مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَتْ " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «ضَحُّوا بِالْجَذَعِ مِنْ الضَّأْنِ فَإِنَّهُ جَائِزٌ» .

L16258 And through the chain of Al-Ḥajjāj ibn Arṭāʾah, from Ibn al-Nuʿaymān, from Bilāl ibn Abu al-Dardāʾ, from his father: "The Messenger of Allāh (peace and blessings of Allāh be upon him) sacrificed two six-month-old rams." Another chain via Al-Ḥajjāj ibn Arṭāʾah, from Abū Jaʿfar: "The Messenger of Allāh (peace and blessings of Allāh be upon him) sacrificed two six-month-old rams."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ ابْنِ النُّعَيْمَانِ عَنْ بِلَالِ بْنِ أَبِي الدَّرْدَاءِ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ضَحَّى بِكَبْشَيْنِ جَذَعَيْنِ» وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ أَبِي جَعْفَرٍ «ضَحَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِكَبْشَيْنِ جَذَعَيْنِ» .

L16259 And through the chain of Waki‘ from Uthman ibn Waqid from Kidam ibn ʿAbd al-Rahman from Abu Kibash that Abu Hurayrah said to him: "I heard the Messenger of Allah—peace be upon him—say: 'How excellent—or rather, how excellent indeed is the sacrificial animal: the *jadhaʿ* of the sheep.'"

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عُثْمَانَ بْنِ وَاقِدٍ عَنْ كِدَامِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي كَبَاشٍ أَنَّ أَبَا هُرَيْرَةَ قَالَ لَهُ " سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «نِعْمَ، أَوْ نِعْمَتْ الْأُضْحِيَّةُ الْجَذَعُ مِنْ الضَّأْنِ» .

L16260 And through the chain of Hishām ibn Saʿd ibn Zayd ibn Aslam, from ʿAṭāʾ ibn Yasār, from Abū Hurayrah: "That Gabriel said to the Prophet (peace be upon him): 'O Muḥammad, a jadhʿa (young sheep) from the sheep is better than a sayyid (prime male goat) from the goats.'" And he mentioned the remainder of the narration.

وَمِنْ طَرِيقِ هِشَامِ بْنِ سَعْدِ بْنِ زَيْدِ بْنِ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ جِبْرِيلَ قَالَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: يَا مُحَمَّدُ إنَّ الْجَذَعَ مِنْ الضَّأْنِ خَيْرٌ مِنْ السَّيِّدِ مِنْ الْمَعْزِ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

L16261 Through the chain of Sa'id ibn Mansur, from 'Isa ibn Yunus, from Isma'il ibn Rafi', from a sheikh among the people of Homs: "The Prophet—peace and blessings of Allah be upon him—said: 'Jibril said to me: "O Muhammad, a young one of the sheep is better than an aged one of the goats,"'" and he mentioned the rest of the report.

مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ عِيسَى بْنِ يُونُسَ عَنْ إِسْمَاعِيلَ بْنَ رَافِعٍ عَنْ شَيْخٍ مِنْ أَهْلِ حِمْصٍ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «قَالَ لِي جِبْرِيلُ: يَا مُحَمَّدُ إِنَّ الْجَذَعَ مِنْ الضَّأْنِ خَيْرٌ مِنْ الْمُسِنِّ مِنْ الْمَعْزِ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

L16262 Narrated via the chain of Ibn Abī Shaybah from Ibn Mushir from Ibn Abī Laylā from al-Ḥakam from ʿUbāda ibn Abī al-Dardāʾ from his father: "The Prophet—peace and blessings of Allah be upon him—sacrificed two six-month-old male rams."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ ابْنِ مُسْهِرٍ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الْحَكَمِ عَنْ عُبَادَةَ بْنِ أَبِي الدَّرْدَاءِ عَنْ أَبِيهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ضَحَّى بِكَبْشَيْنِ جَذَعَيْنِ» .

L16263 And through the narration of Sulaymān ibn Mūsā from Makhūl, that the Messenger of Allah—peace and blessings of Allah be upon him—said: "Sacrifice a six-month-old sheep and a one-year-old goat."

وَمِنْ طَرِيقِ سُلَيْمَانَ بْنِ مُوسَى عَنْ مَكْحُولٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «فَضَحُّوا بِالْجَذَعَةِ مِنْ الضَّأْنِ وَالثَّنِيَّةِ مِنْ الْمَعْزِ» .

L16264–16266 Abu Muhammad said: No one cites these narrations except someone lacking knowledge of their weakness—and is thus excused—or someone deficient in religion who cites fabrications from which it is impermissible to derive religious rulings. As for the ḥadīth of ʿUqbah ibn ʿĀmir with which we commenced, it comes through the chain of Muʿādh ibn ʿAbd Allāh ibn Ḥabīb—who is unknown—and the narration of Ibn Wahb from him lacks a connected chain because it does not state that the Prophet (PBUH) recognized this matter. They do not regard the statement of Asmāʾ bint al-Ṣiddīq: "We slaughtered a horse during the time of the Messenger of Allāh (PBUH) and ate it" as having a connected chain, nor the statement of Jābir: "We used to sell the mothers of the children (ummahāt al-awlād, enslaved women who bore children to their masters) during the time of the Messenger of Allāh (PBUH)" as having a connected chain, nor the statement of Ibn ʿAbbās: "The triple divorce was reverted to a single [declaration] during the time of the Messenger of Allāh (PBUH)" as having a connected chain—and all these are of the highest authenticity. Yet they claim: "None of these contain [mention] that the Messenger of Allāh (PBUH) was aware of this," while they treat this weak, invalid report as having a connected chain. This demonstrates a lack of modesty and a trivialization of religious discourse. It comes through

قَالَ أَبُو مُحَمَّدٍ: لَا يَحْتَجُّ بِهَذِهِ الْآثَارِ إلَّا قَلِيلُ الْعِلْمِ بِوَهْيِهَا فَيُعْذَرُ، أَوْ قَلِيلُ الدِّينِ يَحْتَجُّ بِالْأَبَاطِيلِ الَّتِي لَا يَحِلُّ أَخْذُ الدِّينِ بِهَا: أَمَّا حَدِيثُ عُقْبَةَ بْنِ عَامِرٍ الَّذِي صَدَّرْنَا بِهِ فَمِنْ طَرِيقِ مُعَاذِ بْنِ عَبْدِ اللَّهِ بْنِ حَبِيبٍ - وَهُوَ مَجْهُولٌ، وَرِوَايَةُ ابْنِ وَهْبٍ لَهُ غَيْرُ مُسْنَدَةٍ لِأَنَّهُ لَيْسَ فِيهِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَرَفَ ذَلِكَ، وَهُمْ لَا يَجْعَلُونَ قَوْلَ أَسْمَاءَ بِنْتِ الصِّدِّيقِ: «نَحَرْنَا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَسًا فَأَكَلْنَاهُ» مُسْنَدًا، وَلَا قَوْلَ جَابِرٍ: «كُنَّا نَبِيعُ أُمَّهَاتِ الْأَوْلَادِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» مُسْنَدًا، وَلَا قَوْلَ ابْنِ عَبَّاسٍ: «إنَّ طَلَاقَ الثَّلَاثِ كَانَ يُرَدُّ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى الْوَاحِدَةِ» مُسْنَدًا، وَكُلُّهَا فِي غَايَةِ الصِّحَّةِ، وَيَقُولُونَ: لَيْسَ فِيهَا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَعْرِفُ ذَلِكَ، ثُمَّ يَجْعَلُونَ هَذَا الْخَبَرَ السَّاقِطَ الْوَاهِيَ مُسْنَدًا، وَهَذَا قِلَّةُ حَيَاءٍ وَاسْتِخْفَافٌ بِالْكَلَامِ فِي الدِّينِ، وَهُوَ مِنْ طَرِيقِ وَكِيعٍ مِنْ رِوَايَةِ أُسَامَةَ بْنِ زَيْدٍ - وَهُوَ ضَعِيفٌ جِدًّا - عَنْ مَجْهُولٍ.

the chain of Wakiʿ from the narration of Usāmah ibn Zayd—who is severely weak—from an unknown [source].[6]

L16267 As for the ḥadīth of Umm Bilāl, it is narrated through Umm Muḥammad ibn Abī Yaḥyā—whose identity is unknown—via Umm Bilāl—who is likewise unidentified—and we do not know whether she possessed the status of a Companion or not.

L16268 The narrations of Abū al-Dardāʾ and Abū Jaʿfar—both transmitted through the chain of al-Ḥajjāj ibn Arṭāh, who is discredited—and the first chain of Abū Hurayrah, he omitted all of them, along with the disgrace of the era. This is because it is transmitted from ʿUthmān ibn Wāqid—an unknown narrator—from Kidām ibn ʿAbd al-Raḥmān, and we do not know who he is, from Abū Kibbāsh, who brought the yearling rams to Medina, and they multiplied successfully under his care.

L16269 Thus is the text of his hadith. This includes whatever Abu Kibash conveyed came to pass, though he did not comprehend what Abu Kibash [conveyed]. What Allah wills, occurs. Similarly, the report of the scholar from the people of Homs is sufficient for you.

L16270 And from another chain of Abu Hurairah via Hisham ibn Sa'd—who is weak—and the report of Makḥūl is mursal (interrupted chain).

L16271 The hadith of Abu al-Darda is transmitted through the chain of transmission of Ibn Abi Layla—who is poor in retention.

L16272 Then, even if all of them were authenticated through impeccable chains of narration, they would have no valid proof against any of it, because the sacrificial offering was unquestionably permissible for all livestock. Its ruling had been established without doubt from anyone before the incident of Abu Burda, and Abu Burda and a group with him had performed the sacrifice with certainty before the Prophet (peace be upon him) said, "A one-year-old sheep (jadha'ah) will not suffice for anyone after you."

وَأَمَّا حَدِيثُ أُمِّ بِلَالٍ فَهُوَ عَنْ أُمِّ مُحَمَّدِ بْنِ أَبِي يَحْيَى - وَلَا يُدْرَى مَنْ هِيَ - عَنْ أُمِّ بِلَالٍ - وَهِيَ مَجْهُولَةٌ - وَلَا نَدْرِي لَهَا صُحْبَةٌ أَمْ لَا؟

وَحَدِيثُ أَبِي الدَّرْدَاءِ وَأَبِي جَعْفَرٍ كِلَاهُمَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ هَالِكٌ - وَطَرِيقُ أَبِي هُرَيْرَةَ الْأُولَى أَسْقَطَهَا كُلَّهَا وَفَضِيحَةُ الدَّهْرِ؛ لِأَنَّهُ عَنْ عُثْمَانَ بْنِ وَاقِدٍ - وَهُوَ مَجْهُولٌ - عَنْ كِدَامِ بْنِ عَبْدِ الرَّحْمَنِ وَلَا نَدْرِي مَنْ هُوَ؟ عَنْ أَبِي كِبَاشٍ الَّذِي جَلَبَ الْكِبَاشَ الْجَذَعَةَ إِلَى الْمَدِينَةِ فَبَارَتْ عَلَيْهِ.

هَكَذَا نَصُّ حَدِيثِهِ، وَهُنَا جَاءَ مَا جَاءَ أَبُو كِبَاشٍ وَمَا أَدْرَكَ مَا أَبُو كِبَاشٍ مَا شَاءَ اللَّهُ كَانَ، وَكَذَلِكَ خَبَرُ الشَّيْخِ مِنْ أَهْلِ حِمْصٍ، وَكَفَاك بِهِ.

وَمِنْ طَرِيقِ أَبِي هُرَيْرَةَ الْأُخْرَى مِنْ طَرِيقِ هِشَامِ بْنِ سَعْدٍ - وَهُوَ ضَعِيفٌ - وَحَدِيثُ مَكْحُولٍ مُرْسَلٌ.

وَحَدِيثُ أَبِي الدَّرْدَاءِ مِنْ طَرِيقِ ابْنِ أَبِي لَيْلَى - وَهُوَ سَيِّئُ الْحِفْظِ.

ثُمَّ لَوْ صَحَّتْ كُلُّهَا بِالْأَسَانِيدِ الَّتِي لَا مَغْمَزَ فِيهَا لَمَا كَانَ لَهُمْ فِي شَيْءٍ مِنْهَا حُجَّةٌ؛ لِأَنَّ الْأُضْحِيَّةَ كَانَتْ مُبَاحَةً فِي كُلِّ مَا كَانَ مِنْ الْأَنْعَامِ بِلَا شَكٍّ، وَقَدْ كَانَ نَزَلَ حُكْمُهَا بِلَا شَكٍّ مِنْ أَحَدٍ قَبْلَ قِصَّةِ أَبِي بُرْدَةَ، وَضَحَّى أَبُو بُرْدَةَ وَقَوْمٌ مَعَهُ بِيَقِينٍ قَبْلَ أَنْ يَقُولَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تُجْزِي جَذَعَةٌ عَنْ أَحَدٍ بَعْدَكَ» .

[6] **Hadith references (L16264):** Sahih al-Bukhari 5512.

فَلَوْ صَحَّتْ هَذِهِ الْأَخْبَارُ كُلُّهَا لَكَانَ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «لَا تُجْزِي جَذَعَةٌ عَنْ أَحَدٍ بَعْدَكَ» ، نَاسِخًا لَهَا بِلَا شَكٍّ، وَمَنْ ادَّعَى عَوْدَةَ حُكْمِ الْمَنْسُوخِ فَقَدْ كَذَبَ إلَّا أَنْ يَأْتِيَ عَلَى ذَلِكَ بِبُرْهَانٍ، فَكَيْفَ وَكُلُّهَا بَاطِلٌ لَا خَيْرَ فِي شَيْءٍ مِنْهَا ".

L16273–16275 If all these reports were authentic, his statement, peace be upon him, "A jadhaʿah (a sheep or goat younger than the required age for sacrifice) does not suffice from anyone" would remain authoritative. "after you," abrogating them without doubt. Whoever claims the reinstatement of an abrogated ruling has lied unless he provides proof for it. How could this be, when all such rulings are void and there is no good whatsoever in any of them?"

وَذَكَرُوا عَنْ بَعْضِ السَّلَفِ إجَازَةَ الْأُضْحِيَّةِ بِالْجَذَعِ مِنْ الضَّأْنِ فَذَكَرُوا عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: يُجْزِي مِنْ الضَّأْنِ الْجَذَعُ، وَعَنْ حِبَّةَ الْعُرَنِيِّ عَنْ عَلِيٍّ مِثْلُهُ مَعَ رِوَايَةِ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّ عَلِيًّا قَالَ: يُجْزِي مِنْ الْبُدْنِ، وَمِنْ الْبَقَرِ، وَمِنْ الْمَعْزِ الثَّنِيُّ فَصَاعِدًا.

L16276 They mentioned from some of the early scholars the permissibility of offering a *jadhʿ* from sheep as a sacrificial animal. They narrated from Jaʿfar ibn Muḥammad, from his father, that ʿAlī ibn Abī Ṭālib said: "A *jadhʿ* suffices among sheep." From Ḥibba al-ʿUranī, a similar report is transmitted from ʿAlī, alongside the narration of Jaʿfar ibn Muḥammad from his father that ʿAlī said: "A *thaniyy* or older suffices for sacrificial animals among camels, cattle, and goats."

وَعَنْ ابْنِ عُمَرَ لَأَنْ أُضَحِّيَ بِجَذَعَةٍ سَمِينَةٍ أَحَبُّ إلَيَّ مِنْ أَنْ أُضَحِّيَ بِجِدَاءٍ. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا خَالِدُ بْنُ عَبْدِ اللَّهِ هُوَ الطَّحَّانُ - عَنْ عَبْدِ الْعَزِيزِ بْنِ حَكِيمٍ سَمِعْت ابْنَ عُمَرَ يَقُولُ: لَأَنْ أُضَحِّيَ بِجَذَعَةٍ سَمِينَةٍ عَظِيمَةٍ تُجْزِي فِي الصَّدَقَةِ أَحَبُّ إلَيَّ مِنْ أَنْ أُضَحِّيَ بِجَذَعِ الْمَعْزِ مَعَ قَوْلِهِ: لَا تُجْزِي إلَّا الثَّنِيَّةُ مِنْ الْإِبِلِ، وَالْبَقَرِ.

L16277 From Ibn ʿUmar: "I would prefer to sacrifice a fat yearling sheep (jadhʿah) over sacrificing a young goat (jidaʾ)." Through the chain of Saʿīd ibn Manṣūr: Khālid ibn ʿAbdillāh al-Ṭaḥḥān reported to us from ʿAbd al-ʿAzīz ibn Ḥakīm, who said: I heard Ibn ʿUmar state: "I would prefer to sacrifice a large, fat yearling sheep (jadhʿah) that is valid for charity over sacrificing a yearling goat (jadhʿ)," despite his ruling: "Only the thaniyah (mature) of camels and cattle are valid [sacrifices]."

وَعَنْ أُمِّ سَلَمَةَ لَأَنْ أُضَحِّيَ بِجَذَعٍ مِنْ الضَّأْنِ أَحَبُّ إلَيَّ مِنْ أَنْ أُضَحِّيَ بِمُسِنٍّ مِنْ الْمَعْزِ.

L16278 I would prefer to sacrifice a six-month-old sheep rather than a two-year-old goat.

وَعَنْ أَبِي هُرَيْرَةَ لَا بَأْسَ بِالْجَذَعِ مِنْ الضَّأْنِ فِي الْأُضْحِيَّةِ.

L16279 From Abu Hurairah: There is no objection to offering a six-month-old sheep (jadhaʿ) as Uḍḥiyah.

وَعَنْ عِمْرَانَ بْنِ الْحُصَيْنِ إنِّي لَأُضَحِّي بِالْجَذَعِ مِنْ الضَّأْنِ وَإِنَّهَا لَتَرُوحُ عَلَى أَلْفِ شَاةٍ.

L16280 From Imran ibn Husayn: "I indeed sacrifice a jadhaʿ, a six-month-old from the sheep, and indeed it suffices for a thousand sheep."

وَعَنْ ابْنِ عَبَّاسٍ: لَا بَأْسَ بِالْجَذَعِ مِنْ الضَّأْنِ - فَهُمْ سِتَّةٌ مِنْ الصَّحَابَةِ.

L16281 On the authority of Ibn Abbas: There is no harm in a six-month-old sheep (jadhaʿ) of sheep—they are six of the Companions.

L16282 It has been narrated to us regarding the permissibility of sacrificing a six-month-old sheep as Udḥiyyah from Hilāl ibn Yasāf, Kaʿb, ʿAṭāʾ, Ṭāwūs,

Ibrāhīm, Abū Razīn, and Suwayd ibn Ghafalah—making them seven of the Followers.

وَرُوِّينَا إجَازَةَ الْجَذَعِ مِنْ الضَّأْنِ فِي الْأُضْحِيَّةِ عَنْ هِلَالِ بْنِ يَسَافٍ وَعَنْ كَعْبٍ، وَعَطَاءٍ، وَطَاوُسٍ، وَإِبْرَاهِيمَ، وَأَبِي رَزِينٍ، وَسُوَيْدِ بْنِ غَفَلَةَ - فَهُمْ سَبْعَةٌ مِنْ التَّابِعِينَ.

L16283 Ibrahim said: No goats are acceptable unless they are *thani* (two-year-old) or older — and that is the opinion of Abu Hanifah, Malik, and al-Shafi'i.

وَقَالَ إبْرَاهِيمُ: لَا يُجْزِي مِنْ الْمَاعِزِ إلَّا الثَّنِيُّ فَصَاعِدًا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ.

L16284–16285 Abu Muhammad said: All of this contains no proof for them. As for the narration from ʿAlī, it is disconnected, and the other is weak. Moreover, they contain no prohibition against sacrificing a *jadhaʿ* from among the goats, nor against sacrificing camels or cows. Even if they were authentic, we would have narrated from him reports contradicting them, as we presented earlier. When a disagreement is found among the Companions, the obligation is to refer back to the Quran and the Sunnah.

قَالَ أَبُو مُحَمَّد: كُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ، أَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ فَمُنْقَطِعَةٌ، وَالْأُخْرَى وَاهِيَةٌ، ثُمَّ لَيْسَ فِيهَا الْمَنْعُ مِنْ التَّضْحِيَةِ بِالْجَذَعِ مِنْ الْمَاعِزِ وَلَا مِنْ الْإِبِلِ، وَالْبَقَرِ، ثُمَّ لَوْ صَحَّتْ لَكُنَّا قَدْ رُوِّينَا عَنْهُ خِلَافَهَا كَمَا قَدَّمْنَا قَبْلُ، وَإِذَا وُجِدَ خِلَافٌ مِنْ الصَّحَابَةِ فَالْوَاجِبُ الرَّدُّ إلَى الْقُرْآنِ وَالسُّنَّةِ.

L16286 As for Ibn ʿUmar, there is no evidence in his position for them; rather, it is against them. For his narration here mentions only the preference for sheep over goats and prohibits only camels and cattle below the thaniyy age, not goats.

وَأَمَّا ابْنُ عُمَرَ فَلَا حُجَّةَ لَهُمْ فِيهِ، بَلْ هُوَ عَلَيْهِمْ لِأَنَّهُ لَيْسَ فِي هَذِهِ الرِّوَايَةِ عَنْهُ إلَّا اخْتِيَارُ الضَّأْنِ عَلَى الْمَاعِزِ فَقَطْ وَالْمَنْعُ مِمَّا دُونَ الثَّنِيِّ مِنْ الْإِبِلِ وَالْبَقَرِ فَقَطْ لَا مِنْ الْمَاعِزِ.

L16287 Indeed, we have previously narrated from him this disagreement, as we cited—thus it constitutes a disagreement arising from his own statements. When disagreement is reported from the Companions—may Allah be pleased with them—it becomes obligatory to return to the Qur'an and the Sunnah, as Allah, the Mighty and Majestic, has commanded.

وَقَدْ رُوِّينَا عَنْهُ قَبْلُ خِلَافَ هَذَا كَمَا أَوْرَدْنَا فَهُوَ اخْتِلَافٌ مِنْ قَوْلِهِ وَإِذَا جَاءَ الِاخْتِلَافُ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَقَدْ وَجَبَ الرَّدُّ إلَى الْقُرْآنِ وَالسُّنَّةِ، كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ.

L16288 As for the narration from Umm Salamah, the Mother of the Believers, it only specifies choosing the jadhʿ (six-month-old) from sheep, and it does not prohibit the jadhʿ from other than sheep. Similarly, [this applies] to all the Companions we mentioned—may Allah be pleased with them. How, then, can there be any valid argument in the opinion of anyone alongside the Messenger of Allah—peace and blessings be upon him? How many cases are there where they opposed the majority of scholars? As we have mentioned in multiple issues.

وَأَمَّا الرِّوَايَةُ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ فَإِنَّمَا فِيهَا اخْتِيَارُ الْجَذَعِ مِنْ الضَّأْنِ وَلَيْسَ فِيهَا الْمَنْعُ مِنْ الْجَذَعِ مِنْ غَيْرِ الضَّأْنِ، وَكَذَلِكَ عَنْ سَائِرِ مَنْ ذَكَرْنَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَكَيْفَ وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ وَكَمْ قِصَّةً خَالَفُوا فِيهَا جُمْهُورَ الْعُلَمَاءِ؟ كَمَا ذَكَرْنَا فِي غَيْرِ مَا مَسْأَلَةٍ.

L16289 It is astonishing that authentic narrations from Ibn Abbas, Jabir, Ibn Masʿud, and Zayd ibn Thabit affirm that ʿUmrah is obligatory like Hajj, yet no authentic disagreement from any of the Companions—may Allah be pleased with them—opposing them has been established. Thus they considered Ibn ʿUmar's statement, "Islam is built upon five pillars," in which he mentioned Hajj but omitted ʿUmrah, as a disagreement on this matter. Moreover, they do not regard his explicit declaration that an animal younger than a *jadhaʿah* (one-year-old sheep) is insufficient as constituting disagreement on that issue.

وَمِنْ الْعَجَبِ أَنَّ الرِّوَايَةَ صَحَّتْ عَنْ ابْنِ عَبَّاسٍ، وَجَابِرٍ، وَابْنِ مَسْعُودٍ، وَزَيْدِ بْنِ ثَابِتٍ: بِأَنَّ الْعُمْرَةَ فَرْضٌ كَالْحَجِّ وَلَمْ يَصِحَّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافٌ لَهُمْ؛ فَجَعَلُوا قَوْلَ ابْنِ عُمَرَ «بُنِيَ الْإِسْلَامُ عَلَى خَمْسٍ» فَذَكَرَ فِيهِنَّ الْحَجَّ، وَلَمْ يَذْكُرْ الْعُمْرَةَ خِلَافًا فِي ذَلِكَ، ثُمَّ لَا يَجْعَلُونَ تَصْرِيحَهُ بِأَنَّ مَا دُونَ الْجَذَعِ لَا يُجْزِي خِلَافًا فِي ذَلِكَ.

L16290–16292 A group of the Companions and the Successors—may Allah be pleased with them—indicated that it is permissible to sacrifice a one-year-old goat, a five-year-old camel, or a two-year-old cow, as we will mention, Allah the Exalted willing. Narrations from the Prophet—peace and blessings be upon him—have been transmitted regarding this matter, which we will present, Allah the Exalted willing, so that we may see who has sincerely advised themselves that the Hanafis, Malikis, and Shafiʿis possess no valid proof at all for their position permitting the sacrifice of a jadhaʿ sheep while prohibiting the jadhaʿ of camels, cows, and goats. It has been narrated to us through the chain of Abu Bakr ibn Abi Shaybah: Abdullah ibn Numayr narrated to us from Muhammad ibn Ishaq from Umarah (the son of Abdullah ibn Ta'mah) from Sa'id ibn al-Musayyib from Zayd ibn Khalid al-Juhani, who said: The Messenger of Allah (peace and blessings be upon him) distributed sacrificial animals among his companions and gave me a young male goat. I brought it to the Prophet (peace and blessings be upon him) and said, "Is it a jadhaʿ (young goat)?" He replied, "Offer it as a sacrifice."

وَقَدْ أَشَارَ قَوْمٌ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ - رَضِيَ اللَّهُ عَنْهُمْ - أَنْ يُضَحَّى بِالْجَذَعِ مِنْ الْمَاعِزِ، وَبِالْجَذَعِ مِنْ الْإِبِلِ، وَالْبَقَرِ، كَمَا نُورِدُ إنْ شَاءَ اللَّهُ تَعَالَى، وَجَاءَتْ بِذَلِكَ آثَارٌ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نُورِدُهَا إنْ شَاءَ اللَّهُ تَعَالَى لِنَرَى مَنْ نَصَحَ نَفْسَهُ أَنَّهُ لَا حُجَّةَ لِلْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ أَصْلًا فِي إجَازَتِهِمْ الْجَذَعَ مِنْ الضَّأْنِ وَمَنْعِهِمْ مِنْ الْجَذَعِ مِنْ الْإِبِلِ، وَالْبَقَرِ، وَالْمَاعِزِ -: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ عَنْ مُحَمَّدِ بْنِ إسْحَاقَ عَنْ عُمَارَةَ هُوَ ابْنُ عَبْدِ اللَّهِ بْنِ طَعْمَةَ - عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ قَالَ «قَسَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَصْحَابِهِ ضَحَايَا فَأَعْطَانِي عَتُودًا مِنْ الْمَعْزِ، فَجِئْتُ بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْتُ: إنَّهُ جَذَعٌ؟ فَقَالَ: ضَحِّ بِهِ» .

L16293 From the transmission of Al-Bukhari and Muslim jointly: Al-Bukhari stated: "Reported to us by Amr ibn Khalid," while Muslim stated: "Reported to us by Muhammad ibn Rumh." Then Amr and Ibn Rumh agreed in reporting that Al-Layth ibn Sa'd informed them both through Yazid - who is Ibn Abi Habib - from Abu Al-Khayr, from Uqbah ibn Amir who said: "The Prophet - peace and blessings of Allah be upon him - granted him sheep to distribute among his companions. A young ram remained, and he mentioned this to the Messenger of Allah - peace and blessings of Allah be upon him - who

وَمِنْ طَرِيقِ الْبُخَارِيِّ وَمُسْلِمٍ جَمِيعًا قَالَ الْبُخَارِيُّ: نَا عَمْرُو بْنُ خَالِدٍ، وَقَالَ مُسْلِمٌ: نَا مُحَمَّدُ بْنُ رُمْحٍ، ثُمَّ اتَّفَقَ عَمْرٌو، وَابْنُ رُمْحٍ عَلَى أَنَّ اللَّيْثَ بْنَ سَعْدٍ أَخْبَرَهُمَا عَنْ يَزِيدَ هُوَ ابْنُ أَبِي حَبِيبٍ - عَنْ أَبِي الْخَيْرِ «عَنْ عُقْبَةَ بْنِ عَامِرٍ قَالَ: إنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ

instructed him: 'Sacrifice it yourself.'" This is the wording of Amr. The wording of Ibn Rumh is: "You, sacrifice it."

وَسَلَّمَ - أَعْطَاهُ غَنَمًا يَقْسِمُهَا بَيْنَ أَصْحَابِهِ فَبَقِيَ عَتُودٌ فَذَكَرَهُ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ: ضَحِّ أَنْتَ بِهِ» هَذَا لَفْظُ عَمْرٍو، وَلَفْظُ ابْنِ رُمْحٍ «ضَحِّ بِهِ أَنْتَ» .

L16294 Abū Muḥammad said: The ʿatūd refers to the yearling goat without any disagreement. These two narrations are of the highest reliability, and two Companions—ʿUqbah ibn ʿĀmir and Zayd ibn Khālid—permitted sacrificing the yearling goat in them.

قَالَ أَبُو مُحَمَّد: الْعَتُودُ هُوَ الْجَذَعُ مِنْ الْمَعْزِ بِلَا خِلَافٍ - وَهَذَانِ خَبَرَانِ فِي غَايَةِ الصِّحَّةِ، وَقَدْ أَجَازَ التَّضْحِيَةَ بِالْجَذَعِ مِنْ الْمَعْزِ فِيهِمَا اثْنَانِ مِنْ الصَّحَابَةِ: عُقْبَةُ بْنُ عَامِرٍ، وَزَيْدُ بْنُ خَالِدٍ.

L16295 We have previously mentioned from Umm Salamah—the Mother of the Believers—and Ibn Umar the permissibility of a yearling goat (jadhaʿ) from goats as a valid offering in the udḥiyyah, though others are better than it.

وَقَدْ ذَكَرْنَا قَبْلُ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ، وَابْنِ عُمَرَ جَوَازَ الْجَذَعِ مِنْ الْمَعْزِ فِي الْأُضْحِيَّةِ وَإِنْ كَانَ غَيْرُهُ خَيْرًا مِنْهُ.

L16296 If they say: "This is abrogated by the narration of al-Barā'?" We respond: The narration of al-Barā' contains no evidence to restrict the prohibition specifically to the jadhʿa of goats while excluding the jadhʿa of sheep, camels, and cows, except through a false assertion.

فَإِنْ قَالُوا: هَذَا مَنْسُوخٌ بِخَبَرِ الْبَرَاءِ؟ قُلْنَا: خَبَرُ الْبَرَاءِ لَا دَلِيلَ فِيهِ عَلَى تَخْصِيصِ الْجَذَعِ مِنْ الْمَعْزِ دُونَ الْجَذَعِ مِنْ الضَّأْنِ وَالْإِبِلِ، وَالْبَقَرِ بِالْمَنْعِ إلَّا بِدَعْوَى كَاذِبَةٍ.

L16297 As for the reports permitting the ritual sacrifice of the *jadhʿa* in entirety for every purpose, it has been transmitted to us from ʿAbd al-Razzāq from Sufyān al-Thawrī from ʿĀṣim ibn Kulayb from his father, who said: We were with a man from the Companions of the Prophet—peace and blessings be upon him—called Mujāshiʿ of Banū Sulaym. He instructed a caller to announce: "The Messenger of Allah—peace and blessings be upon him—would say: 'The *jadhʿa* fulfills the same requirements as the *thaniyya*.'"

وَأَمَّا الْآثَارُ الَّتِي فِيهَا إبَاحَةُ التَّضْحِيَةِ بِالْجَذَعِ جُمْلَةً مِنْ كُلِّ شَيْءٍ فَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَاصِمِ بْنِ كُلَيْبٍ عَنْ أَبِيهِ قَالَ: كُنَّا مَعَ رَجُلٍ مِنْ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُقَالُ لَهُ: مُجَاشِعٌ مِنْ بَنِي سُلَيْمٍ فَأَمَرَ مُنَادِيًا يُنَادِي «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَقُولُ: الْجَذَعُ تُوفِي مِمَّا تُوفِي مِنْهُ الثَّنِيَّةُ» .

L16298–16300 From the chain of Abū al-Jahm: Yūsuf—he is Ibn Yaʿqūb al-Qāḍī—narrated to us; Abū al-Rabīʿ—he is al-Zahrānī—narrated to us. Hibbān ibn ʿAlī narrated to us from ʿĀṣim ibn Kulayb from his father, who said: "During military campaigns, Companions of Allah's Messenger (peace be upon him) would be appointed to lead us. A man from the Anṣār was placed in command over us and said: 'I witnessed with Allah's Messenger (peace be upon him) that day'—meaning the Day of Sacrifice—'when we sought a mature sacrificial animal (musinnah), but it became scarce for us.' Thereupon Allah's Messenger (peace

وَمِنْ طَرِيقِ أَبِي الْجَهْمِ نَا يُوسُفُ هُوَ ابْنُ يَعْقُوبَ الْقَاضِي - نَا أَبُو الرَّبِيعِ هُوَ الزَّهْرَانِيُّ نَا حِبَّانُ بْنُ عَلِيٍّ عَنْ عَاصِمِ بْنِ كُلَيْبٍ عَنْ أَبِيهِ قَالَ: كُنَّا يُؤَمَّرُ عَلَيْنَا فِي الْمَغَازِي أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأُمِّرَ عَلَيْنَا رَجُلٌ مِنْ الْأَنْصَارِ فَقَالَ: إنِّي شَهِدْت مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَذَا الْيَوْمَ يَعْنِي يَوْمَ النَّحْرِ فَطَلَبْنَا الْمُسِنَّ فَغَلَتْ عَلَيْنَا فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ الْجَذَعَ يَفِي مِمَّا يَفِي مِنْهُ الْمُسِنُّ» .

be upon him) said: 'A young sheep (jadhaʿ) suffices for the same purpose as a mature animal.'"

L16301 Abu Muhammad said: The first hadith is of the utmost authenticity. Mujāshiʿ al-Sulamī - who is Mujāshiʿ ibn Masʿūd, a well-known, distinguished Companion among those who embraced Islam, contributed wealth, and fought before the conquest of Mecca - participated in the conquest of Kirmān. All its narrators are reliable and prominent. The other hadith is sound and authentically established, for the validity or invalidity of the commander of the army's companionship cannot remain obscure.

L16302 It has been narrated to us through Maʿmar, from Ayyūb al-Sakhtiyānī, from Ibn Sīrīn, from ʿImrān ibn al-Ḥuṣayn, who said: "To sacrifice a yearling is dearer to me than sacrificing an aged animal, for Allah is more deserving of [receiving] the finest and most generous [offerings]. The one I would most cherish to sacrifice is the one I would most cherish to keep."

L16303 We previously mentioned from Ibn Umar: "Sacrificing a large yearling valid for sacrifice is more beloved to me than sacrificing a kid." This establishes a general ruling regarding the yearling.

L16304 From the path of Waki' and Yaḥyā ibn Saʿīd al-Qaṭṭān, both of whom jointly narrated: ʿAlī ibn al-Mubārak reported to us from Abū al-Sāwiyyah al-Tamīmī, who said: A man came to Ibn ʿAbbās and asked, "I am obligated to offer a *badana* (mature sacrificial camel). Will a *jadhaʿah* (young camel) suffice for me?" He replied, "Yes." In Waki''s narration, the man specified: "A *jadhaʿah* from the camels?" Ibn ʿAbbās said, "Yes."

L16305 And through the narration of Waki', who narrated from 'Umar ibn Dharr al-Hamdani: I said to Tāwus, "O Abu 'Abd al-Rahman, when we enter the market, we find al-jadha' (yearling) among the fat, large cattle, so we choose the thani (two-year-old) based on its age." Tāwus replied, "The one I prefer is the fattest of them and the largest of them."

L16306 And through the chain of Abd al-Razzaq from Ma'mar, from Abdullah ibn Tawus, from his father, who said: A one-year-old goat suffices, a yearling

قَالَ أَبُو مُحَمَّد: الْحَدِيثُ الْأَوَّلُ فِي غَايَةِ الصِّحَّةِ، وَمُجَاشِعٌ السُّلَمِيُّ هُوَ مُجَاشِعُ بْنُ مَسْعُودٍ - مَشْهُورٌ مِنْ فُضَلَاءِ الصَّحَابَةِ مِمَّنْ أَسْلَمَ، وَأَنْفَقَ، وَقَاتَلَ قَبْلَ فَتْحِ مَكَّةَ، وَهُوَ فَتْحُ كَرْمَانَ، وَرُوَاتُهُ كُلُّهُمْ ثِقَاتٌ مَشَاهِيرُ، وَالْآخَرُ جَيِّدٌ صَحِيحٌ لِأَنَّ أَمِيرَ الْعَسْكَرِ لَا تَخْفَى صِحَّةُ صُحْبَتِهِ مِنْ بُطْلَانِهَا.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ سِيرِينَ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ قَالَ: لَأَنْ أُضَحِّيَ بِجَذَعٍ أَحَبُّ إِلَيَّ مِنْ أَنْ أُضَحِّيَ بِهَرِمٍ، اللَّهُ أَحَقُّ بِالْغِنَى وَالْكَرَمِ، وَأَحَبُّهُنَّ إِلَيَّ أَنْ أُضَحِّيَ بِهِ أَحَبُّهُنَّ إِلَيَّ بِأَنْ أَقْتَنِيَهُ.

وَقَدْ ذَكَرْنَا قَبْلُ عَنْ ابْنِ عُمَرَ لَأَنْ أُضَحِّيَ بِجَذَعَةٍ عَظِيمَةٍ تَجُوزُ فِي الصَّدَقَةِ أَحَبُّ إِلَيَّ مِنْ أَنْ أُضَحِّيَ بِجِدَاءٍ فَهَذَا عُمُومٌ فِي الْجَذَعِ.

وَمِنْ طَرِيقِ وَكِيعٍ، وَيَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ، قَالَا جَمِيعًا: نَا عَلِيُّ بْنُ الْمُبَارَكِ عَنْ أَبِي السَّوِيَّةِ التَّمِيمِيِّ قَالَ: جَاءَ رَجُلٌ إِلَى ابْنِ عَبَّاسٍ فَقَالَ عَلَيَّ بَدَنَةٌ أَتُجْزِي عَنِّي جَذَعَةٌ؟ قَالَ: نَعَمْ، وَفِي رِوَايَةِ وَكِيعٍ جَذَعَةٌ مِنْ الْإِبِلِ؟ قَالَ: نَعَمْ.

وَمِنْ طَرِيقِ وَكِيعٍ نَا عُمَرُ بْنُ ذَرٍّ الْهَمْدَانِيُّ قُلْت لِطَاوُسٍ: يَا أَبَا عَبْدِ الرَّحْمَنِ إنَّا نَدْخُلُ السُّوقَ فَنَجِدُ الْجَذَعَ مِنْ الْبَقَرِ السَّمِينِ الْعَظِيمِ فَنَخْتَارُ الثَّنِيَّ لِسِنِّهِ فَقَالَ طَاوُسٌ: أَحَبُّهُمَا إلَيَّ أَسْمَنُهُمَا وَأَعْظَمُهُمَا.

sheep suffices, a five-year-old camel suffices, and a cow suffices—meaning as sacrificial offerings.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: يُجْزِي الثَّنِيُّ مِنْ الْمَعْزِ وَالْجَذَعُ مِنْ الضَّأْنِ، وَالْجَذَعُ مِنْ الْإِبِلِ، وَالْبَقَرِ - يَعْنِي فِي الْأَضَاحِيِّ.

L16307 From the chain of Waki‘: Sufyan reported from Ibn Jurayj, from ʿAṭāʾ ibn Abī Rabāḥ, who said: “A jadha‘ (eligible sheep) suffices on behalf of seven.”

وَمِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: يُجْزِي الْجَذَعُ عَنْ سَبْعَةٍ.

L16308–16309 From the narration of Abd al-Razzaq, from Ibn Jurayj, from Ata, he said: A jadh‘ camel (five years old) or older suffices [as a sacrifice].

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: يُجْزِي مِنْ الْإِبِلِ الْجَذَعُ فَصَاعِدًا.

L16310 From the transmission of Ibn Abī Shaybah: Ibn ʿUlayyah narrated to us from Yūnus ibn ʿUbayd from al-Ḥasan al-Baṣrī that he reported: He would say: “A jadha‘ (a camel of at least six years) is eligible for the Udḥiyah sacrifice. Cows may be sacrificed on behalf of three people, while any camel below the jadha‘ age suffices for one person.” These are chains of transmission of the highest authenticity.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا ابْنُ عُلَيَّةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ قَالَ: كَانَ يَقُولُ: يُضَحَّى بِالْجَذَعِ مِنْ الْإِبِلِ، وَالْبَقَرِ عَنْ ثَلَاثَةٍ، وَمَا دُونَ الْجَذَعِ مِنْ الْإِبِلِ عَنْ وَاحِدٍ - فَهَذِهِ أَسَانِيدُ فِي غَايَةِ الصِّحَّةِ.

L16311 From Ṭāwus, ʿAṭāʾ, and al-Ḥasan regarding the permissibility of five-year-old camels and two-year-old cattle for Udhiyah.

وَعَنْ طَاوُسٍ، وَعَطَاءٍ، وَالْحَسَنِ فِي جَوَازِ الْجَذَعِ مِنْ الْإِبِلِ وَالْبَقَرِ فِي الْأَضَاحِيِّ.

L16312 Ibn Abbas permitted the use of a jadha‘ (four-year-old camel) among sacrificial camels.

وَعَنْ ابْنِ عَبَّاسٍ جَوَازُ الْجَذَعِ مِنْ الْإِبِلِ فِي الْبُدْنِ.

L16313 If it is said: “It has been reported from ʿAṭāʾ that he disliked this?” We reply: It was transmitted by al-Ḥajjāj ibn Arṭāh—a weak narrator—and none would oppose Ibn Jurayj with this except an ignorant person. Abū Muḥammad said: What abrogates all of this is the statement of Allah’s Messenger—peace and blessings be upon him—: “A *jadhaʿah* is not valid from anyone after you.” It is utterly false to claim this statement abrogates the permissibility of certain *jadhaʿahs* but not others. How astonishing is it that they found no report whatsoever prohibiting *jadhaʿahs* of camels and cattle except this very wording? How then did they restrict it specifically to *jadhaʿahs* of camels and cattle, excluding *jadhaʿahs* of sheep?

فَإِنْ قِيلَ: قَدْ رُوِيَ عَنْ عَطَاءٍ كَرَاهَةُ ذَلِكَ؟ قُلْنَا: رَوَاهُ الْحَجَّاجُ بْنُ أَرْطَاةَ وَهُوَ سَاقِطٌ، وَلَا يُعَارِضُ بِهِ ابْنَ جُرَيْجٍ إلَّا جَاهِلٌ؟ قَالَ أَبُو مُحَمَّدٍ: وَالنَّاسِخُ لِهَذَا كُلِّهِ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُجْزِي جَذَعَةٌ عَنْ أَحَدٍ بَعْدَكَ» وَمِنْ الْبَاطِلِ الْبَحْتِ أَنْ يُجْعَلَ هَذَا الْقَوْلُ نَاسِخًا لِإِبَاحَةِ بَعْضِ الْجِذَاعِ دُونَ بَعْضٍ، وَالْعَجَبُ أَنَّهُمْ لَمْ يَجِدُوا فِي النَّهْيِ عَنْ الْجِذَاعِ مِنْ الْإِبِلِ وَالْبَقَرِ خَبَرًا أَصْلًا إلَّا هَذَا اللَّفْظَ فَمِنْ أَيْنَ خَصُّوا بِهِ جِذَاعَ الْإِبِلِ وَالْبَقَرِ دُونَ جِذَاعِ الضَّأْنِ.

L16314 If they say: “We analogized the jadh‘ (a one-year-old) of camels and cattle to the jadh‘ of goats?” We respond: “Why did you not analogize them to

فَإِنْ قَالُوا: قِسْنَا جِذَاعَ الْإِبِلِ وَالْبَقَرِ عَلَى جِذَاعِ الْمَاعِزِ؟ قُلْنَا: وَهَلَّا قِسْتُمُوهَا عَلَى جِذَاعِ الضَّأْنِ الْجَائِزَةِ عِنْدَكُمْ، وَمَا الَّذِي جَعَلَ قِيَاسَ الْإِبِلِ وَالْبَقَرِ عَلَى الْمَاعِزِ أَوْلَى مِنْ قِيَاسِهَا عَلَى الضَّأْنِ؟ لَا سِيَّمَا وَالْجَذَعُ عِنْدَكُمْ مِنَ الْإِبِلِ وَالْبَقَرِ يَجْزِيَانِ فِي الزَّكَاةِ، فَهَلَّا قِسْتُمْ جَوَازَهَا فِي الْأُضْحِيَّةِ عَلَى جَوَازِهَا فِي الزَّكَاةِ - فَلَاحَ أَنَّهُمْ لَا النَّصَّ اتَّبَعُوا، وَلَا الْقِيَاسَ عَرَفُوا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

They say: the jadhʿ of sheep which you deem permissible? What makes analogizing camels and cattle to goats more valid than analogizing them to sheep? Especially since the jadhʿ of camels and cattle are both permissible for zakāh according to your position. Why did you not analogize their permissibility in ʿUdḥiyyah to their permissibility in zakāh?" Thus it became clear they neither followed textual authority nor properly understood legal analogy. Success comes solely from Allah, the Exalted.

وَيَقُولُونَ أَيْضًا: إِنْ وَلَدَتْ الْأُضْحِيَّةُ الشَّاةُ، أَوْ الْمَاعِزُ، أَوْ الْبَقَرَةُ أَوْ النَّاقَةُ ضُحِّيَ بِوَلَدِهَا مَعَهَا - فَتَنَاقَضُوا وَأَجَازُوا فِي الْأُضْحِيَّةِ الصَّغِيرَ جِدًّا.

They also say: If a sacrificial animal—whether a sheep, goat, cow, or camel—gives birth, its offspring should be sacrificed alongside her. Thus they contradict themselves, permitting the extremely young animal as a sacrifice.

فَإِنْ قَالُوا: إنَّمَا هُوَ تَبَعٌ؟ قُلْنَا: هَذَا كَلَامٌ فَاسِدٌ لَا مَعْنَى لَهُ، وَعَرِّفُونَا مَا مَعْنَى تَبَعٌ؟ أَهُوَ بَعْضُهَا - فَهَذَا كَذِبٌ بِالْعِيَانِ، بَلْ هُوَ غَيْرُهَا، وَهُوَ ذَكَرٌ وَهِيَ أُنْثَى، وَإِنْ كَانَ غَيْرَهَا، فَهُوَ قَوْلُنَا، وَلَا فَضْلَ فِي ذَلِكَ.

If they say, "It is merely a subordinate?" We reply: This is an invalid statement devoid of meaning. Explain to us what "subordinate" signifies. Is it a part of it? That is evident falsehood, for it is distinct from her—grammatically masculine while she is feminine. If it is distinct, then this is our assertion, and there is no merit in such a claim.

[مَسْأَلَةٌ اشْتَرَى أُضْحِيَّةً وَدَخَلَ الْعَشْرُ]

A legal issue: He purchased a sacrificial animal and the ten had begun.

مَسْأَلَةٌ:

Issue:

قَالَ عَلِيٌّ: ذَكَرْنَا فِي أَوَّلِ كَلَامِنَا هَهُنَا فِي الْأَضَاحِيِّ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أَرَادَ أَنْ يُضَحِّيَ أَنْ لَا يَمَسَّ مِنْ شَعْرِهِ وَلَا مِنْ أَظْفَارِهِ شَيْئًا» ، وَلَمْ نَذْكُرْ اعْتِرَاضَ الْمُخَالِفِينَ فِي ذَلِكَ بِالنِّسْيَانِ فَاسْتَدْرَكْنَا هَهُنَا مَا رُوِيَ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا أَفْتَتْ بِذَلِكَ.

Ali said: At the beginning of our discussion here concerning sacrificial animals, we mentioned the command of Allah's Messenger—peace and blessings be upon him—"Whoever intends to offer a sacrifice must not remove anything from his hair or nails." However, we neglected to mention the objections of the opponents regarding this matter due to oversight. We now supplement here what has been narrated from Umm Salamah, the Mother of the Believers, that she issued a fatwa regarding this.

وَنَا حَمَامٌ نَا عَبَّاسُ بْنُ أَصْبَغَ نَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نَا بَكْرُ بْنُ حَمَّادٍ نَا مُسَدَّدٌ نَا يَزِيدُ بْنُ زُرَيْعٍ نَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ نَا ابْنُ أَبِي كَثِيرٍ هُوَ يَحْيَى - أَنَّ يَحْيَى بْنَ يَعْمَرَ

From Hamam, from Abbas ibn Asbagh, from Muhammad ibn Abd al-Malik ibn Ayman, from Bakr ibn Hammad, from Musaddad, from Yazid ibn Zurai', from Sa'id ibn Abi Arubah, from Ibn Abi Kathir (he is Yahya) - that Yahya ibn Ya'mar used to issue legal rulings in Khurasan: When a man purchases

كَانَ يُفْتِي بِخُرَاسَانَ: أَنَّ الرَّجُلَ إِذَا اشْتَرَى أُضْحِيَّةً، وَدَخَلَ الْعَشْرُ أَنْ يَكُفَّ عَنْ شَعْرِهِ وَأَظْفَارِهِ حَتَّى يُضَحِّيَ.

a sacrificial animal and the ten days of Dhul-Hijjah begin, he must refrain from cutting his hair and nails until he performs the sacrifice.

L16322 قَالَ سَعِيدٌ: قَالَ قَتَادَةُ: فَذَكَرْت ذَلِكَ لِسَعِيدِ بْنِ الْمُسَيِّبِ فَقَالَ: نَعَمْ، فَقُلْت: عَمَّنْ يَا أَبَا مُحَمَّدٍ؟ قَالَ: عَنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

Sa'īd reported that Qatādah said: "I mentioned this to Sa'īd ibn al-Musayyib, who replied, 'Yes.' I asked, 'From whom, O Abū Muḥammad?' He said, 'From the Companions of the Messenger of Allah—peace be upon him—.'"

L16323 قَالَ مُسَدَّدٌ: وَنَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ سَمِعْت أَبِي يَقُولُ: كَانَ ابْنُ سِيرِينَ يَكْرَهُ إِذَا دَخَلَ الْعَشْرُ أَنْ يَأْخُذَ الرَّجُلُ مِنْ شَعْرِهِ حَتَّى يَكْرَهَ أَنْ يَحْلِقَ الصِّبْيَانُ فِي الْعَشْرِ، وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَخَالَفَ ذَلِكَ أَبُو حَنِيفَةَ، وَمَالِكٌ - وَمَا نَعْلَمُ لَهُمَا حُجَّةً أَصْلًا، إلَّا أَنَّ بَعْضَهُمْ ذَكَرَ مَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ عُمَارَةَ بْنِ عَبْدِ اللَّهِ بْنِ صَيَّادٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِالِادِّهَانِ فِي الْعَشْرِ، قَالُوا: وَهُوَ رَاوِي هَذَا الْخَبَرِ.

Musaddad said: Al-Mu'tamir ibn Sulayman Al-Taymi reported: I heard my father say: Ibn Sirin disliked a man removing any of his hair upon the commencement of the last ten days [of Ramadan], even to the extent of disliking that children be shaved during these ten days. This is the position of Ash-Shāfi'ī, Abū Thawr, Ahmad, Isḥāq, Abū Sulaymān, and Al-Awzā'ī. Abū Ḥanīfah and Mālik opposed this view - though we know of no evidence at all for their position. However, some mentioned what was narrated to us through Mālik from 'Amārah ibn 'Abdullāh ibn Ṣayyād, from Sa'īd ibn Al-Musayyab, who deemed it permissible to apply oil or dye (such as henna) during the ten days. They said: He is the narrator of this report.

L16324 وَمَا رُوِّينَا مِنْ طَرِيقِ عِكْرِمَةَ أَنَّهُ ذَكَرَ لَهُ هَذَا الْخَبَرَ فَقَالَ: فَهَلَّا اجْتَنَبَ النِّسَاءَ وَالطِّيبَ - وَمَا نَعْلَمُ لَهُمْ غَيْرَ هَذَا أَصْلًا، وَهَذَا كُلُّهُ لَا شَيْءَ -:

It was narrated to us via the chain of Ikrimah that when this report was mentioned to him, he said: "Why did he not avoid women and perfume?" - We know of no basis for them other than this at all, and all of this is nothing - :

L16325 أَمَّا الرِّوَايَةُ عَنْ سَعِيدٍ أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِالِادِّهَانِ فِي الْعَشْرِ، فَالِاحْتِجَاجُ بِهِ بَاطِلٌ لِوُجُوهٍ -:

As for the narration from Sa'īd that he used to consider no harm in applying dye during the ten days, the argument based on it is invalid for several reasons:

L16326 أَوَّلُهَا: أَنَّهُ لَا حُجَّةَ فِي قَوْلِ سَعِيدٍ، وَإِنَّمَا الْحُجَّةُ الَّتِي أَلْزَمَنَاهَا اللَّهُ تَعَالَى فَهِيَ رِوَايَتُهُ وَرِوَايَةُ غَيْرِهِ مِنْ الثِّقَاتِ.

The first is that there is no authoritative evidence in the statement of Sa'īd; rather, the authoritative evidence that Allah, the Exalted, has made it incumbent upon us is his narration and the narration of others from the trustworthy ones.

L16327 وَثَانِيهَا: أَنَّهُ قَدْ صَحَّ عَنْ سَعِيدٍ خِلَافُ ذَلِكَ مِمَّا ذَكَرْنَا قَبْلُ وَهُوَ أَوْلَى بِسَعِيدٍ.

Secondly, it has been authentically established that Sa'īd held a contrary position to what we mentioned before, and this is more fitting to Sa'īd.

L16328–16329 The third point is that Sa'īd might interpret the scrutiny [of hair] as differing

from the legal ruling for other hair, maintaining that the prohibition applies solely to the hair on the head.

وَثَالِثُهَا: أَنَّهُ قَدْ يَتَأَوَّلُ سَعِيدٌ فِي الِاطِّلَاءِ أَنَّهُ بِخِلَافِ حُكْمِ سَائِرِ الشَّعْرِ، وَأَنَّ النَّهْيَ إِنَّمَا هُوَ شَعْرُ الرَّأْسِ فَقَطْ.

L16330 The fourth is that it should be said to them: Just as you argued that Sa'īd's reported contradiction of this hadith indicates the weakness of that hadith—since one would only abandon a narration for what he considers stronger—it is more appropriate for you to apply this reasoning to Sa'īd's own narrations from the Prophet (peace be upon him) and his Companions (may Allah be pleased with them) which conflict with other reports attributed to Sa'īd. This proves the weakness of those narrations from Sa'īd, as it is impermissible for him to issue rulings contradicting what he himself transmitted. This objection holds greater validity than yours.

وَرَابِعُهَا: أَنْ يُقَالَ لَهُمْ: كَمَا قُلْتُمْ لِمَا رُوِيَ عَنْ سَعِيدٍ خِلَافُ هَذَا الْحَدِيثِ الَّذِي رُوِيَ دَلَّ عَلَى ضَعْفِ ذَلِكَ الْحَدِيثِ، لِأَنَّهُ لَا يَدَعُ مَا رُوِيَ إِلَّا لِمَا هُوَ أَقْوَى عِنْدَهُ مِنْهُ، فَالْأَوْلَى بِكُمْ أَنْ تَقُولُوا لِمَا رَوَى سَعِيدٌ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَنْ أَصْحَابِهِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافَ مَا رُوِيَ عَنْ سَعِيدٍ: دَلَّ ذَلِكَ عَلَى ضَعْفِ تِلْكَ الرِّوَايَةِ عَنْ سَعِيدٍ، إِذْ لَا يَجُوزُ أَنْ يُفْتِيَ بِخِلَافِ مَا رَوَى - فَهَذَا اعْتِرَاضٌ أَوْلَى مِنْ اعْتِرَاضِكُمْ.

L16331 The fifth is that the intended meaning of Sa'id's statement regarding applying oil during "the ten" might specifically be the ten days of Muḥarram, not the ten days of Dhū al-Ḥijjah. Otherwise, from where do you derive that he meant the ten days of Dhū al-Ḥijjah? Does the term "the ten" not apply to the ten days of Muḥarram just as it applies to the ten days of Dhū al-Ḥijjah?

وَخَامِسُهَا: أَنَّهُ قَدْ يَكُونُ الْمُرَادُ بِقَوْلِ سَعِيدٍ فِي الِاطِّلَاءِ فِي الْعَشْرِ إِنَّمَا أَرَادَ عَشْرَ الْمُحَرَّمِ لَا عَشْرَ ذِي الْحِجَّةِ، وَإِلَّا فَمِنْ أَيْنَ لَكُمْ أَنَّهُ أَرَادَ عَشْرَ ذِي الْحِجَّةِ؟ وَاسْمُ الْعَشْرِ يُطْلَقُ عَلَى عَشْرِ الْمُحَرَّمِ كَمَا يُطْلَقُ عَلَى عَشْرِ ذِي الْحِجَّةِ؟

L16332 The sixth of these is that we say: Perhaps Sa'īd held that view regarding one who does not intend to offer a sacrifice, and this is valid. As for 'Ikrimah's opinion, it is invalid, because the religion is not derived from 'Ikrimah's statements or opinion. Rather, this is nothing but his qiyas, and all qiyas is invalid.

وَسَادِسُهَا: أَنْ نَقُولَ: لَعَلَّ سَعِيدًا رَأَى ذَلِكَ لِمَنْ لَا يُرِيدُ أَنْ يُضَحِّيَ، فَهَذَا صَحِيحٌ، وَأَمَّا قَوْلُ عِكْرِمَةَ فَفَاسِدٌ، لِأَنَّ الدِّينَ لَا يُؤْخَذُ بِقَوْلِ عِكْرِمَةَ وَرَأْيِهِ، إِنَّمَا هَذَا مِنْهُ قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

L16333 Furthermore, if the analogy were valid, this would be the epitome of falsehood, because the obligation to refrain from touching hair and nails, as per the textual ruling on that, does not necessitate refraining from sexual relations with women and using perfume, just as the obligation to refrain from sexual intercourse and using perfume does not thereby necessitate refraining from touching hair and nails.

ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّهُ لَيْسَ إِذَا وَجَبَ أَنْ لَا يَمَسَّ الشَّعْرَ، وَالظُّفْرَ، بِالنَّصِّ الْوَارِدِ فِي ذَلِكَ يَجِبُ أَنْ يَجْتَنِبَ النِّسَاءَ وَالطِّيبَ، كَمَا أَنَّهُ إِذَا وَجَبَ اجْتِنَابُ الْجِمَاعِ وَالطِّيبِ، لَمْ يَجِبْ بِذَلِكَ اجْتِنَابُ مَسِّ الشَّعْرِ وَالظُّفْرِ.

L16334 A fasting person is obligated to abstain from sexual relations, but he is not required to avoid perfume, nor cutting hair or nails—and the same applies to one in i'tikaf (seclusion in the mosque). As for a woman in her waiting

period (iddah), intercourse and perfume are prohibited for her, but she is not obligated to abstain from cutting her hair or nails.

فَهَذَا الصَّائِمُ فَرْضٌ عَلَيْهِ اجْتِنَابُ النِّسَاءِ، وَلَا يَلْزَمُهُ اجْتِنَابُ الطِّيبِ، وَلَا مَسُّ الشَّعْرِ، وَالظُّفْرِ - وَكَذَلِكَ الْمُعْتَكِفُ، وَهَذِهِ الْمُعْتَدَّةُ يَحْرُمُ عَلَيْهَا الْجِمَاعُ وَالطِّيبُ، وَلَا يَلْزَمُهَا اجْتِنَابُ قَصِّ الشَّعْرِ وَالْأَظْفَارِ.

L16335 Thus, the foolishness of their analogy and their invalid statements in religion became evident. This legal opinion is authentically established from the Companions—may Allah be pleased with them—and no dissent from any of them against it is known. Yet they opposed it based on their independent reasoning.

فَظَهَرَ حَمَاقَةُ قِيَاسِهِمْ وَقَوْلِهِمْ فِي الدِّينِ بِالْبَاطِلِ، وَهَذِهِ فُتْيَا صَحَّتْ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا يُعْرَفُ فِيهَا مُخَالِفٌ مِنْهُمْ لَهُمْ، فَخَالَفُوا ذَلِكَ بِرَأْيِهِمْ.

L16336 Mālik narrated it as a mursal narration, so they contradicted the mursal narration and the musnad narration—and success comes only from Allāh, the Exalted.

وَرَوَاهُ مَالِكٌ مُرْسَلًا، فَخَالَفُوا الْمُرْسَلَ وَالْمُسْنَدَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16337 **Issue: The Udhiyah is valid with any animal whose meat is religiously permissible to eat.**

[مَسْأَلَةٌ الْأُضْحِيَّةُ جَائِزَةٌ بِكُلِّ حَيَوَانٍ يُؤْكَلُ لَحْمُهُ]

L16338–16340 Issue 977: The *uḍḥīyah* sacrifice is permissible with every animal whose flesh is eaten among four-legged creatures or birds, such as horses, camels, wild cattle, roosters, and all other birds and lawful animals to eat. The best among all these is an animal that has wholesome meat, is abundant, and commands a high price.

٩٧٧ - مَسْأَلَةٌ: وَالْأُضْحِيَّةُ جَائِزَةٌ بِكُلِّ حَيَوَانٍ يُؤْكَلُ لَحْمُهُ مِنْ ذِي أَرْبَعٍ، أَوْ طَائِرٍ، كَالْفَرَسِ، وَالْإِبِلِ، وَبَقَرِ الْوَحْشِ، وَالدِّيكِ، وَسَائِرِ الطَّيْرِ وَالْحَيَوَانِ الْحَلَالِ أَكْلُهُ، وَالْأَفْضَلُ فِي كُلِّ ذَلِكَ مَا طَابَ لَحْمُهُ وَكَثُرَ وَغَلَا ثَمَنُهُ.

L16341 We mentioned at the beginning of our discourse on sacrificial animals the statement of Bilāl: "I see no harm in sacrificing a rooster," and the report concerning Ibn ʿAbbās's act of purchasing meat for two dirhams, wherein he said: "This is Ibn ʿAbbās's substitute for a sacrificial offering."

وَقَدْ ذَكَرْنَا فِي أَوَّلِ كَلَامِنَا فِي الْأَضَاحِيِّ قَوْلَ بِلَالٍ: مَا أُبَالِي لَوْ ضَحَّيْت بِدِيكٍ، وَعَنْ ابْنِ عَبَّاسٍ فِي ابْتِيَاعِهِ لَحْمًا بِدِرْهَمَيْنِ وَقَالَ: هَذِهِ أُضْحِيَّةُ ابْنِ عَبَّاسٍ.

L16342 And it has also been narrated to us through the chain of Wakīʿ, from Kathīr ibn Zayd, from ʿIkrimah, from Ibn ʿAbbās. This Kathīr ibn Zayd is the one they relied upon in their argument by using the report that is not authentic: "Muslims are bound by their stipulations." They deemed him reliable in that context, and no one other than him narrated it.

وَرُوِّينَا أَيْضًا مِنْ طَرِيقِ وَكِيعٍ عَنْ كَثِيرِ بْنِ زَيْدٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ وَكَثِيرِ بْنِ زَيْدٍ هَذَا هُوَ الَّذِي عَوَّلُوا عَلَيْهِ فِي احْتِجَاجِهِمْ بِالْأَثَرِ الَّذِي لَا يَصِحُّ " الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ " وَثَّقُوهُ هُنَالِكَ وَلَمْ يَرْوِهِ غَيْرُهُ.

L16343 Al-Ḥasan ibn Ḥayy permits the Udhiyah with a wild cow for seven people, and with a gazelle for one person.

وَالْحَسَنُ بْنُ حَيٍّ يُجِيزُ الْأُضْحِيَّةَ بِبَقَرَةٍ وَحْشِيَّةٍ عَنْ سَبْعَةٍ، وَبِالظَّبْيِ أَوْ الْغَزَالِ عَنْ وَاحِدٍ.

وَأَجَازَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ التَّضْحِيَةَ بِمَا حَمَلَتْ بِهِ الْبَقَرَةُ الْإِنْسِيَّةُ مِنَ الثَّوْرِ الْوَحْشِيِّ، وَبِمَا حَمَلَتْ بِهِ الْعَنْزُ مِنَ الْوَعْلِ.

L16344 Abu Hanifa and his companions permitted the sacrificial offering of the offspring conceived by the domestic cow from a wild bull and the offspring conceived by the domestic goat from an ibex.

وَقَالَ مَالِكٌ: لَا تُجْزِي إِلَّا مِنَ الْإِبِلِ، وَالْبَقَرِ، وَالْغَنَمِ.

L16345 Mālik said: It is only valid from camels, cattle, or sheep and goats.

وَرَأَى مَالِكٌ: النَّعْجَةَ، وَالْعَنْزَ، وَالتَّيْسَ أَفْضَلَ مِنَ الْإِبِلِ، وَالْبَقَرِ: فِي الْأُضْحِيَّةِ.

L16346 Malik held that ewes, female goats, and male goats are preferable to camels and cows as the sacrificial offering (al-uḍḥiyyah).

وَخَالَفَهُ فِي ذَلِكَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ فَرَأَيَا الْإِبِلَ أَفْضَلَ، ثُمَّ الْبَقَرَ، ثُمَّ الضَّأْنَ، ثُمَّ الْمَاعِزَ - وَمَا نَعْلَمُ لِهَذَا الْقَوْلِ حُجَّةً فَنُورِدُهَا أَصْلًا، إِلَّا أَنْ يَدَّعُوا إِجْمَاعًا فِي جَوَازِهَا مِنْ هَذِهِ الْأَنْعَامِ، وَالْخِلَافَ فِي غَيْرِهَا.

L16347 Abu Hanifah and Al-Shafi'i disagreed with him on this, both holding that camels are preferable, followed by cows, then sheep, then goats. We know of no evidence for this opinion that can be cited as a basis, unless they claim Ijmaʿ (consensus) exists regarding the permissibility concerning these livestock, while disagreement applies to other types.

فَهَذَا لَيْسَ بِشَيْءٍ، وَيُعَارِضُونَ بِمَا صَحَّ فِي ذَلِكَ عَنْ بِلَالٍ، وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهَذَا عِنْدَهُمْ حُجَّةٌ إِذَا وَافَقَهُمْ.

L16348 This is not valid. They oppose it with what has been authentically reported from Bilāl regarding that, and no opposing view from the Companions—may Allah be pleased with them—is known to contradict him in that matter. This, according to them, serves as evidence when it agrees with them.

وَأَمَّا مُرَاعَاةُ الْإِجْمَاعِ فَيُؤْخَذُ بِهِ وَيُتْرَكُ مَا اخْتُلِفَ فِيهِ، فَهَذَا يَهْدِمُ عَلَيْهِمْ جَمِيعَ مَذَاهِبِهِمْ إِلَّا يَسِيرًا جِدًّا مِنْهَا، وَيَلْزَمُهُمْ أَنْ لَا يُوجِبُوا فِي الصَّلَاةِ، أَوِ الصَّوْمِ، وَالْحَجِّ، وَالزَّكَاةِ وَالْبُيُوعِ، إِلَّا مَا أُجْمِعَ عَلَيْهِ، وَفِي هَذَا هَدْمُ مَذْهَبِهِمْ كُلِّهِ.

L16349 As for adhering to consensus, it is to be followed, and whatever is disputed is to be discarded. This would undermine nearly all their legal schools, leaving only a very few intact, and oblige them not to mandate anything in prayer, fasting, Hajj, Zakat, or transactions except what has been established by consensus. This would destroy their entire school of thought.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا الْمَرْدُودُ إِلَيْهِ عِنْدَ التَّنَازُعِ فَهُوَ مَا افْتَرَضَ اللَّهُ تَعَالَى الرَّدَّ إِلَيْهِ فَوَجَدْنَا النُّصُوصَ تَشْهَدُ لِقَوْلِنَا، وَذَلِكَ أَنَّ الْأُضْحِيَّةَ قُرْبَةٌ إِلَى اللَّهِ تَعَالَى، فَالتَّقَرُّبُ إِلَى اللَّهِ تَعَالَى - بِكُلِّ مَا لَمْ يَمْنَعْ مِنْهُ قُرْآنٌ وَلَا نَصُّ سُنَّةٍ - حَسَنٌ، وَقَالَ تَعَالَى: {وَافْعَلُوا الْخَيْرَ لَعَلَّكُمْ تُفْلِحُونَ} [الحج: ٧٧] وَالتَّقَرُّبُ إِلَيْهِ عَزَّ وَجَلَّ بِمَا لَمْ يَمْنَعْ مِنَ التَّقَرُّبِ إِلَيْهِ بِهِ فِعْلُ خَيْرٍ.

L16350–16352 Abu Muhammad said: As for that which is referred back to in disputes, it is what Allah the Exalted has obligated referring back to. We found the texts supporting our view: the Udhiyah is an act of devotion to Allah the Exalted. Drawing near to Him through any means not prohibited by Quranic text or Sunnah-based text is virtuous. He the Exalted said: "And do good that you may prosper" (Surah Al-Ḥajj 22:77). And seeking nearness to Him, the Almighty and Majestic, through that which has not been prohibited as a means of seeking nearness to Him is an act of goodness.[7]

[7] **Qur'an references (L16350):** Qur'an 22:77 (Al-Hajj).

L16353 Yunus ibn Abdullah ibn Mughith narrated from Ahmad ibn Abdullah ibn Abd al-Rahim, from Ahmad ibn Khalid, from Muhammad ibn Abd al-Salam al-Khushani, from Muhammad ibn Bashshar (Bundār), from Safwan ibn Isa, from Ibn Ajlan from his father, from Abu Hurayrah who said: The Messenger of Allah (peace be upon him) said, "The example of one who proceeds early to Friday prayer is like that of one who sacrifices a camel, then the merit decreases to that of one who sacrifices a cow, then to that of one who sacrifices a chicken."

نَا يُونُسُ بْنُ عَبْدِ اللَّهِ بْنِ مُغِيثٍ نَا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ نَا أَحْمَدُ بْنُ خَالِدٍ نَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نَا مُحَمَّدُ بْنُ بَشَّارٍ بُنْدَارٌ نَا صَفْوَانُ بْنُ عِيسَى نَا ابْنُ عَجْلَانَ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَثَلُ الْمُهَجِّرِ إِلَى الْجُمُعَةِ كَمَثَلِ مَنْ يُهْدِي بَدَنَةً، ثُمَّ كَمَنْ يُهْدِي بَقَرَةً، ثُمَّ كَمَنْ يُهْدِي بَيْضَةً» .

L16354 It has been narrated to us through the chain of Mālik from Sumayy, the freed slave of Abū Bakr, from Abū Ṣāliḥ the oil seller, from Abū Hurayrah, that the Messenger of Allah—peace and blessings of Allah be upon him—said: "Whoever performs ghusl on Friday and proceeds, it is as though he has sacrificed a camel. Whoever proceeds during the second period, it is as though he has sacrificed a cow. Whoever proceeds during the third period, it is as though he has sacrificed a horned ram. Whoever proceeds during the fourth period, it is as though he has sacrificed a hen. Whoever proceeds during the fifth period, it is as though he has sacrificed an egg."

وَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ سُمَيٍّ مَوْلَى أَبِي بَكْرٍ عَنْ أَبِي صَالِحٍ السَّمَّانِ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ اغْتَسَلَ يَوْمَ الْجُمُعَةِ ثُمَّ رَاحَ فَكَأَنَّمَا قَرَّبَ بَدَنَةً، وَمَنْ رَاحَ فِي السَّاعَةِ الثَّانِيَةِ فَكَأَنَّمَا قَرَّبَ بَقَرَةً، وَمَنْ رَاحَ فِي السَّاعَةِ الثَّالِثَةِ فَكَأَنَّمَا قَرَّبَ كَبْشًا أَقْرَنَ، وَمَنْ رَاحَ فِي السَّاعَةِ الرَّابِعَةِ فَكَأَنَّمَا قَرَّبَ دَجَاجَةً، وَمَنْ رَاحَ فِي السَّاعَةِ الْخَامِسَةِ فَكَأَنَّمَا قَرَّبَ بَيْضَةً» .

L16355 In these two narrations is the ruling concerning the sacrificial offering of a hen, a sparrow, their ritual offering, and the offering of an egg. The *Udhiyah* (Eid al-Adha sacrifice) is undoubtedly a sacrificial act. Within them also lies the merit of prioritizing the physically larger [animal] in bodily substance and in benefit to the poor. There is absolutely no valid objection whatsoever to these two foundational texts.

فَفِي هَذَيْنِ الْخَبَرَيْنِ هَدْيُ دَجَاجَةٍ، وَعُصْفُورٍ، وَتَقْرِيبُهُمَا، وَتَقْرِيبُ بَيْضَةٍ؛ وَالْأُضْحِيَّةُ تَقْرِيبٌ بِلَا شَكٍّ، وَفِيهِمَا أَيْضًا فَضْلُ الْأَكْبَرِ فَالْأَكْبَرِ جِسْمًا فِيهِ وَمَنْفَعَةً لِلْمَسَاكِينِ، وَلَا مُعْتَرَضَ عَلَى هَذَيْنِ النَّصَّيْنِ أَصْلًا.

L16356–16358 Abu Muhammad said: Among the proofs that camels and cows are superior to sheep is the established report from the Messenger of Allah (peace be upon him), as has been narrated to us through the chain of al-Bukhari, and the report we cited in the following question. For this reason, in it lies his directive (peace be upon him) concerning sacrificial animals to be slaughtered through nahr [throat-slitting while standing].

قَالَ أَبُو مُحَمَّد: وَمِنْ الْبُرْهَانِ عَلَى أَنَّ الْإِبِلَ وَالْبَقَرَ أَفْضَلُ مِنْ الْغَنَمِ الْخَبَرُ الثَّابِتُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ، وَالْخَبَرُ الَّذِي أَوْرَدْنَا فِي الْمَسْأَلَةِ التَّالِيَةِ لِهَذِهِ فَفِيهَا أَمْرُهُ - عَلَيْهِ السَّلَامُ - فِي الْأَضَاحِيِّ بِالنَّحْرِ.

L16359 This scenario entails one of two possibilities: either the Prophet (peace be upon him) commanded slaughter by nahr (cutting the throat) for camels and cattle, or for sheep. If he commanded this for sheep, it invalidates Mālik's

وَلَا يَخْلُو هَذَا مِنْ أَنْ يَكُونَ - عَلَيْهِ السَّلَامُ - أَمَرَ بِالنَّحْرِ فِي الْإِبِلِ وَالْبَقَرِ، أَوْ فِي الْغَنَمِ، فَإِنْ كَانَ أَمَرَ بِذَلِكَ فِي الْغَنَمِ، فَهَذَا مُبْطِلٌ لِقَوْلِ مَالِكٍ: إنَّ النَّحْرَ فِي الْغَنَمِ لَا يَحِلُّ،

view that nahr is impermissible for sheep and does not constitute valid ritual slaughter. If he (peace be upon him) commanded it for camels, cattle, and sheep, this would lead to an absurd, invalid, and impossible conclusion—beyond any doubt—that the Prophet (peace be upon him) would urge his community and companions to sacrifice camels and cattle despite their immense burden, exorbitant prices, while abandoning the less expensive and lower-priced option which is superior. This constitutes squandering wealth, which Allah, the Mighty and Majestic, has prohibited. Sacrificing sheep—both rams and goats—is an act of kindness to people due to their low cost, the simplicity of the matter, and as a relief for them from the superior option that entails greater financial hardship for Allah, the Mighty and Majestic. This is beyond any doubt.

وَلَا يَكُونُ ذَكَاةً فِيهَا، وَإِنْ كَانَ أَمَرَ بِذَلِكَ - عَلَيْهِ السَّلَامُ - فِي الْإِبِلِ وَالْبَقَرِ وَالْغَنَمِ لَحَسُنَ الْمُحَالُ الْبَاطِلُ الْمُمْتَنِعُ بِيَقِينٍ لَا شَكَّ فِيهِ أَنْ يَكُونَ - عَلَيْهِ السَّلَامُ - يَحُضُّ أُمَّتَهُ وَأَصْحَابَهُ عَلَى التَّضْحِيَةِ بِالْإِبِلِ وَالْبَقَرِ مَعَ عَظِيمِ الْكُلْفَةِ فِيهَا وَغُلُوِّ أَثْمَانِهَا وَيَتْرُكُونَ الْأَرْخَصَ وَالْأَقَلَّ ثَمَنًا وَهُوَ أَفْضَلُ، وَهَذِهِ إضَاعَةُ الْمَالِ الَّتِي حَرَّمَهَا اللَّهُ تَعَالَى، وَإِنَّمَا التَّضْحِيَةُ بِالْغَنَمِ ضَأْنِهَا وَمَاعِزِهَا رِفْقٌ بِالنَّاسِ لِقِلَّةِ أَثْمَانِهَا وَتَفَاهَةِ أَمْرِهَا وَتَخْفِيفٌ لَهُمْ بِذَلِكَ عَنْ الْأَفْضَلِ الَّذِي هُوَ أَشَقُّ فِي النَّفَقَةِ لِلَّهِ عَزَّ وَجَلَّ، وَهَذَا مِمَّا لَا شَكَّ فِيهِ.

L16360 Those who held that sheep are superior argued with a narration we transmitted through the chain of Hishām ibn Saʿd from Zayd ibn Aslam from ʿAṭāʾ ibn Yasār from Abū Hurayrah: "Gabriel said to the Prophet (peace and blessings of Allah be upon him) on the Day of Sacrifice: 'O Muḥammad, a six-month-old sheep is superior to a prime specimen among goats, a six-month-old sheep is superior to a prime specimen among cattle, and a six-month-old sheep is superior to a prime specimen among camels. Had Allah known a sacrificial offering greater than it, He would have ransomed Ibrāhīm (peace be upon him) with that sacrifice.'"

وَاحْتَجَّ مَنْ رَأَى أَنَّ الضَّأْنَ أَفْضَلُ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ هِشَامِ بْنِ سَعْدٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ جِبْرِيلَ قَالَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ الْأَضْحَى: يَا مُحَمَّدُ إنَّ الْجَذَعَ مِنْ الضَّأْنِ خَيْرٌ مِنْ السَّيِّدِ مِنْ الْمَعْزِ، وَإِنَّ الْجَذَعَ مِنْ الضَّأْنِ خَيْرٌ مِنْ السَّيِّدِ مِنْ الْبَقَرِ، وَإِنَّ الْجَذَعَ مِنْ الضَّأْنِ خَيْرٌ مِنْ السَّيِّدِ مِنْ الْإِبِلِ، وَلَوْ عَلِمَ اللَّهُ ذَبْحًا هُوَ أَفْضَلُ مِنْهُ لَفَدَى بِهِ إبْرَاهِيمَ - عَلَيْهِ السَّلَامُ -» .

L16361 And with a report we have narrated via Abd al-Razzaq from Ma'mar, from Yahya ibn Abi Kathir, from Muhammad ibn Abd al-Rahman ibn Thawban, who said: "Al-Nu'man ibn Abi Fatimah passed by the Messenger of Allah (peace and blessings be upon him) while carrying a horned, one-eyed ram. The Prophet (peace be upon him) said: 'How similar this ram is to the ram slaughtered by Ibrahim, peace be upon him!'"

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ قَالَ: «مَرَّ النُّعْمَانُ بْنُ أَبِي فَطِيمَةَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِكَبْشٍ أَقْرَنَ أَعْيَنَ فَقَالَ - عَلَيْهِ السَّلَامُ -: مَا أَشْبَهَ هَذَا الْكَبْشَ بِالْكَبْشِ الَّذِي ذَبَحَ إبْرَاهِيمُ - عَلَيْهِ السَّلَامُ -» .

L16362 A similar narration was narrated through the chain of Ziyād ibn Maymūn from Anas ibn Mālik.

وَرُوِيَ نَحْوُهُ مِنْ طَرِيقِ زِيَادِ بْنِ مَيْمُونٍ عَنْ أَنَسٍ.

L16363 And with a narration that was narrated to us through the route of Waki', from Hisham ibn Sa'd, from Hatim ibn Abi Nasr, from 'Ubadah ibn Nusayy,

that the Prophet (peace be upon him) said: “The best sacrificial animal is the ram.”

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامِ بْنِ سَعْدٍ عَنْ حَاتِمِ بْنِ أَبِي نَصْرٍ عَنْ عُبَادَةَ بْنِ نُسَيٍّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «خَيْرُ الْأُضْحِيَّةِ الْكَبْشُ» .

L16364 Abū Muḥammad said: These are fabricated narrations:

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ أَخْبَارٌ مَكْذُوبَةٌ -:

L16365–16367 As for the report of Abū Hurayrah and ʿUbādah ibn Nusayyin, it is transmitted through Hishām ibn Saʿd - who is very weak. Aḥmad very severely weakened him, discarded him, spoke very ill of him, and did not... Yahya ibn Saʿid permits narrating from him through it; Ziyad ibn Maymun is noted for lying.

أَمَّا خَبَرُ أَبِي هُرَيْرَةَ، وَعُبَادَةَ بْنِ نُسَيٍّ فَعَنْ هِشَامِ بْنِ سَعْدٍ وَهُوَ ضَعِيفٌ جِدًّا، ضَعَّفَهُ جِدًّا وَاطَّرَحَهُ أَحْمَدُ، وَأَسَاءَ الْقَوْلَ فِيهِ جِدًّا وَلَمْ يُجِزْ الرِّوَايَةَ بِهِ عَنْهُ يَحْيَى بْنُ سَعِيدٍ - وَزِيَادُ بْنُ مَيْمُونٍ مَذْكُورٌ بِالْكَذِبِ.

L16368 The report of ʿAbd al-Razzāq from Muḥammad ibn ʿAbd al-Raḥmān ibn Thawbān—who is weak—and the narration is also *mursal* (a report with a broken chain). Furthermore, the narration attributed to Abū Hurayrah contains an obvious falsehood in his statement: “Indeed, Allah ransomed Ibrāhīm with him,” for He undoubtedly did not ransom Ibrāhīm; rather, He ransomed his son.

وَخَبَرُ عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ وَهُوَ ضَعِيفٌ وَمُرْسَلٌ مَعَ ذَلِكَ - وَأَيْضًا فَفِي الْخَبَرِ الْمَنْسُوبِ إلَى أَبِي هُرَيْرَةَ كَذِبٌ ظَاهِرٌ وَهُوَ قَوْلُهُ: إنَّهُ فَدَى اللَّهُ بِهِ إبْرَاهِيمَ وَلَمْ يَفْدِ إبْرَاهِيمَ بِلَا شَكٍّ وَإِنَّمَا فَدَى ابْنَهُ.

L16369 As for the argument that he redeemed the sacrifice with a ram, it is invalid. That has never been substantiated. It has been said it was a mountain goat. Even if we assume it were valid, it does not indicate the superiority of all rams over other animals, nor was Abraham’s command—peace be upon him—an udhiyah. Thus, udhiyah sacrifices find no basis in it. Allah the Exalted said: “Indeed, Allah commands you to slaughter a cow” [Al-Baqarah: 67] until His statement: “So We said, ‘Strike him with part of it.’ This is how Allah revives the dead and shows you His signs” [Al-Baqarah: 73]. By this clear and manifest verse, cows ought to be superior to sheep—not by the false conjecture regarding the ram of the sacrifice.[8]

وَأَمَّا الِاحْتِجَاجُ بِأَنَّهُ فَدَى الذَّبِيحَ بِكَبْشٍ فَبَاطِلٌ، مَا صَحَّ ذَلِكَ قَطُّ، وَقَدْ قِيلَ: إنَّهُ كَانَ أُرْوِيَّةً، وَهَبْكَ لَوْ صَحَّ فَلَيْسَ فِيهِ فَضْلُ سَائِرِ الْكِبَاشِ عَلَى سَائِرِ الْحَيَوَانِ، وَلَا كَانَ أَمْرُ إبْرَاهِيمَ - عَلَيْهِ السَّلَامُ - أُضْحِيَّةً فَلَا مَدْخَلَ لِلْأَضَاحِيِّ فِيهِ، وَقَدْ قَالَ تَعَالَى: {إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تَذْبَحُوا بَقَرَةً} [البقرة: ٦٧] إلَى قَوْله تَعَالَى: {فَقُلْنَا اضْرِبُوهُ بِبَعْضِهَا كَذَلِكَ يُحْيِي اللَّهُ الْمَوْتَى وَيُرِيكُمْ آيَاتِهِ} [البقرة: ٧٣] فَيَنْبَغِي عَلَى هَذَا أَنْ يَكُونَ الْبَقَرُ أَفْضَلَ مِنْ الضَّأْنِ بِهَذِهِ الْآيَةِ الْبَيِّنَةِ الْوَاضِحَةِ لَا بِالظَّنِّ الْكَاذِبِ فِي كَبْشِ الذَّبِيحِ.

L16370 Allah the Exalted has said: *“The she-camel of Allah and her watering”* [Ash-Shams 91:13] regarding the she-camel of Salih. Thus, camels should be considered superior to sheep based on this clear and manifest verse - not

وَقَدْ قَالَ اللَّهُ تَعَالَى: {نَاقَةَ اللَّهِ وَسُقْيَاهَا} [الشمس: ١٣] فِي نَاقَةِ صَالِحٍ فَيَنْبَغِي أَنْ تَكُونَ الْإِبِلُ أَفْضَلَ مِنْ الضَّأْنِ بِهَذِهِ الْآيَةِ الْبَيِّنَةِ الْوَاضِحَةِ لَا بِالظَّنِّ الْكَاذِبِ فِي كَبْشِ إبْرَاهِيمَ - عَلَيْهِ السَّلَامُ -.

[8] **Qur’an references (L16369):** Qur’an 2:67 (Al-Baqarah); Qur’an 2:73 (Al-Baqarah).

through the false conjecture concerning the ram of Abraham (peace be upon him).[9]

L16371 Some of them obscured by citing the narration concerning prayer in sheep resting places and the prohibition of prayer in camel resting areas, saying: "Because they are jinn created from jinn?" We responded: Let this be evidence for you of the superiority of sheep over them regarding sacrificial offerings for Hajj—yet you yourselves do not accept this.

L16372 If they mention that the Messenger of Allah—peace and blessings be upon him—sacrificed two rams?, we say: Yes, and it is authentically established that ʿĀ'ishah said: "The Messenger of Allah—peace and blessings be upon him—would refrain from an act he loves to perform, fearing that people might act upon it, and it would then be made obligatory upon them."

L16373–16375 Moreover, he offered sheep adorned with garlands as we mentioned in the Book of Hajj, yet this was not considered by you as evidence that sheep are superior to cows for Hajj sacrifices. How then did you derive this conclusion regarding the udhiyah? Furthermore, the Prophet (peace be upon him) sacrificed cows—it has been narrated to us through Al-Bukhari's chain from Musaddad, who narrated from Sufyan Al-Thawri, from Abdur-Rahman ibn Al-Qasim ibn Muhammad, from his father, from Aisha, the Mother of the Believers, who said in a hadith, "When we were in Mina, I was brought some cow meat..." There was much, so I asked: "What is this?" They replied: "The Messenger of Allah (peace and blessings of Allah be upon him) sacrificed cows on behalf of his wives." This occurred during the Farewell Pilgrimage—his final act (peace be upon him)—and he never sacrificed again afterward.

L16376 It was conveyed to us through the chain of transmission reported by Muslim: Muḥammad ibn al-Muthannā narrated to us, Muḥammad ibn Jaʿfar (known as Ghundar) narrated to us, Shuʿbah narrated to us from Zubayd al-Yāmī from al-Shaʿbī from al-Barāʾ ibn ʿĀzib, who said: The Messenger of Allah

[9] **Qur'an references (L16370):** Qur'an 91:13 (Ash-Shams).

وَمَوَّهَ بَعْضُهُمْ بِذِكْرِ الْأَثَرِ الَّذِي فِيهِ الصَّلَاةُ فِي مَبَارِكِ الْغَنَمِ وَالنَّهْيُ عَنْ الصَّلَاةِ فِي مَعَاطِنِ الْإِبِلِ، لِأَنَّهُ جِنٌّ خُلِقَتْ مِنْ جِنٍّ؟ فَقُلْنَا: فَلْيَكُنْ هَذَا عِنْدَكُمْ دَلِيلًا فِي فَضْلِ الْغَنَمِ عَلَيْهَا فِي الْهَدْيِ، وَأَنْتُمْ لَا تَقُولُونَ بِهَذَا.

فَإِنْ ذَكَرُوا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ضَحَّى بِكَبْشَيْنِ؟ قُلْنَا: نَعَمْ، وَقَدْ صَحَّ أَنَّ عَائِشَةَ قَالَتْ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَتْرُكُ الْعَمَلَ وَهُوَ يُحِبُّ أَنْ يَعْمَلَ بِهِ مَخَافَةَ أَنْ يَعْمَلَ بِهِ النَّاسُ فَيُكْتَبَ عَلَيْهِمْ» .

وَأَيْضًا: فَقَدْ أَهْدَى غَنَمًا مُقَلَّدَةً كَمَا ذَكَرْنَا فِي كِتَابِ الْحَجِّ فَلَمْ يَكُنْ ذَلِكَ عِنْدَكُمْ دَلِيلًا عَلَى أَنَّ الْغَنَمَ أَفْضَلُ فِي الْهَدْيِ مِنْ الْبَقَرِ، فَمِنْ أَيْنَ وَقَعَ لَكُمْ هَذَا الِاسْتِدْلَالُ فِي الْأَضَاحِيِّ؟ - وَأَيْضًا: «فَقَدْ ضَحَّى - عَلَيْهِ السَّلَامُ - بِالْبَقَرِ» : رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ مُسَدَّدٍ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ فِي حَدِيثٍ «لَمَّا كُنَّا بِمِنًى أُتِيتُ بِلَحْمِ بَقَرٍ كَثِيرٍ فَقُلْتُ: مَا هَذَا؟ قَالُوا: ضَحَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ نِسَائِهِ بِالْبَقَرِ» وَهَذَا فِي حَجَّةِ الْوَدَاعِ وَهُوَ آخِرُ عَمَلِهِ - عَلَيْهِ السَّلَامُ - وَلَمْ يُضَحِّ بَعْدَهَا.

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا مُحَمَّدُ بْنُ الْمُثَنَّى نَا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نَا شُعْبَةُ عَنْ زُبَيْدٍ الْيَامِيِّ عَنْ الشَّعْبِيِّ عَنْ الْبَرَاءِ بْنِ عَازِبٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَوَّلُ مَا نَبْدَأُ بِهِ فِي يَوْمِنَا هَذَا أَنْ نُصَلِّيَ ثُمَّ نَرْجِعَ فَنَنْحَرَ» .

(peace be upon him) stated, “The first act we undertake on this day is to pray, then return to our homes to perform the sacrifice.”[10]

L16377 Via the chain of Al-Bukhārī: Yaḥyā ibn Bukayr narrated to us, from Al-Layth ibn Saʿd, from Kathīr ibn Farqad, from Nāfiʿ, that Ibn ʿUmar reported to him, saying: “The Messenger of Allah (peace and blessings of Allah be upon him) used to slaughter livestock and sacrifice camels at the Eid prayer ground.”[11]

L16378 As for slaughtering by nahr, according to Mālik—who differs with us on this issue—it is entirely impermissible for sheep. His position restricts it to camels and permits it for cows only as disliked. Yet it is authentically established that the Prophet (peace be upon him) sacrificed camels and cows. This necessitates either abandoning Mālik’s opinion (thereby permitting nahr for sheep) or rejecting his view entirely—one of these two conclusions is unavoidable. It is invalid to cite an action the Prophet (peace be upon him) performed—whether that action was permissible or otherwise—while disregarding the explicit textual hierarchy in his statement (peace be upon him): camels taking precedence, followed by cows, then sheep.

L16379 It has been narrated to us from Muslim ibn Yasar that he would sacrifice male camels from the camels.

L16380 Saʿīd ibn al-Musayyib would sometimes offer a camel, sometimes a cow, sometimes a sheep, and sometimes he would not perform the *udḥiyah* at all.

L16381 As for Mālik’s statement regarding the superiority of goats over cows and camels, and the superiority of cows over camels: we know of no basis connected to it, nor anyone who stated it before him—and guidance is from Allah, the Most High.

L16382–16383 Issue: The time for slaughtering (dhabḥ) the Udhiyah or performing its nahr (ritual slaughter).

L16384 Issue: The time for slaughtering the sacrificial animal (udḥiyah) by dhabḥ

[10] **Hadith references (L16376):** Sahih al-Bukhari 5545; Mishkat al-Masabih 1435.

[11] **Hadith references (L16377):** Mishkat al-Masabih 1438.

وَمِنْ طَرِيقِ الْبُخَارِيِّ عَنْ يَحْيَى بْنِ بُكَيْرٍ نَا اللَّيْثُ بْنُ سَعْدٍ عَنْ كَثِيرِ بْنِ فَرْقَدٍ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ أَخْبَرَهُ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَذْبَحُ وَيَنْحَرُ بِالْمُصَلَّى» .

وَالنَّحْرُ عِنْدَ مَالِكٍ - وَهُوَ الَّذِي يُخَالِفُنَا فِي هَذِهِ الْمَسْأَلَةِ - لَا يَجُوزُ أَلْبَتَّةَ فِي الْغَنَمِ وَإِنَّمَا هُوَ عِنْدَهُ فِي الْإِبِلِ وَعَلَى تَكَرُّهٍ فِي الْبَقَرِ - وَقَدْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يُضَحِّي بِالْإِبِلِ وَالْبَقَرِ، أَوْ يَتْرُكُ قَوْلَهُ فَيُجِيزُ النَّحْرَ فِي الْغَنَمِ وَلَا بُدَّ مِنْ أَحَدِهِمَا، وَلَا يَجُوزُ أَنْ يُحْتَجَّ بِفِعْلٍ فَعَلَهُ - عَلَيْهِ السَّلَامُ - مُبَاحُ ذَلِكَ الْفِعْلِ أَوْ غَيْرُهُ بِإِقْرَارِ الْمُحْتَجِّ عَلَى نَصِّ قَوْلِهِ - عَلَيْهِ السَّلَامُ - فِي تَفْضِيلِ الْإِبِلِ، ثُمَّ الْبَقَرِ، ثُمَّ الضَّأْنِ.

رُوِّينَا عَنْ مُسْلِمِ بْنِ يَسَارٍ أَنَّهُ كَانَ يُضَحِّي بِجُزُورٍ مِنْ الْإِبِلِ.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ كَانَ يُضَحِّي مَرَّةً بِنَاقَةٍ، وَمَرَّةً بِبَقَرَةٍ، وَمَرَّةً بِشَاةٍ، وَمَرَّةً لَا يُضَحِّي.

فَأَمَّا قَوْلُ مَالِكٍ فِي فَضْلِ الْمَاعِزِ عَلَى الْبَقَرِ، وَالْإِبِلِ، وَفَضْلِ الْبَقَرِ عَلَى الْإِبِلِ: فَلَا نَعْلَمُ لَهُ مُتَعَلَّقًا أَصْلًا وَلَا أَحَدًا قَالَ بِهِ قَبْلَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ وَقْتُ ذَبْحِ الْأُضْحِيَّةِ أَوْ نَحْرِهَا]

مَسْأَلَةٌ: وَوَقْتُ ذَبْحِ الْأُضْحِيَّةِ أَوْ نَحْرِهَا هُوَ أَنْ يُمْهِلَ حَتَّى تَطْلُعَ الشَّمْسُ مِنْ يَوْمِ النَّحْرِ، ثُمَّ تَبْيَضَّ وَتَرْتَفِعَ، وَيُمْهِلَ حَتَّى يَمْضِيَ مِقْدَارُ مَا يُصَلِّي رَكْعَتَيْنِ يَقْرَأُ فِي الْأُولَى بَعْدَ ثَمَانِ

or nahr begins after waiting until the sun has risen on the Day of Sacrifice, brightened, and ascended. Then one waits for a duration equivalent to performing two rakʿahs: in the first rakʿah, after eight takbīrs, one recites the Opening Chapter (Sūrat al-Fātiḥah) and Sūrat Qāf, and in the second rakʿah, after six takbīrs, one recites the Opening Chapter and Sūrat al-Qamar, with slow, deliberate recitation (tartīl). One must properly complete the bowing and prostration in both rakʿahs, sit and recite the Tashahhud, and conclude with the salutation.

تَكْبِيرَاتٍ " أُمَّ الْقُرْآنِ " وَسُورَةَ " ق " وَفِي الثَّانِيَةِ بَعْدَ سِتِّ تَكْبِيرَاتٍ " أُمَّ الْقُرْآنِ " وَسُورَةَ: " اقْتَرَبَتْ السَّاعَةُ وَانْشَقَّ الْقَمَرُ " بِتَرْتِيلٍ وَيُتِمُّ فِيهِمَا الرُّكُوعَ وَالسُّجُودَ، وَيَجْلِسُ، وَيَتَشَهَّدُ، وَيُسَلِّمُ.

L16385 Then he slaughters his uḍḥiyyah (sacrificial animal) by dhabh or nahr—Bedouins, urban dwellers, villagers, desert inhabitants, and city residents are all equal in this matter. Whoever slaughters or sacrifices before the aforementioned time must necessarily perform the uḍḥiyyah after the designated time begins. There is no basis for considering the Imam's prayer timing or his sacrificial act.

ثُمَّ يَذْبَحُ أُضْحِيَّتَهُ أَوْ يَنْحَرُهَا - الْبَادِي، وَالْحَاضِرُ، وَأَهْلُ الْقُرَى، وَالصَّحَارِي، وَالْمُدُنِ سَوَاءٌ فِي كُلِّ ذَلِكَ، فَمَنْ ذَبَحَ، أَوْ نَحَرَ قَبْلَ مَا ذَكَرْنَا فَفَرْضٌ عَلَيْهِ أَنْ يُضَحِّيَ وَلَا بُدَّ بَعْدَ دُخُولِ الْوَقْتِ الْمَذْكُورِ، وَلَا مَعْنَى لِمُرَاعَاةِ صَلَاةِ الْإِمَامِ، وَلَا لِمُرَاعَاةِ تَضْحِيَتِهِ.

L16386 The proof of this is what we mentioned at the beginning of the preceding chapter from his saying (peace be upon him): "The first thing we begin with on this day is that we pray, then we return and slaughter."

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَا فِي أَوَّلِ الْبَابِ الَّذِي قَبْلَ هَذَا مِنْ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «أَوَّلُ مَا نَبْدَأُ بِهِ فِي يَوْمِنَا هَذَا أَنْ نُصَلِّيَ، ثُمَّ نَرْجِعَ فَنَنْحَرَ» .

L16387 From the narration of Shuʿbah from Salamah ibn Kuhayl, from Abu Juḥayfah, from Al-Bara' ibn 'Azib, who said: "Abu Burdah slaughtered before the prayer, so the Prophet, peace and blessings of Allah be upon him, said to him: 'Replace it.'"

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ سَلَمَةَ هُوَ ابْنُ كُهَيْلٍ - عَنْ أَبِي جُحَيْفَةَ عَنْ الْبَرَاءِ بْنِ عَازِبٍ قَالَ: «ذَبَحَ أَبُو بُرْدَةَ قَبْلَ الصَّلَاةِ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَبْدِلْهَا» .

L16388 From the narration of Hammad ibn Zayd, via Ayyub, on the authority of Muhammad ibn Sirin, who reported from Anas ibn Malik: "The Messenger of Allah—peace and blessings be upon him—performed the Eid prayer, then delivered a sermon and ordered whoever had slaughtered their sacrificial animal before the prayer to repeat the ritual sacrifice."[12]

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ نَا أَيُّوبُ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى، ثُمَّ خَطَبَ فَأَمَرَ مَنْ كَانَ ذَبَحَ قَبْلَ الصَّلَاةِ أَنْ يُعِيدَ ذَبْحًا» .

L16389 From the narration of Waki', who informed us: Sufyan al-Thawri narrated from al-Aswad ibn Qays, who said: I heard Jundub saying: "On the Day of Sacrifice, the Messenger of Allah (peace be upon him) passed by people who had sacrificed or slaughtered. He said: 'Whoever sacrificed **or** slaugh-

وَمِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ الْأَسْوَدِ بْنِ قَيْسٍ قَالَ: سَمِعْت جُنْدُبًا يَقُولُ: «مَرَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ النَّحْرِ عَلَى قَوْمٍ قَدْ نَحَرُوا وَذَبَحُوا فَقَالَ: مَنْ نَحَرَ وَذَبَحَ قَبْلَ صَلَاتِنَا فَلْيُعِدْ، وَمَنْ لَمْ يَذْبَحْ أَوْ يَنْحَرْ فَلْيَذْبَحْ وَلْيَنْحَرْ بِاسْمِ اللَّهِ» .

[12] **Hadith references (L16388):** Sahih Muslim 1962b.

tered before our prayer, let him repeat it. Whoever has not slaughtered **or** sacrificed, let him slaughter **or** sacrifice in the name of Allah.'"

وَمِنْ طَرِيقِ مُسْلِمٍ نَا مُحَمَّدُ بْنُ حَاتِمٍ نَا مُحَمَّدُ بْنُ بَكْرٍ نَا ابْنُ جُرَيْجٍ أَنَا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ «أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ كَانَ نَحَرَ قَبْلَهُ أَنْ يُعِيدَ بِنَحْرٍ آخَرَ وَلَا يَنْحَرُوا حَتَّى يَنْحَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

L16390 Through the transmission of Muslim: Muhammad ibn Hatim narrated to us, Muhammad ibn Bakr narrated to us, Ibn Jurayj narrated to us, from Abu al-Zubayr, who heard Jabir ibn Abdullah say: "The Messenger of Allah (peace and blessings be upon him) commanded whoever performed ritual slaughter before him to repeat it with another sacrifice, and he forbade them from ritually slaughtering until the Prophet (peace and blessings be upon him) had slaughtered."

فَالْوَقْتُ الَّذِي حَدَّدْنَا هُوَ وَقْتُ صَلَاةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، إلَّا أَنَّ الشَّافِعِيَّ لَمْ يُجِزْ التَّضْحِيَةَ قَبْلَ تَمَامِ الْخُطْبَةِ - وَلَا مَعْنَى لِهَذَا لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَحُدَّ وَقْتَ الْأُضْحِيَّةِ بِذَلِكَ.

L16391–16392 The time we have specified corresponds to the time of the Prophet's Eid prayer—may Allah bless him and grant him peace—and this is the opinion of Al-Shāfiʿī and Abū Sulaymān, except that Al-Shāfiʿī did not permit performing Udhiyah before the completion of the khutbah. However, this has no basis, for the Prophet—may Allah bless him and grant him peace—did not designate the time of Udhiyah based on that.

وَقَالَ سُفْيَانُ: إنْ ضَحَّى قَبْلَ الْخُطْبَةِ أَجْزَأَهُ.

L16393 And Sufyan said: If he performs the Udhiyah before the sermon, it sufficed for him.

وَقَالَ أَبُو حَنِيفَةَ: أَمَّا أَهْلُ الْمُدُنِ وَالْأَمْصَارِ فَمَنْ ضَحَّى مِنْهُمْ قَبْلَ تَمَامِ صَلَاةِ الْإِمَامِ فَعَلَيْهِ أَنْ يُعِيدَ وَلَمْ يُضَحِّ، وَأَمَّا أَهْلُ الْقُرَى وَالْبَوَادِي فَإِنْ ضَحَّوْا بَعْدَ طُلُوعِ الْفَجْرِ مِنْ يَوْمِ الْأَضْحَى أَجْزَأَهُمْ.

L16394 Abu Hanifah said: As for the people of cities and towns, if any of them sacrifices before the completion of the Imam's prayer, he must repeat it and his sacrifice is invalid. As for the people of villages and rural areas, if they sacrifice after the dawn of the Day of Sacrifice begins, it suffices for them.

وَقَالَ مَالِكٌ: مَنْ ضَحَّى قَبْلَ أَنْ يُضَحِّيَ الْإِمَامُ فَلَمْ يُضَحِّ؛ ثُمَّ اخْتَلَفَ أَصْحَابُهُ فَطَائِفَةٌ قَالَتْ: الْإِمَامُ هُوَ أَمِيرُ الْمُؤْمِنِينَ، وَطَائِفَةٌ قَالَتْ: بَلْ هُوَ أَمِيرُ الْبَلْدَةِ، وَطَائِفَةٌ قَالَتْ: بَلْ هُوَ الَّذِي يُصَلِّي بِالنَّاسِ صَلَاةَ الْعِيدِ.

L16395 Malik said: "Whoever sacrifices before the Imam does so, his sacrifice is not valid." Then his companions disagreed. Some said: "The Imam is the Commander of the Faithful"; others said: "Rather, he is the governor of the city"; while others said: "Rather, he is the one who leads the people in Eid prayer."

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَخِلَافٌ مُجَرَّدٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا أَوْرَدْنَا بِلَا بُرْهَانٍ.

L16396 Abu Muhammad said: As for the statement of Abu Hanifah, it constitutes a sheer difference of opinion with the Messenger of Allah (peace and blessings be upon him) as we have cited it without evidence.

L16397 As for Mālik's opinion, it has no basis in proof whatsoever and contradicts

the ḥadīth, since the Prophet (may Allah's blessings and peace be upon him) never commanded consideration of another's udḥiyah.

وَأَمَّا قَوْلُ مَالِكٍ فَلَا حُجَّةَ لَهُ أَصْلًا، وَخِلَافٌ لِلْخَبَرِ أَيْضًا إذْ لَمْ يَأْمُرْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ بِمُرَاعَاةِ تَضْحِيَةِ غَيْرِهِ.

L16398 We say to both groups: Have you considered—if the Imam neglects the Eid al-Adha prayer and fails to sacrifice—would the Decree of Allah the Exalted concerning sacrifices for people thereby be nullified? Far be it from Allah! Rather, the truth is: If the Imam prays at the time during which Allah's Messenger—peace and blessings be upon him—prayed, he has done well and is one of the Muslims during the time he performs his sacrifice. If he neglects this, he has erred, but this does not impair his integrity, for he has not abandoned an obligation, nor does it invalidate anything regarding the rulings of the people concerning their sacrifices.

وَنَقُولُ لِلطَّائِفَتَيْنِ مَعًا: أَرَأَيْتُمْ إنْ ضَيَّعَ الْإِمَامُ صَلَاةَ الْأَضْحَى وَلَمْ يُضَحِّ أَتَبْطُلُ سُنَّةُ اللَّهِ تَعَالَى فِي الْأَضَاحِيِّ عَلَى النَّاسِ؟ حَاشَا لِلَّهِ مِنْ هَذَا، بَلْ هُوَ الْحَقُّ أَنَّ الْإِمَامَ إنْ صَلَّى فِي الْوَقْتِ الَّذِي كَانَ يُصَلِّي فِيهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ أَحْسَنَ وَهُوَ أَحَدُ الْمُسْلِمِينَ فِي وَقْتِ تَضْحِيَتِهِ، وَإِنْ أَغْفَلَ ذَلِكَ فَقَدْ أَخْطَأَ وَلَيْسَ ذَلِكَ بِكَادِحٍ فِي عَدَالَتِهِ، لِأَنَّهُ لَمْ يُعَطِّلْ فَرْضًا، وَلَيْسَ ذَلِكَ بِمُحِيلٍ شَيْئًا مِنْ حُكْمِ النَّاسِ فِي أَضَاحِيهِمْ.

L16399 We also say to the Malikis: What do you think—if the Imam sacrifices before the time of the Eid al-Adha prayer, would this constitute a valid precedent for the people's sacrifices? If they say yes, they have committed a grave error. If they say no, they speak truthfully and thereby abandon their position regarding adherence to the Imam's sacrifice. And with Allah, the Exalted, is success.

وَنَقُولُ لِلْمَالِكِيِّينَ أَيْضًا: أَرَأَيْتُمْ إنْ ضَحَّى الْإِمَامُ قَبْلَ وَقْتِ صَلَاةِ الْأَضْحَى أَيَكُونُ ذَلِكَ عَلَمًا لِأَضَاحِيِّ النَّاسِ؟ فَإِنْ قَالُوا: نَعَمْ، أَتَوْا بِعَظِيمَةٍ وَإِنْ قَالُوا: لَا، صَدَقُوا، وَتَرَكُوا قَوْلَهُمْ فِي مُرَاعَاةِ تَضْحِيَةِ الْإِمَامِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16400–16402 It has been narrated to us from ʿAṭā a statement akin to Abū Ḥanīfah's regarding the distinction between rural dwellers and urban dwellers. As for Ibrahim, we do not know Mālik's opinion regarding the requirement for the Imam to ensure his sacrifice applies on behalf of someone prior [to him]—and with Allah, the Exalted, lies all divine guidance.

وَقَدْ رُوِّينَا مِثْلَ قَوْلِ أَبِي حَنِيفَةَ فِي الْفَرْقِ بَيْنَ أَهْلِ الْقُرَى وَأَهْلِ الْمُدُنِ عَنْ عَطَاءٍ، وَإِبْرَاهِيمَ، وَمَا نَعْرِفُ قَوْلَ مَالِكٍ فِي مُرَاعَاةِ تَضْحِيَةِ الْإِمَامِ عَنْ أَحَدٍ قَبْلَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16403 A legal issue: The sacrificial animal for the pilgrim and the traveler.

[مَسْأَلَةٌ الْأُضْحِيَّةُ لِلْحَاجِّ وَلِلْمُسَافِرِ]

L16404 Issue 979: The Uḍḥiyah is recommended for pilgrims in Mecca and travelers just as it is for residents - there is no distinction. Similarly for a slave and a woman, due to Allah the Exalted's statement: {And do good} [22:77], for the Uḍḥiyah constitutes an act of goodness.[13]

٩٧٩ - مَسْأَلَةٌ: وَالْأُضْحِيَّةُ مُسْتَحَبَّةٌ لِلْحَاجِّ بِمَكَّةَ وَلِلْمُسَافِرِ كَمَا هِيَ لِلْمُقِيمِ وَلَا فَرْقَ، وَكَذَلِكَ الْعَبْدُ وَالْمَرْأَةُ لِقَوْلِ اللَّهِ تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] وَالْأُضْحِيَّةُ فِعْلُ خَيْرٍ.

[13] **Qur'an references (L16404):** Qur'an 22:77 (Al-Hajj).

وَكُلُّ مَنْ ذَكَرْنَا مُحْتَاجٌ إِلَى فِعْلِ الْخَيْرِ مَنْدُوبٌ إِلَيْهِ، وَلَمَّا ذَكَرْنَا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي التَّضْحِيَةِ وَالتَّقْرِيبِ وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - بَادِيًا مِنْ حَاضِرٍ، وَلَا مُسَافِرًا مِنْ مُقِيمٍ، وَلَا ذَكَرًا مِنْ أُنْثَى، وَلَا حُرًّا مِنْ عَبْدٍ، وَلَا حَاجًّا مِنْ غَيْرِهِ، فَتَخْصِيصُ شَيْءٍ مِنْ ذَلِكَ بَاطِلٌ لَا يَجُوزُ، وَقَدْ ذَكَرْنَا قَبْلُ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ضَحَّى بِالْبَقَرِ عَنْ نِسَائِهِ بِمَكَّةَ وَهُنَّ حَوَاجُّ مَعَهُ» .

L16405 Everyone we have mentioned is required to perform good deeds, which are recommended. Since we have cited the saying of the Messenger of Allah (peace and blessings be upon him) regarding sacrificial offerings and drawing near to Allah, he (peace and blessings be upon him) did not distinguish between a Bedouin and a settled person, a traveler and a resident, a male and a female, a free person and a slave, or a pilgrim and a non-pilgrim. Therefore, specifying any of these distinctions is invalid and impermissible. We previously mentioned that "the Prophet (peace and blessings be upon him) sacrificed cattle on behalf of his wives in Mecca while they were female Hajj pilgrims with him."

وَرُوِّينَا مِنْ طَرِيقِ النَّخَعِيِّ أَنَّ عُمَرَ كَانَ يَحُجُّ فَلَا يُضَحِّي - وَهَذَا مُرْسَلٌ.

L16406 And it has been reported to us through the narration chain of Al-Nakhaʿī that ʿUmar would perform the pilgrimage but not offer the Udḥiyah sacrifice (and this is a *mursal* report).

وَمِنْ طَرِيقِ الْحَارِثِ عَنْ عَلِيٍّ لَيْسَ عَلَى الْمُسَافِرِ أُضْحِيَّةٌ -. وَالْحَارِثُ كَذَّابٌ.

L16407 And through the narration of Al-Harith from Ali: "There is no Udḥiyah (sacrificial offering) obligatory on the traveler" - and Al-Harith is a fabricator.

وَعَنْ أَصْحَابِ ابْنِ مَسْعُودٍ أَنَّهُمْ كَانُوا لَا يُضَحُّونَ فِي الْحَجِّ - وَلَيْسَ فِي شَيْءٍ مِنْ هَذَا كُلِّهِ مَنْعٌ لِلْحَاجِّ وَلَا لِلْمُسَافِرِ مِنْ التَّضْحِيَةِ وَإِنَّمَا فِيهِ تَرْكُهَا فَقَطْ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L16408 And from the companions of Ibn Masʿud: they would not offer sacrifices during Hajj. None of these rulings, in any way, prohibits pilgrims or travelers from sacrificing; it is merely abstaining from it. No valid argument can be derived from anyone other than the Messenger of Allah—peace and blessings be upon him.

وَرُوِّينَا مِنْ طَرِيقِ أَبِي الْجَهْمِ نَا أَحْمَدُ بْنُ فَرَجٍ نَا الْهَرَوِيُّ نَا ابْنُ فُضَيْلٍ عَنْ عَطَاءٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ سَافَرَ مَعِي تَمِيمُ بْنُ سَلَمَةَ فَلَمَّا ذَبَحْنَا أُضْحِيَّتَهُ أَخَذَ مِنْهَا بَضْعَةً فَقَالَ: آكُلُهَا؟

L16409 It was narrated to us through the chain of Abū al-Jahm: Aḥmad ibn Faraj reported to us, al-Harawī reported to us, Ibn Fuḍayl reported to us from ʿAṭāʾ from Ibrāhīm al-Nakhaʿī: Tamīm ibn Salamah traveled with me, and when we sacrificed his sacrificial animal (Uḍḥiyah), he took a portion of it and said, "May I eat this?"

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا أَبُو عَوَانَةَ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ قَالَ: كَانَ عُمَرُ يَحُجُّ وَلَا يُضَحِّي وَكَانَ أَصْحَابُنَا يَحُجُّونَ مَعَهُمْ الْوَرِقُ وَالذَّهَبُ فَلَا يُضَحُّونَ مَا يَمْنَعُهُمْ مِنْ ذَلِكَ إلَّا لِيَتَفَرَّغُوا لِنُسُكِهِمْ.

Through the chain of Saʿīd ibn Manṣūr: Abū ʿAwānah reported to us from Manṣūr from Ibrāhīm, who said, "'Umar would perform Ḥajj without offering a sacrifice. Our companions would perform Ḥajj while carrying silver coins and gold, yet they abstained from sacrificing. The only thing that kept them from doing so was their desire to fully dedicate themselves to their pilgrimage rites (nusuk)."

L16410 From the path of Saʿīd ibn Manṣūr: Mahdī ibn Maymūn narrated to us from

Wāṣil al-Aḥdab from Ibrāhīm, who said: I performed Ḥajj and my provisions were depleted. My companions said, “Shall we lend you so you may offer a sacrifice?” I replied, “No.” This demonstrates that they did not prevent him from it, and it is impermissible to forbid a good deed except through explicit textual evidence from the Messenger of Allah (may Allah bless him and grant him peace) clarifying that it is not a virtuous act.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا مَهْدِيُّ بْنُ مَيْمُونٍ عَنْ وَاصِلٍ الْأَحْدَبِ عَنْ إبْرَاهِيمَ قَالَ: حَجَجْت فَهَلَكَتْ نَفَقَتِي فَقَالَ أَصْحَابِي: أَلَا نُقْرِضُك فَتُضَحِّيَ؟ فَقُلْت: لَا - فَهَذَا بَيَانُ أَنَّهُمْ لَمْ يَمْنَعُوا مِنْهَا وَالنَّهْيُ عَنْ فِعْلِ الْخَيْرِ لَا يَجُوزُ إلَّا بِنَصٍّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُبَيِّنُ أَنَّهُ لَيْسَ خَيْرًا.

Issue: If someone intends to sacrifice an animal...

[مَسْأَلَةٌ نَوَى أَنْ يُضَحِّيَ بِحَيَوَانٍ]

L16411–16412

L16413 Issue: One who intends to sacrifice an animal from the categories we have mentioned is not necessarily obligated to do so. Rather, he may refrain unless he vows to offer it, in which case fulfilling the vow becomes incumbent upon him.

مَسْأَلَةٌ: وَلَا يَلْزَمُ مَنْ نَوَى أَنْ يُضَحِّيَ بِحَيَوَانٍ مِمَّا ذَكَرْنَا أَنْ يُضَحِّيَ بِهِ وَلَا بُدَّ، بَلْ لَهُ أَنْ لَا يُضَحِّيَ بِهِ إنْ شَاءَ إلَّا أَنْ يَنْذُرَ ذَلِكَ فِيهِ فَيَلْزَمُهُ الْوَفَاءُ بِهِ.

L16414 The proof of this is that the Eid sacrifice, as we have previously mentioned, is not obligatory. Since it is not obligatory, one is not required to perform it unless textual evidence obligates it. There is no textual evidence except regarding one who sacrificed before the designated time of sacrifice—requiring repetition—and regarding one who has vowed to fulfill the vow.

بُرْهَانُ ذَلِكَ -: أَنَّ الْأُضْحِيَّةَ كَمَا قَدَّمْنَا لَيْسَتْ فَرْضًا فَإِذْ لَيْسَتْ فَرْضًا فَلَا يَلْزَمُهُ التَّضْحِيَةُ إلَّا أَنْ يُوجِبَهَا نَصٌّ وَلَا نَصَّ إلَّا فِيمَنْ ضَحَّى قَبْلَ وَقْتِ التَّضْحِيَةِ فِي أَنْ يُعِيدَ، وَفِيمَنْ نَذَرَ أَنْ يَفِيَ بِالنَّذْرِ.

L16415 It has been reported to us through the chain of Mujāhid that there is no harm in a man selling his sacrificial animal to someone from among those who would sacrifice it and purchasing a better one. Regarding one who bought a sacrificial animal then changed his mind, ʿAṭāʾ said: “There is no harm in him selling it.” It has been reported to us from ʿAlī, al-Shaʿbī, al-Ḥasan, and ʿAṭāʾ that they disliked that. ʿAlī said: “We do not know of any evidence for those who disliked that.”

وَرُوِّينَا مِنْ طَرِيقِ مُجَاهِدٍ لَا بَأْسَ بِأَنْ يَبِيعَ الرَّجُلُ أُضْحِيَّتَهُ مِمَّنْ يُضَحِّي بِهَا وَيَشْتَرِي خَيْرًا مِنْهَا - وَعَنْ عَطَاءٍ فِيمَنْ اشْتَرَى أُضْحِيَّةً، ثُمَّ بَدَا لَهُ؟ قَالَ: لَا بَأْسَ بِأَنْ يَبِيعَهَا - وَرُوِّينَا عَنْ عَلِيٍّ، وَالشَّعْبِيِّ، وَالْحَسَنِ، وَعَطَاءٍ، كَرَاهَةَ ذَلِكَ. قَالَ عَلِيٌّ: مَا نَعْلَمُ لِمَنْ كَرِهَ ذَلِكَ حُجَّةً.

Ruling: The Udhiyah does not become a valid Udhiyah unless it is slaughtered with the intention to perform the sacrifice.

[مَسْأَلَةٌ لَا تَكُونُ الْأُضْحِيَّةُ أُضْحِيَّةً إلَّا بِذَبْحِهَا بِنِيَّةِ التَّضْحِيَةِ]

L16416

L16417 981 - Issue: An animal does not become a valid Uḍḥiyyah except through slaughtering or sacrificing with the intention of Uḍḥiyyah. The intention must not precede this act at all. As long as he has not slaughtered or sacrificed

٩٨١ - مَسْأَلَةٌ: وَلَا تَكُونُ الْأُضْحِيَّةُ أُضْحِيَّةً إلَّا بِذَبْحِهَا، أَوْ نَحْرِهَا بِنِيَّةِ التَّضْحِيَةِ لَا قَبْلَ ذَلِكَ أَصْلًا وَلَهُ مَا لَمْ يَذْبَحْهَا، أَوْ يَنْحَرْهَا كَذَلِكَ أَنْ لَا يُضَحِّيَ بِهَا وَأَنْ يَبِيعَهَا وَأَنْ يَجُزَّ

it in this manner, he retains full rights: he may abstain from offering it as Uḍḥiyyah, sell it, shear its wool for any purpose, consume or sell its milk. If it gives birth, he may sell its offspring, keep it, or slaughter it. If the animal is lost and he purchases another, then finds the original one, he is not obligated to slaughter either. If he offers Uḍḥiyyah with both, with one of them, or with another animal besides them, he has acted commendably. If he abstains entirely from sacrificing, there is no blame upon him. If he purchased an animal with a disqualifying defect for Uḍḥiyyah—such as being one-eyed, emaciated, lame, or ill—and the defect later disappears, he may validly offer it as Uḍḥiyyah. However, if he owned it while sound and it then acquired a disqualifying defect before the slaughter is fully completed—even during the slaughtering process—it becomes invalid.

صُوفَهَا وَيَفْعَلَ فِيهِ مَا شَاءَ وَيَأْكُلَ لَبَنَهَا وَيَبِيعَهُ، وَإِنْ وَلَدَتْ فَلَهُ أَنْ يَبِيعَ وَلَدَهَا أَوْ يُمْسِكَهُ أَوْ يَذْبَحَهُ، فَإِنْ ضَلَّتْ فَاشْتَرَى غَيْرَهَا، ثُمَّ وَجَدَ الَّتِي ضَلَّتْ لَمْ يَلْزَمْهُ ذَبْحُهَا وَلَا ذَبْحُ وَاحِدَةٍ مِنْهُمَا، فَإِنْ ضَحَّى بِهِمَا، أَوْ بِأَحَدِهِمَا، أَوْ بِغَيْرِهِمَا فَقَدْ أَحْسَنَ، وَإِنْ لَمْ يُضَحِّ أَصْلًا فَلَا حَرَجَ، وَإِنْ اشْتَرَاهَا وَبِهَا عَيْبٌ لَا تُجْزِي بِهِ فِي الْأَضَاحِيِّ كَعَوَرٍ، أَوْ عَجَفٍ: أَوْ عَرَجٍ، أَوْ مَرَضٍ، ثُمَّ ذَهَبَ الْعَيْبُ وَصَحَّتْ جَازَ لَهُ أَنْ يُضَحِّيَ بِهَا، وَلَوْ أَنَّهُ مَلَكَهَا سَلِيمَةً مِنْ كُلِّ ذَلِكَ، ثُمَّ أَصَابَهَا عَيْبٌ لَا تُجْزِي بِهِ فِي الْأُضْحِيَّةِ قَبْلَ تَمَامِ ذَكَاتِهَا، وَلَوْ فِي حَالِ التَّذْكِيَةِ لَمْ تُجْزِهِ.

L16418–16420 The proof of this is what we have mentioned: that it is not an obligation. Since this is the case, it does not become a sacrificial animal unless one sacrifices it, and one does not sacrifice it unless its slaughter is completed with the intention of sacrifice. Thus, as long as it is not sacrificed, it remains property from his wealth, which he may use as he wishes, like the rest of his possessions. Whoever contradicts this and permits sacrificing an animal that develops a defect while in his possession has openly opposed the prohibition of the Messenger of Allah—peace and blessings be upon him—and it becomes incumbent upon him, if he purchases a defective sacrificial animal and considers it valid despite the defect, that sacrificing it does not suffice. Yet they do not say this. It has been narrated to us from Ali ibn Abi Talib through the chain of Abu Ishaq from Hubayrah ibn Yarim, who said: He stated… Ali: If you purchased a sacrificial animal in sound condition, but a physical defect or lameness occurred while in your custody, and it has reached the designated time for sacrifice, then sacrifice it.

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَاهُ مِنْ أَنَّهَا لَيْسَتْ فَرْضًا فَإِذْ هِيَ كَذَلِكَ فَلَا تَكُونُ أُضْحِيَّةً إِلَّا حَتَّى يُضَحِّيَ بِهَا وَلَا يُضَحِّي بِهَا إِلَّا حَتَّى تَتِمَّ ذَكَاتُهَا بِنِيَّةِ التَّضْحِيَةِ فَهِيَ مَا لَمْ يُضَحِّ بِهَا مَالٌ مِنْ مَالِهِ يَفْعَلُ فِيهِ مَا أَحَبَّ كَسَائِرِ مَالِهِ وَمَنْ خَالَفَ هَذَا فَأَجَازَ أَنْ يُضَحِّيَ بِالَّتِي يُصِيبُهَا عِنْدَهُ الْعَيْبُ فَقَدْ خَالَفَ نَهْيَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَهَارًا وَلَزِمَهُ إِنْ اشْتَرَى أُضْحِيَّةً مَعِيبَةً فَصَحَّتْ عِنْدَهُ أَنْ لَا تُجْزِئَهُ أَنْ يُضَحِّيَ بِهَا، وَهُمْ لَا يَقُولُونَ هَذَا -: رُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ مِنْ طَرِيقِ أَبِي إِسْحَاقَ عَنْ هُبَيْرَةَ بْنِ يَرِيمَ قَالَ: قَالَ عَلِيٌّ: إِذَا اشْتَرَيْت الْأُضْحِيَّةَ سَلِيمَةً فَأَصَابَهَا عِنْدَك عَوَارٌ، أَوْ عَرَجٌ فَبَلَغَتْ الْمَنْسَكَ فَضَحِّ بِهَا.

L16421 From the narration of Al-Ḥārith through ʿAlī - he was asked about a man who purchased a sound sacrificial animal that later developed a one-eyed defect in his care. He replied: “He should sacrifice it.” This is the opinion of Ḥammād ibn Abī Sulaymān - We have narrated it from him through the chain of Shuʿbah. This is also the view of Al-Ḥasan and Ibrāhīm. We have narrated it through Ibn ʿAbbās regarding one who bought a sacrificial animal that strayed

وَمِنْ طَرِيقِ الْحَارِثِ عَنْ عَلِيٍّ أَنَّهُ سُئِلَ عَنْ رَجُلٍ اشْتَرَى أُضْحِيَّةً سَلِيمَةً - فَاعْوَرَّتْ عِنْدَهُ؟ قَالَ: يُضَحِّي بِهَا - وَهُوَ قَوْلُ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ -: رُوِّينَاهُ عَنْهُ مِنْ طَرِيقِ شُعْبَةَ، وَهُوَ قَوْلُ الْحَسَنِ، وَإِبْرَاهِيمَ -: وَرُوِّينَاهُ مِنْ طَرِيقِ ابْنِ عَبَّاسٍ فِيمَنْ اشْتَرَى

- he stated: “It causes no harm to you.” From Al-Ḥasan and Al-Ḥakam ibn ʿUtaybah concerning a man whose sacrificial animal strayed, whereupon he purchased another and subsequently found the first: “He should slaughter both of them.” Ḥammād said: “He should slaughter the first sacrificial animal.”

أُضْحِيَّةً فَضَلَّتْ؟ قَالَ: لَا يَضُرُّكَ؟ وَعَنْ الْحَسَنِ، وَالْحَكَمِ بْنِ عُتَيْبَةَ فِيمَنْ ضَلَّتْ أُضْحِيَّتُهُ فَاشْتَرَى أُخْرَى فَوَجَدَ الْأُولَى أَنَّهُ يَذْبَحُهُمَا جَمِيعًا، قَالَ حَمَّادٌ: يَذْبَحُ الْأُولَى.

L16422 Abu Hanifah said: If one purchases an animal in sound condition and it becomes emaciated under his care to the point of being unable to regain health, it suffices for him to sacrifice it. But if it becomes one-eyed while in his possession, it does not suffice. However, if during slaughter the knife accidentally strikes its eye or its leg breaks, it suffices. These are corrupt and contradictory rulings, and we know of no such classifications from anyone preceding him.

وَقَالَ أَبُو حَنِيفَةَ: إنْ اشْتَرَاهَا صَحِيحَةً، ثُمَّ عَجِفَتْ عِنْدَهُ حَتَّى لَا تُنْقِي أَجْزَأَتْهُ أَنْ يُضَحِّيَ بِهَا، فَلَوْ اعْوَرَّتْ عِنْدَهُ لَمْ تُجْزِهِ، فَلَوْ أَنَّهُ إذْ ذَبَحَهَا أَصَابَ السِّكِّينُ عَيْنَهَا، أَوْ انْكَسَرَ رِجْلُهَا أَجْزَأَتْهُ. - وَهَذِهِ أَقْوَالٌ فَاسِدَةٌ مُتَنَاقِضَةٌ وَلَا نَعْلَمُ هَذِهِ التَّقَاسِيمَ عَنْ أَحَدٍ قَبْلَهُ.

L16423 Abu Hanifa, Malik, and Al-Shafi’i said: Its wool is not permissible, nor does he drink its milk.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: لَا يَجُزُّ صُوفَهَا وَلَا يَشْرَبُ لَبَنَهَا.

L16424 Al-Shafi’i said: except the excess related to her child.

قَالَ الشَّافِعِيُّ: إلَّا مَا فَضَلَ عَنْ وَلَدِهَا.

L16425 It has been narrated from ‘Aṭā’ concerning someone who purchased a sacrificial animal that he may shear its wool, and al-Ḥasan instructed that if he does so, he must give the wool in charity. Abū Ḥanīfah and al-Shāfiʿī said: If she gives birth, he must slaughter her offspring along with her. Mālik said: He is not obligated to do that.

وَرُوِّينَا عَنْ عَطَاءٍ فِيمَنْ اشْتَرَى أُضْحِيَّةً أَنَّ لَهُ أَنْ يَجُزَّ صُوفَهَا وَأَمَرَهُ الْحَسَنُ إنْ فَعَلَ أَنْ يَتَصَدَّقَ بِهِ، وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: إنْ وَلَدَتْ ذَبَحَ وَلَدَهَا مَعَهَا - وَقَالَ مَالِكٌ: لَيْسَ عَلَيْهِ ذَلِكَ.

L16426 It has been narrated to us from Ali that a man with a cow that had given birth asked him: “Did I buy it to sacrifice it?” Ali replied: “Do not milk it except for the surplus beyond its calf’s needs. When the day of Eid al-Adha arrives, slaughter it and its calf as a sacrifice on behalf of seven people.”

رُوِّينَا عَنْ عَلِيٍّ أَنَّهُ سَأَلَهُ رَجُلٌ مَعَهُ بَقَرَةٌ قَدْ وَلَدَتْ فَقَالَ: كُنْت اشْتَرَيْتهَا لِأُضَحِّيَ بِهَا؟ فَقَالَ لَهُ عَلِيٌّ: لَا تَحْلِبْهَا إلَّا فَضْلًا عَنْ وَلَدِهَا فَإِذَا كَانَ يَوْمُ الْأَضْحَى فَاذْبَحْهَا وَوَلَدَهَا عَنْ سَبْعَةٍ.

L16427 ## Issue: The Taḍḥiyah (Sacrifice) During Night and Day

[مَسْأَلَةُ التَّضْحِيَةُ لَيْلًا وَنَهَارًا]

L16428 982 - Issue: Sacrifice is permissible from the time we mentioned on the Day of Slaughter until the crescent of Muharram is sighted, and sacrifice is permissible both night and day.

٩٨٢ - مَسْأَلَةٌ: وَالتَّضْحِيَةُ جَائِزَةٌ مِنْ الْوَقْتِ الَّذِي ذَكَرْنَا يَوْمَ النَّحْرِ إلَّا أَنْ يُهِلَّ هِلَالُ الْمُحَرَّمِ، وَالتَّضْحِيَةُ لَيْلًا وَنَهَارًا جَائِزٌ.

L16429 People have differed regarding this. It was narrated to us through the chain of Ibn Abī Shaybah, from Abū Usāmah, from Hishām (ibn Hassān), from Muḥammad ibn Sirīn, who said: "The time for ritual slaughter is a single day, lasting until sunset."

وَاخْتَلَفَ النَّاسُ فِي هَذَا فَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا أَبُو أُسَامَةَ عَنْ هِشَامٍ هُوَ ابْنُ حَسَّانَ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: النَّحْرُ يَوْمٌ وَاحِدٌ إِلَى أَنْ تَغِيبَ الشَّمْسُ.

L16430–16431 It is reported from Ḥumayd ibn ʿAbd al-Raḥmān that he did not consider slaughter valid except on the Day of Sacrifice, and this is the opinion of Abū Sulaymān.

وَعَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ أَنَّهُ كَانَ لَا يَرَى الذَّبْحَ إِلَّا يَوْمَ النَّحْرِ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ.

L16432 Another opinion: We narrated it through the route of Wakiʿ from Muḥammad ibn ʿAbd al-ʿAzīz from Jābir ibn Zayd, who said: The sacrifice [period] in cities is one day, and in Mina it is three days.

وَقَوْلٌ آخَرُ: رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الْعَزِيزِ عَنْ جَابِرِ بْنِ زَيْدٍ قَالَ: النَّحْرُ فِي الْأَمْصَارِ يَوْمٌ، وَبِمِنًى ثَلَاثَةُ أَيَّامٍ.

L16433 A third opinion is that the time for sacrifice spans the Day of Sacrifice and the two subsequent days. We have been narrated through the chain of Ibn Abī Laylā from al-Minhāl ibn ʿAmr from Zirr from ʿAlī, who said: "The sacrificial period is three days, the best of them being the first day."

وَقَوْلٌ ثَالِثٌ: أَنَّ التَّضْحِيَةَ يَوْمَ النَّحْرِ وَيَوْمَانِ بَعْدَهُ - رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي لَيْلَى عَنْ الْمِنْهَالِ بْنِ عَمْرٍو عَنْ زِرٍّ عَنْ عَلِيٍّ قَالَ: النَّحْرُ ثَلَاثَةُ أَيَّامٍ أَفْضَلُهَا أَوَّلُهَا.

L16434 Via the chain of Ibn Abī Shaybah: He reported to us, Jarīr narrated from Manṣūr from Mujāhid from Mālik ibn Māʿiz al-Thaqafī (or Māʿiz ibn Mālik al-Thaqafī) - that Mālik/Māʿiz's father heard ʿUmar say: "The sacrifice is only during these three days."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ عَنْ مَالِكِ بْنِ مَاعِزٍ، أَوْ مَاعِزِ بْنِ مَالِكٍ الثَّقَفِيِّ: أَنَّ أَبَاهُ سَمِعَ عُمَرَ يَقُولُ: إنَّمَا النَّحْرُ فِي هَذِهِ الثَّلَاثَةِ الْأَيَّامِ.

L16435 From the chain of Ibn Abi Shaybah: He informed us [that] Hushaym narrated from Abu Hamzah, from Harb ibn Nājiyah, from Ibn Abbas, who said, "The Days of Sacrifice are three days."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا هُشَيْمٌ عَنْ أَبِي حَمْزَةَ عَنْ حَرْبِ بْنِ نَاجِيَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: أَيَّامُ النَّحْرِ ثَلَاثَةُ أَيَّامٍ.

L16436 Via the chain of Wakiʿ from Ibn Abī Laylā, from al-Minhāl, from Saʿīd ibn Jubayr, from Ibn ʿAbbās: The sacrificial slaughtering is three days.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الْمِنْهَالِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ النَّحْرُ ثَلَاثَةُ أَيَّامٍ.

L16437 Reported through the chain of Ibn Abi Shaybah from Isma'il ibn 'Ayyash, from 'Ubayd Allah ibn 'Umar, from Nafi', from Ibn 'Umar, who said: "Al-Adha is the Day of Sacrifice (Yawm al-Nahr) and two days following it."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: الْأَضْحَى يَوْمُ النَّحْرِ وَيَوْمَانِ بَعْدَهُ.

L16438 And through the chain of Waki' from 'Abdullāh ibn Nāfi' from his father

from Ibn ʻUmar, who said: Whatever I slaughtered on the Day of Sacrifice, the second day, and the third day—they are sacrificial animals.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَبْدِ اللَّهِ بْنِ نَافِعٍ عَنْ أَبِيهِ عَنْ ابْنِ عُمَرَ قَالَ: مَا ذَبَحْت يَوْمَ النَّحْرِ، وَالثَّانِيَ، وَالثَّالِثَ فَهِيَ الضَّحَايَا.

L16439 And via the transmission of Ibn Abi Shaybah: Zayd ibn al-Hubab reported to us from Mu'awiyah ibn Salih. Abu Maryam narrated to me, saying: "I heard Abu Hurayrah state: Al-Adha lasts for three days."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا زَيْدُ بْنُ الْحُبَابِ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ حَدَّثَنِي أَبُو مَرْيَمَ سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: الْأَضْحَى ثَلَاثَةُ أَيَّامٍ.

L16440 It was narrated through Waki', from Shu'bah, from Qatādah, from Anas, who said: The Sacrificial Feast (al-Adha) is the Day of Sacrifice and the two Days of Tashreeq following it.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ أَنَسٍ قَالَ: الْأَضْحَى يَوْمُ النَّحْرِ وَيَوْمَانِ بَعْدَهُ.

L16441 And with this, Abu Hanifah and Malik hold the view—and none of this is reliably established except through Anas alone, because it is reported from Umar via a chain containing an unknown narrator from his father (the narrator's father), who is also unknown.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ - وَلَا يَصِحُّ شَيْءٌ مِنْ هَذَا كُلِّهِ إلَّا عَنْ أَنَسٍ وَحْدَهُ لِأَنَّهُ عَنْ عُمَرَ مِنْ طَرِيقٍ مَجْهُولٍ عَنْ أَبِيهِ - مَجْهُولٌ أَيْضًا.

L16442–16444 And from ʿAlī through the transmission of Ibn Abī Laylā (who was poor in memory) and al-Minhāl (a criticized narrator). In it; and from Ibn Abbas via the narration of Ibn Abi Layla (poor in retention) and Abu Hamzah (weak).

وَعَنْ عَلِيٍّ مِنْ طَرِيقِ ابْنِ أَبِي لَيْلَى - وَهُوَ سَيِّئُ الْحِفْظِ - عَنْ الْمِنْهَالِ - وَهُوَ مُتَكَلَّمٌ فِيهِ؛ وَعَنْ ابْنِ عَبَّاسٍ مِنْ طَرِيقِ ابْنِ أَبِي لَيْلَى - وَهُوَ سَيِّئُ الْحِفْظِ - وَأَبِي حَمْزَةَ - وَهُوَ ضَعِيفٌ.

L16445 And from the chain of Ibn ʿUmar, narrated by Ismāʿīl ibn ʿAyyāsh and ʿAbdullāh ibn Nāfiʿ; both of whom are weak.

وَمِنْ طَرِيقِ ابْنِ عُمَرَ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ وَعَبْدِ اللَّهِ بْنِ نَافِعٍ، وَكِلَاهُمَا ضَعِيفٌ.

L16446 And from the chain of Abū Hurayrah, from Muʿāwiyah ibn Ṣāliḥ (who is weak), from Abū Maryam (who is unknown).

وَمِنْ طَرِيقِ أَبِي هُرَيْرَةَ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ - وَلَيْسَ بِالْقَوِيِّ - عَنْ أَبِي مَرْيَمَ - وَهُوَ مَجْهُولٌ.

L16447 The fourth opinion is that the sacrificial period comprises the Day of Sacrifice and the three days following it. It has been narrated to us through the chain of Muḥammad ibn al-Muthannā, who narrated to us from ʻUbayd Allāh ibn Mūsā, who narrated to us from Ibn Abī Laylā, from al-Ḥakam ibn ʻUtaybah, from Miqsam, from Ibn ʻAbbās, who said: "The appointed days are the Day of Sacrifice and the three days after it." This is how it is recorded in

وَقَوْلٌ رَابِعٌ وَهُوَ أَنَّ التَّضْحِيَةَ يَوْمُ النَّحْرِ وَثَلَاثَةُ أَيَّامٍ بَعْدَهُ -: رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نَا عُبَيْدُ اللَّهِ بْنُ مُوسَى نَا ابْنُ أَبِي لَيْلَى عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ مِقْسَمٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: الْأَيَّامُ الْمَعْلُومَاتُ: يَوْمُ النَّحْرِ، وَثَلَاثَةُ أَيَّامٍ بَعْدَهُ -: هَكَذَا فِي كِتَابِي وَلَا أَدْرِي لَعَلَّهُ وَهْمٌ، وَاَللَّهُ أَعْلَمُ.

my book, though I do not know – perhaps it is an error. And Allāh knows best.

L16448 And through the chain of Ibn Abi Shaybah: Abu Usamah narrated to us from Hisham from ʻAta' who said, "The slaughtering spans four days, lasting until the end of the Days of *Tashriq*."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا أَبُو أُسَامَةَ عَنْ هِشَامٍ عَنْ عَطَاءٍ قَالَ: النَّحْرُ أَرْبَعَةُ أَيَّامٍ إِلَى آخِرِ أَيَّامِ التَّشْرِيقِ.

L16449 From the chain of Wakiʻ: Hammām ibn Yaḥyā reported to us, "I heard ʿAṭāʾ say: The sacrificial slaughter is four days, lasting until the end of the days of Tashrīq."

وَمِنْ طَرِيقِ وَكِيعٍ نَا هَمَّامُ بْنُ يَحْيَى سَمِعْت عَطَاءً يَقُولُ: النَّحْرُ أَرْبَعَةُ أَيَّامٍ إلَى آخِرِ أَيَّامِ التَّشْرِيقِ.

L16450 From Wakiʻ, from Hammām ibn Yaḥyā, who said: "I heard ʻAṭāʾ say: The time for slaughtering [the sacrificial animal] lasts as long as the tents remain pitched in Mina."

وَمِنْ وَكِيعٍ نَا هَمَّامُ بْنُ يَحْيَى سَمِعْت عَطَاءً يَقُولُ: النَّحْرُ مَا دَامَتْ الْفَسَاطِيطُ بِمِنًى.

L16451 Through the chain of Wakīʻ from Shuʻbah from Qatādah from al-Ḥasan, who said: The time for the sacrificial rite is the Day of Sacrifice and the three days following it.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ قَالَ: النَّحْرُ يَوْمُ النَّحْرِ وَثَلَاثَةُ أَيَّامٍ بَعْدَهُ.

L16452 From the chain of Ibn Wahb → Yunus ibn Yazid → al-Zuhri regarding one who forgot to perform the Udhiyah on the Day of Sacrifice: He said: "There is no harm in performing it during the Days of Tashrīq."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ الزُّهْرِيِّ فِيمَنْ نَسِيَ أَنْ يُضَحِّيَ يَوْمَ النَّحْرِ؟ قَالَ: لَا بَأْسَ أَنْ يُضَحِّيَ أَيَّامَ التَّشْرِيقِ.

L16453 And via the chain of Ibn Abī Shaybah from Ismāʻīl ibn ʿAyyāsh from ʿUmar ibn Muhājir from ʿUmar ibn ʿAbd al-ʿAzīz, who said: "The days of sacrifice (al-Aḍḥā) are four days: the Day of Sacrifice and three days following it." This is the opinion of al-Shāfiʻī.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ عُمَرَ بْنِ مُهَاجِرٍ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: الْأَضْحَى أَرْبَعَةُ أَيَّامٍ يَوْمُ النَّحْرِ وَثَلَاثَةُ أَيَّامٍ بَعْدَهُ - وَهُوَ قَوْلُ الشَّافِعِيِّ.

L16454 A fifth opinion: As we have narrated through the chain of Ibn Abi Shaybah – narrated by Abu Dawud al-Tayalisi, from Harb ibn Shaddad, from Yahya ibn Abi Kathir, from Muhammad ibn Ibrahim, who is al-Taymi, from Abu Salamah ibn Abd al-Rahman ibn Awf and Sulayman ibn Yasar – both jointly stated: The Udhiyah (sacrificial rite) lasts until the sighting of Muharram's crescent moon for those who intentionally extend it for a valid reason.

وَقَوْلٌ خَامِسٌ: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا أَبُو دَاوُد الطَّيَالِسِيُّ عَنْ حَرْبِ بْنِ شَدَّادٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ هُوَ التَّيْمِيُّ - عَنْ أَبِي سَلَمَةَ بْنِ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ، وَسُلَيْمَانَ بْنِ يَسَارٍ، قَالَا جَمِيعًا: الْأَضْحَى إلَى هِلَالِ الْمُحَرَّمِ لِمَنْ اسْتَأْنَى بِذَلِكَ.

L16455–16456 Abu Muhammad said: As for those who claim that sacrificial slaughter is confined to the Day of Sacrifice alone, arguing: "It is unanimously agreed

upon, while other days are disputed," [we ask]: Can divine law be established through disagreements lacking textual evidence? Ali said: They have spoken truthfully, and the textual evidence supports our position, in accordance with what we will present hereafter, God Almighty willing.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ قَالَ النَّحْرُ يَوْمُ الْأَضْحَى وَحْدَهُ فَقَالَ: إنَّهُ مُجْمَعٌ عَلَيْهِ وَمَا عَدَاهُ فَمُخْتَلَفٌ فِيهِ، فَلَا تُوجَدُ شَرِيعَةٌ بِاخْتِلَافٍ لَا نَصَّ فِيهِ؟ قَالَ عَلِيٌّ: صَدَقُوا، وَالنَّصُّ يُجِيزُ قَوْلَنَا عَلَى مَا نَأْتِي بِهِ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

L16457 As for those who adhere to the opinion of Abū Ḥanīfa and Mālik, they argued that this position was narrated from ʿUmar, ʿAlī, Ibn ʿUmar, Ibn ʿAbbās, Abū Hurayra, and Anas, and no opponent to them is known among the Companions—may Allah be pleased with them—and such a position is not attributed to mere opinion.

وَأَمَّا مَنْ قَالَ بِقَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ، فَإِنَّهُمْ احْتَجُّوا بِأَنَّهُ قَوْلٌ رُوِيَ عَنْ عُمَرَ، وَعَلِيٍّ، وَابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ، وَأَبِي هُرَيْرَةَ، وَأَنَسٍ، وَلَا يُعْرَفُ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ، وَمِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ.

L16458 Ali said: We have mentioned major legal cases in which they opposed a group of the Companions—may Allah be pleased with them—where no opponent from among them is known. How then can this stand, when nothing we have mentioned is authenticated except through Anas alone, as we clarified before? If this were deemed consensus, then indeed ʻAṭāʼ, ʻUmar ibn ʻAbd al-ʻAzīz, al-Ḥasan, al-Zuhrī, Abū Salamah ibn ʻAbd al-Raḥmān, and Sulaymān ibn Yasār contradicted the consensus. Shame on any consensus from which such as these depart!

قَالَ عَلِيٌّ: قَدْ ذَكَرْنَا قَضَايَا عَظِيمَةً خَالَفُوا فِيهَا جَمَاعَةً مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، فَكَيْفَ وَلَا يَصِحُّ شَيْءٌ مِمَّا ذَكَرْنَا إلَّا عَنْ أَنَسٍ وَحْدَهُ عَلَى مَا بَيَّنَّا قَبْلُ وَإِنْ كَانَ هَذَا إجْمَاعًا فَقَدْ خَالَفَ عَطَاءٌ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ، وَالْحَسَنُ، وَالزُّهْرِيُّ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ، وَسُلَيْمَانُ بْنُ يَسَارٍ -: الْإِجْمَاعَ، وَأُفٍّ لِكُلِّ إجْمَاعٍ يَخْرُجُ عَنْهُ هَؤُلَاءِ.

L16459 We have received narrations from Ibn Abbas indicating its contradiction to this opinion, and we do not know of any basis for those who say, "Four days are also valid evidence," except that the days of Mina are three days: the Day of Sacrifice alone. This is not valid evidence.

وَقَدْ رُوِّينَا عَنْ ابْنِ عَبَّاسٍ مَا يَدُلُّ عَلَى خِلَافِهِ لِهَذَا الْقَوْلِ وَلَا نَعْلَمُ لِمَنْ قَالَ: أَرْبَعَةُ أَيَّامٍ حُجَّةً أَيْضًا، إلَّا أَنَّ أَيَّامَ مِنًى ثَلَاثَةُ أَيَّامٍ يَوْمُ النَّحْرِ فَقَطْ وَلَيْسَ هَذَا حُجَّةً.

L16460 Abu Muhammad said: The ritual sacrifice is an act of virtue and a means of drawing near to Allah, the Exalted. Acts of virtue are good at all times, as Allah, the Exalted, said: "And the camels and cattle We have appointed for you as among the symbols of Allah; for you therein is good" [Al-Hajj: 36]. He, the Exalted, specified no particular time over another, nor did His Messenger—peace be upon him—specify any time. Thus, it is impermissible to restrict its timing without a textual basis. Drawing near to Allah, the Exalted, through sacrifice is good unless prohibited by a text or consensus,

قَالَ أَبُو مُحَمَّدٍ: الْأُضْحِيَّةُ فِعْلُ خَيْرٍ وَقُرْبَةٌ إلَى اللَّهِ تَعَالَى: وَفِعْلُ الْخَيْرِ حَسَنٌ فِي كُلِّ وَقْتٍ، قَالَ اللَّهُ تَعَالَى: {وَالْبُدْنَ جَعَلْنَاهَا لَكُمْ مِنْ شَعَائِرِ اللَّهِ لَكُمْ فِيهَا خَيْرٌ} [الحج: ٣٦] فَلَمْ يَخُصَّ تَعَالَى وَقْتًا مِنْ وَقْتٍ وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -، فَلَا يَجُوزُ تَخْصِيصُ وَقْتٍ بِغَيْرِ نَصٍّ، فَالتَّقْرِيبُ إلَى اللَّهِ تَعَالَى بِالتَّضْحِيَةِ حَسَنٌ مَا لَمْ يَمْنَعْ مِنْهُ نَصٌّ أَوْ إجْمَاعٌ، وَلَا نَصَّ فِي ذَلِكَ وَلَا إجْمَاعَ إلَى آخِرِ ذِي الْحُجَّةِ.

and there exists neither text nor consensus prohibiting it, even up to the end of Dhu al-Hijjah.[14]

وَقَدْ رُوِّينَا خَبَرًا يَلْزَمُهُمْ الْأَخْذُ بِهِ - وَأَمَّا نَحْنُ فَلَا نَحْتَجُّ بِهِ وَيُعِيذُنَا اللَّهُ تَعَالَى مِنْ أَنْ نَحْتَجَّ بِمُرْسَلٍ، وَهُوَ مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نَا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ نَا إبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ نَا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ نَا أَحْمَدُ بْنُ الْهَيْثَمِ نَا مُسْلِمٌ نَا يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ التَّيْمِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَسُلَيْمَانَ بْنِ يَسَارٍ، قَالَا جَمِيعًا " بَلَغَنَا: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْأَضْحَى إلَى هِلَالِ الْمُحَرَّمِ لِمَنْ أَرَادَ أَنْ يَسْتَأْنِيَ بِذَلِكَ» وَهَذَا مِنْ أَحْسَنِ الْمَرَاسِيلِ وَأَصَحِّهَا فَيَلْزَمُ الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ الْقَوْلُ بِهِ وَإِلَّا فَقَدْ تَنَاقَضُوا.

L16461–16463 We have been transmitted a report that requires them to act upon it - but as for us, we do not rely on it as evidence, and may Allah the Exalted safeguard us from relying on a *mursal* hadith. This is what Ahmad ibn Umar ibn Anas narrated to us, who narrated to us from Abdullah ibn al-Husayn ibn Iqal, who narrated to us from Ibrahim ibn Muhammad al-Dinawari, who narrated to us from Muhammad ibn Ahmad ibn al-Jahm, who narrated to us from Ahmad ibn al-Haytham, who narrated to us from Muslim, who narrated to us from Yahya - who is Ibn Abi Kathir - from Muhammad ibn Ibrahim al-Taymi, from Abu Salamah ibn Abd al-Rahman ibn Awf and Sulayman ibn Yasar, both of whom said: "It has reached us that the Messenger of Allah - may Allah's blessings and peace be upon him - said:" "The Udhiyah sacrifice may be performed until the sighting of Muharram's crescent moon for whoever wishes to extend the period thereby. This is among the finest and most authentic mursal reports. Hence, it becomes obligatory for the Ḥanafīs and Mālikīs to adhere to this opinion; otherwise, they would be contradicting themselves."

قَالَ عَلِيٌّ: وَأَجَازَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: أَنْ يُضَحَّى بِاللَّيْلِ - وَهُوَ قَوْلُ عَطَاءٍ.

L16464 Ali ibn Abi Talib said: Abū Ḥanīfah and al-Shāfiʿī permitted that the sacrifice be offered at night—this is the opinion of ʿAṭāʾ.

وَقَالَ مَالِكٌ: لَا يَجُوزُ أَنْ يُضَحَّى لَيْلًا - وَمَا نَعْلَمُ لِهَذَا الْقَوْلِ حُجَّةً أَصْلًا إلَّا أَنَّهُمْ قَالَ قَائِلُهُمْ: قَالَ اللَّهُ تَعَالَى: {وَيَذْكُرُوا اسْمَ اللَّهِ فِي أَيَّامٍ مَعْلُومَاتٍ عَلَى مَا رَزَقَهُمْ مِنْ بَهِيمَةِ الْأَنْعَامِ} [الحج: ٢٨] قَالُوا: فَلَمْ يَذْكُرْ اللَّيْلَ.

L16465 Mālik said: It is not permissible to sacrifice at night. We do not know of any definitive proof for this opinion except that a speaker among them stated: Allah the Exalted said: {And let them mention the name of Allah on appointed days over what He has provided them of beasts of cattle} [Al-Ḥajj: 28]. They said, "So He did not mention the night."[15]

قَالَ عَلِيٌّ: وَهَذَا مِنْهُمْ إيهَامٌ يُمَقِّتُ اللَّهُ تَعَالَى عَلَيْهِ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَذْكُرْ فِي هَذِهِ الْآيَةِ ذَبْحًا، وَلَا تَضْحِيَةً، وَلَا نَحْرًا لَا فِي نَهَارٍ، وَلَا فِي لَيْلٍ، وَإِنَّمَا أَمَرَ اللَّهُ تَعَالَى بِذِكْرِهِ فِي تِلْكَ الْأَيَّامِ الْمَعْلُومَاتِ أَفَتَرَى يَحْرُمُ ذِكْرُهُ فِي لَيَالِيهِنَّ؟ إنَّ هَذَا لَعَجَبٌ وَمَعَاذَ اللَّهِ مِنْ

L16466 Ali said: This is from them an ambiguity that Allah the Exalted abhors, for He mentioned no slaughtering, sacrificing, or ritual slaughter (of camels) in this verse—neither by day nor by night. Rather, Allah the Exalted commanded His remembrance during those appointed days. Would you then deem His remembrance forbidden during their nights? This is truly aston-

[14] **Qur'an references (L16460):** Qur'an 22:36 (Al-Hajj).
[15] **Qur'an references (L16465):** Qur'an 22:28 (Al-Hajj).

ishing, and Allah protect us from such a claim! This text does not prevent the remembrance of Him the Exalted nor praise of Him and gratitude for the livestock He has granted us—by night or day, throughout the entire year.

هَذَا، وَلَيْسَ هَذَا النَّصُّ بِمَانِعٍ مِنْ ذِكْرِهِ تَعَالَى وَحَمْدِهِ عَلَى مَا رَزَقَنَا مِنْ بَهِيمَةِ الْأَنْعَامِ فِي لَيْلٍ أَوْ نَهَارٍ فِي الْعَامِ كُلِّهِ.

L16467 This is among the distortions they committed by diverting words from their proper contexts. They do not differ regarding one who swears not to speak to Zayd for three days that the night enters into that along with the daytime.

وَهَذَا مِمَّا حَرَّفُوا فِيهِ الْكَلِمَ عَنْ مَوَاضِعِهِ، وَلَا يَخْتَلِفُونَ فِيمَنْ حَلَفَ أَنْ لَا يُكَلِّمَ زَيْدًا ثَلَاثَةَ أَيَّامٍ أَنَّ اللَّيْلَ يَدْخُلُ فِي ذَلِكَ مَعَ النَّهَارِ.

L16468 They mentioned a ḥadīth that is not authentic; we narrated it via the chain (ṭarīq) of Baqiyya ibn al-Walīd from Mubashshir ibn ʿUbayd al-Ḥalabī from Zayd ibn Aslam from ʿAṭāʾ ibn Yasār: "The Messenger of Allah—peace and blessings be upon him—prohibited ritual slaughter at night."

وَذَكَرُوا حَدِيثًا لَا يَصِحُّ رُوِّينَاهُ مِنْ طَرِيقِ بَقِيَّةَ بْنِ الْوَلِيدِ عَنْ مُبَشِّرِ بْنِ عُبَيْدٍ الْحَلَبِيِّ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الذَّبْحِ بِاللَّيْلِ» .

L16469 Abu Muhammad said: This is an everlasting disgrace, and Baqiyya is not strong. Mubashshar ibn ʻUbayd is mentioned for intentionally fabricating hadith. Moreover, the narration is mursal. Even if it were sound, they would have no valid argument in it, for they permit slaughtering at night—contradicting what it contains—while citing it as evidence for what it does not mention. This is extremely grave.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ فَضِيحَةُ الْأَبَدِ، وَبَقِيَّةُ لَيْسَ بِالْقَوِيِّ، وَمُبَشِّرُ بْنُ عُبَيْدٍ مَذْكُورٌ بِوَضْعِ الْحَدِيثِ عَمْدًا، ثُمَّ هُوَ مُرْسَلٌ، ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ لِأَنَّهُمْ يُجِيزُونَ الذَّبْحَ بِاللَّيْلِ فَيُخَالِفُونَهُ فِيمَا فِيهِ وَيَحْتَجُّونَ بِهِ فِيمَا لَيْسَ فِيهِ وَهَذَا عَظِيمٌ جِدًّا.

L16470 And a speaker among them said: Since sacrificing is not permissible during the Night of Nahr but is permissible during its day [Yawm al-Nahr], the nights of the rest of the days of sacrificing are likewise [not permissible].

وَقَالَ قَائِلٌ مِنْهُمْ: لَمَّا كَانَتْ لَيْلَةُ النَّحْرِ لَا يَجُوزُ التَّضْحِيَةُ فِيهَا وَكَانَ يَوْمُهُ تَجُوزُ التَّضْحِيَةُ فِيهِ كَانَتْ لَيَالِي سَائِرِ أَيَّامِ التَّضْحِيَةِ كَذَلِكَ.

L16471–16473 Ali said: "This is *qiyas*, and all *qiyas* is invalid. Even were it valid, this instance would represent the epitome of invalidity, for the Day of Sacrifice marks the commencement of entry into the ritual sacrifice timeframe - what precedes it is not a time for ritual sacrifice. They do not differ with us that from sunrise until some duration has elapsed after the sun's brightening and ascent on the Day of Sacrifice, there remains an extended period wherein sacrifice is impermissible. Thus they would be compelled to apply analogy from that day to subsequent..." As for the days of sacrifice, they do not permit ritual sacrifice during those days except after the same amount of time has passed. Otherwise they would have contradicted themselves, and the flaw in

قَالَ عَلِيٌّ: وَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ يَوْمَ النَّحْرِ هُوَ مَبْدَأُ دُخُولِ وَقْتِ التَّضْحِيَةِ وَمَا قَبْلَهُ لَيْسَ وَقْتًا لِلتَّضْحِيَةِ، وَلَا يَخْتَلِفُونَ مَعَنَا فِي أَنَّ مِنْ طُلُوعِ الشَّمْسِ إلَى أَنْ يَمْضِيَ بَعْدَ ابْيِضَاضِهَا وَارْتِفَاعِهَا وَقْتٌ وَاسِعٌ مِنْ يَوْمِ النَّحْرِ لَا تَجُوزُ فِيهِ التَّضْحِيَةُ فَيَلْزَمُهُمْ أَنْ يَقِيسُوا عَلَى ذَلِكَ الْيَوْمِ مَا بَعْدَهُ مِنْ أَيَّامِ التَّضْحِيَةِ فَلَا يُجِيزُوا التَّضْحِيَةَ فِيهَا إلَّا بَعْدَ مُضِيِّ مِثْلِ ذَلِكَ الْوَقْتِ

their argument would become evident. We know of no one among the Salaf before Mālik who prohibited ritual sacrifice at night.

L16474 **A juristic issue pertains to the person performing the Udhiyah slaughtering his sacrificial animal personally.**

L16475 983 - Issue: We recommend for the sacrificer - whether male or female - to slaughter their sacrificial animal or perform *nahr* with their own hand. If another Muslim or a Kitabi slaughters it or performs *nahr* on it on their behalf by their command, it suffices them, and there is no harm in that. We have been narrated through Muslim's chain: Yahya ibn Yahya narrated to us, from Waki' from Shu'bah from Qatadah from Anas, who said: "Allah's Messenger - peace and blessings be upon him - sacrificed two predominantly white horned rams. I saw him slaughter them with his own hand, placing his foot on the sides of their necks while pronouncing Allah's name and saying 'Allahu Akbar'." Muslim reported: Yahya ibn Habib narrated to us, from Khalid ibn al-Harith, from Shu'bah: I heard Qatadah narrate from Anas a similar account. Therefore, we recommend following the example of the Prophet - peace and blessings be upon him - in this matter, as Allah the Exalted said: {There has certainly been for you in the Messenger of Allah an excellent model} [Al-Ahzab: 21].[16]

L16476 And He, the Exalted, said: {The food of those who were given the Scripture is lawful for you} [Al-Mā'idah: 5]. What He, the Almighty and Majestic, certainly meant is what they slaughter according to rites, not what they consume, for they eat carrion, blood, swine, and what is prepared using wine or in which its influence is evident. Thus, since their slaughtered animals and pilgrimage sacrifices are lawful, there is no basis for distinguishing between the Eid sacrifice and others.[17]

L16477 This statement of ours is the view of Abū Ḥanīfah, al-Shāfi'ī, and Abū Sulaymān.

[16] **Qur'an references (L16475):** Qur'an 33:21 (Al-Ahzab).
[17] **Qur'an references (L16476):** Qur'an 5:5 (Al-Ma'idah).

وَإِلَّا فَقَدْ تَنَاقَضُوا وَظَهَرَ فَسَادُ قَوْلِهِمْ، وَمَا نَعْلَمُ أَحَدًا مِنَ السَّلَفِ قَبْلَ مَالِكٍ مَنَعَ مِنَ التَّضْحِيَةِ لَيْلًا.

[مَسْأَلَةٌ لِلْمُضَحِّي أَنْ يَذْبَحَ أُضْحِيَّتَهُ بِيَدِهِ]

٩٨٣ - مَسْأَلَةٌ: وَنَسْتَحِبُّ لِلْمُضَحِّي رَجُلًا كَانَ أَوْ امْرَأَةً أَنْ يَذْبَحَ أُضْحِيَّتَهُ أَوْ يَنْحَرَهَا بِيَدِهِ، فَإِنْ ذَبَحَهَا أَوْ نَحَرَهَا لَهُ بِأَمْرِهِ مُسْلِمٌ غَيْرُهُ أَوْ كِتَابِيٌّ أَجْزَأَهُ وَلَا حَرَجَ فِي ذَلِكَ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا يَحْيَى بْنُ يَحْيَى نَا وَكِيعٌ عَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ أَنَسٍ قَالَ: «ضَحَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِكَبْشَيْنِ أَمْلَحَيْنِ أَقْرَنَيْنِ وَرَأَيْتُهُ يَذْبَحُهُمَا بِيَدِهِ وَاضِعًا قَدَمَهُ عَلَى صِفَاحِهِمَا وَسَمَّى اللَّهَ وَكَبَّرَ» قَالَ مُسْلِمٌ نَا يَحْيَى بْنُ حَبِيبٍ نَا خَالِدُ بْنُ الْحَارِثِ نَا شُعْبَةُ أَنَا قَتَادَةُ قَالَ: سَمِعْت أَنَسًا فَذَكَرَ مِثْلَ هَذَا الْحَدِيثِ، فَنَحْنُ نَسْتَحِبُّ الِاقْتِدَاءَ بِهِ - عَلَيْهِ السَّلَامُ - فِي هَذَا قَالَ تَعَالَى: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] .

وَقَالَ تَعَالَى: {وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ} [المائدة: ٥] وَإِنَّمَا عَنَى عَزَّ وَجَلَّ بِيَقِينٍ مَا يُذَكُّونَهُ لَا مَا يَأْكُلُونَهُ، لِأَنَّهُمْ يَأْكُلُونَ الْمَيْتَةَ، وَالدَّمَ، وَالْخِنْزِيرَ، وَمَا عُمِلَ بِالْخَمْرِ وَظَهَرَتْ فِيهِ؛ فَإِذْ ذَبَائِحُهُمْ وَنَحَائِرُهُمْ حَلَالٌ، فَالتَّفْرِيقُ بَيْنَ الْأُضْحِيَّةِ وَغَيْرِهَا لَا وَجْهَ لَهُ.

وَقَوْلُنَا هَذَا هُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L16478 It was narrated to us via the chain of Ibn Abi Shaybah: from Jarīr, who narrated to us, from Manṣūr, who said: "I said to Ibrāhīm: 'If a boy has a Jewish wet nurse establishing kinship, may he slaughter his sacrificial animal?' He replied: 'Yes.'"

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا جَرِيرٌ عَنْ مَنْصُورٍ قُلْت لِإِبْرَاهِيمَ: صَبِيٌّ لَهُ ظِئْرٌ يَهُودِيَّةٌ أَيَذْبَحُ أُضْحِيَّتَهُ؟ قَالَ: نَعَمْ.

L16479 From the chain of Abd al-Razzaq: I [Abd al-Razzaq] narrate from Ibn Jurayj and Ma'mar. Ibn Jurayj reported that Ata said, while Ma'mar reported that al-Zuhri said. Later, Ata and al-Zuhri both concurred, stating jointly: "The Jew and the Christian may slaughter your sacrifice if you wish." Al-Zuhri added: "And the woman may slaughter it if you wish."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ: أَنَا ابْنُ جُرَيْجٍ، وَمَعْمَرٌ، قَالَ ابْنُ جُرَيْجٍ قَالَ عَطَاءٌ، وَقَالَ مَعْمَرٌ: قَالَ الزُّهْرِيُّ، ثُمَّ اتَّفَقَ عَطَاءٌ، وَالزُّهْرِيُّ قَالَا جَمِيعًا: يَذْبَحُ نُسُكَك الْيَهُودِيُّ وَالنَّصْرَانِيُّ إنْ شِئْت، قَالَ الزُّهْرِيُّ: وَالْمَرْأَةُ إنْ شِئْت.

L16480 Mālik said: No one may slaughter it except a Muslim. If a Person of the Book slaughters it, Ibn al-Qāsim said: He must replace it.

وَقَالَ مَالِكٌ: لَا يَذْبَحُهَا إلَّا مُسْلِمٌ، فَإِنْ ذَبَحَهَا كِتَابِيٌّ قَالَ ابْنُ الْقَاسِمِ: يَضْمَنُهَا.

L16481 It has been narrated to us through the chain of Ja'far ibn Muḥammad from his father that 'Alī ibn Abī Ṭālib said: "Let not the Jews or the Christians slaughter your sacrificial animals. None may slaughter them save a Muslim." From Jarīr through Qābūs ibn Abī Ẓabyān from his father from Ibn 'Abbās: "Let none slaughter your sacrificial animal except a Muslim."

رُوِّينَا مِنْ طَرِيقِ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لَا يَذْبَحُ أَضَاحِيَّكُمْ الْيَهُودُ، وَلَا النَّصَارَى، لَا يَذْبَحُهَا إلَّا مُسْلِمٌ - وَعَنْ جَرِيرٍ عَنْ قَابُوسَ بْنِ أَبِي ظَبْيَانَ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ لَا يَذْبَحُ أُضْحِيَّتَك إلَّا مُسْلِمٌ.

L16482 From Abū Sufyān, from Jābir: None may perform the ritual sacrifices except a Muslim.

وَعَنْ أَبِي سُفْيَانَ عَنْ جَابِرٍ: لَا يَذْبَحُ النُّسُكَ إلَّا مُسْلِمٌ.

L16483–16484 From Sa'id ibn Jubayr, Al-Hasan, Ata' al-Khurasani, Ash-Sha'bi, Mujahid, and Ata' ibn Abi Rabah also: Only a Muslim may slaughter the sacrificial animal.

وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ، وَالْحَسَنِ، وَعَطَاءٍ الْخُرَاسَانِيِّ، وَالشَّعْبِيِّ، وَمُجَاهِدٍ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ أَيْضًا: لَا يَذْبَحُ النُّسُكَ إلَّا مُسْلِمٌ.

L16485 From Ibrāhīm, it is reported that they used to say: "No one may slaughter the ritual sacrifice except a Muslim." This is among the matters where the Hanafis and Shafiʿis disagreed with a group of the Companions and the majority of scholars, with no known dissenting opinion among the Companions. What we mentioned is not authentically established from any of the Companions, as the narration from ʿAlī has an interrupted chain, while Qābūs and Abū Sufyān are weak narrators. However, what is narrated from al-Ḥasan, Ibrāhīm, al-Shaʿbī, and Saʿīd ibn Jubayr is sound, and nothing is authentically reported from others besides them. We know of no evidence

وَعَنْ إبْرَاهِيمَ كَانُوا يَقُولُوا: لَا يَذْبَحُ النُّسُكَ إلَّا مُسْلِمٌ، وَهَذَا مِمَّا خَالَفَ فِيهِ الْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ جَمَاعَةً مِنْ الصَّحَابَةِ وَجُمْهُورُ الْعُلَمَاءِ لَا مُخَالِفَ لَهُمْ يُعْرَفُ مِنْ الصَّحَابَةِ، وَلَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ مَا ذَكَرْنَا لِأَنَّهُ عَنْ عَلِيٍّ مُنْقَطِعٌ - وَقَابُوسُ، وَأَبُو سُفْيَانَ ضَعِيفَانِ - إلَّا أَنَّهُ عَنْ الْحَسَنِ، وَإِبْرَاهِيمَ، وَالشَّعْبِيِّ، وَسَعِيدِ بْنِ جُبَيْرٍ: صَحِيحٌ وَلَا يَصِحُّ

whatsoever for this opinion—neither from the Quran, nor the Sunnah, nor a feeble narration, nor analogical reasoning.

Issue: A group sharing in a single sacrificial animal.

Issue 984: It is permissible for any number of people, whether members of the same household or others, to share in a single sacrificial animal. It is also permissible for one person to offer multiple sacrificial animals. The Messenger of Allah (peace be upon him) sacrificed two mostly white rams with some black markings, as we mentioned earlier, and he did not prohibit offering more than two. Sacrifice is an act of goodness, and seeking abundance in goodness is commendable.[18]

Abu Hanifah, Sufyan al-Thawri, al-Awzaʿi, al-Shafiʿi, Ahmad, Ishaq, Abu Thawr, and Abu Sulayman said: A cow (female) or a she-camel is sufficient for seven or fewer people, whether strangers or non-strangers share in it. It does not suffice for more than seven, and a sheep is only sufficient for one person.

Malik said: One head of camel, cow, or sheep suffices for one person and the members of a household—even if they are numerous and exceed seven, provided he voluntarily includes them in it. It does not suffice if they purchase it through partnership among themselves, nor does it suffice for two or more unrelated persons.

Abu Muhammad said: The sacrificial offering is an act of goodness and a voluntary deed of righteousness. Therefore, shared participation in this voluntary act is permissible unless there exists a textual evidence that prohibits it. Allah the Exalted said: “And do good deeds” [Al-Hajj: 77]. Thus, those who jointly participate in it are performing good deeds. There is no valid basis for restricting the prohibition to strangers, nor any justification

[18] **Hadith references (L16487):** Sunan an-Nasai 4386; Sahih Muslim 1966b; Sunan an-Nasai 4415.

عَنْ غَيْرِهِمْ، وَمَا نَعْلَمُ لِهَذَا الْقَوْلِ حُجَّةً أَصْلًا لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ أَثَرٍ سَقِيمٍ، وَلَا مِنْ قِيَاسٍ.

[مَسْأَلَةٌ يَشْتَرِكُ فِي الْأُضْحِيَّةِ الْوَاحِدَةِ الْجَمَاعَةُ]

٩٨٤ - مَسْأَلَةٌ: وَجَائِزٌ أَنْ يَشْتَرِكَ فِي الْأُضْحِيَّةِ الْوَاحِدَةِ أَيُّ شَيْءٍ كَانَتْ الْجَمَاعَةُ مِنْ أَهْلِ الْبَيْتِ وَغَيْرِهِمْ، وَجَائِزٌ أَنْ يُضَحِّيَ الْوَاحِدُ بِعَدَدٍ مِنْ الْأَضَاحِيِّ «ضَحَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِكَبْشَيْنِ أَمْلَحَيْنِ» كَمَا ذَكَرْنَا آنِفًا وَلَمْ يَنْهَ عَنْ أَكْثَرَ مِنْ ذَلِكَ، وَالْأُضْحِيَّةُ فِعْلُ خَيْرٍ، فَالِاسْتِكْثَارُ مِنْ الْخَيْرِ حَسَنٌ.

وَقَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ الثَّوْرِيُّ، وَالْأَوْزَاعِيُّ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَإِسْحَاقُ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ: تُجْزِئُ الْبَقَرَةُ، أَوْ النَّاقَةُ عَنْ سَبْعَةٍ فَأَقَلَّ أَجْنَبِيِّينَ وَغَيْرَ أَجْنَبِيِّينَ يَشْتَرِكُونَ فِيهَا، وَلَا تُجْزِئُ عَنْ أَكْثَرَ، وَلَا تُجْزِئُ الشَّاةُ إلَّا عَنْ وَاحِدٍ.

وَقَالَ مَالِكٌ: يُجْزِئُ الرَّأْسُ الْوَاحِدُ مِنْ الْإِبِلِ، أَوْ الْبَقَرِ، أَوْ الْغَنَمِ عَنْ وَاحِدٍ، وَعَنْ أَهْلِ الْبَيْتِ - وَإِنْ كَثُرَ عَدَدُهُمْ وَكَانُوا أَكْثَرَ مِنْ سَبْعَةٍ إذَا أَشْرَكَهُمْ فِيهَا تَطَوُّعًا - وَلَا تُجْزِئُ إذَا اشْتَرَوْهَا بَيْنَهُمْ بِالشَّرِكَةِ وَلَا عَنْ أَجْنَبِيِّينَ فَصَاعِدًا.

قَالَ أَبُو مُحَمَّد: الْأُضْحِيَّةُ فِعْلُ خَيْرٍ وَتَطَوُّعٌ بِالْبِرِّ فَالِاشْتِرَاكُ فِي التَّطَوُّعِ جَائِزٌ مَا لَمْ يَمْنَعْ مِنْ ذَلِكَ نَصٌّ قَالَ تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] فَالْمُشْتَرِكُونَ فِيهَا فَاعِلُونَ لِلْخَيْرِ، فَلَا مَعْنَى لِتَخْصِيصِ الْأَجْنَبِيِّينَ بِالْمَنْعِ، وَلَا مَعْنَى لِمَنْعِ ذَلِكَ بِالشِّرَاءِ، لِأَنَّهُ كُلَّهُ قَوْلٌ بِلَا بُرْهَانٍ أَصْلًا لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قِيَاسٍ.

for prohibiting such participation through purchase. For all of this is an assertion without any evidence whatsoever—neither from the Quran, nor the Sunnah, nor a weak narration, nor analogical reasoning.[19]

وَقَدْ أَبَاحَ اللَّيْثُ الِاشْتِرَاكَ فِي الْأُضْحِيَّةِ فِي السَّفَرِ - وَهَذَا تَخْصِيصٌ لَا مَعْنَى لَهُ أَيْضًا.

L16491 Al-Layth permitted sharing in the udḥiyah (sacrificial offering) during travel - but this specification is likewise meaningless.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَوْ أَبِي هُرَيْرَةَ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ كَانَ إذَا أَرَادَ أَنْ يُضَحِّيَ اشْتَرَى كَبْشَيْنِ عَظِيمَيْنِ، سَمِينَيْنِ، أَقْرَنَيْنِ أَمْلَحَيْنِ، مَوْجُوءَيْنِ، فَيَذْبَحُ أَحَدَهُمَا عَنْ أُمَّتِهِ مَنْ شَهِدَ لِلَّهِ بِالتَّوْحِيدِ وَلَهُ بِالْبَلَاغِ، وَيَذْبَحُ الْآخَرَ عَنْ مُحَمَّدٍ وَآلِ مُحَمَّدٍ» .

L16492–16493 It has been narrated to us through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from ʿAbd Allāh ibn Muḥammad ibn ʿAqīl, from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf, from ʿĀ'isha the Mother of the Believers or Abū Hurayrah, from the Messenger of Allah—peace and blessings be upon him—that when he intended to offer a sacrifice, he would purchase two massive, fat, horned rams, mostly white with some black markings, castrated. He would slaughter one of them on behalf of his nation (those who testify to Allah's oneness and bear witness to his conveying of the message), and slaughter the other on behalf of the Prophet Muḥammad and his household.

فَهَذَا أَثَرٌ صَحِيحٌ عِنْدَهُمْ، وَعَلَى رِوَايَةِ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ عَوَّلَ الْمَالِكِيُّونَ فِي خَبَرِ الصَّلَاةِ «تَحْرِيمُهَا التَّكْبِيرُ وَتَحْلِيلُهَا التَّسْلِيمُ» .

L16494 This is a sound narration according to them. The Malikis relied on the report transmitted by ʿAbdullāh ibn Muḥammad ibn ʿAqīl regarding prayer: "Its prohibition [i.e., the act that initiates the prayer's sacred state] is the takbīr, and its permission [i.e., the act that terminates it] is the taslīm."

وَرُوِّينَا مِنْ طَرِيقِ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: الْبَدَنَةُ عَنْ وَاحِدٍ، وَالْبَقَرَةُ عَنْ وَاحِدٍ، وَالشَّاةُ عَنْ وَاحِدٍ، لَا أَعْلَمُ شِرْكًا.

L16495 It was narrated to us via the chain of 'Ubaydullāh ibn 'Umar, from Nāfiʿ, from Ibn 'Umar: A camel (as a sacrifice) is offered on behalf of one person, a cow on behalf of one person, and a goat on behalf of one person. I know of no sharing [in the sacrifice].

وَصَحَّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: لَا أَعْلَمُ دَمًا وَاحِدًا يُرَاقُ عَنْ أَكْثَرَ مِنْ وَاحِدٍ.

L16496 It is authentically reported from Muḥammad ibn Sīrīn: "I am not aware of any single blood money payment that is required for more than one person."

وَصَحَّ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي مُعَاوِيَةَ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ: لَا تَكُونُ ذَكَاةُ نَفْسٍ عَنْ نَفْسَيْنِ وَكَرِهَهُ الْحَكَمُ.

L16497 It has been authentically reported through the chain of Ibn Abī Shaybah from Abū Muʿāwiyah from Misʿar ibn Kidām from Ḥammād ibn Abī Sulaymān that the ritual slaughter of one animal cannot fulfill the obligation on behalf of two persons, and al-Ḥakam deemed this practice reprehensible (makrūh).

وَقَوْلٌ آخَرُ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ حَاتِمِ بْنِ إسْمَاعِيلَ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: الْجَزُورُ، وَالْبَقَرَةُ، عَنْ سَبْعَةٍ مِنْ أَهْلِ الْبَيْتِ لَا

L16498 Another statement we have transmitted through the chain of Ibn Abi Shaybah from Ḥātim ibn Ismāʿīl from Jaʿfar ibn Muḥammad from his father from

[19] **Qur'an references (L16490):** Qur'an 22:77 (Al-Hajj).

يَدْخُلُ مَعَهُمْ مِنْ غَيْرِهِمْ -: كُلُّ هَذَا مُخَالِفٌ لِقَوْلِ مَالِكٍ لِأَنَّ ابْنَ عُمَرَ لَمْ يُجِزْ الرَّأْسَ الْوَاحِدَ إِلَّا عَنْ وَاحِدٍ، وَكَذَلِكَ ابْنُ سِيرِينَ، وَحَمَّادٌ، وَعَلِيٌّ أَجَازَ النَّاقَةَ أَوْ الْبَقَرَةَ عَنْ سَبْعَةٍ مِنْ أَهْلِ الْبَيْتِ لَا أَكْثَرَ.

ʿAlī ibn Abī Ṭālib, who said: A she-camel and a cow may be offered on behalf of seven members of the household, and none from outside the household may join them. All of this contradicts Mālik's opinion, for Ibn ʿUmar did not permit a single animal except for one person. Similarly, Ibn Sīrīn, Ḥammād, and Ali permitted a she-camel or a cow on behalf of seven members of the household, but no more.

L16499

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ ابْنِ عُلَيَّةَ عَنْ سَعِيدٍ عَنْ قَتَادَةَ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: الْبَقَرَةُ وَالْجَزُورُ عَنْ سَبْعَةٍ.

From the narration of Ibn Abi Shaybah, from Ibn ʿUlayyah, from Saʿid, from Qatadah, from Sulayman ibn Yasar, from ʿAisha, the Mother of the Believers, who said: A cow and a mature camel are for seven.

L16500 From Ibn Abi Shaybah, from Ali bin Mushir, from Sa'id bin Abi Arubah, from Qatadah, who narrated from Anas bin Malik, Sa'id bin al-Musayyib, and al-Hasan—all of whom said: A cow suffices for seven, and a sacrificial camel suffices for seven; participants may share in each even if they belong to different households.

وَعَنْ ابْنِ أَبِي شَيْبَةَ عَنْ عَلِيِّ بْنِ مُسْهِرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ أَنَسِ بْنِ مَالِكٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَالْحَسَنِ قَالُوا كُلُّهُمْ: الْبَقَرَةُ عَنْ سَبْعَةٍ وَالْجَزُورُ عَنْ سَبْعَةٍ يَشْتَرِكُونَ فِيهَا وَإِنْ كَانُوا مِنْ غَيْرِ أَهْلِ دَارٍ وَاحِدَةٍ.

L16501–16502 And through the chain of Ibn Abi Shaybah: Muhammad ibn Fudayl narrated to us from Dawud ibn Abi Hind from al-Sha'bi, who said: I encountered the companions of Muhammad—may Allah bless him and grant him peace—when they were gathered in large numbers, and they would slaughter a cow and a camel on behalf of seven people.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ دَاوُد بْنِ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ قَالَ: أَدْرَكْت أَصْحَابَ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُمْ مُتَوَافِرُونَ كَانُوا يَذْبَحُونَ الْبَقَرَةَ وَالْبَعِيرَ عَنْ سَبْعَةٍ.

L16503 And through the chain of Waki' from Sufyan from Hammad from Ibrahim, he said: The companions of Muhammad (peace be upon him) used to say: A cow or a mature camel is shared by seven people.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ حَمَّادٍ عَنْ إبْرَاهِيمَ قَالَ: كَانَ أَصْحَابُ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُونَ: الْبَقَرَةُ، وَالْجَزُورُ عَنْ سَبْعَةٍ.

L16504 Ali said: This Ḥammād has indeed narrated what we mentioned from the Companions, then he contradicted the transmitted reports and did not consider that matter to be a consensus as these people allege. From Ibn Abī Shaybah, from Ibn Fuḍayl, from Muslim, from Ibrāhīm, from ʿAlqamah, from Ibn Masʿūd: "A cow and a sacrificial camel are shared by seven." From Wakīʿ, from Sufyān, from Ḥuṣayn ibn ʿAbd al-Raḥmān, from Khālid ibn Saʿd, from Abī Masʿūd, who said: "A cow is shared by seven." We have also narrated this from Ḥudhayfah, Jābir, and ʿAlī. It is authentically established from Saʿīd ibn al-Musayyib: "A sacrificial camel is shared by ten." We have also narrated this from Ibn ʿAbbās, from the Companions - may Allah be pleased with them.

قَالَ عَلِيٌّ: هَذَا حَمَّادٌ قَدْ رَوَى مَا ذَكَرْنَا عَنْ الصَّحَابَةِ، ثُمَّ خَالَفَ مَا رُوِيَ وَلَمْ يَرَ ذَلِكَ إجْمَاعًا كَمَا يَزْعُمُ هَؤُلَاءِ -: وَعَنْ ابْنِ أَبِي شَيْبَةَ عَنْ ابْنِ فُضَيْلٍ عَنْ مُسْلِمٍ عَنْ إبْرَاهِيمَ عَنْ عَلْقَمَةَ عَنْ ابْنِ مَسْعُودٍ الْبَقَرَةُ وَالْجَزُورُ عَنْ سَبْعَةٍ -: وَعَنْ وَكِيعٍ عَنْ سُفْيَانَ عَنْ حُصَيْنِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ خَالِدِ بْنِ سَعْدٍ عَنْ أَبِي مَسْعُودٍ قَالَ: الْبَقَرَةُ عَنْ سَبْعَةٍ - وَرُوِّينَاهُ أَيْضًا عَنْ حُذَيْفَةَ، وَجَابِرٍ، وَعَلِيٍّ، وَصَحَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ الْبَدَنَةُ عَنْ عَشَرَةٍ - وَرُوِّينَا ذَلِكَ أَيْضًا عَنْ ابْنِ عَبَّاسٍ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L16505 Among those who permitted joint ownership of sacrificial animals by unrelated individuals—a cow is shared by seven and a camel is shared by seven—were Ṭāwus, Abū ʿUthmān al-Nahdī, ʿAṭāʾ, and the majority of the Successors.

وَمِمَّنْ أَجَازَ الِاشْتِرَاكَ فِي الْأَضَاحِيِّ بَيْنَ الْأَجْنَبِيِّينَ الْبَقَرَةَ عَنْ سَبْعَةٍ، وَالنَّاقَةَ عَنْ سَبْعَةٍ: طَاوُسٍ، وَأَبُو عُثْمَانَ النَّهْدِيُّ، وَعَطَاءٌ، وَجُمْهُورُ التَّابِعِينَ.

L16506 As for Ibn Umar, we have narrated through the chain of Ibn Abi Shaybah: Abdullah ibn Numayr narrated to us: Mujalid narrated to us from al-Sha'bi, who said: I asked Ibn Umar regarding a cow or a camel: "Does it suffice for seven?" He responded: "How? Is its first [requirement] seven persons?"

فَأَمَّا ابْنُ عُمَرَ فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ نَا مُجَالِدٌ عَنْ الشَّعْبِيِّ قَالَ: سَأَلْت ابْنَ عُمَرَ عَنْ الْبَقَرَةِ وَالْبَعِيرِ تُجْزِي عَنْ سَبْعَةٍ؟ فَقَالَ: كَيْفَ، أَوَّلُهَا سَبْعَةٌ

أَنْفُسٍ؟ قُلْت: إنَّ أَصْحَابَ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِينَ بِالْكُوفَةِ أَفْتَوْنِي فَقَالُوا: نَعَمْ قَالَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبُو بَكْرٍ، وَعُمَرُ، فَقَالَ ابْنُ عُمَرَ: مَا شَعُرْت - فَهَذَا تَوَقُّفٌ مِنْ ابْنِ عُمَرَ.

I said: "The Companions of Muhammad (peace and blessings of Allah be upon him) in Kufa issued me a fatwa, affirming: 'Yes, the Prophet (peace and blessings of Allah be upon him) stated it, as did Abu Bakr and Umar.'" Ibn Umar then said: "I was not aware of this." This constitutes reservation from Ibn Umar.

L16507 وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَرِيفِ بْنِ دِرْهَمٍ عَنْ جَبَلَةَ بْنِ سُحَيْمٍ عَنْ ابْنِ عُمَرَ قَالَ: الْبَقَرَةُ عَنْ سَبْعَةٍ، فَهَذَا يَدُلُّ عَلَى رُجُوعِهِ - وَهَذَا مِمَّا خَالَفَ فِيهِ مَالِكٌ كُلَّ رِوَايَةٍ رُوِيَتْ فِيهِ عَنْ صَاحِبٍ إلَّا رِوَايَةً عَنْ ابْنِ عُمَرَ رَجَعَ عَنْهَا، وَخَالَفَ جُمْهُورَ التَّابِعِينَ فِي ذَلِكَ.

And through the chain of Waki' from 'Arīf ibn Dirham from Jabalah ibn Suhaym from Ibn 'Umar, who said: "A cow is for seven." This indicates Mālik's retraction—this is among the matters in which he opposed every narration reported in this matter from a Companion except a narration from Ibn 'Umar, from which he retracted, and he opposed the majority of the Successors regarding that.

L16508 قَالَ أَبُو مُحَمَّدٍ: الْحُجَّةُ إنَّمَا هِيَ فِي فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَمْنَعْ - عَلَيْهِ السَّلَامُ - مِنْ الِاشْتِرَاكِ فِي التَّطَوُّعِ أَكْثَرَ مِنْ عَشَرَةٍ، وَسَبْعَةٍ، بَلْ قَدْ أَشْرَكَ - عَلَيْهِ السَّلَامُ - فِي أُضْحِيَّتِهِ جَمِيعَ أُمَّتِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Abū Muḥammad said: The proof lies solely in the action of Allah's Messenger—peace and blessings be upon him. He—peace and blessings be upon him—did not restrict participation in voluntary sacrifices to fewer than seventeen individuals. Rather, he included the entirety of his nation in his sacrificial offering. And success is from Allah, the Exalted.

[مَسْأَلَةٌ عَلَى كُلِّ مُضَحٍّ أَنْ يَأْكُلَ مِنْ أُضْحِيَّتِهِ]

It is recommended for every person offering an udhiyah to eat from it.

L16509–16510

L16511 مَسْأَلَةٌ: فَرْضٌ عَلَى كُلِّ مُضَحٍّ أَنْ يَأْكُلَ مِنْ أُضْحِيَّتِهِ وَلَا بُدَّ لَوْ لُقْمَةً فَصَاعِدًا، وَفَرْضٌ عَلَيْهِ أَنْ يَتَصَدَّقَ أَيْضًا مِنْهَا بِمَا شَاءَ قَلَّ أَوْ كَثُرَ وَلَا بُدَّ، وَمُبَاحٌ لَهُ أَنْ يُطْعِمَ مِنْهَا الْغَنِيَّ، وَالْكَافِرَ، وَأَنْ يُهْدِيَ مِنْهَا إنْ شَاءَ ذَلِكَ.

Issue: It is obligatory and necessary for every person offering a sacrifice to eat from his sacrifice, even a single morsel or more. It is also obligatory and necessary upon him to give charity from it, whatever he wishes, whether little or abundant. It is permissible for him to feed the wealthy person and the disbeliever from it, and to give gifts from it if he wishes.

L16512 فَإِنْ نَزَلَ بِأَهْلِ بَلَدِ الْمُضَحِّي جَهْدٌ أَوْ نَزَلَ بِهِ طَائِفَةٌ مِنْ الْمُسْلِمِينَ فِي جَهْدٍ جَازَ لِلْمُضَحِّي أَنْ يَأْكُلَ مِنْ أُضْحِيَّتِهِ مِنْ حِينِ يُضَحِّي بِهَا إلَى انْقِضَاءِ ثَلَاثِ لَيَالٍ كَامِلَةٍ مُسْتَأْنَفَةٍ يَبْتَدِئُهَا بِالْعَدَدِ مِنْ بَعْدِ تَمَامِ التَّضْحِيَةِ ثُمَّ لَا يَحِلُّ لَهُ أَنْ يُصْبِحَ فِي مَنْزِلِهِ مِنْهَا بَعْدَ تَمَامِ الثَّلَاثِ لَيَالٍ شَيْءٌ أَصْلًا - لَا مَا قَلَّ وَلَا مَا كَثُرَ.

If hardship befalls the people of the sacrificer's town, or if a group of Muslims faces severe hardship, it is permissible for the sacrificer to eat from his sacrificial animal from the moment he sacrifices it until the end of three full nights counted anew from the completion of the sacrifice. After the three nights have fully passed, it becomes categorically forbidden for any portion of it—whether little or much—to remain in his home by morning.

L16513 If he sacrifices at night, he does not repeat that night within the three, because part of it has already passed. If none of this applies, let him store from it as much as he wishes.

فَإِنْ ضَحَّى لَيْلًا لَمْ يُعِدْ تِلْكَ اللَّيْلَةَ فِي الثَّلَاثِ، لِأَنَّهُ تَقَدَّمَ مِنْهَا شَيْءٌ، فَإِنْ لَمْ يَكُنْ شَيْءٌ مِنْ هَذَا فَلْيَدَّخِرْ مِنْهَا مَا شَاءَ.

L16514 It was narrated to us via the transmission cited in al-Bukhārī: from us, Abū ʻĀṣim—who is al-Ḍaḥḥāk ibn Makhlad—from Zayd ibn Abī ʻUbayd, from Salamah ibn al-Akwaʻ, who said: The Prophet—peace and blessings of Allah be upon him—said, "Whoever among you sacrifices must not let the morning of the third day arrive while anything of it remains in his house." When the following year came, they asked, "O Messenger of Allah, should we do as we did last year?" He replied, "Eat from it, feed others, and store it, for that year the people were in severe hardship, and I wanted you to provide aid through it."

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا أَبُو عَاصِمٍ هُوَ الضَّحَّاكُ بْنُ مَخْلَدٍ - عَنْ زَيْدِ بْنِ أَبِي عُبَيْدٍ عَنْ سَلَمَةَ بْنِ الْأَكْوَعِ قَالَ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ ضَحَّى مِنْكُمْ فَلَا يُصْبِحَنَّ بَعْدَ ثَالِثَةٍ وَفِي بَيْتِهِ مِنْهُ شَيْءٌ، فَلَمَّا كَانَ الْعَامُ الْمُقْبِلُ قَالُوا: يَا رَسُولَ اللَّهِ نَفْعَلُ كَمَا فَعَلْنَا الْعَامَ الْمَاضِيَ؟ قَالَ: كُلُوا، وَأَطْعِمُوا، وَادَّخِرُوا، فَإِنَّ ذَلِكَ الْعَامَ كَانَ بِالنَّاسِ جَهْدٌ فَأَرَدْتُ أَنْ تُعِينُوا فِيهَا» .

L16515 And through the chain of Malik from Abdullah ibn Abi Bakr ibn Amr ibn Hazm, that Amrah bint Abd al-Rahman said to him: "I heard Aisha, the Mother of the Believers, say: 'They said: "O Messenger of Allah, people are making water skins from their sacrificial animals and carrying fat in them." The Messenger of Allah (peace and blessings be upon him) said: "What is that¿' They said: "You prohibited us from eating the meat of the sacrifices after three days." He (peace be upon him) said: "From now on, eat, store, and give in charity."'"

وَمِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ عَمْرِو بْنِ حَزْمٍ " أَنَّ عَمْرَةَ بِنْتَ عَبْدِ الرَّحْمَنِ قَالَتْ لَهُ سَمِعْت عَائِشَةَ أُمَّ الْمُؤْمِنِينَ تَقُولُ: إنَّهُمْ قَالُوا: «يَا رَسُولَ اللَّهِ إنَّ النَّاسَ يَتَّخِذُونَ الْأَسْقِيَةَ مِنْ ضَحَايَاهُمْ وَيَحْمِلُونَ فِيهَا الْوَدَكَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: وَمَا ذَاكَ؟ قَالُوا: نَهَيْتَ أَنْ تُؤْكَلَ لُحُومُ الضَّحَايَا بَعْدَ ثَلَاثٍ قَالَ - عَلَيْهِ السَّلَامُ -: بَعْدُ كُلُوا، وَادَّخِرُوا، وَتَصَدَّقُوا» .

L16516 So these are commands from the Messenger of Allah—peace and blessings of Allah be upon him—and it is unlawful to contravene them. Allah, the Exalted, said, _"So let those who defy his command beware, lest a trial strike them or a painful punishment befall them"_ [Surah An-Nur 24:63].[1]

فَهَذِهِ أَوَامِرُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَحِلُّ خِلَافُهَا قَالَ تَعَالَى: {فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ} [النور: ٦٣] .

L16517–16518 And whoever claims that it is recommended has lied and asserted what he has no knowledge of. It suffices him that all the Companions—may Allah be pleased with them—did not interpret the Prophet's prohibition—peace be upon him—against keeping any of it in their homes beyond three days except as an obligation, nor did they contravene him except after his permission. There is no distinction between command and prohibition, for he said:

وَمَنْ ادَّعَى أَنَّهُ نَدْبٌ فَقَدْ كَذَبَ، وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ وَيَكْفِيهِ أَنَّ جَمِيعَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَمْ يَحْمِلُوا نَهْيَهُ - عَلَيْهِ السَّلَامُ - عَنْ أَنْ يُصْبِحَ فِي بُيُوتِهِمْ بَعْدَ ثَلَاثٍ مِنْهَا شَيْءٌ إلَّا عَلَى الْفَرْضِ وَلَمْ يُقْدِمُوا عَلَى مُخَالَفَتِهِ إلَّا بَعْدَ إذْنِهِ، وَلَا فَرْقَ بَيْنَ الْأَمْرِ وَالنَّهْيِ، قَالَ - عَلَيْهِ السَّلَامُ -: «إذَا نَهَيْتُكُمْ عَنْ شَيْءٍ فَاتْرُكُوهُ وَإِذَا أَمَرْتُكُمْ بِشَيْءٍ فَأْتُوا

[1] **Qur'an references (L16516):** Qur'an 24:63 (An-Nur).

مِنْهُ مَا اسْتَطَعْتُمْ» وَعَمَّ - عَلَيْهِ السَّلَامُ - بِالْإِطْعَامِ فَجَائِزٌ أَنْ يُطْعِمَ مِنْهُ كُلَّ آكِلٍ، إذْ لَوْ حُرِّمَ مِنْ ذَلِكَ شَيْءٌ لَبَيَّنَهُ - عَلَيْهِ السَّلَامُ - {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] ، {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] وَادِّخَارُ سَاعَةٍ فَصَاعِدًا يُسَمَّى ادِّخَارًا.

"When I forbid you from something, leave it, and when I command you to do something, do as much of it as you are able." He—peace be upon him—generalized the feeding, so it is permissible to feed any eater from it. Had anything therein been prohibited, he would have clarified it, for "your Lord is not forgetful" [19:64], "nor does he speak out of desire" [53:3], "it is but a revelation revealed" [53:4]. Storing for an hour or longer is termed storing.[2]

L16519 وَالْعَجَبُ كُلُّهُ مِمَّنْ يَسْتَخْرِجُ بِعَقْلِهِ الْقَاصِرِ وَرَأْيِهِ الْفَاسِدِ عِلَلًا لِأَوَامِرِ اللَّهِ تَعَالَى وَأَوَامِرِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - لَا بُرْهَانَ لَهُ بِهَا إلَّا دَعْوَاهُ الْكَاذِبَةُ، ثُمَّ يَأْتِي إلَى حُكْمٍ جَعَلَهُ - عَلَيْهِ السَّلَامُ - مُوجِبًا لِحُكْمٍ آخَرَ فَلَا يَلْتَفِتُ إلَيْهِ، وَقَدْ جَعَلَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْجَهْدَ الْحَالَّ بِالنَّاسِ مُوجِبًا لِئَلَّا يَبْقَى عِنْدَ أَحَدٍ مِنْ أُضْحِيَّتِهِ شَيْءٌ بَعْدَ ثَالِثَةٍ فَلَمْ يَلْتَفِتُوا إلَى ذَلِكَ وَنَعُوذُ بِاَللَّهِ مِنْ هَذَا.

All astonishment lies in those who, with their deficient intellects and corrupt reasoning, fabricate pretexts regarding the commandments of Allah the Exalted and the commandments of His Messenger—peace be upon him—having no proof for this except their false claims. Then they approach a ruling which the Prophet—peace and blessings of Allah be upon him—rendered it a basis for another ruling, yet they ignore it. Indeed, the Prophet—peace and blessings of Allah be upon him—made the current hardship affecting people a cause so that no one would retain any portion of their sacrificial animal beyond three days, yet they disregarded this. We seek refuge in Allah from this [behavior].

L16520 فَإِنْ ذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ إبْرَاهِيمَ الْحَرْبِيِّ عَنْ الْحَكَمِ بْنِ مُوسَى عَنْ الْوَلِيدِ عَنْ طَلْحَةَ بْنِ عَمْرٍو عَنْ عَطَاءٍ عَنْ ابْنِ مَسْعُودٍ «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَأْكُلَ مِنْهَا ثُلُثًا وَنَتَصَدَّقَ بِثُلُثِهَا وَنُطْعِمَ الْجِيرَانَ ثُلُثَهَا» . فَطَلْحَةُ مَشْهُورٌ بِالْكَذِبِ الْفَاضِحِ، وَعَطَاءٌ لَمْ يُدْرِكْ ابْنَ مَسْعُودٍ وَلَا وُلِدَ إلَّا بَعْدَ مَوْتِهِ، وَلَوْ صَحَّ لَقُلْنَا بِهِ مُسَارِعِينَ إلَيْهِ، لَكِنْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُمَرَ عَنْ عَاصِمٍ عَنْ أَبِي مِجْلَزٍ قَالَ: أَمَرَ ابْنُ عُمَرَ أَنْ يُرْفَعَ لَهُ مِنْ أُضْحِيَّتِهِ بَضْعَةٌ وَيُتَصَدَّقَ بِسَائِرِهَا.

If they mention what has been narrated to us through the chain of Ibrāhīm al-Ḥarbī from al-Ḥakam ibn Mūsā from al-Walīd from Ṭalḥah ibn ʿAmrū from ʿAṭāʾ from Ibn Masʿūd: "The Messenger of Allāh—peace and blessings be upon him—commanded us to eat one-third of it, give one-third in charity, and feed the neighbors one-third." Now Ṭalḥah is notorious for flagrant falsehood, and ʿAṭāʾ did not meet Ibn Masʿūd nor was he born until after his death. Had this narration been sound, we would have rushed to adopt it. However, it has been narrated to us through the chain of ʿAbd al-Razzāq from ʿUmar from ʿĀṣim from Abū Mijlaz, who reported: Ibn ʿUmar ordered that a portion of his sacrificial animal be reserved for him while the remainder be given in charity.

L16521 وَمِنْ طَرِيقِ أَبِي الْجَهْمِ نَا أَحْمَدُ بْنُ فَرَجٍ نَا الْهَرَوِيُّ نَا ابْنُ فُضَيْلٍ عَنْ عَطَاءٍ.

And via the chain of Abi al-Jahm: Aḥmad ibn Faraj reported to us, al-Harawī reported, Ibn Fuḍayl reported, from ʿAṭāʾ.

[2] **Qur'an references (L16518):** Qur'an 19:64 (Maryam); Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).

عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: سَافَرَ مَعِي تَمِيمُ بْنُ سَلَمَةَ فَلَمَّا ذَبَحْنَا أُضْحِيَّتَهُ فَأَخَذَ مِنْهَا بَضْعَةً فَقَالَ: آكُلُهَا؟ فَقُلْتُ لَهُ: وَمَا عَلَيْكَ أَنْ لَا تَأْكُلَ مِنْهَا؟ فَقَالَ تَمِيمٌ: يَقُولُ اللَّهُ تَعَالَى: {فَكُلُوا مِنْهَا} [الحج: ٢٨] فَتَقُولُ أَنْتَ: وَمَا عَلَيْكَ أَنْ لَا تَأْكُلَ.

L16522–16524 From Ibrahim al-Nakha'i said: Tamim ibn Salama traveled with me. When we slaughtered his sacrificial animal, he took a portion of it and said: "Shall I eat it?" I said to him: "What harm is there if you do not eat from it?" Tamim said: "Allah the Most High says: *'So eat from it'* [Al-Hajj: 28], yet you say: 'What harm is there if you do not eat?'"[3]

قَالَ أَبُو مُحَمَّدٍ: حَمَلَ هَذَا الْأَمْرَ تَمِيمٌ عَلَى الْوُجُوبِ وَهَذَا الْحَقُّ الَّذِي لَا يَسَعُ أَحَدًا سِوَاهُ، وَتَمِيمٌ مِنْ أَكَابِرِ أَصْحَابِ ابْنِ مَسْعُودٍ.

L16525 Abu Muhammad said: Tamim interpreted this matter as being obligatory, and this is the truth that no one may validly oppose. Tamim was one of the most prominent companions of Ibn Mas'ud.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ مُحَمَّدِ بْنِ فُضَيْلٍ عَنْ عَبْدِ الْمَلِكِ عَنْ مَوْلًى لِأَبِي سَعِيدٍ عَنْ أَبِي سَعِيدٍ أَنَّهُ كَانَ يَقُولُ لِبَنِيهِ: إِذَا ذَبَحْتُمْ أَضَاحِيَكُمْ فَأَطْعِمُوا، وَكُلُوا، وَتَصَدَّقُوا. وَعَنْ ابْنِ مَسْعُودٍ أَيْضًا نَحْوُ هَذَا - وَعَنْ عَطَاءٍ نَحْوُهُ، وَصَحَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ: لَيْسَ لِصَاحِبِ الْأُضْحِيَّةِ إِلَّا رُبُعُهَا.

L16526 Through the narration of Ibn Abī Shaybah, from Muḥammad ibn Fuḍayl, from ʿAbd al-Malik, from a client of Abū Saʿīd, from Abū Saʿīd, that he would say to his sons: "When you slaughter your sacrificial animals, feed others, eat, and give charity." A similar statement is reported from Ibn Masʿūd as well – and from ʿAṭāʾ a similar statement. It is authentically reported from Saʿīd ibn al-Musayyib and ʿUrwah ibn al-Zubayr: "The owner of the sacrificial animal has no entitlement except to a quarter of it."

فَإِنْ ذَكَرُوا: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نَا إِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ حَدَّثَنِي أَخِي أَبُو بَكْرٍ عَنْ سُلَيْمَانَ هُوَ ابْنُ بِلَالٍ - عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ عَمْرَةَ «عَنْ عَائِشَةَ قَالَتْ فِي الضَّحِيَّةِ كُنَّا نُمَلِّحُ مِنْهُ فَنَقْدَمُ بِهِ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمَدِينَةِ فَقَالَ: لَا تَأْكُلُوا إِلَّا ثَلَاثَةَ أَيَّامٍ» وَلَيْسَتْ بِعَزِيمَةٍ وَلَكِنْ أَرَادَ أَنْ يُطْعِمَ مِنْهُ، وَاَللَّهُ أَعْلَمُ.

L16527 If they mentioned: What we have narrated through the chain of Al-Bukhari—Ismail ibn Abi Uwais narrated to me, my brother Abu Bakr narrated to me from Sulayman (ibn Bilal) from Yahya ibn Sa'id al-Ansari from 'Amrah from 'A'ishah, who said regarding the sacrificial meat: "We would salt some of it and bring it to the Prophet (ﷺ) in Medina. He said: 'Do not eat from it for more than three days.'" This was not a binding obligation, but rather he intended for it to be distributed as food. Allah knows best.

فَهَذَا خَبَرٌ لَا حُجَّةَ فِيهِ، لِأَنَّ قَوْلَ الْقَائِلِ " لَيْسَتْ بِعَزِيمَةٍ " لَيْسَ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا هُوَ مِنْ ظَنِّ بَعْضِ رُوَاةِ الْخَبَرِ، يُبَيِّنُ ذَلِكَ قَوْلُهُ فِي آخِرِ هَذَا الْخَبَرِ «أَرَادَ أَنْ يُطْعِمَ مِنْهُ» وَاَللَّهُ أَعْلَمُ.

L16528 This is a report that holds no authoritative evidence, because the statement "It is not a binding obligation" is not from the speech of Allah's Messenger—peace and blessings be upon him—but rather arises from the conjecture of some narrators. This is clarified by the statement at the end of the report: "He intended to feed others from it," and Allah knows best.

وَأَيْضًا: فَإِنَّ أَبَا بَكْرِ بْنَ أَبِي أُوَيْسٍ مَذْكُورٌ عَنْهُ فِي رِوَايَتِهِ أَمْرٌ عَظِيمٌ، وَقَدْ حَمَلَ عَلِيُّ بْنُ أَبِي طَالِبٍ هَذَا الْقَوْلَ مِنْهُ - عَلَيْهِ السَّلَامُ - عَلَى الْوُجُوبِ، وَابْنُ عُمَرَ كَمَا ذَكَرْنَا.

L16529 Moreover, a significant matter is attributed to Abu Bakr ibn Abi Uways in

[3] **Qur'an references (L16522):** Qur'an 22:28 (Al-Hajj).

his narration. Ali ibn Abi Talib (AS) interpreted this statement from him as indicating obligation, as did Ibn Umar, as we mentioned.

L16530–16531 It has been narrated to us through the chain of Muslim: Harmala ibn Yahya narrated to me from Ibn Wahb, who informed me from Yunus from Ibn Shihab, who informed me from Abu Ubayd, the client of Ibn Azhar, that he attended the Eid with Umar ibn al-Khattab. He said: "Then I prayed with Ali ibn Abi Talib, and he led us in prayer before the sermon. Then he addressed the people and said: 'Indeed, the Messenger of Allah—peace and blessings be upon him—has forbidden you from eating the meat of your sacrifices beyond three nights, so do not eat it.'"

Through the chain of Waki': Sufyan al-Thawri narrated to us from Abu Husain from Abu Abd al-Rahman al-Sulami from Ali ibn Abi Talib, who said: "No one should eat from the meat of his sacrificial animal beyond three days."[4]

L16532 Ali said: The narration of Abu Ubayd, the client of Ibn Azhar, pertains to the year of Uthman's siege—may Allah be pleased with him—when the desert dwellers were driven by turmoil to Medina and faced hardship. He therefore commanded the same as what the Messenger of Allah—peace and blessings be upon him—had ordered when people were in hardship and the throng surged. And with Allah the Exalted is success.

L16533 **Issue: It is impermissible for the sacrificer to sell from his sacrificial animal.**

L16534 986 - Issue: It is not permissible for the sacrificer to sell anything from their sacrificial animal after sacrificing it: neither skin, wool, hair, fur, feathers, fat, meat, bones, cartilage, head, limb, innards, nor to give any part of it as sadaqah, rent it out, or purchase anything with it whatsoever—not even household items, a sieve, sifter, seasonings, or anything whatsoever.

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى عَنْ ابْنِ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي أَبُو عُبَيْدٍ مَوْلَى ابْنِ أَزْهَرَ أَنَّهُ شَهِدَ الْعِيدَ مَعَ عُمَرَ بْنِ الْخَطَّابِ قَالَ: ثُمَّ صَلَّيْت مَعَ عَلِيِّ بْنِ أَبِي طَالِبٍ فَصَلَّى لَنَا قَبْلَ الْخُطْبَةِ ثُمَّ خَطَبَ النَّاسَ فَقَالَ «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ نَهَاكُمْ أَنْ تَأْكُلُوا لُحُومَ نُسُكِكُمْ فَوْقَ ثَلَاثِ لَيَالٍ فَلَا تَأْكُلُوا» . وَمِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي حُصَيْنٍ عَنْ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: لَا يَأْكُلْ أَحَدٌ مِنْ لَحْمِ أُضْحِيَّتِهِ فَوْقَ ثَلَاثٍ.

قَالَ عَلِيٌّ: حَدِيثُ أَبِي عُبَيْدٍ مَوْلَى ابْنِ أَزْهَرَ كَانَ عَامَ حَصْرِ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - وَكَانَ أَهْلُ الْبَوَادِي قَدْ أَجْأَتْهُمْ الْفِتْنَةُ إلَى الْمَدِينَةِ وَأَصَابَهُمْ جَهْدٌ فَأَمَرَ لِذَلِكَ بِمِثْلِ مَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَ جَهِدَ النَّاسُ وَدَفَّتْ الدَّافَّةُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يَحِلُّ لِلْمُضَحِّي أَنْ يَبِيعَ مِنْ أُضْحِيَّتِهِ]

٩٨٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْمُضَحِّي أَنْ يَبِيعَ مِنْ أُضْحِيَّتِهِ بَعْدَ أَنْ يُضَحِّيَ بِهَا شَيْئًا: لَا جِلْدًا، وَلَا صُوفًا، وَلَا شَعْرًا، وَلَا وَبَرًا، وَلَا رِيشًا، وَلَا شَحْمًا، وَلَا لَحْمًا، وَلَا عَظْمًا، وَلَا غُضْرُوفًا، وَلَا رَأْسًا، وَلَا طَرَفًا، وَلَا حَشْوَةً، وَلَا أَنْ يُصْدِقَهُ، وَلَا أَنْ يُؤَاجِرَ بِهِ، وَلَا أَنْ يَبْتَاعَ بِهِ شَيْئًا أَصْلًا، لَا مِنْ مَتَاعِ الْبَيْتِ، وَلَا غِرْبَالًا، وَلَا مُنْخُلًا، وَلَا تَابِلًا وَلَا شَيْئًا أَصْلًا.

[4] **Hadith references (L16531):** Sahih Muslim 1969b.

L16535 He has the right to benefit from all of that, use it, inscribe on the leather, wear it, grant it as a gift (hiba), or offer it as a gift (hadiyya). Whoever acquires ownership of any such item through a grant, voluntary charity (sadaqah), or inheritance may then sell it if he wishes.

وَلَهُ أَنْ يَنْتَفِعَ بِكُلِّ ذَلِكَ، وَيَتَوَطَّأَهُ، وَيَنْسَخَ فِي الْجِلْدِ، وَيَلْبَسَهُ، وَيَهَبَهُ وَيُهْدِيَهُ، فَمَنْ مَلَكَ شَيْئًا مِنْ ذَلِكَ بِهِبَةٍ، أَوْ صَدَقَةٍ، أَوْ مِيرَاثٍ، فَلَهُ بَيْعُهُ حِينَئِذٍ إِنْ شَاءَ.

L16536 It is not permissible for him to give the butcher anything from the animal in return for slaughtering or skinning it. But he may give him something from other than it. Every occurrence of this practice is invalidated forever.

وَلَا يَحِلُّ لَهُ أَنْ يُعْطِيَ الْجَزَّارَ عَلَى ذَبْحِهَا، أَوْ سَلْخِهَا شَيْئًا مِنْهَا، وَلَهُ أَنْ يُعْطِيَهُ مِنْ غَيْرِهَا، وَكُلُّ مَا وَقَعَ مِنْ هَذَا فُسِخَ أَبَدًا.

L16537 The Salaf differed concerning this matter: We have been informed through the chain of Shu'bah, from Qatādah, from 'Uqbah ibn Ṣahbān: I asked Ibn 'Umar, "May I sell the hide of a cow that I had sacrificed?" And he permitted me.

وَقَدْ اخْتَلَفَ السَّلَفُ فِي هَذَا -: فَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ قَتَادَةَ عَنْ عُقْبَةَ بْنِ صَهْبَانَ قُلْت لِابْنِ عُمَرَ: أَبِيعُ جِلْدَ بَقَرٍ ضَحَّيْت بِهَا؟ فَرَخَّصَ لِي.

L16538 It has been narrated to us through ʿAṭāʾ's chain of narration that he said: If the sacrifice is obligatory, one must give its skin as charity, and if it is voluntary, one may sell it if one wishes.

وَرُوِّينَا مِنْ طَرِيقِ عَطَاءٍ أَنَّهُ قَالَ: إذَا كَانَ الْهَدْيُ وَاجِبًا يَتَصَدَّقُ بِإِهَابِهِ وَإِنْ كَانَ تَطَوُّعًا بَاعَهُ إنْ شَاءَ.

L16539–16540 And he also said: There is no harm in selling the hide of the Uḍḥiyah (Eid sacrificial animal) if you owe a debt.

وَقَالَ أَيْضًا: لَا بَأْسَ بِبَيْعِ جِلْدِ الْأُضْحِيَّةِ إذَا كَانَ عَلَيْك دَيْنٌ.

L16541 Ash-Sha'bī was asked about the hides of sacrificial animals. He replied: *"Neither their flesh nor their blood will ever reach Allah"* [Surah Al-Ḥajj 22:37]; if you wish, then sell them; if you wish, then keep them.[5]

وَسُئِلَ الشَّعْبِيُّ عَنْ جُلُودِ الْأَضَاحِيِّ؟ فَقَالَ {لَنْ يَنَالَ اللَّهَ لُحُومُهَا وَلا دِمَاؤُهَا} [الحج: ٣٧] إنْ شِئْت فَبِعْ، وَإِنْ شِئْت فَأَمْسِكْ.

L16542 It is authentically reported from Abu Al-'Aliyah that he said: There is no harm in selling the hides of sacrificial animals. What an excellent bounty: you eat the meat, fulfill the rites, and reclaim some of the price.

وَصَحَّ عَنْ أَبِي الْعَالِيَةِ أَنَّهُ قَالَ: لَا بَأْسَ بِبَيْعِ جُلُودِ الْأَضَاحِيِّ، نِعْمَ الْغَنِيمَةُ تَأْكُلُ اللَّحْمَ وَتَقْضِي النُّسُكَ، وَيُرْجَعُ إلَيْك بَعْضُ الثَّمَنِ.

L16543 Others held a similar view except that they permitted selling it by exchanging one item for another. It is authentically reported from Ibrāhīm al-Nakhaʿī that he disapproved of selling the sacrificial animal's hide, stating: "There is no harm in exchanging the hide for some household items." He said: "Give it as charity," but permitted as a concession to purchase sieves and sifters with it.

وَذَهَبَ آخَرُونَ إلَى مِثْلِ هَذَا إلَّا أَنَّهُمْ أَجَازُوا أَنْ يُبَاعَ بِهِ شَيْءٌ دُونَ شَيْءٍ -: صَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ كَرِهَ بَيْعَ جِلْدِ الْأُضْحِيَّةِ وَقَالَ: لَا بَأْسَ بِأَنْ يُبَدِّلَ بِجِلْدِ الْأُضْحِيَّةِ بَعْضُ مَتَاعِ الْبَيْتِ وَأَنَّهُ قَالَ: تَصَدَّقْ بِهِ وَأَرْخَصَ أَنْ يُشْتَرَى بِهِ الْغِرْبَالُ وَالْمُنْخُلُ.

[5] **Qur'an references (L16541):** Qur'an 22:37 (Al-Hajj).

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَا يَجُوزُ بَيْعُهُ، وَلَكِنْ يُبْتَاعُ بِهِ بَعْضُ مَتَاعِ الْبَيْتِ كَالْغِرْبَالِ، وَالْمُنْخُلِ، وَالتَّابِلِ.

L16544 Abu Hanifa and Malik said: It is not permissible to sell it, but some household items such as sieves, sifters, and ropes may be purchased with it.

قَالَ هِشَامُ بْنُ عُبَيْدِ اللَّهِ الرَّازِيّ: أَيُبْتَاعُ بِهِ الْخَلُّ؟ قَالَ: لَا، قَالَ: فَقُلْت لَهُ: فَمَا الْفَرْقُ بَيْنَ الْخَلِّ وَالْغِرْبَالِ؟ قَالَ: فَقَالَ: لَا تَشْتَرِ بِهِ الْخَلَّ - وَلَمْ يَزِدْهُ عَلَى ذَلِكَ.

L16545 Hisham ibn ʻUbayd Allah al-Razi said: "Does one purchase vinegar in exchange for it?" He replied: "No." I then said to him: "What is the difference between vinegar and the sieve?" He said: "Do not purchase vinegar in exchange for it," and he added nothing beyond that.

قَالَ أَبُو مُحَمَّد: أَمَّا هَذَا الْقَوْلُ فَطَرِيفٌ جِدًّا، وَلَيْتَ شِعْرِي مَا الْفَرْقُ بَيْنَ التَّوَابِلِ، الْكَمُّونِ، وَالْفُلْفُلِ، وَالْكُسْبُرَةِ، وَالْكَرَاوْيَا، وَالْغِرْبَالِ، وَالْمُنْخُلِ. وَبَيْنَ الْخَلِّ، وَالزَّيْتِ وَاللَّحْمِ، وَالْفَأْسِ، وَالْمِسْحَاةِ، وَالثَّوْبِ، وَالْبِرِّ، وَالنَّبِيذِ الَّذِي لَا يُسْكِرُ؟ وَهَلْ يَجُوزُ عِنْدَهُمْ فِي ابْتِيَاعِ: التَّوَابِلِ، وَالْغِرْبَالِ، وَالْمَنَاخِلِ، مِنْ الرِّبَا وَالْبُيُوعِ الْفَاسِدَةِ مَا لَا يَجُوزُ فِي غَيْرِ ذَلِكَ؟ إنَّ هَذَا لَعَجَبٌ لَا نَظِيرَ لَهُ وَهَذَا أَيْضًا قَوْلٌ خِلَافُ كُلِّ مَا رُوِيَ فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L16546 Abu Muhammad said: As for this statement, it is exceedingly novel. Would that I knew: What is the distinction between spices—cumin, pepper, coriander, caraway, winnowing baskets, and sieve—and vinegar, oil, meat, axes, hoes, garments, wheat, and non-intoxicating nabīdh? Does their position permit in the purchase of spices, winnowing baskets, and sieves—regarding usury and invalid sales—what is impermissible in other matters? Truly, this is an unparalleled marvel. Moreover, this opinion contradicts all that has been transmitted from the Companions (may Allah be pleased with them) concerning this matter.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ أَبِي ظَبْيَانَ فَقُلْت لِابْنِ عَبَّاسٍ: كَيْفَ نَصْنَعُ بِإِهَابِ الْبُدْنِ؟ قَالَ: يُتَصَدَّقُ بِهِ وَيُنْتَفَعُ بِهِ.

L16547 It has been narrated to us through Abd al-Razzaq, from Sufyan al-Thawri, from al-Aʻmash, from Abu Ẓabyān: I said to Ibn Abbas, "What should we do with the hides of sacrificial camels?" He replied, "They should be given as charity and utilized."

وَعَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنْ يُجْعَلَ مِنْ جِلْدِ الْأُضْحِيَّةِ سِقَاءً يُنْبَذُ فِيهِ.

L16548 That a water skin made from the hide of the sacrificial animal be designated for storing nabīdh (fermented drink).

وَعَنْ مَسْرُوقٍ أَنَّهُ كَانَ يَجْعَلُ مِنْ جِلْدِ أُضْحِيَّتِهِ مُصَلًّى يُصَلِّي فِيهِ.

L16549 And it is narrated from Masruq that he would use the skin of his sacrificial animal as a prayer mat to pray on.

وَصَحَّ عَنْ الْحَسَنِ الْبَصْرِيِّ: انْتَفِعُوا بِمُسُوكِ الْأَضَاحِيِّ وَلَا تَبِيعُوهَا.

L16550 It is authentically reported from al-Ḥasan al-Baṣrī: Benefit from the hides of sacrificial animals, but do not sell them.

وَعَنْ طَاوُسٍ أَنَّهُ عَمِلَ مِنْ جِلْدِ عُنُقِ بَدَنَتِهِ نَعْلَيْنِ لِغُلَامِهِ.

L16551 From Ṭāwus: he made two sandals from the neck skin of his sacrificial camel for his enslaved youth.

وَعَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ لَا يُعْطَى الْجَزَّارُ جِلْدَ الْبَدَنَةِ وَلَا يُبَاعُ.

L16552–16553 From Ma'mar, from Al-Zuhri: The butcher should not be given the hide of the sacrificial camel, nor should it be sold.

L16554 Sufyan ibn ‘Uyaynah narrated from Ibn Abi Najih that Mujahid and Sa‘id ibn Jubayr disliked selling the hide of the sacrificial camel, whether the sacrifice was voluntary or obligatory.

وَعَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ ابْنِ أَبِي نَجِيحٍ أَنَّ مُجَاهِدًا، وَسَعِيدَ بْنَ جُبَيْرٍ كَرِهَا أَنْ يُبَاعَ جِلْدُ الْبَدَنَةِ تَطَوُّعًا كَانَتْ أَوْ وَاجِبَةً.

L16555 Abu Muhammad said: There are only two opinions: those who generally prohibit it and those who generally permit it. Those who generally permit it cited as evidence the statement of Allah, the Most High: “And Allah has made sale lawful” [Al-Baqarah: 275].[6]

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ إلَّا قَوْلُ مَنْ مَنَعَ جُمْلَةً أَوْ مَنْ أَبَاحَ جُمْلَةً فَاحْتَجَّ مَنْ أَبَاحَ جُمْلَةً بِقَوْلِ اللَّهِ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

L16556 Ali said: “This is right since nothing specific has come regarding it, and it is authentically established from the Prophet (peace be upon him) concerning ritual sacrifices as we have cited of his saying: ’Eat, feed others, give charity, and store up.’ Therefore, it is not permissible to overstep these manners, for that would transgress the limits set by Allah, the Exalted.”

قَالَ عَلِيٌّ: هَذَا حَقٌّ إذْ لَمْ يَأْتِ مَا يَخُصُّهُ، وَقَدْ صَحَّ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْأَضَاحِيِّ مَا أَوْرَدْنَاهُ مِنْ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: كُلُوا، وَأَطْعِمُوا، وَتَصَدَّقُوا، وَادَّخِرُوا» فَلَا يَحِلُّ تَعَدِّي هَذِهِ الْوُجُوهِ فَيَتَعَدَّى حُدُودَ اللَّهِ تَعَالَى.

L16557 Saving is a term that applies to withholding. We are therefore permitted to withhold it and give charity from it, and nothing else is permissible for us.

وَالِادِّخَارُ اسْمٌ يَقَعُ عَلَى الْحَبْسِ، فَأُبِيحَ لَنَا احْتِبَاسُهَا وَالصَّدَقَةُ بِهَا، فَلَيْسَ لَنَا غَيْرُ ذَلِكَ.

L16558 Moreover, when the sacrificial offering is presented to Allah the Exalted, the sacrificer has removed it from his ownership to Allah. Therefore, nothing from it becomes permissible for him except what the text has permitted. Were it not for the explicit directive regarding eating and storing, nothing from it would have been permissible for us. Thus, these two are exempted from the prohibition by the text, while all that is other than these entirely remains subject to the prohibition.

وَأَيْضًا: فَإِنَّ الْأُضْحِيَّةَ إذَا قُرِّبَتْ إلَى اللَّهِ تَعَالَى فَقَدْ أَخْرَجَهَا الْمُضَحِّي مِنْ مِلْكِهِ إلَى اللَّهِ تَعَالَى فَلَا يَحِلُّ لَهُ مِنْهَا شَيْءٌ إلَّا مَا أَحَلَّهُ لَهُ النَّصُّ، فَلَوْلَا الْأَمْرُ الْوَارِدُ بِالْأَكْلِ وَالِادِّخَارِ مَا حَلَّ لَنَا شَيْءٌ مِنْ ذَلِكَ، فَخَرَجَ هَذَانِ عَنْ الْحَظْرِ بِالنَّصِّ وَبَقِيَ مَا عَدَا ذَلِكَ كُلِّهِ عَلَى الْحَظْرِ.

L16559 They assert—and we hold the same view concerning the umm al-walad—that he may employ her services, have intercourse with her, and emancipate her, but it is unlawful for him to sell her, give her as a dowry, rent her out, or grant her ownership to another. And with Allah, the Exalted, is success.

وَهُمْ يَقُولُونَ وَنَحْنُ فِي أُمِّ الْوَلَدِ كَذَلِكَ أَنَّ لَهُ اسْتِخْدَامَهَا وَوَطْأَهَا وَعِتْقَهَا وَلَا يَحِلُّ لَهُ بَيْعُهَا، وَلَا إصْدَاقُهَا، وَلَا الْإِجَارَةُ بِهَا، وَلَا تَمْلِيكُهَا غَيْرَهُ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16560 Any action that occurs which is unlawful must be annulled, based on the statement of Allah’s Messenger—peace and blessings be upon him: “Whoever performs an act not in accordance with our way, it is invalid.” As for one who acquires ownership of something from such [unlawful sources] through inheritance, gift, or charity, it remains part of his wealth that he has not yet

وَمَا وَقَعَ مِمَّا لَا يَجُوزُ فَيُفْسَخُ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَأَمَّا مَنْ تَمَلَّكَ مِنْ ذَلِكَ شَيْئًا بِمِيرَاثٍ أَوْ هِبَةٍ أَوْ صَدَقَةٍ فَهُوَ مَالٌ مِنْ مَالِهِ لَمْ يُخْرِجْهُ عَنْ يَدِهِ إلَى اللَّهِ تَعَالَى بَعْدُ فَلَهُ فِيهِ مَا لَهُ فِي سَائِرِ مَالِهِ وَلَا فَرْقَ.

[6] **Qur’an references (L16555):** Qur’an 2:275 (Al-Baqarah).

transferred from his possession to Allah's ownership. He retains the same rights to it as to the rest of his wealth, with no distinction.[7]

L16561 **A legal question: If a defect is discovered in the *Udhiyah* after he has sacrificed it.**

L16562 987 - Issue: If someone finds a defect in the sacrificial animal after sacrificing it without having stipulated soundness, they may reclaim the difference between its value when alive and sound versus its defective value. This is because they originally held the right to return or retain it. When this right becomes void due to the animal's exit through sacrifice to Allah the Exalted, it becomes impermissible for the seller to consume their brother's property through deceit and falsehood. Thus, the seller must return whatever excess they took beyond the animal's rightful equivalent value, as this was taken without legitimate right - unless the purchaser permits this, for it remains their rightful claim which they may relinquish to Allah the Exalted. This matter is comprehensively addressed in the Book of Transactions, if Allah the Exalted wills.

L16563–16564 He, the Exalted, said: "Do not consume one another's wealth wrongfully" (Quran 2:188).[8]

L16565 And He, the Exalted, said: "They deceive Allah and those who believe, but they deceive none except themselves" [Al-Baqarah: 9]. Thus, the deception here refers to usurping wealth wrongfully.[9]

L16566 ٩٨٨ - Issue:

L16567 If the condition of soundness was stipulated, it is deemed carrion. The buyer shall compensate the seller with its equivalent and reclaim the price. It may not be consumed, for the sound animal—with certainty and without doubt—is distinct from the defective one.

[7] **Hadith references (L16560):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[8] **Qur'an references (L16564):** Qur'an 2:188 (Al-Baqarah).

[9] **Qur'an references (L16565):** Qur'an 2:9 (Al-Baqarah).

[مَسْأَلَةٌ وَجَدَ بِالْأُضْحِيَّةِ عَيْبًا بَعْدَ أَنْ ضَحَّى بِهَا]

٩٨٧ - مَسْأَلَةٌ: وَمَنْ وَجَدَ بِالْأُضْحِيَّةِ عَيْبًا بَعْدَ أَنْ ضَحَّى بِهَا وَلَمْ يَكُنْ اشْتَرَطَ السَّلَامَةَ فَلَهُ الرُّجُوعُ بِمَا بَيْنَ قِيمَتِهَا حَيَّةً صَحِيحَةً وَبَيْنَ قِيمَتِهَا مَعِيبَةً، وَذَلِكَ لِأَنَّهُ كَانَ لَهُ الرَّدُّ أَوْ الْإِمْسَاكُ، فَلَمَّا بَطَلَ الرَّدُّ بِخُرُوجِهَا بِالتَّضْحِيَةِ إِلَى اللَّهِ تَعَالَى لَمْ يَجُزْ لِلْبَائِعِ أَكْلُ مَالِ أَخِيهِ بِالْخَدِيعَةِ وَالْبَاطِلِ فَعَلَيْهِ رَدُّ مَا اسْتَزَادَ عَلَى حَقِّهَا الَّذِي يُسَاوِيهِ، لِأَنَّهُ أَخَذَهُ بِغَيْرِ حَقٍّ، إِلَّا أَنْ يُحَلَّ لَهُ ذَلِكَ الْمُبْتَاعُ فَلَهُ ذَلِكَ، لِأَنَّهُ حَقُّهُ تَرَكَهُ لِلَّهِ تَعَالَى وَهَذَا مُتَقَصًّى فِي كِتَابِ الْبُيُوعِ إِنْ شَاءَ اللَّهُ تَعَالَى.

قَالَ تَعَالَى: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

وَقَالَ تَعَالَى: {يُخَادِعُونَ اللَّهَ وَالَّذِينَ آمَنُوا وَمَا يَخْدَعُونَ إِلا أَنْفُسَهُمْ} [البقرة: ٩] فَالْخَدِيعَةِ أَكْلُ مَالٍ بِالْبَاطِلِ.

٩٨٨ - مَسْأَلَةٌ:

فَإِنْ كَانَ اشْتِرَاطَ السَّلَامَةَ فَهِيَ مَيْتَةٌ وَيَضْمَنُ مِثْلَهَا لِلْبَائِعِ وَيَسْتَرِدُّ الثَّمَنَ وَلَا تُؤْكَلُ لِأَنَّ السَّالِمَةَ بِيَقِينٍ لَا شَكَّ فِيهِ هِيَ غَيْرُ الْمَعِيبَةِ.

L16568 Whoever purchases a sound item and gives a defective one in return has indeed given something other than what he purchased. When he gives something other than what he purchased, he has taken what does not rightfully belong to him. Whoever takes what does not rightfully belong to him, it is forbidden for him. Allah the Exalted said: "Do not consume one another's wealth unjustly, except through trade by mutual consent among you." [An-Nisa: 29][10]

فَمَنْ اشْتَرَى سَالِمَةً وَأَعْطَى مَعِيبَةً فَإِنَّمَا أَعْطَى غَيْرَ مَا اشْتَرَى، وَإِذَا أَعْطَى غَيْرَ مَا اشْتَرَى فَقَدْ أَخَذَ مَا لَيْسَ لَهُ، وَمَنْ أَخَذَ مَا لَيْسَ لَهُ فَهُوَ حَرَامٌ عَلَيْهِ قَالَ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

L16569 Mutual consent occurs only through awareness to the extent of what is mutually agreed upon, not through ignorance of it. One who did not know the defect has not consented to it, and consent is valid only during the contract of the transaction, not after it.

وَالتَّرَاضِي لَا يَكُونُ إِلَّا بِالْمَعْرِفَةِ بِقَدْرِ مَا يَتَرَاضَيَانِ بِهِ لَا بِالْجَهْلِ بِهِ، فَمَنْ لَمْ يَعْرِفْ الْعَيْبَ فَلَمْ يَرْضَ بِهِ، وَالرِّضَا لَا يَكُونُ إِلَّا فِي عَقْدِ الصَّفْقَةِ لَا بَعْدَهُ.

L16570 Whoever slaughters another's livestock without the owner's permission has transgressed, and transgression is disobedience to Allah and an act of injustice. Allah the Exalted has ordained valid slaughter as an act of obedience to Him. There is no doubt that obedience to Allah the Exalted is not disobedience. Thus, the slaughter that is an act of obedience and valid slaughter differs from the slaughter that is disobedience and aggression. It is impermissible to consume any part of an animal except through the valid slaughter ordained by Allah the Exalted, not from that which He has forbidden of aggression. Thus, it is not properly slaughtered and is carrion. Whoever transgresses by destroying his brother's property is financially liable, and the sale transaction is invalid, so the price must be refunded.

وَمَنْ ذَبَحَ مَالَ غَيْرِهِ بِغَيْرِ إِذْنِ مَالِكِهِ فَقَدْ تَعَدَّى، وَالتَّعَدِّي مَعْصِيَةٌ لِلَّهِ وَظُلْمٌ، وَقَدْ أَمَرَ اللَّهُ تَعَالَى بِالذَّكَاةِ فَهِيَ طَاعَةٌ لَهُ تَعَالَى، وَلَا شَكَّ فِي أَنَّ طَاعَةَ اللَّهِ تَعَالَى غَيْرُ مَعْصِيَةٍ، فَالذَّبْحُ الَّذِي هُوَ طَاعَةٌ وَذَكَاةٌ، هُوَ غَيْرُ الذَّبْحِ الَّذِي هُوَ مَعْصِيَةٌ وَعُدْوَانٌ، وَلَا يَحِلُّ أَكْلُ شَيْءٍ مِنْ الْحَيَوَانِ إِلَّا بِالذَّكَاةِ الَّتِي أَمَرَ اللَّهُ تَعَالَى بِهَا، لَا مِمَّا نَهَى عَنْهُ مِنْ الْعُدْوَانِ، فَلَيْسَتْ ذَكِيَّةً فَهِيَ مَيْتَةٌ، وَمَنْ تَعَدَّى بِإِتْلَافِ مَالِ أَخِيهِ فَهُوَ ضَامِنٌ، وَالصَّفْقَةُ فَاسِدَةٌ فَالثَّمَنُ مَرْدُودٌ.

L16571 Whoever differs from us in this matter has contradicted himself, since he prohibits eating the game killed in the Sacred Precinct or what the pilgrim in a state of consecration hunts, though there is no distinction between the two cases. And Abū Thawr and others have permitted eating the game killed by the pilgrim in a state of consecration based on the same rationale that they used to permit eating what was slaughtered unlawfully.

وَمَنْ خَالَفَنَا فِي هَذَا فَقَدْ تَنَاقَضَ، إِذْ حَرَّمَ أَكْلَ مَا ذُبِحَ مِنْ صَيْدِ الْحَرَمِ أَوْ مَا يَصِيدُهُ الْمُحْرِمُ، وَلَا فَرْقَ بَيْنَ الْأَمْرَيْنِ، وَقَدْ أَبَاحَ أَبُو ثَوْرٍ وَغَيْرُهُ أَكْلَ الصَّيْدِ الَّذِي يَقْتُلُهُ الْمُحْرِمُ بِالْعِلَّةِ الَّتِي بِهَا أَبَاحَ هَؤُلَاءِ أَكْلَ مَا ذُبِحَ بِغَيْرِ حَقٍّ.

L16572 **A case where someone erred and slaughtered another's sacrificial animal without their permission.**

[مَسْأَلَةٌ أَخْطَأَ فَذَبَحَ أُضْحِيَّةَ غَيْرِهِ بِغَيْرِ أَمْرِهِ]

[10] **Qur'an references (L16568):** Qur'an 4:29 (An-Nisa).

L16573 Issue 989: If a person mistakenly slaughters another's sacrificial animal without their permission, it becomes dead meat (maytah) that is not to be eaten. They are obligated to replace it, for the reasons stated.

٩٨٩ - مَسْأَلَةٌ: وَمَنْ أَخْطَأَ فَذَبَحَ أُضْحِيَّةَ غَيْرِهِ بِغَيْرِ أَمْرِهِ فَهِيَ مَيْتَةٌ لَا تُؤْكَلُ، وَعَلَيْهِ ضَمَانُهَا لِمَا ذَكَرْنَا.

L16574 For an absent person, it is permissible to instruct that a sacrifice be offered on his behalf, and this is valid, as it constitutes enjoining good. If a sacrifice is made on his behalf from his wealth without his instruction, it is considered unlawful to consume, like carrion, for the reason we have mentioned. If the guardian of a minor or an insane person offers a sacrifice on their behalf from their wealth, it is valid and is not deemed carrion, because he is their legal guardian. This does not apply to someone who is competent to manage their own affairs. And with Allah, exalted is He, lies all success.

وَلِلْغَائِبِ أَنْ يَأْمُرَ بِأَنْ يُضَحَّى عَنْهُ وَهُوَ حَسَنٌ، لِأَنَّهُ أَمْرٌ بِمَعْرُوفٍ، فَإِنْ ضُحِّيَ عَنْهُ مِنْ مَالِهِ بِغَيْرِ أَمْرِهِ فَهِيَ مَيْتَةٌ لِمَا ذَكَرْنَا، فَلَوْ ضَحَّى عَنْ الصَّغِيرِ أَوْ الْمَجْنُونِ وَلِيُّهُمَا مِنْ مَالِهِمَا فَهُوَ حَسَنٌ، وَلَيْسَتْ مَيْتَةً، لِأَنَّهُ النَّاظِرُ لَهُمَا وَلَيْسَ كَذَلِكَ مَالِكُ أَمْرِ نَفْسِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.



AL-MUHALLA

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[The Book of Foods] [Issue on Eating Pork]

[كِتَابُ الْأَطْعِمَةِ] [مَسْأَلَةٌ أَكْلُ لَحْمِ الْخِنْزِيرِ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الْأَطْعِمَةِ مَا يَحِلُّ أَكْلُهُ وَمَا يَحْرُمُ أَكْلُهُ ٩٨٩ - مُكَرَّرٌ مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: لَا يَحِلُّ أَكْلُ شَيْءٍ مِنْ الْخِنْزِيرِ، لَا لَحْمِهِ، وَلَا شَحْمِهِ، وَلَا جِلْدِهِ، وَلَا عَصَبِهِ، وَلَا غُضْرُوفِهِ، وَلَا حَشْوَتِهِ، وَلَا مُخِّهِ، وَلَا عَظْمِهِ، وَلَا رَأْسِهِ، وَلَا أَطْرَافِهِ، وَلَا لَبَنِهِ، وَلَا شَعْرِهِ - الذَّكَرُ وَالْأُنْثَى وَالصَّغِيرُ وَالْكَبِيرُ سَوَاءٌ - وَلَا يَحِلُّ الِانْتِفَاعُ بِشَعْرِهِ لَا فِي خَرَزٍ، وَلَا فِي غَيْرِهِ.

L16577 In the name of Allah, the Most Gracious, the Most Merciful. The Book of Foods: What is Permissible to Eat and What is Forbidden to Eat. Reiterated Issue 989. Abu Muhammad said: It is not permissible to eat any part of the pig—neither its meat, fat, skin, sinew, cartilage, innards, marrow, bones, head, extremities, milk, nor hair—whether the animal is male or female, young or old, the ruling remains the same. Nor is it permissible to use its hair, whether in beads or any other form.

وَلَا يَحِلُّ أَكْلُ شَيْءٍ مِنْ الدَّمِ وَلَا اسْتِعْمَالُهُ - مَسْفُوحًا كَانَ أَوْ غَيْرَ مَسْفُوحٍ - إلَّا الْمِسْكُ وَحْدَهُ، وَلَا يَحِلُّ أَكْلُ شَيْءٍ مِمَّا مَاتَ حَتْفَ أَنْفِهِ مِنْ حَيَوَانِ الْبَرِّ وَلَا مَا قُتِلَ مِنْهُ بِغَيْرِ الذَّكَاةِ الْمَأْمُورِ بِهَا، إلَّا الْجَرَادُ وَحْدَهُ، فَإِنْ خُنِقَ شَيْءٌ مِنْ حَيَوَانِ الْبَرِّ حَتَّى يَمُوتَ أَوْ ضُرِبَ بِشَيْءٍ حَتَّى يَمُوتَ، أَوْ سَقَطَ مِنْ عُلْوٍ فَمَاتَ، أَوْ نَطَحَهُ حَيَوَانٌ آخَرُ فَمَاتَ مِنْ ذَلِكَ فَلَا يَحِلُّ أَكْلُ شَيْءٍ مِنْهُ، وَلَا مَا قَتَلَهُ السَّبُعُ أَوْ حَيَوَانٌ آخَرُ حَاشَا الصَّيْدَ عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى فَإِنْ أُدْرِكَ كُلُّ مَا ذَكَّيْنَا حَيًّا فَذُكِّيَ فَهُوَ حَلَالٌ أَكْلُهُ إنْ كَانَ مِمَّا لَمْ يَحْرُمْ أَكْلُهُ.

L16578 It is impermissible to consume any form of blood or use it—whether flowing or not—except musk alone. It is also impermissible to eat any animal that dies naturally on land or is killed without the commanded ritual slaughter, except locusts alone. If any land animal is strangled to death, struck with an object until it dies, falls from a height and dies, or is gored by another animal and dies from that injury, it is impermissible to consume any part of it. Nor is it permissible to eat what is killed by a beast of prey or another animal—except for hunted game as we will mention after this, God Almighty willing. If all the aforementioned animals are found alive and slaughtered properly, their consumption becomes lawful provided they belong to a category not prohibited for eating.

وَلَا يَحِلُّ أَكْلُ حَيَوَانٍ ذُبِحَ أَوْ نُحِرَ لِغَيْرِ اللَّهِ تَعَالَى، قَالَ اللَّهُ تَعَالَى: {حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ وَالدَّمُ وَلَحْمُ الْخِنْزِيرِ وَمَا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ وَالْمُنْخَنِقَةُ وَالْمَوْقُوذَةُ وَالْمُتَرَدِّيَةُ وَالنَّطِيحَةُ وَمَا أَكَلَ السَّبُعُ إِلا مَا ذَكَّيْتُمْ وَمَا ذُبِحَ عَلَى النُّصُبِ} [المائدة: ٣] فَحَرَّمَ تَعَالَى كُلَّ مَا ذَكَّيْنَا وَاسْتَثْنَى مِنْهُ بِالْإِبَاحَةِ كُلَّ مَا ذَكَّيْنَا وَلَا تَقْتَضِي الْآيَةُ غَيْرَ هَذَا أَصْلًا وَهَهُنَا قَوْلَانِ لِبَعْضِ مَنْ تَقَدَّمَ، أَحَدُهُمَا قَوْلُ مَالِكٍ وَهُوَ أَنَّهُ إذَا بَلَغَ بِالْحَيَوَانِ شَيْءٌ مِمَّا ذَكَّيْنَا مَبْلَغًا

L16579–16581 It is not permissible to eat an animal slaughtered by dhabh or slaughtered by nahr for other than Allah the Exalted. Allah the Exalted said: “Forbidden to you are carrion, blood, the flesh of swine, what is dedicated to other than Allah, the strangled, the beaten, the fallen, the gored, what wild animals have devoured—except what you properly slaughter—and what is slaughtered upon altars” [Al-Ma’idah 5:3]. Thus, He the Exalted prohibited all. What we have mentioned, and from which exemption is declared permissible, includes all that has been properly slaughtered. The verse does not necessitate anything beyond this at all. Here, there are two opinions among

some earlier scholars. The first is the opinion of Mālik: If an animal reaches, due to any of the causes we mentioned, a state where death is certain, then eating it remains unlawful even if slaughtered. The second opinion is that of Al-Muzanī, who said: If one determines that the animal will die from its injury before dying due to the slaughtering, eating it is prohibited. But if one determines that it will die from the slaughtering before dying from its injury, then eating it is permissible.[1]

يُوقَنُ أَنَّهُ يَمُوتُ مِنْهُ فَإِنَّهُ لَا يَحِلُّ أَكْلُهُ، وَإِنْ ذُكِّيَ وَالْقَوْلُ الثَّانِي قَالَهُ الْمُزَنِيّ وَهُوَ أَنَّهُ قَالَ: إِذَا عَرَفَ أَنَّهُ يَمُوتُ مِمَّا أَصَابَهُ قَبْلَ مَوْتِهِ مِنْ الذَّكَاةِ حَرُمَ أَكْلُهُ وَإِنْ عَرَفَ أَنَّهُ يَمُوتُ مِنْ الذَّكَاةِ قَبْلَ مَوْتِهِ مِمَّا أَصَابَهُ حَلَّ أَكْلُهُ.

L16582 Abu Muhammad said: As for Mālik's opinion, it is manifestly contrary to the verse, and likewise Imam Al-Muzanī's categorization as well. We shall expound this comprehensively in the Book of Ritual Slaughter (Dhakat), Allah the Exalted willing. As for blood, certain scholars prohibited solely the spilled blood—that which flows—adducing as proof Allah's declaration: {Say, "I find not in what has been revealed to me anything forbidden to one who eats it except carrion, or spilled blood, or swine's flesh—for it is impurity—or that which is sacrilegiously dedicated to other than Allah"} [6:145]. They contended: He indeed prohibited only the spilled blood.[2]

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مَالِك فَخِلَافٌ لِلْآيَةِ ظَاهِرٌ، وَكَذَلِكَ تَقْسِيمُ الْمُزَنِيّ أَيْضًا وَسَنَسْتَقْصِي هَذَا فِي كِتَابِ الذَّكَاةِ إنْ شَاءَ اللَّهُ تَعَالَى، وَأَمَّا الدَّمُ فَإِنَّ قَوْمًا حَرَّمُوا الْمَسْفُوحَ وَحْدَهُ، وَهُوَ الْجَارِي، وَاحْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {قُلْ لا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلا أَنْ يَكُونَ مَيْتَةً أَوْ دَمًا مَسْفُوحًا أَوْ لَحْمَ خِنْزِيرٍ فَإِنَّهُ رِجْسٌ أَوْ فِسْقًا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ} [الأنعام: ١٤٥] قَالُوا: فَإِنَّمَا حَرَّمَ الْمَسْفُوحَ فَقَطْ.

L16583 Abu Muhammad said: This argument of theirs is misplaced, for the verse they cited as evidence is in Surah Al-An'am—a Meccan revelation—whereas the verse we have recited is in Surah Al-Ma'idah—a Medinan revelation and among the final revelations. In the early period of Islam at Mecca, only flowing blood was prohibited, but later in Medina, all blood was universally prohibited in its entirety. Thus, whoever restricts the prohibition to flowing blood alone has permitted what God Almighty prohibited in the other verse, while whoever prohibits blood in its entirety has upheld both verses. Moreover, after that verse, other matters not mentioned in it—such as wine and other things—were prohibited. Therefore, it is obligatory to prohibit everything explicitly forbidden by textual rulings revealed after that verse, and the prohibition of blood in its entirety is among what was decreed after that verse.

قَالَ أَبُو مُحَمَّد: وَهَذَا اسْتِدْلَالٌ مِنْهُمْ مَوْضُوعٌ فِي غَيْرِ مَوْضِعِهِ لِأَنَّ الْآيَةَ الَّتِي احْتَجُّوا بِهَا فِي سُورَةِ الْأَنْعَامِ وَهِيَ مَكِّيَّةٌ وَالْآيَةُ الَّتِي تَلَوْنَا نَحْنُ فِي سُورَةِ الْمَائِدَةِ وَهِيَ مَدَنِيَّةٌ مِنْ آخِرِ مَا أُنْزِلَ فَحَرَّمَ فِي أَوَّلِ الْإِسْلَامِ بِمَكَّةَ الدَّمَ الْمَسْفُوحَ ثُمَّ حَرَّمَ بِالْمَدِينَةِ الدَّمَ كُلَّهُ جُمْلَةً عُمُومًا فَمَنْ لَمْ يُحَرِّمْ إلَّا الْمَسْفُوحَ وَحْدَهُ فَقَدْ أَحَلَّ مَا حَرَّمَ اللَّهُ تَعَالَى فِي الْآيَةِ الْأُخْرَى وَمَنْ حَرَّمَ الدَّمَ جُمْلَةً فَقَدْ أَخَذَ بِالْآيَتَيْنِ جَمِيعًا وَقَدْ حَرَّمَ بَعْدَ تِلْكَ الْآيَةِ أَشْيَاءَ لَيْسَتْ فِيهَا كَالْخَمْرِ وَغَيْرِ ذَلِكَ فَوَجَبَ تَحْرِيمُ كُلِّ مَا جَاءَ نَصٌّ بِتَحْرِيمِهِ بَعْدَ تِلْكَ الْآيَةِ وَالدَّمُ جُمْلَةً مِمَّا نَزَلَ تَحْرِيمُهُ بَعْدَ تِلْكَ الْآيَةِ. نَا أَبُو سَعِيدٍ الْفَتَى نَا مُحَمَّدُ بْنُ عَلِيٍّ الْمُقْرِي نَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ إِسْمَاعِيلَ النَّحَّاسُ حَدَّثَنِي يَمُوتُ بْنُ الْمزرع نَا أَبُو حَاتِمٍ سَهْلُ بْنُ مُحَمَّدٍ السِّجِسْتَانِيُّ نَا أَبُو عُبَيْدَةَ مَعْمَرُ بْنُ الْمُثَنَّى نَا يُونُسُ بْنُ حَبِيبٍ قَالَ: سَمِعْت أَبَا عَمْرِو بْنِ

From Abu Sa'id Al-Fata; from Muhammad ibn 'Ali Al-Muqri; from Ahmad ibn Muhammad ibn Isma'il Al-Nahhas; from Yamut ibn Al-Mazra'; from

[1] **Qur'an references (L16579):** Qur'an 5:3 (Al-Ma'idah).
[2] **Qur'an references (L16582):** Qur'an 6:145 (Al-An'am).

الْعَلَاءِ قَالَ: سَأَلْت مُجَاهِدًا عَنْ تَلْخِيصِ آيِ الْقُرْآنِ الْمَدَنِيِّ مِنْ الْمَكِّيِّ؟ فَقَالَ: سَأَلْت ابْنَ عَبَّاسٍ عَنْ ذَلِكَ؟ فَقَالَ: سُورَةُ الْأَنْعَامِ نَزَلَتْ بِمَكَّةَ جُمْلَةً وَاحِدَةً إلَّا ثَلَاثَ آيَاتٍ مِنْهَا نَزَلَتْ بِالْمَدِينَةِ {قُلْ تَعَالَوْا أَتْلُ مَا حَرَّمَ رَبُّكُمْ عَلَيْكُمْ} [الأنعام: ١٥١] إلَى تَمَامِ الثَّلَاثِ الْآيَاتِ.

Abu Hatim Sahl ibn Muhammad Al-Sijistani; from Abu ʻUbaydah Maʻmar ibn Al-Muthanna; from Yunus ibn Habib, who said: I heard Abu ʻAmr ibn Al-ʻAla' say: I asked Mujahid about determining Medinan Quranic verses from Meccan ones. He replied: I asked Ibn ʻAbbas about that, and he said: Surah Al-Anʻam was revealed in Mecca in its entirety except for three verses revealed in Medina: {Say, "Come, I will recite what your Lord has forbidden to you"} [Al-Anʻam 6:151] to the completion of the three verses.[3]

قَالَ أَبُو مُحَمَّد: هِيَ قَوْلُ اللَّهِ تَعَالَى: {قُلْ تَعَالَوْا أَتْلُ مَا حَرَّمَ رَبُّكُمْ عَلَيْكُمْ أَلا تُشْرِكُوا بِهِ شَيْئًا وَبِالْوَالِدَيْنِ إِحْسَانًا وَلا تَقْتُلُوا أَوْلادَكُمْ مِنْ إِمْلاقٍ نَحْنُ نَرْزُقُكُمْ وَإِيَّاهُمْ وَلا تَقْرَبُوا الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَنَ وَلا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلا بِالْحَقِّ ذَلِكُمْ وَصَّاكُمْ بِهِ لَعَلَّكُمْ تَعْقِلُونَ - وَلا تَقْرَبُوا مَالَ الْيَتِيمِ إِلا بِالَّتِي هِيَ أَحْسَنُ حَتَّى يَبْلُغَ أَشُدَّهُ وَأَوْفُوا الْكَيْلَ وَالْمِيزَانَ بِالْقِسْطِ لا نُكَلِّفُ نَفْسًا إِلا وُسْعَهَا وَإِذَا قُلْتُمْ فَاعْدِلُوا وَلَوْ كَانَ ذَا قُرْبَى وَبِعَهْدِ اللَّهِ أَوْفُوا ذَلِكُمْ وَصَّاكُمْ بِهِ لَعَلَّكُمْ تَذَكَّرُونَ - وَأَنَّ هَذَا صِرَاطِي مُسْتَقِيمًا فَاتَّبِعُوهُ وَلا تَتَّبِعُوا السُّبُلَ فَتَفَرَّقَ بِكُمْ عَنْ سَبِيلِهِ ذَلِكُمْ وَصَّاكُمْ بِهِ لَعَلَّكُمْ تَتَّقُونَ} [الأنعام: ١٥١ - ١٥٣] .

L16584–16586 Abū Muḥammad said: This is the word of Allah, the Exalted: Say, "Come, I will recite what your Lord has forbidden you: Do not associate anything with Him, show kindness to parents, and do not kill your children out of fear of poverty—We provide for you and them. Do not approach immoralities, whether overt or concealed. Do not kill the soul Allah has sanctified except by right. This He has commanded you so that you may reason. Do not approach the orphan's property except in the best manner until he reaches maturity. Give full measure and weight with justice. We task no soul beyond its capacity. When you speak, be just even if it concerns a relative. Fulfill Allah's covenant. This He has commanded you so that you may reflect. This is My straight path—follow it. Do not follow other paths, lest they scatter you from His way. This He has commanded you so that you may attain piety." [Al-An'am: 151–153][4]

فَهَذِهِ الثَّلَاثُ الْآيَاتُ هِيَ الَّتِي أُنْزِلَتْ مِنْهَا فِي الْمَدِينَةِ وَسَائِرُهَا بِمَكَّةَ، وَسُورَةُ الْمَائِدَةِ أُنْزِلَتْ بِالْمَدِينَةِ لَا خِلَافَ فِي ذَلِكَ، (فَإِنْ ذَكَرُوا) مَا رُوِيَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا سُئِلَتْ عَنْ الدَّمِ يَكُونُ فِي أَعْلَى الْقِدْرِ؟ فَلَمْ تَرَ بِهِ بَأْسًا وَقَرَأَتْ {قُلْ لا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ} [الأنعام: ١٤٥] حَتَّى بَلَغَتْ (مَسْفُوحًا) فَإِنَّ هَذَا قَدْ عَارَضَهُ مَا رُوِّينَاهُ عَنْهَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ عَنْ جُرَيٍّ

L16587 These three verses are those which were revealed in Medina, while the rest of the surah was revealed in Mecca. Surah al-Mā'idah was revealed in Medina with no disagreement concerning this. If they mention what has been narrated from ʻĀ'ishah, the Mother of the Believers—when she was asked about blood found at the top of a cooking pot and she saw no issue with it, reciting: "Say, 'I do not find within what has been revealed to me anything forbidden for one who eats it...'" [al-Anʻām 6:145] until she reached "poured forth [masfūḥ]"—this report conflicts with what we have transmitted from her through the chain of Ibn Wahb, from Muʻāwiyah ibn Ṣāliḥ, from

[3]**Qur'an references (L16583):** Qur'an 6:151 (Al-An'am).

[4]**Qur'an references (L16584):** Qur'an 6:151 (Al-An'am); Qur'an 6:152 (Al-An'am); Qur'an 6:153 (Al-An'am).

بْنِ كُلَيْبٍ عَنْ جُبَيْرِ بْنِ نُفَيْرٍ قَالَ: قَالَتْ لِي عَائِشَةُ أُمُّ الْمُؤْمِنِينَ: هَلْ تَقْرَأُ سُورَةَ الْمَائِدَةِ؟ قُلْت: نَعَمْ قَالَتْ: أَمَا إنَّهَا آخِرُ سُورَةٍ نَزَلَتْ فَمَا وَجَدْتُمْ فِيهَا حَرَامًا فَحَرِّمُوهُ.

Jurayy ibn Kulayb, from Jubayr ibn Nufayr, who said: ʻĀ'ishah, the Mother of the Believers, said to me: "Do you recite Surah al-Mā'idah?" I replied: "Yes." She said: "Know that it is the final surah revealed. Whatever you find therein to be forbidden, you must deem it forbidden."[5]

قَالَ أَبُو مُحَمَّد: وَأَيْضًا فَإِنَّ الدَّمَ الَّذِي فِي أَعْلَى الْقِدْرِ إنْ كَانَ أَحْمَرَ ظَاهِرًا فَهُوَ بِلَا شَكّ مَسْفُوحٌ وَلَا خِلَافَ فِي تَحْرِيمِهِ وَإِنْ كَانَ إنَّمَا هُوَ صُفْرَةٌ فَلَيْسَ دَمًا لِأَنَّ الدَّمَ أَحْمَرُ أَوْ أَسْوَدُ لَا أَصْفَرُ فَإِنْ بَطَلَتْ صِفَاتُهُ الَّتِي مِنْهَا يَقُومُ حَدُّهُ فَقَطْ سَقَطَ عَنْهُ اسْمُ الدَّمِ وَإِذْ لَمْ يَكُنْ دَمًا فَهُوَ حَلَالٌ، وَكَذَلِكَ مَا فِي الْعُرُوقِ وَخِلَالَ اللَّحْمِ فَإِنَّهُ لَيْسَ ظَاهِرًا وَإِذَا لَمْ يَكُنْ ظَاهِرًا فَلَيْسَ هُنَالِكَ دَمٌ يُحَرَّمُ وَإِنَّمَا نَسْأَلُ خُصُومَنَا عَنْ دَمٍ أَحْمَرَ ظَاهِرٍ إلَّا أَنَّهُ جَامِدٌ لَيْسَ جَارِيًا أَيَحِلُّ أَكْلُهُ أَمْ لَا؟ فَهَذَا مَكَانُ الِاخْتِلَافِ بَيْنَنَا وَبَيْنَهُمْ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16588 Abū Muḥammad said: Furthermore, the blood atop the cooking pot—if it is visibly red, it is undoubtedly shed blood, and there is no dispute concerning its prohibition (ḥarām). If it is merely yellow, it is not blood, for blood is red or black, not yellow. If its attributes that establish its legal definition (ḥadd) are nullified, the term "blood" no longer applies to it. Since it is not blood, it is lawful (ḥalāl). Similarly, what remains in the veins and permeates the meat is not apparent. When it is not apparent, there is no prohibited (ḥarām) blood present. We merely ask our opponents about visibly red blood that is clotted, not flowing: is it permissible to consume it or not? This is the point of disagreement between us and them. Success is attained solely through Allah, the Exalted.

وَأَمَّا الْمِسْكُ فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَزَلْ يَتَطَيَّبُ بِهِ فِي حَجَّةِ الْوَدَاعِ وَبَعْدَهَا وَقَبْلَهَا وَأَقَرَّهُ اللَّهُ تَعَالَى عَلَى ذَلِكَ وَأَبَاحَهُ لَهُ وَلَنَا وَقَدْ عَلِمَ اللَّهُ تَعَالَى أَنَّهُ فِي أَصْلِهِ دَمُ قُرْحَةٍ مُتَوَلِّدَةٍ فِي حَيَوَانٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L16589 As for musk, the Messenger of Allah—peace and blessings be upon him—never ceased to use it as perfume during the Farewell Pilgrimage, as well as before it and after it. Allah the Exalted affirmed him in this practice and permitted it for him and for us. Allah the Exalted certainly knew that its origin is blood from a sore generated in an animal, *"and your Lord is never forgetful"* [19:64].[6]

وَأَمَّا الْخِنْزِيرُ فَإِنَّ اللَّهَ تَعَالَى قَالَ: {أَوْ لَحْمَ خِنْزِيرٍ فَإِنَّهُ رِجْسٌ أَوْ فِسْقًا} [الأنعام: ١٤٥] وَالضَّمِيرُ فِي لُغَةِ الْعَرَبِ الَّتِي نَزَلَ بِهَا الْقُرْآنُ رَاجِعٌ إلَى أَقْرَبِ مَذْكُورٍ إلَيْهِ فَصَحَّ بِالْقُرْآنِ أَنَّ الْخِنْزِيرَ بِعَيْنِهِ رِجْسٌ فَهُوَ كُلُّهُ رِجْسٌ وَبَعْضُ الرِّجْسِ رِجْسٌ، وَالرِّجْسُ حَرَامٌ وَاجِبٌ اجْتِنَابُهُ فَالْخِنْزِيرُ كُلُّهُ حَرَامٌ لَا يَخْرُجُ مِنْ ذَلِكَ شَعْرُهُ وَلَا غَيْرُهُ حَاشَا مَا أَخْرَجَهُ النَّصُّ مِنْ الْجِلْدِ إذَا دُبِغَ فَحَلَّ اسْتِعْمَالُهُ.

L16590–16592 As for the swine, Allah the Exalted said: "or the flesh of swine—for indeed, it is ritually impure or sinful" [Al-Anʻām 6:145]. In the Arabic language in which the Quran was revealed, the pronoun refers to the nearest antecedent, thereby confirming through the Quran that the swine itself is ritually impure. Thus, all of it is ritually impure, and any part of a ritually impure entity remains ritually impure. The ritually impure is categorically forbidden, and avoiding it is an obligatory duty. The entire pig is forbidden; nothing is excluded from this prohibition—neither its hair nor anything else—except

[5] **Qur'an references (L16587):** Qur'an 6:145 (Al-An'am).
[6] **Qur'an references (L16589):** Qur'an 19:64 (Maryam).

what the text has exempted regarding the skin when it is tanned, in which case its use is permissible.[7]

L16593 It has been narrated to us through the chain of Muslim: from Qutaybah ibn Saʿīd, from Layth—that is, Ibn Saʿd—from Ibn Shihāb, from Saʿīd ibn al-Musayyab that he heard Abū Hurayrah say: The Messenger of Allah—peace and blessings of Allah be upon him—said: "By the One in Whose Hand is my soul, the son of Mary—peace be upon him—will soon descend among you as a just judge. He will break the cross, kill the pigs, abolish the jizyah, and wealth will abound so plentifully that no one will accept it."[8]

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا قُتَيْبَةُ بْنُ سَعِيدٍ نَا لَيْثٌ هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَالَّذِي نَفْسِي بِيَدِهِ لَيُوشِكَنَّ أَنْ يَنْزِلَ فِيكُمْ ابْنُ مَرْيَمَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمًا مُقْسِطًا فَيَكْسِرَ الصَّلِيبَ وَيَقْتُلَ الْخِنْزِيرَ وَيَضَعَ الْجِزْيَةَ وَيَفِيضَ الْمَالُ حَتَّى لَا يَقْبَلَهُ أَحَدٌ» .

L16594 Through the chain of Muslim: Hārūn ibn ʿAbdullāh narrated to us, Ḥajjāj ibn Muḥammad narrated to us from Ibn Jurayj, who narrated from Abū al-Zubayr that he heard Jābir ibn ʿAbdullāh say: I heard the Prophet—peace and blessings be upon him (ﷺ)—say: "A group from my ummah will persist in fighting for the truth, remaining dominant until the Day of Resurrection. Then Jesus son of Mary—peace be upon him (عليه السلام)—will descend, and their leader will say: 'Come lead us in prayer.' But he will respond: 'No, for Allah has appointed some of you as leaders over others as an honor for this ummah.'" Thus it is established that the Prophet—peace and blessings be upon him (ﷺ)—affirmed Jesus'—peace be upon him (عليه السلام)—slaying of pigs and clarified that he will descend governing by Islamic law and judge accordingly. It is also authenticated that the Prophet—peace and blessings be upon him (ﷺ)—forbade wasteful destruction of property. If ritual slaughter (dhabīḥah) could render any part of the pig permissible, he—peace and blessings be upon him (ﷺ)—would not have sanctioned killing it without benefit, thereby wasting it. Hence it is confirmed that every part of the pig is carrion, absolutely forbidden in all circumstances. Certain careless adherents of qiyās, who speak carelessly, have asserted that pig fat was prohibited merely

وَمِنْ طَرِيقِ مُسْلِمٍ نَا هَارُونُ بْنُ عَبْدِ اللَّهِ نَا حَجَّاجٌ هُوَ ابْنُ مُحَمَّدٍ - (عَنْ ابْنِ جُرَيْجٍ) نَا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: سَمِعْت النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا تَزَالُ طَائِفَةٌ مِنْ أُمَّتِي يُقَاتِلُونَ عَلَى الْحَقِّ ظَاهِرِينَ إلَى يَوْمِ الْقِيَامَةِ فَيَنْزِلُ عِيسَى ابْنُ مَرْيَمَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيَقُولُ: أَمِيرُهُمْ تَعَالَ صَلِّ لَنَا فَيَقُولُ: لَا إنَّ بَعْضَكُمْ عَلَى بَعْضٍ أُمَرَاءُ تَكْرِمَةَ اللَّهِ هَذِهِ الْأُمَّةَ» ، فَصَحَّ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَوَّبَ قَتْلَ عِيسَى - عَلَيْهِ السَّلَامُ - لِلْخَنَازِيرِ وَأَخْبَرَ أَنَّهُ بِحُكْمِ الْإِسْلَامِ يَنْزِلُ وَبِهِ يَحْكُمُ، وَقَدْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - نَهَى عَنْ إضَاعَةِ الْمَالِ فَلَوْ كَانَتْ الذَّكَاةُ تَعْمَلُ فِي شَيْءٍ مِنْ الْخِنْزِيرِ لَمَا أَبَاحَ - عَلَيْهِ السَّلَامُ - قَتْلَهُ فَيُضَيِّعُ، فَصَحَّ أَنَّهُ كُلَّهُ مَيْتَةٌ مُحَرَّمٌ عَلَى كُلِّ حَالٍ، وَقَدْ ادَّعَى بَعْضُ مَنْ لَا يُبَالِي مَا أَطْلَقَ بِهِ لِسَانَهُ مِنْ أَصْحَابِ الْقِيَاسِ أَنَّ شَحْمَ الْخِنْزِيرِ إنَّمَا حُرِّمَ قِيَاسًا عَلَى لَحْمِهِ وَأَنَّ الْإِجْمَاعَ عَلَى تَحْرِيمِهِ إنَّمَا هُوَ مِنْ قِبَلِ الْقِيَاسِ الْمَذْكُورِ.

[7] **Qur'an references (L16590):** Qur'an 6:145 (Al-An'am).
[8] **Hadith references (L16593):** Sahih Muslim 155a.

through analogy to its flesh, claiming the consensus on its prohibition stems solely from this juristic analogy.[9]

قَالَ أَبُو مُحَمَّدٍ: فَيُقَالُ لِمَنْ قَالَ هَذَا التَّخْلِيطَ الظَّاهِرَ فَسَادُهُ: أَوَّلُ بُطْلَانِ قَوْلِك أَنَّهُ دَعْوَى

L16595–16597 Abu Muhammad said: To the one who propounded this evident confusion whose corruption is clear, it shall be said: The first invalidity of your assertion is that it constitutes a claim without evidence. The second is that it falsely accuses the entire Ummah by claiming they collectively agreed upon the falsehood arising from analogy. The third is that even were analogy valid, this instance from it would epitomize falsehood, for no effective cause unites fat and meat. Should they argue: "Because fat is a part of meat, and from meat because it is generated from meat," we reply: As for your claim that fat is part of meat - this is false, for were it so, fat would itself be meat, yet this has never been attested by any language or divine law. As for your argument that it is because fat is generated from meat - we were generated from dust yet are not dust. The hen was generated from the egg yet is not an egg, and dates were generated from the palm tree yet are not palm trees. And it is not palm trees. Meat is generated from blood, and milk is generated from blood, yet meat is not blood nor is milk blood; rather, both are permissible (ḥalāl), while blood is forbidden (ḥarām). Whatever is generated from a substance without retaining its name becomes a distinct category. It is impermissible to subject it to the legal ruling of its origin—neither linguistically nor religiously. Allāh the Exalted forbade abdominal fat for the Children of Israel, yet He did not forbid meat by virtue of forbidding fat. Indeed, He did not forbid the fat of the back, the fat of the chest, or the visceral fat due to the prohibition of abdominal fat. If meat were forbidden, how could a person of intellect know from where it would be necessitated that fat must also be forbidden? We have already clarified the distinction between them previously.

بِلَا بُرْهَانٍ، وَثَانِيه أَنَّهُ كَذِبٌ عَلَى الْأُمَّةِ كُلِّهَا إذْ قُلْت إنَّهَا إنَّمَا أَجْمَعَتْ عَلَى الْبَاطِلِ مِنْ الْقِيَاسِ، وَالثَّالِثُ أَنَّهُ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ لِأَنَّهُ لَا عِلَّةَ تَجْمَعُ بَيْنَ الشَّحْمِ وَاللَّحْمِ، فَإِنْ قَالُوا: لِأَنَّ الشَّحْمَ بَعْضُ اللَّحْمِ وَمِنْ اللَّحْمِ لِأَنَّهُ مِنْ اللَّحْمِ تُولَدُ قُلْنَا لَهُمْ: أَمَّا قَوْلُكُمْ: إنَّ الشَّحْمَ بَعْضُ اللَّحْمِ فَبَاطِلٌ لِأَنَّهُ لَوْ كَانَ ذَلِكَ لَكَانَ الشَّحْمُ لَحْمًا وَهَذَا لَمْ تَأْتِ بِهِ لُغَةٌ قَطُّ وَلَا شَرِيعَةٌ، وَأَمَّا قَوْلُكُمْ لِأَنَّهُ مِنْ اللَّحْمِ تَوَلَّدَ فَنَحْنُ تَوَلَّدْنَا مِنْ التُّرَابِ وَلَسْنَا تُرَابًا، وَالدَّجَاجَةُ تَوَلَّدَتْ مِنْ الْبَيْضَةِ وَلَيْسَتْ بَيْضَةً، وَالتَّمْرُ تَوَلَّدَ مِنْ النَّخْلِ وَلَيْسَ نَخْلًا، وَاللَّحْمُ تَوَلَّدَ مِنْ الدَّمِ، وَاللَّبَنُ تَوَلَّدَ مِنْ الدَّمِ وَلَيْسَ اللَّحْمُ دَمًا وَلَا اللَّبَنُ دَمًا بَلْ هُمَا حَلَالَانِ، وَالدَّمُ حَرَامٌ وَكُلُّ مَا تَوَلَّدَ مِنْ شَيْءٍ فَلَمْ يَقَعْ عَلَيْهِ اسْمُ مَا تَوَلَّدَ مِنْهُ فَهُوَ نَوْعٌ آخَرُ وَلَا يَجُوزُ أَنْ يُحْكَمَ لَهُ بِحُكْمِهِ لَا فِي اللُّغَةِ وَلَا فِي الدِّيَانَةِ، وَقَدْ حَرَّمَ اللَّهُ تَعَالَى الشَّحْمَ عَلَى بَنِي إسْرَائِيلَ فَلَمْ يُحَرِّمْ اللَّحْمَ بِتَحْرِيمِ الشَّحْمِ. نَعَمْ وَلَا حَرَّمَ شَحْمَ الظَّهْرِ وَلَا شَحْمَ الصَّدْرِ وَلَا شَحْمَ الْحَوَايَا لِتَحْرِيمِ شَحْمِ الْبَطْنِ، وَلَا يَدْرِي ذُو عَقْلٍ مِنْ أَيْنَ وَجَبَ إذَا حُرِّمَ اللَّحْمُ أَنْ يُحَرِّمَ الشَّحْمَ؟ وَقَدْ بَيَّنَّا فَرْقَ مَا بَيْنَهُمَا آنِفًا.

L16598 The fourth argument is to ask them: Do you consider the shattering of its bone, eating its cartilage, and drinking its milk to be prohibited by analogy to its meat? This is truly astonishing, for all these are distinct from meat in their view without any disagreement among them. Moreover, ask them: Inform us—did Allah the Exalted prohibit pig's fat, cartilage, bone, hair, and

وَالرَّابِعُ أَنْ يُقَالَ لَهُمْ أَتَرَوْنَ سَفَّ عَظْمِهِ وَأَكْلَ غُضْرُوفِهِ وَشُرْبَ لَبَنِهِ حُرِّمَ قِيَاسًا عَلَى لَحْمِهِ؟ إنَّ هَذَا لَعَجَبٌ جِدًّا وَكُلُّ هَذِهِ عِنْدَهُمْ أَنْوَاعٌ غَيْرُ اللَّحْمِ بِلَا خِلَافٍ مِنْهُمْ، وَيُقَالُ لَهُمْ أَيْضًا أَخْبِرُونَا أَحَرَّمَ اللَّهُ تَعَالَى شَحْمَ الْخِنْزِيرِ وَغُضْرُوفَهُ وَعَظْمَهُ وَشَعْرَهُ وَلَبَنَهُ؟ أَمْ لَمْ

[9] **Hadith references (L16594):** Sahih Muslim 1923; Mishkat al-Masabih 5507.

milk, or did He not prohibit any of these? They must affirm one of the two options. If they say, "Allah the Exalted prohibited all of that," we respond: How can Allah's prohibition of what He forbade be known except through His detailed specification of its prohibition and His revelation of this to His Messenger—peace be upon him? Is not anyone who claims Allah the Exalted prohibited such matters without divine revelation concerning them but a brazen fabricator against Allah, lying against Him openly? For they have ascribed to Him what He neither revealed nor declared about Himself. Allah the Exalted says: "He has already detailed for you what He has forbidden to you" [al-An'ām 6:119].[10]

L16599–16601 If they say: "All of that became prohibited due to Allah's prohibition of meat," we respond: This is a reiterated false claim fabricated without any evidence for its validity. Concerning this false claim, we questioned you but found nothing from you except its mere repetition. Whatever stands thus is invalid with certainty. If they say: "Allah the Exalted did not prohibit these things through revelation from Himself, nor did His Messenger (peace be upon him) prohibit them through explicit text from Him, but Muslims reached consensus to prohibit all of that," we tell them: This is more grievous and reprehensible – that there exists something they acknowledge was not prohibited by Allah the Exalted nor by His Messenger (peace be upon him). Since Allah the Exalted and His Messenger (peace be upon him) did not prohibit it, Allah the Exalted has undoubtedly permitted it. Thus, Muslims reached consensus to contradict Allah the Exalted and contradict His Messenger (peace be upon him) by prohibiting what Allah the Exalted and His Messenger (peace be upon him) did not prohibit. Allah the Exalted has safeguarded Muslims from these bald-faced disbelievers. If they say: "When Muslims reached consensus to prohibit it, Allah the Exalted then prohibited it at that time," we reply: When did Allah the Exalted prohibit it – before their consensus, simultaneously with their consensus, or after their consensus? There is no fourth category. If they say: "After their consensus," they render the ruling of Allah, the Exalted, subordinate to the ruling of His servants – and this is sheer disbelief. If they say: "Rather, simultaneously with

يُحَرِّمْ شَيْئًا مِنْ ذَلِكَ؟ وَلَا بُدَّ مِنْ أَحَدِهِمَا، فَإِنْ قَالُوا: حَرَّمَ اللَّهُ تَعَالَى كُلَّ ذَلِكَ قُلْنَا لَهُمْ: وَمِنْ أَيْنَ يُعْرَفُ تَحْرِيمُ اللَّهِ تَعَالَى مَا حَرَّمَ إلَّا بِتَفْصِيلِهِ تَحْرِيمَهُ وَبِوَحْيِهِ بِذَلِكَ إلَى رَسُولِهِ - عَلَيْهِ السَّلَامُ -، وَهَلْ يَكُونُ مَنْ ادَّعَى أَنَّ اللَّهَ تَعَالَى حَرَّمَ أَمْرَ كَذَا بِغَيْرِ وَحْيٍ مِنْ اللَّهِ تَعَالَى بِذَلِكَ إلَّا مُفْتَرِيًا عَلَى اللَّهِ تَعَالَى كَاذِبًا عَلَيْهِ جِهَارًا؟ إذْ أَخْبَرَ عَنْهُ تَعَالَى بِمَا لَمْ يُنَزِّلْ بِهِ وَحْيًا وَلَا أَخْبَرَ بِهِ عَنْ نَفْسِهِ، وَقَدْ قَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

فَإِنْ قَالُوا: حَرُمَ كُلُّ ذَلِكَ بِتَحْرِيمِهِ اللَّحْمَ قُلْنَا: وَهَذِهِ دَعْوَى مُكَرَّرَةٌ كَاذِبَةٌ مُفْتَرَاةٌ بِلَا دَلِيلٍ عَلَى صِحَّتِهَا، وَعَنْ هَذِهِ الدَّعْوَةِ الْكَاذِبَةِ سَأَلْنَاكُمْ فَلَمْ نَجِدْ عِنْدَكُمْ زِيَادَةً عَلَى تَكْرِيرِهَا فَقَطْ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ بِيَقِينٍ. فَإِنْ قَالُوا: لَمْ يُحَرِّمْهَا اللَّهُ تَعَالَى بِوَحْيٍ مِنْ عِنْدِهِ وَلَا حَرَّمَهَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - بِنَصٍّ مِنْهُ لَكِنْ أَجْمَعَ الْمُسْلِمُونَ عَلَى تَحْرِيمِ كُلِّ ذَلِكَ، قِيلَ لَهُمْ: هَذِهِ أَطَمُّ وَأَفْحَشُ أَنْ يَكُونَ شَيْءٌ يُقِرُّونَ أَنَّهُ لَمْ يُحَرِّمْهُ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِذَا لَمْ يُحَرِّمْهُ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ أَحَلَّهُ اللَّهُ تَعَالَى بِلَا شَكٍّ فَأَجْمَعَ الْمُسْلِمُونَ عَلَى مُخَالَفَةِ اللَّهِ تَعَالَى وَمُخَالَفَةِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - إذْ حَرَّمُوا مَا لَمْ يُحَرِّمْهُ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - وَقَدْ أَعَاذَ اللَّهُ تَعَالَى الْمُسْلِمِينَ مِنْ هَذِهِ الْكَفَرَةِ الصَّلْعَاءِ، فَإِنْ قَالُوا: لَمَّا أَجْمَعَ الْمُسْلِمُونَ عَلَى تَحْرِيمِهِ حَرَّمَهُ اللَّهُ تَعَالَى حِينَئِذٍ قُلْنَا لَهُمْ: مَتَى حَرَّمَهُ اللَّهُ تَعَالَى؟ أَقَبْلَ إجْمَاعِهِمْ أَمْ مَعَ إجْمَاعِهِمْ أَمْ بَعْدَ إجْمَاعِهِمْ؟ وَلَا سَبِيلَ إلَى قِسْمٍ رَابِعٍ. فَإِنْ قَالُوا: بَعْدَ إجْمَاعِهِمْ جَعَلُوا حُكْمَهُ تَعَالَى تَبَعًا لِحُكْمِ عِبَادِهِ وَهَذَا كُفْرٌ مَحْضٌ، وَإِنْ قَالُوا: بَلْ مَعَ إجْمَاعِهِمْ كَانُوا قَدْ أَوْجَبُوا أَنَّهُمْ ابْتَدَءُوا مُخَالَفَةَ اللَّهِ تَعَالَى فِي تَحْرِيمِ مَا لَمْ يُحَرِّمْهُ وَقَدْ بَيَّنَّا فُحْشَ

[10] **Qur'an references (L16598):** Qur'an 6:119 (Al-An'am).

their consensus," they would have asserted that they initiated contradiction of Allah the Exalted in... The prohibition of what He has not prohibited—we have already clarified the reprehensibility of this earlier. If they say: "Rather, before their consensus," we respond: "It has been verified that He, the Exalted, prohibited it, and His prohibition of it cannot be known except through a detailed clarification from Him regarding its prohibition. Such detailed clarification cannot exist except through a textual source—this being our position. Otherwise, it constitutes a false claim against Allah, the Exalted, mere conjecture, and an assertion in religion based on speculation." Thus, the certainty of our position and the invalidity of their claim have become evident. It is confirmed that Muslims only reached consensus on prohibiting all of that in adherence to the text that came regarding its prohibition, just as they did not agree on prohibiting its meat except after the arrival of the text forbidding it—and there is no difference. And with Allah, the Exalted, is success. We shall mention the ruling concerning locusts after this, Allah willing.

هَذَا آنِفًا. وَإِنْ قَالُوا: بَلْ قَبْلَ إِجْمَاعِهِمْ قُلْنَا: فَقَدْ صَحَّ أَنَّهُ تَعَالَى حَرَّمَهُ وَلَا يُعْرَفُ تَحْرِيمُهُ إِيَّاهُ إِلَّا بِتَفْصِيلٍ مِنْهُ تَعَالَى بِتَحْرِيمِهِ وَالتَّفْصِيلُ لَا يَكُونُ أَلْبَتَّةَ إِلَّا بِنَصٍّ وَهَذَا قَوْلُنَا وَإِلَّا فَهُوَ دَعْوَى كَذِبٌ عَلَى اللَّهِ تَعَالَى وَتَكَهُّنٌ. وَقَوْلٌ فِي الدِّينِ بِالظَّنِّ فَظَهَرَ يَقِينُ مَا قُلْنَاهُ وَفَسَادُ قَوْلِهِمْ وَصَحَّ أَنَّ الْمُسْلِمِينَ إِنَّمَا أَجْمَعُوا عَلَى تَحْرِيمِ كُلِّ ذَلِكَ اتِّبَاعًا لِلنَّصِّ الْوَارِدِ فِي تَحْرِيمِهِ كَمَا لَمْ يُجْمِعُوا عَلَى تَحْرِيمِ لَحْمِهِ إِلَّا بَعْدَ وُرُودِ النَّصِّ بِتَحْرِيمِهِ وَلَا فَرْقَ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ، وَسَنَذْكُرُ حُكْمَ الْجَرَادِ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى.

The ruling on eating that which dwells within water and cannot live except in it.

[مَسْأَلَة أَكْلُ مَا يَسْكُنُ جَوْفَ الْمَاءِ وَلَا يَعِيشُ إِلَّا فِيهِ]

990 – Issue: As for creatures that dwell exclusively in water and cannot survive outside it, all of them are entirely lawful to eat regardless of their condition: whether captured alive and later died, died naturally in water, floated or sank, or were killed by marine or terrestrial animals—all of it is lawful to eat. This ruling applies equally to aquatic swine, human-like sea creatures, aquatic canines, and similar beings. Their permissibility holds whether slaughtered by a polytheist, Muslim, People of the Book, or found dead without human intervention.

٩٩٠ - مَسْأَلَةٌ: وَأَمَّا مَا يَسْكُنُ جَوْفَ الْمَاءِ وَلَا يَعِيشُ إِلَّا فِيهِ فَهُوَ حَلَالٌ كُلُّهُ كَيْفَمَا وُجِدَ، سَوَاءٌ أُخِذَ حَيًّا ثُمَّ مَاتَ أَوْ مَاتَ فِي الْمَاءِ، طَفَا أَوْ لَمْ يَطْفُ، أَوْ قَتَلَهُ حَيَوَانٌ بَحْرِيٌّ أَوْ بَرِّيٌّ هُوَ كُلُّهُ حَلَالٌ أَكْلُهُ. وَسَوَاءٌ خِنْزِيرُ الْمَاءِ، أَوْ إِنْسَانُ الْمَاءِ، أَوْ كَلْبُ الْمَاءِ وَغَيْرُ ذَلِكَ كُلُّ ذَلِكَ حَلَالٌ أَكْلُهُ: قَتَلَ كُلَّ ذَلِكَ وَثَنِيٌّ أَوْ مُسْلِمٌ أَوْ كِتَابِيٌّ أَوْ لَمْ يَقْتُلْهُ أَحَدٌ.

The proof for this is the statement of Allah the Most High: "The two seas are not equal—this one is fresh, sweet, and pleasant to drink, while that one is salty and bitter. Yet from each you eat tender meat" [35:12]. And He said: "Lawful for you is the game of the sea and its food as a provision for you and for travelers" [5:96]. Thus, He generalized and did not exclude anything,

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {وَمَا يَسْتَوِي الْبَحْرَانِ هَذَا عَذْبٌ فُرَاتٌ سَائِغٌ شَرَابُهُ وَهَذَا مِلْحٌ أُجَاجٌ وَمِنْ كُلٍّ تَأْكُلُونَ لَحْمًا طَرِيًّا} [فاطر: ١٢] وَقَالَ تَعَالَى: {أُحِلَّ لَكُمْ صَيْدُ الْبَحْرِ وَطَعَامُهُ مَتَاعًا لَكُمْ وَلِلسَّيَّارَةِ} [المائدة: ٩٦] فَعَمَّ تَعَالَى وَلَمْ يَخُصَّ شَيْئًا مِنْ

for “your Lord is never forgetful” [19:64]. The followers of Abū Ḥanīfah opposed all this and ruled: It is permissible to eat what dies among fish and what the tide has receded from, provided it did not float on the water—specifically what died of natural causes in the water. They prohibited eating anything that floats and restricted permissibility to fish alone, excluding water swine and water humans. They argued: “Allah has entirely forbidden the consumption of swine and humans, and these are swine and humans.” They stipulated: If a whale kills it, or a bird kills it, or it is struck and killed by a rock, or a polytheist hunts and kills it—then floats afterward—it remains permissible to eat. Muḥammad ibn al-Ḥasan ruled regarding a dead fish partially on land and partially in water: If only the head is outside the water, it is permissible to eat. If the head remains in the water, one must assess the portion on land: if the rear portion from its hind part is half or less, it is impermissible; but if the rear portion on land exceeds half, it becomes permissible.[11]

شَيْءٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] فَخَالَفَ أَصْحَابُ أَبِي حَنِيفَةَ هَذَا كُلَّهُ وَقَالُوا: يَحِلُّ أَكْلُ مَا مَاتَ مِنَ السَّمَكِ وَمَا جَزَرَ عَنْهُ الْمَاءُ مَا لَمْ يَطْفُ عَلَى الْمَاءِ مِمَّا مَاتَ فِي الْمَاءِ حَتْفَ أَنْفِهِ خَاصَّةً، وَلَا يَحِلُّ أَكْلُ مَا طَفَا مِنْهُ عَلَى الْمَاءِ، وَلَا يَحِلُّ أَكْلُ شَيْءٍ مِمَّا فِي الْمَاءِ إِلَّا السَّمَكُ وَحْدَهُ، وَلَا يَحِلُّ أَكْلُ خِنْزِيرِ الْمَاءِ وَلَا إِنْسَانِ الْمَاءِ، وَاحْتَجُّوا فِي ذَلِكَ بِأَنْ قَالُوا: قَدْ حَرَّمَ اللَّهُ أَكْلَ الْخِنْزِيرِ جُمْلَةً وَالْإِنْسَانِ وَهَذَا خِنْزِيرٌ وَإِنْسَانٌ، قَالُوا: فَإِنْ ضَرَبَهُ حُوتٌ فَقَتَلَهُ أَوْ ضَرَبَهُ طَائِرٌ فَقَتَلَهُ أَوْ ضَرَبَتْهُ صَخْرَةٌ فَقَتَلَتْهُ أَوْ صَادَهُ وَثَنِيٌّ فَقَتَلَهُ فَطَفَا بَعْدَ كُلِّ هَذَا فَهُوَ حَلَالٌ أَكْلُهُ، وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ فِي سَمَكَةٍ مَيِّتَةٍ بَعْضُهَا فِي الْبَرِّ وَبَعْضُهَا فِي الْمَاءِ: إِنْ كَانَ الرَّأْسُ وَحْدَهُ خَارِجَ الْمَاءِ أُكِلَتْ وَإِنْ كَانَ الرَّأْسُ فِي الْمَاءِ نُظِرَ فَإِنْ كَانَ الَّذِي فِي الْبَرِّ مِنْ مُؤَخَّرِهَا النِّصْفَ فَأَقَلَّ لَمْ يَحِلَّ أَكْلُهَا وَإِنْ كَانَ الَّذِي فِي الْبَرِّ مِنْ مُؤَخَّرِهَا أَكْثَرَ مِنَ النِّصْفِ حَلَّ أَكْلُهَا.

L16605–16607

Abū Muḥammad said: These are assertions not known from any Muslim scholar before them. They contradict the Qur’an, the Sunnah, the scholars’ teachings, legal analogy, and rational principles, for they impose obligations beyond human capacity—matters for which there is no feasible path. To His knowledge: Did it die while floating therein, or die before floating, or perish from a whale’s strike, a collapsing rock, or death by its own nature? None knows this except Allah or an angel entrusted with that whale. We cannot know for certain—perhaps the devils have no means to ascertain this, or could they possibly know it, given they undoubtedly include divers? The Exalted said: *“And among the devils were those who dived for him”* [Al-Anbiyā’: 82]. Furthermore, the fish concerning which Muḥammad ibn al-Ḥasan formulated this absurd ruling necessitates a quantifier to measure what portion of it is outside the water and what remains within. How could the wretched man discern this? Perhaps most of the fish was submerged, then

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ أَقْوَالٌ لَا تُعْلَمُ عَنْ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ قَبْلَهُمْ وَهِيَ مُخَالِفَةٌ لِلْقُرْآنِ وَلِلسُّنَنِ وَلِأَقْوَالِ الْعُلَمَاءِ وَلِلْقِيَاسِ وَلِلْمَعْقُولِ لِأَنَّهَا تَكْلِيفُ مَا لَا يُطَاقُ مِمَّا لَا سَبِيلَ إِلَى عِلْمِهِ هَلْ مَاتَتْ وَهِيَ طَافِيَةٌ فِيهِ أَوْ مَاتَتْ قَبْلَ أَنْ تَطْفُوَ أَوْ مَاتَتْ مِنْ ضَرْبَةِ حُوتٍ أَوْ مِنْ صَخْرَةٍ مُنْهَدِمَةٍ أَوْ حَتْفَ أَنْفِهَا؟ وَلَا يَعْلَمُ هَذَا إِلَّا اللَّهُ أَوْ مَلَكٌ مُوَكَّلٌ بِذَلِكَ الْحُوتِ، وَمَا نَدْرِي لَعَلَّ الْجِنَّ لَا سَبِيلَ لَهَا إِلَى مَعْرِفَةِ ذَلِكَ أَمْ يُمْكِنُهَا عِلْمُ ذَلِكَ لِأَنَّ فِيهِمْ غَوَّاصِينَ بِلَا شَكٍّ؟ قَالَ تَعَالَى: {وَمِنَ الشَّيَاطِينِ مَنْ يَغُوصُونَ لَهُ} [الأنبياء: ٨٢] ثُمَّ لَا بُدَّ لِلسَّمَكَةِ الَّتِي شَرَعَ فِيهَا مُحَمَّدُ بْنُ الْحَسَنِ هَذِهِ الشَّرِيعَةَ السَّخِيفَةَ مِنْ مِذْرَعٍ يُذَرِّعُ مَا مِنْهَا خَارِجَ الْمَاءِ وَمَا مِنْهَا دَاخِلَ الْمَاءِ ثُمَّ مَا يُدْرِيهِ الْبَائِسُ لَعَلَّهُ كَانَ أَكْثَرُهَا فِي الْمَاءِ، ثُمَّ أَدَارَتْهَا الْأَمْوَاجُ فَيَا لِلَّهِ وَيَا لِلْمُسْلِمِينَ لِهَذِهِ الْحَمَاقَاتِ الَّتِي لَا تُشْبِهُ إِلَّا مَا يَتَطَايَبُ بِهِ

[11] **Qur’an references (L16604):** Qur’an 35:12 (Fatir); Qur’an 5:96 (Al-Ma’idah); Qur’an 19:64 (Maryam).

the waves tossed it about. O Allah! O Muslims! Such idiocies, resembling only the antics jesters employ to amuse witless kings! Most astounding is their assertion regarding the established reports that one suckling or two do not establish prohibition: "This is an addition to the Quran, so we accept it only through mass transmission." Yet they feel no shame in appending—with intellects such as these—additions like these to the Quran. We praise Allah greatly for preservation in religion and sanity.[12]

L16608 As for their claim that He has prohibited the pig and the human, and this [entity] is a pig and a human—and Al-Layth ibn Sa'd also held this view specifically—it is neither a pig nor a human, because it is merely a designation by someone who is not a definitive authority in linguistic matters, and designation belongs solely to Allah the Exalted. If this were left to people, then whoever wished to permit the forbidden could do so by calling it by the name of something permissible, and whoever wished to forbid the permissible could do so by calling it by the name of something forbidden. Thus, the argument of this group collapses completely beyond doubt, while the opinion of some of the early scholars remains regarding the prohibition of fish that float [on water].

L16609 It has been narrated to us through the chain of Muḥammad ibn al-Muthannā, from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Abī al-Zubayr, from Jābir, who said: "Do not eat what floats, but eat what remains on its edges or what is left uncovered as the water recedes."

L16610 And via the chain of Saʿīd ibn Manṣūr: Ibrāhīm ibn ʿUlayyah narrated to us from Ayyūb, from Abū al-Zubayr, from Jābir, who said: "Whatever the sea exposes upon its two banks, eat it; but whatever dies floating within it, do not eat it."

L16611 Narrated via Ibn Fudayl: Ata ibn al-Sa'ib reported from Maysarah that Ali ibn Abi Talib said, "Do not eat what floats from the creatures of the sea." Narrated via Abd al-Razzaq: Sufyan al-Thawri reported from al-Ajlah that Abdullah ibn Abi al-Hudhayl heard Ibn Abbas reply to a man who said, "I see the sea has produced fish," "Do not eat any of it floating." Narrated via

[12]**Qur'an references (L16605):** Qur'an 21:82 (Al-Anbya).

الْمُجَّانُ لِإِضْحَاكِ سُخَفَاءِ الْمُلُوكِ، وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ قَوْلِهِمْ فِي الْأَخْبَارِ الثَّابِتَةِ فِي أَنَّهُ لَا تُحَرِّمُ الرَّضْعَةُ وَلَا الرَّضْعَتَانِ: هَذَا زِيَادَةٌ عَلَى مَا فِي الْقُرْآنِ فَلَا نَأْخُذُ بِهَا إِلَّا مِنْ طَرِيقِ التَّوَاتُرِ، ثُمَّ لَا يَسْتَحْيُونَ أَنْ يَزِيدُوا بِمِثْلِ هَذِهِ الْعُقُولِ مِثْلَ هَذِهِ الزِّيَادَةِ عَلَى مَا فِي الْقُرْآنِ. نَحْمَدُ اللَّهَ عَلَى السَّلَامَةِ فِي الدِّينِ وَالْعَقْلِ كَثِيرًا.

وَأَمَّا قَوْلُهُمْ: إِنَّهُ قَدْ حَرَّمَ الْخِنْزِيرَ وَالْإِنْسَانَ وَهَذَا خِنْزِيرٌ وَإِنْسَانٌ، وَقَدْ قَالَ اللَّيْثُ بْنُ سَعْدٍ بِهَذَا أَيْضًا خَاصَّةً: فَلَيْسَ خِنْزِيرًا وَلَا إِنْسَانًا لِأَنَّهَا إِنَّمَا هِيَ تَسْمِيَةُ مَنْ لَيْسَ حُجَّةً فِي اللُّغَةِ وَلَيْسَتْ التَّسْمِيَةُ إِلَّا لِلَّهِ تَعَالَى، وَلَوْ كَانَ ذَلِكَ إِلَى النَّاسِ لَكَانَ مَنْ شَاءَ أَنْ يُحِلَّ الْحَرَامَ أَحَلَّهُ بِأَنْ يُسَمِّيَهُ بِاسْمِ شَيْءٍ حَلَالٍ وَمَنْ شَاءَ أَنْ يُحَرِّمَ الْحَلَالَ حَرَّمَهُ بِأَنْ يُسَمِّيَهُ بِاسْمِ شَيْءٍ حَرَامٍ، فَسَقَطَ قَوْلُ هَذِهِ الطَّائِفَةِ سُقُوطًا لَا مِرْيَةَ فِيهِ وَبَقِيَ قَوْلُ لِبَعْضِ السَّلَفِ فِي تَحْرِيمِ الطَّافِي مِنْ السَّمَكِ.

رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: مَا طَفَا فَلَا تَأْكُلُوهُ وَمَا كَانَ عَلَى حَافَتَيْهِ أَوْ حَسِرَ عَنْهُ فَكُلُوهُ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا إِبْرَاهِيمُ هُوَ ابْنُ عُلَيَّةَ - نَا أَيُّوبُ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: مَا حَسِرَ الْمَاءُ عَنْ ضِفَّتَيْ الْبَحْرِ فَكُلْ وَمَا مَاتَ فِيهِ طَافِيًا فَلَا تَأْكُلْ.

وَمِنْ طَرِيقِ ابْنِ فُضَيْلٍ أَنَا عَطَاءُ بْنُ السَّائِبِ عَنْ مَيْسَرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: مَا طَفَا مِنْ صَيْدِ الْبَحْرِ فَلَا تَأْكُلُوهُ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَجْلَحِ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي الْهُذَيْلِ أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ وَقَدْ قَالَ لَهُ رَجُلٌ: إِنِّي أَجِدُ الْبَحْرَ وَقَدْ جَعَلَ سَمَكًا قَالَ: لَا تَأْكُلْ مِنْهُ طَافِيًا. وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ

Yahya ibn Sa'id al-Qattan: Ibn Abi Arubah reported from Qatadah that Sa'id ibn al-Musayyab said, "Do not eat what floats of the fish."

L16612–16613 It has been authentically reported from al-Ḥasan, Ibn Sīrīn, Jābir ibn Zayd, and Ibrāhīm al-Nakhaʿī that they disapproved of dead floating fish. Al-Ḥasan al-Basri ruled it impermissible. Regarding sea creatures other than fish, two opinions are narrated from Sufyān al-Thawrī: one permits eating them, while the other prohibits consumption unless slaughtered. Another opinion we have transmitted via Wakiʿ, who said: Jarīr ibn Ḥāzim informed us from ʿĪsā ibn ʿĀṣim from ʿAlī ibn Abī Ṭālib that he disapproved of the Magians' catch of fish. Through the chain of ʿAbd al-Razzāq, from Ibn Jurayj: Abū Bakr ibn Ḥafṣ informed me from Ibn Masʿūd, who said: "The proper slaughter method for a large sea creature is to split its jaws."

L16614 Abū Muḥammad said: As for this statement and the division of one of the two opinions of al-Thawrī, all are invalidated by what we have narrated via the chain of Imām Muslim: Yaḥyā ibn Yaḥyā narrated to us, Abū Khaythamah—who is Zuhayr ibn Muʿāwiyah—from Abū al-Zubayr al-Makkī, who said: Jābir narrated to me, saying: "Allah's Messenger (peace be upon him) dispatched us under Abū ʿUbaydah's command to intercept a Quraysh caravan, provisioning us only with a bag of dates. Abū ʿUbaydah would distribute one date to each man." Abū al-Zubayr said: I asked Jābir, "How did you manage with that?" He replied: "We would suck it as a child would, then drink water—this sufficed us until nightfall. We beat down dry foliage with our sticks, soaked it with water, and ate it." He continued: "While traveling along the coast, we encountered something like a massive sand dune. Approaching it, we found a dead sperm whale. Abū ʿUbaydah initially said, 'Carrion!' then declared: 'But we are messengers of Allah's Messenger (peace be upon him), acting in Allah's path. You are compelled by necessity—eat!' We three hundred stayed there a month, gaining weight. I witnessed us scooping ambergris oil from its eye socket with large pots and cutting bull-sized chunks from it. Abū ʿUbaydah seated thirteen men in its eye socket. He took one rib, propped it upright, and led our largest camel under it. We carried portions of its meat and dried meat. Upon returning to Medina, we

عَنْ ابْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: مَا طَفَا مِنْ السَّمَكِ فَلَا تَأْكُلْهُ.

وَصَحَّ عَنْ الْحَسَنِ وَابْنِ سِيرِينَ وَجَابِرِ بْنِ زَيْدٍ وَإِبْرَاهِيمَ النَّخَعِيِّ أَنَّهُمْ كَرِهُوا الطَّافِيَ مِنْ السَّمَكِ، وَبِتَحْرِيمِهِ يَقُولُ الْحَسَنُ بْنُ حَيٍّ، وَرُوِيَ عَنْ سُفْيَانَ الثَّوْرِيِّ فِيمَا فِي الْبَحْرِ مِمَّا عَدَا السَّمَكَ قَوْلَانِ، أَحَدُهُمَا أَنَّهُ يُؤْكَلُ، وَالْآخَرُ لَا يُؤْكَلُ حَتَّى يُذْبَحَ، وَهَهُنَا قَوْلٌ آخَرُ رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ قَالَ: نَا جَرِيرُ بْنُ حَازِمٍ عَنْ عِيسَى بْنِ عَاصِمٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ كَرِهَ صَيْدَ الْمَجُوسِ لِلسَّمَكِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو بَكْرِ بْنُ حَفْصٍ عَنْ ابْنِ مَسْعُودٍ قَالَ: ذَكَاةُ الْحُوتِ فَكُّ لَحْيَيْهِ.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا هَذَا الْقَوْلُ وَتَقْسِيمُ أَحَدِ قَوْلَيْ الثَّوْرِيِّ فَيُبْطِلُهَا كُلَّهَا مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا يَحْيَى بْنُ يَحْيَى نَا أَبُو خَيْثَمَةَ هُوَ زُهَيْرُ بْنُ مُعَاوِيَةَ - عَنْ أَبِي الزُّبَيْرِ الْمَكِّيِّ حَدَّثَنِي جَابِرٌ قَالَ: «بَعَثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَمَّرَ عَلَيْنَا أَبَا عُبَيْدَةَ نَتَلَقَّى عِيرًا لِقُرَيْشٍ وَزَوَّدَنَا جِرَابًا مِنْ تَمْرٍ لَمْ يَجِدْ لَنَا غَيْرَهُ فَكَانَ أَبُو عُبَيْدَةَ يُعْطِينَا تَمْرَةً تَمْرَةً، قَالَ أَبُو الزُّبَيْرِ: فَقُلْت لِجَابِرٍ: كَيْفَ كُنْتُمْ تَصْنَعُونَ بِهَا؟ قَالَ: نَمُصُّهَا كَمَا يَمُصُّ الصَّبِيُّ ثُمَّ نَشْرَبُ عَلَيْهَا مِنْ الْمَاءِ فَتَكْفِينَا يَوْمَنَا إلَى اللَّيْلِ وَكُنَّا نَضْرِبُ بِعِصِيِّنَا الْخَبَطَ فَنَبُلُّهُ بِالْمَاءِ فَنَأْكُلُهُ قَالَ: وَانْطَلَقْنَا عَلَى سَاحِلِ الْبَحْرِ فَرُفِعَ لَنَا عَلَى سَاحِلِ الْبَحْرِ كَهَيْئَةِ الْكَثِيبِ الضَّخْمِ فَأَتَيْنَاهُ فَإِذَا هُوَ دَابَّةٌ تُدْعَى الْعَنْبَرَ قَالَ أَبُو عُبَيْدَةَ: مَيْتَةٌ، ثُمَّ قَالَ: لَا بَلْ نَحْنُ رُسُلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي سَبِيلِ اللَّهِ تَعَالَى وَقَدْ اُضْطُرِرْتُمْ فَكُلُوا فَأَقَمْنَا عَلَيْهِ شَهْرًا وَنَحْنُ ثَلَاثُمِائَةٍ حَتَّى سَمِنَّا وَلَقَدْ رَأَيْتُنَا نَغْتَرِفُ مِنْ وَقْبِ عَيْنَيْهِ بِالْقِلَالِ الدُّهْنَ وَنَقْتَطِعُ مِنْهُ الْفِدَرَ كَالثَّوْرِ أَوْ كَقَدْرِ الثَّوْرِ وَلَقَدْ أَخَذَ مِنَّا أَبُو عُبَيْدَةَ ثَلَاثَةَ عَشَرَ

informed Allah's Messenger (peace be upon him), who said: 'This was sustenance Allah provided you. Have you any left to share?' We sent him some, and he ate it."

رَجُلًا فَأَقْعَدَهُمْ فِي وَقْبِ عَيْنِهِ وَأَخَذَ ضِلْعًا مِنْ أَضْلَاعِهِ فَأَقَامَهَا، ثُمَّ رَحَلَ أَعْظَمَ بَعِيرٍ مَعَنَا فَمَرَّ مِنْ تَحْتِهَا وَتَزَوَّدْنَا مِنْ لَحْمِهِ وَشَائِقَ، فَلَمَّا قَدِمْنَا الْمَدِينَةَ ذَكَرْنَا ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ هُوَ رِزْقٌ أَخْرَجَهُ اللَّهُ تَعَالَى لَكُمْ فَهَلْ مَعَكُمْ مِنْ لَحْمِهِ شَيْءٌ فَتُطْعِمُونَا؟ فَأَرْسَلْنَا إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْهُ فَأَكَلَهُ» .

L16615–16617 Abu Muhammad said: This is not from fish but rather among what those we mentioned have prohibited, and it is not among what has its jaws split; rather, it is carrion. This is the authentic report from Jabir, as Abu al-Zubayr heard it directly from him, and this is evident in his statement to Jabir regarding the date: "What would you do with it?" Since the carrion of the sea is permissible, the game hunted by an idolater or others is equally permissible for consumption, as it does not require ritual slaughter—its ritual slaughter is simply its natural death. As for those who entirely prohibit floating carrion, the narration concerning... [text cut off]. That narration from Jābir is not authentic because Abū al-Zubayr did not mention hearing from Jābir within it. Since he did not mention that, it constitutes Tadlīs from him, as we shall mention after this if Allāh the Exalted wills. The narration from ʿAlī is not authentic because Ibn Fuḍayl only heard from ʿAṭāʾ ibn al-Sāʾib after his mental deterioration. The narration from Ibn ʿAbbās through Ajlaḥ's chain is not strong, but it is authentic from al-Ḥasan, Ibn Sīrīn, and Jābir ibn Zayd. They cited as evidence what we transmitted via Abū Dāwūd's chain: Aḥmad ibn ʿAbdah narrated to us, Yaḥyā ibn Sulaym al-Ṭāʾifī narrated to us, Ismāʿīl ibn Umayyah narrated to us from Abū al-Zubayr from Jābir ibn ʿAbd Allāh, who said: The Messenger of Allāh—peace and blessings be upon him—said, "What the sea casts ashore or leaves behind as it recedes, eat it. But what dies therein and floats, do not eat it." From Saʿīd ibn Manṣūr's chain: Ismāʿīl ibn ʿAyyāsh narrated to us, ʿAbd al-ʿAzīz ibn ʿUbayd Allāh narrated to me from Wahb ibn Kaysān and Nuʿaym ibn al-Mujmir (Ibn ʿAbd Allāh) from Jābir ibn ʿAbd Allāh from the Prophet—peace and blessings be upon him—who said,

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا لَيْسَ مِنَ السَّمَكِ بَلْ هُوَ مِمَّا حَرَّمَهُ مَنْ ذَكَرْنَا وَلَيْسَ مِمَّا فُكَّتْ لَحْيَاه بَلْ هُوَ مَيْتَةٌ وَهَذَا هُوَ الصَّحِيحُ عَنْ جَابِرٍ لِسَمَاعِ أَبِي الزُّبَيْرِ إِيَّاهُ مِنْهُ، وَهَذَا بَيِّنٌ فِيهِ لِقَوْلِهِ لِجَابِرٍ فِي التَّمْرَةِ كَيْفَ كُنْتُمْ تَصْنَعُونَ بِهَا؟ وَإِذْ مَيْتَةُ الْبَحْرِ حَلَالٌ فَصَيْدُ الْوَثَنِيِّ وَغَيْرِهِ لَهُ سَوَاءٌ لِأَنَّهُ لَا يَحْتَاجُ إِلَى ذَكَاةٍ إِنَّمَا ذَكَاتُهُ مَوْتُهُ فَقَطْ، وَأَمَّا مَنْ حَرَّمَ الطَّافِيَ جُمْلَةً فَالرِّوَايَةُ فِي ذَلِكَ عَنْ جَابِرٍ لَا تَصِحُّ لِأَنَّ أَبَا الزُّبَيْرِ لَمْ يَذْكُرْ فِيهِ سَمَاعًا مِنْ جَابِرٍ وَهُوَ مَا لَمْ يَذْكُرْ ذَلِكَ فَمُدَلَّسٌ عَنْهُ كَمَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى، وَهِيَ عَنْ عَلِيٍّ لَا تَصِحُّ لِأَنَّ ابْنَ فُضَيْلٍ لَمْ يَسْمَعْ مِنْ عَطَاءِ بْنِ السَّائِبِ إِلَّا بَعْدَ اخْتِلَاطِهِ، وَهِيَ عَنِ ابْنِ عَبَّاسٍ مِنْ طَرِيقِ أَجْلَحَ وَلَيْسَ بِالْقَوِيِّ لَكِنَّهُ صَحِيحٌ عَنِ الْحَسَنِ وَابْنِ سِيرِينَ وَجَابِرِ بْنِ زَيْدٍ. وَاحْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نَا أَحْمَدُ بْنُ عَبْدَةَ نَا يَحْيَى بْنُ سُلَيْمٍ الطَّائِفِيُّ نَا إِسْمَاعِيلُ بْنُ أُمَيَّةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا أَلْقَى الْبَحْرُ أَوْ جَزَرَ عَنْهُ فَكُلُوهُ وَمَا مَاتَ فِيهِ فَطَفَا فَلَا تَأْكُلُوهُ» وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ حَدَّثَنِي عَبْدُ الْعَزِيزِ بْنُ عُبَيْدِ اللَّهِ عَنْ وَهْبِ بْنِ كَيْسَانَ وَنُعَيْمِ بْنِ الْمُجْمِرِ هُوَ ابْنُ عَبْدِ اللَّهِ - عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كُلُوا مَا حَسَرَ عَنْهُ الْبَحْرُ وَمَا أَلْقَى وَمَا وَجَدْتُمُوهُ طَافِيًا مِنَ السَّمَكِ فَلَا تَأْكُلُوهُ» .

"Eat what the sea exposes, what it casts ashore. As for whatever you find floating of fish, do not eat it."[13]

L16618 Abu Muhammad said: We know of no argument for them except this, and it is not a valid proof. Even if it were sound, we would not hesitate for a moment to adopt it. However, first and foremost, even if it were sound, it would only serve as a proof against the followers of Abu Hanifah because they contradict its contents. This applies to every report we have received on this matter from a Companion or Successor, for they permit certain dead floating sea creatures that perish from an external cause—not natural death—while prohibiting much of what the sea washes up or exposes through receding waters. Thus, they contradicted the report in two aspects, as does anyone reported to have held a position on this. As for the weakness of these two reports: one comes via Ismail ibn Ayyash, who is weak, and the other through Abu al-Zubayr's narration from Jabir without explicitly mentioning direct transmission. Narrated by Yusuf ibn Abd Allah ibn Abd al-Barr al-Namari, from Abd Allah ibn Muhammad ibn Yusuf al-Azdi the judge, from Ishaq ibn Ahmad al-Dakhil, from Abu Ja'far al-'Uqayli, from Muhammad ibn Ismail and Zakariyya ibn Yahya al-Hulwani. Zakariyya said: From Ahmad ibn Sa'id ibn Abi Maryam. Muhammad ibn Ismail said: From al-Hasan ibn Ali. Then both Ahmad and al-Hasan agreed, both saying: From Sa'id ibn Abi Maryam, from al-Layth ibn Sa'd, who said: I came to Abu al-Zubayr, and he handed me two books. I asked him, "Did you hear all of this from Jabir?" He replied, "Some of it I heard from him, and some I narrated from him." I said, "Mark for me what you heard directly," so he marked the one in my possession.

L16619–16621 Abu Muhammad said: So what was not from the narration of al-Layth from Abu al-Zubayr, nor did Abu al-Zubayr say in it that he Jabir informed him of it, but he did not hear it through Jabir's explicit affirmation, nor do we know from whom he received it. Thus, it is impermissible to cite it as evidence. This report falls under that category [of invalid transmissions], and therefore it is invalidated. We praise Allah, the Exalted, for clarifying it to us.

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا وَلَيْسَ بِحُجَّةٍ لِأَنَّهُ لَا يَصِحُّ وَلَوْ صَحَّ لَمَا تَرَدَّدْنَا طَرْفَةَ عَيْنٍ فِي الْقَوْلِ بِهِ إِلَّا أَنَّ قَبْلَ كُلِّ شَيْءٍ فَهُوَ لَوْ صَحَّ حُجَّةٌ عَلَى أَصْحَابِ أَبِي حَنِيفَةَ لِأَنَّهُمْ مُخَالِفُونَ لِمَا فِيهِ وَلِكُلِّ مَا رُوِّينَا فِي ذَلِكَ عَنْ صَاحِبٍ أَوْ تَابِعٍ لِأَنَّهُمْ يُبِيحُونَ بَعْضَ الطَّافِي إِذَا مَاتَ مِنْ عَارِضٍ عَرَضَ لَهُ لَا حَتْفَ أَنْفِهِ وَيُحَرِّمُونَ كَثِيرًا مِمَّا أَلْقَى الْبَحْرُ أَوْ حَسِرَ عَنْهُ فَخَالَفُوا الْخَبَرَ فِي مَوْضِعَيْنِ، وَكَذَلِكَ مَنْ رُوِيَ عَنْهُ فِي هَذَا شَيْءٌ، وَأَمَّا ضَعْفُ هَذَيْنِ الْخَبَرَيْنِ، فَأَحَدُهُمَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ عَيَّاشٍ وَهُوَ ضَعِيفٌ، وَالْآخَرُ مِنْ رِوَايَةِ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ وَلَمْ يَذْكُرْ فِيهِ سَمَاعًا. نَا يُوسُفُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَرِّ النَّمَرِيُّ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ يُوسُفَ الْأَزْدِيُّ الْقَاضِي نَا إِسْحَاقُ بْنُ أَحْمَدَ الدَّخِيلُ نَا أَبُو جَعْفَرٍ الْعُقَيْلِيُّ نَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ وَزَكَرِيَّا بْنُ يَحْيَى الْحُلْوَانِيُّ قَالَ زَكَرِيَّا: نَا أَحْمَدُ بْنُ سَعِيدِ بْنِ أَبِي مَرْيَمَ، وَقَالَ مُحَمَّدُ بْنُ إِسْمَاعِيلَ: نَا الْحَسَنُ بْنُ عَلِيٍّ، ثُمَّ اتَّفَقَ أَحْمَدُ وَالْحَسَنُ قَالَا جَمِيعًا: نَا سَعِيدُ بْنُ أَبِي مَرْيَمَ نَا اللَّيْثُ بْنُ سَعْدٍ قَالَ: جِئْتُ أَبَا الزُّبَيْرِ فَدَفَعَ إِلَيَّ كِتَابَيْنِ فَقُلْتُ لَهُ: هَذَا كُلُّهُ سَمِعْتَهُ مِنْ جَابِرٍ فَقَالَ: مِنْهُ مَا سَمِعْتُ مِنْهُ، وَمِنْهُ مَا حَدَّثْتُ عَنْهُ فَقُلْتُ: أَعْلِمْ لِي عَلَى مَا سَمِعْتَ فَأَعْلَمَ لِي عَلَى هَذَا الَّذِي عِنْدِي.

قَالَ أَبُو مُحَمَّد: فَمَا لَمْ يَكُنْ مِنْ رِوَايَةِ اللَّيْثِ عَنْ أَبِي الزُّبَيْرِ وَلَا قَالَ فِيهِ أَبُو الزُّبَيْرِ أَنَّهُ أَخْبَرَهُ بِهِ جَابِرٌ فَلَمْ يَسْمَعْهُ مِنْ جَابِرٍ بِإِقْرَارِهِ وَلَا نَدْرِي عَمَّنْ أَخَذَهُ فَلَا يَجُوزُ الِاحْتِجَاجُ بِهِ، وَهَذَا مِنْ ذَلِكَ الْخَبَرِ فَسَقَطَ وَنَحْمَدُ اللَّهَ تَعَالَى عَلَى بَيَانِهِ لَنَا.

[13] **Hadith references (L16615):** Sunan Ibn Majah 3247.

وَقَدْ رُوِيَ مِثْلُ قَوْلِنَا عَنْ طَائِفَةٍ مِنَ السَّلَفِ. رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي بَشِيرٍ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: أَشْهَدُ عَلَى أَبِي بَكْرٍ أَنَّهُ قَالَ: السَّمَكَةُ الطَّافِيَةُ حَلَالٌ لِمَنْ أَرَادَ أَكْلَهَا. نَا حُمَامٌ نَا الْبَاجِيَّ نَا ابْنُ أَيْمَنَ نَا أَحْمَدُ بْنُ مُسْلِمٍ نَا أَبُو ثَوْرٍ نَا مُعَلَّى نَا أَبُو عَوَانَةَ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ قَالَ: السَّمَكُ كُلُّهُ ذَكِيٌّ وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عِكْرِمَةَ قَالَ: قَالَ أَبُو بَكْرٍ الصِّدِّيقُ: طَعَامُ الْبَحْرِ كُلُّ مَا فِيهِ. وَمِنْ طَرِيقِ وَكِيعٍ نَا هَمَّامٌ هُوَ ابْنُ يَحْيَى - عَنْ قَتَادَةَ عَنْ جَابِرِ بْنِ أَبِي الشَّعْثَاءِ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: الْحِيتَانُ وَالْجَرَادُ ذَكِيٌّ.

L16622 A similar opinion to ours has been reported from a group of the Salaf. It was narrated through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from ʿAbd al-Malik ibn Abī Bashīr, from ʿIkrimah, from Ibn ʿAbbās, who said: "I bear witness regarding Abū Bakr that he said: 'The floating fish is lawful for whoever wishes to eat it.'" From Ḥammām, from al-Bājī, from Ibn Ayman, from Aḥmad ibn Muslim, from Abū Thawr, from Muʿallā, from Abū ʿAwānah, from Qatādah, from ʿIkrimah, from Ibn ʿAbbās, that Abū Bakr al-Ṣiddīq said: "All fish are lawful without slaughter." Through the chain of Saʿīd ibn Manṣūr, from Sufyān—he is Ibn ʿUyaynah—from ʿAmr ibn Dīnār, from ʿIkrimah, who said: "Abū Bakr al-Ṣiddīq said: 'The food of the sea: eat all that is in it.'" Through the chain of Wakīʿ, from Hammām—he is Ibn Yaḥyā—from Qatādah, from Jābir ibn Abī al-Shaʿthāʾ, who said: "'Umar ibn al-Khaṭṭāb said: 'Whales and locusts are lawful without slaughter.'"

قَالَ أَبُو مُحَمَّد: قَالَ اللَّهُ تَعَالَى: {فَالْتَقَمَهُ الْحُوتُ وَهُوَ مُلِيمٌ} [الصافات: ١٤٢] فَسَمَّى مَا يَلْتَقِمُ الْإِنْسَانَ فِي بَلْعَةٍ وَاحِدَةٍ حُوتًا. وَلَيْسَ هَذَا مِنَ الصِّفَةِ الَّتِي أَحَلَّ أَبُو حَنِيفَةَ، وَقَدْ قَالَ أَبُو بَكْرٍ وَعُمَرُ بِإِبَاحَتِهِ وَلَا يُعْلَمُ لَهُمَا فِي ذَلِكَ مُخَالِفٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا صَالِحُ بْنُ مُوسَى الطَّلْحِيُّ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ سُئِلَ عَنِ الْحِيتَانِ وَالْجَرَادِ؟ فَقَالَ: الْحِيتَانُ وَالْجَرَادُ ذَكِيٌّ ذَكَاتُهُمَا صَيْدُهُمَا. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ أَنَا مَنْصُورٌ عَنْ مُعَاوِيَةَ بْنِ قُرَّةَ أَنَّ أَبَا أَيُّوبَ أَكَلَ سَمَكَةً طَافِيَةً. وَمِنْ طَرِيقِ أَبِي ثَوْرٍ نَا مُعَلَّى نَا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ التَّنُّورِيُّ نَا أَبُو التَّيَّاحِ عَنْ ثُمَامَةَ بْنِ أَنَسِ بْنِ مَالِكٍ أَنَّ أَبَا أَيُّوبَ الْأَنْصَارِيَّ سُئِلَ عَنْ سَمَكَةٍ طَافِيَةٍ؟ فَقَالَ: كُلْ وَأَطْعِمْنِي. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ إِسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُبَيْدٍ الْكَلَاعِيِّ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنْ

L16623 Abū Muḥammad said: Allāh the Exalted stated: {Then the fish swallowed him while he was blaming himself} [Aṣ-Ṣāffāt: 142]. Thus, He named what engulfs a human in one gulp a "fish." This is not the type [of slaughter] deemed permissible by Abū Ḥanīfah. Abū Bakr and ʿUmar ruled its permissibility, with no known opposition from the Companions (may Allāh be pleased with them) regarding this.

Via the chain of Saʿīd ibn Manṣūr: Ṣāliḥ ibn Mūsā aṭ-Ṭalḥī narrated from Jaʿfar ibn Muḥammad from his father from his grandfather ʿAlī ibn Abī Ṭālib that he was asked about fish and locusts. He replied: "Fish and locusts are ritually pure – their slaughter is valid through their being caught."

Via the chain of Saʿīd ibn Manṣūr: Hushaym narrated from Manṣūr from Muʿāwiyah ibn Qurrah that Abū Ayyūb ate a dead fish floating [on water].

Via the chain of Abū Thawr: Muʿallā narrated from ʿAbd al-Wārith ibn Saʿīd at-Tannūrī from Abū at-Tayyāḥ from Thumāmah ibn Anas ibn Mālik that Abū Ayyūb al-Anṣārī asked about a dead floating fish. He responded: "Eat it and feed me."

Via the chain of Saʿīd ibn Manṣūr from Ismāʿīl ibn ʿAyyāsh from ʿUbaydullāh ibn ʿUbayd al-Kalāʿī from Sulaymān ibn Mūsā from al-Ḥasan, who said: "I

encountered seventy men from the Companions of Allāh's Messenger – peace and blessings be upon him – eating fish hunted by Zoroastrians, without any doubt arising in their hearts, for they did not consider the hunting of Zoroastrians as valid slaughter."

The permissibility of eating floating dead fish is upheld by Ibn Abī Laylā, al-Awzāʿī, Sufyān ath-Thawrī, Mālik, al-Layth ash-Shāfiʿī, and Abū Sulaymān.[14]

L16624–16625 Ali said: A fish does not float at all except when it dies or approaches death, and when it dies, it floats necessarily and unavoidably. Thus, their singling out of the floating [fish] for prohibition while permitting what died in the water is a contradiction.

L16626 **The issue of eating what lives in water and on land.**

L16627 991 - Issue: As for amphibious creatures, their consumption is impermissible unless properly slaughtered, such as the turtle, the dugong, the otter, the sable, and similar animals, for they are classified as land game and its creatures. If a pilgrim in the state of consecration (Iḥrām) kills one, he must provide compensation (fidyah). As for the frog, its consumption is fundamentally prohibited due to what we mentioned in the Book of Hajj regarding the Prophet's (peace be upon him) prohibition against slaughtering it, obviating the need to repeat it here.

L16628 **The issue of consuming what has not been slaughtered according to _dhabīḥah_.**

L16629 Issue 992: It is not permissible to eat any animal permitted for consumption while it remains alive, due to Allah the Exalted's decree: "Except what you have properly slaughtered" (Quran 5:3). Thus, He has forbidden us to eat what has not undergone ritual slaughter, for the living animal has not yet been slaughtered. Similarly, if an animal is slaughtered by dhabh or nahr, no part of it becomes lawful to eat until it dies, in accordance with Allah the Exalted's command: "Invoke Allah's name over them while they are properly

[14]**Qur'an references (L16623):** Qur'an 37:142 (As-Saffat).

الْحَسَنِ قَالَ: أَدْرَكْت سَبْعِينَ رَجُلًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْكُلُونَ صَيْدَ الْمَجُوسِ مِنْ الْحِيتَانِ لَا يَخْتَلِجُ مِنْهُ شَيْءٌ فِي صُدُورِهِمْ وَلَمْ يَكُونُوا يَرَوْنَ صَيْدَهُ ذَكَاتَهُ، وَبِأَكْلِ الطَّافِي مِنْ السَّمَكِ يَقُولُ ابْنُ أَبِي لَيْلَى وَالْأَوْزَاعِيُّ وَسُفْيَانُ الثَّوْرِيُّ وَمَالِكٌ وَاللَّيْثُ الشَّافِعِيُّ وَأَبُو سُلَيْمَانَ.

قَالَ عَلِيٌّ: لَا يَطْفُو الْحُوتُ أَصْلًا إلَّا حَتَّى يَمُوتَ أَوْ يُقَارِبَ الْمَوْتَ فَإِذَا مَاتَ طَفَا ضَرُورَةً وَلَا بُدَّ، فَتَخْصِيصُهُمْ الطَّافِيَ بِالْمَنْعِ وَإِبَاحَتُهُمْ مَا مَاتَ فِي الْمَاءِ تَنَاقُضٌ.

[مَسْأَلَة أَكْلُ مَا يَعِيشُ فِي الْمَاءِ وَفِي الْبَرِّ]

٩٩١ - مَسْأَلَةٌ: وَأَمَّا مَا يَعِيشُ فِي الْمَاءِ وَفِي الْبَرِّ فَلَا يَحِلُّ أَكْلُهُ إلَّا بِذَكَاةٍ كَالسُّلَحْفَاةِ والباليمرين وَكَلْبِ الْمَاءِ وَالسَّمُّورِ وَنَحْوِ ذَلِكَ لِأَنَّهُ مِنْ صَيْدِ الْبَرِّ وَدَوَابِّهِ وَإِنْ قَتَلَهُ الْمُحْرِمُ جَزَاهُ، وَأَمَّا الضِّفْدَعُ فَلَا يَحِلُّ أَكْلُهُ أَصْلًا لِمَا ذَكَرْنَا فِي كِتَابِ الْحَجِّ مِنْ نَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَبْحِهَا فَأَغْنَى عَنْ إعَادَتِهِ.

[مَسْأَلَة أَكْل مَا لَمْ يُذَكَّ]

٩٩٢ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ حَيَوَانٍ مِمَّا يَحِلُّ أَكْلُهُ مَا دَامَ حَيًّا لِقَوْلِ اللَّهِ تَعَالَى: {إلا مَا ذَكَّيْتُمْ} [المائدة: ٣] فَحَرَّمَ عَلَيْنَا أَكْلَ مَا لَمْ نُذَكِّ، وَالْحَيُّ لَمْ يُذَكَّ بَعْدُ. وَكَذَلِكَ لَوْ ذُبِحَ حَيَوَانٌ أَوْ نُحِرَ فَإِنَّهُ لَا يَحِلُّ أَكْلُ شَيْءٍ مِنْهُ حَتَّى يَمُوتَ لِقَوْلِ اللَّهِ تَعَالَى: {فَاذْكُرُوا اسْمَ اللَّهِ عَلَيْهَا صَوَافَّ فَإِذَا وَجَبَتْ جُنُوبُهَا فَكُلُوا مِنْهَا} [الحج: ٣٦] .

positioned; then when their sides collapse lifeless, eat from them" (Quran 22:36).[15]

L16630 There is no disagreement that the ruling concerning the body [of an animal] and other creatures in this matter is equal. Thus, it is unlawful to swallow a living locust or a living fish, even though this constitutes torture, for it has been prohibited to torture animals. We have been narrated through the chain of ʿAbd al-Razzāq who narrated to us, from Maʿmar, from Yaḥyā ibn Abī Kathīr, from a man, from Ibn al-Furāfiṣah, from his father that ʿUmar ibn al-Khaṭṭāb said: "Verily, slaughtering according to Islamic law entails cutting the throat and jugular vein for those capable. Let the souls depart completely until they are fully expelled." And with Allah, the Exalted, lies all success.

L16631 **Issue: It is not permissible to eat any part of a terrestrial animal by twisting the neck.**

L16632 Issue 993: It is not permissible to eat any part of a land animal by twisting its neck, crushing its skull, or suffocating it, due to the statement of Allah, the Exalted: "except what you have ritually slaughtered" [Quran 5:3], for this [act] does not constitute valid slaughter.[16]

L16633 **The Issue of Eating Human Feces and Camel Dung**

L16634 Issue 994: It is not permissible to eat excrement, nor refuse, nor anything from the urine of horses, nor vomit, nor human flesh—even if slaughtered—nor to consume anything taken from a human being except milk alone. It is forbidden to eat any predatory beasts possessing fangs, nor the dog, nor the cat—whether domesticated or wild, they are equally prohibited—nor the fox. Save the hyena alone: its consumption is permissible. And if it were possible to properly slaughter an elephant according to Islamic rites, would its meat then become lawful to eat?

L16635 As for excrement and urine, this is based on what we mentioned in the Book

[15] **Qur'an references (L16629):** Qur'an 5:3 (Al-Ma'idah); Qur'an 22:36 (Al-Hajj).
[16] **Qur'an references (L16632):** Qur'an 5:3 (Al-Ma'idah).

وَلَا خِلَافَ فِي أَنَّ حُكْمَ الْبَدَنِ وَغَيْرِهَا فِي هَذَا سَوَاءٌ، فَلَا يَحِلُّ بَلْعُ جَرَادَةٍ حَيَّةٍ، وَلَا بَلْعُ سَمَكَةٍ حَيَّةٍ، مَعَ أَنَّهُ تَعْذِيبٌ، وَقَدْ نُهِيَ عَنْ تَعْذِيبِ الْحَيَوَانِ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ رَجُلٍ عَنْ ابْنِ الْفُرَافِصَةِ عَنْ أَبِيهِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إنَّ الذَّكَاةَ: الْحَلْقُ وَاللَّبَّةُ لِمَنْ قَدَرَ، وَذَرُوا الْأَنْفُسَ حَتَّى تُزْهَقَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة لَا يَحِلُّ أَكْلُ شَيْءٍ مِنْ حَيَوَانِ الْبَرِّ بِفَتْلِ عُنُقٍ]

٩٩٣ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ شَيْءٍ مِنْ حَيَوَانِ الْبَرِّ بِفَتْلِ عُنُقٍ، وَلَا بِشَدْخٍ، وَلَا بِغَمٍّ؛ لِقَوْلِ اللَّهِ تَعَالَى: {إِلا مَا ذَكَّيْتُمْ} [المائدة: ٣] وَلَيْسَ هَذَا ذَكَاةً.

[مَسْأَلَة أَكْلُ الْعَذِرَةِ وَالرَّجِيعِ]

٩٩٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ الْعَذِرَةِ، وَلَا الرَّجِيعِ، وَلَا شَيْءٍ مِنْ أَبْوَالِ الْخُيُولِ، وَلَا الْقَيْءِ، وَلَا لُحُومِ النَّاسِ - وَلَوْ ذُبِحُوا - وَلَا أَكْلُ شَيْءٍ يُؤْخَذُ مِنْ الْإِنْسَانِ إلَّا اللَّبَنَ وَحْدَهُ، وَلَا شَيْءٍ مِنْ السِّبَاعِ ذَوَاتِ الْأَنْيَابِ، وَلَا أَكْلُ الْكَلْبِ، وَالْهِرِّ - الْإِنْسِيُّ وَالْبَرِّيُّ سَوَاءٌ - وَلَا الثَّعْلَبِ، حَاشَا الضَّبُعَ وَحْدَهَا، فَهِيَ حَلَالٌ أَكْلُهَا، وَلَوْ أَمْكَنَتْ ذَكَاةُ الْفِيلِ لَحَلَّ أَكْلُهُ؟

of Prayer regarding the Prophet's prohibition—peace be upon him—against praying while suppressing the urge to relieve the two impurities: urine and feces, and in accordance with Allah's saying: "He makes lawful for them what is wholesome and forbids them what is impure" (Quran 7:157).[17]

أَمَّا الْعَذِرَةُ وَالْبَوْلُ فَلِمَا ذَكَرْنَا فِي كِتَابِ الصَّلَاةِ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي النَّهْيِ عَنْ الصَّلَاةِ وَهُوَ يُدَافِعُ الْأَخْبَثَيْنِ الْبَوْلَ وَالْغَائِطَ، وَلِقَوْلِ اللَّهِ تَعَالَى: {وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ} [الأعراف: ١٥٧] .

L16636–16637 We mentioned there his statement—peace be upon him—: "Most of the punishment in the grave is due to urine." Thus, he—peace be upon him—made it a general ruling encompassing all urine.

وَذَكَرْنَا هُنَالِكَ قَوْلَهُ - عَلَيْهِ السَّلَامُ -: «أَكْثَرُ عَذَابِ الْقَبْرِ فِي الْبَوْلِ» فَعَمَّ - عَلَيْهِ السَّلَامُ - كُلَّ بَوْلٍ.

L16638 We clarified there that the Prophet's (peace be upon him) act of giving the 'Urayniyyin camels' urine to drink was solely to treat the ailments that had afflicted them, and we adduced the authentic chains of transmission for all of this.

وَبَيَّنَّا هُنَالِكَ أَنَّ سَقْيَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْعُرَنِيِّينَ أَبْوَالَ الْإِبِلِ، إنَّمَا كَانَ عَلَى سَبِيلِ التَّدَاوِي لِلْعِلَلِ الَّتِي كَانَتْ أَصَابَتْهُمْ وَأَوْرَدْنَا الْأَسَانِيدَ الثَّابِتَةَ بِكُلِّ هَذَا.

L16639 We clarified the defect in the narration transmitted through Sawwār ibn Muṣʿab—who is rejected—regarding the permissibility of the urine of animals whose meat is lawful to eat. This is among the matters in which they abandoned analogical reasoning, for they analogized the urine and excrement of an animal to its meat. Why did they not instead analogize it to its blood? That would have been more deserving of analogy—or to the urine and excrement of human beings.

وَبَيَّنَّا فَسَادَ الرِّوَايَةِ مِنْ طَرِيقِ سَوَّارِ بْنِ مُصْعَبٍ - وَهُوَ سَاقِطٌ - لَا بَأْسَ بِبَوْلِ مَا أُكِلَ لَحْمُهُ وَهَذَا مِمَّا تَرَكُوا فِيهِ الْقِيَاسَ؛ إذْ قَاسُوا بَوْلَ الْحَيَوَانِ وَرَجِيعَهُ عَلَى لَحْمِهِ، فَهَلَّا قَاسُوهُ عَلَى دَمِهِ؟ فَهُوَ أَوْلَى بِالْقِيَاسِ، أَوْ عَلَى بَوْلِ الْآدَمِيِّينَ وَرَجِيعِهِمْ.

L16640 As for vomiting: Based on what we have narrated through Al-Bukhari's chain—Muslim ibn Ibrahim narrated to us, Hisham Al-Dastuwa'i and Shu'bah narrated to us, both saying: Qatadah narrated to us from Sa'id ibn Al-Musayyib from Ibn Abbas [may Allah be pleased with them] who said: Allah's Messenger [peace be upon him] stated, "The one who retracts his gift is like the one returning to his vomit." Vomit refers to what has undergone alteration. If food emerges unchanged, it does not constitute vomit—thus it is not prohibited. Regarding human flesh, Allah the Exalted says: {Nor backbite one another. Would any of you wish to eat the flesh of his dead brother? You would abhor it} [Al-Hujurat:12]. This aligns with the command of Allah's Messenger [peace be upon him]—mentioned in the Book of Funerals—that every deceased person, whether believer or disbeliever, must be buried.

وَأَمَّا الْقَيْءُ -: فَلِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا مُسْلِمُ بْنُ إبْرَاهِيمَ نَا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ - وَشُعْبَةُ قَالَا جَمِيعًا: نَا قَتَادَةُ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ ابْنِ عَبَّاسٍ [- رَضِيَ اللَّهُ عَنْهُمَا -] قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْعَائِدُ فِي هِبَتِهِ كَالْعَائِدِ فِي قَيْئِهِ» وَالْقَيْءُ هُوَ مَا تَغَيَّرَ، فَإِنْ خَرَجَ الطَّعَامُ وَلَمْ يَتَغَيَّرْ فَلَيْسَ قَيْئًا، فَلَيْسَ حَرَامًا؟ وَأَمَّا لُحُومُ النَّاسِ فَإِنَّ اللَّهَ تَعَالَى قَالَ: {وَلا يَغْتَبْ بَعْضُكُمْ بَعْضًا أَيُحِبُّ أَحَدُكُمْ أَنْ يَأْكُلَ لَحْمَ أَخِيهِ مَيْتًا فَكَرِهْتُمُوهُ} [الحجرات: ١٢] . وَلِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

[17] **Qur'an references (L16635):** Qur'an 7:157 (Al-A'raf).

Whoever consumes [human flesh] has failed to bury the deceased, and whoever neglects burial has disobeyed Allah the Exalted.[18]

L16641 And because of the statement of Allah the Exalted: {Except what you have slaughtered in the prescribed manner} [Al-Mā'idah: 3]. Thus, the Exalted has prohibited eating carrion and eating what has not been properly slaughtered. The human is of two categories: one whose killing is forbidden and one whose killing is legally sanctioned.[19]

L16642–16643 Therefore, it is forbidden to kill it if it dies naturally or is killed without proper ritual slaughter, and thus it is unlawful.

L16644 As for the one whose killing is lawful, it is not lawful to kill him except for one of three reasons:

L16645 Either due to his disbelief if he is not Muslim, or as qisas (prescribed retaliation), or due to a ḥadd punishment requiring his execution. Whichever of these methods applies, it is not validly slaughtered, because his killing is only permissible through a specific manner. Thus, it is impermissible to kill him by any other means, and Islamic ritual slaughter differs from these methods without doubt. Intending it [ritual slaughter] is sinful, and sinfulness does not constitute valid Islamic slaughter. Therefore, consuming its flesh is entirely forbidden. Since the entirety is forbidden, consuming any part of it is forbidden, because a portion of the forbidden is necessarily forbidden.

L16646 Included in this are mucus, phlegm, tears, sweat, pre-ejaculatory fluid, semen, nails, skin, hair, pus, and teeth—except for the permissible milk, as stated in the Quran, the Sunnah, and Consensus.

L16647 The Prophet (peace be upon him) permitted Salim - a man - to receive breastfeeding from the milk of Sahla bint Suhail. This ruling includes saliva, for the Messenger of Allah (peace and blessings of Allah be upon him) would perform tahneek for infants with a date he had chewed, whereby his saliva

- الَّذِي قَدْ ذَكَرْنَاهُ فِي كِتَابِ الْجَنَائِزِ بِأَنْ يُوَارَى كُلُّ مَيِّتٍ مِنْ مُؤْمِنٍ أَوْ كَافِرٍ؛ فَمَنْ أَكَلَهُ فَلَمْ يُوَارِهِ؛ وَمَنْ لَمْ يُوَارِهِ فَقَدْ عَصَى اللَّهَ تَعَالَى.

وَلِقَوْلِ اللَّهِ تَعَالَى: {إِلا مَا ذَكَّيْتُمْ} [المائدة: ٣] فَحَرَّمَ تَعَالَى أَكْلَ الْمَيْتَةِ وَأَكْلَ مَا لَمْ يُذَكَّ، وَالْإِنْسَانُ قِسْمَانِ: قِسْمٌ حَرَامٌ قَتْلُهُ، وَقِسْمٌ مُبَاحٌ قَتْلُهُ.

فَالْحَرَامُ قَتْلُهُ إنْ مَاتَ، أَوْ قُتِلَ فَلَمْ يُذَكَّ فَهُوَ حَرَامٌ.

وَأَمَّا الْحَلَالُ قَتْلُهُ فَلَا يَحِلُّ قَتْلُهُ إلَّا لِأَحَدِ ثَلَاثَةِ أَوْجُهٍ -:

إمَّا لِكُفْرِهِ مَا لَمْ يُسْلِمْ، وَإِمَّا قَوَدًا، وَإِمَّا لِحَدٍّ أَوْجَبَ قَتْلَهُ، وَأَيُّ هَذِهِ الْوُجُوهِ كَانَ فَلَيْسَ مُذَكًّى؟ لِأَنَّهُ لَمْ يَحِلَّ قَتْلُهُ إلَّا بِوَجْهٍ مَخْصُوصٍ، فَلَا يَحِلُّ قَتْلُهُ بِغَيْرِ ذَلِكَ الْوَجْهِ وَالتَّذْكِيَةُ غَيْرُ تِلْكَ الْوُجُوهِ بِلَا شَكٍّ، فَالْقَصْدُ إلَيْهَا مَعْصِيَةٌ، وَالْمَعْصِيَةُ لَيْسَتْ ذَكَاةً فَهُوَ غَيْرُ مُذَكًّى، فَحَرَامٌ أَكْلُهُ بِكُلِّ وَجْهٍ، وَإِذْ هُوَ كُلُّهُ حَرَامٌ فَأَكْلُ بَعْضِهِ حَرَامٌ، لِأَنَّ بَعْضَ الْحَرَامِ حَرَامٌ بِالضَّرُورَةِ.

وَيَدْخُلُ فِي هَذَا الْمُخَاطُ، وَالنُّخَاعَةُ، وَالدَّمْعُ، وَالْعَرَقُ، وَالْمَذْيُ، وَالْمَنِيُّ، وَالظُّفْرُ، وَالْجِلْدُ، وَالشَّعْرُ، وَالْقَيْحُ، وَالسِّنُّ إلَّا اللَّبَنَ الْمُبَاحَ بِالْقُرْآنِ وَالسُّنَّةِ وَالْإِجْمَاعِ.

وَقَدْ أَبَاحَ - عَلَيْهِ السَّلَامُ - لِسَالِمٍ وَهُوَ رَجُلٌ الرَّضَاعَ مِنْ لَبَنِ سَهْلَةَ بِنْتِ سُهَيْلٍ. وَالرِّيقَ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَنَّكَ الصِّبْيَانَ بِتَمْرٍ مَضَغَهُ، فَرِيقُهُ فِي ذَلِكَ الْمَمْضُوغِ، فَالرِّيقُ حَلَالٌ بِالنَّصِّ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[18] **Qur'an references (L16640):** Qur'an 49:12 (Al-Hujurat).
[19] **Qur'an references (L16641):** Qur'an 5:3 (Al-Ma'idah).

was in that chewed [substance]. Thus, saliva is permissible solely through explicit textual evidence - and with Allah, the Exalted, is success.

L16648 As for beasts of prey: Based on what has been narrated to us through the chain of Mālik ibn Anas from Ismāʿīl ibn Abī Ḥakīm from ʿUbaydah ibn Sufyān from Abū Hurayrah from the Messenger of Allah (peace and blessings be upon him) who said: "Eating every fanged beast from among the beasts of prey is unlawful."

وَأَمَّا السِّبَاعُ -: فَلِمَا رُوِّينَا مِنْ طَرِيقِ مَالِكِ بْنِ أَنَسٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي حَكِيمٍ عَنْ عُبَيْدَةَ بْنِ سُفْيَانَ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كُلُّ ذِي نَابٍ مِنْ السِّبَاعِ فَأَكْلُهُ حَرَامٌ» .

L16649 And it has also been reported through other than this chain—we have omitted it for brevity.

وَجَاءَ أَيْضًا مِنْ غَيْرِ هَذِهِ الطَّرِيقِ تَرَكْنَاهَا اخْتِصَارًا.

L16650–16651 The dog, as a fanged predatory animal among beasts of prey, along with the cat and the fox—all of these are forbidden.

وَالْكَلْبُ ذُو نَابٍ مِنْ السِّبَاعِ، وَكَذَلِكَ الْهِرُّ، وَالثَّعْلَبُ، فَكُلُّ ذَلِكَ حَرَامٌ.

L16652 He (peace be upon him) ordered the killing of the dog and forbade the waste of wealth. Were it permissible to eat it, killing it would not be lawful, just as it is unlawful to kill any edible animal from among livestock or other categories.

وَقَدْ أَمَرَ - عَلَيْهِ السَّلَامُ - بِقَتْلِ الْكَلْبِ، وَنَهَى عَنْ إضَاعَةِ الْمَالِ، فَلَوْ جَازَ أَكْلُهَا مَا حَلَّ قَتْلُهَا، كَمَا لَا يَحِلُّ قَتْلُ كُلِّ مَا يُؤْكَلُ مِنْ الْأَنْعَامِ وَغَيْرِهَا.

L16653 It has been narrated to us through the chain of Waki', from Mubarak ibn Fadalah, from Al-Hasan Al-Basri, from Uthman (may Allah be pleased with him), who said: "Kill the dogs and slaughter the pigeons." He differentiated between them and ordered the slaughtering of what is eaten and the killing of what is not eaten.

رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نَا مُبَارَكٌ هُوَ ابْنُ فَضَالَةَ - عَنْ الْحَسَنِ الْبَصْرِيِّ عَنْ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: اُقْتُلُوا الْكِلَابَ وَاذْبَحُوا الْحَمَامَ، فَفَرَّقَ بَيْنَهُمَا فَأَمَرَ بِذَبْحِ مَا يُؤْكَلُ، وَقَتْلِ مَا لَا يُؤْكَلُ -:

L16654 From the narration of Ibn Wahb from Ibn Abī Dhi'b, that he heard Ibn Shihāb asking about the bile of predatory animals and the milk of female donkeys. Al-Zuhrī said: "The Messenger of Allah (peace be upon him) prohibited eating all fanged predators," and there is no goodness in what the Messenger of Allah (peace be upon him) has prohibited.[20]

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ أَبِي ذِئْبٍ أَنَّهُ سَمِعَ ابْنُ شِهَابٍ يَسْأَلُ عَنْ مَرَارَةِ السَّبُعِ، وَأَلْبَانِ الْأُتُنِ؟ فَقَالَ الزُّهْرِيُّ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَكْلِ كُلِّ ذِي نَابٍ مِنْ السِّبَاعِ» ، وَلَا خَيْرَ فِيمَا نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L16655 The Messenger of Allah—peace and blessings be upon him—prohibited eating the meat of domestic donkeys. Thus, we do not regard their milk—which emerges from between their flesh and blood—except as equivalent in ruling to their meat.

وَنَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَكْلِ لُحُومِ الْحُمُرِ الْإِنْسِيَّةِ، فَلَا نَرَى أَلْبَانَهَا الَّتِي تَخْرُجُ مِنْ بَيْنِ لَحْمِهَا وَدَمِهَا إلَّا بِمَنْزِلَةِ لَحْمِهَا.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: الثَّعْلَبُ سَبُعٌ لَا يُؤْكَلُ.

[20] **Hadith references (L16654):** Sahih Muslim 1932b.

L16656 And from the transmission of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: "The fox is a predator - its consumption is forbidden."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُمَرَ بْنِ زَيْدٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَكْلِ الْهِرِّ وَثَمَنِهِ» .

L16657 From the narration of Abd al-Razzaq, who reported from Umar ibn Zayd: Abu'l-Zubayr informed me that he heard Jabir ibn Abdullah say: "The Messenger of Allah—peace be upon him—forbade eating cats and profiting from their sale."

أَقَلُّ مَا فِي هَذَا الْأَثَرِ أَنْ يَكُونَ مَوْقُوفًا عَلَى جَابِرٍ.

L16658 The least that can be said about this narration is that it is mawqūf (attributed to the Companion Jabir).

وَبِتَحْرِيمِ السِّبَاعِ وَبِكُلِّ مَا ذَكَرْنَا يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ إِلَّا أَنَّ الشَّافِعِيَّ أَبَاحَ الثَّعْلَبَ، وَأَنْكَرَ الْمَالِكِيُّونَ تَحْرِيمَ السِّبَاعِ وَمَوَّهُوا بِأَنْ قَالُوا: قَدْ صَحَّ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا سَأَلَتْ عَنْ أَكْلِ لُحُومِ السِّبَاعِ؟ فَقَرَأَتْ {قُلْ لا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلا أَنْ يَكُونَ مَيْتَةً أَوْ دَمًا مَسْفُوحًا أَوْ لَحْمَ خِنْزِيرٍ} [الأنعام: ١٤٥] الْآيَةَ.

L16659 Regarding the prohibition of beasts of prey and all that we have mentioned, Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān say so. However, al-Shāfiʿī permitted the fox. The Mālikīs denied the prohibition of beasts of prey and obscured the matter by asserting: "It has been authentically established from ʿĀ'ishah, the Mother of the Believers, that she was asked about eating the meat of beasts of prey. Then she recited: {Say, 'I find not in what has been revealed to me anything forbidden to one who eats it except carrion, spilled blood, or the flesh of swine'} [*al-Anʿām* 6:145]."[21]

وَرُوِيَ مِنْ طَرِيقِ جُوَيْبِرٍ عَنْ الضَّحَّاكِ قَالَ: تَلَا ابْنُ عَبَّاسٍ هَذِهِ الْآيَةَ {قُلْ لا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا} [الأنعام: ١٤٥] قَالَ: مَا خَلَا هَذَا فَهُوَ حَلَالٌ.

L16660–16661 It has been reported through the chain of Juwaybir from al-Dahhak, who said: "Ibn Abbas recited this verse: 'Say, I do not find in what has been revealed to me anything forbidden' [al-Anʿam: 145]." He said: "What is other than this is permissible (ḥalāl)."[22]

وَقَالُوا: رَوَى الزُّهْرِيُّ خَبَرَ النَّهْيِ عَنْ كُلِّ ذِي نَابٍ مِنْ السِّبَاعِ، ثُمَّ قَالَ: لَمْ أَسْمَعْ هَذَا مِنْ عُلَمَائِنَا بِالْحِجَازِ حَتَّى حَدَّثَنِي أَبُو إِدْرِيسَ وَكَانَ مِنْ فُقَهَاءِ الشَّامِ. وَقَالَ بَعْضُهُمْ: إنَّمَا نَهَى عَنْهَا مِنْ أَجْلِ ضَرَرِ لَحْمِهَا.

L16662 They said: Al-Zuhri narrated the report prohibiting every predatory animal with fangs. Then he stated: "I did not hear this from our scholars in the Hijaz until Abu Idris (who was among the jurists of the Levant) related it to me." Some of them said: "The prohibition against them was solely due to the harm of their meat."

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا مَوَّهُوا بِهِ وَكُلُّهُ لَا شَيْءَ -:

L16663 Abū Muḥammad said: This is all that they have embellished - and all of it is nothing.

أَمَّا الْآيَةُ فَإِنَّهَا مَكِّيَّةٌ كَمَا قَدَّمْنَا وَلَا يَجُوزُ أَنْ تَبْطُلَ بِهَا أَحْكَامٌ نَزَلَتْ بِالْمَدِينَةِ، وَهُمْ يُحَرِّمُونَ الْحُمُرَ الْأَهْلِيَّةَ وَلَيْسَتْ فِي الْآيَةِ.

L16664 As for the verse, it is Meccan as we have previously established, and rulings revealed in Medinan [periods] cannot be invalidated by it. However, they

[21] **Qur'an references (L16659):** Qur'an 6:145 (Al-An'am).
[22] **Qur'an references (L16661):** Qur'an 6:145 (Al-An'am).

[claim to] prohibit domestic donkeys, though no such prohibition exists in the verse.

L16665–16666 They prohibit wine—though it is not mentioned in the verse—and the two mixtures even if they do not intoxicate and are not mentioned in the verse, which constitutes a great contradiction.

L16667 As for the statement of ʾĀʾishah, may Allah be pleased with her, "There is no valid argument for anyone alongside the Messenger of Allah, peace and blessings be upon him": had ʾĀʾishah, may Allah be pleased with her, been informed of the prohibition of the Messenger of Allah, peace and blessings be upon him, regarding that matter, she would not have opposed him. This is just as she complied with the prohibition of the crow when it reached her, even though it is not mentioned in the verse, as we will mention after this if Allah the Exalted wills.

L16668 As for the narration from Ibn Abbas, it is utterly defective because it is transmitted by Juwaybir—who is rejected—from al-Daḥḥāk—who is weak. No one besides the Prophet—peace and blessings be upon him—serves as a binding proof.

L16669 As for al-Zuhri's statement that he did not hear it from his scholars in the Hijaz—what does that signify? Suppose al-Zuhri never heard it at all; do you imagine that nothing from the Sunnah can be adopted until al-Zuhri knows it? This is truly astonishing—nothing like it has ever been heard! How can this be, when al-Zuhri himself did not pay attention to his not having heard it from his Hijazi scholars, yet issued a fatwa as we mentioned earlier? How many cases are there where they opposed ʿAʾishah in those cases, and al-Zuhri—even as Malik opposed them both—without trouble, as we have frequently discussed and will elaborate further, God the Exalted willing.

L16670 This very issue is among those in which they opposed ʿĀʾisha's fatwā concerning the crow and al-Zuhri's fatwā, as we have mentioned. They are like a drowning person clinging to whatever he finds, even if clinging to it entails his destruction.

L16671 As for their statement, "He only prohibited it due to the harm of its meat"—this is the speech of a group of scum and lies. As for the falsehood, it stems

وَيُحَرِّمُونَ الْخَمْرَ وَلَيْسَتْ فِي الْآيَةِ، وَالْخَلِيطَيْنِ وَإِنْ لَمْ يُسْكِرَا وَلَمْ يُذْكَرَا فِي الْآيَةِ، وَهَذَا تَنَاقُضٌ عَظِيمٌ.

وَأَمَّا قَوْلُ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - فَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَوْ أَنَّ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - بَلَغَهَا نَهْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ لَمَا خَالَفَتْهُ كَمَا فَعَلَتْ فِي تَحْرِيمِ الْغُرَابِ إذْ بَلَغَهَا وَلَيْسَ مَذْكُورًا فِي الْآيَةِ عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

وَأَمَّا الرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ فَفِي غَايَةِ الْفَسَادِ، لِأَنَّهَا عَنْ جُوَيْبِرٍ - وَهُوَ هَالِكٌ - عَنْ الضَّحَّاكِ - وَهُوَ ضَعِيفٌ - وَلَا حُجَّةَ فِي أَحَدٍ غَيْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَأَمَّا قَوْلُ الزُّهْرِيِّ: إنَّهُ لَمْ يَسْمَعْهُ مِنْ عُلَمَائِهِ بِالْحِجَازِ فَكَانَ مَاذَا؟ وَهَبْك أَنَّ الزُّهْرِيَّ لَمْ يَسْمَعْهُ قَطُّ، أَتُرَى السُّنَنَ لَا يُؤْخَذُ مِنْهَا شَيْءٌ حَتَّى يَعْرِفَهَا الزُّهْرِيُّ؟ إنَّ هَذَا لَعَجَبٌ مَا سُمِعَ بِمِثْلِهِ فَكَيْفَ وَالزُّهْرِيُّ لَمْ يَلْتَفِتْ إلَى أَنَّهُ لَمْ يَسْمَعْهُ مِنْ عُلَمَائِهِ بِالْحِجَازِ، بَلْ أَفْتَى بِهِ كَمَا ذَكَرْنَا آنِفًا؟ وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا عَائِشَةَ، وَالزُّهْرِيَّ إذَا خَالَفَهُمَا مَالِكٌ [إذْ] لَا مُؤْنَةَ عَلَيْهِمْ فِي ذَلِكَ كَمَا ذَكَرْنَا كَثِيرًا مِنْهُ وَنَذْكُرُ إنْ شَاءَ اللَّهُ تَعَالَى.

وَهَذِهِ الْمَسْأَلَةُ نَفْسُهَا مِمَّا خَالَفُوا فِيهِ فُتْيَا عَائِشَةَ فِي الْغُرَابِ وَفُتْيَا الزُّهْرِيِّ كَمَا أَوْرَدْنَا وَإِنَّمَا هُمْ كَالْغَرِيقِ يَتَعَلَّقُ بِمَا يَجِدُ وَإِنْ كَانَ فِيهِ هَلَاكُهُ.

from what lies upon them in that assertion. Whoever attributed this to the Prophet—peace and blessings of Allah be upon him—has lied against him—peace and blessings of Allah be upon him—for they fabricated words he never spoke and reported from him what he never conveyed about himself. This is a damning narrative leading to Hellfire—we seek refuge in Allah from it.

وَأَمَّا قَوْلُهُمْ: إِنَّمَا نَهَى عَنْهَا لِضَرَرِ لَحْمِهَا - فَكَلَامُ جَمْعِ الْغَثَاثَةِ وَالْكَذِبِ، أَمَّا الْكَذِبُ مِمَّا عَلَيْهِمْ بِذَلِكَ، وَمَنْ أَخْبَرَهُمْ بِهَذَا عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا كَذِبٌ عَلَيْهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ قَوَّلُوهُ مَا لَمْ يَقُلْ، وَإِذْ أَخْبَرُوا عَنْهُ بِمَا لَمْ يُخْبِرْ بِهِ قَطُّ عَنْ نَفْسِهِ، وَهَذِهِ قِصَّةٌ مُهْلِكَةٌ مُؤَدِّيَةٌ إِلَى النَّارِ نَعُوذُ بِاللَّهِ مِنْهَا.

L16672 As for the paltriness [of their knowledge], their medical understanding regarding this matter is extremely lacking, and anyone with the slightest insight into foods would not doubt that the meat of a noble camel and an old buck is far more harmful than the meat of a dog, a cat, or a cheetah.

وَأَمَّا الْغَثَاثَةُ فَإِنَّ عِلْمَهُمْ بِالطِّبِّ فِي هَذِهِ الْمَسْأَلَةِ ضَعِيفٌ جِدًّا، وَمَا يَشُكُّ مَنْ لَهُ أَقَلُّ بَصَرٍ بِالْأَغْذِيَةِ فِي أَنَّ لَحْمَ الْجَمَلِ الشَّارِفِ وَالتَّيْسِ الْهَرِمِ أَشَدُّ ضَرَرًا مِنْ لَحْمِ الْكَلْبِ، وَالْهِرِّ، وَالْفَهْدِ.

L16673–16675 Then, suppose you grant that it is as they claimed—is there anything in that which nullifies the prohibition against them? It is nothing but an emphasis in prohibiting them. Moreover, they have incriminated themselves by squandering wealth and committing sin therein, since they left the dogs. Cats die in garbage dumps and homes, yet people do not slaughter them to eat their meat—even though they are permissible? If someone were to do this [let die without slaughter] to their sheep or cattle, they would be disobeying Allah the Exalted by squandering their wealth.

ثُمَّ هَبْكَ أَنَّهُ كَمَا قَالُوا فَهَلْ فِي ذَلِكَ مَا يُبْطِلُ النَّهْيَ عَنْهَا؟ مَا هُوَ إِلَّا تَأْكِيدٌ فِي الْمَنْعِ مِنْهَا، ثُمَّ قَدْ شَهِدُوا عَلَى أَنْفُسِهِمْ بِإِضَاعَةِ الْمَالِ وَالْمَعْصِيَةِ فِي ذَلِكَ، إِذْ تَرَكُوا الْكِلَابَ، وَالسَّنَانِيرَ تَمُوتُ عَلَى الْمَزَابِلِ، وَفِي الدُّورِ، وَلَا يَذْبَحُونَهَا فَيَأْكُلُونَهَا، إِذْ هِيَ حَلَالٌ؟ وَلَوْ أَنَّ امْرَءًا فَعَلَ هَذَا بِغَنَمِهِ وَبَقَرِهِ لَكَانَ عَاصِيًا لِلَّهِ تَعَالَى بِإِضَاعَةِ مَالِهِ.

L16676 As for hyenas, Al-Shafi'i and Abu Sulayman permitted their consumption. The proof for this is what we have transmitted through Abd al-Razzaq's chain from Ibn Jurayj, who stated: Abdullah ibn Ubayd ibn Umayr reported to me that Abd al-Rahman ibn Abi Ammar informed him, saying: "I asked Jabir ibn Abdullah regarding the hyena: 'Do I eat it?' He replied: 'Yes.' I asked: 'Is it considered game?' He answered: 'Yes.' I inquired: 'Did you hear this from Allah's Prophet (Peace be upon him)?' He responded: 'Yes.'" Ibn Jurayj added: Nafi', the freedman of Ibn Umar, narrated to us that a man informed Ibn Umar of Sa'd ibn Abi Waqqas consuming hyenas. Nafi' remarked: Ibn Umar did not object to this.

وَأَمَّا الضِّبَاعُ فَإِنَّ الشَّافِعِيَّ وَأَبَا سُلَيْمَانَ، أَبَاحَا أَكْلَهَا -: وَالْحُجَّةُ لِذَلِكَ مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ عُبَيْدِ بْنِ عُمَيْرٍ أَنَّ عَبْدَ الرَّحْمَنِ بْنَ أَبِي عَمَّارٍ أَخْبَرَهُ قَالَ: «سَأَلْتُ جَابِرَ بْنَ عَبْدِ اللَّهِ عَنِ الضَّبُعِ أَآكُلُهَا؟ قَالَ: نَعَمْ قُلْتُ: أَصَيْدٌ هِيَ؟ قَالَ: نَعَمْ، قُلْتُ: أَسَمِعْتَ ذَلِكَ مِنْ نَبِيِّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ قَالَ: نَعَمْ» ، قَالَ ابْنُ جُرَيْجٍ: نَا نَافِعُ مَوْلَى ابْنِ عُمَرَ قَالَ: أَخْبَرَ رَجُلٌ ابْنَ عُمَرَ أَنَّ سَعْدَ بْنَ أَبِي وَقَّاصٍ يَأْكُلُ الضِّبَاعَ؟ قَالَ نَافِعٌ: فَلَمْ يُنْكِرْ ابْنُ عُمَرَ ذَلِكَ.

L16677 Narrated by ʿAbd al-Razzāq from Maʿmar from Ibn Abī Najīḥ from Mujāhid, who said: ʿAlī ibn Abī Ṭālib did not see any harm in eating hyena meat.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ لَا يَرَى بِأَكْلِ الضِّبَاعِ بَأْسًا.

L16678 Ma'mar reported from 'Amr ibn Muslim, who said, "I heard 'Ikrimah narrate from Ibn 'Abbas. He was asked, 'What about the hyena?'" He replied, "I saw it on Ibn Abbas's table."

وَقَالَ مَعْمَرٌ عَنْ عَمْرِو بْنِ مُسْلِمٍ: سَمِعْت عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ وَسُئِلَ عَنْ الضَّبُعِ؟ فَقَالَ: رَأَيْتهَا عَلَى مَائِدَةِ ابْنِ عَبَّاسٍ.

L16679 And via the chain of Waki' from Abū al-Minhāl al-Ṭā'ī from 'Abdullāh ibn Zayd, who narrated from his uncle, he said: I asked Abū Hurayrah about the hyena? He replied, "A ewe of the sheep."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ أَبِي الْمِنْهَالِ الطَّائِيِّ عَنْ عَبْدِ اللَّهِ بْنِ زَيْدٍ عَمِّهِ قَالَ: سَأَلْت أَبَا هُرَيْرَةَ عَنْ الضَّبُعِ؟ فَقَالَ: نَعْجَةٌ مِنْ الْغَنَمِ.

L16680 It is narrated from 'Aṭā' that he said, "A hyena is more preferable to me than a ram."

وَعَنْ عَطَاءٍ قَالَ: ضَبُعٌ أَحَبُّ إلَيَّ مِنْ كَبْشٍ.

L16681 Abu Muhammad said: It is obligatory that hyenas be excluded from the category of predatory animals, as the Messenger of Allah (peace be upon him) excluded them, and none of his statements—peace be upon him—should be contradicted.

قَالَ أَبُو مُحَمَّدٍ: فَوَاجِبٌ أَنْ تُسْتَثْنَى الضِّبَاعُ مِنْ جُمْلَةِ السِّبَاعِ كَمَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا يُخَالَفُ شَيْءٌ مِنْ أَقْوَالِهِ - عَلَيْهِ السَّلَامُ -.

L16682 Abu Hanifah held the opinion that hyenas are prohibited - and we know of no argument he presented except his reliance upon the general prohibition by the Prophet (peace be upon him) against eating predatory animals. They said: "It is a predatory animal."

وَقَالَ أَبُو حَنِيفَةَ: بِتَحْرِيمِ الضِّبَاعِ - وَمَا نَعْلَمُ لَهُ حُجَّةً إلَّا تَعَلُّقَهُ بِعُمُومِ نَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَكْلِ السِّبَاعِ؟ قَالُوا: وَهِيَ سَبُعٌ.

L16683–16685 And they mentioned a corrupt narration that we narrated via the chain of Muḥammad ibn Jarīr al-Ṭabarī: Ibn Ḥumayd reported to me, Abū Zuhayr narrated to us, Muḥammad ibn Isḥāq narrated to us, from Ismā'īl ibn Muslim al-Makkī, from 'Abd al-Karīm ibn Abī al-Mukhāriq. From Habban ibn Juz' from his brother Khuzaymah ibn Juz', who said: "I said: 'O Messenger of Allah, what do you say about the hyena?' He said to me: 'Who would eat a hyena?'" They mentioned what we narrated through the chain of Mu'ammal ibn Ismā'īl from Sufyān al-Thawrī, who narrated to us from Suhayl ibn Abī Ṣāliḥ from 'Abdullāh ibn Yazīd, who said: "I asked Sa'īd ibn al-Musayyab about the hyena. He disliked it. I said to him: 'Your people eat it.' He replied: 'My people have no knowledge.'"

وَذَكَرُوا خَبَرًا فَاسِدًا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ جَرِيرٍ الطَّبَرِيِّ أَنَا ابْنُ حُمَيْدٍ نَا أَبُو زُهَيْرٍ نَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ إسْمَاعِيلَ بْنِ مُسْلِمٍ الْمَكِّيِّ عَنْ عَبْدِ الْكَرِيمِ بْنِ أَبِي الْمُخَارِقِ عَنْ حِبَّانَ بْنِ جُزْءٍ عَنْ أَخِيهِ خُزَيْمَةَ بْنِ جُزْءٍ قَالَ «قُلْتُ: يَا رَسُولَ اللَّهِ: مَا تَقُولُ فِي الضَّبُعِ؟ فَقَالَ لِي: وَمَنْ يَأْكُلُ الضَّبُعَ» ؟ وَذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ مُؤَمَّلِ بْنِ إسْمَاعِيلَ عَنْ سُفْيَانَ الثَّوْرِيِّ نَا سُهَيْلُ بْنُ أَبِي صَالِحٍ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ قَالَ: سَأَلْت سَعِيدَ بْنَ الْمُسَيِّبِ عَنْ الضَّبُعِ؟ فَكَرِهَهُ فَقُلْت لَهُ: إنَّ قَوْمَك يَأْكُلُونَهُ؟ فَقَالَ: إنَّ قَوْمِي لَا يَعْلَمُونَ.

L16686 Abū Muḥammad said: We do not know any proof for them other than this. As for their argument citing the Prophet—peace and blessings be upon him—and his prohibition of predatory animals, it is indeed valid. However, the One who prohibited predatory animals is the same One who permitted hyenas. Thus, there is no difference between permitting what was forbidden from predatory animals and forbidding what was permitted of hyenas, and it is not permissible to contravene both of them.

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا -: فَأَمَّا احْتِجَاجُهُمْ بِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ السِّبَاعِ فَإِنَّهُ حَقٌّ وَلَكِنَّ الَّذِي نَهَى عَنْ السِّبَاعِ هُوَ الَّذِي أَحَلَّ الضِّبَاعَ فَلَا فَرْقَ بَيْنَ إبَاحَةِ مَا حُرِّمَ مِنْ السِّبَاعِ وَبَيْنَ تَحْرِيمِ مَا حُلِّلَ مِنْ الضِّبَاعِ، وَكِلَاهُمَا لَا تَحِلُّ مُخَالَفَتُهُ.

L16687 As for the mentioned report, it holds no validity, because Ismāʿīl ibn Muslim is weak, Ibn Abī al-Mukhāriq is disregarded, and Ḥibbān ibn Juzʾ is obscure. Moreover, even if it were authentic, they could not cite it as evidence, for it contains no prohibition whatsoever—it merely expresses astonishment at those who consume it.

وَأَمَّا الْخَبَرُ الْمَذْكُورُ فَلَا شَيْءَ، لِأَنَّ إسْمَاعِيلَ بْنَ مُسْلِمٍ ضَعِيفٌ وَابْنَ أَبِي الْمُخَارِقِ سَاقِطٌ، وَحِبَّانَ بْنَ جُزْءٍ مَجْهُولٌ. ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ لِأَنَّهُ لَيْسَ فِيهِ تَحْرِيمٌ أَصْلًا وَإِنَّمَا فِيهِ التَّعَجُّبُ مِمَّنْ يَأْكُلُهَا فَقَطْ.

L16688 We know that sheep bones are lawful; then, were we to see someone eating them or their hides, we would be utterly astounded to the utmost degree.

وَقَدْ عَلِمْنَا أَنَّ عِظَامَ الضَّأْنِ حَلَالٌ، ثُمَّ لَوْ رَأَيْنَا أَحَدًا يَأْكُلُهَا " أَوْ يَأْكُلُ جُلُودَهَا لَعَجِبْنَا مِنْ ذَلِكَ أَشَدَّ الْعَجَبِ.

L16689 As for the statement of Sa'id ibn al-Musayyib: "No one's opinion holds authority against the Messenger of Allah—peace and blessings be upon him," [this is because] Allah permitted trade in its entirety, then the Prophet—peace and blessings be upon him—by Allah's authority prohibited many specific types of sales. Later jurists did not prioritize the general permissibility over the specific prohibition, and this contradicts their actions here. This is among the matters in which they opposed a group of the Companions—with no known opponent among the Companions against them. And success is from Allah, the Most High.

وَأَمَّا قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ فَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ أَحَلَّ اللَّهُ الْبَيْعَ جُمْلَةً ثُمَّ حَرَّمَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بُيُوعًا كَثِيرَةً فَلَمْ يُغَلِّبُوا عُمُومَ الْإِبَاحَةِ عَلَى تَخْصِيصِ النَّهْيِ وَهَذَا خِلَافُ فِعْلِهِمْ هَهُنَا، وَهَذَا مِمَّا خَالَفُوا فِيهِ جَمَاعَةً مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16690–16692 As for the elephant, it is not a predatory animal, nor has there been an explicit text prohibiting it. Allah the Exalted said: "He created for you all that is on the earth" [Surah Al-Baqarah 2:29], and He the Exalted said: "Say, 'I do not find in what has been revealed to me anything forbidden to one who eats it [...]" [Surah Al-Anʿam 6:145]. And He, the Exalted, has said: {He has detailed for you what He has forbidden upon you} [Al-Anʿam (6:119)]. Thus, all things are lawful except what has been prohibited by a text. This is

وَأَمَّا الْفِيلُ فَلَيْسَ سَبُعًا وَلَا جَاءَ فِي تَحْرِيمِهِ نَصٌّ، وَقَالَ تَعَالَى: {خَلَقَ لَكُمْ مَا فِي الأَرْضِ جَمِيعًا} [البقرة: ٢٩] وَقَالَ تَعَالَى: {قُلْ لا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ} [الأنعام: ١٤٥] ؛ وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ}

affirmed by the text of the Quran and the Sunnah. Since no text has come prohibiting the elephant, it is lawful.[23]

[الأنعام: ١١٩] فَكُلُّ شَيْءٍ حَلَالٌ إِلَّا مَا جَاءَ نَصٌّ بِتَحْرِيمِهِ بِهَذَا جَاءَ نَصُّ الْقُرْآنِ وَالسُّنَنِ وَلَمْ يَأْتِ فِي الْفِيلِ نَصُّ تَحْرِيمٍ فَهُوَ حَلَالٌ.

The issue of the ruling on eating snakes.

[مَسْأَلَةُ حُكْمُ أَكْلِ الْحَيَّاتِ]

995 – Legal Question: It is impermissible to eat anything from snakes, nor any clawed birds that hunt with their claws among birds, nor scorpions, nor rats, nor kites, nor crows.

٩٩٥ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ شَيْءٍ مِنْ الْحَيَّاتِ وَلَا أَكْلُ شَيْءٍ مِنْ ذَوَاتِ الْمَخَالِبِ مِنْ الطَّيْرِ وَهِيَ الَّتِي تَصِيدُ الصَّيْدَ بِمَخَالِبِهَا، وَلَا الْعَقَارِبِ، وَلَا الْفِئْرَانِ وَلَا الْحِدَاءِ، وَلَا الْغُرَابِ.

We have been narrated via the transmission of Muslim: Shaybān ibn Farrūkh narrated to us, Abū ʿAwāna narrated to us from Zayd ibn Jubayr, who said: Ibn ʿUmar said, “One of the Prophet’s wives—peace and blessings be upon him—narrated to me that he—peace be upon him—commanded the killing of the vicious dog, the mouse, the scorpion, the kite, the crow, and the snake.” He added: “And also during prayer.”

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا شَيْبَانُ بْنُ فَرُّوخَ نَا أَبُو عَوَانَةَ عَنْ زَيْدِ بْنِ جُبَيْرٍ قَالَ " قَالَ ابْنُ عُمَرَ حَدَّثَتْنِي إحْدَى نِسْوَةِ «النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ كَانَ - عَلَيْهِ السَّلَامُ - يَأْمُرُ بِقَتْلِ الْكَلْبِ الْعَقُورِ، وَالْفَأْرَةِ، وَالْعَقْرَبِ، وَالْحُدَيَّا، وَالْغُرَابِ، وَالْحَيَّةِ، قَالَ: وَفِي الصَّلَاةِ أَيْضًا» .

From the transmission of Muslim: Isḥāq ibn Manṣūr narrated to me, Muḥammad ibn Jahḍam narrated to us, Ismāʿīl—whom we consider to be Ibn Jaʿfar—narrated from ʿUmar ibn Nāfiʿ from his father, who said: One day, while ʿAbdullāh ibn ʿUmar was engaged in demolition, he noticed the glint of a jinn and said, “Kill it!” Abū Lubābah al-Anṣārī then said: I heard the Messenger of Allah—peace and blessings be upon him—forbid the killing of jinn that reside in houses except for the tailless one and the one with two tufts, for they are the ones that snatch away eyesight and induce harm to what is in women’s wombs.

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي إِسْحَاقُ بْنُ مَنْصُورٍ نَا مُحَمَّدُ بْنُ جَهْضَمٍ نَا إِسْمَاعِيلُ وَهُوَ عِنْدَنَا ابْنُ جَعْفَرٍ عَنْ عُمَرَ بْنِ نَافِعٍ عَنْ أَبِيهِ قَالَ كَانَ عَبْدُ اللَّهِ بْنُ عُمَرَ يَوْمًا [عِنْدَ هَدْمٍ لَهُ] رَأَى وَبِيصَ جَانٍّ فَقَالَ: اُقْتُلُوا؟ فَقَالَ أَبُو لُبَابَةَ الْأَنْصَارِيُّ: سَمِعْت «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ قَتْلِ الْجِنَّانِ الَّتِي تَكُونُ فِي الْبُيُوتِ إلَّا الْأَبْتَرَ وَذَا الطُّفْيَتَيْنِ فَإِنَّهُمَا اللَّذَانِ يَخْطِفَانِ الْبَصَرَ وَيَتْبَعَانِ مَا فِي بُطُونِ النِّسَاءِ» .

From the transmission of Malik from Sayfi, who is Ibn Aflah – Abu al-Sa’ib, the freedman of Hisham ibn Zuhrah, informed me that Abu Sa‘id al-Khudri informed him: “The Messenger of Allah (peace be upon him) said: ’There

وَمِنْ طَرِيقِ مَالِكٍ عَنْ صَيْفِي هُوَ ابْنُ أَفْلَحَ - أَخْبَرَنِي أَبُو السَّائِبِ مَوْلَى هِشَامِ بْنِ زُهْرَةَ أَنَّ أَبَا سَعِيدٍ الْخُدْرِيَّ أَخْبَرَهُ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِنَّ

[23] **Qur’an references (L16690):** Qur’an 2:29 (Al-Baqarah); Qur’an 6:145 (Al-An’am); Qur’an 6:119 (Al-An’am).

are jinn in Medina who have embraced Islam. If you see anything from it [Medina], notify it for three days. If it reappears to you after that, then kill it.”’

L16698–16700 Whatever the Messenger of Allah (peace and blessings be upon him) commanded to be killed has no ritual slaughter (dhakāh) applicable to it, for he (peace be upon him) prohibited the waste of It is unlawful to destroy property and to kill any edible creature. We have mentioned in the Book of Hajj the Prophet’s saying (peace be upon him): “Five corrupting creatures may be killed in both sacred and non-sacred territories”—he then listed the scorpion, the mouse, the kite, the crow, and the rabid dog.

L16701 Thus, it is established that there is sacrilegious slaughter in it, and sacrilegious slaughter is prohibited. The Exalted said: {Say, “I do not find in what has been revealed to me anything forbidden for someone to eat except dead flesh, flowing blood, the flesh of swine—for indeed, it is an abomination—or [meat] slaughtered in the name of other than Allah with it.”} [Al-An‘ām: 145].[24]

L16702 If a creature involving sin were slaughtered, it would fall under what is dedicated to other than Allah; for slaughtering what is not permissible to eat is an act of disobedience, and disobedience is an intent directed toward other than Allah, the Exalted. It has been narrated to us from ‘Umar ibn al-Khaṭṭāb: “Kill all snakes.”

L16703 From Ibn Mas‘ud: Whoever kills a snake or a scorpion has killed a disbeliever.

L16704 From the narration of Muḥammad ibn Zuhayr ibn Abī Khaythama: Ibn Abī Uways narrated to us, his father narrated to us, Yaḥyā ibn Saʿīd al-Anṣārī narrated to us from ʿAmra from ʿĀ’isha, the Mother of the Believers, who said: “I am truly astonished at someone who eats the crow, when the Messenger of Allah (peace and blessings of Allah be upon him) permitted its killing and called it a sinful creature. By Allah, it is not among the lawful things.”

L16705 From the chain of Sharik from Hisham ibn Urwah from his father from Ibn

بِالْمَدِينَةِ جِنًّا قَدْ أَسْلَمُوا فَإِذَا رَأَيْتُمْ مِنْهَا شَيْئًا فَآذِنُوهُ ثَلَاثَةَ أَيَّامٍ، فَإِنْ بَدَا لَكُمْ بَعْدَ ذَلِكَ فَاقْتُلُوهُ» .

فَكُلُّ مَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَتْلِهِ فَلَا ذَكَاةَ لَهُ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - نَهَى عَنْ إِضَاعَةِ الْمَالِ، وَلَا يَحِلُّ قَتْلُ شَيْءٍ يُؤْكَلُ، وَقَدْ ذَكَرْنَا فِي كِتَابِ الْحَجِّ قَوْلَهُ - عَلَيْهِ السَّلَامُ -: «خَمْسٌ فَوَاسِقُ يُقْتَلْنَ فِي الْحِلِّ وَالْحَرَمِ» فَذَكَرَ الْعَقْرَبَ، وَالْفَأْرَةَ، وَالْحِدَأَةَ، وَالْغُرَابَ، وَالْكَلْبَ الْعَقُورَ.

فَصَحَّ أَنَّ فِيهَا فِسْقًا، وَالْفِسْقُ مُحَرَّمٌ قَالَ تَعَالَى: {قُلْ لا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلا أَنْ يَكُونَ مَيْتَةً أَوْ دَمًا مَسْفُوحًا أَوْ لَحْمَ خِنْزِيرٍ فَإِنَّهُ رِجْسٌ أَوْ فِسْقًا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ} [الأنعام: ١٤٥] .

فَلَوْ ذُبِحَ مَا فِيهِ فِسْقٌ لَكَانَ مِمَّا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ، لِأَنَّ ذَبْحَ مَا لَا يَحِلُّ أَكْلُهُ مَعْصِيَةٌ، وَالْمَعْصِيَةُ قَصْدٌ إِلَى غَيْرِ اللَّهِ تَعَالَى بِهِ -: رُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ: اُقْتُلُوا الْحَيَّاتِ كُلَّهَا.

وَعَنْ ابْنِ مَسْعُودٍ: مَنْ قَتَلَ حَيَّةً أَوْ عَقْرَبًا قَتَلَ كَافِرًا.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ زُهَيْرِ بْنِ أَبِي خَيْثَمَةَ نَا ابْنُ أَبِي أُوَيْسٍ نَا أَبِي نَا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ عَمْرَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: إِنِّي لَأَعْجَبُ مِمَّنْ يَأْكُلُ الْغُرَابَ، وَقَدْ أَذِنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي قَتْلِهِ وَسَمَّاهُ فَاسِقًا، وَاَللَّهِ مَا هُوَ مِنْ الطَّيِّبَاتِ.

[24] **Qur’an references (L16701):** Qur’an 6:145 (Al-An’am).

Umar, who said: “Who eats a crow when the Messenger of Allah (peace and blessings be upon him) named it a prohibited creature? By Allah, it is not among the pure things.”

وَمِنْ طَرِيقِ شَرِيكٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ ابْنِ عُمَرَ قَالَ: مَنْ يَأْكُلُ الْغُرَابَ؟ وَقَدْ سَمَّاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاسِقًا، وَاَللَّهِ مَا هُوَ مِنْ الطَّيِّبَاتِ.

L16706 From the chain of Ibn Abi Shaybah, Abu Muʿawiyah narrated to us from Hisham ibn ʿUrwah from his father, who said: Who would eat a crow when the Messenger of Allah—peace and blessings be upon him—has declared it impure?

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا أَبُو مُعَاوِيَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: مَنْ يَأْكُلُ الْغُرَابَ وَقَدْ سَمَّاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاسِقًا.

L16707 And via the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: Some scholars deemed it reprehensible to eat the kite and the crow because the Messenger of Allah—peace and blessings be upon him—named them among the verminous creatures that are to be killed in the sacred precinct.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: كَرِهَ رِجَالٌ مِنْ أَهْلِ الْعِلْمِ أَكْلَ الْحِدَاءِ وَالْغُرَابِ حَيْثُ سَمَّاهُمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ فَوَاسِقِ الدَّوَابِّ الَّتِي تُقْتَلُ فِي الْحَرَمِ.

L16708 If it is said: “It has been reported: ’Throw stones at the crow but do not kill it,’” we respond: This was narrated by one whose transmissions are inadmissible—Yazīd ibn Abī Ziyād—and we have previously mentioned the weakening of his reliability in the Book of Ḥajj. Our statement is the statement of al-Shāfiʿī and of Abū Sulaymān.

فَإِنْ قِيلَ: قَدْ رُوِيَ «وَتَرْمِي الْغُرَابَ وَلَا تَقْتُلُهُ» ؟ قُلْنَا: رَوَاهُ مَنْ لَا يَجُوزُ الْأَخْذُ بِرِوَايَتِهِ يَزِيدُ بْنُ أَبِي زِيَادٍ وَقَدْ ذَكَرْنَا تَضْعِيفَهُ فِي كِتَابِ الْحَجِّ وَقَوْلُنَا هُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L16709 Abu Hanifah deemed the speckled crow impermissible but not the black crow, citing as evidence that certain textual reports specifically mention the speckled crow.

وَحَرَّمَ أَبُو حَنِيفَةَ الْغُرَابَ الْأَبْقَعَ، وَلَمْ يُحَرِّمْ الْأَسْوَدَ، وَاحْتَجَّ بِأَنَّ فِي بَعْضِ الْأَخْبَارِ ذَكَرَ الْغُرَابَ الْأَبْقَعَ.

L16710–16711 Abu Muhammad said: The narrations containing the general mention of crows have a supplementary ruling not found in the narration specifying the piebald crow. Whoever claims the Messenger of God (peace and blessings be upon him) meant by his statement “the crow” solely the piebald crow specifically, because he mentioned the piebald crow in another narration, has lied. He has presumed without knowledge what he cannot know, while we are certain the Prophet (peace and blessings be upon him) commanded the killing of the piebald crow in one narration and the collective killing of crows in another. Both are true, and it is impermissible to oppose it.

قَالَ أَبُو مُحَمَّد: الْأَخْبَارُ الَّتِي فِيهَا عُمُومُ ذِكْرِ الْغُرَابِ هُوَ الزَّائِدُ حُكْمًا لَيْسَ فِي الَّذِي فِيهِ تَخْصِيصُ الْأَبْقَعِ، وَمَنْ قَالَ: إنَّمَا عَنَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَوْلِهِ " الْغُرَابُ " الْغُرَابَ الْأَبْقَعَ خَاصَّةً، لِأَنَّهُ قَدْ ذَكَرَ الْغُرَابَ الْأَبْقَعَ فِي خَبَرٍ آخَرَ -: فَقَدْ كَذَبَ، إذْ قَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهُ قَدْ أَمَرَ - عَلَيْهِ السَّلَامُ - بِقَتْلِ الْأَبْقَعِ فِي خَبَرٍ، وَبِقَتْلِ الْغُرَابِ جُمْلَةً فِي خَبَرٍ آخَرَ، وَكِلَاهُمَا حَقٌّ لَا يَحِلُّ خِلَافُهُ.

L16712 The Malikis expressed uncertainty concerning these beasts of burden which we have mentioned.

وَتَرَدَّدَ الْمَالِكِيُّونَ فِي هَذِهِ الدَّوَابِّ الَّتِي ذَكَرْنَا.

وَأَمَّا الْعَقَارِبُ وَالْحَيَّاتُ فَمَا يَمْتَرِي ذُو فَهْمٍ فِي أَنَّهُنَّ مِنْ أَخْبَثِ الْخَبَائِثِ وَقَدْ قَالَ تَعَالَى: {وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ} [الأعراف: ١٥٧] .

L16713 As for scorpions and snakes, no person of understanding would dispute that they are among the most impure of impure things, for Allah, the Exalted, says: “He prohibits for them impure things” [al-A‘rāf 7:157].[25]

وَأَمَّا الْفِئْرَانُ فَمَا زَالَ جَمِيعُ أَهْلِ الْإِسْلَامِ يَتَّخِذُونَ لَهَا الْقِطَاطَ، وَالْمَصَائِدَ الْقَتَّالَةَ، وَيَرْمُونَهَا مَقْتُولَةً عَلَى الْمَزَابِلِ، فَلَوْ كَانَ أَكْلُهَا حَلَالًا لَكَانَ ذَلِكَ مِنْ الْمَعَاصِي، وَمِنْ إضَاعَةِ الْمَالِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16714 As for mice, Muslims have always used cats to hunt them and lethal traps against them, discarding their dead bodies on rubbish heaps. If consuming them were permissible, such actions would be among the sins and a squandering of wealth - and success is from Allah, the Most High.

وَأَبَاحُوا أَكْلَ الْحَيَّاتِ الْمُذَكَّاةِ، وَهُمْ يُحَرِّمُونَ أَكْلَ مَا ذُكِّيَ مِنْ قَفَاهُ، وَلَا سَبِيلَ إلَى تَذْكِيَةِ الْحَيَّاتِ إلَّا مِنْ أَقْفَائِهَا؟ قَالَ أَبُو مُحَمَّدٍ: وَهِيَ وَالْخَمْرُ تَقَعُ فِي التِّرْيَاقِ فَلَا يَحِلُّ أَكْلُهُ إلَّا عِنْدَ الضَّرُورَةِ عَلَى سَبِيلِ التَّدَاوِي، لِأَنَّ الْمُتَدَاوِيَ مُضْطَرٌّ، وَقَدْ قَالَ تَعَالَى: {إلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] .

L16715 They permitted the consumption of ritually slaughtered snakes, yet they prohibit eating what is ritually slaughtered from its nape. Is there no valid method for ritually slaughtering snakes except at their napes? Abu Muhammad said: “Snakes and wine are used in antidotes, so their consumption is not permissible except in cases of necessity for the purpose of treatment, as the one seeking treatment is compelled by necessity. Allah the Exalted has said: {except what you are compelled to consume} [Al-An‘am 6:119].”[26]

وَأَمَّا ذَوَاتُ الْمَخَالِبِ مِنْ الطَّيْرِ -: فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا أَحْمَدُ بْنُ حَنْبَلٍ، وَعُبَيْدُ اللَّهِ بْنُ مُعَاذٍ قَالَ أَحْمَدُ: نَا هُشَيْمٌ أَنَّ أَبَا بِشْرٍ جَعْفَرَ بْنَ أَبِي وَحْشِيَّةَ أَخْبَرَهُ، وَقَالَ عُبَيْدُ اللَّهِ: نَا أَبِي نَا شُعْبَةُ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، ثُمَّ اتَّفَقَ الْحَكَمُ، وَأَبُو بِشْرٍ، كِلَاهُمَا عَنْ مَيْمُونِ بْنِ مِهْرَانَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ كُلِّ ذِي نَابٍ مِنْ السِّبَاعِ وَعَنْ كُلِّ ذِي مِخْلَبٍ مِنْ الطَّيْرِ» .

L16716 As for birds with talons—this is based on what we narrated via the chain of Muslim: Ahmad ibn Hanbal and Ubayd Allah ibn Mu‘adh reported. Ahmad said: Hushaym narrated to us that Abu Bishr Ja‘far ibn Abi Wahshiyyah informed him. Ubayd Allah said: My father narrated to us, and Shu‘bah narrated to us from al-Hakam ibn ‘Utaybah. Then their chains converged—both al-Hakam and Abu Bishr reported from Maymun ibn Mihrān from Ibn Abbas that the Messenger of Allah, peace be upon him, forbade every predatory animal with fangs and every bird with talons.[27]

قَالَ اللَّهُ تَعَالَى: {وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا} [الحشر: ٧] .

L16717 Allah the Exalted said: “And whatever We have forbidden you from, then refrain.” [Al-Hashr 7].[28]

وَلَا يَجُوزُ أَنْ يَنْهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ حَلَالٍ -: وَبِهَذَا يَقُولُ أَبُو حَنِيفَةَ وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَبُو سُلَيْمَانَ.

L16718–16719 It is not permissible for the Messenger of Allah (peace and blessings be upon

[25] **Qur’an references (L16713):** Qur’an 7:157 (Al-A’raf).
[26] **Qur’an references (L16715):** Qur’an 6:119 (Al-An’am).
[27] **Hadith references (L16716):** Sahih Muslim 1934c.
[28] **Qur’an references (L16717):** Qur’an 59:7 (Al-Hashr).

him) to prohibit what is lawful. This is what Abu Hanifah, al-Shafi'i, Ahmad, and Abu Sulayman say.

L16720 The Malikis permitted the consumption of predatory birds. One of those whom Allah the Exalted has subjected to the trial of rigid imitation argued that Maymun ibn Mihran did not hear this report from Ibn Abbas, but rather heard it from Sa'id ibn Jubayr who narrated it from Ibn Abbas. He referenced a narration we have narrated through the chain of Ahmad ibn Shu'ayb—Isma'il ibn Mas'ud al-Jahdari informed us, from Bishr ibn al-Mufaddal, from Sa'id ibn Abi 'Arubah, from 'Ali ibn al-Hakam, from Maymun ibn Mihran, from Sa'id ibn Jubayr, from Ibn Abbas—that "the Messenger of Allah, peace be upon him, prohibited on the day of Khaybar every bird of prey with talons and every predatory animal with canine teeth."

وَأَبَاحَ الْمَالِكِيُّونَ أَكْلَ سِبَاعِ الطَّيْرِ، وَاحْتَجَّ بَعْضُ مَنْ ابْتَلَاهُ اللَّهُ تَعَالَى بِتَقْلِيدِهِ بِأَنَّ هَذَا الْخَبَرَ لَمْ يَسْمَعْهُ مَيْمُونُ بْنُ مِهْرَانَ مِنْ ابْنِ عَبَّاسٍ وَإِنَّمَا سَمِعَهُ مِنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ، وَأَشَارَ إلَى خَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إسْمَاعِيلُ بْنُ مَسْعُودٍ الْجَحْدَرِيُّ عَنْ بِشْرِ بْنِ الْمُفَضَّلِ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ عَلِيِّ بْنِ الْحَكَمِ عَنْ مَيْمُونِ بْنِ مِهْرَانَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى يَوْمَ خَيْبَرَ عَنْ كُلِّ ذِي مِخْلَبٍ مِنْ الطَّيْرِ وَعَنْ كُلِّ ذِي نَابٍ مِنْ السِّبَاعِ»

L16721 Abū Muḥammad said: This nullifier sought to argue for himself but buried his argument, and he intended to weaken the report yet only strengthened it. For Saʿīd ibn Jubayr is the rising star in trustworthiness, authoritativeness, and reliability. How then could it be claimed when Shuʿbah, Hushaym, al-Ḥakam, and Abū Bishr—not one of whom is equivalent to ʿAlī ibn al-Ḥakam? The most sound view concerning ʿAlī ibn al-Ḥakam is that he was not described as having erred in this report, and to say: Maymūn ibn Mihrān heard it from Ibn ʿAbbās, and he also heard it from Saʿīd ibn Jubayr, who narrated it from Ibn ʿAbbās.

قَالَ أَبُو مُحَمَّدٍ: أَرَادَ هَذَا النَّاقِضُ أَنْ يَحْتَجَّ لِنَفْسِهِ فَدَفَنَهَا، وَأَرَادَ أَنْ يُوهِنَ الْخَبَرَ فَزَادَهُ قُوَّةً، لِأَنَّ سَعِيدَ بْنَ جُبَيْرٍ هُوَ النَّجْمُ الطَّالِعُ ثِقَةً وَإِمَامَةً وَأَمَانَةً، فَكَيْفَ وَشُعْبَةُ، وَهُشَيْمٌ، وَالْحَكَمُ، وَأَبُو بِشْرٍ، كُلُّ وَاحِدٍ مِنْهُمْ لَا يَعْدِلُ بِهِ عَلِيُّ بْنُ الْحَكَمِ؟ وَأَسْلَمُ الْوُجُوهِ لِعَلِيِّ بْنِ الْحَكَمِ أَنْ لَمْ يُوصَفْ بِأَنَّهُ أَخْطَأَ فِي هَذَا الْخَبَرِ أَنْ يُقَالَ: إنَّ مَيْمُونَ بْنَ مِهْرَانَ سَمِعَهُ مِنْ ابْنِ عَبَّاسٍ، وَسَمِعَهُ أَيْضًا مِنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ.

L16722 Ali said: Among the Arabs, none is called "possessor of a claw" except the one who hunts with his claw alone.

قَالَ عَلِيٌّ: لَا يُسَمَّى ذَا مِخْلَبٍ عِنْدَ الْعَرَبِ إلَّا الصَّائِدَ بِمِخْلَبِهِ وَحْدَهُ.

L16723 As for roosters, sparrows, starlings, doves and pigeons, and what does not hunt—none of these are referred to as having talons in the Arabic language. And with Allah, the Exalted, is success.

وَأَمَّا الدِّيكُ، وَالْعَصَافِيرُ، وَالزُّرْزُورُ، وَالْحَمَامُ، وَمَا لَمْ يَصِدْ، فَلَا يُسَمَّى شَيْءٌ مِنْهَا ذَا مِخْلَبٍ فِي اللُّغَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16724 The Ruling on Eating Wild Snails and Insects.

[مَسْأَلَة أَكْلُ الْحَلَزُونِ الْبَرِّيِّ وَالْحَشَرَاتِ]

L16725 996 – Issue: It is not permissible to eat wild snails or any insects whatsoever—such as geckos, beetles, ants, bees, flies, hornets, all worms (whether

from flying or non-flying insects), lice, fleas, bedbugs, mosquitoes, and all their types—due to the statement of Allah, exalted is He: "Forbidden to you is carrion" (Surah Al-Mā'idah 5:3).[29]

٩٩٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ الْحَلَزُونِ الْبَرِّيِّ، وَلَا شَيْءٍ مِنْ الْحَشَرَاتِ كُلِّهَا كَالْوَزَغِ وَالْخَنَافِسِ، وَالنَّمْلِ، وَالنَّحْلِ، وَالذُّبَابِ، وَالدُّبْرِ، وَالدُّودِ كُلِّهِ - طَيَّارَةٍ وَغَيْرِ طَيَّارَةٍ - وَالْقَمْلِ، وَالْبَرَاغِيثِ، وَالْبَقِّ، وَالْبَعُوضِ وَكُلِّ مَا كَانَ مِنْ أَنْوَاعِهَا لِقَوْلِ اللَّهِ تَعَالَى: {حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ} [المائدة: ٣] .

L16726 And the saying of the Most High: {except what you have slaughtered} [Al-Mā'idah: 3].[30]

وَقَوْله تَعَالَى {إلا مَا ذَكَّيْتُمْ} [المائدة: ٣] .

L16727–16729 Conclusive evidence has established that valid slaughter for an animal that can be subdued is lawful only by cutting the throat (including the esophagus and jugular veins) or... As for the chest, if it cannot be ritually slaughtered, there is no permissible way to consume it—thus, it is forbidden, because it cannot be eaten except as unslaughtered carrion.

وَقَدْ صَحَّ الْبُرْهَانُ عَلَى أَنَّ الذَّكَاةَ فِي الْمَقْدُورِ عَلَيْهِ لَا تَكُونُ إلَّا فِي الْحَلْقِ أَوْ الصَّدْرِ، فَمَا لَمْ يُقْدَرْ فِيهِ عَلَى ذَكَاةٍ فَلَا سَبِيلَ إلَى أَكْلِهِ -: فَهُوَ حَرَامٌ، لِامْتِنَاعِ أَكْلِهِ إلَّا مَيْتَةً غَيْرَ مُذَكًّى.

L16730 Another proof within all we have mentioned is that they are two categories: a category whose killing is permissible, such as geckos, beetles, fleas, lice, and wasps; and a category whose killing is forbidden, such as ants and bees. Those whose killing is permissible require no ritual slaughter, because killing what would otherwise require ritual slaughter constitutes waste of wealth. As for what it is unlawful to kill, ritual slaughter does not apply to it. We have been narrated through Al-Sha'bi's transmission: "Anything without flowing blood requires no ritual slaughter." And through 'Abd al-Razzaq's chain from Ma'mar, from Al-Zuhri, from 'Amir ibn Sa'd ibn Abi Waqqas, from his father: "The Prophet—peace and blessings of Allah be upon him—commanded the killing of geckos and called them 'minor corrupters,'" though they are deemed the most vile of vile creatures by every discerning soul.

وَبُرْهَانٌ آخَرُ -: فِي كُلِّ مَا ذَكَرْنَا أَنَّهُمَا قِسْمَانِ -: قِسْمٌ مُبَاحٌ قَتْلُهُ: كَالْوَزَغِ، وَالْخَنَافِسِ، وَالْبَرَاغِيثِ، وَالْبَقِّ، وَالدُّبْرِ، وَقِسْمٌ مُحَرَّمٌ قَتْلُهُ: كَالنَّمْلِ، وَالنَّحْلِ، فَالْمُبَاحُ قَتْلُهُ لَا ذَكَاةَ فِيهِ، لِأَنَّ قَتْلَ مَا تَجُوزُ فِيهِ الذَّكَاةُ إضَاعَةٌ لِلْمَالِ، وَمَا لَا يَحِلُّ قَتْلُهُ لَا تَجُوزُ فِيهِ الذَّكَاةُ -: رُوِّينَا مِنْ طَرِيقِ الشَّعْبِيِّ: «كُلُّ مَا لَيْسَ لَهُ دَمٌ سَائِلٌ فَلَا ذَكَاةَ فِيهِ» . وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَمَرَ بِقَتْلِ الْوَزَغِ وَسَمَّاهُ فُوَيْسِقًا» مَعَ أَنَّهُ مِنْ أَخْبَثِ الْخَبَائِثِ عِنْدَ كُلِّ ذِي نَفْسٍ.

L16731 From the transmission of Al-Bukhari: From Qutaybah, from Ismā'īl ibn Ja'far, from 'Utbah ibn Muslim - mawla of Banū Tamīm - from 'Ubayd ibn Ḥunayn - mawla of Banū Zurayq - from Abū Hurayrah that the Messenger of Allah (peace be upon him) said: "If a fly falls into the vessel of one of you,

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا قُتَيْبَةُ نَا إسْمَاعِيلُ بْنُ جَعْفَرٍ نَا عُتْبَةُ بْنُ مُسْلِمٍ مَوْلَى بَنِي تَمِيمٍ عَنْ عُبَيْدِ بْنِ حُنَيْنٍ مَوْلَى بَنِي زُرَيْقٍ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ

[29] **Qur'an references (L16725):** Qur'an 5:3 (Al-Ma'idah).
[30] **Qur'an references (L16726):** Qur'an 5:3 (Al-Ma'idah).

let him immerse it entirely, then remove it." He [the narrator] mentioned the hadith, and the Prophet (peace be upon him) commanded its removal, for if it were lawful to eat it, he would not have commanded its discarding.

وَسَلَّمَ - قَالَ: «إِذَا وَقَعَ الذُّبَابُ فِي إِنَاءِ أَحَدِكُمْ فَلْيَغْمِسْهُ ثُمَّ لِيَطْرَحْهُ» وَذَكَرَ الْحَدِيثَ فَأَمَرَ - عَلَيْهِ السَّلَامُ - بِطَرْحِهِ وَلَوْ كَانَ حَلَالًا أَكْلُهُ مَا أَمَرَ بِطَرْحِهِ.

L16732 And via the narration of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah from Ibn ʿAbbās: "The Messenger of Allah (peace be upon him) forbade killing four types of animals: the bee, the ant, the hoopoe, and the shrike."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ قَتْلِ أَرْبَعٍ مِنْ الدَّوَابِّ: النَّحْلَةُ، وَالنَّمْلَةُ، وَالْهُدْهُدُ، وَالصُّرَدُ» .

L16733–16734 From the chain of Abū Dāwūd: Muḥammad ibn Kathīr reported to us from Sufyān, from Ibn Abī Dhi'b, from Saʿīd ibn Khālid, from Saʿīd ibn al-Musayyib, from ʿAbd al-Raḥmān ibn ʿUthmān: "A physician asked the Prophet—peace and blessings of Allāh be upon him—whether he could incorporate a frog into a medicinal remedy. The Messenger of Allāh—peace and blessings of Allāh be upon him—forbade him from killing it."

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا مُحَمَّدُ بْنُ كَثِيرٍ أَنَا سُفْيَانُ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ سَعِيدِ بْنِ خَالِدٍ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عُثْمَانَ «أَنَّ طَبِيبًا سَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ضِفْدَعٍ يَجْعَلُهَا فِي دَوَاءٍ؟ فَنَهَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ قَتْلِهَا» .

L16735 Abu Muhammad said: This annuls the Prophet's earlier hadith in which he burned the ant colony, for the Sharia of our Prophet—peace be upon him—abrogates every preceding religion. We have also mentioned how Umar ibn al-Khattab and other Companions—may Allah be pleased with them—killed the monkeys while being in a state of Ihram.

قَالَ أَبُو مُحَمَّدٍ: هَذَا يَقْضِي عَلَى حَدِيثِ النَّبِيِّ الَّذِي كَانَ قَدِيمًا فَأَحْرَقَ قَرْيَةَ النَّمْلِ لِأَنَّ شَرِيعَةَ نَبِيِّنَا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَاسِخَةٌ لِكُلِّ دِينٍ سَلَفَ، وَقَدْ ذَكَرْنَا قَتْلَ عُمَرَ بْنِ الْخَطَّابِ وَغَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لِلْقِرْدَانِ وَهُمْ مُحْرِمُونَ.

L16736 It has been authentically reported from Ibn Abbas, Ibn Umar, and Aisha, the Mother of the Believers, that the killing of geckos is established. Through the narration chain of Maʿmar from Qatadah: killing frogs was prohibited, and killing geckos was commanded.

وَصَحَّ عَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ، وَعَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَتْلُ الْأَوْزَاغِ؛ وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ قَتَادَةَ نَهَى عَنْ قَتْلِ الضِّفْدَعِ وَأَمَرَ بِقَتْلِ الْوَزَغِ.

L16737 Intimidate creeping pests before they intimidate you.

وَعَنْ عُمَرَ بْنِ الْخَطَّابِ أَخِيفُوا الْهَوَامَّ قَبْلَ أَنْ تُخِيفَكُمْ.

L16738 If someone mentions the ḥadīth of Ghālib ibn Ḥujrah from al-Milqām ibn al-Ṭalib from his father - "I accompanied the Prophet - peace and blessings of Allah be upon him - yet I never heard him declare insects unlawful" - then Ghālib ibn Ḥujrah and al-Milqām are unknown narrators. Moreover, even if the narration were authentic, it would not constitute valid proof, for one's

فَإِنْ ذَكَرَ ذَاكِرٌ حَدِيثَ غَالِبِ بْنِ حُجْرَةَ عَنْ الْمِلْقَامِ بْنِ التَّلِبِ عَنْ أَبِيهِ «صَحِبْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمْ أَسْمَعْ لِلْحَشَرَاتِ تَحْرِيمًا» - فَغَالِبُ بْنُ حُجْرَةَ، وَالْمِلْقَامُ مَجْهُولَانِ - ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ مَنْ لَمْ يَسْمَعْ حُجَّةً عَلَى مَا قَامَ بِهِ بُرْهَانُ النَّصِّ.

failure to hear something cannot override what has been established through textual evidence.

The Issue of Eating Human-Associated Donkeys

[مَسْأَلَة أَكْلُ الْحُمُرِ الْإِنْسِيَّةِ]

997. Issue: It is not permissible to eat any part of domesticated donkeys, whether they have become wild or remain domesticated. It is permissible to eat wild donkeys, whether they have become tame or remain untamed. It is permissible to eat horses and mules. We were narrated through the chain recorded by al-Bukhārī: Muḥammad ibn Salām narrated to us; ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī narrated to us; from Ayyūb—he is al-Sakhtiyānī—from Muḥammad—he is Ibn Sīrīn—from Anas ibn Mālik: "Allah's Messenger—peace and blessings be upon him—commanded a caller to proclaim: 'Allah and His Messenger forbid you from the meat of domesticated donkeys, for they are impure.' Thereupon the cooking pots were overturned while they were indeed boiling with meat."

٩٩٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ شَيْءٍ مِنْ الْحُمُرِ الْإِنْسِيَّةِ تَوَحَّشَتْ أَوْ لَمْ تَتَوَحَّشْ، وَحَلَالٌ أَكْلُ حُمُرِ الْوَحْشِ تَأَنَّسَتْ أَوْ لَمْ تَتَأَنَّسْ، وَحَلَالٌ أَكْلُ الْخَيْلِ وَالْبِغَالِ -: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا مُحَمَّدُ بْنُ سَلَّامٍ نَا عَبْدُ الْوَهَّابِ بْنِ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ أَنَا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ - عَنْ مُحَمَّدٍ هُوَ ابْنُ سِيرِينَ - عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ مُنَادِيًا فَنَادَى إنَّ اللَّهَ وَرَسُولَهُ يَنْهَيَانِكُمْ عَنْ لُحُومِ الْحُمُرِ الْأَهْلِيَّةِ فَإِنَّهَا رِجْسٌ، فَأُكْفِئَتْ الْقُدُورُ وَإِنَّهَا لَتَفُورُ بِاللَّحْمِ» .

It is confirmed that all of it is impure, and the Companions—may Allah be pleased with them—pouring out the pots containing it in the presence of the Prophet—peace and blessings be upon him—which demonstrates that its soft fat, hard fat, bones, and every part of it are forbidden.

فَصَحَّ أَنَّهَا كُلَّهَا رِجْسٌ، وَإِهْرَاقُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - الْقُدُورَ بِهَا بِحَضْرَةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيَانُ أَنَّ وَدَكَهَا وَشَحْمَهَا وَعَظْمَهَا وَكُلَّ شَيْءٍ مِنْهَا حَرَامٌ.

And via the route of Ḥammād ibn Zayd; from ʿAmr ibn Dīnār; from Muḥammad ibn ʿAlī; from Jābir ibn ʿAbd Allāh. "The Messenger of Allah - peace be upon him - forbade the meat of domestic donkeys on the day of Khaybar and permitted the meat of horses."[31]

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ مُحَمَّدِ بْنِ عَلِيٍّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى يَوْمَ خَيْبَرَ عَنْ لُحُومِ الْحُمُرِ الْأَهْلِيَّةِ وَأَذِنَ فِي لُحُومِ الْخَيْلِ» .

From the transmission of Muslim: Muhammad ibn Hatim narrated to me, Muhammad ibn Bakr reported to us, Ibn Jurayj said: Abu al-Zubayr informed me that he heard Jabir ibn Abdullah say: "We ate horses and wild donkeys during the time of Khaybar, so the Messenger of Allah (peace be upon him) prohibited us from domestic donkeys."

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمٍ نَا مُحَمَّدُ بْنُ بَكْرٍ أَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «أَكَلْنَا زَمَنَ خَيْبَرَ الْخَيْلَ وَحُمُرَ الْوَحْشِ فَنَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْحِمَارِ الْأَهْلِيِّ» .

It has been narrated to us regarding the prohibition of domestic donkeys

[31] **Hadith references (L16742):** Sahih Muslim 1941a; Mishkat al-Masabih 4107.

from the Prophet—peace and blessings of Allah be upon him—via the narrations of al-Barāʾ ibn ʿĀzib, ʿAbdullāh ibn Abī Awfā, ʿAlī ibn Abī Ṭālib, Abū Thaʿlabah al-Khushanī, al-Ḥakam ibn ʿAmr al-Ghifārī, Salamah ibn al-Akwaʿ, and Ibn ʿUmar, with chains of transmission as clear as the sun.

وَرُوِّينَا تَحْرِيمَ الْحُمُرِ الْأَهْلِيَّةِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ الْبَرَاءِ بْنِ عَازِبٍ، وَعَبْدِ اللَّهِ بْنِ أَبِي أَوْفَى، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَأَبِي ثَعْلَبَةَ الْخُشَنِيِّ، وَالْحَكَمِ بْنِ عَمْرٍو الْغِفَارِيِّ: وَسَلَمَةَ بْنِ الْأَكْوَعِ، وَابْنِ عُمَرَ بِأَسَانِيدَ كَالشَّمْسِ.

L16747 And from Anas and Jabir, as we have mentioned, it is a *tawatur* transmission that does not permit anyone to disagree with it.

وَعَنْ أَنَسٍ وَجَابِرٍ كَمَا ذَكَرْنَا، فَهُوَ نَقْلُ تَوَاتُرٍ لَا يَسَعُ أَحَدًا خِلَافُهُ.

L16748 It has been narrated to us through the chain of ʿAmr ibn Dīnār from Jābir ibn ʿAbdullāh that he used to prohibit donkey meat and command the eating of horse meat.

وَرُوِّينَا مِنْ طَرِيقِ عَمْرِو بْنِ دِينَارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّهُ كَانَ يَنْهَى عَنْ لُحُومِ الْحُمُرِ وَيَأْمُرُ بِلُحُومِ الْخَيْلِ.

L16749–16751 It has been narrated to us regarding the prohibition against them from Majzaʾah ibn Zāhir—one of those who pledged allegiance under the Tree—and from Saʿīd ibn Jubayr concerning donkey meat. He stated: "It is entirely forbidden." This is the position of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān. Mālik also inclined toward this ruling. Should someone mention that Ibn ʿAbbās permitted it, we respond: No one's opinion constitutes proof in comparison to the Messenger of Allah—peace and blessings be upon him. How then [could this be argued], when Ibn ʿAbbās himself reported his uncertainty about it? As narrated to us through the chain reported by al-Bukhārī: Muḥammad ibn Abī al-Ḥusayn narrated to us, ʿUmar ibn Ḥafṣ ibn Ghiyāth narrated to us, Ubayy narrated to us, ʿĀṣim ibn Abī al-Najūd narrated from ʿĀmir al-Shaʿbī from Ibn ʿAbbās, who said: "I do not know." The Messenger of Allah—peace be upon him—prohibited it because it served as people's pack animal, and he disliked the loss of their transportation means. Alternatively, he forbade the meat of domestic donkeys during Khaybar. This is mere conjecture and an error, for had the Prophet—peace be upon him—not entirely prohibited them, he would have clarified the rationale behind his prohibition rather than leaving people perplexed. How then, given his statement—peace be upon him—"Indeed, it is impure," which nullifies all conjecture? They were undeniably in greater need of horses than donkeys, yet this did not prompt him to prohibit horses. Instead, he permitted their consumption and slaughter since they were lawful. Thus, the claim of those

وَقَدْ رُوِّينَا النَّهْيَ عَنْهَا عَنْ مَجْزَأَةَ بْنِ زَاهِرٍ أَحَدِ الْمُبَايِعِينَ تَحْتَ الشَّجَرَةِ، وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ فِي لُحُومِ الْحُمُرِ قَالَ: هِيَ حَرَامٌ أَلْبَتَّةَ. وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ - وَنَحَا نَحْوَهُ مَالِكٌ، فَإِنْ ذَكَرَ ذَاكِرٌ: أَنَّ ابْنَ عَبَّاسٍ أَبَاحَهَا؟ قُلْنَا: لَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَيْفَ وَابْنُ عَبَّاسٍ قَدْ أَخْبَرَ بِأَنَّهُ مُتَوَقِّفٌ فِيهَا؟ كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا مُحَمَّدُ بْنُ أَبِي الْحُسَيْنِ نَا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ نَا أُبَيٌّ نَا عَاصِمُ بْنُ أَبِي النَّجُودِ عَنْ عَامِرٍ الشَّعْبِيِّ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: لَا أَدْرِي أَنَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَجْلِ أَنَّهُ كَانَ حَمُولَةَ النَّاسِ فَكَرِهَ أَنْ تَذْهَبَ حَمُولَتُهُمْ، أَوْ حَرَّمَهُ فِي يَوْمِ خَيْبَرَ لَحْمَ الْحُمُرِ الْأَهْلِيَّةِ " فَهَذَا ظَنٌّ مِنْهُ، وَوَهْلَةٌ لِأَنَّهُ لَوْ لَمْ يُحَرِّمْهَا - عَلَيْهِ السَّلَامُ - جُمْلَةً لَبَيَّنَ وَجْهَ نَهْيِهِ عَنْهَا، وَلَمْ يَدَعْ النَّاسَ إلَى الْحَيْرَةِ، فَكَيْفَ «وَقَوْلُهُ - عَلَيْهِ السَّلَامُ - فَإِنَّهَا رِجْسٌ» وَيُبْطِلُ كُلَّ ظَنٍّ؟ وَلَقَدْ كَانُوا إلَى الْخَيْلِ بِلَا شَكٍّ أَحْوَجَ مِنْهُمْ إلَى الْحُمُرِ، فَمَا حَمَلَهُ ذَلِكَ عَلَى نَهْيٍ عَنْهَا، بَلْ أَبَاحَ أَكْلَهَا وَذَكَاتَهَا، إذْ كَانَتْ حَلَالًا، وَبِذَلِكَ أَيْضًا يَبْطُلُ قَوْلُ مَنْ قَالَ: إنَّمَا نَهَى عَنْهَا لِأَنَّهَا لَمْ تُخَمَّسْ.

who argue “He only prohibited them because they were not subjected to the fifth” is likewise invalidated.

L16752 As for the statement of those who say: “It was prohibited solely because it was consuming excrement” - this too is a false assumption without evidence, for chickens consume more excrement than it does, yet it is halal.

L16753 If they argue: “‘Ā’ishah, the Mother of the Believers, cited the verse of the Exalted {Say, *I do not find in what has been revealed to me anything forbidden*} [al-Anʿām 6:145] as evidence,” we say: The prohibition had not reached her. Had it reached her, she would have adhered to it, as she did regarding the crow, for it is not mentioned in this verse.[32]

L16754 If they mention what has been narrated from his statement—peace be upon him—regarding donkey meat: “Feed your family from your fattened livestock, for I have only disliked for you the donkeys that roam the village. Do they not eat trees and graze in the wilderness? Hunt from them.”

L16755 All of this is invalid, because it is transmitted through Abd al-Rahman ibn Bishr – who is unknown – and the other narration is transmitted through Abd al-Rahman ibn Amr ibn Luwaym – who is unknown – or through Sharik – who is weak.

L16756–16758 Then from Abū al-Ḥasan - and it is not known who he is - from Ghālib ibn Dīj - and it is not known who he is - And through the chain of Salmā bint al-Naḍr al-Khiḍriyyah, and it is not known who she is.

L16759 As for wild donkeys, their permissibility [is] as we mentioned from the Prophet - peace be upon him.

L16760 Mālik said: If it is domesticated, it is not to be eaten. This is erroneous because there is no text establishing it; it is merely an assertion without proof. A wild animal belonging to a domesticated species does not become impermissible due to domestication, nor does a domesticated animal belonging to a wild species become permissible by reverting to a wild state.

وَأَمَّا قَوْلُ مَنْ قَالَ: إِنَّمَا حُرِّمَتْ لِأَنَّهَا كَانَتْ تَأْكُلُ الْعَذِرَةَ - فَظَنٌّ كَاذِبٌ أَيْضًا بِلَا بُرْهَانٍ، وَالدَّجَاجُ آكَلُ مِنْهَا لِلْعَذِرَةِ وَهِيَ حَلَالٌ.

فَإِنْ ذَكَرُوا: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ احْتَجَّتْ بِقَوْلِهِ تَعَالَى: {قُلْ لا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا} [الأنعام: ١٤٥] الْآيَةَ؟ قُلْنَا: لَمْ يَبْلُغْهَا التَّحْرِيمُ وَلَوْ بَلَغَهَا لَقَالَتْ بِهِ، كَمَا فَعَلَتْ فِي الْغُرَابِ، وَلَيْسَ مَذْكُورًا فِي هَذِهِ الْآيَةِ.

فَإِنْ ذَكَرُوا: مَا رُوِيَ مِنْ قَوْلِهِ - عَلَيْهِ السَّلَامُ - فِي لُحُومِ الْحُمُرِ «أَطْعِمْ أَهْلَكَ مِنْ سَمِينِ مَالِكَ، فَإِنَّمَا كَرِهْتُ لَكُمْ جَوَّالَ الْقَرْيَةِ، أَلَيْسَ تَأْكُلُ الشَّجَرَ وَتَرْعَى الْفَلَاةَ؟ فَأَصِدْ مِنْهَا» .

فَهَذَا كُلُّهُ بَاطِلٌ، لِأَنَّهَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ بِشْرٍ وَهُوَ مَجْهُولٌ، وَالْآخَرُ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ عَمْرِو بْنِ لُوَيْمٍ - وَهُوَ مَجْهُولٌ - أَوْ مِنْ طَرِيقِ شَرِيكٍ - وَهُوَ ضَعِيفٌ.

ثُمَّ عَنْ أَبِي الْحَسَنِ - وَلَا يُدْرَى مَنْ هُوَ - عَنْ غَالِبِ بْنِ ديج وَلَا يُدْرَى مَنْ هُوَ - وَمِنْ طَرِيقِ سَلْمَى بِنْتِ النَّضْرِ الْخِضْرِيَّةِ وَلَا يُدْرَى مَنْ هِيَ.

وَأَمَّا حُمُرُ الْوَحْشِ: فَكَمَا ذَكَرْنَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَحْلِيلَهَا.

وَقَالَ مَالِكٌ: إنْ دَجَنَ لَمْ يُؤْكَلْ - وَهَذَا خَطَأٌ لِأَنَّهُ لَمْ يَأْتِ بِهِ نَصٌّ، فَهُوَ قَوْلٌ بِلَا بُرْهَانٍ، وَلَا يَصِيرُ الْوَحْشِيُّ مِنْ جِنْسِ الْأَهْلِيِّ حَرَامًا بِالدُّجُونِ، وَلَا يَصِيرُ الْأَهْلِيُّ مِنْ جِنْسِ الْوَحْشِيِّ حَلَالًا بِالتَّوَحُّشِ.

[32] **Qur’an references (L16753):** Qur’an 6:145 (Al-An’am).

L16761 As for mules and horses: it has been narrated to us through the chain of Ṣāliḥ ibn Yaḥyā ibn al-Miqdām ibn Maʿdī Karib, from his father, from his grandfather, from Khālid ibn al-Walīd that the Prophet (peace and blessings be upon him) prohibited eating the meat of horses, mules, donkeys, all predatory animals with fangs, and birds with talons.

وَأَمَّا الْبِغَالُ، وَالْخَيْلُ: فَقَدْ رُوِّينَا مِنْ طَرِيقِ صَالِحِ بْنِ يَحْيَى بْنِ الْمِقْدَامِ بْنِ مَعْدِ كَرِبَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ خَالِدِ بْنِ الْوَلِيدِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ أَكْلِ لُحُومِ الْخَيْلِ، وَالْبِغَالِ، وَالْحَمِيرِ، وَكُلِّ ذِي نَابٍ مِنْ السِّبَاعِ، وَكُلِّ ذِي مِخْلَبٍ مِنْ الطَّيْرِ» .

L16762 Via the narration of ʿIkrimah ibn ʿAmmār, from Yaḥyā ibn Abī Kathīr, from Abū Salamah, from Jābir: "The Messenger of Allāh (may Allāh bless him and grant him peace) forbade the meat of donkeys, horses, mules, every predatory beast with fangs, every bird with talons, and he prohibited the *mujaththama*—animals killed by confinement and beating."

وَمِنْ طَرِيقِ عِكْرِمَةَ بْنِ عَمَّارٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ عَنْ جَابِرٍ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ لُحُومِ الْحُمُرِ وَالْخَيْلِ وَالْبِغَالِ وَكُلِّ ذِي نَابٍ مِنْ السِّبَاعِ وَكُلِّ ذِي مِخْلَبٍ مِنْ الطَّيْرِ وَحَرَّمَ الْمُجَثَّمَةَ» .

L16763 And a narration we have narrated via the route of Ḥammād ibn Salamah from Abū al-Zubayr from Jābir: "The Messenger of Allāh—ṣallā Allāhu ʿalayhi wa-sallam—forbade us regarding mules and donkeys, but he did not prohibit horses."

وَخَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ «نَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْبِغَالِ وَالْحَمِيرِ وَلَمْ يَنْهَنَا عَنْ الْخَيْلِ» .

L16764 And they mentioned the words of Allah, the Most High: "And the livestock—He created them for you. In them are means of warmth and benefits, and from them you obtain food." [An-Nahl: 5][33]

وَذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {وَالأَنْعَامَ خَلَقَهَا لَكُمْ فِيهَا دِفْءٌ وَمَنَافِعُ وَمِنْهَا تَأْكُلُونَ} [النحل: ٥] .

L16765 And He, the Exalted, said: "And [He created] horses, mules, and donkeys for you to ride and as adornment" [16:8]. They said: He mentioned consumption in the context of livestock but did not mention it regarding horses, mules, and donkeys. They said: The mule is the offspring of a donkey, being procreated from it, and what is procreated from an unlawful union is unlawful.[34]

وَقَالَ تَعَالَى {وَالْخَيْلَ وَالْبِغَالَ وَالْحَمِيرَ لِتَرْكَبُوهَا وَزِينَةً} [النحل: ٨] . قَالُوا: فَذَكَرَ فِي الْأَنْعَامِ الْأَكْلَ، وَلَمْ يَذْكُرْهُ فِي الْخَيْلِ، وَالْبِغَالِ، وَالْحَمِيرِ. وَقَالُوا: الْبَغْلُ وَلَدُ الْحِمَارِ فَهُوَ مُتَوَلِّدٌ مِنْهُ وَالْمُتَوَلِّدُ مِنْ الْحَرَامِ حَرَامٌ.

L16766 Abu Muhammad said: This is all they have raised as objections. As for the narrations, none of them can be cited as proof.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا شَغَبُوا بِهِ - فَأَمَّا الْأَخْبَارُ فَلَا يُحْتَجُّ بِشَيْءٍ مِنْهَا -:

L16767–16769 As for the ḥadīth of Ṣāliḥ ibn Yaḥyā ibn al-Miqdām ibn Maʿdī Karib, it is invalid because they are unknown. All of them. Furthermore, therein lies evidence of fabrication, for it contains a narration narrated from Khālid ibn al-Walīd, reporting that he said: "I fought alongside the Prophet—may the

أَمَّا حَدِيثُ صَالِحِ بْنِ يَحْيَى بْنِ الْمِقْدَامِ بْنِ مَعْدِي كَرِبَ فَهَالِكٌ لِأَنَّهُمْ مَجْهُولُونَ كُلُّهُمْ، ثُمَّ فِيهِ دَلِيلُ الْوَضْعِ، لِأَنَّ فِيهِ عَنْ خَالِدِ بْنِ الْوَلِيدِ قَالَ: غَزَوْت مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْبَرَ - وَهَذَا بَاطِلٌ، لِأَنَّهُ لَمْ يُسْلِمْ خَالِدٌ إلَّا بَعْدَ خَيْبَرَ بِلَا خِلَافٍ.

[33] **Qur'an references (L16764):** Qur'an 16:5 (An-Nahl).
[34] **Qur'an references (L16765):** Qur'an 16:8 (An-Nahl).

peace and blessings of Allah be upon him—in Khaybar." But this is baseless, as Khālid did not embrace Islam except after Khaybar, without dissent.

L16770 As for the ḥadīth of ʿIkrimah ibn ʿAmmār, ʿIkrimah is weak.

L16771 We have been transmitted a fabricated report through his chain of narration wherein none is accused except him. Either [the error] was introduced to him and he did not take notice of it, or the calamity originates from him. We have elaborated this in detail in *Kitāb al-Iṣāl*.

L16772 As for the narration of Ḥammād ibn Salamah, Abū al-Zubayr was not mentioned in it as having heard from Jābir. We previously stated before the authentic narration that whatever Ḥammād narrated from Jābir which was not present in al-Layth ibn Saʿd's transmissions, nor cited with audition from Jābir, was not heard by Ḥammād from Jābir—thus it is valid as a disconnected chain.

L16773 This report has been narrated to us through the chain of Abū Az-Zubayr, who heard it from Jābir. He did not mention mules in it—and indeed an authentic report regarding the permissibility of horses from the Prophet (peace be upon him) had previously been authenticated from Jābir.

L16774 As for the verse, there is no mention in it of eating—neither permitting nor prohibiting it—so they have no argument therein. Nor does it mention selling either. Thus, they should prohibit it, since it is not mentioned in the verse. Yet the Prophet's (PBUH) permissibility [of such matters] is the judge over all things.

L16775 It has been authentically established through the chain of Asmā bint Abī Bakr al-Ṣiddīq: "We ritually slaughtered a horse during the time of the Messenger of Allah—may Allah bless him and grant him peace—and we ate it." We narrated it through the chain of al-Bukhārī.[35]

L16776 From al-Ḥumaydī from Sufyān ibn ʿUyaynah from Hishām ibn ʿUrwah from Fāṭimah bint al-Mundhir ibn al-Zubayr from Asma.

وَأَمَّا حَدِيثُ عِكْرِمَةَ بْنِ عَمَّارٍ، فَعِكْرِمَةَ ضَعِيفٌ.

وَقَدْ رُوِّينَا مِنْ طَرِيقِهِ خَبَرًا مَوْضُوعًا لَيْسَ فِيهِ أَحَدٌ يُتَّهَمُ غَيْرَهُ -: فَإِمَّا أُدْخِلَ عَلَيْهِ فَلَمْ يَأْبَهُ لَهُ، وَإِمَّا الْبَلِيَّةُ مِنْ قِبَلِهِ؛ وَقَدْ ذَكَرْنَاهُ مُبَيَّنًا فِي كِتَابِ الْإِيصَالِ.

وَأَمَّا حَدِيثُ حَمَّادِ بْنِ سَلَمَةَ فَإِنَّهُ لَمْ يُذْكَرْ فِيهِ أَبُو الزُّبَيْرِ سَمَاعًا مِنْ جَابِرٍ؛ وَقَدْ ذَكَرْنَا قَبْلَ الرِّوَايَةَ الصَّحِيحَةَ أَنَّ مَا لَمْ يَكُنْ عِنْدَ اللَّيْثِ بْنِ سَعْدٍ مِنْ حَدِيثِهِ عَنْ جَابِرٍ، وَلَا ذَكَرَ فِيهِ سَمَاعًا مِنْ جَابِرٍ فَلَمْ يَسْمَعْهُ مِنْ جَابِرٍ فَصَحَّ مُنْقَطِعًا.

وَقَدْ رُوِّينَا هَذَا الْخَبَرَ مِنْ طَرِيقِ أَبِي الزُّبَيْرِ أَنَّهُ سَمِعَ مِنْ جَابِرٍ فَلَمْ يَذْكُرْ فِيهِ الْبِغَالَ - وَقَدْ صَحَّ قَبْلُ عَنْ جَابِرٍ إبَاحَةُ الْخَيْلِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَأَمَّا الْآيَةُ: فَلَا ذِكْرَ فِيهَا لِلْأَكْلِ لَا بِإِبَاحَةٍ وَلَا بِتَحْرِيمٍ، فَلَا حُجَّةَ لَهُمْ فِيهَا، وَلَا ذَكَرَ فِيهَا أَيْضًا الْبَيْعَ - فَيَنْبَغِي أَنْ يُحَرِّمُوهُ لِأَنَّهُ لَمْ يُذْكَرْ فِي الْآيَةِ، وَإِبَاحَةُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهَا حَاكِمٌ عَلَى كُلِّ شَيْءٍ.

وَقَدْ صَحَّ مِنْ طَرِيقِ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ «نَحَرْنَا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَسًا فَأَكَلْنَاهُ» . رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ

عَنْ الْحُمَيْدِيِّ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ فَاطِمَةَ بِنْتِ الْمُنْذِرِ بْنِ الزُّبَيْرِ عَنْ أَسْمَاءَ.

[35] **Hadith references (L16775):** Sahih al-Bukhari 5512.

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ وَكِيعٍ، وَحَفْصِ بْنِ غِيَاثٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَعَبْدِ اللَّهِ بْنِ نُمَيْرٍ، وَمَعْمَرٍ، وَأَبِي مُعَاوِيَةَ، وَأَبِي أُسَامَةَ، كُلُّهُمْ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ فَاطِمَةَ بِنْتِ الْمُنْذِرِ عَنْ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ.

L16777 We have also narrated it via the path of Wakiʿ, Ḥafṣ ibn Ghiyāth, Sufyān al-Thawrī, ʿAbdullāh ibn Numayr, Maʿmar, Abū Muʿāwiyah, and Abū Usāmah: all of them from Hishām ibn ʿUrwah, from Fāṭimah bint al-Mundhir, from Asmāʾ bint Abī Bakr al-Ṣiddīq.

وَمِنْ طَرِيقِ ابْنِ سَعِيدٍ الْقَطَّانِ عَنْ ابْنِ جُرَيْجٍ سَأَلْتُ عَطَاءَ بْنَ أَبِي رَبَاحٍ عَنْ لَحْمِ الْفَرَسِ؟ فَقَالَ: لَمْ يَزَلْ سَلَفُك يَأْكُلُونَهُ؟ قُلْتُ: أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ قَالَ: نَعَمْ.

L16778 From Ibn Sa’id al-Qattan, from Ibn Jurayj: I asked Ata ibn Abi Rabah about horse meat. He said: “Your predecessors never ceased to eat it.” I asked: “The Companions of Allah’s Messenger—peace and blessings of Allah be upon him—?” He replied: “Yes.”

وَقَدْ أَدْرَكَ عَطَاءٌ جُمْهُورَ الصَّحَابَةِ مِنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَمَنْ دُونَهَا.

L16779 And indeed ‘Aṭā’ met the majority of the Companions, including ‘Ā’ishah, the Mother of the Believers, and those after her.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ، وَعَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: ذَبَحَ أَصْحَابُ ابْنِ مَسْعُودٍ فَرَسًا، قَالَ ابْنُ مَهْدِيٍّ: فَاقْتَسَمُوهُ بَيْنَهُمْ، وَقَالَ عَبْدُ الرَّزَّاقِ: فَأَكَلُوهُ.

L16780–16781 Via the transmission of ʿAbd al-Raḥmān ibn Mahdī and ʿAbd al-Razzāq—both narrating from Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm al-Nakhaʿī—who said: The companions of Ibn Masʿūd slaughtered a horse. Ibn Mahdī said: So they divided it among themselves; ʿAbd al-Razzāq said: So they ate it.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ أَنَا مُغِيرَةُ عَنْ إبْرَاهِيمَ قَالَ: أُهْدِيَ لِلْأَسْوَدِ بْنِ يَزِيدَ لَحْمُ فَرَسٍ فَأَكَلَ مِنْهُ - وَبِهِ إلَى هُشَيْمٍ عَنْ الْقَاسِمِ بْنِ أَبِي أَيُّوبَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: مَا أَكَلْتُ لَحْمًا أَطْيَبَ مِنْ مَعْرَفَةِ بِرْذَوْنٍ.

L16782 And through the chain of Saʿīd ibn Manṣūr: Hushaym reported to us: Mughīrah reported from Ibrāhīm, who said: Al-Aswad ibn Yazīd was gifted the meat of a horse, and he ate from it. And through Hushaym: From al-Qāsim ibn Abī Ayyūb, from Saʿīd ibn Jubayr, who said: I have never eaten meat more delicious than that of a mule I knew.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ أَنَّهُ سَأَلَ ابْنَ شِهَابٍ عَنْ لَحْمِ الْفَرَسِ، وَالْبَغْلِ، وَالْبِرْذَوْنِ؟ فَقَالَ: لَا أَعْلَمُهُ حَرَامًا وَلَا يُفْتِي أَحَدٌ مِنْ الْعُلَمَاءِ بِأَكْلِهِ.

L16783 And through the chain of Ibn Wahb from Yunus ibn Yazid, that he asked Ibn Shihab about the meat of horses, mules, and *birḏawn*. He said: “I do not know it to be forbidden, nor does any scholar issue a fatwa permitting its consumption.”

قَالَ أَبُو مُحَمَّد: لَمْ يُحَرِّمْ الزُّهْرِيُّ الْبَغْلَ، وَأَمَّا فُتْيَا الْعُلَمَاءِ بِأَكْلِ الْفَرَسِ فَتَكَادُ أَنْ تَكُونَ إجْمَاعًا عَلَى مَا ذَكَرْنَا قَبْلُ وَمَا نَعْلَمُ عَنْ أَحَدٍ مِنْ السَّلَفِ كَرَاهَةَ أَكْلِ لُحُومِ الْخَيْلِ إلَّا

L16784 Abu Muhammad said: Al-Zuhri did not prohibit mules. As for the scholars’ legal ruling on eating horse meat, this nearly amounts to consensus as we previously stated. We know of no disapproval (makruh) from any of the Salaf regarding the consumption of horse flesh except an unauthentic narration attributed to Ibn Abbas. This is because the narration comes through the

client of Nafi‘ ibn Alqama - who is unknown, as his name was not mentioned, so his identity is unknown.

رِوَايَةً عَنْ ابْنِ عَبَّاسٍ لَا تَصِحُّ؛ لِأَنَّهُ عَنْ مَوْلَى نَافِعِ بْنِ عَلْقَمَةَ - وَهُوَ مَجْهُولٌ لَمْ يُذْكَرْ اسْمُهُ فَلَا يُدْرَى مَنْ هُوَ.

L16785 If a prohibition concerning the mule had been established as valid according to us, we would have ruled accordingly.

وَلَوْ صَحَّ عِنْدَنَا فِي الْبَغْلِ نَهْيٌ لَقُلْنَا بِهِ.

L16786 As for their claim that the mule is the offspring of the donkey and generated from it: verily, the mule – from the moment the soul is breathed into it – is distinct from the donkey and is not called a donkey. Thus, it is impermissible to apply the legal ruling of the donkey to it, for the Text only stipulates the prohibition of the donkey, and the mule is neither a donkey nor a component of the donkey.

وَأَمَّا قَوْلُهُمْ: إنَّ الْبَغْلَ وَلَدُ الْحِمَارِ، وَمُتَوَلِّدٌ مِنْهُ، فَإِنَّ الْبَغْلَ مُذْ يُنْفَخُ فِيهِ الرُّوحُ فَهُوَ غَيْرُ الْحِمَارِ، وَلَا يُسَمَّى حِمَارًا، فَلَا يَجُوزُ أَنْ يُحْكَمَ لَهُ بِحُكْمِ الْحِمَارِ، لِأَنَّ النَّصَّ إنَّمَا جَاءَ بِتَحْرِيمِ الْحِمَارِ، وَالْبَغْلُ لَيْسَ حِمَارًا وَلَا جُزْءًا مِنْ الْحِمَارِ.

L16787 Some ignorant people said: “The donkey is prohibited by explicit text, and likewise the horse and mule, because they are possessors of a hoof like it.” This constitutes among the most absurd analogies on earth, for it would be said to him: “What distinguishes you from your opponent?” He would respond: “The permissibility of the horse is established by the established text, and the mule and donkey are possessors of a hoof like it, thus they are lawful. Are you two in opposition to the Messenger of Allah—peace and blessings of Allah be upon him—except as two wagered horses? Or one who tells you: ’The wild donkey is lawful by consensus, and it has a hoof’—then the horse and mule are like it.” All this is confusion. Rather, the wild donkey and horse are explicitly permitted by text, while the domestic donkey is explicitly prohibited by text. It is impermissible to contradict the texts.

وَقَالَ بَعْضُ الْجُهَّالِ: الْحِمَارُ حَرَامٌ بِالنَّصِّ، وَالْفَرَسُ، وَالْبَغْلُ مِثْلُهُ، لِأَنَّهُمَا ذَوَا حَافِرٍ مِثْلُهُ فَكَانَ هَذَا مِنْ أَسْخَفِ قِيَاسٍ فِي الْأَرْضِ، لِأَنَّهُ يُقَالُ لَهُ: مَا الْفَرْقُ بَيْنَك وَبَيْنَ مَنْ عَارَضَك؟ فَقَالَ: قَدْ صَحَّ تَحْلِيلُ الْفَرَسِ بِالنَّصِّ الثَّابِتِ، وَالْبَغْلُ وَالْحِمَارُ ذَوَا حَافِرٍ مِثْلُهُ، فَهُمَا حَلَالٌ، فَهَلْ أَنْتُمَا فِي مُخَالَفَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا فَرَسَا رِهَانٍ؟ أَوْ مَنْ قَالَ لَك: حِمَارُ وَحْشٍ حَلَالٌ بِإِجْمَاعٍ وَهُوَ ذُو حَافِرٍ، فَالْفَرَسُ، وَالْبَغْلُ مِثْلُهُ - وَهَذَا كُلُّهُ تَخْلِيطٌ، بَلْ حِمَارُ الْوَحْشِ، وَالْفَرَسِ مَنْصُوصٌ عَلَى تَحْلِيلِهِمَا، وَالْحِمَارُ الْأَهْلِيُّ مَنْصُوصٌ عَلَى تَحْرِيمِهِ، فَلَا يَجُوزُ مُخَالَفَةُ النُّصُوصِ.

L16788–16789 As for the mule, Allah the Exalted has said: “O people, eat of what is on the earth as lawful and wholesome” [Al-Baqarah: 168].[36]

وَأَمَّا الْبَغْلُ فَقَدْ قَالَ اللَّهُ تَعَالَى: {يَا أَيُّهَا النَّاسُ كُلُوا مِمَّا فِي الأَرْضِ حَلالا طَيِّبًا} [البقرة: ١٦٨] .

L16790 And He, the Exalted, said: “He has made clear to you what He has forbidden, except what you are compelled to [consume] out of necessity” [Al-An‘ām: 119].[37]

وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] .

[36] **Qur’an references (L16789):** Qur’an 2:168 (Al-Baqarah).
[37] **Qur’an references (L16790):** Qur’an 6:119 (Al-An’am).

L16791 The mule is permissible by the explicit text of the Quran because its prohibition has not been detailed, and nothing from the donkey is permissible except what the text has permitted only in terms of its ownership, selling, buying, and riding—and in Allah the Exalted we seek support.

L16792 **Issue: What is forbidden to eat its meat, then its sale and milk are also forbidden.**

L16793 998. Issue: Everything whose meat is forbidden to eat is also forbidden to sell, including its milk, because it is part of it and attributed to it—and success is from Allah, the Exalted—except women's milk, which is permissible as we mentioned previously—and success is from Allah, the Exalted.

L16794 It is said: the she-ass's milk, the swine's milk, the crow's eggs, the snake's eggs, and the kite's eggs—just as it is said: the swine's foreleg, the donkey's head, the crow's wing, and the kite's raptorial claws, with no difference [in ruling].

L16795 **The ruling on eating the hoopoe.**

L16796 999. Issue: It is not permissible to eat the hoopoe, the shrike, or the frog, due to the Prophet's prohibition (peace be upon him) against killing them, as previously mentioned.

L16797 **The issue of what can be lawfully slaughtered from that which the prohibition has not been specified.**

L16798 1000. Issue: Both land tortoises and sea turtles, as well as their eggs, are lawful to eat. This is based on Allah's command: "Eat of what is in the earth, lawful and wholesome" [Al-Baqarah: 168], alongside His clarification: "He has already detailed for you what He has forbidden you" [Al-An'am: 119]. Since He has not explicitly prohibited tortoises or turtles, they are entirely lawful—including all parts and their offspring.[38]

L16799 Likewise are the vultures, the Egyptian vulture, the gecko, the hedgehogs,

فَالْبَغْلُ حَلَالٌ بِنَصِّ الْقُرْآنِ لِأَنَّهُ لَمْ يُفَصَّلْ تَحْرِيمُهُ وَلَا يَحِلُّ مِنْ الْحِمَارِ إلَّا مَا أَحَلَّهُ النَّصُّ مِنْ مِلْكِهِ، وَبَيْعِهِ، وَابْتِيَاعِهِ، وَرُكُوبِهِ، فَقَطْ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

[مَسْأَلَة مَا حَرُمَ أَكْلُ لَحْمِهِ فَحَرَامٌ بَيْعُهُ وَلَبَنُهُ]

٩٩٨ - مَسْأَلَةٌ: وَكُلُّ مَا حَرُمَ أَكْلُ لَحْمِهِ فَحَرَامٌ بَيْعُهُ وَلَبَنُهُ، لِأَنَّهُ بَعْضُهُ وَمَنْسُوبٌ إلَيْهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إلَّا أَلْبَانَ النِّسَاءِ فَهِيَ حَلَالٌ كَمَا ذَكَرْنَا قَبْلُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَيُقَالُ: لَبَنُ الْأَتَانِ، وَلَبَنُ الْخِنْزِيرِ، وَبَيْضُ الْغُرَابِ، وَبَيْضُ الْحَيَّةِ، وَبَيْضُ الْحِدَأَةِ - كَمَا يُقَالُ يَدُ الْخِنْزِيرِ، وَرَأْسُ الْحِمَارِ، وَجَنَاحُ الْغُرَابِ، وَزِمَكَّى الْحِدَأَةِ وَلَا فَرْقَ.

[مَسْأَلَة أَكْلُ الْهُدْهُدِ]

٩٩٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ الْهُدْهُدِ، وَلَا الصُّرَدِ، وَلَا الضِّفْدَعِ، لِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ قَتْلِهَا، كَمَا ذَكَرْنَا قَبْلُ.

[مَسْأَلَة مَا أَمْكَنَ أَنْ يُذَكَّى مِمَّا لَمْ يُفَصَّلْ تَحْرِيمُهُ]

١٠٠٠ - مَسْأَلَةٌ: وَالسُّلَحْفَاةُ الْبَرِّيَّةُ وَالْبَحْرِيَّةُ حَلَالٌ أَكْلُهَا، وَأَكْلُ بَيْضِهَا لِقَوْلِ اللَّهِ تَعَالَى: {كُلُوا مِمَّا فِي الأَرْضِ حَلالا طَيِّبًا} [البقرة: ١٦٨] مَعَ قَوْلِهِ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] وَلَمْ يُفَصِّلْ لَنَا تَحْرِيمَ السُّلَحْفَاةِ، فَهِيَ حَلَالٌ كُلُّهَا وَمَا تَوَلَّدَ مِنْهَا.

[38] **Qur'an references (L16798):** Qur'an 2:168 (Al-Baqarah); Qur'an 6:119 (Al-An'am).

the jerboa, the sand skink, the hyrax, the scorpion, the large rodents, the monitor lizard, all birds, and every animal that can be ritually slaughtered among those whose prohibition has not been explicitly detailed.

L16800 Similarly, the bat, the bat, and the swallow, and with Allah alone is all success.

L16801 It is reported from ʻAṭāʼ that it is permissible to eat turtles and crabs.

L16802 From Tāwus, al-Ḥasan, Muḥammad ibn ʿAlī, and the jurists of Medina: the permissibility of eating turtle.

L16803–16805 And from Ibn Abbas: that he prohibited those in ihram from killing the rakhama and imposed an expiation for it if it is mentioned. The report stating, "The hedgehog is vile among impure things," comes from an unknown, unnamed narrator. Were it authentic, we would have upheld it and would not have opposed it.

L16806 **A discussion on eating the meat of jallalah [animals fed impurities].**

L16807 1001 – Issue: It is impermissible to eat the meat of filth-eating animals (Jallalah), drink their milk, or consume their derivatives, because they are from them and part of them. It is also impermissible to ride them. These are animals that feed on impurities, including camels and other four-legged animals specifically.

L16808 Chickens and birds are not termed *jalālah* (animals feeding on filth), even if they consume excrement. If they are prevented from eating it, causing the name *jalālah* to cease, their consumption, their milk, and their use for riding become lawful.

L16809 For what has been narrated to us through the chain reported by Abu Dawud: Uthman ibn Abi Shaybah, from Abdah, from Muhammad ibn Ishaq, from Ibn Abi Najih, from Mujahid, from Ibn Umar, who said: "The Messenger of

وَكَذَلِكَ النُّسُورُ، وَالرَّخَمُ، والبلزج، وَالْقَنَافِذُ، وَالْيَرْبُوعُ، وَأُمُّ حُبَيْنٍ وَالْوَبْرُ، وَالسَّرَطَانُ، وَالْجَرَاذِينُ، وَالْوَرَلُ، وَالطَّيْرُ كُلُّهُ، وَكُلُّ مَا أَمْكَنَ أَنْ يُذَكَّى مِمَّا لَمْ يُفَصَّلْ تَحْرِيمُهُ.

وَكَذَلِكَ الْخُفَّاشُ، وَالْوَطْوَاطُ، وَالْخَطَّافُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

رُوِّينَا عَنْ عَطَاءٍ إبَاحَةَ أَكْلِ السُّلَحْفَاةِ، وَالسَّرَطَانِ.

وَعَنْ طَاوُسٍ، وَالْحَسَنِ، وَمُحَمَّدِ بْنِ عَلِيٍّ، وَفُقَهَاءِ الْمَدِينَةِ: إبَاحَةُ أَكْلِ السُّلَحْفَاةِ.

وَعَنْ ابْنِ عَبَّاسٍ: أَنَّهُ نَهَى الْمُحْرِمَ عَنْ قَتْلِ الرَّخَمَةِ وَجَعَلَ فِيهَا الْجَزَاءَ، فَإِنْ ذُكِرَ الْخَبَرُ الَّذِي فِيهِ: «الْقُنْفُذُ خَبِيثٌ مِنْ الْخَبَائِثِ» فَهُوَ عَنْ شَيْخٍ مَجْهُولٍ لَمْ يُسَمَّ وَلَوْ صَحَّ لَقُلْنَا بِهِ، وَمَا خَالَفْنَاهُ.

[مَسْأَلَة أَكْلُ لُحُومِ الْجَلَّالَةِ]

١٠٠١ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ لُحُومِ الْجَلَّالَةِ، وَلَا شُرْبُ أَلْبَانِهَا، وَلَا مَا تَصَرَّفُ مِنْهَا؛ لِأَنَّهُ مِنْهَا وَبَعْضُهَا، وَلَا يَحِلُّ رُكُوبُهَا، وَهِيَ الَّتِي تَأْكُلُ الْعَذِرَةَ مِنْ الْإِبِلِ وَغَيْرِ الْإِبِلِ مِنْ ذَوَاتِ الْأَرْبَعِ خَاصَّةً.

وَلَا يُسَمَّى الدَّجَاجُ، وَلَا الطَّيْرُ: جَلَّالَةً، وَإِنْ كَانَتْ تَأْكُلُ الْعَذِرَةَ فَإِذَا قُطِعَ عَنْهَا أَكَلَهَا فَانْقَطَعَ عَنْهَا الِاسْمُ حَلَّ أَكْلُهَا، وَأَلْبَانُهَا، وَرُكُوبُهَا.

لِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نَا عَبْدَةُ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عُمَرَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَكْلِ الْجَلَّالَةِ وَأَلْبَانِهَا» .

Allah (peace and blessings be upon him) prohibited eating the Jallalah and their milk."[39]

وَمِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نَا أَحْمَدُ بْنُ يَزِيدَ نَا يَزِيدُ بْنُ مُحَمَّدٍ نَا يَزِيدُ بْنُ زُرَيْعٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ لَبَنِ الْجَلَّالَةِ وَلُحُومِهَا وَعَنْ أَكْلِ الْمُجَثَّمَةِ» وَهَذَا عُمُومٌ لِكُلِّ مَا طَعَامُهُ الْجِلَّةُ، وَهِيَ الْعَذِرَةُ - هَكَذَا رُوِّينَا عَنِ الْأَصْمَعِيِّ، وَأَبِي عُبَيْدٍ.

L16810 From the chain of Qāsim ibn Aṣbagh: Aḥmad ibn Yazīd transmitted to us, Yazīd ibn Muḥammad transmitted to us, Yazīd ibn Zuraiʿ transmitted to us from Saʿīd ibn Abī ʿArūbah from Qatādah from ʿIkrimah from Ibn ʿAbbās: "The Messenger of Allah (peace be upon him) prohibited the milk of animals that consume filth, their meat, and eating the confined animal." This constitutes a general ruling for anything fed on jillah, which is excrement – as we have been transmitted from al-Aṣmaʿī and Abū ʿUbayd.

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا أَحْمَدُ بْنُ سُرَيْجٍ الرَّازِيّ أَنَا عَبْدُ اللَّهِ بْنُ جَهْمٍ نَا عَمْرٌو يَعْنِي ابْنَ أَبِي قَيْسٍ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنِ الْجَلَّالَةِ فِي الْإِبِلِ أَنْ يُرْكَبَ عَلَيْهَا أَوْ يُشْرَبَ مِنْ أَلْبَانِهَا» فَفِي هَذَا بَعْضُ مَا فِي ذَلِكَ.

L16811 From the narration of Abu Dawud: Ahmad ibn Suraij al-Razi informed us, Abdullah ibn Jahm informed us, Amr—meaning Ibn Abi Qays—narrated from Ayyub al-Sikhtiyani, from Nafi', from Ibn Umar, who said: "The Messenger of Allah—peace and blessings be upon him—prohibited al-jallalah camels (those that consume filth) from being ridden or their milk being drunk." This includes some of the rulings related to that matter.[40]

وَفِيهِ أَيْضًا زِيَادَةُ الرُّكُوبِ وَتَحْرِيمُهُ.

L16812 In it is also excessive riding and its prohibition.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي يَزِيدَ عَنْ أَبِيهِ: أَنَّ عُمَرَ قَالَ لِرَجُلٍ لَهُ إِبِلٌ جَلَّالَةٌ: لَا تَحُجَّ عَلَيْهَا وَلَا تَعْتَمِرْ.

L16813 It was narrated through the chain of Abd al-Razzaq from Sufyan ibn Uyaynah from Ubayd Allah ibn Abi Yazid from his father that Umar said to a man who owned Jallalah camels: "Do not perform Hajj or Umrah on them."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنِ ابْنِ جُرَيْجٍ كَانَ عَطَاءٌ يَنْهَى عَنْ جَلَّالَةِ الْإِبِلِ، وَالْغَنَمِ أَنْ تُؤْكَلَ فَإِنْ حَبَسْتَهُمَا وَعَلَفْتَهُمَا حَتَّى تَطِيبَ بُطُونُهُمَا فَلَا بَأْسَ حِينَئِذٍ بِأَكْلِهَا.

L16814–16816 Through the transmission of Ibn Wahb from Ibn Jurayj, 'Ata would prohibit jallalah among camels and sheep from... They may be eaten. But if you confine the two of them and feed them until their stomachs are cleansed, there is no harm in eating them.

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّهُ قَالَ: لَا أُصَاحِبُ أَحَدًا رَكِبَ جَلَّالَةً.

L16817 Ibn Jurayj said: And 'Amr ibn Dīnār informed me from 'Abdullāh ibn 'Umar that he said: I do not accompany anyone who rides a *jallālah* animal.

[39] **Hadith references (L16809):** Sunan Abi Dawud 3785; Jami at-Tirmidhi 1824; Mishkat al-Masabih 4126.

[40] **Hadith references (L16811):** Sunan Abi Dawud 3787.

[مَسْأَلَة أَكْلُ مَا ذُبِحَ أَوْ نُحِرَ لِغَيْرِ اللَّهِ تَعَالَى]

The issue of consuming what has been slaughtered (by dhabh) or ritually slaughtered (by nahr) for other than Allah, the Exalted.

١٠٠٢ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ مَا ذُبِحَ أَوْ نُحِرَ لِغَيْرِ اللَّهِ تَعَالَى، وَلَا مَا سُمِّيَ عَلَيْهِ غَيْرُ اللَّهِ تَعَالَى مُتَقَرِّبًا بِتِلْكَ الذَّكَاةِ إِلَيْهِ - سَوَاءٌ ذَكَرَ اللَّهَ تَعَالَى مَعَهُ أَوْ لَمْ يَذْكُرْ - وَكَذَلِكَ مَا ذُكِّيَ مِنْ الصَّيْدِ لِغَيْرِهِ تَعَالَى -: فَلَوْ قَالَ: بِاسْمِ اللَّهِ وَصَلَّى اللَّهُ عَلَى الْمَسِيحِ، أَوْ قَالَ: عَلَى مُحَمَّدٍ، أَوْ ذَكَرَ سَائِرَ الْأَنْبِيَاءِ، فَهُوَ حَلَالٌ؛ لِأَنَّهُ لَمْ يُهِلَّ بِهِ لَهُمْ، قَالَ اللَّهُ تَعَالَى: {أَوْ فِسْقًا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ} [الأنعام: ١٤٥] فَسَوَاءٌ ذُكِرَ اللَّهُ تَعَالَى عَلَيْهِ، أَوْ لَمْ يُذْكَرْ هُوَ مِمَّا أُهِلَّ لِغَيْرِ اللَّهِ تَعَالَى بِهِ فَهُوَ حَرَامٌ سَوَاءٌ ذَبَحَهُ مُسْلِمٌ أَوْ كِتَابِيٌّ.

1002. Issue: It is not permissible to eat what is slaughtered or sacrificed (dhabḥ or nahr) for other than Allah the Exalted, nor what is slaughtered while invoking any name other than Allah the Exalted—seeking nearness to it through that slaughter—regardless of whether Allah's name is mentioned alongside it or not. Similarly prohibited is what is ritually slaughtered from hunted game for other than Him. If one says, "In the name of Allah, and may Allah send blessings upon the Messiah," or says, "upon Muhammad," or mentions other prophets, it remains lawful because the slaughter was not ritually dedicated to them. Allah the Exalted said: "Or [meat] offered in devotion to other than Allah" (6:145). Thus, whether Allah's name is mentioned over it or not, if the slaughter is devoted to other than Allah the Exalted, it is unlawful—whether performed by a Muslim or a person of the Book.[41]

وَقَالَ بَعْضُ الْقَائِلِينَ: قَدْ أَبَاحَ اللَّهُ تَعَالَى لَنَا أَكْلَ ذَبَائِحِهِمْ - وَهُوَ يَعْلَمُ مَا يَقُولُونَ -: وَهَذَا لَيْسَ حُجَّةً فِي إبَاحَةِ مَا حَرَّمَ اللَّهُ تَعَالَى، لِأَنَّ الَّذِي أَبَاحَ لَنَا ذَبَائِحَهُمْ، وَعَلِمَ مَا يَقُولُونَ هُوَ اللَّهُ عَزَّ وَجَلَّ الْمُحَرِّمُ عَلَيْنَا مَا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ، فَلَا يَحِلُّ تَرْكُ شَيْءٍ مِنْ أَمْرِهِ تَعَالَى لِأَمْرٍ آخَرَ، وَلَا بُدَّ مِنْ اسْتِعْمَالِهِمَا جَمِيعًا، وَلَيْسَ ذَلِكَ إلَّا بِاسْتِثْنَاءِ الْأَقَلِّ مِنْ الْأَعَمِّ.

Some of those who said: "Allah the Exalted has permitted us to eat their slaughtered animals"—while He knows what they say—this cannot serve as evidence for permitting what Allah has prohibited. For He who permitted their slaughtered animals to us while knowing their statements is the same One who forbade us from what is dedicated to other than Allah with it. Therefore, it is impermissible to abandon any of His Exalted commands for another command. Both must be implemented together, and this can only be achieved by excepting the more specific from the more general.

وَرُوِيَتْ فِي هَذَا رِوَايَاتٌ عَنْ عُبَادَةَ بْنِ الصَّامِتِ، وَأَبِي الدَّرْدَاءِ، وَالْعِرْبَاضِ بْنِ سَارِيَةَ، وَعَلِيٍّ، وَابْنِ عَبَّاسٍ، وَأَبِي أُمَامَةَ، كُلُّهَا عَنْ مَجَاهِيلَ، أَوْ عَنْ كَذَّابٍ، أَوْ عَنْ ضَعِيفٍ؛ وَلَكِنَّهُ صَحِيحٌ عَنْ بَعْضِ التَّابِعِينَ. وَرُوِّينَا عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ امْرَأَةً سَأَلَتْهَا عَمَّا ذُبِحَ لِعِيدِ النَّصَارَى؟ فَقَالَتْ عَائِشَةُ: أَمَّا مَا ذُبِحَ لِذَلِكَ الْيَوْمِ فَلَا تَأْكُلُوا مِنْهُ.

Narrations have been reported concerning this matter from ʿUbādah ibn al-Ṣāmit, Abū al-Dardāʾ, al-ʿIrbaḍ ibn Sāriyah, ʿAlī, Ibn ʿAbbās, and Abū Umāmah—all are from obscure narrators, a liar, or a weak narrator. However, it is sound from some of the Successors. We have been narrated from ʿĀʾishah, the Mother of the Believers, that a woman asked her about what

[41] **Qur'an references (L16819):** Qur'an 6:145 (Al-An'am).

is slaughtered for the festival of the Christians such as Christmas or Easter. ʿĀ'ishah replied: "As for what is slaughtered for that day, do not eat from it."

وَمِنْ طَرِيقِ ابْنِ عُمَرَ مَا ذُبِحَ لِلْكَنِيسَةِ فَلَا تَأْكُلْهُ.

L16822 And via the chain of Ibn Umar: What is slaughtered for the church, do not eat it.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ قَيْسٍ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ زَاذَانَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إِذَا سَمِعْتَ النَّصْرَانِيَّ يَقُولُ: بِاسْمِ الْمَسِيحِ، فَلَا تَأْكُلْ، وَإِذَا لَمْ تَسْمَعْ فَكُلْ.

L16823 And through the chain of Abd al-Rahman ibn Mahdi from Qays from Ata ibn al-Sa'ib from Zadhan from Ali ibn Abi Talib, who said: If you hear a Christian say, "In the name of Christ," you must not eat; but if you do not hear it, you may eat.

وَصَحَّ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي ذَبِيحَةِ النَّصْرَانِيِّ إِذَا تَوَارَى عَنْكَ فَكُلْ.

L16824 It is reliably established from Ibrāhīm al-Nakhaʿī concerning an animal slaughtered by a Christian: if the slaughter is hidden from your view, you may still eat it.

وَعَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ فِي ذَبَائِحِ أَهْلِ الْكِتَابِ، قَالَ: كُلُّ مَا لَمْ تَسْمَعْهُ أَهَلَّ بِهِ لِغَيْرِ اللَّهِ تَعَالَى.

L16825–16826 And from Hammad ibn Abi Sulayman regarding the slaughtered animals of the People of the Book, he said: All that you do not hear them invoke over it for other than Allah the Exalted.

وَعَنِ الْحَسَنِ، وَطَاوُسٍ، وَمُجَاهِدٍ: أَنَّهُمْ كَرِهُوا مَا ذُبِحَ لِلْآلِهَةِ.

L16827 It is reported from Al-Ḥasan, Ṭāwūs, and Mujāhid that they deemed reprehensible anything slaughtered for idols.

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ وَكَّلَ بِهِمْ مَنْ يَمْنَعُهُمْ أَنْ يُشْرِكُوا عَلَى ذَبَائِحِهِمْ، وَيَأْمُرُهُمْ أَنْ يُسَمُّوا اللَّهَ تَعَالَى. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ قَالَ: إِذَا سَمِعْتَ فِي الذَّبِيحَةِ غَيْرَ اسْمِ اللَّهِ تَعَالَى، فَلَا تَأْكُلْ.

L16828 From Umar ibn Abd al-Aziz that he appointed someone to prevent them from associating partners in their slaughtered animals and commanded them to pronounce the name of Allah the Exalted. Through the chain of Ibn Abi Shaybah, who narrated to us from Abdullah ibn al-Mubarak, from Ma'mar, from al-Zuhri, who said: If you hear in the slaughtered animal other than the name of Allah the Exalted, do not eat it.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَلِيِّ بْنِ صَالِحٍ عَنْ مُحَمَّدِ بْنِ جُحَادَةَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: إِذَا سَمِعْتَه يُهِلُّ بِالْمَسِيحِ، فَلَا تَأْكُلْ.

L16829 And via the chain of Wakiʿ from ʿAli ibn Salih from Muḥammad ibn Juḥādah from Ibrāhīm al-Nakhaʿī, who said: If you hear him proclaiming Jesus the Messiah, do not eat [what he offers].

وَهُوَ قَوْلُ الْحَارِثِ الْعُكْلِيِّ، وَمُحَمَّدِ بْنِ سِيرِينَ.

L16830 It is the opinion of al-Ḥārith al-ʿUklī, and Muḥammad ibn Sīrīn.

L16831 Ali said: And it is said to those who oppose this: "Allah the Exalted has permitted their slaughtered animals, though He knows they slaughter pigs. Would he then eat it?" If they reply: "No, because Allah has prohibited pigs,"

it is said to them: “Allah the Exalted has prohibited what is slaughtered in the name of other than Him just as He prohibited pigs—equally and without distinction.”

قَالَ عَلِيٌّ: وَيُقَالُ لِمَنْ خَالَفَ هَذَا: قَدْ أَحَلَّ اللَّهُ تَعَالَى ذَبَائِحَهُمْ، وَهُوَ تَعَالَى يَعْلَمُ أَنَّهُمْ يَذْبَحُونَ الْخِنْزِيرَ، أَفَيَأْكُلُهُ؟ فَمِنْ قَوْلِهِمْ: لَا، لِأَنَّ اللَّهَ تَعَالَى حَرَّمَ الْخِنْزِيرَ؟ فَيُقَالُ لَهُمْ: وَاَللَّهُ تَعَالَى حَرَّمَ مَا أُهِلَّ بِهِ لِغَيْرِهِ كَمَا حَرَّمَ الْخِنْزِيرَ سَوَاءً سَوَاءً، وَلَا فَرْقَ.

The issue of eating what a pilgrim in *ihram* hunts and kills.

[مَسْأَلَة أَكْلُ مَا يَصِيدُهُ الْمُحْرِمُ فَقَتَلَهُ]

1003. Issue: It is not permissible to eat what a pilgrim in the state of consecration (iḥrām) hunts and then kills wherever he may be in the land, or what a person not in the state of iḥrām hunts within the sacred precincts of Mecca or Medina only and then kills. This is based on Allah the Exalted’s statement: “Do not kill game while you are in a state of consecration” (5:95). Therefore, any killing that Allah the Exalted has prohibited makes it forbidden to eat what has been killed in such a manner, because it is not the ritual slaughter commanded by Him.[42]

١٠٠٣ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ مَا يَصِيدُهُ الْمُحْرِمُ فَقَتَلَهُ حَيْثُ كَانَ مِنْ الْبِلَادِ، أَوْ يَصِيدُهُ الْمُحِلُّ فِي حَرَمِ مَكَّةَ، أَوْ الْمَدِينَةِ فَقَطْ، فَقَتَلَهُ لِقَوْلِ اللَّهِ تَعَالَى: {لا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرُمٌ} [المائدة: ٩٥] فَكُلُّ قَتْلٍ نَهَى اللَّهُ تَعَالَى عَنْهُ فَحَرَامٌ أَكْلُ مَا أُمِيتَ بِهِ، لِأَنَّهُ غَيْرُ الذَّكَاةِ الْمَأْمُورِ بِهَا.

Abu Thawr said: Consuming it is permissible, as with meat slaughtered by a usurper or thief, and there is no distinction [in ruling].

وَقَالَ أَبُو ثَوْرٍ: أَكْلُهُ حَلَالٌ، كَذَبِيحَةِ الْغَاصِبِ، وَالسَّارِقِ، وَلَا فَرْقَ.

The issue of consuming that upon which Allah, the Exalted, has not been mentioned.

[مَسْأَلَة أَكْلُ مَا لَمْ يُسَمَّ اللَّهُ تَعَالَى عَلَيْهِ]

1004 - A question: It is impermissible to eat anything over which the name of Allah, the Exalted, was not mentioned—whether the omission was intentional or due to forgetfulness.

١٠٠٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ مَا لَمْ يُسَمَّ اللَّهُ تَعَالَى عَلَيْهِ بِعَمْدٍ أَوْ نِسْيَانٍ.

The proof of that is the words of Allah, the Exalted: “And do not eat from that over which the name of Allah has not been mentioned, and indeed, it is transgression” (Al-Anʿām 6:121). Thus, He, the Exalted, made it general and did not specify.[43]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَلا تَأْكُلُوا مِمَّا لَمْ يُذْكَرِ اسْمُ اللَّهِ عَلَيْهِ وَإِنَّهُ لَفِسْقٌ} [الأنعام: ١٢١] فَعَمَّ تَعَالَى وَلَمْ يَخُصَّ.

Abu Hanifah and Malik said: If one omits the act intentionally, the meat

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: إنْ تَرَكَ عَمْدًا لَمْ يَحِلَّ أَكْلُهُ، وَإِنْ تَرَكَ نِسْيَانًا حَلَّ أَكْلُهُ.

[42] **Qur’an references (L16833):** Qur’an 5:95 (Al-Ma’idah).
[43] **Qur’an references (L16837):** Qur’an 6:121 (Al-An’am).

is not permissible to eat. However, if one omits it out of forgetfulness, it is permissible to eat.

وَقَالَ الشَّافِعِيُّ: هُوَ حَلَالٌ تَرَكَ عَمْدًا، أَوْ نِسْيَانًا.

L16839 Al-Shafi'i said: It remains permissible whether omitted intentionally or due to forgetfulness.

رُوِّينَا عَنْ ابْنِ عَبَّاسٍ مِنْ طَرِيقٍ فِيهَا ابْنُ لَهِيعَةَ أَنَّهُ قَالَ: إذَا خَرَجْتَ قَانِصًا لَا تُرِيدُ إلَّا ذَلِكَ، فَذَكَرْتَ اسْمَ اللَّهِ حِينَ تَخْرُجُ، فَإِنَّ ذَلِكَ يَكْفِيك.

L16840–16842 It was narrated to us from Ibn Abbas through a chain of transmission that includes Ibn Lahi'ah that Ibn Abbas said: If you go out as a hunter, you do not intend... However, if you mention Allah's name when you go out, then that is indeed sufficient for you.

وَصَحَّ عَنْ أَبِي هُرَيْرَةَ فِيمَنْ ذَبَحَ وَهُوَ مُغْضَبٌ فَلَمْ يَذْكُرْ اللَّهَ تَعَالَى أَنَّهُ يُؤْكَلُ وَلْيُسَمِّ اللَّهَ تَعَالَى إذَا أَكَلَ.

L16843 It is authentically reported from Abu Hurairah that even if one slaughters [an animal] while angry and fails to invoke the name of Allah, the Most High, the meat may still be eaten - but let him invoke the name of Allah, the Most High, when he eats.

وَعَنْ عَطَاءٍ إذَا قَالَ الْمُسْلِمُ: بِاسْمِ الشَّيْطَانِ فَكُلْ.

L16844 It is reported from 'Aṭā': If a Muslim says, "In the name of Satan," then eat.

وَرُوِّينَا عَنْ جَمَاعَةٍ مِنْ التَّابِعِينَ إبَاحَةَ أَكْلِ مَا نُسِيَ ذِكْرُ اللَّهِ تَعَالَى عَلَيْهِ، وَلَمْ يُذْكَرْ عَنْهُمْ تَحْرِيمُهُ فِي تَعَمُّدِ تَرْكِ الذِّكْرِ.

L16845 It has been narrated to us from a group of the Tabi'un (Successors) that they permitted eating [an animal] where the remembrance of Allah, the Exalted, was forgotten. No prohibition was reported from them regarding the deliberate abandonment of the remembrance [of Allah].

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ أَهْلُ الْإِبَاحَةِ لِذَلِكَ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عِمْرَانَ بْنِ عُيَيْنَةَ أَخِي سُفْيَانَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: «جَاءَتْ الْيَهُودُ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: أَنَأْكُلُ مِمَّا قَتَلْنَا، وَلَا نَأْكُلُ مِمَّا قَتَلَ اللَّهُ عَزَّ وَجَلَّ؟ فَأَنْزَلَ اللَّهُ تَعَالَى: {وَلا تَأْكُلُوا مِمَّا لَمْ يُذْكَرِ اسْمُ اللَّهِ عَلَيْهِ} [الأنعام: ١٢١] إلَى آخِرِ الْآيَةِ» .

L16846 Abu Muhammad said: Proponents of unrestricted permissibility argued for this based on what we have reported through the chain of ʿImrān ibn ʿUyaynah—Sufyān's brother—from ʿAṭāʾ ibn al-Sāʾib, from Saʿīd ibn Jubayr, from Ibn ʿAbbās, who said: "The Jews came to the Messenger of Allah (peace and blessings be upon him) and said: 'Do we eat from what we slaughter, yet refrain from eating what Allah the Almighty, the Majestic has killed?' Thereupon Allah revealed: *'And do not eat of that upon which Allah's name has not been invoked'* [al-Anʿām 6:121] to the end of the verse."[44]

قَالَ عَلِيٌّ: هَذَا مِنْ التَّمْوِيهِ الْقَبِيحِ، وَلَيْتَ شِعْرِي أَيُّ ذِكْرٍ فِي هَذَا الْخَبَرِ لِإِبَاحَةِ أَكْلِ مَا لَمْ يُسَمَّ اللَّهُ تَعَالَى عَلَيْهِ، بَلْ حُجَّةٌ عَلَيْهِمْ كَافِيَةٌ.

L16847 Ali said: "This is repugnant obfuscation. If only I knew what mention exists in this narration to permit eating that over which Allah the Exalted's name was not invoked! Rather, it is decisive proof against them."

[44] **Qur'an references (L16846):** Qur'an 6:121 (Al-An'am).

فَأَمَّا قَوْلُ الشَّافِعِيِّ فَمَا نَعْلَمُ لَهُ حُجَّةً أَصْلًا.

L16848 As for the statement of Al-Shāfiʿī, we do not know of any valid proof for it in principle.

وَأَمَّا الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، فَإِنَّهُمْ ذَكَرُوا خَبَرًا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا عِيسَى بْنُ يُونُسَ نَا الْأَحْوَصُ بْنُ حَكِيمٍ عَنْ رَاشِدِ بْنِ سَعْدٍ قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ ذَبِيحَةَ الْمُسْلِمِ حَلَالٌ وَإِنْ لَمْ يُسَمِّ إِذَا لَمْ يَتَعَمَّدْ» .

L16849 As for the Ḥanafīs and Mālikīs, they cited a report we have transmitted through the chain of Saʿīd ibn Manṣūr, narrated to us by ʿĪsā ibn Yūnus, who narrated to us from al-Aḥwaṣ ibn Ḥakīm, from Rāshid ibn Saʿd, who said: The Prophet (peace be upon him) stated, “The slaughter of a Muslim is permissible even if he did not utter Allah’s Name, provided it was not done deliberately.”

فَهَذَا مُرْسَلٌ، وَالْأَحْوَصُ بْنُ حَكِيمٍ لَيْسَ بِشَيْءٍ، وَرَاشِدُ بْنُ سَعْدٍ ضَعِيفٌ.

L16850 This is a *mursal*; al-Aḥwaṣ ibn Ḥakīm is dismissed, and Rāshid ibn Saʿd is weak.

وَخَبَرٌ آخَرُ: مِنْ طَرِيقِ وَكِيعٍ نَا ثَوْرٌ الشَّامِيُّ عَنْ الصَّلْتِ مَوْلَى سُوَيْدٍ قَالَ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «ذَبِيحَةُ الْمُسْلِمِ حَلَالٌ - وَإِنْ نَسِيَ أَنْ يَذْكُرَ اسْمَ اللَّهِ - لِأَنَّهُ إِذَا ذَكَرَ لَمْ يَذْكُرْ إلَّا اللَّهَ تَعَالَى» .

L16851 And another narration: Through the chain of Waki‘, who narrated to us from Thawr al-Shāmi, from al-Ṣalt—the client of Suwayd—who said: The Prophet (peace and blessings of Allah be upon him) said: “The slaughter of a Muslim is permissible, even if he forgot to mention Allah’s name, because when he mentions, he mentions none but Allah the Exalted.”

وَهَذَا مُرْسَلٌ لَا حُجَّةَ فِيهِ، وَالصَّلْتُ أَيْضًا مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ.

L16852 This is a mursal narration lacking juristic authority, and Ṣalt is likewise an undocumented narrator (majhūl) whose identity cannot be ascertained.

وَقَالَ بَعْضُهُمْ: إنَّمَا ذَبَحْت بِدِينِك.

L16853 Some of them said: “I only slaughtered according to your religion.”

قَالَ عَلِيٌّ: وَمَا نَذْبَحُ إلَّا بِأَدْيَانِنَا وَبِمَا يُنْهِرُ الدَّمَ، وَمِنْ الذَّبْحِ بِالدِّينِ أَنْ يُسَمَّى اللَّهُ تَعَالَى فَمَنْ لَمْ يُسَمِّهِ عَزَّ وَجَلَّ فَلَمْ يَذْبَحْ بِدِينِهِ وَلَا كَمَا أُمِرَ.

L16854 Ali said: We do not slaughter except in accordance with our religion and with what ensures the blood flows freely. Part of valid religious slaughter is that Allah the Exalted be mentioned by name. Whoever fails to mention the name of the Almighty and Majestic has neither slaughtered in accordance with his religion nor as he was commanded.

وَاحْتَجُّوا أَيْضًا بِأَنْ قَالُوا: قَالَ اللَّهُ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ} [الأحزاب: ٥] وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «رُفِعَ عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» وَأَنْتُمْ تُجِيزُونَ صَلَاةَ مَنْ تَكَلَّمَ فِيهَا نَاسِيًا، وَصَوْمَ مَنْ

L16855–16856 They also argued by citing the following: Allah the Exalted said, **“There is no blame upon you for that in which you have erred”** [Al-Ahzab: 5], and the Messenger of Allah (peace be upon him) said, **“My nation has been absolved from error, forgetfulness, and what they are compelled into.”** Yet you validate the prayer of one who speaks out of forgetfulness during it and the fasting of one who eats out of forgetfulness during it—so what is the difference? They replied: Allah’s statement, **“Indeed, it is transgression”**

[Al-An'am: 121], removes the forgetful person from this general ruling, because forgetfulness does not constitute transgression.[45]

أَكَلَ فِيهِ نَاسِيًا، فَمَا الْفَرْقُ؟ قَالُوا: وَقَوْلُ اللَّهِ تَعَالَى: {وَإِنَّهُ لَفِسْقٌ} [الأنعام: ١٢١] إِخْرَاجٌ لِلنَّاسِي مِنْ هَذِهِ الْجُمْلَةِ، لِأَنَّ النِّسْيَانَ لَيْسَ فِسْقًا.

L16857 This is all they have adduced as evidence, and there is no proof for them in any of it. As for the exemption from sin in cases of error and the removal of accountability from us for forgetfulness and error—is that not the case? This is our position. Thus we say: In such a situation, sin and constraint are lifted from the person if they forgot to invoke Allah's name. However, we affirm that they did not perform the ritual slaughter, but rather presumed they had slaughtered when they had not—like one who forgot prayer and presumed they had prayed when they did not. Since they did not perform the ritual slaughter, it becomes carrion which is not permissible to eat, for Allah the Exalted has prohibited us from consuming that over which Allah's name was not invoked. Thus, any slaughtered animal, ritually sacrificed animal, or hunted game possessing this trait is impermissible to consume.

هَذَا كُلُّ مَا احْتَجُّوا بِهِ، وَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ. أَمَّا سُقُوطُ الْجُنَاحِ فِي الْخَطَأِ، وَسُقُوطُ الْمُؤَاخَذَةِ بِالنِّسْيَانِ وَالْخَطَأِ، وَرَفْعُهُمَا عَنَّا، فَنَعَمْ؟ وَهُوَ قَوْلُنَا، وَهَكَذَا نَقُولُ: إِنَّهُ هَهُنَا مَرْفُوعٌ عَنْهُ الْإِثْمُ وَالْحَرَجُ إِذَا نَسِيَ التَّسْمِيَةَ، لَكِنَّا قُلْنَا: إِنَّهُ لَمْ يُذَكِّ، لَكِنْ ظَنَّ أَنَّهُ ذَكَّى وَلَمْ يُذَكِّ، كَمَنْ نَسِيَ الصَّلَاةَ وَظَنَّ أَنَّهُ صَلَّى وَهُوَ لَمْ يُصَلِّ، فَلَمَّا لَمْ يُذَكِّ كَانَ مَيْتَةً لَا يَحِلُّ أَكْلُهُ، لِأَنَّ اللَّهَ تَعَالَى نَهَانَا أَنْ نَأْكُلَ مَا لَمْ يُذْكَرْ اسْمُ اللَّهِ عَلَيْهِ فَكَانَتْ هَذِهِ الصِّفَةُ مَتَى وُجِدَتْ فِي مَذْبُوحٍ أَوْ مَنْحُورٍ أَوْ تَصَيُّدٍ لَمْ يَحِلَّ أَكْلُهُ.

L16858 The distinction between matters they were ignorant of distinguishing among those is that: regarding the commanded act - whoever forgot to perform it or intentionally neglected to perform it, so he did not perform it - the forgetful is not held accountable for his forgetfulness while the intentional is held accountable. Any commanded act a person performs wherein he forgetfully adds something not commanded within it, no accountability falls upon him for what he did forgetfully, and his performance of the commanded act is valid, permissible, and has been accepted. This constitutes the ruling of the Quran and Sunnah except where explicit textual evidence excludes a matter from this ruling, in which case it is deferred to.

وَالْفَرْقُ بَيْنَ مَا جَهِلُوا الْفَرْقَ بَيْنَهُ مِنْ ذَلِكَ: هُوَ أَنَّ الْعَمَلَ الْمَأْمُورَ بِهِ مَنْ نَسِيَ أَنْ يَعْمَلَهُ، أَوْ تَعَمَّدَ أَنْ لَا يَعْمَلَهُ، فَلَمْ يَعْمَلْهُ إِلَّا أَنَّ النَّاسِيَ غَيْرُ حَرِجٍ فِي نِسْيَانِهِ وَالْعَامِدَ فِي حَرَجٍ، وَكُلُّ عَمَلٍ عَمِلَهُ الْمَرْءُ مِمَّا أُمِرَ بِهِ فَزَادَ فِيهِ مَا لَمْ يُؤْمَرْ بِهِ نَاسِيًا فَلَا حَرَجَ عَلَيْهِ فِيمَا عَمِلَ نَاسِيًا، وَعَمَلُهُ لِمَا عَمِلَ مِمَّا أُمِرَ بِهِ صَحِيحٌ جَائِزٌ جَازَ - فَهَذَا هُوَ حُكْمُ الْقُرْآنِ وَالسُّنَنِ إِلَّا مَا جَاءَ نَصٌّ بِإِخْرَاجِهِ عَنْ هَذَا الْحُكْمِ فَيُوقَفُ عِنْدَهُ.

L16859 As for the statement of Allah the Exalted: {And indeed, it is transgression} [6:121], we have never asserted that a person's forgetfulness in invoking Allah's name over his slaughtered animal, sacrificial animal, or hunted game constitutes transgression. Nor have we claimed that Allah the Exalted termed his forgetfulness of this as transgression. Rather, Allah the Exalted explicitly termed the slaughtered animal (by throat-cutting) over which His name was

وَأَمَّا قَوْلُه تَعَالَى: {وَإِنَّهُ لَفِسْقٌ} [الأنعام: ١٢١] فَلَمْ نَقُلْ قَطُّ: إِنَّ نِسْيَانَ النَّاسِي لِتَسْمِيَةِ اللَّهِ تَعَالَى عَلَى ذَبِيحَتِهِ وَنَحِيرَتِهِ وَصَيْدِهِ -: فِسْقٌ؟ وَلَا قُلْنَا: إِنَّ اللَّهَ تَعَالَى سَمَّى نِسْيَانَهُ لِذَلِكَ: فِسْقًا، لَكِنَّ اللَّهَ تَعَالَى سَمَّى ذَلِكَ الْعَقِيرَ الَّذِي لَمْ يُذْكَرْ اسْمُ اللَّهِ عَلَيْهِ: فِسْقًا - هَذَا نَصُّ الْآيَةِ الَّذِي لَا يَجُوزُ إِحَالَتُهَا عَنْهُ أَنَّ مَا لَمْ يُذْكَرْ اسْمُ اللَّهِ تَعَالَى عَلَيْهِ، فَإِنَّهُ فِسْقٌ، وَالْفِسْقُ

[45] **Qur'an references (L16856):** Qur'an 33:5 (Al-Ahzab); Qur'an 6:121 (Al-An'am).

not invoked as transgression—this is the unequivocal text of the verse, which cannot be diverted from its meaning: that anything over which Allah's name is not invoked is transgression, and transgression is forbidden. Whatever is slaughtered without invoking Allah's name falls under what is dedicated to other than Allah, thereby being prohibited by the explicit text of the verse, which permits no interpretation contrary to this. And with Allah the Exalted is success.[46]

مُحَرَّمٌ، وَمَا لَمْ يُذْكَرْ اسْمُ اللَّهِ عَلَيْهِ فَهُوَ مِمَّا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ فَهُوَ حَرَامٌ بِنَصِّ الْآيَةِ الَّتِي لَا تَحْتَمِلُ تَأْوِيلًا سِوَاهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L16860–16862 Hammam ibn Ahmad narrated to us: Abu Muhammad al-Baji narrated to us: Muhammad ibn Abd al-Malik ibn Ayman narrated to us: Ahmad ibn Muslim narrated to us: Abu Thawr narrated to us: Mu'alla narrated to us: Hushaym narrated to us—from Yunus ibn Ubayd—from Muhammad ibn Ziyad. He said: A man forgot to invoke the name of Allah the Exalted when he slaughtered a sheep, so Ibn Umar instructed his servant: "When you intend to sell any of it to someone, tell them: Ibn Umar says, 'Indeed, the name of Allah was not mentioned over it when it was slaughtered.'" This is a chain of transmission of the highest authenticity.

نَا حُمَامُ بْنُ أَحْمَدَ نَا أَبُو مُحَمَّدٍ الْبَاجِيَّ نَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نَا أَحْمَدُ بْنُ مُسْلِمٍ نَا أَبُو ثَوْرٍ نَا مُعَلَّى نَا هُشَيْمٌ، عَنْ يُونُسَ هُوَ ابْنُ عُبَيْدٍ - عَنْ مُحَمَّدِ بْنِ زِيَادٍ قَالَ: إِنَّ رَجُلًا نَسِيَ أَنْ يُسَمِّيَ اللَّهَ تَعَالَى عَلَى شَاةٍ ذَبَحَهَا فَأَمَرَ ابْنُ عُمَرَ غُلَامَهُ فَقَالَ: إِذَا أَرَادَ أَنْ يَبِيعَ مِنْهَا لِأَحَدٍ؟ فَقُلْ لَهُ: إِنَّ ابْنَ عُمَرَ يَقُولُ: إِنَّ هَذَا لَمْ يُذْكَرْ اسْمِ اللَّهِ عَلَيْهَا حِينَ ذَبَحَهَا - وَهَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ.

L16863 Through the chain of Ibn Abī Shaybah, Muʿtamir ibn Sulaymān narrated to us from Khālid—he is al-Khaddāʾ—from Ibn Sīrīn from ʿAbd Allāh ibn Yazīd, who said: "Do not eat anything unless the name of Allah has been mentioned over it."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا مُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ خَالِدٍ هُوَ الْحَذَّاءُ - عَنْ ابْنِ سِيرِينَ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ قَالَ: لَا تَأْكُلْ إِلَّا مِمَّا ذُكِرَ اسْمُ اللَّهِ عَلَيْهِ.

L16864 From the chain of Ibn Abi Shaybah: Yazeed ibn Harun narrated to us from Ash'ath (Al-Humrani) from Ibn Sireen, from Abdullah ibn Yazeed: A man asked him about one who slaughtered an animal but forgot to invoke Allah's name. Abdullah then recited Allah's statement: {Do not eat of that upon which Allah's name has not been pronounced, for it is indeed disobedience} [al-An'am 6:121]. This Abdullah is a reliable transmitter.[47]

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا يَزِيدُ بْنُ هَارُونَ عَنْ أَشْعَثَ هُوَ الْحُمْرَانِيُّ - عَنْ ابْنِ سِيرِينَ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ سَأَلَهُ رَجُلٌ عَمَّنْ ذَبَحَ وَنَسِيَ أَنْ يُسَمِّيَ اللَّهَ؟ فَتَلَا عَبْدُ اللَّهِ قَوْلَ اللَّهِ تَعَالَى: {وَلا تَأْكُلُوا مِمَّا لَمْ يُذْكَرِ اسْمُ اللَّهِ عَلَيْهِ وَإِنَّهُ لَفِسْقٌ} [الأنعام: ١٢١] وَعَبْدُ اللَّهِ هَذَا هُوَ صَحِيحُ الصُّحْبَةِ.

L16865 Narrated via the transmission of Ibn Abi Shaybah, from Abu Khalid al-Ahmar Sulayman ibn Hayyan, from Dawud ibn Abi Hind, from al-Sha'bi,

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا أَبُو خَالِدٍ الْأَحْمَرُ سُلَيْمَانُ بْنُ حَيَّانَ عَنْ دَاوُد بْنِ أَبِي هِنْدٍ عَنِ الشَّعْبِيِّ أَنَّهُ كَرِهَ مَا لَمْ يُذْكَرْ اسْمُ اللَّهِ تَعَالَى عَلَيْهِ بِنِسْيَانٍ.

[46] **Qur'an references (L16859):** Qur'an 6:121 (Al-An'am).
[47] **Qur'an references (L16864):** Qur'an 6:121 (Al-An'am).

that he disapproved of that which the name of Allah, the Exalted, was not invoked over due to forgetfulness.

L16866 Through the narration of Abd al-Razzaq from Ma'mar from a man from Ikrimah, who said: If you find an arrow in dead game, do not eat it, for you do not know who shot it nor whether he mentioned Allah's name upon it. Through the narration of Waki' from Abdullah ibn Rashid al-Munqiri from Ibn Sirin concerning someone who forgot to mention Allah's name upon it: "What do you think if I said, 'Eat,' when Allah has said, 'Do not eat'? Would you eat?" Through the narration of Ibn Abi Shaybah from Ibn Ulayyah from Ayyub al-Sakhtiyani from Nāfi', the freed slave of Ibn Umar, that he disliked eating meat from an animal whose slaughterer forgot to mention the name of Allah the Exalted upon it.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ عِكْرِمَةَ قَالَ: إذَا وَجَدْت سَهْمًا فِي صَيْدٍ وَقَدْ مَاتَ فَلَا تَأْكُلْهُ، إنَّك لَا تَدْرِي مَنْ رَمَاهُ وَلَا تَدْرِي أَسَمَّى أَمْ لَمْ يُسَمِّ؟ وَمِنْ طَرِيقِ وَكِيعٍ نَا عَبْدُ اللَّهِ بْنُ رَاشِدٍ الْمُنْقِرِيُّ عَنْ ابْنِ سِيرِينَ فِيمَا نَسِيَ أَنْ يَذْكُرَ اسْمَ اللَّهِ عَلَيْهِ أَرَأَيْت لَوْ قُلْتُ: كُلْ وَقَالَ اللَّهُ: لَا تَأْكُلْ - أَكُنْتَ تَأْكُلُ؟ وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ أَنَّهُ كَرِهَ أَكْلَ مَا نَسِيَ ذَابِحُهُ أَنْ يُسَمِّيَ اللَّهَ تَعَالَى عَلَيْهِ.

L16867 And from the narration of Hammad ibn Zayd, from Ayyub, from Ibn Sirin: He disliked eating what was slaughtered by one who forgot to name Allah, the Exalted, over it.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ عَنْ ابْنِ سِيرِينَ أَنَّهُ كَرِهَ أَكْلَ مَا نَسِيَ ذَابِحُهُ أَنْ يُسَمِّيَ اللَّهَ تَعَالَى عَلَيْهِ.

L16868 This is the opinion of Abū Thawr, Abū Sulaymān, and their companions, and it is established by the transmitted traditions.

وَهُوَ قَوْلُ أَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِ، وَبِهَذَا جَاءَتْ السُّنَنُ.

L16869 It was narrated to us through the chain of Abū Dāwūd al-Ṭayālisī, who narrated to us: Zā'idah from Sa'īd ibn Masrūq from 'Abāyah ibn Rifā'ah ibn Rāfi' ibn Khadīj from his grandfather Rāfi' ibn Khadīj, who said: The Messenger of Allah (peace and blessings of Allah be upon him) said to us: "Whatever causes the blood to flow and upon which the name of Allah the Exalted was mentioned, then eat it." He mentioned the remainder of the ḥadīth.

رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد الطَّيَالِسِيِّ نَا زَائِدَةُ عَنْ سَعِيدِ بْنِ مَسْرُوقٍ نَا عَبَايَةُ بْنُ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ عَنْ جَدِّهِ رَافِعِ بْنِ خَدِيجٍ قَالَ: قَالَ لَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا أَنْهَرَ الدَّمَ وَذُكِرَ اسْمُ اللَّهِ تَعَالَى عَلَيْهِ فَكُلْ» وَذَكَرَ بَاقِيَ الْحَدِيثِ.

L16870–16871 From the narration of Shu'bah from al-Hakam ibn 'Utaybah, who informed us, from al-Sha'bi: I heard 'Adi ibn Ḥātim say, "I asked the Messenger of Allah (peace be upon him), 'I release my dog and then find another dog alongside my dog that has caught it, but I do not know which of them caught it.' The Messenger of Allah (peace be upon him) replied: 'Do not eat, for you only mentioned Allah's name upon your dog and did not mention it upon the other.'" Thus, the Prophet (peace be upon him) prohibited eating because the

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ نَا الشَّعْبِيُّ سَمِعْت عَدِيَّ بْنَ حَاتِمٍ يَقُولُ: «قُلْتُ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُرْسِلُ كَلْبِي فَأَجِدُ مَعَ كَلْبِي كَلْبًا قَدْ أَخَذَ لَا أَدْرِي أَيُّهُمَا أَخَذَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: فَلَا تَأْكُلْ إنَّمَا سَمَّيْتَ

name was not mentioned upon the one whose involvement was uncertain—whether it killed the game or another.

The ruling on invoking Allah's name in a non-Arabic language during slaughter.

1005. Issue: Whoever gives a name in a non-Arabic language has fulfilled the naming obligation, for Allah the Exalted did not stipulate a specific language among languages nor one naming over another. Thus, however he names, he has discharged what was incumbent upon him - and success is through Allah, the Exalted.

A legal question: If someone slaughtered the property of another by his command but forgot to mention the name of Allah, the Exalted.

Issue 1006: If someone slaughters another's animal by his order but forgets to invoke Allah the Exalted's name, or intentionally omits it, he is liable to replace the equivalent of the animal he invalidated, as it becomes carrion (religiously impermissible) - as we previously established - for he has destroyed his fellow's property. People's property is compensable whether the harm is intentional or due to forgetfulness. Success comes only through Allah the Exalted.

The issue of consuming what a person has slaughtered by *nahr* (camel slaughter) or *dhabh* (throat-slitting) from an animal owned by someone else.

1007 - Issue: It is not permissible to eat what a person has slaughtered by nahr or dhabh from another's property without the owner's instruction—whether through usurpation, theft, or wrongful transgression—for it is carrion. This is impermissible for both its owner and others, and the slaughterer is liable to compensate for it, except in cases of valid consideration such as fearing the animal's imminent death and hastening to perform its

عَلَى كَلْبِكَ وَلَمْ تُسَمِّ عَلَى غَيْرِهِ» فَجَعَلَ - عَلَيْهِ السَّلَامُ - الْمَانِعَ مِنْ الْأَكْلِ لِأَنَّهُ لَمْ يُسَمِّ عَلَى الَّذِي لَا يَدْرِي أَهُوَ قَتَلَهُ أَمْ غَيْرُهُ.

[مَسْأَلَةُ التَّسْمِيَةُ بِالْعَجَمِيَّةِ عِنْدَ الذَّبْحِ]

١٠٠٥ - مَسْأَلَةٌ: وَمَنْ سَمَّى بِالْعَجَمِيَّةِ فَقَدْ سَمَّى كَمَا أُمِرَ؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يَشْتَرِطْ لُغَةً مِنْ لُغَةٍ وَلَا تَسْمِيَةً مِنْ تَسْمِيَةٍ، فَكَيْفَمَا سَمَّى فَقَدْ أَدَّى مَا عَلَيْهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ ذَبَحَ مَالَ غَيْرِهِ بِأَمْرِهِ فَنَسِيَ أَنْ يُسَمِّيَ اللَّهَ تَعَالَى]

١٠٠٦ - مَسْأَلَةٌ: وَمَنْ ذَبَحَ مَالَ غَيْرِهِ بِأَمْرِهِ فَنَسِيَ أَنْ يُسَمِّيَ اللَّهَ تَعَالَى، أَوْ تَعَمَّدَ فَهُوَ ضَامِنٌ مِثْلَ الْحَيَوَانِ الَّذِي أَفْسَدَ، لِأَنَّهُ مَيْتَةٌ - كَمَا قَدَّمْنَا - فَقَدْ أَفْسَدَ مَالَ أَخِيهِ، وَأَمْوَالُ النَّاسِ تُضْمَنُ بِالْعَمْدِ وَالنِّسْيَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ أَكْلُ مَا نَحَرَهُ أَوْ ذَبَحَهُ إنْسَانٌ مِنْ مَالِ غَيْرِهِ]

١٠٠٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ مَا نَحَرَهُ أَوْ ذَبَحَهُ إنْسَانٌ مِنْ مَالِ غَيْرِهِ بِغَيْرِ أَمْرِ مَالِكِهِ بِغَصْبٍ أَوْ سَرِقَةٍ أَوْ تَعَدٍّ بِغَيْرِ حَقٍّ - وَهُوَ مَيْتَةٌ - لَا يَحِلُّ لِصَاحِبِهِ وَلَا لِغَيْرِهِ وَيَضْمَنُهُ قَاتِلُهُ إلَّا أَنْ يَكُونَ نَظَرًا صَحِيحًا كَخَوْفِ أَنْ يَمُوتَ فَبَادَرَ بِذَكَاتِهِ، أَوْ نَظَرًا لِصَغِيرٍ أَوْ مَجْنُونٍ أَوْ غَائِبٍ، أَوْ فِي حَقٍّ وَاجِبٍ.

ritual slaughter, acting on behalf of a minor, an insane person, or an absent individual, or in the case of an obligatory right.

L16878 The proof of that is the statement of Allah, the Exalted: “Except what you have ritually slaughtered” [Surah Al-Mā’idah 5:3].[48]

L16879 And the saying of the Messenger of Allah (peace be upon him): “Indeed, your blood and your wealth are forbidden [to violate] upon you.”

L16880 And He, the Exalted, said: “Do not devour one another’s wealth unjustly” [Al-Baqarah 2:188].[49]

L16881 So we ask those who oppose our view: Did he slaughter this animal by *dhabh* or *nahr* in a legitimate or illegitimate manner? It must necessarily be one of the two. No Muslim would say he slaughtered it legitimately. Since there is no doubt that he performed *nahr* and *dhabh* illegitimately, its consumption is prohibited by the explicit text of the Quran.

L16882–16884 Furthermore, consuming an animal is prohibited except what we have ritually slaughtered. Thus, ritual slaughter is an obligatory duty commanded by Allah, the Exalted, to be fulfilled in obedience to Him. It is not permissible to consume any prohibited animal except through proper slaughtering. The slaughter performed by one who transgresses the prescribed limits in slaughtering is invalid, forbidden for him, constituting a sinful defiance of Allah, the Exalted—a ruling established without any disagreement among scholars and in accordance with the texts of the Quran and the Sunnah.

L16885 And among the certain falsehoods is that sin could replace obedience. What is astonishing is that they agree with us that forbidden sexual relations remain unlawful except through the commanded contract, not the forbidden contract. How then did they come to permit prohibited animals through prohibited actions? What distinguishes a pilgrim hunting game forbidden to him from a transgressor slaughtering what he is prohibited from slaughtering? This is supported by the authentic Prophetic traditions:

L16886 It was narrated to us through the chain of Muslim ibn al-Hajjaj: from Ishaq

[48] **Qur’an references (L16878):** Qur’an 5:3 (Al-Ma’idah).
[49] **Qur’an references (L16880):** Qur’an 2:188 (Al-Baqarah).

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {إِلا مَا ذَكَّيْتُمْ} [المائدة: ٣] .

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

وَقَالَ تَعَالَى: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

فَنَسْأَلُ مَنْ خَالَفَ قَوْلَنَا أَبِحَقٍّ ذَبَحَ هَذَا الْحَيَوَانَ أَوْ نَحَرَ، أَمْ بِبَاطِلٍ، وَلَا بُدَّ مِنْ أَحَدِهِمَا؟ وَلَا يَقُولُ مُسْلِمٌ: إِنَّهُ ذَبَحَ بِحَقٍّ، فَإِذْ لَا شَكَّ فِي أَنَّهُ نَحَرَ وَذَبَحَ بِبَاطِلٍ فَهُوَ مُحَرَّمٌ أَكْلُهُ بِنَصِّ الْقُرْآنِ.

وَأَيْضًا: فَإِنَّ الْحَيَوَانَ حَرَامٌ أَكْلُهُ إِلَّا مَا ذَكَّيْنَا، فَالذَّكَاةُ حَقٌّ مَأْمُورٌ بِهِ طَاعَةً لِلَّهِ تَعَالَى لَا يَحِلُّ أَكْلُ مَا حُرِّمَ مِنْ الْحَيَوَانِ إِلَّا بِهِ، وَذَبْحُ الْمُعْتَدِي بَاطِلٌ مُحَرَّمٌ عَلَيْهِ مَعْصِيَةٌ لِلَّهِ تَعَالَى بِلَا خِلَافٍ وَبِنَصِّ الْقُرْآنِ وَالسُّنَّةِ.

وَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ تَنُوبَ الْمَعْصِيَةُ عَنْ الطَّاعَةِ؟ وَالْعَجَبُ أَنَّهُمْ مُتَّفِقُونَ مَعَنَا عَلَى أَنَّ الْفُرُوجَ الْمُحَرَّمَةَ لَا تَحِلُّ إلَّا بِالْعَقْدِ الْمَأْمُورِ بِهِ لَا بِالْعَقْدِ الْمُحَرَّمِ: فَمِنْ أَيْنَ وَقَعَ لَهُمْ أَنْ يُبِيحُوا الْحَيَوَانَ الْمُحَرَّمَ بِالْفِعْلِ الْمُحَرَّمِ؟ وَمَا الْفَرْقُ بَيْنَ تَصَيُّدِ الْمُحْرِمِ لِلصَّيْدِ الْمُحَرَّمِ عَلَيْهِ، وَبَيْنَ ذَبْحِ الْمُتَعَدِّي لِمَا حُرِّمَ عَلَيْهِ ذَبْحُهُ؟ وَبِهَذَا جَاءَتْ السُّنَنُ الثَّابِتَةُ -:

رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نَا إِسْحَاقُ بْنُ إبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - نَا وَكِيعٌ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِيهِ عَنْ عَبَايَةَ بْنِ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ عَنْ رَافِعِ بْنِ خَدِيجٍ

ibn Ibrahim—Ibn Rahawayh—from Waki‘, from Sufyan al-Thawri, from his father, from ‘Abayah ibn Rifa‘ah ibn Rafi‘ ibn Khadij, from Rafi‘ ibn Khadij, who said: “We were with the Messenger of Allah—peace and blessings be upon him—at Dhu al-Hulayfah in Tihamah when we came upon sheep and camels. The people hurried to cook them in the pots. The Messenger of Allah—peace and blessings be upon him—ordered the pots to be overturned, then exchanged ten sheep for one camel.”

قَالَ «كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذِي الْحُلَيْفَةِ مِنْ تِهَامَةَ فَأَصَبْنَا غَنَمًا وَإِبِلًا فَعَجَّلَ الْقَوْمُ فَأَغْلَوْا بِهَا الْقُدُورَ فَأَمَرَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأُكْفِئَتْ، ثُمَّ عَدَلَ عَشْرًا مِنْ الْغَنَمِ بِجَزُورٍ» .

L16887 Thus, the Messenger of Allah (peace be upon him) ordered the spilling of the pots containing meat slaughtered from the spoils before distribution. There is no doubt that if it had been lawful to eat, he would not have ordered its disposal, for he (peace be upon him) prohibited the waste of wealth. Thus, it is established with certainty that it is utterly forbidden, and that slaughtering or sacrificing it constitutes an unlawful act necessitating compensation and does not make it permissible to consume.

فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ أَمَرَ بِهَرْقِ الْقُدُورِ الَّتِي فِيهَا اللَّحْمُ الْمَذْبُوحُ مِنْ الْغَنِيمَةِ قَبْلَ الْقِسْمَةِ، وَلَا شَكَّ فِي أَنَّهُ لَوْ كَانَ حَلَالًا أَكْلُهُ مَا أَمَرَ بِهَرْقِهِ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - نَهَى عَنْ إضَاعَةِ الْمَالِ - فَصَحَّ يَقِينًا أَنَّهُ حَرَامٌ مَحْضٌ، وَأَنَّ ذَبْحَهُ وَنَحْرَهُ تَعَدٍّ يُوجِبُ الضَّمَانَ وَلَا يُبِيحُ الْأَكْلَ.

L16888 We do not know of any argument at all for the opposing view—neither from the Qur’an, nor the Sunnah, nor the statement of a Companion, nor analogy—except that some of them have misleadingly cited a report we narrated through the chain of ʿĀṣim ibn Kulayb, from his father, from a man of the Anṣār, who said: “We were with the Messenger of Allah—peace and blessings of Allah be upon him—at a funeral. A woman’s inviter approached him, so he came, and food was brought. He placed his hand, then the people placed their hands and ate, while the Messenger of Allah—peace and blessings of Allah be upon him—was chewing a morsel in his mouth. Then he said: ’I sense the meat of a sheep taken without its owners’ permission.’ The woman sent [a message]: ’O Messenger of Allah, I sent someone to al-Baqīʿ to buy a sheep for me, but I did not find any. Then I sent to a neighbor of mine who had bought a sheep, asking him to send it to me for its price, but he was not found. So I sent to his wife, and she sent it to me.’ The Messenger of Allah—peace and blessings of Allah be upon him—said: ’Feed it to the captives.’”

وَمَا نَعْلَمُ لِلْمُخَالِفِ حُجَّةً أَصْلًا لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ وَلَا مِنْ قَوْلِ صَاحِبٍ وَلَا مِنْ قِيَاسٍ، إلَّا أَنَّ بَعْضَهُمْ مَوَّهَ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ عَاصِمِ بْنِ كُلَيْبٍ عَنْ أَبِيهِ عَنْ رَجُلٍ مِنْ الْأَنْصَارِ قَالَ «كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي جِنَازَةٍ، فَاسْتَقْبَلَهُ دَاعِي امْرَأَةٍ فَجَاءَ وَجِيءَ بِالطَّعَامِ فَوَضَعَ يَدَهُ ثُمَّ وَضَعَ الْقَوْمُ أَيْدِيَهُمْ فَأَكَلُوا وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَلُوكُ لُقْمَةً فِي فِيهِ ثُمَّ قَالَ: أَجِدُ لَحْمَ شَاةٍ أُخِذَتْ بِغَيْرِ إذْنِ أَهْلِهَا، فَأَرْسَلَتْ الْمَرْأَةُ: يَا رَسُولَ اللَّهِ إنِّي أَرْسَلْتُ إلَى الْبَقِيعِ مَنْ يَشْتَرِي لِي شَاةً فَلَمْ أَجِدْ فَأَرْسَلْتُ إلَى جَارٍ لِي قَدْ اشْتَرَى شَاةً أَنْ أَرْسِلْ بِهَا إلَيَّ بِثَمَنِهَا، فَلَمْ يُوجَدْ فَأَرْسَلْتُ إلَى امْرَأَتِهِ، فَأَرْسَلَتْ إلَيَّ بِهَا؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَطْعِمِيهِ الْأُسَارَى» .

L16889–16891 Abu Muhammad said: “There is no argument for them in this; rather, were it sound, it would be an argument against them—” The first is that it concerns an unnamed man, and it is unknown whether his status as a Companion [of

the Prophet] was authentic or not. The second is that even if it were authentic, it would serve as evidence for us, because the Messenger of Allah—peace and blessings be upon him—did not permit eating carrion nor authorize any Muslim to consume any part of it. Rather, he ordered it to be fed to disbelievers who deem carrion permissible. Perhaps those captives were ill, for whom it is permissible to use carrion for treatment—though it was neither forcibly seized nor stolen, but acquired through a purchase they considered valid. However, since this was not done with the permission of the animal's original owner, it remained impermissible for Muslims to eat. Thus, their deception using this report is nullified.

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، بَلْ هُوَ لَوْ صَحَّ حُجَّةٌ عَلَيْهِمْ -: أَوَّلُ ذَلِكَ: أَنَّهُ عَنْ رَجُلٍ لَمْ يُسَمَّ وَلَا يُدْرَى أَصَحَّتْ صُحْبَتُهُ أَمْ لَا؟ وَالثَّانِي: أَنَّهُ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَسْتَحِلَّ أَكْلَهُ وَلَا أَبَاحَ لِأَحَدٍ مِنْ الْمُسْلِمِينَ أَكْلَ شَيْءٍ مِنْهُ، بَلْ أَمَرَ بِأَنْ يُطْعِمَ الْكُفَّارَ الْمُسْتَحِلِّينَ لِلْمَيْتَةِ، وَلَعَلَّ أُولَئِكَ الْأُسَارَى كَانُوا مَرْضَى يَحِلُّ لَهُمْ التَّدَاوِي بِالْمَيْتَةِ، مَعَ أَنَّهَا لَمْ تَكُنْ غَصْبًا وَلَا مَسْرُوقَةً، وَإِنَّمَا أَخَذَتْهَا بِشِرَاءٍ صَحِيحٍ عِنْدَ نَفْسِهَا، لَكِنْ لَمَّا لَمْ يَكُنْ بِإِذْنِ مَالِكِهَا لَمْ يَحِلَّ أَكْلُهَا لِمُسْلِمٍ، فَبَطَلَ تَمْوِيهُهُمْ بِهَذَا الْخَبَرِ.

L16892 There is no doubt that the liability for that sheep rests upon the woman, as this is textually stipulated in the narration through her statement: "Send it to me with its price." We approach them through this very method – which stands as a manifest proof against them for us in this matter—

وَلَا شَكَّ فِي أَنَّ تِلْكَ الشَّاةَ مَضْمُونَةٌ عَلَى الْمَرْأَةِ، وَذَلِكَ مَنْصُوصٌ فِي الْخَبَرِ مِنْ قَوْلِ الْمَرْأَةِ " ابْعَثْهَا إلَيَّ بِثَمَنِهَا " وَنَحْنُ نَأْتِيهِمْ مِنْ هَذِهِ الطَّرِيقِ بِعَيْنِهَا بِمَا هُوَ حُجَّةٌ مُبَيِّنَةٌ عَلَيْهِمْ لَنَا فِي هَذِهِ الْمَسْأَلَةِ -:

L16893 We have been narrated through the chain of Abū Dāwūd al-Sijistānī: Hannād ibn al-Sarrī narrated to us, [saying]: Abū al-Aḥwaṣ—who is Salām ibn Sulaym—narrated to us from ʻĀṣim ibn Kulayb, from his father, from a man among the Anṣār, who said: "We set out with the Messenger of Allāh—peace and blessings be upon him—on a journey, and the people were afflicted by severe need and hardship. They came upon some sheep and plundered them. And indeed, our pots were boiling when the Messenger of Allāh—peace and blessings be upon him—came walking with his bow. He overturned our pots with his bow and began mixing the meat with the dust. Then he said: 'Plunder is not more permissible than carrion,' or 'Carrion is not more permissible than plunder'—Abū al-Aḥwaṣ doubted which of the two statements he—peace and blessings be upon him—uttered."

رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نَا هَنَّادُ بْنُ السَّرِيِّ حَدَّثَنَا أَبُو الْأَحْوَصِ هُوَ سَلَّامُ بْنُ سُلَيْمٍ - عَنْ عَاصِمِ بْنِ كُلَيْبٍ عَنْ أَبِيهِ عَنْ رَجُلٍ مِنْ الْأَنْصَارِ قَالَ «خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَفَرٍ فَأَصَابَ النَّاسَ حَاجَةٌ شَدِيدَةٌ وَجَهْدٌ، فَأَصَابُوا غَنَمًا فَانْتَهَبُوهَا، فَإِنَّ قُدُورَنَا لَتَغْلِي، إذْ جَاءَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَمْشِي عَلَى قَوْسِهِ فَأَكْفَأَ قُدُورَنَا بِقَوْسِهِ ثُمَّ جَعَلَ يُرَمِّلُ اللَّحْمَ بِالتُّرَابِ - ثُمَّ قَالَ: إنَّ النُّهْبَةَ لَيْسَتْ بِأَحَلَّ مِنْ الْمَيْتَةِ، أَوْ إنَّ الْمَيْتَةَ لَيْسَتْ بِأَحَلَّ مِنْ النُّهْبَةِ، شَكَّ أَبُو الْأَحْوَصِ فِي أَيَّتِهِمَا قَالَ - عَلَيْهِ السَّلَامُ -» .

L16894 This, then, is the very chain of narration with a clear explanation free of ambiguity concerning the Prophet's act—may Allah bless him and his family

and grant him peace—of spoiling the slaughtered meat that had been seized before apportionment, which he then mixed with soil.

L16895 It has thus been firmly established that this is purely forbidden and entirely impermissible, for if it were permissible, he (peace be upon him) would not have invalidated it. It is perplexing that a single method is considered authoritative evidence in matters lacking his clarification, yet is not deemed an authoritative argument in matters containing his explicit clarification.

L16896 It has been narrated to us through the chain of Tāwus and ʿIkrimah regarding the prohibition of eating meat slaughtered by a thief. This is the opinion of Isḥāq ibn Rāhawayh, Abū Sulaymān, and their companions. We do not know of any disagreement with our position on this matter from any of the Companions or any Successor except only al-Zuhrī, Rabīʿah, and Yaḥyā ibn Saʿīd. And the success is from Allah, the Most High.

L16897 **The issue of consuming animals slaughtered (dhabḥ) or ritually sacrificed by nahr (camel slaughter) out of pride or ostentation.**

L16898–16900 1008 – Issue: It is unlawful to eat what has been slaughtered or sacrificed by nahr out of pride or boastfulness, as per the statement of Allah, the Exalted: "Or [meat] sacrificed in transgression dedicated to other than Allah" [Al-An'am: 145], and this is part of what was dedicated to other than Allah.[50]

L16901 It has been narrated to us through the chain of Ahmad ibn Shu'ayb: Qutaybah narrated to us from Yahya—that is, Ibn Sa'id al-Qattan—from Mansur ibn Hayyan, from Amir ibn Wathilah, that Ali ibn Abi Talib said: "The Messenger of Allah—peace be upon him—said to him: 'May Allah curse whoever curses his father; may Allah curse whoever slaughters for other than Allah;

[50]**Qur'an references (L16898):** Qur'an 6:145 (Al-An'am).

فَهَذَا ذَلِكَ الْإِسْنَادُ نَفْسُهُ بِبَيَانٍ لَا إِشْكَالَ فِيهِ مِنْ إِفْسَادِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - اللَّحْمَ الْمَذْبُوحَ مُنْتَهَبًا غَيْرَ مَقْسُومٍ وَخَلَطَهُ بِالتُّرَابِ.

فَصَحَّ يَقِينًا أَنَّهُ حَرَامٌ بَحْتٌ لَا يَحِلُّ أَصْلًا، إِذْ لَوْ حَلَّ لَمَا أَفْسَدَهُ - عَلَيْهِ السَّلَامُ -؛ فَمِنْ الْعَجَائِبِ أَنْ تَكُونَ طَرِيقٌ وَاحِدَةٌ حُجَّةً فِيمَا لَا بَيَانَ فِيهَا مِنْهُ، وَلَا تَكُونُ حُجَّةً فِيمَا فِيهَا الْبَيَانُ الْجَلِيُّ مِنْهُ.

وَرُوِّينَا مِنْ طَرِيقِ طَاوُسٍ، وَعِكْرِمَةَ النَّهْيَ عَنْ أَكْلِ ذَبِيحَةِ السَّارِقِ وَهُوَ قَوْلُ إِسْحَاقَ ابْنِ رَاهْوَيْهِ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِ، وَلَا نَعْلَمُ خِلَافَ قَوْلِنَا فِي هَذِهِ الْمَسْأَلَةِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ وَلَا عَنْ تَابِعٍ إِلَّا عَنْ الزُّهْرِيِّ، وَرَبِيعَةَ وَيَحْيَى بْنِ سَعِيدٍ، فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة أَكْلُ مَا ذُبِحَ أَوْ نُحِرَ نَخْرًا أَوْ مُبَاهَاةً]

١٠٠٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ مَا ذُبِحَ أَوْ نُحِرَ نَخْرًا أَوْ مُبَاهَاةً لِقَوْلِ اللَّهِ تَعَالَى: {أَوْ فِسْقًا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ} [الأنعام: ١٤٥] وَهَذَا مِمَّا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ.

وَرُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا قُتَيْبَةُ نَا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ مَنْصُورِ بْنِ حَيَّانَ عَنْ عَامِرِ بْنِ وَاثِلَةَ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: " إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: «لَعَنَ اللَّهُ مَنْ لَعَنَ وَالِدَهُ، وَلَعَنَ اللَّهُ مَنْ ذَبَحَ لِغَيْرِ اللَّهِ، وَلَعَنَ اللَّهُ مَنْ آوَى مُحْدِثًا، وَلَعَنَ اللَّهُ مَنْ غَيَّرَ مَنَارَ الْأَرْضِ» .

may Allah curse whoever shelters a religious innovator; and may Allah curse whoever alters the boundary markers of the earth.”’[51]

L16902 From the narration of Sa’id ibn Mansur: Ribʿī ibn Abdullah ibn al-Jarud reported, saying: I heard al-Jarud ibn Abi Sabrah state: There was a man from Banu Riyāh called Ibn Wathil—he was Suhaym—a prominent poet who surpassed Abu al-Farazdaq in poetry at a water source near Kufah, each pledging to slaughter one hundred of his camels when they arrived. When the camels reached the water, the two men attacked them with swords, severing their hamstrings. People rushed out on donkeys seeking meat while Ali—in Kufah—came out riding the mule of Allah’s Messenger (peace and blessings be upon him), proclaiming: “Do not eat their meat, for it belongs to what has been consecrated to other than Allah.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا رِبْعِيُّ بْنُ عَبْدِ اللَّهِ بْنِ الْجَارُودِ قَالَ: سَمِعْت الْجَارُودَ بْنَ أَبِي سَبْرَةَ يَقُولُ: كَانَ رَجُلٌ مِنْ بَنِي رِيَاحٍ يُقَالُ لَهُ: ابْنُ وَثِيلٍ هُوَ سُحَيْمٌ - قَالَ: وَكَانَ شَاعِرًا نَافِرًا غَالِبًا أَبَا الْفَرَزْدَقِ الشَّاعِرُ بِمَاءٍ بِظَهْرِ الْكُوفَةِ عَلَى أَنْ يَعْقِرَ هَذَا مِائَةً مِنْ إبِلِهِ وَهَذَا مِائَةً مِنْ إبِلِهِ إذَا وَرَدَتْ، فَلَمَّا وَرَدَتْ الْإِبِلُ الْمَاءَ قَامَا إلَيْهَا بِالسُّيُوفِ فَجَعَلَا يَكْسَعَانِ عَرَاقِيبَهَا، فَخَرَجَ النَّاسُ عَلَى الْحُمُرَاتِ يُرِيدُونَ اللَّحْمَ وَعَلِيٌّ بِالْكُوفَةِ فَخَرَجَ عَلَى بَغْلَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ يُنَادِي: أَيُّهَا النَّاسُ لَا تَأْكُلُوا مِنْ لُحُومِهَا فَإِنَّهَا مِمَّا أُهِلَّ بِهَا لِغَيْرِ اللَّهِ.

L16903 And from ʿIkrimah: “The animal slaughtered by poets out of pride and show is not to be eaten, nor what Bedouins slaughter at their graves. No disagreement from the Companions (may Allah be pleased with them) is known regarding ʿAlī’s position (may Allah be pleased with him) on this matter.”

وَعَنْ عِكْرِمَةَ لَا تُؤْكَلُ ذَبِيحَةٌ ذَبَحَهَا الشُّعَرَاءُ فَخْرًا وَرِيَاءً، وَلَا مَا ذَبَحَهُ الْأَعْرَابُ عَلَى قُبُورِهِمْ، وَلَا يُعْلَمُ لِعَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - فِي هَذَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L16904 Everything in this chapter serves as decisive evidence confirming our position in the preceding chapter regarding the prohibition of slaughter by thieves, usurpers, and transgressors. For these individuals are unquestionably among those who slaughter for other than Allah the Almighty. Their slaughtered animals and dedicated offerings indisputably fall under what is consecrated to other than Allah the Exalted, since it is absolutely impermissible for one who intends Allah’s pleasure through such intention to commit disobedience. These individuals are undoubtedly disobedient to Allah the Exalted, opposing His command both in the very act of slaughter and in its idolatrous slaughter practice.

وَكُلُّ مَا فِي هَذَا الْبَابِ فَهُوَ بُرْهَانٌ عَلَى صِحَّةِ قَوْلِنَا فِي الْبَابِ الَّذِي قَبْلَهُ مِنْ تَحْرِيمِ ذَبِيحَةِ السَّارِقِ، وَالْغَاصِبِ، وَالْمُتَعَدِّي لِأَنَّ هَؤُلَاءِ بِلَا شَكٍّ مِمَّنْ ذَبَحَ لِغَيْرِ اللَّهِ عَزَّ وَجَلَّ، وَذَبَائِحُهُمْ وَنَحَائِرُهُمْ مِمَّنْ أُهِلَّ لِغَيْرِ اللَّهِ تَعَالَى بِهِ بِيَقِينٍ، إذْ لَا يَجُوزُ أَلْبَتَّةَ أَنْ يَعْصِيَ أَحَدٌ يُرِيدُ بِذَلِكَ وَجْهَ اللَّهِ تَعَالَى: وَهَؤُلَاءِ عُصَاةٌ لِلَّهِ تَعَالَى بِلَا شَكٍّ، مُخَالِفُونَ لِأَمْرِهِ فِي ذَلِكَ الذَّبْحِ نَفْسِهِ، وَفِي ذَلِكَ الْعَقْرِ نَفْسِهِ.

[مَسْأَلَة جَوَازُ مَا كَانَ مِنْ الْأَطْعِمَةِ نَظَرًا وَمَصْلَحَةً]

The issue of the permissibility of foods considered through

L16905

[51] **Hadith references (L16901):** Sunan an-Nasai 4422; Sahih Muslim 1978a.

deliberation and benefit.

L16906 Issue 1009: As for the permissibility of matters involving consideration and public interest, this is based on Allah's statement - the Exalted: {And cooperate in righteousness and piety, and do not cooperate in sin and transgression} [Al-Mā'idah: 2]. The Messenger of Allah - peace and blessings be upon him - prohibited the squandering of wealth. Therefore, preserving the wealth of a Muslim and a dhimmi is obligatory, being an act of righteousness and piety, while squandering it constitutes a sin, a transgression, and a forbidden act.[52]

١٠٠٩ - مَسْأَلَةٌ: وَأَمَّا جَوَازُ مَا كَانَ مِنْ ذَلِكَ نَظَرًا وَمَصْلَحَةً فَلِقَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَنَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ، فَحِفْظُ مَالِ الْمُسْلِمِ وَالذِّمِّيِّ وَاجِبٌ وَبِرٌّ وَتَقْوَى، وَإِضَاعَتُهُ إثْمٌ وَعُدْوَانٌ وَحَرَامٌ.

L16907–16909 It has been narrated to us through the chain of Al-Bukhārī: Muḥammad ibn Abī Bakr - who is Al-Muqaddamī - narrated to us; Al-Muʿtamir ibn Sulaymān al-Taymī narrated to us. From Ubaydullah ibn Umar, from Nāfiʿ, the freed servant of Ibn Umar, that he heard Ibn Kaʿb ibn Mālik relate to Ibn Umar that his father Kaʿb ibn Mālik informed him: Their servant girl who grazed sheep at Mount Salʿ noticed one of their ewes dying. She broke a stone to sharpen it and slaughtered the ewe. He [Kaʿb] instructed his household: "Do not eat until I approach the Messenger of Allah (peace and blessings be upon him) to ask him, or until I send someone to him to inquire." So he asked the Prophet (peace and blessings be upon him), and the Prophet (peace and blessings be upon him) commanded him to eat it.

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا مُحَمَّدُ بْنُ أَبِي بَكْرٍ هُوَ الْمُقَدَّمِيُّ - نَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ أَنَّهُ سَمِعَ ابْنَ كَعْبِ بْنِ مَالِكٍ يُخْبِرُ ابْنَ عُمَرَ بِأَنَّ أَبَاهُ «كَعْبَ بْنَ مَالِكٍ أَخْبَرَهُ أَنَّ جَارِيَةً لَهُمْ كَانَتْ تَرْعَى غَنَمًا بِسَلْعٍ فَأَبْصَرَتْ بِشَاةٍ مِنْ غَنَمِهَا مَوْتًا فَكَسَرَتْ حَجَرًا فَذَبَحَتْهَا فَقَالَ لِأَهْلِهِ: لَا تَأْكُلُوا حَتَّى آتِيَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَسْأَلَهُ أَوْ أُرْسِلَ إلَيْهِ مَنْ يَسْأَلُهُ فَسَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَأَمَرَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَكْلِهَا»

L16910 **A legal question: An egg emerged from a dead hen or a dead bird.**

[مَسْأَلَةٌ خَرَجَتْ بَيْضَةٌ مِنْ دَجَاجَةٍ مَيِّتَةٍ أَوْ طَائِرٍ مَيِّتٍ]

L16911 1010 - Issue: If an egg emerges from a dead chicken or a dead bird whose meat would be permissible if slaughtered, then if it has a shell, eating it is lawful. If it does not yet have a shell, it is prohibited, because when it develops a shell, it has fully separated from the carcass and becomes distinct from it. If it lacks a shell, it is then part of its innards and attached to them, thus it is prohibited.

١٠١٠ - مَسْأَلَةٌ: فَلَوْ خَرَجَتْ بَيْضَةٌ مِنْ دَجَاجَةٍ مَيِّتَةٍ أَوْ طَائِرٍ مَيِّتٍ مِمَّا يُؤْكَلُ لَحْمُهُ لَوْ ذُكِّيَ فَإِنْ كَانَتْ ذَاتَ قِشْرٍ فَأَكْلُهَا حَلَالٌ، وَإِنْ لَمْ تَكُنْ ذَاتَ قِشْرٍ بَعْدُ فَهِيَ حَرَامٌ؛ لِأَنَّهَا إذَا صَارَتْ ذَاتَ قِشْرٍ فَقَدْ بَايَنَتْ الْمَيْتَةَ وَصَارَتْ مُنْحَازَةً عَنْهَا، وَإِذَا لَمْ تَكُنْ ذَاتَ قِشْرٍ فَهِيَ حِينَئِذٍ بَعْضُ حَشْوَتِهَا وَمُتَّصِلَةٌ بِهَا فَهِيَ حَرَامٌ.

L16912 **Issue: Eggs were cooked, and a spoiled one was found in the entire batch.**

[مَسْأَلَةٌ طُبِخَ بَيْضٌ فَوُجِدَ فِي جُمْلَتِهَا بَيْضَةٌ فَاسِدَةٌ]

[52] **Qur'an references (L16906):** Qur'an 5:2 (Al-Ma'idah).

L16913 1011 – Question: If eggs are cooked and a spoiled egg—having turned into blood or containing an embryo—is found among them, the spoiled one is discarded and the rest of the eggs are eaten, due to the statement of Allah, the Exalted: “No bearer of burdens shall bear the burden of another” (6:164). Thus, the lawful remains lawful; its proximity to the unlawful does not invalidate it, while the unlawful remains unlawful; its proximity to the lawful does not rectify it. And with Allah, the Exalted, lies success.[53]

١٠١١ - مَسْأَلَةٌ: وَلَوْ طُبِخَ بَيْضٌ فَوُجِدَ فِي جُمْلَتِهَا بَيْضَةٌ فَاسِدَةٌ قَدْ صَارَتْ دَمًا أَوْ فِيهَا فَرْخٌ رُمِيَتْ الْفَاسِدَةُ وَأُكِلَ سَائِرُ الْبَيْضِ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] فَالْحَلَالُ حَلَالٌ لَا يُفْسِدُهُ مُجَاوَرَةُ الْحَرَامِ لَهُ، وَالْحَرَامُ حَرَامٌ لَا يُصْلِحُهُ مُجَاوَرَةُ الْحَلَالِ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: Food cooked or roasted with impurity or carrion.

[مَسْأَلَةُ طَعَامٍ طُبِخَ أَوْ شُوِيَ بِعَذِرَةٍ أَوْ بِمَيْتَةٍ]

L16914

L16915 1012. Issue: Any bread, food, meat, or other item cooked or roasted with excrement or a dead animal is entirely lawful (halal), for it is neither a dead animal nor excrement itself. Excrement and dead animals are forbidden (haram), and what is permitted is lawful. Thus, if the actual excrement or dead animal is not evident in any part of it, it is lawful.

١٠١٢ - مَسْأَلَةٌ: وَكُلُّ خُبْزٍ أَوْ طَعَامٍ أَوْ لَحْمٍ أَوْ غَيْرِ ذَلِكَ طُبِخَ أَوْ شُوِيَ بِعَذِرَةٍ أَوْ بِمَيْتَةٍ فَهُوَ حَلَالٌ كُلُّهُ، لِأَنَّهُ لَيْسَ مَيْتَةً وَلَا عَذِرَةً، وَالْعَذِرَةُ وَالْمَيْتَةُ حَرَامٌ، وَمَا أُحِلَّ فَهُوَ حَلَالٌ فَإِذَا لَمْ يَظْهَرْ فِي شَيْءٍ مِنْهُ عَيْنُ الْعَذِرَةِ أَوْ الْمَيْتَةِ فَهُوَ حَلَالٌ.

L16916 Similarly, if food falls into wine or excrement and is washed until no trace of the prohibited substance remains, it is ḥalāl, as neither the Quran nor the Sunnah has mandated the prohibition of anything [i.e., the food] in such a case.

وَكَذَلِكَ لَوْ وَقَعَ طَعَامٌ فِي خَمْرٍ، أَوْ فِي عَذِرَةٍ فَغُسِلَ حَتَّى لَا يَكُونَ لِلْحَرَامِ فِيهِ عَيْنٌ فَهُوَ حَلَالٌ، إذْ لَمْ يُوجِبْ تَحْرِيمَ شَيْءٍ مِنْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ.

Issue: If an animal that would have been permissible to eat had it been Islamically slaughtered dies, and milk was extracted from it...

[مَسْأَلَةُ مَاتَ حَيَوَانٌ مِمَّا يَحِلُّ أَكْلُهُ لَوْ ذُكِّيَ فَحُلِبَ مِنْهُ لَبَنٌ]

L16917

L16918 1013 - Issue: If an animal whose meat would be permissible if slaughtered dies, and milk is milked from it, the milk is lawful. This is because milk is lawful by explicit textual ruling. Its presence in the udder of carrion does not prohibit it, as it has separated from the carcass afterwards. It and the milk milked from it during its life (after which the animal died) are equivalent. It is merely lawful milk in an unlawful vessel, being the same as milk in a gold or silver vessel. Success comes through God Almighty.

١٠١٣ - مَسْأَلَةٌ: فَلَوْ مَاتَ حَيَوَانٌ مِمَّا يَحِلُّ أَكْلُهُ لَوْ ذُكِّيَ فَحُلِبَ مِنْهُ لَبَنٌ فَاللَّبَنُ حَلَالٌ، لِأَنَّ اللَّبَنَ حَلَالٌ بِالنَّصِّ، فَلَا يُحَرِّمُهُ كَوْنُهُ فِي ضَرْعِ مَيْتَةٍ، لِأَنَّهُ قَدْ بَايَنَهَا بَعْدُ، وَهُوَ وَمَا حُلِبَ مِنْهَا فِي حَيَاتِهَا ثُمَّ مَاتَتْ سَوَاءٌ، وَإِنَّمَا هُوَ لَبَنٌ حَلَالٌ فِي وِعَاءٍ حَرَامٍ فَقَطْ، فَهُوَ وَالَّذِي فِي وِعَاءِ ذَهَبٍ أَوْ فِضَّةٍ سَوَاءٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The legal question of eating lethal poison slowly.

[مَسْأَلَةُ أَكْلُ السُّمِّ الْقَاتِلِ بِبُطْءٍ]

L16919

[53] **Qur’an references (L16913):** Qur’an 6:164 (Al-An’am); Qur’an 17:15 (Al-Isra); Qur’an 35:18 (Fatir); Qur’an 39:7 (Az-Zumar).

L16920–16922 Issue 1014: It is not permissible to eat deadly poison, whether consumed gradually or quickly, nor anything harmful from... the foods, nor the excessive consumption of a food whose excessive consumption causes illness, based on the statement of Allah the Exalted: “And do not kill yourselves” (an-Nisā’: 29).[54]

١٠١٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ السُّمِّ الْقَاتِلِ بِبُطْءٍ أَوْ تَعْجِيلٍ وَلَا مَا يُؤْذِي مِنْ الْأَطْعِمَةِ، وَلَا الْإِكْثَارُ مِنْ طَعَامٍ يُمْرِضُ الْإِكْثَارُ مِنْهُ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] .

L16923 It has been narrated to us through the chain of Sufyān ibn ʿUyaynah from Ziyād ibn ʿIlaqah, who said: I heard Usāmah ibn Sharīk say, “I witnessed the Messenger of Allah—peace and blessings be upon him—saying: ’Seek treatment, O servants of Allah, for Allah did not send down any disease without sending down a cure for it, except old age.”’ ʿAlī remarked: Ziyād is trustworthy and reliable. From him narrated Shuʿbah, Sufyān, Sufyān and Misʿar, Abū ʿAwanah, Abū Isḥāq al-Shaybānī, and others.

رُوِّينَا مِنْ طَرِيقِ سُفْيَانِ بْنِ عُيَيْنَةَ عَنْ زِيَادِ بْنِ عِلَاقَةَ قَالَ: سَمِعْت أُسَامَةَ بْنَ شَرِيكٍ قَالَ " شَهِدْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «تَدَاوَوْا عِبَادَ اللَّهِ فَإِنَّ اللَّهَ لَمْ يُنْزِلْ دَاءً إلَّا أَنْزَلَ بِهِ دَوَاءً إلَّا الْهَرَمَ» قَالَ عَلِيٌّ: زِيَادٌ ثِقَةٌ مَأْمُونٌ رَوَى عَنْهُ شُعْبَةُ، وَسُفْيَانُ، وَسُفْيَانُ وَمِسْعَرٌ، وَأَبُو عَوَانَةَ - وَأَبُو إسْحَاقَ الشَّيْبَانِيُّ، وَغَيْرُهُمْ.

L16924 The authentic ḥadīth states: “They are those who do not practice cauterization, do not seek healing through incantations, do not believe in omens, and rely on their Lord.” There is no praise in it for abandoning medicine entirely, nor any mention of prohibiting it. The Prophet’s command—peace be upon him—to seek treatment is a prohibition against abandoning it, for consuming what is harmful is abandoning treatment, and thus it is forbidden—and success is by Allah, the Exalted.

وَلَيْسَ فِي الْخَبَرِ الثَّابِتِ «هُمْ الَّذِينَ لَا يَكْتَوُونَ وَلَا يَسْتَرْقُونَ وَلَا يَتَطَيَّرُونَ وَعَلَى رَبِّهِمْ يَتَوَكَّلُونَ» حُمِدَ لِتَرْكِ الدَّوَاءِ أَصْلًا، وَلَا ذِكْرَ لِلْمَنْعِ مِنْهُ، وَأَمْرُهُ - عَلَيْهِ السَّلَامُ - بِالتَّدَاوِي: نَهْيٌ عَنْ تَرْكِهِ، وَأَكْلُ الْمُضِرِّ: تَرْكٌ لِلتَّدَاوِي، فَهُوَ مَنْهِيٌّ عَنْهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: The Slaughter of the Fetus

L16925

[مَسْأَلَةُ ذَكَاةُ الْجَنِينِ]

L16926 1015. Issue: Every properly slaughtered animal in which a dead fetus is found—if the soul had already been breathed into it—is considered carrion, and its consumption is unlawful. If the fetus is found alive and then slaughtered, its consumption becomes permissible. If the soul had not yet been breathed into it, its consumption is permissible unless it is merely blood without flesh. There is no legal relevance to marking the mother during slaughter or omitting this practice—this is the opinion of Abū Ḥanīfah. The evidence for this is Allah’s statement: “Carrion and blood are forbidden to you” [5:3], and His statement: “except what you have ritually slaughtered” [5:3]. Through empirical observation, we know that the mother’s slaughter

١٠١٥ - مَسْأَلَةٌ: وَكُلُّ حَيَوَانٍ ذَكِيٍّ فَوُجِدَ فِي بَطْنِهِ جَنِينٌ مَيِّتٌ، وَقَدْ كَانَ نُفِخَ فِيهِ الرُّوحُ بَعْدُ فَهُوَ مَيْتَةٌ لَا يَحِلُّ أَكْلُهُ، فَلَوْ أُدْرِكَ حَيًّا فَذُكِّيَ حَلَّ أَكْلُهُ، فَلَوْ كَانَ لَمْ يُنْفَخْ فِيهِ الرُّوحُ بَعْدُ فَهُوَ حَلَالٌ إلَّا إنْ كَانَ بَعْدُ دَمًا لَا لَحْمَ فِيهِ، وَلَا مَعْنَى لِإِشْعَارِهِ وَلَا لِعَدَمِ إشْعَارِهِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ. بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ وَالدَّمُ} [المائدة: ٣] . وَقَالَ تَعَالَى: {إلا مَا ذَكَّيْتُمْ} [المائدة: ٣] . وَبِالْعِيَانِ نَدْرِي

[54] **Qur’an references (L16920):** Qur’an 4:29 (An-Nisa).

does not suffice as slaughter for the living fetus, as it is distinct from her—it may be male while she is female. As for the fetus that is flesh into which the soul had not yet been breathed, it is part of her and was never at any point alive, thus not requiring slaughter.[55]

أَنَّ ذَكَاةَ الْأُمِّ لَيْسَتْ ذَكَاةً لِلْجَنِينِ الْحَيِّ، لِأَنَّهُ غَيْرُهَا وَقَدْ يَكُونُ ذَكَرًا وَهِيَ أُنْثَى، فَأَمَّا إِذَا كَانَ لَحْمًا لَمْ يُنْفَخْ فِيهِ الرُّوحُ بَعْدُ فَهُوَ بَعْضُهَا وَلَمْ يَكُنْ قَطُّ حَيًّا فَيَحْتَاجُ إِلَى ذَكَاةٍ.

L16927 The opponents have cited weak reports as evidence—among them is a narration via the chain of Waki‘, from Ibn Abi Layla, from ‘Atiyyah al-‘Awfi, from Abu Sa‘id al-Khudri, from the Prophet, peace and blessings be upon him: “The lawful slaughter of a fetus [in the womb] is dependent on the lawful slaughter of its mother.” And Ibn Abi Layla is weak in memorization, and ‘Atiyyah is rejected.

وَقَدْ احْتَجَّ الْمُخَالِفُونَ بِأَخْبَارٍ وَاهِيَةٍ -: مِنْهَا: مِنْ طَرِيقِ وَكِيعٍ عَنِ ابْنِ أَبِي لَيْلَى عَنْ عَطِيَّةَ الْعَوْفِيِّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «ذَكَاةُ الْجَنِينِ ذَكَاةُ أُمِّهِ» وَابْنُ أَبِي لَيْلَى سَيِّئُ الْحِفْظِ وَعَطِيَّةُ هَالِكٌ.

L16928–16929 And via the chain of Isma‘īl ibn Muslim al-Makkī from al-Zuhrī from ‘Abd Allāh ibn Ka‘b ibn Mālik from his father from the Prophet – peace and blessings be upon him – with a similar narration. Isma‘īl ibn Muslim is a weak narrator. And via the chain of Ibn al-Mubārak from Mujālid ibn Sa‘īd from Abū al-Waddāk from Abū Sa‘īd from the Prophet – peace and blessings be upon him – regarding the fetus: “Eat it if you wish.” Mujālid is a weak narrator, and Abū al-Waddāk is a weak narrator.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ مُسْلِمٍ الْمَكِّيِّ عَنِ الزُّهْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ كَعْبِ بْنِ مَالِكٍ عَنْ أَبِيهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِهِ - إِسْمَاعِيلَ بْنِ مُسْلِمٍ ضَعِيفٌ. وَمِنْ طَرِيقِ ابْنُ الْمُبَارَكِ عَنْ مُجَالِدِ بْنِ سَعِيدٍ عَنْ أَبِي الْوَدَّاكِ عَنْ أَبِي سَعِيدٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْجَنِينِ «كُلُوهُ إِنْ شِئْتُمْ» ، مُجَالِدٌ ضَعِيفٌ، وَأَبُو الْوَدَّاكِ ضَعِيفٌ.

And via the chain of Abū al-Zubayr from Jābir from the Prophet – peace and blessings be upon him: “The slaughter of the fetus is the slaughter of its mother.” [The narration of Abū al-Zubayr] is not found in al-Layth’s transmission from him, nor did Abū al-Zubayr explicitly state therein that he heard it from Jābir. Thus, he did not hear it from Jābir – and this falls into the category of reports whose transmitter from Jābir is unknown, rendering it from an unknown narrator as we previously cited. Moreover, nothing is transmitted from Abū al-Zubayr except via the chains of Ḥammād ibn Shu‘ayb, al-Ḥasan ibn Bishr, and ‘Attāb ibn Bashīr from ‘Ubayd Allāh ibn Ziyād al-Qaddāḥ – all of whom are weak narrators.

وَمِنْ طَرِيقِ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «ذَكَاةُ الْجَنِينِ ذَكَاةُ أُمِّهِ» [حَدِيثُ أَبِي الزُّبَيْرِ] مَا لَمْ يَكُنْ عِنْدَ اللَّيْثِ عَنْهُ، أَوْ لَمْ يَقُلْ فِيهِ أَبُو الزُّبَيْرِ: أَنَّهُ سَمِعَهُ مِنْ جَابِرٍ؛ فَلَمْ يَسْمَعْهُ مِنْ جَابِرٍ - وَهَذَا مِنْ هَذَا النَّمَطِ لَا يُدْرَى مِمَّنْ أَخَذَهُ عَنْ جَابِرٍ فَهُوَ عَنْ مَجْهُولٍ عَلَى مَا أَوْرَدْنَا قَبْلُ. ثُمَّ لَمْ يَأْتِ عَنْ أَبِي الزُّبَيْرِ إِلَّا مِنْ طَرِيقِ حَمَّادِ بْنِ شُعَيْبٍ، وَالْحَسَنِ بْنِ بِشْرٍ، وَعَتَّابِ بْنِ بَشِيرٍ عَنْ عُبَيْدِ اللَّهِ بْنِ زِيَادٍ الْقَدَّاحِ - وَكُلُّهُمْ ضُعَفَاءُ. وَمِنْ طَرِيقِ أَبِي حُذَيْفَةَ نا مُحَمَّدُ بْنُ مُسْلِمٍ الطَّائِفِيُّ عَنْ أَيُّوبَ بْنِ مُوسَى قَالَ: ذُكِرَ لِي عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي «الْجَنِينِ إِذَا أَشْعَرَ فَذَكَاتُهُ ذَكَاةُ أُمِّهِ» أَبُو حُذَيْفَةَ ضَعِيفٌ، وَمُحَمَّدِ بْنِ مُسْلِمٍ أَسْقَطُ مِنْهُ - ثُمَّ هُوَ مُنْقَطِعٌ.

And via the chain of Abū Ḥudhayfah narrated to us: Muḥammad ibn Muslim al-Ṭā’ifī from Ayyūb ibn Mūsā, who said: It was mentioned to me from Ibn ‘Umar from the Prophet – peace and blessings be upon him – regarding the fetus: “If it grows hair, its slaughter is the slaughter of its mother.” Abū Ḥud-

[55] **Qur’an references (L16926):** Qur’an 5:3 (Al-Ma’idah).

hayfah is a weak narrator, and Muḥammad ibn Muslim is more unreliable than him – moreover, the chain is disconnected.

And via the chain of Ibn Abī Laylā from his brother ʿĪsā from his father from the Prophet – peace and blessings be upon him: "The slaughter of the fetus is the slaughter of its mother if it grows hair." Ibn Abī Laylā is deficient in memorization, and the chain is disconnected.

They said: This is the position of the majority of scholars – as we were informed via the chain of Sufyān from al-Zuhrī from Ibn Kaʿb ibn Mālik, who said: The Companions of the Messenger of Allāh – peace and blessings be upon him – would say, "The slaughter of the fetus is the slaughter of its mother."

And via the chain of Ibn Abī Shaybah: Ibn ʿUlayyah narrated from Ayyūb al-Sikhtiyānī from Ibn ʿUmar, who said regarding the fetus of a she-camel if it is fully formed and grows hair: "Its slaughter is the slaughter of its mother, and it is to be slaughtered."

And via the chain of al-Ḥārith from ʿAlī: "If the fetus of a she-camel grows hair, eat it, for its slaughter is the slaughter of its mother."

L16930–16932 And from Qābūs ibn Abī Ẓabyān, from his father, from Ibn ʿAbbās: He pointed to the fetus of the she-camel, grasped its tail, and said: "This is among the livestock animals." And from Abū al-Zubayr, from Jābir: "The slaughtering by nahr of the fetus of the she-camel is the slaughtering by nahr of its mother." And from Ibrāhīm, from Ibn Masʿūd: "The ritual slaughter of the fetus is the ritual slaughter of its mother." This is the position of Ibrāhīm, al-Shaʿbī, al-Qāsim ibn Muḥammad, Ṭāwūs, Abū Ẓabyān, Abū Isḥāq al-Sabīʿī, al-Ḥasan, and Saʿīd ibn al-Musayyib. Nafi', Ikrimah, Mujahid, Ata', Yahya ibn Sa'id al-Ansari, Abd al-Rahman ibn Abi Layla, al-Zuhri, Malik, al-Awza'i, al-Layth ibn Sa'd, Sufyan al-Thawri, al-Hasan ibn Hayyin, Abu Yusuf, Muhammad ibn al-Hasan, and al-Shafi'i.

L16933 It was reported to us through the chain of Ibn Abī Shaybah: Abū Muʿāwiyah reported to us from Misʿar ibn Kidām, from Ḥammād ibn Abī Sulaymān

وَمِنْ طَرِيقِ ابْنِ أَبِي لَيْلَى عَنْ أَخِيهِ عِيسَى عَنْ أَبِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «ذَكَاةُ الْجَنِينِ ذَكَاةُ أُمِّهِ إذَا أَشْعَرَ» ابْنُ أَبِي لَيْلَى سَيِّئُ الْحِفْظِ، ثُمَّ هُوَ مُنْقَطِعٌ. وَقَالُوا: هُوَ قَوْلُ جُمْهُورِ الْعُلَمَاءِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ عَنْ الزُّهْرِيِّ عَنْ ابْنِ كَعْبِ بْنِ مَالِكٍ قَالَ: كَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُونَ «ذَكَاةُ الْجَنِينِ ذَكَاةُ أُمِّهِ» . وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ عُمَرَ قَالَ فِي جَنِينِ النَّاقَةِ إذَا تَمَّ وَأَشْعَرَ: فَذَكَاتُهُ ذَكَاةُ أُمِّهِ وَيُنْحَرُ. وَمِنْ طَرِيقِ الْحَارِثِ عَنْ عَلِيٍّ إذَا أَشْعَرَ جَنِينُ النَّاقَةِ فَكُلْهُ، فَإِنَّ ذَكَاتَهُ ذَكَاةُ أُمِّهِ -

وَعَنْ قَابُوسَ بْنِ أَبِي ظَبْيَانَ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ أَشَارَ إلَى جَنِينِ نَاقَةٍ وَأَخَذَ بِذَنَبِهِ وَقَالَ: هَذَا مِنْ بَهِيمَةِ الْأَنْعَامِ وَعَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ نَحْرُ جَنِينِ النَّاقَةِ نَحْرُ أُمِّهِ. وَعَنْ إبْرَاهِيمَ عَنْ ابْنِ مَسْعُودٍ ذَكَاةُ الْجَنِينِ ذَكَاةُ أُمِّهِ - وَهُوَ قَوْلُ إبْرَاهِيمَ، وَالشَّعْبِيِّ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ، وَطَاوُسٍ، وَأَبِي ظَبْيَانَ، وَأَبِي إسْحَاقَ السَّبِيعِيِّ، وَالْحَسَنِ، وَسَعِيدِ بْنِ الْمُسَيِّبِ وَنَافِعٍ، وَعِكْرِمَةَ، وَمُجَاهِدٍ، وَعَطَاءٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى، وَالزُّهْرِيِّ، وَمَالِكٍ، وَالْأَوْزَاعِيِّ، وَاللَّيْثِ بْنِ سَعْدٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَالشَّافِعِيِّ.

regarding the fetus of a slaughtered animal. He said: “The slaughter of one life cannot validate two lives”—this being the opinion of Abū Ḥanīfah and Zufar. It was reported to us by Aḥmad ibn ʿUmar ibn Anas: Muḥammad ibn ʿĪsā Ghundar reported to us from Khalaf ibn al-Qāsim, from Abū al-Maymūn, from ʿAbd al-Raḥmān ibn ʿUbayd Allāh ibn ʿUmar ibn Rāshid al-Bajalī, from Abū Zurʿah—who is ʿAbd al-Raḥmān ibn ʿUmar al-Naṣrī—from ʿAbd Allāh ibn Ḥayyān. I said to Mālik ibn Anas: “O Abā ʿAbd Allāh, if a camel is slaughtered while a fetus is moving in its womb, its belly is cut open, and the fetus emerges—may it be eaten?” He said: “Yes.” I said: “Al-Awzāʿī prohibits eating it.” He replied: “Al-Awzāʿī is correct”—this also being a view attributed to Mālik. Those who permitted its consumption differed: It was reported to us from al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq, who said: “If it is known that the fetus died before its mother’s death, it may be eaten; otherwise, it may not.” He was asked: “How is this known?” He answered: “If it emerges unswollen and unaltered, its death coincided with hers.” Others said: “It may not be eaten unless it has grown hair and is fully formed”—this being the opinion of Ibn ʿUmar, ʿAbd al-Raḥmān ibn Abī Laylā, al-Zuhrī, al-Shaʿbī, Nāfiʿ, ʿIkrimah, Mujāhid, ʿAṭāʾ, and Yaḥyā ibn Saʿīd. Yaḥyā stated: “If it emerges alive, it is unlawful to eat unless ritually slaughtered”—this being Mālik’s position, though he added: “If it emerges alive, eating it is disliked (makrūh) but not forbidden (ḥarām).”

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو مُعَاوِيَةَ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ فِي جَنِينِ الْمَذْبُوحَةِ؟ قَالَ: لَا تَكُونُ ذَكَاةُ نَفْسٍ عَنْ نَفْسَيْنِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَزُفَرَ -: نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نا مُحَمَّدُ بْنُ عِيسَى غُنْدَرٌ نا خَلَفُ بْنُ الْقَاسِمِ نا أَبُو الْمَيْمُونِ نا عَبْدُ الرَّحْمَنِ بْنُ عُبَيْدِ اللَّهِ بْنِ عُمَرَ بْنِ رَاشِدٍ الْبَجَلِيُّ نا أَبُو زُرْعَةَ - هُوَ عَبْدُ الرَّحْمَنِ بْنُ عُمَرَ النَّصْرِيُّ - نا عَبْدُ اللَّهِ بْنُ حَيَّانَ قُلْت لِمَالِكِ بْنِ أَنَسٍ: يَا أَبَا عَبْدِ اللَّهِ النَّاقَةُ تُذْبَحُ وَفِي بَطْنِهَا جَنِينٌ يَرْتَكِضُ فَيُشَقُّ بَطْنُهَا فَيَخْرُجُ جَنِينُهَا أَيُؤْكَلُ؟ قَالَ: نَعَمْ، قُلْت: إنَّ الْأَوْزَاعِيَّ قَالَ: لَا يُؤْكَلُ، قَالَ: أَصَابَ الْأَوْزَاعِيُّ - فَهَذَا قَوْلٌ لِمَالِكٍ أَيْضًا. وَاخْتَلَفَ الْقَائِلُونَ فِي إبَاحَةِ أَكْلِهِ -: فَرُوِّينَا عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ. قَالَ: إذَا عَلِمَ أَنَّ مَوْتَ الْجَنِينِ قَبْلَ مَوْتِ أُمِّهِ أُكِلَ وَإِلَّا لَمْ يُؤْكَلْ، قِيلَ لَهُ: مِنْ أَيْنَ يَعْلَمُ ذَلِكَ؟ قَالَ: إذَا خَرَجَ لَمْ يَنْتَفِخْ وَلَمْ يَتَغَيَّرْ فَهُوَ مَوْتُهَا. وَقَالَ بَعْضُهُمْ: لَا يُؤْكَلُ إلَّا أَنْ يَكُونَ قَدْ أَشْعَرَ وَتَمَّ - وَهُوَ قَوْلُ ابْنِ عُمَرَ، وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى، وَالزُّهْرِيِّ، وَالشَّعْبِيِّ، وَنَافِعٍ، وَعِكْرِمَةَ، وَمُجَاهِدٍ، وَعَطَاءٍ، وَيَحْيَى بْنِ سَعِيدٍ، قَالَ يَحْيَى: فَإِنْ خَرَجَ حَيًّا لَمْ يَحِلَّ أَكْلُهُ إلَّا أَنْ يُذَكَّى - وَبِهِ قَالَ مَالِكٌ، إلَّا أَنَّهُ قَالَ: إنْ خَرَجَ حَيًّا كُرِهَ أَكْلُهُ، وَلَيْسَ حَرَامًا.

L16934–16936 Others said: Whether he formally declared the intention or not, it is permissible—and this is the position of Ibn Abbas, Ibrahim al-Nakhaʿi, Saʿid ibn al-Musayyib, al-Awzaʿi, al-Layth, Sufyan al-Thawri, al-Hasan ibn Salih ibn Hayy, Abu Yusuf, Muhammad ibn al-Hasan, and al-Shafiʿi. Abu Muhammad said: Had this been authentically established from the Prophet (peace be upon him), we would have affirmed it without hesitation. Since it is not authentically established from him, it is impermissible to abandon the Quran for the opinion of one or several individuals. As for Abu Hanifa, he censures

وَقَالَ آخَرُونَ: أَشْعَرَ أَوْ لَمْ يُشْعِرْ هُوَ حَلَالٌ - وَهُوَ قَوْلُ ابْنِ عَبَّاسٍ، وَإِبْرَاهِيمَ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَالْأَوْزَاعِيِّ، وَاللَّيْثِ، وَسُفْيَانَ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَالشَّافِعِيِّ. قَالَ أَبُو مُحَمَّدٍ: لَوْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَقُلْنَا بِهِ مُسَارِعِينَ وَإِذَا لَمْ يَصِحَّ عَنْهُ فَلَا يَحِلُّ تَرْكُ الْقُرْآنِ لِقَوْلِ قَائِلٍ أَوْ قَائِلِينَ -: فَأَمَّا أَبُو

two matters: differing from a Companion when no dissenting opinion is known among them, and differing from the majority of scholars. He views this as contrary to the consensus of the scholars. This constitutes a matter wherein he opposed the Companions and the majority of scholars among the Successors, while the reports he adduces as evidence are weaker than those - a flagrant contradiction. As for Mālik, he did not prohibit the fetus if it emerged alive after its mother's slaughter, and we do not know this [ruling] about any of Allah's creatures before him.

L16937 According to this view of his, if the offspring is considered lawfully slaughtered by its mother's slaughter, then should it live, grow, impregnate, and produce offspring, it would be permissible to eat it upon its death—since it was slaughtered afterward by its mother's slaughter. But Allah is exalted far above this! Both positions thus oppose the consensus—or what he considers to be consensus—in this matter. [And with Allah, the Exalted, is success.]

L16938 ## A Question Regarding Eating and Drinking in Gold or Silver Vessels

L16939 1016 - Issue: It is not permissible to eat or drink from vessels of gold or silver, whether for men or women. If a vessel is banded with silver, eating and drinking from it becomes permissible for men and women, as it does not constitute a silver vessel. If it is banded with gold or adorned with gold, its use becomes forbidden for men due to the employment of gold, while remaining permissible for women since it is not a gold vessel. We have narrated through the chain transmitted by Muslim: Abu Bakr ibn Abi Shaybah narrated to us, Ali ibn Mushir narrated to us from Ubayd Allah ibn Umar from Nāfi'—the client of Ibn Umar—from Zayd ibn Abd Allah ibn Umar ibn al-Khattāb from Abd Allah ibn Abd al-Rahmān ibn Abi Bakr al-Siddīq from Umm Salamah, the Mother of the Believers, that the Messenger of Allah—peace and blessings be upon him—said: "Whoever eats or drinks from vessels of gold or silver is filling his belly with the fire of Hell." This ruling applies generally to both men and women. It is authentically established from the Prophet—peace and blessings be upon him—that "gold is forbidden for the males of my nation but permissible for its women."

حَنِيفَةَ، فَإِنَّهُ يُشَنِّعُ، بِخِلَافِ الصَّاحِبِ لَا يُعْرَفُ لَهُ مُخَالِفٌ، وَخِلَافِ جُمْهُورِ الْعُلَمَاءِ، وَيَرَى ذَلِكَ خِلَافًا لِلْإِجْمَاعِ، هَذَا مَكَانٌ خَالَفَ فِيهِ الصَّحَابَةَ وَجُمْهُورَ الْعُلَمَاءِ مِنْ التَّابِعِينَ وَالْآثَارُ الَّتِي يَحْتَجُّ هُوَ بِأَسْقَطَ مِنْهَا - وَهَذَا تَنَاقُضٌ فَاحِشٌ. وَأَمَّا مَالِكٌ، فَإِنَّهُ لَمْ يُحَرِّمْ الْجَنِينَ إذَا خَرَجَ بَعْدَ ذَبْحِ أُمِّهِ حَيًّا، وَمَا نَعْلَمُ هَذَا عَنْ أَحَدٍ مِنْ خَلْقِ اللَّهِ تَعَالَى قَبْلَهُ.

وَيَلْزَمُ عَلَى هَذَا أَنَّهُ إنْ كَانَ عِنْدَهُ ذَكِيًّا بِذَكَاةِ أُمِّهِ أَنَّهُ إنْ عَاشَ وَكَبُرَ وَأَلْقَحَ وَنَتَجَ أَنَّهُ حَلَالٌ أَكْلُهُ مَتَى مَاتَ، لِأَنَّهُ ذُكِّيَ بَعْدُ بِذَكَاةِ أُمِّهِ - وَحَاشَا لِلَّهِ مِنْ هَذَا، فَكِلَاهُمَا خَالَفَ الْإِجْمَاعَ، أَوْ مَا يَرَاهُ إجْمَاعًا فِي هَذِهِ الْمَسْأَلَةِ [وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ] .

[مَسْأَلَةُ الْأَكْلُ وَالشُّرْبُ فِي آنِيَةِ الذَّهَبِ أَوْ الْفِضَّةِ]

١٠١٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْأَكْلُ وَلَا الشُّرْبُ فِي آنِيَةِ الذَّهَبِ أَوْ الْفِضَّةِ لَا لِرَجُلٍ وَلَا لِامْرَأَةٍ، فَإِنْ كَانَ مُضَبَّبًا بِالْفِضَّةِ جَازَ الْأَكْلُ وَالشُّرْبُ فِيهِ لِلرِّجَالِ وَالنِّسَاءِ، لِأَنَّهُ لَيْسَ إنَاءَ فِضَّةٍ، فَإِنْ كَانَ مُضَبَّبًا بِالذَّهَبِ، أَوْ مُزَيَّنًا بِهِ حَرُمَ عَلَى الرِّجَالِ، لِأَنَّ فِيهِ اسْتِعْمَالَ ذَهَبٍ - وَحَلَّ لِلنِّسَاءِ لِأَنَّهُ لَيْسَ إنَاءُ ذَهَبٍ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَلِيُّ بْنُ مُسْهِرٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ - هُوَ مَوْلَى ابْنِ عُمَرَ - عَنْ زَيْدِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الَّذِي يَأْكُلُ أَوْ يَشْرَبُ فِي آنِيَةِ الذَّهَبِ وَالْفِضَّةِ إنَّمَا يُجَرْجِرُ فِي بَطْنِهِ نَارَ جَهَنَّمَ» فَهَذَا عُمُومٌ

يَدْخُلُ فِيهِ الرِّجَالُ وَالنِّسَاءُ. وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَّ الذَّهَبَ حَرَامٌ عَلَى ذُكُورِ أُمَّتِهِ حِلٌّ لِإِنَاثِهَا» .

L16940 We have been narrated from Ali—may Allah be pleased with him—that he was brought faloodaj in a silver vessel, so he removed it, placed it on bread, and ate it, except if the report transmitted to us by Muhammad ibn Isma'il al-'Udhri, judge of Saragossa, is valid: From Muhammad ibn Ali al-Muṭṭawwi'ī, from al-Hakim Muhammad ibn 'Abd Allah al-Naysaburi, from al-Husayn ibn al-Hasan al-Tusi in Naysabur and 'Abd Allah ibn Muhammad al-Khuza'i in Mecca—both saying: From Abu Yahya ibn Abi Maysarah, from Yahya ibn Muhammad al-Jari, from Zakariyya ibn Ibrahim ibn 'Abd Allah ibn Mutti', from his father, from his grandfather, from Ibn 'Umar, who said: The Messenger of Allah—peace and blessings be upon him—said: "Whoever drinks from a vessel of gold or silver, or a vessel containing any of that, verily he gulps down into his belly the fire of Hell."[56]

وَرُوِّينَا عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ أُتِيَ بفالوذج فِي إنَاءِ فِضَّةٍ فَأَخْرَجَهُ وَجَعَلَهُ عَلَى رَغِيفٍ وَأَكَلَهُ إلَّا أَنْ يَصِحَّ مَا حَدَّثَنَا بِهِ مُحَمَّدُ بْنُ إسْمَاعِيلَ الْعُذْرِيُّ قَاضِي سَرَقُسْطَةَ نا مُحَمَّدُ بْنُ عَلِيٍّ الْمُطَّوِّعِيُّ نا الْحَاكِمُ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ النَّيْسَابُورِيُّ أَنَا الْحُسَيْنُ بْنُ الْحَسَنِ الطُّوسِيُّ بِنَيْسَابُورَ، وَعَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الْخُزَاعِيُّ بِمَكَّةَ، قَالَا جَمِيعًا: نا أَبُو يَحْيَى بْنُ أَبِي مَيْسَرَةَ نا يَحْيَى بْنُ مُحَمَّدٍ الْجَارِي نا زَكَرِيَّا بْنُ إبْرَاهِيمَ بْنِ عَبْدِ اللَّهِ بْنِ مُطِيعٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ شَرِبَ فِي إنَاءِ ذَهَبٍ أَوْ فِضَّةٍ أَوْ إنَاءٍ فِيهِ شَيْءٌ مِنْ ذَلِكَ، فَإِنَّمَا يُجَرْجِرُ فِي بَطْنِهِ نَارَ جَهَنَّمَ» .

L16941–16942 If this report is authenticated, we adhere to its explicit text, and drinking from a vessel containing any gold or silver becomes impermissible for both men and women. However, we hesitate to adopt this position because Zakariya ibn Ibrahim is not known to us as reliable (ʿadl) or discredited (jarḥ)—and success is from Allah, the Most High.

فَإِنْ صَحَّ هَذَا الْخَبَرُ قُلْنَا بِهِ عَلَى نَصِّهِ، وَلَمْ يَحِلَّ الشُّرْبُ فِي إنَاءٍ فِيهِ شَيْءٌ مِنْ ذَهَبٍ أَوْ فِضَّةٍ لِرَجُلٍ وَلَا لِامْرَأَةٍ، وَإِنَّمَا تَوَقَّفْنَا عَنْهُ لِأَنَّ زَكَرِيَّا بْنَ إبْرَاهِيمَ لَا نَعْرِفُهُ بِعَدْلٍ وَلَا جَرَاحَةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L16943 It was narrated to us through the chain of Ibn Abi Shaybah from Marwan ibn Mu'awiyah from al-'Ala' from Ya'la ibn al-Nu'man, who said: Amr said, "Whoever drinks from a silver-plated vessel, Allah will give him embers to drink on the Day of Resurrection." It has been authentically established from Ibn Umar that he would not drink from a vessel containing a silver rivet or a silver ring. The like of this is reported from a group [of scholars], while others permit it.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ مَرْوَانَ بْنِ مُعَاوِيَةَ عَنْ الْعَلَاءِ عَنْ يَعْلَى بْنِ النُّعْمَانِ قَالَ: قَالَ عَمْرٌو: مَنْ شَرِبَ فِي قَدَحٍ مُفَضَّضٍ سَقَاهُ اللَّهُ جَمْرًا يَوْمَ الْقِيَامَةِ. وَصَحَّ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ لَا يَشْرَبُ بِقَدَحٍ فِيهِ ضَبَّةُ فِضَّةٍ وَلَا حَلَقَةُ فِضَّةٍ -: وَعَنْ جَمَاعَةٍ مِثْلُ هَذَا - وَعَنْ آخَرِينَ إبَاحَتُهُ

L16944

The Issue of Combining During Eating

[مَسْأَلَةُ الْقِرَانُ فِي الْأَكْلِ]

[56] **Hadith references (L16940):** Mishkat al-Masabih 4285.

L16945 1017 - Issue: It is not permissible to pair items while eating except with the permission of the one being dined with. This means you take two items at a time, two at a time, while he takes one at a time, such as two dates versus one, two figs versus one, or similar, unless the entire item is yours, in which case you may do as you wish. It was narrated to us through Al-Bukhari's chain of transmission: Adam narrated to us, Shu'bah narrated to us, Jabalah ibn Suhaym narrated to us that he heard Ibn 'Umar say—as he passed by people who were eating—"Do not pair, for the Messenger of Allah (peace be upon him) forbade pairing unless a man seeks permission from his companion." Shu'bah said the mention of permission is Ibn 'Umar's own addition. 'Ali said: This is more comprehensive than what Sufyan narrated from Jabalah ibn Suhaym. Therefore, if the one dining with you permits it, it is his right to forgo [the prohibition].

١٠١٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْقِرَانُ فِي الْأَكْلِ إلَّا بِإِذْنِ الْمُؤَاكِلِ، وَهُوَ أَنْ تَأْخُذَ أَنْتَ شَيْئَيْنِ شَيْئَيْنِ وَيَأْخُذَ هُوَ وَاحِدًا وَاحِدًا كَتَمْرَتَيْنِ وَتَمْرَةٍ، أَوْ تِينَتَيْنِ وَتِينَةٍ، وَنَحْوِ ذَلِكَ، إلَّا أَنْ يَكُونَ الشَّيْءُ كُلُّهُ لَك فَافْعَلْ فِيهِ مَا شِئْت. رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا آدَم نا شُعْبَةُ نا «جَبَلَةُ بْنُ سُحَيْمٍ: أَنَّهُ سَمِعَ ابْنَ عُمَرَ يَقُولُ - وَهُوَ يَمُرُّ بِهِمْ وَهُمْ يَأْكُلُونَ - لَا تُقَارِنُوا فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ الْقِرَانِ إلَّا أَنْ يَسْتَأْذِنَ الرَّجُلُ أَخَاهُ» قَالَ شُعْبَةُ: الْإِذْنُ مِنْ قَوْلِ ابْنِ عُمَرَ. قَالَ عَلِيٌّ: هَذَا أَعَمُّ مِمَّا رَوَاهُ سُفْيَانُ عَنْ جَبَلَةَ بْنِ سُحَيْمٍ، فَإِذَا أَذِنَ الْمُؤَاكِلُ فَهُوَ حَقُّهُ تَرَكَهُ.

Issue: The ruling on consuming dough kneaded with intoxicants (khamr).

[مَسْأَلَةٌ أَكْلُ مَا عُجِنَ بِالْخَمْرِ]

L16946–16949 1018 - Issue: It is not permissible to eat dough kneaded with wine or anything prohibited for consumption, nor [to use] a pot in which something from that category was used for cooking—unless the substance used to knead the flour and cook the food was lawful, and the prohibited substance added to it was minimal, having no detectable smell, taste, or color within it, and leaving no trace of the prohibited element whatsoever. In such a case, it becomes permissible, though whoever intentionally introduced any prohibited substance into it has disobeyed Allah Almighty. This is because when the defining attributes of a prohibited substance—those for which it was named in the scriptural evidence establishing its prohibition—are nullified, that designation ceases to apply. Once the designation ceases, the prohibition is lifted, as the prohibition applies only to what is designated by that name, such as wine, blood, or carrion. Thus, when blood transforms into meat, wine becomes vinegar, or carrion is assimilated through nourishment—such as when an animal consumes carrion and its flesh becomes permissible—it becomes lawful. As for chicken and other similar animals, the prohibition has indeed been lifted, and from Allah, the Exalted, is all success.

١٠١٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ مَا عُجِنَ بِالْخَمْرِ، أَوْ بِمَا لَا يَحِلُّ أَكْلُهُ أَوْ شُرْبُهُ، وَلَا قِدْرٌ طُبِخَتْ بِشَيْءٍ مِنْ ذَلِكَ، إلَّا أَنْ يَكُونَ مِمَّا عُجِنَ بِهِ الدَّقِيقُ وَطُبِخَ بِهِ الطَّعَامُ شَيْئًا حَلَالًا وَكَانَ مَا رُمِيَ فِيهِ مِنْ الْحَرَامِ قَلِيلًا لَا رِيحَ لَهُ فِيهِ وَلَا طَعْمَ وَلَا لَوْنَ، وَلَا يَظْهَرُ لِلْحَرَامِ فِي ذَلِكَ أَثَرٌ أَصْلًا فَهُوَ حَلَالٌ حِينَئِذٍ، وَقَدْ عَصَى اللَّهَ تَعَالَى مَنْ رَمَى فِيهِ شَيْئًا مِنْهُ، لِأَنَّ الْحَرَامَ إذَا بَطَلَتْ صِفَاتُهُ الَّتِي بِهَا سُمِّيَ بِذَلِكَ الِاسْمِ الَّذِي بِهِ نَصَّ عَلَى تَحْرِيمِهِ فَقَدْ بَطَلَ ذَلِكَ الِاسْمُ عَنْهُ وَإِذَا بَطَلَ ذَلِكَ الِاسْمُ سَقَطَ التَّحْرِيمُ، لِأَنَّهُ إنَّمَا حَرَّمَ مَا يُسَمَّى بِذَلِكَ الِاسْمِ كَالْخَمْرِ، وَالدَّمِ، وَالْمَيْتَةِ، فَإِذَا اسْتَحَالَ الدَّمُ لَحْمًا، أَوْ الْخَمْرُ خَلًّا، أَوْ الْمَيْتَةُ بِالتَّغَذِّي أَجْزَاءً فِي الْحَيَوَانِ الْآكِلِ لَهَا مِنْ الدَّجَاجِ، وَغَيْرِهِ فَقَدْ سَقَطَ التَّحْرِيمُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16950 Whoever opposes this position would consequently be obliged to prohibit milk, as it is blood transformed into milk, and to prohibit dates and crops irrigated with excrement and urine. Conversely, they would also be compelled to permit excrement and urine themselves, since they are originally permissible food and water that have transformed into entities explicitly prohibited by name in textual sources. The prohibition of dough or food cooked with them arises from the pervasive effect of their essence throughout the entire mixture. However, when the effect originates from a permissible substance while the prohibited element leaves no trace, we have now clarified what suffices. It has been narrated through Ibn Abi Shaybah's chain from Muhammad ibn Yazid, from Dawud ibn Amr, from Makhul, from Abu al-Darda regarding *murri* (a fermented sauce) mixed with wine. He said: "There is no harm in it, for fire and salt have nullified it."

وَمَنْ خَالَفَ هَذَا لَزِمَهُ أَنْ يُحَرِّمَ اللَّبَنَ، لِأَنَّهُ دَمٌ اسْتَحَالَ لَبَنًا، وَأَنْ يُحَرِّمَ التَّمْرَ وَالزَّرْعَ الْمَسْقِيَّ بِالْعَذِرَةِ وَالْبَوْلِ، وَلَزِمَهُ أَنْ يُبِيحَ الْعَذِرَةَ وَالْبَوْلَ، لِأَنَّهُمَا طَعَامٌ، وَمَاءٌ حَلَالَانِ اسْتَحَالَا إلَى اسْمٍ مَنْصُوصٍ عَلَى تَحْرِيمِ الْمُسَمَّى بِهِ. وَأَمَّا تَحْرِيمُ مَا عُجِنَ أَوْ طُبِخَ بِهِ، فَلِظُهُورِ أَثَرِهِ فِي جَمِيعِ الشَّيْءِ الْمَعْجُونِ وَالْمَطْبُوخِ، وَأَمَّا إذَا كَانَ الْأَثَرُ لِشَيْءٍ حَلَالٍ، وَكَانَ الْحَرَامُ لَا أَثَرَ لَهُ، فَقَدْ قُلْنَا الْآنَ مَا يَكْفِي -: رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ مُحَمَّدِ بْنِ يَزِيدَ عَنْ دَاوُد بْنِ عَمْرٍو عَنْ مَكْحُولٍ عَنْ أَبِي الدَّرْدَاءِ: فِي الْمُرِّيِّ يُجْعَلُ فِيهِ الْخَمْرُ؟ قَالَ: لَا بَأْسَ بِهِ، ذَبَحَتْهُ النَّارُ وَالْمِلْحُ.

A legal question on the permissibility of eating cheese curdled with rennet from an animal that died without proper Islamic slaughter.

[مَسْأَلَةٌ أَكْلُ جُبْنٍ عُقِدَ بِإِنْفَحَةِ مَيْتَةٍ]

L16952 Issue 1019: It is not permissible to eat cheese coagulated with the rennet of a non-slaughtered carcass because its effect is evident in it - since it is the rennet that coagulates it, as per what was mentioned earlier. Likewise, everything mixed with impermissible substances, and with Allah, the Exalted, is success.

١٠١٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ جُبْنٍ عُقِدَ بِإِنْفَحَةِ مَيْتَةٍ لِأَنَّ أَثَرَهَا ظَاهِرٌ فِيهِ وَهُوَ عَقْدُهَا لَهُ لِمَا ذَكَرْنَا آنِفًا وَهَكَذَا كُلُّ مَا مُزِجَ بِحَرَامٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A legal issue concerning that in which a dog has lapped.

[مَسْأَلَةٌ مَا وَلَغَ فِيهِ الْكَلْبُ]

L16954 Issue 1020: It is not permissible to consume anything a dog has lapped into, due to the command of the Messenger of Allah (peace be upon him) to pour it out. If the dog ate from it without having lapped into it, all of it is permissible. We have already detailed this issue in the Book of Purification, making its repetition unnecessary. And success is from Allah, the Exalted.

١٠٢٠ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ مَا وَلَغَ فِيهِ الْكَلْبُ، لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهَرْقِهِ، فَإِنْ أَكَلَ مِنْهُ وَلَمْ يَلَغْ فِيهِ فَهُوَ كُلُّهُ حَلَالٌ - وَقَدْ تَقَصَّيْنَا هَذِهِ الْمَسْأَلَةَ فِي كِتَابِ الطَّهَارَةِ فَأَغْنَى عَنْ إعَادَتِهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

An issue: Eating from the middle of the food.

[مَسْأَلَةٌ الْأَكْلُ مِنْ وَسَطِ الطَّعَامِ]

L16956 1021 - Issue: It is not permissible to eat from the middle of the dish, nor

to eat from what is not nearest to you, whether it is a single type or various types. If a person takes a portion from what is near others, places it before himself, leaves it, then takes it and eats it, there is no blame on him for doing so. We were narrated through the chain of Sufyān ibn ʿUyaynah, who narrated from ʿAṭāʾ ibn al-Sāʾib, who said: Saʿīd ibn Jubayr told us: I heard Ibn ʿAbbās say: The Messenger of Allah—peace and blessings be upon him—said: "Blessing descends in the middle of the dish, so eat from its sides and do not eat from its middle." The narration of Sufyān, Shuʿbah, and Ḥammād ibn Zayd from ʿAṭāʾ ibn al-Sāʾib was before his reports became mixed. From the chain of al-Bukhārī: ʿAbd al-ʿAzīz ibn ʿAbd Allāh al-Uwaysī narrated to us: Muḥammad ibn Jaʿfar narrated from Muḥammad ibn ʿAmr ibn Ḥalḥalah al-Dīlī from Wahb ibn Kaysān Abū Nuʿaym from ʿUmar ibn Abī Salamah al-Makhzūmī: "The Messenger of Allah—peace and blessings be upon him—said to him: 'Eat from what is nearest to you.'"

١٠٢١ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْأَكْلُ مِنْ وَسَطِ الطَّعَامِ وَلَا أَنْ تَأْكُلَ مِمَّا لَا يَلِيكَ سَوَاءٌ كَانَ صِنْفًا وَاحِدًا أَوْ أَصْنَافًا شَتَّى، فَلَوْ أَنَّ الْمَرْءَ أَخَذَ شَيْئًا مِمَّا يَلِي غَيْرَهُ ثُمَّ جَعَلَهُ أَمَامَ نَفْسِهِ وَتَرَكَهُ ثُمَّ أَخَذَهُ فَأَكَلَهُ فَلَا حَرَجَ عَلَيْهِ فِي ذَلِكَ. رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ قَالَ: نا عَطَاءُ بْنُ السَّائِبِ قَالَ: قَالَ لَنَا سَعِيدُ بْنُ جُبَيْرٍ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْبَرَكَةُ تَنْزِلُ وَسَطَ الطَّعَامِ فَكُلُوا مِنْ نَوَاحِيهِ وَلَا تَأْكُلُوا مِنْ وَسَطِهِ» سَمَاعُ سُفْيَانَ، وَشُعْبَةَ، وَحَمَّادِ بْنِ زَيْدٍ مِنْ عَطَاءِ بْنِ السَّائِبِ كَانَ قَبْلَ اخْتِلَاطِهِ. وَمِنْ طَرِيقِ الْبُخَارِيِّ نا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ الْأُوَيْسِيُّ نا مُحَمَّدُ بْنُ جَعْفَرٍ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَلْحَلَةَ الدِّيلِيِّ عَنْ وَهْبِ بْنِ كَيْسَانَ أَبِي نُعَيْمٍ عَنْ عُمَرَ بْنِ أَبِي سَلَمَةَ الْمَخْزُومِيِّ: " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: «كُلْ مِمَّا يَلِيكَ» .

L16957–16958 From the path of Ahmad ibn Shu'ayb: I am Abdullah ibn al-Sabbah al-Attar, narrated by Abd al-A'la, narrated by Ma'mar, from Hisham ibn Urwah, from his father, from Umar ibn Abi Salamah: "The Messenger of Allah—peace and blessings be upon him—said to him: 'Come closer, my son. Mention Allah's name, eat with your right hand, and eat from what is nearest to you.'" He—peace be upon him—did not specify a specific category among categories. Those who differentiate cited a narration we have reported through the path of Muhammad ibn Jarir al-Tabari: Narrated by Muhammad ibn al-Muthanna, narrated by al-Ala ibn al-Fadl ibn Abd al-Malik ibn Abi Sawiyyah al-Munqiri, narrated by Abu al-Hudhayl: "Ubaydullah ibn Ikraash ibn Dhu'ayb narrated from his father: He was with the Messenger of Allah—peace and blessings be upon him—when they brought a portion of tharid. The Messenger of Allah—peace and blessings be upon him—said to him: 'O Ikraash, eat from one place, for it is a single dish.' Then they brought a platter containing varieties of fresh dates or dried dates, and the Messenger of Allah—peace and blessings be upon him—said to him: 'O Ikraash, eat from wherever you wish, for

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَبْدُ اللَّهِ بْنُ الصَّبَّاحِ الْعَطَّارُ نا عَبْدُ الْأَعْلَى نا مَعْمَرٌ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ «عُمَرَ بْنِ أَبِي سَلَمَةَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: ادْنُهْ يَا بُنَيَّ فَسَمِّ اللَّهَ وَكُلْ بِيَمِينِكَ وَكُلْ مِمَّا يَلِيكَ» فَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - صِنْفًا مِنْ أَصْنَافٍ. وَذَكَرَ الْمُفَرِّقُونَ بَيْنَ ذَلِكَ خَبَرًا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ جَرِيرٍ الطَّبَرِيِّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا الْعَلَاءُ بْنُ الْفَضْلِ بْنِ عَبْدِ الْمَلِكِ بْنِ أَبِي سَوِيَّةَ الْمُنْقِرِيُّ نا أَبُو الْهُذَيْلِ حَدَّثَنِي «عُبَيْدُ اللَّهِ بْنُ عِكْرَاشِ بْنِ ذُؤَيْبٍ عَنْ أَبِيهِ: أَنَّهُ كَانَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَتَوْا بِحَفْنَةٍ مِنْ ثَرِيدٍ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَا عِكْرَاشُ كُلْ مِنْ مَوْضِعٍ وَاحِدٍ فَإِنَّهُ طَعَامٌ وَاحِدٌ ثُمَّ أَتَيْنَا بِطَبَقٍ فِيهِ أَلْوَانٌ مِنْ رُطَبٍ أَوْ تَمْرٍ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَا عِكْرَاشُ

this is not a single dish.' He said: 'The Prophet's hand—peace and blessings be upon him—moved freely around the platter.'" However, Ubaydullah ibn Ikraash ibn Dhu'ayb is extremely weak and cannot be relied upon. It is impermissible to ascribe such a statement to the Messenger of Allah—peace and blessings be upon him—because food scarcely exists without comprising multiple categories except in rare instances. Tharid contains meat and bread, and perhaps onion and chickpeas, and broth similarly. Meat includes liver, fat, flesh, breast, and back, as do most things. If they cite the hadith of Anas: "A man invited the Messenger of Allah—peace and blessings be upon him—so I accompanied him. A broth containing pumpkin was brought, and the Messenger of Allah—peace and blessings be upon him—ate from that pumpkin which he favored. Anas said: 'I kept placing it near him without eating it.'" In another narration from some reliable narrators: "I saw the Messenger of Allah—peace and blessings be upon him—seeking the pumpkin around the dish." This is a sound report.

كُلْ مِنْ حَيْثُ شِئْتَ فَإِنَّهُ غَيْرُ طَعَامٍ وَاحِدٍ، قَالَ: وَجَالَتْ يَدُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الطَّبَقِ» فَعُبَيْدُ اللَّهِ بْنُ الْعِكْرَاشِ بْنِ ذُؤَيْبٍ ضَعِيفٌ جِدًّا لَا يُحْتَجُّ بِهِ، وَمِثْلُ هَذَا لَا يَجُوزُ أَنْ يَقُولَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّهُ لَا يَكَادُ يُوجَدُ طَعَامٌ لَا يَكُونُ أَصْنَافًا إِلَّا فِي النُّدْرَةِ، فَالثَّرِيدُ فِيهِ لَحْمٌ وَخُبْزٌ، وَرُبَّمَا بَصَلٌ وَحِمَّصٌ وَالْمَرَقُ كَذَلِكَ، وَيَكُونُ فِي اللَّحْمِ كَبِدٌ وَشَحْمٌ وَلَحْمٌ وَصُدْرَةٌ وَظَهْرٌ، وَهَكَذَا فِي أَكْثَرِ الْأَشْيَاءِ. فَإِنْ ذَكَرُوا حَدِيثَ أَنَسٍ: «دَعَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَجُلٌ فَانْطَلَقْتُ مَعَهُ فَجِيءَ بِمَرَقَةٍ فِيهَا دُبَّاءُ فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْكُلُ مِنْ ذَلِكَ الدُّبَّاءِ وَتُعْجِبُهُ، قَالَ أَنَسٌ: فَجَعَلْتُ أُلْقِيهِ إِلَيْهِ وَلَا أَطْعَمُهُ» . وَفِيهِ أَيْضًا فِي رِوَايَةِ بَعْضِ الثِّقَاتِ: «فَرَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَتَتَبَّعُ الدُّبَّاءَ مِنْ حَوْلِ الصَّحْفَةِ» فَإِنَّ هَذَا خَبَرٌ صَحِيحٌ.

L16959–16961 Some adherents of the literalist school said this applied specifically to the gourd. Abu Muhammad stated: This is not our position because it is an action of the Messenger of Allah (peace and blessings be upon him) without him stating it was exclusive to the gourd. Therefore, it is not appropriate for us to make such a statement. Rather, we say: This narration aligns with the established foundational principle. It was undoubtedly permissible before his instruction (peace be upon him) to "eat from what is nearest to you," and thus it is conclusively abrogated by his command (peace be upon him) to eat from what lies before the eater. Whoever claims the abrogated ruling has reverted to permissibility cannot be accepted without proof, for this is a baseless assertion. Moreover, upon examining this narration, we found it contains absolutely no explicit text or indication that... - Peace be upon him - took the gourd from what was not adjacent to him. Whoever claims this has made a false claim and uttered what is not in the *hadith*. The gourd might have been on the sides of the dish from what was adjacent to the Prophet - peace and blessings of Allah be upon him - to his right and left, where he

وَقَدْ قَالَ بَعْضُ أَهْلِ الظَّاهِرِ إِنَّمَا هَذَا فِي الدُّبَّاءِ خَاصَّةً. قَالَ أَبُو مُحَمَّدٍ: وَلَيْسَ هَذَا عِنْدَنَا كَذَلِكَ لِأَنَّهُ فِعْلٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَقُلْ: إِنَّهُ خَاصٌّ بِالدُّبَّاءِ، فَلَا يَنْبَغِي لَنَا أَنْ نَقُولَهُ، لَكِنْ نَقُولُ: إِنَّ هَذَا الْخَبَرَ مُوَافِقٌ لِمَعْهُودِ الْأَصْلِ، وَقَدْ كَانَ ذَلِكَ بِلَا شَكٍّ مُبَاحًا قَبْلَ أَنْ يَقُولَ - عَلَيْهِ السَّلَامُ -: «كُلْ مِمَّا يَلِيكَ» فَهُوَ مَنْسُوخٌ بِيَقِينٍ بِأَمْرِهِ - عَلَيْهِ السَّلَامُ - بِالْأَكْلِ مِمَّا يَلِي الْآكِلَ، وَمَنْ ادَّعَى أَنَّ الْمَنْسُوخَ عَادَ مُبَاحًا لَمْ يُصَدَّقْ إِلَّا بِبُرْهَانٍ لِأَنَّهُ دَعْوَى بِلَا دَلِيلٍ. وَأَيْضًا فَإِنَّ هَذَا الْخَبَرَ لَمَّا تَدَبَّرْنَاهُ وَجَدْنَاهُ لَيْسَ فِيهِ أَلْبَتَّةَ لَا نَصٌّ وَلَا دَلِيلٌ عَلَى أَنَّهُ - عَلَيْهِ السَّلَامُ - أَخَذَ الدُّبَّاءَ مِمَّا لَا يَلِيهِ وَمَنْ ادَّعَى هَذَا فَقَدْ ادَّعَى الْبَاطِلَ وَقَالَ مَا لَيْسَ فِي الْحَدِيثِ. وَقَدْ يَكُونُ الدُّبَّاءُ فِي نَوَاحِي

would seek it out from what was adjacent to him in all such instances. This alone is the permissible interpretation of the report, and none other may be adopted.

L16962 Since there is nothing in it that the dissenter presumes at all, their argument is invalidated—and all praise is due to Allah. When a person takes something from outside his immediate reach and places it before him, the prohibition applies only to eating from what is not within his immediate reach. In this case, he did not eat from what was outside his reach. Once it is placed before him, he may then eat it, as it is now within his immediate reach. Khalid ibn al-Walid once dragged a spiny-tailed lizard (dabb) toward himself from the hands of the Messenger of Allah—peace be upon him—and ate it, and the Prophet—peace be upon him—did not disapprove of that. We will mention this, if Allah the Exalted wills, in the chapter on the dabb. And with Allah alone is success.

L16963 **An issue: Whoever eats alone should only eat from what is directly in front of him.**

L16964 1022. Issue: If a person eats alone, he must eat only from what lies adjacent to him, as we previously mentioned. If he rotates the communal dish, he may do so since this is not prohibited. However, if the food belongs to another, it is impermissible for him to rotate the communal dish, for the one who placed it has the greater right over its placement. He was permitted only to eat from what is near him, not to rotate it. If both the communal dish and the food belong to him, he may rotate it as he pleases and lift it when he wishes, since it is his property. He must still eat only from what lies adjacent to him, for the Prophet's command (peace be upon him) regarding this is general.

L16965 And Allah, the Most High, said: "The Prophet has more right over the believers than their own selves" [Al-Ahzab: 6]. And He, the Most High, said: "It is not for a believing man nor a believing woman, when Allah and His

الصَّحْفَةِ مِمَّا يَلِي النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ يَمِينِهِ وَيَسَارِهِ فَيَتَتَبَّعُهُ مِمَّا يَلِيهِ فِي كُلِّ ذَلِكَ، وَهَذَا الَّذِي لَا يَجُوزُ أَنْ يُحْمَلَ الْخَبَرُ عَلَى مَا سِوَاهُ.

إذْ لَيْسَ فِيهِ مَا يَظُنُّ الْمُخَالِفُ أَصْلًا -: فَبَطَلَ تَعَلُّقُهُمْ بِهِ وَلِلَّهِ الْحَمْدُ. فَإِذَا أَخَذَ الْمَرْءُ الشَّيْءَ مِمَّا لَا يَلِيهِ ثُمَّ جَعَلَهُ أَمَامَهُ فَإِنَّمَا نَهَى عَنْ أَنْ يَأْكُلَ مِمَّا لَا يَلِيهِ، وَهَذَا لَمْ يَأْكُلْ مِمَّا لَا يَلِيهِ فَإِذَا صَارَ أَمَامَهُ فَلَهُ أَكْلُهُ حِينَئِذٍ، لِأَنَّهُ مِمَّا يَلِيهِ - وَقَدْ اجْتَرَّ خَالِدُ بْنُ الْوَلِيدِ الضَّبَّ مِنْ يَدَيْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَكَلَهُ وَلَمْ يُنْكِرْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ - وَسَنَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى فِي بَابِ الضَّبِّ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَنْ أَكَلَ وَحْدَهُ فَلَا يَأْكُلُ إلَّا مِمَّا يَلِيهِ]

١٠٢٢ - مَسْأَلَةٌ: وَمَنْ أَكَلَ وَحْدَهُ فَلَا يَأْكُلُ إلَّا مِمَّا يَلِيهِ لِمَا ذَكَرْنَا آنِفًا فَإِنْ أَدَارَ الصَّحْفَةَ فَلَهُ ذَلِكَ، لِأَنَّهُ لَمْ يُنْهَ عَنْ ذَلِكَ، فَإِنْ كَانَ الطَّعَامُ لِغَيْرِهِ لَمْ يَجُزْ لَهُ أَنْ يُدِيرَ الصَّحْفَةَ لِأَنَّ وَاضِعَهَا أَمْلَكُ بِوَضْعِهَا، وَلَمْ يَجْعَلْ لَهُ إدَارَتَهَا إنَّمَا جَعَلَ لَهُ الْأَكْلَ مِمَّا يَلِيهِ فَقَطْ، فَإِنْ كَانَتْ الْقَصْعَةُ وَالطَّعَامُ لَهُ فَلَهُ أَنْ يُدِيرَهَا كَمَا يَشَاءُ، وَأَنْ يَرْفَعَهَا إذَا شَاءَ، لِأَنَّهُ مَالُهُ وَلَيْسَ لَهُ أَنْ يَأْكُلَ إلَّا مِمَّا يَلِيهِ، لِأَنَّ أَمْرَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ عُمُومٌ.

وَقَالَ اللَّهُ تَعَالَى: {النَّبِيُّ أَوْلَى بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ} [الأحزاب: ٦] . وَقَالَ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] .

Messenger have decreed a matter, that there should be for them any choice in their matter" [Al-Ahzab: 36].[57]

L16966 **An issue: Saying "Bismillāh" (In the name of Allah) is obligatory for every eater when beginning to eat.**

L16967 Issue 1023: The tasmiyah (mentioning Allah's name) is obligatory upon every eater when beginning one's meal. It is impermissible for anyone to eat with the left hand unless incapable, in which case one may use it, based on the command of the Prophet (peace and blessings be upon him) to Umar ibn Abi Salamah as previously mentioned regarding tasmiyah and eating with the right hand. Through the transmission of al-Layth from Abu al-Zubayr from Jabir from the Prophet (peace and blessings be upon him): "Do not eat with the left hand, for indeed Satan eats with the left hand." This constitutes a general prohibition against eating with one's own left hand or from another's left hand. If one is incapable, then Allah the Exalted states: {Allah does not burden any soul beyond its capacity} [Al-Baqarah 2:286]. The Prophet (peace and blessings be upon him) said: "When I command you to do something, fulfill it as much as you are able."[58]

L16968–16970 And whoever presumes to legislate, deeming some injunctions obligatory and others recommended, has indeed attributed to Allah and His Messenger what they did not say. knowledge he possesses thereof, and the Exalted said: "And you utter with your mouths what you have no knowledge of, and you deem it trivial while it is tremendous with Allah" [An-Nur: 15].[59]

L16971 **Issue: Eating from the Vessels of the People of the Book**

L16972 1024. Issue: It is not permissible to eat from the vessels of the People of the Book unless they are washed with water when no alternative vessels are available. This is based on what we narrated through Muslim's chain: Hannād ibn Sarriyy narrated to us, ʿAbdullāh ibn al-Mubārak narrated to us

[57] **Qur'an references (L16965):** Qur'an 33:6 (Al-Ahzab); Qur'an 33:36 (Al-Ahzab).
[58] **Qur'an references (L16967):** Qur'an 2:286 (Al-Baqarah).
[59] **Qur'an references (L16968):** Qur'an 24:15 (An-Nur).

[مَسْأَلَةٌ تَسْمِيَةُ اللَّهِ تَعَالَى فَرْضٌ عَلَى كُلِّ آكِلٍ عِنْدَ ابْتِدَاءِ أَكْلِهِ]

١٠٢٣ - مَسْأَلَةٌ: وَتَسْمِيَةُ اللَّهِ تَعَالَى فَرْضٌ عَلَى كُلِّ آكِلٍ عِنْدَ ابْتِدَاءِ أَكْلِهِ وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَأْكُلَ بِشِمَالِهِ إِلَّا أَنْ لَا يَقْدِرَ فَيَأْكُلَ بِشِمَالِهِ لِأَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عُمَرَ بْنَ أَبِي سَلَمَةَ الَّذِي ذَكَرْنَا آنِفًا بِالتَّسْمِيَةِ وَالْأَكْلِ بِالْيَمِينِ. وَمِنْ طَرِيقِ اللَّيْثِ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَأْكُلُوا بِالشِّمَالِ فَإِنَّ الشَّيْطَانَ يَأْكُلُ بِالشِّمَالِ» وَهَذَا عُمُومٌ فِي النَّهْيِ عَنْ شِمَالِهِ وَشِمَالِ غَيْرِهِ فَإِنْ عَجَزَ فَاَللَّهُ تَعَالَى يَقُولُ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] . وَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» .

وَمَنْ تَحَكَّمَ فَجَعَلَ بَعْضَ الْأَوَامِرِ فَرْضًا وَبَعْضَهَا نَدْبًا فَقَدْ قَالَ عَلَى اللَّهِ وَرَسُولِهِ مَا لَا عِلْمَ لَهُ بِهِ، وَقَالَ تَعَالَى: {وَتَقُولُونَ بِأَفْوَاهِكُمْ مَا لَيْسَ لَكُمْ بِهِ عِلْمٌ وَتَحْسَبُونَهُ هَيِّنًا وَهُوَ عِنْدَ اللَّهِ عَظِيمٌ} [النور: ١٥] .

[مَسْأَلَةُ الْأَكْلُ فِي آنِيَةِ أَهْلِ الْكِتَابِ]

١٠٢٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْأَكْلُ فِي آنِيَةِ أَهْلِ الْكِتَابِ حَتَّى تُغْسَلَ بِالْمَاءِ إذَا لَمْ يَجِدْ غَيْرَهَا أَيْضًا لِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا هَنَّادُ بْنُ سَرِيٍّ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ حَيْوَةَ بْنِ شُرَيْحٍ قَالَ: سَمِعْت رَبِيعَةَ بْنِ يَزِيدَ الدِّمَشْقِيِّ يَقُولُ: نا أَبُو إدْرِيسَ عَائِذُ اللَّهِ الْخَوْلَانِيِّ قَالَ: سَمِعْت «أَبَا ثَعْلَبَةَ الْخُشَنِيَّ يَقُولُ: قُلْتُ: يَا رَسُولَ اللَّهِ إنَّا بِأَرْضِ قَوْمٍ

from Ḥaywah ibn Shurayḥ, who said: I heard Rabīʿah ibn Yazīd al-Dimashqī say: Abū Idrīs ʿĀ'idhullāh al-Khawlānī narrated to us, saying: I heard Abū Thaʿlabah al-Khushanī say: I asked, "O Messenger of Allah, we are in a land of People of the Book. May we eat from their vessels?" He (peace be upon him) replied, "Regarding your mention of being in a land of People of the Book and eating from their vessels: if you find vessels other than theirs, do not eat from theirs. If you find no alternative, wash them with water and eat from them."

Ḥammām narrated to us, ʿAbbās ibn Aṣbagh narrated to us, Muḥammad ibn ʿAbd al-Malik ibn Ayman narrated to us, Abū Yaḥyā ibn Abī Masarrat narrated to us, al-Nuʿmān ibn Muḥammad al-Munqirī narrated to us: Ḥammād reported from Qatādah and Ayyūb al-Sikhtiyānī, from Abū Qilābah, from Abū Asmā' al-Raḥabī, from Abū Thaʿlabah al-Khushanī: I said, "O Messenger of Allah, we are in a land of People of the Book. May we cook in their pots and drink from their vessels?" He said, "If you find no alternative, wash them with water, then cook and drink from them."

Yūnus ibn ʿAbdillāh narrated to us, Abū ʿĪsā ibn Abī ʿĪsā narrated to us, Aḥmad ibn Khālid narrated to us, Ibn Waḍḍāḥ narrated to us, Abū Bakr ibn Abī Shaybah narrated to us, Muḥammad ibn Bishr narrated to us, Saʿīd ibn Abī ʿArūbah narrated to us, from Ayyūb al-Sikhtiyānī, from Abū Qilābah, from Abū Thaʿlabah al-Khushanī: He said, "O Messenger of Allah, grant me a written assignment of land?" He replied, "How can I write for you when it is in enemy territory?" Abū Thaʿlabah said, "By Him who sent you with the truth, you will indeed possess what lies beneath their feet." This pleased the Messenger of Allah (peace and blessings of Allah be upon him). The ḥadīth continues, including his question: "O Messenger of Allah, we are in a land whose inhabitants are People of the Book. We need to use their pots and vessels." The Prophet said, "Do not use them if you find an alternative. If you find no alternative, wash them with water, then cook and drink."

L16973–16975 Abu Muhammad said: A group who have opposed this authentic report have relied upon a report that we narrated through the chain of Abu Dawud al-Sijistani → Nasr ibn 'Asim al-Antaki → Muhammad ibn Shu'ayb → Abdullah ibn al-'Ala' ibn Zabr. From Abu Abdullah Muslim ibn Mishkam: From

أَهْلِ كِتَابٍ نَأْكُلُ فِي آنِيَتِهِمْ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -: أَمَّا مَا ذَكَرْتَ أَنَّكُمْ بِأَرْضِ قَوْمٍ أَهْلِ كِتَابٍ تَأْكُلُونَ فِي آنِيَتِهِمْ فَإِنْ وَجَدْتُمْ غَيْرَ آنِيَتِهِمْ فَلَا تَأْكُلُوا فِيهَا. وَإِنْ لَمْ تَجِدُوا فَاغْسِلُوهَا وَكُلُوا فِيهَا» . نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَبُو يَحْيَى بْنُ أَبِي مَسَرَّةَ نا النُّعْمَانُ بْنُ مُحَمَّدٍ الْمُنْقِرِيُّ أَنَا حَمَّادٌ عَنْ قَتَادَةَ وَأَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي أَسْمَاءَ الرَّحَبِيِّ «عَنْ أَبِي ثَعْلَبَةَ الْخُشَنِيِّ قُلْتُ: يَا رَسُولَ اللَّهِ إِنَّا بِأَرْضِ أَهْلِ كِتَابٍ أَفَنَطْبُخُ فِي قُدُورِهِمْ وَنَشْرَبُ فِي آنِيَتِهِمْ؟ قَالَ: إِنْ لَمْ تَجِدُوا غَيْرَهَا فَارْحَضُوهَا بِالْمَاءِ ثُمَّ اطْبُخُوا فِيهَا وَاشْرَبُوا» . نا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَبُو عِيسَى بْنِ أَبِي عِيسَى نا أَحْمَدُ بْنُ خَالِدٍ نا ابْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ مُحَمَّدِ بْنِ بِشْرٍ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ أَيُّوبَ هُوَ السِّخْتِيَانِيُّ عَنْ أَبِي قِلَابَةَ «عَنْ أَبِي ثَعْلَبَةَ الْخُشَنِيِّ أَنَّهُ قَالَ: يَا رَسُولَ اللَّهِ اكْتُبْ لِي بِأَرْضٍ؟ قَالَ: كَيْفَ أَكْتُبُ لَكَ وَهِيَ بِأَرْضِ الْحَرْبِ؟ قَالَ: وَالَّذِي بَعَثَكَ بِالْحَقِّ لَتَمْلِكَنَّ مَا تَحْتَ أَقْدَامِهِمْ، فَأَعْجَبَ ذَلِكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَذَكَرَ الْحَدِيثَ وَفِيهِ: أَنَّهُ قَالَ: يَا رَسُولَ اللَّهِ إِنَّا بِأَرْضٍ أَهْلُهَا أَهْلُ كِتَابٍ نَحْتَاجُ مِنْهَا إِلَى قُدُورِهِمْ وَآنِيَتِهِمْ، فَقَالَ: لَا تَقْرَبُوهَا مَا وَجَدْتُمْ مِنْهَا بُدًّا، فَإِذَا لَمْ تَجِدُوا بُدًّا فَاغْسِلُوهَا بِالْمَاءِ وَاطْبُخُوا وَاشْرَبُوا» .

قَالَ أَبُو مُحَمَّدٍ: وَتَعَلَّقَ قَوْمٌ قَدْ خَالَفُوا هَذَا الْخَبَرَ الثَّابِتَ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نا نَصْرُ بْنُ عَاصِمٍ الْأَنْطَاكِيُّ نا مُحَمَّدُ بْنُ شُعَيْبٍ نا عَبْدُ اللَّهِ بْنُ الْعَلَاءِ بْنِ زَبْرٍ

Abu Tha'labah al-Khushani that he asked the Messenger of Allah (peace and blessings be upon him): "We live adjacent to the People of the Book, and they cook pork in their pots and drink wine in their vessels?" The Messenger of Allah (peace and blessings be upon him) responded: "If you find other vessels, eat and drink from them. If you find no others, rinse them with water and then eat and drink." Abu Muhammad said: This is a weak narration, for it includes 'Abdullah ibn al-'Ala' ibn Zabr – who is not renowned – and Muslim ibn Mishkam, who is an unknown narrator.[60]

عَنْ أَبِي عَبْدِ اللَّهِ مُسْلِمِ بْنِ مِشْكَمٍ «عَنْ أَبِي ثَعْلَبَةَ الْخُشَنِيِّ: أَنَّهُ سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ قَالَ: إِنَّا نُجَاوِرُ أَهْلَ الْكِتَابِ وَهُمْ يَطْبُخُونَ فِي قُدُورِهِمْ الْخِنْزِيرَ، وَيَشْرَبُونَ فِي آنِيَتِهِمْ الْخَمْرَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنْ وَجَدْتُمْ غَيْرَهَا فَكُلُوا فِيهَا وَاشْرَبُوا، وَإِنْ لَمْ تَجِدُوا غَيْرَهَا فَارْحَضُوهَا بِالْمَاءِ وَكُلُوا وَاشْرَبُوا» . قَالَ أَبُو مُحَمَّد: هَذَا خَبَرٌ لَا يَصِحُّ، لِأَنَّ فِيهِ عَبْدَ اللَّهِ بْنَ الْعَلَاءِ بْنِ زَبْرٍ وَلَيْسَ بِمَشْهُورٍ وَمُسْلِمَ بْنَ مِشْكَمٍ وَهُوَ مَجْهُولٌ.

The Issue of Eating Intoxicants

[مَسْأَلَةٌ أَكْلُ السَّيْكَرَانِ]

Issue 1025: It is not permissible to consume _sakarān_ due to the Prophet's prohibition—may Allah bless him and grant him peace—against all intoxicants, for _sakarān_ is intoxicating. If some people adulterate it with milk and darnel, it is not as they assumed, because milk and darnel are sedatives that nullify movement without causing intoxication, whereas _sakarān_ and _khamr_ are intoxicants that neither sedate nor nullify movement. And success comes from Allah, the Most High.

١٠٢٥ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ السَّيْكَرَانِ لِتَحْرِيمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلَّ مُسْكِرٍ، وَالسَّيْكَرَانُ مُسْكِرٌ - فَإِنْ مَوَّهَ قَوْمٌ بِاللَّبَنِ وَالزُّوَانِ فَلَيْسَ كَمَا ظَنُّوا لِأَنَّ اللَّبَنَ وَالزُّوَانَ مُخَدِّرَانِ مُبْطِلَانِ لِلْحَرَكَةِ لَا يُسْكِرَانِ، وَالسَّيْكَرَانُ وَالْخَمْرُ مُسْكِرَانِ لَا يُخَدِّرَانِ وَلَا يُبْطِلَانِ الْحَرَكَةَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Forbidden foods and drinks become lawful in cases of necessity.

[مَسْأَلَةٌ مَا حَرُمَ مِنْ الْمَآكِلِ وَالْمَشَارِبِ حَلَالٌ عِنْدَ الضَّرُورَةِ]

1026. Issue: Every food and drink that Allah the Almighty has forbidden—such as pork, unlawful game, carrion, blood, the flesh of predatory animals, birds, four-legged animals, insects, intoxicants, or anything else—all becomes permissible under necessity, except for human flesh and anything that kills the one who consumes it; these remain absolutely impermissible neither by necessity nor otherwise. If someone is compelled to consume any of the aforementioned items and cannot find the property of a Muslim or a *Dhimmi*, they may eat until satisfied and take provisions until lawful means are found. Once lawful means become available, the previously permitted

١٠٢٦ - مَسْأَلَةٌ - وَكُلُّ مَا حَرَّمَ اللَّهُ عَزَّ وَجَلَّ مِنْ الْمَآكِلِ وَالْمَشَارِبِ مِنْ خِنْزِيرٍ أَوْ صَيْدٍ حَرَامٍ، أَوْ مَيْتَةٍ، أَوْ دَمٍ، أَوْ لَحْمِ سَبُعٍ أَوْ طَائِرٍ، أَوْ ذِي أَرْبَعٍ، أَوْ حَشَرَةٍ، أَوْ خَمْرٍ، أَوْ غَيْرِ ذَلِكَ: فَهُوَ كُلُّهُ عِنْدَ الضَّرُورَةِ حَلَالٌ - حَاشَا لُحُومِ بَنِي آدَمَ - وَمَا يُقْتَلُ مَنْ تَنَاوَلَهُ -: فَلَا يَحِلُّ مِنْ ذَلِكَ شَيْءٌ أَصْلًا لَا بِضَرُورَةٍ وَلَا بِغَيْرِهَا. فَمَنْ اُضْطُرَّ إلَى شَيْءٍ مِمَّا ذَكَرْنَا قَبْلُ وَلَمْ يَجِدْ مَالَ مُسْلِمٍ أَوْ ذِمِّيٍّ -: فَلَهُ أَنْ يَأْكُلَ حَتَّى يَشْبَعَ، وَيَتَزَوَّدَ حَتَّى يَجِدَ حَلَالًا، فَإِذَا وَجَدَهُ عَادَ الْحَلَالُ مِنْ ذَلِكَ حَرَامًا كَمَا كَانَ عِنْدَ ارْتِفَاعِ الضَّرُورَةِ.

[60] **Hadith references (L16973):** Sunan Abi Dawud 3839.

items revert to being forbidden, as they were before the necessity ceased. The definition of necessity is when a person remains for a day and a night without finding anything to eat or drink. If they fear harmful debilitating weakness that, if prolonged, would lead to death, or if it prevents them from continuing their journey or duties, it becomes permissible for them to consume whatever wards off death by hunger or thirst. All categories we mentioned are equal in ruling, with no preference for one over another. If they find two or more types, they may eat whichever they choose, since ritual slaughter is not required in such cases. The permissibility of all this under necessity is based on Allah's statement: "He has detailed for you what He has forbidden to you, except when compelled by necessity" (Quran 6:119). Allāh, exalted is He, has abolished the prohibition of what He had exhaustively detailed in its prohibition in cases of necessity, rendering it general without singling out exceptions. Thus, it is impermissible to make exceptions to any part of that.[61]

وَحَدُّ الضَّرُورَةِ أَنْ يبْقَى يوْمًا وَلَيْلَةً لَا يجِدُ فِيهَا مَا يأْكُلُ أَوْ يشْرَبُ، فَإِنْ خَشِيَ الضَّعْفَ الْمُؤْذِيَ الَّذِي إِنْ تَمَادَى أَدَّى إِلَى الْمَوْتِ، أَوْ قَطَعَ بِهِ عَنْ طَرِيقِهِ وَشُغْلِهِ - حَلَّ لَهُ الْأَكْلُ وَالشُّرْبُ فِيمَا يدْفَعُ بِهِ عَنْ نَفْسِهِ الْمَوْتَ بِالْجُوعِ أَوْ الْعَطَشِ. وَكُلُّ مَا ذَكَرْنَا سَوَاءٌ لَا فَضْلَ لِبَعْضِهَا عَلَى بَعْضٍ إِنْ وَجَدَ مِنْهَا نَوْعَيْنِ، أَوْ أَنْوَاعًا فَيأْكُلُ مَا شَاءَ مِنْهَا لِلتَّذْكِيَةِ فِيهَا. أَمَّا تَحْلِيلُ كُلِّ ذَلِكَ لِلضَّرُورَةِ فَلِقَوْلِ اللَّهِ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] فَأَسْقَطَ تَعَالَى تَحْرِيمَ مَا فَصَّلَ تَحْرِيمَهُ عِنْدَ الضَّرُورَةِ، فَعَمَّ وَلَمْ يخُصَّ، فَلَا يجُوزُ تَخْصِيصُ شَيْءٍ مِنْ ذَلِكَ.

L16982 As for our statement that if one does not find the wealth of a Muslim, this is based on the saying of Allah's Messenger—peace and blessings be upon him—which we narrated through Abu Musa: "Feed the hungry." This means that if he finds the wealth of a Muslim or a dhimmi, he has found wealth from which Allah has commanded that feeding be done. He has a right to it, so he is not compelled to resort to carrion or other prohibited matters. If he is unjustly denied this, he is then compelled. Some scholars specifically prohibited wine—an error, as it constitutes a restriction of the Quran without proof—and this is Mālik's opinion. Abū Ḥanīfah and others opposed him. The Mālikīs argued that wine does not substitute for water—an error refuted by observation, for it is established among us that many addicts among disbelievers and licentious individuals drink no water at all while consuming wine. They contradicted themselves: it is narrated that Mālik permitted seeking aid through wine for one choking on a morsel and commanded him to do that. Yet there is no distinction between seeking its aid in the necessity of choking or thirst—no basis in the Quran, Sunnah, authentic narration, or analogy. Thus, they effectively command him to kill

وَأَمَّا قَوْلُنَا إِذَا لَمْ يجِدْ مَالَ مُسْلِمٍ فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ أَبِي مُوسَى: «أَطْعِمُوا الْجَائِعَ» فَهُوَ إِذَا وَجَدَ مَالَ الْمُسْلِمِ أَوْ الذِّمِّيِّ فَقَدْ وَجَدَ مَالًا قَدْ أَمَرَ اللَّهُ تَعَالَى بِإِطْعَامِهِ مِنْهُ، فَحَقُّهُ فِيهِ، فَهُوَ غَيْرُ مُضْطَرٍّ إِلَى الْمَيْتَةِ وَسَائِرِ الْمُحَرَّمَاتِ، فَإِنْ مُنِعَ ذَلِكَ ظُلْمًا فَهُوَ مُضْطَرٌّ حِينَئِذٍ. وَخَصَّصَ قَوْمٌ الْخَمْرَ بِالْمَنْعِ - وَهَذَا خَطَأٌ لِأَنَّهُ تَخْصِيصٌ لِلْقُرْآنِ بِلَا بُرْهَانٍ - وَهُوَ قَوْلُ مَالِكٍ، وَخَالَفَهُ أَبُو حَنِيفَةَ وَغَيْرُهُ، وَاحْتَجَّ الْمَالِكِيُّونَ بِأَنَّهَا لَا تُرْوَى - وَهَذَا خَطَأٌ مُدْرَكٌ بِالْعِيَانِ، وَقَدْ صَحَّ عِنْدَنَا أَنَّ كَثِيرًا مِنْ الْمُدْمِنِينَ عَلَيْهَا مِنْ الْكُفَّارِ وَالْخِلَاعِ لَا يشْرَبُونَ الْمَاءَ أَصْلًا مَعَ شُرْبِهِمْ الْخَمْرَ. وَقَدْ اضْطَرَبُوا -: فَرُوِيَ عَنْ مَالِكٍ: الِاسْتِغَاثَةُ بِالْخَمْرِ لِمَنْ اخْتَنَقَ بِلُقْمَةٍ وَأَمَرَهُ بِذَلِكَ، وَلَا فَرْقَ بَيْنَ الِاسْتِغَاثَةِ إلَيْهَا فِي ضَرُورَةِ الِاخْتِنَاقِ أَوْ فِي ضَرُورَةِ الْعَطَشِ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ صَحِيحَةٍ، وَلَا قِيَاسٍ. فَصَحَّ أَنَّهُمْ آمِرُونَ لَهُ بِقَتْلِ

[61] **Qur'an references (L16979):** Qur'an 6:119 (Al-An'am).

himself, for if he abstains from wine and dies, he becomes the killer of the soul that Allah has forbidden to kill. As for the exception of human flesh, this aligns with our earlier mention of the obligation to bury it, rendering other than that impermissible.

نَفْسِهِ وَأَنَّهُ إِنْ لَمْ يَشْرَبْ الْخَمْرَ فَمَاتَ فَهُوَ قَاتِلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ. وَأَمَّا اسْتِثْنَاءُ لُحُومِ بَنِي آدَمَ فَلِمَا ذَكَرْنَا قَبْلُ مِنْ الْأَمْرِ بِمُوَارَاتِهَا، فَلَا يَحِلُّ غَيْرُ ذَلِكَ.

L16983 As for killing oneself, forbidden matters are permitted solely out of fear of death or harm. Hastening death is unlawful due to Allah's saying: {Do not kill yourselves} [An-Nisā': 29]. Through this same verse, forbidden matters were made permissible out of fear that one abstaining from them would kill themselves, thereby disobeying Allah the Exalted and becoming a killer of an inviolable soul. This constitutes the gravest of major sins after polytheism. As for our stipulation of enduring a day and night without eating, it derives from the Prophet's prohibition—peace and blessings be upon him—against continuous fasting for a day and night. As for our statement that if one fears death or weakness before this duration, it is because they are then compelled by necessity. As for our assertion that no aspect of this holds superiority over another, it rests on Allah's words: {He does not speak from [his own] inclination} [An-Najm: 3], {It is but a revelation revealed} [An-Najm: 4].[62]

وَأَمَّا مَا يُقْتَلُ فَإِنَّمَا أُبِيحَتْ الْمُحَرَّمَاتُ خَوْفَ الْمَوْتِ أَوْ الضَّرَرِ فَاسْتِعْجَالُ الْمَوْتِ لَا يَحِلُّ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] وَبِهَذِهِ الْآيَةِ أَيْضًا حَلَّتْ الْمُحَرَّمَاتُ خَوْفَ أَنْ يَكُونَ الْمُمْتَنِعُ مِنْهَا قَاتِلَ نَفْسِهِ فَيَعْصِي اللَّهَ تَعَالَى بِذَلِكَ وَيَكُونُ قَاتِلَ نَفْسٍ مُحَرَّمَةٍ وَهَذَا أَكْبَرُ الْكَبَائِرِ بَعْدَ الشِّرْكِ. وَأَمَّا تَحْدِيدُنَا ذَلِكَ بِبَقَاءِ يَوْمٍ وَلَيْلَةٍ بِلَا أَكْلٍ فَلِتَحْرِيمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْوِصَالَ يَوْمًا وَلَيْلَةً. وَأَمَّا قَوْلُنَا: إنْ خَافَ الْمَوْتَ قَبْلَ ذَلِكَ أَوْ الضَّعْفَ فَلِأَنَّهُ مُضْطَرٌّ حِينَئِذٍ. وَأَمَّا قَوْلُنَا: لَا فَضْلَ لِبَعْضِ ذَلِكَ عَلَى بَعْضٍ فَلِقَوْلِ اللَّهِ تَعَالَى: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] .

L16984–16985 It is firmly established that everything the Prophet—peace and blessings of Allah be upon him—prohibited is indeed prohibited by Allah the Exalted, and he—peace and blessings of Allah be upon him—conveyed it to us. All that Allah the Exalted prohibited in the Quran was conveyed to us by the Prophet—peace and blessings of Allah be upon him—for without him, we would not have known the Quran. Thus, it is conclusively established that every prohibition, obligation, or permissibility originates from the Prophet—peace and blessings of Allah be upon him—from Allah, the Almighty and Majestic, with no distinction. Our statement that it is impermissible for a person in the state of consecration (iḥrām) to kill game, or for one permitted [to hunt] within the sacred precincts (ḥaram) to do so as long as they find any of these prohibited things, does not negate this principle but rather extends it. This is because one who finds pork, carrion, blood, or other than that is not

فَصَحَّ أَنَّ كُلَّ شَيْءٍ حَرَّمَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنَّ اللَّهَ تَعَالَى حَرَّمَهُ وَبَلَّغَهُ هُوَ - عَلَيْهِ السَّلَامُ - إلَيْنَا، وَكُلُّ مَا حَرَّمَهُ اللَّهُ تَعَالَى فِي الْقُرْآنِ فَالنَّبِيُّ - عَلَيْهِ السَّلَامُ - بَلَّغَ الْقُرْآنَ إلَيْنَا، وَلَوْلَاهُ مَا عَرَفْنَا مَا هُوَ الْقُرْآنُ. فَصَحَّ يَقِينًا أَنَّ كُلَّ حَرَامٍ، أَوْ كُلَّ مُفْتَرَضٍ، أَوْ كُلَّ حَلَالٍ فَهُوَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ اللَّهِ عَزَّ وَجَلَّ وَلَا فَرْقَ. وَلَيْسَ قَوْلُنَا: إنَّهُ لَا يَحِلُّ لِلْمُحْرِمِ قَتْلُ الصَّيْدِ وَلَا لِلْمُحِلِّ فِي الْحَرَمِ مَا دَامَ يَجِدُ شَيْئًا مِنْ هَذِهِ الْمُحَرَّمَاتِ نَاقِضًا لِهَذِهِ الْجُمْلَةِ، بَلْ هُوَ طَرْدٌ لَهَا؛ لِأَنَّ وَاجِدَ الْخِنْزِيرِ، وَالْمَيْتَةِ، وَالدَّمِ، وَغَيْرِ ذَلِكَ غَيْرُ مُضْطَرٍّ مَعَهَا، بَلْ هُوَ وَاجِدُ حَلَالٍ، فَلَيْسَ مُضْطَرًّا إلَى الصَّيْدِ إلَّا حَتَّى لَا يَجِدَ غَيْرَهُ فَيَحِلُّ لَهُ حِينَئِذٍ. وَأَمَّا قَوْلُنَا: لَا مَعْنَى لِلتَّذْكِيَةِ فَلِأَنَّ الذَّكَاةَ إخْرَاجُ

[62] **Qur'an references (L16983):** Qur'an 4:29 (An-Nisa); Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).

compelled by necessity while these exist. Rather, they have lawful provisions available and are thus not driven to hunt unless no other provisions exist, in which case it becomes permissible for them. As for our statement that ritual slaughter has no applicability here, this is because slaughtering removes the ruling of prohibition from an animal by transitioning it from carrion to lawfully slaughtered. Every animal prohibited by Allah the Exalted is carrion, and thus ritual slaughter has no applicability to carrion—and success is attained only through Allah, the Exalted.

L16986 **A legal question: A highway robber attacked Muslims and could find no food except pigs.**

L16987 Issue 1027: None of the things we mentioned are permissible for one engaged in oppression against Muslims or withholding a rightful obligation. Rather, all such matters are forbidden to him. If he finds no food, he must repent from his state, cease oppression, and then eat and drink from what necessity compels him to consume—provided it is lawful for him. Should he refuse, he becomes a disobedient sinner against Allah the Exalted—a consumer of unlawful things. The proof lies in Allah's words: "But whoever is driven by necessity in famine, without inclining to sin, then Allah is Forgiving, Merciful" (5:3), and His words: "But whoever is compelled by necessity without being oppressive nor transgressing, there is no sin upon him" (2:173). For Allah only permits what He prohibited under necessity for those who do not incline to sin and refrain from oppression or transgression. This is the stance of all known scholars except the Malikis, who ruled that one who blocks roads against Muslims, awaits his allies among those waging war, besieges villages and cities as part of oppressors spilling Muslim blood, deems lawful their wealth and the private parts of Muslim women through injustice and aggression—if such a person finds nothing to eat except swine and carrion—may lawfully consume it. Thus, they supported him in the gravest injustice and severest oppression and transgression. Astonishingly, they jus-

لِحُكْمِ الْحَيَوَانِ عَلَى التَّحْرِيمِ بِكَوْنِهِ مَيْتَةً إِلَى التَّحْلِيلِ بِكَوْنِهِ مُذَكًّى، وَكُلُّ مَا حَرَّمَهُ اللَّهُ تَعَالَى مِنْ الْحَيَوَانِ فَهُوَ مَيْتَةٌ، فَالتَّذْكِيَةُ لَا مَدْخَلَ لَهَا فِي الْمَيْتَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَطَعَ الطَّرِيقَ عَلَى الْمُسْلِمِينَ فَلَمْ يَجِدْ مَأْكَلًا إلَّا الْخَنَازِيرَ]

١٠٢٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ شَيْءٌ مِمَّا ذَكَرْنَا لِمَنْ كَانَ فِي طَرِيقِ بَغْيٍ عَلَى الْمُسْلِمِينَ أَوْ مُمْتَنِعًا مِنْ حَقٍّ، بَلْ كُلُّ ذَلِكَ حَرَامٌ عَلَيْهِ، فَإِنْ لَمْ يَجِدْ مَا يَأْكُلُ فَلْيَتُبْ مِمَّا هُوَ فِيهِ وَلْيُمْسِكْ عَنْ الْبَغْيِ وَلْيَأْكُلْ حِينَئِذٍ وَلْيَشْرَبْ مِمَّا اُضْطُرَّ إلَيْهِ حَلَالًا لَهُ فَإِنْ لَمْ يَفْعَلْ فَهُوَ عَاصٍ لِلَّهِ تَعَالَى فَاسِقٌ، آكِلُ حَرَامٍ. بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {فَمَنِ اضْطُرَّ فِي مَخْمَصَةٍ غَيْرَ مُتَجَانِفٍ لِإِثْمٍ فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ} [المائدة: ٣] وَقَوْلُهُ: {فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَلا عَادٍ فَلا إِثْمَ عَلَيْهِ} [البقرة: ١٧٣] فَإِنَّمَا أَبَاحَ تَعَالَى مَا حَرَّمَهُ بِالضَّرُورَةِ مَنْ لَمْ يَتَجَانَفْ لِإِثْمٍ، وَمَنْ لَمْ يَكُنْ بَاغِيًا وَلَا عَادِيًا -: وَهَذَا قَوْلُ كُلِّ مَنْ نَعْلَمُهُ مِنْ الْعُلَمَاءِ إلَّا الْمَالِكِيِّينَ، فَإِنَّهُمْ قَالُوا فِيمَنْ قَطَعَ الطَّرِيقَ عَلَى الْمُسْلِمِينَ، وَانْتَظَرَ رِفَاقَهُمْ مِنْ الْمُحَارِبِينَ، وَحَاصَرَ قُرَاهُمْ وَمُدُنَهُمْ مِنْ الْبَاغِينَ لِسَفْكِ دِمَاءِ الْمُسْلِمِينَ، وَيَسْتَبِيحُ أَمْوَالَهُمْ وَفُرُوجَ الْمُسْلِمَاتِ ظُلْمًا وَعُدْوَانًا، فَلَمْ يَجِدْ مَأْكَلًا إلَّا الْخَنَازِيرَ وَالْمَيْتَاتِ -: أَنَّهُ مُبَاحٌ لَهُ أَكْلُهُ، فَأَعَانُوهُ عَلَى أَعْظَمِ الظُّلْمِ، وَأَشَدِّ الْبَغْيِ وَالْعُدْوَانِ وَالْعَجَبُ أَنَّهُمْ مَوَّهُوا هَهُنَا بِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] .

tified their stance here using Allah's words: "And do not kill yourselves" (4:29).[63]

L16988–16989 Abu Muhammad said: This is among the most repugnant forms of ambiguity, for we did not command him to kill himself but rather to fulfill what Allah the Exalted has obligated upon him—repentance. Let him sincerely resolve it in his heart, refrain from transgression and withholding the truth with his hands, then eat what he is compelled to consume—lawful for him specifically. We have not heard a statement more repugnant than their claim here—that they do not command him to repent from transgression yet permit him to empower himself for spreading corruption on earth by eating carrion and swine. We disavow to Allah from this statement—

قَالَ أَبُو مُحَمَّد: وَهَذَا مِنْ أَقْبَحِ مَا يَكُونُ مِنْ الْإِبْهَامِ وَمَا أَمَرْنَاهُ بِقَتْلِ نَفْسِهِ بَلْ بِمَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ مِنْ التَّوْبَةِ، فَلْيَنْوِهَا بِقَلْبِهِ، وَلْيُمْسِكْ عَنْ الْبَغْيِ وَالِامْتِنَاعِ مِنْ الْحَقِّ بِيَدَيْهِ، ثُمَّ يَأْكُلُ مَا اُضْطُرَّ إلَيْهِ حَلَالًا لَهُ، وَمَا سَمِعْنَا بِقَوْلٍ أَقْبَحَ مِنْ قَوْلِهِمْ هَذَا أَنْ لَا يَأْمُرُوهُ بِالتَّوْبَةِ مِنْ الْبَغْيِ، وَيُبِيحُوا لَهُ التَّقَوِّي عَلَى الْإِفْسَادِ فِي الْأَرْضِ بِأَكْلِ الْمَيْتَةِ وَالْخِنْزِيرِ نَبْرَأُ إلَى اللَّهِ مِنْ هَذَا الْقَوْلِ -: رُوِّينَا عَنْ مُجَاهِدٍ {غَيْرَ بَاغٍ وَلا عَادٍ} [البقرة: ١٧٣] غَيْرَ بَاغٍ عَلَى الْمُسْلِمِينَ، وَلَا عَادٍ عَلَيْهِمْ - قَالَ مُجَاهِدٌ: وَمَنْ يَخْرُجُ لِقَطْعِ الطَّرِيقِ، أَوْ فِي مَعْصِيَةِ اللَّهِ تَعَالَى، فَاضْطُرَّ إلَى الْمَيْتَةِ لَمْ تَحِلَّ لَهُ، إنَّمَا تَحِلُّ لِمَنْ خَرَجَ فِي سَبِيلِ اللَّهِ تَعَالَى، فَإِنْ اُضْطُرَّ إلَيْهَا فَلْيَأْكُلْ. وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ {فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَلا عَادٍ} [البقرة: ١٧٣] قَالَ: إذَا خَرَجَ فِي سَبِيلٍ مِنْ سُبُلِ اللَّهِ تَعَالَى فَاضْطُرَّ إلَى الْمَيْتَةِ أَكَلَ، وَإِنْ خَرَجَ إلَى قَطْعِ الطَّرِيقِ فَلَا رُخْصَةَ لَهُ.

It has been narrated to us from Mujahid regarding {"except when compelled, neither transgressing nor aggressing"} [Al-Baqarah 2:173]: "Neither transgressing against the Muslims nor aggressing upon them." Mujahid said: "Whoever goes out to commit highway robbery or engaged in an act of disobedience to Allah the Exalted and is compelled to eat carrion, it is not lawful for him. It is only lawful for one who goes out in a path from the paths of Allah the Exalted; if he is compelled, let him eat."

From Sa'id ibn Jubayr regarding {"Whoever is compelled, neither transgressing nor aggressing"} [Al-Baqarah 2:173], he said: "If one goes out in a path from the paths of Allah the Exalted and is compelled to eat carrion, he may eat. But if he goes out to commit highway robbery, there is no dispensation for him."[64]

L16990–16992 They attempted to justify their position with what we narrated through the chain of Salama ibn Sabur from Atiyya from Ibn Abbas - that the meaning of "the transgressor" and "the oppressor" pertains specifically to consumption. Abu Muhammad said: This contains no valid evidence for them due to three aspects: First: No individual's statement holds authority in specifying the Quran's rulings except Allah's Messenger. Second: The chain is defective

وَمَوَّهُوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ سَلَمَةَ بْنِ سَابُورٍ عَنْ عَطِيَّةَ عَنْ ابْنِ عَبَّاسٍ أَنَّ مَعْنَى الْبَاغِي، وَالْعَادِي، إنَّمَا هُوَ فِي الْأَكْلِ. قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ ثَلَاثَةٍ -: أَوَّلُهَا: أَنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ فِي تَخْصِيصِ الْقُرْآنِ دُونَ رَسُولِ اللَّهِ. وَالثَّانِي: أَنَّهُ إسْنَادٌ فَاسِدٌ لَا يَصِحُّ، لِأَنَّ سَلَمَةَ بْنَ سَابُورٍ ضَعِيفٌ، وَعَطِيَّةَ مَجْهُولٌ. وَالثَّالِثُ: أَنَّهُ لَوْ صَحَّ لَكَانَ مُوَافِقًا لِقَوْلِنَا لَا لِقَوْلِهِمْ، لِأَنَّ الْبَاغِيَ فِي الْأَكْلِ، وَالْعَادِيَ فِيهِ: هُوَ مِنْ أَكْلِهِ

[63] **Qur'an references (L16987):** Qur'an 5:3 (Al-Ma'idah); Qur'an 2:173 (Al-Baqarah); Qur'an 4:29 (An-Nisa).

[64] **Qur'an references (L16989):** Qur'an 2:173 (Al-Baqarah); Qur'an 6:145 (Al-An'am); Qur'an 16:115 (An-Nahl).

and invalid, for Salama ibn Sabur is weak and Atiyya is unknown. Third: Even if authentic, it would support our position rather than theirs, for "the transgressor in consumption" and "the oppressor in it" refers to eating what is not permitted. Whoever consumes food through transgression against Muslims becomes a transgressor in consumption and an oppressor therein - which aligns exactly with our stance. No one we know of prior to them ever claimed that one spreading corruption on earth, when compelled to eat carrion while persisting in his corruption and strengthening himself to oppress Muslims, is permitted to consume it. We seek refuge in Allah from being forsaken. Some argued: "He may only eat what sustains his vital functions." Ali responded: This is erroneous, for Allah Almighty exempted the one compelled by necessity from the prohibition, so it is without doubt permissible. Since it is not included in the prohibition, and as it is not included within it, all of that is entirely permissible for him.

فِيمَا لَمْ يُبَحْ لَهُ، وَآكِلُهُ فِي الْبَغْيِ عَلَى الْمُسْلِمِينَ بَاغٍ فِي الْأَكْلِ وَعَادٍ فِيهِ، وَهَكَذَا نَقُولُ. وَمَا قَالَ قَطُّ أَحَدٌ نَعْلَمُهُ قَبْلَهُمْ: أَنَّ مَنْ خَرَجَ مُفْسِدًا فِي الْأَرْضِ فَاضْطُرَّ إِلَى الْمَيْتَةِ فَلَهُ أَكْلُهَا مُصِرًّا عَلَى إِفْسَادِهِ مُتَقَوِّيًا عَلَى ظُلْمِ الْمُسْلِمِينَ، وَنَعُوذُ بِاللَّهِ مِنْ الْخِذْلَانِ. وَقَالَ قَائِلُونَ: لَا يَحِلُّ لَهُ أَنْ يَأْكُلَ مِنْ ذَلِكَ إِلَّا مَا يُمْسِكُ رَمَقَهُ؟ قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِأَنَّ اللَّهَ تَعَالَى اسْتَثْنَى الْمُضْطَرَّ مِنْ التَّحْرِيمِ، فَهُوَ بِلَا شَكٍّ غَيْرُ دَاخِلٍ فِي التَّحْرِيمِ، وَإِذْ هُوَ غَيْرُ دَاخِلٍ فِيهِ فَكُلُّ ذَلِكَ مُبَاحٌ لَهُ جُمْلَةً.

Issue: Extravagance is forbidden (ḥarām).

[مَسْأَلَةٌ السَّرَفُ حَرَامٌ]

L16993

L16994

Issue 1028: Extravagance is forbidden, defined as expenditure on what Allah the Exalted has prohibited—whether small or large, even if amounting to a portion the size of a mosquito's wing. This includes squandering wealth on what is not needed out of necessity, leaving the spender without lasting sufficiency thereafter, or wastefully disposing of wealth however minimal. Expenditures beyond these aspects are lawful and not considered extravagance, regardless of their quantity. We have transmitted this view from Sa'īd ibn Jubayr and others. Allah the Exalted states: "And do not be extravagant. Indeed, He does not love the extravagant" (6:141). Through Ibn Wahb's chain: I am Yūnus ibn Yazīd—reporting from Ibn Shihāb—who informed me that 'Abd al-Raḥmān ibn Ka'b ibn Mālik said: "I heard Ka'b ibn Mālik narrate a ḥadīth in which he stated: 'O Messenger of Allah, part of my repentance is to divest myself of my wealth as charity to Allah and His Messenger.' The Messenger of Allah (peace be upon him) replied: 'Retain some of your wealth, for that is better for you.'" It is authentically established that the Prophet (peace be upon him) said: "The best charity is what is given from what remains after sufficiency. Begin with those under your care." We

١٠٢٨ - مَسْأَلَةٌ: وَالسَّرَفُ حَرَامٌ، وَهُوَ النَّفَقَةُ فِيمَا حَرَّمَ اللَّهُ تَعَالَى قَلَّتْ أَوْ كَثُرَتْ، وَلَوْ أَنَّهَا جُزْءٌ مِنْ قَدْرِ جَنَاحِ بَعُوضَةٍ - أَوْ التَّبْذِيرُ فِيمَا لَا يَحْتَاجُ إلَيْهِ ضَرُورَةً مِمَّا لَا يَبْقَى لِلْمُنْفِقِ بَعْدَهُ غِنًى - أَوْ إضَاعَةُ الْمَالِ وَإِنْ قَلَّ بِرَمْيِهِ عَبَثًا، فَمَا عَدَا هَذِهِ الْوُجُوهِ فَلَيْسَ سَرَفًا وَهُوَ حَلَالٌ وَإِنْ كَثُرَتْ النَّفَقَةُ فِيهِ. وَقَوْلُنَا هَذَا رُوِّينَاهُ عَنْ سَعِيدِ بْنِ جُبَيْرٍ وَغَيْرِهِ، قَالَ اللَّهُ تَعَالَى: {وَلا تُسْرِفُوا إِنَّهُ لا يُحِبُّ الْمُسْرِفِينَ} [الأنعام: ١٤١] . وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَنَا يُونُسُ - هُوَ ابْنُ يَزِيدَ - عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي عَبْدُ الرَّحْمَنِ بْنُ كَعْبِ بْنِ مَالِكٍ قَالَ: «سَمِعْتُ كَعْبَ بْنَ مَالِكٍ فَذَكَرَ الْحَدِيثَ وَفِيهِ فَقُلْتُ: يَا رَسُولَ اللَّهِ إنَّ مِنْ تَوْبَتِي أَنْ أَنْخَلِعَ مِنْ مَالِي صَدَقَةً إلَى اللَّهِ وَرَسُولِهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَمْسِكْ عَلَيْكَ بَعْضَ مَالِكَ فَهُوَ خَيْرٌ لَكَ» . وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: " أَنَّهُ قَالَ: «خَيْرُ الصَّدَقَةِ مَا كَانَ عَنْ ظَهْرِ غِنًى وَابْدَأْ بِمَنْ

transmit via Abū Mālik al-Ashja'ī from Ḥudhayfah that the Prophet (peace be upon him) said: "Every act of kindness is charity." Thus, it is confirmed that spending on acts of kindness or permissible matters is not lawful unless it preserves sufficiency—except for one compelled to provide basic sustenance for oneself and dependents, as it is impermissible to cause one's own death or neglect those under one's care. Allah the Exalted is the Provider. As for other expenditures, Allah states: "Eat from the pure provisions" (23:51), and says: "Do not prohibit the good things Allah has made lawful to you, nor transgress" (5:87). He further declares: "Say, 'Who has forbidden the adornment of Allah which He produced for His servants and the pure provisions?'" (7:32), and "Allah has permitted trade" (2:275). Whoever prohibits any of these without textual evidence has falsely attributed lies to Allah. If they cite the verse: "You consumed your pure provisions in your worldly life" (46:20), this applies exclusively to disbelievers, as the verse explicitly states: "On the Day the disbelievers are presented to the Fire: 'You consumed your pure provisions in your worldly life and indulged in them. Today you will be repaid with humiliating punishment for your arrogant oppression on earth without right and for your deviance'" (46:20).[65][66]

L16995–16996 Abu Muhammad said: Obfuscation by citing part of a verse while remaining silent about its beginning or its end is a corrupt practice of those whom Allah the Exalted intends to disgrace in this world and the Hereafter, for it is distorting the Words from their positions and lying against Allah the Exalted.

L16997 **An issue: What if a permissible-to-eat animal has been nourished with unlawful substances?**

[65] **Hadith references (L16994):** Sahih al-Bukhari 1426; Sahih al-Bukhari 5356; Sunan an-Nasai 2544.

[66] **Qur'an references (L16994):** Qur'an 6:141 (Al-An'am); Qur'an 7:31 (Al-A'raf); Qur'an 23:51 (Al-Mu'minun); Qur'an 5:87 (Al-Ma'idah); Qur'an 7:32 (Al-A'raf); Qur'an 2:275 (Al-Baqarah); Qur'an 46:20 (Al-Ahqaf).

تَعُولُ» : رُوِّينَا مِنْ طَرِيقِ أَبِي مَالِكٍ الْأَشْجَعِيِّ عَنْ حُذَيْفَةَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كُلُّ مَعْرُوفٍ صَدَقَةٌ» ". فَصَحَّ أَنَّهُ لَا يَحِلُّ نَفَقَةُ شَيْءٍ مِنْ الْمَعْرُوفِ، وَلَا الْمُبَاحِ، إلَّا مَا أَبْقَى غِنًى، إلَّا مَنْ اُضْطُرَّ إلَى قُوتِ نَفْسِهِ وَمَنْ مَعَهُ، فَلَا يَحِلُّ لَهُ قَتْلُ نَفْسِهِ وَلَا تَضْيِيعُ مَنْ مَعَهُ، ثُمَّ اللَّهُ تَعَالَى هُوَ الرَّزَّاقُ، وَأَمَّا مَا دُونَ هَذَا فَإِنَّ اللَّهَ تَعَالَى يَقُولُ {كُلُوا مِنَ الطَّيِّبَاتِ} [المؤمنون: ٥١] . وَقَالَ تَعَالَى: {لا تُحَرِّمُوا طَيِّبَاتِ مَا أَحَلَّ اللَّهُ لَكُمْ وَلا تَعْتَدُوا} [المائدة: ٨٧] . وَقَالَ تَعَالَى: {قُلْ مَنْ حَرَّمَ زِينَةَ اللَّهِ الَّتِي أَخْرَجَ لِعِبَادِهِ وَالطَّيِّبَاتِ مِنَ الرِّزْقِ} [الأعراف: ٣٢] {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] . فَمَنْ حَرَّمَ شَيْئًا مِنْ ذَلِكَ بِغَيْرِ نَصٍّ فَقَدْ قَالَ عَلَى اللَّهِ تَعَالَى الْبَاطِلَ. فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {أَذْهَبْتُمْ طَيِّبَاتِكُمْ فِي حَيَاتِكُمُ الدُّنْيَا} [الأحقاف: ٢٠] فَإِنَّمَا هَذِهِ الْآيَةُ فِي الْكُفَّارِ خَاصَّةً بِنَصِّ الْآيَةِ قَالَ تَعَالَى: {وَيَوْمَ يُعْرَضُ الَّذِينَ كَفَرُوا عَلَى النَّارِ أَذْهَبْتُمْ طَيِّبَاتِكُمْ فِي حَيَاتِكُمُ الدُّنْيَا وَاسْتَمْتَعْتُمْ بِهَا فَالْيَوْمَ تُجْزَوْنَ عَذَابَ الْهُونِ بِمَا كُنْتُمْ تَسْتَكْبِرُونَ فِي الْأَرْضِ بِغَيْرِ الْحَقِّ وَبِمَا كُنْتُمْ تَفْسُقُونَ} [الأحقاف: ٢٠] .

قَالَ أَبُو مُحَمَّدٍ: التَّمْوِيهُ بِإِيرَادِ بَعْضِ آيَةٍ وَالسُّكُوتِ عَنْ أَوَّلِهَا أَوْ آخِرِهَا عَادَةُ سُوءٍ لِمَنْ أَرَادَ اللَّهَ تَعَالَى خِزْيَهُ فِي الدُّنْيَا وَالْآخِرَةِ، لِأَنَّهُ تَحْرِيفٌ لِلْكَلِمِ عَنْ مَوَاضِعِهِ وَكَذِبٌ عَلَى اللَّهِ تَعَالَى.

[مَسْأَلَةٌ مَا تَغَذَّى مِنْ الْحَيَوَانِ الْمُبَاحِ أَكْلُهُ بِالْمُحَرَّمَاتِ]

L16998 1029. Issue: Any animal permissible to eat that consumed forbidden substances remains lawful—such as unrestricted chickens, ducks, vultures, and others. Even if a kid goat were suckled by a sow, its meat would still be lawful except for what we mentioned regarding al-jallalah (filth-fed animals), for Allah the Exalted said: "He has explicitly detailed what He forbade you" (6:119). He did not prohibit anything due to its consumption except al-jallalah, "and your Lord is never forgetful" (19:64). It is authentically reported from Abu Musa that he deemed chickens lawful to eat even when they consume filth. We narrate from Ibn Umar that when he wished to eat them, he would confine them for three days until their stomachs were purified. Abu Muhammad said: This reasoning is invalid, for if he confined them due to undigested waste in their crops from consumed matter, then such contents are entirely impermissible to eat as they constitute undigested waste. If this were due to the transformation of consumed forbidden substances, their flesh does not transform—neither in three days nor three months—rather, what they consumed becomes integral to their flesh. Were this prohibited, fruits and crops grown on manure would likewise be forbidden—which is erroneous. We previously established that when forbidden substances undergo transformation in their essential attributes and designation, the ruling attached to that designation becomes void. And success comes from Allah, the Exalted.[67]

١٠٢٩ - مَسْأَلَةٌ: وَكُلُّ مَا تَغَذَّى مِنْ الْحَيَوَانِ الْمُبَاحِ أَكْلُهُ بِالْمُحَرَّمَاتِ فَهُوَ حَلَالٌ: كَالدَّجَاجِ الْمُطْلَقِ، وَالْبَطِّ، وَالنَّسْرِ، وَغَيْرِ ذَلِكَ. وَلَوْ أَنَّ جَدْيًا أُرْضِعَ لَبَنَ خِنْزِيرَةٍ لَكَانَ أَكْلُهُ حَلَالًا حَاشَا مَا ذَكَرْنَا مِنْ الْجَلَّالَةِ لِأَنَّ اللَّهَ تَعَالَى قَالَ: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] . فَلَمْ يُفَصِّلْ لَنَا تَحْرِيمَ شَيْءٍ مِنْ أَجْلِ مَا يَأْكُلُ إلَّا الْجَلَّالَةَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] . وَقَدْ صَحَّ عَنْ أَبِي مُوسَى تَحْلِيلُ الدَّجَاجِ وَإِنْ كَانَ يَأْكُلُ الْقَذَرَ. وَرُوِّينَا عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ إذَا أَرَادَ أَكْلَهَا حَبَسَهَا ثَلَاثًا حَتَّى يَطِيبَ بَطْنُهَا. قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا يَلْزَمُ لِأَنَّهُ إنْ كَانَ حَبَسَهَا مِنْ أَجْلِ مَا فِي قَانِصَتِهَا مِمَّا أَكَلَتْ فَالَّذِي فِي الْقَانِصَةِ لَا يَحِلُّ أَكْلُهُ جُمْلَةً، لِأَنَّهُ رَجِيعٌ، وَإِنْ كَانَ مِنْ أَجْلِ اسْتِحَالَةِ الْمُحَرَّمَاتِ الَّتِي أُكِلَتْ فَلَا يَسْتَحِيلُ لَحْمُهَا فِي ثَلَاثَةِ أَيَّامٍ، وَلَا فِي ثَلَاثَةِ أَشْهُرٍ بَلْ قَدْ صَارَ مَا تَغَذَّتْ بِهِ مِنْ ذَلِكَ لَحْمًا مِنْ لَحْمِهَا، وَلَوْ حَرُمَ مِنْ ذَلِكَ لَحَرُمَ مِنْ الثِّمَارِ وَالزَّرْعِ مَا يَنْبُتُ عَلَى الزِّبْلِ - وَهَذَا خَطَأٌ. وَقَدْ قَدَّمْنَا أَنَّ الْحَرَامَ إذَا اسْتَحَالَتْ صِفَاتُهُ وَاسْمُهُ بَطَلَ حُكْمُهُ الَّذِي عُلِّقَ عَلَى ذَلِكَ الِاسْمِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حُكْمُ أَكْلِ الْقِرْدِ]

L16999 **Issue: The ruling on eating the monkey.**

[67] **Qur'an references (L16998):** Qur'an 6:119 (Al-An'am); Qur'an 19:64 (Maryam).

L17000–17002 Issue 1030: The consumption of monkeys is forbidden because Allah the Exalted transformed disobedient people into swine and monkeys as a punishment for them. By necessity, every person of sound perception knows that He the Exalted does not transform anyone as punishment into the form of pure animals. Thus, it is established that the monkey does not belong to them. Since it does not belong to them, it must be among impure things - for nothing exists except pure or impure. Whatever is not counted among the pure becomes categorically impure. Therefore, the monkey is impure, and the swine [is likewise impure]. The swine is impure, so they are both prohibited - and this too constitutes evidence for the prohibition of swine in totality and every part of it - while every account concerning metamorphosed creatures other than the ape and the swine: these are invalid, false, and fabricated - and success comes only through Allah, the Exalted.

١٠٣٠ - مَسْأَلَةٌ: وَالْقِرْدُ حَرَامٌ أَكْلُهُ لِأَنَّ اللَّهَ تَعَالَى مَسَخَ نَاسًا عُصَاةً عُقُوبَةً لَهُمْ عَلَى صُورَةِ الْخِنْزِيرِ، وَالْقِرَدَةِ. وَبِالضَّرُورَةِ يَدْرِي كُلُّ ذِي حِسٍّ سَلِيمٍ أَنَّهُ تَعَالَى لَا يَمْسَخُ عُقُوبَةً فِي صُورَةِ الطَّيِّبَاتِ مِنْ الْحَيَوَانِ فَصَحَّ أَنَّهُ لَيْسَ مِنْهَا وَإِذْ لَيْسَ هُوَ مِنْهَا فَهُوَ مِنْ الْخَبَائِثِ؛ لِأَنَّهُ لَيْسَ إلَّا طَيِّبٌ أَوْ خَبِيثٌ، فَمَا لَمْ يَكُنْ مِنْ الطَّيِّبَاتِ طَيِّبًا فَهُوَ مِنْ الْخَبَائِثِ خَبِيثٌ فَإِذًا الْقِرْدُ خَبِيثٌ، وَالْخِنْزِيرُ خَبِيثٌ، فَهُمَا مُحَرَّمَانِ - وَهَذَا مِنْ الْبَرَاهِينِ أَيْضًا عَلَى تَحْرِيمِ الْخِنْزِيرِ جُمْلَةً وَكُلُّ شَيْءٍ مِنْهُ - وَكُلُّ مَا جَاءَ فِي الْمُسُوخِ فِي غَيْرِ الْقِرْدِ وَالْخِنْزِيرِ: فَبَاطِلٌ وَكَذِبٌ مَوْضُوعٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The issue of eating clay for one who is not harmed by it

[مَسْأَلَةٌ أَكْلُ الطِّينِ لِمَنْ لَا يَسْتَضِرُّ بِهِ]

L17003

L17004 Issue 1031: Eating clay is permissible for one who is not harmed by it. As for consuming what causes harm - whether clay, excessive water, or bread - this is forbidden because such acts are not among the specific prohibitions decreed for us, thus it remains permissible. However, anything causing harm becomes forbidden by the Prophet's statement (peace be upon him): "Allah has prescribed excellence in all matters." This was transmitted through multiple chains: Shu'bah, Sufyān, Hushaym, Manṣūr ibn al-Mu'tamir, Ibn 'Ulayyah, and 'Abd al-Wahhāb ibn 'Abd al-Majīd - all from Khālid al-Ḥadhdhā' from Abū Qilābah from Abū al-Ash'ath al-Ṣan'ānī from Shaddād ibn Aws, who preserved from Allah's Messenger (peace be upon him) the saying: "Allah has prescribed excellence in all matters" along with the remainder of the ḥadīth. Whoever harms themselves or others has failed to uphold excellence, thereby opposing Allah's decree of excellence in all matters.

False reports exist regarding clay's prohibition, including one through Suwayd ibn Sa'īd al-Ḥadathānī - a known liar - and mursal narrations. Some argue using Allah's verse: {O believers! Spend from the good things you have

١٠٣١ - مَسْأَلَةٌ: وَأَكْلُ الطِّينِ لِمَنْ لَا يَسْتَضِرُّ بِهِ حَلَالٌ، وَأَمَّا أَكْلُ مَا يَسْتَضِرُّ بِهِ مِنْ طِينٍ أَوْ إكْثَارٍ مِنْ الْمَاءِ أَوْ الْخُبْزِ -: فَحَرَامٌ؛ لِأَنَّهُ لَيْسَ مِمَّا فَصَّلَ تَحْرِيمَهُ لَنَا فَهُوَ حَلَالٌ، وَأَمَّا كُلُّ مَا أَضَرَّ فَهُوَ حَرَامٌ، لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ اللَّهَ كَتَبَ الْإِحْسَانَ عَلَى كُلِّ شَيْءٍ» . رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ، وَسُفْيَانَ، وَهُشَيْمٍ، وَمَنْصُورِ بْنِ الْمُعْتَمِرِ، وَابْنِ عُلَيَّةَ، وَعَبْدِ الْوَهَّابِ بْنِ عَبْدِ الْمَجِيدِ، كُلُّهُمْ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْأَشْعَثِ الصَّنْعَانِيِّ عَنْ شَدَّادِ بْنِ أَوْسٍ أَنَّهُ حَفِظَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إنَّ اللَّهَ كَتَبَ الْإِحْسَانَ عَلَى كُلِّ شَيْءٍ» وَذَكَرَ بَاقِيَ الْحَدِيثِ، فَمَنْ أَضَرَّ بِنَفْسِهِ أَوْ بِغَيْرِهِ فَلَمْ يُحْسِنْ، وَمَنْ لَمْ يُحْسِنْ فَقَدْ خَالَفَ كِتَابَ اللَّهِ تَعَالَى الْإِحْسَانَ عَلَى كُلِّ شَيْءٍ. وَقَدْ رُوِيَ فِي تَحْرِيمِ الطِّينِ آثَارٌ كَاذِبَةٌ -: مِنْهَا: مِنْ طَرِيقِ سُوَيْدِ بْنِ سَعِيدٍ الْحَدَثَانِيِّ وَهُوَ مَذْكُورٌ بِالْكَذِبِ، وَمُرْسَلَاتٌ - وَاحْتَجَّ بَعْضُهُمْ

earned and what We have produced for you from the earth} [2:267], claiming clay is not among what the earth produces.

Abū Muḥammad responded: This exemplifies their habitual deception in creating the false impression that they are presenting evidence, when in reality they cite what contains no proof. While the verse permits earth-produced goods, it neither prohibits nor permits other substances. If it forbade non-earth products, all land and sea animals, honey, manna, hail, and snow would be unlawful - none being earth-produced. Clay in fact constitutes substances within the earth extracted from it, for it is among the minerals found in the earth. No religiously conscientious person would cite such arguments, which only exposes their disgrace - success comes only from Allah.[1]

بِقَوْلِ اللَّهِ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا أَنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أَخْرَجْنَا لَكُمْ مِنَ الأَرْضِ} [البقرة: ٢٦٧] . قَالَ: وَالطِّينُ لَيْسَ مِمَّا أَخْرَجَ لَنَا مِنَ الْأَرْضِ. قَالَ أَبُو مُحَمَّد: وَهَذَا مِنَ التَّمْوِيهِ الَّذِي جَرَوْا عَلَى عَادَتِهِمْ فِيهِ فِي إِيهَامِهِمْ أَنَّهُمْ يَحْتَجُّونَ، وَإِنَّمَا يَأْتُونَ بِمَا لَا حُجَّةَ لَهُمْ فِيهِ، وَهَذِهِ الْآيَةُ حَقٌّ وَلَكِنْ لَيْسَ فِيهَا تَحْرِيمُ أَكْلِ مَا لَمْ يُخْرِجْ لَنَا مِنَ الْأَرْضِ وَإِنَّمَا فِيهَا إِبَاحَةُ مَا أَخْرَجَ لَنَا مِنَ الْأَرْضِ وَلَيْسَ فِيهَا ذِكْرُ مَا عَدَا ذَلِكَ لَا بِتَحْلِيلٍ وَلَا بِتَحْرِيمٍ، فَحُكْمُ مَا لَمْ يَخْرُجْ مِنَ الْأَرْضِ مَطْلُوبٌ مِنْ غَيْرِهَا. وَلَوْ كَانَتْ هَذِهِ الْآيَةُ مَانِعَةً مِنْ أَكْلِ مَا لَمْ يَخْرُجْ مِنَ الْأَرْضِ لَحَرُمَ أَكْلُ الْحَيَوَانِ كُلِّهِ بَرِّيِّهِ وَبَحْرِيِّهِ، وَلَحَرُمَ أَكْلُ الْعَسَلِ، والطرنجبين، وَالْبَرَدِ، وَالثَّلْجِ، لِأَنَّهُ لَيْسَ شَيْءٌ مِنْ ذَلِكَ مِمَّا أَخْرَجَ اللَّهُ تَعَالَى لَنَا مِنَ الْأَرْضِ؛ فَالطِّينُ وَاحِدٌ مِنْ هَذِهِ فَكَيْفَ وَهُوَ مِمَّا فِي الْأَرْضِ وَمِمَّا أَخْرَجَ اللَّهُ تَعَالَى مِنَ الْأَرْضِ؟ لِأَنَّهُ مَعَادِنُ فِي الْأَرْضِ مُسْتَخْرَجَةٌ مِنَ الْأَرْضِ، وَلَقَدْ كَانَ يَنْبَغِي لِمَنْ لَهُ دِينٌ أَنْ لَا يَحْتَجَّ بِمِثْلِ هَذَا مِمَّا يَفْتَضِحُ فِيهِ مِنْ قُرْبٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L17005–17006 We know that a small amount of mushrooms, truffles, or the meat of an aged male goat is more harmful than a small amount of clay. Some of them proposed an absurd argument, claiming: "We were created from dust, so whoever eats dust consumes his own origin." We retorted: "What does that prove?" By this ludicrous logic, drinking water would also be forbidden, since the Quran explicitly states that we were created from water.

وَقَدْ عَلِمْنَا أَنَّ الْقَلِيلَ مِنَ الْفِطْرِ وَالْكَمْأَةِ، وَلَحْمِ التَّيْسِ الْهَرِمِ أَضَرُّ مِنْ قَلِيلِ الطِّينِ، وَأَتَى بَعْضُهُمْ بِطَرِيفَةٍ فَقَالَ: خُلِقْنَا مِنَ التُّرَابِ فَمَنْ أَكَلَ التُّرَابَ فَقَدْ أَكَلَ مَا خُلِقَ مِنْهُ. فَقُلْنَا: فَكَانَ مَاذَا؟ وَعَلَى هَذَا الِاسْتِدْلَالِ السَّخِيفِ يَحْرُمُ شُرْبُ الْمَاءِ لِأَنَّنَا مِنَ الْمَاءِ خُلِقْنَا بِنَصِّ الْقُرْآنِ.

L17007 The Ruling on Eating the Meat of the Spiny-tailed Lizard.

[مَسْأَلَةٌ أَكْلِ لَحْمِ الضَّبِّ]

L17008 1032 - Issue: The ḍabb is permissible, but Abū Ḥanīfah did not consider

[1] **Qur'an references (L17004):** Qur'an 2:267 (Al-Baqarah).

it permissible to eat. It has been narrated to us via al-Ḥārith's chain from ʿAlī ibn Abī Ṭālib that he deemed the ḍabb reprehensible. From Abū al-Zubayr, he said: I asked Jābir ibn ʿAbd Allāh about the ḍabb, and he replied: "Do not consume it." The proponents of this view cited several ḥadīths—some authentic, such as the one narrated through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān and Abū Muʿāwiyah al-Ḍarīr from al-Aʿmash from Zayd ibn Wahb from ʿAbd al-Raḥmān ibn Ḥasanah, who said: "We were with the Messenger of Allāh (peace be upon him) during a military campaign when we faced severe hunger. We found ḍabbs. As the pots were boiling with them, the Messenger of Allāh (peace be upon him) emerged and said: 'A community from the Children of Israel vanished, and I fear these may be them. Overturn them!' So we spilled them out." This is Abū Muʿāwiyah's wording, and Yaḥyā's is similar. Among the cited ḥadīths are non-authentic ones, such as the chain from Ismāʿīl ibn ʿAyyāsh from Ḍamḍam ibn Zurʿah from Shurayḥ ibn ʿUbayd from Abū Rāshid al-Ḥubrānī from ʿAbd al-Raḥmān ibn Shibl: "The Prophet (peace be upon him) forbade eating the flesh of the ḍabb." There are also reports expressing reservation about it, such as the narration via Muslim: Muḥammad ibn al-Muthannā narrated to us, Ibn Abī ʿAdī narrated from Dāwūd from Abū Naḍrah from Abū Saʿīd al-Khudrī: "The Prophet (peace be upon him) was asked about the ḍabb. He (peace be upon him) said: 'A nation from the Children of Israel was transformed,' but he neither commanded nor forbade." A similar authentic report with the same meaning is narrated through Jābir from the Prophet (peace be upon him).[2]

L17009–17010 And from the chain of Zayd ibn Wahb from Thābit ibn Yazīd from the Prophet, peace and blessings of Allah be upon him. And from the chain of Shu'bah from al-Ḥakam ibn 'Utaybah from Zayd ibn Wahb from al-Barā' ibn 'Āzib from Thābit ibn Wadi'ah from the Prophet, peace and blessings of Allah be upon him. And from the chain of Yaḥyā ibn Sa'īd al-Qaṭṭān from

[2]**Hadith references (L17008):** Mishkat al-Masabih 4127.

١٠٣٢ - مَسْأَلَةٌ: وَالضَّبُّ حَلَالٌ، وَلَمْ يَرَ أَبُو حَنِيفَةَ أَكْلَهُ. وَرُوِّينَا مِنْ طَرِيقِ الْحَارِثِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ كَرِهَ الضَّبَّ. وَعَنْ أَبِي الزُّبَيْرِ قَالَ: سَأَلْت جَابِرَ بْنَ عَبْدِ اللَّهِ عَنْ الضَّبِّ فَقَالَ: لَا تَطْعَمُوهُ. وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِأَحَادِيثَ -: مِنْهَا صَحِيحٌ: كَالَّذِي رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ، وَأَبِي مُعَاوِيَةَ الضَّرِيرِ عَنْ الْأَعْمَشِ عَنْ زَيْدِ بْنِ وَهْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ حَسَنَةَ قَالَ: «كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي غَزَاةٍ فَأَصَابَتْنَا مَجَاعَةٌ فَوَجَدْنَا ضِبَابًا فَبَيْنَمَا الْقُدُورُ تَغْلِي بِالضِّبَابِ خَرَجَ عَلَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إنَّ أُمَّةً مِنْ بَنِي إسْرَائِيلَ فُقِدَتْ، وَإِنِّي أَخَافُ أَنْ تَكُونَ هَذِهِ هِيَ فَأَكْفِئُوهَا، فَأَكْفَئْنَا بِهَا» . هَذَا لَفْظُ أَبِي مُعَاوِيَةَ، وَلَفْظُ يَحْيَى نَحْوُهُ. وَمِنْهَا غَيْرُ صَحِيحٍ: مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ ضَمْضَمِ بْنِ زُرْعَةَ عَنْ شُرَيْحِ بْنِ عُبَيْدٍ عَنْ أَبِي رَاشِدٍ الْحُبْرَانِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ شِبْلٍ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ أَكْلِ لَحْمِ الضَّبِّ» . وَجَاءَتْ أَخْبَارٌ فِيهَا التَّوَقُّفُ فِيهِ -: كَالَّذِي رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي مُحَمَّدُ بْنُ الْمُثَنَّى نا ابْنُ أَبِي عَدِيٍّ عَنْ دَاوُد عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ سُئِلَ عَنْ الضَّبِّ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -. إنَّ أُمَّةً مِنْ بَنِي إسْرَائِيلَ مُسِخَتْ - فَلَمْ يَأْمُرْ وَلَمْ يَنْهَ» وَمِثْلُ هَذَا أَيْضًا بِمَعْنَاهُ صَحِيحٌ مِنْ طَرِيقِ جَابِرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَمِنْ طَرِيقِ زَيْدِ بْنِ وَهْبٍ عَنْ ثَابِتِ بْنِ يَزِيدَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ زَيْدِ بْنِ وَهْبٍ عَنْ الْبَرَاءِ بْنِ عَازِبٍ عَنْ ثَابِتِ ابْنِ وَدِيعَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي الضَّبِّ:

‘Ubayd Allāh ibn ‘Umar from Nāfi‘ from Ibn ‘Umar from the Prophet, peace and blessings of Allah be upon him, who said regarding the dabb: “I neither command it nor forbid it.” And from the chain of Ḥammād ibn Salamah from Ḥammād ibn Abī Sulaymān from Ibrāhīm from al-Aswad from ‘Ā’ishah, the Mother of the Believers: “The Prophet, peace and blessings of Allah be upon him, was presented with a dabb but did not eat it. She asked: ’O Messenger of Allah, should we not feed it to the poor?’ He replied: ’Do not feed them what you do not eat.”’

Abū Muḥammad said: As for this narration, it holds no legal proof. As for the ḥadīth of ‘Abd al-Raḥmān ibn Shibl, it contains weak and unknown narrators, thus it is dismissed. As for the ḥadīth of ‘Abd al-Raḥmān ibn Ḥasānah, it is a valid proof, though undoubtedly abrogated, for it states that the Prophet, peace and blessings of Allah be upon him, ordered inverting cooking pots containing dabbs only out of fear they might be remnants of the metamorphosed beings of past nations—this being the explicit text of the ḥadīth. If we find a definitive statement from him, peace and blessings of Allah be upon him, that dispels this assumption, the dislike or prohibition concerning the dabb is lifted. We thus investigated this matter and found what we narrated through the chain of Muslim: Isḥāq ibn Ibrāhīm—he is Ibn Rāhwayh—and Ḥajjāj ibn al-Shā‘ir (the wording is his), both from ‘Abd al-Razzāq, who said: Sufyān al-Thawrī reported from ‘Alqamah ibn Marthad from al-Mughīrah ibn ‘Abd Allāh al-Yashkurī from al-Ma‘rūr ibn Suwayd from ‘Abd Allāh ibn Mas‘ūd, who said: “A man asked: ’O Messenger of Allah, are monkeys and pigs among the metamorphosed beings?’ The Messenger of Allah, peace and blessings of Allah be upon him, replied: ’Allah, the Exalted, does not annihilate or punish a people and then grant them progeny. Monkeys and pigs existed prior to that.”’

And from the chain of Ibn Abī Shaybah from Wakī‘ from Mis‘ar ibn Kidām from ‘Alqamah ibn Marthad from al-Mughīrah ibn ‘Abd Allāh al-Yashkurī from al-Ma‘rūr ibn Suwayd from Ibn Mas‘ūd: “Monkeys were mentioned before the Prophet, peace and blessings of Allah be upon him, whereupon he said, peace and blessings of Allah be upon him: ’Allah does not grant

لَا آمُرُ بِهِ، وَلَا أَنْهَى عَنْهُ.» وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ عَنْ الْأَسْوَدِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِضَبٍّ فَلَمْ يَأْكُلْهُ فَقَالَتْ: يَا رَسُولَ اللَّهِ أَلَا نُطْعِمُهُ الْمَسَاكِينَ؟ قَالَ: لَا تُطْعِمُوهُمْ مَا لَمْ تَأْكُلُوا» . قَالَ أَبُو مُحَمَّد: أَمَّا هَذِهِ فَلَا حُجَّةَ فِيهَا، وَأَمَّا حَدِيثُ عَبْدِ الرَّحْمَنِ بْنِ شِبْلٍ فَفِيهِ ضُعَفَاءُ وَمَجْهُولُونَ - فَسَقَطَ - وَأَمَّا حَدِيثُ عَبْدِ الرَّحْمَنِ بْنِ حَسَنَةَ فَهُوَ حُجَّةٌ إلَّا أَنَّهُ مَنْسُوخٌ بِلَا شَكٍّ، لِأَنَّ فِيهِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا أَمَرَ بِإِكْفَاءِ الْقُدُورِ بِالضِّبَابِ خَوْفَ أَنْ تَكُونَ مِنْ بَقَايَا مَسْخِ الْأُمَّةِ السَّالِفَةِ، هَذَا نَصُّ الْحَدِيثِ، فَإِنْ وَجَدْنَا عَنْهُ - عَلَيْهِ السَّلَامُ - مَا يُؤَمِّنُ مِنْ هَذَا الظَّنِّ بِيَقِينٍ فَقَدْ ارْتَفَعَتْ الْكَرَاهَةُ أَوْ الْمَنْعُ فِي الضَّبِّ، فَنَظَرْنَا فِي ذَلِكَ -: فَوَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ وَحَجَّاجُ بْنُ الشَّاعِرِ وَاللَّفْظُ لَهُ كِلَاهُمَا عَنْ عَبْدِ الرَّزَّاقِ قَالَ: أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ عَلْقَمَةَ بْنِ مَرْثَدٍ عَنْ الْمُغِيرَةِ بْنِ عَبْدِ اللَّهِ الْيَشْكُرِيِّ عَنْ الْمَعْرُورِ بْنِ سُوَيْدٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: «قَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ الْقِرَدَةُ وَالْخَنَازِيرُ هِيَ مِمَّا مُسِخَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يُهْلِكْ قَوْمًا أَوْ يُعَذِّبْ قَوْمًا فَيَجْعَلَ لَهُمْ نَسْلًا، وَإِنَّ الْقِرَدَةَ، وَالْخَنَازِيرَ كَانُوا قَبْلَ ذَلِكَ» . وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ عَلْقَمَةَ بْنِ مَرْثَدٍ عَنْ الْمُغِيرَةِ بْنِ عَبْدِ اللَّهِ الْيَشْكُرِيِّ عَنْ الْمَعْرُورِ بْنِ سُوَيْدٍ عَنْ ابْنِ مَسْعُودٍ «أَنَّ الْقِرَدَةَ ذُكِرَتْ عِنْدَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ - عَلَيْهِ السَّلَامُ -: إنَّ اللَّهَ لَمْ يَجْعَلْ لِمَسْخٍ نَسْلًا وَلَا عَقِبًا وَقَدْ كَانَتْ الْقِرَدَةُ وَالْخَنَازِيرُ قَبْلَ ذَلِكَ» .

offspring or descendants to any metamorphosed beings. Monkeys and pigs existed before that.”’[3]

L17011–17012 It was conclusively established that the previous apprehension concerning him—peace and blessings be upon him—regarding the dhabb (spiny-tailed lizard) being among metamorphosed creatures had been lifted. It was affirmed that the dhabb is neither among transformed beings nor does any metamorphosed creation exist in their forms—thus it was permitted. Subsequently, we verified the narration transmitted through Malik’s chain from Ibn Shihāb, from Abū Umāmah ibn Sahl ibn Ḥunayf, from ʿAbdullāh ibn ʿAbbās, who said: “Khalid ibn al-Walīd and I entered the house of Maymūnah with the Messenger of Allah—peace and blessings be upon him. A roasted dhabb was presented. The Messenger of Allah—peace and blessings be upon him—withdrew his hand. I inquired: ’Is it unlawful, O Messenger of Allah?’ He replied: ’No, but it was absent from my people’s land, so I find it repugnant.’ Khalid remarked: ’I pulled it toward me and consumed it while the Messenger of Allah—peace and blessings be upon him—watched.”’ This constitutes an explicit text affirming its lawfulness, representing the abrogating report. Undoubtedly, Ibn Abbas only joined the Messenger of Allah—peace and blessings be upon him—in Medina after the conclusion of the Conquest of Mecca, Ḥunayn, and Ṭā’if. After these, he—peace and blessings be upon him—waged no battle except Tabūk, during which no famine whatsoever afflicted them. It was decisively confirmed that ʿAbd al-Raḥmān ibn Ḥasana’s report predated this narration without doubt, thereby wholly resolving the ambiguity and validating its permissibility as affirmed by ʿUmar ibn al-Khaṭṭāb and others. And success comes only from Allah, the Exalted.

L17013 **Issue: The Ruling on Eating Rabbit**

L17014–17016 1033 - Issue: The rabbit is permissible because He did not specify its prohibition for us. The Salaf differed concerning it: We have narrated through Waki’’s chain from Hammām ibn Yaḥyā, from Qaṭādah, from Sa‘īd ibn al-Musayyib, from ‘Umar or Ibn ‘Umar, that he considered the rabbit reprehen-

[3]**Hadith references (L17010):** Sahih Muslim 2663d.

فَصَحَّ يَقِينًا أَنَّ تِلْكَ الْمَخَافَةَ مِنْهُ - عَلَيْهِ السَّلَامُ - فِي الضِّبَابِ أَنْ تَكُونَ مِمَّا مُسِخَ قَدْ ارْتَفَعَتْ، وَصَحَّ أَنَّ الضِّبَابَ لَيْسَتْ مِمَّا مُسِخَ، وَلَا مِمَّا مُسِخَ شَيْءٌ فِي صُوَرِهَا -: فَحَلَّتْ. ثُمَّ وَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي أُمَامَةَ بْنِ سَهْلِ بْنِ حُنَيْفٍ «عَنْ عَبْدِ اللَّهِ بْنِ عَبَّاسٍ قَالَ: دَخَلْتُ أَنَا وَخَالِدُ بْنُ الْوَلِيدِ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْتَ مَيْمُونَةَ: فَأُتِيَ بِضَبٍّ مَحْنُوذٍ فَرَفَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَدَهُ، فَقُلْتُ: أَحَرَامٌ هُوَ يَا رَسُولَ اللَّهِ؟ قَالَ: لَا، وَلَكِنَّهُ لَمْ يَكُنْ بِأَرْضِ قَوْمِي فَأَجِدُنِي أَعَافُهُ، قَالَ خَالِدٌ: فَاجْتَرَرْتُهُ فَأَكَلْتُهُ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْظُرُ» . فَهَذَا نَصٌّ جَلِيٌّ عَلَى تَحْلِيلِهِ، وَهَذَا هُوَ الْآخَرُ النَّاسِخُ، لِأَنَّ ابْنَ عَبَّاسٍ بِلَا شَكٍّ لَمْ يَجْتَمِعْ قَطُّ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمَدِينَةِ إلَّا بَعْدَ انْقِضَاءِ غَزْوَةِ الْفَتْحِ، وَحُنَيْنٍ، وَالطَّائِفِ، وَلَمْ يَغْزُ - عَلَيْهِ السَّلَامُ - بَعْدَهَا إلَّا تَبُوكَ، وَلَمْ تُصِبْهُمْ فِي تَبُوكَ مَجَاعَةٌ أَصْلًا. وَصَحَّ يَقِينًا أَنَّ خَبَرَ عَبْدِ الرَّحْمَنِ بْنِ حَسَنَةَ كَانَ قَبْلَ هَذَا الْخَبَرِ بِلَا مِرْيَةٍ فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً وَصَحَّتْ إبَاحَتُهُ عَنْ عُمَرَ بْنِ الْخَطَّابِ وَغَيْرِهِ -: وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حُكْمُ أَكْلِ الْأَرْنَبُ]

١٠٣٣ - مَسْأَلَةٌ: وَالْأَرْنَبُ حَلَالٌ، لِأَنَّهُ لَمْ يُفَصِّلْ لَنَا تَحْرِيمَهَا، وَقَدْ اخْتَلَفَ السَّلَفُ فِيهَا؛ رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ هَمَّامِ بْنِ يَحْيَى عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُمَرَ أَوْ ابْنِ عُمَرَ أَنَّهُ كَرِهَ الْأَرْنَبَ. وَمِنْ طَرِيقِ قَتَادَةَ عَنْ ابْنِ الْمُسَيِّبِ أَيْضًا أَنَّ عَبْدَ

sible (makruh). Through Qaṭādah's chain, also from Ibn al-Musayyib, it is related that ʻAbdullāh ibn ʻAmr ibn al-ʻĀṣ and his father considered the rabbit reprehensible. Saʻd ibn Abī Waqqāṣ ate it. From ʻAbd al-Raḥmān ibn Abī Laylā, it is narrated that he considered the rabbit reprehensible. Those who deemed it reprehensible cited as evidence a report through Waki''s chain: Abū Makīn reported from ʻIkrimah that "the Prophet—peace be upon him—was presented with a rabbit and told, 'It menstruates,' so he disliked it." Another narration via ʻAbd al-Razzāq, from Ibrāhīm ibn ʻUmar, from ʻAbd al-Karīm Abū Umayyah, states: "Jarīr ibn Anas al-Aslamī asked the Prophet—peace be upon him—about rabbit. He replied: 'I do not eat it; I have been informed that it menstruates.'" Abū Muḥammad said: ʻAbd al-Karīm Abū Umayyah is rejected, and ʻIkrimah's ḥadīth is mursal (with an incomplete chain), and it has been authenticated. From the narration of Shuʻbah from Hishām ibn Zayd, from Anas ibn Mālik: He caught a rabbit and brought it to Abū Ṭalḥah, who slaughtered it and sent its haunch and both thighs to the Prophet—may Allah's peace and blessings be upon him. [Anas said:] I brought it to the Prophet—may Allah's peace and blessings be upon him—and he accepted it. From the narration of Abū Hurayrah: The Prophet—peace be upon him—was presented with a roasted rabbit, but he did not eat from it and commanded the people to eat. This is an authentic text regarding its permissibility. He—peace be upon him—may have disliked it due to its natural disposition, not due to any sin in it. By the life of Allah, we entirely dislike it and cannot bring ourselves to eat it at all. But does this constitute prohibition in any way?

L17017 **Issue concerning vinegar that has completely transformed from wine.**

L17018 1034 - Issue: Vinegar transformed from wine is permissible, whether one intentionally converted it or not, except that whoever retains wine without pouring it out until converting it into vinegar or letting it naturally turn to vinegar is a sinner against Allah Almighty and has inadmissible testimony. The proof lies in wine's prohibition being explicitly detailed in scripture, while vinegar remains permissible and unrestricted. We narrate through the chain of Sahih Muslim: ʻAbd al-Raḥmān ibn ʻAbdillāh al-Dārimī reported

اللَّهِ بْنَ عَمْرِو بْنِ الْعَاصِ وَأَبَاهُ كَرِهَا الْأَرْنَبَ - وَأَكَلَهَا سَعْدُ بْنُ أَبِي وَقَّاصٍ. وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى أَنَّهُ كَرِهَ الْأَرْنَبَ. وَاحْتَجَّ مَنْ كَرِهَهَا بِخَبَرٍ مِنْ طَرِيقِ وَكِيعٍ نا أَبُو مَكِينٍ عَنْ عِكْرِمَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِأَرْنَبٍ فَقِيلَ لَهُ: إنَّهَا تَحِيضُ فَكَرِهَهَا» . وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إبْرَاهِيمَ بْنِ عُمَرَ عَنْ عَبْدِ الْكَرِيمِ أَبِي أُمَيَّةَ قَالَ: «سَأَلَ جَرِيرُ بْنُ أَنَسٍ الْأَسْلَمِيُّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْأَرْنَبِ؟ فَقَالَ: لَا آكُلُهَا أُنْبِئْتُ أَنَّهَا تَحِيضُ» . قَالَ أَبُو مُحَمَّدٍ: عَبْدُ الْكَرِيمِ أَبُو أُمَيَّةَ - هَالِكٌ - وَحَدِيثُ عِكْرِمَةَ مُرْسَلٌ، وَقَدْ صَحَّ مِنْ طَرِيقِ شُعْبَةَ عَنْ هِشَامِ بْنِ زَيْدٍ «عَنْ أَنَسِ بْنِ مَالِكٍ: أَنَّهُ صَادَ أَرْنَبًا فَأَتَى بِهَا أَبَا طَلْحَةَ فَذَبَحَهَا وَبَعَثَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِوَرِكِهَا وَفَخِذَيْهَا فَأَتَيْتُ بِهَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَبِلَهَا» . وَمِنْ طَرِيقِ أَبِي هُرَيْرَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِأَرْنَبٍ مَشْوِيَّةٍ فَلَمْ يَأْكُلْ - عَلَيْهِ السَّلَامُ - مِنْهَا وَأَمَرَ - عَلَيْهِ السَّلَامُ - الْقَوْمَ فَأَكَلُوا» فَهَذَا نَصٌّ صَحِيحٌ فِي تَحْلِيلِهَا وَقَدْ يَكْرَهُهَا - عَلَيْهِ السَّلَامُ - خِلْقَةً، لَا لِإِثْمٍ فِيهَا، وَنَحْنُ لَعَمْرُ اللَّهِ نَكْرَهُهَا جُمْلَةً وَلَا نَقْدِرُ عَلَى أَكْلِهَا أَصْلًا، وَلَيْسَ هَذَا مِنْ التَّحْرِيمِ فِي شَيْءٍ؟

[مَسْأَلَةُ انْخَلُّ الْمُسْتَحِيلُ عَنْ الْخَمْرِ]

١٠٣٤ - مَسْأَلَةٌ: وَانْخَلُّ الْمُسْتَحِيلُ عَنْ الْخَمْرِ حَلَالٌ تَعَمَّدَ تَخْلِيلَهَا أَوْ لَمْ يَتَعَمَّدْ إلَّا أَنَّ الْمُمْسِكَ لِلْخَمْرِ لَا يُرِيقُهَا حَتَّى يُخَلِّلَهَا أَوْ تَتَخَلَّلَ مِنْ ذَاتِهَا -: عَاصٍ لِلَّهِ عَزَّ وَجَلَّ مُجَرَّحُ الشَّهَادَةِ. بُرْهَانُ ذَلِكَ -: أَنَّ الْخَمْرَ مُفَصَّلٌ تَحْرِيمُهَا، وَانْخَلُّ حَلَالٌ لَمْ يُحَرَّمْ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ الدَّارِمِيُّ أَنَا يَحْيَى بْنُ حَسَّانَ نا سُلَيْمَانُ بْنُ بِلَالٍ

to us, Yahyā ibn Ḥassān reported to us, Sulaymān ibn Bilāl reported from Hishām ibn ʻUrwah from his father from ʻĀ'ishah, Mother of the Believers, who said: Allah's Messenger (peace be upon him) declared, "What an excellent condiment vinegar is!" Thus vinegar is decisively permissible, being distinct from prohibited wine. When a permissible juice loses its original properties and acquires the characteristics of wine, it ceases to be lawful juice and becomes prohibited wine. Conversely, when wine loses its prohibited characteristics and acquires vinegar's lawful properties, it ceases to be prohibited wine and becomes lawful vinegar. This principle governs all things: rulings follow designated names. When names become invalid, their stipulated rulings lapse, replaced by those of the new designations. The minor has rulings specific to him; the adult, his own; the deceased, theirs; blood, its ruling; nourishment transformed from blood, its ruling; milk and meat transformed from blood, their rulings - this applies universally. There is no significance to intentional conversion versus natural transformation, as no Qur'anic verse, authentic Sunnah, weak report, Companion's opinion, or analogy distinguishes between them. The sole prohibition lies in retaining wine itself.

عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «نِعْمَ الْإِدَامُ الْخَلُّ» فَإِذًا الْخَلُّ حَلَالٌ، فَهُوَ بِيَقِينٍ غَيْرُ الْخَمْرِ الْمُحَرَّمَةِ، وَإِذَا سَقَطَتْ عَنْ الْعَصِيرِ الْحَلَالِ صِفَاتُ الْعَصِيرِ وَحَلَّتْ فِيهِ صِفَاتُ الْخَمْرِ فَلَيْسَتْ تِلْكَ الْعَيْنُ عَصِيرًا حَلَالًا، بَلْ هِيَ خَمْرٌ مُحَرَّمَةٌ، وَإِذَا سَقَطَتْ عَنْ تِلْكَ الْعَيْنِ صِفَاتُ الْخَمْرِ الْمُحَرَّمَةِ وَحَلَّتْ فِيهَا صِفَاتُ الْخَلِّ الْحَلَالِ، فَلَيْسَتْ خَمْرًا مُحَرَّمَةً، بَلْ هِيَ خَلٌّ حَلَالٌ. وَهَكَذَا كُلُّ مَا فِي الْعَالَمِ إنَّمَا الْأَحْكَامُ عَلَى الْأَسْمَاءِ فَإِذَا بَطَلَتْ تِلْكَ الْأَسْمَاءُ بَطَلَتْ تِلْكَ الْأَحْكَامُ الْمَنْصُوصَةُ عَلَيْهَا وَحَدَثَتْ لَهَا أَحْكَامُ الْأَسْمَاءِ الَّتِي انْتَقَلَتْ إلَيْهَا فَلِلصَّغِيرِ حُكْمُهُ، وَلِلْبَالِغِ حُكْمُهُ، وَلِلْمَيِّتِ حُكْمُهُ، وَلِلدَّمِ حُكْمُهُ، وَلِلْغِذَاءِ الَّذِي اسْتَحَالَ مِنْهُ حُكْمُهُ، وَلِلَّبَنِ، وَاللَّحْمِ الْمُسْتَحِيلَيْنِ عَنْ الدَّمِ حُكْمُهُمَا، وَهَكَذَا كُلُّ شَيْءٍ. وَلَا مَعْنَى لِتَعَمُّدِ تَخْلِيلِهَا، أَوْ لِتَخْلِيلِهَا مِنْ ذَاتِهَا لِأَنَّهُ لَمْ يَأْتِ بِالْفَرْقِ بَيْنَ شَيْءٍ مِنْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَإِنَّمَا الْحَرَامُ إمْسَاكُ الْخَمْرِ فَقَطْ.

L17019–17020 There is no distinction between vinegarizing it or abstaining from vinegarizing it. Rather, the one who intends for it to remain as wine bears greater sin and graver offense than the one who deliberately seeks to corrupt it or intends to alter it. This view of ours is the position of Abū Ḥanīfah and Mālik. Al-Shāfiʻī and Abū Sulaymān said: If it vinegarizes spontaneously, it becomes lawful, but if vinegarized intentionally, it does not become lawful—this is a corrupt opinion. It has been reported to us from some Mālikī scholars that all vinegar originating from wine—whether by intent or without intent—is forbidden. This is erroneous due to what we have previously established.

وَلَا فَرْقَ بَيْنَ تَخْلِيلِهَا أَوْ تَرْكِ تَخْلِيلِهَا، بَلْ الْمُرِيدُ لِبَقَائِهَا خَمْرًا أَعْظَمُ إثْمًا وَأَكْثَرُ جُرْمًا مِنْ الْمُتَعَمِّدِ لِإِفْسَادِهَا وَالْقَاصِدِ لِتَغْيِيرِهَا - وَقَوْلُنَا هَذَا هُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ. وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: إذَا تَخَلَّلَتْ حَلَّتْ، وَإِنْ خُلِّلَتْ لَمْ تَحِلَّ - وَهَذَا قَوْلٌ فَاسِدٌ وَرُوِّينَا عَنْ بَعْضِ الْمَالِكِيِّينَ: أَنَّ كُلَّ خَلٍّ تَوَلَّدَ مِنْ خَمْرٍ بِقَصْدٍ أَوْ بِغَيْرِ قَصْدٍ فَهُوَ حَرَامٌ - وَهَذَا خَطَأٌ لِمَا ذَكَرْنَا. وَأَمَّا عِصْيَانُ مُمْسِكِ الْخَمْرِ -: فَلِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ أَبِي خَلَفٍ قَالَ: نا زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - نا عُبَيْدُ اللَّهِ - هُوَ ابْنُ عَمْرٍو - عَنْ زَيْدٍ - هُوَ ابْنُ أَبِي أُنَيْسَةَ - عَنْ يَحْيَى النَّخَعِيِّ قَالَ: سُئِلَ ابْنُ عَبَّاسٍ عَنْ النَّبِيذِ؟

Regarding the sinfulness of retaining wine: We have reported through Muslim's chain that Muḥammad ibn Aḥmad ibn Abī Khalaf narrated to us from Zakariyyā (son of Abī Zā'idah) from ʻUbayd Allāh (son of ʻAmr) from Zayd (son of Abī Unaysah) from Yaḥyā al-Nakhaʻī, who said: Ibn ʻAbbās was asked about *nabīdh*. He mentioned the ḥadīth in which the Prophet (peace be

upon him) commanded a waterskin to be prepared with raisins and water left overnight. He drank from it the next day, the following night, and the subsequent day until evening—drinking and giving others to drink. The next morning, he ordered the remainder to be discarded. Thus, retaining wine is absolutely impermissible.

If it is asked: How can vinegar be obtained without the handler incurring sin? We reply: Yes, by placing grapes whole into a container. When the approaching summer arrives, they are pressed, yielding only pure vinegar. It is not termed wine prior to extraction. Similarly, if one presses grapes or soaks raisins or dates, then adds sharp vinegar equal to both in quantity to the sweet juice or sweet *nabīdh* before fermentation begins, it will vinegarize without ever becoming wine. And with Allah, the Exalted, lies all success.

A Legal Issue: The Melted Clarified Butter into Which a Mouse Falls

L17021

L17022 Issue 1035: If a mouse falls into melted butter - whether it dies therein or not - it is forbidden. It is not permissible to retain it at all; rather, it must be poured away. If the butter is solid, the part surrounding the mouse is removed and discarded, and the remainder remains permissible as it was. As for anything other than butter into which a mouse or another animal falls - whether it dies or not - all of it remains permissible as it was, as long as its color, taste, or smell remains unchanged. If something forbidden becomes apparent in it, then it is forbidden.

L17023–17024 Similarly, if anything other than a mouse falls into clarified butter—whether it dies or not—all of it is permissible, provided no unlawful change becomes apparent in it, as we have previously stated. We have already fully explained this matter in the Book of Purification within this compendium of ours, making its repetition redundant. The core principle is that the prohibition applies only to melted clarified butter in which a mouse has fallen, and no

فَذَكَرَ الْحَدِيثَ، وَفِيهِ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِسِقَاءٍ فَجُعِلَ فِيهِ زَبِيبٌ وَمَاءٌ جُعِلَ مِنَ اللَّيْلِ فَأَصْبَحَ فَشَرِبَ مِنْهُ يَوْمَهُ وَاللَّيْلَةَ الْمُسْتَقْبَلَةَ وَمِنَ الْغَدِ حَتَّى أَمْسَى فَشَرِبَ وَسَقَى فَلَمَّا أَصْبَحَ أَمَرَ بِمَا بَقِيَ مِنْهُ فَأُهْرِقَ» . فَلَا يَحِلُّ إِمْسَاكُ الْخَمْرِ أَصْلًا. فَإِنْ قِيلَ: فَكَيْفَ السَّبِيلُ إِلَى خَلٍّ لَا يَأْثَمُ مُعَانِيهِ؟ قُلْنَا: نَعَمْ، بِأَنْ يَكُونَ الْعِنَبُ كَمَا هُوَ يُلْقَى فِي الظَّرْفِ صَحِيحًا فَإِذَا كَانَ فِي اسْتِقْبَالِ الصَّيْفِ الَّذِي يَأْتِي عُصِرَ فَإِنَّهُ لَا يَنْعَصِرُ إِلَّا الْخَلُّ الصِّرْفُ. وَلَا يُسَمَّى خَمْرًا مَا لَمْ يَبْرُزْ مِنَ الْعِنَبِ. وَأَيْضًا فَإِنَّ مَنْ عَصَرَ الْعِنَبَ، أَوْ نَبَذَ الزَّبِيبَ أَوِ التَّمْرَ ثُمَّ صَبَّ عَلَى الْعَصِيرِ الْحُلْوِ أَوِ النَّبِيذِ الْحُلْوِ قَبْلَ أَنْ يَبْدَأَ بِهِمَا الْغَلَيَانُ مِثْلَ كِلَيْهِمَا خَلًّا حَاذِقًا، فَإِنَّهُ يَتَخَلَّلُ، وَلَا يَصِيرُ خَمْرًا أَصْلًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ السَّمْنُ الذَّائِبُ يَقَعُ فِيهِ الْفَأْرُ]

١٠٣٥ - مَسْأَلَةٌ: وَالسَّمْنُ الذَّائِبُ يَقَعُ فِيهِ الْفَأْرُ مَاتَ فِيهِ أَوْ لَمْ يَمُتْ -: فَهُوَ حَرَامٌ، لَا يَحِلُّ إِمْسَاكُهُ أَصْلًا، بَلْ يُهْرَاقُ، فَإِنْ كَانَ جَامِدًا أُخِذَ مَا حَوْلَ الْفَأْرِ فَرُمِيَ، وَكَانَ الْبَاقِي حَلَالًا كَمَا كَانَ. وَأَمَّا كُلُّ مَا عَدَا السَّمْنِ يَقَعُ فِيهِ الْفَأْرُ أَوْ غَيْرُ الْفَأْرِ فَيَمُوتُ أَوْ لَا يَمُوتُ فَهُوَ كُلُّهُ حَلَالٌ كَمَا كَانَ، مَا لَمْ يَتَغَيَّرْ لَوْنُهُ أَوْ طَعْمُهُ أَوْ رِيحُهُ، فَإِنْ ظَهَرَ فِيهِ الْحَرَامُ فَهُوَ حَرَامٌ.

وَكَذَلِكَ السَّمْنُ يَقَعُ فِيهِ غَيْرُ الْفَأْرِ فَيَمُوتُ أَوْ لَا يَمُوتُ فَهُوَ حَلَالٌ كُلُّهُ مَا لَمْ يَظْهَرْ فِيهِ تَغْيِيرُ الْحَرَامِ لَهُ كَمَا قَدَّمْنَا، وَقَدْ بَيَّنَّا هَذِهِ الْقِصَّةَ كُلَّهَا فِي كِتَابِ الطَّهَارَةِ مِنْ دِيوَانِنَا هَذَا فَأَغْنَى عَنْ إِعَادَتِهَا وَعُمْدَتُهُ أَنَّ النَّهْيَ إِنَّمَا جَاءَ فِي السَّمْنِ الذَّائِبِ فِيهِ الْفَأْرُ وَلَمْ يُنَصَّ عَلَى مَا عَدَاهُ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

explicit ruling is given for other cases, *"Your Lord is not forgetful"* (Quran 19:64). Success is from Allah, the Exalted.[4]

L17025 **A juristic question regarding the ruling on what falls from food.**

L17026 1036. Issue: It is obligatory to eat whatever falls from food. Licking the fingers after completing the meal is obligatory, and licking the platter when its contents are finished is obligatory. This is based on what we have reported through Al-Bukhari's chain: Ali ibn Abdullah [Ibn Al-Madini] narrated to us, Sufyan ibn Uyaynah narrated to us from Amr ibn Dinar from Ata' from Ibn Abbas that the Messenger of Allah—peace and blessings be upon him—said: "When one of you eats, he must not wipe his hand until he licks it or has someone else lick it." Through Hammad ibn Salamah's chain: Thabit al-Bunani narrated to us from Anas ibn Malik that the Prophet—peace and blessings be upon him—said: "If a morsel falls from one of you, let him remove any impurity from it and eat it, and not leave it for Satan." He commanded us to wipe the platter, saying: "For you do not know in which part of your food the blessing resides."[5]

L17027 **The Legal Issue of Eating While Reclining**

L17028 1037. Question: It is disliked to eat while reclining, but we do not consider it disliked to eat lying on one's stomach. None of these positions is forbidden, as there is no explicit prohibition against any of them. Whatever is not explicitly defined as forbidden to us is permissible. It has been narrated to us through Bukhārī's chain: Abū Nu'aym narrated to us, from Mis'ar—Ibn Kidām—from 'Alī ibn al-Aqmar, who said: I heard Abū Juḥayfah say, "The Prophet—peace and blessings of Allah be upon him—said: 'I do not eat while reclining.'" This is not a prohibition at all; rather, he merely preferred the superior manner. If they cite what has been narrated to us through Abū Dāwūd's chain: from 'Uthmān ibn Abī Shaybah, from Kathīr ibn Hishām,

[4]**Qur'an references (L17024):** Qur'an 19:64 (Maryam).

[5]**Hadith references (L17026):** Mishkat al-Masabih 4166; Sahih Muslim 2034.

[مَسْأَلَةٌ حُكْمِ مَا سَقَطَ مِنْ الطَّعَامِ]

١٠٣٦ - مَسْأَلَةٌ: وَمَا سَقَطَ مِنْ الطَّعَامِ فَفَرْضٌ أَكْلُهُ، وَلَعْقُ الْأَصَابِعِ بَعْدَ تَمَامِ الْأَكْلِ فَرْضٌ. وَلَعْقُ الصَّحْفَةِ إذَا تَمَّ مَا فِيهَا فَرْضٌ -: لِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ ابْنُ الْمَدِينِيِّ - نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا أَكَلَ أَحَدُكُمْ فَلَا يَمْسَحْ يَدَهُ حَتَّى يَلْعَقَهَا، أَوْ يُلْعِقَهَا» . وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا ثَابِتٌ - هُوَ الْبُنَانِيُّ عَنْ أَنَسِ بْنِ مَالِكٍ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا سَقَطَتْ لُقْمَةُ أَحَدِكُمْ فَلْيُمِطْ عَنْهَا الْأَذَى، وَلْيَأْكُلْهَا وَلَا يَدَعْهَا لِلشَّيْطَانِ وَأَمَرَنَا أَنْ نَسْلُتَ الْقَصْعَةَ قَالَ: فَإِنَّكُمْ لَا تَدْرُونَ فِي أَيِّ طَعَامِكُمْ الْبَرَكَةُ» .

[مَسْأَلَةٌ الْأَكْلُ مُتَّكِئًا]

١٠٣٧ - مَسْأَلَةٌ: وَيُكْرَهُ الْأَكْلُ مُتَّكِئًا وَلَا نَكْرَهُهُ مُنْبَطِحًا عَلَى بَطْنِهِ وَلَيْسَ شَيْءٌ مِنْ ذَلِكَ حَرَامًا، لِأَنَّهُ لَمْ يَأْتِ نَهْيٌ عَنْ شَيْءٍ مِنْ ذَلِكَ، وَمَا لَمْ يُفَصَّلْ لَنَا تَحْرِيمُهُ فَهُوَ حَلَالٌ. وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو نُعَيْمٍ نا مِسْعَرٌ - هُوَ ابْنُ كِدَامٍ - عَنْ عَلِيِّ بْنِ الْأَقْمَرِ قَالَ: سَمِعْت أَبَا جُحَيْفَةَ يَقُولُ: «قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إنِّي لَا آكُلُ مُتَّكِئًا» فَلَيْسَ هَذَا نَهْيًا أَصْلًا لَكِنَّهُ آثَرَ الْأَفْضَلَ فَقَطْ. فَإِنْ ذَكَرُوا: مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد عَنْ عُثْمَانَ بْنِ أَبِي شَيْبَةَ عَنْ كَثِيرِ بْنِ هِشَامٍ عَنْ جَعْفَرِ بْنِ بُرْقَانَ عَنْ

from Ja‘far ibn Burqān, from al-Zuhrī, from Sālim ibn ‘Abdillāh ibn ‘Umar, from his father, that the Prophet—peace and blessings of Allah be upon him—“forbade a man from eating while lying on his stomach.”

L17029–17030 We said: This is a report that Ja‘far did not hear from al-Zuhri. Abu Dawud said: Harun ibn Zayd ibn Abi al-Zarqa narrated to us; his father narrated to us; Ja‘far ibn Burqan narrated to us that this very same hadith reached him from al-Zuhri. So the chain was deemed defective. And Allah alone grants success.

L17031 ## Issue: Washing Hands Before and After the Meal

L17032 1038 - Issue: Washing the hands before and after meals is commendable. We have transmitted through Abū Dāwūd’s chain: Aḥmad ibn Yūnus narrated to us; Zuḥayr (Ibn Muʿāwiyah) narrated to us; Suhayl ibn Abī Ṣāliḥ reported from his father, from Abū Hurayrah, who said: Allah’s Messenger (peace and blessings be upon him) said: “Whoever sleeps with grease on their hand without washing it off, then suffers harm, let them blame none but themselves.” Abū Muḥammad said: This indicates a recommended act, not an obligation. A rat may bite a person’s fingers if it detects the smell of food on them. No prohibition exists against washing hands before eating. Some have claimed: “This is a practice of non-Arabs”—a most astonishing claim, for even eating bread is a practice of non-Arabs. Had Allah the Exalted intended its prohibition or disapproval, He would have clarified it. If it is argued: A verified report states that when food was presented to the Prophet (peace and blessings be upon him), he was asked: “Will you not perform ablution?” He replied: “Shall I perform ablution when I have not prayed?” This contains no reference whatsoever to washing hands before eating. It concerns ablution, as he (peace and blessings be upon him) stated: “No ablution is obligatory except for Prayer.”[6]

L17033 ## The praise of Allah, the Exalted, upon completion of eating.

الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ نَهَى عَنْ أَنْ يَأْكُلَ الرَّجُلُ مُنْبَطِحًا عَلَى بَطْنِهِ» .

قُلْنَا: هَذَا خَبَرٌ لَمْ يَسْمَعْهُ جَعْفَرٌ مِنْ الزُّهْرِيِّ، قَالَ أَبُو دَاوُد: نا هَارُونُ بْنُ زَيْدِ بْنِ أَبِي الزَّرْقَاءِ نا أَبِي نا جَعْفَرُ بْنُ بُرْقَانَ أَنَّهُ بَلَغَهُ عَنْ الزُّهْرِيِّ هَذَا الْحَدِيثُ نَفْسُهُ، فَسَقَطَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ غَسْلُ الْيَدِ قَبْلَ الطَّعَامِ وَبَعْدَهُ]

١٠٣٨ - مَسْأَلَةٌ: وَغَسْلُ الْيَدِ قَبْلَ الطَّعَامِ وَبَعْدَهُ حَسَنٌ -: رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ يُونُسَ نا زُهَيْرٌ - هُوَ ابْنُ مُعَاوِيَةَ - نا سُهَيْلُ بْنُ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ نَامَ وَفِي يَدِهِ غَمَرٌ وَلَمْ يَغْسِلْهُ فَأَصَابَهُ شَيْءٌ فَلَا يَلُومَنَّ إلَّا نَفْسَهُ» . قَالَ أَبُو مُحَمَّد: فَهَذَا نَدْبٌ لَا أَمْرٌ، وَالْجُرَذُ رُبَّمَا عَضَّ أَصَابِعَ الْمَرْءِ إذَا شَمَّ فِيهَا رَائِحَةَ الطَّعَامِ وَلَمْ يَأْتِ نَهْيٌ عَنْ غَسْلِ الْيَدِ قَبْلَ الطَّعَامِ، وَقَدْ قَالَ قَوْمٌ: هُوَ مِنْ فِعْلِ الْأَعَاجِمِ، وَهَذَا عَجَبٌ جِدًّا وَإِنَّ أَكْلَ الْخُبْزِ لَمِنْ فِعْلِ الْأَعَاجِمِ، وَلَوْ أَرَادَ اللَّهُ تَعَالَى تَحْرِيمَهُ أَوْ كَرَاهِيَتَهُ لَنَا لَبَيَّنَهُ فَإِنْ قِيلَ: فَقَدْ صَحَّ الْخَبَرُ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ قُرِّبَ إلَيْهِ الطَّعَامُ فَقِيلَ لَهُ: أَلَا تَتَوَضَّأُ؟ قَالَ: لَمْ أُصَلِّ فَأَتَوَضَّأُ» فَلَيْسَ فِي هَذَا ذِكْرٌ لِغَسْلِ الْيَدِ قَبْلَ الطَّعَامِ أَصْلًا، وَإِنَّمَا فِيهِ الْوُضُوءُ وَهُوَ كَمَا قَالَ - عَلَيْهِ السَّلَامُ -: «لَا وُضُوءَ وَاجِبًا إلَّا لِلصَّلَاةِ» .

[مَسْأَلَةٌ حَمْدُ اللَّهِ تَعَالَى عِنْدَ الْفَرَاغِ مِنْ الْأَكْلِ]

[6] **Hadith references (L17032):** Sunan Abi Dawud 3852.

L17034 Issue 1039: Praising Allah the Exalted upon finishing eating is commendable, even if done after every morsel, because it is an act of goodness and virtuousness, and this applies in all circumstances.

L17035 **Issue: Cutting meat with a knife for consumption.**

L17036–17038 1040. Issue: Cutting meat with a knife for eating is commendable, and we do not consider it disliked to cut bread with a knife for eating as well (and rinsing the mouth after eating is recommended), as reported to us through the chain of al-Bukhārī: Narrated to us by ʿAlī ibn ʿAbd Allāh, narrated to us by Sufyān, who said: I heard Yaḥyā ibn Saʿīd al-Anṣārī say, from Bashīr ibn Yasār, from Suwayd ibn al-Nuʿmān: "The Messenger of Allah—peace be upon him—ate sawīq (a dish of ground barley or wheat), then called for water and rinsed his mouth." Also through the chain of al-Layth, from ʿUqayl ibn Khālid, from al-Zuhrī, from ʿAbd Allāh ibn ʿAbd Allāh, from Ibn ʿAbbās. The Prophet (peace and blessings of Allah be upon him) drank milk and then rinsed his mouth with water, saying: "Indeed it contains fat." It is authentically established that he (peace and blessings of Allah be upon him) drank milk without rinsing his mouth. Since this involves neither a command nor a prohibition, it constitutes a commendable and permissible act.

Through the chain of Al-Bukhari: Abu Al-Yaman narrated to us, saying: I am Shuʿayb ibn Abi Hamzah, from Az-Zuhri [who] said: Jaʿfar ibn ʿAmr ibn Umayyah informed me that his father told him he saw Allah's Messenger (peace and blessings of Allah be upon him) cutting meat from a sheep's shoulder. When called to prayer, he threw down the meat and the knife he was cutting with, then stood to pray without performing ablution.

No prohibition exists against cutting bread or other items with a knife, making it permissible. There is a narration stating: "Do not cut meat with a knife, for this is the practice of non-Arabs," but it lacks authenticity as it comes through Abu Maʿshar al-Madini - a weak narrator. Success is by Allah, the Exalted.

L17039 **A question regarding eating from a silver-plated vessel**

١٠٣٩ - مَسْأَلَةٌ: وَحَمْدُ اللَّهِ تَعَالَى عِنْدَ الْفَرَاغِ مِنْ الْأَكْلِ حَسَنٌ وَلَوْ بَعْدَ كُلِّ لُقْمَةٍ لِأَنَّهُ فِعْلُ خَيْرٍ وَبِرٍّ، وَفِي كُلِّ حَالٍ.

[مَسْأَلَةٌ قَطْعُ اللَّحْمِ بِالسِّكِّينِ لِلْأَكْلِ]

١٠٤٠ - مَسْأَلَةٌ: وَقَطْعُ اللَّحْمِ بِالسِّكِّينِ لِلْأَكْلِ حَسَنٌ، وَلَا نَكْرَهُ قَطْعَ الْخُبْزِ بِالسِّكِّينِ لِلْأَكْلِ أَيْضًا - وَتُسْتَحَبُّ الْمَضْمَضَةُ مِنْ الطَّعَامِ -: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا سُفْيَانُ سَمِعْت يَحْيَى بْنَ سَعِيدٍ الْأَنْصَارِيَّ يَقُولُ عَنْ بَشِيرِ بْنِ يَسَارٍ عَنْ سُوَيْدِ بْنِ النُّعْمَانِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَكَلَ سَوِيقًا ثُمَّ دَعَا بِمَاءٍ فَتَمَضْمَضَ» . وَمِنْ طَرِيقِ اللَّيْثِ عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنْ الزُّهْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ عَنْ ابْنِ عَبَّاسٍ «إنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَرِبَ لَبَنًا ثُمَّ تَمَضْمَضَ بِالْمَاءِ وَقَالَ: إنَّ لَهُ دَسَمًا» . وَصَحَّ «أَنَّهُ - عَلَيْهِ السَّلَامُ - شَرِبَ لَبَنًا وَلَمْ يَتَمَضْمَضْ» فَلَمْ يَأْتِ بِهَا أَمْرٌ وَلَا نَهْيٌ فَهِيَ فِعْلٌ حَسَنٌ وَمُبَاحٌ -: وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو الْيَمَانِ أَنَا شُعَيْبُ بْنُ أَبِي حَمْزَةَ عَنْ الزُّهْرِيِّ [قَالَ] أَخْبَرَنِي جَعْفَرُ بْنُ عَمْرِو بْنِ أُمَيَّةَ: " أَنَّ أَبَاهُ أَخْبَرَهُ أَنَّهُ «رَأَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَحْتَزُّ مِنْ كَتِفِ شَاةٍ فَدُعِيَ إلَى الصَّلَاةِ فَأَلْقَاهَا وَالسِّكِّينَ الَّتِي يَحْتَزُّ بِهَا ثُمَّ قَامَ فَصَلَّى وَلَمْ يَتَوَضَّأْ.» وَلَمْ يَأْتِ نَهْيٌ عَنْ قَطْعِ الْخُبْزِ وَغَيْرِهِ بِالسِّكِّينِ فَهُوَ مُبَاحٌ. وَجَاءَ خَبَرٌ فِيهِ: «لَا تَقْطَعُوا اللَّحْمَ بِالسِّكِّينِ، فَإِنَّهُ مِنْ فِعْلِ الْأَعَاجِمِ» ، وَهُوَ لَا يَصِحُّ لِأَنَّهُ مِنْ رِوَايَةِ أَبِي مَعْشَرٍ لِلْمَدِينِيِّ - وَهُوَ ضَعِيفٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ الْأَكْلُ فِي إنَاءٍ مُفَضَّضٍ بِالْجَوْهَرِ وَالْيَاقُوتِ]

adorned with jewels and rubies.

L17040 1041 - Issue: Eating from a silver-plated vessel with jewels and rubies, and in crystal and onyx is permissible - and not considered extravagance. For if it were forbidden, its prohibition would have been explicitly detailed. Whatever is not explicitly prohibited remains permissible. Allah the Exalted has prohibited vessels of gold and silver, making them forbidden. He abstained from prohibiting anything beyond these entirely, therefore all else is permissible. It was narrated to us through Ibn al-Jahm's chain: Ahmad ibn al-Haytham narrated to us: Muhammad ibn Shariq narrated from 'Amr ibn Dinar from Abi al-Sha'tha' from Ibn 'Abbas, who said: "The people of pre-Islamic ignorance would eat some things and avoid others out of disgust. Then Allah the Exalted sent His Prophet (peace be upon him), revealed His Book, declared lawful what is lawful and forbidden what is forbidden. What He permitted is lawful, what He prohibited is forbidden, and what He remained silent about is pardoned." Through 'Abd al-Razzaq's chain from Sufyan ibn 'Uyaynah from 'Amr ibn Dinar, who heard 'Ubayd ibn 'Umayr say: "Allah declared lawful what is lawful and forbidden what is forbidden. What He permitted is lawful, what He prohibited is forbidden, and what He remained silent about is pardoned." Whoever claims that any of this constitutes extravagance or asserts this regarding food must define the precise boundary between the prohibited and permissible aspects of such matters, but they have no means to do so. Thus it is established [with certainty] that their claim is invalid. And success comes from Allah, the Most High.

An issue regarding the ruling on consuming garlic, onions, and kurrat.

L17041

L17042–17044 Issue 1042: Garlic, onions, and leeks are lawful except that whoever consumes any of them... It is forbidden for him to enter the mosque until the odor disappears. We have previously addressed this in the Book of Prayer, which suffices and makes its repetition unnecessary. He may sit in markets, public gatherings, weddings, and wherever he wishes except mosques, because the textual prohibition is explicitly limited to them.

١٠٤١ - مَسْأَلَةٌ: وَالْأَكْلُ فِي إنَاءٍ مُفَضَّضٍ بِالْجَوْهَرِ، وَالْيَاقُوتِ، وَفِي الْبَلُّورِ، وَالْجَزَعِ مُبَاحٌ - وَلَيْسَ مِنْ السَّرَفِ لِأَنَّهُ لَوْ كَانَ حَرَامًا لَفَصَّلَ تَحْرِيمَهُ، وَمَا لَمْ يُفَصَّلْ تَحْرِيمُهُ فَهُوَ حَلَالٌ، وَقَدْ حَرَّمَ اللَّهُ تَعَالَى آنِيَةَ الذَّهَبِ، وَالْفِضَّةِ فَهِيَ حَرَامٌ - وَأَمْسَكَ عَمَّا عَدَا ذَلِكَ كُلِّهِ فَهُوَ حَلَالٌ -: رُوِّينَا مِنْ طَرِيقِ ابْنِ الْجَهْمِ نا أَحْمَدُ بْنُ الْهَيْثَمِ نا مُحَمَّدُ بْنُ شَرِيكٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي الشَّعْثَاءِ عَنْ ابْنِ عَبَّاسٍ قَالَ: كَانَ أَهْلُ الْجَاهِلِيَّةِ يَأْكُلُونَ أَشْيَاءَ وَيَتْرُكُونَ أَشْيَاءَ تَقَذُّرًا فَبَعَثَ اللَّهُ تَعَالَى نَبِيَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنْزَلَ كِتَابَهُ وَأَحَلَّ حَلَالَهُ وَحَرَّمَ حَرَامَهُ فَمَا أَحَلَّ فَهُوَ حَلَالٌ، وَمَا حَرَّمَ فَهُوَ حَرَامٌ، وَمَا سَكَتَ عَنْهُ فَهُوَ عَفْوٌ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ أَنَّهُ سَمِعَ عُبَيْدَ بْنَ عُمَيْرٍ يَقُولُ: أَحَلَّ اللَّهُ حَلَالَهُ وَحَرَّمَ حَرَامَهُ، فَمَا أَحَلَّ فَهُوَ حَلَالٌ وَمَا حَرَّمَ فَهُوَ حَرَامٌ وَمَا سَكَتَ عَنْهُ فَهُوَ عَفْوٌ. وَمَنْ ادَّعَى أَنَّ شَيْئًا مِنْ هَذَا سَرَفٌ أَوْ ادَّعَى ذَلِكَ فِي الْمَأْكَلِ كُلِّفَ أَنْ يَأْتِيَ بِحَدِّ مَا يَحْرُمُ مِنْ ذَلِكَ مِمَّا يَحِلُّ، وَلَا سَبِيلَ لَهُ إلَيْهِ، فَصَحَّ [يَقِينًا] أَنَّ قَوْلَهُ بَاطِلٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حُكْمُ أَكْلِ الثُّومِ وَالْبَصَلِ وَالْكُرَّاثِ]

١٠٤٢ - مَسْأَلَةٌ: وَالثُّومُ، وَالْبَصَلُ، وَالْكُرَّاثُ حَلَالٌ إلَّا أَنَّ مَنْ أَكَلَ مِنْهَا شَيْئًا فَحَرَامٌ عَلَيْهِ أَنْ يَدْخُلَ الْمَسْجِدَ حَتَّى تَذْهَبَ الرَّائِحَةُ وَقَدْ ذَكَرْنَاهُ فِي كِتَابِ الصَّلَاةِ فَأَغْنَى عَنْ إعَادَتِهِ وَلَهُ الْجُلُوسُ فِي الْأَسْوَاقِ، وَالْجَمَاعَاتِ وَالْأَعْرَاسِ وَحَيْثُ شَاءَ إلَّا الْمَسَاجِدَ لِأَنَّ النَّصَّ لَمْ يَأْتِ إلَّا فِيهَا.

The Issue of the Eating of Locusts

[مَسْأَلَةُ أَكْلُ الْجَرَادِ]

L17045

L17046 Issue 1043: Locusts are permissible whether captured dead or alive, regardless of whether they subsequently die under those circumstances or not. It has been narrated to us through Al-Bukhari's chain: Abu Al-Walid Al-Tayalisi narrated to us, Shu'bah from Abu Ya'fur, who said: I heard 'Abdullah ibn Abi Awfa state: "We fought alongside Allah's Messenger—peace and blessings upon him—in six or seven campaigns, consuming locusts with him." It has also been narrated to us from 'Umar: "There is no harm in locusts"; from Ibn 'Umar: "The entire locust is validated [as permissible]"; and from Ibn 'Abbas regarding locusts: "There is no harm in eating them"—this being the view of Jabir ibn Zayd and others, without excluding any state or condition. This is likewise the position of Abu Hanifah and Al-Shafi'i. A faction maintained: "They remain impermissible even if captured alive unless killed"—this being Malik's opinion, though we find no valid evidence for it since ritual slaughter cannot feasibly be performed on them. Another group argued that locusts found dead are impermissible, but if captured alive, they become lawful irrespective of how they later die. It has been narrated to us via Ibn Wahb's chain from Ibn Abi Dhi'b from 'Ubayd ibn Salman, who heard Sa'id ibn Al-Musayyab declare concerning locusts: "Those captured alive and subsequently dead are permissible to eat." Through 'Ata's chain: "Capturing locusts constitutes their ritual slaughter"—this being Al-Layth's view.

Abu Muhammad—may Allah have mercy on him—stated: These proponents cited as evidence Allah's decree: {Carrion is forbidden to you} (5:3). Thus, whatever is found dead remains prohibited. He also said: {Allah will surely test you with game within reach of your hands and spears} (5:94). The permissibility of eating locusts is authentically established through the Prophet's precedent—peace and blessings upon him—while empirical observation confirms the impossibility of ritual slaughter for them, thereby nullifying its requirement. Thus, capturing them suffices as validation since they are game obtained by our hands. 'Ali remarked: Their argument holds no validity regarding this verse, for it does not distinguish between capturing game

١٠٤٣ - مَسْأَلَةٌ: وَالْجَرَادُ حَلَالٌ إذَا أُخِذَ مَيِّتًا أَوْ حَيًّا سَوَاءٌ بَعْدَ ذَلِكَ مَاتَ فِي الظُّرُوفِ أَوْ لَمْ يَمُتْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو الْوَلِيدِ الطَّيَالِسِيُّ نا شُعْبَةُ عَنْ أَبِي يَعْفُورٍ [قَالَ] سَمِعْتُ عَبْدَ اللَّهِ بْنَ أَبِي أَوْفَى قَالَ: «غَزَوْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَبْعَ غَزَوَاتٍ أَوْ سِتًّا نَأْكُلُ مَعَهُ الْجَرَادَ» وَرُوِّينَا عَنْ عُمَرَ لَا بَأْسَ بِالْجَرَادِ، وَعَنْ ابْنِ عُمَرَ الْجَرَادُ ذَكَاةٌ كُلُّهُ، وَعَنْ ابْنِ عَبَّاسٍ فِي الْجَرَادِ لَا بَأْسَ بِأَكْلِهِ - وَهُوَ قَوْلُ جَابِرِ بْنِ زَيْدٍ وَغَيْرِهِ، فَلَمْ يَسْتَثْنُوا فِيهِ حَالًا مِنْ حَالٍ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ. وَقَالَتْ طَائِفَةٌ: لَا يَحِلُّ وَإِنْ أُخِذَ حَيًّا إلَّا حَتَّى يُقْتَلَ - وَهُوَ قَوْلُ مَالِكٍ وَلَا نَعْلَمُ لَهُ حُجَّةً لِأَنَّ الذَّكَاةَ لَا تَمْكُنُ فِيهِ، وَذَهَبَ قَوْمٌ إلَى أَنَّهُ لَا يَحِلُّ إنْ وُجِدَ مَيِّتًا فَإِنْ أُخِذَ حَيًّا حَلَّ كَيْفَ مَاتَ بَعْدَ ذَلِكَ، رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ عُبَيْدِ بْنِ سَلْمَانَ أَنَّهُ سَمِعَ سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ فِي الْجَرَادِ: مَا أُخِذَ وَهُوَ حَيٌّ ثُمَّ مَاتَ فَلَا بَأْسَ بِأَكْلِهِ. وَمِنْ طَرِيقِ عَطَاءٍ أَخْذُ الْجَرَادِ ذَكَاتُهُ - وَهُوَ قَوْلُ اللَّيْثِ. قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ هَؤُلَاءِ بِقَوْلِ اللَّهِ تَعَالَى: {حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ} [المائدة: ٣] . فَمَا وُجِدَ مَيِّتًا فَهُوَ حَرَامٌ، وَقَالَ تَعَالَى: {لَيَبْلُوَنَّكُمُ اللَّهُ بِشَيْءٍ مِنَ الصَّيْدِ تَنَالُهُ أَيْدِيكُمْ وَرِمَاحُكُمْ} [المائدة: ٩٤] . وَصَحَّ أَكْلُ الْجَرَادِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَصَحَّ بِالْحِسِّ أَنَّ الذَّكَاةَ لَا تُمْكِنُ فِيهِ فَسَقَطَتْ، فَصَحَّ أَنَّ أَخْذَهُ ذَكَاتُهُ لِأَنَّهُ صَيْدٌ نَالَتْهُ أَيْدِينَا. قَالَ عَلِيٌّ: وَلَا حُجَّةَ لَهُمْ فِي هَذِهِ الْآيَةِ لِأَنَّهُ لَيْسَ فِيهَا إبَاحَةُ مَا نَالَتْهُ أَيْدِينَا حَيًّا دُونَ مَا نَالَتْهُ مَيِّتًا، وَصَحَّ فِي كُلِّ مَقْدُورٍ عَلَى تَذْكِيَتِهِ أَنَّهُ لَا يَحِلُّ إلَّا بِالذَّكَاةِ وَالذَّكَاةُ الشَّقُّ وَهِيَ غَيْرُ

مَقْدُورٍ عَلَيْهَا فِي الْجَرَادِ فَارْتَفَعَ حُكْمُهَا عَنْهُ - رَحِمَهُ اللَّهُ تَعَالَى -: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَقَدْ صَحَّ تَحْلِيلُهُ بِالنَّصِّ فَهُوَ حَلَالٌ كَيْفَمَا وُجِدَ حَيًّا أَوْ مَيِّتًا بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

alive or dead. It is established that for any creature requiring ritual slaughter, permissibility hinges solely upon it—yet slaughter (i.e., throat-slitting) is unattainable for locusts, thus exempting them by divine mercy: {Allah does not burden any soul beyond its capacity} (2:286). Their lawfulness is unequivocally confirmed by scriptural texts, rendering them permissible whether found alive or dead according to Quranic and Prophetic injunctions. Success is attained only by the grace of Allah, the Exalted.[7]

[مَسْأَلَةٌ ذَمُّ مَا قُدِّمَ إِلَى الْمَرْءِ مِنْ الطَّعَامِ]

L17047–17048

A legal question concerning the censure of what has been offered to a person from the food.

مَسْأَلَةٌ: وَإِكْثَارُ الْمَرَقِ حَسَنٌ، وَتَعَاهُدُ الْجِيرَانِ مِنْهُ وَلَوْ مَرَّةً فَرْضٌ، وَذَمُّ مَا قُدِّمَ إِلَى الْمَرْءِ مِنْ الطَّعَامِ مَكْرُوهٌ، لَكِنْ إِنْ اشْتَهَاهُ فَلْيَأْكُلْهُ وَإِنْ كَرِهَهُ فَلْيَدَعْهُ وَلْيَسْكُتْ. وَالْأَكْلُ مُعْتَمِدًا عَلَى يُسْرَاهُ مُبَاحٌ -: رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي عِمْرَانَ الْجَوْنِيِّ عَنْ عَبْدِ اللَّهِ بْنِ الصَّامِتِ عَنْ أَبِي ذَرٍّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا طَبَخْتُمْ اللَّحْمَ فَأَكْثِرُوا الْمَرَقَ وَأَطْعِمُوا الْجِيرَانَ» . وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَإِنْ كَانَ الطَّعَامُ مَشْفُوهًا فَلْيُنَاوِلْهُ مِنْهُ أُكْلَةً أَوْ أُكْلَتَيْنِ» يَعْنِي صَانِعَهُ، فَصَحَّ أَنَّ التَّعْلِيلَ مِنْ الْمَرَقِ مُبَاحٌ. وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ كَثِيرٍ نا سُفْيَانُ عَنْ الْأَعْمَشِ عَنْ أَبِي حَازِمٍ - هُوَ الْأَشْجَعِيُّ - عَنْ أَبِي هُرَيْرَةَ قَالَ: «مَا عَابَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَعَامًا قَطُّ إنْ اشْتَهَاهُ أَكَلَهُ وَإِنْ كَرِهَهُ تَرَكَهُ» . وَلَمْ يَصِحَّ فِي النَّهْيِ عَنْ الِاعْتِمَادِ عَلَى الْيَسَارِ شَيْءٌ - وَرُوِيَ فِيهِ أَثَرٌ مُرْسَلٌ لَا يَصِحُّ مِنْ طَرِيقِ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ «زَجَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَعْتَمِدَ الرَّجُلُ عَلَى يَدِهِ الْيُسْرَى عِنْدَ الْأَكْلِ» وَلَا حُجَّةَ فِي مُرْسَلٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L17049

Issue: Abundant broth is commendable, and attending to neighbors with it—even once—is an obligation. Criticizing food presented to one is reprehensible; if desired, let him eat it, and if disliked, let him leave it and remain silent. Eating while leaning on the left hand is permissible. We narrate via Shu'bah from Abū 'Imrān al-Jawnī from 'Abdullāh ibn al-Ṣāmit from Abū Dharr that the Prophet—peace and blessings of Allah upon him—said: "When you cook meat, increase the broth and feed the neighbors." It is authentically established from the Prophet—peace and blessings of Allah upon him—: "If the food is minced, let its preparer offer a morsel or two from it." Thus, taking abundantly from the broth is confirmed permissible. Through Abū Dāwūd's chain: Muḥammad ibn Kathīr reported to us: Sufyān narrated from al-A'mash from Abū Ḥāzim al-Ashja'ī from Abū Hurayrah: "Allah's Messenger—peace and blessings upon him—never censured food. If he desired it, he ate; if disliked, he refrained." No authentic prohibition exists against leaning on the left hand. A mursal report via Ma'mar from Yaḥyā ibn Abī Kathīr states: "The Prophet forbade leaning on the left hand while eating," but a mursal narration holds no authority. And with Allah, the Exalted, lies all guidance to success.[8]

[7] **Qur'an references (L17046):** Qur'an 5:3 (Al-Ma'idah); Qur'an 5:94 (Al-Ma'idah); Qur'an 2:286 (Al-Baqarah).

[8] **Hadith references (L17049):** Sunan Abi Dawud 3763; Riyad as-Salihin 735.



AL-MUHALLA

كِتَابُ التَّذْكِيَةِ

The Book of Ritual Slaughter

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ التَّذْكِيَةِ] [مَسْأَلَةٌ لَا يَحِلُّ أَكْلُ شَيْءٍ مِمَّا يَحِلُّ أَكْلُهُ إِلَّا بِذَكَاةٍ]

١٠٤٥ - مَسْأَلَةٌ: لَا يَحِلُّ أَكْلُ شَيْءٍ مِمَّا يَحِلُّ أَكْلُهُ مِنْ حَيَوَانِ الْبَرِّ - طَائِرُهُ وَدَارِجُهُ - إِلَّا بِذَكَاةٍ كَمَا قَدَّمْنَا حَاشَا الْجَرَادِ وَقَدْ بَيَّنَّا أَمْرَهُ وَالتَّذْكِيَةُ قِسْمَانِ، قِسْمٌ فِي مَقْدُورٍ عَلَيْهِ مُتَمَكِّنٌ مِنْهُ، وَقِسْمٌ فِي غَيْرِ مَقْدُورٍ عَلَيْهِ أَوْ غَيْرِ مُتَمَكِّنٍ مِنْهُ؛ وَهَذَا مَعْلُومٌ بِالْمُشَاهَدَةِ؛ فَتَذْكِيَةُ الْمَقْدُورِ عَلَيْهِ الْمُتَمَكِّنِ مِنْهُ يَنْقَسِمُ قِسْمَيْنِ لَا ثَالِثَ لَهُمَا -: إِمَّا شَقٌّ فِي الْحَلْقِ وَقَطْعٌ يَكُونُ الْمَوْتُ فِي أَثَرِهِ. وَإِمَّا نَحْرٌ فِي الصَّدْرِ يَكُونُ الْمَوْتُ فِي أَثَرِهِ. وَسَوَاءٌ فِي ذَلِكَ كُلِّهِ مَا قَدَرَ عَلَيْهِ مِنْ الصَّيْدِ الشَّارِدِ أَوْ مِنْ غَيْرِ الصَّيْدِ، وَهَذَا حُكْمٌ وَرَدَ بِهِ النَّصُّ بِقَوْلِ اللَّهِ تَعَالَى: {إِلا مَا ذَكَّيْتُمْ} [المائدة: ٣] وَالذَّكَاةُ فِي اللُّغَةِ الشَّقُّ وَهُوَ أَيْضًا أَمْرٌ مُتَّفَقٌ عَلَى جُمْلَتِهِ إِلَّا أَنَّ النَّاسَ اخْتَلَفُوا فِي تَقْسِيمِهِ عَلَى مَا نُبَيِّنُ - إِنْ شَاءَ اللَّهُ تَعَالَى.

[مَسْأَلَةٌ إِكْمَالُ الذَّبْحِ]

١٠٤٦ - مَسْأَلَةٌ: وَإِكْمَالُ الذَّبْحِ هُوَ أَنْ يُقْطَعَ الْوَدَجَانِ وَالْحُلْقُومُ، وَالْمَرِيءُ وَهَذَا مَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ. ١٠٤٧ -

مَسْأَلَةٌ: فَإِنْ قَطَعَ الْبَعْضَ مِنْ هَذِهِ الْآرَابِ الْمَذْكُورَةِ فَأَسْرَعَ الْمَوْتُ كَمَا يُسْرِعُ مِنْ قَطْعِ جَمِيعِهَا فَأَكْلُهَا حَلَالٌ فَإِنْ لَمْ يُسْرِعْ الْمَوْتُ فَلْيُعِدْ الْقَطْعَ وَلَا يَضُرُّهُ ذَلِكَ شَيْئًا، وَأَكْلُهُ حَلَالٌ، وَسَوَاءٌ ذَبَحَ مِنْ الْحَلْقِ فِي أَعْلَاهُ أَوْ أَسْفَلِهِ رُمِيَتْ الْعُقْدَةُ إلَى فَوْقُ أَوْ إلَى أَسْفَلَ أَوْ قُطِعَ كُلُّ ذَلِكَ مِنْ الْقَفَا - أُبِينَ الرَّأْسُ أَوْ لَمْ يُبَنْ - كُلُّ ذَلِكَ حَلَالٌ أَكْلُهُ. وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ -: فَقَالَتْ طَائِفَةٌ: مَا قُطِعَ مِنْ الْقَفَا لَمْ يَحِلَّ أَكْلُهُ.

[The Book of Ritual Slaughter] [An issue: It is not permissible to eat anything that is inherently permissible to eat except by ritual slaughter.]

Issue 1045: It is not permissible to eat anything permissible among land animals—its birds and ground-dwelling animals—except by slaughtering as we previously stated, excluding locusts whose ruling we have clarified. Slaughtering is divided into two categories: one for what is within one's capability and feasible to perform, and another for what is beyond one's capability or not feasible to perform. This is known through observation. The slaughtering of what is within one's capability and feasible to perform is divided into two methods with no third: either slitting the throat and severing it, causing death to follow, or cutting at the base of the neck, causing death to follow. This ruling applies equally to all that one is capable of slaughtering, whether hunted fleeing game or non-hunted animals. This is a ruling established by the scriptural text in Allah's words: "except what you slaughter" (Quran 5:3). Linguistically, "slaughtering" refers to the slitting, a matter agreed upon in its general principle though people have differed in its detailed classification—as we will clarify, if Allah wills.[1]

Legal Issue: The Completion of Slaughter

Issue 1046: The completion of slaughter is achieved by cutting the two jugular veins, the trachea, and the esophagus. There is no disagreement on this matter from anyone. —1047—

Issue: If one cuts some of these mentioned vessels and death hastens as it would hasten from cutting all of them, then consuming it is lawful. If death does not hasten, he must repeat the cutting - this causes no harm - and its consumption remains lawful. It is legally equivalent whether the slaughtering is performed from the upper throat or lower throat, whether the trachea/esophagus is severed upward or downward, or whether all is cut from the nape, whether the head is fully severed or not: all such cases

[1] **Qur'an references (L17052):** Qur'an 5:3 (Al-Ma'idah).

render the meat lawful to eat. This is an issue where people have differed - some scholars ruled that meat from animals slaughtered by cutting the nape is unlawful for consumption.

L17056–17057 A group said: If the throat and esophagus are not severed, the meat is unlawful, and we disregard failure to cut the two jugular veins—this being Al-Shafi'i's view. Another group stated: We do not recognize the esophagus as essential; however, if both jugular veins and the throat remain unsevered, the meat becomes unlawful. If one withdraws his hand before fully severing all of them, consumption is prohibited. Slaughtering from the nape renders the meat unlawful. If one slaughters at the throat and accidentally severs the head, the meat is lawful, but intentional decapitation makes it unlawful—this being Malik's opinion. Ibn al-Qasim, Malik's disciple, ruled: Directing the windpipe downward invalidates the slaughter.

Another group, identifying four parts—the throat, esophagus, and two jugular veins—held that severing three of these, regardless of which remains intact (whether throat, esophagus, or one jugular vein), makes the meat lawful. Severing only two of the four, irrespective of which two, renders it unlawful. Cutting more than half of each structure validates consumption; less than half invalidates it—this being Abu Hanifa's school. Another group required severing the throat, esophagus, and half of both jugular veins for lawful meat—Abu Thawr's position. Sufyan al-Thawri ruled: Severing only the two jugular veins suffices, even if throat and esophagus remain intact. Some Zahirites stipulated: These four must be cut from the throat's front; otherwise, the meat is unlawful.

Abu Hanifa and al-Shafi'i permitted meat from nape-slaughtered animals. Abu Muhammad countered al-Shafi'i's argument about jugular veins: "We need not engage in formal debate over whether survival is possible, but challenge his prohibition against consuming anything where only the esophagus remains unsevered—a ruling unsupported by textual evidence, analogy, or companion precedent."

وَقَالَتْ طَائِفَةٌ: إِنْ لَمْ يَقْطَعْ الْحُلْقُومَ وَالْمَرِيءَ لَمْ يَحِلَّ أَكْلُهُ، وَلَا نُبَالِي بِتَرْكِ قَطْعِ الْوَدَجَيْنِ - وَهُوَ قَوْلُ الشَّافِعِيِّ. وَقَالَتْ طَائِفَةٌ: لَا نَعْرِفُ الْمَرِيءَ؛ لَكِنْ إِنْ لَمْ يَقْطَعْ الْوَدَجَيْنِ جَمِيعًا وَالْحُلْقُومَ لَمْ يَحِلَّ أَكْلُهُ، وَإِنْ رَفَعَ يَدَهُ قَبْلَ تَمَامِ قَطْعِهَا كُلِّهَا لَمْ يَحِلَّ أَكْلُهُ. وَإِنْ ذَبَحَ مِنْ الْقَفَا لَمْ يَحِلَّ أَكْلُهُ. فَإِنْ ذَبَحَ مِنْ الْحَلْقِ فَأَبَانَ الرَّأْسَ غَيْرَ عَامِدٍ فَهُوَ حَلَالٌ أَكْلُهُ فَإِنْ تَعَمَّدَ ذَلِكَ لَمْ يَحِلَّ أَكْلُهُ - وَهُوَ قَوْلُ مَالِكٍ، وَقَالَ ابْنُ الْقَاسِمِ صَاحِبُ مَالِكٍ: إِنْ أَلْقَى الْعُقْدَةَ إلَى أَسْفَلَ لَمْ يَحِلَّ أَكْلُهُ. وَقَالَتْ طَائِفَةٌ - هِيَ أَرْبَعَةُ آرَابٍ، الْحُلْقُومُ، وَالْمَرِيءُ، وَالْوَدَجَانِ، فَإِنْ قَطَعَ مِنْهَا ثَلَاثَةً وَتَرَكَ الرَّابِعَ لَا نُبَالِي أَيَّ الْأَرْبَعَةِ تَرَكَ الْحُلْقُومَ، أَوْ الْمَرِيءَ أَوْ أَحَدَ الْوَدَجَيْنِ فَهُوَ حَلَالٌ أَكْلُهُ، وَإِنْ قَطَعَ اثْنَيْنِ مِنْ الْأَرْبَعَةِ فَقَطْ لَا نُبَالِي أَيَّهُمَا قَطَعَ لَمْ يَحِلَّ أَكْلُهُ. فَإِنْ قَطَعَ أَكْثَرَ مِنْ النِّصْفِ مِنْ كُلِّ وَاحِدٍ مِنْ هَذِهِ الْأَرْبَعَةِ حَلَّ أَكْلُهُ، فَإِنْ قَطَعَ أَقَلَّ لَمْ يَحِلَّ أَكْلُهُ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَأَصْحَابِهِ. وَقَالَتْ طَائِفَةٌ: إذَا قَطَعَ الْحُلْقُومَ وَالْمَرِيءَ وَالنِّصْفَ مِنْ الْوَدَجَيْنِ حَلَّ أَكْلُهُ. فَإِنْ قَطَعَ أَقَلَّ مِمَّا ذَكَرْنَا لَمْ يَحِلَّ أَكْلُهُ - وَهُوَ قَوْلُ أَبِي ثَوْرٍ. وَقَالَ سُفْيَانُ الثَّوْرِيُّ: إنْ قَطَعَ الْوَدَجَيْنِ فَقَطْ حَلَّ أَكْلُهُ، وَإِنْ لَمْ يَقْطَعْ الْحُلْقُومَ وَلَا الْمَرِيءَ. وَقَالَ بَعْضُ أَصْحَابِ الظَّاهِرِ: إنْ قَطَعَ هَذِهِ الْأَرْبَعَةَ مِنْ جِهَةِ الْحَلْقِ حَلَّ أَكْلُهُ وَإِلَّا فَلَا - وَأَجَازَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ أَكْلَ مَا ذُبِحَ مِنْ الْقَفَا. قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ الشَّافِعِيُّ فِي تَرْكِ الْوَدَجَيْنِ بِأَنَّهُمَا عِرْقَانِ قَدْ يَعِيشُ مَنْ قُطِعَا لَهُ. قَالَ أَبُو مُحَمَّدٍ: وَلَسْنَا نَحْتَاجُ إلَى مُنَاظَرَةٍ

فَهَلْ يَعِيشُ أَمْ لَا يَعِيشُ؟ لَكِنْ إِنَّمَا نُكَلِّمُهُ فِي مَنْعِهِ أَكْلَ مَا لَمْ يُقْطَعْ مَرِيئُهُ فَقَطْ، فَإِنَّهُ لَا يَقْدِرُ فِي ذَلِكَ عَلَى نَصٍّ، وَلَا عَلَى قِيَاسٍ أَصْلًا، وَلَا عَلَى قَوْلِ صَاحِبٍ.

L17058–17059 وَبِالْمُشَاهَدَةِ نَعْلَمُ أَنَّهُ يَمُوتُ مَنْ قَطَعَ الْحُلْقُومَ وَالْوَدَجَيْنِ وَإِنْ لَمْ يَقْطَعِ الْمَرِيءَ، كَمَا يَمُوتُ مَنْ قَطَعَ الْمَرِيءَ وَالْوَدَجَيْنِ وَلَا فَرْقَ فِي سُرْعَةِ الْمَوْتِ، فَتَعَرَّى هَذَا الْقَوْلُ مِنَ الدَّلِيلِ، فَسَقَطَ، إِذْ كُلُّ قَوْلٍ لَا بُرْهَانَ عَلَى صِحَّتِهِ فَهُوَ بَاطِلٌ؟ وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَإِنَّهُ رَاعَى الْأَكْثَرَ فِي الْقَطْعِ، وَهُوَ أَيْضًا قَوْلٌ بِلَا بُرْهَانٍ أَصْلًا لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ. فَإِنْ قَالُوا: قِسْنَاهُ عَلَى نُقْصَانِ أُذُنِ الذَّبِيحَةِ وَذَنَبِهَا؟ قُلْنَا: قِسْتُمُ الْخَطَأَ عَلَى الْخَطَأِ، وَمَا لَا يَصِحُّ عَلَى مَا لَا يَصِحُّ، وَلَا تَخْلُو هَذِهِ الْآرَابُ مِنْ أَنْ يَكُونَ قَطْعُهَا كُلِّهَا فَرْضًا، وَلَا يَكُونُ قَطْعُهَا كُلُّهَا فَرْضًا، فَإِنْ لَمْ يَكُنْ قَطْعُهَا كُلُّهَا فَرْضًا فَعَلَيْهِ الْبُرْهَانُ فِي إِيجَابِ قَطْعِ ثَلَاثَةٍ مِنْهَا، وَلَا سَبِيلَ لَهُ إِلَى ذَلِكَ، وَإِنْ كَانَ قَطْعُهَا كُلُّهَا قَدْ وَجَبَ فَرْضًا فَلَا يُجْزِئُ عَنِ الْفَرْضِ بَعْضُهُ. وَيَلْزَمُهُ عَلَى هَذَا أَنَّ مَنْ صَلَّى ثَلَاثَ رَكَعَاتٍ مِنَ الظُّهْرِ أَنَّهُ يُجْزِيهِ مِنَ الظُّهْرِ، لِأَنَّهُ قَدْ صَلَّى الْأَكْثَرَ - وَأَنَّ مَنْ صَامَ أَكْثَرَ النَّهَارِ أَنَّهُ يُجْزِيهِ، وَهَذَا لَا يَقُولُونَهُ، فَلَاحَ فَسَادُ قَوْلِهِ جُمْلَةً، وَكَذَلِكَ قَوْلُ أَبِي ثَوْرٍ سَوَاءً سَوَاءً. وَأَمَّا قَوْلُ مَالِكٍ فَإِنَّ إِيجَابَهُ الْحُلْقُومَ وَإِسْقَاطَهُ الْمَرِيءَ قَوْلٌ بِلَا بُرْهَانٍ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا إِجْمَاعٍ، وَلَا قِيَاسٍ. وَأَمَّا قَوْلُ سُفْيَانَ فَإِنَّهُمْ ذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ كُلُّ مَا أَفْرَى الْأَوْدَاجَ غَيْرُ مُتَرَدٍّ. وَعَنِ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَجَابِرِ بْنِ زَيْدٍ، وَيَحْيَى بْنِ يَعْمُرَ كَذَلِكَ، وَاحْتَجُّوا فِي

Through observation, we know that whoever severs the trachea and the two jugular veins dies even if the esophagus is not severed, just as one who severs the esophagus and the two jugular veins dies, with no difference in the speed of death. Thus, this opinion is stripped of evidence and invalidated, for any statement without proof of its validity is false. As for Abu Hanifa's opinion, he considered the majority in severing, which is also an entirely baseless opinion with no evidence from the Quran, the Sunnah, a weak narration, analogy, or a companion's statement. If they argue: "We analogized it to the deficiency in the slaughtered animal's ear or tail," we respond: "You have analogized error upon error and invalidated what is invalid." These four critical vessels—the trachea, esophagus, and two jugular veins—cannot escape one of two scenarios: either their complete severance is obligatory, or their complete severance is not obligatory. If their complete severance is not obligatory, then proof is required for obligating the severance of three of them, and there is no means to establish this. If their complete severance is indeed obligatory, then performing part of the obligation does not suffice. By this logic, it would follow that one who prays three units of the Dhuhr prayer is deemed sufficient because he performed most of it, and that one who fasts most of the day is deemed sufficient—yet they do not uphold this. Thus, the flaw in his opinion becomes wholly apparent, as does Abu Thawr's opinion, both being equally invalid. As for Malik's opinion, his obligation of the trachea and omission of the esophagus is a baseless statement with no evidence from the Quran, the Sunnah, a weak narration, a companion's statement, consensus, or analogy. Regarding Sufyan's opinion, they cited what was narrated to us through Abu Ubayd: Ibn Ulayyah narrated from Ayyub from Ikrimah from Ibn Abbas: "Every act that severs the jugular veins is valid if done without delay." Similar statements are reported from Al-Nakha'i, Al-Sha'bi, Jabir ibn Zayd, and Yahya ibn Ya'mur. They argued for the obligation of the two jugular veins with what was narrated to us by Humam: Abbas ibn Asbagh narrated from Ibn Ayman from Mutallib from

Ibn Abi Maryam from Yahya ibn Ayyub, who narrated from Ubaydullah ibn Zahir from Ali ibn Zayd from Al-Qasim Abu Abd al-Rahman from Abu Umamah: "A woman asked the Messenger of Allah—peace be upon him—about slaughtering a sheep. He said to her: 'Did you sever the jugular veins?' She said: 'Yes.' He said: 'Every act that severs the jugular veins is permissible, provided it is not a gnawing with a tooth or a claw slash.'" Abu Muhammad said: This is a report of the utmost weakness, for it is narrated by Yahya ibn Ayyub, whom Malik ibn Anas accused of lying and reported that he narrated falsehood from him. Ahmad ibn Hanbal and others weakened him, and he is entirely dismissed.

إِيجَابِهِ الْوَدَجَيْنِ بِمَا حَدَّثَنَاهُ حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا ابْنُ أَيْمَنَ نا مُطَّلِبٌ نا ابْنُ أَبِي مَرْيَمَ نا يَحْيَى بْنُ أَيُّوبَ حَدَّثَنِي عُبَيْدُ اللَّهِ بْنُ زَحْرٍ عَنْ عَلِيِّ بْنِ زَيْدٍ عَنْ الْقَاسِمِ أَبِي عَبْدِ الرَّحْمَنِ عَنْ أَبِي أُمَامَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَأَلَتْهُ امْرَأَةٌ ذَبَحَتْ شَاةً؟ فَقَالَ لَهَا: أَفَرَيْتِ الْأَوْدَاجَ؟ قَالَتْ: نَعَمْ، قَالَ: كُلُّ مَا أَفْرَى الْأَوْدَاجَ مَا لَمْ يَكُنْ قَرْضَ سِنٍّ، أَوْ حَزَّ ظُفْرٍ» . قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَبَرٌ فِي نِهَايَةِ السُّقُوطِ لِأَنَّهُ مِنْ رِوَايَةِ يَحْيَى بْنِ أَيُّوبَ وَقَدْ شَهِدَ عَلَيْهِ مَالِكُ بْنُ أَنَسٍ بِالْكَذِبِ، وَأَخْبَرَ أَنَّهُ رَوَى عَنْهُ الْكَذِبَ، وَضَعَّفَهُ أَحْمَدُ بْنُ حَنْبَلٍ وَغَيْرُهُ، وَهُوَ سَاقِطٌ أَلْبَتَّةَ.

L17060–17061 Then from 'Ubayd Allah ibn Zahr – who is weak, declared weak by Yahya and others. Then from 'Ali ibn Yazid – who is Abu 'Abd al-Malik al-Alhāniyy, a Damascene whose narrations are rejected. Then from al-Qasim Abu 'Abd al-Rahman – who is extremely weak. Thus, all of it is invalidated. There is no prohibition in Ibn 'Abbas's statement against eating anything beyond that, nor do the Malikis have any valid basis in this report. For if it were authentic, it would constitute proof against them, as it neither obligates severing the gullet (which they require) nor prescribes slaughtering from the throat (which they also require) – thus contradicting their position.

ثُمَّ عَنْ عُبَيْدِ اللَّهِ بْنِ زَحْرٍ، وَهُوَ ضَعِيفٌ ضَعَّفَهُ يَحْيَى وَغَيْرُهُ. ثُمَّ عَنْ عَلِيِّ بْنِ يَزِيدَ - وَهُوَ أَبُو عَبْدِ الْمَلِكِ الْأَلْهَانِيُّ - دِمَشْقِيٌّ مَتْرُوكُ الْحَدِيثِ. ثُمَّ عَنْ الْقَاسِمِ أَبِي عَبْدِ الرَّحْمَنِ - وَهُوَ ضَعِيفٌ جِدًّا، فَبَطَلَ كُلُّهُ، وَلَيْسَ فِي قَوْلِ ابْنِ عَبَّاسٍ مَنْعٌ مِنْ أَكْلِ مَا عَدَا ذَلِكَ. وَلَا مُتَعَلَّقَ لِلْمَالِكِيِّينَ فِي هَذَا الْخَبَرِ لِأَنَّهُ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ لِأَنَّهُ لَيْسَ فِيهِ إيجَابُ الْحُلْقُومِ وَقَدْ أَوْجَبُوهُ، وَلَا فِيهِ إيجَابُ الذَّبْحِ مِنْ الْحَلْقِ وَقَدْ أَوْجَبُوهُ - فَهَذَا مُخَالِفٌ لِقَوْلِهِمْ. وَأَمَّا قَوْلُ مَالِكٍ: إنْ رَفَعَ يَدَهُ قَبْلَ تَمَامِ الذَّكَاةِ لَمْ يَحِلَّ أَكْلُهُ - فَقَوْلٌ فَاسِدٌ جِدًّا - وَحُجَّتُهُمْ لَهُ: أَنَّهُ قَدْ حَصَلَ فِي حَالٍ لَا يَعِيشُ مِنْهَا فَإِنَّمَا يُعِيدُ فِي مَيِّتَةٍ وَلَا بُدَّ؟ فَقُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ وَأَيْنَ وَجَدْتُمْ تَحْرِيمَ مَا هَذَا صِفَتُهُ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا عَجَبٌ جِدًّا، وَهَلْ بَعْدَ بُلُوغِهِ إلَى قَطْعِ مَا قَطَعَ رَجَاءٌ فِي حَيَاةِ الْمَذْبُوحِ؟ هَذَا مَا لَا رَجَاءَ فِيهِ، فَتَمَادِيهِ فِي الْقَطْعِ بِغَيْرِ رَفْعِ يَدٍ أَوْ بَعْدَ رَفْعِ يَدٍ، إنَّمَا هُوَ فِيمَا لَا تُرْجَى حَيَاتُهُ - فَعَلَى قَوْلِهِ هَذَا لَا يَحِلُّ أَكْلُ مَذْبُوحٍ أَبَدًا، لِأَنَّهُ قَبْلَ تَمَامِ الذَّبْحِ وَلَا بُدَّ قَدْ حَصَلَ فِي حَالٍ

As for Malik's statement: "If one lifts their hand before completing the slaughter, it becomes impermissible to eat" – this is an utterly invalid opinion. Their evidence is that the slaughter renders the animal in a state from which it cannot survive, thereby necessarily making it a carcass. We respond: Granted – but what follows? Where have you established the prohibition of something with this description?

Abu Muhammad said: This is utterly astonishing. Once the slaughterer has severed what he severed, can any hope remain for the slaughtered animal's survival? This leaves no hope for survival. His persisting in cutting – whether without lifting the hand or after lifting it – applies only to what has no prospect of life. By this logic of his, no slaughtered animal would

ever be lawful to eat, for prior to completing the slaughter, it is inevitably rendered in a state from which survival is impossible – notwithstanding that this condition is invalid and an unsubstantiated claim. Thus, this opinion is nullified. Success comes only from Allah, the Exalted.

لَا يَعِيشُ مِنْهَا - مَعَ أَنَّهُ شَرْطٌ فَاسِدٌ، وَدَعْوَى أَيْضًا بِلَا بُرْهَانٍ - فَسَقَطَ هَذَا الْقَوْلُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L17062 This is also a position not known to have been held by anyone prior to him. As for his statement: "If the head is severed unintentionally, its consumption is permissible, but if severed intentionally, it is not permissible"—this is an invalid opinion, for it constitutes an unwarranted distinction without any proof. Once the slaughter is properly completed upon confirmation and fulfillment of all its conditions, what harm is there in intentionally severing the head at that point? If they argue: "It constitutes inflicting undue suffering on the slaughtered animal," we respond: "Does causing it suffering after completing its valid slaughter—according to your principles—prohibit its consumption?" They would answer: "No." We then ask: "What then justifies specifically prohibiting it due to this particular form of suffering?" A ruling similar to Mālik's position regarding cases where the head is severed has been reported from ʿAṭāʾ. Nāfiʿ, al-Ḥakam, Ḥammād ibn Abī Sulaymān, Saʿīd ibn Jubayr, ʿAbd al-Raḥmān ibn Abī Laylā, and Ibn Sīrīn all considered it reprehensible to consume an animal whose head had been severed.

وَهُوَ أَيْضًا قَوْلٌ لَا يُعْلَمُ أَنَّ أَحَدًا قَالَهُ قَبْلَهُ. وَأَمَّا قَوْلُهُ: إنْ أَبَانَ الرَّأْسَ غَيْرَ عَامِدٍ حَلَّ أَكْلُهُ، فَإِنْ أَبَانَهُ عَامِدًا لَمْ يَحِلَّ أَكْلُهُ - فَقَوْلٌ فَاسِدٌ، لِأَنَّهُ تَفْرِيقٌ بِلَا بُرْهَانٍ أَصْلًا، وَإِذَا تَمَّتْ ذَكَاتُهُ عَلَى إقْرَارِهِ وَعَلَى تَمَامِ شُرُوطِهِ فَمَا الَّذِي يَضُرُّ تَعَمُّدَ قَطْعِ الرَّأْسِ حِينَئِذٍ؟ فَإِنْ قَالُوا: إنَّهُ تَعْذِيبٌ لِلْمَذْبُوحِ؟ قُلْنَا: فَتَعْذِيبُهُ عِنْدَكُمْ بَعْدَ تَمَامِ ذَكَاتِهِ مَانِعٌ مِنْ أَكْلِهِ؟ فَمِنْ قَوْلِهِمْ: لَا، فَيُقَالُ لَهُمْ: فَمِنْ أَيْنَ وَقَعَ لَهُمْ تَحْرِيمُهُ بِهَذَا النَّوْعِ مِنْ التَّعْذِيبِ خَاصَّةً؟ وَقَدْ رُوِيَ مِثْلُ قَوْلِ مَالِكٍ فِيمَا أُبِينَ رَأْسُهُ عَنْ عَطَاءٍ. وَكَرِهَ نَافِعٌ، وَالْحَكَمُ، وَحَمَّادُ بْنُ أَبِي سُلَيْمَانَ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَعَبْدُ الرَّحْمَنِ بْنُ أَبِي لَيْلَى، وَابْنُ سِيرِينَ مَا أُبِينَ رَأْسُهُ.

L17063–17064 It is narrated from ʿAlī concerning a mark that became apparent on his head, but this is invalid because it comes through Ḥasan ibn ʿUmārah—an abandoned narrator—while authentic contradictory reports exist from other Companions. The opposite is also narrated from ʿAlī himself, and differing reports exist from al-Ḥasan (may Allah be pleased with him) and others. As for their prohibition of animals slaughtered from the nape, this too is an unsupported opinion with no evidence from the Quran or authentic Sunnah. If they argue: "It constitutes torture," we respond: The torture in this equals that of slaughtering from the front—there is no difference, and this is observable reality. If they cite reports from certain Companions validating slaughter at the throat or jugular notch, we reply: Yes, but this offers no proof for two reasons. First: You contradict this by prohibiting slaughter at the jugular notch for some animals and at the throat for others, though no such distinction is reported from the Companions. Second: Validating

وَرُوِيَ عَنْ عَلِيٍّ فِيمَا أُبِينَ رَأْسُهُ أَثَرٌ لَا يَصِحُّ لِأَنَّهُ مِنْ رِوَايَةِ الْحَسَنِ بْنِ عُمَارَةَ - وَهُوَ هَالِكٌ - وَقَدْ صَحَّ خِلَافُهُ عَنْ غَيْرِهِ مِنْ الصَّحَابَةِ، وَرُوِيَ عَنْهُ نَفْسِهِ أَيْضًا خِلَافُ ذَلِكَ، وَاخْتَلَفَ فِيهِ عَنْ الْحَسَنِ - رَضِيَ اللَّهُ عَنْهُ - وَعَنْهُمْ. وَأَمَّا مَنْعُهُمْ أَيْضًا مِمَّا ذُبِحَ مِنْ الْقَفَا فَقَوْلٌ أَيْضًا لَا بُرْهَانَ عَلَى صِحَّتِهِ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ. فَإِنْ قَالُوا: هُوَ تَعْذِيبٌ؟ قُلْنَا: مَا التَّعْذِيبُ فِيهِ إلَّا كَالتَّعْذِيبِ فِي الذَّبْحِ مِنْ أَمَامٍ وَلَا فَرْقَ، وَهَذَا أَمْرٌ مُشَاهَدٌ. فَإِنْ قَالُوا: قَدْ رُوِيَ عَنْ بَعْضِ الصَّحَابَةِ الذَّكَاةُ فِي الْحَلْقِ وَاللَّبَّةِ؟ قُلْنَا: نَعَمْ، وَلَا حُجَّةَ لَكُمْ فِيهِ لِوَجْهَيْنِ -: أَحَدُهُمَا: أَنَّكُمْ قَدْ خَالَفْتُمُوهُ فِي مَنْعِكُمْ مِنْ الذَّكَاةِ فِي اللَّبَّةِ فِي بَعْضِ الْحَيَوَانِ وَمَنْعِكُمْ الذَّكَاةَ فِي الْحَلْقِ فِي بَعْضِهِ وَلَيْسَ عَنْهُمْ فِي ذَلِكَ تَفْرِيقٌ. وَالثَّانِي:

slaughter at the throat does not necessitate restricting it to either the front or rear portion, as the entire throat is equivalent. Thus, their reliance on this wording is invalid. Saʿīd ibn al-Musayyab's prohibition of nape-slaughtered animals—endorsed by Aḥmad and Isḥāq—is also reported. As for Ibn al-Qāsim's stipulation to direct the knot [trachea and esophagus] downward, Mālik's followers rejected this. His adherents argued that such slaughter occurs in the head, not the throat, equating it to a strangled animal—a claim utterly false and defiant of observable reality. Whoever said that has lied, for observable slaughter occurs only at the front of the throat, which is part of the throat like its middle and end, with no distinction. No precedent exists for Ibn al-Qāsim's view before him, rendering it entirely baseless. And success comes from Allah, the Most High.

أَنَّهُ لَيْسَ فِي كَوْنِ الذَّكَاةِ فِي الْحَلْقِ مَا يُوجِبُ أَنْ لَا يَكُونَ قَطْعُ الْحَلْقِ ذَكَاةً مِنْ وَرَائِهِ دُونَ أَمَامِهِ، أَوْ مِنْ أَمَامِهِ دُونَ وَرَائِهِ، فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا اللَّفْظِ أَيْضًا، وَقَدْ رُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ الْمَنْعُ مِمَّا ذُبِحَ مِنْ الْقَفَا - وَبِهِ يَقُولُ أَحْمَدُ، وَإِسْحَاقُ. وَأَمَّا اشْتِرَاطُ ابْنُ الْقَاسِمِ إلْقَاءَ الْعُقْدَةِ إلَى أَسْفَلَ فَإِنَّ أَصْحَابَ مَالِكٍ خَالَفُوهُ فِي ذَلِكَ، وَاحْتَجَّ لَهُ مُقَلِّدُوهُ بِأَنَّهُ إنَّمَا ذُبِحَ فِي الرَّأْسِ لَا فِي الْحَلْقِ، وَأَنَّهُ بِمَنْزِلَةِ الْمَخْنُوقِ - فَكَانَتْ الْحُجَّةُ أَشَدَّ بُطْلَانًا وَمُكَابَرَةً لِلْعِيَانِ مِنْ الْقَوْلِ الْمُحْتَجِّ لَهُ بِهَا - وَقَدْ كَذَبَ مَنْ قَالَ ذَلِكَ وَمَا ذُبِحَ بِالْمُشَاهَدَةِ إلَّا فِي أَوَّلِ الْحَلْقِ، وَأَوَّلُ الْحَلْقِ بَعْضُ الْحَلْقِ كَوَسَطِهِ وَكَآخِرِهِ وَلَا فَرْقَ، وَلَا نَعْلَمُ لِابْنِ الْقَاسِمِ أَحَدًا قَبْلَهُ قَالَ بِهَذَا الْقَوْلِ فَسَقَطَ لِتَعَرِّيه عَنْ الدَّلِيلِ جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L17065–17071 As for those among our companions and others who hold that valid slaughter cannot be achieved except by severing the two jugular veins, the trachea, and the esophagus, they argue by stating: The prohibition of the animal being alive until it is properly slaughtered is established, and severing these four parts constitutes valid slaughter agreed upon for the permissibility of what is slaughtered thus. Any method falling short of this is disputed, and therefore it cannot transition from prohibition to permissibility except through consensus. Abu Muhammad said: This argument has a sound premise but an incomplete conclusion. The obligatory ruling is that… They say: Whatever has been authentically established as prohibited cannot transition from prohibition to permissibility except through an authentic scriptural text, regardless of whether it is unanimously agreed upon or disputed. If a person were to derive rulings solely from texts unanimously agreed upon, he would contradict the preponderance of Allah's decrees—Exalted is He—in the Quran and the majority of the Sunnah of the Messenger of Allah (peace be upon him). This is impermissible for anyone, and it opposes Allah's command—Exalted is He—to refer disputes to the Quran and Sunnah. He did not say—Exalted is He—"Refer them to what you have unanimously agreed upon," though we

وَأَمَّا مَنْ ذَهَبَ مِنْ أَصْحَابِنَا وَغَيْرِهِمْ إلَى أَنَّهُ لَا تَكُونُ ذَكَاةٌ إلَّا مَا قَطَعَ الْوَدَجَيْنِ، وَالْحُلْقُومَ، وَالْمَرِيءَ فَإِنَّهُمْ احْتَجُّوا بِأَنْ قَالُوا: قَدْ صَحَّ تَحْرِيمُ الْحَيَوَانِ حَيًّا حَتَّى يُذَكَّى، وَقَطْعُ هَذِهِ الْأَرْبَعَةِ ذَكَاةٌ صَحِيحَةٌ مُجْتَمَعٌ عَلَى تَحْلِيلِ مَا زُكِّيَ كَذَلِكَ، وَكَانَ مَا دُونَ ذَلِكَ مُخْتَلَفًا فِيهِ فَلَا يَخْرُجُ مِنْ تَحْرِيمٍ إلَى تَحْلِيلٍ إلَّا بِإِجْمَاعٍ. قَالَ أَبُو مُحَمَّد: وَهَذِهِ قَضِيَّةٌ صَحِيحَةُ الْمَبْدَأِ نَاقِصَةُ الْآخِرِ، وَإِنَّمَا الْوَاجِبُ أَنْ يَقُولُوا: مَا صَحَّ تَحْرِيمُهُ لَمْ يَجُزْ أَنْ يَخْرُجَ عَنْ التَّحْرِيمِ إلَى التَّحْلِيلِ إلَّا بِنَصٍّ صَحِيحٍ، ثُمَّ لَا نُبَالِي أُجْمِعَ عَلَيْهِ أَمْ اُخْتُلِفَ فِيهِ. وَلَوْ أَنَّ امْرَأً لَا يَأْخُذُ مِنْ النُّصُوصِ إلَّا بِمَا أُجْمِعَ عَلَيْهِ لَخَالَفَ جُمْهُورَ أَحْكَامِ اللَّهِ تَعَالَى فِي الْقُرْآنِ، وَجُمْهُورَ سُنَنِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؛ وَهَذَا لَا يَحِلُّ لِأَحَدٍ، وَهُوَ خِلَافُ أَمْرِ اللَّهِ تَعَالَى بِالرَّدِّ عِنْدَ التَّنَازُعِ إلَى الْقُرْآنِ، وَالسُّنَّةِ، وَلَمْ يَقُلْ تَعَالَى: فَرُدُّوهُ إلَى مَا أَجْمَعْتُمْ عَلَيْهِ مَعَ أَنَّنَا لَا نَعْلَمُ أَنَّ أَحَدًا الْتَزَمَ هَذَا الْأَصْلَ وَلَا أَحَدًا قَالَ

know of none who upheld this principle or validated it. Therefore, when disagreement arises as mentioned, the disputed matter must be referred to what Allah—Exalted is He—has obligated us to refer to in disputes, as He says: "If you dispute over anything, refer it to Allah and the Messenger, if you believe in Allah and the Last Day" (4:59). We did so and found Allah—Exalted is He—state: "Except what you duly slaughter" (5:3). Ritual slaughter (dhabḥ) is the act of slitting the throat, and the Prophet (peace be upon him) commanded slaughtering and sacrificing where feasible, obligating us not to transgress his directive (peace be upon him). He (peace be upon him) prescribed facilitation: any act of slaughtering or cutting affirmed by any scholar constitutes valid ritual slaughter. Since it is valid, what is duly slaughtered thereby transitions from prohibition to permissibility. If ritual slaughter were valid only by cutting specific disputed blood vessels, all vessels, or through disputed methods as mentioned, Allah—Exalted is He—would not have neglected to clarify it, nor would His Messenger (peace be upon him) have failed to inform us, requiring reliance on opinions Allah did not sanction, even for something as insignificant as a straw. Far be it from Allah to neglect instructing us in His obligations until those who recorded baseless doctrines prescribe for us. By Allah, the obscurity of this to those unaware is astounding, but we would never have been guided had Allah not guided us.

We narrate via Bukhari's chain: Musa ibn Ismail narrated to us, from Abu 'Awanah Sa'id ibn Masruq, from 'Abayah ibn Rifa'ah ibn Rafi' ibn Khadij, from his grandfather Rafi' ibn Khadij, who mentioned a hadith wherein he said: "O Messenger of Allah, we have no knife—should we slaughter with reeds?" The Messenger of Allah (peace be upon him) replied: "Whatever causes the blood to flow with Allah's name invoked over it, eat—but not with teeth or claws."

Via Ahmad ibn Shu'ayb's chain: 'Amr ibn 'Ali narrated to us, from Yahya ibn Sa'id al-Qattan, from Sufyan al-Thawri, from his father, from 'Abayah ibn Rifa'ah, from Rafi' ibn Khadij, who said: "I asked..." O Messenger of Allah, we will confront the enemy tomorrow and have no knives with us? He said: "Whatever causes blood to flow with Allah's name invoked over it

بِهِ وَصَحَّحَهُ. فَالْوَاجِبُ إِذْ قَدْ اخْتَلَفُوا كَمَا ذَكَرْنَا أَنْ يُرَدَّ مَا تَنَازَعُوا فِيهِ إِلَى مَا افْتَرَضَ اللَّهُ تَعَالَى الرَّدَّ إِلَيْهِ عِنْدَ التَّنَازُعِ إِذْ يَقُولُ تَعَالَى: {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [النساء: ٥٩] فَفَعَلْنَا فَوَجَدْنَا اللَّهَ تَعَالَى قَالَ: {إِلا مَا ذَكَّيْتُمْ} [المائدة: ٣] وَالذَّكَاةُ الشَّقُّ وَقَدْ أَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالذَّبْحِ وَالنَّحْرِ فِيمَا تُمُكِّنَ مِنْهُ فَوَجَبَ أَنْ لَا يَتَعَدَّى حَدَّهُ - عَلَيْهِ السَّلَامُ -. وَأَمَرَ - عَلَيْهِ السَّلَامُ - بِالْإِرَاحَةِ، أَنَّ كُلَّ ذَبْحٍ وَكُلَّ شَقٍّ قَالَ بِهِ أَحَدٌ مِنْ الْعُلَمَاءِ فَهُوَ ذَكَاةٌ، وَإِذْ هُوَ ذَكَاةٌ فَإِنَّ الْمُذَكَّى بِهِ خَارِجٌ مِنْ التَّحْرِيمِ إِلَى التَّحْلِيلِ. وَلَوْ أَنَّ الذَّكَاةَ لَا تَكُونُ إِلَّا بِقَطْعِ بَعْضِ الْآرَابِ الْمُخْتَلَفِ فِيهَا دُونَ بَعْضٍ، أَوْ بِقَطْعِ جَمِيعِهَا، أَوْ بِصِفَةٍ مِنْ الصِّفَاتِ الَّتِي اخْتَلَفَ النَّاسُ فِيهَا كَمَا ذَكَرْنَا لَمَا نَسِيَ اللَّهُ تَعَالَى بَيَانَهَا وَلَا أَغْفَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِعْلَامَنَا بِهَا حَتَّى نَحْتَاجَ فِي ذَلِكَ إِلَى رَأْيِ مَنْ لَمْ يَجْعَلْ اللَّهُ تَعَالَى رَأْيَهُ حُجَّةً فِي تَبِنَةٍ فَمَا فَوْقَهَا، وَحَاشَا لِلَّهِ مِنْ أَنْ يُضَيِّعَ إِعْلَامَنَا بِمَا افْتَرَضَهُ عَلَيْنَا حَتَّى يَشْرَعَهُ لَنَا مَنْ دُونَهُ مِنْ الْأَقْوَالِ الْفَاسِدَةِ، تَاللَّهِ إِنَّ فِي مَغِيبِ هَذَا عَمَّنْ غَابَ عَنْهُ لَعَجَبًا، وَلَكِنْ مَا كُنَّا لِنَهْتَدِيَ لَوْلَا أَنْ هَدَانَا اللَّهُ. رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُوسَى بْنُ إِسْمَاعِيلَ نا أَبُو عَوَانَةَ سَعِيدُ بْنُ مَسْرُوقٍ عَنْ عَبَايَةَ بْنِ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ عَنْ جَدِّهِ «رَافِعِ بْنِ خَدِيجٍ فَذَكَرَ حَدِيثًا - وَفِيهِ أَنَّهُ قَالَ: يَا رَسُولَ اللَّهِ لَيْسَ مَعَنَا مُدًى أَفَنَذْبَحُ بِالْقَصَبِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا أَنْهَرَ الدَّمَ وَذُكِرَ اسْمُ اللَّهِ عَلَيْهِ فَكُلْ لَيْسَ السِّنَّ وَالظُّفُرَ» . وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا سُفْيَانُ - هُوَ الثَّوْرِيُّ - حَدَّثَنِي أَبِي عَنْ عَبَايَةَ بْنِ رِفَاعَةَ «عَنْ رَافِعِ بْنِ خَدِيجٍ قَالَ قُلْتُ: يَا رَسُولَ اللَّهِ إِنَّا لَاقُو الْعَدُوِّ غَدًا وَلَيْسَ مَعَنَا

may be eaten, excluding teeth and claws. I shall clarify: As for teeth, they are bones, and as for claws, they are the knives of the Ethiopians." We narrated this through Shu'bah, Zā'idah, Abū al-Aḥwaṣ, and 'Amr ibn Sa'īd—all from Sa'īd ibn Masrūq from 'Abāyah ibn Rāfi' ibn Khadīj from the Prophet (peace be upon him)—thus resolving the ambiguity. Therefore, anything that causes blood flow when possible, with Allah's name invoked over it through slaughter or neck-cutting, constitutes valid slaughter permitting consumption. Had there been an essential condition required, he (peace be upon him) would have specified it, just as he clarified the obligation to eat only what causes blood flow and has Allah's name invoked over it, and the prohibition of using teeth or claws. Among the most astonishing wonders is those who discard Allah's conditions conveyed through His Messenger (peace be upon him) regarding slaughter—permitting consumption of what lacks Allah's name whether forgotten or intentional, and allowing slaughter with bones or claws. They further add stipulations unmentioned by Allah or His Messenger (peace be upon him) through their false opinions: restricting slaughter to the front, requiring severing the carotid arteries and windpipe but not the esophagus, partial slaughtering methods, prohibitions against raising hands, intentional head removal, untying knots, cutting three legs or over half of each limb, or specifying only windpipe and esophagus. This constitutes an appalling anomaly for those who reflect, surpassed only by the recklessness of those zealously defending these views by any means—we seek refuge in Allah from abandonment. We narrated through Muḥammad ibn al-Muthannā from Yaḥyā ibn Sa'īd al-Qaṭṭān from Sufyān al-Thawrī from Manṣūr ibn al-Mu'tamir from Ibrāhīm al-Nakha'ī from 'Alqamah ibn Qays: A wild ass was struck in the neck within 'Abdullāh ibn Mas'ūd's residence. When asked, Ibn Mas'ūd said: "It is lawful game—eat it." Abū Muḥammad said: This was a wild ass under control in the residence. Our opponents do not dispute that permissible game under one's control follows the same slaughter rules as camels, cattle, and sheep without distinction. Through Marwān ibn Mu'āwiyah al-Fazārī and Yaḥyā ibn Sa'īd al-Qaṭṭān from Abū Ghifār al-Ṭā'ī: Abū Mijlaz said: I asked Ibn 'Umar about an animal slaughtered by decapitation, and he permitted its consumption. Through 'Abd al-Razzāq from Ma'mar from Qatādah: 'Alī ibn Abī Ṭālib ruled regarding

مُدًى؟ فَقَالَ: مَا أَنْهَرَ الدَّمَ وَذُكِرَ اسْمُ اللَّهِ عَلَيْهِ فَكُلْ لَيْسَ السِّنَّ وَالظُّفُرَ وَسَأُحَدِّثُكَ: أَمَّا السِّنُّ فَعَظْمٌ، وَأَمَّا الظُّفُرُ فَمُدَى الْحَبَشَةِ» . وَرُوِّينَاهُ مِنْ طَرِيقِ شُعْبَةَ، وَزَائِدَةَ، وَأَبِي الْأَحْوَصِ، وَعَمْرِ بْنِ سَعِيدٍ كُلُّهُمْ عَنْ سَعِيدِ بْنِ مَسْرُوقٍ عَنْ عَبَايَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَارْتَفَعَ الْإِشْكَالُ. فَكُلُّ مَا أَنْهَرَ الدَّمَ فِي الْمُتَمَكِّنِ مِنْهُ وَذُكِرَ اسْمُ اللَّهِ عَلَيْهِ مِنْ ذَبْحٍ أَوْ نَحْرٍ فَهُوَ ذَكَاةٌ يَحِلُّ بِهَا الْأَكْلُ، وَلَوْ كَانَ هَهُنَا صِفَةٌ لَازِمَةٌ لَبَيَّنَهَا - عَلَيْهِ السَّلَامُ - كَمَا بَيَّنَ وُجُوبَ أَنْ لَا يُؤْكَلَ إلَّا مَا أَنْهَرَ الدَّمَ وَمَا ذُكِرَ اسْمُ اللَّهِ عَلَيْهِ وَأَنْ لَا يَكُونَ ذَلِكَ بِسِنٍّ وَلَا ظُفُرٍ. وَمِنْ أَعْجَبِ الْعَجَائِبِ مَنْ أَسْقَطَ فِي الذَّكَاةِ مَا اشْتَرَطَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - فِيهَا فَيُبِيحُ أَكْلَ مَا لَمْ يُسَمِّ اللَّهَ تَعَالَى بِنِسْيَانٍ أَوْ تَعَمُّدٍ، وَيُبِيحُ أَكْلَ مَا ذُبِحَ بِعَظْمٍ أَوْ ظُفُرٍ، ثُمَّ يَزِيدُ مَا لَمْ يَذْكُرْهُ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِرَأْيِهِ الزَّائِفِ مِنْ أَنْ لَا يَكُونَ ذَلِكَ إلَّا مِنْ أَمَامَ وَبِأَنْ يَعُمَّ الْوَدَجَيْنِ، وَالْحُلْقُومَ، دُونَ الْمَرِيءِ، وَالذَّبْحُ فِي بَعْضِ ذَلِكَ دُونَ بَعْضٍ وَالنَّحْرُ فِي بَعْضٍ دُونَ بَعْضٍ، وَبِأَنْ لَا يَرْفَعَ يَدًا، وَأَنْ لَا يَتَعَمَّدَ إبَانَةَ الرَّأْسِ، وَأَنْ لَا يُلْقِيَ الْعُقْدَةَ، أَوْ بِأَنْ يَقْطَعَ الثَّلَاثَ الْآرَابَ، أَوْ الْأَكْثَرَ مِنْ النِّصْفِ مِنْ كُلِّ وَاحِدٍ مِنْ الْأَرْبَعَةِ أَوْ بِأَنْ يُبِيِّنَ الْحُلْقُومَ وَالْمَرِيءَ فَقَطْ - إنَّ فِي هَذَا لَعَجَبًا شَنِيعًا لِمَنْ تَأَمَّلَهُ، وَأَشْنَعُ مِنْ هَذَا تَهَالُكُ مَنْ تَهَالَكَ عَلَى التَّدَايُنِ بِهَذِهِ الْآرَاءِ وَنَصْرِهَا بِمَا أَمْكَنَهُ - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ. وَرُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ بْنِ قَيْسٍ أَنَّ حِمَارَ وَحْشٍ ضَرَبَ رَجُلٌ عُنُقَهُ فِي دَارِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ فَسَأَلُوا ابْنَ مَسْعُودٍ عَنْهُ؟ فَقَالَ: صَيْدٌ فَكُلُوهُ. قَالَ أَبُو مُحَمَّدٍ: هَذَا حِمَارُ وَحْشٍ مُتَمَكِّنٌ مِنْهُ فِي الدَّارِ وَلَا

poultry... If its head is severed, it is a swift valid slaughter—meaning all of it is permissible to eat. Narrated via Waki‘: Ḥammād ibn Salamah reported from Yūsuf ibn Sa‘d, who said: A man struck a duck’s neck with his sword, completely severing its head. He posed a question to ʿImrān ibn al-Ḥuṣayn, who then ordered them to eat it. We also narrated this via Hushaym: Yūnus ibn ʿUbayd and Manṣūr ibn al-Muʿtamir—both from Yūsuf ibn Saʿd—reported from ʿImrān ibn al-Ḥuṣayn. Yūsuf had met ʿImrān. Via Ibn Abī Shaybah: al-Muʿtamir ibn Sulaymān al-Taymī reported from ʿAwf—that is, Ibn Abī Jamīlah—from ʿAbdullāh ibn ʿAmr ibn Hind al-Jamalī that ʿAlī ibn Abī Ṭālib was asked about a man who struck a camel’s neck with a sword while invoking Allah’s name, severing it entirely. ʿAlī said: “It is valid slaughter even if the animal is alive.” Via Waki‘: Mubārak ibn Faḍālah reported from ʿUbaydullāh ibn Abī Bakr ibn Anas ibn Mālik that a baker belonging to Anas slaughtered a chicken, which began thrashing. He then slaughtered it from the back of its neck, severing the head entirely. They wanted to discard it, but Anas instructed them to eat it. Via Ibn Abī Shaybah: Abū Usāmah reported from Jarīr ibn Ḥāzim, from Yaʿlā ibn Ḥakīm, from ʿIkrimah, that Ibn ʿAbbās was asked about someone who slaughtered a chicken and severed its head. Ibn ʿAbbās said: “It is valid slaughter even if the animal is alive.” Via Waki‘: Hishām al-Dastuwā’ī reported from Yaḥyā ibn Abī Kathīr, from al-Maʿrūr, from Abū al-Furāfiṣah, from his father, who witnessed ʿUmar ibn al-Khaṭṭāb commanding a herald to announce: “The valid slaughter is in the throat and jugular notch. Allow the soul to depart fully.” Via Waki‘: Sufyān—that is, al-Thawrī—reported from Khālid al-Ḥadhdhā’, from ʿIkrimah, from Ibn ʿAbbās, who said: “The valid slaughter is in the throat and jugular notch.” From Ibn ʿAbbās: “The slaughter is completed when the blade reaches the bone.” Authentically reported via Saʿīd ibn Manṣūr: Ismāʿīl ibn Zakariyyā reported from Sulaymān al-Taymī, from Abū Mijlaz, from Ibn ʿAbbās, who said: “If the blood is spilled and the jugular veins are severed, then eat it.” Thus, ʿUmar ibn al-Khaṭṭāb and Ibn ʿAbbās spoke in general terms without elaboration, and ʿAlī ibn Abī Ṭālib, ʿImrān ibn al-Ḥuṣayn, Anas, Ibn Masʿūd,

يُخَالِفُنَا خُصُومُنَا فِي أَنَّ الْمَقْدُورَ عَلَيْهِ مِنْ الصَّيْدِ ذَكَاتُهُ كَذَكَاةِ الْإِبِلِ، وَالْبَقَرِ، وَالْغَنَمِ، وَلَا فَرْقَ. وَمِنْ طَرِيقِ مَرْوَانَ بْنِ مُعَاوِيَةَ الْفَزَارِيِّ، وَيَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نا أَبُو غِفَارٍ - هُوَ الطَّائِيُّ - قَالَ: حَدَّثَنِي أَبُو مِجْلَزٍ قَالَ: سَأَلْت ابْنَ عُمَرَ عَنْ ذَبِيحَةٍ قُطِعَ رَأْسُهَا؟ فَأَمَرَ ابْنُ عُمَرَ بِأَكْلِهَا. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الدَّجَاجَةِ إذَا قُطِعَ رَأْسُهَا: ذَكَاةٌ سَرِيعَةٌ، أَيْ كُلْهَا. وَمِنْ طَرِيقِ وَكِيعٍ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ يُوسُفَ بْنِ سَعْدٍ قَالَ: ضَرَبَ رَجُلٌ بِسَيْفِهِ عُنُقَ بَطَّةٍ فَأَبَانَ رَأْسَهَا، فَسَأَلَ عِمْرَانَ بْنَ الْحُصَيْنِ؟ فَأَمَرَ بِأَكْلِهَا - وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ هُشَيْمٍ عَنْ يُونُسَ بْنِ عُبَيْدٍ، وَمَنْصُورِ بْنِ الْمُعْتَمِرِ كِلَاهُمَا عَنْ يُوسُفَ بْنِ سَعْدٍ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ وَقَدْ أَدْرَكَ يُوسُفُ عِمْرَانَ. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ عَوْفٍ - هُوَ ابْنُ أَبِي جَمِيلَةَ - عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو ابْنِ هِنْدٍ الْجَمَلِيِّ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ سُئِلَ عَنْ رَجُلٍ ضَرَبَ عُنُقَ بَعِيرٍ بِالسَّيْفِ وَذَكَرَ اسْمَ اللَّهِ فَقَطَعَهُ، فَقَالَ عَلِيٌّ: ذَكَاةٌ وَحِيَّةٌ. وَمِنْ طَرِيقِ وَكِيعٍ نا مُبَارَكُ بْنُ فَضَالَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ أَنَسِ بْنِ مَالِكٍ أَنَّ خَبَّازًا لِأَنَسٍ ذَبَحَ دَجَاجَةً فَاضْطَرَبَتْ، فَذَبَحَهَا مِنْ قَفَاهَا فَأَبَانَ الرَّأْسَ فَأَرَادُوا طَرْحَهَا، فَأَمَرَهُمْ أَنَسٌ بِأَكْلِهَا. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو أُسَامَةَ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ يَعْلَى بْنِ حَكِيمٍ عَنْ عِكْرِمَةَ أَنَّ ابْنَ عَبَّاسٍ سُئِلَ عَمَّنْ ذَبَحَ دَجَاجَةً فَظَنَّ رَأْسَهَا فَقَالَ ابْنُ عَبَّاسٍ: ذَكَاةٌ وَحِيَّةٌ. وَمِنْ طَرِيقِ وَكِيعٍ نا هِشَامٌ الدَّسْتُوَائِيُّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ الْمَعْرُورِ عَنْ أَبِي الْفُرَافِصَةِ عَنْ أَبِيهِ أَنَّهُ شَهِدَ عُمَرَ بْنَ الْخَطَّابِ أَمَرَ مُنَادِيًا فَنَادَى أَلَا إنَّ الذَّكَاةَ فِي الْحَلْقِ وَاللَّبَّةِ، وَأَقِرُّوا الْأَنْفُسَ حَتَّى تَزْهَقَ. وَمِنْ طَرِيقِ وَكِيعٍ

and Ibn ʿUmar—no authentic report from any Companion contradicts their rulings.[2]

نا سُفْيَانُ - هُوَ الثَّوْرِيُّ - عَنْ خَالِدٍ الْحَذَّاءِ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: الذَّكَاةُ فِي الْحَلْقِ وَاللَّبَّةِ. وَعَنْ ابْنِ عَبَّاسٍ إبْلَاغُ الذَّبْحِ أَنْ تَبْلُغَ الْعَظْمَ. وَصَحَّ عَنْهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا إسْمَاعِيلُ بْنُ زَكَرِيَّا عَنْ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَبِي مِجْلَزٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: إذَا أُهْرِيقَ الدَّمُ وَقُطِعَ الْوَدَجُ فَكُلْهُ -: فَهَؤُلَاءِ عُمَرُ بْنُ الْخَطَّابِ، وَابْنُ عَبَّاسٍ أَجْمَلَا وَلَمْ يُفَصِّلَا، وَعَلِيُّ بْنُ أَبِي طَالِبٍ، وَعِمْرَانُ بْنُ الْحُصَيْنِ، وَأَنَسٌ، وَابْنُ مَسْعُودٍ، وَابْنُ عُمَرَ لَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ خِلَافُهُمْ.

L17072–17075 From the narration of ʿAbd al-Razzāq from Jurayj, ʿAṭāʾ said: "Slaughtering is cutting the jugular veins." I said to ʿAṭāʾ: "What if a slaughterer slaughtered without cutting the jugular veins?" He replied: "I see no exception except that he has performed the ritual slaughter properly. Let him eat it." This shows ʿAṭāʾ's view that the ritual slaughter is valid regardless of how it was performed. From the narration of ʿAbd al-Razzāq from Sufyān al-Thawrī from Abū Isḥāq al-Sabīʿī and ʿAbd Allāh ibn Abī al-Safar—both narrating from al-Shaʿbī—that he was asked about a rooster slaughtered from the nape of its neck. He said: "If you invoked Allah's name, eat it." From the narration of ʿAbd al-Razzāq from Maʿmar from al-Mughīrah ibn Miqsam from Ibrāhīm al-Nakhaʿī, who was asked about an animal slaughtered such that the knife passed through and severed the entire neck. He said: "No harm—it is valid if done swiftly." From the narration of Shuʿbah from al-Mughīrah ibn Miqsam, who said: "I asked Ibrāhīm al-Nakhaʿī about a man who struck the neck of a wild ass. He instructed me to eat it. I also asked him about a hen slaughtered from the nape of its neck. Ibrāhīm said: 'That slaughtering from the nape—no harm in it.'" From the narration of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī, who was asked about a man who slaughtered with his sword and severed the head. Al-Zuhrī said: "How reprehensible his action!" A man asked: "Should we eat it?" He replied: "Yes." Abū Muḥammad remarked: "Had it been unintentional, al-Zuhrī would not have said, 'How reprehen-

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ جُرَيْجٍ قَالَ عَطَاءٌ: الذَّبْحُ قَطْعُ الْأَوْدَاجِ فَقُلْت لِعَطَاءٍ: ذَبَحَ ذَابِحٌ فَلَمْ يَقْطَعْ الْأَوْدَاجَ؟ قَالَ: مَا أَرَاهُ إلَّا قَدْ ذَكَّاهَا فَلْيَأْكُلْهَا - فَهَذَا عَطَاءٌ يَرَى الذَّكَاةَ كَيْفَ كَانَتْ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إسْحَاقَ السَّبِيعِيِّ، وَعَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ، وَكِلَاهُمَا عَنْ الشَّعْبِيِّ أَنَّهُ سُئِلَ عَنْ دِيكٍ ذُبِحَ مِنْ قَفَاهُ؟ فَقَالَ: إذَا سَمَّيْت فَكُلْ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ سُئِلَ عَنْ الذَّبِيحَةِ تُذْبَحُ فَتَمُرُّ السِّكِّينُ فَتَقْطَعُ الْعُنُقَ كُلَّهُ؟ قَالَ: لَا بَأْسَ بِهِ ذَكَاةٌ سَرِيعَةٌ. وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ قَالَ: سَأَلْت إبْرَاهِيمَ النَّخَعِيَّ عَنْ رَجُلٍ ضَرَبَ عُنُقَ حِمَارٍ وَحْشٍ؟ فَأَمَرَنِي بِأَكْلِهِ، وَسَأَلْته عَنْ دَجَاجَةٍ ذُبِحَتْ مِنْ قَفَاهَا؟ فَقَالَ إبْرَاهِيمُ: تِلْكَ الْقَفِينَةُ لَا بَأْسَ بِهَا. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ أَنَّهُ سُئِلَ عَنْ رَجُلٍ ذَبَحَ بِسَيْفِهِ فَقَطَعَ الرَّأْسَ؟ فَقَالَ الزُّهْرِيُّ: بِئْسَمَا فَعَلَ، فَقَالَ لَهُ رَجُلٌ: أَفَنَأْكُلُهَا؟ قَالَ: نَعَمْ. قَالَ أَبُو مُحَمَّدٍ: لَوْ كَانَ مَغْلُوبًا لَمْ يَقُلْ الزُّهْرِيُّ، " بِئْسَمَا فَعَلَ ". فَصَحَّ أَنَّهُ إنَّمَا قَالَهُ فِي مُتَعَمَّدِهِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ

[2] **Qur'an references (L17065):** Qur'an 4:59 (An-Nisa); Qur'an 5:3 (Al-Ma'idah).

sible his action!' Thus, it is confirmed he spoke this regarding intentional severance." From the narration of ʿAbd al-Razzāq from Maʿmar from ʿAbd Allāh ibn Ṭāwūs from his father, who said: "If a man slaughtered a kid and severed its head, there is no harm in eating it." From the narration of Wakīʿ from Shuʿbah from Yūnus ibn ʿUbayd from al-Ḥasan al-Baṣrī regarding a duck whose neck was struck with a sword. Al-Ḥasan said: "No harm in eating it." From the narration of Wakīʿ from al-Rabīʿ ibn Ṣubayḥ from al-Ḥasan and ʿAṭāʾ, who both said regarding one who slaughters and severs the head: "No harm in eating it." From the narration of Ibn Abī Shaybah from Ḥafs ibn Ghiyāth from Layth from Mujāhid regarding one who slaughters and severs the head. He said: "Eat it." Mujāhid also narrated from al-Ḍaḥḥāk. From the narration of Saʿīd ibn Manṣūr from Ismāʿīl ibn ʿAyyāsh, who narrated from ʿAbd al-ʿAzīz ibn ʿAbd Allāh. From Al-Shaʿbī that he said regarding slaughter: "The head should not be severed. If the head is severed, then let him eat." So these—ʿAṭāʾ, Ṭāwūs, Mujāhid, Al-Ḥasan, Al-Nakhaʿī, Al-Shaʿbī, Al-Zuhrī, and Al-Ḍaḥḥāk—permit eating what had its head severed during ritual slaughter. Some of them ate from what had not had its jugular veins severed, and from what was slaughtered from the nape, and from what had its neck struck.

L17076 **Issue: All that is permissible to slaughter by *dhabh* is permissible to slaughter by *nahr*.**

L17077 Issue: Any animal that is permissible to slaughter by cutting the throat (*dhabḥ*) is permissible to slaughter by piercing the base of the neck (*nahr*), and any animal permissible to slaughter by *nahr* is permissible to slaughter by *dhabḥ*. This includes camels, cows, sheep and goats, horses, chickens, sparrows, pigeons, and all other animals whose meat is lawful to eat. Thus, if you wish, slaughter by *dhabḥ*, and if you wish, slaughter by *nahr*. This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, Sufyān al-Thawrī, al-Layth ibn Saʿd, Abū Thawr, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhawayh, and some of our companions.

Mālik, however, said: Sheep and goats and birds must be slaughtered by *dhabḥ* and not by *nahr*. If any of them are slaughtered by *nahr*, their meat is not permissible to eat. As for camels, they must be slaughtered by

عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: لَوْ أَنَّ رَجُلًا ذَبَحَ جَدْيًا فَقَطَعَ رَأْسَهُ لَمْ يَكُنْ بِأَكْلِهِ بَأْسٌ. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ فِي بَطَّةٍ ضَرَبَ رَجُلٌ عُنُقَهَا بِالسَّيْفِ، فَقَالَ الْحَسَنُ: لَا بَأْسَ بِأَكْلِهَا. وَمِنْ طَرِيقِ وَكِيعٍ نا الرَّبِيعُ بْنُ صُبَيْحٍ عَنْ الْحَسَنِ، وَعَطَاءٍ قَالَا جَمِيعًا فِيمَنْ ذَبَحَ فَأَبَانَ الرَّأْسَ: فَلَا بَأْسَ بِأَكْلِهِ. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ - هُوَ ابْنُ غِيَاثٍ - عَنْ لَيْثٍ عَنْ مُجَاهِدٍ فِيمَنْ ذَبَحَ فَأَبَانَ الرَّأْسَ، قَالَ: كُلْ - وَرَوَى أَيْضًا عَنْ الضَّحَّاكِ وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ حَدَّثَنِي عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ عَنْ الشَّعْبِيِّ أَنَّهُ قَالَ فِي الذَّبْحِ لَا يُقْطَعُ الرَّأْسُ فَإِنْ قُطِعَ الرَّأْسُ فَلْيَأْكُلْ -: فَهَؤُلَاءِ عَطَاءٌ، وَطَاوُسٌ، وَمُجَاهِدٌ، وَالْحَسَنِ، وَالنَّخَعِيُّ، وَالشَّعْبِيُّ، وَالزُّهْرِيُّ، وَالضَّحَّاكُ يُجِيزُونَ أَكْلَ مَا قُطِعَ رَأْسُهُ فِي الذَّكَاةِ - وَبَعْضُهُمْ أَكَلَ مَا لَمْ يُقْطَعْ أَوْدَاجُهُ - وَمَا ذُبِحَ مِنْ قَفَاهُ - وَمَا ضُرِبَتْ عُنُقُهُ.

[مَسْأَلَةٌ كُلُّ مَا جَازَ ذَبْحُهُ جَازَ نَحْرُهُ]

١٠٤٨ - مَسْأَلَةٌ: وَكُلُّ مَا جَازَ ذَبْحُهُ جَازَ نَحْرُهُ، وَكُلُّ مَا جَازَ نَحْرُهُ جَازَ ذَبْحُهُ -: الْإِبِلُ، وَالْبَقَرُ، وَالْغَنَمُ، وَالْخَيْلُ، وَالدَّجَاجُ، وَالْعَصَافِيرُ، وَالْحَمَامُ، وَسَائِرُ كُلِّ مَا يُؤْكَلُ لَحْمُهُ، فَإِنْ شِئْت فَاذْبَحْ، وَإِنْ شِئْت فَانْحَرْ -: وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَاللَّيْثِ بْنِ سَعْدٍ، وَأَبِي ثَوْرٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ وَبَعْضُ أَصْحَابِنَا. وَقَالَ مَالِكٌ: الْغَنَمُ، وَالطَّيْرُ، تُذْبَحُ وَلَا تُنْحَرُ، فَإِنْ نُحِرَ شَيْءٌ مِنْهَا لَمْ يُؤْكَلْ وَأَمَّا الْإِبِلُ فَتُنْحَرُ، فَإِنْ ذُبِحَ مِنْهَا شَيْءٌ لَمْ يُؤْكَلْ، وَأَمَّا الْبَقَرُ فَتُذْبَحُ وَتُنْحَرُ - وَلَا نَعْلَمُ لَهُ فِي هَذَا الْقَوْلِ سَلَفًا مِنْ الْعُلَمَاءِ أَصْلًا، إلَّا رِوَايَةً عَنْ عَطَاءٍ فِي الْبَعِيرِ خَاصَّةً قَدْ رُوِيَ عَنْهُ

nahr; if slaughtered by *dhabḥ*, their meat is not permissible to eat. As for cows, they may be slaughtered by either method. We know of no precedent among earlier scholars for this opinion, except for a disputed report attributed to ʿAṭāʾ concerning camels specifically, which itself has conflicting narrations.

Some of Mālik's followers argued that slaughtering a camel by *dhabḥ* is torturous due to its long neck and thick skin. ʿAlī responded: This is a denial of evident reality. The suffering caused by *dhabḥ* is no different from that caused by *nahr*; there is no distinction. A camel's skin is no thicker than that of an ox, and its neck is no longer than that of other camels, yet one who holds this view permits *dhabḥ* in all such cases. Similarly, slaughtering a sparrow, pigeon, or chicken by *nahr* is as torturous as slaughtering them by *dhabḥ*, with no difference.

The strangest part of their argument is their citation of Allah's verse: *"Allah commands you to slaughter a cow"* (Quran 2:67), while they themselves contradict this by permitting *nahr* for cows. As for us, we are not bound by what Allah commanded the Children of Israel.

If some argue that *"the Prophet (peace be upon him) slaughtered camels by *nahr* at Minā and slaughtered the two rams by *dhabḥ* when he offered them as sacrifices,"* we respond: Yes, this was his practice, not a command, and it does not prohibit other methods. What is decisively established from him (peace be upon him) is his statement: *"Whatever causes the blood to flow and over which Allah's name is mentioned, eat of it."* This is the clear ruling that must not be violated, not merely actions that do not preclude other methods.[3][4]

L17078–17081 We have mentioned in the issue preceding this one concerning Umar ibn al-Khattab and Ibn Abbas that ritual slaughter occurs at the throat and jugular notch, and they did not designate either method exclusively for any specific animal. Rather, Umar proclaimed this emphatically in general terms, and no opposing view from any of the Companions is known at all. In-

خِلَافُهَا، وَاحْتَجَّ بَعْضُهُمْ فِي ذَلِكَ بِأَنَّ ذَبْحَ الْجَمَلِ تَعْذِيبٌ لَهُ لِطُولِ عُنُقِهِ، وَغِلَظِ جِلْدِهِ. قَالَ عَلِيٌّ: وَهَذِهِ مُكَابَرَةٌ لِلْعِيَانِ، وَمَا تَعْذِيبُهُ بِالذَّبْحِ إِلَّا كَتَعْذِيبِهِ بِالنَّحْرِ وَلَا فَرْقَ، وَمَا جِلْدُهُ بِأَغْلَظَ مِنْ جِلْدِ الثَّوْرِ، وَمَا عُنُقُهُ بِأَطْوَلَ مِنْ عُنُقِ الْإِبِلِ وَهُوَ يَرَى الذَّبْحَ فِي كُلِّ ذَلِكَ - وَمَا تَعْذِيبُ الْعُصْفُورِ، وَالْحَمَامَةِ، وَالدَّجَاجَةِ بِالنَّحْرِ إِلَّا كَتَعْذِيبِهَا بِالذَّبْحِ وَلَا فَرْقَ. وَأَطْرَفُ شَيْءٍ احْتِجَاجُهُمْ فِي ذَلِكَ بِقَوْلِ اللَّهِ تَعَالَى: {إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تَذْبَحُوا بَقَرَةً} [البقرة: ٦٧] وَهُمْ أَوَّلُ مُخَالِفٍ لِذَلِكَ فَيُجِيزُونَ فِيهَا النَّحْرَ - وَأَمَّا نَحْنُ فَلَا يَلْزَمُنَا مَا أَمَرَ اللَّهُ بِهِ بَنِي إِسْرَائِيلَ. فَإِنْ احْتَجَّ بَعْضُهُمْ بِأَنَّ «النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَحَرَ الْإِبِلَ بِمِنًى، وَذَبَحَ الْكَبْشَيْنِ إِذْ ضَحَّى بِهِمَا» قُلْنَا: نَعَمْ، وَهَذَا فِعْلٌ لَا أَمْرٌ، وَلَيْسَ ذَلِكَ بِمَانِعٍ مِنْ غَيْرِ هَذَا الْفِعْلِ، وَقَدْ صَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - مَا ذَكَرْنَا قَبْلُ مِنْ قَوْلِهِ «مَا أَنْهَرَ الدَّمَ وَذُكِرَ اسْمُ اللَّهِ عَلَيْهِ فَكُلْ» وَهَذَا هُوَ الْفُتْيَا الْمُبِينَةُ الَّتِي لَا يَحِلُّ تَعَدِّيهَا، لَا الْعَمَلُ الَّذِي لَمْ يُنْهَ عَمَّا سِوَاهُ.

وَقَدْ ذَكَرْنَا فِي الْمَسْأَلَةِ الَّتِي قَبْلَ هَذِهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ عَبَّاسٍ الذَّكَاةَ فِي الْحَلْقِ وَاللَّبَّةِ، وَلَمْ يَخُصَّا بِإِحْدَاهُمَا حَيَوَانًا مِنْ حَيَوَانٍ بَلْ هَتَفَ عُمَرُ بِذَلِكَ مُجْمَلًا وَلَا يُعْرَفُ لَهُمَا مُخَالِفٌ مِنْ الصَّحَابَةِ أَصْلًا. بَلْ قَدْ ذَكَرْنَا الرِّوَايَةَ عَنْ عَلِيٍّ فِي إبَاحَةِ أَكْلِ بَعِيرٍ ضُرِبَ عُنُقُهُ بِالسَّيْفِ وَرَأَى ذَلِكَ ذَكَاةً وَحَيَّةً. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا وَهْبُ بْنُ

[3] **Hadith references (L17077):** Sahih al-Bukhari 5498; Sunan Ibn Majah 3178.
[4] **Qur'an references (L17077):** Qur'an 2:67 (Al-Baqarah).

deed, we have cited the narration from Ali regarding the permissibility of eating a camel whose neck was struck with a sword, deeming this a valid slaughter while it was alive. From the transmission of Abd al-Razzaq: Wahb ibn Nafi‘ narrated that he heard Ikrimah report that Ibn Abbas ordered him to slaughter a jazur (camel) while in the state of ritual consecration (ihram) during pilgrimage, and “jazur” unequivocally denotes a camel. From another transmission of Abd al-Razzaq via Ibn Jurayj from Ata, who said: Allah the Exalted mentioned slaughtering in the Quran. If you slaughter an animal that is normally sacrificed by nahr (throat-slitting), it suffices. From the transmission of Muhammad ibn al-Muthanna: Muammal ibn Isma‘il narrated from Sufyan al-Thawri via Ibn Jurayj from Ata, who said: “Slaughtering (dhabh) is a form of ritual sacrifice (nahr), and ritual sacrifice is a form of slaughtering.” From the transmission of Abd al-Razzaq via Ma‘mar from al-Zuhri and Qatada, both of whom said: For camels and cattle, you may slaughter them or perform nahr as you choose. From the transmission of Abd al-Razzaq via Sufyan al-Thawri from Ubayd from Mujahid, who said: “Slaughtering was their practice, and ritual sacrifice is yours” – [But they slaughtered her, though they nearly refrained] [2:71] and [So pray to your Lord and sacrifice] [108:2]. Abu Muhammad said: We have mentioned Allah’s decree [except what you duly slaughter] [5:3] and the Prophet’s (peace be upon him) saying: “Whatever causes the blood to flow with Allah’s name invoked over it, then eat.” Allah the Exalted did not prioritize slaughtering over ritual sacrifice, nor ritual sacrifice over slaughtering – [and your Lord is never forgetful] [19:64]. From the transmission of Muslim: Yahya ibn Yahya narrated from Abu Khaythamah – Zuhayr ibn Mu‘awiyah – from al-Aswad ibn Qays, who said: Jundub ibn Sufyan narrated: “I attended the Eid al-Adha with the Messenger of Allah (peace be upon him), and he said: ’Whoever slaughtered their sacrifice before praying or before we prayed, let them slaughter another in its place. Whoever has not slaughtered, let them slaughter in Allah’s name.’” From the transmission of Shu‘bah via Zubayd al-Yami from al-Sha‘bi from al-Bara’ ibn Azib, who said: The Prophet (peace be upon him) said... The Messenger of Allah (peace be upon him) said: “The first act we commence with on this day of ours is to pray, then return to perform the sacrifice. Whoever does this has indeed conformed to our Sunnah, while whoever

نَافِعٍ أَنَّهُ سَمِعَ عِكْرِمَةَ يُحَدِّثُ أَنَّ ابْنَ عَبَّاسٍ أَمَرَهُ أَنْ يَذْبَحَ جَزُورًا وَهُوَ مُحْرِمٌ، وَالْجَزُورُ الْبَعِيرُ بِلَا خِلَافٍ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: ذَكَرَ اللَّهُ تَعَالَى الذَّبْحَ فِي الْقُرْآنِ، فَإِنْ ذَبَحْت شَيْئًا يُنْحَرُ أَجْزَى عَنْك. وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا مُؤَمَّلُ بْنُ إِسْمَاعِيلَ، نا سُفْيَانُ الثَّوْرِيُّ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: الذَّبْحُ مِنَ النَّحْرِ، وَالنَّحْرُ مِنَ الذَّبْحِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ، وَقَتَادَةَ، قَالَا جَمِيعًا: الْإِبِلُ، وَالْبَقَرُ إِنْ شِئْت ذَبَحْت وَإِنْ شِئْت نَحَرْت. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عُبَيْدٍ عَنْ مُجَاهِدٍ قَالَ: كَانَ الذَّبْحُ فِيهِمْ، وَالنَّحْرُ فِيكُمْ {فَذَبَحُوهَا وَمَا كَادُوا يَفْعَلُونَ} [البقرة: ٧١] ، {فَصَلِّ لِرَبِّكَ وَانْحَرْ} [الكوثر: ٢] . قَالَ أَبُو مُحَمَّدٍ: قَدْ ذَكَرْنَا قَوْلَ اللَّهِ تَعَالَى: {إِلا مَا ذَكَّيْتُمْ} [المائدة: ٣] وَقَوْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا أَنْهَرَ الدَّمَ وَذُكِرَ اسْمُ اللَّهِ عَلَيْهِ فَكُلُوا» وَلَمْ يَخُصَّ اللَّهُ تَعَالَى ذَبْحًا مِنْ نَحْرٍ، وَلَا نَحْرًا مِنْ ذَبْحٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] . وَمِنْ طَرِيقِ مُسْلِمٍ نا يَحْيَى بْنُ يَحْيَى أَنَا أَبُو خَيْثَمَةَ - هُوَ زُهَيْرُ بْنُ مُعَاوِيَةَ - عَنِ الْأَسْوَدِ بْنِ قَيْسٍ حَدَّثَنِي «جُنْدُبُ بْنُ سُفْيَانَ قَالَ شَهِدْتُ الْأَضْحَى مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ مَنْ كَانَ ذَبَحَ أُضْحِيَّتَهُ قَبْلَ أَنْ يُصَلِّيَ أَوْ نُصَلِّيَ فَلْيَذْبَحْ مَكَانَهَا أُخْرَى، وَمَنْ لَمْ يَذْبَحْ فَلْيَذْبَحْ بِاسْمِ اللَّهِ» . وَمِنْ طَرِيقِ شُعْبَةَ عَنْ زُبَيْدٍ اليامي عَنِ الشَّعْبِيِّ عَنِ الْبَرَاءِ بْنِ عَازِبٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ أَوَّلَ مَا نَبْدَأُ بِهِ فِي يَوْمِنَا هَذَا أَنْ نُصَلِّيَ ثُمَّ نَرْجِعَ فَنَنْحَرَ، فَمَنْ فَعَلَ ذَلِكَ فَقَدْ أَصَابَ سُنَّتَنَا وَمَنْ ذَبَحَ قَبْلَ ذَلِكَ فَإِنَّمَا هُوَ لَحْمٌ قَدَّمَهُ لِأَهْلِهِ وَذَكَرَ الْخَبَرَ» وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ حَاتِمٍ نا مُحَمَّدُ بْنُ بَكْرٍ أَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ «صَلَّى بِنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

slaughters before this time—it is nothing but ordinary meat provided for his household"—and he mentioned the report explicitly. As narrated in Sahih Muslim: Muhammad ibn Hatim reported to us, Muhammad ibn Bakr reported to us, Ibn Jurayj informed us: Abu al-Zubayr narrated that he heard Jabir ibn Abdullah state: "Allah's Messenger (peace be upon him) led us in prayer on the Day of Sacrifice at Medina. Some men proceeded to sacrifice, assuming the Prophet had already performed his sacrifice. Thereupon the Prophet ordered those who had sacrificed before him to repeat it with another animal, instructing them not to sacrifice until he himself had sacrificed."

It is authentically established through Ibn Umar's transmission—as we cited in the Book of Sacrificial Rites—that "Allah's Messenger (peace be upon him) would slaughter and sacrifice at the prayer ground." He (peace be upon him) used the terms "slaughtering" and "sacrificing" comprehensively for all sacrificial animals, including camels, cattle, and sheep. He did not designate any specific type to be exclusively sacrificed by one method over the other. Had either practice been religiously impermissible or discouraged in Islamic law, he would have clarified it.

It is narrated through Asma's transmission, daughter of Abu Bakr al-Siddiq: "We sacrificed a horse during the era of Allah's Messenger (peace be upon him)." Another narration from her states: "We slaughtered a horse." And with Allah alone lies all success.[56]

The issue of ritual slaughter that cannot be properly performed.

L17082

L17083–17085

1049 - Issue: As for an animal that cannot be properly restrained, its slaughter is accomplished by killing it through throat-slitting (dhabḥ) or slaughtering at the jugular notch (nahr) wherever possible—whether in the flank, hindquarters, thigh, back, belly, or head—such as a camel, sheep, cow,

[5] **Hadith references (L17079):** Sahih al-Bukhari 2507; Sunan Abi Dawud 2821; Sahih al-Bukhari 5512.

[6] **Qur'an references (L17079):** Qur'an 2:71 (Al-Baqarah); Qur'an 108:2 (Al-Kawthar); Qur'an 5:3 (Al-Ma'idah); Qur'an 19:64 (Maryam).

يَوْمَ النَّحْرِ بِالْمَدِينَةِ فَتَقَدَّمَ رِجَالٌ فَنَحَرُوا وَظَنُّوا أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ نَحَرَ فَأَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ كَانَ نَحَرَ قَبْلَهُ أَنْ يُعِيدَ بِنَحْرٍ آخَرَ وَلَا يَنْحَرُوا حَتَّى يَنْحَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» . وَصَحَّ مِنْ طَرِيقِ ابْنِ عُمَرَ كَمَا أَوْرَدْنَا فِي كِتَابِ الْأَضَاحِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَذْبَحُ وَيَنْحَرُ بِالْمُصَلَّى» فَأَطْلَقَ - عَلَيْهِ السَّلَامُ - فِي الْأَضَاحِيِّ الذَّبْحَ وَالنَّحْرَ عُمُومًا وَفِيهَا الْإِبِلُ، وَالْبَقَرُ، وَالْغَنَمُ، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - شَيْئًا مِنْ ذَلِكَ بِنَحْرٍ دُونَ ذَبْحٍ وَلَا بِذَبْحٍ دُونَ نَحْرٍ، وَلَوْ كَانَ أَحَدُ الْأَمْرَيْنِ لَا يَجُوزُ أَوْ يُكْرَهُ لَبَيَّنَهُ - عَلَيْهِ السَّلَامُ -: رُوِّينَا مِنْ طَرِيقِ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ «نَحَرْنَا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَسًا» وَرُوِّينَا عَنْهَا أَيْضًا ذَبَحْنَا فَرَسًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ ذَكَاة غَيْر الْمُتَمَكَّنِ مِنْهُ]

١٠٤٩ - مَسْأَلَةٌ: وَأَمَّا غَيْرُ الْمُتَمَكَّنِ مِنْهُ فَذَكَاتُهُ أَنْ يُمَاتَ بِذَبْحٍ أَوْ بِنَحْرٍ حَيْثُ أَمْكَنَ مِنْهُ مِنْ خَاصِرَةٍ، أَوْ مِنْ عَجُزٍ، أَوْ نَخِذٍ، أَوْ ظَهْرٍ، أَوْ بَطْنٍ، أَوْ رَأْسٍ، كَبَعِيرٍ، أَوْ شَاةٍ، أَوْ بَقَرَةٍ، أَوْ دَجَاجَةٍ، أَوْ طَائِرٍ، أَوْ غَيْرِ ذَلِكَ: سَقَطَ فِي غَوْرٍ فَلَمْ يُتَمَكَّنْ مِنْ حَلْقِهِ، وَلَا مِنْ لَبَّتِهِ، فَإِنَّهُ يُطْعَنُ حَيْثُ أَمْكَنَ بِمَا يُعَجِّلُ بِهِ مَوْتَهُ، ثُمَّ هُوَ حَلَالٌ أَكْلُهُ. وَكَذَلِكَ

كُلُّ مَا اسْتَعْصَى مِنْ كُلِّ مَا ذَكَرْنَا فَلَمْ يَقْدِرْ عَلَى أَخْذِهِ، فَإِنَّ ذَكَاتَهُ كَذَكَاةِ الصَّيْدِ، ثُمَّ يُؤْكَلُ عَلَى مَا نَذْكُرُ فِي كِتَابِ الصَّيْدِ إِنْ شَاءَ اللَّهُ تَعَالَى. وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَأَصْحَابِهِ، وَسُفْيَانَ الثَّوْرِيِّ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَصْحَابِهِمْ - وَهُوَ قَوْلُ أَبِي سُفْيَانَ وَأَصْحَابِنَا. وَقَالَ مَالِكٌ: لَا يَجُوزُ أَنْ يُذَكَّى أَصْلًا إِلَّا فِي الْحَلْقِ وَاللَّبَّةِ - وَهُوَ قَوْلُ اللَّيْثِ. قَالَ أَبُو مُحَمَّد: وَقَوْلُنَا هُوَ قَوْلُ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ زِيَادِ بْنِ أَبِي مَرْيَمَ أَنَّ حِمَارًا وَحْشِيًّا اسْتَعْصَى عَلَى أَهْلِهِ فَضَرَبُوا عُنُقَهُ فَسَأَلَ ابْنَ مَسْعُودٍ؟ فَقَالَ: تِلْكَ أَسْرَعُ الذَّكَاةِ. وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ نا سُفْيَانُ، وَشُعْبَةُ كِلَاهُمَا عَنْ سَعِيدِ بْنِ مَسْرُوقٍ عَنْ عَبَايَةَ بْنِ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ أَنَّ بَعِيرًا تَرَدَّى فِي بِئْرٍ فَذُكِّيَ مِنْ قِبَلِ شَاكِلَتِهِ، فَأَخَذَ ابْنُ عُمَرَ مِنْهُ عَشِيرًا بِدِرْهَمَيْنِ. وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ حَدَّثَنِي أَبُو حَيَّانَ يَحْيَى بْنُ سَعِيدٍ التَّيْمِيُّ حَدَّثَنِي عَبَايَةُ بْنُ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ قَالَ: تَرَدَّى بَعِيرٌ فِي بِئْرٍ، فَكَانَ أَعْلَاهُ أَسْفَلَهُ؟ فَنَزَلَ عَلَيْهِ رَجُلٌ فَلَمْ يَسْتَطِعْ أَنْ يَنْحَرَهُ، فَقَالَ ابْنُ عُمَرَ: أَجِزْ عَلَيْهِ وَاذْكُرْ اسْمَ اللَّهِ عَزَّ وَجَلَّ، فَأَجَازَ عَلَيْهِ مِنْ شَاكِلَتِهِ فَأُخْرِجَ قِطَعًا قِطَعًا فَأَخَذَ مِنْهُ ابْنُ عُمَرَ عَشِيرًا بِدِرْهَمَيْنِ. وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَبْدِ الْعَزِيزِ بْنِ سِيَاهٍ سَمِعَ أَبَا رَاشِدٍ السَّلْمَانِيَّ قَالَ: كُنْت فِي مَنَائِخِ لِأَهْلِي بِظَهْرِ الْكُوفَةِ أَرْعَاهَا فَتَرَدَّى بَعِيرٌ مِنْهَا فَنَحَرْتُهُ مِنْ قِبَلِ شَاكِلَتِهِ، فَأَتَيْت عَلِيًّا فَأَخْبَرْتُهُ؟ فَقَالَ: اهْدِ لِي عَجُزَهُ -: الشَّاكِلَةَ: الْحَاصِرَةَ. وَمِنْ طَرِيقِ وَكِيعٍ نا عَبْدُ الْعَزِيزِ بْنُ سِيَاهٍ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ مَسْرُوقٍ أَنَّ بَعِيرًا تَرَدَّى فِي بِئْرٍ فَصَارَ أَسْفَلُهُ أَعْلَاهُ، قَالَ: فَسَأَلْنَا عَلِيَّ بْنَ أَبِي طَالِبٍ؟ فَقَالَ: قَطِّعُوهُ أَعْضَاءً وَكُلُوهُ. وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ - هُوَ الثَّوْرِيُّ - عَنْ خَالِدٍ

chicken, bird, or similar creature that falls into a pit where one cannot reach its throat or jugular notch. In such cases, it suffices to pierce it wherever possible with whatever hastens its death, after which it becomes permissible to eat it. Similarly, any animal from the mentioned categories that becomes unmanageable and cannot be controlled—its slaughter follows the slaughter rules for hunted game, and it may be consumed according to the regulations detailed in the Book of Hunting, God willing. This is the opinion of Abū Ḥanīfa and his companions, Sufyān al-Thawrī, al-Shāfiʿī, Abū Thawr, Aḥmad, Isḥāq, and their followers—and also the view of Abū Sufyān and our associates. Mālik said: "It is impermissible to slaughter except at the throat and jugular notch"—this being al-Layth's opinion. Abū Muḥammad said: "Our position aligns with the predecessors (salaf). As transmitted via Ibn Abī Shaybah's chain: Sufyān ibn ʿUyaynah reported from ʿAbd al-Karīm al-Jazarī from..." Ziyad ibn Abi Maryam reported that a wild donkey became uncontrollable for its owners, so they struck its neck. They asked Ibn Mas'ud? He said: "That is the swiftest method of slaughter." Through the chain of Abd al-Rahman ibn Mahdi: Sufyan and Shu'ba both narrated from Saʿid ibn Masruq from Ubaya ibn Rifaʿa ibn Rafiʿ ibn Khadīj that a camel fell into a well and was slaughtered from its loin. Ibn Umar took a portion of it for two *dirhams*. Through the chain of Yahya ibn Saʿid al-Qattan: Abu Hayyan Yahya ibn Saʿid al-Taymi narrated to me from Ubaya ibn Rifaʿa ibn Rafiʿ ibn Khadīj, who said: A camel fell into a well and flipped upside down. A man descended to it but could not slaughter it. Ibn Umar said: "Go ahead and slaughter it and mention the name of Allah Almighty." He slaughtered it from its loin, and it was removed in pieces. Ibn Umar took a portion of it for two *dirhams*. Through the chain of Sufyan ibn Uyayna from Abd al-Aziz ibn Siyah, who heard Abu Rashid al-Salmani say: "I was tending my family's camels near Kufa when a camel fell, and I slaughtered it from its loin. I went to Ali and informed him. He said: 'Give me its loin.'" Through the chain of Waki' from Abd al-Aziz ibn Siyah from Habib ibn Abi Thabit from Masruq: An unmanageable camel fell into a well, its lower part becoming its upper. They asked Ali ibn Abi Talib? He said: "Cut it into pieces and eat it." Through the chain of Waki' from Sufyan al-Thawri from Khalid al-Hadhdha' from Ikrimah from Ibn Abbas, who said: "What becomes impossible for you

to slaughter among livestock is equivalent to game." This is also the view of Aisha, the Mother of the Believers, with no known disagreement among the Companions—Ibn Masʿud, Ali, Ibn Abbas, Ibn Umar, and the Mother of the Believers. Through the chain of Abd al-Rahman ibn Mahdi from Sufyan al-Thawri from Mansur ibn al-Muʿtamir from Abu al-Duha from Masruq, who was asked about a camel that fell into a well and was slaughtered from its loin. Masruq said: "Eat it." Through the chain of Wakiʿ from Hurayth from al-Shaʿbi, who said: "If you fear missing the slaughter, strike wherever you can reach on it."

الْحَذَّاءِ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ، قَالَ: مَا أَعْجَزَكَ مِنَ الْبَهَائِمِ فَهُوَ بِمَنْزِلَةِ الصَّيْدِ. وَهُوَ أَيْضًا قَوْلُ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَلَا يُعْرَفُ لَهُمْ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ: ابْنُ مَسْعُودٍ، وَعَلِيٌّ، وَابْنُ عَبَّاسٍ، وَابْنُ عُمَرَ، وَأُمُّ الْمُؤْمِنِينَ. وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ أَبِي الضُّحَى عَنْ مَسْرُوقٍ أَنَّهُ سَأَلَ عَنْ قَالِحٍ تَرَدَّى فِي بِئْرٍ فَذُكِّيَ مِنْ قِبَلِ خَاصِرَتِهِ، فَقَالَ مَسْرُوقٌ: كُلُوهُ. وَمِنْ طَرِيقِ وَكِيعٍ نا حُرَيْثٌ عَنِ الشَّعْبِيِّ قَالَ: إِذَا خَشِيتَ أَنْ يَفُوتَكَ ذَكَاتُهَا فَاضْرِبْ حَيْثُ أَدْرَكْتَ مِنْهَا.

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From the path of Wakiʿ: Hishām al-Dastuwāʾī reported from Qatādah from Saʿīd ibn al-Musayyab concerning a camel that falls into a well. He said: "It must be stabbed where they are able to mention the name of Allah, the Mighty and Majestic." From the path of Saʿīd ibn Manṣūr: Jarīr reported from al-Mughīrah ibn Miqsam from Ibrāhīm, who said: "A camel fell into a well, and they found no way to kill it. Al-Aswad ibn Yazīd was asked about this, and he replied: 'Slaughter it at the nearest accessible point of slaughter.' They did so, and al-Aswad took two dirhams from it." From the path of Wakiʿ: Qurrah ibn Khālid said: "I heard al-Ḍaḥḥāk state regarding a straying cow: 'It holds the status of game.' This is the view of ʿAṭāʾ, Ṭāwūs, al-Ḥasan, al-Ḥakam ibn ʿUtaybah, Ibrāhīm al-Nakhaʿī, and Ḥammād ibn Abī Sulaymān. We know of no precedent for Mālik's ruling on this matter except a statement from Rabīʿah."

وَمِنْ طَرِيقِ وَكِيعٍ نا هِشَامٌ الدَّسْتُوَائِيُّ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ فِي الْبَعِيرِ يَتَرَدَّى فِي الْبِئْرِ؟ قَالَ: يُطْعَنُ حَيْثُ قَدَرُوا ذِكْرَ اسْمِ اللَّهِ عَزَّ وَجَلَّ. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرٌ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ قَالَ: تَرَدَّى بَعِيرٌ فِي بِئْرٍ فَلَمْ يَجِدُوا لَهُ مَقْتَلًا فَسُئِلَ الْأَسْوَدُ بْنُ يَزِيدَ عَنْ ذَلِكَ؟ فَقَالَ: ذَكُّوهُ مِنْ أَدْنَى مَقْتَلِهِ، فَفَعَلُوا فَأَخَذَ الْأَسْوَدُ مِنْهُ بِدِرْهَمَيْنِ. وَمِنْ طَرِيقِ وَكِيعٍ نا قُرَّةُ بْنُ خَالِدٍ قَالَ: سَمِعْتُ الضَّحَّاكَ يَقُولُ فِي بَقَرَةٍ شَرَدَتْ: هِيَ بِمَنْزِلَةِ الصَّيْدِ - وَهُوَ قَوْلُ عَطَاءٍ، وَطَاوُسٍ، وَالْحَسَنِ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ. وَلَا نَعْلَمُ لِمَالِكٍ فِي هَذَا سَلَفًا إِلَّا قَوْلًا عَنْ رَبِيعَةَ. قَالَ أَبُو مُحَمَّدٍ: وَقَالَ قَائِلُهُمْ: إِنْ كَانَتْ بِمَنْزِلَةِ الصَّيْدِ فَأَبِيحُوا قَتْلَهَا بِالْكِلَابِ وَالْجَوَارِحِ؟ فَقُلْنَا: نَعَمْ، إِذَا لَمْ يُقْدَرْ عَلَيْهَا بِذَلِكَ فَهِيَ فِي ذَلِكَ كَالصَّيْدِ وَلَا فَرْقَ. قَالَ عَلِيٌّ: وَهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ وَقَدْ أَجْمَعُوا عَلَى أَنَّ الصَّيْدَ إِذَا قُدِرَ عَلَيْهِ فَهُوَ بِمَنْزِلَةِ النَّعَمِ وَالْإِنْسِيَّاتِ فِي الذَّكَاةِ، فَهَلَّا قَالُوا: إِنَّ النَّعَمَ وَالْإِنْسِيَّاتِ إِذَا لَمْ يُقْدَرْ عَلَيْهَا فَمَنْزِلَتُهَا

Abū Muḥammad remarked: Someone among them argued: "If its status equates to game, does this permit killing it with dogs and hunting animals?" We responded: "Yes, if it cannot be subdued by that means. In such a case, it is treated as game with no distinction." ʿAlī observed: "They claim to uphold analogy, yet they unanimously agree that captured game assumes the status of livestock and domestic animals regarding slaughter. Why do they not assert that livestock and domestic animals, when unmanageable, should

be treated as game? If analogy were ever valid, this would be the soundest analogy in existence."

It is perplexing that Mālik declared: "I consider it immensely grave to deliberately pour out a provision from Allah's sustenance because a dog lapped from it," yet failed to state here: "I consider it immensely grave to deliberately waste and ruin a provision from Allah's sustenance merely because one cannot access its throat or chest." Had he reversed his reasoning, it would have been correct. The greatest gravity of all lies in the Messenger of Allah—peace and blessings upon him—commanding: "If a dog laps from one's vessel, let him pour it out," only for someone to assert by personal opinion: "Do not pour it out," and in the Prophet—peace and blessings upon him—prohibiting the waste of wealth, yet permitting the loss of camels, cows, sheep, or poultry—despite our capacity to slaughter them—solely due to inability to slit the throat or chest. This is the true gravity!

Abū Muḥammad affirmed: Allah the Mighty and Majestic decreed: {Except what you slaughter} [5:3], and He stated: {Allah does not burden any soul beyond its capacity} [2:286]. Thus, it is established that slaughter is valid by whatever means attainable, for we are not tasked beyond our capability. It was narrated to us through the chain of Al-Bukhari: Mūsā ibn Ismāʿīl narrated to us, ʿAwāna narrated to us from Saʿīd ibn Masrūq from ʿAbāya ibn Rifāʿa ibn Rāfiʿ ibn Khadīj from his grandfather Rāfiʿ ibn Khadīj, who said: "We were with the Prophet—peace and blessings of Allah be upon him—and he mentioned the report. In it, a camel bolted while there were only a few horses with the group. They pursued it but grew exhausted. A man aimed an arrow at it, and Allah—the Almighty—halted it. The Messenger of Allah—peace and blessings of Allah be upon him—said: 'These beasts have wild instincts like those of untamed animals. Whatever escapes your control among them, deal with it in this manner.'"

Through the chain of Muslim: Ibn Abī ʿUmar narrated to us, Sufyān ibn ʿUyayna narrated to us, saying: ʿUmar ibn Saʿīd ibn Masrūq reported to me from his father from ʿAbāya ibn Rifāʿa ibn Rāfiʿ ibn Khadīj from his grandfather Rāfiʿ ibn Khadīj: "They were with the Messenger of Allah—peace

كَمَنْزِلَةِ الصَّيْدِ؟ وَلَوْ صَحَّ قِيَاسٌ يَوْمًا مَا لَكَانَ هَذَا أَصَحَّ قِيَاسٍ فِي الْعَالَمِ. وَالْعَجَبُ مِنْ قَوْلِ مَالِكٍ: إنِّي لَأَرَاهُ عَظِيمًا أَنْ يُعْمَدَ إلَى رِزْقٍ مِنْ رِزْقِ اللَّهِ فَيُهْرَقَ مِنْ أَجْلِ كَلْبٍ وَلَغَ فِيهِ وَلَمْ يَقُلْ هَهُنَا: إنِّي لَأَرَاهُ عَظِيمًا أَنْ يُعْمَدَ إلَى رِزْقٍ مِنْ رِزْقِ اللَّهِ فَيُضَيَّعَ وَيُفْسَدَ لِأَجْلِ أَنْ لَمْ يَقْدِرْ عَلَى لَبَّتِهِ، وَلَا عَلَى حَلْقِهِ؛ فَلَوْ عُكِسَ كَلَامُهُ لَأَصَابَ؛ بَلْ الْعَظِيمُ كُلُّ الْعَظِيمِ هُوَ أَنْ يَقُولَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا وَلَغَ الْكَلْبُ فِي إنَاءِ أَحَدِكُمْ فَلْيُرِقْهُ» فَيَقُولُ قَائِلٌ بِرَأْيِهِ: لَا يُرَاقُ، وَأَنْ يَنْهَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ فَيُضَيَّعُ الْبَعِيرُ، وَالْبَقَرَةُ، وَالشَّاةُ، وَالدَّجَاجَةُ، وَنَحْنُ قَادِرُونَ عَلَى تَذْكِيَتِهَا مِنْ أَجْلِ عَجْزِنَا عَنْ أَنْ تَكُونَ التَّذْكِيَةُ فِي الْحَلْقِ وَاللَّبَّةِ؛ فَهَذَا هُوَ الْعَظِيمُ حَقًّا؟ قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ عَزَّ وَجَلَّ: {إلا مَا ذَكَّيْتُمْ} [المائدة: ٣] . وَقَالَ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إلا وُسْعَهَا} [البقرة: ٢٨٦] فَصَحَّ أَنَّ التَّذْكِيَةَ كَيْفَمَا قَدَرْنَا لَا نُكَلَّفُ مِنْهَا مَا لَيْسَ فِي وُسْعِنَا -: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُوسَى بْنُ إسْمَاعِيلَ نا عَوَانَةُ عَنْ سَعِيدِ بْنِ مَسْرُوقٍ عَنْ عَبَايَةَ بْنِ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ عَنْ جَدِّهِ «رَافِعِ بْنِ خَدِيجٍ قَالَ: كُنَّا مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ الْخَبَرَ وَفِيهِ فَنَدَّ بَعِيرٌ وَكَانَ فِي الْقَوْمِ خَيْلٌ يَسِيرَةٌ فَطَلَبُوهُ فَأَعْيَاهُمْ، فَأَهْوَى إلَيْهِ رَجُلٌ بِسَهْمٍ فَحَبَسَهُ اللَّهُ - عَزَّ وَجَلَّ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ لِهَذِهِ الْبَهَائِمِ أَوَابِدَ كَأَوَابِدِ الْوَحْشِ فَمَا نَدَّ عَلَيْكُمْ مِنْهَا فَاصْنَعُوا بِهِ هَكَذَا» . وَمِنْ طَرِيقِ مُسْلِمٍ نا ابْنُ أَبِي عُمَرَ نا سُفْيَانُ بْنُ عُيَيْنَةَ حَدَّثَنِي عُمَرُ بْنُ سَعِيدِ بْنِ مَسْرُوقٍ عَنْ أَبِيهِ عَنْ عَبَايَةَ بْنِ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ عَنْ جَدِّهِ «رَافِعِ بْنِ خَدِيجٍ أَنَّهُمْ كَانُوا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَنَدَّ عَلَيْنَا بَعِيرٌ فَرَمَيْنَاهُ بِالنَّبْلِ حَتَّى وَهَصْنَاهُ» وَذَكَرَ الْحَدِيثَ. قَالَ عَلِيٌّ: الْوَهْصُ الْكَسْرُ وَالْإِسْقَاطُ إلَى

and blessings of Allah be upon him—when a camel escaped from us. We shot it with arrows until we brought it down." He mentioned the narration.

ʿAlī said: "Al-Wahṣ means breaking and felling to the ground. A camel does not reach this state unless it is beyond capture. The Prophet—peace and blessings of Allah be upon him—permitted shooting it with arrows. The customary outcome of such shooting is death, and this constitutes his authorization for their valid slaughter by arrow."

ʿAlī said: "Here is a narration they would have transgressed in applying had they found its like: As narrated through ʿAbd al-Raḥmān ibn Mahdī from Ḥammād ibn Salama from Abū al-ʿAshrāʾ from his father: I said, 'O Messenger of Allah, is valid slaughter only in the throat and chest?' He replied: 'Were you to stab its thigh, it would suffice you.'"

Abū Muḥammad said: "Abū al-ʿAshrāʾ—some say his name is Usāma ibn Mālik ibn Qaḥṭam, others ʿUṭārid ibn Barz. The authentic report we cited earlier suffices. This exemplifies their disregard for the apparent meaning of the Quran, the Sunnah, the Companions' practice, the majority of scholars, and analogical reasoning. Success comes solely from Allah, the Exalted."[7]

L17090 **A legal issue regarding the permissibility of ritual slaughter to make lawful a part severed from livestock while alive, which subsequently becomes fully detached from it.**

L17091 1050 - Issue: Any part severed from an animal while it is alive or before the completion of its ritual slaughter, and which becomes separated from it, is considered carrion that is unlawful to consume. If the ritual slaughter is completed after severing that part, the animal becomes permissible to eat while the severed part remains unlawful. There is no disagreement on this ruling, for the severed part had separated from the animal while its consumption was prohibited. Thus, the subsequent slaughter does not apply to it, as it was severed from the animal when the slaughter had not yet been completed. - 1051

L17092–17094 Issue: If a part is severed from an animal after the completion of ritual

[7] **Qur'an references (L17087):** Qur'an 5:3 (Al-Ma'idah); Qur'an 2:286 (Al-Baqarah).

الْأَرْضِ وَلَا يَبْلُغُ الْبَعِيرُ هَذَا الْأَمْرَ إِلَّا وَهُوَ مَنْفَذُ الْمَقَاتِلِ، وَقَدْ أُذِنَ - عَلَيْهِ السَّلَامُ - فِي رَمْيِهِ بِالنَّبْلِ، وَالْمَعْهُودُ مِنْهَا الْمَوْتُ بِإِصَابَتِهَا وَهَذَا إِذْنٌ مِنْهُ - عَلَيْهِ السَّلَامُ - فِي ذَكَاتِهَا بِالرَّمْيِ. قَالَ عَلِيٌّ: وَهَهُنَا خَبَرٌ لَوْ ظَفِرُوا بِمِثْلِهِ لَطَغَوْا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ «أَبِي الْعَشْرَاءِ عَنْ أَبِيهِ قُلْتُ يَا رَسُولَ اللَّهِ أَمَا تَكُونُ الذَّكَاةُ إِلَّا فِي الْحَلْقِ وَاللَّبَّةِ؟ قَالَ: لَوْ طُعِنْتَ فِي فَخِذِهَا لَأَجْزَأَكَ» . قَالَ أَبُو مُحَمَّدٍ: أَبُو الْعَشْرَاءِ قِيلَ: اسْمُهُ أُسَامَةُ بْنُ مَالِكِ بْنِ قَهْطَمٍ، وَقِيلَ: عُطَارِدُ بْنُ بَرْزٍ وَفِي الصَّحِيحِ الَّذِي قَدَّمْنَا كِفَايَةٌ. وَهَذَا مِمَّا تَرَكُوا فِيهِ ظَاهِرَ الْقُرْآنِ، وَالسُّنَنِ، وَالصَّحَابَةِ، وَجُمْهُورَ الْعُلَمَاءِ، وَالْقِيَاسَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَذْكِيَةَ مَا قُطِعَ مِنْ الْبَهِيمَةِ وَهِيَ حَيَّةٌ فَبَانَ عَنْهَا]

١٠٥٠ - مَسْأَلَةٌ: وَمَا قُطِعَ مِنْ الْبَهِيمَةِ - وَهِيَ حَيَّةٌ - أَوْ قَبْلَ تَمَامِ تَذْكِيَتِهَا فَبَانَ عَنْهَا فَهُوَ مَيْتَةٌ لَا يَحِلُّ أَكْلُهُ، فَإِنْ تَمَّتْ الذَّكَاةُ بَعْدَ قَطْعِ ذَلِكَ الشَّيْءِ أُكِلَتْ الْبَهِيمَةُ وَلَمْ تُؤْكَلْ تِلْكَ الْقِطْعَةُ - وَهَذَا مَا لَا خِلَافَ فِيهِ لِأَنَّهَا زَايَلَتْ الْبَهِيمَةَ وَهِيَ حَرَامٌ أَكْلُهَا فَلَا تَقَعُ عَلَيْهَا ذَكَاةٌ كَانَتْ بَعْدَ مُفَارَقَتِهَا لَمَّا قُطِعَتْ مِنْهُ. ١٠٥١ -

slaughter but before its death, it is impermissible to eat it as long as the animal is alive. Once it dies, the entire animal becomes permissible, and the severed part also becomes permissible. This is based on the statement of Allah, the Exalted: “When their sides have ceased [moving], then eat from them” [Al-Ḥajj: 36]. Thus, Allah, the Exalted, has not permitted eating anything from them except after that has occurred. The term *al-janb*—which linguistically denotes “death”—refers to the animal. If it dies after valid slaughter, the ritual slaughter applies to its entire body once slaughtered. Thus, any part severed from it is lawfully slaughtered. When the animal itself becomes lawful, all its parts become lawful. Success is attained solely through Allah, the Exalted.[8]

L17095 There is no disagreement among anyone that the ruling concerning the sacrificial camel in this matter follows the same ruling as all other ritually slaughtered animals. We have mentioned ’Umar’s statement: “Keep the soul undisturbed until it expires,” and none of the Companions opposed him in this.

L17096 **Issue: Lawful slaughter is permissible with anything, provided it cuts in the manner of a knife’s severing.**

L17097 Issue 1052: Slaughtering is valid by throat-cutting, jugular severance, stabbing, or striking with any implement that causes a knife-like incision or spear-like penetration. This applies equally to all such methods: sharpened sticks, sharp stones, sharp reeds, or any object except unlawfully acquired tools, teeth, claws, or instruments crafted from extracted teeth or claws. Excluded also are pig bones, domestic donkey bones, bones of predatory quadrupeds—except hyenas—or birds, or human bones. Slaughtering with any of these renders the meat unlawful, as it is carrion. Slaughtering is permissible with bones from carrion animals and all other bones except the aforementioned. It is valid with Ethiopian blades and what is slaughtered by a Zanjī, Ethiopian, or any Muslim slaughterer, for it is lawful. If an arrow, spear, or knife is fashioned from an elephant’s molar, meat slaughtered with it becomes unlawful as it constitutes a tooth. However, tools made from other elephant bones permit lawful slaughter and shooting with them. Abu

مَسْأَلَةٌ: وَمَا قُطِعَ مِنْهَا بَعْدَ تَمَامِ التَّذْكِيَةِ وَقَبْلَ مَوْتِهَا لَمْ يَحِلَّ أَكْلُهُ مَا دَامَتْ الْبَهِيمَةُ حَيَّةً فَإِذَا مَاتَتْ حَلَّتْ هِيَ وَحَلَّتْ الْقِطْعَةُ أَيْضًا لِقَوْلِ اللَّهِ تَعَالَى: {فَإِذَا وَجَبَتْ جُنُوبُهَا فَكُلُوا مِنْهَا} [الحج: ٣٦] فَلَمْ يُبِحْ اللَّهُ تَعَالَى أَكْلَ شَيْءٍ مِنْهَا إلَّا بَعْدَ وُجُوبِ الْجَنْبِ - وَهُوَ فِي اللُّغَةِ الْمَوْتُ - فَإِذَا مَاتَتْ فَالذَّكَاةُ وَاقِعَةٌ عَلَى جَمِيعِهَا إذْ ذُكِّيَتْ، فَالَّذِي قُطِعَ مِنْهَا مُذَكًّى فَإِذَا حَلَّتْ هِيَ حَلَّتْ أَجْزَاؤُهَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَلَا خِلَافَ بَيْنَ أَحَدٍ فِي أَنَّ حُكْمَ الْبَدَنِ فِي ذَلِكَ حُكْمُ سَائِرِ مَا يُذَكَّى، وَقَدْ ذَكَرْنَا قَوْلَ عُمَرَ: أَقِرُّوا الْأَنْفُسَ حَتَّى تَزْهَقَ، وَلَا مُخَالِفَ لَهُ فِي ذَلِكَ مِنْ الصَّحَابَةِ.

[مَسْأَلَةٌ التَّذْكِيَةُ جَائِزَةٌ بِكُلِّ شَيْءٍ إذَا قَطَعَ قِطْعَةَ السِّكِّينِ]

١٠٥٢ - مَسْأَلَةٌ: وَالتَّذْكِيَةُ مِنْ الذَّبْحِ، وَالنَّحْرِ، وَالطَّعْنِ، وَالضَّرْبِ جَائِزَةٌ بِكُلِّ شَيْءٍ إذَا قَطَعَ قِطْعَةَ السِّكِّينِ أَوْ نَفَذَ نَفَاذَ الرُّمْحِ سَوَاءٌ فِي ذَلِكَ كُلِّهِ: الْعُودُ الْمُحَدَّدُ، وَالْحَجَرُ الْحَادُّ، وَالْقَصَبُ الْحَادُّ وَكُلُّ شَيْءٍ حَاشَا آلَةٍ أُخِذَتْ بِغَيْرِ حَقٍّ، وَحَاشَا السِّنِّ، وَالظُّفْرِ، وَمَا عُمِلَ مِنْ سِنٍّ، أَوْ مِنْ ظُفْرٍ مَنْزُوعَيْنِ وَإِلَّا عَظْمُ خِنْزِيرٍ، أَوْ عَظْمُ حِمَارٍ أَهْلِيٍّ، أَوْ عَظْمُ سَبُعٍ مِنْ ذَوَاتِ الْأَرْبَعِ - أَوْ الطَّيْرِ حَاشَا الضِّبَاعَ - أَوْ عَظْمِ إنْسَانٍ فَلَا يَكُونُ حَلَالًا مَا ذُبِحَ أَوْ نُحِرَ بِشَيْءٍ مِمَّا ذَكَرْنَا بَلْ هُوَ مَيْتَةٌ حَرَامٌ. وَالتَّذْكِيَةُ جَائِزَةٌ بِعَظْمِ الْمَيْتَةِ وَبِكُلِّ عَظْمٍ حَاشَا مَا ذَكَرْنَا، وَهِيَ جَائِزَةٌ بِمُدَى الْحَبَشَةِ وَمَا ذَكَّاهُ الزِّنْجِيُّ، وَالْحَبَشِيُّ، وَكُلُّ مُسْلِمٍ فَهُوَ حَلَالٌ. فَلَوْ عُمِلَ مِنْ ضِرْسِ الْفِيلِ سَهْمٌ، أَوْ رُمْحٌ، أَوْ سِكِّينٌ: لَمْ يَحِلَّ

[8] **Qur’an references (L17092):** Qur’an 22:36 (Al-Hajj).

Hanifa and Malik said: All such slaughter is lawful except that performed with teeth before extraction from the mouth or claws before removal from the limb, as this constitutes strangulation rather than valid slaughter. Al-Shāfiʿī said: All slaughter with the aforementioned tools is lawful except that performed with any claws or bones—whether extracted or not—rendering the meat unlawful. This is also the view of Al-Layth ibn Saʿd.

أَكْلُ مَا ذُبِحَ أَوْ نُحِرَ بِهِ، لِأَنَّهُ سِنٌّ. فَلَوْ عُمِلَتْ مِنْ سَائِرِ عِظَامِهِ هَذِهِ الْآلَاتُ حَلَّ الذَّبْحُ، وَالنَّحْرُ، وَالرَّمْيُ بِهَا. وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: التَّذْكِيَةُ بِكُلِّ ذَلِكَ حَلَالٌ حَاشَا السِّنَّ قَبْلَ أَنْ يُنْزَعَ مِنَ الْفَمِ، وَحَاشَا الظُّفْرَ قَبْلَ أَنْ يُنْزَعَ مِنَ الْيَدِ، فَإِنَّهُ لَا يُؤْكَلُ مَا ذُبِحَ بِهِمَا لِأَنَّهُ خَنْقٌ لَا ذَبْحٌ. وَقَالَ الشَّافِعِيُّ: كُلُّ مَا ذُكِّيَ بِكُلِّ مَا ذَكَرْنَا فَحَلَالٌ أَكْلُهُ حَاشَا مَا ذُكِّيَ بِشَيْءٍ مِنَ الْأَظْفَارِ كُلِّهَا، وَالْعِظَامِ كُلِّهَا، مَنْزُوعٍ كُلِّ ذَلِكَ أَوْ غَيْرِ مَنْزُوعٍ، فَلَا يُؤْكَلُ وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ.

L17098–17101 Abū Sulaymān said: This is identical to al-Shāfiʿī's view—identical—except he stated: One may not eat what is slaughtered by throat-slitting (dhabḥ) or jugular piercing (nahr), or struck with an unlawfully acquired instrument. As for the opinion of Abū Ḥanīfah and Mālik, we know of no precedent for it among earlier scholars, nor any evidence whatsoever—neither from the Qurʾān, nor the Sunnah, nor a weak narration, nor analogy. Rather, it contradicts the Sunnah as we shall demonstrate hereafter, God willing. Thus this opinion is entirely invalidated, leaving only our position alongside those of al-Shāfiʿī, al-Layth, and Abū Sulaymān. We found in the narration transmitted through Sufyān al-Thawrī: My father narrated from ʿAbāyah ibn Rifāʿah ibn Rāfiʿ ibn Khadīj from his grandfather Rāfiʿ ibn Khadīj: I said, "O Messenger of God, we will confront the enemy tomorrow and have no knives." The Messenger of God—peace and blessings be upon him—said: "Whatever causes blood to flow with God's name invoked over it, you may eat—except what is slaughtered with a tooth or claw. Let me clarify: the tooth is bone, and the claw is like Ethiopian-style blades." We previously cited this in our opening discussion on slaughtering methods with its chain.

We adhere strictly to his prohibition—peace be upon him—without extension, forbidding only what is slaughtered or killed using teeth or claws. We do not consider bones inherently prohibitive except where the Messenger of God—peace and blessings be upon him—specified the cause, namely teeth and claws exclusively. We prohibit slaughtering with bones from pigs, domestic donkeys, quadruped predators, or birds based on God's decree regard-

وَقَالَ أَبُو سُلَيْمَانَ: كَقَوْلِ الشَّافِعِيِّ سَوَاءً سَوَاءً إِلَّا أَنَّهُ قَالَ: لَا يُؤْكَلُ مَا ذُبِحَ أَوْ نُحِرَ أَوْ رُمِيَ بِآلَةٍ مَأْخُوذَةٍ بِغَيْرِ حَقٍّ - فَأَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ فَلَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُمَا وَلَا نَعْلَمُ لَهُمَا فِيهِ سَلَفًا مِنْ أَهْلِ الْعِلْمِ، وَلَا حُجَّةَ أَصْلًا لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قِيَاسٍ؛ بَلْ هُوَ خِلَافُ السُّنَّةِ عَلَى مَا نُورِدُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى - فَسَقَطَ هَذَا الْقَوْلُ جُمْلَةً، وَبَقِيَ قَوْلُنَا، وَقَوْلُ الشَّافِعِيِّ، وَاللَّيْثِ، وَأَبِي سُلَيْمَانَ -: فَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ حَدَّثَنِي أَبِي عَنْ عَبَايَةَ بْنِ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ عَنْ جَدِّهِ «رَافِعِ بْنِ خَدِيجٍ قُلْتُ يَا رَسُولَ اللَّهِ إِنَّا لَاقُو الْعَدُوِّ غَدًا وَلَيْسَ مَعَنَا مُدًى فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: مَا أَنْهَرَ الدَّمَ، وَذُكِرَ اسْمُ اللَّهِ عَلَيْهِ فَكُلْ لَيْسَ السِّنَّ وَالظُّفُرَ، وَسَأُحَدِّثُكَ، أَمَّا السِّنُّ فَعَظْمٌ، وَأَمَّا الظُّفُرُ فَمُدَى الْحَبَشَةِ» . وَقَدْ ذَكَرْنَاهُ فِي أَوَّلِ كَلَامِنَا فِي التَّذْكِيَةِ بِإِسْنَادِهِ. فَأَمَّا نَحْنُ فَتَعَلَّقْنَا بِنَهْيِهِ - عَلَيْهِ السَّلَامُ - وَلَمْ نَتَعَدَّهُ وَلَمْ نُحَرِّمْ إِلَّا مَا ذُبِحَ أَوْ رُمِيَ بِسِنٍّ أَوْ ظُفُرٍ فَقَطْ، وَلَمْ نَجْعَلْ الْعَظِيمَةَ سَبَبًا لِلْمَنْعِ مِنَ الذَّكَاةِ إِلَّا حَيْثُ جَعَلَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَبَبًا لِذَلِكَ، وَهُوَ السِّنُّ، وَالظُّفُرُ فَقَطْ. وَإِنَّمَا مَنَعْنَا مِنَ التَّذْكِيَةِ بِعِظَامِ الْخِنْزِيرِ، وَالْحِمَارِ الْأَهْلِيِّ، أَوْ

ing pigs: {It is indeed an abomination} (6:145), and the Prophet's—peace and blessings be upon him—declaration concerning domestic donkeys: "They are abominations." All such items are abominations requiring avoidance. Their possession is unlawful except where explicitly permitted—such as owning, riding, utilizing, selling, or purchasing donkeys specifically.

We forbid slaughtering with bones of quadruped predators and birds due to the Prophet's—peace and blessings be upon him—general prohibition as previously detailed. We permit only what textual evidence allows regarding their use for hunting or acquisition for that purpose—otherwise, they remain forbidden, and even a portion of what is forbidden remains forbidden. Concerning human bones, their burial is obligatory regardless of the deceased's faith. We permit slaughtering using carrion bones based on the Prophet's—peace and blessings be upon him—ruling: "Only consumption is prohibited regarding carrion," while its sale and use of its fat for oil remain forbidden—nothing beyond these restrictions applies. Al-Shāfiʿī and our scholars argued using the Prophet's—peace and blessings be upon him—statement "It is bone," establishing the use of bone as the legal cause. Regarding the prohibition of slaughtering [an animal] if a bone or any bone whatsoever is used: Abu Muhammad said: This is an error because it transgresses the boundaries of Allah, the Most High, and the boundaries of His Messenger—peace be upon him—for if the Prophet—peace be upon him—had intended that, he would not have failed to say, "Neither bone nor claw," given that he—peace be upon him—was granted the concise and comprehensive speech and was commanded to clarify. Had he—peace be upon him—intended to prohibit slaughtering with bone, he would not have neglected to state it explicitly, nor resorted to obfuscation and meaningless repetition by restricting the prohibition to teeth alone. This constitutes confusion and complication, not clarification. Both we and they are certain that he—peace be upon him—ruled the prohibition of slaughtering with teeth stems solely from their being bones, and we are certain that had he—peace be upon him—intended all bones, he would not have remained silent. Thus, they have added to his ruling—peace be upon him—what he did not decree. Moreover, they contradicted themselves in this very report, for he—peace be upon him—

سِبَاعِ ذَوَاتِ الْأَرْبَعِ، أَوْ الطَّيْرِ لِقَوْلِهِ تَعَالَى فِي الْخِنْزِيرِ: {فَإِنَّهُ رِجْسٌ} [الأنعام: ١٤٥] «وَلِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْحُمُرِ الْأَهْلِيَّةِ فَإِنَّهَا رِجْسٌ» فَهِيَ كُلُّهَا رِجْسٌ، وَالرِّجْسُ وَاجِبٌ اجْتِنَابُهُ، وَلَا يَحِلُّ إمْسَاكُهَا إلَّا حَيْثُ أَبَاحَهَا نَصٌّ، وَلَيْسَ ذَلِكَ إلَّا مِلْكُهَا وَرُكُوبُهَا وَاسْتِخْدَامُهَا وَبَيْعُهَا وَابْتِيَاعُهَا يَعْنِي الْحُمُرَ فَقَطْ. وَمَنَعْنَا مِنْ التَّذْكِيَةِ بِعِظَامِ سِبَاعِ ذَوَاتِ الْأَرْبَعِ، وَالطَّيْرِ لِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهَا جُمْلَةً عَلَى مَا ذَكَرْنَا قَبْلُ فَلَمْ نُحِلَّ مِنْهَا إلَّا مَا أَحَلَّهُ النَّصُّ مِنْ تَمَلُّكِهَا لِلصَّيْدِ بِهَا وَابْتِيَاعِهَا لِذَلِكَ فَقَطْ وَإِلَّا فَهِيَ حَرَامٌ وَبَعْضُ الْحَرَامِ حَرَامٌ. وَأَمَّا عَظْمُ الْإِنْسَانِ فَلِأَنَّ مُوَارَاتَهُ فَرْضٌ كَافِرًا كَانَ أَوْ مُؤْمِنًا. وَأَبَحْنَا التَّذْكِيَةَ بِعِظَامِ الْمَيْتَةِ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا حُرِّمَ مِنْ الْمَيْتَةِ أَكْلُهَا» وَحُرِّمَ - عَلَيْهِ السَّلَامُ - بَيْعُهَا وَالدُّهْنُ بِشَحْمِهَا، فَلَا يَحْرُمُ مِنْ الْمَيْتَةِ شَيْءٌ إلَّا ذَلِكَ وَلَا مَزِيدَ. وَاحْتَجَّ الشَّافِعِيُّ وَأَصْحَابُنَا «بِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنَّهُ عَظْمٌ» فَجَعَلَ الْعَظْمِيَّةَ عِلَّةً لِلْمَنْعِ مِنْ التَّذْكِيَةِ حَيْثُ كَانَ الْعَظْمُ أَوْ أَيُّ عَظْمٍ كَانَ -: قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ لِأَنَّهُ تَعَدٍّ لِحُدُودِ اللَّهِ تَعَالَى وَحُدُودِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَوْ أَرَادَ ذَلِكَ لَمَا عَجَزَ عَنْ أَنْ يَقُولَ: لَيْسَ الْعَظْمُ وَالظُّفْرُ، وَهُوَ - عَلَيْهِ السَّلَامُ - قَدْ أُوتِيَ جَوَامِعَ الْكَلِمِ وَأُمِرَ - عَلَيْهِ السَّلَامُ - بِالْبَيَانِ. فَلَوْ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَرَادَ تَحْرِيمَ الذَّكَاةِ بِالْعَظْمِ لَمَا تَرَكَ أَنْ يَقُولَهُ وَلَا اسْتَعْمَلَ التَّحْلِيقَ وَالْإِكْثَارَ بِلَا مَعْنًى فِي الِاقْتِصَارِ عَلَى ذِكْرِ السِّنِّ، فَهَذَا هُوَ التَّلْبِيسُ وَالْإِشْكَالُ لَا الْبَيَانُ، وَنَحْنُ وَهُمْ عَلَى يَقِينٍ مِنْ أَنَّهُ - عَلَيْهِ السَّلَامُ - حَكَمَ بِأَنَّ الْمَنْعَ مِنْ التَّذْكِيَةِ بِالسِّنِّ إنَّمَا هُوَ مِنْ أَجْلِ كَوْنِهِ عَظْمًا، وَنَحْنُ مُوقِنُونَ بِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَوْ أَرَادَ كُلَّ عَظْمٍ لَمَا سَكَتَ عَنْ ذَلِكَ فَقَدْ زَادُوا فِي حُكْمِهِ - عَلَيْهِ السَّلَامُ - مَا لَمْ

attributed the reason for prohibiting slaughtering with claws to their being the knives of the Ethiopians. This obliges them to apply their principle universally, prohibiting slaughtering with Ethiopian knives regardless of their material, or else they contradict themselves. If they claim consensus here, they lie, asserting what they have no knowledge of. We have received a narration through Abu Bakr ibn Abi Shaybah, from ʻAbd al-Aʻlā, from Maʻmar, from ʻAbdullāh ibn Ṭāwūs, from his father, that he deemed the slaughter of the Zanj reprehensible. As for us, we do not consider the use of Ethiopian knives for slaughtering a reason to prohibit consumption except for claws alone, as designated by the Messenger of Allah—peace be upon him. Nor do we deem the fact of being a bone a reason to prohibit consuming what is slaughtered with such material except for teeth alone, as established by the Messenger of Allah—peace be upon him. This is the height of clarity and lucidity—and success is from Allah, the Most High.[9]

L17102–17104 It has been reported that a statement similar to theirs was transmitted from some of the early predecessors: as narrated through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from al-Mughīrah from Ibrāhīm, who said: "Slaughtering is permissible with anything except four: the fang, the nail, the bone, and the horn." And through the chain of ʿAbd al-Razzāq from Hishām ibn Ḥassān from al-Ḥasan, who said: "Anything that slits the jugular veins and spills the blood, except the nail, the fang, and the bone." A statement similar to our opinion has also been reported from some of the early predecessors... As narrated through the chain of Saʿīd ibn Manṣūr: Abū Muʿāwiyah reported to us, al-Aʿmash reported to us from Ibrāhīm, who said: "If it does not slit the jugular veins, then all except the tooth and nail." And through the chain of Saʿīd ibn Manṣūr: Khadīj ibn Muʿāwiyah reported to us from Abū Isḥāq al-Sabīʿī, who said: "The canine tooth and nail were disliked."

L17105 Abu Muhammad said: The Hanafis and Malikis have opposed this Sunnah with their opinions. Among all marvels, none is more astounding than their advancement of false, corrupt, and fabricated rationales—such as rational-

[9] **Qur'an references (L17099):** Qur'an 6:145 (Al-An'am).

يَحْكُمْ بِهِ. وَأَيْضًا فَقَدْ تَنَاقَضُوا فِي هَذَا الْخَبَرِ نَفْسِهِ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - جَعَلَ السَّبَبَ فِي مَنْعِ التَّذْكِيَةِ بِالظُّفْرِ إنَّمَا هُوَ كَوْنُهُ مُدَى الْحَبَشَةِ فَيَلْزَمُهُمْ أَنْ يَطْرُدُوا أَصْلَهُمْ فَيَمْنَعُوا التَّذْكِيَةَ بِمُدَى الْحَبَشَةِ مِنْ أَيِّ شَيْءٍ كَانَتْ وَإِلَّا فَقَدْ تَنَاقَضُوا فَإِنْ ادَّعَوْا هَهُنَا إجْمَاعًا كَانُوا كَاذِبِينَ قَائِلِينَ مَا لَا عِلْمَ لَهُمْ بِهِ. وَقَدْ رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدُ الْأَعْلَى عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ كَرِهَ ذَبِيحَةَ الزِّنْجِيِّ. وَأَمَّا نَحْنُ فَلَا نَجْعَلُ كَوْنَ مَا يُذَكَّى بِهِ مِنْ مُدَى الْحَبَشَةِ سَبَبًا لِتَحْرِيمِ أَكْلِهِ إلَّا فِي الظُّفْرِ وَحْدَهُ، حَيْثُ جَعَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا نَجْعَلُ الْعَظْمِيَّةَ سَبَبًا لِتَحْرِيمِ أَكْلِ مَا ذُكِّيَ بِمَا هِيَ فِيهِ إلَّا فِي السِّنِّ وَحْدَهُ، حَيْثُ جَعَلَهُ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ -، وَهَذَا فِي غَايَةِ الْبَيَانِ وَالْوُضُوحِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَدْ رُوِيَ نَحْوُ قَوْلِهِمْ عَنْ بَعْضِ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ قَالَ: يُذْبَحُ بِكُلِّ شَيْءٍ غَيْرِ أَرْبَعَةِ السِّنِّ، وَالظُّفْرِ، وَالْعَظْمِ، وَالْقَرْنِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ الْحَسَنِ قَالَ: كُلُّ مَا فَرَى الْأَوْدَاجَ وَأَهْرَاقَ الدَّمَ، إلَّا الظُّفْرَ، وَالنَّابَ، وَالْعَظْمَ. وَرُوِيَ نَحْوُ قَوْلِنَا عَنْ بَعْضِ السَّلَفِ أَيْضًا -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ نا الْأَعْمَشُ عَنْ إبْرَاهِيمَ قَالَ: مَا فَرَى الْأَوْدَاجَ فَكُلُّ إلَّا السِّنَّ، وَالظُّفْرَ. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا خَدِيجُ بْنُ مُعَاوِيَةَ عَنْ أَبِي إسْحَاقَ السَّبِيعِيِّ قَالَ: كَانَ يُكْرَهُ النَّابُ وَالظُّفْرُ.

قَالَ أَبُو مُحَمَّدٍ: وَخَالَفَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ هَذِهِ السُّنَّةَ بِآرَائِهِمْ، وَلَيْسَ فِي الْعَجَبِ أَعْجَبُ مِنْ إخْرَاجِهِمْ الْعِلَلَ الْكَاذِبَةَ الْفَاسِدَةَ الْمُفْتَرَاةَ: مِنْ مِثْلِ تَعْلِيلِ الرِّبَا بِالِادِّخَارِ وَالْأَكْلِ، وَتَعْلِيلِ مِقْدَارِ الصَّدَاقِ بِأَنَّهُ عِوَضُ مَا يُسْتَبَاحُ بِهِ الْعُضْوُ، وَسَائِرُ تِلْكَ الْعِلَلِ

izing usury based on hoarding and consumption, justifying the prescribed dowry amount as compensation for legitimizing access to bodily organs, and other similarly absurd, lame, and invented rationales. Then they approach what the Prophet—peace and blessings of Allah be upon him—established as the cause for prohibiting the consumption of what is slaughtered with certain tools, when he said, "For it is a bone, and it is the blade of the Ethiopians," yet they disregard these as meaningless speech, instead contriving a false and ludicrous rationale of their own: slaughter by suffocation. We ask them: If someone grows their nail excessively, sharpens it, and thins it until they slaughter a small bird with it—the nail being honed like a knife—is it permissible to eat or not? If they say no, they abandon their rationale of suffocation. If they say yes, they contradict their ruling on the detached nail. If they cite the narration we transmitted from Shu'bah, from Simak ibn Harb, from Murayy ibn Qatariyy, from 'Adi ibn Hatim, from the Prophet—peace and blessings of Allah be upon him—who said, "Let the blood flow with whatever you wish, and mention Allah's name," we respond: This is a rejected narration, for it comes through Simak ibn Harb—who accepts prompting—from Murayy ibn Qatariyy, who is unknown. Even if it were authentic, the narration of Rafi' ibn Khadij would constitute an additional specification to it, necessitating its incorporation so that both narrations are applied together.

السَّخِيفَةِ الْبَارِدَةِ الْمَكْذُوبَةِ، ثُمَّ يَأْتُونَ إِلَى مَا جَعَلَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَبَبًا لِتَحْرِيمِ أَكْلِ مَا ذُكِّيَ بِهِ بِقَوْلِهِ فَإِنَّهُ عَظْمٌ وَإِنَّهُ مُدَى الْحَبَشَةِ وَلَا يُعَلِّلُونَ بِهِمَا بَلْ يَجْعَلُونَهُ لَغْوًا مِنْ الْكَلَامِ وَيُخْرِجُونَ مِنْ أَنْفُسِهِمْ عِلَّةً كَاذِبَةً سَخِيفَةً وَهِيَ الْخَنْقُ. وَنَسْأَلُهُمْ عَمَّنْ أَطَالَ ظُفْرَهُ جِدًّا وَشَحَذَهُ وَرَقَّقَهُ حَتَّى ذَبَحَ بِهِ عُصْفُورًا صَغِيرًا فَبُرِيَ كَمَا تُبْرَى السِّكِّينُ أَيُؤْكَلُ أَمْ لَا؟ فَإِنْ قَالُوا: لَا، تَرَكُوا عِلَّتَهُمْ فِي الْخَنْقِ. وَإِنْ قَالُوا: يُؤْكَلُ، تَرَكُوا قَوْلَهُمْ فِي الظُّفْرِ الْمَنْزُوعِ. فَإِنْ ذَكَرُوا مَا رُوِّينَاهُ عَنْ شُعْبَةَ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ مُرَيٍّ بْنِ قَطَرِيٍّ عَنْ عَدِيِّ بْنِ حَاتِمٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَنْهِرْ الدَّمَ بِمَا شِئْتَ وَاذْكُرْ اسْمَ اللَّهِ» . قُلْنَا: هَذَا خَبَرٌ سَاقِطٌ، لِأَنَّهُ عَنْ سِمَاكِ بْنِ حَرْبٍ وَهُوَ يَقْبَلُ التَّلْقِينَ عَنْ مُرَيِّ بْنِ قَطَرِيٍّ - وَهُوَ مَجْهُولٌ - ثُمَّ لَوْ صَحَّ لَكَانَ خَبَرُ رَافِعِ بْنِ خَدِيجٍ زَائِدًا عَلَيْهِ تَخْصِيصًا يَلْزَمُ إضَافَتُهُ إلَيْهِ وَلَا بُدَّ لِيَسْتَعْمِلَ الْخَبَرَيْنِ مَعًا.

L17106 If they cite what has been narrated to us through Ma'mar's chain from 'Awf, from Abū Rajā' al-'Uṭāridī, who said: "I asked Ibn 'Abbās about a rabbit I slaughtered with my fingernail." He replied: "Do not eat it, for it is strangled." In some narrations, Ibn 'Abbās said: "You only killed it by strangulation." This does not constitute valid proof for them for two reasons. The first is that no valid proof lies in the words of anyone other than the Messenger of Allah—peace and blessings be upon him. The second is that it serves as proof against them and contradicts their view, for Ibn 'Abbās did not stipulate it being removed or not removed.

فَإِنْ ذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ مَعْمَرٍ عَنْ عَوْفٍ عَنْ أَبِي رَجَاءٍ الْعُطَارِدِيِّ قَالَ: سَأَلْت ابْنَ عَبَّاسٍ عَنْ أَرْنَبٍ ذَبَحْتُهَا بِظُفْرِي؟ فَقَالَ: لَا تَأْكُلْهَا فَإِنَّهَا الْمُنْخَنِقَةُ، وَفِي بَعْضِ الرِّوَايَاتِ إنَّمَا قَتَلْتَهَا خَنْقًا، فَلَا حُجَّةَ لَهُمْ فِيهِ لِوَجْهَيْنِ -: أَحَدُهُمَا: أَنْ لَا حُجَّةَ فِيمَنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَالثَّانِي: أَنَّهُ حُجَّةٌ عَلَيْهِمْ وَخِلَافُ قَوْلِهِمْ؛ لِأَنَّ ابْنَ عَبَّاسٍ لَمْ يَشْتَرِطْهُ مَنْزُوعًا مِنْ غَيْرِ مَنْزُوعٍ.

L17107–17108 As for our prohibition from eating what is slaughtered, sacrificed, or hunted with a projectile using a tool seized unlawfully, this is due to Allah's statement: *"And do not consume one another's wealth wrongfully"* [Al-Baqarah

وَأَمَّا مَنْعُنَا مِنْ أَكْلِ مَا ذُبِحَ أَوْ نُحِرَ أَوْ رُمِيَ بِآلَةٍ مَأْخُوذَةٍ بِغَيْرِ حَقٍّ فَلِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] وَقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ

2:188], and the Messenger of Allah—peace and blessings be upon him—saying: *"Your blood and your wealth are inviolable to you."* There is no doubt that what is slaughtered, sacrificed, or hunted with a projectile using a tool seized unlawfully entails wrongful acquisition by the perpetrator. When this is established with certainty, it is wrongfully consumed, and this is forbidden by explicit textual ruling. Additionally, Islamic slaughter is an obligatory act commanded as obedience to Allah Almighty, while using a tool seized unlawfully in slaughtering, sacrificing, or hunting is a forbidden act of disobedience to Him. These are two certain, undisputed principles. Given this, it is pure falsehood and manifest deceit to claim that disobedience substitutes for obedience, or that one who disobeys Allah—failing to perform what He commanded—could be fulfilling what He commanded. And success comes only from Allah, the Most High.[10]

L17109 **Issue: If one incises deeply or pierces in the case of ritual slaughter (with a knife) or with an arrow (for hunting), but the penetration does not reach the depth achieved by a knife.**

L17110 1053. Issue: If an animal is pierced or slashed with a tool that does not penetrate fully like a knife or arrow, it is impermissible to eat what is killed thereby. Likewise, if slaughtered with a saw or sickle, due to the statement of Allah's Messenger—peace and blessings be upon him: "Allah has prescribed excellence in all matters. When you kill, execute properly, and when you slaughter, slaughter properly. Let each of you sharpen his blade and let him ease his slaughter." Therefore, one who slashes or slaughters with a worn-toothed instrument has neither slaughtered as commanded nor performed the ritual purification as ordained. Thus, it becomes carrion. It is astonishing that they prohibit consumption in this case because the slaughter was not conducted as prescribed nor the ritual purification fulfilled, but rather with a prohibited tool. Yet they permit eating what is slaughtered by nahr (throat-cutting for camels) or slaughtered with a prohibited tool acquired unjustly—

[10]**Qur'an references (L17108):** Qur'an 2:188 (Al-Baqarah).

عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» . وَلَا شَكَّ فِي أَنَّ مَا ذُبِحَ أَوْ نُحِرَ بِآلَةٍ مَأْخُوذَةٍ بِغَيْرِ حَقٍّ، فَبِالْبَاطِلِ تَوَلَّى ذَلِكَ مِنْهُ، وَإِذَا هُوَ كَذَلِكَ بِيَقِينٍ فَبِالْبَاطِلِ يُؤْكَلُ، وَهَذَا حَرَامٌ بِالنَّصِّ. وَأَيْضًا فَإِنَّ الذَّكَاةَ فِعْلٌ مُفْتَرَضٌ مَأْمُورٌ بِهِ طَاعَةً لِلَّهِ عَزَّ وَجَلَّ، وَاسْتِعْمَالُ الْمَأْخُوذَةِ بِغَيْرِ حَقٍّ فِي الذَّبْحِ، وَالنَّحْرِ، وَالرَّمْيِ: فِعْلٌ مُحَرَّمٌ مَعْصِيَةً لِلَّهِ تَعَالَى. هَذَانِ قَوْلَانِ مُتَيَقَّنَانِ بِلَا خِلَافٍ، فَإِذْ هُوَ كَذَلِكَ فَمِنْ الْبَاطِلِ الْبَحْتِ، وَالْكَذِبِ الظَّاهِرِ أَنْ تَنُوبَ الْمَعْصِيَةُ عَنْ الطَّاعَةِ وَأَنْ يَكُونَ مَنْ عَصَى اللَّهَ تَعَالَى وَلَمْ يَفْعَلْ مَا أَمَرَ بِهِ مُؤَدِّيًا لِمَا أُمِرَ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَا ثَرَدَ وَخَزَقَ وَلَمْ يَنْفُذْ نَفَاذَ السِّكِّينِ فِي التَّذْكِيَةِ وَالسَّهْمِ]

١٠٥٣ - مَسْأَلَةٌ: وَمَا ثَرَدَ وَخَزَقَ وَلَمْ يَنْفُذْ نَفَاذَ السِّكِّينِ، وَالسَّهْمِ: لَمْ يَحِلَّ أَكْلُ مَا قُتِلَ بِهِ، وَكَذَلِكَ مَا ذُبِحَ بِمِنْشَارٍ، أَوْ بِمِنْجَلٍ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ اللَّهَ كَتَبَ الْإِحْسَانَ عَلَى كُلِّ شَيْءٍ فَإِذَا قَتَلْتُمْ فَأَحْسِنُوا الْقِتْلَةَ، وَإِذَا ذَبَحْتُمْ فَأَحْسِنُوا الذِّبْحَ، وَلْيُحِدَّ أَحَدُكُمْ شَفْرَتَهُ وَلْيُرِحْ ذَبِيحَتَهُ» . فَالْمُثْرِدُ وَالذَّابِحُ بِشَيْءٍ مُضْرِسٍ لَمْ يَذْبَحْ كَمَا أُمِرَ وَلَا ذَكَّى كَمَا أُمِرَ، فَهِيَ مَيْتَةٌ وَالْعَجَبُ مِنْ مَنْعِهِمْ الْأَكْلَ هَهُنَا، لِأَنَّهُ لَمْ يُذَكِّ كَمَا أُمِرَ وَلَمْ يَذْبَحْ بَلْ بِآلَةٍ نُهِيَ عَنْهَا، ثُمَّ يُجِيزُونَ أَكْلَ مَا نُحِرَ أَوْ ذُبِحَ بِآلَةٍ مَنْهِيٍّ عَنْهَا مَأْخُوذَةٍ بِغَيْرِ حَقٍّ - وَلَا فَرْقَ بَيْنَ ذَلِكَ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

though there is absolutely no distinction between the two cases. And success comes only from Allah, the Most High.[11]

L17111 **Issue: Ritual slaughter using an implement of gold or a gilded one.**

L17112 1054. Issue: It is not permissible at all for men to ritually slaughter using a gold or gold-plated tool. If a man does so, the meat becomes prohibited for both men and women. However, if a woman ritually slaughters with such a tool, it is permissible for both men and women. This ruling derives from the Prophet's (peace be upon him) prohibition of gold for male members of his community and its allowance for female members. Thus, any man who slaughters with a gold or gold-plated tool has employed a tool whose use is forbidden to him, thereby failing to slaughter as commanded. The ruling for women is contrary to this.

L17113–17114 **An issue of ritual slaughter using a silver implement.**

L17115 It is permissible because only their utensils were prohibited, and neither the knife, the spear, the arrow, nor the sword—are utensils.

L17116 **A case where he could find nothing but a tooth, a claw, or a predator's bone and feared the animal's death.**

L17117 1056 - Issue: If one finds only a tooth, a claw, a bone of a wild beast, a bird, a quadruped, a pig, a donkey, a human, or gold, and fears the animal's death, it is not permissible for him to eat what has been slaughtered with any of those things, for valid ritual slaughter cannot be performed with any of these whatsoever. Such a person lacks the means to perform valid slaughter and is not considered negligent, because he did not find any permissible instrument to slaughter it with. Therefore, that animal remains entirely without valid slaughter.

[مَسْأَلَةٌ التَّذْكِيَةُ بِآلَةٍ ذَهَبٍ أَوْ مُذَهَّبَةٍ]

١٠٥٤ - مَسْأَلَةٌ: وَلَا يَجُوزُ التَّذْكِيَةُ بِآلَةِ ذَهَبٍ أَوْ مُذَهَّبَةٍ أَصْلًا لِلرِّجَالِ، فَإِنْ فَعَلَ الرَّجُلُ فَهُوَ حَرَامٌ عَلَى الرِّجَالِ وَالنِّسَاءِ. فَإِنْ ذَكَّتْ بِهَا امْرَأَةٌ فَهُوَ حَلَالٌ لِلرِّجَالِ وَلِلنِّسَاءِ، لِتَحْرِيمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الذَّهَبَ عَلَى ذُكُورِ أُمَّتِهِ وَإِبَاحَتِهِ إيَّاهُ لِإِنَاثِهَا. فَمَنْ ذَكَّى مِنْ الرِّجَالِ بِآلَةِ ذَهَبٍ أَوْ مُذَهَّبَةٍ فَقَدْ اسْتَعْمَلَ آلَةً مُحَرَّمَةً عَلَيْهِ اسْتِعْمَالُهَا فَلَمْ يُذَكِّ كَمَا أُمِرَ - وَالْمَرْأَةُ بِخِلَافِ ذَلِكَ.

[مَسْأَلَةٌ التَّذْكِيَةُ بِآلَةِ فِضَّةٍ]

حَلَالٌ، لِأَنَّهُ لَمْ يُنْهَ إلَّا عَنْ آنِيَتِهَا فَقَطْ، وَلَيْسَ السِّكِّينُ، وَالرُّمْحُ وَالسَّهْمُ، وَلَا السَّيْفُ -: آنِيَةً.

[مَسْأَلَةٌ لَمْ يَجِدْ إلَّا سِنًّا أَوْ ظُفْرًا أَوْ عَظْمَ سَبُعٍ وَخَشِيَ مَوْتَ الْحَيَوَانِ]

١٠٥٦ - مَسْأَلَةٌ: فَمَنْ لَمْ يَجِدْ إلَّا سِنًّا، أَوْ ظُفْرًا، أَوْ عَظْمَ سَبُعٍ، أَوْ طَائِرٍ، أَوْ ذِي أَرْبَعٍ أَوْ خِنْزِيرٍ، أَوْ حِمَارٍ، أَوْ إنْسَانٍ، أَوْ ذَهَبٍ، وَخَشِيَ مَوْتَ الْحَيَوَانِ لَمْ يَحِلَّ لَهُ أَنْ يَأْكُلَ مَا ذُكِّيَ بِشَيْءٍ مِنْ ذَلِكَ، لِأَنَّهُ لَا يَكُونُ ذَكَاةٌ بِشَيْءٍ مِنْ هَذَا كُلِّهِ أَصْلًا، فَهُوَ عَادِمُ مَا يُذْكِي بِهِ، وَلَيْسَ مُضَيِّعًا لَهُ، لِأَنَّهُ لَمْ يَجِدْ مَا يَجُوزُ أَنْ يُذَكِّيَهُ بِهِ، فَذَلِكَ الْحَيَوَانُ غَيْرُ مُذَكًّى أَصْلًا.

[11] **Hadith references (L17110):** Sunan an-Nasai 4412.

[مَسْأَلَةٌ لَمْ يَجِدْ إِلَّا آلَةً مَغْصُوبَةً وَخَشِيَ الْمَوْتَ عَلَى حَيَوَانِهِ]

١٠٥٧ - مَسْأَلَةٌ: فَمَنْ لَمْ يَجِدْ إِلَّا آلَةً مَغْصُوبَةً، أَوْ مَأْخُوذَةً بِغَيْرِ حَقٍّ وَخَشِيَ الْمَوْتَ عَلَى حَيَوَانِهِ ذَكَّاهُ بِهَا وَحَلَّ لَهُ أَكْلُهُ لِقَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] فَحَرَامٌ عَلَى صَاحِبِ الْآلَةِ مَنْعُهُ مِنْهَا إِذَا خَشِيَ ضَيَاعَ مَالِهِ بِمَوْتِهِ جِيفَةً، فَإِذْ هُوَ حَرَامٌ عَلَى صَاحِبِهَا مَنْعُهُ مِنْهَا، فَفُرِضَ عَلَى صَاحِبِ الْحَيَوَانِ أَخْذُهَا وَالتَّذْكِيَةُ بِهَا فَهُوَ مُطِيعٌ بِذَلِكَ أَحَبَّ صَاحِبُ الْآلَةِ أَوْ كَرِهَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L17118 **A case where one finds only a usurped tool and fears his animal may die.**

L17119 Issue: If someone finds only a tool that is wrongfully seized or taken without right and fears the death of his animal, he may slaughter it with that tool, and its consumption becomes lawful. This is based on Allah's statement, the Exalted: *"Cooperate in righteousness and piety, and do not cooperate in sin and aggression"* [Al-Mā'idah: 2]. Thus, it is forbidden for the tool's owner to withhold it when the animal's owner fears losing his property through its death as carrion. Since withholding it is forbidden, the animal's owner is obligated to take the tool and slaughter with it. In doing so, he is obeying Allah—whether the tool's owner approves or disapproves. And success is from Allah, the Exalted.[12]

[مَسْأَلَةٌ تَذْكِيَةُ الْحَائِضِ وَالزِّنْجِيِّ وَالْأَقْلَفِ وَالْأَخْرَسِ]

١٠٥٨ - مَسْأَلَةٌ: وَتَذْكِيَةُ الْمَرْأَةِ الْحَائِضِ وَغَيْرِ الْحَائِضِ، وَالزِّنْجِيِّ، وَالْأَقْلَفِ، وَالْأَخْرَسِ، وَالْفَاسِقِ، وَالْجُنُبِ، وَالْآبِقِ، وَمَا ذُبِحَ أَوْ نُحِرَ لِغَيْرِ الْقِبْلَةِ عَمْدًا، أَوْ غَيْرِ عَمْدٍ: جَائِزٌ أَكْلُهَا إِذَا ذَكَّوْا وَسَمَّوْا عَلَى حَسْبِ طَاقَتِهِمْ، بِالْإِشَارَةِ مِنَ الْأَخْرَسِ، وَيُسَمِّي الْأَعْجَمِيُّ بِلُغَتِهِ لِقَوْلِ اللَّهِ تَعَالَى: {إِلا مَا ذَكَّيْتُمْ} [المائدة: ٣] فَخَاطَبَ كُلَّ مُسْلِمٍ وَمُسْلِمَةٍ، وَقَالَ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] فَلَمْ يُكَلِّفُوا مِنَ التَّسْمِيَةِ إِلَّا مَا قَدَرُوا عَلَيْهِ. وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَفِي كُلِّ مَا ذَكَرْنَا خِلَافٌ - وَقَدْ ذَكَرْنَا مَنْعَ طَاوُسٍ مِنْ أَكْلِ ذَبِيحَةِ الزِّنْجِيِّ. رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو أُسَامَةَ عَنْ سَعِيدٍ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ حَيَّانَ عَنْ جَابِرٍ - هُوَ ابْنُ زَيْدٍ - عَنِ ابْنِ عَبَّاسٍ قَالَ: الْأَقْلَفُ لَا تُؤْكَلُ لَهُ ذَبِيحَةٌ، وَلَا تُقْبَلُ

L17120 **Issue: The permissibility of ritual slaughter performed by a menstruating woman, a Zanjī person, an uncircumcised male, or a mute person.**

L17121–17123 1058. Issue: The slaughtering by a menstruating woman, a non-menstruating woman, a Zinjī, one who is not circumcised, a mute person, a sinner, one in a state of major impurity, a fugitive slave, and what is slaughtered by dhabh or nahr not facing the qiblah intentionally or unintentionally—it is permissible to consume provided they performed the slaughtering and pronounced Allah's name as they were able, through gestures in the case of the mute. A non-Arab may pronounce the name in his own tongue, based on Allah's decree: {Except what you slaughter} [Al-Mā'idah: 3], which addresses every Muslim male and female. Allah also states: {Allah does not burden a soul beyond its capacity} [Al-Baqarah: 286], thus obligating them only to what they can manage in pronouncing the name. This is the view of Abū Ḥanīfah, Mālik, Al-Shāfiʿī, and Abū Sulaymān. There exists disagreement concerning all the aforementioned cases; we previously noted Ṭāwūs's prohibition against consuming the slaughter of a Zinjī. It is narrated through the chain of Ibn Abī Shaybah: Abū Usāmah reported to us from Saʿīd—

[12] **Qur'an references (L17119):** Qur'an 5:2 (Al-Ma'idah).

Ibn Abī ʿArūbah—from Qatādah from Ḥayyān from Jābir ibn Zayd from Ibn ʿAbbās, who said: "The slaughter of one who is not circumcised is impermissible to eat, his prayer is invalid, and his testimony is inadmissible." However, Al-Ḥasan and Ḥammād ibn Abī Sulaymān deemed his slaughter lawful. Through another chain of Ibn Abī Shaybah: ʿUbaydullāh ibn Mūsá reported to us from Ṣakhr ibn Juwayriyah from Nāfiʿ from... Ibn Umar disliked eating it—meaning the slaughter performed by a runaway slave—while Saʿīd ibn al-Musayyib permitted it. From the transmission chain of ʿAbd al-Razzāq, from Maʿmar, from Ayyūb al-Sikhtiyānī, from Nāfiʿ, from Ibn Umar: he disliked eating what was slaughtered while not facing the Qiblah. The same is authentically reported from Ibn Sīrīn and Jābir ibn Zayd. The permissibility of eating it is authentically established from al-Nakhaʿī, al-Shaʿbī, al-Qāsim ibn Muḥammad, and al-Ḥasan al-Baṣrī. Abū Muḥammad said: No Companion is recorded to have opposed Ibn ʿAbbās regarding the slaughter by an uncircumcised male, nor Ibn Umar regarding the slaughter performed by a runaway slave or what was slaughtered while not facing the Qiblah—but later Companions (may Allah be pleased with them) did oppose them. From the transmission chain of Ibn Abī Shaybah: ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī narrated to us from Ayyūb al-Sikhtiyānī, from Muḥammad ibn Sīrīn: when asked about slaughter performed by a woman or a child, he would not comment on them. From ʿIkrimah and Qatādah: one in major impurity may slaughter after performing ablution. From al-Ḥasan: he should wash his face and forearms, then slaughter. Ibrāhīm, ʿAṭāʾ, and al-Ḥakam permitted it unconditionally. Abū Muḥammad said: Had facing the Qiblah been a condition for valid slaughter, Allah the Exalted would not have omitted its clarification—and likewise for all previously mentioned matters. Success is by Allah, the Exalted. 1059.[13]

لَهُ صَلَاةٌ، وَلَا تَجُوزُ لَهُ شَهَادَةٌ - وَأَجَازَ ذَبِيحَتَهُ الْحَسَنُ، وَحَمَّادُ بْنُ أَبِي سُلَيْمَانَ. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عُبَيْدُ اللَّهِ بْنُ مُوسَى عَنْ صَخْرِ بْنِ جُوَيْرِيَةَ عَنْ نَافِعٍ عَنْ ابْنُ عُمَرَ أَنَّهُ كَرِهَ أَكْلَهَا - يَعْنِي ذَبِيحَةَ الْآبِقِ - وَأَجَازَهَا سَعِيدُ بْنُ الْمُسَيِّبِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيُّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ يَكْرَهُ أَنْ يَأْكُلَ ذَبِيحَةً لِغَيْرِ الْقِبْلَةِ. وَصَحَّ عَنْ ابْنِ سِيرِينَ، وَجَابِرِ بْنِ زَيْدٍ مِثْلُ هَذَا، وَصَحَّتْ إبَاحَةُ ذَلِكَ عَنْ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ، وَالْحَسَنِ الْبَصْرِيِّ إبَاحَةَ أَكْلِهَا. قَالَ أَبُو مُحَمَّدٍ: لَا يُعْرَفُ لِابْنِ عَبَّاسٍ فِي ذَبِيحَةِ الْأَقْلَفِ مُخَالِفٌ مِنْ الصَّحَابَةِ، وَلَا لِابْنِ عُمَرَ فِي ذَبِيحَةِ الْآبِقِ - وَمَا ذُبِحَ لِغَيْرِ الْقِبْلَةِ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَقَدْ خَالَفُوهُمَا. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ عَنْ أَيُّوبَ السِّخْتِيَانِيُّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ كَانَ إذَا سُئِلَ عَنْ ذَبِيحَةِ الْمَرْأَةِ، وَالصَّبِيِّ؟ لَا يَقُولُ فِيهِمَا شَيْئًا. وَعَنْ عِكْرِمَةَ، وَقَتَادَةَ يَذْبَحُ الْجُنُبُ إذَا تَوَضَّأَ. وَعَنْ الْحَسَنِ يَغْسِلُ وَجْهَهُ وَذِرَاعَيْهِ وَيَذْبَحُ - وَأَجَازَهَا إبْرَاهِيمُ، وَعَطَاءٌ، وَالْحَكَمُ بِغَيْرِ شَرْطٍ. قَالَ أَبُو مُحَمَّدٍ: لَوْ كَانَ اسْتِقْبَالُ الْقِبْلَةِ مِنْ شُرُوطِ التَّذْكِيَةِ لَمَا أَغْفَلَ اللَّهُ تَعَالَى بَيَانَهُ وَكَذَلِكَ سَائِرُ مَا ذُكِرَ قَبْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. ١٠٥٩ -

[مَسْأَلَةٌ مَا ذَبَحَهُ أَوْ نَحَرَهُ يَهُودِيٌّ أَوْ نَصْرَانِيٌّ أَوْ مَجُوسِيٌّ]

L17124 **Issue: That which is slaughtered by throat-cutting or slaughtered by chest-cutting by a Jew, a Christian, or a Zoroastrian.**

L17125 Issue: Any animal slaughtered via dhabh or slaughtered via nahr by a Jew,

[13] **Qur'an references (L17121):** Qur'an 5:3 (Al-Ma'idah); Qur'an 2:286 (Al-Baqarah).

Christian, or Zoroastrian—whether by their women or men—is lawful for us, and the fats of such animals are lawful for us provided they invoke the name of God Almighty over them. Even if a Jew slaughters a camel via nahr or a rabbit, its consumption is permissible, and we pay no heed to what the Torah prohibits them or permits. Mālik said: It is unlawful to eat the fats of animals slaughtered by Jews, nor what they slaughter of animals they deem unlawful for themselves—and this is an utterly baseless opinion, for it contradicts the Qur'an, the Sunnah, and rational principles.

L17126–17127 As for the Quran, Allah the Exalted says: "The food of those who were given the Scripture is lawful for you, and your food is lawful for them" [Al-Ma'idah: 5]. We have agreed that what is intended by this is what they have properly slaughtered, not what they have consumed, for they eat pork, carrion, and blood – none of which is lawful for us by the consensus of them and us. Since this is established, Allah the Exalted did not stipulate distinguishing between what they eat and what they do not eat, "and your Lord is not forgetful" [Maryam: 64].[14]

L17128–17130 As for the Quran and *Ijmaʿ*: The Quran has come, and *Ijmaʿ* is established that the religion of Islam has abrogated every religion preceding it, and that whoever adheres to what the Torah or Gospel brought without following the Quran is a disbeliever and polytheist, whose adherence is not accepted. Since this is so, Allah the Exalted has nullified every legal code formerly present in the Torah, Gospel, and other creeds, and He obligated jinn and humankind to follow the ordinances of Islam. Thus, nothing is forbidden except what He forbade therein, nothing lawful except what He permitted therein, and no obligation except what He ordained therein. Whoever asserts anything contrary to this regarding religion is a disbeliever without disagreement from any of the Imams.

As for the *Sunnah*: We mentioned in the Book of Jihad within this work the hadith of the fat container seized at Khaybar—the Prophet (peace be upon him) did not prohibit its consumption, but left it for whichever Muslims

[14] **Qur'an references (L17127):** Qur'an 5:5 (Al-Ma'idah); Qur'an 19:64 (Maryam).

مَسْأَلَةٌ: وَكُلُّ مَا ذَبَحَهُ، أَوْ نَحَرَهُ يَهُودِيٌّ، أَوْ نَصْرَانِيٌّ، أَوْ مَجُوسِيٌّ - نِسَاؤُهُمْ، أَوْ رِجَالُهُمْ -: فَهُوَ حَلَالٌ لَنَا، وَشُحُومُهَا حَلَالٌ لَنَا إِذَا ذَكَرُوا اسْمَ اللَّهِ تَعَالَى عَلَيْهِ. وَلَوْ نَحَرَ الْيَهُودِيُّ بَعِيرًا أَوْ أَرْنَبًا حَلَّ أَكْلُهُ، وَلَا نُبَالِي مَا حُرِّمَ عَلَيْهِمْ فِي التَّوْرَاةِ وَمَا لَمْ يُحَرَّمْ. وَقَالَ مَالِكٌ: لَا يَحِلُّ أَكْلُ شُحُومِ مَا ذَبَحَهُ الْيَهُودِيُّ، وَلَا مَا ذَبَحُوهُ مِمَّا لَا يَسْتَحِلُّونَهُ - وَهَذَا قَوْلٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ خِلَافُ الْقُرْآنِ، وَالسُّنَنِ، وَالْمَعْقُولِ.

أَمَّا الْقُرْآنُ فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ وَطَعَامُكُمْ حِلٌّ لَهُمْ} [المائدة: ٥] . وَقَدْ اتَّفَقْنَا عَلَى أَنَّ الْمُرَادَ بِذَلِكَ مَا ذَكَّوْهُ، لَا مَا أَكَلُوهُ، لِأَنَّهُمْ يَأْكُلُونَ الْخِنْزِيرَ، وَالْمَيْتَةَ، وَالدَّمَ، وَلَا يَحِلُّ لَنَا شَيْءٌ مِنْ ذَلِكَ بِإِجْمَاعٍ مِنْهُمْ وَمِنَّا، فَإِذْ ذَلِكَ كَذَلِكَ فَلَمْ يَشْتَرِطِ اللَّهُ تَعَالَى مَا أَكَلُوهُ مِمَّا لَمْ يَأْكُلُوهُ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَأَمَّا الْقُرْآنُ، وَالْإِجْمَاعُ: فَقَدْ جَاءَ الْقُرْآنُ، وَصَحَّ الْإِجْمَاعُ بِأَنَّ دِينَ الْإِسْلَامِ نَسَخَ كُلَّ دِينٍ كَانَ قَبْلَهُ، وَأَنَّ مَنْ الْتَزَمَ مَا جَاءَتْ بِهِ التَّوْرَاةُ أَوْ الْإِنْجِيلُ، وَلَمْ يَتَّبِعْ الْقُرْآنَ فَإِنَّهُ كَافِرٌ مُشْرِكٌ، غَيْرُ مَقْبُولٍ مِنْهُ، فَإِذْ ذَلِكَ كَذَلِكَ فَقَدْ أَبْطَلَ اللَّهُ تَعَالَى كُلَّ شَرِيعَةٍ كَانَتْ فِي التَّوْرَاةِ، وَالْإِنْجِيلِ، وَسَائِرِ الْمِلَلِ، وَافْتَرَضَ عَلَى الْجِنِّ، وَالْإِنْسِ: شَرَائِعَ الْإِسْلَامِ، فَلَا حَرَامَ إِلَّا مَا حَرَّمَ فِيهِ، وَلَا حَلَالَ إِلَّا مَا حَلَّلَ فِيهِ، وَلَا فَرْضَ إِلَّا مَا فَرَضَ فِيهِ - وَمَنْ قَالَ فِي شَيْءٍ مِنْ الدِّينِ خِلَافَ هَذَا فَهُوَ كَافِرٌ بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ الْأَئِمَّةِ.

وَأَمَّا السُّنَّةُ: فَقَدْ ذَكَرْنَا فِي كِتَابِ الْجِهَادِ مِنْ كِتَابِنَا هَذَا مِنْ حَدِيثِ جِرَابِ الشَّحْمِ الْمَأْخُوذِ فِي خَيْبَرَ فَلَمْ يَمْنَعْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَكْلِهِ، بَلْ أَبْقَاهُ لِمَنْ وَقَعَ لَهُ مِنْ الْمُسْلِمِينَ. وَرُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد الطَّيَالِسِيِّ نا سُلَيْمَانُ بْنُ الْمُغِيرَةِ عَنْ

acquired it. It was narrated to us via Abu Dawud al-Tayalisi: Sulayman ibn al-Mughirah narrated to us from Humaid ibn Hilal al-Adawi: “I heard Abdullah ibn Mughaffal say: ’A fat container was lowered during Khaybar. I seized it and clung to it, whereupon Allah’s Messenger (peace be upon him) told me: ”It is yours.“” The renowned report through Shu‘bah from Hisham ibn Zayd from Anas ibn Malik states: “A Jewish woman gifted a poisoned sheep to Allah’s Messenger (peace be upon him), and he ate from it”—he (peace be upon him) did not prohibit its belly fat or any other part.

As for rational proof: It is utterly absurd to claim slaughter according to Islamic law applies to some portions of a sheep’s fat but not others. We know of no evidence for their claim here—neither from the Quran, nor sound *Sunnah*, nor weak narration, nor analogy. Astonishingly, they hear Allah’s words: *“Your food is lawful for them”* (Quran 5:5)—yet our food includes fat, camel meat, and all they prohibit or what Allah had forbidden them through Musa (peace be upon him), later abrogating, nullifying, and permitting it through ‘Isa and Muhammad (peace be upon them) by His statement regarding ‘Isa... And I will declare lawful for you some of what was forbidden to you [Āl ‘Imrān 3:50].[15]

L17131 And by His Exalted statement regarding Muhammad—peace and blessings of Allah be upon him: “The unlettered Prophet whom they find written with them in the Torah and the Gospel. He enjoins upon them what is right and forbids them what is wrong, makes lawful for them the good things and prohibits for them the evil” [Al-A‘raf 7:157]. And by His Exalted statement: “Whoever seeks a religion other than Islam, it will never be accepted from him” [Al ‘Imran 3:85]. Then they persist in forbidding what [others] prohibit, even though they acknowledge it is permissible for them, and they inquire about fat and the camel: “Are these permissible for the Jews today, or are they forbidden to them to this day?” If they say: “Rather, it is forbidden to them to this day,” they commit disbelief without doubt, for they claim that Allah the Exalted did not abrogate it. If they say: “Rather, they are permissible,” they are believed and must abandon their corrupt statement regarding that.

[15] **Qur’an references (L17128):** Qur’an 5:5 (Al-Ma’idah); Qur’an 3:50 (Ali ’Imran).

حُمَيْدِ بْنِ هِلَالٍ الْعَدَوِيِّ سَمِعْتُ «عَبْدَ اللَّهِ بْنَ مُغَفَّلٍ يَقُولُ دُلِّيَ جِرَابٌ مِنْ شَحْمٍ يَوْمَ خَيْبَرَ فَأَخَذْتُهُ وَالْتَزَمْتُهُ فَقَالَ لِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ لَكَ» . وَالْخَبَرُ الْمَشْهُورُ مِنْ طَرِيقِ شُعْبَةَ عَنْ هِشَامِ بْنِ زَيْدٍ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ يَهُودِيَّةً أَهْدَتْ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَاةً مَسْمُومَةً فَأَكَلَ مِنْهَا» وَلَمْ يُحَرِّمْ - عَلَيْهِ السَّلَامُ - مِنْهَا لَا شَحْمَ بَطْنِهَا وَلَا غَيْرَهُ. وَأَمَّا الْمَعْقُولُ: فَمِنْ الْمُحَالِ الْبَاطِلِ أَنْ تَقَعَ الذَّكَاةُ عَلَى بَعْضِ شَحْمِ الشَّاةِ دُونَ بَعْضٍ، وَمَا نَعْلَمُ لِقَوْلِهِمْ هَهُنَا حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قِيَاسٍ. وَالْعَجَبُ أَنَّهُمْ يَسْمَعُونَ اللَّهَ تَعَالَى يَقُولُ: {وَطَعَامُكُمْ حِلٌّ لَهُمْ} [المائدة: ٥] وَمِنْ طَعَامِنَا الشَّحْمُ، وَالْجَمَلُ، وَسَائِرُ مَا يُحَرِّمُونَهُ أَوْ حَرَّمَهُ اللَّهُ تَعَالَى عَلَيْهِمْ عَلَى لِسَانِ مُوسَى، ثُمَّ نَسَخَهُ وَأَبْطَلَهُ وَأَحَلَّهُ عَلَى لِسَانِ عِيسَى وَمُحَمَّدٍ - عَلَيْهِمَا السَّلَامُ - بِقَوْلِهِ تَعَالَى عَنْ عِيسَى {وَلأُحِلَّ لَكُمْ بَعْضَ الَّذِي حُرِّمَ عَلَيْكُمْ} [آل عمران: ٥٠] .

وَبِقَوْلِهِ تَعَالَى عَنْ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: {النَّبِيَّ الأُمِّيَّ الَّذِي يَجِدُونَهُ مَكْتُوبًا عِنْدَهُمْ فِي التَّوْرَاةِ وَالإِنْجِيلِ يَأْمُرُهُمْ بِالْمَعْرُوفِ وَيَنْهَاهُمْ عَنِ الْمُنْكَرِ وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ} [الأعراف: ١٥٧] . وَبِقَوْلِهِ تَعَالَى: {وَمَنْ يَبْتَغِ غَيْرَ الإِسْلامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ} [آل عمران: ٨٥] ثُمَّ يُصِرُّونَ عَلَى تَحْرِيمِ مَا يُحَرِّمُونَهُ مِمَّا هُمْ مُقِرُّونَ بِأَنَّهُ حَلَالٌ لَهُمْ وَيَسْأَلُونَ عَنْ الشَّحْمِ وَالْجَمَلِ أَحَلَالٌ هُمَا الْيَوْمَ لِلْيَهُودِ أَمْ هُمَا حَرَامٌ عَلَيْهِمْ إلَى الْيَوْمِ؟ فَإِنْ قَالُوا: بَلْ هُوَ حَرَامٌ عَلَيْهِمْ إلَى الْيَوْمِ كَفَرُوا، بِلَا مِرْيَةٍ؛ إذْ قَالُوا: إنَّ ذَلِكَ لَمْ يَنْسَخْهُ اللَّهُ تَعَالَى. وَإِنْ قَالُوا: بَلْ هُمَا حَلَالٌ صُدِّقُوا وَلَزِمَهُمْ تَرْكُ قَوْلِهِمْ الْفَاسِدِ فِي ذَلِكَ. وَنَسْأَلُهُمْ عَنْ يَهُودِيٍّ مُسْتَخْفٍ بِدِينِهِ يَأْكُلُ الشَّحْمَ فَذَبَحَ شَاةً. أَيَحِلُّ لَنَا أَكْلُ

We ask them about a Jew who conceals his religion, eats fat, and slaughters a sheep: Is its fat permissible for us to eat because the slaughterer deems it lawful, or is it forbidden for us as a result of strictly adhering to the religion of the Jews—the religion of disbelief and error? One of the two must be affirmed, and both are paths to ruin. They are obliged not to consider it permissible to eat what a Jew slaughters on the Sabbath or to eat fish caught by a Jew on the Sabbath—a clear contradiction in their stance. It has been narrated to us from ʻUmar ibn al-Khattab, ʻAli, Ibn Masʻud, ʻA'ishah the Mother of the Believers, Abu al-Darda', ʻAbdullah ibn Yazid, Ibn ʻAbbas, al-ʻIrbad ibn Sariyah, Abu Umamah, ʻUbadah ibn al-Samit, and Ibn ʻUmar—the permissibility of what the People of the Book slaughter without stipulating conditions regarding what they deem permissible or impermissible.[16]

L17132 Similarly, none of the majority of the Tabi'in—such as Ibrahim al-Nakha'i, Jubayr ibn Nufayr, Abu Muslim al-Khawlani, Damrah ibn Habib, al-Qasim ibn Mukhaymirata, Makhūl, Sa'id ibn al-Musayyab, Mujahid, 'Abd al-Rahman ibn Abi Layla, al-Hasan, Ibn Sirin, al-Harith al-'Uklī, 'Ata', al-Sha'bi, Muhammad ibn 'Ali ibn al-Husayn, Tawus, 'Amr ibn al-Aswad, Hammad ibn Abi Sulayman, and others—are recorded to have held this opinion except Qatadah, then Malik and 'Ubayd Allah ibn al-Hasan.

L17133–17134 This is among the matters in which they differed from a group of the Companions—with whom no other Companion disagreed—and in which they differed from the majority of scholars. Our position aligns with Sufyan al-Thawri, al-Awza'i, al-Layth ibn Sa'd, Abu Hanifa, al-Shafi'i, Abu Sulayman, Ahmad, Ishaq, and their adherents.

L17135 As for the Magians: We have mentioned in the Book of Jihad that they are considered People of the Book, and thus their rulings correspond to those of the People of the Book in all respects. If they cite the narration we transmitted through Waki‘ from Sufyān from Qays ibn Muslim al-Jadalī from

[16] **Qur'an references (L17131):** Qur'an 7:157 (Al-A'raf); Qur'an 3:85 (Ali 'Imran).

شَحْمِهَا لِاسْتِحْلَالِ ذَابِحِهَا لَهُ أَمْ يَحْرُمُ عَلَيْنَا تَحْقِيقًا فِي اتِّبَاعِ دِينِ الْيَهُودِ دِينِ الْكُفْرِ وَدِينِ الضَّلَالِ؟ وَلَا بُدَّ مِنْ أَحَدِهِمَا، وَكِلَاهُمَا خُطَّةُ خَسْفٍ. وَيَلْزَمُهُمْ أَنْ لَا يَسْتَحِلُّوا أَكْلَ مَا ذَبَحَهُ يَهُودِيٌّ يَوْمَ سَبْتٍ وَلَا أَكْلَ حِيتَانٍ صَادَهَا يَهُودِيٌّ يَوْمَ سَبْتٍ، وَهَذَا مِمَّا تَنَاقَضُوا فِيهِ. وَقَدْ رُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيٍّ، وَابْنِ مَسْعُودٍ، وَعَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَأَبِي الدَّرْدَاءِ، وَعَبْدِ اللَّهِ بْنِ يَزِيدَ، وَابْنِ عَبَّاسٍ، وَالْعِرْبَاضِ بْنِ سَارِيَةَ: وَأَبِي أُمَامَةَ، وَعُبَادَةَ بْنِ الصَّامِتِ، وَابْنِ عُمَرَ: إبَاحَةَ مَا ذَبَحَهُ أَهْلُ الْكِتَابِ دُونَ اشْتِرَاطٍ لِمَا يَسْتَحِلُّونَهُ مِمَّا لَا يَسْتَحِلُّونَهُ.

وَكَذَلِكَ عَنْ جُمْهُورِ التَّابِعِينَ كَإِبْرَاهِيمَ النَّخَعِيِّ، وَجُبَيْرِ بْنِ نُفَيْرٍ، وَأَبِي مُسْلِمٍ الْخَوْلَانِيِّ، وَضَمْرَةَ بْنِ حَبِيبٍ، وَالْقَاسِمِ بْنِ مُخَيْمِرَةَ، وَمَكْحُولٍ، وَسَعِيدِ بْنِ الْمُسَيَّبِ، وَمُجَاهِدٍ، وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى، وَالْحَسَنِ، وَابْنِ سِيرِينَ، وَالْحَارِثِ الْعُكْلِيِّ، وَعَطَاءٍ، وَالشَّعْبِيِّ، وَمُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ، وَطَاوُسٍ، وَعَمْرِو بْنِ الْأَسْوَدِ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَغَيْرِهِمْ، لَمْ نَجِدْ عَنْ أَحَدٍ مِنْهُمْ هَذَا الْقَوْلَ إلَّا عَنْ قَتَادَةَ - ثُمَّ عَنْ مَالِكٍ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ.

وَهَذَا مِمَّا خَالَفُوا فِيهِ طَائِفَةً مِنْ الصَّحَابَةِ لَا مُخَالِفَ لَهُمْ مِنْهُمْ وَخَالَفُوا فِيهِ جُمْهُورَ الْعُلَمَاءِ. وَقَوْلُنَا هُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَاللَّيْثِ بْنِ سَعْدٍ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَصْحَابِهِمْ.

وَأَمَّا الْمَجُوسُ: فَقَدْ ذَكَرْنَا فِي كِتَابِ الْجِهَادِ أَنَّهُمْ أَهْلُ كِتَابٍ فَحُكْمُهُمْ حُكْمُ أَهْلِ الْكِتَابِ فِي كُلِّ ذَلِكَ: فَإِنْ ذَكَرُوا: مَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ قَيْسِ بْنِ مُسْلِمٍ الْجَدَلِيِّ عَنْ الْحَسَنِ بْنِ مُحَمَّدٍ «كَتَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى مَجُوسٍ مِنْ

al-Ḥasan ibn Muḥammad: “The Messenger of Allah—peace and blessings of Allah be upon him—wrote to Magians among the people of Hajar inviting them to Islam. Whoever embraced Islam was accepted, and whoever refused was subjected to the jizya. It is not permissible to eat their slaughtered animals, nor to marry their women”—this is a mursal narration, and no valid proof exists in a mursal report. Hammām narrated to us; ʻAbdullāh ibn Muḥammad al-Bājī narrated to us; Aḥmad ibn Muslim narrated to us; Abū Thawr Ibrāhīm ibn Khālid narrated to us; ʻAbd al-Wahhāb narrated from Saʻīd ibn Abī ʻArūbah from Qatādah from Saʻīd ibn al-Musayyab that he was asked about a sick man who instructed a Magian to slaughter an animal while invoking Allah’s name, and the Magian did so. Saʻīd ibn al-Musayyab replied, “There is no harm in that”—this being the opinion of Qatādah and Abū Thawr. Abū Muḥammad said: Allah the Exalted did not permit accepting jizya from those outside the People of the Book, yet the Prophet—peace and blessings of Allah be upon him—collected it from the Magians. It was not conceivable for him to oppose the command of his Lord, the Exalted. If they cite Allah’s statement: {Lest you say, “The Book was only revealed to two communities before us, and we were entirely unaware of their teachings”} [al-Anʻām 6:156], we respond: Allah articulated this in the explicit verse to prohibit such a statement, not to endorse it. He further said: {And messengers We have not mentioned to you} [al-Nisāʼ 4:164].[17]

L17136 **Issue: Eating what is ritually slaughtered by someone other than a Jew, Christian, or Zoroastrian.**

L17137 1060. Issue: It is not permissible to eat what has been slaughtered by anyone other than a Jew, a Christian, or a Zoroastrian. Nor is it permissible to eat what has been slaughtered by an apostate who reverts to a scriptural or non-scriptural religion, nor what has been slaughtered by one who converts from one religion of the Book to another, nor what has been slaughtered by one who enters a religion of the Book after the commissioning of the Prophet—peace and blessings of Allah be upon him. This is because Allah, exalted be

[17] **Qur’an references (L17135):** Qur’an 6:156 (Al-An’am); Qur’an 4:164 (An-Nisa).

أَهْلِ هَجَرَ يَدْعُوهُمْ إِلَى الْإِسْلَامِ فَمَنْ أَسْلَمَ قُبِلَ مِنْهُ وَمَنْ لَمْ يُسْلِمْ ضُرِبَتْ عَلَيْهِ الْجِزْيَةُ وَلَا تُؤْكَلُ لَهُمْ ذَبِيحَةٌ وَلَا تُنْكَحُ مِنْهُمُ امْرَأَةٌ» فَهَذَا مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ. نا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الْبَاجِيَّ نا أَحْمَدُ بْنُ مُسْلِمٍ نا أَبُو ثَوْرٍ إِبْرَاهِيمُ بْنُ خَالِدٍ نَا عَبْدُ الْوَهَّابِ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ سُئِلَ عَنْ رَجُلٍ مَرِيضٍ أَمَرَ مَجُوسِيًّا أَنْ يَذْبَحَ وَيُسَمِّيَ، فَفَعَلَ ذَلِكَ؟ فَقَالَ سَعِيدُ بْنُ الْمُسَيِّبِ: لَا بَأْسَ بِذَلِكَ - وَهُوَ قَوْلُ قَتَادَةَ، وَأَبِي ثَوْرٍ قَالَ أَبُو مُحَمَّدٍ: لَمْ يُفْسِحْ اللَّهُ تَعَالَى فِي أَخْذِ الْجِزْيَةِ مِنْ غَيْرِ كِتَابِيٍّ، وَأَخَذَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ الْمَجُوسِ وَمَا كَانَ لِيُخَالِفَ أَمْرَ رَبِّهِ تَعَالَى. فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {أَنْ تَقُولُوا إِنَّمَا أُنْزِلَ الْكِتَابُ عَلَى طَائِفَتَيْنِ مِنْ قَبْلِنَا وَإِنْ كُنَّا عَنْ دِرَاسَتِهِمْ لَغَافِلِينَ} [الأنعام: ١٥٦] . قُلْنَا: إنَّمَا قَالَ اللَّهُ تَعَالَى هَذَا بِنَصِّ الْآيَةِ نَهْيًا عَنْ هَذَا الْقَوْلِ لَا تَصْحِيحًا لَهُ، وَقَدْ قَالَ تَعَالَى: {وَرُسُلا لَمْ نَقْصُصْهُمْ عَلَيْكَ} [النساء: ١٦٤] .

[مَسْأَلَةٌ أَكْلُ مَا ذَكَّاهُ غَيْرُ الْيَهُودِيِّ وَالنَّصْرَانِيِّ وَالْمَجُوسِيِّ]

١٠٦٠ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ مَا ذَكَّاهُ غَيْرُ الْيَهُودِيِّ، وَالنَّصْرَانِيِّ، وَالْمَجُوسِيِّ، وَلَا مَا ذَكَّاهُ مُرْتَدٌّ إلَى دِينٍ كِتَابِيٍّ أَوْ غَيْرِ كِتَابِيٍّ، وَلَا مَا ذَكَّاهُ مَنْ انْتَقَلَ مِنْ دِينٍ كِتَابِيٍّ إلَى دِينٍ كِتَابِيٍّ، وَلَا مَا ذَكَّاهُ مَنْ دَخَلَ فِي دِينٍ كِتَابِيٍّ بَعْدَ مَبْعَثِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّ اللَّهَ تَعَالَى لَمْ يُبِحْ لَنَا إلَّا مَا ذَكَّيْنَاهُ أَوْ ذَكَّاهُ الْكِتَابِيُّ كَمَا قَدَّمْنَا.

He, has not permitted us [to eat] except what we have slaughtered or what a person of the Book has slaughtered, as we previously mentioned.

L17138–17139 Every individual we have mentioned is not considered a follower of a scriptured religion, for all inhabitants of the earth outside the People of the Book are obligated to embrace Islam—since Allah the Exalted sent Muhammad (may Allah bless him and grant him peace) with it—or face being killed. Their adherence to a non-Islamic scriptured religion is invalid, nor are they among those whose slaughtered animals Allah has permitted for consumption. The apostate from our religion to theirs is treated similarly, as is one who converts from one scriptured religion to another, for he was under the *dhimma* (covenant) entailed by the religion of his forefathers—a covenant that rendered his killing prohibited. His shift to another religion breaches this covenant, and he cannot be permitted to persist in that state. All of this constitutes the view of Al-Shāfiʿī and Abū Sulaymān. And success is from Allah, the Exalted.

L17140 **A legal issue: If someone slaughtered [an animal] while drunk or insane...**

L17141 Issue 1061: If someone slaughters an animal while intoxicated or in a state of insanity, the meat is not permissible to eat, as they are not legally accountable when their rationality is impaired, based on Allah's saying: {except what you slaughter} [5:3]. If they slaughter after regaining sobriety or recovery, the meat becomes permissible to eat, for they are then legally accountable like all other Muslims - and success comes only from Allah, the Most High.[18]

L17142 **The Issue of the Slaughter of the Woman and the Boy.**

L17143 1062 - Issue: What is slaughtered or sacrificed by one who has not reached puberty is impermissible to eat, because such a person is not legally accountable under Allah's injunction: {except what you properly slaughter} [5:3]. The Messenger of Allah—peace and blessings be upon him—declared that the pen is lifted from the child until he reaches puberty. We have received narration

[18] **Qur'an references (L17141):** Qur'an 5:3 (Al-Ma'idah).

وَكُلُّ مَنْ ذَكَرْنَا لَيْسَ كِتَابِيًّا لِأَنَّ كُلَّ مَنْ كَانَ عَلَى ظَهْرِ الْأَرْضِ مِنْ غَيْرِ أَهْلِ الْكِتَابِ فَفَرْضٌ عَلَيْهِمْ أَنْ يَرْجِعُوا إلَى الْإِسْلَامِ إذْ بَعَثَ اللَّهُ تَعَالَى مُحَمَّدًا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهِ، أَوْ الْقَتْلُ فَدُخُولُهُ فِي دِينٍ كِتَابِيٍّ غَيْرِ مَقْبُولٍ مِنْهُ وَلَا هُوَ مِنْ الَّذِينَ أَمَرَ اللَّهُ تَعَالَى بِأَكْلِ ذَبَائِحِهِمْ، وَالْمُرْتَدُّ مِنَّا إلَيْهِمْ كَذَلِكَ، وَالْخَارِجُ مِنْ دِينٍ كِتَابِيٍّ إلَى دِينٍ كِتَابِيٍّ كَذَلِكَ، لِأَنَّهُ إنَّمَا تَذَمَّمَ وَحَرُمَ قَتْلُهُ بِالدِّينِ الَّذِي كَانَ آبَاؤُهُ عَلَيْهِ، فَخُرُوجُهُ إلَى غَيْرِهِ نَقْضٌ لِلذِّمَّةِ لَا يَقَرُّ عَلَى ذَلِكَ - وَهَذَا كُلُّهُ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مسأَلَةٌ ذَبَحَ وَهُوَ سَكْرَانُ أَوْ فِي جُنُونِهِ]

١٠٦١ - مَسْأَلَةٌ: وَمَنْ ذَبَحَ وَهُوَ سَكْرَانُ أَوْ فِي جُنُونِهِ لَمْ يَحِلَّ أَكْلُهُ، لِأَنَّهُمَا غَيْرُ مُخَاطَبَيْنِ فِي حَالِ ذَهَابِ عُقُولِهِمَا بِقَوْلِ اللَّهِ تَعَالَى: {إلا مَا ذَكَّيْتُمْ} [المائدة: ٣] فَإِنْ ذَكَّيَا بَعْدَ الصَّحْوِ وَالْإِفَاقَةِ حَلَّ أَكْلُهُ، لِأَنَّهُمَا مُخَاطَبَانِ كَسَائِرِ الْمُسْلِمِينَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ ذَبِيحَةُ الْمَرْأَةِ وَالصَّبِيِّ]

١٠٦٢ - مَسْأَلَةٌ: وَمَا ذَبَحَهُ أَوْ نَحَرَهُ مَنْ لَمْ يَبْلُغْ لَمْ يَحِلَّ أَكْلُهُ، لِأَنَّهُ غَيْرُ مُخَاطَبٍ بِقَوْلِ اللَّهِ تَعَالَى: {إلا مَا ذَكَّيْتُمْ} [المائدة: ٣] . وَقَدْ أَخْبَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ الصَّبِيَّ مَرْفُوعٌ عَنْهُ الْقَلَمُ حَتَّى يَبْلُغَ. رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الْوَهَّابِ

through Ibn Abi Shaybah's transmission: narrated to us by 'Abd al-Wahhab ibn 'Abd al-Majid al-Thaqafi, from Ayyub al-Sakhtiyānī, from Muhammad ibn Sirin—that when asked about slaughter by a woman and a child, he would not comment on either case. Abu Sulayman and our scholarly companions prohibit slaughter by both. However, al-Nakha'i, al-Sha'bi, al-Hasan, 'Ata', Tawus, and Mujahid permitted it. The Abu Muhammad said: They concur with us that a minor's authorization of marriage for his female relative, his own marriage contract, his sales, purchases, or appointments of agents are invalid; that he bears no obligation for prayer, fasting, or pilgrimage—since he is not subject to these divine injunctions—and that his Hajj cannot substitute for another's obligation. How then do they deem his slaughter permissible?[19]

بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ كَانَ إِذَا سُئِلَ عَنْ ذَبِيحَةِ الْمَرْأَةِ، وَالصَّبِيِّ؟ لَا يَقُولُ فِيهِمَا شَيْئًا. وَبِالْمَنْعِ مِنْهُمَا يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا. وَأَبَاحَهَا: النَّخَعِيُّ: وَالشَّعْبِيُّ، وَالْحَسَنُ، وَعَطَاءٌ، وَطَاوُسٌ، وَمُجَاهِدٌ. قَالَ أَبُو مُحَمَّدٍ: قَدْ وَافَقُونَا أَنَّ إِنْكَاحَهُ لِوَلِيَّتِهِ، وَنِكَاحَهُ، وَبَيْعَهُ، وَابْتِيَاعَهُ، وَتَوْكِيلَهُ: لَا يَجُوزُ، وَأَنَّهُ لَا تَلْزَمُهُ صَلَاةٌ، وَلَا صَوْمٌ، وَلَا حَجٌّ، لِأَنَّهُ غَيْرُ مُخَاطَبٍ بِذَلِكَ وَلَا يُجْزِي حَجُّهُ عَنْ غَيْرِهِ فَمِنْ أَيْنَ أَجَازُوا ذَبِيحَتَهُ؟

[Issue: An animal shared between two individuals, wherein one slaughtered it without the other's permission.]

[مَسْأَلَةُ حَيَوَانٍ بَيْنَ اثْنَيْنِ فَذَكَّاهُ أَحَدُهُمَا بِغَيْرِ إِذْنِ الْآخَرِ]

L17144

L17145–17147

Issue 1063: If an animal is jointly owned by two or more partners and one of them ritually slaughters it without the other partner's permission, it becomes carrion unlawful for consumption. The slaughterer must compensate the other partner with a share equivalent to his portion in a similar animal under undivided ownership. If no such animal exists at all, the compensation becomes its monetary value. However, if the animal is observed to be near death or its upkeep becomes prohibitively costly leading to loss, he may slaughter it at that point, rendering it lawful. This ruling applies as per what we mentioned regarding Allah's prohibition against consuming wealth unjustly, and His saying: "No soul bears the burden of another" (6:164). Thus, he is a transgressor in slaughtering it. If it involves utilizing another's property and such use is righteous, then it is permissible, as we have stated, based on Allah's command: *And cooperate in righteousness and piety* [Al-Ma'idah: 2], and the Prophet's prohibition—peace and blessings of Allah be upon him—against squandering wealth. This is the view of Abū Sulaymān and our companions.[20]

١٠٦٣ - مَسْأَلَةٌ: وَكُلُّ حَيَوَانٍ بَيْنَ اثْنَيْنِ فَصَاعِدًا فَذَكَّاهُ أَحَدُهُمَا بِغَيْرِ إِذْنِ الْآخَرِ، فَهُوَ مَيْتَةٌ لَا يَحِلُّ أَكْلُهُ، وَيَضْمَنُ لِشَرِيكِهِ مِثْلَ حِصَّتِهِ مُشَاعًا فِي حَيَوَانٍ مِثْلِهِ، فَإِنْ لَمْ يُوجَدْ أَصْلًا فَقِيمَتُهُ، إِلَّا أَنْ يَرَى بِهِ مَوْتًا أَوْ تَعْظُمُ مُؤْنَتُهُ فَيَضِيعُ، فَلَهُ تَذْكِيَتُهُ حِينَئِذٍ، وَهُوَ حَلَالٌ لِمَا ذَكَرْنَا مِنْ تَحْرِيمِ اللَّهِ تَعَالَى أَكْلَ أَمْوَالِنَا بِالْبَاطِلِ. وَقَوْلِهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَهُوَ مُتَعَدٍّ فِي ذَبْحِهِ مَتَاعَ غَيْرِهِ، فَإِنْ كَانَ ذَلِكَ صَلَاحًا جَازَ كَمَا قُلْنَا لِقَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢] وَلِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إِضَاعَةِ الْمَالِ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

[19] **Qur'an references (L17143):** Qur'an 5:3 (Al-Ma'idah).

[20] **Qur'an references (L17145):** Qur'an 6:164 (Al-An'am); Qur'an 5:2 (Al-Ma'idah).

A legal issue: He instructed his household to perform ritual slaughter on whichever of his animals they wished or whichever they had need of.

Issue 1064: If someone instructs his family, agent, or servant to perform ritual slaughter of any animals they choose from his livestock or what they require from it (whether in his presence or absence), this is permissible. The slaughter is religiously valid because it was conducted with his authorization, and the slaughterer does not overstep in such circumstances - as this authority pertains to his own property. Success comes solely from Allah, the Most High.

[مَسْأَلَةٌ أَمَرَ أَهْلَهُ بِتَذْكِيَةِ مَا شَاءُوا مِنْ حَيَوَانِهِ أَوْ مَا احْتَاجُوا إِلَيْهِ]

١٠٦٤ - مَسْأَلَةٌ: وَمَنْ أَمَرَ أَهْلَهُ، أَوْ وَكِيلَهُ، أَوْ خَادِمَهُ بِتَذْكِيَةِ مَا شَاءُوا مِنْ حَيَوَانِهِ، أَوْ مَا احْتَاجُوا إِلَيْهِ فِي حَضْرَتِهِ، أَوْ مَغِيبِهِ جَازَ ذَلِكَ، وَهِيَ ذَكَاةٌ صَحِيحَةٌ لِأَنَّهُ بِإِذْنِهِ كَانَ ذَلِكَ، وَلَمْ يَتَعَدَّ الْمُذَكِّي حِينَئِذٍ - وَلَهُ ذَلِكَ فِي مَالِ نَفْسِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: Breaking the nape of an animal intended for slaughter until it dies.

Issue 1065: It is not permissible to break the nape of the slaughtered animal until it dies. If one does so after completing the slaughter, he has sinned, but the meat remains permissible to eat. This is because he failed to ease his slaughtered animal's suffering by breaking its neck, though this act does not render the meat unlawful. For when the slaughter is properly completed, the meat becomes permissible to eat once the animal dies from that [valid slaughter].

[مَسْأَلَةٌ كَسْرُ قَفَا الذَّبِيحَةِ حَتَّى تَمُوتَ]

١٠٦٥ - مَسْأَلَةٌ: وَلَا يَحِلُّ كَسْرُ قَفَا الذَّبِيحَةِ حَتَّى تَمُوتَ فَإِنْ فَعَلَ بَعْدَ تَمَامِ الذَّكَاةِ فَقَدْ عَصَى وَلَمْ يَحْرُمْ أَكْلُهَا بِذَلِكَ، لِأَنَّهُ لَمْ يُرِحْ ذَبِيحَتَهُ، إذْ كَسَرَ عُنُقَهَا، وَلَمْ يَحْرُمْ أَكْلُهَا، لِأَنَّهُ إذَا تَمَّتْ ذَكَاتُهَا فَقَدْ حَلَّ أَكْلُهَا بِذَلِكَ إذَا مَاتَتْ.

An issue pertaining to that which is slaughtered outside our presence by a sinful Muslim, an ignorant person [of the rulings], or a Kitabi (member of the People of the Book).

1066 - Issue: Any meat slaughtered by a Muslim (whether sinful or ignorant) or a Person of the Book, which is unknown to us, is lawful to consume. This is based on what we narrated through Al-Bukhari's chain: Muhammad ibn Abdullah, Abu Thabit Al-Madini, narrated to us; Usamah ibn Hafs narrated to us from Hisham ibn Urwah from his father from Aisha, Mother of the Believers: "Some people said to the Prophet—peace and blessings of Allah be upon him—'Certain people bring us meat, and we do not know whether they mentioned Allah's name over it.' He—peace be upon him—responded:

[مَسْأَلَةٌ مَا غَابَ عَنَّا مِمَّا ذَكَّاهُ مُسْلِمٌ فَاسِقٌ أَوْ جَاهِلٌ أَوْ كِتَابِيٌّ]

١٠٦٦ - مَسْأَلَةٌ: وَكُلُّ مَا غَابَ عَنَّا مِمَّا ذَكَّاهُ مُسْلِمٌ فَاسِقٌ، أَوْ جَاهِلٌ، أَوْ كِتَابِيٌّ فَحَلَالٌ أَكْلُهُ لِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ هُوَ أَبُو ثَابِتٍ الْمَدِينِيُّ - نا أُسَامَةُ بْنُ حَفْصٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ قَوْمًا قَالُوا لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ قَوْمًا يَأْتُونَنَا بِاللَّحْمِ لَا نَدْرِي أَذَكَرُوا اسْمَ اللَّهِ عَلَيْهِ أَمْ لَا؟

'Pronounce Allah's name yourselves and eat.' Aisha added: 'They had recently left disbelief.'" If they object: "You have transmitted this report through Sufyan ibn Uyaynah's chain wherein he—peace be upon him—said: 'Strive concerning their faith and eat,'" we reply: Indeed, we narrated it through Sufyan's chain from Hisham ibn Urwah from his father that the Messenger of Allah—peace and blessings of Allah be upon him—[said]. This constitutes a disconnected chain, and disconnected narrations cannot serve as conclusive evidence. Success comes solely from Allah, the Most High.

فَقَالَ - عَلَيْهِ السَّلَامُ -: سَمُّوا اللَّهَ أَنْتُمْ وَكُلُوا، قَالَتْ عَائِشَةُ: وَكَانُوا حَدِيثِي عَهْدٍ بِكُفْرٍ» . فَإِنْ قَالُوا: وَقَدْ رَوَيْتُمْ هَذَا الْخَبَرَ مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ، وَفِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ «اجْتَهِدُوا إِيمَانَهُمْ وَكُلُوا» . قُلْنَا: نَعَمْ، رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَذَا مُرْسَلٌ، وَالْمُرْسَلُ لَا تَقُومُ بِهِ حُجَّةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: If an animal that has fallen is retrieved while still alive, then it is slaughtered.

L17154

[مَسْأَلَةٌ مَا تَرَدَّى إذَا أُدْرِكَ وَفِيهِ شَيْءٌ مِنْ الْحَيَاةِ فَذُبِحَ]

L17155 Issue: Any animal that plunges (from a height), is attacked by a predator, is gored by another animal, suffocates until its brain spills out, has its intestines severed, has its spinal cord cut, or has its internal organs scattered—if found with any remnant of life and subsequently slaughtered by dhabḥ (standard throat-slitting) or subjected to nahr (camel-specific slaughter)—its consumption becomes lawful. The prohibition applies only to what dies from such injuries. The evidence for this is Allah's statement: "Except what you properly slaughter" (Quran 5:3). Thus, He excluded from all such cases whatever is ritually slaughtered. It does not matter whether the injury or the slaughter occurred first chronologically, for Allah did not stipulate such precedence. Rather, He permitted what we slaughter before death. If a predator severs the throat of a camel, it must still undergo nahr (if alive), rendering its consumption lawful. If a portion of the throat remains intact where valid dhabḥ can be performed, it must be slaughtered accordingly, making its consumption lawful.[21]

١٠٦٧ - مَسْأَلَةٌ: وَكُلُّ مَا تَرَدَّى أَوْ أَصَابَهُ سَبُعٌ أَوْ نَطَحَهُ نَاطِحٌ، أَوْ انْخَنَقَ فَانْتَثَرَ دِمَاغُهُ، أَوْ انْقَرَضَ مُصْرَانُهُ، أَوْ انْقَطَعَ نُخَاعُهُ، أَوْ انْتَشَرَتْ حَشْوَتُهُ فَأُدْرِكَ وَفِيهِ شَيْءٌ مِنْ الْحَيَاةِ فَذُبِحَ أَوْ نُحِرَ -: حَلَّ أَكْلُهُ، وَإِنَّمَا حَرَّمَ تَعَالَى مَا مَاتَ مِنْ كُلِّ ذَلِكَ. بُرْهَانُهُ -: قَوْله تَعَالَى: {إلا مَا ذَكَّيْتُمْ} [المائدة: ٣] فَاسْتَثْنَى مِنْ ذَلِكَ كُلِّهِ مَا أُدْرِكَتْ ذَكَاتُهُ، وَلَا نُبَالِي مِنْ أَيِّهِمَا مَاتَ قَبْلُ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَشْتَرِطْ ذَلِكَ بَلْ أَبَاحَ مَا ذَكَّيْنَا قَبْلَ الْمَوْتِ، فَلَوْ قَطَعَ السَّبُعُ حَلْقَهَا نُحِرَتْ وَحَلَّ أَكْلُهَا، وَلَوْ بَقِيَ فِي الْحَلْقِ مَوْضِعٌ يُذْبَحُ فِيهِ ذُبِحَتْ وَحَلَّ أَكْلُهَا.

L17156–17157 It was narrated through the chain of ʿAbd al-Razzāq from Maʿmar from Ibn Abī Dhuʾayb from Muḥammad ibn Yaḥyā ibn Ḥibbān from Abū Murrah, the freed slave of ʿAqīl ibn Abī Ṭālib, that he found a sheep of theirs dying, so he slaughtered it. It then moved. He asked Zayd ibn Thābit, who said: "A

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ أَبِي ذُؤَيْبٍ عَنْ مُحَمَّدِ بْنِ يَحْيَى بْنِ حِبَّانَ عَنْ أَبِي مُرَّةَ مَوْلَى عَقِيلِ بْنِ أَبِي طَالِبٍ أَنَّهُ وَجَدَ شَاةً لَهُمْ تَمُوتُ فَذَبَحَهَا فَتَحَرَّكَتْ فَسَأَلَتْ زَيْدَ بْنَ ثَابِتٍ؟ فَقَالَ: إنَّ الْمَيْتَةَ لَا تَتَحَرَّكُ، فَسَأَلَتْ أَبَا هُرَيْرَةَ؟ فَقَالَ: كُلْهَا إذَا طَرَفَتْ عَيْنُهَا، أَوْ تَحَرَّكَتْ قَائِمَةٌ مِنْ قَوَائِمِهَا.

[21] **Qur'an references (L17155):** Qur'an 5:3 (Al-Ma'idah).

dead animal does not move." He then asked Abū Hurayrah, who said: "Eat it if either its eye fluttered or a leg jerked upright from among its legs."

L17158 From the narration of Ibn Juraij, from Ja'far ibn Muhammad, from his father, that Ali ibn Abi Talib said: "If it strikes with its leg or tail, or blinks its eye, then it is ritually slaughtered." From the narration of Sufyan ibn Uyaynah, from al-Rukayn ibn al-Rabi', from Abu Talhah al-Asadi, who said: "A wolf attacked a sheep, slit its belly, and something from the sheep fell to the ground. I asked Ibn Abbas, and he said: 'Examine what fell to the earth and do not eat it,' then he instructed him to slaughter it ritually and consume it." From the narration of Muhammad ibn al-Muthanna, from Abdullah ibn Dawud al-Khuraibi, from Abu Shihab—who is Musa ibn Rafi'—from al-Nu'man ibn Ali, who said: "Sa'id ibn Jubayr saw an ostrich in our courtyard thrashing its leg. He asked: 'What is this?' We replied: 'An animal that fell into a pit and became trapped in the well.' He said: 'Ritually slaughter it, for the fallen animal is what dies from its fall.'" From the narration of Isma'il ibn Ishaq al-Qadi, from Muhammad ibn Ubayd, from Muhammad ibn Thawr, from Ma'mar, from Qatadah, regarding Allah's statement: {And the strangled} [5:3], he said: "It is what dies from suffocation. {And the struck} [5:3] is what is bludgeoned and dies. {And the fallen from a height} [5:3] is what plummets and dies. {And what is mauled by beasts—except what you slaughter ritually} [5:3]—from all these categories. If you find it blinking its eye or twitching its ear among these—whether strangled, bludgeoned, fallen from a height, mauled by a beast, or gored—then it becomes lawful for you if you slaughter it ritually."[22]

L17159–17161 From the path of Sa'īd ibn Manṣūr: Jarīr ibn 'Abd al-Ḥamīd narrated to us from al-Rukayn ibn al-Rabī' from Abū Ṭalḥah al-Asadī that he heard Ibn 'Abbās being asked about a sheep whose belly a wolf tore, causing its intestines to fall to the ground, after which it was slaughtered. Ibn 'Abbās said: "Do not eat whatever part of its intestines fell to the ground, for it is carrion, but eat whatever remains." No Companion is known to have disagreed with the

وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: إِذَا ضَرَبَتْ بِرِجْلِهَا أَوْ ذَنَبِهَا أَوْ طَرَفَتْ بِعَيْنِهَا فَهِيَ ذَكِيٌّ. وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الرُّكَيْنِ بْنِ الرَّبِيعِ عَنْ أَبِي طَلْحَةَ الْأَسَدِيِّ قَالَ: عَدَا الذِّئْبُ عَلَى شَاةٍ فَفَرَى بَطْنَهَا فَسَقَطَ مِنْهُ شَيْءٌ إِلَى الْأَرْضِ، فَسَأَلْتُ ابْنَ عَبَّاسٍ؟ فَقَالَ: انْظُرْ مَا سَقَطَ مِنْهَا إِلَى الْأَرْضِ فَلَا تَأْكُلْهُ، وَأَمَرَهُ أَنْ يُذَكِّيَهَا فَيَأْكُلَهَا. وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ اللَّهِ بْنُ دَاوُد الْخُرَيْبِيُّ عَنْ أَبِي شِهَابٍ هُوَ مُوسَى بْنُ رَافِعٍ - عَنْ النُّعْمَانِ بْنِ عَلِيٍّ قَالَ: رَأَى سَعِيدُ بْنُ جُبَيْرٍ فِي دَارِنَا نَعَامَةً تَرْكُضُ بِرِجْلِهَا، فَقَالَ: مَا هَذِهِ؟ قُلْنَا: وَقِيذٌ وَقَعَتْ فِي بِئْرٍ، فَقَالَ: ذَكُّوهَا، فَإِنَّ الْوَقِيذَ مَا مَاتَ فِي وَقْذِهِ. وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا مُحَمَّدُ بْنُ عُبَيْدٍ نا مُحَمَّدُ بْنُ ثَوْرٍ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي قَوْلِ اللَّهِ تَعَالَى -: {وَالْمُنْخَنِقَةُ} [المائدة: ٣] قَالَ: هِيَ الَّتِي تَمُوتُ فِي خِنَاقِهَا. {وَالْمَوْقُوذَةُ} [المائدة: ٣] الَّتِي تُوقَذُ فَتَمُوتُ. {وَالْمُتَرَدِّيَةُ} [المائدة: ٣] الَّتِي تَتَرَدَّى فَتَمُوتُ. {وَمَا أَكَلَ السَّبُعُ إِلا مَا ذَكَّيْتُمْ} [المائدة: ٣] مِنْ هَذَا كُلِّهِ، فَإِذَا وَجَدْتَهَا تَطْرِفُ عَيْنَهَا، أَوْ تُحَرِّكُ أُذُنَهَا مِنْ هَذَا كُلِّهِ: مُنْخَنِقَةً، أَوْ مَوْقُوذَةً، أَوْ مُتَرَدِّيَةً، أَوْ مَا أَكَلَ السَّبُعُ، أَوْ نَطِيحَةً فَهِيَ لَكَ حَلَالٌ إِذَا ذَكَّيْتَهَا.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ الرُّكَيْنِ بْنِ الرَّبِيعِ عَنْ أَبِي طَلْحَةَ الْأَسَدِيِّ أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ سُئِلَ عَنْ شَاةٍ بَقَرَ الذِّئْبُ بَطْنَهَا فَوَضَعَ قَصَبَهَا إِلَى الْأَرْضِ، ثُمَّ ذُبِحَتْ؟ فَقَالَ ابْنُ عَبَّاسٍ: مَا سَقَطَ، مِنْ قَصَبِهَا إِلَى الْأَرْضِ فَلَا تَأْكُلْهُ، فَإِنَّهُ مَيْتَةٌ، وَكُلْ مَا بَقِيَ - وَلَا يُعْرَفُ لِمَنْ ذَكَرْنَا مُخَالِفٌ مِنْ الصَّحَابَةِ - وَهِيَ رِوَايَةُ ابْنِ

[22] **Qur'an references (L17158):** Qur'an 5:3 (Al-Ma'idah).

وَهْبٍ عَنْ مَالِكٍ - وَبِهِ يَأْخُذُ إِسْمَاعِيلُ، وَمَا نَعْلَمُ لِلْقَوْلِ الْآخَرِ حُجَّةً أَصْلًا وَلَا مُتَعَلَّقًا.
وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا حَجَّاجٌ عَنْ الشَّعْبِيِّ عَنْ الْحَارِثِ عَنْ عَلِيٍّ قَالَ: إذَا وَجَدَ الْمَوْقُوذَةَ، وَالْمُتَرَدِّيَةَ، وَالنَّطِيحَةَ، وَمَا أَصَابَ السَّبُعُ: فَوَجَدْتَ تَحْرِيكَ يَدٍ أَوْ رِجْلٍ فَذَكِّهَا وَكُلْ. قَالَ هُشَيْمٌ: وَأَخْبَرَنَا حُصَيْنٌ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ - أَنَّ ابْنَ أَخِي مَسْرُوقٍ سَأَلَ ابْنَ عُمَرَ عَنْ صَيْدِ الْمَنَاجِلِ؟ فَقَالَ: إنَّهُ يَبِينُ مِنْهُ الشَّيْءُ وَهُوَ حَيٌّ فَقَالَ ابْنُ عُمَرَ: أَمَّا مَا أَبَانَ مِنْهُ وَهُوَ حَيٌّ فَلَا تَأْكُلْ - وَكُلْ مَا سِوَى ذَلِكَ. وَأَمَّا مَنْ قَالَ: يُنْظَرُ مِنْ أَيِّ الْأَمْرَيْنِ مَاتَ قَبْلُ - فَقَوْلٌ فَاسِدٌ، لِأَنَّهُ لَا يُقْدَرُ فِيهِ عَلَى بُرْهَانٍ مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَنَسْأَلُهُ عَمَّنْ ذَبَحَ، أَوْ نَحَرَ كَمَا أَمَرَ اللَّهُ تَعَالَى، ثُمَّ رَمَى رَامٍ حَجَرًا، وَشَدَخَ رَأْسَ الذَّبِيحَةِ، أَوْ النَّحِيرَةِ، بَعْدَ تَمَامِ الذَّكَاةِ فَمَاتَتْ لِلْوَقْتِ؟ أَتُؤْكَلُ أَمْ لَا؟ فَمِنْ قَوْلِهِمْ: نَعَمْ، فَصَحَّ أَنَّ الْمُرَاعَى إنَّمَا هُوَ مَا جَاءَ بِهِ النَّصُّ مِمَّا ذُكِّيَ، ثُمَّ لَا نُبَالِي مِمَّا مَاتَ أَمِنْ الذَّكَاةِ أَمْ مِنْ غَيْرِهَا؟ لِأَنَّ اللَّهَ تَعَالَى لَمْ يَشْتَرِطْ لَنَا ذَلِكَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] . وَمِنْ الْبَاطِلِ أَنْ يُلْزِمَنَا اللَّهُ تَعَالَى حُكْمًا، وَلَا يُعَيِّنَهُ عَلَيْنَا.

one we mentioned—and this is the narration of Ibn Wahb. From Malik—and Ismail adopts this position—and we know of no argument whatsoever, foundational or related, for the opposing view. Through the chain of Sa'id ibn Mansur: Hushaym narrated to us from Hajjaj, from Al-Sha'bi, from Al-Harith, from 'Ali, who said: "If you find an animal beaten to death, fallen from a height, gored by another animal, or mauled by a predator, and you observe movement in a limb, then ritually slaughter it and eat." Hushaym said: Husayn, the son of 'Abd al-Rahman, informed us that Masruq's nephew asked Ibn 'Umar about prey taken by birds of prey. He replied: "What is severed from it while alive—do not eat that part. Eat everything else!" As for those who say, "Determine which of the two causes preceded its death," this is an invalid opinion, for no evidence exists from the Quran or Sunnah. We ask him: If one slaughters or sacrifices as Allah commanded, then a thrower threw a stone and crushed the head of the slaughtered or sacrificed animal after proper ritual slaughter, causing immediate death—is it permissible to eat? They replied, "Yes," thereby confirming that the consideration is solely what the text specifies regarding what was ritually slaughtered. Thereafter, we disregard whether death resulted from the slaughter or other causes, for Allah did not impose this condition: {Your Lord is never forgetful} [19:64]. It is falsehood to claim Allah obligates rulings without clarifying them.[23]

[23] **Qur'an references (L17159):** Qur'an 19:64 (Maryam).



AL-MUHALLA

كِتَابُ الصَّيْدِ

The Book of Hunting

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الصَّيْدِ] [مَسْأَلَةٌ مَا شَرَدَ فَلَمْ يُقْدَرْ عَلَيْهِ مِنْ حَيَوَانِ الْبَرِّ]

١٠٦٨ - مَسْأَلَةٌ: مَا شَرَدَ فَلَمْ يُقْدَرْ عَلَيْهِ مِنْ حَيَوَانِ الْبَرِّ كُلِّهِ - وَحْشِيِّهِ وَأَنِيسِهِ - لَا تُحَاشِ شَيْئًا، لَا طَائِرًا وَلَا ذَا أَرْبَعٍ مِمَّا يَحِلُّ أَكْلُهُ فَإِنَّ ذَكَاتَهُ أَنْ يُرْمَى بِمَا يَعْمَلُ عَمَلَ الرُّمْحِ، أَوْ عَمَلَ السَّهْمِ، أَوْ عَمَلَ السَّيْفِ، أَوْ عَمَلَ السِّكِّينِ حَاشَا مَا ذَكَرْنَا أَنَّهُ لَا تَحِلُّ التَّذْكِيَةُ بِهِ، فَإِنْ أُصِيبَ بِذَلِكَ، فَمَاتَ قَبْلَ أَنْ تُدْرِكَ ذَكَاتُهُ فَأَكْلُهُ حَلَالٌ، فَإِنْ أُدْرِكَ حَيًّا إِلَّا أَنَّهُ فِي سَبِيلِ الْمَوْتِ السَّرِيعِ فَإِنْ ذُبِحَ، أَوْ نُحِرَ فَحَسَنٌ، وَإِلَّا فَلَا بَأْسَ بِأَكْلِهِ، وَإِنْ كَانَ لَا يَمُوتُ سَرِيعًا لَمْ يَحِلَّ أَكْلُهُ إِلَّا بِذَبْحٍ أَوْ نَحْرٍ، أَوْ بِأَنْ يُرْسَلَ عَلَيْهِ سَبُعٌ مِنْ سِبَاعِ الطَّيْرِ، أَوْ ذَوَاتِ الْأَرْبَعِ، لَا ذَكَاةَ لَهُ إِلَّا بِأَحَدِ هَذَيْنِ الْوَجْهَيْنِ -: لِمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ عَنْ الشَّعْبِيِّ عَنْ عَدِيِّ بْنِ حَاتِمٍ قَالَ «سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْمِعْرَاضِ؟ فَقَالَ: إذَا أَصَابَ بِحَدِّهِ فَكُلْ وَإِذَا أَصَابَ بِعَرْضِهِ فَقَتَلَ فَإِنَّهُ وَقِيذٌ فَلَا تَأْكُلْ» . وَمِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ إبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - أَنَا جَرِيرٌ هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ مَنْصُورٍ هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ هَمَّامِ بْنِ الْحَارِثِ عَنْ عَدِيِّ بْنِ حَاتِمٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: «إذَا رَمَيْتَ بِالْمِعْرَاضِ نَخَزَ فَكُلْهُ، وَإِنْ أَصَابَ بِعَرْضِهِ فَلَا تَأْكُلْهُ» . وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: كَمَا رُوِّينَا عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عَمَّارِ بْنِ يَاسِرٍ قَالَ: إذَا رَمَيْت بِالْحَجَرِ أَوْ الْبُنْدُقَةِ ثُمَّ ذَكَرْت اسْمَ اللَّهِ فَكُلْ.

L17162–17163 **[The Book of Hunting] [A legal issue concerning wild animals that escape and cannot be captured]**

L17164 Issue 1068: Concerning any land animal that flees and cannot be captured—whether wild or domesticated, including all types such as birds and permissible four-legged animals—its valid slaughter occurs when struck by a projectile serving the function of a spear, arrow, sword, or knife, excluding tools we previously deemed impermissible for slaughter. If killed by such means before slaughter can be performed, its consumption is lawful. If caught alive but undergoing rapid death, slaughtering it by throat-cutting (dhabḥ) or neck-base slaughter (nahr) is preferable; otherwise, consumption remains permissible. If the animal is not dying rapidly, consumption is lawful only through dhabḥ, nahr, or by releasing upon it a bird of prey or four-legged predator. Slaughter is valid solely through these two methods.

This ruling derives from our narration via Shu'bah's chain from 'Abdullāh ibn Abī al-Safar, from al-Sha'bī, from 'Adī ibn Ḥātim, who said: "I asked Allah's Messenger—peace and blessings upon him—about the blunt arrow (mi'rāḍ). He replied: 'If it pierces with its sharp edge, eat. But if it kills by striking with its flat side, it is carrion—do not eat.'"

Through Muslim's chain: Isḥāq ibn Ibrāhīm (Ibn Rāhwayh) narrated to us that Jarīr ibn 'Abd al-Ḥamīd reported from Manṣūr ibn al-Mu'tamir, from Ibrāhīm al-Nakha'ī, from Hammām ibn al-Ḥārith, from 'Adī ibn Ḥātim that Allah's Messenger—peace and blessings upon him—said: "If you shoot with a blunt arrow and it pierces, eat it. But if it strikes with its flat side, do not eat it."

Scholars have differed on this matter, as evidenced by our narration from Sufyān ibn 'Uyaynah, from 'Amr ibn Dīnār, from Sa'īd ibn al-Musayyib, from 'Ammār ibn Yāsir, who stated: "If you throw a stone or pellet while invoking Allah's name, then eat."[1]

L17165–17168 We have also transmitted it from Salmān al-Fārisī - and this is the opinion

[1] **Hadith references (L17164):** Sunan an-Nasai 4306; Sahih Muslim 1929c.

of Abū al-Dardā’, Faḍālah ibn ʿUbayd, and Ibn ʿUmar. Through the chain of Sufyān al-Thawrī from ʿAbd al-Raḥmān ibn Ḥarmala from Saʿīd ibn al-Musayyab, who said: “Any wild game you kill with a stone, a wooden implement, or a sling – eat it. If you shoot and forget to invoke Allah’s name, then eat it.” Through the chain of Sufyān ibn ʿUyayna from ʿAbd al-Raḥmān ibn Ḥarmala: I heard Saʿīd ibn al-Musayyab say: “Any wild game you kill with a stone, a sling, or a blunt arrow – eat it. If you refuse to eat it, bring it to me.” This is the opinion of Makḥūl and al-Awzāʿī. We have transmitted contradictory reports from ʿUmar, as we narrated through the chain of ʿAbd al-Razzāq from Maʿmar from ʿĀṣim ibn Abī al-Najūd from Zirr ibn Ḥubaysh, who said: I heard ʿUmar ibn al-Khaṭṭāb say: “Let none of you strike a rabbit with his staff or stone then consume it. Let him perform the slaughter for you with al-asall: arrows and spears.” This is the position of Abū Ḥanīfa, Mālik, al-Shāfiʿī, and Abū Sulaymān. Those who upheld the opinion of ʿAmmār, Salmān, and Saʿīd cited as evidence Allah’s decree: {Allah will surely test you with game within reach of your hands and spears} [5:94], and a ḥadīth we transmitted through Muslim’s chain from Hannād ibn al-Sarī from ʿAbdullāh ibn al-Mubārak from Ḥaywah ibn Shurayḥ, who said: I heard Rabīʿah ibn Yazīd al-Dimashqī say: “I am Abū Idrīs ʿĀ’idh Allāh al-Khawlānī. I heard Abū Thaʿlabah al-Khushanī say: The Messenger of Allah (peace be upon him) told me: ’Regarding your mention of dwelling in a game-rich land: whatever you strike with your bow after invoking Allah’s name – eat it.’” Abū Muḥammad said: They possess no valid proof through these two texts, for the ḥadīth of ʿAdī ibn Ḥātim we previously mentioned necessitates qualifying them with the exceptions it specifies. It is impermissible to disregard one textual proof for another. There is unanimous agreement that these rulings on game are not absolute, since one might retrieve a dead animal by hand (without proper slaughter), or strike it with a bow in a manner insufficient for valid ritual slaughter – which is indisputably invalid. Herein lies the contradiction of the Ḥanafīs, for they adopted the report of ʿAdī ibn Ḥātim – which introduces stipulations beyond [text incomplete]. What is in the Quran—while they refused similar cases regarding the exemption from Zakat for quantities

وَرُوِّينَاهُ أَيْضًا عَنْ سَلْمَانَ الْفَارِسِيِّ - وَهُوَ قَوْلُ أَبِي الدَّرْدَاءِ، وَفَضَالَةَ بْنِ عُبَيْدٍ، وَابْنِ عُمَرَ.
وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ حَرْمَلَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: كُلُّ وَحْشِيَّةٍ قَتَلْتَهَا بِحَجَرٍ، أَوْ بِخَشَبَةٍ، أَوْ بِبُنْدُقَةٍ فَكُلْهَا وَإِذَا رَمَيْتَ فَنَسِيتَ أَنْ تُسَمِّيَ فَكُلْ.
وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ حَرْمَلَةَ سَمِعْتُ سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ: كُلُّ وَحْشِيَّةٍ قَتَلْتَهَا بِحَجَرٍ، أَوْ بِبُنْدُقَةٍ، أَوْ بِمِعْرَاضٍ فَكُلْ، وَإِنْ أَبَيْتَ أَنْ تَأْكُلَ فَأْتِنِي بِهِ - وَهُوَ قَوْلُ مَكْحُولٍ، وَالْأَوْزَاعِيِّ. وَرُوِّينَا خِلَافَ هَذَا عَنْ عُمَرَ كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَاصِمِ بْنِ أَبِي النَّجُودِ عَنْ زِرِّ بْنِ حُبَيْشٍ قَالَ: سَمِعْتُ عُمَرَ بْنَ الْخَطَّابِ يَقُولُ: لَا يَخْذِفَنَّ أَحَدُكُمْ الْأَرْنَبَ بِعَصَاهُ أَوْ بِحَجَرٍ، ثُمَّ يَأْكُلُهَا وَلْيُذَكِّ لَكُمْ الْأَسَلُّ: النَّبْلُ، وَالرِّمَاحُ. وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ. وَاحْتَجَّ مَنْ ذَهَبَ إلَى قَوْلِ عَمَّارٍ، وَسَلْمَانَ، وَسَعِيدٍ بِقَوْلِ اللَّهِ تَعَالَى {لَيَبْلُوَنَّكُمُ اللَّهُ بِشَيْءٍ مِنَ الصَّيْدِ تَنَالُهُ أَيْدِيكُمْ وَرِمَاحُكُمْ} [المائدة: ٩٤] . وَبِحَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ عَنْ هَنَّادِ بْنِ السَّرِيِّ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ حَيْوَةَ بْنِ شُرَيْحٍ قَالَ: سَمِعْتُ رَبِيعَةَ بْنَ يَزِيدَ الدِّمَشْقِيَّ يَقُولُ: أَنَا أَبُو إدْرِيسَ عَائِذُ اللَّهِ الْخَوْلَانِيّ قَالَ سَمِعْتُ «أَبَا ثَعْلَبَةَ الْخُشَنِيَّ يَقُولُ: قَالَ لِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: وَأَمَّا مَا ذَكَرْتَ مِنْ أَنَّكَ بِأَرْضِ صَيْدٍ فَمَا أَصَبْتَ بِقَوْسِكَ فَاذْكُرْ اسْمَ اللَّهِ عَلَيْهِ وَكُلْ» . قَالَ أَبُو مُحَمَّد: وَلَا حُجَّةَ لَهُمْ فِي هَذَيْنِ النَّصَّيْنِ، لِأَنَّ حَدِيثَ عَدِيِّ بْنِ حَاتِمٍ الَّذِي ذَكَرْنَا فَرَضَ أَنْ يُضَافَ إلَيْهِمَا فَيُسْتَثْنَى مِنْهُمَا مَا اسْتَثْنَى فِيهِ، فَإِنَّهُ لَا يَحِلُّ تَرْكُ نَصٍّ لِنَصٍّ. وَلَا خِلَافَ فِي أَنَّ هَذَيْنِ مِنْ الصَّيْدِ لَيْسَا عَلَى عُمُومِهِمَا، لِأَنَّهُ قَدْ تَنَالُ فِيهِ الْيَدُ الْمَيْتَةَ، وَقَدْ تُصَابُ بِالْقَوْسِ الْمَقْدُورِ عَلَيْهِ فَلَا يَكُونُ ذَكَاةً بِلَا خِلَافٍ. وَهَذَا مِمَّا تَنَاقَضَ فِيهِ الْحَنَفِيُّونَ لِأَنَّهُمْ أَخَذُوا

بِخَبَرِ عَدِيِّ بْنِ حَاتِمٍ، وَهُوَ زَائِدٌ عَلَى مَا فِي الْقُرْآنِ، وَقَدْ امْتَنَعُوا مِنْ مِثْلِ هَذَا فِي إِسْقَاطِ الزَّكَاةِ فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ، وَغَيْرِ ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

below five awsuq, and other matters—and success comes only from Allah, the Exalted.[2]

وَأَمَّا قَوْلُنَا: إِنْ أُدْرِكَ حَيًّا إِلَّا أَنَّهُ فِي سَبِيلِ الْمَوْتِ السَّرِيعِ فَلَا بَأْسَ بِنَحْرِهِ وَذَبْحِهِ وَلَا بَأْسَ بِتَرْكِهِ، فَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِأَكْلِ مَا خُزِقَ، وَلَمْ يَنْهَ عَنْ ذَبْحِهِ، أَوْ نَحْرِهِ وَلَا أَمَرَ بِهِ فَهُوَ حَلَالٌ مُذَكًّى عَلَى كُلِّ حَالٍ، وَأَمَّا إِذَا كَانَ لَا يَمُوتُ مِنْ ذَلِكَ مَوْتَ الْمُذَكَّى فَلَا يَحِلُّ أَكْلُهُ إِلَّا بِذَكَاةٍ، لِأَنَّ حُكْمَ الذَّكَاةِ إِرَاحَةُ الْمُذَكَّى، وَتَعْجِيلُ الْمَوْتِ كَمَا ذَكَرْنَا مِنْ أَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ وَسَنَذْكُرُ إِنْ شَاءَ اللَّهُ تَعَالَى حُكْمَ إِرْسَالِ الْجَارِحِ.

L17169 As for our statement: If the animal is found alive but in the process of rapid dying, there is no harm in slaughtering it by dhabh or nahr, nor in leaving it. This is because the Messenger of Allah—peace and blessings be upon him—instructed eating what has been pierced by a weapon, did not prohibit slaughtering through dhabh or nahr, nor mandated it. Thus, it is lawful as a properly slaughtered (mudhakkan) animal in all cases. However, if the injury would not cause the death of a properly slaughtered animal, it becomes impermissible to eat except through valid slaughter. This is because the ruling of slaughter entails relieving the animal's suffering and hastening death, as indicated in the Prophet's instruction—peace and blessings be upon him. We will mention, Allah willing, the ruling regarding releasing predatory animals.

[مَسْأَلَةٌ أَكْلُ مَا لَمْ يُسَمِّ اللَّهَ تَعَالَى عَلَيْهِ مِمَّا قُتِلَ مِنْ الصَّيْدِ]

١٠٦٩ - مَسْأَلَةٌ: وَكُلُّ مَا ذَكَرْنَا أَنَّهُ لَا يَجُوزُ التَّذْكِيَةُ بِهِ فَلَا يَحِلُّ مَا قُتِلَ بِهِ مِنْ الصَّيْدِ، وَكُلُّ مَنْ قُلْنَا: إِنَّهُ لَا يَحِلُّ أَكْلُ مَا ذَبَحَ أَوْ نَحَرَ لَمْ يَحِلَّ أَكْلُ مَا قَتَلَ مِنْ الصَّيْدِ كَغَيْرِ الْكِتَابِيِّ وَالصَّبِيِّ، وَمَنْ تَصَيَّدَ بِآلَةٍ مَأْخُوذَةٍ بِغَيْرِ حَقٍّ. وَكُلُّ مَنْ قُلْنَا: إِنَّهُ يَحِلُّ أَكْلُ مَا ذَبَحَ أَوْ نَحَرَ أُكِلَ مَا قَتَلَ مِنْ الصَّيْدِ كَالْكِتَابِيِّ، وَالْمَرْأَةِ، وَالْعَبْدِ، وَغَيْرِهِمْ، وَلَا يَحِلُّ أَكْلُ مَا لَمْ يُسَمِّ اللَّهَ تَعَالَى عَلَيْهِ مِمَّا قُتِلَ مِنْ الصَّيْدِ بِعَمْدٍ، أَوْ بِنِسْيَانٍ لِأَنَّ الصَّيْدَ ذَكَاةٌ، وَقَدْ ذَكَرْنَا بُرْهَانَ ذَلِكَ -: فِي كَلَامِنَا فِي كِتَابِ التَّذْكِيَةِ آنِفًا وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ. وَكَرِهَ بَعْضُ النَّاسِ أَكْلَ مَا قَتَلَهُ الْكِتَابِيُّونَ مِنْ الصَّيْدِ - وَهَذَا بَاطِلٌ لِأَنَّ الصَّيْدَ ذَكَاةٌ، وَقَدْ أَبَاحَ اللَّهُ تَعَالَى لَنَا مَا ذَكَّوْا وَلَمْ يَخُصَّ ذَبِيحَةً مِنْ نَحِيرَةٍ مِنْ صَيْدٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا}

Issue: Consuming what was killed from the game without invoking the name of Allah, the Exalted, over it.

L17170

1069. Issue: Every tool or method we have mentioned as impermissible for slaughtering renders unlawful any game killed with it. Anyone we have deemed impermissible to eat what they slaughter or sacrifice likewise makes unlawful the game they kill - such as non-People of the Book, a child, and those who hunt with wrongfully acquired tools. Conversely, those we permit to eat what they slaughter or sacrifice also make permissible the game they kill - such as People of the Book, women, slaves, and others. It is impermissible to eat any game killed - whether intentionally or in forgetfulness - without Allah's name being pronounced over it, for game is validated through ritual slaughter. We have already established the proof for this in our preceding discourse in the Book of Slaughtering. All praise is due to Allah, Lord of the Worlds.

L17171–17173

[2] **Qur'an references (L17166):** Qur'an 5:94 (Al-Ma'idah).

Some have disapproved of eating game killed by People of the Book, but this is baseless, as game is validated through ritual slaughter. Allah Almighty has permitted us what they slaughter without excluding their sacrifices or hunts: {Your Lord is never forgetful} [19:64]. He also said: {He has already detailed for you what He has forbidden you} [6:119], yet He did not specify prohibiting this. Had it been forbidden, He would have detailed its prohibition. Since He did not, it remains entirely lawful.

If they obfuscate this with Allah's words: {What your hands and spears reach} [5:94], we respond: He also said: {Except what you slaughter} [5:3]. By this verse, they would then have to prohibit eating what they slaughter - otherwise, they contradict themselves. His statement: {The food of those who were given the Scripture is lawful for you} [5:5] supplements these two verses, and acting upon it is obligatory. Our position here aligns with the views of 'Aṭā', al-Layth, al-Awzā'ī, al-Thawrī, and Abū Ḥanīfah. Ash-Shafi'i, Abu Sulayman, and their companions (hold one view). The other opinion (that of Malik)—we know of no precedent for this in any foundational basis, nor did any of the Companions or Successors report making a distinction between the slaughtered animals of the People of the Book and their game. We have narrated through the chain of Yahya ibn Sa'id al-Qattan from Ibn Jurayj, who said: I asked 'Ata', "May a Zoroastrian send out a hawk?" He replied, "Yes. If a Zoroastrian sends out his dog and it kills [game], then eat." This is the opinion of Abu Thawr and others—and with Allah, the Exalted, lies success.[3]

L17174 Some people said: We know that when a Christian invokes Allah the Exalted, he intends Christ by it. Therefore, whether he explicitly invokes the name of the Messiah or not makes no difference - and this view is invalid, for we only follow what Allah the Exalted has commanded us and do not oppose Him with our opinions. Allah the Exalted has said: {Do not eat of that over which Allah's name has not been invoked} (6:121). Thus, it suffices us that if he has invoked Allah the Exalted, he has fulfilled the requirement through which Allah the Exalted permitted us to eat what he slaughtered. We

[3] **Qur'an references (L17171):** Qur'an 19:64 (Maryam); Qur'an 6:119 (Al-An'am); Qur'an 5:94 (Al-Ma'idah); Qur'an 5:3 (Al-Ma'idah); Qur'an 5:5 (Al-Ma'idah).

[مريم: ٦٤] . وَقَدْ قَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] وَلَمْ يُفَصِّلْ لَنَا تَحْرِيمَ هَذَا، فَلَوْ كَانَ حَرَامًا لَفَصَّلَ لَنَا تَحْرِيمَهُ، فَإِذْ لَمْ يُفَصِّلْ لَنَا تَحْرِيمَهُ فَهُوَ حَلَالٌ مَحْضٌ. فَإِنْ مَوَّهُوا بِقَوْلِ اللَّهِ تَعَالَى: {تَنَالُهُ أَيْدِيكُمْ وَرِمَاحُكُمْ} [المائدة: ٩٤] . قُلْنَا: وَقَدْ قَالَ تَعَالَى: {إِلا مَا ذَكَّيْتُمْ} [المائدة: ٣] فَحَرِّمُوا بِهَذِهِ الْآيَةِ أَكْلَ مَا ذَبَحُوا إِذًا، وَإِلَّا فَقَدْ تَنَاقَضْتُمْ وقَوْله تَعَالَى: {وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ} [المائدة: ٥] زَائِدٌ عَلَى مَا فِي هَاتَيْنِ الْآيَتَيْنِ، فَالْأَخْذُ بِهِ وَاجِبٌ. وَقَوْلُنَا هَهُنَا - هُوَ قَوْلُ عَطَاءٍ، وَاللَّيْثِ، وَالْأَوْزَاعِيِّ، وَالثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ. وَالْقَوْلُ الْآخَرُ - هُوَ قَوْلُ مَالِكٍ، وَلَا نَعْلَمُ لَهُ سَلَفًا فِي هَذَا أَصْلًا، وَلَا جَاءَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ وَلَا التَّابِعِينَ التَّفْرِيقُ بَيْنَ ذَبَائِحِ أَهْلِ الْكِتَابِ وَبَيْنَ صَيْدِهِمْ. وَرُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: أُيْرْسِلُ الْمَجُوسِيُّ بَازِيَ؟ قَالَ: نَعَمْ، إذَا أَرْسَلَ الْمَجُوسِيُّ كَلْبَك فَقَتَلَ فَكُلْ وَهُوَ قَوْلُ أَبِي ثَوْرٍ، وَغَيْرِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَالَ بَعْضُ النَّاسِ: قَدْ عَلِمْنَا أَنَّ النَّصْرَانِيَّ إذَا سَمَّى اللَّهَ تَعَالَى فَإِنَّمَا يَعْنِي بِهِ الْمَسِيحَ، فَسَوَاءٌ أَعْلَنَ بِاسْمِ الْمَسِيحِ أَوْ لَمْ يُعْلِنْ - وَهَذَا بَاطِلٌ، لِأَنَّا إنَّمَا نَتْبَعُ مَا أَمَرَنَا اللَّهُ تَعَالَى بِهِ، وَلَا نَعْتَرِضُ عَلَيْهِ بِآرَائِنَا. وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَلا تَأْكُلُوا مِمَّا لَمْ يُذْكَرِ اسْمُ اللَّهِ عَلَيْهِ} [الأنعام: ١٢١] فَحَسْبُنَا إذَا سَمَّى اللَّهَ تَعَالَى فَقَدْ أَتَى بِالصِّفَةِ الَّتِي أَبَاحَ اللَّهُ تَعَالَى لَنَا بِهَا أَكْلَ مَا ذَكَّى وَلَا نُبَالِي مَا عَنَى، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَأْمُرْنَا بِمُرَاعَاةِ نِيَّتِهِ الْخَبِيثَةِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَإِذَا لَمْ يَذْكُرْ اللَّهَ تَعَالَى، أَوْ ذَكَرَ غَيْرَ اللَّهِ تَعَالَى،

disregard what he intended, for Allah the Exalted did not command us to consider his vile intention - {Your Lord is never forgetful} (19:64). If he fails to invoke Allah the Exalted, or invokes other than Allah the Exalted, he has met the condition through which Allah the Exalted prohibited us from eating in such cases, because he dedicated it to other than Allah. We disregard his vile intention, as Allah the Exalted only commanded this obligation to be observed by each individual personally.[4]

L17175

Issue: The Timing for the Slaughterer to Utter [Allah's Name].

L17176–17178

1070. Issue: The time for invoking the name of Allah the Exalted during slaughter is necessarily at the initial placement of the slaughtering or sacrificing tool upon the hide before cutting. For hunting, its time coincides with the first release of the projectile, the first strike, or the initial release of the trained animal. Invocation is invalid before or after these moments, as these mark the commencement of slaughter. If one begins slaughter before invocation, part of the act precedes the invocation, thus he has not slaughtered as commanded. If an interval exists between invocation and commencing slaughter, the slaughter does not coincide with invocation as ordained, so he has not slaughtered as commanded. No distinction exists between a short or long interval, for if separation by an eye-blink were permitted, two or three blinks would follow until reaching the general populace and beyond. We are narrated via the chain of Imam Muslim's Ṣaḥīḥ: Al-Walīd ibn Shujāʿ al-Sakūnī reported to us from ʿAlī ibn Mushir, from ʿĀṣim al-Aḥwal, from al-Shaʿbī, from ʿAdī ibn Ḥātim, who said: The Messenger of Allah—peace and blessings be upon him—said to me, "When..." When you release your trained dog, mention Allah's name. Then he mentioned other words including: "If you shoot your arrow, mention Allah's name." Through the chain of Shuʿbah from al-Ḥakam ibn ʿUtaybah from Saʿīd ibn Masrūq: Ash-Shaʿbī narrated, saying: I heard ʿAdiyy ibn Ḥātim - who was my neighbor, dependent, and frontier guard in the Two Rivers region (Nahrawān) - that he asked Allah's Messenger (peace be upon him): "I release my dog and find another dog with

[4] **Qur'an references (L17174):** Qur'an 6:121 (Al-An'am); Qur'an 19:64 (Maryam).

فَقَدْ أَتَى بِالصِّفَةِ الَّتِي حَرَّمَ اللَّهُ تَعَالَى عَلَيْنَا الْأَكْلَ مَعَ وُجُودِهَا، لِأَنَّهُ أَهَلَّ لِغَيْرِ اللَّهِ بِهِ، وَلَا نُبَالِي بِنِيَّتِهِ الْخَبِيثَةِ، إِذْ لَمْ يَأْمُرِ اللَّهُ تَعَالَى بِذَلِكَ إِلَّا كُلَّ أَحَدٍ فِي نَفْسِهِ خَاصَّةً.

[مَسْأَلَةٌ وَقْتُ تَسْمِيَةِ الذَّابِحِ]

١٠٧٠ - مَسْأَلَةٌ: وَوَقْتُ تَسْمِيَةِ الذَّابِحِ اللَّهَ تَعَالَى فِي الذَّكَاةِ هِيَ مَعَ أَوَّلِ وَضْعِ مَا يَذْبَحُ بِهِ أَوْ يَنْحَرُ فِي الْجِلْدِ قَبْلَ الْقَطْعِ وَلَا بُدَّ. وَوَقْتُهَا فِي الصَّيْدِ مَعَ أَوَّلِ إِرْسَالِ الرَّمْيَةِ أَوْ مَعَ أَوَّلِ الضَّرْبَةِ، أَوْ مَعَ أَوَّلِ إِرْسَالِ الْجَارِحِ لَا تُجْزِي قَبْلَ ذَلِكَ وَلَا بَعْدَهُ، لِأَنَّ هَذِهِ مَبَادِئُ الذَّكَاةِ فَإِذَا شَرَعَ فِيهَا قَبْلَ التَّسْمِيَةِ فَقَدْ مَضَى مِنْهَا شَيْءٌ قَبْلَ التَّسْمِيَةِ فَلَمْ يُذَكِّ كَمَا أُمِرَ، وَإِذَا كَانَ بَيْنَ التَّسْمِيَةِ وَبَيْنَ الشُّرُوعِ فِي التَّذْكِيَةِ مُهْلَةٌ فَلَمْ تَكُنِ الذَّكَاةُ مَعَ التَّسْمِيَةِ كَمَا أُمِرَ، فَلَمْ يُذَكِّ كَمَا أُمِرَ. وَلَا فَرْقَ بَيْنَ قَلِيلِ الْمُهْلَةِ وَبَيْنَ كَثِيرِهَا، وَلَوْ جَازَ أَنْ يُفَرَّقَ بَيْنَهُمَا بِطَرْفَةِ عَيْنٍ جَازَ أَنْ يُفَرَّقَ بَيْنَهُمَا بِطَرْفَتَيْنِ وَثَلَاثٍ إِلَى أَنْ يَبْلُغَ الْأَمْرُ إِلَى الْعَامِّ وَأَكْثَرَ. رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا الْوَلِيدُ بْنُ شُجَاعٍ السَّكُونِيُّ أَنَا عَلِيُّ بْنُ مُسْهِرٍ عَنْ عَاصِمٍ الْأَحْوَلِ عَنِ الشَّعْبِيِّ عَنْ عَدِيِّ بْنِ حَاتِمٍ قَالَ: قَالَ [لِي] ، رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا أَرْسَلْتَ كَلْبَكَ الْمُعَلَّمَ فَاذْكُرِ اسْمَ اللَّهِ ثُمَّ ذَكَرَ كَلَامًا وَفِيهِ وَإِنْ رَمَيْتَ سَهْمَكَ فَاذْكُرِ اسْمَ اللَّهِ» . وَمِنْ طَرِيقِ شُعْبَةَ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ سَعِيدِ بْنِ مَسْرُوقٍ نا الشَّعْبِيُّ قَالَ: سَمِعْتُ عَدِيَّ بْنَ حَاتِمٍ وَكَانَ لِي جَارًا وَدَخِيلًا وَرَبِيطًا بِالنَّهْرَيْنِ، أَنَّهُ سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: «أُرْسِلُ كَلْبِي فَأَجِدُ مَعَ كَلْبِي آخَرَ قَدْ

mine that has caught [prey], and I do not know which of them caught it." He replied: "Do not eat it, for you mentioned Allah's name over your dog alone and did not mention it over the other." Thus, the Prophet (peace be upon him) only validated the release when accompanied by immediate mention of Allah's name, and prohibited eating what was not mentioned over. However, we have received conflicting reports from Ibn ʻAbbās, as transmitted through Ibn Lahīʻah from Yazīd ibn Abī Ḥabīb: ʻAbdullāh ibn al-Ḥakam al-Balawī informed him that he asked Ibn ʻAbbās: "I go out hunting and mention Allah's name when departing, yet sometimes game rushes past me swiftly, so I hasten to shoot before mentioning Allah's name?" Ibn ʻAbbās answered him: "If you depart as a hunter intending nothing else, and mentioned Allah's name when leaving, that suffices you." But no argument can be derived from anyone below the rank of Allah's Messenger (peace be upon him), especially since the narration from Ibn Lahīʻah - who is discarded - is followed by transmission from ʻAbdullāh ibn al-Ḥakam al-Balawī - who is unknown.

أَخَذَ لَا أَدْرِي أَيُّهُمَا أَخَذَ؟ قَالَ: فَلَا تَأْكُلْ إِنَّمَا سَمَّيْتَ عَلَى كَلْبِكَ وَلَمْ تُسَمِّ عَلَى غَيْرِهِ» فَلَمْ يَجْعَلْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْإِرْسَالَ، إِلَّا مَعَ التَّسْمِيَةِ بِلَا مُهْلَةٍ، وَحَرَّمَ أَكْلَ مَا لَمْ يُسَمِّ عَلَيْهِ. وَقَدْ رُوِّينَا خِلَافَ هَذَا عَنْ ابْنِ عَبَّاسٍ كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ أَنَّ عَبْدَ اللَّهِ بْنَ الْحَكَمِ الْبَلَوِيَّ أَخْبَرَهُ أَنَّهُ سَأَلَ ابْنَ عَبَّاسٍ؟ فَقَالَ: إِنِّي أَخْرُجُ إِلَى الصَّيْدِ فَأَذْكُرُ اسْمَ اللَّهِ حِينَ أَخْرُجُ فَرُبَّمَا مَرَّ بِي الصَّيْدُ حَثِيثًا فَأُعَجِّلُ فِي رَمْيِهِ قَبْلَ أَنْ أَذْكُرَ اسْمَ اللَّهِ تَعَالَى؟ فَقَالَ لَهُ ابْنُ عَبَّاسٍ: إِذَا خَرَجْتَ قَانِصًا لَا تُرِيدُ إِلَّا ذَلِكَ فَذَكَرْتَ اسْمَ اللَّهِ حِينَ تَخْرُجُ فَإِنَّ ذَلِكَ يَكْفِيكَ - وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَيْفَ وَرِوَايَةُ ابْنِ لَهِيعَةَ وَهُوَ سَاقِطٌ - ثُمَّ عَنْ عَبْدِ اللَّهِ بْنِ الْحَكَمِ الْبَلَوِيِّ وَهُوَ مَجْهُولٌ. -

A legal question: What is the ruling when a game animal is struck with a stone and some remaining life is found in it?

[مَسْأَلَةٌ مَا ضُرِبَ بِحَجَرٍ مِنْ الصَّيْدِ فَأُدْرِكَتْ فِيهِ بَقِيَّةٌ مِنْ الْحَيَاةِ]

1071 - Issue: Any animal struck by a stone or stick, or whose vital organs were cut open by a wild beast, a bird likewise, an idolater, or someone who did not mention Allah's name—if found with residual life—must be properly slaughtered by throat-cutting (dhabh) or chest-slaughtering (nahr). Its consumption becomes lawful, as this falls under the Exalted's statement: "Except what you [properly] slaughter" (5:3). We have detailed this in "What is Lawful and Forbidden to Eat" within this book. Success comes from Allah, the Most High.[5]

١٠٧١ - مَسْأَلَةٌ: وَكُلُّ مَا ضُرِبَ بِحَجَرٍ، أَوْ عُودٍ، أَوْ فَرَى مَقَاتِلَهُ سَبُعٌ بَرِّيٌّ أَوْ طَائِرٌ كَذَلِكَ، أَوْ وَثَنِيٌّ، أَوْ مَنْ لَمْ يُسَمِّ اللَّهَ تَعَالَى فَأُدْرِكَتْ فِيهِ بَقِيَّةٌ مِنْ الْحَيَاةِ ذُكِّيَ بِالذَّبْحِ أَوْ النَّحْرِ، وَحَلَّ أَكْلُهُ، لِأَنَّهُ مِمَّا قَالَ فِيهِ تَعَالَى {إِلا مَا ذَكَّيْتُمْ} [المائدة: ٣] وَقَدْ تَقَصَّيْنَا هَذَا " فِيمَا يَحِلُّ أَكْلُهُ وَيَحْرُمُ " مِنْ كِتَابِنَا هَذَا. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A case where two individuals each placed his hand on a knife and slaughtered an animal.

[مَسْأَلَةٌ وَضَعَ اثْنَانِ أَيْدِيَهُمَا عَلَى شَفْرَةٍ فَذَكَّيَا بِهَا حَيَوَانًا]

1072. Issue: If two or more persons place their hands on a blade or spear

[5] **Qur'an references (L17180):** Qur'an 5:3 (Al-Ma'idah).

and slaughter an animal at its owner's instruction, and one or all of them utter the name of Allah the Exalted, it is lawful. Similarly, if a group shoots arrows, and one or all of them utter the name of Allah the Exalted, and they strike game such that their arrows hit its lethal spot while all of them have uttered Allah's name, its consumption is lawful and shared among them. If any of them fails to strike the lethal spot, he has no claim to it. If the sole person who uttered the name of Allah the Exalted misses the lethal spot, the animal becomes *maytah* (carrion) and its consumption is unlawful. If none of those who struck the lethal spot uttered the name of Allah the Exalted, he has no claim to it, and the entire animal belongs to the one who uttered Allah's name. This differs from the ruling concerning owned animals under control, for the utterance remains valid over them, rendering them lawful. As for game, ownership cannot be established except through proper slaughter or capture. Before its death, this one did not slaughter it. However, he wounded it without attaining ownership. Ownership belongs solely to the one who slaughtered it with the *tasmiyah* [i.e., invoking Allah's name]. As for an animal already owned before being slaughtered, it becomes ritually slaughtered through the *tasmiyah* of whoever invoked Allah's name. Ownership remains with the one who originally held it, as it originally was—and success is from Allah, the Most High.

A case: He shot at game, struck it, lost sight of it, and later found it dead.

L17185

L17186 1073 - Issue: If someone shoots at game and hits it, and it remains out of sight for a day or more, or even less, then finds it dead: if he identifies his arrow and is certain he struck its lethal spot, it is permissible for him to eat it; otherwise, it is not permissible. Similarly, if he shoots it and hits it, then it falls from a mountain or into water: if he likewise identifies his arrow and is certain he struck its lethal spot, it is permissible for him to eat it; otherwise, it is not permissible. This is based on what we have narrated through the chain of Aḥmad ibn Ḥanbal: Yaḥyā ibn Zakariyyā ibn Abī Zā'idah reported to us, ʿĀṣim al-Aḥwal reported to me from al-Shaʿbī from ʿAdī ibn Ḥātim from the Prophet – peace and blessings be upon him – who said: "If your arrow lands in water and it drowns and dies, do not eat it." And through another

١٠٧٢ - مَسْأَلَةٌ: فَلَوْ وَضَعَ اثْنَانِ فَصَاعِدًا أَيْدِيَهُمْ عَلَى شَفْرَةٍ، أَوْ رُمْحٍ فَذَكَّوْا بِهِ حَيَوَانًا بِأَمْرِ مَالِكِهِ وَسَمَّى اللَّهَ تَعَالَى أَحَدُهُمْ أَوْ كُلُّهُمْ فَهُوَ حَلَالٌ. وَكَذَلِكَ، لَوْ رَمَى جَمَاعَةٌ سِهَامًا وَسَمَّى اللَّهَ تَعَالَى أَحَدُهُمْ أَوْ كُلُّهُمْ فَأَصَابُوا صَيْدًا فَأَكْلُهُ حَلَالٌ وَهُوَ بَيْنَهُمْ إِذَا أَصَابَتْ سِهَامُهُمْ مَقْتَلَهُ سَمَّى اللَّهَ تَعَالَى جَمِيعُهُمْ وَإِذَا لَمْ يُصِبْ أَحَدُهُمْ مَقْتَلَهُ، فَلَا حَقَّ لَهُ فِيهِ، فَإِنْ كَانَ الَّذِي لَمْ يُصِبْ مَقْتَلَهُ هُوَ وَحْدَهُ الَّذِي سَمَّى اللَّهَ تَعَالَى فَهُوَ مَيْتَةٌ لَا يَحِلُّ أَكْلُهُ فَإِنْ لَمْ يُسَمِّ اللَّهَ تَعَالَى أَحَدٌ مِمَّنْ أَصَابَ مَقْتَلَهُ فَلَا حَقَّ لَهُ فِيهِ، وَهُوَ كُلُّهُ الَّذِي سَمَّى اللَّهَ تَعَالَى - بِخِلَافِ الْقَوْلِ فِي الْمَقْدُورِ عَلَيْهِ الْمُتَمَلَّكِ، وَذَلِكَ لِأَنَّ التَّسْمِيَةَ صَحَّتْ عَلَيْهِ فَهُوَ حَلَالٌ، فَأَمَّا الصَّيْدُ فَلَا يُمْلَكُ إِلَّا بِالتَّذْكِيَةِ أَوْ بِأَنْ يُقْدَرَ عَلَيْهِ قَبْلَ مَوْتِهِ فَهَذَا لَمْ يُذَكِّهِ، لَكِنْ جَرَحَهُ فَلَمْ يَمْلِكْهُ وَإِنَّمَا مَلَكَهُ الَّذِي ذَكَّاهُ بِالتَّسْمِيَةِ، وَأَمَّا الْمُتَمَلَّكُ قَبْلَ أَنْ يُذَكَّى فَهُوَ مُذَكًّى بِتَسْمِيَةِ مَنْ سَمَّى، وَالْمِلْكُ بَاقٍ لِمَنْ سَلَفَ لَهُ فِيهِ مِلْكٌ كَمَا كَانَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ رَمَى صَيْدًا فَأَصَابَهُ وَغَابَ عَنْهُ ثُمَّ وَجَدَهُ مَيِّتًا]

١٠٧٣ - مَسْأَلَةٌ: وَمَنْ رَمَى صَيْدًا فَأَصَابَهُ وَغَابَ عَنْهُ يَوْمًا أَوْ أَكْثَرَ أَوْ أَقَلَّ، ثُمَّ وَجَدَهُ مَيِّتًا، فَإِنْ مَيَّزَ سَهْمَهُ وَأَيْقَنَ أَنَّهُ أَصَابَ مَقْتَلَهُ حَلَّ لَهُ أَكْلُهُ وَإِلَّا فَلَا يَحِلُّ لَهُ. وَكَذَلِكَ لَوْ رَمَاهُ فَأَصَابَهُ، ثُمَّ تَرَدَّى مِنْ جَبَلٍ أَوْ فِي مَاءٍ، فَإِنْ مَيَّزَ أَيْضًا سَهْمَهُ وَأَيْقَنَ أَنَّهُ أَصَابَ مَقْتَلَهُ حَلَّ لَهُ أَكْلُهُ وَإِلَّا فَلَا -: لِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ نا يَحْيَى بْنُ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ حَدَّثَنِي عَاصِمٌ الْأَحْوَلُ عَنْ الشَّعْبِيِّ عَنْ عَدِيِّ بْنِ حَاتِمٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا وَقَعَتْ رَمْيَتُكَ فِي مَاءٍ فَغَرِقَ فَمَاتَ فَلَا تَأْكُلْ» . وَمِنْ طَرِيقِ

chain of Aḥmad ibn Ḥanbal: Ghundar reported to us, Shuʿbah reported from Abū Bishr from Saʿīd ibn Jubayr from ʿAdī ibn Ḥātim, who said: “I asked the Messenger of Allah – peace and blessings be upon him – and he said: ’If you recognize your arrow and know it killed it, finding no trace of another [cause] upon it, then eat it.’”[6]

أَحْمَدَ بْنِ حَنْبَلٍ نا غُنْدَرٌ نا شُعْبَةُ عَنْ أَبِي بِشْرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ «عَدِيِّ بْنِ حَاتِمٍ قَالَ سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إذَا عَرَفْتَ سَهْمَكَ تَعْلَمُ أَنَّهُ قَتَلَهُ لَمْ تَرَ فِيهِ أَثَرًا لِغَيْرِهِ فَكُلْ» . ١٠٧٤ -

L17187 Issue: It is the same whether the game has become putrid or not. The narration stating that one who retrieves their game after three days may eat it provided it has not putrefied is invalid, as it comes through Muʿāwiyah ibn Ṣāliḥ. Similarly invalid is the narration containing the query: “O Messenger of God, rule for me regarding my bow!” where he (peace be upon him) responded: “Eat whatever your bow retrieves for you - whether properly slaughtered or not, even if it disappears from sight - provided it is not lost or you find marks other than your arrow,” since it is transmitted as a musnad narration through ʻAmr ibn Shuʻayb from his father from his grandfather. Likewise invalid is the report stating: “Eat what you strike mortally and abstain from what escapes wounded.” The term “striking mortally” refers to immobilizing the prey, while “escaping wounded” denotes when the animal wanders off with the arrow embedded until vanishing from sight, later being found dead after a day or similar duration - this being the interpretation we relate from Ibn ʻAbbās. The narration is invalid because its transmitter Muḥammad ibn Sulaymān ibn Masmūl - a discredited ḥadīth narrator - relays it from ʻAmr ibn Tamīm (another discredited narrator) from his unknown father. Also invalid is the report where a man said: “O Messenger of God, I shot game that disappeared overnight,” prompting him (peace be upon him) to respond: “Nighttime vermin are numerous,” as its chain is interrupted.

مَسْأَلَةٌ: وَسَوَاءٌ أَنْتَنَ أَمْ لَمْ يُنْتِنْ، وَلَا يَصِحُّ الْأَثَرُ الَّذِي فِيهِ فِي الَّذِي يُدْرِكُ صَيْدَهُ بَعْدَ ثَلَاثٍ فَكُلْهُ مَا لَمْ يُنْتِنْ، لِأَنَّهُ مِنْ طَرِيقِ مُعَاوِيَةَ بْنِ صَالِحٍ، وَلَا الْخَبَرُ الَّذِي فِيهِ «يَا رَسُولَ اللَّهِ أَفْتِنِي فِي قَوْسِي؟ قَالَ: كُلْ مَا رَدَّتْ عَلَيْكَ قَوْسُكَ ذَكِيًّا وَغَيْرَ ذَكِيٍّ - وَإِنْ تَغَيَّبَ عَنْكَ - مَا لَمْ يَضِلَّ أَوْ تَجِدْ فِيهِ أَثَرًا غَيْرَ سَهْمِكَ» لِأَنَّهُ مِنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ مُسْنَدًا، وَلَا الْأَثَرُ الَّذِي فِيهِ «كُلْ مَا أَصْمَيْتَ وَلَا تَأْكُلْ مَا أَنْمَيْتَ» . وَتَفْسِيرُ الْإِصْمَاءِ أَنْ تُقْعِصَهُ وَالْإِنْمَاءُ أَنْ يَسْتَقِلَّ بِسَهْمِهِ حَتَّى يَغِيبَ عَنْهُ فَيَجِدَهُ بَعْدَ ذَلِكَ مَيِّتًا بِيَوْمٍ أَوْ نَحْوِهِ - وَهَكَذَا رُوِّينَا تَفْسِيرَهُ عَنْ ابْنِ عَبَّاسٍ: لِأَنَّ رَاوِيَ الْمُسْنَدِ فِي ذَلِكَ مُحَمَّدُ بْنُ سُلَيْمَانَ بْنِ مَسْمُولٍ - وَهُوَ مُنْكَرُ الْحَدِيثِ - عَنْ عَمْرِو بْنِ تَمِيمٍ عَنْ أَبِيهِ - وَهُوَ مُنْكَرُ الْحَدِيثِ وَأَبُوهُ مَجْهُولٌ. وَلَا الْخَبَرُ الَّذِي فِيهِ: «أَنَّ رَجُلًا قَالَ: يَا رَسُولَ اللَّهِ رَمَيْتُ صَيْدًا فَتَغَيَّبَ عَنِّي لَيْلَةً فَقَالَ - عَلَيْهِ السَّلَامُ -: إنَّ هَوَامَّ اللَّيْلِ كَثِيرَةٌ» لِأَنَّهُ مُرْسَلٌ.

L17188–17189 Nor is the narration containing his statement—peace be upon him—“If I knew that raiding mounts had not aided in its killing, I would have instructed you to eat it” valid, for it is mursal, and it includes al-Ḥārith ibn Nabḥān who is weak. Nor is the narration containing “his statement—peace be upon him—regarding game: ’If the place of its killing becomes concealed from you, deem it makrūh’” valid, for it is mursal. It has been narrated from Ibn ʿAbbās concerning one who shot game and found his arrow in it the next

وَلَا الْخَبَرُ الَّذِي فِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ «لَوْ أَعْلَمُ أَنَّهُ لَمْ يُعِنْ عَلَى قَتْلِهِ دَوَابُّ الْمُعَارِ لَأَمَرْتُكَ بِأَكْلِهِ» لِأَنَّهُ مُرْسَلٌ، وَفِيهِ الْحَارِثُ بْنُ نَبْهَانَ وَهُوَ ضَعِيفٌ. وَلَا الْخَبَرُ الَّذِي فِيهِ «أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ فِي الصَّيْدِ، إذَا غَابَ مَصْرَعُهُ عَنْك كَرِهَهُ» لِأَنَّهُ مُرْسَلٌ. وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ فِيمَنْ رَمَى الصَّيْدَ فَوَجَدَ فِيهِ سَهْمَهُ مِنْ الْغَدِ قَالَ: لَوْ أَعْلَمُ أَنَّ سَهْمَك قَتَلَهُ لَأَمَرْتُك بِأَكْلِهِ، وَلَكِنَّهُ لَعَلَّهُ قَتَلَهُ تَرَدِّيهِ أَوْ غَيْرُهُ.

[6] **Hadith references (L17186):** Sunan Abi Dawud 2850.

day: he said, “If I knew your arrow killed it, I would instruct you to eat it, but perhaps it was killed by its collapse or another cause.”

L17190 From Ibn Masʿūd: If one of you shoots a bird perched on a mountain and it plummets to death, do not eat it – for I fear its death resulted from the fall. Or if it falls into water and dies, do not eat it – for I fear the water may have caused its death. A similar ruling is narrated from Ṭāwūs and ʿIkrimah, who specified: “If it falls into water before you perform its ritual slaughter.” From ash-Shaʿbī: He refrained from eating the flesh of a bird that was shot, fell into water, and died. From ʿAṭāʾ regarding game that was shot and remained under observation until death: “Eat it; but if it disappears from your sight among hills or mountains – once the place where it fell is hidden from your sight – do not eat it. If it plunges from a height or falls into water while you witness it, do not eat it.”

As for later jurists: Abū Ḥanīfah ruled, “If the game and hunting dog vanish *while the dog is actively pursuing it*, then you find it slain, consumption is permissible. But if one leaves the dog to pray or attend to other matters, then returns to find the game killed with the dog present, its consumption is reprehensible.” Mālik said, “If one releases his dog or arrow, locates the game the same day dead with wounds, he may eat it. If it remains overnight, he does not eat it.” Ash-Shāfiʿī stated, “The analogy dictates that if it disappears from sight, he may eat it.”

Abū Muḥammad remarked: “These opinions are baseless, as no evidence substantiates them. The one we are bound to obey is the Messenger of Allah (peace be upon him) – *since* he says, as we narrate through Abū Bakr ibn Abī Shaybah, transmitted to us by ʿAbd al-Aʿlā (Ibn ʿAbd al-Aʿlā ath-Thaʿlabī), from Dāwūd ibn Abī Hind, from ash-Shaʿbī – that ʿAdī ibn Ḥātim said: ”O Messenger of Allah, when one of us shoots game and tracks it for two or three days, then finds it dead with his arrow embedded – may he eat it¿‘ The Messenger of Allah (peace be upon him) replied: ”Yes, if he wishes,“ or [alternately] said: ”He may eat it if he wishes.“

L17191–17192 And through the chain of Aḥmad ibn Ḥanbal: He narrated to us from Hushaym, from Abū Bishr, from Saʿīd ibn Jubayr, from ʿAdī ibn Ḥātim: “I

وَعَنْ ابْنِ مَسْعُودٍ إِذَا رَمَى أَحَدُكُمْ طَائِرًا وَهُوَ عَلَى جَبَلٍ فَخَرَّ فَمَاتَ فَلَا تَأْكُلْهُ فَإِنِّي أَخَافُ أَنْ يَقْتُلَهُ تَرَدِّيهِ أَوْ وَقَعَ فِي مَاءٍ فَمَاتَ فَلَا تَأْكُلْهُ، فَإِنِّي أَخَافُ أَنْ يَكُونَ قَتَلَهُ الْمَاءُ. وَمِثْلُهُ عَنْ طَاوُسٍ، وَعِكْرِمَةَ قَالَ: إِذَا وَقَعَ فِي الْمَاءِ قَبْلَ أَنْ تُذَكِّيَهُ. وَعَنْ الشَّعْبِيِّ أَنَّهُ لَمْ يَأْكُلْ مِنْ لَحْمِ طَيْرٍ رُمِيَ فَوَقَعَ فِي مَاءٍ فَمَاتَ. وَعَنْ عَطَاءٍ فِي صَيْدٍ رُمِيَ فَلَمْ يَزَلْ يَنْظُرُ إِلَيْهِ حَتَّى مَاتَ قَالَ: كُلْهُ فَإِنْ تَوَارَى عَنْك بِالْهِضَابِ أَوْ الْجِبَالِ فَلَا تَأْكُلْهُ إِذَا غَابَ عَنْك مَصْرَعُهُ فَإِنْ تَرَدَّى أَوْ وَقَعَ فِي مَاءٍ وَأَنْتَ تَرَاهُ فَلَا تَأْكُلْهُ. وَأَمَّا الْمُتَأَخِّرُونَ فَإِنَّ أَبَا حَنِيفَةَ قَالَ: إِذَا تَوَارَى عَنْك الصَّيْدُ وَالْكَلْبُ وَهُوَ فِي طَلَبِهِ فَوَجَدْتَهُ وَقَدْ قَتَلَهُ جَازَ أَكْلُهُ، فَلَوْ تَرَكَ الرَّجُلُ الْكَلْبَ وَاشْتَغَلَ بِصَلَاةٍ أَوْ عَمَلٍ مَا ثُمَّ رَجَعَ إلَى الْكَلْبِ فَوَجَدَ الصَّيْدَ مَقْتُولًا وَالْكَلْبُ عِنْدَهُ كُرِهَ أَكْلُهُ. وَقَالَ مَالِكٌ: إذَا أَرْسَلَ كَلْبَهُ أَوْ سَهْمَهُ فَأَدْرَكَهُ مِنْ يَوْمِهِ فَوَجَدَهُ مَيِّتًا وَفِيهِ جِرَاحَةٌ أَكَلَهُ، فَإِنْ بَاتَ عَنْهُ لَمْ يَأْكُلْهُ. وَقَالَ الشَّافِعِيُّ: الْقِيَاسُ إذَا غَابَ عَنْهُ أَنْ يَأْكُلَهُ. قَالَ أَبُو مُحَمَّدٍ: هَذِهِ أَقْوَالٌ سَاقِطَةٌ إذْ لَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا، وَالْمُفْتَرَضُ طَاعَتُهُ هُوَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -[إذْ] يَقُولُ مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدُ الْأَعْلَى هُوَ ابْنُ عَبْدِ الْأَعْلَى الثَّعْلَبِيُّ - عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ الشَّعْبِيِّ أَنَّ «عَدِيَّ بْنَ حَاتِمٍ قَالَ يَا رَسُولَ اللَّهِ أَحَدُنَا يَرْمِي الصَّيْدَ فَيَقْتَفِي أَثَرَهُ الْيَوْمَيْنِ وَالثَّلَاثَةَ، ثُمَّ يَجِدُهُ مَيِّتًا وَفِيهِ سَهْمُهُ أَيَأْكُلُ؟ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَعَمْ، إنْ شَاءَ، أَوْ قَالَ: يَأْكُلُ إنْ شَاءَ» .

asked the Messenger of Allāh—peace and blessings of Allāh be upon him—saying: 'One of us shoots at game, and it goes out of his sight for a night or two. Then he finds it with his arrow in it.' The Messenger of Allāh—peace and blessings of Allāh be upon him—said: 'If you find your arrow [in the game] and do not find any other trace on it, and you are certain that your arrow killed it, then eat it.'" ʿAlī said: "If he finds his arrow has pierced its killing spot, he has ascertained that his arrow killed the game—and success is from Allāh, the Most High."

L17193 **A jurisprudential issue: He shot at game, struck it, thereby preventing it from fleeing.**

L17194 1075 - Issue: If someone shoots at game and hits it, thereby preventing it from fleeing or flying, whether he fails to strike a lethal spot or succeeds in striking it, then it belongs to him. It does not belong to the one who takes it, because the shooter has rendered it attainable and no longer evasive, thus he owns it through that action. And success is from Allah, the Exalted.

L17195 **He shot a game animal, severed a limb from it, and it died.**

L17196–17198 1076 - Issue: If someone shoots game and severs any limb from it, causing certain death - whether swift death resembling lawful slaughter or delayed death, provided he only finds it after its demise or while in the immediate causes of death - he may consume the entire animal including the severed limb. If the animal does not die swiftly and is found alive with potential to survive longer than a lawfully slaughtered animal would, he must perform lawful slaughter and consume the meat while abstaining from the severed limb, regardless of its type. Should the animal die from the injury in a manner resembling lawful slaughter, the entire animal becomes permissible. If unrecovered alive, the animal remains lawfully slaughtered whenever death occurs from the inflicted injury, with the entire body deemed permissible. Contrary rulings are invalid. The Prophet (peace be upon him) stated, "If pierced [by hunting], consume it" - a universal ruling admitting no exceptions.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ نا هُشَيْمٌ عَنْ أَبِي بِشْرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ «عَنْ عَدِيِّ بْنِ حَاتِمٍ سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَقُلْتُ: يَرْمِي أَحَدُنَا الصَّيْدَ فَيَغِيبُ عَنْهُ لَيْلَةً أَوْ لَيْلَتَيْنِ فَيَجِدُهُ وَفِيهِ سَهْمُهُ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا وَجَدْتَ سَهْمَكَ وَلَمْ تَجِدْ فِيهِ أَثَرًا غَيْرَهُ وَعَلِمْتَ أَنَّ سَهْمَكَ قَتَلَهُ فَكُلْهُ» . قَالَ عَلِيٌّ: إذَا وَجَدَ سَهْمَهُ قَدْ أَنْفَذَ مَقْتَلَهُ فَقَدْ عَلِمَ أَنَّهُ قَتَلَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ رَمَى صَيْدًا فَأَصَابَهُ فَمَنَعَهُ مِنْ الْجَرْيِ]

١٠٧٥ - مَسْأَلَةٌ: وَمَنْ رَمَى صَيْدًا فَأَصَابَهُ فَمَنَعَهُ ذَلِكَ الْأَمْرُ مِنْ الْجَرْيِ أَوْ الطَّيَرَانِ وَلَمْ يُصِبْ لَهُ مَقْتَلًا أَوْ أَصَابَ فَهُوَ لَهُ، وَلَا يَكُونُ لِمَنْ أَخَذَهُ لِأَنَّهُ قَدْ جَعَلَهُ مَقْدُورًا عَلَيْهِ غَيْرَ مُمْتَنِعٍ فَمَلَكَهُ بِذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ رَمَى صَيْدًا فَقَطَعَ مِنْهُ عُضْوًا فَمَاتَ]

١٠٧٦ - مَسْأَلَةٌ: وَمَنْ رَمَى صَيْدًا فَقَطَعَ مِنْهُ عُضْوًا، أَيَّ عُضْوٍ كَانَ فَمَاتَ مِنْهُ بِيَقِينٍ مَوْتًا سَرِيعًا كَمَوْتِ سَائِرِ الذَّكَاةِ، أَوْ بَطِيئًا إلَّا أَنَّهُ لَمْ يُدْرِكْهُ إلَّا وَقَدْ مَاتَ، أَوْ هُوَ فِي أَسْبَابِ الْمَوْتِ الْحَاضِرِ: أَكَلَهُ كُلَّهُ، وَأَكَلَ أَيْضًا الْعُضْوَ الْبَائِنَ. فَلَوْ لَمْ يَمُتْ مِنْهُ مَوْتًا سَرِيعًا وَأَدْرَكَهُ حَيًّا وَكَانَ يَعِيشُ مِنْهُ أَكْثَرَ مِنْ عَيْشِ الْمُذَكَّى، ذَكَّاهُ وَأَكَلَهُ، وَلَمْ يَأْكُلْ الْعُضْوَ الْبَائِنَ، أَيَّ عُضْوٍ كَانَ، لِأَنَّهُ إذَا مَاتَ مِنْهُ كَمَوْتِ الذَّكَاةِ فَهُوَ ذَكِيٌّ كُلُّهُ. فَلَوْ لَمْ يُدْرِكْهُ حَيًّا فَهُوَ ذَكِيٌّ مَتَى مَاتَ مِمَّا أَصَابَهُ وَهُوَ مُذَكًّى كُلُّهُ، وَمَا كَانَ بِخِلَافِ ذَلِكَ فَهُوَ غَيْرُ مُذَكًّى، وَقَالَ - عَلَيْهِ السَّلَامُ -، «إذَا خُزِقَ فَكُلْ» فَهَذَا عُمُومٌ لَا يَجُوزُ تَعَدِّيهِ. وَإِذَا أُدْرِكَ حَيًّا فَذَكَاتُهُ فَرْضٌ لِأَنَّهُ مَأْمُورٌ بِإِحْسَانِ الْقِتْلَةِ وَالْإِرَاحَةِ. وَأَمَّا إذَا

Recovering the animal alive necessitates lawful slaughter as an obligation, ensuring humane killing and mercy. If found in the immediate throes of death, slaughter by throat-cutting or nahr (the method for camels) becomes redundant and impermissible, as it causes suffering rather than providing relief. The animal remains lawful.

Narrations from Ibn Mas'ud, Ibn Abbas, Ikrimah, Qatadah, Ibrahim, Ata, and Abu Thawr state: If a hunter finds wounded game alive the next morning with a severed limb, only the intact parts may be consumed. If it dies at that moment, the entire animal may be consumed. Abu Hanifah, Malik, Sufyan, and Al-Awza'i ruled: If split into two halves, both portions may be eaten together. If unequally divided, the portion containing the head...[text incomplete] If the smaller one is eaten, both may be eaten. If the one containing the head is the larger one, it may be eaten while the other may not. Al-Shāfiʿī said: If one cuts from it a part that causes its death like an animal slaughtered by throat-cutting (manḥūr) or ritual slaughter (madhbūḥ), both [the animal and the severed part] may be consumed together. If one cuts from it a part that allows it to survive for an hour or longer, then finds it and performs valid ritual slaughter (dhakāh) on it, it may be eaten excluding the part that was severed. We know of no one who ascribed the juridical rulings established by Abū Ḥanīfah and Mālik to being rooted in a valid foundational principle—and success is attained only through Allah, the Exalted.

وَجَدَهُ فِي أَسْبَابِ الْمَوْتِ الْعَاجِلِ فَلَا مَعْنَى لِذَبْحِهِ حِينَئِذٍ وَلَا لِنَحْرِهِ لِأَنَّهُ لَيْسَ إرَاحَةً بَلْ هُوَ تَعْذِيبٌ، وَهُوَ بَعْدُ مُذَكًّى، فَهُوَ حَلَالٌ. وَرُوِيَ عَنْ ابْنِ مَسْعُودٍ، وَابْنِ عَبَّاسٍ، وَعِكْرِمَةَ، وَقَتَادَةَ، وَإِبْرَاهِيمَ، وَعَطَاءٍ، وَأَبِي ثَوْرٍ: إذَا رَمَى الصَّيْدَ فَغَدَا حَيًّا وَقَدْ سَقَطَ مِنْهُ عُضْوٌ، فَإِنَّهُ يُؤْكَلُ سَائِرُهُ حَاشَا ذَلِكَ الْعُضْوِ، فَإِنْ مَاتَ حِينَ ذَلِكَ أُكِلَ كُلُّهُ. وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَسُفْيَانُ، وَالْأَوْزَاعِيُّ: إنْ قَطَعَهُ نِصْفَيْنِ أَكَلَ النِّصْفَيْنِ مَعًا، فَإِنْ كَانَتْ إحْدَاهُمَا أَقَلَّ مِنْ الْأُخْرَى، فَإِنْ كَانَتْ الْقِطْعَةُ الَّتِي فِي الرَّأْسِ هِيَ الصُّغْرَى أُكِلَ كِلْتَاهُمَا، وَإِنْ كَانَتْ الَّتِي فِيهَا الرَّأْسُ هِيَ الْكُبْرَى أُكِلَتْ هِيَ وَلَمْ تُؤْكَلْ الْأُخْرَى. وَقَالَ الشَّافِعِيُّ: إنْ قَطَعَ مِنْهُ مَا يَمُوتُ بِهِ مَوْتَ الْمَنْحُورِ أَوْ الْمَذْبُوحِ أُكِلَا مَعًا، وَإِنْ قَطَعَ مِنْهُ مَا يَعِيشُ بَعْدَهُ سَاعَةً فَأَكْثَرَ، ثُمَّ أَدْرَكَهُ فَذَكَّاهُ أُكِلَ، حَاشَا مَا قُطِعَ مِنْهُ. وَمَا نَعْلَمُ لِمَنْ حَدَّ الْحُدُودَ الَّتِي حَدَّهَا أَبُو حَنِيفَةَ، وَمَالِكٌ مُتَعَلِّقًا أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A case where a person shot at a group of game, invoked the name of Allah, the Exalted, and intended whichever one he might hit.

[مَسْأَلَةٌ رَمَى جَمَاعَةَ صَيْدٍ وَسَمَّى اللَّهَ تَعَالَى وَنَوَى أَيَّهَا أَصَابَ]

1077. Issue: If someone shoots at a group of game, invokes the name of Allah the Exalted while intending whichever he may strike, then whatever he strikes is lawful, based on the statement of the Messenger of Allah (peace be upon him) which we previously mentioned: "If you strike it with its proper tool, then eat," and his saying: "When you shoot your arrow, invoke Allah's name. If it disappears from you for a day and you find nothing but your arrow's trace, then eat." Thus, the Messenger of Allah (peace be upon him) gave a general ruling without specifying that one must target a particular

١٠٧٧ - مَسْأَلَةٌ: وَمَنْ رَمَى جَمَاعَةَ صَيْدٍ، وَسَمَّى اللَّهَ تَعَالَى وَنَوَى أَيَّهَا أَصَابَ، فَأَيُّهَا أَصَابَ حَلَالٌ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَاهُ آنِفًا «إذَا أَصَابَ بِحَدِّهِ فَكُلْ» . وَقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إذَا رَمَيْتَ سَهْمَكَ فَاذْكُرْ اسْمَ اللَّهِ فَإِنْ غَابَ

عَنْكَ يَوْمًا فَلَمْ تَجِدْ إِلَّا أَثَرَ سَهْمِكَ فَكُلْ» فَعَمَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَخُصَّ أَنْ يَقْصِدَ صَيْدًا مِنْ الْجُمْلَةِ بِعَيْنِهِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] ١٠٧٨ - مَسْأَلَةٌ: فَلَوْ لَمْ يَنْوِ إِلَّا وَاحِدًا بِعَيْنِهِ فَإِنْ أَصَابَهُ فَهُوَ حَلَالٌ، وَإِنْ أَصَابَ غَيْرَهُ فَإِنْ أَدْرَكَ ذَكَاتَهُ فَهُوَ حَلَالٌ، فَإِنْ لَمْ يُدْرِكْ ذَكَاتَهُ لَمْ يَحِلَّ أَكْلُهُ. وَكَذَلِكَ لَوْ رَمَى وَسَمَّى اللَّهَ تَعَالَى وَلَمْ يَنْوِ صَيْدًا فَأَصَابَ صَيْدًا لَمْ يَحِلَّ أَكْلُهُ إِلَّا أَنْ يُدْرِكَ ذَكَاتَهُ. وَكَذَلِكَ لَوْ أَرَادَ ذَبْحَ حَيَوَانٍ مُتَمَلَّكٍ بِعَيْنِهِ فَذَبَحَ غَيْرَهُ مُخْطِئًا لَمْ يَحِلَّ أَكْلُهُ لِأَنَّهُ لَمْ يُسَمِّ اللَّهَ تَعَالَى عَلَيْهِ قَاصِدًا إلَيْهِ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» .

animal from the group. {And your Lord is never forgetful} [Maryam: 64]. 1078.[7]

L17201 Issue: If one intends only a specific animal and hits it, it is permissible. If he hits another animal, it is permissible if he manages to slaughter it ritually; otherwise, eating it is not permissible. Similarly, if one shoots while invoking the name of Allah the Exalted without intending to hunt, and it strikes game, eating it is not permissible unless he manages to slaughter it ritually. Likewise, if one intends to slaughter ritually a specifically owned animal but mistakenly slaughters another ritually, eating it is not permissible because he did not invoke the name of Allah the Exalted upon it while directing his intention to it. The Messenger of Allah—peace be upon him—said: "Deeds are judged by intentions, and every person will be rewarded according to what they intended."

[مَسْأَلَةٌ رَمَى صَيْدًا فَأَثْخَنَهُ ثُمَّ رَمَاهُ فَسَمَّى اللَّهَ تَعَالَى فَقَتَلَهُ]

L17202 **Issue: He shot at game and severely wounded it. Then he shot it again, invoked "Bismillah," and killed it.**

١٠٧٩ - مَسْأَلَةٌ: وَلَوْ أَنَّ امْرَأً رَمَى صَيْدًا فَأَثْخَنَهُ وَجَعَلَهُ مَقْدُورًا عَلَيْهِ، ثُمَّ رَمَاهُ هُوَ أَوْ غَيْرُهُ فَسَمَّى اللَّهَ تَعَالَى فَقَتَلَهُ فَهُوَ مَيْتَةٌ فَلَا يَحِلُّ أَكْلُهُ، لِأَنَّهُ إذْ قَدَرَ عَلَيْهِ لَمْ تَكُنْ ذَكَاتُهُ إلَّا بِالذَّبْحِ أَوْ النَّحْرِ، فَلَمْ يُذَكِّهِ كَمَا أُمِرَ، فَهُوَ غَيْرُ مُذَكًّى، وَعَلَى قَاتِلِهِ إنْ كَانَ غَيْرَهُ ضَمَانُ مِثْلِهِ لِلَّذِي أَثْخَنَهُ، لِأَنَّهُ قَدْ مَلَكَهُ بِالْإِثْخَانِ وَخُرُوجِهِ عَنْ الِامْتِنَاعِ، فَقَاتِلُهُ مُعْتَدٍ عَلَيْهِ، وَقَدْ قَالَ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] . وَلَوْ جَرَحَهُ إلَّا أَنَّهُ مُمْتَنِعٌ بَعْدُ، فَهُوَ لِمَنْ أَخَذَهُ، لِأَنَّهُ لَا يَمْلِكُهُ إلَّا بِالْخُرُوجِ عَنْ الِامْتِنَاعِ، فَمَا دَامَ مُمْتَنِعًا فَهُوَ غَيْرُ مَمْلُوكٍ بَعْدُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L17203–17205 1079 - Issue: If a man shoots a game animal, inflicts severe wounds that render it possible to subdue, then he or another shoots it while uttering "Bismillah" (in God's name), thereby killing it, it becomes an unslaughtered carcass and is unlawful to eat. This is because once the animal becomes accessible for capture, its ritual slaughter can only be valid through throat-slitting (dhabḥ, for non-camels) or jugular vein cutting (naḥr, for camels). Since it was not properly slaughtered as prescribed, it remains ritually invalid. If someone other than the subduer kills it, the slayer becomes liable to replace it with an equivalent animal for the initial subduer, who gained ownership by rendering the animal incapable of resistance through severe wounding. The slayer thus unlawfully infringes upon the subduer's ownership, as God Almighty states: *"So whoever transgresses against you, respond with equivalent transgression"* (Quran 2:194). If the animal is wounded but still resisting, it belongs to whoever captures it, for ownership is only estab-

[7] **Qur'an references (L17200):** Qur'an 19:64 (Maryam).

lished by rendering it incapable of resistance. As long as he is in a state of refusal, he is not yet owned – and success is from Allah, the Most High.[8]

L17206 **A jurisprudential issue regarding one who set up a trap or snare, or dug a game pit for hunting.**

L17207 1080 - Issue: Whoever sets a trap, snare, or digs a pit for hunting, whatever falls into any of these belongs solely to him, and none other may lawfully claim it. If he sets these devices for purposes other than hunting and game falls into them, it belongs to whoever retrieves it. Similarly, if one finds game caught by a trained hunting animal or bearing an arrow wound that has rendered it incapable of resistance, it is unlawful to take it, in accordance with the Messenger of Allah's (peace be upon him) saying: "Actions are but by intentions, and each person will have what they intended." When one intends to hunt, they acquire rights to whatever they capture from their intended prey. If they did not intend hunting, they gain no rights over what falls into their traps, and such game remains available for anyone to claim. Likewise, birds nesting in a tree or the walls of one's home belong to whoever takes them unless he establishes ownership through an act.

It is narrated through Malik's chain from Yahyā ibn Saʿīd al-Anṣārī, from Muḥammad ibn Ibrāhīm ibn al-Ḥārith al-Taymī, from ʿĪsā ibn Ṭalḥah ibn ʿUbaydullāh, from ʿUmayr ibn Salamah al-Ḍamrī, who reported from al-Bahzī: "The Messenger of Allah (peace be upon him) passed by al-Rawḥā and found a hamstrung wild donkey. He said, 'Leave it, for its owner will soon arrive,' then proceeded until reaching al-Uthāyah, where a gazelle was sitting on its haunches in a shaded shelter with an arrow in it. The Prophet (peace be upon him) instructed a man to stand firmly and guard it so no one would disturb it."

Abū Muḥammad said: This refutes Abū Ḥanīfah's ruling that if someone shoots game and it dies in others' presence without being slaughtered according to Islamic law, it becomes unlawful—for the Prophet (peace be upon him) neither ordered such slaughter for that gazelle nor claimed it, leaving it instead for the archer. This al-Bahzī owned that hamstrung donkey.

[8] **Qur'an references (L17203):** Qur'an 2:194 (Al-Baqarah).

[مَسْأَلَةٌ نَصَبَ خَفًّا أَوْ حِبَالَةً أَوْ حَفَرَ زُبْيَةً لِلصَّيْدِ]

١٠٨٠ - مَسْأَلَةٌ: وَمَنْ نَصَبَ خَفًّا، أَوْ حِبَالَةً، أَوْ حَفَرَ زُبْيَةً كُلُّ ذَلِكَ لِلصَّيْدِ، فَكُلُّ مَا وَقَعَ فِي شَيْءٍ مِنْ ذَلِكَ فَهُوَ لَهُ وَلَا يَحِلُّ لِأَحَدٍ سِوَاهُ، فَإِنْ نَصَبَهَا لِغَيْرِ الصَّيْدِ فَوَقَعَ فِيهَا صَيْدٌ فَهُوَ لِمَنْ أَخَذَهُ. وَكَذَلِكَ مَنْ وَجَدَ صَيْدًا قَدْ صَادَهُ جَارِحٌ أَوْ فِيهِ رَمْيَةٌ قَدْ جَعَلَتْهُ غَيْرَ مُمْتَنِعٍ فَلَا يَحِلُّ لَهُ أَخْذُهُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» . وَإِذَا نَوَى الصَّيْدَ فَقَدْ مَلَكَ كُلَّ مَا قَدَرَ عَلَيْهِ مِمَّا قَصَدَ تَمَلُّكَهُ، وَإِذَا لَمْ يَنْوِ الصَّيْدَ فَلَمْ يَتَمَلَّكْ مَا وَقَعَ فِيهَا فَهُوَ بَاقٍ عَلَى حَالِهِ لِكُلِّ مَنْ تَمَلَّكَهُ - وَكَذَلِكَ مَا عَشَّشَ فِي شَجَرَةٍ أَوْ جُدْرَانِ دَارِهِ هُوَ لِمَنْ أَخَذَهُ إلَّا أَنْ يُحْدِثَ لَهُ تَمَلُّكًا -: رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَا مُحَمَّدُ بْنُ إبْرَاهِيمَ بْنِ الْحَارِثِ التَّيْمِيُّ عَنْ عِيسَى بْنِ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ عَنْ عُمَيْرِ بْنِ سَلَمَةَ الضَّمْرِيِّ أَخْبَرَهُ عَنْ الْبَهْزِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَرَّ بِالرَّوْحَاءِ فَإِذَا حِمَارُ وَحْشٍ عَقِيرٌ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: دَعُوهُ فَإِنَّهُ يُوشِكُ أَنْ يَأْتِيَ صَاحِبُهُ، ثُمَّ مَضَى فَلَمَّا كَانَ بِالْأُثَايَةِ إذَا ظَبْيٌ حَاقِفٌ فِي ظِلٍّ وَفِيهِ سَهْمٌ فَأَمَرَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَجُلًا يَثْبُتُ عِنْدَهُ لَا يَرِيبُهُ أَحَدٌ مِنْ النَّاسِ» . قَالَ أَبُو مُحَمَّدٍ: وَهَذَا يُبْطِلُ قَوْلَ أَبِي حَنِيفَةَ فِيمَنْ رَمَى صَيْدًا فَوَقَعَ بِحَضْرَةِ قَوْمٍ فَلَمْ يُذَكُّوهُ حَتَّى مَاتَ، فَهُوَ حَرَامٌ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَأْمُرْ بِتَذْكِيَةِ ذَلِكَ الظَّبْيِ وَتَرَكَهُ لِصَاحِبِهِ الَّذِي رَمَاهُ، وَهَذَا الْبَهْزِيُّ هُوَ كَانَ صَاحِبَ ذَلِكَ الْحِمَارِ الْعَقِيرِ. ١٠٨١ -

1081 -

L17208–17210 Issue: If he dies in a snare or pitfall, his consumption remains impermissible whether the trapper placed an iron implement there or not, because he did not intend ritual slaughter through the commanded methods of hunting by projectile or killing via predator. The entire creature remains forbidden during its lifetime and becomes permissible only through explicit textual evidence - which is absent here. Yet some early scholars permitted it: We have been narrated through Ma'mar's chain from Jābir al-Juʿfī who said: "I asked al-Shaʿbī about one who placed his sickle where a bird passed by and was killed." He disapproved of eating it. When I asked Sālim ibn ʿAbdullāh about it, he saw no objection. Through Saʿīd ibn Manṣūr's chain: Hushaym reported to us from Yūnus, from al-Ḥasan that he saw no harm in it. Regarding game caught by sickles, he said: "Mention Allah's name when you deploy them." Through the chain of Saʿīd ibn Masrūq: Hushaym narrated to us: I am Husayn - son of 'Abd al-Rahmān and great-nephew of Masrūq - who asked Ibn 'Umar about game caught by sickles. Ibn 'Umar replied: "As for what becomes visibly affected by it while still alive, do not eat it, and eat all else. None of the Companions are known to have disagreed with him. The Hanafis and Malikis have opposed him, condemning this against others."

L17211 **An issue: owning a live wild animal, or a ritually slaughtered one, or portions of aquatic game.**

L17212 1082. Issue: Anyone who owns a wild animal—whether alive, properly slaughtered, or a part of aquatic game—retains ownership over it as part of their property without dispute. If the animal escapes, reverts to the wild, and returns to land or sea, it remains the owner's permanent property. None may lawfully take it except with the owner's consent. This applies equally to all offspring produced by such animals indefinitely, based on Allah's decree: "Do not consume one another's wealth unjustly" [Al-Baqarah 2:188], and the Prophet's (peace be upon him) declaration: "Your blood and your wealth are inviolable." This constitutes property owned by its possessor through the consensus of those who disagree with us, rendering it unlawful for others

مَسْأَلَةٌ: فَلَوْ مَاتَ فِي الْحِبَالَةِ، أَوْ الزُّبْيَةِ، لَمْ يَحِلَّ أَكْلُهُ سَوَاءٌ جَعَلَ هُنَالِكَ حَدِيدَةً أَمْ لَمْ يَجْعَلْ، لِأَنَّهُ لَمْ يَقْصِدْ تَذْكِيَتَهُ كَمَا أُمِرَ أَنْ يُذَكِّيَهُ بِهِ مِنْ رَمْيٍ أَوْ قَتْلِ جَارِحٍ، وَالْحَيَوَانُ كُلُّهُ حَرَامٌ فِي حَالِ حَيَاتِهِ، فَلَا يَنْتَقِلُ إلَى التَّحْلِيلِ إلَّا بِنَصٍّ وَلَا نَصَّ فِي هَذَا. وَقَدْ أَبَاحَهُ بَعْضُ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ مَعْمَرٍ عَنْ جَابِرٍ الْجُعْفِيِّ قَالَ: سَأَلْتُ الشَّعْبِيَّ عَمَّنْ وَضَعَ مِنْجَلَهُ فَيَمُرُّ بِهِ طَائِرٌ فَيَقْتُلُهُ؟ فَكَرِهَ أَكْلَهُ - وَسَأَلْتُ عَنْهُ سَالِمَ بْنَ عَبْدِ اللَّهِ فَلَمْ يَرَ بِهِ بَأْسًا. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا يُونُسُ عَنْ الْحَسَنِ أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِصَيْدِ الْمَنَاجِلِ، وَقَالَ: سَمِّ إذَا نَصَبْتَهَا. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَسْرُوقٍ نا هُشَيْمٌ أَنَا حُصَيْنٌ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ ابْنِ أَخِي مَسْرُوقٍ - سَأَلَ ابْنَ عُمَرَ عَنْ صَيْدِ الْمَنَاجِلِ؟ فَقَالَ ابْنُ عُمَرَ: أَمَّا مَا بَانَ مِنْهُ وَهُوَ حَيٌّ فَلَا تَأْكُلْ وَكُلْ مَا سِوَى ذَلِكَ، وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، قَدْ خَالَفَهُ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ وَهُمْ يُشَنِّعُونَ هَذَا عَلَى غَيْرِهِمْ.

[مَسْأَلَةٌ مَلَكَ حَيَوَانًا وَحْشِيًّا حَيًّا أَوْ مُذَكًّى أَوْ بَعْضَ صَيْدِ الْمَاءِ]

١٠٨٢ - مَسْأَلَةٌ: وَكُلُّ مَنْ مَلَكَ حَيَوَانًا وَحْشِيًّا حَيًّا أَوْ مُذَكًّى أَوْ بَعْضَ صَيْدِ الْمَاءِ كَذَلِكَ فَهُوَ لَهُ كَسَائِرِ مَالِهِ بِلَا خِلَافٍ، فَإِنْ أَفْلَتَ وَتَوَحَّشَ وَعَادَ إلَى الْبَرِّ أَوْ الْبَحْرِ فَهُوَ بَاقٍ عَلَى مِلْكِ مَالِكِهِ أَبَدًا، وَلَا يَحِلُّ لِسِوَاهُ إلَّا بِطِيبِ نَفْسِ مَالِكِهِ، وَكَذَلِكَ كُلُّ مَا تَنَاسَلَ مِنْ الْإِنَاثِ مِنْ ذَلِكَ أَبَدًا. لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] . وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» . وَهَذَا مَالٌ مِنْ مَالِهِ بِإِجْمَاعِ الْمُخَالِفِينَ مَعَنَا فَلَا يَحِلُّ لِسِوَاهُ إلَّا

except through lawful means applicable to all property. This is the majority opinion.

Mālik asserted: “If the animal becomes wild, it belongs to the one who takes it”—a clearly corrupt view contradicting the Qur’an, Sunnah, and reason. They concede that if the animal escapes and is seized the same day or the next, it remains the owner’s. Let them define the precise point at which ownership ceases, for no criterion exists. They are asked about someone who owns a wild animal that breeds in his care, then its offspring flee. If they affirm that ownership lapses, this must apply universally, for all creatures in Allah’s initial creation were unowned before being claimed. The same logic governs doves in towers and bees: whatever is distinguished as domesticated and its progeny remain perpetually the owner’s property.

Mālik’s aforementioned view, al-Layth’s opinion that “an animal left unattended in a neglected place belongs to its finder,” and similar claims—such as damaged goods from ships wrecked at sea, which the sea casts ashore, belonging to whoever retrieves them, even if the owner produces testimony from upright witnesses—are all corrupt and manifestly false. They constitute the illegitimate appropriation of a Muslim’s or protected non-Muslim’s property through unjust means.[9]

A Juristic Inquiry on Dispatching the Predator (for Hunting).

L17213

1083. Issue: As for the ruling on releasing a hunting animal, such an animal inevitably falls into one of the following cases: Whether trained or untrained, the trained hunting animal is that which does not set out until released by its owner. When released, it departs, and when it seizes and kills without eating any of the prey, then once it has learned this action—killing from the outset without consuming any of it—it becomes a trained animal. The prey it kills is lawful to eat when released by its owner for hunting, provided the owner mentions Allah’s name upon releasing it. It is equally permissible whether the kill occurs through wounding, striking, collision, or suffocation—all such methods are lawful. If the animal kills and eats

L17214–17216

[9] **Qur’an references (L17212):** Qur’an 2:188 (Al-Baqarah).

بِمَا يَحِلُّ بِهِ سَائِرُ مَالِهِ. وَهُوَ قَوْلُ جُمْهُورِ النَّاسِ. وَقَالَ مَالِكٌ: إِذَا تَوَحَّشَ فَهُوَ لِمَنْ أَخَذَهُ - وَهَذَا قَوْلٌ بَيِّنُ الْفَسَادِ مُخَالِفٌ لِلْقُرْآنِ، وَالسُّنَّةِ، وَالنَّظَرِ، وَهُمْ لَا يَخْتَلِفُونَ فِي أَنَّهُمْ إِنْ أَفْلَتَ فَأُخِذَ مِنْ يَوْمِهِ، أَوْ مِنَ الْغَدِ فَلَا يَحِلُّ لِغَيْرِ مَالِكِهِ فَلْيُبَيِّنُوا لَنَا الْحَدَّ الَّذِي إِذَا بَلَغَهُ خَرَجَ بِهِ عَنْ مِلْكِ مَالِكِهِ وَلَا سَبِيلَ لَهُ إِلَيْهِ. وَيُسْأَلُونَ عَمَّنْ مَلَكَ وَحْشِيًّا فَتَنَاسَلَ عِنْدَهُ ثُمَّ شَرَدَ نَسْلُهَا؟ فَإِنْ قَالُوا: يَسْقُطُ مِلْكُهُ عَنْهُ - لَزِمَهُمْ ذَلِكَ فِي كُلِّ حَيَوَانٍ فِي الْعَالَمِ، لِأَنَّ جَمِيعَهَا فِي أَوَّلِ خَلْقِ اللَّهِ تَعَالَى لَهَا كَانَتْ غَيْرَ مُتَمَلَّكَةٍ ثُمَّ مُلِّكَتْ وَكَذَلِكَ الْقَوْلُ فِي حَمَامِ الْأَبْرَاجِ، وَالنَّحْلُ كُلُّ مَا مَيَّزَ فَهُوَ وَنَسْلُهُ لِمَالِكِهِ أَبَدًا لِمَا ذَكَرْنَا. وَقَوْلُ مَالِكٍ الَّذِي ذَكَرْنَا، وَقَوْلُ اللَّيْثِ: مَنْ تَرَكَ دَابَّتَهُ بِمَضْيَعَةٍ فَهِيَ لِمَنْ وَجَدَهَا لَا تُرَدُّ إِلَى صَاحِبِهَا - وَكَقَوْلِ اللَّيْثِ، أَوْ غَيْرِهِ مِنْ نُظَرَائِهِ: مَا عَطِبَ فِي الْبَحْرِ مِنَ السُّفُنِ فَرَمَى الْبَحْرُ مَتَاعًا مِمَّا غَرِقَ فِيهَا فَهُوَ لِمَنْ أَخَذَهُ لَا لِصَاحِبِهِ، وَلَوْ قَامَتْ لَهُ بِكُلِّ ذَلِكَ بَيِّنَةُ عَدْلٍ وَهَذِهِ أَقْوَالٌ فَاسِدَةٌ ظَاهِرَةُ الْبُطْلَانِ، لِأَنَّهُ إِيكَالُ مَالِ مُسْلِمٍ، أَوْ ذِمِّيٍّ بِالْبَاطِلِ.

[مَسْأَلَةٌ إِرْسَالِ الْجَارِحِ]

١٠٨٣ - مَسْأَلَةٌ: وَأَمَّا حُكْمُ إِرْسَالِ الْجَارِحِ، فَلَا يَخْلُو ذَلِكَ الْجَارِحُ مِنْ أَنْ يَكُونَ مُعَلَّمًا أَوْ غَيْرَ مُعَلَّمٍ فَالْمُعَلَّمُ هُوَ الَّذِي لَا يَنْطَلِقُ حَتَّى يُطْلِقَهُ صَاحِبُهُ، فَإِذَا أَطْلَقَهُ انْطَلَقَ، وَإِذَا أَخَذَ وَقَتَلَ وَلَمْ يَأْكُلْ مِنْ ذَلِكَ الصَّيْدِ شَيْئًا، فَإِذَا تَعَلَّمَ هَذَا الْعَمَلَ، فَبِأَوَّلِ مُدَّةٍ يُقْتَلُ وَلَا يَأْكُلُ مِنْهُ شَيْئًا فَهُوَ مُعَلَّمٌ حَلَالٌ أَكْلُ مَا قَتَلَ مِمَّا أَطْلَقَهُ عَلَيْهِ صَاحِبُهُ وَذَكَرَ اسْمَ اللَّهِ تَعَالَى عِنْدَ إِطْلَاقِهِ. وَسَوَاءٌ قَتَلَهُ بِجُرْحٍ أَوْ بِرَضٍّ، أَوْ بِصَدْمٍ، أَوْ بِخَنْقٍ كُلُّ ذَلِكَ حَلَالٌ. فَإِنْ قَتَلَهُ وَأَكَلَ مِنْ لَحْمِهِ شَيْئًا فَذَلِكَ الصَّيْدُ حَرَامٌ لَا يَحِلُّ أَكْلُ شَيْءٍ مِنْهُ.

any portion, the prey becomes entirely unlawful. This ruling applies equally in all we have mentioned: dogs, other predators of four-legged animals, falcons, and other birds of prey without distinction. The distinction between trained and untrained lies in Allah's words: "And what you have trained of hunting animals by training them as hunting dogs, teaching them from what Allah taught you—so eat what they catch for you" (5:4). What we will later cite from the Prophet's teachings—by Allah's will—confirms that He has only permitted what our trained hunting animals catch for us. Regarding training: Allah has not permitted us except what our trained animals catch. Necessarily, we recognize that predatory birds and four-legged animals hunt by natural instinct for their own sustenance and livelihood. Thus, there must be additional training beyond their innate behavior—training they would not acquire otherwise. Were this not so, every predator would be considered trained—contrary to the Quran, the Sunnah, and the fact that no one asserts this. Since this distinction is essential, no other form of training exists except what we have described.[10]

وَسَوَاءٌ فِي كُلِّ مَا ذَكَرْنَا الْكَلْبُ، وَغَيْرُهُ مِنْ سِبَاعِ دَوَابِّ الْأَرْبَعِ، وَالْبَازِي وَغَيْرُهُ مِنْ سِبَاعِ الطَّيْرِ وَلَا فَرْقَ. فَأَمَّا الْفَرْقُ بَيْنَ الْمُعَلَّمِ وَغَيْرِ الْمُعَلَّمِ فَهُوَ قَوْلُ اللَّهِ تَعَالَى: {وَمَا عَلَّمْتُمْ مِنَ الْجَوَارِحِ مُكَلِّبِينَ تُعَلِّمُونَهُنَّ مِمَّا عَلَّمَكُمُ اللَّهُ فَكُلُوا مِمَّا أَمْسَكْنَ عَلَيْكُمْ} [المائدة: ٤] . وَمَا سَنَذْكُرُهُ بَعْدَ هَذَا مِنْ كَلَامِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنْ شَاءَ اللَّهُ فَلَمْ يُبِحْ لَنَا عَزَّ وَجَلَّ إلَّا مَا أَمْسَكَ عَلَيْنَا جَوَارِحُنَا الْمُعَلَّمَةُ. وَأَمَّا قَوْلُنَا فِي التَّعْلِيمِ: فَإِنَّ اللَّهَ تَعَالَى لَمْ يُبِحْ لَنَا كَمَا ذَكَرْنَا إلَّا مَا أَمْسَكَ عَلَيْنَا جَوَارِحُنَا الْمُعَلَّمَةُ، وَبِالضَّرُورَةِ نَدْرِي أَنَّ سِبَاعَ الطَّيْرِ، وَذَوَاتَ الْأَرْبَعِ تَعْلَمُ التَّصَيُّدَ بِطَبْعِهَا لِأَنْفُسِهَا وَمَعَاشِهَا فَلَا بُدَّ مِنْ شَيْءٍ زَائِدٍ تَعْلَمُهُ لَمْ تَكُنْ تَعْلَمُهُ إلَّا أَنْ تَعَلَّمَهُ لَا بُدَّ مِنْ هَذَا ضَرُورَةً، وَإِلَّا فَكُلُّ جَارِحٍ فَهُوَ مُعَلَّمٌ - وَهَذَا خِلَافُ الْقُرْآنِ، وَالسُّنَنِ، وَلَا يَقُولُهُ أَحَدٌ، فَإِذْ لَا بُدَّ مِنْ هَذَا فَلَيْسَ هَهُنَا شَيْءٌ يُمْكِنُ أَنْ تُعَلَّمَهُ إلَّا مَا ذَكَرْنَاهُ.

L17217–17219 The early scholars differed regarding this matter. Abū Ḥanīfah and al-Shāfiʿī stated: If the hunting animal seizes prey and does not eat it time after time, it is considered trained. What it kills after those repeated instances may be eaten, though they did not specify a limit for this. Abū Yūsuf and Muḥammad ibn al-Ḥasan said: If it seizes prey and does not eat it three times, it is deemed trained. What it kills during the fourth instance may be eaten, but what it killed during those three instances may not be eaten. Abū Sulaymān held: If it seizes prey and does not eat it once, it is considered trained. What it kills during the second instance may be eaten, but what it killed during the first instance may not be eaten. Abū Thawr maintained: If it seizes prey and does not eat it, the first prey it kills in that initial instance may be eaten. Abū Muḥammad remarked: As for the position of Abū Ḥanīfah and al-Shāfiʿī, its apparent error lies in their failure to clarify when... The permissibility of eating what has been killed and when it is impermissible. In such cases, silence is preferable, as it is a matter of sheer ambiguity with no clarification or evi-

وَقَدْ اخْتَلَفَ الْمُتَقَدِّمُونَ فِي هَذَا فَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: إذَا أَمْسَكَ وَلَمْ يَأْكُلْ وَفَعَلَ ذَلِكَ مَرَّةً بَعْدَ مَرَّةٍ فَهُوَ مُعَلَّمٌ يُؤْكَلُ مَا قَتَلَ بَعْدَ تِلْكَ الْمِرَارِ، وَلَمْ يَحُدَّا فِي ذَلِكَ حَدًّا. وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: إذَا أَمْسَكَ وَلَمْ يَأْكُلْ ثَلَاثَ مَرَّاتٍ فَهُوَ مُعَلَّمٌ يُؤْكَلُ مَا قَتَلَ فِي الرَّابِعَةِ وَلَا يُؤْكَلُ مَا قَتَلَ فِي تِلْكَ الثَّلَاثِ مَرَّاتٍ. وَقَالَ أَبُو سُلَيْمَانَ: إذَا أَمْسَكَ فَلَمْ يَأْكُلْ مَرَّةً فَهُوَ مُعَلَّمٌ وَيُؤْكَلُ مَا قَتَلَ فِي الثَّانِيَةِ وَلَا يُؤْكَلُ مَا قَتَلَ فِي الْأُولَى. وَقَالَ أَبُو ثَوْرٍ: إذَا أَمْسَكَ وَلَمْ يَأْكُلْ فَأَوَّلُ مَرَّةٍ يَفْعَلُ ذَلِكَ يُؤْكَلُ مَا قَتَلَ. قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ فَظَاهِرُ الْخَطَأِ لِأَنَّهُمَا لَمْ يُبَيِّنَا مَتَى يَحِلُّ أَكْلُ مَا قَتَلَ وَمَتَى لَا يَحِلُّ، وَمَا كَانَ هَكَذَا فَالسُّكُوتُ عَنْهُ أَوْلَى لِأَنَّهُ إشْكَالٌ مَحْضٌ، لَا بَيَانَ فِيهِ وَلَا دَلِيلَ عَلَيْهِ، وَدِينُ اللَّهِ تَعَالَى بَيِّنٌ لَائِحٌ قَدْ فَصَّلَ لَنَا مَا حَرَّمَ

[10] **Qur'an references (L17214):** Qur'an 5:4 (Al-Ma'idah).

dence. The religion of Allah the Exalted is clear and manifest, having clearly distinguished for us what He prohibited from what He did not prohibit—and to Allah the Exalted belongs all praise. Thus, this opinion is invalidated with certainty. As for the opinion of Abū Yūsuf and Muḥammad, its invalidity is more evident than that of the first opinion, for they prescribed a limit not supported by any textual evidence from the Qur'ān, the Sunnah, the statements of the Companions, rational basis, nor any distinction between one who sets the limit at three instances and one who sets it at four, five, two instances, or more. All such rulings constitute legislation in the religion that Allah the Exalted has not authorized. Therefore, this opinion is invalidated with certainty.

عَلَيْنَا مِمَّا لَمْ يَحْرُمْ - وَلِلَّهِ تَعَالَى الْحَمْدُ - فَسَقَطَ هَذَا الْقَوْلُ بِيَقِينٍ. وَأَمَّا قَوْلُ أَبِي يُوسُفَ، وَمُحَمَّدٍ فَأَظْهَرُ فَسَادًا مِنْ الْقَوْلِ الْأَوَّلِ لِأَنَّهُمَا حَدَّا حَدًّا لَمْ يَأْتِ بِهِ نَصٌّ مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا مَعْقُولٍ وَلَا فَرْقَ بَيْنَ مَنْ حَدَّ بِثَلَاثِ مَرَّاتٍ وَبَيْنَ مَنْ حَدَّ بِأَرْبَعٍ، أَوْ خَمْسٍ، أَوْ بِمَرَّتَيْنِ، أَوْ بِمَا زَادَ - وَكُلُّ ذَلِكَ، شَرْعٌ فِي الدِّينِ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى فَبَطَلَ هَذَا الْقَوْلُ بِيَقِينٍ.

L17220 As for the statement of Abū Sulaymān, he argued that we only knew the hunting animal was trained through that initial action, thereby confirming its training. Thus, in the second instance, it is a trained animal, and what it has killed may be eaten. ʿAlī said: We responded: You are correct. Through that initial action, we knew it was trained, and there is no doubt it was untrained beforehand. Once its training was confirmed through that action, it became certain it hunted while trained. Had it been untrained, it would not have fulfilled the conditions of training. Therefore, since it hunted while trained, consuming its prey is lawful. This is the view of Abū Thawr, and it is undoubtedly the correct position. As for Mālik, he neglected the ruling on eating the prey caught by the trained animal, which is erroneous, as we shall clarify, God willing. Concerning the permissibility of eating what it kills regardless of method, some argued: Only prey it wounds may be eaten, not what it kills by choking, collision, crushing, or suffocation—citing God's words: "from the trained hunting animals" [5:4]. ʿAlī said: This reflects their ignorance, for the trained animal is the one that seizes prey. God, exalted, said: "He knows what you injure by day" [6:60]. Even if "trained hunting animals" were understood as "those inflicting injury," their argument would fail, for God named them trained hunting animals, and they are indeed trained hunters and killers, without doubt. He did not say: "Do not eat except what they wound," but rather: "Eat of what they catch for you" [5:4], without specifying wounding. "Your Lord is never forgetful" [19:64], for His

وَأَمَّا قَوْلُ أَبِي سُلَيْمَانَ فَإِنَّهُ احْتَجَّ بِأَنَّنَا لَمْ نَعْلَمْ أَنَّهُ مُعَلَّمٌ إلَّا بِتِلْكَ الْفِعْلَةِ الْأُولَى فَبِهَا عَلِمْنَا أَنَّهُ قَدْ تَعَلَّمَ فَهُوَ فِي الثَّانِيَةِ مُعَلَّمٌ يُؤْكَلُ مَا قَتَلَ. قَالَ عَلِيٌّ: فَقُلْنَا: صَدَقْتُمْ، إنَّهُ بِتِلْكَ الْفِعْلَةِ الْأُولَى عَلِمْنَا أَنَّهُ مُعَلَّمٌ، وَلَا شَكَّ أَنَّهُ قَبْلَهَا لَمْ يَكُنْ مُعَلَّمًا، فَلَمَّا صَحَّ أَنَّهُ مُعَلَّمٌ بِتِلْكَ الْفِعْلَةِ صَحَّ يَقِينًا أَنَّهُ صَادَ تِلْكَ الْمَرَّةَ وَهُوَ مُعَلَّمٌ، وَلَوْ لَمْ يَكُنْ مُعَلَّمًا لَمَا أَتَى بِشُرُوطِ التَّعْلِيمِ، فَإِذْ صَادَهَا وَهُوَ مُعَلَّمٌ فَحَلَالٌ أَكْلُ مَا صَادَ فِيهَا. وَهَذَا قَوْلُ أَبِي ثَوْرٍ: وَهَذَا الْقَوْلُ الصَّحِيحُ بِلَا شَكٍّ. وَأَمَّا مَالِكٌ: فَلَمْ يُرَاعِ أَكْلَ الْجَارِحِ وَهُوَ خَطَأٌ لِمَا نَذْكُرُ إنْ شَاءَ اللَّهُ تَعَالَى. وَأَمَّا جَوَازُ أَكْلِ مَا قَتَلَ كَيْفَمَا قَتَلَ فَإِنَّ قَوْمًا قَالُوا: لَا يُؤْكَلُ إلَّا مَا جَرَحَ لَا مَا قَتَلَ بِخَنْقٍ، أَوْ صَدْمٍ، أَوْ رَضٍّ، أَوْ غَمٍّ - وَاحْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {مِنَ الْجَوَارِحِ} [المائدة: ٤] . قَالَ عَلِيٌّ: وَهَذَا جَهْلٌ مِنْهُمْ، لِأَنَّ الْجَارِحَ الْكَاسِبُ قَالَ اللَّهُ تَعَالَى: {وَيَعْلَمُ مَا جَرَحْتُمْ بِالنَّهَارِ} [الأنعام: ٦٠] وَحَتَّى لَوْ كَانَ مُرَادُ اللَّهِ تَعَالَى بِقَوْلِهِ: (الْجَوَارِحِ) مِنْ الْجِرَاحِ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّ اللَّهَ تَعَالَى سَمَّاهُنَّ جَوَارِحَ، وَهُنَّ جَوَارِحُ، وَقَوَاتِلُ، بِلَا شَكٍّ، وَلَمْ يَقُلْ تَعَالَى: (لَا تَأْكُلُوا إلَّا مِمَّا وَلَّدْنَ فِيهِ جِرَاحَةً)

بَلْ قَالَ تَعَالَى: {فَكُلُوا مِمَّا أَمْسَكْنَ عَلَيْكُمْ} [المائدة: ٤] وَلَمْ يَذْكُرْ تَعَالَى بِجِرَاحَةٍ، وَلَا بِغَيْرِ جِرَاحَةٍ، {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] . وَقَالَ بَعْضُهُمْ: قِسْنَا الْجَارِحَ عَلَى الْمِعْرَاضِ إنْ خُزِقَ أُكِلَ وَإِنْ رُضَّ لَمْ يُؤْكَلْ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ لِأَنَّهُ قِيَاسٌ.

ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا بَاطِلًا لِأَنَّهُ لَا قِيَاسَ عِنْدَهُمْ مَعَ نَصٍّ وَالنَّصُّ جَاءَ فِي الْمِعْرَاضِ بِمَا ذَكَرُوا، وَفِي الْجَارِحِ بِغَيْرِ ذَلِكَ كَمَا ذَكَرْنَا مِنْ قَوْلِ اللَّهِ تَعَالَى. وَكَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ إبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - نا جَرِيرٌ هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ هَمَّامِ بْنِ الْحَارِثِ عَنْ عَدِيِّ بْنِ حَاتِمٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: «إذَا أَرْسَلْتَ كَلْبَكَ الْمُعَلَّمَ وَذَكَرْتَ اسْمَ اللَّهِ عَلَيْهِ فَكُلْ، قُلْتُ: وَإِنْ قَتَلْنَ؟ قَالَ: وَإِنْ قَتَلْنَ مَا لَمْ يُشْرِكْهَا كَلْبٌ لَيْسَ مَعَهَا» . وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو نُعَيْمٍ هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - نا زَكَرِيَّا هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ الشَّعْبِيِّ عَنْ «عَدِيِّ بْنِ حَاتِمٍ قَالَ: سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَخْذِ الْكَلْبِ؟ فَقَالَ: كُلْ مَا أَمْسَكَ عَلَيْكَ فَإِنَّ أَخْذَ الْكَلْبِ ذَكَاةٌ» . وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ نا أَبِي نا زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ الشَّعْبِيِّ عَنْ «عَدِيِّ بْنِ حَاتِمٍ قَالَ سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ صَيْدِ الْكَلْبِ؟ فَقَالَ: مَا أَمْسَكَ عَلَيْكَ وَلَمْ يَأْكُلْ مِنْهُ فَكُلْهُ فَإِنَّ ذَكَاتَهُ أَخْذُهُ» فَأَمَرَهُ - عَلَيْهِ السَّلَامُ - بِأَكْلِ مَا قَتَلَ الْكَلْبُ الْمُعَلَّمُ وَأَخْبَرَ أَنَّهُ ذَكَاةٌ وَلَمْ يَشْتَرِطْ - عَلَيْهِ السَّلَامُ - بِجِرَاحَةٍ مِنْ غَيْرِهَا، فَاشْتِرَاطُ ذَلِكَ بَاطِلٌ لَا يَجُوزُ. وَقَوْلُنَا هُوَ قَوْلُ أَبِي الْحَسَنِ بْنِ الْمُغَلِّسِ، وَغَيْرِهِ.

omission is deliberate. Some argued: We analogize the trained animal to the blunt arrow—if it pierces, the prey is eaten; if it crushes without bleeding, it is not eaten.[11]

L17221–17222 Abu Muhammad said: This is invalid because it is analogical reasoning (qiyās).

L17223 Furthermore, if analogical reasoning were valid, this would be invalid because they do not apply analogy in the presence of explicit textual evidence. The explicit text regarding the mi'rāḍ (hunting spear) is as they mentioned, and concerning the jāriḥ (wounding instrument), it is otherwise as we mentioned from the statement of Allah the Exalted. As narrated to us through Muslim's chain: Isḥāq ibn Ibrāhīm – Ibn Rāhwaih – narrated to us; Jarīr ibn 'Abd al-Ḥamīd narrated to us from Manṣūr, from Ibrāhīm al-Nakha'ī, from Hammām ibn al-Ḥārith, from 'Adī ibn Ḥātim that the Messenger of Allah – peace be upon him – said to him: "When you release your trained dog and invoke Allah's name upon it, then eat." I said: "Even if it kills?" He said: "Even if it kills, provided no other dog unassociated with it participates." Through Bukhārī's chain: Abū Nu'aym [al-Faḍl ibn Dukayn] narrated to us; Zakariyyā [Ibn Abī Zā'idah] narrated to us from al-Sha'bī, from 'Adī ibn Ḥātim, who said: "I asked the Messenger of Allah – peace be upon him – about taking game with a dog. He said: 'Eat whatever it captures for you, for the dog's capture constitutes ritual slaughter.'" Through Muslim's chain: Muḥammad ibn 'Abdullāh ibn Numayr narrated to us; my father narrated to us; Zakariyyā [Ibn Abī Zā'idah] narrated to us from al-Sha'bī, from 'Adī ibn Ḥātim, who said: "I asked the Messenger of Allah – peace be upon him – about hunting with a dog. He said: 'Whatever it captures for you without eating from it, eat it, for its ritual slaughter is its capture.'" Thus, the Prophet – peace be upon him – commanded him to eat what the trained dog killed and affirmed that this constitutes ritual slaughter, without stipulating a wound from another instrument. Therefore, stipulating such a condition

[11] **Qur'an references (L17220):** Qur'an 6:60 (Al-An'am); Qur'an 5:4 (Al-Ma'idah); Qur'an 19:64 (Maryam).

is invalid and impermissible. Our opinion aligns with that of Abū al-Ḥasan Ibn al-Mughallis and others.[12]

L17224–17226 As for the prohibition of eating game when a hunting animal has consumed part of it, this is based on Allah's statement: {"Then eat of what they catch for you"} [5:4]. Thus, Allah the Exalted has not permitted for us what hunting animals catch indiscriminately, nor what they catch for themselves, but only what they catch specifically for us. Through empirical evidence, we understand that if a hunting animal eats from the prey, it has caught it for itself and hunted it for its own benefit – thus making it unlawful. Furthermore, Allah the Exalted states: {"Prohibited to you are carrion, blood, swine flesh, what has been dedicated to other than Allah, animals strangled, beaten to death, fallen from height, gored, and what predators have eaten – except what you properly slaughter"} [5:3]. A dog is unquestionably a predator by consensus. Therefore, what it consumes becomes prohibited by the Quran's explicit text, leaving no permissibility except where the text specifically allows. Through al-Bukhārī's transmission: Adam narrated to us, Shuʿbah narrated from ʿAbdullāh ibn Abī al-Safar, from al-Shaʿbī, from ʿAdī ibn Ḥātim that Allah's Messenger (peace be upon him) told him: "When you release your trained dog after pronouncing Allah's name, and it catches, kills, then eats [from the prey], do not [...]" Eat [the prey], for the dog has only caught it for itself. From the chain of Ahmad ibn Shuʿayb: Suwayd ibn Nasr → Abdullah ibn al-Mubarak → ʿAsim (al-Ahwal) → al-Shaʿbi → ʿAdi ibn Hatim that the Messenger of Allah—peace and blessings be upon him—said to him: "When you release your dog, mention Allah's name over it. If you find it has not killed [the prey], slaughter it and mention Allah's name over it. If you find it has killed but not eaten [the prey], then eat, for it caught it for you. But if you find it has eaten any of the prey, do not consume it, for the dog has caught it only for itself." He mentioned the remainder of the report. This is the position held by a group of the Salaf. It is authentically established through the chain of Maʿmar → Abdullah ibn Tawus → his father

وَأَمَّا تَحْرِيمُ أَكْلِ الصَّيْدِ إِذَا أَكَلَ مِنْهُ الْجَارِحُ فَلِقَوْلِ اللَّهِ تَعَالَى: {فَكُلُوا مِمَّا أَمْسَكْنَ عَلَيْكُمْ} [المائدة: ٤] فَلَمْ يُبِحْ لَنَا اللَّهُ تَعَالَى مَا أَمْسَكْنَ فَقَطْ وَلَا مَا أَمْسَكْنَ عَلَى أَنْفُسِهِنَّ بَلْ مَا أَمْسَكْنَ عَلَيْنَا فَقَطْ، وَبِالْمُشَاهَدَةِ نَدْرِي أَنَّهُ إِذَا أَكَلَ مِنْهُ فَعَلَى نَفْسِهِ أَمْسَكَ وَلَهَا صَادَ فَهُوَ حَرَامٌ. وَأَيْضًا قَوْلُ اللَّهِ تَعَالَى: {وَالْمُنْخَنِقَةُ وَالْمَوْقُوذَةُ وَالْمُتَرَدِّيَةُ وَالنَّطِيحَةُ وَمَا أَكَلَ السَّبُعُ إِلا مَا ذَكَّيْتُمْ} [المائدة: ٣] وَالْكَلْبُ سَبُعٌ بِلَا خِلَافٍ فَتَحْرِيمُ مَا أَكَلَ مِنْهُ حَرَامٌ بِنَصِّ الْقُرْآنِ فَلَا يَحِلُّ إِلَّا حَيْثُ أَحَلَّهُ النَّصُّ فَقَطْ. وَمِنْ طَرِيقِ الْبُخَارِيِّ نا آدَم نا شُعْبَةُ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ عَنْ الشَّعْبِيِّ عَنْ عَدِيِّ بْنِ حَاتِمٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: «إِذَا أَرْسَلْتَ كَلْبَكَ وَسَمَّيْتَ فَأَخَذَ فَقَتَلَ فَأَكَلَ فَلَا تَأْكُلْ فَإِنَّمَا أَمْسَكَ عَلَى نَفْسِهِ» . وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا سُوَيْدُ بْنُ نَصْرٍ أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ عَاصِمٍ هُوَ الْأَحْوَلُ - عَنْ الشَّعْبِيِّ عَنْ عَدِيِّ بْنِ حَاتِمٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: «إِذَا أَرْسَلْتَ كَلْبَكَ فَاذْكُرْ اسْمَ اللَّهِ عَلَيْهِ فَإِنْ أَدْرَكْتَهُ لَمْ يَقْتُلْ فَاذْبَحْ وَاذْكُرْ اسْمَ اللَّهِ عَلَيْهِ، فَإِنْ أَدْرَكْتَهُ قَدْ قَتَلَ وَلَمْ يَأْكُلْ فَكُلْ فَقَدْ أَمْسَكَهُ عَلَيْكَ وَإِنْ وَجَدْتَهُ قَدْ أَكَلَ مِنْهُ فَلَا تَطْعَمْ مِنْهُ شَيْئًا فَإِنَّمَا أَمْسَكَ عَلَى نَفْسِهِ» وَذَكَرَ بَاقِي الْخَبَرِ - وَبِهَذَا يَقُولُ جَمَاعَةٌ مِنْ السَّلَفِ -: صَحَّ مِنْ طَرِيقِ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ إِذَا أَكَلَ الْكَلْبُ الْمُعَلَّمُ فَلَا تَأْكُلْ مِنْهُ فَإِنَّمَا أَمْسَكَ عَلَى نَفْسِهِ.

[12] **Hadith references (L17223):** Sahih Muslim 1929a.

→ Ibn Abbas: “If the trained dog eats any of the prey, do not consume it, for it has only caught it for itself.”[13]

L17227 From Sa‘īd ibn Manṣūr: Narrated from Sufyān, from ‘Amr ibn Dīnār, from ‘Aṭā’, from Ibn ‘Abbās, who said: If the dog eats, do not eat, for it has kept it for itself. Narrated from Ḥumām: Narrated from al-Bājī Abū Muḥammad: Narrated from Muḥammad ibn ‘Abd al-Malik ibn Ayman: Narrated from Aḥmad ibn Muslim: Narrated from Abū Thawr: Narrated from ‘Alī ibn al-Ḥasan ibn Shaqīq: Narrated from ‘Abdullāh ibn al-Mubārak: Narrated from Naṣr ibn Idrīs, from his uncle, who said: I asked Abū Hurayrah about a dog he sent. He said to me: “Rebuke it. When you release it, invoke the name of Allah the Exalted. If it eats, do not eat.” Through the chain of Wakī‘: Narrated from Sufyān al-Thawrī, from Layth, from Mujāhid, from Ibn ‘Umar, who said: If it eats, then it is not trained. This is the view of Abū Burdah ibn Abī Mūsā al-Ash‘arī, al-Sha‘bī, al-Nakha‘ī, ‘Ikrimah, and ‘Aṭā’—authentically reported from him (‘Aṭā’) via the chain of Wakī‘, from al-Rabī‘ ibn Ṣubayḥ, from ‘Aṭā’, who was asked: “If the falcon or goshawk eats?” He replied: “Do not eat.” A similar ruling is reported from ‘Ikrimah—and it is the opinion of Sa‘īd ibn Jubayr, Suwayd ibn Ghaflah, and Ḥammād ibn Abī Sulaymān. Al-Sha‘bī forbade eating the prey if the hunting animal drank its blood. This is the view of Sufyān al-Thawrī.

وَعَنْ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: إِذَا أَكَلَ الْكَلْبُ فَلَا تَأْكُلْ فَإِنَّمَا أَمْسَكَ عَلَى نَفْسِهِ. نا حُمَامٌ نا الْبَاجِيَّ أَبُو مُحَمَّدٍ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَحْمَدُ بْنُ مُسْلِمٍ نا أَبُو ثَوْرٍ نا عَلِيُّ بْنُ الْحَسَنِ بْنُ شَقِيقٍ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ نا نَصْرُ بْنُ إِدْرِيسَ عَنْ عَمِّهِ قَالَ: سَأَلْتُ أَبَا هُرَيْرَةَ عَنْ كَلْبٍ أَرْسَلَهُ؟ فَقَالَ لِي وَذَّمْهُ فَإِذَا أَرْسَلْته فَسَمِّ اللَّهَ تَعَالَى فَإِنْ أَكَلَ فَلَا تَأْكُلْ - وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ لَيْثٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عُمَرَ قَالَ: إذَا أَكَلَ فَلَيْسَ بِمُعَلَّمٍ. وَهُوَ قَوْلُ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ، وَالشَّعْبِيِّ، وَالنَّخَعِيِّ، وَعِكْرِمَةَ، وَعَطَاءٍ صَحَّ عَنْهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ الرَّبِيعِ بْنِ صُبَيْحٍ عَنْ عَطَاءٍ قَالَ فِي الصَّقْرِ وَالْبَازِي يَأْكُلُ؟ قَالَ: لَا تَأْكُلْ، وَمِثْلُهُ عَنْ عِكْرِمَةَ - وَهُوَ قَوْلُ سَعِيدِ بْنِ جُبَيْرٍ، وَسُوَيْدِ بْنِ غَفَلَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ. وَمَنَعَ الشَّعْبِيُّ مِنْ أَكْلِ الصَّيْدِ إذَا شَرِبَ الْجَارِحُ مِنْ دَمِهِ. وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ،

L17228–17230 And Abu Hanifah, al-Shafi’i, Abu Thawr, Ahmad ibn Hanbal, Abu Sulayman, and all their companions. Malik said: It may be eaten even if he ate from it. Those who followed him adduced as proof what we have reported through the narration of Abu Dawud: I am Muhammad ibn ‘Isa, who narrated to us from Hushaym, who narrated to us from Dawud ibn ‘Amr, from Busr ibn ‘Ubayd Allah, from Abu Idris al-Khawlani. From Abu Tha‘labah, who said: The Messenger of Allah—peace and blessings be upon him—said: “If you release your dog while mentioning Allah’s name, then eat [the game] even if it eats.” Through the chain of ‘Amr ibn Shu‘ayb, from his father, from his grandfather: “The Prophet—peace and blessings be upon him—said to Abu

وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِهِمْ. وَقَالَ مَالِكٌ: يُؤْكَلُ وَإِنْ أَكَلَ مِنْهُ، وَاحْتَجَّ لَهُ مَنْ قَلَّدَهُ بِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُحَمَّدُ بْنُ عِيسَى نا هُشَيْمٌ نا دَاوُد بْنُ عَمْرٍو عَنْ بُسْرِ بْنِ عُبَيْدِ اللَّهِ عَنْ أَبِي إِدْرِيسَ الْخَوْلَانِيِّ عَنْ أَبِي ثَعْلَبَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَرْسَلْتَ كَلْبَكَ وَذَكَرْتَ اسْمَ اللَّهِ فَكُلْ وَإِنْ أَكَلَ مِنْهُ» . وَمِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِأَبِي ثَعْلَبَةَ: إنْ كَانَ لَك كِلَابٌ

[13] **Qur’an references (L17224):** Qur’an 5:4 (Al-Ma’idah); Qur’an 5:3 (Al-Ma’idah).

Tha'labah: 'If you have trained hunting dogs, eat what they seize for you even if they eat from it. Eat whatever returns to your bow, and if the game is out of your sight, so long as it has not strayed.'" Through the chain of 'Abd al-Malik ibn Habib: Asad ibn Musa narrated to us from Ibn Abi Za'idah, from al-Sha'bi, from 'Adiyy ibn Hatim, who said: "I asked: 'O Messenger of Allah, we dwell in a game-rich land and have dogs we send out—do they catch game?' He—peace and blessings be upon him—replied: 'Eat what they seize for you unless another dog joins them.' I asked: 'O Messenger of Allah, even if it kills?' He said: 'Even if it kills.' I asked: 'Even if it eats?' He said: 'Even if it eats.'" Through the chain of Sufyan al-Thawri, from Simak ibn Harb, from Murayy ibn Qaṭari, from 'Adiyy ibn Hatim, who said: The Messenger of Allah—peace and blessings be upon him—said: "Whatever a hunting dog catches for you, eat it." I asked: "Even if it eats?" He said: "Yes."[14]

مُكَلَّبَةً فَكُلْ مِمَّا أَمْسَكْنَ عَلَيْكَ، وَإِنْ أَكَلَ مِنْهُ كُلْ مَا رَدَّتْ عَلَيْكَ قَوْسَكَ، وَإِنْ تَغَيَّبَ عَنْكَ مَا لَمْ يَضِلَّ» . وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ نا أَسَدُ بْنُ مُوسَى عَنِ ابْنِ أَبِي زَائِدَةَ عَنِ الشَّعْبِيِّ «عَنْ عَدِيِّ بْنِ حَاتِمٍ قُلْتُ: يَا رَسُولَ اللَّهِ إِنَّا بِأَرْضِ صَيْدٍ وَلَنَا كِلَابٌ نُرْسِلُهَا فَتَأْخُذُ الصَّيْدَ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -: كُلْ مِمَّا أَمْسَكْنَ عَلَيْكَ إِلَّا أَنْ يُخَالِطَهَا كَلْبٌ مِنْ غَيْرِهَا؟ قُلْتُ: يَا رَسُولَ اللَّهِ وَإِنْ قَتَلْنَ، قَالَ: وَإِنْ قَتَلْنَ، قُلْتُ: وَإِنْ أَكَلْنَ، قَالَ: وَإِنْ أَكَلْنَ» . وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ مُرَيِّ بْنِ قَطَرِيٍّ عَنْ عَدِيِّ بْنِ حَاتِمٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا كَانَ مِنْ كَلْبٍ ضَارٍ أَمْسَكَ عَلَيْكَ فَكُلْ، قُلْتُ: وَإِنْ أَكَلَ؟ قَالَ: نَعَمْ» .

L17231–17233 And from the chain of Muḥammad ibn Jarīr al-Ṭabarī: Al-Ḥārith narrated to me, Muḥammad ibn Sa'īd narrated to us, Muḥammad ibn 'Umar al-Wāqidī narrated to us, Muḥammad ibn 'Abdullāh — the nephew of al-Zuhrī — narrated to us from Abī 'Umayr al-Ṭā'ī from Abī al-Nu'mān from his father — who was from Sa'd Hudhaym — who said: I said, "O Messenger of Allāh, we are people of hunting." The Messenger of Allāh — peace and blessings of Allāh be upon him — said to him: "When you release your trained dog and mention Allāh's name, and it kills, then eat." We asked, "Even if it ate, do we eat?" He replied, "Yes." They rejected the notion that the dog intends to seize for its owner or for itself — and it is authentically reported from Ibn 'Umar: "Eat from what your trained dog has eaten, even if it ate." It is also narrated from Sa'd ibn Abī Waqqāṣ: "Eat even if nothing remains but a piece." And from the chain of Ḥammād ibn Salama from Dāwūd from al-Sha'bī from Abī Hurayrah: "If you release your dog and it eats two-thirds, then eat." And from the chain of Shu'bah and Ḥammād ibn Salama: Shu'bah said — from Qatādah from Sa'īd ibn al-Musayyab — and Ḥammād said — from Ḥumayd from Bakr ibn 'Abdillāh al-Muzanī. Then Bakr and Sa'īd both concurred, narrating from... Salman al-Farisi held that game hunted by a

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ جَرِيرٍ الطَّبَرِيِّ حَدَّثَنِي الْحَارِثُ نا مُحَمَّدُ بْنُ سَعِيدٍ نا مُحَمَّدُ بْنُ عُمَرَ الْوَاقِدِيُّ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ ابْنُ أَخِي الزُّهْرِيِّ عَنْ أَبِي عُمَيْرٍ الطَّائِيِّ عَنْ أَبِي النُّعْمَانِ عَنْ أَبِيهِ - وَهُوَ مِنْ سَعْدِ هُذَيْمٍ - قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ إِنَّا أَصْحَابُ قَنْصٍ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا أَرْسَلْتَ كَلْبَكَ الْمُعَلَّمَ وَذَكَرْتَ اسْمَ اللَّهِ فَقَتَلَ فَكُلْ، قُلْنَا وَإِنْ أَكَلَ نَأْكُلُ؟ قَالَ: نَعَمْ» . وَاعْتَرَضُوا عَلَى الْقَوْلِ بِأَنَّ الْكَلْبَ لَهُ نِيَّةٌ فِي الْإِمْسَاكِ عَلَى مُرْسِلِهِ أَوْ عَلَى نَفْسِهِ بِالْإِنْكَارِ لِذَلِكَ - وَصَحَّ عَنِ ابْنِ عُمَرَ: كُلْ مِمَّا أَكَلَ مِنْهُ كَلْبُكَ الْمُعَلَّمُ وَإِنْ أَكَلَ. وَرُوِيَ أَيْضًا عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ كُلْ وَإِنْ لَمْ يَبْقَ إِلَّا بِضْعَةٌ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد عَنِ الشَّعْبِيِّ عَنْ أَبِي هُرَيْرَةَ إِذَا أَرْسَلْتَ كَلْبَكَ فَأَكَلَ ثُلُثَيْهِ فَكُلْ. وَمِنْ طَرِيقِ شُعْبَةَ، وَحَمَّادِ بْنِ سَلَمَةَ قَالَ شُعْبَةُ: عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، وَقَالَ حَمَّادٌ: عَنْ حُمَيْدٍ عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيِّ ثُمَّ اتَّفَقَ بَكْرٌ، وَسَعِيدٌ كِلَاهُمَا عَنْ سَلْمَانَ الْفَارِسِيِّ: أَنْ يُؤْكَلَ مِنْ صَيْدِ الْكَلْبِ وَإِنْ أَكَلَ ثُلُثَيْهِ.

[14] **Hadith references (L17228):** Sunan Abi Dawud 2852.

dog is permissible to eat even if the dog consumed two-thirds of it. A narration is attributed to Ali through an unidentified and unnamed chain of transmission, which is also the opinion of al-Zuhri and Rabi'ah. There is disagreement regarding the positions of al-Hasan and 'Ata'. Abu Muhammad stated: "We have exhaustively examined all the arguments they raise in dispute, and none of them constitutes valid evidence for their claim. As for the narrations ascribed to the Prophet (peace and blessings be upon him), all are invalid and unauthenticated. The hadith of Abu Tha'labah, for instance, is transmitted through Dawud ibn 'Umar, a weak narrator whom Ahmad ibn Hanbal deemed unreliable and who was accused of fabrication. Should they persist, claiming: 'But he is trustworthy!' We reply: 'If you insist on affirming his reliability here, then adhere to his narration transmitted via Abdullah ibn Ahmad ibn Hanbal from his father: Hushaym reported from Dawud ibn 'Umar, from Busr ibn 'Ubaydullah, from Idris al-Khawlani, from 'Awf ibn Malik al-Ashja'i: 'During the Tabuk expedition, the Messenger of Allah (peace and blessings be upon him) instructed travelers to wipe over khuffs for three days and nights, and residents for one day and night." This is the very same chain. To cite such narrations as religious proofs when they align with your desires and the opinions of those you blindly follow, while discarding them when they contradict these, constitutes a grave sin in Allah's religion. This is the trait Allah ascribes to those who say: {If you are granted this, accept it; but if you are not, beware} [5:41]. Herein lies sufficient admonition for the discerning. As for us, we neither cite these as proofs nor accept them as valid evidence. Concerning the hadith of 'Amr ibn Shu'ayb – a written record – should they demand its validation, we respond: 'Then accept his narration from his father, from his grandfather, from the Prophet (peace and blessings be upon him): 'The diyah for accidental killing is one hundred camels: thirty one-year-old she-camels (bint makhad), thirty two-year-old she-camels (bint labun), twenty four-year-old she-camels (ḥiqqah), and twenty two-year-old male camels (ibn labun). For cattle owners, it is two hundred cows,' and 'The Messenger of Allah (peace and blessings be upon him), Abu Bakr, and Umar burned the possessions of spoils-thieves and flogged them.' And much more besides this, which they reject solely by weakening the chain of 'Amr's transmission from his father and grandfather,

وَرُوِيَ عَنْ عَلِيٍّ مِنْ طَرِيقِ مَنْ لَا يُعْرَفُ مَنْ هُوَ وَلَا سُمِّيَ أَيْضًا وَهُوَ قَوْلُ الزُّهْرِيِّ، وَرَبِيعَةَ - وَاخْتُلِفَ فِيهِ عَنْ الْحَسَنِ. وَعَطَاءٍ. قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا شَغَبُوا بِهِ قَدْ تَقَصَّيْنَاهُ لَهُمْ وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ. أَمَّا الْآثَارُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكُلُّهَا سَاقِطَةٌ لَا تَصِحُّ -: أَمَّا حَدِيثُ أَبِي ثَعْلَبَةَ فَمِنْ طَرِيقِ دَاوُد بْنِ عُمَرَ. وَهُوَ ضَعِيفٌ، ضَعَّفَهُ أَحْمَدُ بْنُ حَنْبَلٍ وَقَدْ ذُكِرَ بِالْكَذِبِ، فَإِنْ لَجُّوا وَقَالُوا: بَلْ هُوَ ثِقَةٌ؟ قُلْنَا: لَا عَلَيْكُمْ إنْ وَثَّقْتُمُوهُ هَهُنَا فَخُذُوا رِوَايَتَهُ الَّتِي رُوِّينَاهَا مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ عَنْ أَبِيهِ نا هُشَيْمٌ أَنَا دَاوُد بْنُ عُمَرَ عَنْ بُسْرِ بْنِ عُبَيْدِ اللَّهِ إدْرِيسَ الْخَوْلَانِيِّ عَنْ عَوْفِ بْنِ مَالِكٍ الْأَشْجَعِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِالْمَسْحِ عَلَى الْخُفَّيْنِ فِي غَزْوَةِ تَبُوكَ ثَلَاثَةَ أَيَّامٍ لِلْمُسَافِرِ وَلَيَالِهِنَّ وَيَوْمٌ وَلَيْلَةٌ لِلْمُقِيمِ» فَهَذِهِ تِلْكَ الطَّرِيقُ بِعَيْنِهَا. وَمِنْ الْكَبَائِرِ فِي دِينِ اللَّهِ تَعَالَى الِاحْتِجَاجُ بِهَا إذَا اشْتَهَيْتُمْ وَوَافَقَتْ أَهْوَاءَكُمْ وَرَأْيَ مَنْ قَلَّدْتُمُوهُ دِينَكُمْ، وَإِطْرَاحُهَا إذَا خَالَفَتْ أَهْوَاءَكُمْ وَرَأْيَ مَنْ قَلَّدْتُمُوهُ هَذِهِ الصِّفَةَ الَّتِي ذَكَرَهَا اللَّهُ تَعَالَى عَنْ قَوْمٍ يَقُولُونَ {إنْ أُوتِيتُمْ هَذَا فَخُذُوهُ وَإِنْ لَمْ تُؤْتَوْهُ فَاحْذَرُوا} [المائدة: ٤١] وَفِي هَذَا كِفَايَةٌ لِمَنْ عَقَلَ. وَأَمَّا نَحْنُ فَمَا نَحْتَجُّ بِهِ أَصْلًا، وَلَا نَقْبَلُهُ حُجَّةً. وَأَمَّا حَدِيثُ عَمْرِو بْنِ شُعَيْبٍ فَصَحِيفَةٌ، فَإِنْ أَبَوْا إلَّا تَصْحِيحَهَا، قُلْنَا: لَا عَلَيْكُمْ خُذُوا بِرِوَايَتِهِ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ قُتِلَ خَطَأً فَدِيَتُهُ مِائَةٌ مِنْ الْإِبِلِ: ثَلَاثُونَ بِنْتُ مَخَاضٍ، وَثَلَاثُونَ بِنْتُ لَبُونٍ، وَعِشْرُونَ حِقَّةً، وَعِشْرُونَ ابْنُ لَبُونٍ ذَكَرٍ، وَعَلَى أَهْلِ الْبَقَرِ مِائَتَا بَقَرَةٍ» «وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبَا بَكْرٍ، وَعُمَرَ: حَرَقُوا مَتَاعَ الْغَالِّ وَضَرَبُوهُ» ، وَغَيْرُ هَذَا كَثِيرٌ مِمَّا خَالَفُوهُ وَلَمْ يَرُدُّوهُ

despite its authenticity as valid proof in Allah's religion. They attribute narrations to the Prophet (peace and blessings be upon him) when these suit their desires and the views of their authorities, yet dismiss them as rejected and unverified when contradictory. Is this not manifest misguidance? How can a Muslim's soul feel at ease with such [behavior]?"[15]

إِلَّا بِتَضْعِيفِ رِوَايَتِهِ عَنْ أَبِيهِ عَنْ جَدِّهِ فَهِيَ صَحِيحَةٌ، وَحُجَّةٌ فِي دِينِ اللَّهِ تَعَالَى وَمَنْسُوبَةٌ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا اشْتَهَوْا وَوَافَقَتْ أَهْوَاءَهُمْ، وَرَأْيَ مَنْ قَلَّدُوهُ، وَهِيَ مَرْدُودَةٌ مُطَّرَحَةٌ غَيْرُ مُصَدَّقَةٍ إذَا خَالَفَتْ أَهْوَاءَهُمْ، وَرَأْيَ مَنْ قَلَّدُوهُ، أَلَا ذَلِكَ هُوَ الضَّلَالُ الْمُبِينُ، وَمَا نَدْرِي كَيْفَ تَنْبَسِطُ نَفْسُ مُسْلِمٍ لِمِثْلِ هَذَا؟

L17234–17235 As for the narration from 'Adi ibn Hatim: one of its two chains comes through the report of 'Abd al-Malik ibn Habib al-Andalusi. He narrated sheer falsehood attributed to trustworthy authorities through Asad ibn Musa, who is rejected in hadith transmission.

وَأَمَّا الْخَبَرُ: عَنْ عَدِيِّ بْنِ حَاتِمٍ -: فَأَحَدُ: طَرِيقَيْهِ مِنْ رِوَايَةِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ. وَقَدْ رَوَى الْكَذِبَ الْمَحْضَ عَنْ الثِّقَاتِ عَنْ أَسَدِ بْنِ مُوسَى وَهُوَ مُنْكَرُ الْحَدِيثِ.

L17236 The second [narration] is through the chain of Simāk ibn Ḥarb—who accepts prompting—from Murayy ibn Qaṭarīy, who is unknown. How many narrations of Asad and Simāk do they discard when they contradict their desires? As for the ḥadīth of Abū al-Nuʿmān: it is problematic. Within it, al-Wāqidī—noted for falsehood—narrates from the nephew of al-Zuhrī—who is weak—from Abū ʿUmayr al-Ṭā'ī—whose identity is unknown—from Abū al-Nuʿmān—also unknown. Thus, all they clung to collapses. Regarding the Companions: the narration from Saʿd is invalid, as it comes through Ḥumayd ibn Mālik ibn al-Akhtam—who is obscure. Similarly, the narrations attributed to ʿAlī and Salmān are invalid, for we do not know of any instance where Saʿīd ibn al-Musayyib or Bakr ibn ʿAbd Allāh directly heard from Salmān, nor were they of an age to comprehend during Salmān's lifetime—may Allāh be pleased with him—as he died in the days of ʿUmar. However, the narration from Abū Hurayrah and Ibn ʿUmar is sound, though differences are reported from them on this matter, as we have cited.

وَالْأُخْرَى: مِنْ طَرِيقِ سِمَاكِ بْنِ حَرْبٍ وَهُوَ يَقْبَلُ التَّلْقِينَ عَنْ مُرَيِّ بْنِ قَطَرِيٍّ وَهُوَ مَجْهُولٌ. وَكَمْ رِوَايَةٍ لِأَسَدٍ، وَسِمَاكٍ، اطْرَحُوهَا إذَا خَالَفَتْ أَهْوَاءَهُمْ؟ وَأَمَّا حَدِيثُ أَبِي النُّعْمَانِ: فَمُصِيبَةٌ، فِيهِ الْوَاقِدِيُّ مَذْكُورٌ بِالْكَذِبِ عَنْ ابْنِ أَخِي الزُّهْرِيِّ - وَهُوَ ضَعِيفٌ - عَنْ أَبِي عُمَيْرٍ الطَّائِيِّ وَلَا يُدْرَى مَنْ هُوَ عَنْ أَبِي النُّعْمَانِ وَهُوَ مَجْهُولٌ - فَسَقَطَ كُلُّ مَا تَعَلَّقُوا بِهِ. وَأَمَّا عَنْ الصَّحَابَةِ: فَهُوَ عَنْ سَعْدٍ لَا يَصِحُّ، لِأَنَّهُ مِنْ طَرِيقِ حُمَيْدِ بْنِ مَالِكِ بْنِ الْأَخْتَمِ وَلَيْسَ بِالْمَشْهُورِ، وَعَنْ عَلِيٍّ كَذَلِكَ، وَعَنْ سَلْمَانَ كَذَلِكَ، لِأَنَّنَا لَا نَعْلَمُ لِسَعِيدِ بْنِ الْمُسَيِّبِ، وَلَا لِبَكْرِ بْنِ عَبْدِ اللَّهِ سَمَاعًا مِنْ سَلْمَانَ وَلَا كَانَا مِمَّنْ يَعْقِلُ؛ إذْ مَاتَ سَلْمَانُ - رَضِيَ اللَّهُ عَنْهُ - أَيَّامَ عُمَرَ بَلْ إنَّهُ صَحِيحٌ عَنْ أَبِي هُرَيْرَةَ، وَابْنِ عُمَرَ، وَقَدْ اُخْتُلِفَ عَنْهُمَا فِي ذَلِكَ كَمَا أَوْرَدْنَا.

L17237–17239 It has been authentically reported from Ibn Umar, as we narrated through Abd al-Razzaq's chain from Ibn Jurayj from Nafi' from Ibn Umar, who said: "Whatever is hunted with falcons or other birds—if you are able to slaughter

وَقَدْ صَحَّ عَنْ ابْنِ عُمَرَ مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: مَا يُصَادُ بِهِ مِنْ الْبِيزَانِ وَغَيْرِهَا مِنْ الطَّيْرِ فَمَا أَدْرَكْتَ ذَكَاتَهُ فَكُلْ وَمَا

[15] **Qur'an references (L17231):** Qur'an 5:41 (Al-Ma'idah).

it, then eat it; otherwise, do not consume it. As for the trained dog, eat from what it catches for you even if it has eaten from it. If Ibn Umar constitutes a valid authority in some of his rulings, he must be accepted as such in all of them; otherwise, this amounts to mockery of the religion. Their rejection of considering the intentions of dogs is itself the truly objectionable stance, for it constitutes a challenge to the Quran and to Allah's Messenger—peace and blessings be upon him. This is enough concerning the deprived one—we seek refuge in Allah from him. It is reported from Rabi'ah that he said: 'If a predator's consumption [of the game] rendered it unlawful, no one could lawfully hasten to the predator until knowing whether it would eat from it or not.' Abu Muhammad said: 'This is an utterly feeble statement, for within the first instant it is possible for the predator to...' [text incomplete]" He eats from what he killed. If he does not do so, we know he retained it on behalf of the one who commissioned him, not for himself. How then [could this apply] when we have never been charged with such an obligation? He – peace be upon him – only commanded us to abstain from eating if the hunter has eaten from it. Disgrace be upon every intellect that objects to Allah, the Exalted, and His Messenger – may Allah bless him and grant him peace. Thus, this claim is invalidated and entirely nullified – and all success lies with Allah, the Exalted.

لَا فَلَا تَطْعَمْ. وَأَمَّا الْكَلْبُ الْمُعَلَّمُ فَكُلْ مِمَّا أَمْسَكَ عَلَيْك وَإِنْ أَكَلَ مِنْهُ، فَإِنْ كَانَ ابْنُ عُمَرَ حُجَّةً فِي بَعْضِ قَوْلِهِ، فَهُوَ حُجَّةٌ فِي سَائِرِهِ، وَإِلَّا فَهُوَ تَلَاعُبٌ بِالدِّينِ. وَأَمَّا إنْكَارُهُمْ مُرَاعَاةَ نِيَّاتِ الْكِلَابِ فَقَوْلُهُمْ هَذَا هُوَ الْمُنْكَرُ نَفْسُهُ حَقًّا، لِأَنَّهُ اعْتِرَاضٌ عَلَى الْقُرْآنِ، وَعَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحَسْبُ الْمَحْرُومِ هَذَا - وَنَعُوذُ بِاَللَّهِ مِنْهُ. وَرُوِيَ عَنْ رَبِيعَةَ أَنَّهُ قَالَ: لَوْ كَانَ أَكْلُ الْجَارِحِ يُحَرِّمُ مِنْهُ مَا بَقِيَ لَمْ يَحِلَّ لِأَحَدٍ أَنْ يُبَادِرَ إلَى الضَّارِي حَتَّى يَدْرِيَ أَيَأْكُلُ مِنْهُ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا [قَوْلٌ] فِي غَايَةِ السُّقُوطِ لِأَنَّ بِأَوَّلِ دَقِيقَةٍ يُمْكِنُ الْجَارِحَ أَنْ يَأْكُلَ مِمَّا قَتَلَ فَإِنْ لَمْ يَفْعَلْ عَلِمْنَا أَنَّهُ عَلَى مُرْسِلِهِ أَمْسَكَ لَا عَلَى نَفْسِهِ فَكَيْفَ وَلَمْ نُكَلَّفْ قَطُّ هَذَا؟ إنَّمَا أَمَرَ - عَلَيْهِ السَّلَامُ - أَنْ لَا نَأْكُلَ إذَا أَكَلَ، وَأُفٍّ أَوْ تُفٍّ لِكُلِّ عَقْلٍ يَعْتَرِضُ عَلَى اللَّهِ تَعَالَى وَعَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. فَسَقَطَ هَذَا الْقَوْلُ وَبَطَلَ جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L17240 As for the permissibility of eating anything killed by a trained creature other than dogs, there is disagreement on this matter. We have narrated from Ibn Umar—as mentioned earlier—that it is unlawful to eat game killed by any of the trained hunting beasts except the trained one from among dogs alone. This has also been authentically established from Mujahid. It is authentically narrated from Ibn Abbas: "Whatever is trained to hunt and eats, it is permissible to eat what it kills."

وَأَمَّا جَوَازُ أَكْلِ كُلِّ مَا قَتَلَهُ الْمُعَلَّمُ مِنْ غَيْرِ الْكِلَابِ فَقَدْ اُخْتُلِفَ فِي هَذَا فَرُوِّينَا عَنْ ابْنِ عُمَرَ مَا رُوِّينَاهُ عَنْهُ آنِفًا مِنْ أَنَّهُ لَا يَحِلُّ أَكْلُ صَيْدٍ قَتَلَهُ شَيْءٌ مِنْ الْجَوَارِحِ إلَّا الْمُعَلَّمَ مِنْ الْكِلَابِ وَحْدَهُ - وَصَحَّ أَيْضًا عَنْ مُجَاهِدٍ. وَصَحَّ عَنْ ابْنِ عَبَّاسٍ: كُلُّ مَا عُلِّمَ فَصَادَ فَأَكَلَ مَا قَتَلَ جَائِزٌ.

L17241 Those who prohibited that argued that the authenticated reports from the Messenger of Allah—peace and blessings of Allah be upon him—pertain exclusively to dogs. They said: Allah's statement {And [what] you have trained of hunting creatures, preparing them as trained hunters} [Al-Mā'idah:4] refers specifically to dogs. They argued: Birds of prey and land predators cannot be trained at all, except dogs alone.

وَاحْتَجَّ مَنْ مَنَعَ ذَلِكَ بِأَنَّ الْأَخْبَارَ الثَّابِتَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا جَاءَتْ فِي الْكَلْبِ فَقَطْ، قَالُوا: وَقَوْلُ اللَّهِ تَعَالَى: {وَمَا عَلَّمْتُمْ مِنَ الْجَوَارِحِ مُكَلِّبِينَ} [المائدة: ٤] إشَارَةٌ إلَى الْكِلَابِ قَالُوا: وَسِبَاعُ الطَّيْرِ، وَسِبَاعُ الْبَرِّ، لَا يُمْكِنُ فِيهَا تَعْلِيمٌ

أَصْلًا حَاشَا الْكِلَابِ فَقَطْ. قَالَ أَبُو مُحَمَّد: أَمَّا الْأَخْبَارُ الثَّابِتَةُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَمَا قَالُوا إلَّا أَنَّ الْآيَةَ أَعَمُّ مِنْ تِلْكَ الْأَحَادِيثِ لِقَوْلِ اللَّهِ تَعَالَى: {مِنَ الْجَوَارِحِ} [المائدة: ٤] فَعَمَّ كُلَّ جَارِحٍ، وَهَذَا لَا يَجُوزُ تَرْكُهُ لِخَبَرٍ فِيهِ بَعْضُ مَا فِي الْآيَةِ. وَأَمَّا قَوْله تَعَالَى: {مُكَلِّبِينَ} [المائدة: ٤] فَلَيْسَ فِيهِ دَلِيلٌ عَلَى أَنَّهُ لَا يُؤْكَلُ مَا قَتَلَهُ غَيْرُ الْكَلْبِ مِنْ الصَّيْدِ أَصْلًا، لَا بِنَصٍّ، وَلَا بِدَلِيلٍ، بَلْ فِيهِ بَيَانٌ بِأَنَّ صَيْدَ غَيْرِ الْكِلَابِ جَائِزٌ بِقَوْلِهِ تَعَالَى: {مُكَلِّبِينَ} [المائدة: ٤] لِأَنَّهَا لَا تَحْتَمِلُ هَذِهِ اللَّفْظَةَ أَلْبَتَّةَ إلَّا أَنْ يَجْعَلَهَا فِي حَالِ الْكِلَابِ - فَصَحَّ أَنَّهَا غَيْرُ الْكِلَابِ أَيْضًا. وَأَمَّا قَوْلُهُمْ: إنَّ مَا عَدَا الْكِلَابَ لَا يَقْبَلُ التَّعْلِيمَ الْمَذْكُورَ أَصْلًا، فَالْوَاجِبُ أَنْ يُنْظَرَ فِي ذَلِكَ، فَإِنْ وُجِدَ مِنْهَا نَوْعٌ يَقْبَلُ التَّعْلِيمَ فَلَا يَنْطَلِقُ حَتَّى يُطْلِقَهُ صَاحِبُهُ، وَإِذَا صَادَ لَمْ يَأْكُلْ فَهُوَ مُعَلَّمٌ يُؤْكَلُ مَا قَتَلَ وَإِنْ لَمْ يُوجَدْ ذَلِكَ أَصْلًا فَلَا يَجُوزُ أَكْلُ شَيْءٍ مِمَّا قَتَلَتْ إلَّا مَا أُدْرِكَتْ ذَكَاتُهُ وَهُوَ حَيٌّ بَعْدُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَدْ قَالَ قَوْمٌ: يُؤْكَلُ صَيْدُ الْبَازِي وَإِنْ أَكَلَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ. قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ لِأَنَّ اللَّهَ تَعَالَى لَمْ يُبِحْ لَنَا أَنْ نَأْكُلَ إلَّا مِمَّا أَمْسَكْنَ عَلَيْنَا، لَا مِمَّا أَمْسَكْنَ جُمْلَةً، وَلَا مِمَّا أَمْسَكْنَ عَلَى أَنْفُسِهِنَّ وَقَوْلُنَا هُوَ قَوْلُ الشَّافِعِيِّ، وَهُوَ أَيْضًا قَوْلُ عَطَاءٍ، وَعِكْرِمَةَ كَمَا ذَكَرْنَا قَبْلُ وَعَنْ ابْنِ عَبَّاسٍ مَا أَكَلَتْ الْجَوَارِحُ فَلَا تَأْكُلْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ شَرِبَ الْجَارِحُ مِنْ دَمِ الصَّيْدِ]

Imam Abū Muḥammad responded: As for the authenticated reports from the Prophet—peace and blessings of Allah be upon him—they are indeed as they stated. However, the Quranic verse is broader than those ḥadīths due to Allah's statement {of hunting creatures}, which encompasses all predatory animals. This general ruling cannot be abandoned for a report addressing only part of the verse's scope.

Regarding Allah's statement {preparing them as trained hunters}, it contains no evidence—neither explicit nor implicit—prohibiting consumption of game killed by non-canine predators. Rather, the verse confirms the permissibility of hunting with animals other than dogs through the phrase {preparing them as trained hunters}, for this wording cannot apply to them unless understood in the canine context—thereby establishing that the ruling extends beyond dogs.

As for their claim that non-canine animals cannot accept such training at all, this requires examination. If any species is found trainable to hunt—not setting off until released by its owner, and refraining from consuming prey—then its game is permissible. If no such training exists, only game slaughtered according to Islamic rites while still alive after being caught may be eaten. And success comes only from Allah, the Most High.[16]

L17242–17244 A group of scholars have said: "The prey of the falcon may be eaten even if it has eaten"—and this is the opinion of Abū Ḥanīfah. Abū Muḥammad said: "This is false, for Allah the Exalted has not permitted us to eat except from what they have retained for us." Neither from what they have caught in entirety, nor from what they have retained for themselves. Our opinion is the opinion of Al-Shāfiʿī, and it is also the view of ʿAṭāʾ and ʿIkrimah, as mentioned earlier. From Ibn ʿAbbās: "If the hunting animals have eaten [any of it], then do not eat it." And success comes from Allāh, the Exalted.

L17245 Issue: If a hunting animal drank from the blood of the game.

L17246 If the hunting dog or another hunting animal drinks from the blood of the

[16] **Qur'an references (L17241):** Qur'an 5:4 (Al-Ma'idah).

prey, that does not affect its permissibility, and it is lawful to eat what it has killed. This is because the Prophet (peace be upon him) only forbade us from eating what it has killed if it consumed part of the prey, and he did not prohibit us from eating what it has killed if it merely lapped the blood. {And your Lord is never forgetful} [Maryam: 64]. If the animal has not eaten from the prey, it has secured it for its owner. This is the opinion of Imam Abū Ḥanīfah and Imam al-Shāfiʿī. And success is from Allah, the Most High.[17]

Issue: If a hunting animal consumed part of the head, leg, or a detached piece of the hunted animal.

1085 - Question: If one eats from the head, leg, internal organs, or a piece severed from the hunted animal, all these are treated equally. It is not permissible to eat what he killed, because he has consumed part of the game.

Issue: If a trained dog consumes part of the game.

1086 - Issue: If the trained hunting dog, as we mentioned, returns and eats from what it killed, its status as trained does not cease thereby. However, eating the prey it killed and consumed is prohibited, while eating the prey it killed without consuming any remains permissible. Abū Ḥanīfa said: Its training becomes invalid, and it reverts to being untrained. Thus, whatever it kills cannot be eaten—even if it did not consume any—until it repeatedly [hunts properly] and regains its trained status. Our school's jurists said: Its training is not invalidated by this. However, it must be struck and disciplined harshly to deter it from eating. This is the correct ruling, for the Prophet (may Allah's prayers and peace be upon him) said—as narrated through Abū Dāwūd's chain: Hannād ibn al-Sarī narrated to us, from Ibn Fudayl, from Bayān, from al-Shaʿbī, from ʿAdī ibn Ḥātim—that Allah's Messenger (may Allah's prayers and peace be upon him) told him: "When you release your trained dogs after invoking Allah's name, eat what they seize for you even if they kill it, unless the dog eats [from the prey]. If it eats, do not eat [it],

[17] **Qur'an references (L17246):** Qur'an 19:64 (Maryam).

١٠٨٤ - مَسْأَلَةٌ: وَإِنْ شَرِبَ الْجَارِحُ الْكَلْبُ أَوْ غَيْرُهُ مِنْ دَمِ الصَّيْدِ لَمْ يَضُرَّ ذَلِكَ شَيْئًا وَحَلَّ أَكْلُ مَا قَتَلَ لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا حَرَّمَ عَلَيْنَا أَكْلَ مَا قَتَلَ إذَا أَكَلَ، وَلَمْ يَنْهَنَا عَنْ أَكْلِ مَا قَتَلَ إذَا وَلَغَ فِي الدَّمِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَإِذَا لَمْ يَأْكُلْ مِنْ الصَّيْدِ فَقَدْ أَمْسَكَهُ عَلَى مُرْسِلِهِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ أَكَلَ الجارح مِنْ الرَّأْسِ أَوْ الرِّجْلِ أَوْ قِطْعَةً انْقَطَعَتْ مِنْ الصَّيْدِ]

١٠٨٥ - مَسْأَلَةٌ: فَإِنْ أَكَلَ مِنْ الرَّأْسِ، أَوْ الرِّجْلِ، أَوْ الْحَشْوَةِ، أَوْ قِطْعَةً انْقَطَعَتْ مِنْهُ، فَكُلُّ ذَلِكَ سَوَاءٌ، وَلَا يَحِلُّ أَكْلُ مَا قَتَلَ، لِأَنَّهُ أَكَلَ مِنْ الصَّيْدِ.

[مَسْأَلَةٌ أَكَلَ الْكَلْبُ الْمُعَلَّمُ مِنْ الصَّيْدِ]

١٠٨٦ - مَسْأَلَةٌ: فَإِنْ كَانَ الْجَارِحُ مُعَلَّمًا كَمَا ذَكَرْنَا ثُمَّ إنَّهُ عَادَ فَأَكَلَ مِمَّا قَتَلَ لَمْ يَسْقُطْ بِذَلِكَ عَنْ أَنْ يَكُونَ مُعَلَّمًا، لَكِنْ يَحْرُمُ أَكْلُ الَّذِي قَتَلَ وَأَكَلَ مِنْهُ فَقَطْ، وَلَا يَحْرُمُ أَكْلُ مَا قَتَلَ وَلَمْ يَأْكُلْ مِنْهُ. وَقَالَ أَبُو حَنِيفَةَ: قَدْ بَطَلَ تَعْلِيمُهُ وَعَادَ غَيْرَ مُعَلَّمٍ، فَلَا يُؤْكَلُ مَا قَتَلَ وَإِنْ لَمْ يَأْكُلْ مِنْهُ حَتَّى يَفْعَلَ ذَلِكَ مَرَّةً بَعْدَ مَرَّةٍ فَيَعُودُ مُعَلَّمًا. وَقَالَ أَصْحَابُنَا: لَا يَبْطُلُ بِذَلِكَ تَعْلِيمُهُ، لَكِنْ يُضْرَبُ وَيُؤَدَّبُ حَتَّى لَا يَأْكُلَ - وَهَذَا هُوَ الصَّوَابُ، لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا هَنَّادُ بْنُ السَّرِيِّ نا ابْنُ فُضَيْلٍ عَنْ بَيَانٍ عَنْ الشَّعْبِيِّ «عَنْ عَدِيِّ بْنِ حَاتِمٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: إذَا أَرْسَلْتَ كِلَابَكَ الْمُعَلَّمَةَ وَذَكَرْتَ اسْمَ اللَّهِ عَلَيْهَا، فَكُلْ مِمَّا أَمْسَكْنَ عَلَيْكَ، وَإِنْ قَتَلَ، إلَّا إنْ أَكَلَ الْكَلْبُ فَإِنْ أَكَلَ فَلَا تَأْكُلْ

for I fear it caught it solely for itself." He (peace and blessings be upon him) still termed them "trained," without nullifying their legal status due to eating, but prohibited only the consumed portion. Another narration via ʻAbd al-Razzāq, from Maʻmar, from ʻAbdullāh ibn Ṭāwūs, from his father, from Ibn ʻAbbās states: "If the trained dog eats from the prey, do not eat from it, for it caught it for itself." Ibn ʻAbbās nevertheless maintained its designation as "trained." One who is taught, even if he eats—and it has been narrated to us from Ibn Abbas as well: "If he eats, how detestable is what you have taught him—he is no scholar"—and with Allah, the Exalted, lies all success.

فَإِنِّي أَخَافُ أَنْ يَكُونَ إِنَّمَا أَمْسَكَهُ عَلَى نَفْسِهِ» فَقَدْ سَمَّاهَا - عَلَيْهِ السَّلَامُ - مُعَلَّمَةً وَلَمْ يُسْقِطْ حُكْمَ التَّعْلِيمِ بِأَكْلِ مَا أَكَلَ مِنْهَا، بَلْ نَهَى عَنْ أَكْلِ مَا أَكَلَ مِنْهُ فَقَطْ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ قَالَ: إذَا أَكَلَ الْكَلْبُ الْمُعَلَّمُ فَلَا تَأْكُلْ مِنْهُ، فَإِنَّمَا أَمْسَكَ عَلَى نَفْسِهِ فَسَمَّاهُ ابْنُ عَبَّاسٍ مُعَلَّمًا وَإِنْ أَكَلَ - وَقَدْ رُوِّينَا عَنْ ابْنِ عَبَّاسٍ أَيْضًا: أَنَّهُ إذَا أَكَلَ فَبِئْسَ مَا عَلَّمْتَهُ لَيْسَ بِعَالِمٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ أَدْرَكَهُ مُرْسِلُهُ حَتَّى قَتَلَ الصَّيْدَ وَهُوَ يُرِيدُ الْأَكْلَ مِنْهُ فَأَخَذَهُ]

L17253 **A legal case in which the sender caught up with his agent after he had killed the game intending to eat from it, and then took possession of it.**

L17254 Issue 1087: If its owner reaches it until he kills it while intending to eat from it, and takes it while the predator contends with him to eat from it, then eating it is not permissible at all. It is carrion, because we are certain at that moment that the predator seized it for itself rather than for its owner. This is the precise attribute by which Allah the Exalted and His Messenger (peace be upon him) prohibited us from eating what the predator has killed [in such circumstances].

١٠٨٧ - مَسْأَلَةٌ: فَإِنْ أَدْرَكَهُ مُرْسِلُهُ حَتَّى قَتَلَهُ وَهُوَ يُرِيدُ الْأَكْلَ مِنْهُ فَأَخَذَهُ وَالْجَارِحُ يُنَازِعُهُ إلَى الْأَكْلِ مِنْهُ، لَمْ يَحِلَّ أَكْلُهُ أَصْلًا، وَهُوَ مَيْتَةٌ، لِأَنَّنَا عَلَى يَقِينٍ حِينَئِذٍ مِنْ أَنَّهُ إنَّمَا أَمْسَكَ عَلَى نَفْسِهِ لَا عَلَى مُرْسِلِهِ، وَهَذِهِ الصِّفَةُ الَّتِي حَرَّمَ اللَّهُ تَعَالَى بِهَا وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْأَكْلَ مِمَّا قَتَلَهُ الْجَارِحُ عَلَيْنَا.

[مَسْأَلَةٌ قَتَلَ الصَّيْدَ وَلَمْ يَأْكُلْ مِنْهُ وَهُوَ قَادِرٌ ثُمَّ أَكَلَ مِنْهُ]

L17255 **A jurisprudential issue in which a person killed game, did not eat from it despite being capable, and later ate some of it.**

L17256 1088 - Issue: If he kills it and does not eat anything from it while being capable of eating, then eats from it afterward, the remainder is permissible. This is because we are certain that if he did not eat from it—despite being capable—he did not retain it for himself but for the dispatcher. Whatever bears this characteristic is permissible by the explicit text of the Qur'an and the established Sunnahs. Since its permissibility has been validated through this and its ritual slaughter is complete, there is no harm in him eating from it afterward, for he realized he could eat from what was confirmed as retained

١٠٨٨ - مَسْأَلَةٌ: فَلَوْ قَتَلَهُ وَلَمْ يَأْكُلْ مِنْهُ شَيْئًا وَهُوَ قَادِرٌ عَلَى الْأَكْلِ مِنْهُ ثُمَّ أَكَلَ مِنْهُ فَبَاقِيهِ حَلَالٌ، لِأَنَّنَا عَلَى يَقِينٍ مِنْ أَنَّهُ إذَا لَمْ يَأْكُلْ مِنْهُ - وَهُوَ قَادِرٌ عَلَى الْأَكْلِ مِنْهُ - فَلَمْ يُمْسِكْ عَلَى نَفْسِهِ وَإِنَّمَا أَمْسَكَ عَلَى مُرْسِلِهِ، وَمَا كَانَ بِهَذِهِ الصِّفَةِ فَهُوَ حَلَالٌ بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ. وَإِذْ قَدْ صَحَّ تَحْلِيلُهُ بِذَلِكَ وَتَمَّتْ ذَكَاتُهُ فَلَا يَضُرُّهُ أَنْ يَأْكُلَ مِنْهُ بَعْدَ ذَلِكَ لِأَنَّهُ قَدْ بَدَا لَهُ أَنْ يَأْكُلَ مِمَّا قَدْ صَحَّ أَنَّهُ أَمْسَكَهُ عَلَى مُرْسِلِهِ - وَقَدْ يَحْدُثُ

for the dispatcher. He may experience hunger compelling him to eat what he finds. The decisive factor is whether he retained it for his master—in which case it is permissible to eat even if he killed it—or retained it for himself, rendering only what he killed impermissible to eat, as Allah the Exalted commanded through His Messenger—peace and blessings be upon him—in the Qur'an and the established Sunnahs. And success is by Allah, the Exalted.

L17257 **A legal case in which he slaughtered [the animal] but did not consume it. Then the one who commissioned him took it, cut a portion from it, and ate it.**

L17258 Issue 1089: If he slaughters it but does not eat it, then the one who sent it takes it, cuts a piece for himself and eats it—or leaves it before him to eat, and he eats from it—then the remainder is ḥalāl. This is because, as we stated, the sender's act of taking possession validates it, thereby completing its ritual slaughter.

L17259 **Issue: The ruling on game hunted by untrained hunting animals.**

L17260–17262 1090. Issue: As for the untrained animal—whether owned or wild, from birds of prey or four-legged beasts, or not owned (whether released or not released)—all are treated the same. The ruling is that whatever it kills cannot be eaten at all. However, if one finds in it a remnant of life and performs ritual slaughter, its consumption becomes lawful, in accordance with Allah's decree: "Except what you have ritually slaughtered" [5:3]. Thus, the Exalted has exempted from all that was prohibited before that whatever we properly slaughter. This aligns with what we narrated through al-Bukhari's chain: From ʻAbdullāh ibn Yazīd, from Haywah—who is Ibn Shurayh—who informed me from Rabīʻah ibn Yazīd al-Dimashqī, from Abū Idrīs al-Khawlānī, from Abū Thaʻlabah al-Khushanī, that Allah's Messenger (peace be upon him) said to him: "What your trained dog catches—after you have invoked Allah's name—you may eat. And what you hunted..." "If your untrained [hunting] dog catches the game and you slaughter it [properly], then you may eat it"—

لَهُ جُوعٌ يَأْكُلُ بِهِ مَا وَجَدَ، وَإِنَّمَا الْمُرَاعَى إِمْسَاكُهُ عَلَى سَيِّدِهِ فَيُؤْكَلُ، وَإِنْ قَتَلَ، أَوْ إِمْسَاكُهُ عَلَى نَفْسِهِ فَلَا يُؤْكَلُ مَا قَتَلَ فَقَطْ، كَمَا أَمَرَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْقُرْآنِ، وَالسُّنَنِ الثَّابِتَةِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَتَلَ وَلَمْ يَأْكُلْ ثُمَّ أَخَذَهُ مُرْسِلُهُ فَقَطَعَ لَهُ قِطْعَةً فَأَكَلَهَا]

١٠٨٩ - مَسْأَلَةٌ: فَلَوْ قَتَلَ وَلَمْ يَأْكُلْ، ثُمَّ أَخَذَهُ مُرْسِلُهُ فَقَطَعَ لَهُ قِطْعَةً فَأَكَلَهَا أَوْ خَلَّاهُ بَيْنَ يَدِهِ يَأْكُلُهُ فَأَكَلَ مِنْهُ فَالْبَاقِي حَلَالٌ، لِمَا ذَكَرْنَا مِنْ أَنَّهُ قَدْ صَحَّ إِمْسَاكُهُ عَلَى مُرْسِلِهِ فَتَمَّتْ ذَكَاتُهُ بِذَلِكَ.

[مَسْأَلَةٌ حُكْمُ صَيْدِ غَيْرِ الْمُعَلَّمِ مِنَ الْجَوَارِحِ]

١٠٩٠ - مَسْأَلَةٌ: وَأَمَّا غَيْرُ الْمُعَلَّمِ فَسَوَاءٌ كَانَ مُتَمَلَّكًا أَوْ بَرِّيًّا مِنْ سِبَاعِ الطَّيْرِ أَوْ دَوَابِّ الْأَرْبَعِ غَيْرَ مُتَمَلَّكٍ أُرْسِلَ أَوْ لَمْ يُرْسَلْ كُلُّ ذَلِكَ سَوَاءٌ، وَحُكْمُهُ أَنْ لَا يُؤْكَلَ مَا قَتَلَ أَصْلًا، فَإِنْ أَدْرَكَ فِيهِ بَقِيَّةً مِنَ الرُّوحِ وَذَكَّى حَلَّ أَكْلُهُ لِقَوْلِ اللَّهِ تَعَالَى: {إِلا مَا ذَكَّيْتُمْ} [المائدة: ٣] فَاسْتَثْنَى تَعَالَى مَا ذَكَّيْنَا مِنْ كُلِّ مَا حَرَّمَ مِنْ قَبْلِ ذَلِكَ. وَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا عَبْدُ اللَّهِ بْنُ يَزِيدَ أَنَا حَيْوَةُ هُوَ ابْنُ شُرَيْحٍ - أَخْبَرَنِي رَبِيعَةُ بْنُ يَزِيدَ الدِّمَشْقِيُّ عَنْ أَبِي إِدْرِيسَ الْخَوْلَانِيِّ «عَنْ أَبِي ثَعْلَبَةَ الْخُشَنِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: وَمَا صِدْتَ بِكَلْبِكَ الْمُعَلَّمِ فَذَكَرْتَ اسْمَ اللَّهِ فَكُلْ، وَمَا صِدْتَ

he (peace be upon him) did not make an exception for the hope of preserving its life through means other than [the dog's action]. Therefore, such an exception is invalid and contrary to the Messenger of Allah (peace and blessings be upon him).[18]

L17263 **A case where a trained hunting animal departed without its owner having set it loose.**

L17264 Issue: If a predatory animal—whether trained or untrained—departs without being released by its owner, it is impermissible to eat what it kills unless some life remains in it, in which case it may be ritually slaughtered and eaten. This is based on the statement of Allah's Messenger (peace be upon him): "If you release your dog and mention Allah's name..." The Prophet (peace be upon him) restricted valid slaughter to cases where the animal is intentionally released alongside the mention of Allah's name. Ritual slaughter is only valid with human intention and purpose, as per his saying (peace be upon him): "A person is rewarded only according to their intention." Authentic texts confirm that if one releases a trained predatory animal while mentioning Allah's name, and it kills the prey, this constitutes valid slaughter. However, no authentic text validates slaughter in cases that do not meet these conditions. It is narrated through the chain of 'Abd al-Razzāq, from Ma'mar, from Qatadah, that a man asked him about someone training his falcon. While the falcon was circling nearby, it saw a bird, swooped toward it, and the owner mentioned Allah's name. Qatadah said: "He may not eat it because he did not release it himself—unless he reaches it in time to slaughter it [while alive]."

L17265 **Legal issue: If one shoots a poisoned arrow and finds the game dead.**

L17266 Issue 1092: If someone shoots a poisoned arrow and finds the game dead, it is not permissible to eat it unless the arrow penetrated its vital organs in a way equivalent to how it would have died from it had the arrow not been poisoned. This is because what is killed by poison constitutes dead meat, as

بِكَلْبِكَ غَيْرِ الْمُعَلَّمِ فَأَدْرَكْتَ ذَكَاتَهُ فَكُلْ» فَلَمْ يَسْتَثْنِ - عَلَيْهِ السَّلَامُ - رَجَاءَ حَيَاةٍ مِنْ غَيْرِهَا، فَاسْتِثْنَاءُ ذَلِكَ بَاطِلٌ وَخِلَافٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

[مَسْأَلَةٌ انْطَلَقَ الْجَارِحُ مِنْ غَيْرِ أَنْ يُطْلِقَهُ صَاحِبُهُ]

١٠٩١ - مَسْأَلَةٌ: وَإِذَا انْطَلَقَ الْجَارِحُ الْمُعَلَّمُ أَوْ غَيْرُ الْمُعَلَّمِ مِنْ غَيْرِ أَنْ يُطْلِقَهُ صَاحِبُهُ لَمْ يَحِلَّ أَكْلُ مَا قَتَلَ إلَّا أَنْ تُدْرَكَ فِيهِ بَقِيَّةٌ مِنْ الرُّوحِ فَيُذَكَّى وَيُؤْكَلُ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَرْسَلْتَ كَلْبَكَ وَسَمَّيْتَ اللَّهَ» فَلَمْ يَجْعَلْ - عَلَيْهِ السَّلَامُ - الذَّكَاةَ إلَّا بِإِرْسَالِهِ مَعَ تَسْمِيَةِ اللَّهِ تَعَالَى، وَالذَّكَاةُ لَا تَكُونُ إلَّا بِنِيَّةٍ مِنْ الْإِنْسَانِ الْمُذَكِّي وَقَصْدٍ لِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «وَلِكُلِّ امْرِئٍ مَا نَوَى» . وَصَحَّ بِالنَّصِّ أَنَّهُ إذَا أَرْسَلَ جَارِحَهُ الْمُعَلَّمَ وَسَمَّى اللَّهَ تَعَالَى فَقَتَلَ الْجَارِحُ فَهِيَ ذَكَاةٌ صَحِيحَةٌ - وَلَمْ يَصِحَّ فِي كَوْنِ مَا دُونَ ذَلِكَ ذَكَاةً نَصٌّ. رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ أَنَّهُ قَالَ لِرَجُلٍ سَأَلَهُ عَنْ إنْسَانٍ كَانَ يُعَلِّمُ صَقْرًا لَهُ؟ فَبَيْنَمَا هُوَ يَحُومُ حَوْلَهُ إذْ رَأَى طَائِرًا فَانْقَضَّ نَحْوَهُ وَسَمَّى الرَّجُلُ اللَّهَ عَزَّ وَجَلَّ؟ قَالَ قَتَادَةَ: لَا يَأْكُلُهُ لِأَنَّهُ لَمْ يُرْسِلْهُ هُوَ، إلَّا أَنْ يُدْرِكَ ذَكَاتَهُ.

[مَسْأَلَةٌ رَمَى بِسَهْمٍ مَسْمُومٍ فَوَجَدَ الصَّيْدَ مَيِّتًا]

١٠٩٢ - مَسْأَلَةٌ: وَكُلُّ مَنْ رَمَى بِسَهْمٍ مَسْمُومٍ فَوَجَدَ الصَّيْدَ مَيِّتًا لَمْ يَحِلَّ أَكْلُهُ إلَّا إنْ كَانَ السَّهْمُ أَنْفَذَ مَقَاتِلَهُ إنْفَاذًا كَأَنْ يَمُوتَ مِنْهُ لَوْ لَمْ يَكُنْ مَسْمُومًا لِأَنَّ مَا قُتِلَ بِالسُّمِّ

[18] **Qur'an references (L17260):** Qur'an 5:3 (Al-Ma'idah).

there is no definitive scriptural text stating that poisoning qualifies as valid ritual slaughter - unless some remnant of life is found in it, whereupon it must be ritually slaughtered to become permissible. And with Allah, the Exalted, lies all success.

فَهُوَ مَيْتَةٌ؛ لِأَنَّهُ لَمْ يَأْتِ نَصٌّ بِأَنَّهُ ذَكَاةٌ إِلَّا أَنْ تُدْرَكَ فِيهِ بَقِيَّةُ رُوحٍ فَيُذَكَّى فَيَحِلَّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L17267 **A legal ruling: It is permissible to eat what every predatory animal trained for hunting kills.**

[مَسْأَلَةٌ كُلُّ جَارِحٍ مُعَلَّمٍ حَلَالٌ أَكْلُ مَا قَتَلَ]

L17268 1093. Issue: Every trained hunting animal—thus, it is permissible to eat what it kills as we mentioned, regardless of whether it was trained by an idolater or a Muslim. Similarly, game hunted with an arrow fashioned by an idolater or a Muslim is permissible, due to the statement of the Messenger of Allah—peace and blessings be upon him—"When you release your trained dog," and he—peace and blessings be upon him—did not specify training by a Muslim over an idolater. This is the opinion of Abū Ḥanīfah, Mālik, al-Shāfiʿī, and Abū Sulaymān. Some scholars held that game hunted by an animal trained by one whose slaughter is invalid is impermissible to eat. It was narrated to us via Wakīʿ's chain: from Jarīr ibn Ḥāzim, from ʿĪsā ibn ʿĀṣim, from ʿAlī ibn Abī Ṭālib, that he deemed reprehensible game caught by a Zoroastrian's bāzī or falcon, and he also deemed reprehensible fish hunted by the Zoroastrian. Via ʿAbd al-Razzāq's chain: from Ḥumayd ibn Rumān, from al-Ḥajjāj, from Abū al-Zubayr, from Jābir, who said: "Do not eat the game of a Zoroastrian's dog or what is struck by his arrow."

١٠٩٣ - مَسْأَلَةٌ: وَكُلُّ جَارِحٍ مُعَلَّمٍ فَحَلَالٌ أَكْلُ مَا قَتَلَ كَمَا ذَكَرْنَا سَوَاءٌ عَلَّمَهُ وَثَنِيٌّ أَوْ مُسْلِمٌ، وَكَذَلِكَ الصَّيْدُ بِسَهْمٍ صَنَعَهُ وَثَنِيٌّ أَوْ مُسْلِمٌ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَرْسَلْتَ كَلْبَكَ الْمُعَلَّمَ» وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - تَعْلِيمَ مُسْلِمٍ مِنْ تَعْلِيمِ وَثَنِيٍّ. وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ. وَقَالَ قَوْمٌ: لَا يُؤْكَلُ صَيْدُ جَارِحٍ عَلَّمَهُ مَنْ لَا يَحِلُّ أَكْلُ مَا ذَكَّى -: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا جَرِيرُ بْنُ حَازِمٍ عَنْ عِيسَى بْنِ عَاصِمٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ كَرِهَ صَيْدَ بَازِي الْمَجُوسِيِّ وَصَقْرِهِ، وَصَيْدُ الْمَجُوسِيِّ لِلسَّمَكِ كَرِهَهُ أَيْضًا. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ حُمَيْدِ بْنِ رُومَانَ عَنْ الْحَجَّاجِ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: لَا تَأْكُلْ صَيْدَ كَلْبِ الْمَجُوسِيِّ وَلَا مَا أَصَابَ بِسَهْمِهِ.

L17269–17270 This has also been transmitted to us via Saʿīd ibn Manṣūr's chain: ʿAttāb ibn Bashīr informed us, from Khuṣayf, who said: Ibn ʿAbbās stated: "Do not eat what you have hunted with a Zoroastrian's dog, even if you pronounce Allah's name over it, for this stems from the Zoroastrian's training. Allah the Exalted said: *'You teach them from what Allah has taught you'* [5:4]." This opinion has also been transmitted by 'Aṭā', Mujāhid, al-Nakhaʿī, and Muḥammad ibn 'Alī—and it is the view of Sufyān al-Thawrī. The proponents of this position cited Allah's statement as proof: *'And [lawful is] what you have trained of hunting animals as trainers, teaching them from what Allah has taught you'* [5:4]. They argued: "Thus, He ascribed the teaching to us." 'Alī remarked:

وَقَدْ رُوِّينَا هَذَا أَيْضًا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا عَتَّابُ بْنُ بَشِيرٍ أَنَا خُصَيْفٌ قَالَ: قَالَ ابْنُ عَبَّاسٍ: لَا تَأْكُلْ مَا صِدْت بِكَلْبِ الْمَجُوسِ وَإِنْ سَمَّيْت فَإِنَّهُ مِنْ تَعْلِيمِ الْمَجُوسِيِّ قَالَ اللَّهُ تَعَالَى: {تُعَلِّمُونَهُنَّ مِمَّا عَلَّمَكُمُ اللَّهُ} [المائدة: ٤] . وَجَاءَ هَذَا الْقَوْلُ عَنْ عَطَاءٍ، وَمُجَاهِدٍ، وَالنَّخَعِيِّ، وَمُحَمَّدِ بْنِ عَلِيٍّ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِقَوْلِ اللَّهِ تَعَالَى: {وَمَا عَلَّمْتُمْ مِنَ الْجَوَارِحِ مُكَلِّبِينَ تُعَلِّمُونَهُنَّ مِمَّا عَلَّمَكُمُ اللَّهُ} [المائدة: ٤]

"They have no valid evidence in this, for Allah's address with the rulings of Islam is binding upon every person—and success is from Allah the Exalted."[19]

قَالُوا: فَجَعَلَ التَّعْلِيمَ لَنَا. قَالَ عَلِيٌّ: وَلَا حُجَّةَ لَهُمْ فِي هَذَا، لِأَنَّ خِطَابَ اللَّهِ تَعَالَى بِأَحْكَامِ الْإِسْلَامِ لَازِمٌ لِكُلِّ أَحَدٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L17271 This is among the matters in which they contradicted the narration transmitted from Companions (may Allah be pleased with them) - for whom no opposing Companion is known - and success comes from Allah, the Exalted.

وَهَذَا مِمَّا خَالَفُوا فِيهِ الرِّوَايَةَ عَنْ صَحَابِيٍّ لَا يُعْرَفُ لَهُمْ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L17272 **A legal issue concerning hunting with a predatory animal that had been unlawfully seized.**

[مَسْأَلَةٌ تَصَيَّدَ بِجَارِحٍ أُخِذَ بِغَيْرِ حَقٍّ]

L17273 1094. Issue: If someone hunts using a predatory animal taken without right, it is impermissible to eat what it kills, due to Allah's statement: "And do not transgress" (Quran 2:190). This is an act of transgression, and transgression cannot validly fulfill the requirements of slaughter. If the prey is found alive, or if a person sets a trap taken without right, or uses a tool taken without right, and subsequently finds the prey still has life remaining, then properly slaughters it, it becomes lawful for him. However, he must compensate the owner for the value of that predatory animal, that arrow, that spear, or that trap. This is because game animals—over which no one holds ownership—belong to the capturer. The owner of the tool, trap, or predatory animal does not own the prey, as he neither deployed nor released them with the intent to claim ownership of what they catch. Ownership of unowned property cannot be established except through intention. And with Allah, the Most High, lies all success.[20]

١٠٩٤ - مَسْأَلَةٌ: وَمَنْ تَصَيَّدَ بِجَارِحٍ أُخِذَ بِغَيْرِ حَقٍّ فَلَا يَحِلُّ أَكْلُ مَا قَتَلَ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَعْتَدُوا} [البقرة: ١٩٠] وَهَذَا مُعْتَدٍ فَلَا يَكُونُ التَّعَدِّي ذَكَاةً أَصْلًا. فَلَوْ أَدْرِكَ حَيًّا، أَوْ نَصَبَ الْمَرْءُ حِبَالَةً مَأْخُوذَةً بِغَيْرِ حَقٍّ، أَوْ رَمَى بِآلَةٍ مَأْخُوذَةٍ بِغَيْرِ حَقٍّ، فَأَدْرَكَ كُلَّ ذَلِكَ فِيهِ بَقِيَّةُ حَيَاةٍ ذَكَّاهَا وَهِيَ لَهُ حَلَالٌ، وَعَلَيْهِ أُجْرَةُ مِثْلِ ذَلِكَ الْجَارِحِ، وَذَلِكَ السَّهْمِ، وَالرُّمْحِ، وَتِلْكَ الْحِبَالَةِ لِصَاحِبِ كُلِّ ذَلِكَ، لِأَنَّ الصَّيْدَ الَّذِي لَا مِلْكَ لِأَحَدٍ عَلَيْهِ هُوَ لِمَنْ أَخَذَهُ وَلَمْ يَمْلِكْهُ صَاحِبُ الْآلَةِ، وَالْحِبَالَةِ، وَالْجَارِحِ؛ لِأَنَّهُ لَمْ يَنْصِبْ ذَلِكَ وَلَا أَرْسَلَهُ قَاصِدًا لِتَمَلُّكِ مَا أَصَابَ بِذَلِكَ، وَلَا يَكُونُ التَّمَلُّكُ لِمَا لَمْ يَتَقَدَّمْ فِيهِ مِلْكٌ إِلَّا بِنِيَّةٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L17274 **A case where a person found another individual with his hunting animal and could not determine which of them killed the game.**

[مَسْأَلَةٌ وَجَدَ مَعَ جَارِحِهِ آخَرَ لَمْ يَدْرِ أَيُّهُمَا قَتَلَ الصَّيْدَ]

L17275 1095. Issue: If someone finds that their hunting animal was accompanied by another hunting animal or a predatory animal, and it is unknown which

١٠٩٥ - مَسْأَلَةٌ: وَمَنْ وَجَدَ مَعَ جَارِحِهِ جَارِحًا آخَرَ أَوْ سَبُعًا لَمْ يَدْرِ أَيُّهُمَا قَتَلَ الصَّيْدَ؟ فَهُوَ مَيْتَةٌ لَا يَحِلُّ أَكْلُهُ إِلَّا أَنْ تُدْرَكَ ذَكَاتُهُ فَيُذَكَّى فَيَحِلَّ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ

[19] **Qur'an references (L17270):** Qur'an 5:4 (Al-Ma'idah).
[20] **Qur'an references (L17273):** Qur'an 2:190 (Al-Baqarah).

one of them killed the prey, then it is carrion and unlawful to eat—unless it can be properly slaughtered before death, thereby making it lawful. As we were narrated through the chain of Ahmad ibn Shuʿayb: from Suwayd ibn Nasr, from ʿAbdullāh ibn al-Mubārak, from ʿĀṣim, from al-Shaʿbī, from ʿAdī ibn Ḥātim, from the Prophet (peace and blessings of Allah be upon him)—and he mentioned the hadith containing: "If your dog joins other dogs and they killed [prey] while they did not eat any of it, then do not eat from it, for you do not know which one killed it."

The issue concerning hunting a jet-black dog.

L17276–17277

L17278 Issue: It is impermissible to keep a solid black dog without markings or one with two spots - whether for hunting or other purposes. It is impermissible to train such dogs for hunting, and the game they kill cannot be eaten under any circumstances unless ritual slaughter (dhabīḥah) is performed upon it. Moreover, keeping any dog is generally impermissible except for guarding crops, livestock, hunting, or necessity due to fear - based on what we have narrated through Muslim's chain: via Isḥāq ibn Manṣūr → Rawḥ ibn 'Ubādah → Ibn Jurayj → Abū al-Zubayr, who heard Jābir ibn 'Abdullāh say: "Allah's Messenger (peace be upon him) ordered us to kill dogs, then forbade their killing, stating: 'Beware of the solid black dog with two spots, for it is the devil.'"

Through another chain from Aḥmad ibn Shu'ayb: via 'Imrān ibn Mūsā → Yazīd ibn Zurai' → Yūnus ibn 'Ubayd → al-Ḥasan → 'Abdullāh ibn Mughaffal, who reported: Allah's Messenger (peace be upon him) said: "Were dogs not a community among communities, I would have ordered their extermination. Kill every solid black one. Any people who keep a dog not meant for farming, hunting, or herding will have his reward diminished daily by a qīrāṭ."

Allah the Exalted states: {He has explicitly forbidden you certain things, except when compelled} (6:119). Since the Prophet (peace be upon him) prohibited keeping solid black dogs or those with two spots, their ownership becomes unlawful. Maintaining them constitutes disobedience, while ritual slaughter through hunting animals constitutes obedience. Disobedience to

بْنِ شُعَيْبٍ أَنَا سُوَيْد بْنُ نَصْرٍ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ عَاصِمٍ عَنْ الشَّعْبِيِّ عَنْ عَدِيِّ بْنِ حَاتِمٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ الْحَدِيثَ وَفِيهِ: «فَإِنْ خَالَطَ كَلْبُكَ كِلَابًا فَقَتَلْنَ فَلَمْ يَأْكُلْنَ فَلَا تَأْكُلْ مِنْهُ شَيْئًا فَإِنَّكَ لَا تَدْرِي أَيُّهَا قَتَلَ؟» .

[مَسْأَلَةُ صَيْدِ الْكَلْبِ الْأَسْوَدِ الْبَهِيمِ]

مَسْأَلَةٌ: وَلَا يَحِلُّ إمْسَاكُ كَلْبٍ أَسْوَدَ بَهِيمٍ أَوْ ذِي نُقْطَتَيْنِ لَا لِصَيْدٍ وَلَا لِغَيْرِهِ، وَلَا يَحِلُّ تَعْلِيمُهُ، وَلَا أَكْلُ مَا قَتَلَ مِنْ الصَّيْدِ أَصْلًا، إلَّا أَنْ تُدْرَكَ ذَكَاتُهُ، وَلَا اتِّخَاذُ كَلْبٍ سِوَى ذَلِكَ أَصْلًا إلَّا لِزَرْعٍ، أَوْ مَاشِيَةٍ، أَوْ صَيْدٍ، أَوْ ضَرُورَةِ خَوْفٍ -: لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي إسْحَاقُ بْنُ مَنْصُورٍ نا رَوْحُ بْنُ عُبَادَةَ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَتْلِ الْكِلَابِ ثُمَّ نَهَى عَنْ قَتْلِهَا وَقَالَ: عَلَيْكُمْ بِالْأَسْوَدِ الْبَهِيمِ ذِي النُّقْطَتَيْنِ فَإِنَّهُ الشَّيْطَانُ» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عِمْرَانُ بْنُ مُوسَى نا يَزِيدُ بْنُ زُرَيْعٍ نا يُونُسُ بْنُ عُبَيْدٍ عَنْ الْحَسَنِ عَنْ عَبْدِ اللَّهِ بْنِ مُغَفَّلٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَوْلَا أَنَّ الْكِلَابَ أُمَّةٌ مِنْ الْأُمَمِ لَأَمَرْتُ بِقَتْلِهَا فَاقْتُلُوا مِنْهَا الْأَسْوَدَ الْبَهِيمَ وَأَيُّمَا قَوْمٍ اتَّخَذُوا كَلْبًا لَيْسَ بِكَلْبِ حَرْثٍ، أَوْ صَيْدٍ، أَوْ مَاشِيَةٍ، فَإِنَّهُ يَنْقُصُ مِنْ أَجْرِهِ كُلَّ يَوْمٍ قِيرَاطٌ» وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] فَإِذَا حَرَّمَ - عَلَيْهِ السَّلَامُ - آنِفًا الْأَسْوَدَ الْبَهِيمَ أَوْ ذَا النُّقْطَتَيْنِ فَلَا يَحِلُّ اتِّخَاذُهُ، وَإِذْ

Allah cannot substitute for obedience to Him, and the disobedient has not performed the ritual slaughter (dhabīḥah) - thus the game becomes carrion.

We further narrate via ʾAbd al-Razzāq → Maʾmar → Qatādah, who stated: "I consider it disliked to eat game killed by a solid black dog, for Allah's Messenger (peace be upon him) ordered its killing." Through Wakīʿ's chain: Sufyān al-Thawrī → Yūnus ibn ʾUbayd → al-Ḥasan, who disliked game killed by solid black dogs. Through another chain from Wakīʿ: Saʾīd ibn Abī ʾArūbah → Abū Maʾshar → Ibrāhīm al-Nakhaʾī, who said: "How could we eat game killed by solid black dogs when we were commanded to kill them?" This is the position of Aḥmad ibn Ḥanbal and Isḥāq ibn Rāhawayh.

Aḥmad stated: "I know of no scholar who permitted eating game killed by solid black dogs" - and Aḥmad had encountered generations of scholars. Abū Muḥammad remarked: The two spots' location on the body is irrelevant. If there is one spot or more than two, killing is impermissible, as it does not linguistically qualify as "having two spots."[21][22]

L17279 **A case: If a person goes out with their trained hunting animal, releases it, invokes Allah's name, and intends whatever of the game it catches.**

L17280–17282 1097 - Issue: Whoever goes out with his predatory animal, releases it, invokes Allah's name, and intends whatever game it catches— Whether one does all of that from their home or in the desert—whatever game is caught during that act of sending the dog, if it kills it, then eating it is permissible. This is because the Prophet—peace and blessings of Allah be upon him—said: "When you release your trained dog," without specifying whether you see the game or not. It has been narrated to us through the chain of Saʿīd ibn Manṣūr from Ismāʿīl ibn ʿAyyāsh from ʿUmar ibn Muḥammad ibn Zayd from someone who narrated to him from Abū Hurayrah, who said: "If one

[21] **Hadith references (L17278):** Sunan an-Nasai 4280.

[22] **Qur'an references (L17278):** Qur'an 6:119 (Al-An'am).

لَا يَحِلُّ اتِّخَاذُهُ فَاتِّخَاذُهُ مَعْصِيَةٌ، وَالذَّكَاةُ بِالْجَارِحِ طَاعَةٌ، وَلَا تَنُوبُ الْمَعْصِيَةُ لِلَّهِ تَعَالَى عَنْ طَاعَتِهِ وَالْعَاصِي لَمْ يُذَكِّ كَمَا أُمِرَ فَهِيَ مَيْتَةٌ. وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: أَكْرَهُ صَيْدَ الْكَلْبِ الْأَسْوَدِ الْبَهِيمِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِقَتْلِهِ. وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ أَنَّهُ كَرِهَ صَيْدَ الْكَلْبِ الْأَسْوَدِ الْبَهِيمِ. وَمِنْ طَرِيقِ وَكِيعٍ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ أَبِي مَعْشَرٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَيْفَ نَأْكُلُ صَيْدَ الْكَلْبِ الْأَسْوَدِ الْبَهِيمِ وَقَدْ أُمِرْنَا بِقَتْلِهِ؟ وَهُوَ قَوْلُ أَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ. قَالَ أَحْمَدُ: مَا أَعْلَمُ أَحَدًا رَخَّصَ فِي أَكْلِ مَا قَتَلَ الْكَلْبُ الْأَسْوَدُ مِنْ الصَّيْدِ - وَقَدْ أَدْرَكَ أَحْمَدُ مِنْ أَهْلِ الْعِلْمِ أُمَمًا. قَالَ أَبُو مُحَمَّدٍ: سَوَاءٌ حَيْثُ كَانَتْ النُّقْطَتَانِ مِنْ جَسَدِهِ فَإِنْ كَانَتْ نُقْطَةً وَاحِدَةً أَوْ أَكْثَرَ مِنْ اثْنَتَيْنِ لَمْ يَجُزْ قَتْلُهُ، لِأَنَّهُ لَا يُسَمَّى فِي اللُّغَةِ ذَا نُقْطَتَيْنِ.

[مَسْأَلَةٌ خَرَجَ بِجَارِحِهِ فَأَرْسَلَهُ وَسَمَّى وَنَوَى مَا أَصَابَ مِنْ الصَّيْدِ]

١٠٩٧ - مَسْأَلَةٌ: وَمَنْ خَرَجَ بِجَارِحِهِ فَأَرْسَلَهُ وَسَمَّى وَنَوَى مَا أَصَابَ مِنْ الصَّيْدِ - فَسَوَاءٌ فَعَلَ كُلَّ ذَلِكَ مِنْ مَنْزِلِهِ أَوْ فِي الصَّحْرَاءِ - مَا أَصَابَ فِي ذَلِكَ الْإِرْسَالِ مِنْ الصَّيْدِ، فَقَتَلَهُ فَأَكْلُهُ حَلَالٌ، لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا أَرْسَلْتَ كَلْبَكَ الْمُعَلَّمَ» وَلَمْ يَخُصَّ: وَأَنْتَ تَرَى صَيْدًا مِنْ أَنْ لَا تَرَاهُ. وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ عُمَرَ بْنِ مُحَمَّدِ بْنِ زَيْدٍ عَمَّنْ حَدَّثَهُ عَنْ أَبِي هُرَيْرَةَ قَالَ: إنْ غَدَا بِكِلَابٍ مُعَلَّمَةٍ فَذَكَرَ اسْمَ اللَّهِ حِينَ يَغْدُو كَانَ كُلُّ شَيْءٍ صَادَهُ إلَى اللَّيْلِ

goes out in the morning with trained dogs and mentions Allah's name at that time, everything they catch until nightfall is permissible." Through the chain of Wakī', Sufyān al-Thawrī narrated from Khālid al-Ḥadhā' from Abū Iyās, who said: "We used to go out with our dogs for hunting, release them without seeing any game, and eat what they caught." Abū Muḥammad said: Abū Ḥanīfah stated: "If someone releases a dog or a domestic pig and it catches game, its consumption is not permissible. But if one releases a lion, wolf, or wild pig and it catches game, its consumption is permissible. If one releases their predatory animal at specific game but it catches another, its consumption is permissible. However, if one releases it at a fish and it catches game, its consumption is not permissible." 'Alī said: "These are confused statements, devoid of logic. Such things are unacceptable except from someone who does not question their actions. All that has been mentioned is the same—none of it is permissible because Allah's name was not invoked, nor did he direct his predatory animal or his arrow at what was caught. Thus, it is not properly slaughtered. Success comes only from Allah, the Exalted."

حَلَالًا. وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي إيَاسٍ قَالَ: إنَّا كُنَّا نَخْرُجُ بِكِلَابِنَا إلَى الصَّيْدِ فَنُرْسِلُهَا، وَلَا نَرَى شَيْئًا فَنَأْكُلُ مَا أَخَذَتْ. قَالَ أَبُو مُحَمَّدٍ: وَقَالَ أَبُو حَنِيفَةَ: مَنْ رَمَى كَلْبًا أَوْ خِنْزِيرًا إنْسِيًّا فَأَصَابَ صَيْدًا لَمْ يَحِلَّ أَكْلُهُ، فَلَوْ رَمَى أَسَدًا أَوْ ذِئْبًا أَوْ خِنْزِيرًا بَرِّيًّا فَأَصَابَ صَيْدًا حَلَّ لَهُ أَكْلُهُ، فَلَوْ أَرْسَلَ جَارِحَهُ عَلَى صَيْدٍ بِعَيْنِهِ فَأَصَابَ غَيْرَهُ حَلَّ أَكْلُهُ - فَلَوْ أَرْسَلَهُ عَلَى سَمَكَةٍ فَأَصَابَ صَيْدًا لَمْ يَحِلَّ أَكْلُهُ. قَالَ عَلِيٌّ: هَذِهِ تَخَالِيطُ لَا تُعْقَلُ وَلَا يُقْبَلُ مِثْلُهَا إلَّا مِمَّنْ لَا يُسْأَلُ عَمَّا يَفْعَلُ - وَكُلُّ مَا ذُكِرَ فَسَوَاءٌ - لَا يَحِلُّ شَيْءٌ مِنْهُ لِأَنَّهُ لَمْ يُسَمِّ اللَّهَ تَعَالَى، وَلَا أَرْسَلَ جَارِحَهُ، وَلَا سَهْمَهُ عَلَى الَّذِي أَصَابَ، فَهُوَ غَيْرُ مُذَكًّى - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[An Issue: The Sale of the Dog]

[مَسْأَلَةٌ بَيْعُ الْكَلْبِ]

1098 - Issue: It is not permissible to sell any dog whatsoever—neither those permitted to keep nor others—due to the authentic prohibition by the Prophet (peace and blessings of Allah be upon him). We shall mention this in the Book of Transactions if Allah, the Exalted, wills. If one is compelled to acquire a dog, they may take it from someone who has no need for it without payment. If unable to obtain it, they may purchase it. The price remains forbidden for the seller to retain but remains the property of the buyer. This is analogous to bribes in unjust matters and ransoming captives, as it constitutes taking wealth wrongfully. And success is from Allah alone.

١٠٩٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ كَلْبٍ أَصْلًا لَا الْمُبَاحُ اتِّخَاذُهُ وَلَا غَيْرُهُ؛ لِصِحَّةِ نَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهُ - وَسَنَذْكُرُهُ فِي كِتَابِ الْبُيُوعِ إنْ شَاءَ اللَّهُ تَعَالَى - فَمَنْ اُضْطُرَّ إلَيْهِ فَلَهُ أَخْذُهُ مِمَّنْ يَسْتَغْنِي عَنْهُ بِلَا ثَمَنٍ، وَإِنْ لَمْ يَتَمَكَّنْ لَهُ، فَلَهُ ابْتِيَاعُهُ - وَالثَّمَنُ حَرَامٌ عَلَى الْبَائِعِ بَاقٍ عَلَى مِلْكِ الْمُشْتَرِي - وَإِنَّمَا هُوَ كَالرِّشْوَةِ فِي الْمَظْلَمَةِ، وَفِدَاءِ الْأَسِيرِ، لِأَنَّهُ أَخْذُ مَالٍ بِالْبَاطِلِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

AL-MUHALLA

كِتَابُ الْأَشْرِبَةِ وَمَا يَحِلُّ مِنْهَا وَمَا يَحْرُمُ

The Book of Beverages

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْأَشْرِبَةِ وَمَا يَحِلُّ مِنْهَا وَمَا يَحْرُمُ] [مَسْأَلَةٌ مَا أَسْكَرَ كَثِيرُهُ]

[The Book of Beverages: What is Permissible and What is Prohibited] [Issue: What Intoxicates in Large Quantities is Prohibited in Any Amount]

مَسْأَلَةٌ: كُلُّ شَيْءٍ أَسْكَرَ كَثِيرُهُ أَحَدًا مِنْ النَّاسِ فَالنُّقْطَةُ مِنْهُ فَمَا فَوْقَهَا إلَى أَكْثَرِ الْمَقَادِيرِ: خَمْرٌ حَرَامٌ -: مِلْكُهُ، وَبَيْعُهُ، وَشُرْبُهُ، وَاسْتِعْمَالُهُ عَلَى أَحَدٍ - وَعَصِيرُ الْعِنَبِ، وَنَبِيذُ التِّينِ، وَشَرَابُ الْقَمْحِ، وَالسِّكْرَانِ، وَعَصِيرُ كُلِّ مَا سِوَاهَا وَنَقِيعُهُ، وَشَرَابُهُ - طُبِخَ كُلُّ ذَلِكَ أَوْ لَمْ يُطْبَخْ - ذَهَبَ أَكْثَرُهُ أَوْ أَقَلُّهُ سَوَاءٌ فِي كُلِّ مَا ذَكَرْنَا وَلَا فَرْقَ. وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ وَغَيْرِهِمْ - وَفِي هَذَا اخْتِلَافٌ قَدِيمٌ وَحَدِيثٌ بَعْدَ صِحَّةِ الْإِجْمَاعِ عَلَى تَحْرِيمِ الْخَمْرِ قَلِيلِهَا وَكَثِيرِهَا -: فَرُوِّينَا عَنْ طَائِفَةٍ أَنَّهَا قَالَتْ: شَرَابُ الْبُسْرِ وَحْدَهُ خَمْرٌ مُحَرَّمَةٌ. وَقَالَتْ طَائِفَةٌ: الرُّطَبُ، وَالْبُسْرُ إذَا خُلِطَا، فَشَرَابُهُمَا خَمْرٌ مُحَرَّمَةٌ، وَكَذَلِكَ التَّمْرُ وَالْبُسْرُ إذَا خُلِطَا. وَقَالَتْ طَائِفَةٌ: عَصِيرُ الْعِنَبِ إذَا أَسْكَرَ، وَنَقِيعُ الزَّبِيبِ إذَا أَسْكَرَ، وَلَمْ يُطْبَخَا: هِيَ الْخَمْرُ الْمُحَرَّمَةُ قَلِيلُهَا وَكَثِيرُهَا، [وَكُلُّ] مَا عَدَا ذَلِكَ حَلَالٌ مَا لَمْ يُسْكِرْ مِنْهُ. وَقَالَتْ طَائِفَةٌ: لَا خَمْرَ إلَّا عَصِيرُ الْعِنَبِ إذَا أَسْكَرَ مَا لَمْ يُطْبَخْ حَتَّى يَذْهَبَ ثُلُثَاهُ فَهُوَ حَرَامٌ قَلِيلُهُ وَكَثِيرُهُ، فَإِذَا طُبِخَ كَذَلِكَ فَلَيْسَ خَمْرًا بَلْ هُوَ حَلَالٌ أَسْكَرَ أَوْ لَمْ يُسْكِرْ. وَأَمَّا كُلُّ شَرَابٍ مَا عَدَا عَصِيرَ الْعِنَبِ الْمَذْكُورَ فَهُوَ حَلَالٌ أَسْكَرَ أَوْ لَمْ يُسْكِرْ كَنَقِيعِ الزَّبِيبِ وَغَيْرِهِ طُبِخَ كُلُّ ذَلِكَ أَوْ لَمْ يُطْبَخْ إلَّا أَنَّ السُّكْرَ مِنْهُ حَرَامٌ. وَقَالَتْ طَائِفَةٌ: كُلُّ مَا عُصِرَ مِنْ الْعِنَبِ، وَنَبِيذِ الزَّبِيبِ، وَنَبِيذِ التَّمْرِ، وَالرُّطَبِ، وَالْبُسْرِ، وَالزَّهْوِ، فَلَمْ يُطْبَخْ، فَكُلُّ خَمْرٍ مُحَرَّمَةٌ قَلِيلُهَا وَكَثِيرُهَا، فَإِنْ طُبِخَ عَصِيرُ الْعِنَبِ حَتَّى ذَهَبَ ثُلُثَاهُ وَطُبِخَ سَائِرُ مَا ذَكَرْنَا فَهُوَ حَلَالٌ أَسْكَرَ أَوْ لَمْ يُسْكِرْ، إلَّا أَنَّ السُّكْرَ مِنْهُ حَرَامٌ. وَكُلُّ نَبِيذٍ

L17285–17286

Issue: Every substance whose large quantity intoxicates any person—from a drop up to the largest quantities—is unlawful khamr. This applies to its ownership, sale, drinking, use on anyone, grape juice, fig nabīdh, wheat-based drink, intoxicants, the juice or infusion of anything else—whether cooked or uncooked, whether most or little of it has evaporated—all are equal in what we have mentioned, with no distinction. This is the opinion of Mālik, al-Shāfiʿī, Aḥmad, Abū Sulaymān, and others. There exists ancient and modern disagreement on this matter after the establishment of the consensus prohibiting khamr in both small and large quantities.

L17287–17289

We have reported from one group that they said: "The drink of unripe dates alone is prohibited khamr." Another group said: "When fresh dates and unripe dates are mixed, their drink becomes prohibited khamr, as does the mixture of dried dates and unripe dates." A third group stated: "Uncooked grape juice or raisin infusion that intoxicates is prohibited khamr in small or large amounts. Every other drink is permissible unless it causes intoxication."

Another group argued: "There is no khamr except uncooked grape juice that intoxicates. If it is not cooked until two-thirds of it evaporates, it remains unlawful in any quantity. If cooked thus, it is not khamr but permissible, whether it intoxicates or not. As for all drinks besides this grape juice—such as raisin infusion and others, whether cooked or uncooked—they are permissible even if they intoxicate, though intoxication itself is forbidden."

Another group asserted: "Any liquid pressed from grapes, raisin nabīdh, date nabīdh, fresh date nabīdh, unripe date nabīdh, or nabīdh of fully ripe dates—if uncooked—is entirely prohibited khamr in all quantities. If grape juice is cooked..." Until two-thirds of it have evaporated and the remainder of what we mentioned has been cooked, it is permissible whether it caused intoxication or not, except that intoxication from it remains forbidden. All other nabidh and juices apart from what we mentioned are permissible whether they caused intoxication or not—cooked or uncooked—and intoxication from

them is likewise not forbidden. As for those who consider the drink of unripe dates alone to be khamr: We have received through Ahmad ibn Shu'ayb's chain—Ahmad ibn Sulayman narrated to us; Yazid reported from Humaid from 'Ikrimah from Ibn 'Abbas who said: "Unripe dates alone are forbidden." Ahmad ibn Shu'ayb stated: I, Abu Bakr ibn 'Ali al-Muqaddami, received from al-Qawariri (i.e., 'Ubaydullah ibn 'Umar); Hammad ibn Zayd narrated to us; Ayyub al-Sakhtiyani narrated from Sa'id ibn Jubayr from Ibn 'Abbas who said: "Nabidh made exclusively from unripe dates is unlawful." This opinion has also been transmitted from 'Abd al-Rahman ibn Abi Layla and Jabir ibn Zayd. It is reported that Ibn 'Abbas would administer flogging for it as for khamr. We find no valid evidence for this view whatsoever. Contrarily, the Prophet's invalidation of it is established—as we received through 'Abdullah ibn al-Mubarak's chain from Isma'il ibn Muslim al-'Abdi; Abu al-Mutawakkil narrated from Abu Sa'id al-Khudri that the Prophet (peace be upon him) said: "Whoever among you drinks it, let each consume one type individually: dates alone, unripe dates alone, or raisins alone."

The second opinion: We received through 'Abd al-Razzaq's chain from Sufyan al-Thawri from Muharib ibn Dithar who said: I heard Jabir ibn 'Abdullah declare: "Unripe dates and fresh dates are khamr"—meaning when mixed. Through Ahmad ibn Shu'ayb's chain: Suwayd ibn Nasr narrated; 'Abdullah ibn al-Mubarak reported from Sufyan al-Thawri and Shu'bah, both from Muharib ibn Dithar from Jabir ibn 'Abdullah who said: "Unripe dates and dried dates are khamr." Proponents of this view cite the authenticated prohibition by the Prophet (peace be upon him) against mixing unripe dates with dried dates or fresh dates.

Abu Muhammad remarked: This report provides them no proof for two reasons. First, the Prophet (peace be upon him) prohibited combining other types beyond these, rendering baseless any exclusive prohibition of these while disregarding others he forbade. We received through Yahya ibn Sa'id al-Qattan's chain from Ibn Jurayj; 'Ata' informed from Jabir who said: "The Prophet (peace be upon him) forbade mixing dates, raisins, unripe dates, and fresh dates."[1]

[1] **Hadith references (L17287):** Sunan an-Nasai 5568; Sunan an-Nasai 5554.

وَعَصِيرٍ مَا سِوَى مَا ذَكَرْنَا فَحَلَالٌ أَسْكَرَ أَوْ لَمْ يُسْكِرْ طُبِخَ أَوْ لَمْ يُطْبَخْ وَالسُّكْرُ أَيْضًا مِنْهُ لَيْسَ حَرَامًا. فَأَمَّا مَنْ رَأَى شَرَابَ الْبُسْرِ وَحْدَهُ خَمْرًا -: فَرُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ سُلَيْمَانَ نا يَزِيدُ [قَالَ] أَنَا حُمَيْدٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: الْبُسْرُ وَحْدَهُ حَرَامٌ قَالَ أَحْمَدُ بْنُ شُعَيْبٍ: وَأَنَا أَبُو بَكْرِ بْنُ عَلِيٍّ الْمُقَدَّمِيُّ نا الْقَوَارِيرِيُّ هُوَ عُبَيْدُ اللَّهِ بْنُ عُمَرَ - نا حَمَّادٌ هُوَ ابْنُ زَيْدٍ - نا أَيُّوبُ هُوَ السَّخْتِيَانِيُّ - عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: نَبِيذُ الْبُسْرِ بَحْتًا لَا يَحِلُّ - وَرُوِيَ هَذَا الْقَوْلُ أَيْضًا عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى، وَجَابِرِ بْنِ زَيْدٍ. وَرُوِيَ عَنِ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ يَجْلِدُ فِيهِ كَمَا يَجْلِدُ فِي الْخَمْرِ - وَمَا نَعْلَمُ لِهَذَا الْقَوْلِ حُجَّةً أَصْلًا، بَلْ قَدْ صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إبْطَالُهُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ إسْمَاعِيلَ بْنِ مُسْلِمٍ الْعَبْدِيِّ نا أَبُو الْمُتَوَكِّلِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ شَرِبَهُ مِنْكُمْ فَلْيَشْرَبْ كُلَّ وَاحِدٍ مِنْهُ فَرْدًا، تَمْرًا فَرْدًا، أَوْ بُسْرًا فَرْدًا، أَوْ زَبِيبًا فَرْدًا» . وَالْقَوْلُ الثَّانِي - رُوِّيناهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُحَارِبِ بْنِ دِثَارٍ قَالَ: سَمِعْت جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: الْبُسْرُ، وَالرُّطَبُ: خَمْرٌ - يَعْنِي إذَا جُمِعَا. وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا سُوَيْد بْنُ نَصْرٍ أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَشُعْبَةَ، كِلَيْهِمَا عَنْ مُحَارِبِ بْنِ دِثَارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: الْبُسْرُ، وَالتَّمْرُ: خَمْرٌ وَحُجَّةُ هَذَا الْقَوْلِ هُوَ صِحَّةُ نَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ خَلْطِ الْبُسْرِ مَعَ التَّمْرِ، أَوْ مَعَ الرُّطَبِ. قَالَ أَبُو مُحَمَّد: وَلَا حُجَّةَ لَهُمْ فِي هَذَا الْخَبَرِ، لِوَجْهَيْنِ -: أَحَدُهُمَا: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ نَهَى عَنِ الْجَمْعِ بَيْنَ غَيْرِ هَذِهِ الْأَنْوَاعِ، فَلَا مَعْنَى لِتَخْصِيصِ هَذِهِ خَاصَّةً بِالتَّحْرِيمِ دُونَ سَائِرِ مَا نَهَى - عَلَيْهِ السَّلَامُ - عَنْهُ. رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ

سَعِيدٍ الْقَطَّانِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَطَاءٌ عَنْ جَابِرٍ قَالَ «إِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ خَلِيطِ التَّمْرِ، وَالزَّبِيبِ، وَالْبُسْرِ، وَالرُّطَبِ» .

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وَمِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ عَطَاءٍ عَنْ جَابِرٍ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُنْبَذَ الزَّبِيبُ وَالتَّمْرُ جَمِيعًا، وَأَنْ يُنْبَذَ الْبُسْرُ وَالتَّمْرُ جَمِيعًا» . وَنَهَى أَيْضًا - عَلَيْهِ السَّلَامُ - عَنْ أَنْ يُجْمَعَ غَيْرُ هَذِهِ كَمَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى. وَوَجْهٌ آخَرُ -: وَهُوَ أَنَّهُ لَيْسَ كُلُّ مُحَرَّمٍ خَمْرًا، الدَّمُ حَرَامٌ، وَلَيْسَ خَمْرًا، وَلَبَنُ الْخِنْزِيرِ حَرَامٌ وَلَيْسَ خَمْرًا، وَالْبَوْلُ حَرَامٌ وَلَيْسَ خَمْرًا، فَهَذَانِ اللَّذَانِ نَهَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ جَمْعِهِمَا حَرَامٌ وَلَيْسَتْ خَمْرًا إِلَّا أَنْ تُسْكِرَ، وَلَا مَعْنَى لِتَسْمِيَتِهِمَا إِذَا جُمِعَا خَمْرًا. فَإِنْ قِيلَ: فَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الزَّبِيبُ وَالتَّمْرُ هُوَ الْخَمْرُ» فَمَا قَوْلُكُمْ فِيهِ؟ قُلْنَا: قَدْ صَحَّ بِالنَّصِّ وَالْإِجْمَاعِ الْمُتَيَقَّنِ إِبَاحَةُ التَّمْرِ وَإِبَاحَةُ الزَّبِيبِ، وَإِبَاحَةُ نَبِيذِهِمَا غَيْرَ مَخْلُوطَيْنِ، كَمَا ذَكَرْنَا آنِفًا وَأَنَّ ذَلِكَ لَمْ يُنْسَخْ قَطُّ. فَصَحَّ أَنَّ هَذَا الْخَبَرَ لَيْسَ عَلَى ظَاهِرِهِ، فَإِذْ لَا شَكَّ فِي هَذَا فَإِنَّمَا يَكُونُ خَمْرًا إِذَا جَاءَ نَصٌّ مُبَيِّنٌ لِهَذِهِ الْجُمْلَةِ، وَلَيْسَ ذَلِكَ إِلَّا إِذَا أَسْكَرَ نَبِيذُهُمَا كَمَا بَيَّنَ - عَلَيْهِ السَّلَامُ - فِي خَبَرٍ نَذْكُرُهُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى «إِنَّ كُلَّ مُسْكِرٍ خَمْرٌ» فَسَقَطَ هَذَا الْقَوْلُ أَيْضًا. وَالْقَوْلُ الثَّالِثُ: مِنْ تَخْصِيصِ عَصِيرِ الْعِنَبِ وَنَبِيذِ الزَّبِيبِ بِالتَّحْرِيمِ مَا لَمْ يُطْبَخَا دُونَ سَائِرِ الْأَنْبِذَةِ وَالْعَصِيرِ فَقَوْلٌ صَحَّ عَنْ أَبِي حَنِيفَةَ - وَهُوَ الْأَشْهَرُ عَنْهُ - إِلَّا أَنَّهُ لَا يَعْتَمِدُ مُقَلِّدُوهُ عَلَيْهِ، وَلَا يَشْتَغِلُونَ بِنَصْرِهِ، وَلَا نَعْلَمُ لَهُ أَيْضًا حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ ضَعِيفَةٍ، وَلَا دَلِيلِ إِجْمَاعٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا رَأْيٍ، وَلَا قِيَاسٍ - فَسَقَطَ - وَلِلَّهِ الْحَمْدُ. وَالْقَوْلُ الرَّابِعُ: مِنْ تَخْصِيصِ عَصِيرِ الْعِنَبِ بِالتَّحْرِيمِ مَا لَمْ يُطْبَخْ، فَهُوَ قَوْلٌ اخْتَارَهُ

From the narration of Al-Layth ibn Sa‘d through ‘Aṭā’ from Jābir, who said: “The Messenger of Allah—peace and blessings of Allah be upon him—prohibited fermenting raisins and dates together, and fermenting unripe dates and dates together.” He—peace be upon him—also prohibited combining other substances besides these, as we will mention hereafter, Allah the Exalted willing. Another perspective holds that not every prohibited substance constitutes khamr. Blood is forbidden but not khamr, swine’s milk is forbidden but not khamr, and urine is forbidden but not khamr. Thus, these two mixtures the Prophet—peace and blessings of Allah be upon him—forbade combining are prohibited but not khamr unless they cause intoxication. There is no basis for designating them as khamr merely due to their combination. If one objects: There exists an authentic report from the Prophet—peace and blessings of Allah be upon him—that “raisins and dates constitute khamr”—what is your response? We reply: It is definitively established through textual evidence and certain consensus that dates are permissible, raisins are permissible, and their individual fermented drinks are permissible when unmixed—as we previously stated—and this ruling has never been abrogated. Therefore, this narration cannot be understood literally. Since there is no doubt in this matter, they can only be classified as khamr if an explicit text clarifies this generality, which applies solely when their fermented drink causes intoxication—as the Prophet—peace be upon him—explained in a narration we will mention later, Allah the Exalted willing: “Every intoxicant is khamr.” Thus, this argument too becomes invalid. The third opinion—restricting the prohibition to uncooked grape juice and raisin ferment, unlike other beverages and juices—is authentically reported from Abū Ḥanīfah and is most renowned from him. However, his followers neither base their practice on it nor strive to defend it. Moreover, we find no foundational evidence for it whatsoever—neither from the Qur’an, Sunnah, weak narrations, consensus, companions’ statements, reasoned opinion, nor analogy. Therefore, it is dismissed—and all praise belongs to Allah. The

fourth opinion—limiting the prohibition to uncooked grape juice—is a position favored by Abū Ja'far al-Ṭaḥāwī. Its proponents cite reports attributed to the Prophet—peace and blessings of Allah be upon him—narrations from the Companions, and claims of consensus. As for the narrations from the Prophet—peace and blessings of Allah be upon him—all contain no merit, as we shall clarify, Allah the Exalted willing.

L17292–17293 Then, even if they were authentic, none of them would align with this opinion; thus, it becomes evident that their citation of them is sheer obfuscation. Similarly, the narrations from the Companions—may Allah be pleased with them—except that some of them are inauthentic and do not conform to the view they have adopted, thus their citation of them is obfuscation.

L17294–17296 Among these are matters that are valid, and those who do not scrutinize carefully may presume they align with what the scholars have concluded—as we will present, God willing—though there exists no valid proof in the opinion of a scholar when another from among them opposes it. As for the claim of consensus, they argue: "Consensus has been established on the prohibition of grape juice when it intoxicates, while disagreement exists regarding other intoxicants. Thus, nothing is prohibited due to mere disagreement." Abu Muhammad said: This is an utterly corrupt view, for it invalidates the majority of their own rulings. It would compel them to mandate zakah only where consensus requires it, to recognize no obligation of Hajj or prayer except where consensus confirms it, and to not deem anything usury unless the entire ummah agrees it is usury. Whoever adopts this doctrine unquestionably exits the fold of Islam for two reasons: First, it is a fabricated doctrine never commanded by Allah Almighty nor His Messenger (peace be upon him). Allah has only commanded adherence to the Quran, the Sunnah of the Prophet (peace be upon him), and consensus in following those in authority. He never commanded that only consensus be followed, nor did He or His Messenger (peace be upon him) state: "Do not adopt anything from disputed matters except what is unanimously agreed upon." Whoever asserts this has falsely attributed lies to Allah, introduced a blatant religious innovation, and embraced manifest misguidance. Allah says: "Follow what has been revealed to you from your Lord, and do not follow guardians besides Him" (7:3);

أَبُو جَعْفَرٍ الطَّحَاوِيَّ. وَاحْتَجَّ مَنْ ذَهَبَ إِلَيْهِ بِأَخْبَارٍ أُضِيفَتْ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَخْبَارٍ عَنْ الصَّحَابَةِ، وَدَعْوَى إِجْمَاعٍ - فَأَمَّا الْأَخْبَارُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكُلُّهَا لَا خَيْرَ فِيهَا - عَلَى مَا نُبَيِّنُ إِنْ شَاءَ اللَّهُ تَعَالَى.

ثُمَّ لَوْ صَحَّتْ لَمَا كَانَ شَيْءٌ مِنْهَا مُوَافِقًا لِهَذَا الْقَوْلِ، فَلَاحَ أَنَّ إِيرَادَهُمْ لَهَا تَمْوِيهٌ مَحْضٌ - وَكَذَلِكَ الْآثَارُ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، إِلَّا أَنَّ مِنْهَا مَا لَا يَصِحُّ وَلَا يُوَافِقُ مَا ذَهَبُوا إِلَيْهِ فَإِيرَادُهُمْ لَهَا تَمْوِيهٌ.

وَمِنْهَا شَيْءٌ يَصِحُّ وَيَظُنُّ مَنْ لَا يُنْعِمُ النَّظَرَ أَنَّهُ يُوَافِقُ مَا ذَهَبُوا إِلَيْهِ - عَلَى مَا نُورِدُ إِنْ شَاءَ اللَّهُ تَعَالَى - وَلَا حُجَّةَ فِي قَوْلِ صَاحِبٍ قَدْ خَالَفَهُ غَيْرُهُ مِنْهُمْ. وَأَمَّا دَعْوَى الْإِجْمَاعِ فَإِنَّهُمْ قَالُوا: قَدْ صَحَّ الْإِجْمَاعُ عَلَى تَحْرِيمِ عَصِيرِ الْعِنَبِ إِذَا أَسْكَرَ، وَاخْتُلِفَ فِيمَا عَدَاهُ - فَلَا يَحْرُمُ شَيْءٌ بِاخْتِلَافٍ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قَوْلٌ فِي غَايَةِ الْفَسَادِ لِأَنَّهُ يُبْطِلُ عَلَيْهِمْ جُمْهُورَ أَقْوَالِهِمْ، وَيَلْزَمُهُمْ أَنْ لَا يُوجِبُوا زَكَاةً إِلَّا حَيْثُ أَوْجَبَهَا إِجْمَاعٌ، وَلَا فَرِيضَةَ حَجٍّ أَوْ صَلَاةٍ إِلَّا حَيْثُ صَحَّ الْإِجْمَاعُ عَلَى وُجُوبِهَا، وَأَنْ لَا يُثْبِتُوا الرِّبَا إِلَّا حَيْثُ أَجْمَعَتْ الْأُمَّةُ عَلَى أَنَّهُ رِبًا - وَمَنْ الْتَزَمَ هَذَا الْمَذْهَبَ خَرَجَ عَنْ دِينِ الْإِسْلَامِ بِلَا شَكٍّ لِوَجْهَيْنِ -: أَحَدُهُمَا: أَنَّهُ مَذْهَبٌ مُفْتَرًى لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِهِ قَطُّ وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -، وَإِنَّمَا أَمَرَ اللَّهُ تَعَالَى بِاتِّبَاعِ الْقُرْآنِ، وَسُنَّةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأُولِي الْأَمْرِ بِاتِّبَاعِ الْإِجْمَاعِ، وَلَمْ يَأْمُرْ تَعَالَى قَطُّ بِأَنْ لَا يُتَّبَعَ إِلَّا الْإِجْمَاعُ، وَلَا قَالَ تَعَالَى قَطُّ، وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -: لَا تَأْخُذُوا مِمَّا اُخْتُلِفَ فِيهِ إِلَّا مَا أُجْمِعَ عَلَيْهِ - وَمَنْ ادَّعَى هَذَا فَقَدْ افْتَرَى عَلَى اللَّهِ الْكَذِبَ وَأَتَى بِدِينٍ مُبْتَدَعٍ وَبِالضَّلَالِ الْمُبِينِ. إِنَّمَا قَالَ

"Whatever the Messenger gives you, take it, and whatever he forbids you, abstain from it" (59:7); and "If you dispute over anything, refer it to Allah and the Messenger, if you believe in Allah and the Last Day" (4:59). He did not say: "Refer it to consensus." Therefore, whoever refers disputed matters to consensus rather than the explicit texts of the Quran and Sunnah has disobeyed Allah Almighty and His Messenger (peace be upon him), introducing into religion what Allah never sanctioned. As for us, we follow consensus where its validity is established, never opposing it in principle. We refer disputed matters to the Quran and Sunnah, adopting their rulings even if no consensus exists—as Allah commands in the Quran, His Messenger (peace be upon him) taught, and all Muslims unanimously agree. And we know not. If anyone has ever said, "I do not adhere to anything in religion except what people unanimously agree upon," they have undoubtedly become opposed to the scholarly consensus (ijmāʿ) by this principle. The second aspect is that this is a doctrine which necessitates disregarding the Quran and the Sunnah whenever disagreement arises regarding any of their rulings, and this has no place in the religion of Islam. Moreover, it is in most cases a falsehood against the community and a statement without knowledge. Additionally, they only adhere to this corrupt principle in very few issues—though it invalidates all their doctrines entirely, thus recoiling upon them. Success is from Allah, the Exalted.

As for the narrations: Among them is a report authenticated from Ibn Abbas, who said, "Wine itself is prohibited, whether in small or large quantities, and whatever intoxicates from any drink." We narrated it through the chain of Qāsim ibn Aṣbagh: Aḥmad ibn Zuhayr narrated to us, Abū Nuʿaym al-Faḍl ibn Dukayn narrated to us, from Misʿar, from Abū ʿAwn, from ʿAbdullāh ibn Shaddād, from Ibn Abbas. There is no proof for them in this, for we narrated it through the chain of Aḥmad ibn Shuʿayb: al-Ḥusayn ibn Manṣūr narrated to us, Aḥmad ibn Ḥanbal narrated to us, Muḥammad ibn Jaʿfar Ghundar narrated to us, from Shuʿbah, from Misʿar, from Abū ʿAwn, from ʿAbdullāh ibn Shaddād, from Ibn Abbas, who said: "Wine itself is prohibited, whether in small or large quantities, and any intoxicant from every drink." Shuʿbah—without dispute—is more precise and reliable in memorization than Abū

تَعَالَى: {اتَّبِعُوا مَا أُنْزِلَ إِلَيْكُمْ مِنْ رَبِّكُمْ وَلا تَتَّبِعُوا مِنْ دُونِهِ أَوْلِيَاءَ} [الأعراف: ٣] وَقَالَ تَعَالَى: {وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا} [الحشر: ٧] . وَقَالَ تَعَالَى: {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [النساء: ٥٩] وَلَمْ يَقُلْ تَعَالَى: فَرُدُّوهُ إِلَى الْإِجْمَاعِ، فَمَنْ رَدَّ مَا تُنُوزِعَ فِيهِ إِلَى الْإِجْمَاعِ لَا إِلَى نَصِّ الْقُرْآنِ وَالسُّنَّةِ فَقَدْ عَصَى اللَّهَ تَعَالَى وَرَسُولَهُ - عَلَيْهِ السَّلَامُ -، وَشَرَعَ مِنْ الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى. وَأَمَّا نَحْنُ فَنَتَّبِعُ الْإِجْمَاعَ فِيمَا صَحَّ أَنَّهُمْ أَجْمَعُوا عَلَيْهِ وَلَا نُخَالِفُهُ أَصْلًا، وَنَرُدُّ مَا تُنُوزِعَ فِيهِ إِلَى الْقُرْآنِ، وَالسُّنَّةِ، فَنَأْخُذُ مَا فِيهِمَا وَإِنْ لَمْ يُجْمَعْ عَلَى الْأَخْذِ بِهِ - وَبِهَذَا أَمَرَ اللَّهُ تَعَالَى فِي الْقُرْآنِ وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَيْهِ أَجْمَعَ أَهْلُ الْإِسْلَامِ وَمَا نَعْلَمُ أَحَدًا قَالَ قَطُّ: لَا أَلْتَزِمُ فِي شَيْءٍ مِنْ الدِّينِ إلَّا مَا أَجْمَعَ النَّاسُ عَلَيْهِ، فَقَدْ صَارُوا بِهَذَا الْأَصْلِ مُخَالِفِينَ لِلْإِجْمَاعِ بِلَا شَكٍّ. وَالْوَجْهُ الثَّانِي: أَنَّهُ مَذْهَبٌ يَقْتَضِي أَنْ لَا يُلْتَفَتَ لِلْقُرْآنِ وَالسُّنَنِ إذَا وُجِدَ الِاخْتِلَافُ فِي شَيْءٍ مِنْ أَحْكَامِهِمَا، وَلَيْسَ هَذَا مِنْ دِينِ الْإِسْلَامِ فِي شَيْءٍ مَعَ أَنَّهُ فِي أَكْثَرِ الْأَمْرِ كَذِبٌ عَلَى الْأُمَّةِ وَقَوْلٌ بِلَا عِلْمٍ. وَأَيْضًا فَإِنَّهُمْ لَا يَلْتَزِمُونَ هَذَا الْأَصْلَ الْفَاسِدَ إلَّا فِي مَسَائِلَ قَلِيلَةٍ جِدًّا - وَهُوَ مُبْطِلٌ لِسَائِرِ مَذَاهِبِهِمْ كُلِّهَا فَعَادَ عَلَيْهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَأَمَّا الْأَخْبَارُ: فَمِنْهَا خَبَرٌ صَحَّ عَنْ ابْنِ عَبَّاسٍ قَالَ: حُرِّمَتْ الْخَمْرُ بِعَيْنِهَا الْقَلِيلُ مِنْهَا وَالْكَثِيرُ وَالْمُسْكِرُ مِنْ كُلِّ شَرَابٍ -: وَرُوِّينَاهُ مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا أَحْمَدُ بْنُ زُهَيْرٍ نا أَبُو نُعَيْمٍ الْفَضْلُ بْنُ دُكَيْنٍ عَنْ مِسْعَرٍ عَنْ أَبِي عَوْنٍ عَنْ عَبْدِ اللَّهِ بْنِ شَدَّادٍ عَنْ ابْنِ عَبَّاسٍ - وَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّنَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا الْحُسَيْنُ بْنُ مَنْصُورٍ نا أَحْمَدُ بْنُ حَنْبَلٍ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ عَنْ مِسْعَرٍ عَنْ أَبِي عَوْنٍ عَنْ عَبْدِ

Nu‘aym. He also reported an addition beyond what Abū Nu‘aym narrated, and the addition by a trustworthy narrator is impermissible to discard. Abū Nu‘aym’s narration does not preclude the prohibition of what we mentioned in our narration if an authentic text prohibiting it exists. It is authentically established through Ibn Abbas’s transmission that intoxicants are wholly prohibited, and it is also authentically established from him—as we mentioned earlier—that the fermented drink from unripe dates is absolutely forbidden. Thus, their reliance on this report is nullified.

Another narration we transmitted through Ibn Abbas from the Prophet—peace and blessings be upon him and his family—states: “Ferment in them”—meaning in containers—“for containers neither permit nor prohibit anything, and do not become intoxicated.” And that ‘Umar said to him: “O Messenger of Allah, what is your saying: ‘Every intoxicant is unlawful’?” He replied: “Drink, but when you fear intoxication, abstain.” Another narration through Abū Mūsā al-Ash‘arī from the Prophet—peace and blessings be upon him and his family—states: “Both of you drink, but do not become intoxicated.” Neither of these reports contains any proof for their argument.[2]

L17297–17302 As for the report of Ibn Abbas: It is transmitted through the path of Al-Mushma‘il ibn Milḥān—who is unknown—from Al-Naḍr ibn ʿAbd al-Raḥmān, a Basran silk merchant known as Abū Bakr, a denounced narrator of ḥadīth weakened by Al-Bukhārī and others. Ibn Maʿīn stated: “It is impermissible to narrate from him.” Even if it were authentic, it would not serve as proof for them, for it contains a prohibition against intoxication. His statement “When you fear, then abstain” means “If you fear it may be intoxicating”—thus, reliance on it is invalidated.

As for the report of Abū Mūsā: It is inauthentic, as it is transmitted through Sharīk—a narrator who practices tadlis (concealing defects in the chain) and is weak—from Abū Isḥāq, from Abū Burdah, from Abū Mūsā, from the Prophet (peace and blessings of Allah be upon him). Trustworthy narrators have transmitted it differently, as we reported through ʿUmar ibn Dīnār, Zayd ibn

[2]**Qur’an references (L17294):** Qur’an 7:3 (Al-A’raf); Qur’an 59:7 (Al-Hashr); Qur’an 4:59 (An-Nisa).

اللَّهِ بْنِ شَدَّادٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: حُرِّمَتْ الْخَمْرُ بِعَيْنِهَا قَلِيلُهَا وَكَثِيرُهَا، وَالْمُسْكِرُ مِنْ كُلِّ شَرَابٍ وَشُعْبَةَ بِلَا خِلَافٍ أَضْبَطُ وَأَحْفَظُ مِنْ أَبِي نُعَيْمٍ. وَقَدْ رَوَى فِيهِ زِيَادَةً عَلَى مَا رَوَى أَبُو نُعَيْمٍ، وَزِيَادَةُ الْعَدْلِ لَا يَحِلُّ تَرْكُهَا، وَلَيْسَ فِي رِوَايَةِ أَبِي نُعَيْمٍ مَا يَمْنَعُ مِنْ تَحْرِيمِ غَيْرِ مَا ذَكَرْنَا فِي رِوَايَتِهِ إذَا جَاءَ بِتَحْرِيمِهِ نَصٌّ صَحِيحٌ. وَقَدْ صَحَّ مِنْ طَرِيقِ ابْنِ عَبَّاسٍ تَحْرِيمُ الْمُسْكِرِ جُمْلَةً - وَصَحَّ عَنْهُ كَمَا ذَكَرْنَا آنِفًا تَحْرِيمُ نَبِيذِ الْبُسْرِ بَحْتًا فَسَقَطَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ. وَمِنْهَا: خَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَفِيهِ «فَانْتَبِذُوا فِيهَا - يَعْنِي فِي الظُّرُوفِ - فَإِنَّ الظُّرُوفَ لَا تَحِلُّ شَيْئًا وَلَا تُحَرِّمُ وَلَا تَسْكَرُوا» وَأَنَّ عُمَرَ قَالَ لَهُ «يَا رَسُولَ اللَّهِ مَا قَوْلُكَ: كُلُّ مُسْكِرٍ حَرَامٌ؟ قَالَ: اشْرَبْ، فَإِذَا خِفْتَ فَدَعْ» . وَخَبَرٌ: مِنْ طَرِيقِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «اشْرَبَا وَلَا تَسْكَرَا» وَكِلَاهُمَا لَا حُجَّةَ لَهُمْ فِيهِ.

وَأَمَّا خَبَرُ ابْنِ عَبَّاسٍ: فَإِنَّهُ مِنْ طَرِيقِ الْمُشْمَعِلِّ بْنِ مِلْحَانَ وَهُوَ مَجْهُولٌ عَنْ النَّضْرِ بْنِ عَبْدِ الرَّحْمَنِ خَزَّازٌ بَصْرِيٌّ يُكَنَّى أَبَا بَكْرٍ - مُنْكَرُ الْحَدِيثِ ضَعَّفَهُ الْبُخَارِيُّ وَغَيْرُهُ، وَقَالَ فِيهِ ابْنُ مَعِينٍ: لَا تَحِلُّ الرِّوَايَةُ عَنْهُ - وَلَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّ فِيهِ النَّهْيَ عَنْ السُّكْرِ وَيَكُونُ قَوْلُهُ «فَإِذَا خِفْتَ فَدَعْ» أَيْ إذَا خِفْت أَنْ يَكُونَ مُسْكِرًا - فَسَقَطَ التَّعَلُّقُ بِهِ. وَأَمَّا خَبَرُ أَبِي مُوسَى: فَلَا يَصِحُّ لِأَنَّهُ مِنْ طَرِيقِ شَرِيكٍ عَنْ أَبِي إسْحَاقَ عَنْ أَبِي بُرْدَةَ عَنْ أَبِي مُوسَى عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَشَرِيكٌ مُدَلِّسٌ وَضَعِيفٌ فَسَقَطَ. وَقَدْ رَوَاهُ الثِّقَاتُ بِخِلَافِ هَذَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عُمَرَ بْنِ دِينَارٍ، وَزَيْدِ بْنِ أَبِي أُنَيْسَةَ، وَشُعْبَةَ بْنِ الْحَجَّاجِ، كُلِّهِمْ عَنْ سَعِيدِ بْنِ أَبِي بُرْدَةَ عَنْ أَبِيهِ عَنْ أَبِي مُوسَى

Abī Unaysah, and Shuʿbah ibn al-Ḥajjāj—all from Saʿīd ibn Abī Burdah, from his father, from Abū Mūsā al-Ashʿarī, from the Prophet (peace and blessings of Allah be upon him), who said: "Every intoxicant is forbidden. Whatever causes intoxication to the point of preventing prayer is forbidden. I prohibit every intoxicant that intoxicates to the point of preventing prayer." This is the established truth, not the narration of every weak, deceptive, lying, or unknown narrator.

A report we transmitted from Abū Burdah, from the Prophet (peace and blessings of Allah be upon him)—"Drink from vessels but do not become intoxicated"—is inauthentic. Its chain includes Simāk ibn Ḥarb, who is known to accept prompting (as attested by Shuʿbah and others), from Al-Qāsim ibn ʿAbd al-Raḥmān, from his father, from Abū Burdah. Even if authentic, it would not constitute proof for them, for it merely prohibits intoxication and does not negate the prohibition of other intoxicants unmentioned in this report. The prohibition of all intoxicants has been firmly established through the most reliable chains, as previously cited—praise be to Allah.

A report transmitted through Sawwār ibn Muṣʿab and Saʿīd ibn ʿUmārah: Sawwār narrated from ʿAṭiyyah al-ʿAwfī (a discredited narrator) from Abū Saʿīd; Saʿīd narrated from Al-Ḥārith ibn al-Nuʿmān (an unknown figure) from Anas. Both Abū Saʿīd and Anas then concurred, attributing to the Prophet (peace and blessings of Allah be upon him): "Wine is inherently forbidden, whether little or much, as is intoxication from any drink." Sawwār is accused of lying, ʿAṭiyyah is discredited, and Al-Ḥārith and Saʿīd are unknown. Even if authentic, it would lack probative value, for the narration of Shuʿbah from Misʿar, from Abū ʿAwn, from ʿAbd Allāh ibn Shaddād, from Ibn ʿAbbās—cited earlier—adds to this report, and the addition of a reliable narrator must be accepted.

A report states: "The Prophet (peace and blessings of Allah be upon him) said to ʿAbd al-Qays: 'Drink what is wholesome for you.'" We transmitted it... From the narration of Ibn Abi Shaybah through Mulazim ibn Amr, from ʿAjībah ibn ʿAbd al-Hamid, from his uncle Qays ibn Talq, from his father Talq ibn ʿAlī, from the Prophet—peace and blessings of Allah be upon him and his family—this holds no valid evidence for several reasons: First, it is nar-

الْأَشْعَرِيِّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كُلُّ مُسْكِرٍ حَرَامٌ، كُلُّ مَا أَسْكَرَ عَنْ الصَّلَاةِ فَهُوَ حَرَامٌ، أَنْهَى عَنْ كُلِّ مُسْكِرٍ أَسْكَرَ عَنْ الصَّلَاةِ» فَهَذَا هُوَ الْحَقُّ الثَّابِتُ لَا رِوَايَةُ كُلِّ ضَعِيفٍ، وَمُدَلِّسٍ، وَكَذَّابٍ، وَمَجْهُولٍ. وَخَبَرٌ رُوِّينَاهُ عَنْ أَبِي بُرْدَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «اشْرَبُوا فِي الظُّرُوفِ وَلَا تَسْكَرُوا» - وَهَذَا لَا يَصِحُّ لِأَنَّهُ مِنْ رِوَايَةِ سِمَاكِ بْنِ حَرْبٍ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي بُرْدَةَ وَسِمَاكٌ يَقْبَلُ التَّلْقِينَ شَهِدَ عَلَيْهِ بِذَلِكَ شُعْبَةُ، وَغَيْرُهُ. ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ لِأَنَّهُ إنَّمَا فِيهِ النَّهْيُ عَنْ السُّكْرِ وَلَيْسَ فِيهِ مَانِعٌ مِنْ تَحْرِيمِ مَا يَصِحُّ تَحْرِيمُهُ مِمَّا لَمْ يُذْكَرْ فِي هَذَا الْخَبَرِ. وَقَدْ صَحَّ تَحْرِيمُ كُلِّ مَا أَسْكَرَ كَمَا ذَكَرْنَا مِنْ أَصَحِّ طَرِيقٍ وَلِلَّهِ الْحَمْدُ. وَخَبَرٌ: مِنْ طَرِيقِ سَوَّارِ بْنِ مُصْعَبٍ، وَسَعِيدِ بْنِ عُمَارَةَ، قَالَ سَوَّارٌ: عَنْ عَطِيَّةَ الْعَوْفِيِّ عَنْ أَبِي سَعِيدٍ، وَقَالَ سَعِيدٌ: عَنْ الْحَارِثِ بْنِ النُّعْمَانِ عَنْ أَنَسٍ، ثُمَّ اتَّفَقَ أَبُو سَعِيدٍ وَأَنَسٌ قَالَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «حُرِّمَتْ الْخَمْرُ بِعَيْنِهَا قَلِيلُهَا وَكَثِيرُهَا وَالسُّكْرُ مِنْ كُلِّ شَرَابٍ» وَسَوَّارٌ مَذْكُورٌ بِالْكَذِبِ، وَعَطِيَّةُ هَالِكٌ، وَالْحَارِثُ، وَسَعِيدٌ مَجْهُولَانِ لَا يُدْرَى مَنْ هُمَا ثُمَّ لَوْ صَحَّ لَمْ تَكُنْ فِيهِ حُجَّةٌ لِأَنَّ رِوَايَةَ شُعْبَةَ عَنْ مِسْعَرٍ عَنْ أَبِي عَوْنٍ عَنْ عَبْدِ اللَّهِ بْنِ شَدَّادٍ عَنْ ابْنِ عَبَّاسٍ الَّتِي ذَكَرْنَا آنِفًا زَائِدَةٌ عَلَى هَذِهِ الرِّوَايَةِ، وَزِيَادَةُ الْعَدْلِ لَا يَجُوزُ رَدُّهَا. وَخَبَرٌ: رُوِيَ فِيهِ «أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ لِعَبْدِ الْقَيْسِ اشْرَبُوا مَا طَابَ لَكُمْ» رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ مُلَازِمِ بْنِ عَمْرٍو عَنْ عَجِيبَةَ بْنِ عَبْدِ الْحَمِيدِ عَنْ عَمِّهِ قَيْسِ بْنِ طَلْقٍ عَنْ أَبِيهِ طَلْقِ بْنِ عَلِيٍّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهَذَا لَا حُجَّةَ فِيهِ لِوُجُوهٍ -: أَوَّلُهَا: أَنَّهُ مِنْ رِوَايَةِ عَجِيبَةَ بْنِ عَبْدِ الْحَمِيدِ وَهُوَ مَجْهُولٌ لَا يُدْرَى مَنْ

rated by ʿAjībah ibn ʿAbd al-Hamid, who is unknown and unidentified. Even if authentic, it would not constitute proof for them, since “what is lawful for us” refers to what Allah has permitted, as He said: {Marry women who are lawful for you} [4:3]. None of this permits what has been definitively prohibited. Another narration: We report through ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ from the Prophet—peace and blessings of Allah be upon him—that he “forbade wine, gambling, kubah, and ghubayrā,” and he said: “Every intoxicant is forbidden.” They argue that he—peace be upon him—distinguished between kubah, ghubayrā, and wine, thereby claiming the former two are not classified as wine. Abū Muḥammad said: This contains no proof for them; rather, it refutes them, as it is transmitted through al-Walīd ibn ʿAbdah—an unknown narrator. As for being evidence against them: If authentic, he—peace be upon him—would have equated all these in prohibition, making wine and other intoxicants equally forbidden—contrary to their claim. Furthermore, differentiation in specific contexts does not prove categorical distinction. Allah said: {Whoever is an enemy to Allah, His angels, His messengers, Gabriel, and Michael} [2:98], yet this does not exclude them—peace upon them—from being angels. Similarly, if “wine” denotes all intoxicants, listing wine alongside kubah and ghubayrā does not preclude the latter two from being wine. It is established that “every intoxicant is wine,” and the narration concludes: “Every intoxicant is forbidden”—directly opposing their view. We have never witnessed a more blatant contradiction than their citation of evidence that refutes their own argument. Another narration: We report through Ibn ʿUmar that he saw the Prophet—peace and blessings of Allah be upon him and his family—when date-wine (nabīdh) was brought to him. Finding it strong, he rejected it. When asked, “Is it unlawful?” he took it back, called for water, and poured water into it twice, saying: “When these vessels ferment excessively, dilute their contents with water.” A similar narration from Ibn ʿAbbās states: “If it becomes strong, dilute it with water,” with a parallel account from Abū Masʿūd. All of this contains no valid proof for them; rather, it constitutes proof against them. The report from Ibn ʻUmar comes through two chains: ʻAbd al-Malik ibn Nāfiʻ and ʻAbd al-Malik, the nephew of al-Qaʻqaʻ—both narrating from Ibn ʻUmar with a connected chain (*isnād*). Both are obscure and weak, whether they are two individuals or

هُوَ - ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ لِأَنَّ مَا طَابَ لَنَا هُوَ مَا أُحِلَّ لَنَا كَمَا قَالَ تَعَالَى: {فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ} [النساء: ٣] فَلَيْسَ فِي شَيْءٍ مِنْ هَذَا إبَاحَةُ مَا قَدْ صَحَّ تَحْرِيمُهُ. وَخَبَرٌ: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ «نَهَى عَنْ الْخَمْرِ وَالْمَيْسِرِ وَالْكُوبَةِ وَالْغُبَيْرَاءِ» وَقَالَ: «كُلُّ مُسْكِرٍ حَرَامٌ» قَالُوا: فَقَدْ فَرَّقَ - عَلَيْهِ السَّلَامُ - بَيْنَ الْكُوبَةِ، وَالْغُبَيْرَاءِ، وَالْخَمْرِ، فَلَيْسَا خَمْرًا. قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ بَلْ هُوَ حُجَّةٌ عَلَيْهِمْ لِأَنَّهُ مِنْ طَرِيقِ الْوَلِيدِ بْنِ عَبْدَةَ وَهُوَ مَجْهُولٌ - وَأَمَّا كَوْنُهُ حُجَّةً عَلَيْهِمْ فَإِنَّهُ لَوْ صَحَّ لَكَانَ - عَلَيْهِ السَّلَامُ - قَدْ سَاوَى بَيْنَ كُلِّ ذَلِكَ فِي النَّهْيِ وَالْخَمْرُ وَسَائِرُ الْأَشْرِبَةِ سَوَاءٌ فِي النَّهْيِ عَنْهَا وَهَذَا خِلَافُ قَوْلِهِمْ. وَأَيْضًا: فَلَيْسَ التَّفْرِيقُ فِي بَعْضِ الْمَوَاضِعِ فِي الذِّكْرِ دَلِيلًا عَلَى أَنَّهُمَا شَيْئَانِ مُتَغَايِرَانِ فَقَدْ قَالَ تَعَالَى: {مَنْ كَانَ عَدُوًّا لِلَّهِ وَمَلَائِكَتِهِ وَرُسُلِهِ وَجِبْرِيلَ وَمِيكَالَ} [البقرة: ٩٨] لَمْ يَكُنْ هَذَا مُوجِبًا أَنَّهُمَا - عَلَيْهِمَا السَّلَامُ - لَيْسَا مِنْ الْمَلَائِكَةِ. وَهَكَذَا إذَا صَحَّ أَنَّ الْخَمْرَ هِيَ كُلُّ مُسْكِرٍ لَمْ يَكُنْ ذِكْرُ الْخَمْرِ وَالْكُوبَةِ وَالْغُبَيْرَاءِ مَانِعًا مِنْ أَنْ تَكُونَ الْكُوبَةُ وَالْغُبَيْرَاءُ خَمْرًا - وَقَدْ صَحَّ «أَنَّ كُلَّ مُسْكِرٍ خَمْرًا» وَأَيْضًا: فَفِي آخِرِ هَذَا الْحَدِيثِ «كُلُّ مُسْكِرٍ حَرَامٌ» وَهَذَا خِلَافُ قَوْلِهِمْ - فَمَا رَأَيْنَا أَقْبَحَ مُجَاهِرَةً مِنْ احْتِجَاجِهِمْ بِمَا هُوَ حُجَّةٌ عَلَيْهِمْ؟ وَخَبَرٌ: رُوِّينَاهُ مِنْ طَرِيقِ «ابْنِ عُمَرَ أَنَّهُ رَأَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أُتِيَ بِنَبِيذٍ فَوَجَدَهُ شَدِيدًا فَرَدَّهُ فَقِيلَ: أَحَرَامٌ هُوَ؟ قَالَ: فَاسْتَرَدَّهُ ثُمَّ دَعَا بِمَاءٍ فَصَبَّهُ فِيهِ مَرَّتَيْنِ ثُمَّ قَالَ: إذَا اغْتَلَمَتْ عَلَيْكُمْ هَذِهِ الْأَوْعِيَةُ فَاكْسِرُوا مُتُونَهَا بِالْمَاءِ» . وَمِنْ طَرِيقِ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِثْلُهُ، وَفِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: «إذَا اشْتَدَّ عَلَيْكُمْ فَاكْسِرُوهُ بِالْمَاءِ» وَمِثْلُهُ مِنْ طَرِيقِ أَبِي مَسْعُودٍ وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ، بَلْ

one. Furthermore, their narration is transmitted through Asbāṭ ibn Muḥammad al-Qurashī, Layth ibn Abī Sulaym, Qurrah al-ʻIjlī, and al-ʻAwwām—all of whom are weak. As for the report from Ibn ʻAbbās, it comes through Yazīd ibn Abī Ziyād from ʻIkrimah from Ibn ʻAbbās. Yazīd is weak, and we have received from him a fabricated report falsely attributed to the Prophet (peace and blessings of Allah be upon him) among fabricated narrations—there is no one accused in them except him. He has been deemed weak by Shuʻbah, Aḥmad, and Yaḥyā. Regarding the report from Abū Masʻūd, it is transmitted through Yaḥyā ibn Yamān and ʻAbd al-ʻAzīz ibn Abān—both unanimously acknowledged as weak. Even if these reports were authentic, they would constitute the greatest proof against their position, for all of them state that the Prophet (peace and blessings of Allah be upon him) mixed the drink with water before consuming it. This inevitably reduces to one of two scenarios: either the drink was not intoxicating, in which case all these reports align with our view; or it was intoxicating as they claim. If it was intoxicating, then—by their own principles—pouring water onto an intoxicant does not transfer it from prohibition to permissibility, nor alter its legal status. If it was unlawful before dilution, it remains unlawful afterward; if lawful before, lawful after; if disliked before, disliked after. Thus, they have contradicted all these reports, rendering the Prophet's action (peace and blessings of Allah be upon him)—which they themselves affirmed—null and meaningless in their view, as you can see. If adding water transformed it from intoxicating to non-intoxicating, they have no basis for their argument whatsoever, for if it ceased to intoxicate, we do not dispute its permissibility—thus the argument entirely rebounds against them. The report from Abū Hurayrah quoting the Prophet (peace and blessings of Allah be upon him and his family)—"Drink what is wholesome for you, but abandon it when it becomes spoiled"—contains no proof for them. Rather, it is proof against them, as its chain includes ʻAbd al-Ḥamīd ibn Bahram and Shahr ibn Ḥawshab—both dismissed as unreliable. Even if authentic, it would decisively oppose their position, for "when it becomes spoiled" unequivocally means "when it intox-

هُوَ حُجَّةٌ عَلَيْهِمْ، لِأَنَّ خَبَرَ ابْنِ عُمَرَ هُوَ مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ نَافِعٍ وَعَبْدِ الْمَلِكِ ابْنِ أَخِي الْقَعْقَاعِ كِلَاهُمَا عَنِ ابْنِ عُمَرَ مُسْنَدًا، وَكِلَاهُمَا مَجْهُولٌ وَضَعِيفٌ سَوَاءٌ كَانَا اثْنَيْنِ أَوْ كَانَا إِنْسَانًا وَاحِدًا، ثُمَّ هُوَ عَنْهُمَا مِنْ طَرِيقِ أَسْبَاطِ بْنِ مُحَمَّدٍ الْقُرَشِيِّ، وَلَيْثِ بْنِ أَبِي سُلَيْمٍ، وَقُرَّةَ الْعِجْلِيِّ، وَالْعَوَّامِ، وَكُلُّهُمْ ضَعِيفٌ. وَأَمَّا خَبَرُ ابْنِ عَبَّاسٍ: فَهُوَ مِنْ طَرِيقِ يَزِيدَ بْنِ أَبِي زِيَادٍ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ - وَيَزِيدَ ضَعِيفٌ، وَقَدْ رُوِّينَا عَنْهُ فِي الرِّوَايَاتِ السُّودِ خَبَرًا مَوْضُوعًا عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَيْسَ فِيهِ أَحَدٌ يَتَّهِمُ غَيْرَهُ - وَقَدْ ضَعَّفَهُ شُعْبَةُ، وَأَحْمَدُ، وَيَحْيَى. وَأَمَّا خَبَرُ أَبِي مَسْعُودٍ فَهُوَ مِنْ طَرِيقِ يَحْيَى بْنِ يَمَانٍ، وَعَبْدِ الْعَزِيزِ بْنِ أَبَانَ وَكِلَاهُمَا مُتَّفَقٌ عَلَى ضَعْفِهِ - ثُمَّ لَوْ صَحَّتْ لَكَانَتْ أَعْظَمَ حُجَّةً عَلَيْهِمْ، لِأَنَّ فِيهَا كُلِّهَا أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَزَجَهُ بِالْمَاءِ ثُمَّ شَرِبَهُ - وَهَذَا لَا يَخْلُو ضَرُورَةً مِنْ أَحَدِ وَجْهَيْنِ -: إِمَّا أَنْ لَا يَكُونَ ذَلِكَ النَّبِيذُ مُسْكِرًا فَهِيَ كُلُّهَا مُوَافِقَةٌ لِقَوْلِنَا. وَإِمَّا أَنْ يَكُونَ مُسْكِرًا كَمَا يَقُولُونَ، فَإِنْ كَانَ مُسْكِرًا فَصَبُّ الْمَاءِ عَلَى الْمُسْكِرِ عِنْدَهُمْ لَا يُخْرِجُهُ عِنْدَهُمْ عَنِ التَّحْرِيمِ إِلَى التَّحْلِيلِ، وَلَا يَنْقُلُهُ عَنْ حَالِهِ أَصْلًا إِنْ كَانَ قَبْلَ صَبِّ الْمَاءِ حَرَامًا فَهُوَ عِنْدَهُمْ بَعْدَ صَبِّهِ حَرَامٌ. وَإِنْ كَانَ قَبْلَ صَبِّهِ حَلَالًا فَهُوَ بَعْدَ صَبِّهِ حَلَالٌ، وَإِنْ كَانَ قَبْلَ صَبِّهِ مَكْرُوهًا فَهُوَ بَعْدَ صَبِّهِ مَكْرُوهٌ، فَقَدْ خَالَفُوهُ كُلَّهَا وَجَعَلُوا فِعْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي حَقَّقُوهُ عَلَيْهِ بَاطِلًا عِنْدَهُمْ وَلَغْوًا لَا مَعْنَى لَهُ، وَهَذَا كَمَا تَرَى. وَإِنْ كَانَ صَبُّ الْمَاءِ نَقَلَهُ عَنْ أَنْ يَكُونَ مُسْكِرًا إِلَى أَنْ لَا يَكُونَ مُسْكِرًا فَلَا مُتَعَلَّقَ لَهُمْ فِيهِ حِينَئِذٍ أَصْلًا، لِأَنَّهُ إِذَا لَمْ يَكُنْ مُسْكِرًا فَلَا نُخَالِفُهُمْ فِي أَنَّهُ حَلَالٌ - فَعَادَ عَلَيْهِمْ جُمْلَةً. وَخَبَرٌ: مِنْ طَرِيقِ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «اشْرَبُوا مَا طَابَ لَكُمْ فَإِذَا خَبُثَ فَذَرُوهُ» وَهَذَا لَا حُجَّةَ

icates”—it admits no other interpretation. Let them otherwise clarify what “when it becomes spoiled, abandon it” signifies.[3][4]

L17303–17306 A report from the chain of ʿAlī: “The Prophet - peace and blessings of Allah be upon him - was brought nabīdh in Mecca. He tasted it, frowned, and rejected it. It was said to him: ’O Messenger of Allah, this is the drink of the people of Mecca?’ He then rejected it, poured water over it until it foamed vigorously, and said: ’Wine is prohibited by its very nature, and intoxication from any drink is forbidden.’” This contains no valid evidence for their position, as its chain includes Muḥammad ibn al-Furāt al-Kūfī - unanimously deemed weak and discarded - followed by al-Ḥārith - a known liar. Another chain via Shuʿayb ibn Wāqid - an unknown narrator - from Qays ibn Qaṭan - who is unidentified. Even if deemed authentic, it would constitute evidence against them, as its content aligns with the narration from Ibn ʿAbbās which we have previously cited.

A report from the chain of Samura: “The Prophet - peace and blessings of Allah be upon him - permitted nabīdh after having prohibited it” - this provides no valid evidence, as its chain includes al-Mundhir Abū Ḥassān - a weak narrator. Even if authentic, it would signify permission for nabīdh in certain vessels after its initial prohibition - a valid distinction. It does not indicate that wine was prohibited then permitted, given the established authentic ruling: ’Every intoxicant is wine,’ thereby nullifying their argument.

A report from Ibn ʿAbbās: “The Messenger of Allah - peace and blessings of Allah be upon him - said: ’Every intoxicant is forbidden.’ A man asked: ’Does this drink become forbidden if consumed excessively until it intoxicates?’ He replied: ’Not so. If one drinks nine measures without intoxication, it is permissible. If the tenth causes intoxication, that [act] is forbidden.’” This is

[3] **Hadith references (L17298):** Sunan an-Nasai 5684; Sunan an-Nasai 5685.

[4] **Qur’an references (L17298):** Qur’an 4:3 (An-Nisa); Qur’an 2:98 (Al-Baqarah).

لَهُمْ فِيهِ بَلْ هُوَ حُجَّةٌ عَلَيْهِمْ لِأَنَّهُ مِنْ طَرِيقِ عَبْدِ الْحَمِيدِ بْنِ بَهْرَامَ عَنْ شَهْرِ بْنِ حَوْشَبٍ - وَكِلَاهُمَا سَاقِطٌ. ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً قَاطِعَةً عَلَيْهِمْ، لِأَنَّ مَعْنَى " إِذَا خَبُثَ " إِذَا أَسْكَرَ، لَا يَحْتَمِلُ غَيْرَ هَذَا أَصْلًا، وَإِلَّا فَلْيُعَرِّفُونَا مَا مَعْنَى «إِذَا خَبُثَ فَذَرُوهُ» .

وَخَبَرٌ: مِنْ طَرِيقِ عَلِيٍّ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ أُتِيَ بِمَكَّةَ بِنَبِيذٍ فَذَاقَهُ فَقَطَّبَ وَرَدَّهُ؟ فَقِيلَ لَهُ: يَا رَسُولَ اللَّهِ هَذَا شَرَابُ أَهْلِ مَكَّةَ؟ قَالَ: فَرَدَّهُ فَصَبَّ عَلَيْهِ الْمَاءَ حَتَّى رَغَا، قَالَ: حُرِّمَتْ الْخَمْرُ بِعَيْنِهَا، وَالسُّكْرُ مِنْ كُلِّ شَرَابٍ» . وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْفُرَاتِ الْكُوفِيِّ - وَهُوَ ضَعِيفٌ بِاتِّفَاقٍ - مُطَّرَحٌ - ثُمَّ عَنْ الْحَارِثِ - وَهُوَ كَذَّابٌ. وَمِنْ طَرِيقِ شُعَيْبِ بْنِ وَاقِدٍ وَهُوَ مَجْهُولٌ عَنْ قَيْسِ بْنِ قَطَنٍ وَلَا يُدْرَى مَنْ هُوَ - ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ، لِأَنَّ الْكَلَامَ فِيهِ كَالْكَلَامِ فِيهِ مِنْ طَرِيقِ ابْنِ عَبَّاسٍ وَقَدْ ذَكَرْنَاهُ. وَخَبَرٌ: مِنْ طَرِيقِ سَمُرَةَ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَذِنَ فِي النَّبِيذِ بَعْدَمَا نَهَى عَنْهُ» - وَلَا حُجَّةَ فِيهِ لِأَنَّهُ مِنْ طَرِيقِ الْمُنْذِرِ أَبِي حَسَّانَ - وَهُوَ ضَعِيفٌ - ثُمَّ لَوْ صَحَّ لَكَانَ مَعْنَاهُ أَذِنَ فِي النَّبِيذِ فِي الظُّرُوفِ بَعْدَمَا نَهَى عَنْهُ، وَهَذَا حَقٌّ وَلَيْسَ فِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - نَهَى عَنْ الْخَمْرِ، ثُمَّ أَذِنَ فِيهَا - وَقَدْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: «كُلُّ مُسْكِرٍ خَمْرٌ» فَبَطَلَ تَعَلُّقُهُمْ بِهِ - وَلِلَّهِ الْحَمْدُ. وَخَبَرٌ: عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: كُلُّ مُسْكِرٍ حَرَامٌ فَقَالَ لَهُ رَجُلٌ: إنَّ هَذَا الشَّرَابَ إذَا أَكْثَرْنَا مِنْهُ سَكِرْنَا؟ قَالَ: لَيْسَ كَذَلِكَ إذَا شَرِبَ تِسْعَةً فَلَمْ يَسْكَرْ لَا بَأْسَ وَإِذَا شَرِبَ الْعَاشِرَ فَسَكِرَ فَذَلِكَ حَرَامٌ» وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّهُ فَضِيحَةُ الدَّهْرِ مَوْضُوعٌ بِلَا شَكٍّ -: رَوَاهُ أَبُو بَكْرِ بْنُ عَيَّاشٍ: ضَعِيفٌ - عَنْ الْكَلْبِيِّ: كَذَّابٌ

an utter scandal—undoubtedly fabricated. Its chain includes Abū Bakr ibn ʿAyyāsh (weak), al-Kalbī (notorious liar), and Abū Ṣāliḥ (discredited narrator).

A report prohibiting nabīdh in colored jars and instructing its preparation in waterskins, adding water if one fears intoxication - this comes via Abān al-Raqāshī, a weak narrator. Even if authentic, it opposes their stance, as the directive to dilute with water when fearing intoxication (by consensus) annuls its intoxicating potential. It specifies precaution before intoxication occurs, not remediation afterward.

A mursal report from Saʿīd ibn al-Musayyib: "The Prophet - peace and blessings of Allah be upon him - said: 'Wine derives from grapes, intoxication [results] from dates, mizr (a wheat-based drink) from wheat, bitʿ (a honey-based drink) from honey. Every intoxicant is forbidden. Deception and fraud merit the Fire, and trade requires mutual consent.'" This is utterly baseless, as mursal reports lack evidential value. All praise is due to Allah. From the narration of Ibrāhīm ibn Abī Yaḥyā—noted for falsehood—even if authentic, it would constitute proof against them, as it states "Every intoxicant is forbidden," contradicting their doctrine. The statement "Wine is from grapes" does not preclude other sources if supported by scriptural evidence. The authenticated saying of the Prophet (peace be upon him)—"Every intoxicant is wine"—invalidates their argument. Another report via Sufyān al-Thawrī from ʿAlī ibn Badhīmah from Qays ibn Ḥabtar al-Nahshalī from Ibn ʿAbbās: "The Prophet (peace be upon him) prohibited using gourds and tarred vessels, ordering nabīdh (fermented drink) to be prepared in water skins. They asked: 'If it becomes potent in the skins, O Messenger of God?' He replied: 'Pour water over it.' On the third or fourth occasion, he said: 'Discard it, for God has forbidden wine, gambling, kūbah, and every intoxicant is forbidden.'" This chain includes Qays ibn Ḥabtar—an unknown narrator. Even if authentic, it would strongly support our position against theirs, as it wholly contradicts their view and aligns with our ruling to discard it. The phrase "every intoxicant is forbidden" suffices for anyone with a modicum of reason. Is it not astonishing that they cite a text opposing their own doctrine? Has shame here become nonexistent? Another report via Abū al-Qumūṣ Zayd ibn ʿAlī from a man of ʿAbd al-Qays—we presume his name is Qays

مَشْهُورٌ - عَنْ أَبِي صَالِحٍ: هَالِكٌ. وَخَبَرٌ: فِيهِ النَّهْيُ عَنْ النَّبِيذِ فِي الْجِرَارِ الْمُلَوَّنَةِ وَالْأَمْرُ بِأَنْ يُنْبَذَ فِي السِّقَاءِ فَإِذَا خَشِيَ فَلْيَسُجَّهُ بِالْمَاءِ - فَهَذَا مِنْ طَرِيقِ أَبَانَ وَهُوَ الرَّقَاشِيُّ، وَهُوَ ضَعِيفٌ - ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ، بَلْ هُوَ حُجَّةٌ عَلَيْهِمْ، لِأَنَّ فِيهِ إذَا خَشِيَ فَلْيَسُجَّهُ بِالْمَاءِ، وَمَعْنَاهُ إذَا خَشِيَ أَنْ يَسْكَرَ بِإِجْمَاعِهِمْ مَعَنَا - لَا يَحْتَمِلُ غَيْرَ هَذَا أَصْلًا، فَإِذَا سُجَّ بِالْمَاءِ بَطَلَ إسْكَارُهُ - وَهَذَا لَا نُخَالِفُهُمْ فِيهِ وَلَيْسَ فِيهِ أَنَّ بَعْدَ إسْكَارِهِ يُسَجُّ إنَّمَا فِيهِ " إذَا خَشِيَ " وَهَذَا بِلَا شَكٍّ قَبْلَ أَنْ يَسْكَرَ. وَخَبَرٌ مُرْسَلٌ: مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْخَمْرُ مِنْ الْعِنَبِ، وَالسُّكْرُ مِنْ التَّمْرِ، وَالْمِزْرُ مِنْ الْحِنْطَةِ، وَالْبِتْعُ مِنْ الْعَسَلِ، وَكُلُّ مُسْكِرٍ حَرَامٌ، وَالْمَكْرُ وَالْخَدِيعَةُ فِي النَّارِ، وَالْبَيْعُ عَنْ تَرَاضٍ» ، وَهَذَا لَا شَيْءَ، لِأَنَّهُ لَا حُجَّةَ فِي مُرْسَلٍ - ثُمَّ هُوَ أَيْضًا مِنْ طَرِيقِ إبْرَاهِيمَ بْنِ أَبِي يَحْيَى وَهُوَ مَذْكُورٌ بِالْكَذِبِ، ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ لِأَنَّ فِيهِ «كُلُّ مُسْكِرٍ حَرَامٌ» وَهُوَ خِلَافُ قَوْلِهِمْ وَلَيْسَ فِي قَوْلِهِ «إنَّ الْخَمْرَ مِنْ الْعِنَبِ» مَانِعٌ مِنْ أَنْ تَكُونَ مِنْ غَيْرِ الْعِنَبِ أَيْضًا إذَا صَحَّ بِذَلِكَ نَصٌّ. وَقَدْ صَحَّ قَوْلُهُ - عَلَيْهِ السَّلَامُ - «كُلُّ مُسْكِرٍ خَمْرٌ» فَسَقَطَ تَعَلُّقُهُمْ بِهِ. وَخَبَرٌ: مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ عَلِيِّ بْنِ بَذِيمَةَ عَنْ قَيْسِ بْنِ حَبْتَرٍ النَّهْشَلِيِّ عَنْ ابْنِ عَبَّاسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ الدُّبَّاءِ وَالْمُزَفَّتِ، وَأَمَرَ بِأَنْ يُنْبَذَ فِي الْأَسْقِيَةِ، قَالُوا: فَإِنْ اشْتَدَّ فِي الْأَسْقِيَةِ يَا رَسُولَ اللَّهِ قَالَ: فَصُبُّوا عَلَيْهِ الْمَاءَ، وَقَالَ لَهُمْ فِي الثَّالِثَةِ أَوْ الرَّابِعَةِ: أَهْرِيقُوهُ فَإِنَّ اللَّهَ حَرَّمَ الْخَمْرَ، وَالْمَيْسِرَ، وَالْكُوبَةَ، وَكُلُّ مُسْكِرٍ حَرَامٌ» ، فَهَذَا مِنْ طَرِيقِ قَيْسِ بْنِ حَبْتَرٍ - وَهُوَ مَجْهُولٌ ثُمَّ لَوْ صَحَّ لَكَانَ أَعْظَمَ حُجَّةً لَنَا عَلَيْهِمْ، لِأَنَّهُ مُخَالِفٌ كُلُّهُ لِقَوْلِهِمْ، مُوَافِقٌ لِقَوْلِنَا فِي الْأَمْرِ

ibn al-Nuʿmān—states: “The Prophet (peace be upon him) said: ’Drink in tied leather skins. If it becomes potent, weaken it with water. If unable, discard it.”’ Abū al-Qumūṣ is unknown. Even if authentic, it would decisively support our view and nullify theirs, given the command to discard it when unable to reduce its potency with water.

بِهَرْقِهِ، وَقَوْلُهُ «وَكُلُّ مُسْكِرٍ حَرَامٌ» كِفَايَةٌ لِمَنْ كَانَ لَهُ مُسْكَةُ عَقْلٍ فَاعْجَبُوا لِقَوْمٍ يَحْتَجُّونَ بِمَا هُوَ نَصٌّ مُخَالِفٌ لِقَوْلِهِمْ إِنَّ الْحَيَاءَ هَهُنَا لَعَدَمٌ؟ وَخَبَرٌ مِنْ طَرِيقِ أَبِي الْقُمُوصِ زَيْدِ بْنِ عَلِيٍّ عَنْ رَجُلٍ مِنْ عَبْدِ الْقَيْسِ - نَحْسِبُ أَنَّ اسْمَهُ قَيْسُ بْنُ النُّعْمَانِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «اشْرَبُوا فِي الْجِلْدِ الْمُوكَى عَلَيْهِ فَإِنْ اشْتَدَّ فَاكْسِرُوهُ بِالْمَاءِ فَإِنْ أَعْيَاكُمْ فَأَهْرِيقُوهُ» أَبُو الْقُمُوصِ مَجْهُولٌ - ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً قَاطِعَةً مُوَافِقَةً لِقَوْلِنَا مُفْسِدَةً لِقَوْلِهِمْ بِمَا فِيهِ مِنْ الْأَمْرِ بِهَرْقِهِ إِنْ لَمْ يُقْدَرْ عَلَى إِبْطَالِ شِدَّتِهِ بِالْمَاءِ.

L17307–17317 A narration: From the chain of Saʿīd ibn Manṣūr, who narrated to us from Ismāʿīl ibn Ibrāhīm—who is Ibn ʿUlayyah—who said: Al-Jurayrī, Saʿīd ibn Iyās, narrated to me from Abū al-ʿAlā’ ibn al-Shikhkhīr, who said: The matter of beverages was concluded by the Messenger of Allah—peace and blessings be upon him—when he said: “Drink what does not impair your judgment or squander your wealth.” This is a mursal narration. Had it possessed a connected chain (musnad), it would have constituted proof for our position, as it prohibits the category of drink that inherently impairs judgment and depletes wealth—admitting no alternative interpretation—since no individual element within this category uniquely causes these effects apart from others.

وَخَبَرٌ: مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ - حَدَّثَنِي الْجُرَيْرِيُّ سَعِيدُ بْنُ إِيَاسٍ عَنْ أَبِي الْعَلَاءِ بْنِ الشِّخِّيرِ قَالَ: انْتَهَى أَمْرُ الْأَشْرِبَةِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «اشْرَبُوا مَا لَا يُسَفِّهُ أَحْلَامَكُمْ وَلَا يُذْهِبُ أَمْوَالَكُمْ» وَهَذَا مُرْسَلٌ ثُمَّ لَوْ انْسَنَدَ لَكَانَ حُجَّةً لَنَا، لِأَنَّهُ نَهَى عَنْ النَّوْعِ الَّذِي مِنْ طَبْعِهِ أَنْ يُسَفِّهَ الْحُلُمَ، وَيُذْهِبَ الْمَالَ، لَا يَحْتَمِلُ غَيْرَ ذَلِكَ أَصْلًا؛ إِذْ لَيْسَ شَيْءٌ مِنْهُ يَنْفَرِدُ بِذَلِكَ دُونَ سَائِرِهِ. وَخَبَرٌ: مِنْ طَرِيقِ عَلْقَمَةَ «سَأَلْتُ ابْنَ مَسْعُودٍ عَنْ قَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمُسْكِرِ؟ قَالَ: الشَّرْبَةُ الْآخِرَةُ» وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ هَالِكٌ - رُوِّينَا عَنْهُ أَنَّهُ كَانَ لَا يُصَلِّي مَعَ الْمُسْلِمِينَ فِي الْمَسْجِدِ فَقِيلَ لَهُ فِي ذَلِكَ؟ فَقَالَ: أَكْرَهُ مُزَاحَمَةَ الْبَقَّالِينَ، لَا يَنْبُلُ الْإِنْسَانُ حَتَّى يَدَعَ الصَّلَاةَ فِي الْجَمَاعَةِ - وَأَنَّهُ أَنْكَرَ السَّلَامَ عَلَى الْمَسَاكِينِ، وَقَالَ: عَلِيٌّ مِثْلُ هَؤُلَاءِ لَا يَسْلَمُ -: وَهَذِهِ جُرُحٌ ظَاهِرَةٌ، ثُمَّ الْأَظْهَرُ فِيهِ أَنَّ قَوْلَهُ " الشَّرْبَةُ الْآخِرَةُ " مِنْ قَوْلِ ابْنِ مَسْعُودٍ تَأْوِيلٌ مِنْهُ - وَهُوَ أَيْضًا فَاسِدٌ مِنْ التَّأْوِيلِ لِمَا نُبَيِّنُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى. وَخَبَرٌ مُرْسَلٌ: مِنْ طَرِيقِ مُجَاهِدٍ فِيهِ «أَنَّهُ - عَلَيْهِ السَّلَامُ - شَرِبَ مِنْ نَبِيذِ سِقَايَةِ زَمْزَمَ فَشَدَّ وَجْهَهُ،

it states: “The Prophet (peace and blessings of God be upon him) drank from the *nabīdh* of Zamzam’s water-skin, contorted his face, then poured water over it repeatedly, then drank from it.” This lacks foundation because it is reported by Ibn Jurayj from an unnamed source via Mujāhid—rendering it both interrupted (*munqatiʿ*) and mursal. Furthermore, it contradicts their established position—as we previously noted—that adding water does not alter a substance’s legal status from permissibility to prohibition or vice versa, nor does it hold any legal significance in their view. If it transforms it into a non-intoxicating substance, this aligns with our position that it is permissible when non-intoxicating. We have exhaustively examined all they cited from the Prophet (peace and blessings of God be upon him) and demonstrated that none of it constitutes valid evidence for their claim. Indeed, most of their citations serve as arguments against their own position.

They cited narrations from the Companions (may God be pleased with them): Among these is a report via Abū ʿAwānah from Simāk ibn Ḥarb from Qirṣāfah—a woman among them—from ʿĀ’ishah, Umm al-Muʾminīn [Mother of the Believers] (may God be pleased with her), who said: “Drink, but do not become intoxicated.” Simāk is deemed weak in transmission, and Qirṣāfah is unknown. Even if authentic, this does not permit intoxicants. Another narration via Isrāʾīl ibn Yūnus from Simāk ibn Ḥarb from Qirṣāfah from ʿĀ’ishah states she instructed her: “Drink, but do not consume intoxicants.” Simāk’s transmission from Qirṣāfah is inconsistent: at times attributing statements to them, at others neither for us nor for them? A report via Sumayyah from ʿĀ’ishah states: “If you fear your *nabīdh* may intoxicate, dilute it with water.” This offers them no proof, for diluting a potentially intoxicating substance is obligatory. The established position transmitted from Umm al-Muʾminīn is the prohibition of any substance that intoxicates in large quantities.

From Saʿīd ibn Dhī Ḥaddān or ibn Dhī Laʿwah: A man drank from ʿUmar ibn al-Khaṭṭāb’s vessel, became intoxicated, and was brought before ʿUmar. He protested: “I drank from your own vessel!” ʿUmar replied: “I strike you for intoxication.” Both Ibn Dhī Ḥaddān and Ibn Dhī Laʿwah are unknown narrators. A report via Abū Isḥāq al-Sabīʿī from ʿAmr ibn Maymūn from

ثُمَّ صَبَّ عَلَيْهِ الْمَاءَ مَرَّةً بَعْدَ مَرَّةٍ، ثُمَّ شَرِبَ مِنْهُ» - وَهَذَا لَا شَيْءَ؛ لِأَنَّهُ عَنْ ابْنِ جُرَيْجٍ عَمَّنْ لَمْ يُسَمِّهِ عَنْ مُجَاهِدٍ فَهُوَ مَقْطُوعٌ وَمُرْسَلٌ مَعًا - ثُمَّ هُوَ مُخَالِفٌ لِقَوْلِهِمْ كَمَا ذَكَرْنَا مِنْ أَنَّ صَبَّ الْمَاءِ لَا يَنْقُلُهُ عِنْدَهُمْ مِنْ تَحْلِيلٍ إلَى تَحْرِيمٍ وَلَا مِنْ تَحْرِيمٍ إلَى تَحْلِيلٍ وَلَا لَهُ عِنْدَهُمْ فِيهِ مَعْنًى، فَإِنْ نَقَلَهُ إلَى أَنْ لَا يُسْكِرَ فَهُوَ قَوْلُنَا فِي أَنَّهُ حَلَالٌ إذَا لَمْ يُسْكِرْ. هَذَا كُلُّ مَا مَوَّهُوا بِهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ تَقَصَّيْنَاهُ بِأَجْمَعِهِ وَبَيَّنَّا أَنَّهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ، وَأَنَّ أَكْثَرَ مَا أَوْرَدُوا حُجَّةٌ عَلَيْهِمْ لَنَا. وَذَكَرُوا عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - آثَارًا -: مِنْهَا: عَنْ أَبِي عَوَانَةَ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ قِرْصَافَةَ - امْرَأَةٌ مِنْهُمْ - عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - أَنَّهَا قَالَتْ: اشْرَبُوا وَلَا تَسْكَرُوا - وَسِمَاكٌ ضَعِيفٌ، وَقِرْصَافَةُ مَجْهُولَةٌ - ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ إبَاحَةُ مَا أَسْكَرَ. وَرُوِّينَا مِنْ طَرِيقِ إسْرَائِيلَ بْنِ يُونُسَ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ قِرْصَافَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا قَالَتْ لَهَا: اشْرَبِي وَلَا تَشْرَبِي مُسْكِرًا - فَسِمَاكٌ عَنْ قِرْصَافَةَ مَرَّةً [قَالَ] لَنَا عَلَيْهِمْ، وَمَرَّةً لَا لَنَا وَلَا لَهُمْ؟ وَمِنْ طَرِيقِ سُمَيَّةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: إنْ خَشِيت مِنْ نَبِيذِك فَاكْسِرْهُ بِالْمَاءِ - وَلَا حُجَّةَ لَهُمْ فِي هَذَا لِأَنَّهُ إذَا خَشِيَ إسْكَارَهُ كَسَرَهُ بِالْمَاءِ، وَالثَّابِتُ عَنْ أُمِّ الْمُؤْمِنِينَ تَحْرِيمُ كُلِّ مَا أَسْكَرَ كَثِيرُهُ، وَعَنْ سَعِيدِ بْنِ ذِي حَدَّانَ أَوْ ابْنِ ذِي لَعْوَةَ: أَنَّ رَجُلًا شَرِبَ مِنْ سَطِيحَةٍ لِعُمَرَ بْنِ الْخَطَّابِ فَسَكِرَ، فَأُتِيَ بِهِ عُمَرَ، فَقَالَ: إنَّمَا شَرِبْت مِنْ سَطِيحَتِك؟ فَقَالَ لَهُ عُمَرُ: إنَّمَا أَضْرِبُك عَلَى السُّكْرِ، ابْنُ ذِي حَدَّانَ أَوْ ابْنُ ذِي لَعْوَةَ مَجْهُولَانِ. وَمِنْ طَرِيقِ أَبِي إسْحَاقَ السَّبِيعِيِّ عَنْ عَمْرِو بْنِ مَيْمُونٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ كَانَ يَقُولُ: إنَّا نَشْرَبُ مِنْ هَذَا النَّبِيذِ شَرَابًا يَقْطَعُ لُحُومَ الْإِبِلِ، قَالَ عَمْرُو بْنُ مَيْمُونٍ: وَشَرِبْت مِنْ شَرَابِهِ فَكَانَ كَأَشَدِّ النَّبِيذِ - وَفِي بَعْضِ طُرُقِهِ " إنَّا لَنَشْرَبُ هَذَا

ʿUmar ibn al-Khaṭṭāb states he would say: “We drink this *nabīdh*—a beverage potent enough to dissolve camel flesh.” ʿAmr ibn Maymūn remarked: “I drank his beverage, and it resembled the strongest *nabīdh*.” In some transmission chains: “We drink this intensely potent drink...” So that we may break down with it the camel meat in our stomachs, lest it harm us. Whoever is doubtful about something in his drink, let him mix it with water.“ This is a sound report, but there is no proof for them in it, because the sweet compounded nabīdh with its binding strength - which does not intoxicate - breaks down camel meat in the belly. This report does not state that ʿUmar drank from that drink which ʿAmr ibn Maymūn drank from. Since it lacks this, do they have any valid basis in this report whatsoever? Among them is a report through Ḥafṣ ibn Ghiyāth: al-Aʿmash reported to us from Ibrāhīm al-Nakhaʿī, from Hammām ibn al-Ḥārith that ʿUmar was brought a drink of Ṭāʾif raisins. He frowned and said: ”The nabīdh of Ṭāʾif has vigorous fermentation,“ then mentioned a potency I cannot recall, then called for water, poured it into the drink, and drank. This is a sound report, but it contains no proof for them, as it does not state that this nabīdh was intoxicating or had fermented strongly. It merely reports ʿUmar’s observation that Ṭāʾif nabīdh has frothing and potency, and that he diluted it with water before drinking. The evident meaning is that ʿUmar feared it might ferment further and intensify, so he diluted it with water - this supports our view, not theirs whatsoever. From what we have cited, only these two reports hold any validity for them.

A report we narrated through Ibn Abī Shaybah from Wakīʿ, from Ismāʿīl ibn Abī Khālid, from Qays ibn Abī Ḥāzim: ʿUqbah ibn Farqad told me: ”I visited ʿUmar when he was brought nabīdh that had nearly turned to vinegar. He told me: ’Drink.’ I could scarcely swallow it. ʿUmar then took it and said: ’We drink this strong nabīdh to break down camel meat in our stomachs, lest it harm us.’“ Abū Muḥammad remarked: What approaches vinegar cannot intoxicate.

Through Sufyān al-Thawrī from Yaḥyā ibn Saʿīd al-Anṣārī, who heard Saʿīd ibn al-Musayyab say: ”The Thaqīf tribe presented ʿUmar with a drink. When

الشَّرَابَ الشَّدِيدَ لِنَقْطَعَ بِهِ لُحُومَ الْإِبِلِ فِي بُطُونِنَا أَنْ تُؤْذِيَنَا فَمَنْ رَابَهُ مِنْ شَرَابِهِ شَيْءٌ فَلْيَمْزُجْهُ بِالْمَاءِ " وَهَذَا خَبَرٌ صَحِيحٌ وَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ النَّبِيذَ الْحُلْوَ اللَّفِيفَ الشَّدِيدَ لِلْفَتِهِ الَّذِي لَا يُسْكِرُ يَقْطَعُ لُحُومَ الْإِبِلِ فِي الْجَوْفِ، لَيْسَ فِي هَذَا الْخَبَرِ: أَنَّ عُمَرَ شَرِبَ مِنْ ذَلِكَ الشَّرَابِ الَّذِي شَرِبَ مِنْهُ عَمْرُو بْنُ مَيْمُونٍ، فَإِذْ لَيْسَ فِيهِ ذَلِكَ، فَلَا مُتَعَلَّقَ لَهُمْ بِهَذَا الْخَبَرِ أَصْلًا؟ وَمِنْهَا: خَبَرٌ مِنْ طَرِيقِ حَفْصِ بْنِ غِيَاثٍ نا الْأَعْمَشُ نا إِبْرَاهِيمُ هُوَ النَّخَعِيُّ - عَنْ هَمَّامِ بْنِ الْحَارِثِ أَنَّ عُمَرَ أُتِيَ بِشَرَابٍ مِنْ زَبِيبِ الطَّائِفِ فَقَطَّبَ وَقَالَ: إِنَّ نَبِيذَ الطَّائِفِ لَهُ عُرَامٌ ثُمَّ ذَكَرَ شِدَّةً لَا أَحْفَظُهَا ثُمَّ دَعَا بِمَاءٍ فَصَبَّهُ فِيهِ ثُمَّ شَرِبَ - وَهَذَا خَبَرٌ صَحِيحٌ، إِلَّا أَنَّهُ لَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّهُ لَيْسَ فِيهِ: أَنَّ ذَلِكَ النَّبِيذَ كَانَ مُسْكِرًا، وَلَا أَنَّهُ كَانَ قَدْ اشْتَدَّ وَإِنَّمَا فِيهِ إِخْبَارُ عُمَرَ بِأَنَّ نَبِيذَ الطَّائِفِ لَهُ عُرَامٌ وَشِدَّةٌ وَأَنَّهُ كَسَرَ هَذَا بِالْمَاءِ ثُمَّ شَرِبَهُ، فَالْأَظْهَرُ فِيهِ أَنَّ عُمَرَ خَشِيَ أَنْ يَعْرِمَ وَيَشْتَدَّ فَتَعَجَّلَ كَسْرَهُ بِالْمَاءِ - وَهَذَا مُوَافِقٌ لِقَوْلِنَا لَا لِقَوْلِهِمْ أَصْلًا. وَلَا يَصِحُّ لَهُمْ مِمَّا ذَكَرْنَا إِلَّا هَذَانِ الْخَبَرَانِ فَقَطْ. وَخَبَرٌ: رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ حَدَّثَنِي عُقْبَةُ بْنُ فَرْقَدٍ قَالَ: قَدِمْت عَلَى عُمَرَ فَأُتِيَ بِنَبِيذٍ قَدْ كَادَ يَصِيرُ خَلًّا، فَقَالَ لِي: اشْرَبْ؟ قَالَ: فَمَا كِدْت أَنْ أَسِيغَهُ ثُمَّ أَخَذَهُ عُمَرُ، ثُمَّ قَالَ لِي: إِنَّا نَشْرَبُ هَذَا النَّبِيذَ الشَّدِيدَ لِيَقْطَعَ لُحُومَ الْإِبِلِ فِي بُطُونِنَا أَنْ تُؤْذِيَنَا قَالَ أَبُو مُحَمَّد: مَا بَلَغَ مُقَارَبَةَ الْخَلِّ فَلَيْسَ مُسْكِرًا. وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ سَمِعَ سَعِيدَ بْنَ الْمُسَيَّبِ يَقُولُ: إِنَّ ثَقِيفًا تَلَقَّتْ عُمَرَ بِشَرَابٍ فَلَمَّا قَرَّبَهُ إِلَى فِيهِ كَرِهَهُ، ثُمَّ كَسَرَهُ بِالْمَاءِ، وَقَالَ: هَكَذَا فَافْعَلُوا - وَهَذَا مُرْسَلٌ. وَخَبَرٌ: مِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ إِسْمَاعِيلَ أَنَّ رَجُلًا عَبَّ فِي نَبِيذٍ لِعُمَرَ فَسَكِرَ فَلَمَّا أَفَاقَ حَدَّهُ، ثُمَّ أَوْجَعَ النَّبِيذَ بِالْمَاءِ فَشَرِبَ مِنْهُ

he brought it to his mouth, he disliked it, diluted it with water, and said: ’Do likewise.“ This is mursal.

A report through Ibn Jurayj from Ismāʿīl: A man drank excessively from ʿUmar’s nabīdh, became intoxicated, and ʿUmar punished him upon recovery. He then thoroughly diluted the nabīdh with water and drank. This is mursal.

Through Ibn Abī Mulaykah: Wahb ibn al-Aswad told me: ”We placed abundant raisins in our water-skins with little water. Before meeting ʿUmar, it had overfermented. We informed him and showed it. He tasted its strength, diluted it with water, then drank.“ Wahb ibn al-Aswad is unidentified.

Through Maʿmar from al-Zuhrī: ʿUmar was brought a vessel containing nabīdh that had partially intensified... He tasted its potency, then exclaimed: ”Tsk, tsk! Dilute it with water“—and this is a mursal report. A narration through Saʿīd ibn Manṣūr’s chain: Ismāʿīl—Ibn ʿUlayyah—from Khālid al-Ḥadhā’ from Abū al-Muʿaddil that Ibn ʿUmar told him: ”‘Umar had nabīdh prepared in a standing vessel of fifteen measures.“ He came, tasted it, and said: ”You have reduced its sediment.“ Abū al-Muʿaddil is unknown. Another narration via Ibn Abī Shaybah: from ʿUbaydah ibn Ḥumayd from Abī Miskīn from Hudhayl ibn Shuraḥbīl that ʿUmar asked the people of Ṭā’if for a drink, and they gave him their nabīdh. He told them: ”O Thaqīf! You drink this strong beverage. Whoever is uncertain about their drink should dilute it with water.“ Even if authentic, this would plainly support our view, as it does not mention consuming an intoxicant. Rather, it forbids the strong, doubtful drink and orders altering it with water until it loses potency and doubt—they cite nothing else from ʿUmar. None of this constitutes evidence for their stance, as diluting nabīdh with water does not—in their view—shift it from prohibition to permissibility. To them, its legal ruling remains unchanged before and after dilution. If water removes intoxication, it becomes permissible in our view. Had these reports been sound, their content would align with our position. What is authentically established from ʿUmar is the prohibition of any amount of what intoxicates in excess, as we will later detail, God willing. A narration through ʿAlī’s chain: A man drank from his water vessel, became intoxicated, and ʿAlī enforced the Hadd penalty. This is unsound, as it comes via Sharīk—a weak narrator guilty of tadlīs (concealing

- وَهَذَا مُرْسَلٌ. وَخَبَرٌ: مِنْ طَرِيقِ ابْنِ أَبِي مُلَيْكَةَ حَدَّثَنِي وَهْبُ بْنُ الْأَسْوَدِ قَالَ: أَخَذْنَا زَبِيبًا فَأَكْثَرْنَا مِنْهُ فِي أَدَاوَانَا وَأَقْلَلْنَا الْمَاءَ فَلَمْ نَلْقَ عُمَرَ حَتَّى عَدَا طَوْرُهُ فَأَخْبَرْنَاهُ أَنَّهُ قَدْ عَدَا طَوْرُهُ وَأَرَيْنَاهُ إيَّاهُ فَذَاقَهُ فَوَجَدَهُ شَدِيدًا فَكَسَرَهُ بِالْمَاءِ، ثُمَّ شَرِبَ - وَهْبُ بْنُ الْأَسْوَدِ لَا يُدْرَى مَنْ هُوَ. وَخَبَرٌ: مِنْ طَرِيقِ مَعْمَرٍ عَنْ الزُّهْرِيِّ أَنَّ عُمَرَ أُتِيَ بِسَطِيحَةٍ فِيهَا نَبِيذٌ قَدْ اشْتَدَّ بَعْضَ الشِّدَّةِ فَذَاقَهُ، ثُمَّ قَالَ: بَخٍ بَخٍ اكْسِرْهُ بِالْمَاءِ - وَهَذَا مُرْسَلٌ. وَخَبَرٌ: مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا إسْمَاعِيلُ هُوَ ابْنُ عُلَيَّةَ - عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي الْمُعَدِّلِ أَنَّ ابْنَ عُمَرَ قَالَ لَهُ: إنَّ عُمَرَ يُنْبَذُ لَهُ فِي خَمْسَ عَشْرَةَ قَائِمَةً؟ فَجَاءَ فَذَاقَهُ فَقَالَ: إنَّكُمْ أَقْلَلْتُمْ عَكَرَهُ - أَبُو الْمُعَدِّلِ مَجْهُولٌ. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ عُبَيْدَةَ بْنِ حُمَيْدٍ عَنْ أَبِي مِسْكِينٍ عَنْ هُذَيْلِ بْنِ شُرَحْبِيلَ أَنَّ عُمَرَ اسْتَسْقَى أَهْلَ الطَّائِفِ مِنْ نَبِيذِهِمْ فَسَقَوْهُ، فَقَالَ لَهُمْ: يَا مَعْشَرَ ثَقِيفٍ إنَّكُمْ تَشْرَبُونَ مِنْ هَذَا الشَّرَابِ الشَّدِيدِ فَأَيُّكُمْ رَابَهُ مِنْ شَرَابِهِ شَيْءٌ فَلْيَكْسِرْهُ بِالْمَاءِ؟ وَهَذَا لَوْ صَحَّ حُجَّةٌ ظَاهِرَةٌ لَنَا لِأَنَّهُ لَيْسَ فِيهِ: أَنَّهُ شَرِبَ مُسْكِرًا، بَلْ فِيهِ النَّهْيُ عَنْ الشَّرَابِ الشَّدِيدِ الْمُرِيبِ، وَالْأَمْرُ بِأَنْ يُغَيَّرَ بِالْمَاءِ عَنْ حَالِهِ تِلْكَ حَتَّى يُفَارِقَ الشِّدَّةَ وَالْإِرَابَةَ - لَيْسَ لَهُمْ عَنْ عُمَرَ إلَّا هَذَا - وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِمَا ذَكَرْنَا قَبْلُ مِنْ أَنَّ كَسْرَ النَّبِيذِ بِالْمَاءِ لَا يَنْقُلُهُ عِنْدَهُمْ مِنْ تَحْرِيمٍ إلَى تَحْلِيلٍ، وَأَنَّهُ عِنْدَهُمْ قَبْلَ كَسْرِهِ بِالْمَاءِ وَبَعْدَهُ سَوَاءٌ وَأَنَّهُ إنْ كَانَ الْمَاءُ يُخْرِجُهُ عَنْ الْإِسْكَارِ فَهُوَ حِينَئِذٍ عِنْدَنَا حَلَالٌ، فَلَوْ صَحَّتْ لَكَانَ مَا فِيهَا مُوَافِقًا لِقَوْلِنَا - وَقَدْ صَحَّ عَنْ عُمَرَ تَحْرِيمُ قَلِيلِ مَا أَسْكَرَ كَثِيرُهُ عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى. وَخَبَرٌ: مِنْ طَرِيقِ عَلِيٍّ أَنَّ رَجُلًا شَرِبَ مِنْ إدَاوَتِهِ فَسَكِرَ فَجَلَدَهُ عَلِيٌّ الْحَدَّ - وَهَذَا لَا يَصِحُّ لِأَنَّهُ عَنْ شَرِيكٍ - وَهُوَ مُدَلِّسٌ ضَعِيفٌ - عَنْ فِرَاسٍ عَنْ الشَّعْبِيِّ عَنْ عَلِيٍّ - وَالشَّعْبِيُّ لَمْ يَسْمَعْ عَلِيًّا. ثُمَّ لَوْ

صَحَّ لَكَانَ لَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّهُ لَيْسَ فِيهِ أَنَّ عَلِيًّا شَرِبَ مِنْ تِلْكَ الْإِدَاوَةِ بَعْدَ مَا أَسْكَرَ مَا فِيهَا - فَلَا مُتَعَلَّقَ لَهُمْ بِهِ. وَخَبَرٌ: مِنْ طَرِيقِ هُشَيْمٍ عَنْ مُجَالِدٍ عَنْ الشَّعْبِيِّ أَنَّ رَجُلًا سَكِرَ مِنْ طِلَاءٍ فَضَرَبَهُ عَلِيٌّ الْحَدَّ فَقَالَ لَهُ الرَّجُلُ: إنَّمَا شَرِبْت مَا أَحْلَلْتُمْ؟ فَقَالَ لَهُ عَلِيٌّ: إنَّمَا ضَرَبْتُك لِأَنَّك سَكِرْت - وَهَذَا مُنْقَطِعٌ - وَمُجَالِدٌ ضَعِيفٌ جِدًّا. وَخَبَرٌ: عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ: إذَا أَطْعَمَك أَخُوك الْمُسْلِمُ طَعَامًا فَكُلْ وَإِذَا سَقَاك شَرَابًا فَاشْرَبْ فَإِنْ رَابَك فَأَسْجُجْهُ بِالْمَاءِ، وَهَذَا خَبَرٌ صَحِيحٌ عَنْهُ رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مُحَمَّدِ بْنِ عَجْلَانَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ، وَلَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّهُ لَيْسَ فِيهِ إبَاحَةُ نَبِيذِ الْمُسْكِرِ لَا بِنَصٍّ وَلَا بِدَلِيلٍ. وَلَا إبَاحَةُ مَا حَرَّمَ اللَّهُ مِنْ الْمَأْكَلِ كَالْخِنْزِيرِ وَغَيْرِهِ، وَلَا إبَاحَةُ الْخَمْرِ وَإِنَّمَا فِيهِ أَنْ لَا تُفَتِّشَ عَلَى أَخِيك الْمُسْلِمِ وَأَنْ يُسَجَّ النَّبِيذُ إذَا خِيفَ أَنْ يُسْكِرَ بِالْمَاءِ وَهُمْ لَا يَقُولُونَ بِهَذَا - وَهُوَ مُوَافِقٌ لِقَوْلِنَا إذَا كَانَ الْمَاءُ يُحِيلُهُ عَنْ الشِّدَّةِ إلَى إبْطَالِهَا - وَقَدْ صَحَّ عَنْ أَبِي هُرَيْرَةَ تَحْرِيمُ الْمُسْكِرِ جُمْلَةً. وَخَبَرٌ: مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ إسْمَاعِيلَ بْنِ خَالِدٍ عَنْ عُثْمَانَ بْنِ قَيْسٍ أَنَّهُ خَرَجَ مَعَ جَرِيرِ بْنِ عَبْدِ اللَّهِ الْبَجَلِيِّ إلَى حَمَّامٍ لَهُ بِالْعَاقُولِ فَأَكَلُوا مَعَهُ ثُمَّ أُوتُوا بِعَسَلٍ وَطِلَاءٍ فَقَالَ: اشْرَبُوا الْعَسَلَ أَنْتُمْ: وَشَرِبَ هُوَ الطِّلَاءَ، وَقَالَ: إنَّهُ يَسْتَنْكِرُ مِنْكُمْ وَلَا يَسْتَنْكِرُ مِنِّي قَالَ: وَكَانَتْ رَائِحَتُهُ تُوجَدُ مِنْ هُنَالِكَ، وَأَشَارَ إلَى أَقْصَى الْحَلْقَةِ عُثْمَانُ بْنُ قَيْسٍ مَجْهُولٌ. وَخَبَرٌ: مِنْ طَرِيقِ ابْنِ مَسْعُودٍ قَالَ: " إنَّ الْقَوْمَ يَجْلِسُونَ عَلَى الشَّرَابِ، وَهُوَ لَهُمْ حَلَالٌ فَمَا يَقُومُونَ حَتَّى يَحْرُمَ عَلَيْهِمْ، وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ عَنْ سَعِيدِ بْنِ مَسْرُوقٍ عَنْ شِمَاسِ بْنِ لَبِيدٍ عَنْ رَجُلٍ عَنْ ابْنِ مَسْعُودٍ - شِمَاسٌ وَلَبِيدٌ مَجْهُولَانِ، وَرَجُلٌ أَجْهَلُ وَأَجْهَلُ. ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ دَلِيلٌ عَلَى قَوْلِهِمْ، وَيُقَالُ لَهُمْ: مَا مَعْنَاهُ إلَّا أَنَّهُمْ يَقْعُدُونَ عَلَيْهِ قَبْلَ أَنْ

defects)—from Firās from al-Shaʿbī from ʿAlī, and al-Shaʿbī did not directly hear from ʿAlī, breaking the chain. Even if valid, it offers no proof, as it does not state ʿAlī drank from the vessel after intoxication—thus, no basis for their claim. Another narration via Hushaym from Mujālid from al-Shaʿbī: A man became intoxicated from ṭilā' (fermented drink), so ʿAlī punished him. The man objected: "I drank what you permitted¡ʿ ʿAlī replied: "I punished you for becoming intoxicated." This chain is broken, and Mujālid is severely weak. A report from Abū Hurayrah: "When a Muslim brother offers you food, eat it. If he offers a drink, drink it. If uncertain, dilute it with water." This is authentic, transmitted via Sufyān ibn ʿUyaynah from Muḥammad ibn ʿAjlān from Saʿīd ibn Abī Saʿīd al-Maqburī from Abū Hurayrah. They have no argument in this matter because there is neither an explicit text nor an indicant permitting the intoxicant nabīdh. There is no permission for what Allah has prohibited of foods like pork and others, nor any permission for wine. Rather, it only contains the directive not to scrutinize your Muslim brother and that nabīdh should be diluted with water if there is fear of intoxication—though they do not hold this opinion, which aligns with our position that when water transforms it from potency to nullification. It is authentically established from Abū Hurayrah that intoxicants are prohibited wholesale.

A report transmitted through Ibn Abī Shaybah's chain from Wakīʿ, from Ismāʿīl ibn Khālid, from ʿUthmān ibn Qays states that he went with Jarīr ibn ʿAbdillāh al-Bajalī to his bathhouse in al-ʿĀqūl. They ate with him, then were brought honey and ṭilā' (fermented drink). Jarīr said: "You drink the honey," while he himself drank the ṭilā', adding: "It would be deemed improper if you drank it, but not if I do." ʿUthmān ibn Qays remarked that its odor could be detected from the far end of the gathering, gesturing toward the edge. However, ʿUthmān ibn Qays is obscure.

Another report via Ibn Masʿūd's chain states: "They sit around a drink permissible to them, but do not rise until it becomes forbidden." This contains no proof for their argument, as it is transmitted from Saʿīd ibn Masrūq, from Shimās ibn Labīd, from an unnamed man, from Ibn Masʿūd—Shimās and Labīd are unknown, and the man is even more obscure. Even if authentic, it provides no evidence for their claim. They are told: Its meaning is only that

يَغْلِيَ، وَهُوَ حَلَالٌ فَلَا يَقُومُونَ حَتَّى يَأْخُذَ فِي الْغَلَيَانِ فَيَحْرُمَ - فَهَذِهِ دَعْوَى كَدَعْوَى بَلْ هَذِهِ أَصَحُّ مِنْ دَعْوَاهُمْ لِأَنَّ قَوْلَهُمْ: إنَّ الشَّرَابَ لَا يَحْرُمُ أَصْلًا، وَإِنَّمَا يَحْرُمُ الْمُسْكِرُ وَلَيْسَ فِي الْحَدِيثِ إلَّا أَنَّ الشَّرَابَ نَفْسَهُ يَحْرُمُ - فَصَحَّ تَأْوِيلُنَا وَبَطَلَ تَأْوِيلُهُمْ. وَخَبَرٌ: مِنْ طَرِيقِ أَبِي وَائِلٍ كُنَّا نَدْخُلُ عَلَى ابْنِ مَسْعُودٍ فَيَسْقِينَا نَبِيذًا شَدِيدًا - وَهَذَا لَا يَصِحُّ لِأَنَّهُ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ عَيَّاشٍ وَهُوَ ضَعِيفٌ. وَخَبَرٌ: عَنْ ابْنِ مَسْعُودٍ رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ قَالَ: أَكَلْت مَعَ ابْنِ مَسْعُودٍ فَأُتِينَا بِنَبِيذٍ شَدِيدٍ نَبَذَتْهُ سِيرِينَ فِي جَرَّةٍ خَضْرَاءَ فَشَرِبُوا مِنْهُ سِيرِينَ هِيَ أُمُّ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ - وَهَذَا خَبَرٌ صَحِيحٌ وَلَيْسَ فِي شَيْءٍ مِمَّا أَوْرَدُوا لِقَوْلِهِمْ وِفَاقٌ إلَّا هَذَا الْخَبَرُ وَحْدَهُ إلَّا أَنَّهُ يُسْقِطُ تَعَلُّقَهُمْ بِهِ بِثَلَاثَةِ وُجُوهٍ -: أَحَدُهَا: أَنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَالثَّانِي: أَنَّهُ قَدْ صَحَّ عَنْ ابْنِ مَسْعُودٍ تَحْرِيمُ كُلِّ مَا قَلَّ أَوْ كَثُرَ مِمَّا يُسْكِرُ كَثِيرُهُ، وَعَنْ غَيْرِهِ مِنْ الصَّحَابَةِ أَيْضًا فَإِذَا اخْتَلَفَ قَوْلُهُ وَخَالَفَهُ غَيْرُهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَيْسَ بَعْضُهُمْ أَوْلَى مِنْ بَعْضٍ، وَهَذَا تَنَازُعٌ يَجِبُ بِهِ مَا أَوْجَبَهُ اللَّهُ تَعَالَى مِنْ الرَّدِّ عِنْدَ التَّنَازُعِ إلَى الْقُرْآنِ، وَالسُّنَّةِ. وَالثَّالِثُ: أَنَّهُ قَدْ يَحْتَمِلُ أَنْ يَكُونَ قَوْلُ عَلْقَمَةَ نَبِيذًا شَدِيدًا أَيْ خَاثِرًا لَفِيفًا حُلْوًا - فَهَذَا مُمْكِنٌ أَيْضًا. وَخَبَرٌ: عَنْ عِيسَى بْنِ أَبِي لَيْلَى أَنَّهُ مَضَى إلَى أَنَسٍ فَأَبْصَرَ عِنْدَهُ طِلَاءً شَدِيدًا - وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّهُ عَنْ ابْنِ أَبِي لَيْلَى - وَهُوَ سَيِّئُ الْحِفْظِ - عَنْ أَخِيهِ عِيسَى، وَيُمْكِنُ أَنْ يَكُونَ أَرَادَ بِقَوْلِهِ " شَدِيدًا " أَيْ خَاثِرًا لَفِيفًا، وَهَذِهِ صِفَةُ الرُّبِّ الْمَطْبُوخِ الَّذِي لَا يُسْكِرُ. وَرَوَى بَعْضُهُمْ عَنْ الْحَسَنِ بْنِ عَلِيٍّ أَنَّهُ أَبَاحَ

they sit around it before it boils (while permissible) and do not rise until it begins boiling and thus becomes forbidden. This claim resembles theirs, but ours is more valid because they assert the drink itself is never prohibited—only intoxication—whereas the ḥadīth explicitly states the drink becomes prohibited. Thus, our interpretation is validated and theirs invalidated.

A report via Abū Wāʾil's chain states: "We would enter Ibn Masʿūd's presence, and he would give us strong nabīdh to drink." This is unreliable due to its chain via Abū Bakr ibn ʿAyyāsh, a weak narrator. Another report from Ibn Masʿūd—which we narrated through the chain of Ḥammād ibn Salamah, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī, from ʿAlqamah—states: "I ate with Ibn Masʿūd, and we were brought strong nabīdh that Sirīn had prepared in a green jar. They drank from it." Sirīn was the mother of Abū ʿUbaydah ibn ʿAbdillāh ibn Masʿūd. This report is authentic, but none of their cited proofs support their position except this one alone. Nevertheless, their reliance on it is invalidated by three considerations: The first is that there is no valid authority in the statement of anyone apart from the Messenger of Allah—peace and blessings of Allah be upon him. The second is that it is authentically established from Ibn Masʿūd that he prohibited every substance whose large quantity intoxicates, regardless of whether consumed in small or large amounts, and similarly from other Companions—may Allah be pleased with them. When his statement differs and is contradicted by other Companions, none among them holds greater precedence over another. This is a dispute necessitating what Allah the Exalted has ordained in cases of disagreement: referral back to the Quran and the Sunnah. The third is that it is plausible ʿAlqamah's statement refers to a "strong *nabīdh*"—meaning a thickened, layered, sweet drink—which remains a valid possibility.

A report from ʿĪsā ibn Abī Laylā states that he visited Anas and observed "strong *ṭilāʾ*" with him. This holds no valid proof for their position, as it is transmitted via Ibn Abī Laylā—a narrator of poor retention—from his brother ʿĪsā. It is possible "strong" here denotes a thickened or layered drink, describing the cooked syrup (*al-rubb*) that does not intoxicate.

Some narrators attributed to al-Ḥasan ibn ʿAlī the permissibility of consuming intoxicants provided one does not become intoxicated. This is entirely

baseless, as it stems from Simāk—a narrator susceptible to coaching—via an unnamed, unidentified man claiming al-Ḥasan ibn ʿAlī said: ”Drink, but if you fear intoxication, stop.“ Even if authentic, its apparent meaning would be: ”Consume the drink unless you fear intoxication; if so, abstain.“ We transmit this through Ibn Abī Shaybah from Wakīʿ, from al-Ḥasan ibn Ṣāliḥ, from Simāk ibn Ḥarb, from a man who asked al-Ḥasan ibn ʿAlī about *nabīdh*, to which he replied: ”Drink, but if you fear intoxication, stop.“

A report from Ibn ʿUmar via ʿAbd al-Malik ibn Nāfiʿ—an obscure narrator—states: ”I asked Ibn ʿUmar about *nabīdh* in a waterskin—if I stirred it, it would be confiscated.“ He replied: ”Oppression falls only on the oppressor,“ then cited the ḥadīth we prefaced earlier from the Prophet—peace and blessings of Allah be upon him—regarding pouring water over *nabīdh*. This wording contains no sanction for consuming intoxicants.

Another chain via Ibn Abī Shaybah from Marwān ibn Muʿāwiyah, from al-Naḍr ibn Muṭarrif, from Qāsim ibn ʿAbd al-Raḥmān, from his father claims: ”ʿAbdullāh ibn Masʿūd would have *nabīdh* prepared in a jar, retaining its sediment.“ This is invalid, as al-Naḍr is unknown and the chain is interrupted.

L17318–17319 From ʿAbd al-Raḥmān ibn Abī Laylā via the chain of Abū Farwah: He drank with him nabīdh from a jar containing dardī sediment. A similar report is cited from Abū Waʾil, al-Nakhaʿī, al-Shaʿbī, and al-Ḥasan: that lees were placed in his nabīdh.

L17320 These individuals were opposed by Ibn Sirīn and Ibn al-Musayyib—with authentic reports from them prohibiting *ʿakar* (date wine). Ibn al-Musayyib stated: “It is *khamr* (grape wine).” Authentic narrations from Ibn ʿUmar include what we transmitted via al-Bukhārī’s chain: al-Ḥasan ibn al-Ṣabbāḥ narrated to us, Muḥammad ibn Sābiq narrated to us, Mālik ibn Mighwal nar-

الْمُسْكِرَ، مَا لَمْ يُسْكِرْ مِنْهُ، وَلَا يَصِحُّ هَذَا عَنْ الْحَسَنِ أَصْلًا، لِأَنَّهُ مِنْ رِوَايَةِ سِمَاكٍ وَهُوَ يَقْبَلُ التَّلْقِينَ كَمَا قُلْنَا عَنْ رَجُلٍ لَمْ يُسَمِّهِ - وَلَا يُعْرَفُ مَنْ هُوَ - عَنْ الْحَسَنِ بْنِ عَلِيٍّ اشْرَبْ فَإِذَا رَهِبْت أَنْ تَسْكَرَ فَدَعْهُ. ثُمَّ لَوْ صَحَّ لَكَانَ ظَاهِرُهُ اشْرَبْ الشَّرَابَ مَا لَمْ يُسْكِرْ فَإِذَا رَهِبْت أَنْ تَشْرَبَهُ فَتَسْكَرَ مِنْهُ فَدَعْهُ - هَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ الْحَسَنِ بْنِ صَالِحٍ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ رَجُلٍ أَنَّهُ سَأَلَ الْحَسَنَ بْنَ عَلِيٍّ عَنْ النَّبِيذِ؟ فَقَالَ: اشْرَبْ فَإِذَا رَهِبْت أَنْ تَسْكَرَ فَدَعْهُ. وَخَبَرٌ: عَنْ ابْنِ عُمَرَ مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ نَافِعٍ قَالَ: سَأَلْت ابْنَ عُمَرَ عَنْ نَبِيذٍ فِي سِقَاءٍ لَوْ نَكَهْته لَأُخِذَ مِنِّي؟ فَقَالَ: إنَّمَا الْبَغْيُ عَلَى مَنْ أَرَادَ الْبَغْيَ ثُمَّ ذَكَرَ الْحَدِيثَ الَّذِي صَدَّرْنَا بِهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ صَبِّهِ الْمَاءَ عَلَى النَّبِيذِ - وَعَبْدُ الْمَلِكِ بْنُ نَافِعٍ قَدْ قَدَّمْنَا أَنَّهُ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ. وَأَيْضًا فَلَيْسَ فِي هَذَا اللَّفْظِ إبَاحَةٌ لِشُرْبِ الْمُسْكِرِ. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ مَرْوَانَ بْنِ مُعَاوِيَةَ عَنْ النَّضْرِ بْنِ مُطَرِّفٍ عَنْ قَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ قَالَ: كَانَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ يُنْبَذُ لَهُ فِي جُرٍّ وَيُجْعَلُ لَهُ فِيهِ عَكَرٌ - وَهَذَا بَاطِلٌ، لِأَنَّ النَّضْرَ مَجْهُولٌ، ثُمَّ هُوَ مُنْقَطِعٌ.

وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى مِنْ طَرِيقِ أَبِي فَرْوَةَ أَنَّهُ شَرِبَ مَعَهُ نَبِيذَ جُرٍّ فِيهِ دُرْدِيٌّ. وَعَنْ أَبِي وَائِلٍ مِثْلُهُ - وَعَنْ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَعَنْ الْحَسَنِ: أَنَّهُ كَانَ يُجْعَلُ فِي نَبِيذِهِ عَكَرٌ،

وَقَدْ خَالَفَ هَؤُلَاءِ: ابْنُ سِيرِينَ، وَابْنُ الْمُسَيِّبِ - وَصَحَّ عَنْ هَؤُلَاءِ الْمَنْعُ مِنْ الْعَكَرِ - وَقَالَ ابْنُ الْمُسَيِّبِ هُوَ: خَمْرٌ. وَأَخْبَارٌ صِحَاحٌ عَنْ ابْنِ عُمَرَ -: مِنْهَا: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا الْحَسَنُ بْنُ الصَّبَّاحِ نا مُحَمَّدُ بْنُ سَابِقٍ نا مَالِكُ بْنُ مِغْوَلٍ عَنْ نَافِعٍ عَنْ ابْنِ

rated to us from Nāfiʿ from Ibn ʿUmar—may Allah be pleased with them—who said: “Grape wine (*khamr*) was forbidden, and there was none of it in Medina.” Another narration via ʿAbd al-Razzāq’s chain from ʿAqīl from Maʿqil, that Hammām ibn Munabbih informed him that Ibn ʿUmar told him: “As for grape wine (*khamr*), it is forbidden—there is no way to it. As for other beverages, every intoxicant is forbidden.” Another via ʿAbd al-Razzāq: Maʿmar narrated to us from al-Zuhrī from Sālim ibn ʿAbd Allāh ibn ʿUmar from his father, who said: “My brother ʿAbd al-Raḥmān ibn ʿUmar ibn al-Khaṭṭāb drank, and Abū Sirwaʿah ibn ʿUqbah ibn al-Ḥārith drank with him in Egypt during ʿUmar’s caliphate. They became intoxicated, and when morning came, they went to ʿAmr ibn al-ʿĀṣ, the governor of Egypt, and said: ’Purify us by punishing us, for we became intoxicated from a beverage we consumed.’ Thus, ʿAmr ibn al-ʿĀṣ administered the *ḥadd* punishment to them.” [The opponents] said: “Here, ʿAbd Allāh (Ibn ʿUmar) distinguished between grape wine (*khamr*) and other intoxicating beverages, not classifying them as *khamr*. Yet his brother ʿAbd al-Raḥmān—a Companion—and Abū Sirwaʿah—a Companion—along with ʿAmr ibn al-ʿĀṣ, upheld the *ḥadd* punishment for intoxication from a beverage they drank.” Authentic reports from Ibn ʿAbbās include what we previously cited: “Grape wine (*khamr*) was forbidden by its very essence, whether in small or large quantities, and every intoxicating beverage [is forbidden].” Thus, all of them differentiated between grape wine (*khamr*) and other intoxicating beverages, refusing to classify them as *khamr*. They attempted to use this to argue that *khamr* is exclusively derived from grapes. Abū Muḥammad said: “All of this evidence opposes their position, not supports it. For Ibn ʿUmar and Ibn ʿAbbās affirmed that every intoxicant is forbidden—contrary to their claim. As for the report involving ʿAbd al-Raḥmān, Abū Sirwaʿah, and ʿAmr ibn al-ʿĀṣ, it contains nothing they can validly rely upon.”

L17321–17322 It is possible that the two of them drank grape juice assuming it would not intoxicate, yet became intoxicated—with nothing to negate this. Thus, they have no remaining argument except to claim: “Khamr is none other than grape juice, and whatever is besides it is not khamr”—a stance that holds no benefit for them even if valid, once the prohibition of every intoxicant—

عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ: لَقَدْ حُرِّمَتْ الْخَمْرُ وَمَا بِالْمَدِينَةِ مِنْهَا شَيْءٌ. وَآخَرُ: مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عَقِيلٍ عَنْ مَعْقِلٍ أَنَّ هَمَّامَ بْنَ مُنَبِّهٍ أَخْبَرَهُ أَنَّ ابْنَ عُمَرَ قَالَ لَهُ: أَمَّا الْخَمْرُ فَحَرَامٌ لَا سَبِيلَ إلَيْهَا، وَأَمَّا مَا سِوَاهَا مِنْ الْأَشْرِبَةِ فَكُلُّ مُسْكِرٍ حَرَامٌ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: شَرِبَ أَخِي عَبْدُ الرَّحْمَنِ بْنُ عُمَرَ بْنِ الْخَطَّابِ وَشَرِبَ مَعَهُ أَبُو سِرْوَعَةَ بْنُ عُقْبَةَ بْنِ الْحَارِثِ بِمِصْرَ فِي خِلَافَةِ عُمَرَ فَسَكِرَا فَلَمَّا أَصْبَحَا انْطَلَقَا إلَى عَمْرِو بْنِ الْعَاصِ أَمِيرِ مِصْرَ فَقَالَا لَهُ: طَهِّرْنَا فَإِنَّا قَدْ سَكِرْنَا مِنْ شَرَابٍ شَرِبْنَاهُ، فَجَلَدَهُمَا عَمْرُو بْنُ الْعَاصِ، قَالُوا: فَهَذَا عَبْدُ اللَّهِ قَدْ فَرَّقَ بَيْنَ الْخَمْرِ وَبَيْنَ سَائِرِ الْأَشْرِبَةِ الْمُسْكِرَةِ فَلَمْ يَجْعَلْهَا خَمْرًا، وَهَذَا أَخُوهُ عَبْدُ الرَّحْمَنِ - وَلَهُ صُحْبَةٌ - وَأَبُو سِرْوَعَةَ - وَلَهُ صُحْبَةٌ - وَعَمْرُو بْنُ الْعَاصِ رَأَوْا الْحَدَّ فِي السُّكْرِ مِنْ شَرَابٍ شَرِبَاهُ، وَصَحَّ عَنْ ابْنِ عَبَّاسٍ مَا قَدَّمْنَا قَبْلُ: حُرِّمَتْ الْخَمْرُ بِعَيْنِهَا قَلِيلُهَا وَكَثِيرُهَا وَالْمُسْكِرُ مِنْ كُلِّ شَرَابٍ. فَفَرَّقُوا كُلُّهُمْ بَيْنَ الْخَمْرِ وَبَيْنَ سَائِرِ الْأَشْرِبَةِ الْمُسْكِرَةِ فَلَمْ يَرَوْهَا خَمْرًا، وَرَامُوا بِهَذَا أَنْ يُثْبِتُوا أَنَّ الْخَمْرَ لَيْسَتْ إلَّا مِنْ الْعِنَبِ فَقَطْ؟ قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ هَذَا عَلَيْهِمْ لَا لَهُمْ، لِأَنَّ ابْنَ عُمَرَ، وَابْنَ عَبَّاسٍ قَدْ أَثْبَتَا أَنَّ كُلَّ مُسْكِرٍ حَرَامٌ - وَهَذَا خِلَافُ قَوْلِهِمْ - وَلَيْسَ فِي خَبَرِ عَبْدِ الرَّحْمَنِ، وَأَبِي سِرْوَعَةَ، وَعَمْرِو بْنِ الْعَاصِ شَيْءٌ يُمْكِنُ أَنْ يَتَعَلَّقُوا بِهِ.

وَقَدْ يُمْكِنُ أَنْ يَكُونَا شَرِبَا عَصِيرَ عِنَبٍ ظَنًّا أَنَّهُ لَا يُسْكِرُ فَسَكِرَا - وَلَيْسَ فِيهِ شَيْءٌ يَدْفَعُ هَذَا، فَلَمْ يَبْقَ لَهُمْ مُتَعَلَّقٌ إلَّا أَنْ يَقُولُوا: إنَّ الْخَمْرَ هِيَ عَصِيرُ الْعِنَبِ فَقَطْ وَمَا سِوَاهَا فَلَيْسَ خَمْرًا - فَهَذَا مَكَانٌ لَا مَنْفَعَةَ لَهُمْ فِيهِ لَوْ صَحَّ لَهُمْ إذَا ثَبَتَ تَحْرِيمُ كُلِّ مُسْكِرٍ قَلَّ

be it small or large—is established. Here, we dispute them not merely regarding terminology. Since nothing remains but this claim, we present them with evidence from the Companions—may Allah, Exalted is He, be pleased with them—that every intoxicant is khamr. Moreover, from Ibn Umar himself, through a more authentic chain than this narration, it is established that khamr also comes from non-grape sources: as we were narrated through Ibn Abi Shaybah via Muhammad ibn Bishr, from Abdul-Aziz al-Darawardi, from Nafi', from Ibn Umar, who said: "The prohibition of khamr was revealed in the Quran while there were five intoxicating drinks in Medina, all called khamr—none being grape-derived khamr." This clarifies their report and invalidates their reliance on it. When we present this to them, the dispute is validated, obligating adherence to the Quran and Sunnah as Allah, Exalted is He, has mandated upon us if we are believers. They also assert it is authentically reported from Ibrahim al-Nakha'i—the jurist—that intoxication is prohibited, that grape juice becomes forbidden if it intoxicates, and that all intoxicating fermented drinks (nabīdh) are permissible.

أَوْ كَثُرَ، وَفِي هَذَا نَازَعْنَاهُمْ لَا فِي التَّسْمِيَةِ فَقَطْ، فَإِذْ لَمْ يَبْقَ إِلَّا هَذَا فَقَطْ فَنَحْنُ نُوجِدُهُمْ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّ كُلَّ مُسْكِرٍ خَمْرٌ، نَعَمْ، وَعَنْ ابْنِ عُمَرَ نَفْسِهِ بِأَصَحَّ مِنْ هَذِهِ الرِّوَايَةِ مِنْ طَرِيقٍ ثَابِتَةٍ أَنَّ الْخَمْرَ مِنْ غَيْرِ الْعِنَبِ أَيْضًا -: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ مُحَمَّدِ بْنِ بِشْرٍ نا عَبْدُ الْعَزِيزِ هُوَ الدَّرَاوَرْدِيُّ - حَدَّثَنِي نَافِعٌ عَنْ ابْنِ عُمَرَ قَالَ: نَزَلَ تَحْرِيمُ الْخَمْرِ وَإِنَّ بِالْمَدِينَةِ خَمْسَةَ أَشْرِبَةٍ كُلُّهَا يَدْعُونَهَا الْخَمْرَ مَا فِيهَا خَمْرُ الْعِنَبِ، فَهَذَا بَيَانُ خَبَرِهِمْ بِمَا يُبْطِلُ تَعَلُّقَهُمْ بِهِ، فَإِذَا أَوْجَدْنَاهُمْ هَذَا فَقَدْ صَحَّ التَّنَازُعُ، وَوَجَبَ الرَّدُّ لِلْقُرْآنِ وَالسُّنَّةِ كَمَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا إنْ كُنَّا مُؤْمِنِينَ. وَقَالُوا أَيْضًا: قَدْ صَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ تَحْرِيمُ السُّكْرِ وَعَصِيرُ الْعِنَبِ إذَا أَسْكَرَ وَإِبَاحَةُ كُلِّ مَا أَسْكَرَ مِنْ الْأَنْبِذَةِ.

From the narration chain of Ibn Abī Shaybah through Muḥammad ibn Fuḍayl through Yazīd ibn Abī Ziyād, who said: I saw ʿAbd al-Raḥmān ibn Abī Laylā drinking nabīdh from the jarr (a large clay vessel) after its boiling subsided—Yazīd ibn Abī Ziyād is weak. And from the narration chain of Ibn Abī Shaybah through Abī Khālid al-Aḥmar through al-Aʿmash through al-Ḥakam through Shurayh that he used to drink strong ṭilā' (a date-based fermented drink)—this suggests it was a very potent mixture—for had it been forbidden, would this have remained concealed from earlier generations? Abū Muḥammad said: This is deeply invalid, for they uphold placing hands on the knees during prayer, yet this was entirely unknown to Ibn Masʿūd. They also claim that a person in major impurity may perform dry ablution if water is unavailable, yet this was unknown to ʿUmar ibn al-Khaṭṭāb and Ibn Masʿūd. The Prophet's saying—peace and blessings be upon him—"Leaders are from Quraysh" remained unknown to the Anṣār until they were reminded of it—the matter here allows flexibility, for not every companion encompasses all sunnahs. They further said: Authentic consensus exists on declaring as unbelievers those who deny the prohibition of wine, and one who does not... Did He not prohibit other intoxicating beverages (nabīdh) besides it? Abū

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وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ مُحَمَّدِ بْنِ فُضَيْلٍ عَنْ يَزِيدَ بْنِ أَبِي زِيَادٍ قَالَ: رَأَيْت عَبْدَ الرَّحْمَنِ بْنَ أَبِي لَيْلَى يَشْرَبُ نَبِيذَ الْجُرِّ بَعْدَ أَنْ يَسْكُنَ غَلَيَانُهُ - يَزِيدُ بْنُ أَبِي زِيَادٍ ضَعِيفٌ. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي خَالِدٍ الْأَحْمَرِ عَنْ الْأَعْمَشِ عَنْ الْحَكَمِ عَنْ شُرَيْحٍ أَنَّهُ كَانَ يَشْرَبُ الطِّلَاءَ الشَّدِيدَ - وَهَذَا يَخْرُجُ عَلَى أَنَّهُ لَفِيفٌ جِدًّا - فَلَوْ كَانَتْ حَرَامًا مَا خَفِيَ ذَلِكَ عَلَى مَنْ سَلَفَ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا فِي غَايَةِ الْفَسَادِ، لِأَنَّهُمْ يَقُولُونَ بِوَضْعِ الْأَيْدِي عَلَى الرُّكَبِ فِي الصَّلَاةِ، وَقَدْ خَفِيَ ذَلِكَ عَلَى ابْنِ مَسْعُودٍ [أَبَدًا] . وَيَقُولُونَ: بِأَنْ يَتَيَمَّمَ الْجُنُبُ إذَا لَمْ يَجِدْ الْمَاءَ، وَقَدْ خَفِيَ ذَلِكَ عَلَى عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ مَسْعُودٍ. وَقَدْ خَفِيَ عَلَى الْأَنْصَارِ قَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْأَئِمَّةُ مِنْ قُرَيْشٍ» حَتَّى ذُكِّرُوا بِهِ - وَالْأَمْرُ هُنَا يَتَّسِعُ، وَلَيْسَ كُلُّ صَاحِبٍ يُحِيطُ بِجَمِيعِ السُّنَنِ. وَقَالُوا أَيْضًا: قَدْ صَحَّ الْإِجْمَاعُ عَلَى تَكْفِيرِ مَنْ لَمْ يَقُلْ بِتَحْرِيمِ الْخَمْرِ، وَلَا يَكْفُرُ مَنْ لَمْ

يُحَرِّمْ مَا سِوَاهَا مِنْ الْأَنْبِذَةِ الْمُسْكِرَةِ؟ قَالَ أَبُو مُحَمَّد: وَهَذَا لَا شَيْءَ لِأَنَّهُ لَوْ وَجَدْنَا إنْسَانًا غَابَ عَنْهُ تَحْرِيمُ الْخَمْرِ فَلَمْ يَبْلُغْهُ لَمَا كَفَّرْنَاهُ فِي إحْلَالِهَا حَتَّى يَبْلُغَ إلَيْهِ الْأَمْرُ، فَحِينَئِذٍ إنْ أَصَرَّ عَلَى اسْتِحْلَالِ مُخَالَفَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَفَرَ، لَا قَبْلَ ذَلِكَ. وَكَذَلِكَ مُسْتَحِلُّ النَّبِيذِ الْمُسْكِرِ وَكُلَّ مَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَحْرِيمُهُ لَا يَكْفُرُ مِنْ جَهْلِ ذَلِكَ وَلَمْ تَقُمْ عَلَيْهِ الْحُجَّةُ بِهِ - فَإِذَا ثَبَتَ ذَلِكَ عِنْدَهُ، وَصَحَّ لَدَيْهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَرَّمَ ذَلِكَ فَأَصَرَّ عَلَى اسْتِحْلَالِ مُخَالَفَةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ كَافِرٌ وَلَا بُدَّ، وَلَا يَكْفُرُ جَاهِلٌ أَبَدًا حَتَّى يَبْلُغَهُ الْحُكْمُ مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِذَا بَلَغَهُ وَثَبَتَ عِنْدَهُ فَحِينَئِذٍ يَكْفُرُ إنْ اعْتَقَدَ مُخَالَفَتَهُ - عَلَيْهِ السَّلَامُ -، وَيَفْسُقُ إنْ عَمِلَ بِخِلَافِهِ غَيْرَ مُعْتَقِدٍ لِجَوَازِ ذَلِكَ. قَالَ اللَّهُ تَعَالَى: {فَلا وَرَبِّكَ لا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا} [النساء: ٦٥] وَقَالَ تَعَالَى: {لأُنْذِرَكُمْ بِهِ وَمَنْ بَلَغَ} [الأنعام: ١٩] . قَالَ أَبُو مُحَمَّد: فَسَقَطَ كُلُّ مَا شَغَبَ بِهِ أَهْلُ هَذِهِ الْمَقَالَةِ، وَأَيْضًا: فَإِنَّهُ لَيْسَ فِي شَيْءٍ مِمَّا أَوْرَدُوا كُلِّهِ أَوَّلُهُ عَنْ آخِرِهِ وَلَا لَفْظَةٌ وَاحِدَةٌ مُوَافِقَةٌ لِقَوْلِهِمْ: أَنَّ الْخَمْرَ الْمُحَرَّمَةَ لَيْسَتْ إلَّا عَصِيرَ الْعِنَبِ فَقَطْ دُونَ نَقِيعِ الزَّبِيبِ، وَكَذَلِكَ أَيْضًا لَيْسَ فِي شَيْءٍ مِنْهُ وَلَا كَلِمَةٌ وَاحِدَةٌ مُوَافِقَةٌ لِقَوْلِ مَنْ قَالَ: إنَّ الْخَمْرَ الْمُحَرَّمَةَ لَيْسَتْ إلَّا نَقِيعَ الزَّبِيبِ الَّذِي لَمْ يُطْبَخْ، وَعَصِيرَ الْعِنَبِ إذَا أَسْكَرَ. فَصَحَّ أَنَّهُمَا قَوْلَانِ فَاسِدَانِ مُبْتَدَعَانِ خَارِجَانِ عَنْ كُلِّ أَثَرٍ ثَبَتَ أَوْ لَمْ يَثْبُتْ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَالْقَوْلُ الْخَامِسُ: هُوَ الَّذِي رُوِيَ عَنْ أَبِي حَنِيفَةَ عَنْ طَرِيقِ مُحَمَّدِ بْنِ رُسْتُمَ عَنْ مُحَمَّدِ بْنِ الْحَسَنِ عَنْ أَبِي يُوسُفَ عَنْ أَبِي حَنِيفَةَ - وَهُوَ الَّذِي يَنْصُرُهُ الْمُتَأَخِّرُونَ مِنْ مُقَلِّدِيهِ -

Muḥammad said: This holds no validity, for if we encountered someone unaware of wine's prohibition—to whom the ruling had not been conveyed—we would not deem him a disbeliever for permitting it until the command reached him. Only then, if he persists in deeming it permissible to oppose the Messenger of Allah—peace and blessings of Allah be upon him—would he disbelieve, not before that. Similarly, one who deems permissible intoxicating nabīdh or anything authentically prohibited by the Prophet—peace and blessings of Allah be upon him—does not disbelieve due to ignorance before the proof is established against him. Once this becomes certain to him and he confirms that the Messenger of Allah—peace and blessings of Allah be upon him—prohibited it, yet persists in deeming it permissible to oppose the Prophet—peace and blessings of Allah be upon him—he is necessarily a disbeliever. An ignorant person never disbelieves until the Prophet's ruling—peace and blessings of Allah be upon him—reaches him. When it reaches him and is confirmed, he disbelieves if he holds the belief of opposing him—peace be upon him—and becomes sinful if he acts contrary to it without believing in its permissibility. Allah the Exalted said: "But no, by your Lord, they will not believe until they make you judge in all disputes between them, find no reluctance in their hearts regarding your judgment, and submit with full submission" [4:65]. He also said: "That I may warn you thereby and whoever it reaches" [6:19]. Abū Muḥammad said: Thus every argument raised by proponents of this view collapses. Moreover, none of their cited evidence—from beginning to end—contains a single word supporting their claim that prohibited wine is exclusively grape juice to the exclusion of raisin infusion. Likewise, no word in their evidence aligns with those who claim prohibited wine refers only to unboiled raisin infusion and intoxicating grape juice. Thus both views are invalidated as innovated falsehoods, detached from any established precedent—whether verified or unverified. Success is attained only through Allah the Exalted.[5]

L17326–17328 The fifth opinion is that which is narrated from Abū Ḥanīfah through the chain of Muḥammad ibn Rustam from Muḥammad ibn al-Ḥasan from Abū

[5]**Qur'an references (L17323):** Qur'an 4:65 (An-Nisa); Qur'an 6:19 (Al-An'am).

Yūsuf from Abū Ḥanīfah—and it is the opinion supported by later jurists among his followers (by taqlīd)—that this interpretation is not authentically preserved from Abū Ḥanīfah but rather stems from their debased opinions. What is reliably transmitted from Abū Ḥanīfah is what Muḥammad ibn al-Ḥasan mentioned in *al-Jāmiʿ al-Ṣaghīr* within his discourse on manumission, situated between his discussion of reprehensible acts and that of pledges. Muḥammad said: "I, Yaʿqūb, narrate from Abū Ḥanīfah, who said: 'Wine, whether small or large in quantity, is forbidden in the Book of Allah. Intoxication, according to our school, is prohibited and reprehensible, and the infusion..." In our view, raisin wine when it becomes potent and ferments is prohibited (ḥarām) and reprehensible (makrūh). As for ṭilā' (date wine), if more than two-thirds is reduced through boiling and one-third remains, it is reprehensible. Other beverages are permissible—there is no objection to them. He [Abū Ḥanīfa] deemed the dregs of wine (durdiyy al-khamr) reprehensible for drinking and for women to comb their hair with. One who drinks it is not subjected to ḥadd punishment unless intoxicated; if intoxicated, the ḥadd is enforced. This is the explicit wording of their scholars. The dregs of wine refer to the sediment (ʿakar) that congeals at the bottom of the vat (dann), which is undeniably wine. Consider the irrationality of this obsession! As for the narration of Muḥammad ibn Rustam from Muḥammad ibn al-Ḥasan: Muḥammad said, "Abū Ḥanīfa stated: All fermented drinks are permissible except four: wine, cooked beverages if two-thirds have not been reduced and one-third remains, date infusion (for it is intoxicating), and raisin infusion." There is no disagreement reported from Abū Ḥanīfa that date-syrup infusion (dūshāt) is permissible in his view even if intoxicating, as is grape-syrup infusion (rubb) even if intoxicating—dūshāt being derived from dates and rubb from grapes. Abū Yūsuf said: "Any drink among fermented beverages that increases in potency beyond its initial state is reprehensible; otherwise, its sale is permitted. Its permissible duration is ten days. If it remains beyond ten days, it is reprehensible. If within ten days or less, there is no harm." This is the opinion of Muḥammad ibn al-Ḥasan. These are their statements in the major source. Later, Abū Yūsuf reverted to Abū Ḥanīfa's view. Muḥammad ibn al-Ḥasan said: "What intoxicates in large quantities—other than wine—I deem reprehensible but do not pro-

عَلَى أَنَّ ذَلِكَ التَّفْسِيرَ لَا يُحْفَظُ عَنْ أَبِي حَنِيفَةَ وَإِنَّمَا هُوَ مِنْ آرَائِهِمْ الْخَبِيثَةِ - وَالْمَحْفُوظُ عَنْ أَبِي حَنِيفَةَ هُوَ مَا ذَكَرَهُ مُحَمَّدُ بْنُ الْحَسَنِ فِي الْجَامِعِ الصَّغِيرِ فِي كَلَامِهِ فِي الْعِتْقِ الَّذِي بَيْنَ كَلَامِهِ فِي الْكَرَاهَةِ وَكَلَامِهِ فِي الرَّهْنِ قَالَ مُحَمَّدٌ: أَنَا يَعْقُوبُ عَنْ أَبِي حَنِيفَةَ قَالَ: الْخَمْرُ قَلِيلُهَا وَكَثِيرُهَا حَرَامٌ فِي كِتَابِ اللَّهِ، وَالسُّكْرُ عِنْدَنَا حَرَامٌ مَكْرُوهٌ وَنَقِيعُ الزَّبِيبِ عِنْدَنَا إذَا اشْتَدَّ وَغَلَى عِنْدَنَا حَرَامٌ مَكْرُوهٌ - وَالطِّلَاءُ مَا زَادَ عَلَى مَا ذَهَبَ ثُلُثَاهُ وَبَقِيَ ثُلُثُهُ فَهُوَ مَكْرُوهٌ، وَمَا سِوَى ذَلِكَ مِنْ الْأَشْرِبَةِ فَلَا بَأْسَ بِهِ - وَكَانَ يَكْرَهُ دُرْدِيَّ الْخَمْرِ أَنْ يُشْرَبَ وَأَنْ تَمْتَشِطَ بِهِ الْمَرْأَةُ وَلَا يُحَدُّ مَنْ شَرِبَهُ إلَّا أَنْ يَسْكَرَ فَإِنْ سَكِرَ حُدَّ. هَذَا نَصُّ كَلَامِهِمْ هُنَالِكَ، وَدُرْدِيُّ الْخَمْرِ هُوَ الْعَكَرُ الَّذِي يُعْقَدُ مِنْهَا فِي قَاعِ الدَّنِّ. وَهُوَ خَمْرٌ بِلَا شَكٍّ، فَاعْجَبُوا لِهَذَا الْهَوَسِ وَأَمَّا رِوَايَةُ مُحَمَّدِ بْنِ رُسْتُمَ عَنْ مُحَمَّدِ بْنِ الْحَسَنِ فَإِنَّمَا هِيَ -: قَالَ مُحَمَّدٌ: قَالَ أَبُو حَنِيفَةَ: الْأَنْبِذَةُ كُلُّهَا حَلَالٌ إلَّا أَرْبَعَةُ أَشْيَاءَ: الْخَمْرُ، وَالْمَطْبُوخُ إذَا لَمْ يَذْهَبْ ثُلُثَاهُ وَبَقِيَ ثُلُثُهُ، وَنَقِيعُ التَّمْرِ فَإِنَّهُ السَّكَرُ، وَنَقِيعُ الزَّبِيبِ. وَلَا خِلَافَ عَنْ أَبِي حَنِيفَةَ فِي أَنَّ نَقِيعَ الدُّوشَاتِ عِنْدَهُ حَلَالٌ وَإِنْ أَسْكَرَ، وَكَذَلِكَ نَقِيعُ الرُّبِّ وَإِنْ أَسْكَرَ -: وَالدُّوشَاتُ مِنْ التَّمْرِ، وَالرُّبُّ مِنْ الْعِنَبِ. وَقَالَ أَبُو يُوسُفَ: كُلُّ شَرَابٍ مِنْ الْأَنْبِذَةِ يَزْدَادُ جَوْدَةً عَلَى التَّرْكِ فَهُوَ مَكْرُوهٌ وَإِلَّا أُجِيزَ بَيْعُهُ وَوَقْتُهُ عَشَرَةُ أَيَّامٍ، فَإِذَا بَقِيَ أَكْثَرُ مِنْ عَشَرَةِ أَيَّامٍ فَهُوَ مَكْرُوهٌ، فَإِنْ كَانَ فِي عَشَرَةِ أَيَّامٍ فَأَقَلَّ فَلَا بَأْسَ، بِهِ - وَهُوَ قَوْلُ مُحَمَّدِ بْنِ الْحَسَنِ. هَذَا كَلَامُهُمْ فِي الْأَصْلِ الْكَبِيرِ، ثُمَّ رَجَعَ أَبُو يُوسُفَ إلَى قَوْلِ أَبِي حَنِيفَةَ؛. وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: مَا أَسْكَرَ كَثِيرُهُ مِمَّا عَدَا الْخَمْرَ أَكْرَهُهُ وَلَا أُحَرِّمُهُ. فَإِنْ صَلَّى إنْسَانٌ وَفِي ثَوْبِهِ مِنْهُ أَكْثَرُ مِنْ قَدْرِ الدِّرْهَمِ الْبَغْلِيِّ بَطَلَتْ صَلَاتُهُ وَأَعَادَهَا أَبَدًا فَاعْجَبُوا لِهَذِهِ السَّخَافَاتِ لَئِنْ كَانَ تُعَادُ مِنْهُ الصَّلَاةُ أَبَدًا فَهُوَ نَجِسٌ، فَكَيْفَ يُبِيحُ شُرْبَ النَّجِسِ؟

hibit. If someone prays while wearing a garment containing more than a Baghli dirham's worth (a specific measure) of it, his prayer is invalidated and must be repeated perpetually." Reflect on these absurdities! If prayer must be repeated perpetually due to it, then it is ritually impure—how can they permit consuming impurity? If it is permissible, why must prayer be repeated for something permissible? We seek refuge in Allah from misguidance! Abū Muḥammad said: The fundamental flaw in these rulings is that none align with the Qur'ān, the Sunnah, weak narrations, the statements of the Companions (may Allah be pleased with them), the Followers, or any of Allah's creation before Abū Ḥanīfa—nor anyone before Abū Yūsuf regarding his ten-day stipulation. How grave is the calamity of these people, who legislate rulings of obligation, prohibition, and permissibility based on personal opinion—employing the most absurd reasoning utterly divorced from rationality!

وَلَئِنْ كَانَ حَلَالًا فَلِمَ تُعَادُ الصَّلَاةُ مِنْ الْحَلَالِ؟ وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ. قَالَ أَبُو مُحَمَّد: فَأَوَّلُ فَسَادِ هَذِهِ الْأَقْوَالِ أَنَّهَا كُلُّهَا أَقْوَالٌ لَيْسَ فِي الْقُرْآنِ شَيْءٌ يُوَافِقُهَا وَلَا فِي شَيْءٍ مِنْ السُّنَنِ، وَلَا فِي شَيْءٍ مِنْ الرِّوَايَاتِ الضَّعِيفَةِ، وَلَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا صَحِيحٍ وَلَا غَيْرِ صَحِيحٍ، وَلَا عَنْ أَحَدٍ مِنْ التَّابِعِينَ، وَلَا عَنْ أَحَدٍ مِنْ خَلْقِ اللَّهِ تَعَالَى قَبْلَ أَبِي حَنِيفَةَ، وَلَا أَحَدٍ قَبْلَ أَبِي يُوسُفَ فِي تَحْدِيدِهِ عَشَرَةَ الْأَيَّامِ فَيَا لِعَظِيمِ مُصِيبَةِ هَؤُلَاءِ الْقَوْمِ فِي أَنْفُسِهِمْ إذْ يُشَرِّعُونَ الشَّرَائِعَ فِي الْإِيجَابِ وَالتَّحْرِيمِ وَالتَّحْلِيلِ مِنْ ذَوَاتِ أَنْفُسِهِمْ ثُمَّ بِأَسْخَفِ قَوْلٍ وَأَبْعَدِهِ عَنْ الْمَعْقُولِ؟

L17329–17330 Ali said: "There remains from what the followers of Abu Hanifah have embellished certain matters which we shall present, God willing, and mention their invalidity with the help of God Almighty, then follow with the established Sunnah in this matter from the Prophet—peace and blessings be upon him—and his Companions—may Allah be pleased with them."

Ali said: They argued: Allah Almighty stated: {From the fruits of palm trees and grapevines, you take intoxicants and goodly provision} [16:67]. And He said: {Eat and drink} [2:60]. This necessitates the permissibility of all foods and drinks, so nothing becomes unlawful after this except what is unanimously agreed upon or conveyed through mass-transmitted reports, as it constitutes an addition to what is in the Quran.

Abu Muhammad said: Herein they began with contradiction. Neither we nor any Muslim ever differed regarding the fact that wine, pork, and carrion were not prohibited until their prohibition was revealed. When the prohibition was revealed, it outlawed what it specified. Yet they were the first to prohibit date nabīdh based on a solitary report lacking consensus or mass transmission.

قَالَ عَلِيٌّ: وَبَقِيَ مِمَّا مَوَّهَ بِهِ مُقَلِّدُو أَبِي حَنِيفَةَ أَشْيَاءَ نُورِدُهَا إنْ شَاءَ اللَّهُ تَعَالَى وَنَذْكُرُ بِعَوْنِ اللَّهِ تَعَالَى فَسَادَهَا، ثُمَّ نُعَقِّبُ بِالسُّنَنِ الثَّابِتَةِ فِي هَذِهِ الْمَسْأَلَةِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَصْحَابِهِ - رَضِيَ اللَّهُ عَنْهُمْ -. قَالَ عَلِيٌّ: قَالُوا: قَالَ اللَّهُ تَعَالَى: {وَمِنْ ثَمَرَاتِ النَّخِيلِ وَالأَعْنَابِ تَتَّخِذُونَ مِنْهُ سَكَرًا وَرِزْقًا حَسَنًا} [النحل: ٦٧] . وَقَالَ تَعَالَى: {كُلُوا وَاشْرَبُوا} [البقرة: ٦٠] . فَاقْتَضَى هَذَا إبَاحَةَ كُلِّ مَأْكُولٍ وَمَشْرُوبٍ فَلَا يَحْرُمُ بَعْدَ هَذَا إلَّا مَا أُجْمِعَ عَلَيْهِ أَوْ جَاءَ مِنْ مَجِيءِ التَّوَاتُرِ، لِأَنَّهُ زَائِدٌ عَلَى مَا فِي الْقُرْآنِ. قَالَ أَبُو مُحَمَّد: مِنْ هُنَا بَدَءُوا بِالتَّنَاقُضِ وَمَا خَالَفَنَاهُمْ قَطُّ لَا نَحْنُ وَلَا أَحَدٌ مِنْ الْمُسْلِمِينَ فِي أَنَّهُ لَمْ يُحَرِّمْ الْخَمْرَ، وَلَا الْخِنْزِيرَ، وَلَا الْمَيْتَةَ حَتَّى نَزَلَ تَحْرِيمُ كُلِّ ذَلِكَ، فَلَمَّا نَزَلَ التَّحْرِيمُ حَرَّمَ مَا نَزَلَ تَحْرِيمُهُ وَهُمْ أَوَّلُ مَنْ حَرَّمَ نَبِيذَ تَمْرِ النَّخِيلِ بِخَبَرٍ مِنْ أَخْبَارِ الْآحَادِ غَيْرِ مُجْمَعٍ عَلَيْهِ وَلَا مَنْقُولٍ نَقْلَ التَّوَاتُرِ. ثُمَّ قَالُوا: صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْخَمْرُ مِنْ هَاتَيْنِ الشَّجَرَتَيْنِ النَّخْلَةِ وَالْعِنَبَةِ» فَالْخَمْرُ لَا تَكُونُ إلَّا مِنْهُمَا هَذَا كُلُّ

مَا مَوَّهُوا بِهِ، وَلَا حُجَّةَ لَهُمْ فِيهِ بَلْ هُوَ حُجَّةٌ عَلَيْهِمْ قَاطِعَةٌ. وَهَذَا خَبَرٌ رُوِّينَاهُ مِنْ طُرُقٍ كُلُّهَا تَرْجِعُ إِلَى الْأَوْزَاعِيِّ، وَيَحْيَى بْنِ أَبِي كَثِيرٍ قَالَا جَمِيعًا: نا أَبُو كَثِيرٍ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْخَمْرُ مِنْ هَاتَيْنِ الشَّجَرَتَيْنِ النَّخْلَةِ وَالْعِنَبَةِ» . أَبُو كَثِيرٍ اسْمُهُ يَزِيدُ بْنُ عَبْدِ الرَّحْمَنِ. قَالَ عَلِيٌّ: فَافْتَرَقُوا فِي خِلَافِهِ عَلَى وَجْهَيْنِ -: فَأَمَّا الطَّحَاوِيُّ فَإِنَّهُ قَالَ: لَيْسَ ذِكْرُهُ - عَلَيْهِ السَّلَامُ - النَّخْلَةَ مَعَ الْعِنَبَةِ بِمُوجِبٍ أَنْ يَكُونَ الْخَمْرُ مِنَ النَّخْلَةِ بَلِ الْخَمْرُ مِنَ الْعِنَبَةِ فَقَطْ قَالَ: وَهَذَا مِثْلُ قَوْلِ اللَّهِ تَعَالَى: {مَرَجَ الْبَحْرَيْنِ يَلْتَقِيَانِ} [الرحمن: ١٩] {بَيْنَهُمَا بَرْزَخٌ لا يَبْغِيَانِ} [الرحمن: ٢٠] {فَبِأَيِّ آلاءِ رَبِّكُمَا تُكَذِّبَانِ} [الرحمن: ٢١] {يَخْرُجُ مِنْهُمَا اللُّؤْلُؤُ وَالْمَرْجَانُ} [الرحمن: ٢٢] .

قَالَ: فَإِنَّمَا يَخْرُجُ اللُّؤْلُؤُ وَالْمَرْجَانُ مِنْ أَحَدِهِمَا -: قَالَ: وَمِثْلُ قَوْلِه تَعَالَى: {يَا مَعْشَرَ الْجِنِّ وَالإِنْسِ أَلَمْ يَأْتِكُمْ رُسُلٌ مِنْكُمْ} [الأنعام: ١٣٠] قَالَ: وَإِنَّمَا الرُّسُلُ مِنَ الْإِنْسِ لَا مِنَ الْجِنِّ. قَالَ أَبُو مُحَمَّدٍ: صَدَقَ اللَّهُ وَكَذَبَ الطَّحَاوِيُّ، وَكَذَبَ مَنْ أَخْبَرَهُ بِمَا ذُكِرَ بَلْ اللُّؤْلُؤُ وَالْمَرْجَانُ خَارِجَانِ مِنَ الْبَحْرَيْنِ اللَّذَيْنِ بَيْنَهُمَا الْبَرْزَخُ فَلَا يَبْغِيَانِ، وَلَقَدْ جَاءَتِ الْجِنَّ رُسُلٌ مِنْهُمْ بِيَقِينٍ، لِأَنَّهُمْ بِنَصِّ الْقُرْآنِ مُتَعَبَّدُونَ مَوْعُودُونَ بِالْجَنَّةِ وَالنَّارِ. وَقَدْ صَحَّ مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا قُتَيْبَةُ نا إِسْمَاعِيلُ هُوَ ابْنُ جَعْفَرٍ - عَنِ الْعَلَاءِ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ - عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «فُضِّلْتُ عَلَى الْأَنْبِيَاءِ بِسِتٍّ» فَذَكَرَ مِنْهَا «وَأُرْسِلْتُ إِلَى الْخَلْقِ كَافَّةً» . وَمِنْ طَرِيقِ

They then claimed: It is authentically reported from the Prophet—peace and blessings be upon him—that he said: 'Intoxicants come from these two trees: the date palm and the grapevine.' Thus, intoxicants cannot originate except from them. This is all they have used to embellish their arguments, containing no proof for them—rather, it decisively refutes them.

This report we narrated through chains all converging on Al-Awzāʿī and Yaḥyā ibn Abī Kathīr, who both said: We narrate from Abū Kathīr that he heard Abū Hurayrah say: The Messenger of Allah—peace and blessings be upon him—said: 'Intoxicants come from these two trees: the date palm and the grapevine.' Abū Kathīr's name is Yazīd ibn ʿAbd al-Raḥmān.

Ali said: They diverged in opposing it into two aspects: As for Al-Ṭaḥāwī, he asserted: The Prophet's mention of the date palm alongside the grapevine—peace be upon him—does not necessitate that intoxicants come from the date palm. Rather, intoxicants come solely from the grapevine. He said: This resembles Allah's statement: {He released the two seas meeting side by side} [55:19], {Between them is a barrier they do not transgress} [55:20], {So which of your Lord's favors will you deny?} [55:21], {From them both emerge pearls and coral} [55:22]."[6]

L17331–17332 He said: "Indeed, pearls and coral emerge from one of the two." He said: "Similar to the words of Allah the Exalted: {O company of jinn and mankind, did there not come to you messengers from among you?} [Al-An'am 6:130]."

[6] **Qur'an references (L17330):** Qur'an 16:67 (An-Nahl); Qur'an 55:19 (Ar-Rahman); Qur'an 55:20 (Ar-Rahman); Qur'an 55:13 (Ar-Rahman); Qur'an 55:16 (Ar-Rahman); Qur'an 55:18 (Ar-Rahman); Qur'an 55:21 (Ar-Rahman); Qur'an 55:23 (Ar-Rahman); Qur'an 55:25 (Ar-Rahman); Qur'an 55:28 (Ar-Rahman); Qur'an 55:30 (Ar-Rahman); Qur'an 55:32 (Ar-Rahman); Qur'an 55:34 (Ar-Rahman); Qur'an 55:36 (Ar-Rahman); Qur'an 55:38 (Ar-Rahman); Qur'an 55:40 (Ar-Rahman); Qur'an 55:42 (Ar-Rahman); Qur'an 55:45 (Ar-Rahman); Qur'an 55:47 (Ar-Rahman); Qur'an 55:49 (Ar-Rahman); Qur'an 55:51 (Ar-Rahman); Qur'an 55:53 (Ar-Rahman); Qur'an 55:55 (Ar-Rahman); Qur'an 55:57 (Ar-Rahman); Qur'an 55:59 (Ar-Rahman); Qur'an 55:61 (Ar-Rahman); Qur'an 55:63 (Ar-Rahman); Qur'an 55:65 (Ar-Rahman); Qur'an 55:67 (Ar-Rahman); Qur'an 55:69 (Ar-Rahman); Qur'an 55:71 (Ar-Rahman); Qur'an 55:73 (Ar-Rahman); Qur'an 55:75 (Ar-Rahman); Qur'an 55:77 (Ar-Rahman); Qur'an 55:22 (Ar-Rahman); Qur'an 2:60 (Al-Baqarah).

He said: “But the messengers are from mankind, not from the jinn.” Abu Muhammad said: “Allah has spoken the truth, and Al-Tahawi has lied, and the one who informed him of what was mentioned has lied. Rather, pearls and coral emerge from the two seas between which is a barrier, so they do not overflow. Indeed, messengers came to the jinn from among themselves with certainty, because according to the explicit text of the Quran, they are obliged to worship and are promised Paradise and Hellfire. It has been authenticated what we have narrated through Muslim ibn Al-Hajjaj’s chain: Qutaybah reported to us, Isma’il ibn Ja’far reported to us, from Al-’Ala’ ibn ’Abdur-Rahman, from his father, from Abu Hurairah, that the Messenger of Allah - peace and blessings be upon him - said: ’I have been favored over the prophets with six things’ - among them he mentioned: ’And I have been sent to all creation.’” And through Al-Bukhari’s chain: Muhammad ibn Sinan Al-’Awfi reported to us, Hushaym reported to us, from Sayyar who said: Yazid ibn Suhayb Al-Faqir reported to us, Jabir ibn ’Abdullah reported to us, that the Messenger of Allah - peace and blessings be upon him and his family - said: “I have been granted five things never granted to anyone before me” - among them he mentioned: “Every prophet was sent exclusively to his people, but I have been sent to all people.”[7][8]

الْبُخَارِيِّ نا مُحَمَّدُ بْنُ سِنَانٍ الْعَوْفِيُّ نا هُشَيْمٌ أَنَا سَيَّارٌ نا يَزِيدُ هُوَ ابْنُ صُهَيْبٍ الْفَقِيرُ أَنَا جَابِرُ بْنُ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «أُعْطِيتُ خَمْسًا لَمْ يُعْطَهُنَّ أَحَدٌ قَبْلِي» فَذَكَرَ فِيهَا «وَكَانَ النَّبِيُّ يُبْعَثُ إِلَى قَوْمِهِ خَاصَّةً وَبُعِثْتُ إِلَى النَّاسِ عَامَّةً» .

L17333 And through the chain of al-Ḥajjāj ibn al-Minhāl—he informed us—Ḥammād ibn Salamah narrated from Thābit al-Bunānī and Ḥumayd, both from Anas, that the Messenger of Allah—peace and blessings be upon him—said: “I have been granted four things no prophet before me was granted: I was sent to all people, red and black”—and he mentioned the rest of the report. Thus, it has been established through mass-transmitted reports that the Messenger of Allah—peace and blessings be upon him—was uniquely sent to both jinn and mankind, and that no prophet preceding him was ever sent except exclusively to his own community. The Almighty said: “I did not create the jinn and mankind except to worship Me” (51:56), and “We never punish until We have sent a messenger” (17:15). Therefore, it is decisively established that since their creation, they have been commanded to worship Allah Almighty.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ وَحُمَيْدٍ كِلَيْهِمَا عَنْ أَنَسٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أُعْطِيتُ أَرْبَعًا لَمْ يُعْطَهَا نَبِيٌّ قَبْلِي، أُرْسِلْتُ إِلَى كُلِّ أَحْمَرَ وَأَسْوَدَ» وَذَكَرَ بَاقِيَ الْخَبَرِ. فَصَحَّ بِنَقْلِ التَّوَاتُرِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بُعِثَ وَحْدَهُ إِلَى الْجِنِّ وَالْإِنْسِ وَأَنَّهُ لَمْ يُبْعَثْ نَبِيٌّ قَبْلَهُ قَطُّ إِلَّا إِلَى قَوْمِهِ خَاصَّةً. وَقَالَ تَعَالَى: {وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلا لِيَعْبُدُونِ} [الذاريات: ٥٦] . وَقَالَ تَعَالَى: {وَمَا كُنَّا مُعَذِّبِينَ حَتَّى نَبْعَثَ رَسُولا} [الإسراء: ١٥] . فَصَحَّ يَقِينًا أَنَّهُمْ مُذْ خُلِقُوا مَأْمُورُونَ بِعِبَادَةِ اللَّهِ تَعَالَى. وَصَحَّ بِمَا ذَكَرْنَا مِنَ السُّنَنِ الْقَاطِعَةِ أَنَّهُ

[7] **Hadith references (L17332):** Sahih al-Bukhari 335; Mishkat al-Masabih 5747.
[8] **Qur’an references (L17332):** Qur’an 6:130 (Al-An’am).

It has also been confirmed by the definitive traditions we cited that no human prophet was sent to them before Muhammad—peace and blessings be upon him—and that the jinn are not a community belonging to any human being.[9]

L17334–17335 It was thus definitively established that prophets were indeed sent to them from among their own, and al-Ṭaḥāwī's erroneous conflation of falsehood—through which he sought to suppress the truth—was invalidated. He also said: This derives from the ḥadīth of ʿUbāda ibn al-Ṣāmit from the Prophet—peace and blessings of Allah be upon him—who said: "Pledge allegiance to me on the condition that you associate nothing with Allah, do not steal, do not commit adultery, do not kill your children, do not fabricate slanders between your hands and feet, and do not disobey in matters of recognized goodness. Whoever among you fulfills this pledge will have his reward with Allah. Whoever commits any of those sins and is punished in this world, such punishment serves as expiation for him. Whoever commits any of those sins and Allah conceals it, then the matter rests with Allah: if He wills, He punishes him, and if He wills, He forgives him." He clarified: Expiation and forgiveness apply only to sins lesser than polytheism, not to polytheism itself, though it is mentioned alongside the other transgressions. Abū Muḥammad remarked: This reflects his profound ignorance, for expiations in the Qur'an and Sunnah are divided into four categories. The first: Expiation for a worship act devoid of any sin whatsoever, as Allah the Exalted stated: "Such is the expiation for your oaths when you swear" [5:89]. Breaking an oath may indeed be superior to persisting in it. The Messenger of Allah—peace and blessings of Allah be upon him—said: "If I swear an oath and then perceive a better course, I adopt what is better and perform expiation"—or as he said, peace be upon him. He explicitly affirmed that breaking an oath requiring expiation may be preferable to upholding it. The second: Expiation without lingering sin, applicable to sins already forgiven by Allah the Exalted, such as enforcing the prescribed penalty on one who repents after committing adultery. The third: Expiation for unrepented sins, whereby the penalty absolves the sin, as in the case of unrepentant adulterers or thieves. The fourth: Expiation for unrepented sins neither absolved nor mitigated by the

[9] **Qur'an references (L17333):** Qur'an 51:56 (Adh-Dhariyat); Qur'an 17:15 (Al-Isra).

لَمْ يُبْعَثْ إِلَيْهِمْ نَبِيٌّ مِنَ الْإِنْسِ قَبْلَ مُحَمَّدٍ - عَلَيْهِ السَّلَامُ -، وَالْجِنُّ لَيْسُوا قَوْمَ أَحَدٍ مِنَ الْإِنْسِ.

فَصَحَّ يَقِينًا أَنَّهُمْ بُعِثَ إِلَيْهِمْ أَنْبِيَاءُ مِنْهُمْ، وَبَطَلَ تَخْلِيطُ الطَّحَاوِيِّ بِالْبَاطِلِ الَّذِي رَامَ بِهِ دَفْعَ الْحَقِّ. وَقَالَ أَيْضًا: وَهَذَا مِنْ حَدِيثِ عُبَادَةَ بْنِ الصَّامِتِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «بَايِعُونِي عَلَى أَنْ لَا تُشْرِكُوا بِاللَّهِ شَيْئًا وَلَا تَسْرِقُوا وَلَا تَزْنُوا وَلَا تَقْتُلُوا أَوْلَادَكُمْ وَلَا تَأْتُوا بِبُهْتَانٍ تَفْتَرُونَهُ بَيْنَ أَيْدِيكُمْ وَأَرْجُلِكُمْ، وَلَا تَعْصُوا فِي مَعْرُوفٍ، فَمَنْ وَفَّى مِنْكُمْ فَأَجْرُهُ عَلَى اللَّهِ، وَمَنْ أَصَابَ مِنْ ذَلِكَ شَيْئًا فَعُوقِبَ فِي الدُّنْيَا فَهُوَ كَفَّارَةٌ لَهُ، وَمَنْ أَصَابَ مِنْ ذَلِكَ شَيْئًا ثُمَّ سَتَرَهُ اللَّهُ فَهُوَ إِلَى اللَّهِ إِنْ شَاءَ عَاقَبَهُ وَإِنْ شَاءَ عَفَا عَنْهُ» قَالَ: وَإِنَّمَا الْكَفَّارَةُ وَالْعَفْوُ فِيمَا دُونَ الشِّرْكِ لَا فِي الشِّرْكِ، وَقَدْ ذُكِرَ مَعَ سَائِرِ ذَلِكَ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا جَهْلٌ مِنْهُ شَدِيدٌ لِأَنَّ الْكَفَّارَاتِ فِي الْقُرْآنِ، وَالسُّنَنِ تَنْقَسِمُ أَرْبَعَةَ أَقْسَامٍ -: أَحَدُهَا: كَفَّارَةُ عِبَادَةٍ بِغَيْرِ ذَنْبٍ أَصْلًا قَالَ تَعَالَى: {ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ} [المائدة: ٨٩] . وَقَدْ يَكُونُ الْحِنْثُ أَفْضَلَ مِنَ التَّمَادِي عَلَى الْيَمِينِ وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنِّي لَا أَحْلِفُ عَلَى يَمِينٍ فَأَرَى غَيْرَهَا خَيْرًا مِنْهَا إِلَّا أَتَيْتُ الَّذِي هُوَ خَيْرٌ وَكَفَّرْتُ» أَوْ كَمَا قَالَ - عَلَيْهِ السَّلَامُ -، فَقَدْ نَصَّ - عَلَيْهِ السَّلَامُ -[عَلَى] أَنَّ الْحِنْثَ وَفِيهِ الْكَفَّارَةُ قَدْ يَكُونُ خَيْرًا مِنَ الْوَفَاءِ بِالْيَمِينِ. وَالثَّانِي: كَفَّارَةٌ بِلَا ذَنْبٍ بَاقٍ لَكِنْ لِذَنْبٍ قَدْ تَقَدَّمَ غُفْرَانُ اللَّهِ تَعَالَى لَهُ كَالْحَدِّ يُقَامُ عَلَى التَّائِبِ مِنَ الزِّنَى. وَالثَّالِثُ: كَفَّارَةٌ لِذَنْبٍ لَمْ يَتُبْ مِنْهُ صَاحِبُهُ فَتَرْفَعُهُ الْكَفَّارَةُ كَحَدِّ الزَّانِي وَالسَّارِقِ اللَّذَيْنِ لَمْ يَتُوبَا. وَالرَّابِعُ: كَفَّارَةٌ عَلَى ذَنْبٍ لَمْ يَتُبْ مِنْهُ صَاحِبُهُ وَلَا رَفَعَتْهُ الْكَفَّارَةُ وَلَا حَطَّتْهُ كَالْعَائِدِ إِلَى قَتْلِ الصَّيْدِ فِي الْحَرَمِ عَمْدًا مَرَّةً بَعْدَ مَرَّةٍ - قَالَ تَعَالَى:

expiation, such as the deliberate repeated killing of game within the sacred precinct. Allah the Exalted decreed: “The recompense is livestock equivalent to what he slaughtered, as judged by two just men among you, offered as a sacrifice to the Kaaba, or expiation through feeding the needy or equivalent fasting—so he may taste the evil consequences of his affair. Allah pardons what is past, but whoever relapses, Allah will exact retribution from him” [5:95].[10]

{فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ يَحْكُمُ بِهِ ذَوَا عَدْلٍ مِنْكُمْ هَدْيًا بَالِغَ الْكَعْبَةِ أَوْ كَفَّارَةٌ طَعَامُ مَسَاكِينَ أَوْ عَدْلُ ذَلِكَ صِيَامًا لِيَذُوقَ وَبَالَ أَمْرِهِ عَفَا اللَّهُ عَمَّا سَلَفَ وَمَنْ عَادَ فَيَنْتَقِمُ اللَّهُ مِنْهُ} [المائدة: ٩٥] .

L17336–17341 This is a divine chastisement He has threatened, alongside the obligation of expiation upon him. The expiation mentioned in the ḥadīth of ʻUbādah, in its general application, either nullifies the sin and its punishment in the Hereafter—as in fornication, murder, slanderous fabrication, and disobedience in matters of recognized good—or does not nullify the sin and its punishment in the Hereafter, such as killing a polytheist for his polytheism. As for the Prophet’s statement—peace be upon him—“Whoever commits any of that and Allah conceals it, it rests with Allah: if He wills, He punishes him, and if He wills, He forgives him”—I wonder how it escaped him that this applies universally! The angels, messengers, prophets, righteous individuals, the debauched, disbelievers, Iblīs, Pharaoh, Abū Jahl, and Abū Lahab—all are subject to the will of Allah the Exalted. He does with them as He wills, punishing or pardoning, except that He has clarified He will necessarily punish the disbelievers, Iblīs, Abū Lahab, Abū Jahl, and Pharaoh without exception—and will necessarily be pleased with the angels, messengers, prophets, and righteous without exception. All remain within His will; none of this exits the will of Allah the Exalted. Whoever Allah punishes, He has willed to punish, and whoever He admits to Paradise, He has willed to admit. As for the ignorant one’s assertion that if Allah willed to torment the angels and messengers while granting disbelievers bliss, none could hinder Him—yet He has not willed this—has he not heard Allah’s words: “He forgives whom He wills and punishes whom He wills” [3:129], and His words: “Allah forgives all sins” [39:53], then excluded polytheism comprehensively and eternally, along with those whose major sins and misdeeds prevail until they are extracted through intercession? Does he not comprehend that the Prophet’s state-

فَهَذِهِ نِقْمَةٌ مُتَوَعَّدٌ بِهَا مَعَ وُجُوبِ الْكَفَّارَةِ عَلَيْهِ، فَالْكَفَّارَةُ الْمَذْكُورَةُ فِي حَدِيثِ عُبَادَةَ عَلَى عُمُومِهَا إِمَّا مُسْقِطَةٌ لِلذَّنْبِ وَعُقُوبَتِهِ فِي الْآخِرَةِ فِي الزِّنَى وَالْقَتْلِ، وَالْبُهْتَانِ الْمُفْتَرَى، وَالْمَعْصِيَةِ فِي الْمَعْرُوفِ، وَإِمَّا غَيْرُ مُسْقِطَةٍ لِلذَّنْبِ، وَعُقُوبَتِهِ فِي الْآخِرَةِ، وَهِيَ قَتْلُ الْمُشْرِكِ عَلَى شِرْكِهِ. وَأَمَّا قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «وَمَنْ أَصَابَ مِنْ ذَلِكَ شَيْئًا ثُمَّ سَتَرَهُ اللَّهُ فَهُوَ إِلَى اللَّهِ إِنْ شَاءَ عَاقَبَهُ وَإِنْ شَاءَ عَفَا عَنْهُ» فَلَيْتَ شِعْرِي كَيْفَ خَفِيَ عَلَيْهِ أَنَّ هَذَا عَلَى عُمُومِهِ؟ وَأَنَّ الْمَلَائِكَةَ وَالرُّسُلَ، وَالْأَنْبِيَاءَ، وَالصَّالِحِينَ، وَالْفُسَّاقَ وَالْكُفَّارَ، وَإِبْلِيسَ، وَفِرْعَوْنَ، وَأَبَا جَهْلٍ، وَأَبَا لَهَبٍ، كُلَّهُمْ فِي مَشِيئَةِ اللَّهِ تَعَالَى يَفْعَلُ فِيهِمْ مَا يَشَاءُ مِنْ عُقُوبَةٍ أَوْ عَفْوٍ، إِلَّا أَنَّهُ تَعَالَى قَدْ بَيَّنَ أَنَّهُ يُعَاقِبُ الْكُفَّارَ وَلَا بُدَّ، وَإِبْلِيسَ، وَأَبَا لَهَبٍ، وَأَبَا جَهْلٍ، وَفِرْعَوْنَ، وَلَا بُدَّ - وَيَرْضَى عَنِ الْمَلَائِكَةِ وَالرُّسُلِ، وَالْأَنْبِيَاءِ، وَالصَّالِحِينَ، وَلَا بُدَّ، وَكُلُّهُمْ فِي الْمَشِيئَةِ وَلَا يَخْرُجُ شَيْءٌ مِنْ ذَلِكَ عَنْ مَشِيئَةِ اللَّهِ تَعَالَى، مَنْ عَاقَبَهُ اللَّهُ تَعَالَى فَقَدْ شَاءَ أَنْ يُعَاقِبَهُ، وَمَنْ أَدْخَلَهُ الْجَنَّةَ فَقَدْ شَاءَ أَنْ يُدْخِلَهُ الْجَنَّةَ. أَمَّا عِلْمُ الْجَاهِلِ أَنَّ اللَّهَ تَعَالَى لَوْ شَاءَ أَنْ يُعَذِّبَ الْمَلَائِكَةَ، وَالرُّسُلَ، وَيُنْعِمَ الْكُفَّارَ لَمَا مَنَعَهُ مِنْ ذَلِكَ مَانِعٌ، لَكِنَّهُ تَعَالَى لَمْ يَشَأْ ذَلِكَ. أَمَا سَمِعَ قَوْلَهُ تَعَالَى {يَغْفِرُ لِمَنْ يَشَاءُ وَيُعَذِّبُ مَنْ يَشَاءُ} [آل عمران: ١٢٩] وَقَوْلَهُ تَعَالَى: {إِنَّ اللَّهَ يَغْفِرُ الذُّنُوبَ جَمِيعًا} [الزمر: ٥٣] ثُمَّ اسْتَثْنَى الشِّرْكَ جُمْلَةً أَبَدِيَّةً، وَمَنْ رَجَحَتْ كَبَائِرُهُ وَسَيِّئَاتُهُ حَتَّى يَخْرُجُوا

[10] **Qur’an references (L17335):** Qur’an 5:89 (Al-Ma’idah); Qur’an 5:95 (Al-Ma’idah).

ment—peace be upon him—"If He wills, He punishes him, and if He wills, He forgives him" does not necessitate either outcome irrevocably, but rather defers to other scriptural texts? What misguidance is more repugnant than deeming the Prophet's statement—Allah's peace and blessings upon him and his family—"Wine is from these two trees: the date palm and the grapevine" as contrary to reality? Rather, this is deception in religion! For what rationale would he claim the Prophet intended to clarify that wine is prohibited only from grapes, yet falsely included the date palm—from which wine is not produced? Is this not the doing of the debauched and those who practice deceit in religion, trifling with their speech? May they perish! Away with every whim that compels attributing to the Messenger of Allah—peace and blessings of Allah be upon him—what every honorable truth-rejecting person would disdain! They shall be returned, and we shall be returned; they shall know, and we shall know. By Allah, profound regret will indeed follow such grave transgressions—praise be to Allah for His abundant guidance: *{We would never have attained guidance had Allah not guided us}* [Al-Aʿrāf 7:43]. Did Al-Ṭaḥāwī clarify why he restricted the Prophet's statement—peace be upon him—"Intoxicants derive from these two trees: the date palm and the grapevine" to mean only the grapevine while still mentioning the date palm? We cannot fathom why he differentiated this from a deviant's claim: "Falsehood originates from these two men: Muḥammad and Musaylimah?" Ponder what drove Al-Ṭaḥāwī to this. You will find this assertion equally baseless. He arbitrarily imposed falsehood upon this ḥadīth, as evident, while his followers compounded it with two further invalid claims:

First: They declared, "Intoxicants derive solely from these two," though the ḥadīth contains no such restriction. The Prophet—peace and blessings of Allah be upon him—did not state, "Intoxicants are **exclusively** from these two trees," but rather, "Intoxicants are from these two trees," affirming their inclusion without precluding other sources if validated by authentic texts. Such a text exists: As narrated by Abū Dāwūd through Mālik ibn ʿAbd al-Wāḥid al-Misma'ī, via al-Muʿtamir ibn Sulaymān, who recited to al-Fuḍayl ibn Maysarah from Abū Ḥarīz, reporting that al-Sha'bī narrated from al-Nuʿmān ibn Bashīr, who heard Allah's Messenger—peace and blessings of

بِالشَّفَاعَةِ. أَمَا عَقَلَ أَنَّ قَوْلَهُ - عَلَيْهِ السَّلَامُ -: «إِنْ شَاءَ عَاقَبَهُ وَإِنْ شَاءَ عَفَا عَنْهُ» لَيْسَ فِيهِ إِيجَابٌ لِأَحَدِهِمَا وَلَا بُدَّ، وَأَنَّ ذَلِكَ مَرْدُودٌ إِلَى سَائِرِ النُّصُوصِ. فَهَلْ فِي الضَّلَالِ أَشْنَعُ مِمَّنْ جَعَلَ قَوْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «الْخَمْرُ مِنْ هَاتَيْنِ الشَّجَرَتَيْنِ النَّخْلَةِ وَالْعِنَبَةِ» عَلَى غَيْرِ الْحَقِيقَةِ؟ بَلْ عَلَى التَّدْلِيسِ فِي الدِّينِ وَإِلَّا فَأَيُّ وَجْهٍ لَأَنْ يُرِيدَ أَنْ يُبَيِّنَ عَلَيْنَا مَا حَرَّمَ عَلَيْنَا مِنْ أَنَّ الْخَمْرَ مِنَ الْعِنَبِ فَقَطْ فَيُقْحِمَ فِي ذَلِكَ النَّخْلَةَ، وَهِيَ لَا تَكُونُ الْخَمْرُ مِنْهَا؟ هَلْ هَذَا إِلَّا فِعْلُ الْفُسَّاقِ وَالْمُلْغِزِينَ فِي الدِّينِ، الْعَابِثِينَ فِي كَلَامِهِمْ؟ فَسُحْقًا فَسُحْقًا لِكُلِّ هَوًى يُحْمَلُ عَلَى أَنْ يُنْسَبَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلُ مِمَّا يَتَرَفَّعُ عَنْهُ كُلُّ مُجِدٍّ لَا يَرْضَى بِالْكَذِبِ، وَسَيُرَدُّونَ وَنُرَدُّ، وَيَعْلَمُونَ وَنَعْلَمُ، وَاَللَّهِ لَتَطُولَنَّ النَّدَامَةُ عَلَى مِثْلِ هَذِهِ الْعَظَائِمِ - وَالْحَمْدُ لِلَّهِ عَلَى هُدَاهُ لَنَا كَثِيرًا {وَمَا كُنَّا لِنَهْتَدِيَ لَوْلا أَنْ هَدَانَا اللَّهُ} [الأعراف: ٤٣] . وَهَلْ بَيَّنَ مَا حَمَلَ عَلَيْهِ الطَّحَاوِيُّ قَوْلَهُ - عَلَيْهِ السَّلَامُ - «الْخَمْرُ مِنْ هَاتَيْنِ الشَّجَرَتَيْنِ النَّخْلَةِ وَالْعِنَبَةِ» مِنْ أَنَّهُ إِنَّمَا أَرَادَ الْعِنَبَةَ فَقَطْ لَا النَّخْلَةَ فَذَكَرَ النَّخْلَةَ؟ لَا نَدْرِي لِمَاذَا فَرَّقَ بَيْنَهُ وَبَيْنَ قَوْلِ فَاسِقٍ يَقُولُ: الْكَذِبُ مِنْ هَذَيْنِ الرَّجُلَيْنِ مُحَمَّدٍ وَمُسَيْلِمَةَ؟ فَتَأَمَّلُوا مَا حَمَلَهُ عَلَيْهِ الطَّحَاوِيُّ، وَهَذَا الْقَوْلُ تَجِدُوهُ سَوَاءً سَوَاءً فَتَحَكَّمَ الطَّحَاوِيُّ بِالْبَاطِلِ فِي هَذَا الْخَبَرِ كَمَا تَرَوْنَ وَتَحَكَّمَ أَصْحَابُهُ فِيهِ أَيْضًا بِبَاطِلَيْنِ آخَرَيْنِ -: أَحَدُهُمَا: أَنَّهُمْ قَالُوا: لَيْسَ الْخَمْرُ مِنْ غَيْرِهِمَا، وَلَيْسَ هَذَا فِي الْخَبَرِ أَصْلًا، لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقُلْ: لَيْسَ الْخَمْرُ إِلَّا مِنْ هَاتَيْنِ الشَّجَرَتَيْنِ، إِنَّمَا قَالَ «الْخَمْرُ مِنْ هَاتَيْنِ الشَّجَرَتَيْنِ» فَأَوْجَبَ أَنَّ الْخَمْرَ مِنْهُمَا، وَلَمْ يَمْنَعْ أَنْ تَكُونَ الْخَمْرُ أَيْضًا مِنْ غَيْرِهِمَا إِنْ وَرَدَ بِذَلِكَ نَصٌّ صَحِيحٌ، بَلْ قَدْ جَاءَ نَصٌّ بِذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مَالِكُ بْنُ عَبْدِ الْوَاحِدِ الْمِسْمَعِيُّ نا الْمُعْتَمِرُ هُوَ ابْنُ سُلَيْمَانَ -[قَالَ] قَرَأْت عَلَى

الْفُضَيْلِ بْنِ مَيْسَرَةَ عَنْ أَبِي حَرِيزٍ قَالَ: إِنَّ الشَّعْبِيَّ حَدَّثَهُ أَنَّ النُّعْمَانَ بْنَ بَشِيرٍ حَدَّثَهُ قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إنَّ الْخَمْرَ مِنْ الْعَصِيرِ، وَالزَّبِيبِ، وَالتَّمْرِ، وَالْحِنْطَةِ، وَالشَّعِيرِ، وَالذُّرَةِ، وَإِنِّي أَنْهَاكُمْ عَنْ كُلِّ مُسْكِرٍ» -: أَبُو حَرِيزٍ هُوَ عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ - قَاضِي سِجِسْتَانَ رَوَى عَنْ عِكْرِمَةَ، وَالشَّعْبِيِّ، وَرَوَى عَنْهُ الْفَضْلُ بْنُ مَيْسَرَةَ وَغَيْرُهُ. فَهَذَا نَصٌّ كَنَصِّهِمْ وَزَائِدٌ عَلَيْهِ مَا لَا يَحِلُّ تَرْكُهُ. وَقَدْ صَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - أَنَّهُ قَالَ: «كُلُّ مُسْكِرٍ خَمْرٌ» . وَالثَّانِي: أَنَّهُمْ قَالُوا: لَيْسَ مَا طُبِخَ مِنْ عَصِيرِ الْعِنَبِ وَنَبِيذِ ثَمَرِ النَّخْلِ إذَا ذَهَبَ ثُلُثَاهُ خَمْرًا وَإِنْ أَسْكَرَ، فَتَحَكَّمُوا فِي الْخَبَرِ الَّذِي أَوْهَمُوا أَنَّهُمْ تَعَلَّقُوا بِهِ تَحَكُّمًا ظَاهِرَ الْفَسَادِ بِلَا بُرْهَانٍ، وَبَطَلَ تَعَلُّقُهُمْ بِهِ إذْ خَالَفُوا مَا فِيهِ بِغَيْرِ نَصٍّ آخَرَ، وَخَرَجَ عَنْ أَنْ يَكُونَ لَهُمْ فِي شَيْءٍ مِنْ جَمِيعِ ذَلِكَ مُتَعَلَّقٌ أَوْ مِنْ النَّاسِ سَلَفٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Allah be upon him—declare: **"Intoxicants derive from grape juice, raisins, dates, wheat, barley, and grains. I prohibit every intoxicant."** Abū Ḥarīz—'Abdullāh ibn al-Ḥusayn, judge of Sijistān—narrated from 'Ikrimah and al-Sha'bī, with transmissions from al-Faḍl ibn Maysarah and others. This text matches theirs in authority while adding indispensable details. It is authentically established that the Prophet—peace be upon him—said: **"Every intoxicant is unlawful."**

Second: They asserted that cooked grape juice or fermented date drink does not become unlawful even if two-thirds evaporates and causes intoxication. They thus imposed corrupt, baseless interpretations on the ḥadīth they cited, nullifying their argument by contradicting its content without textual proof. They strayed beyond any legitimate evidence they might claim. Something related to all of that, or there are predecessors (Salaf) among the people. And by Allah, the Most High, is success.[1][12]

وَمَوَّهُوا فِي إبَاحَةِ مَا طُبِخَ حَتَّى ذَهَبَ ثُلُثَاهُ وَبَقِيَ ثُلُثُهُ مِنْ عَصِيرِ الْعِنَبِ أَسْكَرَ بَعْدَ ذَلِكَ أَوْ لَمْ يُسْكِرْ بِرِوَايَاتٍ -: مِنْهَا: مَا رُوِّينَا مِنْ طُرُقٍ ثَابِتَةٍ إلَى إبْرَاهِيمَ عَنْ سُوَيْدِ بْنِ غَفَلَةَ قَالَ: كَتَبَ عُمَرُ إلَى عُمَّالِهِ أَنْ يَرْزُقُوا النَّاسَ الطِّلَاءَ ذَهَبَ ثُلُثَاهُ وَبَقِيَ ثُلُثُهُ. وَأُخْرَى مِنْ طَرِيقِ الشَّعْبِيِّ عَنْ حَيَّانَ الْأَسَدِيِّ أَنَّهُ رَأَى عَمَّارًا قَدْ شَرِبَ مِنْ الْعَصِيرِ مَا طُبِخَ حَتَّى ذَهَبَ ثُلُثَاهُ وَبَقِيَ ثُلُثُهُ وَسَقَاهُ مَنْ حَوْلَهُ. وَمِنْ طَرِيقِ قَتَادَةَ أَنَّ أَبَا عُبَيْدَةَ بْنِ الْجَرَّاحِ، وَمُعَاذَ بْنَ جَبَلٍ، كَانَا يَشْرَبَانِ الطِّلَاءَ مَا طُبِخَ حَتَّى ذَهَبَ ثُلُثَاهُ. وَعَنْ أَبِي الدَّرْدَاءِ، وَأَبِي مُوسَى مِثْلُ ذَلِكَ. وَعَنْ عَلِيٍّ: أَنَّهُ كَانَ يَرْزُقُ النَّاسَ طِلَاءً يَقَعُ فِيهِ الذُّبَابُ فَلَا يَسْتَطِيعُ أَنْ يَخْرُجَ مِنْهُ. وَعَنْ جَمَاعَةٍ مِنْ التَّابِعِينَ مِثْلُ هَذَا. وَاحْتَجُّوا فِي هَذَا بِخَبَرٍ عَنْ

L17342–17348 They argued for the permissibility of what was boiled until two-thirds evaporated and one-third remained of grape juice—whether it intoxicates afterward or not—based on narrations including: What we narrate through established chains from Ibrāhīm via Suwayd ibn Ghaflah, who said: "Umar wrote to his governors instructing them to provide people with ṭilā' (boiled liquid) when two-thirds had evaporated and one-third remained." Another narration through Al-Sha'bī from Ḥayyān al-Asadī states that he saw 'Ammār drink from juice boiled until two-thirds evaporated and one-third remained, and he gave it to those around him to drink. Through Qatādah's chain: Abū 'Ubaydah ibn al-Jarrāḥ and Mu'ādh ibn Jabal used to drink ṭilā' boiled until two-thirds evaporated. Similar accounts are reported from Abū al-Dardā' and Abū Mūsā. From 'Alī: He would distribute ṭilā' so thick that a

[11] **Hadith references (L17337):** Sunan Abi Dawud 3677.

[12] **Qur'an references (L17337):** Qur'an 3:129 (Ali 'Imran); Qur'an 5:18 (Al-Ma'idah); Qur'an 48:14 (Al-Fath); Qur'an 39:53 (Az-Zumar); Qur'an 7:43 (Al-A'raf).

fly falling into it could not escape. Comparable reports exist from a group of Successors. They cited as evidence a narration from Ibn Sīrīn regarding Noah—peace be upon him—dividing the zarjūn plant with Iblīs: two-thirds for Iblīs and one-third for Noah. A similar report is transmitted through Anas ibn Mālik. Abū Muḥammad commented: "Anas and Ibn Sīrīn undoubtedly never met Noah—peace be upon him. We do not know their source for this. Had Anas heard it from the Prophet—peace and blessings of Allāh be upon him—he would not have concealed the Prophet's name as the narrator. Thus, this argument is invalid. Even if valid, the ruling would apply whether two-thirds is lost through boiling or pouring, for only intoxication matters, as the Prophet—peace and blessings of Allāh be upon him—defined." Abū Muḥammad added: "This provides no proof for them. First: No authority exists apart from the Messenger of Allāh—peace and blessings of Allāh be upon him—to legislate religious boundaries of permissibility and prohibition. Second: Reports differing from this exist among other Companions, as we narrate through Ibn Abī Shaybah's chain: From Muḥammad ibn Fuḍayl, ʿAbd al-Raḥīm ibn Sulaymān, Wakīʿ, and Yaḥyā ibn Yamān, who said..." Ibn Fudayl reported from Habib ibn Abī ʿAmrah from ʿAdiyy ibn Thābit from Al-Barāʾ ibn ʿĀzib. ʿAbdur-Raḥīm reported from ʿUbaydah from Khaythamah from Anas ibn Mālik. Yaḥyā ibn Yamān reported from Ashʿath from Jaʿfar ibn Abzā. Wakīʿ reported from Ṭalḥah ibn Jabr and Jarīr ibn Ayyūb. Ṭalḥah said: "I saw Abū Juḥayfah As-Suwāʾī." Jarīr reported from Abū Zurʿah ibn ʿAmr ibn Jarīr that Jarīr ibn ʿAbdillāh Al-Bajalī – then their chains converged – from Al-Barāʾ, Abū Juḥayfah, Jarīr ibn ʿAbdillāh, and Ibn Abzā that they used to drink date syrup (ṭilāʾ) diluted by half. Through this chain to Ibn Abī Shaybah from Ibn Fudayl, Wakīʿ, and ʿAbdur-Raḥīm ibn Sulaymān: Ibn Fudayl reported from Dīnār Al-Aʿraj from Saʿīd ibn Jubayr that he drank date syrup diluted by half. Ibn Fudayl also reported from Al-Aʿmash from Yaḥyā that he drank date syrup diluted by half. Wakīʿ reported from Al-Aʿmash from Mundhir Ath-Thawrī from Ibn Al-Ḥanafiyyah that he used to drink date syrup diluted by half. Al-Aʿmash reported from Al-Ḥakam that Shurayḥ used to drink date syrup diluted by half. Al-Aʿmash stated: "Ibrāhīm used to drink it diluted by half." It is authentically established from Qays ibn Abī Ḥāzim – and narrated from Ash-Shaʿbī and Abū ʿUbaydah – how astonish-

ابْنِ سِيرِينَ فِي مُقَاسَمَةِ نُوحٍ - عَلَيْهِ السَّلَامُ - إبْلِيسَ الزَّرْجُونَ: لِإِبْلِيسِ الثُّلُثَانِ، وَلِنُوحٍ الثُّلُثُ. وَمِنْ طَرِيقِ أَنَسِ بْنِ مَالِكٍ مِثْلُ هَذَا. قَالَ أَبُو مُحَمَّد: لَمْ يُدْرِكْ أَنَسٌ، وَلَا ابْنُ سِيرِينَ نُوحًا بِلَا شَكٍّ، وَلَا نَدْرِي مِمَّنْ سَمِعَاهُ، وَلَوْ سَمِعَهُ أَنَسٌ مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا اسْتَحَلَّ كِتْمَانَ اسْمِهِ - فَسَقَطَ الِاحْتِجَاجُ بِهَذَا. وَلَوْ صَحَّ هَذَا لَكَانَ مَتَى أُهْرِقَ مِنْ الْعَصِيرِ ثُلُثَاهُ حَلَّ بَاقِيهِ فَلَا فَرْقَ بَيْنَ ذَهَابِ ثُلُثَيْهِ بِالطَّبْخِ وَبَيْنَ ذَهَابِهِمَا بِالْهَرْقِ وَإِنَّمَا الْمُرَاعَى السُّكْرُ فَقَطْ كَمَا حَدَّ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ -: أَوَّلُ ذَلِكَ: أَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا يَحُدُّ الْحُدُودَ فِي الدِّيَانَةِ بِالتَّحْلِيلِ وَالتَّحْرِيمِ أَحَدٌ سِوَاهُ. وَالثَّانِي: أَنَّهُ قَدْ جَاءَ عَنْ طَائِفَةٍ مِنْ الصَّحَابَةِ غَيْرُ هَذَا كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: نا مُحَمَّدُ بْنُ فُضَيْلٍ، وَعَبْدُ الرَّحِيمِ بْنُ سُلَيْمَانَ، وَوَكِيعٌ، وَيَحْيَى بْنُ يَمَانٍ، قَالَ ابْنُ فُضَيْلٍ: عَنْ حَبِيبِ بْنِ أَبِي عَمْرَةَ عَنْ عَدِيِّ بْنِ ثَابِتٍ عَنْ الْبَرَاءِ بْنِ عَازِبٍ، وَقَالَ عَبْدُ الرَّحِيمِ: عَنْ عُبَيْدَةَ عَنْ خَيْثَمَةَ عَنْ أَنَسِ بْنِ مَالِكٍ، قَالَ يَحْيَى بْنُ يَمَانٍ: عَنْ أَشْعَثَ عَنْ جَعْفَرِ بْنِ أَبْزَى، وَقَالَ وَكِيعٌ: عَنْ طَلْحَةَ بْنِ جَبْرٍ، وَجَرِيرِ بْنِ أَيُّوبَ قَالَ طَلْحَةُ: رَأَيْت أَبَا جُحَيْفَةَ السُّوَائِيَّ، وَقَالَ جَرِيرٌ: عَنْ أَبِي زُرْعَةَ بْنِ عَمْرِو بْنِ جَرِيرٍ أَنَّ جَرِيرَ بْنَ عَبْدِ اللَّهِ الْبَجَلِيَّ ثُمَّ اتَّفَقَ عَنْ الْبَرَاءِ، وَأَبِي جُحَيْفَةَ، وَجَرِيرِ بْنِ عَبْدِ اللَّهِ وَابْنِ أَبْزَى أَنَّهُمْ كَانُوا يَشْرَبُونَ الطِّلَاءَ عَلَى النِّصْفِ. وَبِهِ إلَى ابْنِ أَبِي شَيْبَةَ عَنْ ابْنِ فُضَيْلٍ، وَوَكِيعٍ، وَعَبْدِ الرَّحِيمِ بْنِ سُلَيْمَانَ قَالَ ابْنُ فُضَيْلٍ: عَنْ دِينَارٍ الْأَعْرَجِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ: أَنَّهُ شَرِبَ الطِّلَاءَ عَلَى النِّصْفِ. وَقَالَ ابْنُ فُضَيْلٍ أَيْضًا: عَنْ الْأَعْمَشِ عَنْ يَحْيَى أَنَّهُ شَرِبَ الطِّلَاءَ عَلَى النِّصْفِ وَقَالَ وَكِيعٌ عَنْ الْأَعْمَشِ عَنْ مُنْذِرٍ الثَّوْرِيِّ عَنْ ابْنِ الْحَنَفِيَّةِ: أَنَّهُ كَانَ يَشْرَبُ الطِّلَاءَ

ing is the lack of modesty among these people! What makes the opinion of some Companions superior to others? The third point: They opposed ʿUmar and ʿAlī. It has been narrated to us through Qatādah's chain that ʿUmar said: "I would prefer to drink a heated vessel that burns what it burns and spares what it spares over drinking jar-fermented beverage." If they object: "Qatādah did not contemporaneously meet ʿUmar?" We respond: "Nor did he meet Muʿādh or Abū ʿUbaydah." Through Saʿīd ibn Manṣūr's chain: Al-Muʿtamir ibn Sulaymān At-Taymī reported from his father that Abū Isḥāq As-Sabīʿī said: "When ʿAlī was informed about the jar-fermented beverage he had drunk, he vomited it." Fourth: None of the mentioned accounts indicate it was an intoxicant. Rather, it is confirmed to be non-intoxicating, as stated in ʿAlī's report that flies would fall into it and be unable to escape. We have been narrated through Ḥuṣayn's chain from Ibn Abī Laylā from Ash-Shaʿbī that ʿUmar wrote to... Ammar ibn Yasir reported: I was brought a drink that had been cooked until two-thirds of it evaporated, leaving one-third. Its devilish part departed from it along with the fumes of its madness, while its wholesome essence and lawful nature remained. He said, "Direct the Muslims around you to use it freely in their beverages," thereby nullifying their attachment to any of that. It is astonishing that they argue to invalidate the Prophet's prohibition—peace and blessings be upon him—against mixing dates and raisins in *nabidh* by saying, "If one were to drink this separately and then that, would it become forbidden?" They claim there is no difference between mixing them before drinking and mixing them in one's stomach. We responded: "It is impermissible to oppose Allah the Exalted or the Prophet—peace and blessings be upon him—with such reasoning. But you oppose with this misleading innovation when we say to you: What is your ruling regarding juice that intoxicates before being cooked, then is cooked until two-thirds evaporates and one-third remains—does it become permissible according to you?" They reply, "No." We then ask them: "What distinguishes cooking it after it intoxicates from cooking it before it intoxicates, when intoxication occurs in both cases?" If cooking nullifies its prohibition when it intoxicates afterward, then its prohibition should likewise be nullified if it intoxicates beforehand. This refutation holds greater validity.

عَلَى النِّصْفِ. وَقَالَ الْأَعْمَشُ عَنْ الْحَكَمِ: إنَّ شُرَيْحًا كَانَ يَشْرَبُ الطِّلَاءَ عَلَى النِّصْفِ. وَقَالَ الْأَعْمَشُ: وَكَانَ إبْرَاهِيمُ يَشْرَبُهُ عَلَى النِّصْفِ. وَصَحَّ أَيْضًا عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ - وَرَوَى عَنْ الشَّعْبِيِّ، وَأَبِي عُبَيْدَةَ؛ فَالْعَجَبُ لِقِلَّةِ حَيَاءِ هَؤُلَاءِ الْقَوْمِ مَا الَّذِي جَعَلَ قَوْلَ بَعْضِ الصَّحَابَةِ أَوْلَى مِنْ قَوْلِ بَعْضٍ؟ وَالثَّالِثُ: قَدْ خَالَفُوا عُمَرَ، وَعَلِيًّا -: رُوِّينَا مِنْ طَرِيقِ قَتَادَةَ أَنَّ عُمَرَ قَالَ: لَأَنْ أَشْرَبَ قُمْقُمًا مُحْمًى أَحْرَقَ مَا أَحْرَقَ وَأَبْقَى مَا أَبْقَى أَحَبُّ إلَيَّ مِنْ أَنْ أَشْرَبَ نَبِيذَ الْجَرِّ. فَإِنْ قَالُوا: لَمْ يُدْرِكْ قَتَادَةُ عُمَرَ؟ قُلْنَا: وَلَا أَدْرَكَ مُعَاذًا، وَلَا أَبَا عُبَيْدَةَ. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ أَبِيهِ أَنَّ أَبَا إِسْحَاقَ السَّبِيعِيَّ قَالَ: إنَّ عَلِيًّا لَمَّا بَلَغَهُ فِي نَبِيذٍ شَرِبَهُ أَنَّهُ نَبِيذُ جُرٍّ تَقَيَّأَهُ. الرَّابِعُ: أَنَّهُ لَيْسَ فِي شَيْءٍ مِمَّا ذَكَرْنَا أَنَّهُ كَانَ مُسْكِرًا بَلْ قَدْ صَحَّ أَنَّهُ لَمْ يَكُنْ مُسْكِرًا كَمَا ذَكَرْنَا فِي خَبَرِ عَلِيٍّ أَنَّ الذُّبَابَ كَانَ يَقَعُ فِيهِ فَلَا يَسْتَطِيعُ الْخُرُوجَ مِنْهُ. وَرُوِّينَاهُ مِنْ طَرِيقِ حُصَيْنٍ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الشَّعْبِيِّ: أَنَّ عُمَرَ كَتَبَ إلَى عَمَّارِ بْنِ يَاسِرٍ أَنِّي أُتِيت بِشَرَابٍ قَدْ طُبِخَ حَتَّى ذَهَبَ ثُلُثَاهُ وَبَقِيَ ثُلُثُهُ فَذَهَبَ مِنْهُ شَيْطَانُهُ وَرِيحُ جُنُونِهِ وَبَقِيَ طِيبُهُ وَحَلَالُهُ فَمُرْ الْمُسْلِمِينَ قِبَلَك فَلْيَتَوَسَّعُوا بِهِ فِي شَرَابِهِمْ، فَبَطَلَ تَعَلُّقُهُمْ بِشَيْءٍ مِنْ ذَلِكَ، وَالْعَجَبُ أَنَّهُمْ يَحْتَجُّونَ فِي إبْطَالِ تَحْرِيمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - التَّمْرَ، وَالزَّبِيبَ مَخْلُوطَيْنِ فِي النَّبِيذِ بِأَنْ قَالُوا: لَوْ شَرِبَ هَذَا ثُمَّ هَذَا أَكَانَ يَحْرُمُ ذَلِكَ عَلَيْهِ؟ فَلَا فَرْقَ بَيْنَ خَلْطِهِمَا قَبْلَ شُرْبِهِمَا وَبَيْنَ خَلْطِهِمَا فِي جَوْفِهِ؟ فَقُلْنَا: لَا يَحِلُّ أَنْ يُعَارَضَ اللَّهُ تَعَالَى وَلَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِ هَذَا، لَكِنْ تُعَارِضُونَ أَنْتُمْ فِي بِدْعَتِكُمْ هَذِهِ الْمُضِلَّةِ بِأَنْ نَقُولَ لَكُمْ: أَرَأَيْتُمْ الْعَصِيرَ إذَا أَسْكَرَ قَبْلَ أَنْ يُطْبَخَ، ثُمَّ طُبِخَ حَتَّى ذَهَبَ ثُلُثَاهُ وَبَقِيَ ثُلُثُهُ أَيَحِلُّ عِنْدَكُمْ؟ فَمِنْ قَوْلِهِمْ: لَا، فَنَقُولُ لَهُمْ: فَمَا الْفَرْقُ بَيْنَ طَبْخِهِ بَعْدَ أَنْ يُسْكِرَ وَبَيْنَ

طَبْخِهِ قَبْلَ أَنْ يُسْكِرَ، وَالسُّكْرُ حَاصِلٌ فِيهِ فِي كِلَا الْوَجْهَيْنِ؟ فَإِذَا أَبْطَلَ الطَّبْخُ تَحْرِيمَهُ إِذَا أَسْكَرَ بَعْدَهُ كَذَلِكَ يَبْطُلُ تَحْرِيمُهُ إِذَا أَسْكَرَ قَبْلَهُ وَهَذَا أَصَحُّ فِي الْمُعَارَضَةِ. وَالْوَجْهُ الثَّالِثُ: أَنَّهُ قَدْ صَحَّ عَنْ عُمَرَ وَغَيْرِ عُمَرَ أَنَّهُمْ لَمْ يُرَاعُوا ثُلُثَيْنِ وَلَا ثُلُثًا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ أَسْلَمَ مَوْلَى عُمَرَ قَالَ: قَدِمْنَا الْجَابِيَةَ مَعَ عُمَرَ فَأُتِينَا بِالطِّلَاءِ وَهُوَ مِثْلُ عَقْدِ الرُّبِّ إنَّمَا يُخَاضُ بِالْمَخُوضِ خَوْضًا فَقَالَ عُمَرُ بْنُ الْخَطَّابِ: إنَّ فِي هَذَا لَشَرَابًا مَا انْتَهَى إلَيْهِ. وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا سُوَيْد بْنُ نَصْرٍ أَنَا عَبْدُ اللَّهِ هُوَ ابْنُ الْمُبَارَكِ - عَنْ ابْنِ جُرَيْجٍ قِرَاءَةً أَخْبَرَنِي عَطَاءٌ قَالَ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ: وَاَللَّهِ مَا تُحِلُّ النَّارُ شَيْئًا وَلَا تُحَرِّمُهُ قَالَ: ثُمَّ فَسَّرَ لِي قَوْلَهُ: لَا تُحِلُّ النَّارُ شَيْئًا لِقَوْلِهِمْ فِي الطِّلَاءِ وَلَا تُحَرِّمُهُ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا هُوَ الْحَقُّ الَّذِي لَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ سِوَاهُ - وَصَحَّ عَنْ طَاوُسٍ أَنَّهُ سُئِلَ عَنْ الطِّلَاءِ؟ فَقَالَ: أَرَأَيْت الَّذِي مِثْلَ الْعَسَلِ تَأْكُلُهُ بِالْخُبْزِ وَتَصُبُّ عَلَيْهِ الْمَاءَ فَتَشْرَبُهُ؟ عَلَيْك بِهِ، وَلَا تَقْرَبْ مَا دُونَهُ وَلَا تَشْتَرِهِ، وَلَا تَسْقِهِ، وَلَا تَبِعْهُ، وَلَا تَسْتَعِنْ بِثَمَنِهِ - فَإِنَّمَا رَاعَى عُمَرُ، وَعَلِيٌّ، وَابْنُ عَبَّاسٍ مَا لَا يُسْكِرُ فَأَحَلُّوهُ، وَمَا يُسْكِرُ فَحَرَّمُوهُ. وَقَدْ صَحَّ عِنْدَنَا أَنَّ بِجِبَالِ رَيَّةَ أَعْنَابًا إذَا طُبِخَ عَصِيرُهَا فَنَقَصَ مِنْهُ الرُّبْعُ صَارَ رُبًّا خَائِرًا لَا يُسْكِرُ بَعْدَهَا كَالْعَسَلِ فَهَذَا حَلَالٌ بِلَا شَكٍّ. وَشَاهَدْنَا بِالْجَزَائِرِ أَعْنَابًا رَمْلِيَّةً تُطْبَخُ حَتَّى تَذْهَبَ ثَلَاثَةُ أَرْبَاعِهَا وَهِيَ بَعْدُ خَمْرٌ مُسْكِرَةٌ كَمَا كَانَتْ فَهَذَا حَرَامٌ بِلَا شَكٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The third perspective: It is authentically established from Umar and others that they did not adhere to the two-thirds or one-third reduction—as narrated through Abd al-Razzaq from Ma‘mar, from al-Zuhri, from al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq, from Aslam, the freed slave of Umar, who said: “We arrived at al-Jabiyah with Umar, and we were brought *ṭilā’* resembling date molasses, which had been thoroughly stirred. Umar ibn al-Khattab remarked: ‘This contains a drink that has not reached its completion.’” From the narration of Ahmad ibn Shu‘ayb: I, Suwayd ibn Nasr, [report] from Abdullah ibn al-Mubarak, from Ibn Jurayj, who recited to me: Aṭa’ informed me, saying: “I heard Ibn Abbas declare: ‘By Allah, fire does not render anything lawful or unlawful.’” He then clarified to me his statement “fire does not render anything lawful” in reference to their claims about *ṭilā’*, “nor does it render anything unlawful.” Abu Muhammad said: “This is the truth, as no authentic report from any Companion contradicts it.” It is authentically reported that Tawus, when asked about *ṭilā’*, replied: “What of that which resembles honey—consumed with bread or diluted with water for drinking? Consume it, but avoid what is inferior to it. Do not purchase it, serve it, sell it, or benefit from its price.” Umar, Ali, and Ibn Abbas only deemed permissible what does not intoxicate and prohibited what intoxicates. It is established to us that in the mountains of Rayyah, grapes are cooked until a quarter of their juice evaporates, becoming a superior syrup that does not intoxicate—like honey—which is unquestionably lawful. We observed in al-Jazair sandy grapes cooked until three-fourths evaporated, yet they remained wine. It is intoxicating as it has been, so this is undoubtedly forbidden. And with Allah, the Exalted, is success.

L17349 Since all these statements have been invalidated by the proofs we have presented, and the opinion of Abū Ḥanīfah and his followers stands stripped of any connection to textual evidence—neither through authentic narrations

nor defective ones, whether via a connected chain (musnad), disconnected chain (mursal), narration from a Companion, or a Successor—nor did they have any predecessor from the Ummah known to have established such a principle before them—let us now, with the help of Allah the Exalted, adduce the evidences affirming the correctness of our position:

We have received narrations through the chains of Mālik and Sufyān ibn ʿUyaynah—both transmitting from al-Zuhrī, from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, from ʿĀ'ishah, the Mother of the Believers—that the Messenger of Allah (ﷺ) said: "Every intoxicating drink is forbidden." This is Sufyān's wording. Mālik's version states: "He was asked about *al-bitʿ*, and replied: 'Every intoxicating drink is forbidden.'"

Through another chain, ʿAbdullāh ibn al-Mubārak reported from Maʿmar, from al-Zuhrī, from Abū Salamah ibn ʿAbd al-Raḥmān, from ʿĀ'ishah, the Mother of the Believers, who said: "The Messenger of Allah (ﷺ) was asked about *al-bitʿ*, and he replied: 'Every intoxicating drink is forbidden.'"

Al-bitʿ is made from honey. Even if no evidence existed beyond this authenticated report—in which the Prophet explicitly declared, when asked about a honey drink, that whatever intoxicates is forbidden—it would suffice to refute these deprived ones who claim that intoxicating honey beverages are permissible and that intoxication from them is lawful. We seek refuge in Allah the Most Great from the like of their misguidance.[13]

L17350–17352 Via the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān and Abū Dāwūd al-Ṭayālisī. Yaḥyā narrated: From Muḥammad ibn ʿAmr, from Abū Salamah ibn ʿAbd al-Raḥmān, from Abū Hurayrah. Abū Dāwūd narrated: From Shuʿbah, from Saʿīd ibn Abī Burdah, from his father, from Abū Mūsā al-Ashʿarī. Then their chains converge via the Prophet - peace and blessings of Allah be upon him - as both Abū Hurayrah and Abū Mūsā al-Ashʿarī transmitted that he said: "Every intoxicant is unlawful." Via the chain of Wakīʿ, from Shuʿbah, from

[13] **Hadith references (L17349):** Sunan an-Nasai 5593; Jami at-Tirmidhi 1863; Sunan an-Nasai 5594; Sahih Muslim 2001a; Sunan Abi Dawud 3682.

فَإِذْ قَدْ بَطَلَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا بِالْبَرَاهِينِ الَّتِي أَوْرَدْنَا وَخَرَجَ قَوْلُ أَبِي حَنِيفَةَ وَأَصْحَابُهُ عَنْ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ بِشَيْءٍ مِنْ النُّصُوصِ وَلَا بِرِوَايَةٍ سَقِيمَةٍ، لَا فِي مُسْنَدٍ، وَلَا فِي مُرْسَلٍ، وَلَا عَنْ صَاحِبٍ، وَلَا عَنْ تَابِعٍ، وَلَا كَانَ لَهُمْ سَلَفٌ مِنْ الْأُمَّةِ يَعْرِفُ أَصْلًا قَبْلَهُمْ فَلْنَأْتِ بِعَوْنِ اللَّهِ تَعَالَى بِالْبَرَاهِينِ عَلَى صِحَّةِ قَوْلِنَا فِي ذَلِكَ -: رُوِّينَا مِنْ طَرِيقِ مَالِكٍ، وَسُفْيَانَ بْنِ عُيَيْنَةَ كِلَاهُمَا عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كُلُّ شَرَابٍ أَسْكَرَ فَهُوَ حَرَامٌ» هَذَا لَفْظُ سُفْيَانَ - وَلَفْظُ مَالِكٍ «سُئِلَ عَنْ الْبِتْعِ؟ فَقَالَ: كُلُّ شَرَابٍ أَسْكَرَ فَهُوَ حَرَامٌ» . وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْبِتْعِ؟ فَقَالَ: كُلُّ شَرَابٍ أَسْكَرَ فَهُوَ حَرَامٌ» وَالْبِتْعُ مِنْ الْعَسَلِ فَلَوْ لَمْ يَكُنْ إلَّا هَذَا الْخَبَرُ فِي صِحَّةِ إسْنَادِهِ وَقَدْ نَصَّ - عَلَيْهِ السَّلَامُ - إذْ سُئِلَ عَنْ شَرَابِ الْعَسَلِ أَنَّهُ إذَا أَسْكَرَ حَرَامٌ، وَهَذَا خِلَافُ قَوْلِ هَؤُلَاءِ الْمَحْرُومِينَ إنَّ شَرَابَ الْعَسَلِ الْمُسْكِرِ حَلَالٌ وَالسُّكْرُ مِنْهُ حَلَالٌ - نَعُوذُ بِاَللَّهِ الْعَظِيمِ مِنْ مِثْلِ ضَلَالِهِمْ.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ، وَأَبِي دَاوُد الطَّيَالِسِيِّ، قَالَ يَحْيَى: عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ. وَقَالَ أَبُو دَاوُد عَنْ شُعْبَةَ عَنْ سَعِيدِ بْنِ أَبِي بُرْدَةَ عَنْ أَبِيهِ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ، ثُمَّ اتَّفَقَ أَبُو هُرَيْرَةَ، وَأَبُو مُوسَى الْأَشْعَرِيُّ، كِلَاهُمَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «كُلُّ مُسْكِرٍ حَرَامٌ» . وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ سَعِيدِ بْنِ أَبِي بُرْدَةَ عَنْ أَبِيهِ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ قَالَ «بَعَثَنِي

Saʿīd ibn Abī Burdah, from his father, from Abū Mūsā al-Ashʿarī, who said: “The Prophet - peace and blessings of Allah be upon him - sent me and Muʿādh ibn Jabal to Yemen. I asked: ’O Messenger of Allah, there is a beverage made in our land called al-mizr from barley, and another called al-bitʿ from honey.’ He responded: ’Every intoxicant is unlawful.’” Similarly, Khālid narrated it from ʿĀṣim ibn Kulayb, from Abū Burdah, and ʿAmr ibn Dīnār, who narrated from... Sa’id ibn Abi Burdah narrated from Abi Burdah, from Abu Musa, from the Prophet (may Allah bless him and grant him peace). Through the chain of Hammad ibn Salamah, from Hammad ibn Abi Sulayman, from Abdullah ibn Buraidah, from his father, who said: The Messenger of Allah (may Allah bless him and grant him peace) stated, “Beware entirely of every intoxicant.” Through the chain of Abdullah ibn Tawus, from his father, from Ibn Umar: “The Messenger of Allah (may Allah bless him and grant him peace) delivered a sermon when a man inquired, ’O Messenger of Allah, what is your view of mizr?’ He responded, ’What is mizr?’ The man answered, ’A grain made in Yemen.’ He asked, ’Does it intoxicate?’ The man affirmed, ’Yes.’ He declared, ’Every intoxicant is forbidden.’” Through the chain of Ayyub al-Sakhtiyani, Musa ibn Uqbah, and Ibn Ajlan—all narrating from Nafi’, from Ibn Umar, from the Prophet (may Allah bless him and grant him peace)—who said: “Every intoxicant is an intoxicant, and every intoxicant is prohibited.” This was narrated by Hammad ibn Zayd from Ayyub. It was transmitted from Hammad by Abd al-Rahman ibn Mahdi, Yunus ibn Muhammad, Abu al-Rabi’ al-Ataki, and Abu Kamil. Ibn Jurayj narrated it from Musa ibn Uqbah. These accounts have been conveyed through subsequent narrators of your choice. Through the chain of Muhammad ibn Ishaq, from Yazid ibn Abi Habib, from Marthad ibn Abdullah al-Yazani (known as Abu al-Khayr), from Daylam ibn al-Hawsha’ al-Himyari, who recounted: “I said, ’O Messenger of Allah, we inhabit a cold region where we undertake arduous labor. We prepare a drink from this wheat to strengthen ourselves for our work and withstand our land’s cold.’ He asked, ’Does it intoxicate?’ I replied, ’Yes.’ He commanded, ’Avoid it.’ I said, ’Our people will not give it up.’ He decreed, ’If they do not abandon it, fight them.’”

L17353 From the chain of Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār from ʿAlī

النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَا وَمُعَاذَ بْنَ جَبَلٍ إِلَى الْيَمَنِ فَقُلْتُ: يَا رَسُولَ اللَّهِ إِنَّ شَرَابًا يُصْنَعُ بِأَرْضِنَا يُقَالُ لَهُ: الْمِزْرُ مِنْ الشَّعِيرِ، وَشَرَابًا يُقَالُ لَهُ: الْبِتْعُ مِنْ الْعَسَلِ؟ فَقَالَ: كُلُّ مُسْكِرٍ حَرَامٌ» . وَهَكَذَا رَوَاهُ أَيْضًا خَالِدٌ عَنْ عَاصِمِ بْنِ كُلَيْبٍ عَنْ أَبِي بُرْدَةَ، وَعَمْرِو بْنِ دِينَارٍ عَنْ سَعِيدِ بْنِ أَبِي بُرْدَةَ عَنْ أَبِي بُرْدَةَ عَنْ أَبِي مُوسَى عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَإِيَّاكُمْ وَكُلَّ مُسْكِرٍ» . وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عُمَرَ: «خَطَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ رَجُلٌ: يَا رَسُولَ اللَّهِ أَرَأَيْت الْمِزْرَ؟ قَالَ: وَمَا الْمِزْرُ؟ قَالَ: حَبَّةٌ تُصْنَعُ بِالْيَمَنِ؟ قَالَ: تُسْكِرُ؟ قَالَ: نَعَمْ، قَالَ: كُلُّ مُسْكِرٍ حَرَامٌ» . وَمِنْ طَرِيقِ أَيُّوبَ السِّخْتِيَانِيِّ وَمُوسَى بْنِ عُقْبَةَ، وَابْنِ عَجْلَانَ كُلُّهُمْ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «كُلُّ مُسْكِرٍ خَمْرٌ وَكُلُّ مُسْكِرٍ حَرَامٌ» . وَرَوَاهُ عَنْ أَيُّوبَ حَمَّادِ بْنِ زَيْدٍ. وَرَوَاهُ عَنْ حَمَّادٍ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ، وَيُونُسَ بْنِ مُحَمَّدٍ، وَأَبُو الرَّبِيعِ الْعَتَكِيُّ، وَأَبُو كَامِلٍ. وَرَوَاهُ عَنْ مُوسَى بْنِ عُقْبَةَ ابْنُ جُرَيْجٍ. وَرَوَاهُ عَنْ هَؤُلَاءِ مَنْ شِئْت. وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ مَرْثَدِ بْنِ عَبْدِ اللَّهِ الْيَزَنِيِّ هُوَ أَبُو الْخَيْرِ - «عَنْ دَيْلَمٍ هُوَ ابْنُ الْهَوْشَعِ الْحِمْيَرِيُّ - قَالَ: قُلْتُ يَا رَسُولَ اللَّهِ إِنَّا بِأَرْضٍ بَارِدَةٍ نُعَالِجُ فِيهَا عَمَلًا شَدِيدًا وَإِنَّا نَتَّخِذُ مِنْ هَذَا الْقَمْحِ شَرَابًا نَتَقَوَّى بِهِ عَلَى أَعْمَالِنَا وَعَلَى بَرْدِ بِلَادِنَا، فَقَالَ: هَلْ يُسْكِرُ؟ قُلْتُ: نَعَمْ، قَالَ: فَاجْتَنِبُوهُ قُلْتُ: فَإِنَّ النَّاسَ عِنْدَنَا غَيْرُ تَارِكِيهِ، قَالَ: فَإِنْ لَمْ يَتْرُكُوهُ قَاتِلُوهُمْ» .

ibn al-Ḥusayn al-Dirhamī from Anas ibn ʿIyāḍ (Ibn Ḍamrah) from Mūsā ibn ʿUqbah from Sālim ibn ʿAbd Allāh ibn ʿUmar from his father, who said: The Messenger of Allāh—peace be upon him—said, "What intoxicates in large quantities, its small amount is forbidden." From the chain of Qāsim ibn Aṣbagh from Isḥāq ibn al-Ḥasan al-Ḥarbī from Zakariyyā ibn ʿAdī from al-Walīd ibn Kathīr ibn Sinān al-Muzanī from al-Ḍaḥḥāk ibn ʿUthmān from Bukayr ibn ʿAbd Allāh ibn al-Ashajj from ʿĀmir ibn Saʿd ibn Abī Waqqāṣ from his father that the Messenger of Allāh—peace be upon him—said: "I forbid you from the small amount of what intoxicates in large quantities."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارِ عَنْ عَلِيِّ بْنِ الْحُسَيْنِ الدِّرْهَمِيِّ نا أَنَسُ بْنُ عِيَاضٍ هُوَ ابْنُ ضَمْرَةَ - نا مُوسَى بْنُ عُقْبَةَ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَا أَسْكَرَ كَثِيرُهُ فَقَلِيلُهُ حَرَامٌ» . وَمِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا إِسْحَاقُ بْنُ الْحَسَنِ الْحَرْبِيُّ نا زَكَرِيَّا بْنُ عَدِيٍّ نا الْوَلِيدُ بْنُ كَثِيرِ بْنِ سِنَانٍ الْمُزَنِيّ حَدَّثَنِي الضَّحَّاكُ بْنُ عُثْمَانَ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَنْهَاكُمْ عَنْ قَلِيلِ مَا أَسْكَرَ كَثِيرُهُ» .

L17354–17355 From the path of Abū Dāwūd al-Sijistānī and ʿAbdullāh ibn Muḥammad ibn ʿAbd al-ʿAzīz—the maternal grandson of Manīʿ al-Baghawī—Abū Dāwūd said: Qutaybah narrated to us. ʿAbdullāh said: Aḥmad ibn Ḥanbal narrated to us, Sulaymān ibn Dāwūd al-Hāshimī narrated to us. Then the chains of Qutaybah and Sulaymān converged, both stating: Ismāʿīl ibn Jaʿfar narrated to us, Dāwūd ibn Bakr ibn Abī al-Furāt narrated to us, Muḥammad ibn al-Munkadir narrated to us from Jābir ibn ʿAbdillāh, who said: The Messenger of Allāh—peace and blessings of Allāh be upon him—declared: "Whatever intoxicates in large quantity, its smallest measure is forbidden." We have also transmitted through the path of al-Qāsim ibn Muḥammad from ʿĀ'ishah, Mother of the Believers, from the Prophet—peace and blessings of Allāh be upon him. These are the mutually supporting, firmly established, authentic, mass-transmitted reports from the Mother of the Believers, Abū Hurayrah, Abū Mūsā, Ibn ʿUmar, Saʿd ibn Abī Waqqāṣ, Jābir ibn ʿAbdillāh, al-Nuʿmān ibn Bashīr, and al-Daylam ibn al-Hawshaʿ—all from the Prophet—peace and blessings of Allāh be upon him—through texts impervious to figurative interpretation and resistant to legal stratagems. They explicitly prohibit the intoxicating drink itself when it intoxicates, the honey drink, barley drink, wheat drink when intoxicating, corn drink when intoxicating, and the prohibition of any small quantity from what intoxicates in abundance—contrary to the claims of those whom Allāh has forsaken and deprived of divine suc-

وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ، وَعَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَبْدِ الْعَزِيزِ هُوَ ابْنُ بِنْتِ مَنِيعٍ الْبَغَوِيِّ قَالَ أَبُو دَاوُد: نا قُتَيْبَةَ، وَقَالَ عَبْدُ اللَّهِ: نا أَحْمَدُ بْنُ حَنْبَلٍ نا سُلَيْمَانُ بْنُ دَاوُد الْهَاشِمِيُّ، ثُمَّ اتَّفَقَ قُتَيْبَةَ، وَسُلَيْمَانُ، وَقَالَا جَمِيعًا: نا إِسْمَاعِيلُ هُوَ ابْنُ جَعْفَرٍ - نا دَاوُد بْنُ بَكْرٍ هُوَ ابْنُ أَبِي الْفُرَاتِ - نا مُحَمَّدُ بْنُ الْمُنْكَدِرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَا أَسْكَرَ كَثِيرُهُ فَقَلِيلُهُ حَرَامٌ» . وَرُوِّينَا أَيْضًا مِنْ طَرِيقِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَذِهِ الْآثَارُ الْمُتَظَاهِرَةُ الثَّابِتَةُ الصِّحَاحُ الْمُتَوَاتِرَةُ عَنْ أُمِّ الْمُؤْمِنِينَ، وَأَبِي هُرَيْرَةَ، وَأَبِي مُوسَى، وَابْنِ عُمَرَ، وَسَعْدِ بْنِ أَبِي وَقَّاصٍ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ، وَالنُّعْمَانِ بْنِ بَشِيرٍ، وَالدَّيْلَمِ بْنِ الْهَوْشَعِ كُلِّهِمْ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَا لَا يَحْتَمِلُ التَّأْوِيلَ وَلَا يُقْدَرُ فِيهِ عَلَى حِيلَةٍ، بَلْ بِالنَّصِّ عَلَى تَحْرِيمِ الشَّرَابِ نَفْسِهِ إذَا أَسْكَرَ وَتَحْرِيمِ شَرَابِ الْعَسَلِ، وَشَرَابِ الشَّعِيرِ، وَشَرَابِ الْقَمْحِ إذَا أَسْكَرَ، وَشَرَابِ الذُّرَةِ إذَا أَسْكَرَ، وَتَحْرِيمِ الْقَلِيلِ مِنْ كُلِّ مَا أَسْكَرَ كَثِيرُهُ بِخِلَافِ مَا يَقُولُ مَنْ خَذَلَهُ اللَّهُ تَعَالَى وَحَرَمَهُ التَّوْفِيقَ. وَقَدْ رُوِّينَا أَيْضًا

cess. We have also transmitted through the path of ʿAmr ibn Shuʿayb from his father from his grandfather from the Prophet—peace and blessings of Allāh be upon him—the prohibition against small quantities of what intoxicates abundantly. Yet they authenticate such reports only when aligned with their desires, while some shamelessly oppose aspects of these narrations, such as his statement—peace be upon him—"Every intoxicant is forbidden," claiming it refers solely to the final cup causing intoxication. Abū Muḥammad said: This position is utterly invalid for three reasons: First, it is a baseless claim without evidence—a false attribution to the Messenger of Allāh—peace and blessings of Allāh be upon him—and an imposition of words he never uttered nor indicated. This act necessitates entry into the Fire for its perpetrator. Second, they do not apply this principle to honey drink, wheat drink, barley drink, apple drink, plum drink, pear drink, cherry drink, pomegranate drink, millet drink, or other beverages—restricting it only to cooked date wine, raisin drink, and grape juice. Thus they openly oppose the Prophet—peace and blessings of Allāh be upon him. Third, it constitutes a foolish interpretation and absurd deduction. Allāh has exalted His Messenger—peace and blessings of Allāh be upon him and his family—above such intent, just as He has exalted every rational being above such assertions. We challenge them: Which element do you deem prohibited? The final cup? The last swallow? Or the ultimate drop entering the throat?

مِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النَّهْيَ عَنْ قَلِيلِ مَا أَسْكَرَ كَثِيرُهُ وَهُمْ يُوَثِّقُونَهَا إذَا وَافَقَتْ أَهْوَاءَهُمْ وَجَلَّحَ بَعْضُهُمْ بِعَدَمِ الْحَيَاءِ فِي بَعْضِ هَذِهِ الْآثَارِ وَهُوَ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «كُلُّ مُسْكِرٍ حَرَامٌ» فَقَالَ: إنَّمَا عَنَى الْكَأْسَ الْأَخِيرَ الَّذِي يُسْكِرُ مِنْهُ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا فِي غَايَةِ الْفَسَادِ مِنْ وُجُوهٍ -: أَحَدُهَا: أَنَّهُ دَعْوَى كَاذِبَةٌ بِلَا دَلِيلٍ وَافْتِرَاءٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْبَاطِلِ، وَتَقْوِيلٌ لَهُ مَا لَمْ يَقُلْهُ عَنْ نَفْسِهِ، وَلَا أَخْبَرَ بِهِ عَنْ مُرَادِهِ، وَهَذَا يُوجِبُ النَّارَ لِفَاعِلِهِ. وَثَانِيهَا: أَنَّهُمْ لَا يَقُولُونَ بِذَلِكَ فِي شَرَابِ الْعَسَلِ، وَالْحِنْطَةِ، وَالشَّعِيرِ، وَالتُّفَّاحِ، وَالْإِجَّاصِ وَالْكُمَّثْرَى، وَالْقَرَاسْيَا، وَالرُّمَّانِ، وَالدُّخْنِ، وَسَائِرِ الْأَشْرِبَةِ، إنَّمَا يَقُولُونَهُ فِي مَطْبُوخِ التَّمْرِ، وَالزَّبِيبِ، وَالْعَصِيرِ فَقَطْ، فَلَاحَ خِلَافُهُمْ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جِهَارًا. وَالثَّالِثُ: أَنَّهُ تَأْوِيلٌ أَحْمَقُ وَتَخْرِيجٌ سَخِيفٌ، قَدْ نَزَّهَ اللَّهُ تَعَالَى رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ أَنْ يُرِيدَهُ، بَلْ قَدْ نَزَّهَ اللَّهُ تَعَالَى كُلَّ ذِي مُسْكَةِ عَقْلٍ عَنْ أَنْ يَقُولَهُ لِأَنَّا نَسْأَلُهُمْ أَيُّ ذَلِكَ هُوَ الْمُحَرَّمُ عِنْدَكُمْ؟ الْكَأْسُ الْآخِرَةُ أَمْ الْجَرْعَةُ الْآخِرَةُ، أَمْ آخِرُ نُقْطَةٍ تَلِجُ حَلْقَهُ؟

L17356–17357 If they say: "The last cup?" We reply: It could be an ounce, four ratls, or more—varying between these measures—and there might not even be a cup. Instead, the drinker might place his mouth on the jug and not remove it from his mouth until he is intoxicated. Thus, the falsity of their claim regarding the cup is exposed. If they say: "The last gulp?" We reply: Gulps differ: some are minute, others fill the throat. Which of these is forbidden or permissible? Here, the flaw in their claim about the gulp becomes clear. If they say: "The last drop?" We reply: Drops vary in size—some large, some small—until we compel them to concede the correct measure, reducing them to the status of those mocked and derided for their assertions. If they fail to define a

فَإِنْ قَالُوا: الْكَأْسُ الْآخِرَةُ؟ قُلْنَا لَهُمْ: قَدْ يَكُونُ مِنْ أُوقِيَّةٍ، وَقَدْ يَكُونُ مِنْ أَرْبَعَةِ أَرْطَالٍ، وَأَكْثَرَ، فَمَا بَيْنَ ذَلِكَ، وَقَدْ لَا يَكُونُ هُنَالِكَ كَأْسٌ، بَلْ يَضَعُ الشَّرِّيبُ فَاهُ فِي الْكُوزِ فَلَا يُقْلِعُهُ عَنْ فِيهِ حَتَّى يَسْكَرَ فَظَهَرَ بُطْلَانُ قَوْلِهِمْ فِي الْكَأْسِ. فَإِنْ قَالُوا: الْجَرْعَةُ الْآخِرَةُ؟ قُلْنَا: وَالْجُرَعُ تَتَفَاضَلُ فَتَكُونُ مِنْهَا الصَّغِيرَةُ جِدًّا، وَتَكُونُ مِنْهَا مِلْءُ الْحَلْقِ، فَأَيُّ ذَلِكَ هُوَ الْحَرَامُ، وَأَيُّهُ هُوَ الْحَلَالُ؟ فَظَهَرَ فَسَادُ قَوْلِهِمْ فِي الْجَرْعَةِ أَيْضًا. فَإِنْ قَالُوا: آخِرُ نُقْطَةٍ؟

specific measure, they would have ascribed to Allah—Exalted is He—that He forbade us a quantity He neglected to delineate from what He permitted—a quantity unknown to anyone. This imposes an unbearable obligation and prohibits what cannot be discerned, and Allah is far above such a thing. If they retort: "You prohibit excessive consumption of destructive or harmful food or drink—so define this limit!" We respond: Indeed, it is what exceeds physically perceptible satiety and quenching, naturally recognized by all—even a nursing infant or animal. Every rational being stops once satiated, save those intent on harming themselves or indulging their desires. How can this hold when the narrations we cited utterly reject this corrupt interpretation? For the Prophet's statement—peace be upon him—"Every intoxicating drink is forbidden" refers to the drink's essence before consumption, not its final portion. Moreover, their claimed "last intoxicating cup" is not necessarily what causes intoxication. All prior portions contribute. One might drink yet not become intoxicated until exposed to the wind or a sudden head movement. Which portion of his drink would then be unlawful? And success comes only from Allah, the Exalted.

قُلْنَا: النُّقَطُ تَتَفَاضَلُ فَمِنْهَا كَبِيرٌ، وَمِنْهَا صَغِيرٌ حَتَّى نَرُدَّهُمْ إلَى مِقْدَارِ الصُّوَابَةِ، وَيَحْصُلُوا فِي نِصَابِ مَنْ يَسْخَرُ بِهِمْ وَيَتَطَايَبُ بِأَخْبَارِهِمْ، فَإِنْ لَمْ يَحُدُّوا فِي ذَلِكَ حَدًّا كَانُوا قَدْ نَسَبُوا إلَى اللَّهِ تَعَالَى أَنَّهُ حَرَّمَ عَلَيْنَا مِقْدَارًا مَا فَصَّلَهُ عَمَّا أَحَلَّ وَذَلِكَ الْمِقْدَارُ لَا يَعْرِفُهُ أَحَدٌ، وَهَذَا تَكْلِيفُ مَا لَا يُطَاقُ، وَتَحْرِيمُ مَا لَا يُمْكِنُ أَنْ يُدْرَى مَا هُوَ وَحَاشَا لِلَّهِ مِنْ هَذَا. فَإِنْ قَالُوا: أَنْتُمْ تُحَرِّمُونَ الْإِكْثَارَ الْمُهْلِكَ أَوْ الْمُؤْذِيَ مِنْ الطَّعَامِ أَوْ الشَّرَابِ فَحُدُّوهُ لَنَا؟ قُلْنَا: نَعَمْ، وَهُوَ مَا زَادَ عَلَى الشِّبَعِ وَالرِّيِّ الْمَحْسُوسَيْنِ بِالطَّبِيعَةِ اللَّذَيْنِ يُمَيِّزُهُمَا كُلُّ أَحَدٍ مِنْ نَفْسِهِ حَتَّى الطِّفْلُ الرَّضِيعُ وَالْبَهِيمَةُ، فَإِنَّ كُلَّ ذِي عَقْلٍ إذَا بَلَغَ شِبَعُهُ قَطَعَ إلَّا الْقَاصِدُ إلَى أَذَى نَفْسِهِ وَاتِّبَاعِ شَهْوَتِهِ فَكَيْفَ وَالْأَحَادِيثُ الَّتِي ذَكَرْنَا لَا تَحْتَمِلُ أَلْبَتَّةَ هَذَا التَّأْوِيلَ الْفَاسِدَ؟ لِأَنَّ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَرَابٍ أَسْكَرَ حَرَامٌ» إشَارَةٌ إلَى عَيْنِ الشَّرَابِ قَبْلَ أَنْ يُشْرَبَ لَا إلَى آخِرِ شَيْءٍ مِنْهُ وَأَيْضًا فَإِنَّ الْكَأْسَ الْأَخِيرَ الْمُسْكِرَةَ عِنْدَهُمْ لَيْسَتْ هِيَ الَّتِي أَسْكَرَتْ الشَّارِبَ بِالضَّرُورَةِ يُدْرَى هَذَا، بَلْ هِيَ وَكُلُّ مَا شُرِبَ قَبْلَهَا وَقَدْ يَشْرَبُ الْإِنْسَانُ فَلَا يَسْكَرُ، فَإِنْ خَرَجَ إلَى الرِّيحِ حَدَثَ لَهُ السُّكْرُ، وَكَذَلِكَ إنْ حَرَّكَ رَأْسَهُ حَرَكَةً قَوِيَّةً، فَأَيُّ أَجْزَاءِ شَرَابِهِ هُوَ الْحَرَامُ حِينَئِذٍ؟ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L17358–17360 Abu Muhammad said: "We say to them: When you claim that the last cup becomes prohibited as intoxicating, inform us—when did it become unlawful? Was this before he drank it, after he drank it, or while he was drinking it? There is no fourth possibility. If they say: 'After he drank it,' we reply: 'This is invalid, for if it was not prohibited until after his drinking, then it remained permissible both when he drank it and before his drinking. It is among the false and absurd assertions that no Muslim would ever utter...'" A substance is permissible to drink, but when it enters his stomach, the act of drinking it becomes prohibited—this is foolish, absurd, and irrational babble.

قَالَ أَبُو مُحَمَّد: وَنَقُولُ لَهُمْ إذَا قُلْتُمْ: إنَّ الْكَأْسَ الْأَخِيرَةَ هِيَ الْمُسْكِرَةُ فَأَخْبِرُونَا مَتَى صَارَتْ حَرَامًا مُسْكِرَةً؟ أَقَبْلَ شُرْبِهِ لَهَا، أَمْ بَعْدَ شُرْبِهِ لَهَا، أَمْ فِي حَالِ شُرْبِهِ لَهَا؟ وَلَا سَبِيلَ إلَى قِسْمٍ رَابِعٍ. فَإِنْ قَالُوا: بَعْدَ أَنْ شَرِبَهَا؟ قُلْنَا: هَذَا بَاطِلٌ لِأَنَّهَا إذَا لَمْ تُحَرَّمْ إلَّا بَعْدَ شُرْبِهِ لَهَا فَقَدْ كَانَتْ حَلَالًا حِينَ شُرْبِهِ لَهَا وَقَبْلَ شُرْبِهِ لَهَا، وَمِنْ الْبَاطِلِ الْمُحَالِ الَّذِي لَا يَقُولُهُ مُسْلِمٌ أَنْ يَكُونَ شَيْءٌ حَلَالًا شُرْبُهُ، فَإِذَا صَارَ فِي بَطْنِهِ صَارَ حَرَامًا شُرْبُهُ

- هَذَا كَلَامٌ أَحْمَقُ وَسُخْفٌ وَهَذْرٌ لَا يُعْقَلُ. فَإِنْ قَالُوا: بَلْ صَارَتْ حَرَامًا حِينَ شُرْبِهِ لَهَا؟ قُلْنَا: إِنَّهَا لَا حَظَّ لَهَا فِي إِسْكَارِهِ إِلَّا بَعْدَ شُرْبِهِ لَهَا، وَأَمَّا فِي حِينِ شُرْبِهِ لَهَا فَلَيْسَتْ مُسْكِرَةً إِلَّا بِمَعْنَى أَنَّهَا سَتُسْكِرُهُ، وَهَذَا الْمَعْنَى مَوْجُودٌ فِيهَا وَهِيَ فِي دَنِّهَا فَلَا فَرْقَ بَيْنَهَا فِي حِينِ شُرْبِهِ لَهَا وَبَيْنَهَا قَبْلَ ذَلِكَ أَصْلًا. فَإِنْ قَالُوا: بَلْ قَبْلَ أَنْ يَشْرَبَهَا؟ قُلْنَا: فَقُولُوا بِتَحْرِيمِ الْإِنَاءِ الَّذِي كَانَتْ فِيهِ، وَبِتَنْجِيسِهِ، وَبِتَحْرِيمِ كُلِّ مَا كَانَ فِيهِ مِنَ الشُّرْبِ، وَبِتَنْجِيسِهِ لِأَنَّهُ قَدْ خَالَطَهُ حَرَامٌ نَجِسٌ عِنْدَكُمْ وَهُمْ لَا يَقُولُونَ بِهَذَا. فَظَهَرَ فَسَادُ قَوْلِهِمْ مِنْ كُلِّ وَجْهٍ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

If they argue, “Rather, it becomes prohibited at the moment of drinking,” we reply: It has no effect in causing his intoxication except after he drinks it. As for the moment of drinking, it does not actively cause intoxication except in the sense that it will eventually intoxicate him. This inherent property exists within it even while in its cask, so there is absolutely no difference between it during the act of drinking and beforehand. If they counter, “Rather, it becomes prohibited before he drinks it,” we say: Then you must declare the container holding it prohibited, deem it ritually impure, forbid every drink within it, and consider it defiled because—by your claim—it has mixed with something forbidden and impure. Yet they do not hold this position. Thus, the corruption of their argument is evident from every angle, and success comes only from Allah, the Exalted.

وَهُوَ قَوْلُ السَّلَفِ كَمَا رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نا يَحْيَى بْنُ سَعِيدٍ التَّيْمِيُّ حَدَّثَنِي أَبِي عَنْ مَرْيَمَ بِنْتِ طَارِقٍ أَنَّهَا سَمِعَتْ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ تَقُولُ لِنِسَاءٍ عِنْدَهَا: مَا أَسْكَرَ إِحْدَاكُنَّ فَلْتَجْتَنِبْهُ - وَإِنْ كَانَ مَاءَ حُبِّهَا [مَحَلِّهَا] فَإِنَّ كُلَّ مُسْكِرٍ حَرَامٌ. وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ عَلِيِّ بْنِ الْمُبَارَكِ حَدَّثَتْنِي كَرِيمَةُ بِنْتُ هَمَّامٍ أَنَّهَا سَمِعَتْ أُمَّ الْمُؤْمِنِينَ عَائِشَةَ تَقُولُ: نُهِيتُمْ عَنِ الدُّبَّاءِ، نُهِيتُمْ عَنِ الْحَنْتَمِ، نُهِيتُمْ عَنِ الْمُزَفَّتِ [ثُمَّ أَقْبَلَتْ عَلَى النِّسَاءِ فَقَالَتْ] إِيَّاكُنَّ وَالْجَرَّ الْأَخْضَرَ وَإِنْ أَسْكَرَكُنَّ مَاءُ حُبِّكُنَّ فَلَا تَشْرَبْنَهُ. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا عَبْدُ الْحَمِيدِ بْنُ أَبِي هِلَالٍ الْجَرْمِيُّ قَالَ: سَمِعْتُ أُمَّ طَلْحَةَ تَقُولُ: سَمِعْتُ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ وَقَدْ سُئِلَتْ عَنِ النَّبِيذِ؟ فَقَالَتْ: إِيَّاكُمْ وَمَا يُسْكِرُكُمْ. وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ قُدَامَةَ الْعَامِرِيِّ أَنَّ جَسْرَةَ بِنْتَ دَجَاجَةَ الْعَامِرِيَّةَ حَدَّثَتْهُ أَنَّهَا سَمِعَتْ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ تَقُولُ: لَا أُحِلُّ مُسْكِرًا وَإِنْ كَانَ خُبْزًا وَمَاءً. نا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نا عَبْدُ الرَّحْمَنِ بْنُ مَرْوَانَ الْقَنَازِعِيُّ - ثِقَةٌ مَشْهُورٌ - نا أَحْمَدُ

L17361–17363 This is the statement of the predecessors, as we have been narrated through the chain of Yahya ibn Sa’id al-Qattan: Yahya ibn Sa’id at-Taymi reported to us - my father narrated to me from Maryam bint Tariq that she heard Aisha, the Mother of the Believers, say to women present with her: “Whatever intoxicates any of you, she must avoid it—even if it were the water of her container [her place], for every intoxicating substance is forbidden.” Through the chain of Abdullah ibn al-Mubarak from Ali ibn al-Mubarak: Karimah bint Hammam narrated to me that she heard the Mother of the Believers, Aisha, say: “You are prohibited from gourds, prohibited from earthenware jugs (hantam), prohibited from resin-sealed containers (muzaffat). [Then she turned to the women and said]: Avoid the green jar. If the water of your container intoxicates you, do not drink it.” Through the chain of Sa’id ibn Mansur: Abdul-Hamid ibn Abi Hilal al-Jarmi reported to us, saying: I heard Umm Talhah say: “I heard Aisha, the Mother of the Believers, when asked about fermented date wine (nabidh), respond: ’Avoid whatever intoxicates you.”’ Through the chain of Abdullah ibn al-Mubarak from Qudamah al-Amiri: Jusrah bint Dajajah al-Amriyyah narrated to him that she heard Aisha, the Mother of the Believers, say: “I do not permit any intoxicating substance, even if it were bread and water.” Yusuf ibn Abdullah an-Namari reported to us: Abdur-Rahman ibn Marwan al-Qanazi’i—a trustworthy renowned narrator—reported to us: Ahmad ibn Amr ibn Sulaiman al-Baghdadi reported to us: Abdullah ibn Muhammad al-Baghawi reported to us: Ahmad ibn Hanbal

and my grandfather Ahmad ibn Mani' both stated: Abdullah ibn Idris al-Awdi reported to us, saying: I heard... Al-Mukhtar ibn Fulful narrated: Anas ibn Malik said: Khamr (intoxicant) is derived from grapes, dates, honey, wheat, barley, and millet. Whatever ferments from these and intoxicates is Khamr. Through the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from al-Sāʾib ibn Yazīd, who said: I witnessed ʿUmar ibn al-Khaṭṭāb pray over a funeral, then he turned to us and declared: "I detected the scent of drink on ʿUbayd Allāh and questioned him about it. He claimed it was ṭilāʾ (fermented date wine). I will inquire about the drink he consumed. If it was intoxicating, I will lash him." He added: Later, I witnessed ʿUmar lashing him. This is the most authentic chain of narration from ʿUmar, confirming he deemed the ḥadd penalty obligatory for consuming a drink that intoxicates in large quantities, even though ʿUbayd Allāh showed no signs of intoxication from what he drank. ʿUmar cross-examined him and observed no drunkenness, yet punished him solely for drinking what intoxicates. This applies even to ṭilāʾ, which some permit as you have heard.

Yūsuf ibn ʿAbd Allāh al-Namarī narrated, from ʿAbd al-Raḥmān ibn Marwān al-Qanāziʿī, from Aḥmad ibn ʿAmr ibn Sulaymān al-Baghdādī, from ʿAbd Allāh ibn Muḥammad al-Baghawī (the grandson of Manīʿ), from Aḥmad ibn Ḥanbal, from Ismāʿīl ibn Ibrāhīm (Ibn ʿUlayyah), from Abū Ḥayyān (Yaḥyā ibn Saʿīd al-Taymī), from al-Shaʿbī, from ʿAbd Allāh ibn ʿUmar, who said: I heard ʿUmar deliver a sermon from the pulpit of the Messenger of Allāh (may Allah bless him and grant him peace): "O people, the prohibition of Khamr was revealed on the day of its revelation. It is derived from five sources: grapes, dates, honey, wheat, and barley. Khamr is what clouds the mind."

L17364 We have also narrated it via the chain of Shuʿbah from ʿAbdullāh ibn Abī al-Safar from al-Shaʿbī from Ibn ʿUmar from ʿUmar. We have likewise narrated it via the chain of Abū Kuraib Muḥammad ibn al-ʿAlāʾ from ʿAbdullāh ibn Idrīs al-Awdī from Zakariyyā—who is the son of Abū Zāʾidah—from al-Shaʿbī from Ibn ʿUmar from ʿUmar. Via the chain of Aḥmad ibn Shuʿayb: Abū

بْنُ عَمْرِو بْنِ سُلَيْمَانَ الْبَغْدَادِيُّ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الْبَغَوِيّ نا أَحْمَدُ بْنُ حَنْبَلٍ، وَجَدِّي أَحْمَدُ بْنُ مَنِيعٍ، قَالَا جَمِيعًا: نا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ الْأَوْدِيُّ قَالَ: سَمِعْت الْمُخْتَارَ بْنَ فُلْفُلٍ قَالَ: قَالَ أَنَسُ بْنُ مَالِكٍ: الْخَمْرُ مِنْ الْعِنَبِ، وَالتَّمْرِ، وَالْعَسَلِ، وَالْحِنْطَةِ، وَالشَّعِيرِ، وَالذُّرَةِ، فَمَا تَخَمَّرَتْ مِنْ ذَلِكَ فَهُوَ الْخَمْرُ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ السَّائِبِ بْنِ يَزِيدَ قَالَ شَهِدْت عُمَرَ بْنَ الْخَطَّابِ صَلَّى جِنَازَةً، ثُمَّ أَقْبَلَ عَلَيْنَا فَقَالَ: إنِّي وَجَدْت مِنْ عُبَيْدِ اللَّهِ رِيحَ شَرَابٍ وَإِنِّي سَأَلْته عَنْهَا؟ فَزَعَمَ أَنَّهَا الطِّلَاءُ وَإِنِّي سَائِلٌ عَنْ الشَّرَابِ الَّذِي شَرِبَ؟ فَإِنْ كَانَ مُسْكِرًا جَلَدْته؟ قَالَ: فَشَهِدْتُهُ بَعْدَ ذَلِكَ يَجْلِدُهُ. فَهَذِهِ أَصَحُّ طَرِيقٍ فِي الدُّنْيَا عَنْ عُمَرَ أَنَّهُ رَأَى الْحَدَّ وَاجِبًا عَلَى مَنْ شَرِبَ شَرَابًا يُسْكِرُ كَثِيرُهُ لِأَنَّ عُبَيْدَ اللَّهِ لَمْ يَكُنْ سَكِرَ مِمَّا شَرِبَ، لِأَنَّهُ سَأَلَهُ فَرَاجَعَهُ وَلَمْ يَرَ عَلَيْهِ سُكْرًا؟ وَإِنَّمَا حَدَّهُ عَلَى شُرْبِهِ، مِمَّا يُسْكِرُ فَقَطْ، نَعَمْ، وَمِنْ الطِّلَاءِ الَّذِي يُحَلُّونَهُ كَمَا تَسْمَعُ. نا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نا عَبْدُ الرَّحْمَنِ بْنُ مَرْوَانَ الْقَنَازِعِيُّ، نا أَحْمَدُ بْنُ عَمْرِو بْنِ سُلَيْمَانَ الْبَغْدَادِيُّ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الْبَغَوِيّ هُوَ ابْنُ بِنْتِ مَنِيعٍ - نا أَحْمَدُ بْنُ حَنْبَلٍ نا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ - نا أَبُو حَيَّانَ هُوَ يَحْيَى بْنُ سَعِيدٍ التَّيْمِيُّ - نا الشَّعْبِيُّ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: سَمِعْت عُمَرَ يَخْطُبُ عَلَى مِنْبَرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: يَا أَيُّهَا النَّاسُ إنَّهُ قَدْ نَزَلَ تَحْرِيمُ الْخَمْرِ يَوْمَ نَزَلَ وَهِيَ مِنْ خَمْسَةٍ مِنْ الْعِنَبِ، وَالتَّمْرِ، وَالْعَسَلِ، وَالْحِنْطَةِ، وَالشَّعِيرِ - وَالْخَمْرُ مَا خَامَرَ الْعَقْلَ ".

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ شُعْبَةَ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ عَنْ الشَّعْبِيِّ عَنْ ابْنِ عُمَرَ عَنْ عُمَرَ - وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ أَبِي كُرَيْبٍ مُحَمَّدِ بْنِ الْعَلَاءِ عَنْ عَبْدِ اللَّهِ بْنِ إِدْرِيسَ الْأَوْدِيِّ عَنْ زَكَرِيَّا هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ الشَّعْبِيِّ عَنْ ابْنِ عُمَرَ عَنْ عُمَرَ. وَمِنْ طَرِيقِ

أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي أَبُو بَكْرِ بْنُ عَلِيٍّ هُوَ الْمُقَدَّمِيُّ - نا الْقَوَارِيرِيُّ هُوَ عُبَيْدُ اللَّهِ بْنُ عُمَرَ - نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ أَبِيهِ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبِيدَةَ السَّلْمَانِيِّ عَنِ ابْنِ مَسْعُودٍ قَالَ: أَحْدَثَ النَّاسُ أَشْرِبَةً لَا أَدْرِي مَا هِيَ؟ فَمَا لِي شَرَابٌ مُنْذُ عِشْرِينَ سَنَةً أَوْ قَالَ: عَدَدًا آخَرَ إِلَّا السَّوِيقُ وَالْمَاءُ - غَيْرَ أَنَّهُ لَمْ يَذْكُرْ النَّبِيذَ. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ أَبِيهِ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبِيدَةَ السَّلْمَانِيِّ عَنْ ابْنِ مَسْعُودٍ قَالَ: أَحْدَثَ النَّاسُ أَشْرِبَةً لَا أَدْرِي مَا هِيَ؟

Bakr ibn ʿAlī—who is al-Muqaddamī—narrated to us; al-Qawārīrī, who is ʿUbaydullāh ibn ʿUmar, narrated to us; al-Muʿtamir ibn Sulaymān al-Taymī narrated to us from his father from Muḥammad ibn Sīrīn from ʿUbāda al-Salmānī from Ibn Masʿūd, who said: "The people have introduced drinks I am unfamiliar with. For twenty years—or another number, as he said—I have consumed no drink except _sawīq_ and water," though he omitted mention of _nabīdh_. Via the chain of Saʿīd ibn Manṣūr: al-Muʿtamir ibn Sulaymān al-Taymī narrated to us from his father Muḥammad ibn Sīrīn from ʿUbāda al-Salmānī from Ibn Masʿūd, who said: "The people have introduced drinks I am unfamiliar with."

وَمَا لِي شَرَابٌ مُنْذُ عِشْرِينَ سَنَةً إِلَّا الْمَاءُ وَالْعَسَلُ وَاللَّبَنُ؟ وَمِنْ طَرِيقِ الْبُخَارِيِّ، وَأَحْمَدَ بْنِ شُعَيْبٍ، قَالَ الْبُخَارِيُّ: نا مُحَمَّدُ بْنُ كَثِيرٍ، وَقَالَ ابْنُ شُعَيْبٍ: أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، ثُمَّ اتَّفَقَ ابْنُ كَثِيرٍ وَقُتَيْبَةُ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ أَبِي الْجُوَيْرِيَةِ الْجَرْمِيِّ قَالَ: سَأَلْتُ ابْنَ عَبَّاسٍ عَنِ الْبَاذَقِ؟ فَقَالَ: سَبَقَ مُحَمَّدٌ الْبَاذَقَ، مَا أَسْكَرَ فَهُوَ حَرَامٌ - أَبُو الْجُوَيْرِيَةِ سَمِعَ ابْنَ عَبَّاسٍ، وَمَعْنَ بْنَ يَزِيدَ - وَرَوَى عَنْهُ أَبُو عَوَانَةَ، وَسُفْيَانُ. وَمِنْ طَرِيقِ إِسْحَاقَ بْنِ رَاهْوَيْهِ نا أَبُو عَامِرٍ هُوَ الْعَقَدِيُّ - وَالنَّضْرُ بْنُ شُمَيْلٍ، وَوَهْبُ بْنُ جَرِيرِ بْنِ حَازِمٍ، قَالُوا كُلُّهُمْ: نا شُعْبَةُ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ، قَالَ: سَمِعْتُ أَبَا الْحَكَمِ يَقُولُ: قَالَ ابْنُ عَبَّاسٍ مَنْ سَرَّهُ أَنْ يُحَرِّمَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ فَلْيُحَرِّمِ النَّبِيذَ. وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا سُوَيْدُ بْنُ نَصْرٍ أَنَا عَبْدُ اللَّهِ هُوَ ابْنُ الْمُبَارَكِ - عَنْ عُيَيْنَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ أَنَّ ابْنَ عَبَّاسٍ قَالَ لِرَجُلٍ سَأَلَهُ: اجْتَنِبْ مَا أَسْكَرَ مِنْ تَمْرٍ أَوْ زَبِيبٍ أَوْ غَيْرِهِ. وَبِهِ إِلَى عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ سُلَيْمَانَ التَّيْمِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: الْمُسْكِرُ قَلِيلُهُ وَكَثِيرُهُ حَرَامٌ. وَمِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ كُلُّ مُسْكِرٍ خَمْرٌ وَكُلُّ مُسْكِرٍ حَرَامٌ. وَمِنْ طَرِيقِ

L17365–17366 What have I drunk for twenty years except water, honey, and milk? Through the chain of Al-Bukhārī and Aḥmad ibn Shuʿayb: Al-Bukhārī said: Muḥammad ibn Kathīr narrated to us, while Ibn Shuʿayb said: I am Qutaybah ibn Saʿīd. Then Ibn Kathīr and Qutaybah concurred through Sufyān ibn ʿUyaynah from Abū al-Juwayriyah al-Jarmī, who said: I asked Ibn ʿAbbās about al-bādhaq. He replied: Muḥammad has already addressed al-bādhaq. Whatever intoxicates is forbidden. Abū al-Juwayriyah heard Ibn ʿAbbās and Maʿn ibn Yazīd. Abū ʿAwānah and Sufyān narrated from him. Through the chain of Isḥāq ibn Rāhwayh: Abū ʿĀmir al-ʿAqadī, al-Naḍr ibn Shumayl, and Wahb ibn Jarīr ibn Ḥāzim all narrated: Shuʿbah narrated to us from Salamah ibn Kuhayl, who said: I heard Abū al-Ḥakam say: Ibn ʿAbbās said, "Whoever wishes to prohibit what Allāh and His Messenger have prohibited must prohibit nabīdh." Through the chain of Aḥmad ibn Shuʿayb: Suwayd ibn Naṣr narrated to us: ʿAbdullāh ibn al-Mubārak narrated from ʿUyaynah ibn ʿAbd al-Raḥmān from his father that Ibn ʿAbbās told a questioner: "Avoid whatever intoxicates, whether from dates, raisins, or other sources." Through the same chain to ʿAbdullāh ibn al-Mubārak from Sulaymān al-Taymī from Muḥammad ibn Sīrīn, who said: "The intoxicant – whether small or large in quantity – is forbidden." Through the chain of Mālik from Nāfiʿ from Ibn ʿUmar: "Every intoxicant is khamr, and every intoxicant is forbidden." Through the chain of Aḥmad ibn Shuʿayb: Qutaybah narrated to us: Abū ʿAwānah narrated from Zayd ibn Jubayr, who said: I asked Ibn ʿUmar about beverages. He replied: "Avoid anything that intoxicates." Through the chain

of Saʿīd ibn Manṣūr: Ismāʿīl ibn Ibrāhīm, known as Ibn ʿUlayyah, narrated to us from Ayyūb al-Sikhtiyānī from Muḥammad ibn Sīrīn, who heard ʿAbdullāh ibn ʿUmar respond to a man asking: "May I take dates, place them in a clay vessel, and put it in an oven?" Ibn ʿUmar said: "I do not understand your query about dates in clay vessels and ovens. Do not drink khamr." He then remarked: "The people of such-and-such land produce khamr from such-and-such and name it such-and-such," enumerating five beverages. Ibn Sīrīn said: "I recall only honey, barley, and milk among them."

أَحْمَدَ بْنِ شُعَيْبٍ أَنَا قُتَيْبَةَ أَنَا أَبُو عَوَانَةَ عَنْ زَيْدِ بْنِ جُبَيْرٍ قَالَ: سَأَلْت ابْنَ عُمَرَ عَنْ الْأَشْرِبَةِ؟ فَقَالَ: اجْتَنِبْ كُلَّ شَيْءٍ يَنُشُّ. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ عُمَرَ قَدْ قَالَ لَهُ رَجُلٌ: آخُذُ التَّمْرَ فَأَجْعَلُهُ فِي نَخَّارٍ وَاجْعَلْهُ فِي التَّنُّورِ؟ فَقَالَ لَهُ ابْنُ عُمَرَ: لَا أَدْرِي مَا تَقُولُ آخُذُ التَّمْرَ فَأَجْعَلُهُ فِي نَخَّارٍ ثُمَّ أَجْعَلُهُ فِي تَنُّورٍ، لَا تَشْرَبْ الْخَمْرَ، ثُمَّ قَالَ ابْنُ عُمَرَ: يَتَّخِذُ أَهْلُ أَرْضِ كَذَا مِنْ كَذَا خَمْرًا يُسَمُّونَهَا كَذَا، وَيَتَّخِذُ أَهْلُ كَذَا مِنْ كَذَا خَمْرًا يُسَمُّونَهَا كَذَا، وَيَتَّخِذُ أَهْلُ أَرْضِ كَذَا مِنْ كَذَا خَمْرًا يُسَمُّونَهَا كَذَا - وَذَكَرَ كَلَامًا حَتَّى عَدَّ خَمْسَةَ أَشْرِبَةٍ، قَالَ ابْنُ سِيرِينَ لَا أَحْفَظُ مِنْهَا إِلَّا الْعَسَلَ، وَالشَّعِيرَ، وَاللَّبَنَ.

L17367–17368 Ayyub said: I feared to inform people about milk until a man told me that in Armenia, a drink is made from milk that does not remain long with its consumer. Similarly, Hammad ibn Zayd narrated from Ayyub, from Ibn Sirin, from Ibn Umar; and Ibn al-Mubarak from Abdullah ibn Awn, from Ibn Sirin, from Ibn Umar. Thus, Ibn Umar saw no significance in its preparation. We have also narrated it through Isra'il from Abu Husayn, from al-Sha'bi, from Ibn Umar: "Wine (khamr) is derived from five sources: dates, wheat, barley, honey, and grapes." Through the route of Abd al-Razzaq, Ma'mar narrated from Thabit al-Bunani and Qatadah, both from Anas ibn Malik, who said: "When wine was prohibited, Anas said: 'I used to serve eleven men, and they ordered me to spill it. So I spilled it, and people spilled their vessels until the streets were nearly flooded.'" Anas said: "Their wine was nothing but fresh unripe dates and dates mixed together." Abu Muhammad said: Anas named among them—in authentic hadiths we omitted for brevity—Abu Talha, Abu Ayyub, Abu Dujana, Abu Ubayda ibn al-Jarrah, Mu'adh ibn Jabal, Suhayl ibn Bayda', and Ubayy ibn Ka'b. Thus, this is the definitive consensus that when wine was prohibited, the Companions (may Allah be

قَالَ أَيُّوبُ: فَكُنْت أَهَابُ أَنْ أُحَدِّثَ النَّاسَ بِاللَّبَنِ حَتَّى حَدَّثَنِي رَجُلٌ أَنَّهُ يُصْنَعُ بِأَرْمِينِيَةَ مِنْ اللَّبَنِ شَرَابًا لَا يَلْبَثُ صَاحِبُهُ. وَهَكَذَا رَوَاهُ حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ عَنْ ابْنِ سِيرِينَ عَنْ ابْنِ عُمَرَ، وَابْنِ الْمُبَارَكِ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ ابْنِ سِيرِينَ عَنْ ابْنِ عُمَرَ - فَهَذَا ابْنُ عُمَرَ لَا يَرَى لِطَبْخِهِ مَعْنًى. وَقَدْ رُوِّينَاهُ مِنْ طَرِيقِ إِسْرَائِيلَ عَنْ أَبِي حُصَيْنٍ عَنْ الشَّعْبِيِّ عَنْ ابْنِ عُمَرَ: الْخَمْرُ مِنْ خَمْسَةٍ: مِنْ التَّمْرِ، وَالْحِنْطَةِ، وَالشَّعِيرِ، وَالْعَسَلِ، وَالْعِنَبِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ ثَابِتٍ الْبُنَانِيِّ، وَقَتَادَةَ، كِلَاهُمَا عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: لَمَّا حُرِّمَتْ الْخَمْرُ قَالَ أَنَسٌ: إِنِّي لِأَسْقِي أَحَدَ عَشَرَ رَجُلًا فَأَمَرُونِي فَكَفَأْتُهَا وَكَفَأَ النَّاسُ آنِيَتَهُمْ حَتَّى كَادَتْ السِّكَكُ أَنْ تَمْتَنِعَ - قَالَ أَنَسٌ: وَمَا خَمْرُهُمْ إِلَّا الْبُسْرُ، وَالتَّمْرُ مَخْلُوطَيْنِ. قَالَ أَبُو مُحَمَّدٍ: سَمَّى مِنْهُمْ أَنَسٌ فِي أَحَادِيثَ صِحَاحٍ تَرَكْنَا ذِكْرَهَا اخْتِصَارًا أَبَا

pleased with them) spilled every drink they had, whether from dates or fresh unripe dates. This confirms that according to all of them, it was considered wine without distinguishing between unfermented and fermented, contrary to the claims of those deprived of success. Had they considered a small amount permissible, they would not have spilled it, as wasting wealth is prohibited. Abu Muhammad said: Al-Tahtawi stated here a claim—we do not know how such words escaped his tongue—that they spilled it for fear that consuming more would lead to intoxication. Ali said: "This is an outright lie against all of them. I wish I knew who informed him of this! Is it permissible to report about someone based on conjecture?" We have narrated from Shu'ba ibn al-Hajjaj, from Yahya ibn Ubayd (the son of Abu Umar al-Bahrani), who said: "I heard Ibn Abbas say: 'The Messenger of Allah—peace and blessings be upon him—would have date wine prepared for him at night's beginning. He would drink it upon waking the next morning, throughout that day, the following night, the next day, the subsequent night, and the following day until Asr. If any remained, he would give it to a servant or order it to be poured out.'"

طَلْحَةَ، وَأَبَا أَيُّوبَ، وَأَبَا دُجَانَةَ، وَأَبَا عُبَيْدَةَ بْنَ الْجَرَّاحِ، وَمُعَاذَ بْنَ جَبَلٍ، وَسُهَيْلَ بْنَ بَيْضَاءَ، وَأُبَيَّ بْنَ كَعْبٍ - فَهَذَا الْإِجْمَاعُ الْمُتَيَقَّنُ أَنْ تَكُونَ حُرِّمَتْ الْخَمْرُ فَيُهْرِقُ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - كُلَّ شَرَابٍ عِنْدَهُمْ مِنْ تَمْرٍ أَوْ بُسْرٍ. فَصَحَّ أَنَّهُ عِنْدَ جَمِيعِهِمْ خَمْرٌ وَلَمْ يَخُصُّوا نَبِيًّا مِنْ مَطْبُوخٍ بِخِلَافِ أَقْوَالِ هَؤُلَاءِ الْمَحْرُومِينَ مِنْ التَّوْفِيقِ؛ وَلَوْ عِنْدَهُمْ قَلِيلُهُ لَمَا أَهْرَقُوهُ، لِأَنَّهُ قَدْ صَحَّ النَّهْيُ عَنْ إضَاعَةِ الْمَالِ. قَالَ أَبُو مُحَمَّد: وَقَالَ الطَّحْطَاوِيُّ هَهُنَا قَوْلًا لَا نَدْرِي كَيْفَ انْطَلَقَ بِهِ لِسَانُهُ؟ وَهُوَ أَنَّهُ قَالَ: إنَّمَا أَهْرَقُوهُ خَوْفَ أَنْ يَزِيدُوا مِنْهُ فَيَسْكَرُوا. قَالَ عَلِيٌّ: وَهَذَا هُوَ الْكَذِبُ الْبَحْتُ عَلَيْهِمْ كُلِّهِمْ، وَلَيْتَ شِعْرِي مَنْ أَخْبَرَهُ بِهَذَا عَنْهُمْ؟ وَهَلْ يَحِلُّ أَنْ يُخْبَرَ عَنْ أَحَدٍ بِالظَّنِّ؟ وَرُوِّينَا عَنْ شُعْبَةَ بْنِ الْحَجَّاجِ عَنْ يَحْيَى بْنِ عُبَيْدٍ هُوَ ابْنُ أَبِي عُمَرَ الْبَهْرَانِيُّ قَالَ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ: كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُنْتَبَذُ لَهُ أَوَّلَ اللَّيْلِ فَيَشْرَبُهُ إذَا أَصْبَحَ يَوْمَهُ ذَلِكَ وَاللَّيْلَةَ الَّتِي تَجِيءُ وَالْغَدَ وَاللَّيْلَةَ الْأُخْرَى وَالْغَدَ إلَى الْعَصْرِ، فَإِنْ بَقِيَ شَيْءٌ سَقَاهُ لِخَادِمٍ أَوْ أَمَرَ بِهِ فَصُبَّ.

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We have similarly transmitted it through the chain of Ibn Abi Shaybah and Abu Kuraib from Abu Mu'awiyah al-Darir from al-A'mash from Yahya ibn 'Ubayd al-Bahrani. If it were permissible as al-Tahawi claims, or if cooking rendered it lawful as his companions assert, the Messenger of Allah - peace and blessings be upon him - would not have destroyed it, given his prohibition against squandering wealth and his Lord's command to declare: {I do not wish to oppose you regarding what I forbid you from} [Hud 11:88]. Through the chain of Sa'id ibn Mansur: Nuh ibn Qays related to us: Muhammad ibn Nafi' reported that Anas ibn Malik instructed regarding unripe dates: "Separate them from fresh dates, prepare the nabīdh, then drink it before it becomes intoxicating." We previously transmitted from 'Ali that he vomited nabīdh upon learning it was prepared in clay vessels. This very ruling was transmitted from Tawus - indicating the prohibition of any quantity, small or

وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ، وَأَبِي كُرَيْبٍ عَنْ أَبِي مُعَاوِيَةَ الضَّرِيرِ عَنْ الْأَعْمَشِ عَنْ يَحْيَى بْنِ عُبَيْدٍ الْبَهْرَانِيِّ؛ فَلَوْ كَانَ حَلَالًا كَمَا يَدَّعِي الطَّحَاوِيُّ أَوْ كَانَ الطَّبْخُ يُحِلُّهُ كَمَا يَزْعُمُ سَائِرُ أَصْحَابِهِ مَا أَهْرَقَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ نَهَى عَنْ إضَاعَةِ الْمَالِ وَأَمَرَهُ بَاعِثُهُ عَزَّ وَجَلَّ أَنْ يَقُولَ: {وَمَا أُرِيدُ أَنْ أُخَالِفَكُمْ إِلَى مَا أَنْهَاكُمْ عَنْهُ} [هود: ٨٨] . وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا نُوحُ بْنُ قَيْسٍ نا مُحَمَّدُ بْنُ نَافِعٍ أَنَّ أَنَسَ بْنَ مَالِكٍ قَالَهُ لَهُ فِي الْبُسْرِ: خَلِّصْهُ مِنْ الرُّطَبِ ثُمَّ انْبِذْهُ ثُمَّ اشْرَبْهُ قَبْلَ أَنْ يَتَسَفَّهَ. رُوِّينَا قَبْلُ عَنْ عَلِيٍّ أَنَّهُ تَقَيَّأَ نَبِيذًا شَرِبَهُ إذْ عَلِمَ أَنَّهُ نَبِيذُ جُرٍّ. وَقَدْ رُوِّينَا

large, of intoxicants. From ’Ata’ and Mujahid, all stated: “A small measure of what intoxicates in large amounts is forbidden.” This is the position of Abu al-’Ala’ ibn al-Shikhkhir, ’Ubaydah al-Salmani, Muhammad ibn Sirin, and al-Qasim ibn Muhammad. Sulayman ibn Harb reported from Jarir ibn Hazim: “I heard Ibn Sirin tell one who opposed him regarding nabīdh: ’I met Ibn Mas’ud’s companions - whom you did not - and they did not hold the same opinion on nabīdh as you.”’ Through the chain of Ahmad ibn Shu’ayb: Ishaq ibn Ibrahim (Ibn Rahawayh) related to us: Jarir ibn ’Abd al-Hamid reported from Ibn Shubrumah: “May Allah grant Ibrahim mercy; people were strict regarding nabīdh while he permitted it.” Through the chain of Ahmad ibn Shu’ayb: Abu Qudamah ’Ubaydullah ibn Sa’id al-Sarakhsi - a trustworthy and reliable authority - related from Abu Usamah (Hammad ibn Usamah): “I heard ’Abdullah ibn al-Mubarak say: ’I found no authentic concession for intoxicants except from Ibrahim.”’ We transmitted through Ibn Abi Shaybah’s chain from Jarir from Mughirah from Ibrahim: “There is no merit in sweet nabīdh.” Abu Muhammad noted: “Contradictory reports from Ibrahim exist, as transmitted through Sa’id ibn Mansur’s chain: Abu ’Awanah and Khalid ibn ’Abdullah al-Tahhan - both from al-Mughirah ibn Miqsam - from Ibrahim al-Nakhaʿī, who disapproved of fermented nabīdh.”[14]

هَذَا نَفْسُهُ عَنْ طَاوُسٍ - يَعْنِي تَحْرِيمَ كُلِّ قَلِيلٍ أَوْ كَثِيرٍ مِنْ أَيِّ شَيْءٍ أَسْكَرَ. وَعَنْ عَطَاءٍ، وَمُجَاهِدٍ، قَالُوا كُلُّهُمْ: قَلِيلُ مَا أَسْكَرَ كَثِيرُهُ حَرَامٌ -. وَهُوَ قَوْلُ أَبِي الْعَلَاءِ بْنِ الشِّخِّيرِ - وَعَبِيدَةَ السَّلْمَانِيِّ، وَمُحَمَّدِ بْنِ سِيرِينَ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ. وَرَوَى سُلَيْمَانُ بْنُ حَرْبٍ عَنْ جَرِيرِ بْنِ حَازِمٍ سَمِعْت ابْنَ سِيرِينَ يَقُولُ لِبَعْضِ مَنْ خَالَفَهُ فِي النَّبِيذِ: أَنَا أَدْرَكْت أَصْحَابَ ابْنِ مَسْعُودٍ وَأَنْتَ لَمْ تُدْرِكْهُمْ كَانُوا لَا يَقُولُونَ فِي النَّبِيذِ كَمَا تَقُولُونَ. وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا إِسْحَاقُ بْنُ إبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - أَنَا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ ابْنِ شُبْرُمَةَ قَالَ: رَحِمَ اللَّهُ إبْرَاهِيمَ شَدَّدَ النَّاسُ فِي النَّبِيذِ وَرَخَّصَ هُوَ فِيهِ. وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا أَبُو قُدَامَةَ عُبَيْدُ اللَّهِ بْنُ سَعِيدٍ السَّرَخْسِيُّ - ثِقَةٌ مَأْمُونٌ - عَنْ أَبِي أُسَامَةَ هُوَ حَمَّادُ بْنُ أُسَامَةَ - قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ الْمُبَارَكِ يَقُولُ: مَا وَجَدْت الرُّخْصَةَ فِي الْمُسْكِرِ صَحِيحًا عَنْ أَحَدٍ إلَّا عَنْ إبْرَاهِيمَ. رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ جَرِيرٍ عَنْ مُغِيرَةَ عَنْ إبْرَاهِيمَ قَالَ: لَا خَيْرَ فِي النَّبِيذِ إذَا كَانَ حُلْوًا. قَالَ أَبُو مُحَمَّدٍ: وَقَدْ رُوِّينَا عَنْ إبْرَاهِيمَ خِلَافَ هَذَا كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو عَوَانَةَ. وَخَالِدُ بْنُ عَبْدِ اللَّهِ هُوَ الطَّحَّانُ - كِلَاهُمَا عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ كَرِهَ الْمُخَمَّرَ مِنْ النَّبِيذِ.

L17371–17372 From the path of Saʿīd ibn Manṣūr: Hushaym narrated to us, from al-Mughīrah, from Ibrāhīm, who said: They disapproved of aged date wine and aged raisin wine. It has been narrated from him permitting what is boiled until half evaporates and half remains. Yet Ibrāhīm has let them down, for he narrated the concession from later authorities: al-Aʿmash, Sharik, Wakīʿ, and Baqī ibn Makhlad. As for the opinion of Abū Ḥanīfah and his companions—it is invalid. Abū Muḥammad said: Our view aligns with the

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا الْمُغِيرَةُ عَنْ إبْرَاهِيمَ قَالَ: كَانُوا يَكْرَهُونَ الْمُعَتَّقَ مِنْ نَبِيذِ التَّمْرِ وَالْمُعَتَّقَ مِنْ نَبِيذِ الزَّبِيبِ. وَرُوِّينَا عَنْهُ إبَاحَةَ مَا طُبِخَ حَتَّى ذَهَبَ نِصْفُهُ وَبَقِيَ نِصْفُهُ - فَهَذَا إبْرَاهِيمُ قَدْ خَذَلَهُمْ، وَلَقَدْ رَوَى عَمَّنْ بَعْدَهُ التَّرْخِيصَ فِيهِ عَنْ الْأَعْمَشِ، وَشَرِيكٍ، وَوَكِيعٍ، وَبَقِيِّ بْنِ مَخْلَدٍ - وَأَمَّا مِثْلُ قَوْلِ أَبِي حَنِيفَةَ وَأَصْحَابِهِ فَلَا. قَالَ أَبُو مُحَمَّدٍ: وَقَوْلُنَا هُوَ قَوْلُ مَالِكٍ، وَالْأَوْزَاعِيِّ، وَاللَّيْثِ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ،

[14] **Qur’an references (L17370):** Qur’an 11:88 (Hud).

view of Mālik, al-Awzā‘ī, al-Layth, al-Shāfi‘ī, Aḥmad, Isḥāq, Abū Sulaymān, and their companions. Differing narrations are reported from Sufyān al-Thawrī. Abū Muḥammad said: They narrated lies from the Prophet—peace and blessings of Allah be upon him—without evidence, contradicting their own position. It has been transmitted to us from him the authentic, widely-transmitted reports that explicitly affirm our position. They narrated lies and statements inconsistent with their own position from ‘Umar, ‘Alī, Ibn ‘Umar, ‘Ā’ishah, Ibn Mas‘ūd, and Anas. It has been transmitted to us from them the authentic reports and the explicit text of our position—all praise is to Allah, Lord of the worlds.[15]

Chapter: The Ḥadd for Intoxication

L17373

L17374 Issue 1100: The defining criterion of intoxication that prohibits a drink and shifts it from permissibility to prohibition is when boiling begins in it - even with a single bubble or more - and when drinking it and overindulgence typically result in corruption of one’s discernment, mixing their speech between coherent and incoherent elements, with their speech no longer following the logical structure of intelligible discourse. If any person reaches this state through excessive drinking, that drink becomes an intoxicant and thus unlawful. All who drink it are considered intoxicated by it - whether it intoxicates the drinker or not, whether cooked or uncooked, whether most of it is removed by cooking or not. Such a person is intoxicated. If this characteristic ceases to exist in the drink after having been present - so that no one becomes intoxicated through excessive consumption - it becomes permissible: vinegar, not an intoxicant.

L17375 The evidence for this is the statement of Allah the Exalted: {O you who have believed, do not approach prayer while you are intoxicated until you know what you are saying} [An-Nisa: 43]. Thus, Allah the Exalted refers to the one who does not know what he is saying as intoxicated, even if such a person may comprehend some of the matter.[16]

[15] **Qur’an references (L17372):** Qur’an 37:182 (As-Saffat).

[16] **Qur’an references (L17375):** Qur’an 4:43 (An-Nisa).

وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ - وَاخْتُلِفَ فِيهِ عَنْ سُفْيَانَ الثَّوْرِيِّ. قَالَ أَبُو مُحَمَّد: وَقَدْ رَوَوْا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْكَذِبَ وَمَا لَا حُجَّةَ لَهُمْ فِيهِ وَلَا يُوَافِقُ قَوْلَهُمْ - وَرُوِّينَا عَنْهُ الصَّحِيحَ الْمُتَوَاتِرَ الَّذِي هُوَ نَصُّ قَوْلِنَا، وَرَوَوْا عَنْ عُمَرَ، وَعَلِيٍّ، وَابْنِ عُمَرَ، وَعَائِشَةَ، وَابْنِ مَسْعُودٍ، وَأَنَسٍ: الْكَذِبَ، وَمَا لَا يُوَافِقُ قَوْلَهُمْ. وَرُوِّينَا عَنْهُمْ الصَّحِيحَ، وَنَصُّ قَوْلِنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[مَسْأَلَةٌ حَدُّ الْإِسْكَارِ]

١١٠٠ - مَسْأَلَةٌ: وَحَدُّ الْإِسْكَارِ الَّذِي يَحْرُمُ بِهِ الشَّرَابُ وَيَنْتَقِلُ بِهِ مِنْ التَّحْلِيلِ إلَى التَّحْرِيمِ هُوَ أَنْ يَبْدَأَ فِيهِ الْغَلَيَانُ وَلَوْ بِحَبَابَةٍ وَاحِدَةٍ فَأَكْثَرَ، وَيَتَوَلَّدُ مِنْ شُرْبِهِ وَالْإِكْثَارِ مِنْهُ عَلَى الْمَرْءِ فِي الْأَغْلَبِ أَنْ يَدْخُلَ الْفَسَادُ فِي تَمْيِيزِهِ، وَيَخْلِطَ فِي كَلَامِهِ بِمَا يَعْقِلُ وَبِمَا لَا يَعْقِلُ، وَلَا يَجْرِي كَلَامُهُ عَلَى نِظَامِ كَلَامِ التَّمْيِيزِ، فَإِذَا بَلَغَ الْمَرْءُ مِنْ النَّاسِ مِنْ الْإِكْثَارِ مِنْ الشَّرَابِ إلَى هَذِهِ الْحَالِ فَذَلِكَ الشَّرَابُ مُسْكِرٌ حَرَامٌ، سَكِرَ مِنْهُ كُلُّ مَنْ شَرِبَهُ سَوَاءٌ أَسْكَرَ أَوْ لَمْ يُسْكِرْ، طُبِخَ أَوْ لَمْ يُطْبَخْ، ذَهَبَ بِالطَّبْخِ أَكْثَرُهُ أَوْ لَمْ يَذْهَبْ، وَذَلِكَ الْمَرْءُ سَكْرَانُ، وَإِذَا بَطَلَتْ هَذِهِ الصِّفَةُ مِنْ الشَّرَابِ بَعْدَ أَنْ كَانَتْ فِيهِ مَوْجُودَةً فَصَارَ لَا يَسْكَرُ أَحَدٌ مِنْ النَّاسِ مِنْ الْإِكْثَارِ مِنْهُ، فَهُوَ حَلَالٌ، خَلٌّ لَا خَمْرٌ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تَقْرَبُوا الصَّلاةَ وَأَنْتُمْ سُكَارَى حَتَّى تَعْلَمُوا مَا تَقُولُونَ} [النساء: ٤٣] فَسَمَّى اللَّهُ تَعَالَى مَنْ لَا يَدْرِي مَا يَقُولُ سَكْرَانَ، وَإِنْ كَانَ قَدْ يَفْهَمُ بَعْضَ الْأَمْرِ.

أَلَا تَرَى أَنَّهُ قَدْ يَقُومُ إِلَى الصَّلَاةِ فِي تِلْكَ الْحَالِ فَنَهَاهُ اللَّهُ تَعَالَى عَنْ ذَلِكَ وَالْمَجْنُونُ مِثْلُهُ سَوَاءً سَوَاءً قَدْ يَفْهَمُ الْمَجْنُونُ فِي حَالِ تَخْلِيطِهِ كَثِيرًا وَلَا يُخْرِجُهُ ذَلِكَ عَنْ أَنْ يُسَمَّى مَجْنُونًا فِي اللُّغَةِ وَأَحْكَامِ الشَّرِيعَةِ.

L17376–17378 Do you not see that he may indeed rise to perform prayer in such a state? Thus Allah, the Exalted, has forbidden him from that. The insane person is entirely the same, absolutely equal: even if he comprehends much during his state of confusion, this does not remove him from being called insane in language and the rulings of Sharia.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا سَوَّارُ بْنُ عَبْدِ اللَّهِ بْنِ سَوَّارِ بْنِ عَبْدِ اللَّهِ هُوَ الْعَنْبَرِيُّ - نَا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ هُوَ الثَّقَفِيُّ - عَنْ هِشَامٍ هُوَ ابْنُ حَسَّانَ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «انْتَبِذْ فِي سِقَائِكَ وَأَوْكِهِ وَاشْرَبْهُ حُلْوًا»

L17379 From the chain of Ahmad ibn Shu’ayb: I, Sawwar ibn Abdullah ibn Sawwar - he is al-Anbari - narrated to us, from Abdul Wahhab ibn Abdul Majid - he is al-Thaqafi - from Hisham - he is ibn Hassan - from Muhammad ibn Sirin, from Abu Hurairah, who said: The Messenger of Allah (peace and blessings be upon him) said, “Make nabidh in your waterskin, tie its stopper, and drink it sweet.”

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قَوْلُنَا، لِأَنَّهُ إِذَا بَدَأَ يَغْلِي حَدَثَ فِي طَعْمِهِ تَغْيِيرٌ عَنْ الْحَلَاوَةِ، وَهُوَ قَوْلُ جَمَاعَةٍ مِنْ السَّلَفِ. كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ نَا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ لَيْسَ بِشُرْبِ الْعَصِيرِ وَبَيْعِهِ بَأْسٌ حَتَّى يَغْلِيَ.

L17380 Abu Muhammad said: This is our position, because when it begins to boil, a change occurs in its taste—a departure from its sweetness—and this is the position of a group of the Salaf. As we were narrated through the chain of Saʿid ibn Mansur: narrated to us Ismāʿīl ibn Ibrāhīm; narrated to us Hishām al-Dastuwa’ī, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī: “There is no harm in drinking grape juice or selling it until it boils.”

وَمِنْ طَرِيقِ ابْنِ الْمُبَارَكِ عَنْ هِشَامِ بْنِ عَائِذٍ الْأَسَدِيِّ قَالَ: سَأَلْت إبْرَاهِيمَ النَّخَعِيَّ عَنْ الْعَصِيرِ؟ فَقَالَ: اشْرَبْهُ مَا لَمْ يَتَغَيَّرْ.

L17381 And through the chain of Ibn al-Mubārak from Hishām ibn ʿĀ’idh al-Asadī, who said: I asked Ibrāhīm al-Nakhaʿī about juice? He said: “Drink it as long as it has not changed.”

وَمِنْ طَرِيقِ ابْنِ الْمُبَارَكِ عَنْ عَبْدِ الْمَلِكِ عَنْ عَطَاءٍ فِي الْعَصِيرِ قَالَ: اشْرَبْهُ حَتَّى يَغْلِيَ

L17382 And from the transmission of Ibn al-Mubārak, from ʿAbd al-Malik, from ʿAṭāʾ concerning grape juice, he said: “Drink it until it boils.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ أَخْبَرَنِي مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ يَزِيدَ بْنِ قُسَيْطٍ قَالَ سَعِيدُ بْنُ الْمُسَيِّبِ: لَيْسَ بِشَرَابِ الْعَصِيرِ بَأْسٌ مَا لَمْ يُزْبِدْ فَإِذَا أَزْبَدَ فَاجْتَنِبُوهُ - وَهُوَ قَوْلُ أَبِي يُوسُفَ.

L17383 From the path of Saʿīd ibn Manṣūr: Ismāʿīl ibn Ibrāhīm (that is, Ibn ʿUlayyah) narrated to us: Muḥammad ibn Isḥāq reported from Yazīd ibn Quṣayṭ that Saʿīd ibn al-Musayyab said: “There is no harm in drinking fresh juice as long as it does not froth. But when it froths, avoid it.” This is the opinion of Abū Yūsuf.

L17384 We have transmitted it via the narration of Ahmad ibn Shuʿayb: from Suwayd ibn Nuṣayr, from ʿAbdullāh ibn al-Mubārak, from Abū Yaʿfūr al-Sulamī, from

وَرُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا سُوَيْد بْنُ نُصَيْرٍ نَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ أَبِي يَعْفُورٍ السُّلَمِيِّ عَنْ أَبِي ثَابِتٍ الثَّعْلَبِيِّ أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ يَقُولُ فِي الْعَصِيرِ: اشْرَبْهُ مَا دَامَ طَرِيًّا.

Abū Thābit al-Thaʿlabī, that he heard Ibn ʿAbbās say regarding fruit juice: "Drink it as long as it remains fresh."

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا فَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ فِي الْعَصِيرِ هَكَذَا، وَفِي مَا عَدَا الْعَصِيرِ إذَا تَجَاوَزَ عَشَرَةَ أَيَّامٍ فَهُوَ حَرَامٌ - وَهَذَا حَدٌّ فِي غَايَةِ الْفَسَادِ، لَا يُعَضِّدُهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ سَدِيدٌ، وَلَا قَوْلُ أَحَدٍ نَعْلَمُهُ قَبْلَهُمَا.

L17385 People have differed regarding this matter. Abū Yūsuf and Muḥammad ibn al-Ḥasan held this view concerning grape juice, while regarding anything other than grape juice, if it exceeds ten days, it becomes forbidden. This definition is deeply flawed, unsupported by the Qur'ān, the Sunnah, a weak narration, analogy, sound opinion, or the statement of anyone we know of before the two of them.

وَقَالَتْ طَائِفَةٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا سُوَيْد بْنُ عَبْدِ الْعَزِيزِ الدِّمَشْقِيُّ نَا ثَابِتُ بْنُ عَجْلَانَ عَنْ سُلَيْمِ بْنِ عَامِرٍ قَالَ: سَمِعْت عَمَّارَ بْنَ يَاسِرٍ يَقُولُ: اشْرَبْ الْعَصِيرَ ثَلَاثَةَ أَيَّامٍ مَا لَمْ يَغْلِ.

L17386–17387 And a group said—as transmitted via the chain of Saʿīd ibn Manṣūr → Suwayd ibn ʿAbd al-ʿAzīz al-Dimashqī → Thābit ibn ʿAjlān → Sulaym ibn ʿĀmir, who said: I heard ʿAmmār ibn Yāsir say: "Drink the fresh grape juice for three days, provided it has not boiled."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةَ عَنْ ابْنِ عُمَرَ: اشْرَبُوا الْعَصِيرَ مَا لَمْ يَأْخُذْهُ شَيْطَانُهُ، قَالَ: وَمَتَى يَأْخُذُهُ شَيْطَانُهُ؟ قَالَ: بَعْدَ ثَلَاثٍ، أَوْ قَالَ: فِي ثَلَاثٍ.

L17388 From the narration of ʿAbd al-Razzāq via Sufyān al-Thawrī via ʿAbd Allāh ibn Murrah via Ibn ʿUmar: "Drink the juice as long as its Shayṭān does not seize it." He was asked: "When does its Shayṭān seize it?" He replied: "After three," or he said: "Within three."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ مِينَا أَنَّهُ سَمِعَ الْقَاسِمَ بْنَ مُحَمَّدٍ يَقُول: نَهَى أَنْ يُشْرَبَ النَّبِيذُ بَعْدَ ثَلَاثٍ.

L17389 And from the transmission of Abd al-Razzaq from Ibn Jurayj: I, Abd al-Rahman ibn Meena, that he heard al-Qasim ibn Muhammad say: He prohibited the drinking of nabidh after three [days].

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا إسْمَاعِيلُ بْنُ إبْرَاهِيمَ نَا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ قَالَ: لَا بَأْسَ بِشُرْبِ الْخَمْرِ مَا لَمْ يَغْلِ - يَعْنِي الْعَصِيرَ.

L17390 Through the chain of Saʿīd ibn Manṣūr: Ismāʿīl ibn Ibrāhīm narrated to us, from Dāwūd ibn Abī Hind, from al-Shaʿbī, who said: "There is no harm in drinking the juice [referred to as khamr] as long as it has not fermented."

L17391 A group defined this period as one day. As it has been narrated to us through the chain of transmission of 'Abd al-Razzāq from Ma'mar, from an

anonymous narrator, from Sa'īd ibn Jubayr – who would say: "If you emit semen during the day and evening comes, avoid it. If you emit semen at night and morning comes, avoid it."

وَحَدَّثَ طَائِفَةٌ ذَلِكَ بِيَوْمٍ وَاحِدٍ. كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ كَانَ يَقُولُ: إِذَا فَضَخْتَهُ نَهَارًا فَأَمْسَى فَلَا تَقْرَبْهُ، وَإِذَا فَضَخْتَهُ لَيْلًا فَأَصْبَحَ، فَلَا تَقْرَبْهُ

L17392 Abu Muhammad said: Those who defined that limit cited three pieces of evidence: the report transmitted to us through the chain of Al-A'mash from Ibn Abi Umar (he is Yahya al-Bahrani) from Ibn Abbas, who said: "Raisins would be soaked for the Messenger of Allah—peace and blessings be upon him—and he would drink it on the same day, the next day, and the day after that until the evening of the third day. When evening arrived, he would order it to be poured out or given to others to drink."

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ حَدَّ ذَلِكَ بِثَلَاثٍ: بِالْخَبَرِ الَّذِي رُوِّينَا مِنْ طَرِيقِ الْأَعْمَشِ عَنِ ابْنِ أَبِي عُمَرَ هُوَ يَحْيَى الْبَهْرَانِيُّ عَنِ ابْنِ عَبَّاسٍ قَالَ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُنْقَعُ لَهُ الزَّبِيبُ فَيَشْرَبُهُ الْيَوْمَ وَالْغَدَ وَبَعْدَ الْغَدِ إِلَى مَسَاءِ الثَّالِثَةِ فَإِذَا أَمْسَى أَمَرَ بِهِ أَنْ يُهْرَاقَ أَوْ يُسْقَى» .

L17393 Those who argued for limiting it to one day. It was narrated by us through the chain of Abū Dāwūd: 'Īsā ibn Muḥammad Abū 'Umayr al-Ramlī narrated to us; Ḍamrah narrated to us from al-Saybānī, from 'Abdullāh ibn al-Daylamī, from his father, that they asked the Prophet—peace be upon him—about their grapevines. He said: "Dry them into raisins." We asked: "What should we do with the raisins?" He replied: "Brew it at your noon meal to drink at your evening meal, and brew it at your evening meal to drink at your noon meal. Brew it in water skins, and do not brew it in large jars, for if it remains beyond its fresh state, it turns to vinegar."

وَاحْتَجَّ مَنْ حَدَّ ذَلِكَ بِيَوْمٍ وَاحِدٍ. رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نَا عِيسَى بْنُ مُحَمَّدٍ أَبُو عُمَيْرٍ الرَّمْلِيُّ نَا ضَمْرَةُ عَنِ السَّيْبَانِيِّ «عَنْ عَبْدِ اللَّهِ بْنِ الدَّيْلَمِيِّ عَنْ أَبِيهِ أَنَّهُمْ سَأَلُوا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَعْنَابِهِمْ فَقَالَ: زَبِّبُوهَا. قُلْنَا: مَا نَصْنَعُ بِالزَّبِيبِ؟ قَالَ: انْبِذُوهُ عَلَى غَدَائِكُمْ وَاشْرَبُوهُ عَلَى عَشَائِكُمْ وَانْبِذُوهُ عَلَى عَشَائِكُمْ وَاشْرَبُوهُ عَلَى غَدَائِكُمْ وَانْبِذُوهُ فِي الشِّنَانِ وَلَا تَنْبِذُوهُ فِي الْقُلَلِ فَإِنَّهُ إِذَا تَأَخَّرَ عَنْ عَصِيرِهِ صَارَ خَلًّا» .

L17394–17396 This al-Saybānī with an unpointed sīn [potentially ambiguous in early orthography] is Yaḥyā ibn Abī ʿAmr. Through the transmission path of Abū Dāwūd: Muḥammad ibn al-Muthannā reported to us, who reported: ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī reported from Yūnus ibn ʿUbayd, from al-Ḥasan al-Baṣrī, from his mother, from ʿĀ'ishah, Mother of the Believers, who said: "Nabīdh (fermented drink) was prepared for the Messenger of God [...]." "...peace and blessings be upon him—in a tied waterskin with a spout. It is prepared in the morning to be drunk by evening, and prepared in the evening to be drunk by morning."[17]

هَذَا السَّيْبَانِيُّ بِالسِّينِ غَيْرِ مَنْقُوطَةٍ هُوَ يَحْيَى بْنُ أَبِي عَمْرٍو - وَمِنْ طَرِيقِ أَبِي دَاوُد نَا مُحَمَّدُ بْنُ الْمُثَنَّى نَا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنِ الْحَسَنِ الْبَصْرِيِّ عَنْ أُمِّهِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «كَانَ يُنْبَذُ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سِقَاءٍ يُوكَأُ أَعْلَاهُ وَلَهُ عَزْلَاءُ يُنْبَذُ غُدْوَةً فَيَشْرَبُهُ عِشَاءً، وَيُنْبَذُ عِشَاءً فَيَشْرَبُهُ غُدْوَةً» .

L17397 Abu Muhammad said: This report and the report of Ibn Abbas are authentic,

[17] **Hadith references (L17394):** Sunan Abi Dawud 3711.

but they do not constitute a definitive ruling regarding prohibitions, for they contradict each other and neither takes precedence over the other. This matter depends on the measure of lands and vessels. You will find cold regions where raisin water does not transform into the initial stage of sweetness except after a week or longer, and similarly in unseasoned vessels. You will find hot regions and seasoned vessels where the nabidh becomes fully fermented within a day. The legal ruling rests solely on his statement—peace be upon him—which we mentioned: "Drink it while sweet, for whatever intoxicates is forbidden."

L17398 Abu Hanifah said: If it boils and emits froth, it is forbidden at that moment—this is an opinion without evidence. Others held: When its boiling ends and it begins to decrease in intensity, it becomes forbidden.

L17399 Others said: Therefore, when its boiling subsides, it is deemed ḥarām - and all of this constitutes an unsubstantiated opinion.

L17400 As for the prescribed punishment (ḥadd) for intoxication, it has been narrated to us through the transmission chain (isnād) of Ahmad ibn Salih that he was asked about the intoxicated person. He replied: "I rule in this matter by what Ibn Jurayj reported from Amr ibn Dinar from Ya'la ibn Munabbih from his father: 'I asked Umar ibn al-Khattab about the prescribed punishment for intoxication.' He answered: 'It applies to one who, when asked to recite a surah, did not recite it, and when his garment was mixed with others, he did not retrieve it.'"

L17401 Abu Muhammad said: This aligns with our view that he does not know what he is saying and fails to observe the distinction of his garment. Imam Abu Hanifah said: Intoxication is not deemed valid unless it reaches the point where one cannot distinguish earth from sky, and he permitted all levels of intoxication short of this threshold—so marvel at this ruling, may Allah have mercy on us and you?

L17402 **A legal question regarding the mixing of *nabīdh* (a soaked beverage) with *nabīdh*.**

L17403–17405 Issue 1101: If dates, fresh dates (rutab), half-dried dates (zahw), unripe dates

قَالَ أَبُو مُحَمَّد: هَذَا الْخَبَرُ، وَخَبَرُ ابْنِ عَبَّاسٍ صَحِيحَانِ، وَلَيْسَا حَدًّا فِيمَا يَحْرُمُ مِنْ ذَلِكَ؛ لِأَنَّهُمَا مُخْتَلِفَانِ، وَلَيْسَ أَحَدُهُمَا بِأَوْلَى مِنْ الْآخَرِ، إنَّمَا هَذَا عَلَى قَدْرِ الْبِلَادِ وَالْآنِيَةِ فَتَجِدُ بِلَادًا بَارِدَةً لَا يَسْتَحِيلُ فِيهَا مَاءُ الزَّبِيبِ إلَى ابْتِدَاءِ الْحَلَاوَةِ إلَّا بَعْدَ جُمُعَةٍ أَوْ أَكْثَرَ، وَآنِيَةً غَيْرَ ضَارِيَةٍ كَذَلِكَ، وَتَجِدُ بِلَادًا حَارَّةً وَآنِيَةً ضَارِيَةً يَتِمُّ فِيهَا النَّبِيذُ مِنْ يَوْمِهِ، وَالْحُكْمُ فِي ذَلِكَ لِقَوْلِهِ - عَلَيْهِ السَّلَامُ - الَّذِي ذَكَرْنَا: «وَاشْرَبْهُ حُلْوًا وَكُلُّ مَا أَسْكَرَ حَرَامٌ» فَقَطْ.

وَقَالَ أَبُو حَنِيفَةَ: إذَا غَلَى وَقَذَفَ بِالزَّبَدِ فَهُوَ حِينَئِذٍ حَرَامٌ - وَهَذَا قَوْلٌ بِلَا دَلِيلٍ - وَقَالَ آخَرُونَ: إذَا انْتَهَى غَلَيَانُهُ وَابْتَدَأَ بِأَنْ يَقِلَّ غَلَيَانُهُ فَحِينَئِذٍ يَحْرُمُ.

وَقَالَ آخَرُونَ إذَنْ إذَا سَكَنَ غَلَيَانُهُ فَحِينَئِذٍ يَحْرُمُ - وَهَذَا كُلُّهُ قَوْلٌ بِلَا بُرْهَانٍ.

وَأَمَّا حَدُّ سُكْرِ الْإِنْسَانِ فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ صَالِحٍ أَنَّهُ سُئِلَ عَنْ السَّكْرَانِ؟ فَقَالَ: أَنَا آخُذُ فِيهِ بِمَا رَوَاهُ ابْنُ جُرَيْجٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ يَعْلَى بْنِ مُنَبِّهٍ عَنْ أَبِيهِ سَأَلْتُ عُمَرَ بْنَ الْخَطَّابِ عَنْ حَدِّ السَّكْرَانِ؟ فَقَالَ: هُوَ الَّذِي إذَا اُسْتُقْرِئَ سُورَةً لَمْ يَقْرَأْهَا، وَإِذَا خُلِطَتْ ثَوْبُهُ مَعَ ثِيَابٍ لَمْ يُخْرِجْهُ.

قَالَ أَبُو مُحَمَّد: وَهُوَ نَحْوُ قَوْلِنَا فِي أَنْ لَا يَدْرِيَ مَا يَقُولُ، وَلَا يُرَاعِيَ تَمْيِيزَ ثَوْبِهِ، وَقَالَ أَبُو حَنِيفَةَ لَيْسَ سَكْرَانَ إلَّا حَتَّى لَا يُمَيِّزَ الْأَرْضَ مِنْ السَّمَاءِ، وَأَبَاحَ كُلَّ سُكْرٍ دُونَ هَذَا - فَاعْجَبُوا يَرْحَمُنَا اللَّهُ وَإِيَّاكُمْ؟

[مَسْأَلَةٌ خَلْطُ نَبِيذٍ بِنَبِيذٍ]

(busr), or raisins are soaked to make *nabīdh* with another type from these five categories or a type outside them, or if the *nabīdh* of one category is mixed with *nabīdh* of another category from them or outside them, or with a liquid other than these five categories except water, its consumption becomes forbidden—whether it intoxicates or not—while *nabīdh* of each individual category remains permissible. If a type not among these five is mixed with another type also outside them, or they are soaked together, or if juice is mixed with *nabīdh*, all of it is permissible—such as dry dates (balah), grape juice, fig *nabīdh*, honey, wheat, barley, and other substances we have not mentioned, without excluding anything. This ruling is based on the narration transmitted through Muslim's chain: Muslim reported to me through Abū Bakr ibn Isḥāq, from ʿAffān ibn Muslim, from Abān ibn Yazīd ibn al-ʿAṭṭār, from Yaḥyā ibn Abī Kathīr. Abdullah ibn Abi Qatadah and Abu Salamah ibn Abd al-Rahman ibn Awf both narrated from Abu Qatadah that the Prophet of Allah—peace and blessings of Allah be upon him—prohibited mixing dried dates with unripe dates, raisins with dried dates, and moist dates with fresh dates, saying: "Prepare each one separately for fermentation." Abu Muhammad said: We have also been conveyed through the chains of Jabir ibn Abdullah, Abu Sa'id al-Khudri, Ibn Abbas, Abu Hurairah, Ibn Umar, and Aisha, the Mother of the Believers, from the Prophet—peace and blessings of Allah be upon him—regarding this matter numerous, corroborating traditions of the highest authenticity, all of which together encompass the content of Abu Qatadah's aforementioned hadith.[18]

L17406 This is also the opinion held by the majority of the early scholars following his view. As reported through the chain of Musa ibn Uqbah from Nafi' from Ibn 'Umar, who said: "He prohibited that dates and raisins be made into nabidh together, and unripe dates and fresh dates together." Additionally, through the chain of Ma'mar from Qatadah, who said: "When Anas intended to make nabidh, he would separate the ripened part from the date fruit, set it apart, and make nabidh from dates separately and unripe dates separately."

L17407 And through the chain of Ibn Abi Shaybah from Abu Usamah, from Hatim ibn Abi Sagheerah, from Abu Mus'ab al-Madani, who said: I heard Abu

١١٠١ - مَسْأَلَةٌ: فَإِنْ نُبِذَ تَمْرٌ، أَوْ رُطَبٌ، أَوْ زَهْوٌ، أَوْ بُسْرٌ، أَوْ زَبِيبٌ مَعَ نَوْعٍ مِنْهَا أَوْ نَوْعٍ مِنْ غَيْرِهَا، أَوْ خُلِطَ نَبِيذُ أَحَدِ الْأَصْنَافِ بِنَبِيذِ صِنْفٍ مِنْهَا، أَوْ بِنَبِيذِ صِنْفٍ مِنْ غَيْرِهَا، أَوْ بِمَائِعٍ غَيْرِهَا حَاشَا الْمَاءِ حَرُمَ شُرْبُهُ أَسْكَرَ أَوْ لَمْ يُسْكِرْ، وَنَبِيذُ كُلِّ صِنْفٍ مِنْهَا عَلَى انْفِرَادِهِ حَلَالٌ، فَإِنْ مُزِجَ نَوْعٌ مِنْ غَيْرِ هَذِهِ الْخَمْسَةِ مَعَ نَوْعٍ آخَرَ مِنْ غَيْرِهَا أَيْضًا أَوْ نُبِذَا مَعًا، أَوْ خُلِطَ عَصِيرٌ بِنَبِيذٍ فَكُلُّهُ حَلَالٌ: كَالْبَلَحِ وَعَصِيرِ الْعِنَبِ، وَنَبِيذِ التِّينِ، وَالْعَسَلِ، وَالْقَمْحِ، وَالشَّعِيرِ، وَغَيْرِ مَا ذَكَرْنَا لَا تَحَاشَ شَيْئًا -: لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي أَبُو بَكْرِ بْنُ إِسْحَاقَ نَا عَفَّانَ بْنُ مُسْلِمٍ نا أَبَانُ بْنُ يَزِيدَ بْنِ الْعَطَّارِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ نَا عَبْدُ اللَّهِ بْنُ أَبِي قَتَادَةَ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ كِلَاهُمَا عَنْ أَبِي قَتَادَةَ: «أَنَّ نَبِيَّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ خَلِيطِ التَّمْرِ وَالْبُسْرِ، وَعَنْ خَلِيطِ الزَّبِيبِ وَالتَّمْرِ، وَعَنْ خَلِيطِ الزَّهْوِ وَالرُّطَبِ، وَقَالَ: انْتَبِذُوا كُلَّ وَاحِدٍ عَلَى حِدَتِهِ» قَالَ أَبُو مُحَمَّدٍ: وَرُوِّينَا مِنْ طَرِيقِ جَابِرِ بْنِ عَبْدِ اللَّهِ، وَأَبِي سَعِيدٍ الْخُدْرِيِّ، وَابْنِ عَبَّاسٍ، وَأَبِي هُرَيْرَةَ، وَابْنِ عُمَرَ، وَعَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي هَذَا أَيْضًا آثَارًا مُتَوَاتِرَةً مُتَظَاهِرَةً فِي غَايَةِ الصِّحَّةِ يَجْمَعُ كُلُّ مَا فِيهَا حَدِيثُ أَبِي قَتَادَةَ الْمَذْكُورُ.

وَبِهِ يَقُولُ جُمْهُورُ السَّلَفِ. كَمَا رُوِّينَا مِنْ طَرِيقِ مُوسَى بْنِ عُقْبَةَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: نَهَى أَنْ يُنْتَبَذَ التَّمْرُ وَالزَّبِيبُ جَمِيعًا، وَالْبُسْرُ وَالرُّطَبُ جَمِيعًا، وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: كَانَ أَنَسٌ إِذَا أَرَادَ أَنْ يَنْبِذَ يَقْطَعُ مِنَ الثَّمَرَةِ مَا نَضِجَ مِنْهَا فَيَضَعُهُ وَحْدَهُ وَيَنْبِذُ التَّمْرَ وَحْدَهُ وَالْبُسْرَ وَحْدَهُ.

[18] **Hadith references (L17403):** Sahih Muslim 1988e.

Hurairah say: When wine was prohibited, they would take fresh dates, cut off every tail-like part, then crush them forcefully and drink the liquid.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي أُسَامَةَ عَنْ حَاتِمِ بْنِ أَبِي صَغِيرَةَ عَنْ أَبِي مُصْعَبٍ الْمَدَنِيِّ قَالَ: سَمِعْتُ أَبَا هُرَيْرَةَ يَقُولُ: لَمَّا حُرِّمَتْ الْخَمْرُ كَانُوا يَأْخُذُونَ الْبُسْرَ فَيَقْطَعُونَ مِنْهُ كُلَّ مُذَنَّبٍ ثُمَّ يَأْخُذُ الْبُسْرَ فَيَفْضَخُهُ ثُمَّ يَشْرَبُهُ.

L17408 And via the chain of Ibn Abi Shaybah from Ashʿath from Thabit ibn ʿUbayd, who said: Abu Masʿud al-Ansari would direct his household to cut the mudhannab [date clusters], and each part would be soaked separately to make nabīdh.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَشْعَثَ عَنْ ثَابِتِ بْنِ عُبَيْدٍ قَالَ: كَانَ أَبُو مَسْعُودٍ الْأَنْصَارِيُّ يَأْمُرُ أَهْلَهُ بِقَطْعِ الْمُذَنَّبِ فَيَنْبِذُ كُلَّ وَاحِدٍ مِنْهُمَا عَلَى حِدَةٍ.

L17409 From the narration of Ibn Abi Shaybah, from Mu’awiyah ibn Hisham, from Ammar ibn Zurayq, from Ibn Abi Layla, from al-Hakam ibn Utaybah, from Abd al-Rahman ibn Abi Layla, who said: A man would pass by the companions of Muhammad (peace be upon him) while they were gathered in large numbers, and they would curse him, saying: “Does this man drink the two mixtures of raisins and dates?” Abu Muhammad said: This was according to them when it aligned with their consensus, and a similar report has also come from Uthman, as we will mention later.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ مُعَاوِيَةَ بْنِ هِشَامٍ عَنْ عَمَّارِ بْنِ زُرَيْقٍ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى قَالَ: كَانَ الرَّجُلُ يَمُرُّ عَلَى أَصْحَابِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُمْ مُتَوَافِرُونَ فَيَلْعَنُونَهُ وَيَقُولُونَ: هَذَا يَشْرَبُ الْخَلِيطَيْنِ الزَّبِيبَ وَالتَّمْرَ؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا عِنْدَهُمْ إذَا وَافَقَهُمْ إجْمَاعٌ، وَقَدْ جَاءَ عَنْ عُثْمَانَ أَيْضًا كَمَا نَذْكُرُ بَعْدَ هَذَا.

L17410–17412 Through the chain of ʿAbd al-Razzāq, from Ibn Jurayj, who said: ʿAmr ibn Dīnār said to me, “I heard Jābir ibn ʿAbd Allāh—or someone informed me about him—so whose testimony should I trust: that one must not combine unripe dates, fresh dates, dried dates, and raisins.” I said to ʿAmr ibn Dīnār, “Is there anything beyond this?” He replied, “No.” I said to ʿAmr, “What about other matters pertaining to sharecropping contracts and date palms?” He said, “I do not know.” I said to ʿAmr, “Or is it not that the prohibition is only against combining the two in nabīdh and fermenting them all together?” He answered, “Yes.” I said to ʿAṭāʾ, “Did Jābir mention that the Prophet—peace and blessings be upon him—prohibited...” Is it permissible to combine two things other than fresh dates with unripe dates, or dates with raisins? He said: “No—unless I have forgotten something?” I said to ʿAṭāʾ: “Can dates and raisins be combined by fermenting them as *nabīdh*, then drunk while both are sweet?” He said: “No, combining them has been prohibited.” Ibn Jurayj said: “If a drink were prepared in a vessel the Prophet—peace and

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ لِي عَمْرُو بْنُ دِينَارٍ سَمِعْتُ جَابِرَ بْنَ عَبْدِ اللَّهِ أَوْ أَخْبَرَنِي عَنْهُ مَنْ أُصَدِّقُ: أَنْ لَا يُجْمَعَ بَيْنَ الْبُسْرِ، وَالرُّطَبِ، وَالتَّمْرِ، وَالزَّبِيبِ، قُلْت لِعَمْرِو بْنِ دِينَارٍ: هَلْ غَيْرُ ذَلِكَ؟ قَالَ: لَا، قُلْت لِعَمْرٍو: فَغَيْرُ ذَلِكَ مِمَّا فِي الْحَبَلَةِ وَالنَّخْلَةِ، قَالَ: لَا أَدْرِي، قُلْت لِعَمْرٍو: أَوْ لَيْسَ إنَّمَا نَهَى عَنْ أَنْ يُجْمَعَ بَيْنَهُمَا فِي النَّبِيذِ وَأَنْ يُنْبَذَ جَمِيعًا؟ قَالَ: بَلَى، وَقُلْت لِعَطَاءٍ: أَذَكَرَ جَابِرٌ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ أَنْ يُجْمَعَ بَيْنَ شَيْئَيْنِ غَيْرِ الرُّطَبِ وَالْبُسْرِ، وَالتَّمْرِ وَالزَّبِيبِ؟ قَالَ: لَا، إلَّا أَنْ أَكُونَ نَسِيتُ؟ قُلْت لِعَطَاءٍ: أَيُجْمَعُ بَيْنَ التَّمْرِ وَالزَّبِيبِ يُنْبَذَانِ، ثُمَّ يُشْرَبَانِ حُلْوَيْنِ؟ قَالَ:

blessings of Allah be upon him—forbade, it should not be drunk even if it is sweet." All of this is our opinion—and praise be to Allah, Lord of the worlds.

لَا قَدْ نُهِيَ عَنْ الْجَمْعِ بَيْنَهُمَا، قَالَ ابْنُ جُرَيْجٍ: لَوْ نُبِذَ شَرَابٌ فِي ظَرْفٍ قَدْ نَهَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهُ لَمْ يُشْرَبْ حُلْوًا - وَهَذَا كُلُّهُ قَوْلُنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L17413 Thus, this ʿAmr ibn Dīnār did not consider the prohibition to be overstepped beyond what the scriptural text specifies—and that is our doctrine.

فَهَذَا عَمْرُو بْنُ دِينَارٍ لَمْ يَرَ النَّهْيَ يُتَعَدَّى بِهِ مَا وَرَدَ بِهِ النَّصُّ - وَهُوَ قَوْلُنَا -.

L17414 It was narrated to us from ʿUmar ibn ʿAbd al-ʿAzīz that he said: "If I had date *nabīdh* in one hand and raisin *nabīdh* in the other, and drank each separately, I would see no harm in it; but if I mixed it, I would not drink it." It is authentically reported from Jābir ibn Zayd Abū al-Shaʿthā that he was asked about unripe dates and dates being combined in *nabīdh*. He replied: "It would be better for you to take water and boil it in your stomach than to combine them both in your stomach."

وَرُوِّينَا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ قَالَ: لَوْ كَانَ فِي إحْدَى يَدَيَّ نَبِيذُ تَمْرٍ، وَفِي الْأُخْرَى نَبِيذُ زَبِيبٍ فَشَرِبْت كُلَّ وَاحِدٍ مِنْهُمَا وَحْدَهُ لَمْ أَرَ بِهِ بَأْسًا، وَلَوْ خَلَطْته لَمْ أَشْرَبْهُ. وَصَحَّ عَنْ جَابِرِ بْنِ زَيْدٍ أَبِي الشَّعْثَاءِ أَنَّهُ سُئِلَ عَنْ الْبُسْرِ، وَالتَّمْرِ يُجْمَعَانِ فِي النَّبِيذِ؟ فَقَالَ: لَأَنْ تَأْخُذَ الْمَاءَ فَتَغْلِيَهُ فِي بَطْنِك خَيْرٌ مِنْ أَنْ تَجْمَعَهُمَا جَمِيعًا فِي بَطْنِك.

L17415 Mālik declared the prohibition of mixing any two types during the preparation of nabīdh, after its preparation, and in what has been pressed, without excluding anything from anything.

وَقَالَ مَالِكٌ بِتَحْرِيمِ خَلِيطِ كُلِّ نَوْعَيْنِ فِي الِانْتِبَاذِ وَبَعْدِ الِانْتِبَاذِ، وَكَذَلِكَ فِيمَا عُصِرَ، وَلَمْ يَخُصَّ شَيْئًا مِنْ شَيْءٍ.

L17416 Abu Hanifah ruled that every two mixed substances are permissible. His followers practicing taqlīd of him cited as evidence the narration we transmitted through Mis'ar's chain from Mūsā ibn 'Abd Allāh, from an unnamed woman of Banū Asad, from 'Ā'ishah: "We would prepare raisin nabīdh for the Messenger of Allah—peace and blessings of Allah be upon him—and dates would be added to it, or we would prepare date nabīdh and raisins would be added to it." This is invalid, as it comes through an unnamed woman.

وَقَالَ أَبُو حَنِيفَةَ بِإِبَاحَةِ كُلِّ خَلِيطَيْنِ وَاحْتَجَّ لِأَبِي حَنِيفَةَ مُقَلِّدُوهُ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مِسْعَرٍ عَنْ مُوسَى بْنِ عَبْدِ اللَّهِ عَنْ امْرَأَةٍ مِنْ بَنِي أَسَدٍ عَنْ عَائِشَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُنْبَذُ لَهُ زَبِيبٌ فَيُلْقَى فِيهِ تَمْرٌ أَوْ تَمْرٌ فَيُلْقَى فِيهِ زَبِيبٌ» - وَهَذَا لَا شَيْءَ؛ لِأَنَّهُ عَنْ امْرَأَةٍ لَمْ تُسَمَّ.

L17417 From the path of Ziyād ibn Yaḥyā al-Ḥassānī: Abū Baḥr narrated to us from ʿAṭṭāb ibn ʿAbd al-ʿAzīz al-Ḥimmānī. Ṣafiyyah bint ʿAṭiyyah narrated to me that she heard ʿĀ'ishah, the Mother of the Believers, say—when she was asked about dates and raisins—"I would take a handful of dates and a handful of raisins, cast them into a vessel, press them, then give the drink to the Prophet—peace and blessings of Allah be upon him." This narration is disputed in its rejection, as it comes from Abū Baḥr—whose identity is unknown—via ʿAṭṭāb ibn ʿAbd al-ʿAzīz al-Ḥimmānī, who is an unknown narrator, via Ṣafiyyah bint ʿAṭiyyah—who is unrecognized. Has there ever

وَمِنْ طَرِيقِ زِيَادِ بْنِ يَحْيَى الْحَسَّانِيِّ أَنَا أَبُو بَحْرٍ نَا عَتَّابُ بْنُ عَبْدِ الْعَزِيزِ الْحِمَّانِيُّ حَدَّثَتْنِي صَفِيَّةُ بِنْتُ عَطِيَّةَ أَنَّهَا سَمِعَتْ «عَائِشَةَ أُمَّ الْمُؤْمِنِينَ تَقُولُ - وَقَدْ سُئِلَتْ عَنْ التَّمْرِ وَالزَّبِيبِ - فَقَالَتْ: كُنْت آخُذُ قَبْضَةً مِنْ تَمْرٍ وَقَبْضَةً مِنْ زَبِيبٍ فَأُلْقِيهِ فِي إنَاءٍ فَأَمْرُسُهُ، ثُمَّ أَسْقِيهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» وَهَذَا مُرَدَّدٌ فِي السُّقُوطِ؛ لِأَنَّهُ عَنْ أَبِي بَحْرٍ - لَا يُدْرَى مَنْ هُوَ عَنْ عَتَّابِ بْنِ عَبْدِ الْعَزِيزِ الْحِمَّانِيُّ - وَهُوَ مَجْهُولٌ عَنْ صَفِيَّةَ بِنْتِ

been anyone more contemptibly foolish than one who argues with such a narration attributed to the Mother of the Believers? An objection arises regarding the report of Abū ʿUthmān al-Anṣārī from al-Qāsim ibn Muḥammad from ʿĀ'ishah from the Prophet—peace and blessings of Allah be upon him: "What intoxicates in large quantities, even a small amount of it is forbidden."

عَطِيَّةَ - وَلَا تُعْرَفُ مَنْ هِيَ فَهَلْ سُمِعَ بِأَسْخَفَ مِمَّنْ يَحْتَجُّ بِمِثْلِ هَذَا عَنْ أُمِّ الْمُؤْمِنِينَ؟ وَيَعْتَرِضُ فِي رِوَايَةِ أَبِي عُثْمَانَ الْأَنْصَارِيِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَائِشَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا أَسْكَرَ كَثِيرُهُ فَقَلِيلُهُ حَرَامٌ» .

L17418 And Abu Uthman, the well-known judge of Rayy, was one from whom the imams narrated.

وَأَبُو عُثْمَانَ مَشْهُورٌ قَاضِي الرَّيِّ رَوَى عَنْهُ الْأَئِمَّةُ.

L17419–17421 And they increased their misguidance by citing as evidence what we have narrated via ʿAbd al-Razzāq from Ibn Jurayj: "It was reported to me." On the authority of Abu Ishaq: A man asked Ibn Umar, "May I combine dates and raisins?" He replied, "No." The man asked, "Why?" He said, "The Prophet (peace and blessings of Allah be upon him) forbade it." The man asked, "Why?" He said, "A man became intoxicated, so the Prophet (PBUH) prescribed the *hadd* punishment for him and ordered that his drink be examined. It turned out to be dates and raisins. The Prophet (PBUH) prohibited combining dates and raisins and said, 'Each should be left to ferment on its own.'"

وَزَادُوا ضَلَالًا فَاحْتَجُّوا بِمَا رُوِّينَاهُ عَنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أُخْبِرْتُ عَنْ أَبِي إِسْحَاقَ: «أَنَّ رَجُلًا سَأَلَ ابْنَ عُمَرَ: أَجْمَعُ بَيْنَ التَّمْرِ وَالزَّبِيبِ؟ فَقَالَ: لَا، قَالَ: لِمَ؟ قَالَ: نَهَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: لِمَ؟ قَالَ: سَكِرَ رَجُلٌ فَحَدَّهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَمَرَ أَنْ يُنْظَرَ مَا شَرَابُهُ فَإِذَا هُوَ تَمْرٌ وَزَبِيبٌ، فَنَهَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَنْ يُجْمَعَ بَيْنَ التَّمْرِ وَالزَّبِيبِ وَقَالَ: يُلْقَى كُلُّ وَاحِدٍ مِنْهُمَا وَحْدَهُ» .

L17422 On the authority of Abu Ishaq from al-Najrani from Ibn Umar, who said: "The Messenger of Allah—peace and blessings be upon him—flogged a drunkard and asked him: 'What did you drink?' He replied: 'Dates and raisins.' He said: 'Do not mix them. Each should be left alone separately.'"

وَمِنْ طَرِيقِ أَبِي إِسْحَاقَ عَنْ النَّجْرَانِيِّ عَنْ ابْنِ عُمَرَ قَالَ: «ضَرَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَكْرَانَ وَقَالَ لَهُ: أَيُّ شَيْءٍ شَرِبْتَ؟ قَالَ: تَمْرٌ وَزَبِيبٌ، قَالَ: لَا تَخْلِطُوهُمَا كُلُّ وَاحِدٍ يُلْقَى وَحْدَهُ» .

L17423 From the chain of Abu al-Tayyāḥ, from Abu al-Waddāk, from Abu Saʿīd al-Khudrī: "An intoxicated man was brought to the Prophet—peace and blessings of Allah be upon him—and he said: 'I did not drink wine—I only drank raisins and dates in a vessel.' Then the mixture was stirred by hand and struck with sandals, and he prohibited raisins and dates from being mixed together."

وَمِنْ طَرِيقِ أَبِي التَّيَّاحِ عَنْ أَبِي الْوَدَّاكِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ، «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِنَشْوَانَ فَقَالَ: إِنِّي لَمْ أَشْرَبْ خَمْرًا إِنَّمَا شَرِبْتُ زَبِيبًا وَتَمْرًا فِي إِنَاءٍ. فَنُهِزَ بِالْأَيْدِي وَخُفِقَ بِالنِّعَالِ وَنَهَى عَنْ الزَّبِيبِ، وَالتَّمْرِ أَنْ يُخْلَطَا»

L17424 Abu Muhammad said: Do these despicable ones not have a religion to restrain them, or shame to deter them, or reason to prevent them from arguing with falsehood against the truth? Moreover, by what [they claim]—even if it were valid—it would become a greater proof against them. Ibn

قَالَ أَبُو مُحَمَّد: أَمَا لِهَؤُلَاءِ الْمَخَاذِيلِ دِينٌ يَرْدَعُهُمْ، أَوْ حَيَاءٌ يَزَعُهُمْ، أَوْ عَقْلٌ يَمْنَعُهُمْ عَنْ الِاحْتِجَاجِ بِالْبَاطِلِ عَلَى الْحَقِّ، ثُمَّ بِمَا لَوْ صَحَّ لَكَانَ أَعْظَمَ حُجَّةً عَلَيْهِمْ، ابْنُ جُرَيْجٍ

يَقُولُ: أُخْبِرْت عَنْ أَبِي إِسْحَاقَ وَلَا يُسَمِّي مَنْ أَخْبَرَهُ، ثُمَّ أَبُو إِسْحَاقَ عَنْ النَّجْرَانِيِّ - وَمَنْ النَّجْرَانِيُّ - لَيْتَ شِعْرِي؟ ثُمَّ هَبْكَ أَنَّنَا سَمِعْنَا كُلَّ ذَلِكَ مِنْ أَبِي سَعِيدٍ، وَمِنْ ابْنِ عُمَرَ أَلَيْسَ قَدْ أَخْبَرَا: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ جَمْعِهِمَا وَأَمَرَ بِإِفْرَادِ كُلِّ وَاحِدٍ مِنْهُمَا؟ وَكَيْف يُجْعَلُ نَهْيُهُ نَفْسُهُ حُجَّةً فِي اسْتِبَاحَةِ مَا نَهَى عَنْهُ؟ مَا بَعْدَ هَذَا الضَّلَالِ ضَلَالٌ، وَلَا وَرَاءَ هَذِهِ الْمُجَاهَرَةِ مُجَاهَرَةٌ، وَلَوْلَا كَثْرَةُ مَنْ ضَلَّ بِاتِّبَاعِهِمْ لَكَانَ الْإِعْرَاضُ عَنْهُمْ أَوْلَى.

Jurayj says: "I was narrated from Abu Ishaq" without naming his informant, then Abu Ishaq from an-Najrani—who is this an-Najrani? Would that I knew! Suppose we heard all that from Abu Sa'id and Ibn 'Umar—have the two not informed us that the Prophet, peace and blessings be upon him, prohibited combining them and commanded that each be performed separately? How can his own prohibition be made a proof for legitimizing what he prohibited? No misguidance surpasses this misguidance, and no brazenness exceeds this brazenness. Were it not for the many who have gone astray by following them, turning away from them would be more fitting.

L17425 وَقَالُوا: إنَّمَا نُهِيَ عَنْ ذَلِكَ؛ لِأَنَّ أَحَدَهُمَا يُعَجِّلُ غَلَيَانَ الْآخَرِ. فَقُلْنَا: كَذَبْتُمْ وَقَفَوْتُمْ مَا لَا عِلْمَ لَكُمْ بِهِ، وَافْتَرَيْتُمْ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْهُ قَطُّ وَلَا أَخْبَرَ بِهِ - ثُمَّ هَبْ الْأَمْرَ كَمَا قُلْتُمْ؟ أَلَيْسَ قَدْ نَهَى - عَلَيْهِ السَّلَامُ - عَنْهُ كَمَا ذَكَرْتُمْ؟ فَانْهَوْا عَمَّا نَهَاكُمْ عَنْهُ إنْ كَانَ فِي قُلُوبِكُمْ إيمَانٌ بِهِ؟

They said: "This was prohibited only because one of them hastens the boiling of the other." We retorted: "You have lied and followed what you know nothing about, fabricating against the Messenger of Allah (peace be upon him) what he neither said nor disclosed." Then [we said]: Even if we suppose your claim were true—did he not (peace be upon him) prohibit it as you yourselves mentioned? So forbid what he has forbidden you, if there is faith in him within your hearts!

L17426 فَإِنْ قَالُوا: هَذَا نَدْبٌ؟ قُلْنَا: كَذَبْتُمْ وَقُلْتُمْ مَا لَا دَلِيلَ لَكُمْ عَلَيْهِ - ثُمَّ هَبْ الْأَمْرَ كَمَا قُلْتُمْ فَاكْرَهُوهُ إذًا وَانْدُبُوا إلَى تَرْكِهِ، وَأَنْتُمْ لَا تَفْعَلُونَ ذَلِكَ بَلْ هُوَ عِنْدَكُمْ وَمَا لَمْ يَنْهَ عَنْهُ أَصْلًا سَوَاءٌ.

If they say: "This is recommended?" We say: "You have lied and asserted what you have no proof for." Then [say]: "Suppose the matter is as you claim—then declare it Disliked and urge toward abandoning it. Yet you yourselves refrain from doing this. Rather, in your view, it is the same as that which was never prohibited in the first place."

L17427–17428 وَقَالُوا: إنَّمَا نَهَى عَنْهُ لِضِيقِ الْعَيْشِ، وَلِأَنَّهُ مِنْ السَّرَفِ - وَهَذَا قَوْلٌ يُوجِبُ عَلَى قَائِلِهِ مَقْتَ اللَّهِ تَعَالَى، لِأَنَّهُ كَذِبٌ بَحْتٌ، وَمَعَ أَنَّهُ كَذِبٌ فَهُوَ بَارِدٌ مِنْ الْكَذِبِ سَخِيفٌ مِنْ الْبُهْتَانِ، لِأَنَّهُ مَا كَانَ قَطُّ عِنْدَ ذِي عَقْلٍ رِطْلُ تَمْرٍ وَرِطْلُ زَبِيبٍ، سَرَفًا، أَوْ رِطْلُ زَهْوٍ وَرِطْلُ بُسْرٍ سَرَفًا، وَهُمْ بِالْمَدِينَةِ وَالطَّائِفِ قَرِيبٌ، وَهُمَا بِلَادُ التَّمْرِ وَالزَّبِيبِ.

They said: He prohibited it solely due to constrained livelihood and because it is from extravagance – a statement that renders its speaker deserving of Allah's contempt, for it is sheer falsehood. Although it is a lie, it is a feeble fabrication and absurd slander. Never has a ratl of dates and a ratl of raisins been deemed extravagance by any rational person, nor has a ratl of Zahw dates and a ratl of Busr dates been considered extravagance – while Medina and Ta'if are nearby, these being the lands of dates and raisins.

L17429 فَكَيْفَ يَكُونُ رِطْلٌ مِنْ تَمْرٍ يَابِسٍ، وَرِطْلٌ مِنْ زَبِيبٍ، وَرِطْلٌ مِنْ بُسْرٍ، أَوْ رِطْلٌ مِنْ رُطَبٍ مَقْرُونٍ - سَرَفًا؟

Then how could a *ritl* of dry dates, a *ritl* of raisins, a *ritl* of semi-ripe dates, or a *ritl* of fresh dates—when combined in pairs—constitute

extravagance that straitened circumstances prohibit, such that they are forbidden for this reason? Yet fermenting one hundred *ritls* of dry dates, one hundred *ritls* of raisins, and one hundred *ritls* of honey—each type separately—would not be deemed extravagance. And how could fermenting a *ritl* of dry dates and a *ritl* of semi-ripe dates together be considered extravagance, while consuming them together is not deemed extravagance? Likewise, consuming dry dates and raisins together—this represents the very pinnacle of intellectual absurdity! What manner of intellect operates on such a measure? Grave indeed is the trial they face from themselves—and we seek refuge in Allah from being deprived of His support.

ثُمَّ كَيْفَ يَكُونُ رِطْلَ تَمْرٍ، وَرِطْلَ زَبِيبٍ، أَوْ رِطْلَ زَهْوٍ، وَرِطْلَ رُطَبٍ يُجْمَعَانِ سَرَفًا يَمْنَعُ مِنْهُ ضِيقُ الْعَيْشِ فَيُنْهَوْنَ عَنْهُ لِذَلِكَ - وَلَا يَكُونُ مِائَةَ رِطْلِ تَمْرٍ، وَمِائَةَ رِطْلِ زَبِيبٍ، وَمِائَةَ رِطْلِ عَسَلٍ يُنْبَذُ كُلُّ صِنْفٍ مِنْهَا عَلَى حِدَتِهِ سَرَفًا. وَكَيْفَ يَكُونُ رِطْلَ تَمْرٍ، وَرِطْلَ زَهْوٍ يُنْبَذَانِ مَعًا سَرَفًا وَلَا وَيَكُونُ أَكْلُهُمَا مَعًا سَرَفًا؟ كَذَلِكَ التَّمْرُ وَالزَّبِيبُ فِي الْأَكْلِ مَعًا، لَقَدْ بَلَغَ الْغَايَةَ مِنْ سُخْفِ الْعَقْلِ، مَنْ هَذَا مِقْدَارُ عَقْلِهِ، وَلَقَدْ عَظُمَتْ بَلِيَّتُهُمْ بِأَنْفُسِهِمْ - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L17430 Moreover, eating chicken, quail, and sugar further introduces your corrupt principles of extravagance and distances you from hardship in living—things the Messenger of Allah (peace be upon him) never prohibited. Even if we grant your claim, what comfort does that bring you? There were indeed people of wealth among them. ʾĀʾishah said: "The sacrificial offerings were with the Messenger of Allah (peace be upon him) and the affluent." The well-known narration states: "Those with abundant wealth have taken the rewards." Among them were ʾUthmān, ʾAbd al-Raḥmān, Saʿd ibn ʾUbādah, and others. Among us now, and until the Day of Resurrection, there are those experiencing hardship in living and severe poverty. Thus, the rationale remains sufficiently established, making the prohibition necessarily binding. Mock as you wish—to evade Allah's decree upon you.

وَأَيْضًا: فَإِنَّ أَكْلَ الدَّجَاجِ وَالنِّقْيِ وَالسُّكَّرِ أَدْخَلُ عَلَى أُصُولِكُمْ الْفَاسِدَةِ فِي السَّرَفِ، وَأَبْعَدُ مِنْ ضِيقِ الْعَيْشِ، وَمَا نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ، ثُمَّ هَبْكُمْ أَنَّهُ كَمَا تَقُولُونَ، فَأَيُّ رَاحَةٍ لَكُمْ فِي ذَلِكَ؟ وَقَدْ كَانَ فِيهِمْ ذُو سَعَةٍ مِنْ الْمَالِ، قَالَتْ عَائِشَةُ: وَكَانَ الْهَدْيُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَذَوِي الْيَسَارَةِ، وَالْخَبَرُ الْمَشْهُورُ «ذَهَبَ أَصْحَابُ الدُّثُورِ بِالْأُجُورِ» وَكَانَ فِيهِمْ عُثْمَانُ، وَعَبْدُ الرَّحْمَنِ، وَسَعْدُ بْنُ عُبَادَةَ، وَغَيْرُهُ وَفِينَا نَحْنُ وَإِلَى يَوْمِ الْقِيَامَةِ ذُو ضِيقٍ مِنْ الْعَيْشِ وَفَاقَةٍ شَدِيدَةٍ، فَالْعِلَّةُ بَاقِيَةٌ بِحَسْبِهَا، فَالنَّهْيُ بَاقٍ وَلَا بُدَّ، اسْخَفُوا مَا شِئْتُمْ لَأَنْ تُفَوِّتُوا حُكْمَ اللَّهِ عَلَيْكُمْ.

L17431 They mentioned what we have narrated through the chain of Ibn Abī Shaybah from ʿAlī ibn Mushir from al-Shaybānī from ʿAbd al-Malik ibn Nāfiʿ: I said to Ibn ʿUmar, "I prepare nabīdh from raisins, and dates are thrown into it, causing it to spoil for me." He said, "There is no harm in it." ʿAbd al-Malik ibn Nāfiʿ is of unknown reliability.

وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ عَلِيِّ بْنِ مُسْهِرٍ عَنْ الشَّيْبَانِيِّ عَنْ عَبْدِ الْمَلِكِ بْنِ نَافِعٍ قُلْت لِابْنِ عُمَرَ: أَنْبِذُ نَبِيذَ زَبِيبٍ فَيُلْقَى لِي فِيهِ تَمْرٌ فَيَفْسُدُ عَلَيَّ؟ قَالَ: لَا بَأْسَ بِهِ - وَعَبْدُ الْمَلِكِ بْنُ نَافِعٍ مَجْهُولٌ.

L17432 It has been authentically reported that Ibn ʿUmar retracted from this—as we have been narrated through the chain of Saʿīd ibn Manṣūr: from Ismāʿīl—that is, the son of Ibrāhīm, who is the son of ʿUlayyah; from Ayyūb—that is, al-Sikhtiyānī; from Nāfiʿ; from Ibn ʿUmar—that he ordered raisins and dates

وَقَدْ صَحَّ عَنْ ابْنِ عُمَرَ الرُّجُوعُ عَنْ هَذَا - كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا إِسْمَاعِيلُ هُوَ ابْنُ إبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ - نَا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ - عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ

أَنَّهُ أَمَرَ بِزَبِيبٍ وَتَمْرٍ أَنْ يُنْبَذَا لَهُ، ثُمَّ تَرَكَهُ بَعْدَ ذَلِكَ - قَالَ نَافِعٌ: فَلَا أَدْرِي أَلِشَيْءٍ ذَكَرَهُ أَمْ لِشَيْءٍ بَلَغَهُ؟ فَصَحَّ أَنَّهُ ذَكَرَ النَّهْيَ بَعْدَ أَنْ نَسِيَهُ أَوْ بَلَغَهُ وَلَمْ يَكُنْ بَلَغَهُ قَبْلَ ذَلِكَ.

to be prepared as *nabīdh* for him, then abandoned it afterward. Nāfiʿ said: "I do not know whether this was due to something he recalled or something that reached him?" Thus, it is confirmed that he mentioned the prohibition after having forgotten it, or that it reached him when it had not reached him before that.

وَذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقٍ غَيْرِ مَشْهُورَةٍ عَنْ شُعْبَةَ قَالَ: سَمِعْتُ أُسَامَةَ رَجُلًا مِنْ جِيرَانِنَا قَالَ: سَمِعْتُ شِهَابَ بْنَ عَبَّادٍ قَالَ: سَأَلْتُ ابْنَ عَبَّاسٍ عَنِ التَّمْرِ وَالزَّبِيبِ فَقَالَ: لَا يَضُرُّكَ أَنْ تَخْلِطَهُمَا جَمِيعًا أَوْ تُنْبَذَ كُلُّ وَاحِدٍ مِنْهُمَا عَلَى حِدَةٍ.

L17433–17434 They mentioned what we have narrated through an uncommon chain from Shuʿbah, who said: I heard Usāmah, a man from our neighbors, say: I heard Shihāb ibn ʿAbbād say: I asked Ibn ʿAbbās about dates and raisins, and he said: "It will not harm you to mix them together or to ferment each one separately."

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا شَيْءَ، فَلَا أَكْثَرَ، أُسَامَةُ رَجُلٌ مِنْ جِيرَانِ شُعْبَةَ وَمَا نَعْلَمُ أَتَمَّ جَهْلًا، أَوْ أَقَلَّ حَيَاءً مِمَّنْ يَتَعَلَّقُ بِهَذَا عَنِ ابْنِ عَبَّاسٍ وَلَا يَصِحُّ أَصْلًا - ثُمَّ يُخَالِفُ رِوَايَةَ مُحَمَّدِ بْنِ جَعْفَرٍ غُنْدَرٍ عَنْ شُعْبَةَ عَنْ أَبِي جَمْرَةَ نَصْرِ بْنِ عِمْرَانَ الضُّبَعِيِّ قَالَ: قُلْتُ لِابْنِ عَبَّاسٍ: إِنِّي أَنْتَبِذُ فِي جَرَّةٍ خَضْرَاءَ نَبِيذًا حُلْوًا فَأَشْرَبُ مِنْهُ فَيُقَرْقِرُ بَطْنِي. قَالَ ابْنُ عَبَّاسٍ: لَا تَشْرَبْ مِنْهُ وَإِنْ كَانَ أَحْلَى مِنَ الْعَسَلِ.

L17435 Abū Muḥammad said: This is nothing—nor anything more. Usāmah is a man among Shuʿbah's neighbors, and we know no one more completely ignorant or shameless than those who attribute this to Ibn ʿAbbās, and it is not authentic at all. Moreover, it contradicts the narration of Muḥammad ibn Jaʿfar Ghundar from Shuʿbah from Abū Jamrah Naṣr ibn ʿImrān al-Ḍubaʿī, who said: I said to Ibn ʿAbbās, "I prepare sweet *nabīdh* in a green jar and drink from it, but it makes my stomach gurgle." Ibn ʿAbbās said, "Do not drink from it, even if it were sweeter than honey."

فَإِنْ قَالُوا: قَدْ صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَسْخُ النَّهْيِ عَنْ نَبِيذِ الْجَرِّ. قُلْنَا: النَّهْيُ وَاَللَّهِ عَنْ خَلْطِ الزَّبِيبِ وَالتَّمْرِ أَصَحُّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ نَسْخِ النَّهْيِ عَنْ نَبِيذِ الْجَرِّ الَّذِي لَمْ يَأْتِ إِلَّا مِنْ طَرِيقِ بُرَيْدَةَ وَجَابِرٍ فَقَطْ، وَالنَّهْيُ عَنِ الْجَمْعِ بَيْنَ التَّمْرِ وَالزَّبِيبِ فِي الِانْتِبَاذِ صَحَّ مِنْ طَرِيقِ أَبِي قَتَادَةَ، وَجَابِرٍ، وَابْنِ عَبَّاسٍ، وَأَبِي سَعِيدٍ، وَأَبِي هُرَيْرَةَ، فَهُوَ نَقْلُ تَوَاتُرٍ وَلَمْ يَأْتِ قَطُّ شَيْءٌ يَنْسَخُهُ لَا ضَعِيفٌ وَلَا قَوِيٌّ.

L17436 If they say: "It has been authentically established from the Prophet (peace be upon him) that the prohibition against *nabīdh* prepared in jars was abrogated," we say: By Allah, the prohibition against mixing raisins and dates is more authentic from the Prophet (peace be upon him) than the abrogation of the prohibition against jar-prepared *nabīdh*, which only comes via the chains of Buraydah and Jabir. The prohibition against combining dates and raisins in fermentation has been authentically transmitted through Abu Qatādah, Jabir, Ibn Abbās, Abu Saʿīd, and Abu Hurayrah—constituting a mass-transmitted (tawātur) report. No abrogating element has ever emerged regarding it, neither weak nor strong.

L17437 They said: "What difference is there between combining them in a vessel and combining them in the stomach?" We replied: "The Messenger of Allah (peace and blessings be upon him) cannot be contradicted in this. What dif-

ference is there between simultaneously marrying two sisters and marrying them one after another? If you were to oppose yourselves regarding your distinction between a runaway slave found within the city and a runaway slave found outside the city on three, you would have been correct."

وَقَالُوا: أَيُّ فَرْقٍ بَيْنَ جَمْعِهِمَا فِي الْإِنَاءِ، وَبَيْنَ جَمْعِهِمَا فِي الْبَطْنِ؟ فَقُلْنَا: لَا يُعَارَضُ بِهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَيُّ فَرْقٍ بَيْنَ الْجَمْعِ بَيْنَ الْأُخْتَيْنِ وَبَيْنَ نِكَاحِهِمَا وَاحِدَةً بَعْدَ أُخْرَى؟ وَلَوْ عَارَضْتُمْ أَنْفُسَكُمْ فِي فَرْقِكُمْ بَيْنَ الْآبِقِ يُوجَدُ فِي الْمِصْرِ، وَبَيْنَ الْآبِقِ يُوجَدُ خَارِجَ الْمِصْرِ عَلَى ثَلَاثٍ لَأَصَبْتُمْ.

L17438 Regarding your distinction between theft from a secured place involving less than ten dirhams—which does not mandate amputation—and theft of ten dirhams from a non-secured place—which also does not mandate amputation: if both conditions combine, such as stealing ten dirhams from a secured place, amputation becomes obligatory. Similarly, regarding laughter during prayer—which invalidates ablution—and laughter after prayer—which does not invalidate it: adhering to this distinction would be more prudent for you.

وَفِي فَرْقِكُمْ بَيْنَ السَّرِقَةِ مِنْ الْحِرْزِ أَقَلَّ مِنْ عَشَرَةِ دَرَاهِمَ فَلَا يُوجِبُ الْقَطْعَ [وَبَيْنَ] سَرِقَةِ عَشَرَةِ دَرَاهِمَ مِنْ غَيْرِ حِرْزٍ فَلَا يُوجِبُ الْقَطْعَ، فَإِذَا اجْتَمَعَا فَسَرَقَ عَشَرَةَ دَرَاهِمَ مِنْ حِرْزٍ وَجَبَ الْقَطْعُ، وَبَيْنَ الْقَهْقَهَةِ تَكُونُ فِي الصَّلَاةِ فَتَنْقُضُ الْوُضُوءَ، وَتَكُونُ بَعْدَ الصَّلَاةِ فَلَا تَنْقُضُهُ لَكَانَ أَسْلَمَ لَكُمْ.

L17439 It has been narrated to us through the chain of Saʿīd ibn Manṣūr from Hushaym, from Yūnus, from al-Ḥasan that he saw no harm in splitting open a date cluster along with its contents. We do not know of this from any of the Salaf besides him, though the narration does not clarify the permissibility of combining raisins and dates and all other things that were subject to prohibition.

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ هُشَيْمٍ عَنْ يُونُسَ عَنْ الْحَسَنِ أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يَفْضَخَ الْعِذْقَ بِمَا فِيهِ، وَمَا نَعْلَمُ هَذَا عَنْ أَحَدٍ مِنْ السَّلَفِ غَيْرِهِ، عَلَى أَنَّهُ لَيْسَ فِيهِ بَيَانٌ لِإِبَاحَةِ الْجَمْعِ بَيْنَ الزَّبِيبِ وَالتَّمْرِ وَسَائِرِ مَا جَاءَ النَّهْيُ عَنْهُ.

L17440–17441 It was narrated to us through the chain of Ibn Abī Shaybah from ʿAffān ibn Muslim from ʿAbd al-Wāḥid ibn Ṣafwān, who said: I heard my father narrating from his mother that she said: "I would soak raisins for ʿUthmān (may Allah be pleased with him) in the morning, and he would drink it in the evening. I would soak them in the evening, and he would drink it in the morning." She said: ʿUthmān asked me, "Perhaps you add yeast to it?" I replied, "Perhaps I did." He said, "Then do not do it."

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ عَفَّانَ بْنِ مُسْلِمٍ عَنْ عَبْدِ الْوَاحِدِ بْنِ صَفْوَانَ سَمِعْتُ أَبِي يُحَدِّثُ عَنْ أُمِّهِ أَنَّهَا قَالَتْ: كُنْت أَمْغَثُ لِعُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - الزَّبِيبَ غُدْوَةً فَيَشْرَبُهُ عَشِيَّةً، وَأَمْغَثُهُ عَشِيَّةً فَيَشْرَبُهُ غُدْوَةً، قَالَتْ: فَقَالَ لِي عُثْمَانُ: لَعَلَّك تَجْعَلِينَ فِيهِ زَهْوًا قُلْت: رُبَّمَا فَعَلْت، فَقَالَ: فَلَا تَفْعَلِي. .

L17442 As for the Mālikīs, they argued by citing the narration we reported through the chain of Abū Dāwūd al-Ṭayālisī: Ḥarb ibn Shaddād reported from Yaḥyā ibn Abī Kathīr, from Abū Salama ibn ʿAbd al-Raḥmān, from ʿĀʾisha, the

Mother of the Believers, that “the Messenger of Allah (peace be upon him) forbade mixing two separately owned commodities.”

وَأَمَّا الْمَالِكِيُّونَ فَاحْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد الطَّيَالِسِيِّ نَا حَرْبُ بْنُ شَدَّادٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ الْخَلِيطَيْنِ» .

L17443 Through the chain of Ibn Wahb, Abd al-Jabbar ibn Umar said: Muhammad ibn al-Munkadir narrated to me from Jabir ibn Abdullah: “The Messenger of Allah (peace be upon him) prohibited the two mixtures from being drunk. We asked: ’O Messenger of Allah, what are the two mixtures?’ He said: ’Dates and raisins. All intoxicants are ḥarām.”’

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ حَدَّثَنِي عَبْدُ الْجَبَّارِ بْنُ عُمَرَ قَالَ: حَدَّثَنِي مُحَمَّدُ بْنُ الْمُنْكَدِرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ الْخَلِيطَيْنِ أَنْ يُشْرَبَا؟ قُلْنَا: يَا رَسُولَ اللَّهِ وَمَا الْخَلِيطَانِ؟ قَالَ: التَّمْرُ وَالزَّبِيبُ، وَكُلُّ مُسْكِرٍ حَرَامٌ» .

L17444 From the narration of ʿAbdullāh ibn al-Mubārak: I [narrate] from Wiqāʿ ibn Iyās, from al-Mukhtār ibn Fulful, from Anas: “The Messenger of Allah (peace be upon him) forbade us from combining two substances as nabīdh from [ingredients] where one accelerates the fermentation of the other.” Anas disliked the stalk of unripe dates, fearing they might constitute two entities, so we would cut it off.

وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ أَنَا وِقَاءُ بْنُ إيَاسٍ عَنْ الْمُخْتَارِ بْنِ فُلْفُلٍ عَنْ أَنَسٍ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَجْمَعَ شَيْئَيْنِ نَبِيذًا مِمَّا يَبْغِي أَحَدُهُمَا عَلَى صَاحِبِهِ» وَكَانَ أَنَسٌ يَكْرَهُ الْمُذَنَّبَ مِنْ الْبُسْرِ مَخَافَةَ أَنْ يَكُونَا شَيْئَيْنِ فَكُنَّا نَقْطَعُهُ ".

L17445 They said: The Prophet’s prohibition—peace and blessings of Allah be upon him—has been authentically established against combining dates, raisins, unripe dates, overripe dates, and fresh dates in nabīdh-making: whether combining two of them, one of them with another from outside them, or fermenting them in a vessel. Thus, it necessarily follows that all that is used for nabīdh-making or pressing is similarly prohibited.

وَقَالُوا: قَدْ صَحَّ نَهْيُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَنْ يُجْمَعَ التَّمْرُ، وَالزَّبِيبُ، وَالْبُسْرُ، وَالزَّهْوُ، وَالرُّطَبُ: اثْنَانِ مِنْهُمَا أَوْ وَاحِدٌ مِنْهُمَا وَآخَرُ مِنْ غَيْرِهِمَا فِي الِانْتِبَاذِ مَعًا، أَوْ يَنْبِذَهُمَا فِي إنَاءٍ، فَوَجَبَ أَنْ يَكُونَ سَائِرُ مَا يُنْبَذُ وَيُعْصَرُ كَذَلِكَ.

L17446 Abū Muḥammad said: This is all they have objected with—and none of it is valid: As for the first ḥadīth, it is a *mudallas* narration, for Yaḥyā ibn Abī Kathīr did not hear it from Abū Salamah via ʿĀ’ishah. Rather, he heard it from Abū Salamah via Abū Qatādah, according to what we presented at the beginning of this chapter regarding the detailed explanation of the mentioned classifications. As for the chain through ʿĀ’ishah, we have been narrated via the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn Maʿmar reported to us; Abū Dāwūd al-Ṭayālisī reported to us; Ḥarb ibn Shaddād reported to us from Yaḥyā ibn Abī Kathīr that Kilāb ibn ʿAlī informed him that Abū Salamah—the son of ʿAbd al-Raḥmān ibn ʿAwf—informed him that ʿĀ’ishah informed

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّ مَا شَغَبُوا بِهِ - وَكُلُّهُ لَا يَصِحُّ: - أَمَّا الْحَدِيثُ الْأَوَّلُ: فَمُدَلَّسٌ لَمْ يَسْمَعْهُ يَحْيَى بْنُ أَبِي كَثِيرٍ مِنْ أَبِي سَلَمَةَ عَنْ عَائِشَةَ، وَإِنَّمَا سَمِعَهُ مِنْ أَبِي سَلَمَةَ عَنْ أَبِي قَتَادَةَ عَلَى مَا أَوْرَدْنَا فِي أَوَّلِ هَذَا الْبَابِ مِنْ تَفْصِيلِ الْأَصْنَافِ الْمَذْكُورَةِ وَأَمَّا مِنْ طَرِيقِ عَائِشَةَ فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَعْمَرٍ نَا أَبُو دَاوُد الطَّيَالِسِيُّ نَا حَرْبُ بْنُ شَدَّادٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ أَنَّ كِلَابَ بْنَ عَلِيٍّ أَخْبَرَهُ أَنَّ أَبَا

him: “The Messenger of Allāh, peace be upon him, prohibited mixing unripe dates with fresh dates, and raisins with dried dates.”

سَلَمَةَ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - أَخْبَرَهُ أَنَّ عَائِشَةَ أَخْبَرَتْهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى أَنْ يُخْلَطَ بَيْنَ الْبُسْرِ وَالرُّطَبِ، وَبَيْنَ الزَّبِيبِ وَالتَّمْرِ» .

L17447–17449 Ahmad ibn Shu‘ayb said: And I, Muhammad ibn al-Muthanna, narrate from Abu ‘Amir – who is al-‘Aqadi – from ‘Ali ibn al-Mubarak, from Yahya ibn Abi Kathir, from Thumamah ibn Kilab, from Abu Salamah, from ‘A’ishah: that... The Prophet - peace and blessings be upon him - said: “Prepare nabidh from raisins and dates together, but do not prepare nabidh from fresh dates and dried dates together.” Now Yahya heard this from Kilab ibn Ali and Thumamah ibn Kilab - both of whom are unidentified narrators - thus the narration became unreliable. Even if authentic, it would not constitute authoritative proof, for the two mixtures mentioned in such absolute terms remain ambiguous: are they mixtures pertaining to zakah or to what? Moreover, tharid combines two substances - meat and bread - while milk and water form another pair of combined substances. Therefore, the intended meaning of his statement - peace be upon him - must be clarified, and such clarification can only derive from his own wording - peace be upon him. Thus their dependence on this narration is invalidated.

قَالَ أَحْمَدُ بْنُ شُعَيْبٍ: وَأَنَا مُحَمَّدُ بْنُ الْمُثَنَّى نَا أَبُو عَامِرٍ هُوَ الْعَقَدِيُّ - نَا عَلِيُّ بْنُ الْمُبَارَكِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ ثُمَامَةَ بْنِ كِلَابٍ عَنْ أَبِي سَلَمَةَ عَنْ عَائِشَةَ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «انْتَبِذُوا الزَّبِيبَ وَالتَّمْرَ جَمِيعًا، وَلَا تَنْتَبِذُوا الرُّطَبَ وَالتَّمْرَ جَمِيعًا» فَإِنَّمَا سَمِعَهُ يَحْيَى مِنْ كِلَابِ بْنِ عَلِيٍّ، وَثُمَامَةَ بْنِ كِلَابٍ، وَكِلَاهُمَا لَا يُدْرَى مَنْ هُوَ - فَسَقَطَ. ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ حُجَّةٌ؛ لِأَنَّ الْخَلِيطَيْنِ هَكَذَا مُطْلَقًا لَا يُدْرَى مَا هُمَا أَهُمَا الْخَلِيطَانِ فِي الزَّكَاةِ أَمْ فِي مَاذَا؟ وَأَيْضًا فَإِنَّ ثَرِيدَ اللَّحْمِ وَالْخُبْزِ خَلِيطَانِ، وَاللَّبَنَ وَالْمَاءَ خَلِيطَانِ، فَلَا بُدَّ مِنْ بَيَانِ مُرَادِهِ - عَلَيْهِ السَّلَامُ - بِذَلِكَ، وَلَا يُؤْخَذُ بَيَانُ مُرَادِهِ إِلَّا مِنْ لَفْظِهِ - عَلَيْهِ السَّلَامُ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْأَثَرِ.

L17450 As for the ḥadīth of Jābir, it is transmitted through the chain of ‘Abd al-Jabbār ibn ‘Umar al-Ubullī, who is extremely weak. Even if it were authentic, it would not constitute evidence for them. Rather, it would be a decisive and overwhelming proof against them, for it states that the Companions - may Allah be pleased with them - did not know the meaning of the two prohibited mixtures until they asked the Messenger of Allah - peace and blessings be upon him - as was obligatory upon them and upon every individual. He - peace be upon him - explained to them that they were dates and raisins, without mentioning anything else. If he had intended other mixtures, would he have remained silent about them when they sought clarification. This is something no Muslim can deny, for it would have been the greatest deception against them. Whoever claims there exists something additional here about which the Prophet - peace and blessings be upon him - was questioned yet failed to clarify for his Ummah has indeed fabricated a lie against the

وَأَمَّا حَدِيثُ جَابِرٍ فَمِنْ طَرِيقِ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ الْأُبُلِّيِّ وَهُوَ ضَعِيفٌ جِدًّا - ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ، بَلْ كَانَ يَكُونُ حُجَّةً عَظِيمَةً قَاطِعَةً عَلَيْهِمْ؛ لِأَنَّ فِيهِ أَنَّ الصَّحَابَةَ - رَضِيَ اللَّهُ عَنْهُمْ - لَمْ يَعْرِفُوا مَا الْخَلِيطَانِ الْمَنْهِيُّ عَنْهُمَا حَتَّى سَأَلُوا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا يَجِبُ عَلَيْهِمْ وَعَلَى كُلِّ أَحَدٍ؟ فَفَسَّرَهُمَا لَهُمْ - عَلَيْهِ السَّلَامُ - بِأَنَّهُمَا التَّمْرُ وَالزَّبِيبُ وَلَمْ يَذْكُرْ غَيْرَهُمَا، فَلَوْ أَرَادَ غَيْرَهُمَا لَمَا سَكَتَ عَنْ ذِكْرِهِ وَقَدْ سَأَلُوهُ الْبَيَانَ؟ هَذَا مَا لَا يُحِيلُ عَلَى مُسْلِمٍ؛ لِأَنَّهُ كَانَ يَكُونُ أَعْظَمَ التَّلْبِيسِ عَلَيْهِمْ وَمَنْ ادَّعَى أَنَّ هَهُنَا شَيْئًا زَائِدًا سُئِلَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهُ فَلَمْ يُبَيِّنْهُ لِأُمَّتِهِ فَقَدْ افْتَرَى الْكَذِبَ

Messenger of Allah - peace and blessings be upon him - and has undoubtedly committed heresy in the religion. We seek refuge in Allah from this.

عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَلْحَدَ فِي الدِّينِ بِلَا شَكٍّ - وَنَعُوذُ بِاللَّهِ مِنْ هَذَا.

L17451 As for the report of Anas, it comes through Wiqā' ibn Iyās—who is weak, having been deemed so by Ibn Maʿīn and others. Moreover, it is incoherent, corrupt speech that is unintelligible and cannot lawfully be attributed to the Prophet (peace and blessings be upon him) under any circumstance, for no one understands what is meant by "one of them overstepping against the other concerning nabīdh [fermented drink]."

وَأَمَّا خَبَرُ أَنَسٍ فَمِنْ طَرِيقِ وِقَاءِ بْنِ إيَاسٍ وَهُوَ ضَعِيفٌ ضَعَّفَهُ ابْنُ مَعِينٍ وَغَيْرُهُ، مَعَ أَنَّهُ كَلَامٌ فَاسِدٌ لَا يُعْقَلُ لَا يَجُوزُ أَنْ يُضَافَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَلْبَتَّةَ؛ لِأَنَّهُ لَا يَدْرِي أَحَدٌ مَا مَعْنَى يَبْغِي أَحَدُهُمَا عَلَى صَاحِبِهِ فِي النَّبِيذِ.

L17452 If they say, "Its meaning is that one of the two hastens the boiling of the other?" We say: This is manifest falsehood; dates and raisins do not boil together in *nabīdh* except when raisins alone are boiling; or dates alone are boiling. And he—peace be upon him—does not speak except the truth. Thus, all they have deceptively presented is invalidated with certainty.

فَإِنْ قَالُوا: مَعْنَاهُ يُعَجِّلُ أَحَدُهُمَا غَلَيَانَ الْآخَرِ؟ قُلْنَا: هَذَا الْكَذِبُ الْعَلَانِيَةُ وَمَا يَغْلِي تَمْرٌ وَزَبِيبٌ جَمْعًا فِي النَّبِيذِ إلَّا فِي الْمُدَّةِ الَّتِي يَغْلِي فِيهَا الزَّبِيبُ وَحْدَهُ؛ أَوْ التَّمْرُ وَحْدَهُ وَهُوَ - عَلَيْهِ السَّلَامُ - لَا يَقُولُ إلَّا الْحَقَّ؛ فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ بِيَقِينٍ.

L17453–17455 As for their statement: "We analogized the rest of the mixture according to what was explicitly established," we replied: The analogy is invalid. Then, even if it were valid, this instance would constitute the very essence of invalidity, for you are no more entitled to analogize figs and honey to what was mentioned than another who wanted to analogize milk and sugar to it. Either vinegar and honey in a dual combination as oxymel (a mixture of vinegar and honey), or raisins and vinegar in a dual combination, and there is no means to differentiate between them.

وَأَمَّا قَوْلُهُمْ: قِسْنَا سَائِرَ الْخَلْطِ عَلَى مَا نَصَّ عَلَيْهِ فَقُلْنَا: الْقِيَاسُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّكُمْ لَسْتُمْ بِأَوْلَى أَنْ تَقِيسُوا التِّينَ، وَالْعَسَلَ عَلَى مَا ذُكِرَ مِنْ آخَرَ أَرَادَ أَنْ يَقِيسَ عَلَى ذَلِكَ اللَّبَنَ وَالسُّكَّرَ مَجْمُوعَيْنِ، أَوْ الْخَلَّ، وَالْعَسَلَ فِي السَّكَنْجَبِينِ مَجْمُوعَيْنِ، أَوْ الزَّبِيبَ، وَالْخَلَّ مَجْمُوعَيْنِ، وَلَا سَبِيلَ إلَى فَرْقٍ.

L17456 If they say: "We do not extend [the ruling] beyond nabīdh," we say to them: "Rather, apply the analogy of combining in nabīdh to combining in what is not nabīdh, or do not exceed what the scriptural text has specified - neither in nabīdh nor in anything else - for there is absolutely no basis for distinction. And with Allāh, the Exalted, is success."

فَإِنْ قَالُوا: لَا نَتَعَدَّى النَّبِيذَ. قُلْنَا لَهُمْ: بَلْ قِيسُوا عَلَى الْجَمْعِ فِي النَّبِيذِ الْجَمْعَ فِي غَيْرِ النَّبِيذِ، أَوْ لَا تَتَعَدَّوْا مَا وَرَدَ بِهِ النَّصُّ لَا فِي نَبِيذٍ، وَلَا غَيْرِهِ، وَلَا سَبِيلَ إلَى فَرْقٍ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L17457 **A legal issue concerning the fermentation of *nabidh* in clay jugs, hollowed-out wooden containers, pitched vessels, tar-coated receptacles, and gourds.**

[مَسْأَلَةٌ الِانْتِبَاذُ فِي الْحَنْتَمِ وَالنَّقِيرِ وَالْمُزَفَّتِ وَالْمُقَيَّرِ وَالدُّبَّاءِ]

L17458 1102 – Question:

١١٠٢ - مَسْأَلَةٌ:

وَالِانْتِبَاذُ فِي الْحَنْتَمِ، وَالنَّقِيرِ، وَالْمُزَفَّتِ، وَالْمُقَيَّرِ، وَالدُّبَّاءِ، وَالْجِرَارِ الْبِيضِ، وَالسُّودِ، وَالْحُمْرِ، وَالْخُضْرِ، وَالصُّفْرِ، وَالْمُوَشَّاةِ، وَغَيْرِ الْمَدْهُونَةِ، وَالْأَسْقِيَةِ، وَكُلُّ ظَرْفٍ حَلَالٌ، إِلَّا إِنَاءَ ذَهَبٍ أَوْ فِضَّةٍ أَوْ إِنَاءَ أَهْلِ الْكِتَابِ، أَوْ جِلْدَ مَيْتَةٍ غَيْرَ مَدْبُوغٍ، أَوْ إِنَاءً مَأْخُوذًا بِغَيْرِ حَقٍّ.

L17459 The preparation of nabīdh in ḥantam jars, naqīr (hollowed trunks), tar-coated vessels, resin-coated vessels, gourds, white jars, black jars, red jars, green jars, yellow jars, decorated jars, unoiled jars, waterskins, and all permissible vessels is permissible—except for vessels of gold or silver, vessels belonging to the People of the Book, vessels made from untanned dead animal hide, or vessels acquired through illegitimate means.

بُرْهَانُ ذَلِكَ: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي أَبُو بَكْرِ بْنُ عَلِيٍّ هُوَ الْمُقَدَّمِيُّ - نَا إِبْرَاهِيمُ بْنُ الْحَجَّاجِ نَا حَمَّادُ بْنُ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ عُبَيْدِ اللَّهِ بْنِ بُرَيْدَةَ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُنْتُ نَهَيْتُكُمْ عَنْ الْأَوْعِيَةِ فَانْتَبِذُوا فِيمَا بَدَا لَكُمْ، وَإِيَّاكُمْ وَكُلَّ مُسْكِرٍ» .

L17460 The evidence for that is what we have narrated through the chain of Ahmad ibn Shu‘ayb, who informed me: Abū Bakr ibn ‘Ali—Al-Muqaddamī—informed us: Ibrāhīm ibn al-Ḥajjāj informed us, from Ḥammād ibn Salamah, from Ḥammād ibn Abī Sulaymān, from ‘Ubayd Allāh ibn Buraydah, from his father, who said: The Messenger of Allah—peace and blessings be upon him—said, “I had forbidden you from [using certain] vessels, so prepare nabīdh in whatever seems suitable to you, and avoid every intoxicant.”[19]

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ مَعْرُوفِ بْنِ وَاصِلٍ عَنْ مُحَارِبِ بْنِ دِثَارٍ عَنْ ابْنِ بُرَيْدَةَ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُنْتُ نَهَيْتُكُمْ عَنْ الْأَشْرِبَةِ إِلَّا فِي ظُرُوفِ الْأُدْمِ فَاشْرَبُوا فِي كُلِّ وِعَاءٍ غَيْرَ أَنْ لَا تَشْرَبُوا مُسْكِرًا»

L17461 From the path of Waki’ from Ma’ruf ibn Wasil from Muharib ibn Dithar from Ibn Buraidah from his father, who said: The Messenger of Allah (peace and blessings of Allah be upon him) said: “I had forbidden you from drinks except in vessels of tanned hides. Now drink in every container, but do not drink intoxicants.”[20]

وَمِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نَا الْحَجَّاجُ بْنُ الشَّاعِرُ نَا الضَّحَّاكُ بْنُ مَخْلَدٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَلْقَمَةَ بْنِ مَرْثَدٍ عَنْ أَبِي بُرَيْدَةَ عَنْ أَبِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «نَهَيْتُكُمْ عَنْ الظُّرُوفِ وَإِنَّ الظُّرُوفَ ظَرْفًا لَا يُحِلُّ شَيْئًا وَلَا يُحَرِّمُهُ وَكُلُّ مُسْكِرٍ حَرَامٌ»

L17462 From the path of Muslim ibn al-Ḥajjāj: Al-Ḥajjāj ibn al-Sha‘ir narrated to us, Al-Ḍaḥḥāk ibn Makhlad narrated to us from Sufyān al-Thawrī from ‘Alqamah ibn Marthad from Abū Buraydah from his father: That the Messenger of Allah—peace and blessings be upon him—said, “I forbade you from containers, yet a container, as a container, does not make anything permissible or impermissible. And every intoxicant is forbidden.”

L17463 From the chain of Yahya ibn Sa’id al-Qattan, from Sufyan al-Thawri, from Mansur, from Salim ibn Abi al-Ja’d, from Jabir ibn Abdullah, who said: “The

[19] **Hadith references (L17460):** Sunan an-Nasai 5654.

[20] **Hadith references (L17461):** Mishkat al-Masabih 4291.

Messenger of Allah—peace be upon him and his family—prohibited certain containers. The Ansar said: 'We must necessarily have them.' He said: 'Then do not do so.'"

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ الظُّرُوفِ فَقَالَتْ الْأَنْصَارُ: إنَّهُ لَا بُدَّ لَنَا مِنْهَا. قَالَ: فَلَا إذًا» .

L17464 It has been established that the permissibility of what he prohibited of the vessels constitutes an abrogation of the prohibition, and he—peace and blessings of Allah be upon him—had indeed forbidden them. It is authentically transmitted through Ibn Abbas's narration from the Prophet—peace and blessings of Allah be upon him—that he prohibited: the preparation of Nabidh, drinking from al-Hantam vessels, pitch-coated vessels, gourds, water skins with severed tops, anything fashioned from mud mixed with hair, and earthenware jars.

فَصَحَّ أَنَّ إبَاحَةَ مَا نَهَى عَنْهُ مِنْ الظُّرُوفِ نَاسِخَةٌ لِلنَّهْيِ، وَقَدْ كَانَ - عَلَيْهِ السَّلَامُ - نَهَى عَنْهَا، فَقَدْ صَحَّ عَنْ طَرِيقِ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّهُ نَهَى عَنْ الِانْتِبَاذِ وَالشُّرْبِ فِي الْحَنْتَمِ، وَالْمُقَيَّرِ، وَالدُّبَّاءِ، وَالْمَزَادَةِ الْمَجْبُوبَةِ، وَكُلِّ شَيْءٍ صُنِعَ مِنْ مَدَرٍ، وَالْجَرِّ» .

L17465–17466 It has been authentically reported through Abu Hurairah from the Prophet, peace and blessings be upon him, that he prohibited all such vessels except that he omitted mention of "everything made of mud." It has also been authentically reported from Ibn Umar from the Prophet, peace and blessings be upon him, that he prohibited all such vessels except that he omitted mention of the stitched water-skin, while he did mention the large clay jar.

وَصَحَّ مِنْ طَرِيقِ أَبِي هُرَيْرَةَ عَنْهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ نَهَى عَنْ ذَلِكَ كُلِّهِ إلَّا أَنَّهُ لَمْ يَذْكُرْ «كُلَّ شَيْءٍ صُنِعَ مِنْ مَدَرٍ» . وَصَحَّ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ نَهَى عَنْ ذَلِكَ كُلِّهِ إلَّا أَنَّهُ لَمْ يَذْكُرْ الْمُزَادَةَ الْمَجْبُوبَةَ وَذَكَرَ الْجَرَّ.

L17467 It has been authentically reported through the chain of Abū Saʿīd al-Khudrī and Ibn ʿUmar that the Prophet (peace and blessings of Allāh be upon him) forbade the use of tar-lined vessels, green ḥantam jugs, hollowed palm-stem containers, and stone jars.

وَصَحَّ مِنْ طَرِيقِ أَبِي سَعِيدٍ الْخُدْرِيِّ، وَابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ «نَهَى عَنْ الْمُزَفَّتِ، وَالْحَنْتَمِ، وَالنَّقِيرِ، وَالْجَرِّ» .

L17468 It has been authentically reported from Aisha, the Mother of the Believers, Ali ibn Abi Talib, Anas, and Abd al-Rahman ibn Yaʿmar—all of them—that the Prophet—peace and blessings of Allah be upon him—prohibited dried gourd containers and pitched vessels.[21]

وَصَحَّ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَأَنَسٍ، وَعَبْدِ الرَّحْمَنِ بْنِ يَعْمُرَ كُلِّهِمْ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ نَهَى عَنْ الدُّبَّاءِ وَالْمُزَفَّتِ» .

L17469 And also through the chain of ʿĀ'ishah, transmitted with a connected chain regarding the clay jar. On the authority of Ṣafiyyah, the Mother of the Be-

وَمِنْ طَرِيقِ عَائِشَةَ أَيْضًا مُسْنَدًا عَنْ الْجَرِّ. وَعَنْ صَفِيَّةَ أُمِّ الْمُؤْمِنِينَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ نَبِيذِ الْجَرِّ» .

[21] **Hadith references (L17468):** Sunan an-Nasai 5627.

lievers: “The Messenger of Allah—may Allah’s blessings and peace be upon him—prohibited the fermented drink of the clay jar.”[22]

وَصَحَّ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَبِي أَوْفَى «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ نَهَى عَنْ الْجَرِّ الْأَخْضَرِ وَالْأَبْيَضِ» .

L17470 It has been authentically reported through Abdullah ibn Abi Awfa that the Prophet (peace be upon him and his household) forbade green and white jars.

وَمِنْ طَرِيقِ ابْنِ الزُّبَيْرِ «أَنَّهُ - عَلَيْهِ السَّلَامُ -: نَهَى عَنْ الْجَرِّ» . فَهَؤُلَاءِ أَحَدَ عَشَرَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - رَوَوْا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النَّهْيَ، وَرَوَاهُ عَنْهُمْ أَعْدَادٌ كَثِيرَةٌ مِنْ التَّابِعِينَ، وَهَذَا نَقْلُ تَوَاتُرٍ وَلَمْ يَأْتِ النَّسْخُ إلَّا مِنْ طَرِيقِ ابْنِ بُرَيْدَةَ عَنْ أَبِيهِ. وَمِنْ طَرِيقِ سَالِمِ بْنِ أَبِي الْجَعْدِ عَنْ جَابِرٍ فَقَطْ - وَقَدْ ثَبَتَ عَلَى تَحْرِيمِ مَا صَحَّ النَّهْيُ عَنْهُ مِنْ ذَلِكَ: عُمَرُ بْنُ الْخَطَّابِ، وَعَلِيٌّ، وَابْنُ عُمَرَ، وَأَبُو سَعِيدٍ الْخُدْرِيِّ.

L17471 And through the narration of Ibn al-Zubayr: “He (peace be upon him) prohibited jarr.” These eleven Companions (may Allah be pleased with them) transmitted the prohibition from the Prophet (peace be upon him), and it was narrated from them by many of the Tabiʿun. This constitutes a mass-transmitted report, as abrogation was only reported through the chain of Ibn Buraidah from his father and only through the chain of Salim ibn Abi al-Ja’d from Jabir. Those who upheld the prohibition of what was authentically forbidden in this regard are: ʿUmar ibn al-Khaṭṭāb, ʿAlī, Ibn ʿUmar, and Abū Saʿīd al-Khudri.

وَاخْتُلِفَ فِيهِ عَنْ ابْنِ مَسْعُودٍ، وَعَنْ ابْنِ عَبَّاسٍ.

L17472 There existed differing positions ascribed to Ibn Mas’ud and Ibn Abbas regarding the matter.

وَاخْتَلَفَ التَّابِعُونَ أَيْضًا. وَعَهْدُنَا بِالْحَنَفِيِّينَ يَقُولُونَ: إنَّهُ إذَا جَاءَ خَبَرَانِ أَحَدُهُمَا نَقْلُ تَوَاتُرٍ، وَالْآخَرُ نَقْلُ آحَادٍ: أَخَذْنَا بِالتَّوَاتُرِ، وَتَنَاقَضُوا هَهُنَا.

L17473 The Successors also differed. Our understanding of the Hanafis is that they assert: when there are two reports—one being a mass-transmitted report (tawātur) and the other a solitary report (āḥād)—we follow the tawātur. Yet they contradicted themselves here.

وَقَالَ مَالِكٌ: أَكْرَهُ أَنْ يُنْبَذَ فِي الدُّبَّاءِ، وَالْمُزَفَّتِ فَقَطْ، وَأَبَاحَ الْجَرَّ كُلَّهُ غَيْرَ الْمُزَفَّتِ، وَالْحَنْتَمِ، وَالْمُقَيَّرِ - وَهَذَا فَاسِدٌ جِدًّا؛ لِأَنَّهُ قَوْلٌ بِلَا بُرْهَانٍ وَلَا نَعْلَمُ أَحَدًا قَبْلَهُ قَسَّمَ هَذَا التَّقْسِيمَ.

L17474–17476 Mālik said: I dislike that nabīdh is prepared specifically in gourds and pitched vessels, but he permitted all jars except... *The muzaffat, the hantam, and the muqayyar*—and this is profoundly invalid, for it is a statement without proof, and we do not know of anyone before him who formulated this division.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ ذَكَرْنَا: فِيمَا يَحِلُّ أَكْلُهُ وَيَحْرُمُ تَحْرِيمُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْأَكْلَ.

L17477 Abu Muhammad said: We have mentioned what is permissible to eat and what is forbidden by the Prophet’s prohibition (peace and blessings be upon him) of [certain] acts of eating.

[22] **Hadith references (L17469):** Sunan an-Nasai 5616; Sunan an-Nasai 5621; Sunan an-Nasai 5622.

L17478 Drinking from a vessel of gold or silver, or a vessel of the People of the Book is prohibited unless no other is found. In that case, it should be washed with water, and it becomes permissible to drink from it at that time. The evidence establishes the prohibition of using a vessel acquired unlawfully. We mentioned in the "Book of Purification" the prohibition of the skin of a dead animal before tanning. All these matters remain prohibited due to the validity of the evidence that none of them has been abrogated since their prohibition. Success comes from Allah, the Exalted.

L17479 **The issue of the permissibility of intoxicants for one compelled to consume them.**

L17480 1103 – An issue: We have previously mentioned in "The Book of Lawful and Unlawful Foods" within this volume the permissibility of wine for one who is compelled to consume it, based on the declaration of the Exalted: "He has elaborated for you what He has forbidden to you, except that to which you are compelled" [Al-Anʿām: 119]. This suffices to preclude its repetition.[23]

L17481 **Issue: Whatever is not lawful to drink is therefore not lawful to sell, nor to possess, nor to benefit from.**

L17482 1104 - Issue: Everything we have mentioned as impermissible to drink is also impermissible to sell, retain, or benefit from. Whoever ferments it into vinegar has disobeyed Allah, the Exalted and Majestic – though consuming that vinegar is permissible. Ownership of the originally lawful drink is forfeited once it becomes intoxicating wine. If someone seizes it first through force or theft, it becomes permissible, unless the one who fermented it acquires ownership first, in which case it belongs to them, just as it would belong to anyone else who acquires it first, with no distinction. This is based on what we have narrated through the chain reported by Imam Muslim: Ubaydullah ibn Umar al-Qawariri reported from Abd al-A'la Abu Hammad, from Sa'id al-Jurayri, from Abu Nadrah, from Abu Sa'id al-Khudri, who said: "I heard the Messenger of Allah (peace be upon him) delivering a sermon in Medina, saying: 'O people, Allah the Exalted is alluding to wine. Perhaps

[23] **Qur'an references (L17480):** Qur'an 6:119 (Al-An'am).

وَالشُّرْبَ فِي إِنَاءِ الذَّهَبِ أَوْ الْفِضَّةِ أَوْ إِنَاءِ أَهْلِ الْكِتَابِ إلَّا أَنْ لَا يُوجَدَ غَيْرُهُ فَيَغْسِلَ بِالْمَاءِ وَيَحِلَّ ذَلِكَ فِيهِ حِينَئِذٍ، وَالْبُرْهَانُ عَلَى تَحْرِيمِ اسْتِعْمَالِ الْإِنَاءِ الْمَأْخُوذِ بِغَيْرِ حَقٍّ وَذَكَرْنَا فِي " كِتَابِ الطَّهَارَةِ " تَحْرِيمَ جِلْدِ الْمَيْتَةِ قَبْلَ أَنْ يُدْبَغَ، فَبَقِيَ كُلُّ هَذَا عَلَى التَّحْرِيمِ لِصِحَّةِ الْبُرْهَانِ بِأَنَّ كُلَّ ذَلِكَ لَمْ يُنْسَخْ مُذْ حُرِّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ إبَاحَةَ الْخَمْرِ لِمَنْ اُضْطُرَّ إلَيْهَا]

١١٠٣ - مَسْأَلَةٌ: وَقَدْ ذَكَرْنَا فِي " كِتَابِ مَا يَحِلُّ أَكْلُهُ وَمَا يَحْرُمُ " مِنْ هَذَا الدِّيوَانِ إبَاحَةَ الْخَمْرِ لِمَنْ اُضْطُرَّ إلَيْهَا لِقَوْلِهِ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] فَأَغْنَى عَنْ إعَادَتِهِ.

[مَسْأَلَةٌ مَا لَا يَحِلّ شُرْبُهُ فَلَا يَحِلُّ بَيْعُهُ وَلَا إمْسَاكُهُ وَلَا الِانْتِفَاعُ بِهِ]

١١٠٤ - مَسْأَلَةٌ: وَكُلُّ مَا ذَكَرْنَا أَنَّهُ لَا يَحِلُّ شُرْبُهُ فَلَا يَحِلُّ بَيْعُهُ وَلَا إمْسَاكُهُ، وَلَا الِانْتِفَاعُ بِهِ، فَمَنْ خَلَّلَهُ فَقَدْ عَصَى اللَّهَ عَزَّ وَجَلَّ - وَحَلَّ أَكْلُ ذَلِكَ الْخَلِّ، إلَّا أَنَّ مِلْكَهُ قَدْ سَقَطَ عَنْ الشَّرَابِ الْحَلَالِ إذَا أَسْكَرَ وَصَارَ خَمْرًا فَمَنْ سَبَقَ إلَيْهِ مِنْ أَحَدٍ بِغَلَبَةٍ أَوْ بِسَرِقَةٍ فَهُوَ حَلَالٌ، إلَّا أَنْ يَسْبِقَ الَّذِي خَلَّلَهُ إلَى تَمَلُّكِهِ فَهُوَ حِينَئِذٍ لَهُ، كَمَا لَوْ سَبَقَ إلَيْهِ غَيْرُهُ، وَلَا فَرْقَ؛ لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ نَا عَبْدُ الْأَعْلَى أَبُو هَمَّامٍ نَا سَعِيدٌ الْجُرَيْرِيُّ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: «سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَخْطُبُ بِالْمَدِينَةِ قَالَ: يَا أَيُّهَا النَّاسُ إنَّ اللَّهَ تَعَالَى يُعَرِّضُ بِالْخَمْرِ، وَلَعَلَّ اللَّهَ سَيُنْزِلُ فِيهَا أَمْرًا فَمَنْ كَانَ عِنْدَهُ مِنْهَا شَيْءٌ فَلْيَبِعْهُ وَلْيَنْتَفِعْ

به؟ فَمَا لَبِثْنَا إِلَّا يَسِيرًا حَتَّى قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّ اللَّهَ حَرَّمَ الْخَمْرَ فَمَنْ أَدْرَكَتْهُ هَذِهِ الْآيَةُ وَعِنْدَهُ مِنْهَا شَيْءٌ فَلَا يَشْرَبْ وَلَا يَبِعْ، قَالَ: فَاسْتَقْبَلَ النَّاسُ بِمَا كَانَ عِنْدَهُمْ مِنْهَا فِي طَرِيقِ الْمَدِينَةِ فَسَفَكُوهَا» .

Allah will soon reveal a decree concerning it. Whoever possesses any of it, let them sell it and benefit from it.' We had not waited long before the Prophet (peace be upon him) said: 'Allah has forbidden wine. Whoever is reached by this verse and possesses any of it must neither drink nor sell it.'" He said: "People then brought out whatever they had of it onto the streets of Medina and poured it out."[24]

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَالِكٍ، وَسُلَيْمَانَ بْنِ بِلَالٍ، قَالَ مَالِكٌ: عَنْ زَيْدِ بْنِ أَسْلَمَ، وَقَالَ سُلَيْمَانُ: عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، ثُمَّ اتَّفَقَ زَيْدٌ، وَيَحْيَى، كِلَاهُمَا عَنْ عَبْدِ الرَّحْمَنِ بْنِ وَعْلَةَ السَّبَائِيِّ مِنْ أَهْلِ مِصْرَ عَنِ ابْنِ عَبَّاسٍ «أَنَّ رَجُلًا أَهْدَى لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَاوِيَةَ خَمْرٍ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَلْ عَلِمْتَ أَنَّ اللَّهَ حَرَّمَهَا؟ قَالَ: لَا، فَسَارَّ إِنْسَانًا فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّ الَّذِي حَرَّمَ شُرْبَهَا حَرَّمَ بَيْعَهَا فَفَتَحَ الْمَزَادَةَ حَتَّى ذَهَبَ مَا فِيهَا» وَالَّذِي ذَكَرْنَاهُ قَبْلُ مِنْ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَشْرَبُ مَا يُنْبَذُ لَهُ ثَلَاثَةَ أَيَّامٍ، ثُمَّ يَأْمُرُ بِأَنْ يُشْرَبَ أَوْ يُهْرَقَ وَهُوَ - عَلَيْهِ السَّلَامُ - قَدْ نَهَى عَنْ إِضَاعَةِ الْمَالِ فَلَوْ كَانَ مَا حَرَّمَ مَالًا لَمَا أَضَاعَهُ - عَلَيْهِ السَّلَامُ -، فَإِذْ لَيْسَ مَالًا فَقَدْ سَقَطَ مِلْكُ صَاحِبِهِ عَنْهُ، فَإِذْ سَقَطَ عَنْهُ ثُمَّ عَادَ إِلَى أَنْ صَارَ خَلًّا فَلَا يَجُوزُ أَنْ يَعُودَ مِلْكُهُ عَلَى مَا لَا مِلْكَ لَهُ عَلَيْهِ بِغَيْرِ أَنْ يَتَمَلَّكَهُ إِلَّا بِنَصٍّ، وَلَا نَصَّ فِي ذَلِكَ فَهُوَ لِمَنْ سَبَقَ إِلَيْهِ كَسَائِرِ مَا لَا يَمْلِكُهُ أَحَدٌ مِنَ الصَّيْدِ وَالْحَطَبِ وَغَيْرِ ذَلِكَ -: وَقَالَ أَبُو حَنِيفَةَ: مِلْكُهَا جَائِزٌ وَتَخْلِيلُهَا جَائِزٌ -: وَهَذَا بَاطِلٌ لِمَا ذَكَرْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L17483–17485 And through the transmission of Ibn Wahb from Malik and Sulayman ibn Bilal: Malik narrated from Zayd ibn Aslam, and Sulayman narrated from Yahya ibn Sa'id al-Ansari. Then their chains of narration converged, both transmitting from 'Abd al-Rahman ibn Wa'la al-Sabā'ī, one of the people of Egypt, from Ibn Abbas: "A man gifted a wineskin of wine to the Messenger of Allah (peace be upon him). The Messenger of Allah (peace be upon him) said to him, 'Did you know that Allah has forbidden it?' He replied, 'No.' Then the Messenger of Allah whispered to him." A man said to the Messenger of Allah—peace be upon him—regarding a human: "He Who prohibited drinking it prohibited its sale." He then opened the waterskin and emptied it until nothing remained. Our earlier mention—that the Prophet—peace be upon him—would drink date-wine prepared for him for three days, then command it to be consumed or discarded—while he—peace be upon him—had forbidden squandering wealth—indicates that if what He prohibited were considered wealth, he—peace be upon him—would not have destroyed it. Since it is not wealth, the owner's ownership over it ceases. When it reverts to vinegar after this cessation, ownership cannot lawfully return to what inherently lacks ownership except through a textual ruling. As no such ruling exists, it becomes permissible for whoever first takes possession of it, like the rest of unowned items such as game, firewood, and similar things. Abu Hanifah said: "Its ownership remains valid, and its vinegarization is permissible"—but this is invalid due to our aforementioned reasoning. And success is from Allah, the Exalted.

وَقَالَ مَالِكٌ: إِنْ تَعَمَّدَ تَخْلِيلَ الْخَمْرِ لَمْ يَحِلَّ أَكْلُ ذَلِكَ الْخَلِّ فَإِنْ تَخَلَّلَتْ دُونَ أَنْ تُخَلَّلَ حَلَّ أَكْلُهَا - وَقَالَ أَبُو ثَوْرٍ: لَا تُؤْكَلُ تَخَلَّلَتْ أَوْ خُلِّلَتْ.

L17486 Malik said: If wine is intentionally turned into vinegar, it is impermissible to consume that vinegar. But if it becomes vinegar naturally without human intervention, its consumption is permissible. Abu Thawr said: It should not

[24] **Hadith references (L17482):** Sahih Muslim 1578.

be consumed, whether it turned into vinegar on its own or was intentionally made into vinegar.

وَقَوْلُنَا فِي مِلْكِهَا هُوَ قَوْلُ أَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ.

L17487 Our opinion concerning its ownership is the opinion of Abū Ḥanīfah and Abū Sulaymān.

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ إِسْمَاعِيلَ ابْنِ عُلَيَّةَ عَنْ التَّيمِيِّ عَنْ أُمِّ خِدَاشٍ أَنَّهَا رَأَتْ عَلِيَّ بْنَ أَبِي طَالِبٍ يَصْطَبِغُ بِخَلِّ خَمْرٍ.

L17488 Narrated via the chain of Ibn Abī Shaybah, from Ismāʿīl ibn ʿUlayyah, from Tamīmī, from Umm Khidāsh, that she saw ʿAlī ibn Abī Ṭālib applying wine vinegar.

ابْنُ أَبِي شَيْبَةَ عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ أَبِي الزَّاهِرِيَّةِ عَنْ جُبَيْرِ بْنِ نُفَيْرٍ قَالَ: اخْتَلَفَ اثْنَانِ مِنْ أَصْحَابِ مُعَاذٍ فِي خَلِّ الْخَمْرِ فَسَأَلَا أَبَا الدَّرْدَاءِ؟ فَقَالَ: لَا بَأْسَ بِهِ.

L17489 Ibn Abī Shaybah from ʿAbd al-Raḥmān ibn Mahdī, from Muʿāwiyah ibn Ṣāliḥ, Abu al-Zāhiriyyah, from Jubayr ibn Nufayr, who said: Two companions of Mu’adh differed regarding wine vinegar, so they asked Abū al-Dardāʾ, and he said: “There is no harm in it.”

ابْنُ أَبِي شَيْبَةَ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ مُسَرْبَلٍ الْعَبْدِيِّ عَنْ أُمِّهِ قَالَتْ: سَأَلْت عَائِشَةَ أُمَّ الْمُؤْمِنِينَ عَنْ خَلِّ الْخَمْرِ؟ فَقَالَتْ: لَا بَأْسَ بِهِ هُوَ إدَامٌ.

L17490 Ibn Abi Shaybah reported from Humaid ibn Abd al-Rahman from his father from Musarbal al-Abdi from his mother, who said: I asked Aisha, the Mother of the Believers, about vinegar made from wine. She said, “There is no harm in it, for it is a savory accompaniment.”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَبْدِ اللَّهِ بْنِ نَافِعٍ عَنْ أَبِيهِ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِأَكْلِ مَا كَانَ خَمْرًا فَصَارَ خَلًّا.

L17491 And via the chain of Waki‘, from ‘Abdullāh ibn Nāfi‘, from his father, from Ibn ‘Umar: He did not consider it impermissible to consume what was originally wine but had turned into vinegar.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ يَحْيَى بْنِ عَتِيقٍ عَنْ ابْنِ سِيرِينَ قَالَ: لَا بَأْسَ بِخَلِّ الْخَمْرِ - وَهُوَ قَوْلُ الْحَسَنِ، وَسَعِيدِ بْنِ جُبَيْرٍ - وَلَا نَعْلَمُ مِثْلَ تَفْرِيقِ مَالِكٍ عَنْ أَحَدٍ قَبْلَهُ.

L17492 And through the narration of Ḥammād ibn Zayd, from Yaḥyā ibn ʿAtīq, from Ibn Sīrīn, who said: There is no objection to vinegar made from wine—and this is the position of al-Ḥasan and Saʿīd ibn Jubayr—and we know of no one before Mālik who formulated a similar legal distinction.

[مَسْأَلَةٌ كَسْرُ أَوَانِي الْخَمْرِ]

A Legal Ruling on the Breaking of Wine Utensils.

١١٠٥ - مَسْأَلَةٌ: وَلَا يَحِلُّ كَسْرُ أَوَانِي الْخَمْرِ، وَمَنْ كَسَرَهَا مِنْ حَاكِمٍ أَوْ غَيْرِهِ فَعَلَيْهِ ضَمَانُهَا، لَكِنْ تُهْرَقُ وَتُغْسَلُ الْفَخَّارُ، وَالْجُلُودُ، وَالْعِيدَانُ، وَالْحَجَرُ، وَالدُّبَّاءُ، وَغَيْرُ ذَلِكَ، كُلُّهُ سَوَاءٌ فِي ذَلِكَ.

L17493 1105 - Issue: It is not permissible to break wine vessels, and whoever breaks them—whether a ruler or anyone else—is liable for their compensation. However, the wine must be poured out, and the following must be washed: earthenware, leather, wood, stone vessels, gourd vessels, and others. All of these are treated equally in this ruling.

L17495–17496 This is the opinion of Abū Ḥanīfah and al-Shāfiʿī. Mālik said: The earthenware and wood should be broken; the leather should be split; and anything else should be washed.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ - وَقَالَ مَالِكٌ: يُكْسَرُ الْفَخَّارُ وَالْعُودُ وَيُشَقُّ الْجِلْدُ وَيُغْسَلُ مَا عَدَا ذَلِكَ.

L17497 The proof of this is what we have just mentioned regarding the case where a man gifted a wineskin of wine to the Prophet—peace and blessings be upon him. When the Prophet informed him that its sale was unlawful, he opened the wineskin and poured out its contents, but he—peace be upon him—did not order him to tear it. And his prohibition—peace be upon him—against squandering wealth, for breaking or tearing constitutes such waste. Moreover, one who destroys another's property is a transgressor, and Allah the Exalted says: "So whoever has transgressed against you, then transgress against him in the same manner as he has transgressed against you" [Al-Baqarah: 194].[25]

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَاهُ الْآنَ مِنْ فَتْحِ الَّذِي أَهْدَى رَاوِيَةَ الْخَمْرِ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمَّا أَخْبَرَهُ أَنَّهُ لَا يَحِلُّ بَيْعُهَا فَتَحَ الْمُزَادَةَ وَأَهْرَقَهَا وَلَمْ يَأْمُرْهُ - عَلَيْهِ السَّلَامُ - بِخَرْقِهَا، وَنَهْيِهِ - عَلَيْهِ السَّلَامُ - عَنْ إضَاعَةِ الْمَالِ، وَالْكَسْرُ وَالْخَرْقُ إضَاعَةٌ لِلْمَالِ، وَمُتْلِفُ مَالِ غَيْرِهِ مُعْتَدٍ وَاَللَّهُ تَعَالَى يَقُولُ: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

L17498 Those who opposed this cited as evidence what we reported through ʿIkrimah's chain: "The Prophet—may God's blessings and peace be upon him—shattered a jug containing alcoholic drink and tore the torches—which are the water skins—on the day of Khaybar." This is a mursal narration lacking a full chain of transmission and holds no authority.

وَاحْتَجَّ مَنْ خَالَفَ هَذَا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عِكْرِمَةَ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَسَرَ كُوزًا فِيهِ شَرَابٌ وَشَقَّ الْمَشَاعِلَ يَوْمَ خَيْبَرَ وَهِيَ الزِّقَاقُ» . وَهَذَا مُرْسَلٌ لَا حُجَّةَ فِيهِ.

L17499 And in a narration transmitted through Ibn Umar, he said: "The Messenger of Allah (peace be upon him) destroyed the wineskins of wine."

وَبِخَبَرٍ مِنْ طَرِيقِ ابْنِ عُمَرَ قَالَ: «شَقَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زُقَاقَ الْخَمْرِ» .

[25] **Qur'an references (L17497):** Qur'an 2:194 (Al-Baqarah).

L17500 And a report transmitted through the chain of Abu Hurairah states that the Prophet (peace be upon him) split open the wineskins.

وَبِخَبَرٍ مِنْ طَرِيقِ أَبِي هُرَيْرَةَ: «أَنَّهُ - عَلَيْهِ السَّلَامُ - شَقَّ زُقَاقَ الْخَمْرِ» .

L17501 And with a narration via Jābir's chain of transmission that the Prophet—peace be upon him—poured out the wine and shattered its jars.

وَبِخَبَرٍ مِنْ طَرِيقِ جَابِرٍ «أَنَّهُ - عَلَيْهِ السَّلَامُ - أَرَاقَ الْخَمْرَ وَكَسَرَ جِرَارَهَا» .

L17502 And all of this: nothing from it is legally sound.

وَكُلُّ هَذَا لَا يَصِحُّ مِنْهُ شَيْءٌ:

L17503 As for the narration of Ibn ʿUmar: one of its chains of transmission includes Thābit ibn Yazīd al-Khawlānī—an unknown figure whose identity is undetermined.

أَمَّا خَبَرُ ابْنِ عُمَرَ -: فَأَحَدُ طُرُقِهِ فِيهَا ثَابِتُ بْنُ يَزِيدَ الْخَوْلَانِيُّ - وَهُوَ مَجْهُولٌ - لَا يُدْرَى مَنْ هُوَ.

L17504 The second: via the chain of Ibn Lahīʿah—rejected—from Abī Ṭuʿmah, who is Nusayr ibn Dhuʿlūq, deemed insignificant.

وَالثَّانِي: مِنْ طَرِيقِ ابْنِ لَهِيعَةَ - وَهُوَ هَالِكٌ - عَنْ أَبِي طُعْمَةَ وَهُوَ نُسَيْرُ بْنُ ذُعْلُوقٍ وَهُوَ لَا شَيْءَ.

L17505 The third [narration] is transmitted by ʿAbd al-Malik ibn Ḥabīb al-Andalusī—who is deviant—from Ṭalq, who is weak.

وَالثَّالِثُ: مِنْ رِوَايَةِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ - وَهُوَ هَالِكٌ - عَنْ طَلْقٍ وَهُوَ ضَعِيفٌ.

L17506 As for the ḥadīth of Abū Hurayrah, it includes ʿUmar ibn Ṣahbān—he is weak; Al-Bukhārī and others declared him so—and another narrator whom he did not name.

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ: فَفِيهِ عُمَرُ بْنُ صَهْبَانَ - وَهُوَ ضَعِيفٌ ضَعَّفَهُ الْبُخَارِيُّ وَغَيْرُهُ - وَفِيهِ أَيْضًا آخَرُ لَمْ يُسَمِّ.

L17507 The narration of Jābir through the chain of Ibn Lahiʿah—who is rejected—thus nothing authentic exists in this chapter. We have mentioned the instruction of the Messenger of Allah—peace and blessings of Allah be upon him—regarding the vessels of the People of the Book in which they habitually cook pork and drink wine. The Messenger of Allah—peace and blessings be upon him and his family—acknowledged this and ordered their washing with water, then permitted eating and drinking in them. There is no proof except what is authentically established from him—peace be upon him.

وَحَدِيثُ جَابِرٍ مِنْ طَرِيقِ ابْنِ لَهِيعَةَ - وَهُوَ مُطَّرَحٌ - فَلَمْ يَصِحَّ فِي هَذَا الْبَابِ شَيْءٌ، وَقَدْ ذَكَرْنَا أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي آنِيَةِ أَهْلِ الْكِتَابِ الَّتِي يَطْبُخُونَ فِيهَا لُحُومَ الْخَنَازِيرِ وَيَشْرَبُونَ فِيهَا الْخَمْرَ وَعَرَفَ ذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَمَرَ بِغَسْلِهَا بِالْمَاءِ، ثُمَّ أَبَاحَ الْأَكْلَ فِيهَا وَالشُّرْبَ، وَلَا حُجَّةَ إلَّا فِيمَا صَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ -.

[مَسْأَلَةٌ مَنْ أَرَادَ النَّوْمَ لَيْلًا]

L17508–17509 **A juristic issue concerning one who wants to sleep at night.**

L17510 Issue: It is incumbent upon whoever intends to sleep at night to tie his water-skin, cover his vessels—even if by placing a stick over them—and mention the name of Allah the Exalted upon doing so. He must extinguish the lamp and remove fire completely from his house unless compelled to retain it due to cold, illness, or rearing a child; in such cases, it is permissible for him not to extinguish what he requires from that. This is based on what we have been narrated through the chain of Al-Bukhari: Ishaq ibn Mansur narrated to us, Ruh ibn Ubadah narrated to us, Ibn Jurayj said: 'Ata' informed me that he heard Jabir ibn Abdullah saying: The Messenger of Allah—peace and blessings be upon him—said, "When night falls or you enter the evening, restrain your children, for the devils spread at that time. When a portion of the night has passed, release them, close the doors, and mention the name of Allah, for the devil cannot open a closed door. Tie your water-skins, mention the name of Allah over them, cover your vessels, and mention the name of Allah over them—even if by placing something over them—and extinguish your lamps."

مَسْأَلَةٌ: وَفُرِضَ عَلَى مَنْ أَرَادَ النَّوْمَ لَيْلًا أَنْ يُوكِيَ قِرْبَتَهُ، وَيُخَمِّرَ آنِيَتَهُ وَلَوْ بِعُودٍ يَعْرِضُهُ عَلَيْهَا، وَيَذْكُرُ اسْمَ اللَّهِ تَعَالَى عَلَى مَا فَعَلَ مِنْ ذَلِكَ. وَأَنْ يُطْفِئَ السِّرَاجَ، وَيُخْرِجَ النَّارَ مِنْ بَيْتِهِ جُمْلَةً إِلَّا أَنْ يُضْطَرَّ إِلَيْهَا لِبَرْدٍ أَوْ لِمَرَضٍ، أَوْ لِتَرْبِيَةِ طِفْلٍ، فَمُبَاحٌ لَهُ أَنْ لَا يُطْفِئَ مَا احْتَاجَ إِلَيْهِ مِنْ ذَلِكَ لِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ -: نَا إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا رَوْحُ بْنُ عُبَادَةَ نَا ابْنُ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَطَاءٌ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا كَانَ جُنْحُ اللَّيْلِ أَوْ أَمْسَيْتُمْ فَكُفُّوا صِبْيَانَكُمْ فَإِنَّ الشَّيَاطِينَ تَنْتَشِرُ حِينَئِذٍ فَإِذَا ذَهَبَ سَاعَةٌ مِنَ اللَّيْلِ فَخَلُّوهُمْ وَأَغْلِقُوا الْأَبْوَابَ وَاذْكُرُوا اسْمَ اللَّهِ فَإِنَّ الشَّيْطَانَ لَا يَفْتَحُ بَابًا مُغْلَقًا، وَأَوْكُوا قِرَبَكُمْ، وَاذْكُرُوا اسْمَ اللَّهِ عَلَيْهَا، وَخَمِّرُوا آنِيَتَكُمْ وَاذْكُرُوا اسْمَ اللَّهِ عَلَيْهَا وَلَوْ أَنْ تَعْرِضُوا عَلَيْهَا شَيْئًا وَأَطْفِئُوا مَصَابِيحَكُمْ» .

L17511 And through the chain of Abī Dāwūd: Aḥmad ibn Ḥanbal informed us, Yaḥyā (that is, Ibn Saʿīd al-Qaṭṭān) informed us from Ibn Jurayj, who said: ʿAṭāʾ informed me from Jābir from the Prophet—peace and blessings of Allah be upon him—and he transmitted it. In it is: "Extinguish your lamp and mention the name of Allah."

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا أَحْمَدُ بْنُ حَنْبَلٍ نَا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنِ ابْنِ جُرَيْجٍ قَالَ أَخْبَرَنِي عَطَاءٌ عَنْ جَابِرٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَهُ. وَفِيهِ «وَأَطْفِئْ مِصْبَاحَكَ وَاذْكُرْ اسْمَ اللَّهِ» .

L17512 From the transmission route of Muslim from Abu Bakr ibn Abi Shaybah: Sufyan ibn Uyaynah narrated to us from al-Zuhri, from Salim ibn Abd Allah ibn Umar [from his father], from the Prophet—peace be upon him—who said: "Do not leave fire in your houses when you sleep." As for one compelled by necessity to do so, Allah the Exalted says: "He has detailed for you what He has forbidden to you, except what you are forced to" (Quran 6:119).[1]

وَمِنْ طَرِيقِ مُسْلِمٍ عَنْ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ [عَنْ أَبِيهِ] عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَتْرُكُوا النَّارَ فِي بُيُوتِكُمْ حِينَ تَنَامُونَ» وَأَمَّا مَنْ اُضْطُرَّ إِلَى ذَلِكَ فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] .

[مَسْأَلَةُ الشُّرْبِ مِنْ فَمِ السِّقَاءِ]

L17513 **An issue: Drinking from the mouth of the waterskin.**

[1] **Qur'an references (L17512):** Qur'an 6:119 (Al-An'am).

L17514 1107 - Issue: It is not permissible to drink from the mouth of a water skin—due to the narration we have reported through Al-Bukhari's chain: Ali ibn Abdullah narrated from Sufyan ibn Uyaynah from Ayyub al-Sakhtiyani from Ikrimah from Abu Hurairah, who said: "The Messenger of Allah (peace be upon him) prohibited drinking from the mouth of a water skin or a water container."

١١٠٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ الشُّرْبُ مِنْ فَمِ السِّقَاءِ -: لِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا عَلِيُّ بْنُ عَبْدِ اللَّهِ نَا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ نَا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ أَنَا عِكْرِمَةُ نَا أَبُو هُرَيْرَةَ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ الشُّرْبِ مِنْ فَمِ الْقِرْبَةِ أَوْ السِّقَاءِ» .

L17515–17516 The prohibition of that has also been narrated with a connected, authentic chain via Abū Saʿīd al-Khudrī and Ibn ʿAbbās (raḍiya Allāhu ʿanhum).

وَرُوِيَ النَّهْيُ عَنْ ذَلِكَ أَيْضًا مُسْنَدًا صَحِيحًا مِنْ طَرِيقِ أَبِي سَعِيدٍ الْخُدْرِيِّ وَابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمْ -.

L17517 If it is said: It has been reported that the Prophet—peace and blessings of Allah be upon him—drank from the mouth of a water skin? We respond: There is no proof in any of these reports. One of them is transmitted through Al-Harith ibn Abi Usamah, who was abandoned, and it includes Al-Bara', son of the daughter of Anas, who is unknown. Another report is transmitted through Yazid ibn Yazid ibn Jariyah from Abd al-Rahman ibn Abi Amrah, whom I do not know. Another report is transmitted through an unnamed man.

فَإِنْ قِيلَ: قَدْ رُوِيَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ شَرِبَ مِنْ فَمِ قِرْبَةٍ؟ قُلْنَا: لَا حُجَّةَ فِي شَيْءٍ مِنْهُ؛ لِأَنَّ أَحَدَهَا مِنْ طَرِيقِ الْحَارِثِ بْنِ أَبِي أُسَامَةَ - وَقَدْ تُرِكَ - وَفِيهِ الْبَرَاءُ ابْنُ بِنْتِ أَنَسٍ - وَهُوَ مَجْهُولٌ - وَخَبَرٌ آخَرُ: مِنْ طَرِيقِ يَزِيدَ بْنِ يَزِيدَ بْنِ جَارِيَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي عَمْرَةَ وَلَا أَعْرِفُهُ. وَآخَرُ مِنْ طَرِيقِ رَجُلٍ لَمْ يُسَمَّ.

L17518 Then, if it were valid, it would conform to the established principle of the original ruling, and the prohibitions—without doubt—would arise when an abrogating ruling of that permissibility comes without doubt. It is impossible for the abrogated ruling to become the abrogating one without a clear explanation. Thus, the religion would have been left unexplained—God forbid such a thing—while he—peace be upon him—was commanded to provide clarification.

ثُمَّ لَوْ صَحَّتْ لَكَانَتْ مُوَافَقَةً لِمَعْهُودِ الْأَصْلِ، وَالنَّهْيُ بِلَا شَكٍّ إذَا وَرَدَ نَاسِخٌ لِتِلْكَ الْإِبَاحَةِ بِلَا شَكٍّ، وَمِنْ الْمُحَالِ أَنْ يَعُودَ الْمَنْسُوخُ نَاسِخًا وَلَا يَأْتِي بِذَلِكَ بَيَانٌ جَلِيٌّ، إذَنْ كَانَ يَكُونُ الدِّينُ غَيْرَ مُبَيَّنٍ، وَمَعَاذَ اللَّهِ مِنْ هَذَا، وَهُوَ - عَلَيْهِ السَّلَامُ - مَأْمُورٌ بِالْبَيَانِ.

L17519 If it is said: "It has been authentically reported from Ibn Umar that he drank from the mouth of a small vessel (idāwa)," we say: Yes, this is ḥasan (a sound narration), because he drank from an idāwa and not a water skin (qirba or siqā'), and success is from Allah, the Exalted.

فَإِنْ قِيلَ: قَدْ صَحَّ عَنْ ابْنِ عُمَرَ أَنَّهُ شَرِبَ مِنْ فَمِ إدَاوَةٍ. قُلْنَا: نَعَمْ، هَذَا حَسَنٌ؛ لِأَنَّهُ الْإِدَاوَةُ وَلَيْسَتْ قِرْبَةً وَلَا سِقَاءً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L17520 The jurisprudential issue of the act of drinking while standing.

[مَسْأَلَةُ الشُّرْبِ قَائِمًا]

L17521–17523 ١١٠٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ الشُّرْبُ قَائِمًا، وَأَمَّا الْأَكْلُ قَائِمًا فَمُبَاحٌ -: لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نَا هَدَّابُ بْنُ خَالِدٍ، وَقُتَيْبَةُ، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ الْمُثَنَّى، قَالَ هَدَّابٌ: نَا هَمَّامُ بْنُ يَحْيَى، وَقَالَ مُحَمَّدُ بْنُ الْمُثَنَّى: نَا عَبْدُ الْأَعْلَى نَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ، وَقَالَ قُتَيْبَةُ وَابْنُ أَبِي شَيْبَةَ: نَا وَكِيعٌ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ، ثُمَّ اتَّفَقَ هَمَّامٌ، وَهِشَامٌ، وَسَعِيدٌ، كُلُّهُمْ عَنْ قَتَادَةَ عَنْ أَنَسٍ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَهَى عَنْ الشُّرْبِ قَائِمًا» وَلَفْظُ هَدَّابٍ «زَجَرَ عَنْ الشُّرْبِ قَائِمًا» .

1108 - Issue: It is not permissible to drink while standing, but eating while standing is permissible. This ruling derives from the narration transmitted via the chain of Muslim ibn al-Ḥajjāj: Haddāb ibn Khālid, Quṭaybah, Abū Bakr ibn Abī Shaybah, and Muḥammad ibn al-Muthannā narrated. Haddāb narrated from Hammām ibn Yaḥyā; Muḥammad ibn al-Muthannā narrated from ʿAbd al-Aʿlā, from Saʿīd ibn Abī ʿArūbah; Quṭaybah and Ibn Abī Shaybah narrated from Wakīʿ, from Hishām al-Dastawā'ī. Then the chains of Hammām, Hishām, and Saʿīd converge, all narrating from Qatādah, from Anas: "That the Prophet..." Peace and blessings of Allah be upon him and his family—prohibited drinking while standing. The wording of Haddāb is "rebuked [people] against drinking while standing."

L17524 وَصَحَّ أَيْضًا مِنْ طَرِيقِ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ قَوْلُ أَنَسٍ، وَأَبِي هُرَيْرَةَ، وَذَكَرَ لِابْنِ عُمَرَ قَوْلَ أَبِي هُرَيْرَةَ فَقَالَ: لَمْ أَسْمَعْ. فَإِنْ قِيلَ: قَدْ صَحَّ عَنْ عَلِيٍّ، وَابْنِ عَبَّاسٍ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَرِبَ قَائِمًا» قُلْنَا: نَعَمْ، وَالْأَصْلُ إبَاحَةُ الشُّرْبِ عَلَى كُلِّ حَالٍ مِنْ قِيَامٍ، وَقُعُودٍ، وَاتِّكَاءٍ، وَاضْطِجَاعٍ، فَلَمَّا صَحَّ نَهْيُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الشُّرْبِ قَائِمًا كَانَ ذَلِكَ بِلَا شَكٍّ نَاسِخًا لِلْإِبَاحَةِ الْمُتَقَدِّمَةِ، وَمُحَالٌ مَقْطُوعٌ أَنْ يَعُودَ الْمَنْسُوخُ نَاسِخًا، ثُمَّ لَا يُبَيِّنَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ، إذَا كُنَّا لَا نَدْرِي مَا يَجِبُ عَلَيْنَا مِمَّا لَا يَجِبُ، وَكَانَ يَكُونُ الدِّينُ غَيْرَ مَوْثُوقٍ بِهِ - وَمَعَاذَ اللَّهِ مِنْ هَذَا. وَأَقَلُّ مَا فِي هَذَا عَلَى أُصُولِ الْمُخَالِفِينَ أَنْ لَا يُتْرَكَ الْيَقِينُ لِلظُّنُونِ وَهُمْ عَلَى يَقِينٍ مِنْ نَسْخِ الْإِبَاحَةِ السَّالِفَةِ وَلَمْ يَأْتِ فِي الْأَكْلِ نَهْيٌ إلَّا عَنْ أَنَسٍ مِنْ قَوْلِهِ.

It has also been authentically established through the chain of Abu Sa'id al-Khudri from the Prophet - may Allah's peace and blessings be upon him - and this is the position of Anas and Abu Hurairah. When someone mentioned to Ibn Umar the statement of Abu Hurairah, he said: "I did not hear it." If it is argued: "Authentic reports exist from Ali and Ibn Abbas that the Prophet - may Allah's peace and blessings be upon him - drank while standing," we respond: Indeed, but the foundational principle is the permissibility of drinking in every state—standing, sitting, reclining, or lying down. When the Prophet's prohibition - may Allah's peace and blessings be upon him - against drinking while standing was established, this undoubtedly abrogated the earlier permissibility. It is conclusively impossible and definitively established that the abrogated ruling could become the abrogating one, while the Prophet - may Allah's peace and blessings be upon him - would fail to clarify this, leaving us ignorant of what is obligatory versus non-obligatory. This would render the religion untrustworthy - and we seek refuge in Allah from this! At the very least, according to the opponents' principles, certainty must not be abandoned for conjectures, given their own certainty regarding the abrogation of the prior permissibility. No prohibition concerning eating has been transmitted except from Anas in his own statement.

[مَسْأَلَةُ النَّفْخِ فِي الشُّرْبِ]

An issue of blowing in drinking

L17526 Issue 1109: It is prohibited to blow during drinking, and it is recommended

for the drinker to distance the vessel from his mouth three times, as narrated in the chain transmitted by Muslim: reported by Ibn Abī ʻUmar, reported by al-Thaqafī—who is ʻAbd al-Wahhāb ibn ʻAbd al-Majīd—from Ayyūb—who is al-Sikhtiyānī—from Yaḥyā ibn Abī Kathīr, from ʻAbd Allāh ibn Abī Qatādah, from his father: "The Prophet (peace be upon him) forbade breathing into the vessel."[2]

١١٠٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ النَّفْخُ فِي الشُّرْبِ وَيُسْتَحَبُّ أَنْ يُبِينَ الشَّارِبُ الْإِنَاءَ عَنْ فِيهِ ثَلَاثًا لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا ابْنُ أَبِي عُمَرَ نَا الثَّقَفِيُّ هُوَ عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ عَنْ أَيُّوبَ هُوَ السِّخْتِيَانِيُّ - عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ عَنْ أَبِيهِ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى أَنْ يُتَنَفَّسَ فِي الْإِنَاءِ» .

L17527 It was also narrated by Shaybān ibn Farrukh from Yaḥyā from ʿAbdullāh ibn Abī Qatādah from his father as a musnad report. And through the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn al-Muthannā from ʿAbd al-Aʿlā from Maʿmar from Yaḥyā ibn Abī Kathīr from ʿAbdullāh ibn Abī Qatādah from his father that the Prophet—peace and blessings of Allāh be upon him—prohibited blowing into a vessel.

وَرَوَاهُ أَيْضًا شَيْبَانُ بْنُ فَرُّوخَ عَنْ يَحْيَى عَنْ عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ عَنْ أَبِيهِ مُسْنَدًا وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى نَا عَبْدُ الْأَعْلَى نَا مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ عَنْ أَبِيهِ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ نَهَى عَنْ النَّفْخِ فِي الْإِنَاءِ» .

L17528–17529 It was also transmitted by Abān ibn Yazīd al-ʿAṭṭār from Yaḥyā from ʿAbdullāh ibn Abī Qatādah from his father as a musnad narration with a complete chain of transmission.

وَرَوَاهُ أَيْضًا أَبَانُ بْنُ يَزِيدَ الْعَطَّارُ عَنْ يَحْيَى عَنْ عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ عَنْ أَبِيهِ مُسْنَدًا.

L17530 If it is said: Hisham al-Dastawā'ī narrated it from Yahya al-Dastawā'ī from 'Abdullah ibn Abi Qatadah from his father, I believe, from the Prophet, may God bless him and his family and grant him peace—we say: This is the narration of al-Harith ibn Abi Usāmah, and it was abandoned. Even if Hisham cast doubt on its chain, neither Ayyub nor Ma'mar did so, and both are above Hisham.

فَإِنْ قِيلَ -: قَدْ رَوَاهُ هِشَامٌ الدَّسْتُوَائِيُّ عَنْ يَحْيَى الدَّسْتُوَائِيِّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي قَتَادَةَ عَنْ أَبِيهِ أَحْسَبُهُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قُلْنَا: هَذِهِ رِوَايَةُ الْحَارِثِ بْنِ أَبِي أُسَامَةَ - وَقَدْ تُرِكَ - وَحَتَّى لَوْ شَكَّ هِشَامٌ فِي إسْنَادِهِ فَلَمْ يَشُكَّ أَيُّوبُ وَلَا مَعْمَرٌ، وَكِلَاهُمَا فَوْقَ هِشَامٍ.

L17531 Through Al-Bukhārī's chain: Abū Nuʿaym and Abū ʻĀṣim narrated to us, saying: ʻAzrah ibn Thābit al-Anṣārī narrated to us, Thumāmah ibn ʻAbdullāh ibn Anas narrated to us, saying: "Anas would take breaths while drinking two or three times, and Anas narrated that the Prophet—peace and blessings of Allah be upon him—would take breaths three times."[3]

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا أَبُو نُعَيْمٍ، وَأَبُو عَاصِمٍ قَالَا: نَا عَزْرَةُ بْنُ ثَابِتٍ الْأَنْصَارِيُّ نَا ثُمَامَةُ بْنُ عَبْدِ اللَّهِ بْنِ أَنَسٍ قَالَ: كَانَ أَنَسٌ يَتَنَفَّسُ فِي الْإِنَاءِ مَرَّتَيْنِ أَوْ ثَلَاثًا وَزَعَمَ أَنَسٌ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَتَنَفَّسُ ثَلَاثًا»

[2] **Hadith references (L17526):** Sahih Muslim 267d; Jami at-Tirmidhi 1888; Sahih Muslim 267c.

[3] **Hadith references (L17531):** Sahih al-Bukhari 5631.

L17532 Abū Muḥammad said: The prohibited breathing is blowing into it, as clarified by Maʿmar—and the mustaḥabb breathing is to exhale away from his mouth, for we have found no other meaning applicable to it besides this.

قَالَ أَبُو مُحَمَّد: التَّنَفُّسُ الْمَنْهِيُّ عَنْهُ هُوَ النَّفْخُ فِيهِ كَمَا بَيَّنَهُ مَعْمَرٌ - وَالتَّنَفُّسُ الْمُسْتَحَبُّ هُوَ أَنْ يَتَنَفَّسَ بِإِبَانَتِهِ عَنْ فِيهِ، إِذْ لَمْ نَجِدْ مَعْنًى يُحْمَلُ عَلَيْهِ سِوَاهُ.

L17533 **Issue: The ruling of one who drinks with his mouth from a river, a spring, or a water channel.**

[مَسْأَلَةٌ حُكْم مِنْ شَرِبَ بِفَمِهِ مِنْ النَّهْرِ أَوْ الْعَيْنِ أَوْ السَّاقِيَةِ]

L17534 Issue 1110: Al-karʿ is lawful, defined as drinking with one's mouth directly from a river, spring, or flowing watercourse, since no authentic prohibition has been established regarding it.

١١١٠ - مَسْأَلَةٌ: وَالْكَرْعُ مُبَاحٌ، وَهُوَ أَنْ يَشْرَبَ بِفَمِهِ مِنْ النَّهْرِ، أَوْ الْعَيْنِ، أَوْ السَّاقِيَةِ، إِذْ لَمْ يَصِحَّ فِيهِ نَهْيٌ.

L17535 It has been narrated to us via al-Bukhārī's chain from Fulayḥ, from Saʿīd ibn al-Ḥārith, from Jābir, that the Prophet—peace be upon him—said to an Anṣārī man while in his orchard: "If you have water that stayed overnight in a water-skin, otherwise we will drink by mouth directly from the source."

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ فُلَيْحٍ عَنْ سَعِيدِ بْنِ الْحَارِثِ عَنْ جَابِرٍ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ قَالَ لِبَعْضِ الْأَنْصَارِ وَهُوَ فِي حَائِطِهِ: إنْ كَانَ عِنْدَكَ مَاءٌ بَاتَ فِي شَنَّةٍ وَإِلَّا كَرَعْنَا» .

L17536 It has been narrated to us through the chain of Ibn Abi Shaybah, from Muhammad ibn Fudayl, from Layth ibn Abi Sulaym, from Sa'id ibn 'Amir, from Ibn 'Umar, who said: The Messenger of Allah—peace and blessings be upon him—said: "Do not drink by putting your mouth to the vessel, but rather wash your hands and drink from your hands, for there is no vessel purer than the hand."

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ سَعِيدِ بْنِ عَامِرٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَكْرَعُوا، وَلَكِنْ اغْسِلُوا أَيْدِيَكُمْ فَاشْرَبُوا فِيهَا، فَإِنَّهُ لَيْسَ مِنْ إنَاءٍ أَطْيَبَ مِنْ الْيَدِ» .

L17537–17539 Abu Muhammad said: Fulayḥ and Layth are closely similar. When neither a prohibition nor a command is established, all matters are permissible, according to his authenticated statement (peace be upon him): "Leave me [to judge] what I have left unaddressed for you. When I command you to do something, do from it what you can." "If I command you to do something, do it as much as you are able, and if I forbid you from something, abandon it." Thus, there is no obligation to do except what he - peace be upon him - commanded, and no obligation to refrain except from what he - peace be upon him - prohibited. What lies between them is neither obligatory nor prohibited; it is permissible.

قَالَ أَبُو مُحَمَّد: فُلَيْحٌ، وَلَيْثٌ مُتَقَارِبَانِ، فَإِذَا لَمْ يَصِحَّ نَهْيٌ وَلَا أَمْرٌ، فَكُلُّ شَيْءٍ مُبَاحٌ؛ لِقَوْلِهِ - عَلَيْهِ السَّلَامُ - الثَّابِتِ «ذَرُونِي مَا تَرَكْتُكُمْ فَإِذَا أَمَرْتُكُمْ بِشَيْءٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ، وَإِذَا نَهَيْتُكُمْ عَنْ شَيْءٍ فَاتْرُكُوهُ» فَلَا وَاجِبَ أَنْ يُؤْتَى إلَّا مَا أُمِرَ بِهِ - عَلَيْهِ السَّلَامُ -، وَلَا وَاجِبَ أَنْ يُتْرَكَ إلَّا مَا نُهِيَ عَنْهُ - عَلَيْهِ السَّلَامُ - وَمَا بَيْنَهُمَا فَلَا وَاجِبَ وَلَا مُحَرَّمَ فَهُوَ مُبَاحٌ.

L17540 **Issue: Drinking from a crack in the cup.**

[مَسْأَلَةٌ الشُّرْبُ مِنْ ثُلْمَةِ الْقَدَحِ]

L17541 Issue 1111: Drinking from the chipped part of a cup is permissible, as no authentic prohibition against it has been established. The prohibition transmitted to us comes through the chain of Ibn Wahb from Qurrah ibn ʿAbd al-Raḥmān from al-Zuhrī from ʿUbayd Allāh ibn ʿAbd Allāh from Abū Saʿīd as a connected report (musnad). This Qurrah is Ibn ʿAbd al-Raḥmān ibn Ḥayyūl—and he is a discarded narrator. He is not Qurrah ibn Khālid, who narrates from Ibn Sīrīn; the latter is trustworthy and dependable. Another chain reported by Ibn Abī Shaybah states: Ḥusayn ibn ʿAlī al-Juʿfī narrated to us from Zāʾidah from Ibrāhīm ibn Muhājir from Mujāhid from Ibn ʿAbbās and Ibn ʿUmar that they deemed it reprehensible to drink from the chipped part of a cup or from near its rim. No opposing view is known from the Companions, yet these [narrators] have opposed them.

١١١١ - مَسْأَلَةٌ: وَالشُّرْبُ مِنْ ثُلْمَةِ الْقَدَحِ مُبَاحٌ؛ لِأَنَّهُ لَمْ يَصِحَّ فِيهَا نَهْيٌ، إنَّمَا رُوِّينَا النَّهْيَ عَنْ ذَلِكَ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ قُرَّةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِي سَعِيدٍ مُسْنَدًا - وَقُرَّةُ هَذَا هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ حَيْوِيلَ - وَهُوَ سَاقِطٌ - وَلَيْسَ هُوَ قُرَّةُ بْنُ خَالِدٍ الَّذِي يَرْوِي عَنْ ابْنِ سِيرِينَ، ذَلِكَ ثِقَةٌ مَأْمُونٌ. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا حُسَيْنُ بْنُ عَلِيٍّ الْجُعْفِيُّ عَنْ زَائِدَةَ عَنْ إبْرَاهِيمَ بْنِ مُهَاجِرٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ: أَنَّهُمَا كَرِهَا أَنْ يُشْرَبَ مِنْ ثُلْمَةِ الْقَدَحِ، أَوْ مِنْ عِنْدِ أُذُنِهِ، وَلَا يُعْرَفُ لَهُمَا مُخَالِفٌ مِنْ الصَّحَابَةِ، وَقَدْ خَالَفَهُمَا هَؤُلَاءِ.

A legal issue: Whoever drinks should pass it to the one on their right, then the right one.

[مَسْأَلَةٌ مَنْ شَرِبَ فَلْيُنَاوِلْ الْأَيْمَنَ مِنْهُ فَالْأَيْمَنَ]

L17542

L17543 1112: Issue

١١١٢ - مَسْأَلَةٌ:

L17544 Whoever drinks should offer it to the one on his right, then again to the one on his right—this is obligatory regardless of who the recipient may be. It is impermissible to offer it to anyone other than the one on the right unless permitted by him. Whoever does not wish to offer it to anyone has the right to refrain.

وَمَنْ شَرِبَ فَلْيُنَاوِلْ الْأَيْمَنَ مِنْهُ فَالْأَيْمَنَ وَلَا بُدَّ كَائِنًا مَنْ كَانَ، وَلَا يَجُوزُ مُنَاوَلَةُ غَيْرِ الْأَيْمَنِ إلَّا بِإِذْنِ الْأَيْمَنِ، وَمَنْ لَمْ يُرِدْ أَنْ يُنَاوِلَ أَحَدًا فَلَهُ ذَلِكَ.

L17545 If there is a group present with him, and they are all before him, behind his back, or to his left, he must necessarily hand it to the eldest then the eldest—as we have narrated through Muslim's chain: Zuhayr ibn Ḥarb narrated from Sufyān ibn ʿUyaynah from al-Zuhrī from Anas that the Messenger of Allah—peace and blessings be upon him—entered their home. He said: "We milked for him from a household sheep, and we mixed it for him with water from a well in the house. The Messenger of Allah—peace and blessings be upon him—drank, while Abū Bakr was on his left. ʿUmar said to him: 'O Messenger of Allah, give it to Abū Bakr!' The Messenger of Allah—peace and blessings be upon him—gave it to a Bedouin on his right and said—peace be upon him: 'The one on the right then the one on the right.'"

وَإِنْ كَانَ بِحَضْرَتِهِ جَمَاعَةٌ فَإِنْ كَانُوا كُلُّهُمْ أَمَامَهُ أَوْ خَلْفَ ظَهْرِهِ أَوْ عَنْ يَسَارِهِ: فَلْيُنَاوِلْ الْأَكْبَرَ فَالْأَكْبَرَ وَلَا بُدَّ -: لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا زُهَيْرُ بْنُ حَرْبٍ نَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ «عَنْ أَنَسٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَخَلَ دَارَهُمْ، قَالَ: فَحَلَبْنَا لَهُ مِنْ شَاةٍ دَاجِنٍ وَشُيِّبَ لَهُ مِنْ بِئْرٍ فِي الدَّارِ فَشَرِبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبُو بَكْرٍ عَنْ شِمَالِهِ، فَقَالَ لَهُ عُمَرُ: يَا رَسُولَ اللَّهِ أَعْطِهِ أَبَا بَكْرٍ فَأَعْطَاهُ

رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْرَابِيًّا عَنْ يَمِينِهِ، وَقَالَ - عَلَيْهِ السَّلَامُ -: الْأَيْمَنَ فَالْأَيْمَنَ» .

L17546 From him [the preceding narrator], through Muslim: ‘Abdullāh ibn Maslamah ibn Qa‘nab narrated to us; Sulaymān ibn Bilāl narrated to us from ‘Abdullāh ibn ‘Abd al-Raḥmān ibn Ma‘mar ibn Ḥazm ibn Abī Ṭuwālah al-Anṣārī that he heard Anas ibn Mālik narrating—and he mentioned this narration, within which: “The Messenger of Allāh (peace and blessings be upon him) gave to the Bedouin, bypassing Abū Bakr and ‘Umar, and said (peace and blessings be upon him): ‘Those on the right, those on the right, those on the right.’ Anas said: ‘This is a Sunnah, this is a Sunnah, this is a Sunnah.’”

وَبِهِ إِلَى مُسْلِمٍ نَا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ بْنِ قَعْنَبٍ نَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ مَعْمَرِ بْنِ حَزْمِ بْنِ أَبِي طُوَالَةَ الْأَنْصَارِيِّ أَنَّهُ سَمِعَ أَنَسَ بْنَ مَالِكٍ يُحَدِّثُ فَذَكَرَ هَذَا الْخَبَرَ - وَفِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَاوَلَ الْأَعْرَابِيَّ، وَتَرَكَ أَبَا بَكْرٍ وَعُمَرَ، وَقَالَ - عَلَيْهِ السَّلَامُ -: الْأَيْمَنُونَ الْأَيْمَنُونَ الْأَيْمَنُونَ، قَالَ أَنَسٌ: فَهِيَ سُنَّةٌ فَهِيَ سُنَّةٌ فَهِيَ سُنَّةٌ» .

L17547–17548 From the narration of Malik, from Abu Hazim, from Sahl ibn Sa‘d al-Sa‘idi: “The Messenger of Allah (peace and blessings of Allah be upon him) was brought a drink, and he drank from it. On his right was a boy, and on his left were elders. He said to the boy, ‘Do you permit me to give these elders?’ The boy replied, ‘No, by Allah, O Messenger of Allah! I would not prefer anyone over my share from you.’ Then the Messenger of Allah (peace and blessings of Allah be upon him) placed it in his hand.”

وَمِنْ طَرِيقِ مَالِكٍ عَنْ أَبِي حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ السَّاعِدِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِشَرَابٍ فَشَرِبَ مِنْهُ وَعَنْ يَمِينِهِ غُلَامٌ وَعَنْ يَسَارِهِ الْأَشْيَاخُ فَقَالَ لِلْغُلَامِ: أَتَأْذَنُ لِي أَنْ أُعْطِيَ هَؤُلَاءِ الْأَشْيَاخَ فَقَالَ الْغُلَامُ: لَا وَاَللَّهِ يَا رَسُولَ اللَّهِ لَا أُوثِرُ بِنَصِيبِي مِنْكَ أَحَدًا قَالَ فَتَلَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي يَدِهِ» .

L17549 As for serving the eldest, the eldest should be served if there is no one to his right, based on the statement of the Messenger of Allah (peace and blessings be upon him) in the ḥadīth of Muḥayyiṣah and Ḥuwayyiṣah: “Honor the eldest.” This is a general ruling from which no exceptions are permitted unless supported by an authentic textual ruling, such as what we mentioned regarding the serving of drinks.

وَأَمَّا مُنَاوَلَةُ الْأَكْبَرِ فَالْأَكْبَرِ إِذَا لَمْ يَكُنْ عَنْ يَمِينِهِ أَحَدٌ فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثِ مُحَيِّصَةَ، وَحُوَيِّصَةَ «كَبِّرْ الْكُبْرَ» فَهَذَا عُمُومٌ لَا يَجُوزُ أَنْ يَخْرُجَ مِنْهُ إلَّا مَا اسْتَثْنَاهُ نَصٌّ صَحِيحٌ كَالَّذِي ذَكَرْنَا فِي مُنَاوَلَةِ الشَّرَابِ.

L17550 From the chain of transmission of Al-Bukhari: Malik ibn Isma‘il narrated to us, Abdul Aziz ibn Abi Salama narrated to us, Abu al-Nadr—who is Salim, the client of Umar ibn Ubayd Allah ibn Ubayd Allah—narrated to us from Umayr, the client of Ibn Abbas, from Umm al-Fadl bint al-Harith, that she sent a cup of milk to the Messenger of Allah, peace and blessings be upon him and his family, while he was standing on the evening of Arafah. He took it with his hand and drank it. He drank this in the presence of the people and

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا مَالِكُ بْنُ إِسْمَاعِيلَ نَا عَبْدُ الْعَزِيزِ بْنُ أَبِي سَلَمَةَ نَا أَبُو النَّضْرِ هُوَ سَالِمٌ مَوْلَى عُمَرَ بْنِ عُبَيْدِ اللَّهِ بْنِ عُبَيْدِ اللَّهِ عَنْ عُمَيْرٍ مَوْلَى ابْنِ عَبَّاسٍ «عَنْ أُمِّ الْفَضْلِ بِنْتِ الْحَارِثِ أَنَّهَا أَرْسَلَتْ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِقَدَحِ لَبَنٍ وَهُوَ

did not offer it to anyone. And he, peace be upon him, ate in the presence of his companions.

وَاقِفٌ عَشِيَّةَ عَرَفَةَ فَأَخَذَهُ بِيَدِهِ فَشَرِبَهُ» فَهَذَا الشَّرَابُ بِحَضْرَةِ النَّاسِ وَلَمْ يُنَاوِلْ أَحَدًا - وَقَدْ أَكَلَ - عَلَيْهِ السَّلَامُ - بِحَضْرَةِ أَصْحَابِهِ.

L17551 And through the chain of Sahl ibn Sa'd, he mentioned the hadith concerning the wedding of Abu Usaid, which includes: "Indeed, the wife of Abu Usaid served the Messenger of Allah (may the peace and blessings of Allah be upon him and his family) nabidh that she had reserved exclusively for him."

وَمِنْ طَرِيقِ سَهْلِ بْنِ سَعْدٍ وَذَكَرَ حَدِيثَ عُرْسِ أَبِي أُسَيْدَ وَفِيهِ «أَنَّ امْرَأَةَ أَبِي أُسَيْدَ سَقَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَبِيذًا تَخُصُّهُ بِهِ» .

L17552 **An issue: the water bearer of the group is their last.**

[مَسْأَلَةُ سَاقِي الْقَوْمِ آخِرُهُمْ]

L17553 Issue 1113: The water server for a group should drink last, according to what we have narrated through Ibn Abī Shaybah: Shababah ibn Sawwār informed us, from Sulaymān ibn al-Mughīrah, from Thābit, who is al-Bunānī, from ʿAbdullāh ibn Rabāḥ, from Abū Qatādah, from the Prophet (peace and blessings be upon him and his family), who said: "The one who serves drinks to the group should drink last."

١١١٣ - مَسْأَلَةٌ: وَسَاقِي الْقَوْمِ آخِرُهُمْ شُرْبًا لِمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا شَبَابَةُ بْنُ سَوَّارٍ عَنْ سُلَيْمَانَ بْنِ الْمُغِيرَةِ عَنْ ثَابِتٍ هُوَ الْبُنَانِيُّ - عَنْ عَبْدِ اللَّهِ بْنِ رَبَاحٍ عَنْ أَبِي قَتَادَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «سَاقِي الْقَوْمِ آخِرُهُمْ شُرْبًا» .



AL-MUHALLA

كِتَابُ الْعَقِيقَةِ

The Book of Aqiqah

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْعَقِيقَةِ] [مَسْأَلَةٌ الْعَقِيقَة فَرْضٌ وَاجِبٌ]

١١١٤ - مَسْأَلَةٌ: الْعَقِيقَةُ فَرْضٌ وَاجِبٌ يُجْبَرُ الْإِنْسَانُ عَلَيْهَا إذَا فَضَلَ لَهُ عَنْ قُوتِهِ مِقْدَارُهَا. وَهُوَ أَنْ يَذْبَحَ عَنْ كُلِّ مَوْلُودٍ يُولَدُ لَهُ حَيًّا أَوْ مَيِّتًا بَعْدَ أَنْ يَكُونَ يَقَعُ عَلَيْهِ اسْمُ غُلَامٍ أَوْ اسْمُ جَارِيَةٍ. إنْ كَانَ ذَكَرًا فَشَاتَانِ وَإِنْ كَانَ أُنْثَى فَشَاةٌ وَاحِدَةٌ.

يَذْبَحُ كُلَّ ذَلِكَ فِي الْيَوْمِ السَّابِعِ مِنْ الْوِلَادَةِ وَلَا تُجْزِئُ قَبْلَ الْيَوْمِ السَّابِعِ أَصْلًا - فَإِنْ لَمْ يَذْبَحْ فِي الْيَوْمِ السَّابِعِ ذَبَحَ بَعْدَ ذَلِكَ مَتَى أَمْكَنَ فَرْضًا.

وَيُؤْكَلُ مِنْهَا وَيُهْدَى وَيُتَصَدَّقُ، هَذَا كُلُّهُ مُبَاحٌ لَا فَرْضٌ.

وَيُعَدُّ فِي الْأَيَّامِ السَّبْعَةِ الَّتِي ذَكَرْنَا يَوْمُ الْوِلَادَةِ وَلَوْ لَمْ يَبْقَ مِنْهُ إلَّا يَسِيرٌ.

وَيَحْلِقُ رَأْسَهُ فِي الْيَوْمِ السَّابِعِ، وَلَا بَأْسَ بِأَنْ يَمَسَّ بِشَيْءٍ مِنْ دَمِ الْعَقِيقَةِ، وَلَا بَأْسَ بِكَسْرِ عِظَامِهَا. وَلَا يُجْزِئُ فِي الْعَقِيقَةِ إلَّا مَا يَقَعُ عَلَيْهِ اسْمُ شَاةٍ - إمَّا مِنْ الضَّأْنِ، وَإِمَّا مِنْ الْمَاعِزِ فَقَطْ - وَلَا يُجْزِئُ فِي ذَلِكَ مِنْ غَيْرِ مَا ذَكَرْنَا لَا مِنْ الْإِبِلِ وَلَا مِنْ الْبَقَرِ الْإِنْسِيَّةِ، وَلَا مِنْ غَيْرِ ذَلِكَ.

وَلَا تُجْزِئُ فِي ذَلِكَ جَذَعَةٌ أَصْلًا، وَلَا يُجْزِئُ مَا دُونَهَا مِمَّا لَا يَقَعُ عَلَيْهِ اسْمُ شَاةٍ.

وَيُجْزَى الذَّكَرُ وَالْأُنْثَى مِنْ كُلِّ ذَلِكَ؛ وَيُجْزِئُ الْمَعِيبُ سَوَاءٌ كَانَ مِمَّا يَجُوزُ فِي الْأَضَاحِيِّ أَوْ كَانَ مِمَّا لَا يَجُوزُ فِيهَا، وَالسَّالِمُ أَفْضَلُ.

وَيُسَمَّى الْمَوْلُودُ يَوْمَ وِلَادَتِهِ، فَإِنْ أُخِّرَتْ تَسْمِيَتُهُ إلَى الْيَوْمِ السَّابِعِ فَحَسَنٌ.

وَيُسْتَحَبُّ أَنْ يَطْعَمَ أَوَّلَ وِلَادَتِهِ التَّمْرَ مَمْضُوغًا وَلَيْسَ فَرْضًا.

[The Book of the Aqiqah] [Issue: The Aqiqah is an obligatory and prescribed duty.]

Issue 1114: The ʻAqīqah is a compulsory obligation that must be enforced upon a person when they possess surplus provisions beyond their basic sustenance. It requires slaughtering for every child born to them - whether alive or deceased, once the child is designated as a boy or a girl - two sheep if the child is male and one sheep if the child is female.

He must sacrifice all those animals on the seventh day from the child's birth; it is not valid at all before the seventh day. If he does not sacrifice on the seventh day, he must sacrifice after that as soon as possible.

From the sacrifice, one may eat, gift it, or give it as charity; all of this is permissible, not obligatory.

And the day of childbirth is counted during the seven days previously mentioned, even if only a small portion of it remains.

He shaves his head on the seventh day, and there is no harm in touching some of the blood of the ʻaqīqah and breaking its bones. Only what is called a sheep suffices for the ʻaqīqah—either from sheep or from goats exclusively—and nothing else is valid for this purpose: neither camels, nor human-raised cattle, nor from anything other than these.

A young female sheep (jadha'ah) does not suffice for that purpose at all, nor does anything younger than it that cannot be classified as a sheep.

Both male and female animals are valid for all these cases. A defective animal suffices whether it is of the type permitted for sacrifices or not, and a sound animal is preferable.

The newborn is named on the day of their birth. If the naming is delayed until the seventh day, it is good.

It is recommended to feed the newborn chewed dates immediately after birth, but it is not obligatory.

L17566 The free person and the slave are equal in all that we have mentioned, and the believer and the disbeliever are likewise.

وَالْحُرُّ، وَالْعَبْدُ فِي كُلِّ مَا ذَكَرْنَا سَوَاءٌ، وَالْمُؤْمِنُ، وَالْكَافِرُ كَذَلِكَ.

L17567 The ʻaqīqah is charged to the father's wealth or the mother's wealth if the child has no father, or if the newborn has no wealth. Then if the newborn has wealth, it is charged to his wealth.

وَهِيَ فِي مَالِ الْأَبِ أَوْ الْأُمِّ إِنْ لَمْ يَكُنْ لَهُ أَبٌ، أَوْ لَمْ يَكُنْ لِلْمَوْلُودِ مَالٌ، فَإِنْ كَانَ لَهُ مَالٌ فَهِيَ فِي مَالِهِ.

L17568 If he dies before the seventh day, an ʻaqīqah must be performed for him as we have mentioned - it is necessary, based on what we narrated through the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn al-Muthannā from ʿAffān ibn Muslim from Ḥammād ibn Salamah from Ayyūb al-Sikhtiyānī, Ḥabīb ibn al-Shahīd, Yūnus ibn ʿUbayd, and Qatādah, all transmitting from Muḥammad ibn Sīrīn from Salmān ibn ʿĀmir al-Ḍabbī, that the Messenger of Allah (peace be upon him) said: "For the child there is an ʻaqīqah: sacrifice an animal on his behalf, and remove harm from him." We also narrated this through the chain of al-Bukhārī and others via Ḥammād ibn Zayd and Jarīr ibn Ḥāzim, both transmitting from Ayyūp from Ibn Sīrīn from Salmān ibn ʿĀmir from the Prophet (peace be upon him) in similar wording.[1]

وَإِنْ مَاتَ قَبْلَ السَّابِعِ عُقَّ عَنْهُ كَمَا ذَكَرْنَا وَلَا بُدَّ - لِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى نَا عَفَّانَ بْنُ مُسْلِمٍ نَا حَمَّادُ بْنُ سَلَمَةَ أَنَا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ - وَحَبِيبٌ هُوَ ابْنُ الشَّهِيدِ - وَيُونُسُ هُوَ ابْنُ عُبَيْدٍ - وَقَتَادَةَ كُلُّهُمْ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ سَلْمَانَ بْنِ عَامِرٍ الضَّبِّيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «فِي الْغُلَامِ عَقِيقَةٌ فَأَهْرِيقُوا عَنْهُ دَمًا، وَأَمِيطُوا عَنْهُ الْأَذَى» . وَرُوِّيناهُ أَيْضًا مِنْ طَرِيقِ الْبُخَارِيِّ وَغَيْرِهِ إِلَى حَمَّادِ بْنِ زَيْدٍ، وَجَرِيرِ بْنِ حَازِمٍ، كِلَاهُمَا عَنْ أَيُّوبَ عَنْ ابْنِ سِيرِينَ عَنْ سَلْمَانَ بْنِ عَامِرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِنَحْوِهِ.

L17569 And through the chain of Rabāb, from Ibn Salmān ibn ʿĀmir, from the Prophet (peace and blessings of Allah be upon him), with a similar wording.

وَمِنْ طَرِيقِ الرَّبَابِ عَنْ ابْنِ سَلْمَانَ بْنِ عَامِرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِنَحْوِهِ.

L17570 Through the mentioned chain of transmission from Aḥmad ibn Shuʿayb, from Aḥmad ibn Sulaymān, from ʿAffān, from Ḥammād ibn Salamah, from Qays ibn Saʿd, from Ṭāwūs and Mujāhid—who narrated from Umm Kurz al-Khuzāʿiyyah—that the Messenger of Allāh, may the peace and blessings of Allāh be upon him, said: "Two sheep of equal age are required for a male child, and one sheep is required for a female child."

وَبِالسَّنَدِ الْمَذْكُورِ إِلَى أَحْمَدَ بْنِ شُعَيْبٍ نَا أَحْمَدُ بْنُ سُلَيْمَانَ نَا عَفَّانَ نَا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ طَاوُسٍ، وَمُجَاهِدٍ عَنْ أُمِّ كُرْزٍ الْخُزَاعِيَّةِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «عَنْ الْغُلَامِ شَاتَانِ مُكَافَأَتَانِ وَعَنْ الْجَارِيَةِ شَاةٌ» .

L17571 Hummam narrated to us, Abbas ibn Asbagh narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, Muhammad ibn Isma'il al-Tirmidhi narrated to us, al-Humaydi narrated to us, Sufyan ibn Uyaynah narrated to us, Amr ibn Dinar narrated to us, Ata ibn Abi Rabah narrated to us, that Habibah bint Maysarah al-Fihriyyah—her client from above—informed him

نَا حُمَامٌ نَا عَبَّاسُ بْنُ أَصْبَغَ نَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنُ أَيْمَنَ نَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ نَا الْحُمَيْدِيُّ نَا سُفْيَانُ بْنُ عُيَيْنَةَ نَا عَمْرُو بْنُ دِينَارٍ أَنَا عَطَاءُ بْنُ أَبِي رَبَاحٍ أَنَّ حَبِيبَةَ بِنْتَ مَيْسَرَةَ الْفِهْرِيَّةَ مَوْلَاتُهُ مِنْ فَوْقُ أَخْبَرَتْهُ أَنَّهَا سَمِعَتْ أُمَّ كُرْزٍ الْخُزَاعِيَّةَ تَقُولُ سَمِعْت

[1] **Hadith references (L17568):** Sunan an-Nasai 4214.

that she heard Umm Kurz al-Khuza'iyyah say: "I heard the Messenger of Allah—peace and blessings be upon him—say regarding the Aqiqah: For a boy, two equivalent sheep, and for a girl, one sheep."

«رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ فِي الْعَقِيقَةِ: عَنْ الْغُلَامِ شَاتَانِ مُكَافَأَتَانِ، وَعَنْ الْجَارِيَةِ شَاةٌ»

L17572 'Aṭā' interpreted the two compensations as being the two equivalents.

فَسَّرَ عَطَاءٌ الْمُكَافَأَتَانِ بِأَنَّهُمَا الْمِثْلَانِ.

L17573 Ahmad ibn Hanbal interpreted them as the two proximate entities or the two equivalent entities.

وَفَسَّرَهُ أَحْمَدُ بْنُ حَنْبَلٍ أَنَّهُمَا الْمُتَقَارِبَتَانِ أَوْ الْمُتَسَاوِيَتَانِ.

L17574 And through the chain of Sufyan ibn 'Uyaynah from 'Ubayd Allah ibn Abi Yazid from his father from Siba' ibn Thabit from Umm Kurz, she said: I heard the Messenger of Allah (peace and blessings be upon him) say: "Two goats are due for a boy and one for a girl. It does not harm you whether they are male or female."

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي يَزِيدَ عَنْ أَبِيهِ عَنْ سِبَاعِ بْنِ ثَابِتٍ عَنْ أُمِّ كُرْزٍ قَالَتْ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «عَنْ الْغُلَامِ شَاتَانِ وَعَنْ الْجَارِيَةِ شَاةٌ لَا يَضُرُّكُمْ ذُكْرَانًا كُنَّ أَوْ إنَاثًا» .

L17575–17577 Through the narration of Aḥmad ibn Shuʿayb: I am ʿAmr ibn ʿAlī, Yazīd ibn Zurayʿ informed us from... From Sa'id ibn Abi 'Arubah, from Qatadah, from Al-Hasan, from Samurah ibn Jundub, from the Messenger of Allah - peace be upon him - who said: "Every newborn is pledged by his 'aqeeqah: a sacrifice is slaughtered for him on his seventh day, his head is shaved, and he is named."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نَا يَزِيدُ هُوَ ابْنُ زُرَيْعٍ - عَنْ سَعِيدٍ هُوَ ابْنُ أَبِي عَرُوبَةَ - نَا قَتَادَةُ عَنْ الْحَسَنِ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كُلُّ غُلَامٍ مُرْتَهَنٌ بِعَقِيقَتِهِ تُذْبَحُ عَنْهُ يَوْمَ سَابِعِهِ وَيُحْلَقُ رَأْسُهُ وَيُسَمَّى» .

L17578 And through the chain of Abū Dāwūd: Ḥafṣ ibn ʿUmar al-Namarī narrated to us, Hammām (Ibn Yaḥyā) narrated to us from Qatādah, from al-Ḥasan, from Samurah, from the Prophet—peace and blessings of Allāh be upon him—who said: "Every child is bound by their *ʿaqīqah* until it is slaughtered for them on the seventh day, their head is shaved, and they are smeared with blood." When Qatādah was asked about how the blood is to be applied, he said: "When the *ʿaqīqah* is slaughtered, a tuft of wool is taken, dipped into the blood from its jugular veins, then placed on the infant's fontanelle until blood flows upon his head like a thin stream. Afterward, his head is washed and shaved."

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا حَفْصُ بْنُ عُمَرَ النَّمَرِيُّ نَا هَمَّامٌ هُوَ ابْنُ يَحْيَى - نَا قَتَادَةُ عَنْ الْحَسَنِ عَنْ سَمُرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كُلُّ غُلَامٍ رَهِينَةٌ بِعَقِيقَتِهِ حَتَّى تُذْبَحَ عَنْهُ يَوْمَ السَّابِعِ وَيُحْلَقُ رَأْسُهُ وَيُدَمَّى» فَكَانَ قَتَادَةُ إذَا سُئِلَ عَنْ الدَّمِ كَيْفَ يُصْنَعُ؟ قَالَ: إذَا ذُبِحَتْ الْعَقِيقَةُ أُخِذَتْ مِنْهَا صُوفَةٌ فَاسْتُقْبِلَتْ بِهَا أَوْدَاجُهَا، ثُمَّ تُوضَعُ عَلَى يَافُوخِ الصَّبِيِّ حَتَّى يَسِيلَ عَلَى رَأْسِهِ مِثْلُ الْخَيْطِ، ثُمَّ يُغْسَلُ رَأْسُهُ بَعْدُ وَيُحْلَقُ ".

L17579 Abu Dawud said: Hammam erred; rather, it is to be named.

قَالَ أَبُو دَاوُد: أَخْطَأَ هَمَّامٌ إنَّمَا هُوَ يُسَمَّى.

L17580 Abu Muhammad said: Rather, Abu Dawud erred, for Hammam affirmed and

clarified that they asked Qatadah about the manner of the aforementioned raising the voice in saying *Amin*, and he described it to them.

قَالَ أَبُو مُحَمَّد: بَلْ وَهَمَ أَبُو دَاوُد، لِأَنَّ هَمَّامًا ثَبَّتَ وَبَيَّنَ أَنَّهُمْ سَأَلُوا قَتَادَةَ عَنْ صِفَةِ التَّدْمِيَةِ الْمَذْكُورَةِ فَوَصَفَهَا لَهُمْ.

L17581 From the transmission of Al-Bukhari: Abdullah ibn Abi al-Aswad narrated to us, Quraysh ibn Anas narrated to us, Habib ibn al-Shahid said: "Ibn Sirin commanded me to ask al-Hasan from whom he heard the hadith of the aqeeqah. I asked him? He replied: 'From Samurah ibn Jundub.'"

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا عَبْدُ اللَّهِ بْنِ أَبِي الْأَسْوَدِ نَا قُرَيْشُ بْنُ أَنَسٍ حَبِيبُ بْنُ الشَّهِيدِ قَالَ: أَمَرَنِي ابْنُ سِيرِينَ أَنْ أَسْأَلَ الْحَسَنَ مِمَّنْ سَمِعَ حَدِيثَ الْعَقِيقَةِ؟ فَسَأَلْته؟ فَقَالَ: مِنْ سَمُرَةَ بْنِ جُنْدُبٍ.

L17582 Ali said: No valid audition from Samura is authenticated for al-Ḥasan except the lone ḥadīth of ʿAqīqah. These reports constitute the explicit textual evidence for our position, which represents the view of a group of the early predecessors. We have been narrated via ʿAbd al-Razzāq from Ibn Jurayj, who reported from Yūsuf ibn Māhak that he said: I visited Ḥafṣa bint ʿAbd al-Raḥmān ibn Abī Bakr when she had given birth to a son for al-Mundhir ibn al-Zubayr. I said to her: "Why haven't you sacrificed a she-camel for your son?" She replied: "Allah forbid! My paternal aunt ʿĀ'isha used to say: For a male child, two sheep; and for a female child, one sheep."

قَالَ عَلِيٌّ: لَا يَصِحُّ لِلْحَسَنِ سَمَاعٌ مِنْ سَمُرَةَ إلَّا حَدِيثُ الْعَقِيقَةِ وَحْدَهُ - فَهَذِهِ الْأَخْبَارُ نَصُّ مَا قُلْنَا - وَهُوَ قَوْلُ جَمَاعَةٍ مِنْ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي يُوسُفُ بْنُ مَاهَكَ أَنَّهُ دَخَلَ عَلَى حَفْصَةَ بِنْتِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ وَقَدْ وَلَدَتْ لِلْمُنْذِرِ بْنِ الزُّبَيْرِ غُلَامًا فَقُلْت لَهَا: هَلَّا عَقَقْت جَزُورًا عَلَى ابْنِك؟ قَالَتْ: مَعَاذَ اللَّهِ كَانَتْ عَمَّتِي عَائِشَةُ تَقُولُ: عَلَى الْغُلَامِ شَاتَانِ، وَعَلَى الْجَارِيَةِ شَاةٌ.

L17583 And via the chain of Abī al-Ṭufayl from Ibn ʿAbbās: Two sheep are due for a boy, and one for a girl—this is the opinion of ʿAṭāʾ ibn Abī Rabāḥ.

وَمِنْ طَرِيقِ أَبِي الطُّفَيْلِ عَنْ ابْنِ عَبَّاسٍ: عَنْ الْغُلَامِ شَاتَانِ، وَعَنْ الْجَارِيَةِ شَاةٌ - وَهُوَ قَوْلُ عَطَاءِ بْنِ أَبِي رَبَاحٍ.

L17584 From the transmission of Ibn al-Jahm: Jaʿfar ibn Muḥammad al-Ṣāʾigh reported to us, ʿAffān reported to us, ʿAbd al-Wārith—he is Ibn Saʿīd al-Tannūrī—reported to us, from ʿAṭāʾ ibn al-Sāʾib, from Muḥārib ibn Dithār, from Ibn ʿUmar, who said: "His head is shaved and he smears it with blood, is slaughtered on the seventh day, and charity equivalent to its weight in silver is given."

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نَا جَعْفَرُ بْنُ مُحَمَّدٍ الصَّائِغُ نَا عَفَّانَ نَا عَبْدُ الْوَارِثِ هُوَ ابْنُ سَعِيدٍ التَّنُّورِيُّ - عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ مُحَارِبِ بْنِ دِثَارٍ عَنْ ابْنِ عُمَرَ قَالَ: يُحْلَقُ رَأْسُهُ وَيُلَطَّخُهُ بِالدَّمِ، وَيُذْبَحُ يَوْمَ السَّابِعِ وَيُتَصَدَّقُ بِوَزْنِهِ فِضَّةً.

L17585–17586 From the narration of Makḥūl: It has reached me from Ibn ʿUmar that he said, "The newborn is pledged by his *ʿAqīqah*." From Buraydah al-Aslamī: "People will be presented with [their obligation toward] the *ʿAqīqah* on the Day of Resurrection, just as they are presented with the five obligatory prayers." The same [statement] is reported from Fāṭimah *bint* al-Ḥusayn.

وَمِنْ طَرِيقِ مَكْحُولٍ: بَلَغَنِي عَنْ ابْنِ عُمَرَ أَنَّهُ قَالَ: الْمَوْلُودُ مُرْتَهَنٌ بِعَقِيقَتِهِ. وَعَنْ بُرَيْدَةَ الْأَسْلَمِيِّ: إنَّ النَّاسَ يُعْرَضُونَ يَوْمَ الْقِيَامَةِ عَلَى الْعَقِيقَةِ كَمَا يُعْرَضُونَ عَلَى الصَّلَوَاتِ الْخَمْسِ - وَمِثْلُهُ عَنْ فَاطِمَةَ بِنْتِ الْحُسَيْنِ.

L17587 And according to the transmission of al-Ḥasan al-Baṣrī, the same rulings applied to the Uḍḥiyah are applied to the ʿAqīqah.

وَمِنْ طَرِيقِ الْحَسَنِ الْبَصْرِيِّ يُصْنَعُ بِالْعَقِيقَةِ مَا يُصْنَعُ بِالْأُضْحِيَّةِ.

L17588 And from ‘Ata’ he said: The family performing the ‘Aqiqah may eat from it and give it as gifts. The Prophet—peace be upon him—ordered that, as they claimed, and if he wills, he may give it in charity.

وَعَنْ عَطَاءٍ قَالَ: يَأْكُلُ أَهْلُ الْعَقِيقَةِ وَيُهْدُونَهَا أَمَرَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ - زَعَمُوا - وَإِنْ شَاءَ تَصَدَّقَ.

L17589 Abu Muhammad said: His command—peace be upon him—regarding the *aqiqah* is obligatory, as we have mentioned. It is not permissible for anyone to interpret any of his commands—peace be upon him—as permitting their abandonment except through another text that states that. Otherwise, asserting such is a falsehood and a blind following of matters they have no knowledge of.

قَالَ أَبُو مُحَمَّد: أَمْرُهُ - عَلَيْهِ السَّلَامُ - بِالْعَقِيقَةِ فَرْضٌ كَمَا ذَكَرْنَا لَا يَحِلُّ لِأَحَدٍ أَنْ يَحْمِلَ شَيْئًا مِنْ أَوَامِرِهِ - عَلَيْهِ السَّلَامُ - عَلَى جَوَازِ تَرْكِهَا إلَّا بِنَصٍّ آخَرَ وَارِدٍ بِذَلِكَ، وَإِلَّا فَالْقَوْلُ بِذَلِكَ كَذِبٌ وَقَفْوٌ لِمَا لَا عِلْمَ لَهُمْ بِهِ.

L17590 He (peace be upon him) said, “If I command you to do something, fulfill it to the best of your ability.”

وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» .

L17591 Among those who stated its obligation are Abū Sulaymān and our companions.

وَمِمَّنْ قَالَ بِوُجُوبِهَا: أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا.

L17592 Among those who said that two sheep are for a male and one sheep for a female are Al-Shāfiʿī and Abū Sulaymān - and the suckling lamb (al-sakhlah) is not called a sheep.

وَمِمَّنْ قَالَ: بِالشَّاتَيْنِ عَنْ الذَّكَرِ، وَشَاةٍ عَنْ الْأُنْثَى: الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ - وَلَا تُسَمَّى " السَّخْلَةُ " شَاةً.

L17593 We have mentioned in the section on sacrifices the saying of the Prophet—peace be upon him—: “A jadhaʿah is not sufficient for anyone after you.” This is a general ruling that is not specified except by what a definitive text specifies.

وَقَدْ ذَكَرْنَا فِي " الْأَضَاحِيِّ " قَوْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُجْزِي جَذَعَةٌ عَنْ أَحَدٍ بَعْدَكَ» فَهَذَا عُمُومٌ لَا يَخُصُّ مِنْهُ إلَّا مَا خَصَّهُ نَصٌّ.

L17594 The term *al-shaat* applies to both the female sheep (ewe) and the female goat (she-goat) without any disagreement, absolutely and without qualification. Al-Aʿshā described a wild bull, saying:

وَاسْمُ الشَّاةِ يَقَعُ عَلَى الضَّانِيَةِ وَالْمَاعِزَةِ بِلَا خِلَافٍ إطْلَاقًا بِلَا إضَافَةٍ - وَقَالَ الْأَعْشَى يَصِفُ ثَوْرًا وَحْشِيًّا:

L17595 When dawn shone, he rose in haste, and the sheep set out from where the two had camped.

فَلَمَّا أَضَاءَ الصُّبْحُ ثَارَ مُبَادِرًا ... وَكَانَ انْطِلَاقُ الشَّاةِ مِنْ حَيْثُ خَيَّمَا

L17596 And Dhū al-Rummah said, addressing a female gazelle:

وَقَالَ ذُو الرُّمَّةِ يُخَاطِبُ ظَبْيَةً:

L17597 O gazelle of the desolate wastes between clanging bells and shifting sands—

أَيَا ظَبْيَةَ الْوَعْسَاءِ بَيْنَ جُلَاجِلٍ ... وَبَيْنَ النَّقَا أَأَنْتِ أَمْ أُمُّ سَالِمِ

فَأَجَابَهُ أَخُو هِشَامٍ وَكِلَاهُمَا عَرَبِيٌّ أَعْرَابِيٌّ فَصِيحٌ:

فَلَوْ تُحْسِنُ التَّشْبِيهَ وَالشِّعْرَ لَمْ تَقُلْ ... لِشَاةِ النَّقَا أَأَنْتِ أَمْ أُمُّ سَالِمِ

وَقَالَ زُهَيْرُ بْنُ أَبِي سُلْمَى يَصِفُ حَمِيرَ وَحْشٍ: فَبَيْنَا نَبْغِي الْوَحْشَ جَاءَ غُلَامُنَا ... يَدِبُّ وَيُخْفِي شَخْصَهُ وَيُضَائِلُهُ

فَقَالَ شِيَاهٌ رَائِعَاتٌ بِقَفْرَةٍ ... بِمُسْتَأْسِدِ الْقِرْيَانِ حُوٌّ مَسَائِلُهُ

ثَلَاثٌ كَأَقْوَاسِ السَّرَاءِ وَمِسْحَلٌ ... قَدْ اخْضَرَّ مِنْ لَسِّ الْغَمِيرِ جَحَافِلُهُ

وَقَدْ خَرَمَ الطِّرَادَ عَنْهُ جِحَاشُهُ ... فَلَمْ يَبْقَ إِلَّا نَفْسُهُ وَحَلَائِلُهُ

ثُمَّ مَضَى فِي الْوَصْفِ إِلَى أَنْ قَالَ:

فَتَبِعَ آثَارَ الشِّيَاهِ وَلِيدُنَا ... كَشُؤْبُوبِ غَيْثٍ يَحْفِشُ الْأَكَمَ وَابِلُهُ

فَرَدَّ عَلَيْنَا الْعَيْرَ مِنْ دُونِ إِلْفِهِ ... عَلَى رَغْمِهِ يَدْمَى نَسَاهُ وَفَائِلُهُ

فَسَمَّى " الشِّيَاهَ " ثُمَّ فَسَّرَهَا بِأَنَّ لَهَا " مِسْحَلًا وَجِحَاشًا " وَأَنَّهَا عَيْرٌ وَأَتَانُهُ. فَإِنْ قَالَ قَائِلٌ: فَهَلَّا قُلْتُمْ بِإِيجَابِ الزَّكَاةِ فِيهَا وَبِأَخْذِ ذَلِكَ فِي زَكَاةِ الْغَنَمِ وَزَكَاةِ الْإِبِلِ، وَفِي الْعَقِيقَةِ، وَالنُّسُكِ؟ قُلْنَا: لَمْ يَجُزْ ذَلِكَ، لِأَنَّ النَّصَّ فِي الزَّكَاةِ إِنَّمَا جَاءَ كَمَا أَوْرَدْنَا فِي " كِتَابِ الزَّكَاةِ عَنْهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَصَّ كِتَابِهِ «فِي صَدَقَةِ الْغَنَمِ فِي سَائِمَتِهَا إِذَا كَانَتْ أَرْبَعِينَ إِلَى عِشْرِينَ وَمِائَةٍ شَاةٌ» .

are you, or are you Umm Salim?

So the brother of Hishām responded to him, and both were eloquent Arab Bedouins.

If you were adept in metaphor and poetry, you would not say to the ewe of the dunes: “Are you or Umm Salim?”

And Zuhayr ibn Abī Sulmā said, describing wild donkeys: While we were seeking out wild game, our young servant crept near, hiding his form and diminishing his presence.

He said: Splendid sheep in a desolate expanse... in lion-like villages, Huww’s matters.

Three like the arches of prosperity and a broom shrub— Its verdant masses have turned green from the caress of rain-fed soil.

His weaned camels impaired the pursuit away from him, Leaving nothing but himself and his breeding camels.

Then he continued describing until he said:

So our young boy followed the sheep’s tracks, like a deluge whose rain pools at the hillocks.

He drove back the camel train upon us, away from its familiar path against his will—his forgetfulness and deeds bleed.

He named “the sheep,” then explained them as having “a milking area and young goats,” and that they are a male donkey and female donkey. If someone were to say: Why do you not rule that Zakāh is obligatory on them and include that in the Zakāh of sheep and camels, as well as in the ʿAqīqah and sacrificial offerings? We would respond: This is not permissible because the textual evidence regarding Zakāh only came as we cited in the “Book of Zakāh” from him, peace and blessings be upon him, in the text of his book: “Regarding the charity of freely grazing sheep when they number forty up to 120, one sheep is due.”

And in the other Hadith: “For sheep and goats, a sheep is due out of every

forty sheep."

L17611 In the hadith of Abu Bakr from the Prophet—peace and blessings of Allah be upon him—it states: "For camels numbering twenty-four or fewer, one sheep is due for every five camels, taken from small livestock (sheep and goats)." The term "small livestock" (ghanam) in the language applies exclusively to sheep and goats. Thus, the hadiths on zakat necessitate that only small livestock be collected, and that one must not give anything other than small livestock as zakat for camels.

L17612 As for the prescribed amount taken from sheep, Allah, the Exalted, says: "Take zakat from their livestock" [At-Tawbah: 103].[2]

L17613 This wording by its apparent meaning necessitates taking Zakat from the very wealth subject to obligation and from which it is collected. Thus, it is established that what is taken in Zakat must exclusively come from the assets liable for Zakat. Zakat taken from other sources is invalid except what is explicitly permitted by textual evidence - such as paying Zakat for camels with sheep, or fulfilling Zakat for sheep with sheep the payer brings from any location he chooses. Success is from Allah, the Exalted.

L17614–17616 As for the *ʿaqīqah* and *nusuk*, we have stated that the term *shāh* in the Arabic language does not fundamentally apply to anything other than domesticated sheep (*ḍaʾn*) and goats (*maʿz*). Rather, that term is applied to gazelles (*ẓibāʾ*), onagers (*ḥumur al-waḥsh*), and wild cows (*baqar al-waḥsh*). By way of borrowing, clarification, and supplementary reasoning—not as an absolute ruling in any respect—restricting the sacrificial animal to sheep and goats in the ʿaqīqah does not constitute consensus. It has been narrated to us through the chain of Ibn Wahb from Mālik from Yaḥyā ibn Saʿīd al-Anṣārī from Muḥammad ibn Ibrāhīm al-Taymī, who said: "I heard that the ʿaqīqah is recommended even with a sparrow." Some held the opinion regarding camels in this matter. We presented this solely to avoid any claim of consensus being imposed on us therein. If it is asked: "Why do you not permit performing the ʿaqīqah with whatever one wishes whenever

[2]**Qur'an references (L17612):** Qur'an 9:103 (At-Tawbah).

وَفِي الْحَدِيثِ الْآخَرِ «فِي الْغَنَمِ فِي كُلِّ أَرْبَعِينَ شَاةً شَاةٌ» .

وَفِي حَدِيثِ أَبِي بَكْرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فِي أَرْبَعٍ وَعِشْرِينَ مِنْ الْإِبِلِ فَمَا دُونَهَا مِنْ الْغَنَمِ فِي كُلِّ خَمْسٍ شَاةٌ» . وَاسْمُ الْغَنَمِ لَا يَقَعُ فِي اللُّغَةِ إلَّا عَلَى الضَّأْنِ وَالْمَاعِزِ فَقَطْ، فَوَجَبَ بِالْأَحَادِيثِ الْوَارِدَةِ فِي الزَّكَاةِ أَنْ لَا يَأْخُذَ إلَّا مِنْ الْغَنَمِ، وَلَا يُعْطِي فِي زَكَاةِ الْإِبِلِ إلَّا الْغَنَمَ.

وَأَمَّا الْمَأْخُوذُ مِنْ الْغَنَمِ فَاَللَّهُ تَعَالَى يَقُولُ: {خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً} [التوبة: ١٠٣] .

وَهَذَا اللَّفْظُ يَقْتَضِي بِظَاهِرِهِ أَخْذُ الصَّدَقَةِ مِنْ نَفْسِ الْمَالِ الَّذِي يَجِبُ فِيهِ الصَّدَقَةُ، وَالَّذِي هِيَ مَأْخُوذَةٌ مِنْهُ، فَثَبَتَ أَنَّ الْمَأْخُوذَ فِي الصَّدَقَةِ إنَّمَا هُوَ مِنْ الْأَمْوَالِ الَّتِي تُؤْخَذُ مِنْهَا الصَّدَقَةُ، فَلَا تُجْزِئُ مِنْ غَيْرِهَا إلَّا مَا جَاءَ النَّصُّ بِأَنَّهُ يَجْزِي كَزَكَاةِ الْإِبِلِ مِنْ الْغَنَمِ، وَزَكَاةِ الْغَنَمِ مِنْ غَنَمٍ يَأْتِي بِهَا مِنْ حَيْثُ شَاءَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا الْعَقِيقَةُ، وَالنُّسُكُ - فَقَدْ قُلْنَا: لَا يَقَعُ اسْمُ شَاةٍ بِالْإِطْلَاقِ فِي اللُّغَةِ أَصْلًا عَلَى غَيْرِ الضَّأْنِ وَالْمَعْزِ وَإِنَّمَا يُطْلَقُ ذَلِكَ عَلَى الظِّبَاءِ، وَحُمُرِ الْوَحْشِ، وَبَقَرِ الْوَحْشِ، اسْتِعَارَةً، وَبَيَانًا وَإِضَافَةً، لَا عَلَى الْإِطْلَاقِ أَصْلًا - وَلَيْسَ الِاقْتِصَارُ عَلَى الضَّأْنِ وَالْمَاعِزِ إجْمَاعًا فِي الْعَقِيقَةِ. رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ التَّيْمِيِّ قَالَ: سَمِعْت أَنَّهُ يُسْتَحَبُّ الْعَقِيقَةُ وَلَوْ بِعُصْفُورٍ - وَقَدْ رَأَى بَعْضُهُمْ فِي ذَلِكَ الْجُزُورِ وَإِنَّمَا أَتَيْنَا بِهَذَا لِئَلَّا يُدْعَى عَلَيْنَا الْإِجْمَاعُ فِي ذَلِكَ. فَإِنْ قِيلَ: فَهَلَّا أَجَزْتُمْ أَنْ يُعَقَّ بِمَا شَاءَ مَتَى شَاءَ؟ لِحَدِيثِ سَلْمَانَ بْنِ عَامِرٍ «أَرِيقُوا عَنْهُ دَمًا» ؟ قُلْنَا: ذَلِكَ خَبَرٌ مُجْمَلٌ، فَسَّرَهُ الَّذِي فِيهِ «عَنْ الْغُلَامِ شَاتَانِ، وَعَنْ الْجَارِيَةِ شَاةٌ، تُذْبَحُ يَوْمَ السَّابِعِ» ،

فَكَانَتْ هَذِهِ الصِّفَةُ وَاجِبَةً، وَكَانَ مَنْ عَقَّ بِخِلَافِهَا مُخَالِفًا لِهَذَا النَّصِّ، وَهَذَا لَا يَجُوزُ وَلَا يَحِلُّ، وَكَانَ مَنْ عَقَّ بِهَذِهِ الصِّفَةِ مُوَافِقًا سَلْمَانَ بْنِ عَامِرٍ غَيْرَ خَارِجٍ عَنْهُ وَهَذَا هُوَ الَّذِي لَا يَحِلُّ سِوَاهُ.

one wishes, based on the ḥadīth of Salmān ibn ʿĀmir: ‘Shed blood on his behalf’?” We respond: That is a general report which is explicated by the ḥadīth specifying: “For a boy, two sheep, and for a girl, one sheep—slaughtered on the seventh day.” Thus, this specification becomes obligatory. Whoever performs the ʿaqīqah contrary to it opposes this explicit text, and this is neither permissible nor lawful. Whoever performs it in accordance with this specification aligns with Salmān ibn ʿĀmir without diverging from his directive, and this alone is lawful—nothing else is permitted.

فَإِنْ قِيلَ: فَمِنْ أَيْنَ أَجَزْتُمْ الذَّبْحَ بَعْدَ السَّابِعِ؟ قُلْنَا: لِأَنَّهُ قَدْ وَجَبَ الذَّبْحُ يَوْمَ السَّابِعِ وَلَزِمَ إخْرَاجُ تِلْكَ الصِّفَةِ مِنْ الْمَالِ فَلَا يَحِلُّ إبْقَاؤُهَا فِيهِ فَهُوَ دَيْنٌ وَاجِبٌ إخْرَاجُهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L17617 If it is asked: “From where do you permit slaughtering after the seventh day?” We reply: Because the slaughter has become obligatory on the seventh day, and it is necessary to remove this specific requirement from the wealth. Thus, it is impermissible to retain this requirement within the wealth, for it is an obligatory debt that must be discharged - and success comes only through Allah, the Exalted.

وَأَمَّا التَّسْمِيَةُ: فَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا مُحَمَّدُ بْنُ حَاتِمٍ نَا بَهْزُ بْنُ أَسَدٍ نَا سُلَيْمَانُ بْنُ الْمُغِيرَةِ عَنْ ثَابِتٍ هُوَ الْبُنَانِيُّ - «عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ أُمَّ سُلَيْمٍ أُمَّهُ وَلَدَتْ غُلَامًا فَقَالَتْ لَهُ: يَا أَنَسُ لَا يُرْضِعُهُ أَحَدٌ حَتَّى تَغْدُوَ بِهِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: فَلَمَّا أَصْبَحْتُ انْطَلَقْتُ بِهِ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: لَعَلَّ أُمَّ سُلَيْمٍ وَلَدَتْ؟ قُلْتُ: نَعَمْ، فَوَضَعْتُهُ فِي حِجْرِهِ وَدَعَا - عَلَيْهِ السَّلَامُ - بِعَجْوَةٍ مِنْ عَجْوَةِ الْمَدِينَةِ فَلَاكَهَا فِي فِيهِ ثُمَّ قَذَفَهَا فِي فِي الصَّبِيِّ فَجَعَلَ الصَّبِيُّ يَتَلَمَّظُهَا فَمَسَحَ وَجْهَهُ وَسَمَّاهُ عَبْدَ اللَّهِ» .

وَأَمَّا التَّسْمِيَةُ: فَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا مُحَمَّدُ بْنُ حَاتِمٍ نَا بَهْزُ بْنُ أَسَدٍ نَا سُلَيْمَانُ بْنُ الْمُغِيرَةِ عَنْ ثَابِتٍ هُوَ الْبُنَانِيُّ - «عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ أُمَّ سُلَيْمٍ أُمَّهُ وَلَدَتْ غُلَامًا فَقَالَتْ لَهُ: يَا أَنَسُ لَا يُرْضِعُهُ أَحَدٌ حَتَّى تَغْدُوَ بِهِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: فَلَمَّا أَصْبَحْتُ انْطَلَقْتُ بِهِ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: لَعَلَّ أُمَّ سُلَيْمٍ وَلَدَتْ؟ قُلْتُ: نَعَمْ، فَوَضَعْتُهُ فِي حِجْرِهِ وَدَعَا - عَلَيْهِ السَّلَامُ - بِعَجْوَةٍ مِنْ عَجْوَةِ الْمَدِينَةِ فَلَاكَهَا فِي فِيهِ ثُمَّ قَذَفَهَا فِي فِي الصَّبِيِّ فَجَعَلَ الصَّبِيُّ يَتَلَمَّظُهَا فَمَسَحَ وَجْهَهُ وَسَمَّاهُ عَبْدَ اللَّهِ» .

L17618 As for the naming: It was narrated to us through the chain of Muslim: Muhammad ibn Hatim narrated to us, Bahz ibn Asad narrated to us, Sulayman ibn al-Mughirah narrated to us from Thabit al-Bunani, from Anas ibn Malik, that Umm Sulaym - his mother - gave birth to a boy. She said to him: “O Anas, do not let anyone breastfeed him until you have taken him to the Messenger of Allah (peace be upon him and his family) at dawn.” He said: “When morning came, I carried him to the Messenger of Allah (peace be upon him and his family). He asked: ’Has Umm Sulaym given birth?’ I replied: ’Yes.’ I placed him in his lap. He (peace be upon him and his family) called for an Ajwa date from the Ajwa dates of Medina, chewed it, then placed it in the infant’s mouth. The baby began to move it in his mouth. He wiped the child’s face and named him Abdullah.”

وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَيْمَنَ نَا إبْرَاهِيمُ بْنُ إسْحَاقَ السَّرَّاجُ نَا عَمْرُو بْنُ مُحَمَّدٍ النَّاقِدُ أَنَا الْهَيْثَمُ بْنُ جَمِيلٍ نَا عَبْدُ اللَّهِ بْنُ الْمُثَنَّى بْنِ أَنَسٍ نَا ثُمَامَةُ بْنُ عَبْدِ اللَّهِ بْنِ أَنَسٍ عَنْ أَنَسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَقَّ عَنْ نَفْسِهِ بَعْدَمَا جَاءَتْهُ النُّبُوَّةُ»

L17619–17621 We have been narrated through the chain of Ibn Ayman: from Ibrāhīm ibn Isḥāq al-Sarrāj, from ʿAmr ibn Muḥammad al-Nāqid, from al-Haytham ibn Jamīl, from ʿAbdullāh ibn al-Muthannā ibn Anas, from Thumāmah ibn ʿAbdillāh ibn Anas, from Anas: “That the Messenger of Allāh (peace be upon him and his family) performed ʿAqīqah for himself after prophethood came to him.” It has been narrated to us from Ibn Sīrīn that he did not mind slaughtering the ʿaqīqah before the seventh day or after it—but we do not

وَرُوِّينَا عَنْ ابْنِ سِيرِينَ أَنَّهُ كَانَ لَا يُبَالِي أَنْ يَذْبَحَ الْعَقِيقَةَ قَبْلَ السَّابِعِ أَوْ بَعْدَهُ - وَلَا نَقُولُ بِهَذَا، وَلَا يَجْزِي قَبْلَ السَّابِعِ؛ لِأَنَّهُ خِلَافُ النَّصِّ وَلَمْ تَجِبْ الْعَقِيقَةُ بَعْدُ.

hold this opinion, nor is it valid to slaughter before the seventh day, as this contradicts the explicit text. The ʿaqīqah had not yet become obligatory.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الرَّبِيعِ بْنِ صُبَيْحٍ عَنْ الْحَسَنِ الْبَصْرِيِّ إذَا لَمْ يُعَقَّ عَنْك فَعُقَّ عَنْ نَفْسِك وَإِنْ كُنْت رَجُلًا. فَإِنْ قِيلَ: قَدْ رُوِيَ عَنْ عَمْرِو بْنِ شُعَيْبٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَمَرَ بِالْعَقِيقَةِ يَوْمَ سَابِعِ الْمَوْلُودِ وَتَسْمِيَتِهِ» .

L17622 From the narration of Waki‘ through Rabi‘ ibn Subayh from al-Hasan al-Basri: If no *‘Aqiqah* was performed for you, then perform it for yourself even if you are a man. If someone objects: It has been narrated from ‘Amr ibn Shu‘ayb that “the Prophet—peace be upon him and his family and grant him peace—commanded that the *‘Aqiqah* be performed on the newborn’s seventh day and his naming.”

قُلْنَا: هَذَا مُرْسَلٌ وَلَمْ يَصِحَّ فِي الْمَنْعِ مِنْ كَسْرِ عِظَامِهَا شَيْءٌ.

L17623 We said: This is mursal, and nothing authentic has been established regarding the prohibition from breaking her bones.

فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ «عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ وَقَدْ قِيلَ لَهَا فِي الْعَقِيقَةِ بِجَزُورٍ، فَقَالَتْ: لَا، بَلْ السُّنَّةُ أَفْضَلُ، عَنْ الْغُلَامِ شَاتَانِ مُكَافَأَتَانِ، وَعَنْ الْجَارِيَةِ شَاةٌ تُقْطَعُ جُدُولًا وَلَا يُكْسَرُ لَهَا عَظْمٌ فَيَأْكُلُ وَيُطْعِمُ وَيَتَصَدَّقُ، وَلْيَكُنْ ذَلِكَ يَوْمَ السَّابِعِ، فَإِنْ لَمْ يَكُنْ فَفِي أَرْبَعَةَ عَشَرَ، فَإِنْ لَمْ يَكُنْ فَفِي إحْدَى وَعِشْرِينَ» .

L17624 If it is said: You have narrated from ʿĀ’ishah, the Mother of the Believers, when it was mentioned to her regarding using a camel for the *ʿaqīqah*, she replied, “No, rather the *sunnah* is superior: for a boy, two equivalent sheep, and for a girl, one sheep. It should be divided into portions at the joints without breaking its bones, then eat, feed others, and give charity. This should be done on the seventh day; if not, then on the fourteenth day; and if not, then on the twenty-first day.”

قُلْنَا: هَذَا لَا يَصِحُّ؛ لِأَنَّهُ مِنْ رِوَايَةِ عَبْدِ الْمَلِكِ بْنِ أَبِي سُلَيْمَانَ الْعَرْزَمِيِّ - ثُمَّ لَوْ كَانَ صَحِيحًا لَمَا كَانَتْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ عَمَّنْ دُونَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: وَعَنْ عَطَاءٍ كَانُوا يَسْتَحِبُّونَ أَنْ لَا يُكْسَرَ لَهَا عَظْمٌ، فَإِنْ أَخْطَأَهُمْ أَنْ يَعُقُّوا يَوْمَ السَّابِعِ فَأَحَبُّ إلَيَّ أَنْ يُؤَخِّرَهُ إلَى السَّابِعِ الْآخَرِ - وَلَيْسَ هَذَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -. فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ عَنْ ابْنِ أَبِي شَيْبَةَ عَنْ حَفْصِ بْنِ غِيَاثٍ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بَعَثَ مِنْ عَقِيقَةِ الْحَسَنِ وَالْحُسَيْنِ إلَى الْقَابِلَةِ بِرِجْلِهَا، وَقَالَ: لَا تَكْسِرُوا مِنْهَا عَظْمًا» قُلْنَا: هَذَا مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ،

L17625 We said: This is not authentic because it is from the narration of ‘Abd al-Malik ibn Abi Sulayman al-‘Arzami. Furthermore, even if it were authentic, it would not constitute authoritative proof because it is transmitted from someone other than the Prophet (peace be upon him and his family). It is narrated from ‘Ata’ that they deemed it preferable not to break any bone for it. If they erred in performing the ‘aqiqah on the seventh day, I would prefer that they delay it to the following seventh day - but this is not from the Prophet (peace be upon him and his family). If it is argued: “You have indeed narrated from Ibn Abi Shaybah, from Hafṣ ibn Ghiyath, from Ja‘far ibn Muhammad, from his father that the Prophet (peace be upon him and his family) sent a leg from the ‘aqiqah of al-Hasan and al-Husayn to the midwife and said: ’Do not break any bone from it,’” we respond: This is a mursal narration, and there is no authoritative proof in a mursal narration. Those who rely on mursal narrations must necessarily accept this one, especially

given the statements of the Mother of the Believers, ‘Ata’, and others besides them who held the same view.

وَيَلْزَمُ مَنْ قَالَ بِالْمُرْسَلِ أَنْ يَقُولَ بِهَذَا لَا سِيَّمَا مَعَ قَوْلِ أُمِّ الْمُؤْمِنِينَ، وَعَطَاءٍ، وَغَيْرِهِمَا بِذَلِكَ.

L17626 It has been reported to us through the chain of Abu Bakr ibn Abi Shaybah, who reported to us from Ma‘n ibn ‘Isa, from Ibn Abi Dhi’b, from al-Zuhri regarding the aqiqah. He said: Its bones and head are to be broken, and the child is not to be touched by any of its blood.

رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نَا مَعْنُ بْنُ عِيسَى عَنِ ابْنِ أَبِي ذِئْبٍ عَنِ الزُّهْرِيِّ فِي الْعَقِيقَةِ قَالَ: تُكْسَرُ عِظَامُهَا وَرَأْسُهَا وَلَا يُمَسُّ الصَّبِيُّ بِشَيْءٍ مِنْ دَمِهَا.

L17627 It is narrated to us from ‘Aṭā’ via ‘Abd al-Razzāq, from Ibn Jurayj, regarding the ‘aqīqah: it is cooked plainly with water and salt, divided into portions, distributed among neighbors and close friends, and no part of it is to be given as charity.

وَرُوِّينَا عَنْ عَطَاءٍ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْهُ فِي الْعَقِيقَةِ تُطْبَخُ بِمَاءٍ وَمِلْحٍ آرَابًا، وَتُهْدَى فِي الْجِيرَانِ، وَالصَّدِيقِ، وَلَا يُتَصَدَّقُ مِنْهَا بِشَيْءٍ.

L17628–17629 Through the chain of Waki‘ from al-Rabī‘ from al-Ḥasan al-Baṣrī, he said: The ‘Aqīqah is sacrificed for the boy but not for the girl. Through the chain of Ibn Abī Shaybah from Jarīr and Sahl ibn Yūsuf (Sahl said: from ‘Amr from Muḥammad ibn Sīrīn) that he did not consider the ‘Aqīqah obligatory for the girl. Jarīr said from al-Mughīrah ibn Miqsam from Abū Wā’il, Shaqīq ibn Salamah, who said: The ‘Aqīqah is not sacrificed for the girl, nor is it an honor.

وَمِنْ طَرِيقِ وَكِيعٍ عَنِ الرَّبِيعِ عَنِ الْحَسَنِ الْبَصْرِيِّ قَالَ: يُعَقُّ عَنِ الْغُلَامِ وَلَا يُعَقُّ عَنِ الْجَارِيَةِ - وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ جَرِيرٍ، وَسَهْلِ بْنِ يُوسُفَ، قَالَ سَهْلٌ: عَنْ عَمْرٍو عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ كَانَ لَا يَرَى عَلَى الْجَارِيَةِ عَقِيقَةً - وَقَالَ جَرِيرٌ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ أَبِي وَائِلٍ هُوَ شَقِيقُ بْنُ سَلَمَةَ - قَالَ: لَا يُعَقُّ عَنِ الْجَارِيَةِ وَلَا كَرَامَةَ.

L17630 These statements impose no obligation, for there is no valid proof except in revelation from Allah the Exalted through His Messenger—peace and blessings be upon him and his progeny—as stated: *“Nor does he speak from desire. It is not but a revelation revealed”* [an-Najm 53:3–4]. Since Abū Ḥanīfah did not know the ʿaqīqah ritual, what of it? If only I knew why Abū Ḥanīfah did not know it—this is not something strange, for how often he remained unaware of Sunnah practices![3]

وَهَذِهِ أَقْوَالٌ لَا يَلْزَمُ مِنْهَا شَيْءٌ، لَا حُجَّةَ إِلَّا فِي وَحْيٍ عَنِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] وَلَمْ يَعْرِفْ أَبُو حَنِيفَةَ الْعَقِيقَةَ، فَكَانَ مَاذَا؟ لَيْتَ شِعْرِي إِذْ لَمْ يَعْرِفْهَا أَبُو حَنِيفَةَ مَا هَذَا بِنَكِرَةٍ فَطَالَمَا لَمْ يَعْرِفْ السُّنَنَ.

L17631 Those who do not consider it obligatory have relied on a weak narration from Abū Jaʿfar Muḥammad ibn ʿAlī ibn al-Ḥusayn stating: “The Udḥiyah abrogates every slaughter performed before it.” This constitutes no valid proof, for it is the statement of Muḥammad ibn ʿAlī, and the claim of abrogation cannot be established except through a text with a documented chain

وَاحْتَجَّ مَنْ لَمْ يَرَهَا وَاجِبَةً بِرِوَايَةٍ وَاهِيَةٍ عَنْ أَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ نَسَخَ الْأَضْحَى كُلَّ ذَبْحٍ كَانَ قَبْلَهُ وَهَذَا لَا حُجَّةَ فِيهِ، لِأَنَّهُ قَوْلُ مُحَمَّدِ بْنِ عَلِيٍّ وَلَا يَصِحُّ دَعْوَى النَّسْخِ إِلَّا بِنَصٍّ مُسْنَدٍ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

[3] **Qur’an references (L17630):** Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm).

of transmission traced back to the Messenger of Allāh (peace be upon him and his progeny).

L17632 And according to what we have narrated through the chain of Sufyan al-Thawri and Sufyan ibn Uyaynah—Sufyan [al-Thawri] from Zayd ibn Aslam from a man who reported from his father (Al-Thawri said: "from Banu Damrah," while Ibn Uyaynah said: "or from his uncle")—from the Prophet, peace and blessings be upon him and his family, when he was asked about Aqeeqah: "I dislike disobedience to parents. If someone has a child born to him and wishes to perform a sacrifice on the child's behalf, let him do so."

L17633 Ibn ʿUyaynah said: "Or [it is narrated] from his uncle: 'I witnessed the Prophet (may God bless him, his family, and grant him peace),' but this is baseless because it comes from a man whose identity is unknown among the people."

L17634 Al-Shafi'i and Al-Nakha'i said it is not obligatory, and they cited as evidence the narration of ʿAmr ibn Shuʿayb on the authority of his father on the authority of his grandfather: "The Prophet—peace be upon him and his family—was asked about the ʿaqīqah. He replied: 'I dislike _al-ʿuquq_ (disobedience/cutting). Whoever among you wishes to offer a sacrifice for their child may do so: two equivalent sheep for a male child and one sheep for a female child.'"

L17635 Abū Muḥammad said: "This is a document. Were it authentic, it would serve as proof for us against them, for it stipulates this obligation upon the boy and the female servant, and that it binds the father unless he wishes – this being the explicit wording of the narration and its legal implication. Thus, it is like Zakāt, and Zakāt al-Fiṭr falls under this ruling without distinction."

L17636–17638 Mālik said: The ʿaqīqah is not obligatory, but it is a sheep for the male and the female equally, to be slaughtered on the seventh day, excluding the day of his birth. If they do not perform it on the seventh, they perform it on the second. If they do not do so, they do not perform the ʿaqīqah after that. We know of no precedent for them in excluding the day of birth or restricting to the second week alone—nor are we aware of anyone who stated these two views prior to him.

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ، وَسُفْيَانَ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ رَجُلٍ عَنْ أَبِيهِ، قَالَ الثَّوْرِيُّ: مِنْ بَنِي ضَمْرَةَ، وَقَالَ ابْنُ عُيَيْنَةَ: أَوْ عَنْ عَمِّهِ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَدْ سُئِلَ عَنْ الْعَقِيقَةِ؟ لَا أُحِبُّ الْعُقُوقَ، مَنْ وُلِدَ لَهُ وَلَدٌ فَأَحَبَّ أَنْ يَنْسُكَ عَنْهُ فَلْيَفْعَلْ» .

وَقَالَ ابْنُ عُيَيْنَةَ: أَوْ عَنْ عَمِّهِ شَهِدْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهَذَا لَا شَيْءَ؛ لِأَنَّهُ عَنْ رَجُلٍ لَا يُدْرَى مَنْ هُوَ فِي الْخَلْقِ.

وَقَالَ الشَّافِعِيُّ، وَالنَّخَعِيُّ لَيْسَتْ وَاجِبَةً وَاحْتَجُّوا بِرِوَايَةِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «سُئِلَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ الْعَقِيقَةِ؟ فَقَالَ: لَا أُحِبُّ الْعُقُوقَ، مَنْ أَحَبَّ مِنْكُمْ أَنْ يَنْسُكَ عَنْ وَلَدِهِ فَلْيَفْعَلْ: عَنْ الْغُلَامِ شَاتَانِ مُكَافَأَتَانِ، وَعَنْ الْجَارِيَةِ شَاةٌ» .

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا صَحِيفَةٌ، وَلَوْ صَحَّ لَكَانَ حُجَّةً لَنَا عَلَيْهِمْ؛ لِأَنَّ فِيهِ إيجَابَ ذَلِكَ عَلَى الْغُلَامِ وَالْجَارِيَةِ، وَأَنَّ ذَلِكَ يَلْزَمُ الْأَبَ إلَّا أَنْ يَشَاءَ - هَذَا نَصُّ الْخَبَرِ وَمُقْتَضَاهُ، فَهِيَ كَالزَّكَاةِ، وَزَكَاةُ الْفِطْرِ فِي هَذَا وَلَا فَرْقَ

وَقَالَ مَالِكٌ: الْعَقِيقَةُ لَيْسَتْ وَاجِبَةً، لَكِنَّهَا شَاةٌ عَنْ الذَّكَرِ وَالْأُنْثَى سَوَاءً تُذْبَحُ يَوْمَ السَّابِعِ، وَلَا يُعَدُّ فِيهَا يَوْمَ وِلَادَتِهِ، فَإِنْ لَمْ يَعُقُّوا فِي السَّابِعِ عَقُّوا فِي الثَّانِي - فَإِنْ لَمْ يَفْعَلُوا لَمْ يَعُقُّوا بَعْدَ ذَلِكَ -: وَمَا نَعْلَمُ لَهُمْ سَلَفًا فِي أَنْ لَا يُعَدَّ يَوْمُ الْوِلَادَةِ، وَلَا فِي الِاقْتِصَارِ عَلَى السَّابِعِ الثَّانِي فَقَطْ - وَلَا نَدْرِي أَحَدًا قَالَ هَذَيْنِ الْقَوْلَيْنِ قَبْلَهُ.

وَأَمَّا الْقَوْلُ بِشَاةٍ عَنْ الذَّكَرِ وَالْأُنْثَى، فَقَدْ رُوِيَ عَنْ طَائِفَةٍ مِنْ السَّلَفِ -: مِنْهُمْ عَائِشَةُ أُمُّ الْمُؤْمِنِينَ، وَأَسْمَاءُ أُخْتُهَا وَلَا يَصِحُّ ذَلِكَ عَنْهُمَا، لِأَنَّهَا عَنْ ابْنِ لَهِيعَةَ - وَهُوَ سَاقِطٌ - أَوْ عَنْ سُلَافَةَ مَوْلَاةِ حَفْصَةَ - وَهِيَ مَجْهُولَةٌ - أَوْ عَنْ أُسَامَةَ بْنِ زَيْدٍ اللَّيْثِيِّ - وَهُوَ ضَعِيفٌ - أَوْ عَنْ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ، وَهِيَ صَحِيفَةٌ - وَإِنَّمَا الصَّحِيحُ عَنْ أُمِّ الْمُؤْمِنِينَ مَا ذَكَرْنَا عَنْهَا قَبْلُ، لَكِنَّهُ عَنْ ابْنِ عُمَرَ صَحِيحٌ.

L17639 As for the opinion prescribing a sheep for both a male and female child, this has been reported from a group of early predecessors—including ʿĀ'ishah, the Mother of the Believers, and her sister Asmā'—but this is not authentically established from them. This is because the narration is transmitted through Ibn Lahīʿah, who is rejected; or through Sulāfah, the client of Ḥafṣah, who is unknown; or through Usāmah ibn Zayd al-Laythī, who is weak; or through Makḥramah ibn Bukayr, from his father—and this is a written document. The authentic narration from the Mother of the Believers is what we previously mentioned from her. However, the narration from Ibn ʿUmar is authentic.

وَاحْتَجَّ مَنْ رَأَى هَذَا بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَيْمَنَ نَا أَحْمَدُ بْنُ مُحَمَّدٍ الْبِرْتِيُّ نَا أَبُو مَعْمَرٍ عَبْدُ اللَّهِ بْنُ عَمْرٍو الرَّقِّيِّ نَا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ التَّنُّورِيُّ نَا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَقَّ عَنْ الْحَسَنِ كَبْشًا وَعَنْ الْحُسَيْنِ كَبْشًا» .

L17640 Those who hold this view cite as evidence what was transmitted to us through Ibn Ayman's chain: Ahmad ibn Muhammad al-Birtī narrated to us, Abu Ma'mar 'Abdullah ibn 'Amr al-Raqqī narrated to us, 'Abd al-Warith ibn Sa'īd al-Tannūrī narrated to us, Ayyub al-Sikhtiyānī narrated from 'Ikrimah, from Ibn 'Abbās: "The Messenger of Allah - may Allah bless him and his family and grant him peace - offered a ram as 'aqīqah for al-Hasan and a ram for al-Husayn."

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نَا مُحَمَّدُ بْنُ غَالِبٍ التَّمَّامُ نَا الْحَارِثُ بْنُ مِسْكِينٍ نَا ابْنُ وَهْبٍ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ قَتَادَةَ عَنْ أَنَسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَقَّ عَنْ الْحَسَنِ وَالْحُسَيْنِ شَاتَيْنِ» .

L17641 From the chain of Ibn al-Jahm: Muḥammad ibn Ghālib al-Tamtām narrated to us, al-Ḥārith ibn Miskīn narrated to us, Ibn Wahb narrated to us from Jarīr ibn Ḥāzim from Qatādah from Anas that the Messenger of Allāh—peace and blessings be upon him and his family—sacrificed two sheep as ʿAqiqah for al-Ḥasan and al-Ḥusayn.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَانِ عِنْدَنَا أَثَرَانِ صَحِيحَانِ إلَّا أَنَّهُ لَا حُجَّةَ فِيهِمَا لَهُمْ، لِوُجُوهٍ -:

L17642 Abū Muḥammad said: These two are, in our view, two authentic traditions; however, they constitute no valid evidence for them, on account of various considerations:

أَوَّلُهَا: أَنَّ حَدِيثَ أُمِّ كُرْزٍ زَائِدٌ عَلَى مَا فِي هَذَيْنِ الْخَبَرَيْنِ وَالزِّيَادَةُ مِنْ الْعَدْلِ لَا يَحِلُّ تَرْكُهَا.

L17643 The first is that the ḥadīth of Umm Kurz contains an addition to what is in these two reports, and it is prohibited to disregard an addition from a reliable narrator.

وَالثَّانِي: أَنَّنَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا قُتَيْبَةَ نَا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي يَزِيدَ عَنْ سِبَاعِ بْنِ ثَابِتٍ عَنْ أُمِّ كُرْزٍ قَالَتْ: «أَتَيْتُ رَسُولَ اللَّهِ - صَلَّى

L17644 The second: We have been narrated through the chain of Ahmad ibn Shuʿayb—from Qutaybah, from Sufyān—who is Ibn ʿUyaynah—from ʿUbayd Allāh ibn Abī Yazīd, from Sibāʿ ibn Thābit, from Umm Kurz, who said: "I came to the Messenger of Allah (peace be upon him and his family) at Al-

Ḥudaybiyah to ask him about the meat of sacrificial animals. I heard him say: ‘For a male child, two sheep are due, and for a female child, one sheep. It does not matter whether the sheep are male or female.’”

L17645 There is no disagreement that Al-Hasan—may Allah be pleased with him—was born in the year of Uhud, and that Al-Husayn—may Allah be pleased with him—was born the following year, two years before Al-Hudaybiyah. Thus, the ruling adhered to the later scholar’s position, not the Prophet’s earlier action—peace be upon him—which was merely a supererogatory act.

L17646–17647 The third perspective: We have been narrated through the chain of Ibn al-Jahm: Muʿadh reported to us; al-Qaʿnabī reported to us; Sulaymān ibn Bilāl reported from Jaʿfar ibn Muḥammad ibn ʿAlī ibn al-Ḥusayn, from his father, from his grandfather: “Fāṭimah, daughter of the Messenger of Allah—ṣallā Allāhu ʿalayhi wa ālihi wa sallam—performed the ʿaqīqah for al-Ḥasan and al-Ḥusayn when she gave birth to them, one sheep for each.” Abū Muḥammad said: There is no doubt that what Fāṭimah—raḍiya Allāhu ʿanhā—used for the ʿaqīqah differed from what the Messenger of Allah—ṣallā Allāhu ʿalayhi wa ālihi wa sallam—used. Thus, from these two reports, it becomes clear that he—ʿalayhi al-salām—performed the ʿaqīqah for each of them with a ram, while Fāṭimah—raḍiya Allāhu ʿanhā—performed the ʿaqīqah for each with a sheep. The result for each of them was a ram and a sheep, a ram and a sheep.

L17648 And we have also been narrated a report such that, had they obtained its like, they would have rejoiced: as we have been narrated through the chain of Aḥmad ibn Shuʿayb – Aḥmad ibn Ḥafṣ ibn ʿAbdullāh narrated to us, saying: My father narrated to me from Ibrāhīm ibn Ṭahmān, from al-Ḥajjāj ibn al-Ḥajjāj, from Qatādah, from ʿIkrimah, from Ibn ʿAbbās, who said: “The Messenger of Allah (may Allah bless him and his family and grant him peace) performed ʿaqīqah on behalf of al-Ḥasan and al-Ḥusayn (may Allah be pleased with them both) with two large rams.”

L17649 We have also been narrated a similar report through the chain of Ibn Jurayj from the Mother of the Believers ʿĀ’ishah—though this chain is disconnected—and it is surprising that Sufyān al-Thawrī narrated that report from

اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِالْحُدَيْبِيَةِ أَسْأَلُهُ عَنْ لُحُومِ الْهَدْيِ؟ فَسَمِعْتُهُ يَقُولُ: عَلَى الْغُلَامِ شَاتَانِ، وَعَلَى الْجَارِيَةِ شَاةٌ، لَا يَضُرُّكُمْ ذُكْرَانًا كَانَتْ أَمْ إِنَاثًا» .

وَلَا خِلَافَ فِي أَنَّ مَوْلِدَ الْحَسَنِ - رَضِيَ اللَّهُ عَنْهُ - كَانَ " عَامَ أُحُدٍ " وَأَنَّ مَوْلِدَ الْحُسَيْنِ - رَضِيَ اللَّهُ عَنْهُ - كَانَ فِي الْعَامِ الثَّانِي لَهُ وَذَلِكَ قَبْلَ الْحُدَيْبِيَةِ بِسَنَتَيْنِ، فَصَارَ الْحُكْمُ لِقَوْلِ الْمُتَأَخِّرِ، لَا لِفِعْلِهِ الْمُتَقَدِّمِ الَّذِي إنَّمَا كَانَ تَطَوُّعًا مِنْهُ - عَلَيْهِ السَّلَامُ -.

وَالْوَجْهُ الثَّالِثُ: أَنَّنَا رُوِّينَا مِنْ طَرِيقِ ابْنِ الْجَهْمِ نَا مُعَاذٌ نَا الْقَعْنَبِيُّ نَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ جَعْفَرِ بْنِ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ، عَنْ أَبِيهِ عَنْ جَدِّهِ " أَنَّ فَاطِمَةَ بِنْتَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَقَّتْ عَنْ الْحَسَنِ وَالْحُسَيْنِ حِينَ وَلَدَتْهُمَا شَاةً شَاةً ". قَالَ أَبُو مُحَمَّدٍ: لَا شَكَّ فِي أَنَّ الَّذِي عَقَّتْ بِهِ فَاطِمَةُ - رَضِيَ اللَّهُ عَنْهَا - هُوَ غَيْرُ الَّذِي عَقَّ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَاجْتَمَعَ مِنْ هَذَيْنِ الْخَبَرَيْنِ أَنَّهُ - عَلَيْهِ السَّلَامُ - عَقَّ عَنْ كُلِّ وَاحِدٍ مِنْهُمَا بِكَبْشٍ وَعَقَّتْ فَاطِمَةُ - رَضِيَ اللَّهُ عَنْهَا - عَنْ كُلِّ وَاحِدٍ مِنْهُمَا بِشَاةٍ، فَحَصَلَ عَنْ كُلِّ وَاحِدٍ مِنْهُمَا كَبْشٌ وَشَاةٌ، كَبْشٌ وَشَاةٌ.

وَقَدْ رُوِّينَا أَيْضًا خَبَرًا لَوْ ظَفَرُوا بِمِثْلِهِ لَاسْتَبْشَرُوا -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نَا أَحْمَدُ بْنُ حَفْصِ بْنِ عَبْدِ اللَّهِ حَدَّثَنِي أَبِي نَا إبْرَاهِيمُ بْنُ طَهْمَانَ عَنْ الْحَجَّاجِ بْنِ الْحَجَّاجِ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ «عَقَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ الْحَسَنِ وَالْحُسَيْنِ - رَضِيَ اللَّهُ عَنْهُمَا - بِكَبْشَيْنِ كَبِيرَيْنِ» .

Ayyūb, from ʿIkrimah: “The Prophet—peace and blessings be upon him and his family—performed the *ʿAqiqah* for al-Ḥasan and al-Ḥusayn with a ram for each.”

وَرُوِّينَا أَيْضًا مِثْلَ هَذَا مِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ أُمِّ الْمُؤْمِنِينَ عَائِشَةَ وَهُوَ مُنْقَطِعٌ - وَالْعَجَبُ أَنَّ سُفْيَانَ الثَّوْرِيَّ رَوَى ذَلِكَ الْخَبَرَ عَنْ أَيُّوبَ عَنْ عِكْرِمَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَقَّ عَنْ الْحَسَنِ وَالْحُسَيْنِ بِكَبْشٍ كَبْشٍ» .

L17650 Similarly, he transmitted it from Ayyūb as well. On weaker grounds than this, they seek pretexts to reject reports and allege inconsistency. We do not heed this—our reliance is upon what we mentioned concerning acceptance of the additional and the other. Success is from Allah, the Exalted.

وَكَذَلِكَ أَيْضًا أَرْسَلَهُ عَنْ أَيُّوبَ - وَبِأَقَلَّ مِنْ هَذَا يَتَعَلَّلُونَ فِي رَدِّ الْأَخْبَارِ وَيَدَّعُونَ أَنَّهُ اضْطِرَابٌ، وَنَحْنُ لَا نُرَاعِي هَذَا، وَإِنَّمَا مُعْتَمَدُنَا عَلَى مَا ذَكَرْنَا مِنْ الْأَخْذِ بِالزَّائِدِ وَالْآخَرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.



AL-MUHALLA

كِتَابُ النُّذُورِ

The Book of Vows

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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The Book of Vows: A legal issue wherein he vowed obedience to Allah, the Mighty and Majestic.

[كِتَابُ النُّذُورِ] [مَسْأَلَةٌ نَذَرَ طَاعَةً لِلَّهِ عَزَّ وَجَلَّ]

Issue 1115: We dislike vows and prohibit them. However, if someone vows an act of obedience to Allah the Almighty, fulfilling it becomes obligatory as a duty if the vow was made purely as a means of drawing closer to Allah the Almighty, in gratitude for a blessing from the blessings of Allah the Exalted, or if Allah the Exalted shows him a hope that involves no injustice toward a Muslim, and no sin:

١١١٥ - مَسْأَلَةٌ: نَكْرَهُ النَّذْرَ وَنَنْهَى عَنْهُ، لَكِنْ مَعَ ذَلِكَ مَنْ نَذَرَ طَاعَةً لِلَّهِ عَزَّ وَجَلَّ لَزِمَهُ الْوَفَاءُ بِهَا فَرْضًا إِذَا نَذَرَهَا تَقَرُّبًا إِلَى اللَّهِ عَزَّ وَجَلَّ مُجَرَّدًا أَوْ شُكْرًا لِنِعْمَةٍ مِنْ نِعَمِ اللَّهِ تَعَالَى، أَوْ إِنْ أَرَاهُ اللَّهُ تَعَالَى أَمَلًا لَا ظُلْمَ فِيهِ لِمُسْلِمٍ، وَلَا لِمَعْصِيَةٍ -:

Such as saying: "I must give to Allah such and such charity," or saying: "Fasting such and such days or more," or Hajj, or jihad, or remembrance of Allah the Exalted, or guarding the frontier, or visiting a sick person, or attending a funeral, or visiting the grave of a prophet or a righteous man, or walking or riding, or traveling to a ritual site associated with Mecca, or to Medina, or to Jerusalem (Bayt al-Maqdis), or freeing a specific slave, or an unspecified one, or any act of obedience whatsoever: this is pure devotion.

مِثْلُ أَنْ يَقُولَ: لِلَّهِ عَلَيَّ صَدَقَةُ كَذَا وَكَذَا، أَوْ يَقُولَ: صَوْمُ كَذَا وَكَذَا فَأَكْثَرَ، أَوْ حَجٌّ، أَوْ جِهَادٌ، أَوْ ذِكْرٌ لِلَّهِ تَعَالَى، أَوْ رِبَاطٌ، أَوْ عِيَادَةُ مَرِيضٍ، أَوْ شُهُودُ جِنَازَةٍ، أَوْ زِيَارَةُ قَبْرِ نَبِيٍّ، أَوْ رَجُلٍ صَالِحٍ، أَوْ الْمَشْيُ أَوْ الرُّكُوبُ، أَوْ النُّهُوضُ إِلَى مَشْعَرٍ مِنْ مَشَاعِرِ مَكَّةَ، أَوْ الْمَدِينَةِ، أَوْ إِلَى بَيْتِ الْمَقْدِسِ، أَوْ عِتْقُ مُعَيَّنٍ، أَوْ غَيْرُ مُعَيَّنٍ، أَوْ أَيُّ طَاعَةٍ كَانَتْ -: فَهَذَا هُوَ التَّقَرُّبُ الْمُجَرَّدُ.

If He delivers me from such-and-such, grants me authority over such-and-such matter, reunites me with my father, so-and-so my friend, or my family—or if one mentions any of the acts of devotion we mentioned—then charity is incumbent upon me for Allah's sake.

أَوْ يَقُولَ: لِلَّهِ عَلَيَّ إِذَا خَلَّصَنِي مِنْ كَذَا، أَوْ إِذَا مَلَّكَنِي أَمْرَ كَذَا، أَوْ إِذَا جَمَعَنِي مَعَ أَبِي، أَوْ فُلَانٍ صَدِيقِي، أَوْ مَعَ أَهْلِي صَدَقَةٌ، أَوْ ذَكَرَ شَيْئًا مِنْ الْقُرَبِ الَّتِي ذَكَرْنَا.

"Or he says: 'Upon me is a vow to Allah if He sends down rain, should I recover from my illness, should I be delivered, should I acquire authority over such-and-such a matter, or anything similar to this.'"

أَوْ يَقُولَ: عَلَيَّ لِلَّهِ إِنْ أَنْزَلَ الْغَيْثَ، أَوْ إِنْ صَحَحْت مِنْ عِلَّتِي، أَوْ إِنْ تَخَلَّصْت، أَوْ إِنْ مَلَكْت أَمْرَ كَذَا، أَوْ مَا أَشْبَهَ هَذَا.

If one vows to commit an act of disobedience to Allah, or an act that is neither obedience nor disobedience, fulfilling such a vow is not obligatory.

فَإِنْ نَذَرَ مَعْصِيَةً لِلَّهِ، أَوْ مَا لَيْسَ طَاعَةً وَلَا مَعْصِيَةً: لَمْ يَلْزَمْ الْوَفَاءُ بِشَيْءٍ مِنْ ذَلِكَ -:

Such as reciting poetry, or dyeing his garment red, or anything resembling this—and likewise, one who vows to perform obedience if he commits a sin, or when he sees a sin—

مِثْلُ أَنْ يُنْشِدَ شِعْرًا، أَوْ أَنْ يَصْبُغَ ثَوْبَهُ أَحْمَرَ، أَوْ مَا أَشْبَهَ هَذَا - وَكَذَلِكَ مَنْ نَذَرَ طَاعَةً إِنْ نَالَ مَعْصِيَةً، أَوْ إِذَا رَأَى مَعْصِيَةً -

For example, if one declares, "Upon me is a fast for Allah if so-and-so is killed or beaten," even though that so-and-so does not warrant such harm.

مِثْلَ أَنْ يَقُولَ: لِلَّهِ عَلَيَّ صَوْمٌ إنْ قُتِلَ فُلَانٌ، أَوْ إنْ ضُرِبَ، وَذَلِكَ الْفُلَانُ لَا يَسْتَحِقُّ شَيْئًا مِنْ ذَلِكَ.

L17660–17661 أَوْ قَالَ: لِلَّهِ عَلَيَّ صَدَقَةٌ إذَا أَرَانِي مَصْرَعَ فُلَانٍ - وَذَلِكَ الْفُلَانُ مَظْلُومٌ -: فَكُلُّ هَذَا لَا يَلْزَمُ الْوَفَاءُ بِشَيْءٍ مِنْهُ وَلَا كَفَّارَةَ فِي شَيْءٍ مِنْهُ وَلْيَسْتَغْفِرْ اللَّهَ تَعَالَى فَقَطْ.

L17662 وَكَذَلِكَ مَنْ أَخْرَجَ نَذْرَهُ مَخْرَجَ الْيَمِينِ، فَقَالَ عَلَيَّ الْمَشْيُ إلَى مَكَّةَ إنْ كَلَّمْت فُلَانًا، أَوْ عَلَيَّ عِتْقُ خَادِمِي فُلَانَةَ إنْ كَلَّمْت فُلَانًا، أَوْ إنْ زُرْت فُلَانًا، فَكُلُّ هَذَا لَا يَلْزَمُ الْوَفَاءُ بِهِ، وَلَا كَفَّارَةَ فِيهِ إلَّا الِاسْتِغْفَارُ فَقَطْ.

L17663 فَإِنْ قَالَ: لِلَّهِ عَلَيَّ وَلَمْ يُسَمِّ شَيْئًا فَلَيْسَ عَلَيْهِ إلَّا كَفَّارَةُ يَمِينٍ فَقَطْ. وَقَالَ قَوْمٌ: مَا خَرَجَ مِنْ هَذَا مَخْرَجَ الْيَمِينِ فَعَلَيْهِ الْوَفَاءُ بِهِ. وَقَالَ آخَرُونَ: مَا خَرَجَ مِنْ هَذَا مَخْرَجَ الْيَمِينِ فَلَيْسَ فِيهِ إلَّا كَفَّارَةُ يَمِينٍ.

L17664–17666 قَالَ أَبُو مُحَمَّد: بُرْهَانُ صِحَّةِ قَوْلِنَا -: أَمَّا الْمَنْعُ مِنْ النَّذْرِ فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ وَشُعْبَةَ، كِلَاهُمَا عَنْ مَنْصُورٍ عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةَ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنَّهُ نَهَى عَنْ النَّذْرِ، وَقَالَ: إنَّهُ لَا يَرُدُّ شَيْئًا وَلَكِنْ يُسْتَخْرَجُ بِهِ مِنْ الْبَخِيلِ» هَذَا لَفْظُ سُفْيَانَ. وَلَفْظُ شُعْبَةَ إنَّهُ لَا يَأْتِي بِخَيْرٍ مَكَانَ «إنَّهُ لَا يَرُدُّ شَيْئًا، وَأَنَّهُ يُسْتَخْرَجُ بِهِ مِنْ الْبَخِيلِ» وَاتَّفَقَا فِي غَيْرِ ذَلِكَ. وَصَحَّ أَيْضًا مُسْنَدًا مِنْ طَرِيقِ أَبِي هُرَيْرَةَ. وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ ابْنِ عَجْلَانَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ " أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: لَا أَنْذِرُ أَبَدًا " وَهَذَا يُوجِبُ مَا قُلْنَا: مِنْ أَنَّهُ مَنْهِيٌّ عَنْهُ فَإِذَا وَقَعَ لَزِمَ وَاسْتُخْرِجَ بِهِ مِنْ الْبَخِيلِ. وَأَيْضًا قَوْلُ اللَّهِ تَعَالَى: {يُوفُونَ بِالنَّذْرِ وَيَخَافُونَ يَوْمًا

Or if he said: "I owe a charity to Allah if He shows me the place where so-and-so will die"—and that so-and-so is oppressed—then in all such instances, none of this requires fulfillment nor entails expiation. Let him seek forgiveness from Allah, the Exalted, only.

Similarly, one who formulates his vow in the manner of an oath, such as saying, "It is incumbent upon me to walk to Mecca if I speak to so-and-so male," or, "It is incumbent upon me to emancipate my female servant so-and-so female if I speak to so-and-so male," or, "If I visit so-and-so male," all of this does not require fulfillment, nor does any expiation apply to it except istighfār alone.

If he says, "To Allah is incumbent upon me," without specifying anything, there is nothing incumbent upon him except the expiation of an oath alone. Some jurists said: If this is not formulated in the manner of an oath, fulfilling the vow is obligatory upon him. Others said: If it is not formulated in the manner of an oath, there is nothing required except the expiation of an oath.

Abu Muhammad said: The evidence supporting the validity of our position—: As for the prohibition of vows, this is based on what we transmitted through the chains of Sufyān and Shu'bah—both reporting from Manṣūr from 'Abdullāh ibn Murrah from Ibn 'Umar from the Prophet, peace and blessings be upon him and his family: "He forbade vows, saying: 'It does not avert anything, but rather it is extracted from a miser.'" This is Sufyān's wording. Shu'bah's wording states: "It does not bring good," instead of "It does not avert anything; rather, it is extracted from a miser." They concurred on the remainder. This is also authentically established as a musnad through the chain of Abū Hurayrah. We transmitted through Sufyān ibn 'Uyaynah's chain from Ibn 'Ajlān from Sa'īd ibn Abī Sa'īd al-Maqburī that he heard Abū Hurayrah declare: "I will never make a vow." This necessitates what we said: that vows are prohibited, but if undertaken, they become binding and it is extracted from a miser. Furthermore, Allah's words: "They fulfill

vows and dread a day whose evil is widespread" (Quran 76:7); "O believers, fulfill your covenants" (Quran 5:1); "Whoever transgresses Allah's limits has wronged themselves" (Quran 65:1); and "Say: My Lord has forbidden only indecencies—open and secret—sin, and oppression without justification" (Quran 7:33). All this confirms that whatever Allah has prohibited, it is not lawful for anyone to do. From this, it is established that whoever vows such a thing has vowed to disobey Allah—the Mighty and Majestic—while Allah the Exalted has prohibited him from disobeying Him. Thus, it is conclusively confirmed that the vows and contracts which Allah the Exalted has commanded to fulfill are solely vows of obedience, nothing more. A vow of obedience is precisely what we have described, with no addition. Necessarily, everyone knows that if someone vows obedience but then witnesses disobedience, gains the capacity for disobedience, or finds joy in witnessing disobedience—all of that from him constitutes disobedience to Allah the Exalted. No Muslim doubts any of this. Therefore, it is confirmed that all such vows are vows of disobedience, and fulfilling them is impermissible. As for what entails neither obedience nor disobedience, the one making such a vow is imposing what Allah the Exalted has neither obligated nor recommended. Whoever does this has transgressed Allah's limits, and his action in this is itself disobedience. Thus, he is not bound to fulfill what Allah the Exalted has not imposed upon him.

It has been narrated to us through the chain of Ahmad ibn Shuʿayb: Abu Kurayb Muhammad ibn al-ʿAlā' narrated to us, from Ibn Idrīs (i.e., ʿAbdullāh), from ʿUbaydullāh ibn ʿUmar, from Ṭalḥah ibn ʿAbd al-Malik, from al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq, from ʿĀ'ishah, the Mother of the Believers, who said: I heard the Messenger of Allah—peace and blessings be upon him and his family—say, "Whoever vows to obey Allah the Exalted, let him obey Him; and whoever vows to disobey Allah the Exalted, let him not disobey Him." Ahmad said: Ṭalḥah ibn ʿAbd al-Malik is trustworthy, trustworthy, trustworthy.

Through the chain of al-Bukhārī: Mūsā ibn Ismāʿīl narrated to us, from Wuḥayb ibn Khālid, from Ayyūb al-Sakhtiyānī, from ʿIkrimah, from Ibn ʿAbbās: "While the Messenger of Allah—peace and blessings be upon him and

كَانَ شَرُّهُ مُسْتَطِيرًا} [الإنسان: ٧] . وقَوْله تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ} [المائدة: ١] {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] . وقَوْله تَعَالَى {قُلْ إِنَّمَا حَرَّمَ رَبِّيَ الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَنَ وَالإِثْمَ وَالْبَغْيَ بِغَيْرِ الْحَقِّ} [الأعراف: ٣٣] . فَصَحَّ بِهَذَا كُلِّهِ أَنَّ كُلَّ مَا نَهَى اللَّهُ تَعَالَى عَنْهُ فَلَا يَحِلُّ لأَحَدٍ أَنْ يَفْعَلَهُ - فَصَحَّ مِنْ هَذَا أَنَّ مَنْ نَذَرَهُ فَقَدْ نَذَرَ أَنْ يَعْصِيَ اللَّهَ عَزَّ وَجَلَّ وَقَدْ نَهَاهُ اللَّهُ تَعَالَى عَنْ مَعْصِيَتِهِ. فَقَدْ صَحَّ يَقِينًا أَنَّ النُّذُورَ وَالْعُقُودَ الَّتِي أَمَرَ اللَّهُ تَعَالَى بِالْوَفَاءِ بِهَا إِنَّمَا هِيَ نَذْرُ الطَّاعَةِ فَقَطْ، وَلَيْسَ نَذْرُ الطَّاعَةِ إِلَّا مَا ذَكَرْنَا وَلَا مَزِيدَ، وَبِالضَّرُورَةِ يَدْرِي كُلُّ أَحَدٍ أَنَّ مَنْ نَذَرَ طَاعَةً إِنْ رَأَى مَعْصِيَةً أَوْ إِنْ تَمَكَّنَ مِنْ مَعْصِيَةٍ، أَوْ إِذْ رَأَى مَعْصِيَةً سُرُورًا بِهَا - فَإِنَّ كُلَّ ذَلِكَ مِنْهُ عِصْيَانٌ لِلَّهِ تَعَالَى، لَا يَشُكُّ فِي شَيْءٍ مِنْ هَذَا مُسْلِمٌ. فَصَحَّ أَنَّهُ كُلَّهُ نَذْرُ مَعْصِيَةٍ فَلَا يَحِلُّ الْوَفَاءُ بِهِ. وَأَمَّا مَا لَا طَاعَةَ فِيهِ وَلَا مَعْصِيَةَ، فَإِنَّ نَاذِرَهُ مُوجِبٌ مَا لَمْ يُوجِبْهُ اللَّهُ تَعَالَى وَلَا نَدَبَ إِلَيْهِ، وَمَنْ فَعَلَ هَذَا فَقَدْ تَعَدَّى حُدُودَ اللَّهِ تَعَالَى، فَفِعْلُهُ لِذَلِكَ مَعْصِيَةٌ، فَلَا يَلْزَمُهُ الْوَفَاءُ بِمَا لَمْ يَلْزَمْهُ اللَّهُ تَعَالَى مِنْ ذَلِكَ. رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ نا ابْنُ إِدْرِيسَ هُوَ عَبْدُ اللَّهِ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ طَلْحَةَ بْنِ عَبْدِ الْمَلِكِ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -[يَقُولُ] : «مَنْ نَذَرَ أَنْ يُطِيعَ اللَّهَ تَعَالَى فَلْيُطِعْهُ، وَمَنْ نَذَرَ أَنْ يَعْصِيَ اللَّهَ تَعَالَى فَلَا يَعْصِهِ» . قَالَ أَحْمَدُ: طَلْحَةُ بْنُ عَبْدِ الْمَلِكِ ثِقَةٌ ثِقَةٌ ثِقَةٌ. وَمِنْ طَرِيقِ الْبُخَارِيِّ نا مُوسَى بْنُ إِسْمَاعِيلَ نا وُهَيْبُ بْنُ خَالِدٍ نا أَيُّوبُ هُوَ السَّخْتِيَانِيُّ - عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بَيْنَمَا هُوَ يَخْطُبُ إِذَا هُوَ بِرَجُلٍ قَائِمٍ فَسَأَلَ عَنْهُ؟ فَقَالُوا

his family—was delivering a sermon, he noticed a man standing. He asked about him, and they replied, 'This is Abū Isrā'īl, who vowed to stand without sitting, not seek shade, not speak, and to fast.' The Prophet—peace and blessings be upon him and his family—said, 'Order him to speak, seek shade, sit, and complete his fast.'"

All of this aligns precisely with our position, and praise be to Allah. He—peace and blessings be upon him and his family—commanded fulfilling the fast, which is an act of obedience, and prohibited fulfilling what is neither obedience nor disobedience, such as standing, abstaining from shade, and abstaining from speech.[1]

L17667–17668 Abu Thawr said: It is incumbent upon him to abandon speech, and he supported this by the words of the Almighty: {I have vowed to the Most Merciful a fast, so I will not speak to any human today} [Maryam: 26], and His words: {Your sign is that you will not speak to the people for three consecutive nights} [Maryam: 10]. Ali said: This is the Shariah of Zakariyya and Maryam, peace be upon them, and we are not obligated by the Shariah of anyone other than our Prophet, may Allah bless him and his family and grant him peace—especially since their situation was a miraculous sign among the signs of prophethood, and such signs are not meant for us. Moreover, the Messenger of Allah, may Allah bless him and his family and grant him peace, prohibited abstaining from speech, as we have mentioned.[2]

L17669 From the chain of Abd al-Razzaq via Ibn Jurayj via Abdullah ibn Tawus, who said: I heard my father say, "Since I reached the age of understanding, there is no valid vow involving disobedience to Allah. No vow holds except concerning matters within your ownership."

From the chain of Abd al-Razzaq via Ma'mar, who said: I asked al-Zuhri about a vow made by a person. He replied, "If it entails obedience to Allah, he must fulfill it. If it entails disobedience to Allah, let him draw closer to Allah Almighty through whatever act he wishes."

[1] **Qur'an references (L17664):** Qur'an 76:7 (Al-Insan); Qur'an 5:1 (Al-Ma'idah); Qur'an 65:1 (At-Talaq); Qur'an 7:33 (Al-A'raf).

[2] **Qur'an references (L17668):** Qur'an 19:26 (Maryam); Qur'an 19:10 (Maryam).

أَبُو إِسْرَائِيلَ نَذَرَ أَنْ يَقُومَ وَلَا يَقْعُدَ وَلَا يَسْتَظِلَّ وَلَا يَتَكَلَّمَ وَيَصُومَ فَقَالَ النَّبِيُّ صَلَّى - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: مُرْهُ فَلْيَتَكَلَّمْ وَلْيَسْتَظِلَّ وَلْيَقْعُدْ وَلْيُتِمَّ صَوْمَهُ» . وَهَذَا كُلُّهُ هُوَ نَفْسُ قَوْلِنَا وَلِلَّهِ الْحَمْدُ، أَمَرَهُ - عَلَيْهِ السَّلَامُ - بِالْوَفَاءِ بِالصَّوْمِ الَّذِي هُوَ طَاعَةٌ وَنَهَاهُ عَنْ الْوَفَاءِ بِمَا لَيْسَ طَاعَةً وَلَا مَعْصِيَةً مِنْ الْوُقُوفِ وَتَرْكِ الِاسْتِظْلَالِ وَتَرْكِ الْكَلَامِ.

وَقَدْ قَالَ أَبُو ثَوْرٍ: يَلْزَمُهُ تَرْكُ الْكَلَامِ وَاحْتَجَّ لَهُ بِقَوْلِهِ تَعَالَى: {إِنِّي نَذَرْتُ لِلرَّحْمَنِ صَوْمًا فَلَنْ أُكَلِّمَ الْيَوْمَ إِنْسِيًّا} [مريم: ٢٦] . وَبِقَوْلِهِ تَعَالَى {آيَتُكَ أَلا تُكَلِّمَ النَّاسَ ثَلاثَ لَيَالٍ سَوِيًّا} [مريم: ١٠] . قَالَ عَلِيٌّ: هَذِهِ شَرِيعَةُ زَكَرِيَّا، وَمَرْيَمَ - عَلَيْهِمَا السَّلَامُ - وَلَا يَلْزَمُنَا شَرِيعَةُ غَيْرِ نَبِيِّنَا - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَعَ أَنَّ شَأْنَهُمَا آيَةٌ مِنْ آيَاتِ النُّبُوَّةِ، وَلَيْسَتْ الْآيَاتُ لَنَا، وَقَدْ نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ تَرْكِ الْكَلَامِ كَمَا ذَكَرْنَا.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ قَالَ: سَمِعْت أَبِي يَقُولُ مُذْ عَقَلْت لَا نَذْرَ فِي مَعْصِيَةِ اللَّهِ، لَا نَذْرَ إلَّا فِيمَا تَمْلِكُ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: سَأَلْت الزُّهْرِيَّ عَنْ النَّذْرِ يُنْذِرُهُ الْإِنْسَانُ؟ فَقَالَ: إنْ كَانَ طَاعَةً لِلَّهِ فَعَلَيْهِ وَفَاؤُهُ، وَإِنْ كَانَ مَعْصِيَةً لِلَّهِ فَلْيَتَقَرَّبْ إلَى اللَّهِ تَعَالَى بِمَا شَاءَ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبَانَ عَنْ ابْنِ عَبَّاسٍ: أَنَّ رَجُلًا أَتَاهُ فَقَالَ: إنِّي نَذَرْت إنْ نَجَا أَبِي مِنْ الْأَسْرِ أَنْ أَقُومَ عُرْيَانًا، وَأَنْ أَصُومَ يَوْمًا؟ فَقَالَ لَهُ ابْنُ عَبَّاسٍ: الْبَسْ ثِيَابَك، وَصُمْ يَوْمًا، وَصَلِّ قَائِمًا وَقَاعِدًا. وَعَنْ أَبِي الزُّبَيْرِ: أَنَّهُ سَمِعَ جَابِرًا يَقُولُ: لَا وَفَاءَ لِنَذْرٍ فِي

From the chain of Abd al-Razzaq via Ma’mar via Aban via Ibn Abbas: A man came to him and said, “I vowed that if my father were rescued from captivity, I would stand naked and fast for a day—should I do so?” Ibn Abbas told him, “Wear your clothes, fast for one day, and pray whether standing or sitting.”

From Abu al-Zubayr: He heard Jabir state, “There is no obligation to fulfill a vow involving disobedience to Allah Almighty.”

From Ikrimah via Ibn Abbas via Umar ibn al-Khattab: A man vowed never to eat with his brother’s orphaned sons. Umar instructed him, “Go and eat with them.”

From Qays ibn Abi Hazim: Abu Bakr al-Siddiq—may Allah Almighty be pleased with him—ordered a woman who vowed to perform Hajj in total silence to break her vow and speak.

L17670 From Masruq and Al-Shaʿbi: There is no fulfillment of a vow of disobedience, nor any expiation.

L17671–17673 And via the route of Muslim: Qutaybah narrated to us, from Ismāʿīl ibn Jaʿfar, from ʿAbdullāh ibn Dīnār: that he heard Ibn ʿUmar saying, the Messenger of Allah—peace and blessings be upon him—said: “Whoever takes an oath, let him not swear except by Allah.” And via the route of Mālik: on the authority of Nāfiʿ, on the authority of Ibn ʿUmar, on the authority of the Messenger of Allah—peace and blessings be upon him—that he said in a ḥadīth: “Whoever takes an oath, let him swear by Allah or remain silent.” Thereby, the Messenger of Allah—peace and blessings be upon him—nullified such oaths. Every oath except those sworn by Allah, the Almighty and Majestic, is invalid, and Allah has prohibited it. Whoever swears by other than Allah has indeed disobeyed Allah the Exalted. There is no validity to fulfilling a vow made in disobedience to Allah. Abu Muhammad said: Abu Hanifah and Malik stated, “Whoever formulates their vow in the manner of an oath—such as one who says, ’Walking to Mecca becomes incumbent upon me if I speak to so-and-so’—then if they speak to him, they are obligated to fulfill that vow.”

L17674 Al-Shāfiʿī stated: Expiation is required solely for oaths, except in [the contexts of] designated manumission and the ḥadd (prescribed punishment).

مَعْصِيَةِ اللَّهِ تَعَالَى. وَعَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ: أَنَّ رَجُلًا نَذَرَ أَنْ لَا يَأْكُلَ مَعَ بَنِي أَخِيهِ يَتَامَى؟ فَقَالَ لَهُ عُمَرُ: اذْهَبْ فَكُلْ مَعَهُمْ. وَعَنْ قَيْسِ بْنِ أَبِي حَازِمٍ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ - رَضِيَ اللَّهُ تَعَالَى عَنْهُ - أَمَرَ امْرَأَةً نَذَرَتْ أَنْ تَحُجَّ سَاكِتَةً بِأَنْ تَتَكَلَّمَ.

وَعَنْ مَسْرُوقٍ، وَالشَّعْبِيِّ: لَا وَفَاءَ فِي نَذْرِ مَعْصِيَةٍ، وَلَا كَفَّارَةَ.

وَمِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةَ نا إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ: أَنَّهُ سَمِعَ ابْنَ عُمَرَ يَقُولُ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «مَنْ كَانَ حَالِفًا فَلَا يَحْلِفْ إِلَّا بِاللَّهِ» . وَمِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ فِي حَدِيثٍ: «مَنْ كَانَ حَالِفًا فَلْيَحْلِفْ بِاللَّهِ أَوْ لِيَصْمُتْ» . فَأَبْطَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كُلَّ يَمِينٍ إِلَّا بِاللَّهِ عَزَّ وَجَلَّ وَنَهَى عَنْهَا، فَمَنْ حَلَفَ بِغَيْرِ اللَّهِ فَقَدْ عَصَى اللَّهَ تَعَالَى، وَلَا وَفَاءَ لِنَذْرٍ فِي مَعْصِيَةِ اللَّهِ. قَالَ أَبُو مُحَمَّدٍ: وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: مَنْ أَخْرَجَ نَذْرَهُ مَخْرَجَ الْيَمِينِ مِثْلَ مَنْ قَالَ عَلَيَّ الْمَشْيُ إلَى مَكَّةَ إنْ كَلَّمْت فُلَانًا، فَإِنْ كَلَّمَهُ فَعَلَيْهِ الْوَفَاءُ بِذَلِكَ.

وَقَالَ الشَّافِعِيُّ: كَفَّارَةُ يَمِينٍ فَقَطْ إلَّا فِي الْعِتْقِ الْمُعَيَّنِ وَحَدِّهِ.

وَقَالَ أَبُو ثَوْرٍ: كَفَّارَةُ يَمِينٍ فِي كُلِّ ذَلِكَ الْعِتْقِ الْمُعَيَّنِ وَغَيْرِهِ. وَقَالَ الْمُزَنِيّ: لَا شَيْءَ فِي ذَلِكَ إلَّا فِي الْعِتْقِ الْمُعَيَّنِ وَحَدِّهِ فَفِيهِ الْوَفَاءُ بِهِ. قَالَ عَلِيٌّ: أَمَّا مَنْ قَالَ بِقَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ؛ فَإِنَّهُمْ احْتَجُّوا بِأَنَّهُ نَذْرُ طَاعَةٍ فَعَلَيْهِ الْوَفَاءُ بِهِ - وَقَالُوا: قِسْنَاهُ عَلَى الطَّلَاقِ. قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ ظَاهِرٌ؛ لِأَنَّ النَّذْرَ مَا قَصَدَ نَاذِرُهُ الرَّغْبَةَ فِي فِعْلِهِ وَالتَّقَرُّبَ إلَى اللَّهِ تَعَالَى بِهِ، وَاسْتَدْعَى مِنْ اللَّهِ عَزَّ وَجَلَّ تَعْجِيلَ تَبْلِيغِهِ مَا يُوجِبُ عَلَيْهِ ذَلِكَ الْعَمَلَ، وَهَذَا بِخِلَافِ ذَلِكَ، لِأَنَّهُ إنَّمَا قَصَدَ الِامْتِنَاعَ مِنْ ذَلِكَ الْبِرِّ، وَإِبْعَادِهِ عَنْ نَفْسِهِ جُمْلَةً وَمَنَعَ نَفْسَهُ مِمَّا يُوجِبُ عَلَيْهَا ذَلِكَ الْعَمَلَ.

L17675 Abu Thawr said: The expiation for an oath applies to all of that—both specified manumission and other forms. Al-Muzani said: There is no obligation in that except in specified manumission and its defined conditions, which necessitate fulfilling it. Ali said: As for those who follow the opinion of Abu Hanifah and Malik, they argued that it is a vow of obedience requiring fulfillment—stating: "We analogized it to divorce." Abu Muhammad said: This is a manifest error, for a vow inherently involves the maker's desire to perform the act and draw nearer to Allah the Exalted through it, thereby seeking from Allah Almighty to hasten the occurrence of what would render that action obligatory. This situation contradicts that principle entirely, for here the person merely intended to abstain from that righteous deed, wholly distancing himself from it, and preventing himself from what would necessitate performing that action.

فَصَحَّ يَقِينًا أَنَّهُ لَيْسَ نَاذِرًا، وَإِذْ لَيْسَ نَاذِرًا، فَلَا وَفَاءَ عَلَيْهِ بِمَا قَالَ.

L17676 It was thus conclusively established that he is not a vow-maker, and since he is not a vow-maker, there is no fulfillment required of him for what he declared.

وَأَيْضًا فَإِنَّهُ عَاصٍ اللَّهَ عَزَّ وَجَلَّ فِي ذَلِكَ الِالْتِزَامِ إذْ أَخْرَجَهُ مَخْرَجَ الْيَمِينِ، وَقَدْ حَرَّمَ اللَّهُ تَعَالَى عَلَيْهِ أَنْ يَحْلِفَ بِغَيْرِهِ فَصَارَ مَعْصِيَةً وَلَا وَفَاءَ لِنَذْرِ مَعْصِيَةٍ.

L17677 Moreover, he is disobeying Allah, the Exalted and Majestic, in that commitment, since he has treated the commitment as equivalent to an oath. Allah, the Most High, has prohibited him from swearing by anything other than Him, thus it became disobedience, and there is no validity to a vow rooted in disobedience.

فَصَحَّ يَقِينًا أَنَّ كُلَّ مَا ذَكَرْنَا لَيْسَ نَذْرَ طَاعَةٍ فَيَجِبُ الْوَفَاءُ بِهِ، وَلَيْسَ يَمِينًا لِلَّهِ تَعَالَى فَيَجِبُ فِيهِ كَفَّارَةُ يَمِينٍ - فَبَطَلَ أَنْ يَجِبَ فِي ذَلِكَ شَيْءٌ، إذْ لَمْ يُوجِبْهُ قُرْآنٌ، وَلَا سُنَّةٌ - وَالْأَمْوَالُ مَحْظُورَةٌ مُحَرَّمَةٌ إلَّا بِنَصٍّ.

L17678 It is certain that all we have mentioned is neither a vow of obedience (which would require fulfillment) nor an oath in the name of Allah the Exalted (which would necessitate expiation for an oath). Thus, it is nullified that anything should be obligatory in such matters, since neither the Quran nor the Sunnah has mandated it. Wealth is prohibited and forbidden except by an explicit textual ruling.

وَأَمَّا قِيَاسُهُمْ إيَّاهُ عَلَى الطَّلَاقِ: فَالْخِلَافُ أَيْضًا فِي الطَّلَاقِ غَيْرِ الْمُعَيَّنِ أَشْهَرُ مِنْ أَنْ يُجْهَلَ - فَظَهَرَ بُطْلَانُ هَذَا الْقَوْلِ.

L17679 As for their analogy of it to divorce: the disagreement about non-specific divorce is likewise too prominent to be unknown—thus the invalidity of this analogical opinion becomes clear.

L17680 As for those who obligate an expiation for an oath in such a case, this too is invalid, because He (Allah) has decreed there is no oath except by Allah,

the Exalted, and He, the Mighty and Majestic, has not obligated expiation for oaths sworn by other than Him. Thus, there is no expiation for an oath sworn by other than Him, the Mighty and Majestic.

وَأَمَّا مَنْ أَوْجَبَ فِي ذَلِكَ كَفَّارَةَ يَمِينٍ، فَبَاطِلٌ أَيْضًا، لِأَنَّهُ لَا يَمِينَ إِلَّا بِاللَّهِ تَعَالَى، وَلَمْ يُوجِبْ عَزَّ وَجَلَّ كَفَّارَةً فِي غَيْرِ الْيَمِينِ بِهِ، فَلَا كَفَّارَةَ فِي يَمِينٍ بِغَيْرِهِ عَزَّ وَجَلَّ.

L17681–17682 As for those who differentiate between specified manumission and other types, this is erroneous. Their argument is that it constitutes conditional manumission - but this is incorrect. Rather, it is an oath concerning manumission, which is also void and non-binding.

وَأَمَّا مَنْ فَرَّقَ بَيْنَ الْعِتْقِ الْمُعَيَّنِ وَغَيْرِهِ خَطَأً، وَحُجَّتُهُمْ فِي ذَلِكَ أَنَّهُ عِتْقٌ بِصِفَةٍ - وَلَيْسَ كَمَا قَالُوا - بَلْ هُوَ يَمِينٌ بِالْعِتْقِ فَهُوَ بَاطِلٌ أَيْضًا لَا يَلْزَمُ.

L17683 They said: "Have we analogized specific manumission to specific divorce?" We replied: "All analogy is entirely invalid. Moreover, your claim regarding specific divorce when he intended it as an oath is invalid - neither from the Qur'an, nor the Sunnah, nor the consensus."

وَقَالُوا: قِسْنَا الْعِتْقَ الْمُعَيَّنَ عَلَى الطَّلَاقِ الْمُعَيَّنِ؟ فَقُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَا يَصِحُّ قَوْلُكُمْ فِي الطَّلَاقِ الْمُعَيَّنِ إِذَا قَصَدَ بِهِ الْيَمِينَ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إِجْمَاعٍ.

L17684 If they adduce as evidence the report we transmitted through the chain of al-Zuhrī from Abū Salama from ʿĀ'isha that the Prophet—may Allah's blessings and peace be upon him and his family—said, "There is no valid vow in disobedience to Allah, and its expiation is the expiation for an oath," this is a report al-Zuhrī never heard directly from Abū Salama. Rather, he narrated it from Sulaymān ibn Arqam from Yaḥyā ibn Abī Kathīr from Abū Salama—and Sulaymān ibn Arqam is known for lying.[3]

فَإِنْ احْتَجُّوا بِالْخَبَرِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ عَنْ عَائِشَةَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «لَا نَذْرَ فِي مَعْصِيَةِ اللَّهِ وَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ» . وَهَذَا خَبَرٌ لَمْ يَسْمَعْهُ الزُّهْرِيُّ مِنْ أَبِي سَلَمَةَ، إِنَّمَا رَوَاهُ عَنْ سُلَيْمَانَ بْنِ أَرْقَمَ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ - وَسُلَيْمَانُ بْنُ أَرْقَمَ مَذْكُورٌ بِالْكَذِبِ.

L17685 Another narration: Through the chain of Ṭalḥah ibn Yaḥyā al-Anṣārī from ʿAbd Allāh ibn Saʿīd ibn Abī Hindah from Bukayr ibn ʿAbd Allāh ibn al-Ashajj from Kurayb from Ibn ʿAbbās, that the Messenger of Allah—peace and blessings of Allah be upon him—said: "Whoever vows to commit an act of disobedience, its expiation is the expiation of an oath, and whoever makes a vow that he cannot fulfill, its expiation is the expiation of an oath." Ṭalḥah ibn Yaḥyā al-Anṣārī is a very weak narrator.

وَخَبَرٌ آخَرُ: مِنْ طَرِيقِ طَلْحَةَ بْنِ يَحْيَى الْأَنْصَارِيِّ عَنْ عَبْدِ اللَّهِ بْنِ سَعِيدِ بْنِ أَبِي هِنْدٍ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ كُرَيْبٍ عَنِ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «مَنْ نَذَرَ نَذْرًا فِي مَعْصِيَةٍ فَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ، وَمَنْ نَذَرَ نَذْرًا لَا يُطِيقُهُ فَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ» . وَطَلْحَةُ بْنُ يَحْيَى الْأَنْصَارِيُّ ضَعِيفٌ جِدًّا.

L17686 It was narrated to us through the route of Saʿīd ibn Manṣūr—Ḥammād ibn Zayd ibn Dirham narrated from Muḥammad ibn al-Zubayr al-Ḥanẓalī, from his father, from 'Imrān ibn al-Ḥuṣayn, from the Prophet—peace and blessings be upon him and his family—who said: "There is no vow in anger, and its expiation is the expiation for an oath."

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حَمَّادُ بْنُ زَيْدِ بْنِ دِرْهَمٍ عَنْ مُحَمَّدِ بْنِ الزُّبَيْرِ الْحَنْظَلِيِّ عَنْ أَبِيهِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «لَا نَذْرَ فِي غَضَبٍ، وَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ» .

[3] **Hadith references (L17684):** Jami at-Tirmidhi 1525.

L17687 And a report via the chain of ʿAbd al-Wārith ibn Saʿīd from Muḥammad ibn al-Zubayr al-Ḥanẓalī from his father from ʿImrān ibn al-Ḥuṣayn from the Prophet—peace and blessings be upon him and his family—: "There is no vow in disobedience, and its atonement is the atonement for an oath." Muḥammad ibn al-Zubayr al-Ḥanẓalī is in the utmost weakness. Furthermore: It has been narrated to us through the chain of Ibn Abī Shaybah from al-Muʿtamir ibn Sulaymān al-Taymī from Muḥammad ibn al-Zubayr al-Ḥanẓalī from ʿImrān ibn al-Ḥuṣayn, where he cited this same ḥadīth.

وَخَبَرٌ: مِنْ طَرِيقِ عَبْدِ الْوَارِثِ بْنِ سَعِيدٍ عَنْ مُحَمَّدِ بْنِ الزُّبَيْرِ الْحَنْظَلِيِّ عَنْ أَبِيهِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لَا نَذْرَ فِي مَعْصِيَةٍ وَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ» مُحَمَّدُ بْنُ الزُّبَيْرِ الْحَنْظَلِيُّ فِي غَايَةِ الضَّعْفِ وَزِيَادَةٌ: - فَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنِ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ مُحَمَّدِ بْنِ الزُّبَيْرِ الْحَنْظَلِيِّ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ، فَذَكَرَ هَذَا الْحَدِيثَ نَفْسَهُ.

L17688–17689 Al-Muʿtamir said: I asked Muḥammad ibn al-Zubayr, "Did one who heard it directly from ʿImrān narrate it to you?" He replied, "No, but a man narrated it to me on the authority of ʿImrān ibn al-Ḥuṣayn," thereby invalidating the entire narration as a whole.

قَالَ الْمُعْتَمِرُ: فَقُلْت لِمُحَمَّدِ بْنِ الزُّبَيْرِ أَحَدَّثَكَهُ مَنْ سَمِعَهُ مِنْ عِمْرَانَ فَقَالَ: لَا وَلَكِنْ حَدَّثَنِيهِ رَجُلٌ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ، فَبَطَلَ جُمْلَةً.

L17690 Another [narration]: through the chain of Ismāʿīl ibn Abī Uways from his father, from Dāwūd ibn al-Ḥuṣayn, from Bukayr ibn al-Ashajj, from Kurayb, from Ibn ʿAbbās, from the Messenger of Allah (peace and blessings of Allah be upon him and his family), similar to the ḥadīth of Ṭalḥah ibn Yaḥyā al-Anṣārī which we mentioned; Ibn Abī Uways is deemed weak.

وَآخَرُ: مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ أَبِي أُوَيْسٍ عَنْ أَبِيهِ عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ كُرَيْبٍ عَنِ ابْنِ عَبَّاسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِثْلَ حَدِيثِ طَلْحَةَ بْنِ يَحْيَى الْأَنْصَارِيِّ الَّذِي ذَكَرْنَا. وَابْنُ أَبِي أُوَيْسٍ ضَعِيفٌ.

L17691 Narrated via the chain of ʿAbd al-Razzāq ibn Rūḥ, from Salām ibn Sulaymān, from Muḥammad ibn al-Faḍl ibn ʿAṭiyyah, from ʿAbd al-ʿAzīz ibn Rufayʿ, from Tamīm ibn Ṭarafah, from ʿAdī ibn Ḥātim, from the Prophet—may God's blessings and peace be upon him and his family—: "Whoever vows a vow involving disobedience, its expiation is the atonement for breaking an oath." Salām ibn Sulaymān is deemed weak.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ بْنِ رَوْحٍ عَنْ سَلَّامِ بْنِ سُلَيْمَانَ عَنْ مُحَمَّدِ بْنِ الْفَضْلِ بْنِ عَطِيَّةَ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنْ تَمِيمِ بْنِ طَرَفَةَ عَنْ عَدِيِّ بْنِ حَاتِمٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «مَنْ نَذَرَ نَذْرًا فِي مَعْصِيَةٍ فَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ» . سَلَّامُ بْنُ سُلَيْمَانَ هَالِكٌ.

L17692 And from the chain of ʿAbd al-Razzāq: from Maʿmar, and from Ibn Jurayj. Maʿmar said: From Yaḥyā ibn Abī Kathīr from a man of Banū Ḥanīfah. Ibn Jurayj said: It was narrated to me from Yaḥyā ibn Abī Kathīr from Abū Salamah. Then their chains converge at the Prophet (peace and blessings of Allah be upon him and his family): "There is no vow in anger nor in disobedience to Allah, and its expiation is the expiation of an oath." One is mursal and munqaṭiʿ, and the other is mursal and from someone unidentified.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَابْنِ جُرَيْجٍ قَالَ مَعْمَرٌ: عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ رَجُلٍ مِنْ بَنِي حَنِيفَةَ، وَقَالَ ابْنُ جُرَيْجٍ: حَدَّثْت عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ ثُمَّ اتَّفَقَا عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لَا نَذْرَ فِي غَضَبٍ وَلَا فِي مَعْصِيَةِ اللَّهِ

وَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ» . أَحَدُهُمَا مُرْسَلٌ وَمُنْقَطِعٌ، وَالْآخَرُ مُرْسَلٌ وَعَمَّنْ لَا يُدْرَى مَنْ هُوَ.

L17693 It has been reported to us from Ibn Mas‘ūd and Ibn ‘Abbās: “No fulfillment is due for a vow involving disobedience, and its expiation is the expiation of an oath.” None of that [ruling] is valid, because the narration from Ibn Mas‘ūd comes through his son Abū ‘Ubaydah, who did not hear anything from him. As for the narration from Ibn ‘Abbās, it comes through Ibrāhīm ibn Abī Yaḥyā, who is known for lying.

وَرُوِّينَا عَنْ ابْنِ مَسْعُودٍ، وَابْنِ عَبَّاسٍ: لَا وَفَاءَ لِنَذْرٍ فِي مَعْصِيَةٍ وَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ - وَلَا يَصِحُّ شَيْءٌ مِنْ ذَلِكَ؛ لِأَنَّهُ عَنْ ابْنِ مَسْعُودٍ مِنْ طَرِيقِ ابْنِهِ أَبِي عُبَيْدَةَ وَلَمْ يَسْمَعْ مِنْهُ شَيْئًا - وَعَنْ ابْنِ عَبَّاسٍ مِنْ طَرِيقِ إبْرَاهِيمَ بْنِ أَبِي يَحْيَى، وَهُوَ مَذْكُورٌ بِالْكَذِبِ.

L17694 It has also been narrated to us through the chain of Abū Sufyān from Jābir: “A vow made to disobey [Allah] is invalid, and its atonement is equivalent to that of breaking an oath.” However, Abū Sufyān is rejected [as a narrator].

وَرُوِّينَا أَيْضًا مِنْ طَرِيقِ أَبِي سُفْيَانَ عَنْ جَابِرٍ: لَا نَذْرَ فِي مَعْصِيَةٍ وَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ، وَأَبُو سُفْيَانَ سَاقِطٌ.

L17695–17697 Abu Muhammad said: Then, despite the invalidity of all this, Abu Hanifa and Al-Shafi‘i oppose him. As for Abu Hanifa, he does not consider anything obligatory for one who equates a vow to an oath except fulfilling it - even though the vow is one of disobedience. Rather, he holds that the expiation for a vow of disobedience corresponds to the expiation of an oath in two instances only: the first is when one says: “I am a disbeliever if I do such and such,” and the second is when one says: “I owe a duty to Allah if he is killed today.” So-and-so intended to take an oath, but he did not deem it obligatory upon one who vows to commit adultery, kill, disbelieve, commit sodomy (liwaṭ), or drink intoxicants (khamr) to offer any expiation for the oath whatsoever, thereby opposing all that we have mentioned in favor of an unrecognized predecessor.

قَالَ أَبُو مُحَمَّد: ثُمَّ كُلُّ هَذَا عَلَى فَسَادِهِ فَإِنَّ أَبَا حَنِيفَةَ، وَالشَّافِعِيَّ: مُخَالِفَانِ لَهُ -: أَمَّا أَبُو حَنِيفَةَ فَلَا يَرَى فِيمَنْ أَخْرَجَ النَّذْرَ مَخْرَجَ الْيَمِينِ إلَّا الْوَفَاءَ بِهِ وَهُوَ نَذْرُ مَعْصِيَةٍ وَإِنَّمَا يَرَى كَفَّارَةَ نَذْرِ الْمَعْصِيَةِ كَفَّارَةَ يَمِينٍ فِي مَوْضِعَيْنِ فَقَطْ -: أَحَدُهُمَا - إذَا قَالَ: أَنَا كَافِرٌ إنْ فَعَلْت كَذَا وَكَذَا، وَإِذَا قَالَ: لِلَّهِ عَلَيَّ إنْ قُتِلَ الْيَوْمَ فُلَانٌ، وَأَرَادَ الْيَمِينَ، وَلَمْ يَرَ عَلَى مَنْ نَذَرَ أَنْ يَزْنِيَ، أَوْ أَنْ يَقْتُلَ، أَوْ أَنْ يَكْفُرَ، أَوْ أَنْ يَلُوطَ، أَوْ أَنْ يَشْرَبَ الْخَمْرَ كَفَّارَةَ يَمِينٍ أَصْلًا، فَخَالَفَ كُلَّ مَا ذَكَرْنَا إلَى غَيْرِ سَلَفٍ يُعْرَفُ.

L17698 As for al-Shāfi‘ī, he did not consider the expiation for oaths applicable to any vows involving sin except for one who vowed obedience while treating it as equivalent to an oath. Both positions contradict all that we have mentioned, thereby invalidating any foundational basis for their stance. Our opinion aligns with that of a group from the Salaf. As transmitted through ‘Abd al-Razzāq from al-Mu‘tamir ibn Sulaymān al-Taymī, from his father, from Bakr ibn ‘Abd Allāh al-Muzanī: Abū Rāfi‘ narrated to me, saying: My mistress Laylā bint al-‘Ajmā’ declared to me: “Every slave I own is free, all my wealth is

وَأَمَّا الشَّافِعِيُّ فَلَمْ يَرَ فِي شَيْءٍ مِنْ النُّذُورِ فِي الْمَعْصِيَةِ كَفَّارَةَ يَمِينٍ إلَّا فِيمَنْ نَذَرَ طَاعَةً أَخْرَجَهُ مَخْرَجَ الْيَمِينِ؛ فَكِلَاهُمَا مُخَالِفٌ لِكُلِّ مَا ذَكَرْنَا، فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ بِشَيْءٍ أَصْلًا - وَقَوْلُنَا هُوَ قَوْلُ طَائِفَةٍ مِنْ السَّلَفِ -: كَمَا رُوِّينَا مِنْ عَبْدِ الرَّزَّاقِ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَبِيهِ عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيِّ أَخْبَرَنِي أَبُو رَافِعٍ قَالَ: قَالَتْ

لِي مَوْلَاتِي لَيْلَى بِنْتِ الْعَجْمَاءِ: كُلُّ مَمْلُوكٍ لَهَا حُرٌّ، وَكُلُّ مَالٍ لَهَا هَدْيٌ، وَهِيَ يَهُودِيَّةٌ، أَوْ نَصْرَانِيَّةٌ إِنْ لَمْ تُطَلِّقِ امْرَأَتَك، فَأَتَيْت زَيْنَبَ بِنْتَ أُمِّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ فَجَاءَتْ مَعِي إِلَيْهَا، فَقَالَتْ: يَا زَيْنَبُ جَعَلَنِي اللَّهُ فِدَاءَك إِنَّهَا قَالَتْ: كُلُّ مَمْلُوكٍ حُرٌّ وَهِيَ يَهُودِيَّةٌ؟ فَقَالَتْ لَهَا زَيْنَبُ: يَهُودِيَّةٌ وَنَصْرَانِيَّةٌ خَلِّ بَيْنَ الرَّجُلِ وَبَيْنَ امْرَأَتِهِ: فَكَأَنَّهَا لَمْ تَقْبَلْ فَأَتَيْت حَفْصَةَ أُمَّ الْمُؤْمِنِينَ فَأَرْسَلَتْ مَعِي إِلَيْهَا فَقَالَتْ: يَا أُمَّ الْمُؤْمِنِينَ جَعَلَنِي اللَّهُ فِدَاءَك إِنَّهَا قَالَتْ: كُلُّ مَمْلُوكٍ حُرٌّ، وَكُلُّ مَالٍ لَهَا هَدْيٌ وَهِيَ يَهُودِيَّةٌ أَوْ نَصْرَانِيَّةٌ؛ فَقَالَتْ أُمُّ الْمُؤْمِنِينَ: يَهُودِيَّةٌ وَنَصْرَانِيَّةٌ خَلِّ بَيْنَ الرَّجُلِ وَبَيْنَ امْرَأَتِهِ.

a sacrificial offering, and I shall be a Jewess or Christian if you do not divorce your wife." I then approached Zaynab bint Umm Salamah, the Mother of the Believers, who accompanied me to her. I said: "O Zaynab, may Allāh ransom me for you, she vowed: 'Every slave is free, and she becomes a Jewess?'" Zaynab responded: "A Jewess or Christian? Let the man remain with his wife." As if she did not accept this, I went to Ḥafṣah, the Mother of the Believers, who sent me back to her with her directive. I said: "O Mother of the Believers, may I be sacrificed for you, she vowed: 'Every slave is free, all her wealth is a sacrificial offering, and she becomes a Jewess or Christian.'" The Mother of the Believers replied: "A Jewess or Christian? Let the man remain with his wife."

وَمِنْ طَرِيقِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فِيمَنْ قَالَ لِغَرِيمِهِ: إِنْ فَارَقْتُك فَمَا لِي عَلَيْك فِي الْمَسَاكِينِ صَدَقَةٌ، فَفَارَقَهُ، إِنَّ هَذَا لَا شَيْءَ يَلْزَمُهُ فِيهِ.

L17699 From the narration of Aisha, the Mother of the Believers, regarding one who said to his creditor: "If I release you [from the debt], then what I am owed by you shall be charity (sadaqah) for the poor." When he released him, [the ruling is that] this creditor bears no obligation in this matter.

وَصَحَّ هَذَا أَيْضًا عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ مِنْ طَرِيقِ شُعْبَةَ عَنْهُمَا وَهُوَ قَوْلُ الشَّعْبِيِّ وَالْحَارِثِ الْعُكْلِيِّ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L17700 This has also been authentically reported from Al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān through the narration of Shuʿbah from both of them, and it is the opinion of Ash-Shaʿbī, Al-Ḥārith al-ʿUklī, Saʿīd ibn Al-Musayyib, Al-Qāsim ibn Muḥammad, Abī Sulaymān, and our companions.

فَإِنْ قَالُوا: قَدْ أَفْتَى ابْنُ عُمَرَ فِي ذَلِكَ بِكَفَّارَةِ يَمِينٍ؟ قُلْنَا: نَعَمْ، وَقَدْ اخْتَلَفَ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى، فَمَا الَّذِي جَعَلَ قَوْلَ بَعْضِهِمْ أَوْلَى مِنْ قَوْلِ بَعْضٍ بِلَا بُرْهَانٍ؟ وَصَحَّ عَنْ عَائِشَةَ، وَأُمِّ سَلَمَةَ أُمَّيْ الْمُؤْمِنِينَ.

L17701 If they say: "Did Ibn Umar issue a legal ruling with the expiation of an oath?" We say: Yes, and the Companions (may Allah be pleased with them) differed on this matter, as we will mention after this if Allah the Exalted wills. So what makes the opinion of some preferable to others without proof? It is authentically reported from Aisha and Umm Salama, the two Mothers of the Believers.

وَعَنْ ابْنِ عُمَرَ أَنَّهُ جَعَلَ قَوْلَ لَيْلَى بِنْتِ الْعَجْمَاءِ: كُلُّ مَمْلُوكٍ لَهَا حُرٌّ، وَكُلُّ مَالٍ لَهَا هَدْيٌ، وَهِيَ يَهُودِيَّةٌ أَوْ نَصْرَانِيَّةٌ إِنْ لَمْ تُطَلِّقِ امْرَأَتَك كَفَّارَةَ يَمِينٍ وَاحِدَةً.

L17702 Ibn 'Umar deemed that Layla bint al-'Ajmā"s declaration—"Every slave she owns is free, and all her wealth is a sacrificial offering"—while she was Jewish or Christian, would serve as the atonement for a single oath if you do not divorce your wife.

L17703–17704 From Aisha, the Mother of the Believers, that she spoke regarding someone who swears an oath, saying, “My wealth is [dedicated to] charitable contributions in the cause of Allah,” or who says, “All my wealth is for the door of the Kaaba”—this constitutes the expiation for an oath.

وَعَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا قَالَتْ فِيمَنْ قَالَ فِي يَمِينٍ: مَالِي ضَرَائِبُ فِي سَبِيلِ اللَّهِ، أَوْ قَالَ: مَالِي كُلُّهُ فِي رِتَاجِ الْكَعْبَةِ كَفَّارَةُ يَمِينٍ.

L17705 On the authority of Umm Salamah and Aisha, the two Mothers of the Believers, regarding one who said: “It is incumbent upon me to walk to the House of Allah” - if that is not done, it requires the expiation for an oath.

وَعَنْ أُمِّ سَلَمَةَ، وَعَائِشَةَ أُمَّيِ الْمُؤْمِنِينَ فِيمَنْ قَالَ عَلَيَّ الْمَشْيُ إِلَى بَيْتِ اللَّهِ إِنْ لَمْ يَكُنْ كَذَا كَفَّارَةُ يَمِينٍ.

L17706 From the path of Muḥammad ibn ʿAbd Allāh al-Anṣārī via Ashʿath al-Ḥumrānī via Bakr ibn ʿAbd Allāh al-Muzannī via Abū Rāfiʿ via them both.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الْأَنْصَارِيِّ عَنْ أَشْعَثَ الْحُمْرَانِيِّ عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيِّ عَنْ أَبِي رَافِعٍ عَنْهُمَا.

L17707 It has been reported to us from Ḥammād ibn ʿAbd Allāh that the expiation for a vow is the expiation for an oath.

وَرُوِّينَا عَنْ حَمَّادِ بْنِ عَبْدِ اللَّهِ: النَّذْرُ كَفَّارَتُهُ كَفَّارَةُ يَمِينٍ.

L17708 And from Ibn Abbas, the like of this – and from Umar ibn al-Khattab, akin to it.

وَعَنْ ابْنِ عَبَّاسٍ مِثْلَ هَذَا - وَعَنْ عُمَرَ بْنِ الْخَطَّابِ نَحْوَهُ.

L17709 From Ikrimah and Al-Ḥasan regarding one who says, “All my wealth is for the door of the Kaaba as expiation for an oath”—and it is authentically reported from Ṭāwūs and ʿAṭāʾ. As for Ṭāwūs, he said: “One who swears by manumitting slaves, [says] ’My wealth is a sacrificial animal,’ and ’Everything I own is in the cause of Allah,’ and similar declarations—this type is expiation for an oath.”

وَعَنْ عِكْرِمَةَ، وَالْحَسَنِ، فِيمَنْ قَالَ: مَالِي كُلُّهُ فِي رِتَاجِ الْكَعْبَةِ كَفَّارَةُ يَمِينٍ - وَصَحَّ عَنْ طَاوُسٍ، وَعَطَاءٍ، أَمَّا طَاوُسٌ فَقَالَ: الْحَالِفُ بِالْعَتَاقِ، وَمَالِي هَدْيٌ، وَكُلُّ شَيْءٍ لِي فِي سَبِيلِ اللَّهِ، وَهَذَا النَّحْوُ كَفَّارَةُ يَمِينٍ.

L17710 As for Ata, he said regarding one who says, “I am obligated to a thousand badanah (sacrificial camels),” or says, “I must perform the Hajj pilgrimage a thousand times,” or says, “My wealth is for the poor”: all such statements constitute an oath.

وَأَمَّا عَطَاءٌ فَقَالَ فِيمَنْ قَالَ عَلَيَّ أَلْفُ بَدَنَةٍ، أَوْ قَالَ عَلَيَّ أَلْفُ حَجَّةٍ، أَوْ قَالَ: مَالِي فِي الْمَسَاكِينِ: كُلُّ ذَلِكَ يَمِينٌ.

L17711 And this is the view of Qatāda, Sulaymān ibn Yasār, and Sālim ibn ʿAbd Allāh ibn ʿUmar.

وَهُوَ قَوْلُ قَتَادَةَ وَسُلَيْمَانَ بْنِ يَسَارٍ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ.

L17712 Abū Muḥammad said: All of this contradicts the opinion of Abū Ḥanīfah, Mālik, and al-Shāfiʿī, for al-Shāfiʿī excluded specifically appointed manumission from this ruling. What we mentioned from those we cited among the Companions and Followers represents the opinion of ʿUbayd Allāh ibn al-

قَالَ أَبُو مُحَمَّدٍ: كُلُّ هَذَا خِلَافٌ لِقَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ؛ لِأَنَّ الشَّافِعِيَّ أَخْرَجَ مِنْ ذَلِكَ الْعِتْقَ الْمُعَيَّنَ - وَالَّذِي ذَكَرْنَا عَمَّنْ ذَكَرْنَا مِنْ الصَّحَابَةِ، وَالتَّابِعِينَ هُوَ

Ḥasan, Sharīk, Abū Thawr, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhawayh, and Abū ʿUbayd. Al-Ṭaḥāwī upholds this opinion, citing it as the view of Zufar ibn al-Hudhayl and one of the two opinions of Muḥammad ibn al-Ḥasan.

قَوْلُ عُبَيْدِ اللَّهِ بْنِ الْحَسَنِ، وَشَرِيكٍ، وَأَبِي ثَوْرٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ وَأَبِي عُبَيْدٍ - وَبِهِ يَقُولُ الطَّحَاوِيُّ، وَذَكَرَ أَنَّهُ قَوْلُ زُفَرَ بْنِ الْهُذَيْلِ - وَأَحَدُ قَوْلَيْ مُحَمَّدِ بْنِ الْحَسَنِ.

L17713 We have been narrated through a sound chain from Ibn al-Qāsim, Mālik's companion, that he gave his son a legal opinion regarding walking to Mecca as oath expiation, saying to him: "If you do it again, I will issue you a ruling according to Mālik's view" - and this is exceedingly astonishing? - Ḥumām ibn Aḥmad narrated to me, saying: ʿAbd Allāh ibn Muḥammad al-Bājī narrated to us; ʿUmar ibn Abī Tammām narrated to us; Muḥammad ibn ʿAbd Allāh ibn ʿAbd al-Ḥakam said: ʿAbd al-Ṣamad ibn ʿAbd al-Raḥmān ibn al-Qāsim narrated this to me from his father.

وَقَدْ رُوِّينَا مِنْ طَرِيقٍ ثَابِتَةٍ عَنِ ابْنِ الْقَاسِمِ صَاحِبِ مَالِكٍ أَنَّهُ أَفْتَى ابْنَهُ فِي الْمَشْيِ إِلَى مَكَّةَ بِكَفَّارَةِ يَمِينٍ، وَقَالَ لَهُ: إِنْ عُدْت أَفْتَيْتُك بِقَوْلِ مَالِكٍ - وَهَذَا عَجَبٌ جِدًّا؟ -: حَدَّثَنِي بِذَلِكَ حُمَامُ بْنُ أَحْمَدَ قَالَ ثنا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الْبَاجِيُّ نا عُمَرُ بْنُ أَبِي تَمَّامٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ قَالَ: حَدَّثَنِي بِذَلِكَ عَبْدُ الصَّمَدِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ عَنْ أَبِيهِ.

L17714–17715 It has been reported to us another opinion from Ibn Umar: He was asked about vows and replied, "The best of oaths. If you do not find [the means to fulfill it], then the next [category], he says: freeing [a slave], then clothing [the needy], then feeding [them]." Except that this is transmitted through the chain of Abu Ma'shar - who is weak.

وَرُوِّينَا عَنِ ابْنِ عُمَرَ قَوْلًا آخَرَ وَهُوَ أَنَّ ابْنَ عُمَرَ سُئِلَ عَنِ النَّذْرِ؟ فَقَالَ: أَفْضَلُ الْأَيْمَانِ، فَإِنْ لَمْ تَجِدْ، فَالَّتِي تَلِيهَا يَقُولُ: الْعِتْقُ، ثُمَّ الْكِسْوَةُ، ثُمَّ الْإِطْعَامُ، إِلَّا أَنَّهَا مِنْ طَرِيقِ أَبِي مَعْشَرٍ - وَهُوَ ضَعِيفٌ.

L17716 It has also been narrated to us a similar distinction by Al-Shāfiʿī—contrary to his own position—also from Ibn ʿAbbās and Ibn ʿUmar via the narration of Ismāʿīl ibn Umayyah from ʿUthmān ibn Abī Ḥāḍir, who said: A woman swore, "My wealth is for the sake of Allah, and my slave-girl is free if she does not do such-and-such." Ibn ʿAbbās and Ibn ʿUmar said: As for the slave-girl, she is to be emancipated. As for her statement, "My wealth is for the sake of Allah," the zakāh due on her wealth must be given as charity.

وَرُوِّينَا مِثْلَ تَفْرِيقِ الشَّافِعِيِّ أَيْضًا بِخِلَافِ قَوْلِهِ أَيْضًا عَنِ ابْنِ عَبَّاسٍ وَابْنِ عُمَرَ مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ عُثْمَانَ بْنِ أَبِي حَاضِرٍ قَالَ: حَلَفَتْ امْرَأَةٌ: مَالِي فِي سَبِيلِ اللَّهِ، وَجَارِيَتِي حُرَّةٌ إِنْ لَمْ تَفْعَلْ كَذَا؟ فَقَالَ ابْنُ عَبَّاسٍ، وَابْنُ عُمَرَ: أَمَّا الْجَارِيَةُ فَتُعْتَقُ، وَأَمَّا قَوْلُهَا: مَالِي فِي سَبِيلِ اللَّهِ، فَيُتَصَدَّقُ بِزَكَاةِ مَالِهَا.

L17717 And a statement similar to that of Abū Ḥanīfah, attributed to Ibn ʿUmar, has been transmitted to us through an unauthentic chain.

وَرُوِّينَا مِثْلَ قَوْلِ أَبِي حَنِيفَةَ عَنِ ابْنِ عُمَرَ مِنْ طَرِيقٍ لَا تَصِحُّ.

L17718 They have also contradicted him in this matter—as we have been narrated through the chain of Saʿīd ibn Manṣūr: Abū Muʿāwiyah reported to us: Jamīl ibn Zayd reported from Ibn ʿUmar, who said: "Whoever swears an oath of iṣr has no expiation for it. The iṣr is swearing by divorce, manumission, a vow,

وَقَدْ خَالَفُوهُ أَيْضًا فِيهَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ نا جَمِيلُ بْنُ زَيْدٍ عَنِ ابْنِ عُمَرَ قَالَ: مَنْ حَلَفَ عَلَى يَمِينِ إِصْرٍ فَلَا كَفَّارَةَ لَهُ وَالْإِصْرُ أَنْ يَحْلِفَ

بِطَلَاقٍ، أَوْ عَتَاقٍ، أَوْ نَذْرٍ، أَوْ مَشْيٍ، وَمَنْ حَلَفَ عَلَى يَمِينٍ غَيْرِ ذَلِكَ فَلْيَأْتِ الَّذِي هُوَ خَيْرٌ فَهُوَ كَفَّارَتُهُ. جَمِيلُ بْنُ زَيْدٍ - سَاقِطٌ.

or a vowed journey. Whoever swears an oath other than this, let him fulfill the better course—that shall be his expiation." Jamīl ibn Zayd is rejected.

وَلَوْ صَحَّ لَكَانُوا قَدْ خَالَفُوهُ فِي هَذَا الْخَبَرِ نَفْسِهِ؛ لِأَنَّهُ لَمْ يُجْعَلْ فِيمَنْ أَتَى خَيْرًا مِمَّا حَلَفَ أَنْ يَفْعَلَهُ كَفَّارَةٌ، إلَّا فِعْلُهُ ذَلِكَ فَقَطْ.

L17719 If it were valid, they would have contradicted him in this very report, because no expiation is prescribed for one who performs a good act other than what he swore to do—except the performance of that very action itself.

فَإِنْ قَالُوا: قَدْ أَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي هَذَا بِالْكَفَّارَةِ؟ قُلْنَا: نَعَمْ وَقَدْ نَهَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْحَلِفِ بِغَيْرِ اللَّهِ تَعَالَى وَنَهَى عَنْ الْوَفَاءِ بِنَذْرِ الْمَعْصِيَةِ، فَإِنْ كَانَ قَوْلُهُ يَمِينًا فَهُوَ مَعْصِيَةٌ، وَإِنْ كَانَ نَذْرًا فَهُوَ مَعْصِيَةٌ، إذْ لَمْ يَقْصِدْ بِهِ قَصْدَ الْقُرْبَةِ إلَى اللَّهِ تَعَالَى، فَلَا وَفَاءَ فِيهِ، وَلَا كَفَّارَةَ - فَحَصَلَ قَوْلُ هَؤُلَاءِ الْقَوْمِ خَارِجًا عَنْ أَقْوَالِ جَمِيعِ السَّلَفِ.

L17720 If they say: Did the Prophet (peace be upon him) command expiation in this matter? We reply: Yes, and the Prophet (peace be upon him) prohibited swearing by anything other than Allah the Exalted and forbade fulfilling vows of disobedience. If his statement is an oath, it is an act of disobedience, and if it is a vow, it is an act of disobedience, since he did not intend by it drawing closer to Allah the Exalted. Thus, it should not be fulfilled, nor is there any expiation. Therefore, the opinion of these people contradicts the statements of all the Salaf.

[نَذَرَ أَنْ يَتَصَدَّقَ بِجَمِيعِ مَالِهِ فِي الْمَسَاكِينِ]

He vowed to give all his wealth as charity to the poor.

وَمِمَّا ذَكَرْنَا مَسَائِلُ فِيهَا خِلَافٌ قَدِيمٌ، وَهِيَ -: مَنْ نَذَرَ الصَّدَقَةَ بِجَمِيعِ مَالِهِ، وَمَنْ نَذَرَ أَنْ يَنْحَرَ نَفْسَهُ، وَمَنْ نَذَرَ الْمَشْيَ إلَى مَسْجِدِ الْمَدِينَةِ، أَوْ مَسْجِدِ إيلِيَاءَ، أَوْ الرُّكُوبَ، أَوْ النُّهُوضَ إلَى مَكَّةَ، أَوْ إلَى مَوْضِعٍ سَمَّاهُ مِنْ الْحَرَمِ، وَمَنْ نَذَرَ عِتْقَ عَبْدِهِ إنْ بَاعَهُ، أَوْ عِتْقَ عَبْدِ فُلَانٍ إنْ مَلَكَهُ.

L17721 L17722 Among the matters we have mentioned are issues entailing longstanding disagreement—namely: one who vows to give all his wealth in charity; one who vows to sacrifice himself; one who vows to walk to the Mosque of Medina or Al-Aqsa Mosque; one who vows to ride or set out to Mecca; one who vows to go to a specific location he names within the Sacred Precinct; one who vows to free his slave if he sells him; and one who vows to free so-and-so's slave if the vow-maker comes to own him.

فَأَمَّا الصَّدَقَةُ بِجَمِيعِ الْمَالِ فَقَدْ ذَكَرْنَا مَنْ قَالَ: لَا شَيْءَ فِي ذَلِكَ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ إذَا خَرَجَ مَخْرَجَ الْيَمِينِ - وَهُوَ قَوْلُنَا.

L17723–17724 As for giving all wealth as ṣadaqah, we have mentioned those among the Companions and Followers who said: "There is nothing in that" when it takes the form of an oath—and this is our position.

L17725 A group said: Whoever vows to give all their wealth in charity to the poor must give all of it. This is authenticated through the narration of ʻAbd al-Razzāq from Maʻmar from Sālim ibn ʻAbd Allāh ibn ʻUmar from his father:

A man asked Ibn ʿUmar, “Have I dedicated my wealth to the path of Allah?” He replied, “Then it is in the path of Allah.”

وَقَالَتْ طَائِفَةٌ: مَنْ نَذَرَ أَنْ يَتَصَدَّقَ بِجَمِيعِ مَالِهِ فِي الْمَسَاكِينِ فَعَلَيْهِ أَنْ يَتَصَدَّقَ بِهِ كُلِّهِ، صَحَّ ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ أَنَّ رَجُلًا سَأَلَهُ فَقَالَ جَعَلْت مَالِي فِي سَبِيلِ اللَّهِ؟ فَقَالَ ابْنُ عُمَرَ: فَهُوَ فِي سَبِيلِ اللَّهِ.

L17726 It was narrated to us from Sālim and al-Qāsim ibn Muḥammad that they said regarding this matter: “He should give it as charity to some of his daughters.”

وَرُوِّينَا عَنْ سَالِمٍ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ، أَنَّهُمَا قَالَا فِي هَذِهِ الْمَسْأَلَةِ: يَتَصَدَّقُ بِهِ عَلَى بَعْضِ بَنَاتِهِ.

L17727 It has been authentically reported from al-Shāfiʿī and al-Nakhāʿī that they obligated the individual to fulfill what he had imposed upon himself, this being the opinion of ʿUthmān al-Battī, al-Shāfiʿī, al-Ṭaḥāwī, and Abū Sulaymān. These scholars said: If he phrased it in the manner of an oath, its expiation is the expiation for an oath - except Abū Sulaymān, who said: “There is nothing required in that.”

وَصَحَّ عَنْ الشَّافِعِيِّ، وَالنَّخَعِيِّ، أَنَّهُمَا كَانَا يُلْزِمَانِهِ مَا جَعَلَ عَلَى نَفْسِهِ - وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ، وَالشَّافِعِيِّ، وَالطَّحَاوِيِّ، وَأَبِي سُلَيْمَانَ، قَالَ هَؤُلَاءِ: فَإِنْ أَخْرَجَهُ مَخْرَجَ الْيَمِينِ فَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ إلَّا أَبَا سُلَيْمَانَ فَقَالَ: لَا شَيْءَ فِي ذَلِكَ.

L17728 A group said: He should give all of it in charity except for a month’s basic provisions. Then, if he acquires anything, he should give in charity what he had retained for himself—and this is the opinion of Zufar ibn al-Hudhayl. He opined regarding it that if he treats it in the manner of an oath, it becomes an atonement for an oath.

وَقَالَتْ طَائِفَةٌ: يَتَصَدَّقُ بِجَمِيعِهِ حَاشَا قُوتِ شَهْرٍ فَإِذَا أَفَادَ شَيْئًا تَصَدَّقَ بِمَا كَانَ أَبْقَى لِنَفْسِهِ - وَهُوَ قَوْلُ زُفَرَ بْنِ الْهُذَيْلِ، وَرَأَى فِيهِ إذَا أَخْرَجَهُ مَخْرَجَ الْيَمِينِ كَفَّارَةَ يَمِينٍ.

L17729 A school of scholars held: He should give a third of his wealth in charity, and it suffices for him. That has been narrated to us from Ibn Lahīʿah, from Yazīd ibn Ḥabīb, from Ibn Shihāb, from Saʿīd ibn al-Musayyib. A similar report has been authenticated from al-Zuhrī. This is the opinion of al-Layth ibn Saʿd.

وَقَالَتْ طَائِفَةٌ: يَتَصَدَّقُ بِثُلُثِ مَالِهِ وَيَجْزِيهِ -: رُوِّينَا ذَلِكَ عَنْ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ حَبِيبٍ عَنْ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ - وَصَحَّ نَحْوُهُ عَنْ الزُّهْرِيِّ - وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ.

L17730 A group said: “In this case, there is expiation for an oath.” This has also been narrated to us from ʿIkrimah, al-Hasan, and ʿAṭāʾ.

وَقَالَتْ طَائِفَةٌ: فِيهِ كَفَّارَةُ يَمِينٍ -: رُوِّينَا ذَلِكَ أَيْضًا عَنْ عِكْرِمَةَ، وَالْحَسَنِ، وَعَطَاءٍ.

L17731 It has been narrated to us previously from Aisha, the Mother of the Believers, Umar, Jabir, Ibn Abbas, and Ibn Umar—and this is the opinion of Al-Awzai.

وَرُوِّينَا ذَلِكَ قَبْلُ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَعُمَرَ، وَجَابِرٍ، وَابْنِ عَبَّاسٍ وَابْنِ عُمَرَ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ.

L17732 A group said—as reported to us through the chain of ʿAbd al-Razzāq from Maʿmar from Qatādah from Jābir ibn Zayd—that he was asked about some-

one who designated his wealth as a sacrificial offering in the cause of Allah, the Almighty and Majestic. He replied: "Allah the Exalted does not desire for anyone's wealth to be taken unjustly. If it is abundant, let them offer a fifth of it; if average, a seventh; and if small, a tenth."

وَقَالَتْ طَائِفَةٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ جَابِرِ بْنِ زَيْدٍ أَنَّهُ سُئِلَ عَمَّنْ جَعَلَ مَالَهُ هَدْيًا فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ؟ فَقَالَ: إِنَّ اللَّهَ تَعَالَى لَمْ يُرِدْ أَنْ يَغْتَصِبَ أَحَدًا مَالَهُ، فَإِنْ كَانَ كَثِيرًا فَلْيُهْدِ خُمُسَهُ وَإِنْ كَانَ وَسَطًا فَسُبُعَهُ، وَإِنْ كَانَ قَلِيلًا فَعُشْرَهُ.

L17733 Qatadah said: The much is two thousand, the middle is one thousand, and the little is five hundred.

قَالَ قَتَادَةُ: الْكَثِيرُ أَلْفَانِ، وَالْوَسَطُ أَلْفٌ، وَالْقَلِيلُ خَمْسُمِائَةٍ.

L17734–17735 And a group held the opinion—though we have not received this through the aforementioned chain reaching Qatādah—that he [Qatādah] said: "One should give a fifth of it as charity."

وَقَالَتْ طَائِفَةٌ - مَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى قَتَادَةَ، قَالَ: يَتَصَدَّقُ بِخُمُسِهِ.

L17736 A group said: One should give as charity one-fortieth - as we previously transmitted that from Ibn Abbas and Ibn Umar, and it is the opinion of Rabi'ah. The group equated between one who swore to give all his wealth as charity and one who swore to give a portion he named from it. We have transmitted that solely from them in the oath pertaining to this matter.

وَقَالَتْ طَائِفَةٌ: يَتَصَدَّقُ بِرُبْعِ الْعُشْرِ - كَمَا رُوِّينَا ذَلِكَ آنِفًا عَنِ ابْنِ عَبَّاسٍ وَابْنِ عُمَرَ وَهُوَ قَوْلُ رَبِيعَةَ، وَسَوَّى بَيْنَ مَنْ حَلَفَ بِصَدَقَةِ جَمِيعِ مَالِهِ أَوْ بِصَدَقَةِ جُزْءٍ مِنْهُ سَمَّاهُ وَإِنَّمَا رُوِّينَا ذَلِكَ عَنْهُمْ فِي الْيَمِينِ بِذَلِكَ.

L17737 We have received a narration from ʿAbd al-ʿAzīz ibn al-Mājishūn that he considered this statement of Rabīʿah sound.

وَرُوِّينَا عَنْ عَبْدِ الْعَزِيزِ بْنِ الْمَاجِشُونِ أَنَّهُ اسْتَحْسَنَ قَوْلَ رَبِيعَةَ هَذَا.

L17738 A group maintained—as reported through narrations from Ibn Juraij and ʿUmar ibn Dharr, both transmitting from ʿAṭāʾ regarding one who states, "My camels are a vow or sacrificial offering"—that one camel from them suffices him.

وَقَالَتْ طَائِفَةٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ جُرَيْجٍ، وَعُمَرَ بْنِ ذَرٍّ، كِلَاهُمَا عَنْ عَطَاءٍ فِيمَنْ قَالَ: إِبِلِي نَذْرٌ، أَوْ هَدْيٌ، أَنَّهُ يُجْزِيه بَعِيرٌ مِنْهَا.

L17739 Ibn Jurayj reported on his authority: Perhaps it would suffice him if his camels are numerous.

قَالَ ابْنُ جُرَيْجٍ عَنْهُ: لَعَلَّهُ يُجْزِيه إِنْ كَانَتْ إِبِلُهُ كَثِيرَةً.

L17740 And Ibn Dharr said, reporting from him: He offers a valuable mature she-camel and retains the remainder of his camels.

وَقَالَ ابْنُ ذَرٍّ عَنْهُ: يُهْدِي جَزُورًا ثَمِينًا، وَيُمْسِكُ بَقِيَّةَ إِبِلِهِ.

L17741 As for the later ones, they hold opinions other than all of this—

وَأَمَّا الْمُتَأَخِّرُونَ فَلَهُمْ أَقْوَالٌ غَيْرُ هَذَا كُلِّهِ -:

L17742 Abu Hanifah said: Whoever vows to donate all his wealth as a vow or by way of an oath is obligated to give in charity from his wealth only every type in which Zakat is obligatory—such as livestock, gold, and silver—whether he

قَالَ أَبُو حَنِيفَةَ: مَنْ نَذَرَ أَنْ يَتَصَدَّقَ بِجَمِيعِ مَالِهِ نَذْرًا، أَوْ عَلَى سَبِيلِ الْيَمِينِ، فَإِنَّهُ يَلْزَمُهُ أَنْ يَتَصَدَّقَ مِنْ مَالِهِ بِكُلِّ نَوْعٍ تَجِبُ فِيهِ الزَّكَاةُ فَقَطْ، كَالْمَوَاشِي، وَالذَّهَبِ وَالْفِضَّةِ،

possesses for that type the nisab threshold required for Zakat on its like, or less than the nisab. Nothing is incumbent upon him regarding the rest of his wealth.

سَوَاءٌ كَانَ مَعَهُ مِنْ ذَلِكَ نِصَابٌ تَجِبُ فِي مِثْلِهِ الزَّكَاةُ، أَوْ كَانَ أَقَلَّ مِنْ النِّصَابِ - وَلَا شَيْءَ عَلَيْهِ فِي سَائِرِ أَمْوَالِهِ.

L17743 Abū Muḥammad said: We do not know their position regarding grains, cultivated crops, fruits, and honey—for indeed, zakat applies to all these in his view, and to every merchandise intended for trade. This represents the view of Abū Yūsuf and Muḥammad ibn al-Ḥasan. This opinion is utterly baseless, unknown to anyone before Abū Ḥanīfah, lacking any foundation in the Quran, the Sunnah, weak narrations, statements of earlier scholars, or analogical reasoning. Some of them attempted to justify it by claiming: "Wealth is that which requires zakat, based on Allah's words: 'Take from their wealth a charity' [Quran 9:103]."[4]

قَالَ أَبُو مُحَمَّدٍ: وَلَا نَدْرِي مَا قَوْلُهُمْ فِي الْحُبُوبِ وَمَا يُزْرَعُ، وَالثِّمَارُ، وَالْعَسَلُ؟ فَإِنَّ الزَّكَاةَ فِي كُلِّ هَذَا عِنْدَهُ نَعَمْ، وَفِي كُلِّ عَرَضٍ إذَا كَانَ لِلتِّجَارَةِ وَهُوَ قَوْلُ أَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ - وَهَذَا قَوْلٌ فِي غَايَةِ الْفَسَادِ وَلَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ وَلَا مُتَعَلَّقَ لَهُ بِقُرْآنٍ وَلَا بِسُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ سَلَفٍ، وَلَا قِيَاسٍ، وَمَوَّهَ بَعْضُهُمْ بِأَنْ قَالَ: الْمَالُ هُوَ الَّذِي فِيهِ الزَّكَاةُ لِقَوْلِ اللَّهِ تَعَالَى {خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً} [التوبة: ١٠٣] .

L17744 Abu Muhammad said: The charity taken is only part of what a person owns. There has never been disagreement among any Arab, linguist, or jurist that walled gardens and houses are termed "property" and "properties" — and that whoever swears he has no property while he has donkeys, houses, and estates is considered an oath-breaker according to them and others besides them. Abu Talhah said to the Messenger of Allah (peace be upon him), "The dearest of my properties to me is Bayruha." The Messenger of Allah (peace be upon him) said to Ka'b ibn Malik, "Will you retain some of your property?" He replied, "I retain my share in Khaybar."

قَالَ أَبُو مُحَمَّدٍ: الصَّدَقَةُ الْمَأْخُوذَةُ إنَّمَا هِيَ مِنْ جُمْلَةِ مَا يَمْلِكُ الْمَرْءُ، وَمَا اخْتَلَفَ قَطُّ عَرَبِيٌّ، وَلَا لُغَوِيٌّ، وَلَا فَقِيهٌ، أَنَّ الْحَوَائِطَ، وَالدُّورَ تُسَمَّى: مَالًا، وَأَمْوَالًا - وَأَنَّ مَنْ حَلَفَ أَنَّهُ لَا مَالَ لَهُ وَلَهُ حَمِيرٌ، وَدُورٌ، وَضِيَاعٌ، فَإِنَّهُ حَانِثٌ عِنْدَهُمْ، وَعِنْدَ غَيْرِهِمْ -: وَقَالَ أَبُو طَلْحَةَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَحَبُّ أَمْوَالِي إلَيَّ بَيْرُحَاءُ «وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِكَعْبِ بْنِ مَالِكٍ أَمْسِكْ عَلَيْكَ بَعْضَ مَالِكَ؟ فَقَالَ: إنِّي أُمْسِكُ سَهْمِي الَّذِي بِخَيْبَرَ» .

L17745–17746 According to their corrupt opinion, it necessarily follows that no charity is valid whatsoever unless given from wealth liable to zakat or in the amount of zakat only.

وَيَلْزَمُ عَلَى قَوْلِهِمْ الْفَاسِدِ أَنْ لَا تُجْزِئَ صَدَقَةٌ أَصْلًا إلَّا بِمَالٍ فِيهِ زَكَاةٌ أَوْ بِمِقْدَارِ الزَّكَاةِ فَقَطْ.

L17747 Malik said: It is the same whether one vowed this or phrased it as an oath. If someone declares, "All my wealth is charity for the poor," one-third of it suffices. But if he specifies: "All my houses are charity for the poor, all my farmlands are charity for the

وَقَالَ مَالِكٌ: سَوَاءٌ نَذَرَ ذَلِكَ أَوْ أَخْرَجَهُ مَخْرَجَ الْيَمِينِ إنْ قَالَ: مَالِي كُلُّهُ صَدَقَةٌ عَلَى الْمَسَاكِينِ أَجْزَأَهُ ثُلُثُهُ، فَإِنْ قَالَ: دُورِي كُلُّهَا صَدَقَةٌ عَلَى الْمَسَاكِينِ وَضِيَاعِي كُلُّهَا صَدَقَةٌ عَلَى الْمَسَاكِينِ، وَثِيَابِي كُلُّهَا صَدَقَةٌ عَلَى الْمَسَاكِينِ، وَرَقِيقِي كُلُّهُمْ صَدَقَةٌ عَلَى

[4] **Qur'an references (L17743):** Qur'an 9:103 (At-Tawbah).

poor, all my slaves are charity for the poor," naming each type one by one until encompassing everything he owns from beginning to end, it becomes incumbent upon him to give as charity all of that. One-third no longer suffices. However, he is commanded to fulfill it but not compelled.

الْمَسَاكِينِ، فَلَمْ يَزَلْ هَكَذَا حَتَّى سَمَّى نَوْعًا نَوْعًا حَتَّى أَتَى عَلَى كُلِّ مَا يَمْلِكُ -: لَزِمَهُ أَنْ يَتَصَدَّقَ بِكُلِّ ذَلِكَ أَوَّلُهُ عَنْ آخِرِهِ، لَا يُجْزِيه مِنْهُ الثُّلُثُ إلَّا أَنَّهُ يُؤْمَرُ وَلَا يُجْبَرُ.

L17748 If he were to designate a specific individual instead of the poor, he must give all of it in charity to that person and would be legally compelled to do so.

فَلَوْ قَالَ مَكَانَ الْمَسَاكِينِ عَلَى إنْسَانٍ بِعَيْنِهِ -: لَزِمَهُ أَنْ يَتَصَدَّقَ عَلَيْهِ بِكُلِّ ذَلِكَ وَيُجْبَرَ عَلَى ذَلِكَ.

L17749 They said: If someone vows or swears to give all their wealth in charity except one dinar, they are obligated to give all but that dinar in charity. This is a profoundly invalid view. For there is no Quran to support it, nor Sunnah, nor even a weak ḥadīth, nor any opinion we know of from anyone before him, nor analogy, nor any opinion with discernible justification. Rather, it contradicts all of that.

وَقَالُوا: فَلَوْ نَذَرَ، أَوْ حَلَفَ أَنْ يَتَصَدَّقَ بِمَالِهِ كُلِّهِ، إلَّا دِينَارًا أَنَّهُ تَلْزَمُهُ الصَّدَقَةُ بِجَمِيعِهِ إلَّا دِينَارًا -: وَهَذَا قَوْلٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ لَا قُرْآنَ يُعَضِّدُهُ، وَلَا سُنَّةَ، وَلَا رِوَايَةَ ضَعِيفَةً، وَلَا قَوْلَ نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ؛ بَلْ هُوَ مُخَالِفٌ لِكُلِّ ذَلِكَ.

L17750 The question is posed regarding one who vowed to donate all his wealth except half a dinar or a dirham, until it is reduced to a fils and a mustard seed. Ibn Wahb said: If his wealth is substantial, he should donate one-third of it; if modest, one-fortieth of it; and if a negligible amount, then the expiation for an oath. This is also an unfounded opinion.

وَنَسْأَلُهُمْ عَمَّنْ نَذَرَ أَنْ يَتَصَدَّقَ بِمَالِهِ كُلِّهِ إلَّا نِصْفَ دِينَارٍ، أَوْ دِرْهَمًا حَتَّى نَبْلُغَهُمْ إلَى الْفَلْسِ، وَحَبَّةِ الْخَرْدَلَةِ؟ وَقَالَ ابْنُ وَهْبٍ: إنْ كَانَ مَالُهُ كَثِيرًا تَصَدَّقَ بِثُلُثِهِ، وَإِنْ كَانَ يَسِيرًا فَرُبْعُ عُشْرِهِ، وَإِنْ كَانَ عَلَقَةً قَلِيلَةً، فَكَفَّارَةُ يَمِينٍ - وَهَذَا أَيْضًا قَوْلٌ لَا وَجْهَ لَهُ.

L17751 Abu Muhammad said: None of these statements have a basis requiring mention except the opinion that one should give all of it in charity; the opinion that one should give a third of it in charity; and the opinion that it is only the expiation of an oath.

قَالَ أَبُو مُحَمَّدٍ لَيْسَ لِشَيْءٍ مِنْ هَذِهِ الْأَقْوَالِ مُتَعَلَّقٌ يَحْتَاجُ إلَى ذِكْرِهِ إلَّا قَوْلَ مَنْ قَالَ مَنْ قَالَ: يَتَصَدَّقُ بِجَمِيعِهِ، وَقَوْلَ مَنْ قَالَ: يَتَصَدَّقُ بِثُلُثِهِ، وَقَوْلَ مَنْ قَالَ: كَفَّارَةُ يَمِينٍ فَقَطْ.

L17752 As for those who said "expiation of an oath," they invoked the authenticated narration from the Prophet, peace and blessings of Allah be upon him, in his statement: "The expiation for a vow is the expiation for an oath."

فَأَمَّا مَنْ قَالَ: كَفَّارَةُ يَمِينٍ، فَإِنَّهُمْ احْتَجُّوا بِالْخَبَرِ الثَّابِتِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ «كَفَّارَةُ النَّذْرِ كَفَّارَةُ يَمِينٍ» .

L17753–17755 Ali said: "This is a narration that provides no valid evidence for them, because the Prophet—peace and blessings of Allah be upon him—said: 'Whoever vows to obey Allah must obey Him, and whoever vows to disobey Him must not disobey Him.' Thus, a vow to donate all one's wealth in charity

قَالَ عَلِيٌّ: وَهَذَا خَبَرٌ لَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ نَذَرَ أَنْ يُطِيعَ اللَّهَ فَلْيُطِعْهُ، وَمَنْ نَذَرَ أَنْ يَعْصِيَهُ فَلَا يَعْصِهِ» ؛ فَلَا يَخْلُو النَّذْرُ بِصَدَقَةِ الْمَالِ

must necessarily be either an act of obedience to Allah Almighty—making its fulfillment obligatory—or an act of disobedience, rendering it non-binding at all unless there comes authentic textual evidence." In this lies a ruling to be adhered to, thus invalidating their reliance on the Prophet's statement—peace be upon him—"The expiation for a vow is the same as the expiation for an oath." This report also has an evident aspect, which we shall mention hereafter, God, the Exalted, willing.[5]

كُلِّهِ مِنْ أَنْ يَكُونَ طَاعَةً لِلَّهِ تَعَالَى فَيَلْزَمُ الْوَفَاءُ بِهِ، أَوْ يَكُونَ مَعْصِيَةً فَلَا يَلْزَمُهُ أَصْلًا إِلَّا أَنْ يَأْتِيَ نَصٌّ صَحِيحٌ فِي ذَلِكَ بِحُكْمٍ مَا فَيُوقَفُ عِنْدَهُ، فَبَطَلَ تَعَلُّقُهُمْ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «كَفَّارَةُ النَّذْرِ كَفَّارَةُ يَمِينٍ» - وَلِهَذَا الْخَبَرِ وَجْهٌ ظَاهِرٌ نَذْكُرُهُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى.

L17756 As for the one who said he should give all of it in charity, then indeed they said: "It is a vow of obedience, so he is obligated to fulfill it."

وَأَمَّا مَنْ قَالَ: يَتَصَدَّقُ بِجَمِيعِهِ فَإِنَّهُمْ قَالُوا: هُوَ نَذْرُ طَاعَةٍ فَعَلَيْهِ الْوَفَاءُ بِهِ.

L17757 Abū Muḥammad said: Is it not as they claimed? Rather, is it not a vow of obedience—as we will clarify, if Allah the Exalted wills? As for those who said one-third suffices, they cited a report we transmitted via the chain of Abū Dāwūd—from Muḥammad ibn Yaḥyā, from Al-Ḥasan ibn Ar-Rabīʿ, from Ibn Idrīs, who said: Ibn Isḥāq narrated to me, from Az-Zuhrī, from ʿAbdur-Raḥmān ibn ʿAbdillāh ibn Mālik, from his grandfather regarding his story when he stayed back from Tabūk. He said: I said, "O Messenger of Allah, part of my repentance to Allah is to give all my wealth as charity to Allah and His Messenger—may Allah bless him and his family and grant him peace." He replied: "No." I asked: "Half of it?" He said: "No." I asked: "A third?" He said: "Yes." I said: "Then I shall retain my share from Khaybar."

قَالَ أَبُو مُحَمَّدٍ: وَلَيْسَ كَمَا قَالُوا، بَلْ لَيْسَ هُوَ نَذْرَ طَاعَةٍ عَلَى مَا نُبَيِّنُ إِنْ شَاءَ اللَّهُ تَعَالَى؟ وَأَمَّا مَنْ قَالَ: يُجْزِيه الثُّلُثُ، فَإِنَّهُمْ احْتَجُّوا بِخَبَرٍ: رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ يَحْيَى نا الْحَسَنُ بْنُ الرَّبِيعِ نا ابْنُ إِدْرِيسَ قَالَ: قَالَ ابْنُ إِسْحَاقَ: حَدَّثَنِي الزُّهْرِيُّ عَنْ «عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَالِكٍ عَنْ جَدِّهِ فِي قِصَّتِهِ إِذْ تَخَلَّفَ عَنْ تَبُوكَ قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ إِنَّ مِنْ تَوْبَتِي إِلَى اللَّهِ أَنْ أُخْرِجَ مِنْ مَالِي كُلِّهِ إِلَى اللَّهِ وَإِلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - صَدَقَةً قَالَ: لَا، قُلْتُ: فَنِصْفَهُ، قَالَ: لَا، قُلْتُ: فَثُلُثَهُ؟ قَالَ: نَعَمْ، قُلْتُ: فَإِنِّي أُمْسِكُ سَهْمِي مِنْ خَيْبَرَ» .

L17758 And with a narration that was narrated by us through the chain of Ibn Shihab: That Husayn ibn al-Sa'ib ibn Abi Lubabah informed him that Abu Lubabah said: "O Messenger of Allah, part of my repentance to Allah—the Exalted and Glorified—is that I abandon the home of my people, dwell with you, and divest myself of part of my wealth as charity for Allah and His Messenger?" He said: "A third suffices on your behalf."

وَبِخَبَرٍ: رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ شِهَابٍ: أَنَّ حُسَيْنَ بْنَ السَّائِبِ بْنِ أَبِي لُبَابَةَ أَخْبَرَهُ «أَنَّ أَبَا لُبَابَةَ قَالَ: يَا رَسُولَ اللَّهِ إِنَّ مِنْ تَوْبَتِي إِلَى اللَّهِ - عَزَّ وَجَلَّ - أَنْ أَهْجُرَ دَارَ قَوْمِي، وَأُسَاكِنَكَ، وَأَنْخَلِعَ مِنْ مَالِي صَدَقَةً لِلَّهِ وَلِرَسُولِهِ؟ قَالَ: يُجْزِي عَنْكَ الثُّلُثُ» .

L17759 And through the chain of Ibn Shihāb: Some of the sons of al-Sā'ib ibn Abī Lubābah informed me from Abu Lubābah with a narration similar to it.

وَمِنْ طَرِيقِ ابْنِ شِهَابٍ -: أَخْبَرَنِي بَعْضُ بَنِي السَّائِبِ بْنِ أَبِي لُبَابَةَ عَنْ أَبِي لُبَابَةَ بِمِثْلِهِ.

[5] **Hadith references (L17753):** Sahih al-Bukhari 6696; Sahih al-Bukhari 6700; Mishkat al-Masabih 3427.

L17760 And through the chain of al-Zuhrī, Ibn al-Musayyib informed me and related the hadith, which states: "Abū Lubābah said: 'O Messenger of Allah, shall I divest myself of my wealth as charity to Allah and His Messenger?' He replied: 'One-third suffices on your behalf.'"

وَمِنْ طَرِيقِ الزُّهْرِيِّ أَخْبَرَنِي ابْنُ الْمُسَيِّبِ فَذَكَرَ الْحَدِيثَ، وَفِيهِ «أَنَّ أَبَا لُبَابَةَ قَالَ: يَا رَسُولَ اللَّهِ، وَأَنْ أَنْخَلِعَ مِنْ مَالِي صَدَقَةً إِلَى اللَّهِ وَرَسُولِهِ؟ قَالَ: يُجْزِي عَنْكَ الثُّلُثُ» .

L17761 Abu Muhammad said: This is all the evidence they have cited, and none of it constitutes a valid proof for them, because all are mursal reports, and the first report has an interrupted chain as Ibn Idris mentions that he heard it from Ibn Ishaq.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا احْتَجُّوا بِهِ، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّهَا كُلَّهَا مَرَاسِيلُ، وَالْأَوَّلُ مُنْقَطِعٌ؛ لِأَنَّ ابْنَ إِدْرِيسَ يَذْكُرُ أَنَّهُ سَمِعَهُ مِنْ ابْنِ إِسْحَاقَ.

L17762 As for the Mālikīs' obfuscation by citing this report as evidence, it constitutes severe disgrace upon them, for they wholly contradict it through those invalid divisions and their doctrine that fulfilling a vow to donate half one's wealth as alms is obligatory – whereas this report contains opposition to that stance and equates vows to donate all of one's wealth with those to donate half. Thus, this opinion is invalidated and has no basis.

وَأَمَّا تَمْوِيهُ الْمَالِكِيِّينَ بِالِاحْتِجَاجِ بِهَذَا الْخَبَرِ فَعَارٌ عَظِيمٌ عَلَيْهِمْ؛ لِأَنَّهُمْ مُخَالِفُونَ لَهُ كُلِّهِ بِتِلْكَ التَّقَاسِيمِ الْفَاسِدَةِ، وَبِأَنَّهُمْ يَرَوْنَ عَلَيْهِ الْوَفَاءَ بِصَدَقَةِ نِصْفِ مَالِهِ إِذَا نَذَرَهُ - وَفِي هَذَا الْخَبَرِ خِلَافُ ذَلِكَ، وَالتَّسْوِيَةُ بَيْنَ النَّذْرِ بِصَدَقَةِ جَمِيعِهِ، وَصَدَقَةِ نِصْفِهِ - فَبَطَلَ أَنْ يَكُونَ لِهَذَا الْقَوْلِ مُتَعَلَّقٌ.

L17763–17764 Ali said: "When these opinions are invalidated except for the view of those who say: 'He should give all of it as sadaqah, for it is a vowed act of obedience'—here we will discuss with them, God willing, and say—: Allah the Exalted stated: 'Give the relative his rightful due, and the needy and the traveler, and do not squander wastefully'" [Al-Isra: 26].[6]

قَالَ عَلِيٌّ: فَإِذَا بَطَلَتْ هَذِهِ الْأَقْوَالُ إِلَّا قَوْلَ مَنْ قَالَ: يَتَصَدَّقُ بِجَمِيعِهِ، لِأَنَّهُ طَاعَةٌ مَنْذُورَةٌ - فَهَهُنَا نَتَكَلَّمُ مَعَهُمْ إِنْ شَاءَ اللَّهُ تَعَالَى، فَنَقُولُ -: قَالَ اللَّهُ تَعَالَى {وَآتِ ذَا الْقُرْبَى حَقَّهُ وَالْمِسْكِينَ وَابْنَ السَّبِيلِ وَلا تُبَذِّرْ تَبْذِيرًا} [الإسراء: ٢٦] .

L17765 And He, the Exalted, said: "Do not keep your hand chained to your neck nor stretch it out excessively, lest you sit blameworthy and regretful." (Al-Isrāʾ 17:29)[7]

وَقَالَ تَعَالَى: {وَلا تَجْعَلْ يَدَكَ مَغْلُولَةً إِلَى عُنُقِكَ وَلا تَبْسُطْهَا كُلَّ الْبَسْطِ فَتَقْعُدَ مَلُومًا مَحْسُورًا} [الإسراء: ٢٩] .

L17766 And He, the Exalted, said: {Give its due [rights] on the day of harvest, and do not be excessive. Indeed, He does not love those who exceed limits} [Al-Anʿām 6:141]. By this, Allah, the Exalted, reproached and showed no approval for one who donates all their wealth in charity to the point of extravagance.[8]

وَقَالَ تَعَالَى: {وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ وَلا تُسْرِفُوا إِنَّهُ لا يُحِبُّ الْمُسْرِفِينَ} [الأنعام: ١٤١] فَلَامَ اللَّهُ تَعَالَى وَلَمْ يُحِبَّ مَنْ تَصَدَّقَ بِكُلِّ مَا يَمْلِكُ.

L17767 And through the chain of Al-Bukhari: Ahmad ibn Salih narrated to us, Ibn

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَحْمَدُ بْنُ صَالِحٍ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنِ ابْنِ شِهَابٍ أَخْبَرَنِي عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ كَعْبِ بْنِ مَالِكٍ قَالَ: سَمِعْتُ «كَعْبَ بْنَ

[6] **Qur'an references (L17764):** Qur'an 17:26 (Al-Isra).
[7] **Qur'an references (L17765):** Qur'an 17:29 (Al-Isra).
[8] **Qur'an references (L17766):** Qur'an 6:141 (Al-An'am).

Wahb narrated to us, Yunus ibn Yazid informed me from Ibn Shihab, who informed me: Abd al-Rahman ibn Abdullah ibn Ka'b ibn Malik said: I heard Ka'b ibn Malik—and he mentioned the account of his staying behind from Tabuk—and that he said to the Messenger of Allah: "Indeed, part of my repentance is that I strip myself of my wealth as charity to Allah and His Messenger." The Messenger of Allah—peace and blessings be upon him—said: "Retain some of your wealth for yourself, for that is better for you."

مَالِك - فَذَكَرَ حَدِيثَ تَخَلُّفِهِ عَنْ تَبُوكَ - وَأَنَّهُ قَالَ لِرَسُولِ اللَّهِ: إِنَّ مِنْ تَوْبَتِي أَنْ أَنْخَلِعَ مِنْ مَالِي صَدَقَةً إِلَى اللَّهِ وَرَسُولِهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمْسِكْ عَلَيْكَ بَعْضَ مَالِكَ فَهُوَ خَيْرٌ لَكَ» .

L17768 And from the chain of Muslim from Aḥmad ibn ʿAmr ibn ʿAbd Allāh ibn ʿAmr ibn al-Sarḥ, from Ibn Wahb with his isnad (the same as it), with this addition: "So I said: 'If I retain my share that is in Khaybar.'"

وَمِنْ طَرِيقِ مُسْلِمٍ عَنْ أَحْمَدَ بْنِ عَمْرِو بْنِ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ السَّرْحِ عَنْ ابْنِ وَهْبٍ بِإِسْنَادِهِ مِثْلَهُ، وَزَادَ فِيهِ فَقُلْتُ: إِنْ أُمْسِكْ سَهْمِي الَّذِي بِخَيْبَرَ.

L17769 From the narration of Abū Hurayrah, the Messenger of Allah—peace and blessings be upon him—said: "The best charity is that which leaves you in sufficiency, or is given from sufficiency. Start by giving to those under your care."

وَمِنْ طَرِيقِ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَّ خَيْرَ الصَّدَقَةِ مَا تَرَكَ غِنًى، أَوْ تَصَدَّقَ عَنْ غِنًى، وَابْدَأْ بِمَنْ تَعُولُ» .

L17770 From the narration of Abū Hurayrah, from the Prophet (peace be upon him): "Begin by giving charity to yourself. If anything remains, give it to your family. If anything remains beyond your family, give it to your relative. If anything remains beyond your relative, then proceed likewise and likewise."[9]

وَمِنْ طَرِيقِ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «ابْدَأْ بِنَفْسِكَ فَتَصَدَّقْ عَلَيْهَا فَإِنْ فَضَلَ شَيْءٌ فَلأَهْلِكَ، فَإِنْ فَضَلَ عَنْ أَهْلِكَ شَيْءٌ فَلِذِي قَرَابَتِكَ، فَإِنْ فَضَلَ عَنْ ذِي قَرَابَتِكَ شَيْءٌ، فَهَكَذَا وَهَكَذَا» .

L17771–17773 The hadiths here are exceedingly numerous. From the chain of Hammad ibn Salamah, from Muhammad ibn Ishaq, from Asim ibn Umar ibn Qatadah ibn al-Nuʿman al-Ẓafarī, from Mahmud ibn Labid, from Jabir ibn Abdullah al-Ansari, who said: "We were in the presence of the Messenger of Allah—peace and blessings be upon him—when a man came to him with an egg-shaped object made of gold and said: 'O Messenger of Allah, I found this from... Take this piece of metal as charity, for I possess nothing else. The Prophet (peace be upon him) repeatedly turned away from him as the man kept repeating this statement, until he (peace be upon him) finally took it and hurled it at him, saying: "Had it struck him, it would have pained him or maimed him." Then he (peace be upon him) said: "One of you comes with

وَالْأَحَادِيثُ هَهُنَا كَثِيرَةٌ جِدًّا. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَاصِمِ بْنِ عُمَرَ بْنِ قَتَادَةَ بْنِ النُّعْمَانِ الظَّفَرِيِّ عَنْ مَحْمُودِ بْنِ لَبِيدٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ الْأَنْصَارِيِّ قَالَ: «كُنَّا عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ جَاءَهُ رَجُلٌ بِمِثْلِ بَيْضَةٍ مِنْ ذَهَبٍ فَقَالَ: يَا رَسُولَ اللَّهِ أَصَبْتُ هَذِهِ مِنْ مَعْدِنٍ فَخُذْهَا فَهِيَ صَدَقَةٌ، مَا أَمْلِكُ غَيْرَهَا؟ فَأَعْرَضَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهُ مِرَارًا - وَهُوَ يُرَدِّدُ كَلَامَهُ هَذَا - ثُمَّ أَخَذَهَا - عَلَيْهِ السَّلَامُ - فَحَذَفَهُ بِهَا، فَلَوْ أَنَّهَا أَصَابَتْهُ لَأَوْجَعَتْهُ أَوْ لَعَقَرَتْهُ وَقَالَ

[9] **Hadith references (L17770):** Sahih Muslim 997a; Mishkat al-Masabih 3392.

what he owns and declares, 'This is charity,' then sits and solicits alms from people. The best charity is that given from surplus wealth."

- عَلَيْهِ السَّلَامُ -: يَأْتِي أَحَدُكُمْ بِمَا يَمْلِكُ فَيَقُولُ: هَذِهِ صَدَقَةٌ ثُمَّ يَقْعُدُ فَيَتَكَفَّفُ النَّاسَ خَيْرُ الصَّدَقَةِ مَا كَانَ عَنْ ظَهْرِ غِنًى» .

L17774 And from the transmission of Abdullah ibn Idris from Muhammad ibn Ishaq through his isnad in a similar wording. At the end of it: that he (peace be upon him) said: "Take your wealth from us; we have no need of it."

وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ إِدْرِيسَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ بِإِسْنَادِهِ نَحْوُهُ، وَفِي آخِرِهِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: «خُذْ عَنَّا مَالَكَ، لَا حَاجَةَ لَنَا بِهِ» .

L17775 From the path of Sufyan ibn 'Uyaynah ibn 'Ajlan, from 'Iyad ibn 'Abd Allah ibn Sa'd, that he heard Abu Sa'id al-Khudri say: "A man entered the mosque, so the Messenger of Allah—peace be upon him and his family—commanded the people to cast off garments, and they cast them off. He ordered that two of those garments be given to him. Then he—peace be upon him and his family—urged charity, so the man cast off one of the two garments. The Messenger of Allah—peace be upon him and his family—called out to him and said, 'Take your garment.'"

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ بْنِ عَجْلَانَ عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ بْنِ سَعْدٍ أَنَّهُ سَمِعَ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ: «دَخَلَ رَجُلٌ الْمَسْجِدَ فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - النَّاسَ أَنْ يَطْرَحُوا ثِيَابًا فَطَرَحُوا فَأَمَرَ لَهُ مِنْهَا بِثَوْبَيْنِ، ثُمَّ حَثَّ - عَلَيْهِ السَّلَامُ - عَلَى الصَّدَقَةِ فَطَرَحَ الرَّجُلُ أَحَدَ الثَّوْبَيْنِ فَصَاحَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَالَ خُذْ ثَوْبَكَ» .

L17776 And from the narration of Hakim ibn Hizam, from the Prophet—peace and blessings be upon him and his family—who said: "The best charity is that which is given from one's surplus."

وَمِنْ طَرِيقِ حَكِيمِ بْنِ حِزَامٍ، عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «أَفْضَلُ الصَّدَقَةِ مَا كَانَ عَنْ ظَهْرِ غِنًى» .

L17777 These are recurrent, mutually supporting narrations decisively invalidating charity given from what exceeds sufficiency. Since giving charity from what maintains sufficiency is better and superior to giving from what does not maintain sufficiency, it necessarily becomes evident to every person that his charity from such surplus yields him no reward—rather reduces his reward—and thus is not accepted. When certainty exists that giving wealth reduces reward or entails no reward, it is impermissible to give it in such cases, for this constitutes corruption of wealth, squandering, and prohibited extravagance. How then does his rejection—peace be upon him—of such charity not constitute sufficient clarification? Should they invoke God's statement: "They prefer others over themselves even when experiencing destitution themselves" [Al-Ḥashr: 9]...[10]

فَهَذِهِ آثَارٌ مُتَوَاتِرَةٌ مُتَظَاهِرَةٌ بِإِبْطَالِ الصَّدَقَةِ بِمَا زَادَ عَلَى مَا يُبْقِي غِنًى، وَإِذَا كَانَ الصَّدَقَةُ بِمَا أَبْقَى غِنًى خَيْرًا وَأَفْضَلَ مِنْ الصَّدَقَةِ بِمَا لَا يُبْقِي غِنًى؛ فَبِالضَّرُورَةِ يَدْرِي كُلُّ أَحَدٍ أَنَّ صَدَقَتَهُ بِتِلْكَ الزِّيَادَةِ لَا أَجْرَ لَهُ فِيهَا، بَلْ حَطَّتْ مِنْ أَجْرِهِ فَهِيَ غَيْرُ مَقْبُولَةٍ، وَمَا تَيَقَّنَ أَنَّهُ يَحُطُّ مِنْ الْأَجْرِ، أَوْ لَا أَجْرَ فِيهِ مِنْ إعْطَاءِ الْمَالِ فَلَا يَحِلُّ إعْطَاؤُهُ فِيهِ؛ لِأَنَّهُ إفْسَادٌ لِلْمَالِ وَإِضَاعَةٌ لَهُ وَسَرَفٌ حَرَامٌ، فَكَيْفَ وَرَدُّهُ - عَلَيْهِ السَّلَامُ - الصَّدَقَةَ بِذَلِكَ بَيَانٌ كَافٍ؟ فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى {وَيُؤْثِرُونَ عَلَى أَنْفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ} [الحشر: ٩] .

وَقَوْلُهُ - عَلَيْهِ السَّلَامُ - إذْ سُئِلَ «أَيُّ الصَّدَقَةِ أَفْضَلُ؟ فَقَالَ: جَهْدُ الْمُقِلِّ» .

[10] **Qur'an references (L17777):** Qur'an 59:9 (Al-Hashr).

L17778 His statement (peace be upon him) when asked, “Which charity is best?” was: “The contribution of one who has little.”

وَقَوْلُهُ - عَلَيْهِ السَّلَامُ - «سَبَقَ دِرْهَمٌ مِائَةَ أَلْفٍ كَانَ لِرَجُلٍ دِرْهَمَانِ تَصَدَّقَ بِأَجْوَدِهِمَا» .

L17779 And his saying, peace be upon him: “A single dirham surpassed a hundred thousand, for there was a man who had two dirhams and gave as charity the superior one of the two.”

L17780 “As for those who can find nothing but their capacity, so they mock them—Allah derided them” [At-Tawbah: 79].[11]

وَبِقَوْلِهِ تَعَالَى {وَالَّذِينَ لا يَجِدُونَ إِلا جُهْدَهُمْ فَيَسْخَرُونَ مِنْهُمْ سَخِرَ اللَّهُ مِنْهُمْ} [التوبة: ٧٩] .

L17781–17782 And with my narration from Abū Masʿūd: “The Messenger of Allāh—may Allāh bless him, his family, and grant him peace—would command us to give charity. So one of us would set out, exert himself, and return with a *mudd*, while Abū ʿAqīl’s charity consisted of a *saʿ* of dates.” All of this is authentic and constitutes evidence for us, not for them.

وَبِحَدِيثِي أَبِي مَسْعُودٍ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَأْمُرُنَا بِالصَّدَقَةِ، فَيَنْطَلِقُ أَحَدُنَا فَيَتَحَامَلُ فَيَجِيءُ بِالْمُدِّ، وَصَدَقَةِ أَبِي عَقِيلٍ بِصَاعِ تَمْرٍ» فَهَذَا كُلُّهُ صَحِيحٌ وَحُجَّةٌ لَنَا لَا لَهُمْ.

L17783 As for Allah’s statement, the Exalted, {and they give preference over themselves, even though they are in need} [Al-Hashr: 9], it does not mean they left no sustenance for themselves; rather, it means they were in scarcity, yet they preferentially gave from some of their provisions.[12]

وَأَمَّا قَوْلُ اللَّهِ تَعَالَى {وَيُؤْثِرُونَ عَلَى أَنْفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ} [الحشر: ٩] فَلَيْسَ فِيهِ أَنَّهُمْ لَمْ يُبْقُوا لِأَنْفُسِهِمْ مَعَاشًا، إنَّمَا فِيهِ أَنَّهُمْ كَانُوا مُقِلِّينَ، وَيُؤْثِرُونَ مِنْ بَعْضِ قُوتِهِمْ.

L17784 As for the statement of the Exalted: “And those who can afford nothing except their capacity” [Surah At-Tawbah (9:79)], this is also similar.[13]

وَأَمَّا قَوْله تَعَالَى: {وَالَّذِينَ لا يَجِدُونَ إِلا جُهْدَهُمْ} [التوبة: ٧٩] فَمِثْلُ هَذَا أَيْضًا.

L17785 As for their statement, “the utmost effort of the one with limited means,” this phrase, found in the hadith narrated by Abū Hurayrah, is connected to the Prophet’s saying (peace be upon him): “Begin with those you support.” This clarifies that it refers to one’s utmost effort after ensuring the sufficiency of those under your care.

وَأَمَّا قَوْلُهُمْ “ جَهْدُ الْمُقِلِّ ” فَفِي حَدِيثِ أَبِي هُرَيْرَةَ هَذِهِ اللَّفْظَةُ الْمَوْصُولَةُ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «وَابْدَأْ بِمَنْ تَعُولُ» فَبَيَّنَ هَذَا الْقَوْلُ أَنَّهُ جَهْدُهُ بَعْدَ كَفَافِ مَنْ تَعُولُ.

L17786 Similarly, the two narrations of Abu Mas’ud also state that a man had two dirhams and gave the more valuable of them in charity—and this case is likewise. It is possible he owned an estate or had sufficient income to sustain

وَكَذَلِكَ حَدِيثَا أَبِي مَسْعُودٍ أَيْضًا، وَإِنَّمَا كَانَ لِرَجُلٍ دِرْهَمَانِ فَتَصَدَّقَ بِأَجْوَدِهِمَا، فَكَذَلِكَ أَيْضًا، وَقَدْ يَكُونُ لَهُ ضَيْعَةٌ أَوْ لَهُ غَلَّةٌ تَقُومُ بِهِ فَتَصَدَّقَ بِأَحَدِ دِرْهَمَيْنِ كَانَا لَهُ وَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ -: إنَّهُ لَمْ يَكُنْ لَهُ غَيْرُهُمَا؟ فَإِنْ ذَكَرُوا صَدَقَةَ أَبِي بَكْرٍ بِمَا يَمْلِكُهُ؟ قُلْنَا: هَذَا لَا

[11] **Qur’an references (L17780):** Qur’an 9:79 (At-Tawbah).
[12] **Qur’an references (L17783):** Qur’an 59:9 (Al-Hashr).
[13] **Qur’an references (L17784):** Qur’an 9:79 (At-Tawbah).

himself, then gave one of his two dirhams in charity. Yet the Prophet (peace be upon him) did not say he possessed nothing else besides them? If they cite Abu Bakr's charity with all he owned, we respond: This is unsound, as it is transmitted through Hisham ibn Sa'd, a weak narrator, from Zaid ibn Aslam, from his father, who said: I heard 'Umar state, "The Messenger of Allah (peace be upon him and his family) commanded us to give charity. I happened to have wealth available, so I said, 'Today I will outdo Abu Bakr, if I ever can!' I brought half my wealth." The Messenger of Allah (peace be upon him and his family) asked, "What have you left for your family?" I replied, "The same [as what I gave]." Then Abu Bakr came with everything he possessed. The Messenger of Allah (peace be upon him and his family) asked him, "What have you left for your family?" He answered, "I left Allah and His Messenger for them."

يَصِحُّ؛ لِأَنَّهُ مِنْ طَرِيقِ هِشَامِ بْنِ سَعْدٍ، وَهُوَ ضَعِيفٌ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ أَبِيهِ قَالَ: سَمِعْتُ «عُمَرَ يَقُولُ: أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِالصَّدَقَةِ، فَوَافَقَ ذَلِكَ مَالًا عِنْدِي فَقُلْتُ: الْيَوْمَ أَسْبِقُ أَبَا بَكْرٍ إِنْ سَبَقْتُهُ يَوْمًا قَالَ: فَجِئْتُ بِنِصْفِ مَالِي؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: مَا أَبْقَيْتَ لِأَهْلِكَ؟ قُلْتُ: مِثْلَهُ، وَأَتَى أَبُو بَكْرٍ بِكُلِّ مَا عِنْدَهُ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: مَا أَبْقَيْتَ لِأَهْلِكَ؟ قَالَ: أَبْقَيْتُ لَهُمْ اللَّهَ وَرَسُولَهُ» .

L17787 Abu Muhammad said: Furthermore, even if it were valid, they would have no proof in it; for without doubt Abu Bakr had a well-known residence in Medina and a residence in Mecca. Moreover, for someone of Abu Bakr's stature, the Prophet—peace be upon him and his family—would never have neglected him, and thus he was in no need.

قَالَ أَبُو مُحَمَّد: ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ بِلَا شَكٍّ كَانَتْ لَهُ دَارٌ بِالْمَدِينَةِ مَعْرُوفَةٌ وَدَارٌ بِمَكَّةَ - وَأَيْضًا: فَإِنَّ مِثْلَ أَبِي بَكْرٍ لَمْ يَكُنْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِيُضَيِّعَهُ فَكَانَ فِي غِنًى.

L17788 It is validated by what we have stated that whoever vows to give charity with all their wealth—whether phrased in general terms or specified types as an act of seeking closeness to Allah the Exalted—is not obligated to give in charity except what he retains for sufficiency for himself and his family, as the Messenger of Allah—peace and blessings be upon him and his family—commanded Kaʿb ibn Mālik and others.

فَصَحَّ بِمَا ذَكَرْنَا أَنَّ مَنْ نَذَرَ أَنْ يَتَصَدَّقَ بِجَمِيعِ مَالِهِ مُجْمَلًا، أَوْ مُنَوَّعًا عَلَى سَبِيلِ الْقُرْبَةِ إلَى اللَّهِ تَعَالَى، لَمْ يَلْزَمْهُ أَنْ يَتَصَدَّقَ مِنْهُ إلَّا بِمَا أَبْقَى لِنَفْسِهِ، وَلِأَهْلِهِ غِنًى، كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَعْبَ بْنَ مَالِكٍ وَغَيْرَهُ.

L17789–17790 If they mention the ḥadīth of Saʿd concerning the will, we say: It is incumbent upon you, for the ruling of wills differs from the ruling of charity enacted during one's lifetime by agreement between us and you. Furthermore, the Prophet—peace be upon him—forbade him from donating half of it as charity, while you do not say this. No one may bequeath more than a third, even if he leaves a million dinars or more—the excess beyond that is rejected. Yet you do not hold that charity exceeding a third of his wealth during his lifetime should be rejected. Success comes from Allah, the Most High.

فَإِنْ ذَكَرُوا حَدِيثَ سَعْدٍ فِي الْوَصِيَّةِ؟ قُلْنَا: هُوَ عَلَيْكُمْ، لِأَنَّ أَمْرَ الْوَصِيَّةِ غَيْرُ أَمْرِ الصَّدَقَةِ الْمُنَفَّذَةِ فِي الْحَيَاةِ بِاتِّفَاقٍ مِنَّا وَمِنْكُمْ - وَأَيْضًا فَقَدْ مَنَعَهُ - عَلَيْهِ السَّلَامُ - مِنْ الصَّدَقَةِ بِنِصْفِهِ، وَأَنْتُمْ لَا تَقُولُونَ هَذَا، وَلَيْسَ لِأَحَدٍ أَنْ يُوصِيَ بِأَكْثَرَ مِنْ الثُّلُثِ؛ وَلَوْ تَرَكَ أَلْفَ أَلْفِ دِينَارٍ أَوْ أَكْثَرَ - وَيُرَدُّ مَا زَادَ عَلَى ذَلِكَ، وَأَنْتُمْ لَا تَقُولُونَ: بِرَدِّ مَا نَفَذَ مِنْ الصَّدَقَةِ بِأَكْثَرَ مِنْ ثُلُثِهِ فِي حَيَاتِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

He vowed to ritually slaughter himself or his son.

[نَذَرَ نَحْرَ نَفْسِهِ أَوْ ابْنِهِ]

L17792 As for one who vows to slaughter himself or his son: It has been narrated to us through the chain of ʿAbd al-Razzāq via Ibn Jurayj—Yaḥyā ibn Saʿīd al-Anṣārī informed me, saying: I heard al-Qāsim ibn Muḥammad ibn Abī Bakr say: Ibn ʿAbbās was asked about someone who vowed to slaughter his son. He replied: "He must not slaughter his son, and he must atone for his oath." It was said to Ibn ʿAbbās: "How can atonement apply to an act performed in obedience to Satan?" Ibn ʿAbbās responded: "'Those who declare *ẓihār*' [al-Mujādilah: 2], then He ordained within it from the atonement what you have seen."[14]

وَأَمَّا مَنْ نَذَرَ نَحْرَ نَفْسِهِ أَوْ ابْنِهِ -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ قَالَ: سَمِعْت الْقَاسِمَ بْنَ مُحَمَّدِ بْنِ أَبِي بَكْرٍ يَقُولُ: سُئِلَ ابْنُ عَبَّاسٍ عَمَّنْ نَذَرَ أَنْ يَنْحَرَ ابْنَهُ؟ فَقَالَ: لَا يَنْحَرْ ابْنَهُ، وَلْيُكَفِّرْ عَنْ يَمِينِهِ، فَقِيلَ لِابْنِ عَبَّاسٍ: كَيْفَ تَكُونُ فِي طَاعَةِ الشَّيْطَانِ كَفَّارَةٌ؟ فَقَالَ ابْنُ عَبَّاسٍ {الَّذِينَ يُظَاهِرُونَ} [المجادلة: ٢] ثُمَّ جَعَلَ فِيهِ مِنْ الْكَفَّارَةِ مَا رَأَيْت.

L17793 Abu Muhammad said: There is no valid proof for Ibn Abbas regarding this verse.

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ لِابْنِ عَبَّاسٍ فِي هَذِهِ الْآيَةِ.

L17794 The first of that is: He did not impose the expiation in ẓihār—despite likening obedience to Satan to obedience in ẓihār—and this suffices. Then, were this argument to be extended consistently, the expiation for an oath would become obligatory for every sin—a position neither he nor any other scholar upholds.

أَوَّلُ ذَلِكَ -: أَنَّهُ لَمْ يَجْعَلْ هُوَ فِي طَاعَةِ الشَّيْطَانِ الَّتِي شَبَّهَا بِطَاعَتِهِ فِي الظِّهَارِ، الْكَفَّارَةَ الَّتِي فِي الظِّهَارِ وَيَكْفِي هَذَا - ثُمَّ لَوْ طَرَدَ هَذَا الْقَوْلُ لَوَجَبَتْ فِي كُلِّ مَعْصِيَةٍ كَفَّارَةُ يَمِينٍ - وَهَذَا لَا يَقُولُهُ هُوَ وَلَا غَيْرُهُ.

L17795 It has been authentically reported from him regarding one who says to his wife, "You are forbidden to me," that she does not become forbidden by that, and he did not prescribe an expiation for it—and this is the most correct of his rulings. It has also been narrated to us from him a different view through the chain of Ibn Jurayj from ʿAta, who said: A man came to Ibn ʿAbbas and said, "I vowed to slaughter myself." Ibn ʿAbbas replied, {"There has certainly been for you in the Messenger of Allah an excellent example"} [Al-Ahzab: 21] {"And We ransomed him with a great sacrifice"} [As-Saffat: 107], and instructed him to offer a ram. ʿAta said: "The ram is to be slaughtered in Mecca." Ibn Jurayj said: I asked ʿAta, "What if someone vowed to slaughter his horse or mule?" He replied, "A camel or a cow?" I said to him, "Ibn ʿAbbas instructed him to offer a ram for himself, yet you prescribe a camel for the animal?" But ʿAta insisted on that.[15]

وَقَدْ صَحَّ عَنْهُ فِيمَنْ قَالَ لِامْرَأَتِهِ: أَنْت عَلَيَّ حَرَامٌ، أَنَّهَا لَا تَحْرُمُ بِذَلِكَ، وَلَمْ يَجْعَلْ فِيهِ كَفَّارَةً - وَهَذَا أَصَحُّ أَقْوَالِهِ -: وَقَدْ رُوِّينَا عَنْهُ غَيْرَ هَذَا مِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ، قَالَ: جَاءَ رَجُلٌ إلَى ابْنِ عَبَّاسٍ فَقَالَ لَهُ: نَذَرْت لَأَنْحَرَنَّ نَفْسِي؟ فَقَالَ ابْنُ عَبَّاسٍ {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] {وَفَدَيْنَاهُ بِذِبْحٍ عَظِيمٍ} [الصافات: ١٠٧] فَأَمَرَهُ بِكَبْشٍ، قَالَ عَطَاءٌ: يُذْبَحُ الْكَبْشُ بِمَكَّةَ، قَالَ ابْنُ جُرَيْجٍ: فَقُلْت لِعَطَاءٍ: نَذَرَ لَيَنْحَرَنَّ فَرَسَهُ أَوْ بَغْلَتَهُ؟ فَقَالَ: جَزُورٌ أَوْ بَقَرَةٌ؟ فَقُلْت لَهُ: أَمَرَهُ ابْنُ عَبَّاسٍ بِكَبْشٍ فِي نَفْسِهِ، وَتَقُولُ فِي الدَّابَّةِ جَزُورٌ؟ فَأَبَى عَطَاءٌ إلَّا ذَلِكَ.

[14] **Qur'an references (L17792):** Qur'an 58:2 (Al-Mujadila).

[15] **Qur'an references (L17795):** Qur'an 33:21 (Al-Ahzab); Qur'an 37:107 (As-Saffat).

قَالَ أَبُو مُحَمَّد: وَلَيْسَ فِي هَذِهِ الْآيَةِ أَيْضًا حُجَّةٌ لِابْنِ عَبَّاسٍ، لِأَنَّ إبْرَاهِيمَ - عَلَيْهِ السَّلَامُ - لَمْ يَنْذُرْ ذَبْحَ وَلَدِهِ، لَكِنْ أَمَرَهُ اللَّهُ تَعَالَى بِذَبْحِهِ فَكَانَ فَرْضًا عَلَيْهِ أَنْ يَذْبَحَهُ، وَكَانَ نَذْرُ النَّاذِرِ نَحْرُ وَلَدِهِ أَوْ نَفْسِهِ مَعْصِيَةً مِنْ كِبَارِ الْمَعَاصِي، وَلَا يَجُوزُ أَنْ تُشَبَّهَ الْكَبَائِرُ بِالطَّاعَاتِ.

L17796 Abu Muhammad said: There is also no proof in this verse for Ibn Abbas, because Ibrahim, peace be upon him, did not vow the slaughter of his child, but Allah the Exalted commanded him to slaughter his son, making it obligatory for him to do so. The vow of one who vows the slaughter of his child or himself constitutes a sin among the major sins, and it is not permissible to liken major sins to righteous deeds.

وَأَيْضًا - فَإِنَّنَا لَا نَدْرِي مَا كَانَ ذَلِكَ الذَّبْحُ الَّذِي فُدِيَ بِهِ إسْمَاعِيلُ - عَلَيْهِ السَّلَامُ -، فَبَطَلَ هَذَا التَّشْبِيهُ - وَرُوِّينَا عَنْهُ قَوْلًا ثَالِثًا أَيْضًا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ فِي رَجُلٍ نَذَرَ أَنْ يَنْحَرَ نَفْسَهُ، قَالَ: لِيُهْدِ مِائَةَ نَاقَةٍ. وَمِنْ طَرِيقِ شُعْبَةَ عَنْ عَمْرِو بْنِ مُرَّةَ قَالَ: سَمِعْت سَالِمَ بْنَ أَبِي الْجَعْدِ قَالَ: جَاءَ رَجُلٌ إلَى ابْنِ عَبَّاسٍ فَقَالَ لَهُ: إنِّي كُنْت أَسِيرًا فِي أَرْضِ الْعَدُوِّ فَنَذَرْت إنْ نَجَّانِي اللَّهُ أَنْ أَفْعَلَ كَذَا، وَأَنْ أَنْحَرَ نَفْسِي، وَإِنِّي قَدْ فَعَلْت ذَلِكَ؟ قَالَ وَفِي عُنُقِهِ قِدٌّ فَأَقْبَلَ ابْنُ عَبَّاسٍ عَلَى امْرَأَةٍ سَأَلَتْهُ وَغَفَلَ عَنْ الرَّجُلِ، فَانْطَلَقَ لِيَنْحَرَ نَفْسَهُ، فَسَأَلَ ابْنَ عَبَّاسٍ عَنْهُ؟ فَقِيلَ لَهُ: ذَهَبَ لِيَنْحَرَ نَفْسَهُ، فَقَالَ عَلَيَّ بِالرَّجُلِ؟ فَجَاءَ، فَقَالَ: لَمَّا أَعْرَضْت عَنِّي انْطَلَقْت أَنْحَرُ نَفْسِي؟ فَقَالَ لَهُ ابْنُ عَبَّاسٍ: لَوْ فَعَلْت مَا زِلْت فِي نَارِ جَهَنَّمَ، انْظُرْ دِيَتَك فَاجْعَلْهَا فِي بُدْنٍ فَأَهْدِهَا فِي كُلِّ عَامٍ شَيْئًا، وَلَوْلَا أَنَّك شَدَدْت عَلَى نَفْسِك لَرَجَوْت أَنْ يُجْزِيك كَبْشٌ - وَهَذِهِ آثَارٌ فِي غَايَةِ الصِّحَّةِ.

L17797–17798 Moreover, we do not know the nature of the sacrifice through which Ishmael - peace be upon him - was redeemed, rendering this analogy invalid. We have also received a third ruling attributed to him: As transmitted through Abd al-Razzaq from Ma'mar via Ibn Tawus and his father, Ibn Abbas ruled regarding a man who vowed to slaughter himself: "Let him sacrifice one hundred camels." Another report through Shu'bah from Amr ibn Murrah states: I heard Salim ibn Abi al-Ja'd recount: A man came to Ibn Abbas and said, "I was a captive in enemy lands and vowed, 'If Allah delivers me, I will perform such acts and slaughter myself.' Now I have fulfilled this." He bore a noose mark on his neck. Ibn Abbas turned to address a questioning woman, neglecting the man, who then departed to slaughter himself. When inquired about him, Ibn Abbas was told, "He went to slaughter himself." He commanded, "Bring him to me!" Upon the man's return, he said, "When you disregarded me, I resolved to kill myself." Ibn Abbas responded, "Had you done so, you would have remained eternally in Hell's fire. Calculate your blood money and allocate it to sacrificial camels by offering a portion annually. Were it not for your stringent self-imposed obligation, I would have deemed a ram sufficient for you." These are reports of the highest authenticity.

وَمِنْ طَرِيقِ قَتَادَةَ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ أَفْتَى رَجُلًا نَذَرَ أَنْ يَنْحَرَ نَفْسَهُ، فَقَالَ لَهُ: أَتَجِدُ مِائَةَ بَدَنَةٍ؟ قَالَ: نَعَمْ، قَالَ: فَانْحَرْهَا، فَلَمَّا وَلَّى الرَّجُلُ قَالَ ابْنُ عَبَّاسٍ: أَمَا لَوْ أَمَرْته بِكَبْشٍ لَأَجْزَأَ عَنْهُ.

L17799 From the chain of Qatadah via Ibn Abbas: He issued a verdict to a man who vowed to sacrifice himself (misunderstanding the vow's meaning). He asked him: "Can you obtain a hundred badanah (sacrificial camels)?" The man replied: "Yes." He said: "Then sacrifice them [to fulfill your vow]." As the man turned to leave, Ibn Abbas remarked: "Had I instructed him to offer a ram, it would have sufficed."

L17800 From the chain of Ibn Jurayj, Amr ibn Dinar reported to me that Ikrimah

وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ: أَنَّ عِكْرِمَةَ أَخْبَرَهُ أَنَّ رَجُلًا أَتَى إلَى ابْنِ عَبَّاسٍ فَقَالَ لَهُ: لَقَدْ أَذْنَبْت ذَنْبًا لَئِنْ أَمَرْتنِي لَأَنْحَرَنَّ السَّاعَةَ نَفْسِي وَاَللَّهِ لَا أُخْبِرُكَهُ فَقَالَ لَهُ ابْنُ عَبَّاسٍ: بَلَى، لَعَلِّي أَنْ أُخْبِرَك بِكَفَّارَةٍ، قَالَ فَأَبَى، فَأَمَرَهُ بِمِائَةِ نَاقَةٍ - وَهَذَا أَيْضًا إسْنَادٌ صَحِيحٌ.

informed him: A man came to Ibn Abbas and said, "I have committed a sin so grave that if you command me, I will slaughter myself this very moment, and by Allah, I will not disclose it to you." Ibn Abbas responded, "Indeed, perhaps I can inform you of an expiation." The man refused. Ibn Abbas then commanded him to sacrifice one hundred she-camels—and this chain of transmission is also authentic.

L17801 وَرُوِّينَا مِنْ طَرِيقٍ سَاقِطَةٍ فِيهَا ابْنُ حَبِيبٍ الْأَنْدَلُسِيُّ: أَنَّ عَلِيًّا، وَابْنَ عَبَّاسٍ، وَابْنَ عُمَرَ أَفْتَوْا فِيمَنْ نَذَرَ أَنْ يُهْدِيَ ابْنَهُ؟ أَنْ يُهْدِيَ مِائَةً مِنْ الْإِبِلِ قَالَ ابْنُ حَبِيبٍ: وَحَدَّثَنِي ابْنُ الْمُغِيرَةِ عَنْ الثَّوْرِيِّ عَنْ إسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ عُثْمَانَ بْنِ حَاضِرٍ أَنَّهُمْ ثَلَاثَتُهُمْ سُئِلُوا عَنْ ذَلِكَ بَعْدَ ذَلِكَ؟ فَقَالُوا: يَنْحَرُ بَدَنَةً، فَإِنْ لَمْ يَجِدْ فَكَبْشًا.

L17801 It has been narrated to us through a weak chain involving Ibn Ḥabīb al-Andalusī that ʿAlī, Ibn ʿAbbās, and Ibn ʿUmar issued a legal opinion regarding one who vowed to offer his son [as a sacrifice], ruling that he must instead offer one hundred camels. Ibn Ḥabīb said: Ibn al-Mughīrah narrated to me from al-Thawrī, from Ismāʿīl ibn Umayyah, from ʿUthmān ibn Ḥāḍir, that the three of them were asked about the same matter afterward. They replied: "He should slaughter a badanah; if he cannot afford it, then a ram."

قَالَ أَبُو مُحَمَّد: فَهَذِهِ أَقْوَالٌ عَنْ ابْنِ عَبَّاسٍ صِحَاحٌ لَيْسَ بَعْضُهَا أَوْلَى مِنْ بَعْضٍ وَلَا حُجَّةَ فِي أَحَدٍ غَيْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَابْنِ عَبَّاسٍ وَغَيْرُهُ لَمْ يُعْصَمْ مِنْ الْخَطَأِ، وَمَنْ قَلَّدَهُمْ فَقَدْ خَالَفَ أَمْرَ اللَّهِ تَعَالَى فِي أَنْ لَا نَتَّبِعَ مَا أُنْزِلَ إلَيْنَا، وَلِكُلِّ وَاحِدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَضَائِلُ وَمُشَاهَدُ تَعْفُو عَنْ كُلِّ تَقْصِيرٍ وَلَيْسَ ذَلِكَ لِغَيْرِهِمْ.

L17802–17804 Abu Muhammad said: These are sound statements from Ibn Abbas, none of which holds greater authority than the others. There is no binding proof in anyone except the Messenger of Allah (peace and blessings be upon him and his family), for Ibn Abbas and others were not infallible... Regarding the error—whoever imitates them has indeed disobeyed Allah's command to follow what was revealed to us—yet every Companion (may Allah be pleased with them) possesses virtues and witnessed merits that overlook any shortcoming, and this is not for others.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ قَالَ: سَأَلَ رَجُلٌ سَعِيدَ بْنَ الْمُسَيِّبِ عَنْ رَجُلٍ نَذَرَ نَذْرًا لَا يَنْبَغِي لَهُ ذِكْرُ، لِأَنَّهُ مَعْصِيَةٌ؟ فَأَمَرَهُ أَنْ يُوَفِّيَهُ - ثُمَّ سَأَلَ عِكْرِمَةَ؟ فَنَهَاهُ عَنْ الْوَفَاءِ بِهِ، وَأَمَرَهُ بِكَفَّارَةِ يَمِينٍ فَرَجَعَ إلَى سَعِيدِ بْنِ الْمُسَيِّبِ فَأَخْبَرَهُ؟ فَقَالَ سَعِيدٌ: لَيَنْتَهِيَنَّ عِكْرِمَةُ أَوْ لَيُوجِعَنَّ الْأُمَرَاءُ ظَهْرَهُ، فَرَجَعَ إلَى عِكْرِمَةَ فَأَخْبَرَهُ؟ فَقَالَ لَهُ عِكْرِمَةُ: إذْ بَلَّغْتنِي فَبَلِّغْهُ، أَمَّا هُوَ فَقَدْ ضَرَبَتْ الْأُمَرَاءُ ظَهْرَهُ، وَأَوْقَفُوهُ فِي تُبَّانِ شَعْرٍ،

L17805 From the narration of Abd al-Razzaq through Ma'mar from Ayyub al-Sakhtiyani, who said: A man asked Sa'id ibn al-Musayyib about someone who articulated a vow he ought not to have made, because it constituted disobedience to Allah. Sa'id instructed him to fulfill it. The man then asked Ikrimah, who prohibited him from fulfilling it and ordered him to perform expiation for an oath. When the man returned to Sa'id ibn al-Musayyib and informed him, Sa'id declared: "Ikrimah must desist, or the rulers will surely inflict pain on his back!" The man went back to Ikrimah and relayed this. Ikrimah responded: "Since you have delivered his message to me, convey

to him: As for him, the rulers have already beaten his back and forced him to stand wearing a hair undergarment. Ask him whether your vow is an act of obedience to Allah or disobedience. If he says 'disobedience,' then he has commanded you to commit disobedience. If he claims it is 'obedience,' he has lied against Allah by asserting that disobedience to Him constitutes obedience!"

وَسَلْهُ عَنْ نَذْرِك أَطَاعَةٌ لِلَّهِ هُوَ أَمْ مَعْصِيَةٌ؟ فَإِنْ قَالَ: مَعْصِيَةٌ لِلَّهِ، فَقَدْ أَمَرَك بِالْمَعْصِيَةِ؟ وَإِنْ قَالَ هُوَ طَاعَةٌ لِلَّهِ، فَقَدْ كَذَبَ عَلَى اللَّهِ، إذْ زَعَمَ أَنَّ مَعْصِيَةَ اللَّهِ طَاعَةٌ لَهُ؟ قَالَ أَبُو مُحَمَّد: وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ يَحْيَى بْنِ الْعَلَاءِ عَنْ رِشْدِينَ بْنِ كُرَيْبٍ مَوْلَى ابْنِ عَبَّاسٍ «أَنَّ رَجُلًا قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: إنِّي نَذَرْتُ أَنْ أَنْحَرَ نَفْسِي؟ فَأَمَرَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِأَنْ يُهْدِيَ مِائَةَ نَاقَةٍ، وَأَنْ يَجْعَلَهَا فِي ثَلَاثِ سِنِينَ، قَالَ: فَإِنَّكَ لَا تَجِدُ مَنْ يَأْخُذُهُ مِنْكَ بَعْدَ أَنْ سَأَلَهُ: أَلَكَ مَالٌ؟ فَقَالَ: نَعَمْ» .

Abu Muhammad said: We have also received a narration through Abd al-Razzaq from Yahya ibn al-Ala' from Rishdin ibn Kurayb, the freedman of Ibn Abbas: "A man said to the Messenger of Allah—peace and blessings be upon him and his family—: 'I vowed to sacrifice myself.' The Prophet—peace and blessings be upon him and his family—commanded him to sacrifice one hundred camels as an offering and to distribute it within three years. The Prophet added: 'You will not find anyone to take it,' after inquiring: 'Do you possess wealth?' The man replied: 'Yes.'"

L17806 The Hanafis and Malikis opposed what was reported from the Companions regarding this matter. Thus, they neither adhered to what might be presumed of following the Companions, nor followed the text obligatory upon them, nor relied on the mursal—a hadith with an incomplete chain. Yet they assert that the mursal and the musnad—a hadith with a complete chain—are equivalent. As for Abu Hanifah, he said: "Whoever vows to slaughter his child, himself, his slave, his parent, a stranger, or to offer himself as a sacrificial gift, or to offer his child or his parent as a gift—there is no obligation upon him in any of that except specifically regarding his child, in which case he must offer a sheep as a hady." This constitutes muddling unparalleled in juristic discourse. Muhammad ibn al-Hasan agreed with him on all of this except that he stated: "He must also offer a sheep for his slave."

وَقَدْ خَالَفَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ مَا رُوِيَ عَنْ الصَّحَابَةِ فِي هَذَا، فَلَا مَا يُوهَمُونَ مِنْ اتِّبَاعِ الصَّحَابَةِ الْتَزَمُوا، وَلَا النَّصَّ الْمُفْتَرَضَ عَلَيْهِمْ اتَّبَعُوا، وَلَا بِالْمُرْسَلِ أَخَذُوا، وَهُمْ يَقُولُونَ: إنَّ الْمُرْسَلَ وَالْمُسْنَدَ سَوَاءٌ -: وَأَمَّا أَبُو حَنِيفَةَ فَقَالَ: مَنْ نَذَرَ نَحْرَ وَلَدِهِ، أَوْ نَحْرَ نَفْسِهِ، أَوْ نَحْرَ غُلَامِهِ، أَوْ نَحْرَ وَالِدِهِ، أَوْ نَحْرَ أَجْنَبِيٍّ، أَوْ إهْدَاءَهُ، أَوْ إهْدَاءَ وَلَدِهِ، أَوْ إهْدَاءَ وَالِدِهِ - فَلَا شَيْءَ عَلَيْهِ فِي كُلِّ ذَلِكَ، إلَّا فِي وَلَدِهِ خَاصَّةً، فَيَلْزَمُهُ فِيهِ هَدْيُ شَاةٍ - وَهَذَا مِنْ التَّخْلِيطِ الَّذِي لَا نَظِيرَ لَهُ - وَوَافَقَهُ عَلَى كُلِّ ذَلِكَ مُحَمَّدُ بْنُ الْحَسَنِ، إلَّا أَنَّهُ قَالَ: وَعَلَيْهِ فِي عَبْدِهِ أَيْضًا شَاةٌ.

L17807 The opinion of Mālik is conflicting: at one time he said, "Whoever swears, saying, 'I will slaughter my son if I do such a thing,' and thereby violates it, must perform the expiation for an oath." At another time he said, "If he intended it as a sacrificial offering, he must offer it; but if he did not intend a sacrificial offering, he incurs no obligation—neither a sacrificial offering nor an expiation."

وَاضْطَرَبَ قَوْلُ مَالِك، فَمَرَّةً قَالَ: مَنْ حَلَفَ فَقَالَ: أَنَا أَنْحَرُ ابْنِي إنْ فَعَلْت كَذَا، فَحَنِثَ، فَعَلَيْهِ كَفَّارَةُ يَمِينٍ -: وَمَرَّةً قَالَ: إنْ كَانَ نَوَى بِذَلِكَ الْهَدْيَ فَعَلَيْهِ هَدْيٌ، وَإِنْ كَانَ لَمْ يَنْوِ هَدْيًا فَلَا شَيْءَ عَلَيْهِ، لَا هَدْيٌ وَلَا كَفَّارَةٌ.

L17808 And on another occasion, he said: If one vows to perform that at the Station

of Abraham, a sacrificial animal is required of him. But if he does not stipulate "at the Station of Abraham," then the expiation of an oath is required.

وَمَرَّةً قَالَ: إِنْ نَذَرَ ذَلِكَ عِنْدَ مَقَامِ إِبْرَاهِيمَ، فَعَلَيْهِ هَدْيٌ، وَإِنْ لَمْ يَقُلْ عِنْدَ مَقَامِ إِبْرَاهِيمَ، فَكَفَّارَةُ يَمِينٍ.

L17809–17810 Ibn al-Qasim, his companion, said: If someone vows, "If I do such and such, I will sacrifice my father or mother," the ruling in this case is like the ruling mentioned concerning the son as well.

وَقَالَ ابْنُ الْقَاسِمِ صَاحِبُهُ: إِنْ نَذَرَ أَنْ يَنْحَرَ أَبَاهُ، أَوْ أُمَّهُ، إِنْ فَعَلْت كَذَا وَكَذَا، فَالْحُكْمُ فِي ذَلِكَ كَالْحُكْمِ الْمَذْكُورِ فِي الِابْنِ أَيْضًا.

L17811 Similarly, if one vows such an act in Mina or between Ṣafā and Marwah, it is as if he vowed it at the Station of Ibrāhīm. These opinions are utterly invalid and contrary to the Salaf.

وَكَذَلِكَ إِنْ نَذَرَ ذَلِكَ بِمِنًى، أَوْ بَيْنَ الصَّفَا وَالْمَرْوَةِ، فَكَمَا لَوْ نَذَرَهُ عِنْدَ مَقَامِ إِبْرَاهِيمَ - وَهَذِهِ أَقْوَالٌ فِي غَايَةِ الْفَسَادِ وَخِلَافٌ لِلسَّلَفِ.

L17812 Al-Layth ibn Sa'd said: Whoever declares, "I will slaughter my son near the Sacred House," must perform Hajj himself, perform Hajj with his son, and offer a sacrificial animal (hady).

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ: مَنْ قَالَ: أَنَا أَنْحَرُ ابْنِي عِنْدَ الْبَيْتِ، فَعَلَيْهِ أَنْ يَحُجَّ، وَيَحُجَّ بِابْنِهِ وَيُهْدِيَ هَدْيًا.

L17813 Al-Ḥasan ibn Ḥayy said: "Whoever says, 'I will slaughter a sacrificial animal for so-and-so at the Kaaba,' must perform Ḥajj or ʿUmrah on his behalf and offer the *Hady*, unless he [the vow-maker] intends that, in which case only what he intended becomes obligatory upon him." These are statements without any proof, so there is no reason to concern oneself with them.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: مَنْ قَالَ: أَنَا أَنْحَرُ فُلَانًا عِنْدَ الْكَعْبَةِ، فَإِنَّهُ يُحِجُّهُ، أَوْ يُعْمِرُهُ، وَيُهْدِي، إِلَّا أَنْ يَنْوِيَ أَحَدٌ ذَلِكَ فَيَلْزَمُهُ مَا نَوَى فَقَطْ -: وَهَذِهِ أَقْوَالٌ لَا بُرْهَانَ عَلَيْهَا، فَلَا وَجْهَ لِلِاشْتِغَالِ بِهَا.

L17814 Abu Yusuf, Al-Shafi'i, and Abu Sulayman said: There is nothing incumbent upon him in all of that except seeking forgiveness only.

وَقَالَ أَبُو يُوسُفَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: لَا شَيْءَ عَلَيْهِ فِي كُلِّ ذَلِكَ إِلَّا الِاسْتِغْفَارَ فَقَطْ.

L17815 Abu Muhammad said: This is the truth due to the words of Allah, the Exalted: "And do not kill yourselves" [Surah An-Nisā' 4:29].[16]

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا هُوَ الْحَقُّ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] .

L17816 And He, the Exalted, said: "Do not kill the soul that Allah has forbidden except by right." [Al-An'ām 6:151][17]

وَقَالَ تَعَالَى: {وَلا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلا بِالْحَقِّ} [الأنعام: ١٥١] .

L17817 The Messenger of Allah—may Allah's blessings and peace be upon him and his family—said: "Whoever vows to disobey Allah, he should not disobey

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «مَنْ نَذَرَ أَنْ يَعْصِيَ اللَّهَ فَلَا يَعْصِهِ» وَلَمْ يَأْمُرْهُ فِي ذَلِكَ بِكَفَّارَةٍ، وَلَا هَدْيٍ {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] .

[16] **Qur'an references (L17815):** Qur'an 4:29 (An-Nisa).
[17] **Qur'an references (L17816):** Qur'an 6:151 (Al-An'am); Qur'an 17:33 (Al-Isra).

Him," and he did not command such a person to offer any expiation or sacrificial offering. "He does not speak from [his own] inclination" [53:3] "It is nothing but a revelation sent down" [53:4].[18]

L17818 "And never is your Lord forgetful" (Maryam 64).[19]

L17819–17821 It has been narrated to us through the chain of Ibn Jurayj, who said: I heard Sulaymān ibn Mūsā narrating to 'Aṭā' that a man came to Ibn 'Umar and said: "I vowed to sacrifice myself." Ibn 'Umar replied: "Fulfill what you have vowed." The man said: "Shall I kill myself?" He responded: "Then you would enter the Fire." The man said: "You have confused me!" He retorted: "Did you not confuse yourself?" Abū Muḥammad said: This was the legal ruling Ibn 'Umar would issue. It is authentically reported that a man came to him and said: "I vowed to fast on the Day of Sacrifice." Ibn 'Umar said: "Allah the Exalted commanded the fulfillment of vows, and the Messenger of Allah—may Allah's blessings and peace be upon him and his family—forbade..." It was narrated regarding fasting on the Day of Sacrifice that a woman approached him and said, "I vowed to walk with my head uncovered." He replied, "Fulfill your vow, but cover your head."

L17822 We mentioned before from Ibn Abbas: the invalidity of a vow involving sin altogether, and this is what we say.

L17823 **He vowed to slaughter by cutting the throat his horse or his female mule.**

L17824 Abu Muhammad said: As for one who vows to slaughter his horse or mule, let him slaughter them for Allah, and likewise what is eaten, for it is a vow of obedience, and with Allah, the Most High, is success.

L17825 **He vowed to walk to the Mosque of Medina or the Mosque of Bayt al-Maqdis.**

L17826 Abu Muhammad said: As for one who vows to walk to the Mosque of Med-

[18] **Qur'an references (L17817):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).
[19] **Qur'an references (L17818):** Qur'an 19:64 (Maryam).

{وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

رُوِّينَا مِنْ طَرِيقِ ابْنِ جُرَيْجٍ قَالَ: سَمِعْت سُلَيْمَانَ بْنَ مُوسَى يُحَدِّثُ عَطَاءً أَنَّ رَجُلًا أَتَى إلَى ابْنِ عُمَرَ فَقَالَ لَهُ: نَذَرْت لَأَنْحَرَنَّ نَفْسِي؟ فَقَالَ لَهُ ابْنُ عُمَرَ: أَوْفِ مَا نَذَرْت، فَقَالَ لَهُ الرَّجُلُ: أَفَأَقْتُلُ نَفْسِي؟ قَالَ لَهُ إذْنَ تَدْخُلُ النَّارَ، قَالَ لَهُ: أَلْبَسْت عَلَيَّ قَالَ: أَنْتَ أَلْبَسْت عَلَى نَفْسِك؟ قَالَ أَبُو مُحَمَّد: وَبِهَذَا كَانَ يُفْتِي ابْنُ عُمَرَ، صَحَّ أَنَّ آتِيًا أَتَاهُ فَقَالَ: نَذَرْت صَوْمَ يَوْمِ النَّحْرِ؟ فَقَالَ لَهُ ابْنُ عُمَرَ: أَمَرَ اللَّهُ تَعَالَى بِوَفَاءِ النَّذْرِ، وَنَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ صَوْمِ يَوْمِ النَّحْرِ. وَأَنَّ امْرَأَةً سَأَلَتْهُ؟ فَقَالَتْ: نَذَرْت أَنْ أَمْشِيَ حَاسِرَةً؟ فَقَالَ: أَوْفِي بِنَذْرِك، وَاخْتَمِرِي.

وَقَدْ ذَكَرْنَا قَبْلُ عَنْ ابْنِ عَبَّاسٍ: سُقُوطَ نَذْرِ الْمَعْصِيَةِ جُمْلَةً وَبِهَذَا نَقُولُ.

[نَذَرَ نَحْرَ فَرَسِهِ أَوْ بَغْلَتِهِ]

قَالَ أَبُو مُحَمَّد: وَأَمَّا مَنْ نَذَرَ نَحْرَ فَرَسِهِ أَوْ بَغْلَتِهِ، فَلْيَنْحَرْهُمَا لِلَّهِ، وَكَذَلِكَ مَا يُؤْكَلُ؛ لِأَنَّهُ نَذْرُ طَاعَةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[نَذَرَ الْمَشْيَ إلَى مَسْجِدِ الْمَدِينَةِ أَوْ مَسْجِدِ بَيْتِ الْمَقْدِسِ]

قَالَ أَبُو مُحَمَّد: وَأَمَّا مَنْ نَذَرَ الْمَشْيَ إلَى مَسْجِدِ الْمَدِينَةِ، أَوْ مَسْجِدِ بَيْتِ الْمَقْدِسِ، أَوْ إلَى مَكَان سَمَّاهُ مِنْ الْحَرَمِ، أَوْ إلَى مَسْجِدٍ مِنْ سَائِرِ الْمَسَاجِدِ، فَإِنَّهُ إنْ نَذَرَ مَشْيًا، أَوْ

ina, the Mosque of Bayt al-Maqdis, a named location within the Sanctuary, or any of the other mosques – if he vows to walk, ride, or set out to Mecca or to a specific location within the Sanctuary, it becomes binding upon him, for this constitutes a vow of obedience. The entire Sanctuary is considered a mosque, as we previously clarified in *The Book of Hajj*, which obviates the need to repeat it.

L17827 Similarly, if he vows to walk, depart, or ride to the city, he is obligated to fulfill it.

L17828 Similarly, regarding a site from the sites of the prophets—peace be upon them—if one vows to walk, ride, perform iʿtikāf, or undertake a journey to Jerusalem, it becomes binding upon him.

L17829 If someone vows to perform a prayer therein, they are given the choice between two options:

L17830 One of them—and it is the superior option—is that he should go to Mecca, pray there, and it suffices him.

L17831 The second is that he sets out to Bayt al-Maqdis (Al-Aqsa Mosque in Jerusalem). If he vows walking and setting out, or riding to any mosque in the world other than this mosque, nothing at all is required of him.

L17832 The proof of that is that the Prophet—peace and blessings be upon him and his family—forbade undertaking journeys except to three mosques only: the Sacred Mosque, the Mosque of Medina, and Al-Aqsa Mosque.

L17833 It has been narrated to us through the route of al-Bazzār: Muḥammad ibn Maʿmar narrated to us from Rawḥ - who is Ibn ʿUbādah - from Muḥammad ibn Abī Ḥafṣah from al-Zuhrī from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him and his family—said: "To undertake a journey [for worship] is only to three mosques: the Sacred Mosque, the Mosque of Medina, and the Mosque of Iliyā." Thus, intending to travel to any mosque other than these has become an act of disobedience, and it is impermissible to fulfill disobedience.

رُكُوبًا، أَوْ نُهُوضًا إِلَى مَكَّةَ، أَوْ إِلَى مَوْضِعٍ مِنْ الْحَرَمِ لَزِمَهُ؛ لِأَنَّهُ نَذْرُ طَاعَةٍ، وَالْحَرَمُ كُلُّهُ مَسْجِدٌ عَلَى مَا ذَكَرْنَا فِي " كِتَابِ الْحَجِّ " فَأَغْنَى عَنْ إعَادَتِهِ.

وَكَذَلِكَ إنْ نَذَرَ مَشْيًا، أَوْ نُهُوضًا، أَوْ رُكُوبًا إلَى الْمَدِينَةِ، لَزِمَهُ ذَلِكَ.

وَكَذَلِكَ إلَى أَثَرٍ مِنْ آثَارِ الْأَنْبِيَاءِ - عَلَيْهِمْ السَّلَامُ -، فَإِنْ نَذَرَ مَشْيًا، أَوْ رُكُوبًا، أَوْ اعْتِكَافًا، أَوْ نُهُوضًا إلَى بَيْتِ الْمَقْدِسِ لَزِمَهُ.

فَإِنْ نَذَرَ صَلَاةً فِيهِ كَانَ مُخَيَّرًا بَيْنَ أَمْرَيْنِ -:

أَحَدُهُمَا - وَهُوَ الْأَفْضَلُ أَنْ يَنْهَضَ إلَى مَكَّةَ فَيُصَلِّي فِيهَا وَيُجْزِيه.

وَالثَّانِي - أَنْ يَنْهَضَ إلَى بَيْتِ الْمَقْدِسِ، فَإِنْ نَذَرَ مَشْيًا، وَنُهُوضًا، أَوْ رُكُوبًا إلَى مَسْجِدٍ مِنْ مَسَاجِدِ الْأَرْضِ غَيْرِ هَذِهِ، لَمْ يَلْزَمْهُ شَيْءٌ أَصْلًا.

بُرْهَانُ ذَلِكَ -: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَهَى عَنْ شَدِّ الرِّحَالِ إلَّا إلَى ثَلَاثَةِ مَسَاجِدَ فَقَطْ، الْمَسْجِدِ الْحَرَامِ، وَمَسْجِدِ الْمَدِينَةِ، وَالْمَسْجِدِ الْأَقْصَى» .

رُوِّينَا مِنْ طَرِيقِ الْبَزَّارِ نا مُحَمَّدُ بْنُ مَعْمَرٍ نا رَوْحٌ هُوَ ابْنُ عُبَادَةَ - نا مُحَمَّدُ بْنُ أَبِي حَفْصَةَ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «إنَّمَا الرِّحْلَةُ إلَى ثَلَاثَةِ مَسَاجِدَ: مَسْجِدِ الْحَرَامِ، وَمَسْجِدِ الْمَدِينَةِ، وَمَسْجِدِ إيلْيَاءَ» فَصَارَ الْقَصْدُ إلَى مَا سِوَاهَا مَعْصِيَةً، وَالْمَعْصِيَةُ لَا يَجُوزُ الْوَفَاءُ بِهَا.

L17834 It is impermissible to obligate someone to perform a prayer he did not vow in a mosque other than the one he specified.

وَلَا يَجُوزُ أَنْ يَلْزَمَ مَا لَمْ يَنْذُرْهُ مِنْ صَلَاةٍ فِي غَيْرِ الْمَسْجِدِ الَّذِي سَمَّى.

L17835–17836 There is no distinction between rising, going, walking, or riding; except that walking is an act of obedience, and riding is likewise an act of obedience, because it involves additional spending in righteousness.

وَلَا فَرْقَ بَيْنَ النُّهُوضِ، وَالذَّهَابِ، وَالْمَشْيِ، وَالرُّكُوبِ، إِلَّا أَنَّ الْمَشْيَ طَاعَةٌ، وَالرُّكُوبَ أَيْضًا طَاعَةٌ، لِأَنَّ فِيهِ نَفَقَةً زَائِدَةً فِي بِرٍّ.

L17837 As for one who vows to pray in Al-Aqsa Mosque, also known as Bayt al-Maqdis, or in other than it such as Makkah or the Mosque of Medina, if he vowed a voluntary prayer there, he is not obligated to fulfill any of it.

وَأَمَّا مَنْ نَذَرَ الصَّلَاةَ فِي بَيْتِ الْمَقْدِسِ أَوْ فِي غَيْرِهَا مَكَّةَ، أَوْ مَسْجِدِ الْمَدِينَةِ، فَإِنْ كَانَ نَذَرَ صَلَاةَ تَطَوُّعٍ هُنَالِكَ لَمْ يَلْزَمْهُ شَيْءٌ مِنْ ذَلِكَ.

L17838 If one vows to perform an obligatory prayer in one of these mosques, it becomes binding upon him, for his presence in these mosques constitutes obedience to Allah—the Mighty and Majestic—which he must fulfill. However, we hold that such a vow does not become binding if he pledges to perform a voluntary prayer therein, based on the established narration from the Messenger of Allah (peace and blessings be upon him and his family), who reported from his Lord, the Mighty and Majestic, on the Night Journey when He prescribed the five prayers: "They are five, yet they are fifty; My decree is not altered." Thus, we believed in His exalted statement, {My decree is not altered} [Qaf 50:29], which confirms that no obligatory prayer apart from the five can exist—neither fewer than five nor more than five—as an obligation specified forever upon a specific individual.[20]

فَإِنْ نَذَرَ أَنْ يُصَلِّيَ صَلَاةَ فَرْضٍ فِي أَحَدِ هَذِهِ الْمَسَاجِدِ لَزِمَهُ، لِأَنَّ كَوْنَهُ فِي هَذِهِ الْمَسَاجِدِ طَاعَةٌ لِلَّهِ عَزَّ وَجَلَّ يَلْزَمُهُ الْوَفَاءُ بِهَا. وَإِنَّمَا قُلْنَا: لَا يَلْزَمُهُ ذَلِكَ فِي نَذْرِهِ صَلَاةَ تَطَوُّعٍ فِيهَا لِلْأَثَرِ الثَّابِتِ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ رَبِّهِ - عَزَّ وَجَلَّ - أَنَّهُ قَالَ لَيْلَةَ الْإِسْرَاءِ إِذْ فَرَضَ - عَزَّ وَجَلَّ - الْخَمْسَ الصَّلَوَاتِ: هُنَّ خَمْسٌ، وَهُنَّ خَمْسُونَ مَا يُبَدَّلُ الْقَوْلُ لَدَيَّ» فَآمَنَّا بِقَوْلِهِ تَعَالَى: {مَا يُبَدَّلُ الْقَوْلُ لَدَيَّ} [ق: ٢٩] أَنْ تَكُونَ صَلَاةٌ مُفْتَرَضَةٌ، غَيْرَ الْخَمْسِ لَا أَقَلَّ مِنْ خَمْسٍ، وَلَا أَكْثَرَ مِنْ خَمْسٍ، مُعَيَّنَةً عَلَى إِنْسَانٍ بِعَيْنِهِ أَبَدًا.

L17839 And that is not the case outside prayer, as no textual evidence in any acts of worship prescribes anything similar to this. By this reasoning, we have nullified the obligation of Witr as a fard despite the existence of the command, and nullified the obligation of the two rak'ahs as a fard upon one entering the mosque before sitting.

وَلَيْسَ ذَلِكَ فِي غَيْرِ الصَّلَاةِ إِذْ لَمْ يَأْتِ نَصٌّ فِي شَيْءٍ مِنَ الْأَعْمَالِ بِمِثْلِ هَذَا - وَبِهَذَا أَسْقَطْنَا وُجُوبَ الْوَتْرِ فَرْضًا مَعَ وُرُودِ الْأَمْرِ، وَوُجُوبَ الرَّكْعَتَيْنِ فَرْضًا عَلَى الدَّاخِلِ الْمَسْجِدَ قَبْلَ أَنْ يَجْلِسَ.

L17840 If it is said: "Have you stated regarding one who vowed to pray in Bayt al-Maqdis (Jerusalem) what you have stated?" We reply: Yes, it is recommended for him to pray it in Makkah, based on what we have narrated via the chain of Abu Dawud: Musa ibn Isma'il narrated to us; Hammad ibn Salamah narrated

فَإِنْ قِيلَ: قَدْ قُلْتُمْ فِيمَنْ نَذَرَ صَلَاةً فِي بَيْتِ الْمَقْدِسِ مَا قُلْتُمْ؟ قُلْنَا: نَعَمْ، يُسْتَحَبُّ لَهُ أَنْ يُصَلِّيَهَا بِمَكَّةَ، لِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُوسَى بْنُ إِسْمَاعِيلَ نا حَمَّادُ بْنُ سَلَمَةَ نا حَبِيبٌ الْمُعَلِّمُ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَجُلًا قَامَ يَوْمَ الْفَتْحِ

[20] **Qur'an references (L17838):** Qur'an 50:29 (Qaf).

to us; Habib the Teacher narrated from ʻAta' ibn Abi Rabah, from Jabir ibn ʻAbdullah: "A man stood on the day of the Conquest and said: 'O Messenger of Allah, I vowed to Allah that if He granted you victory over Makkah, I would pray two rakʻahs in Bayt al-Maqdis?' The Messenger of Allah—peace be upon him—said: 'Pray here.' The man repeated his question, and he replied: 'Pray here.' When he repeated it again, he said: 'Do as you wish, then.'"

فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي نَذَرْتُ لِلَّهِ إِنْ فَتَحَ اللَّهُ عَلَيْكَ مَكَّةَ، أَنْ أُصَلِّيَ فِي بَيْتِ الْمَقْدِسِ رَكْعَتَيْنِ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - عَلَيْهِ السَّلَامُ -: صَلِّ هَهُنَا، فَأَعَادَهَا عَلَيْهِ، فَقَالَ: صَلِّ هَهُنَا، ثُمَّ أَعَادَهَا، فَقَالَ: شَأْنَكَ إِذًا» .

L17841 From the chain of Muḥammad ibn ʿAbd al-Malik ibn Ayman; ʿAlī ibn ʿAbd al-ʿAzīz; Abū ʿUbayd al-Qāsim ibn Sallām; Muḥammad ibn Kathīr from Ḥammād ibn Salamah from Ḥabīb al-Muʿallim from ʿAṭāʾ from Jābir ibn ʿAbd Allāh, who narrated: A man said on the Day of the Conquest of Mecca: "O Messenger of Allah, I vowed that if Allah grants you victory, I would pray in Bayt al-Maqdis." He replied: "Pray here." The man repeated this two or three times. Then the Messenger of Allah (ṣallā Allāhu ʿalayhi wa-ālihi wa-sallam) said: "Then it is your concern."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا أَبُو عُبَيْدٍ الْقَاسِمُ بْنُ سَلَّامٍ نا مُحَمَّدُ بْنُ كَثِيرٍ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَبِيبٍ الْمُعَلِّمِ عَنْ عَطَاءٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «قَالَ رَجُلٌ يَوْمَ الْفَتْحِ: يَا رَسُولَ اللَّهِ إِنِّي نَذَرْتُ إِنْ فَتَحَ اللَّهُ عَلَيْكَ أَنْ أُصَلِّيَ فِي بَيْتِ الْمَقْدِسِ؟ قَالَ: صَلِّ هَهُنَا، فَأَعَادَ الرَّجُلُ مَرَّتَيْنِ، أَوْ ثَلَاثًا، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: فَشَأْنَكَ إِذًا» .

L17842–17843 Abu Muhammad said: Nothing similar to this has been mentioned regarding one who vows to observe iʿtikāf in the Mosque of Iliya [Jerusalem]. Rather, it is only cited concerning someone who vows to pray there specifically: {And your Lord is not forgetful} [Maryam 19:64].[21]

قَالَ أَبُو مُحَمَّدٍ: وَلَمْ يَأْتِ مِثْلُ هَذَا فِيمَنْ نَذَرَ اعْتِكَافًا فِي مَسْجِدِ إِيلْيَاءَ، وَإِنَّمَا جَاءَ فِيمَنْ نَذَرَ صَلَاةً فِيهِ فَقَطْ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L17844 If he is unable, he must ride, as Allah, the Exalted, says: {Allah does not burden any soul beyond its capacity} [Al-Baqarah: 286], and there is no blame on him.[22]

فَإِنْ عَجَزَ رَكِبَ لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَلَا شَيْءَ عَلَيْهِ.

L17845 Ali said: When a man informed the Prophet (peace be upon him and his family) that he had vowed to pray in Bayt al-Maqdis (Jerusalem), the Messenger of God said to him, "Pray here"—referring to Mecca. This clarified that he was not obliged by his vow to pray in Bayt al-Maqdis.

قَالَ عَلِيٌّ: لَمَّا أَخْبَرَ الرَّجُلُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِأَنَّهُ نَذَرَ الصَّلَاةَ فِي بَيْتِ الْمَقْدِسِ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - صَلِّ هَهُنَا - يَعْنِي بِمَكَّةَ - تَبَيَّنَ بِذَلِكَ أَنَّهُ لَيْسَ عَلَيْهِ وُجُوبُ نَذْرِهِ أَنْ يُصَلِّيَ فِي بَيْتِ الْمَقْدِسِ.

L17846 It was established that it is a recommended permissible act; it appeared outwardly to be binding for him to pray in Mecca. When he referred back to

وَصَحَّ أَنَّهُ نَدْبٌ مُبَاحٌ وَكَانَ فِي ظَاهِرِ الْأَمْرِ لَازِمًا لَهُ أَنْ يُصَلِّيَ بِمَكَّةَ، «فَلَمَّا رَاجَعَ بِذَلِكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ - عَلَيْهِ السَّلَامُ -: فَشَأْنَكَ إِذًا» تَبَيَّنَ وَصَحَّ أَنَّ

[21] **Qur'an references (L17843):** Qur'an 19:64 (Maryam).
[22] **Qur'an references (L17844):** Qur'an 2:286 (Al-Baqarah).

the Prophet—peace and blessings of Allah be upon him and his family—about that, he—upon him be peace—said: “Then it is your choice.” Thus, it became evident and was confirmed that his command—upon him be peace—for him to pray in Mecca was a recommendation, also not an obligation. This cannot be otherwise, and the narration does not admit any interpretation beyond this. Consequently, all of that became purely a recommendation.

أَمْرَهُ - عَلَيْهِ السَّلَامُ - لَهُ بِأَنْ يُصَلِّيَ بِمَكَّةَ نَدْبٌ لَا فَرْضٌ أَيْضًا، هَذَا مَا لَا يُمْكِنُ سِوَاهُ، وَلَا يَحْتَمِلُ الْخَبَرُ غَيْرَهُ - فَصَارَ كُلُّ ذَلِكَ نَدْبًا فَقَطْ.

L17847 If it is said: “Do you consider the funeral prayer to be a mandatory obligation?” We say: Yes, as a collective obligation, not incumbent upon any specific individual.

فَإِنْ قِيلَ: فَإِنَّكُمْ تُوجِبُونَ صَلَاةَ الْجِنَازَةِ فَرْضًا؟ قُلْنَا: نَعَمْ، عَلَى الْكِفَايَةِ لَا مُتَعَيِّنًا عَلَى أَحَدٍ بِعَيْنِهِ.

L17848 We ask those who oppose this about one who vows to pray two rak‘ahs in the third hour of every day: if that binds him, would it constitute a sixth prayer? And he altered the divine word which the Most High has declared cannot be altered in His presence.

وَنَسْأَلُ مَنْ خَالَفَ هَذَا عَمَّنْ نَذَرَ رَكْعَتَيْنِ فِي السَّاعَةِ الثَّالِثَةِ مِنْ كُلِّ يَوْمٍ، فَإِنْ أَلْزَمَهُ ذَلِكَ كَانَتْ صَلَاةً سَادِسَةً؟ وَبَدَّلَ الْقَوْلَ الَّذِي أَخْبَرَ تَعَالَى أَنَّهُ لَا يُبَدَّلُ لَدَيْهِ.

L17849 If he is not bound by that, we ask him: What is the distinction? There is no possible basis for any distinction whatsoever—and success comes from Allah, the Most High.

فَإِنْ لَمْ يَلْزَمْهُ ذَلِكَ سَأَلْنَاهُ: مَا الْفَرْقُ؟ وَلَا سَبِيلَ إِلَى فَرْقٍ أَبَدًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L17850 If someone vows to set out exclusively to Mecca, Medina, or Bayt al-Maqdis (Jerusalem) solely to pray there, they are absolutely obligated to fulfill this vow, as it is an act of obedience to Allah Almighty. Then, they must perform the obligatory prayers whose time occurs during their stay there, and it is recommended for them to offer the voluntary prayers in that place that are recommended for anyone present there.

فَلَوْ نَذَرَ النُّهُوضَ إلَى مَكَّةَ أَوْ الْمَدِينَةِ أَوْ بَيْتِ الْمَقْدِسِ لِيُصَلِّيَ فِيهَا لَزِمَهُ النُّهُوضُ إلَيْهَا وَلَا بُدَّ فَقَطْ؛ لِأَنَّهُ طَاعَةٌ لِلَّهِ عَزَّ وَجَلَّ ثُمَّ يَلْزَمُهُ مِنْ صَلَاةِ الْفَرْضِ هُنَالِكَ مَا أَدْرَكَهُ وَقْتُهُ، وَيُسْتَحَبُّ لَهُ فِيهَا مِنْ التَّطَوُّعِ مَا يُسْتَحَبُّ لِمَنْ هُوَ هُنَالِكَ.

L17851 It was narrated to us through the chain of Muhammad ibn al-Muthannā → ʿAbd al-Raḥmān ibn Mahdī → Sufyān al-Thawrī → ʿAbd al-Karīm al-Jazarī → Saʿīd ibn al-Musayyib: A man intended to visit Bayt al-Maqdis, so ʿUmar ibn al-Khaṭṭāb said to him, “Go and prepare yourself.” He prepared himself, then returned to ʿUmar. ʿUmar said to him, “Make this [journey] an ʿUmrah.”

وَرُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ رَجُلًا أَرَادَ أَنْ يَأْتِيَ بَيْتَ الْمَقْدِسِ فَقَالَ لَهُ عُمَرُ بْنُ الْخَطَّابِ: اذْهَبْ فَتَجَهَّزْ؟ فَتَجَهَّزَ، ثُمَّ أَتَاهُ فَقَالَ لَهُ عُمَرُ: اجْعَلْهَا عُمْرَةً.

L17852 A similar narration has been reported from Umm Salamah, the Mother of the Believers, concerning a woman who vowed to pray in Bayt al-Maqdis. She commanded her to pray in the Mosque of the Prophet (peace be upon him and his family).

وَقَدْ رُوِيَ نَحْوُ هَذَا عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ فِي امْرَأَةٍ نَذَرَتْ أَنْ تُصَلِّيَ فِي بَيْتِ الْمَقْدِسِ فَأَمَرَتْهَا بِأَنْ تُصَلِّيَ فِي مَسْجِدِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L17853–17854 It is authentically reported from Sa‘id ibn al-Musayyib that he said: Whoever vows to perform i‘tikaf in the Mosque of Ilya then performs i‘tikaf in the Mosque of the Prophet—peace and blessings be upon him and his family—in Medina, it suffices for him. Whoever vows to perform i‘tikaf in the Mosque of Medina then performs i‘tikaf in the Sacred Mosque, it suffices for him. Whoever vows to perform i‘tikaf on mountain peaks—it is not proper for him to do that; rather, let him perform i‘tikaf in a congregational mosque.

وَصَحَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: مَنْ نَذَرَ أَنْ يَعْتَكِفَ فِي مَسْجِدِ إِيلْيَاءَ فَاعْتَكَفَ بِمَسْجِدِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِالْمَدِينَةِ أَجْزَأَ عَنْهُ. وَمَنْ نَذَرَ أَنْ يَعْتَكِفَ فِي مَسْجِدِ الْمَدِينَةِ فَاعْتَكَفَ فِي الْمَسْجِدِ الْحَرَامِ أَجْزَأَ عَنْهُ. وَمَنْ نَذَرَ أَنْ يَعْتَكِفَ عَلَى رُءُوسِ الْجِبَالِ فَإِنَّهُ لَا يَنْبَغِي لَهُ ذَلِكَ وَلْيَعْتَكِفْ فِي مَسْجِدِ جَمَاعَةٍ -:

L17855 It has been narrated to us through the chain of Abd al-Razzaq from Ma’mar from Abd al-Karim al-Jazari from Ibn al-Musayyib.

رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ ابْنِ الْمُسَيِّبِ.

L17856 And from the narration of ʿAbd al-Razzāq from Ibn Jurayj: I said to ʿAṭāʾ: A man vowed to walk to Jerusalem from Basra. He said: You have only been commanded concerning this House, and likewise regarding its vicinity. I said: What if he stipulated a condition in a matter but I find a better option? He said: Do what is better, provided you have not designated something for a specific person. But if he said: For the poor or in the path of Allah, and you see a better alternative, then do what is better. Then ʿAṭāʾ retracted this opinion and said: Let him do what he said and carry out his instruction.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: رَجُلٌ نَذَرَ أَنْ يَمْشِيَ إلَى بَيْتِ الْمَقْدِسِ مِنْ الْبَصْرَةِ قَالَ: إنَّمَا أُمِرْتُمْ بِهَذَا الْبَيْتِ، وَكَذَلِكَ فِي الْجِوَارِ قُلْت: فَأَوْصَى فِي أَمْرٍ فَرَأَيْت خَيْرًا مِنْهُ؟ قَالَ: افْعَلْ الَّذِي هُوَ خَيْرٌ مَا لَمْ تُسَمِّ لِإِنْسَانٍ شَيْئًا، وَلَكِنْ إنْ قَالَ: لِلْمَسَاكِينِ، أَوْ فِي سَبِيلِ اللَّهِ، فَرَأَيْت خَيْرًا مِنْ ذَلِكَ فَافْعَلْ الَّذِي هُوَ خَيْرٌ - ثُمَّ رَجَعَ عَطَاءٌ عَنْ هَذَا وَقَالَ: لِيَفْعَلْ الَّذِي قَالَ وَلْيُنَفِّذْ أَمْرَهُ.

L17857 Ibn Jurayj said: The first statement is more preferable to me. Ibn Jurayj reported from Ibn Tāwus from his father that if someone said to him: “I vowed to walk to Bayt al-Maqdis” or “to visit Bayt al-Maqdis?” Tāwus would say to him: “You must go to Mecca, Mecca.”

قَالَ ابْنُ جُرَيْجٍ: وَقَوْلُهُ الْأَوَّلُ أَحَبُّ إلَيَّ، وَقَالَ ابْنُ جُرَيْجٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ: أَنَّهُ كَانَ مَنْ قَالَ لَهُ: نَذَرْت مَشْيًا إلَى بَيْتِ الْمَقْدِسِ، أَوْ زِيَارَةَ بَيْتِ الْمَقْدِسِ؟ قَالَ لَهُ طَاوُسٍ: عَلَيْك بِمَكَّةَ مَكَّةَ.

L17858 Abu Hanifah and his companions said: Whoever vows to walk to the Mosque of the Prophet—peace be upon him—in Medina, or to Bayt al-Maqdis, or to come to Bayt al-Maqdis, or to come to the Mosque of Medina, nothing is incumbent upon him whatsoever.

وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: مَنْ نَذَرَ الْمَشْيَ إلَى مَسْجِدِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِالْمَدِينَةِ أَوْ إلَى بَيْتِ الْمَقْدِسِ، أَوْ إتْيَانَ بَيْتِ الْمَقْدِسِ، أَوْ إتْيَانَ مَسْجِدِ الْمَدِينَةِ لَمْ يَلْزَمْهُ شَيْءٌ أَصْلًا.

L17859 Similarly, whoever vows to pray in the Sacred Mosque in Mecca, or in the Mosque of the Prophet—may God’s blessings and peace be upon him and his family—in Medina, or in Al-Aqsa Mosque in Jerusalem, is not obligated to fulfill such a vow. Instead, he is obligated to pray in his residence within

وَكَذَلِكَ مَنْ نَذَرَ صَلَاةً فِي الْمَسْجِدِ الْحَرَامِ بِمَكَّةَ، أَوْ فِي مَسْجِدِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِالْمَدِينَةِ أَوْ بَيْتِ الْمَقْدِسِ فَإِنَّهُ لَا يَلْزَمُهُ شَيْءٌ مِنْ ذَلِكَ، لَكِنْ يَلْزَمُهُ أَنْ

whichever town or country he resides. However, it has been reported from Abū Yūsuf: if one vows to pray in a specific place and prays in a superior place, it fulfills his obligation; but if he prays in a place lesser than it, it does not fulfill his obligation.

يُصَلِّيَ فِي مَسْكَنِهِ مِنْ الْبِلَادِ حَيْثُ كَانَ إلَّا أَنَّهُ قَدْ رُوِيَ عَنْ أَبِي يُوسُفَ: أَنَّهُ إنْ نَذَرَ صَلَاةً فِي مَوْضِعٍ فَصَلَّى فِي أَفْضَلَ مِنْهُ أَجْزَأَهُ، وَإِنْ صَلَّى فِي دُونِهِ لَمْ يُجْزِهِ.

L17860–17862 Malik said: If one vows, “By Allah, upon me is to walk to Medina,” or says, “to Bayt al-Maqdis,” this is not binding unless he intends to perform prayer there. In that case, he must travel by mount to that place and perform the prayer there. If he says, “Upon me is walking to the mosque of Medina,” or says, “to the mosque of Bayt al-Maqdis,” then he must go to that place by mount and perform the prayer there. He said: If one vows to walk to Arafat or to Muzdalifah, he has not... It becomes incumbent upon him. If one vows to walk to Makkah, it has become binding upon them.

وَقَالَ مَالِكٌ: إذَا قَالَ: لِلَّهِ عَلَيَّ أَنْ أَمْشِيَ إلَى الْمَدِينَةِ، أَوْ قَالَ إلَى بَيْتِ الْمَقْدِسِ لَمْ يَلْزَمْهُ ذَلِكَ، إلَّا أَنْ يَنْوِيَ صَلَاةً هُنَالِكَ فَعَلَيْهِ أَنْ يَذْهَبَ رَاكِبًا، وَالصَّلَاةُ هُنَالِكَ؛ فَإِنْ قَالَ عَلَيَّ الْمَشْيُ إلَى مَسْجِدِ الْمَدِينَةِ، أَوْ قَالَ: إلَى مَسْجِدِ بَيْتِ الْمَقْدِسِ، فَعَلَيْهِ الذَّهَابُ إلَى مَا هُنَالِكَ رَاكِبًا وَالصَّلَاةُ هُنَالِكَ؟ قَالَ: فَإِنْ نَذَرَ الْمَشْيَ إلَى عَرَفَةَ، أَوْ إلَى مُزْدَلِفَةَ لَمْ يَلْزَمْهُ، فَإِنْ نَذَرَ الْمَشْيَ إلَى مَكَّةَ لَزِمَهُ.

L17863 Al-Layth said: Whoever vows to walk to one of the mosques must walk to that mosque. Al-Shafi‘i said: Whoever vows to pray in Mecca, it does not suffice unless they pray there. If one vows to pray in Medina or Bayt al-Maqdis, it suffices to pray in Mecca or in the mosque they specified, not elsewhere. If one vows to pray in a mosque other than these three, they are not bound to it, but they should pray where they are. If one vows to walk to the mosque of Medina or Bayt al-Maqdis, it suffices for them to ride to either of them.

وَقَالَ اللَّيْثُ: مَنْ نَذَرَ أَنْ يَمْشِيَ إلَى مَسْجِدٍ مِنْ الْمَسَاجِدِ مَشَى إلَى ذَلِكَ الْمَسْجِدِ - وَقَالَ الشَّافِعِيُّ: مَنْ نَذَرَ أَنْ يُصَلِّيَ بِمَكَّةَ لَمْ يُجْزِهِ إلَّا فِيهَا، فَإِنْ نَذَرَ أَنْ يُصَلِّيَ بِالْمَدِينَةِ، أَوْ بَيْتِ الْمَقْدِسِ أَجْزَأَهُ أَنْ يُصَلِّيَ بِمَكَّةَ، أَوْ فِي الْمَسْجِدِ الَّذِي ذَكَرَ لَا فِيمَا سِوَاهُ، فَإِنْ نَذَرَ صَلَاةً فِي غَيْرِ هَذِهِ الثَّلَاثَةِ الْمَسَاجِدِ لَمْ يَلْزَمْهُ، لَكِنْ يُصَلِّي حَيْثُ هُوَ، فَإِنْ نَذَرَ الْمَشْيَ إلَى مَسْجِدِ الْمَدِينَةِ، أَوْ بَيْتِ الْمَقْدِسِ أَجْزَأَهُ الرُّكُوبُ إلَيْهِمَا.

L17864 Abu Muhammad said: As for the statement of Abu Hanifah, it lies at the height of corruption and opposes the transmitted Sunnah concerning one who vows obedience. This includes the principle that one prayer in the Mosque of Medina is superior to a thousand prayers elsewhere, and that one prayer in the Sacred Mosque is superior to one hundred thousand prayers in other mosques except the Mosque of Medina - applying universally, without excluding supererogatory or obligatory prayers. This is immense obedience, while the Messenger of Allah - may Allah bless him and his family and grant him peace - said: “Whoever vows to obey Allah must obey Him.” Yet they said: “He should not obey Him.”

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفِي غَايَةِ الْفَسَادِ، وَخِلَافُ السُّنَّةِ الْوَارِدَةِ فِيمَنْ نَذَرَ طَاعَةً، وَفِي أَنَّ صَلَاةً فِي مَسْجِدِ الْمَدِينَةِ أَفْضَلُ مِنْ أَلْفِ صَلَاةٍ فِيمَا سِوَاهُ، وَإِنَّ صَلَاةً فِي الْمَسْجِدِ الْحَرَامِ أَفْضَلُ مِنْ مِائَةِ أَلْفِ صَلَاةٍ فِيمَا سِوَاهُ مِنْ الْمَسَاجِدِ إلَّا مَسْجِدَ الْمَدِينَةِ عُمُومًا لَا يَخُصُّ مِنْهُ نَافِلَةً مِنْ فَرْضٍ، وَهَذِهِ طَاعَةٌ عَظِيمَةٌ، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «مَنْ نَذَرَ أَنْ يُطِيعَ اللَّهَ فَلْيُطِعْهُ» فَقَالُوا: لَا يُطِعْهُ.

L17865 As for the statement of Abū Yūsuf, it is also invalid because according to his

view, if someone vows to fast a day and then engages in jihad, this would suffice him from the fasting since he has performed a deed better than what he vowed. Similarly, if someone vows to give a dirham in charity but instead donates a garment, this would suffice him. This is incorrect, for he did not fulfill his vow.

L17866 As for Mālik's opinion, it is a manifest error as well, for he exempted those who vowed to walk to Medina from the obligation to walk yet obligated it upon those who vowed to walk to Mecca—and this is utterly astonishing, particularly alongside his claim that Medina is superior to Mecca. Furthermore, his specification concerning those who vowed to walk to certain sacred sites like Muzdalifah or Arafah, so he did not obligate that, yet obligated it for vows to Mecca, the Kaaba, and the Haram—all of this is arbitrary without any proof.

L17867 Similarly, Al-Shafi'i's opinion is also nullified by the same arguments that nullify Abu Yusuf's opinion.

L17868 **He vowed to manumit the slave of Fulān if he himself comes to own him.**

L17869 As for one who vows to free the slave of so-and-so if he owns him, or obligates himself to free his own slave if he sells him: if he structured this as an oath, it is invalid and not binding for the reasons we previously mentioned. If he formulated it as a vow, nothing becomes obligatory upon him either. This is because if he says, "My slave is free if I sell him," or says, "This garment of mine is sadaqah if I sell it," and then sells it, his ownership ceases upon selling it. When his ownership ceases, it is invalid for his act of freeing to apply to a slave he no longer owns, as it is now owned by another. The same applies to his sadaqah.

L17870–17871 And whoever says, "If I purchase so-and-so's slave, he is free," or "If I purchase so-and-so's house, it is charity," then he bought all of that, he was not bound to emancipate the slave nor donate as charity—due to what we have narrated via Imam Muslim's chain: Ali ibn Hujr al-Sa'di reported to us, Ismail ibn Ibrahim (Ibn Ulayyah) reported to us, Ayyub (al-Sakhtiyani) re-

وَأَمَّا قَوْلُ أَبِي يُوسُفَ فَفَاسِدٌ أَيْضًا؛ لِأَنَّهُ يَجِبُ عَلَى قَوْلِهِ مَنْ نَذَرَ صَوْمَ يَوْمٍ فَجَاهَدَ فَإِنَّهُ يُجْزِيه مِنْ الصَّوْمِ؛ لِأَنَّهُ قَدْ فَعَلَ خَيْرًا مِمَّا نَذَرَ، وَإِنَّ مَنْ نَذَرَ أَنْ يَتَصَدَّقَ بِدِرْهَمٍ فَتَصَدَّقَ بِثَوْبٍ، أَنَّهُ يُجْزِيه - وَهَذَا خَطَأٌ؛ لِأَنَّهُ لَمْ يَفِ بِنَذْرِهِ.

وَأَمَّا قَوْلُ مَالِكٍ فَخَطَأٌ لَائِحٌ أَيْضًا؛ لِأَنَّهُ أَسْقَطَ وُجُوبَ الْمَشْيِ عَنْ مَنْ نَذَرَهُ إلَى الْمَدِينَةِ وَأَوْجَبَهُ عَلَى مَنْ نَذَرَهُ إلَى مَكَّةَ - وَهَذَا عَجَبٌ جِدًّا، لَا سِيَّمَا مَعَ قَوْلِهِ: إنَّ الْمَدِينَةَ أَفْضَلُ مِنْ مَكَّةَ ثُمَّ تَخْصِيصُهُ فِيمَنْ نَذَرَ الْمَشْيَ إلَى بَعْضِ الْمَشَاعِرِ، كَمُزْدَلِفَةَ، أَوْ عَرَفَةَ، فَلَمْ يُوجِبْ ذَلِكَ، وَأَوْجَبَهُ إلَى مَكَّةَ، وَإِلَى الْكَعْبَةِ، وَإِلَى الْحَرَمِ؛ وَهَذَا كُلُّهُ تَحَكُّمٌ بِلَا بُرْهَانٍ.

وَكَذَلِكَ قَوْلُ الشَّافِعِيِّ أَيْضًا فَإِنَّهُ يُنْتَقَضُ بِمَا يُنْتَقَضُ بِهِ قَوْلُ أَبِي يُوسُفَ.

[نَذَرَ عِتْقَ عَبْدِ فُلَانٍ إنْ مَلَكَهُ]

وَأَمَّا مَنْ نَذَرَ عِتْقَ عَبْدِ فُلَانٍ إنْ مَلَكَهُ، أَوْ أَوْجَبَ عَلَى نَفْسِهِ عِتْقَ عَبْدِهِ إنْ بَاعَهُ، فَإِنَّ مَنْ أَخْرَجَ ذَلِكَ مَخْرَجَ الْيَمِينِ فَهُوَ بَاطِلٌ لَا يَلْزَمُ لِمَا ذَكَرْنَا قَبْلُ، فَإِنْ أَخْرَجَ ذَلِكَ مَخْرَجَ النَّذْرِ لَمْ يَلْزَمْهُ أَيْضًا شَيْءٌ؛ لِأَنَّهُ إذَا قَالَ: عَبْدِي حُرٌّ إنْ بِعْته، أَوْ قَالَ: ثَوْبِي هَذَا صَدَقَةٌ إنْ بِعْته فَبَاعَهُ فَقَدْ سَقَطَ مُلْكُهُ عَنْهُ، وَإِذَا سَقَطَ مُلْكُهُ عَنْهُ، فَمِنْ الْبَاطِلِ أَنْ يَنْفُذَ عِتْقُهُ فِي عَبْدٍ لَا يَمْلِكُهُ هُوَ وَإِنَّمَا يَمْلِكُهُ غَيْرُهُ، وَصَدَقَتُهُ كَذَلِكَ.

وَمَنْ قَالَ: إنْ ابْتَعْت عَبْدَ فُلَانٍ فَهُوَ حُرٌّ، أَوْ إنْ ابْتَعْت دَارَ فُلَانٍ فَهِيَ صَدَقَةٌ، ثُمَّ ابْتَاعَ كُلَّ ذَلِكَ لَمْ يَلْزَمْهُ عِتْقٌ وَلَا صَدَقَةٌ -: لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا عَلِيُّ بْنُ حُجْرٍ السَّعْدِيُّ نا إسْمَاعِيلُ بْنُ إبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ - نا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ - عَنْ أَبِي قِلَابَةَ

ported from Abu Qilabah, from Abu al-Muhallab, from Imran ibn al-Husayn that the Prophet—peace and blessings of Allah be upon him and his family—said: "There is no fulfillment of a vow made in disobedience to Allah, nor to what one does not own."

عَنْ أَبِي الْمُهَلَّبِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «لَا وَفَاءَ لِنَذْرٍ فِي مَعْصِيَةِ اللَّهِ، وَلَا فِيمَا لَا يَمْلِكُ الْعَبْدُ» .

L17872 From the path of Abū Dāwūd al-Sijistānī: Dāwūd ibn Rashīd narrated to us, Shuʿayb ibn Isḥāq narrated to us from al-Awzāʿī: Yaḥyā ibn Abī Kathīr narrated to me, from Abū Qilābah, from Thābit ibn al-Ḍaḥḥāk—he was among the Companions of the Tree—that a man during the era of the Messenger of Allah—peace and blessings be upon him and his family—vowed to slaughter camels at Buwanah. He came to the Messenger of Allah—peace and blessings be upon him and his family—and said, "Have I vowed to slaughter camels at Buwanah?" The Prophet—peace and blessings be upon him and his family—asked him, "Was there an idol from the idols of the pre-Islamic era worshipped there?" They replied, "No." He asked, "Was there a festival of theirs observed there?" They replied, "No." The Messenger of Allah—peace and blessings be upon him and his family—then said, "Fulfill your vow, for there is no fulfillment for a vow in disobedience to Allah or for what the son of Adam does not own." In this report lies textual proof of what we have stated: that a person is not bound to fulfill a vow concerning what they do not own, and it establishes the obligation to fulfill a vow to slaughter camels outside Makkah—which is our position. All praise is due to Allah.[23]

وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نا دَاوُد بْنُ رَشِيدٍ نا شُعَيْبُ بْنُ إِسْحَاق عَنْ الْأَوْزَاعِيِّ حَدَّثَنِي يَحْيَى بْنِ أَبِي كَثِيرٍ حَدَّثَنِي أَبُو قِلَابَةَ نا ثَابِتُ بْنُ الضَّحَّاكِ - هُوَ مِنْ أَصْحَابِ الشَّجَرَةِ - «أَنَّ رَجُلًا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَذَرَ أَنْ يَنْحَرَ إبِلًا بِبُوَانَةَ فَأَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: إنِّي نَذَرْت أَنْ أَنْحَرَ إبِلًا بِبُوَانَةَ؟ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - هَلْ كَانَ فِيهَا وَثَنٌ مِنْ أَوْثَانِ الْجَاهِلِيَّةِ يُعْبَدُ؟ قَالُوا: لَا، قَالَ: هَلْ كَانَ فِيهَا عِيدٌ مِنْ أَعْيَادِهِمْ؟ قَالُوا: لَا فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: أَوْفِ بِنَذْرِكَ فَإِنَّهُ لَا وَفَاءَ لِنَذْرٍ فِي مَعْصِيَةِ اللَّهِ وَلَا فِيمَا لَا يَمْلِكُ ابْنُ آدَمَ» فَفِي هَذَا الْخَبَرِ نَصُّ مَا قُلْنَا: مِنْ أَنَّهُ لَا يَلْزَمُ الْمَرْءَ وَفَاءُ نَذْرِهِ فِيمَا لَا يَمْلِكُهُ، وَفِيهِ إيجَابُ الْوَفَاءِ بِنَذْرِ نَحْرِ الْإِبِلِ فِي غَيْرِ مَكَّةَ - وَهُوَ قَوْلُنَا - وَلِلَّهِ الْحَمْدُ.

L17873 People have differed in their opinions regarding this matter. They disputed the case of a man who said, "If you sell my slave, he is free," and another who said, "If I buy him from you, he is free," then the first sold him to the second? As for Abū Ḥanīfa and ʿAbd al-ʿAzīz ibn al-Mājishūn, they said: Emancipation is incumbent upon the buyer, not the seller.

وَقَالَ النَّاسُ فِي هَذَا: أَقْوَالًا: فَاخْتَلَفُوا فِي رَجُلٍ قَالَ: إنْ بِعْت عَبْدِي هَذَا فَهُوَ حُرٌّ وَقَالَ آخَرُ: إنْ اشْتَرَيْته مِنْك فَهُوَ حُرٌّ، ثُمَّ بَاعَهُ مِنْهُ؟ فَإِنَّ أَبَا حَنِيفَةَ، وَعَبْدَ الْعَزِيزِ بْنَ الْمَاجِشُونِ قَالَا: يُعْتَقُ عَلَى الْمُشْتَرِي، لَا عَلَى الْبَائِعِ.

L17874 Malik and al-Shafi'i said: The slave is to be freed at the expense of the seller, not the buyer.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: يُعْتَقُ عَلَى الْبَائِعِ لَا عَلَى الْمُشْتَرِي.

L17875 Abu Sulayman said: Emancipation is not imposed on either of them—and this is the correct position due to our earlier reasoning—while the aforementioned scholars have each nullified their own foundational principles.

وَقَالَ أَبُو سُلَيْمَانَ: لَا يُعْتَقُ عَلَى وَاحِدٍ مِنْهُمَا - وَهُوَ الْحَقُّ لِمَا ذَكَرْنَا - وَالْمَذْكُورُونَ قَبْلُ قَدْ نَقَضَتْ كُلُّ طَائِفَةٍ أَصْلَهَا، لِأَنَّهُمْ عَلَى اخْتِلَافِهِمْ مُتَّفِقُونَ عَلَى أَنَّ مَنْ قَالَ: إنْ بِعْت

[23] **Hadith references (L17872):** Sunan Abi Dawud 3313; Mishkat al-Masabih 3437.

For despite their disagreements, they concur that if one declares, "If I sell my slave, he is free," and then sells him, emancipation becomes incumbent upon him. They likewise agree that if one states, "If I buy so-and-so's slave, he is free," and then purchases him, the slave is emancipated. Why then did each of the two groups, when both sale and purchase occur together, prioritize one of the two conditional declarants over the other? It would have been more appropriate for them to impose emancipation jointly upon both parties. This constitutes a single nullification.

عَبْدِي فَهُوَ حرٌّ، فَبَاعَهُ: أَنَّهُ يُعْتَقُ عَلَيْهِ، وَعَلَى أَنَّهُ إِنْ قَالَ: إِنْ اشْتَرَيْت عَبْدَ فُلَانٍ فَهُوَ حرٌّ فَاشْتَرَاهُ، فَإِنَّهُ حرٌّ - فَمِنْ أَيْنَ غَلَّبَتْ كُلُّ طَائِفَةٍ مِنْهُمَا فِي اجْتِمَاعِهِمَا فِي بَيْعِهِ وَابْتِيَاعِهِ أَحَدَ النَّاذِرَيْنِ عَلَى الْآخَرِ؟ فَكَانَ الْأَوْلَى بِهِمْ أَنْ يُعْتِقُوهُ عَلَيْهِمَا جَمِيعًا، فَهَذَا نَقْضٌ وَاحِدٌ.

L17876–17878 As for Mālik's statement that "manumission is incumbent upon the seller"—this is a clear error, as it inherently presupposes the sale was validly concluded. Or he did not sell it, nor is there any basis for a third category.

وَأَمَّا قَوْلُ مَالِكٍ: يُعْتَقُ عَلَى الْبَائِعِ - فَخَطَأٌ ظَاهِرٌ، لِأَنَّهُ لَا يَخْلُو مِنْ أَنْ يَكُونَ بَاعَهُ، أَوْ لَمْ يَبِعْهُ، وَلَا سَبِيلَ إِلَى قِسْمٍ ثَالِثٍ.

L17879 If he sold him, then indeed someone else has owned him. By what ruling is a Muslim's completed transaction nullified? And by what ruling does Zaid manumit ʿAmr's slave? This is truly astonishing. If he did not sell him, he is not obligated to manumit him, for he only vowed to manumit him if he sold him—and he did not sell him. This very conclusion applies to al-Shāfiʿī equally, equally, thus the invalidity of their opinions has become evident—and all praise is due to Allah.

فَإِنْ كَانَ بَاعَهُ فَقَدْ مَلَكَهُ غَيْرُهُ فَبِأَيِّ حُكْمٍ تُفْسَخُ صَفْقَةُ مُسْلِمٍ قَدْ تَمَّتْ؟ وَبِأَيِّ حُكْمٍ يُعْتِقُ زَيْدٌ عَبْدَ عَمْرٍو؟ إِنَّ هَذَا لَعَجَبٌ وَإِنْ كَانَ لَمْ يَبِعْهُ - فَمَا يَلْزَمُهُ عِتْقُهُ، لِأَنَّهُ إِنَّمَا نَذَرَ عِتْقَهُ إِنْ بَاعَهُ - وَهُوَ لَمْ يَبِعْهُ - وَهَذَا نَفْسُهُ لَازِمٌ لِلشَّافِعِيِّ سَوَاءً سَوَاءً فَظَهَرَ فَسَادُ أَقْوَالِهِمْ - وَلِلَّهِ الْحَمْدُ.

L17880 Ibn Abi Layla said: If someone declares, "Should my enslaved boy enter Zayd's house, he is free," then sells him, and the boy later enters Zayd's house after the stipulated period, the sale is rescinded, and the seller is obligated to manumit him.

وَقَالَ ابْنُ أَبِي لَيْلَى: مَنْ قَالَ: إِنْ دَخَلَ غُلَامِي دَارَ زَيْدٍ فَهُوَ حرٌّ - ثُمَّ بَاعَهُ - ثُمَّ دَخَلَ الْغُلَامُ دَارَ زَيْدٍ بَعْدَ مُدَّةٍ، فَإِنَّهُ يُفْسَخُ الْبَيْعُ فِيهِ، وَيُعْتَقُ عَلَى بَائِعِهِ.

L17881 By my life, the opinion of Mālik and al-Shāfiʿī is not far from Ibn Abī Laylā's view, for they all ruled that emancipation is incumbent upon the seller after the slave departed his ownership, invalidated both the buyer's transaction and the legitimacy of his ownership. If only I knew what Ibn Abī Laylā would say if the buyer emancipated him before the slave entered Zayd's house. Would his emancipation be revoked, then would the seller emancipate him? Or if she were a slave woman whom the buyer fathered a child with, then she entered the house?

وَلَعَمْرِي مَا قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ بِبَعِيدٍ مِنْ قَوْلِ ابْنِ أَبِي لَيْلَى؛ لِأَنَّهُمْ كُلَّهُمْ قَدْ اعْتَقُوهُ عَلَيْهِ بَعْدَ خُرُوجِهِ عَنْ مِلْكِهِ، وَأَبْطَلُوا صَفْقَةَ الْمُشْتَرِي وَصِحَّةَ مِلْكِهِ - وَلَيْتَ شِعْرِي مَاذَا يَقُولُ ابْنُ أَبِي لَيْلَى إِنْ أَعْتَقَهُ الْمُشْتَرِي قَبْلَ أَنْ يَدْخُلَ الْغُلَامُ دَارَ زَيْدٍ؟ أَيُفْسَخُ عِتْقُهُ ثُمَّ يُعْتِقُهُ عَلَى بَائِعِهِ؟ أَوْ كَانَتْ أَمَةً فَأَوْلَدَهَا الْمُشْتَرِي، ثُمَّ دَخَلَتْ الدَّارَ؟

L17882 **A legal issue: He said, "To Allah, the Exalted, upon me is**

[مَسْأَلَةٌ قَالَ لِلَّهِ تَعَالَى عَلَيَّ عِتْقُ رَقَبَةٍ]

the freeing of a *raqaba*."

L17883 1116 - Issue: This differs from the case of one who states, "I owe Allah the Exalted the manumission of a slave," or says, "a sacrificial camel," or declares, "one hundred dirhams," or "a portion of wheat," without specifying it. All such instances constitute a binding vow, for he did not vow any of these regarding an item he does not own. What he vowed is not a designated entity that is referenced or described; rather, he vowed manumission as an obligation upon himself, or alms as an obligation upon himself.

L17884 The proof of this is the statement of Allah, the Most High: {And among them is he who made a covenant with Allah: "If He gives us from His bounty, we will surely spend in charity"} [At-Tawbah: 75]. Then He, the Mighty and Majestic, reproached them when they did not fulfill that after He had granted them from His bounty. This ruling applies to obligations assumed in their entirety. The prohibition of the Prophet – peace and blessings be upon him and his family – against vowing what one does not own pertains to vowing a specific thing that one does not possess.[24]

L17885–17887 The binding category includes one who vows to free the first slave they acquire or the first child borne by their bondwoman—though this is subject to scrutiny. Via the chain transmitted by Muslim: Abu Bakr ibn Abi Shaybah narrated to us, Abdullah ibn Numayr narrated to us from Hisham ibn Urwah, from his father: "Hakim ibn Hizam emancipated one hundred slaves and provided one hundred camels for charity during the pre-Islamic period, then emancipated one hundred slaves and provided one hundred camels for charity after the advent of Islam. Hakim said: 'I asked, "O Messenger of Allah, things I used to do..."" I did them in the Age of Ignorance. The Messenger of Allah—peace and blessings of Allah be upon him and his family—said to him: "Have you embraced Islam based on the good you previously sent forth?" Hakim said: I replied, "By Allah! I have not abandoned anything I did in the Age of Ignorance except that I have performed its like in Islam." This was Hakim's vow to free one hundred slaves. The Prophet—peace and blessings of Allah be upon him and his family—knew of this yet did not reject

١١١٦ - مَسْأَلَةٌ: وَهَذَا بِخِلَافِ مَنْ قَالَ: لِلَّهِ تَعَالَى عَلَيَّ عِتْقُ رَقَبَةٍ، أَوْ قَالَ: بَدَنَةً، أَوْ قَالَ: مِائَةَ دِرْهَمٍ، أَوْ شَيْءٍ مِنْ الْبُرِّ، هَكَذَا لَمْ يُعَيِّنْهُ -: فَإِنَّ هَذَا كُلَّهُ نَذْرٌ لَازِمٌ؛ لِأَنَّهُ لَمْ يَنْذُرْ شَيْئًا مِنْ ذَلِكَ فِي شَيْءٍ لَا يَمْلِكُهُ؛ لِأَنَّ الَّذِي نَذَرَ لَيْسَ مُعَيَّنًا فَيَكُونُ مُشَارًا إلَيْهِ مُخْبَرًا عَنْهُ، فَإِنَّمَا نَذَرَ عِتْقًا فِي ذِمَّتِهِ، أَوْ صَدَقَةً فِي ذِمَّتِهِ.

بُرْهَانُ هَذَا -: قَوْلُ اللَّهِ تَعَالَى: {وَمِنْهُمْ مَنْ عَاهَدَ اللَّهَ لَئِنْ آتَانَا مِنْ فَضْلِهِ لَنَصَّدَّقَنَّ} [التوبة: ٧٥] ثُمَّ لَامَهُمْ عَزَّ وَجَلَّ إذْ لَمْ يَفُوا بِذَلِكَ إذْ آتَاهُمْ مِنْ فَضْلِهِ -: فَخَرَجَ هَذَا عَلَى مَا الْتَزَمَ فِي الذِّمَّةِ جُمْلَةً، وَخَرَجَ نَهْيُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ النَّذْرِ فِيمَا لَا يَمْلِكُ عَلَى مَا نَذَرَ فِي مُعَيَّنٍ لَا يَمْلِكُهُ.

وَيَدْخُلُ فِي الْقِسْمِ اللَّازِمِ مَنْ نَذَرَ عِتْقَ أَوَّلِ عَبْدٍ يَمْلِكُهُ، أَوْ أَوَّلِ وَلَدٍ تَلِدُهُ أَمَتُهُ، وَفِي هَذَا نَظَرٌ؟ وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ «أَنَّ حَكِيمَ بْنَ حِزَامٍ أَعْتَقَ فِي الْجَاهِلِيَّةِ مِائَةَ رَقَبَةٍ وَحَمَلَ عَلَى مِائَةِ بَعِيرٍ ثُمَّ أَعْتَقَ فِي الْإِسْلَامِ مِائَةَ رَقَبَةٍ، وَحَمَلَ عَلَى مِائَةِ بَعِيرٍ قَالَ حَكِيمٌ: فَقُلْتُ: يَا رَسُولَ اللَّهِ أَشْيَاءُ كُنْتُ أَفْعَلُهَا فِي الْجَاهِلِيَّةِ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَسْلَمْتَ عَلَى مَا أَسْلَفْتَ لَكَ مِنْ الْخَيْرِ؟ قَالَ حَكِيمٌ: قُلْتُ: فَوَاَللَّهِ لَا أَدَعُ شَيْئًا صَنَعْتُهُ فِي الْجَاهِلِيَّةِ إلَّا فَعَلْتُ فِي الْإِسْلَامِ مِثْلَهُ» فَهَذَا نَذْرٌ مِنْ حَكِيمٍ فِي عِتْقِ مِائَةِ رَقَبَةٍ، وَعَلِمَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِذَلِكَ فَلَمْ يُنْكِرْهُ كَمَا أَنْكَرَ نَذْرَ الْأَنْصَارِيَّةِ نَحْرَ النَّاقَةِ

[24] **Qur'an references (L17884):** Qur'an 9:75 (At-Tawbah).

it, unlike how he rejected the Ansari woman's vow to slaughter the camel she did not own. Thus, it is confirmed that the prohibition applies only to vows involving specific, unowned objects, while what is permissible is the non-specific vow—even if the vowed object was not within one's ownership at the time—because it constitutes a responsibility upon him.

الَّتِي لَمْ تَمْلِكْهَا - فَصَحَّ أَنَّ ذَلِكَ النَّهْيَ إنَّمَا هُوَ فِي الْمُعَيَّنِ، وَأَنَّ الْجَائِزَ هُوَ غَيْرُ الْمُعَيَّنِ، وَإِنْ لَمْ يَكُنْ فِي مِلْكِهِ حِينَئِذٍ؛ لِأَنَّهُ فِي ذِمَّتِهِ.

L17888 As for one who says, "A vow is incumbent upon me," without specifying anything, the expiation is that of an oath, and it is obligatory; nothing else suffices him. This is based on what has been narrated to us through the chain of Ibn Wahb, who reported from ʻAmr ibn al-Ḥārith from Kaʻb ibn ʻAlqamah from ʻAbd al-Raḥmān ibn Shimasah from Abu al-Khayr from ʻUqbah ibn ʻĀmir from the Messenger of Allah—peace and blessings of Allah be upon him and his family—who said: "The expiation of a vow is the expiation of an oath."

وَأَمَّا مَنْ قَالَ عَلَيَّ نَذْرٌ وَلَمْ يُسَمِّ شَيْئًا فَكَفَّارَةُ يَمِينٍ وَلَا بُدَّ، لَا يُجْزِيهِ غَيْرُ ذَلِكَ -: لِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ كَعْبِ بْنِ عَلْقَمَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ شِمَاسَةَ عَنْ أَبِي الْخَيْرِ عَنْ عُقْبَةَ بْنِ عَامِرٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «كَفَّارَةُ النَّذْرِ كَفَّارَةُ يَمِينٍ» .

L17889 Abu Muhammad said: We have mentioned the statement of the Prophet—peace and blessings be upon him and his family—"Whoever vows to obey Allah must fulfill it, and whoever vows to disobey Him must not do so," and his statement—peace and blessings be upon him and his family—"There is no fulfillment for a vow involving disobedience to Allah."[25]

قَالَ أَبُو مُحَمَّدٍ: قَدْ ذَكَرْنَا قَوْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «مَنْ نَذَرَ أَنْ يُطِيعَ اللَّهَ فَلْيُطِعْهُ وَمَنْ نَذَرَ أَنْ يَعْصِيَهُ فَلَا يَعْصِهِ» وَقَوْلُهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لَا وَفَاءَ لِنَذْرٍ فِي مَعْصِيَةِ اللَّهِ» .

L17890 Allah's command concerning one who vows to fast and not seek shade, not sit, and not speak is that he must fast and disregard the rest. He prohibits swearing oaths by other than Allah, the Exalted, and we have not found any vow in existence that deviates from these categories.

وَأَمْرُهُ مَنْ نَذَرَ أَنْ يَصُومَ وَلَا يَسْتَظِلَّ وَلَا يَقْعُدَ وَلَا يَتَكَلَّمَ: بِأَنْ يَصُومَ وَيَطْرَحَ مَا سِوَى ذَلِكَ - وَنَهْيُهُ عَنْ الْيَمِينِ بِغَيْرِ اللَّهِ تَعَالَى وَلَمْ نَجِدْ نَذْرًا فِي الْعَالَمِ يَخْرُجُ عَنْ هَذِهِ الْوُجُوهِ.

L17891 He (peace be upon him) clarified the ruling for each case. Thus, whoever applies the expiation for an oath to any of those cases has erred, for he added to it what no textual evidence established regarding that case. Therefore, this report must be interpreted in a manner that does not divert the rulings of those texts from their original determinations. We find that if interpreted according to its apparent meaning, its ruling holds valid—pertaining to one who merely makes a vow as stated in the report's text—and it is impermissible

وَقَدْ بَيَّنَ - عَلَيْهِ السَّلَامُ - لِكُلِّ وَجْهٍ حُكْمَهُ، فَكَانَ مَنْ اسْتَعْمَلَ فِي أَحَدِ تِلْكَ الْوُجُوهِ كَفَّارَةَ يَمِينٍ فَقَدْ أَخْطَأَ؛ لِأَنَّهُ زَادَ فِي ذَلِكَ مَا لَمْ يَأْتِ بِهِ نَصٌّ فِي ذَلِكَ الْوَجْهِ، فَوَجَبَ حَمْلُ هَذَا الْخَبَرِ عَلَى مَا لَا يُحَالُ بِهِ حُكْمُ تِلْكَ النُّصُوصِ عَنْ أَحْكَامِهَا -: فَوَجَدْنَاهُ إذَا حُمِلَ عَلَى ظَاهِرِهِ صَحَّ حُكْمُهُ، وَهُوَ مَنْ نَذَرَ نَذْرًا فَقَطْ كَمَا فِي نَصِّ الْخَبَرِ وَلَمْ يَجُزْ أَنْ يُلْزَمَ شَيْئًا مِنْ أَعْمَالِ الْبِرِّ لَمْ يَلْتَزِمْهَا وَلَا جَاءَ بِالْتِزَامِهِ إيَّاهَا نَصٌّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[25] **Hadith references (L17889):** Sahih al-Bukhari 6696; Sahih al-Bukhari 6700; Mishkat al-Masabih 3427.

to obligate him to acts of righteousness he neither pledged nor were there textual mandates for them. Success is from Allah, the Most High.

L17892 It is the same whether one says, “A vow is binding upon me,” or says, “If I am freed from what I am in, then a vow is binding upon me,” whether he is ultimately relieved or not—in all such cases, the expiation for an oath is obligatory. And success comes from Allah, the Exalted.

L17893–17895 It was narrated to us through the chain of Saʿīd ibn Manṣūr: Abū ʿAwānah informed us from Manṣūr ibn al-Muʿtamir from Saʿīd ibn Jubayr from Ibn ʿAbbās regarding a man who declares, “Such-and-such is forbidden for me,” or “A vow is binding upon me.” Ibn ʿAbbās said: “Free a slave or fast.” Two consecutive months, or feed sixty poor people.

L17896 Saʿīd said: Sufyān—he is Ibn ʿUyaynah—narrated to us from ʿAṭāʾ ibn al-Sāʾib from Saʿīd ibn Jubayr from Ibn ʿAbbās, who said: A vow is the most binding oath, and in it is the most stringent expiation: freeing a slave. Both [rulings] are authentically reported from Ibn ʿAbbās, and we know of no dissent to them from the Companions.

L17897 Among those who said, “There is an oath in it, as per our position,” is al-Shaʿbī. We narrated it through Sufyān ibn ʿUyaynah, from Ismāʿīl ibn Abī Khālid, [who reported] from al-Shaʿbī. No authoritative proof exists for anyone besides the Messenger of Allah (peace be upon him and his family).

L17898 **A juristic question: He said regarding the binding vow—except if Allah wills.**

L17899 1117 - Issue: If someone, regarding the binding vow we previously mentioned, says: “except if Allah wills,” “if Allah wills,” “except that Allah wills,” mentions “intention” (al-irādah) instead of “will” (al-mashiyyah), “unless Allah alters my resolve,” “unless it becomes clear to me,” or similar exceptions attached syntactically to their utterance, this constitutes a valid exception. He is not bound by what he vowed, based on Allah’s saying: {And never say of anything, “I will do this tomorrow, except, ‘If Allah wills’”} [Al-Kahf: 23-24]. This is because if he conditions his vow on any of the aforementioned

وَسَوَاءٌ قَالَ عَلَيَّ نَذْرٌ، أَوْ قَالَ: إِنْ تَخَلَّصْت مِمَّا أَنَا فِيهِ فَعَلَيَّ نَذْرٌ، وَسَوَاءٌ تَخَلَّصَ أَوْ لَمْ يَتَخَلَّصْ: عَلَيْهِ كُلُّ ذَلِكَ كَفَّارَةُ يَمِينٍ وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو عَوَانَةَ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ فِي الرَّجُلِ يَقُولُ: عَلَيَّ حَرَامٌ، عَلَيَّ نَذْرٌ؟ قَالَ: اعْتِقْ رَقَبَةً، أَوْ صُمْ شَهْرَيْنِ مُتَتَابِعَيْنِ، أَوْ أَطْعِمْ سِتِّينَ مِسْكِينًا.

قَالَ سَعِيدٌ: ونا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: النَّذْرُ أَغْلَظُ الْيَمِينِ، وَفِيهَا أَغْلَظُ الْكَفَّارَةِ: عِتْقُ رَقَبَةٍ - وَكِلَاهُمَا صَحِيحٌ عَنْ ابْنِ عَبَّاسٍ، وَلَا نَعْلَمُ لَهُ مُخَالِفًا مِنْ الصَّحَابَةِ.

وَمِمَّنْ قَالَ: فِيهِ يَمِينٌ كَقَوْلِنَا: الشَّعْبِيُّ، رُوِّينَاهُ عَنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ: عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

[مَسْأَلَةٌ قَالَ فِي النَّذْرِ اللَّازِمِ إلَّا أَنْ يَشَاءَ اللَّهُ]

١١١٧ - مَسْأَلَةٌ: وَمَنْ قَالَ فِي النَّذْرِ اللَّازِمِ الَّذِي قَدَّمْنَا: إلَّا أَنْ يَشَاءَ اللَّهُ، أَوْ إنْ شَاءَ اللَّهُ، أَوْ إلَّا أَنْ يَشَاءَ اللَّهُ، أَوْ ذَكَرَ الْإِرَادَةَ مَكَانَ الْمَشِيئَةِ، أَوْ إلَّا إنْ بَدَّلَ اللَّهُ مَا فِي نَفْسِي، أَوْ إلَّا أَنْ يَبْدُوَ لِي أَوْ نَحْوِ هَذَا مِنْ الِاسْتِثْنَاءِ وَوَصَلَهُ بِكَلَامِهِ، فَهُوَ اسْتِثْنَاءٌ صَحِيحٌ، وَلَا يَلْزَمُهُ مَا نَذَرَ، لِقَوْلِ اللَّهِ تَعَالَى {وَلا تَقُولَنَّ لِشَيْءٍ إِنِّي فَاعِلٌ ذَلِكَ غَدًا}

exceptions, he has not committed to it. For if Allah had willed its fulfillment, He would have enacted it without exception.[26]

L17900 And we know that if it has not come to be, then indeed Allah, the Most High, did not will its coming into being.

L17901 He is not bound to it unless Allah the Exalted wills its occurrence. Therefore, if Allah the Exalted does not will its occurrence, he is not bound to it. Likewise, if it becomes apparent to him—and success comes only from Allah the Exalted.

L17902 **Issue: The vows of men, women, slaves, and free individuals are equal.**

L17903 Issue 1118: The vows of a man, a virgin woman with a father or without a father, a woman with a husband or without a husband, a slave, and a free person are all equal in every matter we have mentioned. This is because Allah's command to fulfill vows and His Messenger's injunction - may Allah's peace and blessings be upon him - apply universally without exception. *"And your Lord is never forgetful"* [Maryam 19:64].[27]

L17904 Among the invalid impossibilities is that Allah, the Exalted, would intend to specify any of what we have mentioned without clarifying it to us. This is a matter we are secure in (and all praise is due to Allah), except in the case of fasting alone: a woman may not fast beyond that which Allah, the Exalted, has obligated upon her except with her husband's permission, as we detailed in "The Book of Fasting." And with Allah, the Exalted, lies all success.

L17905–17906 **Issue: A vow to do what one is incapable of fulfilling.**

L17907 Issue: Whoever vows to do what he is perpetually incapable of fulfilling, it

[26] **Qur'an references (L17899):** Qur'an 18:23 (Al-Kahf); Qur'an 18:24 (Al-Kahf).
[27] **Qur'an references (L17903):** Qur'an 19:64 (Maryam).

[الكهف: ٢٣] {إِلا أَنْ يَشَاءَ اللَّهُ} [الكهف: ٢٤] وَلِأَنَّهُ إِذَا عَلَّقَ نَذْرَهُ بِكُلِّ مَا ذَكَرْنَا فَلَمْ يَلْتَزِمْهُ؛ لِأَنَّ اللَّهَ تَعَالَى لَوْ شَاءَ تَمَامَهُ لَأَنْفَذَهُ دُونَ اسْتِثْنَاءٍ.

وَقَدْ عَلِمْنَا أَنَّهُ إِذَا لَمْ يَكُنْ فَإِنَّ اللَّهَ تَعَالَى لَمْ يُرِدْ كَوْنَهُ.

وَهُوَ لَمْ يَلْتَزِمْهُ إِلَّا إِنْ أَرَادَ اللَّهُ تَعَالَى كَوْنَهُ، فَإِذْ لَمْ يُرِدْ اللَّهُ تَعَالَى كَوْنَهُ فَلَمْ يَلْتَزِمْهُ، وَكَذَلِكَ إِنْ بَدَا لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ نَذْرُ الرَّجُلِ وَالْمَرْأَةِ وَالْعَبْدِ وَالْحُرِّ سَوَاءٌ]

١١١٨ - مَسْأَلَةٌ: وَنَذْرُ الرَّجُلِ، وَالْمَرْأَةِ الْبِكْرِ ذَاتِ الْأَبِ، وَغَيْرِ ذَاتِ الْأَبِ، وَذَاتِ الزَّوْجِ، وَغَيْرِ ذَاتِ الزَّوْجِ، وَالْعَبْدِ، وَالْحُرِّ، سَوَاءٌ فِي كُلِّ مَا ذَكَرْنَا؛ لِأَنَّ أَمْرَ اللَّهِ تَعَالَى بِالْوَفَاءِ بِالنَّذْرِ وَأَمْرَ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِذَلِكَ عُمُومٌ لَمْ يُخَصَّ مِنْ ذَلِكَ أَحَدٌ مِنْ أَحَدٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَمِنْ الْبَاطِلِ الْمُمْتَنِعِ أَنْ يَكُونَ اللَّهُ تَعَالَى يُرِيدُ تَخْصِيصَ بَعْضِ مَا ذَكَرْنَا فَلَا يُبَيِّنُهُ لَنَا، هَذَا أَمْرٌ قَدْ أَمِنَّاهُ - وَلِلَّهِ الْحَمْدُ - إلَّا الصِّيَامَ وَحْدَهُ فَلَيْسَ لِلْمَرْأَةِ أَنْ تَصُومَ غَيْرَ الَّذِي فَرَضَهُ اللَّهُ تَعَالَى عَلَيْهَا إلَّا بِإِذْنِ زَوْجِهَا عَلَى مَا ذَكَرْنَا فِي " كِتَابِ الصِّيَامِ " وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ نَذَرَ مَا لَا يُطِيقُ]

مَسْأَلَةٌ: وَمَنْ نَذَرَ مَا لَا يُطِيقُ أَبَدًا لَمْ يَلْزَمْهُ، لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

does not become binding on him, due to the statement of Allah, the Exalted: *"Allah does not burden a soul beyond its capacity"* (Qur'an 2:286).[28]

وَكَذَلِكَ مَنْ نَذَرَ نَذْرًا فِي وَقْتٍ مَحْدُودٍ فَجَاءَ ذَلِكَ الْوَقْتُ - وَهُوَ لَا يُطِيقُهُ - فَإِنَّهُ غَيْرُ لَازِمٍ لَهُ، لَا حِينَئِذٍ، وَلَا بَعْدَ ذَلِكَ.

L17908 Similarly, if someone makes a vow within a specified period, and once that period arrives he is unable to fulfill it, then it is not binding upon him: neither at that time nor thereafter.

[مَسْأَلَةٌ نَذَرَ فِي حَالَةِ كُفْرِهِ طَاعَةً لِلَّهِ عَزَّ وَجَلَّ ثُمَّ أَسْلَمَ]

Issue: If a person, while in disbelief, vows to obey Allah, the Almighty, the Majestic, and later embraces Islam...

١١٢٠ - مَسْأَلَةٌ: وَمَنْ نَذَرَ فِي حَالَةِ كُفْرِهِ طَاعَةً لِلَّهِ عَزَّ وَجَلَّ ثُمَّ أَسْلَمَ لَزِمَهُ الْوَفَاءُ بِهِ لِقَوْلِ اللَّهِ تَعَالَى: {فَلا اقْتَحَمَ الْعَقَبَةَ} [البلد: ١١] {وَمَا أَدْرَاكَ مَا الْعَقَبَةُ} [البلد: ١٢] {فَكُّ رَقَبَةٍ} [البلد: ١٣] {أَوْ إِطْعَامٌ فِي يَوْمٍ ذِي مَسْغَبَةٍ} [البلد: ١٤] {يَتِيمًا ذَا مَقْرَبَةٍ} [البلد: ١٥] {أَوْ مِسْكِينًا ذَا مَتْرَبَةٍ} [البلد: ١٦] {ثُمَّ كَانَ مِنَ الَّذِينَ آمَنُوا} [البلد: ١٧] فَحَضَّ اللَّهُ تَعَالَى عَلَى فِعْلِ الْخَيْرِ، وَأَوْجَبَهُ لِفَاعِلِهِ، ثُمَّ عَلَى الْإِيمَانِ، وَعَلَى فِعْلِ الْخَيْرِ فِيهِ أَيْضًا، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «مَنْ نَذَرَ أَنْ يُطِيعَ اللَّهَ فَلْيُطِعْهُ» .

L17910 1120 - Issue: If someone, during their state of disbelief, vows to perform an act of obedience to Allah the Almighty (عَزَّ وَجَلَّ) and then embraces Islam, fulfilling the vow becomes obligatory upon them. This is based on Allah the Exalted's (تَعَالَى) words: "But he has not attempted the steep ascent" (Surah Al-Balad 90:11); "And what will make you comprehend what the steep ascent is?" (90:12); "It is freeing a slave" (90:13); "Or feeding during a day of famine" (90:14); "An orphan of close kin" (90:15); "Or a destitute lying in dust" (90:16); "Then he becomes one of those who believe" (90:17). Thus, Allah the Exalted urges the performance of good deeds and makes them obligatory for the doer, then urges faith, and likewise urges performing good deeds within the framework of faith. This is supported by the saying of Allah's Messenger—peace and blessings be upon him and his family—: "Whoever vows to obey Allah must fulfill it."[29]

وَهُوَ - عَلَيْهِ السَّلَامُ - مَبْعُوثٌ إِلَى الْجِنِّ وَالْإِنْسِ، وَطَاعَتُهُ فَرْضٌ عَلَى كُلِّ مُؤْمِنٍ وَكَافِرٍ، مَنْ قَالَ غَيْرَ هَذَا فَلَيْسَ مُسْلِمًا -: وَهَذِهِ جُمْلَةٌ لَمْ يَخْتَلِفْ فِيهَا أَحَدٌ مِمَّنْ يَدَّعِي الْإِسْلَامَ - ثُمَّ نَقَضُوا فِي التَّفْصِيلِ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا حَسَنٌ الْحُلْوَانِيُّ نا يَعْقُوبُ هُوَ ابْنُ إِبْرَاهِيمَ بْنِ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - نا أَبِي عَنْ صَالِحِ بْنِ كَيْسَانَ عَنِ ابْنِ شِهَابٍ أَنَا عُرْوَةُ بْنُ الزُّبَيْرِ «أَنَّ حَكِيمَ بْنَ حِزَامٍ أَخْبَرَهُ أَنَّهُ قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: أَيْ رَسُولَ اللَّهِ أَرَأَيْتَ أُمُورًا كُنْتُ أَتَحَنَّثُ بِهَا فِي الْجَاهِلِيَّةِ

L17911 He (peace be upon him) is sent to jinn and humankind, and obedience to him is obligatory upon every believer and disbeliever. Whoever says otherwise is not a Muslim. This is a matter in which none who claim Islam have disagreed—then they contradicted it in the details. We have been narrated via Muslim's chain: Ḥasan al-Ḥalwānī narrated to us, Yaʿqūb—the son of Ibrāhīm ibn Saʿd ibn Ibrāhīm ibn ʿAbd al-Raḥmān ibn ʿAwf—narrated to us, from his father, from Ṣāliḥ ibn Kayṣān, from Ibn Shihāb, that ʿUrwah ibn al-

[28] **Qur'an references (L17907):** Qur'an 2:286 (Al-Baqarah).

[29] **Qur'an references (L17910):** Qur'an 90:11 (Al-Balad); Qur'an 90:12 (Al-Balad); Qur'an 90:13 (Al-Balad); Qur'an 90:14 (Al-Balad); Qur'an 90:15 (Al-Balad); Qur'an 90:16 (Al-Balad); Qur'an 90:17 (Al-Balad).

Zubayr said: "Ḥakīm ibn Ḥizām informed him that he said to the Messenger of Allah (peace be upon him and his family): 'O Messenger of Allah, what do you say about deeds I used to practice religiously in the Age of Ignorance—charity, freeing slaves, or maintaining kinship ties—is there any reward for them?' The Messenger of Allah (peace be upon him and his family) replied: 'You have embraced Islam with the good you previously performed.'"

مِنْ صَدَقَةٍ، أَوْ عَتَاقَةٍ، أَوْ صِلَةِ رَحِمٍ، أَفِيهَا أَجْرٌ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: أَسْلَمْتَ عَلَى مَا أَسْلَفْتَ مِنْ خَيْرٍ» .

L17912 Yusuf ibn ʻAbd Allah ibn ʻAbd al-Barr al-Namari narrated to us from Saʻid ibn Nasr from Qasim ibn Aṣbagh from Ibn Waddah from Abu Bakr ibn Abi Shaybah from Hafs ibn Ghiyath from ʻUbayd Allah ibn ʻUmar from Nafiʻ from Ibn ʻUmar from ʻUmar, who said: "I made a vow during the Age of Ignorance, and after I embraced Islam, I asked the Messenger of Allah (peace and blessings be upon him) about it, and he commanded me to fulfill my vow."

نا يُوسُفُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَرِّ النَّمَرِيُّ نا سَعِيدُ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «عَنْ عُمَرَ قَالَ: نَذَرْتُ نَذْرًا فِي الْجَاهِلِيَّةِ فَسَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بَعْدَ مَا أَسْلَمْتُ فَأَمَرَنِي أَنْ أُوَفِّيَ بِنَذْرِي» .

L17913–17915 Narrated by Humam from Abū Muḥammad al-Bājī from ʿAbdullāh ibn Yūnus al-Murādī from Baqiyy ibn Makhlad from Abū Bakr ibn Abī Shaybah from Hafs ibn Ghiyath from ʿUbaydullāh ibn ʿUmar from Nāfiʿ from Ibn ʿUmar from ʿUmar. He said, "I made a vow during the Age of Ignorance, then I accepted Islam. I asked the Messenger of Allah (may Allah bless him and his family and grant him peace), so he commanded me to fulfill my vow."

نا حُمَامٌ نا أَبُو مُحَمَّدٍ الْبَاجِيَّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ الْمُرَادِيُّ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا حَفْصٌ هُوَ ابْنُ غِيَاثٍ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنْ «عُمَرَ قَالَ: نَذَرْتُ نَذْرًا فِي الْجَاهِلِيَّةِ ثُمَّ أَسْلَمْتُ فَسَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَمَرَنِي أَنْ أُوَفِّيَ بِنَذْرِي» .

L17916 Therefore, this ruling leaves no room for anyone to deviate from it.

فَهَذَا حُكْمٌ لَا يَسَعُ أَحَدًا الْخُرُوجُ عَنْهُ.

L17917 Malik said: It is not incumbent upon him, and his followers cited evidence for this by the words of Allah the Exalted: "If you associate [others with Allah], your deeds will surely be nullified" (39:65) and His words: "We will take account of whatever deeds they did, rendering them as scattered dust" (25:23).[30]

وَقَالَ مَالِكٌ: لَا يَلْزَمُهُ - وَاحْتَجَّ لَهُ مُقَلِّدُوهُ بِقَوْلِ اللَّهِ تَعَالَى {لَئِنْ أَشْرَكْتَ لَيَحْبَطَنَّ عَمَلُكَ} [الزمر: ٦٥] وقَوْله تَعَالَى {وَقَدِمْنَا إِلَى مَا عَمِلُوا مِنْ عَمَلٍ فَجَعَلْنَاهُ هَبَاءً مَنْثُورًا} [الفرقان: ٢٣] .

L17918 Abu Muhammad said: There is no argument for them in this, for all of these verses were revealed specifically regarding those who die as disbelievers, as explicitly stated in each of the two verses. The Exalted said: "And whoever

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ لَهُمْ فِي هَذَا، لِأَنَّ هَذَا كُلَّهُ إنَّمَا نَزَلَ فِيمَنْ مَاتَ كَافِرًا بِنَصِّ كُلِّ آيَةٍ مِنْهُمَا قَالَ تَعَالَى: {وَمَنْ يَرْتَدِدْ مِنْكُمْ عَنْ دِينِهِ فَيَمُتْ وَهُوَ كَافِرٌ فَأُولَئِكَ حَبِطَتْ أَعْمَالُهُمْ} [البقرة: ٢١٧] .

[30] **Qur'an references (L17917):** Qur'an 39:65 (Az-Zumar); Qur'an 25:23 (Al-Furqan).

among you turns back from his religion and dies while he is a disbeliever - for those, their deeds have become invalidated" [Al-Baqarah: 217].[31]

ثُمَّ هُمْ أَوَّلُ مَنْ يَنْقُضُ هَذِهِ الْحُجَّةَ فَيُجِيزُونَ: بَيْعَهُمْ، وَابْتِيَاعَهُمْ، وَنِكَاحَهُمْ، وَهِبَاتِهِمْ، وَصَدَقَاتِهِمْ، وَعِتْقَهُمْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L17919 Then they are the first to invalidate this argument by permitting their selling, purchasing, marriages, gifts, charitable acts, and manumission—and success is by Allah, the Almighty.

وَمِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا لَيْثُ بْنُ سَعْدٍ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - خَيْلًا قِبَلَ نَجْدٍ فَجَاءَتْ بِرَجُلٍ مِنْ بَنِي حَنِيفَةَ يُقَالُ لَهُ: ثُمَامَةُ بْنُ أَثَالٍ سَيِّدُ أَهْلِ الْيَمَامَةِ فَرَبَطُوهُ بِسَارِيَةٍ مِنْ سَوَارِي الْمَسْجِدِ وَذَكَرَ الْحَدِيثَ. وَفِيهِ أَنَّ ثُمَامَةَ أَسْلَمَ بَعْدَ أَنْ أَطْلَقَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَالَ: يَا مُحَمَّدُ، وَاَللَّهِ مَا كَانَ عَلَى الْأَرْضِ مِنْ دِينٍ أَبْغَضَ إلَيَّ مِنْ دِينِكَ، فَأَصْبَحَ دِينُكَ أَحَبَّ الدِّينِ كُلِّهِ إلَيَّ وَاَللَّهِ مَا كَانَ مِنْ بَلَدٍ أَبْغَضَ إلَيَّ مِنْ بَلَدِكَ فَأَصْبَحَ بَلَدُكَ أَحَبَّ الْبِلَادِ كُلِّهَا إلَيَّ وَإِنَّ خَيْلَكَ أَخَذَتْنِي، وَأَنَا أُرِيدُ الْعُمْرَةَ فَمَاذَا تَرَى؟ فَبَشَّرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَأَمَرَهُ أَنْ يَعْتَمِرَ» .

L17920 And through the chain of Muslim, Qutaybah ibn Sa'id narrated to us: Laith ibn Sa'd narrated to us from Sa'id ibn Abi Sa'id al-Maqburi that he heard Abu Hurairah say: "The Messenger of Allah (peace and blessings of Allah be upon him and his family) dispatched a cavalry toward Najd. It came back with a man from Banu Hanifah named Thumamah ibn Athāl, the chief of the people of Yamamah. They bound him to one of the mosque's pillars," and he mentioned the hadith. In it, Thumamah embraced Islam after the Prophet (peace and blessings of Allah be upon him and his family) released him. He said: "O Muhammad, by Allah! No religion on earth was more hateful to me than your religion, yet now your religion has become the most beloved of all religions to me. By Allah! No land was more detestable to me than your land, yet now your land has become the most beloved of all lands to me. Indeed, your cavalry seized me while I intended to perform Umrah. What do you advise?" The Messenger of Allah (peace and blessings of Allah be upon him and his family) gave him glad tidings and commanded him to perform Umrah.

فَهَذَا كَافِرٌ خَرَجَ يُرِيدُ الْعُمْرَةَ فَأَسْلَمَ فَأَمَرَهُ - عَلَيْهِ السَّلَامُ - بِإِتْمَامِ نِيَّتِهِ.

L17921 So a disbeliever set out intending to perform Umrah. Then he embraced Islam, and the Prophet (peace be upon him) instructed him to complete the Umrah he had intended.

وَرُوِّينَا عَنْ طَاوُسٍ مَنْ نَذَرَ فِي كُفْرِهِ، ثُمَّ أَسْلَمَ فَلْيُوَفِّ بِنَذْرِهِ - وَعَنْ الْحَسَنِ، وَقَتَادَةَ نَحْوُهُ - وَبِهَذَا يَقُولُ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا.

L17922 It was reported to us from Ṭāwus that whoever vowed during his disbelief then embraced Islam must fulfill his vow. A similar report was narrated from al-Ḥasan and Qatādah. This is the position of al-Shāfiʿī, Abū Sulaymān, and their companions.

[مَسْأَلَةٌ نَذَرَ صَوْمَ يَوْمٍ يَقْدُمُ فِيهِ فُلَانٌ]

A case where he vowed to fast a day when so-and-so arrives.

L17923

[31] **Qur'an references (L17918):** Qur'an 2:217 (Al-Baqarah).

1121 – Issue: Whoever vows to Allah to fast a day [when] a certain person arrives, or a day [when] he is acquitted or sets out, and it occurs. In that case, whether night or day, nothing becomes obligatory for him on that day; for if it is night, what he vowed [to do] does not exist during it, and if it is day, the time for entering into the fast has already passed—unless he states: "I owe to Allah to fast the day I begin [it]," or specifies it as perpetual or for a specified period, in which case fasting that day becomes obligatory in the renewed [period]. And with Allah, the Exalted, is success.

١١٢١ - مَسْأَلَةٌ: وَمَنْ نَذَرَ لِلَّهِ صَوْمَ يَوْمٍ يَقْدُمُ فِيهِ فُلَانٌ، أَوْ يَوْمٍ يَبْرَأُ أَوْ يَنْطَلِقُ فَكَانَ ذَلِكَ لَيْلًا أَوْ نَهَارًا لَمْ يَلْزَمْهُ فِي ذَلِكَ الْيَوْمِ شَيْءٌ؛ لِأَنَّهُ إنْ كَانَ لَيْلًا فَلَمْ يَكُنْ مَا نَذَرَ فِيهِ، وَإِنْ كَانَ نَهَارًا فَقَدْ مَضَى وَقْتُ الدُّخُولِ فِي الصَّوْمِ إلَّا أَنْ يَقُولَ: لِلَّهِ عَلَيَّ صَوْمُ الْيَوْمِ الَّذِي أَنْطَلِقُ فِيهِ، أَوْ أَنْ يَكُونَ كَذَا فِي الْأَبَدِ، أَوْ مُدَّةً يُسَمِّيهَا، فَيَلْزَمُهُ صِيَامُ ذَلِكَ الْيَوْمِ فِي الْمُسْتَأْنَفِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Case: If someone vows to fast without specifying a number [of days], what is the obligation?

[مَسْأَلَةٌ نَذَرَ صِيَامًا وَلَمْ يُسَمِّ عَدَدًا مَا]

Issue 1122: If someone vows to fast, pray, or give charity without specifying a quantity, they must fast one day with no additional obligation. For charity, they must give what their soul willingly accepts from what qualifies as charity—even if it means dividing a date into halves or giving less than what benefits the recipient. For prayer, they must perform two rakʿahs. This is because the minimum amount that falls under each designated term constitutes the definitive obligation, with no requirement to exceed it, as neither Islamic law nor linguistic convention imposes such increase. And success comes from Allah, the Most High.

١١٢٢ - مَسْأَلَةٌ: وَمَنْ نَذَرَ صِيَامًا، أَوْ صَلَاةً، أَوْ صَدَقَةً، وَلَمْ يُسَمِّ عَدَدًا مَا: لَزِمَهُ فِي الصِّيَامِ صَوْمُ يَوْمٍ وَلَا مَزِيدٍ، وَفِي الصَّدَقَةِ مَا طَابَتْ بِهِ نَفْسُهُ مِمَّا يُسَمَّى صَدَقَةً، وَلَوْ شَقَّ تَمْرَةً، أَوْ أَقَلَّ مِمَّا يَنْتَفِعُ بِهِ الْمُتَصَدَّقُ عَلَيْهِ، وَلَزِمَهُ فِي الصَّلَاةِ رَكْعَتَانِ؛ لِأَنَّ كُلَّ مَا ذَكَرْنَا أَقَلُّ مِمَّا يَقَعُ عَلَيْهِ الِاسْمُ الْمَذْكُورُ، فَهُوَ اللَّازِمُ بِيَقِينٍ وَلَا يَلْزَمُهُ زِيَادَةٌ؛ لِأَنَّهُ لَمْ يُوجِبْهَا شَرْعٌ، وَلَا لُغَةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: He said, "By Allah, there is upon me sadaqah like this, as a whole."

[مَسْأَلَةٌ قَالَ لِلَّهِ عَلَيَّ صَدَقَةٌ هَكَذَا جُمْلَةً]

1123 - Issue: If someone says, "I owe Allah charity, fasting, or prayer," as a general statement, he is obligated to perform whichever of these he willed, and it suffices him. This is because he vowed an act of obedience, so he must fulfill it.

١١٢٣ - مَسْأَلَةٌ: وَمَنْ قَالَ: لِلَّهِ عَلَيَّ صَدَقَةٌ، أَوْ صِيَامٌ، أَوْ صَلَاةٌ، هَكَذَا جُمْلَةً: لَزِمَهُ أَنْ يَفْعَلَ أَيَّ ذَلِكَ شَاءَ، وَيُجْزِيهِ؛ لِأَنَّهُ نَذَرَ طَاعَةً، فَعَلَيْهِ أَنْ يُطِيعَ.

Similarly, if one says: "Upon me is an act of righteousness for Allah's sake," it is sufficient for him to perform a *tasbīḥ* (glorification), a *takbīr* (proclamation of 'Allāhu Akbar'), an act of charity, fasting, prayer, or other such acts of righteousness.

وَكَذَلِكَ لَوْ قَالَ: لِلَّهِ عَلَيَّ عَمَلُ بِرٍّ: فَيُجْزِيهِ تَسْبِيحَةٌ، أَوْ تَكْبِيرَةٌ، أَوْ صَدَقَةٌ، أَوْ صَوْمٌ، أَوْ صَلَاةٌ، أَوْ غَيْرُ ذَلِكَ مِنْ أَعْمَالِ الْبِرِّ.

It is the same whether one says, "Upon me is this vow," or "Upon me is Allah's covenant," or states, "By Allah, such-and-such is binding"—all are the

same. Neither verbal declaration without intention nor intention without verbal declaration suffices in this matter, according to the statement of the Messenger of Allah—peace and blessings be upon him: "Actions are judged by intentions, and every person will have what they intended."

وَسَوَاءٌ قَالَ عَلَيَّ ذَلِكَ نَذْرًا، أَوْ عَلَيَّ عَهْدُ اللَّهِ، أَوْ قَالَ: عَلَى اللَّهِ كَذَا وَكَذَا، كُلُّ ذَلِكَ سَوَاءٌ - وَلَا يُجْزِي فِي ذَلِكَ لَفْظٌ دُونَ نِيَّةٍ، وَلَا نِيَّةٌ دُونَ لَفْظٍ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» .

L17933 He—peace be upon him—did not isolate intention without action, nor action without intention. And with Allah, the Exalted, is divine enablement.

فَلَمْ يُفْرِدْ - عَلَيْهِ السَّلَامُ - نِيَّةً دُونَ عَمَلٍ وَلَا عَمَلًا دُونَ نِيَّةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L17934 **An issue: He died with a vow upon him.**

[مَسْأَلَةٌ مَاتَ وَعَلَيْهِ نَذْرٌ]

L17935 1124. Issue: If a person dies while under an unfulfilled vow, it becomes obligatory to fulfill it on their behalf from their estate before all debts owed to people. If anything remains thereafter, it is for the people's debts, in accordance with Allah's statement: "...after [fulfilling] any bequest he may have made or debt" [An-Nisā' 4:11]. Thus, He, the Exalted, generalized the ruling and did not specify exceptions.[32]

١١٢٤ - مَسْأَلَةٌ: وَمَنْ مَاتَ وَعَلَيْهِ نَذْرٌ فَفَرْضٌ أَنْ يُؤَدَّى عَنْهُ مِنْ رَأْسِ مَالِهِ قَبْلَ دُيُونِ النَّاسِ كُلِّهَا، فَإِنْ فَضَلَ شَيْءٌ كَانَ لِدُيُونِ النَّاسِ لِقَوْلِ اللَّهِ تَعَالَى: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] فَعَمَّ تَعَالَى وَلَمْ يَخُصَّ.

L17936 The Messenger of Allah (peace be upon him) said, as we have mentioned in 'the book of Ṣiyām' and 'the book of Ḥajj', "Allah's debt has a greater right to be fulfilled."

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا قَدْ ذَكَرْنَاهُ فِي " كِتَابِ الصِّيَامِ " " وَكِتَابِ الْحَجِّ " «دَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى» .

L17937–17938 From the path of al-Bukhārī: Abū al-Yamān—al-Ḥakam ibn Nāfiʿ—informed us. Shuʿayb—Ibn Abī Ḥamzah—from al-Zuhrī: ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah informed me that ʿAbd Allāh ibn ʿAbbās informed him that Saʿd ibn ʿUbādah al-Anṣārī sought a legal verdict from the Messenger of Allāh (peace and blessings be upon him) regarding a vow incumbent upon his mother who died before fulfilling it. The Prophet (peace be upon him) issued a legal verdict that he should fulfill it on her behalf. Thus it became a Sunnah after him.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو الْيَمَانِ هُوَ الْحَكَمُ بْنُ نَافِعٍ - أَنَا شُعَيْبٌ هُوَ ابْنُ أَبِي حَمْزَةَ - عَنْ الزُّهْرِيِّ أَخْبَرَنِي عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ أَنَّ عَبْدَ اللَّهِ بْنَ عَبَّاسٍ أَخْبَرَهُ «أَنَّ سَعْدَ بْنَ عُبَادَةَ الْأَنْصَارِيَّ اسْتَفْتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي نَذْرٍ كَانَ عَلَى أُمِّهِ فَتُوُفِّيَتْ قَبْلَ أَنْ تَقْضِيَهُ فَأَفْتَاهُ - عَلَيْهِ السَّلَامُ - أَنْ يَقْضِيَهُ عَنْهَا» فَكَانَتْ سُنَّةً بَعْدَهُ.

L17939 Abu Muhammad said: Whoever turns away from the legal rulings of the Messenger of Allah—may Allah bless him and grant him peace—and hastens

[32] **Qur'an references (L17935):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

to accept the legal rulings of Abu Hanifah, Malik, and Al-Shafiʿi is forsaken and deprived of divine success. We seek refuge in Allah from misguidance.

قَالَ أَبُو مُحَمَّد: إنَّ مِنْ رَغِبَ عَنْ فُتْيَا رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَسَارَعَ إلَى قَبُولِ فُتْيَا أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ: لَمَخْذُولٌ مَحْرُومٌ مِنْ التَّوْفِيقِ - وَنَعُوذُ بِاَللَّهِ مِنْ الضَّلَالِ.

L17940 And the astonishment lies in their argument that for three fingers cut off, thirty of the camels are assigned to a woman, while for four fingers cut off, twenty of the camels are assigned to her, based on Saʿīd ibn al-Musayyab's statement, "That is the Sunnah"—yet they do not consider the opinion of Ibn ʿAbbās here, or ʿUbayd Allāh ibn ʿAbd Allāh, or al-Zuhrī—thereby making the Sunnah a proof for a remote [opinion] from the correct opinion.

وَالْعَجَبُ مِنْ احْتِجَاجِهِمْ فِي أَنَّ فِي ثَلَاثَةِ أَصَابِعَ تُقْطَعُ لِلْمَرْأَةِ ثَلَاثِينَ مِنْ الْإِبِلِ، وَفِي أَرْبَعِ أَصَابِعَ تُقْطَعُ لَهَا عِشْرِينَ مِنْ الْإِبِلِ، لِقَوْلِ سَعِيدِ بْنِ الْمُسَيِّبِ تِلْكَ السُّنَّةُ - ثُمَّ لَا يَرَى قَوْلَ ابْنِ عَبَّاسٍ هَهُنَا، أَوْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ، أَوْ الزُّهْرِيِّ - فَكَانَتْ سُنَّةً حُجَّةً لِبَعِيدٍ مِنْ الْقَوْلِ بِالْحَقِّ.

L17941 We were narrated via the chain of Ibn Abi Shaybah: Abu al-Ahwas reported to us from Ibrahim ibn Muhajir, from Amir ibn Mus'ab, that Aisha, the Mother of the Believers, observed Itikaf [in seclusion] following the death of her brother.

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو الْأَحْوَصِ عَنْ إبْرَاهِيمَ بْنِ مُهَاجِرٍ عَنْ عَامِرِ بْنِ مُصْعَبٍ أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ اعْتَكَفَتْ عَنْ أَخِيهَا بَعْدَمَا مَاتَ.

L17942 And from the narration of Ḥammād ibn Salamah, from ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah, that his mother had vowed to perform *i'tikaf* but died without fulfilling it. Ibn ʿAbbās said to him: "Fulfill the *i'tikaf* on behalf of your mother."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ أَنَّ أُمَّهُ نَذَرَتْ اعْتِكَافًا فَمَاتَتْ وَلَمْ تَعْتَكِفْ فَقَالَ لَهُ ابْنُ عَبَّاسٍ: اعْتَكِفْ عَنْ أُمِّك.

L17943 And from the chain of Waki', from Sufyān al-Thawrī, from Abū Ḥuṣayn, from Saʿīd ibn Jubayr, from Ibn ʿAbbās: If one dies while owing a vow, his guardian shall fulfill it on his behalf. This is the position of Ṭāwus and others.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي حُصَيْنٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ إذَا مَاتَ وَعَلَيْهِ نَذْرٌ قَضَاهُ عَنْهُ وَلِيُّهُ، وَهُوَ قَوْلُ طَاوُسٍ، وَغَيْرِهِ.

L17944 Narrated by Abd al-Razzaq, from Ibn Jurayj, who said: I asked Ata about someone who vowed to undertake a devotional stay near the Kaaba or to walk in pilgrimage, then died without fulfilling it. He said: His legal guardian must fulfill it on his behalf. I asked: What if another of his relatives fulfills it? He said: Yes, but the legal guardians are preferable in our view.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: سَأَلْت عَطَاءً عَمَّنْ نَذَرَ جِوَارًا أَوْ مَشْيًا فَمَاتَ وَلَمْ يُنَفِّذْ؟ قَالَ: يُنَفِّذُهُ عَنْهُ وَلِيُّهُ، قُلْتُ: فَغَيْرُهُ مِنْ ذَوِي قَرَابَتِهِ؟ قَالَ: نَعَمْ، وَأَحَبُّ إلَيْنَا الْأَوْلِيَاءُ.

L17945 Abū Muḥammad said: If he vowed a prayer, his guardian should pray it on his behalf; or fasting, likewise; or Ḥajj, likewise; or ʿUmrah, likewise; or mosque retreat (iʿtikāf), likewise; or remembrance (dhikr), likewise; and

every righteous act, likewise—if the guardian refuses, someone must be hired using funds from his own capital to fulfill the debt to Allah the Exalted on his behalf. This is the opinion of Abū Sulaymān and our companions—and success is from Allah the Exalted.

قَالَ أَبُو مُحَمَّدٍ: فَإِنْ كَانَ نَذَرَ صَلَاةً صَلَّاهَا عَنْهُ وَلِيُّهُ، أَوْ صَوْمًا كَذَلِكَ، أَوْ حَجًّا كَذَلِكَ، أَوْ عُمْرَةً كَذَلِكَ، أَوْ اعْتِكَافًا كَذَلِكَ، أَوْ ذِكْرًا كَذَلِكَ، وَكُلَّ بِرٍّ كَذَلِكَ - فَإِنْ أَبَى الْوَلِيُّ اُسْتُؤْجِرَ مِنْ رَأْسِ مَالِهِ مَنْ يُؤَدِّي دَيْنَ اللَّهِ تَعَالَى قِبَلَهُ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ وَأَصْحَابِنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَعَمَّدَ النُّذُورَ لِيُلْزِمَهَا مَنْ بَعْدَهُ]

L17946–17947

A legal issue regarding one who intentionally makes vows to impose them as binding obligations on those who succeed him.

مَسْأَلَةٌ: قَالَ عَلِيٌّ: وَمَنْ تَعَمَّدَ النُّذُورَ لِيُلْزِمَهَا مَنْ بَعْدَهُ، فَهِيَ غَيْرُ لَازِمَةٍ، لَا لَهُ وَلَا لِمَنْ بَعْدَهُ؛ لِأَنَّ النَّذْرَ اللَّازِمَ الْوَفَاءِ بِهِ هُوَ نَذْرُ الطَّاعَةِ كَمَا قَدَّمْنَا، وَهُوَ الْآنَ نَذْرُ مَعْصِيَةٍ لَا نَذْرُ طَاعَةٍ؛ لِأَنَّهُ لَمْ يَقْصِدْ بِهِ وَجْهَ اللَّهِ تَعَالَى، وَإِنَّمَا قَصَدَ إدْخَالَ الْمَشَقَّةِ عَلَى مُسْلِمٍ، فَهُوَ نَذْرُ مَعْصِيَةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L17948

Issue: Ali said: Whoever deliberately makes vows to bind those who come after him, they are not binding: neither upon himself nor those who come after him—because the binding vow the fulfillment of which is required is the vow of obedience as we previously established. This now constitutes a sinful vow, not one of obedience, for he did not intend by it the sake of Allah the Exalted. Rather, he sought to impose hardship upon a Muslim. Therefore, it becomes a sinful vow—and with Allah, the Exalted, lies all success.

[الْوَعْدُ]

L17949

The promise

[مَسْأَلَةٌ وَعَدَ آخَرَ بِأَنْ يُعْطِيَهُ مَالًا]

L17950

An issue: one promised another that he would give him wealth.

الْوَعْدُ ١١٢٦ - مَسْأَلَةٌ: وَمَنْ وَعَدَ آخَرَ بِأَنْ يُعْطِيَهُ مَالًا مُعَيَّنًا أَوْ غَيْرَ مُعَيَّنٍ، أَوْ بِأَنْ يُعَيِّنَهُ فِي عَمَلٍ مَا - حَلَفَ لَهُ عَلَى ذَلِكَ أَوْ لَمْ يَحْلِفْ - لَمْ يَلْزَمْهُ الْوَفَاءُ بِهِ، وَيُكْرَهُ لَهُ ذَلِكَ، وَكَانَ الْأَفْضَلُ لَوْ وَفَّى بِهِ.

L17951

Promise 1126 - Issue: If someone pledges to another to give them specified or unspecified wealth, or to assign them to a certain job—whether he swore an oath regarding that or not—fulfilling it is not obligatory upon him, though it is discouraged for him. It is most preferable for him to fulfill it.

وَسَوَاءٌ أَدْخَلَهُ بِذَلِكَ فِي نَفَقَةٍ أَوْ لَمْ يُدْخِلْهُ كَمَنْ قَالَ: تَزَوَّجْ فُلَانَةَ وَأَنَا أُعِينُك فِي صَدَاقِهَا بِكَذَا وَكَذَا، أَوْ نَحْوِ هَذَا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L17952

It makes no difference whether this subjects him to an expense or not, like one who says: "Marry such-and-such a woman, and I will assist you with her dowry by such-and-such [amount]," or similar wording—this being the position of Abū Ḥanīfa, al-Shāfiʿī, and Abū Sulaymān.

وَقَالَ مَالِكٌ: لَا يَلْزَمُهُ شَيْءٌ مِنْ ذَلِكَ إلَّا أَنْ يُدْخِلَ

L17953

Mālik said: He is not obligated by any of that unless he introduces through

that promise of his a burden, thereby making it binding and subjecting him to a judicial ruling.

وَقَالَ مَالِكٌ: لَا يَلْزَمُهُ شَيْءٌ مِنْ ذَلِكَ إِلَّا أَنْ يُدْخِلَهُ بِوَعْدِهِ ذَلِكَ فِي كُلْفَةٍ، فَيَلْزَمُهُ وَيُقْضَى عَلَيْهِ.

L17954 Ibn Shubrumah said: Every promise is entirely binding. The judge rules on it against the promisor, and the promisor is compelled to comply.

وَقَالَ ابْنُ شُبْرُمَةَ الْوَعْدُ كُلُّهُ لَازِمٌ، وَيُقْضَى بِهِ عَلَى الْوَاعِدِ وَيُجْبَرُ.

L17955 As for Mālik's division, there is no valid justification for it, nor any proof to support it—neither from the Quran, nor Sunnah, nor the statement of a Companion, nor analogy.

فَأَمَّا تَقْسِيمُ مَالِكٍ: فَلَا وَجْهَ لَهُ وَلَا بُرْهَانَ يُعَضِّدُهُ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ.

L17956 If they say, "He has indeed caused harm by imposing upon him a task and expense due to His promise?" We say: Suppose it is as you claim—from where is it obligatory upon one who harmed another, oppressed him, and deceived him to pay monetary compensation? We have not known this in the religion of Allah the Exalted except only where the textual proof has stated it: *"And whoever transgresses the bounds set by Allah has indeed wronged himself"* (65:1).[33]

فَإِنْ قَالُوا قَدْ أَضَرَّ بِهِ إِذْ كَلَّفَهُ مِنْ أَجْلِ وَعْدِهِ عَمَلًا وَنَفَقَةً؟ قُلْنَا: فَهَبْكُمْ أَنَّهُ كَمَا تَقُولُونَ مِنْ أَيْنَ وَجَبَ عَلَى مَنْ أَضَرَّ بِآخَرَ، وَظَلَمَهُ وَغَرَّهُ أَنْ يَغْرَمَ لَهُ مَالًا؟ مَا عَلِمْنَا هَذَا فِي دِينِ اللَّهِ تَعَالَى إِلَّا حَيْثُ جَاءَ بِهِ النَّصُّ فَقَطْ {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

L17957 As for those who follow the opinion of Ibn Shubrumah, they argued using the words of Allah, the Exalted: "Great is the hatred in the sight of Allah that you say what you do not do" [al-Ṣaff: 3].[34]

وَأَمَّا مَنْ ذَهَبَ إِلَى قَوْلِ ابْنِ شُبْرُمَةَ فَإِنَّهُمْ احْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى {كَبُرَ مَقْتًا عِنْدَ اللَّهِ أَنْ تَقُولُوا مَا لا تَفْعَلُونَ} [الصف: ٣] .

L17958 The authentic narration transmitted through Abdullah ibn Amr from the Messenger of Allah—peace and blessings be upon him—states: "Four traits: whoever possesses them is a pure hypocrite, and whoever has one of these traits exhibits a characteristic of hypocrisy until he abandons that trait. When he speaks, he lies; when he pledges, he betrays; when he promises, he breaks it; and when he disputes, he transgresses."

وَالْخَبَرُ الصَّحِيحُ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ عَمْرٍو عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَرْبَعٌ مَنْ كُنَّ فِيهِ كَانَ مُنَافِقًا خَالِصًا وَمَنْ كَانَتْ فِيهِ خَصْلَةٌ مِنْهُنَّ كَانَتْ فِيهِ خَصْلَةٌ مِنْ النِّفَاقِ حَتَّى يَدَعَهَا: إذَا حَدَّثَ كَذَبَ، وَإِذَا عَاهَدَ غَدَرَ، وَإِذَا وَعَدَ أَخْلَفَ، وَإِذَا خَاصَمَ فَجَرَ» .

L17959–17960 The other: That which is established through the chain of Abū Hurayrah from the Prophet—peace be upon him—: "Among the signs of hypocrisy are three—even if he prays, fasts, and claims to be Muslim—when he speaks, he lies; when he promises, he breaks; and when entrusted, he betrays."

وَالْآخَرُ: الثَّابِتُ مِنْ طَرِيقِ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مِنْ عَلَامَةِ النِّفَاقِ ثَلَاثَةٌ - وَإِنْ صَلَّى، وَصَامَ، وَزَعَمَ أَنَّهُ مُسْلِمٌ: - إذَا حَدَّثَ كَذَبَ، وَإِذَا وَعَدَ أَخْلَفَ، وَإِذَا اُؤْتُمِنَ خَانَ» .

[33] **Qur'an references (L17956):** Qur'an 65:1 (At-Talaq).
[34] **Qur'an references (L17957):** Qur'an 61:3 (As-Saf).

فَهَذَانِ أَثَرَانِ فِي غَايَةِ الصِّحَّةِ، وَآثَارٌ أُخَرُ لَا تَصِحُّ -: أَحَدُهَا: مِنْ طَرِيقِ اللَّيْثِ عَنِ ابْنِ عَجْلَانَ أَنَّ رَجُلًا مِنْ مَوَالِي عَبْدِ اللَّهِ بْنِ عَامِرِ بْنِ رَبِيعَةَ الْعَدَوِيِّ حَدَّثَهُ «عَنْ عَبْدِ اللَّهِ بْنِ عَامِرٍ قَالَتْ لِي أُمِّي هَاهْ تَعَالَ أُعْطِكَ؟ فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا أَرَدْتِ أَنْ تُعْطِيهِ؟ فَقَالَتْ: أُعْطِيهِ تَمْرًا، فَقَالَ - عَلَيْهِ السَّلَامُ -: أَمَا أَنَّكِ لَوْ لَمْ تُعْطِيهِ شَيْئًا، كُتِبَتْ عَلَيْكِ كِذْبَةٌ» هَذَا لَا شَيْءَ، لِأَنَّهُ عَمَّنْ لَمْ يُسَمَّ.

L17961 These are two narrations of the utmost authenticity, and other unreliable narrations—one of them being through the chain of Al-Layth from Ibn ʻAjlan: a man from the clients of ʻAbdullah ibn ʻAmir ibn Rabiʻah al-ʻAdawi narrated to him from ʻAbdullah ibn ʻAmir, who said: My mother said to me, “Hey, come here! Should I give you something?” The Messenger of Allah (peace be upon him) said to her, “What did you intend to give him?” She replied, “A date.” He (peace be upon him) said, “Verily, if you had not given him anything, a lie would have been recorded against you.” This is unreliable because it is from an unnamed individual.

وَآخَرُ: مِنْ طَرِيقِ ابْنِ وَهْبٍ أَيْضًا عَنْ هِشَامِ بْنِ سَعْدٍ عَنْ زَيْدِ بْنِ أَسْلَمَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: وَأَيُّ الْمُؤْمِنِ حَقٌّ وَاجِبٌ» .

L17962 Another narration via Ibn Wahb’s chain from Hishām ibn Saʻd, from Zayd ibn Aslam: “The Messenger of Allah (peace be upon him) said: ’And which right of a believer is obligatory?’”

هِشَامُ بْنُ سَعْدٍ ضَعِيفٌ وَهُوَ مُرْسَلٌ.

L17963 Hisham ibn Saʻd is weak, and his narrations are *mursal* (hadiths with incomplete chains of transmission).

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ إِسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ أَبِي إِسْحَاقَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «وَلَا تَعِدْ أَخَاكَ وَعْدًا فَتُخْلِفَهُ، فَإِنَّ ذَلِكَ يُورِثُ بَيْنَكَ وَبَيْنَهُ عَدَاوَةً» .

L17964 And from the chain of Ibn Wahb, from Ismāʻīl ibn ʿAyyāsh, from Abū Isḥāq, that the Messenger of Allah—peace be upon him—said: “Do not make a promise to your brother and then break it, for indeed that causes enmity between you and him.”

وَهَذَا مُرْسَلٌ، وَإِسْمَاعِيلُ بْنُ عَيَّاشٍ ضَعِيفٌ.

L17965 This is *mursal*, and Ismāʻīl ibn ʿAyyāsh is *ḍaʻīf*.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي اللَّيْثُ بْنُ سَعْدٍ عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنِ ابْنِ شِهَابٍ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ قَالَ لِصَبِيٍّ: تَعَالَ هَاهْ لَكَ، ثُمَّ لَمْ يُعْطِهِ شَيْئًا فَهِيَ كِذْبَةٌ» .

L17966 And through the chain of Ibn Wahb, Al-Layth ibn Saʻd reported to me from ʻUqayl ibn Khalid from Ibn Shihab from Abu Hurayrah from the Prophet—peace and blessings be upon him—who said: “Whoever says to a boy, ’Come here, here for you,’ then does not give him anything, that is a lie.”

ابْنُ شِهَابٍ كَانَ إِذْ مَاتَ أَبُو هُرَيْرَةَ ابْنَ أَقَلَّ مِنْ تِسْعِ سِنِينَ لَمْ يُسْمَعْ مِنْهُ كَلِمَةٌ.

L17967 Ibn Shihab was when Abu Hurairah died—his son being less than nine years old—and no word was ever heard from him.

وَأَبُو حَنِيفَةَ، وَمَالِكٌ: يَرَوْنَ الْمُرْسَلَ كَالْمُسْنَدِ، وَيَحْتَجُّونَ بِمَا ذَكَرْنَا - فَيَلْزَمُهُمْ أَنْ يَقْضُوا بِإِنْجَازِ الْوَعْدِ عَلَى الْوَاعِدِ وَلَا بُدَّ، وَإِلَّا فَهُمْ مُتَنَاقِضُونَ، فَلَوْ صَحَّتْ هَذِهِ الْآثَارُ لَقُلْنَا بِهَا.

L17968 Abu Hanifa and Malik consider the *mursal* as the *musnad* and cite as evidence what we have mentioned. This necessarily compels them to hold that the promisor must fulfill the promise without fail; otherwise, they would

be contradicting themselves. Had these reports been authentic, we would have upheld them.

L17969 As for the two hadiths with which we commenced, they are authentic; however, they contain no authoritative evidence against our position, for they are not to be taken according to their apparent meaning. Whoever pledges to do what is impermissible, or agrees to commit an act of disobedience, it is not permissible for him to fulfill any such obligation—like one who promises to commit fornication, supply intoxicants, or engage in similar acts.

L17970–17972 Thus, it is valid that not everyone who makes a promise and then breaks it, or makes a pledge and then betrays it, is blameworthy, reproachable, nor... Disobedient; rather, he may be obedient by fulfilling an obligation. Therefore, in such a case, fulfilling the promise and the covenant does not become an obligation from their fulfillment, except upon one who promised a duty incumbent upon him, such as fairness in a debt or the discharge of a right alone.

L17973 Moreover, if someone makes a promise, swears an oath, and specifies an exception, he is indeed absolved from the violation incurred by breaking the oath by explicit textual evidence and indisputable consensus. Once absolved, he is not obligated to fulfill what he swore to do, and there is no difference between a promise made under oath and one not made under oath.

L17974 Moreover, Allah the Exalted says: **"And never say of anything, 'I will surely do this tomorrow' - except 'if Allah wills'**" [Al-Kahf 18:23-24]. Thus, the prohibition against making a promise without exception is firmly established. Therefore, it is obligatory that whoever makes a promise without making an exception has indeed disobeyed Allah the Exalted in that promise.[35]

L17975 It is not permissible to compel anyone to commit a sin. If one stipulates by saying, "If Allah the Exalted wills," or "except if Allah the Exalted wills," or similar phrases that condition the matter upon the will of Allah the Almighty, the Majestic, then failing to fulfill the promise does not constitute a breach of it. This is because the promise was made conditional upon Allah's will,

[35] **Qur'an references (L17974):** Qur'an 18:23 (Al-Kahf); Qur'an 18:24 (Al-Kahf).

وَأَمَّا الْحَدِيثَانِ اللَّذَانِ صَدَّرْنَا بِهِمَا فَصَحِيحَانِ إِلَّا أَنَّهُ لَا حُجَّةَ فِيهِمَا عَلَيْنَا، لِأَنَّهُمَا لَيْسَا عَلَى ظَاهِرِهِمَا، لِأَنَّ مَنْ وَعَدَ بِمَا لَا يَحِلُّ، أَوْ عَاهَدَ عَلَى مَعْصِيَةٍ، فَلَا يَحِلُّ لَهُ الْوَفَاءُ بِشَيْءٍ مِنْ ذَلِكَ، كَمَنْ وَعَدَ بِزِنًى، أَوْ بِخَمْرٍ، أَوْ بِمَا يُشْبِهُ ذَلِكَ.

فَصَحَّ أَنْ لَيْسَ كُلُّ مَنْ وَعَدَ فَأَخْلَفَ، أَوْ عَاهَدَ فَغَدَرَ: مَذْمُومًا، وَلَا مَلُومًا، وَلَا عَاصِيًا، بَلْ قَدْ يَكُونُ مُطِيعًا مُؤَدِّيَ فَرْضٍ، فَإِذْ ذَلِكَ كَذَلِكَ فَلَا يَكُونُ فَرْضًا مِنْ إِنْجَازِ الْوَعْدِ وَالْعَهْدِ، إِلَّا عَلَى مَنْ وَعَدَ بِوَاجِبٍ عَلَيْهِ، كَإِنْصَافٍ مِنْ دَيْنٍ، أَوْ أَدَاءِ حَقٍّ فَقَطْ.

وَأَيْضًا: فَإِنَّ مَنْ وَعَدَ وَحَلَفَ وَاسْتَثْنَى فَقَدْ سَقَطَ عَنْهُ الْحِنْثُ بِالنَّصِّ وَالْإِجْمَاعِ الْمُتَيَقَّنِ، فَإِذَا سَقَطَ عَنْهُ الْحِنْثُ لَمْ يَلْزَمْهُ فِعْلُ مَا حَلَفَ عَلَيْهِ، وَلَا فَرْقَ بَيْنَ وَعْدٍ أَقْسَمَ عَلَيْهِ وَبَيْنَ وَعْدٍ لَمْ يُقْسِمْ عَلَيْهِ.

وَأَيْضًا: فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَلا تَقُولَنَّ لِشَيْءٍ إِنِّي فَاعِلٌ ذَلِكَ غَدًا} [الكهف: ٢٣] {إِلا أَنْ يَشَاءَ اللَّهُ} [الكهف: ٢٤] فَصَحَّ تَحْرِيمُ الْوَعْدِ بِغَيْرِ اسْتِثْنَاءٍ، فَوَجَبَ أَنَّ مَنْ وَعَدَ وَلَمْ يَسْتَثْنِ فَقَدْ عَصَى اللَّهَ تَعَالَى فِي وَعْدِهِ ذَلِكَ.

وَلَا يَجُوزُ أَنْ يُجْبَرَ أَحَدٌ عَلَى مَعْصِيَةٍ، فَإِنْ اسْتَثْنَى فَقَالَ: إِنْ شَاءَ اللَّهُ تَعَالَى، أَوْ إِلَّا أَنْ يَشَاءَ اللَّهُ تَعَالَى، أَوْ نَحْوُهُ مِمَّا يُعَلِّقُهُ بِإِرَادَةِ اللَّهِ عَزَّ وَجَلَّ، فَلَا يَكُونُ مُخْلِفًا لِوَعْدِهِ إِنْ لَمْ يَفْعَلْ، لِأَنَّهُ إِنَّمَا وَعَدَهُ أَنْ يَفْعَلَ إِنْ شَاءَ اللَّهُ تَعَالَى - وَقَدْ عَلِمْنَا أَنَّ اللَّهَ تَعَالَى لَوْ شَاءَهُ لَأَنْفَذَهُ فَإِنْ لَمْ يُنْفِذْهُ، فَلَمْ يَشَأْ اللَّهُ تَعَالَى كَوْنَهُ.

and we know that if Allah the Exalted had willed it, He would have brought it about. If it does not occur, then Allah the Exalted did not will its existence.

L17976 "And the statement of Allah, the Exalted: 'It is most hateful to Allah that you say what you do not do' (61:3) is also among the obligations incumbent upon them, like the one whom Allah, the Exalted, described when He says: 'Among them is he who pledged to Allah: "If He grants us from His bounty, we will surely give charity and be among the righteous"' (9:75). 'But when He granted them from His bounty, they became stingy and turned away while averting' (9:76). 'So He requited them with hypocrisy in their hearts until the Day they meet Him, because they failed Allah regarding what they had promised Him' (9:77)."[36]

L17977 Thus, what we have said is correct, because zakah is obligatory, and striving to be among the righteous is obligatory. Therefore, the promise and covenant thereof are two obligations—fulfilling them has been divinely mandated—and with Allah, the Exalted, lies all divine enablement.

L17978 Moreover, this is a vow from the one who made a covenant with Allah the Exalted concerning that, and the vow is an obligation. And in Allah the Exalted we place our trust.

وَقَوْلُ اللَّهِ تَعَالَى {كَبُرَ مَقْتًا عِنْدَ اللَّهِ أَنْ تَقُولُوا مَا لا تَفْعَلُونَ} [الصف: ٣] عَلَى هَذَا أَيْضًا مِمَّا يَلْزَمُهُمْ، كَالَّذِي وَصَفَ اللَّهُ تَعَالَى عَنْهُ إِذْ يَقُولُ: {وَمِنْهُمْ مَنْ عَاهَدَ اللَّهَ لَئِنْ آتَانَا مِنْ فَضْلِهِ لَنَصَّدَّقَنَّ وَلَنَكُونَنَّ مِنَ الصَّالِحِينَ} [التوبة: ٧٥] {فَلَمَّا آتَاهُمْ مِنْ فَضْلِهِ بَخِلُوا بِهِ وَتَوَلَّوْا وَهُمْ مُعْرِضُونَ} [التوبة: ٧٦] {فَأَعْقَبَهُمْ نِفَاقًا فِي قُلُوبِهِمْ إِلَى يَوْمِ يَلْقَوْنَهُ بِمَا أَخْلَفُوا اللَّهَ مَا وَعَدُوهُ} [التوبة: ٧٧] .

فَصَحَّ مَا قُلْنَا، لِأَنَّ الصَّدَقَةَ وَاجِبَةٌ، وَالْكَوْنَ مِنْ الصَّالِحِينَ وَاجِبٌ، فَالْوَعْدُ وَالْعَهْدُ بِذَلِكَ فَرْضَانِ: فُرِضَ إنْجَازُهُمَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَيْضًا: فَإِنَّ هَذَا نَذْرٌ مِنْ هَذَا الَّذِي عَاهَدَ اللَّهَ تَعَالَى عَلَى ذَلِكَ، وَالنَّذْرُ فَرْضٌ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

[36] **Qur'an references (L17976):** Qur'an 61:3 (As-Saf); Qur'an 9:75 (At-Tawbah); Qur'an 9:76 (At-Tawbah); Qur'an 9:77 (At-Tawbah).



AL-MUHALLA

كِتَابُ الْأَيْمَانِ

The Book of Oaths

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[The Book of Oaths] [A Principle: No oath is valid unless sworn by Allah, the Exalted and Majestic]

[كِتَابُ الْأَيْمَانِ] [مَسْأَلَةٌ لَا يَمِينَ إِلَّا بِاللَّهِ عَزَّ وَجَلَّ]

1127. Issue: There is no valid oath except by Allah, the Mighty and Majestic, whether through one of His exalted names or through attributes reported about Him—with nothing other than Him being intended by them—such as "Turner of hearts," "Inheritor of the earth and all upon it," "the One in whose hand is my soul—the Lord of the Worlds," and similar expressions (applying to all languages), or by His knowledge, power, might, strength, majesty, or any such matters mentioned in the texts. Whoever swears by these has taken a binding oath. If they break it, expiation becomes obligatory.

١١٢٧ - مَسْأَلَةٌ: لَا يَمِينَ إِلَّا بِاللَّهِ عَزَّ وَجَلَّ، إِمَّا بِاسْمٍ مِنْ أَسْمَائِهِ تَعَالَى، أَوْ بِمَا يُخْبِرُ بِهِ عَنْ اللَّهِ تَعَالَى وَلَا يُرَادُ بِهِ غَيْرُهُ، مِثْلَ: مُقَلِّبِ الْقُلُوبِ، وَوَارِثِ الْأَرْضِ وَمَا عَلَيْهَا، الَّذِي نَفْسِي بِيَدِهِ رَبِّ الْعَالَمِينَ، وَمَا كَانَ مِنْ هَذَا النَّحْوِ، - وَيَكُونُ ذَلِكَ بِجَمِيعِ اللُّغَاتِ - أَوْ بِعِلْمِ اللَّهِ تَعَالَى، أَوْ قُدْرَتِهِ، أَوْ عِزَّتِهِ، أَوْ قُوَّتِهِ، أَوْ جَلَالِهِ، وَكُلِّ مَا جَاءَ بِهِ النَّصُّ مِنْ مِثْلِ هَذَا، فَهَذَا هُوَ الَّذِي إِنْ حَلَفَ بِهِ الْمَرْءُ كَانَ حَالِفًا، فَإِنْ حَنِثَ فِيهِ كَانَتْ فِيهِ الْكَفَّارَةُ.

As for one who swears by anything other than what we have mentioned—whatever it may be, without exception—he is not truly swearing, nor is it deemed an oath. There is no expiation required if he breaks it, nor is he bound to fulfill what he swore upon by that act. He is solely disobeying Allah the Exalted, and nothing is required of him except repentance and seeking forgiveness.

وَأَمَّا مَنْ حَلَفَ بِغَيْرِ مَا ذَكَرْنَا - أَيُّ شَيْءٍ كَانَ لَا تَحَاشَ شَيْئًا - فَلَيْسَ حَالِفًا، وَلَا هِيَ يَمِينًا وَلَا كَفَّارَةٌ فِي ذَلِكَ إِنْ حَنِثَ - وَلَا يَلْزَمُهُ الْوَفَاءُ بِمَا حَلَفَ عَلَيْهِ بِذَلِكَ، وَهُوَ عَاصٍ لِلَّهِ تَعَالَى فَقَطْ، وَلَيْسَ عَلَيْهِ إِلَّا التَّوْبَةُ مِنْ ذَلِكَ وَالِاسْتِغْفَارُ.

The evidence for this is what we mentioned earlier in the "Book of Vows" from the statement of the Messenger of Allah (peace and blessings be upon him and his family): "Whoever takes an oath must swear only by Allah."

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَاهُ قَبْلُ فِي " كِتَابِ النُّذُورِ " مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «مَنْ كَانَ حَالِفًا فَلَا يَحْلِفْ إِلَّا بِاللَّهِ» .

And His statement, the Most High: "Say, 'Call upon Allah or call upon Ar-Rahman. Whichever you call upon, to Him belong the Most Beautiful Names.'" [Surah Al-Isra 17:110][1]

وَقَوْلِهِ تَعَالَى {قُلِ ادْعُوا اللَّهَ أَوِ ادْعُوا الرَّحْمَنَ أَيًّا مَا تَدْعُوا فَلَهُ الأَسْمَاءُ الْحُسْنَى} [الإسراء: ١١٠] .

And He, the Exalted, said: "To Allah belong the most beautiful names, so invoke Him by them, and abandon those who deviate concerning His names." [Al-Aʿrāf: 180][2]

وَقَالَ تَعَالَى {وَلِلَّهِ الأَسْمَاءُ الْحُسْنَى فَادْعُوهُ بِهَا وَذَرُوا الَّذِينَ يُلْحِدُونَ فِي أَسْمَائِهِ} [الأعراف: ١٨٠] .

Everything we have mentioned before refers solely to Allah, the Exalted—nothing besides Him—and none of that is attributed to anything other than

وَكُلُّ مَا ذَكَرْنَا قَبْلُ فَإِنَّمَا يُرَادُ بِهِ اللَّهُ تَعَالَى، لَا شَيْءَ سِوَاهُ، وَلَا يُرْجَعُ مِنْ كُلِّ ذَلِكَ إِلَى شَيْءٍ غَيْرِ اللَّهِ تَعَالَى -: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو الْيَمَانِ هُوَ الْحَكَمُ بْنُ نَافِعٍ

[1] **Qur'an references (L17984):** Qur'an 17:110 (Al-Isra).
[2] **Qur'an references (L17985):** Qur'an 7:180 (Al-A'raf).

Allah, the Exalted. It has been narrated to us through the chain of Al-Bukhārī: Abū al-Yamān—he is Al-Ḥakam ibn Nāfiʿ—Shuʿayb ibn Abī Ḥamzah—Abū az-Zināد—Al-Aʿraj—Abū Hurayrah [may Allah be pleased with him]—that the Messenger of Allah, peace and blessings be upon him and his family, said: "Allah has ninety-nine names—one hundred minus one. Whoever enumerates them will enter Paradise."[3]

- أَنَا شُعَيْبُ بْنُ أَبِي حَمْزَةَ نا أَبُو الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ [- رَضِيَ اللَّهُ عَنْهُ -] أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «إِنَّ لِلَّهِ تِسْعَةً وَتِسْعِينَ اسْمًا، مِائَةً إِلَّا وَاحِدًا مَنْ أَحْصَاهَا دَخَلَ الْجَنَّةَ» .

L17987–17988 And the Exalted said: "They are nothing but names you have named—you and your forefathers—for which Allah has sent down no authority." [Surah An-Najm 53:23][4]

وَقَالَ تَعَالَى: {إِنْ هِيَ إِلا أَسْمَاءٌ سَمَّيْتُمُوهَا أَنْتُمْ وَآبَاؤُكُمْ مَا أَنْزَلَ اللَّهُ بِهَا مِنْ سُلْطَانٍ} [النجم: ٢٣] .

L17989 It has thus been established that it is impermissible for anyone to name Allah the Exalted except with that which He has named Himself with.

فَصَحَّ أَنَّهُ لَا يَحِلُّ لِأَحَدٍ أَنْ يُسَمِّيَ اللَّهَ تَعَالَى إِلَّا بِمَا سَمَّى بِهِ نَفْسَهُ.

L17990 It has been established that His names do not exceed ninety-nine things, according to his statement—peace be upon him—"a hundred except one," thereby negating any increase and nullifying it. However, He is made known through what He does, the Exalted.

وَصَحَّ أَنَّ أَسْمَاءَهُ لَا تَزِيدُ عَلَى تِسْعَةٍ وَتِسْعِينَ شَيْئًا، لِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «مِائَةً إِلَّا وَاحِدًا» فَنَفَى الزِّيَادَةَ، وَأَبْطَلَهَا، لَكِنْ يُخْبِرُ عَنْهُ بِمَا يَفْعَلُ تَعَالَى.

L17991 Narrations concerning the enumeration of the ninety-nine names have been transmitted, yet they are conflicting and entirely unauthentic. They are derived solely from the Quranic text.

وَجَاءَتْ أَحَادِيثُ فِي إِحْصَاءِ التِّسْعَةِ وَالتِّسْعِينَ أَسْمَاءً مُضْطَرِبَةً لَا يَصِحُّ مِنْهَا شَيْءٌ أَصْلًا، فَإِنَّمَا تُؤْخَذُ مِنْ نَصِّ الْقُرْآنِ.

L17992 And among what has been authentically reported from the Prophet—may Allah's blessings and peace be upon him and his family—and our enumeration of them has reached what we mention: they are: Allah, the Most Merciful, the Especially Merciful, the All-Knowing, the All-Wise, the Most Generous, the Most Great, the Forbearing, the Self-Subsisting, the Most Honorable, the Source of Peace, the Acceptor of Repentance, the Lord, the Bestower, the Deity, the Ever-Near, the All-Hearing, the Responder, the All-Encompassing, the Almighty, the Appreciative, the Subduer, the Last, the Manifest, the Most Great, the All-Aware, the All-Powerful, the All-Seeing, the Oft-Forgiving, the Most Appreciative, the Ever-Forgiving, the All-Dominant, the Compeller, the Supreme in Greatness, the Fashioner, the Most Kind, the Omnipotent, the

وَمِمَّا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَقَدْ بَلَغَ إِحْصَاؤُنَا مِنْهَا إِلَى مَا نَذْكُرُ -: وَهِيَ -: اللَّهُ، الرَّحْمَنُ، الرَّحِيمُ، الْعَلِيمُ، الْحَكِيمُ، الْكَرِيمُ، الْعَظِيمُ، الْحَلِيمُ، الْقَيُّومُ، الْأَكْرَمُ، السَّلَامُ، التَّوَّابُ، الرَّبُّ، الْوَهَّابُ، الْإِلَهُ، الْقَرِيبُ، السَّمِيعُ، الْمُجِيبُ، الْوَاسِعُ، الْعَزِيزُ، الشَّاكِرُ، الْقَاهِرُ، الْآخِرُ، الظَّاهِرُ، الْكَبِيرُ، الْخَبِيرُ، الْقَدِيرُ، الْبَصِيرُ، الْغَفُورُ، الشَّكُورُ، الْغَفَّارُ، الْقَهَّارُ، الْجَبَّارُ، الْمُتَكَبِّرُ، الْمُصَوِّرُ، الْبَرُّ، مُقْتَدِرٌ، الْبَارِي، الْعَلِيُّ، الْغَنِيُّ، الْوَلِيُّ، الْقَوِيُّ، الْحَيُّ، الْحَمِيدُ، الْمَجِيدُ، الْوَدُودُ، الصَّمَدُ، الْأَحَدُ، الْوَاحِدُ، الْأَوَّلُ، الْأَعْلَى، الْمُتَعَالِ، الْخَالِقُ، الْخَلَّاقُ، الرَّزَّاقُ، الْحَقُّ، اللَّطِيفُ، رَءُوف، عَفُوٌّ، الْفَتَّاحُ، الْمَتِينُ،

[3] **Hadith references (L17986):** Sahih al-Bukhari 2736; Sahih al-Bukhari 7392; Sunan Ibn Majah 3860.

[4] **Qur'an references (L17988):** Qur'an 53:23 (An-Najm).

Originator, the Most High, the Self-Sufficient, the Protector, the All-Strong, the Ever-Living, the Praiseworthy, the Glorious, the Most Loving, the Eternal Refuge, the One, the Unique, the First, the Most Exalted, the Supreme, the Creator, the Creator of All, the Provider, the Truth, the Subtle, the Compassionate, the Oft-Pardoning, the Opener, the Firm, the Clear, the Granter of Security, the Guardian, the Hidden, the Most Holy, the Sovereign, the Absolute Sovereign, the Greatest, the Most Mighty, the Master, the All-Perfect, the Singular, the Beneficent, the Beautiful, the Gentle, the One who Sets Measures, the Withholder, the Expander, the Healer, the Giver, the Advancer, the Delayer, the Eternal.

الْمُبِينُ، الْمُؤْمِنُ، الْمُهَيْمِنُ، الْبَاطِنُ، الْقُدُّوسُ، الْمَلِكُ، مَلِيكٌ، الْأَكْبَرُ، الْأَعَزُّ، السَّيِّدُ، سُبُّوحٌ، وِتْرٌ، مِحْسَانٌ، جَمِيلٌ، رَفِيقٌ، الْمُسَعِّرُ، الْقَابِضُ، الْبَاسِطُ، الشَّافِي، الْمُعْطِي، الْمُقَدِّمُ، الْمُؤَخِّرُ، الدَّهْرُ.

L17993 We received the narration through the chain of Aḥmad ibn Shuʿayb: Isḥāq ibn Ibrāhīm—that is, Ibn Rāhwayh—narrated to us, from al-Faḍl ibn Mūsā, who narrated to us, from Muḥammad ibn ʿAmr, who narrated to us, from Abū Salamah [Ibn ʿAbd al-Raḥmān ibn ʿAwf], from Abū Hurayrah, from the Messenger of Allah—peace and blessings be upon him—who mentioned the ḥadīth of the creation of Paradise and Hell. In it is [the statement]: "When Gabriel—peace be upon him—saw Paradise and that it was surrounded by hardships, he said to Allah, the Exalted and Majestic: 'By Your Might, I feared that none would enter it.'"

رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - أَنَا الْفَضْلُ بْنُ مُوسَى نا مُحَمَّدُ بْنُ عَمْرٍو نا أَبُو سَلَمَةَ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ حَدِيثَ خَلْقِ الْجَنَّةِ وَالنَّارِ - وَفِيهِ «أَنَّ جِبْرِيلَ - عَلَيْهِ السَّلَامُ - لَمَّا رَأَى الْجَنَّةَ وَأَنَّهَا حُفَّتْ بِالْمَكَارِهِ قَالَ لِلَّهِ عَزَّ وَجَلَّ: وَعِزَّتِكَ لَقَدْ خَشِيتُ أَنْ لَا يَدْخُلَهَا أَحَدٌ» .

L17994 And He, the Exalted, said: He sent it down with His knowledge (An-Nisa 4:166).[5]

وَقَالَ تَعَالَى: {أَنْزَلَهُ بِعِلْمِهِ} [النساء: ١٦٦] .

L17995–17997 From the chain of Al-Bukhārī: Muṭarrif ibn ʿAbdillāh Abū Muṣʿab narrated to us, from ʿAbdur-Raḥmān ibn Abī Al-Mawālī. From Muhammad ibn al-Munkadir, from Jabir ibn Abdullah, who said: "The Messenger of Allah (peace and blessings be upon him) taught us to seek divine guidance in all matters with the same meticulousness as teaching a Surah from the Quran: 'When one of you resolves to undertake an affair, let him pray two rakʿahs, then say: O Allah, I seek Your counsel through Your knowledge, and I seek capability through Your power.'"

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا مُطَرِّفُ بْنُ عَبْدِ اللَّهِ أَبُو مُصْعَبٍ نا عَبْدُ الرَّحْمَنِ بْنُ أَبِي الْمَوَالِي عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُعَلِّمُنَا الِاسْتِخَارَةَ فِي الْأُمُورِ كُلِّهَا، كَالسُّورَةِ مِنْ الْقُرْآنِ: إذَا هَمَّ أَحَدُكُمْ بِالْأَمْرِ فَلْيَرْكَعْ رَكْعَتَيْنِ ثُمَّ يَقُولُ: اللَّهُمَّ إنِّي أَسْتَخِيرُكَ بِعِلْمِكَ وَأَسْتَقْدِرُكَ بِقُدْرَتِكَ» .

L17998 And He, the Exalted and Majestic, said: {He is stronger than them in strength}

وَقَالَ عَزَّ وَجَلَّ: {هُوَ أَشَدُّ مِنْهُمْ قُوَّةً} [فصلت: ١٥] .

[5] **Qur'an references (L17994):** Qur'an 4:166 (An-Nisa).

[41:15].[6]

L17999 And He, the Exalted, said: “Lord of Majesty and Honor” (Surah Ar-Rahman 55:27).[7]

وَقَالَ تَعَالَى: {ذُو الْجَلَالِ وَالإِكْرَامِ} [الرحمن: ٢٧] .

[6] **Qur’an references (L17998):** Qur’an 41:15 (Fussilat).
[7] **Qur’an references (L17999):** Qur’an 55:27 (Ar-Rahman).

وَقَالَ تَعَالَى: {فَثَمَّ وَجْهُ اللَّهِ} [البقرة: ١١٥] .

وَقَالَ تَعَالَى {يَدُ اللَّهِ فَوْقَ أَيْدِيهِمْ} [الفتح: ١٠] .

وَقَالَ تَعَالَى {وَلِتُصْنَعَ عَلَى عَيْنِي} [طه: ٣٩] .

وَقَالَ تَعَالَى {فَإِنَّكَ بِأَعْيُنِنَا} [الطور: ٤٨] .

فَهَذِهِ جَاءَ النَّصُّ بِهَا.

وَأَمَّا الْيَمِينُ بِعَظَمَةِ اللَّهِ، وَإِرَادَتِهِ، وَكَرَمِهِ، وَحِلْمِهِ، وَحِكْمَتِهِ، وَسَائِرِ مَا لَمْ يَأْتِ بِهِ نَصٌّ، فَلَيْسَ شَيْءٌ مِنْ ذَلِكَ يَمِينًا؛ لِأَنَّهُ لَمْ يَأْتِ بِهَا نَصٌّ، فَلَا يَجُوزُ الْقَوْلُ بِهَا

[مَسْأَلَةٌ حَلَفَ بِعَظَمَةِ اللَّهِ أَنْ لَا يَفْعَلَ أَمْرًا كَذَا]

١١٢٨ - مَسْأَلَةٌ: وَمَنْ حَلَفَ بِمَا ذَكَرْنَا أَنْ لَا يَفْعَلَ أَمْرًا كَذَا، أَوْ أَنْ يَفْعَلَ أَمْرًا كَذَا فَإِنْ وَقَّتَ وَقْتًا مِثْلَ: غَدًا، أَوْ يَوْمَ كَذَا، أَوْ الْيَوْمَ أَوْ فِي وَقْتٍ يُسَمِّيهِ، فَإِنْ مَضَى ذَلِكَ الْوَقْتُ وَلَمْ يَفْعَلْ مَا حَلَفَ أَنْ يَفْعَلَهُ فِيهِ عَامِدًا ذَاكِرًا لِيَمِينِهِ، أَوْ فَعَلَ مَا حَلَفَ أَنْ لَا يَفْعَلَهُ فِيهِ عَامِدًا ذَاكِرًا لِيَمِينِهِ، فَعَلَيْهِ كَفَّارَةُ الْيَمِينِ.

هَذَا مَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ، وَبِهِ جَاءَ الْقُرْآنُ وَالسُّنَّةُ، فَإِنْ لَمْ يُوَقِّتْ وَقْتًا فِي قَوْلِهِ: لَأَفْعَلَنَّ كَذَا، فَهُوَ عَلَى الْبِرِّ أَبَدًا حَتَّى يَمُوتَ.

L18000 And He, the Exalted, said: “So there is the Face of Allah” [Al-Baqarah 2:115].[1]

L18001 And He, the Exalted, said, “Allah’s hand is above their hands” [Al-Fath: 10].[2]

L18002 And He, the Exalted, said, “So that you may be fashioned under My very eye.” [20:39][3]

L18003 And He, the Exalted, said, “For indeed you are within Our Sight” [At-Tur: 48].[4]

L18004 Thus, this is explicitly stated in the text.

L18005 As for swearing by the greatness of Allah, His will, His generosity, His forbearance, His wisdom, or any other attributes not explicitly mentioned in a textual source, none of these constitutes a valid oath, since no text has explicitly affirmed these attributes. It is therefore impermissible to deem such oaths legally binding.

L18006 **Issue: He swore by the greatness of Allah that he would not perform such an action.**

L18007 1128 – Legal Ruling: If someone swears by what we have mentioned to abstain from such-and-such an action or to perform such-and-such an action, and specifies a timeframe—such as ’tomorrow,’ ’a specific day,’ ’today,’ or a named period—then if that timeframe elapses and he intentionally, while being aware of his oath, fails to perform what he swore to do within it, or deliberately does what he swore to avoid within it, he must offer the expiation for the oath.

L18008 This is a matter in which there is no disagreement from anyone, as has been established in the Qur’an and the Sunnah. If one does not specify a time when saying, “I will certainly do such and such,” they remain bound in righteousness forever until they die.

[1] **Qur’an references (L18000):** Qur’an 2:115 (Al-Baqarah).
[2] **Qur’an references (L18001):** Qur’an 48:10 (Al-Fath).
[3] **Qur’an references (L18002):** Qur’an 20:39 (Taha).
[4] **Qur’an references (L18003):** Qur’an 52:48 (At-Tur).

وَكَذَلِكَ لَوْ وَقَّتَ وَقْتًا، وَلَا فَرْقَ، وَلَا حِنْثَ عَلَيْهِ، وَهَذَا مَكَانٌ فِيهِ خِلَافٌ -: قَالَ مَالِكٌ: هُوَ حَانِثٌ فِي كِلَا الْأَمْرَيْنِ وَعَلَيْهِ الْكَفَّارَةُ.

L18009 Similarly, if he specified a time, there is no distinction, and no oath-breaking is incurred. This is a point where there is disagreement—Malik said, "He is guilty of oath-breaking in both cases and must perform atonement (kaffārah)."

وَقَالَ الشَّافِعِيُّ: هُوَ عَلَى الْبِرِّ إلَى آخِرِ أَوْقَاتِ صِحَّتِهِ الَّتِي يَقْدِرُ فِيهَا عَلَى فِعْلِ مَا حَلَفَ أَنْ يَفْعَلَهُ، فَحِينَئِذٍ يَحْنَثُ وَعَلَيْهِ الْكَفَّارَةُ.

L18010 Al-Shafi'i said: "He remains obligated to fulfill the oath until the end of its valid period, during which he is capable of performing what he swore to do. At that point, he violates the oath, and the expiation becomes obligatory for him."

وَقَالَ أَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ كَقَوْلِنَا.

L18011 And Abu Thawr and Abu Sulayman said the same as we hold.

قَالَ أَبُو مُحَمَّدٍ: فَنَسْأَلُ مَنْ قَالَ بِقَوْلِ مَالِكٍ: أَحَانِثٌ هُوَ مَا لَمْ يَفْعَلْ مَا حَلَفَ أَنْ يَفْعَلَهُ أَمْ بَارٌّ؟ وَلَا سَبِيلَ إلَى قَسَمٍ ثَالِثٍ، فَإِنْ قَالُوا: هُوَ بَارٌّ؟ قُلْنَا: صَدَقْتُمْ، وَهُوَ قَوْلُنَا لَا قَوْلُكُمْ - وَإِنْ قَالُوا: هُوَ حَانِثٌ؟ قُلْنَا: فَأَوْجِبُوا عَلَيْهِ الْكَفَّارَةَ، وَطَلَاقَ امْرَأَتِهِ فِي قَوْلِكُمْ - إنْ كَانَ حَانِثًا - وَهُمْ لَا يَقُولُونَ بِذَلِكَ.

L18012–18014 Abu Muhammad said: We ask those who adhere to Mālik's position: Is he among the oath-breakers for not fulfilling what he swore to do, or is he a fulfiller? There exists no third category. If they respond, "He is a fulfiller," we say: "You have spoken truthfully—yet this contradicts our position: No." If they say, "He is an oath-breaker?"—we respond: "Then, according to your own statement—if he is an oath-breaker—you must oblige him to perform the expiation and the divorce of his wife." Yet they do not hold this opinion.

فَظَهَرَ يَقِينُ فَسَادِ قَوْلِهِمْ بِلَا مِرْيَةٍ، وَأَنَّ قَوْلَهُمْ: هُوَ عَلَى حِنْثٍ، وَلَيْسَ حَانِثًا، وَلَا حِنْثَ بَعْدُ -: كَلَامٌ مُتَنَاقِضٌ فِي غَايَةِ الْفَسَادِ وَالتَّخْلِيطِ.

L18015 Thus, the invalidity of their claim became indisputably evident, and their assertion that "he is in a state of oath-breaking, yet he is not an oath-breaker, nor does any breach exist" constitutes a self-contradictory statement, thoroughly invalid and logically incoherent.

وَأَمَّا قَوْلُ الشَّافِعِيِّ فَخَطَأٌ؛ لِأَنَّهُ أَوْجَبَ الْحِنْثَ بَعْدَ الْبِرِّ بِلَا نَصٍّ وَلَا إجْمَاعٍ - وَلَا يَقَعُ الْحِنْثُ عَلَى مَيِّتٍ بَعْدَ مَوْتِهِ - فَلَاحَ أَنَّ قَوْلَهُ دَعْوَى بِلَا بُرْهَانٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18016 As for the statement of Al-Shāfi'ī, it is erroneous because he imposed oath-breaking after righteous fulfillment without textual evidence or consensus—and oath-breaking does not apply to a deceased person after their death—thus it becomes clear that his claim lacks evidence. Success comes only from Allah, the Exalted.

[مَسْأَلَةٌ الْحَلِفُ بِالْأَمَانَةِ وَبِعَهْدِ اللَّهِ وَمِيثَاقِهِ]

Issue: Swearing an oath by the Trust, Allah's covenant, and His solemn pact.

١١٢٩ - مَسْأَلَةٌ: وَأَمَّا الْحَلِفُ بِالْأَمَانَةِ، وَبِعَهْدِ اللَّهِ وَمِيثَاقِهِ، وَمَا أَخَذَ يَعْقُوبُ عَلَى بَنِيهِ، وَأَشَدَّ مَا أَخَذَ أَحَدٌ عَلَى أَحَدٍ، وَحَقِّ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحَقِّ

L18017 **Issue: Swearing an oath by the Trust, Allah's covenant, and His solemn pact.**

L18018 Issue 1129: As for swearing by the trust, by Allah's covenant and His pact; the oath Ya'qub exacted from his sons; the most stringent pledge one can impose upon another; the right of the Messenger of Allah - peace and blessings of Allah be upon him - the right of the Mus'haf, the right of Islam, the right

of the Kaaba; “I am a disbeliever,” “by my life,” “by your life,” “I will certainly do such-and-such,” “I swear,” “I have sworn,” “I swear,” “I have sworn,” “I testify,” “an oath is binding upon me,” “a thousand oaths are binding upon me,” or “all oaths are binding upon me” - none of this constitutes an oath. Swearing by these constitutes disobedience, requiring only repentance and seeking forgiveness, for all of this is other than Allah. It is not permissible to swear except by Allah.

L18019 Abu Muhammad said: How astonishing is one who considers these expressions as oaths, who regards swearing by walking to Mecca, by divorce, by manumission, and by donating wealth as oaths—yet they do not require people to swear by any of these in matters involving people’s rights pertaining to bloodshed, chastity, property, or bodily integrity—and these are more binding in their view since they entail no expiation—whereas they require them to swear by Allah, which entails expiation. Is this not astonishing? If these are indeed oaths in their view—nay, among the most solemn and severe oaths—then it is obligatory to require people to swear by such weighty oaths. But if they are not oaths, why do they claim they are? Allah suffices us, and He is the One sought for aid.

L18020 In all that we have mentioned, there exists an ancient disagreement among the Salaf regarding their view that all such matters constitute oaths. It has been narrated to us through the chain of al-Ḥajjāj ibn al-Minhāl, from Abū ʻAwanah, from Layth, from Mujāhid, from Ibn Masʻūd, who said: “It is more beloved to me to swear falsely by Allah than to swear truthfully by anything other than Him.”

L18021 Ibn Masʻūd or Ibn ʿUmar said: “That I swear by Allah falsely is more beloved to me than that I swear by other than Him truthfully.”

L18022–18023 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj: I heard ʿAbd Allāh ibn Abī Mulaykah say: I heard Ibn al-Zubayr state: “‘Umar said to him - when he heard him swear by the Kaaba - ’If I knew you had reflected on the oath before swearing, I would punish you. Swear by Allah: then sin or fulfill.’”

الْمُصْحَفِ، وَحَقِّ الْإِسْلَامِ، وَحَقِّ الْكَعْبَةِ، وَأَنَا كَافِرٌ، وَلَعَمْرِي، وَلَعَمْرُكَ، وَلَأَفْعَلَنَّ كَذَا، وَأُقْسِمُ، وَأَقْسَمْتُ، وَأَحْلِفُ، وَحَلَفْتُ، وَأَشْهَدُ، وَعَلَيَّ يَمِينٌ، أَوْ عَلَيَّ أَلْفُ يَمِينٍ، أَوْ جَمِيعُ الْأَيْمَانِ تَلْزَمُنِي -: فَكُلُّ هَذَا لَيْسَ يَمِينًا - وَالْيَمِينُ بِهَا مَعْصِيَةٌ، لَيْسَ فِيهَا إِلَّا التَّوْبَةُ وَالِاسْتِغْفَارُ، لِأَنَّهُ كُلَّهُ غَيْرُ اللَّهِ - وَلَا يَجُوزُ الْحَلِفُ إِلَّا بِاللَّهِ.

قَالَ أَبُو مُحَمَّد: وَالْعَجَبُ مِمَّنْ يَرَى هَذِهِ الْأَلْفَاظَ يَمِينًا، وَيَرَى الْحَلِفَ بِالْمَشْيِ إِلَى مَكَّةَ، وَبِالطَّلَاقِ، وَبِالْعِتْقِ، وَبِصَدَقَةِ الْمَالِ: أَيْمَانًا - ثُمَّ لَا يُحَلِّفُ فِي حُقُوقِ النَّاسِ مِنَ الدِّمَاءِ، وَالْفُرُوجِ، وَالْأَمْوَالِ، وَالْأَبْشَارِ بِشَيْءٍ مِنْ ذَلِكَ - وَهِيَ أَوْكَدُ عِنْدَهُمْ -، لِأَنَّهَا لَا كَفَّارَةَ لَهَا، وَيُحَلِّفُونَهُمْ بِاللَّهِ، وَفِيهِ الْكَفَّارَةُ، أَلَيْسَ هَذَا عَجَبًا؟ وَلَئِنْ كَانَتْ أَيْمَانًا عِنْدَهُمْ -: بَلْ مِنْ أَغْلَظِ الْأَيْمَانِ وَأَشَدِّهَا -: فَالْوَاجِبُ أَنْ يُحَلِّفُوا النَّاسَ بِالْأَيْمَانِ الْغَلِيظَةِ، وَلَئِنْ كَانَتْ لَيْسَتْ أَيْمَانًا فَلِمَ يَقُولُونَ: إِنَّهَا أَيْمَانٌ؟ حَسْبُنَا اللَّهُ، وَهُوَ الْمُسْتَعَانُ.

وَفِي كُلِّ مَا ذَكَرْنَا خِلَافٌ قَدِيمٌ مِنَ السَّلَفِ يَرَوْنَ كُلَّ ذَلِكَ أَيْمَانًا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ لَيْثٍ عَنْ مُجَاهِدٍ عَنِ ابْنِ مَسْعُودٍ قَالَ: لَأَنْ أَحْلِفَ بِاللَّهِ كَاذِبًا أَحَبُّ إِلَيَّ مِنْ أَنْ أَحْلِفَ بِغَيْرِ اللَّهِ صَادِقًا.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي سَلَمَةَ عَنْ وَبَرَةَ قَالَ: قَالَ ابْنُ مَسْعُودٍ، أَوِ ابْنُ عُمَرَ: لَأَنْ أَحْلِفَ بِاللَّهِ كَاذِبًا أَحَبُّ إِلَيَّ مِنْ أَنْ أَحْلِفَ بِغَيْرِهِ صَادِقًا.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ سَمِعْتُ عَبْدَ اللَّهِ بْنَ أَبِي مُلَيْكَةَ سَمِعْتُ ابْنَ الزُّبَيْرِ يَقُولُ: إِنَّ عُمَرَ قَالَ لَهُ - وَقَدْ سَمِعَهُ يَحْلِفُ بِالْكَعْبَةِ -: لَوْ أَعْلَمُ أَنَّكَ فَكَّرْتَ فِيهَا قَبْلَ أَنْ تَحْلِفَ لَعَاقَبْتُكَ، احْلِفْ بِاللَّهِ فَأْثَمْ أَوْ ابْرَرْ

[مَسْأَلَةٌ حَلَفَ بِالْقُرْآنِ أَوْ بِكَلَامِ اللَّهِ عَزَّ وَجَلَّ]

١١٣٠ - مَسْأَلَةٌ: وَمَنْ حَلَفَ بِالْقُرْآنِ، أَوْ بِكَلَامِ اللَّهِ عَزَّ وَجَلَّ، فَإِنْ نَوَى فِي نَفْسِهِ الْمُصْحَفَ، أَوْ الصَّوْتَ الْمَسْمُوعَ، أَوْ الْمَحْفُوظَ فِي الصُّدُورِ فَلَيْسَ يَمِينًا، وَإِنْ لَمْ يَنْوِ ذَلِكَ بَلْ نَوَاهُ عَلَى الْإِطْلَاقِ، فَهِيَ يَمِينٌ وَعَلَيْهِ كَفَّارَةٌ إنْ حَنِثَ؛ لِأَنَّ كَلَامَ اللَّهِ تَعَالَى هُوَ عِلْمُهُ.

قَالَ تَعَالَى {وَلَوْلا كَلِمَةٌ سَبَقَتْ مِنْ رَبِّكَ إِلَى أَجَلٍ مُسَمًّى لَقُضِيَ بَيْنَهُمْ} [الشورى: ١٤] .

وَعِلْمُ اللَّهِ تَعَالَى لَيْسَ هُوَ غَيْرَ اللَّهِ تَعَالَى، وَالْقُرْآنُ كَلَامُ اللَّهِ تَعَالَى.

وَقَدْ رُوِّينَا خِلَافَ هَذَا [رُوِّينَا] مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ، وَالْحَجَّاجِ بْنِ الْمِنْهَالِ، قَالَ عَبْدُ الرَّزَّاقِ: عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ لَيْثٍ عَنْ مُجَاهِدٍ، وَقَالَ الْحَجَّاجُ بْنُ الْمِنْهَالِ: نا أَبُو الْأَشْهَبِ عَنْ الْحَسَنِ الْبَصْرِيِّ - ثُمَّ اتَّفَقَ الْحَسَنُ، وَمُجَاهِدٌ قَالَا جَمِيعًا: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ حَلَفَ بِسُورَةٍ مِنْ الْقُرْآنِ فَعَلَيْهِ بِكُلِّ آيَةٍ مِنْهَا يَمِينُ صَبْرٍ فَمَنْ شَاءَ بَرَّ وَمَنْ شَاءَ فَجَرَ» .

وَلَفْظُ الْحَسَنِ «إنْ شَاءَ بَرَّ وَإِنْ شَاءَ فَجَرَ» .

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي سِنَانٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي الْهُذَيْلِ عَنْ عَبْدِ اللَّهِ بْنِ حَنْظَلَةَ قَالَ: أَتَيْت مَعَ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ السُّوقَ فَسَمِعَ رَجُلًا يَحْلِفُ بِسُورَةِ الْبَقَرَةِ؟ فَقَالَ ابْنُ مَسْعُودٍ: أَمَا إنَّ عَلَيْهِ بِكُلِّ آيَةٍ يَمِينًا.

A jurisprudential case: If someone has sworn by the Qur'an or by the Speech of Allah, the Exalted and Majestic.

Issue 1130: If someone swore by the Quran or by the Word of Allah Almighty and intended in their heart the physical book, the audibly recited sound, or what is preserved in the hearts, it is not an oath. If they did not intend these specific meanings but intended it in an absolute sense, then it constitutes an oath requiring expiation if broken, because the Word of Allah the Exalted is His knowledge.

He, the Exalted, said: "And were it not for a word that had already been decreed by your Lord for a specified term, it would have been judged between them." [42:14][5]

The knowledge of Allah, the Exalted, is not other than Allah, the Exalted, and the Quran is the speech of Allah, the Exalted.

And it has been narrated to us contrary to this [It has been narrated to us] via the paths of Abd al-Razzaq and al-Hajjaj ibn al-Minhal. Abd al-Razzaq said: From Sufyan al-Thawri, from Layth, from Mujahid. Al-Hajjaj ibn al-Minhal said: Abu al-Ashhab narrated to us from al-Hasan al-Basri. Then al-Hasan and Mujahid concurred, and both said together: The Messenger of Allah (peace and blessings of Allah be upon him) said, "Whoever swears by a surah of the Quran must make a binding oath requiring expiation for each verse in it. Then, whoever wishes may act righteously, and whoever wishes may commit sin."

And the wording of al-Ḥasan is, "If Allah wills, one acts righteously, and if He wills, one transgresses."

It was narrated to us via the chain of transmission of Abd al-Rahman ibn Mahdi from Sufyan al-Thawri from Abu Sinan from Abdullah ibn Abi al-Hudhayl from Abdullah ibn Hanzalah, who said: I came to the market with Abdullah ibn Mas'ud, and he heard a man swearing by Surah al-Baqarah. Ibn Mas'ud said: Indeed, he owes an oath for each verse.

[5] **Qur'an references (L18026):** Qur'an 42:14 (Ash-Shuraa).

L18031 From the chain of Abd al-Razzaq, from Sufyan al-Thawri, from al-A'mash, from Ibrahim al-Nakha'i, from Ibn Mas'ud, who said: Whoever disbelieves in a single letter of the Qur'an has disbelieved in it entirely, and whoever swears by the Qur'an is bound by an oath for every verse.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ ابْنِ مَسْعُودٍ قَالَ: مَنْ كَفَرَ بِحَرْفٍ مِنْ الْقُرْآنِ فَقَدْ كَفَرَ بِهِ أَجْمَعَ، وَمَنْ حَلَفَ بِالْقُرْآنِ فَعَلَيْهِ بِكُلِّ آيَةٍ يَمِينٌ.

L18032 This is the view of Al-Ḥasan al-Baṣrī and Aḥmad ibn Ḥanbal.

وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ.

L18033 It has been narrated to us from Sahm ibn Minjāb: Whoever swears by the Quran, then upon him is a sin for every verse.

وَرُوِّينَا عَنْ سَهْمِ بْنِ مِنْجَابٍ: مَنْ حَلَفَ بِالْقُرْآنِ فَعَلَيْهِ بِكُلِّ آيَةٍ خَطِيئَةٌ.

L18034 And Abū 'Ubayd said, "It is one oath."

وَقَالَ أَبُو عُبَيْدٍ: هُوَ يَمِينٌ وَاحِدَةٌ.

L18035–18037 It has been narrated to us through the chain of Abd al-Razzaq from Ibn Jurayj, who said: I heard Ata—when a man had asked him— He said: I said, "By the House and the Book of Allah?" ʿAṭā said: "They are not lords for you, nor are they oaths"—and this is what Abū Ḥanīfah says.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ سَمِعْت عَطَاءً - وَقَدْ سَأَلَهُ رَجُلٌ - فَقَالَ: قُلْت: وَالْبَيْتُ، وَكِتَابُ اللَّهِ؟ فَقَالَ عَطَاءٌ: لَيْسَا لَك بِرَبٍّ، لَيْسَا يَمِينًا - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ.

L18038 It was incumbent upon the Ḥanafīs and Mālikīs to adopt the opinion of Ibn Masʿūd, as no opposing view from the Companions to his opinion in that matter is known.

وَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ أَنْ يَقُولُوا بِقَوْلِ ابْنِ مَسْعُودٍ، لِأَنَّهُ لَا يُعْلَمُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ.

L18039 ## The Issue of Vain Oaths.

[مَسْأَلَةٌ لَغْوُ الْيَمِينِ]

L18040 1131 – Issue: There is no atonement in a frivolous oath, nor sin, and it has two viewpoints:

١١٣١ - مَسْأَلَةٌ: وَلَغْوُ الْيَمِينِ لَا كَفَّارَةَ فِيهِ، وَلَا إثْمَ، وَهُوَ وَجْهَانِ -:

L18041 One of the two cases is when a person swears to something, having no doubt that it is as he swore, but later it becomes clear to him that it is contrary to that. This is the opinion of Abū Ḥanīfah, Mālik, and Abū Sulaymān.

أَحَدُهُمَا: مَا حَلَفَ عَلَيْهِ الْمَرْءُ - وَهُوَ لَا يَشُكُّ فِي أَنَّهُ كَمَا حَلَفَ عَلَيْهِ - ثُمَّ تَبَيَّنَ لَهُ أَنَّهُ بِخِلَافِ ذَلِكَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَأَبِي سُلَيْمَانَ.

L18042 The second type is what a person's tongue utters amidst his speech without intent, such as saying during his talk: "No, by Allah!" or "Yes, by Allah!"—this is the opinion of Al-Shāfiʿī and Abū Sulaymān.

وَالثَّانِي: مَا جَرَى بِهِ لِسَانُ الْمَرْءِ فِي خِلَالِ كَلَامِهِ بِغَيْرِ نِيَّةٍ فَيَقُولُ فِي أَثْنَاءِ كَلَامِهِ: لَا وَاَللَّهِ، وَأَيْ وَاَللَّهِ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L18043 Allah, the Exalted, said: “Allah does not hold you accountable for frivolous oaths in your oaths, but He holds you accountable for the binding oaths you have made.” [Al-Mā’idah 5:89][6]

قَالَ اللَّهُ تَعَالَى: {لا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الأَيْمَانَ} [المائدة: ٨٩] .

L18044 It has been authentically reported through the chain of Ma’mar from al-Zuhri from Salim ibn Abdullah ibn Umar, who said: Often, Ibn Umar would say to one of his sons: “I have recorded against you in this gathering eleven oaths,” and he did not instruct him to perform expiation.

وَصَحَّ مِنْ طَرِيقِ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: رُبَّمَا قَالَ ابْنُ عُمَرَ لِبَعْضِ بَنِيهِ: لَقَدْ حَفِظْت عَلَيْك فِي هَذَا الْمَجْلِسِ أَحَدَ عَشَرَ يَمِينًا، وَلَا يَأْمُرُهُ بِكَفَّارَةٍ.

L18045 From the narration of ʿAbd al-Razzāq: Ibn Jurayj reported to us, saying, “I heard from ʿAṭāʾ that he heard ʿĀ’ishah, the Mother of the Believers”—when ʿUbayd ibn ʿUmayr asked her about Allah’s statement, “Allah does not hold you accountable for what is vain in your oaths” [Q 5:89]—say: “It refers to a person’s utterances: ’No, by Allah,’ and ’Yes, by Allah.’”[7]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَنَا عَطَاءٌ أَنَّهُ سَمِعَ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ وَقَدْ سَأَلَهَا عُبَيْدُ بْنُ عُمَيْرٍ عَنْ قَوْلِ اللَّهِ تَعَالَى: {لا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ} [المائدة: ٨٩] قَالَتْ: هُوَ قَوْلُ الرَّجُلِ لَا وَاَللَّهِ، وَبَلَى وَاَللَّهِ.

L18046 From the route of Ma’mar via al-Zuhri, from Salim ibn ’Abdullah, from ’Urwah, from ’Ā’ishah the Mother of the Believers, who said concerning idle speech: It refers to people’s speech when they dispute over a matter. One says: “No, by Allah,” another says: “Yes, by Allah,” and another says: “Certainly not, by Allah,” while their hearts are not bound to it.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ فِي اللَّغْوِ: هُوَ قَوْلُ الْقَوْمِ يَتَدَارَءُونَ فِي الْأَمْرِ يَقُولُ هَذَا: لَا وَاَللَّهِ، وَبَلَى وَاَللَّهِ، وَكَلَا وَاَللَّهِ، وَلَا تَعْقِدُ عَلَيْهِ قُلُوبُهُمْ.

L18047 This is the opinion of al-Qasim ibn Muhammad, Ata’, Ibrahim, _al-Shaʿbi_, Ikrimah, Mujahid, Tawus, al-Hasan, al-Zuhri, Abū Qilābah and others.

وَهُوَ قَوْلُ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَعَطَاءٍ، وَإِبْرَاهِيمَ، وَالشَّعْبِيِّ، وَعِكْرِمَةَ، وَمُجَاهِدٍ، وَطَاوُسٍ، وَالْحَسَنِ، وَالزُّهْرِيِّ، وَأَبِي قِلَابَةَ، وَغَيْرِهِمْ.

L18048 And from the chain of Ibn Abbas—though it is not authentically reported from him due to transmission through Al-Kalbi—a frivolous oath is when a man says, “By Allah, this is so-and-so,” while he is not so-and-so.

وَمِنْ طَرِيقِ ابْنِ عَبَّاسٍ - وَلَا يَصِحُّ عَنْهُ؛ لِأَنَّهُ مِنْ طَرِيقِ الْكَلْبِيِّ -: لَغْوُ الْيَمِينِ هُوَ قَوْلُ الرَّجُلِ هَذَا وَاَللَّهِ فُلَانٌ، وَلَيْسَ بِفُلَانٍ.

L18049–18051 This is also the view of Al-Hasan, Ibrāhīm, Al-Shaʿbī, Mujāhid, Qatādah, and Zurārah ibn Awfā. And Sulaymān ibn Yasar, Sufyān al-Thawrī, al-Awzāʿī, al-Ḥasan ibn Ḥayy, Aḥmad ibn Ḥanbal, and others among them.

وَهُوَ أَيْضًا قَوْلُ الْحَسَنِ، وَإِبْرَاهِيمَ، وَالشَّعْبِيِّ، وَمُجَاهِدٍ، وَقَتَادَةَ، وَزُرَارَةَ بْنِ أَوْفَى وَسُلَيْمَانَ بْنِ يَسَارٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَغَيْرِهِمْ.

L18052 Abu Muhammad said: As for a person saying “No, by Allah” and “Indeed,

[6] **Qur’an references (L18043):** Qur’an 5:89 (Al-Ma’idah).
[7] **Qur’an references (L18045):** Qur’an 2:225 (Al-Baqarah); Qur’an 5:89 (Al-Ma’idah).

by Allah" without intention, the ruling is evident and unambiguous, because it is the explicit text of the Qur'an, as stated by the Mother of the Believers – may Allah be pleased with her.

L18053 As for one who swears upon something while believing it to be so without any doubt, he neither intended oath-breaking nor purposed it, for there is no oath-breaking except upon one who deliberately intends it. However, this is among the matters where the Hanafis and the Malikis have contradicted each other: they waived expiation here but imposed it upon performing what one swore upon—whether forgetfully or under duress—with no distinction between such cases. And success is from Allah, the Exalted.

L18054 And it is also astonishing that they deemed oaths sworn by Allah, the Exalted, to be frivolous, yet did not apply the same ruling to oaths sworn by other than Him—such as those sworn by walking to Mecca, divorce, emancipation, and similar matters.

L18055 A narration corroborates our view: We narrated it through the chain of Abū Dāwūd al-Sijistānī — Ḥumayd ibn Mas'adah narrated to us, Ḥassān (Ibn Ibrāhīm) narrated to us, Ibrāhīm (the goldsmith) — from 'Aṭā' ibn Abī Rabāḥ, who said: "The inconsequential oath [in speech] — 'Ā'ishah reported from the Prophet (may Allah's peace and blessings be upon him) — is a man's casual remark in his household: 'No, by Allah,' and 'Yes, by Allah.'" And with Allah alone is success.

L18056 **Legal case: If someone swore not to do a certain thing (such-and-such) but then did so unintentionally or under coercion.**

L18057 Issue 1132: If someone swears not to do a certain thing but then does it forgetfully, under compulsion, or is overcome by a circumstance that placed a barrier between him and fulfilling it; or if they swear that someone else will perform a specific action they mentioned to him or will refrain from a certain action—and the subject of the oath then does it intentionally, forgetfully, or the swearer doubted whether the subject of the oath did what was sworn against or not; or if the action is done while the subject of the oath is not in

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ الْمَرْءِ: لَا وَاللَّهِ، وَأَيْ وَاللَّهِ بِغَيْرِ نِيَّةٍ، فَأَمْرُهُ ظَاهِرٌ لَا إِشْكَالَ فِيهِ؛ لِأَنَّهُ نَصُّ الْقُرْآنِ، كَمَا قَالَتْ أُمُّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا -.

وَأَمَّا مَنْ أَقْسَمَ عَلَى شَيْءٍ وَهُوَ يَرَى، وَلَا يَشُكُّ فِي أَنَّهُ كَمَا حَلَفَ عَلَيْهِ، فَإِنَّهُ لَمْ يَعْمِدْ الْحِنْثَ، وَلَا قَصَدَ لَهُ، وَلَا حِنْثَ إِلَّا عَلَى مَنْ قَصَدَ إِلَيْهِ إِلَّا أَنَّ هَذَا مِمَّا تَنَاقَضَ فِيهِ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، فَأَسْقَطُوا الْكَفَّارَةَ هَهُنَا، وَأَوْجَبُوهَا عَلَى فِعْلِ مَا حَلَفَ عَلَيْهِ نَاسِيًا أَوْ مُكْرَهًا، وَلَا فَرْقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَالْعَجَبُ أَيْضًا - أَنَّهُمْ رَأَوْا اللَّغْوَ فِي الْيَمِينِ بِاللَّهِ تَعَالَى، وَلَمْ يَرَوْهُ فِي الْيَمِينِ بِغَيْرِهِ تَعَالَى، كَالْمَشْيِ إِلَى مَكَّةَ، وَالطَّلَاقِ، وَالْعِتْقِ، وَغَيْرِ ذَلِكَ.

وَقَدْ جَاءَ أَثَرٌ بِقَوْلِنَا: رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نا حُمَيْدُ بْنُ مَسْعَدَةَ نا حَسَّانُ هُوَ ابْنُ إِبْرَاهِيمَ - نا إِبْرَاهِيمُ هُوَ الصَّائِغُ - عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: «اللَّغْوُ فِي الْيَمِينِ قَالَتْ عَائِشَةُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ كَلَامُ الرَّجُلِ فِي بَيْتِهِ: كَلَا وَاللَّهِ، وَبَلَى وَاللَّهِ» وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَفْعَلَ أَمْرًا كَذَا فَفَعَلَهُ نَاسِيًا أَوْ مُكْرَهًا]

١١٣٢ - مَسْأَلَةٌ: وَمَنْ حَلَفَ أَنْ لَا يَفْعَلَ أَمْرًا كَذَا، فَفَعَلَهُ نَاسِيًا أَوْ مُكْرَهًا، أَوْ غُلِبَ بِأَمْرٍ حِيلَ بَيْنَهُ وَبَيْنَهُ بِهِ، أَوْ حَلَفَ عَلَى غَيْرِهِ أَنْ يَفْعَلَ فِعْلًا ذَكَرَهُ لَهُ، أَوْ أَنْ لَا يَفْعَلَ فِعْلًا كَذَا - فَفَعَلَهُ الْمَحْلُوفُ عَلَيْهِ عَامِدًا أَوْ نَاسِيًا، أَوْ شَكَّ الْحَالِفُ أَفَعَلَ مَا حَلَفَ أَنْ

their right mind—then there is no expiation required for the swearer in any of these cases, nor is there any sin.

L18058 It has been reported to us via Hushaym, on the authority of al-Mughirah, from Ibrāhīm al-Nakhaʿī, who said: "A vain oath is when one swears to something and later forgets it." Hushaym added: "Mansūr informed me, reporting from al-Ḥasan, the same [ruling]."

L18059 The proof of that is the words of Allah, the Most High: "But He will hold you accountable for the oaths you have bound" (Quran 5:89).[8]

L18060 And He, the Exalted, said: "But only what your hearts have intended." [Quran 33:5][9]

L18061 We have stated: Indeed, oath-breaking is only applicable to one who deliberately intends it according to the Quranic text. None of them intended it, so they are not guilty of oath-breaking, as they did not commit it willfully in their hearts.

L18062–18063 It has been authentically reported from the Prophet (peace be upon him): "Has been pardoned for my Ummah - mistakes, forgetfulness, and what they have been compelled to do."

L18064 And that "the pen is lifted from the sleeper until he awakens and from the insane until he recovers reason."

L18065 And because of the saying of Allah, the Most High: "Allah does not burden a soul beyond its capacity" [Al-Baqarah: 286].[10]

L18066 Through observation, we know that it is not within people's capacity, nor one who is overcome in any way, to avoid doing what is forgotten or compelled. Thus, it is established by the text of the Quran that one is not obligated to prevent such actions. Since one is not obligated to prevent them, the requirement to fulfill what one was not obligated to fulfill is waived. This is

لَا يَفْعَلَهُ أَمْ لَا؟ أَوْ فَعَلَهُ فِي غَيْرِ عَقْلِهِ، فَلَا كَفَّارَةَ عَلَى الْحَالِفِ فِي شَيْءٍ مِنْ كُلِّ ذَلِكَ وَلَا إِثْمَ.

رُوِّينَا مِنْ طَرِيقِ هُشَيْمٍ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَغْوُ الْيَمِينِ: هُوَ أَنْ يَحْلِفَ عَلَى الشَّيْءِ ثُمَّ يَنْسَى - قَالَ هُشَيْمٌ: وَأَخْبَرَنِي مَنْصُورٌ عَنْ الْحَسَنِ بِمِثْلِهِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى {وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الأَيْمَانَ} [المائدة: ٨٩] .

وَقَالَ تَعَالَى {وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

وَقَدْ قُلْنَا: إنَّ الْحِنْثَ لَيْسَ إلَّا عَلَى قَاصِدٍ إلَى الْحِنْثِ يَتَعَمَّدُ لَهُ بِنَصِّ الْقُرْآنِ، وَهَؤُلَاءِ كُلُّهُمْ غَيْرُ قَاصِدِينَ إلَيْهِ، فَلَا حِنْثَ عَلَيْهِمْ، إذْ لَمْ يَتَعَمَّدُوهُ بِقُلُوبِهِمْ.

وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «عُفِيَ لِأُمَّتِي عَنْ الْخَطَأِ وَالنِّسْيَانِ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» .

وَأَنَّهُ «رُفِعَ الْقَلَمُ عَنْ النَّائِمِ حَتَّى يَسْتَيْقِظَ وَالْمَجْنُونِ حَتَّى يُفِيقَ» .

وَلِقَوْلِ اللَّهِ تَعَالَى {لا يُكَلِّفُ اللَّهُ نَفْسًا إلا وُسْعَهَا} [البقرة: ٢٨٦] .

وَبِالْمُشَاهَدَةِ نَدْرِي أَنَّهُ لَيْسَ فِي وُسْعِ النَّاسِ، وَلَا الْمَغْلُوبِ بِأَيِّ وَجْهٍ: مَنْعٌ أَنْ يَفْعَلَ مَا نَسِيَ وَلَا مَا غُلِبَ عَلَى فِعْلِهِ - فَصَحَّ بِنَصِّ الْقُرْآنِ أَنَّهُ لَمْ يُكَلَّفْ فِعْلَ ذَلِكَ، وَإِذْ لَيْسَ مُكَلَّفًا لِذَلِكَ فَقَدْ سَقَطَ عَنْهُ الْوَفَاءُ بِمَا لَمْ يُكَلَّفْ الْوَفَاءَ بِهِ وَهَذَا فِي غَايَةِ الْبَيَانِ، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - وَهُوَ قَوْلُ الْحَسَنِ، وَإِبْرَاهِيمَ.

[8] **Qur'an references (L18059):** Qur'an 5:89 (Al-Ma'idah).
[9] **Qur'an references (L18060):** Qur'an 33:5 (Al-Ahzab).
[10] **Qur'an references (L18065):** Qur'an 2:286 (Al-Baqarah).

supremely evident, and all praise belongs to Allah, Lord of the worlds. This is the view of Al-Ḥasan and Ibrahim.

L18067 It has been narrated to us through the chain of Saʿīd ibn Manṣūr: from Hushaym, who stated: "Mansur—the son of al-Muʿtamir—" from al-Ḥasan al-Baṣrī, who said: If a person takes an oath against another and then violates it, no expiation is required of him.

L18068 From the transmission of Hushaym: Mughīrah reported to us from Ibrāhīm regarding one who compels another to swear an oath and then causes them to break it: "It is more preferable to me that the swearer should perform expiation." However, Ibrāhīm did not deem this obligatory—only recommended.

L18069 A jurisprudential case concerning one who swears an oath about something they do not know - whether it is true or not.

L18070 1133: Issue — And from this category is one who swears upon something he does not know whether it is the case or not, or upon what may or may not occur—such as one who swears, "It will certainly rain tomorrow," whether it rains or not. There is no expiation required in any of these instances, because he did not intentionally intend to break the oath. Expiation applies only to one who deliberately intends to break the oath, in accordance with Allah's statement: "But only what your hearts have intended" [Al-Aḥzāb: 5].[11]

L18071 It has been authentically established that ʿUmar swore in the presence of the Prophet (peace and blessings be upon him) that Ibn Ṣayyād is the Dajjāl. Yet the Prophet (peace be upon him) did not command him to perform expiation.

L18072 Malik said: The expiation is obligatory upon him whether the sworn-upon matter existed or had not occurred. This is erroneous because there is no textual evidence supporting his claim, as wealth is prohibited except by textual authority, and religious laws are not obligatory except through such evidence. Success is from Allah, the Exalted.

رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا مَنْصُورٌ هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: إذَا أَقْسَمَ عَلَى غَيْرِهِ فَأَحْنَثَ فَلَا كَفَّارَةَ عَلَيْهِ.

وَمِنْ طَرِيقِ هُشَيْمٍ نا مُغِيرَةُ عَنْ إبْرَاهِيمَ فِيمَنْ أَقْسَمَ عَلَى غَيْرِهِ فَأَحْنَثَهُ أَحَبُّ إلَيَّ لِلْمُقْسِمِ أَنْ يُكَفِّرَ، فَلَمْ يُوجِبْهُ إلَّا اسْتِحْبَابًا.

[مَسْأَلَةٌ حَلَفَ عَلَى مَا لَا يَدْرِي أَهْوَ كَذَلِكَ أَمْ لَا]

١١٣٣ - مَسْأَلَةٌ: وَمِنْ هَذَا مَنْ حَلَفَ عَلَى مَا لَا يَدْرِي أَهْوَ كَذَلِكَ أَمْ لَا، وَعَلَى مَا قَدْ يَكُونُ وَلَا يَكُونُ؟ كَمَنْ حَلَفَ لَيَنْزِلَنَّ الْمَطَرُ غَدًا، فَنَزَلَ أَوْ لَمْ يَنْزِلْ، فَلَا كَفَّارَةَ فِي شَيْءٍ مِنْ ذَلِكَ؛ لِأَنَّهُ لَمْ يَتَعَمَّدْ الْحِنْثَ وَلَا كَفَّارَةَ إلَّا عَلَى مَنْ تَعَمَّدَ الْحِنْثَ وَقَصَدَهُ لِقَوْلِهِ تَعَالَى: {وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

وَقَدْ صَحَّ «أَنَّ عُمَرَ حَلَفَ بِحَضْرَةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ ابْنَ صَيَّادٍ هُوَ الدَّجَّالُ؟ فَلَمْ يَأْمُرْهُ - عَلَيْهِ السَّلَامُ - بِكَفَّارَةٍ» .

وَقَالَ مَالِكٌ: عَلَيْهِ الْكَفَّارَةُ كَانَ مَا حَلَفَ عَلَيْهِ أَوْ لَمْ يَكُنْ - وَهَذَا خَطَأٌ؛ لِأَنَّهُ لَا نَصَّ بِمَا قَالَ، وَالْأَمْوَالُ مَحْظُورَةٌ إلَّا بِنَصٍّ، وَالشَّرَائِعُ لَا تَجِبُ إلَّا بِنَصٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[11] **Qur'an references (L18070):** Qur'an 33:5 (Al-Ahzab).

L18073 **A legal issue: One who intentionally swears a false oath concerning the matter of his oath.**

L18074 1134. Legal Question: Whoever intentionally swears falsely concerning the matter he swears about, then he must perform expiation. This is the opinion of Al-Awza'i, Al-Hasan ibn Ḥayy, and Al-Shafi'i.

L18075 A group of scholars said: There is no expiation for that—and this is the opinion of Abū Ḥanīfah, Mālik, Sufyān al-Thawrī, and Abū Sulaymān.

L18076–18078 A narration akin to our own statement has reached us from the early Salaf via Shu'bah, who said: "I asked al-Ḥakam ibn 'Utaybah." Concerning a man who swears by a false oath, is there an expiation for it? He replied: Yes.

L18079 Through the narration of Hushaym from Al-Ḥajjāj from ʿAṭāʾ ibn Abī Rabāḥ regarding one who deliberately swears a false oath while intending to lie, ʿAṭāʾ said: The expiation is upon him, and he will only increase in good through the expiation.

L18080 And via the chain of Waki' from Sufyan al-Thawri from Ibn Abi Najih from Mujahid regarding the verse, "But He will hold you accountable for what you have made of oaths" [Al-Ma'idah 5:89], he said, "For what you have intentionally committed."[12]

L18081 And through the narration of Qatādah from Al-Ḥasan regarding the statement of the Exalted, "But He will hold you accountable for the oaths you have sworn, so its expiation is..." [Al-Mā'idah: 89], he said: "For the sin you deliberately committed in it."[13]

L18082 Sa'īd ibn Jubayr said: It is an oath pertaining to an act of disobedience.

L18083 Via the chain of ʿAbd al-Razzāq from Maʿmar concerning a man who deliberately swears falsely about a matter: saying "By Allah, I have done it" when

[12] **Qur'an references (L18080):** Qur'an 5:89 (Al-Ma'idah).
[13] **Qur'an references (L18081):** Qur'an 5:89 (Al-Ma'idah).

[مَسْأَلَةٌ حَلَفَ عَامِدًا لِلْكَذِبِ فِيمَا يَحْلِفُ]

١١٣٤ - مَسْأَلَةٌ: وَمَنْ حَلَفَ عَامِدًا لِلْكَذِبِ فِيمَا يَحْلِفُ، فَعَلَيْهِ الْكَفَّارَةُ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَالشَّافِعِيِّ.

وَقَالَتْ طَائِفَةٌ: لَا كَفَّارَةَ فِي ذَلِكَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَبِي سُلَيْمَانَ.

وَرُوِّينَا مِثْلَ قَوْلِنَا عَنْ السَّلَفِ الْمُتَقَدِّمِ مِنْ طَرِيقِ شُعْبَةَ قَالَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ عَنْ الرَّجُلِ يَحْلِفُ بِالْحَلِفِ الْكَاذِبِ؟ أَفِيهِ كَفَّارَةٌ؟ قَالَ: نَعَمْ.

وَمِنْ طَرِيقِ هُشَيْمٍ عَنْ الْحَجَّاجِ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ فِيمَنْ حَلَفَ عَلَى كَذِبٍ يَتَعَمَّدُ فِيهِ الْكَذِبَ، قَالَ عَطَاءٌ: عَلَيْهِ الْكَفَّارَةُ، وَلَا يَزِيدُ بِالْكَفَّارَةِ إلَّا خَيْرًا.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ {وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الأَيْمَانَ} [المائدة: ٨٩] قَالَ: بِمَا تَعَمَّدْتُمْ.

وَمِنْ طَرِيقِ قَتَادَةَ عَنْ الْحَسَنِ فِي قَوْله تَعَالَى {وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الأَيْمَانَ فَكَفَّارَتُهُ} [المائدة: ٨٩] قَالَ: بِمَا تَعَمَّدْتُمْ فِيهِ الْمَأْثَمَ.

وَقَالَ سَعِيدُ بْنُ جُبَيْرٍ: هِيَ الْيَمِينُ فِي الْمَعْصِيَةِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ فِي الرَّجُلِ يَحْلِفُ عَلَى أَمْرٍ يَتَعَمَّدُهُ كَاذِبًا يَقُولُ: وَاَللَّهِ لَقَدْ فَعَلْت، وَلَمْ يَفْعَلْ، أَوْ وَاَللَّهِ مَا فَعَلْت، وَقَدْ فَعَلَ، قَالَ: أَحَبُّ إلَيَّ أَنْ يُكَفِّرَ.

he has not, or “By Allah, I have not done it” when he has—Maʿmar said: “It is more fitting, in my view, that he offer _kaffārah_.”

وَرُوِّينَا الْقَوْلَ الثَّانِيَ مِنْ طَرِيقِ رُفَيْعٍ أَبِي الْعَالِيَةِ: أَنَّ ابْنَ مَسْعُودٍ كَانَ يَقُولُ: كُنَّا نَعُدُّ مِنْ الذَّنْبِ الَّذِي لَا كَفَّارَةَ لَهُ الْيَمِينَ الْغَمُوسَ أَنْ يَحْلِفَ الرَّجُلُ كَاذِبًا عَلَى مَالِ أَخِيهِ لِيَقْتَطِعَهُ.

L18084 It has been narrated to us as the second position through the chain of Rufayʿ Abu al-ʿĀliyah that Ibn Masʿūd would say: “We counted among the sins for which there is no expiation the perjurious oath (that drowns in sin) – when a man swears a false oath to wrongfully take a portion of his brother’s property.”

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَالْحَسَنِ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ: أَنَّ هَذَا الْيَمِينَ أَعْظَمُ مِنْ أَنْ تُكَفَّرَ أَوْ أَنَّهَا كِذْبَةٌ، لَا كَفَّارَةَ فِيهَا.

L18085 And from Ibrāhīm al-Nakhaʿī, al-Ḥasan, and Ḥammād ibn Abī Sulaymān: This oath is either too grave to be expiated or constitutes a false oath—there is no expiation for it.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ لَمْ يَرَ الْكَفَّارَةَ فِي ذَلِكَ بِالْأَخْبَارِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْهَا - مِنْ طَرِيقِ ابْنِ مَسْعُودٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ حَلَفَ عَلَى يَمِينِ صَبْرٍ يَقْتَطِعُ بِهَا مَالَ امْرِئٍ مُسْلِمٍ لَقِيَ اللَّهَ وَهُوَ عَلَيْهِ غَضْبَانُ» فَأَنْزَلَ اللَّهُ تَعَالَى تَصْدِيقَ ذَلِكَ {إِنَّ الَّذِينَ يَشْتَرُونَ بِعَهْدِ اللَّهِ وَأَيْمَانِهِمْ ثَمَنًا قَلِيلا أُولَئِكَ لا خَلاقَ لَهُمْ فِي الآخِرَةِ وَلا يُكَلِّمُهُمُ اللَّهُ وَلا يَنْظُرُ إِلَيْهِمْ يَوْمَ الْقِيَامَةِ وَلا يُزَكِّيهِمْ وَلَهُمْ عَذَابٌ أَلِيمٌ} [آل عمران: ٧٧] .

L18086 Abu Muhammad said: Those who do not hold the view of expiation in that matter cite as evidence the authentic narrations from the Messenger of Allah (peace and blessings of Allah be upon him) - among them is the narration transmitted through Ibn Mas’ud from the Prophet (peace and blessings of Allah be upon him): “Whoever swears a deliberate oath to seize the property of a Muslim thereby will meet Allah while He is wrathful toward him.” Then Allah, the Exalted, revealed in confirmation of that: {Indeed, those who exchange the covenant of Allah and their oaths for a trifling price - those will have no share in the Hereafter, nor will Allah speak to them, nor look upon them on the Day of Resurrection, nor purify them; and for them is a painful punishment} [Āl ʿImrān 3:77].[14]

وَمِنْ طَرِيقِ أَبِي ذَرٍّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «ثَلَاثَةٌ لَا يُكَلِّمُهُمْ اللَّهُ يَوْمَ الْقِيَامَةِ وَلَا يَنْظُرُ إلَيْهِمْ وَلَا يُزَكِّيهِمْ وَلَهُمْ عَذَابٌ أَلِيمٌ فَذَكَرَ - عَلَيْهِ السَّلَامُ - فِيهِمْ الْمُنْفِقَ سِلْعَتَهُ بِالْحَلِفِ الْكَاذِبِ» .

L18087 From the narration of Abū Dharr, the Prophet (peace and blessings be upon him) said: “Three whom Allah will not address on the Day of Resurrection, nor look at them, nor purify them - and for them is a painful punishment.” He (peace be upon him) then mentioned among them: “the one who sells his merchandise through false swearing.”[15][16]

وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ عَمْرٍو عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْكَبَائِرُ: الْإِشْرَاكُ بِاَللَّهِ، وَعُقُوقُ الْوَالِدَيْنِ، وَقَتْلُ النَّفْسِ، وَالْيَمِينُ الْغَمُوسُ» .

L18088–18090 And through the narration of Abdullah ibn Amr from the Prophet (peace be upon him): “The major sins are associating partners with Allah and disobe-

[14] **Qur’an references (L18086):** Qur’an 3:77 (Ali ’Imran).

[15] **Hadith references (L18087):** Sunan Ibn Majah 2208; Sahih Muslim 106a; Sunan an-Nasai 4458.

[16] **Qur’an references (L18087):** Qur’an 2:174 (Al-Baqarah); Qur’an 3:77 (Ali ’Imran).

dience to parents..." "the two parents, the killing of a soul, and the plunging oath."[17]

L18091 From the narration of ʿImrān ibn al-Ḥuṣayn from the Prophet (peace be upon him): "Whoever swears a false compelled oath, let him prepare a place in Hellfire with his face."[18]

L18092 Narrated by Al-Ashʿath ibn Qays from the Prophet (peace be upon him): "Whoever swears a binding oath while being deceitful in it to wrongfully take the property of a Muslim will meet Allah under His wrath."

L18093 From the narration of Jābir ibn ʿAbdullāh, the Prophet (peace be upon him) said: "Whoever swears upon this pulpit of mine with a sinful oath will have taken his seat in the Fire."[19]

L18094 And some of them added, "even if it were a green siwak." All of these are sound narrations.

L18095 They also mentioned: an authentic report via the chain of Yaḥyā ibn Abī Kathīr, from ʿIkrimah, from Abū Hurayrah, from the Prophet—peace and blessings be upon him—: "Whoever insistently swears oaths within his family, his sin is graver, and the expiation does not suffice."

L18096 And in a narration: We were narrated through the chain of Ibn al-Jahm, from Yusuf ibn al-Dahhak, from Musa ibn Isma'il, from Hammad ibn Salamah, from Thabit, from Ibn 'Umar, from the Prophet (peace be upon him), that he said to a man: "Did you do such-and-such?" The man replied: "No, by the One besides whom there is no god—I did not do it." Then Gabriel (peace be upon him) came and said: "He did indeed do it, but Allah has forgiven him due to his sincerity."

L18097 And Abū Dāwūd narrated it through the chain of Mūsā ibn Ismāʿīl → Ḥam-

وَمِنْ طَرِيقِ عِمْرَانَ بْنِ الْحُصَيْنِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ حَلَفَ عَلَى يَمِينٍ مَصْبُورَةٍ كَاذِبًا فَلْيَتَبَوَّأْ بِوَجْهِهِ مَقْعَدَهُ مِنْ النَّارِ» .

وَمِنْ طَرِيقِ الْأَشْعَثِ بْنِ قَيْسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ حَلَفَ عَلَى يَمِينِ صَبْرٍ وَهُوَ فِيهَا فَاجِرٌ يَقْتَطِعُ بِهَا مَالَ امْرِئٍ مُسْلِمٍ لَقِيَ اللَّهَ وَهُوَ عَلَيْهِ غَضْبَانُ» .

وَمِنْ طَرِيقِ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ حَلَفَ عَلَى مِنْبَرِي هَذَا بِيَمِينٍ آثِمَةٍ تَبَوَّأَ مَقْعَدَهُ مِنْ النَّارِ» .

وَزَادَ بَعْضُهُمْ «وَلَوْ كَانَ سِوَاكًا أَخْضَرَ» هَذِهِ كُلُّهَا آثَارٌ صِحَاحٌ.

وَذَكَرُوا أَيْضًا: خَبَرًا صَحِيحًا مِنْ طَرِيقِ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عِكْرِمَةَ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ اسْتَلَجَّ فِي أَهْلِهِ بِيَمِينٍ فَهُوَ أَعْظَمُ إثْمًا لَيْسَ تُغْنِي الْكَفَّارَةُ» .

وَبِخَبَرٍ: رُوِّينَا مِنْ طَرِيقِ ابْنِ الْجَهْمِ نا يُوسُفُ بْنُ الضَّحَّاكِ نا مُوسَى بْنُ إسْمَاعِيلَ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ ثَابِتٍ عَنْ ابْنِ عُمَرَ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ لِرَجُلٍ: فَعَلْتَ كَذَا وَكَذَا؟ قَالَ: لَا وَالَّذِي لَا إلَهَ إلَّا هُوَ مَا فَعَلْتُ، فَجَاءَ جِبْرِيلُ - عَلَيْهِ السَّلَامُ - فَقَالَ: بَلَى قَدْ فَعَلَ، لَكِنَّ اللَّهَ غَفَرَ لَهُ بِالْإِخْلَاصِ» .

وَرَوَاهُ أَبُو دَاوُد مِنْ طَرِيقِ مُوسَى بْنِ إسْمَاعِيلَ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي يَحْيَى عَنْ ابْنِ عَبَّاسٍ.

[17] **Hadith references (L18088):** Sahih al-Bukhari 6675; Sunan an-Nasai 4011; Sunan an-Nasai 4868.

[18] **Hadith references (L18091):** Sunan Abi Dawud 3242.

[19] **Hadith references (L18093):** Bulugh al-Maram 1428.

mād ibn Salama → ʿAṭāʾ ibn al-Sāʾib → Abū Yaḥyā → Ibn ʿAbbās.

وَهَكَذَا رُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي يَحْيَى عَنْ ابْنِ عَبَّاسٍ، فَإِنْ لَمْ يَكُنْ أَخْطَأَ فِيهِ يُوسُفُ بْنُ الضَّحَّاكِ فَهُوَ حَدِيثٌ جَيِّدٌ، وَإِلَّا فَهُوَ ضَعِيفٌ؟ قَالُوا: فَلَمْ يَأْمُرْهُ - عَلَيْهِ السَّلَامُ - بِكَفَّارَةٍ؟ قَالُوا: إِنَّمَا الْكَفَّارَةُ فِيمَا حَلَفَ فِيهِ فِي الْمُسْتَأْنَفِ.

L18098 And likewise, we have also narrated it through the chain of Ibn Abi Shaybah from Waki‘ from Sufyan al-Thawri from ‘Ata’ ibn al-Sa’ib from Abu Yahya from Ibn ‘Abbas. If Yusuf ibn al-Dahhak did not err in the narration, then it is a sound hadith; otherwise, it is weak. They said: “Did he (peace be upon him) not instruct him to perform expiation?” They replied: “Expiation applies only to what one swears upon in the newly initiated matter.”

وَمَوَّهُوا فِي ذَلِكَ بِذِكْرِ قَوْلِ اللَّهِ تَعَالَى {وَاحْفَظُوا أَيْمَانَكُمْ} [المائدة: ٨٩] .

L18099 They disguised this by invoking the words of Allah, the Exalted: “Guard your oaths” [al-Mā’idah 5:89].[20]

قَالُوا: وَحِفْظُهَا إِنَّمَا يَكُونُ بَعْدَ مُوَاقَعَتِهَا.

L18100 They said: Her maintenance is only after consummation.

هَذَا كُلُّ مَا شَغَبُوا بِهِ - وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ.

L18101 This is all they have clamored about—and none of it constitutes valid proof for them.

أَمَّا حَدِيثُ ابْنِ مَسْعُودٍ، وَأَبِي ذَرٍّ، وَعِمْرَانَ، وَجَابِرٍ، وَالْأَشْعَثِ، وَقَوْلُ اللَّهِ تَعَالَى {إِنَّ الَّذِينَ يَشْتَرُونَ بِعَهْدِ اللَّهِ وَأَيْمَانِهِمْ} [آل عمران: ٧٧] فَلَيْسَ فِي شَيْءٍ مِنْ ذَلِكَ إِسْقَاطُ الْكَفَّارَةِ وَلَا إِيجَابُهَا، كَمَا لَيْسَ فِيهَا ذِكْرٌ لِتَوْبَةٍ أَصْلًا، وَإِنَّمَا فِيهَا كُلِّهَا الْوَعِيدُ الشَّدِيدُ بِالنَّارِ وَالْعِقَابِ -.

L18102–18103 As for the narrations of Ibn Mas’ud, Abu Dharr, Imran, Jabir, and Al-Ash’ath, and the verse of Allah the Exalted: {Indeed, those who exchange the covenant of Allah and their oaths} [Al-Imran:77], there is nothing in any of that regarding the waiver of expiation or its obligation, just as they make no mention of repentance whatsoever. Rather, all of them contain the severe threat of the Fire and punishment—[21]

فَسَقَطَ تَعَلُّقُهُمْ بِهَا فِي إِسْقَاطِ الْكَفَّارَةِ.

L18104 Therefore, their attachment to it was nullified due to the removal of the expiation.

ثُمَّ الْعَجَبُ كُلُّهُ أَنَّهُمْ فِي هَذِهِ الْأَحَادِيثِ، وَفِي هَذِهِ الْآيَةِ عَلَى قِسْمَيْنِ -:

L18105 Then the truly astonishing thing is that they, in these hadiths and in this verse, are divided into two groups:

قِسْمٌ يَقُولُ: إِنَّهُ لَيْسَ شَيْءٌ مِمَّا ذُكِرَ فِي هَذِهِ الْآيَةِ، وَفِي هَذِهِ الْأَحَادِيثِ -: يَقْطَعُ: بِكَوْنِهِ وَلَا بُدَّ، وَقَدْ يُمْكِنُ أَنْ يَغْفِرَ اللَّهُ عَزَّ وَجَلَّ.

L18106 A faction argues: Nothing mentioned in this Quranic verse or these hadiths conclusively confirms its inevitability, and it is indeed possible that Allah the Almighty might grant forgiveness.

وَقِسْمٌ قَالُوا: هُوَ نَافِذٌ مَا لَمْ يَتُبْ - فَمَنْ أَعْجَبُ شَأْنًا مِمَّنْ احْتَجَّ بِآيَةٍ وَأَخْبَارٍ صِحَاحٍ فِي إِسْقَاطِ كَفَّارَةِ يَمِينٍ لَيْسَ فِيهَا مِنْ ذَلِكَ ذِكْرٌ أَصْلًا، وَهُمْ قَدْ خَالَفُوا كُلَّ مَا فِيهَا عَلَانِيَةً

L18107 Another category [of scholars] said: It remains effective unless repentance

[20] **Qur’an references (L18099):** Qur’an 5:89 (Al-Ma’idah).
[21] **Qur’an references (L18103):** Qur’an 3:77 (Ali ’Imran).

occurs. Who could be more astonishing than one who cites a verse and authentic reports to argue for waiving the expiation of an oath—when these texts contain no mention of such [provision] whatsoever—while they have openly opposed everything therein? Is this not utterly astounding? As for the Prophet's statement (peace be upon him), "Whoever insists vehemently in swearing concerning his family, his sin becomes graver—the expiation does not suffice"—this constitutes no proof for them whatsoever. For in our view and theirs, among oaths exist vain utterances incurring no sin, and this type is unquestionably not referenced in this hadith.

- وَهَذَا عَجَبٌ جِدًّا؟ وَأَمَّا قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «مَنْ اسْتَلَجَّ فِي أَهْلِهِ بِيَمِينٍ فَهُوَ أَعْظَمُ إِثْمًا لَيْسَ تُغْنِي الْكَفَّارَةُ» فَلَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا؛ لِأَنَّ الْأَيْمَانَ عِنْدَنَا وَعِنْدَهُمْ، مِنْهَا لَغْوٌ لَا إِثْمَ فِيهِ، وَلَمْ يَرِدْ هَذَا الصِّنْفُ فِي هَذَا الْخَبَرِ بِلَا شَكٍّ.

L18108 Among these is when a person swears an oath about something for which another option is better than it. There is no disagreement among us and among them that the expiation suffices for this.

وَمِنْهَا - مَا يَكُونُ الْمَرْءُ بِهَا حَالِفًا عَلَى مَا غَيْرُهُ خَيْرٌ مِنْهُ وَلَا خِلَافَ عِنْدَنَا وَعِنْدَهُمْ فِي أَنَّ الْكَفَّارَةَ تُغْنِي فِي هَذَا.

L18109 And through him, the text has come from the Prophet—may Allah bless him and grant him peace—as we will mention hereafter, if Allah, the Exalted, wills.

وَبِهِ جَاءَ النَّصُّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى.

L18110 Among these is the perjurious oath about which we disagree. Through sensory perception and observation, we and they both know that one swearing it is not called 'persistent in falsehood' toward his family. Thus, it becomes invalid to claim this report refers to such an oath, and their argument for abolishing expiation in perjurious oaths loses validity.

وَمِنْهَا - الْيَمِينُ الْغَمُوسُ الَّتِي اخْتَلَفْنَا فِيهَا، وَبِالْحِسِّ وَالْمُشَاهَدَةِ نَدْرِي نَحْنُ وَهُمْ أَنَّ الْحَالِفَ بِهَا لَا يُسَمَّى مُسْتَلِجًّا فِي أَهْلِهِ، فَبَطَلَ أَنْ يُرَادَ بِهَذَا الْخَبَرِ هَذَا الْقَسَمَ، وَبَطَلَ احْتِجَاجُهُمْ بِهِ فِي إِسْقَاطِهِمْ الْكَفَّارَةَ فِي الْيَمِينِ الْغَمُوسِ.

L18111–18113 If it is said: What is the meaning of this report according to you, given that it is authentic? We say: Yes, its meaning—and all praise is due to God—is clear according to the apparent wording, without alteration, distortion, addition, or omission. It refers to a person swearing to treat his family kindly or to refrain from harming them, then persisting in breaking it—harming them, failing to treat them well, and expiating his oath. This person, without doubt, is obstinately persisting in violating his oath toward his family by not fulfilling it, and he is undoubtedly more sinful. The expiation does not suffice for him, nor does it absolve [his sin]. Even if wronging them was obligatory upon him, this narration does not bear any meaning other than this whatsoever.

فَإِنْ قِيلَ: فَمَا مَعْنَى هَذَا الْخَبَرِ عِنْدَكُمْ وَهُوَ صَحِيحٌ؟ قُلْنَا: نَعَمْ، مَعْنَاهُ - وَلِلَّهِ الْحَمْدُ - بَيِّنٌ عَلَى ظَاهِرِ لَفْظِهِ دُونَ تَبْدِيلٍ وَلَا إِحَالَةٍ وَلَا زِيَادَةٍ وَلَا نَقْصٍ، وَهُوَ أَنْ يَحْلِفَ الْمَرْءُ أَنْ يُحْسِنَ إِلَى أَهْلِهِ، أَوْ أَنْ لَا يَضُرَّ بِهِمْ، ثُمَّ لَجَّ فِي أَنْ يَحْنَثَ، فَيَضُرَّ بِهِمْ، وَلَا يُحْسِنَ إِلَيْهِمْ وَيُكَفِّرَ عَنْ يَمِينِهِ - فَهَذَا بِلَا شَكٍّ مُسْتَلِجٌّ بِيَمِينِهِ فِي أَهْلِهِ أَنْ لَا يَفِيَ بِهَا، وَهُوَ أَعْظَمُ إِثْمًا بِلَا شَكٍّ - وَالْكَفَّارَةُ لَا تُغْنِي عَنْهُ، وَلَا تَحُطُّ إِثْمَ إِسَاءَتِهِ إِلَيْهِمْ وَإِنْ كَانَتْ وَاجِبَةً عَلَيْهِ - لَا يَحْتَمِلُ أَلْبَتَّةَ هَذَا الْخَبَرُ مَعْنًى غَيْرَ هَذَا.

L18114 As for the narration of Ḥammād ibn Salamah and Sufyān, the chain of

Sufyān is not authentic. If the chain of Ḥammād is authentic, it contains no mention of waiving expiation. It merely states that Allah the Exalted forgave him solely due to sincerity. Not every legal precept exists in every narration, and there is no doubt that one is commanded to repent from intentional false swearing. This narration makes no mention of it. If the Prophet's silence—peace be upon him—regarding expiation constitutes proof of its waiver, then his silence regarding repentance necessarily constitutes proof of its waiver. Yet they do not uphold this position.

وَأَمَّا حَدِيثُ حَمَّادِ بْنِ سَلَمَةَ، وَسُفْيَانَ، فَطَرِيقُ سُفْيَانَ لَا تَصِحُّ، فَإِنْ صَحَّتْ طَرِيقُ حَمَّادٍ فَلَيْسَ فِيهِ لِإِسْقَاطِ الْكَفَّارَةِ ذِكْرٌ، وَإِنَّمَا فِيهِ: أَنَّ اللَّهَ تَعَالَى غَفَرَ لَهُ بِالْإِخْلَاصِ فَقَطْ، وَلَيْسَ كُلُّ شَرِيعَةٍ تُوجَدُ فِي كُلِّ حَدِيثٍ - وَلَا شَكَّ فِي أَنَّهُ مَأْمُورٌ بِالتَّوْبَةِ مِنْ تَعَمُّدِ الْحَلِفِ عَلَى الْكَذِبِ، وَلَيْسَ فِي هَذَا الْخَبَرِ لَهَا ذِكْرٌ، فَإِنْ كَانَ سُكُوتُهُ - عَلَيْهِ السَّلَامُ - عَنْ ذِكْرِ الْكَفَّارَةِ حُجَّةً فِي سُقُوطِهَا فَسُكُوتُهُ عَنْ ذِكْرِ التَّوْبَةِ حُجَّةٌ فِي سُقُوطِهَا وَلَا بُدَّ، وَهُمْ لَا يَقُولُونَ بِهَذَا.

L18115 If they say, "He has commanded repentance in other texts?" We respond, "He has also commanded expiation in other texts, which we shall mention, Allah, the Exalted, willing."

فَإِنْ قَالُوا: قَدْ أَمَرَ بِالتَّوْبَةِ فِي نُصُوصٍ أُخَرَ؟ قُلْنَا: وَقَدْ أَمَرَ بِالْكَفَّارَةِ فِي نُصُوصٍ أُخَرَ نَذْكُرُهَا إِنْ شَاءَ اللَّهُ تَعَالَى.

L18116 And we say to them: If his silence—peace be upon him—regarding the mention of expiation in all these reports constitutes evidence for its nullification, then his silence (peace be upon him) regarding the mention of its lapse would equally constitute evidence for its obligation—with no distinction. This is a claim like any claim; thus, must the ruling on expiation be sought in a text other than these? As for Allah's statement, *"And fulfill your oaths"* (Al-Ma'idah: 89), it is an established ruling.[22]

وَنَقُولُ لَهُمْ: إِنْ كَانَ سُكُوتُهُ - عَلَيْهِ السَّلَامُ - عَنْ ذِكْرِ الْكَفَّارَةِ فِي هَذِهِ الْأَخْبَارِ كُلِّهَا حُجَّةً فِي إِسْقَاطِهَا فَسُكُوتُهُ - عَلَيْهِ السَّلَامُ - عَنْ ذِكْرِ سُقُوطِهَا حُجَّةٌ فِي إِيجَابِهَا وَلَا فَرْقَ - وَهِيَ دَعْوَى كَدَعْوَى، فَالْوَاجِبُ طَلَبُ حُكْمِ الْكَفَّارَةِ فِي نَصٍّ غَيْرِ هَذِهِ؟ وَأَمَّا قَوْلُ اللَّهِ تَعَالَى {وَاحْفَظُوا أَيْمَانَكُمْ} [المائدة: ٨٩] فَحَقٌّ.

L18117 As for their claim that preservation only applies after the enactment of oaths, this is falsehood, fabrication, calumny, and pure misguidance. Rather, the preservation of oaths is obligatory before swearing by them, during the swearing, and after swearing by them. Thus, one must not swear in any of these instances except truthfully.

وَأَمَّا قَوْلُهُمْ: إِنَّ الْحِفْظَ لَا يَكُونُ إِلَّا بَعْدَ مُوَاقَعَةِ الْيَمِينِ فَكَذِبٌ، وَافْتِرَاءٌ، وَبُهْت، وَضَلَالٌ مَحْضٌ، بَلْ حِفْظُ الْأَيْمَانِ وَاجِبٌ قَبْلَ الْحَلِفِ بِهَا، وَفِي الْحَلِفِ بِهَا، وَبَعْدَ الْحَلِفِ بِهَا، فَلَا يَحْلِفُ فِي كُلِّ ذَلِكَ إِلَّا عَلَى حَقٍّ.

L18118 Then suppose the matter is as they claim, and that the Exalted's statement "Guard your oaths" [Al-Mā'idah: 89] applies only after swearing—what evidence does this provide that no expiation is required for one who deliberately swears a false oath? Is this anything but blatant deception and obfuscation, distorting Allah's speech from its proper context? Anyone possessing even

ثُمَّ هَبْكَ أَنَّ الْأَمْرَ كَمَا قَالُوا، وَأَنَّ قَوْله تَعَالَى: {وَاحْفَظُوا أَيْمَانَكُمْ} [المائدة: ٨٩] إِنَّمَا هُوَ بَعْدَ أَنْ يَحْلِفَ، فَأَيُّ دَلِيلٍ فِي هَذَا عَلَى أَنْ لَا كَفَّارَةَ عَلَى مَنْ تَعَمَّدَ الْحَلِفَ كَاذِبًا؟ وَهَلْ هَذَا مِنْهُمْ إِلَّا الْمُبَاهَتَةَ وَالتَّمْوِيهَ، وَتَحْرِيفَ كَلَامِ اللَّهِ عَنْ مَوَاضِعِهِ وَمَا يَشُكُّ كُلُّ

[22] **Qur'an references (L18116):** Qur'an 5:89 (Al-Ma'idah).

a trace of discernment knows that whoever intentionally swears falsely has failed to guard his oath, thus exposing the corruption of all they deceitfully fabricate.[23]

ذِي مَسْكَةِ تَمْيِيزٍ فِي أَنَّ مَنْ تَعَمَّدَ الْحَلِفَ كَاذِبًا فَمَا حَفِظَ يَمِينَهُ - فَظَهَرَ فَسَادُ كُلِّ مَا يُمَخْرِقُونَ بِهِ.

L18119 As for their claim that expiation is only obligatory upon him concerning what he swore upon in the renewed oath, this is invalid—a baseless assertion with no evidence from the Quran, the Sunnah, or *Ijma*.

وَأَمَّا قَوْلُهُمْ: إنَّ الْكَفَّارَةَ إنَّمَا تَجِبُ عَلَيْهِ فِيمَا حَلَفَ عَلَيْهِ فِي الْمُسْتَأْنَفِ فَبَاطِلٌ، وَدَعْوَى بِلَا بُرْهَانٍ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إجْمَاعٍ.

L18120 If they mention the saying of the Messenger of Allah—peace and blessings be upon him—: "One does not swear an oath and then see something better than it unless he does what is better and expiates his oath."

فَإِنْ ذَكَرُوا «قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ لَا يَحْلِفُ عَلَى يَمِينٍ فَيَرَى غَيْرَهَا خَيْرًا مِنْهَا إلَّا أَتَى الَّذِي هُوَ خَيْرٌ وَكَفَّرَ عَنْ يَمِينِهِ» .

L18121–18123 They have no proof in this matter, for expiation according to them and according to us is obligatory in other than this attribute, which is: Whoever swears an oath while considering something else worse than it, then commits that which is worse, expiation is obligatory upon him in that matter according to both them and us.

فَلَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ الْكَفَّارَةَ عِنْدَهُمْ وَعِنْدَنَا تَجِبُ فِي غَيْرِ هَذِهِ الصِّفَةِ، وَهِيَ: مَنْ حَلَفَ عَلَى يَمِينٍ وَرَأَى غَيْرَهَا شَرًّا مِنْهَا فَفَعَلَ الَّذِي هُوَ شَرٌّ، فَإِنَّ الْكَفَّارَةَ عِنْدَهُمْ وَعِنْدَنَا وَاجِبَةٌ عَلَيْهِ فِي ذَلِكَ.

L18124 Abu Muhammad said: As for their statement that it is too great to be expiated—from where do they derive this? Where did they find it? Is this not merely a ruling from themselves, not from Allah the Exalted? They may be countered by saying: A better claim than theirs can be made. Rather, the greater the sin, the more its committer requires expiation, and it becomes more obligatory for him than for matters that are not sins at all or for minor sins. Regarding one who intentionally breaks the fast in Ramadan—we and they agree that expiation is required of him. Perhaps his sin is greater than that of one who swears a false oath or similar to it. They hold the view that expiation is required for one who intentionally invalidates his Hajj through the sacrificial animal according to their opinions, and perhaps his sin is greater than that of one who swears a false oath or similar to it.

قَالَ أَبُو مُحَمَّد: وَأَمَّا قَوْلُهُمْ: هِيَ أَعْظَمُ مِنْ أَنْ تُكَفَّرَ فَمِنْ أَيْنَ لَهُمْ هَذَا؟ وَأَيْنَ وَجَدُوهُ؟ وَهَلْ هُوَ إلَّا حُكْمٌ مِنْهُمْ لَا مِنْ عِنْدِ اللَّهِ تَعَالَى؟ وَيُعَارَضُونَ بِأَنْ يُقَالَ لَهُمْ: دَعْوَى أَحْسَنُ مِنْ دَعْوَاهُمْ، بَلْ كُلَّمَا عَظُمَ الذَّنْبُ كَانَ صَاحِبُهُ أَحْوَجَ إلَى الْكَفَّارَةِ، وَكَانَتْ أَوْجَبَ عَلَيْهِ مِنْهَا فِيمَا لَيْسَ ذَنْبًا أَصْلًا، وَفِيمَا هُوَ صَغِيرٌ مِنْ الذُّنُوبِ، وَهَذَا الْمُتَعَمِّدُ لِلْفِطْرِ فِي رَمَضَانَ نَحْنُ وَهُمْ مُتَّفِقُونَ عَلَى أَنَّ الْكَفَّارَةَ عَلَيْهِ، وَلَعَلَّهُ أَعْظَمُ إثْمًا مِنْ حَالِفٍ عَلَى يَمِينِ غَمُوسٍ، أَوْ مِثْلِهِ وَهُمْ يَرَوْنَ الْكَفَّارَةَ عَلَى مَنْ تَعَمَّدَ إفْسَادَ حَجِّهِ بِالْهَدْيِ بِآرَائِهِمْ، وَلَعَلَّهُ أَعْظَمُ إثْمًا مِنْ حَالِفِ يَمِينِ غَمُوسٍ أَوْ مِثْلِهِ.

L18125 And more astonishing than all of this is their ruling regarding one who swore not to kill a believer intentionally, to pray the obligatory prayers of that day, not to commit adultery with a forbidden woman, and not to engage

وَأَعْجَبُ مِنْ هَذَا كُلِّهِ قَوْلُهُمْ فِيمَنْ حَلَفَ أَنْ لَا يَقْتُلَ مُؤْمِنًا مُتَعَمِّدًا، وَأَنْ يُصَلِّيَ الْيَوْمَ الصَّلَوَاتِ الْمَفْرُوضَةَ، وَأَنْ لَا يَزْنِيَ بِحَرِيمَةٍ وَأَنْ لَا يَعْمَلَ بِالرِّبَا، ثُمَّ لَمْ يُصَلِّ مِنْ يَوْمِهِ

[23] **Qur'an references (L18118):** Qur'an 5:89 (Al-Ma'idah).

in usury—then he did not pray that day, killed the soul Allah has forbidden, committed adultery, and engaged in usury—thus ritual expiation is incumbent upon him for those very oaths. By Allah! What would Muslims say [to this]? Which of the two is the graver sin—one who deliberately swears falsely that he did not see Zaid that day when he had indeed seen him, yet they invalidated ritual expiation for it due to the oath's deliberate falsehood?

L18126 Or one who breaks an oath by failing to perform the five prayers, by killing a soul, by fornicating with his daughter or mother, or by engaging in usury - yet they fail to perceive the enormity of his oath-breaking through these tremendous sins which, by Allah, are certainly - according to every religiously knowledgeable person - more sinful than a thousand oaths sworn with intentional falsehood. Does no expiation apply to it because it is too grave to be expiated? Do the statements of these people follow textual adherence or analogical reasoning? As for their obfuscation by claiming this was narrated from Ibn Mas'ud - with no known opposition from the Companions, may Allah be pleased with them - this is a disconnected narration that is invalid. Abu al-'Aliyah never met Ibn Mas'ud or his peers among the Companions, may Allah be pleased with them. He only encountered the youngest Companions like Ibn Abbas and his contemporaries, may Allah be pleased with them.

L18127–18129 They differed from Ibn Mas'ud concerning his statement: "Whoever swears by the Quran or by a surah from it incurs an expiation for every verse," and no opposing opinion from the Companions is known in this matter. Therefore, Ibn Mas'ud's view constitutes authoritative evidence when it is disputed. And it is not valid as evidence if they did not intend for it to serve as such.

L18130 Abū Muḥammad said: Since all that they clamored against has collapsed, let us bring forth proof for the soundness of our position. So we say: And with Allah, the Exalted, is divine success (tawfīq).

L18131 Allah, the Almighty and Majestic, said: "The expiation for it is feeding ten needy people from the average food you feed your families, or clothing them, or freeing a slave" [Al-Ma'idah: 89], up to His statement: "That is

ذَلِكَ، وَقَتَلَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ، وَزَنَى، وَأَرْبَى فَإِنَّ عَلَيْهِ الْكَفَّارَةُ فِي أَيْمَانِهِ تِلْكَ فَيَا لِلَّهِ وَيَا لِلْمُسْلِمِينَ أَيُّمَا أَعْظَمُ إِثْمًا: مَنْ حَلَفَ عَامِدًا لِلْكَذِبِ أَنَّهُ مَا رَأَى زَيْدًا الْيَوْمَ، وَهُوَ قَدْ رَآهُ فَأَسْقَطُوا فِيهِ الْكَفَّارَةَ لِعَظْمِهِ.

أَوْ مَنْ حَنِثَ بِأَنْ لَا يُصَلِّيَ الْخَمْسَ صَلَوَاتٍ، وَبِأَنْ قَتَلَ النَّفْسَ، وَبِأَنْ زَنَى بِابْنَتِهِ أَوْ بِأُمِّهِ، وَبِأَنْ عَمِلَ بِالرِّبَا - ثُمَّ لَا يَرَوْنَ عِظَمَ حِنْثِهِ فِي إِتْيَانِهِ هَذِهِ الْكَبَائِرِ الْعَظِيمَةِ الَّتِي هِيَ وَاَللَّهِ قَطْعًا عِنْدَ كُلِّ مَنْ لَهُ عِلْمٌ بِالدِّينِ أَعْظَمُ إِثْمًا مِنْ أَلْفِ يَمِينٍ تَعَمَّدَ فِيهَا الْكَذِبَ، لَا تَجِبُ فِيهِ كَفَّارَةٌ، لِأَنَّهُ أَعْظَمُ مِنْ أَنْ يُكَفِّرَ؟ فَهَلْ تَجْرِي أَقْوَالُ هَؤُلَاءِ الْقَوْمِ عَلَى اتِّبَاعِ نَصٍّ أَوْ عَلَى الْتِزَامِ قِيَاسٍ؟ وَأَمَّا تَمْوِيهُهُمْ بِأَنَّهُ رُوِيَ ذَلِكَ عَنْ ابْنِ مَسْعُودٍ وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَهِيَ رِوَايَةٌ مُنْقَطِعَةٌ لَا تَصِحُّ؛ لِأَنَّ أَبَا الْعَالِيَةِ لَمْ يَلْقَ ابْنَ مَسْعُودٍ وَلَا أَمْثَالَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إنَّمَا أَدْرَكَ أَصَاغِرَ الصَّحَابَةِ كَابْنِ عَبَّاسٍ، وَمِثْلِهِ، رَضِيَ اللَّهُ عَنْ جَمِيعِهِمْ.

وَقَدْ خَالَفُوا ابْنَ مَسْعُودٍ فِي قَوْلِهِ: إنَّ مَنْ حَلَفَ بِالْقُرْآنِ، أَوْ بِسُورَةٍ مِنْهُ، فَعَلَيْهِ بِكُلِّ آيَةٍ كَفَّارَةٌ، وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ؛ فَابْنُ مَسْعُودٍ حُجَّةٌ إذَا اُشْتُهُوا، وَغَيْرُ حُجَّةٍ إذَا لَمْ يَشْتَهُوا أَنْ يَكُونَ حُجَّةً.

قَالَ أَبُو مُحَمَّدٍ: فَإِذْ قَدْ سَقَطَ كُلُّ مَا شَغَبُوا بِهِ فَلْنَأْتِ بِالْبُرْهَانِ عَلَى صِحَّةِ قَوْلِنَا -: فَنَقُولُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

the expiation for your oaths when you have sworn. And guard your oaths" [Al-Ma'idah: 89].[24]

قَالَ اللَّهُ عَزَّ وَجَلَّ {فَكَفَّارَتُهُ إِطْعَامُ عَشَرَةِ مَسَاكِينَ مِنْ أَوْسَطِ مَا تُطْعِمُونَ أَهْلِيكُمْ أَوْ كِسْوَتُهُمْ أَوْ تَحْرِيرُ رَقَبَةٍ} [المائدة: ٨٩] إِلَى قَوْلِه تَعَالَى {ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ وَاحْفَظُوا أَيْمَانَكُمْ} [المائدة: ٨٩] .

L18132 The apparent meaning of the Quran obligates expiation for every oath. Thus, it is impermissible to exempt any oath from expiation at all unless a Quranic text or Sunnah exempts it. There is no Quranic text or Sunnah whatsoever that exempts the one who swears a deliberately false oath (ghamūs) from expiation; it is therefore obligatory upon him by the text of the Quran.

فَظَاهِرُ الْقُرْآنِ إِيجَابُ الْكَفَّارَةِ فِي كُلِّ يَمِينٍ، فَلَا يَجُوزُ أَنْ تُسْقَطَ كَفَّارَةٌ عَنْ يَمِينٍ أَصْلًا إِلَّا حَيْثُ أَسْقَطَهَا نَصُّ قُرْآنٍ، أَوْ سُنَّةٍ، وَلَا نَصَّ قُرْآنٍ، وَلَا سُنَّةَ، أَصْلًا فِي إِسْقَاطِ الْكَفَّارَةِ عَنْ الْحَالِفِ يَمِينًا غَمُوسًا، فَهِيَ وَاجِبَةٌ عَلَيْهِ بِنَصِّ الْقُرْآنِ.

L18133 The greatest wonder is how those who exempt him from expiation [act] despite the Quran requiring it. Yet they obligate it upon one who breaks an oath unintentionally or in error, though the Quran and Sunnah have exempted such a person from it.

وَالْعَجَبُ كُلُّهُ مِمَّنْ أَسْقَطَهَا عَنْهُ وَالْقُرْآنُ يُوجِبُهَا، ثُمَّ يُوجِبُونَهَا عَلَى مَنْ حَنِثَ نَاسِيًا مُخْطِئًا وَالْقُرْآنُ وَالسُّنَّةُ قَدْ أَسْقَطَاهَا عَنْهُ.

L18134 And they made it obligatory upon one who neither deliberately swore a sworn oath nor intended to swear it, and the Quran and the Sunnah both nullify it for him; this, as you can see.

وَأَوْجَبُوهَا عَلَى مَنْ لَمْ يَتَعَمَّدْ الْيَمِينَ وَلَا نَوَاهَا وَالْقُرْآنُ وَالسُّنَّةُ يَسْقُطَانِهَا عَنْهُ، وَهَذِهِ كَمَا تَرَى.

L18135 If they say: "Indeed, this verse contains an elision without doubt, for otherwise atonement would be obligatory upon everyone who swears an oath the moment they swear it—whether they fulfill it or break it?" We respond: "Yes, there is no doubt in this. However, no one can truthfully assert its identification except through an authentic text or certain consensus confirming it to be precisely what Allah the Exalted intended—not anything else. As for fabricated claims, then no—" We thus find the elision mentioned in the verse has been confirmed through certain consensus and authentic texts as referring to "then you [all] broke it." Since there is no doubt in this, one who deliberately swears a false oath, knowing it to be a lie, is a breaker of it by the certain ruling of the Sharia and the rulings of the language.

فَإِنْ قَالُوا: إنَّ هَذِهِ الْآيَةُ فِيهَا حَذْفٌ بِلَا شَكٍّ، وَلَوْلَا ذَلِكَ لَوَجَبَتْ الْكَفَّارَةُ عَلَى كُلِّ مَنْ حَلَفَ سَاعَةَ حَلَفَ بَرَّ أَوْ حَنِثَ؟ قُلْنَا: نَعَمْ لَا شَكَّ فِي ذَلِكَ إلَّا أَنَّ ذَلِكَ الْحَذْفَ لَا يَصْدُقُ أَحَدٌ فِي تَعْيِينِهِ لَهُ إلَّا بِنَصٍّ صَحِيحٍ، أَوْ إجْمَاعٍ مُتَيَقَّنٍ، عَلَى أَنَّهُ هُوَ الَّذِي أَرَادَ اللَّهُ تَعَالَى لَا مَا سِوَاهُ، وَأَمَّا بِالدَّعْوَى الْمُفْتَرَاةِ فَلَا -: فَوَجَدْنَا الْحَذْفَ الْمَذْكُورَ فِي الْآيَةِ قَدْ صَحَّ الْإِجْمَاعُ الْمُتَيَقَّنُ وَالنَّصُّ عَلَى أَنَّهُ حَنِثْتُمْ، وَإِذْ لَا شَكَّ فِي هَذَا فَالْمُتَعَمِّدُ لِلْيَمِينِ عَلَى الْكَذِبِ عَالِمًا بِأَنَّهُ كَذِبٌ حَانِثٌ بِيَقِينِ حُكْمِ الشَّرِيعَةِ، وَحُكْمِ اللُّغَةِ.

L18136 Thus, it is established since he is an oath-breaker that expiation becomes obligatory upon him, and this is of utmost clarity — and success is from

[24] **Qur'an references (L18131):** Qur'an 5:89 (Al-Ma'idah).

فَصَحَّ إِذْ هُوَ حَانِثٌ أَنَّ عَلَيْهِ الْكَفَّارَةَ، وَهَذَا فِي غَايَةِ الْوُضُوحِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ - وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَقَدْ قَاسُوا حَالِقَ رَأْسِهِ لِغَيْرِ ضَرُورَةٍ مُحْرِمًا غَيْرَ عَاصٍ لِلَّهِ تَعَالَى.

Allah, the Most High. The people, as they claim, are proponents of analogy, and they have analogized the one who shaves his head without necessity to a person in *iḥrām* who is not disobeying Allah Almighty.

فَهَلَّا قَاسُوا الْحَالِفَ عَامِدًا لِلْكَذِبِ حَانِثًا عَاصِيًا عَلَى الْحَالِفِ أَنْ لَا يَعْصِيَ، فَحَنِثَ عَاصِيًا، أَوْ عَلَى مَنْ حَلَفَ أَنْ لَا يَبَرَّ فَبَرَّ: غَيْرَ عَاصٍ فِي إِيجَابِ الْكَفَّارَةِ فِي كُلِّ ذَلِكَ؟ وَلَكِنَّ هَذَا مِقْدَارُ عِلْمِهِمْ وَقِيَاسِهِمْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L18137–18138 Why do they not apply analogy between the deliberate oath-breaker who intends falsehood—a sinful transgressor—and one who swears not to disobey yet breaks his oath sinfully, or one who swears not to act righteously yet does so—without being sinful in the obligation of atonement for all such cases? But this is the extent of their knowledge and analogical reasoning—and all success lies with Allah the Exalted.

[مَسْأَلَةُ الْيَمِينُ فِي الْغَضَبِ]

A Jurisprudential Issue: The Oath in the State of Anger

١١٣٥ - مَسْأَلَةٌ

Issue 1135

وَالْيَمِينُ فِي الْغَضَبِ وَالرِّضَا، وَعَلَى أَنْ يُطِيعَ، أَوْ عَلَى أَنْ يَعْصِيَ، أَوْ عَلَى مَا لَا طَاعَةَ فِيهِ وَلَا مَعْصِيَةَ سَوَاءٌ فِي كُلِّ مَا ذَكَرْنَا إِنْ تَعَمَّدَ الْحِنْثَ فِي كُلِّ ذَلِكَ فَعَلَيْهِ الْكَفَّارَةُ، وَإِنْ لَمْ يَتَعَمَّدْ الْحِنْثَ، أَوْ لَمْ يَعْقِدْ الْيَمِينَ بِقَلْبِهِ فَلَا كَفَّارَةَ فِي ذَلِكَ، لِقَوْلِ اللَّهِ تَعَالَى: {ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ وَاحْفَظُوا أَيْمَانَكُمْ} [المائدة: ٨٩] فَالْكَفَّارَةُ وَاجِبَةٌ فِي كُلِّ حِنْثٍ قَصَدَهُ الْمَرْءُ.

L18139 L18140 L18141 An oath made in anger or contentment, whether to obey, to disobey, or regarding matters that involve neither obedience nor disobedience, is the same in all the aforementioned situations. If one intentionally commits a breach of oath in any of these cases, expiation is required. If the breach was unintentional or the oath was not firmly resolved in one's heart, no expiation is required, based on the words of Allah Almighty: {That is the expiation for your oaths when you swear, and guard your oaths} [Al-Mā'idah 5:89]. Thus, expiation is obligatory for every intentional breach one resolves.[25]

وَقَدْ اخْتَلَفَ السَّلَفُ فِي ذَلِكَ -: فَرُوِيَ عَنْ ابْنِ عَبَّاسٍ أَنَّ لَغْوَ الْيَمِينِ هُوَ الْيَمِينُ فِي الْغَضَبِ وَلَا كَفَّارَةَ فِيهَا.

L18142 The Salaf differed regarding that—it is narrated from Ibn Abbas that a vain oath is an oath sworn in anger, and there is no expiation for it.

قَالَ أَبُو مُحَمَّد: وَهَذَا قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ، بَلْ الْبُرْهَانُ قَائِمٌ بِخِلَافِهِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو مَعْمَرٍ هُوَ عَبْدُ اللَّهِ بْنُ عَمْرٍو هُوَ الرَّقِّيِّ - نا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ التَّنُّورِيُّ نا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ - نا الْقَاسِمُ بْنُ عَاصِمٍ عَنْ زَهْدَمٍ الْجَرْمِيِّ عَنْ أَبِي مُوسَى

L18143 Abu Muhammad said: This is a statement unsupported by evidence of its validity; rather, conclusive proof stands contrary to it. As narrated through Al-Bukhari's chain: Abu Ma'mar (Abdullah ibn Amr al-Raqqi) → Abdul-Warith ibn Sa'id al-Tannuri → Ayyub al-Sakhtiyani → al-Qasim ibn Asim → Zahdam

[25] **Qur'an references (L18141):** Qur'an 5:89 (Al-Ma'idah).

أَنَّهُ سَمِعَهُ يَقُولُ «أَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي نَفَرٍ مِنْ الْأَشْعَرِيِّينَ فَوَافَقْتُهُ وَهُوَ غَضْبَانُ فَاسْتَحْمَلْنَاهُ فَحَلَفَ أَنْ لَا يَحْمِلَنَا - ثُمَّ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاَللَّهِ إنْ شَاءَ اللَّهُ لَا أَحْلِفُ عَلَى يَمِينٍ فَأَرَى غَيْرَهَا خَيْرًا مِنْهَا إلَّا أَتَيْتُ الَّذِي هُوَ خَيْرٌ وَتَحَلَّلْتُهَا» .

al-Jarmi → Abu Musa, who said: "I came to the Messenger of Allah (peace and blessings be upon him) with a group of Ash'aris. I encountered him while he was angry. We requested mounts from him, but he swore not to provide us any. Then the Messenger of Allah (peace and blessings be upon him) said: 'By Allah, Allah willing, if I ever swear an oath and then find a better course, I shall adopt what is better and atone for my oath.'"[26]

فَصَحَّ وُجُوبُ الْكَفَّارَةِ فِي الْيَمِينِ فِي الْغَضَبِ قَالَ تَعَالَى: {وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الْأَيْمَانَ فَكَفَّارَتُهُ إِطْعَامُ عَشَرَةِ مَسَاكِينَ مِنْ أَوْسَطِ مَا تُطْعِمُونَ} [المائدة: ٨٩] وَالْحَالِفُ فِي الْغَضَبِ مُعَقِّدٌ لِيَمِينِهِ فَعَلَيْهِ الْكَفَّارَةُ.

L18144 Thus, the obligation of expiation for an oath sworn in anger is established. He, the Exalted, said: **"But He will hold you accountable for what you have made binding as oaths. Its expiation is feeding ten needy people from the average of what you normally provide"** (5:89). The one who swears an oath in anger has made his oath binding, and thus expiation is required of him.[27]

وَأَمَّا الْيَمِينُ فِي الْمَعْصِيَةِ -: فَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي الْبَخْتَرِيِّ: أَنَّ رَجُلًا أَضَافَهُ رَجُلٌ فَحَلَفَ أَنْ يَأْكُلَ، فَحَلَفَ الضَّيْفُ أَنْ لَا يَأْكُلَ، فَقَالَ لَهُ ابْنُ مَسْعُودٍ: كُلْ وَإِنِّي لَا أَظُنُّ أَنَّ أَحَبَّ إلَيْك أَنْ تُكَفِّرَ عَنْ يَمِينِك - فَلَمْ يَرَ الْكَفَّارَةَ فِي ذَلِكَ إلَّا اسْتِحْبَابًا.

L18145 As for an oath concerning a sinful matter, it has been narrated to us through the chain of Ḥammād ibn Salamah from ʿAṭāʾ ibn as-Sāʾib from Abū al-Bakhtarī: A man hosted another man. The host swore that the guest would eat, but the guest swore not to eat. Ibn Masʿūd said to him: "Eat, for I do not believe that what is most preferable to you is to expiate your oath." He did not consider the expiation in this case to be obligatory, but rather as merely recommended.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد بْنِ هِنْدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَابِسٍ أَنَّ ابْنَ عَبَّاسٍ حَلَفَ أَنْ يَجْلِدَ غُلَامَهُ مِائَةَ جَلْدَةٍ، ثُمَّ لَمْ يَجْلِدْهُ، قَالَ: فَقُلْنَا لَهُ فِي ذَلِكَ؟ فَقَالَ: أَلَمْ تَرَ مَا صَنَعْت؟ تَرَكْته، فَذَاكَ بِذَاكَ.

L18146–18148 Narrated through the chain of Ḥammād ibn Salamah, from Dāwūd ibn Hind, from ʿAbd al-Raḥmān ibn ʿĀbis, that... Ibn Abbas swore to lash his servant one hundred times, then refrained. We said to him concerning that, and he replied: "Did you not see what I did? I abandoned it, so that offsets that."

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ سُلَيْمَانَ الْأَحْوَلِ قَالَ: مَنْ حَلَفَ عَلَى مِلْكِ يَمِينِهِ: أَنْ يَضْرِبَهُ، فَإِنَّ كَفَّارَةَ يَمِينِهِ أَنْ لَا يَضْرِبَهُ، وَهِيَ مَعَ الْكَفَّارَةِ حَسَنَةٌ.

L18149 And from the narration of Sufyān ibn ʿUyaynah through Sulaymān al-Aḥwal, who said: Whoever swears an oath to strike what his right hand possesses, the expiation for his oath is to refrain from striking him. Abstaining [from striking], along with the expiation, is a good deed.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَبِيهِ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ فِيمَنْ حَلَفَ أَنْ يَضْرِبَ مَمْلُوكَهُ؟ قَالَ إبْرَاهِيمُ: لَأَنْ يَحْنَثَ أَحَبُّ إلَيَّ

L18150 From the route of ʿAbd al-Razzāq, from Ibn Jurayj, from al-Muʿtamir ibn Su-

[26] **Hadith references (L18143):** Sahih al-Bukhari 6680.
[27] **Qur'an references (L18144):** Qur'an 5:89 (Al-Ma'idah).

laymān al-Taymī, from his father, from al-Mughīrah, from Ibrāhīm regarding one who swore to strike his slave: Ibrāhīm said, “It is more beloved to me that he break the oath than that he strike him.” Al-Muʿtamir said, “I swore to strike my slave girl, but my father forbade me and did not command me to perform expiation.”

مِنْ أَنْ يَضْرِبَهُ، قَالَ الْمُعْتَمِرُ: وَحَلَفْت أَنْ أَضْرِبَ مَمْلُوكَةً لِي، فَنَهَانِي أَبِي وَلَمْ يَأْمُرْنِي بِكَفَّارَةٍ.

L18151 From the narration chain of Muḥammad ibn al-Muthannā: Ubayd Allāh ibn Mūsá al-ʿAbsī narrated to us, from Ḥanẓala ibn Abī Sufyān al-Jumaḥī, who said: Ṭāwus was asked about a man who swore not to emancipate his slave but then emancipated him. Ṭāwus responded: “Do you seek more expiation than this?”

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عُبَيْدُ اللَّهِ بْنُ مُوسَى الْعَبْسِيُّ نا حَنْظَلَةُ بْنُ أَبِي سُفْيَانَ الْجُمَحِيُّ قَالَ: سُئِلَ طَاوُسٌ عَمَّنْ حَلَفَ: أَنْ لَا يَعْتِقَ غُلَامًا لَهُ فَأَعْتَقَهُ؟ فَقَالَ طَاوُوسٌ: تُرِيدُ مِنْ الْكَفَّارَةِ أَكْثَرَ مِنْ هَذَا؟ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هُشَيْمٍ عَنْ أَبِي بِشْرٍ هُوَ جَعْفَرُ بْنُ أَبِي وَحْشِيَّةَ - عَنْ سَعِيدِ بْنِ جُبَيْرٍ فِي لَغْوِ الْيَمِينِ؟ قَالَ: هُوَ الرَّجُلُ يَحْلِفُ عَلَى الْحَرَامِ فَلَا يُؤَاخِذُهُ اللَّهُ بِتَرْكِهِ.

From the narration chain of ʿAbd al-Razzāq, from Hushaym, from Abū Bishr—who is Jaʿfar ibn Abī Waḥshiyya—regarding a frivolous oath: Saʿīd ibn Jubayr was asked about it. He said: “It is when a man swears to do what is unlawful, so Allāh does not hold him accountable for abandoning it.”

L18152 From the chain of Ismail ibn Ishaq: Musaddad narrated to us, Abd al-Wahid ibn Ziyad narrated to us, Asim narrated from Al-Sha’bi, who said: A vain oath is every oath involving disobedience. It has no expiation, for who would make expiation for Satan? From the chain of Ismail: He narrated to us Abdullah ibn Abd al-Wahhab Al-Hajabi, who narrated to us Abd al-Wahid ibn Ziyad, who narrated to us Sulayman Al-Shaybani. He said: I heard Ikrimah say: Whoever swears an oath then sees something better than it, let him adopt it: {Allah does not hold you accountable for vain oaths} [Al-Ma’idah 5:89]. It was revealed regarding this.[28]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا مُسَدَّدٌ نا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ نا عَاصِمٌ عَنْ الشَّعْبِيِّ قَالَ: اللَّغْوُ فِي الْيَمِينِ كُلُّ يَمِينٍ فِي مَعْصِيَةٍ فَلَيْسَتْ لَهَا كَفَّارَةٌ، مَنْ يُكَفِّرُ لِلشَّيْطَانِ؟ وَمِنْ طَرِيقِ إِسْمَاعِيلَ نا عَبْدُ اللَّهِ بْنُ عَبْدِ الْوَهَّابِ الْحَجَبِيُّ نا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ نا سُلَيْمَانُ الشَّيْبَانِيُّ قَالَ: سَمِعْت عِكْرِمَةَ قَالَ: مَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا فَلْيَأْتِهِ: {لا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ} [المائدة: ٨٩] فِيهِ نَزَلَتْ.

L18153 And through the chain of Ḥammād ibn Salamah: Dāwūd ibn Abī Hind narrated to us from al-Shaʿbī from Masrūq that he said regarding a man who swears not to uphold kinship ties with his father and mother: “His expiation [is required] upon abandoning [the oath].” I asked Saʿīd ibn Jubayr about this, and he replied: “He has gained nothing [by this oath]. Let him do what is better and expiate for his oath.”

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّهُ قَالَ فِي الرَّجُلِ يَحْلِفُ أَنْ لَا يَصِلَ أَبَاهُ وَأُمَّهُ، قَالَ: كَفَّارَتُهُ تَرْكُهُ، فَسَأَلْت سَعِيدَ بْنَ جُبَيْرٍ؟ فَقَالَ: لَمْ يَصْنَعْ شَيْئًا لِيَأْتِ الَّذِي هُوَ خَيْرٌ، وَلْيُكَفِّرْ عَنْ يَمِينِهِ.

L18154–18156 The adherents of this position argued by citing what was narrated to us through the chain of Ibn Abi Shaybah: Abu Usamah from al-Walid ibn Kathir,

وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو أُسَامَةَ عَنْ الْوَلِيدِ بْنِ كَثِيرٍ نا عَبْدُ الرَّحْمَنِ بْنُ الْحَارِثِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ: قَالَ

[28] **Qur’an references (L18152):** Qur’an 2:225 (Al-Baqarah); Qur’an 5:89 (Al-Ma’idah).

from Abd al-Rahman ibn al-Harith, from Amr ibn Shu'ayb, from his father, from his grandfather, who said: The Messenger of Allah, peace be upon him, said: "Whoever swears to commit an act of disobedience, then no..." An oath is binding upon him, and whoever swears to sever kinship ties, his oath holds no validity.[29]

رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ حَلَفَ عَلَى مَعْصِيَةٍ فَلَا يَمِينَ لَهُ وَمَنْ حَلَفَ عَلَى قَطِيعَةِ رَحِمٍ فَلَا يَمِينَ لَهُ» .

L18157 Via the route of Abū Dāwūd: Al-Mundhir ibn al-Walīd narrated to us, from ʿAbdullāh ibn Bakr, from ʿUbaydullāh ibn al-Akhnas, from ʿAmr ibn Shuʿayb, from his father, from his grandfather, who said: The Messenger of Allāh—peace and blessings be upon him—said: "There is no vow nor oath concerning what a human being does not own, nor in disobedience to Allāh, nor in severing kinship ties. Whoever swears an oath then perceives a better course, let him abandon it and pursue what is better, for abandoning it is its atonement."[30]

وَمِنْ طَرِيقِ أَبِي دَاوُد نا الْمُنْذِرُ بْنُ الْوَلِيدِ نا عَبْدُ اللَّهِ بْنُ بَكْرٍ نا عُبَيْدُ اللَّهِ بْنُ الْأَخْنَسِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا نَذْرَ وَلَا يَمِينَ فِيمَا لَا يَمْلِكُ ابْنُ آدَمَ، وَلَا فِي مَعْصِيَةِ اللَّهِ، وَلَا فِي قَطِيعَةِ رَحِمٍ، وَمَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا فَلْيَدَعْهَا وَلْيَأْتِ الَّذِي هُوَ خَيْرٌ، فَإِنَّ تَرْكَهَا كَفَّارَتُهَا» .

L18158 Via Hajjaj ibn al-Minhal — Hushaym narrated to us from Yahya ibn Abdullah, from his father, from Abu Hurairah — the Prophet (PBUH) said: "Whoever swears an oath and then finds a better alternative to it, let him act upon what is better, for that is its expiation."

وَمِنْ طَرِيقِ حَجَّاجِ بْنِ الْمِنْهَالِ نا هُشَيْمٌ عَنْ يَحْيَى بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: قَالَ: «مَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا فَلْيَأْتِ الَّذِي هُوَ خَيْرٌ فَهُوَ كَفَّارَتُهَا» .

L18159 From the path of Abū Dāwūd: Muḥammad ibn al-Minhāl narrated to us, Yazīd ibn Zuraiʿ narrated to us, Ḥabīb al-Muʿallim narrated to us from ʿAmr ibn Shuʿayb from Saʿīd ibn al-Musayyib that ʿUmar ibn al-Khaṭṭāb said: "I heard the Messenger of Allāh—may Allāh bless him and grant him peace—say: 'No oath is binding upon you, no vow in disobedience to Allāh, no [act] in severing family ties, and no [obligation] concerning what you do not possess.'"

وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ الْمِنْهَالِ نا يَزِيدُ بْنُ زُرَيْعٍ نا حَبِيبٌ الْمُعَلِّمُ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ «أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: لَا يَمِينَ عَلَيْكَ، وَلَا نَذْرَ فِي مَعْصِيَةِ اللَّهِ، وَلَا فِي قَطِيعَةِ الرَّحِمِ، وَفِيمَا لَا تَمْلِكُ» .

L18160–18161 From the path of Al-ʻUqayli: From Ahmad ibn ʻAmr, from Ibrahim ibn al-Mustamir, from Shuʿayb ibn Hayyan ibn Shuʿayb ibn Dirham, from Yazid ibn Abi Muʿadh, from Muslim ibn ʻAqrab, from the Prophet – peace be upon him

وَمِنْ طَرِيقِ الْعُقَيْلِيُّ نا أَحْمَدُ بْنُ عَمْرٍو نا إبْرَاهِيمُ بْنُ الْمُسْتَمِرِّ نا شُعَيْبُ بْنُ حَيَّانَ بْنِ شُعَيْبِ بْنِ دِرْهَمٍ نا يَزِيدُ بْنُ أَبِي مُعَاذٍ عَنْ مُسْلِمِ بْنِ عَقْرَبٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ حَلَفَ عَلَى مَمْلُوكِهِ لَيَضْرِبَنَّهُ فَإِنَّ كَفَّارَتَهُ أَنْ يَدَعَهُ، وَلَهُ مَعَ كَفَّارَتِهِ خَيْرٌ» .

[29] **Hadith references (L18154):** Sunan Abi Dawud 2191.
[30] **Hadith references (L18157):** Sunan Abi Dawud 3274.

– who said: “Whoever swears to strike his slave, his expiation is to refrain from striking him, and he will attain good in addition to the expiation.”

L18162 From the chain of transmission of Sa‘id ibn Mansur, who narrated to us: Hazm ibn Abi Hazm al-Qata‘i said, “I heard al-Hasan say, ‘It has reached us from the Messenger of Allah—peace and blessings be upon him—that he said, “There is no vow for the son of Adam concerning the wealth of another, nor any oath in disobedience.”’”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حَزْمُ بْنُ أَبِي حَزْمٍ الْقَطَعِيُّ سَمِعْت الْحَسَنَ يَقُولُ: بَلَغَنَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «لَا نَذْرَ لِابْنِ آدَمَ فِي مَالِ غَيْرِهِ وَلَا يَمِينَ فِي مَعْصِيَةٍ» .

L18163 Abū Muḥammad said: All of this is invalid—the ḥadīth of ʿAmr ibn Shuʿayb is a written compilation. However, there is no blame on the Mālikīs, Shāfiʿīs, and Ḥanafīs if they cite his narration as evidence when it aligns with their positions and validate it in such cases. Yet when it opposes them, it becomes a weak written compilation. How can anyone who truly believes in the verse, *“Not a word does he utter without a vigilant observer present beside him”* [Qāf 50:18], speak thus? Or how can a soul aware that Allah the Exalted *“knows what is hidden and what is even more concealed”* [Ṭāha 20:7] hold this as religious conviction? As for the ḥadīth of ʿUmar, its chain is disconnected, for Saʿīd ibn al-Musayyib heard nothing from ʿUmar except his announcement of al-Nuʿmān ibn Muqrin al-Muzanī’s death from the pulpit. Yet these scholars claim disconnected and continuous chains are equivalent—how can they ignore this narration? As for the ḥadīth of Abū Hurayrah, it is narrated through Yaḥyā ibn ʿUbayd Allāh—a discarded and abandoned narrator. Muslim mentioned this, among others.[31]

قَالَ أَبُو مُحَمَّدٍ: كُلُّ هَذَا لَا يَصِحُّ - حَدِيثُ عَمْرِو بْنِ شُعَيْبٍ صَحِيفَةٌ، وَلَكِنْ لَا مُؤْنَةَ عَلَى الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، وَالْحَنَفِيِّينَ فِي أَنْ يَحْتَجُّوا بِرِوَايَتِهِ إذَا وَافَقَتْهُمْ وَيُصَحِّحُونَهَا حِينَئِذٍ، فَإِذَا خَالَفَتْهُمْ كَانَتْ حِينَئِذٍ صَحِيفَةً ضَعِيفَةً. مَا نَدْرِي كَيْفَ يَنْطِقُ بِهَذَا مَنْ يُوقِنُ أَنَّهُ: {مَا يَلْفِظُ مِنْ قَوْلٍ إلا لَدَيْهِ رَقِيبٌ عَتِيدٌ} [ق: ١٨] أَمْ كَيْفَ تَدِينُ بِهِ نَفْسٌ تَدْرِي أَنَّ اللَّهَ تَعَالَى: {يَعْلَمُ السِّرَّ وَأَخْفَى} [طه: ٧] وَأَمَّا حَدِيثُ عُمَرَ فَمُنْقَطِعٌ، لِأَنَّ سَعِيدَ بْنَ الْمُسَيِّبِ لَمْ يَسْمَعْ مِنْ عُمَرَ شَيْئًا إلَّا نَعْيَهُ النُّعْمَانَ بْنَ مُقْرِنٍ الْمُزَنِيَّ عَلَى الْمِنْبَرِ فَقَطْ، وَهَؤُلَاءِ يَقُولُونَ: إنَّ الْمُنْقَطِعَ، وَالْمُتَّصِلَ سَوَاءٌ، فَأَيْنَ هُمْ عَنْ هَذَا الْأَثَرِ؟ وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ فَعَنْ يَحْيَى بْنِ عُبَيْدِ اللَّهِ - وَهُوَ سَاقِطٌ مَتْرُوكٌ ذَكَرَ - ذَلِكَ مُسْلِمٌ، وَغَيْرُهُ.

L18164 As for the hadith of Muslim ibn ’Aqrab, its chain includes Shu’ayb ibn Hayyan (who is weak) and Yazid ibn Abi Mu’adh (who is unknown).

وَأَمَّا حَدِيثُ مُسْلِمِ بْنِ عَقْرَبٍ فَفِيهِ شُعَيْبُ بْنُ حَيَّانَ - وَهُوَ ضَعِيفٌ - وَيَزِيدُ بْنُ أَبِي مُعَاذٍ - وَهُوَ غَيْرُ مَعْرُوفٍ.

L18165 The ḥadīth of al-Ḥasan is mursal - so all that is in this chapter is invalidated.

وَحَدِيثُ الْحَسَنِ مُرْسَلٌ - فَسَقَطَ كُلُّ مَا فِي هَذَا الْبَابِ.

L18166–18168 We found the text of the Qur’an mandates expiation in that matter in its generality, along with the statement of the Messenger. Allah - may peace

[31] **Qur’an references (L18163):** Qur’an 50:18 (Qaf); Qur’an 20:7 (Taha).

and blessings be upon him - said: “Whoever swears an oath then considers something else better than it, let him act upon what is better and expiate it.”

وَوَجَدْنَا نَصَّ الْقُرْآنِ يُوجِبُ الْكَفَّارَةَ فِي ذَلِكَ بِعُمُومِهِ، وَمَعَ ذَلِكَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا فَلْيَأْتِ الَّذِي هُوَ خَيْرٌ وَلْيُكَفِّرْهُ» .

L18169 If it is said: “This applies to cases where both have good, except that the other has more good?” We said: “This is a claim. Rather, all evil in the world and every act of disobedience: righteousness and piety are better than both. Allah the Exalted said: {Is Allah better, or what they associate with Him?} [An-Naml 27:59].”[32]

فَإِنْ قِيلَ: إنَّ هَذَا فِيمَا كَانَ فِي كِلَيْهِمَا خَيْرٌ إلَّا أَنَّ الْآخَرَ أَكْثَرُ خَيْرًا؟ قُلْنَا: هَذِهِ دَعْوَى، بَلْ كُلُّ شَرٍّ فِي الْعَالَمِ، وَكُلُّ مَعْصِيَةٍ، فَالْبِرُّ وَالتَّقْوَى خَيْرٌ مِنْهُمَا، قَالَ اللَّهُ تَعَالَى: {آللَّهُ خَيْرٌ أَمَّا يُشْرِكُونَ} [النمل: ٥٩] .

L18170 Thus, it is soundly established that Allah, the Exalted, is superior in goodness to the idols, and there is nothing of good in them.

فَصَحَّ أَنَّ اللَّهَ تَعَالَى خَيْرٌ مِنْ الْأَوْثَانِ، وَلَا شَيْءَ مِنْ الْخَيْرِ فِي الْأَوْثَانِ.

L18171 The Almighty said: “The companions of Paradise on that Day will be better in their abode and more excellent in their resting place” (Al-Furqān 25:24). And there is no good in Hellfire at all.[33]

وَقَالَ تَعَالَى: {أَصْحَابُ الْجَنَّةِ يَوْمَئِذٍ خَيْرٌ مُسْتَقَرًّا وَأَحْسَنُ مَقِيلا} [الفرقان: ٢٤] وَلَا خَيْرَ فِي جَهَنَّمَ أَصْلًا.

L18172 From the chain of Muslim: From Muhammad ibn Rafi’, from Abd al-Razzaq, [Ma’mar narrated to us], from Hammam ibn Munabbih, from Abu Hurairah, who said: The Messenger of Allah (peace and blessings be upon him) said: “By Allah, if one of you stubbornly clings to an oath regarding his family, it is far more sinful for him before Allah than to fulfill the atonement Allah has ordained.”[34]

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رَافِعٍ نا عَبْدُ الرَّزَّاقِ [ثنا مَعْمَرٌ] عَنْ هَمَّامِ بْنِ مُنَبِّهٍ نا أَبُو هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَاَللَّهِ لَأَنْ يَلِجَّ أَحَدُكُمْ بِيَمِينِهِ فِي أَهْلِهِ آثَمُ لَهُ عِنْدَ اللَّهِ مِنْ أَنْ يُعْطِيَ كَفَّارَتَهُ الَّتِي فَرَضَ اللَّهُ» .

L18173 This report confirms the obligation of expiation for breaking an oath where persisting in fulfilling it would be sinful. It has been transmitted to us that ’Umar ibn al-Khaṭṭāb held the view requiring expiation in such cases, which is also the position of those present. And with Allah, the Exalted, lies all success.

فَصَحَّ بِهَذَا الْخَبَرِ وُجُوبُ الْكَفَّارَةِ فِي الْحِنْثِ فِي الْيَمِينِ الَّتِي يَكُونُ التَّمَادِي عَلَى الْوَفَاءِ بِهَا إثْمًا - وَقَدْ رُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ رَأَى فِي ذَلِكَ الْكَفَّارَةَ، وَهُوَ قَوْلُ الْحَاضِرِينَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18174 **A legal principle: The oath is contingent upon the swearer’s wording and his intention.**

[مَسْأَلَةٌ الْيَمِينُ مَحْمُولَةٌ عَلَى لُغَةِ الْحَالِفِ وَعَلَى نِيَّتِهِ]

[32] **Qur’an references (L18169):** Qur’an 27:59 (An-Naml).
[33] **Qur’an references (L18171):** Qur’an 25:24 (Al-Furqan).
[34] **Hadith references (L18172):** Sahih Muslim 1655.

١١٣٦ - مَسْأَلَةٌ

وَالْيَمِينُ مَحْمُولَةٌ عَلَى لُغَةِ الْحَالِفِ وَعَلَى نِيَّتِهِ، وَهُوَ مُصَدَّقٌ فِيمَا ادَّعَى مِنْ ذَلِكَ إِلَّا مَنْ لَزِمَتْهُ يَمِينٌ فِي حَقِّ خَصْمِهِ عَلَيْهِ - وَالْحَالِفُ مُبْطِلٌ - فَإِنَّ الْيَمِينَ هَهُنَا عَلَى نِيَّةِ الْمَحْلُوفِ لَهُ.

وَمَنْ قِيلَ لَهُ: قُلْ كَذَا أَوْ كَذَا؟ فَقَالَ - وَكَانَ ذَلِكَ الْكَلَامُ يَمِينًا بِلُغَةٍ لَا يُحْسِنُهَا الْقَائِلُ - فَلَا شَيْءَ عَلَيْهِ وَلَمْ يَحْلِفْ - وَمَنْ حَلَفَ بِلُغَتِهِ بِاسْمِ اللَّهِ تَعَالَى عِنْدَهُمْ فَهُوَ حَالِفٌ، فَإِنْ حَنِثَ فَعَلَيْهِ الْكَفَّارَةُ.

بُرْهَانُ ذَلِكَ -: أَنَّ الْيَمِينَ إِنَّمَا هِيَ إِخْبَارٌ مِنْ الْحَالِفِ عَمَّا يَلْتَزِمُ بِيَمِينِهِ تِلْكَ، وَكُلُّ وَاحِدٍ فَإِنَّمَا يُخْبِرُ عَنْ نَفْسِهِ بِلُغَتِهِ، وَعَمَّا فِي ضَمِيرِهِ.

- فَصَحَّ مَا قُلْنَاهُ، وَقَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» .

وَقَالَ اللَّهُ تَعَالَى: {وَإِنْ مِنْ أُمَّةٍ إِلا خَلا فِيهَا نَذِيرٌ} [فاطر: ٢٤] .

وَقَالَ تَعَالَى: {وَمَا أَرْسَلْنَا مِنْ رَسُولٍ إِلا بِلِسَانِ قَوْمِهِ لِيُبَيِّنَ لَهُمْ} [إبراهيم: ٤] .

وَلِلَّهِ تَعَالَى فِي كُلِّ لُغَةٍ اسْمٌ، فَبِالْفَارِسِيَّةِ: أوزمز، وَبِالْعِبْرَانِيَّةِ: أذوناي، والوهيم، والوهاء، وَإِسْرَائِيلُ، وَبِاللَّاتِينِيَّةِ: داوش، وقريطور، وبالصقلبية: بغ، وَبِالْبَرْبَرِيَّةِ: يكش.

فَإِنْ حَلَفَ هَؤُلَاءِ بِهَذِهِ الْأَسْمَاءِ فَهِيَ يَمِينٌ صَحِيحَةٌ، وَفِي الْحِنْثِ فِيهِ الْكَفَّارَةُ.

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The oath is contingent upon the language and intent of the swearer, who is deemed truthful in their claim unless obligated to swear regarding a right owed to their adversary—while the swearer is invalidating—in which case the oath depends on the intent of the party to whom it is sworn.

If someone was told, “Say such a thing or such a thing,” and he responded—while that speech constituted an oath in a language the speaker was not proficient in—then nothing is binding upon him, and he has not sworn. Whoever swears in his own language by the name of God Almighty in their consideration has sworn an oath; if he breaks it, he must make expiation.

The proof of this is that the oath is merely a declaration by the swearer concerning what he binds himself to through that oath… and every… Indeed, one reports only about himself in his own language and what lies within his conscience.

Thus, what we have said is correct, and the statement of the Prophet—peace be upon him—“Actions are by intentions, and to every person belongs what they intended.”

And Allah, the Exalted, said: “There is no community but that a warner has passed among them” [Surah al-Fatir 35:24].[35]

And He, the Exalted, said: “We have not sent any messenger except in the language of his people so he might clarify for them” [Ibrahim 4].[36]

Allah, the Exalted, has a name in every language: in Persian: Awzmz; in Hebrew: Adonai, Elohim, Eloah, and Israel; in Latin: Dāwush and Creator; in Slavic: Bog; and in Berber: Yakuc.

If these individuals swear by these names, the oath is valid, and breaking it necessitates expiation.

As for the one obligated to swear an oath for his opponent while being a

[35] **Qur’an references (L18182):** Qur’an 35:24 (Fatir).
[36] **Qur’an references (L18183):** Qur’an 14:4 (Ibrahim).

wrongdoer, he gains no benefit from his ambiguous wording. He disobeys Allah the Exalted by denying the rightful claim and disobeys Him by repelling his opponent's due demand through that oath. Thus, he inevitably swears a false, submersive oath without doubt.

وَأَمَّا مَنْ لَزِمَتْهُ يَمِينٌ لِخَصْمِهِ - وَهُوَ مُبْطِلٌ - فَلَا يَنْتَفِعُ بِتَوْرِيَتِهِ، وَهُوَ عَاصٍ لِلَّهِ تَعَالَى فِي جُحُودِهِ الْحَقَّ، عَاصٍ لَهُ فِي اسْتِدْفَاعِ مَطْلَبِ خَصْمِهِ بِتِلْكَ الْيَمِينِ، فَهُوَ حَالِفُ يَمِينٍ غَمُوسٍ، وَلَا بُدَّ.

L18187 It has been narrated to us through the chain of transmission of Hushaym from 'Abbad ibn Abi Salih and 'Abdullah ibn Abi Salih, from Abu Salih al-Samman, from Abu Hurayrah, that the Prophet (peace be upon him) said: "Your oath is binding based on what your companion confirms from you."

رُوِّينَا مِنْ طَرِيقِ هُشَيْمٍ عَنْ عَبَّادِ بْنِ أَبِي صَالِحٍ وَعَبْدِ اللَّهِ بْنِ أَبِي صَالِحٍ عَنْ أَبِي صَالِحٍ السَّمَّانِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يَمِينُكَ عَلَى مَا يُصَدِّقُكَ عَلَيْهِ صَاحِبُكَ» .

L18188 It has been said: "Abbad and Abdullah are one." A person's companion is none other than someone with whom he shares a matter that binds them together and in which they accompany one another. This refers solely to the possessor of a right who holds an oath over you that you must inevitably fulfill.

وَقَدْ قِيلَ: عَبَّادٌ، وَعَبْدُ اللَّهِ وَاحِد، وَلَا يَكُونُ صَاحِبُ الْمَرْءِ إلَّا مَنْ لَهُ مَعَهُ أَمْرٌ يَجْمَعُهُمَا يَصْطَحِبَانِ فِيهِ، وَلَيْسَ إلَّا ذُو الْحَقِّ الَّذِي لَهُ عَلَيْك يَمِينٌ تُؤَدِّيهَا إلَيْهِ وَلَا بُدَّ.

L18189 As for the one for whom there is no oath with you, he is not your partner in that oath.

وَأَمَّا مَنْ لَا يَمِينَ لَهُ عِنْدَك فَلَيْسَ صَاحِبَك فِي تِلْكَ الْيَمِينِ.

L18190 **A legal issue: He took an oath, then said, "I intended part of what the wording he uttered encompasses."**

[مَسْأَلَةٌ حَلَفَ ثُمَّ قَالَ نَوَيْت بَعْضَ مَا يَقَعُ عَلَيْهِ اللَّفْظُ الَّذِي نَطَقَ]

L18191 Issue 1137: If someone takes an oath and then says, "I intended some of what falls under the wording I uttered," they are to be believed. Similarly, if they say, "I spoke inadvertently and had no intention," they are also to be believed. If they say, "I did not intend one thing to the exclusion of another," their oath is interpreted according to the general meaning of their wording, as previously explained. And success is from Allah, the Most High.

١١٣٧ - مَسْأَلَةٌ وَمَنْ حَلَفَ ثُمَّ قَالَ: نَوَيْت بَعْضَ مَا يَقَعُ عَلَيْهِ اللَّفْظُ الَّذِي نَطَقَ صُدِّقَ، وَكَذَلِكَ لَوْ قَالَ: جَرَى لِسَانِي وَلَمْ يَكُنْ لِي نِيَّةٌ فَإِنَّهُ يُصَدَّقُ، فَإِنْ قَالَ: لَمْ أَنْوِ شَيْئًا دُونَ شَيْءٍ حُمِلَ عَلَى عُمُومِ لَفْظِهِ لِمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18192–18193 **A case where someone swore an oath regarding something and then said, connected to his statement, "If Allah, the Exalted, wills."**

[مَسْأَلَةٌ حَلَفَ عَلَى شَيْءٍ ثُمَّ قَالَ مَوْصُولًا بِكَلَامِهِ إنْ شَاءَ اللَّهُ تَعَالَى]

L18194 Issue.

مَسْأَلَةٌ

L18195 And whoever swears an oath regarding something and then says connected to his speech: “If Allah the Exalted wills,” or “except if Allah wills,” or “except if Allah does not will,” or similar phrasing, or “except if I intend,” or “except if I do not intend,” or “except if Allah changes what is in my heart,” or “except if it becomes clear to me,” or “except if so-and-so wills,” or “if so-and-so wills,” then this constitutes a valid exception. The oath is thereby nullified for him through that exception, and no expiation is required if he contravenes what he swore upon.

وَمَنْ حَلَفَ عَلَى شَيْءٍ ثُمَّ قَالَ مَوْصُولًا بِكَلَامِه: إِنْ شَاءَ اللَّهُ تَعَالَى، أَوْ إِلَّا أَنْ يَشَاءَ اللَّهُ، أَوْ إِلَّا أَنْ لَا يَشَاءَ اللَّهُ، أَوْ نَحْوَ هَذَا، أَوْ إِلَّا أَنْ أَشَاءَ، أَوْ إِلَّا أَنْ لَا أَشَاءَ، أَوْ إِلَّا إِنْ بَدَّلَ اللَّهُ مَا فِي قَلْبِي، أَوْ إِلَّا أَنْ يَبْدُوَ إِلَيَّ، أَوْ إِلَّا أَنْ يَشَاءَ فُلَانٌ، أَوْ إِنْ شَاءَ فُلَانٌ، فَهُوَ اسْتِثْنَاءٌ صَحِيحٌ وَقَدْ سَقَطَتْ الْيَمِينُ عَنْهُ بِذَلِكَ، وَلَا كَفَّارَةَ عَلَيْهِ إِنْ خَالَفَ مَا حَلَفَ عَلَيْهِ.

L18196 If the exception is not connected to his oath but is severed by abandoning speech, and he subsequently reintroduces the exception, he does not benefit from that. The oath has become binding upon him, and if he violates it, expiation is obligatory.

فَلَوْ لَمْ يَصِلْ الِاسْتِثْنَاءُ بِيَمِينِهِ لَكِنْ قُطِعَ قَطْعَ تَرْكٍ لِلْكَلَامِ ثُمَّ ابْتَدَأَ الِاسْتِثْنَاءَ لَمْ يَنْتَفِعْ بِذَلِكَ، وَقَدْ لَزِمَتْهُ الْيَمِينُ، فَإِنْ حَنِثَ فِيهَا فَعَلَيْهِ الْكَفَّارَةُ.

L18197 The exception does not occur except by verbal expression, and it is not accepted by intention without verbal expression, due to the words of Allah, the Exalted: {But He will take you to task for what you have bound by oaths} [Al-Ma’idah: 89]. Thus, this person did not bind the oath.[37]

وَلَا يَكُونُ الِاسْتِثْنَاءُ إِلَّا بِاللَّفْظِ، وَأَمَّا بِنِيَّةٍ دُونَ لَفْظٍ فَلَا، لِقَوْلِ اللَّهِ تَعَالَى: {وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الأَيْمَانَ} [المائدة: ٨٩] فَهَذَا لَمْ يُعَقِّدْ الْيَمِينَ.

L18198 And we are certain that if Allah the Exalted had willed the completion of that oath, He would have enacted it and perfected it. Since He, the Exalted, neither enacted it nor perfected it, we are certain He did not will its existence. He only bound Himself to it if Allah the Exalted willed it, and Allah the Exalted did not will it, so He never obligated Himself to it.

وَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ اللَّهَ تَعَالَى لَوْ شَاءَ تَمَامَ تِلْكَ الْيَمِينِ لَأَنْفَذَهَا، وَأَتَمَّهَا، فَإِذْ لَمْ يُنَفِّذْهَا عَزَّ وَجَلَّ وَلَا أَتَمَّهَا، فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهُ تَعَالَى لَمْ يَشَأْ كَوْنَهَا وَهُوَ إِنَّمَا الْتَزَمَهَا إِنْ شَاءَ اللَّهُ تَعَالَى، وَاَللَّهُ تَعَالَى لَمْ يَشَأْهَا، فَلَمْ يَلْتَزِمْهَا قَطُّ.

L18199 Similarly, his stipulation of his own will or Zayd’s will – since his own will is only known by himself, and he is therefore believed regarding it – as for Zayd’s will, we do not know whether he is truthful in his claim that Zayd willed it or is not truthful. Nor do we know whether he is truthful in his claim that Zayd did not will it or is not truthful. Thus we lack certainty about the binding nature of this oath he has sworn, and it is not permissible to impose an expiation upon him based on doubt.

وَكَذَلِكَ اشْتِرَاطُهُ مَشِيئَةَ نَفْسِهِ، أَوْ مَشِيئَةَ زَيْدٍ، لِأَنَّ مَشِيئَتَهُ لَا تُعْلَمُ إِلَّا مِنْ قِبَلِهِ فَهُوَ مُصَدَّقٌ فِيهَا - وَمَشِيئَةُ زَيْدٍ لَا نَدْرِي أَصَدَقَ فِي دَعْوَاهُ أَنَّهُ شَاءَ أَوْ لَمْ يَصْدُقْ؟ وَلَا نَدْرِي أَيْضًا أَصَدَقَ فِي دَعْوَاهُ أَنَّهُ لَمْ يَشَأْ أَوْ لَمْ يَصْدُقْ؟ فَلَسْنَا عَلَى يَقِينٍ مِنْ لُزُومِ هَذِهِ الْيَمِينِ الَّتِي حَلَفَ بِهَا، فَلَمْ يَجُزْ أَنْ نُلْزِمَهُ كَفَّارَةً بِالشَّكِّ.

L18200 From the chain of Aḥmad ibn Zuhayr ibn Ḥarb: Yaḥyā ibn Maʿīn narrated to us from ʿAbd al-Razzāq from Maʿmar from Ibn Ṭāwūs from his father

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ زُهَيْرِ بْنِ حَرْبٍ نا يَحْيَى بْنُ مَعِينٍ عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُوسٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -:

[37] **Qur’an references (L18197):** Qur’an 5:89 (Al-Ma’idah).

from Abū Hurayrah, who said: The Messenger of Allah (peace be upon him) said, “Whoever swears an oath and says, ‘If Allah wills,’ does not break his oath.” From the chain of Muḥammad ibn ʿAbd al-Malik ibn Ayman: Bakr ibn Ḥammād narrated to us from Musaddad from ʿAbd al-Wārith ibn Saʿīd al-Tannūrī from Ayyūb al-Sikhtiyānī from Nāfiʿ from Ibn ʿUmar, who said: The Messenger of Allah (peace be upon him) said, “Whoever swears an oath and makes an exception may withdraw if he wishes, or leave it without breaking his oath.” This constitutes a general ruling for all exceptions, as previously mentioned.[38]

L18201–18202 Abu Muhammad said: The statement of the Prophet—peace be upon him—when he said, “If Allah wills,” or when he made an exception [by saying “If Allah wills”], necessitates verbal utterance. Speech must be articulated verbally; it cannot be established through intent whatsoever.

L18203 And a school of jurists said: If he makes an inward exception, it suffices him.

L18204 It was narrated to us through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān from Muḥil ibn Muḥriz from Ibrāhīm al-Nakhaʿī, who said: “It is not valid unless one pronounces the conditional exception audibly, just as one pronounced the oath audibly.”

L18205 From the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from al-Mughīrah, from Ibrāhīm: If someone mentally stipulates an exception, it holds no validity until they verbally declare it.

L18206 And from Maʿmar, from Ḥammād, regarding the exception: It is of no effect unless one hears oneself declare it.

L18207 Narrated by Qatadah on the authority of al-Ḥasan al-Baṣrī: If one moves his tongue [to speak], this suffices for him in making an exception.

L18208 Abu Muhammad said: “With this we say, for it is a valid opinion” – meaning the movement of the tongue.

L18209 As for connecting the exception to the oath, Abū Thawr said: One is not considered to have made an exception unless they intend it at the time of

[38] **Hadith references (L18200):** Sunan Abi Dawud 3262.

«مَنْ حَلَفَ فَقَالَ: إِنْ شَاءَ اللَّهُ، لَمْ يَحْنَثْ» وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا بَكْرُ بْنُ حَمَّادٍ نا مُسَدَّدٌ عَنْ عَبْدِ الْوَارِثِ هُوَ ابْنُ سَعِيدٍ التَّنُّورِيِّ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ حَلَفَ فَاسْتَثْنَى فَإِنْ شَاءَ رَجَعَ وَإِنْ شَاءَ تَرَكَ غَيْرَ حِنْثٍ» فَهَذَا عُمُومٌ لِكُلِّ اسْتِثْنَاءٍ كَمَا ذَكَرْنَا.

قَالَ أَبُو مُحَمَّدٍ: وَقَوْلُهُ - عَلَيْهِ السَّلَامُ - فَقَالَ: " إِنْ شَاءَ اللَّهُ " أَوْ " فَاسْتَثْنَى " يَقْتَضِي الْقَوْلَ، وَالْقَوْلُ لَا يَكُونُ إلَّا بِاللِّسَانِ، لَا يَكُونُ بِالنِّيَّةِ أَصْلًا.

وَقَدْ قَالَ قَوْمٌ: إنْ اسْتَثْنَى فِي نَفْسِهِ أَجْزَأَهُ.

وَرُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ مُحِلِّ بْنِ مُحْرِزٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَا، حَتَّى يَجْهَرَ بِالِاسْتِثْنَاءِ كَمَا جَهَرَ بِالْيَمِينِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ: إنْ اسْتَثْنَى فِي نَفْسِهِ فَلَيْسَ بِشَيْءٍ حَتَّى يُظْهِرَهُ بِلِسَانِهِ.

وَعَنْ مَعْمَرٍ عَنْ حَمَّادٍ فِي الِاسْتِثْنَاءِ: لَيْسَ بِشَيْءٍ حَتَّى يَسْمَعَ نَفْسَهُ.

وَعَنْ قَتَادَةَ عَنْ الْحَسَنِ الْبَصْرِيِّ إذَا حَرَّكَ لِسَانَهُ أَجْزَأَ عَنْهُ فِي الِاسْتِثْنَاءِ.

قَالَ أَبُو مُحَمَّدٍ: وَبِهَذَا نَقُولُ، لِأَنَّهُ قَوْلٌ صَحِيحٌ - يَعْنِي حَرَكَةَ اللِّسَانِ.

uttering the oath—not after its completion. For if they finalize the oath without intending the exception during it, they have concluded their oath, and thus it becomes binding.

وَأَمَّا وَصْلُ الِاسْتِثْنَاءِ بِالْيَمِينِ فَإِنَّ أَبَا ثَوْرٍ قَالَ: لَا يَكُونُ مُسْتَثْنِيًا إِلَّا حَتَّى يَنْوِيَ الِاسْتِثْنَاءَ فِي حِينِ نُطْقِهِ بِالْيَمِينِ، لَا بَعْدَ تَمَامِهَا، لِأَنَّهُ إِذَا أَتَمَّ الْيَمِينَ وَلَمْ يَنْوِ فِيهَا الِاسْتِثْنَاءَ كَانَ قَدْ عَقَّدَ يَمِينَهُ فَلَزِمَتْهُ.

L18210 Abu Muhammad said: One should not oppose with speculative reasoning the clarification of the Messenger of Allah (peace be upon him), for he stated: "Whoever takes an oath and says, 'If Allah wills,' does not break it." The Prophet first affirmed the oath for him, then nullified it through his subsequent statement: "and says, 'If Allah wills.'" The conjunction "fa" (and) indicates that the second utterance follows the first immediately without any delay - thereby confirming our position.

قَالَ أَبُو مُحَمَّدٍ: وَلَا يَعْتَرِضُ بِالنَّظَرِ عَلَى بَيَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ حَلَفَ فَقَالَ إِنْ شَاءَ اللَّهُ لَمْ يَحْنَثْ» فَأَثْبَتَ لَهُ الْيَمِينَ أَوَّلًا، ثُمَّ أَسْقَطَهَا - عَلَيْهِ السَّلَامُ - عَنْهُ بِقَوْلِهِ: " فَقَالَ إِنْ شَاءَ اللَّهُ " وَالْفَاءُ تُعْطِي أَنْ تَكُونَ الثَّانِي بَعْدَ الْأَوَّلِ بِلَا مُهْلَةٍ - فَصَحَّ مَا قُلْنَاهُ.

L18211 A group said: The exception is perpetually permissible whenever one intends to make an exception, as it has been narrated to us through the chain of Al-Ḥajjāj ibn Minhāl - who narrated from ʿAbdullāh ibn Dāwūd (who is Al-Khuraibī) - from Sulaymān Al-Aʿmash, from Mujāhid, from Ibn ʿAbbās, who said: "He has two exceptions after such and such."

وَقَالَتْ طَائِفَةٌ: الِاسْتِثْنَاءُ جَائِزٌ أَبَدًا مَتَى أَرَادَ أَنْ يَسْتَثْنِيَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا عَبْدُ اللَّهِ بْنُ دَاوُد هُوَ الْخُرَيْبِيُّ - عَنْ سُلَيْمَانَ الْأَعْمَشِ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَهُ ثُنْيَاهُ بَعْدَ كَذَا وَكَذَا.

L18212 And through the chain of Khuṣayf from Mujāhid, he said: If one says, after years, "If Allah, the Exalted, wills," then he has indeed made an exception.

وَمِنْ طَرِيقِ خُصَيْفٍ عَنْ مُجَاهِدٍ قَالَ: إِنْ قَالَ بَعْدَ سِنِينَ إِنْ شَاءَ اللَّهُ تَعَالَى فَقَدْ اسْتَثْنَى.

L18213 A group said after four months—as narrated through the chain of Sālim al-Afṭas from Saʿīd ibn Jubayr, who said: If he said after four months, "If Allah wills," then he has made an exception.

وَقَالَتْ طَائِفَةٌ بَعْدَ أَرْبَعَةِ أَشْهُرٍ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَالِمٍ الْأَفْطَسِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: إِنْ قَالَ بَعْدَ أَرْبَعَةِ أَشْهُرٍ - إِنْ شَاءَ اللَّهُ - فَقَدْ اسْتَثْنَى.

L18214–18216 And a group said: After a month—as we have been narrated through the chain of Yahya ibn Saʿīd al-Qaṭṭān from... From Sufyān al-Thawrī, from Sālim ibn ʿAjlān al-Afṭas, from Saʿīd ibn Jubayr, who said: If a man takes an oath and says, "After a month, God willing," he may retract it.

وَقَالَتْ طَائِفَةٌ: بَعْدَ شَهْرٍ -: كَمَا رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سَالِمِ بْنِ عَجْلَانَ الْأَفْطَسِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: إِذَا حَلَفَ الرَّجُلُ فَقَالَ: بَعْدَ شَهْرٍ - إِنْ شَاءَ اللَّهُ - فَلَهُ ثُنْيَاهُ.

L18217 A group said: Whoever forgets may make a conditional exception whenever he remembers: as we have narrated through the chain of Ibn Abi Shaybah - Waki' narrated to us from Al-A'mash, from Mujahid, from Ibn 'Abbās, who said: "He may make a conditional exception in his oath whenever he

remembers," and he recited: {And remember your Lord when you forget} [Al-Kahf: 24].[39]

وَقَالَتْ طَائِفَةٌ: مَنْ نَسِيَ فَلَهُ أَنْ يَسْتَثْنِيَ مَتَى مَا ذَكَرَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ الْأَعْمَشِ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: يَسْتَثْنِي فِي يَمِينِهِ مَتَى مَا ذَكَرَ، وَقَرَأَ: {وَاذْكُرْ رَبَّكَ إِذَا نَسِيتَ} [الكهف: ٢٤] .

L18218 And [this] has also been authenticated from Saʿīd ibn Jubayr and Abū al-ʿĀliyah.

وَصَحَّ [هَذَا] أَيْضًا عَنْ سَعِيدِ بْنِ جُبَيْرٍ [وَعَنْ] أَبِي الْعَالِيَةِ.

L18219 A group held the opinion that this [matter] involves an unlimited respite period - as narrated through the chain of Ḥammād ibn Salamah from ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn ʾUtbah ibn ʿAbd Allāh ibn Masʿūd, from al-Qāsim ibn ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Masʿūd, who reported that ʿAbd Allāh ibn Masʿūd said: "Whoever takes an oath then says 'If Allāh wills,' he retains the legal option."

وَقَالَتْ طَائِفَةٌ: فِي ذَلِكَ بِمُهْلَةٍ غَيْرِ مَحْدُودَةٍ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ: مَنْ حَلَفَ ثُمَّ قَالَ: إنْ شَاءَ اللَّهُ - فَهُوَ بِالْخِيَارِ.

L18220 A group said: "Equivalent to the amount of milk obtained from milking a copious ewe" – as we have been narrated through the chain of ʿAbd al-Razzāq from Sufyān ibn ʿUyaynah from Ibn Abī Najīḥ from ʿAṭāʾ, who said: "The exception in oaths pertains to an amount equivalent to the milk obtained from milking a copious she-camel."

وَقَالَتْ طَائِفَةٌ: بِمِقْدَارِ حَلْبِ شَاةٍ غَزِيرَةٍ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ عَطَاءٍ، قَالَ: لَهُ الِاسْتِثْنَاءُ فِي الْيَمِينِ بِمِقْدَارِ حَلْبِ النَّاقَةِ الْغَزِيرَةِ.

L18221 A group said: The exception is valid for him provided he has not risen from where he was seated or spoken – as narrated to us through Ḥammād ibn Salamah, from Qatādah, who said: "If someone takes an oath and then makes an exception before rising or speaking, his exception is valid."

وَطَائِفَةٌ قَالَتْ: لَهُ الِاسْتِثْنَاءُ مَا لَمْ يَقُمْ عَنْ مَجْلِسِهِ، أَوْ يَتَكَلَّمْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ قَالَ: إذَا حَلَفَ ثُمَّ اسْتَثْنَى قَبْلَ أَنْ يَقُومَ أَوْ يَتَكَلَّمَ فَلَهُ ثُنْيَاهُ.

L18222 A group of scholars held that "so long as he does not rise at all" - as we have reported through the chain of ʿAbd al-Razzāq from Ibn Jurayj: Ibn Ṭāwūs reported from his father, who said: "Whoever stipulates an exception does not break his oath, and he has the exception clause as long as he does not rise from his seat."

وَطَائِفَةٌ قَالَتْ: مَا لَمْ يَقُمْ فَقَطْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي ابْنُ طَاوُوسٍ عَنْ أَبِيهِ قَالَ: مَنْ اسْتَثْنَى لَمْ يَحْنَثْ وَلَهُ الثُّنْيَا مَا لَمْ يَقُمْ مِنْ مَجْلِسِهِ.

L18223 And via the chain of Ibn Abī Shaybah from Ḥammād ibn Salama from Hishām ibn Ḥassān from al-Ḥasan al-Baṣrī: he held that the exception in an

[39] **Qur'an references (L18217):** Qur'an 18:24 (Al-Kahf).

oath—so long as a person has not risen from their seat—does not necessitate expiation if they made the exception before standing.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّهُ كَانَ يَرَى الِاسْتِثْنَاءَ فِي الْيَمِينِ مَا لَمْ يَقُمْ مِنْ مَقْعَدِهِ ذَلِكَ لَا يُوجِبُ عَلَيْهِ الْكَفَّارَةَ إنْ اسْتَثْنَى قَبْلَ أَنْ يَقُومَ.

L18224–18226 A group said: He may make the exception at the beginning of his day - as we transmitted via Abd al-Razzaq → Sufyan al-Thawri → Abd al-Rahman ibn Abd Allah ibn Utbah ibn Abd Allah ibn Mas'ud → al-Qasim ibn Abd al-Rahman ibn Abd Allah ibn Mas'ud, who said: Abd Allah ibn Mas'ud said: Abu Dharr al-Ghifari said: "He is the Ghifarite." There is no man who says when morning comes: O Allah, whatever words I have spoken, sworn as an oath, or made as a vow—Your will encompasses all of that. What You will of it shall be, and what You do not will shall not be. So forgive me for it and overlook it for me. O Allah, whomever You bless, then my blessings are upon him, and whomever You curse, then my curse is upon him—except that he will be granted this exception for the remainder of that day.

وَقَالَتْ طَائِفَةٌ: لَهُ الِاسْتِثْنَاءُ فِي أَوَّلِ نَهَارِهِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ قَالَ أَبُو ذَرٍّ هُوَ الْغِفَارِيُّ مَا مِنْ رَجُلٍ يَقُولُ حِينَ يُصْبِحُ: اللَّهُمَّ مَا قُلْت مِنْ قَوْلٍ، أَوْ حَلَفْت مِنْ حَلِفٍ، أَوْ نَذَرْت مِنْ نَذْرٍ فَمَشِيئَتُك بَيْنَ يَدَيْ ذَلِكَ كُلِّهِ، مَا شِئْت مِنْهُ كَانَ، وَمَا لَمْ تَشَأْ لَمْ يَكُنْ، فَاغْفِرْهُ لِي، وَتَجَاوَزْ لِي عَنْهُ، اللَّهُمَّ مَنْ صَلَّيْت عَلَيْهِ فَصَلَوَاتِي عَلَيْهِ، وَمَنْ لَعَنْته فَلَعْنَتِي عَلَيْهِ، إلَّا كَانَ فِي اسْتِثْنَائِهِ بَقِيَّةَ يَوْمِهِ ذَلِكَ

L18227 As for our statement: It has been narrated to us via the chain of ʿAbd al-Razzāq from Maʿmar from Ayyūb from Nāfiʿ that Ibn ʿUmar would swear, saying, "By Allah, I will not do such and such, if Allah wills," then he would do it and not make expiation.

وَأَمَّا قَوْلُنَا: فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ كَانَ يَحْلِفُ يَقُولُ: وَاَللَّهِ لَا أَفْعَلُ كَذَا وَكَذَا إنْ شَاءَ اللَّهُ - ثُمَّ يَفْعَلُهُ وَلَا يُكَفِّرُ.

L18228 It has been authentically reported from Ibn Umar that he would perform expiation for other oaths. It has been established from him that the expiation is waived if the exception is connected to his statement, and nothing authentic has been reported from him regarding a grace period. The apparent meaning is that if his exception was not attached to his oath, he performed expiation.

وَقَدْ صَحَّ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ يُكَفِّرُ أَيْمَانًا أُخَرَ -: فَقَدْ ثَبَتَ عَنْهُ إسْقَاطُ الْكَفَّارَةِ إذَا وَصَلَ الِاسْتِثْنَاءَ بِكَلَامِهِ، وَلَمْ يَصِحَّ عَنْهُ فِي الْمُهْلَةِ شَيْءٌ، فَظَاهِرُهُ أَنَّهُ إذَا لَمْ يَكُنْ اسْتِثْنَاؤُهُ مَوْصُولًا بِيَمِينِهِ كَفَّرَ.

L18229 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: ʿAṭāʾ told me, "If someone swears an oath and then makes an exception immediately after, alongside it, or at that point." Ibn Jurayj said, "It is as if he meant: provided he does not break the oath and abandon it." It is authentically transmitted from al-Aʿmash from Ibrāhīm regarding exceptions in oaths: He said, "What occurs within his speech as a declarative statement."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ لِي عَطَاءٌ: إذَا حَلَفَ ثُمَّ اسْتَثْنَى عَلَى أَثَرِ ذَلِكَ وَمَعَ ذَلِكَ، وَعِنْدَ ذَلِكَ، قَالَ ابْنُ جُرَيْجٍ كَأَنَّهُ يَقُولُ: مَا لَمْ يَقْطَعْ الْيَمِينَ وَيَتْرُكْهُ - وَصَحَّ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ فِي الِاسْتِثْنَاءِ فِي الْيَمِينِ قَالَ: مَا كَانَ فِي كَلَامِهِ بِقَوْلٍ.

وَرُوِّينَاهُ أَيْضًا عَنْ الشَّعْبِيِّ، وَالْحَسَنِ، وَسُفْيَانَ الثَّوْرِيِّ.

L18230 It has also been narrated by us on the authority of Al-Shaʿbī, Al-Ḥasan, and Sufyān al-Thawrī.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L18231 And this is the opinion of Abū Ḥanīfah, Mālik, al-Shāfiʿī, and Aḥmad ibn Ḥanbal.

قَالَ أَبُو مُحَمَّد: إنَّمَا قُلْنَا بِهَذَا لِقَوْلِ اللَّهِ تَعَالَى: {وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الأَيْمَانَ فَكَفَّارَتُهُ إطْعَامُ عَشَرَةِ مَسَاكِينَ} [المائدة: ٨٩] الْآيَةَ فَأَوْجَبَ اللَّهُ تَعَالَى الْكَفَّارَةَ عَلَى مَنْ عَقَّدَ الْيَمِينَ، ثُمَّ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ حَلَفَ فَقَالَ إنْ شَاءَ اللَّهُ لَمْ يَحْنَثْ» فَلَمْ يَجْعَلْ الِاسْتِثْنَاءَ مَرْدُودًا عَلَى الْيَمِينِ إلَّا بِالْفَاءِ، وَالْفَاءُ فِي لُغَةِ الْعَرَبِ تُوجِبُ تَعْقِيبًا بِلَا مُهْلَةٍ فَوَقَفْنَا عِنْدَ ذَلِكَ.

L18232 Abū Muḥammad said: We have only said this due to Allāh the Exalted's statement: *"But He will hold you accountable for the oaths you have bound. The expiation for it is feeding ten needy people"* [5:89], the verse. Thus, Allāh the Exalted has obligated expiation upon anyone who binds an oath. Then the Messenger of Allāh—peace and blessings of Allāh be upon him—said: *"Whoever swears an oath and says, 'If Allāh wills,' he has not broken his oath."* He did not consider the exception as valid for the oath unless connected by the particle *fa*. In the Arabic language, the particle *fa* necessitates immediate succession without delay. Therefore, we have upheld this ruling.[40]

وَقَالَ بَعْضُهُمْ: لَوْ كَانَ مَا قَالَ ابْنُ عَبَّاسٍ مَا لَزِمَتْ أَحَدًا كَفَّارَةٌ أَبَدًا.

L18233 And some of them said: If what Ibn Abbas had said were true, no one would have ever been liable for expiation.

قَالَ عَلِيٌّ: وَهَذَا لَا شَيْءَ، لِأَنَّ ابْنَ عَبَّاسٍ لَا يَمْنَعُ مَنْ أَرَادَ الْحِنْثَ وَإِيجَابَ الْكَفَّارَةِ مِنْ أَنْ يُكَفِّرَ، لَكِنْ لَوْ قَالُوا: هَذَا مِمَّا تَكْثُرُ بِهِ الْبَلْوَى فَمَا كَانَ مِثْلُ هَذَا لِيَخْفَى عَلَى ابْنِ عَبَّاسٍ لَكَانَ أَلْزَمَ لَهُمْ.

L18234 Ali said: "This is baseless, because Ibn Abbas does not prevent one who intends to break an oath and incur the obligation of expiation from fulfilling it. However, had they said: 'This is among matters that involve frequent predicaments, for something like this would not have eluded Ibn Abbas's knowledge'—their argument would have been more compelling."

وَالْعَجَبُ أَنَّ أَبَا حَنِيفَةَ وَمَالِكًا يَرَيَانِ الِاسْتِثْنَاءَ فِي الْيَمِينِ بِاَللَّهِ تَعَالَى فَقَطْ وَلَا يَرَيَانِهِ فِي سَائِرِ الْأَيْمَانِ، وَهَذَا عَجَبٌ جِدًّا أَنْ يَكُونَ الْأَيْمَانُ بِغَيْرِ اللَّهِ تَعَالَى أَوْكَدَ وَأَعْظَمَ مِنْ الْيَمِينِ بِاَللَّهِ، لِأَنَّ الْيَمِينَ بِاَللَّهِ تَعَالَى يُسْقِطُهَا الِاسْتِثْنَاءُ وَيُسْقِطُهَا الْكَفَّارَةُ، وَالْيَمِينُ بِغَيْرِ اللَّهِ تَعَالَى أَجَلُّ مِنْ أَنْ يُسْقِطَهَا الِاسْتِثْنَاءُ وَمِنْ أَنْ يُسْقِطَهَا الْكَفَّارَةُ، وَمِنْ أَنْ يَكُونَ فِيهَا غَيْرُ الْوَفَاءِ بِهَا.

L18235–18237 It is astonishing that Abū Ḥanīfah and Mālik consider exceptions valid only in oaths sworn by Allah the Exalted and do not recognize them in oaths sworn by other than Him. This is extremely astonishing: that oaths sworn by other than Allah the Exalted would be more emphatic and weightier. The oath by Allah the Exalted is annulled by exception (istithnāʾ) and annulled by expiation (kaffārah), whereas the oath by other than Allah is too sacred to be invalidated by exception or expiation, and too sacred to allow anything other than its fulfillment.

L18238 We disavow before Allah the Exalted this vile and heinous statement. The

[40] **Qur'an references (L18232):** Qur'an 5:89 (Al-Ma'idah).

expiation in the Quranic text came as a general ruling concerning oaths, and the exception in the clarification of the Messenger of Allah—peace and blessings be upon him—came in general terms. If those are oaths, then the exception and expiation apply to them, but if they are not oaths, how could they impose it? Another profoundly astonishing matter is that Malik said: "The exception in oaths is valid if the swearer intends by it the exception. But if he intends by it the statement of Allah Almighty: {And never say of anything, 'I will do that tomorrow,'} [18:23] {except if Allah wills} [18:24], then it is not an exception."[41]

وَنَحْنُ نَبْرَأُ إِلَى اللَّهِ تَعَالَى مِنْ هَذَا الْقَوْلِ الْبَشِيعِ الشَّنِيعِ، وَالْكَفَّارَةُ فِي نَصِّ الْقُرْآنِ جَاءَتْ عَلَى الْأَيْمَانِ جُمْلَةً، وَالِاسْتِثْنَاءُ فِي بَيَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَاءَ فِي جُمْلَةٍ، فَإِنْ كَانَ تِلْكَ أَيْمَانًا فَالِاسْتِثْنَاءُ وَالْكَفَّارَةُ فِيهَا وَإِنْ لَمْ تَكُنْ أَيْمَانًا فَمِنْ أَيْنَ أَلْزَمُوهَا؟ وَعَجَبٌ آخَرُ عَجِيبٌ جِدًّا وَهُوَ أَنَّ مَالِكًا قَالَ: إِنَّ الِاسْتِثْنَاءَ فِي الْأَيْمَانِ إِنْ نَوَى بِهِ الْحَالِفُ الِاسْتِثْنَاءَ فَهُوَ اسْتِثْنَاءٌ صَحِيحٌ، فَإِنْ نَوَى بِهِ قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَقُولَنَّ لِشَيْءٍ إِنِّي فَاعِلٌ ذَلِكَ غَدًا} [الكهف: ٢٣] {إِلا أَنْ يَشَاءَ اللَّهُ} [الكهف: ٢٤] لَمْ يَكُنْ اسْتِثْنَاءً.

L18239 Abū Muḥammad said: This is a statement whose meaning is unknown, nor what its speaker intended by it. We have indeed attempted to find among his adherents, from whom we derived his statement, a comprehensible meaning for these words. Yet we found nothing except that they take it as it is – just as we say regarding [Kāf-Hā-Yā-ʿAyn-Ṣād] [Maryam: 1], [Ṭā-Hā] [Ṭā-Hā: 1], and [We believe in it, all of it is from our Lord] [Āl ʿImrān: 7] – even though we do not understand its meaning.[42]

قَالَ أَبُو مُحَمَّدٍ: هَذَا كَلَامٌ لَا يُدْرَى مَا هُوَ؟ وَلَا مَاذَا أَرَادَ قَائِلُهُ بِهِ، وَلَقَدْ رُمْنَا أَنْ نَجِدَ عِنْدَ مَنْ أَخَذْنَا قَوْلَهُ عَنْهُ مِنَ الْمُنْتَمِينَ إِلَيْهِ مَعْنًى يَصِحُّ فَهْمُهُ لِهَذَا الْكَلَامِ، فَمَا وَجَدْنَاهُ إِلَّا أَنَّهُمْ يَحْمِلُونَهُ كَمَا جَاءَ وَكَمَا نَقُولُ نَحْنُ فِي {كهيعص} [مريم: ١] وَ {طه} [طه: ١] {آمَنَّا بِهِ كُلٌّ مِنْ عِنْدِ رَبِّنَا} [آل عمران: ٧] ، وَإِنْ لَمْ نَفْهَمْ مَعْنَاهُ.

L18240 Abu Muhammad said: If someone seeks to justify the opinion of Ibn Abbas and others by citing what we have transmitted through the chain of Abu Dawud—who narrated from Muhammad ibn al-Ala', who narrated from Ibn Bishr, from Misʿar, from Simak ibn Harb [from Ikrimah], attributing it to the Prophet—that "Allah's Messenger, peace be upon him, said: 'By Allah, I will surely wage war against Quraysh!' Then he said: 'If Allah wills.' Then he repeated: 'By Allah, I will surely wage war against Quraysh!' Then he paused and said: 'If Allah wills.'" Abu Dawud stated: Al-Walid ibn Muslim from Sharik added: "Yet he did not wage war against them."

قَالَ أَبُو مُحَمَّدٍ: فَإِنْ احْتَجَّ مُحْتَجٌّ لِقَوْلِ ابْنِ عَبَّاسٍ وَغَيْرِهِ بِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ الْعَلَاءِ نا ابْنُ بِشْرٍ عَنْ مِسْعَرٍ عَنْ سِمَاكِ بْنِ حَرْبٍ [عَنْ عِكْرِمَةَ] يَرْفَعُهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: وَاللَّهِ لَأَغْزُوَنَّ قُرَيْشًا ثُمَّ قَالَ: إِنْ شَاءَ اللَّهُ ثُمَّ قَالَ وَاللَّهِ لَأَغْزُوَنَّ قُرَيْشًا، ثُمَّ سَكَتَ، ثُمَّ قَالَ: إِنْ شَاءَ اللَّهُ» قَالَ أَبُو دَاوُد: وَقَالَ الْوَلِيدُ بْنُ مُسْلِمٍ عَنْ شَرِيكٍ، " ثُمَّ لَمْ يَغْزُهُمْ ".

L18241 We have also narrated it through the chain of Sharīk from Simāk from ʿIkrimah, and a group narrated it from Simāk from ʿIkrimah from Ibn ʿAbbās.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ شَرِيكٍ عَنْ سِمَاكٍ عَنْ عِكْرِمَةَ، وَأَسْنَدَهُ جَمَاعَةٌ عَنْ سِمَاكٍ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ.

[41] **Qur'an references (L18238):** Qur'an 18:23 (Al-Kahf); Qur'an 18:24 (Al-Kahf).

[42] **Qur'an references (L18239):** Qur'an 3:7 (Ali 'Imran); Qur'an 19:1 (Maryam); Qur'an 20:1 (Taha).

قَالَ أَبُو مُحَمَّد: سِمَاكٌ ضَعِيفٌ يَقْبَلُ التَّلْقِينَ وَيَلْزَمُ مَنْ اعْتَدَّ بِرِوَايَتِهِ فِي أَخْذِ الدَّنَانِيرِ مِنْ الدَّرَاهِمِ، وَالدَّرَاهِمِ مِنْ الدَّنَانِيرِ أَنْ يَأْخُذَ بِهَا هَهُنَا.

L18242 Abu Muhammad said: Simak is a weak narrator who accepts uncritical prompting. Therefore, whoever relies on his narration concerning the taking of dinars from dirhams and dirhams from dinars is obligated to apply it here.

وَمَنْ قَالَ: إنَّ الْمُرْسَلَ كَالْمُسْنَدِ أَنْ يَقُولَ بِهَذَا أَيْضًا.

L18243–18244 And whoever said, "Indeed, the mursal [ḥadīth] is like the musnad [ḥadīth]," is also to say this.

وَيَلْزَمُهُمْ إذْ قَاسُوا مَا يَكُونُ صَدَاقًا عَلَى مَا تُقْطَعُ فِيهِ الْيَدُ فِي السَّرِقَةِ أَنْ يَقِيسُوا مُدَّةَ مُهْلَةِ الِاسْتِثْنَاءِ عَلَى مُدَّةِ الْإِيلَاءِ فَيَقُولُوا بِقَوْلِ سَعِيدِ بْنِ جُبَيْرٍ فِي ذَلِكَ أَوْ يَجْعَلُوهُ شَهْرًا عَلَى قَوْلِهِمْ فِي أَجَلِ الْمَدِينِ أَنَّهُ يُسْجَنُ شَهْرًا، ثُمَّ يُسْأَلُ عَنْهُ بَعْدَ الشَّهْرِ؟ أَوْ يَقِيسُوهُ عَلَى قَوْلِهِمْ الْفَاسِدِ فِي الْمُخَيَّرَةِ أَنَّ لَهَا الْخِيَارَ مَا لَمْ تَقُمْ عَنْ مَجْلِسِهَا أَوْ تَتَكَلَّمْ، فَأَيُّ فَرْقٍ بَيْنَ هَذِهِ التَّحَكُّمَاتِ فِي الدِّينِ بِالْبَاطِلِ فِي تَحْرِيمِ الْفُرُوجِ وَإِبَاحَتِهَا، وَغَيْرِ ذَلِكَ مِنْ الدِّيَانَةِ وَبَيْنَ مُهْلَةِ الِاسْتِثْنَاءِ؟ وَهَلْ هَذَا إلَّا شَبَهُ التَّلَاعُبِ بِالدِّينِ؟ وَالْعَجَبُ مِنْ إجَازَتِهِمْ أَكْلَ مَا ذُبِحَ أَوْ نُحِرَ وَنَسِيَ مُذْكِيهِ أَنْ يُسَمِّيَ اللَّهَ تَعَالَى عَلَيْهِ، ثُمَّ لَا يَرَوْنَ هَهُنَا نِسْيَانَ الِاسْتِثْنَاءِ عُذْرًا يُوجِبُونَ لِلْحَالِفِ بِهِ الِاسْتِثْنَاءَ مَتَى ذَكَرَ.

L18245 Since they analogize what constitutes a dowry to what mandates hand amputation in theft, they must analogize the duration of the exception's waiting period to the oath of abstention's term, thereby adopting Sa'īd ibn Jubayr's position. Alternatively, they should fix it at one month per their ruling that a debtor is jailed for a month then asked about repayment after the month. Or they should analogize it to their invalid opinion regarding the woman given the option - that her choice remains valid until she rises from her seat or speaks. What difference exists between these arbitrary religious rulings through falsehood - whether in prohibiting/intimacy permissions or other matters of faith - and the exception's waiting period? Is this not akin to resembling trifling with religion? Astonishingly, they permit eating animals slaughtered or sacrificed by nahr (jugular cut) when the slaughterer forgets to name Allah, yet they do not consider forgetfulness of the exception here as an excuse - though they require the swearer to apply the exception whenever remembered.

فَإِنْ قَالُوا: فَهَلَّا قُلْتُمْ أَنْتُمْ بِهَذَا كَمَا أَسْقَطْتُمْ الْكَفَّارَةَ عَمَّنْ فَعَلَ مَا حَلَفَ عَلَيْهِ نَاسِيًا؟ قُلْنَا: لَمْ نَفْعَلْ بِذَلِكَ، لِأَنَّ الْفَاعِلَ نَاسِيًا لَيْسَ حَانِثًا لِأَنَّ الْحَانِثَ هُوَ الْقَاصِدُ إلَى الْحِنْثِ، وَنَاسِي الِاسْتِثْنَاءِ لَمْ يَسْتَثْنِ، فَانْعَقَدَتْ الْيَمِينُ عَلَيْهِ فَوَجَبَتْ الْكَفَّارَةُ بِنَصِّ الْقُرْآنِ.

L18246 If they say: Why did you yourselves not say this, just as you exempted the expiation for one who did what he swore to avoid out of forgetfulness? We replied: We did not do so in that case, because the one who acts out of forgetfulness is not an oath-breaker, since the oath-breaker is the one who intentionally intends to break the oath. The one who forgot to include the stipulation failed to do so, so the oath became binding upon him, and the expiation became obligatory by the Quranic text.

وَالْكَفَّارَةُ لَا تَسْقُطُ بَعْدَ وُجُوبِهَا إلَّا بِنَصٍّ، وَلَمْ يُسْقِطْهَا النَّصُّ إلَّا إذَا قَالَ مَوْصُولًا بِالْيَمِينِ مَا يَسْتَثْنِي بِهِ.

L18247 Expiation does not cease to be obligatory after becoming incumbent except by a scriptural text. The text nullifies it only when one utters a statement connected to the oath that serves as an exemption.

L18248 And the wonder is that they say regarding such a case when it aligns with

their position: “Such a case is not decided by personal opinion”—so why do they not say the same regarding the statement of Abu Dharr?

L18249 And Ibn Abbas here: Such a ruling is not to be established through opinion, just as they stated in the narration of a sheikh from Banu Kinana reporting from Umar regarding “a sale based on a transaction or an option”: “This is not to be established through opinion,” thus rejecting the established Sunnah that between two sales, there is no sale unless the parties physically separate while remaining present together.

L18250 ## The Issue of the Mute’s Oath and Its Exception

L18251 Question 1139:

L18252 The oath of a mute person and his exception are both binding according to his capability—through vocalization or gesture if he is non-verbal and cannot do more than that—because, as previously explained, oaths are declarations by the swearer about himself. Both the mute and non-verbal are subject to the laws of Islam like other individuals.

L18253 Allah, the Most High, says: “Allah does not burden a soul beyond its capability” (Quran 2:286).[43]

L18254 The Messenger of Allah (peace be upon him) said: “When I command you to do something, fulfill it to the best of your ability.”

L18255–18257 Therefore, it is incumbent upon both of them, from this Sharia, to fulfill what they are capable of, and that what is not within [their capacity] be waived for them. and their capacity, that He accept from the two of them what they report about themselves according to what they are capable of, and what the two have committed to is incumbent upon them—and success comes from Allah, the Most High.

L18258 ## Issue: Men, women, free persons, and enslaved persons

[43] **Qur’an references (L18253):** Qur’an 2:286 (Al-Baqarah).

وَالْعَجَبُ أَنَّهُمْ يَقُولُونَ فِي مِثْلِ هَذَا إذَا وَافَقَهُمْ: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، فَهَلَّا قَالُوا فِي قَوْلِ أَبِي ذَرٍّ.

وَابْنِ عَبَّاسٍ هَهُنَا: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، كَمَا قَالُوا فِي رِوَايَةِ شَيْخٍ مِنْ بَنِي كِنَانَةَ عَنْ عُمَرَ الْبَيْعُ عَنْ صَفْقَةٍ أَوْ خِيَارٍ: هَذَا لَا يُقَالُ بِالرَّأْيِ، فَرَدُّوا بِهِ السُّنَّةَ الثَّابِتَةَ مِنْ أَنَّ كُلَّ بَيْعَيْنِ فَلَا بَيْعَ بَيْنَهُمَا مَا لَمْ يَتَفَرَّقَا وَكَانَا مَعًا.

[مَسْأَلَةٌ يَمِينُ الْأَبْكَمِ وَاسْتِثْنَاؤُهُ]

١١٣٩ - مَسْأَلَةٌ

وَيَمِينُ الْأَبْكَمِ وَاسْتِثْنَاؤُهُ لَازِمَانِ عَلَى حَسَبِ طَاقَتِهِ مِنْ صَوْتٍ يُصَوِّتُهُ أَوْ إشَارَةٍ إنْ كَانَ مُصْمَتًا لَا يَقْدِرُ عَلَى أَكْثَرَ، لِمَا ذَكَرْنَا مِنْ أَنَّ الْأَيْمَانَ إخْبَارٌ مِنْ الْحَالِفِ عَنْ نَفْسِهِ، وَالْأَبْكَمُ، وَالْمُصْمَتُ، مُخَاطَبَانِ بِشَرَائِعِ الْإِسْلَامِ كَغَيْرِهِمَا.

وَقَدْ قَالَ اللَّهُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» .

فَوَجَبَ عَلَيْهِمَا مِنْ هَذِهِ الشَّرِيعَةِ مَا اسْتَطَاعَاهُ، وَأَنْ يُسْقِطَ عَنْهُمَا مَا لَيْسَ فِي وُسْعِهِمَا، وَأَنْ يَقْبَلَ مِنْهُمَا مَا يُخْبِرَانِ بِهِ عَنْ أَنْفُسِهِمَا حَسْبَ مَا يُطِيقَانِ وَيَلْزَمُهُمَا مَا الْتَزَمَاهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الرِّجَالُ وَالنِّسَاءُ وَالْأَحْرَارُ وَالْمَمْلُوكُونَ فِي الْيَمِينِ سَوَاءٌ]

are equal in oaths.

L18259 1140 - Issue

١١٤٠ - مَسْأَلَةٌ

L18260 Men, women, free persons, slaves, women—whether married, virgins, or others among them—are equal in all the rulings we have discussed and will discuss, for Allah the Most High says: “That is the expiation for your oaths when you swear” [Surah Al-Ma’idah 5:89].[44]

وَالرِّجَالُ، وَالنِّسَاءُ، الْأَحْرَارُ، وَالْمَمْلُوكُونَ، وَذَوَاتُ الْأَزْوَاجِ وَالْأَبْكَارُ، وَغَيْرُهُنَّ، فِي كُلِّ مَا ذَكَرْنَا وَنَذْكُرُ سَوَاءٌ، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ} [المائدة: ٨٩] .

L18261 And He, the Exalted, said: “But He will call you to account for the oaths you have sworn.” [Al-Ma’idah 89][45]

وَقَالَ تَعَالَى: {وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الْأَيْمَانَ} [المائدة: ٨٩] .

L18262 He (peace be upon him) said: “Whoever takes an oath should swear only by Allah.” He addressed exceptions as we have outlined, and there has been no text specifying a distinction between a slave and a free person, nor a married woman and an unmarried woman, nor a virgin and a previously married woman: *And your Lord is not forgetful* (Maryam 19:64).[46]

وَقَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ كَانَ حَالِفًا فَلَا يَحْلِفْ إِلَّا بِاللَّهِ» وَقَالَ فِي الِاسْتِثْنَاءِ مَا ذَكَرْنَا وَلَمْ يَأْتِ نَصٌّ بِتَخْصِيصِ عَبْدٍ مِنْ حُرٍّ، وَلَا ذَاتِ زَوْجٍ مِنْ أَيِّمٍ، وَلَا بِكْرٍ مِنْ ثَيِّبٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L18263 Domineering over religion with corrupt opinions is impermissible—and success is by Allah, the Exalted.

وَالتَّحَكُّمُ فِي الدِّينِ بِالْآرَاءِ الْفَاسِدَةِ لَا يَجُوزُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L18264 They have concurred with us that all those we have mentioned are equally obligated by prayer, fasting, prohibiting what is forbidden, and permitting what is lawful. How then can they arbitrarily distinguish some of these obligations from others through falsehood and baseless claims? If they cite what we have narrated through ʿAbd al-Razzāq from Maʿmar from Ḥarām ibn ʿUthmān from ʿAbd al-Raḥmān and Muḥammad, the sons of Jābir ibn ʿAbd Allāh, from their father: that the Messenger of Allāh—peace and blessings be upon him—said, “A child’s oath cannot override a parent’s oath, a wife’s oath cannot override her husband’s oath, and an enslaved person’s oath cannot override their owner’s oath. There is no valid oath for severing kinship ties, no vow in disobedience, no divorce before marriage, no emancipation prior to ownership, no vow of silence lasting a full day until nightfall, no continuous fasting without interruption, no orphanhood after puberty, no

قَدْ وَافَقُونَا: عَلَى أَنَّ كُلَّ مَنْ ذَكَرْنَا مُخَاطَبٌ بِالصَّلَاةِ، وَبِالصِّيَامِ، وَتَحْرِيمِ مَا يُحَرَّمُ، وَتَحْلِيلِ مَا يَحِلُّ سَوَاءٌ، فَأَنَّى لَهُمْ تَخْصِيصُ بَعْضِ ذَلِكَ مِنْ بَعْضٍ بِالْبَاطِلِ، وَالدَّعَاوَى الْكَاذِبَةِ؟ فَإِنْ ذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ حَرَامِ بْنِ عُثْمَانَ عَنْ عَبْدِ الرَّحْمَنِ، وَمُحَمَّدٍ ابْنَيْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِمَا: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَمِينَ لِوَلَدٍ مَعَ يَمِينِ وَالِدٍ، وَلَا يَمِينَ لِزَوْجَةٍ مَعَ يَمِينِ زَوْجٍ، وَلَا يَمِينَ لِلْمَمْلُوكِ مَعَ يَمِينِ مَلِيكِهِ، وَلَا يَمِينَ فِي قَطِيعَةٍ، وَلَا نَذْرَ فِي مَعْصِيَةٍ، وَلَا طَلَاقَ قَبْلَ نِكَاحٍ، وَلَا عَتَاقَةَ قَبْلَ الْمِلْكِ وَلَا صَمْتَ يَوْمٍ إِلَى اللَّيْلِ، وَلَا مُوَاصَلَةَ فِي الصِّيَامِ، وَلَا يُتْمَ بَعْدَ الْحُلُمِ، وَلَا رَضَاعَةَ بَعْدَ الْفِطَامِ، وَلَا تَغَرُّبَ بَعْدَ الْهِجْرَةِ، وَلَا هِجْرَةَ بَعْدَ الْفَتْحِ» فَحَرَامُ بْنُ عُثْمَانَ سَاقِطٌ مُطْرَحٌ لَا تَحِلُّ الرِّوَايَةُ عَنْهُ، وَيَلْزَمُ مَنْ قَلَّدَ رِوَايَتَهُ فِي اسْتِظْهَارِ

[44] **Qur’an references (L18260):** Qur’an 5:89 (Al-Ma’idah).
[45] **Qur’an references (L18261):** Qur’an 5:89 (Al-Ma’idah).
[46] **Qur’an references (L18262):** Qur’an 19:64 (Maryam).

breastfeeding after weaning, no residing abroad after the Migration, and no Migration after the Conquest"—then Ḥarām ibn ʿUthmān is a discredited and rejected narrator from whom transmission is impermissible. Those who blindly imitate his narration concerning deeming the woman with chronic bleeding to have three days beyond her menstrual period—thereby invalidating her obligatory prayers and fasting and prohibiting lawful intercourse—must likewise accept his narration here. Otherwise, they are trivializing the religion.

الْمُسْتَحَاضَةِ بِثَلَاثٍ بَعْدَ أَيَّامِهَا، فَأَسْقَطَ بِهَا الصَّلَوَاتِ الْمَفْرُوضَةَ وَالصِّيَامَ الْمَفْرُوضَ، وَحَرَّمَ الْوَطْءَ الْمُبَاحَ أَنْ يَأْخُذُوا بِرِوَايَتِهِ هَهُنَا، وَإِلَّا فَهُمْ مُتَلَاعِبُونَ بِالدِّينِ.

L18265 Success is from Allah, the Exalted.

بِاللَّهِ تَعَالَى التَّوْفِيقُ.

L18266 They have contradicted most of what is in this report. As for us—by Allah—if trustworthy narrators had authenticated it through a continuous chain of narration, we would have hastened to uphold it. And success is granted only by Allah, the Exalted.

وَقَدْ خَالَفُوا أَكْثَرَ مَا فِي هَذَا الْخَبَرِ - وَأَمَّا نَحْنُ فَوَاللَّهِ لَوْ صَحَّ بِرِوَايَتِهِ الثِّقَاتُ مُتَّصِلًا لَبَادَرْنَا إِلَى الْقَوْلِ بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L18267–18268 A legal issue concerning the oath of the intoxicated one, the insane one, the mentally distracted one, the sleeper, and the one who has not reached puberty.

[مَسْأَلَةٌ يَمِينَ السَّكْرَانِ وَالْمَجْنُونِ وَالْهَاذِي وَالنَّائِمِ وَمَنْ لَمْ يَبْلُغْ]

L18269 Legal Question

مَسْأَلَةٌ

L18270 No oath is legally binding for an intoxicated person, an insane person during their state of insanity, a delirious person in their illness, a sleeping person during their sleep, or a minor.

وَلَا يَمِينَ لِسَكْرَانَ، وَلَا لِمَجْنُونٍ فِي حَالِ جُنُونِهِ، وَلَا لِهَاذٍ فِي مَرَضِهِ، وَلَا لِنَائِمٍ فِي نَوْمِهِ، وَلَا لِمَنْ لَمْ يَبْلُغْ.

L18271 In all of this, Abū Ḥanīfah, Mālik, and al-Shāfiʿī agreed with us, except that they disagreed with us solely regarding the intoxicated person. And concerning the intoxicated person, our opinion here also agrees with the opinion of al-Muzanī, Abū Sulaymān, Abū Thawr, al-Ṭaḥāwī, al-Karkhī (among the companions of Abū Ḥanīfah), and others.

وَوَافَقَنَا فِي كُلِّ هَذَا أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، إِلَّا أَنَّهُمْ خَالَفُونَا فِي السَّكْرَانِ وَحْدَهُ، وَوَافَقَ فِي السَّكْرَانِ أَيْضًا قَوْلُنَا هَهُنَا قَوْلَ الْمُزَنِيِّ، وَأَبِي سُلَيْمَانَ، وَأَبِي ثَوْرٍ، وَالطَّحَاوِيِّ، وَالْكَرْخِيِّ مِنْ أَصْحَابِ أَبِي حَنِيفَةَ، وَغَيْرِهِمْ.

L18272 Our evidence regarding the intoxicated person is Allah the Exalted's statement: "Do not approach prayer while you are intoxicated until you know what you are saying" [An-Nisa: 43]. For whoever Allah the Exalted testifies for him that he does not know what he says, it is impermissible to hold him

وَحُجَّتُنَا فِي السَّكْرَانِ قَوْلُ اللَّهِ تَعَالَى: {لا تَقْرَبُوا الصَّلاةَ وَأَنْتُمْ سُكَارَى حَتَّى تَعْلَمُوا مَا تَقُولُونَ} [النساء: ٤٣] فَمَنْ شَهِدَ اللَّهُ تَعَالَى لَهُ بِأَنَّهُ لَا يَدْرِي مَا يَقُولُ، فَلَا يَحِلُّ أَخْذُهُ

بِمَا لَا يَدْرِي مَا هُوَ مِنْ قَوْلِهِ، وَبِيَقِينٍ نَدْرِي أَنَّهُ لَمْ يَعْقِدْ الْيَمِينَ، وَاَللَّهُ تَعَالَى لَا يُؤَاخِذُ إلَّا بِمَا عَقَّدَ مِنْهَا بِنَصِّ الْقُرْآنِ، وَمَا نَعْلَمُ لَهُمْ حُجَّةً إلَّا أَنَّهُمْ قَالُوا: هُوَ أَدْخَلَ ذَلِكَ عَلَى نَفْسِهِ؟ فَقُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ وَمَا تَقُولُونَ فِيمَنْ قَطَعَ الطَّرِيقَ فَجُرِحَ جِرَاحَةً أَقْعَدَتْهُ، أَوْ جَرَحَهَا نَفْسَهُ عَابِثًا عَاصِيًا، أَيَنْتَقِلُ إلَى حُكْمِ مَنْ أُقْعِدَ فِي سَبِيلِ اللَّهِ، أَوْ بِمَرَضٍ مِنْ عِنْدِهِ عَزَّ وَجَلَّ فِي جَوَازِ الصَّلَاةِ قَاعِدًا، وَفِي وُجُوبِ الْفِطْرِ فِي رَمَضَانَ فِي مَرَضِهِ أَمْ لَا؟ فَمِنْ قَوْلِهِمْ: نَعَمْ، فَظَهَرَ تَنَاقُضُهُمْ.

accountable for what he utters unknowingly. We know with certainty that he did not bind himself by oath, and Allah the Exalted only holds accountable for what one binds from oaths by the Quran's explicit text. We know of no argument for their position except their statement: "He brought this upon himself?" We respond: "Yes, then what?" What do you say concerning one who commits highway robbery and is injured with incapacitating wounds, or who injures himself frivolously and disobediently? Does he thereby become subject to the ruling of one incapacitated in the path of Allah, or to one afflicted by an illness from Him, the Almighty—regarding the permissibility of praying seated or the obligation to break the fast in Ramadan during his illness—or not? If they answer affirmatively, their contradiction becomes evident.[47]

L18273 وَكُلُّ مَنْ صَارَ إلَى حَالٍ يَبْطُلُ اخْتِيَارُهُ فِيهَا بِأَيِّ وَجْهٍ صَارَ إلَيْهَا، فَهُوَ فِي حُكْمِ مَنْ صَارَ إلَيْهَا بِغَلَبَةٍ، لِأَنَّ النُّصُوصَ لَمْ تَسْتَثْنِ هَهُنَا مِنْ أَحْوَالِ الْمَصِيرِ إلَى تِلْكَ الْحَالِ شَيْئًا.

L18273 And whoever enters a state that nullifies their volition (regardless of the manner by which they entered it) is subject to the same ruling as one who entered it under compulsion, because the revealed texts did not exclude any modes of arriving at that state in this context.

L18274 وَالْعَجَبُ مِنْ الْمَالِكِيِّينَ الْقَائِلِينَ فِيمَنْ خَرَجَ قَاطِعًا لِلطَّرِيقِ فَاضْطُرَّ إلَى الْمَيْتَةِ، وَالْخِنْزِيرِ: إنَّ لَهُ أَنْ يُقَوِّيَ نَفْسَهُ بِأَكْلِهَا، وَالْقُرْآنُ جَاءَ بِخِلَافِ ذَلِكَ - وَهُوَ قَادِرٌ عَلَى التَّوْبَةِ ثُمَّ يَأْكُلُ حَلَالًا فَلَا يَلْزَمُهُ ذَلِكَ، ثُمَّ لَا يَرَى السَّكْرَانَ فِي حُكْمِ مَنْ ذَهَبَ عَقْلُهُ مِنْ أَجْلِ أَنَّهُ هُوَ أَدْخَلَهُ عَلَى نَفْسِهِ.

L18274 It is astonishing that the Malikis who rule that a highway robber compelled to eat carrion or pig meat may sustain himself by consuming it—despite the Quran's contrary ruling—claim he faces no obligation to do so when capable of repentance and subsequent consumption of halal. Similarly, they refuse to regard the intoxicated as equivalent to one who lost mental capacity, arguing he self-inflicted this state.

L18275 وَالْعَجَبُ مِنْ أَبِي حَنِيفَةَ الَّذِي يَرَى أَنَّ النَّائِمَ فِي نَهَارِ رَمَضَانَ إنْ أَكَلَ فِي حَالِ نَوْمِهِ، أَوْ شَرِبَ مَا دَسَّ فِي فَمِهِ، أَنَّهُ مُفْطِرٌ، ثُمَّ يَرَاهُ هَهُنَا غَيْرَ حَالِفٍ ثُمَّ يُلْزِمُ السَّكْرَانَ يَمِينَهُ، وَهَذَا عَجَبٌ جِدًّا.

L18275 It is astonishing regarding Abu Hanifa, who holds that a sleeping person during the daytime of Ramadan breaks his fast if he eats while asleep or drinks what is put into his mouth, yet in this case he deems him not to have sworn an oath while still compelling the intoxicated person to fulfill his oath—and this is truly astonishing.

L18276–18278 فَإِنْ قَالُوا: لَعَلَّهُ مُتَسَاكِرٌ، وَمَنْ يَدْرِي أَنَّهُ سَكْرَانُ؟ قُلْنَا: وَلَعَلَّ الْمَجْنُونَ مُتَجَنِّنٌ، مُتَحَامِقٌ، وَمَنْ يَدْرِي أَنَّهُ مَجْنُونٌ، أَوْ أَحْمَقُ - وَجَوَابُنَا هَهُنَا أَنَّهُ مِنْ حَيْثُ يَدْرِي أَنَّهُ مَجْنُونٌ، يَدْرِي أَنَّهُ سَكْرَانُ، وَلَا فَرْقَ.

L18276–18278 If they say: "Perhaps he is pretending to be drunk—how can one know that he is truly intoxicated?" We say: "And perhaps the insane person is pretending to be insane, putting on a foolish act—how can one know that

[47] **Qur'an references (L18272):** Qur'an 4:43 (An-Nisa).

he is truly insane or foolish?" Our answer here is that insofar as he knows he is insane, he knows he is intoxicated, and there is no difference.

وَفِي الصَّبِيِّ يَحْلِفُ: خِلَافٌ نَذْكُرُهُ: رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى عَنْ حَفْصِ بْنِ غِيَاثٍ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ طَاوُسٍ قَالَ: إذَا حَلَفَ الصَّبِيُّ ثُمَّ حَنِثَ بَعْدَ مَا يَكْبَرُ كَفَّرَ.

L18279 Regarding the male minor taking an oath, there is a disagreement we mention. It has been narrated to us through the chain of Muḥammad ibn al-Muthannā from Ḥafṣ ibn Ghiyāth from Layth ibn Abī Sulaym from Ṭāwūs, who said: If a minor takes an oath and then breaks it after attaining puberty, he must perform kaffarah.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ صَحَّ عَنْ بَعْضِ الصَّحَابَةِ: عُمَرَ، أَوْ عُثْمَانَ: إقَامَةُ الْحَدِّ عَلَى مَنْ بَلَغَ خَمْسَةَ أَشْبَارٍ وَإِنْ لَمْ يَبْلُغْ - وَيَلْزَمُ مَنْ يَرَى مِنْ الْمَالِكِيِّينَ أَنْ يُكَفِّرَ عَنْ الصَّبِيِّ يُصِيبُ لِصَيْدٍ فِي إحْرَامِهِ أَنْ يُكَفِّرَ عَنْهُ إنْ حَنِثَ وَإِلَّا فَقَدْ تَنَاقَضُوا.

L18280 Abū Muḥammad said: It has been authentically reported from some of the Companions—ʿUmar or ʿUthmān—that the prescribed punishment is applied to whoever attains pubic hair growth of five spans, even if he has not reached legal maturity. Moreover, those among the Mālikīs who hold that expiation must be performed on behalf of a minor who kills game while in the state of iḥrām are obliged to perform expiation on his behalf if the minor violates the prohibitions of iḥrām. Otherwise, they would be contradicting themselves.

قَالَ عَلِيٌّ: وَالْحُجَّةُ فِي هَذَا -: هُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا مُوسَى بْنُ إسْمَاعِيلَ نا وُهَيْبٌ هُوَ ابْنُ خَالِدٍ - عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي الضُّحَى عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ: عَنْ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنْ الصَّبِيِّ حَتَّى يَحْتَلِمَ، وَعَنْ الْمَجْنُونِ حَتَّى يَعْقِلَ» .

L18281 Ali said: The proof regarding this is what we have narrated through the chain from Abu Dawud from Musa ibn Isma'il from Wuhaib, who is the son of Khalid, from Khalid al-Hadhdha' from Abu al-Duha from Ali ibn Abi Talib from the Prophet (peace and blessings be upon him), who said: "The pen is lifted from three: the sleeper until he awakens, the child until he reaches puberty, and the mentally incapacitated until he regains rationality."

وَمِنْ طَرِيقِ أَبِي دَاوُد نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ الْأَسْوَدِ بْنِ يَزِيدَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ عَنْ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنْ الْمُبْتَلَى حَتَّى يَبْرَأَ، وَعَنْ الصَّبِيِّ حَتَّى يَكْبَرَ» .

L18282 Through the chain of Abu Dawud: Uthman ibn Abi Shaybah narrated to us, Yazid ibn Harun narrated to us, Hammad ibn Salamah narrated to us, from Hammad ibn Abi Sulayman, from Ibrahim al-Nakha'i, from al-Aswad ibn Yazid, from Aishah, the Mother of the Believers, that the Messenger of Allah (peace and blessings of Allah be upon him) said: "The pen is lifted for three types of people: from the sleeper until he awakens, from the afflicted until he recovers, and from the child until he matures."

قَالَ عَلِيٌّ: السَّكْرَانُ مُبْتَلًى بِلَا شَكٍّ فِي عَقْلِهِ.

L18283 Ali said: The drunkard is undoubtedly afflicted in his mind.

L18284 **An issue: He swore by Allah the Exalted while in a state**

of disbelief, then broke his oath.

1142 – Issue

And whoever swears by Allah the Exalted in disbelief then breaks it, whether during disbelief or after embracing Islam, he must perform expiation. This is because they are addressed by the obligation to obey the Messenger of Allah (peace be upon him), and the religion of Allah the Exalted is irrevocably incumbent upon them. Allah the Exalted said: “Fight them until there is no strife and religion is entirely for Allah” [Surah Al-Anfal 8:39].[48]

And He, the Exalted, said: “And judge between them by what Allah has revealed” [Al-Mā’idah: 49]. It is not sufficient for him to perform atonement while in his state of disbelief, because he has not carried out the atonement Allah the Exalted obligated upon him in the Quran while affirming that it is the religion of Allah the Exalted. Therefore, he must perform it.[49]

He, the Exalted, said: “They were only commanded to worship Allah, sincere in faith to Him, as upright hanifs.” [Al-Bayyinah: 5][50]

The Issue Concerning the Oath by al-Lāt

1143. Issue: And whoever swears by Al-Lāt and Al-‘Uzzā, his expiation is to say: “There is no deity but Allah alone, with no partner to Him. To Him belongs the dominion and the praise, and He is over all things all-powerful” – saying it once, or... He should say: “There is no god but Allah alone” three times, without fail.[51]

He blows lightly from his left three times, seeks refuge with Allah from Satan three times, and should not repeat. If he does repeat, he must return to what we have mentioned.

[مَسْأَلَةٌ حَلَفَ بِاللَّهِ تَعَالَى فِي كُفْرِهِ ثُمَّ حَنِثَ]

١١٤٢ - مَسْأَلَةٌ

وَمَنْ حَلَفَ بِاللَّهِ تَعَالَى فِي كُفْرِهِ ثُمَّ حَنِثَ فِي كُفْرِهِ، أَوْ بَعْدَ إسْلَامِهِ فَعَلَيْهِ الْكَفَّارَةُ، لِأَنَّهُمْ مُخَاطَبُونَ بِطَاعَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَدِينُ اللَّهِ تَعَالَى لَازِمٌ لَهُمْ - قَالَ تَعَالَى: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] .

وَقَالَ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] وَلَا يَجْزِيهِ أَنْ يُكَفِّرَ فِي حَالِ كُفْرِهِ، لِأَنَّهُ لَمْ يَأْتِ بِالْكَفَّارَةِ الَّتِي افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ فِي الْقُرْآنِ مُصَدِّقًا أَنَّهَا دِينُ اللَّهِ تَعَالَى فَعَلَيْهِ أَنْ يَأْتِيَ بِهَا.

قَالَ تَعَالَى: {وَمَا أُمِرُوا إِلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ حُنَفَاءَ} [البينة: ٥] .

[مَسْأَلَةُ الْحَلِفِ بِاللَّاتِ]

١١٤٣ - مَسْأَلَةٌ وَمَنْ حَلَفَ: وَاللَّاتِ، وَالْعُزَّى، فَكَفَّارَتُهُ أَنْ يَقُولَ: لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ، لَهُ الْمُلْكُ وَلَهُ الْحَمْدُ وَهُوَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ - يَقُولُهَا مَرَّةً؛ أَوْ يَقُولُ: لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ ثَلَاثَ مَرَّاتٍ وَلَا بُدَّ.

وَيَنْفُثُ عَنْ شِمَالِهِ ثَلَاثَ مَرَّاتٍ، وَيَتَعَوَّذُ بِاللَّهِ مِنْ الشَّيْطَانِ ثَلَاثَ مَرَّاتٍ ثُمَّ لَا يَعُدْ فَإِنْ عَادَ عَادَ لِمَا ذَكَرْنَا أَيْضًا.

[48] **Qur’an references (L18286):** Qur’an 8:39 (Al-Anfal).
[49] **Qur’an references (L18287):** Qur’an 5:49 (Al-Ma’idah).
[50] **Qur’an references (L18288):** Qur’an 98:5 (Al-Bayyinah).
[51] **Qur’an references (L18290):** Qur’an 64:1 (At-Taghabun).

L18294 Whoever says to another: “Come, let me gamble with you,” must give charity willingly, whether the amount is small or large—due to what has been narrated to us through the chain of Ahmad ibn Shu‘ayb: Narrated by Abd al-Hamid ibn Muhammad from Makhlad, from Yunus—who is Yunus ibn Abi Ishaq al-Sabi‘i—from his father, from Mus‘ab ibn Sa‘d from his father Sa‘d ibn Abi Waqqas, who said: “I swore by Al-Lat and Al-‘Uzza, so I came to the Messenger of Allah—peace and blessings be upon him—and mentioned that to him. He said: ’Say: There is no god but Allah alone, with no partner. To Him belongs the dominion and to Him belongs all praise, and He is over all things all-powerful. Blow lightly to your left three times, seek refuge with Allah from Satan, then do not do it again.’”[5253]

وَمَنْ قَالَ لِآخَرَ: تَعَالَ أُقَامِرْكَ؟ فَلْيَتَصَدَّقْ وَلَا بُدَّ بِمَا طَابَتْ بِهِ نَفْسُهُ قَلَّ أَمْ كَثُرَ -: لِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَبْدُ الْحَمِيدِ بْنُ مُحَمَّدٍ أَنَا مَخْلَدٌ نا يُونُسُ هُوَ ابْنُ أَبِي إِسْحَاقَ السَّبِيعِيِّ - عَنْ أَبِيهِ [قَالَ] حَدَّثَنِي مُصْعَبُ بْنُ سَعْدٍ عَنْ أَبِيهِ «سَعْدِ بْنِ أَبِي وَقَّاصٍ قَالَ: حَلَفْتُ بِاللَّاتِ وَالْعُزَّى فَأَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرْتُ ذَلِكَ لَهُ؟ فَقَالَ: قُلْ لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ لَهُ الْمُلْكُ وَلَهُ الْحَمْدُ وَهُوَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ وَانْفُثْ عَنْ شِمَالِكَ ثَلَاثًا، وَتَعَوَّذْ بِاللَّهِ مِنْ الشَّيْطَانِ، ثُمَّ لَا تَعُدْ» .

L18295 From the path of Ahmad ibn Shu’ayb - Abu Dawud al-Harrani narrated to us - al-Hasan ibn Muhammad - he is Ibn A’yan, trustworthy - narrated to us - Zuhayr - he is Ibn Mu’awiyah - narrated to us - Abu Ishaq - he is al-Sabīʿī - from Mus’ab ibn Sa’d ibn Abi Waqqas, from his father, who said: “I swore by al-Lat and al-Uzza. The Companions of Allah’s Messenger - peace and blessings be upon him - said to me: ’How evil is what you have uttered! Go to Allah’s Messenger - peace and blessings be upon him - and inform him, for we consider you to have disbelieved.’ So I met him and informed him? He said to me: ’Say: There is no god but Allah alone, with no partner to Him - three times. Seek refuge with Allah from Satan - three times. Spit lightly to your left side - three times. And do not return to this act.’”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا أَبُو دَاوُد الْحَرَّانِيُّ نا الْحَسَنُ بْنُ مُحَمَّدٍ هُوَ ابْنُ أَعْيَنَ ثِقَةٌ - نا زُهَيْرٌ هُوَ ابْنُ مُعَاوِيَةَ - نا أَبُو إِسْحَاقَ هُوَ السَّبِيعِيِّ عَنْ «مُصْعَبِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ قَالَ: حَلَفْتُ بِاللَّاتِ وَالْعُزَّى فَقَالَ لِي أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: بِئْسَ مَا قُلْتَ ائْتِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبِرْهُ فَإِنَّا لَا نَرَاكَ إِلَّا قَدْ كَفَرْتَ فَلَقِيتُهُ فَأَخْبَرْتُهُ؟ فَقَالَ لِي: قُلْ لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ ثَلَاثَ مَرَّاتٍ وَتَعَوَّذْ بِاللَّهِ مِنْ الشَّيْطَانِ ثَلَاثَ مَرَّاتٍ وَانْفُثْ عَنْ شِمَالِكَ ثَلَاثَ مَرَّاتٍ وَلَا تَعُدْ لَهُ» .

L18296 Through the chain of Muslim: Isḥāq ibn Rāhwayh narrated to us – I, ʿAbd al-Razzāq, narrate from Maʿmar, from al-Zuhrī, who informed me from Ḥumayd ibn ʿAbd al-Raḥmān ibn ʿAwf: Abū Hurayrah said: The Messenger of Allah (peace and blessings be upon him) said: “Whoever among you swears and declares in his oath: ’By al-Lāt,’ let him say: ’There is no god but Allah.’

وَمِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ هُوَ ابْنُ رَاهْوَيْهِ - أَنَا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ أَخْبَرَنِي حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: أَنَّ أَبَا هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ حَلَفَ مِنْكُمْ فَقَالَ فِي حَلِفِهِ: بِاللَّاتِ، فَلْيَقُلْ لَا إِلَهَ إِلَّا اللَّهُ وَمَنْ قَالَ لِصَاحِبِهِ: تَعَالَ أُقَامِرْكَ فَلْيَتَصَدَّقْ» .

[52]**Hadith references (L18294):** Sahih Muslim 2723c; Sunan an-Nasai 1343; Sunan an-Nasai 2961.

[53]**Qur’an references (L18294):** Qur’an 64:1 (At-Taghabun).

And whoever says to his companion: 'Come, let me gamble with you,' let him give charity."[54]

L18297–18298 Ali said: This nullifies reliance on anyone's statement other than the Messenger of Allah's, for the Companions—may Allah be pleased with them—said to Sa'd: "We see nothing but that you have disbelieved," though he had not actually disbelieved.

L18299 **A legal issue: He swore multiple oaths on various matters, with a separate oath sworn for each individual thing.**

L18300 1144 – Question

L18301 Whoever swears multiple oaths—an oath for each thing among them—such as: "By Allah, I will not eat today," "By Allah, I will not speak to Zayd," "By Allah, I will not enter his house," or the like—these constitute multiple oaths. If he breaks any one of them, he is obligated to perform an expiation ritual.

L18302 If he violates another [oath], then another expiation is required. If he violates a third, then a third expiation is required - and so on for each additional instance, because they are distinct oaths, distinct actions, and distinct violations. Undoubtedly, violating one oath does not entail violating another. Thus, each oath carries its own ruling. Issue 1145.

L18303 If he swore in such a manner and then said at the end, "Insha'Allah," or stipulated any exception, some scholars have stated: If that exception was connected [to the oath], he is considered truthful in his intention. If he says, "I intended the exception to apply to all oaths," there is no breach of oath incumbent upon him regarding any of them.

L18304 And if he said, "I intended its end," then it is as he said—and success is from Allah, the Exalted.

L18305 And Abu Thawr said: The exception pertains to all oaths.

قَالَ عَلِيٌّ: فِي هَذَا إبْطَالُ التَّعَلُّقِ بِقَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ فَقَدْ قَالَ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - لِسَعْدٍ: مَا نَرَاك إلَّا قَدْ كَفَرْت، وَلَمْ يَكُنْ كَفَرَ.

[مَسْأَلَةٌ حَلَفَ أَيْمَانًا عَلَى أَشْيَاءَ كَثِيرَةٍ عَلَى كُلِّ شَيْءٍ مِنْهَا يَمِينٌ]

١١٤٤ - مَسْأَلَةٌ

وَمَنْ حَلَفَ أَيْمَانًا عَلَى أَشْيَاءَ كَثِيرَةٍ عَلَى كُلِّ شَيْءٍ مِنْهَا يَمِينٌ، مِثْلُ: وَاَللَّهِ لَا أَكَلْت الْيَوْمَ، وَوَاَللَّهِ لَا كَلَّمْت زَيْدًا، وَوَاَللَّهِ لَا دَخَلْت دَارِهِ أَوْ نَحْوَ هَذَا، فَهِيَ أَيْمَانٌ كَثِيرَةٌ إنْ حَنِثَ فِي شَيْءٍ مِنْهَا فَعَلَيْهِ كَفَّارَةٌ.

فَإِنْ عَمِلَ آخَرَ فَكَفَّارَةٌ أُخْرَى، فَإِنْ عَمِلَ ثَالِثًا فَكَفَّارَةٌ ثَالِثَةٌ - وَهَكَذَا مَا زَادَ، لِأَنَّهَا أَيْمَانٌ مُتَغَايِرَةٌ، وَأَفْعَالٌ مُتَغَايِرَةٌ، وَأَحْنَاثٌ مُتَغَايِرَةٌ، إنْ حَنِثَ فِي يَمِينٍ لَمْ يَحْنَثْ بِذَلِكَ فِي أُخْرَى بِلَا شَكٍّ، فَلِكُلِّ يَمِينٍ حُكْمُهَا. ١١٤٥ - مَسْأَلَةٌ

فَلَوْ حَلَفَ كَذَلِكَ ثُمَّ قَالَ فِي آخِرِهَا: إنْ شَاءَ اللَّهُ أَوْ اسْتَثْنَى بِشَيْءٍ مَا، فَإِنَّ قَوْمًا قَالُوا: إنْ كَانَ ذَلِكَ مَوْصُولًا فَهُوَ مُصَدَّقٌ فِيمَا نَوَى، فَإِنْ قَالَ أَرَدْت بِالِاسْتِثْنَاءِ جَمِيعَ الْأَيْمَانِ، فَلَا حِنْثَ عَلَيْهِ فِي شَيْءٍ مِنْهَا.

وَإِنْ قَالَ: نَوَيْت آخِرَهَا، فَهُوَ كَمَا قَالَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَالَ أَبُو ثَوْرٍ: الِاسْتِثْنَاءُ رَاجِعٌ إلَى جَمِيعِ الْأَيْمَانِ.

[54] **Hadith references (L18296):** Sahih Muslim 1647a.

L18306 Abu Hanifa said: The exception does not apply except to the oath that follows it.

L18307 Abu Muhammad said: We adhere to this position because he formally bound the previous oaths without stipulating an exception within them, concluded the discourse about them, and commenced a different discourse. Consequently, the exception could no longer be connected to those oaths. Therefore, if he violates them, the violation is established, and expiation becomes obligatory. The exception applies solely to the oath to which it was attached, as we previously established. And success is by Allah, the Exalted.

L18308 **A jurisprudential case involving swearing a single oath regarding numerous matters.**

L18309 1146 - Question

L18310 If someone swears a single oath regarding multiple matters—such as one who says: "By Allah, I did not speak to Zaid or Khalid, nor entered Abdullah's house, nor gave you anything"—then it is considered a single oath. He does not break the oath by doing any single thing he swore upon, nor is he required to perform an expiation unless he does everything he swore upon.

L18311–18312 This is the doctrine of ʿAṭāʾ, al-Shāfiʿī, and some of our companions.

L18313 It was narrated to us through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: "'Aṭāʾ said regarding one who swears: 'By Allah, I will not do such a thing,' and 'By Allah, I will not do such a thing,' for various matters: 'It constitutes a single statement, but he assigned each [instance] to an oath. Two expiations are required.'"

L18314 And ʿAṭā was asked about one who swore, "By Allah, I will not do such-and-such things," combining two distinct matters in a single oath. He replied: "One expiation"—and we do not know of any earlier scholar who expressed a differing opinion on this.

L18315 The Mālikīs said: He is an oath-breaker for every such action he performs. This opinion entails that he must perform an expiation for each action. An-

وَقَالَ أَبُو حَنِيفَةَ: لَا يَكُونُ الِاسْتِثْنَاءُ إِلَّا لِلْيَمِينِ الَّتِي تَلِي الِاسْتِثْنَاءَ.

قَالَ أَبُو مُحَمَّدٍ: وَبِهَذَا نَأْخُذُ، لِأَنَّهُ قَدْ عَقَّدَ الْأَيْمَانَ السَّالِفَةَ وَلَمْ يَسْتَثْنِ فِيهَا وَقَطَعَ الْكَلَامَ فِيهَا، وَأَخَذَ فِي كَلَامٍ آخَرَ، فَبَطَلَ أَنْ يَتَّصِلَ الِاسْتِثْنَاءُ بِهَا، فَوَجَبَ الْحِنْثُ فِيهَا إِنْ حَنِثَ وَالْكَفَّارَةُ، وَكَانَ الِاسْتِثْنَاءُ فِي الْيَمِينِ الَّتِي اتَّصَلَ بِهَا كَمَا قَدَّمْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حَلَفَ يَمِينًا وَاحِدَةً عَلَى أَشْيَاءَ كَثِيرَةٍ]

١١٤٦ - مَسْأَلَةٌ

فَإِنْ حَلَفَ يَمِينًا وَاحِدَةً عَلَى أَشْيَاءَ كَثِيرَةٍ، كَمَنْ قَالَ: وَاَللَّهِ لَا كَلَّمْت زَيْدًا وَلَا خَالِدًا، وَلَا دَخَلْت دَارَ عَبْدِ اللَّهِ، وَلَا أَعْطَيْتُك شَيْئًا، فَهِيَ يَمِينٌ وَاحِدَةٌ، وَلَا يَحْنَثُ بِفِعْلِهِ شَيْئًا مِمَّا حَلَفَ عَلَيْهِ، وَلَا تَجِبُ عَلَيْهِ كَفَّارَةٌ حَتَّى يَفْعَلَ كُلَّ مَا حَلَفَ عَلَيْهِ.

وَهَذَا قَوْلُ عَطَاءٍ، وَالشَّافِعِيِّ، وَبَعْضِ أَصْحَابِنَا.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ عَطَاءٌ فِيمَنْ قَالَ: وَاَللَّهِ لَا أَفْعَلُ كَذَا، وَاَللَّهِ لَا أَفْعَلُ كَذَا، لِأُمُورٍ شَتَّى - قَالَ: هُوَ قَوْلٌ وَاحِدٌ، وَلَكِنَّهُ خَصَّ كُلَّ وَاحِدٍ بِيَمِينٍ، قَالَ: كَفَّارَتَانِ.

وَقَالَ عَطَاءٌ فِيمَنْ قَالَ وَاَللَّهِ لَا أَفْعَلُ كَذَا، وَكَذَا لِأَمْرَيْنِ شَتَّى فَعَمَّهُمَا بِالْيَمِينِ؟ قَالَ: كَفَّارَةٌ وَاحِدَةٌ - وَلَا نَعْلَمُ لِمُتَقَدِّمٍ فِيهَا قَوْلًا آخَرَ.

other opinion states: He is obligated to perform an expiation for the first instance of breaking his oath, after which no expiation is required for the rest of those actions.

وَقَالَ الْمَالِكِيُّونَ: هُوَ حَانِثٌ بِكُلِّ مَا فَعَلَ مِنْ ذَلِكَ، ثُمَّ يُخَرَّجُ عَلَى هَذَا الْقَوْلِ أَنَّهُ يَجِبُ عَلَيْهِ لِكُلِّ فِعْلٍ كَفَّارَةٌ - وَقَوْلٌ آخَرُ: إنَّهُ يَلْزَمُهُ كَفَّارَةٌ بِأَوَّلِ مَا يَحْنَثُ، ثُمَّ لَا كَفَّارَةَ عَلَيْهِ فِي سَائِرِ ذَلِكَ.

L18316 Abū Muḥammad said: An oath is not established by intention without verbal utterance. Since he uttered only a single oath, he is not bound by more than one oath in any case, as neither the Quran nor the Sunnah obligates its binding upon him. Given that it is a single oath, it is impermissible for part of it to entail oath violation and part of it to entail fulfillment. Rather, he is either a violator or not a violator. No evidence outside this framework has been established by the Quran, the Sunnah, analogical reasoning, or any earlier scholarly opinion.

قَالَ أَبُو مُحَمَّدٍ: الْيَمِينُ لَا تَكُونُ بِالنِّيَّةِ دُونَ الْقَوْلِ وَهُوَ لَمْ يَلْفِظْ إلَّا بِيَمِينٍ وَاحِدَةٍ، فَلَا يَلْزَمُهُ أَكْثَرَ مِنْ يَمِينٍ أَصْلًا، إذْ لَمْ يُوجِبْ لُزُومَهَا إيَّاهُ قُرْآنٌ، وَلَا سُنَّةٌ، فَإِذْ هِيَ يَمِينٌ وَاحِدَةٌ فَلَا يَجُوزُ أَنْ يَكُونَ فِي بَعْضِهَا عَلَى حِنْثٍ، وَفِي بَعْضِهَا عَلَى بِرٍّ، إنَّمَا هُوَ حَانِثٌ، أَوْ غَيْرُ حَانِثٍ: وَلَمْ يَأْتِ بِغَيْرِ هَذَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قِيَاسٌ، وَلَا قَوْلٌ مُتَقَدِّمٌ.

L18317 Thus, it is established that one does not become an oath-breaker unless he does any of what he pledged not to do by that oath. Moreover, wealth is sacrosanct, and religious rulings are not binding by claims lacking textual evidence. And success is by Allah, the Exalted.

فَصَحَّ أَنَّهُ لَا يَكُونُ حَانِثًا إلَّا بِأَنْ يَفْعَلَ كُلَّ مَا عَقَّدَ بِتِلْكَ الْيَمِينِ أَنْ لَا يَفْعَلَهُ - وَأَيْضًا: فَالْأَمْوَالُ مَحْظُورَةٌ وَالشَّرَائِعُ لَا تَجِبُ بِدَعْوَى لَا نَصَّ مَعَهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حَلَفَ أَيْمَانًا كَثِيرَةً عَلَى شَيْءٍ وَاحِدٍ]

[A legal case where someone swore multiple oaths concerning a single matter.]

L18318

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١١٤٧ - مَسْأَلَةٌ

L18320 If someone swears numerous oaths concerning a single matter—such as declaring: “By Allah, I did not speak to Zayd,” “By the Most Gracious, I did not speak to him,” “By the Most Merciful, I did not speak to him,” “By Allah, a second time, I did not speak to him,” “By Allah, a third time, I did not speak to him”—and continues this endlessly, whether in one sitting, or in separate sittings and over different days, then all these oaths count as a single oath—even if repeated a million times—entailing one violation; one expiation; and nothing more.

فَإِنْ حَلَفَ أَيْمَانًا كَثِيرَةً عَلَى شَيْءٍ وَاحِدٍ، مِثْلُ: أَنْ يَقُولَ: بِاَللَّهِ لَا كَلَّمْت زَيْدًا، وَالرَّحْمَنِ لَا كَلَّمْته، وَالرَّحِيمِ لَا كَلَّمْته، بِاَللَّهِ ثَانِيَةً لَا كَلَّمْته، بِاَللَّهِ ثَالِثَةً لَا كَلَّمْته - وَهَكَذَا أَبَدًا فِي مَجْلِسٍ وَاحِدٍ، أَوْ فِي مَجَالِسَ مُتَفَرِّقَةٍ، وَفِي أَيَّامٍ مُتَفَرِّقَةٍ: فَهِيَ كُلُّهَا يَمِينٌ وَاحِدَةٌ - وَلَوْ كَرَّرَهَا أَلْفَ أَلْفَ مَرَّةٍ - وَحِنْثٌ وَاحِدٌ، وَكَفَّارَةٌ وَاحِدَةٌ - وَلَا مَزِيدَ.

L18321 The Salaf differed regarding this matter: It was narrated to us via Hammad ibn Salama from Abān from Mujāhid, who said: Ibn ‘Umar married his male slave to one of his female slaves. When the slave intended to travel, Ibn ‘Umar

وَقَدْ اخْتَلَفَ السَّلَفُ فِي هَذَا -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبَانَ عَنْ مُجَاهِدٍ قَالَ: زَوَّجَ ابْنُ عُمَرَ مَمْلُوكَهُ مِنْ جَارِيَةٍ لَهُ، فَأَرَادَ الْمَمْلُوكُ سَفَرًا فَقَالَ لَهُ ابْنُ عُمَرَ: طَلِّقْهَا؟

said to him, “Divorce her!” The slave swore, “By Allah, I will not divorce her!” Ibn ʻUmar then declared, “By Allah, you shall divorce her!” repeating this three times. Mujāhid asked Ibn ʻUmar, “What will you do?” He replied, “I will perform expiation for my oath.” Mujāhid said: I said to him, “But you swore repeatedly?” He responded, “One expiation is sufficient.”

فَقَالَ الْمَمْلُوكُ: وَاَللَّهِ لَا طَلَّقْتهَا فَقَالَ لَهُ ابْنُ عُمَرَ وَاَللَّهِ لَتُطَلِّقُنَّهَا كَرَّرَ ذَلِكَ ثَلَاثَ مَرَّاتٍ؟ قَالَ مُجَاهِدٌ لِابْنِ عُمَرَ: كَيْفَ تَصْنَعُ؟ قَالَ: أُكَفِّرُ عَنْ يَمِينِي، فَقُلْت لَهُ: قَدْ حَلَفْت مِرَارًا؟ قَالَ: كَفَّارَةٌ وَاحِدَةٌ.

L18322–18323 Narrated via the chain of ʻAbd al-Razzāq, from Sufyān al-Thawrī, from Mujāhid, from Ibn ʻUmar, who said: If you swear oaths repeatedly, only one expiation is required.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُجَاهِدٍ عَنْ ابْنِ عُمَرَ قَالَ: إذَا أَقْسَمْت مِرَارًا فَكَفَّارَةٌ وَاحِدَةٌ.

L18324 And according to the transmission of Ibrāhīm al-Nakhaʻī, if one reiterates oaths [in a single instance], it is regarded as a single oath.

وَمِنْ طَرِيقِ إبْرَاهِيمَ النَّخَعِيِّ إذَا رَدَّدَ الْأَيْمَانَ فَهِيَ يَمِينٌ وَاحِدَةٌ.

L18325 And from Hisham ibn Urwah that his father was asked about a man whose female slave was made available to him repeatedly—each time he would swear by Allah not to have intercourse with her, then he proceeded to do so. Urwah responded: “One expiation suffices.”

وَعَنْ هِشَامِ بْنِ عُرْوَةَ أَنَّ أَبَاهُ سُئِلَ مَنْ تَعَرَّضَتْ لَهُ جَارِيَةٌ لَهُ مِرَارًا كُلَّ مَرَّةٍ يَحْلِفُ بِاَللَّهِ أَنْ لَا يَطَأَهَا؟ ثُمَّ وَطِئَهَا؟ فَقَالَ لَهُ عُرْوَةُ: كَفَّارَةٌ وَاحِدَةٌ.

L18326 And from the chain of Ḥammād ibn Salamah, from Qays ibn Saʻd, from ʻAṭāʾ, who said: A single expiation suffices if one takes an oath in a single matter across different gatherings.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ عَطَاءٍ قَالَ: كَفَّارَةٌ وَاحِدَةٌ إذَا حَلَفَ فِي أَمْرٍ وَاحِدٍ، فِي مَجَالِسَ شَتَّى.

L18327 Narrated by Abd al-Razzaq, from Ma’mar, from al-Zuhri, who said: If someone swears [oaths] in multiple gatherings, a single expiation suffices.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: إذَا حَلَفَ فِي مَجَالِسَ شَتَّى قَالَ: كَفَّارَةٌ وَاحِدَةٌ.

L18328 He said: Who heard ʻIkrimah say something like this? And through the transmission of Hammad ibn Salamah from Humayd, and Qatadah from al-Ḥasan, he said: A single expiation is required if one swears regarding a single matter across multiple sessions—and this is the opinion of al-Awzāʻī, Mālik, and Aḥmad.

قَالَ: وَأَخْبَرَنِي مَنْ سَمِعَ عِكْرِمَةَ يَقُولُ مِثْلَ هَذَا؟ وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ، وَقَتَادَةَ عَنْ الْحَسَنِ قَالَ: كَفَّارَةٌ وَاحِدَةٌ إذَا حَلَفَ فِي أَمْرٍ وَاحِدٍ فِي مَجَالِسَ شَتَّى - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَمَالِكٍ، وَأَحْمَدَ.

L18329 And Isḥāq, Abū Sulaymān, Abū ʻUbayd, and one of the two opinions of Sufyān al-Thawrī.

وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَأَبِي عُبَيْدٍ، وَأَحَدُ قَوْلَيْ سُفْيَانَ الثَّوْرِيِّ.

L18330 It has been reported to us from Ibn ʻUmar and Ibn ʻAbbās: When one violates the oath, he must free a believing slave.

وَرُوِّينَا عَنْ ابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ: إذَا أَكَّدَ الْيَمِينَ فَعِتْقُ رَقَبَةٍ.

L18331 A group said: If that takes place in a single session, then one expiation is required, and if it occurs in multiple sessions, then separate expiations are required.

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَ ذَلِكَ فِي مَجْلِسٍ وَاحِدٍ فَكَفَّارَةٌ وَاحِدَةٌ، وَإِنْ كَانَ فِي مَجَالِسَ شَتَّى فَكَفَّارَاتٌ شَتَّى.

L18332 That has been authentically reported from Qatādah, and ʿAmr ibn Dīnār said, "Some scholars say that."

صَحَّ ذَلِكَ عَنْ قَتَادَةَ، وَقَالَ عَمْرُو بْنُ دِينَارٍ: يَقُولُونَ ذَلِكَ.

L18333 Sufyan al-Thawri stated in one of his opinions: "If one intends another oath as a second oath, then two expiations are obligatory." Uthman al-Batti and Abu Thawr said: "If he intended repetition, it counts as a single oath, but if he intended to intensify it, an expiation is required for each instance."

وَقَالَ سُفْيَانُ الثَّوْرِيُّ فِي قَوْلٍ لَهُ: إِنْ نَوَى بِالْيَمِينِ الْأُخْرَى يَمِينًا ثَانِيَةً فَكَفَّارَتَانِ، وَقَالَ عُثْمَانُ الْبَتِّيُّ، وَأَبُو ثَوْرٍ: إِنْ أَرَادَ التَّكْرَارَ فَيَمِينٌ وَاحِدَةٌ وَإِنْ أَرَادَ التَّغْلِيظَ فَلِكُلِّ مَرَّةٍ كَفَّارَةٌ.

L18334 This is the opinion of Al-Shafi'i, except that he expressed it by stating: "If one intends repetition, then a single expiation suffices; otherwise, each instance requires an expiation." Thus, he did not exclude the obligation of an expiation for every instance except by intending repetition solely. Moreover, he did not stipulate the intention of aggravation.

وَهُوَ قَوْلُ الشَّافِعِيِّ إِلَّا أَنَّهُ عَبَّرَ عَنْهُ بِأَنْ قَالَ: إِنْ أَرَادَ التَّكْرَارَ فَكَفَّارَةٌ وَاحِدَةٌ، وَإِلَّا فَلِكُلِّ مَرَّةٍ كَفَّارَةٌ - فَلَمْ يُخْرِجْهُ عَنْ أَنْ يَكُونَ لِكُلِّ مَرَّةٍ كَفَّارَةٌ، إِلَّا بِأَنْ يَنْوِيَ التَّكْرَارَ فَقَطْ - ثُمَّ لَمْ يَشْتَرِطْ إِرَادَةَ التَّغْلِيظِ.

L18335 Abu Hanifa and his companions said: If he intended repetition, it counts as one oath. But if he had no such intention and intended to emphasize the oath, or if the oaths occurred in two or more gatherings, then each oath requires its own expiation.

وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: إِنْ أَرَادَ التَّكْرَارَ فَيَمِينٌ وَاحِدَةٌ، وَإِنْ لَمْ تَكُنْ لَهُ نِيَّةٌ، وَأَرَادَ التَّغْلِيظَ، أَوْ كَانَ ذَلِكَ فِي مَجْلِسَيْنِ فَصَاعِدًا، فَلِكُلِّ يَمِينٍ كَفَّارَةٌ.

L18336–18337 Abu Muhammad said: We find no valid proof for those who claim that the confirmation of an oath necessitates freeing a slave alone, for when Allah—Exalted is He—specified [the expiation as] freeing a slave, feeding, and clothing, even though He knew that confirmed oaths existed there, He said: {And do not break your oaths after confirming them} [Al-Naḥl 16:91].[55]

قَالَ أَبُو مُحَمَّد: لَا نَعْلَمُ لِمَنْ رَأَى فِي تَأْكِيدِ الْيَمِينِ عِتْقَ رَقَبَةٍ - فَقَطْ - حُجَّةً، لِأَنَّ اللَّهَ تَعَالَى حِينَ بَيَّنَ الرَّقَبَةَ، وَالْإِطْعَامَ، وَالْكِسْوَةَ، وَقَدْ عَلِمَ أَنَّ هُنَالِكَ أَيْمَانًا مُؤَكَّدَةً، قَالَ تَعَالَى: {وَلا تَنْقُضُوا الأَيْمَانَ بَعْدَ تَوْكِيدِهَا} [النحل: ٩١] .

L18338 We do not know of any valid justification for those who distinguish between an oath being in one session and it being in two sessions or beyond, except the claim that it constitutes one oath in a session and another oath in the subsequent session.

وَلَا نَعْلَمُ لِمَنْ فَرَّقَ بَيْنَ أَنْ يَكُونَ ذَلِكَ فِي مَجْلِسٍ وَبَيْنَ أَنْ يَكُونَ فِي مَجْلِسَيْنِ فَصَاعِدًا حُجَّةً إِلَّا الدَّعْوَى أَنَّهَا يَمِينٌ وَاحِدَةٌ، فِي مَجْلِسٍ، وَيَمِينٌ ثَانِيَةٌ فِي الْمَجْلِسِ الثَّانِي.

L18339 And this is a claim unsubstantiated by evidence. Every utterance is undoubt-

[55] **Qur'an references (L18337):** Qur'an 16:91 (An-Nahl).

edly distinct from another, just as every session differs from the next—yet no valid distinction exists between them.

وَهَذِهِ دَعْوَى لَا يُصَحِّحُهَا بُرْهَانٌ، وَكُلُّ لَفْظٍ فَهُوَ بِلَا شَكٍّ غَيْرُ اللَّفْظِ الْآخَرِ، كَمَا أَنَّ كُلَّ مَجْلِسٍ غَيْرُ الْمَجْلِسِ الْآخَرِ وَلَا فَرْقَ.

L18340 Similarly, we do not know of any foundational proof whatsoever for those who differentiate between aggravation and non-aggravation except an unsubstantiated claim.

وَكَذَلِكَ لَا نَدْرِي لِمَنْ فَرَّقَ بَيْنَ التَّغْلِيظِ وَغَيْرِ التَّغْلِيظِ حُجَّةً أَصْلًا إِلَّا الدَّعْوَى بِلَا بُرْهَانٍ.

L18341 As for those who say: If one intends repetition, the oath constitutes a single instance; otherwise, the oaths are various—we know of no evidence for their position except their assertion that these are distinct expressions entailing separate rulings for each utterance, or their analogy of this matter to repeated pronouncements of divorce.

وَأَمَّا مَنْ قَالَ: إِنْ نَوَى التَّكْرَارَ فَهِيَ يَمِينٌ وَاحِدَةٌ، وَإِلَّا فَهِيَ أَيْمَانٌ شَتَّى، فَمَا نَعْلَمُ لَهُمْ حُجَّةً إِلَّا أَنَّهُمْ قَالُوا: هِيَ أَلْفَاظٌ شَتَّى، فَلِكُلِّ لَفْظٍ حُكْمٌ، أَوْ أَنْ يَقِيسُوا ذَلِكَ عَلَى تَكْرَارِ الطَّلَاقِ.

L18342 Abu Muhammad said: All analogy is invalid in its entirety. Furthermore, even if analogy were valid, this instance of it would still be invalid, because the Quranic text explicitly states that the ruling of the third divorce differs from that of the second and from that of the first, yet this has not been stipulated in the case of oaths.

قَالَ أَبُو مُحَمَّدٍ: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّ النَّصَّ جَاءَ فِي الْقُرْآنِ بِأَنَّ حُكْمَ الطَّلْقَةِ الثَّالِثَةِ غَيْرُ حُكْمِ الثَّانِيَةِ، وَغَيْرُ حُكْمِ الْأُولَى، وَلَمْ يَأْتِ ذَلِكَ فِي الْأَيْمَانِ.

L18343 As for their claim that these are various wordings, yes—except that expiation is obligatory for the breach of the oath, not for the oath itself, since oaths do not inherently obligate expiation at all. There is no disagreement on this. Expiation is only required by the breach. The breach in all such cases constitutes a single breach without doubt, and it is impermissible for a single breach to incur multiple expiations. Wealth is prohibited, and legal rulings are suspended unless textual evidence permits the wealth or establishes the legal ruling. Success comes solely from Allah, the Exalted.

وَأَمَّا قَوْلُهُمْ: إِنَّهَا أَلْفَاظٌ شَتَّى، فَنَعَمْ، إِلَّا أَنَّ الْحِنْثَ بِهِ تَجِبُ الْكَفَّارَةُ لَا بِنَفْسِ الْيَمِينِ فَإِنَّ الْأَيْمَانَ لَا تُوجِبُ الْكَفَّارَةَ أَصْلًا، وَلَا خِلَافَ فِي ذَلِكَ وَلَا يُوجِبُ الْكَفَّارَةَ إِلَّا الْحِنْثُ، فَالْحِنْثُ فِيهَا كُلِّهَا حِنْثٌ وَاحِدٌ بِلَا شَكٍّ وَلَا يَجُوزُ أَنْ يَكُونَ بِحِنْثٍ وَاحِدٍ كَفَّارَاتٌ شَتَّى، وَالْأَمْوَالُ مُحَرَّمَةٌ، وَالشَّرَائِعُ سَاقِطَةٌ، إِلَّا أَنْ يُبِيحَ الْمَالَ نَصٌّ، أَوْ يَأْتِيَ بِالشَّرْعِ نَصٌّ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L18344 And this is among the matters in which the Ḥanafīs and Shāfiʿīs differed from Ibn ʿUmar and Ibn ʿAbbās, with no opposition to them being known from the Companions. Success is by Allah, the Exalted.

وَهَذَا مِمَّا خَالَفَ فِيهِ الْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ، ابْنَ عُمَرَ وَابْنَ عَبَّاسٍ وَلَا يُعْرَفُ لَهُمَا مِنَ الصَّحَابَةِ مُخَالِفٌ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L18345 **Issue: He swore by Allah that he did not eat this loaf.**

[مَسْأَلَةٌ حَلَفَ بِاللَّهِ لَا أَكَلْت هَذَا الرَّغِيفَ]

١١٤٨ - مَسْأَلَةٌ

وَمَنْ حَلَفَ بِاَللَّهِ لَا أَكَلْت هَذَا الرَّغِيفَ، أَوْ قَالَ: لَا شَرِبْت مَاءَ هَذَا الْكُوزِ، فَلَا يَحْنَثُ بِأَكْلِ بَعْضِ الرَّغِيفِ، وَلَوْ لَمْ يَبْقَ مِنْهُ إلَّا فُتَاتُهُ، وَلَا بِشُرْبِ بَعْضِ مَا فِي الْكُوزِ.

وَكَذَلِكَ لَوْ حَلَفَ بِاَللَّهِ لَآكُلَنَّ هَذَا الرَّغِيفَ الْيَوْمَ، فَأَكَلَهُ كُلَّهُ إلَّا فُتَاتَهُ وَغَابَتْ الشَّمْسُ فَقَدْ حَنِثَ - وَهَكَذَا فِي الرُّمَّانَةِ، وَفِي كُلِّ شَيْءٍ فِي الْعَالَمِ لَا يَحْنَثُ بِبَعْضِ مَا حَلَفَ عَلَيْهِ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

وَقَالَ الْمَالِكِيُّونَ: يَحْنَثُ بِأَكْلِ بَعْضِهِ وَشُرْبِ بَعْضِهِ.

قَالَ أَبُو مُحَمَّدٍ: نَسْأَلُهُمْ عَنْ رَجُلٍ أَكَلَ بَعْضَ رَغِيفٍ لِزَيْدٍ فَشَهِدَ عَلَيْهِ شَاهِدَانِ أَنَّهُ أَكَلَ رَغِيفَ زَيْدٍ؟ أَصَادِقَانِ هُمَا أَمْ كَاذِبَانِ؟ فَمِنْ قَوْلِهِمْ إنَّهُمَا كَاذِبَانِ مُبْطِلَانِ، فَأَقَرُّوا عَلَى أَنْفُسِهِمْ بِالْفُتْيَا بِالْكَذِبِ، وَبِالْبَاطِلِ، وَبِالْمُشَاهَدَةِ يُدْرَى فَسَادُ هَذَا الْقَوْلِ، لِأَنَّهُ إنَّمَا حَلَفَ أَنْ لَا يَأْكُلَهُ، لَمْ يَحْلِفْ أَنْ لَا يَأْكُلَ مِنْهُ شَيْئًا، وَهُوَ إذَا أَبْقَى مِنْهُ شَيْئًا فَلَمْ يَفْعَلْ مَا حَلَفَ عَلَيْهِ، وَالْأَمْوَالُ مَحْظُورَةٌ إلَّا بِنَصٍّ، وَلَا نَصَّ فِي صِحَّةِ قَوْلِهِمْ.

وَقَالَ قَائِلُهُمْ: الْحِنْثُ، وَالتَّحْرِيمُ، وَكِلَاهُمَا يَدْخُلُ بِأَرَقِّ الْأَسْبَابِ؟ فَقُلْنَا: هَذَا بَاطِلٌ مَا يَدْخُلُ الْحِنْثُ وَالتَّحْرِيمُ لَا بِأَرَقِّ الْأَسْبَابِ، وَلَا بِأَغْلَظِهَا، وَلَا يَدْخُلُ التَّحْلِيلُ أَيْضًا لَا بِأَرَقِّ الْأَسْبَابِ، وَلَا بِأَغْلَظِهَا - وَكُلُّ هَذَا بَاطِلٌ وَإِفْكٌ، وَلَا يَدْخُلُ الْحِنْثُ، وَالْبِرُّ، وَالتَّحْرِيمُ، وَالتَّحْلِيلُ؛ إلَّا حَيْثُ أَدْخَلَ اللَّهُ تَعَالَى مِنْهَا فِي كِتَابِهِ أَوْ عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

1148 – Issue

And whoever swears by Allah: I did not eat this loaf of bread; or says: I did not drink water, Regarding this jug, one does not break their oath by eating part of the bread—even if only crumbs remain—nor by drinking some of what is in the jug.

Similarly, if a man swears by Allah that he will indeed eat this entire loaf of bread today, then eats all of it except a crumb and the sun sets, he has broken his oath. This ruling applies similarly in the case of a pomegranate and to everything in the world: merely fulfilling part of what one swore to do does not suffice to avoid breaking the oath. This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān.

The Malikis said: He violates his oath by eating some of it and drinking some of it.

Abu Muhammad said: We ask them about a man who ate part of a loaf belonging to Zayd, yet two witnesses testified against him that he ate Zayd's entire loaf. Are they truthful or liars? By their claim that the two are lying nullifiers, they admit against themselves issuing fatwas based on falsehood and invalidity. Through observation, the falsehood of this claim becomes evident, for he only swore not to eat the loaf - not to abstain from eating any portion of it. If he left part of it uneaten, he did not violate what he swore against. Properties remain inviolable unless established by textual evidence, and no text exists to validate their claim.

One of them said: "Does the breaking of an oath and the imposition of prohibition become subject to the slightest of causes?" We responded: "This is invalid. Neither the breaking of oaths nor prohibition is subject to the slightest of causes, nor the gravest. Likewise, rendering things permissible is not subject to the slightest or gravest causes. All of this is baseless falsehood. Breaking oaths, righteousness, prohibition, and rendering permissible only apply where Allah the Exalted has ordained them in His Book or through the tongue of His Messenger—peace be upon him."

The most astonishing thing is their claim that the prohibition of the father's

wife upon the son is effected through the weakest of causes—merely the marriage contract. We retorted: Have you forgotten your own principles? Was the sexual prohibition of this woman not equally binding upon the father as upon the son? Yet permissibility for the father is effected through the weakest of causes—merely the marriage contract. Where then is your claim that permissibility is only effected through the most stringent causes? How profound is this confusion involving baseless principles within the religion of God Almighty! They further argued: Permissibility regarding the thrice-divorced woman is not effected except through the most stringent causes—the marriage contract and intercourse. We replied: You have invalidated your own doctrine. Either adhere to Al-Ḥasan's opinion, lest you dismantle your entire framework, for he asserts: The thrice-divorced woman does not become permissible except through the marriage contract, intercourse, and ejaculation within her—otherwise, she remains prohibited. This constitutes the most stringent of causes, yet these people cling to nothingness—and we praise God for well-being.

وَأَطْرَفُ شَيْءٍ أَنَّهُمْ قَالُوا: تَحْرِيمُ زَوْجَةِ الْأَبِ عَلَى الِابْنِ يَدْخُلُ بِأَرَقِّ الْأَسْبَابِ - وَهُوَ الْعَقْدُ وَحْدَهُ؟ فَقُلْنَا لَهُمْ: نَسِيتُمْ أَنْفُسَكُمْ، أَوْ لَمْ يَكُنْ فَرْجُ هَذِهِ الْمَرْأَةِ حَرَامًا عَلَى الْأَبِ، كَمَا هِيَ عَلَى الِابْنِ، ثُمَّ دَخَلَ التَّحْلِيلُ لِلْأَبِ بِأَرَقِّ الْأَسْبَابِ - وَهُوَ الْعَقْدُ وَحْدَهُ - فَأَيْنَ قَوْلُكُمْ: إِنَّ التَّحْلِيلَ لَا يَدْخُلُ إِلَّا بِأَغْلَظِ الْأَسْبَابِ؟ وَكَمْ هَذَا التَّخْلِيطُ بِمَا لَا يُعْقَلُ فِي دِينِ اللَّهِ تَعَالَى؟ وَقَالُوا: وَالتَّحْلِيلُ لَا فِي الْمُطَلَّقَةِ ثَلَاثًا لَا يَدْخُلُ إِلَّا بِأَغْلَظِ الْأَسْبَابِ - وَهُوَ الْعَقْدُ، وَالْوَطْءُ؟ فَقُلْنَا: نَقَضْتُمْ قَوْلَكُمْ قَوْلُوا بِقَوْلِ الْحَسَنِ، وَإِلَّا فَقَدْ أَفْسَدْتُمْ بُنْيَانَكُمْ، لِأَنَّهُ يَقُولُ: لَا تَحِلُّ الْمُطَلَّقَةُ ثَلَاثًا إِلَّا بِالْعَقْدِ، وَالْوَطْءِ، وَالْإِنْزَالِ فِيهَا، وَإِلَّا فَلَا، وَهَذَا أَغْلَظُ الْأَسْبَابِ وَالْقَوْمُ فِي لَا شَيْءَ - وَنَحْمَدُ اللَّهَ عَلَى السَّلَامَةِ.

L18355–18356 The daughter of the wife is not prohibited upon her mother's husband by the weakest of causes, which is the marriage contract, but rather by consummation with the mother alongside the contract. Thus, this prohibition applies only through the most stringent of causes.

وَابْنَةُ الزَّوْجَةِ لَا تُحَرَّمُ عَلَى زَوْجِ أُمِّهَا بِأَرَقِّ الْأَسْبَابِ الَّذِي هُوَ الْعَقْدُ، لَكِنْ بِالدُّخُولِ بِالْأُمِّ مَعَ الْعَقْدِ، فَهَذَا تَحْرِيمٌ لَمْ يَدْخُلْ إِلَّا بِأَغْلَظِ الْأَسْبَابِ.

L18357 Furthermore, their contradiction here is quite remarkable, for according to their doctrine: if someone swears not to eat a loaf of bread and then eats half a loaf, he violates his oath, whereas if someone swears not to give Zayd ten dinars and gives him nine dinars, he does not violate his oath. What distinction exists in all of this if there were any God-consciousness here?

ثُمَّ تَنَاقُضُهُمْ هَهُنَا طَرِيفٌ جِدًّا، لِأَنَّ مِنْ قَوْلِهِمْ: إِنَّ مَنْ حَلَفَ أَنْ لَا يَأْكُلَ رَغِيفًا فَأَكَلَ نِصْفَ رَغِيفٍ يَحْنَثُ، وَمَنْ حَلَفَ أَنْ لَا يَهَبَ لِزَيْدٍ عَشْرَةَ دَنَانِيرَ فَوَهَبَ لَهُ تِسْعَةَ دَنَانِيرَ أَنَّهُ لَا يَحْنَثُ، فَأَيُّ فَرْقٍ بَيْنَ هَذَا كُلِّهِ لَوْ كَانَ هَهُنَا تَقْوَى؟

L18358 Some of them argued regarding that—by saying: "If someone swears not to enter Zayd's house and then enters any part of it, he breaks his oath." We responded to them: "Breaking the oath occurs only when one violates the specific terms sworn upon. Linguistically and logically, 'entering a house' is defined as entering part of it—not by occupying it entirely with his body—contrary to the case of eating a loaf of bread. If part of him entered the house without his entire body, he would not break his oath, because he did

وَاحْتَجَّ بَعْضُهُمْ فِي ذَلِكَ -: بِأَنَّ مَنْ حَلَفَ أَنْ لَا يَدْخُلَ دَارَ زَيْدٍ فَدَخَلَ شَيْئًا مِنْهَا فَإِنَّهُ يَحْنَثُ، فَقُلْنَا لَهُمْ: إِنَّمَا يَكُونُ الْحِنْثُ بِمُخَالَفَةِ مَا حَلَفَ عَلَيْهِ، وَلَا يَكُونُ فِي اللُّغَةِ وَالْمَعْقُولُ دُخُولُ الدَّارِ إِلَّا بِدُخُولِ بَعْضِهَا، لَا بِأَنْ يَمْلَأَهَا بِجُثَّتِهِ، بِخِلَافِ أَكْلِ الرَّغِيفِ، وَلَوْ أَنَّهُ

not fully enter it." They unanimously agree with us that if someone swears not to demolish this wall and then removes a mud brick from it, he does not break his oath.

Issue: He swore an oath not to eat from this loaf.

1149 – Issue: If someone swears not to eat from this loaf or not to drink from the water of this vessel, he violates his oath by eating any part of it or drinking any portion of the water, because this contradicts what he swore upon – and success is from Allah, the Exalted.

Issue: He swore not to drink river water.

1150. Issue

If someone swears not to drink the water of a river, and he intends to drink any of it, he violates his oath by drinking any part of it, because he thereby declares the drinking of some of its water. If he had no such intention, there is no violation on him, as the Prophet—peace and blessings be upon him—said: "Actions are but by intentions, and every person will have what he intended."

An issue: He swore an oath that he would not enter the house of Zayd.

1151 - Question

If someone swears not to enter Zayd's house, and if it is among houses whose vestibules are permissible—such as the houses of notables—he does not break his oath by entering the vestibule until he enters a part of it where anyone present would deem him to have entered Zayd's house. But if it is among houses whose vestibules are not permissible, he breaks his oath by entering the vestibule.

And likewise in mosques, bathhouses, and all other places due to what we

دَخَلَ بَعْضُهُ الدَّارَ لَا كُلُّهُ لَمْ يَحْنَثْ، لِأَنَّهُ لَمْ يَدْخُلْهَا - وَهُمْ مُجْمِعُونَ مَعَنَا عَلَى: أَنَّ مَنْ حَلَفَ أَنْ لَا يَهْدِمَ هَذَا الْحَائِطَ فَهَدَمَ مِنْهُ مَدَرَةً أَنَّهُ لَا يَحْنَثُ

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَأْكُلَ مِنْ هَذَا الرَّغِيفِ]

١١٤٩ - مَسْأَلَةٌ فَلَوْ حَلَفَ أَنْ لَا يَأْكُلَ مِنْ هَذَا الرَّغِيفِ، أَوْ أَنْ لَا يَشْرَبَ مِنْ مَاءِ هَذَا الْكُوزِ فَإِنَّهُ يَحْنَثُ بِأَكْلِ شَيْءٍ مِنْهُ وَشُرْبِ شَيْءٍ مِنْهُ، لِأَنَّهُ خِلَافُ مَا حَلَفَ عَلَيْهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَشْرَبَ مَاءَ النَّهْرِ]

١١٥٠ - مَسْأَلَةٌ

فَلَوْ حَلَفَ أَنْ لَا يَشْرَبَ مَاءَ النَّهْرِ، فَإِنْ كَانَتْ لَهُ نِيَّةٌ فِي شُرْبِ شَيْءٍ مِنْهُ حَنِثَ [بِأَيِّ شَيْءٍ مِنْهُ] لِأَنَّهُ بِهَذَا يُخْبِرُ عَنْ شُرْبِ بَعْضِ مَائِهِ فَإِنْ لَمْ يَكُنْ لَهُ نِيَّةٌ فَلَا حِنْثَ عَلَيْهِ، لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى».

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَدْخُلَ دَارَ زَيْدٍ]

١١٥١ - مَسْأَلَةٌ

وَمَنْ حَلَفَ أَنْ لَا يَدْخُلَ دَارَ زَيْدٍ، فَإِنْ كَانَتْ مِنْ الدُّورِ الْمُبَاحَةِ الدَّهَالِيزَ كَدُورِ الرُّؤَسَاءِ لَمْ يَحْنَثْ بِدُخُولِ الدِّهْلِيزِ حَتَّى يَدْخُلَ مِنْهَا مَا يَقَعُ عَلَى مَنْ صَارَ هُنَالِكَ أَنَّهُ دَاخِلُ دَارِ زَيْدٍ وَإِنْ كَانَتْ مِنْ الدُّورِ الَّتِي لَا تُبَاحُ دَهَالِيزُهَا حَنِثَ بِدُخُولِ الدِّهْلِيزِ.

have mentioned: that consideration is given solely to the terms used by speakers of that language in their mutual communication.

L18368 Allah the Exalted has said: _“There is not one of you but will come to it; this is a decree your Lord is bound to execute”_ [19:71]. This constitutes a universal ruling, and it is impermissible to assert that Muhammad - peace be upon him - and the Prophets enter Hellfire.[56]

L18369–18370 Issue: If someone swears not to enter so-and-so’s house and walks on its roof.

L18371 Legal Question

L18372 Whoever swears not to enter so-and-so’s house or not to enter the bathhouse, then walks upon the roofs of each of those [places] or enters the bathhouse’s vestibule, has not broken his oath, for he neither entered the house nor the bathhouse, nor is entering the bathhouse’s vestibule regarded as entering the bathhouse itself.

L18373 Issue: He swore not to speak to a certain person, then bequeathed to him or wrote something.

L18374 Issue 1153: If someone swears not to speak to a certain person, then makes a testamentary will in his favor or writes to him, he does not break his oath, because neither writing nor a will is considered speech.

L18375 Similarly, when he [Zakariya] gestured to him, Allah, the Exalted and Glorious, said: “Your sign is that you will not speak to the people for three consecutive nights” [Maryam: 10]. “Then he emerged from the *miḥrāb* to his people and inspired them to glorify [Allah] morning and evening” [Maryam: 11].[57]

L18376 And He, the Exalted, said: {So if you see any human being, say, “I have

[56] **Qur’an references (L18368):** Qur’an 19:71 (Maryam).
[57] **Qur’an references (L18375):** Qur’an 19:10 (Maryam); Qur’an 19:11 (Maryam).

وَهَكَذَا فِي الْمَسَاجِدِ، وَالْحَمَّامَاتِ، وَسَائِرِ الْمَوَاضِعِ لِمَا ذَكَرْنَا: مِنْ أَنَّهُ إِنَّمَا يُرَاعَى مَا يَتَخَاطَبُ بِهِ أَهْلُ تِلْكَ اللُّغَةِ.

وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَإِنْ مِنْكُمْ إِلا وَارِدُهَا كَانَ عَلَى رَبِّكَ حَتْمًا مَقْضِيًّا} [مريم: ٧١] فَهَذَا عُمُومٌ، وَلَا يَجُوزُ أَنْ يُقَالَ: إِنَّ مُحَمَّدًا - عَلَيْهِ السَّلَامُ -، وَالْأَنْبِيَاءَ يَدْخُلُونَ جَهَنَّمَ.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَدْخُلَ دَارَ فُلَانٍ فَمَشَى عَلَى سَقْفِهَا]

مَسْأَلَةٌ

وَمَنْ حَلَفَ أَنْ لَا يَدْخُلَ دَارَ فُلَانٍ، أَوْ أَنْ لَا يَدْخُلَ الْحَمَّامَ فَمَشَى عَلَى سُقُوفِ كُلِّ ذَلِكَ، أَوْ دَخَلَ دِهْلِيزَ الْحَمَّامِ لَمْ يَحْنَثْ، لِأَنَّهُ لَمْ يَدْخُلْ الدَّارَ وَلَا الْحَمَّامَ وَلَا يُسَمَّى دُخُولُ دِهْلِيزِ الْحَمَّامِ دُخُولَ حَمَّامٍ

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يُكَلِّمَ فُلَانًا فَأَوْصَى إِلَيْهِ أَوْ كَتَبَ]

١١٥٣ - مَسْأَلَةٌ وَمَنْ حَلَفَ أَنْ لَا يُكَلِّمَ فُلَانًا، فَأَوْصَى إِلَيْهِ أَوْ كَتَبَ لَمْ يَحْنَثْ، لِأَنَّهُ لَا يُسَمَّى الْكِتَابُ وَلَا الْوَصِيَّةُ: كَلَامًا.

وَكَذَلِكَ لَوْ أَشَارَ إِلَيْهِ قَالَ اللَّهُ عَزَّ وَجَلَّ: {آيَتُكَ أَلا تُكَلِّمَ النَّاسَ ثَلاثَ لَيَالٍ سَوِيًّا} [مريم: ١٠] {فَخَرَجَ عَلَى قَوْمِهِ مِنَ الْمِحْرَابِ فَأَوْحَى إِلَيْهِمْ أَنْ سَبِّحُوا بُكْرَةً وَعَشِيًّا} [مريم: ١١] .

وَقَالَ تَعَالَى: {فَإِمَّا تَرَيِنَّ مِنَ الْبَشَرِ أَحَدًا فَقُولِي إِنِّي نَذَرْتُ لِلرَّحْمَنِ صَوْمًا فَلَنْ أُكَلِّمَ الْيَوْمَ إِنْسِيًّا} [مريم: ٢٦] إِلَى قَوْلِهِ: {فَأَشَارَتْ إِلَيْهِ} [مريم: ٢٩] .

vowed a fast to the Most Merciful, so I will not speak to any human today"} [Maryam: 26] to His words: {Then she pointed to him} [Maryam: 29].[58]

L18377 Thus, it is established that gestures and nods are not speech.

فَصَحَّ أَنَّ الْإِشَارَةَ، وَالْإِيمَاءَ لَيْسَ كَلَامًا.

L18378 **A legal question regarding one who swore not to buy condiments.**

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَشْتَرِيَ إِدَامًا]

L18379 1154 – Issue –:

١١٥٤ - مَسْأَلَةٌ -:

L18380 If a man swears not to purchase a side dish, then buys whatever—whether meat or other things—from among those with which bread is eaten, intending to use it to eat bread, he breaks his oath—whether he eats with it or not—because he has purchased the side dish. But if he buys it to eat it without bread, he does not break his oath, as it is not considered a side dish in that case.

وَمَنْ حَلَفَ أَنْ لَا يَشْتَرِيَ إِدَامًا فَأَيُّ شَيْءٍ اشْتَرَاهُ مِنْ لَحْمٍ، أَوْ غَيْرِهِ أَيِّ شَيْءٍ كَانَ مِمَّا يُؤْكَلُ بِهِ الْخُبْزُ فَاشْتَرَاهُ لِيَأْكُلَ بِهِ الْخُبْزَ حَنِثَ - أَكَلَ بِهِ أَوْ لَمْ يَأْكُلْ - لِأَنَّهُ قَدْ اشْتَرَى الْإِدَامَ فَلَوْ اشْتَرَاهُ لِيَأْكُلَهُ بِلَا خُبْزٍ لَمْ يَحْنَثْ، لِأَنَّهُ لَيْسَ إِدَامًا حِينَئِذٍ.

L18381 Abu Hanifa said: If someone swears not to eat any condiment (idam) and then eats bread with roasted meat, he does not break his oath. However, if he eats the bread with salt, oil, or anything added to the bread's dough during preparation, he breaks his oath.

وَقَالَ أَبُو حَنِيفَةَ: مَنْ حَلَفَ أَنْ لَا يَأْكُلَ إِدَامًا فَأَكَلَ خُبْزًا بِشِوَاءٍ لَمْ يَحْنَثْ، فَإِنْ أَكَلَهُ بِمِلْحٍ أَوْ بِزَيْتٍ أَوْ بِشَيْءٍ يُصْنَعُ فِيهِ الْخُبْزُ حَنِثَ.

L18382 Ali said: "This is utterly invalid speech, for there exists no evidence for it - neither from Islamic law nor linguistic usage—" Narrated by Ahmad ibn Umar ibn Anas from Ahmad ibn Muhammad al-Balawi (Ghundar) from Khalaf ibn al-Qasim from Abu al-Maymun from Abd al-Rahman ibn Abdullah ibn Umar ibn Rashid from Abu Zur'ah Abd al-Rahman ibn Amr al-Nasri from Umar ibn Hafs ibn Ghiyath from his father from Muhammad ibn Yahya, a trustworthy narrator, from Yazid al-A'war from Yusuf ibn Abdullah ibn Salam, who said: "I saw the Messenger of Allah (peace and blessings be upon him) take a morsel of barley bread, place a date upon it, and declare: 'This [date] is the relish for this bread.'"

قَالَ عَلِيٌّ: وَهَذَا كَلَامٌ فَاسِدٌ جِدًّا لِأَنَّهُ لَا دَلِيلَ عَلَيْهِ لَا مِنْ شَرِيعَةٍ وَلَا لُغَةٍ -: نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نا أَحْمَدُ بْنُ مُحَمَّدٍ الْبَلَوِيُّ غُنْدَرٌ نا خَلَفُ بْنُ الْقَاسِمِ نا أَبُو الْمَيْمُونِ نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ رَاشِدٍ نا أَبُو زُرْعَةَ عَبْدُ الرَّحْمَنِ بْنُ عَمْرٍو النَّصْرِيُّ نا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ نا أَبِي عَنْ مُحَمَّدِ بْنِ يَحْيَى ثِقَةٌ عَنْ يَزِيدَ الْأَعْوَرِ عَنْ يُوسُفَ بْنِ عَبْدِ اللَّهِ بْنِ سَلَامٍ قَالَ: «رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخَذَ كِسْرَةَ خُبْزِ شَعِيرٍ وَوَضَعَ عَلَيْهَا تَمْرَةً وَقَالَ: هَذِهِ إِدَامُ هَذِهِ» .

L18383–18385 Ali said: "The origin of idām (condiment) lies in combining it with bread, for this is more deserving of harmonizing between the two." Thus, any-

قَالَ عَلِيٌّ: وَأَصْلُ الْإِدَامِ الْجَمْعُ بَيْنَهُ وَبَيْنَ الْخُبْزِ، فَذَلِكَ أَحْرَى أَنْ يُؤْدَمَ بَيْنَهُمَا فَكُلُّ شَيْءٍ جُمِعَ إِلَى الْخُبْزِ لِيَسْهُلَ أَكْلُهُ بِهِ فَهُوَ إِدَامٌ.

[58] **Qur'an references (L18376):** Qur'an 19:26 (Maryam); Qur'an 19:29 (Maryam).

thing gathered with bread to facilitate eating it by means of that is idam (an accompaniment to bread).

[مَسْأَلَةٌ حَلَفَ أَنْ يَضْرِبَ غُلَامَهُ عَدَدًا مِنْ الْجَلْدِ أَكْثَرَ مِنْ الْعَشْرِ]

L18386 **A case: He took an oath to strike his slave a number of lashes exceeding ten.**

١١٥٥ - مَسْأَلَةٌ

L18387 Issue 1155

وَمَنْ حَلَفَ أَنْ يَضْرِبَ غُلَامَهُ عَدَدًا مِنْ الْجَلْدِ أَكْثَرَ مِنْ الْعَشْرِ لَمْ يَحِلَّ لَهُ ذَلِكَ، وَيَبَرُّ فِي يَمِينِهِ بِأَنْ يَجْمَعَ ذَلِكَ الْعَدَدَ فَيَضْرِبُهُ ضَرْبَةً وَاحِدَةً -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَنَّهُ أَخْبَرَهُ عَبْدُ اللَّهِ بْنُ عُبَيْدِ بْنِ عُمَيْرٍ أَنَّهُ رَأَى أَبَاهُ يَتَحَلَّلُ يَمِينَهُ فِي ضَرْبِ نَذْرِهِ بِأَدْنَى ضَرْبٍ؟ فَقَالَ عَطَاءٌ: قَدْ نَزَلَ ذَلِكَ فِي كِتَابِ اللَّهِ تَعَالَى: {وَخُذْ بِيَدِكَ ضِغْثًا فَاضْرِبْ بِهِ وَلا تَحْنَثْ} [ص: ٤٤] .

L18388 And whoever swears to strike his slave a number of lashes exceeding ten, it is not permissible for him to do so. He fulfills his oath by collecting that number and striking him a single strike. It has been reported to us through the chain of Abd al-Razzaq from Ibn Jurayj that Abdullah ibn Ubayd ibn Umayr reported he saw his father expiating his oath concerning the striking he vowed by performing the most minimal striking. Ata said: "This matter is addressed in the Book of Allah, the Exalted: 'Take in your hand a bundle and strike with it, and do not break your oath' [Saad: 44]."[59]

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L18389 It is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān.

وَقَالَ مُجَاهِدٌ، وَاللَّيْثُ، وَمَالِكٌ: لَا يَبَرُّ بِذَلِكَ - وَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا.

L18390 Mujāhid, al-Layth, and Mālik said: "That does not count as dutifulness" – and we know of no argument whatsoever for them.

[مَسْأَلَةٌ مَنَّتْ امْرَأَتُهُ عَلَيْهِ فَحَلَفَ أَنْ لَا يَلْبَسَ مِنْ مَالِهَا ثَوْبًا]

L18391 **A jurisprudential issue: His wife reproached him by invoking a favor she had done for him, so he swore never to wear any garment belonging to her.**

١١٥٦ - مَسْأَلَةٌ

L18392 1156. Issue

وَلَا مَعْنَى لِلْبِسَاطِ فِي الْأَيْمَانِ وَلَا لِلْمَنِّ، وَلَوْ مَنَّتْ امْرَأَتُهُ عَلَيْهِ أَوْ غَيْرُهَا بِمَالِهَا فَحَلَفَ أَنْ لَا يَلْبَسَ مِنْ مَالِهَا ثَوْبًا لَمْ يَحْنَثْ إلَّا بِمَا سَمَّى فَقَطْ، وَيَأْكُلُ مِنْ مَالِهَا مَا شَاءَ، وَيَأْخُذُ مَا تُعْطِيهِ، وَلَا يَحْنَثُ بِذَلِكَ، وَيَشْتَرِي بِمَا تُعْطِيهِ مَا يَلْبَسُ وَلَا يَحْنَثُ بِذَلِكَ.

L18393 There is no validity to extravagance in oaths nor to reproachful reminders of favors. If his wife or someone else were to reproachfully remind him of her wealth, and he swore not to wear any clothing from her wealth, he would only break his oath by what he specifically mentioned. He may consume whatever he wishes from her wealth, take what she gives him, and he does not break his oath by doing so. He may purchase with what she gives him whatever he wears, and this too does not break his oath.

[59] **Qur'an references (L18388):** Qur'an 38:44 (Sad).

L18394 Similarly, one who grants another the milk of his sheep as a favor and swears not to drink any of it is permitted to eat the meat of that sheep, its cheese, butter, and curdled milk, for none of these constitutes drinking milk.

وَكَذَلِكَ مَنْ مَنَّ عَلَى آخَرَ بِلَبَنِ شَاتِهِ فَحَلَفَ أَنْ لَا يَشْرَبَ مِنْهُ شَيْئًا، فَلَهُ أَنْ يَأْكُلَ مِنْ لَحْمِ تِلْكَ الشَّاةِ، وَمِنْ جُبْنِهَا، وَمِنْ زُبْدِهَا، وَرَائِبِهَا، لِأَنَّهُ لَيْسَ شَيْءٌ مِنْ ذَلِكَ شُرْبَ لَبَنٍ.

L18395 If she sold that ewe and bought another, he may drink from its milk, and no atonement is required for that. He only breaks his oath by what he swore upon and specifically named.

فَإِنْ بَاعَتْ تِلْكَ الشَّاةَ وَاشْتَرَتْ أُخْرَى كَانَ لَهُ أَنْ يَشْرَبَ مِنْ لَبَنِهَا وَلَا كَفَّارَةَ فِي ذَلِكَ، إِنَّمَا يَحْنَثُ بِمَا حَلَفَ عَلَيْهِ وَسَمَّاهُ فَقَطْ.

L18396 And this is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L18397 Malik said: He breaks his oath in all those cases. Then he contradicted himself by stating: If she gifted him a ewe and revoked it by reminding him of the favor, and he swore not to consume any of its milk, then he sold it and used the proceeds to buy a garment and wore it—he breaks his oath. However, he does not break his oath by retaining it in his possession, nor by selling it, nor by settling his debt using its price. This opinion is manifestly invalid, for it holds him accountable for breaking his oath regarding something other than what he swore upon.

وَقَالَ مَالِكٌ: يَحْنَثُ بِكُلِّ ذَلِكَ، ثُمَّ تَنَاقَضَ فَقَالَ: إِنْ وَهَبَتْ لَهُ شَاةً ثُمَّ مَنَّتْ بِهَا عَلَيْهِ فَحَلَفَ أَنْ لَا يَأْكُلَ مِنْ لَبَنِهَا شَيْئًا فَبَاعَهَا وَابْتَاعَ بِثَمَنِهَا ثَوْبًا لَبِسَهُ فَإِنَّهُ يَحْنَثُ - وَلَا يَحْنَثُ بِإِمْسَاكِهَا فِي مِلْكِهِ وَلَا بِبَيْعِهَا وَقَضَاءُ دَيْنِهِ مِنْ ثَمَنِهَا - وَهَذَا قَوْلٌ ظَاهِرُ الْفَسَادِ، لِأَنَّهُ أَحْنَثَهُ بِغَيْرِ مَا حَلَفَ عَلَيْهِ.

L18398–18400 Some of them fabricated by claiming that the mention of what was narrated by us through the chain of Ḥammād ibn Salamah from ʿAlī ibn Zayd ibn Judʿān from ʿAlī ibn al-Ḥusayn: “Abū Lubābah tied himself to a pillar and said: I will not untie myself [until God forgives me].” Until the Messenger of Allah (peace and blessings be upon him) dissolves my vow, or my repentance is accepted. Then Fāṭimah came to annul it, but he refused unless the Messenger of Allah (peace and blessings be upon him) dissolved it. He (peace be upon him) said: “Verily, Fāṭimah is a part of me.” This is invalid because it is a mursal narration. Then it is narrated from ʿAlī ibn Zayd (who is weak in reliability).

وَمَوَّهَ بَعْضُهُمْ بِأَنَّ ذِكْرَ مَا رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَلِيِّ بْنِ زَيْدِ بْنِ جُدْعَانَ عَنْ عَلِيِّ بْنِ الْحُسَيْنِ: «أَنَّ أَبَا لُبَابَةَ رَبَطَ نَفْسَهُ إِلَى سَارِيَةٍ وَقَالَ: لَا أَحُلُّ نَفْسِي حَتَّى يَحُلَّنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ تَنْزِلَ تَوْبَتِي، فَجَاءَتْ فَاطِمَةُ تَحُلُّهُ فَأَبَى إِلَّا أَنْ يَحُلَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ - عَلَيْهِ السَّلَامُ -: إِنَّ فَاطِمَةَ بِضْعَةٌ مِنِّي» فَهَذَا لَا يَصِحُّ، لِأَنَّهُ مُرْسَلٌ - ثُمَّ عَنْ عَلِيِّ بْنِ زَيْدٍ وَهُوَ ضَعِيفٌ.

L18401 Furthermore, if this were sound, they would be contradicting what is stated therein, because they unanimously agree that if someone swore to strike Zayd but struck Zayd’s son instead, he does not break his oath.

ثُمَّ لَوْ صَحَّ لَكَانُوا مُخَالِفِينَ لِمَا فِيهِ، لِأَنَّهُمْ لَا يَخْتَلِفُونَ فِيمَنْ حَلَفَ أَنْ يَضْرِبَ زَيْدًا فَضَرَبَ وَلَدَ زَيْدٍ أَنَّهُ لَا يَحْنَثُ.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَفْعَلَ أَمْرًا كَذَا حِينًا فَبَقِيَ طَرْفَةَ عَيْنٍ ثُمَّ فَعَلَهُ]

١١٥٧ - مَسْأَلَةٌ

وَمَنْ حَلَفَ أَنْ لَا يَفْعَلَ أَمْرًا كَذَا حِينًا أَوْ دَهْرًا أَوْ زَمَانًا أَوْ مُدَّةً أَوْ بُرْهَةً أَوْ وَقْتًا، أَوْ ذَكَرَ كُلَّ ذَلِكَ بِالْأَلِفِ وَاللَّامِ - أَوْ قَالَ مَلِيًّا، أَوْ قَالَ: عُمْرًا، أَوْ الْعُمْرَ، فَبَقِيَ مِقْدَارَ طَرْفَةِ عَيْنٍ لَمْ يَفْعَلْهُ، ثُمَّ فَعَلَهُ، فَلَا حِنْثَ عَلَيْهِ، لِأَنَّ كُلَّ جُزْءٍ مِنْ الزَّمَانِ زَمَانٌ، وَدَهْرٌ، وَحِينٌ، وَوَقْتٌ، وَبُرْهَةٌ، وَمُدَّةٌ.

وَقَدْ اخْتَلَفَ السَّلَفُ فِي الْحِينِ -: فَقَالَتْ طَائِفَةٌ: الْحِينُ سَنَةٌ -: رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ يَقُولُ: أَرَى الْحِينَ سَنَةً.

وَقَدْ رُوِيَ مِنْ طَرِيقِ عَطَاءِ بْنِ السَّائِبِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ: الْحِينُ سَنَةٌ.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، قَالَا جَمِيعًا: الْحِينُ سَنَةٌ - وَعَنْ عِكْرِمَةَ مِثْلُهُ.

وَهُوَ قَوْلُ مَالِكٍ، قَالَ: إلَّا أَنْ يَنْوِيَ غَيْرَ ذَلِكَ فَلَهُ مَا نَوَى.

وَذَهَبَتْ طَائِفَةٌ إلَى مَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى عَنْ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الْأَنْصَارِيِّ عَنْ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ أَنَّهُ سُئِلَ فِي رَجُلٍ حَلَفَ عَلَى امْرَأَتِهِ: أَنْ لَا تَفْعَلَ فِعْلًا مَا إلَى حِينٍ؟ فَقَالَ: أَيُّ الْأَحْيَانِ أَرَدْت؟ فَإِنَّ الْأَحْيَانَ ثَلَاثَةٌ -: قَالَ اللَّهُ عَزَّ وَجَلَّ: {تُؤْتِي

[A case where one swore not to perform a specific act for a time, then did it when only a blink of an eye remained of that period.]

1157 – Issue

Whoever swears not to perform a specific matter for a period (ḥīn), an eternity (dahr), a time (zamān), a duration (muddah), a span (burhah), or a term (waqt)—or mentions all such terms with the definite article—or states "a full period" (maliyyan), "a lifetime" (ʿumran), or "the lifetime" (al-ʿumr), and remains not doing it for even the blink of an eye, then performs it, incurs no sin for oath-breaking. This is because every portion of time is considered a time (zamān), an eternity (dahr), a period (ḥīn), a term (waqt), a span (burhah), and a duration (muddah).

The Salaf differed regarding the term *al-ḥīn*—a group said: "*Al-ḥīn* is a year." We are narrated through the chain of Ibn Wahb from al-Layth ibn Saʿd that ʿAlī ibn Abī Ṭālib said: "I maintain *al-ḥīn* is a year."

It has been narrated through the chain of ʿAṭāʾ ibn al-Sāʾib, from Saʿīd ibn Jubayr, from Ibn ʿAbbās: "Al-Ḥīn is a year."

And from the narration of Shuʿbah from al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān, both of whom said together: "'*al-ḥīn* is a year,'" and the same is reported from ʿIkrimah.

This is the view of Mālik, who said: "Unless he intends otherwise, he has what he intended."

A group held the view based on what we narrated through the chain of Muḥammad ibn al-Muthannā from Muḥammad ibn ʿAbdullāh al-Anṣārī from Muḥammad ibn ʿAlī ibn al-Ḥusayn, who was asked about a man who swore an oath concerning his wife that she would not perform a specific action until a period. He replied: "Which of the periods did you intend? For periods are three." He said: Allāh the Exalted and Majestic states, *"'It yields its fruit every period by its Lord's permission'"* [Ibrāhīm 14:25] – this refers to

every six months. And His statement, *"He will surely imprison him until a period"* [Yūsuf 12:35] – that is thirteen years.[60]

L18410–18411 And you will surely come to know its news after a time [38:88]. That is until the Day of Resurrection.[61]

L18412 A group held the opinion based on what we narrated through the chain from Ismāʿīl ibn Isḥāq, from Muḥammad ibn ʿUbayd, from Muḥammad ibn Thawr, from Maʿmar, who said that al-Ḥasan al-Baṣrī stated regarding the verse, "It yields its fruit every season" [Ibrāhīm 14:25], that "season" refers to a period between six to nine months. Another group adhered to what we narrated through the chain of Muḥammad ibn al-Muthannā, narrated to us by al-Mughīrah ibn Salamah ibn Hishām al-Makhzūmī, narrated to us by Wuhaib ibn Khālid, narrated to us by Ibn Ḥarmalah: A man asked Saʿīd ibn al-Musayyib about his oath that his wife would not visit her family for a "season." Saʿīd replied, "A season is the period from when palm trees bloom until they produce ripe dates, as stated in 'It yields its fruit every season' [Ibrāhīm 14:25]."[62]

L18413 A group held the view of what was narrated to us through the chain of Ismāʿīl ibn Isḥāq on the authority of Muḥammad ibn ʿUbayd on the authority of Muḥammad ibn Thawr on the authority of Maʿmar on the authority of Qaṭādah regarding {It yields its produce every season} [Ibrahim 14:25]. He said: Its fruit is eaten in winter and summer.[63]

L18414 A group held the opinion reported through Yaḥyā ibn Saʿīd al-Qaṭṭān's transmission from Sufyān al-Thawrī, who said: "Ṭāriq ibn ʿAbd al-Raḥmān narrated to me from Saʿīd ibn Jubayr, from Ibn ʿAbbās, who stated: '*Al-ḥīn* is six months.'" This is also the independently held view of Saʿīd ibn Jubayr and al-Shaʿbī.

أُكُلَهَا كُلَّ حِينٍ بِإِذْنِ رَبِّهَا} [إبراهيم: ٢٥] . كُلُّ سِتَّةِ أَشْهُرٍ. وقَوْله تَعَالَى: {لَيَسْجُنُنَّهُ حَتَّى حِينٍ} [يوسف: ٣٥] فَذَلِكَ ثَلَاثَةَ عَشَرَ عَامًا.

وقَوْله تَعَالَى: {وَلَتَعْلَمُنَّ نَبَأَهُ بَعْدَ حِينٍ} [ص: ٨٨] فَذَلِكَ إِلَى يَوْمِ الْقِيَامَةِ.

وَذَهَبَتْ طَائِفَةٌ إِلَى مَا رُوِّينَاهُ مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ عُبَيْدٍ عَنْ مُحَمَّدِ بْنِ ثَوْرٍ عَنْ مَعْمَرٍ قَالَ الْحَسَنُ الْبَصْرِيُّ: {تُؤْتِي أُكُلَهَا كُلَّ حِينٍ} [إبراهيم: ٢٥] مَا بَيْنَ سِتَّةِ أَشْهُرٍ إِلَى تِسْعَةِ أَشْهُرٍ، وَذَهَبَ طَائِفَةٌ إِلَى مَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا الْمُغِيرَةُ بْنُ سَلَمَةَ بْنِ هِشَامٍ الْمَخْزُومِيُّ نا وُهَيْبُ بْنُ خَالِدٍ نا ابْنُ حَرْمَلَةَ: أَنَّ رَجُلًا سَأَلَ سَعِيدَ بْنَ الْمُسَيِّبِ عَنْ يَمِينِهِ أَنْ لَا تَدْخُلَ امْرَأَتُهُ عَلَى أَهْلِهَا حِينًا؟ فَقَالَ سَعِيدٌ، الْحِينُ مَا بَيْنَ أَنْ تَطْلُعَ النَّخْلُ إِلَى أَنْ تُرَطِّبَ {تُؤْتِي أُكُلَهَا كُلَّ حِينٍ} [إبراهيم: ٢٥]

وَذَهَبَتْ طَائِفَةٌ إِلَى مَا رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ عُبَيْدٍ عَنْ مُحَمَّدِ بْنِ ثَوْرٍ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ: {تُؤْتِي أُكُلَهَا كُلَّ حِينٍ} [إبراهيم: ٢٥] قَالَ: تُؤْكَلُ ثَمَرَتُهَا فِي الشِّتَاءِ وَالصَّيْفِ.

وَذَهَبَتْ طَائِفَةٌ إِلَى مَا رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سُفْيَانَ الثَّوْرِيِّ حَدَّثَنِي طَارِقُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ قَالَ " الْحِينُ سِتَّةُ أَشْهُرٍ " وَهُوَ قَوْلُ سَعِيدِ بْنِ جُبَيْرٍ، وَالشَّعْبِيِّ.

وَذَهَبَتْ طَائِفَةٌ إِلَى مَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا يَزِيدُ بْنُ هَارُونَ أَنَا هِشَامٌ هُوَ ابْنُ حَسَّانٍ - عَنْ عِكْرِمَةَ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ سَأَلَهُمْ عَمَّنْ قَالَ: لَا أَفْعَلُ أَمْرًا كَذَا

[60] **Qur'an references (L18409):** Qur'an 14:25 (Ibrahim); Qur'an 12:35 (Yusuf).
[61] **Qur'an references (L18411):** Qur'an 38:88 (Sad).
[62] **Qur'an references (L18412):** Qur'an 14:25 (Ibrahim).
[63] **Qur'an references (L18413):** Qur'an 14:25 (Ibrahim).

L18415 A group held the view transmitted to us through the chain of Muḥammad ibn al-Muthannā, who reported from Yazīd ibn Hārūn, who reported from Hishām—that is, Ibn Ḥassān—from ʿIkrimah, that ʿUmar ibn ʿAbd al-ʿAzīz—asked them about someone who declared, "I will not perform such-and-such an action for a period." ʿIkrimah responded: "Some periods are within reach, others are not. The unattainable [period] is as in His words, the Almighty: {And We granted them enjoyment for a period} [Yūnus: 98]. The attainable [period] is as in His words, the Exalted: {It yields its fruit every season} [Ibrāhīm: 25]." He explained it as the duration from when the tree bears fruit until its harvest—six months. ʿUmar ibn ʿAbd al-ʿAzīz found this convincing.[64]

حِينًا؟ فَقَالَ لَهُ عِكْرِمَةُ: إِنَّ مِنْ الْحِينِ مَا يُدْرَكُ وَمَا لَا يُدْرَكُ -: فَالَّذِي لَا يُدْرَكُ قَوْلُهُ عَزَّ وَجَلَّ: {وَمَتَّعْنَاهُمْ إِلَى حِينٍ} [يونس: ٩٨] . وَالَّذِي يُدْرَكُ قَوْله تَعَالَى: {تُؤْتِي أُكُلَهَا كُلَّ حِينٍ} [إبراهيم: ٢٥] فَأَرَاهُ مِنْ حِينِ تُثْمِرُ إلَى حِينِ تُصْرَمُ سِتَّةَ أَشْهُرٍ. فَأَعْجَبَ ذَلِكَ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ -.

L18416 And according to this view, Abu Hanifah, Al-Awza'i, and Abu ʿUbayd say.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَالْأَوْزَاعِيُّ، وَأَبُو عُبَيْدٍ.

L18417 And Abū Ḥanīfah said: unless he intends any duration, then it is according to what he intended.

وَقَالَ أَبُو حَنِيفَةَ: إِلَّا أَنْ يَنْوِيَ مُدَّةً مَا فَلَهُ مَا نَوَى.

L18418 A group held the opinion—as narrated through the chain of Muḥammad ibn al-Muthannā, who narrated from Yazīd ibn Hārūn, from Muḥammad ibn Muslim al-Ṭā'ifī, from Ibrāhīm ibn Maysarah, from Saʿīd ibn al-Musayyab—who said: "The designated time is two months; the palm tree sprouts throughout the entire year except for two months."

وَذَهَبَتْ طَائِفَةٌ إِلَى مَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا يَزِيدُ بْنُ هَارُونَ عَنْ مُحَمَّدِ بْنِ مُسْلِمٍ الطَّائِفِيِّ عَنْ إبْرَاهِيمَ بْنِ مَيْسَرَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: الْحِينُ شَهْرَانِ، النَّخْلَةُ تَطْلُعُ السَّنَةَ كُلَّهَا إلَّا شَهْرَيْنِ.

L18419–18420 A group held the opinion as per what we have narrated through the chain of Muḥammad ibn al-Muthannā - who narrated by Abū Muʿāwiyah al-Ḍarīr, who narrated from al-Aʿmash, from Abī Ẓabyān, from Ibn ʿAbbās - who stated: "Al-ḥīn may indeed denote early morning and late afternoon." This is the view of al-Shāfiʿī and Abū Sulaymān (al-Khaṭṭābī).

وَذَهَبَتْ طَائِفَةٌ إِلَى مَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا أَبُو مُعَاوِيَةَ الضَّرِيرُ نا الْأَعْمَشُ عَنْ أَبِي ظَبْيَانَ عَنْ ابْنِ عَبَّاسٍ قَالَ: الْحِينُ قَدْ يَكُونُ غُدْوَةً وَعَشِيَّةً - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L18421 It was reported to us via Waki''s chain of transmission from Abū Jaʿfar from Ṭāwūs, who said: The period is two months.

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ أَبِي جَعْفَرٍ عَنْ طَاوُوسٍ قَالَ: الزَّمَانُ شَهْرَانِ.

L18422 Abū Muḥammad said: The reference in matters of dispute is the speech of Allāh, the Exalted, and the speech of His Messenger—may Allāh's blessings and peace be upon him. We found that the Exalted has said: {Has there not come upon man a period of time when he was not a thing worth mentioning?}

قَالَ أَبُو مُحَمَّدٍ: الْمَرْجُوعُ إلَيْهِ عِنْدَ التَّنَازُعِ كَلَامُ اللَّهِ تَعَالَى: وَكَلَامُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَجَدْنَاهُ تَعَالَى قَدْ قَالَ: {هَلْ أَتَى عَلَى الْإِنْسَانِ حِينٌ مِنَ الدَّهْرِ لَمْ يَكُنْ شَيْئًا

[64] **Qur'an references (L18415):** Qur'an 10:98 (Yunus); Qur'an 14:25 (Ibrahim).

[Al-Insān: 1]. This refers to the duration from when Allāh, the Mighty and Majestic, established the origin of creation until the creation of Adam, peace be upon him, and His breathing life into Adam's descendants, and until the time of the blowing of the soul into each one of us.[65]

L18423 And He, the Exalted, said: "And you will surely know its tidings in time" [38:88]. This is until the Day of Resurrection.[66]

L18424 And the Most High said: *"And We granted them enjoyment for an appointed term"* (10:98). Therefore, this refers to the human lifespan until death.[67]

L18425 And they said: "He will surely imprison him for a time." [Yusuf 35][68]

L18426 And He, the Exalted, said: {So he remained in prison for several years} [Surah Yusuf (12:42)]. The term "several" (بِضْع) specifically denotes a range between three and nine years.[69]

L18427 Allah the Exalted said: {So glorify Allah in the evening and in the morning} [Ar-Rum: 17] {And to Him is praise in the heavens and the earth, and in the late afternoon and at noon} [Ar-Rum: 18]. Thus, Allah the Exalted named the evening as a time, the morning as a time, and noon as a time.[70]

L18428 Thus, what we have mentioned stands confirmed, and invalid is the claim of whoever prescribes a punishment as a punishment less than the prescribed punishment.

L18429 We found their argument using the date palm to be against them, not in their favor, for we observe its spadix becoming moist, its unripe dates developing into spadix, its young dates turning unripe, and its blossoms forming into

مَذْكُورًا} [الإنسان: ١] فَهَذَا مُذْ خَلَقَ اللَّهُ عَزَّ وَجَلَّ مَبْدَأَ الْعَالَمِ إِلَى خَلْقِ آدَمَ - عَلَيْهِ السَّلَامُ -، وَنَسَمَ بَنِيهِ، وَإِلَى وَقْتِ نَفْخِ الرُّوحِ فِي كُلِّ وَاحِدٍ مِنَّا.

وَقَالَ تَعَالَى: {وَلَتَعْلَمُنَّ نَبَأَهُ بَعْدَ حِينٍ} [ص: ٨٨] فَهَذَا إِلَى يَوْمِ الْقِيَامَةِ.

وَقَالَ تَعَالَى: {وَمَتَّعْنَاهُمْ إِلَى حِينٍ} [يونس: ٩٨] فَهَذَا مُدَّةُ عُمْرِ الْإِنْسَانِ إِلَى أَنْ يَمُوتَ.

وَقَالَ تَعَالَى: {لَيَسْجُنُنَّهُ حَتَّى حِينٍ} [يوسف: ٣٥] .

وَقَالَ تَعَالَى: {فَلَبِثَ فِي السِّجْنِ بِضْعَ سِنِينَ} [يوسف: ٤٢] وَالْبِضْعُ مَا بَيْنَ الثَّلَاثِ إِلَى التِّسْعِ.

وَقَالَ اللَّهُ تَعَالَى: {فَسُبْحَانَ اللَّهِ حِينَ تُمْسُونَ وَحِينَ تُصْبِحُونَ} [الروم: ١٧] {وَلَهُ الْحَمْدُ فِي السَّمَاوَاتِ وَالْأَرْضِ وَعَشِيًّا وَحِينَ تُظْهِرُونَ} [الروم: ١٨] فَسَمَّى اللَّهُ تَعَالَى الْمَسَاءَ حِينًا، وَالْإِصْبَاحَ حِينًا، وَالظَّهِيرَةَ حِينًا.

فَصَحَّ بِذَلِكَ مَا ذَكَرْنَاهُ، وَبَطَلَ قَوْلُ مَنْ حَدَّ حَدًّا دُونَ حَدٍّ.

وَوَجَدْنَا احْتِجَاجَهُمْ بِالنَّخْلَةِ عَلَيْهِمْ لَا لَهُمْ، لِأَنَّنَا نُشَاهِدُهَا يَرْطُبُ مِنْهَا مَا كَانَ زَهْوًا، وَيُزْهِي مَا كَانَ بُسْرًا، وَيُبْسِرُ مِنْهَا مَا كَانَ بَلَحًا، وَيُبْلِحُ مِنْهَا مَا كَانَ طَلْعًا، فَفِي كُلِّ سَاعَةٍ تُؤْتِي أُكُلَهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[65] **Qur'an references (L18422):** Qur'an 76:1 (Al-Insan).
[66] **Qur'an references (L18423):** Qur'an 38:88 (Sad).
[67] **Qur'an references (L18424):** Qur'an 10:98 (Yunus).
[68] **Qur'an references (L18425):** Qur'an 12:35 (Yusuf).
[69] **Qur'an references (L18426):** Qur'an 12:42 (Yusuf).
[70] **Qur'an references (L18427):** Qur'an 30:17 (Ar-Rum); Qur'an 30:18 (Ar-Rum).

young dates. Thus, at every moment it produces its fruit—and with Allah, the Exalted, is all success.

L18430 And Abu Hanifah has grave errors here. Among these is his claim: Whoever swears not to speak to so-and-so for "a period," "the period," "a while," "the while," "a prolonged period," or "a long time," then the entire period [of the oath] is six months, unless he intends a specific duration—in which case his oath is based on what he intended. It is also narrated from him regarding his statement "a prolonged period" that it signifies one month.

L18431–18432 If someone swears not to speak to him for a *dahr* (a contested duration), Abū Ḥanīfa said, "I do not know what *dahr* means." Abū Yūsuf and Muḥammad said, "It is six months."

L18433 If he says, "I will not speak to him for a lifetime," Abū Yūsuf said: "This is binding for eternity."

L18434 Muḥammad ibn al-Ḥasan said: "Six months."

L18435 If he swears not to speak to him until a prolonged period, then that period is defined as more than a month.

L18436 Abu Yusuf said, "A month and a day. If one swears not to speak to him until a near term, then it is less than a month."

L18437 If someone swears not to speak to another for a lifetime [ʿumran, technically one year], Abū Yūsuf said: six months. And it is narrated from him that [the duration is] one [year], unless the swearer specifies a [different] period, in which case his specification applies.

L18438 **A juristic issue: He swore not to speak to him for days.**

L18439 1158: Legal Case

L18440 If he swears not to speak to someone for an extended period, this refers to what exceeds the minimum duration. If he swears not to speak to him for days, weeks, months, or years—or specifies any of these terms using the definite article "al-" (the)—then each is considered a minimum of three units.

وَلِأَبِي حَنِيفَةَ هُنَا تَخَالِيطُ عَظِيمَةٌ -: مِنْهَا - أَنَّهُ قَالَ: مَنْ حَلَفَ أَنْ لَا يُكَلِّمَ فُلَانًا زَمَانًا، أَوْ الزَّمَانَ، أَوْ حِينًا أَوْ الْحِينَ، أَوْ مَلِيًّا، أَوْ طَوِيلًا، فَهُوَ كُلُّهُ سِتَّةُ أَشْهُرٍ، إلَّا أَنْ يَنْوِيَ مُدَّةً مَا فَلَهُ مَا نَوَى - وَرُوِيَ عَنْهُ أَيْضًا فِي قَوْلِهِ مَلِيًّا: أَنَّهُ شَهْرٌ وَاحِدٌ.

فَإِنْ حَلَفَ لَا يُكَلِّمُهُ دَهْرًا؟ قَالَ أَبُو حَنِيفَةَ: لَا أَدْرِي مَا الدَّهْرُ؟ وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدٌ: هُوَ سِتَّةُ أَشْهُرٍ.

فَإِنْ قَالَ: لَا أُكَلِّمُهُ الدَّهْرَ؟ قَالَ أَبُو يُوسُفَ: هُوَ عَلَى الْأَبَدِ.

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: سِتَّةُ أَشْهُرٍ.

فَإِنْ حَلَفَ أَنْ لَا يُكَلِّمَهُ إلَى بَعِيدٍ - فَهُوَ أَكْثَرُ مِنْ شَهْرٍ.

قَالَ أَبُو يُوسُفَ شَهْرٌ وَيَوْمٌ: فَإِنْ حَلَفَ أَنْ لَا يُكَلِّمَهُ إلَى قَرِيبٍ، فَهُوَ أَقَلُّ مِنْ شَهْرٍ.

فَإِنْ حَلَفَ أَنْ لَا يُكَلِّمَهُ عُمْرًا فَإِنَّ أَبَا يُوسُفَ قَالَ: سِتَّةُ أَشْهُرٍ - وَرُوِيَ عَنْهُ أَنَّهُ وَاحِدٌ إلَّا أَنْ يَنْوِيَ مُدَّةً مَا فَلَهُ مَا نَوَى.

[مَسْأَلَةُ حَلَفَ أَنْ لَا يُكَلِّمَهُ أَيَّامًا]

١١٥٨ - مَسْأَلَةٌ

He does not violate his oath if the period exceeds three, because the plural form is used, and the minimum plural is three, which is anything beyond two.

فَإِنْ حَلَفَ أَنْ لَا يُكَلِّمَهُ طَوِيلًا، فَهُوَ مَا زَادَ عَلَى أَقَلِّ الْمُدَدِ، فَإِنْ حَلَفَ أَنْ لَا يُكَلِّمَهُ أَيَّامًا أَوْ جُمَعًا أَوْ شُهُورًا أَوْ سِنِينَ، أَوْ ذَكَرَ - كُلَّ ذَلِكَ بِالْأَلِفِ وَاللَّامِ - فَكُلُّ ذَلِكَ عَلَى ثَلَاثَةٍ، وَلَا يَحْنَثُ فِيمَا زَادَ، لِأَنَّهُ الْجَمْعُ، وَأَقَلُّ الْجَمْعِ ثَلَاثَةٌ، وَهُوَ مَا زَادَ عَلَى التَّثْنِيَةِ.

L18441 He, the Exalted, said: "But if they are females, more than two" [Quran 4:11].[71]

قَالَ تَعَالَى: {فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ} [النساء: ١١] .

L18442 If he says regarding all of that—"numerous," then it amounts to four [categories], because "numerous" is only defined in relation to what is less than it. It is impermissible for anyone to break an oath except with certainty that leaves no room for doubt—and success is from Allah, the Exalted.

فَإِنْ قَالَ فِي كُلِّ ذَلِكَ -: كَثِيرَةٌ، فَهِيَ عَلَى أَرْبَعٍ، لِأَنَّهُ لَا " كَثِيرَ " إِلَّا بِالْإِضَافَةِ إِلَى مَا هُوَ أَقَلُّ مِنْهُ، وَلَا يَجُوزُ أَنْ يَحْنَثَ أَحَدٌ إِلَّا بِيَقِينٍ لَا مَجَالَ لِلشَّكِّ فِيهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حَلَفَ أَلَّا يُسَاكِنَ مَنْ كَانَ سَاكِنًا مَعَهُ]

Legal Issue: He swore not to co-reside with someone who had been living with him.

L18443

١١٥٩ - مَسْأَلَةٌ

L18444 1159 - Issue

وَمَنْ حَلَفَ أَلَّا يُسَاكِنَ مَنْ كَانَ سَاكِنًا مَعَهُ مِنْ امْرَأَتِهِ أَوْ قَرِيبِهِ أَوْ أَجْنَبِيٍّ فَلْيُفَارِقْ الَّتِي هُوَ فِيهَا إلَى غَيْرِهَا، وَلَا يَحْنَثُ.

L18445 Whoever swears not to reside with someone sharing his dwelling—whether that person is his wife, relative, or non-relative—must leave the dwelling he is in for another, and he does not break his oath.

فَإِنْ أَقَامَ مُدَّةً يُمْكِنُهُ فِيهَا أَنْ لَا يُسَاكِنَهُ فَلَمْ يُفَارِقْهُ حَنِثَ - فَإِنْ رَحَلَ كَمَا ذَكَرْنَا مُدَّةً - قَلَّتْ - أَوْ كَثُرَتْ ثُمَّ رَجَعَ لَمْ يَحْنَثْ.

L18446 If he resides for a period during which it is possible to avoid cohabiting with the other party, yet does not leave them, he breaks his oath. If he leaves, as we mentioned, for a period—whether short or long—and then returns, he does not break his oath.

وَتَفْسِيرُ ذَلِكَ -: إنْ كَانَا فِي بَيْتٍ وَاحِدٍ أَنْ يَرْحَلَ أَحَدُهُمَا إلَى بَيْتٍ آخَرَ مِنْ تِلْكَ الدَّارِ أَوْ غَيْرِهَا، وَإِنْ كَانَا فِي دَارٍ وَاحِدَةٍ رَحَلَ أَحَدُهُمَا إلَى أُخْرَى مُتَّصِلَةٍ بِهَا أَوْ مُتَنَابِذَةٍ أَوْ اقْتَسَمَا الدَّارَ - وَإِنْ كَانَا فِي مَحَلَّةٍ وَاحِدَةٍ رَحَلَ أَحَدُهُمَا إلَى أُخْرَى - وَإِنْ كَانَا فِي مَدِينَةٍ وَاحِدَةٍ أَوْ قَرْيَةٍ وَاحِدَةٍ خَرَجَ أَحَدُهُمَا عَنْ دُورِ الْقَرْيَةِ أَوْ دُورِ الْمَدِينَةِ لَمْ يَحْنَثْ، وَإِنْ

L18447–18449 The explanation of this is: If they are in one dwelling, and one of them moves to another dwelling within that compound or elsewhere; if they are in one compound, and one of them moves to another dwelling connected to it or separated from it, or they divide the compound; if they are in one neighborhood, and one of them moves to another; if they are in one city or village, and one of them departs beyond the bounds of the village or city – they do not break the oath. If one of them moves physically while leaving

[71] **Qur'an references (L18441):** Qur'an 4:11 (An-Nisa).

رَحَلَ أَحَدُهُمَا بِجِسْمِهِ وَتَرَكَ أَهْلَهُ وَمَالَهُ وَوَلَدَهُ لَمْ يَحْنَثْ، إِلَّا أَنْ يَكُونَ لَهُ نِيَّةٌ تُطَابِقُ قَوْلَهُ فَلَهُ مَا نَوَى. وَهَذَا كُلُّهُ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

his family, wealth, and children behind, they do not break the oath, unless he holds an intention corresponding to his statement – then he has what... He intended, and all of this is the opinion of Abu Hanifah, Al-Shafi'i, and Abu Sulayman.

وَكُلُّ مَا ذَكَرْنَا مُسَاكَنَةً وَغَيْرُ مُسَاكَنَةٍ، فَإِنْ فَارَقَ تِلْكَ الْحَالَ فَقَدْ فَارَقَ مُسَاكَنَتَهُ وَقَدْ بَرَّ، وَلَا يَقْدِرُ أَحَدٌ عَلَى أَكْثَرَ، لِأَنَّ النَّاسَ مَسَاكِنُ بَعْضُهُمْ لِبَعْضٍ فِي سَاحَةِ الْأَرْضِ، وَفِي الْعَالَمِ، قَالَ تَعَالَى: {وَلَهُ مَا سَكَنَ فِي اللَّيْلِ وَالنَّهَارِ} [الأنعام: ١٣] .

L18450 Everything we have mentioned—whether cohabitation or its absence—if one abandons that condition, he has indeed abandoned cohabitation and fulfilled his obligation. None can achieve beyond this, for people coexist as dwellings for one another throughout the earth and the world. The Exalted said: *"To Him belongs whatever rests in the night and the day"* [Al-An'ām 6:13].[72]

وَقَدْ افْتَرَضَ اللَّهُ عَزَّ وَجَلَّ عَلَى الْمُهَاجِرِينَ الرِّحْلَةَ عَنْ مَكَّةَ وَدَارِ الْكُفْرِ إِلَى الْمَدِينَةِ فَكَانَ مَنْ خَرَجَ مِنْهُمْ بِنَفْسِهِ قَدْ أَدَّى مَا عَلَيْهِ وَفَارَقَ وَطَنَ الْكُفْرِ وَأَكْثَرُهُمْ تَرَكَ أَهْلَهُ، وَوَلَدَهُ وَمَالَهُ بِمَكَّةَ، وَفِي دَارِ قَوْمِهِ فَلَمْ يُخْرِجْهُمْ ذَلِكَ عَنْ الْهِجْرَةِ وَمُفَارَقَةِ الْكُفَّارِ.

L18451 Allah, the Mighty and Majestic, decreed as a duty upon the emigrants to journey from Mecca—the abode of disbelief—to Medina. Thus, whoever among them departed by themselves had fulfilled what was incumbent upon them and abandoned the homeland of disbelief. Most of them left their families, children, and wealth in Mecca and in the dwelling of their people. Yet this did not exempt them from the obligation of migration or severance from the disbelievers.

وَقَالَ مَالِكٌ: يَحْنَثُ حَتَّى يَرْحَلَ بِأَكْثَرِ رَحِيلِهِ - وَهَذَا خَطَأٌ لِمَا ذَكَرْنَا، وَلِأَنَّهُ قَوْلٌ بِلَا دَلِيلٍ.

L18452 Mālik said: He does not violate his oath until he departs with the majority of his departure. This is incorrect due to what we have mentioned, and because it is an opinion without textual evidence.

وَاحْتَجَّ بَعْضُ مُقَلِّدِيهِ بِمَا رُوِيَ: «الْمَرْءُ مَعَ رَحْلِهِ» وَهَذَا لَا يُسْنَدُ، ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ، لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُرْوَ أَنَّهُ قَالَ إِلَّا فِي رَحْلِ نَاقَتِهِ فَقَطْ لَا فِي رَحِيلِ مَنْزِلِهِ، بَلْ تَرَكَهُ بِمَكَّةَ بِلَا شَكٍّ، وَلَمْ يَخْرُجْ إِلَّا بِجِسْمِهِ.

L18453 Some of his followers cited as evidence the report: "A person remains with his mount." This lacks a reliable chain of transmission. Even if it were authentic, it would argue against their position, for the Prophet (peace and blessings of Allah be upon him) is only reported to have said this in reference to his she-camel's mount—not regarding the departure from his residence. Indeed, he undoubtedly left his mount in Mecca and departed only with his physical self.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَأْكُلَ طَعَامًا اشْتَرَاهُ زَيْدٌ]

A jurisprudential case: He swore that he would not eat any food purchased by Zayd.

١١٦٠ - مَسْأَلَةٌ

L18454 1160 – Question

[72] **Qur'an references (L18450):** Qur'an 6:13 (Al-An'am).

Whoever swears not to eat food purchased by Zayd, then eats food purchased jointly by Zayd and another man, does not violate his oath.

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ طَعَامًا اشْتَرَاهُ زَيْدٌ فَأَكَلَ طَعَامًا اشْتَرَاهُ زَيْدٌ وَآخَرُ مَعَهُ لَمْ يَحْنَثْ.

Similarly, if one swears not to enter Zayd's house and then enters a house occupied solely by Zayd, or a house co-owned by Zayd and another person, he does not violate his oath unless he intended to enter a house inhabited by Zayd—in which case he does violate it. This is because oaths depend on the linguistic conventions recognized by speakers of that language in their ordinary speech when swearing, and he swore only according to that understanding. Food jointly purchased by Zayd and Khalid is not ascribed to Zayd alone, nor is a jointly owned house ascribed to any of its owners.

وَكَذَلِكَ لَوْ حَلَفَ أَنْ لَا يَدْخُلَ دَارَ زَيْدٍ فَدَخَلَ دَارًا يُسْكِنُهَا زَيْدٌ بَكْرًا [وَكَذَلِكَ] دَارًا بَيْنَ زَيْدٍ وَغَيْرِهِ لَمْ يَحْنَثْ إِلَّا أَنْ يَنْوِيَ دَارًا يَسْكُنُهَا زَيْدٌ فَيَحْنَثَ، لِأَنَّ الْمَنْظُورَ إِلَيْهِ فِي الْأَيْمَانِ مَا تَعَارَفَهُ أَهْلُ تِلْكَ اللُّغَةِ فِي كَلَامِهِمْ الَّذِي بِهِ حَلَفَ، وَعَلَيْهِ حَلَفَ فَقَطْ - وَلَا يُطْلَقُ عَلَى طَعَامٍ اشْتَرَاهُ زَيْدٌ وَخَالِدٌ أَنَّهُ اشْتَرَاهُ زَيْدٌ، وَلَا عَلَى دَارٍ مُشْتَرَكَةٍ أَنَّهَا لِأَحَدِ مَنْ هِيَ لَهُ.

A legal issue: A man swore not to gift ten dinars to anyone, then he gifted someone more than that amount.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَهَبَ لِأَحَدٍ عَشْرَةَ دَنَانِيرَ فَوَهَبَ لَهُ أَكْثَرَ]

Issue 1161: If someone swears an oath not to give anyone ten dinars, but then gives him more, he breaks his oath. However, if he intends only the specific number he named, he does not break his oath.

١١٦١ - مَسْأَلَةٌ وَمَنْ حَلَفَ أَنْ لَا يَهَبَ لِأَحَدٍ عَشْرَةَ دَنَانِيرَ فَوَهَبَ لَهُ أَكْثَرَ حَنِثَ، إِلَّا أَنْ يَنْوِيَ الْعَدَدَ الَّذِي سَمَّى فَقَطْ فَلَا يَحْنَثُ.

A case where he swore that he and so-and-so would not be under the same roof.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَجْمَعَهُ مَعَ فُلَانٍ سَقْفٌ]

1162 – Issue

١١٦٢ - مَسْأَلَةٌ

Whoever swears not to share a roof with someone, then enters a house and finds him there without having known upon entering that he was present, does not break the oath. However, he must leave immediately. If he does not, he breaks the oath—because of what we mentioned earlier—since the breaking of an oath only occurs when one intentionally seeks it and is aware of it.

وَمَنْ حَلَفَ أَنْ لَا يَجْمَعَهُ مَعَ فُلَانٍ سَقْفٌ فَدَخَلَ بَيْتًا فَوَجَدَهُ فِيهِ وَلَمْ يَكُنْ عَرَفَ إِذْ دَخَلَ أَنَّهُ فِيهِ لَمْ يَحْنَثْ، لَكِنْ لِيَخْرُجْ مِنْ وَقْتِهِ فَإِنْ لَمْ يَفْعَلْ حَنِثَ لِمَا ذَكَرْنَا قَبْلُ مِنْ أَنَّ الْحِنْثَ لَا يَلْحَقُ إِلَّا قَاصِدًا إِلَيْهِ، عَالِمًا بِهِ.

Case: If someone swears not to eat meat or purchase it, and then buys fat...

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَأْكُلَ لَحْمًا أَوْ أَنْ لَا يَشْتَرِيَهُ فَاشْتَرَى شَحْمًا]

1163 – Issue

١١٦٣ - مَسْأَلَةٌ

L18465–18467 Whoever swears not to eat meat or purchase it, then buys fat, or... If he swore off liver, hump, intestines, stuffing, head, shanks, fish, bird, or cured meat, he has not violated his oath [before Allah], because none of the aforementioned items are linguistically termed "meat" in the first place. Rather, every linguist and layperson would state about all these things: "They are not meat." The designation "meat" is not applied to fish or bird except in an annexed form.

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ لَحْمًا أَوْ أَنْ لَا يَشْتَرِيَهُ فَاشْتَرَى شَحْمًا، أَوْ كَبِدًا، أَوْ سَنَامًا، أَوْ مُصْرَانًا، أَوْ حَشْوَةً، أَوْ رَأْسًا، أَوْ أَكَارِعَ أَوْ سَمَكًا، أَوْ طَيْرًا، أَوْ قَدِيدًا: لَمْ يَحْنَثْ، لِأَنَّهُ لَا يَقَعُ عَلَى شَيْءٍ مِمَّا ذَكَرْنَا فِي اللُّغَةِ اسْمُ لَحْمٍ أَصْلًا، بَلْ كُلُّ لُغَوِيٍّ وَعَامِّيٍّ يَقُولُ فِي كُلِّ ذَلِكَ: لَيْسَ لَحْمًا وَلَا يُطْلَقُ عَلَى السَّمَكِ وَالطَّيْرِ اسْمُ لَحْمٍ إِلَّا بِالْإِضَافَةِ.

L18468 And Abū Ḥanīfa, Al-Shāfiʿī, and Abū Sulaymān said as we have stated.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ كَمَا قُلْنَا.

L18469 Malik said: He breaches his oath by all of that, and his adherents cited as evidence the words of Allah, the Exalted: "and the meat of birds from whatever they desire" [Al-Wāqiʿah 56:21], and "and from every [kind] you eat fresh meat" [Fāṭir 35:12].[73]

وَقَالَ مَالِكٌ: يَحْنَثُ بِكُلِّ ذَلِكَ - وَاحْتَجَّ لَهُ مُقَلِّدُوهُ بِقَوْلِ اللَّهِ تَعَالَى: {وَلَحْمِ طَيْرٍ مِمَّا يَشْتَهُونَ} [الواقعة: ٢١] ، {وَمِنْ كُلٍّ تَأْكُلُونَ لَحْمًا طَرِيًّا} [فاطر: ١٢] .

L18470 Abū Muḥammad said: We have stated that the term "meat" is not applied to that except with qualification, just as the term "water" is not applied to "rose water" except with qualification. They are logically required to affirm that if someone swears not to share a ceiling with another person, such a person inevitably breaks their oath, because Allah the Exalted said: "And We made the sky a well-protected ceiling" [Quran 21:32].[74]

قَالَ أَبُو مُحَمَّدٍ: قَدْ قُلْنَا: إِنَّهُ لَا يُطْلَقُ عَلَى ذَلِكَ اسْمُ لَحْمٍ إِلَّا بِالْإِضَافَةِ، كَمَا لَا يُطْلَقُ عَلَى " مَاءِ الْوَرْدِ " اسْمُ مَاءٍ إِلَّا بِالْإِضَافَةِ، وَيَلْزَمُهُمْ أَنْ يَقُولُوا فِيمَنْ حَلَفَ أَنْ لَا يَجْمَعَهُ مَعَ فُلَانٍ سَقْفٌ أَنْ يَحْنَثَ وَلَا بُدَّ، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {وَجَعَلْنَا السَّمَاءَ سَقْفًا مَحْفُوظًا} [الأنبياء: ٣٢] .

L18471 He should rule that one who swore not to read by the light of a lamp and then read by sunlight has broken his oath, since the Quran refers to the sun as a *"blazing lamp"* [78:13], as Allah, the Exalted, said.[75]

وَأَنْ يَقُولَ فِيمَنْ حَلَفَ أَنْ لَا يَقْرَأَ بِضَوْءِ سِرَاجٍ، فَقَرَأَ بِضَوْءِ الشَّمْسِ: أَنْ يَحْنَثَ، لِأَنَّهُ تَعَالَى قَالَ: {وَجَعَلْنَا سِرَاجًا وَهَّاجًا} [النبأ: ١٣] .

L18472 And His saying, the Exalted, "He made the sun a lamp" [Surah Nuh 16].[76]

وقَوْله تَعَالَى: {وَجَعَلَ الشَّمْسَ سِرَاجًا} [نوح: ١٦] .

L18473 And to say regarding one who swore not to place his garments on a peg, then placed them on a mountain: that he has broken his oath, because Allah the Exalted says: {And the mountains as pegs} [An-Naba': 7], yet they do

وَأَنْ يَقُولُوا فِيمَنْ حَلَفَ أَنْ لَا يُلْقِيَ ثِيَابَهُ عَلَى وَتِدٍ فَأَلْقَاهَا عَلَى جَبَلٍ: أَنْ يَحْنَثَ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَالْجِبَالَ أَوْتَادًا} [النبأ: ٧] وَهُمْ لَا يَقُولُونَ هَذَا؟ فَصَحَّ أَنَّ الْمُرَاعَى فِي ذَلِكَ مَا قُلْنَاهُ، وَلَا يُخَالِفُونَنَا فِيمَنْ قَالَ لِآخَرَ: ابْتَعْ لِي بِهَذَا الدِّرْهَمِ لَحْمًا؟ فَابْتَاعَ لَهُ

[73] **Qur'an references (L18469):** Qur'an 56:21 (Al-Waqi'ah); Qur'an 35:12 (Fatir).
[74] **Qur'an references (L18470):** Qur'an 21:32 (Al-Anbya).
[75] **Qur'an references (L18471):** Qur'an 78:13 (An-Naba).
[76] **Qur'an references (L18472):** Qur'an 71:16 (Nuh).

not say this? Thus, it is established that what is considered in this matter is what we have stated. They do not disagree with us concerning one who said to another: "Buy me meat with this dirham?" and he bought for him with it fish, or a chicken, or fat, or a head, or offal, or trotters: he is liable for the dirham because he contravened what he was commanded to do and transgressed his instructions—and success is from Allah, the Most High.[77]

Case: He swore that he would not eat fat.

1164. Issue

And whoever swears not to eat fat violates his oath by consuming the fat of the back, the belly, or anything conventionally termed "fat," but does not violate it by eating entirely pure meat. And this is the view of al-Shāfiʿī and Abū Sulaymān.

Abu Hanifah and his companions said: The oath is broken solely by the abdominal fat itself, and not by the dorsal fat.

Mālik said: "Whoever swears not to eat meat and then eats fat breaks his oath, and whoever swears not to eat fat and then eats meat breaks his oath." The companions of Abū Ḥanīfah cited as evidence Allah's statement: {And from cattle and sheep and goats We prohibited upon them their fats} [al-An'ām 6:146]. They said, "This applied specifically to abdominal fat."[78]

Abū Muḥammad said: This is a misplaced argument, for He did not specifically prohibit abdominal fat for them through this very wording, but rather through what follows in His statement, the Most High: {except what is carried by their backs, the entrails, or what is intermingled with bone} [Al-Anʿām: 146]. It is through this that He specified the prohibition of abdominal fat. Had it not been for that, all fats would have been forbidden. Thus, the verse is conclusive evidence against them.[79]

The Malikis argued: "Allah the Exalted prohibited pork and its fat, but He

[77] **Qur'an references (L18473):** Qur'an 78:7 (An-Naba).
[78] **Qur'an references (L18479):** Qur'an 6:146 (Al-An'am).
[79] **Qur'an references (L18480):** Qur'an 6:146 (Al-An'am).

بِهِ سَمَكًا، أَوْ دَجَاجَةً، أَوْ شَحْمًا، أَوْ رَأْسًا، أَوْ حَشْوَةً، أَوْ أَكَارِعَ: فَإِنَّهُ ضَامِنٌ لِلدِّرْهَمِ، وَإِنَّهُ قَدْ خَالَفَ مَا أُمِرَ بِهِ وَتَعَدَّى - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَأْكُلَ شَحْمًا]

١١٦٤ - مَسْأَلَةٌ

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ شَحْمًا حَنِثَ بِأَكْلِ شَحْمِ الظَّهْرِ وَالْبَطْنِ، وَكُلِّ مَا يُطْلَقُ عَلَيْهِ اسْمُ شَحْمٍ، وَلَمْ يَحْنَثْ بِأَكْلِ اللَّحْمِ الْمَحْضِ وَهَذَا قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا يَحْنَثُ إلَّا بِشَحْمِ الْبَطْنِ وَحْدَهُ، وَلَا يَحْنَثُ بِشَحْمِ الظَّهْرِ.

وَقَالَ مَالِكٌ: مَنْ حَلَفَ أَنْ لَا يَأْكُلَ لَحْمًا فَأَكَلَ شَحْمًا حَنِثَ، وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ شَحْمًا فَأَكَلَ لَحْمًا يَحْنَثُ: وَاحْتَجَّ أَصْحَابُ أَبِي حَنِيفَةَ بِأَنَّ اللَّهَ تَعَالَى قَالَ: {وَمِنَ الْبَقَرِ وَالْغَنَمِ حَرَّمْنَا عَلَيْهِمْ شُحُومَهُمَا} [الأنعام: ١٤٦] قَالُوا: فَكَانَ ذَلِكَ عَلَى شَحْمِ الْبَطْنِ خَاصَّةً.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا احْتِجَاجٌ مُحَالٌ عَنْ مَوْضِعِهِ، لِأَنَّهُ لَمْ يَخُصَّ شَحْمَ الْبَطْنِ بِالتَّحْرِيمِ عَلَيْهِمْ بِنَفْسِ هَذَا اللَّفْظِ لَكِنْ بِمَا بَعْدَهُ مِنْ قَوْلِهِ تَعَالَى: {إلا مَا حَمَلَتْ ظُهُورُهُمَا أَوِ الْحَوَايَا أَوْ مَا اخْتَلَطَ بِعَظْمٍ} [الأنعام: ١٤٦] فَبِهَذَا خَصَّ شَحْمَ الْبَطْنِ بِالتَّحْرِيمِ وَلَوْلَا ذَلِكَ لَحُرِّمَتْ الشُّحُومُ كُلُّهَا فَالْآيَةُ حُجَّةٌ عَلَيْهِمْ.

وَاحْتَجَّ الْمَالِكِيُّونَ بِأَنْ قَالُوا: حَرَّمَ اللَّهُ تَعَالَى لَحْمَ الْخِنْزِيرِ فَحَرَّمَ شَحْمَهُ، وَحَرَّمَ عَلَى بَنِي إسْرَائِيلَ الشَّحْمَ فَلَمْ يُحَرِّمْ اللَّحْمَ.

imposed the prohibition of fat upon the Children of Israel while permitting their meat."

وَقَالُوا: الشَّحْمُ مُتَوَلِّدٌ مِنْ اللَّحْمِ وَلَيْسَ اللَّحْمُ مُتَوَلِّدًا مِنْ الشَّحْمِ.

L18482 And they said, "The fat is generated from the meat, and the meat is not generated from the fat."

قَالَ أَبُو مُحَمَّد: وَهَذَانِ الِاحْتِجَاجَانِ فِي غَايَةِ التَّمْوِيهِ بِالْبَاطِلِ، لِأَنَّ تَحْرِيمَ شَحْمِ الْخِنْزِيرِ لَمْ يُحَرَّمْ مِنْ أَجْلِ تَحْرِيمِ لَحْمِهِ، لَكِنْ بِبُرْهَانٍ آخَرَ قَدْ ذَكَرْنَاهُ فِي " بَابِ مَا يَحِلُّ أَكْلُهُ وَيُحَرَّمُ ".

L18483 Abū Muḥammad said: These two proofs epitomize the ultimate deceptive obfuscation with falsehood, for the prohibition of swine's fat was not due to the prohibition of its meat, but rather based on another proof we have mentioned in "The Chapter on What is Permissible to Eat and What is Prohibited."

وَلَوْ كَانَ تَحْرِيمُ شَحْمِ الْخِنْزِيرِ مِنْ أَجْلِ تَحْرِيمِ لَحْمِهِ دَلِيلًا عَلَى أَنَّ مَنْ حَلَفَ أَنْ لَا يَأْكُلَ لَحْمًا فَأَكَلَ شَحْمًا حَنِثَ - لَكَانَ تَحْرِيمُ لَبَنِ الْخِنْزِيرَةِ وَعَظْمِهَا عَلَى قَوْلِهِمْ مِنْ أَجْلِ تَحْرِيمِ لَحْمِهَا مُوجِبًا لِلْحِنْثِ عَلَى مَنْ حَلَفَ أَنْ لَا يَأْكُلَ لَحْمًا فَشَرِبَ لَبَنًا وَلَا فَرْقَ، وَهُمْ لَا يَقُولُونَ هَذَا.

L18484 If the prohibition of swine's fat because of the prohibition of its meat were evidence that one who swears not to eat meat and then eats fat has broken their oath, then—according to their view—the prohibition of a sow's milk and bones on account of the prohibition of its meat would necessitate oath-breaking for one who swears not to eat meat and then drinks milk, and there is no distinction. But they do not hold this view.

وَأَمَّا قَوْلُهُمْ: إنَّ الشَّحْمَ تَوَلَّدَ مِنْ اللَّحْمِ، فَيُقَالُ لَهُمْ فَكَانَ مَاذَا؟ أَلَيْسَ اللَّحْمُ، وَاللَّبَنُ مُتَوَلِّدَيْنِ مِنْ الدَّمِ، وَالدَّمُ حَرَامٌ، وَهُمَا حَلَالَانِ؟ أَوَلَيْسَ الْخَمْرُ مُتَوَلِّدَةً مِنْ الْعَصِيرِ وَالْخَلُّ مُتَوَلِّدَةً مِنْ الْخَمْرِ وَهِيَ حَرَامٌ، وَمَا تَوَلَّدَتْ مِنْهُ حَلَالٌ، وَمَا تَوَلَّدَ مِنْهَا حَلَالٌ، فَبَطَلَ قَوْلُهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18485 As for their assertion that fat is generated from meat, it is said to them: What then? Are not meat and milk generated from blood, while blood is prohibited, yet both are permissible? Is not wine generated from juice—which is permissible—and vinegar generated from wine—which is prohibited—yet what originates from the permissible is prohibited, and what originates from the prohibited is permissible? Thus, their argument is nullified, and success is from Allah, the Exalted.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَأْكُلَ رَأْسًا]

Case: He swore that he would not eat a head [of an animal].

L18486

١١٦٥ - مَسْأَلَةٌ

1165 - Issue

L18487

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ رَأْسًا لَمْ يَحْنَثْ بِأَكْلِ رُءُوسِ الطَّيْرِ، وَلَا رُءُوسِ السَّمَكِ، وَلَا يَحْنَثُ إلَّا بِأَكْلِ رُءُوسِ الْغَنَمِ، وَالْمَاعِزِ، فَإِنْ كَانَ أَهْلُ مَوْضِعِهِ لَا يُطْلِقُونَ اسْمَ الرُّءُوسِ فِي الْبَيْعِ وَالْأَكْلِ عَلَى رُءُوسِ الْإِبِلِ، وَالْبَقَرِ لَمْ يَحْنَثْ بِأَكْلِهَا - وَإِنْ كَانُوا

L18488–18490 Whoever swears not to eat a head does not break his oath by eating the heads of birds or fish. He only breaks his oath by eating the heads of sheep and goats. If the people of his region do not apply the term "heads" to the heads of camels and cattle in the contexts of sale and eating, he does not break his oath. By [swearing not to] eat them—even if they refer to them in commercial transactions and eating as "heads"—he thereby violates his oath, due to our

earlier explanation that oaths depend solely on the swearer's language and the customary usage in his speech.

يُطْلِقُونَ عَلَيْهَا فِي الْبَيْعِ وَالْأَكْلِ اسْمَ الرُّءُوس حَنِثَ بِهَا، لِمَا ذَكَرْنَا مِنْ أَنَّ الْأَيْمَانَ إِنَّمَا هِيَ عَلَى لُغَةِ الْحَالِفِ، وَمَعْهُودِ اسْتِعْمَالِهِ فِي كَلَامِهِ.

L18491 This is the view of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L18492 Do you not see that musk is solidified blood, but since it is not called "blood," it is permissible (ḥalāl) and not prohibited (ḥarām)?

أَلَا تَرَى: أَنَّ الْمِسْكَ دَمٌ جَامِدٌ، وَلَكِنْ لَمَّا لَمْ يُطْلَقْ عَلَيْهِ اسْمُ دَمٍ حَلَّ وَلَمْ يَحْرُمْ.

L18493 **Question: He swore an oath not to eat eggs.**

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَأْكُلَ بِيضًا]

L18494 1166 – Issue

١١٦٦ - مَسْأَلَةٌ

L18495 Whoever swears not to eat eggs does not break his oath except by eating chicken eggs specifically. He does not break his oath by eating ostrich eggs, the eggs of other birds, or fish eggs, as we have mentioned. This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān.

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ بِيضًا لَمْ يَحْنَثْ إِلَّا بِأَكْلِ بَيْضِ الدَّجَاجِ خَاصَّةً وَلَمْ يَحْنَثْ بِأَكْلِ بَيْضِ النَّعَامِ وَسَائِرِ الطَّيْرِ، وَلَا بِبِيضِ السَّمَكِ لِمَا ذَكَرْنَا؛ وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L18496 **A legal question: If someone swore not to eat grapes and then ate raisins or drank grape juice?**

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَأْكُلَ عِنَبًا فَأَكَلَ زَبِيبًا أَوْ شَرِبَ عَصِيرًا]

L18497 ١١٦٧ - Question

١١٦٧ - مَسْأَلَةٌ

L18498 Whoever swears not to eat grapes, then eats raisins, drinks juice, consumes grape syrup, or uses vinegar, has not broken his oath.

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ عِنَبًا فَأَكَلَ زَبِيبًا أَوْ شَرِبَ عَصِيرًا، أَوْ أَكَلَ رُبًّا أَوْ خَلًّا لَمْ يَحْنَثْ.

L18499 Similarly, one who swears not to eat raisins does not break his oath by eating grapes, nor by drinking raisin wine, nor by eating its vinegar.

وَكَذَلِكَ مَنْ حَلَفَ أَنْ لَا يَأْكُلَ زَبِيبًا لَمْ يَحْنَثْ بِأَكْلِ الْعِنَبِ وَلَا بِشُرْبِ نَبِيذِ الزَّبِيبِ وَأَكْلِ خَلِّهِ.

L18500 Similarly, the ruling applies to dates, fresh dates, early ripe dates (zahū), unripe dates (busr), tender dates (balah), the spathe, soft-dried dates (munakkīt), the fermented beverage (nabīdh) derived from any of these, their vinegar, substances with a trace [of impurity], and flowing palm sap; no oath violation is incurred.

وَكَذَلِكَ الْقَوْلُ فِي التَّمْرِ، وَالرُّطَبِ، وَالزَّهْوِ، وَالْبُسْرِ، وَالْبَلَحِ، وَالطَّلْعِ وَالْمُنَكَّتِ، وَنَبِيذِ كُلِّ ذَلِكَ وَخَلِّهِ، وَذُو شَائِبَةٍ، وَنَاطِفَةٍ: لَا يَحْنَثُ.

L18501 Whoever swears not to take anything from it breaks his oath by eating the remainder of it; he does not break it by drinking what is drunk from it. This is the opinion of Abu Hanifah, Al-Shafi'i, and Abu Suleiman, because the name of each of these acts does not apply to the other. The entire world is interconnected, with parts generating from one another, and we are created from dust and water.

وَمَنْ حَلَفَ أَنْ لَا يَأْخُذَ شَيْئًا مِنْهَا حَنِثَ بِأَكْلِ سَائِرِهَا - وَلَا يَحْنَثُ بِشُرْبِ مَا يَشْرَبُ مِنْهَا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، لِأَنَّ اسْمَ كُلِّ وَاحِدٍ مِنْهَا لَا يُطْلَقُ عَلَى الْآخَرِ، وَالْعَالَمُ كُلُّهُ بَعْضُهُ مُتَوَلِّدٌ مِنْ بَعْضٍ وَنَحْنُ مَخْلُوقُونَ مِنْ تُرَابٍ وَمَاءٍ.

L18502 If a man were to swear not to bring any animal into his house and then brought in dirt and water, he has not broken his oath, without any disagreement from us or from others besides us.

فَلَوْ أَنَّ امْرَأً حَلَفَ أَنْ لَا يُدْخِلَ فِي دَارِهِ حَيَوَانًا فَأَدْخَلَ التُّرَابَ وَالْمَاءَ لَمْ يَحْنَثْ بِلَا خِلَافٍ مِنَّا وَمِنْ غَيْرِنَا.

L18503 Malik said: If someone swore not to eat grapes then ate raisins or drank grape juice, he broke his oath, but did not break it by eating vinegar. This was exceedingly strange, and their justification for this ruling was even more astonishing, for they said: "The status of vinegar is distant." If only I knew - what does "distant" mean? Would they say there are two intermediate stages between grapes and vinegar: juice and wine?

وَقَالَ مَالِكٌ: مَنْ حَلَفَ أَنْ لَا يَأْكُلَ عِنَبًا فَأَكَلَ زَبِيبًا أَوْ شَرِبَ عَصِيرًا حَنِثَ، وَلَا يَحْنَثُ بِأَكْلِ الْخَلِّ - فَكَانَ هَذَا عَجَبًا جِدًّا، وَكَانَ احْتِجَاجُهُمْ لِهَذِهِ الْقَوْلَةِ أَعْجَبَ مِنْهَا، لِأَنَّهُمْ قَالُوا: أَمْرُ الْخَلِّ بَعِيدٌ، وَلَيْتَ شِعْرِي مَا مَعْنَى " بَعِيدٍ "؟ فَإِنْ قَالُوا: إِنَّ بَيْنَ الْعِنَبِ وَبَيْنَ الْخَلِّ دَرَجَتَيْنِ: الْعَصِيرَ، وَالْخَمْرَ؟

L18504–18505 We said: What then? And who established the existence of two stages between vinegar and grapes as a legal cause for rendering it lawful? Far be it from Allah to endorse this corrupt ruling! They merely used their own assertion as evidence for that same assertion, thereby clearly contradicting themselves. Thus, they caused oath-breakers to emerge among those who ate dry cheese after swearing not to consume milk, when between dry cheese and milk lie two intermediate stages: curdled milk and fresh cheese.

قُلْنَا: فَكَانَ مَاذَا؟ وَمَنْ الَّذِي جَعَلَ كَوْنَ دَرَجَتَيْنِ بَيْنَ الْخَلِّ وَالْعِنَبِ عِلَّةً فِي التَّحْلِيلِ؟ وَحَاشَا لِلَّهِ مِنْ هَذَا الْحُكْمِ الْفَاسِدِ - فَمَا زَادُونَا عَلَى أَنْ جَعَلُوا دَعْوَاهُمْ حُجَّةً لِدَعْوَاهُمْ وَقَدْ تَنَاقَضُوا مِنْ قُرْبٍ، فَحَنَّثُوا مَنْ أَكَلَ جُبْنًا يَابِسًا وَقَدْ حَلَفَ أَنْ لَا يَأْكُلَ لَبَنًا وَبَيْنَ الْجُبْنِ الْيَابِسِ وَاللَّبَنِ دَرَجَتَانِ، وَهُمَا الْعَقِيدُ، وَالْجُبْنُ الرَّطْبُ.

L18506 If they say, "Is all of that a single substance?" We reply: "Vinegar, juice, and wine are the same substance, but their rulings vary due to differences in their attributes, and nothing more."

فَإِنْ قَالُوا: كُلُّ ذَلِكَ عَيْنٌ وَاحِدَةٌ؟ قُلْنَا: وَالْخَلُّ، وَالْعَصِيرُ، وَالْخَمْرُ: عَيْنٌ وَاحِدَةٌ، إِلَّا أَنَّ أَحْكَامَهَا اخْتَلَفَتْ بِاخْتِلَافِ صِفَاتِهَا وَلَا مَزِيدَ.

There are two stages between milk and clarified butter: first, curdled milk (*ra’ib*), then butter (*zubdah*). Similarly, grapes may be left in containers from their harvest time until spring, then pressed to produce pure vinegar?

وَكَذَلِكَ السَّمْنُ بَيْنَهُ وَبَيْنَ اللَّبَنِ دَرَجَتَانِ: الرَّائِبُ ثُمَّ الزُّبْدَةُ، وَقَدْ يُتْرَكُ الْعِنَبُ فِي الظُّرُوفِ مِنْ أَيَّامِهِ إِلَى أَيَّامِ الرَّبِيعِ ثُمَّ يُعْصَرُ خَلًّا مَحْضًا؟

A case where he swore that he would not eat milk.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَأْكُلَ لَبَنًا]

Issue 1168: If someone swears not to drink milk, they do not violate their oath by consuming dried curds, hardened curds, soured milk, butter, ghee, buttermilk, whey, or cheese. The same ruling applies to butter, ghee, and the rest of the substances we mentioned, due to the distinct names of each.

١١٦٨ - مَسْأَلَةٌ وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ لَبَنًا لَمْ يَحْنَثْ بِأَكْلِ اللِّبَإِ وَلَا بِأَكْلِ الْعَقِيدِ، لَا الرَّائِبِ، وَلَا الزُّبْدِ، وَلَا السَّمْنِ، وَلَا الْمَخِيضِ، وَلَا الْمَيْسِ، وَلَا الْجُبْنِ - وَكَذَلِكَ الْقَوْلُ فِي الزُّبْدِ، وَالسَّمْنِ، وَسَائِرِ مَا ذَكَرْنَا لِاخْتِلَافِ أَسْمَاءِ كُلِّ ذَلِكَ.

Issue: He swore not to eat bread, but he ate cake.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَأْكُلَ خُبْزًا فَأَكَلَ كَعْكًا]

1169 – Issue.

١١٦٩ - مَسْأَلَةٌ

Whoever swears not to eat bread and then eats cake, *bushmāṭā*, *harīrah*, porridge, crumb broth, or crumbled bread does not break his oath.

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ خُبْزًا فَأَكَلَ كَعْكًا أَوْ بشماطا أَوْ حَرِيرَةً، أَوْ عَصِيدَةً، أَوْ حَسْوَ فَتَاةٍ، أَوْ فَتِيتًا لَمْ يَحْنَثْ.

Whoever swears not to eat wheat: if he intended his oath to include bread, he breaks it; otherwise, he does not break his oath unless he consumes it pure. He does not break his oath by eating harisa (porridge), herbage, sawiq (parched flour), or fariik (green wheat), for the term “wheat” does not apply to any of these. Whoever swears not to eat figs breaks his oath by consuming them fresh or dried, for the term “fig” applies to both forms.

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ قَمْحًا فَإِنْ كَانَتْ لَهُ نِيَّةٌ فِي خُبْزِهِ حَنِثَ وَإِلَّا لَمْ يَحْنَثْ إِلَّا بِأَكْلِهِ صِرْفًا - وَلَا يَحْنَثُ بِأَكْلِ هَرِيسَةٍ، وَلَا أَكْلِ حَشِيشٍ، وَلَا سَوِيقٍ وَلَا أَكْلِ فَرِيكٍ، لِأَنَّهُ لَا يُطْلَقُ عَلَى كُلِّ ذَلِكَ اسْمُ قَمْحٍ - وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ تِينًا حَنِثَ بِالْأَخْضَرِ وَالْيَابِسِ، لِأَنَّ اسْمَ التِّينِ يُطْلَقُ عَلَى كُلِّ ذَلِكَ.

Issue: He swore that he would not drink a beverage.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَشْرَبَ شَرَابًا]

1170 - Issue: And whoever swears not to drink a beverage - if they had a specific intention, their oath is judged accordingly. If they had no specific intention, they break their oath by drinking wine, all nabīdh, jallab, sakanjīn, and all other drinks, because the term “beverage” encompasses all such liquids.

١١٧٠ - مَسْأَلَةٌ وَمَنْ حَلَفَ أَنْ لَا يَشْرَبَ شَرَابًا فَإِنْ كَانَتْ لَهُ نِيَّةٌ حَمَلَ عَلَيْهَا، وَإِنْ لَمْ تَكُنْ لَهُ نِيَّةٌ حَنِثَ بِالْخَمْرِ، وَبِجَمِيعِ الْأَنْبِذَةِ، وَبِالْجَلَّابِ، وَالسَّكَنْجَبِينِ، وَسَائِرِ الْأَشْرِبَةِ؛ لِأَنَّ اسْمَ شَرَابٍ يُطْلَقُ عَلَى كُلِّ ذَلِكَ.

L18516 He does not break his oath by drinking milk or by drinking water, because they are not classified as beverages in this context. If someone swears not to consume milk and then drinks it, he does not break his oath, because he did not eat it. If he swears not to drink it and then consumes it with bread, he does not break his oath, because he did not drink it.

وَلَا يَحْنَثُ بِشُرْبِ اللَّبَنِ، وَلَا بِشُرْبِ الْمَاءِ، لِأَنَّهُ لَا يُطْلَقُ عَلَيْهَا اسْمُ شَرَابٍ - وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ لَبَنًا فَشَرِبَهُ لَمْ يَحْنَثْ، لِأَنَّهُ لَمْ يَأْكُلْهُ - وَلَوْ حَلَفَ أَنْ لَا يَشْرَبَهُ فَأَكَلَهُ بِالْخُبْزِ لَمْ يَحْنَثْ، لِأَنَّهُ لَمْ يَشْرَبْهُ.

L18517–18518 Whoever swears not to drink water on this day of his and then eats bread moistened with water has not broken his oath. And whoever swears not to eat ghee or oil and then eats bread kneaded with them or with one of them has not broken his oath, because he did not eat oil or ghee.

وَمَنْ حَلَفَ أَنْ لَا يَشْرَبَ الْمَاءَ يَوْمَهُ هَذَا فَأَكَلَ خُبْزًا مَبْلُولًا بِالْمَاءِ لَمْ يَحْنَثْ - وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ سَمْنًا وَلَا زَيْتًا فَأَكَلَ خُبْزًا مَعْجُونًا بِهِمَا أَوْ بِأَحَدِهِمَا لَمْ يَحْنَثْ، لِأَنَّهُ لَمْ يَأْكُلْ زَيْتًا وَلَا سَمْنًا.

L18519 If one were to break their oath in this case, then whoever swore not to drink water that day and ate bread would break their oath, because it was kneaded with water. And one does not break the oath by eating food cooked with both of them (water and the other ingredient) unless they remain visibly present in it, such that their original identity has not ceased to apply to them - only then would the oath be broken.

وَلَوْ حَنِثَ فِي هَذَا لَحَنِثَ مَنْ حَلَفَ أَنْ لَا يَشْرَبَ يَوْمَهُ هَذَا مَاءً فَأَكَلَ خُبْزًا، لِأَنَّهُ بِالْمَاءِ عُجِنَ، وَلَا يَحْنَثُ بِأَكْلِ طَعَامٍ طُبِخَ بِهِمَا إِلَّا أَنْ يَكُونَا ظَاهِرَيْنِ فِيهِ لَمْ يَزُلْ الِاسْمُ عَنْهُمَا فَيَحْنَثُ حِينَئِذٍ.

L18520 Whoever swears not to eat salt and then eats food cooked with salt or bread made from dough kneaded with salt has not violated his oath, for he did not eat salt itself. But if he scatters salt upon his food, he violates his oath, because the salt is visibly apparent on it.

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ مِلْحًا فَأَكَلَ طَعَامًا مَعْمُولًا بِالْمِلْحِ، وَخُبْزًا مَعْجُونًا بِهِ لَمْ يَحْنَثْ، لِأَنَّهُ لَمْ يَأْكُلْ مِلْحًا، فَإِنْ كَانَ قَدْ ذَرَّ عَلَيْهِ الْمِلْحَ حَنِثَ، لِأَنَّهُ ظَاهِرٌ فِيهِ.

L18521 Whoever swears not to eat vinegar and then ate food in which the taste of vinegar is distinctly apparent has violated the oath, because vinegar is consumed in this way.

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ خَلًّا فَأَكَلَ طَعَامًا يَظْهَرُ فِيهِ طَعْمُ الْخَلِّ مُتَمَيِّزًا حَنِثَ، لِأَنَّهُ هَكَذَا يُؤْكَلُ الْخَلُّ.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَبِيعَ هَذَا الشَّيْءَ بِدِينَارٍ]

L18522 **Issue: Someone swore that he will not sell this item for a dinar.**

L18523 1171 - Issue

١١٧١ - مَسْأَلَةٌ

وَمَنْ حَلَفَ أَنْ لَا يَبِيعَ هَذَا الشَّيْءَ بِدِينَارٍ فَبَاعَهُ بِدِينَارٍ غَيْرَ فَلْسٍ فَأَكْثَرَ، أَوْ بِدِينَارٍ وَفَلْسٍ فَصَاعِدًا لَمْ يَحْنَثْ، لِأَنَّهُ لَا يُسَمَّى فِي ذَلِكَ كُلِّهِ بَائِعًا لَهُ بِدِينَارٍ.

L18524 Whoever swears not to sell this item for a dinar, then sells it for a dinar excluding a fals, for a dinar and more than a fals, or for a dinar and a fals or more, does not break his oath, because in all these cases he is not regarded as having sold it for a dinar.

[مَسْأَلَةٌ حَلَفَ لَيَقْضِيَنَّ غَرِيمَهُ حَقَّهُ رَأْسَ الْهِلَالِ]

L18525 **A case: He swore that he would certainly repay his creditor what is owed by the beginning of the crescent [month].**

١١٧٢ - مَسْأَلَةٌ

وَمَنْ حَلَفَ لَيَقْضِيَنَّ غَرِيمَهُ حَقَّهُ رَأْسَ الْهِلَالِ فَإِنَّهُ إِنْ قَضَاهُ حَقَّهُ أَوَّلَ لَيْلَةٍ مِنَ الشَّهْرِ، أَوْ أَوَّلَ يَوْمٍ مِنْهُ مَا لَمْ تَغْرُبِ الشَّمْسُ لَمْ يَحْنَثْ، لِأَنَّ هَذَا هُوَ رَأْسُ الْهِلَالِ فِي اللُّغَةِ، فَإِنْ لَمْ يَقْضِهِ فِي اللَّيْلَةِ أَوِ الْيَوْمِ الْمَذْكُورَيْنِ وَهُوَ قَادِرٌ عَلَى قَضَائِهِ ذَاكِرًا حَنِثَ.

L18526 1172 – Question

L18527 Whoever swears to pay his creditor the due right by the beginning of the crescent moon's visibility: if he pays the right on the first night of the month or the first day of it as long as the sun has not set, he does not break his oath, because this is the literal meaning of "the beginning of the crescent moon" in Arabic. If he fails to pay it during the specified night or day despite being capable of payment and mindful of his oath, he breaks his oath.

[مَسْأَلَةٌ حَلَفَ لَا يُزَوِّجَ وَلِيَّتَهُ فَأَمَرَ مَنْ فَعَلَ ذَلِكَ]

L18528 **A case in which a man swore an oath not to marry off the female under his guardianship, then commanded the one who arranged the marriage.**

١١٧٣ - مَسْأَلَةٌ

وَمَنْ حَلَفَ أَنْ لَا يَشْتَرِيَ أَمْرَ كَذَا، أَوْ لَا يُزَوِّجَ وَلِيَّتَهُ، أَوْ أَنْ لَا يَضْرِبَ عَبْدَهُ، أَوْ أَنْ لَا يَبْنِيَ دَارِهِ، أَوْ مَا أَشْبَهَ هَذَا مِنْ كُلِّ شَيْءٍ، فَأَمَرَ مَنْ فَعَلَ لَهُ ذَلِكَ كُلَّهُ؟ فَإِنْ كَانَ مِمَّنْ يَتَوَلَّى الشِّرَاءَ بِنَفْسِهِ، وَالْبِنَاءَ، وَالضَّرْبَ، أَوْ فِعْلَ مَا حَلَفَ عَلَيْهِ لَمْ يَحْنَثْ، لِأَنَّهُ لَمْ يَفْعَلْهُ - وَإِنْ كَانَ مِمَّنْ لَا يُبَاشِرُ بِنَفْسِهِ ذَلِكَ حَنِثَ بِأَمْرِهِ مَنْ يَفْعَلُهُ، لِأَنَّهُ هَكَذَا يُطْلَقُ فِي اللُّغَةِ الْخَبَرُ عَنْ كُلِّ مَنْ ذَكَرْنَا وَلَا يَحْنَثُ فِي أَمْرِ غَيْرِهِ بِالزَّوَاجِ عَلَى كُلِّ حَالٍ، لِأَنَّ كُلَّ أَحَدٍ يُزَوِّجُ وَلِيَّتَهُ فَإِذَا لَمْ يُزَوِّجْهَا وَأَمَرَ غَيْرَهُ فَلَمْ يُزَوِّجْهَا هُوَ.

L18529 1173 – Issue

L18530 And whoever swears not to purchase a specific thing, not to marry off his female ward, not to strike his slave, not to build his house, or anything resembling this—if he then commands someone else to do all of that for him: if he belongs to those who personally handle purchasing, building, striking, or performing what he swore not to do, he does not break his oath, for he did not perform it himself. But if he belongs to those who do not personally engage in such acts, he breaks his oath by ordering another to perform it, as this aligns with common linguistic usage regarding all the cases mentioned. He does not break his oath by ordering another to arrange the marriage under any circumstance, because every guardian holds the authority to marry off his female ward. Thus, if he refrains from marrying her himself and orders

another who then fails to do so, he remains free from oath-breaking—since he himself did not perform the act.

L18531 **Issue: A man swore not to sell his slave, but sold him in a void sale.**

L18532 1174. Issue: And whoever swears not to sell his slave, then sells him through a void sale, gives him as a dowry, leases him, or has the slave sold against his will due to a rightful claim, he has not broken his oath, because none of the actions we mentioned constitutes a sale.

L18533–18534 The void sale is forbidden, and Allah the Exalted says: {And Allah has permitted sale} [Al-Baqarah: 275]. There is no doubt in the mind of anyone of sound intellect that the forbidden differs from the permissible. If he conducts a valid sale, he does not incur an oath violation as long as both parties do not separate from the place of contract. If they separate—while he is acting by free will and sound awareness—he incurs the oath violation at that moment, because he has then completed the sale, as we will clarify in *Kitāb al-Buyūʿ* if Allah the Exalted wills.[1]

L18535 **Legal Case: He swore not to speak that day, yet he recited the Quran.**

L18536 1175 – Issue

L18537 And whoever swears not to speak today, then recites the Quran in prayer or outside of prayer, or remembers Allah the Exalted, does not break the oath, based on the saying of the Messenger of Allah, peace be upon him: "Verily, this prayer is not befitting for any form of human speech; it is only tasbīḥ, takbīr (declaring 'Allāhu Akbar'), recitation of the Quran, or similar acts," and based on the saying of Allah the Exalted: {Then he turned away and was arrogant} [Al-Muddaththir: 23], {He said, "This is nothing but transmitted

[1] **Qur'an references (L18534):** Qur'an 2:275 (Al-Baqarah).

[مَسْأَلَةٌ حَلَفَ أَلَّا يَبِيعَ عَبْدَهُ فَبَاعَهُ بَيْعًا فَاسِدًا]

١١٧٤ - مَسْأَلَةٌ وَمَنْ حَلَفَ أَلَّا يَبِيعَ عَبْدَهُ فَبَاعَهُ بَيْعًا فَاسِدًا، أَوْ أَصْدَقَهُ، أَوْ أَجَرَهُ، أَوْ بِيعَ عَلَيْهِ فِي حَقٍّ لَمْ يَحْنَثْ، لِأَنَّهُ لَيْسَ شَيْءٌ مِمَّا ذَكَرْنَا بَيْعًا.

وَالْبَيْعُ الْفَاسِدُ حَرَامٌ وَاَللَّهُ تَعَالَى يَقُولُ: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَلَا شَكَّ عِنْدَ مَنْ دِمَاغُهُ صَحِيحٌ فِي أَنَّ الْحَرَامَ غَيْرُ الْحَلَالِ، فَإِنْ بَاعَهُ بَيْعًا صَحِيحًا لَمْ يَحْنَثْ مَا لَمْ يَتَفَرَّقَا عَنْ مَوْضِعِهِمَا، فَإِنْ تَفَرَّقَا - وَهُوَ مُخْتَارٌ ذَاكِرٌ -: حَنِثَ حِينَئِذٍ، لِأَنَّهُ حِينَئِذٍ بَاعَ، لِمَا نَذْكُرُ فِي " كِتَابِ الْبُيُوعِ " إِنْ شَاءَ اللَّهُ تَعَالَى.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَتَكَلَّمَ الْيَوْمَ فَقَرَأَ الْقُرْآنَ]

١١٧٥ - مَسْأَلَةٌ

وَمَنْ حَلَفَ أَنْ لَا يَتَكَلَّمَ الْيَوْمَ فَقَرَأَ الْقُرْآنَ فِي صَلَاةٍ، أَوْ غَيْرِ صَلَاةٍ، أَوْ ذَكَرَ اللَّهَ تَعَالَى لَمْ يَحْنَثْ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ هَذِهِ الصَّلَاةَ لَا يَصْلُحُ فِيهَا شَيْءٌ مِنْ كَلَامِ النَّاسِ، إِنَّمَا هُوَ التَّسْبِيحُ، وَالتَّكْبِيرُ، وَقِرَاءَةُ الْقُرْآنِ أَوْ نَحْوُ ذَلِكَ» وَلِقَوْلِ اللَّهِ تَعَالَى: {ثُمَّ أَدْبَرَ وَاسْتَكْبَرَ} [المدثر: ٢٣] {فَقَالَ إِنْ هَذَا إِلا سِحْرٌ يُؤْثَرُ} [المدثر: ٢٤] {إِنْ هَذَا إِلا قَوْلُ الْبَشَرِ} [المدثر: ٢٥] {سَأُصْلِيهِ سَقَرَ} [المدثر: ٢٦] .

magic"} [Al-Muddaththir: 24], {"This is nothing but the speech of a human"} [Al-Muddaththir: 25], {"I will cast him into Saqar"} [Al-Muddaththir: 26].[23]

L18538 Thus, it has been established that the Quran is not the speech of humans, and that whoever attributes this to it will burn in Saqar. Therefore, it has been established that neither in linguistic convention nor in the Sharīʿah is the name "Speech" applied to anything we have mentioned. And success is by Allah, the Exalted.

L18539 ## Atonements for Sworn Oaths

L18540 ## Issue: Breaking an oath by contravening what one swore to uphold.

L18541 The Expiations for Oaths - Issue 1176

L18542 Whoever breaks an oath by acting contrary to what they swore upon must perform expiation after breaking it; there is no disagreement among scholars about this.

L18543 ## Issue: Regarding One Who Intends to Violate an Oath

L18544 Issue 1177: Whoever intends to break an oath may offer the expiation beforehand. Which of the expiations becomes obligatory for him: freeing a slave, clothing, feeding, or fasting - this is the view of Mālik.

L18545 Abu Hanifa and Abu Sulayman said: This is not valid for him unless he breaks the oath.

L18546 Al-Shafi'i said: As for manumission [freeing a slave], clothing [the needy], or feeding [the needy], advancing these before the ḥinth (breach of oath) is valid. As for fasting, it is only valid if performed after the ḥinth.

L18547–18549 The argument of the Shāfiʿīs is that manumission, providing clothing, and feeding [the poor] are among the financial obligations, and wealth... Among

[2] **Hadith references (L18537):** Sahih Muslim 537a; Mishkat al-Masabih 978.

فَصَحَّ أَنَّ الْقُرْآنَ لَيْسَ قَوْلَ الْبَشَرِ، وَأَنَّ مَنْ أَطْلَقَ ذَلِكَ عَلَيْهِ سَيَصْلَى سَقَرَ - فَصَحَّ أَنَّهُ لَا يُطْلَقُ فِي اللُّغَةِ، وَلَا فِي الشَّرِيعَةِ عَلَى شَيْءٍ مِمَّا ذَكَرْنَا اسْمُ كَلَامٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[كَفَّارَاتُ الْأَيْمَانِ]

[مَسْأَلَةٌ حَنِثَ بِمُخَالَفَةِ مَا حَلَفَ عَلَيْهِ]

كَفَّارَاتُ الْأَيْمَانِ ١١٧٦ - مَسْأَلَةٌ

مَنْ حَنِثَ بِمُخَالَفَةِ مَا حَلَفَ عَلَيْهِ فَقَدْ وَجَبَتْ عَلَيْهِ الْكَفَّارَةُ بَعْدَ الْحِنْثِ لَا خِلَافَ فِي ذَلِكَ.

[مَسْأَلَةٌ مَنْ أَرَادَ أَنْ يَحْنَثَ]

١١٧٧ - مَسْأَلَةٌ وَمَنْ أَرَادَ أَنْ يَحْنَثَ فَلَهُ أَنْ يُقَدِّمَ الْكَفَّارَةَ قَبْلَ أَنْ يَحْنَثَ أَيَّ الْكَفَّارَاتِ لَزِمَتْهُ: مِنْ الْعِتْقِ، أَوْ الْكِسْوَةِ، أَوْ الْإِطْعَامِ، أَوْ الصِّيَامِ - وَهُوَ قَوْلُ مَالِكٍ.

وَقَالَ أَبُو حَنِيفَةَ، وَأَبُو سُلَيْمَانَ: لَا يُجْزِئُهُ ذَلِكَ إلَّا بَعْدَ الْحِنْثِ.

وَقَالَ الشَّافِعِيُّ: أَمَّا الْعِتْقُ، أَوْ الْكِسْوَةُ، أَوْ الْإِطْعَامُ، فَيُجْزِئُ تَقْدِيمُهُ قَبْلَ الْحِنْثِ - وَأَمَّا الصِّيَامُ فَلَا يُجْزِئُ إلَّا بَعْدَ الْحِنْثِ.

the rights owed to people are those which may be fulfilled in advance of their appointed deadlines. As for fasting, it is among the bodily obligations, and such obligations are not valid if performed before their designated times.

وَحُجَّةُ الشَّافِعِيِّينَ: أَنَّ الْعِتْقَ، وَالْكِسْوَةَ، وَالْإِطْعَامَ: مِنْ فَرَائِضِ الْأَمْوَالِ، وَالْأَمْوَالُ مِنْ حُقُوقِ النَّاسِ، وَحُقُوقُ النَّاسِ جَائِزٌ تَقْدِيمُهَا قَبْلَ آجَالِهَا - وَأَمَّا الصَّوْمُ فَمِنْ فَرَائِضِ الْأَبَدَانِ، وَفَرَائِضُ الْأَبَدَانِ لَا يُجْزِئُ تَقْدِيمُهَا قَبْلَ أَوْقَاتِهَا.

L18550 Abu Muhammad said: This is an invalid ruling, and they concur with us that expediting the payment of people's wealth only becomes obligatory through the mutual consent of both the right-holder and the obligor jointly, not through the consent of one without the other. They also agree that this obligation applies exclusively to rights specifically owed to a person, where the right-holder and his creditor agree to advance, delay, fully waive, or partially waive it.

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ قَضِيَّةٌ فَاسِدَةٌ، وَهُمْ مُوَافِقُونَ لَنَا عَلَى أَنَّ تَعْجِيلَ أَمْوَالِ النَّاسِ إنَّمَا تَجِبُ بِرِضَا صَاحِبِ الْحَقِّ، وَالَّذِي عَلَيْهِ الْحَقُّ مَعًا، لَا بِرِضَا أَحَدِهِمَا دُونَ الْآخَرِ، وَأَنَّ هَذَا إنَّمَا يَجِبُ أَيْضًا فِيمَا هُوَ حَقٌّ لِلْإِنْسَانِ بِعَيْنِهِ فَتَرَاضَى هُوَ وَغَرِيمُهُ عَلَى تَقْدِيمِهِ أَوْ تَأْخِيرِهِ أَوْ إسْقَاطِهِ أَوْ إسْقَاطِ بَعْضِهِ.

L18551 As for all that is not designated to any specific person but constitutes a right due to Allah, the Exalted, its time is fixed, and no specific individual exists whose valid consent applies to advancing, delaying, waiving, or partially waiving it. Rather, it is a right due to Allah, the Exalted, in which nothing is permissible except what has been prescribed for Allah, the Exalted.

وَأَمَّا كُلُّ مَا لَيْسَ لِإِنْسَانٍ بِعَيْنِهِ وَإِنَّمَا هُوَ حَقٌّ لِلَّهِ تَعَالَى وَقْتُهُ بِوَقْتٍ مَحْدُودٍ، وَلَيْسَ هَهُنَا مَالِكٌ بِعَيْنِهِ يَصِحُّ رِضَاهُ فِي تَقْدِيمِهِ، لَا فِي تَأْخِيرِهِ، وَلَا فِي إسْقَاطِهِ، وَلَا فِي إسْقَاطِ بَعْضِهِ وَإِنَّمَا هُوَ حَقٌّ لِلَّهِ تَعَالَى لَا يَحِلُّ فِيهِ إلَّا مَا حَدَّ لِلَّهِ تَعَالَى.

L18552 Allah, the Most High, said: "And whoever transgresses the boundaries set by Allah has indeed wronged his own soul" [Surah At-Talaq 65:1].[4]

قَالَ اللَّهُ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

L18553 They are also told: "People's rights may be delayed or waived. But is it permissible to waive expiations or to delay them—whether to a specified term or indefinitely?" Thus, the invalidity of their entire statement is evident.

وَيُقَالُ لَهُمْ أَيْضًا: إنَّ حُقُوقَ النَّاسِ يَجُوزُ فِيهَا التَّأْخِيرُ وَالْإِسْقَاطُ، فَهَلْ يَجُوزُ فِي الْكَفَّارَاتِ الْإِسْقَاطُ، أَوْ التَّأْخِيرُ إلَى أَجَلٍ أَوْ إلَى غَيْرِ أَجَلٍ؟ فَظَهَرَ فَسَادُ قَوْلِهِمْ جُمْلَةً.

L18554 As for the Malikis: even if they were correct here, they were highly inconsistent because they permitted preponing the expiation immediately after the oath and before the violation.

وَأَمَّا الْمَالِكِيُّونَ: فَإِنَّهُمْ وَإِنْ كَانُوا أَصَابُوا هَهُنَا فَقَدْ تَنَاقَضُوا جِدًّا لِأَنَّهُمْ أَجَازُوا تَقْدِيمَ الْكَفَّارَةِ إثْرَ الْيَمِينِ، وَقَبْلَ الْحِنْثِ.

L18555 They did not permit advancing the payment of Zakat immediately after acquiring wealth, but a month or similar before the lunar year ends. Nor did

وَلَمْ يُجِيزُوا تَقْدِيمَ الزَّكَاةِ إثْرَ كَسْبِ الْمَالِ لَكِنْ قَبْلَ الْحَوْلِ بِشَهْرٍ وَنَحْوِهِ، وَلَا أَجَازُوا تَقْدِيمَ صَدَقَةِ الْفِطْرِ إثْرَ ابْتِدَاءِ الصَّوْمِ لَكِنْ قَبْلَ الْفِطْرِ بِيَوْمَيْنِ فَأَقَلَّ فَقَطْ.

[3] **Qur'an references (L18537):** Qur'an 74:23 (Al-Muddaththir); Qur'an 74:24 (Al-Muddaththir); Qur'an 74:25 (Al-Muddaththir); Qur'an 74:26 (Al-Muddaththir).

[4] **Qur'an references (L18552):** Qur'an 65:1 (At-Talaq).

they permit advancing the payment of Zakat al-Fitr immediately after the start of fasting, but only two days or fewer before Eid al-Fitr, and no more than that.

وَلَمْ يُجِيزُوا تَقْدِيمَ كَفَّارَةِ الظِّهَارِ أَصْلًا، وَلَا بِسَاعَةٍ قَبْلَ مَا يُوجِبُهَا عِنْدَهُمْ مِنْ إرَادَةِ الْوَطْءِ، وَلَا أَجَازُوا تَقْدِيمَ كَفَّارَةِ قَتْلِ الْخَطَإِ قَبْلَ مَا يُوجِبُهَا مِنْ مَوْتِ الْمَقْتُولِ وَلَا بِطَرْفَةِ عَيْنٍ، وَلَا كَفَّارَةِ قَتْلِ الصَّيْدِ فِي الْحَرَمِ قَبْلَ قَتْلِهِ.

L18556 They did not permit advancing the expiation of ẓihār at all—not even momentarily before what obligates it according to them: the intention of intercourse. Nor did they permit advancing the expiation for accidental killing before what obligates it: the death of the slain—not even for an instant—nor advancing the expiation for killing game within the sacred precinct before its actual killing.

وَأَجَازُوا إذْنَ الْوَرَثَةِ لِلْمُوصِي فِي أَكْثَرَ مِنْ الثُّلُثِ قَبْلَ أَنْ يَجِبَ لَهُمْ الْمَالُ بِمَوْتِهِ، فَظَهَرَ تَنَاقُضُ أَقْوَالِهِمْ - وَلِلَّهِ تَعَالَى الْحَمْدُ.

L18557 They permitted the testator to make a bequest of more than a third with the heirs' consent before the estate becomes rightfully theirs upon his death, thus the contradiction in their opinions became evident—and to Allah, the Exalted, belongs all praise.

وَأَمَّا الْحَنَفِيُّونَ فَتَنَاقَضُوا أَقْبَحَ تَنَاقُضٍ، لِأَنَّهُمْ أَجَازُوا تَقْدِيمَ الزَّكَاةِ قَبْلَ الْحَوْلِ بِثَلَاثَةِ أَعْوَامٍ، وَتَقْدِيمَ زَكَاةِ الزَّرْعِ إثْرَ زَرْعِهِ فِي الْأَرْضِ، وَأَجَازُوا تَقْدِيمَ الْكَفَّارَةِ فِي جَزَاءِ الصَّيْدِ بَعْدَ جِرَاحِهِ وَقَبْلَ مَوْتِهِ - وَتَقْدِيمَ كَفَّارَةِ قَتْلِ الْخَطَإِ قَبْلَ مَوْتِ الْمَجْرُوحِ.

L18558–18559 As for the Ḥanafīs, they contradicted themselves in the worst manner, for they permitted prepaying zakah three years before the completion of the lunar year, prepaying crop zakah immediately after planting in the ground, permitted prepaying the penalty for hunting after wounding the animal but before its death, and prepaying the expiation for accidental killing before the death of the wounded party.

وَلَمْ يُجِيزُوا لِلْوَرَثَةِ الْإِذْنَ فِي الْوَصِيَّةِ بِأَكْثَرَ مِنْ الثُّلُثِ قَبْلَ وُجُوبِ الْمَالِ لَهُمْ بِالْمَوْتِ - وَلَا أَجَازُوا إسْقَاطَ الشَّفِيعِ حَقَّهُ مِنْ الشُّفْعَةِ بَعْدَ عَرْضِ شَرِيكِهِ أَخْذَ الشِّقْصِ عَلَيْهِ قَبْلَ وُجُوبِ أَخْذِهِ لَهُ بِالْبَيْعِ؛ فَظَهَرَ تَخْلِيطُهُمْ وَسُخْفُ أَقْوَالِهِمْ - وَبِاَللَّهِ تَعَالَى نَعُوذُ مِنْ الْخِذْلَانِ.

L18560 They did not permit the heirs to authorize a bequest exceeding one-third before the estate becomes due to them upon death—nor did they allow the pre-emptor to relinquish his right of pre-emption after his co-owner offers to take the share from the seller before the right to claim it becomes obligatory for him through the sale. Thus their muddled reasoning and the absurdity of their statements became manifest—and in Allah the Exalted we seek refuge from abandonment.

وَكُلُّهُمْ لَا يُجِيزُ الِاسْتِثْنَاءَ قَبْلَ الْيَمِينِ، وَلَا قَضَاءَ دَيْنٍ قَبْلَ أَخْذِهِ، وَلَا صَلَاةَ قَبْلَ وَقْتِهَا، فَلَمْ يَبْقَ إلَّا قَوْلُنَا، وَقَوْلُ أَصْحَابِنَا الْمَانِعِينَ مِنْ تَقْدِيمِ كُلِّ حَقٍّ لَهُ وَقْتٌ قَبْلَ وَقْتِهِ،

L18561 None of them permit making an exception before swearing the oath, repaying a debt before it is due, or performing prayer before its designated time. Thus, nothing remains except our position and the position of our fellow jurists who prohibit preponing any time-bound obligation before its due time. They hold that expiation only becomes obligatory through oath violation, being a mandated duty after the breach by textual injunction and consensus.

Therefore, preponing it before its obligation takes effect constitutes a voluntary act rather than a compulsory duty, and it is logically inconceivable for a voluntary act to suffice in place of a compulsory obligation.

L18562 They said, "Allah, the Exalted, said: 'And whoever transgresses the limits set by Allah has certainly wronged himself' [At-Talaq: 1], and the evidences here are exceedingly abundant."[5]

L18563 Abu Muhammad said: These are sound proofs. We agree with them that no aspect of the Shariah suffices before its designated time except in two instances: 1. The expiation for an oath - it is permissible to advance it before committing the violation, but only after forming the intention to violate it, and this is obligatory. 2. The second:

L18564 The pre-emptor's relinquishment of his right after being presented with the pre-emption option—to take or abandon before the sale—makes his waiver binding solely upon him at that point.

L18565 We only did this due to the texts that exclude these two Sharia rulings from the ruling that applies to the rest of the Sharia in that it is neither valid nor permissible to perform any part of these two rulings before the time specified by Allah, the Exalted.

L18566 Abu Muhammad said: Some of those who agreed with us here cited as proof to validate our position by invoking Allah's statement: "That is the expiation for your oaths when you swear" [Al-Ma'idah: 89].[6]

L18567 He said: Thus, the expiation is obligatory by virtue of the very oath itself.

L18568–18569 Ali said: "We have no proof in this matter, for the scriptural text and the definitively established consensus state that no expiation is required of one who does not break an oath. Thus, it is confirmed that the expiation is not obligated by the oath itself. Some of them argued that the verse contains

فَإِنَّهُمْ قَالُوا: الْكَفَّارَةُ لَا تَجِبُ إِلَّا بِالْحِنْثِ، وَهِيَ فَرْضٌ بَعْدَ الْحِنْثِ بِالنَّصِّ وَالْإِجْمَاعِ، فَتَقْدِيمُهَا قَبْلَ أَنْ تَجِبَ تَطَوُّعٌ لَا فَرْضٌ، وَمِنَ الْمُحَالِ أَنْ يُجْزِئَ التَّطَوُّعُ عَنِ الْفَرْضِ.

وَقَالُوا: قَالَ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] وَالدَّلَائِلُ هَهُنَا تَكْثُرُ جِدًّا.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ أَدِلَّةٌ صِحَاحٌ، وَنَحْنُ مُوَافِقُونَ لَهُمْ فِي أَنَّهُ لَا يُجْزِئُ شَيْءٌ مِنَ الشَّرِيعَةِ قَبْلَ وَقْتِهِ إِلَّا فِي مَوْضِعَيْنِ -: أَحَدُهُمَا: كَفَّارَةُ الْيَمِينِ، فَجَائِزٌ تَقْدِيمُهَا قَبْلَ الْحِنْثِ، لَكِنْ بَعْدَ إِرَادَةِ الْحِنْثِ وَلَا بُدَّ. وَالثَّانِي:

إِسْقَاطُ الشَّفِيعِ حَقَّهُ بَعْدَ عَرْضِ الشَّفِيعِ عَلَيْهِ أَنْ يَأْخُذَ أَوْ يَتْرُكَ قَبْلَ الْبَيْعِ، فَإِسْقَاطُهُ حَقَّهُ حِينَئِذٍ لَازِمٌ لَهُ فَقَطْ.

وَإِنَّمَا فَعَلْنَا ذَلِكَ لِلنُّصُوصِ الْمُخْرِجَةِ لِهَذَيْنِ الشَّرْعَيْنِ عَنْ حُكْمِ سَائِرِ الشَّرِيعَةِ فِي أَنَّهُ لَا يُجْزِئُ وَلَا يَجُوزُ أَدَاءُ شَيْءٍ مِنْهَا قَبْلَ الْوَقْتِ الَّذِي حَدَّهُ اللَّهُ تَعَالَى لَهُ.

قَالَ أَبُو مُحَمَّد: وَقَدْ احْتَجَّ بَعْضُ مَنْ وَافَقَنَا هَهُنَا فِي تَصْحِيحِ قَوْلِنَا بِأَنْ قَالَ: قَالَ اللَّهُ تَعَالَى: {ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ} [المائدة: ٨٩] .

قَالَ: فَالْكَفَّارَةُ وَاجِبَةٌ بِنَفْسِ الْيَمِينِ.

قَالَ عَلِيٌّ: وَلَا حُجَّةَ لَنَا فِي هَذَا، لِأَنَّهُ قَدْ جَاءَ النَّصُّ وَالْإِجْمَاعُ الْمُتَيَقَّنُ: عَلَى أَنَّ مَنْ لَمْ يَحْنَثْ فَلَا كَفَّارَةَ تَلْزَمُهُ، فَصَحَّ أَنَّهُ لَيْسَ بِنَفْسِ الْيَمِينِ تَجِبُ الْكَفَّارَةُ - وَاحْتَجَّ بَعْضُهُمْ بِأَنَّ فِي الْآيَةِ حَذْفًا بِلَا خِلَافٍ وَأَنَّهُ: فَأَرَدْتُمُ الْحِنْثَ، أَوْ حَنِثْتُمْ.

[5] **Qur'an references (L18562):** Qur'an 65:1 (At-Talaq).
[6] **Qur'an references (L18566):** Qur'an 5:89 (Al-Ma'idah).

an uncontested ellipsis, meaning: ’You intended to break [the oath] or you broke it.”’

L18570 Abu Muhammad said: This claim of theirs that the omitted phrase is “then you intended to violate [the oath]” cannot be accepted without evidence. It thus became obligatory to seek proof for this matter. We therefore investigated and discovered what we have narrated via the chain transmitted by Imam Muslim: Zuhayr ibn Harb narrated to us; Marwan ibn Muʿawiyah al-Fazari narrated to us; Yazid ibn Kaysan narrated from Abu Hazim, from Abu Hurayrah, that the Messenger of Allah—may Allah bless him and grant him peace—said: “Whoever swears an oath and then finds a better course of action, let him pursue it and expiate for his oath.”[7]

L18571 From the chain of Aḥmad ibn Shuʿayb: I, Aḥmad ibn Sulaymān, narrated to us from ʿAffān ibn Muslim. Jarīr ibn Ḥāzim said: I heard al-Ḥasan al-Baṣrī say: ʿAbd al-Raḥmān ibn Samura narrated to us, saying: The Messenger of Allāh—peace and blessings of Allāh be upon him—said to me, “When you swear an oath and then see a better alternative than it, expiate for your oath, then do what is better.”

L18572 And similarly, it was narrated by us through the chain of Sa’id ibn Abi ’Arubah from Qatadah from al-Hasan from ’Abd al-Rahman ibn Samura from the Prophet — peace be upon him.

L18573 And through the chain of Aḥmad ibn Shuʿayb: Isḥāq ibn Manṣūr narrated: ʿAbd al-Raḥmān ibn Mahdī related: Shuʿbah narrated to us from ʿAmr ibn Murrah, who said: I heard ʿAbd Allāh ibn ʿAmr, the freed slave of al-Ḥasan ibn ʿAlī, narrating from ʿAdī ibn Ḥātim, who said: The Messenger of Allāh (peace and blessings be upon him) said, “Whoever swears an oath and then sees a better alternative to his oath, let him do what is better and expiate for his oath.”[8]

L18574–18575 These hadiths comprehensively encompass all rulings regarding what they disagreed about—the permissibility of offering expiation before the breach of

قَالَ أَبُو مُحَمَّد: وَهَذِهِ دَعْوَى مِنْهُمْ فِي أَنَّ الْمَحْذُوفَ هُوَ " فَأَرَدْتُمْ الْحِنْثَ " لَا يُقْبَلُ إِلَّا بِبُرْهَانٍ، فَوَجَبَ طَلَبُ الْبُرْهَانِ فِي ذَلِكَ -: فَنَظَرْنَا فَوَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ نا مَرْوَانُ بْنُ مُعَاوِيَةَ الْفَزَارِيّ نا يَزِيدُ بْنُ كَيْسَانَ عَنْ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا فَلْيَأْتِهَا وَلْيُكَفِّرْ عَنْ يَمِينِهِ» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ سُلَيْمَانَ نا عَفَّانُ هُوَ ابْنُ مُسْلِمٍ نا جَرِيرُ بْنُ حَازِمٍ قَالَ: سَمِعْت الْحَسَنَ هُوَ الْبَصْرِيُّ يَقُولُ: نا عَبْدُ الرَّحْمَنِ بْنُ سَمُرَةَ قَالَ: قَالَ لِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا حَلَفْتَ عَلَى يَمِينٍ فَرَأَيْتَ غَيْرَهَا خَيْرًا مِنْهَا فَكَفِّرْ عَنْ يَمِينِكَ ثُمَّ ائْتِ الَّذِي هُوَ خَيْرٌ» .

وَهَكَذَا رُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ سَمُرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا شُعْبَةُ عَنْ عَمْرِو بْنِ مُرَّةَ سَمِعْت عَبْدَ اللَّهِ بْنَ عَمْرٍو مَوْلَى الْحَسَنِ بْنِ عَلِيٍّ يُحَدِّثُ عَنْ عَدِيِّ بْنِ حَاتِمٍ قَالَ [قَالَ] رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا فَلْيَأْتِ الَّذِي هُوَ خَيْرٌ وَلْيُكَفِّرْ عَنْ يَمِينِهِ» .

فَهَذِهِ الْأَحَادِيثُ جَامِعَةٌ لِجَمِيعِ أَحْكَامِ مَا اخْتَلَفُوا فِيهِ مِنْ جَوَازِ تَقْدِيمِ الْكَفَّارَةِ قَبْلَ الْحِنْثِ، لِأَنَّ فِي حَدِيثِ أَبِي هُرَيْرَةَ تَقْدِيمَ الْحِنْثِ قَبْلَ الْكَفَّارَةِ.

[7] **Hadith references (L18570):** Sahih Muslim 1650a.

an oath—because Abu Hurairah's hadith establishes the breach as preceding the expiation.

L18576 And in the hadith of ʿAbd al-Raḥmān ibn Samura, the expiation is presented before breaking the oath.

L18577 In the hadith of ʿAdī ibn Ḥātim, the conjunction of breaking an oath and expiation by the conjunctive "wāw," which does not imply sequence—as transmitted through Abū Mūsā al-Ashʿarī—it is obligatory to use all of them, with neither being more deserving of obedience than the other, nor is it permissible to contradict one with the other. Thus that is permissible, and success is from Allah, the Most High.

L18578 Through this, it is affirmed that the omission in the verse pertains solely to when you intend to violate an oath or when you violate an oath, and the Messenger of Allah (peace be upon him) is the expounder of his Lord's commandments—the Almighty, the Majestic.

L18579 Some of them objected by saying: The statement of the Messenger of Allah—peace and blessings be upon him—"Let him perform expiation, then proceed to do what is best," is like the statement of Allah, the Exalted: {Then he became one of those who have faith} (Surah Al-Balad 90:17).[9]

L18580 And like the saying of the Most High: "Then We gave Moses the Scripture" [Al-Anʿām: 154].[10]

L18581 And as the saying of the Most High: "We have certainly created you, then formed you, then We said to the angels: 'Prostrate to Adam'" [Al-Aʿrāf 7:11].[11]

L18582 This speaker said: The word "thumma" in these verses does not denote sequence; rather, it refers to what precedes the word conjoined by "thumma".

وَفِي حَدِيثِ عَبْدِ الرَّحْمَنِ بْنِ سَمُرَةَ تَقْدِيمَ الْكَفَّارَةِ قَبْلَ الْحِنْثِ.

وَفِي حَدِيثِ عَدِيِّ بْنِ حَاتِمٍ الْجَمْعَ بَيْنَ الْحِنْثِ وَالْكَفَّارَةِ بِوَاوِ الْعَطْفِ الَّتِي لَا تُعْطِي رُتْبَةً - هَكَذَا جَاءَ مِنْ طَرِيقِ أَبِي مُوسَى الْأَشْعَرِيِّ فَوَجَبَ اسْتِعْمَالُ جَمِيعِهَا، وَلَمْ يَكُنْ بَعْضُهَا أَوْلَى بِالطَّاعَةِ مِنْ بَعْضٍ، وَلَا تَحِلُّ مُخَالَفَةُ بَعْضِهَا لِبَعْضٍ، فَكَانَ ذَلِكَ جَائِزًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَصَحَّ بِهَذَا أَنَّ الْحَذْفَ الَّذِي فِي الْآيَةِ إِنَّمَا هُوَ إِذَا أَرَدْتُمْ الْحِنْثَ أَوْ حَنِثْتُمْ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ الْمُبَيِّنُ عَنْ رَبِّهِ عَزَّ وَجَلَّ.

وَاعْتَرَضَ بَعْضُهُمْ بِأَنْ قَالَ: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَلْيُكَفِّرْ ثُمَّ لِيَأْتِ الَّذِي هُوَ خَيْرٌ» هُوَ مِثْلُ قَوْلِ اللَّهِ تَعَالَى: {ثُمَّ كَانَ مِنَ الَّذِينَ آمَنُوا} [البلد: ١٧] .

وَكَقَوْلِهِ تَعَالَى: {ثُمَّ آتَيْنَا مُوسَى الْكِتَابَ} [الأنعام: ١٥٤] .

وَكَقَوْلِهِ تَعَالَى: {وَلَقَدْ خَلَقْنَاكُمْ ثُمَّ صَوَّرْنَاكُمْ ثُمَّ قُلْنَا لِلْمَلَائِكَةِ اسْجُدُوا لِآدَمَ} [الأعراف: ١١] .

قَالَ هَذَا الْقَائِلُ: وَلَفْظَةُ " ثُمَّ " فِي هَذِهِ الْآيَاتِ لَا تُوجِبُ تَعْقِيبًا، بَلْ هِيَ وَاقِعَةٌ عَلَى مَا كَانَ قَبْلَ مَا عَطَفَ اللَّفْظَ عَلَيْهِ " بِثُمَّ ".

[8] **Hadith references (L18573):** Sahih Muslim 1650c; Sunan Ibn Majah 2108; Sunan an-Nasai 3785.

[9] **Qur'an references (L18579):** Qur'an 90:17 (Al-Balad).

[10] **Qur'an references (L18580):** Qur'an 6:154 (Al-An'am).

[11] **Qur'an references (L18581):** Qur'an 7:11 (Al-A'raf).

L18583 Abu Muhammad said: It is not as they presumed—as for the statement of the Exalted: {Then he was among those who believed} [Al-Balad: 17], the text of the verses is the statement of the Exalted: {And what can make you know what is the steep pass?} [Al-Balad: 12] {It is freeing a slave} [Al-Balad: 13] {Or feeding on a day of severe hunger} [Al-Balad: 14] {An orphan of near relationship} [Al-Balad: 15] {Or a needy person in dire poverty} [Al-Balad: 16] {Then he was among those who believed and enjoined one another to patience and to mercy} [Al-Balad: 17].[12]

L18584 We have mentioned "the statement of the Messenger of Allah—peace and blessings be upon him—to Ḥakīm ibn Ḥizām: 'You embraced Islam **with** the good deeds you had previously performed,'" and **this verse clarifies** the immense favor of Allah the Exalted upon His servants in His acceptance of every righteous deed they performed during their **disbelief**, then embraced Islam. Thus, the verse is to be understood according to its outward meaning, and it **is in addition to the rest of what is in the Quran** regarding His acceptance of the deeds of those who believed and then performed righteous acts. And all praise is due to Allah, Lord of the worlds.

L18585–18586 As for the statement of the Exalted: {Then We gave Moses the Book} [6:154], it is not as they presumed, for the preceding verse is His declaration—Exalted and Majestic is He: {Indeed, this is My straight path, so follow it. Do not follow divergent ways, lest they scatter you from His path. This He has enjoined upon you that you may attain piety} [6:153]; followed by {Then We gave Moses the Book in completion for those who did good} [6:154].[13]

L18587 Allah, the Exalted, has said: "Abraham was neither a Jew nor a Christian, but he was a ḥanīf (upright monotheist) and Muslim" [Āl ʿImrān: 67]. And He said: "The creed of your father Abraham" [al-Ḥajj: 78].[14]

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ كَمَا ظَنُّوا -: أَمَّا قَوْله تَعَالَى: {ثُمَّ كَانَ مِنَ الَّذِينَ آمَنُوا} [البلد: ١٧] فَإِنَّ نَصَّ الْآيَاتِ هُوَ قَوْله تَعَالَى: {وَمَا أَدْرَاكَ مَا الْعَقَبَةُ} [البلد: ١٢] {فَكُّ رَقَبَةٍ} [البلد: ١٣] {أَوْ إِطْعَامٌ فِي يَوْمٍ ذِي مَسْغَبَةٍ} [البلد: ١٤] {يَتِيمًا ذَا مَقْرَبَةٍ} [البلد: ١٥] {أَوْ مِسْكِينًا ذَا مَتْرَبَةٍ} [البلد: ١٦] {ثُمَّ كَانَ مِنَ الَّذِينَ آمَنُوا وَتَوَاصَوْا بِالصَّبْرِ وَتَوَاصَوْا بِالْمَرْحَمَةِ} [البلد: ١٧] .

وَقَدْ ذَكَرْنَا «قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِحَكِيمِ بْنِ حِزَامٍ أَسْلَمْتَ عَلَى مَا أَسْلَفْتَ مِنْ الْخَيْرِ» فَصَحَّ بِهَذِهِ الْآيَةِ عَظِيمُ نِعْمَةِ اللَّهِ تَعَالَى عَلَى عِبَادِهِ فِي قَبُولِهِ كُلَّ عَمَلِ بِرٍّ عَمِلُوهُ فِي كُفْرِهِمْ ثُمَّ أَسْلَمُوا، فَالْآيَةُ عَلَى ظَاهِرِهَا وَهِيَ زَائِدَةٌ عَلَى سَائِرِ مَا فِي الْقُرْآنِ مِنْ قَبُولِهِ تَعَالَى أَعْمَالَ مَنْ آمَنَ ثُمَّ عَمِلَ الْخَيْرَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَأَمَّا قَوْله تَعَالَى: {ثُمَّ آتَيْنَا مُوسَى الْكِتَابَ} [الأنعام: ١٥٤] فَلَيْسَ كَمَا ظَنُّوا لِأَنَّ أَوَّلَ الْآيَةِ قَوْلُهُ عَزَّ وَجَلَّ: {وَأَنَّ هَذَا صِرَاطِي مُسْتَقِيمًا فَاتَّبِعُوهُ وَلا تَتَّبِعُوا السُّبُلَ فَتَفَرَّقَ بِكُمْ عَنْ سَبِيلِهِ ذَلِكُمْ وَصَّاكُمْ بِهِ لَعَلَّكُمْ تَتَّقُونَ} [الأنعام: ١٥٣] {ثُمَّ آتَيْنَا مُوسَى الْكِتَابَ تَمَامًا عَلَى الَّذِي أَحْسَنَ} [الأنعام: ١٥٤] .

وَقَدْ قَالَ تَعَالَى: {مَا كَانَ إِبْرَاهِيمُ يَهُودِيًّا وَلا نَصْرَانِيًّا وَلَكِنْ كَانَ حَنِيفًا مُسْلِمًا} [آل عمران: ٦٧] وَقَالَ تَعَالَى: {مِلَّةَ أَبِيكُمْ إِبْرَاهِيمَ} [الحج: ٧٨] .

[12] **Qur'an references (L18583):** Qur'an 90:17 (Al-Balad); Qur'an 90:12 (Al-Balad); Qur'an 90:13 (Al-Balad); Qur'an 90:14 (Al-Balad); Qur'an 90:15 (Al-Balad); Qur'an 90:16 (Al-Balad).

[13] **Qur'an references (L18586):** Qur'an 6:154 (Al-An'am); Qur'an 6:153 (Al-An'am).

[14] **Qur'an references (L18587):** Qur'an 3:67 (Ali 'Imran); Qur'an 22:78 (Al-Hajj).

L18588 It has been established that the path which Allah, the Exalted, has commanded us to follow and which Muhammad (peace and blessings be upon him) has brought to us is the path of Abraham (peace be upon him). It undoubtedly existed before Moses. Then Allah, the Exalted, gave Moses the Book. This is a subsequent action following a delay, without any doubt.

فَصَحَّ أَنَّ الصِّرَاطَ الَّذِي أَمَرَنَا اللَّهُ تَعَالَى بِاتِّبَاعِهِ وَأَتَانَا بِهِ مُحَمَّدٌ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ صِرَاطُ إبْرَاهِيمَ - عَلَيْهِ السَّلَامُ -، وَقَدْ كَانَ قَبْلَ مُوسَى بِلَا شَكٍّ ثُمَّ آتَى اللَّهُ تَعَالَى مُوسَى الْكِتَابَ، فَهَذَا تَعْقِيبٌ بِمُهْلَةٍ لَا شَكَّ فِيهِ.

L18589 As for the statement of the Exalted: {We have indeed created you, then formed you, then said to the angels, "Prostrate before Adam"} [Al-A'raf: 11], this is to be understood according to its apparent meaning, for Allah the Exalted created our selves and formed them, and they are the selves upon whom Allah took the covenant: {Am I not your Lord? They said, "Yes"} [Al-A'raf: 172].[15]

فَأَمَّا قَوْله تَعَالَى: {وَلَقَدْ خَلَقْنَاكُمْ ثُمَّ صَوَّرْنَاكُمْ ثُمَّ قُلْنَا لِلْمَلَائِكَةِ اسْجُدُوا لِآدَمَ} [الأعراف: ١١] فَعَلَى ظَاهِرِهِ، لِأَنَّ اللَّهَ تَعَالَى خَلَقَ أَنْفُسَنَا وَصَوَّرَهَا، وَهِيَ الَّتِي أَخَذَ اللَّهُ عَلَيْهَا الْعَهْدَ: {أَلَسْتُ بِرَبِّكُمْ قَالُوا بَلَى} [الأعراف: ١٧٢] .

L18590 Then after that, the angels were made to prostrate to Adam—peace be upon him—which nullified their connection to these verses. Even if "then" were to depart from its apparent meaning here or signify something other than sequential order, this would not necessitate that "then" must always denote non-sequential usage wherever it occurs. For when something deviates from its linguistic meaning in a specific context due to evidence, this does not permit its deviation from its linguistic meaning in other contexts. This is part of their corrupt obfuscation, which benefits them only in bewildering those who do not carefully examine the first things they suddenly confront them with. And success is from Allah, the Most High.

ثُمَّ بَعْدَ ذَلِكَ أَسْجَدَ الْمَلَائِكَةَ لِآدَمَ - عَلَيْهِ السَّلَامُ -، فَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْآيَاتِ - ثُمَّ حَتَّى لَوْ خَرَجَتْ عَنْ ظَاهِرِهَا، أَوْ كَانَتْ " ثُمَّ " لِغَيْرِ التَّعْقِيبِ فِيهَا لَمْ يَجِبْ لِذَلِكَ أَنْ تَكُونَ " ثُمَّ " لِغَيْرِ التَّعْقِيبِ حَيْثُمَا وُجِدَتْ، لِأَنَّ مَا خَرَجَ عَنْ مَوْضُوعِهِ فِي اللُّغَةِ بِدَلِيلٍ فِي مَوْضِعٍ مَا لَمْ يَجُزْ أَنْ يَخْرُجَ فِي غَيْرِ ذَلِكَ الْمَوْضِعِ عَنْ مَوْضُوعِهِ فِي اللُّغَةِ - وَهَذَا مِنْ تَمْوِيهِهِمْ الْفَاسِدِ الَّذِي لَا يَنْتَفِعُونَ بِهِ إلَّا فِي تَحْيِيرِ مَنْ لَمْ يُمْعِنْ النَّظَرَ فِي أَوَّلِ مَا يَفْجَئُونَهُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18591 Our view here is the opinion of ʿĀ'ishah, the Mother of the Believers –: via the chain of Ibn Abī Shaybah: al-Muʿtamir ibn Sulaymān al-Taymī narrated to us from ʿAbdullāh ibn ʿAwn, from Muḥammad ibn Sīrīn, that Maslamah ibn Makhlad and Salmān al-Fārisī would perform expiation before violating their oath.

وَقَوْلُنَا هَذَا هُوَ قَوْلُ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ -: وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ مَسْلَمَةَ بْنَ مَخْلَدٍ، وَسَلْمَانَ الْفَارِسِيَّ كَانَا يُكَفِّرَانِ قَبْلَ الْحِنْثِ.

L18592 And through him to Abū Bakr ibn Abī Shaybah: Ḥafṣ ibn Ghiyāth informed us from Ashʿath from Ibn Sīrīn that Abū al-Dardāʾ called his slave boy and emancipated him, then violated his oath, so he carried out what he had sworn against.

وَبِهِ إلَى أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ أَشْعَثَ عَنْ ابْنِ سِيرِينَ: أَنَّ أَبَا الدَّرْدَاءِ دَعَا غُلَامًا لَهُ فَأَعْتَقَهُ ثُمَّ حَنِثَ، فَصَنَعَ الَّذِي حَلَفَ عَلَيْهِ.

[15] **Qur'an references (L18589):** Qur'an 7:11 (Al-A'raf); Qur'an 7:172 (Al-A'raf).

وَبِهِ إِلَى ابْنِ أَبِي شَيْبَةَ نا أَزْهَرُ عَنِ ابْنِ عَوْنٍ أَنَّ مُحَمَّدَ بْنَ سِيرِينَ: كَانَ يُكَفِّرُ قَبْلَ الْحِنْثِ -: وَهُوَ قَوْلُ ابْنِ عَبَّاسٍ أَيْضًا، وَالْحَسَنِ، وَرَبِيعَةَ، وَسُفْيَانَ، وَالْأَوْزَاعِيِّ، وَمَالِكٍ، وَاللَّيْثِ، وَعَبْدِ اللَّهِ بْنِ الْمُبَارَكِ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَسُلَيْمَانَ بْنِ دَاوُد الْهَاشِمِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي خَيْثَمَةَ، وَغَيْرِهِمْ.

And via his chain to Ibn Abi Shaybah: Azhar reported to us on the authority of Ibn ʻAwn that Muhammad ibn Sirin would offer expiation before breaching the oath: this is also the view of Ibn Abbas, al-Hasan, Rabiʻah, Sufyan, and al-Awzaʻi, Malik, al-Layth, Abdullah ibn al-Mubarak, Ahmad ibn Hanbal, Ishaq ibn Rāhawayh, Sulayman ibn Dawud al-Hashimi, Abu Thawr, Abu Khaythamah, and others.

وَلَا يُعْلَمُ لِمَنْ ذَكَرْنَا مُخَالِفٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إِلَّا أَنَّ مُمَوِّهًا مَوَّهَ بِرِوَايَةِ عَبْدِ الرَّزَّاقِ عَنِ الْأَسْلَمِيِّ هُوَ إِبْرَاهِيمُ بْنُ أَبِي يَحْيَى - عَنْ رَجُلٍ سَمَّاهُ عَنْ مُحَمَّدِ بْنِ زِيَادٍ عَنْ مَيْمُونِ بْنِ مِهْرَانَ عَنِ ابْنِ عَبَّاسٍ: أَنَّهُ كَانَ لَا يُكَفِّرُ حَتَّى يَحْنَثَ - وَهَذَا بَاطِلٌ، لِأَنَّ ابْنَ أَبِي يَحْيَى مَذْكُورٌ بِالْكَذِبِ، ثُمَّ عَمَّنْ لَمْ يُسَمِّ.

No opposing view is known from the Companions—may Allah be pleased with them—regarding those we mentioned, except that a fabricator fabricated through the narration of ʿAbd al-Razzāq from al-Aslamī, who is Ibrāhīm ibn Abī Yaḥyā—from a man he named, from Muḥammad ibn Ziyād, from Maymūn ibn Mihrān, from Ibn ʿAbbās: "Ibn ʿAbbās would not declare someone an unbeliever until they broke an oath"—and this is invalid, for Ibn Abī Yaḥyā is notorious as a liar, then from someone unnamed.

ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ أَنَّ ابْنَ عَبَّاسٍ لَمْ يُجِزِ الْكَفَّارَةَ قَبْلَ الْحِنْثِ، إِنَّمَا فِيهِ: أَنَّهُ كَانَ يُؤَخِّرُ الْكَفَّارَةَ بَعْدَ الْحِنْثِ فَقَطْ - وَنَحْنُ لَا نُنْكِرُ هَذَا.

Then, even if [the report] were valid, it would not constitute proof for them, because it does not state that Ibn Abbas disallowed expiation before the violation. Rather, it only states that he postponed the expiation until after the violation—and we do not dispute this.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يُعْتِقَ عَبْدَهُ فَأَعْتَقَهُ يَنْوِي كَفَّارَةَ تِلْكَ الْيَمِينِ]

Issue: He swore not to emancipate his slave, but then emancipated the slave, intending [this act] to be the expiation for that oath.

١١٧٨ - مَسْأَلَةٌ

1178. Issue

وَمَنْ حَلَفَ أَنْ لَا يُعْتِقَ عَبْدَهُ هَذَا، فَأَعْتَقَهُ يَنْوِي بِعِتْقِهِ ذَلِكَ كَفَّارَةَ تِلْكَ الْيَمِينِ لَمْ يُجْزِهِ.

Whoever swears not to manumit this slave of his, then manumits him intending for that act to serve as atonement *kafārah* for the oath, it does not suffice for him.

وَمَنْ حَلَفَ أَنْ يَتَصَدَّقَ عَلَى هَؤُلَاءِ الْعَشَرَةِ الْمَسَاكِينِ فَأَطْعَمَهُمْ يَنْوِي بِذَلِكَ كَفَّارَةَ يَمِينِهِ لَمْ يُجْزِهِ، وَلَا يَحْنَثُ بِأَنْ يَتَصَدَّقَ عَلَيْهِمْ بَعْدَ ذَلِكَ، وَكَذَلِكَ الْكِسْوَةُ، لَكِنْ عَلَيْهِ الْكَفَّارَةُ.

And whoever swears to give charity to these ten poor people, then feeds them with the intention of fulfilling the expiation for his oath, it does not validly fulfill it. He does not break his oath by giving charity to them afterward. The same ruling applies to clothing. However, the expiation remains obligatory for him.

وَمَنْ حَلَفَ أَنْ لَا يَصُومَ فِي هَذِهِ الْجُمُعَةِ وَلَا يَوْمًا، ثُمَّ صَامَ مِنْهَا ثَلَاثَةَ أَيَّامٍ يَنْوِي بِهَا كَفَّارَةَ يَمِينِهِ تِلْكَ - وَهُوَ مِنْ أَهْلِ الْكَفَّارَةِ بِالصِّيَامِ - لَمْ يُجْزِهِ، وَلَا يَحْنَثُ بِأَنْ يَصُومَ فِيهَا بَعْدَ ذَلِكَ، وَعَلَيْهِ الْكَفَّارَةُ لِأَنَّ مَعْنَى الْكَفَّارَةِ بِلَا شَكٍّ إِسْقَاطُ الْحِنْثِ، وَالْحِنْثُ قَدْ وَجَبَ بِالْعِتْقِ، وَالْإِطْعَامِ، وَالْكِسْوَةِ، فَلَا يَحْنَثُ بَعْدُ فِي يَمِينٍ قَدْ حَنِثَ فِيهَا، وَالْكَفَّارَةُ لَا تَكُونُ الْحِنْثَ بِلَا شَكٍّ، بَلْ هِيَ الْمُبْطِلَةُ لَهُ، وَالْحَقُّ لَا يُبْطِلُ نَفْسَهُ.

L18602 Whoever swears not to fast during this Friday nor any day, then fasts three days from them intending these as expiation for that oath of his—while being among those eligible to expiate by fasting—it did not suffice him, nor is his oath broken by fasting afterward. The expiation remains obligatory upon him, because the meaning of expiation is undoubtedly the removal of oath-breaking. Oath-breaking has already been established through manumission, feeding, and clothing. Thus he does not break his oath thereafter in an oath he already violated. Expiation is undoubtedly not the oath-breaking itself, but rather what nullifies it. The rightful ruling does not nullify itself.

[مَسْأَلَةٌ صِفَةُ الْكَفَّارَةِ]

L18603 ## Issue: The Manner of Expiation

١١٧٩ - مَسْأَلَةٌ

L18604 1179 – Issue

وَصِفَةُ الْكَفَّارَةِ: هِيَ أَنَّ مَنْ حَنِثَ، أَوْ أَرَادَ الْحِنْثَ وَإِنْ لَمْ يَحْنَثْ بَعْدُ، فَهُوَ مُخَيَّرٌ بَيْنَ مَا جَاءَ بِهِ النَّصُّ -: وَهُوَ إِمَّا أَنْ يُعْتِقَ رَقَبَةً، وَإِمَّا أَنْ يَكْسُوَ عَشْرَةَ مَسَاكِينَ، وَإِمَّا أَنْ يُطْعِمَهُمْ: أَيُّ ذَلِكَ فَعَلَ فَهُوَ فَرْضٌ، وَيَجْزِيهِ، فَإِنْ لَمْ يَقْدِرْ عَلَى شَيْءٍ مِنْ ذَلِكَ: فَفَرْضُهُ صِيَامُ ثَلَاثَةِ أَيَّامٍ، وَلَا يُجْزِئُهُ الصَّوْمُ مَا دَامَ يَقْدِرُ عَلَى مَا ذَكَرْنَا: مِنَ الْعِتْقِ، أَوِ الْكِسْوَةِ، أَوِ الْإِطْعَامِ.

L18605 The description of the expiation is as follows: whoever breaks an oath or intends to break it—even if he has not yet done so—may choose between the options stipulated in the sacred text: either freeing a slave, clothing ten poor people, or feeding them. Whichever of these he performs becomes obligatory and suffices for him. If he is incapable of any of these, his obligation is to fast three days. Fasting does not suffice as long as he remains capable of performing the aforementioned acts: emancipation, clothing, or feeding.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {فَكَفَّارَتُهُ إِطْعَامُ عَشَرَةِ مَسَاكِينَ مِنْ أَوْسَطِ مَا تُطْعِمُونَ أَهْلِيكُمْ أَوْ كِسْوَتُهُمْ أَوْ تَحْرِيرُ رَقَبَةٍ فَمَنْ لَمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ وَاحْفَظُوا أَيْمَانَكُمْ} [المائدة: ٨٩] .

L18606 The proof of that is the statement of Allah, the Most High: *“The expiation for it is feeding ten poor people from the average of what you feed your families, or clothing them, or freeing a slave. But whoever cannot afford it must fast three days. That is the expiation for your oaths when you swear. And guard your oaths.”* (5:89)[16]

وَمَا نَعْلَمُ فِي هَذَا خِلَافًا، وَلَا نُبْعِدُهُ، لِأَنَّ مَنْ قَالَ فِي قَوْلِ اللَّهِ تَعَالَى: {فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ يَحْكُمُ بِهِ ذَوَا عَدْلٍ مِنْكُمْ هَدْيًا بَالِغَ الْكَعْبَةِ أَوْ كَفَّارَةٌ طَعَامُ مَسَاكِينَ

L18607–18608 We do not know of any disagreement regarding this matter, nor do we deem it implausible. For whoever holds that Allah’s statement—“The expiation shall be an offering equivalent to the livestock killed, as decreed by two just arbiters among you, to be delivered as a sacrificial offering reaching

[16] **Qur’an references (L18606):** Qur’an 5:89 (Al-Ma’idah).

the Kaaba, or the expiation of feeding the needy, or an equivalent measure thereof in fasting"—indicates a sequential obligation rather than optional alternatives, it is not far-fetched that such a scholar would also maintain that the expiation for broken oaths follows the same sequential order.[17]

L18609 And we ask Allah for success.

L18610 **A legal issue: The substitute for the expiation of an oath is not sufficient for him.**

L18611 1180 - Issue

L18612 Nor will it suffice as a substitute for what we have mentioned: charity, a sacrificial animal, monetary value, or anything else whatsoever, because Allah the Exalted has not obligated anything beyond what we have stated. Whoever mandates monetary value in this matter has transgressed the limits set by Allah: {And whoever transgresses the limits of Allah has certainly wronged himself} [al-Ṭalāq 1]. Such a person has legislated in the religion what Allah the Exalted has not permitted: {And your Lord is not forgetful} [Maryam 64].[18]

L18613 **A case in which one violated an oath while capable of the expiation, then became poor.**

L18614 1181 - Issue

L18615 And whoever breaks an oath while capable of providing food, clothing, or freeing a slave, then becomes impoverished and incapable of all that, fasting does not expiate for him at all. This is because, when the expiation became obligatory, one of these modes was definitively specified for him by the explicit text of the Quran. Therefore, what Allah the Exalted has conclusively obligated cannot be waived through a false claim. However, he is granted respite until he can afford it or cannot, for Allah alone oversees his reckon-

[17] **Qur'an references (L18608):** Qur'an 5:95 (Al-Ma'idah).

[18] **Qur'an references (L18612):** Qur'an 65:1 (At-Talaq); Qur'an 42:21 (Ash-Shuraa); Qur'an 19:64 (Maryam).

أَوْ عَدْلُ ذَلِكَ صِيَامًا} [المائدة: ٩٥] أَنَّ هَذَا عَلَى التَّرْتِيبِ، لَا عَلَى التَّخْيِيرِ - فَغَيْرُ مُسْتَبْعَدٍ مِنْهُ أَنْ يَقُولَ فِي كَفَّارَةِ الْأَيْمَانِ أَيْضًا: إِنَّهُ عَلَى التَّرْتِيبِ.

- وَنَسْأَلُ اللهَ التَّوْفِيقَ.

[مَسْأَلَةٌ لَا يُجْزِيهِ بَدَل كَفَّارَة الْيَمِين]

١١٨٠ - مَسْأَلَةٌ

وَلَا يُجْزِيهِ بَدَلَ مَا ذَكَرْنَا: صَدَقَةٌ، وَلَا هَدْيٌ، وَلَا قِيمَةٌ، وَلَا شَيْءٌ سِوَاهُ أَصْلًا، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ غَيْرَ مَا ذَكَرْنَا، فَمَنْ أَوْجَبَ فِي ذَلِكَ قِيمَةً فَقَدْ تَعَدَّى حُدُودَ اللَّهِ: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] وَقَدْ شَرَعَ مِنْ الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

[مَسْأَلَةٌ حَنِثَ وَهُوَ قَادِرٌ عَلَى الْكَفَّارَة ثُمَّ افْتَقَرَ]

١١٨١ - مَسْأَلَةٌ

وَمَنْ حَنِثَ وَهُوَ قَادِرٌ عَلَى الْإِطْعَامِ، أَوْ الْكِسْوَةِ، أَوْ الْعِتْقِ، ثُمَّ افْتَقَرَ فَعَجَزَ عَنْ كُلِّ ذَلِكَ: لَمْ يُجْزِهِ الصَّوْمُ أَصْلًا، لِأَنَّهُ قَدْ تَعَيَّنَ عَلَيْهِ حِينَ وُجُوبِ الْكَفَّارَةِ أَحَدُ هَذِهِ الْوُجُوهِ بِنَصِّ الْقُرْآنِ، فَلَا يَجُوزُ سُقُوطُ مَا أَلْزَمَهُ اللَّهُ تَعَالَى يَقِينًا بِدَعْوَى كَاذِبَةٍ، لَكِنْ يُمْهَلُ حَتَّى يَجِدَ أَوْ لَا يَجِدَ، فَاَللَّهُ تَعَالَى وَلِيُّ حِسَابِهِ؛ وَأَمَّا مَا لَمْ يَحْنَثْ فَلَمْ يَتَعَيَّنْ عَلَيْهِ وُجُوبُ كَفَّارَةٍ بَعْدُ إلَّا أَنْ يُعَجِّلَهَا فَتُجْزِيهِ عَلَى مَا قَدَّمْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

ing. As for one who has not broken the oath, no expiation is yet binding unless he hastens to perform it, in which case it will expiate for him as we previously established. And success comes from Allah, the Exalted.

L18616 **A jurisprudential issue pertaining to one who breaches an oath while he is incapable of performing the expiation.**

L18617 Question 1182 -

L18618 Whoever breaks an oath while being incapable of fulfilling any of those obligations—his obligation is fasting, whether he was capable of fasting at that time or not. Whenever he becomes capable, nothing but fasting suffices him. If he later attains means and becomes capable of manumission, feeding, or clothing, none of those [alternatives] suffice—only fasting does. If he dies without fasting, his guardian fasts on his behalf, or someone is hired from his estate to fast for him. This is because fasting's obligation was conclusively established upon him when he broke the oath, and its obligation became irrevocably binding. Thus, it is impermissible to nullify what Allah the Exalted has certainly and beyond doubt obligated upon him on the basis of a false claim.

L18619 Some of those who held this opinion stated: If he finds the means before he begins fasting or before completing the fast, his ruling shifts to the emancipation of a slave, feeding the poor, or providing clothing to the needy.

L18620–18622 Abu Muhammad said: This is a void claim. I wish I knew - what is the difference between being rendered insolvent after... If he becomes financially able, is it transferred to the permissibility or obligation of fasting regarding him? And between when he becomes financially able after having been unable—is it then transferred to the obligation of manumission, feeding, or clothing? If they argue: "Fasting was only imposed on him due to the necessity of its absence," we reply: Whoever claims this has lied and falsely attributed to Allah the Exalted, for we find Allah substituted fasting in place of manumission in the expiation for dhihār and accidental killing—not feeding. Then He replaced fasting with feeding for those incapable of fasting in dhihār's expiation, yet did not substitute feeding in place of fasting for the

[مَسْأَلَةٌ حَنِثَ وَهُوَ عَاجِزٌ عَنْ الْكَفَّارَةِ]

١١٨٢ - مَسْأَلَةٌ

وَمَنْ حَنِثَ وَهُوَ عَاجِزٌ عَنْ كُلِّ ذَلِكَ -: فَفَرْضُهُ الصَّوْمُ قَدَرَ عَلَيْهِ حِينَئِذٍ أَوْ لَمْ يَقْدِرْ، مَتَى قَدَرَ فَلَا يُجْزِيهِ إلَّا الصَّوْمُ، فَإِنْ أَيْسَرَ بَعْدَ ذَلِكَ وَقَدَرَ عَلَى الْعِتْقِ، وَالْإِطْعَامِ، وَالْكِسْوَةِ لَمْ يُجْزِهِ شَيْءٌ مِنْ ذَلِكَ إلَّا الصَّوْمَ، فَإِنْ مَاتَ وَلَمْ يَصُمْ صَامَ عَنْهُ وَلِيُّهُ، أَوْ اُسْتُؤْجِرَ عَنْهُ مِنْ رَأْسِ مَالِهِ مَنْ يَصُومُ عَنْهُ، لِأَنَّ الصَّوْمَ قَدْ تَعَيَّنَ عَلَيْهِ وُجُوبُهُ حِينَ حَنِثَ، وَصَحَّ لُزُومُهُ إيَّاهُ فَلَا يَجُوزُ سُقُوطُ مَا أَوْجَبَهُ اللَّهُ تَعَالَى عَلَيْهِ يَقِينًا، لَا شَكَّ فِيهِ بِدَعْوَى كَاذِبَةٍ.

وَقَالَ بَعْضُ الْقَائِلِينَ: إنْ أَيْسَرَ قَبْلَ أَنْ يَصُومَ، أَوْ قَبْلَ أَنْ يُتِمَّ الصَّوْمَ: انْتَقَلَ حُكْمُهُ إلَى الْعِتْقِ، أَوْ الْإِطْعَامِ، أَوْ الْكِسْوَةِ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ دَعْوَى فَاسِدَةٌ، وَلَيْتَ شِعْرِي مَا الْفَرْقُ بَيْنَ أَنْ يُعْسِرَ بَعْدَ أَنْ يُوسِرَ فَلَا يَنْقُلُونَهُ إلَى جَوَازِ الصِّيَامِ عَنْهُ، أَوْ وُجُوبِهِ عَلَيْهِ، وَبَيْنَ أَنْ يُوسِرَ بَعْدَ مَا يُعْسِرُ فَيَنْقُلُونَهُ إلَى وُجُوبِ الْعِتْقِ، أَوْ الْإِطْعَامِ، أَوْ الْكِسْوَةِ؟ فَإِنْ قَالُوا: إنَّمَا لَزِمَهُ الصِّيَامُ لِضَرُورَةِ عَدَمِهِ؟ قُلْنَا: كَذَبَ مَنْ قَالَ هَذَا، وَأَخْبَرَ عَنْ اللَّهِ تَعَالَى بِالْبَاطِلِ، وَقَدْ وَجَدْنَا اللَّهَ تَعَالَى عَوَّضَ مِنْ الْعِتْقِ فِي كَفَّارَةِ الظِّهَارِ، وَقَتْلِ الْخَطَإِ -: الصِّيَامَ لَا الْإِطْعَامَ، ثُمَّ عَوَّضَ مِنْ الصِّيَامِ مَنْ لَا يَقْدِرُ عَلَيْهِ فِي كَفَّارَةِ الظِّهَارِ الْإِطْعَامَ وَلَمْ يُعَوِّضْ مِنْهُ فِي كَفَّارَةِ الْقَتْلِ

expiation of killing. In atonement for hunting, He granted a choice between feeding, fasting, or offering a sacrificial animal. Allah the Exalted does what He wills—"He is not questioned about what He does" [21:23], and "He decrees with none can repeal His decree" [13:41]. It is impermissible to alter what Allah has obligated into something other than what He ordained.[19]

إِطْعَامًا، وَخَيَّرَ فِي جَزَاءِ الصَّيْدِ بَيْنَ الْإِطْعَامِ وَالصِّيَامِ، وَالْهَدْيِ، وَاللَّهُ تَعَالَى يَفْعَلُ مَا يَشَاءُ {لا يُسْأَلُ عَمَّا يَفْعَلُ} [الأنبياء: ٢٣] و {يَحْكُمُ لا مُعَقِّبَ لِحُكْمِهِ} [الرعد: ٤١] وَلَا يَجُوزُ تَغْيِيرُ مَا أَوْجَبَ اللَّهُ تَعَالَى عَنْ مَا أَوْجَبَهُ.

L18623 Those who differ from us have disagreed regarding this matter. Abū Ḥanīfa and his companions said: If one is able to provide food, clothing, or free a slave before completing all three days of fasting, the fast is nullified, and he becomes obligated to fulfill one of what he was capable of from that.

وَاخْتَلَفَ الْمُخَالِفُونَ لَنَا فِي هَذَا -: فَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: إِنْ قَدَرَ عَلَى الْإِطْعَامِ، أَوْ الْكِسْوَةِ، أَوْ الْعِتْقِ، قَبْلَ أَنْ يُتِمَّ جَمِيعَ صِيَامِ الثَّلَاثَةِ الْأَيَّامِ: بَطَلَ حُكْمُ الصَّوْمِ، وَلَزِمَهُ أَحَدُ مَا قَدَرَ عَلَيْهِ مِنْ ذَلِكَ.

L18624 Al-Hakam ibn Utaybah, Ibrāhīm al-Nakhaʿī, and Sufyān al-Thawrī said: If one has fasted two complete days, they fast only the third day. But if they have not fasted the full two days, they are no longer bound by the ruling of fasting and must instead fulfill one of what they are capable of from those [options].

قَالَ الْحَكَمُ بْنُ عُتَيْبَةَ وَإِبْرَاهِيمُ النَّخَعِيُّ، وَسُفْيَانُ الثَّوْرِيُّ: إِنْ كَانَ قَدْ أَتَمَّ صِيَامَ يَوْمَيْنِ صَامَ الْيَوْمَ الثَّالِثَ فَقَطْ، وَإِنْ كَانَ لَمْ يَصُمْ تَمَامَ الْيَوْمَيْنِ انْتَقَلَ عَنْ حُكْمِ الصَّوْمِ وَلَزِمَهُ أَحَدُ مَا قَدَرَ عَلَيْهِ مِنْ ذَلِكَ.

L18625 Others said: If he has completed a single day of fasting, he must proceed to fast the remaining two days, and it is valid for him. But if he has not completed a single day of fasting, he is no longer subject to the ruling of fasting and must undertake one of the obligations he is capable of from that. This is the opinion of Ahmad ibn Hanbal, Ishaq, and one of the two positions held by al-Shafiʿi.

وَقَالَ آخَرُونَ: إِنْ كَانَ قَدْ تَمَّ لَهُ صِيَامُ يَوْمٍ وَاحِدٍ تَمَادَى عَلَى صِيَامِ الْيَوْمَيْنِ الْبَاقِيَيْنِ وَأَجْزَأَهُ، وَإِنْ كَانَ لَمْ يَتِمَّ لَهُ صِيَامُ يَوْمٍ وَاحِدٍ انْتَقَلَ عَنْ حُكْمِ الصَّوْمِ وَلَزِمَهُ أَحَدُ مَا قَدَرَ عَلَيْهِ مِنْ ذَلِكَ - هُوَ قَوْلُ أَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ.

L18626 Mālik said: If one has begun the fast and then becomes financially capable, they should continue their fast. But if they have not begun it, the obligation to fast is nullified, and they must instead free a slave, provide clothing, or feed—and this is the view of al-Ḥasan and ʿAṭāʾ.

وَقَالَ مَالِكٌ: إِنْ دَخَلَ فِي الصَّوْمِ ثُمَّ أَيْسَرَ فَلْيَتَمَادَ فِي صَوْمِهِ، وَإِنْ لَمْ يَدْخُلْ فِيهِ بَطَلَ حُكْمُ الصَّوْمِ وَانْتَقَلَ إِلَى الْعِتْقِ، أَوْ الْكِسْوَةِ، أَوْ الْإِطْعَامِ - وَهُوَ قَوْلُ الْحَسَنِ، وَعَطَاءٍ.

L18627 And Allah, the Most High, said: "If it had been from other than Allah, they would have found within it much inconsistency" [An-Nisa 82].[20]

وَقَالَ اللَّهُ تَعَالَى: {وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ اخْتِلافًا كَثِيرًا} [النساء: ٨٢].

L18628–18630 And these are statements in which there is no Quranic text or *Sunnah*: thus it becomes evident that they are mere opinions, with no distinction

[19] **Qur'an references (L18620):** Qur'an 21:23 (Al-Anbya); Qur'an 13:41 (Ar-Ra'd).
[20] **Qur'an references (L18627):** Qur'an 4:82 (An-Nisa).

between them. The ruling applies between his left before he begins the fast and his left after he has begun it. The ruling applies solely to the state in which Allah the Exalted has obligated upon him what He has obligated.

وَهَذِهِ أَقْوَالٌ لَا نَصَّ قُرْآنٍ فِيهَا وَلَا سُنَّةٍ -: فَصَحَّ أَنَّهَا آرَاءٌ مُجَرَّدَةٌ، وَلَا فَرْقَ بَيْنَ يَسَارِهِ قَبْلَ أَنْ يَشْرَعَ فِي الصَّوْمِ، وَبَيْنَ يَسَارِهِ بَعْدَ أَنْ يَشْرَعَ فِيهِ، وَإِنَّمَا الْحُكْمُ لِلْحَالِ الَّتِي أَوْجَبَ اللَّهُ تَعَالَى فِيهَا عَلَيْهِ مَا أَوْجَبَ.

L18631 We ask all of them regarding one who breaks an oath while in hardship: Is there an expiation prescribed by Allah upon him, or is there no such expiation incumbent from Allah—with one of these two necessarily being the case? Among their doctrines is the assertion that Allah has indeed prescribed an expiation incumbent upon him—for to claim otherwise would contradict the Quran's explicit text without proof. Since the expiation remains binding upon him without exception, we ask them: What is it? If they say, "It is what Allah prescribed in the Quran," we respond: You have spoken truthfully. Having acknowledged this, how then do you deem it waived upon his subsequent solvency when this is not found in the Quran nor the Sunnah? Such a ruling is undoubtedly invalid.

وَنَسْأَلُهُمْ كُلَّهُمْ عَمَّنْ حَنِثَ وَهُوَ مُعْسِرٌ: هَلْ عَلَيْهِ لِلَّهِ تَعَالَى كَفَّارَةٌ مُفْتَرَضَةٌ؟ أَمْ لَيْسَ لِلَّهِ تَعَالَى عَلَيْهِ كَفَّارَةٌ مُفْتَرَضَةٌ، وَلَا بُدَّ مِنْ أَحَدِهِمَا؟ فَمِنْ قَوْلِهِمْ: إِنَّ لِلَّهِ تَعَالَى عَلَيْهِ كَفَّارَةً مُفْتَرَضَةً - وَلَوْ قَالُوا: غَيْرَ هَذَا لَخَالَفُوا نَصَّ الْقُرْآنِ بِلَا بُرْهَانٍ، فَإِذْ الْكَفَّارَةُ عَلَيْهِ وَلَا بُدَّ، فَنَسْأَلُهُمْ مَا هِيَ؟ فَإِنْ قَالُوا: هِيَ الَّتِي افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ فِي الْقُرْآنِ؟ قُلْنَا: صَدَقْتُمْ، فَإِذْ قَدْ أَقْرَرْتُمْ بِذَلِكَ فَمِنْ أَيْنَ سَقَطَتْ عِنْدَكُمْ بِيَسَارِهِ بَعْدَ ذَلِكَ، وَلَيْسَ هَذَا فِي الْقُرْآنِ وَلَا فِي السُّنَّةِ؟ وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ بِلَا شَكٍّ.

L18632 And if they say, "It is not the one which Allah the Exalted has obligated upon him," or they divide, they would be making baseless claims, and we have sufficed them in their burden—and all praise belongs to Allah the Exalted.

وَإِنْ قَالُوا: هِيَ غَيْرُ الَّتِي افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ، أَوْ قَسَمُوا كَانُوا قَائِلِينَ بِلَا بُرْهَانٍ، وَكَفَوْنَا مُؤْنَتَهُمْ - وَلِلَّهِ تَعَالَى الْحَمْدُ -.

L18633 And this opinion of ours is the opinion of Abū Sulaymān and his companions.

وَقَوْلُنَا هَذَا هُوَ قَوْلُ أَبِي سُلَيْمَانَ وَأَصْحَابِهِ.

L18634 **A question regarding what suffices in manumission in the expiation for an oath.**

[مَسْأَلَةٌ مَا يُجْزِئُ فِي الْعِتْقِ فِي كَفَّارَةِ الْيَمِينِ]

L18635 1183 – Issue

١١٨٣ - مَسْأَلَةٌ

L18636 The following are valid for manumission in all such cases: the disbeliever, the believer, the minor, the adult, the physically impaired, the unimpaired, the male, the female, the child of adultery, the domestic slave, the leased slave, the pawned slave, the umm walad (a slave mother who has borne her master's child), the female slave to be freed upon the master's death, the male slave to be freed upon the master's death, the one whose manumission is vowed, the one to be freed after a term, and the mukatab (a slave contracted to

وَيُجْزِئُ فِي الْعِتْقِ فِي كُلِّ ذَلِكَ: الْكَافِرُ، وَالْمُؤْمِنُ، وَالصَّغِيرُ، وَالْكَبِيرُ، وَالْمَعِيبُ، وَالسَّالِمُ، وَالذَّكَرُ، وَالْأُنْثَى، وَوَلَدُ الزِّنَى، وَالْمُخْدَمُ، وَالْمُؤَاجَرُ، وَالْمَرْهُونُ، وَأُمُّ الْوَلَدِ، وَالْمُدَبَّرَةُ، وَالْمُدَبَّرُ، وَالْمَنْذُورُ عِتْقُهُ، وَالْمُعْتَقُ إِلَى أَجَلٍ، وَالْمُكَاتَبُ مَا لَمْ يُؤَدِّ شَيْئًا، فَإِنْ

buy his freedom) who has not paid anything. If he has paid any part of his manumission contract, whether little or much, it is not valid for that purpose. Neither does the manumission of someone imposed on a person by a compulsory legal judgment suffice, nor does freeing half of two slaves.

كَانَ أَدَّى مِنْ كِتَابَتِهِ مَا قَلَّ أَوْ كَثُرَ لَمْ يُجْزِ فِي ذَلِكَ، وَلَا يُجْزِئُ مَنْ يُعْتَقُ عَلَى الْمَرْءِ بِحُكْمٍ وَاجِبٍ، وَلَا نِصْفَا رَقَبَتَيْنِ.

L18637 We have already mentioned all of that in "the book of fasting," so it suffices to preclude repeating it.

وَقَدْ ذَكَرْنَا كُلَّ ذَلِكَ فِي " كِتَابِ الصِّيَامِ " فَأَغْنَى عَنْ إِعَادَتِهِ.

L18638 The mainstay of the proof in this matter is the statement of Allah, the Exalted: "or the freeing of a slave" [Al-Ma'idah: 89]. He did not specify one slave over another, "and your Lord is not forgetful" [Maryam: 64].[21]

وَعُمْدَةُ الْبُرْهَانِ فِي ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {أَوْ تَحْرِيرُ رَقَبَةٍ} [المائدة: ٨٩] . فَلَمْ يَخُصَّ رَقَبَةً مِنْ رَقَبَةٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L18639 If they argue: "We have analogized the freeing of a slave in this matter to the freeing of a slave in [cases requiring] expiation for killing, where only a Muslim female slave suffices?" We respond: "Then apply the same analogy to substituting food provision for the poor within this ruling."

فَإِنْ قَالُوا: قِسْنَا الرَّقَبَةَ فِي هَذَا عَلَى رَقَبَةِ الْقَتْلِ لَا تُجْزِئُ إِلَّا مُؤْمِنَةٌ؟ قُلْنَا: فَقِيسُوهَا عَلَيْهَا فِي تَعْوِيضِ الْإِطْعَامِ مِنْهَا.

L18640–18642 If they say, "We will not do this, for we would be opposing the Quran and adding to its rulings," we respond: Your stipulation in the expiation for an oath—that it must be performed by a believer—inevitably constitutes opposition to the Quran and an addition beyond its text. As for what pertains to it, if analogy is permissible in one of the two rulings, it is permissible in the other; and if impermissible in one, it is impermissible in the other. If they cite as evidence the report wherein a man said to the Messenger of Allah (peace be upon him), "I slapped the face of my slave girl, and I am obligated to emancipate a slave—should I emancipate her?" The Messenger of Allah (peace be upon him) asked her, "Where is Allah?" She replied, "In heaven." He asked, "Who am I?" She answered, "The Messenger of Allah." Thereupon he (peace be upon him) said, "Emancipate her, for she is a believer." This provides no proof for them, since—by the explicit text of the report—it was neither an expiation for an oath, nor for intercourse during Ramaḍān, nor for *ẓihār*.

فَإِنْ قَالُوا: لَا نَفْعَلُ، لِأَنَّنَا نُخَالِفُ الْقُرْآنَ وَنَزِيدُ عَلَى مَا فِيهِ؟ قُلْنَا: وَزِيَادَتُكُمْ فِي كَفَّارَةِ الْيَمِينِ أَنْ تَكُونَ مُؤْمِنَةً وَلَا بُدَّ خِلَافٌ لِلْقُرْآنِ وَزِيَادَةٌ عَلَى مَا فِيهِ فَإِنْ كَانَ الْقِيَاسُ فِي أَحَدِ الْحُكْمَيْنِ جَائِزًا فَهُوَ فِي الْآخَرِ جَائِزٌ، وَإِنْ كَانَ فِي أَحَدِهِمَا غَيْرَ جَائِزٍ فَهُوَ فِي الْآخَرِ غَيْرُ جَائِزٍ. فَإِنْ احْتَجُّوا بِالْخَبَرِ الَّذِي فِيهِ: «إِنَّ الْقَائِلَ قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّهُ لَطَمَ وَجْهَ جَارِيَةٍ لَهُ وَعَلَيَّ رَقَبَةٌ أَفَأُعْتِقُهَا؟ فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَيْنَ اللَّهُ؟ قَالَتْ: فِي السَّمَاءِ، قَالَ: مَنْ أَنَا؟ قَالَتْ: رَسُولُ اللَّهِ، فَقَالَ - عَلَيْهِ السَّلَامُ -: أَعْتِقْهَا فَإِنَّهَا مُؤْمِنَةٌ» فَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهَا - بِنَصِّ الْخَبَرِ - لَمْ تَكُنْ كَفَّارَةَ يَمِينٍ، وَلَا وَطْءٍ فِي رَمَضَانَ، وَلَا عَنْ ظِهَارٍ.

L18643 They permit the use of a disbelieving female slave for the vowed slave that

وَهُمْ يُجِيزُونَ الْكَافِرَةَ فِي الرَّقَبَةِ الْمَنْذُورَةِ عَلَى الْإِنْسَانِ، فَقَدْ خَالَفُوا مَا فِي هَذَا الْخَبَرِ، وَاحْتَجُّوا بِهِ فِيمَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ.

[21] **Qur'an references (L18638):** Qur'an 5:89 (Al-Ma'idah); Qur'an 19:64 (Maryam).

a person is obligated to free, thus contradicting the content of this ḥadīth, and they cite it as evidence for a matter that it does not address at all.

L18644 Moreover, it does not state that he—peace be upon him—said: "Only a believing woman is valid." Rather, it states: "Free her, for she is a believer." We do not reject the manumission of a believing woman, nor does it state that manumitting a disbelieving woman is prohibited. Therefore, we do not prohibit freeing a disbelieving woman.

L18645 If it is said: You have narrated this report through the chain of Hammad ibn Salamah from Muhammad ibn ʻAmr from Abu Salamah that Ash-Sharid said: "O Messenger of Allah, my mother instructed me to free a slave on her behalf, and I have a black female slave. Should I free her?" The Prophet (peace be upon him) said to him: "Bring her here." The Prophet (peace be upon him) then asked her: "Who is your Lord?" She replied: "Allah." He asked: "Who am I?" She replied: "The Messenger of Allah." He said: "Free her, for she is a believer." This constitutes evidence against their position, not in their favor, because they permit manumitting a disbelieving slave through a bequest. As for us, had the chain been sound, we would have ruled accordingly regarding the slave whose manumission is bequeathed, as it was reported.

L18646 Some of them said: Just as a disbeliever is not given from Zakat, similarly a disbeliever should not be freed in obligatory contexts? We replied: This is *qiyas*, and all *qiyas* is invalid. Moreover, this constitutes the epitome of falsehood, for it is a claim that can only be met with denial and rejection, since Allah the Exalted has not stated this, nor has His Messenger—peace be upon him—.

L18647–18648 It has been narrated to us via Ibn Abī Shaybah from Wakīʿ from Sufyān al-Thawrī from Ibn Abī Najīḥ from ʿAṭāʾ, who said: A Jew or a Christian suffices for the expiation of an oath.

L18649 And via the route of Jarīr, on the authority of al-Mughīrah, on the authority of Ibrāhīm: a similar narration is likewise reported.

L18650 And through the chain of Ibn Abi Shaybah from ʿAbd al-Raḥmān ibn Mahdī

وَأَيْضًا: فَإِنَّهُ لَيْسَ فِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: لَا تُجْزِئُ إِلَّا مُؤْمِنَةٌ، وَإِنَّمَا فِيهِ: أَعْتِقْهَا فَإِنَّهَا مُؤْمِنَةٌ، وَنَحْنُ لَا نُنْكِرُ عِتْقَ الْمُؤْمِنَةِ، وَلَيْسَ فِيهِ أَنْ لَا يَجُوزَ عِتْقُ الْكَافِرَةِ، فَنَحْنُ لَا نَمْنَعُ مِنْ عِتْقِهَا.

فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ هَذَا الْخَبَرَ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي سَلَمَةَ «أَنَّ الشَّرِيدَ قَالَ: يَا رَسُولَ اللَّهِ إِنَّ أُمِّي أَمَرَتْنِي أَنْ أُعْتِقَ عَنْهَا رَقَبَةً، وَعِنْدِي أَمَةٌ سَوْدَاءُ أَفَأُعْتِقُهَا؟ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ادْعُ بِهَا؟ فَقَالَ لَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ رَبُّكِ؟ قَالَتْ: اللَّهُ، قَالَ: فَمَنْ أَنَا؟ قَالَتْ: رَسُولُ اللَّهِ قَالَ: أَعْتِقْهَا فَإِنَّهَا مُؤْمِنَةٌ» فَهَذَا عَلَيْهِمْ لَا لَهُمْ لِأَنَّهُمْ يُجِيزُونَ فِي رَقَبَةِ الْوَصِيَّةِ كَافِرَةً، وَأَمَّا نَحْنُ فَلَوْ انْسَنَدَ لَقُلْنَا بِهِ فِي الْمُوصَى بِعِتْقِهَا كَمَا وَرَدَ.

وَقَالَ بَعْضُهُمْ: كَمَا لَا يُعْطَى مِنْ الزَّكَاةِ كَافِرٌ كَذَلِكَ لَا يُعْتَقُ فِي الْفَرْضِ كَافِرٌ؟ قُلْنَا: هَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ هَذَا مِنْهُ عَيْنُ الْبَاطِلِ، لِأَنَّهُ دَعْوَى لَا تُقَابَلُ إِلَّا بِالتَّكْذِيبِ وَالرَّدِّ فَقَطْ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَقُلْ ذَلِكَ وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -.

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ عَطَاءٍ قَالَ: يُجْزِئُ الْيَهُودِيُّ، وَالنَّصْرَانِيُّ، فِي كَفَّارَةِ الْيَمِينِ.

وَمِنْ طَرِيقِ جَرِيرٍ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ مِثْلُهُ أَيْضًا.

from Sufyān from Jābir from al-Shaʿbī, who said: It is valid for a blind person to fulfill the *kaffārah*.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ قَالَ: يُجْزِئُ الْأَعْمَى فِي الْكَفَّارَةِ.

L18651 It is reported from Al-Ḥasan and Ṭāwūs that the *mudabbar* [a slave designated for posthumous freedom] suffices for expiation.

وَعَنْ الْحَسَنِ، وَطَاوُوسٍ: يُجْزِئُ الْمُدَبَّرُ فِي الْكَفَّارَةِ.

L18652 It is reported from al-Ḥasan, Ṭāwūs, and al-Nakhaʿī that the *umm al-walad* suffices for expiation.

وَعَنْ الْحَسَنِ، وَطَاوُوسٍ، وَالنَّخَعِيِّ: تُجْزِئُ أُمُّ الْوَلَدِ فِي الْكَفَّارَةِ.

L18653 As for the child of zina: It has been narrated to us through the chain of Yazīd ibn Abī Ziyād from Mujāhid from ʿĀʾishah, the Mother of the Believers, who said: "Is giving three dates in charity or providing a whip in the cause of Allah, the Exalted, not more beloved to me than freeing a child of zina?"

وَأَمَّا وَلَدُ الزِّنَى -: فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ يَزِيدَ بْنِ أَبِي زِيَادٍ عَنْ مُجَاهِدٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: لَأَنْ أَتَصَدَّقَ بِثَلَاثِ تَمَرَاتٍ، أَوْ أُمَتِّعَ بِسَوْطٍ فِي سَبِيلِ اللَّهِ تَعَالَى أَحَبُّ إلَيَّ مِنْ أَنْ أُعْتِقَ وَلَدَ زِنًى؟ .

L18654 Narrated via the chain of Abu Hurairah that he said to his slave: "Were it not that you are an illegitimate child, I would have freed you."

وَمِنْ طَرِيقِ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ: لِعَبْدٍ لَهُ: لَوْلَا أَنَّك وَلَدُ زِنًى لَأَعْتَقْتُك.

L18655 An-Nakhaʿī and Ash-Shaʿbī said: The child of zinā cannot fulfill a religiously obligated manumission.

وَقَالَ النَّخَعِيُّ، وَالشَّعْبِيُّ: لَا يُجْزِئُ وَلَدُ الزِّنَى فِي رَقَبَةٍ وَاجِبَةٍ.

L18656 It is narrated from Ibn ʿUmar that he manumitted an illegitimate child.

وَعَنْ ابْنِ عُمَرَ أَنَّهُ أَعْتَقَ وَلَدَ زِنًى.

L18657 Those who prohibited it cited as evidence a report we narrated through the chain of Ahmad ibn Shuʿayb: Al-ʿAbbas ibn Muhammad ad-Dawraqi narrated to us, Al-Fadl ibn Dukayn narrated to us, Isra'il narrated from Zayd ibn Jubayr from Abu Yazid ad-Dabbi from Maymunah, the freed female slave of the Messenger of Allah (peace and blessings be upon him), from the Prophet (peace be upon him): "He was asked about the illegitimate child, and he said: 'There is no good in him. Two sandals with which I wage jihad—or he said, "equip myself"—are dearer to me than freeing an illegitimate child.'"

وَاحْتَجَّ مَنْ مَنَعَ مِنْهُ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا الْعَبَّاسُ بْنُ مُحَمَّدٍ الدَّوْرَقِيُّ نا الْفَضْلُ بْنُ دُكَيْنٍ نا إسْرَائِيلُ عَنْ زَيْدِ بْنِ جُبَيْرٍ عَنْ أَبِي يَزِيدَ الضَّبِّيِّ عَنْ مَيْمُونَةَ مَوْلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ -: أَنَّهُ سُئِلَ عَنْ وَلَدِ الزِّنَى فَقَالَ: لَا خَيْرَ فِيهِ، نَعْلَانِ أُجَاهِدُ أَوْ قَالَ أُجَهِّزُ بِهِمَا أَحَبُّ إلَيَّ مِنْ أَنْ أُعْتِقَ وَلَدَ الزِّنَى» .

L18658 Abu Muhammad said: Isra'il is weak, Abu Yazid is obscure as a narrator, and if it were authentic, we would have accepted it.

قَالَ أَبُو مُحَمَّدٍ: إسْرَائِيلُ ضَعِيفٌ، وَأَبُو يَزِيدَ مَجْهُولٌ، وَلَوْ صَحَّ لَقُلْنَا بِهِ.

L18659 It was narrated to us via Ibn Abī Shaybah's chain: he reported from Hushaym, who reported from al-Mughīrah, who reported from Ibrāhīm and

al-Shaʿbī. Both said together: “A child born of illicit intercourse does not suffice for fulfilling any obligatory [religious duty].”

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا هُشَيْمٌ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ، وَالشَّعْبِيِّ قَالَا جَمِيعًا: لَا يُجْزِئُ فِي شَيْءٍ مِنْ الْوَاجِبِ وَلَدُ زِنًى.

L18660 Abu Muhammad said: Tawus and Muhammad ibn Ali permitted it. Nor may two halves of two slaves be designated as one slave. And whoever emancipates a slave under a judicial ruling, but not for the purpose of expiation, such emancipation does not fulfill the expiation requirement.

قَالَ أَبُو مُحَمَّد: وَأَجَازَهُ طَاوُوسٌ، وَمُحَمَّدُ بْنُ عَلِيٍّ. وَلَا يُسَمَّى نِصْفَا رَقَبَتَيْنِ رَقَبَةً - وَمَنْ أَعْتَقَ بِحُكْمٍ فَلَمْ يُعْتِقْ عَنْ الْكَفَّارَةِ فَلَا يُجْزِئُ فِيهَا -.

L18661 And all divine success is from Allah, the Exalted.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18662–18663 Issue: It is not valid for the atonement to feed a single poor person multiple times.

[مَسْأَلَة لَا يُجْزِئُ فِي الْكَفَّارَة إطْعَامُ مِسْكِينٍ وَاحِدٍ يُرْدَدُ عَلَيْهِ]

L18664 Legal Issue

مَسْأَلَةٌ

L18665 Feeding one needy person or fewer than ten by repeatedly giving to them is not valid, because Allah the Exalted has obligated ten needy people, and this contradicts Allah’s command.

وَلَا يُجْزِئُ إطْعَامُ مِسْكِينٍ وَاحِدٍ أَوْ مَا دُونَ الْعَشَرَةِ يُرْدَدُ عَلَيْهِمْ، لِأَنَّ اللَّهَ تَعَالَى افْتَرَضَ عَشَرَةَ مَسَاكِينَ، وَهُنَا خِلَافُ أَمْرِ اللَّهِ تَعَالَى.

L18666 Abu Hanifah said it is permissible, and it has been reported to us that a narration like the saying of Abu Hanifah [has been transmitted] from Al-Hasan. Al-Shaʿbi disagreed with him. Only the same type of food that a person feeds his family suffices. If he gives his family flour, he must give the poor flour; if he gives his family grain, he must give the poor grain; if he gives his family bread, he must give the poor bread. Whatever he feeds his family, he must feed the poor from the same. Anything else does not suffice at all, as it contradicts the text of the Quran. He must give from the same quality and moderate measure—neither the highest nor the lowest—as Allah, the Almighty and Majestic, has stated. People have differed regarding this: It is authentically reported from ʿUmar ibn Al-Khattab concerning the expiation for breaking an oath: “For every poor person: half a saʿ of wheat, or a saʿ of dates, or barley.” A similar statement is reported from ʿAli.

وَقَالَ أَبُو حَنِيفَةَ يَجُوزُ - وَرُوِّينَا مِثْلَ قَوْلِ أَبِي حَنِيفَةَ عَنْ الْحَسَنِ، وَخَالَفَهُ الشَّعْبِيُّ، وَلَا يُجْزِئُ إلَّا مِثْلُ مَا يُطْعِمُ الْإِنْسَانُ أَهْلَهُ، فَإِنْ كَانَ يُعْطِي أَهْلَهُ الدَّقِيقَ، فَلْيُعْطِ الْمَسَاكِينَ الدَّقِيقَ، وَإِنْ كَانَ يُعْطِي أَهْلَهُ الْحَبَّ فَلْيُعْطِ الْمَسَاكِينَ الْحَبَّ، وَإِنْ كَانَ يُعْطِي أَهْلَهُ الْخُبْزَ، فَلْيُعْطِ الْمَسَاكِينَ الْخُبْزَ، وَمِنْ أَيِّ شَيْءٍ أَطْعَمَ أَهْلَهُ فَمِنْهُ يُطْعِمُ الْمَسَاكِينَ، وَلَا يُجْزِئُهُ غَيْرُ ذَلِكَ أَصْلًا، لِأَنَّهُ خِلَافُ نَصِّ الْقُرْآنِ وَيُعْطِي مِنْ الصِّفَةِ، وَالْمِكْيَالِ الْوَسَطِ - لَا الْأَعْلَى وَلَا الْأَدْنَى - كَمَا قَالَ عَزَّ وَجَلَّ. وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَصَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ فِي كَفَّارَةِ الْيَمِينِ: لِكُلِّ مِسْكِينٍ نِصْفُ صَاعِ حِنْطَةٍ، أَوْ صَاعُ تَمْرٍ، أَوْ شَعِيرٍ -. وَعَنْ عَلِيٍّ مِثْلُهُ.

L18667 And it was narrated to us from Ibn ʿUmar: “For every poor person, half a ṣāʿ of wheat.” The same was narrated from Zayd ibn Thābit.

وَرُوِّينَا عَنْ ابْنِ عُمَرَ: لِكُلِّ مِسْكِينٍ نِصْفُ صَاعِ حِنْطَةٍ. وَعَنْ زَيْدِ بْنِ ثَابِتٍ مِثْلُهُ.

L18668 From Aisha, the Mother of the Believers: For every poor person, half a *sa‘* of wheat or a *sa‘* of dates. This is the view of Ibrāhīm al-Nakha‘ī and Ibn Sīrīn. The latter added: or a cooked dish [prepared with fat/oil].

وَعَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: لِكُلِّ مِسْكِينٍ نِصْفُ صَاعِ بُرٍّ أَوْ صَاعُ تَمْرٍ - وَهُوَ قَوْلُ إِبْرَاهِيمَ النَّخَعِيِّ، وَابْنِ سِيرِينَ، وَقَالَ: أَوْ أَكْلَةٌ مَأْدُومَةٌ.

L18669 Al-Ḥasan said: A makkūk of wheat and a makkūk of dates for every needy person.

وَقَالَ الْحَسَنُ: مَكُّوكُ حِنْطَةٍ، وَمَكُّوكُ تَمْرٍ لِكُلِّ مِسْكِينٍ.

L18670 The *makkūk* is half a *ṣā‘*.

وَالْمَكُّوكُ نِصْفُ صَاعٍ.

L18671 Al-Hasan said: If he wishes, he may feed them a meal of bread and meat. If he cannot find [that], then bread, clarified butter, and milk. If he cannot find [that], then bread, vinegar, and olive oil. If he cannot find [anything], he must fast for three days.

قَالَ الْحَسَنُ: وَإِنْ شَاءَ أَطْعَمَهُمْ أَكْلَةً خُبْزًا، وَلَحْمًا، فَإِنْ لَمْ يَجِدْ فَخُبْزًا وَسَمْنًا وَلَبَنًا، فَإِنْ لَمْ يَجِدْ فَخُبْزًا وَخَلًّا وَزَيْتًا فَإِنْ لَمْ يَجِدْ صَامَ ثَلَاثَةَ أَيَّامٍ.

L18672 Qatādah also said: a *makkūk* of dates and a *makkūk* of wheat.

وَقَالَ قَتَادَةَ أَيْضًا: مَكُّوكُ تَمْرٍ، وَمَكُّوكُ حِنْطَةٍ.

L18673 From Ibrāhīm al-Nakha‘ī: a *mudd* of wheat and a *mudd* of dates—all of this pertains to the expiation for breaking an oath.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ مُدُّ بُرٍّ، وَمُدُّ تَمْرٍ - هَذَا كُلُّهُ فِي كَفَّارَةِ الْيَمِينِ.

L18674 ‘Aṭā’ and Mujāhid said: Ten mudd for ten poor people, and two mudd for firewood and seasoning.

وَقَالَ عَطَاءٌ، وَمُجَاهِدٌ: عَشْرَةُ أَمْدَادٍ لِعَشَرَةِ مَسَاكِينَ، وَمُدَّانِ لِلْحَطَبِ، وَالْإِدَامِ.

L18675 From Al-Ḥasan and Ibn Sīrīn: He gathers them and feeds them sufficiently once.

وَعَنْ الْحَسَنِ، وَابْنِ سِيرِينَ: يَجْمَعُهُمْ فَيُشْبِعُهُمْ مَرَّةً وَاحِدَةً.

L18676 It has also been authentically reported from Sa’id ibn al-Musayyib, al-Hasan, and Qatadah: a mudd (a standardized Islamic dry measure, approximately 0.5–1 kg) of dates and a mudd of wheat [is required] for each needy person.

وَصَحَّ أَيْضًا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَالْحَسَنِ، وَقَتَادَةَ: مُدُّ تَمْرٍ وَمُدُّ حِنْطَةٍ لِكُلِّ مِسْكِينٍ.

L18677–18678 It has been authentically reported from Ibn Abbas: For every needy person - a mudd of wheat.

وَصَحَّ عَنْ ابْنِ عَبَّاسٍ: لِكُلِّ مِسْكِينٍ مُدُّ حِنْطَةٍ.

L18679 And from Zayd ibn Thabit and Ibn Umar, there is also an authentic narration similar to it.

وَعَنْ زَيْدِ بْنِ ثَابِتٍ، وَعَنْ ابْنِ عُمَرَ صَحِيحٌ مِثْلُهُ أَيْضًا.

L18680 And from ‘Aṭā’—this is the opinion of Mālik and al-Shāfi‘ī.

وَعَنْ عَطَاءٍ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ.

L18681 And it has been narrated to us from Ibn Buraidah al-Aslamī: If it was dry bread, [then it is counted as] supper and midday meal.

وَرُوِّينَا عَنْ ابْنِ بُرَيْدَةَ الْأَسْلَمِيِّ إِنْ كَانَ خُبْزًا يَابِسًا: فَعَشَاءٌ وَغَدَاءٌ.

L18682 It is reported from Ali that he would serve them breakfast and dinner—

bread, oil, and ghee—but this is not authentically narrated from them both.

وَعَنْ عَلِيٍّ يُغَدِّيهِمْ، وَيُعَشِّيهِمْ: خُبْزًا، وَزَيْتًا، وَسَمْنًا - وَلَا يَصِحُّ عَنْهُمَا.

L18683 Reported from Al-Qāsim, Sālim, Al-Shaʿbī, Al-Nakhaʿī, and others: midday meal and evening meal.

وَعَنْ الْقَاسِمِ، وَسَالِمٍ، وَالشَّعْبِيِّ، وَالنَّخَعِيِّ، وَغَيْرِهِمْ: غَدَاءٌ، وَعَشَاءٌ.

L18684 Those who held this opinion cited as evidence what we have narrated through the chain of Ibn Abī Shaybah: from Yaḥyā ibn Yaʿlā, from Abū al-Muḥayyāh, from Layth ibn Abī Sulaym, who said: Ibn Buraidah said: The Messenger of Allah (peace and blessings be upon him) said: "If it is dry bread, then [it suffices as] lunch and dinner." This narration is mursal, and Layth is weak.

وَاحْتَجَّ مَنْ ذَهَبَ إلَى هَذَا -: بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ يَعْلَى نا أَبُو الْمُحَيَّاةِ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ قَالَ: قَالَ ابْنُ بُرَيْدَةَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنْ كَانَ خُبْزًا يَابِسًا فَغَدَاءٌ وَعَشَاءٌ» وَهَذَا مُرْسَلٌ وَلَيْثٌ ضَعِيفٌ.

L18685 Abu Hanifa said: half a *sa'* of wheat for each needy person, or a *sa'* of dates or barley. For wheat flour or its *sawiq*, half a *sa'* is given, and for barley flour and its *sawiq*, a *sa'*. If he feeds them, it must be a noon meal and an evening meal; two noon meals; two evening meals; a *suhoor* and a noon meal; or a *suhoor* and an evening meal.

وَقَالَ أَبُو حَنِيفَةَ: نِصْفُ صَاعِ بُرٍّ لِكُلِّ مِسْكِينٍ، أَوْ صَاعُ تَمْرٍ، أَوْ شَعِيرٍ، وَمِنْ دَقِيقِ الْبُرِّ وَسَوِيقِهِ نِصْفُ صَاعٍ، وَمِنْ دَقِيقِ الشَّعِيرِ وَسَوِيقِهِ صَاعٌ، فَإِنْ أَطْعَمَهُمْ: فَغَدَاءٌ، وَعَشَاءٌ - أَوْ غَدَاءٌ، وَغَدَاءٌ - أَوْ عَشَاءٌ وَعَشَاءٌ - أَوْ سَحُورٌ وَغَدَاءٌ - أَوْ سَحُورٌ وَعَشَاءٌ.

L18686 According to Mālik and al-Shāfiʿī, neither regular flour nor roasted barley/wheat meal (sawīq) suffices.

وَلَا يُجْزِئُ عِنْدَ مَالِكٍ، وَالشَّافِعِيِّ: دَقِيقٌ وَلَا سَوِيقٌ.

L18687 Abū Muḥammad said: These are differing opinions with no evidence from the Quran or Sunnah. Some of them attempted to justify their view by claiming the Messenger of Allah—peace and blessings be upon him—obligated giving half a ṣāʿ to be distributed among six destitute persons for shaving the head due to harm affecting the muḥrim. Yet this constitutes evidence against them, for the text of that report specifies half a ṣāʿ of dates for each destitute person—which contradicts their opinion.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ أَقْوَالٌ مُخْتَلِفَةٌ لَا حُجَّةَ بِشَيْءٍ مِنْهَا مِنْ قُرْآنٍ وَلَا سُنَّةٍ، وَمَوَّهَ بَعْضُهُمْ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْجَبَ فِي حَلْقِ الرَّأْسِ لِلْأَذَى لِلْمُحْرِمِ نِصْفَ صَاعٍ بَيْنَ سِتَّةِ مَسَاكِينَ - وَهَذَا حُجَّةٌ عَلَيْهِمْ، لِأَنَّ نَصَّ ذَلِكَ الْخَبَرِ نِصْفُ صَاعِ تَمْرٍ لِكُلِّ مِسْكِينٍ - وَهُوَ خِلَافُ قَوْلِهِمْ.

L18688 They also cited a report we narrated through the chain of Abū Yaḥyā Zakariyyā ibn Yaḥyā al-Sājī: from Muḥammad ibn Mūsā al-Ḥarashī, from Ziyād ibn ʿAbd Allāh, from ʿUmar ibn ʿAbd Allāh al-Thaqafī, from al-Minhāl ibn ʿAmr, from Saʿīd ibn Jubayr, from Ibn ʿAbbās, who said: "The Messenger of Allāh (may Allāh's peace and blessings be upon him) fulfilled the kaffārah with a ṣāʿ [a volumetric measure] of dates, and commanded the people to give. Whoever could not find was to give half a ṣāʿ."

وَمَوَّهُوا أَيْضًا بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي يَحْيَى زَكَرِيَّا بْنِ يَحْيَى السَّاجِيِّ نا مُحَمَّدُ بْنُ مُوسَى الْحَرَشِيُّ نا زِيَادُ بْنُ عَبْدِ اللَّهِ نا عُمَرُ بْنُ عَبْدِ اللَّهِ الثَّقَفِيُّ نا الْمِنْهَالُ بْنُ عَمْرٍو عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ «كَفَّرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِصَاعٍ مِنْ تَمْرٍ، وَأَمَرَ النَّاسَ أَنْ يُعْطُوا، فَمَنْ لَمْ يَجِدْ فَنِصْفُ صَاعٍ» .

L18689 This is a discarded narration because Ziyad ibn Abdullah is deemed unre-

liable, and Umar ibn Abdullah—he is the son of Yaʿla ibn Murrah—is sometimes ascribed to his grandfather, and he too is unreliable.

وَهَذَا خَبَرٌ سَاقِطٌ، لِأَنَّ زِيَادَ بْنَ عَبْدِ اللَّهِ ضَعِيفٌ، وَعُمَرَ بْنَ عَبْدِ اللَّهِ هُوَ ابْنُ يَعْلَى بْنِ مُرَّةَ - وَقَدْ يُنْسَبُ إِلَى جَدِّهِ وَهُوَ ضَعِيفٌ.

L18690 And if it were valid, it would contradict their statement, because they do not permit even half a ṣāʿ of dates.

وَلَوْ صَحَّ لَكَانَ خِلَافًا لِقَوْلِهِمْ، لِأَنَّهُمْ لَا يُجِيزُونَ نِصْفَ صَاعِ تَمْرٍ أَلْبَتَّةَ.

L18691–18693 It was narrated to us through the route of Ibn Abī Shaybah: Muʿāwiyah al-Ḍarīr narrated to us from ʿĀṣim from Ibn Sīrīn from... Ibn Umar said, commenting on *"the median of what you feed your families"* [Al-Ma'idah: 89]: "Bread and milk, bread and oil, and bread and clarified butter (ghee) - and the highest of what you feed them is bread and meat."[22]

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُعَاوِيَةُ الضَّرِيرُ عَنْ عَاصِمٍ عَنْ ابْنِ سِيرِينَ عَنْ ابْنِ عُمَرَ قَالَ {مِنْ أَوْسَطِ مَا تُطْعِمُونَ أَهْلِيكُمْ} [المائدة: ٨٩] قَالَ: الْخُبْزُ وَاللَّبَنُ، وَالْخُبْزُ وَالزَّيْتُ، وَالْخُبْزُ وَالسَّمْنُ - وَمِنْ أَعْلَى مَا يُطْعِمُهُمْ: الْخُبْزُ وَاللَّحْمُ.

L18694 Narrated from ʿAbd al-Razzāq, from Hishām ibn Ḥassān, from Muḥammad ibn Sīrīn: That Abū Mūsā al-Ashʿarī expiated for an oath by kneading dough and feeding them.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ كَفَّرَ عَنْ يَمِينٍ فَعَجَنَ فَأَطْعَمَهُمْ.

L18695 From the narration of Sufyan ibn ʾUyaynah, who said: Sulayman ibn Abi al-Mughirah—a trustworthy narrator—reported from Saʿid ibn Jubayr that Ibn ʿAbbas stated: A man would provide sustenance for his family—some people provided abundant amounts, others meager amounts, and others moderate amounts. Thus, it was stated: *"from the average of what you feed your families"* [5:89]. Ibn Sirin reported the same statement as Ibn ʿUmar.[23]

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ قَالَ: قَالَ سُلَيْمَانُ بْنُ أَبِي الْمُغِيرَةِ - وَكَانَ ثِقَةً - عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ ابْنُ عَبَّاسٍ: كَانَ الرَّجُلُ يُقَوِّتُ أَهْلَهُ قُوتًا فِيهِ سَعَةٌ، وَبَعْضُهُمْ قُوتًا دُونًا، وَبَعْضُهُمْ قُوتًا وَسَطًا، فَقِيلَ {مِنْ أَوْسَطِ مَا تُطْعِمُونَ أَهْلِيكُمْ} [المائدة: ٨٩] وَعَنْ ابْنِ سِيرِينَ مِثْلُ قَوْلِ ابْنِ عُمَرَ.

L18696 And similar to this has been reported to us from Shurayḥ, al-Aswad ibn Yazīd, Saʿīd ibn Jubayr, and al-Shaʿbī—this being the opinion of Abū Sulaymān, which is also our opinion, and this is the explicit text of the Quran.

وَرُوِّينَا نَحْوَ هَذَا عَنْ شُرَيْحٍ، وَالْأَسْوَدِ بْنِ يَزِيدَ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَالشَّعْبِيِّ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ - وَهُوَ قَوْلُنَا، وَهُوَ نَصُّ الْقُرْآنِ.

L18697 As for those who imposed any specific measure, those who prevented others from providing bread and flour, and those who made religiously obligatory the provision of two meals—these rulings have no authoritative evidence from the Qur'an, the Sunnah, analogical reasoning, nor even a statement by

وَأَمَّا مَنْ حَدَّ كَيْلًا مَا، وَمَنْ مَنَعَ مِنْ إطْعَامِ الْخُبْزِ، وَالدَّقِيقِ، وَمَنْ أَوْجَبَ أَكْلَتَيْنِ، فَأَقْوَالٌ لَا حُجَّةَ لَهَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا قِيَاسٍ، وَلَا قَوْلِ صَاحِبٍ لَا مُخَالِفَ لَهُ مِنْهُمْ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

[22] **Qur'an references (L18691):** Qur'an 5:89 (Al-Ma'idah).
[23] **Qur'an references (L18695):** Qur'an 5:89 (Al-Ma'idah).

a Companion that none of the others opposed. In Allah, the Exalted, we seek strength.

The question of providing clothing as a form of expiation.

1158 - Question

As for clothing, it includes anything termed clothing: a shirt, trousers, a hood, a cap, a cloak, a turban, a hooded cloak, or other such items, because Allah the Exalted made it general and did not specify.

If Allah, the Exalted and Transcendent, had willed one clothing requirement over another, He would have clarified that to us—*"And your Lord is not forgetful"* (19:64). Thus, it is impermissible to specify such a distinction.[24]

It has been narrated to us from Imrān ibn al-Ḥuṣayn that a man asked him about clothing in expiation. Imrān said to him: "What do you think if a delegation entered before their leader, and he gave each man among them a cap, would people say he has clothed them?" It has been narrated to us via Musaddad from ʿAbd al-Wārith al-Tannūrī from Muḥammad ibn al-Zubayr from his father; and via Wakīʿ from Sufyān al-Thawrī from Ashʿath from al-Ḥasan al-Baṣrī, who said: "A turban suffices as expiation for the oath."

And it is the opinion of Sufyān al-Thawrī, al-Awzāʿī, al-Shāfiʿī, and Abū Sulaymān al-Dārānī.

Malik said: Only what is permissible to wear in prayer suffices—and this has no basis, as it is an assertion without evidence. Differing opinions are narrated from Abū Ḥanīfah regarding whether trousers alone suffice, while in his view a turban alone does not suffice. They argued: "If someone wore only a turban, people would say: 'This person is uncovered.'" Abū Muḥammad said: This is without merit, for Allah Almighty did not command us:

[24]**Qur'an references (L18701):** Qur'an 19:64 (Maryam).

[مَسْأَلَةٌ الْكِسْوَة فِي الْكَفَّارَةِ]

١١٨٥ - مَسْأَلَةٌ

وَأَمَّا الْكِسْوَةُ - فَمَا وَقَعَ عَلَيْهِ اسْمُ كِسْوَةٍ: قَمِيصٌ، أَوْ سَرَاوِيلُ، أَوْ مُقَنِّعٌ، أَوْ قَلَنْسُوَةٌ، أَوْ رِدَاءٌ، أَوْ عِمَامَةٌ، أَوْ بُرْنُسٌ، أَوْ غَيْرُ ذَلِكَ، لِأَنَّ اللَّهَ تَعَالَى عَمَّ وَلَمْ يَخُصَّ.

وَلَوْ أَرَادَ اللَّهُ تَعَالَى كِسْوَةً دُونَ كِسْوَةٍ لَبَيَّنَ لَنَا ذَلِكَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] فَتَخْصِيصُ ذَلِكَ لَا يَجُوزُ.

وَرُوِّينَا عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ: أَنَّ رَجُلًا سَأَلَهُ عَنْ الْكِسْوَةِ فِي الْكَفَّارَةِ؟ فَقَالَ لَهُ عِمْرَانُ: أَرَأَيْت لَوْ أَنَّ وَفْدًا دَخَلُوا عَلَى أَمِيرِهِمْ فَكَسَا كُلَّ رَجُلٍ مِنْهُمْ قَلَنْسُوَةً، قَالَ النَّاسُ: إنَّهُ قَدْ كَسَاهُمْ؟ رُوِّينَا مِنْ طَرِيقِ مُسَدَّدٍ عَنْ عَبْدِ الْوَارِثِ التَّنُّورِيِّ عَنْ مُحَمَّدِ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ -: وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَشْعَثَ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: تُجْزِئُ الْعِمَامَةُ فِي كَفَّارَةِ الْيَمِينِ.

وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

وَقَالَ مَالِكٌ: لَا تُجْزِي إلَّا مَا تَجُوزُ فِيهِ الصَّلَاةُ - وَهَذَا لَا وَجْهَ لَهُ، لِأَنَّهُ قَوْلٌ بِلَا بُرْهَانٍ - وَاخْتَلَفَ عَنْ أَبِي حَنِيفَةَ فِي السَّرَاوِيلِ وَحْدَهَا، وَلَا يُجْزِئُ عِنْدَهُ عِمَامَةٌ فَقَطْ، وَقَالُوا: لَوْ أَنَّ إنْسَانًا لَمْ يَلْبَسْ إلَّا عِمَامَةً فَقَطْ، لَقَالَ النَّاسُ: هَذَا عُرْيَانٌ -: قَالَ أَبُو مُحَمَّدٍ: وَهَذَا

"Clothe them in whatever prevents people from calling them uncovered"—*"And your Lord is never forgetful"* (19:64).[25]

L18706 If a man were to wear a shirt and trousers in winter, people would say: "This is nakedness!" – the entire astonishment lies with Abū Ḥanīfah, for he prohibits considering the turban sufficient even though it is a garment, then asserts: "If he clothed them in a single garment equal to ten garments in value, or gave them a female mule or female donkey equivalent to ten garments, it would suffice." We then deliberated upon this matter and concluded necessarily that the garment in its absolute sense inherently negates nakedness, since it is impossible and inconceivable for one to be simultaneously clothed and naked in one respect. However, this may occur in two respects: either part of him is clothed while another part is naked, or he wears a garment that covers him generally without concealing his skin – as is authentically reported from Allah's Messenger (peace be upon him): "There are women who are clothed yet naked; they will not enter Paradise." Thus, it is firmly established that nakedness cannot coexist with a garment when considered absolutely. Allah the Exalted has mentioned it absolutely without qualification.

L18707 There is no doubt that one who has an ample garment covering him, yet his head is bare, or his back, private area, or any other part of his body is exposed, is not called *kāsiyan* (clothed) nor *muktasīyan* (dressed) except figuratively. It necessarily follows that the garment must comprehensively cover the entire body, shielding it from sight and protecting it from the cold. This is because it is necessarily known that a person covered only with a reed cloak during *Kānūn al-Awwal* (December-January) would not be described by anyone as clothed; rather, he is naked.

L18708 And divine success is with Allah, the Exalted.

L18709 **A juristic issue pertaining to providing clothing to the Peo-**

[25]**Qur'an references (L18705):** Qur'an 19:64 (Maryam).

لَيْسَ بِشَيْءٍ لِأَنَّ اللَّهَ تَعَالَى لَمْ يَقُلْ لَنَا: اُكْسُوهُمْ مَا لَا يَقَعُ عَلَيْهِمْ بِهِ اسْمُ عُرْيَانَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَلَوْ أَنَّ امْرَأً لَبِسَ قَمِيصًا، وَسَرَاوِيلَ فِي الشِّتَاءِ لَقَالَ النَّاسُ: هَذَا عُرْيَانُ - وَالْعَجَبُ كُلُّهُ مِنْ أَبِي حَنِيفَةَ إذْ يَمْنَعُ مِنْ أَنْ تُجْزِئَ الْعِمَامَةُ وَهِيَ كِسْوَةٌ ثُمَّ يَقُولُ: لَوْ كَسَاهُمْ ثَوْبًا وَاحِدًا يُسَاوِي عَشْرَةَ أَثْوَابٍ، أَوْ أَعْطَاهُمْ بَغْلَةً، أَوْ حِمَارَةً تُسَاوِي عَشْرَةَ أَثْوَابٍ أَجْزَأَهُ -: ثُمَّ تَدَبَّرْنَا هَذَا -: فَرَأَيْنَا ضَرُورَةَ أَنَّ الْكِسْوَةَ عَلَى الْإِطْلَاقِ مُنَافِيَةٌ لِلْعُرْيِ، إذْ مُمْتَنِعٌ مُحَالٌ أَنْ يَكُونَ كَاسِيًا عَارِيًّا مِنْ وَجْهٍ وَاحِدٍ، لَكِنْ يَكُونُ كَذَلِكَ مِنْ وَجْهَيْنِ: مِثْلُ أَنْ يَكُونَ بَعْضُهُ كَاسِيًا، وَبَعْضُهُ عَارِيًا أَوْ يَكُونُ عَلَيْهِ كِسْوَةٌ تَعُمُّهُ، وَلَا تَسْتُرُ بَشَرَتَهُ كَمَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «نِسَاءٌ كَاسِيَاتٌ عَارِيَاتٌ لَا يَدْخُلْنَ الْجَنَّةَ» فَصَحَّ يَقِينًا أَنَّ الْكِسْوَةَ لَا يَكُونُ مَعَهَا عُرْيٌ إذَا كَانَتْ عَلَى الْإِطْلَاقِ، وَاَللَّهُ تَعَالَى قَدْ أَطْلَقَهَا، وَلَمْ يَذْكُرْهَا بِإِضَافَةٍ.

وَلَا شَكَّ فِي أَنَّ مَنْ عَلَيْهِ كِسْوَةٌ سَابِغَةٌ إلَّا أَنَّ رَأْسَهُ عَارٍ أَوْ ظَهْرَهُ أَوْ عَوْرَتَهُ، أَوْ غَيْرَ ذَلِكَ مِنْهُ، فَإِنَّهُ لَا يُسَمَّى كَاسِيًا، وَلَا مُكْتَسِيًا إلَّا بِإِضَافَةٍ، فَوَجَبَ ضَرُورَةً أَنْ لَا تَكُونَ الْكِسْوَةُ إلَّا عَامَّةً لِجَمِيعِ الْجِسْمِ، سَاتِرَةً لَهُ عَنْ الْعُيُونِ، مَانِعَةً مِنْ الْبَرْدِ، لِأَنَّهُ بِالضَّرُورَةِ يُعْلَمُ أَنَّ مَنْ كَانَ فِي " كَانُونَ الْأَوَّلِ " مُغَطًّى بِرِدَاءِ قَصَبٍ فَقَطْ: أَنَّهُ لَا يُسَمِّيهِ أَحَدٌ كَاسِيًا، بَلْ هُوَ عُرْيَانُ.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ كِسْوَةُ أَهْلِ الذِّمَّةِ وَإِطْعَامُهُمْ فِي كَفَّارَةِ الْيَمِينِ]

ple of the Covenant (Dhimmis) and feeding them as part of the expiation for breaking an oath.

L18710 1186. Issue

L18711 Providing clothing and food to Dhimmis suffices if they are poor, unlike zakāh, because no explicit text exists here restricting it to the believers.

L18712 The textual ruling on zakah states that it must be taken from the wealthy Muslims and distributed to their poor.

L18713 **The Issue of Non-Consecutive Fasting in the Expiation of the Oath**

L18714 1187 - Issue

L18715–18717 Fasting for the three days non-consecutively suffices if one wishes, and that is the saying of Malik. And Al-Shafiʿi; Abu Hanifah said: "They are not valid unless performed consecutively." They argued by analogy to the expiation for dhihar and killing, citing Ibn Masʿud's Quranic recitation which states: "consecutive."

L18718 Abu Muhammad said: Among the wonders is that the Malikis analogize the requirement for a slave to be believing in oath expiation to the expiation of killing, while the Hanafis do not draw this analogy. Conversely, the Hanafis analogize fasting in oath expiation - regarding the obligation of consecutive days - to fasting in expiation for accidental killing and dhihar, while the Malikis reject this analogy. So how can one not marvel at these feeble analogies recklessly applied in religious rulings? As for Ibn Mas'ud's recitation, it is from the East to the West of the earth more famous than the sun through the transmissions of Asim, Hamzah, and Al-Kisa'i - none of which contains what they alleged. Yet they feel no shame in adding fabricated lies to the Quran to support their corrupt opinions, while refusing to accept exile for adultery because they deem it an addition to the Quran, even though it has been authentically established from the Prophet - peace and blessings of Allah be upon him.

١١٨٦ - مَسْأَلَةٌ

وَيُجْزِئُ كِسْوَةُ أَهْلِ الذِّمَّةِ وَإِطْعَامُهُمْ إذَا كَانُوا مَسَاكِينَ، بِخِلَافِ الزَّكَاةِ، لِأَنَّهُ لَمْ يَأْتِ هَهُنَا نَصٌّ بِتَخْصِيصِ الْمُؤْمِنِينَ.

وَقَدْ جَاءَ النَّصُّ فِي الزَّكَاةِ: أَنْ تُؤْخَذَ مِنْ أَغْنِيَاءِ الْمُسْلِمِينَ فَتُرَدُّ فِي فُقَرَائِهِمْ.

[مَسْأَلَةُ الصَّوْمِ الْمُتَفَرِّقُ فِي كَفَّارَةِ الْيَمِينِ]

١١٨٧ - مَسْأَلَةٌ

وَيُجْزِئُ الصَّوْمُ لِلثَّلَاثَةِ الْأَيَّامِ مُتَفَرِّقَةٍ إنْ شَاءَ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَقَالَ أَبُو حَنِيفَةَ: لَا تُجْزِي إلَّا مُتَتَابِعَةً - وَاحْتَجُّوا بِقِيَاسِهَا عَلَى كَفَّارَةِ الظِّهَارِ، وَالْقَتْلِ، وَقَالُوا فِي قِرَاءَةِ ابْنِ مَسْعُودٍ: " مُتَتَابِعَاتٍ ".

قَالَ أَبُو مُحَمَّدٍ: مِنْ الْعَجَائِبِ أَنْ يَقِيسَ الْمَالِكِيُّونَ: الرَّقَبَةَ فِي أَنْ تَكُونَ مُؤْمِنَةً فِي كَفَّارَةِ الْيَمِينِ عَلَى كَفَّارَةِ الْقَتْلِ، وَلَا يَقِيسُهَا الْحَنَفِيُّونَ عَلَيْهَا، وَيَقِيسُ الْحَنَفِيُّونَ الصَّوْمَ فِي كَفَّارَةِ الْيَمِينِ فِي وُجُوبِ كَوْنِهِ مُتَتَابِعًا عَلَى صَوْمِ كَفَّارَةِ قَتْلِ الْخَطَإِ، وَالظِّهَارِ، وَلَا يَقِيسُهُ الْمَالِكِيُّونَ عَلَيْهِ، فَاعْجَبُوا لِهَذِهِ الْمَقَايِيسِ الْمُتَخَاذِلَةِ الْمَحْكُومِ بِهَا فِي الدِّينِ مُجَازَفَةً؟ وَأَمَّا قِرَاءَةُ ابْنِ مَسْعُودٍ فَهِيَ مِنْ شَرْقِ الْأَرْضِ إلَى غَرْبِهَا أَشْهَرُ مِنْ الشَّمْسِ مِنْ طَرِيقِ عَاصِمٍ، وَحَمْزَةَ، وَالْكِسَائِيِّ لَيْسَ فِيهَا مَا ذَكَرُوا ثُمَّ لَا يَسْتَحْيُونَ مِنْ أَنْ يَزِيدُوا فِي الْقُرْآنِ

الْكَذِبَ الْمُفْتَرَى نَصْرًا لِأَقْوَالِهِمْ الْفَاسِدَةِ، وَهُمْ يَأْبَوْنَ مِنْ قَبُولِ التَّغْرِيبِ فِي الزِّنَى، لِأَنَّهُ عِنْدَهُمْ زِيَادَةٌ عَلَى مَا فِي الْقُرْآنِ، وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. ثُمَّ لَا يَسْتَحْيُونَ مِنْ اللَّهِ تَعَالَى، وَلَا مِنْ النَّاسِ فِي أَنْ يَزِيدُوا فِي الْقُرْآنِ مَا يَكُونُ مَنْ زَادَهُ فِيهِ كَافِرًا وَمَا إنْ قَرَأَ بِهِ فِي الْمِحْرَابِ اُسْتُتِيبَ وَإِنْ كَتَبَهُ فِي مُصْحَفٍ قُطِعَتْ الْوَرَقَةُ أَوْ بُشِّرَ نَصْرًا لِتَقْلِيدِهِمْ، فَإِذْ لَمْ يَخُصَّ اللَّهُ تَعَالَى تَتَابُعًا مِنْ تَفْرِيقٍ، فَكَيْفَمَا صَامَهُنَّ أَجْزَأَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18719 Then they feel no shame before Allah the Exalted nor before people in adding to the Quran that which would render whoever adds it a disbeliever. If one recites it in the prayer niche, repentance must be sought from him; if he writes it in a muṣḥaf, the page is to be torn, or he is given glad tidings of victory due to their imitation. Since Allah the Exalted has not distinguished continuity from separation, however he fasts them, it suffices him—and with Allah the Exalted is all success.

[مَسْأَلَةٌ كَانَ الحانث فِي الْيَمِينِ عِنْدَهُ مَا يُطْعِمُ مِنْهُ عَشَرَةَ مَسَاكِينَ]

L18720 **Case: If the one who breaks an oath possesses, from what he owns, enough to provide food for ten poor people.**

١١٨٨ - مَسْأَلَةٌ

وَمَنْ عِنْدَهُ فَضْلٌ عَنْ قُوتِ يَوْمِهِ وَقُوتِ أَهْلِهِ مَا يُطْعِمُ مِنْهُ عَشَرَةَ مَسَاكِينَ لَمْ يُجْزِهِ الصَّوْمُ أَصْلًا، لِأَنَّهُ وَاجِدٌ، وَلَا يُجْزِئُ الْوَاجِدُ بِنَصِّ الْقُرْآنِ إلَّا مَا وَجَدَ، وَلَا يُجْزِئُ الصَّوْمُ إلَّا مَنْ لَمْ يَجِدْ. وَالْعَبْدُ، وَالْحُرُّ، فِي كُلِّ ذَلِكَ سَوَاءٌ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَمَنْ حَدَّ بِأَكْثَرَ مِنْ هَذَا مِنْ قُوتِ جُمُعَةٍ، أَوْ أَشْهُرٍ، أَوْ سَنَةٍ؛ كُلِّفَ الدَّلِيلَ، وَلَا سَبِيلَ لَهُ إلَيْهِ؟

L18721 Question 1188

L18722 And whoever has surplus beyond his daily provisions and those of his household—enough to feed ten needy persons from it—fasting does not suffice for him at all, for he is one who has the means. By the explicit text of the Quran, the one who has means cannot fulfill his obligation except through what he possesses, and fasting suffices only for one who lacks means. The slave and the free are held to the same standard in all this. *"And your Lord is never forgetful"* [Maryam 19:64]. As for one who stipulates a requirement beyond this—such as provisions for a week, months, or a year—how can he be charged with providing proof when he has no means to do so?[26]

[مَسْأَلَةٌ لَا يُجْزِئُ فِي الْكَفَّارَةِ إطْعَامُ بَعْضِ الْعَشَرَةِ وَكِسْوَةُ بَعْضِهِمْ]

L18723 **A legal issue: Feeding some of the ten and clothing some of them does not suffice to fulfill the expiation.**

١١٨٩ - مَسْأَلَةٌ وَلَا يُجْزِئُ إطْعَامُ بَعْضِ الْعَشَرَةِ وَكِسْوَةُ بَعْضِهِمْ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ - وَقَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ: يُجْزِئُ - وَهَذَا خِلَافُ الْقُرْآنِ وَمَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَ أَبِي حَنِيفَةَ.

L18724 1189 - Issue: It is not valid to feed some from among the ten and provide the clothing of others among them. This is the position of Mālik and al-Shāfiʿī. Abū Ḥanīfah and Sufyān al-Thawri said, "It suffices." This is contrary to the Quran, and we know of none who held this view before Abū Ḥanīfah.

[26] **Qur'an references (L18722):** Qur'an 19:64 (Maryam).

Case: Swearing an Oath Upon a Sin

1190: Issue

Whoever swears to commit a sin, it is made incumbent upon him to abstain from it and to expiate. If he swears to do what is not sinful, he is not bound by this obligation. Some of our companions said: It becomes incumbent upon him if he considers another action better than it [the oath], citing as evidence the statement of Allah's Messenger—peace and blessings be upon him: "Let him do what is better and expiate for his oath."

Abu Muhammad said: This would have been a valid argument were it not for what we have narrated in the Book of Prayer in the chapter on Witr from "the statement of the one who said to the Prophet—peace and blessings be upon him—when he mentioned to him the five prayers, so he asked: 'Is there anything else incumbent upon me besides them?' He replied: 'No, unless you perform voluntary prayers.'" And similarly regarding the fasting of Ramadan and Zakāh: "By Allah, I will neither add to them nor subtract from them?" The Prophet—peace be upon him—then said: "He has succeeded if he is truthful; he has entered Paradise if he is truthful."

There is no doubt that voluntary prayer after the obligatory prayer is better than abandoning it and preferable to doing so. The Prophet—peace be upon him—did not disapprove of that oath of his, nor did he command him to do what is better. Rather, he approved it for him.

Thus, it is established that the directive of the Prophet—may Allah bless him and grant him peace—in this regard is indeed a recommended act, and success comes from Allah, the Exalted.

[مَسْأَلَةٌ حَلَفَ عَلَى إثْمٍ]

١١٩٠ - مَسْأَلَةٌ

وَمَنْ حَلَفَ عَلَى إثْمٍ فَفُرِضَ عَلَيْهِ أَنْ لَا يَفْعَلَهُ وَيُكَفِّرَ، فَإِنْ حَلَفَ عَلَى مَا لَيْسَ إثْمًا فَلَا يَلْزَمُهُ ذَلِكَ - وَقَالَ بَعْضُ أَصْحَابِنَا: يَلْزَمُهُ ذَلِكَ إذَا رَأَى غَيْرَهَا خَيْرًا مِنْهَا وَاحْتَجُّوا بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَلْيَأْتِ الَّذِي هُوَ خَيْرٌ وَلْيُكَفِّرْ عَنْ يَمِينِهِ» .

قَالَ أَبُو مُحَمَّد: كَانَ هَذَا احْتِجَاجًا صَحِيحًا لَوْلَا مَا رُوِّينَاهُ فِي " كِتَابِ الصَّلَاةِ فِي بَابِ الْوَتْرِ مِنْ «قَوْلِ الْقَائِلِ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ ذَكَرَ لَهُ الصَّلَوَاتِ الْخَمْسَ فَقَالَ: هَلْ عَلَيَّ غَيْرُهُنَّ؟ قَالَ: لَا إلَّا أَنْ تَطَوَّعَ - وَقَالَ فِي صَوْمِ رَمَضَانَ وَالزَّكَاةِ كَذَلِكَ، وَاَللَّهِ لَا أَزِيدُ عَلَيْهِنَّ وَلَا أَنْقُصُ مِنْهُنَّ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -: أَفْلَحَ إنْ صَدَقَ، دَخَلَ الْجَنَّةَ إنْ صَدَقَ» .

وَلَا شَكَّ فِي أَنَّ التَّطَوُّعَ بَعْدَ الْفَرْضِ أَفْضَلُ مِنْ تَرْكِ التَّطَوُّعِ وَخَيْرٌ مِنْ تَرْكِهِ، فَلَمْ يُنْكِرْ النَّبِيُّ - عَلَيْهِ السَّلَامُ - يَمِينَهُ تِلْكَ، وَلَا أَمَرَهُ بِأَنْ يَأْتِيَ الَّذِي هُوَ خَيْرٌ، بَلْ حَسَّنَ لَهُ ذَلِكَ.

فَصَحَّ أَنَّ أَمْرَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ إنَّمَا هُوَ نَدْبٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.



AL-MUHALLA

كِتَابُ الْقَرْضِ

The Book of Loans

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْقَرْضِ] [مَسْأَلَةٌ تَعْرِيف الْقَرْض]

وَهُوَ الدَّيْنُ ١١٩١ - مَسْأَلَةٌ:

الْقَرْضُ فِعْلُ خَيْرٍ، وَهُوَ أَنْ تُعْطِيَ إِنْسَانًا شَيْئًا بِعَيْنِهِ مِنْ مَالِك تَدْفَعُهُ إِلَيْهِ لِيَرُدَّ عَلَيْك مِثْلَهُ إِمَّا حَالًّا فِي ذِمَّتِهِ وَإِمَّا إلَى أَجَلٍ مُسَمًّى هَذَا مُجْمَعٌ عَلَيْهِ

وَقَالَ اللَّهُ تَعَالَى: {إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ} [البقرة: ٢٨٢]

[مَسْأَلَةٌ الْقَرْضُ جَائِزٌ فِي كُلِّ مَا يَحِلُّ تَمَلُّكُهُ وَتَمْلِيكُهُ]

١١٩٢ - مَسْأَلَةٌ:

وَالْقَرْضُ جَائِزٌ فِي كُلِّ مَا يَحِلُّ تَمَلُّكُهُ وَتَمْلِيكُهُ بِهِبَةٍ أَوْ غَيْرِهَا سَوَاءٌ جَازَ بَيْعَةُ أَوْ لَمْ يَجُزْ - لِأَنَّ الْقَرْضَ هُوَ غَيْرُ الْبَيْعِ، لِأَنَّ الْبَيْعَ لَا يَجُوزُ إلَّا بِثَمَنٍ، وَيَجُوزُ بِغَيْرِ نَوْعِ مَا بِعْت.

وَلَا يَجُوزُ فِي الْقَرْضِ إلَّا رَدُّ مِثْلِ مَا اُقْتُرِضَ لَا مِنْ سِوَى نَوْعِهِ أَصْلًا

[مَسْأَلَةٌ لَا يَشْتَرِطَ رَدًّا أَكْثَرَ مِمَّا اقترض وَلَا أَقَلَّ]

١١٩٣ - مَسْأَلَةٌ:

وَلَا يَحِلُّ أَنْ يَشْتَرِطَ رَدًّا أَكْثَرَ مِمَّا أَخَذَ وَلَا أَقَلَّ، وَهُوَ رِبًا مَفْسُوخٌ، وَلَا يَحِلُّ اشْتِرَاطُ رَدِّ أَفْضَلَ مِمَّا أَخَذَ وَلَا أَدْنَى وَهُوَ رِبًا، وَلَا يَجُوزُ اشْتِرَاطُ نَوْعٍ غَيْرِ النَّوْعِ الَّذِي أَخَذَ، وَلَا اشْتِرَاطُ أَنْ يَقْضِيَهُ فِي مَوْضِعِ كَذَا وَلَا اشْتِرَاطُ ضَامِنٍ. بُرْهَانُ ذَلِكَ -: قَوْلُ رَسُولِ

Book of the Loan Issue: Defining the Loan

And it is the debt — 1191. Issue:

A loan is an act of benevolence, whereby you give a specific item from your wealth to another person, delivering it to him so he may return its exact equivalent—either as an immediate obligation upon him or deferred to a stipulated term. This ruling is established by scholarly consensus (ijmaʿ).

And Allah, the Exalted, said: *"When you contract a debt among yourselves for a specified term, write it down"* [Al-Baqarah: 282].[1]

A legal issue: Loans are permissible in all cases where it is lawful to own and transfer ownership.

1192 - Question:

A gratuitous loan is permissible for anything that can lawfully be owned and have its ownership transferred through a gift or other means, whether the sale of such an item is permissible or not—because a loan differs from a sale. A sale is only valid with an agreed-upon price, whereas a loan is permissible without requiring the specification of the type of item involved in a sale.

In a loan, it is only permissible to return the equivalent of what was borrowed from its own type, and not from any other type whatsoever.

A matter where it is not permissible to stipulate repaying more than what was borrowed nor less than what was borrowed.

1193 – Issue:

It is not permissible to stipulate repayment of more or less than what was taken, as this is usurious and void. Nor is it permissible to stipulate the return of a better or lesser amount than what was taken—this being usury—nor to stipulate a different type than what was taken, nor to require repayment in

[1] **Qur'an references (L18736):** Qur'an 2:282 (Al-Baqarah).

a specific location, nor to demand a guarantor. The evidence for this is the statement of Allah's Messenger—peace and blessings be upon him: "Every condition not in Allah's Book is void. Why do people stipulate conditions not in Allah's Book? Whoever stipulates a condition not in Allah's Book, it is invalid for him even if he stipulates a hundred conditions. Allah's Book has greater authority, and Allah's condition is most binding."

L18744–18745 There is no disagreement regarding the nullity of these conditions that we have discussed in loan contracts.

L18746 And by Allah, the Most High, is the support.

L18747 A juristic issue wherein one voluntarily gives more than what he received while discharging his owed debt.

L18748 1194. Legal Question:

L18749 If he voluntarily exceeds in fulfilling his obligation—whether by giving more than he took, less than he took, better in quality than he took, or lower in quality than he took—all such actions are commendable and recommended.

L18750 The one who gives back more than what he borrowed and of better quality than what he borrowed is rewarded.

L18751 The one who accepts something inferior to or less than what he gave is rewarded by Allah.

L18752 And it is the same whether that is a customary practice or not, provided it is not stipulated. Similarly, if he repays it in a different locality—there is no difference—it remains acceptable as long as it is not stipulated. It has been narrated to us through the chains of Al-Bukhari and of Musa ibn Mu'awiyah. Al-Bukhari said: Khallad narrated to us, and Musa said: Waki' narrated to us. Then their chains converged: both Khallad and Waki' said: Mis'ar ibn Kidam narrated to us from Muharib ibn Dithar from Jabir ibn 'Abdullah, who said: "I had a debt owed by the Messenger of Allah—peace and blessings be upon him—and he repaid me and gave me extra."

L18753 From the narration of Waki', from 'Ali ibn Salih ibn Hayy, from Salamah ibn Kuhayl, from Abu Salamah, from Abu Hurayrah, who said: "The Messenger

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ مَا بَالُ أَقْوَامٍ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ، مَنْ اشْتَرَطَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ فَلَيْسَ لَهُ وَإِنْ اشْتَرَطَ مِائَةَ شَرْطٍ، كِتَابُ اللَّهِ أَحَقُّ، وَشَرْطُ اللَّهِ أَوْثَقُ» .

وَلَا خِلَافَ فِي بُطْلَانِ هَذِهِ الشُّرُوطِ الَّتِي ذَكَرْنَا فِي الْقَرْضِ.

وَبِاَللَّهِ تَعَالَى التَّأْيِيدُ.

[مَسْأَلَةٌ تَطَوَّعَ عِنْدَ قَضَاءِ مَا عَلَيْهِ بِأَنْ يُعْطِيَ أَكْثَرَ مِمَّا أَخَذَ]

١١٩٤ - مَسْأَلَةٌ:

فَإِنْ تَطَوَّعَ عِنْدَ قَضَاءِ مَا عَلَيْهِ بِأَنْ يُعْطِيَ أَكْثَرَ مِمَّا أَخَذَ، أَوْ أَقَلَّ مِمَّا أَخَذَ، أَوْ أَجْوَدَ مِمَّا أَخَذَ، أَوْ أَدْنَى مِمَّا أَخَذَ، فَكُلُّ ذَلِكَ حَسَنٌ مُسْتَحَبٌّ.

وَمُعْطِي أَكْثَرَ مِمَّا اقْتَرَضَ وَأَجْوَدَ مِمَّا اقْتَرَضَ مَأْجُورٌ.

وَالَّذِي يَقْبَلُ أَدْنَى مِمَّا أَعْطَى، أَوْ أَقَلَّ مِمَّا أَعْطَى مَأْجُورٌ.

وَسَوَاءٌ كَانَ ذَلِكَ عَادَةً أَوْ لَمْ يَكُنْ، مَا لَمْ يَكُنْ عَنْ شَرْطٍ، وَكَذَلِكَ إنْ قَضَاهُ فِي بَلَدٍ آخَرَ، وَلَا فَرْقَ -: فَهُوَ حَسَنٌ مَا لَمْ يَكُنْ عَنْ شَرْطٍ -: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ، وَمُوسَى بْنِ مُعَاوِيَةَ، قَالَ الْبُخَارِيُّ: نا خَلَّادٌ، وَقَالَ مُوسَى: نا وَكِيعٌ، ثُمَّ اتَّفَقَ خَلَّادٌ وَوَكِيعٌ، قَالَا: نا مِسْعَرُ بْنُ كِدَامٍ عَنْ مُحَارِبِ بْنِ دِثَارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ «كَانَ لِي عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَيْنٌ فَقَضَانِي وَزَادَنِي»

of Allah—peace and blessings of Allah be upon him—borrowed an age and repaid it with an age above his age, saying: 'The best among you are those most virtuous in fulfillment.'" This is the saying of the Salaf.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَلِيِّ بْنِ صَالِحِ بْنِ حَيٍّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ «اسْتَقْرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سِنًّا فَأَعْطَاهُ سِنًّا فَوْقَ سِنِّهِ وَقَالَ: خِيَارُكُمْ مَحَاسِنُكُمْ قَضَاءً» وَهُوَ قَوْلُ السَّلَفِ

L18754 It was narrated to us through the route of Sufyān ibn ʻUyaynah from Ismāʻīl ibn Abī Khālid from his father, who said: "Al-Ḥasan ibn ʻAlī ruled in my favor and granted me an additional sum roughly equivalent to eighty dirhams."

رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ أَبِيهِ قَالَ: قَضَانِي الْحَسَنُ بْنُ عَلِيِّ بْنِ أَبِي طَالِبٍ وَزَادَنِي نَحْوًا مِنْ ثَمَانِينَ دِرْهَمًا.

L18755 And through the chain of Wakīʻ from Ismāʻīl ibn Abī Khālid from his father, who said: I demanded payment from al-Ḥasan ibn ʻAlī for a debt he owed me. I found him having just exited the bathhouse, so he settled the debt with me without weighing the payment. When I weighed it, I discovered he had given me seventy dirhams beyond the owed amount.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ أَبِيهِ قَالَ: تَقَاضَيْت الْحَسَنَ بْنَ عَلِيٍّ دَيْنًا لِي عَلَيْهِ فَوَجَدْته قَدْ خَرَجَ مِنْ الْحَمَّامِ فَقَضَانِي وَلَمْ يَزِنْهُ، فَوَزَنْته فَوَجَدْته قَدْ زَادَنِي عَلَى حَقِّي سَبْعِينَ دِرْهَمًا.

L18756–18758 From the narration of Malik, who said: It reached me that a man said to Ibn Umar: "I advanced a loan to a man and stipulated repayment of more than the loaned amount." Ibn Umar responded: "That is usury." Then he [Malik] mentioned further words - and in it [the narration]: Ibn Umar said to him: "I advise you to tear up your contract. If he gives you the equivalent of what you lent him, accept it. But if he gives you less than what..." If you lend someone something and they accept it, you are rewarded. And if they give you more than what you lent them willingly, with a contented heart, then that is their gratitude to you, and it is the reward for granting them respite.

وَمِنْ طَرِيقِ مَالِك قَالَ: بَلَغَنِي أَنَّ رَجُلًا قَالَ لِابْنِ عُمَرَ: إنِّي أَسْلَفْت رَجُلًا سَلَفًا وَاشْتَرَطْت أَفْضَلَ مِمَّا أَسْلَفْته، فَقَالَ ابْنُ عُمَرَ: ذَلِكَ الرِّبَا، ثُمَّ ذَكَرَ كَلَامًا - وَفِيهِ: أَنَّ ابْنَ عُمَرَ قَالَ لَهُ: أَرَى أَنْ تَشُقَّ صَكَّك فَإِنْ أَعْطَاك مِثْلَ الَّذِي أَسْلَفْته قَبِلْته، وَإِنْ أَعْطَاك دُونَ مَا أَسْلَفْته فَأَخَذْته أُجِرْت، وَإِنْ أَفْضَلَ مِمَّا أَسْلَفْته طَيِّبَةً بِهِ نَفْسُهُ، فَذَلِكَ شُكْرٌ شَكَرَهُ لَك وَهُوَ أَجْرُ مَا أَنْظَرْته.

L18759 And through the chain of Ibn Abī Shaybah: Wakīʻ narrated to us, Hishām al-Dastuwā'ī narrated to us from al-Qāsim ibn Abī Bazza from ʻAṭāʾ ibn Yaʻqūb, who said: "Ibn ʻUmar borrowed a thousand dirhams from me and repaid me with dirhams superior to mine. He said to me: 'Whatever excess is in them constitutes a favor from me to you—will you accept it?' I replied: 'Yes.'" No opponent is known regarding these two cases among the Companions—may Allah be pleased with them—except for a narration from Ibn Masʻūd indicating his disapproval.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا هِشَامٌ الدَّسْتُوَائِيُّ عَنْ الْقَاسِمِ بْنِ أَبِي بَزَّةَ عَنْ عَطَاءِ بْنِ يَعْقُوبَ قَالَ: اقْتَرَضَ مِنِّي ابْنُ عُمَرَ أَلْفَ دِرْهَمٍ فَقَضَانِي أَجْوَدَ مِنْ دَرَاهِمِي، وَقَالَ لِي: مَا كَانَ فِيهَا مِنْ فَضْلٍ فَهُوَ نَائِلٌ مِنِّي لَك أَتَقْبَلُهُ؟ قُلْت: نَعَمْ - وَلَا يُعْرَفُ لِهَذَيْنِ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إلَّا رِوَايَةً عَنْ ابْنِ مَسْعُودٍ أَنَّهُ كَرِهَ ذَلِكَ. وَمِنْ

طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: كَانَ ابْنُ الزُّبَيْرِ يَسْتَسْلِفُ مِنْ التُّجَّارِ أَمْوَالَهُمْ ثُمَّ يَكْتُبُ لَهُمْ إلَى الْعُمَّالِ، فَذَكَرْت ذَلِكَ لِابْنِ عَبَّاسٍ؟ فَقَالَ: لَا بَأْسَ بِهِ

Through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ, who said: "Ibn al-Zubayr would borrow wealth from merchants and then write to the officials on their behalf. When I mentioned this to Ibn ʿAbbās, he responded: 'There is no harm in it.'"

وَحَكَى شُعْبَةُ: أَنَّهُ سَأَلَ الْحَكَمَ بْنَ عُتَيْبَةَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَمَّنْ اقْتَرَضَ دَرَاهِمَ فَرَدَّ عَلَيْهِ خَيْرًا مِنْهَا؟ فَقَالَا جَمِيعًا: إذَا كَانَ لَيْسَ مِنْ نِيَّتِهِ فَلَا بَأْسَ

L18760 Shuʿbah narrated that he asked al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān about someone who borrowed dirhams and repaid them with dirhams of greater value. They both said: "If it was not his intention, there is no harm."

وَصَحَّ عَنْ قَتَادَةَ عَنْ الْحَسَنِ الْبَصْرِيِّ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، قَالَا جَمِيعًا: لَا بَأْسَ أَنْ تُقْرِضَ دَرَاهِمَ بِيضًا وَتَأْخُذَ سُودًا، أَوْ تُقْرِضَ سُودًا وَتَأْخُذَ بِيضًا.

L18761 It has been authentically reported from Qatadah, from Al-Ḥasan Al-Baṣrī and Saʿīd ibn Al-Musayyib, who both said: There is no harm in lending white dirhams and taking black ones, or lending black dirhams and taking white ones.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا قَطَرِيُّ بْنُ عَبْدِ اللَّهِ عَنْ الْأَشْعَثِ الْحُمْرَانِيِّ قَالَ: سَأَلْت الْحَسَنَ؟ فَقُلْت: يَا أَبَا سَعِيدٍ لِي جَارَاتٌ وَلَهُنَّ عَطَاءٌ فَيَقْتَرِضْنَ مِنِّي وَنِيَّتِي فِي فَضْلِ دَرَاهِمِ الْعَطَاءِ عَلَى دَرَاهِمِي؟ قَالَ: لَا بَأْسَ بِهِ.

L18762 And via the chain of Ibn Abī Shaybah: Qaṭarī ibn ʿAbd Allāh narrated to us from Al-Ashʿath Al-Ḥumrānī, who said: "I asked Al-Ḥasan: 'O Abā Saʿīd, I have female neighbors who receive stipends. They borrow from me, and my intention concerns the excess of the stipend's dirhams over my dirhams.' He replied: 'There is no harm in it.'"

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ ابْنِ سِيرِينَ إذَا أَسْلَفْت طَعَامًا فَأَعْطَاكَهُ بِأَرْضٍ أُخْرَى، فَإِنْ كَانَ عَنْ شَرْطٍ فَهُوَ مَكْرُوهٌ، وَإِنْ كَانَ عَلَى وَجْهِ الْمَعْرُوفِ فَلَا بَأْسَ بِهِ.

L18763 From the chain of Ma'mar from Ayyub from Ibn Sirin: If you advance food as a loan and he gives it to you in another location, then if it is based on a stipulated condition, it is disliked, but if it is done in accordance with customary practice, there is no harm in it.

وَهُوَ كُلُّهُ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L18764 This is wholly the opinion of Abu Hanifa, al-Shafi'i, and Abu Sulayman.

وَأَجَازَ مَالِكٌ: أَنْ يَرُدَّ أَفْضَلَ مَا لَمْ يَكُنْ عَنْ عَادَةٍ، وَلَمْ يُجِزْ أَنْ يَرُدَّ أَكْثَرَ - وَهَذَا خَطَأٌ، لِأَنَّهُ خِلَافُ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي أَوْرَدْنَا.

L18765 And Malik permitted exchanging a better quality item as long as it is not contrary to customary practice, but he did not permit exchanging a greater quantity—this is mistaken, as it contradicts the action of the Messenger of Allah (peace be upon him) that we have mentioned.

L18766 As for the distinction between customary practice and other matters—it is erroneous, for if it were permissible once, it would be permissible a thousand times with no difference. If it is good in a single instance, then increasing good is good. But if it is evil, then it is not permissible either once or repeatedly—and by Allah, the Exalted, is success.

وَأَمَّا فَرْقُهُ بَيْنَ الْعَادَةِ وَغَيْرِهَا -: فَخَطَأٌ، لِأَنَّهُ إنْ جَازَ مَرَّةً جَازَ أَلْفَ مَرَّةٍ وَلَا فَرْقَ، وَإِنْ كَانَ خَيْرًا فِي الْمَرَّةِ الْوَاحِدَةِ فَالْإِكْثَارُ مِنْ الْخَيْرِ خَيْرٌ، وَإِنْ كَانَ شَرًّا فَالشَّرُّ لَا يَجُوزُ لَا مَرَّةً وَلَا مِرَارًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18767 And we do not know of anyone before him who distinguished between the customary practice in that matter and an isolated instance.

وَلَا نَعْلَمُ أَحَدًا قَبْلَهُ فَرَّقَ بَيْنَ الْعَادَةِ فِي ذَلِكَ وَبَيْنَ الْمَرَّةِ الْوَاحِدَةِ.

وَأَمَّا مَنْعُهُ مِنْ رَدِّ أَكْثَرَ -: فَقَدْ رُوِّينَاهُ عَنْ الشَّعْبِيِّ، وَالزُّهْرِيِّ. وَالْعَجَبُ كُلُّهُ مِنْ إجَازَتِهِ الزِّيَادَةَ حَيْثُ هِيَ الرِّبَا الْمَكْشُوفُ الْمُحَرَّمُ، إذْ يُجِيزُ مُبَادَلَةَ دِينَارٍ نَاقِصٍ بِدِينَارٍ زَائِدٍ عَلَيْهِ فِي وَزْنِهِ بِمُشَارَطَةٍ فِي حِينِ الْمُبَادَلَةِ، وَكَذَلِكَ فِي الدِّرْهَمِ النَّاقِصِ بِالدِّرْهَمِ الزَّائِدِ عَلَيْهِ فِي وَزْنِهِ - وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الدِّرْهَمُ بِالدِّرْهَمِ فَضْلُ مَا بَيْنَهُمَا رِبًا» ثُمَّ يَمْنَعُ مِنْ الزِّيَادَةِ غَيْرِ الْمُشْتَرَطَةِ فِي قَضَاءِ الْقَرْضِ وَقَدْ فَعَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحَضَّ عَلَيْهِ - وَحَسْبُنَا اللَّهُ [وَنِعْمَ الْوَكِيلُ] .

L18768–18769 As for his prohibition against returning more, we have transmitted this from Al-Sha'bi and Al-Zuhri. The entire astonishment lies in his permitting the increase—which constitutes manifestly prohibited usury—by allowing the exchange of an underweight dinar for a dinar exceeding it in weight through stipulation at the time of exchange, and similarly exchanging an underweight dirham for a dirham exceeding it in weight, despite the authentic report from the Prophet (peace be upon him): "Dirham for dirham; any excess between them is usury." Yet he prohibits the increase not stipulated in loan repayment, though the Messenger of Allah (peace be upon him) enacted it and urged it. Sufficient for us is Allah [and what an excellent Trustee].

[مَسْأَلَةٌ قَضَاهُ مِنْ غَيْرِ نَوْعِ مَا اسْتَقْرَضَ]

L18770 **A jurisprudential case: He repaid it with a different kind than what he had borrowed.**

١١٩٥ - مَسْأَلَةٌ:

L18771 1195 - Issue:

فَإِنْ قَضَاهُ مِنْ غَيْرِ نَوْعِ مَا اسْتَقْرَضَ لَمْ يَحِلَّ أَصْلًا - لَا بِشَرْطٍ وَلَا بِغَيْرِ شَرْطٍ - مِثْلُ: أَنْ يَكُونَ أَقْرَضَهُ ذَهَبًا فَيُرِدُّ عَلَيْهِ فِضَّةً، أَوْ غَيْرَ ذَلِكَ، وَهَكَذَا فِي كُلِّ شَيْءٍ، يَقُولُ اللَّهُ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] وَهُوَ إذَا رَدَّ غَيْرَ مَا كَانَ عَلَيْهِ فَقَدْ أَخَذَ غَيْرَ حَقِّهِ، وَمَنْ أَخَذَ غَيْرَ حَقِّهِ فَقَدْ أَكَلَ الْمَالَ بِالْبَاطِلِ.

L18772 If he repays it with a type other than what was borrowed, it is absolutely impermissible—neither by stipulation nor without stipulation—such as if gold was lent and the borrower repays with silver or other than that. This applies to everything. Allah the Exalted says: *"Do not consume your wealth among yourselves unjustly unless it is a trade by mutual consent"* (Quran 4:29). If he repays with something other than what was owed, he has taken what is not his rightful due. Whoever takes what is not their rightful due has wrongfully consumed the wealth.[2]

[2] **Qur'an references (L18772):** Qur'an 4:29 (An-Nisa).

فَإِنْ قَالُوا: إِنَّمَا هُوَ مِنْ بَابِ الْبَيْعِ كَأَنَّهُ بَاعَ مِنْهُ مَا كَانَ لَهُ عِنْدَهُ بِمَا أَخَذَ مِنْهُ؟ قُلْنَا: هَذَا حَرَامٌ لَا يَحِلُّ، لِأَنَّهُ لَيْسَ لَهُ عِنْدَهُ شَيْءٌ بِعَيْنِهِ، وَلَا يَحِلُّ الْبَيْعُ إِلَّا فِي شَيْءٍ بِعَيْنِهِ وَهُوَ بَيْعُ مَا لَيْسَ عِنْدَكَ، وَبَيْعُ مَا لَمْ يُقْبَضْ.

L18773 If they say: “It is a type of sale, as if he sold him what he had with him in exchange for what he took from him?” We say: This is forbidden (ḥarām) and invalid, because there is no specific item in his possession. Sale is only permissible for a specific item, and this constitutes selling what is not in your possession and selling what has not been physically received.

وَكُلُّ هَذَا قَدْ صَحَّ النَّهْيُ عَنْهُ عَلَى مَا نَذْكُرُ فِي الْبُيُوعِ إِنْ شَاءَ اللَّهُ تَعَالَى، وَهُوَ فِيمَا يَقَعُ فِيهِ الرِّبَا رِبًا مَحْضٌ عَلَى مَا نَذْكُرُ فِي " أَبْوَابِ الرِّبَا " إِنْ شَاءَ اللَّهُ تَعَالَى.

L18774 All of this has been authentically prohibited, as we will mention in the Book of Sales, God willing, and where usury occurs, it constitutes pure usury, as we will detail in the Chapters on Usury, God willing.

فَإِنْ احْتَجُّوا بِخَبَرِ ابْنِ عُمَرَ فِي ذَلِكَ فَهُوَ خَبَرٌ لَا يَصِحُّ عَلَى مَا نَذْكُرُ فِي الْبُيُوعِ إِنْ شَاءَ اللَّهُ تَعَالَى؛ لِأَنَّهُ مِنْ رِوَايَةِ سِمَاكِ بْنِ حَرْبٍ - ثُمَّ لَوْ صَحَّ لَكَانُوا مُخَالِفِينَ لَهُ عَلَى مَا نَذْكُرُ هُنَالِكَ إِنْ شَاءَ اللَّهُ تَعَالَى.

L18775 If they argue using the report of Ibn Umar concerning that, it is an unsound report according to what we will mention regarding sales, God Almighty willing, because it is from the narration of Simak ibn Harb. Then, even if it were sound, they would be contradicting it according to what we will mention there, God Almighty willing.

[مَسْأَلَةٌ مَنْ اسْتَقْرَضَ شَيْئًا فَقَدْ مَلَكَهُ]

A legal issue: Whoever takes a loan (qard) of something has indeed acquired ownership of it.

١١٩٦ - مَسْأَلَةٌ:

وَمَنْ اسْتَقْرَضَ شَيْئًا فَقَدْ مَلَكَهُ، وَلَهُ بَيْعُهُ إِنْ شَاءَ، وَهِبَتُهُ، وَالتَّصَرُّفُ فِيهِ، كَسَائِرِ مِلْكِهِ - وَهَذَا لَا خِلَافَ فِيهِ - وَبِهِ جَاءَتْ النُّصُوصُ.

L18776 **A legal issue: Whoever takes a loan (qard) of something has indeed acquired ownership of it.**

L18777 1196 - Issue:

L18778 Whoever borrows something thereby owns it and may sell it, gift it (hibah), or dispose of it as with all his property—a matter with no disagreement—as affirmed by the juristic texts.

[مَسْأَلَةُ الدَّيْنُ لَوْ كَانَ حَالًّا]

Issue: If the Debt Were Demandable

١١٩٧ - مَسْأَلَةٌ:

فَإِنْ كَانَ الدَّيْنُ حَالًّا كَانَ لِلَّذِي أَقْرَضَ أَنْ يَأْخُذَ بِهِ الْمُسْتَقْرَضَ مَتَى أَحَبَّ - إِنْ شَاءَ إِثْرَ إِقْرَاضِهِ إِيَّاهُ، وَإِنْ شَاءَ أَنْظَرَهُ بِهِ إِلَى انْقِضَاءِ حَيَاتِهِ.

L18780 1197 - Question:

L18781 If the debt is immediately due, the lender may demand repayment from the borrower whenever he wishes - either immediately after lending it to him, or defer the debt for him until the end of the lender’s life.

L18782 Mālik said: He has no right to demand repayment from him except after a period during which the borrower benefits from what he borrowed. This is incorrect, as it constitutes an unsubstantiated claim.

وَقَالَ مَالِكٌ: لَيْسَ لَهُ مُطَالَبَتُهُ إيَّاهُ بِهِ إلَّا بَعْدَ مُدَّةٍ يَنْتَفِعُ فِيهَا الْمُسْتَقْرِضُ بِمَا اسْتَقْرَضَ - وَهَذَا خَطَأٌ، لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ.

Moreover, the proponent [of this view] has imposed here a term of unspecified duration—a measure Allah the Exalted has never decreed. Yet the one imposing it does not define its extent. What greater evidence is there for the falsity of this claim than its advocate imposing a measure whose nature neither he nor anyone else knows what it is? The Messenger of Allah—peace and blessings be upon him—commanded that every entitled person be granted their right. Whoever withholds this has opposed his command—peace and blessings be upon him.

وَأَيْضًا - فَإِنَّهُ أَوْجَبَ هَاهُنَا أَجَلًا مَجْهُولَ الْمِقْدَارِ لَمْ يُوجِبْهُ اللَّهُ تَعَالَى قَطُّ - ثُمَّ هُوَ الْمُوجِبُ لَهُ لَا يَحُدُّ مِقْدَارَهُ، فَأَيُّ دَلِيلٍ أَدَلُّ عَلَى فَسَادِ هَذَا الْقَوْلِ مِنْ أَنْ يَكُونَ قَائِلُهُ يُوجِبُ فِيهِ مِقْدَارًا [مَا] لَا يَدْرِي هُوَ وَلَا غَيْرُهُ مَا هُوَ؟ وَقَدْ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُعْطَى كُلُّ ذِي حَقٍّ حَقَّهُ، فَمَنْ مَنَعَ مِنْ هَذَا فَقَدْ خَالَفَ أَمْرَهُ - عَلَيْهِ السَّلَامُ -

[مَسْأَلَةٌ طَالَبَهُ بِدَيْنِهِ وَالشَّيْءُ الْمُسْتَقْرَضُ حَاضِرٌ عِنْدَ الْمُسْتَقْرِضِ]

Case: He demanded his debt from him, and the borrowed item is present with the borrower.

١١٩٨ - مَسْأَلَةٌ:

1198 – Legal Question:

فَإِنْ طَالَبَهُ صَاحِبُ الدَّيْنِ بِدَيْنِهِ وَالشَّيْءُ الْمُسْتَقْرَضُ حَاضِرٌ عِنْدَ الْمُسْتَقْرِضِ لَمْ يَجُزْ أَنْ يُجْبَرَ الْمُسْتَقْرِضُ عَلَى [شَيْءٍ مِنْ مَالِهِ إذْ لَمْ يُوجِبْ ذَلِكَ] أَنْ يَرُدَّ الَّذِي أَخَذَ بِعَيْنِهِ وَلَا بُدَّ، لَكِنْ يُجْبَرُ عَلَى رَدِّ مِثْلِهِ - إمَّا ذَلِكَ الشَّيْءُ وَإِمَّا غَيْرُهُ مِثْلُهُ مِنْ نَوْعِهِ - لِأَنَّهُ قَدْ مَلَكَ الَّذِي اسْتَقْرَضَ وَصَارَ كَسَائِرِ مَالِهِ وَلَا فَرْقَ.

If the creditor demands repayment of the loan while the borrowed item is present with the borrower, it is not permissible to compel the borrower—since there is no obligation to use his own wealth for this purpose—to return the exact item he took by utilizing anything from his possessions. However, he must be compelled to return its equivalent—either the specific item itself or another of the same kind from its category—for he has acquired ownership of what he borrowed, and it has become like the rest of his owned property, with no legal distinction.

وَلَا يَجُوزُ أَنْ يُجْبَرَ عَلَى إخْرَاجِ شَيْءٍ بِعَيْنِهِ مِنْ مَالِهِ، إذْ لَمْ يُوجِبْ عَلَيْهِ قُرْآنٌ وَلَا سُنَّةٌ، فَإِنْ لَمْ يُوجَدْ لَهُ غَيْرُهُ قُضِيَ عَلَيْهِ حِينَئِذٍ بِرَدِّهِ، لِأَنَّهُ مَأْمُورٌ بِتَعْجِيلِ إنْصَافِ غَرِيمِهِ، فَتَأْخِيرُهُ بِذَلِكَ - وَهُوَ قَادِرٌ عَلَى الْإِنْصَافِ - ظُلْمٌ.

It is not permissible to compel one to surrender a specific item from his property, as neither the Quran nor the Sunnah obligates this. If no property other than it is found for him, a ruling is then issued against him to surrender that item, for he is commanded to hasten fairness to his creditor. Delaying fairness—despite being capable of it—constitutes injustice.

وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «مَطْلُ الْغَنِيِّ ظُلْمٌ» وَهَذَا غَنِيٌّ فَمَطْلُهُ ظُلْمٌ.

And he (peace be upon him) said: “Procrastination in payment by the wealthy

is an injustice." This person is wealthy; thus, their procrastination in payment is an act of injustice.

A case of a loan when it is for a term.

[مَسْأَلَةٌ الْقَرْضُ إِذَا كَانَ إِلَى أَجَلٍ]

1199 – Issue:

١١٩٩ - مَسْأَلَةٌ:

If the loan is for a specified term, they are obligated to document it and have it witnessed by two just men or more, or one man and two women - provided they are just individuals, two or more.

فَإِنْ كَانَ الْقَرْضُ إِلَى أَجَلٍ، فَفَرْضٌ عَلَيْهِمَا أَنْ يَكْتُبَاهُ وَأَنْ يُشْهِدَا عَلَيْهِ عَدْلَيْنِ فَصَاعِدًا أَوْ رَجُلًا وَامْرَأَتَيْنِ، عُدُولًا فَصَاعِدًا.

If that occurs during a journey and the two parties cannot find a scribe, then if the creditor wishes to take a pledge from the debtor, he may do so; and if the debtor wishes to offer a pledge, he may do so. The debtor is not liable for anything in that immediately due debt—neither while traveling nor while resident.

فَإِنْ كَانَ ذَلِكَ فِي سَفَرٍ وَلَمْ يَجِدَا كَاتِبًا فَإِنْ شَاءَ الَّذِي لَهُ الدَّيْنُ أَنْ يَرْتَهِنَ بِهِ رَهْنًا فَلَهُ ذَلِكَ، وَإِنْ شَاءَ أَنْ يَرْتَهِنَ فَلَهُ ذَلِكَ، وَلَيْسَ يَلْزَمُهُ شَيْءٌ مِنْ ذَلِكَ الدَّيْنِ الْحَالِّ - لَا فِي السَّفَرِ وَلَا فِي الْحَضَرِ -.

The proof of that is the statement of Allah, the Most High: {O you who have believed, when you contract a debt for a specified term, write it down} [Al-Baqarah: 282] up to His saying, the Most High: {And do not weary of writing it, whether small or large, until its term} [Al-Baqarah: 282] up to His saying, the Most High: {And take two witnesses from among your men. If there are not two men, then a man and two women from those you approve as witnesses} [Al-Baqarah: 282] up to His saying, the Most High: {If you are on a journey and do not find a scribe, then secured pledges. If one of you trusts the other, let the trusted one fulfill his trust} [Al-Baqarah: 283]. There is nothing in the command of Allah, the Most High, except obedience.[3]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ} [البقرة: ٢٨٢] إِلَى قَوْلِهِ -: {وَلا تَسْأَمُوا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَى أَجَلِهِ} [البقرة: ٢٨٢] : إِلَى قَوْله تَعَالَى: {وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ} [البقرة: ٢٨٢] إِلَى قَوْله تَعَالَى -: {وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَقْبُوضَةٌ فَإِنْ أَمِنَ بَعْضُكُمْ بَعْضًا فَلْيُؤَدِّ الَّذِي اؤْتُمِنَ أَمَانَتَهُ} [البقرة: ٢٨٣] وَلَيْسَ فِي أَمْرِ اللَّهِ تَعَالَى إِلَّا الطَّاعَةُ.

Whoever says it is recommended has uttered falsehood, and it is not permissible that Allah the Exalted would say, "Then write it" [Al-Baqarah: 282], and then someone says, "I will not write if you wish."[4]

وَمَنْ قَالَ: إِنَّهُ نَدْبٌ، فَقَدْ قَالَ: الْبَاطِلَ، وَلَا يَجُوزُ أَنْ يَقُولَ اللَّهُ تَعَالَى: {فَاكْتُبُوهُ} [البقرة: ٢٨٢] فَيَقُولُ قَائِلٌ: لَا أَكْتُبُ إِنْ شِئْتُ.

And Allah, the Exalted, says: "And take witnesses" [Al-Baqarah: 282]. Then

وَيَقُولُ اللَّهُ تَعَالَى: {وَاسْتَشْهِدُوا} [البقرة: ٢٨٢] فَيَقُولُ قَائِلٌ: لَا أُشْهِدُ - وَلَا يَجُوزُ نَقْلُ أَوَامِرِ اللَّهِ تَعَالَى عَنْ الْوُجُوبِ إِلَى النَّدْبِ إِلَّا بِنَصٍّ آخَرَ، أَوْ بِضَرُورَةِ حَسٍّ.

[3] **Qur'an references (L18794):** Qur'an 2:282 (Al-Baqarah); Qur'an 2:283 (Al-Baqarah).
[4] **Qur'an references (L18796):** Qur'an 2:282 (Al-Baqarah).

one might argue, “I will not summon a witness”—but it is impermissible to transfer the commands of Allah, the Exalted, from obligation to recommendation except through another textual evidence or by compelling necessity.[5]

L18798 All of this is the view of Abū Sulaymān, all of our associates, and a group from the Salaf (the early predecessors). We will investigate this thoroughly in *The Book of Sales*, if God, the Exalted, wills.

L18799 **A jurisprudential issue wherein a creditor encountered his debtor in a country, and the debt was either immediately due or its term had expired.**

L18800 1200 - Issue:

L18801 Whoever encounters their debtor in a distant or nearby land—and the debt is either payable on demand or has reached its maturity—may rightfully demand repayment and claim what is owed. The judge shall compel the debtor to fulfill the creditor’s rightful due, whether the debt involves trade goods, foodstuffs, livestock, dinars, or dirhams—the ruling applies equally to all these cases. It is impermissible to compel the creditor to relinquish their right to immediate settlement except in the specific location where the debt agreement was originally established.

L18802 The evidence for this: the statement of the Messenger of Allah—peace be upon him—“Delaying payment by a wealthy person is injustice.”

L18803 And his command—peace be upon him—is to give every possessor of a right his due.

L18804 Whoever claims that it is impermissible to compel someone to enforce equitable settlement except when there is mutual debt has uttered falsehood, for this is an assertion without evidence—neither from the Qur’an, nor Sunnah, nor unsound narration, nor a Companion’s opinion, nor analogy, nor sound opinion. Then it should be said to him: If the mutual debt occurred in Andalusia, then the debtor met the creditor in the heart of China while residing there—or both were there—do you consider the creditor’s right invalidated?

[5]**Qur’an references (L18797):** Qur’an 2:282 (Al-Baqarah).

وَكُلُّ هَذَا قَوْلُ أَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا، وَطَائِفَةٍ مِنْ السَّلَفِ، وَنَتَقَصَّى ذَلِكَ فِي " كِتَابِ الْبُيُوعِ " إنْ شَاءَ اللَّهُ تَعَالَى.

[مَسْأَلَةٌ لَقِيَ غَرِيمَهُ فِي بَلَدٍ وَكَانَ الدَّيْنُ حَالًّا أَوْ قَدْ بَلَغَ أَجَلَهُ]

١٢٠٠ - مَسْأَلَةٌ:

وَمَنْ لَقِيَ غَرِيمَهُ فِي بَلَدٍ بَعِيدٍ أَوْ قَرِيبٍ - وَكَانَ الدَّيْنُ حَالًّا أَوْ قَدْ بَلَغَ أَجَلَهُ - فَلَهُ مُطَالَبَتُهُ، وَأَخْذُهُ بِحَقِّهِ، وَيُجْبِرُهُ الْحَاكِمُ عَلَى إنْصَافِهِ - عَرَضًا كَانَ الدَّيْنُ، أَوْ طَعَامًا، أَوْ حَيَوَانًا، أَوْ دَنَانِيرَ، أَوْ دَرَاهِمَ - كُلُّ ذَلِكَ سَوَاءٌ، وَلَا يَحِلُّ أَنْ يُجْبَرَ صَاحِبُ الْحَقِّ عَلَى أَنْ لَا يَنْتَصِفَ إلَّا فِي الْمَوْضِعِ الَّذِي تَدَايَنَا فِيهِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَطْلُ الْغَنِيِّ ظُلْمٌ» .

وَأَمْرُهُ - عَلَيْهِ السَّلَامُ - أَنْ يُعْطِيَ كُلَّ ذِي حَقٍّ حَقَّهُ.

وَمَنْ ادَّعَى أَنَّهُ لَا يَجُوزُ أَنْ يُجْبَرَ عَلَى إنْصَافِهِ إلَّا حَيْثُ تَدَايَنَا فَقَدْ قَالَ الْبَاطِلَ لِأَنَّهُ قَوْلٌ لَا دَلِيلَ عَلَيْهِ لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ وَلَا قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ، ثُمَّ يُقَالُ لَهُ: إنْ كَانَ التَّدَايُنُ بِالْأَنْدَلُسِ، ثُمَّ لَقِيَهُ بِصِينِ الصِّينِ سَاكِنًا

Or must both the debtor and creditor be compelled to travel to Andalusia to have the debtor settle the debt fairly with him there?

هُنَالِكَ، أَوْ كِلَاهُمَا، أَتَرَى حَقَّهُ قَدْ سَقَطَ أَوْ يُكَلَّفُ الَّذِي عَلَيْهِ الْحَقُّ هُوَ وَصَاحِبُ الْحَقِّ النُّهُوضَ إِلَى الْأَنْدَلُسِ لِيُنْصِفهُ هُنَالِكَ مِنْ مَدِينٍ.

L18805 If they were to pursue their argument consistently, it would obligate them not to permit equitable division except in the specific location where both parties were physically present during the transaction. Yet they do not assert this. Therefore, we add to them of the earth span by span until we lead them to reach the farthest extremities of the world.

ثُمَّ لَوْ طَرَدُوا قَوْلَهُمْ لَلَزِمَهُمْ أَنْ لَا يُجِيزُوا الْإِنْصَافَ إِلَّا فِي الْبُقْعَةِ الَّتِي كَانَا فِيهَا بِأَبْدَانِهِمَا حِينَ التَّدَايُنِ، وَهُمْ لَا يَقُولُونَ هَذَا، فَنَحْنُ نَزِيدُهُمْ مِنْ الْأَرْضِ شِبْرًا شِبْرًا حَتَّى نَبْلُغَهُمْ إِلَى أَقْصَى الْعَالَمِ.

L18806 If every person with a viewpoint were to verify their stance and hold themselves accountable by only speaking in matters of religion according to what the Quran or a Sunnah has brought forth, errors would become rare, and it would be safer for every speaker.

وَلَوْ حَقَّقَ كُلُّ ذِي قَوْلٍ قَوْلَهُ، وَحَاسَبَ نَفْسَهُ بِأَنْ لَا يَقُولَ فِي الدِّينِ إِلَّا مَا جَاءَ بِهِ قُرْآنٌ أَوْ سُنَّةٌ؛ لَقَلَّ الْخَطَأُ، وَلَكَانَ أَسْلَمَ لِكُلِّ قَائِلٍ.

L18807 Our attainment of righteousness is solely by Allah, the Almighty.

وَمَا تَوْفِيقُنَا إِلَّا بِاَللَّهِ الْعَظِيمِ.

L18808–18809 Issue: The debtor of a deferred debt intends to expedite its payment.

[مَسْأَلَةٌ أَرَادَ الَّذِي عَلَيْهِ الدَّيْنُ الْمُؤَجَّلُ أَنْ يُعَجِّلَهُ]

L18810 Issue:

مَسْأَلَةٌ:

L18811 If the debtor obligated to repay a deferred debt wishes to hasten its payment before its due date - whether partially or substantially earlier - the creditor cannot be compelled to accept it at all.

وَإِنْ أَرَادَ الَّذِي عَلَيْهِ الدَّيْنُ الْمُؤَجَّلُ أَنْ يُعَجِّلَهُ قَبْلَ أَجَلِهِ بِمَا قَلَّ أَوْ كَثُرَ لَمْ يُجْبَرْ الَّذِي لَهُ الْحَقُّ عَلَى قَبُولِهِ أَصْلًا

L18812 Similarly, if the one entitled to the right wishes to expedite receiving his due debt before its maturity date by a decrease or increase in the amount, it is not permissible to compel the obligated party to fulfill it. The same ruling applies to all that: dinars and dirhams, all food, all merchandise, and animals.

وَكَذَلِكَ لَوْ أَرَادَ الَّذِي لَهُ الْحَقُّ أَنْ يَتَعَجَّلَ قَبْضَ دَيْنِهِ قَبْلَ أَجَلِهِ بِمَا قَلَّ أَوْ كَثُرَ لَمْ يَجُزْ أَنْ يُجْبَرَ الَّذِي عَلَيْهِ الْحَقُّ عَلَى أَدَائِهِ -: سَوَاءٌ فِي كُلِّ ذَلِكَ الدَّنَانِيرُ وَالدَّرَاهِمُ، وَالطَّعَامُ كُلُّهُ، وَالْعُرُوضُ كُلُّهَا، وَالْحَيَوَانُ.

L18813 If they mutually agree to prepay the debt (or part of it) before its due date, or to defer it (or part of it) after its due date, all such arrangements are lawfully valid.

فَلَوْ تَرَاضَيَا عَلَى تَعْجِيلِ الدَّيْنِ أَوْ بَعْضِهِ قَبْلَ حُلُولِ أَجَلِهِ، أَوْ عَلَى تَأْخِيرِهِ بَعْدَ حُلُولِ أَجَلِهِ، أَوْ بَعْضِهِ: جَازَ كُلُّ ذَلِكَ -.

L18814 This is the opinion of Abū Sulaymān and the scholars of our school.

وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L18815 The Malikis stated: If it is something that involves no cost to carry and transport, the claimant is obligated to take possession of it. But if it is something that involves cost to carry and transport, they are not obligated to take delivery before its due time.

وَقَالَ الْمَالِكِيُّونَ: إِنْ كَانَ مِمَّا لَا مُؤْنَةَ فِي حَمْلِهِ وَنَقْلِهِ أُجْبِرَ الَّذِي لَهُ الْحَقُّ عَلَى قَبْضِهِ، وَإِنْ كَانَ مِمَّا فِيهِ مُؤْنَةٌ فِي حَمْلِهِ وَنَقْلِهِ لَمْ يُجْبَرْ عَلَى قَبُولِهِ قَبْلَ مَحِلِّهِ.

L18816 Abu Muhammad said: This is an utterly corrupt opinion—First: that it is a position without proof, neither from the Qur'an, nor the Sunnah, nor consensus, nor a statement of a Companion with no opposition, nor analogy, nor sound opinion.

قَالَ أَبُو مُحَمَّد: وَهَذَا قَوْلٌ فِي غَايَةِ الْفَسَادِ -: أَوَّلُ ذَلِكَ: أَنَّهُ قَوْلٌ بِلَا بُرْهَانٍ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إجْمَاعٍ، وَلَا قَوْلِ صَاحِبٍ لَا مُخَالِف لَهُ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ.

L18817 The second is that the stipulation of a term has been validated through the Quran and Sunnah; therefore, it is impermissible to nullify what Allah the Exalted has established as valid.

وَالثَّانِي: أَنَّ شَرْطَ الْأَجَلِ قَدْ صَحَّ بِالْقُرْآنِ وَالسُّنَّةِ، فَلَا يَجُوزُ إبْطَالُ مَا صَحَّحَهُ اللَّهُ تَعَالَى.

L18818 The third is that they invalidated this valid condition which Allah the Exalted has established in His Book, and permitted invalid conditions that Allah the Exalted has nullified in His Book, such as one who stipulates for his wife that any woman he marries besides her shall be divorced, and any concubine he takes in addition to her shall be freed, and that he shall not relocate her from her home; if he does so, she has the right to decide.

وَالثَّالِثُ: أَنَّهُمْ أَبْطَلُوا هَذَا الشَّرْطَ الصَّحِيحَ الَّذِي أَثْبَتَهُ اللَّهُ تَعَالَى فِي كِتَابِهِ. وَأَجَازُوا الشُّرُوطَ الْفَاسِدَةَ الَّتِي أَبْدَلَهَا اللَّهُ تَعَالَى فِي كِتَابِهِ، كَمَنْ اشْتَرَطَ لِامْرَأَتِهِ أَنَّ كُلَّ امْرَأَةٍ يَتَزَوَّجُهَا عَلَيْهَا فَهِيَ طَالِقٌ، وَكُلَّ سُرِّيَّةٍ يَتَّخِذُهَا عَلَيْهَا فَهِيَ حُرَّةٌ، وَأَنْ لَا يُرَحِّلَهَا عَنْ دَارِهَا، فَإِنْ فَعَلَ فَأَمْرُهَا بِيَدِهَا

L18819 And here they cite a fabricated narration—"Muslims are bound by their stipulations"—so why do they not cite it, given that they deem it authentic for implementing the deferment clause referred to as debt? Reflect on these matters, and you will see the irony.

وَاحْتَجُّوا هَاهُنَا بِرِوَايَةٍ مَكْذُوبَةٍ وَهِيَ " الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ " فَهَلَّا احْتَجُّوا بِهَا إذْ هِيَ عِنْدَهُمْ صَحِيحَةٌ فِي إنْفَاذِ شَرْطِ التَّأْجِيلِ الْمُسَمَّى بِالدَّيْنِ، فَتَأَمَّلُوا هَذِهِ الْأُمُورَ تَرَوْا الْعَجَبَ

L18820 The fourth point: They cited as evidence in this matter Umar and Uthman through what was reported from them regarding the judicial ruling to accept teaching writing before its appointed time, and they erred in this matter in multiple aspects.

وَالرَّابِعُ: أَنَّهُمْ احْتَجُّوا فِي هَذَا بِعُمَرَ، وَعُثْمَانَ، فِيمَا رُوِيَ عَنْهُمَا فِي الْقَضَاءِ بِقَبُولِ تَعْلِيمِ الْكِتَابَةِ قَبْلَ أَجَلِهَا، وَقَدْ أَخْطَئُوا فِي هَذَا مِنْ وُجُوهٍ.

L18821–18822 The first is that there is no conclusive proof in anyone below the Messenger of Allah—peace be upon him.

أَوَّلُهَا: أَنَّهُ لَا حُجَّةَ فِيمَنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L18823 The second is that this was only reported from ʿUmar and ʿUthmān specif-

ically concerning the manumission contract. They analogically extended its ruling to all other financial obligations, while affirming that the ruling of the manumission contract differs from the rulings governing financial obligations in matters like the permissibility of debt transfer and other aspects.

L18824 The third is that Anas opposed ʿUmar and ʿUthmān in that matter, as he did not consider expediting the writing before its term.

L18825 The fourth point is that they opposed ʿUmar and ʿUthmān in scores of legal cases.

L18826 Among them is Umar's compulsion of the slave masters to enter into their manumission contracts through beating if the slaves requested it, and there are many other instances like this. Thus, it is baseless to consider their opinion as proof in one instance and not as proof in another.

L18827 The fifth: that they have opposed ʿUmar and ʿUthmān in this very matter, for it is reported from them that the kitabah contract is to be deposited in the treasury, whereupon the master gives the enslaved person his due at every designated term. Thus, the corruption of this opinion has become evident—and success is from Allah, the Most High.

L18828 Some of them have embellished with the well-established report from the Messenger of Allah (peace and blessings be upon him): "Whatever of this wealth comes to you without you coveting it or asking for it, take it; but whatever does not come, do not let your soul pursue it."[6]

L18829 Abu Muhammad said: This is a distortion by them of the words from their proper contexts, for this report pertains only to the initial grant regarding which we are prohibited from asking—without necessity or divinely sanctioned authority—nor does it apply to the obligatory rights that necessitate obligatory inquiry about them and pursuit of them, or discharging from them for Allah, the Exalted.

L18830 Abu Muhammad said: I wonder—what distinction exists between (a) the obligor's desire to expedite fulfillment of his obligation before its due date, alongside the obligee's objection thereto, and (b) the obligee's desire to ex-

وَالثَّانِي أَنَّهُ إنَّمَا جَاءَ ذَلِكَ عَنْ عُمَرَ، وَعُثْمَانَ، فِي الْكِتَابَةِ خَاصَّةً، فَقَاسُوا عَلَيْهَا سَائِرَ الدُّيُونِ، وَهُمْ مُقِرُّونَ بِأَنَّ حُكْمَ الْكِتَابَةِ مُخَالِفٌ لِحُكْمِ الدُّيُونِ فِي جَوَازِ الْحَمَّالَةِ وَغَيْرِ ذَلِكَ.

وَالثَّالِثُ: أَنَّهُ قَدْ خَالَفَ عُمَرُ، وَعُثْمَانَ فِي ذَلِكَ أَنَسٍ فَلَمْ يَرَ تَعْجِيلَ الْكِتَابَةِ قَبْلَ أَجَلِهَا.

وَالرَّابِعُ: أَنَّهُمْ خَالَفُوا عُمَرَ، وَعُثْمَانَ، فِي مِئِينَ مِنْ الْقَضَايَا.

مِنْهَا - إجْبَارُ عُمَرَ سَادَاتِ الْعَبِيدِ عَلَى كِتَابَتِهِمْ بِالضَّرْبِ إذَا طَلَبَ الْعَبِيدُ ذَلِكَ، وَغَيْرُ هَذَا كَثِيرٌ، فَمِنْ الْبَاطِلِ أَنْ يَكُونَ قَوْلُهُمَا حُجَّةً فِي مَوْضِعٍ غَيْرَ حُجَّةٍ فِي آخَرَ.

وَالْخَامِسُ: أَنَّهُمْ قَدْ خَالَفُوا عُمَرَ، وَعُثْمَانَ، فِي هَذِهِ الْقَضِيَّةِ نَفْسِهَا، لِأَنَّهُ جَاءَ عَنْهُمَا وَضْعُ الْكِتَابَةِ فِي بَيْتِ الْمَالِ، ثُمَّ يُعْطِي السَّيِّدَ فِي كُلِّ نَجْمٍ حَقَّهُ، فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَدْ مَوَّهَ بَعْضُهُمْ بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا جَاءَكَ مِنْ هَذَا الْمَالِ وَأَنْتَ غَيْرُ مُشْرِفٍ وَلَا سَائِلٍ فَخُذْهُ وَمَا لَا فَلَا تُتْبِعْهُ نَفْسَكَ»

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَحْرِيفٌ مِنْهُمْ لِلْكَلِمِ عَنْ مَوَاضِعِهِ، لِأَنَّ هَذَا الْخَبَرَ إنَّمَا هُوَ فِي الْعَطَاءِ الْمُبْتَدَأِ الَّذِي نُهِينَا عَنْ السُّؤَالِ فِيهِ - عَنْ غَيْرِ ضَرُورَةٍ أَوْ بِغَيْرِ سُلْطَانٍ - وَلَا فِي الْحُقُوقِ الْوَاجِبَةِ الْوَاجِبِ السُّؤَالِ عَنْهَا وَطَلَبُهَا أَوْ الْإِبْرَاءِ مِنْهَا لِلَّهِ تَعَالَى.

[6] **Hadith references (L18828):** Sunan an-Nasai 2606.

pedite attainment of his right before its due date, alongside the obligor's objection thereto? For they obligated the former yet prohibited the latter.

قَالَ أَبُو مُحَمَّدٍ: وَلَيْتَ شِعْرِي أَيُّ فَرْقٍ بَيْنَ إِرَادَةِ الَّذِي عَلَيْهِ الْحَقُّ تَعْجِيلَ مَا عَلَيْهِ قَبْلَ أَجَلِهِ مَعَ إِبَايَةِ الَّذِي لَهُ الْحَقُّ مِنْ ذَلِكَ وَبَيْنَ إِرَادَةِ الَّذِي لَهُ الْحَقُّ تَعْجِيلَ مَا لَهُ قَبْلَ أَجَلِهِ مَعَ إِبَايَةِ الَّذِي عَلَيْهِ الْحَقُّ مِنْ ذَلِكَ؟ إِذْ أَوْجَبُوا الْوَاحِدَ وَمَنَعُوا الْآخَرَ.

L18831 If they say, "Does the debtor seek to be absolved of the right [owed to the creditor]?" We say to them: "The creditor seeks to absolve the debtor of it."

فَإِنْ قَالُوا: إِنَّ الَّذِي عَلَيْهِ الْحَقُّ يُرِيدُ أَنْ يَبْرَأَ مِمَّا عَلَيْهِ؟ قُلْنَا لَهُمْ: وَالَّذِي لَهُ الْحَقُّ يُرِيدُ أَنْ يُبْرِئَ الَّذِي عَلَيْهِ الْحَقُّ مِمَّا عَلَيْهِ.

L18832 Then if they say: Does the one obligated by the right intend nothing but to defer until its term?

فَإِنْ قَالُوا: لَيْسَ يُرِيدُ ذَلِكَ الَّذِي عَلَيْهِ الْحَقُّ إِلَّا إِلَى أَجَلِهِ؟

L18833–18834 We said to them: Nor does the entitled party intend that [claim] except until its appointed term.

قُلْنَا لَهُمْ: وَلَا يُرِيدُ ذَلِكَ الَّذِي لَهُ الْحَقُّ إِلَّا إِلَى أَجَلِهِ.

[مَسْأَلَةٌ الْقَرْضُ فِي الْجَوَارِي وَالْعَبِيدِ وَالدَّوَابِّ وَالدُّورِ وَالْأَرْضِينَ]

A jurisprudential issue concerning interest-free loans involving the categories of female slaves, male slaves, animals, houses, and lands.

L18835

١٢٠٢ - مَسْأَلَةٌ:

L18836 1202: Issue

وَالْقَرْضُ جَائِزٌ فِي الْجَوَارِي، وَالْعَبِيدِ، وَالدَّوَابِّ، وَالدُّورِ، وَالْأَرْضِينَ، وَغَيْرِ ذَلِكَ لِعُمُومِ قَوْلِهِ تَعَالَى: {إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى} [البقرة: ٢٨٢] فَعَمَّ تَعَالَى وَلَمْ يَخُصَّ فَلَا يَجُوزُ التَّخْصِيصُ فِي ذَلِكَ بِالرَّأْيِ الْفَاسِدِ بِغَيْرِ قُرْآنٍ، وَلَا سُنَّةٍ.

L18837 The loan (qard) is permissible for female slaves, male slaves, beasts of burden, houses, lands, and other things due to the general applicability of Allah's statement: {When you contract a debt for a specified term} [Al-Baqarah 2:282]. Thus, He made it general without specification, so it is impermissible to specify restrictions in this matter through baseless opinion without relying on the Quran or Sunnah.[7]

وَقَوْلُنَا فِي هَذَا هُوَ قَوْلُ الْمُزَنِيِّ، وَأَبِي سُلَيْمَانَ، وَمُحَمَّدِ بْنِ جَرِيرٍ، وَأَصْحَابِنَا.

L18838 Our statement regarding this is the opinion of Al-Muzani, Abu Sulayman, Muhammad ibn Jarir, and our companions.

وَمَنَعَ مِنْ ذَلِكَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، فِي الْجَوَارِي خَاصَّةً، وَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا

L18839 Abu Hanifah, Malik, and al-Shafi'i prohibited this specifically concerning female slaves, and we are unaware of any valid evidence for their position—neither from the Quran, nor the Sunnah, nor a defective narration, nor a companion's statement, nor consensus, nor analogy, nor sound reasoning—

[7] **Qur'an references (L18837):** Qur'an 2:282 (Al-Baqarah).

except that some of them argued: “This is impermissible because he would cohabit with her, then return her to her owner, thereby rendering her private part a loaned object.”

L18840 Abū Muḥammad said: As for their claim—“He consummates the marriage then returns her to him”—they impose this very ruling in the case where he finds her to have a defect. If they claim consensus? — We say: You are lying. It has been authentically transmitted from ʿAlī and Shurayḥ: Prohibition of annulment due to a defect after consummation. Moreover, even if their claim of consensus were valid, it would obligate them—being proponents of qiyās—to analogize disputed matters to what they allege is agreed upon, for this is their foundational principle in qiyās. How then have they diverged from it? Then we say to them: If he consummates the marriage then annuls it, what becomes of this act? He consummated it lawfully according to the explicit Quranic text. The Exalted said: “And those who guard their chastity, except with their spouses or those their right hands possess—for then they are free from blame” (23:5-6). “But whoever seeks beyond that—it is they who are the transgressors” (23:7).[8]

L18841 Then, if he returns it, he does so by a rightful claim, for he has discharged what was incumbent upon him, thereby transferring the claim from one rightful claim to another.

L18842 As for their claim that it is a loaned private part—this is false and invalid, because the loaned item does not cease to be the property of the lender. Thus, it is forbidden for others to have intercourse with it, as it remains under the ownership of another.

L18843 As for the consumable loan (mustaqraḍah), it becomes the borrower’s lawful ownership, making it permissible for him; he may choose to return the same item, retain it, or return something else of equivalent value. This ruling does not apply to a loaned item for use (ʿāriyyah).

L18844 They said: “Is it utterly disgraceful and abominable?” We replied: “There is

مِنْ إجْمَاعٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ سَدِيدٍ، إلَّا أَنَّ بَعْضَهُمْ قَالَ: لَا يَجُوزُ ذَلِكَ، لِأَنَّهُ يَطَؤُهَا، ثُمَّ يَرُدُّهَا إلَيْهِ فَيَكُونُ فَرْجًا مُعَارًا.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُهُمْ: يَطَؤُهَا ثُمَّ يَرُدُّهَا عَلَيْهِ، فَهُمْ يُوجِبُونَ هَذَا نَفْسَهُ فِي الَّتِي يَجِدُ بِهَا عَيْبًا - فَإِنْ ادَّعَوْا إجْمَاعًا؟ - قُلْنَا: كَذَبْتُمْ، قَدْ صَحَّ عَنْ عَلِيّ وَشُرَيْحٍ: الْمَنْعُ مِنْ الرَّدِّ بِالْعَيْبِ بَعْدَ الْوَطْءِ - ثُمَّ لَوْ صَحَّ لَهُمْ أَنَّهُ إجْمَاعٌ لَلَزِمَهُمْ لِأَنَّهُمْ أَصْحَابُ قِيَاسٍ أَنْ يَقِيسُوا مَا اُخْتُلِفَ فِيهِ عَلَى مَا يَزْعُمُونَ أَنَّهُ اتُّفِقَ عَلَيْهِ فَهَذَا أَصْلُهُمْ فِي الْقِيَاسِ، فَأَنَّى بَدَا لَهُمْ عَنْهُ؟ ثُمَّ نَقُولُ لَهُمْ: فَإِذَا وَطِئَهَا ثُمَّ رَدَّهَا فَكَانَ مَاذَا؟ وَطِئَهَا بِحَقٍّ بِنَصِّ الْقُرْآنِ قَالَ تَعَالَى: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] {فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧]

ثُمَّ إنْ رَدَّهَا رَدَّهَا بِحَقٍّ، لِأَنَّهُ أَدَّى مَا عَلَيْهِ فَانْتَقَلَتْ مِنْ حَقٍّ إلَى حَقٍّ.

وَأَمَّا قَوْلُهُمْ: إنَّهُ فَرْجٌ مُعَارٌ -: فَكَذِبٌ وَبَاطِلٌ، لِأَنَّ الْعَارِيَةَ لَا يَزُولُ عَنْهَا مِلْكُ الْمُعِيرِ، فَحَرَامٌ عَلَى غَيْرِهِ وَطْؤُهَا، لِأَنَّهُ مِلْكُ يَمِينِ غَيْرِهِ.

وَأَمَّا الْمُسْتَقْرَضَةُ فَهِيَ مِلْكُ يَمِينِ الْمُسْتَقْرِضِ فَهِيَ لَهُ حَلَالٌ، وَهُوَ مُخَيَّرٌ بَيْنَ أَنْ يَرُدَّهَا، أَوْ يُمْسِكَهَا أَوْ يَرُدَّ غَيْرَهَا، وَلَيْسَتْ الْعَارِيَةُ كَذَلِكَ.

[8] **Qur’an references (L18840):** Qur’an 23:5 (Al-Mu’minun); Qur’an 70:29 (Al-Ma’arij); Qur’an 23:6 (Al-Mu’minun); Qur’an 70:30 (Al-Ma’arij); Qur’an 23:7 (Al-Mu’minun); Qur’an 70:31 (Al-Ma’arij).

وَقَالُوا: هُوَ بِشِيعَ شَنِيعٌ؟ قُلْنَا: لَا شُنْعَةَ، وَلَا بَشَاعَةَ فِي الْحَلَالِ، وَأَنْتُمْ لَا تَسْتَبْشِعُونَ مِثْلَهُ مِنْ أَنْ يَكُونَ إِنْسَانٌ يَبِيعُ جَارِيَةً مِنْ غَيْرِهِ فَيَطَؤُهَا، ثُمَّ يَبْتَاعُهَا الَّذِي بَاعَهَا فَيَسْتَبْرِئُهَا بِحَيْضَةٍ، ثُمَّ يَطَؤُهَا، ثُمَّ يَبْتَاعُهَا الَّذِي بَاعَهَا مِنْهُ - وَهَكَذَا أَبَدًا.

L18845–18846 وَمِنْ أَنْ يَكُونَ إِنْسَانٌ يَتَزَوَّجُ امْرَأَةً فَيَطَؤُهَا ثُمَّ يُطَلِّقُهَا، فَتَعْتَدُّ خَمْسَةً وَأَرْبَعِينَ يَوْمًا وَهِيَ مُصَدَّقَةٌ عِنْدَهُ، ثُمَّ يَتَزَوَّجُهَا جَارُهُ فَيَطَؤُهَا ثُمَّ يُطَلِّقُهَا، فَتَعْتَدُّ كَذَلِكَ، ثُمَّ يَتَزَوَّجُهَا الْأَوَّلُ فَيَطَؤُهَا ثُمَّ يُطَلِّقُهَا - وَهَكَذَا أَبَدًا.

L18847 فَأَيُّ فَرْقٍ بَيْنَ هَذَا وَبَيْنَ مَا مَنَعُوا مِنْهُ مِنْ قَرْضِ الْجَوَارِي؟

L18848 إِنَّمَا الشَّنِيعُ الْبَشِيعُ الْفَظِيعُ مِمَّا يَقُولُونَهُ: مِنْ أَنَّ رِجَالًا تَكُونُ بَيْنَهُمْ أَمَةٌ يَطَؤُهَا كُلُّ وَاحِدٍ مِنْهُمْ، فَلَا يَرَوْنَ فِي ذَلِكَ حَدًّا وَيُلْحِقُونَ الْوَلَدَ بِهَذَا الْوَطْءِ الْحَرَامِ الْخَبِيثِ.

L18849 وَمِنْ أَنْ يَطَأَ الْوَالِدُ أُمَّ وَلَدِ ابْنِهِ فَلَا يَرَوْنَ عَلَيْهِ حَدًّا وَيُلْحِقُونَ الْوَلَدَ فِي هَذَا الْوَطْءِ الْفَاحِشِ، لَا سِيَّمَا الْحَنَفِيِّينَ الَّذِينَ يَقُولُونَ: مَنْ عَشِقَ امْرَأَةَ جَارِهِ فَرَشَا شَاهِدَيْنِ فَشَهِدَا لَهُ بِأَنَّ زَوْجَهَا طَلَّقَهَا، وَأَنَّهَا اعْتَدَّتْ، وَأَنَّهَا تَزَوَّجَتْ هَذَا - وَهِيَ مُنْكِرَةٌ وَزَوْجُهَا مُنْكِرٌ - وَاللَّهُ تَعَالَى يَعْلَمُ أَنَّهُمَا كَاذِبَانِ، فَقَضَى الْقَاضِي بِذَلِكَ فَإِنَّهُ يَطَؤُهَا حَلَالًا طَيِّبًا - فَهَذِهِ هِيَ الشَّنَاعَةُ الْمُضَاهِيَةُ لِخِلَافِ الْإِسْلَامِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَرْض مَا يُمْكِنُ وَزْنُهُ أَوْ كَيْلُهُ أَوْ عَدَدُهُ أَوْ زَرْعُهُ]

١٢٠٣ - مَسْأَلَةٌ:

no disgrace or repugnance in what is lawful. Yet you do not deem it abhorrent for a man to sell a slave girl belonging to another, consummate relations with her, then have the seller repurchase her, wait for her to complete one menstrual cycle to ensure she is not pregnant, consummate relations with her again, then have the seller repurchase her from him—and so on perpetually."

L18845–18846 And that a man may marry a woman, consummate the marriage, then divorce her, so she observes a waiting period of forty-five days with her waiting period acknowledged by him. Then his neighbor marries her, consummates the marriage, divorces her, and she observes a waiting period of the same length. Then the first man marries her once more, consummates the marriage, divorces her—and so on indefinitely.

L18847 What difference is there between this practice and their prohibition of lending female slaves?

L18848 The truly abhorrent, grotesque, and outrageous claim they assert is that when there exists a female slave among men—with each of them copulating with her—they deem no Hadd punishment applicable to this act, yet they ascribe the child's paternity to this unlawful and abhorrent copulation, a sinful, depraved transgression.

L18849 And among [the rulings] is that if a father has intercourse with his daughter-in-law, they do not deem a ḥadd punishment applicable to him and attribute the child's lineage to this immoral act—particularly the Ḥanafīs, who state: "If a man becomes infatuated with his neighbor's wife, bribes two witnesses to falsely testify that her husband divorced her, that she completed her waiting period, and that she married him (while she and her husband deny it, and Allah knows they are lying), and the judge rules accordingly, he may lawfully and righteously have intercourse with her." This is the atrocity akin to what contradicts Islam. And success is from Allah, the Most High.

L18850 An issue regarding a loan of items that can be weighed, measured, counted, or planted.

L18851 1203 – Question:

L18852 Anything that can be weighed, measured, counted, or cultivated must not be lent indiscriminately, because the lender does not know the exact amount obligating them to repay it, thereby constituting wrongful consumption of wealth.

L18853 1204: Issue

L18854 Any loan borrowed in a known quantity of number, agricultural measure, volume, or weight - if the borrower repays it in bulk quantities, and it becomes clearly and certainly evident that the amount is less than what was borrowed while the lender has consented to this reduction; or if it becomes clearly and certainly evident that it exceeds what was borrowed while the borrower is content with this surplus - all such transactions are permissible and commendable, as we have previously established.

L18855 If he does not know whether it is equivalent to what he borrowed, less, or more, it is impermissible for him, because one may not take another's property except through the owner's voluntary goodwill and consent. Such consent and goodwill can only apply to what is definitively known—not to what is unknown—and with Allah alone is success, the Most High.

L18856 **A legal issue regarding the early payment of part of a deferred debt, on the condition that the creditor waives the remaining amount.**

L18857 1205 – Issue:

L18858–18860 It is not permissible to prepay part of a deferred debt on the condition that the creditor discharges the debtor from the remaining amount. If the condition is rejected and he refunds to the debtor what he had given, because it is a condition not stipulated in the Book of Allah the Exalted—and the Messenger of Allah (ﷺ) said, "Every condition not in the Book of Allah is void."[9]

L18861 If the debtor hastens to pay part of his debt without stipulation, then requests

[9] **Hadith references (L18858):** Sunan Ibn Majah 2521.

وَكُلُّ مَا يُمْكِنُ وَزْنُهُ أَوْ كَيْلُهُ أَوْ عَدَدُهُ أَوْ زَرْعُهُ لَمْ يَجُزْ أَنْ يُقْرَضَ جُزَافًا، لِأَنَّهُ لَا يَدْرِي مِقْدَارَ مَا يَلْزَمُهُ أَنْ يَرُدَّهُ، فَيَكُونُ أَكْلَ مَالٍ بِالْبَاطِلِ.

١٢٠٤ - مَسْأَلَةٌ:

وَكُلُّ مَا اقْتُرِضَ مِنْ ذَلِكَ مَعْلُومَ الْعَدَدِ أَوْ الزَّرْعِ أَوْ الْكَيْلِ أَوْ الْوَزْنِ، فَإِنْ رَدَّهُ جُزَافًا فَكَانَ ظَاهِرًا مُتَيَقَّنًا أَنَّهُ أَقَلُّ مِمَّا اقْتَرَضَ فَرَضِيَ ذَلِكَ الْمُقْرِضُ، أَوْ كَانَ ظَاهِرًا مُتَيَقَّنًا أَنَّهُ أَكْثَرُ مِمَّا اقْتَرَضَ وَطَابَتْ نَفْسُ الْمُقْتَرِضِ، وَكُلُّ ذَلِكَ جَائِزٌ حَسَنٌ، لِمَا قَدَّمْنَا.

فَإِنْ لَمْ يَدْرِ أَهُوَ مِثْلُ مَا اقْتَرَضَ أَمْ أَقَلُّ أَمْ أَكْثَرُ؟ لَمْ يَجُزْ لَهُ، لِأَنَّهُ لَا يَجُوزُ مَالُ أَحَدٍ إلَّا بِطِيبِ نَفْسٍ مِنْهُ وَرِضَاهُ، وَلَا يَكُونُ الرِّضَا وَطِيبُ النَّفْسِ إلَّا عَلَى مَعْلُومٍ وَلَا بُدَّ، عَلَى مَجْهُولٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَعْجِيلُ بَعْضِ الدَّيْنِ الْمُؤَجَّلِ عَلَى أَنْ يُبْرِئَهُ مِنْ الْبَاقِي]

١٢٠٥ - مَسْأَلَةٌ:

وَلَا يَجُوزُ تَعْجِيلُ بَعْضِ الدَّيْنِ الْمُؤَجَّلِ عَلَى أَنْ يُبْرِئَهُ مِنْ الْبَاقِي، فَإِنْ وَقَعَ رَدَّ وَصَرَفَ إلَى الْغَرِيمِ مَا أَعْطَى، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ»

the creditor to remit the remaining amount or a portion thereof, and the creditor either complies with this request or remits the balance—or part of it—without being asked, all such actions are permissible and praiseworthy. Both parties are rewarded by Allah, for no conditional stipulation exists here. One hastened to do good by fulfilling part of his obligation, thereby doing good, while the other hastened to discharge the debtor from liability, thereby doing good. Allah the Almighty says: {And do good} [Al-Hajj:77]. All of this constitutes goodness. And success is by Allah's grace.[10]

فَلَوْ عَجَّلَ الَّذِي عَلَيْهِ الْحَقُّ بَعْضَ مَا عَلَيْهِ بِغَيْرِ شَرْطٍ ثُمَّ رَغِبَ إِلَى صَاحِبِ الْحَقِّ أَنْ يَضَعَ عَنْهُ - الْبَاقِيَ أَوْ بَعْضَهُ، فَأَجَابَهُ إِلَى ذَلِكَ أَوْ وَضَعَهُ عَنْهُ أَوْ بَعْضَهُ بِغَيْرِ رَغْبَةٍ فَكُلُّ ذَلِكَ جَائِزٌ حَسَنٌ وَكِلَاهُمَا مَأْجُورٌ لِأَنَّهُ لَيْسَ هَاهُنَا شَرْطٌ أَصْلًا لَكِنْ أَحَدُهُمَا سَارَعَ إِلَى الْخَيْرِ فِي أَدَاءِ بَعْضِ مَا عَلَيْهِ فَهُوَ مُحْسِنٌ وَالْآخَرُ سَارَعَ إِلَى الْإِبْرَاءِ مِنْ حَقِّهِ فَهُوَ مُحْسِنٌ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] . وَهَذَا كُلُّهُ خَيْرٌ [وَبِاللَّهِ تَعَالَى التَّوْفِيقُ] .

L18862 **A debtor had a debt that had fallen due. The debtor requested an extension, and the creditor granted it.**

[مَسْأَلَةٌ كَانَ لَهُ دَيْنٌ حَالٌّ فَرَغِبَ الْمدين فِي أَنْ يُنْظِرَهُ فَفَعَلَ]

L18863 1206: Issue

١٢٠٦ - مَسْأَلَةٌ:

L18864 If a person has an immediate or deferred debt that becomes due, and the debtor requests the creditor to defer it to a specified term—which the creditor accepts—or if the creditor grants such deferment without the debtor's request, whether witnessed or unwitnessed, nothing becomes binding upon the creditor from this arrangement. The debt remains due, which he may claim whenever he wishes. This is the opinion of Al-Shāfiʿī, and it is also the opinion of Zufar, Abū Sulaymān, and our companions.

وَمَنْ كَانَ لَهُ دَيْنٌ حَالٌّ أَوْ مُؤَجَّلٌ فَحَلَّ فَرَغِبَ إِلَيْهِ الَّذِي عَلَيْهِ الْحَقُّ فِي أَنْ يُنْظِرَهُ أَيْضًا إِلَى أَجَلٍ مُسَمًّى فَفَعَلَ، أَوْ أَنْظَرَهُ كَذَلِكَ بِغَيْرِ رَغْبَةٍ وَأَشْهَدَ أَوْ لَمْ يُشْهِدْ لَمْ يَلْزَمْهُ مِنْ ذَلِكَ شَيْءٌ وَالدَّيْنُ حَالٌّ يَأْخُذُهُ بِهِ مَتَى شَاءَ - وَهُوَ قَوْلُ الشَّافِعِيِّ - وَهُوَ أَيْضًا قَوْلُ زُفَرَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L18865 Similarly, if a man has a deferred debt and formally testifies against himself that he has waived the deferment and made the debt immediately due, this testimony is not binding upon him, and the debt remains deferred until its term as it was.

وَكَذَلِكَ لَوْ أَنَّ امْرَأً عَلَيْهِ دَيْنٌ مُؤَجَّلٌ فَأَشْهَدَ عَلَى نَفْسِهِ: أَنَّهُ قَدْ أَسْقَطَ الْأَجَلَ وَجَعَلَهُ حَالًّا، فَإِنَّهُ لَا يَلْزَمُهُ ذَلِكَ، وَالدَّيْنُ إِلَى أَجَلِهِ كَمَا كَانَ.

L18866 The proof of this is: Everything we have mentioned constitutes a condition not established in the Book of Allah the Exalted, thus it is null and void. None of these matters pertain to the contracts for which Allah the Exalted has prescribed the fulfillment, for the contracts enjoined to be fulfilled are those whose names are textually specified in the Quran.

بُرْهَانُ ذَلِكَ -: أَنَّ كُلَّ مَا ذَكَرْنَا فَإِنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ وَلَيْسَ شَيْءٌ مِنْ هَذَا مِنْ الْعُقُودِ الَّتِي افْتَرَضَ اللَّهُ تَعَالَى الْوَفَاءَ بِهَا، لِأَنَّ الْعُقُودَ الْمَأْمُورَ بِالْوَفَاءِ بِهَا مَنْصُوصَةُ الْأَسْمَاءِ فِي الْقُرْآنِ.

[10] **Qur'an references (L18861):** Qur'an 22:77 (Al-Hajj).

وَلَا خِلَافَ فِي أَنَّ كُلَّ الْعُقُودِ لَا يَلْزَمُ الْوَفَاءُ بِهَا كَمَنْ عَقَدَ: أَنْ يُكَفِّرَ أَوْ أَنْ يَزْنِيَ.

L18867 There is no disagreement that all contracts are not binding, such as one who contracts to renounce faith or commit adultery.

وَكُلُّ عَقْدٍ صَحَّ مُؤَجَّلًا بِالْقُرْآنِ أَوْ السُّنَّةِ، فَلَا يَجُوزُ الْبَتَّةَ إبْطَالُ التَّأْجِيلِ إلَّا بِنَصٍّ آخَرَ.

L18868 Any contract that is valid when deferred according to the Qur'an or Sunnah is strictly prohibited from having its deferment nullified except by another textual evidence.

وَكُلُّ عَقْدٍ صَحَّ حَالًّا بِالْقُرْآنِ أَوْ السُّنَّةِ، فَلَا يَجُوزُ أَلْبَتَّةَ إبْطَالُ الْحُلُولِ إلَّا بِنَصٍّ آخَرَ وَلَا سَبِيلَ إلَى نَصٍّ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18869 Every contract valid in its immediate application under the Qur'an or Sunnah cannot be invalidated in its execution except by another explicit text, and there is no means for such a text in this matter—and success is from Allah, the Most High.

فَإِنْ قِيلَ: قَدْ قُلْتُمْ: إنَّهُ إنْ عَجَّلَ لَهُ مَا عَلَيْهِ قَبْلَ الْأَجَلِ إنَّ ذَلِكَ لَازِمٌ لَهُ لَا رُجُوعَ فِيهِ؟ قُلْنَا نَعَمْ، لِأَنَّهُ قَدْ خَرَجَ مِنْ حَقِّهِ وَصَيَّرَهُ إلَى غَيْرِهِ وَوَهَبَهُ، فَهَذَا جَائِزٌ، إذْ قَدْ أَمْضَاهُ، وَأَمَّا مَا لَمْ يُمْضِهِ فَإِنَّمَا هُوَ وَعْدٌ، وَقَدْ قَدَّمْنَا أَنَّ الْوَعْدَ لَا يَلْزَمُ إنْجَازُهُ فَرْضًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18870 If it is said: "You have asserted that if one expedites payment of what is due before its term, this becomes binding upon him with no possibility of retraction?" We reply: Yes, for he has departed from his right, transferred it to another, and gifted it. This is permissible, as he has executed it. As for what he has not executed, it is merely a promise, and we have previously clarified that fulfilling a promise is not obligatory as a compulsory religious duty—and success comes only from Allah, the Exalted.

وَقَالَ مَالِكٌ: يَلْزَمُهُ التَّأْجِيلُ - وَقَالَ أَبُو حَنِيفَةَ: إنْ أَجَّلَهُ فِي قَرْضٍ لَمْ يَلْزَمْهُ وَكَانَ لَهُ الرُّجُوعُ، وَيَأْخُذُهُ حَالًّا، فَإِنْ أَجَّلَهُ فِي غَصْبٍ غَصَبَهُ إيَّاهُ أَوْ فِي سَائِرِ الْحُقُوقِ - مَا عَدَا الْقَرْضَ - لَزِمَهُ التَّأْجِيلُ.

L18871–18872 Malik said: The deferment becomes binding upon him. Abu Hanifah said: If he defers it in a loan, it does not become binding upon him, and he may retract and demand immediate repayment. However, if he defers it in usurped property taken from him or in other rights—excluding loans—the deferment becomes binding upon him.

وَهُوَ قَوْلُ مُحَمَّدِ بْنِ الْحَسَنِ، وَأَبِي يُوسُفَ، وَرُوِيَ عَنْ أَبِي يُوسُفَ: أَنَّهُ إنْ اسْتَهْلَكَ لَهُ مِمَّا يُكَالُ أَوْ يُوزَنُ ثُمَّ أَجَّلَهُ بِهِ فَلَهُ أَنْ يَرْجِعَ فِي ذَلِكَ، وَلَا يَلْزَمُهُ التَّأْجِيلُ، فَإِنْ اسْتَهْلَكَ لَهُ شَاةً أَوْ ثَوْبًا فَأَجَّلَهُ فِي قِيمَتِهِمَا لَزِمَهُ التَّأْجِيلُ.

L18873 This is the opinion of Muḥammad ibn al-Ḥasan and Abū Yūsuf. It is reported from Abū Yūsuf that if a person consumes for another something measurable by volume or weight and then defers payment with it, he may revoke the deferment, and it is not binding upon him. But if he consumes for another a sheep or garment and defers payment based on their value, the deferment becomes binding upon him.

قَالَ أَبُو مُحَمَّدٍ: فَهَلْ سُمِعَ بِأَسْخَفَ مِنْ هَذِهِ الْفُرُوقِ.

L18874 Abu Muhammad said: Has anything more absurd than these distinctions ever been heard?

L18875 Some of them argued that deferment of the principal in a loan is invalid

- thus this disputant exceeds in opposing Allah the Exalted in His decree: *When you contract a debt for a specified term* (Surah Al-Baqarah 2:282).[11]

L18876 Abu Muhammad said: The only proof is what we have mentioned, and by Allah, the Exalted, we are strengthened.

L18877 **Case: A person died leaving deferred debts owed to them by people.**

L18878 1207 – Question:

L18879 Anyone who dies while having deferred debts owed to people or owed by people to them—all such debts are treated equally. Every deferment period is nullified, every debt they owe becomes immediately due, and every debt owed to them becomes equally due. This ruling applies uniformly to all debts, including loans, sales, and other types. Mālik said: "As for deferred debts owed by the deceased, they become due immediately, but deferred debts owed to him remain subject to their original terms."

L18880 Abū Muḥammad said: This is an invalid distinction without proof—not from the Quran, nor the Sunnah, nor consensus, nor an infirm narration, nor analogy, nor the statement of a Companion, nor an opinion with a sound basis.

L18881–18883 The proof of our statement is: it is the saying of Allah the Exalted: {No soul bears the burden of another} [Al-An'ām: 164], and the saying of the Messenger of Allah—peace and blessings be upon him—"Your blood and your wealth are inviolable to you," and Allah the Exalted said in His ruling regarding inheritance. He then mentioned the ordained shares of inheritance and said: {after any bequest he bequeaths or debt} [An-Nisā': 11]. Thus, it is established that upon a person's death, his legal authority over his wealth ceases, and it transfers to the ownership of creditors, legatees, categories of bequests, and heirs. The creditors' binding agreement concerning the deferment of what is owed by them, or the deferment of what is owed by the deceased, was un-

[11] **Qur'an references (L18875):** Qur'an 2:282 (Al-Baqarah).

وَاحْتَجَّ بَعْضُهُمْ بِأَنْ قَالَ: إِنَّ التَّأْجِيلَ فِي أَصْلِ الْقَرْضِ لَا يَصِحُّ - فَمَا زَادَ هَذَا الْمُحْتَجُّ عَلَى خِلَافِ اللَّهِ تَعَالَى فِي قَوْلِهِ: {إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى} [البقرة: ٢٨٢]

قَالَ أَبُو مُحَمَّدٍ: وَإِنَّمَا الْحُجَّةُ مَا ذَكَرْنَا - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

[مَسْأَلَةٌ مَاتَ وَلَهُ دُيُونٌ عَلَى النَّاسِ مُؤَجَّلَةٌ]

١٢٠٧ - مَسْأَلَةٌ:

وَكُلُّ مَنْ مَاتَ وَلَهُ دُيُونٌ عَلَى النَّاسِ مُؤَجَّلَةٌ، أَوْ لِلنَّاسِ عَلَيْهِ دُيُونٌ مُؤَجَّلَةٌ فَكُلُّ ذَلِكَ سَوَاءٌ، وَقَدْ بَطَلَتْ الْآجَالُ كُلُّهَا، وَصَارَ كُلُّ مَا عَلَيْهِ مِنْ دَيْنٍ حَالًّا، وَكُلُّ مَا لَهُ مِنْ دَيْنٍ حَالًّا سَوَاءٌ فِي ذَلِكَ كُلُّهُ الْقَرْضُ، وَالْبَيْعُ، وَغَيْرُ ذَلِكَ - وَقَالَ مَالِكٌ: أَمَّا الدُّيُونُ الَّتِي عَلَيْهِ مُؤَجَّلَةٌ فَقَدْ حَلَّتْ، وَأَمَّا الَّتِي لَهُ عَلَى النَّاسِ فَإِلَى أَجَلِهَا.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا فَرْقٌ فَاسِدٌ بِلَا بُرْهَانٍ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إجْمَاعٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قِيَاسٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ.

بُرْهَانُ قَوْلِنَا -: هُوَ قَوْلُ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَقَالَ تَعَالَى فِي حُكْمِهِ فِي الْمَوَارِيثِ فَذَكَرَ فَرَائِضَ الْمَوَارِيثِ وَقَالَ عَزَّ وَجَلَّ: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] فَصَحَّ أَنَّ بِمَوْتِ الْإِنْسَانِ بَطَلَ حُكْمُهُ عَنْ مَالِهِ وَانْتَقَلَ إلَى مِلْكِ الْغُرَمَاءِ، وَالْمُوصَى لَهُمْ، وَوُجُوهِ الْوَصَايَا، وَالْوَرَثَةِ، وَعَقْدُ الْغُرَمَاءِ فِي تَأْجِيلِ مَا عَلَيْهِمْ، أَوْ تَأْجِيلِ مَا عَلَى الْمَيِّتِ إنَّمَا كَانَ بِلَا شَكٍّ بَيْنَهُمْ وَبَيْنَ الْمُتَوَفَّى إذْ كَانَ حَيًّا،

doubtedly established between them and the deceased when... He was alive, and the property has now been transferred from his ownership to that of another. Thus, it is impermissible to impose obligations on the deceased regarding matters over which his ownership has been nullified.[12]

L18884 It is not permissible for creditors to take anything from the wealth of the heirs and the legatees, nor is a bequest valid without the heirs' consent. Consequently, the ruling of deferment in such cases is nullified, and it becomes obligatory for the heirs and the legatees to receive their rights.

L18885 Similarly, it is not permissible for the heirs to withhold property owed to their deceased [by his debtor] except with the debtor's free consent, because the contractual obligation existed solely with the deceased during his lifetime. Thus, the deceased's property is not obligated to remain with heirs whom he never transacted with. Nor is it permissible for them to withhold the property of the creditor owed by the deceased, for Allah the Most High has granted neither the heirs nor [the execution of] the will any right except after justly settling the creditors' claims. And with Allah alone is success.

L18886 It was narrated to us through the chain of Abū ʻUbayd, who reported to us from Ismāʻīl ibn Ibrāhīm—known as Ibn ʻUlayyah—from Layth, from al-Shaʻbī and al-Nakhaʻī. Both said: Whoever has a debt with a fixed term, if he dies, it becomes due.

L18887 And through him to Abū ʻUbayd from Muʻādh ibn Muʻādh al-ʻAnbarī from Ashʻath from al-Ḥasan al-Baṣrī: that he held the view that the debt becomes immediately due if he dies while owing a debt.

L18888 From the path of Muḥammad ibn al-Muthannā: He narrated to me that ʻAbd al-Raḥmān ibn Mahdī reported from Sufyān al-Thawrī, from al-Mughīrah ibn Miqsam, from Ibrāhīm, who said: When the deceased dies, their debt becomes payable—and this is a general principle applicable to their liabilities and assets.

L18889 **A legal issue concerning the debtor's gift to the creditor.**

[12] **Qur'an references (L18881):** Qur'an 6:164 (Al-An'am); Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

وَقَدْ انْتَقَلَ الْآنَ الْمَالُ عَنْ مِلْكِهِ إِلَى مِلْكِ غَيْرِهِ، فَلَا يَجُوزُ كَسْبُ الْمَيِّتِ عَلَيْهِمْ فِيمَا قَدْ سَقَطَ مِلْكُهُ عَنْهُ.

وَلَا يَحِلُّ لِلْغُرَمَاءِ شَيْءٌ مِنْ مَالِ الْوَرَثَةِ وَالْمُوصَى لَهُمْ وَالْوَصِيَّةُ بِغَيْرِ طِيبِ أَنْفُسِهِمْ، فَبَطَلَ حُكْمُ التَّأْجِيلِ فِي ذَلِكَ، وَوَجَبَ لِلْوَرَثَةِ وَلِلْوَصِيَّةِ أَخْذُ حُقُوقِهِمْ.

وَكَذَلِكَ لَا يَحِلُّ لِلْوَرَثَةِ إِمْسَاكُ مَالِ غَرِيمِ مَيِّتِهِمْ إِلَّا بِطِيبِ نَفْسِهِ، لِأَنَّ عَقْدَهُ إِنَّمَا كَانَ مَعَ الْمُتَوَفَّى إِذْ كَانَ حَيًّا فَلَا يَلْزَمُهُ أَنْ يَبْقَى مَالُهُ بِأَيْدِي وَرَثَةٍ لَمْ يُعَامِلْهُمْ قَطُّ. وَلَا يَحِلُّ لَهُمْ إِمْسَاكُ مَالِ الَّذِي لَهُ الْحَقُّ عَنْهُ، وَاَللَّهُ تَعَالَى لَمْ يَجْعَلْ لَهُمْ حَقًّا، وَلَا لِلْوَصِيَّةِ إِلَّا بَعْدَ إِنْصَافِ أَصْحَابِ الدُّيُونِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ عُلَيَّةَ - عَنْ لَيْثٍ عَنْ الشَّعْبِيِّ، وَالنَّخَعِيِّ، قَالَا جَمِيعًا: مَنْ كَانَ لَهُ دَيْنٌ إِلَى أَجَلٍ فَإِذَا مَاتَ فَقَدْ حَلَّ

وَبِهِ إِلَى أَبِي عُبَيْدٍ عَنْ مُعَاذِ بْنِ مُعَاذٍ الْعَنْبَرِيِّ عَنْ أَشْعَثَ عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّهُ كَانَ يَرَى الدَّيْنَ حَالًّا إذَا مَاتَ وَعَلَيْهِ دَيْنٌ.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ قَالَ: إذَا مَاتَ الْمَيِّتُ فَقَدْ حَلَّ دَيْنُهُ - وَهَذَا عُمُومٌ لِمَا عَلَيْهِ - وَلِمَا لَهُ.

[مَسْأَلَةٌ هَدِيَّةُ الْمَدِينِ إلَى الدَّائِنِ]

L18890 1208 – Issue:

L18891 The gift from the debtor to the creditor is halal, and likewise the debtor's hospitality extended to him, so long as none of that arises from a precondition.

L18892–18894 If something violates a stipulated condition, it is unlawful—as per the narration transmitted via the chain of Al-Layth ibn Saʿd from Saʿīd ibn Abī Saʿīd al-Maqburī from Abu Shurayḥ al-ʿAdawī, who heard the Messenger of Allah (peace and blessings be upon him) say: "Whoever believes in Allah and the Last Day, let him honor his guest. The hospitality due is a day and its night, and hospitality is three days. Whatever exceeds that is charity." He, peace be upon him, would eat the gift, and he, peace be upon him, said: "If the foreleg of an animal were offered to me, I would accept it."[13]

L18895 We have narrated it through the chain of Shuʿbah from Al-Aʿmash from Abū Ḥāzim from Abū Hurayrah from the Prophet—peace and blessings of Allah be upon him. This is a general ruling, and he—peace be upon him—did not specify any debtor to the exclusion of others in this matter.

L18896 A group said: It is not permissible to accept his gift, nor to reside with him, nor to eat his food. It is authentically reported from Ibn Abbas: "If you grant someone a loan, you must not accept from him a reciprocated gift, nor borrow a riding animal." A man sought his verdict, asking: "I lent a fisherman fifty dirhams, and he began sending me portions of his catch?" Ibn Abbas replied: "Settle accounts with him. If there is an excess, return it to him; if it is exactly equal, offset it against the loan."

L18897 It is authentically reported from Abdullah ibn Salam that he said: If you have money due from a man and he offers you a load of straw as a gift, do not accept it, for that is usury. Either return his gift to him or compensate him.

L18898 It is authentically reported that a questioner asked Ibn ʻUmar, saying: "I lent

[13] **Qur'an references (L18892):** Qur'an 65:2 (At-Talaq).

١٢٠٨ - مَسْأَلَةٌ:

وَهَدِيَّةُ الَّذِي عَلَيْهِ الدَّيْنُ إِلَى الَّذِي لَهُ عَلَيْهِ الدَّيْنُ حَلَالٌ - وَكَذَلِكَ ضِيَافَتُهُ إِيَّاهُ مَا لَمْ يَكُنْ شَيْءٌ مِنْ ذَلِكَ عَنْ شَرْطٍ.

فَإِنْ كَانَ شَيْءٌ عَنْ شَرْطٍ فَهُوَ حَرَامٌ -: لِمَا رُوِّينَا مِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي شُرَيْحٍ الْعَدَوِيِّ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ فَلْيُكْرِمْ ضَيْفَهُ، جَائِزَتُهُ: يَوْمُهُ وَلَيْلَتُهُ، وَالضِّيَافَةُ ثَلَاثَةُ أَيَّامٍ، فَمَا كَانَ وَرَاءَ ذَلِكَ فَهُوَ صَدَقَةٌ» وَكَانَ - عَلَيْهِ السَّلَامُ - يَأْكُلُ الْهَدِيَّةَ وَقَالَ - عَلَيْهِ السَّلَامُ -: «لَوْ أُهْدِيَ إِلَيَّ ذِرَاعٌ لَقَبِلْتُ» .

رُوِّينَاهُ مِنْ طَرِيقِ شُعْبَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَذَا عُمُومٌ لَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - مِنْ ذَلِكَ غَرِيمًا مِنْ غَيْرِهِ.

وَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ قَبُولُ هَدِيَّتِهِ، وَلَا النُّزُولُ عِنْدَهُ، وَلَا أَكْلُ طَعَامِهِ - صَحَّ عَنْ ابْنِ عَبَّاسٍ إِذَا أَسْلَفْت رَجُلًا سَلَفًا فَلَا تُقْبَلُ مِنْهُ هَدِيَّةٌ قِرَاعٍ وَلَا عَارِيَّةُ رُكُوبِ دَابَّةٍ وَأَنَّهُ اسْتَفْتَاهُ رَجُلٌ؟ فَقَالَ لَهُ: أَقْرَضْتُ سَمَّاكًا خَمْسِينَ دِرْهَمًا وَكَانَ يَبْعَثُ إِلَيَّ مِنْ سَمَكِهِ؟ فَقَالَ لَهُ ابْنُ عَبَّاسٍ: حَاسِبْهُ، فَإِنْ كَانَ فَضْلًا فَرُدَّ عَلَيْهِ، وَإِنْ كَانَ كَفَافًا فَقَاصِصْهُ.

وَصَحَّ عَنْ عَبْدِ اللَّهِ بْنِ سَلَامٍ أَنَّهُ قَالَ: إِذَا كَانَ لَك عَلَى رَجُلٍ مَالٌ فَأَهْدَى لَك حَمَلَةَ مِنْ تِبْنٍ فَلَا تَقْبَلْهَا فَإِنَّهَا رِبًا، اُرْدُدْ عَلَيْهِ هَدِيَّتَهُ أَوْ أَثِبْهُ.

وَصَحَّ عَنْ ابْنِ عُمَرَ أَنَّهُ سَأَلَهُ سَائِلٌ؟ فَقَالَ لَهُ: أَقْرَضْت رَجُلًا فَأَهْدَى لِي هَدِيَّةً فَقَالَ: أَثِبْهُ أَوْ احْسُبْهَا لَهُ مِمَّا عَلَيْهِ أَوْ اُرْدُدْهَا عَلَيْهِ.

to a man, and he gave me a gift." He replied: "Reward him, deduct it from what he owes, or return it to him."

L18899 And a similar report is related from ʿAlqamah.

L18900 They argued by saying: "It is a loan that entails a benefit." The prohibition of this is established from Ibn Sīrīn, Qatādah, and al-Nakhaʿī.

L18901–18903 Abu Muhammad said: As for these Companions—may Allah be pleased with them—no one other than the Messenger of Allah—peace and blessings of Allah be upon him—holds authority as a proof. They opposed Ibn Umar and Ibn Abbas in hundreds of legal rulings, and others' disagreement with them has also been reported—it has been narrated to us through the chain of Abd al-Razzaq from Sufyan al-Thawri from Yunus ibn Ubayd and Khalid al-Khadhdhā', both from Muhammad ibn Sirin, that Ubayy ibn Ka'b borrowed ten thousand from Umar ibn al-Khattab. Ubayy then sent him some of his fruit, which ripened early and was considered the finest fruit among the people of Medina. 'Umar returned it to him. Ubayy Ibn Ka'b said to him, "I have no need for what made you withhold the goodness of my fruit." 'Umar then accepted it and said, "Ribā applies only to those who seek increase through deferment."

L18904 And from him to Sufyan from Mansur ibn al-Mu'tamir from Ibrahim al-Nakha'i - and he mentioned: "Did Alqamah prohibit a person from eating at the home of someone who has a debt against him?" Ibrahim said: "Unless it be a customary practice the debtor and creditor had customarily observed."

L18905 Abu Muhammad said: The statement of Umar ibn al-Khattab is correct due to the Prophet's saying—peace be upon him—"Actions are but by intentions, and every man shall have what he intended."

L18906 If the debtor's gift and hospitality were forbidden or disliked, Allah, Exalted be He, would not have overlooked clarifying it through the tongue of His Messenger (peace be upon him), as stated: {And your Lord is never forgetful} [19:64]. Since He, Exalted, did not prohibit this, it is entirely permissible;

وَعَنْ عَلْقَمَةَ نَحْوُ هَذَا.

وَاحْتَجُّوا فَقَالُوا: هُوَ سَلَفٌ جَرَّ مَنْفَعَةً - وَصَحَّ النَّهْيُ عَنْ هَذَا عَنْ ابْنِ سِيرِينَ، وَقَتَادَةَ، وَالنَّخَعِيِّ

قَالَ أَبُو مُحَمَّد: أَمَّا هَؤُلَاءِ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ خَالَفُوا ابْنَ عُمَرَ، وَابْنَ عَبَّاسٍ فِي مِئِينَ مِنْ الْقَضَايَا، وَقَدْ جَاءَ خِلَافُهُمْ عَنْ غَيْرِهِمْ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ، وَخَالِدٍ الْحَذَّاءِ، كِلَاهُمَا عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ أُبَيَّ بْنَ كَعْبٍ تَسَلَّفَ مِنْ عُمَرَ بْنِ الْخَطَّابِ عَشَرَةَ آلَافٍ فَبَعَثَ إلَيْهِ أُبَيٌّ مِنْ ثَمَرِهِ وَكَانَتْ تُبَكِّرُ، وَكَانَ مِنْ أَطْيَبِ ثَمَرِ أَهْلِ الْمَدِينَةِ، فَرَدَّهَا عَلَيْهِ عُمَرُ؟ فَقَالَ لَهُ: أُبَيّ بْنُ كَعْبٍ: لَا حَاجَةَ لِي بِمَا مَنَعَك طِيبَ ثَمَرَتِي، فَقَبِلَهَا عُمَرُ، وَقَالَ: إنَّمَا الرِّبَا عَلَى مَنْ أَرَادَ أَنْ يُرْبِيَ وَيُنْسِئَ.

وَبِهِ إلَى سُفْيَانَ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَذَكَرَ نَهَى عَلْقَمَةَ عَنْ أَكْلِ الْمَرْءِ عِنْدَ مَنْ لَهُ عَلَيْهِ دَيْنٌ؟ فَقَالَ إبْرَاهِيمُ: إلَّا أَنْ يَكُونَ مَعْرُوفًا كَانَ يَتَعَاطَيَانِهِ.

قَالَ أَبُو مُحَمَّد: قَوْلُ عُمَرَ بْنِ الْخَطَّابِ هُوَ الْحَقُّ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» .

وَلَوْ كَانَتْ هَدِيَّةُ الْغَرِيمِ وَالضِّيَافَةُ مِنْهُ حَرَامًا أَوْ مَكْرُوهًا لَمَا أَغْفَلَ اللَّهُ تَعَالَى بَيَانَهُ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] فَإِذَا لَمْ يَنْهَ تَعَالَى عَنْ ذَلِكَ فَهُوَ حَلَالٌ مَحْضٌ، وَإِلَّا مَا كَانَ عَنْ شَرْطٍ بَيْنَهُمَا.

otherwise, it would only be impermissible if a condition [prohibiting it] had been stipulated between them.[14]

L18907 وَأَمَّا قَوْلُهُمْ إنَّهُ سَلَفٌ جَرَّ مَنْفَعَةً، فَكَانَ مَاذَا؟ أَيْنَ وَجَدُوا النَّهْيَ عَنْ سَلَفٍ جَرَّ مَنْفَعَةً؟ فَلْيَعْلَمُوا الْآنَ أَنَّهُ لَيْسَ فِي الْعَالَمِ سَلَفٌ إلَّا وَهُوَ يَجُرُّ مَنْفَعَةً وَذَلِكَ انْتِفَاعُ الْمُسَلِّفِ بِتَضْمِينِ مَالِهِ، فَيَكُونُ مَضْمُونًا - تَلِفَ أَوْ لَمْ يَتْلَفْ - مَعَ شُكْرِ الْمُسْتَقْرِضِ إيَّاهُ، وَانْتِفَاعِ الْمُسْتَقْرِضِ بِمَالِ غَيْرِهِ مُدَّةَ مَا، فَعَلَى قَوْلِهِمْ كُلُّ سَلَفٍ فَهُوَ حَرَامٌ، وَفِي هَذَا مَا فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَتَمَّ " كِتَابُ الْقَرْضِ " وَالْحَمْدُ لِلَّهِ [وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ] .

As for their assertion that it is a loan (ṣalaf) entailing benefit, what then? Where have they found the prohibition against a ṣalaf that yields benefit? Let them now know there exists no loan in the world except that it entails benefit. This includes the lender's (muqriḍ) benefit in the guarantee of compensation for his wealth—secured (whether lost or not)—alongside the borrower's (mustaqriḍ) gratitude for it, and the borrower's benefit in utilizing another's wealth for a period. By their claim, every ṣalaf would thus be forbidden, and this contains inherent contradictions—and success is through Allah, the Exalted. The "Book of Loans" is concluded, and praise be to Allah [and may Allah bless Muhammad and his family].

[14] **Qur'an references (L18906):** Qur'an 19:64 (Maryam).



AL-MUHALLA

كِتَابُ الرَّهْنِ

The Book of Pledges

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الرَّهْنِ] [مَسْأَلَةٌ اشْتِرَاطُ الرَّهْنِ فِي الْبَيْعِ]

١٢٠٩ - مَسْأَلَةٌ:

لَا يَجُوزُ اشْتِرَاطُ الرَّهْنِ إلَّا فِي الْبَيْعِ إلَى أَجَلٍ مُسَمًّى فِي السَّفَرِ، أَوْ فِي السَّلَمِ إلَى أَجَلٍ مُسَمًّى فِي السَّفَرِ خَاصَّةً، أَوْ فِي الْقَرْضِ إلَى أَجَلٍ مُسَمًّى فِي السَّفَرِ خَاصَّةً، مَعَ عَدَمِ الْكَاتِبِ فِي كِلَا الْوَجْهَيْنِ.

بُرْهَانُ ذَلِكَ -: أَنَّ اشْتِرَاطَ الرَّهْنِ شَرْطٌ وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ وَإِنْ كَانَ مِائَةَ شَرْطٍ مَنْ اشْتَرَطَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ فَلَيْسَ لَهُ»

وَقَالَ عَزَّ وَجَلَّ: {إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ} [البقرة: ٢٨٢] إلَى قَوْله تَعَالَى: {وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَقْبُوضَةٌ} [البقرة: ٢٨٣] فَهَاهُنَا يَجُوزُ اشْتِرَاطُ الرَّهْنِ حَيْثُ أَجَازَهُ اللَّهُ تَعَالَى.

وَالدَّيْنُ إلَى أَجَلٍ مُسَمًّى لَا يَعْدُو أَنْ يَكُونَ بَيْعًا، أَوْ سَلَمًا، أَوْ قَرْضًا.

فَهَذِهِ الْوُجُوهُ يَجُوزُ فِيهَا اشْتِرَاطُ التَّأْجِيلِ لِوُرُودِ النُّصُوصِ بِوُجُوبِهِ فِي السَّلَمِ، وَجَوَازُهُ فِي الْقَرْضِ، وَالْبَيْعِ - وَلَا يَجُوزُ فِيمَا عَدَا ذَلِكَ أَصْلًا؛ لِأَنَّهُ لَمْ يَأْتِ فِي شَيْءٍ مِنْ الْمُعَامَلَاتِ سِوَى مَا ذَكَرْنَا نَصٌّ بِجَوَازِ اشْتِرَاطِ التَّأْجِيلِ، فَهُوَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ.

وَصَحَّ عَنْ مُجَاهِدٍ أَنَّهُ لَا يَجُوزُ الرَّهْنُ إلَّا فِي السَّفَرِ.

Book of Pledge | On the Stipulation of the Pledge in the Sale

In 1209 – Issue:

It is impermissible to stipulate a pledge except in a sale with a fixed term during travel, a salam contract with a term specifically fixed during travel, or a loan with a term specifically fixed during travel, provided there is no written contract in both cases.

The proof of that is: the stipulation of a pledge constitutes a condition, and the Messenger of Allah—peace and blessings be upon him—said: "Every condition that is not in the Book of Allah is void, even if there are a hundred conditions. Whoever stipulates a condition not in the Book of Allah, it is not valid for him."

The Almighty said: {When you contract a debt for a specified term, write it down} [Al-Baqarah: 282] up to His saying, the Exalted: {And if you are traveling and cannot find a scribe, then pledged collaterals held} [Al-Baqarah: 283]. Therefore, in these circumstances, stipulating collateral is permissible where Allah, the Exalted, has permitted it.[1]

A debt with a specified term is limited to being a sale, a *salam*, or an interest-free loan.

These cases permit stipulating deferment due to scriptural texts establishing its obligation in salam contracts, along with its permissibility in loans and sales. It is absolutely impermissible in all other transactions, as no textual evidence exists in any contractual matters beyond those we have specified that permits stipulating deferment. Since such a condition is not found in the Book of Allah, the Almighty and Majestic, it is null and void.

It has been authentically established from Mujāhid that pledging is not per-

[1] **Qur'an references (L18913):** Qur'an 2:282 (Al-Baqarah); Qur'an 2:283 (Al-Baqarah).

missible except during travel.

L18917–18919 As for settled peoples—this is based on what we have transmitted through al-Bukhārī's chain: Musaddad narrated to us from ʿAbd al-Wāḥid, who narrated it to him (Musaddad). Al-A'mash narrated to us from Ibrāhīm, who narrated to us from Al-Aswad on the authority of 'Ā'ishah, the Mother of the Believers—may Allah be pleased with her—that the Prophet—peace and blessings of Allah be upon him—purchased food from a Jewish man on credit and pledged his armor as collateral.

وَأَمَّا الْحَضَرُ -: فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسَدَّدٌ نا عَبْدُ الْوَاحِدِ - حَدَّثَهُ الْأَعْمَشُ نا إِبْرَاهِيمُ نا الْأَسْوَدُ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اشْتَرَى مِنْ يَهُودِيٍّ طَعَامًا إلَى أَجَلٍ وَرَهَنَهُ دِرْعَهُ» .

L18920 And through the chain of Muḥammad ibn al-Muthannā: ʿUthmān ibn ʿUmar narrated to us, from Hishām ibn Ḥassān, from ʿIkrimah, from Ibn ʿAbbās, who said: "By Allah, the Messenger of Allah (may Allah's peace and blessings be upon him) died while his armor remained pledged with a Jewish man for twenty *ṣāʿ* of barley - which he [the Prophet] had taken as food for his family."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى حَدَّثَنِي عُثْمَانُ بْنُ عُمَرَ نا هِشَامُ بْنُ حَسَّانَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: وَاَللَّهِ لَقَدْ مَاتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّ دِرْعَهُ لَمَرْهُونَةٌ عِنْدَ رَجُلٍ مِنْ الْيَهُودِ بِعِشْرِينَ صَاعًا مِنْ شَعِيرٍ أَخَذَهَا طَعَامًا لِأَهْلِهِ

L18921 If it is said: Anas reported that the Prophet—peace and blessings of Allah be upon him—took barley from a Jew in Medina and pledged his armor to him as collateral, yet there is no mention of a specified term? We respond: Nor is there a stipulation of the pledge in it, and we do not prohibit the pledge without stipulating it in the contract, for it was a voluntary act from the mortgagor at that time, and voluntary acts concerning what is not forbidden are commendable.

فَإِنْ قِيلَ: قَدْ رَوَى أَنَسٌ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخَذَ شَعِيرًا مِنْ يَهُودِيٍّ بِالْمَدِينَةِ وَرَهَنَهُ دِرْعَهُ» ، وَلَيْسَ فِيهِ ذِكْرُ أَجَلٍ؟ قُلْنَا: وَلَا فِيهِ اشْتِرَاطُ الرَّهْنِ، وَنَحْنُ لَا نَمْنَعُ مِنْ الرَّهْنِ بِغَيْرِ أَنْ يُشْتَرَطَ فِي الْعَقْدِ، لِأَنَّهُ تَطَوُّعٌ مِنْ الرَّاهِنِ حِينَئِذٍ، وَالتَّطَوُّعُ بِمَا لَمْ يُنْهَ عَنْهُ حَسَنٌ.

L18922 If the hadith of Abu Rafi is mentioned—wherein the Prophet (may Allah bless him and grant him peace) sent him to a Jew to borrow food for a guest who had stayed with the Prophet—the Jew refused unless he provided collateral, so the Prophet pawned his armor as security.

فَإِنْ ذُكِرَ حَدِيثُ أَبِي رَافِعٍ فِي بَعْثَةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إيَّاهُ إلَى يَهُودِيٍّ لِيُسَلِّفَهُ طَعَامًا لِضَيْفٍ نَزَلَ بِهِ فَأَبَى إلَّا بِرَهْنٍ فَرَهَنَهُ دِرْعَهُ.

L18923 This is a report exclusively narrated by Mūsā ibn ʿUbayd al-Rabadhī—a weak narrator—as he was criticized as weak by al-Qaṭṭān, Ibn Maʿīn, al-Bukhārī, and Ibn al-Madīnī. Aḥmad ibn Ḥanbal stated: "It is not admissible to transmit reports from him."

فَهَذَا خَبَرٌ انْفَرَدَ بِهِ مُوسَى بْنُ عُبَيْدٍ الرَّبَذِيُّ - وَهُوَ ضَعِيفٌ - ضَعَّفَهُ الْقَطَّانُ، وَابْنُ مَعِينٍ، وَالْبُخَارِيُّ، وَابْنُ الْمَدِينِيِّ - وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: لَا تَحِلُّ الرِّوَايَةُ عَنْهُ

L18924 **A juridical issue regarding the taking of possession in the pledge.**

[مَسْأَلَةُ الْقَبْضِ فِي الرَّهْنِ]

١٢١٠ - مَسْأَلَةٌ:

وَلَا يَجُوزُ الرَّهْنُ إلَّا مَقْبُوضًا فِي نَفْسِ الْعَقْدِ لِقَوْلِ اللَّهِ تَعَالَى: {فَرِهَانٌ مَقْبُوضَةٌ} [البقرة: ٢٨٣]

وَقَالَ قَوْمٌ: إنَّ شَرْطَهُ أَنْ يَجْعَلَ الرَّهْنَ عِنْدَ ثِقَةٍ فَهُوَ جَائِزٌ - وَهُوَ قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَعَطَاءٍ - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ: وَمَالِكٌ، وَالشَّافِعِيُّ.

وَقَالَ آخَرُونَ: لَا يَجُوزُ هَذَا وَلَيْسَ هُوَ قَبْضًا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَسُفْيَانَ الثَّوْرِيِّ قَالَ مَعْمَرٌ: عَنْ قَتَادَةَ.

وَقَالَ سُفْيَانُ: عَنْ أَشْعَثَ عَنْ الْحَكَمِ - ثُمَّ اتَّفَقَ قَتَادَةَ، وَالْحَكَمُ عَلَى أَنَّ الرَّهْنَ إذَا كَانَ عَلَى يَدَيْ عَدْلٍ فَلَيْسَ مَقْبُوضًا.

قَالَ سُفْيَانُ: وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى - وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا.

وَصَحَّ أَيْضًا عَنْ الْحَارِثِ الْعُكْلِيِّ مِنْ طَرِيقِ هُشَيْمٍ عَنْ الْمُغِيرَةِ عَنْهُ.

قَالَ أَبُو مُحَمَّدٍ: إنَّمَا ذَكَرَ اللَّهُ تَعَالَى الْقَبْضَ فِي الرَّهْنِ مَعَ ذِكْرِهِ الْمُتَدَايِنَيْنِ فِي السَّفَرِ إلَى أَجَلٍ عِنْدَ عَدَمِ الْكَاتِبِ وَإِنَّمَا أَقْبَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الدِّرْعَ الَّذِي لَهُ الدَّيْنُ فَهُوَ الْقَبْضُ الصَّحِيحُ.

وَأَمَّا قَبْضُ غَيْرِ صَاحِبِ الدَّيْنِ فَلَمْ يَأْتِ بِهِ نَصٌّ وَلَا إجْمَاعٌ، وَاشْتِرَاطُ أَنْ يَقْبِضَهُ فُلَانٌ لَا صَاحِبُ الدَّيْنِ: شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، فَهُوَ بَاطِلٌ

[مَسْأَلَةٌ رَهْنُ الْمُشَاعِ]

1210 - Issue:

A pledge is not valid unless it is physically received at the time of the contract, as Allah, the Exalted, says: *"pledges taken into possession"* (Q. 2:283).[2]

A group of people said: Its condition is that the pledge should be placed with a trustworthy person, and this is permissible. This is the opinion of Ibrāhīm al-Nakhaʿī, al-Shaʿbī, and ʿAṭāʾ. This is also the position held by Abū Ḥanīfah, Mālik, and al-Shāfiʿī.

Others said: This is not permissible and does not constitute a valid taking of possession (*qabd*) - as we have narrated via ʿAbd al-Razzāq's transmission from both Maʿmar and Sufyān al-Thawrī. Maʿmar said, from Qatāda.

Sufyan said: From Ash'ath from Al-Hakam - then Qatadah and Al-Hakam concurred that when pledged property remains in the custody of a trustworthy guardian, it is not deemed physically seized.

Sufyān said: This is the opinion of Ibn Abī Laylā — and according to it say Abū Sulaymān and our companions.

And it has also been authenticated from al-Ḥārith al-ʻUklī via the chain of Hushaym, from al-Mughīrah, from him.

Abu Muhammad said: Allah the Exalted only mentioned the physical taking of the pledge in the context of His reference to the creditor and debtor during a journey; to a fixed term; and in the absence of a scribe. Indeed, the Messenger of Allah—peace and blessings of Allah be upon him—took physical custody of the armor pledged against the debt, and this is the valid taking of possession.

As for the receiving [of debt] by someone other than the creditor, there is no textual evidence or consensus that permits it. The stipulation requiring it to be received by a specific non-creditor is a condition not found in the Book of Allah Almighty, and therefore it is invalid.

[2]**Qur'an references (L18926):** Qur'an 2:283 (Al-Baqarah).

A legal issue: the pledge of undivided common property.

1211 – Question:

The pledge of a person's share in jointly owned property (mushāʿ), whether divisible or not, is permissible when held by a co-owner or others, for Allah the Exalted said: {then a pledge held} [Al-Baqarah: 283]. The Exalted did not distinguish between undivided and divided property in this ruling, {and your Lord is never forgetful} [Maryam: 64].[3]

And it is the opinion of ʿUthmān al-Battī, Ibn Abī Laylā, Mālik, ʿUbayd Allāh ibn al-Ḥasan, Sawwār ibn ʿAbd Allāh, al-Shāfiʿī, Abū Thawr, Abū Sulaymān, and others.

Abu Hanifa and his companions said: It is not permissible to pledge undivided jointly-owned property—whether it was divisible or indivisible—neither with a co-owner thereof nor with others.

They permitted two individuals to pledge an undivided jointly owned land to a single creditor but prohibited a person from pledging his land to two creditors to whom he owes a single debt in one transaction. This is an utter muddle—firstly, because it is an opinion we know of no one who has held it before them.

The second [reason]: that it is an opinion without evidence – and the third: that they contradicted themselves regarding it, as we mentioned.

Moreover, they unanimously agree that the sale of undivided jointly owned property is permissible whether the property can be divided or not, and whether the sale is by a co-owner or others.

Abu Hanifah prohibited allowing joint ownership (mushāʿ) in what can be divided and what cannot be divided except from the sole co-owner thereof, wherein he permitted it for him.

These are confused notions and contradictions, unmistakably evident, and

[3] **Qur'an references (L18937):** Qur'an 19:64 (Maryam); Qur'an 2:283 (Al-Baqarah).

١٢١١ - مَسْأَلَةٌ:

وَرَهْنُ الْمَرْءِ حِصَّتَهُ مِنْ شَيْءٍ مُشَاعٍ مِمَّا يَنْقَسِمُ، أَوْ لَا يَنْقَسِمُ عِنْدَ الشَّرِيكِ فِيهِ وَعِنْدَ غَيْرِهِ جَائِزٌ، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {فَرِهَانٌ مَقْبُوضَةٌ} [البقرة: ٢٨٣] وَلَمْ يَخُصَّ تَعَالَى مَشَاعًا مِنْ مَقْسُومٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ، وَابْنِ أَبِي لَيْلَى، وَمَالِكٍ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ، وَسَوَّارِ بْنِ عَبْدِ اللَّهِ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ.

وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: لَا يَجُوزُ رَهْنُ الْمُشَاعِ - كَانَ مِمَّا يَنْقَسِمُ أَوْ مِمَّا لَا يَنْقَسِمُ - لَا عِنْدَ الشَّرِيكِ فِيهِ وَلَا عِنْدَ غَيْرِهِ.

وَأَجَازُوا أَنْ يَرْهَنَ اثْنَانِ أَرْضًا مُشَاعَةً بَيْنَهُمَا عِنْدَ إِنْسَانٍ وَاحِدٍ، وَمَنَعُوا مِنْ أَنْ يَرْهَنَ الْمَرْءُ أَرْضَهُ عِنْدَ اثْنَيْنِ دَايَنَهُمَا دَيْنًا وَاحِدًا فِي صَفْقَةٍ وَاحِدَةٍ. وَهَذَا تَخْلِيطٌ نَاهِيكَ بِهِ -: أَوَّلُ ذَلِكَ - أَنَّهُ قَوْلٌ لَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُمْ.

وَالثَّانِي: أَنَّهُ قَوْلٌ بِلَا دَلِيلٍ - وَالثَّالِثُ: أَنَّهُمْ تَنَاقَضُوا فِيهِ كَمَا ذَكَرْنَا

وَأَيْضًا: فَإِنَّهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ بَيْعَ الْمُشَاعِ جَائِزٌ فِيمَا يَنْقَسِمُ، وَمَا لَا يَنْقَسِمُ مِنْ الشَّرِيكِ وَغَيْرِهِ.

وَمَنَعَ أَبُو حَنِيفَةَ مِنْ إجَازَةِ الْمُشَاعِ فِيمَا يَنْقَسِمُ وَمَا لَا يَنْقَسِمُ إلَّا مِنْ الشَّرِيكِ فِيهِ وَحْدَهُ، فَأَجَازَهُ لَهُ.

we know they have disguised nothing except their claim that taking possession (al-qabḍ) is invalid in jointly owned property.

L18945–18947 And among their statements is: "Verily, the sale is not perfected except through possession," yet they have permitted the sale of jointly owned property—so possession... According to them, sale is permissible in joint ownership when they desire it, whereas pledge is not possible in joint ownership when they do not desire it, since delivery in such cases is impossible according to them. Allah suffices us, and He is the Best Disposer of Affairs.

L18948 It is said to them: Just as possession is taken in a sale, so too is it taken in a pledge, and there is no distinction.

L18949 **A legal question regarding the method of taking possession in a pledge (collateral).**

L18950 1212 – Issue:

L18951 The manner of taking possession in collateral and other items is that control is granted over them. For movable property, one transfers it to oneself. For immovable property such as houses and lands, control is granted to secure it, as done in sales. For jointly owned property, one's possession of it is equivalent to a co-owner taking possession of their own share in it alongside their partner, and there is no distinction.

L18952 If possession were invalid in jointly owned property, the two partners would not be holding possession of it. Were they not holding possession, it would remain neglected with no one exercising control over it. This assertion is disproven by debt and tangible assets: Regarding debt, their dealings with the property constitute an owner's exercise of ownership rights over his own property. As for tangible assets, it refers to the property being held by each partner for an agreed period, or entrusted to a mutually agreed custodian. Success comes from Allah, the Exalted.

L18953 **Issue: The pledge is valid for assets that may lawfully be**

وَهَذِهِ تَخَالِيطُ وَمُنَاقَضَاتٌ لَا خَفَاءَ بِهَا وَمَا نَعْلَمُ لَهُمْ شَيْئًا مَوَّهُوا بِهِ إِلَّا أَنَّهُمْ قَالُوا: لَا يَصِحُّ الْقَبْضُ فِي الْمُشَاعِ.

وَمِنْ قَوْلِهِمْ: إِنَّ الْبَيْعَ لَا يَتِمُّ إِلَّا بِالْقَبْضِ، وَقَدْ أَجَازُوا الْبَيْعَ فِي الْمُشَاعِ، فَالْقَبْضُ عِنْدَهُمْ مُمْكِنٌ فِي الْمُشَاعِ حَيْثُ اشْتَهَوْا، وَهُوَ الْبَيْعُ، وَالْقَبْضُ عِنْدَهُمْ غَيْرُ مُمْكِنٍ فِي الْمُشَاعِ حَيْثُ لَمْ يَشْتَهُوا، وَهُوَ الرَّهْنُ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

وَيُقَالُ لَهُمْ: كَمَا يُقْبَضُ فِي الْبَيْعِ كَذَلِكَ يُقْبَضُ فِي الرَّهْنِ وَلَا فَرْقَ

[مَسْأَلَةٌ صِفَةُ الْقَبْضِ فِي الرَّهْنِ]

١٢١٢ - مَسْأَلَةٌ:

وَصِفَةُ الْقَبْضِ فِي الرَّهْنِ وَغَيْرِهِ -: هُوَ أَنْ يُطْلِقَ يَدَهُ عَلَيْهِ، فَمَا كَانَ مِمَّا يُنْقَلُ نَقَلَهُ إِلَى نَفْسِهِ، وَمَا كَانَ مِمَّا لَا يُنْقَلُ كَالدُّورِ، وَالْأَرْضِينَ أُطْلِقَتْ يَدُهُ عَلَى ضَبْطِهِ، كَمَا يَفْعَلُ فِي الْبَيْعِ، وَمَا كَانَ مُشَاعًا كَانَ قَبْضُهُ لَهُ كَقَبْضِ صَاحِبِهِ لِحِصَّتِهِ مِنْهُ مَعَ شَرِيكِهِ، وَلَا فَرْقَ

وَلَوْ كَانَ الْقَبْضُ لَا يَصِحُّ فِي الْمُشَاعِ لَكَانَ الشَّرِيكَانِ فِيهِ غَيْرَ قَابِضَيْنِ لَهُ، وَلَوْ كَانَا غَيْرَ قَابِضَيْنِ لَهُ لَكَانَ مُهْمَلًا لَا يَدَ لِأَحَدٍ عَلَيْهِ، وَهَذَا أَمْرٌ يُكَذِّبُهُ الدَّيْنُ، وَالْعِيَانُ -: أَمَّا الدَّيْنُ: فَتَصَرُّفُهُمَا فِيهِ تَصَرُّفُ ذِي الْمِلْكِ فِي مِلْكِهِ - وَأَمَّا الْعِيَانُ: فَكَوْنُهُ عِنْدَ كُلِّ وَاحِدٍ مُدَّةً يَتَّفِقَانِ فِيهَا، أَوْ عِنْدَ مَنْ يَتَّفِقَانِ عَلَى كَوْنِهِ عِنْدَهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الرَّهْنُ جَائِزٌ فِيمَا يَجُوزُ بَيْعُهُ]

sold.

L18954 1213 - Issue:

L18955 Collateral is permissible for any property whose sale is valid.

L18956 It is impermissible to take as collateral what is impermissible to sell, such as a free person, an umm al-walad (a slave woman who has borne her master's child), a cat, a dog, or water, because it serves as security for the creditor to obtain his due if the debtor defaults. The creditor cannot claim his due except from what is permissible to sell. And in Allah, the Exalted, we place our trust.

The Legal Question Pertaining to the Usufructs of a Pledge

L18957 L18958 Issue 1214:

L18959 All benefits of the pledged item in their entirety remain for its owner, the pledgor, as they were prior to the pledge, with no distinction - except for riding the pledged animal and the milk of the pledged livestock, for these belong to the pledgee as we mentioned, unless the pledgee neglects them, in which case he ceases to provide for their maintenance.

L18960 The pledgor bears all those expenses, and thereby becomes entitled to ride the animal and use the animal's milk in return for what he spent, without such expenses being deducted from the debt owed to him, whether that is much or little.

L18961 The proof of this is the statement of Allah, the Most High: "And do not consume one another's wealth unjustly among yourselves" [Surah al-Baqarah 2:188].[4]

L18962–18964 And the saying of the Messenger of Allah (may Allah's peace and blessings be upon him): "Your blood and your wealth are inviolable against one another." He—peace be upon him—ruled that a Muslim's property is not lawful except with his consent, and ownership of the pledged item remains with

[4]**Qur'an references (L18961):** Qur'an 2:188 (Al-Baqarah).

١٢١٣ - مَسْأَلَةٌ:

وَالرَّهْنُ جَائِزٌ فِي كُلِّ مَا يَجُوزُ بَيْعُهُ.

وَلَا يَجُوزُ فِيمَا لَا يَجُوزُ بَيْعُهُ: كَالْحُرِّ، وَأُمِّ الْوَلَدِ، وَالسِّنَّوْرِ، وَالْكَلْبِ، وَالْمَاءِ، لِأَنَّهُ وَثِيقَةٌ لِلْمُرْتَهِنِ لِيَنْتَصِفَ إِنْ مَطَلَ، وَلَا يُمْكِنُ الِانْتِصَافُ لِلْغَرِيمِ إِلَّا مِمَّا يَجُوزُ بَيْعُهُ - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

[مَسْأَلَةُ مَنَافِعُ الرَّهْنِ]

١٢١٤ - مَسْأَلَةٌ:

وَمَنَافِعُ الرَّهْنِ كُلُّهَا لَا تَحَاشٍ مِنْهَا شَيْئًا لِصَاحِبِهِ الرَّاهِنِ لَهُ كَمَا كَانَتْ قَبْلَ الرَّهْنِ وَلَا فَرْقَ - حَاشَا رُكُوبِ الدَّابَّةِ الْمَرْهُونَةِ، وَحَاشَا لَبَنِ الْحَيَوَانِ الْمَرْهُونِ، فَإِنَّهُ لِصَاحِبِ الرَّهْنِ كَمَا ذَكَرْنَا إِلَّا أَنْ يُضَيِّعَهُمَا فَلَا يُنْفِقُ عَلَيْهِمَا.

وَيُنْفِقُ عَلَى كُلِّ ذَلِكَ الْمُرْتَهِنُ فَيَكُونُ لَهُ حِينَئِذٍ: رُكُوبُ الدَّابَّةِ، وَلَبَنُ الْحَيَوَانِ، بِمَا أَنْفَقَ لَا يُحَاسَبُ بِهِ مِنْ دَيْنِهِ كَثُرَ ذَلِكَ أَمْ قَلَّ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨]

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَحَكَمَ - عَلَيْهِ السَّلَامُ - بِأَنَّهُ لَا يَحِلُّ مَالُ امْرِئٍ مُسْلِمٍ إِلَّا بِطِيبِ نَفْسِهِ وَمِلْكُ الشَّيْءِ الْمُرْتَهَنِ بَاقٍ لِرَاهِنِهِ بِيَقِينٍ وَبِإِجْمَاعٍ لَا خِلَافَ فِيهِ، فَإِذْ هُوَ كَذَلِكَ، فَحَقُّ الرَّهْنِ

the pledger with certainty and through undisputed consensus. Since this is so, the pledge-related entitlement belongs to the pledgee, and the pledger's ownership of the pledged item has not been relinquished. This does not necessitate a ruling that prohibits one from benefiting from his property absent an explicit text. Thus, he retains the right to utilization, use, renting, sewing, consumption of newly grown fruit, benefit from newly born offspring, cultivation, construction, use of newly produced wool, residence, and all other rights an owner holds over his property—except that the pledge remains solely in the pledgee's possession by the right of possession established in the Quran, with no further claims.

الَّذِي حَدَثَ فِيهِ لِلْمُرْتَهِنِ، وَلَمْ يُنْقَلْ مِلْكُ الرَّاهِنِ عَنْ الشَّيْءِ الْمَرْهُونِ لَا يُوجِبُ حُدُوثَ حُكْمٍ فِي مَنْعِهِ مَا لِلْمَرْءِ أَنْ يَنْتَفِعَ بِهِ مِنْ مَالِهِ بِغَيْرِ نَصٍّ بِذَلِكَ، فَلَهُ الْوَطْءُ، وَالِاسْتِخْدَامُ، وَالْمُؤَاجَرَةُ، وَالْخِيَاطَةُ، وَأَكْلُ الثَّمَرَةِ الْحَادِثَةِ، وَالْوَلَدُ الْحَادِثُ، وَالزَّرْعُ، وَالْعِمَارَةُ، وَالْأَصْوَافُ الْحَادِثَةُ، وَالسُّكْنَى، وَسَائِرُ مَا لِلْمَرْءِ فِي مِلْكِهِ، إلَّا كَوْنَ الرَّهْنِ فِي يَدِ الْمُرْتَهِنِ فَقَطْ، بِحَقِّ الْقَبْضِ الَّذِي جَاءَ بِهِ الْقُرْآنُ، وَلَا مَزِيدَ.

L18965 As for riding and specifically milking (for one who covers the upkeep of the ridden or milked animal), this is based on what we were narrated through al-Bukhārī's chain: Muḥammad ibn Muqātil reported to us from ʿAbdullāh ibn al-Mubārak, from Zakariyyā ibn Abī Zāʾidah, from al-Shaʿbī, from Abū Hurayrah that the Messenger of Allah (peace and blessings be upon him) said: "A pledged riding animal may be ridden in return for its upkeep if it is pledged, and the milk of a pledged lactating animal may be drunk in return for its upkeep if it is pledged. The one who rides or drinks must bear the upkeep."[5]

وَأَمَّا الرُّكُوبُ، وَالِاحْتِلَابُ خَاصَّةً، لِمَنْ أَنْفَقَ عَلَى الْمَرْكُوبِ، وَالْمَحْلُوبِ -: فَلِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدُ بْنُ مُقَاتِلٍ أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ أَنَا زَكَرِيَّا بْنُ أَبِي زَائِدَةَ عَنْ الشَّعْبِيِّ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الظَّهْرُ يُرْكَبُ بِنَفَقَتِهِ إذَا كَانَ مَرْهُونًا، وَلَبَنُ الدَّرِّ يُشْرَبُ بِنَفَقَتِهِ إذَا كَانَ مَرْهُونًا، وَعَلَى الَّذِي يَرْكَبُ وَيَشْرَبُ: النَّفَقَةُ»

L18966 The text explicitly prohibits unlawful claims to property from those who have no rightful entitlement to it. Thus, the pledged property is unquestionably forbidden to all except the pledger, while the pledgee holds the right to the pledge. Consequently, the pledgee is encompassed by this general ruling, whereas others are excluded through another explicit text.

وَالنَّصُّ قَدْ وَرَدَ بِتَحْرِيمِ الْأَمْوَالِ عَلَى غَيْرِ مَنْ لَهُ فِيهَا حَقٌّ، فَالرَّهْنُ بِلَا شَكٍّ حَرَامٌ عَلَى كُلِّ مَنْ عَدَا الرَّاهِنِ، وَلِلْمُرْتَهِنِ فِيهِ حَقُّ الِارْتِهَانِ، فَدَخَلَ بِهِ فِي هَذَا الْعُمُومِ وَخَرَجَ مِنْهُ مَنْ عَدَاهُ بِالنَّصِّ الْآخَرِ.

L18967 Abu Muhammad said: Whoever opposes us in this matter indeed opposes the Quran, the Sunnah, and sound reason. As for the Quran and the Sunnah, they prevent the rightful owner from benefiting from his property. Allah the Exalted says: "And those who guard their private parts" [23:5], "except from their wives or those their right hands possess - for indeed they are not to be blamed" [23:6], "But whoever seeks beyond that, then those are the transgressors" [23:7]. Allah the Exalted has granted unrestricted permission

قَالَ أَبُو مُحَمَّدٍ: وَمَنْ خَالَفَنَا فِي هَذَا فَإِنَّهُ يُخَالِفُ الْقُرْآنَ، وَالسُّنَنَ، وَالْمَعْقُولَ -: أَمَّا الْقُرْآنُ، وَالسُّنَنُ فَمَنْعُهُ صَاحِبَ الْحَقِّ مِنْ مَنَافِعِ مَالِهِ - وَاَللَّهُ تَعَالَى يَقُولُ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] {فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧] فَقَدْ أَطْلَقَهُ

[5] **Hadith references (L18965):** Mishkat al-Masabih 2886.

regarding intercourse with his female slave, making no distinction between a mortgaged slave and one who is not. "And your Lord is not forgetful" [19:64].[6]

اللَّهُ تَعَالَى عَلَى وَطْءِ أَمَتِهِ، وَلَمْ يَخُصَّ غَيْرَ مَرْهُونَةٍ مِنْ مَرْهُونَةٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

L18968–18970 Allah, the Exalted, said: "Do not forbid the good things that Allah has made lawful to you, and do not transgress. Indeed, Allah does not love the transgressors." [Al-Ma'idah: 87] As for the contradiction of reason: we ask those who oppose us here concerning the pledged house—is it to be rented and kept in repair, or neglected and left to waste, causing the renter to depart from it? Concerning the pledged land—is it to be cultivated and planted, or neglected and left to ruin? Concerning the pledged animal—should upkeep be provided for it and it be utilized, or left to waste until it perishes? Concerning the pledged trees—to whom does its yield belong? If they say: "All of that is to be wasted," they would contradict the Ijmaʿ (consensus), and it would be said to them: "The Messenger of Allah—peace and blessings of Allah be upon him—has forbidden the squandering of wealth."[7]

وَقَالَ تَعَالَى: {لا تُحَرِّمُوا طَيِّبَاتِ مَا أَحَلَّ اللَّهُ لَكُمْ وَلا تَعْتَدُوا إِنَّ اللَّهَ لا يُحِبُّ الْمُعْتَدِينَ} [المائدة: ٨٧] وَأَمَّا خِلَافُ الْمَعْقُولِ -: فَإِنَّنَا نَسْأَلُ مَنْ خَالَفَنَا هَاهُنَا عَنْ الدَّارِ الْمَرْهُونَةِ أَتُؤَاجَرُ وَيُصْلِحُ مَا هِيَ فِيهَا، أَمْ تُهْمَلُ وَتَضِيعُ وَيَخْرُجُ الْمُسْتَأْجِرُ لَهَا عَنْهَا؟ وَعَنْ الْأَرْضِ الْمَرْهُونَةِ، أَتُحْرَثُ وَتُزْرَعُ، أَمْ تُهْمَلُ وَتُضَاعُ؟ وَعَنْ الْحَيَوَانِ الْمَرْهُونِ أَيُنْفِقُ عَلَيْهِ وَيُسْتَغَلُّ، أَمْ يَضِيعُ حَتَّى يَهْلَكَ؟ وَعَنْ الْأَشْجَارِ الْمَرْهُونَةِ لِمَنْ تَكُونُ غَلَّتُهَا؟ فَإِنْ قَالُوا: إنَّ كُلَّ ذَلِكَ يَضِيعُ -: خَالَفُوا الْإِجْمَاعَ، وَقِيلَ لَهُمْ: قَدْ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ» .

L18971 If they say: "It is not forfeited?" We respond: Then to whom do the aforementioned benefits — the lease, milk, offspring, wool, and fruit — belong? If they claim: "They are included in the collateral?" We say to them: From where do you derive including his property in a collateral agreement that the two parties never stipulated? Who authorized this? There is no obligation to listen, obey, or approve, for it contradicts the Prophet's statement — peace and blessings be upon him —: "Your blood and wealth are inviolable to you," whereas this prohibits his wealth for him and permits it for another — an undeniably invalid ruling.

وَإِنْ قَالُوا: لَا يَضِيعُ؟ قُلْنَا: فَالْمَنَافِعُ الْمَذْكُورَةُ مِنْ الْإِجَارَةِ وَاللَّبَنِ، وَالْوَلَدِ، وَالصُّوفِ، وَالثَّمَرَةِ لِمَنْ تَكُونُ؟ فَإِنْ قَالُوا: تَكُونُ دَاخِلًا فِي الرَّهْنِ؟ قُلْنَا لَهُمْ: وَمِنْ أَيْنَ لَكُمْ إدْخَالُ مَالٍ مِنْ مَالِهِ فِي رَهْنٍ لَمْ يَتَعَاقَدَا قَطُّ أَنْ يَكُونَ دَاخِلًا فِيهِ؟ وَمَنْ أَمَرَ بِهَذَا؟ فَلَا سَمْعَ لَهُ وَلَا طَاعَةَ وَلَا نَعْمَى عَيْنٍ، لِأَنَّهُ خِلَافُ قَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَهَذَا تَحْرِيمُ مَالِهِ عَلَيْهِ وَإِبَاحَتُهُ لِغَيْرِهِ - وَهَذَا بَاطِلٌ مُتَيَقَّنٌ.

L18972 If they say: "Rather, it belongs to the owner of the pledged item?" We respond: "Yes—and this is our position, all praise be to Allah—as authentically reported from Abū Hurayra (may Allah be pleased with him), whose

وَإِنْ قَالُوا: بَلْ هُوَ لِصَاحِبِ الْمِلْكِ؟ قُلْنَا: نَعَمْ، وَهَذَا قَوْلُنَا - وَلِلَّهِ الْحَمْدُ - وَصَحَّ عَنْ أَبِي هُرَيْرَةَ - رَضِيَ اللَّهُ عَنْهُ - مِنْ قَوْلِهِ مِثْلُ قَوْلِنَا -: وَهُوَ أَنَّهُ قَالَ: صَاحِبُ الرَّهْنِ يَرْكَبُهُ، وَصَاحِبُ الدَّرِّ يَحْلُبُهُ، وَعَلَيْهِمَا النَّفَقَةُ وَأَنَّهُ قَالَ: الرَّهْنُ مَرْكُوبٌ، وَمَحْلُوبٌ بِعَلَفِهِ.

[6] **Qur'an references (L18967):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun); Qur'an 70:31 (Al-Ma'arij); Qur'an 19:64 (Maryam).

[7] **Qur'an references (L18968):** Qur'an 5:87 (Al-Ma'idah).

statement aligns with ours, which is that he said: 'The holder of the pawn may ride it, the owner of the milk-producing animal may milk it, and both are responsible for its upkeep.' He also said: 'The pawn may be ridden and milked with its fodder.'"

L18973 From the chain of Ḥammād ibn Salama, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī: Concerning one who takes a lactating sheep as collateral—he said: The pledgeholder may drink from its milk equivalent to the price of its fodder. If he takes surplus milk beyond the price of the fodder, this constitutes ribā.

L18974 Abū Muḥammad said: We do not accept this addition from Ibrāhīm, and the general applicability of the Prophet's statement (peace and blessings of Allāh be upon him) is dearer to us than Abū ʿImrān's interpretation (may Allāh have mercy on him) based on his opinion.

L18975 And we know of no one among the Companions here who opposed Abū Hurayrah.

L18976 Al-Shafi'i said: All benefits of the pledged property remain vested in the pledgor in their original state.

L18977–18979 Abū Thawr held the same position—and with our opinion regarding riding and milking—except he added beneficial use but did not... [text incomplete] We hold this opinion because the text did not mention it, and analogy cannot be used to render permissible what is prohibited from people's wealth: "And your Lord is not forgetful" [Maryam: 64].[8]

L18980 Ishaq and Ahmad ibn Hanbal said: The mortgagor may not benefit from the pledge except through its usufruct (such as milk) - and this is an assertion without proof. As for Mālik, he said: There is no objection to the mortgagee stipulating the benefit of the pledge for a specified period in houses and lands, but he disapproved of this regarding animals, garments, and merchandise - and this is an opinion without evidence for its validity, a flawed categorization, and a stipulation not found in the Book of Allah the Exalted,

[8] **Qur'an references (L18977):** Qur'an 19:64 (Maryam).

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ: فِيمَنْ ارْتَهَنَ شَاةً ذَاتَ لَبَنٍ؟ قَالَ: يَشْرَبُ الْمُرْتَهِنُ مِنْ لَبَنِهَا بِقَدْرِ ثَمَنِ عَلَفِهَا، فَإِنْ اسْتَفْضَلَ مِنَ اللَّبَنِ بَعْدَ ثَمَنِ الْعَلَفِ فَهُوَ رِبًا.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ الزِّيَادَةُ مِنْ إِبْرَاهِيمَ لَا نَقُولُ بِهَا، وَعُمُومُ قَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَحَبُّ إِلَيْنَا مِنْ تَفْسِيرِ أَبِي عِمْرَانَ - رَحِمَهُ اللَّهُ - بِرَأْيِهِ.

وَلَا مُخَالِفَ لِأَبِي هُرَيْرَةَ هَاهُنَا مِنَ الصَّحَابَةِ نَعْلَمُهُ.

وَقَالَ الشَّافِعِيُّ: جَمِيعُ مَنَافِعِ الرَّهْنِ لِلرَّاهِنِ كَمَا كَانَتْ.

وَقَالَ أَبُو ثَوْرٍ بِذَلِكَ - وَبِقَوْلِنَا فِي الرُّكُوبِ، وَالْحَلْبِ، إِلَّا أَنَّهُ زَادَ الِاسْتِخْدَامَ وَلَا نَقُولُ بِهَذَا لِأَنَّهُ لَمْ يَأْتِ بِهِ النَّصُّ، وَالْقِيَاسُ لَا يُسْتَحَلُّ بِهِ الْمُحَرَّمُ مِنْ أَمْوَالِ النَّاسِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

وَقَالَ إِسْحَاقُ، وَأَحْمَدُ بْنُ حَنْبَلٍ: لَا يَنْتَفِعُ الرَّاهِنُ مِنَ الرَّهْنِ إِلَّا بِالدِّرِّ - وَهَذَا قَوْلٌ بِلَا بُرْهَانٍ. وَأَمَّا مَالِكٌ فَإِنَّهُ قَالَ: لَا بَأْسَ أَنْ يَشْتَرِطَ الْمُرْتَهِنُ مَنْفَعَةَ الرَّهْنِ إِلَى أَجَلٍ فِي الدُّورِ، وَالْأَرَضِينَ، وَكَرِهَ ذَلِكَ فِي الْحَيَوَانِ، وَالثِّيَابِ وَالْعُرُوضِ - وَهَذَا قَوْلٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ، وَتَقْسِيمٌ فَاسِدٌ، وَشَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، وَقَوْلٌ لَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ، وَمُنَاقَضَةٌ.

thus it is invalid. It is a view we know of no one who asserted it before him, and it is contradictory.

L18981 One of them presented an unusual view, asking: "Is a loan that yields benefit considered the same with goods (al-'urūḍ)?" He was told: "With real property (al-'aqār) it is treated identically - there is no distinction."

L18982 As for Abū Ḥanīfah and his companions, they prohibited leasing the pledge and deriving benefit from it by both the pledger and the pledgee. Yet they immediately contradicted themselves by permitting the pledger to borrow it from the pledgee and the pledgee to lend it to him, while not considering this act as removing it from the status of a pledge. This opinion is profoundly corrupt due to its lack of evidence and the absence of any predecessor who held it before him. Some of them objected, saying: "If the benefits remain with the pledger as they were, what purpose does the pledge serve?" We replied: "The greatest benefit lies, in the Hereafter, in acting upon what Allah the Exalted has commanded and in receiving the reward; and in this world, in enabling the pledgee to promptly recover his right by selling the pledge if the pledger unjustly delays repayment. What greater benefit do you seek than this?" We further say to them: "You agree with us that exchanging wheat for wheat is impermissible except in equal measure—what benefit is there in this? Similarly, gold for gold and silver for silver." These objections stem from ill assumptions about their proponent, whereas the matter is nothing but compliance with Allah and His Messenger—peace and blessings of Allah be upon him.

L18983 He, the Exalted, said: "It is not for a believing man or a believing woman - when Allah has decreed a matter along with His Messenger - to have any choice regarding their own affair." [Al-Ahzab: 36][9]

L18984 The Almighty and Majestic: "The Prophet is closer to the believers than themselves" [Al-Ahzab: 6].[10]

L18985–18987 Some of those who do not fear Allah the Exalted have objected to the *ha-

وَأَتَى بَعْضُهُمْ بِغَرِيبَةٍ وَهُوَ أَنَّهُ قَالَ: هُوَ فِي الْعُرُوضِ سَلَفٌ جَرَّ مَنْفَعَةً؟ فَقِيلَ لَهُ: وَهُوَ فِي الْعَقَارِ كَذَلِكَ وَلَا فَرْقَ

وَأَمَّا أَبُو حَنِيفَةَ وَأَصْحَابُهُ فَإِنَّهُمْ مَنَعُوا مِنْ مُؤَاجَرَةِ الرَّهْنِ، وَمِنْ أَنْ يَنْتَفِعَ بِهِ الرَّاهِنُ وَالْمُرْتَهِنُ - ثُمَّ تَنَاقَضُوا مِنْ قُرْبٍ فَأَبَاحُوا لِلرَّاهِنِ أَنْ يَسْتَعِيرَهُ مِنْ الْمُرْتَهِنِ، وَأَنْ يُعِيرَهُ إيَّاهُ الْمُرْتَهِنُ، وَلَمْ يَرَوْهُ بِذَلِكَ خَارِجًا مِنْ الرَّهْنِ - وَهَذَا قَوْلٌ فِي غَايَةِ الْفَسَادِ لِتَعَرِّيهِ مِنْ الْبُرْهَانِ، وَلِأَنَّنَا لَا نَعْلَمُ أَحَدًا قَالَ بِهِ قَبْلَهُ. وَاعْتَرَضَ بَعْضُهُمْ بِأَنْ قَالَ: فَإِذَا كَانَتْ الْمَنَافِعُ لِلرَّاهِنِ كَمَا كَانَتْ فَأَيُّ فَائِدَةٍ لِلرَّهْنِ؟ قُلْنَا: أَعْظَمُ الْفَائِدَةِ -: أَمَّا فِي الْآخِرَةِ، فَالْعَمَلُ بِمَا أَمَرَ اللَّهُ تَعَالَى بِهِ وَالْأَجْرُ، وَأَمَّا فِي الدُّنْيَا، فَلِأَنَّ الرَّاهِنَ إنْ مَطَلَ بِالْإِنْصَافِ بِيعَ الرَّهْنُ وَتَعَجَّلَ الْمُرْتَهِنُ الِانْتِصَافَ مِنْ حَقِّهِ، فَأَيُّ فَائِدَةٍ تُرِيدُونَ أَكْثَرَ مِنْ هَذِهِ الْفَائِدَةِ؟ وَنَقُولُ لَهُمْ: أَنْتُمْ تُوَافِقُونَنَا عَلَى أَنَّهُ لَا يَحِلُّ الْقَمْحُ بِالْقَمْحِ إلَّا مِثْلًا بِمِثْلٍ، فَأَيُّ فَائِدَةٍ فِي هَذَا؟ وَكَذَلِكَ الذَّهَبُ بِالذَّهَبِ، وَالْفِضَّةُ بِالْفِضَّةِ - وَهَذِهِ اعْتِرَاضَاتٌ بِسُوءِ الظَّنِّ بِصَاحِبِهَا وَلَيْسَ إلَّا الِائْتِمَارُ لِلَّهِ وَلِرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

قَالَ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦]

وَقَالَ عَزَّ وَجَلَّ: {النَّبِيُّ أَوْلَى بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ} [الأحزاب: ٦]

وَاعْتَرَضَ بَعْضُ مَنْ لَا يَتَّقِي اللَّهَ تَعَالَى عَلَى حَدِيثِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي أَوْرَدْنَا قَبْلُ مِنْ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «الرَّهْنُ مَحْلُوبٌ وَمَرْكُوبٌ» فَقَالَ: هَذَا

[9] **Qur'an references (L18983):** Qur'an 33:36 (Al-Ahzab).
[10] **Qur'an references (L18984):** Qur'an 33:6 (Al-Ahzab).

dith* of the Prophet—peace and blessings be upon him—which we cited earlier from his statement. Peace be upon him—"The pledged beast of burden is to be milked and ridden." He said: This is a report narrated by Hushaym from Zakariyyā from Ash-Shaʿbī from Abū Hurayrah who mentioned that the Messenger of Allah—may Allah's peace and blessings be upon him—said: "When a beast is pledged, the pledgee must provide its fodder. The milk may be consumed to cover its maintenance costs, and it may be ridden." This ignorant prominent one said: Since this ruling concerns the pledgee, it is abrogated by the prohibition of ribā and the prohibition of a loan that entails benefit.

خَبَرٌ رَوَاهُ هُشَيْمٌ عَنْ زَكَرِيَّا عَنْ الشَّعْبِيِّ عَنْ أَبِي هُرَيْرَةَ وَذَكَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا كَانَتْ الدَّابَّةُ مَرْهُونَةً فَعَلَى الْمُرْتَهِنِ عَلَفُهَا، وَلَبَنُ الدَّرِّ يُشْرَبُ بِنَفَقَتِهَا وَتُرْكَبُ» قَالَ هَذَا الْجَاهِلُ الْمُقَدَّمُ: فَإِذْ الْمُرَادُ بِذَلِكَ الْمُرْتَهِنُ فَهُوَ مَنْسُوخٌ بِتَحْرِيمِ الرِّبَا وَبِالنَّهْيِ عَنْ سَلَفٍ جَرَّ مَنْفَعَةً.

L18988 Abū Muḥammad said: This is a statement of ultimate defectiveness and presumption. First - this is a report lacking documentation, for it does not clarify that this wording originates from the speech of Allah's Messenger—peace and blessings be upon him. Moreover, it contains incoherent wording entirely incomprehensible, namely his statement: "The milk of the milch animal may be consumed [by the creditor], and the one who consumes it must bear its expenses. The animal may also be ridden." Far be it from Allah that this could originate from the speech of Allah's Messenger—peace and blessings be upon him—who was commanded to clarify matters for us. This narration comes solely through Ismāʿīl ibn Sālim the goldsmith, freed slave of Banū Hāshim, from Hushaym. The confusion arises from him, not from Hushaym or those above him in the chain, for we transmitted Hushaym's version of this ḥadīth through Saʿīd ibn Manṣūr—the most retentive memorizer of Hushaym's narrations and most precise in transmitting them. He stated: Hushaym narrated to us from al-Aʿmash, from Abū Ṣāliḥ, from Abū Hurayrah—who raised the ḥadīth to the Prophet in what he alleged—saying: Allah's Messenger—peace and blessings be upon him—said: "Collateral may be ridden and fed. If the milk of a pledged milch animal is consumed, the one who drinks it must bear its expenses and fodder."

قَالَ أَبُو مُحَمَّد: وَهَذَا كَلَامٌ فِي غَايَةِ الْفَسَادِ وَالْجُرْأَةِ، أَوَّلُ ذَلِكَ -: إنَّ هَذَا خَبَرٌ لَيْسَ مُسْنَدًا، لِأَنَّهُ لَيْسَ فِيهِ بَيَانٌ بِأَنَّ هَذَا اللَّفْظَ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَيْضًا: فَإِنَّ فِيهِ لَفْظًا مُخْتَلِفًا لَا يُفْهَمُ أَصْلًا، وَهُوَ قَوْلُهُ: «وَلَبَنُ الدَّرِّ يُشْرَبُ وَعَلَى الَّذِي يَشْرَبُ نَفَقَتُهَا وَتُرْكَبُ» ، وَحَاشَا اللَّهِ أَنْ يَكُونَ هَذَا مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَأْمُورِ بِالْبَيَانِ لَنَا، وَهَذِهِ الرِّوَايَةُ إنَّمَا هِيَ مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ سَالِمٍ الصَّائِغِ مَوْلَى بَنِي هَاشِمٍ عَنْ هُشَيْمٍ، فَالتَّخْلِيطُ مِنْ قِبَلِهِ، لَا مِنْ قِبَلِ هُشَيْمٍ فَمَنْ فَوْقَهُ، لِأَنَّ حَدِيثَ هُشَيْمٍ هَذَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ الَّذِي هُوَ أَحْفَظُ النَّاسِ لِحَدِيثِ هُشَيْمٍ وَأَضْبَطُهُمْ لَهُ فَقَالَ: نا هُشَيْمٌ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ يَرْفَعُ الْحَدِيثَ فِيمَا زَعَمَ، قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الرَّهْنُ يُرْكَبُ وَيُعْلَفُ، وَلَبَنُ الدَّرِّ إذَا كَانَ مَرْهُونًا يُشْرَبُ وَعَلَى الَّذِي يَشْرَبُهُ النَّفَقَةُ وَالْعَلَفُ» .

L18989 As for the statement of this ignorant person: "Since that obligation lies with the pledgee, it is abrogated by the prohibition of usury and the prohibition of a loan that entails a benefit"—he has lied and uttered falsehood, for usury has no connection here whatsoever.

وَأَمَّا قَوْلُ هَذَا الْجَاهِلِ: فَإِذْ ذَلِكَ عَلَى الْمُرْتَهِنِ فَهُوَ مَنْسُوخٌ بِالنَّهْيِ عَنْ الرِّبَا وَبِالنَّهْيِ عَنْ سَلَفٍ جَرَّ مَنْفَعَةً -: فَقَدْ كَذَبَ، وَأَفِكَ، وَمَا لِلرِّبَا هَاهُنَا مَدْخَلٌ أَصْلًا

L18990 If they had observed the prohibition of riba, they would not have resorted to practicing it openly, since they permitted exchanging two dates for four - even though the four dates were greater in bulk and heavier in weight.

وَلَوْ أَنَّهُمْ اتَّقُوا الرِّبَا لَمَا أَقْدَمُوا عَلَيْهِ جِهَارًا إِذْ أَبَاحُوا التَّمْرَتَيْنِ بِالْأَرْبَعِ تَمَرَاتٍ، وَإِنْ كَانَتْ الْأَرْبَعُ أَكْبَرَ جِسْمًا، وَأَثْقَلَ وَزْنًا.

L18991 When some scholars permitted exchanging a dirham containing one and a half dirhams [of silver] for a dirham containing one dirham [of silver], this was not a valid sale price.

وَإِذْ أَبَاحَ بَعْضُهُمْ دِرْهَمًا فِيهِ دِرْهَمٌ وَنِصْفٌ بِدِرْهَمٍ فِيهِ دِرْهَمٌ غَيْرُ ثَمَنٍ.

L18992 And when they all allowed exchanging currencies of a thousand present dirhams for a hundred deferred dinars as a liability.

وَإِذْ أَبَاحُوا كُلُّهُمْ أَلْفَ دِرْهَمٍ حَاضِرَةٍ بِمِائَةِ دِينَارٍ غَائِبَةٍ فِي الذِّمَّةِ.

L18993–18995 So this is indeed the riba. The pawnor may not benefit from his property, nor may the pawnee benefit from the milk and riding—despite the explicit textual permission—due to the expenses he incurs for the upkeep of the ridden animals and milked animals.

فَهَذَا هُوَ الرِّبَا حَقًّا لَا انْتِفَاعُ الرَّاهِنِ بِمَالِهِ وَلَا انْتِفَاعُ الْمُرْتَهِنِ بِالدَّرِّ، وَالرُّكُوبِ الْمُبَاحَيْنِ لَهُ بِالنَّصِّ مِنْ أَجْلِ نَفَقَتِهِ عَلَى الْمَرْكُوبِ وَالْمَحْلُوبِ.

L18996 They also said: "It is authentically reported from Al-Sha'bi that he considered reprehensible (makrūḥ) for the pawner to derive any benefit from his pledged property." They said: "He is the narrator of the ḥadīth, so he only refrained from it due to profound knowledge he possessed."

وَقَالُوا أَيْضًا: قَدْ صَحَّ عَنْ الشَّعْبِيِّ أَنَّهُ كَرِهَ أَنْ يَنْتَفِعَ الرَّاهِنُ مِنْ رَهْنِهِ بِشَيْءٍ؟ قَالُوا: وَهُوَ رَاوِي الْحَدِيثِ، فَلَمْ يَتْرُكْهُ إِلَّا لِفَضْلِ عِلْمٍ عِنْدَهُ.

L18997 Abu Muhammad said: This is among the most preposterous things they contrive. We had assumed there was some justification for them in their lands when they justified their stance by citing a Companion's rejection of transmitted reports—until they came to us promoting the abandonment of the Sunnah on account of al-Sha'bī's rejection of it.

قَالَ أَبُو مُحَمَّد: وَهَذَا مِنْ أَسْخَفِ مَا يَأْتُونَ بِهِ، وَلَقَدْ كُنَّا نَظُنُّ أَنَّ فِي بِلَادِهِمْ بَعْضَ الْعُذْرِ لَهُمْ، إِذْ يَحْتَجُّونَ بِتَرْكِ الصَّاحِبِ لِمَا رُوِيَ حَتَّى أَتَوْنَا بِتَرْكِ السُّنَّةِ مِنْ أَجَلِ تَرْكِ الشَّعْبِيِّ لَهَا.

L18998 We have cited Abū Hurayrah's adoption of what was narrated concerning that. If they were to act in this manner, then Mālik's rejection of adopting what was narrated would indeed constitute a decisive proof against the Ḥanafīs in their adherence to those reports, and Abū Ḥanīfah's rejection of the ḥadīth that reached him would equally constitute a decisive proof against the Mālikīs in their adherence to it. This would extend downward in succession until any individual's rejection of a ḥadīth from the Prophet—peace be upon him—upon it reaching him would stand as an irrefutable proof for its dismissal.

وَقَدْ أَوْرَدْنَا أَخْذَ أَبِي هُرَيْرَةَ بِمَا رُوِيَ مِنْ ذَلِكَ، فَلَئِنْ مَشَوْا هَكَذَا، لَيَكُونَنَّ تَرْكُ مَالِك لِلْأَخْذِ بِمَا رُوِيَ حُجَّةً عَلَى الْحَنَفِيِّينَ فِي أَخْذِهِمْ بِهِ، وَلَيَكُونَنَّ تَرْكُ أَبِي حَنِيفَةَ لِمَا بَلَغَهُ مِنْ الْحَدِيثِ حُجَّةً عَلَى الْمَالِكِيِّينَ فِي أَخْذِهِمْ بِهِ، وَهَكَذَا سُفْلًا حَتَّى يَكُونَ تَرْكُ كُلِّ أَحَدٍ لِلْحَدِيثِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا بَلَغَهُ حُجَّةً قَاطِعَةً فِي رَدِّهِ.

L18999 And this is the doctrine of Iblīs and those who follow him. No honor is

وَهَذَا مَذْهَبُ إِبْلِيسَ وَمَنْ اتَّبَعَهُ، وَلَا كَرَامَةَ لِأَحَد أَنْ يَكُونَ حُجَّةً عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَلْ هُوَ - عَلَيْهِ السَّلَامُ - الْحُجَّةُ عَلَى الْجِنِّ وَالْإِنْسِ.

due to anyone who would be a proof against the Messenger of Allah—may Allah bless him and grant him peace—rather, he—peace be upon him—is the proof against the jinn and mankind.

وَأَسْلَمُ الْوُجُوهِ لِمَنْ خَالَفَ مَا رُوِيَ عَنْ صَاحِبٍ فَمَنْ دُونَهُ مِنْ الْأَئِمَّةِ خَاصَّةً أَنْ يُظَنَّ بِهِمْ النِّسْيَانُ أَوْ التَّأْوِيلُ الَّذِي أَخْطَئُوا فِيهِ قَاصِدِينَ لِلْخَيْرِ، فَيُؤْجَرُونَ مَرَّةً وَاحِدَةً، وَأَمَّا مَنْ أَقْدَمَ عَلَى مَا صَحَّ عِنْدَهُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنْ اعْتَقَدَ جَوَازَ مُخَالَفَتِهِ - عَلَيْهِ السَّلَامُ - كَافِرٌ حَلَالُ الدَّمِ وَالْمَالِ، وَإِنْ لَمْ يَعْتَقِدْ ذَلِكَ فَهُوَ فَاسِقٌ قَالَ تَعَالَى: {فَلا وَرَبِّكَ لا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا} [النساء: ٦٥] قَالَ أَبُو مُحَمَّدٍ: وَقَدْ رُوِيَ عَنْ ابْنِ مَسْعُودٍ، وَابْنِ عُمَرَ، وَشُرَيْحٍ: أَنْ لَا يَنْتَفِعَ الْمُرْتَهِنُ بِشَيْءٍ مِنْ الرَّهْنِ - وَلَا يَصِحُّ عَنْ أَحَدٍ مِنْهُمْ، لِأَنَّهُ عَنْ ابْنِ مَسْعُودٍ مُنْقَطِعٌ - وَعَنْ ابْنِ عُمَرَ مِنْ طَرِيقِ ابْنِ لَهِيعَةَ، وَعَنْ شُرَيْحٍ مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ.

L19000 The safest of opinions regarding those who oppose what has been narrated from a Companion or those below him among the Imams—particularly when suspecting them of forgetfulness or erroneous interpretation while intending good—is that they receive a single reward. As for one who acts upon what he considers authentically established from the Prophet (peace be upon him), if he believes in the permissibility of opposing him (peace be upon him), he becomes an unbeliever whose blood and wealth are lawful. If he does not hold this belief, he is a transgressor. The Almighty said: "But no, by your Lord, they will not truly believe until they make you judge in matters of dispute between them, then find no discomfort in their hearts regarding your verdict and submit wholeheartedly" (4:65). Abū Muḥammad said: Narrations are reported from Ibn Masʿūd, Ibn ʿUmar, and Shurayḥ stating that the pledgeholder may not benefit from the pledged item—though none are authentically established. The narration from Ibn Masʿūd has an interrupted chain, that from Ibn ʿUmar comes via Ibn Lahīʿah's chain, and that from Shurayḥ through Jābir al-Juʿfī's chain.[1]

بَلْ قَدْ صَحَّ عَنْ ابْنِ سِيرِينَ، وَالشَّعْبِيِّ: لَا يَنْتَفِعُ مِنْ الرَّهْنِ بِشَيْءٍ - وَهَذَا صَحِيحٌ إنْ كَانُوا عَنَوْا الْمُرْتَهِنَ وَبِهِ نَقُولُ إلَّا الْحَلْبَ، وَالرُّكُوبَ إنْ أَنْفَقَ فَقَطْ، وَإِلَّا فَلَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19001 Indeed, it is authentically reported from Ibn Sīrīn and Al-Shaʿbī that one may not derive any benefit from the pledged item—and this is correct if they intended the pledgee. This is our position, except for milking and riding, provided he has spent on it; otherwise, he may not—and success is from Allah, the Most High.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَبُو سُلَيْمَانَ: نَفَقَةُ الرَّهْنِ عَلَى رَاهِنِهِ - وَهَذَا صَحِيحٌ، لِأَنَّهُ مَالُهُ، إلَّا أَنَّ الْحَنَفِيِّينَ قَالُوا: إنْ مَرِضَ الرَّقِيقُ الْمَرْهُونُ، أَوْ أَصَابَتْ الْعَبْدَ جِرَاحَةٌ، أَوْ دَبَرَتْ الدَّوَابُّ الْمَرْهُونَةُ، فَإِنْ كَانَ الدَّيْنُ، وَقِيمَةُ الرَّهْنِ سَوَاءً، فَالْعِلَاجُ كُلُّهُ عَلَى الْمُرْتَهِنِ، وَإِنْ كَانَ الدَّيْنُ أَقَلَّ مِنْ قِيمَةِ الرَّهْنِ فَالْعِلَاجُ عَلَى الرَّاهِنِ وَالْمُرْتَهِنِ بِحِسَابِ ذَلِكَ.

L19002–19003 Abu Hanifa, Malik, al-Shafiʿi, Ahmad, and Abu Sulayman have stated: The maintenance expenses of the pledged property are incumbent upon the pledger—and this is the valid opinion, as it is his property. However, the Hanafis said: If the pledged slave falls ill, the slave is injured, or the pledged livestock give birth, then if the debt and the value of the pledge are equivalent, the entire cost of treatment is borne by the pledgee. If the debt is less than the value of the pledge, the cost of treatment is shared between the pledger and the pledgee in proportion to their respective shares.

L19004 This speech resembles delirium, yet it is worse in state than delirium, for

[1] **Qur'an references (L19000):** Qur'an 4:65 (An-Nisa).

it establishes rulings in religion through corrupt opinions—ones we do not know of anyone having stated before him—that have no connection by the Quran, nor by Sunnah, nor by a weak narration, nor by analogy, nor by sound judgment, nor by the statement of a predecessor.

The issue of the death of the pledge and its destruction.

1215 – Issue:

If the mortgaged item dies, is destroyed, escapes, becomes defective, or if an enslaved woman becomes pregnant by her master, or he frees her, or sells the mortgaged item, gifts it, donates it, or gives it as *mahr*—all such actions are valid, but the mortgage is invalidated, and the entire debt remains as it is. The mortgagor is not obligated to provide compensation for any of these occurrences, nor are the emancipated [slave] or the pregnant [enslaved woman] liable for *istisʿā'*, unless the mortgagor has no assets **other than it** from which to satisfy his creditor. In that case, his act of freeing her, donating **it**, or gifting **it** is invalidated—though his sale of it or giving it as *mahr* remains valid.

It was transmitted to us through the isnād of Ibn Abī Shaybah: Yaḥyā ibn Ādam narrated to us, from Isrā'īl, from al-Mughīrah ibn Miqsam al-Ḍabbī, from Ibrāhīm al-Nakhaʿī regarding one who pawned his slave and then manumitted him. He said: The manumission is valid, and the creditor has a claim against the debtor. Yaḥyā said: I heard al-Ḥasan ibn Ḥayy say concerning one who pawned a slave and then manumitted him: The manumission is valid, and he is not liable for the slave's labor/services.

The evidence for this is that the debt has been established, so nothing nullifies it except an explicit text from the Quran or the Sunnah; thus, there is no means for its nullification to exist except within these two sources.

It is not permissible to impose compensation or forced labor, because neither Allah the Exalted nor His Messenger—may Allah bless him and grant him

وَهَذَا كَلَامٌ يُشْبِهُ الْهَذَيَانَ إِلَّا أَنَّهُ أَسْوَأُ حَالًا مِنْ الْهَذَيَانِ، لِأَنَّهُ عَلَى حُكْمٍ فِي الدِّينِ بِالْآرَاءِ الْفَاسِدَةِ الَّتِي لَا نَعْلَمُ أَحَدًا قَالَهَا قَبْلَهُ، وَلَا مُتَعَلَّقَ لَهُمْ فِيهَا بِقُرْآنٍ، وَلَا سُنَّةٍ، وَلَا بِرِوَايَةٍ ضَعِيفَةٍ، وَلَا بِقِيَاسٍ، وَلَا بِرَأْيٍ سَدِيدٍ، وَلَا بِقَوْلِ مُتَقَدِّمٍ.

[مَسْأَلَةٌ مَوْت الرَّهْن وَتَلَفُهُ]

١٢١٥ - مَسْأَلَةٌ:

فَإِنْ مَاتَ الرَّهْنُ، أَوْ تَلِفَ، أَوْ أَبِقَ، أَوْ فَسَدَ، أَوْ كَانَتْ أَمَةٌ فَحَمَلَتْ مِنْ سَيِّدِهَا، أَوْ أَعْتَقَهَا، أَوْ بَاعَ الرَّهْنَ، أَوْ وَهَبَهُ، أَوْ تَصَدَّقَ بِهِ، أَوْ أَصْدَقَهُ -: فَكُلُّ ذَلِكَ نَافِذٌ، وَقَدْ بَطَلَ الرَّهْنُ وَبَقِيَ الدَّيْنُ كُلُّهُ بِحَسْبِهِ، وَلَا يُكَلَّفُ الرَّاهِنُ عِوَضًا مَكَانَ شَيْءٍ مِنْ ذَلِكَ، وَلَا يُكَلَّفُ الْمُعْتَقُ وَلَا الْحَامِلُ اسْتِسْعَاءً، إِلَّا أَنْ يَكُونَ الرَّاهِنُ لَا شَيْءَ لَهُ مِنْ أَيْنَ يُنْصِفُ غَرِيمَهُ غَيْرَهُ، فَيَبْطُلُ عِتْقُهُ، وَصَدَقَتُهُ، وَهِبَتُهُ - وَلَا يَبْطُلُ بَيْعُهُ وَلَا إصْدَاقُهُ.

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ آدَمَ نا إسْرَائِيلُ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ الضَّبِّيِّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ فِيمَنْ رَهَنَ عَبْدَهُ ثُمَّ أَعْتَقَهُ؟ قَالَ: الْعِتْقُ جَائِزٌ، وَيَتْبَعُ الْمُرْتَهِنُ الرَّاهِنَ، قَالَ يَحْيَى: وَسَمِعْت الْحَسَنَ بْنَ حَيٍّ يَقُولُ فِيمَنْ رَهَنَ عَبْدًا ثُمَّ أَعْتَقَهُ: الْعِتْقُ جَائِزٌ، وَلَيْسَ عَلَيْهِ سِعَايَةٌ.

بُرْهَانُ ذَلِكَ -: أَنَّ الدَّيْنَ قَدْ ثَبَتَ فَلَا يُبْطِلُهُ شَيْءٌ إلَّا نَصُّ قُرْآنٍ، أَوْ سُنَّةٍ، فَلَا سَبِيلَ إلَى وُجُودِ إبْطَالِهِ فِيهِمَا.

peace—have commanded this. Obligations are invalid unless established by a text from the Qur'an or Sunnah.

وَلَا يَجُوزُ تَكْلِيفُ عِوَضٍ وَلَا اسْتِسْعَاءٍ، لِأَنَّهُ لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِذَلِكَ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالذِّمَمُ بَرِيئَةٌ إلَّا بِنَصِّ قُرْآنٍ، أَوْ سُنَّةٍ.

L19011 As for emancipation, sale, gift, dower, and charity, the pledged property belongs to the pledgor without dispute. All these transactions are permissible regarding one's property according to the explicit texts of the Quran, the Sunnah, and certain consensus, except for those possessing nothing beyond the pledged item, in accordance with the Prophet's saying—peace and blessings be upon him—"Every righteous act is charity," and his statement: "Charity should only be given from surplus wealth."

فَأَمَّا الْعِتْقُ، وَالْبَيْعُ، وَالْهِبَةُ، وَالْإِصْدَاقُ، وَالصَّدَقَةُ، فَإِنَّ الرَّهْنَ مَالُ الرَّاهِنِ بِلَا خِلَافٍ -: وَكُلُّ هَذِهِ الْوُجُوهِ مُبَاحَةٌ لِلْمَرْءِ فِي مَالِهِ بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ، وَالْإِجْمَاعِ الْمُتَيَقَّنِ، إلَّا مَنْ لَا شَيْءَ لَهُ غَيْرُ ذَلِكَ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ مَعْرُوفٍ صَدَقَةٌ» وَقَوْلِهِ: «الصَّدَقَةُ عَنْ ظَهْرِ غِنًى» .

L19012–19013 Whoever claims that the pledge prevents any part of that, his statement is null and his claim is invalid, for he has no recourse to the Quran or the Sunnah to validate his claim.

فَمَنْ ادَّعَى أَنَّ الِارْتِهَانَ يَمْنَعُ شَيْئًا مِنْ ذَلِكَ فَقَوْلُهُ بَاطِلٌ، وَدَعْوَاهُ فَاسِدَةٌ إذْ لَا سَبِيلَ لَهُ إلَى قُرْآنٍ وَلَا سُنَّةٍ، بِتَصْحِيحِ دَعْوَاهُ.

L19014 He, the Exalted, said: {Say, "Bring forth your proof if you are truthful."} [Al-Baqarah: 111].[2]

قَالَ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] .

L19015 They differed regarding that—: ʿUthmān al-Battī, Abū Thawr, and Abū Sulaymān said: "The manumission is invalid in all cases" - this being the position of ʿAṭāʾ.

وَقَدْ اخْتَلَفُوا فِي ذَلِكَ -: فَقَالَ عُثْمَانُ الْبَتِّيُّ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ: الْعِتْقُ بَاطِلٌ بِكُلِّ حَالٍ - وَهُوَ قَوْلُ عَطَاءٍ

L19016 Malik and Al-Shāfiʿī said: If he is solvent, his manumission is executed and he is obligated to provide its value as a pledged security in lieu of him. If he is insolvent, the manumission is null and void.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: إنْ كَانَ مُوسِرًا نَفَذَ عِتْقُهُ وَكُلِّفَ قِيمَةً يَجْعَلُهَا رَهْنًا مَكَانَهُ، وَإِنْ كَانَ مُعْسِرًا فَالْعِتْقُ بَاطِلٌ.

L19017 Ahmad ibn Hanbal said: Manumission is effective under all circumstances. If the master is wealthy, he is required to have its value held as collateral. If he is insolvent, he is not required to pay its value, nor is the slave required to undertake labor for self-ransom (istisʿāʾ), and the manumission is effected.

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: الْعِتْقُ نَافِذٌ عَلَى كُلِّ حَالٍ، فَإِنْ كَانَ مُوسِرًا كُلِّفَ قِيمَتَهُ تَكُونُ رَهْنًا، وَإِنْ كَانَ مُعْسِرًا لَمْ يُكَلَّفْ قِيمَتَهُ، وَلَا كُلِّفَ الْعَبْدُ اسْتِسْعَاءً وَنَفَذَ الْعِتْقُ.

L19018 Abu Hanifah said: Manumission is effective in all circumstances. Then he divided it into categories as we mention after this.

وَقَالَ أَبُو حَنِيفَةَ: الْعِتْقُ نَافِذٌ بِكُلِّ حَالٍ، ثُمَّ قَسَّمَ كَمَا نَذْكُرُ بَعْدَ هَذَا.

[2] **Qur'an references (L19014):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

وَقَالَ الشَّافِعِيُّ: إنْ رَهَنَ أَمَةً لَهُ فَوَطِئَهَا فَحَمَلَتْ، فَإِنْ كَانَ مُوسِرًا خَرَجَتْ مِنْ الرَّهْنِ وَكُلِّفَ رَهْنًا آخَرَ مَكَانَهَا، وَإِنْ كَانَ مُعْسِرًا، فَمَرَّةً قَالَ: تَخْرُجُ مِنْ الرَّهْنِ وَلَا يُكَلَّفُ رَهْنًا مَكَانَهَا وَلَا تُكَلَّفُ هِيَ شَيْئًا - وَمَرَّةً قَالَ: تُبَاعُ إذَا وَضَعَتْ وَلَا يُبَاعُ الْوَلَدُ، وَتَكْلِيفُ رَهْنٍ آخَرَ -: وَالتَّفْرِيقُ هَاهُنَا بَيْنَ الْمُوسِرِ وَالْمُعْسِرِ، وَبَيْعِهَا بَعْدَ وَضْعِهَا دُونَ وَلَدِهَا - أَقْوَالٌ فَاسِدَةٌ بِلَا بُرْهَانٍ.

L19019 Al-Shāfiʿī said: If a man pledges his female slave and then has intercourse with her, resulting in pregnancy: if he is solvent, she is released from the pledge and he is obligated to provide another pledge in her place. If he is insolvent, in one opinion he stated: She is released from the pledge, **he** is not obligated to provide another pledge in her place, and **she** is not held legally responsible for anything. In another opinion, he said: She is sold after delivering the child (without selling the child), and **he** is obligated to provide another pledge. The distinction here between the solvent and insolvent [man], and the permissibility of selling her after delivery without selling her child, are invalid opinions lacking evidence.

وَقَالَ أَبُو ثَوْرٍ: هِيَ خَارِجَةٌ مِنْ الرَّهْنِ، وَلَا يُكَلَّفُ لَا هُوَ وَلَا هِيَ شَيْئًا سَوَاءٌ مُعْسِرًا كَانَ أَوْ مُوسِرًا.

L19020 Abu Thawr said: It is outside the scope of the collateral, and neither the pledger nor the pledgee is obligated to do anything, whether the pledger was insolvent or solvent.

وَرُوِّينَا عَنْ قَتَادَةَ: أَنَّهَا تُبَاعُ هِيَ، وَيُكَلَّفُ سَيِّدُهَا أَنْ يَفْتِكَ وَلَدَهُ مِنْهَا.

L19021 And it has been narrated to us from Qatādah that she is to be sold, and her master is obligated to ransom his child from her.

قَالَ أَبُو مُحَمَّد: افْتِكَاكُ الْوَلَدِ لَا نَدْرِي وَجْهَهُ، وَلَئِنْ كَانَ مَمْلُوكًا فَلِأَيِّ مَعْنًى يُكَلَّفُ وَالِدُهُ افْتِكَاكَهُ؟ وَإِنْ كَانَ حُرًّا فَلِمَ يُبَاعُ حَتَّى يَحْتَاجَ إلَى افْتِكَاكِهِ.

L19022 Abu Muhammad said: We do not know the reason for ransoming the child. If he is enslaved, why should his parent be obligated to ransom him? And if he is free, why would he be sold so that he needs to be ransomed?

وَرُوِّينَا عَنْ ابْنِ شُبْرُمَةَ: أَنَّهَا تُسْتَسْعَى - وَكَذَلِكَ الْعَبْدُ الْمَرْهُونُ إذَا أُعْتِقَ.

L19023 It was narrated to us from Ibn Shubrumah that she must be compelled to labor, and likewise the male slave given as collateral if he is manumitted.

قَالَ أَبُو مُحَمَّد: وَهَذَا عَجَبٌ: وَمَا نَدْرِي مِنْ أَيْنَ حَلَّ أَخْذُ مَالِهِمَا وَتَكْلِيفِهِمَا غَرَامَةً لَمْ يُكَلِّفْهُمَا اللَّهُ تَعَالَى قَطُّ إيَّاهَا، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَا جَعَلَ اللَّهُ تَعَالَى فِيهِمَا شِرْكًا لِلْمُرْتَهِنِ فَيُسْتَسْعَى لَهُ؟

L19024 Abu Muhammad said: This is perplexing—we do not know from what basis arose the permissibility of seizing their wealth and imposing upon them a compensation that Allah the Exalted never ordained for them at all, nor His Messenger (peace be upon him). Nor has Allah the Exalted granted the mortgagee any partnership in their property, such that labor should be demanded for his benefit?

وَأَمَّا مَالِكٌ فَقَالَ: إنْ كَانَ مُوسِرًا كُلِّفَ أَنْ يَأْتِيَ بِقِيمَتِهَا فَتَكُونُ الْقِيمَةُ رَهْنًا وَتَخْرُجُ هِيَ مِنْ الرَّهْنِ، وَإِنْ كَانَ مُعْسِرًا فَإِنْ كَانَتْ تَخْرُجُ إلَيْهِ وَتَأْتِيه فَهِيَ خَارِجَةٌ مِنْ الرَّهْنِ،

L19025–19026 As for Malik, he said: If the debtor is wealthy, he must provide its equivalent value, which is then held as a pledge, and the original item is released from the pledge. If he is indigent, and the item is released and returned to him, it is removed from the pledge, no penalty is imposed, and he is not required to substitute another pledge. He remains liable solely for the debt owed. If he

unlawfully seizes it, the item is sold, and he is given its offspring from the proceeds.

وَلَا تُتْبَعُ بِغَرَامَةٍ وَلَا يُكَلَّفُ هُوَ رَهْنًا مَكَانَهَا، وَلَكِنْ يُتْبَعُ بِالدَّيْنِ الَّذِي عَلَيْهِ فَقَطْ، وَإِنْ كَانَ تَسَوَّرَ عَلَيْهَا بِيعَتْ هِيَ وَأُعْطِيَ هُوَ وَلَدَهُ مِنْهَا.

L19027 Abu Muhammad said: There are five errors in this statement—the first being his differentiation between the insolvent and the solvent in that matter, for the rightful claim is the same for both.

قَالَ أَبُو مُحَمَّدٍ: فِي هَذَا الْقَوْلِ خَمْسَةُ أَوْجُهٍ مِنْ الْخَطَإِ -: وَهِيَ: تَفْرِيقُهُ بَيْنَ الْمُعْسِرِ، وَالْمُوسِرِ، فِي ذَلِكَ وَالْحَقُّ عَلَيْهِمَا وَاحِدٌ.

L19028 Requiring him to bring a portion of his wealth to serve as a pledge, though he never established any pledge agreement concerning it.

وَتَكْلِيفُهُ إحْضَارَ قِطْعَةٍ مِنْ مَالِهِ لِتُرْهَنَ لَمْ يَعْقِدْ قَطُّ فِيهَا رَهْنًا.

L19029 And his distinguishing between her departure to her master and his scaling of her wall.

وَتَفْرِيقُهُ بَيْنَ خُرُوجِهَا إلَى سَيِّدِهَا وَبَيْنَ تَسَوُّرِهِ عَلَيْهَا.

L19030 It is secure in both aspects, yet it is pledged in both aspects—a matter of profound wonder.

وَهُمَا آمِنَةٌ فِي كِلَا الْوَجْهَيْنِ، وَهِيَ مَرْهُونَةٌ فِي كِلَا الْوَجْهَيْنِ، وَهَذَا عَجَبٌ جِدًّا.

L19031 His selling her while she is an umm walad (a slave mother who bore her master's child), and his removal of her child from the jurisdiction of the pledge without imposing compensation—unlike the mother, who remains subject to the pledge's rulings. In his view, neither may be pledged.

وَبَيْعِهِ إيَّاهَا وَهِيَ أُمُّ وَلَدٍ، وَإِخْرَاجِهِ وَلَدَهَا مِنْ حُكْمِ الرَّهْنِ بِلَا تَكْلِيفِ عِوَضٍ بِخِلَافِ الْأُمِّ، وَكِلَاهُمَا عِنْدَهُ لَا يَجُوزُ رَهْنُهُمَا.

L19032 All of these are egregiously erroneous arguments, having no connection to the Quran, the Sunnah, any weak narration, consensus, evidence, analogy, an opinion with a valid basis, the statement of a companion—no, not even the statement of anyone known before such a companion.

وَكُلُّ هَذِهِ أَوْجُهٌ فَاحِشَةُ الْخَطَإِ لَا مُتَعَلَّقَ لَهَا فِيهَا بِقُرْآنٍ وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا إجْمَاعٍ، وَلَا دَلِيلٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ، وَلَا قَوْلِ صَاحِبٍ - نَعَمْ، وَلَا قَوْلِ أَحَدٍ نَعْلَمُهُ قَبْلَهُ.

L19033 Abu Hanifa and his companions said: If she becomes pregnant and he acknowledges her pregnancy, then if the debtor is solvent, the pledged item is released from the pledge, and he is obligated to repay the debt immediately if it is due, or to provide a pledge equivalent to its value if the debt is deferred.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ إنْ حَمَلَتْ فَأَقَرَّ بِحَمْلِهَا، فَإِنْ كَانَ مُوسِرًا خَرَجَتْ مِنْ الرَّهْنِ وَكُلِّفَ قَضَاءَ الدَّيْنِ إنْ كَانَ حَالًّا، أَوْ كُلِّفَ رَهْنًا بِقِيمَتِهَا إنْ كَانَ إلَى أَجَلٍ.

L19034 If she is insolvent, she is compelled to work for the immediate debt regardless of its amount, and she cannot seek recourse against her master, nor is her child subjected to compulsory labor for the debt. If the debt is deferred, she is compelled to work equivalent to her assessed value alone, whereby she

فَإِنْ كَانَ مُعْسِرًا كُلِّفَتْ أَنْ تُسْتَسْعَى فِي الدَّيْنِ الْحَالِ بَالِغًا مَا بَلَغَ، وَلَا تَرْجِعُ بِهِ عَلَى سَيِّدِهَا، وَلَا يُكَلَّفُ وَلَدُهَا سِعَايَةً، فَإِنْ كَانَ الدَّيْنُ إلَى أَجَلٍ كُلِّفَتْ أَنْ تُسْتَسْعَى فِي

قِيمَتِهَا فَقَطْ، فَجُعِلَتْ رَهْنًا مَكَانَهَا، فَإِذَا حَلَّ أَجَلُ الدَّيْنِ كُلِّفَتْ مِنْ ذِي قَبْلِ أَنْ تُسْتَسْعَى فِي بَاقِي الدَّيْنِ إنْ كَانَ أَكْثَرَ مِنْ قِيمَتِهَا.

L19035 قَالُوا: فَإِنْ كَانَ السَّيِّدُ اسْتَلْحَقَ وَلَدَهَا بَعْدَ وَضْعِهَا لَهُ - وَهُوَ مُعْسِرٌ - قَسَّمَ الدَّيْنَ عَلَى قِيمَتِهَا يَوْمَ ارْتَهَنَهَا، وَعَلَى قِيمَةِ وَلَدِهَا يَوْمَ اُسْتُلْحِقَ، فَمَا أَصَابَ الْأُمَّ سَعَتْ فِيهِ بَالِغًا مَا بَلَغَ لِلْمُرْتَهِنِ، وَلَمْ تَرْجِعْ بِهِ عَلَى سَيِّدِهَا، وَمَا أَصَابَ الْوَلَدَ سَعَى فِي الْأَقَلِّ مِنْ الدَّيْنِ أَوْ قِيمَتِهِ وَرَجَعَ بِهِ عَلَى أَبِيهِ وَيَأْخُذُ الْمُرْتَهِنُ كُلَّ ذَلِكَ.

L19036 قَالُوا: فَلَوْ كَانَ الرَّهْنُ عَبْدًا فَأَعْتَقَهُ نَفَذَ فِيهِ الْعِتْقُ، وَخَرَجَ مِنْ الرَّهْنِ.

L19037–19038 فَإِنْ كَانَ الرَّاهِنُ مُوسِرًا وَالدَّيْنُ حَالًّا كُلِّفَ غُرْمَ الدَّيْنِ.

L19039 فَإِنْ كَانَ الدَّيْنُ إلَى أَجَلٍ كُلِّفَ السَّيِّدُ قِيمَةَ الْعَبْدِ تَكُونُ رَهْنًا مَكَانَهُ.

L19040 فَإِنْ كَانَ مُعْسِرًا اُسْتُسْعِيَ الْعَبْدُ فِي الْأَقَلِّ مِنْ قِيمَتِهِ أَوْ الدَّيْنِ، وَرَجَعَ بِهِ عَلَى سَيِّدِهِ، وَرَجَعَ الْمُرْتَهِنُ عَلَى الرَّاهِنِ بِبَاقِي دَيْنِهِ.

L19041 قَالَ أَبُو مُحَمَّدٍ: إنَّ فِي هَذِهِ الْأَقْوَالِ لَعِبْرَةً لِمَنْ اعْتَبَرَ - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ - وَإِنَّ مِنْ الْعَجَبِ تَفْرِيقُهُ بَيْنَ مَا تُسْتَسْعَى فِيهِ الْأُمُّ وَبَيْنَ مَا يُسْتَسْعَى فِيهِ الْعَبْدُ الْمُعْتَقُ، وَبَيْنَ مَا يُسْتَسْعَى فِيهِ الْوَلَدُ - وَهُوَ عِنْدَهُ حُرٌّ لَاحِقُ النَّسَبِ - فَمَا بَالُ أَمَةٍ خَرَجَتْ أُمَّ وَلَدٍ مِنْ سَيِّدِهَا بِوَطْءٍ مُبَاحٍ.

L19042 وَمَا بَالُ إنْسَانٍ حُرٍّ ابْنِ حُرٍّ وُلِدَ عَلَى فِرَاشِ أَبِيهِ.

is pledged as collateral instead. When the debt matures, she is compelled beforehand to work for the remaining debt if it exceeds her value.

They said: If the master legally claims paternity of her child after she delivers it - while being insolvent - the debt is apportioned according to her market value on the day she was pledged and her child's value on the day of paternity acknowledgment. Whatever portion corresponds to the mother, she becomes responsible for working to pay it to the pledgee regardless of how much it amounts to, and she may not recover any of it from her master. Whatever portion corresponds to the child, he becomes liable for the lesser amount between the remaining debt or his own value, while retaining the right to seek reimbursement from his father. The pledgee is entitled to receive all such payments.

They said: If the pledge is a slave and [the pledgor] emancipates him, the emancipation takes effect upon him, and he is released from the pledge.

If the pledgor is solvent and the debt is due, he shall be charged with bearing the liability of the debt.

If the debt is payable at a specified term, the master is obligated to pledge the slave's value as collateral in lieu of the slave.

If he is insolvent, the slave is compelled to work for the lesser of the slave's value or the debt, and the pledgee may seek the resulting amount from the slave's master and claim the remainder of the debt from the pledgor.

Abu Muhammad said: Truly, in these statements lies a lesson for those who take heed—and we seek refuge in Allah from disgrace—and among the astonishing matters is his distinction between cases requiring the mother's labor, those requiring the labor of an emancipated slave, and those requiring the labor of a child—who is in his view free with established lineage. How then does a female slave become an *umm walad* (mother of a child) by her master through lawful intercourse?

What is the status of a free person, born to a free father and upon his father's bed?

وَمَا بَالُ عَبْدٍ عَتَقَ يُكَلَّفُونَ الْغَرَامَاتِ دُونَ جِنَايَةٍ جَنَوْهَا وَلَا ذَنْبٍ اقْتَرَفُوهُ فَتُسْتَبَاحُ أَمْوَالُهُمْ بِالْبَاطِلِ، وَيُكَلَّفُونَ مَا لَمْ يُكَلِّفْهُمْ اللَّهُ تَعَالَى بِهِ قَطُّ وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -، وَلَا أَحَدٌ مِنْ الْمُسْلِمِينَ قَبْلَ أَبِي حَنِيفَةَ ثُمَّ يُكَلِّفُونَهُمْ مَا ذَكَرْنَا، وَيُسَلِّمُونَ صَاحِبَ الْجِنَايَةِ عِنْدَهُمْ مِنْ الْغَرَامَةِ؟ مَا شَاءَ اللَّهُ كَانَ.

L19043 Why is it that a slave who has been emancipated is burdened with prescribed penalties without having committed any criminal offense or sinful act, so their wealth is unlawfully appropriated under false pretenses, and they are charged with what Allah the Exalted has never legislated as an obligation—nor His Messenger (peace be upon him), nor any Muslim before Abū Ḥanīfah? Yet they impose these obligations upon them while releasing the actual perpetrator among them from liability for the penalty? Allah's decree prevails.

وَكُلُّ مَا يَدْخُلُ عَلَى مَالِكٍ مِمَّا ذَكَرْنَا قَبْلُ فَإِنَّهُ يَدْخُلُ عَلَى أَبِي حَنِيفَةَ إلَّا فَرْقَ مَالِكٍ بَيْنَ خُرُوجِهَا إلَيْهِ وَبَيْنَ تَسَوُّرِهِ عَلَيْهَا.

L19044 And all that applies to Mālik from what we previously mentioned also applies to Abū Ḥanīfah, except for Mālik's distinction between [the wife's] departure to [the husband] and [the husband's] act of scaling into [her premises].

وَيَزِيدُ مِنْ التَّنَاقُضِ وَالْفَسَادِ فِي قَوْلِ أَبِي حَنِيفَةَ تَفْرِيقُهُ بَيْنَ الدَّيْنِ الْحَالِ وَالْمُؤَجَّلِ فِي ذَلِكَ - وَتَفْرِيقُهُ بَيْنَ مَا تُكَلَّفُهُ الْأُمُّ وَبَيْنَ مَا يُكَلَّفُهُ الْوَلَدُ.

L19045 A further element amplifying the contradiction and juristic invalidity in Abū Ḥanīfah's position is his distinction between immediate and deferred debts in this matter, along with his differentiation between the legal obligations imposed upon the mother and those assigned to the child.

وَتَفْرِيقُهُ بَيْنَ إقْرَارِهِ بِالْحَمْلِ وَبَيْنَ إقْرَارِهِ بِالْوَلَدِ بَعْدَ الْوَضْعِ فِيمَا يُكَلَّفُهُ مِنْ الِاسْتِسْعَاءِ فِي الْحَالَيْنِ.

L19046 Distinguishing between his acknowledgment of pregnancy and his acknowledgment of the child after childbirth regarding the obligation imposed on him to seek to provide maintenance in both cases.

وَتَفْرِيقُهُ بَيْنَ مَا تُكَلَّفُهُ أُمُّ الْوَلَدِ وَبَيْنَ مَا يُكَلَّفُهُ الْعَبْدُ بِعِتْقٍ.

L19047 His distinction between what the umm al-walad is obligated to undertake and between what the slave is obligated to undertake by manumission.

وَتَفْرِيقُهُ بَيْنَ الرُّجُوعِ مَرَّةً عَلَى السَّيِّدِ بِمَا غَرِمَ الْغَارِمُ مِنْهُمْ وَبَيْنَ مَنْعِهِمْ مِنْ الرُّجُوعِ عَلَيْهِ مَرَّةً بِذَلِكَ.

L19048 Distinguishing between permitting creditors to seek recourse against the master once for the debt owed by the indebted party among them and preventing them from seeking recourse against him even once for that debt.

وَأَغْرَبُ مِنْ ذَلِكَ كُلِّهِ قَوْلُهُ: إنَّ الْوَلَدَ يُسْتَسْعَى، فَلَيْتَ شِعْرِي إلَى مَتَى بَقِيَ هَذَا الدَّيْنُ الْمَسْخُوطُ حَتَّى وُلِدَ الْمَحْمُولُ بِهِ، وَحَتَّى فُطِمَ، وَكَبِرَ، وَبَلَغَ، وَتَصَرَّفَ؟ أَفَإِنْ مَاتَ قَبْلَ ذَلِكَ مَاذَا يَكُونُ؟ كُلُّ هَذَا بِلَا دَلِيلٍ أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ مِنْ وَلَدِ آدَمَ قَبْلَهُمْ، وَلَا قِيَاسٍ أَصْلًا، وَلَا رَأْيٍ لَهُ وَجْهٌ مَا

L19049–19051 Stranger than all of this is his statement: "The child is to be compelled to work." If only I knew until when this reprehensible debt persists—until the child in the womb is born, until he is weaned, grows up, reaches maturity, and conducts his affairs? What if he dies before that—what then? All of this stands without any evidence at all—neither from the Qur'an, nor the Sunnah, nor even an unsound narration. Nor the statement of any of the children of Adam before them, nor any analogy whatsoever, nor any opinion with any valid basis - like minds that produced these statements cannot even safely

manage a burning seed, so how could they control matters of religion? Indeed, Allah the Exalted's blessings upon us are immense through His granting us success in following His Book and the Sunnah of His Messenger—may Allah bless him and grant him peace.

مِثْلُ عُقُولٍ أَنْتَجَتْ هَذِهِ الْأَقْوَالَ بِمَأْمُونَةٍ عَلَى تَدْبِيرِ نَوَاةٍ مُحْرِقَةٍ، فَكَيْفَ عَلَى التَّحَكُّمِ فِي الدِّينِ؟ وَإِنَّ نِعَمَ اللَّهِ تَعَالَى عَلَيْنَا لَعَظِيمَةٌ فِي تَوْفِيقِهِ لَنَا إِلَى اتِّبَاعِ كِتَابِهِ، وَسُنَنِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L19052 Nor should they obfuscate by claiming this is analogized to the established ruling of working for self-manumission (istis'ā') transmitted from the Prophet—peace and blessings be upon him—regarding a jointly owned slave whose master manumits him while insolvent. For that ruling pertains to a slave owned by two or more co-owners in partnership, whereas here there is no owner besides the manumitter of his slave and the master who has fathered a child with his female slave (umm walad).

وَلَا يُمَوِّهُونَ بِأَنْ يَقُولَ: قِسْنَا ذَلِكَ عَلَى الِاسْتِسْعَاءِ الثَّابِتِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْعَبْدِ الْمُشْتَرَكِ يَعْتِقُهُ سَيِّدُهُ وَهُوَ مُعْسِرٌ، فَإِنَّ ذَلِكَ الْحُكْمَ فِي عَبْدٍ يَمْلِكُهُ اثْنَانِ فَصَاعِدًا وَلَيْسَ هَاهُنَا مَالِكٌ غَيْرَ الْمُعْتِقِ عَبْدَهُ وَالْمُوَلِّدِ أَمَتَهُ.

L19053 If analogy were valid, this would represent the epitome of falsehood, for it constitutes applying a ruling to what bears no resemblance to it, neither in application nor in source. Abū Muḥammad said: Then we ask them: What distinguishes emancipating it, gifting it, selling it, and giving it as a dower, given that you permit sale without consensus yet prohibit the rest? Regarding the destruction of the pledged item without any action by the mortgagor or mortgagee, jurists hold five opinions: One group stated that they mutually relinquish the obligation—the explanation of this being that if the pledged item's value equals the debt, the debt is nullified for the obligor with no liability imposed on the pledged item.

وَلَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّهُ قِيَاسُ حُكْمٍ عَلَى مَا لَا يُشْبِهُ، وَعَلَى مَا لَيْسَ مِنْهُ فِي وُرُودٍ وَلَا فِي صَدْرٍ؟ قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَسْأَلُهُمْ؟ مَا الْفَرْقُ بَيْنَ عِتْقِهِ وَهِبَتِهِ وَبَيْعِهِ وَإِصْدَاقِهِ، إِذْ أَجَزْتُمُ الْبَيْعَ بِغَيْرِ إِجْمَاعٍ، وَمَنَعْتُمْ مِنْ سَائِرِ ذَلِكَ؟ وَأَمَّا هَلَاكُ الرَّهْنِ بِغَيْرِ فِعْلِ الرَّاهِنِ وَلَا الْمُرْتَهِنِ، فَلِلنَّاسِ فِيهِ خَمْسَةُ أَقْوَالٍ -: قَالَتْ طَائِفَةٌ: يَتَرَادَّانِ الْفَضْلَ -: تَفْسِيرُ ذَلِكَ -: أَنَّ الرَّهْنَ إِنْ كَانَتْ قِيمَتُهُ وَقِيمَةُ الدَّيْنِ سَوَاءً، فَقَدْ سَقَطَ الدَّيْنُ عَنِ الَّذِي كَانَ عَلَيْهِ وَلَا ضَمَانَ عَلَيْهِ فِي الرَّهْنِ.

L19054 If the pledge's value is greater, the debt is discharged in full, and the pledgee is required to return to the pledgor the surplus amount by which the value of the pledge exceeds the debt.

فَإِنْ كَانَتْ قِيمَةُ الرَّهْنِ أَكْثَرَ سَقَطَ الدَّيْنُ بِمِقْدَارِهِ مِنَ الرَّهْنِ وَكُلِّفَ الْمُرْتَهِنُ أَنْ يُؤَدِّيَ إِلَى الرَّاهِنِ مِقْدَارَ مَا كَانَ تَزِيدُهُ قِيمَةُ الرَّهْنِ عَلَى قِيمَةِ الدَّيْنِ.

L19055 If the value of the pledge is less than the debt, the debt is reduced by the amount of the pledge's value, and the pledgor must pay the pledgee the excess of the debt over the pledge's value.

وَإِنْ كَانَتْ قِيمَةُ الرَّهْنِ أَقَلَّ سَقَطَ مِنَ الدَّيْنِ بِمِقْدَارِهِ وَأَدَّى الرَّاهِنُ إِلَى الْمُرْتَهِنِ فَضْلَ مَا زَادَ الدَّيْنُ عَلَى قِيمَةِ الرَّهْنِ.

L19056 It has been narrated to us through the chain of Al-Ḥakam and Qatādah that ʿAlī ibn Abī Ṭālib said: "The two parties return the surplus—meaning, in the case of collateral, the surplus perishes."

رُوِّينَا مِنْ طَرِيقِ الْحَكَمِ، وَقَتَادَةَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: يَتَرَاجَعَانِ الْفَضْلَ - يَعْنِي فِي الرَّهْنِ يَهْلَكُ.

L19057 It has also been reported from Ibn ʾUmar — and this is the opinion of ʾUbayd Allah ibn al-Hasan, Abu ʾUbayd, and Isḥāq ibn Rāhawayh.

وَرُوِيَ أَيْضًا عَنْ ابْنِ عُمَرَ - وَهُوَ قَوْلُ عُبَيْدِ اللَّهِ بْنِ الْحَسَنِ، وَأَبِي عُبَيْدٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ.

L19058–19060 A group maintained that if the collateral's value equals or exceeds the debt's value, the entire debt becomes void, and the pledgee incurs no liability for the collateral's excess value over the debt. If the collateral's value is less than the debt's value, the debt diminishes by the amount of the collateral's value, and the pledgor must pay the pledgee what... Remaining from his debt—: This has been reported to us through the chain of Matar al-Warraq, from ʻAta', from ʻUbayd ibn ʻUmayr, from ʻUmar ibn al-Khattab.

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَتْ قِيمَةُ الرَّهْنِ أَكْثَرَ مِنْ قِيمَةِ الدَّيْنِ أَوْ مِثْلَهَا فَقَدْ بَطَلَ الدَّيْنُ كُلُّهُ، وَلَا غَرَامَةَ عَلَى الْمُرْتَهِنِ فِي زِيَادَةِ قِيمَةِ الرَّهْنِ عَلَى قِيمَةِ الدَّيْنِ، فَإِنْ كَانَتْ قِيمَةُ الرَّهْنِ أَقَلَّ مِنْ قِيمَةِ الدَّيْنِ سَقَطَ مِنَ الدَّيْنِ بِمِقْدَارِ قِيمَةِ الرَّهْنِ وَأَدَّى الرَّاهِنُ إِلَى الْمُرْتَهِنِ مَا بَقِيَ مِنْ دَيْنِهِ -: رُوِّينَا هَذَا مِنْ طَرِيقِ مَطَرٍ الْوَرَّاقِ عَنْ عَطَاءٍ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ

L19061 And via the chain of Wakīʿ from ʿAlī ibn Ṣāliḥ ibn Ḥayy from ʿAbd al-Aʿlā ibn ʿĀmir from Muḥammad ibn al-Ḥanafiyyah from ʿAlī ibn Abī Ṭālib; and via the chain of Qatādah from ʿAbd Rabbihi from Abī ʿIyāḍ from ʿAlī.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَلِيِّ بْنِ صَالِحِ بْنِ حَيٍّ عَنْ عَبْدِ الْأَعْلَى بْنِ عَامِرٍ عَنْ مُحَمَّدِ بْنِ الْحَنَفِيَّةِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ -: وَمِنْ طَرِيقِ قَتَادَةَ عَنْ عَبْدِ رَبِّهِ عَنْ أَبِي عِيَاضٍ عَنْ عَلِيٍّ

L19062 And through the chain of Wakiʿ from Idrīs al-Awdī from Ibrāhīm ibn ʿUmayr, who said: I heard Ibn ʿUmar say the same—this being the opinion of Ibrāhīm al-Nakhaʿī and Qatādah—and this is the position upheld by Abū Ḥanīfah and his companions.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إِدْرِيسَ الْأَوْدِيِّ عَنْ إِبْرَاهِيمَ بْنِ عُمَيْرٍ قَالَ: سَمِعْتُ ابْنَ عُمَرَ يَقُولُ: مِثْلَ ذَلِكَ - وَهُوَ قَوْلُ إِبْرَاهِيمَ النَّخَعِيِّ، وَقَتَادَةَ - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ.

L19063 A group held that the pledge is forfeited in exchange for its value—whether equal to, less than, or greater than the debt. If the pledge is destroyed, the debt is extinguished and neither party compensates the other. This position is authentically reported from al-Ḥasan al-Baṣrī, Ibrāhīm al-Nakhaʿī, Shurayḥ, al-Shaʿbī, al-Zuhrī, and Qatādah. It is also authentically reported from Ṭāwus regarding pledging an animal. It has been narrated to us from al-Nakhaʿī and al-Shaʿbī concerning one who took a slave as a pledge that subsequently became one-eyed while in his custody: they ruled, "The debtor forfeits half of the debt."

وَقَالَتْ طَائِفَةٌ: ذَهَبَ الرَّهْنُ بِمَا فِيهِ سَوَاءٌ كَانَ كَقِيمَةِ الدَّيْنِ أَوْ أَقَلَّ أَوْ أَكْثَرَ إِذَا تَلِفَ سَقَطَ الدَّيْنُ وَلَا يَغْرَمُ أَحَدُهُمَا لِلْآخَرِ شَيْئًا - صَحَّ هَذَا عَنِ الْحَسَنِ الْبَصْرِيِّ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَشُرَيْحٍ، وَالشَّعْبِيِّ، وَالزُّهْرِيِّ، وَقَتَادَةَ - وَصَحَّ عَنْ طَاوُوسٍ فِي الْحَيَوَانِ يَرْتَهِنُ - وَرُوِّينَا عَنِ النَّخَعِيِّ، وَالشَّعْبِيِّ فِيمَنِ ارْتَهَنَ عَبْدًا فَأَعْوَرَ عِنْدَهُ قَالَا: ذَهَبَ بِنِصْفِ دَيْنِهِ.

L19064 A group said: If the pledge is of concealed items like garments or similar possessions, the pledgee bears liability for any loss incurred up to its full

value, while the debt remains adjusted accordingly until fully settled. If the pledge is visible property like real estate or livestock, the pledgee bears no liability, and the debt remains in full until completely repaid. This is the opinion of Mālik.

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَ الرَّهْنُ مِمَّا يَخْفَى كَالثِّيَابِ، وَنَحْوِهَا، فَضَمَانُ مَا تَلِفَ مِنْهَا عَلَى الْمُرْتَهِنِ بَالِغَةً مَا بَلَغَتْ وَيَبْقَى دَيْنُهُ بِحَسَبِهِ حَتَّى يُؤَدِّيَ إِلَيْهِ بِكَمَالِهِ، وَإِنْ كَانَ الرَّهْنُ مِمَّا يَظْهَرُ كَالْعَقَارِ، وَالْحَيَوَانِ، فَلَا ضَمَانَ فِيهِ عَلَى الْمُرْتَهِنِ وَدَيْنُهُ بَاقٍ بِكَمَالِهِ حَتَّى يُؤَدِّيَ إِلَيْهِ - وَهُوَ قَوْلُ مَالِكٍ.

L19065 A group said: Whether it is from what is concealed or from what is not concealed, there is no liability whatsoever on the pledgee, and the debt remains in its entirety until it is repaid to him. This is the opinion of Al-Shāfiʿī, Abū Thawr, Aḥmad ibn Ḥanbal, Abū Sulaymān, and their companions.

وَقَالَتْ طَائِفَةٌ: سَوَاءٌ كَانَ مِمَّا يَخْفَى أَوْ مِمَّا لَا يَخْفَى لَا ضَمَانَ فِيهِ عَلَى الْمُرْتَهِنِ أَصْلًا وَدَيْنُهُ بَاقٍ بِكَمَالِهِ حَتَّى يُؤَدِّيَ إِلَيْهِ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L19066 It was narrated to us via the chain of Al-Hajjaj ibn Al-Minhal: Hamam ibn Yahya reported to us from Qatadah, from Khilas, that Ali ibn Abi Talib said regarding collateral: “Both parties are to return the surplus. If a calamity befalls it, the debtor is released from liability.”

وَرُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هَمَّامُ بْنُ يَحْيَى أَنَا قَتَادَةَ عَنْ خِلَاسٍ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الرَّهْنِ: يَتَرَادَّانِ الْفَضْلَ فَإِنْ أَصَابَتْهُ جَائِحَةٌ بَرِئَ

L19067 It has been established that Ali ibn Abi Talib did not consider excess liability due except for what was destroyed through the mortgagee’s culpable action, not for what was affected by a calamity. Rather, he maintained the mortgagor’s exemption from liability for what was struck by a calamity. It is authentically reported from Ata that he said: “The pledge serves as collateral. If it perishes, no liability falls upon the mortgagor - the creditor claims the entire debt owed to him.” From Az-Zuhri, it is reported regarding a perished pledge: “The creditor’s right remains valid. It perished while under the ownership of the pledge’s owner - his property remains his, and the liability rests upon him.”

فَصَحَّ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ لَمْ يَرَ تُرَادَ الْفَضْلِ إِلَّا فِيمَا تَلِفَ بِجِنَايَةِ الْمُرْتَهِنِ لَا فِيمَا أَصَابَتْهُ جَائِحَةٌ، بَلْ رَأَى الْبَرَاءَةَ لَهُ مِمَّا أَصَابَتْهُ جَائِحَةٌ - وَصَحَّ عَنْ عَطَاءٍ أَنَّهُ قَالَ: الرَّهْنُ وَثِيقَةٌ إِنْ هَلَكَ فَلَيْسَ عَلَيْهِ غُرْمٌ يَأْخُذُ الدَّيْنَ الَّذِي لَهُ كُلَّهُ. وَعَنْ الزُّهْرِيِّ أَنَّهُ قَالَ فِي الرَّهْنِ يَهْلَكُ أَنَّهُ لَمْ يَذْهَبْ حَقُّ هَذَا إِنَّمَا هَلَكَ مِنْ رَبِّ الرَّهْنِ لَهُ غَنَمُهُ وَعَلَيْهِ غُرْمُهُ.

L19068–19069 Abū Muḥammad said: As for Mālik’s distinction between what is concealed and what is not concealed—this is a statement for which there is no proof of its validity, neither from the Qur’ān, nor the Sunnah, nor a weak narration, nor analogy, nor the opinion of anyone we know of before him—thus it is invalidated. They based it solely on suspicion; and suspicion is a false assumption for which the one who holds it commits a sin, and it is not

قَالَ أَبُو مُحَمَّدٍ: أَمَّا تَفْرِيقُ مَالِكٍ بَيْنَ مَا يَخْفَى وَبَيْنَ مَا لَا يَخْفَى -: فَقَوْلٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا قِيَاسٍ، وَلَا قَوْلِ أَحَدٍ

permissible to assert anything based on it. Suspicion is directed toward anyone and in every matter.

نَعْلَمُهُ قَبْلَهُ - فَسَقَطَ، وَإِنَّمَا بَنَوْهُ عَلَى التُّهْمَةِ، وَالتُّهْمَةُ ظَنٌّ كَاذِبٌ يَأْثَمُ صَاحِبُهُ وَلَا يَحِلُّ الْقَوْلُ بِهِ، وَالتُّهْمَةُ مُتَوَجِّهَةٌ إلَى أَحَدٍ وَفِي كُلِّ شَيْءٍ.

L19070 As for the statement of Abū Ḥanīfah, they argued using a mursal narration which we have narrated via the chain of Saʿīd ibn al-Musayyab that the Messenger of Allāh - peace be upon him - said: "The pledge is not seized from its owner: he retains its benefits and bears its liabilities. The pledge is not seized from the recipient: he retains its benefits and bears its liabilities."

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَإِنَّهُمْ احْتَجُّوا بِخَبَرٍ مُرْسَلٍ رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يُغْلَقُ الرَّهْنُ مِنْ صَاحِبِهِ لَهُ غُنْمُهُ وَعَلَيْهِ غُرْمُهُ، لَا يُغْلَقُ الرَّهْنُ مِمَّنْ رُهِنَهُ لَهُ غُنْمُهُ وَعَلَيْهِ غُرْمُهُ» .

L19071 And they said: The Companions have unanimously agreed on the pledgee's liability concerning the collateral, and the pledgee is a trustee for any surplus value of the collateral beyond the amount of the debt.

وَقَالُوا: قَدْ أَجْمَعَ الصَّحَابَةُ عَلَى تَضْمِينِ الرَّهْنِ، وَالْمُرْتَهِنُ أَمِينٌ فِيمَا زَادَ مِنْ قِيمَةِ الرَّهْنِ عَلَى قِيمَةِ دَيْنِهِ.

L19072 Abu Muhammad said: As for their assertion that the mortgagee is a custodian regarding the surplus value of the pledge exceeding his debt, this is a spurious claim and an arbitrary distinction. He is either wholly a custodian or not a custodian at all.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُهُمْ: إنَّ الْمُرْتَهِنَ أَمِينٌ فِيمَا فَضَلَ مِنْ قِيمَةِ الرَّهْنِ عَلَى قِيمَةِ دَيْنِهِ، فَدَعْوَى فَاسِدَةٌ، وَتَفْرِيقٌ بِلَا دَلِيلٍ، وَمَا هُوَ إلَّا أَمِينٌ فِي الْكُلِّ أَوْ غَيْرُ أَمِينٍ فِي الْكُلِّ.

L19073 As for their assertion that the Companions unanimously agreed on holding the pledgor liable, this is a claim they made by following their customary practice—lying casually about the Companions with effortless readiness on their tongues.

وَأَمَّا قَوْلُهُمْ: أَجْمَعَ الصَّحَابَةُ عَلَى تَضْمِينِ الرَّهْنِ، فَقَوْلٌ جَرَوْا فِيهِ عَلَى عَادَتِهِمْ الْخَفِيفَةِ عَلَى أَلْسِنَتِهِمْ مِنْ الْكَذِبِ عَلَى الصَّحَابَةِ بِلَا مُؤْنَةٍ.

L19074 And O Muslims! Has there been any statement concerning this matter from any of the Companions except ʿUmar, ʿAlī, and Ibn ʿUmar only?

وَيَا لِلْمُسْلِمِينَ هَلْ جَاءَ فِي هَذَا كَلِمَةٌ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ إلَّا عَنْ عُمَرَ، وَعَلِيٍّ، وَابْنِ عُمَرَ فَقَطْ.

L19075 As for ʿUmar, this is not authentically established from him because it is transmitted through the narration of ʿUbayd ibn ʿUmayr. ʿUbayd was either born after ʿUmar's death or met him as a young child who did not hear anything from him.

فَأَمَّا عُمَرُ فَلَمْ يَصِحَّ عَنْهُ ذَلِكَ، لِأَنَّهُ مِنْ رِوَايَةِ عُبَيْدِ بْنِ عُمَيْرٍ وَعُبَيْدٌ لَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ عُمَرَ أَوْ أَدْرَكَهُ صَغِيرًا لَمْ يَسْمَعْ مِنْهُ شَيْئًا.

L19076–19077 As for Ibn Umar, it is not soundly attributed to him because it originates from the narration of Ibrahim ibn Umayr, a narrator of unknown status. And it has been reported that two individuals were competing in excellence of virtue.

وَأَمَّا ابْنُ عُمَرَ فَلَا يَصِحُّ عَنْهُ، لِأَنَّهُ مِنْ رِوَايَةِ إبْرَاهِيمَ بْنِ عُمَيْرٍ عَنْهُ وَهُوَ مَجْهُولٌ - وَقَدْ رُوِيَ عَنْهُ يَتَرَادَّانِ الْفَضْلَ.

L19078 As for Ali, there are differing opinions attributed to him regarding this matter. The most authentic narrations from him indicate the removal of liability for losses caused by calamitous disasters, as we have previously cited.

وَأَمَّا عَلِيٌّ فَمُخْتَلَفٌ عَنْهُ فِي ذَلِكَ، وَأَصَحُّ الرِّوَايَاتِ عَنْهُ إِسْقَاطُ التَّضْمِينِ فِيمَا أَصَابَتْهُ جَائِحَةٌ كَمَا أَوْرَدْنَا آنِفًا.

L19079 Then the most astonishing claim is their assertion that the Companions unanimously agreed on imposing liability for the pledge. If this were proven true, they would have contradicted the consensus, for they do not hold liable the portion of the pledge exceeding the debt's value. Thus, this ruling stands as a self-incriminating judgment against them.

ثُمَّ أَعْجَبُ شَيْءٍ دَعْوَاهُمْ أَنَّ الصَّحَابَةَ أَجْمَعُوا عَلَى تَضْمِينِ الرَّهْنِ، فَإِنْ صَحَّ ذَلِكَ فَهُمْ قَدْ خَالَفُوا الْإِجْمَاعَ، لِأَنَّهُمْ لَا يُضَمِّنُونَ بَعْضَ الرَّهْنِ وَهُوَ مَا زَادَ مِنْ قِيمَتِهِ عَلَى قِيمَةِ الدَّيْنِ فَهَذَا حُكْمُهُمْ عَلَى أَنْفُسِهِمْ.

L19080 As for the ḥadīth they mentioned, it is a *mursal* narration, and no valid proof exists in a *mursal* report. Even if it were authentic, it would not support their argument at all, for it provides no evidence for their claim or categorization. Its implication, if authentic, is solely that the statement "The pledge is not foreclosed [*lā yughlaqu al-rahn*]"—with a *ḍamma* on the *rā'* and *kasra* on the *hā'*—entitles the pledgor to its profits (*ghunm*) and makes him liable for losses incurred by it (*ghurm*). Therefore, the pledgee is necessarily responsible for guaranteeing the pledge's liability, contrary to their position.

وَأَمَّا الْحَدِيثُ الَّذِي ذَكَرُوا فَمُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ، ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ أَصْلًا، لِأَنَّهُ لَا يَدُلُّ عَلَى شَيْءٍ مِنْ قَوْلِهِمْ وَلَا تَقْسِيمِهِمْ، وَإِنَّمَا مُقْتَضَاهُ لَوْ صَحَّ هُوَ أَنَّ قَوْلَ «لَا يُغْلَقُ الرَّهْنُ مِمَّنْ رَهَنَهُ» بِضَمِّ الرَّاءِ وَكَسْرِ الْهَاءِ، لَهُ غُنْمُهُ وَعَلَيْهِ غُرْمُهُ، فَوَجَبَ ضَمَانُ الرَّهْنِ عَلَى الْمُرْتَهِنِ وَلَا بُدَّ بِخِلَافِ قَوْلِهِمْ.

L19081 His statement, "The pledge is not irrevocably forfeited by its owner; the profit belongs to him, and the loss is his liability"—if he intended by "its owner" the pledgor (the owner), which is the apparent meaning—this necessitates that the loss is borne by him, and the pledgee bears no liability for it. If he intended by "its owner" the pledgee, this necessitates the pledgee's liability to him in all cases. Thus, it constitutes decisive proof against them in every respect, thereby nullifying their argument. We say to them: In which foundational principles [of jurisprudence] have you found a single item pledged entirely for one debt, where part is guaranteed and part is held as a trust? You reject prophetic traditions that contradict your position by appealing to your claimed legal methodology (uṣūl), then brazenly contradict them without any textual evidence.

وَقَوْلَهُ «لَا يُغْلَقُ الرَّهْنُ مِنْ صَاحِبِهِ لَهُ غُنْمُهُ وَعَلَيْهِ غُرْمُهُ» إِنْ كَانَ أَرَادَ بِصَاحِبِهِ مَالِكَهُ، وَهُوَ الْأَظْهَرُ، فَهُوَ يُوجِبُ أَنَّ خَسَارَتَهُ مِنْهُ، وَلَا يَضْمَنُهُ لَهُ الْمُرْتَهِنُ، وَإِنْ كَانَ أَرَادَ بِصَاحِبِهِ الْمُرْتَهِنَ فَهُوَ يُوجِبُ ضَمَانَهُ لَهُ بِكُلِّ حَالٍ، فَصَارَ حُجَّةً عَلَيْهِمْ بِكُلِّ وَجْهٍ، وَبَطَلَ قَوْلُهُمْ، وَنَقُولُ لَهُمْ: فِي أَيِّ الْأُصُولِ وَجَدْتُمْ شَيْئًا وَاحِدًا رَهْنًا كُلُّهُ عَنْ دَيْنٍ وَاحِدٍ بَعْضُهُ مَضْمُونٌ وَبَعْضُهُ أَمَانَةٌ؟ وَأَنْتُمْ تَرُدُّونَ السُّنَنَ بِخِلَافِهَا بِالْأُصُولِ بِزَعْمِكُمْ ثُمَّ تُخَالِفُونَهَا جِهَارًا بِلَا نَصٍّ.

L19082 As for those who say "they mutually relinquish the excess," we know of no valid argument for them whatsoever except that it is juristic preference (istihsan). The reasoning is that since the pledge substitutes the debt, they

وَأَمَّا مَنْ قَالَ " يَتَرَادَّانِ الْفَضْلَ " فَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا إِلَّا أَنَّهُ اسْتِحْسَانٌ وَكَأَنَّهُ لَمَّا كَانَ الرَّهْنُ مَكَانَ الدَّيْنِ تَقَاصَّا فِيهِ، وَهَذَا رَأْيٌ، وَالدِّينُ لَا يُؤْخَذُ بِالْآرَاءِ.

are offset through it. This is an opinion, and religious rulings are not to be based on mere opinions.

L19083 As for those who said, "The pledges are lost along with what is in them," they cited as evidence a report we transmitted through the chain of Muṣʿab ibn Thābit from ʿAṭāʾ: "A man pledged a horse, and it perished while in the pledgee's possession. The Messenger of Allah (peace be upon him) said: 'Your right has been forfeited.'"

وَأَمَّا مَنْ قَالَ " ذَهَبَتْ الرُّهُونُ بِمَا فِيهَا " فَإِنَّهُمْ احْتَجُّوا بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ مُصْعَبِ بْنِ ثَابِتٍ عَنْ عَطَاءٍ «أَنَّ رَجُلًا رَهَنَ فَرَسًا فَهَلَكَ عِنْدَهُ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: ذَهَبَ حَقُّكَ» .

L19084 Abū Muḥammad said: This is a *mursal*, and Muṣʿab ibn Thābit is not strong.

قَالَ أَبُو مُحَمَّدٍ: هَذَا مُرْسَلٌ، وَمُصْعَبُ بْنُ ثَابِتٍ لَيْسَ بِالْقَوِيِّ.

L19085–19087 Abu Muhammad said: Now that it has been established that all they have embellished has been invalidated, it becomes obligatory to revert to the Qur'an. And the Sunnah, we have received what was narrated to us by Aḥmad ibn Qāsim, who reported from his father Qāsim ibn Muḥammad ibn Qāsim, who reported from his grandfather Qāsim ibn Aṣbagh, who said: Muḥammad ibn Ibrāhīm narrated to me, who reported from Yaḥyā ibn Abī Ṭālib al-Anṭākī along with a group of reliable narrators, via Naḍr ibn ʿĀṣim al-Anṭākī, who reported from Shabābah, from Warqāʾ, reported by Abū Dhiʾb, from al-Zuhrī, from Saʿīd ibn al-Musayyab and Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, from Abū Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him) said: "Collateral is not forfeited. The collateral belongs to the one who offered it. Its profit is his responsibility, and its liability is his obligation."

قَالَ أَبُو مُحَمَّدٍ: فَإِذْ قَدْ بَطَلَ كُلُّ مَا مَوَّهُوا بِهِ، فَالْوَاجِبُ الرُّجُوعُ إِلَى الْقُرْآنِ، وَالسُّنَّةِ، فَوَجَدْنَا مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ حَدَّثَنِي مُحَمَّدُ بْنُ إِبْرَاهِيمَ حَدَّثَنِي يَحْيَى بْنُ أَبِي طَالِبٍ الْأَنْطَاكِيُّ وَجَمَاعَةٌ مِنْ أَهْلِ الثِّقَةِ نا نَضْرُ بْنُ عَاصِمٍ الْأَنْطَاكِيُّ نا شَبَابَةُ عَنْ وَرْقَاءَ نا أَبِي ذِئْبٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يُغْلَقُ الرَّهْنُ، الرَّهْنُ لِمَنْ رَهَنَهُ، لَهُ غُنْمُهُ، وَعَلَيْهِ غُرْمُهُ» .

L19088 This is a well-attributed narration among the finest reported in this chapter, and they claimed that Abū ʿUmar al-Muṭarriz, who was the servant of Thaʿlab, said, "Whoever asserted 'al-ghurm [financial liability] is destruction' erred."

فَهَذَا مُسْنَدٌ مِنْ أَحْسَنِ مَا رُوِيَ فِي هَذَا الْبَابِ، وَادَّعَوْا أَنَّ أَبَا عُمَرَ الْمُطَرِّزَ غُلَامَ ثَعْلَبٍ، قَالَ: أَخْطَأَ مَنْ قَالَ: إنَّ الْغُرْمَ الْهَلَاكُ.

L19089 Abu Muhammad said: It is confirmed in the Quran's condemnation of a people in His exalted statement: "And among the Bedouins are those who consider what they spend as a loss" [At-Tawbah: 98].[3]

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ صَحَّ فِي ذَمِّ قَوْمٍ فِي الْقُرْآنِ قَوْله تَعَالَى: {وَمِنَ الأَعْرَابِ مَنْ يَتَّخِذُ مَا يُنْفِقُ مَغْرَمًا} [التوبة: ٩٨] .

L19090 That is, he deems him doomed to perish pointlessly; the Quran is more

أَيْ يَرَاهُ هَالِكًا بِلَا مَنْفَعَةٍ، فَالْقُرْآنُ أَوْلَى مِنْ رَأْيِ الْمُطَرِّزِ

[3] **Qur'an references (L19089):** Qur'an 9:98 (At-Tawbah).

authoritative than the opinion of one who adds baseless embellishments.

L19091 Abu Muhammad said, “We found the Prophet, may Allah bless him and grant him peace, has said: ‘Indeed, your blood and your wealth are inviolable for you.’”

L19092 He did not permit anything to the creditor of the mortgagee, nor allow the mortgagee to bear liability for the collateral without an explicit stipulation regarding such liability, unless he oversteps his rights in handling it or neglects to safeguard it, thereby incurring liability due to his misconduct in both cases.

L19093 Similarly, the debt has been established as obligatory, so the disappearance of the collateral does not nullify it. Thus, it is conclusively affirmed by these two sound principles from the Quran, Ijmaʿ (consensus), and the Sunnah: that the destruction of the collateral is the responsibility of the pledgor, the pledgee bears no liability, and the debt owed to the pledgee remains binding upon the pledgor according to its terms. Success is from Allah, the Most High.

L19094 The generated offspring of the pledge.

L19095 As for what is produced from the pledge, we have received a narration through ʿAmr ibn Dīnār that Muʿādh ibn Jabal ruled concerning a person who pledged land that bore produce, stating that the produce is part of the pledge.

L19096 From the chain of Ṭāwūs: In the book of Muʿādh, it states: “Whoever takes land as collateral must credit its produce to the owner of the pledge.”

L19097 Abu Muhammad said: The two rulings are contradictory, and they are two opinions: the first is that the fruit belongs to the pledgor, and the second is that it constitutes part of the pledge.

L19098 Abu Hanifah said: The progeny, revenue, and usufruct are part of the collateral along with the principal assets.

قَالَ أَبُو مُحَمَّد: وَوَجَدْنَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَلَمْ يُحِلَّ لِغَرِيمِ الْمُرْتَهِنِ شَيْئًا، وَلَا أَنْ يَضْمَنَ الرَّهْنَ بِغَيْرِ نَصٍّ فِي تَضْمِينِهِ إِلَّا أَنْ يَتَعَدَّى فِيهِ، أَوْ بِأَنْ يُضَيِّعَهُ فَيَضْمَنَهُ حِينَئِذٍ بِاعْتِدَائِهِ فِي كِلَا الْوَجْهَيْنِ.

وَكَذَلِكَ الدَّيْنُ قَدْ وَجَبَ فَلَا يُسْقِطُهُ ذَهَابُ الرَّهْنِ، فَصَحَّ يَقِينًا مِنْ هَذَيْنِ الْأَصْلَيْنِ الصَّحِيحَيْنِ بِالْقُرْآنِ، وَالْإِجْمَاعِ، وَالسُّنَّةِ: أَنَّ هَلَاكَ الرَّهْنِ مِنْ الرَّاهِنِ، وَلَا ضَمَانَ عَلَى الْمُرْتَهِنِ، وَأَنَّ دَيْنَ الْمُرْتَهِنِ بَاقٍ بِحَسْبِهِ لَازِمٌ لِلرَّاهِنِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَا تَوَلَّدَ مِنْ الرَّهْنِ]

وَأَمَّا مَا تَوَلَّدَ مِنْ الرَّهْنِ فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ عَمْرِو بْنِ دِينَارٍ: أَنَّ مُعَاذَ بْنَ جَبَلٍ قَضَى فِيمَنْ ارْتَهَنَ أَرْضًا فَأَثْمَرَتْ، فَإِنَّ الثَّمَرَةَ مِنْ الرَّهْنِ.

وَمِنْ طَرِيقِ طَاوُوسٍ: أَنَّ فِي كِتَابِ مُعَاذٍ " مَنْ ارْتَهَنَ أَرْضًا فَهُوَ يَحْتَسِبُ ثَمَرَهَا لِصَاحِبِ الرَّهْنِ ".

قَالَ أَبُو مُحَمَّد: الْحُكْمَانِ مُتَضَادَّانِ، وَهُمَا قَوْلَانِ -: أَحَدُهُمَا: أَنَّ الثَّمَرَةَ لِصَاحِبِ الرَّهْنِ - وَالْآخَرُ: أَنَّهَا مِنْ الرَّهْنِ.

وَقَالَ أَبُو حَنِيفَةَ: الْوَلَدُ، وَالْغَلَّةُ، وَالثَّمَرَةُ، رَهْنٌ مَعَ الْأُصُولِ.

L19099–19101 Then they contradicted themselves by stating: “If the child, the crops, or the fruit perish, it does not cease because of that from,” Debt is a thing, even if the principal, the original capital, and the growth perish: the debt is apportioned to these and to the growth. What is allocated to the principal is waived, and what is allocated to the growth remains. Abu Muhammad said: This is an egregious contradiction, for all of that constitutes collateral according to them, yet they imposed contradictory rulings among them without proof.

ثُمَّ تَنَاقَضُوا، فَقَالُوا: إنْ هَلَكَ الْوَلَدُ، وَالْغَلَّةُ، وَالثَّمَرَةُ: لَمْ يَسْقُطْ مِنْ أَجْلِ ذَلِكَ مِنْ، الدَّيْنِ شَيْءٌ، وَإِنْ هَلَكَ الْأَصْلُ، وَالْأُمُّ، وَالشَّجَرُ: قُسِّمَ الدَّيْنَ عَلَى ذَلِكَ، وَعَلَى النَّمَاءِ، فَمَا وَقَعَ لِلْأَصْلِ سَقَطَ، وَمَا وَقَعَ لِلنَّمَاءِ بَقِيَ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَنَاقُضٌ فَاحِشٌ، لِأَنَّ كُلَّ ذَلِكَ رَهْنٌ عِنْدَهُمْ، ثُمَّ خَالَفُوا بَيْنَ أَحْكَامِهَا بِلَا بُرْهَانٍ.

L19102 Malik said: As for the offspring, it is included in the pledge, but as for the yields and produce, they are excluded from the pledge. This constitutes a wholly invalid division without any proof.

وَقَالَ مَالِكٌ: أَمَّا الْوَلَدُ فَدَاخِلٌ فِي الرَّهْنِ، وَأَمَّا الْغَلَّةُ وَالثَّمَرَةُ، فَخَارِجَانِ مِنْ الرَّهْنِ - وَهَذَا تَقْسِيمٌ فَاسِدٌ جِدًّا بِلَا بُرْهَانٍ.

L19103 If they say, “The child is a part of the mother,” we reply, “Whoever said such a thing has lied.” How could he be a part of her, given that he could be male while she is female, or a Muslim while she is a disbeliever? Then it is said to them: “The fruit is also a part of the tree”—a claim as baseless as theirs.

فَإِنْ قَالُوا: إنَّ الْوَلَدَ بَعْضُ الْأُمِّ؟ قُلْنَا: كَذَبَ مَنْ قَالَ هَكَذَا؟ وَكَيْفَ يَكُونُ بَعْضَهَا، وَقَدْ يَكُونُ ذَكَرًا وَهِيَ أُنْثَى، وَيَكُونُ مُسْلِمًا، وَهِيَ كَافِرَةٌ؟ ثُمَّ يُقَالُ لَهُمْ: وَالثَّمَرَةُ أَيْضًا بَعْضُ الشَّجَرِ - دَعْوَى كَدَعْوَى.

L19104 Al-Shafi’i said: All of that belongs to the owner of the principal asset, and none of it enters into the collateral—and this is the correct view—because collateral is what the two parties contracted in the transaction, not what they did not contract in the transaction. Every thing we have mentioned is something they did not contract in the transaction. Thus, all of it is distinct from the principal asset, newly accruing to the ownership of the principal asset’s owner, and thus entirely his. And success comes only from Allah, the Exalted.

وَقَالَ الشَّافِعِيُّ: كُلُّ ذَلِكَ لِصَاحِبِ الْأَصْلِ، وَلَا يَدْخُلُ شَيْءٌ مِنْهُ فِي الرَّهْنِ وَهُوَ الْحَقُّ، لِأَنَّ الرَّهْنَ هُوَ مَا تَعَاقَدَا عَلَيْهِ الصَّفْقَةَ، لَا مَا لَمْ يَتَعَاقَدَاهَا عَلَيْهِ، وَكُلُّ مَا ذَكَرْنَا شَيْءٌ لَمْ يَتَعَاقَدَا الصَّفْقَةَ عَلَيْهِ، فَكُلُّهُ غَيْرُ الْأَصْلِ، وَكُلُّهُ حَادِثٌ فِي مِلْكِ صَاحِبِ الْأَصْلِ، فَكُلُّهُ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَوْت الرَّاهِن أَوْ الْمُرْتَهِن]

A legal issue arising from the death of the pawnor or the pawnee.

L19105 1216 - Issue:

١٢١٦ - مَسْأَلَةٌ:

L19106 If the pledgor or the pledgee dies, the pledge becomes void, and the pledged item must be returned to the pledgor or his heirs. The deferred debt is immediately payable, and the pledgee does not have priority over the pledge’s value compared to other creditors at that point. This is based on Allah’s

فَإِنْ مَاتَ الرَّاهِنُ أَوْ الْمُرْتَهِنُ بَطَلَ الرَّهْنُ وَوَجَبَ رَدُّ الرَّهْنِ إلَى الرَّاهِنِ أَوْ إلَى وَرَثَتِهِ، وَحُلَّ الدَّيْنُ الْمُؤَجَّلُ، وَلَا يَكُونُ الْمُرْتَهِنُ أَوْلَى بِثَمَنِ الرَّهْنِ مِنْ سَائِرِ الْغُرَمَاءِ حِينَئِذٍ،

statement: “No soul bears the burden of another” [al-An‘ām 6:164]. If the pledgee dies, the right to the pledge belongs solely to him—not to his heirs, creditors, or those entitled through his will. Only wealth is inherited, not non-monetary rights such as trusts, agencies, wills, and the like.[4]

وَذَلِكَ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَإِذَا مَا مَاتَ الْمُرْتَهِنُ فَإِنَّمَا كَانَ حَقُّ الرَّهْنِ لَهُ، لَا لِوَرَثَتِهِ وَلَا لِغُرَمَائِهِ، وَلَا لِأَهْلِ وَصِيَّتِهِ، وَإِنَّمَا تُورَثُ الْأَمْوَالُ لَا الْحُقُوقُ الَّتِي لَيْسَتْ أَمْوَالًا: كَالْأَمَانَاتِ، وَالْوَكَالَاتِ، وَالْوَصَايَا وَغَيْرِ ذَلِكَ.

L19108 If the right of the pledgeholder ceases due to his death, the pledged item must be returned to the pledgor. If the pledgor dies, the pledgeholder’s contract was exclusively with him, not with his heirs. The pledgor’s ownership over the pledge terminates upon his death, transferring to his heirs, his creditors—the pledgeholder being one of them—or his testamentary beneficiaries. The pledgeholder has no contractual relationship with them, nor can a deceased person’s contract bind others, thereby imposing obligations upon them. Therefore, their pledged item must be restored to them. This is based on the saying of Allah’s Messenger—peace and blessings be upon him: “Verily, your blood and your wealth are inviolable for you.”

فَإِذَا سَقَطَ حَقُّ الْمُرْتَهِنِ بِمَوْتِهِ وَجَبَ رَدُّ الرَّهْنِ إِلَى صَاحِبِهِ. وَإِذَا مَاتَ الرَّاهِنُ فَإِنَّمَا كَانَ عَقْدُ الْمُرْتَهِنِ مَعَهُ لَا مَعَ وَرَثَتِهِ، وَقَدْ سَقَطَ مِلْكُ الرَّاهِنِ عَنْ الرَّهْنِ بِمَوْتِهِ، وَانْتَقَلَ مِلْكُهُ إِلَى وَرَثَتِهِ أَوْ إِلَى غُرَمَائِهِ، وَهُوَ أَحَدُ غُرَمَائِهِ، أَوْ إِلَى أَهْلِ وَصِيَّتِهِ - وَلَا عَقْدَ لِلْمُرْتَهِنِ مَعَهُمْ، وَلَا يَجُوزُ عَقْدُ الْمَيِّتِ عَلَى غَيْرِهِ فَيَكُونُ كَاسِبًا عَلَيْهِمْ، فَالْوَاجِبُ رَدُّ مَتَاعِهِمْ إلَيْهِمْ، وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L19109–19110 We are unaware of any valid argument whatsoever for those who oppose this position. It has been narrated to us from Al-Sha‘bi concerning one who pledged collateral under the custody of a reliable guardian and then died, that the pledge belongs to him (meaning his heirs). Al-Hakam said: It belongs to the creditors.

وَمَا نَعْلَمُ لِمَنْ خَالَفَ هَذَا حُجَّةً أَصْلًا -: وَرُوِّينَا عَنْ الشَّعْبِيِّ فِيمَنْ رَهَنَ عَلَى يَدَيْ عَدْلٍ فَمَاتَ: أَنَّ الرَّهْنَ لَهُ - أَيْ لِوَرَثَتِهِ، قَالَ: الْحَكَمُ هُوَ لِلْغُرَمَاءِ.

L19111 Issue: If a person pawned an item and feared its corruption.

[مَسْأَلَةٌ ارْتَهَنَ شَيْئًا فَخَافَ فَسَادَهُ]

L19112 1217. Issue:

١٢١٧ - مَسْأَلَةٌ:

L19113 If someone takes something as a pledge and fears its spoilage – such as grape juice that may turn into wine – it becomes obligatory upon him to approach the judge to sell it, hold the proceeds for the owner if the owner is absent, give half of the proceeds to the creditor (pledgee) if the debt is due, or direct the proceeds to the owner if the debt is deferred. If the authority

وَمَنْ ارْتَهَنَ شَيْئًا فَخَافَ فَسَادَهُ كَعَصِيرٍ خِيفَ أَنْ يَصِيرَ خَمْرًا فَفَرْضٌ عَلَيْهِ أَنْ يَأْتِيَ الْحَاكِمَ فَيَبِيعَهُ وَيُوقِفَ الثَّمَنَ لِصَاحِبِهِ إنْ كَانَ غَائِبًا أَوْ يُنْصِفَ مِنْهُ الْغَرِيمَ الْمُرْتَهِنَ إنْ كَانَ الدَّيْنُ حَالًّا أَوْ يَصْرِفَ الثَّمَنَ إلَى صَاحِبِهِ إنْ كَانَ الدَّيْنُ مُؤَجَّلًا، فَإِنْ لَمْ يُمَكِّنْهُ السُّلْطَانُ فَلْيَفْعَلْ هُوَ مَا ذَكَرْنَا لِقَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة:

[4] **Qur’an references (L19107):** Qur’an 6:164 (Al-An’am).

٢] وَلِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ، وَلِأَنَّ ثَمَنَ الرَّهْنِ هُوَ غَيْرُ الرَّهْنِ، وَإِنَّمَا عَقْدُهُ فِي الرَّهْنِ لَا فِي ثَمَنِهِ، وَإِنَّمَا ثَمَنُهُ مَالٌ مِنْ مَالِ مَالِكِهِ كَسَائِرِ مَالِهِ وَلَا فَرْقَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

does not facilitate it for him, he must himself take the measures we have mentioned, based on Allah's command: "Cooperate in righteousness and piety" [Al-Mā'idah: 2], the Prophet's (peace be upon him) prohibition against wasting wealth, and the principle that the pledge's proceeds are distinct from the pledge itself. The contractual obligation applies to the pledge, not its proceeds, for its proceeds form part of the owner's wealth like all his other possessions, with no distinction – and success is from Allah, the Exalted.[5]

[مَسْأَلَةُ بَيْعُ سِلْعَةٍ عَلَى أَنْ تَكُونَ رَهْنًا عَنْ ثَمَنِهَا]

A jurisprudential issue: the sale of a commodity on the condition that it is pledged for its price.

١٢١٨ - مَسْأَلَةٌ:

1218 – Issue:

وَلَا يَجُوزُ بَيْعُ سِلْعَةٍ عَلَى أَنْ تَكُونَ رَهْنًا عَنْ ثَمَنِهَا، فَإِنْ وَقَعَ فَالْبَيْعُ مَفْسُوخٌ، وَلَكِنْ يَجُوزُ لِلْبَائِعِ إمْسَاكُ سِلْعَتِهِ حَتَّى يَنْتَصِفَ مِنْ ثَمَنِهَا إنْ كَانَ حَالًّا وَإِلَّا فَلَيْسَ لَهُ ذَلِكَ.

It is not permissible to sell a commodity on the condition that it serves as collateral against its price. If such a sale occurs, the sale is annulled. However, the seller may withhold the commodity until he secures half of its price if the price is due immediately; otherwise, he is not entitled to do so.

بُرْهَانُ ذَلِكَ -: أَنَّهُ اشْتَرَطَ مَنْعَ الْمُشْتَرِي مِنْ قَبْضِ مَا اشْتَرَى مُدَّةً مُسَمَّاةً وَهَذَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ.

The evidence for that is that he stipulated preventing the buyer from taking possession of what he purchased for a specified period, and this is a condition that is not stipulated in the Book of Allah, the Almighty and Majestic; thus, it is null and void.

وَأَيْضًا: فَإِنَّ الْمُشْتَرِيَ لَا يَمْلِكُ مَا اشْتَرَى إلَّا بِتَمَامِ عَقْدِ الْبَيْعِ بَيْنَهُمَا، وَالْبَيْعُ لَا يَتِمُّ إلَّا بِمَا نَذْكُرُهُ فِي " كِتَابِ الْبُيُوعِ " إنْ شَاءَ اللَّهُ تَعَالَى مِنْ التَّفَرُّقِ أَوْ التَّخْيِيرِ، فَهُوَ مَا لَمْ يَتِمَّ الْبَيْعُ فَإِنَّمَا الشَّيْءُ الْمَبِيعُ مِلْكٌ لِلْبَائِعِ، فَإِنَّمَا اشْتَرَطَا فِي الْمَسْأَلَةِ الْمَذْكُورَةِ كَوْنَ شَيْءٍ مِنْ مَالِ الْبَائِعِ الْمُرْتَهِنِ رَهْنًا عِنْدَهُ نَفْسِهِ - وَهَذَا فِي غَايَةِ الْفَسَادِ، وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

Furthermore, the buyer does not acquire ownership of the purchased item except through the full completion of the sale contract between them. The sale is only finalized by what we will mention—if God Almighty wills—in the "Book of Sales": namely, by means of separation (al-tafarruq) or granting the option (al-takhyīr). Thus, in cases where the sale is not finalized, the sold item remains exclusively the property of the seller. In the aforementioned legal scenario, the two parties stipulated that part of the mortgagor-seller's property be held as collateral by the seller himself—an arrangement that is utterly invalid. This is the opinion of al-Shāfiʿī, Abū Sulaymān, and their respective followers.

وَأَمَّا إمْسَاكُ الْبَائِعِ سِلْعَتَهُ إلَى نِصْفِ الثَّمَنِ [إنْ كَانَ حَالًّا] فَلِأَنَّ

As for the seller retaining his merchandise until the midpoint [of the payment

[5] **Qur'an references (L19113):** Qur'an 5:2 (Al-Ma'idah).

term], his right is legally enforceable against the buyer's property. If the buyer delays a payment that has become due, he is an unjust transgressor, according to the Prophet's statement (peace and blessings be upon him): "Delaying payment by a solvent person is injustice." Since he is unjust, every unjust person is a transgressor.

L19120–19122 And the Exalted said: "So whoever commits aggression against you, retaliate against him in the same measure as he has aggressed against you." [Al-Baqarah: 194] As for the commodity purchased with funds from the buyer's wealth, the Quran's explicit text grants the wronged party the right to retaliate against the transgressor in kind. Therefore, he may retain the commodity until he is vindicated.[6]

L19123 It was narrated to us through the chain of Muḥammad ibn ʿAbd al-Salām al-Khushanī: Muḥammad ibn al-Muthannā narrated to us, ʿAbd al-Raḥmān ibn Mahdī narrated to us, Hushaym narrated to us, and Sufyān al-Thawrī. Sufyān al-Thawrī said: From Ismāʿīl ibn Abī Khālid, from al-Shaʿbī, that ʿAmr ibn Ḥurayth ruled regarding a seller whose buyer paid part of the price, whereupon the seller stated, "I will not release the merchandise to you until you bring the remaining amount." ʿAmr ibn Ḥurayth therefore considered the merchandise a pledge for what remained of the payment.

L19124 Hushaym reported from Dawud ibn Abi Hind, from al-Sha'bi, that Urwah ibn al-Mughirah ibn Shu'bah also pledged the commodity as collateral for the remaining debt. Thus, this Amr is a Companion for whom no opposing [view] from the Companions is known regarding this matter.

L19125 **The jurisprudential question of the pledge within the same debt contract.**

L19126 1219 - Issue:

L19127 The ruling of the pledge applies exclusively to what is pledged within the actual contract of indebtedness. As for what is pledged after the contract's

[6]**Qur'an references (L19120):** Qur'an 2:194 (Al-Baqarah).

وَأَمَّا إِمْسَاكُ الْبَائِعِ سِلْعَتَهُ حَتَّى يَنْتَصِفَ فَإِنَّ حَقَّهُ وَاجِبٌ فِي مَالِ الْمُشْتَرِي فَإِنْ مَطَلَهُ بِحَقٍّ قَدْ وَجَبَ لَهُ عِنْدَهُ، فَهُوَ ظَالِمٌ مُعْتَدٍ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَطْلُ الْغَنِيِّ ظُلْمٌ» ، وَإِذْ هُوَ ظَالِمٌ فَكُلُّ ظَالِمٍ مُعْتَدٍ.

وَقَالَ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] فَالسِّلْعَةُ الَّتِي ابْتَاعَ مَالٌ مِنْ مَالِ الْمُشْتَرِي فَلِلْمُطَوَّلِ بِحَقِّهِ الْمُعْتَدَى عَلَيْهِ أَنْ يَعْتَدِيَ عَلَى الْمُعْتَدِي عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْهِ بِهِ نَصُّ الْقُرْآنِ، فَلَهُ إِمْسَاكُ السِّلْعَةِ حَتَّى يَنْتَصِفَ.

رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ الْخُشَنِيِّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا هُشَيْمٌ، وَسُفْيَانُ الثَّوْرِيُّ، قَالَ سُفْيَانُ الثَّوْرِيُّ: عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ أَنَّ عَمْرَو بْنَ حُرَيْثٍ قَالَ فِيمَنْ بَاعَ سِلْعَةً فَنَقَدَهُ الْمُشْتَرِي بَعْضَ الثَّمَنِ، فَقَالَ الْبَائِعُ: لَا أُعْطِيكَ السِّلْعَةَ حَتَّى تَجِيءَ بِالْبَقِيَّةِ، فَجَعَلَ عَمْرَو بْنَ حُرَيْثٍ السِّلْعَةَ رَهْنًا بِمَا بَقِيَ.

وَقَالَ هُشَيْمٌ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ الشَّعْبِيِّ: أَنَّ عُرْوَةَ بْنَ الْمُغِيرَةِ بْنِ شُعْبَةَ جَعَلَ فِي ذَلِكَ أَيْضًا السِّلْعَةَ رَهْنًا بِمَا بَقِيَ - فَهَذَا عَمْرٌو صَاحِبٌ لَا يُعْرَفُ لَهُ فِي هَذَا مُخَالِفٌ مِنْ الصَّحَابَةِ.

[مَسْأَلَةٌ الارتهان فِي نَفْسِ عَقْدِ التَّدَايُنِ]

١٢١٩ - مَسْأَلَةٌ:

وَلَا يَكُونُ حُكْمُ الرَّهْنِ إلَّا لِمَا ارْتَهَنَ فِي نَفْسِ عَقْدِ التَّدَايُنِ، وَأَمَّا مَا ارْتَهَنَ بَعْدَ تَمَامِ الْعَقْدِ فَلَيْسَ لَهُ حُكْمُ الرَّهْنِ، وَلِرَاهِنِهِ أَخْذُهُ مَتَى شَاءَ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ الرَّهْنَ

completion, it does not carry the legal status of a pledge, and its mortgagor may reclaim it whenever desired. This is because Allah the Exalted has only instituted the pledge within the contract itself - as we have recited - and every condition stipulated thereafter, not being found in the Book of Allah the Exalted, is invalid.

L19128 1220 – Issue:

L19129 If whoever enters into a loan agreement establishes a valid pledge within the contract, then subsequently enters into another loan agreement and designates that same pledge as security for this second debt, the second contract is invalid and rejected. This is because the pledge was valid in the first contract, and transferring it to another contract is impermissible, as neither the Quran nor the Sunnah mandates this. Thus, it constitutes a ruling not found in the Book of Allah the Exalted and is therefore invalid. Every contract founded upon an invalid premise is itself invalid, since its validity depends on the validity of something inherently invalid, rendering it void. And success is through Allah, the Exalted.

L19130 A case in which he pledged collateral and then paid half from a portion of his debt.

L19131 1221 - Question:

L19132 Whoever pledges valid collateral and then repays part of his debt—whether a smaller or larger portion—and wishes to withdraw a portion of the collateral proportionate to what he has repaid is not permitted to do so. This is because the collateral attaches to the entirety of the debt. Therefore, the legal effect of the collateral does not cease for any portion of it due to the partial discharge of the debt, as neither the Quran nor the Sunnah has prescribed such a ruling.

L19133–19134 This is the opinion of Al-Shāfiʿī and our school's scholars. If it is asked: How do you prohibit the removal of the pledge except with the pledgee's consent, yet permit its sale, emancipation, and donation – which constitutes its withdrawal from the pledge without the pledgee's consent? We respond: Because the textual evidence validates the pledge, so the pledger cannot nullify what

إِلَّا فِي الْعَقْدِ - كَمَا تَلَوْنَا - وَكُلُّ مَا كَانَ بَعْدَ ذَلِكَ فَهُوَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ.

١٢٢٠ - مَسْأَلَةٌ:

وَمَنْ تَدَايَنَ فَرَهَنَ فِي الْعَقْدِ رَهْنًا صَحِيحًا، ثُمَّ بَعْدَ ذَلِكَ تَدَايَنَا أَيْضًا وَجَعَلَا ذَلِكَ الرَّهْنَ رَهْنًا عَنْ هَذَا الدَّيْنِ الثَّانِي، فَالْعَقْدُ الثَّانِي بَاطِلٌ مَرْدُودٌ، لِأَنَّ ذَلِكَ الرَّهْنَ قَدْ صَحَّ فِي الْعَقْدِ الْأَوَّلِ، فَلَا يَجُوزُ نَقْلُهُ إلَى عَقْدٍ آخَرَ، إذْ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، فَهُوَ شَرْعٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، وَكُلُّ عَقْدٍ انْعَقَدَ عَلَى بَاطِلٍ فَهُوَ بَاطِلٌ، لِأَنَّهُ لَمْ تُعْقَدْ لَهُ صِحَّةٌ إلَّا بِصِحَّةِ مَا لَا صِحَّةَ لَهُ، فَلَا صِحَّةَ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ رَهَنَ ثُمَّ أَنْصَفَ مِنْ بَعْضِ دَيْنِهِ]

١٢٢١ - مَسْأَلَةٌ:

وَمَنْ رَهَنَ رَهْنًا صَحِيحًا ثُمَّ أَنْصَفَ - مِنْ بَعْضِ دَيْنِهِ - أَقَلَّهُ أَوْ أَكْثَرَهُ - فَأَرَادَ أَنْ يَخْرُجَ عَنْ الرَّهْنِ بِقَدْرِ مَا أَدَّى، لَمْ يَكُنْ لَهُ ذَلِكَ، لِأَنَّ الرَّهْنَ وَقَعَ فِي جَمِيعِهِ بِجَمِيعِ الدَّيْنِ فَلَا يَسْقُطُ عَنْ بَعْضِ الرَّهْنِ حُكْمُ الرَّهْنِ مِنْ أَجْلِ سُقُوطِ بَعْضِ الدَّيْنِ، إذْ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ.

هُوَ قَوْلُ الشَّافِعِيِّ، وَأَصْحَابِنَا. فَإِنْ قِيلَ: كَيْفَ تَمْنَعُونَ مِنْ إخْرَاجِ الرَّهْنِ إلَّا بِرِضَا الْمُرْتَهِنِ، وَتُجِيزُونَ بَيْعَهُ وَعِتْقَهُ وَالصَّدَقَةَ بِهِ، وَهُوَ إخْرَاجٌ لَهُ عَنْ الرَّهْنِ بِغَيْرِ إذْنِ الْمُرْتَهِنِ؟ قُلْنَا: لِأَنَّ النَّصَّ جَاءَ بِإِيجَابِ الرَّهْنِ فَلَيْسَ لَهُ إبْطَالُ مَا صَحَّحَهُ اللَّهُ تَعَالَى فَإِذَا أَخْرَجَهُ عَنْ

God has deemed valid. When he completely relinquishes ownership, God has never prohibited this – neither in the Quran nor the Sunnah. Once it transfers to another's ownership, the Almighty has stated: {No soul earns [guilt] except against itself} [6:164].[7]

L19135 The mortgagor's contract never existed alongside the party to whom ownership was transferred; thus, it is impermissible for him to mortgage his property for another.

L19136 We say to them: All of you—(meaning the Maliki, Hanafi, and Shafiʿi schools)—are unanimously agreed that whoever says to his slave, "You are free whenever my father arrives," has indeed established a contract in which it is impermissible for him to retract ever, and that the slave is free whenever his father arrives. There is no disagreement among you regarding the permissibility of selling him, using him as a dowry, or gifting him before his father arrives. What difference exists between the two matters if you are just to yourselves?

L19137 **A jurisprudential issue regarding pledging another's property as security for his own liability or for a liability related to his child's property.**

L19138 1222. Question:

L19139–19141 It is not permissible for anyone to pledge another's property on his own behalf, nor the property of his minor or adult child, nor the property of his orphan – whether minor or adult – nor his wife's property, except with the permission of the owner of the commodity to be pledged. The Ḥanafīs and Mālikīs stated: A man may pledge his minor son's property on his own behalf. The Mālikīs added: A guardian may pledge his orphan's property on his own behalf. They argued: If a third party authorizes another to pledge his property on the latter's own behalf, this becomes permissible. Their evidence was that since a father-guardian may deposit the son's or orphan's property, using it as collateral is more deserving of permissibility. Abū Muḥammad

[7] **Qur'an references (L19134):** Qur'an 6:164 (Al-An'am).

مِلْكِهِ جُمْلَةً، فَلَمْ يَمْنَعْهُ اللَّهُ تَعَالَى مِنْ ذَلِكَ قَطُّ، لَا فِي قُرْآنٍ، وَلَا سُنَّةٍ، فَإِذَا صَارَ فِي مِلْكِ غَيْرِهِ فَقَدْ قَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤]

وَعَقْدُ الْمُرْتَهِنِ لَمْ يَكُنْ قَطُّ مَعَ الَّذِي انْتَقَلَ إِلَيْهِ الْمِلْكُ، فَلَا يَجُوزُ لَهُ ارْتِهَانُ مَالِهِ عَنْ غَيْرِهِ.

وَنَقُولُ لَهُمْ: إِنَّ جَمِيعَكُمْ - يَعْنِي الْمَالِكِيِّينَ، وَالْحَنَفِيِّينَ، وَالشَّافِعِيِّينَ - مُجْمِعُونَ عَلَى أَنَّ مَنْ قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ إِذَا قَدِمَ أَبِي أَنَّهُ قَدْ عَقَدَ فِيهِ عَقْدًا لَا يَحِلُّ لَهُ الرُّجُوعُ فِيهِ أَبَدًا، وَأَنَّهُ حُرٌّ مَتَى قَدِمَ أَبُوهُ، ثُمَّ لَا خِلَافَ بَيْنَكُمْ فِي جَوَازِ بَيْعِهِ قَبْلَ أَنْ يَأْتِيَ أَبُوهُ وَإِصْدَاقِهِ، وَهِبَتِهِ، فَأَيُّ فَرْقٍ بَيْنَ الْأَمْرَيْنِ إِنْ أَنْصَفْتُمْ أَنْفُسَكُمْ؟

[مَسْأَلَةٌ رَهْنِ مَالِ غَيْرِهِ عَنْ نَفْسِهِ أَوْ مَالَ وَلَدِهِ]

١٢٢٢ - مَسْأَلَةٌ:

وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَرْهَنَ مَالَ غَيْرِهِ عَنْ نَفْسِهِ، وَلَا مَالَ وَلَدِهِ الصَّغِيرِ أَوْ الْكَبِيرِ، إِلَّا بِإِذْنِ صَاحِبِ السِّلْعَةِ الَّتِي يُرِيدُ رَهْنَهَا، وَلَا بِغَيْرِ إِذْنِهِ، وَلَا مَالَ يَتِيمِهِ الصَّغِيرِ أَوْ الْكَبِيرِ وَلَا مَالَ زَوْجَتِهِ. وَقَالَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ: لَهُ أَنْ يَرْهَنَ عَنْ نَفْسِهِ مَالَ ابْنِهِ الصَّغِيرِ. قَالَ الْمَالِكِيُّونَ: وَلِلْوَصِيِّ أَنْ يَرْهَنَ مَالَ يَتِيمِهِ عَنْ نَفْسِهِ. وَقَالُوا: إِذَا أَذِنَ الْأَجْنَبِيُّ لِغَيْرِهِ أَنْ يَرْهَنَ مَالَهُ عَنْ نَفْسِهِ جَازَ. وَاحْتَجُّوا فِي ذَلِكَ أَنَّ لِلْأَبِ الْوَصِيِّ أَنْ يُودِعَ مَالَ الِابْنِ وَالْيَتِيمِ، فَإِدْخَالُهُ فِي الذِّمَّةِ أَحَقُّ بِالْجَوَازِ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ، لِأَنَّهُ لَا يَجُوزُ لَهُمَا

refuted this: This is invalid, for neither may deposit nor lend such property except when acting with due care and protection for the minor. There is no consideration whatsoever for the minor in having his father or guardian pledge his property as collateral for themselves; this constitutes harm and must be rejected. Moreover, a person may deposit a trust left with him elsewhere if he fears its destruction while in his possession. He deemed security to lie in entrusting it, thereby obligating them through this ingenious inference that he has the right to pledge it in his own capacity.

إِيدَاعُهُ، وَلَا قَرْضُهُ، إِلَّا حَيْثُ يَكُونُ ذَلِكَ نَظَرًا وَحِيَاطَةً لِلصَّغِيرِ، وَلَا نَظَرَ لَهُ أَصْلًا فِي أَنْ يَرْهَنَهُ الْأَبُ وَالْوَصِيُّ عَنْ أَنْفُسِهِمَا، فَهُوَ ضَرَرٌ، فَهُوَ مَرْدُودٌ. وَأَيْضًا: فَإِنَّ لِلْإِنْسَانِ أَنْ يُودِعَ الْوَدِيعَةَ الَّتِي أُودِعَتْ عِنْدَهُ أَذَا خَشِيَ هَلَاكَهَا عِنْدَهُ، وَرَأَى السَّلَامَةَ فِي إِيدَاعِهَا -: فَيَلْزَمُهُمْ بِهَذَا الِاسْتِدْلَالِ الْبَدِيعُ أَنْ يَكُونَ لَهُ أَنْ يَرْهَنَهَا عَنْ نَفْسِهِ.

L19142 They argued for this using what was authentically narrated through the chain of Suwayd ibn Ghaflah from Umm al-Mu'minīn 'Ā'ishah, from the Prophet (may Allah bless him and grant him peace), that he said: "The purest food you eat comes from your lawful efforts, and your children are from your efforts." Another narration through the chain of al-Aswad ibn Yazīd from Umm al-Mu'minīn 'Ā'ishah, from the Prophet (may Allah bless him and grant him peace), states that he said: "The purest food a man eats is from the labor of his hands, and his child is from his efforts."[8]

وَاحْتَجُّوا فِي ذَلِكَ بِمَا صَحَّ مِنْ طَرِيقِ سُوَيْدِ بْنِ غَفَلَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إِنَّ أَطْيَبَ مَا أَكَلْتُمْ مِنْ كَسْبِكُمْ، وَإِنَّ أَوْلَادَكُمْ مِنْ كَسْبِكُمْ» . وَمِنْ طَرِيقِ الْأَسْوَدِ بْنِ يَزِيدَ عَنْ أُمِّ الْمُؤْمِنِينَ عَائِشَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إِنَّ أَطْيَبَ مَا أَكَلَ الرَّجُلُ مِنْ كَسْبِ يَدِهِ وَوَلَدُهُ مِنْ كَسْبِهِ» .

L19143 We narrated them both via Qasim ibn Asbagh, who said: Bakr ibn Hammad and Ahmad ibn Zuhayr narrated to us. Bakr said: Musaddad narrated to us from Yahya ibn Sa'id al-Qattan, from Sufyan al-Thawri, who narrated to us from Ibrahim ibn Abd al-A'la, from Suwayd ibn Ghafala.

رُوِّينَاهُمَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ قَالَ: نا بَكْرُ بْنُ حَمَّادٍ، وَأَحْمَدُ بْنُ زُهَيْرٍ، قَالَ بَكْرٌ: نا مُسَدَّدٌ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ سُفْيَانَ الثَّوْرِيِّ نا إِبْرَاهِيمُ بْنُ عَبْدِ الْأَعْلَى عَنْ سُوَيْدِ بْنِ غَفَلَةَ

L19144 Ahmad said: My father narrated to us, Abu Muʿāwiyah al-Ḍarīr narrated to us from al-Aʿmash, from Ibrāhīm al-Nakhaʿī, from al-Aswad. Abū Muḥammad said: These two reports pertain solely to eating. This is our view: he may eat from it as much as he wishes from his household and outside his household. These two reports are not about selling, mortgaging, or gifting.

وَقَالَ أَحْمَدُ: نا أَبِي نا أَبُو مُعَاوِيَةَ الضَّرِيرُ عَنِ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنِ الْأَسْوَدِ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَانِ الْخَبَرَانِ إِنَّمَا هُمَا فِي الْأَكْلِ، وَهَكَذَا نَقُولُ: يَأْكُلُ مِنْهُ مَا شَاءَ مِنْ بَيْتِهِ وَغَيْرِ بَيْتِهِ، وَلَيْسَا فِي الْبَيْعِ، وَلَا فِي الِارْتِهَانِ، وَلَا فِي الْهِبَةِ.

L19145–19147 Nor in taking and possessing. If they argue: "We have analogized this to eating," we reply: "All analogy is invalid. Even were it hypothetically valid, you would have contradicted yourselves most egregiously in two aspects. First: Allah the Exalted states {There is no blame upon you for eating in

وَلَا فِي الْأَخْذِ وَالتَّمَلُّكِ فَإِنْ قَالُوا: قِسْنَا ذَلِكَ عَلَى الْأَكْلِ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ لَكُنْتُمْ قَدْ تَنَاقَضْتُمْ أَفْحَشَ تَنَاقُضٍ مِنْ وَجْهَيْنِ، أَحَدُهُمَا أَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَلَا عَلَى أَنْفُسِكُمْ أَنْ تَأْكُلُوا مِنْ بُيُوتِكُمْ أَوْ بُيُوتِ آبَائِكُمْ أَوْ بُيُوتِ أُمَّهَاتِكُمْ} [النور: ٦١]

[8] **Hadith references (L19142):** Sunan Ibn Majah 2290; Jami at-Tirmidhi 1358; Mishkat al-Masabih 2770.

your own houses, the houses of your fathers, or the houses of your mothers} [24:61] through His words {or those whose keys you possess, or your friends. There is no blame upon you whether you eat together or separately} [24:61]. Thus Allah permitted eating from friends' houses, those whose keys we hold, brothers' and sisters' houses, and all remaining parties mentioned in the verse. If you permit taking pledges from them by analogy to eating without the owners' permission—while you yourselves refrain from this practice—you have nullified your analogy, abandoned it, and ruled it corrupt, as it is inherently corrupt in its entirety. Second: You prohibit selling from a minor son's property except for his benefit, nor permit taking possession of anything from him without urgent necessity—except pledging specifically. According to Malikis, one may only validate such transactions on his own behalf. What contradiction! What arbitrariness—imposing corrupt, conflicting opinions onto the religion!" They also cited as evidence what we narrated through Al-Bazzar's chain: Muhammad ibn Yahya ibn Abdul-Karim narrated from Abdullah ibn Dawud (Al-Khuraibi). From Hisham ibn Urwah from Muhammad ibn al-Munkadir from Jabir ibn Abdullah from the Messenger of Allah—peace be upon him—that he said: "You and your wealth belong to your father." Abu Muhammad said: They thereby permitted a man to pledge his minor son's wealth as collateral, waived the ḥadd punishment for him for engaging in intercourse with the slave girl of his minor and adult son, waived the ḥadd punishment for stealing from the wealth of his adult and minor son, and ruled that the father must guarantee its value and return it. The Mālikīs further permitted by this that he may give charity from his minor son's wealth from himself, manumit a slave of his minor son specifically, and be liable for its value in all such cases.[9]

L19148–19150 Abū Muḥammad said: There is no valid evidence for them in this narration; rather, it serves as decisive evidence against them, for they were the first to oppose it by restricting the father's entitlement to his son's wealth to only what we have mentioned. The ḥadīth is general in scope and does not specify these particular cases over others. Thus, it is impermissible for them to arbitrarily restrict its application through baseless assertions. Another point

إِلَى قَوْله تَعَالَى: {أَوْ مَا مَلَكْتُمْ مَفَاتِحَهُ أَوْ صَدِيقِكُمْ لَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَأْكُلُوا جَمِيعًا أَوْ أَشْتَاتًا} [النور: ٦١] فَأَبَاحَ اللَّهُ تَعَالَى الْأَكْلَ مِنْ بُيُوتِ الْأَصْدِقَاءِ وَالَّتِي مَفَاتِحُهَا بِأَيْدِينَا وَبُيُوتِ الْإِخْوَةِ وَالْأَخَوَاتِ وَسَائِرِ مَنْ ذُكِرَ فِي الْآيَةِ فَأَبِيحُوا الارْتِهَانَ مِنْهَا قِيَاسًا عَلَى الْأَكْلِ بِغَيْرِ إِذْنِ أَهْلِهَا وَأَنْتُمْ لَا تَفْعَلُونَ ذَلِكَ فَقَدْ نَقَضْتُمْ قِيَاسَكُمْ وَتَرَكْتُمُوهُ وَقَضَيْتُمْ بِفَسَادِهِ وَهُوَ أَهْلٌ لِلْفَسَادِ جُمْلَةً، وَالثَّانِي أَنَّكُمْ لَا تُجِيزُونَ أَنْ يُبَاعَ مِنْ مَالِ ابْنِهِ الصَّغِيرِ إِلَّا عَلَى وَجْهِ النَّظَرِ لَهُ وَلَا أَنْ يَتَمَلَّكَ مِنْهُ شَيْئًا أَصْلًا لِغَيْرِ الْحَاجَةِ الْمَاسَّةِ إِلَّا الارْتِهَانَ خَاصَّةً، وَعِنْدَ الْمَالِكِيِّينَ أَنْ يُصَدِّقَهُ عَنْ نَفْسِهِ خَاصَّةً فَكَمْ هَذَا التَّنَاقُضُ وَالتَّحَكُّمُ فِي الدِّينِ بِالْآرَاءِ الْفَاسِدَةِ الْمُضْطَرِبَةِ، وَاحْتَجُّوا أَيْضًا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبَزَّارِ نا مُحَمَّدُ بْنُ يَحْيَى بْنِ عَبْدِ الْكَرِيمِ نا عَبْدُ اللَّهِ بْنُ دَاوُد هُوَ الْخُرَيْبِيُّ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «أَنْتَ وَمَالُكَ لِأَبِيكَ» قَالَ أَبُو مُحَمَّد: فَأَبَاحُوا بِهِ أَنْ يَرْهَنَ الرَّجُلُ مَالَ ابْنِهِ الصَّغِيرِ وَأَسْقَطُوا عَنْهُ الْحَدَّ فِي وَطْءِ أَمَةِ ابْنِهِ الصَّغِيرِ وَالْكَبِيرِ وَأَسْقَطُوا عَنْهُ الْحَدَّ فِيمَا سَرَقَ مِنْ مَالِ ابْنِهِ الْكَبِيرِ، وَالصَّغِيرِ، وَقَضَوْا عَلَى الْأَبِ بِضَمَانِهِ وَرَدِّهِ، وَأَبَاحَ الْمَالِكِيُّونَ بِهِ أَنْ يُصَدِّقَ مَالَ ابْنِهِ الصَّغِيرِ عَنْ نَفْسِهِ وَأَنْ يُعْتِقَ رَقَبَةَ ابْنِهِ الصَّغِيرِ خَاصَّةً وَيَضْمَنَ الْقِيمَةَ فِي ذَلِكَ كُلِّهِ.

قَالَ أَبُو مُحَمَّدٍ: وَلَا حُجَّةَ لَهُمْ فِي هَذَا الْخَبَرِ بَلْ هُوَ حُجَّةٌ عَلَيْهِمْ لِأَنَّهُمْ أَوَّلُ مَنْ خَالَفُوهُ فَلَمْ يُبِيحُوا لِلْأَبِ مِنْ مَالِ ابْنِهِ غَيْرَ مَا ذَكَرْنَا وَالْحَدِيثُ عَامٌّ لَمْ يَخُصَّ هَذِهِ الْوُجُوهَ مِنْ غَيْرِهَا فَلَا يَجُوزُ لَهُمْ تَخْصِيصُهَا بِدَعْوَى كَاذِبَةٍ. وَوَجْهٌ آخَرُ وَهُوَ أَنَّهُمْ لَمْ يُبِيحُوا الارْتِهَانَ وَالْإِصْدَاقَ إِلَّا مِنْ مَالِ الِابْنِ الصَّغِيرِ لَا مِنْ مَالِ الِابْنِ الْكَبِيرِ فَخَالَفُوا الْخَبَرَ وَتَحَكَّمُوا

[9] **Qur'an references (L19145):** Qur'an 24:61 (An-Nur).

of refutation is that they only permitted pawning and bridal payments from the wealth of a minor son—not an adult son—thereby contradicting the narration. They illegitimately imposed rulings on debt by declaring prohibitions or permissions through unsubstantiated claims devoid of proof. If they allege consensus, they have falsified, for we have reliably received through Ibn Abī Shaybah's chain: Wakīʿ narrated to us, from Hishām ibn ʿUrwah, from his father: "A man disposed of part of his wealth without his father's consent and asked the Prophet (peace be upon him)—or Abū Bakr or ʿUmar—who said: 'Restore it to him, for it is merely an arrow from your quiver.'" Similarly, what we received via Ibn al-Jahm's chain is authenticated: Abū Qilābah al-Raqāshī narrated to us, from Rūḥ—i.e., Ibn ʿUbādah—from Ibn Jurayj, who informed me that Abū al-Zubayr reported hearing Jābir ibn ʿAbd Allāh state: "A father and mother may appropriate from their child's wealth without permission, but a son or daughter may not appropriate from their parents' wealth without permission." An explicitly identical ruling is authenticated via ʿAbd ibn Ḥumayd's chain from ʿUbayd Allāh ibn Mūsā al-ʿAbsī, from Sufyān al-Thawrī, from Ibrāhīm ibn ʿAbd al-Aʿlā, from Suwayd—i.e., Ibn Ghafalah—from Umm al-Muʾminīn ʿĀ'ishah, in her own words. Through Ibn al-Jahm's chain: Bishr ibn Mūsā al-Asadī narrated to us, from Aḥmad ibn al-Walīd al-Azraqī, from al-Ḥubāb ibn Faḍālah ibn Hurmuz al-Ḥanafī, who said: "I asked Anas ibn Mālik: 'My father seized a slave girl of mine without...' [text incomplete]." My father's property is mixed with it. Anas said to me: "It is his. You and your property stem from his earning; you and your property are permissible for him, but his property is forbidden to you except what he willingly gives."

فِي الدَّيْنِ بِالتَّحْرِيمِ، وَالتَّحْلِيلِ بِالدَّعْوَى الْمُبْطِلَةِ بِلَا بُرْهَانٍ - فَإِنْ ادَّعَوْا إجْمَاعًا كَذَبُوا لِأَنَّهُ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ «أَنَّ رَجُلًا صَنَعَ شَيْئًا فِي مَالِهِ وَلَمْ يَسْتَأْذِنْ أَبَاهُ فَسَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ أَوْ أَبَا بَكْرٍ أَوْ عُمَرَ فَقَالَ: اُرْدُدْ عَلَيْهِ فَإِنَّمَا هُوَ سَهْمٌ مِنْ كِنَانَتِكَ» ، وَقَدْ صَحَّ مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ الْجَهْمِ نا أَبُو قِلَابَةَ الرَّقَاشِيُّ نا رَوْحٌ هُوَ ابْنُ عُبَادَةَ - نا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: يَأْخُذُ الْأَبُ، وَالْأُمُّ مِنْ مَالِ وَلَدِهِمَا بِغَيْرِ إذْنِهِ وَلَا يَأْخُذُ الِابْنُ وَالِابْنَةُ مِنْ مَالِ أَبَوَيْهِمَا بِغَيْرِ إذْنِهِمَا، وَصَحَّ مِثْلُهُ نَصًّا مِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ عَنْ عُبَيْدِ اللَّهِ بْنِ مُوسَى الْعَبْسِيِّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إبْرَاهِيمَ بْنِ عَبْدِ الْأَعْلَى عَنْ سُوَيْدٍ هُوَ ابْنُ غَفَلَةَ - عَنْ أُمِّ الْمُؤْمِنِينَ عَائِشَةَ مِنْ قَوْلِهَا؛ وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا بِشْرُ بْنُ مُوسَى الْأَسَدِيُّ نا أَحْمَدُ بْنُ الْوَلِيدِ الْأَزْرَقِيُّ نا الْحُبَابُ بْنُ فَضَالَةَ بْنِ هُرْمُزَ الْحَنَفِيُّ قَالَ: قُلْت لِأَنَسِ بْنِ مَالِكٍ: جَارِيَةٌ لِي غَلَبَنِي عَلَيْهَا أَبِي لَمْ يَخْلِطْهَا مَالٌ لِأَبِي فَقَالَ لِي أَنَسٌ: هِيَ لَهُ، أَنْتَ وَمَالُك مِنْ كَسْبِهِ، أَنْتَ وَمَالُك لَهُ حَلَالٌ، وَمَالُهُ عَلَيْك حَرَامٌ إلَّا مَا طَابَتْ بِهِ نَفْسُهُ.

L19151 Through the chain of Ibn al-Jahm: Abu Qilabah informed us; Abu Dawud—he is al-Sijistani—informed us; Muhammad ibn Aban reported from Hammad, from Masʿud ibn Jubayr, from Ibn Abbas, who said: "Your children are Allah's gift to you, and your wealth is yours."

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا أَبُو قِلَابَةَ نا أَبُو دَاوُد هُوَ السِّجِسْتَانِيُّ - نا مُحَمَّدُ بْنُ أَبَانَ عَنْ حَمَّادٍ عَنْ مَسْعُودِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: أَوْلَادُكُمْ هِبَةُ اللَّهِ لَكُمْ وَأَمْوَالُكُمْ لَكُمْ.

L19152 ʿUmar took the son's hand and placed it in the father's hand, saying: "This and his wealth are from Allah's bounty to you."

رُوِّينَا مِنْ طَرِيقِ ابْنِ مَسْعُودٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ أَتَاهُ أَبٌ وَابْنٌ وَالِابْنُ يَطْلُبُ أَبَاهُ بِأَلْفِ دِرْهَمٍ أَقْرَضَهُ إِيَّاهَا وَالْأَبُ يَقُولُ: إِنَّهُ لَا يَقْدِرُ عَلَيْهَا فَأَخَذَ عُمَرُ بِيَدِ الِابْنِ فَوَضَعَهَا فِي يَدِ الْأَبِ فَقَالَ: هَذَا وَمَالُهُ مَنْ هِبَةِ اللَّهِ لَك.

L19153 A similar ruling is reported from Ali ibn Abi Talib, who decreed that a child's wealth belongs to the parent and permitted those who held a differing view.

وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ نَحْوُ هَذَا وَأَنَّهُ قَضَى بِمَالِ الْوَلَدِ لِلْوَالِدِ وَجَوَّزَ مَنْ قَالَ غَيْرَ هَذَا.

L19154 From the transmission of Ibn Abi Shaybah, who narrated to us from Ghundar, from Ibn Jurayj, that 'Aṭā' saw no harm in a man taking whatever he wants from his child's wealth without necessity.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا غُنْدَرٌ عَنْ ابْنِ جُرَيْجٍ كَانَ عَطَاءٌ لَا يَرَى بَأْسًا بِأَنْ يَأْخُذَ الرَّجُلُ مِنْ مَالِ وَلَدِهِ مَا شَاءَ مِنْ غَيْرِ ضَرُورَةٍ.

L19155 From the chain of Ibn Abi Shaybah, from Isra'il, from Jabir, from al-Sha'bi, from Masruq, who said: "You are a gift from Allah to your father; you and your wealth are for your father."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ إِسْرَائِيلَ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ قَالَ: أَنْتَ مِنْ هِبَةِ اللَّهِ لِأَبِيك، أَنْتَ وَمَالُك لِأَبِيك.

L19156 Ibn Abi Shaybah reported from Ubaydullah ibn Musa, from Al-Hasan ibn Ḥayy, from Layth, from Mujahid and Al-Hakam, both of whom said together: "A man may take from his son's wealth whatever he wishes, except the private parts."

نا ابْنُ أَبِي شَيْبَةَ نا عُبَيْدُ اللَّهِ هُوَ ابْنُ مُوسَى - نا الْحَسَنُ هُوَ ابْنُ حَيٍّ - عَنْ لَيْثٍ عَنْ مُجَاهِدٍ، وَالْحَكَمِ، قَالَا جَمِيعًا: يَأْخُذُ الرَّجُلُ مِنْ مَالِ وَلَدِهِ مَا شَاءَ إلَّا الْفَرْجَ

L19157 A parent is permitted regarding their child's wealth, except the private parts.

نا ابْنُ أَبِي شَيْبَةَ نا مُعَاوِيَةُ بْنُ هِشَامٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي حَمْزَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: الْوَالِدُ فِي حِلٍّ مِنْ مَالِ وَلَدِهِ إلَّا الْفَرْجَ.

L19158 Through the narration of Shu'bah from Abu Ishaq al-Sabi'i from Abdullah ibn Abi Burdah ibn Abi Musa al-Ash'ari: that he took his legal dispute with his father to al-Sha'bi regarding property that was his. Al-Sha'bi said to Abdullah, "I render you and your property to him" - meaning his son.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ أَنَّهُ خَاصَمَ أَبَاهُ إلَى الشَّعْبِيِّ فِي مَالٍ لَهُ فَقَالَ الشَّعْبِيُّ لِعَبْدِ اللَّهِ، أَجْعَلُك وَمَالَك لَهُ - يَعْنِي لِوَلَدِهِ.

L19159 From the chain of Abdullah ibn Humaid, Abu Nuʿaym al-Faḍl ibn Dukayn narrated to us from al-Ḥasan ibn Ṣāliḥ ibn Ḥayy, from his father, from al-Shaʿbī, who said: A man is permitted regarding his child's wealth.

وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ نا أَبُو نُعَيْمٍ الْفَضْلُ بْنُ دُكَيْنٍ عَنْ الْحَسَنِ بْنِ صَالِحِ بْنِ حَيٍّ عَنْ أَبِيهِ عَنْ الشَّعْبِيِّ قَالَ: الرَّجُلُ فِي حِلٍّ مِنْ مَالِ وَلَدِهِ.

L19160–19162 From the narration of ʿAlī ibn al-Madīnī: Muḥammad ibn Abī ʿAdīyy re-

ported to us, saying, “I am Ibn Jurayj,” from ʿAṭāʾ ibn Abī Rabāḥ: He saw no objection to a man taking whatever he wishes from his child’s wealth, provided he does not harm him. From the transmission of Abd ibn Humaid, who narrated to us from Yazeed ibn Haroon, who informed us from Dawood ibn Abi Hind, from Sa’eed ibn al-Musayyib, who said: “A father may consume from his child’s wealth as he wills, while a child may not consume from his father’s wealth without his permission.”

وَمِنْ طَرِيقِ عَلِيِّ بْنِ الْمَدِينِيِّ نا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ أَنَا ابْنُ جُرَيْجٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يَأْخُذَ الرَّجُلُ مِنْ مَالِ وَلَدِهِ مَا شَاءَ مَا لَمْ يُضَارَّهُ وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ نا يَزِيدُ بْنُ هَارُونَ أَنَا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: الْوَالِدُ يَأْكُلُ مِنْ مَالِ وَلَدِهِ مَا شَاءَ وَالْوَلَدُ لَا يَأْكُلُ مِنْ مَالِ وَالِدِهِ إِلَّا بِإِذْنِهِ.

L19163 From the path of ʿAbd ibn Ḥumayd, narrated to us Muḥammad ibn Bakr al-Bursānī from Hishām ibn Ḥassān from al-Ḥasan al-Baṣrī, who said: “The two parents may take from their child’s wealth whatever they wish.” From the path of ʿAbd ibn Ḥumayd, narrated to us Wahb ibn Jarīr ibn Ḥāzim from his father, who said: “I heard al-Ḥasan when a questioner asked him about a matter pertaining to his father. Al-Ḥasan replied to him: ’You and your wealth belong to your father. Do you not know that you are your father’s servant?’” From the path of ʿAbd ibn Ḥumayd: I am ʿAbd al-Razzāq, from Maʿmar from Qatādah from al-Ḥasan, who said: “A man may take from his child’s wealth whatever he wishes, even if the wealth includes a female slave he takes as a concubine.” Qatādah said: “I did not approve of what he said regarding the female slave.”

وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ نا مُحَمَّدُ بْنُ بَكْرٍ الْبُرْسَانِيُّ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: يَأْخُذُ الْوَالِدَانِ مِنْ مَالِ وَلَدِهِمَا مَا شَاءَا وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ نا وَهْبِ بْنِ جَرِيرِ بْنِ حَازِمٍ عَنْ أَبِيهِ قَالَ: سَمِعْت الْحَسَنَ وَسَأَلَهُ سَائِلٌ عَنْ شَيْءٍ مِنْ أَمْرِ وَالِدِهِ؟ فَقَالَ لَهُ الْحَسَنُ: أَنْتَ وَمَالُك لِأَبِيك، أَمَا عَلِمْت أَنَّك عَبْدُ أَبِيك؟ وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ أَنَا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ الْحَسَنِ قَالَ: يَأْخُذُ الرَّجُلُ مِنْ مَالِ وَلَدِهِ مَا شَاءَ وَإِنْ كَانَتْ جَارِيَةً تَسَرَّاهَا، قَالَ قَتَادَةَ: لَمْ يُعْجِبْنِي مَا قَالَ فِي الْجَارِيَةِ.

L19164 From the transmission of Laith, on the authority of Mujāhid, who said: A man may take from his child’s wealth except [matters pertaining to] chastity.

وَمِنْ طَرِيقِ لَيْثٍ عَنْ مُجَاهِدٍ قَالَ: يَأْخُذُ الرَّجُلُ مِنْ مَالِ وَلَدِهِ إِلَّا الْفَرْجَ.

L19165 And it has also been narrated to us from Al-Hasan that all body parts may be exposed except the private parts.

وَقَدْ رُوِّينَا عَنْ الْحَسَنِ أَيْضًا إِلَّا الْفَرْجَ.

L19166 Ibn Abi Layla said: The father is not liable for what he consumes from his child’s property, and he may sell from his major child’s property.

وَقَالَ ابْنُ أَبِي لَيْلَى: لَا يَغْرَمُ الْأَبُ مَا اسْتَهْلَكَ مِنْ مَالِ وَلَدِهِ، وَيَجُوزُ بَيْعُهُ لِمَالِ وَلَدِهِ الْكَبِيرِ.

L19167 Abū Muḥammad said: We know of no disagreement from the Companions against those we mentioned among them in this matter—namely ʿUmar, ʿAlī, Ibn Masʿūd, ʿĀishah the Mother of the Believers, Jābir ibn ʿAbd Allāh, Anas, and Ibn ʿAbbās—except for one authentic narration from Ibn ʿUmar and another from ʿAlī that was not authenticated. We also know of no dissent from those we mentioned among the Followers in this matter except Ibn Sīrīn,

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ خِلَافًا مِنْ الصَّحَابَةِ لِمَنْ ذَكَرْنَا مِنْهُمْ فِي هَذِهِ الْمَسْأَلَةِ وَهُمْ: عُمَرُ، وَعَلِيٌّ، وَابْنُ مَسْعُودٍ، وَعَائِشَةُ أُمُّ الْمُؤْمِنِينَ، وَجَابِرُ بْنُ عَبْدِ اللَّهِ، وَأَنَسٌ، وَابْنُ عَبَّاسٍ، إِلَّا رِوَايَةً صَحَّتْ عَنْ ابْنِ عُمَرَ، وَأُخْرَى عَنْ عَلِيٍّ لَمْ يَصِحَّ. وَلَا نَعْلَمُ لِمَنْ ذَكَرْنَا مِنْ

al-Nakhaʿī, and Mujāhid (with conflicting opinions reported from them) and al-Zuhrī. For they hold the same view as ours.

التَّابِعِينَ مُخَالِفًا فِي هَذِهِ الْمَسْأَلَةِ إِلَّا ابْنَ سِيرِينَ، وَالنَّخَعِيَّ، وَمُجَاهِدًا، بِاخْتِلَافٍ عَنْهُمْ وَالزُّهْرِيَّ، فَإِنَّهُمْ يَقُولُونَ كَقَوْلِنَا.

L19168–19169 It was narrated through the chain of Abdullah ibn Humaid, from al-Dahhak ibn Makhlad, from Abdullah ibn Awn, from Muhammad ibn Sirin, who said: "Each of them has a greater right to their own wealth"—referring to the parent and child.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ نا الضَّحَّاكُ بْنُ مَخْلَدٍ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: كُلُّ وَاحِدٍ مِنْهُمَا أَوْلَى بِمَالِهِ - يَعْنِي الْوَالِدَ وَالْوَلَدَ.

L19170 And through him to Abd: Jaʿfar ibn ʿAwn reported to me from Abu Hanifah, from Hammad ibn Abi Sulayman, from Ibrahim, who said: A father has no right to his son's property except what he needs in terms of food, drink, or clothing.

وَبِهِ إِلَى عَبْدٍ: أَخْبَرَنِي جَعْفَرُ بْنُ عَوْنٍ عَنْ أَبِي حَنِيفَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ قَالَ: لَيْسَ لِلْأَبِ مِنْ مَالِ ابْنِهِ إِلَّا مَا احْتَاجَ إِلَيْهِ مِنْ طَعَامٍ، أَوْ شَرَابٍ، أَوْ لِبَاسٍ.

L19171 From the chain of Abd via Abd al-Razzaq via Maʿmar via al-Zuhri, who said: A man may not take anything from his child's wealth unless he is in need, in which case it is expended from it in a reasonable manner. The son provides for him as the father once provided for the son. However, if the father is wealthy, he has no right to take from his son's wealth to preserve his own wealth intact or allocate it to unlawful purposes. He said: If an orphan's mother is needy, he should spend on her from his wealth – her hand is with his hand. A wealthy mother, however, has no entitlement.

وَمِنْ طَرِيقِ عَبْدٍ عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ قَالَ: لَا يَأْخُذُ الرَّجُلُ مِنْ مَالِ وَلَدِهِ شَيْئًا إِلَّا أَنْ يَحْتَاجَ فَيُسْتَنْفَقَ بِالْمَعْرُوفِ، يَعُولُهُ ابْنُهُ، كَمَا كَانَ الْأَبُ يَعُولُهُ، فَأَمَّا إِذَا كَانَ الْأَبُ مُوسِرًا فَلَيْسَ لَهُ أَنْ يَأْخُذَ مِنْ مَالِ ابْنِهِ فَيَبْقَى بِهِ مَالُهُ، أَوْ يَضَعُهُ فِي مَا لَا يَحِلُّ - قَالَ: فَإِذَا كَانَتْ أُمُّ الْيَتِيمِ مُحْتَاجَةً أَنْفَقَ عَلَيْهَا مِنْ مَالِهِ، يَدُهَا مَعَ يَدِهِ، وَالْمُوسِرَةُ لَا شَيْءَ لَهَا.

L19172 From the chain of Ibn Abi Shaybah: Ubaydullah ibn Musa narrated to us from Uthman ibn al-Aswad from Mujahid, who said: "Take from your child's wealth what you have given, and do not take from it what you have not given." From the chain of Abu Bakr ibn Abi Shaybah: Sufyan ibn Uyaynah narrated to us from Amr ibn Dinar, who said: A man said to Jabir ibn Zayd: "My father is withholding his wealth from me." Jabir replied: "Take from your father's wealth in a proper manner." Ibn Abi Shaybah narrated to us: Yazid ibn Harun narrated to us from Jarir ibn Hazim from Yunus ibn Yazid from al-Zuhri from Salim ibn Abdullah that Hamzah ibn Abdullah ibn Umar slaughtered a camel. A beggar came and asked Ibn Umar [for something], so

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عُبَيْدُ اللَّهِ بْنُ مُوسَى عَنْ عُثْمَانَ بْنِ الْأَسْوَدِ عَنْ مُجَاهِدٍ قَالَ: خُذْ مِنْ مَالِ وَلَدِكَ مَا أَعْطَيْتَه وَلَا تَأْخُذْ مِنْهُ مَا لَمْ تُعْطِه وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: قَالَ رَجُلٌ لِجَابِرِ بْنِ زَيْدٍ: إِنَّ أَبِي يَحْرِمُنِي مَالَهُ؟ فَقَالَ لَهُ جَابِرٌ: كُلْ مِنْ مَالِ أَبِيكَ بِالْمَعْرُوفِ. نا ابْنُ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ أَنَّ

Ibn Umar said: “It is not mine.” Hamzah said to him: “O my father, you are absolved [of blame]; feed from it as you please.”

حَمْزَةَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ نَحَرَ جَزُورًا فَجَاءَ سَائِلٌ فَسَأَلَ ابْنَ عُمَرَ؟ فَقَالَ ابْنُ عُمَرَ: مَا هِيَ لِي؟ فَقَالَ لَهُ حَمْزَةُ: يَا أَبَتَاهُ فَأَنْتَ فِي حِلٍّ، أَطْعِمْ مِنْهَا مَا شِئْتَ.

L19173–19175 Ibn Abi Shaybah reported from Isra’il—a weak narrator—from Abd al-A’la from Muhammad ibn al-Hanafiyyah from Ali ibn Abi Talib, who said: “A man has the right to his child’s property while the child is young. But when the child grows up and secures his property, he has the right to it.”

نا ابْنُ أَبِي شَيْبَةَ عَنْ إِسْرَائِيلَ عَنْ عَبْدِ الْأَعْلَى عَنْ مُحَمَّدِ بْنِ الْحَنَفِيَّةِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: الرَّجُلُ أَحَقُّ بِمَالِ وَلَدِهِ إِذَا كَانَ صَغِيرًا فَإِذَا كَبُرَ وَاحْتَازَ مَالَهُ فَهُوَ أَحَقُّ بِهِ - إِسْرَائِيلُ ضَعِيفٌ.

Abu Muhammad said: Ibn Sirin, al-Nakha’i, al-Zuhri, Mujahid, and Jabir ibn Zayd state: “We say in all matters except eating specifically. The father and mother may eat from the child’s property wherever they find it, whether at home or elsewhere, only that. Then they have nothing else, nor any legal authority over anything of his property whatsoever.” by emancipation, nor by dower, nor by collateral, unless they are both poor, in which case the poor parent may take from the child’s wealth what they need for clothing, food, housing, service, and only what they both require.

قَالَ أَبُو مُحَمَّدٍ: يَقُولُ ابْنُ سِيرِينَ، وَالنَّخَعِيُّ، وَالزُّهْرِيُّ، وَمُجَاهِدٌ، وَجَابِرُ بْنُ زَيْدٍ، نَقُولُ فِي كُلِّ شَيْءٍ إِلَّا فِي الْأَكْلِ خَاصَّةً فَإِنَّ لِلْأَبِ وَالْأُمِّ أَنْ يَأْكُلَا مِنْ مَالِ الْوَلَدِ حَيْثُ وَجَدَاهُ مِنْ بَيْتٍ أَوْ غَيْرِ بَيْتٍ فَقَطْ - ثُمَّ لَا شَيْءَ لَهُمَا، وَلَا حُكْمَ فِي شَيْءٍ مِنْ مَالِهِ، لَا بِعِتْقٍ، وَلَا بِإِصْدَاقٍ، وَلَا بِارْتِهَانٍ، إِلَّا إِنْ كَانَا فَقِيرَيْنِ، فَيَأْخُذُ الْفَقِيرُ مِنْهُمَا مَا احْتَاجَ مِنْ مَالِ وَلَدِهِ مِنْ كِسْوَةٍ، وَأَكْلٍ، وَسُكْنَى، وَخِدْمَةٍ، وَمَا احْتَاجَا إِلَيْهِ فَقَطْ.

L19176 As for the child, he may eat from his father’s house and his mother’s house as much as he wishes without their permission, but he may not eat anything from other households, as the revealed texts have stated. He must not transgress the limits set by Allah. If he is in need, he may also take, as we have stated regarding the parents, in accordance with the verse of Allah, the Exalted: “And do good to parents and to near relatives” (4:36).[10]

وَأَمَّا الْوَلَدُ فَيَأْكُلُ مِنْ بَيْتِ أَبِيهِ، وَبَيْتِ أُمِّهِ مَا شَاءَ بِغَيْرِ إِذْنِهِمَا، وَلَا يَأْكُلُ مِنْ غَيْرِ الْبَيْتِ شَيْئًا، كَمَا جَاءَتْ النُّصُوصُ، لَا يَتَعَدَّى حُدُودَ اللَّهِ، فَإِنْ احْتَاجَ أَخَذَ أَيْضًا كَمَا قُلْنَا فِي الْوَالِدَيْنِ لِقَوْلِ اللَّهِ تَعَالَى: {وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَى} [النساء: ٣٦]

L19177 Then, the prescribed penalties and legal rulings are incumbent upon the father concerning his son’s female slave and his son’s property, and incumbent upon the son concerning his father’s female slave, his mother’s female slave, and their property - the same as those between two strangers.

ثُمَّ الْحُدُودُ، وَالْأَحْكَامُ لَازِمَةٌ لِلْأَبِ فِي جَارِيَةِ وَلَدِهِ، وَفِي مَالِ وَلَدِهِ، وَلَازِمَةٌ لِلِابْنِ فِي جَارِيَةِ أَبِيهِ، وَأُمِّهِ، وَمَالِهِمَا، كَمَا هِيَ فِيمَا بَيْنَ الْأَجْنَبِيِّينَ سَوَاءً.

L19178 It is astonishing that the Ḥanafīs and Mālikīs vehemently condemn disagreement with the Companion when it aligns with their whims—despite no dissenter among their own scholars being known—yet falsely declare it

وَالْعَجَبُ أَنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ يُشَنِّعُونَ خِلَافَ الصَّاحِبِ لَا يُعْرَفُ لَهُ مِنْهُمْ مُخَالِفٌ إِذَا وَافَقَ شَهَوَاتِهِمْ، وَيَجْعَلُونَهُ إِجْمَاعًا وَيَكْذِبُونَ فِي ذَلِكَ. وَأَقْرَبُ ذَلِكَ: مَا ذَكَرْنَا مِنْ

[10] **Qur’an references (L19176):** Qur’an 4:36 (An-Nisa).

a consensus. The clearest example is their claim of the Companions' consensus on liability for pledged collateral, though only inauthentic narrations attributed solely to ʿUmar, his son, and ʿAlī exist.

L19179 A narration has been authentically established from ʿAlī regarding the waiver of compensation if a calamity occurs. However, they do not acknowledge [this ruling] here, despite what has been authentically established from ʿĀ'ishah, Anas, and Ibn ʿAbbās.

L19180 It has been narrated from Ali and Ibn Masʿud—with no dissenting opinion known from the Companions, may Allah be pleased with them—that their position is recognized as a foundational proof. They do not consider any [opposing opinion] except a narration from Umar. We have narrated it through the chain of Shuʿbah from Abu Bishr from Muhammad ibn Qudamah al-Hanafi from a man among their group: A man disputed with his father before Umar ibn al-Khattab regarding property his father had taken for him. Umar said, "As for what remains in his possession, he must return it. But as for what he has consumed, there is no obligation upon him."

L19181–19183 They have also contradicted this, though it is invalid, for it originates from an unknown narrator. Is this not the most astounding marvel? It is something the modest should dread and the devout should discern. If it is said: "You claim to uphold every authentic narration from the Prophet (peace be upon him), so why do you permit abandoning his established saying: 'You and your wealth are for your father'?" We reply: May Allah grant us refuge from abandoning any authentic narration from him (peace be upon him), even if we were besieged from between the two seas, unless its abrogation is established—and this narration is abrogated, without doubt—for Allah, the Almighty, has decreed [so]. By the inheritance of the parents, the husband, the wife, the sons, and the daughters from the child's estate upon death; and He permitted in the Quran for every owner of a female slave to have intercourse with her by his right hand's possession, and prohibited intercourse for those who do not own the slaves, as stated in His words, the Exalted: {Except with their spouses or those their right hands possess, for indeed, they are not to be blamed} [Al-Mu'minun: 6] {But whoever seeks beyond that, those are the

دَعْوَى الْحَنَفِيِّينَ إِجْمَاعُ الصَّحَابَةِ عَلَى تَضْمِينِ الرَّهْنِ، وَلَيْسَ مِنْهُ إِلَّا رِوَايَاتٌ لَا تَصِحُّ عَنْ عُمَرَ، وَابْنِهِ، وَعَلِيٍّ فَقَطْ.

وَقَدْ صَحَّتْ عَنْ عَلِيٍّ رِوَايَةٌ بِإِسْقَاطِ التَّضْمِينِ إِذَا أَصَابَتْهُ جَائِحَةٌ، ثُمَّ لَا يَرَوْنَ هَاهُنَا مَا قَدْ صَحَّ عَنْ عَائِشَةَ وَأَنَسٍ، وَابْنِ عَبَّاسٍ.

وَرُوِيَ عَنْ عَلِيٍّ وَابْنِ مَسْعُودٍ لَا مُخَالِفَ لَهُمْ يُعْرَفُ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - حُجَّةٌ أَصْلًا، وَلَا يَلْتَفِتُونَ إِلَيْهِ، إِلَّا رِوَايَةً عَنْ عُمَرَ رُوِّينَاهَا مِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي بِشْرٍ عَنْ مُحَمَّدِ بْنِ قُدَامَةَ الْحَنَفِيِّ عَنْ رَجُلٍ مِنْهُمْ: أَنَّ رَجُلًا خَاصَمَ أَبَاهُ إِلَى عُمَرَ بْنِ الْخَطَّابِ فِي مَالٍ أَخَذَهُ لَهُ أَبُوهُ؟ فَقَالَ عُمَرُ: أَمَّا مَا كَانَ فِي يَدِهِ فَإِنَّهُ يَرُدُّهُ، وَأَمَّا مَا اسْتَهْلَكَ فَلَيْسَ عَلَيْهِ شَيْءٌ.

وَهُمْ قَدْ خَالَفُوا هَذَا أَيْضًا، مَعَ أَنَّهَا لَا تَصِحُّ، لِأَنَّهَا عَمَّنْ لَا يَدْرِي مَنْ هُوَ أَلَيْسَ هَذَا مِنْ أَعْجَبِ الْعَجَبِ؟ وَمِمَّا يَنْبَغِي لِذِي الْحَيَاءِ أَنْ يَهَابَهُ، وَلِذِي الدِّينِ أَنْ يُفَرِّقَهُ. فَإِنْ قِيلَ: فَأَنْتُمُ الْقَائِلُونَ بِكُلِّ مَا صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلِمَ اسْتَحْلَلْتُمْ تَرْكَ الثَّابِتِ عَنْهُ مِنْ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «أَنْتَ وَمَالُكَ لِأَبِيكَ» ؟ قُلْنَا: يُعِيذُنَا اللَّهُ مِنْ أَنْ نَتْرُكَ خَبَرًا صَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ -، وَلَوْ أُجْلِبَ عَلَيْنَا مِنْ بَيْنِ الْبَحْرَيْنِ إِلَّا أَنْ يَصِحَّ نَسْخُهُ - وَهَذَا الْخَبَرُ مَنْسُوخٌ - لَا شَكَّ فِيهِ - لِأَنَّ اللَّهَ عَزَّ وَجَلَّ حَكَمَ بِمِيرَاثِ الْأَبَوَيْنِ، وَالزَّوْجِ، وَالزَّوْجَةِ، وَالْبَنِينَ، وَالْبَنَاتِ، مِنْ مَالِ الْوَلَدِ إِذَا مَاتَ، وَأَبَاحَ فِي الْقُرْآنِ لِكُلِّ مَالِكِ أَمَةٍ وَطْأَهَا بِمِلْكِ يَمِينِهِ، وَحَرَّمَهَا عَلَى مَنْ لَا يَمْلِكُهَا بِقَوْلِهِ تَعَالَى: {إِلا عَلَى أَزْوَاجِهِمْ أَوْ

transgressors} [Al-Mu'minun: 7]. Thus, this ruling encompasses those who have a father and those who do not.[11]

مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] {فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧] فَدَخَلَ فِي هَذَا مَنْ لَهُ وَالِدٌ، وَمَنْ لَا وَالِدَ لَهُ.

L19184 It is established that the child's property belongs to him with certainty, not to his parents, and they have no right to it except what the text has specified as we have mentioned—such as sustenance or during necessity alone. If the child's property belonged to the parent, neither the child's wife, nor the daughter's husband, nor their children would inherit anything from it, since it would be the property of a living person. Nor would it ever be permissible for one who has a living father to have sexual relations with his female slave, for she would be considered his father's property.

فَصَحَّ أَنَّ مَالَ الْوَلَدِ لَهُ بِيَقِينٍ، لَا لِأَبَوَيْهِ، وَلَا حَقَّ لَهُمَا فِيهِ إِلَّا مَا جَاءَ بِهِ النَّصُّ مِمَّا ذَكَرْنَا: مِنَ الْأَكْلِ، أَوْ عِنْدَ الْحَاجَةِ فَقَطْ. وَلَوْ كَانَ مَالُ الْوَلَدِ لِلْوَالِدِ لَمَا وَرِثَتْ زَوْجَةُ الْوَلَدِ، وَلَا زَوْجُ الْبِنْتِ، وَلَا أَوْلَادُهُمَا مِنْ ذَلِكَ شَيْئًا، لِأَنَّهُ مَالٌ لِإِنْسَانٍ حَيٍّ، وَلَا كَانَ يَحِلُّ لِذِي وَالِدٍ أَنْ يَطَأَ جَارِيَتَهُ أَصْلًا، لِأَنَّهَا لِأَبِيهِ كَانَتْ تَكُونُ.

L19185 The continued validity of these two rulings until the Day of Judgment—established and unabrogated—confirms that this narration is abrogated. Likewise, it is definitively established by textual evidence and certain scholarly consensus that whoever owns both a female slave and a male slave who each have parents, the ownership of both belongs to their master, not to their fathers.

فَصَحَّ بِوُرُودِ هَذَيْنِ الْحُكْمَيْنِ وَبَقَائِهِمَا إِلَى يَوْمِ الْقِيَامَةِ ثَابِتَيْنِ غَيْرَ مَنْسُوخَيْنِ: أَنَّ ذَلِكَ الْخَبَرَ مَنْسُوخٌ، وَكَذَلِكَ أَيْضًا صَحَّ بِالنَّصِّ، وَالْإِجْمَاعِ الْمُتَيَقَّنِ: أَنَّ مَنْ مَلَكَ أَمَةً، أَوْ عَبْدًا لَهُمَا وَالِدٌ فَإِنَّ مِلْكَهُمَا لِمَالِكِهِمَا، لَا لِأَبِيهِمَا.

L19186 It has also been validated that his statement—Peace be upon him—"Indeed, it is for his father" is abrogated, and the difficulty has been resolved. Praise be to Allah—this is among what they used the narration as evidence, yet they contradicted the very same narration itself.

فَصَحَّ أَيْضًا: أَنَّ قَوْلَهُ - عَلَيْهِ السَّلَامُ -: «إِنَّهُ لِأَبِيهِ» مَنْسُوخٌ، وَارْتَفَعَ الْإِشْكَالُ وَالْحَمْدُ لِلَّهِ - وَهَذَا مِمَّا احْتَجُّوا بِهِ بِالْأَثَرِ وَخَالَفُوا ذَلِكَ الْأَثَرَ نَفْسَهُ.

L19187 As for when a person pledges an item belonging to another with its owner's permission, the pledged item cannot be released from its pawned status except through its exit from the pawner's ownership, its destruction, its substantial alteration until the legal status it held at the time of pledging is nullified, or by settling the debt for which it was pledged. Any obligation imposed on a third party toward the pawner concerning this pledged item—all of this constitutes a condition not found in the Book of Allah the Exalted, rendering it void. The pawner has the right to reclaim the item whenever he wishes, and the pledge is invalid because it lacks the legal rulings applicable

وَأَمَّا رَهْنُ الْمَرْءِ السِّلْعَةَ تَكُونُ لِغَيْرِهِ بِإِذْنِ صَاحِبِهَا فَإِنَّ الرَّهْنَ لَا يَجُوزُ إِخْرَاجُهُ عَنِ الِارْتِهَانِ إِلَّا بِخُرُوجِهِ عَنْ مِلْكِ الرَّاهِنِ، أَوْ بِهَلَاكِهِ، أَوْ بِاسْتِحَالَتِهِ، حَتَّى يَسْقُطَ عَنْهُ الِاسْمُ الَّذِي كَانَ عَلَيْهِ حِينَ رُهِنَ، أَوْ بِقَضَاءِ الْحَقِّ الَّذِي رُهِنَ عَنْهُ، فَالْتِزَامُ غَيْرِ الرَّاهِنِ لِلرَّاهِنِ - هَذَا كُلُّهُ فِي سِلْعَتِهِ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، فَهُوَ بَاطِلٌ، وَلَهُ أَخْذُ سِلْعَتِهِ مَتَى شَاءَ فَالرَّهْنُ بَاطِلٌ لِأَنَّهُ لَيْسَ لَهُ حُكْمُ الرُّهُونِ فِيمَا ذَكَرْنَا فَلَيْسَ رَهْنًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[11] **Qur'an references (L19181):** Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun); Qur'an 70:31 (Al-Ma'arij).

to valid pledges in the circumstances we described—hence, it is not a valid pledge. Success comes solely from Allah the Exalted.

L19188–19189 **An issue concerning the pledge when it is rightfully claimed in whole or in part.**

L19190 Issue:

L19191 If the collateral, or part of it, is invalidated, the entire transaction becomes void, since they conditioned the transaction's validity on the collateral's validity. They never entered into that credit transaction except on the condition of the collateral's validity, and since this collateral has no validity, that credit transaction was never valid.

L19192 And with Allah, the Exalted, is success.

L19193 **A juridical question regarding a pledge involving a group held in the custody of a single individual.**

L19194 1224 - Issue:

L19195 If a group pledges collateral they own to a single individual, or a single individual pledges collateral to a group, then whichever member of the group settles the debt owed, their right over the collateral is released from the pledge. The shares of their co-owners remain as collateral proportionate to their respective shares.

L19196 Similarly, if one member of the group fulfills his right in part but not in full, the creditor's right to the collateral ceases, his share of the collateral reverts to the pledgor, and the shares of his partners remain pledged according to their respective obligations. This is based on the words of Allah, the Exalted: {No soul earns except against itself, and no bearer of burdens will bear the burden of another} [Al-An'ām 6:164]. Thus, it is correct that for each one of them—and success comes from Allah, the Exalted.[12]

[12]**Qur'an references (L19196):** Qur'an 6:164 (Al-An'am).

[مَسْأَلَةٌ الرَّهْنُ إِذَا اُسْتُحِقَّ كُلُّهُ أَوْ بَعْضُهُ]

مَسْأَلَةٌ:

وَإِذَا اُسْتُحِقَّ الرَّهْنُ، أَوْ بَعْضُهُ: بَطَلَتْ الصَّفْقَةُ كُلُّهَا، لِأَنَّهُمَا تَعَاقَدَا صِحَّتَهَا بِصِحَّةِ الرَّهْنِ، وَلَمْ يَتَعَاقَدَا قَطُّ تِلْكَ الْمُدَايَنَةَ إلَّا عَلَى صِحَّةِ الرَّهْنِ، وَذَلِكَ الرَّهْنُ لَا صِحَّةَ لَهُ، تِلْكَ الْمُدَايَنَةُ لَمْ تَصِحَّ قَطُّ.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ رَهْن جَمَاعَة عِنْدَ وَاحِدٍ]

١٢٢٤ - مَسْأَلَةٌ:

وَإِذَا رَهَنَ جَمَاعَةٌ رَهْنًا هُوَ لَهُمْ عِنْدَ وَاحِدٍ، أَوْ رَهَنَ وَاحِدٌ عِنْدَ جَمَاعَةٍ، فَأَيُّ الْجَمَاعَةِ قَضَى مَا عَلَيْهِ خَرَجَ حَقُّهُ مِنْ ذَلِكَ الرَّهْنِ عَنْ الِارْتِهَانِ، وَبَقِيَ نَصِيبُ شُرَكَائِهِ رَهْنًا بِحِسَبِهِ.

وَكَذَلِكَ إنْ قَضَى الْوَاحِدُ بَعْضَ الْجَمَاعَةِ حَقَّهُ دُونَ بَعْضٍ فَقَدْ سَقَطَ حَقُّ الْمَقْضِيِّ فِي الِارْتِهَانِ، وَرَجَعَتْ حِصَّتُهُ مِنْ الرَّهْنِ إلَى الرَّاهِنِ، وَبَقِيَتْ حِصَصُ شُرَكَائِهِ رَهْنًا بِحِسَبِهَا، لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] فَصَحَّ أَنَّ لِكُلِّ وَاحِدٍ مِنْهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا حَقَّ لِلْمُرْتَهِنِ فِي شَيْءٍ مِنْ رَقَبَةِ الرَّهْنِ]

Issue: The pledgee holds no right whatsoever to the principal asset of the pledge.

1225: Issue:

The pledgee has no right to any part of the pledged asset. If the pledged asset is a female slave and he has intercourse with her, he is an adulterer subject to the ḥadd punishment. That child is enslaved to the pledgor, based on the Prophet's statement—peace be upon him: "The child belongs to the marital bed, and for the fornicator is the stone." There is no disagreement that the female slave is not a lawful spouse for the pledgee, nor does he hold lawful ownership by right hand over her. Therefore, he is both a transgressor and a fornicator.

Chapter on collateral of dinars and dirhams

1226 - Issue:

The collateralization of dinars and dirhams is permissible, whether minted or unminted.

Mālik said: It is not permissible unless it is minted—a view we do not know to have been held by anyone before him. If there is fear of their being used, this is indeed a fear applicable to all pledged items without distinction, especially considering his statement that dinars and dirhams are not uniquely specified. For if a man were to seize a dirham or dinar, he would not be compelled to return those exact coins even if they remain in his possession—he need only repay their equivalent.

This is truly remarkable, given his statement about the natural disposition of both in the context of collateral. Success is through Allah, the Exalted. Completed is the Book of Collateral, and all praise is due to Allah, Lord of the worlds.[13]

[13] **Qur'an references (L19204):** Qur'an 37:182 (As-Saffat).

١٢٢٥ - مَسْأَلَةٌ:

وَلَا حَقَّ لِلْمُرْتَهِنِ فِي شَيْءٍ مِنْ رَقَبَةِ الرَّهْنِ، فَإِنْ كَانَتْ أَمَةً فَوَطِئَهَا فَهُوَ زَانٍ وَعَلَيْهِ الْحَدُّ، وَذَلِكَ الْوَلَدُ رَقِيقٌ لِلرَّاهِنِ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ» فَالْأَمَةُ بِلَا خِلَافٍ لَيْسَتْ فِرَاشًا لِلْمُرْتَهِنِ، وَلَا مِلْكَ يَمِينٍ لَهُ، فَهُوَ مُعْتَدٍ عَاهِرٌ "

[مَسْأَلَةٌ رَهْنُ الدَّنَانِيرِ وَالدَّرَاهِمِ]

١٢٢٦ - مَسْأَلَةٌ:

وَرَهْنُ الدَّنَانِيرِ وَالدَّرَاهِمِ جَائِزٌ - طُبِعَتْ أَوْ لَمْ تُطْبَعْ.

قَالَ مَالِكٌ: لَا يَجُوزُ إلَّا أَنْ تُطْبَعَ - وَهَذَا قَوْلٌ لَا نَعْلَمُهُ لِأَحَدٍ قَبْلَهُ، وَلَئِنْ كَانَ يُخَافُ انْتِفَاعٌ بِهَا فَإِنَّ ذَلِكَ لَمَخُوفٌ عَلَى كُلِّ مَا يُرْهَنُ، وَلَا فَرْقَ وَلَا سِيَّمَا مَعَ قَوْلِهِ: إنَّ الدَّنَانِيرَ وَالدَّرَاهِمَ لَا تَتَعَيَّنُ، وَإِنَّ امْرَأً لَوْ غَصَبَ دِرْهَمًا أَوْ دِينَارًا لَمْ يُقْضَ عَلَيْهِ بِرَدِّهِمَا بِعَيْنِهِمَا، وَإِنْ كَانَا حَاضِرَيْنِ فِي يَدِهِ، وَإِنَّمَا عَلَيْهِ مِثْلُهُمَا.

وَهَذَا عَجَبٌ جِدًّا مَعَ قَوْلِهِ فِي طَبْعِهِمَا فِي الرَّهْنِ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. تَمَّ " كِتَابُ الرَّهْنِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.



AL-MUHALLA

كِتَابُ الْحَوَالَةِ

The Book of Transfer of Debt (Hawalah)

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[Book of Hawala] [Legal Case: Hawala upon a Solvent]

[كِتَابُ الْحَوَالَةِ] [مَسْأَلَةٌ الْحَوَالَةُ عَلَى مَلِيءٍ]

1227 - Issue:

١٢٢٧ - مَسْأَلَةٌ:

It has been narrated to us through the chains of Al-Bukhārī and Muslim. Al-Bukhārī said: Narrated by ʿAbdullāh ibn Yūsuf, from Mālik, from Abū al-Zinād, from al-Aʿraj. Muslim said: Narrated by Ibn Rāfiʿ, from ʿAbd al-Razzāq, from Maʿmar, from Hammām ibn Munabbiḥ. Then the chains of al-Aʿraj and Hishām converge, both narrating from Abū Hurayrah, from the Messenger of Allah (peace be upon him), who said: "The delay of the wealthy is oppression. If one of you is pursued regarding a solvent party, then let him comply."[1]

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ، وَمُسْلِمٍ، قَالَ الْبُخَارِيُّ: نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا مَالِكٌ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ، وَقَالَ مُسْلِمٌ: نا ابْنُ رَافِعٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ - ثُمَّ اتَّفَقَ الْأَعْرَجُ، وَهِشَامٌ، وَكِلَاهُمَا عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «مَطْلُ الْغَنِيِّ ظُلْمٌ وَإِذَا أُتْبِعَ أَحَدُكُمْ عَلَى مَلِيءٍ فَلْيَتْبَعْ» .

It has been authentically reported from the Prophet—peace and blessings of Allah be upon him—as we will mention, Allah willing, in the "Book of Sales" with its chain of narration, that he said: "When you purchase a commodity, do not sell it until you take possession of it." It is established from these two texts that anyone who holds a right against another party arising from a matter other than a sale—such as liability for usurpation or transgression in any form, a prepaid sale (*salam*) in which payment was made, a loan, a settlement, a lease (*ijārah*), dowry, a manumission contract (*kitābah*), or suretyship—and transfers this right—via one of the aforementioned means—to someone who holds a claim against them arising from a non-sale transaction, such as those enumerated here.

وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا سَنَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى فِي " كِتَابِ الْبُيُوعِ " بِإِسْنَادِهِ أَنَّهُ قَالَ: «إذَا ابْتَعْتَ بَيْعًا فَلَا تَبِعْهُ حَتَّى تَقْبِضَهُ» . فَوَجَبَ مِنْ هَذَيْنِ النَّصَّيْنِ: أَنَّ كُلَّ مَنْ لَهُ عِنْدَ آخَرَ حَقٌّ مِنْ غَيْرِ الْبَيْعِ لَكِنْ مِنْ ضَمَانِ غَصْبٍ أَوْ تَعَدٍّ بِوَجْهِ مَا، أَوْ مِنْ سَلَمٍ سَلَّمَ فِيهِ، أَوْ مِنْ قَرْضٍ، أَوْ مِنْ صُلْحٍ، أَوْ إجَارَةٍ، أَوْ صَدَاقٍ، أَوْ مِنْ كِتَابَةٍ، أَوْ مِنْ ضَمَانٍ، فَأَحَالَهُ بِهِ عَلَى مَنْ لَهُ عِنْدَهُ حَقٌّ مِنْ غَيْرِ الْبَيْعِ، لَكِنْ بِأَحَدِ هَذِهِ الْوُجُوهِ الْمَذْكُورَةِ.

It is irrelevant whether the two rights arise from a single legal consideration or two distinct considerations, provided the obligated party fulfills the claim against him promptly without delay. Therefore, an obligation is incumbent upon the transferee to have the liability transferred to him, and he must be compelled to this effect, thereby absolving the transferor from what had been incumbent upon him.

وَلَا نُبَالِي مِنْ وَجْهٍ وَاحِدٍ كَانَ الْحَقَّانِ، أَوْ مِنْ وَجْهَيْنِ مُخْتَلِفَيْنِ، وَكَانَ الْمُحَالُ عَلَيْهِ يُوفِيهِ حَقَّهُ مِنْ وَقْتِهِ وَلَا يَمْطُلُهُ: فَفَرْضٌ عَلَى الَّذِي أُحِيلَ أَنْ يَسْتَحِيلَ عَلَيْهِ، وَيُجْبَرَ عَلَى ذَلِكَ، وَيَبْرَأَ الْمُحِيلُ مِمَّا كَانَ عَلَيْهِ.

The one who transferred the debt has no recourse to reclaim any portion of

وَلَا رُجُوعَ لِلَّذِي أُحِيلَ عَلَى الَّذِي أَحَالَهُ بِشَيْءٍ مِنْ ذَلِكَ الْحَقِّ - انْتَصَفَ، أَوْ لَمْ يَنْتَصِفْ - أَعْسَرَ الْمُحَالُ عَلَيْهِ إثْرَ الْإِحَالَةِ عَلَيْهِ أَمْ لَمْ يُعْسِرْ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى

[1] **Hadith references (L19208):** Sunan Abi Dawud 3345; Sahih Muslim 1564a; Sunan an-Nasai 4691.

اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَهُ بِاتِّبَاعِ الْمُحَالِ عَلَيْهِ، وَلَا يَجُوزُ لَهُ اتِّبَاعُ غَيْرِهِ، فَإِنْ غَرَّهُ وَأَحَالَهُ عَلَى غَيْرِ مَلِيءٍ - وَالْمُحِيلُ يَدْرِي أَنَّهُ غَيْرُ مَلِيءٍ أَوْ لَا يَدْرِي -: فَهُوَ عَمَلٌ فَاسِدٌ، وَحَقُّهُ بَاقٍ عَلَى الْمُحِيلِ كَمَا كَانَ، لِأَنَّهُ لَمْ يُحِلْهُ عَلَى مَلِيءٍ، وَلَا تَجُوزُ الْحَوَالَةُ إِلَّا عَلَى مَلِيءٍ بِنَصِّ الْخَبَرِ.

that right from the party he transferred it to—whether half was received or not, and whether the transferee became insolvent following the transfer or not—because the Messenger of Allah (peace and blessings be upon him) commanded him to pursue the transferee exclusively, and he is not permitted to pursue anyone else. If the transferor deceived him by transferring the debt to an insolvent party—whether the transferor knew of the insolvency or not—the transaction is invalid, and the debt remains binding on the transferor as it originally was, since he did not transfer it to a solvent party. Debt transfer is impermissible except to a solvent debtor, as explicitly stated in the hadith.

L19212–19213 وَقَالَ الشَّافِعِيُّ: لَا يَرْجِعُ الْمُحِيلُ فِي كُلِّ ذَلِكَ - وَهَذَا خَطَأٌ لِمَا ذَكَرْنَاهُ وَقَالَ أَبُو حَنِيفَةَ: وَمَالِكٌ كَقَوْلِنَا، فَإِنْ كَانَ أَحَدُ الْحَقَّيْنِ مِنْ بَيْعٍ وَالْآخَرُ مِنْ غَيْرِ بَيْعٍ، نُظِرَ: فَإِنْ كَانَ الْحَقُّ عَلَى الْمُحِيلِ مِنْ غَيْرِ بَيْعٍ، وَكَانَ حَقُّ الْمُحِيلِ عَلَى الْمُحَالِ عَلَيْهِ مِنْ بَيْعٍ أَوْ غَيْرِ بَيْعٍ: جَازَتْ الْحَوَالَةُ.

Al-Shāfiʿī said: The transferor cannot revoke in any of these cases—but this is erroneous due to what we have previously established. Abū Ḥanīfah said: And Mālik holds the same position as us. If one of the two rights originates from a sale and the other from a non-sale, the matter is examined: If the right against the transferor arises from a non-sale, while the transferor's right against the transferee-debtor originates from a sale or non-sale, then the ḥawālah is valid.

L19214 فَإِنْ كَانَ الْحَقُّ عَلَى الْمُحِيلِ مِنْ بَيْعٍ لَمْ يَجُزْ إِلَّا بِوَجْهِ التَّوْكِيلِ فَيُوَكِّلُهُ عَلَى قَبْضِ حَقِّهِ قَبْلَهُ، فَإِنْ قَبَضَهُ لِلْمُوَكَّلِ لَهُ، فَحِينَ مَصِيرِهِ بِيَدِهِ صَارَ قَابِضًا ذَلِكَ الْحَقَّ لِنَفْسِهِ، وَبَرِئَ الْمُحِيلُ.

If the right against the transferor stems from a sale, it becomes valid solely through agency. The transferor therefore appoints an agent to collect his right prior to the transfer. If the agent collects it on behalf of the principal, then when the right comes into his possession, he effectively acquires it for himself, thereby discharging the transferor from liability.

L19215 وَإِنْ لَمْ يَقْدِرْ عَلَى قَبْضِهِ لِمَانِعٍ مَا، أَيُّ مَانِعٍ كَانَ؟ رَجَعَ الْمُحِيلُ بِحَقِّهِ، لِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ مَا ابْتَعْت حَتَّى تَقْبِضَهُ.

If he is unable to take possession of it due to any obstacle—whatever the obstacle may be—the transferring party regains his right, based on the Prophet's prohibition (peace and blessings be upon him) against selling what you have bought until you take possession of it.

L19216 وَأَمَّا بَرَاءَةُ ذِمَّةِ الْمُوَكِّلِ إِذَا قَبَضَ الْوَكِيلُ الْحَقَّ فَلِأَنَّهُ مَأْمُورٌ بِأَنْ يَقْضِيَهُ لِنَفْسِهِ إِذَا صَارَ بِيَدِهِ، فَإِنْ فَعَلَ فَقَدْ اسْتَوْفَى حَقَّهُ، وَإِنْ لَمْ يَفْعَلْ فَقَدْ اعْتَدَى إِذْ ضَيَّعَ مَالَ مُوَكِّلٍ، فَلَزِمَهُ ضَمَانُهُ بِالتَّضْيِيعِ، [فَصَارَ ضَمَانُهُ بِالتَّضْيِيعِ] فَصَارَ مِثْلُهُ عَلَيْهِ لِمُوَكِّلِهِ فِي ذِمَّتِهِ.

As for the absolution of the principal's liability when the agent receives the due, this is because the agent is instructed to discharge it on his own behalf once it comes into his possession. If he does so, he has fully obtained his right. If he fails to do so, he has transgressed by negligently dissipating the principal's property, thereby becoming liable for its compensation due to negligence. Consequently, its monetary equivalent becomes a personal liability upon him toward his principal.

L19217 Abu Hanifa said: If the transferee denies the transfer, no evidence is established against him, and he swears an oath, the claimant to whom the debt was transferred may recover his right from the transferor. The same ruling applies if the transferee dies leaving no property. Abu Yusuf and Muhammad said: Similarly, if the transferee becomes insolvent – the judge adjudicating the transferee's case must also release him from prison.

وَقَالَ أَبُو حَنِيفَةَ: إنْ جَحَدَ الْمُحَالُ عَلَيْهِ الْحَوَالَةَ وَلَمْ تَقُمْ عَلَيْهِ بَيِّنَةٌ وَحَلَفَ: رَجَعَ الَّذِي أُحِيلَ عَلَى الْمُحِيلِ بِحَقِّهِ، وَكَذَلِكَ إنْ مَاتَ الْمُحَالُ عَلَيْهِ وَلَا مَالَ لَهُ، وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدٌ: وَكَذَلِكَ إذَا أَفْلَسَ - الْقَاضِي الْمُحَالَ عَلَيْهِ وَأَطْلَقَهُ مِنْ السِّجْنِ أَيْضًا.

L19218 Abu Muhammad said: This is a corrupt opinion because it contradicts the command of the Messenger of Allah—peace and blessings of Allah be upon him—and because they unanimously agree with us that when the transfer of debt is validly executed, the claim is dropped from the transferor. Since they have acknowledged its dropping, it is invalid to reinstate a claim that has been dropped without a scriptural text mandating its revival nor a consensus requiring its revival. If they say: It has been reported from Uthman or he said regarding transfers of debt: "There is no immediate liability on the wealth of a Muslim."

قَالَ أَبُو مُحَمَّدٍ: هَذَا قَوْلٌ فَاسِدٌ لِمُخَالَفَتِهِ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلِأَنَّهُمْ مُجْمِعُونَ مَعَنَا عَلَى أَنَّ الْحَوَالَةَ إذَا صَحَّ أَمْرُهَا فَقَدْ سَقَطَ الْحَقُّ عَنْ الْمُحِيلِ، وَإِذْ قَدْ أَقَرُّوا بِسُقُوطِهِ فَمِنْ الْبَاطِلِ رُجُوعُ حَقٍّ قَدْ سَقَطَ بِغَيْرِ نَصٍّ يُوجِبُ رُجُوعَهُ، وَلَا إجْمَاعَ يُوجِبُ رُجُوعَهُ - فَإِنْ قَالُوا: قَدْ رُوِيَ عَنْ عُثْمَانَ أَوْ قَالَ فِي الْحَوَالَاتِ: لَيْسَ عَلَى مَالِ مُسْلِمٍ تَوًّا.

L19219 And via the chain of ʿAbd al-Razzāq—from Maʿmar or another narrator [in the chain] from Qatāda—from ʿAlī ibn Abī Ṭālib, who said regarding the guaranteed party: The creditor may not seek recourse unless the debtor becomes bankrupt or dies. This is the opinion of Shurayḥ, al-Ḥasan, al-Nakhaʿī, and al-Shaʿbī. All of them stated: If the debtor fails to settle justly, the creditor may seek recourse against the guarantor.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ أَوْ غَيْرِهِ عَنْهُ عَنْ قَتَادَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ فِي الَّذِي أُحِيلَ: لَا يَرْجِعُ صَاحِبُهُ إلَّا أَنْ يُفْلِسَ، أَوْ يَمُوتَ. وَهُوَ قَوْلُ شُرَيْحٍ، وَالْحَسَنِ، وَالنَّخَعِيِّ، وَالشَّعْبِيِّ، كُلُّهُمْ يَقُولُ: إنْ لَمْ يُنْصِفْهُ رَجَعَ عَلَى الْمُحِيلِ.

L19220 From Al-Hakam: There is no recourse against the transferor unless the transferee dies before the midpoint. Then does recourse revert to the transferor?

وَعَنْ الْحَكَمِ: لَا يَرْجِعُ عَلَى الْمُحِيلِ إلَّا أَنْ يَمُوتَ الْمُحَالُ عَلَيْهِ قَبْل أَنْ يَنْتَصِفَ، فَإِنَّهُ يَرْجِعُ إلَى الْمُحِيلِ؟

L19221–19222 We said: There is no valid proof for anyone apart from the Messenger of Allah - peace and blessings be upon him. How can this be, when we have received narrations through Ḥammād ibn Salamah's chain from Muḥammad ibn Isḥāq, from ʿAlī ibn ʿUbayd Allāh, from Saʿīd ibn al-Musayyab: Al-Musayyab's father had a debt of two thousand dirhams owed by a man, while another man held a debt of two thousand dirhams over ʿAlī ibn Abī Ṭālib. The debtor said to al-Musayyab: "I will assign my debt to you against ʿAlī, and you assign your debt to so-and-so against me." They proceeded, where-

قُلْنَا: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَيْفَ وَقَدْ رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إسْحَاقَ عَنْ عَلِيِّ بْنِ عُبَيْدِ اللَّهِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّهُ كَانَ لِأَبِيهِ الْمُسَيِّبِ دَيْنٌ عَلَى إنْسَانٍ أَلْفَا دِرْهَمٍ، وَلِرَجُلٍ آخَرَ عَلَى عَلِيِّ بْنِ أَبِي طَالِبٍ أَلْفَا دِرْهَمٍ، فَقَالَ ذَلِكَ الرَّجُلُ لِلْمُسَيِّبِ: أَنَا أُحِيلُك عَلَى عَلِيٍّ وَأَحِلْنِي أَنْتَ عَلَى فُلَانٍ،

upon al-Musayyab took half from ʿAlī. Subsequently, the wealth of the debtor to whom al-Musayyab had assigned the claim perished. When al-Musayyab informed ʿAlī ibn Abī Ṭālib of this, ʿAlī responded: "May Allah distance him!" This contradicts the narration from ʿUthmān and what we mentioned from ʿAlī, yet this account aligns with our position.

فَفَعَلَا فَانْتَصَفَ الْمُسَيِّبُ مِنْ عَلِيٍّ وَتَلِفَ مَالُ الَّذِي أَحَالَهُ الْمُسَيِّبُ عَلَيْهِ فَأَخْبَرَ الْمُسَيِّبُ بِذَلِكَ عَلِيَّ بْنَ أَبِي طَالِبٍ فَقَالَ لَهُ عَلِيٌّ: أَبْعَدَهُ اللَّهُ - فَهَذَا خِلَافُ الرِّوَايَةِ عَنْ عُثْمَانَ، وَالَّذِي ذَكَرْنَا عَنْ عَلِيٍّ، وَهَذِهِ مُوَافِقَةٌ لِقَوْلِنَا.

L19223 When the early scholars (Salaf) differ, none of what is narrated from them holds greater validity than another, by your agreement with us on this matter. We do not deem permissible the assignment of a claim to one who has no right to it, for this constitutes misappropriation of wealth. Only actions like those of Ali and Al-Musayyab—may Allah be pleased with them—regarding guarantees are valid in our view. If each of the two creditors guarantees what is owed by the other without stipulation, this becomes permissible, binding, and the right owed by each is shifted to the other.

وَإِذَا اخْتَلَفَ السَّلَفُ فَلَيْسَ بَعْضُ مَا رُوِيَ عَنْهُمْ بِأَوْلَى مِنْ بَعْضٍ بِاتِّفَاقِكُمْ مَعَنَا فِي ذَلِكَ وَلَسْنَا نَرَى إحَالَةَ مَنْ لَا حَقَّ لِلْمُحَالِ عِنْدَهُ، لِأَنَّهُ أَكْلُ مَالٍ بِالْبَاطِلِ: وَإِنَّمَا يَجُوزُ عِنْدَنَا مِثْلُ فِعْلِ عَلِيٍّ، وَالْمُسَيِّبِ - رَضِيَ اللَّهُ عَنْهُمَا - عَلَى الضَّمَانِ، فَإِنَّهُ إذَا ضَمِنَ كُلُّ وَاحِدٍ مِنْ الْغَرِيمَيْنِ مَا عَلَى الْآخَرِ مِنْ غَيْرِ شَرْطٍ جَازَ ذَلِكَ، وَلَزِمَ، وَتَحَوَّلَ الْحَقُّ الَّذِي عَلَى كُلِّ وَاحِدٍ مِنْهُمَا عَلَى الْآخَرِ.

L19224 Abu Hanifah and Malik said: The designated debtor cannot be compelled to accept the transfer of debt. They argued for this by stating: If compelling him were obligatory, it would also become obligatory if the designated debtor transferred the debt to another party for that subsequent party to be compelled to accept the transfer. Then, if that party transfers it to another, the latter would likewise be compelled to accept it - and this process would perpetuate indefinitely.

وَقَالَ أَبُو حَنِيفَةَ: وَمَالِكٌ: لَا يُجْبَرُ الْمُحَالُ عَلَى قَبُولِ الْحَوَالَةِ - وَاحْتَجُّوا فِي ذَلِكَ بِأَنْ قَالُوا: لَوْ وَجَبَ إجْبَارُهُ لَوَجَبَ أَيْضًا إذَا أَحَالَهُ الْمُحَالُ عَلَيْهِ عَلَى آخَرَ أَنْ يُجْبَرَ عَلَى اتِّبَاعِهِ، ثُمَّ إذَا أَحَالَهُ ذَلِكَ عَلَى آخَرَ أَنْ يُجْبَرَ أَيْضًا عَلَى اتِّبَاعِهِ، وَهَذَا أَبَدًا.

L19225 Abū Muḥammad said: This is an opposition to the command of the Messenger of Allah (peace and blessings be upon him), and this entails inherent issues. How, then, can their objection stand when it is itself invalid? For it is a delay by a wealthy debtor or a transfer of debt to an insolvent party. Delaying payment despite affluence is oppression, and transferring debt to an insolvent party was not commanded to be accepted. A transfer of debt applies only to one who expedites fair settlement through tangible action, not mere words; otherwise, it does not constitute a transfer according to the explicit wording of the Hadith.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ مُعَارَضَةٌ لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي هَذَا مَا فِيهِ، فَكَيْفَ وَالَّذِي اعْتَرَضُوا بِهِ فَاسِدٌ؟ لِأَنَّهُ مَطْلٌ مِنْ غَنِيٍّ، أَوْ حَوَالَةٌ عَلَى غَيْرِ مَلِيءٍ، وَمَطْلُ الْغَنِيِّ ظُلْمٌ، وَالْحَوَالَةُ عَلَى غَيْرِ مَلِيءٍ لَمْ يُؤْمَرْ بِأَنْ يَقْبَلَهَا، وَإِنَّمَا الْحَوَالَةُ عَلَى مَنْ يُعَجِّلُ الْإِنْصَافَ بِفِعْلِهِ لَا بِقَوْلِهِ، وَإِلَّا فَلَيْسَتْ حَوَالَةً بِنَصِّ الْحَدِيثِ

L19226 **Issue: The right of the assignor when it is established**

[مَسْأَلَةٌ حَقُّ الْمُحِيلِ إذَا ثَبَتَ عَلَى الْمُحَالِ عَلَيْهِ]

against the assignee.

1228 - Issue:

١٢٢٨ - مَسْأَلَةٌ:

If the right of the transferor against the transferee is established through the transferee's admission or through the testimony of just witnesses—even if the transferee denies it—then it constitutes a valid Ḥawalah.

وَإِذَا ثَبَتَ حَقُّ الْمُحِيلِ عَلَى الْمُحَالِ عَلَيْهِ بِإِقْرَارِهِ أَوْ بِبَيِّنَةِ عَدْلٍ، وَإِنْ كَانَ جَاحِدًا فَهِيَ حَوَالَةٌ صَحِيحَةٌ.

Malik said: "It is only valid if he admits to the right itself"—but this is an unsubstantiated assertion. Those who followed him argued: "What if the evidence is discredited, thereby voiding the right?" We replied: "He might retract his admission of that right and establish evidence that he had fulfilled it, thus nullifying the right." It is invalid to specify what the Messenger of Allah—peace and blessings be upon him—did not specify, using baseless opinions. "He does not speak from [his own] inclination" (53:3). "It is but a revelation revealed" (53:4). "And your Lord is never forgetful" (19:64).[2]

وَقَالَ مَالِكٌ: لَا تَجُوزُ إِلَّا بِإِقْرَارِهِ بِالْحَقِّ فَقَطْ - وَهَذِهِ دَعْوَى بِلَا بُرْهَانٍ وَاحْتَجَّ لَهُ مَنْ قَلَّدَهُ بِأَنَّهُ قَدْ تُجْرَحُ الْبَيِّنَةُ فَيَبْطُلُ الْحَقُّ؟ قُلْنَا: وَقَدْ يَرْجِعُ عَنْ إقْرَارِهِ بِذَلِكَ الْحَقِّ، وَيُقِيمُ بَيِّنَةً بِأَنَّهُ قَدْ كَانَ أَدَّاهُ، فَيَبْطُلُ الْحَقُّ - وَلَا يَجُوزُ تَخْصِيصُ مَا لَمْ يَخُصَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْآرَاءِ الْفَاسِدَةِ {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

A case concerning the transfer (Hawala) of a deferred debt to a deferred debt.

[مَسْأَلَةُ الْحَوَالَةُ بِالدَّيْنِ الْمُؤَجَّلِ عَلَى الدَّيْنِ الْمُؤَجَّلِ]

Question:

مَسْأَلَةٌ:

It is permissible to reassign a deferred debt to another deferred debt provided the new term matches the original duration precisely—neither extended nor shortened.

وَتَجُوزُ الْحَوَالَةُ بِالدَّيْنِ الْمُؤَجَّلِ عَلَى الدَّيْنِ الْمُؤَجَّلِ إلَى مِثْلِ أَجَلِهِ لَا إلَى أَبْعَدَ، وَلَا إلَى أَقْرَبَ

The transfer of debt is permissible when transferring a current debt onto another current debt. However, it is impermissible to transfer a current debt onto a term-deferred debt, a term-deferred debt onto a current debt, or a term-deferred debt onto another term-deferred debt with a differing stipulated term. This is because each such case necessitates deferring a current debt or enforcing the maturity of a term-deferred debt.

وَتَجُوزُ الْحَوَالَةُ بِالْحَالِ عَلَى الْحَالِ، وَلَا تَجُوزُ بِحَالِ عَلَى مُؤَجَّلٍ؛ وَلَا بِمُؤَجَّلِ عَلَى حَالٍ، وَلَا بِمُؤَجَّلِ عَلَى مُؤَجَّلٍ إلَى غَيْرِ أَجَلِهِ، لِأَنَّ فِي كُلِّ ذَلِكَ إيجَابُ تَأْجِيلِ حَالٍ أَوْ إيجَابِ حُلُولِ مُؤَجَّلٍ.

That is not permissible because neither a text nor Consensus obligated it.

وَلَا يَجُوزُ ذَلِكَ إذْ لَمْ يُوجِبْهُ نَصٌّ وَلَا إجْمَاعٌ.

[2] **Qur'an references (L19229):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 19:64 (Maryam).

L19236 As for substituting a deferred obligation with another deferred one to its term, there is no scriptural text or consensus prohibiting it. Thus, it falls under the ruling of the Prophet - peace be upon him -: "Whoever is pursued [for payment] regarding a solvent person should be directed to pursue him."

L19237 "The Chapter on Ḥawālah" has been concluded, and praise be to Allah, Lord of the worlds.

وَأَمَّا الْمُؤَجَّلُ بِالْمُؤَجَّلِ إلَى أَجَلِهِ فَلَمْ يَمْنَعْ مِنْهُ نَصٌّ وَلَا إجْمَاعٌ، فَهُوَ دَاخِلٌ فِي أَمْرِهِ - عَلَيْهِ السَّلَامُ -: «مَنْ أُتْبِعَ عَلَى مَلِيءٍ أَنْ يَتْبَعَهُ» .

تَمَّ " كِتَابُ الْحَوَالَةِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ



AL-MUHALLA

كِتَابُ الْكَفَالَةِ

The Book of Suretyship

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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Chapter on Suretyship Section: Definition of Suretyship

1230: Question

Al-Kafalah refers to surety (ḍamān), guarantee (zaʿāmah), contractual surety (qabālah), and assumption of liability (ḥamālah).

If someone holds a financial right against another—whether arising from sale, non-sale transaction, or any cause, immediate or deferred—regardless of the principal debtor being alive or deceased, and a person with no prior obligation to the debtor voluntarily guarantees this right with the free consent of both the guarantor and the claimant: the obligation is thereby lifted from the principal debtor and transferred to the guarantor, becoming irrevocably binding. The claimant may never demand repayment from the original debtor or their heirs—whether the debt is partially settled or not, under any circumstance. Likewise, the guarantor may never seek reimbursement from the original debtor or their heirs for anything at all he guaranteed—regardless of whether the debtor requested the guarantee—except in one scenario: if the debtor explicitly states, "Guarantee what this claimant holds against me, and when you discharge it on my behalf, it shall become a debt you hold against me." In this case, the guarantor may recover what he paid, as he has effectively borrowed from him what he paid on his behalf: thus, it becomes a valid loan.

As for our statement: Verily, the surety (al-kafālah) is the guarantee (al-ḍamān), the bearing of responsibility (al-ḥamālah), the assumption of liability (al-zaʿāmah), and the acceptance of obligation (al-qibālah). The guarantor (al-ḍāmin) is referred to as the assuming party (al-qabīl), the surety (al-kafīl), the liable party (al-zaʿīm), and the responsible bearer (al-ḥamīl). There is no disagreement in language and religious obligation regarding these terms.

As for the universal permissibility of surety in every right—whether arising

[كِتَابُ الْكَفَالَةِ] [مَسْأَلَةٌ تَعْرِيف الْكَفَالَة]

١٢٣٠ - مَسْأَلَةٌ:

الْكَفَالَةُ هِيَ الضَّمَانُ، وَهِيَ الزَّعَامَةُ، وَهِيَ الْقَبَالَةُ، وَهِيَ الْحَمَالَةُ.

فَمَنْ كَانَ لَهُ عَلَى آخَرَ حَقُّ مَالٍ مِنْ بَيْعٍ، أَوْ مِنْ غَيْرِ بَيْعٍ مِنْ أَيِّ وَجْهٍ كَانَ - حَالًّا أَوْ إلَى أَجَلٍ - سَوَاءٌ كَانَ الَّذِي عَلَيْهِ الْحَقُّ حَيًّا أَوْ مَيِّتًا فَضَمِنَ لَهُ ذَلِكَ الْحَقَّ إنْسَانٌ لَا شَيْءَ عَلَيْهِ لِلْمَضْمُونِ عَنْهُ بِطِيبِ نَفْسِهِ وَطِيبِ نَفْسِ الَّذِي لَهُ الْحَقُّ: فَقَدْ سَقَطَ ذَلِكَ الْحَقُّ عَنْ الَّذِي كَانَ عَلَيْهِ وَانْتَقَلَ إلَى الضَّامِنِ وَلَزِمَهُ بِكُلِّ حَالٍ - وَلَا يَجُوزُ لِلْمَضْمُونِ لَهُ أَنْ يَرْجِعَ عَلَى الْمَضْمُونِ عَنْهُ، وَلَا عَلَى وَرَثَتِهِ أَبَدًا بِشَيْءٍ مِنْ ذَلِكَ الْحَقِّ - انْتَصَفَ أَوْ لَمْ يَنْتَصِفْ - وَلَا بِحَالٍ مِنْ الْأَحْوَالِ - وَلَا يَرْجِعُ الضَّامِنُ عَلَى الْمَضْمُونِ عَنْهُ، وَلَا عَلَى وَرَثَتِهِ أَبَدًا بِشَيْءٍ مِمَّا ضَمِنَ عَنْهُ أَصْلًا - سَوَاءٌ رَغِبَ إلَيْهِ فِي أَنْ يَضْمَنَهُ عَنْهُ أَوْ لَمْ يَرْغَبْ إلَيْهِ فِي ذَلِكَ - إلَّا فِي وَجْهٍ وَاحِدٍ، وَهُوَ: أَنْ يَقُولَ الَّذِي عَلَيْهِ الْحَقُّ: اضْمَنْ عَنِّي مَا لِهَذَا عَلَيَّ فَإِذَا أَدَّيْت عَنِّي فَهُوَ دَيْنٌ لَك عَلَيَّ: فَهَاهُنَا يَرْجِعُ عَلَيْهِ بِمَا أَدَّى عَنْهُ لِأَنَّهُ اسْتَقْرَضَهُ مَا أَدَّى عَنْهُ: فَهُوَ قَرْضٌ صَحِيحٌ.

أَمَّا قَوْلُنَا: إنَّ الْكَفَالَةَ هِيَ الضَّمَانُ، وَالْحَمَالَةُ، وَالزَّعَامَةُ، وَالْقَبَالَةُ - وَالضَّامِنُ: هُوَ الْقَبِيلُ، وَالْكَفِيلُ، وَالزَّعِيمُ، وَالْحَمِيلُ، فَاللُّغَةُ، وَالدِّيَانَةُ لَا خِلَافَ فِيهِمَا فِي ذَلِكَ.

from a sale or otherwise—this is because it does not involve a sale at all, but is merely the transfer of a right.

وَأَمَّا عُمُومُ جَوَازِ الضَّمَانِ فِي كُلِّ حَقٍّ مِنْ بَيْعٍ أَوْ غَيْرِهِ، فَلِأَنَّهُ لَيْسَ فِيهِ بَيْعٌ أَصْلًا، وَإِنَّمَا هُوَ نَقْلُ حَقٍّ فَقَطْ.

L19245–19247 As for the permissibility of assuming liability without the consent of the party against whom liability is claimed, this is established by what has been transmitted to us through Abū Dāwūd's chain—Musaddad ibn Masarrat narrated to us, Yahyā ibn Saʿīd al-Qaṭṭān narrated to us, Ibn Abī Dhi'b said: Saʿīd ibn Abī Saʿīd al-Maqburī narrated to me. He said: I heard Abu Shuraih Al-Ka'bi say: The Messenger of Allah - peace and blessings be upon him - said: "O assembly of Khuza'ah, you have killed this slain man from Hudhayl, and I will assume responsibility as his ʿāqilah." He mentioned the rest of the report, and the Prophet - peace and blessings be upon him - guaranteed the blood money on their behalf without their consent in that matter.[1]

وَأَمَّا جَوَازُ الضَّمَانِ بِغَيْرِ رَغْبَةِ الْمَضْمُونِ عَنْهُ، فَلِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُسَدَّدُ بْنُ مَسَرَّةَ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا ابْنُ أَبِي ذِئْبٍ قَالَ: حَدَّثَنِي سَعِيدُ بْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ قَالَ: سَمِعْت أَبَا شُرَيْحٍ الْكَعْبِيَّ يَقُولُ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّكُمْ يَا مَعْشَرَ خُزَاعَةَ قَتَلْتُمْ هَذَا الْقَتِيلَ مِنْ هُذَيْلٍ وَإِنِّي عَاقِلُهُ» وَذَكَرَ بَاقِيَ الْخَبَرِ، فَضَمِنَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهُمْ الدِّيَةَ بِغَيْرِ رَغْبَتِهِمْ فِي ذَلِكَ.

L19248 Abu Hanifah said: Suretyship is not permissible except in the presence of the creditor, except in one instance—when a sick person declares to his heirs, "Which of you will guarantee on my behalf the debt of so-and-so owed by me?" and one of them guarantees it. Then, it is permissible without the creditor's presence.

وَقَالَ أَبُو حَنِيفَةَ: لَا يَجُوزُ الضَّمَانُ إلَّا بِمَحْضَرِ الَّذِي لَهُ الْحَقُّ، إلَّا فِي مَوْضِعٍ وَاحِدٍ، وَهُوَ الْمَرِيضُ يَقُولُ لِوَرَثَتِهِ: أَيُّكُمْ يَضْمَنُ عَنِّي دَيْنَ فُلَانٍ عَلَيَّ فَيَضْمَنُهُ أَحَدُهُمْ - فَيَجُوزُ بِغَيْرِ مَحْضَرِ الطَّالِبِ.

L19249 This statement is utterly corrupt, for it is a claim entirely devoid of proof.

وَهَذَا كَلَامٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ أَصْلًا.

L19250 Some of those afflicted by their adherence to his legal authority argued for him that it is a contract like marriage and sale, requiring the presence of both parties for validity. Abū Muḥammad said: This constitutes analogical reasoning, and all such reasoning is invalid. Furthermore, even were it valid, this would itself represent the very essence of invalidity.

وَاحْتَجَّ لَهُ بَعْضُ الْمُبْتَلَيْنَ بِتَقْلِيدِهِ أَنَّهُ عَقْدٌ كَالنِّكَاحِ وَالْبَيْعِ، فَلَا يَصِحُّ إلَّا بِمَحْضَرِهِمَا جَمِيعًا. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ فَاسِدٌ - ثُمَّ إنَّهُ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْفَسَادِ.

L19251 The first aspect of this is that they invalidate matters recently, permitting the marriage of a minor girl without her presence and allowing guarantees for a sick person's debt in the absence of the rightful claimant.

أَوَّلُ ذَلِكَ -: أَنَّهُمْ يَنْتَقِضُونَ مِنْ قُرْبٍ فَيُجِيزُونَ نِكَاحَ الصَّغِيرَةِ بِغَيْرِ مَحْضَرِهَا، وَيُجِيزُونَ الضَّمَانَ لِدَيْنِ الْمَرِيضِ بِغَيْرِ مَحْضَرِ صَاحِبِ الْحَقِّ.

L19252 Furthermore, the guarantee is not a contract binding the beneficiary, but

[1] **Hadith references (L19245):** Sunan Abi Dawud 4504.

rather it is binding solely on the guarantor. The beneficiary is only entitled to a fair portion of his right. If fairness is achieved in such a case, then it stands; otherwise, it is not binding upon him unless he consents, while his right remains intact as it was. They sought to differentiate between the case of the sick person and others by stating that the debt is definitively attached to the sick person's property.

ثُمَّ إِنَّ الضَّمَانَ لَيْسَ عَقْدًا عَلَى الْمَضْمُونِ لَهُ، وَإِنَّمَا هُوَ عَلَى الضَّامِنِ وَحْدَهُ وَإِنَّمَا لِلْمَضْمُونِ لَهُ إِنْصَافُهُ مِنْ حَقِّهِ فَقَطْ، فَإِنْ أُنْصِفَ فِي مِثْلِ هَذَا، وَإِلَّا فَلَا يَلْزَمُهُ مَا لَمْ يَرْضَ بِهِ، وَهُوَ بَاقٍ عَلَى حَقِّهِ كَمَا كَانَ - وَرَامُوا الْفَرْقَ بَيْنَ مَسْأَلَةِ الْمَرِيضِ وَغَيْرِهَا بِأَنْ قَالُوا: إِنَّ الدَّيْنَ قَدْ تَعَيَّنَ فِي مَالِ الْمَرِيضِ.

L19253 Ali said: They have lied; nothing was ever legally established in his property except after his death. Abu Hanifah does not permit suretyship for a debt against the deceased unless he leaves enough to settle it—thus the fallacy of their position was exposed completely. They argued that the debt was irrecoverable, yet they permitted suretyship against the bankrupt's valid claim—despite the debt being irrecoverable—and this is a contradiction.

قَالَ عَلِيٌّ: وَقَدْ كَذَبُوا مَا تَعَيَّنَ قَطُّ فِي مَالِهِ إِلَّا بَعْدَ مَوْتِهِ، وَأَبُو حَنِيفَةَ لَا يُجِيزُ ضَمَانَ دَيْنٍ عَلَى الْمَيِّتِ إِلَّا بِأَنْ يَتْرُكَ وَفَاءً - فَظَهَرَ فَسَادُ قَوْلِهِمْ جُمْلَةً. وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّ الدَّيْنَ قَدْ هَلَكَ - وَأَجَازُوا الضَّمَانَ عَلَى الْحَقِّ الْمُفْلِسِ - وَالدَّيْنُ قَدْ هَلَكَ - وَهَذَا تَنَاقُضٌ.

L19254 If they say, "Could a bankrupt person acquire wealth?" We reply, "Similarly, wealth belonging to the deceased may emerge that had not been known at the time of his death"—and this is a mere disagreement from them against the Messenger of Allah (peace be upon him).

فَإِنْ قَالُوا: قَدْ يَكْسِبُ الْمُفْلِسُ مَالًا؟ قُلْنَا: وَقَدْ يَطْرَأُ لِلْمَيِّتِ مَالٌ لَمْ يَكُنْ عُرِفَ حِينَ مَوْتِهِ - وَهَذَا مِنْهُمْ خِلَافٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُجَرَّدٌ.

L19255–19256 And those who share our opinion regarding the liability on behalf of the deceased who does not leave sufficient assets to fulfill obligations are: Mālik, Abū Yūsuf, Muḥammad ibn al-Ḥasan, al-Shāfiʿī, and Abū Sulaymān.

وَمَنْ قَالَ - بِقَوْلِنَا فِي الضَّمَانِ عَنْ الْمَيِّتِ الَّذِي لَا يَتْرُكُ وَفَاءً: مَالِكٌ، وَأَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ.

L19257 It has been narrated to us via the transmission of al-Bukhari: Makkī ibn Ibrāhīm narrated to us, Yazīd ibn Abī 'Ubayd narrated to us from Salamah ibn al-Akwa' [may Allah be pleased with him], who said: "We were sitting with the Prophet (peace be upon him) when a funeral was brought. They asked, 'Will you pray over him?' He inquired, 'Did he leave anything?' They replied, 'No.' He asked, 'Does he owe any debt?' They said, 'Yes—three dinars.' He said, 'Pray over your companion.' Abū Qatādah then said, 'Pray over him, O Messenger of Allah, and I will assume liability for his debt.' So he prayed over him." This narration establishes the permissibility of guaranteeing the debt of a deceased person who left no means to settle it, contrary to Abū Ḥanīfah's view. It further indicates that the debt is entirely discharged through such guarantee, for had it not been lifted from the deceased and transferred to

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مَكِّيُّ بْنُ إِبْرَاهِيمَ نا يَزِيدُ بْنُ أَبِي عُبَيْدٍ عَنْ سَلَمَةَ بْنِ الْأَكْوَعِ [- رَضِيَ اللَّهُ عَنْهُ -] قَالَ: «كُنَّا جُلُوسًا عِنْدَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ أُتِيَ بِجِنَازَةٍ، فَقَالُوا: صَلِّ عَلَيْهَا؟ فَقَالَ: هَلْ تَرَكَ شَيْئًا؟ قَالُوا: لَا، قَالَ: فَهَلْ عَلَيْهِ دَيْنٌ؟ قَالُوا: نَعَمْ، ثَلَاثَةُ دَنَانِيرَ، قَالَ: صَلُّوا عَلَى صَاحِبِكُمْ، فَقَالَ أَبُو قَتَادَةَ: صَلِّ عَلَيْهِ يَا رَسُولَ اللَّهِ وَعَلَيَّ دَيْنُهُ؟ فَصَلَّى عَلَيْهِ» . فَفِي هَذَا الْخَبَرِ جَوَازُ ضَمَانِ دَيْنِ الْمَيِّتِ الَّذِي لَمْ يَتْرُكْ وَفَاءً بِدَيْنِهِ، بِخِلَافِ رَأْيِ أَبِي حَنِيفَةَ، وَفِيهِ: أَنَّ الدَّيْنَ يَسْقُطُ بِالضَّمَانِ جُمْلَةً، لِأَنَّهُ لَوْ لَمْ يَسْقُطْ عَنْ الْمَيِّتِ وَيَنْتَقِلْ إلَى ذِمَّةِ أَبِي قَتَادَةَ لَمَا كَانَتْ الْحَالُ إلَّا وَاحِدَةً، وَامْتِنَاعُهُ -

عَلَيْهِ السَّلَامُ - مِنْ الصَّلَاةِ عَلَيْهِ قَبْلَ ضَمَانِ أَبِي قَتَادَةَ لِدَيْنِهِ، ثُمَّ صَلَاتُهُ - عَلَيْهِ السَّلَامُ - عَلَيْهِ بَعْدَ ضَمَانِ أَبِي قَتَادَةَ: بُرْهَانٌ صَحِيحٌ عَلَى أَنَّ الْحَالَ الثَّانِيَةَ غَيْرُ الْأُولَى وَأَنَّ الدَّيْنَ الَّذِي لَا يُتْرَكُ بِهِ وَفَاءٌ قَدْ بَطَلَ وَسَقَطَ بِضَمَانِ الضَّامِنِ، وَلَزِمَ ذِمَّةَ الضَّامِنِ بِقَوْلِ أَبِي قَتَادَةَ الَّذِي أَقَرَّهُ عَلَيْهِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى دَيْنِهِ. فَصَحَّ أَنَّ الدَّيْنَ عَلَى الضَّامِنِ بَعْدُ لَا عَلَى الْمَضْمُونِ عَنْهُ.

Abū Qatādah's liability, the circumstance would have remained unchanged. The Prophet's (peace be upon him) initial refusal to pray over him before Abū Qatādah guaranteed the debt, followed by his prayer afterward, constitutes valid proof that the second scenario differs from the first. The debt—for which no repayment was available—is thereby nullified and discharged through the guarantor's assumption, becoming binding upon the guarantor due to Abū Qatādah's declaration, which the Prophet (peace be upon him) affirmed. This confirms that the debt thereafter falls upon the guarantor, not the original debtor.

وَفِيهِ أَيْضًا: جَوَازُ الضَّمَانِ بِغَيْرِ مَحْضَرِ الطَّالِبِ الَّذِي لَهُ الْحَقُّ، وَإِذْ قَدْ سَقَطَ الدَّيْنُ بِالضَّمَانِ كَمَا ذَكَرْنَا فَلَا يَجُوزُ رُجُوعُهُ بَعْدَ سُقُوطِهِ بِالدَّعْوَى الْكَاذِبَةِ بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ.

L19258 It also states the permissibility of kafalah (suretyship) without the presence of the claimant who holds the right. Since the debt has been discharged by the suretyship as previously established, it is impermissible to reassert the debt after its discharge through a false legal claim without explicit textual evidence or scholarly consensus.

وَأَيْضًا: الْخَبَرُ الَّذِي رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا يَحْيَى بْنُ يَحْيَى أَنَا حَمَّادُ بْنُ يَزِيدَ عَنْ هَارُونَ بْنِ رِئَابٍ حَدَّثَنِي كِنَانَةُ بْنُ نُعَيْمٍ الْعَدَوِيُّ عَنْ قَبِيصَةَ بْنِ الْمُخَارِقِ الْهِلَالِيِّ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: يَا قَبِيصَةُ إنَّ الْمَسْأَلَةَ لَا تَحِلُّ إلَّا لِأَحَدِ ثَلَاثَةٍ رَجُلٍ تَحَمَّلَ حَمَالَةً فَحَلَّتْ لَهُ الْمَسْأَلَةُ حَتَّى يُصِيبَهَا ثُمَّ يُمْسِكُ» وَذَكَرَ بَاقِي الْخَبَرِ - فَعَمَّ - عَلَيْهِ السَّلَامُ - إبَاحَةَ تَحَمُّلِ الْحَمَالَةِ عُمُومًا بِكُلِّ حَالٍ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19259 Moreover, the report transmitted as recorded in Muslim's compilation—Yaḥyā ibn Yaḥyā narrated to us; Ḥammād ibn Yazīd reported from Hārūn ibn Ri'āb, who narrated: Kinānah ibn Nuʿaym al-ʿAdawī narrated from Qabīṣah ibn al-Mukhāriq al-Hilālī: "The Messenger of Allah—peace and blessings be upon him—said to him: 'O Qabīṣah, begging is impermissible except for one of three: a man who assumes a financial liability (ḥamālah), making begging lawful for him until he secures it, after which he must desist.'" The narrator mentioned the remainder of the report. Thus, the Prophet—peace and blessings be upon him—generalized the permissibility of assuming financial liabilities under all circumstances, and success is from Allah, the Exalted.

وَأَمَّا قَوْلُنَا: إنَّهُ إنْ لَمْ يَرْضَ الْمَضْمُونُ لَهُ بِالضَّمَانِ لَمْ يَلْزَمْهُ إلَّا بِأَنْ يُوَفِّيَهُ أَيْضًا مِنْ حَقِّهِ فَلَيْسَ لَهُ حِينَئِذٍ إلَّا أَخْذُهُ مِنْهُ أَوْ تَرْكُهُ جُمْلَةً، وَلَا طَلَبَ لَهُ عَلَى الْمَضْمُونِ عَنْهُ بَعْدَهَا، فَلِأَنَّهُ صَاحِبُ الْحَقِّ، وَلَمْ يَأْتِ نَصٌّ بِلُزُومِ تَرْكِ طَلَبِ غَرِيمِهِ، بَلْ الضَّمَانُ حِينَئِذٍ مَطْلٌ لَهُ، وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «مَطْلُ الْغَنِيِّ ظُلْمٌ» وَأَمَرَ - عَلَيْهِ السَّلَامُ -

L19260–19262 As for our statement: If the creditor does not accept the guarantee, it does not bind the guarantor unless he fulfills the obligation himself. At that point, the creditor has no option but to either claim it from him or abandon it entirely, and thereafter has no further claim against the guarantor. This is because the creditor holds the right, and there is no textual evidence requiring him to relinquish claims against his debtor. Rather, the guarantee at that point constitutes delay. To Him belongs [justice], and the Prophet (peace be upon him) said: "Unjust delay in payment by the wealthy is oppression," and he (peace be upon him) commanded that every right-holder be granted

his due. If justice is served, the right-holder's right has been fulfilled, and whoever is granted his right has no right beyond it.

أَنْ يُعْطَى كُلُّ ذِي حَقٍّ حَقَّهُ، فَإِنْ أُنْصِفَ فَقَدْ أُعْطِيَ حَقُّهُ، وَمَنْ أُعْطِيَ حَقَّهُ فَلَا حَقَّ لَهُ سِوَاهُ.

L19263 If it is said: "You are the people who adhere to narrated precedents, so how do you permit praying over one who died while owing a debt that could not be repaid?" We respond: Exalted is Allah! Does his statement—peace be upon him—to them, "Pray over your companion," not clarify that this ruling applies specifically to him alone, excluding all other Muslims—neither the Imam nor anyone else? How could this be, when we have narrated through ʿAbd al-Razzāq, who narrated to us from Maʿmar, from al-Zuhrī, from Abū Salama ibn ʿAbd al-Raḥmān, from Jābir, who said: "The Prophet—peace and blessings of Allah be upon him—would not pray over a man who died indebted. A deceased person was brought to him, and he asked: 'Does he owe a debt?' They replied: 'Yes—two dinars.' Abū Qatāda al-Anṣārī said: 'They are my responsibility, O Messenger of Allah.' Thereupon the Prophet—peace and blessings of Allah be upon him—prayed over him. When Allah bestowed success upon His Messenger, he said: 'I have more right to every believer than he has to himself. Thus, whoever leaves a debt, its settlement is incumbent upon me.'" And he mentioned the report.

فَإِنْ قِيلَ: فَأَنْتُمْ أَصْحَابُ اتِّبَاعٍ لِلْآثَارِ فَمِنْ أَيْنَ أَجَزْتُمْ الصَّلَاةَ عَلَى مَنْ مَاتَ وَعَلَيْهِ دَيْنٌ لَا وَفَاءَ لَهُ بِهِ؟ قُلْنَا: سُبْحَانَ اللَّهِ أَوَ لَيْسَ فِي قَوْلِهِ - عَلَيْهِ السَّلَامُ - لَهُمْ: «صَلُّوا عَلَى صَاحِبِكُمْ» بَيَانٌ فِي أَنَّهُ - عَلَيْهِ السَّلَامُ - الْمَخْصُوصُ بِهَذَا الْحُكْمِ وَحْدَهُ، لَا أَحَدٌ مِنْ الْمُسْلِمِينَ سِوَاهُ، لَا الْإِمَامُ وَلَا غَيْرُهُ؟ فَكَيْفَ وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ جَابِرٍ قَالَ: «كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُصَلِّي عَلَى رَجُلٍ مَاتَ وَعَلَيْهِ دَيْنٌ، فَأُتِيَ بِمَيِّتٍ، فَقَالَ: عَلَيْهِ دَيْنٌ؟ قَالُوا: نَعَمْ، دِينَارَانِ، فَقَالَ أَبُو قَتَادَةَ الْأَنْصَارِيُّ: هُمَا عَلَيَّ يَا رَسُولَ اللَّهِ، فَصَلَّى عَلَيْهِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمَّا فَتَحَ اللَّهُ عَلَى رَسُولِهِ قَالَ: أَنَا أَوْلَى بِكُلِّ مُؤْمِنٍ مِنْ نَفْسِهِ، فَمَنْ تَرَكَ دَيْنًا فَعَلَيَّ قَضَاؤُهُ» وَذَكَرَ الْخَبَرَ.

L19264 Among those who permitted surety for a deceased person who left insufficient assets to fulfill his obligations are Ibn Abī Laylā, Mālik, Abū Yūsuf, Muḥammad ibn al-Ḥasan, al-Shāfiʿī, and Abū Sulaymāna - and we know of no prior authority for Abū Ḥanīfah's opinion.

وَمِمَّنْ أَجَازَ الضَّمَانَ عَنْ الْمَيِّتِ الَّذِي لَمْ يَتْرُكْ وَفَاءً: ابْنُ أَبِي لَيْلَى، وَمَالِكٌ، وَأَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَالشَّافِعِيُّ وَأَبُو سُلَيْمَانَ - وَمَا نَعْلَمُ لِأَبِي حَنِيفَةَ سَلَفًا فِي قَوْلِهِ.

L19265 Abu Hanifah, Sufyan al-Thawri, al-Awza'i, Abu Ubayd, Ishaq, Ahmad, al-Shafi'i, and Malik (in the first of his two opinions) stated that the beneficiary may claim their right if permitted by the guarantor or the principal debtor.

قَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ الثَّوْرِيُّ، وَالْأَوْزَاعِيُّ، وَأَبُو عُبَيْدٍ، وَإِسْحَاقُ، وَأَحْمَدُ، وَالشَّافِعِيُّ، وَمَالِكٌ فِي أَوَّلِ قَوْلَيْهِ: إنَّ لِلْمَضْمُونِ لَهُ أَنْ يَطْلُبَ بِحَقِّهِ إنْ شَاءَ الضَّامِنُ، وَإِنْ شَاءَ الْمَضْمُونُ.

L19266 Mālik said in the latter of his two opinions: If the principal debtor is financially capable of fulfilling the obligation, the claimant has no right to pursue the guarantor but must seek payment exclusively from the principal debtor. This applies unless there is a deficiency in the owed amount - in which case

وَقَالَ مَالِكٌ فِي آخِرِ قَوْلَيْهِ: إذَا كَانَ الْمَضْمُونُ عَنْهُ مَلِيًّا بِالْحَقِّ فَلَيْسَ لِطَالِبِ الْحَقِّ أَنْ يَطْلُبَ الضَّامِنَ، وَإِنَّمَا لَهُ طَلَبُ الْمَضْمُونِ عَنْهُ فَقَطْ، إلَّا أَنْ يَنْقُصَ مِنْ حَقِّهِ شَيْءٌ

فَيُؤْخَذُ مِنْ الضَّامِنِ حِينَئِذٍ، وَإِلَّا أَنْ يَكُونَ الْمَضْمُونُ عَنْهُ غَائِبًا، أَوْ يَكُونَ عَلَيْهِ دُيُونٌ لِلنَّاسِ فَيَخَافُ الْمَضْمُونُ لَهُ مُحَاصَّةَ الْغُرَمَاءِ فَلَهُ فِي هَذَيْنِ الْوَجْهَيْنِ أَنْ يَطْلُبَ الضَّامِنَ [أَيْضًا] حِينَئِذٍ.

the amount is taken from the guarantor - or unless the principal debtor is absent or owes debts to others, leading the claimant to fear encirclement by creditors. In these two scenarios, the claimant may then pursue the guarantor also.

L19267 قَالَ أَبُو مُحَمَّدٍ: أَمَّا هَذَا الْقَوْلُ الَّذِي رَجَعَ إلَيْهِ مَالِكٌ فَظَاهِرُ الْعَوَارِ، لِأَنَّهُ دَعَاوَى كُلُّهُ بِلَا بُرْهَانٍ، وَتَقْسِيمٌ بِلَا دَلِيلٍ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ نَعْلَمُهُ مِنْ صَاحِبٍ أَوْ تَابِعٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ.

Abū Muḥammad said: As for this statement which Mālik resorted to, it is manifestly deficient, for it consists entirely of claims without proof, and categorization without evidence—neither from the Qur'ān, nor the Sunnah, nor a weak narration, nor the saying of anyone we know from the Companions or the Followers, nor analogy, nor an opinion with a sound basis.

L19268–19269 وَقَالَ ابْنُ أَبِي لَيْلَى، وَابْنُ شُبْرُمَةَ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا، كَمَا قُلْنَا مِنْ أَنَّ الْحَقَّ قَدْ سَقَطَ جُمْلَةً عَنْ الْمَضْمُونِ عَنْهُ، وَلَا سَبِيلَ لِلْمَضْمُونِ لَهُ إلَيْهِ أَبَدًا، وَإِنَّمَا حَقُّهُ عِنْدَ الضَّامِنِ أَنْصَفَهُ أَوْ لَمْ يُنْصِفْهُ.

Ibn Abi Layla, Ibn Shubruma, Abu Thawr, Abu Sulayman, and all our companions held the view we have stated: that the right is entirely extinguished from the principal debtor, and the creditor has no recourse to him whatsoever. The creditor's right lies solely with the guarantor, whether the guarantor treats the creditor justly or not.

L19270 رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ أَشْعَثَ هُوَ ابْنُ عَبْدِ الْمَلِكِ الْحُمْرَانِيِّ، عَنْ الْحَسَنِ، وَمُحَمَّدِ بْنِ سِيرِينَ، قَالَا جَمِيعًا: الْكَفَالَةُ، وَالْحَوَالَةُ سَوَاءٌ - وَقَدْ ذَكَرْنَا بُرْهَانَ ذَلِكَ مِنْ السُّنَّةِ.

It has been narrated to us through the chain of Ibn Abī Shaybah: Ḥafṣ ibn Ghiyāth reported to us from Ashʿath (who is Ibn ʿAbd al-Malik al-Ḥumrānī) from al-Ḥasan and Muḥammad ibn Sīrīn. Both affirmed together: "Surety (kafālah) and transfer of debt (ḥawālah) are equal in ruling." We have already cited the evidence for this from the Sunnah.

L19271 وَأَيْضًا: فَإِنَّ مِنْ الْمُحَالِ الْمُمْتَنِعِ أَنْ يَكُونَ مَالٌ وَاحِدٌ مَعْدُودٌ مَحْدُودٌ هُوَ كُلُّهُ عَلَى زَيْدٍ، وَهُوَ كُلُّهُ عَلَى عَمْرٍو، وَلَوْ كَانَ هَذَا لَكَانَ لِلَّذِي هُوَ لَهُ عَلَيْهِمَا أَنْ يَأْخُذَهُمَا جَمِيعًا بِجَمِيعِهِ فَيَحْصُلُ لَهُ الْعَدَدُ مُضَاعَفًا، وَلَمَا سَقَطَ عَنْ أَحَدِهِمَا حَقٌّ قَدْ لَزِمَهُ بِأَدَاءِ آخَرَ عَنْ نَفْسِهِ مَا لَزِمَهُ أَيْضًا - وَهُمْ لَا يَقُولُونَ بِهَذَا.

Furthermore, it is among the impossible and inconceivable that a single, countable, limited property could be entirely owed to Zayd and simultaneously entirely owed to ʿAmr. If this were the case, the creditor could claim the full amount from both Zayd and ʿAmr, thereby doubling the amount for himself. Moreover, no right that had become binding upon either of them—even through another's discharge of their obligation on their behalf of what is also incumbent upon them—would be waived, yet they do not hold this opinion.

L19272 فَظَهَرَ تَنَاقُضُهُمْ وَاخْتِلَاطُ قَوْلِهِمْ وَأَنَّهُ لَا يُعْقَلُ، وَلَا يَسْتَقِرُّ.

Thus, their contradiction became evident, along with the incoherence of their statements, and that it is neither rational nor firmly established.

L19273 فَإِنْ قَالُوا: إنَّمَا هُوَ حَقُّهُ عَلَى أَيِّهِمَا طَلَبَهُ

If they say, "It is only his right against whichever of the two he demands it

from?" We respond: This entrenches absurdity, for in this case, his right has not been settled upon a single one.

فَإِنْ قَالُوا: إِنَّمَا هُوَ لَهُ عَلَى أَيِّهِمَا طَلَبَهُ مِنْهُ؟ قُلْنَا: فَهَذَا أَدْخَلَ فِي الْمُحَالِ، لِأَنَّهُ عَلَى هَذَا لَمْ يَسْتَقِرَّ حَقُّهُ عَلَى وَاحِدٍ.

L19274 from both of them henceforth—neither from the guarantor nor from the debtor for whom guarantee is provided—once this condition is established, he retains no claim against either thereafter.

مِنْهُمَا بَعْدُ - لَا عَلَى الضَّامِنِ وَلَا عَلَى الْمَضْمُونِ عَنْهُ - فَإِذَا هُوَ كَذَلِكَ فَلَا حَقَّ لَهُ عَلَى وَاحِدٍ مِنْهُمَا بَعْدُ.

L19275–19277 If they say: Do you claim that when two heirs inherit two thousand dirhams from their deceased, each taking one thousand dirhams, then a creditor of the deceased appears claiming one thousand dirhams - that the creditor may recover it from whichever of the two he chooses? And do you state regarding one who sells an undivided share, where the purchaser then sells it to another, and the third buyer to a fourth, that the preemptor may exercise his right of preemption against whichever of them he chooses? And do you assert regarding one who unlawfully seizes property then gifts it to another, that the rightful owner may recover his property from whichever of the two he chooses? We replied: Yes. None of this constitutes what we rejected concerning a single property jointly owed by two individuals, where each bears full liability for the entire amount. As for the two heirs, they improperly divided what they had no right to divide, for the creditor's right attaches to the specific estate property itself, not to the heirs' possession. He recovers his due solely from the deceased's estate where... Once it is confirmed, the amount taken from the estate is restored to its claimant, then the two parties divide what remains after settling the creditor's due. The initial division is invalid because Allah the Exalted has granted the heirs their shares only after fulfilling bequests and debts.

فَإِنْ قَالُوا: فَإِنَّكُمْ تَقُولُونَ فِي وَارِثَيْنِ تَرَكَ مُوَرِّثُهُمَا أَلْفَيْ دِرْهَمٍ، فَأَخَذَ كُلُّ وَاحِدٍ مِنْهُمَا أَلْفَ دِرْهَمٍ، ثُمَّ ظَهَرَ غَرِيمٌ لَهُ عَلَى الْمَيِّتِ أَلْفُ دِرْهَمٍ: أَنَّهُ يَأْخُذُهَا مِنْ أَيِّهِمَا شَاءَ؟ وَتَقُولُونَ فِيمَنْ بَاعَ شِقْصًا مُشَاعًا، ثُمَّ بَاعَهُ الْمُبْتَاعُ مِنْ آخَرَ، وَالثَّالِثُ مِنْ رَابِعٍ: أَنَّ الشَّفِيعَ يَأْخُذُهُ بِالشُّفْعَةِ مِنْ أَيِّهِمْ شَاءَ؟ وَتَقُولُونَ فِيمَنْ غَصَبَ مَالًا ثُمَّ وَهَبَهُ لِآخَرَ: فَإِنَّ الْمَغْصُوبَ مِنْهُ يَأْخُذُ بِمَالِهِ أَيَّهُمَا شَاءَ؟ قُلْنَا: نَعَمْ، وَلَيْسَ شَيْءٌ مِنْ هَذَا مِمَّا أَنْكَرْنَاهُ مِنْ كَوْنِ مَالٍ وَاحِدٍ عَلَى اثْنَيْنِ هُوَ كُلُّهُ عَلَى كُلِّ وَاحِدٍ مِنْهُمَا: أَمَّا الْوَارِثَانِ فَإِنَّهُمَا اقْتَسَمَا مَا لَا يَحِلُّ لَهُمَا اقْتِسَامُهُ، وَحَقُّ الْغَرِيمِ فِي ذَلِكَ الْمَالِ بِعَيْنِهِ، لَا عِنْدَ الْوَارِثَيْنِ أَصْلًا، فَإِنَّمَا يَأْخُذُ حَقَّهُ مِنْ مَالِ الْمَيِّتِ حَيْثُ وَجَدَهُ، ثُمَّ يَرْجِعُ الْمَأْخُوذُ مِنْهُ عَلَى صَاحِبِهِ فَيَقْتَسِمَانِ مَا بَقِيَ لِلْغَرِيمِ حِينَئِذٍ، وَالْقِسْمَةُ الْأُولَى فَاسِدَةٌ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ لِلْوَرَثَةِ إِلَّا بَعْدَ الْوَصِيَّةِ، وَالدَّيْنِ.

L19278 As for the usurper who gifts usurped property, the right of the dispossessed owner remains valid against the usurper, while the usurper retains the right to reclaim from the recipient what was improperly gifted. If the dispossessed owner pursues the usurper, he asserts his rightful claim against him. If he pursues the recipient, he does so by asserting the usurper's right to recover what was invalidly transferred. When the recipient returns it, the dispossessed owner becomes entitled to his property based on his rightful claim

وَأَمَّا الْغَاصِبُ يَهَبُ مَا غَصَبَ فَحَقُّ الْمَغْصُوبِ مِنْهُ عِنْدَ الْغَاصِبِ، وَحَقُّ الْغَاصِبِ أَنْ يَرْجِعَ بِمَا يُؤَدِّي عَلَى الَّذِي وَهَبَهُ إِيَّاهُ بِغَيْرِ حَقٍّ، فَالْمَغْصُوبُ مِنْهُ إِنْ طَلَبَ الْغَاصِبَ طَلَبَهُ بِحَقِّهِ عِنْدَهُ، وَإِنْ طَلَبَ الْمَوْهُوبَ لَهُ طَلَبَهُ بِحَقِّ الْغَاصِبِ عِنْدَهُ مِنْ رَدِّ مَا وَهَبَهُ

against the usurper. This principle applies universally whenever property is transferred without legal entitlement.

بِالْبَاطِلِ، فَإِذَا فَعَلَ اسْتَحَقَّ الْمَغْصُوبُ مِنْهُ بِحَقِّهِ عِنْدَ الْغَاصِبِ، وَهَكَذَا كُلُّ مَا انْتَقَلَ ذَلِكَ الْمَالُ بِغَيْرِ حَقٍّ.

L19279 As for the preemptor, he holds the choice to either confirm the sale or annul it. He may validate the sale of whichever party he chooses from among them and annul that of others through his right of pre-emption. Thus, the invalidity of their analogy has been demonstrated.

وَأَمَّا الشَّفِيعُ فَإِنَّهُ مُخَيَّرٌ إمْضَاءَ الْبَيْعِ أَوْ رَدِّهِ، فَهُوَ يُمْضِي بَيْعَ مَنْ شَاءَ مِنْهُمْ وَيَرُدُّ بَيْعَ مَنْ شَاءَ مِنْهُمْ بِحَقِّ الشُّفْعَةِ - فَظَهَرَ فَسَادُ تَنْظِيرِهِمْ.

L19280 We seek support through Allah, the Exalted.

وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

L19281 They cited against the narration of Abū Qatādah, which we mentioned, with another narration we reported through the chain of Ibn Abī Shaybah from Ḥusayn ibn ʿAlī al-Juʿfī from Zā'idah from ʿAbdullāh ibn Muḥammad ibn ʿAqīl from Jābir, who said: "A man died, and the Messenger of Allah (peace be upon him) asked: 'Does he owe any debt?' We said: 'Yes, two dīnārs.' He (peace be upon him) said: 'Pray over your companion.' So Abū Qatādah undertook to pay them. The Messenger of Allah (peace be upon him) said to him: 'Is the debt-claimant's right upon you, and is the deceased absolved of them?' He replied: 'Yes, O Messenger of Allah.' So he prayed over him. The next day, he (peace be upon him) asked Abū Qatādah: 'What have you done with the two dīnārs?' He said: 'O Messenger of Allah, we only buried him yesterday.' Later, he came to him again and asked: 'What have you done with the two dīnārs?' He replied: 'I have settled them, O Messenger of Allah.' He said: 'Now you have cooled his skin.'"

وَاحْتَجُّوا عَلَى خَبَرِ أَبِي قَتَادَةَ الَّذِي ذَكَرْنَا بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ حُسَيْنِ بْنِ عَلِيٍّ الْجُعْفِيِّ عَنْ زَائِدَةَ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ عَنْ جَابِرٍ قَالَ: «مَاتَ رَجُلٌ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعَلَيْهِ دَيْنٌ؟ قُلْنَا: نَعَمْ، دِينَارَانِ، فَقَالَ - عَلَيْهِ السَّلَامُ -: صَلُّوا عَلَى صَاحِبِكُمْ، فَتَحَمَّلَهُمَا أَبُو قَتَادَةَ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَقُّ الْغَرِيمِ عَلَيْكَ، وَبَرِيءَ مِنْهُمَا الْمَيِّتُ؟ قَالَ: نَعَمْ يَا رَسُولَ اللَّهِ فَصَلَّى عَلَيْهِ، فَلَمَّا كَانَ مِنْ الْغَدِ قَالَ - عَلَيْهِ السَّلَامُ - لِأَبِي قَتَادَةَ: مَا فَعَلَ الدِّينَارَانِ؟ قَالَ: يَا رَسُولَ اللَّهِ إنَّمَا دَفَنَّاهُ أَمْسِ، ثُمَّ أَتَاهُ بَعْدُ فَقَالَ لَهُ: مَا فَعَلَ الدِّينَارَانِ؟ قَالَ: قَضَيْتُهُمَا يَا رَسُولَ اللَّهِ، قَالَ: الْآنَ بَرَّدْتَ عَلَيْهِ جِلْدَهُ» .

L19282 And two other narrations that are not authentic: one of them is: "The soul of the believer is suspended because of his debt until it is paid off on his behalf".

وَبِخَبَرَيْنِ آخَرَيْنِ لَا يَصِحَّانِ -: أَحَدُهُمَا: «نَفْسُ الْمُؤْمِنِ مُعَلَّقَةٌ بِدَيْنِهِ حَتَّى يُقْضَى عَنْهُ» .

L19283 The other [narration] states that he—peace be upon him—said to ʿAlī when he guaranteed the debt of the deceased: "Allāh has released your pledge just as you released the pledge of your brother." Abū Muḥammad said: It is astonishing that they cite narrations which constitute even greater proof against them. As for "Allāh has released your pledge just as you released the pledge of your brother," it contains neither evidence nor explicit text sup-

وَالْآخَرُ، فِيهِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ لِعَلِيٍّ إذْ ضَمِنَ دَيْنَ الْمَيِّتِ: «فَكَّ اللَّهُ رِهَانَكَ كَمَا فَكَكْتَ رِهَانَ أَخِيكَ» . قَالَ أَبُو مُحَمَّد: وَهَذَا مِنْ الْعَجَبِ احْتِجَاجُهُمْ بِأَخْبَارٍ هِيَ أَعْظَمُ حُجَّةً عَلَيْهِمْ. أَمَّا: «فَكَّ اللَّهُ رِهَانَكَ كَمَا فَكَكْتَ رِهَانَ أَخِيكَ» فَلَيْسَ فِيهِ دَلِيلٌ

porting their claim that the debt remains binding upon the original debtor. We maintain: His pledge was released solely through his guarantee of the debt, for he transferred the debt to himself—whether the debtor [for whom liability was assumed] was alive or deceased.

L19284–19285 As for the statement, "The believer's soul is suspended by his debt until it is discharged on his behalf," this does not mean the ruling applies to the one on whose behalf the debt is guaranteed, nor does it apply to someone who has not delayed repayment after the creditor has demanded it from him.

L19286 We maintain: Indeed, being called to account for his debt in the Hereafter arises solely from unjust delay in repayment while being solvent, thereby becoming an oppressor. Thus, the sin of procrastination rests upon him—whether he becomes insolvent afterward or not—while the creditor's entitlement lies either in whatever wealth remains [with the debtor] or in the share allocated for indebted persons from Muslims' Zakat funds, if no wealth remains.

L19287 Allah the Exalted may forgive the sin of delaying debt repayment if it is settled from his remaining assets, from the share of *al-gharimīn* (the indebted), or if a guarantor settles it on his behalf. The hadiths concerning this mention the severity of the matter of debt.

L19288 As for one who has never delayed repayment, he has not wronged [the creditor], and if he has not wronged, there is no sin upon him nor liability. The creditor's right—if the debtor dies—is to be fulfilled from the remaining estate or the share allocated for debt settlement. The transgressor in such a case is whoever delays repayment after the debtor's death, whether from the heirs or the governing authority. There is absolutely no sin upon the deceased, in accordance with Allah's words: {Allah does not burden a soul beyond its capacity} [Al-Baqarah: 286].[2]

L19289 And he did not delay [others' rights] in his life, so he did not wrong [others]. Since he did not wrong [others] in his life, he cannot fulfill obligations fairly after his death. Rather, he is only obligated to acknowledge them [the rights].

وَلَا نَصَّ عَلَى مَا يَدَّعُونَهُ مِنْ بَقَاءِ الدَّيْنِ عَلَى الْمَضْمُونِ عَنْهُ. وَنَحْنُ نَقُولُ: إِنَّهُ قَدْ فَكَّ رِهَانَهُ بِضَمَانِهِ دَيْنَهُ فَقَطْ، فَإِنَّهُ حَوَّلَ دَيْنَهُ عَلَى نَفْسِهِ حَيًّا كَانَ الْمَضْمُونُ عَنْهُ أَوْ مَيِّتًا.

وَأَمَّا «نَفْسُ الْمُؤْمِنِ مُعَلَّقَةٌ بِدَيْنِهِ حَتَّى يُقْضَى عَنْهُ» فَلَيْسَ فِيهِ أَنَّهُ حُكْمُ الْمَضْمُونِ عَنْهُ، وَلَا أَنَّهُ حُكْمُ مَنْ لَمْ يَمْطُلْ بِدَيْنِهِ بَعْدَ طَلَبِ صَاحِبِهِ إِيَّاهُ مِنْهُ.

وَنَحْنُ نَقُولُ: إِنَّ الْمُطَالَبَ بِدَيْنِهِ فِي الْآخِرَةِ إِنَّمَا هُوَ مِنْ مَطْلٍ بِهِ وَهُوَ غَنِيٌّ، فَصَارَ ظَالِمًا، فَعَلَيْهِ إِثْمُ الْمَطْلِ - أَعْسَرَ بَعْدَ ذَلِكَ أَوْ لَمْ يُعْسِرْ - وَإِنْ كَانَ حَقُّ الْغَرِيمِ فِيمَا يَتَخَلَّفُ مِنْ مَالٍ أَوْ فِي سَهْمِ الْغَارِمِينَ مِنْ زَكَوَاتِ الْمُسْلِمِينَ إِنْ لَمْ يَخْلُفْ مَالًا.

وَقَدْ يُمْكِنُ أَنْ يَعْفُوَ اللَّهُ تَعَالَى عَنْهُ ذَنْبَ الْمَطْلِ إِذَا قُضِيَ عَنْهُ مِمَّا يَخْلُفُ أَوْ مِنْ سَهْمِ الْغَارِمِينَ أَوْ قَضَاهُ عَنْهُ الضَّامِنُ فَفِي هَذَا جَاءَتْ الْأَحَادِيثُ فِي تَشْدِيدِ أَمْرِ الدَّيْنِ.

وَأَمَّا مَنْ لَمْ يَمْطُلْ قَطُّ بِهِ، فَلَمْ يَظْلِمْ، وَإِذَا لَمْ يَظْلِمْ فَلَا إِثْمَ عَلَيْهِ، وَلَا تَبِعَةَ، وَحَقُّ الْغَرِيمِ إِنْ مَاتَ الَّذِي عَلَيْهِ الدَّيْنُ فِيمَا يَتَخَلَّفُ، أَوْ فِي سَهْمِ الْغَارِمِينَ، وَالظَّالِمُ حِينَئِذٍ مَنْ مَطَلَهُ بَعْدَ مَوْتِ الَّذِي عَلَيْهِ الدَّيْنُ مِنْ وَرَثَةٍ أَوْ سُلْطَانٍ وَلَا إِثْمَ عَلَى الْمَيِّتِ أَصْلًا، لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

وَهُوَ لَمْ يَمْطُلْ فِي حَيَاتِهِ فَلَمْ يَظْلِمْ، وَإِذْ لَمْ يَظْلِمْ فِي حَيَاتِهِ فَلَيْسَ فِي وُسْعِهِ الْإِنْصَافُ بَعْدَ مَوْتِهِ، وَإِنَّمَا عَلَيْهِ الْإِقْرَارُ بِهِ فَقَطْ.

[2] **Qur'an references (L19288):** Qur'an 2:286 (Al-Baqarah).

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ [وَبِهِ نَتَأَيَّدُ] .

L19290 All divine success lies with Allah, the Most High [and by Him we are aided].

وَأَمَّا حَدِيثُ أَبِي قَتَادَةَ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ فَأَعْظَمُ حُجَّةً عَلَيْهِمْ لَوْ كَانَ لَهُمْ مَسْكَةُ إنْصَافٍ لِأَنَّ فِيهِ نَصًّا قَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلضَّامِنِ عَنْ الْمَيِّتِ: «حَقُّ الْغَرِيمِ عَلَيْكَ وَبَرِيءَ مِنْهُمَا الْمَيِّتُ، قَالَ الضَّامِنُ: نَعَمْ» أَلَيْسَ فِي هَذَا كِفَايَةٌ لِمَنْ لَهُ مَسْكَةُ دِينٍ أَوْ أَقَلَّ تَمْيِيزٍ؟ وَلَكِنَّهُمْ قَوْمٌ مَفْتُونُونَ.

L19291 As for the ḥadīth of Abū Qatādah through the chain of ʿAbd Allāh ibn Muḥammad ibn ʿAqīl, it is the greatest argument against them, if they had a trace of fairness, because it contains the explicit statement of the Prophet—peace be upon him—to the guarantor of the deceased: “The creditor’s right is incumbent upon you, and the deceased is absolved from both.” The guarantor said: “Yes.” Does this not suffice for anyone with a trace of religious adherence or the slightest discernment? Yet they are a people misguided.

فَإِنْ قِيلَ: فَمَا مَعْنَى قَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ قَضَاهُمَا: «الْآنَ بَرَّدْتَ عَلَيْهِ جِلْدَهُ» ؟ .

L19292 If it is asked: What is the meaning of the Prophet’s statement—peace be upon him—when he judged between the two of them: “Now you have cooled his anger”?

قُلْنَا: هَذَا لَا مُتَعَلَّقَ فِيهِ فِي بَقَاءِ الدَّيْنِ عَلَى الْمَيِّتِ، وَلَا فِي رُجُوعِهِ عَلَيْهِ لِأَنَّ نَصَّ الْخَبَرِ قَدْ وَرَدَ فِيهِ بِعَيْنِهِ: «أَنَّ الْمَيِّتَ قَدْ بَرِيءَ مِنْ الدَّيْنِ وَأَنَّ حَقَّ الْغَرِيمِ عَلَى الزَّعِيمِ» فَلَا مَعْنَى لِلزِّيَادَةِ فِي هَذَا. وَأَمَّا قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «الْآنَ بَرَّدْتَ عَلَيْهِ جِلْدَهُ» فَقَدْ أَصَابَ - عَلَيْهِ السَّلَامُ - مَا أَرَادَ، وَقَوْلُهُ الْحَقُّ لَا نَشُكُّ فِيهِ، لَكِنْ نَقُولُ: إنَّهُ قَدْ يَكُونُ تَبْرِيدٌ زَائِدٌ دَخَلَ عَلَيْهِ حِينَ الْقَضَاءِ عَنْهُ، وَإِنْ كَانَ لَمْ يَكُنْ قَبْلَ ذَلِكَ فِي حَرٍّ كَمَا تَقُولُ: لَقَدْ سَرَّنِي فِعْلُك، وَإِنْ لَمْ تَكُنْ قَبْلَ ذَلِكَ فِي هَمٍّ وَلَا حُزْنٍ.

L19293 We said: This has no bearing on the debt remaining upon the deceased nor on its reversion to him, for the explicit text of the report has been mentioned in this very context: “The deceased is absolved of the debt, and the right of the debt-claimant lies with the surety.” Thus, there is no need for elaboration here. As for his statement—peace be upon him—“Now you have cooled his skin,” he indeed achieved his intended purpose, and his truthful statement we do not doubt. However, we say: There may indeed be additional cooling that occurs when discharging the debt on his behalf, even if he was not previously in any state of heat, just as when someone says, “Your deed has pleased me,” even if you were not previously afflicted by worry or grief.

وَكَمَا لَوْ تَصَدَّقَ عَنْ الْمَيِّتِ بِصَدَقَةٍ لَكَانَ قَدْ دَخَلَ عَلَيْهِ بِهَا رَوْحٌ زَائِدٌ وَلَا بُدَّ، وَإِنْ لَمْ يَكُنْ قَبْلَ ذَلِكَ فِي كَرْبٍ وَلَا غَمٍّ.

L19294–19295 And just as when charity is given on behalf of the deceased, it would undoubtedly bring them additional comfort, even if they were not previously in distress or sorrow.

وَيُمْكِنُ أَنْ يَكُونَ قَدْ كَانَ مَطَلَ وَهُوَ غَنِيٌّ فَحَصَلَ لَهُ الظُّلْمُ ثُمَّ غَفَرَ اللَّهُ تَعَالَى لَهُ ذَلِكَ الظُّلْمَ بِالْقَضَاءِ وَاَللَّهُ أَعْلَمُ، إلَّا أَنَّهُ لَا مُتَعَلَّقَ لَهُمْ بِهَذَا أَصْلًا، وَإِنَّمَا هُوَ حُكْمٌ مِنْ أَحْكَامِ

L19296 It is possible that he delayed repayment while being wealthy, thus incurring injustice upon himself, then Allah the Exalted forgave him that injustice through His decree—and Allah knows best. However, they have no basis for this whatsoever, as it pertains solely to matters of the Hereafter. Indeed, we find that whoever establishes an evil practice in Islam will bear the sin of it and the sin of all who act upon it perpetually.

الْآخِرَةِ، وَنَحْنُ نَجِدُ مَنْ سَنَّ سُنَّةَ سُوءٍ فِي الْإِسْلَامِ كَانَ لَهُ إِثْمُ ذَلِكَ وَإِثْمُ مَنْ عَمِلَ بِهَا أَبَدًا.

وَنَجِدُ مَنْ سَنَّ سُنَّةَ خَيْرٍ فِي الْإِسْلَامِ كَانَ لَهُ أَجْرُ ذَلِكَ وَأَجْرُ مَنْ عَمِلَ بِهَا أَبَدًا، فَقَدْ يُؤْجَرُ الْإِنْسَانُ بِفِعْلِ غَيْرِهِ، وَيُعَاقَبُ بِفِعْلِ غَيْرِهِ إِذَا كَانَ لَهُ فِيهِمَا سَبَبٌ.

وَقَدْ يَدْخُلُ الرَّوْحُ عَلَى مَنْ تَرَكَ وَلَدًا صَالِحًا يَدْعُو لَهُ {وَيَفْعَلُ اللَّهُ مَا يَشَاءُ} [إبراهيم: ٢٧] ، {لا يُسْأَلُ عَمَّا يَفْعَلُ} [الأنبياء: ٢٣] وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا قَوْلُنَا: لَا يَرْجِعُ الضَّامِنُ بِمَا أَدَّى سَوَاءً بِأَمْرِهِ ضَمِنَ عَنْهُ أَوْ بِغَيْرِ أَمْرِهِ إِلَّا أَنْ يَكُونَ الْمَضْمُونُ عَنْهُ اسْتَقْرَضَهُ، فَلِمَا ذَكَرْنَا مِنْ سُقُوطِ الْحَقِّ عَنْ الْمَضْمُونِ عَنْهُ وَبَرَاءَتِهِ مِنْهُ وَاسْتِقْرَارِهِ عَلَى الضَّامِنِ.

فَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ وَالظُّلْمِ الْوَاضِحِ أَنْ يُطَالِبَ الضَّامِنُ مِنْ أَجْلِ أَدَائِهِ حَقًّا لَزِمَهُ وَصَارَ عَلَيْهِ وَاسْتَقَرَّ فِي ذِمَّتِهِ مَنْ لَا حَقَّ قِبَلَهُ لَهُ، وَلَا لِلَّذِي أَدَّاهُ عَنْهُ، وَهَذَا لَا خَفَاءَ بِهِ وَمَا نَدْرِي لِمَنْ قَالَ: إنَّهُ يَرْجِعُ الضَّامِنُ عَلَى الْمَضْمُونِ عَنْهُ بِمَا أَدَّى حُجَّةً أَصْلًا.

وَقَالَ مَالِكٌ: يَرْجِعُ الضَّامِنُ عَلَى الْمَضْمُونِ عَنْهُ بِمَا أَدَّى عَنْهُ سَوَاءٌ بِأَمْرِهِ ضَمِنَ عَنْهُ أَوْ بِغَيْرِ أَمْرِهِ.

L19297 We find that whoever establishes a good *sunnah* (practice) in Islam will receive the reward for it and the reward of those who act upon it perpetually. Indeed, a person may be rewarded or punished for the deeds of others if he is the cause in both cases.

L19298 Indeed, comfort may enter upon one who leaves behind a righteous child supplicating for him. “Allah does what He wills” [Ibrāhīm 14:27], “He is not questioned about what He does” [Al-Anbiyā’ 21:23]. And with Allah, the Most High, is all success.[3]

L19299 As for our statement that the guarantor cannot reclaim what he has paid, whether he guaranteed with the instruction of the one guaranteed against or without it, except if the one guaranteed against had borrowed it, this is due to what we have mentioned regarding the discharge of the right from the one guaranteed against, his absolution from it, and its definitive establishment upon the guarantor.

L19300 It is indisputably void and manifestly unjust for a guarantor to demand a right—due to fulfilling an obligation that became binding upon him, incumbent on him, and established within his moral liability—from one who holds no obligation toward him personally or toward the party on whose behalf he discharged it. This is unmistakably clear, and we do not know on what basis someone asserted that “the guarantor may reclaim from the principal debtor what he paid as a fundamental legal basis.”

L19301 Malik said: The guarantor may seek recourse against the principal for what he discharged on their behalf, whether he guaranteed the obligation by the principal’s instruction or without their instruction.

L19302 Abu Hanifah, al-Hasan ibn Ḥayyin, and al-Shāfiʿī said: If one guaranteed on another’s behalf by his instruction, he may seek recourse from him; but if he guaranteed on his behalf without his instruction, he may not seek recourse

[3] **Qur’an references (L19298):** Qur’an 14:27 (Ibrahim); Qur’an 21:23 (Al-Anbya).

from him. Both statements are invalid, as there is no evidence for them whatsoever, and this is an invalid division without proof.

وَقَالَ أَبُو حَنِيفَةَ، وَالْحَسَنُ بْنُ حَيٍّ، وَالشَّافِعِيُّ: إِنْ ضَمِنَ عَنْهُ بِأَمْرِهِ رَجَعَ عَلَيْهِ، وَإِنْ ضَمِنَ عَنْهُ بِغَيْرِ أَمْرِهِ لَمْ يَرْجِعْ عَلَيْهِ - وَكِلَا الْقَوْلَيْنِ فَاسِدٌ لَا دَلِيلَ عَلَيْهِ أَصْلًا، وَتَقْسِيمٌ فَاسِدٌ بِلَا بُرْهَانٍ.

L19303 Ibn Abī Laylā, Ibn Shubrumah, Abū Thawr, and Abū Sulaymān held an opinion similar to ours.

وَقَالَ ابْنُ أَبِي لَيْلَى، وَابْنُ شُبْرُمَةَ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ بِمِثْلِ قَوْلِنَا.

L19304–19306 Abu Muhammad said: Some of them deceptively cited a weak narration we narrated from the chain of Abu Dawud, from Al-Qaʿnabī, from Al-Darawardī, from ʿAmr ibn Abī ʿAmr, from Ikrimah, from Ibn ʿAbbās: "That a man insisted on pursuing his debtor." He said, "By Allah, I will not leave you until you repay me or bring me a guarantor." Thereupon, the Messenger of Allah (peace be upon him) acted as a guarantor for it. The Prophet (peace be upon him) came to him with the amount he had promised. The Prophet (peace be upon him) asked him, "Where did you obtain this gold?" He replied, "From a mine." He said, "We have no need for it—there is no good in it." Then the Messenger of Allah (peace be upon him) settled the debt for him.

قَالَ أَبُو مُحَمَّدٍ: وَمَوَّهَ بَعْضُهُمْ بِخَبَرٍ وَاهٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد عَنْ الْقَعْنَبِيِّ عَنْ الدَّرَاوَرْدِيِّ عَنْ عَمْرِو بْنِ أَبِي عَمْرٍو عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَجُلًا لَزِمَ غَرِيمًا لَهُ بِعَشْرَةِ دَنَانِيرَ فَقَالَ: وَاَللَّهِ لَا أُفَارِقُكَ حَتَّى تَقْضِيَنِي أَوْ تَأْتِيَنِي بِحَمِيلٍ؟ فَتَحَمَّلَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَتَاهُ بِقَدْرِ مَا وَعَدَهُ، فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَيْنَ أَصَبْتَ هَذَا الذَّهَبَ؟ قَالَ: مِنْ مَعْدِنٍ، قَالَ: لَا حَاجَةَ لَنَا فِيهَا لَيْسَ فِيهَا خَيْرٌ فَقَضَاهَا عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

L19307 Ali said: It is astonishing that they cite this report as evidence. The first issue with it is that it is from the narration of Amr ibn Abi Amr—who is weak—as Ibn Ma'in and others deemed him weak, and they rejected his narrations except in one instance. Among them is his narration from this very chain of transmission from the Prophet—peace be upon him—: "Whoever commits bestiality with a beast, kill him and kill it with him."

قَالَ عَلِيٌّ: فِي احْتِجَاجِهِمْ بِهَذَا الْخَبَرِ عَجَبٌ أَوَّلُ ذَلِكَ: أَنَّهُ مِنْ رِوَايَةِ عَمْرِو بْنِ أَبِي عَمْرٍو - وَهُوَ ضَعِيفٌ - ضَعَّفَهُ ابْنُ مَعِينٍ وَغَيْرُهُ، وَقَدْ تَرَكُوا رِوَايَتَهُ فِي غَيْرِ قِصَّةٍ -: مِنْهَا - رِوَايَتُهُ مِنْ هَذِهِ الطَّرِيقِ نَفْسِهَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أَتَى بَهِيمَةً فَاقْتُلُوهُ وَاقْتُلُوهَا مَعَهُ» .

L19308 Furthermore, even if it were valid, they would have no proof against it, because it states: "then he came to him with the measure he had promised him."

ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّ فِيهِ: «فَأَتَاهُ بِقَدْرِ مَا وَعَدَهُ» .

L19309 Thus, it is established that the guaranteed party pledged to the Prophet—peace be upon him—to bring what the guarantor had undertaken on his behalf. This is a matter we do not deny; rather, we affirm it when the

فَصَحَّ أَنَّ الْمَضْمُونَ عَنْهُ وَعَدَهُ - عَلَيْهِ السَّلَامُ - بِأَنْ يَأْتِيَهُ بِمَا تَحَمَّلَ عَنْهُ، وَهَذَا أَمْرٌ لَا نَأْبَاهُ، بَلْ بِهِ نَقُولُ إذَا قَالَ الْمَضْمُونُ لِلضَّامِنِ: أَنَا آتِيك بِمَا تَتَحَمَّلُ بِهِ عَنِّي.

guaranteed party says to the guarantor: “I will bring you what you undertake on my behalf.”

L19310 Next, the third paradox is their argumentation using this narration while being the first to oppose it, for it states: “Whatever is taken from a mine has no obligation in it”—yet they do not uphold this opinion. Who is more astonishing than one who cites a narration that lacks any basis for what they argue within it, then contradicts its explicit text? We ask Allah for well-being.

ثُمَّ الْعَجَبُ الثَّالِثُ - احْتِجَاجُهُمْ بِهَذَا الْخَبَرِ وَهُمْ أَوَّلُ مُخَالِفٍ لَهُ، لِأَنَّ فِيهِ " أَنَّ مَا أُخِذَ مِنْ مَعْدِنٍ فَلَا خَيْرَ فِيهِ " وَهُمْ لَا يَقُولُونَ بِهَذَا - فَمَنْ أَعْجَبُ مِمَّنْ يَحْتَجُّ بِخَبَرٍ لَيْسَ فِيهِ أَثَرٌ مِمَّا يَحْتَجُّ بِهِ فِيهِ، ثُمَّ هُوَ مُخَالِفٌ لِنَصِّ مَا فِيهِ - وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

L19311 **In juristic matters, the slave and the free, the woman and the man, the unbeliever and the believer are equal in liability.**

[مَسْأَلَةٌ الْعَبْد وَالْحُرّ وَالْمَرْأَة وَالرَّجُل وَالْكَافِر وَالْمُؤْمِن فِي الضَّمَان سَوَاءٌ]

L19312 1231. Issue: The ruling for the slave, the free individual, the woman, the man, the disbeliever, and the believer (Muslim) is the same, due to the generality of the text we have cited regarding this matter. No textual evidence exists to distinguish between any of the aforementioned categories. And success is from Allah, the Exalted.

١٢٣١ - مَسْأَلَةٌ: وَحُكْمُ الْعَبْدِ، وَالْحُرِّ، وَالْمَرْأَةِ، وَالرَّجُلِ، وَالْكَافِرِ، وَالْمُؤْمِنِ: سَوَاءٌ، لِعُمُومِ النَّصِّ الَّذِي أَوْرَدْنَاهُ فِي ذَلِكَ، وَلَمْ يَأْتِ نَصٌّ بِالْفَرْقِ بَيْنَ شَيْءٍ مِمَّا ذَكَرْنَاهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19313 **An Issue Regarding the Guarantee for That the Extent of Which Is Unknown**

[مَسْأَلَةٌ ضَمَانُ مَا لَا يَدْرِي مِقْدَارُهُ]

L19314 1232 - Issue:

١٢٣٢ - مَسْأَلَةٌ:

L19315 It is not permissible to guarantee something whose amount is unknown, such as saying to someone: “I guarantee from you what is owed by so-and-so upon you,” due to Allah’s statement: “Do not consume your wealth among yourselves through falsehood except that it be trade by mutual consent” (Quran 4:29).[4]

وَلَا يَجُوزُ ضَمَانُ مَا لَا يَدْرِي مِقْدَارُهُ مِثْلَ أَنْ يَقُولَ لَهُ: أَنَا أَضْمَنُ عَنْك مَا لِفُلَانٍ عَلَيْك، لِقَوْلِ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

L19316 And due to the Prophet’s (peace be upon him) teaching that “it is not permissible to take a Muslim’s wealth except with his free consent and mutual agreement,” and free consent can only occur when the amount is clearly known—this is a matter understood through common sense and observable reality.

وَلِإِخْبَارِهِ - عَلَيْهِ السَّلَامُ -: أَنَّهُ «لَا يَحِلُّ مَالُ مُسْلِمٍ إلَّا بِطِيبِ نَفْسٍ مِنْهُ» وَالتَّرَاضِي، وَطِيبُ النَّفْسِ لَا يَكُونُ إلَّا عَلَى مَعْلُومِ الْقَدْرِ - هَذَا أَمْرٌ يُعْلَمُ بِالْحِسِّ وَالْمُشَاهَدَةِ.

[4] **Qur’an references (L19315):** Qur’an 4:29 (An-Nisa).

[مَسْأَلَةٌ ضَمَانُ مَالٍ لَمْ يَجِبْ بَعْدُ]

١٢٣٣ - مَسْأَلَةٌ:

وَلَا يَجُوزُ ضَمَانُ مَالٍ لَمْ يَجِبْ بَعْدُ، كَمَنْ قَالَ لِآخَرَ: أَنَا أَضْمَنُ لَك مَا تَسْتَقْرِضُهُ مِنْ فُلَانٍ، أَوْ قَالَ لَهُ: اقْتَرِضْ مِنْ فُلَانٍ دِينَارًا وَأَنَا أَضْمَنُهُ عَنْك، أَوْ قَالَ لَهُ: أَقْرِضْ فُلَانًا دِينَارًا وَأَنَا أَضْمَنُهُ لَك - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى وَمُحَمَّدِ بْنِ الْحَسَنِ، وَالشَّافِعِيُّ، وَأَبِي سُلَيْمَانَ، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ.

وَلِأَنَّ الضَّمَانَ عَقْدٌ وَاجِبٌ، وَلَا يَجُوزُ الْوَاجِبُ فِي غَيْرِ وَاجِبٍ، وَهُوَ الْتِزَامُ مَا لَمْ يَلْزَمْ بَعْدُ، وَهَذَا مُحَالٌ وَقَوْلٌ مُتَفَاسِدٌ، وَكُلُّ عَقْدٍ لَمْ يَلْزَمْ حِينَ الْتِزَامِهِ فَلَا يَجُوزُ أَنْ يَلْزَمَ فِي ثَانٍ، وَفِي حِينٍ لَمْ يَلْتَزِمْ فِيهِ، وَقَدْ لَا يُقْرِضُهُ مَا قَالَ لَهُ.

وَقَدْ يَمُوتُ الْقَائِلُ لِذَلِكَ قَبْلَ أَنْ يُقْرِضَهُ مَا أَمَرَهُ بِإِقْرَاضِهِ. فَصَحَّ بِكُلِّ هَذَا أَنَّهُ لَا يَلْزَمُ ذَلِكَ الْقَوْلُ.

فَإِنْ قَالَ لَهُ: أَقْرِضْنِي كَذَا وَكَذَا وَادْفَعْهُ إلَى فُلَانٍ، أَوْ زِنْ عَنِّي لِفُلَانٍ كَذَا وَكَذَا، أَوْ أَنْفِقْ، عَنِّي فِي أَمْرِ كَذَا فَمَا أَنْفَقْت فَهُوَ عَلَيَّ، أَوْ ابْتَعْ لِي أَمْرَ كَذَا - فَهَذَا جَائِزٌ لَازِمٌ، لِأَنَّهَا وَكَالَةٌ وَكَّلَهُ بِمَا أَمَرَهُ بِهِ.

وَأَجَازَ مَا ذَكَرْنَا بُطْلَانَهُ: أَبُو حَنِيفَةَ، وَأَبُو يُوسُفَ، وَمَالِكٌ وَعُثْمَانُ الْبَتِّيُّ.

A Jurisprudential Issue Concerning Liability for Property Whose Obligation Has Not Yet Arisen.

1233 – Issue

It is not permissible to guarantee property that has not yet become obligatory, such as when someone says to another: "I will guarantee what you borrow from so-and-so," or if he says: "Borrow a dinar from so-and-so and I will guarantee it on your behalf," or if he says: "Lend so-and-so a dinar and I will guarantee it for you." This is the position of Ibn Abi Layla, Muhammad ibn al-Hasan, al-Shafi'i, and Abu Sulayman, because it is a condition not stipulated in the Book of Allah Almighty, and thus it is invalid.

Furthermore, since a guarantee is an obligatory contract, it is impermissible for an obligation to exist within what is inherently non-obligatory. This involves taking on a duty that is not yet binding—an impossibility and an incoherent proposition. Any contract not binding at the time of its inception cannot become binding later, nor at a time when no obligation was undertaken. Moreover, the lender may refuse to provide what he had [merely] stated to him.

It is possible that the one who makes such a statement dies before lending him what he was obligated to lend. Thus, all of this confirms that such an opinion is not obligatory.

If he says to him, "Lend me such and such and deliver it to so-and-so," or "Measure out such and such on my behalf for so-and-so," or "Spend on my behalf for such a matter—whatever you spend will be my responsibility," or "Purchase such a thing for me"—this is permissible and binding, as it is an agency contract wherein he authorized him to execute the specified actions.

Abu Hanifa, Abu Yusuf, Malik, and Uthman al-Batti permitted what we had mentioned as invalid.

Some of the Muʿtazilah argued in their favor by adhering to the precedent that the Messenger of Allah—may Allah bless him and grant him peace—appointed Zayd ibn Ḥārithah over the army of commanders, [saying]: "If he

وَاحْتَجَّ لَهُمْ بَعْضُ الْمُمْتَحَنِينَ بِتَقْلِيدِهِمْ «بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَّى زَيْدَ بْنَ حَارِثَةَ جَيْشَ الْأُمَرَاءِ، فَإِنْ مَاتَ، فَالْأَمِيرُ جَعْفَرُ بْنُ أَبِي طَالِبٍ، فَإِنْ مَاتَ، فَالْأَمِيرُ عَبْدُ اللَّهِ بْنُ رَوَاحَةَ» .

dies, the commander is Jaʿfar ibn Abī Ṭālib; if he dies, the commander is ʿAbdullāh ibn Rawāḥah."

قَالَ: فَكَمَا تَجُوزُ الْمُخَاطَرَةُ فِي الْوِلَايَاتِ فَهِيَ جَائِزَةٌ فِي الضَّمَانِ.

L19326 He said: Just as risk-taking is permissible in positions of authority, so too is it in financial guarantees.

قَالَ أَبُو مُحَمَّد: وَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ عَيْنُ الْبَاطِلِ، لِأَنَّهُ لَا نِسْبَةَ بَيْنَ الْوِلَايَةِ وَبَيْنَ الضَّمَانِ، وَلَا نِسْبَةَ بَيْنَ الْوَكَالَةِ وَبَيْنَ الضَّمَانِ، لِأَنَّ الْوِلَايَةَ فَرْضٌ عَلَى الْمُسْلِمِينَ إلَى يَوْمِ الْقِيَامَةِ، وَلَيْسَ الضَّمَانُ فَرْضًا - وَأَمَّا الْوَكَالَةُ فَحُكْمٌ عَلَى حِيَالِهِ جَاءَ بِهِ النَّصُّ.

L19327 Abu Muhammad said: This is analogy, and all analogy is entirely void. Moreover, even if analogy were valid, this analogy would be the essence of invalidity, for there is no relation between guardianship and guarantee, nor any relation between agency and guarantee. Guardianship is an obligation upon Muslims until the Day of Resurrection, while guarantee is not an obligation. As for agency, it is an independent ruling established by the explicit text.

ثُمَّ نَسْأَلُهُمْ عَمَّنْ قَالَ: أَنَا أَضْمَنُ لَك مَا أَقْرَضْته زَيْدًا ثُمَّ مَاتَ فَأَقْرَضَ الْمَقُولُ لَهُ ذَلِكَ زَيْدًا مَا أَمَرَهُ بِهِ؟ أَيُلْزِمُونَهُ ذَلِكَ بَعْدَ مَوْتِهِ؟ فَهَذَا عَجَبٌ أَمْ لَا يُلْزِمُونَهُ؟ فَقَدْ تَرَكُوا قَوْلَهُمْ الْفَاسِدَ، وَرَجَعُوا إلَى الْحَقِّ، وَلَئِنْ لَزِمَهُ ضَمَانُ ذَلِكَ فِي ذِمَّتِهِ فِي حَيَاتِهِ، فَهُوَ لَازِمٌ لَهُ فِي مَالِهِ وَلَا بُدَّ بَعْدَ مَوْتِهِ مِنْ رَأْسِ مَالِهِ.

L19328 Then we ask them about one who said: "I guarantee for you what I lent to Zaid," then he died, so the addressee lent Zaid what he was instructed to lend. Do they hold him liable for that after his death? Is this astonishing, or do they not hold him liable? They have indeed abandoned their false doctrine and returned to the truth. If the guarantee of that was binding upon his liability during his lifetime, then it remains binding upon his estate, and it must necessarily be taken from the principal of his wealth after his death.

وَنَسْأَلُهُمْ عَمَّنْ ضَمِنَ كُلَّ مَا يَتَدَايَنُ بِهِ زَيْدٌ إلَى انْقِضَاءِ عُمْرِهِ؟ فَإِنْ أَلْزَمُوهُ ذَلِكَ كَانَ شُنْعَةً مِنْ الْقَوْلِ، وَإِنْ لَمْ يُلْزِمُوهُ تَنَاقَضُوا.

L19329 We ask them about one who guarantees everything Zaid engages in through reciprocal debt transactions until the end of his life. If they oblige him to that, it would amount to an abhorrent claim, and if they do not oblige him, they contradict themselves.

وَنَقُولُ لَهُمْ: كَمَا لَمْ يَجُزْ الْغَرَرُ وَالْمُخَاطَرَةُ فِي الْبُيُوعِ، وَلَا جَازَ إصْدَاقُ مَا لَمْ يُخْلَقْ بَعْدُ، فَكَذَلِكَ لَا يَجُوزُ ضَمَانُ مَا لَمْ يَلْزَمْ بَعْدُ.

L19330 And we say to them: Just as speculative risk (*gharar*) and hazardous uncertainty in sales transactions are impermissible, and it is not permissible to assign a dowry to what has not yet been created, so too is it impermissible to assume liability for what is not yet binding.

فَهَذَا أَصَحُّ مِنْ قِيَاسِهِمْ عَلَى الْإِمَارَةِ، وَالْوَكَالَةِ، وَالدَّلَائِلُ هَاهُنَا عَلَى بُطْلَانِ قَوْلِهِمْ تَكْثُرُ جِدًّا - وَفِيمَا ذَكَرْنَا كِفَايَةٌ.

L19331–19332 Thus, this is sounder than their analogy regarding leadership and agency. The evidences here refuting their claim are made exceedingly abundant—and what we have mentioned suffices.

A Legal Question Pertaining to What is Stipulated in the Guaranty of Two [Parties] on Behalf of One.

1234 – Issue:

It is not permissible to stipulate in a guarantee provided by two individuals for a single debtor that the creditor may claim from whichever he wishes the entire amount, nor for the guarantor to stipulate such a condition concerning himself and the debtor, nor to stipulate that the creditor may demand payment from the solvent one of the two instead of the insolvent party, or from the present guarantor instead of the absent one. This is the opinion of Ibn Shubruma and Abū Sulaymān.

And those who permitted this condition were Shurayḥ, Ibn Sīrīn, ʿAṭāʾ, ʿAmr ibn Dīnār, and Sulaymān ibn Mūsā. This is also the opinion of Sufyān al-Thawrī, Abū Ḥanīfah, and Mālik.

The proof for the validity of our statement is the Prophet's declaration—peace and blessings be upon him: "Every condition not in the Book of Allah is null and void." This is a condition for which no scriptural text permits it; thus, it is null and void.[5]

Moreover, this is a surety (ḍamān) that has not been definitively established upon either of them or upon either one specifically. Rather, it is a contingent surety dependent upon one of them without being definitively assigned to either, and it is unknown upon which of them it will be definitively established. Thus, it is invalid, because what is not validly binding upon a person at the time of contracting it cannot subsequently become valid upon them at a time when they neither contracted it nor undertook its obligation. This is evident, leaving no room for doubt. And with Allah, the Exalted, lies success.

A legal case in which two individuals guaranteed a debt owed by another person.

1235 – Issue:

[مَسْأَلَةٌ مَا يُشْتَرَط فِي ضَمَانِ اثْنَيْنِ عَنْ وَاحِدٍ]

١٢٣٤ - مَسْأَلَةٌ:

وَلَا يَجُوزُ أَنْ يُشْتَرَطَ فِي ضَمَانِ اثْنَيْنِ عَنْ وَاحِدٍ أَنْ يَأْخُذَ أَيَّهُمَا شَاءَ بِالْجَمِيعِ، وَلَا أَنْ يَشْتَرِطَ ذَلِكَ الضَّامِنُ فِي نَفْسِهِ وَفِي الْمَضْمُونِ عَنْهُ، وَلَا أَنْ يَشْتَرِطَ أَنْ يَأْخُذَ الْمَلِيءَ مِنْهُمَا عَنْ الْمُعْسِرِ، وَالْحَاضِرَ عَنْ الْغَائِبِ - وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ، وَأَبِي سُلَيْمَانَ.

وَأَجَازَ هَذَا الشَّرْطَ شُرَيْحٌ، وَابْنُ سِيرِينَ، وَعَطَاءٌ، وَعَمْرُو بْنُ دِينَارٍ وَسُلَيْمَانُ بْنُ مُوسَى، وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَمَالِكٍ.

بُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» وَهَذَا شَرْطٌ لَمْ يَأْتِ بِإِبَاحَتِهِ نَصٌّ فَهُوَ بَاطِلٌ.

وَأَيْضًا: فَإِنَّهُ ضَمَانٌ لَمْ يَسْتَقِرَّ عَلَيْهِمَا، وَلَا عَلَى وَاحِدٍ مِنْهُمَا بِعَيْنِهِ، وَإِنَّمَا هُوَ ضَمَانٌ مُعَلَّقٌ عَلَى أَحَدِهِمَا بِغَيْرِ عَيْنِهِ لَا يَدْرِي عَلَى أَيِّهِمَا يَسْتَقِرُّ فَهُوَ بَاطِلٌ، لِأَنَّ مَا لَمْ يَصِحَّ عَلَى الْمَرْءِ بِعَيْنِهِ حِينَ عَقْدِهِ إيَّاهُ، فَمِنْ الْبَاطِلِ أَنْ يَصِحَّ عَلَيْهِ بَعْدَ ذَلِكَ فِي حِينِ لَمْ يَعْقِدْهُ وَلَا الْتَزَمَهُ - وَهَذَا وَاضِحٌ لَا خَفَاءَ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ ضَمِنَ اثْنَانِ حَقًّا عَلَى إنْسَانٍ]

١٢٣٥ - مَسْأَلَةٌ:

[5] **Hadith references (L19337):** Sunan Ibn Majah 2521.

فَإِنْ ضَمِنَ اثْنَانِ فَصَاعِدًا حَقًّا عَلَى إِنْسَانٍ فَهُوَ بَيْنَهُمْ بِالْحِصَصِ لِمَا ذَكَرْنَا، فَلَوْ ابْتَاعَ اثْنَانِ بَيْعًا أَوْ تَدَايَنَا دَيْنًا عَلَى أَنَّ كُلَّ وَاحِدٍ مِنْهُمْ ضَامِنٌ عَنْ الْآخَرِ، فَإِنَّ مَا كَانَ عَلَى كُلِّ وَاحِدٍ مِنْهُمَا قَدْ انْتَقَلَ عَنْهُ وَاسْتَقَرَّ عَلَى الْآخَرِ لَا يَجُوزُ غَيْرُ هَذَا أَصْلًا لِمَا ذَكَرْنَا قَبْلُ.

L19341 If two or more persons guarantee a right against an individual, the right is divided among them in shares as we mentioned. If two jointly purchase a sale or mutually incur a debt on terms that each guarantees for the other, the obligation incumbent upon each of them is transferred from him and settled upon the other. No alternative to this ruling is fundamentally permissible due to what we mentioned previously.

وَلِأَنَّ مِنْ الْبَاطِلِ الْمُحَالِ الْمُمْتَنِعِ أَنْ يَكُونَ مَالُ وَاحِدٍ عَلَى اثْنَيْنِ فَصَاعِدًا يَكُونُ كُلُّهُ عَلَى كُلِّ وَاحِدٍ مِنْهُمَا، لِأَنَّهُ كَانَ يُصَيِّرُ الدِّرْهَمَ دِرْهَمَيْنِ وَلَا بُدَّ؛ أَوْ يَكُونَ غَيْرَ لَازِمٍ لِأَحَدِهِمَا بِعَيْنِهِ، وَلَا لَهُمَا جَمِيعًا، وَهَذَا هَوَسٌ لَا يُعْقَلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19342 And because it is among the falsehoods, the impossible, and the inconceivable that a single property could belong to two or more individuals in such a way that the entirety of it is assigned to each one of them—for this would necessarily render one dirham into two dirhams—or that it is not binding upon either of them individually nor upon both collectively. This is an inconceivable folly—and success is from Allah, the Most High.

[مَسْأَلَةٌ لَا يُشْتَرَطُ فِي بَيْعٍ وَلَا فِي سَلَمٍ وَلَا فِي مُدَايَنَةٍ إعْطَاءُ ضَامِنٍ]

L19343 **Legal ruling: A guarantor is not required in a sale, a Salam contract, or a credit sale.**

١٢٣٦ - مَسْأَلَةٌ:

L19344 1236 – Issue:

وَلَا يَجُوزُ أَنْ يُشْتَرَطَ فِي بَيْعٍ وَلَا فِي سَلَمٍ وَلَا فِي مُدَايَنَةٍ أَصْلًا إعْطَاءُ ضَامِنٍ.

L19345 It is fundamentally impermissible to stipulate the provision of a guarantor in any sale, salam (advance purchase contract), or mudayinah (deferred payment transaction) whatsoever.

وَلَا يَجُوزُ أَنْ يُكَلَّفَ أَحَدٌ فِي خُصُومَةٍ إعْطَاءَ ضَامِنٍ بِهِ لِئَلَّا يَهْرُبَ.

L19346 It is not permissible to compel anyone involved in a dispute to furnish a guarantor for him to prevent him from fleeing.

وَلَا يَجُوزُ أَنْ يُكَلَّفَ مَنْ وَجَبَ لَهُ حَقٌّ مِنْ مِيرَاثٍ أَوْ غَيْرِهِ ضَامِنًا. وَكُلُّ ذَلِكَ جَوْرٌ وَبَاطِلٌ لِأَنَّهُ كُلُّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ.

L19347–19348 It is impermissible to impose an obligation upon one entitled to a right—whether through inheritance or other means—to act as a guarantor. All such impositions constitute oppression and are null and void, for they are stipulations entirely absent from the Book of Allah, the Almighty, and thus invalid.

وَلِأَنَّهُ تَكْلِيفُ مَا لَمْ يَأْتِ قَطُّ نَصٌّ مِنْ اللَّهِ تَعَالَى وَلَا مِنْ رَسُولِهِ - عَلَيْهِ السَّلَامُ - بِإِيجَابِهِ، فَهُوَ شَرْعٌ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى.

L19349 And because it imposes something for which neither Allah the Exalted nor His Messenger—peace be upon him—has ever provided a text mandating it as obligatory, it constitutes a divine law that Allah the Exalted has not permitted.

L19350 If those who permit that or part of it argue using the narration we trans-

mitted through the chain of Abdullah ibn Salih from al-Layth ibn Sa'd from Ja'far ibn Rabi'ah from Abd al-Rahman ibn Hurmuza from his father from Abu Hurayrah: "That the Messenger of Allah (peace and blessings of Allah be upon him and his family) mentioned a man from the Children of Israel who requested another Israelite to advance him a loan of a thousand dinars. He related some speech, and within it: He said: 'Bring me a guarantor?' He replied: 'Allah suffices as guarantor.' He said: 'You have spoken truthfully,' then handed them to him for a specified term. He departed by sea, fulfilled his need, then sought a vessel to return to him by the appointed term but found none. He took a log, hollowed it out, placed inside it a thousand dinars and a document addressed to his creditor, then sealed its opening. Then he brought it to the sea"—he related some speech, including: "He cast it into the sea"—and he mentioned the remainder of the narration. Al-Bukhari cited this narration as interrupted and disconnected. This narration is invalid because its chain includes Abdullah ibn Salih, who is graded as very weak.

فَإِنْ احْتَجَّ مَنْ يُجِيزُ ذَلِكَ أَوْ بَعْضُهُ بِالْخَبَرِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ صَالِحٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ هُرْمُزَ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - ذَكَرَ رَجُلًا مِنْ بَنِي إسْرَائِيلَ سَأَلَ بَعْضَ بَنِي إسْرَائِيلَ أَنْ يُسَلِّفَهُ أَلْفَ دِينَارٍ، فَذَكَرَ كَلَامًا، وَفِيهِ فَقَالَ: ائْتِنِي بِالْكَفِيلِ؟ فَقَالَ: كَفَى بِاَللَّهِ كَفِيلًا، فَقَالَ: صَدَقْتَ فَدَفَعَهَا إلَيْهِ إلَى أَجَلٍ مُسَمًّى، فَخَرَجَ فِي الْبَحْرِ فَقَضَى حَاجَتَهُ ثُمَّ الْتَمَسَ مَرْكَبًا يَرْكَبُهَا يَقْدَمُ عَلَيْهِ لِلْأَجَلِ الَّذِي أَجَّلَهُ فَلَمْ يَجِدْ مَرْكَبًا فَأَخَذَ خَشَبَةً فَنَقَرَهَا ثُمَّ أَدْخَلَ فِيهَا أَلْفَ دِينَارٍ وَصَحِيفَةً مِنْهُ إلَى صَاحِبِهِ، ثُمَّ زَجَّجَ مَوْضِعَهَا، ثُمَّ أَتَى بِهَا إلَى الْبَحْرِ - فَذَكَرَ كَلَامًا، وَفِيهِ: فَرَمَى بِهَا إلَى الْبَحْرِ» وَذَكَرَ بَاقِي الْخَبَرِ، وَذَكَرَ الْبُخَارِيُّ هَذَا الْخَبَرَ مُنْقَطِعًا غَيْرَ مُتَّصِلٍ - فَإِنَّ هَذَا خَبَرٌ لَا يَصِحُّ لِأَنَّهُ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ صَالِحٍ - وَهُوَ ضَعِيفٌ جِدًّا.

L19351 Moreover, even if it were valid, they would have no proof in this matter, because it is a Sharia other than our Sharia, and nothing other than the Sharia of our Prophet (peace and blessings be upon him) is binding upon us.

ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ شَرِيعَةٌ غَيْرُ شَرِيعَتِنَا وَلَا يَلْزَمُنَا غَيْرُ شَرِيعَةِ نَبِيِّنَا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L19352 Allah the Exalted said: {To each of you We have appointed a law and a clear way} [Al-Mā'idah: 48]. It is astonishing that they are the first to violate it, for they do not permit anyone whatsoever to cast his wealth into the sea hoping it might reach his creditor. Rather, they judge whoever does this as guilty of prodigality, place him under legal guardianship, and discipline him. How then can someone with shame trivialize confronting his opponent with an argument he himself is the first to contravene? Sufficient is Allah for us, and what an excellent Trustee He is.[6]

قَالَ اللَّهُ تَعَالَى: {لِكُلٍّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا} [المائدة: ٤٨] وَالْعَجَبُ أَنَّهُمْ أَوَّلُ مُخَالِفٍ لَهُ، فَإِنَّهُمْ لَا يُجِيزُونَ أَلْبَتَّةَ لِأَحَدٍ أَنْ يَقْذِفَ مَالَهُ فِي الْبَحْرِ لَعَلَّهُ يَبْلُغُ إلَى غَرِيمِهِ، بَلْ يَقْضُونَ عَلَى مَنْ فَعَلَ هَذَا بِالسَّفَهِ وَيَحْجُرُونَ عَلَيْهِ وَيُؤَدِّبُونَهُ فَكَيْفَ يَسْتَسْهِلُ ذُو حَيَاءٍ أَنْ يَحْتَجَّ عَلَى خَصْمِهِ بِمَا هُوَ أَوَّلُ مُخَالِفٍ لَهُ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

The Issue of Liability Pertaining to the Face

[مَسْأَلَةُ ضَمَانُ الْوَجْهِ]

L19353

L19354 ١٢٣٧ - Issue:

١٢٣٧ - مَسْأَلَةٌ:

[6] **Qur'an references (L19352):** Qur'an 5:48 (Al-Ma'idah).

L19355 It is absolutely impermissible to enforce suretyship based on apparent aspects—whether pertaining to property, hadd punishments, or anything among all things—because it constitutes a condition absent from the Book of Allah the Exalted, thereby rendering it null and void.

وَلَا يَجُوزُ ضَمَانُ الْوَجْهِ أَصْلًا، لَا فِي مَالٍ وَلَا فِي حَدٍّ، وَلَا فِي شَيْءٍ مِنْ الْأَشْيَاءِ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ.

L19356–19358 Through juristic reasoning, we ask them: If one guarantees only a specific aspect, and the principal debtor becomes absent - what ruling applies to the guarantor bound to that aspect? Do you impose upon him a penalty equivalent to the principal debtor's obligation? This would be injustice and wrongful consumption of wealth through falsehood, because he... He has never undertaken it at all—or would you abandon him? For you have invalidated the guarantee through the very basis on which you contended with the opponents and ruled that it holds no meaning. Or do you burden him with seeking it? This constitutes imposing a burdensome obligation—something beyond his capacity, which Allah the Exalted has never required of him, nor does it yield any benefit. Perhaps he may depart from your stance without pursuing it further, but instead occupy himself with what rightfully concerns him.

وَمِنْ طَرِيقِ النَّظَرِ إنَّا نَسْأَلُهُمْ عَمَّنْ تَكَفَّلَ بِالْوَجْهِ فَقَطْ فَغَابَ الْمَكْفُولُ مَاذَا تَصْنَعُونَ بِالضَّامِنِ لِوَجْهِهِ؟ أَتُلْزِمُونَهُ غَرَامَةَ مَا عَلَى الْمَضْمُونِ - فَهَذَا جَوْرٌ وَأَكْلُ مَالٍ بِالْبَاطِلِ - لِأَنَّهُ لَمْ يَلْتَزِمْهُ قَطُّ، أَمْ تَتْرُكُونَهُ؟ فَقَدْ أَبْطَلْتُمْ الضَّمَانَ بِالْوَجْهِ الَّذِي جَاذَبْتُمْ فِيهِ الْخُصُومَ، وَحَكَمْتُمْ بِأَنَّهُ لَا مَعْنَى لَهُ، أَمْ تُكَلِّفُونَهُ طَلَبَهُ؟ فَهَذَا تَكْلِيفُ الْحَرَجِ، وَمَا لَا طَاقَةَ لَهُ بِهِ، وَمَا لَمْ يُكَلِّفْهُ اللَّهُ تَعَالَى إيَّاهُ قَطُّ، وَلَا مَنْفَعَةَ فِيهِ، وَلَعَلَّهُ يَزُولُ عَنْ مَوْضِعِكُمْ وَلَا يَطْلُبُهُ، وَلَكِنْ يَشْتَغِلُ بِمَا يَعْنِيهِ.

L19359 Our position here is one of the two opinions of al-Shāfiʿī and the opinion of Abū Sulaymān.

وَقَوْلُنَا هَذَا هُوَ أَحَدُ قَوْلَيْ الشَّافِعِيِّ، وَقَوْلُ أَبِي سُلَيْمَانَ.

L19360 Abu Hanifah and Malik said: It is permissible to guarantee the face. However, Malik added: If one guarantees the face, they must pay compensation unless they say, "solely the face." This categorization is strangely novel, and no one recognizes any distinction between saying, "I guarantee his face," and saying, "I guarantee his face exclusively." Neither statement inherently obligates any financial penalty or guarantee whatsoever. How then can it be valid to impose a financial penalty for something one never guaranteed? Allah suffices us, and He is the Best Disposer of Affairs. We know of no precedent from earlier scholars for Malik in this categorization.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: يَجُوزُ ضَمَانُ الْوَجْهِ إلَّا أَنَّ مَالِكًا قَالَ: إنْ ضَمِنَ الْوَجْهَ غَرِمَ الْمَالَ، إلَّا أَنْ يَقُولَ الْوَجْهَ خَاصَّةً، فَكَانَ هَذَا التَّقْسِيمُ طَرِيفًا جِدًّا، وَمَا يَعْلَمُ أَحَدٌ فَرْقٌ بَيْنَ قَوْلِهِ: أَنَا أَضْمَنُ وَجْهَهُ، وَبَيْنَ قَوْلِهِ: أَنَا أَضْمَنُ وَجْهَهُ خَالِصَةً، وَكِلَا الْقَوْلَيْنِ لَمْ يَلْتَزِمْ فِيهِ غَرَامَةَ مَالٍ وَلَا ضَمَانَةً أَصْلًا، فَكَيْفَ يَجُوزُ أَنْ يَأْخُذَ بِغَرَامَةِ مَالٍ لَمْ يَضْمَنْهُ قَطُّ؟ وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ - وَمَا نَعْلَمُ لِمَالِكٍ فِي هَذَا التَّقْسِيمِ سَلَفًا.

L19361 Those who permit personal guarantee argued with a narration we reported through the chain of Al-ʻUqaylī from Ibrāhīm ibn Al-Ḥasan Al-Hamadhānī from Muḥammad ibn Isḥāq Al-Balkhī from Ibrāhīm ibn Khuthaym ibn ʻIrāk ibn Mālik from his father Khuthaym from ʻIrāk from Abū Hurayrah: "That

وَاحْتَجَّ الْمُجِيزُونَ ضَمَانَ الْوَجْهِ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ الْعُقَيْلِيِّ عَنْ إبْرَاهِيمَ بْنِ الْحَسَنِ الْهَمَذَانِيِّ عَنْ مُحَمَّدِ بْنِ إسْحَاقَ الْبَلْخِيِّ عَنْ إبْرَاهِيمَ بْنِ خُثَيْمِ بْنِ عِرَاكِ بْنِ مَالِكٍ عَنْ أَبِيهِ

the Messenger of Allah—peace and blessings be upon him—stood as a guarantor in a case of accusation." They also cited what we reported through the chain of Ibn Wahb from ʻAbd Al-Raḥmān ibn Abī Al-Zināد from his father from Muḥammad ibn Ḥamzah ibn ʻAmr Al-Aslamī from his father: "That ʻUmar dispatched him as a tax collector to Banū Saʻd Hudhaym," and he mentioned the report, which included "that he found among them a man who had engaged in intercourse with his wife's slave girl, who bore him a child, so Ḥamzah took the man as a guarantor." This was because they informed him that ʻUmar had reviewed the case and did not deem stoning applicable to him, but instead lashed him one hundred times. When he came to ʻUmar, he informed him of the matter, and ʻUmar confirmed their account. It was said: "He averted the stoning from him only because he excused him due to ignorance."

خُثَيْمَ عَنْ عِرَاكٍ عَنْ أَبِي هُرَيْرَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَفَلَ فِي تُهْمَةٍ» . وَبِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ عَنْ أَبِيهِ عَنْ مُحَمَّدِ بْنِ حَمْزَةَ بْنِ عَمْرٍو الْأَسْلَمِيِّ عَنْ أَبِيهِ: أَنَّ عُمَرَ بَعَثَهُ مُصَدِّقًا عَلَى بَنِي سَعْدِ هُذَيْمٍ فَذَكَرَ الْخَبَرَ، وَفِيهِ " أَنَّهُ وَجَدَ فِيهِمْ رَجُلًا وَطِئَ أَمَةَ امْرَأَتِهِ فَوَلَدَتْ مِنْهُ فَأَخَذَ حَمْزَةُ بِالرَّجُلِ كَفِيلًا " لِأَنَّهُمْ ذَكَرُوا لَهُ: أَنَّ عُمَرَ قَدْ عَرَفَ خَبَرَهُ، وَأَنَّهُ لَمْ يَرَ عَلَيْهِ رَجْمًا، لَكِنْ جَلَدَهُ مِائَةً، فَلَمَّا أَتَى عُمَرَ أَخْبَرَهُ الْخَبَرَ، فَصَدَّقَهُمْ عُمَرُ، قَالَ: وَإِنَّمَا دَرَأَ عَنْهُ الرَّجْمَ لِأَنَّهُ عَذَرَهُ بِالْجَهَالَةِ.

L19362 And with a report we have narrated through the chain of Isra'il from Abu Ishaq from Harithah ibn Mudarrib: that Ibn Mas'ud was presented with people who acknowledged the prophethood of Musaylimah, among whom was Ibn al-Nawwahah. He demanded his repentance, but he refused? So he struck his neck. Then Ibn Mas'ud consulted the Companions of the Messenger of Allah (peace and blessings be upon him) concerning the remaining individuals. Adiyy ibn Hatim counseled him to execute them, while Al-Ash'ath ibn Qays and Jarir ibn Abdullah advised demanding their repentance and having their clans guarantee their conduct. He then demanded their repentance, entrusted their clans as guarantors, and exiled them to the Levant.

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ إِسْرَائِيلَ عَنْ أَبِي إِسْحَاقَ عَنْ حَارِثَةَ بْنِ مُضَرِّبٍ: أَنَّ ابْنَ مَسْعُودٍ أُتِيَ بِقَوْمٍ يُقِرُّونَ بِنُبُوَّةِ مُسَيْلِمَةَ، وَفِيهِمْ ابْنُ النَّوَّاحَةِ فَاسْتَتَابَهُ فَأَبَى؟ فَضَرَبَ عُنُقَهُ، ثُمَّ إِنَّ ابْنَ مَسْعُودٍ اسْتَشَارَ أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْبَاقِينَ؟ فَأَشَارَ عَلَيْهِ عَدِيُّ بْنُ حَاتِمٍ بِقَتْلِهِمْ، وَأَشَارَ عَلَيْهِ الْأَشْعَثُ بْنُ قَيْسٍ، وَجَرِيرُ بْنُ عَبْدِ اللَّهِ بِاسْتِتَابَتِهِمْ وَأَنْ يُكَفِّلَهُمْ عَشَائِرُهُمْ، فَاسْتَتَابَهُمْ، فَكَفَّلَهُمْ عَشَائِرُهُمْ، وَنَفَاهُمْ إِلَى الشَّامِ.

L19363 They mentioned that Shurayh stood surety in a blood money case and imprisoned the defendant, and that ʿUmar ibn ʿAbd al-ʿAzīz stood surety in a ḥadd penalty. They said this is a consensus of the Companions, as you see.

وَذَكَرُوا: أَنَّ شُرَيْحًا كَفَلَ فِي دَمٍ وَحَبَسَهُ فِي السِّجْنِ، وَأَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ كَفَلَ فِي حَدٍّ، قَالُوا: وَهَذَا إِجْمَاعٌ مِنْ الصَّحَابَةِ كَمَا تَرَى.

L19364–19365 Abu Muhammad said: In the argumentation of those who cite all of this as evidence lies proof of the weakness of the faith of the one advancing it—and nothing more—as well as his scant regard for immediate worldly disgrace and ultimate humiliation in the Hereafter before Allah, the Exalted. They have no valid proof at all except what we have mentioned, and all of that is baseless.

قَالَ أَبُو مُحَمَّدٍ: فِي احْتِجَاجِ مَنْ احْتَجَّ بِهَذَا كُلِّهِ دَلِيلٌ عَلَى رِقَّةِ دِينِ الْمُحْتَجِّ بِهِ وَلَا مَزِيدَ وَعَلَى قِلَّةِ مُبَالَاتِهِ بِالْفَضِيحَةِ الْعَاجِلَةِ وَالْخِزْيِ الْآجِلِ عِنْدَ اللَّهِ تَعَالَى وَمَا لَهُمْ حُجَّةٌ أَصْلًا غَيْرُ مَا ذَكَرْنَا، وَكُلُّ ذَلِكَ بَاطِلٌ.

L19366 As for the narration attributed to the Messenger of Allah—may Allah bless him and grant him peace—it is invalid, for it is transmitted through Ibrāhīm ibn Khuthaym ibn ʿIrāk, and both he and his father are deemed extremely weak in reliability; transmitting from them is impermissible. I seek refuge in Allah from the notion that the Messenger of Allah—may Allah bless him and grant him peace—would hold anyone accountable based on an accusation, given his declaration: "Avoid suspicion, for suspicion is the falsest of speech." And an accusation is suspicion.

أَمَّا الْخَبَرُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَاطِلٌ لِأَنَّهُ مِنْ رِوَايَةِ إبْرَاهِيمَ بْنِ خُثَيْمِ بْنِ عِرَاكٍ، وَهُوَ وَأَبُوهُ فِي غَايَةِ الضَّعْفِ، لَا تَجُوزُ الرِّوَايَةُ عَنْهُمَا، وَمَعَاذَ اللَّهُ مِنْ أَنْ يَأْخُذَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَحَدًا بِتُهْمَةٍ، وَهُوَ الْقَائِلُ: «إيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» وَالتُّهْمَةُ ظَنٌّ.

L19367 If it were permissible for a person to act as a guarantor based on an accusation, the obligation to act as a guarantor would fall upon every individual on Earth, for none after the earliest generations can be definitively proven innocent of accusations. This is chaos without parallel. Those who cite this report do not uphold the practice of taking guarantees in cases of accusation mentioned within it. Who is more misguided than one who cites a report attributed to the Messenger of Allah—peace and blessings be upon him—regarding a matter he never addressed, while he contradicts everything in that report and considers ruling by it an act of oppression and injustice? We utterly disassociate ourselves from such conduct before Allah, the Exalted.

وَلَوْ جَازَ أَنْ يَكْفُلَ إنْسَانٌ بِتُهْمَةٍ لَوَجَبَ الْكَفِيلُ عَلَى كُلِّ مَنْ عَلَى ظَهْرِ الْأَرْضِ، إذْ لَيْسَ أَحَدٌ بَعْدَ الصَّدْرِ الْأَوَّلِ يُقْطَعُ بِبَرَاءَتِهِ مِنْ التُّهَمَةِ - وَهَذَا تَخْلِيطٌ لَا نَظِيرَ لَهُ، وَالْمُحْتَجُّونَ بِهَذَا الْخَبَرِ لَا يَقُولُونَ بِمَا فِيهِ مِنْ أَخْذِ الْكَفَالَةِ فِي التُّهَمَةِ، فَمَنْ أَضَلُّ مِمَّنْ يَحْتَجُّ بِخَبَرٍ يُطْلِقُهُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ، وَهُوَ يُخَالِفُ كُلَّ مَا فِي ذَلِكَ الْخَبَرِ، وَيَرَى الْحُكْمَ بِمَا فِيهِ جَوْرًا وَظُلْمًا؟ نَبْرَأُ إلَى اللَّهِ تَعَالَى مِنْ مِثْلِ هَذَا.

L19368 As for the narration of Ḥamzah ibn ʿAmr al-Aslamī, it is invalid because it is transmitted through ʿAbd al-Raḥmān ibn Abī al-Zināḍ—a weak narrator. Moreover, those who cite it as evidence are themselves the first to contradict its contents. None among them advocates flogging an ignorant person one hundred lashes for intercourse with his wife's female slave, nor do they hold that stoning punishment should be averted from an ignorant person. How then can they consider it permissible to cite regarding ʿUmar—may Allah be pleased with him—a practice they themselves deem injustice and oppression? Is there not in this cause for amazement and a lesson? What Allah has willed shall occur.

وَأَمَّا خَبَرُ حَمْزَةَ بْنِ عَمْرٍو الْأَسْلَمِيِّ فَبَاطِلٌ لِأَنَّهُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ وَهُوَ ضَعِيفٌ - ثُمَّ الْمُحْتَجُّونَ بِهِ أَوَّلُ مُخَالِفٍ لِمَا فِيهِ، فَلَيْسَ مِنْهُمْ أَحَدٌ يَرَى أَنْ يُجْلَدَ الْجَاهِلُ فِي وَطْءِ أَمَةِ امْرَأَتِهِ مِائَةً، وَلَا أَنْ يُدْرَأَ الرَّجْمُ عَنْ الْجَاهِلِ فَكَيْف يَسْتَحِلُّونَ أَنْ يَحْتَجُّوا عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - بِعَمَلٍ هُوَ عِنْدَهُمْ جَوْرٌ وَظُلْمٌ، أَمَا فِي هَذَا عَجَبٌ وَعِبْرَةٌ مَا شَاءَ اللَّهُ كَانَ.

L19369 Moreover, none of them permit surety in any of the Hudud punishments, yet this report contains surety in a Hudud punishment—so marvel at these wonders? As for the report of Ibn Mas'ud—we have narrated it via the narration of Yahya ibn Sa'id al-Qattan and Sufyan ibn 'Uyaynah, both of

وَأَيْضًا: فَكُلُّهُمْ لَا يُجِيزُ الْكَفَالَةَ فِي شَيْءٍ مِنْ الْحُدُودِ وَهَذَا الْخَبَرُ إنَّمَا فِيهِ الْكَفَالَةُ فِي حَدٍّ فَاعْجَبُوا لِهَذِهِ الْعَجَائِبِ؟ وَأَمَّا خَبَرُ ابْنِ مَسْعُودٍ - فَإِنَّا رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ

whom narrated from Isma'il ibn Abi Khalid from Qays ibn Abi Hazim from Ibn Mas'ud.

سَعِيدٍ الْقَطَّانِ، وَسُفْيَانُ بْنُ عُيَيْنَةَ، كِلَاهُمَا عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ ابْنِ مَسْعُودٍ.

L19370–19372 And through the chains of Al-A'mash, Shu'bah, and Sufyan Al-Thawri—all of whom narrated from Abu Ishaq from Harithah ibn Mudarrib from Ibn Mas'ud. These chains are the lights of guidance. None of them mentioned in their narration that he provided a guarantee for them, nor did any of them cite a guarantee except Isra'il alone—and he is weak. Even if he had been reliable, his narration would not harm those who contradicted it. From the reliable narrators, though he is weak. Even if it were authentic, all who cite it as evidence would be the first to oppose it, for none of them permit surety in apostasy – whether the apostate repents or not – nor do they endorse imposing exile on the apostate upon repentance. This is not a valid framework for them to assert abrogation; rather, these rulings are compiled as either correct and authoritative, or erroneous and non-authoritative. Examples include: surety in the case of prescribed punishments and apostasy, exile in apostasy, and flogging someone entirely unaware of the ruling for fornication with one hundred lashes without stoning. O Muslims!—how could one with even a remnant of modesty deem it permissible to cite as evidence against their opponent what they themselves first oppose? Similarly, the narration from Shurayh and 'Umar ibn 'Abd al-'Azīz merely states that they provided surety in a case involving a prescribed punishment and blood money, whereas they fundamentally reject surety in such matters. Moreover, the narration from Shurayh comes through Jābir al-Ju'fī – who is a fabricator.

وَمِنْ طَرِيقِ الْأَعْمَشِ، وَشُعْبَةَ، وَسُفْيَانَ الثَّوْرِيِّ، كُلُّهُمْ عَنْ أَبِي إِسْحَاقَ عَنْ حَارِثَةَ بْنِ مُضَرِّبٍ عَنِ ابْنِ مَسْعُودٍ، وَهَذِهِ الْأَسَانِيدُ هِيَ أَنْوَارُ الْهُدَى لَمْ يَذْكُرْ أَحَدٌ مِنْهُمْ فِي رِوَايَتِهِ أَنَّهُ كَفَلَ بِهِمْ، وَلَا ذَكَرَ مِنْهُمْ أَحَدٌ كَفَالَةً إِلَّا إِسْرَائِيلَ وَحْدَهُ - وَهُوَ ضَعِيفٌ - وَلَوْ كَانَ ثِقَةً مَا ضَرَّ رِوَايَتَهُ مَنْ خَالَفَهَا مِنَ الثِّقَاتِ، وَلَكِنَّهُ ضَعِيفٌ - ثُمَّ لَوْ صَحَّتْ لَكَانَ جَمِيعُ الْمُحْتَجِّينَ بِهَا أَوَّلَ مُخَالِفٍ لَهَا، لِأَنَّهُمْ كُلُّهُمْ لَا يُجِيزُونَ الْكَفَالَةَ فِي الرِّدَّةِ تَابَ أَوْ لَمْ يَتُبْ، وَلَا يَرَوْنَ التَّغْرِيبَ عَلَى الْمُرْتَدِّ إِذْ تَابَ، وَلَيْسَ هَذَا مَكَانًا يُمَكِّنُهُمْ فِيهِ دَعْوَى نَسْخٍ بَلْ هِيَ أَحْكَامٌ مَجْمُوعَةٌ: إِمَّا صَوَابٌ وَحُجَّةٌ، وَإِمَّا خَطَأٌ وَغَيْرُ حُجَّةٍ: الْكَفَالَةُ بِالْوَجْهِ فِي الْحُدُودِ وَفِي الرِّدَّةِ، وَالتَّغْرِيبُ فِي الرِّدَّةِ وَجَلْدُ الْجَاهِلِ الْمُحْصَنِ فِي الزِّنَى مِائَةَ جَلْدَةٍ، وَلَا يُرْجَمُ، فَيَا لِلْمُسْلِمِينَ كَيْفَ يَسْتَحِلُّ مَنْ لَهُ مُسْكَةُ حَيَاءٍ أَنْ يَحْتَجَّ عَلَى خَصْمِهِ بِمَا هُوَ أَوَّلُ مُخَالِفٍ لَهُ؟ . وَكَذَلِكَ الرِّوَايَةُ عَنْ شُرَيْحٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ إِنَّمَا هِيَ أَنَّهُمَا كَفَلَا فِي حَدٍّ وَدَمٍ، وَهُمْ لَا يَرَوْنَ الْكَفَالَةَ فِيهِمَا أَصْلًا، وَهِيَ بَعْدُ عَنْ شُرَيْحٍ مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ - وَهُوَ كَذَّابٌ -.

L19373 This, too, is not known to be authentically reported from 'Umar ibn 'Abd al-'Azīz.

وَلَا يُعْرَفُ هَذَا أَيْضًا يَصِحُّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

L19374 If what they cited of these falsehoods was consensus as they claimed, then they have admitted against themselves to opposing the consensus. May those who oppose the consensus be banished and cast far away! We say regarding them as the Exalted stated concerning those who confessed to misguidance:

فَإِنْ كَانَ مَا ذَكَرُوا مِنْ هَذِهِ التَّكَاذِيبِ إِجْمَاعًا كَمَا زَعَمُوا فَقَدْ أَقَرُّوا عَلَى أَنْفُسِهِمْ بِمُخَالَفَةِ الْإِجْمَاعِ، فَسُحْقًا وَبُعْدًا لِمَنْ خَالَفَ الْإِجْمَاعَ، نَقُولُ فِيهِمْ: كَمَا قَالَ تَعَالَى فِيمَنْ اعْتَرَفَ عَلَى نَفْسِهِ بِالضَّلَالِ: {فَاعْتَرَفُوا بِذَنْبِهِمْ فَسُحْقًا لِأَصْحَابِ السَّعِيرِ} [الملك: ١١]

"They acknowledged their sin, so away with the companions of the Blazing Fire!" (Al-Mulk: 11).[7]

وَشَهِدُوا عَلَى أَنْفُسِهِمْ إِلَّا إِنَّ أُولَئِكَ نَادِمُونَ، وَهَؤُلَاءِ مُصِرُّونَ.

L19375 They testified against themselves, except that those [people] are penitent, and these [others] persist defiantly.

وَأَمَّا نَحْنُ فَلَوْ صَحَّتْ هَذِهِ الرِّوَايَاتُ كُلُّهَا لَمَا كَانَ فِيهَا حُجَّةٌ، لِأَنَّهَا إِنَّمَا هِيَ عَنْ خَمْسَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَقَطْ، وَأَيْنَ هَذِهِ مِنْ صَلَاةِ مُعَاذٍ مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ إمَامَتِهِ قَوْمَهُ فِي مَسْجِدِ بَنِي سَلِمَةَ فِي تِلْكَ الصَّلَاةِ وَخَلْفَهُ ثَلَاثَةٌ وَأَرْبَعُونَ بَدْرِيًّا مُسَمَّوْنَ بِأَسْمَائِهِمْ وَأَنْسَابِهِمْ سِوَى سَائِرِ أَصْحَابِ الْمَشَاهِدِ مِنْهُمْ، فَلَمْ يَرَوْا هَذَا إجْمَاعًا، بَلْ رَأَوْهَا صَلَاةً فَاسِدَةً، وَمَعَاذَ اللَّهِ مِنْ هَذَا، بَلْ هِيَ وَاَللَّهِ صَلَاةٌ مُقَدَّسَةٌ فَاضِلَةٌ، حَقٌّ، وَصَلَاةُ الْمُخَالِفِينَ لَهَا هِيَ الْفَاسِدَةُ حَقًّا.

L19376 As for us, even if all these narrations were authentic, they would not constitute proof, for they are merely from five Companions—may Allah be pleased with them—only. How do these [narrations] measure against Mu'adh's prayer with the Prophet—peace and blessings of Allah be upon him—then his leading his people in the mosque of Banī Salimah during that prayer, with forty-three veterans of Badr behind him—explicitly named with their names and lineages—besides other participants in significant events among them? They did not view this as consensus; rather, they considered it an invalid prayer. Allah forbid! By Allah, it is a sacred and virtuous prayer, true, while the prayer of those who oppose it is indeed the invalid one.

وَأَيْنَ هَذَا مِنْ إعْطَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَجَمِيعِ أَصْحَابِهِ أَرْضَ خَيْبَرَ عَلَى نِصْفِ مَا يَخْرُجُ مِنْهَا مِنْ زَرْعٍ أَوْ تَمْرٍ إلَى غَيْرِ أَجَلٍ مُسَمًّى، لَكِنْ يُقِرُّونَهُمْ [بِهَا] كَمَا شَاءُوا، وَيُخْرِجُونَهُمْ إذَا شَاءُوا؟ فَلَمْ يَرَوْا هَذَا إجْمَاعًا، بَلْ رَأَوْهُ مُعَامَلَةً فَاسِدَةً مَرْدُودَةً، وَحَاشَا لِلَّهِ مِنْ هَذَا، بَلْ هُوَ وَاَللَّهِ الْإِجْمَاعُ الْمُتَيَقَّنُ وَالْحَقُّ الْوَاضِحُ، وَأَقْوَالُ مَنْ خَالَفَ ذَلِكَ هِيَ الْفَاسِدَةُ الْمَرْدُودَةُ حَقًّا، وَنَحْمَدُ اللَّهَ تَعَالَى عَلَى مَا مَنَّ بِهِ.

L19377–19379 How far is this from the Messenger of Allah—peace and blessings be upon him—and all his Companions giving the land of Khaybar in exchange for half of what came from it in crops or dates without any fixed term, while allowing them to remain there as long as they wished and expelling them whenever they wished? They did not regard this as Ijma, but rather deemed it an invalid and rejected transaction. Far removed is Allah from such a thing. Rather, by Allah, it is the firmly established consensus and the evident truth. The statements of those who oppose this are truly corrupt and invalid, and we praise Allah, Exalted is He, for the favor He has bestowed.

ثُمَّ اعْلَمُوا الْآنَ أَنَّهُ لَمْ يَصِحَّ قَطُّ إبَاحَةُ كَفَالَةِ الْوَجْهِ عَنْ صَاحِبٍ وَلَا تَابِعٍ فَهِيَ بَاطِلٌ مُتَيَقَّنٌ لَا تَجُوزُ الْبَتَّةَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19380 Now know that the permissibility of personal surety (kafālat al-wajh) for a principal debtor or subordinate guarantor has never been validly sanctioned. Thus, it is unequivocally invalid and categorically impermissible—and Allah, the Exalted, alone grants success.

تَمَّ " كِتَابُ الْكَفَالَةِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ

L19381 "The Book on Suretyship" has been completed, and all praise is due to Allah, Lord of all the worlds.

[7] **Qur'an references (L19374):** Qur'an 67:11 (Al-Mulk).



AL-MUHALLA

كِتَابُ الشَّرِكَةِ

The Book of Partnership

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[Book of Partnership] [Legal Case: Partnership of Labor]

[كِتَابُ الشَّرِكَةِ] [مَسْأَلَةٌ شَرِكَةُ الْأَبْدَانِ]

L19382–19383

L19384 Issue 1238: A partnership based on labor services is fundamentally invalid in all forms - whether in mediation, instruction, service, manual work, or any other matter. If such a partnership occurs, it is void and non-binding. Each individual among them retains what he has personally earned. If they divide their earnings, it must be judicially enforced that each claims his rightful share without exception, for this constitutes a condition not ordained in the Book of Allah Almighty and is therefore invalid, in accordance with Allah's decree: "No soul earns except against itself" (al-Anʿām 6:164).[1]

١٢٣٨ - مَسْأَلَةٌ: لَا تَجُوزُ الشَّرِكَةُ بِالْأَبْدَانِ أَصْلًا، لَا فِي دَلَالَةٍ، وَلَا فِي تَعْلِيمٍ، وَلَا فِي خِدْمَةٍ، وَلَا فِي عَمَلِ يَدٍ، وَلَا فِي شَيْءٍ مِنْ الْأَشْيَاءِ، فَإِنْ وَقَعَتْ فَهِيَ بَاطِلَةٌ لَا تَلْزَمُ، وَلِكُلِّ وَاحِدٍ مِنْهُمْ أَوْ مِنْهُمَا مَا كَسَبَ، فَإِنْ اقْتَسَمَاهُ وَجَبَ أَنْ يُقْضَى لَهُ بِأَخْذِهِ وَلَا بُدَّ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، وَلِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

L19385 And He, the Exalted, said: "Allah does not burden a soul beyond its capacity. To its credit is the good it has earned, and against it is the evil it has incurred." [Al-Baqarah: 286][2]

وَقَالَ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا اكْتَسَبَتْ} [البقرة: ٢٨٦] .

L19386 All of this is general in this world and the Hereafter, because neither the Qur'an nor the Sunnah has provided any restriction regarding this matter. Whoever claims a restriction in this regard has ascribed to Allah, the Exalted, something without knowledge.

وَهَذَا كُلُّهُ عُمُومٌ فِي الدُّنْيَا وَالْآخِرَةِ، لِأَنَّهُ لَمْ يَأْتِ بِتَخْصِيصِ شَيْءٍ مِنْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، فَمَنْ ادَّعَى فِي ذَلِكَ تَخْصِيصًا فَقَدْ قَالَ عَلَى اللَّهِ تَعَالَى مَا لَا يَعْلَمُ.

L19387 As for us, we have stated that we do not know, for if Allah the Exalted had intended to specify any part of that, He would not have neglected it in order to mislead us, and His Messenger (peace and blessings be upon him), who was commanded to clarify what was revealed to him, would have elucidated it for us. Since neither Allah the Exalted nor His Messenger (peace be upon him) informed us of specifying any part of that, we stand with decisive and irrevocable certainty that He the Exalted intended the general applicability entailed by His words.

وَأَمَّا نَحْنُ فَقَدْ قُلْنَا: مَا نَعْلَمُ، لِأَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ تَخْصِيصَ شَيْءٍ مِنْ ذَلِكَ لَمَا أَهْمَلَهُ لِيُضِلَّنَا وَلَبَيَّنَهُ لَنَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَأْمُورُ بِبَيَانِ مَا أُنْزِلَ عَلَيْهِ فَإِذْ لَمْ يُخْبِرْنَا اللَّهُ تَعَالَى وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - بِتَخْصِيصِ شَيْءٍ مِنْ ذَلِكَ فَنَحْنُ عَلَى يَقِينٍ قَاطِعٍ بَاتٍّ عَلَى أَنَّهُ تَعَالَى أَرَادَ عُمُومَ مَا اقْتَضَاهُ كَلَامُهُ.

L19388–19389 And due to the statement of the Messenger of Allah—peace and blessings be upon him—"Indeed, your blood and wealth are inviolable to you," it is impermissible to rule that the wealth of a Muslim or a dhimmi be transferred to another except by a text of the Qur'an or Sunnah, otherwise, it is injustice.

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَحِلُّ أَنْ يُقْضَى بِمَالِ مُسْلِمٍ أَوْ ذِمِّيٍّ لِغَيْرِهِ إلَّا بِنَصِّ قُرْآنٍ، أَوْ سُنَّةٍ، وَإِلَّا فَهُوَ جَوْرٌ.

[1] **Qur'an references (L19384):** Qur'an 6:164 (Al-An'am).
[2] **Qur'an references (L19385):** Qur'an 2:286 (Al-Baqarah).

L19390 And due to the statement of Allah the Exalted: {Do not consume your wealth among yourselves unjustly, unless it is through trade by mutual consent} [An-Nisa: 29]. This is not trade at all; thus, it constitutes unjust consumption of wealth.[3]

L19391 **A case involving indivisible labor where its owner hired both parties for a single payment.**

L19392 ١٢٣٩ - Issue:

L19393 If the work is indivisible and their employer hires both for a single wage, the wage is divided between them in proportion to the work each performed—such as fulling a garment, building a wall, sewing a garment, or similar situations. Likewise, if they set up a trap together, the game is shared between them. If they send out two trained hunting animals that catch a single game, it is shared between them; otherwise, each takes what his hunting animal catches.

L19394 Abu Hanifah said: Labor partnerships are permissible in crafts - whether their craft is identical or different - working in a single location or two locations. If one partner is absent or falls ill, whatever the present and healthy partner earns shall be shared between them. Such partnerships are permissible neither in hunting nor in gathering firewood.

L19395 Abu Muhammad said: This is an invalid categorization without proof. It has been reported from him that bodily partnerships are only permissible in matters where agency is valid – yet this too is deeply flawed, for according to him, agency is permissible in marriage. Thus, it would necessitate that partnership also be permissible in marriage under their principles.

L19396 Malik stated that a partnership based on physical labor is valid for gathering firewood and seeking ambergris, provided all such activities are carried out in a single location.

L19397 Similarly, if the two partner in hunting with dogs and goshawks—each pos-

وَلِقَوْلِ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] فَهَذِهِ لَيْسَتْ تِجَارَةً أَصْلًا فَهِيَ أَكْلُ مَالٍ بِالْبَاطِلِ.

[مَسْأَلَةٌ كَانَ الْعَمَلُ لَا يَنْقَسِمُ وَاسْتَأْجَرَهُمَا صَاحِبُهُ بِأُجْرَةٍ وَاحِدَةٍ]

١٢٣٩ - مَسْأَلَةٌ:

فَإِنْ كَانَ الْعَمَلُ لَا يَنْقَسِمُ وَاسْتَأْجَرَهُمَا صَاحِبُهُ بِأُجْرَةٍ وَاحِدَةٍ فَالْأُجْرَةُ بَيْنَهُمَا عَلَى قَدْرِ عَمَلِ كُلِّ وَاحِدٍ كَكَمْدِ ثَوْبٍ وَاحِدٍ، أَوْ بِنَاءِ حَائِطٍ وَاحِدٍ، أَوْ خِيَاطَةِ ثَوْبٍ وَاحِدٍ، وَمَا أَشْبَهَ هَذَا؟ وَكَذَلِكَ إِنْ نَصَبَا حِبَالَةً مَعًا فَالصَّيْدُ بَيْنَهُمَا، أَوْ أَرْسَلَا جَارِحَيْنِ فَأَخَذَا صَيْدًا وَاحِدًا فَهُوَ بَيْنَهُمَا، وَإِلَّا فَلِكُلِّ وَاحِدٍ مَا صَادَ جَارِحُهُ.

وَقَالَ أَبُو حَنِيفَةَ: شَرِكَةُ الْأَبْدَانِ جَائِزَةٌ فِي الصِّنَاعَاتِ اتَّفَقَتْ صِنَاعَتُهُمَا أَوْ اخْتَلَفَتْ عَمَلًا فِي مَوْضِعٍ وَاحِدٍ أَوْ فِي مَوْضِعَيْنِ، فَإِنْ غَابَ أَحَدُهُمَا أَوْ مَرِضَ فَمَا أَصَابَ الصَّحِيحُ الْحَاضِرُ فَبَيْنَهُمَا - وَلَا تَجُوزُ فِي التَّصَيُّدِ، وَلَا فِي الِاحْتِطَابِ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا تَقْسِيمٌ فَاسِدٌ بِلَا بُرْهَانٍ، وَرُوِيَ عَنْهُ: أَنَّ شَرِكَةَ الْأَبْدَانِ لَا تَجُوزُ إِلَّا فِيمَا تَجُوزُ فِيهِ الْوَكَالَةُ - وَهَذَا فِي غَايَةِ الْفَسَادِ أَيْضًا، لِأَنَّ الْوَكَالَةَ عِنْدَهُ جَائِزَةٌ فِي النِّكَاحِ فَتَجِبُ أَنْ تَجُوزَ الشَّرِكَةُ عِنْدَهُمْ فِي النِّكَاحِ.

وَقَالَ مَالِكٌ شَرِكَةُ الْأَبْدَانِ جَائِزَةٌ فِي الِاحْتِطَابِ وَطَلَبِ الْعَنْبَرِ، إِذَا كَانَ كُلُّ ذَلِكَ فِي مَوْضِعٍ وَاحِدٍ.

[3] **Qur'an references (L19390):** Qur'an 4:29 (An-Nisa).

sessing a goshawk and a dog—and the two goshawks or two dogs cooperate in hunting a single prey, partnership is valid in his view based on training in a single location. If they are in two locations, there is no harm in it.

وَكَذَلِكَ إِذَا اشْتَرَكَا فِي صَيْدِ الْكِلَابِ وَالْبُزَاةِ إِذَا كَانَ لِكُلِّ وَاحِدٍ مِنْهُمَا بَازٍ وَكَلْبٌ، يَتَعَاوَنُ الْبَازَانِ أَوْ الْكَلْبَانِ عَلَى صَيْدٍ وَاحِدٍ - وَتَجُوزُ الشَّرِكَةُ عِنْدَهُ عَلَى التَّعْلِيمِ فِي مَكَانٍ وَاحِدٍ، فَإِنْ كَانَا فِي مَجْلِسَيْنِ فَلَا ضَيْرَ فِيهِ.

L19398–19400 He permitted partnerships based on physical labor in crafts when both partners work in a single shop, such as cloth-bleachers and similar occupations, provided they are engaged in one craft. If either partner falls ill, the earnings are divided between them. The same ruling applies if one is absent or if one works one day while the other works two days. In his view, partnerships formed by porters or animal-mounted transporters are invalid. He also entirely prohibited partnerships combining two distinct crafts, such as a blacksmith and a cloth-bleacher, as this constitutes arbitrariness. Without proof, and an opinion for which we know of no prior authorities, and our opinion is the opinion of Al-Layth, Abu Sulayman, Al-Shafi'i, and Abu Thawr.

وَأَجَازَ شَرِكَةَ الْأَبْدَانِ فِي الصِّنَاعَاتِ إِذَا كَانَا فِي دُكَّانٍ وَاحِدٍ، كَالْقَصَّارِ وَنَحْوِهِ إِذَا كَانَ ذَلِكَ فِي صِنَاعَةٍ وَاحِدَةٍ، فَإِنْ مَرِضَ أَحَدُهُمَا فَالْأُجْرَةُ بَيْنَهُمَا وَكَذَلِكَ إِنْ غَابَ أَحَدُهُمَا أَوْ عَمِلَ أَحَدُهُمَا يَوْمًا وَالْآخَرُ يَوْمَيْنِ. وَلَا يَجُوزُ عِنْدَهُ اشْتِرَاكُ الْحَمَّالِينَ أَوْ النَّقَّالِينَ عَلَى الدَّوَابِّ. وَلَا يَجُوزُ عِنْدَهُ الِاشْتِرَاكُ فِي صِنَاعَتَيْنِ أَصْلًا كَحَدَّادٍ وَقَصَّارٍ وَنَحْوِ ذَلِكَ وَهَذَا تَحَكُّمٌ بِلَا بُرْهَانٍ وَقَوْلٌ لَا نَعْلَمُ لَهُمْ سَلَفًا - وَقَوْلُنَا هُوَ قَوْلُ اللَّيْثِ وَأَبِي سُلَيْمَانَ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ

L19401 Those who permitted bodily partnerships argued with what we have narrated through the chain of Abū Dāwūd: from ʿUbayd Allāh ibn Muʿādh al-ʿAnbarī, from Yaḥyā ibn Saʿīd al-Qaṭṭān, from Sufyān al-Thawrī, from Abū Isḥāq al-Sabīʿī, from Abū ʿUbaydah ibn ʿAbd Allāh ibn Masʿūd, from his father, who said: "I entered into a partnership with ʿAmmār ibn Yāsir and Saʿd ibn Abī Waqqāṣ regarding what we would obtain on the day of Badr. Saʿd came with two captives, while neither I nor ʿAmmār brought anything."

وَاحْتَجَّ مَنْ أَجَازَ شَرِكَةَ الْأَبْدَانِ بِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد عَنْ عُبَيْدِ اللَّهِ بْنِ مُعَاذٍ الْعَنْبَرِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ أَبِيهِ قَالَ: اشْتَرَكْت أَنَا وَعَمَّارُ بْنُ يَاسِرٍ، وَسَعْدُ بْنُ أَبِي وَقَّاصٍ فِيمَا نُصِيبُ يَوْمَ بَدْرٍ فَجَاءَ سَعْدٌ بِأَسِيرَيْنِ، وَلَمْ أَجِئْ أَنَا وَعَمَّارٌ بِشَيْءٍ.

L19402 Abu Muhammad said: This is an astonishing wonder, and we do not know upon what basis the actions of these people are justified. We ask Allah for protection from the obfuscation with falsehood in His religion, Exalted is He.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا عَجَبٌ عَجِيبٌ، وَمَا نَدْرِي عَلَى مَاذَا يُحْمَلُ عَلَيْهِ أَمْرُ هَؤُلَاءِ الْقَوْمِ؟ وَنَسْأَلُ اللَّهَ السَّلَامَةَ مِنْ التَّمْوِيهِ فِي دِينِهِ تَعَالَى بِالْبَاطِلِ.

L19403 The first [issue] is that this is a disconnected report because Abu 'Ubaydah does not mention anything from his father. It was narrated to us through the chain of Waki' from Shu'bah from 'Amr ibn Murrah. He [Amr] said: I asked Abu 'Ubaydah: "Do you recall anything from Abdullah?" He replied: "No."

أَوَّلُ ذَلِكَ -: أَنَّ هَذَا خَبَرٌ مُنْقَطِعٌ لِأَنَّ أَبَا عُبَيْدَةَ لَا يَذْكُرُ مِنْ أَبِيهِ شَيْئًا: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ عَمْرِو بْنِ مُرَّةَ قَالَ: قُلْت لِأَبِي عُبَيْدَةَ: أَتَذْكُرُ مِنْ عَبْدِ اللَّهِ شَيْئًا؟ قَالَ: لَا.

L19404 The second is that if it were valid, it would form the greatest proof against them, for they - along with us and the rest of Muslims - are the foremost to assert that this partnership is invalid, and that no member of the army may exclusively claim what they acquire apart from the entire military force, save for the matter we dispute concerning the killer's entitlement to personal spoils (al-salb). They maintain that whoever does so commits ghulul (embezzlement of spoils), which is one of the gravest sins.

وَالثَّانِي: أَنَّهُ لَوْ صَحَّ لَكَانَ أَعْظَمَ حُجَّةً عَلَيْهِمْ، لِأَنَّهُمْ أَوَّلُ قَائِلٍ مَعَنَا وَمَعَ سَائِرِ الْمُسْلِمِينَ: أَنَّ هَذِهِ شَرِكَةٌ لَا تَجُوزُ، وَأَنَّهُ لَا يَنْفَرِدُ أَحَدٌ مِنْ أَهْلِ الْعَسْكَرِ بِمَا يُصِيبُ دُونَ جَمِيعِ أَهْلِ الْعَسْكَرِ حَاشَا مَا اخْتَلَفْنَا فِيهِ مِنْ كَوْنِ السَّلَبِ لِلْقَاتِلِ، وَأَنَّهُ إِنْ فَعَلَ فَهُوَ غُلُولٌ مِنْ كَبَائِرِ الذُّنُوبِ.

L19405 The third point is that this partnership did not materialize, and neither Sa'd, nor 'Ammār, nor Ibn Mas'ūd obtained anything from those two captives except what was acquired by Ṭalḥah ibn 'Ubayd Allāh who was in Syria, and 'Uthmān ibn 'Affān who was in Medina. Thereupon, Allah the Exalted revealed concerning this: *"The spoils (al-Anfāl) belong to Allah and the Messenger. So be mindful of Allah and settle your differences"* [8:1]. How then can one who recognizes disgrace as disgraceful deem it lawful to cite a partnership that Allah the Exalted nullified and did not sanction?[4]

وَالثَّالِثُ: أَنَّ هَذِهِ شَرِكَةٌ لَمْ تَتِمَّ، وَلَا حَصَلَ لِسَعْدٍ وَلَا لِعَمَّارٍ، وَلَا لِابْنِ مَسْعُودٍ مِنْ ذَيْنِكَ الْأَسِيرَيْنِ إِلَّا مَا حَصَلَ لِطَلْحَةَ بْنِ عُبَيْدِ اللَّهِ الَّذِي كَانَ بِالشَّامِ، وَلِعُثْمَانَ بْنِ عَفَّانَ الَّذِي كَانَ بِالْمَدِينَةِ فَأَنْزَلَ اللَّهُ تَعَالَى فِي ذَلِكَ: {قُلِ الْأَنْفَالُ لِلَّهِ وَالرَّسُولِ فَاتَّقُوا اللَّهَ وَأَصْلِحُوا ذَاتَ بَيْنِكُمْ} [الأنفال: ١] فَكَيْفَ يَسْتَحِلُّ مَنْ يَرَى الْعَارَ عَارًا أَنْ يَحْتَجَّ بِشَرِكَةٍ أَبْطَلَهَا اللَّهُ تَعَالَى وَلَمْ يُمْضِهَا؟ .

L19406 The fourth is that they—the Ḥanafī school—do not permit partnership in hunting, nor does the Mālikī school permit partnership in joint labor across two locations. Thus, this partnership mentioned in the ḥadīth is impermissible according to their principles. What could be more astonishing than one who seeks to validate his position by citing a narration his own school deems impermissible? All praise is to Allah, Lord of the worlds, for His enabling grace bestowed upon us.[5]

وَالرَّابِعُ: أَنَّهُمْ - يَعْنِي الْحَنَفِيِّينَ - لَا يُجِيزُونَ الشَّرِكَةَ فِي الِاصْطِيَادِ، وَلَا يُجِيزُهَا الْمَالِكِيُّونَ فِي الْعَمَلِ فِي مَكَانَيْنِ، فَهَذِهِ الشَّرِكَةُ الْمَذْكُورَةُ فِي الْحَدِيثِ لَا تَجُوزُ عِنْدَهُمْ، فَمَنْ أَعْجَبُ مِمَّنْ يَحْتَجُّ فِي تَصْحِيحِ قَوْلِهِ بِرِوَايَةٍ لَا تَجُوزُ عِنْدَهُ؟ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ عَلَى تَوْفِيقِهِ لَنَا.

L19407 **Issue: Partnership is not permissible except in tangible assets.**

[مَسْأَلَةٌ لَا تَجُوزُ الشَّرِكَةُ إِلَّا فِي أَعْيَانِ الْأَمْوَالِ]

L19408 1240: Issue

١٢٤٠ - مَسْأَلَةٌ:

L19409–19411 Partnership is permissible only in tangible assets; therefore, it is allowed in commercial transactions. This requires each partner to contribute money: one a sum and the other a sum of the same kind—whether equal to, less than, or exceeding it—and necessitates the thorough mixing of both funds until

وَلَا تَجُوزُ الشَّرِكَةُ إِلَّا فِي أَعْيَانِ الْأَمْوَالِ، فَتَجُوزُ فِي التِّجَارَةِ، بِأَنْ يُخْرِجَ أَحَدُهُمَا مَالًا وَالْآخَرُ مَالًا مِثْلُهُ مِنْ نَوْعِهِ أَوْ أَقَلَّ مِنْهُ أَوْ أَكْثَرَ مِنْهُ، فَيَخْلِطَا الْمَالَيْنِ وَلَا بُدَّ، حَتَّى لَا يُمَيِّزَ أَحَدُهُمَا مَالَهُ مِنْ الْآخَرِ، ثُمَّ يَكُونُ مَا ابْتَاعَا بِذَلِكَ الْمَالِ بَيْنَهُمَا عَلَى قَدْرِ حِصَصِهِمَا

[4] **Qur'an references (L19405):** Qur'an 8:1 (Al-Anfal).
[5] **Qur'an references (L19406):** Qur'an 37:182 (As-Saffat).

neither can distinguish their own property from the other's. Whatever they acquire with this capital shall be jointly owned according to their respective shares. Profits shall be divided proportionally between them, and losses allocated between them proportionally. If they fail to merge the funds, each partner retains exclusive ownership of what they themselves purchased, and their partner retains ownership of what the partner purchased. The entire profit therefrom belongs to him alone, and the entire loss falls upon him alone.

فِيهِ وَالرِّبْحُ بَيْنَهُمَا كَذَلِكَ، وَالْخَسَارَةُ عَلَيْهِمَا كَذَلِكَ - فَإِنْ لَمْ يَخْلِطَا الْمَالَيْنِ فَلِكُلِّ وَاحِدٍ مِنْهُمَا مَا ابْتَاعَهُ هُوَ أَوْ شَرِيكُهُ، بِهِ رِبْحُهُ كُلُّهُ لَهُ وَحْدُهُ، وَخَسَارَتُهُ كُلُّهَا عَلَيْهِ وَحْدَهُ.

L19412 The proof of this is: when the two partners combine the two funds, the combined sum becomes jointly owned between them. Whatever they purchase with it is jointly owned between them. Since that is the case, the principal is the original amount, the profit is jointly owned between them, and the loss is jointly owned between them.

بُرْهَانُ ذَلِكَ -: أَنَّهُمَا إِذَا خَلَطَا الْمَالَيْنِ فَقَدْ صَارَتْ تِلْكَ الْجُمْلَةُ مُشَاعَةً بَيْنَهُمَا، فَمَا ابْتَاعَا بِهَا فَمُشَاعٌ بَيْنَهُمَا، وَإِذَا هُوَ كَذَلِكَ فَثَمَنُهُ أَصْلُهُ، وَرِبْحُهُ مُشَاعٌ بَيْنَهُمَا - وَالْخَسَارَةُ مُشَاعَةٌ بَيْنَهُمَا.

L19413 As for if the two do not mix the two properties, it is invalid for Zaid to have what is purchased with ʿAmr's property, any profit accrued in another person's property, or any loss incurred in another person's property, based on what we previously mentioned from Allah's statement: "And no soul earns except against itself" [al-Anʿām 6:164].[6]

وَأَمَّا إِذَا لَمْ يَخْلِطَا الْمَالَيْنِ فَمِنَ الْبَاطِلِ أَنْ يَكُونَ لِزَيْدٍ مَا ابْتِيعَ بِمَالِ عَمْرٍو، أَوْ مَا رَبِحَ فِي مَالِ غَيْرِهِ، أَوْ مَا خَسِرَ فِي مَالِ غَيْرِهِ، لِمَا ذَكَرْنَا آنِفًا مِنْ قَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

L19414 [مَسْأَلَةُ ابْتَاعَ اثْنَانِ سِلْعَةً بَيْنَهُمَا عَلَى السَّوَاءِ]

A legal case in which two individuals purchased a commodity on equal terms between them.

L19415 1241 – Issue:

١٢٤١ - مَسْأَلَةٌ:

L19416 If two or more individuals purchase a commodity jointly with equal shares, or if one buys more than half of it while the other takes less than half, this sale is permissible. They are liable for the price according to their respective shares. Whatever profit they earn or loss they suffer shall be distributed between them in proportion to their shares, because the price represents the substitute for the commodity.

فَإِنْ ابْتَاعَ اثْنَانِ فَصَاعِدًا سِلْعَةً بَيْنَهُمَا عَلَى السَّوَاءِ، أَوْ ابْتَاعَ أَحَدُهُمَا مِنْهَا أَكْثَرَ مِنَ النِّصْفِ، وَالْآخَرُ أَقَلَّ مِنَ النِّصْفِ، فَهَذَا بَيْعٌ جَائِزٌ، وَالثَّمَنُ عَلَيْهِمَا عَلَى قَدْرِ حِصَصِهِمَا، فَمَا رَبِحَا أَوْ خَسِرَا فَبَيْنَهُمَا عَلَى قَدْرِ حِصَصِهِمَا، لِأَنَّ الثَّمَنَ بَدَلُ السِّلْعَةِ.

L19417 Similarly, if the two parties inherited a commodity, or it was gifted to both of them, or they acquired it by whatever means they obtained ownership,

وَهَكَذَا لَوْ وَرِثَا سِلْعَةً، أَوْ وُهِبَتْ لَهُمَا، أَوْ مَلَكَاهَا بِأَيِّ وَجْهٍ مَلَكَاهَا بِهِ - فَلَوْ تَعَاقَدَا أَنْ يَبْتَاعَا هَكَذَا لَمْ يَلْزَمْ، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، فَهُوَ بَاطِلٌ

[6] **Qur'an references (L19413):** Qur'an 6:164 (Al-An'am).

then if they contracted to purchase it in such a manner, the contract is not valid. This is because it constitutes a condition not stipulated in the Book of Allah the Exalted, and thus it is void.

A legal issue concerning the stipulation by both partners for an increase in profit for one of them.

1242. Issue:

It is not permissible for two partners or more to stipulate that one of them receives a portion of the profit exceeding the proportion of his capital in their transactions, nor that one of them bears a share of the loss, nor to stipulate that one of them works without the other. If any such stipulation occurs, it is entirely invalid and nullified. In such a case, he is only entitled to a portion of the profit corresponding to his capital's share, and he bears a share of the loss proportionate to that, because all of this constitutes a condition not established in the Book of Allāh, the Exalted, and thus it is invalid.

If one of them works more than the other, or works alone voluntarily without stipulation, this is permissible. Should he refuse to volunteer for such work, he is entitled only to a wage equivalent to his work in such labor—whether they profit or incur a loss—for he is not obligated to work for others. Taking advantage of his labor without his consent constitutes a transgression, and the transgressor is liable to pay an equivalent amount. That wherein he transgressed, due to the statement of Allah, the Most High: {So whoever transgresses against you, retaliate against him in the same measure as he transgressed against you} [Al-Baqarah: 194].[7]

A legal case in which one of the two partners produced gold and the other silver.

1243 – Question:

If one of them produces gold and the other produces silver, merchandise, or

[7] **Qur'an references (L19421):** Qur'an 2:194 (Al-Baqarah).

[مَسْأَلَةٌ اشْتِرَاط الشَّرِيكَيْنِ زِيَادَة فِي الرِّبْح لِأَحَدِهِمَا]

١٢٤٢ - مَسْأَلَةٌ:

وَلَا يَحِلُّ لِلشَّرِيكَيْنِ فَصَاعِدًا أَنْ يَشْتَرِطَا أَنْ يَكُونَ لِأَحَدِهِمَا مِنْ الرِّبْحِ زِيَادَةٌ عَلَى مِقْدَارِ مَالِهِ فِيمَا يَبِيعُ، وَلَا أَنْ يَكُونَ عَلَيْهِ خَسَارَةٌ، وَلَا أَنْ يَشْتَرِطَا أَنْ يَعْمَلَ أَحَدُهُمَا دُونَ الْآخَرِ، فَإِنْ وَقَعَ شَيْءٌ مِنْ هَذَا فَهُوَ كُلُّهُ بَاطِلٌ مَرْدُودٌ، وَلَيْسَ لَهُ مِنْ الرِّبْحِ إلَّا مَا يُقَابِلُ مَالَهُ مِنْ الْمَالِ وَعَلَيْهِ مِنْ الْخَسَارَةِ بِقَدْرِ ذَلِكَ، لِأَنَّهُ كُلُّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، فَهُوَ بَاطِلٌ.

فَإِنْ عَمِلَ أَحَدُهُمَا أَكْثَرَ مِنْ الْآخَرِ، أَوْ عَمِلَ وَحْدَهُ تَطَوُّعًا بِغَيْرِ شَرْطٍ فَذَلِكَ جَائِزٌ، فَإِنْ أَبَى مِنْ أَنْ يَتَطَوَّعَ بِذَلِكَ فَلَيْسَ لَهُ إلَّا أَجْرُ مِثْلِهِ فِي مِثْلِ ذَلِكَ الْعَمَلِ رَبِحَا أَوْ خَسِرَا، لِأَنَّهُ لَيْسَ عَلَيْهِ أَنْ يَعْمَلَ لِغَيْرِهِ، فَاغْتِنَامُ عَمَلِهِ بِغَيْرِ طِيبِ نَفْسِهِ اعْتِدَاءٌ، وَعَلَى الْمُعْتَدِي مِثْلُ مَا اعْتَدَى فِيهِ لِقَوْلِ اللَّهِ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

[مَسْأَلَةٌ أَخْرَجَ أَحَدُ الشَّرِيكَيْنِ ذَهَبًا وَالْآخَرُ فِضَّةً]

١٢٤٣ - مَسْأَلَةٌ:

similar items, the transaction is fundamentally invalid unless one party (or both) sells their merchandise until the price is exclusively gold or silver. They must then convert the price into a single form as we previously detailed, and adherence to what we mentioned earlier is essential.

L19427 Or one of them sells to the other from what they have contributed an amount equivalent to what they intend to invest jointly, so that the capital becomes mixed and indistinguishable. This is necessary for what we have mentioned. And success is from Allah, the Most High.

A Juridical Question on the Muslim's Partnership with a Dhimmi

L19428

L19429 Issue 1244:

L19430 The partnership of a Muslim with a Dhimmi is permissible. A Dhimmi is only permitted to engage in sales or transactions that are lawful for a Muslim, because no Quranic verse or Sunnah has come to prohibit this.

L19431 The Messenger of Allah—peace and blessings be upon him—dealt with the people of Khaybar, who were Jews, stipulating half of what the land produced in exchange for their cultivating it with their wealth and labor. Thus, this constituted a partnership in the share of the price, crops, and planted produce.

L19432 The Messenger of Allah—peace and blessings be upon him—purchased food from a Jew in Medina and pledged his armor to him as collateral. He—peace and blessings be upon him—passed away while it remained pledged with the Jew. We have mentioned this with its chain of transmission in the "Book of Pledges" within this diwan of ours. Thus, trading with Jews is permissible, and transactions with them are permissible. Whoever opposes this has no proof.

L19433 It has been narrated to us from Iyas ibn Mu'āwiyah: There is no objection to a Muslim partnering with a Dhimmi provided the dirhams remain in the Muslim's possession and he undertakes the management for them—this being

فَإِنْ أَخْرَجَ أَحَدُهُمَا ذَهَبًا وَالْآخَرُ فِضَّةً أَوْ عَرَضًا أَوْ مَا أَشْبَهَ ذَلِكَ لَمْ يَجُزْ أَصْلًا، إِلَّا بِأَنْ يَبِيعَ أَحَدُهُمَا عَرَضَهُ أَوْ كِلَاهُمَا حَتَّى يَصِيرَ الثَّمَنُ ذَهَبًا فَقَطْ، أَوْ فِضَّةً فَقَطْ، ثُمَّ يَخْلِطَا الثَّمَنَ كَمَا قَدَّمْنَا وَلَا بُدَّ لِمَا ذَكَرْنَا قَبْلُ.

أَوْ يَبِيعَ أَحَدُهُمَا مِنْ الْآخَرِ مِمَّا أَخْرَجَ بِمِقْدَارِ مَا يُرِيدُ أَنْ يُشَارِكَهُ بِهِ حَتَّى يَكُونَ رَأْسُ الْمَالِ بَيْنَهُمَا مَخْلُوطًا لَا يَتَمَيَّزُ وَلَا بُدَّ لِمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ مُشَارَكَةُ الْمُسْلِمِ لِلذِّمِّيِّ]

١٢٤٤ - مَسْأَلَةٌ:

وَمُشَارَكَةُ الْمُسْلِمِ لِلذِّمِّيِّ جَائِزَةٌ، وَلَا يَحِلُّ لِلذِّمِّيِّ مِنْ الْبَيْعِ وَالتَّصَرُّفِ إلَّا مَا يَحِلُّ لِلْمُسْلِمِ، لِأَنَّهُ لَمْ يَأْتِ قُرْآنٌ، وَلَا سُنَّةٌ بِالْمَنْعِ مِنْ ذَلِكَ.

وَقَدْ عَامَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَهْلَ خَيْبَرَ - وَهُمْ يَهُودُ - بِنِصْفِ مَا يَخْرُجُ مِنْهَا عَلَى أَنْ يَعْمَلُوهَا بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ - فَهَذِهِ شَرِكَةٌ فِي الثَّمَنِ، وَالزَّرْعِ، وَالْغَرْسِ.

وَقَدْ «ابْتَاعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَعَامًا مِنْ يَهُودِيٍّ بِالْمَدِينَةِ وَرَهَنَهُ دِرْعَهُ فَمَاتَ - عَلَيْهِ السَّلَامُ - وَهِيَ رَهْنٌ عِنْدَهُ» وَذَكَرْنَاهُ بِإِسْنَادِهِ فِي " كِتَابِ الرَّهْنِ " مِنْ دِيوَانِنَا هَذَا فَهَذِهِ تِجَارَةُ الْيَهُودِ جَائِزَةٌ وَمُعَامَلَتُهُمْ جَائِزَةٌ وَمَنْ خَالَفَ هَذَا فَلَا بُرْهَانَ لَهُ.

وَرُوِّينَا عَنْ إيَاسِ بْنِ مُعَاوِيَةَ: لَا بَأْسَ بِمُشَارَكَةِ الْمُسْلِمِ لِلذِّمِّيِّ إذَا كَانَتْ الدَّرَاهِمُ عِنْدَ الْمُسْلِمِ وَتَوَلَّى الْعَمَلَ لَهَا - وَهُوَ قَوْلُ مَالِكٍ - وَكَرِهَ ذَلِكَ أَصْحَابُ أَبِي حَنِيفَةَ جُمْلَةً.

the opinion of Mālik. The followers of Abū Ḥanīfah, however, completely disapproved of this.

L19434 Abū Muḥammad said: Among the wonders of the world is the permission given by Abū Ḥanīfa and Mālik for transactions with Jews and Christians even when they give him dirhams of wine and usury, yet they deem it reprehensible for him to enter into partnership with them in cases where he is uncertain whether they are acting upon what is impermissible—and this is utterly astonishing.

قَالَ أَبُو مُحَمَّد: مِنْ عَجَائِبِ الدُّنْيَا تَجْوِيزُ أَبِي حَنِيفَةَ، وَمَالِك: مُعَامَلَةَ الْيَهُودِ وَالنَّصَارَى وَإِنْ أَعْطَوْهُ دَرَاهِمَ الْخَمْرِ وَالرِّبَا ثُمَّ يَكْرَهُونَ مُشَارَكَتَهُ حَيْثُ لَا يُوقِنُ بِأَنَّهُمْ يَعْمَلُونَ بِمَا لَا يَحِلُّ، وَهَذَا عَجَبٌ جِدًّا.

L19435 As for us, we know they deem forbidden matters permissible, just as there are among Muslims those who show no concern for the source of their wealth. Nevertheless, dealings with all remain permissible unless one attains certainty of its prohibition. When we become certain it is forbidden, taking it becomes unlawful—whether from a disbeliever or a Muslim.

وَأَمَّا نَحْنُ فَإِنَّا نَدْرِي أَنَّهُمْ يَسْتَحِلُّونَ الْحَرَامَ، كَمَا أَنَّ فِي الْمُسْلِمِينَ مَنْ لَا يُبَالِي مِنْ أَيْنَ أَخَذَ الْمَالَ؟ إِلَّا أَنَّ مُعَامَلَةَ الْجَمِيعِ جَائِزَةٌ مَا لَمْ يُوقِنْ حَرَامًا، فَإِذَا أَيْقَنَاهُ حَرُمَ أَخْذُهُ مِنْ كَافِرٍ أَوْ مُسْلِمٍ.

L19436 It was narrated to us through Waki‘, from Sufyān al-Thawrī, from Abū Ḥuṣayn, who said: ʿAlī ibn Abī Ṭālib told me regarding the *mudārib* and the two partners: “The profit is based on what the two parties mutually agree upon.”

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي حُصَيْنٍ قَالَ: قَالَ لِي عَلِيُّ بْنُ أَبِي طَالِبٍ فِي الْمُضَارِبِ وَفِي الشَّرِيكَيْنِ: الرِّبْحُ عَلَى مَا اصْطَلَحَا عَلَيْهِ.

L19437–19438 From the path of Waki‘, from Sufyan al-Thawri: from Hisham Abu Kulayb, Asim al-Ahwal, and Isma‘il al-Asadi. Isma‘il said: from al-Sha‘bi; Asim said: from Jabir ibn Zayd; Hisham said: from Ibrahim al-Nakha‘i. They all stated regarding two partners where one partner invested one hundred and the other two hundred: the profit is according to what they mutually agreed upon, and the loss is borne by the principal capital.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ هِشَامٍ أَبِي كُلَيْبٍ، وَعَاصِمٍ الْأَحْوَلِ، وَإِسْمَاعِيلَ الْأَسَدِيِّ قَالَ إِسْمَاعِيلُ: عَنْ الشَّعْبِيِّ، وَقَالَ عَاصِمٌ: عَنْ جَابِرِ بْنِ زَيْدٍ وَقَالَ هِشَامٌ: عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالُوا كُلُّهُمْ فِي شَرِيكَيْنِ أَخْرَجَ أَحَدُهُمَا مِائَةً، وَالْآخَرُ مِائَتَيْنِ: إنَّ الرِّبْحَ عَلَى مَا اصْطَلَحَا عَلَيْهِ، وَالْوَضِيعَةَ عَلَى رَأْسِ الْمَالِ.

L19439 Ali said: “This is a Companion for whom no opponent from the Companions is known, and indeed the Ḥanafīs and Mālikīs opposed him, while they - along with those we mentioned from the Successors - jointly opposed him.”

قَالَ عَلِيٌّ: هَذَا صَاحِبٌ لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ وَقَدْ خَالَفَهُ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَخَالَفُوا مَعَهُ مَنْ ذَكَرْنَا مِنْ التَّابِعِينَ.

L19440 A legal issue where one of the two partners took something from the wealth.

[مَسْأَلَةٌ أَخَذَ أَحَدُ الشَّرِيكَيْنِ شَيْئًا مِنْ الْمَالِ]

L19441 1245. Issue:

١٢٤٥ - مَسْأَلَةٌ:

L19442 If one of the two partners takes a portion from the joint capital, accounts it as his liability, and reduces his own capital by the exact amount he took, he shall have no share of the profit except in proportion to what remains of his capital.

L19443 Neither is it permissible for either of them to spend except from their respective share of the profit, nor is there any increase beyond what we have stated, because wealth is forbidden to those other than its owners. If they show mutual generosity in this matter, whatever is fully expended with willing consent becomes permissible, but it does not become binding in the newly initiated agreement if there is no willing consent.

L19444 **Case: Someone hired a worker to assist him for half of the revenue or a specified portion of it.**

L19445 1246. Issue:

L19446 Whoever hires a worker to assist him in sewing, weaving, or similar tasks for half the proceeds or a specified portion thereof—this contract is void and voidable. The worker must be compensated proportionally for the work performed. If both parties mutually consent out of generosity without stipulating any condition, it is permissible provided this arrangement persists solely through their willing agreement.

L19447 As Allah, the Exalted, says: "And do not forget [to maintain] grace between you" (Surah Al-Baqarah 2:237).[8]

L19448 And the Messenger of Allah (peace and blessings of Allah be upon him) said: "Every condition not in the Book of Allah is void."[9]

L19449 **An issue wherein the beast of burden was jointly owned by both parties.**

L19450 1247 – Legal Question:

فَإِنْ أَخَذَ أَحَدُ الشَّرِيكَيْنِ شَيْئًا مِنْ الْمَالِ حَسَبَهُ عَلَى نَفْسِهِ وَنَقَصَ بِهِ مِنْ رَأْسِ مَالِهِ ذَلِكَ الْقَدْرَ الَّذِي أَخَذَهُ، وَلَمْ يَكُنْ لَهُ مِنْ الرِّبْحِ إلَّا بِقَدْرِ مَا بَقِيَ لَهُ.

وَلَا يَحِلُّ لِأَحَدٍ مِنْهُمَا أَنْ يُنْفِقَ إلَّا مِنْ حِصَّتِهِ مِنْ الرِّبْحِ وَلَا مَزِيدَ لِمَا ذَكَرْنَا مِنْ أَنَّ الْأَمْوَالَ مُحَرَّمَةٌ عَلَى غَيْرِ أَرْبَابِهَا، فَإِنْ تَكَارَمَا فِي ذَلِكَ جَازَ مَا نَفِدَ بِطِيبِ نَفْسٍ، وَلَمْ يَلْزَمْ فِي الْمُسْتَأْنَفِ إنْ لَمْ تَطِبْ بِهِ النَّفْسُ.

[مَسْأَلَةٌ اسْتَأْجَرَ أَجِيرًا يُعَاوِنُهُ بِنِصْفِ مَا يَرِدُ أَوْ بِجُزْءٍ مُسَمًّى مِنْهُ]

١٢٤٦ - مَسْأَلَةٌ:

وَمَنْ اسْتَأْجَرَ أَجِيرًا يُعَاوِنُهُ فِي خِيَاطَةٍ أَوْ نَسْجٍ أَوْ غَيْرِ ذَلِكَ بِنِصْفِ مَا يَرِدُ أَوْ بِجُزْءٍ مُسَمًّى مِنْهُ -: فَهُوَ بَاطِلٌ وَعَقْدٌ فَاسِدٌ، وَلَهُ بِقَدْرِ مَا يَعْمَلُ وَلَا بُدَّ، فَإِنْ تَكَارَمَا بِذَلِكَ عَنْ غَيْرِ شَرْطٍ فَهُوَ جَائِزٌ مَا دَامَ بِطِيبِ نُفُوسِهِمَا بِذَلِكَ فَقَطْ.

لِقَوْلِهِ تَعَالَى: {وَلا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ} [البقرة: ٢٣٧]

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ».

[مَسْأَلَةٌ كَانَتْ بَيْنَهُمَا الدَّابَّةُ مُشْتَرَكَةً]

١٢٤٧ - مَسْأَلَةٌ:

[8] **Qur'an references (L19447):** Qur'an 2:237 (Al-Baqarah).
[9] **Hadith references (L19448):** Sunan Ibn Majah 2521.

If two parties jointly own a beast of burden, it is impermissible for them to stipulate alternating days for its use, as this constitutes a condition not ordained in the Book of Allah and is therefore void. One might use it more than the other. Wealth is forbidden to non-owners except with the owners' willing consent. If they mutually show generosity in this matter, it is permissible as long as their voluntary agreement persists, based on what we have explained: every person may dispose of their wealth as they wish through their consent, provided no scriptural prohibition exists against it.

وَمَنْ كَانَتْ بَيْنَهُمَا الدَّابَّةُ مُشْتَرَكَةً لَمْ يَجُزْ أَنْ يَتَشَارَطَا اسْتِعْمَالَهَا بِالْأَيَّامِ، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ، وَقَدْ يَسْتَعْمِلُهَا أَحَدُهُمَا أَكْثَرَ مِمَّا يَسْتَعْمِلُهَا الْآخَرُ، وَالْأَمْوَالُ مُحَرَّمَةٌ عَلَى غَيْرِ أَرْبَابِهَا إِلَّا بِطِيبِ أَنْفُسِهِمْ، فَإِنْ تَكَارَمَا فِي ذَلِكَ جَازَ مَا دَامَ بِطِيبِ أَنْفُسِهِمْ بِذَلِكَ لِمَا ذَكَرْنَا مِنْ أَنَّ لِكُلِّ أَحَدٍ أَنْ يُطَيِّبَ نَفْسَهُ مِنْ مَالِهِ بِمَا شَاءَ مَا لَمْ يَمْنَعْهُ مِنْ ذَلِكَ نَصٌّ.

L19451

The same ruling applies to the slave, the millstone, and other such items.

وَكَذَلِكَ الْقَوْلُ فِي الْعَبْدِ، وَالرَّحَى، وَغَيْرِ ذَلِكَ.

L19452

If they contest each other's claims, each party is entitled to claim from the other half the rent for the use in the shared property, or an amount equivalent to their share of its rent. If one of them rents it out, that is acceptable, and the rent is divided between them according to the proportion of their shares in that property.

فَإِنْ تَشَاحَّا فَلِكُلِّ أَحَدٍ مِنْهُمَا عَلَى الْآخَرِ نِصْفُ أُجْرَةِ مَا اسْتَعْمَلَ فِيهِ ذَلِكَ الشَّيْءَ الْمُشْتَرَكَ، أَوْ مِقْدَارَ حِصَّتِهِ مِنْ أُجْرَتِهَا، فَإِنْ آجَرَهَا فَحَسَنٌ، وَالْأُجْرَةُ بَيْنَهُمَا عَلَى قَدْرِ حِصَصِهِمَا فِي تِلْكَ السِّلْعَةِ.

L19453

An issue between them concerning goods that the two of them purchased for resale, then one of them wanted to sell.

[مَسْأَلَةٌ بَيْنَهُمَا سِلَعٌ ابْتَاعَاهَا لِلْبَيْعِ فَأَرَادَ أَحَدُهُمَا الْبَيْعَ]

L19454–19455

Issue:

مَسْأَلَةٌ:

L19456

If two partners have jointly acquired goods for sale and one of them wishes to sell, he must compel his partner to sell, because they entered into the partnership for that purpose. If the goods were not for sale, the unwilling partner cannot be compelled to sell, as no scriptural text establishes this obligation.

وَمَنْ كَانَتْ بَيْنَهُمَا سِلَعٌ مُشْتَرَكَةٌ ابْتَاعَاهَا لِلْبَيْعِ فَأَرَادَ أَحَدُهُمَا الْبَيْعَ أَجْبَرَ شَرِيكَهُ عَلَى الْبَيْعِ، لِأَنَّهُمَا عَلَى ذَلِكَ تَعَاقَدَا الشَّرِكَةَ، فَإِنْ لَمْ تَكُنْ لِلْبَيْعِ لَمْ يُجْبَرْ عَلَى الْبَيْعِ مَنْ لَا يُرِيدُهُ، لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ نَصٌّ.

L19457

If there exists between them a beast of burden, a slave, or animals, both are compelled to provide for the maintenance of such entities and for whatever ensures the well-being of all such entities.

وَمَنْ كَانَتْ بَيْنَهُمَا دَابَّةٌ، أَوْ عَبْدٌ، أَوْ حَيَوَانٌ، أُجْبِرَا عَلَى النَّفَقَةِ، وَعَلَى مَا فِيهِ صَلَاحُ كُلِّ ذَلِكَ.

L19458

If there is land between two individuals, the one unwilling to develop it is not compelled to do so. Rather, they must divide it, and whoever wishes may develop his share, in accordance with the Prophet's (peace be upon him)

L19459

saying: “Whoever owns land should cultivate it, let his brother cultivate it, or retain ownership of it.”

وَمَنْ كَانَتْ بَيْنَهُمَا أَرْضٌ لَمْ يُجْبَرْ مَنْ لَا يُرِيدُ عِمَارَتَهَا عَلَى عِمَارَتِهَا، لَكِنْ يَقْتَسِمَانِهَا وَيَعْمُرُ مَنْ شَاءَ حِصَّتَهُ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا أَوْ لِيُزْرِعْهَا أَخَاهُ أَوْ لِيُمْسِكْ أَرْضَهُ» .

L19460 Whoever has between them a house, a mill, or an indivisible property, the two are compelled to reconcile due to the Prophet’s prohibition—peace and blessings of Allah be upon him—against wasting wealth. Each of his commands holds its rightful portion of obedience, and it is not permissible to oppose some with others.

وَمَنْ كَانَتْ بَيْنَهُمَا دَارٌ، أَوْ رَحَى، أَوْ مَا لَا يَنْقَسِمُ، أُجْبِرَا عَلَى الْإِصْلَاحِ لِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ، وَلِكُلِّ أَوَامِرِهِ حَقُّهَا مِنْ الطَّاعَةِ لَا يَحِلُّ ضَرْبُ بَعْضِهَا بِبَعْضٍ.

L19461 The sale by a partner in what they have jointly acquired for sale is binding upon his partner, and his purchase is likewise valid, for they mutually contracted to this arrangement. Each is the agent of the other. If either exceeds the instructions given to him by selling at a loss, selling on credit, or purchasing a defective item, he bears liability for all such acts, as he was not authorized for any of them. Thus, he may not act concerning another’s property except within what was permitted to him.

وَبَيْعُ الشَّرِيكِ فِيمَا اشْتَرَكَا فِيهِ لِلْبَيْعِ جَائِزٌ عَلَى شَرِيكِهِ وَابْتِيَاعُهُ كَذَلِكَ، لِأَنَّهُمَا عَلَى ذَلِكَ تَعَاقَدَا فَكُلُّ وَاحِدٍ مِنْهُمَا وَكِيلٌ لِلْآخَرِ، فَإِنْ تَعَدَّى مَا أَمَرَهُ بِهِ فَبَاعَ بِوَضِيعَةٍ، أَوْ إلَى أَجَلٍ، أَوْ اشْتَرَى عَيْبًا فَعَلَيْهِ ضَمَانُ كُلِّ ذَلِكَ، لِأَنَّهُ لَمْ يُوَكِّلْهُ بِشَيْءٍ مِنْ ذَلِكَ، فَلَا يَجُوزُ لَهُ فِي مَالِ غَيْرِهِ إلَّا مَا أَبَاحَهُ لَهُ.

L19462 It is impermissible for either of them to impose a confirmation on the other beyond what he was authorized to do in matters of sale or purchase, based on the statement of Allah the Exalted: *“And no bearer of burdens will bear the burden of another”* (al-Anʿām 6:164).[10]

وَلَا يَجُوزُ إقْرَارُ أَحَدِهِمَا عَلَى الْآخَرِ فِي غَيْرِ مَا وَكَّلَهُ بِهِ مِنْ بَيْعٍ أَوْ ابْتِيَاعٍ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤] .

L19463 Each of the two has the right to separation if he wishes.

وَكُلُّ وَاحِدٍ مِنْهُمَا إذَا أَرَادَ الِانْفِصَالَ فَلَهُ ذَلِكَ.

L19464 A partnership for a specified term is impermissible, as it is a condition not found in the Book of Allah, the Exalted, and is therefore invalid. And with Allah, the Exalted, is success.

وَلَا تَحِلُّ الشَّرِكَةُ إلَى أَجَلٍ مُسَمًّى، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19465 “The Book of Partnership” has been completed, and all praise is due to Allah, Lord of the Worlds.

تَمَّ “ كِتَابُ الشَّرِكَةِ ” وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ “

[10] **Qur’an references (L19462):** Qur’an 6:164 (Al-An’am).

AL-MUHALLA

كِتَابُ الْقِسْمَةِ

The Book of Division of Shared Property

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْقِسْمَةِ] [مَسْأَلَةٌ الْقِسْمَةُ جَائِزَةٌ فِي كُلِّ حَقٍّ مُشْتَرَكٍ إِذَا أَمْكَنَ]

١٢٤٩ - مَسْأَلَةٌ:

الْقِسْمَةُ جَائِزَةٌ فِي كُلِّ حَقٍّ مُشْتَرَكٍ إِذَا أَمْكَنَ، وَعَلَى حَسْبِ مَا يُمْكِنُ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ} [النساء: ٨] .

وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُوسَى بْنُ إِسْمَاعِيلَ نا حَمَّادٌ - هُوَ ابْنُ سَلَمَةَ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْخَطْمِيِّ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقْسِمُ فَيَعْدِلُ فَيَقُولُ: اللَّهُمَّ هَذِهِ قِسْمَتِي فِيمَا أَمْلِكُ فَلَا تَلُمْنِي فِيمَا تَمْلِكُ وَلَا أَمْلِكُ» [يَعْنِي الْقَلْبَ] .

فَهَذَانِ نَصَّانِ عُمُومٌ لِكُلِّ قِسْمَةٍ، وَلَيْسَ لِأَحَدٍ أَنْ يَخُصَّهُمَا فِي مِيرَاثٍ أَوْ بَيْنَ النِّسَاءِ بِرَأْيِهِ، وَأُمِرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ يُعْطِيَ كُلَّ ذِي حَقٍّ حَقَّهُ -: بُرْهَانٌ قَاطِعٌ فِي وُجُوبِ الْقِسْمَةِ إِذَا طَلَبَ ذُو الْحَقِّ حَقَّهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ ١٢٥٠ - مَسْأَلَةٌ:

وَيُجْبَرُ الْمُمْتَنِعُ مِنْهُمَا عَلَيْهَا، وَيُوَكَّلُ الصَّغِيرُ، وَالْمَجْنُونُ، وَالْغَائِبُ مَنْ يَعْزِلُ لَهُ حَقَّهُ، لِمَا ذَكَرْنَا مِنْ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُعْطَى كُلُّ ذِي حَقٍّ حَقَّهُ فَوَجَبَ أَنْ يَنْفُذَ ذَلِكَ وَيَقْضِيَ بِهِ لِكُلِّ مَنْ طَلَبَ حَقَّهُ، وَأَمَّا التَّقْدِيمُ لِمَنْ ذَكَرْنَا فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] وَهَذَا مِنْ الْقِسْطِ.

The Book of the Division Issue: Division is permissible in every shared right, provided it is feasible.

1249 – Issue:

Division is permissible in every shared right when feasible, and to the extent possible.

The evidence for this is the statement of Allah, the Most High: {And when relatives, orphans, and the needy are present at the division of inheritance, give them a share from it} [*al-Nisāʾ* 4:8].[1]

From the chain of Abi Dawud, Musa ibn Isma'il narrated to us: Hammad—that is, Ibn Salamah—narrated to us from Ayyub al-Sikhtiyani from Abu Qilabah from Abdullah ibn Yazid al-Khitmi from Aisha, the Mother of the Believers, who said: "The Messenger of Allah—peace and blessings be upon him—would distribute and act justly, then say: 'O Allah, this is my distribution in what I possess, so do not blame me in what You possess and I do not possess' *meaning the heart*."

These are two texts of general applicability to every division, and it is not permissible for anyone to make exceptions to them regarding inheritance or divisions between women based on personal opinion. The Messenger of Allah - peace and blessings of Allah be upon him - was commanded to give every entitled person their due right - a decisive proof establishing the obligation of division when the right-holder claims their right. Success comes only from Allah, the Most High. 1250 - Legal case:

The refuser among them is compelled to fulfill the obligation. A representative is appointed for the minor, the insane, and the absent to secure their right, based on what we mentioned regarding the command of the Messenger of Allah (peace be upon him) that every right-holder must be granted his right. It is therefore obligatory to implement this and adjudicate it for everyone who claims their right. As for prioritizing those we mentioned,

[1] **Qur'an references (L19470):** Qur'an 4:8 (An-Nisa).

this is due to Allah's statement: "Be steadfast maintainers of justice" [4:135], and this is part of justice.[2]

L19474–19475 **It is a ruling that one who takes his share of the apportioned amount must give from it to those who attended the division.**

L19476 Issue:

L19477 It is obligatory for everyone who receives his share of the divided portion to give—from it and to the extent his soul is content—to close relatives or two poor people present at the division. The guardian must give this on behalf of the minor, the mentally incapacitated, and the absent person, in accordance with Allah the Exalted's decree: {When close relatives, orphans, and the poor are present at the division, provide for them from it} [An-Nisa' 4:8].[3]

L19478 The command of Allah, the Exalted, constitutes an obligation unless an authentically established text emerges stating it is not obligatory. Otherwise, the assertion of whoever claims, "Implementing Allah's command is not binding due to an alleged specificity, a supposed abrogation, or a recommendation declared through personal conjecture," becomes a baseless, rejected, corrupt, and reprehensible statement - except if the Messenger of Allah (peace and blessings be upon him) informs us of any such matter, in which case we hear and obey, for he is the transmitter of Allah's rulings. As for anyone besides him, this does not apply.

L19479 It was collectively narrated to us through the chain of Sa'īd ibn Manṣūr: Hushaym reported from Yūnus (he is Ibn 'Ubayd), Manṣūr ibn al-Muʿtamir, and al-Mughīrah ibn Miqsam. Yūnus and Manṣūr narrated from al-Ḥasan, while al-Mughīrah narrated from Ibrāhīm. Subsequently, al-Ḥasan and Ibrāhīm concurred, both affirming regarding Allah's verse {When relatives, orphans, and the needy are present at the division [of inheritance], give them

[2]**Qur'an references (L19473):** Qur'an 4:135 (An-Nisa).

[3]**Qur'an references (L19477):** Qur'an 4:8 (An-Nisa).

[مَسْأَلَةٌ عَلَى آخِذِ حَظَّهُ مِنْ الْمَقْسُومِ أَنْ يُعْطِيَ مِنْهُ مِنْ حَضَرَ الْقِسْمَةَ]

مَسْأَلَةٌ:

وَفَرْضٌ عَلَى كُلِّ آخِذٍ حَظَّهُ مِنْ الْمَقْسُومِ أَنْ يُعْطِيَ مِنْهُ مِنْ حَضَرَ الْقِسْمَةَ مِنْ ذَوِي قُرْبَى أَوْ مِسْكَيْنٍ مَا طَابَتْ بِهِ نَفْسُهُ، وَيُعْطِيهِ الْوَلِيُّ عَنْ الصَّغِيرِ، وَالْمَجْنُونِ، وَالْغَائِبِ، لِقَوْلِ اللَّهِ تَعَالَى: {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ} [النساء: ٨] .

وَأَمْرُ اللَّهِ تَعَالَى فَرْضٌ حَتَّى يَأْتِيَ نَصٌّ ثَابِتٌ بِأَنَّهُ لَيْسَ فَرْضًا وَإِلَّا فَقَوْلُ مَنْ قَالَ: لَا يَلْزَمُ إنْفَاذُ أَمْرِ اللَّهِ تَعَالَى لِخُصُوصٍ ادَّعَاهُ، أَوْ نَسْخٍ زَعَمَهُ، أَوْ لِنَدْبٍ أَطْلَقَهُ بِظَنِّهِ قَوْلٌ سَاقِطٌ مَرْدُودٌ فَاسِدٌ فَاحِشٌ، إلَّا أَنْ يُخْبِرَنَا بِشَيْءٍ مِنْ ذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَمْعًا وَطَاعَةً، لِأَنَّهُ الْمُبَلِّغُ عَنْ اللَّهِ تَعَالَى أَحْكَامَهُ، وَأَمَّا مَنْ دُونَهُ فَلَا.

رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ عَنْ يُونُسَ - هُوَ ابْنُ عُبَيْدٍ - وَمَنْصُورُ بْنُ الْمُعْتَمِرِ، وَالْمُغِيرَةُ بْنُ مِقْسَمٍ قَالَ يُونُسُ، وَمَنْصُورٌ عَنْ الْحَسَنِ، وَقَالَ الْمُغِيرَةُ: عَنْ إبْرَاهِيمَ، ثُمَّ اتَّفَقَ الْحَسَنُ وَإِبْرَاهِيمُ، قَالَا جَمِيعًا فِي قَوْلِ اللَّهِ تَعَالَى: {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ} [النساء: ٨] هِيَ مُحْكَمَةٌ وَلَيْسَتْ بِمَنْسُوخَةٍ.

something from it} [4:8]: “This ruling is definitive and has not been abrogated.”[4]

L19480–19482 And with him to Hushaym, from Awf—Ibn Abī Jamīlah—from Ibn Sīrīn, who said: They were... They allocate them a small portion when one of them attends the division of inheritance, and Ibn Sirin met the Companions (may Allah be pleased with them).

L19483 Via the chain of transmission of Aḥmad ibn Muḥammad ibn Ismāʿīl al-Ṣaffār the Grammarian: narrated to us by Jaʿfar ibn Mujāshiʿ ← Ibrāhīm ibn Isḥāq ← ʿAbdullāh ← ʿAbd al-Raḥmān ibn Mahdī ← Sufyān—that is, al-Thawrī—from Ibn Abī Najīḥ from Mujāhid concerning the verse, *“And when relatives, orphans, and the needy are present at the division [of inheritance], provide for them from it”* [al-Nisāʾ: 8]. He said: It is an obligation during the division of the inheritance to allocate to them from it a reasonable portion, whatever is agreeable to them.[5]

L19484 And from the chain of transmission of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī regarding this verse, he said: It is definitive (muḥkamah) in what their souls are content with among the heirs. If it is said: “It has been reported from al-Ḍaḥḥāk, Ibn al-Musayyib, and Ibn ʿAbbās that it is abrogated, while some said it is recommended (nadb),” we respond: As for citing the statements of Ibn al-Musayyib and al-Ḍaḥḥāk, their view is such that one need not trouble to refute it beyond mentioning it. How can that be when al-Ḥasan, Ibn Sīrīn, al-Nakhaʿī, al-Zuhrī, Mujāhid, and others opposed them? As for Ibn ʿAbbās, no individual’s opinion constitutes binding proof after the Messenger of Allāh—peace and blessings be upon him—how then can this be when a contradictory report is transmitted from Ibn ʿAbbās? As narrated through the chain of Aḥmad ibn Muḥammad ibn Ismāʿīl al-Ṣaffār al-Najawī: Bakr ibn Sahl narrated to us: Abū Ṣāliḥ narrated to us: Muʿāwiyah ibn Ṣāliḥ narrated from ʿAlī ibn Abī Ṭalḥah from Ibn ʿAbbās concerning {When relatives, orphans, and the needy are present at the division [of an estate], provide for them from it} [4:8]. He said: Allāh—Exalted and Majestic—commanded that when dividing their inheritances, they should sustain their relatives, or-

وَبِهِ إِلَى هُشَيْمٍ عَنْ عَوْفٍ - هُوَ ابْنُ أَبِي جَمِيلَةَ - عَنِ ابْنِ سِيرِينَ قَالَ: كَانُوا يَرْضَخُونَ لَهُمْ إِذَا حَضَرَ أَحَدُهُمُ الْقِسْمَةَ، وَابْنُ سِيرِينَ أَدْرَكَ الصَّحَابَةَ - رَضِيَ اللَّهُ عَنْهُمْ -.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ مُحَمَّدِ بْنِ إِسْمَاعِيلَ الصَّفَّارِ النَّحْوِيِّ نا جَعْفَرُ بْنُ مُجَاشِعٍ نا إِبْرَاهِيمُ بْنُ إِسْحَاقَ نا عَبْدُ اللَّهِ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ - هُوَ الثَّوْرِيُّ - عَنِ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ} [النساء: ٨] قَالَ: هِيَ وَاجِبَةٌ عِنْدَ قِسْمَةِ الْمِيرَاثِ مَا طَابَتْ بِهِ أَنْفُسُهُمْ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ فِي هَذِهِ الْآيَةِ قَالَ: هِيَ مُحْكَمَةٌ مَا طَابَتْ بِهِ أَنْفُسُهُمْ عِنْدَ أَهْلِ الْمِيرَاثِ، فَإِنْ قِيلَ: قَدْ رُوِيَ عَنِ الضَّحَّاكِ وَابْنِ الْمُسَيِّبِ، وَابْنِ عَبَّاسٍ أَنَّهَا مَنْسُوخَةٌ، وَقَالَ قَوْمٌ: إِنَّهَا نَدْبٌ؟ قُلْنَا: أَمَّا الِاحْتِجَاجُ بِقَوْلِ ابْنِ الْمُسَيِّبِ، وَالضَّحَّاكِ فَقَوْلٌ يُسْتَغْنَى عَنْ تُكَلُّفِ الرَّدِّ عَلَيْهِ بِأَكْثَرَ مِنْ إِيرَادِهِ فَكَيْفَ وَقَدْ خَالَفَهُمَا: الْحَسَنُ، وَابْنُ سِيرِينَ، وَالنَّخَعِيُّ، وَالزُّهْرِيُّ، وَمُجَاهِدٌ، وَغَيْرُهُمْ؟ وَأَمَّا ابْنُ عَبَّاسٍ فَمَا قَوْلُ أَحَدٍ حُجَّةٌ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَيْفَ وَقَدْ جَاءَ عَنِ ابْنِ عَبَّاسٍ خِلَافُ هَذَا؟ كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ مُحَمَّدِ بْنِ إِسْمَاعِيلَ الصَّفَّارِ النَّجَوِيِّ نا بَكْرُ بْنُ سَهْلٍ نا أَبُو صَالِحٍ نا مُعَاوِيَةُ بْنُ صَالِحٍ عَنْ عَلِيِّ بْنِ أَبِي طَلْحَةَ عَنِ ابْنِ عَبَّاسٍ {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ} [النساء: ٨] قَالَ: أَمَرَ اللَّهُ عَزَّ وَجَلَّ عِنْدَ قِسْمَةِ مَوَارِيثِهِمْ أَنْ يَصِلُوا أَرْحَامَهُمْ وَيَتَامَاهُمْ وَمَسَاكِينَهُمْ مِنَ الْوَصِيَّةِ، فَإِنْ

[4] **Qur’an references (L19479):** Qur’an 4:8 (An-Nisa).
[5] **Qur’an references (L19483):** Qur’an 4:8 (An-Nisa).

phans, and the needy through the will. If there is no will, they should provide for them from the inheritance. This verse was invoked in the ruling on the inheritance of ʿAbd al-Raḥmān ibn Abī Bakr with the knowledge of ʿĀ'ishah, the Mother of the Believers, and she did not object to it.[6]

L19485 There is no greater marvel than one who relies on what has been soundly transmitted from Ibn Abbas - that Allah's decree *"If they come to you, judge between them or turn away from them"* [5:42] is abrogated by His words *"Judge between them by what Allah has revealed"* [5:49] - yet pays no heed to this position. This is an opinion whose proof has been soundly validated through Allah's rejection of pre-Islamic judgments.[7]

L19486–19488 Every ruling that contradicts the religion of Islam is a ruling of Jāhiliyyah, whether fabricated by its adherents or originating from Allah the Exalted and subsequently abrogated by means of another ruling—such as praying toward Jerusalem, the waiting period of a woman whose husband has died for a full year, adherence to the Sabbath, and similar rulings. Then, someone may cite a statement reported from Ibn Abbas regarding this verse, saying: "Indeed..." There has come differing from him, and this is following caprice and imposing falsehood in the religion of Allah, the Mighty and Majestic. If Ibn Abbas's statement—about which there is disagreement from him here—is authoritative evidence, then it is more deserving to be authoritative evidence where there is no disagreement from him. And if his statement there is not authoritative evidence, then it is not authoritative evidence here either.

L19489 Then, indeed, the statement of one who says, "This verse is abrogated or not obligatory," is a statement that one is not permitted to follow, because it is a claim without proof—either a prohibition against following the command of Allah, the Exalted, and the command of His Messenger (peace be upon him) without proof, or a permission to oppose them as such. All of that is definitively invalid except through an authentically established text from the Qur'an, or the Sunnah—and with Allah, the Exalted, is success.

[6] **Qur'an references (L19484):** Qur'an 4:8 (An-Nisa).
[7] **Qur'an references (L19485):** Qur'an 5:42 (Al-Ma'idah); Qur'an 5:49 (Al-Ma'idah).

لَمْ تَكُنْ وَصِيَّةٌ وَصَلَ لَهُمْ مِنْ الْمِيرَاثِ، وَقَدْ حَكَمَ بِهَذِهِ الْآيَةِ فِي مِيرَاثِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ بِعِلْمِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَلَمْ تُنْكِرْ ذَلِكَ.

وَلَا عَجَبَ أَعْجَبُ مِمَّنْ يَأْتِي إِلَى مَا قَدْ صَحَّ عَنْ ابْنِ عَبَّاسٍ مِنْ أَنَّ قَوْلَ اللَّهِ تَعَالَى: {فَإِنْ جَاءُوكَ فَاحْكُمْ بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ} [المائدة: ٤٢] مَنْسُوخٌ بِقَوْلِهِ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] فَلَا يُلْتَفَتُ إِلَيْهِ - وَهُوَ قَوْلٌ قَدْ صَحَّ بُرْهَانُهُ بِإِنْكَارِ اللَّهِ تَعَالَى حُكْمَ الْجَاهِلِيَّةِ.

وَكُلُّ مَا خَالَفَ دِينَ الْإِسْلَامِ فَهُوَ حُكْمُ جَاهِلِيَّةٍ سَوَاءٌ كَانَ مُفْتَرًى مِنْ أَهْلِهِ أَوْ كَانَ مِنْ عِنْدِ اللَّهِ تَعَالَى ثُمَّ نَسَخَهُ بِغَيْرِهِ، كَالصَّلَاةِ إِلَى بَيْتِ الْمَقْدِسِ، وَتَرَبُّصِ الْمُتَوَفَّى عَنْهَا حَوْلًا، وَالْتِزَامِ السَّبْتِ، وَغَيْرِ ذَلِكَ، ثُمَّ يَأْتِي فَيَحْتَجُّ بِقَوْلٍ جَاءَ عَنْ ابْنِ عَبَّاسٍ فِي هَذِهِ الْآيَةِ قَدْ جَاءَ عَنْهُ خِلَافُهُ، وَهَذَا هُوَ اتِّبَاعُ الْهَوَى وَالتَّحَكُّمُ بِالْبَاطِلِ فِي دِينِ اللَّهِ عَزَّ وَجَلَّ؛ وَلَئِنْ كَانَ قَوْلُ ابْنِ عَبَّاسٍ الْمُخْتَلَفِ عَنْهُ فِيهِ هَاهُنَا حُجَّةً فَأَحْرَى أَنْ يَكُونَ حُجَّةً حَيْثُ لَمْ يَخْتَلِفْ عَنْهُ، وَإِنْ كَانَ لَيْسَ قَوْلُهُ هُنَالِكَ حُجَّةً فَلَيْسَ هَاهُنَا حُجَّةً.

ثُمَّ إِنَّ قَوْلَ الْقَائِلِ: هَذِهِ الْآيَةُ مَنْسُوخَةٌ أَوْ غَيْرُ وَاجِبَةٍ قَوْلٌ لَا يَحِلُّ اتِّبَاعُهُ لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ وَنَهْيٌ عَنْ اتِّبَاعِ أَمْرِ اللَّهِ تَعَالَى وَأَمْرِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - بِلَا بُرْهَانٍ أَوْ إِبَاحَةٍ لِمُخَالَفَتِهِمَا كَذَلِكَ، وَكُلُّ ذَلِكَ بَاطِلٌ مُتَيَقَّنٌ إِلَّا بِنَصٍّ ثَابِتٍ مِنْ قُرْآنٍ، أَوْ سُنَّةٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يُجْبَرُ أَحَدٌ مِنْ الشُّرَكَاءِ عَلَى بَيْعِ حِصَّتِهِ]

It is a jurisprudential ruling that no partner can be compelled to sell his share.

1252 – Question:

It is not permissible for any of the partners to be compelled to sell their share together with their partner or partners, nor to undergo mutual valuation of the jointly owned property—whether originally divisible or among indivisible assets like animals. However, partners may be compelled to divide the property if one of the two partners (in a dual partnership) or one of them (in a plural partnership) demands division. If division is impossible, the benefits are divided between them. When a partner demands sale, they are told: "Sell your share if you wish, or retain it—your partner has the same choice." This applies unless doing so would squander the property without benefit, in which case it must be sold to one partner, two partners, or more. However, if the partnership was formed for commercial purposes, the unwilling partner is specifically compelled to sell in this case.

The evidence for that is the statement of Allah, the Exalted: "Do not consume your wealth among yourselves wrongfully unless it be through trade by mutual consent among you." [An-Nisa: 29][8]

The Messenger of Allah—peace and blessings be upon him—said: "Indeed, your lives and your wealth are inviolable to you."

Thus, it is confirmed thereby that it is impermissible to transfer anyone's property from their ownership without mutual consent. Compelling a sale constitutes transferring property from its owner to one who is prohibited from acquiring it under the definitive texts of the Quran and Sunnah. This is undeniably an injustice.

If it is said: "Verily, one of them abstaining from selling is a harm due to the decrease in the value of the other's share," we say: There is no harm in that. Rather, all harm lies in compelling a person to relinquish ownership of

[8] **Qur'an references (L19493):** Qur'an 4:29 (An-Nisa).

١٢٥٢ - مَسْأَلَةٌ:

وَلَا يَجُوزُ أَنْ يُجْبَرَ أَحَدٌ مِنْ الشُّرَكَاءِ عَلَى بَيْعِ حِصَّتِهِ مَعَ شَرِيكِهِ أَوْ شُرَكَائِهِ وَلَا عَلَى تَقَاوُمِهِمَا الشَّيْءَ الَّذِي هُمَا فِيهِ شَرِيكَانِ أَصْلًا كَانَ مِمَّا يَنْقَسِمُ أَوْ مِمَّا لَا يَنْقَسِمُ مِنْ الْحَيَوَانِ، لَكِنْ يُجْبَرَانِ عَلَى الْقِسْمَةِ إنْ دَعَا إلَيْهَا أَحَدُهُمَا، أَوْ أَحَدُهُمْ، أَوْ تُقْسَمُ الْمَنَافِعُ بَيْنَهُمَا إنْ كَانَ لَا تُمْكِنُ الْقِسْمَةُ وَمَنْ دَعَا إلَى الْبَيْعِ قِيلَ لَهُ: إنْ شِئْت فَبِعْ حِصَّتَك وَإِنْ شِئْت فَأَمْسِكْ، وَكَذَلِكَ شَرِيكُك إلَّا أَنْ يَكُونَ فِي ذَلِكَ إضَاعَةٌ لِلْمَالِ بِلَا شَيْءٍ مِنْ النَّفْعِ فَيُبَاعُ حِينَئِذٍ لِوَاحِدٍ - كَانَ أَوْ لِشَرِيكَيْنِ - فَصَاعِدًا إلَّا أَنْ يَكُونَ اشْتَرَكَا لِتِجَارَةٍ فَيُجْبَرُ عَلَى الْبَيْعِ هَاهُنَا خَاصَّةً مَنْ أَبَاهُ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَصَحَّ بِهَذَا أَنَّهُ لَا يَحِلُّ أَنْ يُخْرِجَ مَالَ أَحَدٍ عَنْ مِلْكِهِ بِغَيْرِ تَرَاضٍ مِنْهُ، وَالْإِجْبَارُ عَلَى الْبَيْعِ إخْرَاجٌ لِلْمَالِ عَنْ صَاحِبِهِ إلَى مَنْ هُوَ حَرَامٌ عَلَيْهِ بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ، وَهَذَا ظُلْمٌ لَا شَكَّ فِيهِ.

فَإِنْ قِيلَ: إنَّ تَرْكَ أَحَدِهِمَا الْبَيْعَ ضَرَرًا بِانْتِقَاصِ قِيمَةِ حِصَّةِ الْآخَرِ؟ قُلْنَا: لَا ضَرَرَ فِي ذَلِكَ، بَلْ الضَّرَرُ كُلُّهُ هُوَ أَنْ يُجْبَرَ الْمَرْءُ عَلَى إخْرَاجِ مِلْكِهِ عَنْ يَدِهِ، فَهَذَا الضَّرَرُ هُوَ الْمُحَرَّمُ، لَا ضَرَرُ إنْسَانٍ بِأَنْ لَا يُنَفَّذَ لَهُ هَوَاهُ فِي مَالِ شَرِيكِهِ.

their property. This is the prohibited harm, not the harm of a person whose caprice remains unfulfilled regarding his partner's property.

L19497–19499 The opponents have agreed with us here that if someone owns a piece of land or a small dwelling adjacent to another's land or dwelling, selling them together would double the value for both, whereas selling them separately would reduce it. That no one can be compelled to do so if he refuses. How, then, did this ruling come to be applied for them regarding jointly owned properties to the exclusion of individually partitioned ones? Their statement here is devoid of all evidence and is an unmistakable injustice.

وَقَدْ وَافَقَنَا الْمُخَالِفُونَ هَاهُنَا عَلَى أَنَّ مَنْ لَهُ قِطْعَةُ أَرْضٍ أَوْ دَارٌ صَغِيرَةٌ إِلَى جَنْبِ أَرْضٍ أَوْ دَارٍ لِغَيْرِهِ لَوْ بِيعَتَا مَعًا لَتَضَاعَفَتْ الْقِيمَةُ لَهُمَا، وَإِنْ بِيعَتَا مُتَفَرِّقَتَيْنِ نَقَصَتْ الْقِيمَةُ: أَنَّهُ لَا يُجْبَرُ أَحَدٌ عَلَى ذَلِكَ إنْ أَبَاهُ، فَمِنْ أَيْنَ وَقَعَ لَهُمْ هَذَا الْحُكْمُ فِي الْمُشْتَرَكِ مِنْ الْأَمْوَالِ دُونَ الْمَقْسُومِ مِنْهَا؟ وَقَوْلُهُمْ هَاهُنَا عَارٍ مِنْ الْأَدِلَّةِ كُلِّهَا وَظُلْمٌ لَا خَفَاءَ بِهِ.

As for that which is purchased for commerce and sale, it is a stipulation permitted by the Qur'an and the Sunnah. Thus, it is impermissible to annul it except by consent of both parties together. And with Allah, the Most High, is success.

وَأَمَّا مَا ابْتِيعَ لِلتِّجَارَةِ وَالْبَيْعِ فَهُوَ شَرْطٌ قَدْ أَبَاحَهُ الْقُرْآنُ وَالسُّنَّةُ، فَلَا يَجُوزُ إِبْطَالُهُ إِلَّا بِرِضَا مِنْهُمَا جَمِيعًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

Among the strange rulings is that those who compel a partner to sell jointly with their co-owner or enforce mutual appraisal until one acquires full ownership do not uphold the right of pre-emption in such matters except for land and structures. Thus they imposed compulsory sale in situations where neither Allah the Exalted nor His Messenger—may Allah's peace and blessings be upon him—legislated it, while nullifying it where Allah the Exalted and His Messenger—may Allah's peace and blessings be upon him—did legislate it, even though both are instances of sale.

وَمِنْ عَجَائِبِ الْأَقْوَالِ: أَنَّ الَّذِينَ يُجْبِرُونَ الشَّرِيكَ عَلَى الْبَيْعِ مَعَ شَرِيكِهِ أَوْ عَلَى تَقَاوُمِهِ حَتَّى يَحْصُلَ لِأَحَدِهِمَا كُلُّهُ لَا يَرَوْنَ الشُّفْعَةَ فِي ذَلِكَ فِيمَا عَدَا الْأَرْضِ وَالْبِنَاءِ، فَأَوْجَبُوا الْبَيْعَ حَيْثُ لَمْ يُوجِبْهُ اللَّهُ تَعَالَى، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبْطَلُوهُ حَيْثُ أَوْجَبَهُ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُمَا بَيْعٌ وَبَيْعٌ.

Issue: Is everything divisible?

[مَسْأَلَةٌ كُلُّ شَيْءٍ يُقْسَمُ]

1253 - Issue:

١٢٥٣ - مَسْأَلَةٌ:

Every item is to be divided equally—whether land, a small or large house, a bathhouse, a garment, a sword, a pearl, or other such items—provided there is no shared property between them besides it. Excepted from this are a single animal and the written Quranic codex (Muṣḥaf), which must not be divided under any circumstances. Instead, they may lease the Muṣḥaf and divide its rental proceeds, while the animal is shared by them on specified days.

وَيُقْسَمُ كُلُّ شَيْءٍ سَوَاءٌ أَرْضًا كَانَ، أَوْ دَارًا صَغِيرَةً، أَوْ كَبِيرَةً، أَوْ حَمَّامًا، أَوْ ثَوْبًا، أَوْ سَيْفًا، أَوْ لُؤْلُؤَةً، أَوْ غَيْرَ ذَلِكَ، إِذَا لَمْ يَكُنْ بَيْنَهُمَا مَالٌ مُشْتَرَكٌ سِوَاهُ حَاشَا الرَّأْسَ الْوَاحِدَ مِنْ الْحَيَوَانِ، وَالْمُصْحَفَ فَلَا يُقْسَمُ أَصْلًا، لَكِنْ يَكُونُ بَيْنَهُمْ يُؤَاجِرُونَهُ وَيَقْتَسِمُونَ أُجْرَتَهُ، أَوْ يَخْدُمُهُمْ أَيَّامًا مَعْلُومَةً.

The proof of that is—the statement of Allah, the Most High: "For men there is a share of what the two parents and close relatives have left" [An-Nisa: 7] up to His words: "from what little or much there is—a prescribed share" [An-Nisa: 7].[1]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {لِلرِّجَالِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالأَقْرَبُونَ} [النساء: ٧] إلَى قَوْله تَعَالَى: {مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَفْرُوضًا} [النساء: ٧] .

Some scholars held: If one of the partners does not benefit from what pertains to him while the rest benefit, partition should not occur. Others maintained: If one of them benefits from what falls to him, they are compelled to divide even if the other partners do not benefit. A third opinion

وَقَالَ قَوْمٌ: إنْ لَمْ يَنْتَفِعْ وَاحِدٌ مِنْ الشُّرَكَاءِ بِمَا يَقَعُ لَهُ وَانْتَفَعَ سَائِرُهُمْ: لَمْ يَقْسِمْ - وَقَالَ آخَرُونَ: إنْ انْتَفَعَ بِمَا يَقَعُ لَهُ وَاحِدٌ مِنْهُمْ أُجْبِرُوا عَلَى الْقِسْمَةِ وَإِنْ لَمْ يَنْتَفِعْ الْآخَرُونَ - وَقَالَ قَوْمٌ: إنْ اسْتَضَرَّ أَحَدُهُمْ بِالْقِسْمَةِ فِي انْحِطَاطِ قِيمَةِ نَصِيبِهِ لَمْ يُقْسَمْ.

[1] **Qur'an references (L19505):** Qur'an 4:7 (An-Nisa).

argued: If any partner is harmed due to the decline in his share's value caused by partition, division must not take place.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ أَقْوَالٌ فَاسِدَةٌ مُتَنَاقِضَةٌ، لَا يَدُلُّ عَلَى صِحَّةِ شَيْءٍ مِنْهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ سَدِيدٌ -: أَمَّا مَنْ مَنَعَ مِنْ الْقِسْمَةِ إنْ كَانَ فِيهِمْ وَاحِدٌ لَا يَنْتَفِعُ بِمَا يَقَعُ لَهُ فَقَدْ عَجَّلَ الضَّرَرَ لِغَيْرِهِ مِنْهُمْ بِمَنْعِهِ مِنْ أَخْذِ حَقِّهِ وَالتَّصَرُّفِ فِيهِ بِمَا يَشَاءُ، فَمَا الَّذِي جَعَلَ ضَرَرَ زَيْدٍ مُبَاحًا خَوْفَ أَنْ يَسْتَضِرَّ عَمْرٌو؟ وَكَذَلِكَ يُقَالُ لِمَنْ رَاعَى انْحِطَاطَ قِيمَةِ حِصَّةِ أَحَدِهِمْ بِالْقِسْمَةِ.

L19507 Abū Muḥammad said: These are corrupt and contradictory statements—neither the Quran, nor the Sunnah, nor analogical reasoning, nor sound judgment provides evidence for the validity of any of them. As for those who prohibit division if one among them does not benefit from what falls to him, they hasten harm upon others by denying him his right to take his due and dispose of it as he wishes. What justifies permitting harm to Zayd out of fear that ʿAmr might suffer harm? The same applies to those who consider the diminution in value of one's share due to division.

وَأَمَّا تَنَاقُضُهُمْ فَإِنَّهُمْ لَا يَخْتَلِفُونَ فِي قِسْمَةِ الْأَرْضِ الْوَاسِعَةِ - وَإِنْ انْحَطَّتْ قِيمَةُ بَعْضِ الْحِصَصِ انْحِطَاطًا ظَاهِرًا - فَظَهَرَ تَنَاقُضُهُمْ.

L19508–19509 As for their contradiction, they do not disagree on dividing the vast land—even though some shares have suffered an apparent decline—thus their contradiction becomes evident.

وَفِي الْمَسْأَلَةِ الَّتِي قَبْلَ هَذِهِ زِيَادَةُ فِي بَيَانِ فَسَادِ أَقْوَالِهِمْ غَنِينَا عَنْ تَكْرَارِهِمَا وَلَا فَرْقَ بَيْنَ قِسْمَةِ السَّيْفِ، وَاللُّؤْلُؤَةِ، وَالثَّوْبِ، وَالسَّفِينَةِ، وَبَيْنَ قِسْمَةِ الدَّارِ، وَالْحَمَّامِ، وَالْأَرْضِ، وَقَدْ يَنْتَفِعُ الْمَرْءُ بِكُلِّ مَا يَقَعُ لَهُ مِنْ ذَلِكَ، وَقَدْ يَحُطُّ النَّصِيبُ مِنْ الْأَرْضِ، وَالدَّارِ، مِنْ قِيمَتِهِ الْمِئِينَ مِنْ الدَّنَانِيرِ أَضْعَافَ مَا يَحُطُّ النَّصِيبُ مِنْ السَّيْفِ، وَالثَّوْبِ، وَاللُّؤْلُؤَةِ.

L19510 In the preceding issue, there is an additional explanation of the invalidity of their arguments, rendering us free from needing to repeat both of them. There is no distinction between dividing a sword, a pearl, a garment, and a ship, and dividing a house, a bath, and land. A person may benefit from whatever falls to him of these items. Yet the share of the land and the house may depreciate from their value by hundreds of dinars - many times more than the depreciation of a share in the sword, the garment, and the pearl.

وَمَالِكٌ، وَالشَّافِعِيُّ: يُبِيحَانِ قِسْمَةَ الْحَمَّامِ إذَا دَعَا إلَى ذَلِكَ أَحَدُهُمَا وَإِنْ لَمْ يَنْتَفِعْ شَرِيكُهُ بِمَا يَقَعُ لَهُ مِنْ ذَلِكَ - وَأَبُو حَنِيفَةَ: يَرَى ذَلِكَ إذَا اتَّفَقَا عَلَيْهِ.

L19511 Mālik and al-Shāfiʿī permit the partitioning of a bathhouse if one co-owner requests it, even if the other co-owner derives no benefit from what he receives. Abū Ḥanīfah holds that such partitioning is permissible when both parties agree.

وَقَدْ يَسْقُطُ فِي هَذَا مِنْ الْقِيمَةِ، وَيَبْطُلُ مِنْ الْمَنْفَعَةِ مَا لَا يَسْقُطُ مِنْ اللُّؤْلُؤَةِ إذَا قُسِمَتْ، وَالسَّيْفِ إذَا قُسِمَ، وَلَا سَبِيلَ إلَى وُجُودِ قَوْلِ صَاحِبٍ بِخِلَافِ هَذَا، فَكَيْفَ دَعْوَى الْإِجْمَاعِ بِالْبَاطِلِ؟ فَظَهَرَ فَسَادُ نَظَرِهِمْ وَبَطَلَ احْتِيَاطُهُمْ بِإِبَاحَتِهِمْ فِي مَوْضِعٍ مَا مَنَعُوا مِنْهُ فِي آخَرَ.

L19512 In this case, some value may diminish and certain benefits become invalid—losses that do not occur when a pearl is divided or a sword is divided. There is no possibility of finding a Companion's statement opposing this. How then can there be a claim of invalid consensus? Thus, the invalidity of their reasoning becomes evident, and their precaution is invalidated by their permitting in one instance what they prohibited in another.

وَأَمَّا الرَّأْسُ الْوَاحِدُ مِنْ الْحَيَوَانِ: فَإِنْ كَانَ إنْسَانًا فَتَفْصِيلُ أَعْضَائِهِ حَرَامٌ، وَإِنْ كَانَ مِمَّا لَا يُؤْكَلُ لَحْمُهُ كَالْحِمَارِ، وَالْكَلْبِ، وَالسِّنَّوْرِ، فَقَتْلُهُ حَرَامٌ، وَذَبْحُهُ لَا يَكُونُ ذَكَاةً، فَهُوَ إضَاعَةٌ لِلْمَالِ، وَمَعْصِيَةٌ مُجَرَّدَةٌ، وَإِنْ كَانَ مِمَّا يُؤْكَلُ لَحْمُهُ لَمْ يَحِلَّ ذَبْحُهُ بِغَيْرِ إذْنِ كُلِّ مَنْ لَهُ فِيهِ مِلْكٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَحِلُّ لِأَحَدٍ ذَبْحُ حِصَّةِ شَرِيكِهِ بِغَيْرِ إذْنِهِ إلَّا أَنْ يُرَى بِهِ مَوْتٌ فَيُبَادِرَ بِذَبْحِهِ، لِأَنَّ تَرْكَهُ مَيْتَةً إضَاعَةٌ لِلْمَالِ، وَقَدْ نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ.

As for a single head of livestock: if the subject is a human, dismembering its limbs is forbidden. If it is among those animals whose meat is not consumed, such as donkeys, dogs, or cats, killing it is forbidden, and slaughtering it does not constitute proper slaughter. This is considered a waste of wealth and an unmitigated act of disobedience. If it is among those animals whose meat is consumed, slaughtering it is impermissible without the consent of every owner with shared rights, in accordance with the saying of Allah's Messenger—peace and blessings be upon him: "Your blood and your wealth are inviolable to you." Thus, no one may slaughter their partner's share without permission unless it is evident that the animal is dying, so he hastens to slaughter it. Allowing it to become carrion would waste wealth, and Allah's Messenger—peace and blessings be upon him—prohibited the waste of wealth.

وَأَمَّا الْمُصْحَفُ: فَلَا يَحِلُّ تَقْطِيعُهُ وَلَا تَفْرِيقُ أَوْرَاقِهِ، لِأَنَّ رُتْبَةَ كِتَابِ اللَّهِ مُنَزَّلَةٌ مِنْ عِنْدِهِ فَلَا تُحَالُ - وَقَدْ رُوِّينَا عَنْ مُجَاهِدٍ: لَا يُقْسَمُ الْمُصْحَفُ.

As for the Mushaf: it is not permissible to cut it or separate its pages, because the divinely ordained order of Allah's Book is sent down from Him and must not be altered. It has been narrated from Mujahid that the Mushaf should not be divided.

وَاحْتَجَّ الْمَانِعُونَ مِنْ هَذَا بِخَبَرٍ فِيهِ «لَا تَعْضِيَةَ عَلَى أَهْلِ الْمِيرَاثِ إلَّا فِيمَا احْتَمَلَ الْقَسْمَ» وَهَذَا خَبَرٌ مُرْسَلٌ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ جُرَيْجٍ عَنْ صِدِّيقِ بْنِ مُوسَى عَنْ مُحَمَّدِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدٍ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ.

Those who prohibit argued against this with a report stating: "There is no obligation to force division upon heirs except in what admits of equitable partition." This is a mursal report which we have transmitted via the chain of Ibn Wahb, from Ibn Jurayj, from Siddīq ibn Musa. From Muḥammad ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm, from his father.

ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا لِأَنَّ " التَّعْضِيَةَ " مَأْخُوذَةٌ مِنْ قِسْمَةِ الْأَعْضَاءِ وَإِنَّمَا الْأَعْضَاءُ لِلْحَيَوَانِ فَقَطْ.

Then, if it were valid, it would serve as an argument for us because "limb division" is derived from the division of limbs, and limbs belong exclusively to animals.

[مَسْأَلَةٌ كَانَ الْمَقْسُومُ متفرقا فَأَرَادَ أَحَدُ الْمُقْتَسِمِينَ أَخْذَ نَصِيبِهِ بِالْقُرْعَةِ]

A case where the divided property was scattered, and one of the co-partitioners sought to claim his allocated portion by lot.

١٢٥٤ - مَسْأَلَةٌ:

1254: Issue

If the partitioned property consists of disparate items, and one co-owner

formally demands the allocation of his entire share through lot-casting—whether designating a specific item among the property's components or a particular category among its types—judgment shall be granted in his favor, regardless of his partners' approval or disapproval.

فَإِنْ كَانَ الْمَالُ الْمَقْسُومُ أَشْيَاءَ مُتَفَرِّقَةً فَدَعَا أَحَدُ الْمُقْتَسِمِينَ إِلَى إِخْرَاجِ نَصِيبِهِ كُلِّهِ بِالْقُرْعَةِ فِي شَخْصٍ مِنْ أَشْخَاصِ الْمَالِ، أَوْ فِي نَوْعٍ مِنْ أَنْوَاعِهِ: قُضِيَ لَهُ بِذَلِكَ، أَحَبَّ شُرَكَاؤُهُ أَمْ كَرِهُوا.

L19522 It is not permissible to divide each type among all of them, nor each house among all of them, nor each estate among all of them, except by the agreement of all of them.

وَلَا يَجُوزُ أَنْ يُقْسَمَ كُلُّ نَوْعٍ بَيْنَ جَمِيعِهِمْ، وَلَا كُلُّ دَارٍ بَيْنَ جَمِيعِهِمْ، وَلَا كُلُّ ضَيْعَةٍ بَيْنَ جَمِيعِهِمْ، إِلَّا بِاتِّفَاقِ جَمِيعِهِمْ عَلَى ذَلِكَ.

L19523 Slaves, animals, copies of the Quran, and other similar property are divided. If someone's share includes a slave and another part, he remains a co-owner in that which his portion has fallen into.

وَيُقْسَمُ الرَّقِيقُ، وَالْحَيَوَانُ، وَالْمَصَاحِفُ، وَغَيْرُ ذَلِكَ، فَمَنْ وَقَعَ فِي سَهْمِهِ عَبْدٌ وَبَعْضُ آخَرَ بَقِيَ شَرِيكًا فِي الَّذِي وَقَعَ حَظُّهُ فِيهِ.

L19524 The proof of that is: whoever holds a view contrary to ours must inevitably abandon his position and revert to our doctrine, or nullify division in its entirety and impose what cannot be borne. This is because it would be said to him: "What distinguishes your position when you state: 'Every house must be divided among them, every estate divided among them, every flock divided among them, every herd divided among them, every slave divided among them, and every garment divided between them and others'?" He would reply: "Rather, every house must be divided among them, and every portion of each faddān of land must be divided among them. For if you assign each heir a share in every single thing the deceased left behind, you are bound by what we have imposed upon you, with no alternative."

بُرْهَانُ ذَلِكَ -: أَنَّ مَنْ قَالَ غَيْرَ قَوْلِنَا لَمْ يَكُنْ لَهُ بُدٌّ مِنْ تَرْكِ قَوْلِهِ هَذَا وَالرُّجُوعِ إِلَى قَوْلِنَا، أَوْ إِبْطَالِ الْقِسْمَةِ جُمْلَةً، وَتَكْلِيفُ مَا لَا يُطَاقُ، وَذَلِكَ أَنَّهُ يُقَالُ لَهُ: مَا الْفَرْقُ بَيْنَكَ فِي قَوْلِكَ: تُقْسَمُ كُلُّ دَارٍ بَيْنَهُمْ، وَكُلُّ ضَيْعَةٍ بَيْنَهُمْ، وَكُلُّ غَنَمٍ بَيْنَهُمْ، وَكُلُّ بَقَرٍ بَيْنَهُمْ، وَكُلُّ رَقِيقٍ بَيْنَهُمْ، وَكُلُّ ثِيَابٍ بَيْنَهُمْ وَبَيْنَ آخَرَ؟ قَالَ: بَلْ يُقْسَمُ كُلُّ بَيْتٍ بَيْنَهُمْ، وَكُلُّ رُكْنٍ مِنْ كُلِّ فَدَّانٍ بَيْنَهُمْ، لِأَنَّهُ إِذَا جَعَلْتَ لِكُلِّ وَاحِدٍ مِنْهُمْ حِصَّةً فِي كُلِّ شَيْءٍ تَرَكَهُ الْمَيِّتُ لَزِمَكَ هَذَا الَّذِي أَلْزَمْنَاكَ وَلَا بُدَّ.

L19525 If he says: Indeed, Allah, the Exalted, says: "An obligatory prescribed share from whatever there is of it, whether little or much" [An-Nisa: 7].[2]

فَإِنْ قَالَ: إِنَّ اللَّهَ تَعَالَى يَقُولُ: {مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَفْرُوضًا} [النساء: ٧] .

L19526 We said: Yes, this is the truth, and this verse constitutes our proof against you. For if you interpret it according to your claim, our position necessarily follows without alternative. The verse mandates our view, since Allah the Exalted only requires from us what He has placed within our capacity. He, the Exalted, intended solely from what the deceased left behind—be it small or large in quantity—and never required anything from every individual portion

قُلْنَا: نَعَمْ هَذَا الْحَقُّ، وَهَذِهِ الْآيَةُ حُجَّتُنَا عَلَيْكَ لِأَنَّكَ إِذَا حَمَلْتَهَا عَلَى مَا قُلْتَ لَزِمَكَ مَا قُلْنَا وَلَا بُدَّ، وَالْآيَةُ مُوجِبَةٌ لِقَوْلِنَا، لِأَنَّ اللَّهَ تَعَالَى إِنَّمَا أَرَادَ مِنَّا مَا قَدْ جَعَلَهُ فِي وُسْعِنَا، فَإِنَّمَا أَرَادَ تَعَالَى مِمَّا قَلَّ مِمَّا تَرَكَهُ الْمَيِّتُ أَوْ كَثُرَ فَقَطْ، وَلَمْ يُرِدْ تَعَالَى قَطُّ مِنْ كُلِّ جُزْءٍ مِنْ

[2] **Qur'an references (L19525):** Qur'an 4:7 (An-Nisa).

of the apportioned estate. Had He required this, He would have burdened us with what lies beyond human capability: dividing every portion of it, even to the measure of the smallest conceivable unit. Thus, the invalidity of their assertion becomes manifest.

L19527–19529 Also, the authenticated report we transmitted through the chain of al-Bukhārī from ʿAlī ibn al-Ḥakam al-Anṣārī, who narrated to us from Abū ʿAwānah, from Saʿīd ibn Masrūq, from ʿAbāyah ibn Rifāʿah ibn Rāfiʿ ibn Khadīj, from... His grandfather Rafiʿ ibn Khadij reported: "The Messenger of Allah (peace and blessings of Allah be upon him) divided the spoils of war by equating ten sheep to a camel" in a hadith. This is the explicit text of our position, for he (peace and blessings of Allah be upon him) gave some of them sheep and others camels. This reflects the practice of the Companions with the Messenger of Allah (peace and blessings of Allah be upon him), with none among them opposing them. It represents the view of Abu Thawr and others.

L19530 **A legal issue: What is impermissible to sell is distributed when its ownership becomes legally valid.**

L19531 1255 - Legal Question:

L19532 Every item whose sale is impermissible—when ownership becomes permissible—such as dogs, cats, fruit before its ripeness becomes evident, water, and other such items, all these are divided through equality and equivalence. This is because division entails distinguishing each individual's right and isolating it, and it is not a sale. If it were a sale, it would not be permissible for the daughter to receive one dinar while the son receives two dinars.

L19533 Similarly, the division of distant agricultural estates in scattered regions necessitates that some of the heirs travel to one town and others to another due to the reason we have stated. Any opinion contradicting this constitutes arbitrary judgment without proof, leading to contradiction and a return to our opinion while abandoning theirs, for it becomes unavoidable to discard some and adopt others. Abu Hanifa said: "An animal is not divided un-

الْمَقْسُومِ، إِذْ لَوْ أَرَادَ تَعَالَى ذَلِكَ لَكَانَ تَعَالَى قَدْ كَلَّفَنَا مَا لَيْسَ فِي الْوُسْعِ مِنْ قِسْمَةِ كُلِّ جُزْءٍ مِنْهُ وَلَوْ عَلَى قَدْرِ الصُّؤَابَةِ، فَظَهَرَ فَسَادُ قَوْلِهِمْ.

وَأَيْضًا: فَإِنَّ الْخَبَرَ الثَّابِتَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ عَلِيِّ بْنِ الْحَكَمِ الْأَنْصَارِيِّ نا أَبُو عَوَانَةَ عَنْ سَعِيدِ بْنِ مَسْرُوقٍ عَنْ عَبَايَةَ بْنِ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ عَنْ جَدِّهِ رَافِعِ بْنِ خَدِيجٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَسَمَ الْغَنِيمَةَ فَعَدَلَ عَشَرَةً مِنْ الْغَنَمِ بِبَعِيرٍ» فِي حَدِيثٍ - فَهَذَا نَصُّ قَوْلِنَا لِأَنَّهُ - عَلَيْهِ السَّلَامُ - أَعْطَى بَعْضَهُمْ غَنَمًا، وَبَعْضَهُمْ إبِلًا، فَهَذَا عَمَلُ الصَّحَابَةِ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا مُخَالِفَ لَهُمْ مِنْهُمْ - وَهُوَ قَوْلُ أَبِي ثَوْرٍ وَغَيْرِهِ.

[مَسْأَلَةٌ مَا لَا يَحِلُّ بَيْعُهُ يُقْسَمُ إذَا حَلَّ مِلْكُهُ]

١٢٥٥ - مَسْأَلَةٌ:

وَيُقْسَمُ كُلُّ مَا لَا يَحِلُّ بَيْعُهُ - إذَا حَلَّ مِلْكُهُ -: كَالْكِلَابِ، وَالسَّنَانِيرِ، وَالثَّمَرِ قَبْلَ أَنْ يَبْدُوَ صَلَاحُهُ، وَالْمَاءِ، وَغَيْرِ ذَلِكَ، كُلُّ ذَلِكَ بِالْمُسَاوَاةِ وَالْمُمَاثَلَةِ، لِأَنَّ الْقِسْمَةَ تَمْيِيزُ حَقِّ كُلِّ وَاحِدٍ وَتَخْلِيصُهُ، وَلَيْسَتْ بَيْعًا - وَلَوْ كَانَتْ بَيْعًا لَمَا جَازَ أَنْ تَأْخُذَ الْبِنْتُ دِينَارًا وَالِابْنُ دِينَارَيْنِ.

وَكَذَلِكَ: تَقْسِيمُ الضِّيَاعِ الْمُتَبَاعِدَةِ فِي الْبِلَادِ الْمُتَفَرِّقَةِ، فَيَخْرُجُ بَعْضُهُمْ إلَى بَلْدَةٍ، وَالْآخَرُ إلَى أُخْرَى لِمَا ذَكَرْنَا - وَكُلُّ قَوْلٍ خَالَفَ هَذَا فَهُوَ تَحَكُّمٌ بِلَا بُرْهَانٍ يَئُولُ إلَى التَّنَاقُضِ، وَإِلَى الرُّجُوعِ إلَى قَوْلِنَا، وَتَرْكِ قَوْلِهِمْ، إذْ لَا بُدَّ مِنْ تَرْكِ بَعْضٍ وَأَخْذِ بَعْضٍ - وَقَالَ

less accompanied by others"—a ruling unknown from any predecessor. And success is from Allah, the Exalted.

أَبُو حَنِيفَةَ: لَا يُقْسَمُ الْحَيَوَانُ إِلَّا إِذَا كَانَ مَعَهُ غَيْرُهُ، وَلَا يُعْرَفُ هَذَا عَنْ أَحَدٍ قَبْلَهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يَقَعَ فِي الْقِسْمَةِ لِأَحَدِ الْمُقْتَسِمِينَ عُلْو بِنَاءٍ وَالْآخَرِ سُفْلُهُ]

L19534 **A juristic issue that division is invalid if one co-owner is allocated the upper part of a building and the other its lower part.**

L19535 Issue 1256:

١٢٥٦ - مَسْأَلَةٌ:

L19536 It is not permissible in a division of jointly owned property for one of the parties to the division to be allocated the upper part of a building while another is allocated its lower part, and such a division is perpetually void if it occurs.

وَلَا يَجُوزُ أَنْ يَقَعَ فِي الْقِسْمَةِ لِأَحَدِ الْمُقْتَسِمِينَ عُلْوُ بِنَاءٍ وَالْآخَرِ سُفْلُهُ، وَهَذَا مَفْسُوخٌ أَبَدًا إِنْ وَقَعَ.

L19537 The proof of this is that the air above the earth cannot be owned, and ownership in it is fundamentally impossible for two reasons: First, no one can establish a permanent presence in the air, as this is inherently unattainable. Second, it is fluctuating—neither stable nor fixed. Therefore, whoever acquires upper space owns it only on the condition that they build upon the lower owner's supporting walls and roof, and on the condition that the lower owner does not demolish their walls or roof, nor raise, nor shorten, nor dome, nor thin any part of them, nor create arches within them.

بُرْهَانُ ذَلِكَ -: أَنَّ الْهَوَاءَ دُونَ الْأَرْضِ لَا يُتَمَلَّكُ، وَلَا يُمْكِنُ ذَلِكَ فِيهِ أَصْلًا لِوَجْهَيْنِ -: أَحَدُهُمَا: أَنَّهُ لَا سَبِيلَ لِأَحَدٍ إِلَى أَنْ يَسْتَقِرَّ فِي الْهَوَاءِ، وَهَذَا مُمْتَنِعٌ. وَالثَّانِي: أَنَّهُ مُتَمَوِّجٌ غَيْرُ مُسْتَقِرٍّ وَلَا مَضْبُوطٍ، فَمَنْ وَقَعَ لَهُ الْعُلْوُ فَإِنَّمَا يَمْلِكُهُ بِشَرْطِ أَنْ يَبْنِيَ عَلَى جُدُرَاتِ صَاحِبِهِ وَسَطْحِهِ، وَبِشَرْطِ أَنْ لَا يَهْدِمَ صَاحِبُ السُّفْلِ جُدُرَاتِهِ، وَلَا سَطْحَهُ، وَلَا أَنْ يُعْلِيَ شَيْئًا مِنْ ذَلِكَ، وَلَا أَنْ يُقَصِّرَهُ: وَلَا أَنْ يُقَبِّبَ سَطْحَهُ، وَلَا أَنْ يُرَقِّقَ جُدُرَاتِهِ، وَلَا أَنْ يَفْتَحَ فِيهَا أَقْوَاسًا.

L19538 None of these conditions are in the Book of Allāh, the Exalted.

وَكُلُّ هَذِهِ شُرُوطٌ لَيْسَتْ فِي كِتَابِ اللَّهِ تَعَالَى.

L19539–19540 The Messenger of Allah (may Allah bless him and grant him peace) said: "Every stipulation not in the Book of Allah is void, even if it were a hundred stipulations. The Book of Allah is more deserving, and Allah's stipulation is more binding."[3]

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ، وَإِنْ كَانَ مِائَةَ شَرْطٍ، كِتَابُ اللَّهِ أَحَقُّ، وَشَرْطُ اللَّهِ أَوْثَقُ» .

L19541 We know that whoever holds a right is made the owner of it and may dispose of it as he wishes, provided neither the Quran nor the Sunnah prohibits it.

وَقَدْ عَلِمْنَا أَنَّ كُلَّ مَنْ لَهُ حَقٌّ فَهُوَ مُمَلَّكٌ إِيَّاهُ يَتَصَرَّفُ فِيهِ كَيْفَ شَاءَ، مَا لَمْ يَمْنَعْهُ قُرْآنٌ، أَوْ سُنَّةٌ - فَبَطَلَتْ هَذِهِ الْقِسْمَةُ بِيَقِينٍ لَا إِشْكَالَ فِيهِ - وَصَحَّ أَنَّ ابْتِيَاعَ الْعُلُوِّ عَلَى

[3] **Hadith references (L19540):** Sunan Ibn Majah 2521.

إِقْرَارِهِ حَيْثُ هُوَ أَكْلُ مَالٍ بِالْبَاطِلِ، وَإِنَّمَا يَجُوزُ بَيْعُ أَنْقَاضِهِ فَقَطْ، فَإِذَا ابْتَاعَهَا فَلَيْسَ لَهُ إِمْسَاكُهَا عَلَى جُدْرَاتِ غَيْرِهِ، إِلَّا مَا دَامَ تَطِيبُ نَفْسُهُ بِذَلِكَ، ثُمَّ لَهُ أَنْ يَأْخُذَهُ بِإِزَالَتِهَا عَنْ حَقِّهِ مَتَى شَاءَ.

Thus, this partition is invalidated with certainty, without ambiguity. It is confirmed that purchasing rights to the elevated structure while affirming its current state constitutes misappropriation of wealth. Only the sale of its debris is permissible. If he purchases it, he may not keep it on another's walls as long as the owner's soul is content with that. Thereafter, he may reclaim it by removing it from his property whenever he wishes.

وَقَدْ مَنَعَ الشَّافِعِيُّ مِنْ اقْتِسَامِ سُفْلٍ لِوَاحِدٍ وَعُلُوٍّ لِآخَرَ

L19542 And indeed, Al-Shafi'i prohibited dividing by assigning the lower portion to one party and the upper portion to another.

[مَسْأَلَةٌ لَا يَحِلُّ للشريك إِنْفَاذُ شَيْءٍ مِنْ الْحُكْمِ فِي جُزْءٍ مِنْ الشَّرِكَةِ]

Issue: It is not permissible for a partner to implement any part of the legal ruling within a portion of the partnership.

١٢٥٧ - مَسْأَلَةٌ:

L19544 1257 - Question:

وَلَا يَحِلُّ لِأَحَدٍ مِنْ الشُّرَكَاءِ إِنْفَاذُ شَيْءٍ مِنْ الْحُكْمِ فِي جُزْءٍ مُعَيَّنٍ مِمَّا لَهُ فِيهِ شَرِيكٌ، وَلَا فِي كُلِّهِ - سَوَاءٌ قَلَّ ذَلِكَ الْجُزْءُ أَوْ كَثُرَ - لَا بَيْعٌ، وَلَا صَدَقَةٌ، وَلَا هِبَةٌ، وَلَا إصْدَاقٌ، وَلَا إقْرَارٌ فِيهِ لِأَحَدٍ، وَلَا تَحْبِيسٌ، وَلَا غَيْرُ ذَلِكَ، كَمَنْ بَاعَ رُبُعَ هَذَا الْبَيْتِ، أَوْ ثُلُثَ هَذِهِ الدَّارِ، أَوْ مَا أَشْبَهَ ذَلِكَ، أَوْ كَانَ شَرِيكُهُ حَاضِرًا، أَوْ مُقَاسَمَتُهُ لَهُ مُمْكِنَةٌ، لِأَنَّ كُلَّ مَا ذَكَرْنَا كَسْبٌ عَلَى غَيْرِهِ، لِأَنَّهُ لَا يَدْرِي أَيَقَعُ لَهُ عِنْدَ الْقِسْمَةِ ذَلِكَ الْجُزْءُ أَمْ لَا؟ وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

L19545 It is not permissible for any co-owner to enforce any judgment regarding a specified portion of jointly owned property—whether the portion is small or large, nor regarding its entirety. This prohibition includes sale, charity, gift, bridal gift, admission of another's claim to it, endowment, or any other transaction. For instance, selling a quarter of this house, a third of this house, or similar transactions—even if the co-owner is present or partition is feasible—remains impermissible. This is because all such actions burden others unjustly, as one cannot know whether that specific portion will be allotted to them during division. Allah the Exalted said: "No soul earns [anything] except against itself, nor does any bearer bear another's burden" (Quran 6:164).[4]

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L19546 And due to the saying of the Messenger of Allah (peace be upon him): "Indeed, your blood and your wealth are forbidden upon you." 1258 - Issue:

١٢٥٨ - مَسْأَلَةٌ:

فَإِنْ وَقَعَ شَيْءٌ مِمَّا ذَكَرْنَا فُسِخَ أَبَدًا - سَوَاءٌ وَقَعَ ذَلِكَ الشَّيْءُ بِعَيْنِهِ بَعْدَ ذَلِكَ فِي حِصَّتِهِ أَوْ لَمْ يَقَعْ -: لَا يَنْفُذُ شَيْءٌ مِمَّا ذَكَرْنَا أَصْلًا لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -:

L19547 If any of the matters we mentioned occurs, it is permanently invalidated—whether that specific matter occurs afterward in his portion or not—for none of what we mentioned takes effect whatsoever, due to the statement of Al-

[4] **Qur'an references (L19545):** Qur'an 6:164 (Al-An'am).

lah's Messenger (peace be upon him): "Every action not aligned with our command is rejected." Every matter we have mentioned constitutes an action contrary to the command of Allah the Exalted and the command of His Messenger (peace be upon him), so it is rejected.

«كُلُّ عَمَلٍ لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَكُلُّ مَا ذَكَرْنَا فَإِنَّهُ عَمَلٌ وَقَعَ بِخِلَافِ أَمْرِ اللَّهِ تَعَالَى وَأَمْرِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - فَهُوَ رَدٌّ.

L19548–19550 Moreover, every contract that is impermissible at the time of its conclusion—but rather must be invalidated—is among the inherently void and prohibited [acts], such that it cannot later become valid at a time when it was not concluded. Likewise, every statement not authenticated when uttered is among the invalid and inadmissible [declarations]. that [the ruling] is to be accepted even if not explicitly stated, unless it imposes an obligation derived from these principles—such as the Qur'an or Sunnah—in any context; then it is to be listened to and obeyed.

وَأَيْضًا: فَكُلُّ عَقْدٍ لَمْ يَجُزْ حِينَ عَقْدِهِ بَلْ وَجَبَ إبْطَالُهُ، فَمِنْ الْمُحَالِ الْبَاطِلِ أَنْ يَجُوزَ فِي وَقْتٍ آخَرَ لَمْ يَعْقِدْ فِيهِ، وَكُلُّ قَوْلٍ لَمْ يُصَدَّقْ حِينَ النُّطْقِ بِهِ فَمِنْ الْبَاطِلِ الْمُمْتَنِعِ أَنْ يُصَدَّقَ حِينَ لَمْ يَنْطِقْ بِهِ، إلَّا أَنْ يُوجِبَ شَيْئًا مِنْ ذَلِكَ فِي مَكَان مِنْ الْأَمْكِنَةِ: قُرْآنٌ، أَوْ سُنَّةٌ، فَيُسْمَعُ لَهُ وَيُطَاعُ.

L19551 And success is from Allah, the Most High.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19552 If a person shares ownership with another of land, livestock, or movable property and sells, donates, gives as charity, or assigns as mahr any portion thereof—while their partner is absent and does not consent to division, present but unable to proceed with the division, or refuses to consent—then they may expedite claiming their rightful share, enforce division, and ensure justice in it. For there is no distinction between a division by a judge acting justly and a division by a partner acting justly, since neither the Quran, the Sunnah, nor sound reason mandates such a distinction. To deny them their rightful share is oppression, and every rightful claimant is foremost entitled to their right. It is then examined whether they have implemented what we described regarding the measure of their rightful share in value with absolute justice—without overstepping or the slightest self-favoritism. If so, it constitutes a rightful division. Whatever is implemented in this manner is permissible and legally effective, whether the partner consents or objects.

وَمَنْ كَانَ بَيْنَهُ وَبَيْنَ غَيْرِهِ أَرْضٌ، أَوْ حَيَوَانٌ، أَوْ عَرَضٌ، فَبَاعَ شَيْئًا مِنْ ذَلِكَ، أَوْ وَهَبَهُ، أَوْ تَصَدَّقَ بِهِ، أَوْ أَصْدَقَهُ، فَإِنْ كَانَ شَرِيكُهُ غَائِبًا، وَلَمْ يُجِبْ إلَى الْقِسْمَةِ، أَوْ حَاضِرًا يَتَعَذَّرُ عَلَيْهِ أَنْ يَضُمَّهُ إلَى الْقِسْمَةِ، أَوْ لَمْ يُجِبْهُ إلَى الْقِسْمَةِ: فَلَهُ تَعْجِيلُ أَخْذِ حَقِّهِ، وَالْقِسْمَةِ وَالْعَدْلِ فِيهَا، لِأَنَّهُ لَا فَرْقَ بَيْنَ قِسْمَةِ الْحَاكِمِ إذَا عَدَلَ، وَبَيْنَ قِسْمَةِ الشَّرِيكِ إذَا عَدَلَ، إذْ لَمْ يُوجِبْ الْفَرْقُ بَيْنَ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا مَعْقُولٌ، وَمَنْعُهُ مِنْ أَخْذِ حَقِّهِ جَوْرٌ، وَكُلُّ ذِي حَقٍّ أَوْلَى بِحَقِّهِ - فَيُنْظَرُ حِينَئِذٍ؟ فَإِنْ كَانَ أَنْفَذَ مَا ذَكَرْنَا فِي مِقْدَارِ حَقِّهِ فِي الْقِيمَةِ بِالْعَدْلِ غَيْرَ مُتَزَيِّدٍ، وَلَا مُحَابٍ لِنَفْسِهِ بِشَيْءٍ أَصْلًا: فَهِيَ قِسْمَةُ حَقٍّ، وَكُلُّ مَا أَنْفَذَ مِنْ ذَلِكَ جَائِزٌ نَافِذٌ: أَحَبَّ شَرِيكُهُ أَمْ كَرِهَ.

L19553 If he acted in self-interest, the entire transaction was annulled, as it was a deal combining ḥarām and ḥalāl and thus could not be validly contracted.

فَإِنْ كَانَ حَابَى نَفْسَهُ، فُسِخَ كُلُّ ذَلِكَ، لِأَنَّهَا صَفْقَةٌ جَمَعَتْ حَرَامًا وَحَلَالًا فَلَمْ تَنْعَقِدْ صَحِيحَةً.

L19554 If he plants, builds, or develops: all such acts are valid to the extent of

his right, and the excess is decreed to belong to the co-owner. He has no entitlement to the building, development, or planting, except to remove the physical property itself—as in cases of usurpation—with no difference [in ruling].

L19555 If it was food and he ate some of it, he is liable for the excess beyond his entitlement.

L19556 If he was a slave and emancipated: he became liable for his co-owner's share. And with Allah, the Exalted, is success.

L19557 *The Book of Division* has been completed, and all praise is due to Allah, Lord of the Worlds.

فَلَوْ غَرَسَ وَبَنَى وَعَمَّرَ: نَفَذَ كُلُّ ذَلِكَ فِي مِقْدَارِ حَقِّهِ وَقَضَى بِمَا زَادَ لِلَّذِي يُشْرِكُهُ، وَلَا حَقَّ لَهُ فِي بِنَائِهِ وَعِمَارَتِهِ، وَغَرْسِهِ، إِلَّا قَلْعَ عَيْنِ مَالٍ، كَالْغَصْبِ وَلَا فَرْقَ.

فَلَوْ كَانَ طَعَامًا فَأَكَلَ مِنْهُ: ضَمِنَ مَا زَادَ عَلَى مِقْدَارِ حَقِّهِ.

فَإِنْ كَانَ مَمْلُوكًا فَأَعْتَقَ: ضَمِنَ حِصَّةَ شَرِيكِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

تَمَّ " كِتَابُ الْقِسْمَةِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

AL-MUHALLA

كِتَابُ الِاسْتِحْقَاقِ وَالْغَصْبِ وَالْجِنَايَاتِ عَلَى الْأَمْوَالِ

The Book of Entitlement, Usurpation and Offences against Property

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الِاسْتِحْقَاقِ وَالْغَصْبِ وَالْجِنَايَاتِ عَلَى الْأَمْوَالِ] [مَسْأَلَةٌ لَا يَحِلُّ مَالُ مُسْلِمٍ وَلَا مَالُ ذِمِّيٍّ إِلَّا بِمَا أَبَاحَ اللَّهُ]

١٢٥٩ - مَسْأَلَةٌ:

لَا يَحِلُّ لِأَحَدٍ مَالُ مُسْلِمٍ، وَلَا مَالُ ذِمِّيٍّ، إِلَّا بِمَا أَبَاحَ اللَّهُ عَزَّ وَجَلَّ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْقُرْآنِ، أَوْ السُّنَّةِ نَقْلُ مَالِهِ إِلَى غَيْرِهِ، أَوْ بِالْوَجْهِ الَّذِي أَوْجَبَ اللَّهُ تَعَالَى بِهِ أَيْضًا، وَكَذَلِكَ نَقْلُهُ عَنْهُ إِلَى غَيْرِهِ كَالْهِبَاتِ الْجَائِزَةِ، وَالتِّجَارَةِ الْجَائِزَةِ، أَوْ الْقَضَاءِ الْوَاجِبِ بِالدِّيَاتِ، وَالتَّقَاصِّ، وَغَيْرِ ذَلِكَ، مِمَّا هُوَ مَنْصُوصٌ.

فَمَنْ أَخَذَ شَيْئًا مِنْ مَالِ غَيْرِهِ أَوْ صَارَ إلَيْهِ بِغَيْرِ مَا ذَكَرْنَا، فَإِنْ كَانَ عَامِدًا عَالِمًا بَالِغًا مُمَيِّزًا فَهُوَ عَاصٍ لِلَّهِ عَزَّ وَجَلَّ، وَإِنْ كَانَ غَيْرَ عَالِمٍ، أَوْ غَيْرَ عَامِدٍ، أَوْ غَيْرَ مُخَاطَبٍ، فَلَا إثْمَ عَلَيْهِ، إلَّا أَنَّهُمَا سَوَاءٌ فِي الْحُكْمِ فِي وُجُوبِ رَدِّ ذَلِكَ إلَى صَاحِبِهِ، أَوْ فِي وُجُوبِ ضَمَانِ مِثْلِهِ إنْ كَانَ مَا صَارَ إلَيْهِ مِنْ مَالِ غَيْرِهِ قَدْ تَلِفَتْ عَيْنُهُ أَوْ لَمْ يَقْدِرْ عَلَيْهِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L19558–19559 **The Book of Entitlement, Usurpation, and Crimes Against Property: A ruling—The property of a Muslim or a dhimmi is not permissible [to take] except by what Allah has permitted.**

L19560 1259 - Question:

L19561 It is not lawful for anyone to take the property of a Muslim or a protected non-Muslim except through what Allah—the Mighty and Majestic—has permitted as conveyed by His Messenger (may Allah bless him and grant him peace) in the Qur'an or the Sunnah, or through the manner which Allah the Exalted has mandated. This applies to transferring one's property to another, or transferring it from him to another through permissible means such as allowable gifts, lawful trade, compulsory obligations like blood-money payments, mutual deduction (taqāṣṣ), and other such matters that are explicitly stated.

L19562 So whoever takes something from another's property or acquires it through other than what we have mentioned, if he does so intentionally, knowing, having reached puberty and possessing discernment, he is a sinner against Allah, the Almighty and Majestic. But if he is unaware, unintentional, or not legally responsible, there is no sin upon him. However, both are equal in the ruling regarding the obligation to restore it to its owner or the obligation to compensate with its equivalent if the property of another that came into his possession has had its essence perish or he is unable to return it.

L19563 The evidence for that is the statement of Allah, the Almighty and Majestic: "Do not consume your wealth among yourselves unjustly unless it is a trade by mutual agreement among yourselves." [al-Nisāʾ 4:29][1]

L19564 And the statement of the Messenger of Allah (peace and blessings be upon him): "Indeed, your blood and your wealth are sacred to you."

L19565 This has been transmitted to us through various chains, among them: Through al-Bukhari's chain - Musaddad narrated to us, from Yahya (he is

[1] **Qur'an references (L19563):** Qur'an 4:29 (An-Nisa).

Ibn Sa'īd al-Qaṭṭān), from Qurrah ibn Khālid, from Muḥammad ibn Sīrīn who narrated to me, from 'Abd al-Raḥmān ibn Abī Bakrah, from his father, from the Messenger of Allah, may Allah bless him and grant him peace.

رُوِّينَا هَذَا مِنْ طُرُقٍ، مِنْهَا: عَنْ الْبُخَارِيِّ نا مُسَدَّدٌ نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانِ - نا قُرَّةُ بْنُ خَالِدٍ حَدَّثَنِي مُحَمَّدُ بْنُ سِيرِينَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرَةَ عَنْ أَبِيهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L19566–19567 And the saying of Allah, the Mighty and Majestic: "If you punish, then punish in the same manner as you were punished" [An-Nahl 126].[2]

وَقَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] .

L19568 The statement of the Messenger of Allah—peace be upon him—"Whoever performs a deed not in accordance with our command, it is invalid," and he did not differentiate between a scholar and a non-scholar, a legally responsible person and a non-responsible one, or whether the act was done intentionally or unintentionally.[3]

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَلَمْ يَسْتَثْنِ - عَلَيْهِ السَّلَامُ - عَالِمًا مِنْ غَيْرِ عَالِمٍ، وَلَا مُكَلَّفًا مِنْ غَيْرِ مُكَلَّفٍ، وَلَا عَامِدًا مِنْ غَيْرِ عَامِدٍ.

L19569 **A jurisprudential issue concerning the usurpation of a thing while he believes it is his.**

[مَسْأَلَةٌ غَصَبَ شَيْئًا وَهُوَ يَظُنُّ أَنَّهُ لَهُ]

L19570 1260 - Question:

١٢٦٠ - مَسْأَلَةٌ:

L19571 Whoever usurps something or takes it without rightful claim—whether through a prohibited sale, a prohibited gift, an invalid contract, or under the belief of ownership—is obligated to return it if it is present. If some of it is destroyed—whether minor or major—they must return what remains and replace the destroyed portion with its equivalent. They must either return it and replace the diminished attributes with their equivalent or replace it entirely if its original entity is lost. They must also return all that was usurped from it and everything generated from it—as we have stated—uniformly. This ruling applies uniformly to animals, homes, trees, land, slaves, and all other categories we have mentioned.

فَمَنْ غَصَبَ شَيْئًا، أَوْ أَخَذَهُ بِغَيْرِ حَقٍّ، لَكِنْ بِبَيْعٍ مُحَرَّمٍ، أَوْ هِبَةٍ مُحَرَّمَةٍ، أَوْ بِعَقْدٍ فَاسِدٍ، أَوْ وَهُوَ يَظُنُّ أَنَّهُ لَهُ: فَفَرْضٌ عَلَيْهِ أَنْ يَرُدَّهُ إنْ كَانَ حَاضِرًا، أَوْ مَا بَقِيَ مِنْهُ إنْ تَلِفَ بَعْضُهُ - أَقَلُّهُ أَوْ أَكْثَرُهُ - وَمِثْلُ مَا تَلِفَ مِنْهُ، أَوْ يَرُدَّهُ وَمِثْلَ مَا نَقَصَ مِنْ صِفَاتِهِ، أَوْ مِثْلَهُ إنْ فَاتَتْ عَيْنُهُ - وَأَنْ يَرُدَّ كُلَّ مَا اُغْتُلَّ مِنْهُ، وَكُلَّ مَا تَوَلَّدَ مِنْهُ، كَمَا قُلْنَا سَوَاءٌ سَوَاءٌ: الْحَيَوَانُ، وَالدُّورُ، وَالشَّجَرُ، وَالْأَرْضُ، وَالرَّقِيقُ، وَغَيْرُ ذَلِكَ سَوَاءٌ فِي كُلِّ مَا قُلْنَا.

L19572 He must return everything wrongfully taken—from trees, from livestock (milk, wool, or offspring), and from immovable property (rent).

فَيَرُدَّ كُلَّ مَا اُغْتُلَّ مِنْ الشَّجَرِ، وَمِنْ الْمَاشِيَةِ: مِنْ لَبَنٍ، أَوْ صُوفٍ، أَوْ نِتَاجٍ، وَمِنْ الْعَقَارِ: الْكِرَاءِ.

[2] **Qur'an references (L19567):** Qur'an 16:126 (An-Nahl).

[3] **Hadith references (L19568):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

وَإِنْ كَانَتْ أَمَةً فَأَوْلَدَهَا، فَإِنْ كَانَ عَالِمًا فَعَلَيْهِ الْحَدُّ حَدُّ الزِّنَى وَيَرُدُّهَا وَأَوْلَادَهَا وَمَا نَقَصَهَا وَطْؤُهُ، وَإِنْ كَانَ جَاهِلًا فَلَا شَيْءَ عَلَيْهِ مِنْ حَدٍّ، وَلَا إِثْمَ، لَكِنْ يَرُدُّهَا، وَيَرُدُّ أَوْلَادَهُ مِنْهَا رَقِيقًا لِسَيِّدِهَا، وَيَرُدُّ مَا نَقَصَهَا وَطْؤُهُ - وَلَا شَيْءَ لِكُلِّ مَنْ ذَكَرْنَا عَلَى الْمُسْتَحِقِّ فِيمَا أَنْفَقَ كَثُرَ أَمْ قَلَّ.

L19573 If she is a slave woman and he impregnates her, then if he was aware, he is subject to the ḥadd punishment for zinā, and he must return her to her master along with her children, and compensate for any diminution in her value caused by his intercourse. If he was ignorant, he bears no ḥadd punishment or sin, but he must return her to her master, return his children by her as slaves to her master, and compensate for any diminution in her value caused by his intercourse. None of the aforementioned individuals may seek reimbursement from the rightful claimant for expenditures incurred, whether substantial or negligible.

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَا آنِفًا مِنْ الْقُرْآنِ، وَكُلُّ مَا تَوَلَّدَ مِنْ مَالِ الْمَرْءِ فَهُوَ لَهُ بِاتِّفَاقٍ مِنْ خُصُومِنَا مَعَنَا، فَمَنْ خَالَفَ مَا قُلْنَا: فَقَدْ أَبَاحَ أَكْلَ الْمَالِ بِالْبَاطِلِ، وَأَبَاحَ الْمَالَ الْحَرَامَ، وَخَالَفَ الْقُرْآنَ، وَالسُّنَنَ، بِلَا دَلِيلٍ أَصْلًا -: رُوِّينَا مِنْ طَرِيقِ مَالِكٍ، وَاللَّيْثِ، وَعُبَيْدِ اللَّهِ بْنِ عُمَرَ، وَأَيُّوبَ السِّخْتِيَانِيِّ وَإِسْمَاعِيلَ بْنِ أُمَيَّةَ، وَمُوسَى بْنِ عُقْبَةَ، كُلُّهُمْ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَلَا لَا يَحْلُبَنَّ أَحَدٌ مَاشِيَةَ أَحَدٍ إلَّا بِإِذْنِهِ، أَيُحِبُّ أَحَدُكُمْ أَنْ تُؤْتَى مَشْرُبَتُهُ فَتُكْسَرَ خِزَانَتُهُ فَيُنْتَقَلَ طَعَامُهُ، فَإِنَّمَا تَخْزُنُ لَهُمْ ضُرُوعُ مَوَاشِيهِمْ أَطْعِمَتَهُمْ» وَهَذَا نَصُّ قَوْلِنَا وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L19574 The proof of this -: what we previously mentioned from the Qur'an, and all wealth generated from a person's property belongs to them by agreement from our opponents alongside us. Whoever opposes our view has permitted consuming wealth wrongfully, legalized unlawful wealth, and opposed the Qur'an and Sunnah without any evidence whatsoever -: We have been narrated through the chains of Malik; al-Layth; Ubayd Allah ibn Umar; Ayyub al-Sikhtiyani; Isma'il ibn Umayyah; and Musa ibn Uqbah—all transmitting from Nafi', from Ibn Umar, who said: The Messenger of Allah—peace be upon him—declared: "Let no one milk another's livestock without permission. Would any of you wish for his storeroom to be accessed, its storage broken into, and his food taken? Verily, the udders of their livestock store their sustenance." This is the explicit text of our position, and all praise is to Allah, Lord of the worlds.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَ بَعْضُ التَّابِعِينَ وَبَعْضُ الْمُتَأَخِّرِينَ: كُلُّ ذَلِكَ لِلْغَاصِبِ وَلِلْمُسْتَحَقِّ عَلَيْهِ بِضَمَانِهِ.

L19575–19576 People have differed regarding this matter. Some of the Followers and later jurists said: All of that remains with the usurper but is owed to the rightful claimant due to the usurper's liability.

وَقَالَ آخَرُونَ: مَا تَوَلَّدَ مِنْ لَبَنٍ، أَوْ صُوفٍ، أَوْ إجَارَةٍ فَهُوَ لِلْغَاصِبِ وَالْمُسْتَحَقِّ عَلَيْهِ، وَأَمَّا الْوَلَدُ فَلِلْمُسْتَحَقِّ - وَفَرَّقَ آخَرُونَ فِي ذَلِكَ بَيْنَ الْمُسْتَحَقِّ عَلَيْهِ وَبَيْنَ الْغَاصِبِ: فَجَعَلُوا كُلَّ ذَلِكَ لِلْمُسْتَحَقِّ عَلَيْهِ، وَلَمْ يَجْعَلُوهُ لِلْغَاصِبِ - وَفَرَّقَ آخَرُونَ بَيْنَ مَا وُجِدَ مِنْ ذَلِكَ قَائِمًا وَبَيْنَ مَا هَلَكَ مِنْهُ فَلَمْ يُضَمِّنُوهُ مَا هَلَكَ.

L19577 Others held: Proceeds derived from milk, wool, or rental income belong to the wrongful possessor and the entitled claimant, while offspring belong solely to the entitled party. Another group distinguished between the entitled claimant and the wrongful possessor, assigning all such proceeds to the claimant and none to the possessor. Yet others differentiated between proceeds that survived and those that perished, ruling that the wrongful possessor is not liable for what perished.

L19578 Abū Muḥammad said: All these are corrupt and contradictory opinions. Their sole argument is the inauthentic ḥadīth, uniquely reported by Makhlad ibn Khaffāf and Muslim ibn Khālid al-Zinjī: “The land tax is tied to the guarantee.”

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ كُلُّهَا أَرَاءٌ فَاسِدَةٌ مُتَخَاذِلَةٌ، وَحُجَّةُ جَمِيعِهِمْ إنَّمَا هِيَ الْحَدِيثُ الَّذِي لَا يَصِحُّ، الَّذِي انْفَرَدَ بِهِ مَخْلَدُ بْنُ خَفَّافٍ، وَمُسْلِمُ بْنُ خَالِدٍ الزِّنْجِيُّ " أَنَّ الْخَرَاجَ بِالضَّمَانِ ".

L19579 Then, even if it were valid, they would have no proof in it, for it only concerns one who purchased a slave, derived benefit from him, then found a defect in him and returned him - so his earnings would belong to him. This is what we say, because he acquired him through valid ownership and thus utilized his own property, not another’s. It is false to analogize the forbidden to the permissible. Then even if analogy were valid, how could that be when it is entirely invalid? Or to rule for falsehood by the ruling of truth, and for the wrongdoer by the judgment of one who did not wrong - this is injustice and transgression against the boundaries set by Allah Almighty.

ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ إنَّمَا جَاءَ فِيمَنْ اشْتَرَى عَبْدًا فَاسْتَغَلَّهُ، ثُمَّ وَجَدَ بِهِ عَيْبًا فَرَدَّهُ، فَكَانَ خَرَاجُهُ لَهُ - وَهَكَذَا نَقُولُ نَحْنُ، لِأَنَّهُ قَدْ مَلَكَهُ مِلْكًا صَحِيحًا فَاسْتَغَلَّ مَالَهُ لَا مَالَ غَيْرِهِ، وَمِنْ الْبَاطِلِ أَنْ يُقَاسَ الْحَرَامُ عَلَى الْحَلَالِ، ثُمَّ لَوْ كَانَ الْقِيَاسُ حَقًّا فَكَيْفَ وَهُوَ بَاطِلٌ كُلُّهُ؟ أَوْ أَنْ يَحْكُمَ لِلْبَاطِلِ بِحُكْمِ الْحَقِّ، وَلِلظَّالِمِ بِحُكْمِ مَنْ لَمْ يَظْلِمْ، فَهَذَا الْجَوْرُ وَالتَّعَدِّي لِحُدُودِ اللَّهِ عَزَّ وَجَلَّ.

L19580 Then, if this report were valid in its generality, the categorization made by those who differentiate between the usurper and the party upon whom a right is due, between the child and the produce, between existing property and reconciled property, would be definitively invalid and refuted. For they derived their position neither from this report nor from the textual precedents we previously cited. Rather, they contradicted all of that. The remaining discourse lies between us and those who deem the produce and the child to belong to the usurper and the obligated party solely through compensation. Thus, the texts we cited necessitate what we have affirmed. Furthermore, the narration transmitted via Abū Dāwūd states: Muḥammad ibn al-Muthannā narrated to us: ʿAbd al-Wahhāb (Ibn ʿAbd al-Majīd al-Thaqafī) narrated to us: Ayyūb (al-Sakhtiyānī) narrated to us from Hishām ibn ʿUrwah from his father from Saʿīd ibn Zayd ibn ʿAmr ibn Nufayl that the Messenger of Allah—peace and blessings be upon him—said: “Whoever revives a dead land, it belongs to him, and no right is due to an unjust claimant.”[4]

ثُمَّ لَوْ صَحَّ هَذَا الْخَبَرُ عَلَى عُمُومِهِ لَكَانَ تَقْسِيمُ مَنْ فَرَّقَ بَيْنَ الْغَاصِبِ وَبَيْنَ الْمُسْتَحَقِّ عَلَيْهِ، وَبَيْنَ الْوَلَدِ وَبَيْنَ الْغَلَّةِ، وَبَيْنَ الْمَوْجُودِ وَالتَّأَلُّفِ بَاطِلًا مَقْطُوعًا بِهِ، لِأَنَّهُ لَا بِهَذَا الْخَبَرِ أَخَذَ، وَلَا بِالنُّصُوصِ الَّتِي قَدَّمْنَا أَخَذَ، بَلْ خَالَفَ كُلَّ ذَلِكَ، فَإِنَّمَا بَقِيَ الْكَلَامُ بَيْنَنَا وَبَيْنَ مَنْ رَأَى الْغَلَّةَ وَالْوَلَدَ لِلْغَاصِبِ وَلِلْمُسْتَحَقِّ عَلَيْهِ بِالضَّمَانِ فَقَطْ، فَالنُّصُوصُ الَّتِي ذَكَرْنَا تُوجِبُ مَا قُلْنَا. وَأَيْضًا: فَإِنَّ الرِّوَايَةَ مِنْ طَرِيقِ أَبِي دَاوُد قَالَ: نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الْوَهَّابِ - هُوَ ابْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ - نا أَيُّوبُ - هُوَ السِّخْتِيَانِيُّ - عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ سَعِيدِ بْنِ زَيْدِ بْنِ عَمْرِو بْنِ نُفَيْلٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ وَلَيْسَ لِعِرْقِ ظَالِمٍ حَقٌّ» .

L19581–19582 We ask them about one to whom another’s wealth is transferred without right: is this rooted in an unjust origin or not? If they say no, they contradict the Quran and the Sunnah, abandon their own stance and that of the

فَنَسْأَلُهُمْ عَمَّنْ صَارَ إلَيْهِ مَالُ أَحَدٍ بِغَيْرِ حَقٍّ؟ أَعِرْقُ ظَالِمٍ هُوَ أَمْ لَا؟ فَإِنْ قَالُوا: لَا، خَالَفُوا الْقُرْآنَ، وَالسُّنَنَ، وَتَرَكُوا قَوْلَهُمْ، وَقَوْلَ أَهْلِ الْإِسْلَامِ، وَلَزِمَهُمْ أَنْ لَا يَرُدُّوا عَلَى

[4] **Hadith references (L19580):** Sunan Abi Dawud 3073.

Muslims, and are bound to deny restitution to the rightful claimant—since the property is neither in the possession of the liable party nor the usurper. The oppressor operates by an unjust origin; if it is not an unjust origin, then it is a rightful origin, as no intermediary exists between the two.

L19583 Allah the Exalted said: "What is there after truth except misguidance?" [Yūnus: 32] They do not assert this—and were they to say, "Rather, by an unjust lineage that is in his possession," it would necessitate that he has no right to anything this lineage has extended into.[5]

L19584 And this is in the utmost clarity—and success is from Allah, the Exalted.

L19585 As for those who distinguish between the child and the rest of the proceeds, their argument is utterly absurd and corrupt. If their own reasoning were reversed against them, they could not escape its consequences.

L19586 As for those who distinguish between living children—holding that they should be returned—and deceased children—holding that they should not—it is said to them: "Is it obligatory to return everything the mothers produced at the time of birth to their master and the master of their mother, or not?" If they say no, they are obligated not to rule for their return at all, whether they were found alive or dead.

L19587 And if they say: Yes, we reply: The lapse of the obligation to return them due to their death is a baseless statement—its falsehood is plain.

L19588 They have three opinions concerning the children of the woman entitled against the party from whom her entitlement was established: At one time they said: "He takes her and takes the value of her child." At another time they said: "He takes her only, with nothing due to him regarding the child - neither its value nor anything else." At another time they said: "He takes her value and the value of her child."

L19589–19591 Abū Muḥammad said: These statements are profoundly corrupt. We ask them concerning these children: Was the ownership of their mother's master ever established over them at the inception of their creation or at their birth,

الْمُسْتَحَقِّ شَيْئًا، لِأَنَّهُ لَيْسَ بِيَدِ الْمُسْتَحَقِّ عَلَيْهِ، وَلَا بِيَدِ الْغَاصِبِ، وَالظَّالِمُ بِعِرْقِ ظَالِمٍ، وَإِذَا لَمْ يَكُنْ عِرْقُ ظَالِمٍ فَهُوَ عِرْقُ حَقٍّ، إِذْ لَا وَاسِطَةَ بَيْنَهُمَا.

قَالَ تَعَالَى: {فَمَاذَا بَعْدَ الْحَقِّ إِلا الضَّلالُ} [يونس: ٣٢] وَهُمْ لَا يَقُولُونَ بِهَذَا - وَإِنْ قَالُوا: بَلْ بِعِرْقِ ظَالِمٍ هُوَ بِيَدِهِ، لَزِمَهُمْ أَنْ لَا حَقَّ لَهُ فِي شَيْءٍ مِمَّا سَرَى فِيهِ ذَلِكَ الْعِرْقُ.

وَهَذَا فِي غَايَةِ الْوُضُوحِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا مَنْ فَرَّقَ بَيْنَ الْوَلَدِ وَبَيْنَ سَائِرِ الْغَلَّةِ: فَكَلَامٌ فِي غَايَةِ السُّخْفِ وَالْفَسَادِ، وَلَوْ عُكِسَ عَلَيْهِمْ قَوْلُهُمْ مَا انْفَصَلُوا مِنْهُ.

وَأَمَّا مَنْ فَرَّقَ بَيْنَ الْأَوْلَادِ الْأَحْيَاءِ فَرَأَى رَدَّهُمْ، وَبَيْنَ الْمَوْتَى فَلَمْ يَرَ رَدَّهُمْ فَيُقَالُ لَهُمْ هَلْ وَجَبَ عَلَيْهِ رَدُّ كُلِّ مَا نَتَجَتْ الْأُمَّهَاتُ حِينَ الْوِلَادَةِ إِلَى سَيِّدِهِمْ وَسَيِّدِ أُمِّهِمْ أَمْ لَا؟ فَإِنْ قَالُوا: لَا، لَزِمَهُمْ أَنْ لَا يَقْضُوا بِرَدِّهِمْ أَصْلًا أَحْيَاءً وُجِدُوا أَمْ أَمْوَاتًا.

وَإِنْ قَالُوا: نَعَمْ، قُلْنَا: فَسُقُوطُ وُجُوبِ رَدِّهِمْ بِمَوْتِهِمْ كَلَامٌ بَاطِلٌ لَا خَفَاءَ بِهِ.

وَلَهُمْ فِي أَوْلَادِ الْمُسْتَحَقَّةِ مِمَّنْ اُسْتُحِقَّتْ عَلَيْهِ أَقْوَالٌ ثَلَاثَةٌ -: فَمَرَّةً قَالُوا: يَأْخُذُهَا وَيَأْخُذُ قِيمَةَ وَلَدِهَا، وَمَرَّةً قَالُوا: يَأْخُذُهَا فَقَطْ، وَلَا شَيْءَ لَهُ فِي الْوَلَدِ - لَا قِيمَةَ وَلَا غَيْرِهَا - وَمَرَّةً قَالُوا: يَأْخُذُ قِيمَتَهَا وَقِيمَةَ وَلَدِهَا.

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ أَقْوَالٌ فِي غَايَةِ الْفَسَادِ، وَنَسْأَلُهُمْ عَنْ هَؤُلَاءِ الْأَوْلَادِ هَلْ وَقَعَ عَلَيْهِمْ قَطُّ فِي أَوَّلِ خَلْقِهِمْ، أَوْ حِينَ وِلَادَتِهِمْ: مَلَكَ سَيِّدُ أُمِّهِمْ أَمْ لَمْ يَقَعْ لَهُ قَطُّ عَلَيْهِمْ مِلْكٌ؟

[5] **Qur'an references (L19583):** Qur'an 10:32 (Yunus).

وَلَا ثَالِثَ لِهَذَيْنِ الْقَوْلَيْنِ؟ فَإِنْ قَالُوا: بَلْ قَدْ وَقَعَ عَلَيْهِمْ مِلْكُهُ؟ قُلْنَا: فَفِي أَيِّ دِينِ اللَّهِ عَزَّ وَجَلَّ وَجَدْتُمْ أَنْ تُجْبِرُوهُ عَلَى بَيْعِ عَبْدِهِ أَوْ أَمَتِهِ بِلَا ضَرَرٍ كَانَ مِنْهُ إِلَيْهِمْ؟ وَمَا الْفَرْقُ بَيْنَ هَؤُلَاءِ وَبَيْنَ مَنْ تَزَوَّجَ أَمَةً فَاسْتُرِقَّ وَلَدُهُ مِنْهَا؟ فَهَلَّا أَجْبَرْتُمْ سَيِّدَهَا عَلَى قَبُولِ فِدَائِهِمْ فَإِنْ قَالُوا: عَلَى هَذَا دَخَلَ النَّاكِحُ لَمْ يَنْوِ الْمُسْتَحَقَّ عَلَيْهِ عَلَى ذَلِكَ؟ قُلْنَا: فَكَانَ مَاذَا، وَمَا حُرِّمَتْ أَمْوَالُ النَّاسِ عَلَيْهِمْ بِنِيَّاتِ غَيْرِهِمْ فِيهَا، أَوْ أَيْنَ وَجَدْتُمْ هَذَا الْحُكْمَ؟ وَهَذَا مَا لَا سَبِيلَ إِلَى وُجُودِهِ، وَإِذْ هُمْ فِي مِلْكِهِ فَهُمْ لَهُ بِلَا شَكٍّ.

or has it never applied to them at all? Is there no third possibility beyond these two assertions? If they respond: Indeed, his ownership was established over them, we say: In which law of Allah (the Mighty and Majestic) did you find it permissible to compel him to sell his male slave or female slave without harm? What was his relation to them? What difference exists between these cases and one who married a slave woman and whose child born to her was enslaved? Why did you not compel her owner to accept their ransom? If they say: "The husband entered the marriage on these terms without intending the obligation required of him in this matter," we counter: What of it? People's wealth is not forbidden to them because of others' intentions toward it. Or where did you find this ruling? This has no basis, for since they are his property, they unquestionably belong to him.

وَإِنْ قَالُوا: لَمْ يَقَعْ مِلْكُهُ قَطُّ عَلَيْهِمْ؟ قُلْنَا: فَبِأَيِّ وَجْهٍ تَقْضُونَ لَهُ بِقِيمَتِهِمْ؟ وَهَذَا ظُلْمٌ لِأَبِيهِمْ بَيِّنٌ، وَإِيكَالٌ لِمَا لَهُ بِالْبَاطِلِ، وَإِبَاحَةٌ لِثَمَنِ الْحُرِّ الَّذِي حَرَّمَهُ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ السَّلَامُ -.

L19592 If they say: "His ownership over them has never been established," we respond: "Then on what basis do you rule to award him their value? This is a clear injustice against their father, wrongfully imposing on him what he falsely claims, and permitting the compensation for a free person which Allah the Exalted and His Messenger—peace be upon him—have forbidden."

وَيُقَالُ لِمَنْ قَالَ: يَأْخُذُ قِيمَةَ الْأُمِّ فَقَطْ، أَوْ يَأْخُذُهَا فَقَطْ: لِأَيِّ شَيْءٍ يَأْخُذُهَا، أَوْ قِيمَتَهَا؟ فَإِنْ قَالُوا: لِأَنَّهَا أَمَتُهُ؟ قُلْنَا: فَأَوْلَادُ أَمَتِهِ عَبِيدُهُ بِلَا شَكٍّ، فَلِمَ أَعْطَيْتُمُوهُ بَعْضَ مَا مَلَكَتْ يَمِينُهُ وَتَمْنَعُونَهُ الْبَعْضَ؟ أَوْ لِمَ تُجْبِرُونَهُ عَلَى بَيْعِهَا وَهُوَ لَا يُرِيدُ بَيْعَهَا -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ أَنَّ رَجُلًا بَاعَ جَارِيَةً لِأَبِيهِ فَتَسَرَّاهَا الْمُشْتَرِي فَوَلَدَتْ لَهُ أَوْلَادًا فَجَاءَ أَبُوهُ فَخَاصَمَهُ إِلَى عُمَرَ بْنِ الْخَطَّابِ فَرَدَّهَا وَوَلَدَهَا إِلَيْهِ، فَقَالَ الْمُشْتَرِي: دَعْ لِي وَلَدِي، فَقَالَ لَهُ: دَعْ لَهُ وَلَدَهُ. قَالَ عَلِيٌّ: هَذِهِ شَفَاعَةٌ مِنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَرَغْبَةٌ وَلَيْسَ فَسْخًا لِقَضَائِهِ بِهَا وَبِوَلَدِهَا لِسَيِّدِهَا -: وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ الْأَعْلَى نا سَعِيدٌ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ خِلَاسٍ: أَنَّ أَمَةً أَتَتْ طَيِّئًا فَزَعَمَتْ أَنَّهَا حُرَّةٌ، فَتَزَوَّجَهَا رَجُلٌ مِنْهُمْ فَوَلَدَتْ لَهُ أَوْلَادًا ثُمَّ إِنَّ سَيِّدَهَا ظَهَرَ عَلَيْهَا

It is said to those who claim he takes only the female slave's value or takes her alone: "For what reason does he take her or her value?" If they reply: "Because she is his slave," we respond: "Then the children of his female slave are unquestionably his slaves. Why then do you grant him partial ownership over those whom his right hand possesses while denying him the remainder? Why compel him to sell her against his will?"

It has been narrated to us through the chain of Hammad ibn Salama from Humayd: A man sold a slave girl belonging to his father. The purchaser took her as a concubine, and she bore him children. When the father brought the case to Umar ibn al-Khattab, he restored her and her children to him. The purchaser pleaded: "Let me keep my child," but Umar replied: "Let him keep his child." Ali remarked: "This was Umar's intercession—may Allah be pleased with him—motivated by goodwill, not a reversal of his judgment that she and her offspring belong to her master."

فَقَضَى بِهَا عُثْمَانُ بْنُ عَفَّانَ: أَنَّهَا وَأَوْلَادَهَا لِسَيِّدِهَا، وَأَنَّ لِزَوْجِهَا مَا أَدْرَكَ مِنْ مَتَاعِهِ، وَجَعَلَ فِيهِمْ الْمِلَّةَ وَالسُّنَّةَ كُلُّ رَأْسٍ رَأْسَيْنِ.

Another narration through Muhammad ibn al-Muthanna, from Abd al-A'la, from Sa'id ibn Abi Arubah, from Qatadah, from Khilas: A slave woman came to the tribe of Tayy claiming she was free. A man married her, and she bore him children. When her master later proved ownership, Uthman ibn Affan ruled that she and her children belonged to her master, entitling the husband only to recover his possessions. He applied Islamic law and the Sunnah among them, ruling that each individual's liability is doubled.

L19594 وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ مَنْصُورٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّ امْرَأَةً وَابْنًا لَهَا بَاعَا جَارِيَةً لِزَوْجِهَا - وَهُوَ أَبُو الْوَلَدِ - فَوَلَدَتْ الْجَارِيَةُ لِلَّذِي ابْتَاعَهَا ثُمَّ جَاءَ زَوْجُهَا فَخَاصَمَ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ؟ فَقَالَ: لَمْ أَبِعْ وَلَمْ أَهَبْ؟ فَقَالَ لَهُ عَلِيٌّ: قَدْ بَاعَ ابْنُك وَبَاعَتْ امْرَأَتُك؟ قَالَ: إنْ كُنْت تَرَى لِي حَقًّا فَأَعْطِنِي؟ قَالَ: فَخُذْ جَارِيَتَك وَابْنَهَا، ثُمَّ سَجَنَ الْمَرْأَةَ وَابْنَهَا حَتَّى تَخَلَّصَا لَهُ، فَلَمَّا رَأَى الزَّوْجُ ذَلِكَ أَنْفَذَ الْبَيْعَ.

L19598 And through the chain of Ibn Abi Shaybah from Abu Bakr ibn 'Ayyash from Mutarrif from Al-Sha'bi from 'Ali regarding a man who bought a female slave who bore him a child, then another claimant established rightful ownership of her through conclusive proof. 'Ali said: "She is returned to the claimant, her child's value is assessed, and the seller must compensate [the buyer] according to his value, whether high or low."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي بَكْرِ بْنِ عَيَّاشٍ عَنْ مُطَرِّفٍ عَنْ الشَّعْبِيِّ عَنْ عَلِيٍّ فِي رَجُلٍ اشْتَرَى جَارِيَةً فَوَلَدَتْ لَهُ ثُمَّ اسْتَحَقَّهَا آخَرُ بِبَيِّنَةٍ؟ قَالَ عَلِيٌّ: تَرُدُّ عَلَيْهِ، وَيُقَوَّمُ وَلَدُهَا فَيَغْرَمُ الَّذِي بَاعَهُ بِمَا عَزَّ وَهَانَ.

L19599 It was narrated to us through the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us—Muṭarrif (son of Ṭarīf) and al-Mughīrah. Muṭarrif reported from al-Shaʿbī, while al-Mughīrah reported from Ibrāhīm. Al-Shaʿbī and

L19595–19597 Thus, this Ali recognized the legal truth that she and her child belonged to their master, ruled in accordance with this truth, and imprisoned the woman. And her child—and both of them are entitled to this—due to their transgression; accepting a ransom may be intended as the return of the price, and this is a right.

فَهَذَا عَلِيٌّ قَدْ رَأَى الْحَقَّ أَنَّهَا وَوَلَدَهَا لِسَيِّدِهَا وَقَضَى بِذَلِكَ، وَسَجَنَ الْمَرْأَةَ وَوَلَدَهَا - وَهُمَا أَهْلٌ لِذَلِكَ - لِتَعَدِّيهِمَا، وَالْأَخْذُ بِالْخَلَاصِ قَدْ يَكُونُ الْمُرَادُ بِهِ رَدَّ الثَّمَنِ وَهَذَا حَقٌّ.

Ibrāhīm both agreed regarding the children of al-Ghārah: their father is obligated to ransom them with what is precious or trivial.

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا مُطَرِّفٌ - هُوَ ابْنُ طَرِيفٍ - وَالْمُغِيرَةُ، قَالَ مُطَرِّفٌ: عَنْ الشَّعْبِيِّ، وَقَالَ مُغِيرَةُ: عَنْ إبْرَاهِيمَ، ثُمَّ اتَّفَقَ الشَّعْبِيُّ، وَإِبْرَاهِيمُ فِي وَلَدِ الْغَارَّةِ أَنَّ عَلَى أَبِيهِمْ أَنْ يَفْدِيَهُمْ بِمَا عَزَّ وَهَانَ.

L19600 And from Al-Hasan: They are to be redeemed with a slave for each slave.

وَعَنْ الْحَسَنِ: يُفْدَوْنَ بِعَبْدٍ عَبْدٍ.

L19601 It has been narrated to us through the chain of Saʿīd ibn Manṣūr from Sufyān ibn ʿUyaynah from Ayyūb ibn Mūsā from Ibn Qusayṭ from Sulaymān ibn Yasār, who said: "'Umar ruled that the value of the children born to the deceiving female slave be paid as a ghurrah (legal compensation)." We have also narrated it through the chain of Ibn Abī Shaybah: from Sufyān from Ayyūb ibn Mūsā from Ibn Qusayṭ from Sulaymān ibn Yasār, who said: "A slave woman deceived people by claiming she was free, then married among them and bore children. When they discovered she was enslaved, ʿUmar ruled that the value of her children be paid as a ghurrah (fixed compensation) for each instance of deception."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ ابْنِ قُسَيْطٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: قَضَى عُمَرُ فِي أَوْلَادِ الْغَارَّةِ بِالْقِيمَةِ. وَرُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا سُفْيَانُ عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ ابْنِ قُسَيْطٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: غَرَّتْ أَمَةٌ قَوْمًا وَزَعَمَتْ أَنَّهَا حُرَّةٌ فَتَزَوَّجَتْ فِيهِمْ فَوَلَدَتْ أَوْلَادًا فَوَجَدُوهَا أَمَةً فَقَضَى عُمَرُ بِقِيمَةِ أَوْلَادِهَا فِي كُلِّ مَغْرُورٍ غُرَّةً.

L19602 Al-Shaʿbi and Ibn al-Musayyib ruled with a ghurrah (fixed compensation for fetal loss) regarding the child of the deceived.

وَقَضَى الشَّعْبِيُّ، وَابْنُ الْمُسَيِّبِ فِي وَلَدِ الْمَغْرُورِ بِغُرَّةٍ.

L19603 This is also the opinion of Abū Maysarah and al-Ḥasan: For each individual, a *ghurrah* (fixed compensation for fetal loss) is due.

وَهُوَ أَيْضًا قَوْلُ أَبِي مَيْسَرَةَ، وَالْحَسَنِ: مَكَانَ كُلِّ وَاحِدٍ غُرَّةٌ.

L19604 And Ibrahim said: Their value is upon their father, and a portion of the value is deducted from him.

وَقَالَ إبْرَاهِيمُ: عَلَى أَبِيهِمْ قِيمَتُهُمْ وَيُهْضَمُ عَنْهُ مِنْ الْقِيمَةِ شَيْءٌ.

L19605 This is our opinion: it is the opinion of Abū Thawr, Abū Sulaymān, our associates, and the opinion of al-Shāfiʿī – except concerning the child of the legally responsible father attributed through her alone, for al-Shāfiʿī contradicted his own position in that matter.

وَهَذَا قَوْلُنَا: وَهُوَ قَوْلُ أَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا، وَقَوْلُ الشَّافِعِيِّ، إلَّا فِي وَلَدِ الْمُسْتَحَقِّ عَلَيْهِ مِنْهَا فَقَطْ، فَإِنَّهُ نَاقَضَ فِي ذَلِكَ.

L19606 We were narrated through the chain of Ibn Abī Shaybah: Ismāʿīl ibn ʿUlayyah reported from ʿAbdullāh ibn ʿAwn that a man purchased a slave and utilized his labor. Another man then came forward claiming ownership and brought the dispute before Iyās ibn Muʿāwiyah. When the claimant established his

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا إسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ أَنَّ رَجُلًا اشْتَرَى عَبْدًا فَاسْتَغَلَّهُ، ثُمَّ جَاءَ رَجُلٌ فَادَّعَاهُ فَخَاصَمَ إلَى إيَاسِ بْنِ مُعَاوِيَةَ فِيهِ فَاسْتَحَقَّهُ

right, Iyās ruled to grant him both the slave and his usufruct. He further ruled that the purchaser should receive from his seller a slave of equivalent value and equivalent usufruct. Ibn ʿAwn said: "I mentioned this to Muḥammad ibn Sīrīn, who remarked: 'That is sound judgment.' Thus, both Iyās ibn Muʿāwiyah and Muḥammad ibn Sīrīn adhere to our opinion regarding the restitution of usufruct in cases of established ownership claims."

فَقَضَى لَهُ بِالْعَبْدِ وَبِغَلَّتِهِ، وَقَضَى لِلرَّجُلِ عَلَى صَاحِبِهِ الَّذِي اشْتَرَاهُ مِنْهُ بِمِثْلِ الْعَبْدِ، وَبِمِثْلِ غَلَّتِهِ، قَالَ ابْنُ عَوْنٍ: فَذَكَرْت ذَلِكَ لِمُحَمَّدِ بْنِ سِيرِينَ فَقَالَ: هُوَ فَهْمٌ - فَهَذَانِ إيَاسُ بْنُ مُعَاوِيَةَ، وَمُحَمَّدُ بْنُ سِيرِينَ، يَقُولَانِ بِقَوْلِنَا فِي رَدِّ الْغَلَّةِ فِي الِاسْتِحْقَاقِ.

L19607–19609 And through the chain of Abd al-Razzaq, from Sufyan al-Thawri, who said: "If you purchased sheep and they multiplied, then [someone] came…" He must return her and her offspring; if the female slave gives birth, likewise.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ قَالَ: إذَا اشْتَرَيْت غَنَمًا فَنَمَتْ ثُمَّ جَاءَ أَمْرٌ بِرَدِّ الْبَيْعِ فِيهِ قَالَ: يَرُدُّهَا وَنَمَاءَهَا، وَالْجَارِيَةُ إذَا وَلَدَتْ كَذَلِكَ.

L19610 If they say: "Why do you differentiate between the usurper and the rightful parent, attributing the child to the rightful parent but not to the usurper?" We reply: Indeed, because no two people—whether believer or disbeliever—have ever disagreed that when the Messenger of Allah (peace be upon him) was sent, people embraced Islam, among whom were children of women married through invalid marriages or women unlawfully possessed. Both the possessor and the one who contracted the marriage presumed those acts of ownership or marriage to be valid. Thus, he [the Prophet] attributed them to their fathers, but the child of a usurper or adulterer was never attributed to the one who placed him in his mother's womb. Rather, the Prophet (peace be upon him) said: "For the fornicator is the stone." The usurper and the one knowingly entering invalid contracts—whether in ownership or marriage—are equivalent to fornicators and thus have no right to the child. And success is from Allah, the Exalted.

فَإِنْ قَالُوا: فَلِمَ فَرَّقْتُمْ أَنْتُمْ بَيْنَ الْغَاصِبِ وَالْمُسْتَحِقِّ فَأَلْحَقْتُمْ الْوَلَدَ بِالْمُسْتَحَقِّ عَلَيْهِ وَلَمْ تُلْحِقُوهُ بِالْغَاصِبِ؟ قُلْنَا: نَعَمْ، لِأَنَّهُ لَمْ يَخْتَلِفْ اثْنَانِ مِنْ مُؤْمِنٍ وَكَافِرٍ فِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بُعِثَ فَأَسْلَمَ النَّاسُ وَفِيهِمْ أَوْلَادُ الْمَنْكُوحَاتِ النِّكَاحَ الْفَاسِدَ وَالْمُتَمَلَّكَاتِ بِغَيْرِ حَقٍّ، وَالْمُتَمَلِّكُ، وَالنَّاكِحُ يَظُنَّانِ أَنَّ ذَلِكَ النِّكَاحَ وَالْمِلْكَ حَقٌّ، فَأَلْحَقَهُمْ بِآبَائِهِمْ، وَلَمْ يُلْحِقْ قَطُّ وَلَدَ غَاصِبٍ، أَوْ زَانٍ بِمَنْ وَضَعَهُ فِي بَطْنِ أُمِّهِ، بَلْ قَالَ - عَلَيْهِ السَّلَامُ -: «وَلِلْعَاهِرِ الْحَجَرُ» وَالْغَاصِبُ وَالْعَالِمُ بِفَسَادِ عَقْدِهِ - مِلْكًا كَانَ أَوْ زَوَاجًا - عَاهِرَانِ فَلَا حَقَّ لَهُمَا فِي الْوَلَدِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19611 This is an issue wherein they opposed ʿUmar, ʿUthmān, and ʿAlī. No opposing opinion from the Companions—may Allah be pleased with them—is known regarding this except a narration reported by Abū Bakr ibn ʿAyyāsh from Muṭarrif ibn Ṭarīf from al-Shaʿbī: A man purchased a slave girl who bore him a child. Another man then presented evidence that she belonged to him. ʿAlī ruled: "She is to be returned to him, the child's value is assessed against him, and the seller is liable for its value, whether high or low." They claimed to rely on this, but they lied, for they do not compel the seller to pay the ransom for his child—except the disconnected narration we previously

وَهَذَا مَكَانٌ خَالَفُوا فِيهِ عُمَرَ، وَعُثْمَانَ، وَعَلِيًّا، وَلَا يُعْرَفُ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ مُخَالِفٌ إلَّا رِوَايَةً عَنْ أَبِي بَكْرِ بْنِ عَيَّاشٍ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ عَنْ الشَّعْبِيِّ أَنَّ رَجُلًا اشْتَرَى جَارِيَةً فَوَلَدَتْ لَهُ فَأَقَامَ رَجُلٌ الْبَيِّنَةَ أَنَّهَا لَهُ، فَقَالَ عَلِيٌّ: تُرَدُّ إلَيْهِ وَيُقَوَّمُ عَلَيْهِ الْوَلَدُ فَيَغْرَمُ الَّذِي بَاعَ بِمَا عَزَّ وَهَانَ، فَادَّعَوْا أَنَّهُمْ تَعَلَّقُوا بِهَذِهِ، وَقَدْ كَذَبُوا لِأَنَّهُمْ لَا يُغَرِّمُونَ الْبَائِعَ مَا يَفْدِي بِهِ وَلَدَهُ، إلَّا الرِّوَايَةَ الْمُنْقَطِعَةَ الَّتِي ذَكَرْنَا قَبْلُ

عَنْ عُمَرَ أَنَّهُ قَضَى فِي أَوْلَادِ الْغَارَّةِ بِقِيمَتِهِمْ وَالْقِيمَةُ قَدْ صَحَّتْ عَنْ عُمَرَ فِي ذَلِكَ أَنَّهَا عَبْدٌ مَكَانَ عَبْدٍ أَوْ عَبْدَانِ مَكَانَ عَبْدٍ، فَقَدْ خَالَفُوا هَذَا أَيْضًا.

mentioned from ʿUmar, who ruled regarding children born from raids that their value should be paid. The value has been authentically reported from ʿUmar in this matter as "a slave in place of a slave" or "two slaves in place of a slave." Yet they opposed this as well.

وَخَالَفُوا كُلَّ مَنْ ذَكَرْنَا، وَالْحَسَنُ، وَقَتَادَةَ، وَالشَّعْبِيُّ، وَهُمْ جُمْهُورُ مَنْ رَوَى عَنْهُ فِي هَذِهِ الْمَسْأَلَةِ قَوْلٌ فِي فِدَاءِ وَلَدِ الْغَارَّةِ الْمُسْتَحَقَّةِ بِعَبْدٍ.

L19612 They differed with all those we have mentioned—including al-Ḥasan, Qatādah, and al-Shaʿbī, who constitute the majority of narrators from him on this issue—regarding the opinion on redeeming the child of the rightful raid by means of a slave.

وَأَمَّا قَوْلُنَا: إِنَّهُ يَضْمَنُ كُلَّ مَا مَاتَ مِنْ الْوَلَدِ وَالنِّتَاجِ، وَمَا تَلِفَ مِنْ الْغَلَّةِ وَيَضْمَنُ الزِّيَادَةَ فِي الْجِسْمِ وَالْقِيمَةِ، لِأَنَّ كُلَّ ذَلِكَ مَالُ الْمَغْصُوبِ مِنْهُ وَكَانَ فَرْضًا عَلَيْهِ أَنْ يَرُدَّ كُلَّ ذَلِكَ فَهُوَ مُعْتَدٍ بِإِمْسَاكِهِ مَالَ غَيْرِهِ، فَعَلَيْهِ أَنْ يَعْتَدِيَ عَلَيْهِ بِمِثْلِ مَا اعْتَدَى.

L19613 As for our statement that he is liable for every offspring and livestock progeny that dies, whatever perishes of the produce, and the increase in physical growth and value—this is because all such matters constitute the property of the wronged party, and it was obligatory upon him to restore it entirely. By withholding another's property, he commits a wrongful act, and thus he must compensate with the equivalent of the harm caused by his transgression.

فَإِنْ قَالُوا: لَيْسَ مُعْتَدِيًا، لِأَنَّهُ لَمْ يُبَاشِرْ غَصْبَ الْوَلَدِ وَإِنَّمَا هُوَ بِمَنْزِلَةِ رِيحٍ أَلْقَتْ ثَوْبًا فِي مَنْزِلِ الْإِنْسَانِ؟ قُلْنَا: هَذَا بَاطِلٌ، لِأَنَّ الَّذِي رَمَتْ الرِّيحُ الثَّوْبَ فِي مَنْزِلِهِ لَيْسَ مُتَمَلِّكًا لَهُ وَلَوْ تَمَلَّكَهُ لَلَزِمَهُ ضَمَانُهُ، وَهَذَا الْمُشْتَرِي أَوْ الْغَاصِبُ مُتَمَلِّكٌ لِكُلِّ مَا تَوَلَّدَ مِنْ غَلَّةٍ، أَوْ زِيَادَةٍ، أَوْ نِتَاجٍ، أَوْ ثَمَرَةٍ، حَائِلٌ بَيْنَهُ وَبَيْنَ صَاحِبِهِ الَّذِي افْتَرَضَ اللَّهُ تَعَالَى رَدَّهُ إلَيْهِ، وَحَرَّمَ عَلَيْهِ إمْسَاكَهُ عَنْهُ، فَهُوَ مُعْتَدٍ بِذَلِكَ يَقِينًا فَعَلَيْهِ أَنْ يَعْتَدِيَ عَلَيْهِ بِمِثْلِ مَا اعْتَدَى.

L19614–19616 If they say: He is not considered an aggressor because he did not directly usurp the child, but is merely like wind that cast a garment into someone's dwelling - we respond: This is invalid. For the one into whose home the wind threw the garment does not own it. Had he claimed ownership, he would be liable for it. Yet the buyer or the usurper owns everything generated from usufruct, increase, or... If there is an offspring or produce interposing a barrier between him and its rightful owner—to whom Allah the Exalted has ordained its return and prohibited him from withholding it from him—then he is undoubtedly transgressing thereby, so he must be transgressed against in the same manner he transgressed.

وَأَمَّا الزِّيَادَةُ فِي الثَّمَنِ، فَإِنَّهُ حِينَ زَادَ ثَمَنُهُ كَانَ فَرْضًا عَلَيْهِ رَدُّهُ إلَى صَاحِبِهِ بِجَمِيعِ صِفَاتِهِ، فَكَانَ لَازِمًا لَهُ أَنْ يَرُدَّهُ إلَيْهِ وَهُوَ يُسَاوِي تِلْكَ الْقِيمَةَ، فَإِذَا لَزِمَهُ ذَلِكَ ثُمَّ نَقَصَتْ قِيمَتُهُ فَإِنَّهُ لَا يَسْقُطُ رَدُّ مَا لَزِمَهُ رَدُّهُ.

L19617 As for the increase in price: when its value rises, it becomes obligatory to return it to its owner with all its attributes. He is therefore bound to return it equal to that value. Once this obligation takes effect, even if its value subsequently decreases, the requirement to return what he is obligated to restore does not cease.

L19618 As for rent: If one prevents the owner from accessing the tangible asset of his property, thereby depriving him of its benefits, they become liable

for those benefits. They are obligated to pay what they withheld from his rightful due, in accordance with the command of Allah's Messenger—peace and blessings be upon him—that every entitled party must be granted their rightful claim. The rent of his property is unquestionably part of his rightful claim, making it obligatory upon the withholder to grant him his due right.

وَأَمَّا الْكِرَاءُ: فَإِنَّهُ إِذْ حَالَ بَيْنَ صَاحِبِهِ وَبَيْنَ عَيْنِ مَالِهِ حَالَ بَيْنَهُ وَبَيْنَ مَنَافِعِه فَضَمِنَهَا، وَلَزِمَهُ أَدَاءُ مَا مَنَعَهُ مِنْ حَقِّهِ بِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُعْطِيَ كُلَّ ذِي حَقٍّ حَقَّهُ، وَكِرَاءُ مَتَاعِهِ مِنْ حَقِّهِ بِلَا شَكٍّ، فَفَرْضٌ عَلَى مَانِعِهِ إعْطَاؤُهُ حَقَّهُ.

L19619 Among the wonders of the world is the claim of the Hanafis that the rent belongs to the usurper along with the produce, while he incurs no liability for their offspring that die. Yet they assert that if someone hunts a deer within the sacred precinct, captures it without killing it, and it later bears offspring in his possession—if those offspring die without him slaughtering them—he must offer expiation for the deer and its offspring. Had they reversed their position, they would have been correct. For Allah the Exalted has not imposed liability on the hunter of the deer—whether it lives or dies—unless he intentionally kills it; otherwise, there is no liability. Yet they persistently distort the words of Allah the Exalted from their proper contexts.

وَمِنْ عَجَائِبِ الدُّنْيَا -: قَوْلُ الْحَنَفِيِّينَ إنَّ الْكِرَاءَ لِلْغَاصِبِ وَالْغَلَّةَ، وَلَا يَضْمَنُ وَلَدَهَا الْمَوْتَى، ثُمَّ يَقُولُونَ فِيمَنْ صَادَ ظَبْيَةً فِي الْحَرَمِ فَأَمْسَكَهَا وَلَمْ يَقْتُلْهَا، حَتَّى إذَا وَلَدَتْ عِنْدَهُ أَوْلَادًا فَمَاتُوا وَلَمْ يَذْبَحْهُمْ: أَنَّهُ يَجْزِيهَا وَيَجْزِي أَوْلَادَهَا - فَلَوْ عَكَسُوا لَأَصَابُوا وَمَا أَلْزَمَ اللَّهُ تَعَالَى صَائِدَ الظَّبْيَةِ ضَمَانَهَا - عَاشَتْ أَوْ مَاتَتْ - إلَّا أَنْ يَقْتُلَهَا عَامِدًا، وَإِلَّا فَلَا، فَهُمْ أَبَدًا يُحَرِّفُونَ كَلَامَ اللَّهِ تَعَالَى عَنْ مَوَاضِعِهِ.

L19620 The most astonishing thing is how some of their leading figures argue from ignorance by saying: "What sin has the child committed to warrant enslavement?" We responded: "We know of no sin that necessitates enslavement. Apostasy, intentional killing of a believer, abandonment of prayer, and adultery by a married person are the gravest sins – yet none of these necessitate the enslavement of the perpetrator. Meanwhile, the children of disbelievers are enslaved despite having committed no sin. Therefore, none would raise such delusion-filled objections except one devoid of intellect and religion."

وَأَعْجَبُ شَيْءٍ احْتِجَاجُ بَعْضِ مُتَصَدِّرِيهِمْ بِالْجَهْلِ بِأَنْ قَالَ: وَأَيُّ ذَنْبٍ لِلْوَلَدِ حَتَّى يُسْتَرَقَّ؟ فَقُلْنَا: مَا عَلِمْنَا ذَنْبًا يُوجِبُ الِاسْتِرْقَاقَ، وَالرِّدَّةَ، وَقَتْلَ الْمُؤْمِنِ عَمْدًا، وَتَرْكَ الصَّلَاةِ، وَزِنَى الْمُحْصَنِ أَعْظَمُ الذُّنُوبِ، وَلَيْسَ شَيْءٌ مِنْ ذَلِكَ يُوجِبُ اسْتِرْقَاقَ فَاعِلِهِ وَأَوْلَادُ الْكُفَّارِ يُسْتَرَقُّونَ وَلَا ذَنْبَ لَهُمْ فَلَيْسَ يَعْتَرِضُ بِمِثْلِ هَذَا الْهَوَسِ إلَّا مَنْ لَا عَقْلَ لَهُ وَلَا دِينَ.

L19621 As for our position that the mahr is waived in cases of intercourse by a usurper or the party against whom a claim is made, this is because neither the Qur'an nor the Sunnah mandates it. The property of the usurper and the party against whom a claim is made is prohibited, except what is explicitly required by the scriptural text. No mahr is owed except in a valid marriage or solely for the woman married without her guardian's consent—as stipulated by the scriptural text. He is only liable to compensate the diminution in her value caused by his intercourse with her, whether due to the usurper's fornication or solely the mistake of the party against whom a claim is made,

وَأَمَّا إسْقَاطُنَا الْمَهْرَ فِي وَطْءِ الْغَاصِبِ، وَالْمُسْتَحَقِّ، فَلِأَنَّهُ لَمْ يُوجِبْهُ قُرْآنٌ وَلَا سُنَّةٌ، وَمَالُ الْغَاصِبِ وَالْمُسْتَحَقِّ عَلَيْهِ: حَرَامٌ، إلَّا مَا أَوْجَبَهُ النَّصُّ وَلَا مَهْرَ إلَّا فِي نِكَاحٍ صَحِيحٍ، أَوْ لِلَّتِي نُكِحَتْ بِغَيْرِ إذْنِ وَلِيِّهَا فَقَطْ - عَلَى مَا جَاءَ بِهِ النَّصُّ - وَإِنَّمَا عَلَيْهِ ضَمَانُ مَا نَقَصَهُ وَطْؤُهُ إيَّاهَا بِزِنَى الْغَاصِبِ أَوْ بِجَهْلِ الْمُسْتَحَقِّ عَلَيْهِ فَقَطْ، لِأَنَّهُ اسْتَهْلَكَ بِذَلِكَ بَعْضَ قِيمَةِ أَمَةِ غَيْرِهِ فَقَطْ.

for he has thereby appropriated a portion of the value of another's slave woman.

وَأَمَّا الْقَضَاءُ بِالْمِثْلِ: فَإِنَّ الْمُتَأَخِّرِينَ اخْتَلَفُوا، فَقَالَ بَعْضُهُمْ: لَا يُعْطَى إِلَّا الْقِيمَةَ فِي كُلِّ شَيْءٍ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ فِيمَنْ اسْتَهْلَكَ حِنْطَةً أَنَّ لَهُ طَعَامًا مِثْلَ طَعَامِهِ، قَالَ سُفْيَانُ، وَقَالَ غَيْرُهُ مِنْ فُقَهَائِنَا: لَهُ الْقِيمَةُ.

L19622–19624 As for equivalent recompense (qāḍā' bi-l-mithl), later jurists disagreed. Some said: "Nothing but the monetary value is to be given in all things." This has been narrated to us through the transmission of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Abū Isḥāq al-Shaybānī. Regarding one who wrongfully consumes wheat, some jurists ruled that he must provide food equivalent to what he consumed. Sufyān and other jurists from our school said: he must pay its value.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: أَمَّا مَا يُكَالُ أَوْ يُوزَنُ فَعَلَيْهِ مِثْلُهُ مِنْ نَوْعِهِ، وَأَمَّا مَا عَدَا ذَلِكَ مِنْ الْعُرُوضِ، وَالْحَيَوَانِ فَالْقِيمَةُ.

L19625 Abu Hanifah and Malik said: Regarding what is measured by volume or weighed, one must replace it with its equivalent in kind. As for other categories such as trade goods and animals, the market value is due.

وَقَالَ أَصْحَابُنَا: الْمِثْلُ فِي كُلِّ ذَلِكَ وَلَا بُدَّ، فَإِنْ عُدِمَ الْمِثْلُ فَالْمَضْمُونُ لَهُ مُخَيَّرٌ بَيْنَ أَنْ يُمْهِلَهُ حَتَّى يُوجَدَ الْمِثْلُ، وَبَيْنَ أَنْ يَأْخُذَ الْقِيمَةَ.

L19626 Our companions held that the equivalent is obligatory in all such cases. If the equivalent is unavailable, the obligee may choose between granting respite until the equivalent becomes available or accepting its monetary value.

قَالَ أَبُو مُحَمَّد: وَهَذَا هُوَ الْحَقُّ الَّذِي لَا يَجُوزُ خِلَافُهُ، وَمَا نَعْلَمُ لِمَنْ قَضَى بِالْقِيمَةِ حُجَّةً أَصْلًا إلَّا أَنَّ بَعْضَهُمْ أَتَى بِطَامَّةٍ، فَقَالَ: «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى عَلَى مَنْ أَعْتَقَ شِرْكًا لَهُ فِي عَبْدٍ بِأَنْ يُقَوَّمَ عَلَيْهِ بَاقِيهِ لِشَرِيكِهِ، قَالُوا: فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَنْ اسْتَهْلَكَ حِصَّةَ غَيْرِهِ مِنْ الْعَبْدِ بِالْقِيمَةِ» .

L19627 Abu Muhammad said: This is the correct ruling that admits no contradiction, and we know of no valid argument whatsoever for those who ruled based on valuation except that some of them committed a grave error. He said: "The Messenger of Allah - peace and blessings of Allah be upon him - ruled against one who freed his partnership share in a slave, requiring that the remaining portion's value be assessed against him for his co-owner." They said: "The Messenger of Allah - peace and blessings of Allah be upon him - ruled against one who appropriated another's share in the slave to compensate based on valuation."

قَالَ عَلِيٌّ: وَهَذَا مِنْ عَجَائِبِهِمْ فَإِنَّهُمْ أَفْحَشُوا الْخَطَأَ فِي هَذَا الِاحْتِجَاجِ مِنْ وَجْهَيْنِ -: أَحَدُهُمَا - احْتِجَاجُهُمْ بِهِ فِيمَنْ اسْتَهْلَكَ، وَالْمُعْتِقُ نَصِيبَهُ مِنْ عَبْدٍ بَيْنَهُ وَبَيْنَ آخَرَ لَمْ يَسْتَهْلِكْ شَيْئًا، وَلَا غَصَبَ شَيْئًا، وَلَا تَعَدَّى أَصْلًا، بَلْ أَعْتَقَ حِصَّتَهُ الَّتِي أَبَاحَ اللَّهُ تَعَالَى لَهُ عِتْقَهَا، وَإِنَّمَا هُوَ حُكْمٌ مِنْ اللَّهِ تَعَالَى أَنْفَذَهُ لَا لِتَعَدٍّ مِنْ الْمُعْتِقِ أَصْلًا.

L19628 Ali said: This exemplifies their egregious errors, for they have gravely erred in this argument in two respects: The first is their application of this reasoning to one who has misappropriated [property], whereas the person emancipating their share of a slave jointly owned with another has neither misappropriated anything, nor usurped anything, nor fundamentally transgressed. Rather, they have emancipated their share - which Allah the Exalted has permitted them to emancipate. This is purely a divine decree ordained by

Allah the Exalted to be implemented, not stemming from any fundamental transgression by the emancipator whatsoever.

L19629–19631 The second point is the magnitude of their contradiction, for it necessarily follows that if the mentioned emancipator is deemed to have consumed his co-owner's share—thereby obliging him to compensate its value whether insolvent or solvent, as they rule in all cases of consumption—yet they do not apply this here. How can one who knows that Allah the Exalted will question him about his statements concerning religion, and that Allah's servants scrutinize his speech, deem it permissible to engage in such ugly, corrupt brazenness: diverting the Sunnah from its rightful positions and striving to suppress the truth through this? They cannot claim consensus here, for Ibn Abī Laylā and Zufar ibn al-Hudhayl hold him liable whether insolvent or solvent. We disregard the dismissal of these two—their error is rooted in opposing the ruling of Allah's Messenger (peace be upon him), who (peace be upon him) imposed no liability on the insolvent but merely ordained in that matter to compel the emancipator to work alone. It has been narrated to us through the chain of Al-Layth ibn Saʿd from Jarīr ibn Ḥāzim from Ḥumayd al-Ṭawīl, who said: I heard Anas ibn Mālik relate that Zaynab bint Jaḥsh sent a platter of ḥays (date paste mixed with clarified butter) as a gift to the Messenger of Allāh—peace and blessings be upon him—while he was in ʿĀ'ishah's house during her allocated day (her turn). ʿĀ'ishah stood up, seized the platter, smashed it on the ground, and broke it. The Messenger of Allāh—peace and blessings be upon him—rose, took one of her platters, gave it to Zaynab's messenger, and said: "This replaces her platter." He then told ʿĀ'ishah: "Yours is the one you broke." This constitutes a ruling of equivalent replacement, not compensation through dirhams or monetary value.

L19632 It has been reported from ʿUthmān and Ibn Masʿūd that they ruled against anyone who consumed two items, requiring them to replace these with two equivalent ones.

L19633 From Zayd ibn Thābit and ʿAlī: that they both ruled by equivalent compensation for one who sold a camel but excluded its hide, head, and droppings.

وَالثَّانِي - عَظِيمٌ تَنَاقُضُهُمْ، لِأَنَّهُ يَلْزَمُهُمْ إِنْ كَانَ الْمُعْتِقُ الْمَذْكُورُ مُسْتَهْلِكًا حِصَّةَ شَرِيكِهِ، وَلِذَلِكَ يَضْمَنُ الْقِيمَةَ بِأَنْ يُوجِبُوا ذَلِكَ عَلَيْهِ مُعْسِرًا كَانَ أَوْ مُوسِرًا كَمَا يَفْعَلُونَ فِي كُلِّ مُسْتَهْلِكٍ وَهُمْ لَا يَفْعَلُونَ هَذَا فَكَيْفَ يَسْتَحِلُّ مَنْ يَدْرِي أَنَّ اللَّهَ تَعَالَى سَائِلُهُ عَنْ كَلَامِهِ فِي الدِّينِ، وَأَنَّ عِبَادَ اللَّهِ تَعَالَى يَتَعَقَّبُونَ كَلَامَهُ عَلَى هَذِهِ الْمُجَاهَرَةِ الْقَبِيحَةِ الْفَاسِدَةِ مِنْ إحَالَةِ السُّنَنِ عَنْ مَوَاضِعِهَا وَسَعْيِهِمْ فِي إدْحَاضِ الْحَقِّ بِذَلِكَ؟ وَلَيْسَ لَهُمْ أَنْ يَدَّعُوا هَاهُنَا إجْمَاعًا، لِأَنَّ ابْنَ أَبِي لَيْلَى، وَزُفَرَ بْنَ الْهُذَيْلِ يُضَمِّنُونَهُ مُعْسِرًا أَوْ مُوسِرًا، وَمَا نُبَالِي بِطَرْدِ هَذَيْنِ أَصْلُهُمَا فِي الْخَطَأِ، لِأَنَّهُمَا فِي ذَلِكَ مُخَالِفَانِ لِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُضَمِّنْ الْمُعْسِرَ شَيْئًا، وَإِنَّمَا أَمَرَ فِي ذَلِكَ بِالِاسْتِسْعَاءِ لِلْمُعْتَقِ فَقَطْ -: رُوِّينَا مِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ حُمَيْدٍ الطَّوِيلِ قَالَ: سَمِعْت أَنَسَ بْنَ مَالِكٍ يُحَدِّثُ «أَنَّ زَيْنَبَ بِنْتَ جَحْشٍ أَهْدَتْ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ فِي بَيْتِ عَائِشَةَ وَيَوْمِهَا: جَفْنَةً مِنْ حَيْسٍ، فَقَامَتْ عَائِشَةُ فَأَخَذَتْ الْقَصْعَةَ فَضَرَبَتْ بِهَا الْأَرْضَ فَكَسَرَتْهَا، فَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى قَصْعَةٍ لَهَا فَدَفَعَهَا إلَى رَسُولِ زَيْنَبَ، فَقَالَ: هَذِهِ مَكَانُ صَحْفَتِهَا - وَقَالَ لِعَائِشَةَ: لَكِ الَّتِي كَسَرْتِ» فَهَذَا قَضَاءٌ بِالْمِثْلِ لَا بِالدَّرَاهِمِ بِالْقِيمَةِ.

وَقَدْ رُوِيَ عَنْ عُثْمَانَ، وَابْنِ مَسْعُودٍ: أَنَّهُمَا قَضَيَا عَلَى مَنْ اسْتَهْلَكَ فُصْلَانًا بِفُصْلَانٍ مِثْلِهَا.

وَعَنْ زَيْدِ بْنِ ثَابِتٍ، وَعَلِيٍّ: أَنَّهُمَا قَضَيَا بِالْمِثْلِ فِيمَنْ بَاعَ بَعِيرًا وَاسْتَثْنَى جِلْدَهُ، وَرَأْسَهُ، وَسَوَاقِطَهُ.

وَعَنْ عُمَرَ، وَعُثْمَانَ، وَالْحَسَنِ، وَالشَّعْبِيِّ، وَقَتَادَةَ، فِي فِدَاءِ وَلَدِ الْغَارَّةِ بِعَبِيدٍ لَا بِالْقِيمَةِ.

L19634 From Umar, Uthman, al-Hasan, al-Sha'bi, and Qatadah regarding the ransom for the child of a slave woman consisting of slaves, not monetary value.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ ابْنِ سِيرِينَ عَنْ شُرَيْحٍ: أَنَّهُ قَضَى فِي قَصَّارٍ شَقَّ ثَوْبًا أَنَّ الثَّوْبَ لَهُ، وَعَلَيْهِ مِثْلُهُ؟ فَقَالَ رَجُلٌ: أَوْ ثَمَنُهُ؟ فَقَالَ شُرَيْحٌ: إنَّهُ كَانَ أَحَبَّ إلَيْهِ مِنْ ثَمَنِهِ، قَالَ: إنَّهُ لَا يَجِدُ، قَالَ: لَا وَجَدَ.

L19635 And through the chain of Abd al-Razzaq from Ma'mar from Ayyub from Ibn Sirin from Shuraih: He ruled regarding a launderer who tore a garment that the garment belongs to its owner, and he must provide its equivalent? A man asked: "Or its price?" Shuraih replied: "The garment itself was more cherished by him than its price." The man said: "He cannot find it." Shuraih said: "No, he must find it."

وَعَنْ قَتَادَةَ: أَنَّهُ قَضَى فِي ثَوْبٍ اُسْتُهْلِكَ بِالْمِثْلِ.

L19636 And from Qatadah: He ruled that a garment which had been used up should be replaced with its equivalent.

قَالَ أَبُو مُحَمَّدٍ: لَمْ نُورِدْ قَوْلَ أَحَدٍ مِمَّنْ أَوْرَدْنَا احْتِجَاجًا بِهِ، وَإِنَّمَا أَوْرَدْنَاهُ لِئَلَّا يَهْجُمُوا بِدَعْوَى الْإِجْمَاعِ جُرْأَةً عَلَى الْبَاطِلِ، فَإِنْ قَالُوا: فَإِنَّكُمْ لَا تَقْضُونَ بِالْمَكْسُورِ لِلْكَاسِرِ، فَقَدْ خَالَفْتُمْ الْحَدِيثَ؟ قُلْنَا: حَاشَا لِلَّهِ مِنْ ذَلِكَ لَكِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L19637 Abū Muḥammad said: We did not invoke the statements of those we mentioned as evidentiary proofs, but rather we mentioned them to prevent them from rashly asserting a false claim of consensus through audacity in falsehood. If they say: "Then you do not rule that the broken item belongs to the one who broke it—so have you indeed contradicted the ḥadīth?" We say: Far be it from Allah that we do so! Rather, the Prophet (peace and blessings of Allah be upon him) said: "Your blood and your wealth are inviolable to you."

فَعَلِمْنَا أَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يُعْطِي أَحَدًا غَيْرَ حَقِّهِ، وَلَا أَكْثَرَ مِنْ حَقِّهِ، وَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ -: إنَّهَا لَك مِنْ أَجْلِ كَسْرِك إيَّاهَا فَقَدْ كَذَبَ عَلَيْهِ مَنْ نَسَبَ إلَيْهِ هَذَا الْحُكْمَ مِنْ غَيْرِ أَنْ يَقُولَهُ - عَلَيْهِ السَّلَامُ -.

L19638 Thus, we knew that he—peace be upon him—does not grant anyone less than their due nor more than their due, and he—peace be upon him—did not say: "It is yours because you broke it." Therefore, whoever ascribed this ruling to him without him—peace be upon him—having said it has indeed lied against him.

فَصَحَّ بِذَلِكَ يَقِينًا أَنَّ تِلْكَ الْكِسَارَةَ الَّتِي أَعْطَى لِعَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - لَا تَخْلُو مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا -: إمَّا أَنَّهَا لَمْ تَصْلُحْ لِشَيْءٍ فَأَبْقَاهَا كَمَا يَحِلُّ لِكُلِّ إنْسَانٍ مِنَّا مَا فَسَدَ جُمْلَةً مِنْ مَتَاعِ غَيْرِهِ وَلَمْ يَنْتَفِعْ مِنْهُ شَيْءٌ.

L19639 Thus, it was firmly established with certainty that that broken piece which he gave to 'Aisha—may Allah be pleased with her—could not escape one of two aspects, with no third alternative: either it had become wholly unfit for any purpose, so he retained it, just as it is permissible for any individual among us to retain what has entirely spoiled of another's property from which no benefit can be derived.

وَإِمَّا أَنَّ قَصْعَةَ عَائِشَةَ الَّتِي أَعْطَى كَانَتْ خَيْرًا مِنْ الَّتِي كَانَتْ لِزَيْنَبَ - رَضِيَ اللَّهُ عَنْهَا - فَجَبَرَ - عَلَيْهِ السَّلَامُ - تِلْكَ الزِّيَادَةَ بِتِلْكَ الْكِسَارَةِ، وَإِلَّا فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهُ -

L19640–19641 Alternatively, the bowl of 'Aisha—may Allah be pleased with her—which the Prophet ﷺ gave was superior in value to that which belonged to Zainab—may Allah be pleased with her—so he ﷺ compensated for this excess with

those broken pieces. Otherwise, we are certain he ﷺ would never give anyone else's property without a rightful claim. The aggrieved party's entitlement lies solely in the actual property itself, not in other assets. As long as the property or any portion of it exists, they have no claim to anything beyond it. If it is entirely lost, only then is a ruling made to replace it with its equivalent.

عَلَيْهِ السَّلَامُ - لَا يُعْطِي أَحَدًا مَالَ غَيْرِهِ بِغَيْرِ حَقٍّ، وَإِنَّمَا حَقُّ الْمَجْنِيِّ عَلَيْهِ فِي عَيْنِ مَالِهِ لَا فِي غَيْرِهِ، فَمَا دَامَتْ الْعَيْنُ أَوْ شَيْءٌ مِنْهَا مَوْجُودَيْنِ فَلَا حَقَّ لَهُ فِي غَيْرِ ذَلِكَ، فَإِنْ عَدِمَ جُمْلَةً فَحِينَئِذٍ يَقْضِي لَهُ بِالْمِثْلِ.

L19642 Ali said: If no equivalent of its kind exists, then anything that counteracts and equals it is also considered its equivalent in this category—except that it is the lesser of its two equivalents according to its kind. Thus, we rule by this in the absence of an absolute equivalent. And success is from Allah, the Exalted.

قَالَ عَلِيٌّ: فَإِذَا عَدِمَ الْمِثْلَ مِنْ نَوْعِهِ فَكُلُّ مَا قَاوَمَهُ وَسَاوَاهُ فَهُوَ أَيْضًا مِثْلٌ لَهُ مِنْ هَذَا الْبَابِ، إلَّا أَنَّهُ أَقَلُّ مِثْلَيْهِ مِمَّا هُوَ عَلَيْهِ مِنْ نَوْعِهِ، فَلِذَلِكَ قَضَيْنَا بِهِ عِنْدَ عَدَمِ الْمِثْلِ الْمُطْلَقِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19643 **An issue where one person has destroyed something belonging to another.**

[مَسْأَلَةٌ أَتْلَفَ لِآخَرَ شَيْئًا]

L19644 1261 – Issue:

١٢٦١ - مَسْأَلَةٌ:

L19645 Whoever breaks something belonging to another, wounds his slave, wounds his animal, or tears his garment must have each item appraised in its intact state based on the damage caused, then appraised in its current condition. The offender is unequivocally required to pay the owner the difference between the two valuations. It is impermissible to give the damaged item to the offender for the reason previously mentioned. Rather, he must compensate by an equivalent measure of what he damaged. Whether the offense is minor or major, this is not permissible.

وَمَنْ كَسَرَ لِآخَرَ شَيْئًا، أَوْ جَرَحَ لَهُ عَبْدًا، أَوْ حَيَوَانًا، أَوْ خَرَقَ لَهُ ثَوْبًا، قُوِّمَ كُلُّ ذَلِكَ صَحِيحًا مِمَّا جَنَى عَلَيْهِ، ثُمَّ قُوِّمَ كَمَا هُوَ السَّاعَةُ، وَكُلِّفَ الْجَانِي أَنْ يُعْطِيَ صَاحِبَ الشَّيْءِ مَا بَيْنَ الْقِيمَتَيْنِ وَلَا بُدَّ، وَلَا يَجُوزُ أَنْ يُعْطِيَ الشَّيْءَ الْمَجْنِيَّ عَلَيْهِ لِلْجَانِي لِمَا ذَكَرْنَا آنِفًا وَإِنَّمَا عَلَيْهِ أَنْ يَعْتَدِيَ عَلَيْهِ بِمِثْلِ مَا اعْتَدَى فَقَطْ، وَسَوَاءٌ كَانَتْ الْجِنَايَةُ صَغِيرَةً أَوْ كَبِيرَةً لَا يَحِلُّ هَذَا.

L19646 The Hanafis demonstrate conflicting opinions and conceptual confusion here, such as their statement: If someone seizes a garment unlawfully, he must return it to its owner. If the garment is found in a state where the usurper has cut it, the owner may choose between taking it in its altered condition while bearing the value lost due to the cutting, or transferring it to the usurper while holding him liable for the value of the garment. If the garment is only found after the usurper has tailored it into a shirt, it becomes the property of the usurper, leaving the owner no choice, and the usurper remains liable only for the value of the garment.

وَلِلْحَنَفِيِّينَ هَاهُنَا اضْطِرَابٌ وَتَخْلِيطٌ كَثِيرٌ، كَقَوْلِهِمْ: مَنْ غَصَبَ ثَوْبًا فَإِنَّهُ يَرُدُّ إلَى صَاحِبِهِ فَإِنْ وُجِدَ وَقَدْ قَطَعَهُ الْغَاصِبُ فَصَاحِبُ الثَّوْبِ مُخَيَّرٌ بَيْنَ أَخْذِهِ كَمَا هُوَ وَمَا نَقَصَهُ الْقَطْعُ وَبَيْنَ أَنْ يُعْطِيَهُ لِلْغَاصِبِ وَيُضَمِّنَهُ قِيمَةَ الثَّوْبِ، فَإِنْ لَمْ يُوجَدْ إلَّا وَقَدْ خَاطَهُ قَمِيصًا: فَهُوَ لِلْغَاصِبِ بِلَا تَخْيِيرٍ، وَلَيْسَ عَلَيْهِ إلَّا قِيمَةُ الثَّوْبِ.

وَكَذَلِكَ قَوْلُهُمْ فِي الْحِنْطَةِ تُغْصَبُ فَتُطْحَنُ، وَالدَّقِيقُ يُغْصَبُ فَيُعْجَنُ، وَاللَّحْمُ يُغْصَبُ فَيُطْبَخُ، أَوْ يُشْوَى.

L19647 Similarly, their ruling concerning usurped wheat that is ground into flour, usurped flour that is kneaded into dough, and usurped meat that is cooked or roasted.

قَالَ أَبُو مُحَمَّد: مَا فِي الْمُجَاهَرَةِ بِكَيْدِ الدِّينِ أَكْثَرُ مِنْ هَذَا، وَلَا فِي تَعْلِيمِ الظَّلَمَةِ أَكْلَ أَمْوَالِ النَّاسِ أَكْثَرُ مِنْ هَذَا، فَيُقَالُ لِكُلِّ فَاسِقٍ: إذَا أَرَدْت أَخْذَ قَمْحِ يَتِيمٍ، أَوْ جَارِك، وَأَكْلَ غَنَمِهِ، وَاسْتِحْلَالَ ثِيَابِهِ، وَقَدْ امْتَنَعَ مِنْ أَنْ يَبِيعَك شَيْئًا مِنْ ذَلِكَ فَاغْصِبْهَا، وَاقْطَعْهَا ثِيَابًا عَلَى رَغْمِهِ، وَاذْبَحْ غَنَمَهُ وَأَطْبُخْهَا، وَاغْصِبْهُ حِنْطَتَهُ وَاطْحَنْهَا، وَكُلْ كُلَّ ذَلِكَ حَلَالًا طَيِّبًا، وَلَيْسَ عَلَيْك إلَّا قِيمَةُ مَا أَخَذْت، وَهَذَا خِلَافُ الْقُرْآنِ فِي نَهْيِهِ تَعَالَى أَنْ نَأْكُلَ أَمْوَالَنَا بِالْبَاطِلِ، وَخِلَافُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي قَوْلِهِ: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» و «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L19648 Abu Muhammad said: There is no greater instance of openly undermining the religion than this, nor any greater instruction in teaching oppressors to devour people's wealth than this. For it is said to every transgressor: If you wish to take an orphan's wheat, your neighbor's wheat, consume his sheep, or wrongfully claim his garments as lawful—when he refuses to sell you any of these things—then seize them by force, fashion them into garments against his will, slaughter his sheep and cook them, seize his wheat by force and grind it, and consume all of that as lawful and pure. You are only required to pay the value of what you took. This contradicts the Quran in Allah's prohibition against consuming wealth unjustly, and contradicts the Messenger of Allah—peace and blessings be upon him—in his saying: "Your blood and your wealth are inviolable to you," and "Whoever introduces into this matter of ours [Islam] something not part of it, it is rejected."[6]

وَمَا يَشُكُّ أَحَدٌ مِنْ أَهْلِ الْإِسْلَامِ فِي أَنَّ كُلَّ ثَوْبٍ قُطِعَ مِنْ شُقَّةٍ فَإِنَّهُ لِصَاحِبِ الشُّقَّةِ، وَكُلَّ دَقِيقٍ طُحِنَ مِنْ حِنْطَةِ إنْسَانٍ فَهُوَ لِصَاحِبِ الْحِنْطَةِ، وَكُلَّ لَحْمٍ شُوِيَ فَهُوَ لِصَاحِبِ اللَّحْمِ - وَهُمْ يُقِرُّونَ بِهَذَا ثُمَّ لَا يُبَالُونَ بِأَنْ يَقُولُوا: الْغَصْبُ، وَالظُّلْمُ، وَالتَّعَدِّي يُحِلُّ أَمْوَالَ الْمُسْلِمِينَ لِلْغُصَّابِ.

L19649–19650 No one among the people of Islam doubts that every garment cut from a bolt of cloth belongs to the owner of the bolt, all flour ground from an individual's wheat belongs to the owner of the wheat, and all meat that is roasted belongs to the owner of the meat. Yet they acknowledge this and do not hesitate to declare: "Usurpation, oppression, and transgression render the wealth of Muslims lawful for those who commit these acts."

وَاحْتَجُّوا فِي ذَلِكَ بِأَمْرِ الْقَصْعَةِ الْمَكْسُورَةِ الَّتِي ذَكَرْنَا قَبْلُ وَهُمْ أَوَّلُ مُخَالِفٍ لِذَلِكَ الْخَبَرِ فَخَالَفُوهُ فِيمَا فِيهِ، وَاحْتَجُّوا لَهُ فِيمَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ.

L19651 They argued in this matter by citing the case of the broken bowl we previously mentioned, though they were the first to oppose that narration—contradicting it in what it contains while invoking it as evidence for matters it includes nothing about.

وَاحْتَجُّوا أَيْضًا بِخَبَرِ «الْمَرْأَةِ الَّتِي دَعَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى طَعَامٍ فَأَخْبَرَتْهُ أَنَّهَا أَرَادَتْ ابْتِيَاعَ شَاةٍ فَلَمْ تَجِدْهَا فَأَرْسَلَتْ إلَى جَارَةٍ لَهَا: ابْعَثِي إلَيَّ الشَّاةَ الَّتِي لِزَوْجِكِ فَبَعَثَتْ بِهَا إلَيْهَا فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالشَّاةِ أَنْ تُطْعَمَ

L19652 They also cited the report of "the woman who invited the Messenger of Allah (peace be upon him) to a meal and informed him that she had intended to buy a sheep but could not find one. She then sent to a neighbor of hers:

[6] **Hadith references (L19648):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

'Send me the sheep belonging to your husband,' and the neighbor sent it to her. The Messenger of Allah (peace be upon him) then ordered that the sheep be cooked to feed the captives." This ignorant fabricator claimed: "This indicates that the right of the sheep's owner has been waived from her, as it was roasted."

الْأَسَارَى» قَالَ هَذَا الْجَاهِلُ الْمُفْتَرِي: فَهَذَا يَدُلُّ عَلَى أَنَّ حَقَّ صَاحِبِ الشَّاةِ قَدْ سَقَطَ عَنْهَا إِذْ شُوِيَتْ.

L19653 Abu Muhammad said: This report is not valid. If it were valid, it would be the greatest argument against them, for it opposes their claim. This is because the report contains that the Prophet—peace be upon him—did not leave that meat in the possession of the woman who took it without its owner's permission, while they assert that it is lawful for the usurper. This report contains that he did not seek her opinion in the matter, thus confirming that it did not belong to her. Therefore, it is an argument against them.

قَالَ أَبُو مُحَمَّد: وَهَذَا الْخَبَرُ لَا يَصِحُّ، لَوْ صَحَّ لَكَانَ أَعْظَمَ حُجَّةٍ عَلَيْهِمْ، لِأَنَّهُ خِلَافٌ لِقَوْلِهِمْ، إِذْ فِيهِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُبْقِ ذَلِكَ اللَّحْمَ فِي مِلْكِ الَّتِي أَخَذَتْهَا بِغَيْرِ إِذْنِ رَبِّهَا، وَهُمْ يَقُولُونَ: إِنَّهُ لِلْغَاصِبِ حَلَالٌ - وَهَذَا الْخَبَرُ فِيهِ: أَنَّهُ لَمْ يَأْخُذْ رَأْيَهَا فِي ذَلِكَ - فَصَحَّ أَنَّهُ لَيْسَ لَهَا، فَهُوَ حُجَّةٌ عَلَيْهِمْ.

L19654 Ali said: What is preserved from the Companions—may Allah be pleased with them—contradicts this. As narrated through the chain of ʿAbd al-Razzāq, from Maʿmar, from Ayyūb al-Sikhtiyānī, from Muḥammad ibn Sīrīn: The Companions of the Messenger of Allah—peace and blessings be upon him—once camped with the inhabitants of a water source, among whom was Abū Bakr al-Ṣiddīq. Al-Nuʿmān went out and began telling them, "Such and such will happen"—while they were bringing him food and milk, which he then sent to his companions. When Abū Bakr was informed of this, he said, "I see that I have eaten food obtained through al-Nuʿmān's soothsaying since the day began." Then he inserted his hand into his throat and induced vomiting.

قَالَ عَلِيٌّ: وَالْمَحْفُوظُ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافُ هَذَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَزَلُوا بِأَهْلِ مَاءٍ وَفِيهِمْ أَبُو بَكْرٍ الصِّدِّيقُ، فَانْطَلَقَ النُّعْمَانُ فَجَعَلَ يَقُولُ لَهُمْ: يَكُونُ كَذَا وَكَذَا - وَهُمْ يَأْتُونَهُ بِالطَّعَامِ وَاللَّبَنِ، وَيُرْسِلُ هُوَ بِذَلِكَ إِلَى أَصْحَابِهِ - فَأَخْبَرَ أَبُو بَكْرٍ بِذَلِكَ فَقَالَ: أَرَانِي آكِلُ كِهَانَةَ النُّعْمَانِ مُنْذُ الْيَوْمِ، ثُمَّ أَدْخَلَ يَده فِي حَلْقِهِ فَاسْتَقَاءَهُ.

L19655 From the narration of Muḥammad ibn Isḥāq in his *Maghāzī* through Yazīd ibn Abī Ḥabīb, from ʿAwf ibn Mālik al-Ashjaʿī, who said: I was in the expedition of Dhāt al-Salāsil. He mentioned his division of the camel among the people and that they gave him a share of it. He brought it to his companions, who cooked and ate it. Then Abū Bakr and ʿUmar questioned him about it, and he informed them. They both said to him: "By Allah, you did not do well to feed us this!" Then they both stood up and began vomiting what was in their stomachs.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ إِسْحَاق فِي مَغَازِيهِ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عَوْفِ بْنِ مَالِكٍ الْأَشْجَعِيِّ قَالَ: كُنْت فِي غَزْوَةِ ذَاتِ السَّلَاسِلِ فَذَكَرَ قِسْمَتُهُ الْجَزُورَ بَيْنَ الْقَوْمِ وَأَنَّهُمْ أَعْطَوْهُ مِنْهَا، فَأَتَى بِهِ إلَى أَصْحَابِهِ فَطَبَخُوهُ فَأَكَلُوهُ، ثُمَّ سَأَلَهُ أَبُو بَكْرٍ، وَعُمَرُ عَنْهُ؟ فَأَخْبَرَهُمَا، فَقَالَا لَهُ: وَاَللَّهِ مَا أَحْسَنْت حِينَ أَطْعَمْتنَا هَذَا ثُمَّ قَامَا يَتَقَيَّآنِ مَا فِي بُطُونِهِمَا.

L19656 Through the chain of Mālik from Zayd ibn Aslam, who said: ʿUmar ibn al-Khaṭṭāb drank some milk and it pleased him. He inquired about it and was

informed that it had been milked for him from the charity camels. ʿUmar then inserted his finger and vomited it.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ زَيْدِ بْنِ أَسْلَمَ قَالَ: شَرِبَ عُمَرُ بْنُ الْخَطَّابِ لَبَنًا فَأَعْجَبَهُ فَسَأَلَ عَنْهُ فَأُخْبِرَ أَنَّهُ حُلِبَ لَهُ مِنْ نَعَمِ الصَّدَقَةِ فَأَدْخَلَ عُمَرُ أُصْبُعَهُ فَاسْتَقَاءَهُ.

L19657–19658 And through the chain of Saʿīd ibn Manṣūr, Al-Muʿtamir ibn Sulaymān al-Taymī narrated to us from his father that the people of Kufa said to him: "Did ʿAlī drink *nabīdh* of the jar?" Sulaymān said: "So I said to them: This is Abū Isḥāq al-Hamdānī narrating that ʿAlī ibn Abī Ṭālib reported that he vomited it, the *nabīdh* of the jar."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ أَبِيهِ أَنَّ أَهْلَ الْكُوفَةِ قَالُوا لَهُ: قَدْ شَرِبَ عَلِيٌّ نَبِيذَ الْجَرِّ؟ قَالَ سُلَيْمَانُ: فَقُلْت لَهُمْ: هَذَا أَبُو إِسْحَاقَ الْهَمْدَانِيُّ يُحَدِّثُ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أَخْبَرَ أَنَّهُ نَبِيذَ جَرٍّ تَقَيَّأَهُ.

L19659 Aḥmad ibn ʿUmar ibn Anas al-ʿUdhri reported from ʿUbayd Allāh ibn Muḥammad al-Saqaṭī, who reported from Muḥammad ibn Aḥmad ibn Yaʿqūb ibn Shaybah, who reported from Aḥmad ibn Shuwayh, who said: I heard ʿAbd al-Razzāq say: Maʿmar entered upon his family, and there was fruit with her, so he ate some. Then he asked about it, and she told him: "So-and-so the professional mourner gifted it to us." Maʿmar stood up and vomited what he had eaten.

نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ نا عُبَيْدُ اللَّهِ بْنُ مُحَمَّدٍ السَّقَطِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ يَعْقُوبَ بْنِ شَيْبَةَ نا أَحْمَدُ بْنُ شُوَيْهٍ قَالَ: سَمِعْت عَبْدَ الرَّزَّاقِ يَقُولُ: دَخَلَ مَعْمَرٌ عَلَى أَهْلِهِ فَإِذَا عِنْدَهَا فَاكِهَةٌ فَأَكَلَ مِنْهَا، ثُمَّ سَأَلَ عَنْهَا فَقَالَتْ لَهُ: أَهْدَتْهَا إلَيْنَا فُلَانَةُ النَّائِحَةُ، فَقَامَ مَعْمَرٌ فَتَقَيَّأَ مَا أَكَلَ.

L19660 Abu Muhammad said: Abu Bakr, Umar, and Ali—in the presence of the Companions and with their awareness, with none among them opposing them in that—did not consider food taken without right as belonging to the one who seized it, even if he ate it. Rather, they held that he must expel it and not retain it in his body as long as he is capable of doing so, even after consuming it entirely. By what pretext do these people cling to openly permitting what is forbidden? Abu Muhammad said: This is our position. As long as a person is able to vomit it, it is obligatory upon him to do so. It is impermissible to retain unlawful substances at all. If he is unable, then Allah does not burden a soul beyond its capacity. This is one of the matters in which they have opposed the Quran and the Sunnah with their corrupt opinions, emulating some Successors (Tabi'een) in an error the Successors committed—and success is from Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا أَبُو بَكْرٍ، وَعُمَرُ وَعَلِيٌّ بِحَضْرَةِ الصَّحَابَةِ وَعِلْمِهِمْ لَا مُخَالِفَ لَهُمْ مِنْهُمْ فِي ذَلِكَ لَا يَرَوْنَ الطَّعَامَ الْمَأْخُوذَ بِغَيْرِ حَقٍّ مِلْكًا لِآخِذِهِ، وَإِنْ أَكَلَهُ، بَلْ يَرَوْنَ عَلَيْهِ إخْرَاجَهُ، وَأَنْ لَا يُبْقِيَهُ فِي جِسْمِهِ مَا دَامَ يَقْدِرُ عَلَى ذَلِكَ، وَإِنْ اسْتَهْلَكَهُ، فَبِأَيِّ شَيْءٍ تَعَلَّقَ هَؤُلَاءِ الْقَوْمُ فِي إبَاحَةِ الْحَرَامِ جِهَارًا؟ قَالَ أَبُو مُحَمَّدٍ: وَبِهَذَا نَقُولُ، فَمَا دَامَ الْمَرْءُ يَقْدِرُ عَلَى أَنْ يَتَقَيَّأَهُ، فَفَرْضٌ عَلَيْهِ ذَلِكَ، وَلَا يَحِلُّ إمْسَاكُ الْحَرَامِ أَصْلًا فَإِنْ عَجَزَ عَنْ ذَلِكَ فَلَا يُكَلِّفُ اللَّهُ نَفْسًا إلَّا وُسْعَهَا، وَهَذَا مِمَّا خَالَفُوا فِيهِ الْقُرْآنَ، وَالسُّنَنَ بِآرَائِهِمْ الْفَاسِدَةِ، وَتَقْلِيدًا لِبَعْضِ التَّابِعِينَ فِي خَطَأٍ أَخْطَأَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19661 They also said: We applied qiyas to this by comparing it to a slave who dies, so his value must be guaranteed.

وَقَالُوا أَيْضًا: قِسْنَا هَذَا عَلَى الْعَبْدِ يَمُوتُ فَتُضْمَنَ قِيمَتُهُ.

L19662 Ali said: "This is a liability upon them, not a right for them, because the

deceased cannot be owned by the usurper."

قَالَ عَلِيٌّ: وَهَذَا عَلَيْهِمْ، لَا لَهُمْ، لِأَنَّ الْمَيِّتَ لَا يَتَمَلَّكُهُ الْغَاصِبُ.

A legal case: He wrongfully seized a house, so it collapsed.

[مَسْأَلَةٌ غَصَبَ دَارًا فَتَهَدَّمَتْ]

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١٢٦٢ - مَسْأَلَةٌ:

Whoever usurps a house and it collapses must restore its structure as it was without exception, based on Allah's decree: {Whoever commits aggression against you, retaliate against them in the same manner as they aggressed against you} [Al-Baqarah: 194]. For he has committed aggression against the constructed building by intervening between it and its owner. By the consensus of their jurists along with ours, and the consensus of the Muslim community, he is commanded to return it to its owner at all times. Thus, his obligation cannot be waived due to the building's destruction.[7]

وَمَنْ غَصَبَ دَارًا فَتَهَدَّمَتْ كُلِّفَ رَدَّ بِنَائِهَا كَمَا كَانَ وَلَا بُدَّ، لِقَوْلِ اللَّهِ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] وَهُوَ قَدْ اعْتَدَى عَلَى الْبِنَاءِ الْمُؤَلَّفِ فَحَالَ بَيْنَهُ وَبَيْنَ صَاحِبِهِ، وَهُوَ بِإِجْمَاعِهِمْ مَعَنَا وَإِجْمَاعِ أَهْلِ الْإِسْلَامِ مَأْمُورٌ بِرَدِّهَا فِي كُلِّ وَقْتٍ إِلَى صَاحِبِهَا، فَلَا يَجُوزُ أَنْ يَسْقُطَ عَنْهُ بِهَدْمِهَا مَا لَزِمَهُ.

If only I knew: what difference is there between a collapsing house and a slave's death? Their companion's argument was that houses and lands are not unlawfully seized—and this was utterly astonishing.

وَلَيْتَ شِعْرِي أَيُّ فَرْقٍ بَيْنَ دَارٍ تَتَهَدَّمُ وَبَيْنَ عَبْدٍ يَمُوتُ؟ فَكَانَ احْتِجَاجُ صَاحِبِهِمْ: أَنَّ الدُّورَ وَالْأَرَضِينَ لَا تُغْصَبُ، فَكَانَ هَذَا عَجَبًا جِدًّا.

We do not know of a greater advocate for Satan in Islam than one who unleashes tyrants upon the usurpation of people's homes. And their lands—then he permits them to lease it and benefit from its produce, and does not hold them responsible for any loss that occurs to it. We seek refuge in Allah from the like of this.

وَمَا نَعْلَمُ لِإِبْلِيسَ دَاعِيَةً فِي الْإِسْلَامِ أَكْثَرَ مِمَّنْ يُطْلِقُ الظَّلَمَةَ عَلَى غَصْبِ دُورِ النَّاسِ وَأَرَاضِيهِمْ ثُمَّ يُبِيحُ لَهُمْ كِرَاءَهَا وَغَلَّتَهَا، وَلَا يَرَى عَلَيْهِمْ ضَمَانَ مَا تَلِفَ مِنْهَا - نَعُوذُ بِاللَّهِ مِنْ مِثْلِ هَذَا.

A legal question concerning someone who usurped land, whether he cultivated it or did not cultivate it.

[مَسْأَلَةٌ مِنْ غَصَبَ أَرْضًا فَزَرَعَهَا أَوْ لَمْ يَزْرَعْهَا]

1263 - Issue:

١٢٦٣ - مَسْأَلَةٌ:

And whoever unlawfully seizes land—whether cultivating it or not—must restore it and compensate for any damage to it. His sharecropping [liability] is equivalent to [the land's benefit], due to what we stated earlier: he obstructed the owner from benefiting from the land. The land provides no benefit except

وَمَنْ غَصَبَ أَرْضًا فَزَرَعَهَا، أَوْ لَمْ يَزْرَعْهَا فَعَلَيْهِ رَدُّهَا وَمَا نَقَصَ مِنْهَا، وَمُزَارَعَتُهُ مِثْلُهَا لِمَا ذَكَرْنَا مِنْ أَنَّهُ حَالَ بَيْنَ صَاحِبِهَا وَبَيْنَ مَنْفَعَةِ أَرْضِهِ، وَلَا مَنْفَعَةَ لِلْأَرْضِ إِلَّا الزَّرْعُ وَالْمُزَارِعَةُ عَلَى مَا نَذْكُرُ فِي " الْمُزَارَعَةِ " إِنْ شَاءَ اللَّهُ تَعَالَى.

[7] **Qur'an references (L19665):** Qur'an 2:194 (Al-Baqarah).

through cultivation or sharecropping, as per what we will elaborate in the chapter on sharecropping, God willing, Exalted is He.

L19673 The Hanafis claimed: "Land cannot be usurped," but this is a lie on their part, for usurpation means unjustly taking something without right. We have received through Al-Bukhari's transmission: Muslim ibn Ibrāhīm narrated to us from ʿAbdullāh ibn al-Mubārak, from Mūsā ibn ʿUqbah, from Sālim ibn ʿAbdillāh ibn ʿUmar, from his father, who said: The Messenger of Allah (peace be upon him) stated, "Whoever seizes a handspan of land without right will be plunged with it on the Day of Resurrection into the seven earths."

وَقَالَ الْحَنَفِيُّونَ: الْأَرْضُ لَا تُغْصَبُ، وَهَذَا كَذِبٌ مِنْهُمْ، لِأَنَّ الْغَصْبَ هُوَ أَخْذُ الشَّيْءِ بِغَيْرِ حَقِّهِ ظُلْمًا - وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسْلِمُ بْنُ إِبْرَاهِيمَ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ نا مُوسَى بْنُ عُقْبَةَ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أَخَذَ مِنَ الْأَرْضِ شِبْرًا بِغَيْرِ حَقِّهِ خُسِفَ بِهِ يَوْمَ الْقِيَامَةِ إِلَى سَبْعِ أَرَضِينَ» .

L19674 Thus, it is established that the land is taken without right, and therefore wrongfully seized.

فَصَحَّ أَنَّ الْأَرْضَ تُؤْخَذُ بِغَيْرِ حَقٍّ، فَصَحَّ أَنَّهَا تُغْصَبُ.

L19675 **Issue: If someone wrongfully seizes cultivated land and cultivates it, or seizes seeds and plants them.**

[مَسْأَلَةٌ غَصَبَ زُرَيْعَةً فَزَرَعَهَا أَوْ نَوًى فَغَرَسَهُ]

L19676 1264. Legal Question:

١٢٦٤ - مَسْأَلَةٌ:

L19677 Whoever unlawfully seizes a seedling and plants it, a pit and sows it, or cuttings and plants them—all produce generated from the crop belongs to the owner of the seedling, and the planter must compensate him for it. Whatever grows from the pits and cuttings belongs to their rightful owner. All fruit yielded by those resulting trees in perpetuity belongs to him; the usurper has no right to any of this, as per the statement of Allah's Messenger—peace and blessings be upon him: "No right is due to the wrongdoing of a transgressor."

وَمَنْ غَصَبَ زُرَيْعَةً فَزَرَعَهَا، أَوْ نَوًى فَغَرَسَهُ، أَوْ مَلُوخًا فَغَرَسَهَا، فَكُلُّ مَا تَوَلَّدَ مِنَ الزَّرْعِ فَلِصَاحِبِ الزَّرِيعَةِ يَضْمَنُهُ لَهُ الزَّارِعُ - وَكُلُّ مَا نَبَتَ مِنَ النَّوَى، وَالْمَلُوخِ فَلِصَاحِبِهَا - وَكُلُّ مَا أَثْمَرَتْ تِلْكَ الشَّجَرُ فِي الْأَبَدِ فَلَهُ، لَا حَقَّ لِلْغَاصِبِ فِي شَيْءٍ مِنْ ذَلِكَ لِمَا ذَكَرْنَا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَلَيْسَ لِعِرْقٍ ظَالِمٍ حَقٌّ» .

L19678 And because all that originates from a person's wealth belongs to him. What becomes permissible for others is only that which the owner deems insignificant, thereby renouncing it, discarding it, and permitting its taking—such as date seeds and similar items exclusively—not what he has not permitted. And success comes only from Allah, the Exalted.

وَلِأَنَّ كُلَّ مَا تَوَلَّدَ مِنْ مَالِ الْمَرْءِ فَلَهُ، وَإِنَّمَا يَحِلُّ لِلنَّاسِ مِنْ ذَلِكَ مَا لَا خَطْبَ لَهُ بِهِ مِمَّا يَتَبَرَّأُ مِنْهُ صَاحِبُهُ فَيَطْرَحُهُ مُبِيحًا لَهُ، مِنْ أَخْذِهِ مِنَ النَّوَى وَنَحْوِ ذَلِكَ فَقَطْ، لَا مَا لَمْ يُبِحْهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L19679 **A jurisprudential issue where an animal aggressed against him and he could not repel it except by killing the animal.**

[مَسْأَلَةٌ عَدَا عَلَيْهِ حَيَوَانٌ فَلَمْ يَقْدِرْ عَلَى دَفْعِهِ إِلَّا بِقَتْلِهِ]

L19680 1265: Issue

١٢٦٥ - مَسْأَلَةٌ:

L19681–19683 And anyone harmed by a trespassing domesticated animal - whether it is a camel, horse, mule, or... In the case of an elephant or other such animals, if one cannot repel it except by killing it and does so, there is no financial liability upon him for it—this is the opinion of Mālik, al-Shāfiʿī, and Abū Sulaymān.

وَكُلُّ مَنْ عَدَا عَلَيْهِ حَيَوَانٌ مُتَمَلَّكٌ مِنْ بَعِيرٍ، أَوْ فَرَسٍ أَوْ بَغْلٍ، أَوْ فِيلٍ، أَوْ غَيْرِ ذَلِكَ، فَلَمْ يَقْدِرْ عَلَى دَفْعِهِ عَنْ نَفْسِهِ إِلَّا بِقَتْلِهِ فَقَتَلَهُ فَلَا ضَمَانَ عَلَيْهِ فِيهِ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L19684 The Hanafis maintained: He is liable for it, and they cited as evidence the well-established report from the Prophet—peace and blessings of Allah be upon him—"The injury caused by a domesticated animal is without liability (jubār)," along with the narration we transmitted through the chain of ʿAbd al-Karīm: "A stallion attacked a person to kill him, so he struck it with a sword and killed it. Abū Bakr imposed a fine on him for it, stating: It is an animal devoid of reason."

وَقَالَ الْحَنَفِيُّونَ: يَضْمَنُهُ، وَاحْتَجُّوا بِالْخَبَرِ الثَّابِتِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْعَجْمَاءُ جَرْحُهَا جُبَارٌ» . وَبِالْخَبَرِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الْكَرِيمِ " إِنَّ إِنْسَانًا عَدَا عَلَيْهِ فَحْلٌ لِيَقْتُلَهُ فَضَرَبَهُ بِالسَّيْفِ فَقَتَلَهُ فَأَغْرَمَهُ أَبُو بَكْرٍ إِيَّاهُ، وَقَالَ: بَهِيمَةٌ لَا تَعْقِلُ ".

L19685 And on the authority of Ali ibn Abi Talib, a similar narration is reported.

وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ نَحْوُهُ.

L19686 On the authority of ʿAbd al-Razzāq, from Maʿmar, from Hammām ibn Munabbih, from Abū Hurayrah, who said: "Whoever injures a stray animal is liable to pay compensation."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ عَنْ أَبِي هُرَيْرَةَ قَالَ " مَنْ أَصَابَ الْعَجْمَاءَ غُرِّمَ ".

L19687 And through the narration of Sufyān al-Thawrī from al-Aswad ibn Qays from their elders: A boy entered the compound of Zayd ibn Ṣūḥān, and a camel belonging to Zayd struck him, killing him. The boy's guardians then slaughtered the camel. ʿUmar ibn al-Khaṭṭāb invalidated the blood claim for the boy and obligated the boy's father to pay the price of the camel.

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنِ الْأَسْوَدِ بْنِ قَيْسٍ عَنْ أَشْيَاخٍ لَهُمْ: أَنَّ غُلَامًا دَخَلَ دَارَ زَيْدِ بْنِ صُوحَانَ فَضَرَبَتْهُ نَاقَةٌ لِزَيْدٍ فَقَتَلَتْهُ فَعَمَدَ أَوْلِيَاءُ الْغُلَامِ فَعَقَرُوهَا فَأَبْطَلَ عُمَرُ بْنُ الْخَطَّابِ دَمَ الْغُلَامِ وَأَغْرَمَ وَالِدَ الْغُلَامِ ثَمَنَ النَّاقَةِ.

L19688 A similar report is narrated from Shurayh.

وَعَنْ شُرَيْحٍ مِثْلُ هَذَا.

L19689 Ali said: As for the ḥadīth "The injury caused by a non-human animal is non-compensable," it is of the utmost authenticity, and this is the position we uphold. They have no valid argument against this, for we do not disagree with them regarding the principle that no compensation is due for injuries caused by such animals. The ḥadīth's ruling pertains solely to this principle. Rather, it constitutes an argument against their stance of holding liable the

قَالَ عَلِيٌّ: أَمَّا الْحَدِيثُ «جَرْحُ الْعَجْمَاءِ جُبَارٌ» فَفِي غَايَةِ الصِّحَّةِ، وَبِهِ نَقُولُ وَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّنَا لَمْ نُخَالِفْهُمْ فِي أَنَّ مَا جَرَحَتْهُ الْعَجْمَاءُ لَا يَغْرَمُ وَلَيْسَ فِيهِ إِلَّا هَذَا بَلْ هُوَ

rider, the driver, or the handler—when they did not provoke the animal—for harm caused by it. Thus, they are the ones opposing this established narration.

L19690–19692 As for the narration of ʿUmar ibn al-Khaṭṭāb and Shurayḥ, we say: Whoever's legal guardian is killed by an animal and dies... If he kills a person after their wrongful act, he is liable for them because they bear no guilt. As for the statement of Abū Hurayrah, it is correct. Whoever intentionally harms an animal without necessity is obligated to compensate.

L19693 As for the narration from Abū Bakr and ʿAlī, it is disconnected, and there is no valid proof in a disconnected chain—even if it were from the Messenger of Allah (peace and blessings of Allah be upon him)—so how about from those below him? Even if it were authentic, it would not constitute proof for them. How many instances have they opposed Abū Bakr and others where opposition is impermissible? The clearest example is what we cited from Abū Bakr, ʿUmar, and ʿAlī (may Allah be pleased with them) regarding their vomiting what they ate or drank from unlawful sources, yet they opposed. They are only considered proof in their view when their positions align with Abū Ḥanīfa, not when they contradict him. This is toying with religion. It is astonishing that they claim lions and predatory beasts are forbidden to kill within the sacred precinct, and the killer incurs retribution—unless the pilgrim initiates harm against it, in which case he may kill it without liability. What contradiction, demolition, and building is this? The Mālikīs—who condemn others for adhering to a companion's opinion when it aligns with theirs and assert that disconnected and connected narrations are equivalent—ought logically to adopt this stance. Yet this is among their contradictions.

L19694 Ali said: A person upon whom an animal transgresses—fearing it may kill him, wound him, break his limb, or ruin his garments—cannot escape one of two scenarios: either he is commanded to permit the beast [to harm him] while being prohibited from refraining [from allowing it] or repelling it (this is a position they do not uphold, and if they did, it would only compound their misguidance, for Allah Most High states: "Do not cast yourselves into destruction" [Al-Baqarah:195], and this [verse] applies in its general sense);

حُجَّةٌ عَلَيْهِمْ فِي تَضْمِينِهِمْ الرَّاكِبَ، وَالسَّائِقَ، وَالْقَائِدَ، مَا أَصَابَ الْعَجْمَاءُ مِمَّا لَمْ يَحْمِلْهَا عَلَيْهِ فَهُمْ الْمُخَالِفُونَ لِهَذَا الْأَثَرِ.

وَأَمَّا حَدِيثُ عُمَرَ بْنِ الْخَطَّابِ، وَشُرَيْحٍ، فِيهِ نَقُولُ: مَنْ قَتَلَتْ بَهِيمَةٌ وَلِيَّهُ فَمَضَى بَعْدَ جِنَايَتِهَا فَقَتَلَهَا فَهُوَ ضَامِنٌ لَهَا، لِأَنَّهَا لَا ذَنْبَ لَهَا - وَأَمَّا قَوْلُ أَبِي هُرَيْرَةَ فَصَحِيحٌ، وَمَنْ أَصَابَ الْعَجْمَاءَ قَاصِدًا لَهَا غَيْرَ مُضْطَرٍّ فَهُوَ غَارِمٌ.

وَأَمَّا الرِّوَايَةُ عَنْ أَبِي بَكْرٍ، وَعَلِيٍّ، فَمُنْقَطِعَةٌ وَلَا حُجَّةَ فِي مُنْقَطِعٍ لَوْ كَانَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَيْفَ عَمَّنْ دُونَهُ؟ ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا أَبَا بَكْرٍ وَغَيْرَهُ حَيْثُ لَا يَجُوزُ خِلَافُهُ، أَقْرَبُ ذَلِكَ مَا أَوْرَدْنَا عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَعَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمْ - مِنْ تَقَيُّئِهِمْ مَا أَكَلُوا أَوْ شَرِبُوا مِمَّا لَا يَحِلُّ فَخَالَفُوا، فَإِنَّمَا هُمْ حُجَّةٌ عِنْدَهُمْ، حَيْثُ وَافَقُوا أَبَا حَنِيفَةَ لَا حَيْثُ خَالَفُوهُ، وَهَذَا تَلَاعُبٌ بِالدِّينِ. وَالْعَجَبُ أَنَّهُمْ يَقُولُونَ: إنَّ الْأَسَدَ، وَالسَّبُعَ، حَرَامٌ قَتْلُهُ فِي الْحَرَمِ وَعَلَى قَاتِلِهِ الْجَزَاءُ، إلَّا أَنْ يَبْتَدِئَ الْمُحْرِمُ بِأَذًى فَلَهُ قَتْلُهُ وَلَا يَجْزِيه - فَكَمْ هَذَا التَّنَاقُضُ، وَالْهَدْمُ، وَالْبِنَاءُ؟ وَلَقَدْ كَانَ يَلْزَمُ الْمَالِكِيِّينَ الْمُشَنِّعِينَ بِقَوْلِ الصَّاحِبِ إذَا وَافَقَهُمْ وَالْقَائِلِينَ بِأَنَّ الْمُرْسَلَ وَالْمُسْنَدَ سَوَاءٌ أَنْ يَقُولُوا بِهَذَا، وَلَكِنَّهُ مِمَّا تَنَاقَضُوا فِيهِ.

قَالَ عَلِيٌّ: لَا يَخْلُو مَنْ عَدَتْ الْبَهِيمَةُ عَلَيْهِ فَخَشِيَ أَنْ تَقْتُلَهُ أَوْ أَنْ تَجْرَحَهُ، أَوْ أَنْ تَكْسِرَ لَهُ عُضْوًا أَوْ أَنْ تُفْسِدَ ثِيَابَهُ مِنْ أَنْ يَكُونَ مَأْمُورًا بِإِبَاحَةِ ذَلِكَ لَهَا، مَنْهِيًّا عَنْ الِامْتِنَاعِ مِنْهَا وَدَفْعِهَا، وَهَذَا مِمَّا لَا يَقُولُونَهُ، وَلَوْ قَالُوهُ لَكَانَ زَائِدًا فِي ضَلَالِهِمْ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَلا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ} [البقرة: ١٩٥] وَهَذَا عَلَى عُمُومِهِ، أَوْ يَكُونُ مَأْمُورًا

or he is commanded to repel it from himself while being prohibited from enabling it to reach his life, body, property, or Muslim brother. This latter is the truthful stance, due to what we have clarified.[8]

بِدَفْعِهَا عَنْ نَفْسِهِ مَنْهِيًّا عَنْ إِمْكَانِهَا مِنْ رُوحِهِ، أَوْ جِسْمِهِ، أَوْ مَالِهِ، أَوْ أَخِيهِ الْمُسْلِمِ، وَهَذَا هُوَ الْحَقُّ لِمَا ذَكَرْنَا.

L19695 If he is commanded to do that and cannot save himself from her except by killing her, then he is commanded to kill her, because killing her constitutes the act of defense he was commanded to carry out. [And whoever does what he is commanded], he is one who does good. [And since he is one who does good], God, Exalted is He, has said: "There is no blame upon those who do good" [At-Tawbah: 91].[9]

فَإِذَا هُوَ مَأْمُورٌ بِذَلِكَ وَلَمْ يَقْدِرْ عَلَى النَّجَاةِ مِنْهَا إِلَّا بِقَتْلِهَا فَهُوَ مَأْمُورٌ بِقَتْلِهَا، لِأَنَّ قَتْلَهَا هُوَ الدَّفْعُ الَّذِي أُمِرَ بِهِ [وَمَنْ فَعَلَ مَا أُمِرَ بِهِ] فَهُوَ مُحْسِنٌ [وَإِذْ هُوَ مُحْسِنٌ] فَقَدْ قَالَ تَعَالَى: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١]

[مَسْأَلَةٌ لَا ضَمَانَ عَلَى صَاحِبِ الْبَهِيمَةِ فِيمَا جَنَتْهُ]

The ruling is that the owner of livestock incurs no liability for harm committed by it.

L19697 Question 1266:

١٢٦٦ - مَسْأَلَةٌ:

L19698–19700 There is no liability upon the owner of a beast for property damage or bloodshed it causes by night or day. However, the owner is commanded to restrain it. If he restrains it, then that is sufficient. But if it repeats the act and he fails to restrain it, it is to be sold against him, according to the statement of Allah's Messenger—peace and blessings be upon him: "The injury caused by an animal is irreparable harm exempt from compensation (jubār)." This is the opinion of Abū Ḥanīfah and Abū Sulaymān. Mālik and al-Shāfiʿī said: One is liable for whatever damage [an animal] causes at night but not liable for what it causes during the day, and this is the judgment of Shurayḥ and the legal ruling of al-Shaʿbī.

وَلَا ضَمَانَ عَلَى صَاحِبِ الْبَهِيمَةِ فِيمَا جَنَتْهُ فِي مَالٍ أَوْ دَمٍ لَيْلًا أَوْ نَهَارًا لَكِنْ يُؤْمَرُ صَاحِبُهُ بِضَبْطِهِ، فَإِنْ ضَبَطَهُ فَذَاكَ، وَإِنْ عَادَ وَلَمْ يَضْبِطْهُ بِيعَ عَلَيْهِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْعَجْمَاءُ جَرْحُهَا جُبَارٌ» وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: يَضْمَنُ مَا جَنَتْهُ لَيْلًا وَلَا يَضْمَنُ مَا جَنَتْهُ نَهَارًا وَهُوَ قَضَاءُ شُرَيْحٍ، وَحُكْمُ الشَّعْبِيِّ.

L19701 They argued this by citing the hadith of Al-Bara's she-camel: "The Messenger of Allah—peace and blessings be upon him—ruled that the owners of walled gardens are responsible for safeguarding them during the day, while the owners of livestock bear responsibility for any damage they inflict at night."

وَاحْتَجُّوا فِي ذَلِكَ «بِحَدِيثِ نَاقَةِ الْبَرَاءِ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى أَنَّ عَلَى أَهْلِ الْحَوَائِطِ حِفْظَهَا بِالنَّهَارِ، وَعَلَى أَهْلِ الْمَاشِيَةِ مَا أَصَابَتْ بِاللَّيْلِ» .

L19702 Ali said: If this were authentic, they would not have preceded us in asserting

قَالَ عَلِيٌّ: لَوْ صَحَّ هَذَا لَمَا سَبَقُونَا إِلَى الْقَوْلِ بِهِ، وَلَكِنَّهُ خَبَرٌ لَا يَصِحُّ، لِأَنَّهُ إِنَّمَا رَوَاهُ الزُّهْرِيُّ عَنْ حَرَامِ بْنِ مُحَيِّصَةَ عَنْ أَبِيهِ - وَرَوَاهُ الزُّهْرِيُّ أَيْضًا عَنْ أَبِي أُمَامَةَ بْنِ سَهْلِ

[8] **Qur'an references (L19694):** Qur'an 2:195 (Al-Baqarah).
[9] **Qur'an references (L19695):** Qur'an 9:91 (At-Tawbah).

it, but it is an unreliable report because it was only narrated by al-Zuhrī from Ḥaram ibn Muḥayyiṣah from his father. Al-Zuhrī also narrated it from Abū Umāmah ibn Sahl ibn Ḥunayf regarding a she-camel of al-Barā'. Thus, it became clear that the report is mursal, for Ḥaram is not the direct son of Muḥayyiṣah but rather the son of Saʿd ibn Muḥayyiṣah. Saʿd did not hear from al-Barā', nor did Abū Umāmah, nor is there proof in an interrupted chain. It would have been incumbent upon the Ḥanafīs—who claim that the mursal and musnad are equivalent—to assert it, but this is among the matters in which they contradicted themselves.

بْنِ حُنَيْفٍ أَنَّ نَاقَةً لِلْبَرَاءِ، فَصَحَّ أَنَّهُ مُرْسَلٌ لِأَنَّ حَرَامًا لَيْسَ هُوَ ابْنُ مُحَيِّصَةُ لِصُلْبِهِ إِنَّمَا هُوَ ابْنُ سَعْدِ بْنِ مُحَيِّصَةُ، وَسَعْدٌ لَمْ يَسْمَعْ مِنْ الْبَرَاءِ وَلَا أَبُو أُمَامَةَ وَلَا حُجَّةَ فِي مُنْقَطِعٍ - وَلَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ الْقَائِلِينَ: إنَّ الْمُرْسَلَ وَالْمُسْنَدَ سَوَاءٌ أَنْ يَقُولُوا بِهِ، وَلَكِنَّ هَذَا مِمَّا تَنَاقَضُوا فِيهِ.

L19703 They also cited as evidence something even more peculiar than all of this: what was narrated to us through the chains of Ubayd ibn Umayr, al-Zuhri, Masruq, and Mujahid regarding Allah's statement—Exalted is He—"And [mention] David and Solomon, when they judged concerning the cultivated land when the sheep of the people trespassed and grazed in it, and We were witness to their judgment" (21:78), and "So We enabled Solomon to understand it, and to each We gave judgment and knowledge" (21:79). It is related that Solomon—peace be upon him—ruled regarding sheep that had ruined people's cultivated land by ordering the sheep to be given to the cultivators—for them is their wool and milk—until the grapevines or cultivated land returned to their former state.[10]

وَاحْتَجُّوا أَيْضًا بِأَغْرَبَ مِنْ هَذَا كُلِّهِ -: وَهُوَ مَا رُوِّينَا مِنْ طَرِيقِ عُبَيْدِ بْنِ عُمَيْرٍ، وَالزُّهْرِيِّ، وَمَسْرُوقٍ، وَمُجَاهِدٍ، فِي قَوْلِ اللَّهِ تَعَالَى: {وَدَاوُدَ وَسُلَيْمَانَ إِذْ يَحْكُمَانِ فِي الْحَرْثِ إِذْ نَفَشَتْ فِيهِ غَنَمُ الْقَوْمِ وَكُنَّا لِحُكْمِهِمْ شَاهِدِينَ} [الأنبياء: ٧٨] {فَفَهَّمْنَاهَا سُلَيْمَانَ وَكُلا آتَيْنَا حُكْمًا وَعِلْمًا} [الأنبياء: ٧٩] وَأَنَّ سُلَيْمَانَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِي ذَلِكَ فِي غَنَمٍ أَفْسَدَتْ حَرْثَ قَوْمٍ بِأَنْ دَفَعَ الْغَنَمَ إلَى أَهْلِ الْحَرْثِ، لَهُمْ صُوفُهَا وَأَلْبَانُهَا حَتَّى يَعُودَ الْعِنَبُ أَوْ الْحَرْثُ كَمَا كَانَ.

L19704 Abu Muhammad said: This is among the marvels of the world—and by the One in whom there is no doubt, between these mentioned individuals and Sulaiman (peace be upon him) lies a distance as vast as the winds and expansive deserts. Even if they had transmitted this to us from the Messenger of Allah (peace and blessings of Allah be upon him), it would not constitute valid proof, for it is a mursal (hadith with a disconnected chain of transmission).

قَالَ أَبُو مُحَمَّد: وَهَذَا عَجَبٌ مِنْ عَجَائِبِ الدُّنْيَا وَالَّذِي لَا نَشُكُّ فِيهِ أَنَّ بَيْنَ هَؤُلَاءِ الْمَذْكُورِينَ وَبَيْنَ سُلَيْمَانَ - عَلَيْهِ السَّلَامُ - مَا فِي رِيَاحٍ وَمَهَامِهَ فَيْحَاءَ، وَلَوْ رَوَوْا لَنَا ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا قَامَتْ بِهِ حُجَّةٌ لِأَنَّهُ مُرْسَلٌ.

L19705 Then, if it were valid, those who cite it as evidence would be the first of those opposing it, for they do not rule by this ruling. So, by Allah, how can a Muslim's tongue utter arguing against his opponent in religion using a ruling he considers impermissible to act upon? Allah is sufficient for us.

ثُمَّ لَوْ صَحَّ لَكَانَ الْمُحْتَجُّونَ بِهِ أَوَّلَ مُخَالِفِينَ لَهُ، لِأَنَّهُمْ لَا يَحْكُمُونَ بِهَذَا الْحُكْمِ، فَيَا لِلَّهِ كَيْفَ يَنْطِقُ لِسَانُ مُسْلِمٍ بِأَنْ يَحْتَجَّ عَلَى خَصْمِهِ فِي الدِّينِ بِحُكْمٍ لَا يَحِلُّ عِنْدَهُ أَنْ يُؤْخَذَ بِهِ؟ وَحَسْبُنَا اللَّهُ.

[10] **Qur'an references (L19703):** Qur'an 21:78 (Al-Anbya); Qur'an 21:79 (Al-Anbya).

L19706 Another point of astonishment regarding Al-Shāfiʿī is that he rejects acting upon mursal narrations, then here he permits financial rulings based on a mursal that is fundamentally invalid.

وَعَجَبٌ آخَرُ مِنْ الشَّافِعِيِّ: وَهُوَ أَنَّهُ لَا يَرَى الْقَوْلَ بِالْمُرْسَلِ ثُمَّ أَبَاحَ هَاهُنَا الْأَمْوَالَ بِمُرْسَلٍ لَا يَصِحُّ أَصْلًا.

L19707–19709 As for the sale of livestock that have strayed and caused damage, this is based on Allah's command: "Cooperate in righteousness and piety" [Al-Mā'idah: 2]. Among righteousness and piety is the preservation of crops and fruits, which are people's property. Thus, no assistance should be given in facilitating such sales. Its corruption. Thus, removing what corrupts it is obligatory, and there is no means to achieve that except through a lawful sale. There exist narrations from the Companions—may Allah be pleased with them—which they contradicted.[11]

وَأَمَّا بَيْعُ مَا تَعَدَّى مِنْ الْعَجْمَاءِ فَلِقَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢] وَمِنْ الْبِرِّ وَالتَّقْوَى حِفْظُ الزُّرُوعِ، وَالثِّمَارِ الَّتِي هِيَ أَمْوَالُ النَّاسِ فَلَا يُعَانُ عَلَى فَسَادِهَا، فَإِبْعَادُ مَا يُفْسِدُهَا فَرْضٌ وَلَا سَبِيلَ إلَى ذَلِكَ إلَّا بِالْبَيْعِ الْمُبَاحِ، وَهَا هُنَا آثَارٌ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - قَدْ خَالَفُوهَا.

L19710 It has been narrated to us through the chain of Abd al-Razzaq from Ibn Jurayj, who informed me that Abd al-Karim informed me that Umar ibn al-Khattab used to say: "By returning the camel, cow, donkey, and grazing livestock to their owners three times after the enclosure is constructed, then they are to be destroyed."

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْكَرِيمِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَانَ يَقُولُ: بِرَدِّ الْبَعِيرِ، وَالْبَقَرَةِ، وَالْحِمَارِ، وَالضَّوَارِي، إلَى أَهْلِهِنَّ ثَلَاثًا إذَا حُظِرَ الْحَائِطُ ثُمَّ يُعْقَرْنَ.

L19711 Ibn Jurayj said: I heard ʿAbd al-ʿAzīz ibn ʿAbdullāh relate that ʿUmar ibn al-Khaṭṭāb would order a walled enclosure to be constructed, the barrier sealed against the habitually aggressive predator. Then the animal was returned to its owner three times, after which it would be hamstrung.

قَالَ ابْنُ جُرَيْجٍ: وَسَمِعْت عَبْدَ الْعَزِيزِ بْنَ عَبْدِ اللَّهِ يَذْكُرُ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ كَانَ يَأْمُرُ بِالْحَائِطِ أَنْ يُحْظَرَ وَيُسَدَّ الْحَظْرُ مِنْ الضَّارِي الْمُدِلِّ ثُمَّ يُرَدُّ إلَى أَهْلِهِ ثَلَاثَ مَرَّاتٍ ثُمَّ يُعْقَرُ.

L19712 From the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān, narrated by Abū Ḥayyān Yaḥyā ibn Saʿīd al-Taymī, who said: A mukātab of Banū Asad informed me that he brought coins from the Sawād to Kufa. When he reached Kufa's bridge, a client of Bakr ibn Wā'il came and sorted through the coins on the bridge. A coin slipped out from them, causing the man to slip into the Euphrates and drown. I seized it. His patrons then came to my patrons. My patrons offered them a settlement of two thousand dirhams on condition they would not raise the matter to ʿAlī, but they refused. We went to ʿAlī ibn Abī Ṭālib,

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نا أَبُو حَيَّانَ يَحْيَى بْنُ سَعِيدٍ التَّيْمِيُّ قَالَ: أَخْبَرَنِي مُكَاتَبٌ لِبَنِي أَسَدٍ أَنَّهُ أَتَى بِنَقَدٍ مِنْ السَّوَادِ إلَى الْكُوفَةِ فَلَمَّا انْتَهَى إلَى جِسْرِ الْكُوفَةِ جَاءَ مَوْلًى لِبَكْرِ بْنِ وَائِلٍ فَتَخَلَّلَ النَّقَدَ عَلَى الْجِسْرِ فَنَفَرَتْ مِنْهَا نَقْدَةٌ فَقَطَرَتْ الرَّجُلَ فِي الْفُرَاتِ فَغَرِقَ فَأَخَذْت فَجَاءَ مَوَالِيهِ إلَى مَوَالِيَّ فَعَرَضَ مَوَالِيَّ عَلَيْهِمْ صُلْحًا أَلْفَيْ دِرْهَمٍ وَلَا يَرْفَعُونَ إلَى عَلِيٍّ فَأَبَوْا فَأَتَيْنَا عَلِيَّ بْنَ أَبِي طَالِبٍ فَقَالَ لَهُمْ: إنْ عَرَفْتُمْ النَّقْدَةَ بِعَيْنِهَا فَخُذُوهَا، وَإِنْ اخْتَلَطَتْ عَلَيْكُمْ فَشَرْوَاهَا.

[11] **Qur'an references (L19707):** Qur'an 5:2 (Al-Ma'idah).

who told them: “If you recognize the specific coin, take it. But if it has become indistinguishable, assess its market value.”

L19713 Abu Muhammad said: There is indeed astonishment concerning the Hanafis and Malikis, as they argue—in invalidating the established Sunnahs that no sale is concluded between the two parties until they separate—by citing a narration from a sheikh from Banu Kinanah that Umar said: “The sale depends on a transaction or an option.” Then they go on to reject this very narration from Umar ibn al-Khattab and the other one from Ali. Why do they not declare: “Such a matter cannot be based on juristic opinion?” But this is the ruling of these people in their religion. Let the adherents of the Sunnahs praise Allah for the immense favor He has granted them.

قَالَ أَبُو مُحَمَّد: إِنَّ فِي الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، الْعَجَبَ إِذْ يَحْتَجُّونَ فِي إِبْطَالِ السُّنَنِ الثَّابِتَةِ فِي أَنَّ الْبَيِّعَيْنِ لَا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا بِرِوَايَةِ شَيْخٍ مِنْ بَنِي كِنَانَةَ أَنَّ عُمَرَ قَالَ: الْبَيْعُ عَنْ صَفْقَةٍ أَوْ خِيَارٍ - ثُمَّ يَرُدُّونَ هَذِهِ الرِّوَايَةَ عَنْ عُمَرَ بْنِ الْخَطَّابِ وَهَذِهِ الْأُخْرَى عَنْ عَلِيٍّ فَهَلَّا قَالُوا: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ؟ وَلَكِنْ هَذَا حُكْمُ الْقَوْمِ فِي دِينِهِمْ - فَلْيَحْمَدْ اللَّهَ أَهْلُ السُّنَنِ عَلَى عَظِيمِ نِعْمَتِهِ عِنْدَهُمْ.

A legal issue regarding one who broke a silver or gold vessel.

[مَسْأَلَةٌ كَسَرَ إِنَاءَ فِضَّةٍ أَوْ ذَهَبٍ]

L19714

L19715 1267 - Issue:

١٢٦٧ - مَسْأَلَةٌ:

L19716 If someone breaks a silver vessel or a gold vessel, there is no liability upon them, as they have acted rightly by adhering to the Messenger of Allah’s prohibition (Peace be upon him) against that, which we have mentioned in the chapters on “Ablution,” “Foods,” and “Drinks.” Similarly, there is no liability for one who breaks a cross or spills wine—whether belonging to a Muslim or a protected non-Muslim.

وَمَنْ كَسَرَ إِنَاءَ فِضَّةٍ أَوْ إِنَاءَ ذَهَبٍ فَلَا شَيْءَ عَلَيْهِ، وَقَدْ أَحْسَنَ لِنَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ، وَقَدْ ذَكَرْنَاهُ فِي " الْوُضُوءِ " " وَالْأَطْعِمَةِ " " وَالْأَشْرِبَةِ " وَكَذَلِكَ مَنْ كَسَرَ صَلِيبًا أَوْ أَهْرَقَ خَمْرًا لِمُسْلِمٍ، أَوْ لِذِمِّيٍّ.

L19717 The Hanafi scholars said: If a Muslim spills wine belonging to a dhimmi, he is obligated to pay its value, and if a dhimmi spills it, he must replace it in kind.

وَقَالَ الْحَنَفِيُّونَ: إِنْ أَهْرَقَ خَمْرًا لِذِمِّيٍّ مُسْلِمٌ فَعَلَيْهِ قِيمَتُهَا، وَإِنْ أَهْرَقَهَا ذِمِّيٌّ فَعَلَيْهِ مِثْلُهَا.

L19718–19720 Abu Muhammad said: This is void, and wine has no value. The Messenger of Allah, may Allah bless him and grant him peace, prohibited its sale and commanded. Due to its prohibition, whatever cannot be lawfully sold or owned entails no liability for it. If they say: “Is this not the property of the Dhimmis?” We reply: “You are mistaken, for Allah the Exalted has not designated it as lawful property for anyone since the time He prohibited it. Rather, inform us: Is this permissible or forbidden for the Dhimmis?” If they say: “It is permissible for them,” they have disbelieved, for Allah the

قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ، وَلَا قِيمَةَ لِلْخَمْرِ، وَقَدْ حَرَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْعَهَا وَأَمَرَ بِهَرْقِهَا، فَمَا لَا يَحِلُّ بَيْعُهُ وَلَا مِلْكُهُ فَلَا ضَمَانَ فِيهِ، فَإِنْ قَالُوا: هِيَ أَمْوَالُ أَهْلِ الذِّمَّةِ؟ قُلْنَا: كَذَبْتُمْ وَمَا جَعَلَهَا اللَّهُ تَعَالَى مُذْ حَرَّمَهَا مَالًا لِأَحَدٍ، وَلَكِنْ أَخْبِرُونَا: أَهِيَ حَلَالٌ لِأَهْلِ الذِّمَّةِ أَمْ هِيَ حَرَامٌ عَلَيْهِمْ؟ فَإِنْ قَالُوا: هِيَ لَهُمْ حَلَالٌ كَفَرُوا، لِأَنَّ

Exalted states in His reproach against them: {They do not forbid what Allah and His Messenger have forbidden, nor do they uphold the religion of truth} [At-Tawbah: 29].[12]

L19721 No two Muslims disagree that the religion of Islam binds disbelievers as it binds Muslims, that God's Messenger—may God's blessings and peace be upon him—was sent to them just as he was sent to us, and that obeying him is obligatory upon them as it is upon us. If they say, "Rather, it is forbidden for them," we reply: You have spoken the truth. Therefore, whoever destroys property whose ownership is impermissible has done well and bears no liability. They cited as evidence a narration we transmitted through Sufyan al-Thawri's chain from Ibrahim ibn Abd al-A'la al-Ju'fi, from Suwayd ibn Ghaflah: Umar ibn al-Khattab was asked, "Do your agents collect wine and pigs as land tax?" Bilal said to him, "Do they indeed do this?" Umar responded, "Do not do so. Hand them over to them—let them sell it."

L19722 Via the chain of Abī 'Ubayd from Kidām al-Anṣārī from Isrā'īl from Ibrāhīm ibn 'Abd al-A'lā from Suwayd ibn Ghaflah: Bilāl said to 'Umar ibn al-Khaṭṭāb: "Do your agents accept wine and pigs as payment for the *kharaj*?" He replied: "Do not take these from them. Rather, instruct them to sell the items themselves, then take from the proceeds."

L19723 Abu Muhammad said: There is no proof in this, because the ḥadīth of Sufyān—and it is the Ṣaḥīḥ one—contains nothing of Isrā'īl's addition. Rather, it states: "Appoint them as agents over its sale."

L19724 This is like the saying of Allah, the Most High: "We will turn him over to what he has chosen" [An-Nisa 4:115], and Israel (Jacob) is weak.[13]

L19725 Then, if it were valid, there is no authoritative proof in anyone other than the Messenger of Allah—peace be upon him—.

L19726 It is truly astonishing that they oppose 'Umar—may Allah be pleased with

اللَّهَ تَعَالَى قَدْ أَخْبَرَ فِيمَا نَعَاهُ عَلَيْهِمْ أَنَّهُمْ {وَلا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلا يَدِينُونَ دِينَ الْحَقِّ} [التوبة: ٢٩] .

وَلَا يَخْتَلِفُ مُسْلِمَانِ فِي أَنَّ دِينَ الْإِسْلَامِ لَازِمٌ لِلْكُفَّارِ لُزُومَهُ لِلْمُسْلِمِينَ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَبْعُوثٌ إلَيْهِمْ كَمَا بُعِثَ إلَيْنَا، وَأَنَّ طَاعَتَهُ فَرْضٌ عَلَيْهِمْ كَمَا هِيَ عَلَيْنَا؟ فَإِنْ قَالُوا: بَلْ هِيَ عَلَيْهِمْ حَرَامٌ؟ قُلْنَا: صَدَقْتُمْ فَمَنْ أَتْلَفَ مَالًا لَا يَحِلُّ تَمَلُّكُهُ فَقَدْ أَحْسَنَ وَلَا شَيْءَ عَلَيْهِ، وَاحْتَجُّوا بِرِوَايَةٍ رُوِّينَاهَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ إبْرَاهِيمَ بْنِ عَبْدِ الْأَعْلَى الْجُعْفِيِّ عَنْ سُوَيْدِ بْنِ غَفَلَةَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قِيلَ لَهُ: عُمَّالُك يَأْخُذُونَ الْخَمْرَ، وَالْخَنَازِيرَ فِي الْخَرَاجِ؟ فَقَالَ لَهُ بِلَالٌ: إنَّهُمْ لَيَفْعَلُونَ؟ فَقَالَ عُمَرُ: لَا تَفْعَلُوا وَلُّوهُمْ هُمْ بَيْعَهَا.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ كِدَامٍ الْأَنْصَارِيِّ عَنْ إسْرَائِيلَ عَنْ إبْرَاهِيمَ بْنِ عَبْدِ الْأَعْلَى عَنْ سُوَيْدِ بْنِ غَفَلَةَ أَنَّ بِلَالًا قَالَ لِعُمَرَ بْنِ الْخَطَّابِ: إنَّ عُمَّالَك يَأْخُذُونَ الْخَمْرَ وَالْخَنَازِيرَ فِي الْخَرَاجِ؟ فَقَالَ: لَا تَأْخُذُوهَا مِنْهُمْ، وَلَكِنْ وَلُّوهُمْ أَنْتُمْ بَيْعَهَا وَخُذُوا أَنْتُمْ مِنْ الثَّمَنِ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا حُجَّةَ فِيهِ، لِأَنَّ حَدِيثَ سُفْيَانَ - وَهُوَ الصَّحِيحُ - لَيْسَ فِيهِ مَا زَادَ إسْرَائِيلُ وَإِنَّمَا فِيهِ " وَلُّوهُمْ بَيْعَهَا ".

وَهَذَا كَقَوْلِ اللَّهِ تَعَالَى: {نُوَلِّهِ مَا تَوَلَّى} [النساء: ١١٥] وَإِسْرَائِيلُ ضَعِيفٌ.

ثُمَّ لَوْ صَحَّ فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[12] **Qur'an references (L19718):** Qur'an 9:29 (At-Tawbah).

him—in his legal distinction between Magians bound by mahram relations and his prohibition of their al-Zamzamah (ritual wailing), yet here they uncritically adopt a weak narration contradicting the Qur'an and the Sunnah. If wine is considered part of their wealth, then crosses and idols are more esteemed in their view than wine. These people must require compensation from anyone who breaks their cross or idol until it is restored fully intact and undamaged; otherwise, would they not contradict themselves?

وَإِنَّ مِنْ الْعَجَبِ أَنْ يُخَالِفُوا عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فِي تَفْرِيقِهِ بَيْنَ ذَوِي الْمَحَارِمِ مِنْ الْمَجُوسِ وَنَهْيِهِ لَهُمْ عَنْ الزَّمْزَمَةِ ثُمَّ يُقَلِّدُونَ هَاهُنَا رِوَايَةً سَاقِطَةً مُخَالِفَةً لِلْقُرْآنِ، وَالسُّنَنِ وَإِنْ كَانَتْ الْخَمْرُ مِنْ أَمْوَالِهِمْ فَإِنَّ الصَّلِيبَ وَالْأَصْنَامَ عِنْدَهُمْ أَجَلُّ مِنْ الْخَمْرِ، فَيَجِبُ عَلَى هَؤُلَاءِ الْقَوْمِ أَنْ يُضَمِّنُوا مَنْ كَسَرَ لَهُمْ صَلِيبًا أَوْ صَنَمًا حَتَّى يُعِيدَهُ سَالِمًا صَحِيحًا وَإِلَّا فَقَدْ تَنَاقَضُوا؟

L19727–19728 It has been narrated to us through the chain of Abū Dāwūd—he informed us—Qutaybah ibn Saʿīd informed us—al-Layth, that is Ibn Saʿd—from Yazīd ibn Abī Ḥabīb—from ʿAṭāʾ ibn Abī Rabāḥ—from Jābir ibn ʿAbdullāh that he heard Allah's Messenger—peace and blessings be upon him—say in the Year of the Conquest while in Mecca: "Allah has prohibited the sale of wine, dead animals, and swine." How I wish I knew—how could a Muslim deem it lawful to permit the price of a sale Allah the Exalted has forbidden? Or how could a Muslim deem it lawful to say: 'It is property belonging to the wealth of covenant-protected people that is guaranteed to them'? Far be it from Allah! How could this be?

رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا قُتَيْبَةُ بْنُ سَعِيدٍ نَا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ «عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ عَامَ الْفَتْحِ وَهُوَ بِمَكَّةَ: إنَّ اللَّهَ حَرَّمَ بَيْعَ الْخَمْرِ، وَالْمَيْتَةِ، وَالْخَنَازِيرِ» ، فَيَا لَيْتَ شِعْرِي كَيْفَ يَسْتَحِلُّ مُسْلِمٌ أَنْ يُبِيحَ ثَمَنَ بَيْعٍ حَرَّمَهُ اللَّهُ تَعَالَى؟ أَمْ كَيْفَ يَسْتَحِلُّ مُسْلِمٌ أَنْ يَقُولَ: إنَّهَا مَالٌ مِنْ أَمْوَالِ أَهْلِ الذِّمَّةِ تُضْمَنُ لَهُمْ؟ حَاشَا لِلَّهِ مِنْ هَذَا

A legal question: If a person breaks a silver ornament in a saddle or sword.

[مَسْأَلَةٌ كَسَرَ حِلْيَةَ فِضَّةٍ فِي سَرْجٍ أَوْ سَيْفٍ]

L19729 L19730 1268. Issue: If someone breaks a silver ornament on a saddle, bridle, spurs, sword, crown, or similar items, or breaks gold ornaments belonging to a woman or a man who prepares them for his household or for sale, he is obligated to restore them to their original, sound condition for the reasons we previously stated. If both parties mutually agree that he compensates for the difference in value between the intact and broken states, this is permissible, as it is equivalent to what he transgressed. It is permissible for them to agree in such cases on gold for gold ornaments and silver for silver ornaments. He may delay compensation for as long as he wishes, as this is not a sale but

١٢٦٨ - مَسْأَلَةٌ: وَمَنْ كَسَرَ حِلْيَةَ فِضَّةٍ فِي سَرْجٍ، أَوْ لِجَامٍ، أَوْ مَهَامِيزَ، أَوْ سَيْفٍ، أَوْ تَاجٍ، أَوْ غَيْرِ ذَلِكَ، أَوْ حُلِيَّ ذَهَبٍ لِامْرَأَةٍ، أَوْ لِرَجُلٍ يُعِدُّهُ لِأَهْلِهِ، أَوْ لِلْبَيْعِ -: كُلِّفَ إعَادَتَهُ صَحِيحًا كَمَا كَانَ لِمَا ذَكَرْنَا قَبْلُ، فَإِنْ تَرَاضَيَا جَمِيعًا عَلَى أَنْ يَضْمَنَ لَهُ مَا بَيْنَ قِيمَتِهِ صَحِيحًا وَمَكْسُورًا: جَازَ ذَلِكَ؛ لِأَنَّهُ مِثْلُ مَا اعْتَدَى بِهِ، وَجَائِزٌ أَنْ يَتَّفِقَا مِنْ ذَلِكَ فِي حُلِيِّ الذَّهَبِ عَلَى ذَهَبٍ، وَفِي حُلِيِّ الْفِضَّةِ عَلَى فِضَّةٍ، وَلَهُ أَنْ يُؤَخِّرَهُ بِهِ مَا شَاءَ؛ لِأَنَّهُ لَيْسَ هُوَ بَيْعًا وَإِنَّمَا هُوَ اعْتِدَاءٌ بِمِثْلِ مَا اعْتَدَى بِهِ عَلَيْهِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[13] **Qur'an references (L19724):** Qur'an 4:115 (An-Nisa).

merely an infringement equivalent to the harm he caused. And success is from Allah, the Exalted.

Issue: Harm Inflicted Upon a Male Slave or Female Slave

[مَسْأَلَةٌ جَنَى عَلَى عَبْدٍ أَوْ أَمَةٍ]

Issue 1269: Any harm caused to a male slave, female slave, camel, horse, mule, donkey, permissible-to-own dog, cat, sheep, cow, camels, gazelle, or any owned living being entails compensation for the reduction in its value regardless of extent. For male and female slaves specifically, this applies to accidental harm, while for all other mentioned entities it applies to both accidental and intentional harm.

١٢٦٩ - مَسْأَلَةٌ: وَكُلُّ مَا جَنَى عَلَى عَبْدٍ، أَوْ أَمَةٍ، أَوْ بَعِيرٍ، أَوْ فَرَسٍ، أَوْ بَغْلٍ، أَوْ حِمَارٍ، أَوْ كَلْبٍ يَحِلُّ تَمَلُّكُهُ، أَوْ سِنَّوْرٍ، أَوْ شَاةٍ، أَوْ بَقَرَةٍ، أَوْ إبِلٍ، أَوْ ظَبْيٍ، أَوْ كُلِّ حَيَوَانٍ مُتَمَلَّكٍ فَإِنَّ فِي الْخَطَأِ فِي الْعَبْدِ وَفِي الْأَمَةِ [خَاصَّةً] وَفِي سَائِرِ مَا ذَكَرْنَا خَطَأً أَوْ عَمْدًا مَا نَقَصَ مِنْ قِيمَتِهِ بَالِغًا مَا بَلَغَ.

As for the male slave and the female slave, in cases of intentional harm against them, retaliation in kind (qawad) applies along with compensation for the decrease in their value. The right to retaliation in kind belongs to the victim, while the diminished value is due to the master for what was transgressed against of his property.

وَأَمَّا الْعَبْدُ وَالْأَمَةُ فَفِيمَا جَنَى عَلَيْهِمَا عَمْدًا الْقَوَدُ وَمَا نَقَصَ مِنْ قِيمَتِهِمَا. أَمَّا الْقَوَدُ فَلِلْمَجْنِيِّ عَلَيْهِ - وَأَمَّا مَا نَقَصَ مِنْ الْقِيمَةِ فَلِلسَّيِّدِ فِيمَا اُعْتُدِيَ عَلَيْهِ مِنْ مَالِهِ.

Likewise, if a man rapes a female slave and kills her, he must pay financial compensation to her master and receive the hadd punishment for committing unlawful sexual intercourse with her, for one right does not negate another. The Messenger of Allah—peace and blessings be upon him—commanded that every right holder be given their due right.

وَكَذَلِكَ لَوْ أَنَّ امْرَأً اسْتَكْرَهَ أَمَةً فَقَتَلَهَا لَكَانَ عَلَيْهِ الْغَرَامَةُ لِسَيِّدِهَا وَالْحَدُّ فِي زِنَائِهِ بِهَا وَلَا يُبْطِلُ حَقٌّ حَقًّا، وَقَدْ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ يُعْطَى كُلُّ ذِي حَقٍّ حَقَّهُ.

As for qisas between the free person and the slave, we shall address this—if Allah, the Exalted, wills—in the Book of Qisas.

وَأَمَّا الْقَوَدُ بَيْنَ الْحُرِّ، وَالْعَبْدِ فَنَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى فِي " كِتَابِ الْقِصَاصِ ".

As for what diminishes it, the scholars hold differing opinions here, and similarly regarding animals—our position regarding animals is the opinion of Abū Sulaymān, Mālik, and al-Shāfiʿī.

وَأَمَّا مَا نَقَصَهُ فَلِلنَّاسِ هَاهُنَا اخْتِلَافٌ، وَكَذَلِكَ فِي الْحَيَوَانِ - وَقَوْلُنَا فِي الْحَيَوَانِ - هُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَمَالِكٍ، وَالشَّافِعِيِّ.

Abu Hanifah said: Similarly, except specifically regarding camels, cows, mules, donkeys, and horses—and specifically their eyes—for he ruled that a quarter of the market price is owed for the eye of any of these animals.

وَقَالَ أَبُو حَنِيفَةَ: كَذَلِكَ إلَّا فِي الْإِبِلِ، وَالْبَقَرِ، وَالْبِغَالِ، وَالْحَمِيرِ، وَالْخَيْلِ خَاصَّةً فِي عُيُونِهَا خَاصَّةً، فَإِنَّهُ قَالَ فِي عَيْنِ كُلِّ مَا ذَكَرْنَا رُبْعُ ثَمَنِهِ.

Abu Muhammad said: They cited as proof a narration we transmitted

through the chain of Qasim ibn Asbagh—from Zakariyya ibn Yahya al-Naqid, from Sa‘id ibn Sulayman, from Abu Umayyah ibn Ya‘la, from Abu al-Zinad, from ‘Amr ibn Wahb, from his father, from Zayd ibn Thabit—that the Prophet (peace and blessings of Allah be upon him) did not mandate compensation for head injuries except in three cases: the displaced fracture (al-munaqqilah), the exposed fracture (al-muwaddihah), and the penetrating fracture (al-āmmah), and for a horse’s eye injury, a quarter of its price.

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجُّوا فِي ذَلِكَ بِأَثَرٍ رُوِّينَاهُ مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا زَكَرِيَّا بْنُ يَحْيَى النَّاقِدُ نا سَعِيدُ بْنُ سُلَيْمَانَ عَنْ أَبِي أُمَيَّةَ بْنِ يَعْلَى نا أَبُو الزِّنَادِ عَنْ عَمْرِو بْنِ وَهْبٍ عَنْ أَبِيهِ عَنْ زَيْدِ بْنِ ثَابِتٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقْضِ فِي الرَّأْسِ إلَّا فِي ثَلَاثٍ: الْمُنَقِّلَةِ، وَالْمُوضِحَةِ، وَالْآمَّةِ وَفِي عَيْنِ الْفَرَسِ بِرُبْعِ ثَمَنِهِ» .

L19740 In a narration from ‘Umar ibn al-Khaṭṭāb via the chains of Sufyān, ‘Amr ibn Dīnār, and Ma‘mar: Sufyān reported from Jābir al-Ju‘fī from al-Sha‘bī from Shurayḥ from ‘Umar. ‘Amr ibn Dīnār stated that a man informed him Shurayḥ said, “‘Umar told me...” Ma‘mar said, “It reached me that ‘Umar ibn al-Khaṭṭāb...” Then they concurred that he judged regarding the eye of an animal to entail compensation amounting to a quarter of its value.

وَبِرِوَايَةٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ مِنْ طَرِيقِ سُفْيَانَ وَعَمْرِو بْنِ دِينَارٍ، وَمَعْمَرٍ قَالَ سُفْيَانُ: عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ عَنْ عُمَرَ، وَقَالَ عَمْرُو بْنُ دِينَارٍ: أَخْبَرَنِي رَجُلٌ أَنَّ شُرَيْحًا قَالَ لَهُ: قَالَ لِي عُمَرُ، وَقَالَ مَعْمَرٌ: بَلَغَنِي أَنَّ عُمَرَ بْنَ الْخَطَّابِ، ثُمَّ اتَّفَقُوا: أَنَّهُ قَضَى فِي عَيْنِ الدَّابَّةِ بِرُبْعِ ثَمَنِهَا.

L19741 And from the transmission of Ibn Abī Shaybah: Jarīr narrated to us from al-Mughīrah from Ibrāhīm from Shurayḥ, who said: ‘Urwah al-Bāriqī came to me conveying a ruling from ‘Umar that in the eye of the animal is a quarter of its price.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرٌ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ عَنْ شُرَيْحٍ قَالَ: أَتَانِي عُرْوَةُ الْبَارِقِيُّ مِنْ عِنْدِ عُمَرَ بِأَنَّ فِي عَيْنِ الدَّابَّةِ رُبْعَ ثَمَنِهَا.

L19742 Through the chain of Abū Qilābah, on the authority of Abī al-Muhallab, on the authority of ʿUmar concerning the eye of an animal: a quarter of its value.

وَمِنْ طَرِيقِ أَبِي قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ عَنْ عُمَرَ فِي عَيْنِ الدَّابَّةِ رُبْعُ ثَمَنِهَا.

L19743 And via the transmission chain of Ibn Jurayj from ʿAbd al-Karīm: that ʿAlī ibn Abī Ṭālib ruled regarding an animal’s eye [to entail liability of] one-fourth of its value.

وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْكَرِيمِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَضَى فِي عَيْنِ الدَّابَّةِ بِرُبْعِ ثَمَنِهَا.

L19744 Ali said: The narration from the Prophet—peace and blessings of Allah be upon him—is not authentic, as it is transmitted through Ismāʿīl ibn Yaʿlā al-Thaqafī—a weak narrator—from ʿAmr ibn Wahb via his father, both of whom are unknown [majhūl].

قَالَ عَلِيٌّ: الرِّوَايَةُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا تَصِحُّ؛ لِأَنَّهَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ يَعْلَى الثَّقَفِيِّ - وَهُوَ ضَعِيفٌ - عَنْ عَمْرِو بْنِ وَهْبٍ عَنْ أَبِيهِ، وَهُمَا مَجْهُولَانِ.

L19745 Then, there is nothing in it except the horse. Thus, they neither specified it exclusively as it had been specified, nor did they apply analogy from it to all four-legged animals.

ثُمَّ لَيْسَ فِيهِ إلَّا الْفَرَسُ فَلَا هُمْ خَصُّوهُ كَمَا جَاءَ مَخْصُوصًا، وَلَا هُمْ قَاسُوا عَلَيْهِ جَمِيعَ ذَوَاتِ الْأَرْبَعِ.

وَأَمَّا عَنْ عَلِيٍّ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - فَمَرَاسِيلُ كُلُّهَا، ثُمَّ لَوْ صَحَّتْ لَمَا كَانَ فِيهَا حُجَّةٌ لِوُجُوهٍ: أَوَّلُهَا: أَنَّهُ لَا حُجَّةَ فِيمَنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L19746 As for what is reported from ʿAlī and ʿUmar—may Allah be pleased with them—all of their narrations are mursal. Furthermore, even if they were authentic, they would not constitute proof for several reasons. The first reason is that there is no proof in anyone other than the Messenger of Allah—may Allah bless him and grant him peace.

وَالثَّانِي: أَنَّهُ لَا مُؤْنَةَ عَلَيْهِمْ فِي خِلَافِ عُمَرَ، وَعَلِيٍّ إذَا خَالَفَا أَبَا حَنِيفَةَ كَمَا ذَكَرْنَا عَنْهُمَا آنِفًا مِنْ أَنَّهُمَا تَقَيَّآ مَا شَرِبَا إذْ عَلِمَا أَنَّهُ لَا يَحِلُّ.

L19747 The second is that no blame falls upon them for disagreeing with Umar and Ali in cases where they opposed Abu Hanifa, as we previously mentioned regarding them both - that they refrained out of piety from what they drank, knowing it was unlawful.

ثُمَّ فِي هَذِهِ الْقِصَّةِ نَفْسِهَا كَمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَتَبَ عُمَرُ مَعَ عُرْوَةَ الْبَارِقِيِّ إلَى شُرَيْحٍ فِي عَيْنِ الدَّابَّةِ رُبْعُ ثَمَنِهَا وَأَحَقُّ مَا صَدَقَ بِهِ الرَّجُلُ عِنْدَ مَوْتِهِ أَنْ يَنْتَفِيَ مِنْ وَلَدِهِ أَوْ يَدَّعِيهِ.

L19748–19750 Then, in this very report, as transmitted through the chain of Shuʿbah from al-Mughīrah ibn Miqsam from Ibrāhīm al-Nakhaʿī said: ʿUmar wrote via Urwah al-Bāriqī to Shurayḥ regarding the compensation for an animal's eye being set at a quarter of its value. The most valid statement a man can truthfully affirm at death is to deny paternity of a child or assert paternity over one.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَمَّنْ حَدَّثَهُ عَنْ مُحَمَّدِ بْنِ جَابِرٍ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ: أَنَّ عَلِيًّا قَضَى فِي الْفَرَسِ تُصَابُ عَيْنُهُ بِنِصْفِ ثَمَنِهِ.

L19751 From the narration of ʿAbd al-Razzāq, from someone who narrated to him, from Muḥammad ibn Jābir, from Jābir, from al-Shaʿbī: that ʿAlī ruled concerning a horse whose eye was injured, obligating compensation of half its value.

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مُجَالِدٍ عَنْ الشَّعْبِيِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي عَيْنِ جَمَلٍ أُصِيبَ بِنِصْفِ ثَمَنِهِ ثُمَّ نَظَرَ إلَيْهِ بَعْدُ فَقَالَ: مَا أَرَاهُ نَقَصَ مِنْ قُوَتِهِ وَلَا هِدَايَتِهِ فَقَضَى فِيهِ بِرُبْعِ ثَمَنِهِ.

L19752 From the narration of Sufyān ibn ʿUyaynah through Mujālid from al-Shaʿbī that ʿUmar ibn al-Khaṭṭāb ruled regarding a camel's eye that was injured, assessing it at half its value. He later examined it again and said: "I observe no reduction in its strength or its ability to be guided," and thus ruled compensation for it as a quarter of its value.

فَلَيْتَ شِعْرِي مَا الَّذِي جَعَلَ إحْدَى قَضِيَّتَيْ عُمَرَ، وَعَلِيٍّ، أَوْلَى مِنْ الْأُخْرَى؟ وَهَلَّا أَخَذُوا بِهَذِهِ الْقَضِيَّةِ قِيَاسًا عَلَى قَوْلِهِمْ: إنَّ فِي عَيْنِ الْأَنْسَانِ نِصْفَ ثَمَنِهِ، وَقَدْ أَضْعَفَ عُمَرُ عَلَى حَاطِبٍ قِيمَةَ النَّاقَةِ الَّتِي انْتَحَرَهَا عَبِيدُهُ، وَجَاءَ بِذَلِكَ أَثَرٌ -: كَمَا رُوِّينَا عَنْ ابْنِ وَهْبٍ أَنَا عَمْرُو بْنُ الْحَارِثِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَبْدِ اللَّهِ بْنِ عَمْرٍو

L19753 If only I knew what made one of the two rulings of Umar and Ali more valid than the other? Why did they not apply this case as an analogy based on their principle that "the eye's value equals half a person's blood money"? Umar doubled the compensation value of the she-camel imposed on Hatib for his servants' slaughter of it, as evidenced by the report transmitted through Ibn Wahb, from Amr ibn al-Harith, from Amr ibn Shuʿayb, from his father, from his grandfather Abdullah ibn Amr ibn al-As: "A man from Muzaynah asked the Messenger of Allah (peace and blessings be upon him), 'What is your

ruling regarding game in the mountain preserve?' He replied: 'Its equivalent and exemplary punishment.'"

L19754 This narration is more authentic than their narration concerning the horse's eye: a quarter of its price.

L19755 There is a report more authentic than theirs from Umar, thus the invalidity of their opinion became evident in every respect.

L19756 It was incumbent upon the Mālikīs who maintain the position of following the Companion and that the mursal is equivalent to the musnad to affirm these narrations; otherwise, they have contradicted themselves.

L19757 ## Wrongful Injury Against a Slave in Cases Less Than Death.

L19758 As for non-fatal injuries inflicted upon a male slave or similarly upon a female slave, some scholars said: As we have stated, the master is entitled only to the reduction in his or her price caused by the injury, and this is the view of al-Ḥasan.

L19759 A group of scholars said: Injuries to a male slave are calculated from his price, just as injuries to a free person are calculated from his blood money, the price of the male and female slave being whatever it may reach. Thus, for the eye of a male slave, half of his price is taken - even if his price were two thousand dinars - and for the eye of a female slave, half of her price is taken - even if it reached ten thousand dinars. This ruling applies similarly to all other limbs.

L19760–19762 It was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from Saʿīd ibn al-Musayyab, who said, "The injuries..." The adjustment to the prices of slaves for injuries corresponds proportionally to the diyat (blood money) established for similar injuries of free persons – this is the opinion of Shurayḥ, al-Shaʿbī, al-Nakhaʿī, ʿUmar ibn ʿAbd al-ʿAzīz, Muḥammad ibn Sīrīn, al-Shāfiʿī, Sufyān al-Thawrī, and al-Ḥasan ibn Ḥayy. However, al-Ḥasan stipulated: If the compensation reaches the slave's full

بْنِ الْعَاصِ «أَنَّ رَجُلًا مِنْ مُزَيْنَةَ سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَيْفَ تَرَى فِي حَرِيسَةِ الْجَبَلِ؟ قَالَ: هِيَ وَمِثْلُهَا وَالنَّكَالُ» .

فَهَذَا خَبَرٌ أَصَحُّ مِنْ خَبَرِهِمْ فِي عَيْنِ الْفَرَسِ رُبْعُ ثَمَنِهِ.

وَأَصَحُّ مِنْ خَبَرِهِمْ عَنْ عُمَرَ، فَظَهَرَ فَسَادُ قَوْلِهِمْ مِنْ كُلِّ جِهَةٍ.

وَقَدْ كَانَ يَلْزَمُ الْمَالِكِيِّينَ الْقَائِلِينَ بِتَقْلِيدِ الصَّاحِبِ، وَأَنَّ الْمُرْسَلَ كَالْمُسْنَدِ أَنْ يَقُولُوا بِهَذِهِ الْآثَارِ، وَإِلَّا فَقَدْ تَنَاقَضُوا.

[الْجِنَايَةَ عَلَى الْعَبْدِ فِيمَا دُونَ النَّفْسِ]

وَأَمَّا مَا جُنِيَ عَلَى عَبْدٍ فِيمَا دُونَ النَّفْسِ، أَوْ عَلَى أَمَةٍ كَذَلِكَ، فَقَالَ قَوْمٌ: كَمَا قُلْنَا: إنَّمَا فِيهِ لِلسَّيِّدِ مَا نَقَصَ مِنْ ثَمَنِهِ فَقَطْ - وَهُوَ قَوْلُ الْحَسَنِ.

وَقَالَ قَوْمٌ: جِرَاحُ الْعَبْدِ مِنْ ثَمَنِهِ كَجِرَاحِ الْحُرِّ مِنْ دِيَتِهِ، بَالِغًا ثَمَنُ الْعَبْدِ وَالْأَمَةِ مَا بَلَغَ، فَفِي عَيْنِ الْعَبْدِ نِصْفُ ثَمَنِهِ، وَلَوْ أَنَّ ثَمَنَهُ أَلْفَا دِينَارٍ وَفِي عَيْنِ الْأَمَةِ نِصْفُ ثَمَنِهَا وَلَوْ بَلَغَ عَشَرَةَ آلَافِ دِينَارٍ، وَهَكَذَا فِي سَائِرِ الْأَعْضَاءِ.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: جِرَاحَاتُ الْعَبِيدِ فِي أَثْمَانِهِمْ بِقَدْرِ جِرَاحَاتِ الْأَحْرَارِ فِي دِيَاتِهِمْ - وَهُوَ قَوْلُ شُرَيْحٍ، وَالشَّعْبِيِّ، وَالنَّخَعِيِّ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَمُحَمَّدِ بْنِ سِيرِينَ، وَالشَّافِعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ - إلَّا أَنَّ الْحَسَنَ قَالَ: إنْ بَلَغَ جَمِيعَ الْقِيمَةِ لَمْ يَكُنْ لَهُ إلَّا أَنْ يُسَلِّمَهُ، وَيَأْخُذَ قِيمَتَهُ، أَوْ يَأْخُذَ مَا نَقَصَ.

value, the owner must either surrender the slave and receive his full value or retain the slave and accept the diminished compensation.

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِيهِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: وَعَقْلُ الْعَبْدِ فِي ثَمَنِهِ كَعَقْلِ الْحُرِّ فِي دِيَتِهِ.

L19763 It has also been narrated to us through the chain of Abd al-Razzaq, from Ibn Jurayj, from Abd al-Aziz ibn Umar ibn Abd al-Aziz, from his father, that Umar ibn al-Khattab said: The blood money for a slave is based on his price, just as the blood money for a free person is based on the *diya*.

وَرُوِيَ أَيْضًا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: إنَّ رِجَالًا مِنْ الْعُلَمَاءِ لَيَقُولُونَ: الْعَبِيدُ وَالْإِمَاءُ سِلَعٌ، فَيَنْظُرُ مَا نَقَصَ ذَلِكَ مِنْ أَثْمَانِهِمْ.

L19764 It has also been reported from Ali ibn Abī Ṭālib - through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī - that he said: “Certain scholars assert that male slaves and female slaves are chattel, so one examines what reduction this causes in their market values.”

قَالَ أَبُو مُحَمَّد: وَهَذَا قَوْلُنَا - وَقَالَتْ طَائِفَةٌ: فِيهِ مَا نَقَصَ إلَّا أَنْ تَكُونَ الْجِنَايَةُ اسْتِهْلَاكًا كَقَطْعِ الْيَدَيْنِ، أَوْ الرِّجْلَيْنِ، أَوْ فَقْءِ الْعَيْنَيْنِ، فَصَاحِبُهُ مُخَيَّرٌ بَيْنَ أَنْ يَأْخُذَ مَا نَقَصَ مِنْ ذَلِكَ مِنْ قِيمَتِهِ، أَوْ يُسَلِّمُهُ إلَى الْجَانِي وَيَأْخُذَ مِنْهُ قِيمَتَهُ صَحِيحًا - وَهُوَ قَوْلُ أَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ.

L19765 Abu Muhammad said: “This is our position.” Another group maintained: “There is a deficiency [in compensation] unless the injury constitutes total destruction, such as severing both hands, both feet, or rupturing both eyes. In such cases, the victim may choose between taking the deficiency in its value or transferring the injured part to the offender and receiving compensation equivalent to its value in an intact state.” This is the opinion of Abu Yusuf and Muhammad ibn al-Hasan.

وَطَائِفَةٌ قَالَتْ: جِرَاحُ الْعَبْدِ فِي ثَمَنِهِ كَجِرَاحِ الْحُرِّ فِي دِيَتِهِ، فَإِنْ كَانَتْ الْجِنَايَةُ مِمَّا لَوْ كَانَتْ عَلَى حُرٍّ لَكَانَتْ فِيهِ الدِّيَةُ كُلُّهَا أَسْلَمَهُ إلَى الْجَانِي وَلَا بُدَّ، وَأَلْزَمَهُ قِيمَتَهُ صَحِيحًا - وَهُوَ قَوْلُ النَّخَعِيِّ، وَالشَّعْبِيِّ.

L19766 A group said: The wounds of a slave are assessed against his market value like the wounds of a free person are assessed against his diya. If the injury is of a type that would entail full diya had it been inflicted on a free person, the owner must necessarily surrender the slave to the offender and obligate him to pay the slave’s sound market value. This is the opinion of Al-Nakhaʿī and Al-Shaʿbī.

وَطَائِفَةٌ قَالَتْ: يُدْفَعُ إلَى الْجَانِي وَتَلْزَمُهُ قِيمَتُهُ صَحِيحًا - وَهُوَ قَوْلُ إيَاسِ بْنِ مُعَاوِيَةَ، وَقَتَادَةَ -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ إيَاسِ بْنِ مُعَاوِيَةَ فِي رَجُلٍ قَطَعَ يَدَ عَبْدٍ؟ قَالَ: هُوَ لَهُ وَعَلَيْهِ مِثْلُهُ.

L19767 And a group said: The slave is given to the offender, obligating him to pay his value in a sound state - this being the opinion of Iyas ibn Muʿawiyah and Qatadah. It has been narrated via Hammad ibn Salamah’s chain from Iyas ibn Muʿawiyah concerning a man who severed a slave’s hand. He said: “The slave remains his possession, and he must pay the equivalent value.”

L19768 From the report of Abd al-Razzaq via Ma’mar via Qatadah regarding one who cuts off a slave’s ear or nose, or maims his hand: compensation is paid to the owner, and the perpetrator is fined the equivalent value for him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِيمَنْ جَدَعَ أُذُنَ عَبْدٍ، أَوْ أَنْفَهُ، أَوْ أَشَلَّ يَدَهُ: أَنَّهُ يُدْفَعُ إِلَيْهِ وَيَغْرَمُ لِصَاحِبِهِ مِثْلَهُ.

L19769 Through the chain of Abd al-Razzaq from Ibn Jurayj from Ata, he said: If someone inflicts a head wound exposing the bone on a slave or gouges out his eye, the compensation is equivalent to the reduction in his value. He also held that for a wound exposing the bone, the compensation is one-twentieth of his value.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: إِنْ شَجَّ عَبْدًا، أَوْ فَقَأَ عَيْنَهُ، فَقِيمَتُهُ كَمَا أَفْسَدَهُ -: وَرَأَى فِي مُوضِحَتِهِ نِصْفَ عُشْرِ قِيمَتِهِ.

L19770–19771 The statement of Abū Ḥanīfah and Muḥammad: If one unintentionally kills a male slave, the compensation for his value is borne by the ʿāqilah provided it does not reach ten thousand dirhams or more. If it reaches or exceeds ten thousand dirhams, only ten thousand dirhams excluding ten dirhams are owed by the ʿāqilah. In the case of a female slave, her value is similarly borne by the ʿāqilah provided it does not reach five thousand dirhams or more. If it reaches or exceeds five thousand dirhams, only five thousand dirhams excluding five dirhams are owed by the ʿāqilah.

قَوْلُ أَبِي حَنِيفَةَ وَمُحَمَّدٍ: مَنْ قَتَلَ عَبْدًا خَطَأً فَقِيمَتُهُ عَلَى الْعَاقِلَةِ مَا لَمْ تَبْلُغْ قِيمَتُهُ عَشَرَةَ آلَافِ دِرْهَمٍ فَأَكْثَرَ، فَلَيْسَ فِيهِ إِلَّا عَشَرَةُ آلَافِ دِرْهَمٍ غَيْرَ عَشَرَةِ دَرَاهِمَ، وَفِي الْأَمَةِ قِيمَتُهَا كَذَلِكَ مَا لَمْ تَبْلُغْ خَمْسَةَ آلَافِ دِرْهَمٍ فَصَاعِدًا، فَإِنْ بَلَغَتْهَا فَلَيْسَ فِيهَا إِلَّا خَمْسَةُ آلَافِ دِرْهَمٍ غَيْرَ خَمْسَةِ دَرَاهِمَ عَلَى الْعَاقِلَةِ.

L19772 Abu Hanifah alone said: As for injuries less than homicide, the compensation is based on their value as in homicide, and it is incumbent upon the free person to pay from his diya. When the arsh for such an injury from the free person reaches, ten dirhams or five dirhams are deducted from its value. This is the sum total.

قَالَ أَبُو حَنِيفَةَ وَحْدَهُ: وَأَمَّا مَا دُونَ النَّفْسِ فَمِنْ قِيمَتِهَا مِثْلُ مَا فِي الْجِنَايَةِ، وَعَلَى الْحُرِّ مِنْ دِيَتِهِ، فَإِذَا بَلَغَ أَرْشُ ذَلِكَ مِنَ الْحُرِّ، أَنْقَصَ مِنْ قِيمَتِهِ عَشَرَةَ دَرَاهِمَ أَوْ خَمْسَةَ دَرَاهِمَ هَكَذَا جُمْلَةً.

L19773 Then he retracted his ruling concerning the ear and eyebrow specifically, stating: “Compensation applies only for their diminution. If the injury results in total destruction, the victim may either retain it as it is – receiving nothing – or surrender his right to *qisas* and receive the *diya* prescribed for accidental killing.”

ثُمَّ رَجَعَ عَنِ الْأُذُنِ وَالْحَاجِبِ خَاصَّةً فَقَالَ: فِيهِمَا مَا نَقَصُهُمَا فَقَطْ، فَإِنْ كَانَتِ الْجِنَايَةُ مُسْتَهْلِكَةً فَلَيْسَ لَهُ إِلَّا إِمْسَاكُهُ، كَمَا هُوَ، وَلَا شَيْءَ لَهُ، أَوْ إِسْلَامُهُ وَأَخَذَ مَا كَانَ يَأْخُذُ لَوْ قُتِلَ خَطَأً.

L19774 Abu Yusuf ruled concerning the accidental killing of a slave and a criminal offense: the perpetrator must pay the slave’s full value whatever it may be, even if it exceeds blood money amounts. Muhammad concurred with him regarding injuries not resulting in death.

وَقَالَ أَبُو يُوسُفَ فِي قَتْلِ الْعَبْدِ خَطَأً وَالْجِنَايَةِ: عَلَيْهِ قِيمَتُهُ مَا بَلَغَتْ وَلَوْ تَجَاوَزَتْ دِيَاتٍ - وَوَافَقَهُ مُحَمَّدٌ فِيمَا دُونَ النَّفْسِ.

L19775 All of them unanimously agreed on Abu Hanifah’s opinion regarding the

irretrievable loss crime as we have mentioned.

وَاتَّفَقُوا كُلُّهُمْ فِي الْجِنَايَةِ الْمُسْتَهْلَكَةِ عَلَى قَوْلِ أَبِي حَنِيفَةَ الَّذِي ذَكَرْنَا.

L19776 It has been reported from both of them that if he retains it, he must pay the value of the diminution caused by the expended wrongful act.

وَقَدْ رُوِيَ عَنْهُمَا أَنَّهُ إنْ أَمْسَكَهُ أَخَذَ قِيمَةَ مَا نَقَصَتْه الْجِنَايَةُ الْمُسْتَهْلَكَةُ.

L19777 It has been reported from Abū Yūsuf regarding non-fatal injuries specifically - a view similar to Abū Ḥanīfah's position. The same ruling applies to the eyebrow, the ear, and other such parts. This has been mentioned in *Disagreements of the Jurists*.

وَقَدْ رُوِيَ عَنْ أَبِي يُوسُفَ فِيمَا دُونَ النَّفْسِ خَاصَّةً مِثْلُ قَوْلِ أَبِي حَنِيفَةَ وَسَوَاءٌ فِي ذَلِكَ الْحَاجِبُ، وَالْأُذُنُ وَغَيْرُ ذَلِكَ، وَذُكِرَ ذَلِكَ فِي اخْتِلَافِ الْفُقَهَاءِ.

L19778 It has been reported that Zufar, concerning non-capital offenses, at times adopted Abū Ḥanīfa's later opinion and at other times his earlier one, while he agreed with Abū Ḥanīfa's opinion in capital cases.

وَرُوِيَ عَنْ زُفَرَ فِيمَا دُونَ النَّفْسِ مَرَّةً مِثْلُ قَوْلِ أَبِي حَنِيفَةَ الْآخِرِ، وَمَرَّةً مِثْلُ قَوْلِهِ الْأَوَّلِ، وَوَافَقَ أَبَا حَنِيفَةَ فِي قَوْلِهِ فِي النَّفْسِ.

L19779 A group has stated that the injuries of a male slave are assessed relative to his market value, just as injuries to a free person are assessed relative to their blood money (diyah), except when the male slave's value reaches ten thousand dirhams or more, or the female slave's value reaches five thousand dirhams or more. In such cases, the injury compensation (arsh) for those wounds does not reach the amount equivalent to their share from the diyah of a free man or free woman. Instead, it is calculated as a proportion of ten dirhams for the male slave and five dirhams for the female slave, unless the injury involves a severed ear that heals, or plucked eyebrow that heals but fails to regrow. In these cases, he is only responsible for the reduction in the slave's value. This is the opinion of Abū Ḥanīfah.

وَقَالَتْ طَائِفَةٌ جِرَاحُ الْعَبْدِ فِي قِيمَتِهِ كَجِرَاحِ الْحُرِّ فِي دِيَتِهِ إلَّا أَنْ تَبْلُغَ قِيمَةُ الْعَبْدِ عَشَرَةَ آلَافِ دِرْهَمٍ فَصَاعِدًا أَوْ تَبْلُغَ قِيمَةُ الْأَمَةِ خَمْسَةَ آلَافِ دِرْهَمٍ فَصَاعِدًا فَلَا تَبْلُغُ بِأَرْشِ تِلْكَ الْجِرَاحَةِ مِقْدَارَهَا مِنْ دِيَةِ الْحُرِّ، أَوْ الْحُرَّةِ، لَكِنْ يُحَطُّ مِنْ ذَلِكَ حِصَّتَهَا مِنْ عَشَرَةِ دَرَاهِمَ فِي الْعَبْدِ، وَحِصَّتَهَا مِنْ خَمْسَةِ دَرَاهِمَ فِي الْأَمَةِ، إلَّا أَنْ يَكُونَ قَطْعَ أُذُنٍ فَبَرِئَ، أَوْ نَتْفَ حَاجِبٍ فَبَرِئَ، وَلَمْ يَنْبُتْ فَلَيْسَ عَلَيْهِ إلَّا مَا نَقَصَهُ - وَهَذَا قَوْلُ أَبِي حَنِيفَةَ.

L19780–19782 If the injury inflicted upon the slave reaches the degree that would require full blood money if committed against a free person, the owner must either retain the slave as he is, receiving nothing, or surrender him to the offender and take all his value, provided it does not reach ten. For thousands of dirhams or more, he is entitled to only ten thousand dirhams minus ten, and for the female slave, half of that amount.

فَإِنْ بَلَغَ مِنْ الْجِنَايَةِ عَلَى الْعَبْدِ مَا لَوْ جَنَى عَلَى حُرٍّ لَوَجَبَتْ فِيهِ الدِّيَةُ كُلُّهَا فَلَيْسَ لَهُ إلَّا إمْسَاكُهُ كَمَا هُوَ، وَلَا شَيْءَ لَهُ أَوْ إسْلَامُهُ إلَى الْجَانِي وَأَخْذُ جَمِيعِ قِيمَتِهِ مَا لَمْ يَبْلُغْ عَشَرَةَ آلَافِ دِرْهَمٍ فَصَاعِدًا فَلَيْسَ لَهُ إلَّا عَشَرَةُ آلَافٍ غَيْرَ عَشَرَةِ دَرَاهِمَ، وَفِي الْأَمَةِ نِصْفُ ذَلِكَ.

L19783 And its explanation is that if he gouges out the eye of a female slave valued at five thousand dirhams or more than that, up to a hundred thousand

وَتَفْسِيرُهُ -: أَنَّهُ إنْ فَقَأَ عَيْنَ أَمَةٍ تُسَاوِي خَمْسَةَ آلَافِ دِرْهَمٍ فَمَا فَوْقَ ذَلِكَ إلَى مِائَةِ أَلْفٍ فَأَكْثَرَ، فَلَيْسَ عَلَيْهِ إلَّا أَلْفَا دِرْهَمٍ وَخَمْسمِائَةِ دِرْهَمٍ غَيْرَ دِرْهَمَيْنِ وَنِصْفٍ.

or beyond, he is only required to pay two thousand five hundred dirhams, excluding two-and-a-half dirhams.

وَإِنْ فَقَأَ عَيْنَ عَبْدٍ يُسَاوِي عَشَرَةَ آلَافٍ فَمَا زَادَ فَلَيْسَ عَلَيْهِ إِلَّا خَمْسَةُ آلَافِ دِرْهَمٍ، غَيْرَ خَمْسَةِ دَرَاهِمَ، وَهَكَذَا فِي سَائِرِ الْجِرَاحَاتِ.

L19784 If he gouges out the eye of a slave valued at ten thousand dirhams, he is liable only for five thousand dirhams excluding five dirhams, and this ruling applies equally to all other injuries.

فَلَوْ سَاوَتْ الْأَمَةُ مِائَتَيْ دِرْهَمٍ، وَالْعَبْدُ مِائَةَ دِرْهَمٍ، لَمْ يَلْزَمْهُ فِي عَيْنِ الْعَبْدِ إِلَّا خَمْسُونَ دِرْهَمًا فَقَطْ، وَفِي عَيْنِ الْأَمَةِ مِائَةُ دِرْهَمٍ فَقَطْ، وَهَكَذَا الْعَمَلُ فِي سَائِرِ الْقِيَمِ.

L19785 If a female slave is valued at two hundred dirhams and a male slave at one hundred dirhams, only fifty dirhams are due for the male slave's value and one hundred dirhams for the female slave's value. This procedure applies to all other valuations.

وَطَائِفَةٌ قَالَتْ: إِنَّ مُنَقِّلَةَ الْعَبْدِ، وَمَأْمُومَتَهُ، وَجَائِفَتَهُ، وَمُوضِحَتَهُ مِنْ ثَمَنِهِ، بَالِغًا مَا بَلَغَ فَهِيَ مِنْ الْحُرِّ فِي دِيَتِهِ -: فَفِي مُوضِحَةِ الْعَبْدِ نِصْفُ عُشْرِ ثَمَنِهِ - وَلَوْ أَنَّهُ أَلْفُ أَلْفِ دِرْهَمٍ.

L19786 A group maintained that compensation for a slave's displaced fracture, skull fracture reaching the brain membrane, penetrating wound, and bone-exposing injury is taken from his price—regardless of its amount—whereas for a free person, these are compensated from his blood money. Thus, for a bone-exposing injury in a slave, half of one-tenth [i.e., one-twentieth] of his price is owed—even if it amounts to a million dirhams.

وَفِي مُنَقِّلَتِهِ عُشْرُ قِيمَتِهِ كَذَلِكَ وَنِصْفُ عُشْرِ قِيمَتِهِ كَذَلِكَ.

L19787 For one's movable property, a tenth of its value is due, and likewise, half of a tenth of its value is due.

وَفِي جَائِفَتِهِ، وَمَأْمُومَتِهِ ثُلُثُ ثَمَنِهِ بَالِـغٌ مَا بَلَغَ.

L19788 For his deep abdominal wound and his skull-penetrating injury, one-third of its price is owed, reaching whatever amount it reaches.

وَأَمَّا سَائِرُ الْجِرَاحَاتِ، وَقَطْعُ الْأَعْضَاءِ فَإِنَّمَا فِيهِ مَا نَقَصَهُ فَقَطْ، وَهُوَ قَوْلُ مَالِكٍ - وَقَدْ رُوِيَ عَنْ مَالِكٍ أَيْضًا أَنَّهُ إذَا قَطَعَ يَدَيْ عَبْدٍ أَوْ فَقَأَ عَيْنَيْهِ أُعْتِقَ عَلَيْهِ وَغَرِمَ قِيمَتَهُ كَامِلَةً لِسَيِّدِهِ.

L19789 As for other injuries and the severing of limbs, only the reduction in their value applies. This is the opinion of Mālik. It has also been narrated from Mālik that if someone severs both hands of a slave or gouges out both his eyes, the slave is emancipated at the perpetrator's expense, and he is liable to pay the slave's full value to his master.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ: مَنْ خَصَى عَبْدَ غَيْرِهِ فَعَلَيْهِ قِيمَتُهُ كُلُّهَا لِسَيِّدِهِ، وَيَبْقَى الْعَبْدُ لِسَيِّدِهِ - سَوَاءٌ زَادَ ذَلِكَ فِي قِيمَتِهِ أَوْ نَقَصَ.

L19790 And Layth ibn Saʿd said: Whoever castrates another's slave must pay his full value to the master, and the slave remains the master's property—regardless of whether that act increased or decreased his value.

L19791 Abu Muhammad said: As for those who say that the injuries of a slave are in his value like the injuries of a free person are in his blood money—this is a statement with no proof of its validity, neither from the Quran, nor

the Sunnah, nor a corrupt narration. Rather, they analogized it to the free person because he is a human being like him.

قَالَ أَبُو مُحَمَّد: أَمَّا مَنْ قَالَ: جِرَاحُ الْعَبْدِ فِي قِيمَتِهِ كَجِرَاحِ الْحُرِّ فِي دِيَتِهِ -: فَقَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ فَاسِدَةٍ، لَكِنَّهُمْ قَاسُوهُ عَلَى الْحُرِّ؛ لِأَنَّهُ إِنْسَانٌ مِثْلُهُ.

L19792 Ali said: If analogy were valid, this would be the very essence of falsehood in it, for many of the blood money amounts for the limbs of a free person are fixed, with neither increase nor decrease.

قَالَ عَلِيٌّ: وَلَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنُ الْبَاطِلِ؛ لِأَنَّ كَثِيرًا مِنْ دِيَاتِ أَعْضَاءِ الْحُرِّ مُؤَقَّتٌ لَا زِيَادَةَ فِيهَا وَلَا نَقْصَ.

L19793 We have agreed with those who opposed us here that the diyah for a slave's limbs is not fixed. This is undisputed, as a slave may be valued at ten dinars, and thus the compensation for his eye according to them would amount to ten dinars.

وَقَدْ وَافَقْنَا مَنْ خَالَفَنَا هَاهُنَا عَلَى أَنَّ دِيَةَ أَعْضَاءِ الْعَبْدِ غَيْرُ مُؤَقَّتَةٍ لَا خِلَافَ فِي ذَلِكَ، إِذْ قَدْ يُسَاوِي الْعَبْدُ عَشَرَةَ دَنَانِيرَ فَتَكُونُ دِيَةُ عَيْنِهِ عِنْدَهُمْ عَشَرَ دَنَانِيرَ.

L19794–19795 The female slave is equivalent to five thousand dirhams, so the blood money for her eye would be two thousand five hundred dirhams excluding two and a half dirhams (or, according to some scholars, ten thousand dinars). They reached a consensus that blood monies in such cases are unlimited and that it is permissible to set a higher blood money for a woman's body part compared to a man's, contrary to the case with free men and women. The fundamental flaw in their analogical reasoning has become evident through these proofs and others as well - thus this opinion is conclusively invalidated.

وَتُسَاوِي الْأَمَةُ خَمْسَةَ آلَافِ دِرْهَمٍ فَتَكُونُ دِيَةُ عَيْنِهَا أَلْفَيْ دِرْهَمٍ وَخَمْسمِائَةِ دِرْهَمٍ غَيْرَ دِرْهَمَيْنِ وَنِصْفٍ - أَوْ تَكُونُ دِيَةُ عَيْنِهَا عِنْدَ بَعْضِهِمْ عَشَرَةَ آلَافِ دِينَارٍ، فَقَدْ أَصْفَقُوا عَلَى أَنَّ الدِّيَاتِ فِي ذَلِكَ غَيْرُ مَحْدُودَةٍ وَعَلَى جَوَازِ تَفْضِيلِ دِيَةِ عُضْوِ الْمَرْأَةِ عَلَى دِيَةِ عُضْوِ الرَّجُلِ، بِخِلَافِ الْأَحْرَارِ وَالْحَرَائِرِ - فَقَدْ ظَهَرَ فَسَادُ قِيَاسِهِمْ جُمْلَةً بِهَذِهِ الدَّلَائِلِ وَبِغَيْرِهَا أَيْضًا - فَسَقَطَ هَذَا الْقَوْلُ بِيَقِينٍ.

L19796 Then we examined the statement of those who say: "He should surrender it and take its value," and we found this also to be incorrect. For it is impermissible to remove property from the possession of its owner and transfer it to another without mutual consent from both parties unless there exists a textual evidence. In this case, no such text exists at all, and thus the opinion is dismissed in its entirety.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: يُسَلِّمُهُ وَيَأْخُذُ قِيمَتَهُ، فَوَجَدْنَاهُ أَيْضًا غَيْرَ صَحِيحٍ؛ لِأَنَّهُ لَا يَحِلُّ إِخْرَاجُ مَالٍ عَنْ يَدِ صَاحِبِهِ إِلَى غَيْرِهِ بِغَيْرِ تَرَاضٍ مِنْهُمَا إِلَّا أَنْ يَأْتِيَ بِذَلِكَ نَصٌّ، وَلَمْ يَأْتِ بِهَذَا هَاهُنَا نَصٌّ أَصْلًا، فَسَقَطَ أَيْضًا جُمْلَةً.

L19797 Then we examined the statements of Mālik and Abū Ḥanīfah and found them to be the most corrupt of views, for neither brought anything from it: neither Quran, nor Sunnah, nor an infirm narration, nor any statement of a Companion whatsoever, nor analogical reasoning, nor an opinion with a

ثُمَّ نَظَرْنَا فِي قَوْلِ مَالِكٍ، وَأَبِي حَنِيفَةَ، فَوَجَدْنَاهُمَا أَشَدَّ الْأَقْوَالِ فَسَادًا؛ لِأَنَّهُ لَمْ يَأْتِ بِشَيْءٍ مِنْهُ: قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ أَصْلًا، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ، بَلْ مَا نَعْرِفُ هَذَيْنِ عَنْ أَحَدٍ مِنَ الْأَئِمَّةِ قَبْلَ هَذَيْنِ الرَّجُلَيْنِ.

valid basis. Rather, we do not recognize these two [views] from any imam before these two men.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ: فَظُلْمٌ بَيِّنٌ لَا خَفَاءَ بِهِ أَنْ يَكُونَ يُقْطَعُ يَدَ جَارِيَةٍ تُسَاوِي عَشَرَةَ آلَافِ دِينَارٍ فَلَا يُقْضِي لِصَاحِبِهَا إِلَّا بِمِائَتَيْ دِينَارٍ وَخَمْسِينَ دِينَارًا غَيْرَ مَا تُسَاوِي مِنْ الذَّهَبِ دِرْهَمَيْنِ وَنِصْفًا وَيَكُونُ تُغْصَبُ لَهُ خَادِمٌ أُخْرَى قِيمَتُهَا أَلْفُ دِينَارٍ فَتَمُوتُ عِنْدَ الْغَاصِبِ فَيَغْرَمُ لَهُ أَلْفَ دِينَارٍ كَامِلَةً، عَلَى هَذَا الْحُكْمِ الدِّثَارُ وَالدَّمَارُ - وَنَحْنُ نَبْرَأُ إِلَى اللَّهِ تَعَالَى مِنْهُ فِي الدُّنْيَا، وَيَوْمَ يَقُومُ الْأَشْهَادُ.

L19798 As for the statement of Abu Hanifah: It constitutes manifest injustice beyond concealment that one could cut off the hand of a female slave valued at ten thousand dinars, yet her owner would only be awarded two hundred and fifty dinars - excluding the equivalent in gold of two and a half dirhams - while if another female slave of his worth one thousand dinars were seized by force and died under the usurper's possession, he would be liable to pay the full thousand dinars. Such rulings bring about calamity and destruction - we dissociate ourselves to Allah the Exalted from this in this worldly life and on the day when witnesses shall stand forth.

وَأَمَّا قَوْلُ مَالِكٍ: فَتَقْسِيمٌ فِي غَايَةِ الْفَسَادِ، وَلَوْ عُكِسَ عَلَيْهِمْ قَوْلُهُمْ مَا تَخَلَّصُوا مِنْهُ لَوْ قِيلَ لَهُمْ: بَلْ فِي الْمُنَقِّلَةِ، وَالْجَائِفَةِ، وَالْمَأْمُومَةِ -: مَا نَقَصَهُ فَقَطْ، وَأَمَّا سَائِرُ الْجِرَاحَاتِ فَمِنْ ثَمَنِهِ بِقَدْرِهَا مِنْ الْحُرِّ فِي دِيَتِهِ، وَمِثْلُ هَذَا لَا يَشْتَغِلُ بِهِ إِلَّا مَحْرُومٌ.

L19799 As for Mālik's statement: this division is utterly invalid. If their own argument were turned back on them, they could not escape its implications. If they were told regarding the displaced bone, the piercing wound, and the ma'mūmah (the skull-penetrating wound): "Only the diminished part [is compensated]," while all other injuries are compensated from the blood money of a free person, proportionally to their severity—then none would engage with such reasoning except one deprived [of reason].

وَاحْتَجَّ لَهُ بَعْضُ مُقَلِّدِيهِ بِأَنْ قَالَ: هَذِهِ جِرَاحَاتٌ يُشْفَقُ عَلَيْهِ مِنْهَا، فَيُمْكِنُ أَنْ يَتْلَفَ، وَيُمْكِنُ أَنْ يَبْرَأَ، وَلَا يَبْقَى لَهَا أَثَرٌ وَلَا ضَرَرٌ؟ فَقُلْنَا: نَعَمْ، فَاجْعَلُوا هَذَا دَلِيلَكُمْ فِي أَنْ لَا يَكُونَ فِيهَا إِلَّا مَا نَقَصَ فَقَطْ.

L19800 Some of his emulating followers argued in his favor, saying: "These are injuries for which there is fear for him—he might either suffer lasting damage or recover fully, leaving no trace or harm." We replied: "Yes. Take this as your proof that nothing applies to them except what has been reduced."

قَالَ أَبُو مُحَمَّد: وَالْحُكْمُ عَلَى الْجَانِي بِمَا نَقَصَ فِيمَا جَنَاهُ عَلَى الْعَبْدِ مِنْ خِصَاءٍ، أَوْ مَأْمُومَةٍ، أَوْ جَائِفَةٍ، أَوْ قَطْعِ عُضْوٍ، أَوْ غَيْرِ ذَلِكَ، مِمَّا قَلَّ أَوْ كَثُرَ مِنْ الْجِنَايَاتِ إِنَّمَا يَكُونُ بِأَنْ يُقَوَّمَ صَحِيحًا، ثُمَّ يُقَوَّمَ فِي أَصْعَبِ مَا انْتَهَتْ إِلَيْهِ حَالُهُ مِنْ تِلْكَ الْجِنَايَةِ وَأَشَدِّ مَا كَانَ مِنْهَا مَرَضًا وَضَعْفًا وَخَوْفًا عَلَيْهِ، وَيَغْرَمُ مَا بَيْنَ الْقِيمَتَيْنِ، وَلَا يُنْتَظَرُ بِهِ صِحَّةٌ، وَلَا تَخَفُّفٌ أَصْلًا؛ لِأَنَّهُ فِي كُلِّ حَالٍ مِنْ أَحْوَالِهِ فِي تَأْثِيرِ تِلْكَ الْجِنَايَةِ فَهُوَ الْجَانِي عَلَيْهِ فِي كُلِّ تِلْكَ

L19801–19803 Abū Muḥammad said: The judgment against the perpetrator for the diminution in value caused by his injury to the slave—whether through castration, a head wound reaching the brain, a penetrating wound into the body cavity, amputation of a limb, or other such offenses, whether few or extensive—is determined solely by first assessing the slave's value while healthy, then assessing his value in the most severe condition his state has reached from that injury and the most severe state it had attained. Among these are illness, weakness, and fear for him. He is liable to pay the difference between the two values, and no recovery is expected, nor any reduction whatsoever. This

is because in every circumstance of his condition impacting that offense, he remains the liable party against his master in all those situations. Thus, he is responsible in every such circumstance for whatever decrease his master's wealth has suffered due to his offense, undoubtedly – in accordance with Allah's decree: "If you punish, then punish with the equivalent of what you were afflicted with" (16:126), and His decree: "Whoever transgresses against you, then retaliate against him to the extent of his transgression" (2:194).[14]

L19804 If the male slave or female slave recovers and regains health, and those offenses—such as castration of the male slave, the amputation of a super-numerary finger, or similar acts—increase their market value, this is part of Allah's provision to the master. The offender has no recourse to reclaim anything he was obligated to pay for those acts.

L19805 Similarly, if he did not pay any compensation prior to the victim's recovery, he must necessarily pay compensation as previously stated, for he remains obligated to provide the equivalent of what he transgressed against. Thus, it is not absolved from him due to the victim's recovery from the injury caused by the offense.

L19806 Similarly, whoever cuts down a tree belonging to another person is liable for its value, whether it subsequently grows back and thrives or does not grow back or thrive, due to what we have mentioned - and success is from Allah, the Exalted.

L19807 **A person killed a male slave belonging to another or a female slave.**

L19808 If a person kills another's male slave or female slave - whether intentionally or by mistake - their full market value must inevitably be paid in full to their owner, as we have mentioned, though people have differed regarding this matter. It has been reported to us from Hammad ibn Salama, from Dawud ibn Abi Hind, from al-Sha'bi, that a slave was killed by mistake whose purchase price was ten thousand dirhams, so Sa'id ibn al-'As assigned his blood money as four thousand dirhams.

الْأَحْوَالِ، فَعَلَيْهِ فِي كُلِّ حَالٍ مِنْهَا مَا نَقَصَ بِجِنَايَتِهِ مِنْ مَالِ سَيِّدِهِ بِلَا شَكٍّ، لِقَوْلِ اللَّهِ تَعَالَى: {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] . وَلِقَوْلِهِ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

فَإِنْ بَرِئَ الْعَبْدُ، أَوْ الْأَمَةُ وَصَحَّا، وَزَادَتْ تِلْكَ الْجِنَايَاتُ فِي أَثْمَانِهِمَا، كَالْخِصَاءِ فِي الْعَبْدِ، أَوْ قَطْعِ إصْبَعٍ زَائِدَةٍ، أَوْ مَا أَشْبَهَ ذَلِكَ، فَمِنْ رِزْقِ اللَّهِ تَعَالَى لِلسَّيِّدِ، وَلَا رُجُوعَ لِلْجَانِي مِنْ أَجْلِ ذَلِكَ بِشَيْءٍ مِمَّا غَرِمَ.

وَكَذَلِكَ لَوْ لَمْ يَغْرَمْ شَيْئًا حَتَّى صَحَّ الْمَجْنِيُّ عَلَيْهِ فَإِنَّهُ يَغْرَمُ كَمَا ذَكَرْنَا وَلَا بُدَّ، لِأَنَّهُ قَدْ لَزِمَهُ أَدَاءُ مِثْلِ مَا اعْتَدَى فِيهِ، فَلَا يَسْقُطُ عَنْهُ بِبُرْءِ الْجِنَايَةِ.

وَكَذَلِكَ مَنْ قَطَعَ شَجَرَةً لِإِنْسَانٍ، فَإِنَّهُ يَضْمَنُ قِيمَتَهَا سَوَاءٌ نَبَتَتْ بَعْدَ ذَلِكَ وَنَمَتْ أَوْ لَمْ تَنْبُتْ وَلَا نَمَتْ، لِمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[قَتَلَ الْمَرْءُ عَبْدًا لِغَيْرِهِ أَوْ أَمَةً]

وَأَمَّا إنْ قَتَلَ الْمَرْءُ عَبْدًا لِغَيْرِهِ، أَوْ أَمَةً عَمْدًا أَوْ خَطَأً، فَقِيمَتُهُمَا وَلَا بُدَّ لِسَيِّدِهِمَا بَالِغَةً مَا بَلَغَتْ لِمَا ذَكَرْنَا - وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ الشَّعْبِيِّ أَنَّ عَبْدًا قُتِلَ خَطَأً وَكَانَ ثَمَنُهُ عَشَرَةَ آلَافِ دِرْهَمٍ فَجَعَلَ سَعِيدُ بْنُ الْعَاصِ دِيَتَهُ أَرْبَعَةَ آلَافٍ.

[14] **Qur'an references (L19801):** Qur'an 16:126 (An-Nahl); Qur'an 2:194 (Al-Baqarah).

L19809 It is authentically reported from An-Nakha'i and Ash-Sha'bi that they both said: The blood money for a slave does not reach the blood money of a free person.

وَصَحَّ عَنْ النَّخَعِيِّ، وَالشَّعْبِيِّ، قَالَا جَمِيعًا: لَا يَبْلُغُ بِدِيَةِ الْعَبْدِ دِيَةَ الْحُرِّ.

L19810 We have also narrated it from 'Aṭā', al-Ḥakam ibn 'Utaybah, and Ḥammād ibn Abī Sulaymān.

وَرُوِّينَاهُ أَيْضًا عَنْ عَطَاءٍ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ.

L19811 Sufyan al-Thawri also said: "He subtracts a dirham or the like therefrom." 'Aṭā' said: "The subtracted amount should not exceed the diyah of a free person." This was also authentically reported from Ḥammād ibn Abī Sulaymān.

وَبِهِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ، قَالَ: يَنْقُصُ مِنْهَا الدِّرْهَمُ وَنَحْوُهُ، وَقَالَ عَطَاءٌ: لَا يَتَجَاوَزُ بِهِ دِيَةَ الْحُرِّ، وَصَحَّ أَيْضًا عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ.

L19812 Abu Hanifa, Zufar, and Muhammad said: If he is a slave, his value is assessed provided it does not reach ten thousand dirhams. If it reaches or exceeds that amount, regardless of the excess, his killer is liable only for ten thousand dirhams, excluding ten dirhams.

وَقَالَ أَبُو حَنِيفَةَ، وَزُفَرُ، وَمُحَمَّدٌ: إنْ كَانَ عَبْدًا فَقِيمَتُهُ مَا لَمْ يَبْلُغْ عَشَرَةَ آلَافِ دِرْهَمٍ، فَإِنْ بَلَغَهَا أَوْ تَجَاوَزَهَا بِمَا قَلَّ أَوْ كَثُرَ لَمْ يَغْرَمْ قَاتِلُهُ إلَّا عَشَرَةَ آلَافِ دِرْهَمٍ، غَيْرَ عَشَرَةِ دَرَاهِمَ.

L19813–19814 If she is a female slave, her value is paid provided it does not reach five thousand dirhams. If it reaches or exceeds that amount by any margin, her killer is liable only for five thousand dirhams less five dirhams. A group has stated: He must pay the value, however much it reaches.

وَإِنْ كَانَتْ أَمَةً فَقِيمَتُهَا مَا لَمْ تَبْلُغْ خَمْسَةَ آلَافِ دِرْهَمٍ، فَإِنْ بَلَغَتْهَا أَوْ تَجَاوَزَتْهَا بِمَا قَلَّ أَوْ كَثُرَ لَمْ يَغْرَمْ قَاتِلُهَا إلَّا خَمْسَةَ آلَافِ دِرْهَمٍ غَيْرَ خَمْسَةِ دَرَاهِمَ - وَقَالَتْ طَائِفَةٌ: يَغْرَمُ الْقِيمَةَ بَالِغَةً مَا بَلَغَتْ.

L19815 It has been narrated to us through the chain of Ibn Abi Shaybah: Muhammad ibn Bakr reported to us from Ibn Jurayj from Abd al-Karim from Ali ibn Abi Talib, Ibn Masud, and Shurayh, who said: "Its price, even if it differs from the diyah of a free person." This ruling has also been established as valid by Said ibn al-Musayyab, al-Hasan, Ibn Sirin, Ibrahim al-Nakha'i also, Yahya ibn Said al-Ansari, and al-Zuhri.

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ بَكْرٍ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْكَرِيمِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: وَابْنِ مَسْعُودٍ، وَشُرَيْحٍ، قَالُوا: ثَمَنُهُ، وَإِنْ خَالَفَ دِيَةَ الْحُرِّ - وَصَحَّ هَذَا أَيْضًا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَالْحَسَنِ، وَابْنِ سِيرِينَ، وَإِبْرَاهِيمَ النَّخَعِيِّ أَيْضًا، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَالزُّهْرِيِّ.

L19816 And it has also been narrated to us from ʿUmar ibn ʿAbd al-ʿAzīz, Iyās ibn Muʿāwiyah, ʿAṭā', and Makhūl. This is the opinion of Mālik, Abū Yūsuf, al-Shāfiʿī, Aḥmad ibn Ḥanbal, Isḥāq, Abū Sulaymān, others.

وَرُوِّينَاهُ أَيْضًا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَإِيَاسِ بْنِ مُعَاوِيَةَ، وَعَطَاءٍ، وَمَكْحُولٍ، وَهُوَ قَوْلُ مَالِكٍ، وَأَبِي يُوسُفَ، وَالشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ.

L19817 Abu Muhammad said: As for Abu Hanifa's statement, it is utterly baseless,

for he restricted what is invalidated thereof by a criterion not transmitted from any predecessor. Rather, it stems solely from his own corrupt opinion.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفِي غَايَةِ السُّقُوطِ، لِأَنَّهُ حَدَّ مَا يَسْقُطُ مِنْ ذَلِكَ بِحَدٍّ لَا يُحْفَظُ عَنْ أَحَدٍ قَبْلَهُ، وَإِنَّمَا هُوَ مِنْ رَأْيِهِ الْفَاسِدِ.

L19818 His adherents said: "Should that amount be reduced by the amount **for which** the hand is amputated?" We replied: "**What is your source for this?** Moreover, you have contradicted yourselves by deducting five dirhams from a woman's blood money, even though, **by your own position, hand amputation does not apply to her case**. Thus, you have invalidated **the threshold** you established."

وَقَالَ مُقَلِّدُوهُ: يَنْقُصُ مِنْ ذَلِكَ مَا تُقْطَعُ فِيهِ الْيَدُ؟ قُلْنَا: وَمِنْ أَيْنَ لَكُمْ هَذَا؟ ثُمَّ قَدْ تَنَاقَضْتُمْ فَأَسْقَطْتُمْ مِنْ دِيَةِ الْمَرْأَةِ خَمْسَةَ دَرَاهِمَ، وَلَيْسَ تُقْطَعُ فِيهَا الْيَدُ فِي قَوْلِكُمْ، فَقَدْ أَبْطَلْتُمْ مَا أَصَّلْتُمْ مِنْ كَثَبٍ.

L19819 Then we say to them: Why did you not deduct from the blood money the same amount you subtracted from the forty dirhams in the stipulation regarding the runaway slave when he was equivalent to it? Why did you not deduct from the blood money what is subject to zakah? Is this not but a spurious and baseless opinion? Every statement wholly unsupported by any evidence whatsoever, having no precedent, is the most deserving of rejection.

ثُمَّ نَقُولُ لَهُمْ: وَهَلَّا نَقَصْتُمْ مِنْ الدِّيَةِ مَا نَقَصْتُمْ مِنْ الْأَرْبَعِينَ دِرْهَمًا فِي جَعْلِ الْآبِقِ إذَا كَانَ يُسَاوِيهَا؟ وَهَلَّا نَقَصْتُمْ مِنْ الدِّيَةِ مَا تَجِبُ فِيهِ الزَّكَاةُ؟ وَهَلْ هَذَا إلَّا رَأْيٌ زَائِفٌ مُجَرَّدٌ؟ وَكُلُّ قَوْلٍ لَمْ يَقُمْ عَلَيْهِ دَلِيلٌ أَصْلًا، وَلَا كَانَ لَهُ سَلَفٌ فَأَوْلَى قَوْلٍ بِالِاطِّرَاحِ.

L19820 Then we examined the statement of those who claim that a slave's blood money does not reach that of a free person, and we found it to be a corrupt opinion with no evidence. Moreover, they contradict themselves by ruling that one who kills a dog worth two thousand dinars must pay two thousand dinars, and one who maims a dhimmi's pig worth one thousand dinars must pay one thousand dinars. Yet if he kills a Christian who ascribes a son and the mother of the son to God Almighty, they rule that he must pay the blood money of a Muslim. O Muslims! How can the blood money for a dog, a pig, or one worse than a dog and a pig (i.e., the Christian) reach that of a Muslim, while Bilāl—if killed before emancipation—would not reach the blood money of a Muslim? Indeed, he would not even reach the blood money of an unbeliever who worships the cross—though such a person is deemed better than every Muslim on earth today in the sight of God Almighty and according to the people of Islam!

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: لَا يَبْلُغُ بِدِيَةِ الْعَبْدِ دِيَةَ الْحُرِّ -: فَوَجَدْنَاهُ قَوْلًا فَاسِدًا لَا دَلِيلَ عَلَيْهِ، ثُمَّ هُمْ يَتَنَاقَضُونَ، فَيَقُولُونَ: فِيمَنْ قَتَلَ كَلْبًا يُسَاوِي أَلْفَيْ دِينَارٍ: أَنَّهُ يُعْطِي أَلْفَيْ دِينَارٍ، وَإِنْ عَقَرَ خِنْزِيرًا لِذِمِّيٍّ يُسَاوِي أَلْفَ دِينَارٍ أَدَّى إلَيْهِ أَلْفَ دِينَارٍ، وَإِنْ قَتَلَ نَصْرَانِيًّا يَجْعَلُ لِلَّهِ تَعَالَى الْوَلَدَ وَأُمَّ الْوَلَدِ: أَنَّهُ يُعْطِي فِيهِ دِيَةَ الْمُسْلِمِ؟ فَيَا لِلْمُسْلِمِينَ أَيَبْلُغُ كَلْبٌ، وَخِنْزِيرٌ، وَمَنْ هُوَ شَرٌّ مِنْ الْكَلْبِ، وَالْخِنْزِيرِ: دِيَةَ الْمُسْلِمِ، وَلَا يَبْلُغُ بِلَالٌ لَوْ قُتِلَ قَبْلَ أَنْ يُعْتَقَ دِيَةَ مُسْلِمٍ؟ نَعَمْ، وَلَا دِيَةَ كَافِرٍ يَعْبُدُ الصَّلِيبَ، وَهُوَ خَيْرٌ مِنْ كُلِّ مُسْلِمٍ عَلَى ظَهْرِ الْأَرْضِ الْيَوْمَ عِنْدَ اللَّهِ تَعَالَى، وَعِنْدَ أَهْلِ الْإِسْلَامِ.

L19821–19822 Then they contradicted themselves by stating: "If someone unlawfully seizes a slave who dies in their custody while his value is ten thousand dinars, they must pay ten thousand dinars." Has any contradiction more absurd than

ثُمَّ قَدْ تَنَاقَضُوا فَقَالُوا: مَنْ غَصَبَ عَبْدًا فَمَاتَ عِنْدَهُ وَقِيمَتُهُ عَشَرَةُ آلَافِ دِينَارٍ أَدَّى عَشَرَةَ آلَافِ دِينَارٍ فَهَلْ سُمِعَ بِأَسْخَفَ مِنْ هَذَا التَّنَاقُضِ؟ ثُمَّ قَدْ جَعَلُوا دِيَةَ الْعَبْدِ

this ever been heard? Furthermore, they established the diyah for a slave as ten thousand dirhams—excluding one dirham or ten dirhams—thereby exceeding the diyah of a free Muslim woman. These are specious arguments whose mere mention dispenses with the need for elaborate refutation.

L19823 What we have mentioned has been reported from Ibn Mas'ud and 'Ali, and we know of no dissenter among the Companions - may Allah be pleased with them - regarding that matter. So they opposed them both.

L19824 Some of them dared to say: "Consensus has been reached on the amount we mentioned, and disagreement exists regarding what exceeds it?" We responded: "You have lied and slandered! This is Sa'īd ibn al-'Āṣ - governor of Kufa under 'Uthmān (may Allah be pleased with him) and governor of Medina and Mecca under Mu'āwiyah - the blood money for a slave does not exceed four thousand dirhams."

L19825 Abu Muhammad said: The male slave and the female slave are property, so the one who destroys them is liable to compensate the equivalent of what he wrongfully destroyed, up to its full extent—and success comes from Allah, the Exalted.

L19826 **The criminal liability of an enslaved person for harm to another's property.**

L19827 As for the criminal liability of a slave against another's property: it is charged against the slave's own wealth if he possesses any. If he has no wealth, it becomes a personal obligation; the liability remains enforceable against him until he acquires wealth while enslaved or after emancipation. His master bears no obligation to ransom him - neither for a small nor large amount - nor to surrender him [to the victim] due to his offense, nor to sell him because of it.

L19828 Similarly, the criminal liability of a slave designated for eventual freedom (mudabbar), a contracted slave (mukatab), and the mother of the master's child (umm walad) – whether permitted or not permitted – is equal. Debt and criminal liability in all such cases are the same, as stated by Allah, the Exalted:

عَشَرَةَ آلَافِ دِرْهَمٍ غَيْرَ دِرْهَمٍ أَوْ غَيْرَ عَشَرَةِ دَرَاهِمَ فَتَجَاوَزُوا بِهَا دِيَةَ الْحُرَّةِ الْمُسْلِمَةِ - وَهَذِهِ وَسَاوِسُ يُغْنِي ذِكْرُهَا عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهَا.

وَقَدْ رُوِيَ مَا ذَكَرْنَا عَنْ ابْنِ مَسْعُودٍ، وَعَلِيٍّ، وَمَا نَعْلَمُ لَهُمْ مُخَالِفًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ فَخَالَفُوهُمَا.

وَقَدْ جَسَرَ بَعْضُهُمْ فَقَالَ: قَدْ أُجْمِعَ عَلَى الْمِقْدَارِ الَّذِي ذَكَرْنَا وَاخْتُلِفَ فِيمَا زَادَ؟ فَقُلْنَا: كَذَبْت وَأَفَكْت هَذَا سَعِيدُ بْنُ الْعَاصِ أَمِيرُ الْكُوفَةِ لِعُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - وَأَمِيرُ الْمَدِينَةِ، وَمَكَّةَ لِمُعَاوِيَةَ، لَا يَتَجَاوَزُ بِدِيَةِ الْعَبْدِ أَرْبَعَةُ آلَافِ دِرْهَمٍ.

قَالَ أَبُو مُحَمَّدٍ: وَالْعَبْدُ، وَالْأَمَةُ مَالٌ، فَعَلَى مُتْلِفِهِمَا مِثْلُ مَا تَعَدَّى فِيهِ بَالِغًا مَا بَلَغَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[جِنَايَةُ الْعَبْدِ عَلَى مَالِ غَيْرِهِ]

وَأَمَّا جِنَايَةُ الْعَبْدِ عَلَى مَالِ غَيْرِهِ فَفِي مَالِ الْعَبْدِ إنْ كَانَ لَهُ مَالٌ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ فَفِي ذِمَّتِهِ يُتْبَعُ بِهِ حَتَّى يَكُونَ لَهُ مَالٌ فِي رِقِّهِ أَوْ بَعْدَ عِتْقِهِ، وَلَيْسَ عَلَى سَيِّدِهِ فِدَاؤُهُ، وَلَا بِمَا قَلَّ وَلَا بِمَا كَثُرَ وَلَا إسْلَامُهُ فِي جِنَايَتِهِ وَلَا بَيْعُهُ فِيهَا.

وَكَذَلِكَ جِنَايَةُ الْمُدَبَّرِ، وَالْمُكَاتَبِ، وَأُمِّ الْوَلَدِ الْمَأْذُونِ، وَغَيْرِ الْمَأْذُونِ - سَوَاءٌ، الدَّيْنُ وَالْجِنَايَةُ فِي كُلِّ ذَلِكَ سَوَاءٌ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

"No soul bears the burden of another, nor does any bearer of burdens bear another's burden" [al-Anʿām 6:164].[15]

L19829 It is not permissible for anyone to be punished for the crime of another. The Messenger of Allah (peace be upon him) said: "Verily, your blood and your wealth are sacred and inviolable among you."

L19830 And He, the Exalted, said: "Do not consume one another's wealth wrongfully, unless it is trade by mutual consent among yourselves." [Qur'an 4:29][16]

L19831–19833 The slave is property from his master's property, as is his price, and likewise the rest of the master's property. We ask those who oppose us here: By which Book of Allah, or by which tradition of the Messenger of Allah—peace and blessings be upon him—have you deemed it lawful to make the master's property permissible for others? And he did not commit any offense? Perhaps he was a minor, or insane, or absent in a distant land, or asleep, or in prayer—is this not an astounding marvel? Abu Muhammad said: The opponents cited as evidence a report we narrated through the chain of Marwan al-Fazari from Dahtham ibn Qurran al-Yamami from Nimran ibn Jariyah ibn Dhafar from his father: "A slave cut off a man's hand, then encountered another man and struck him, wounding his head. They brought their dispute to the Messenger of Allah (peace and blessings be upon him). The Messenger of Allah handed the slave over to the man whose hand was severed. Then he took him back and transferred him to the man with the head wound, so ownership of the slave passed to him. The slave's owner and the man whose hand was cut off both departed empty-handed."

L19834 Abu Muhammad said: This is invalid because Dahtham ibn Qurran is weak, and there is agreement among transmitters regarding his weakness. Nimran is unknown, so it is impermissible to hold this opinion. Even if it were authentic, they would not have been the first to adopt it. Some who show no concern for lying against the Muslims have claimed consensus that a slave's liability rests upon his own neck. This ignorant one has lied and fabricated.

وَلَا يَحِلُّ أَنْ يُؤْخَذَ أَحَدٌ بِجَرِيرَةِ أَحَدٍ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

وَقَالَ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

وَالْعَبْدُ مَالٌ مِنْ مَالِ سَيِّدِهِ، وَكَذَلِكَ ثَمَنُهُ، وَكَذَلِكَ سَائِرُ مَالِ السَّيِّدِ، فَنَسْأَلُ مَنْ خَالَفَنَا هَاهُنَا؟ بِأَيِّ كِتَابِ اللَّهِ، أَمْ بِأَيِّ سُنَّةٍ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَحْلَلْتُمْ إِبَاحَةَ مَالِ السَّيِّدِ لِغَيْرِهِ وَلَمْ يَجْنِ شَيْئًا؟ وَلَعَلَّهُ صَغِيرٌ، أَوْ مَجْنُونٌ، أَوْ غَائِبٌ فِي أَرْضٍ بَعِيدَةٍ، أَوْ نَائِمٌ، أَوْ فِي صَلَاةٍ، إِنَّ هَذَا لَعَجَبٌ عَجِيبٌ؟ قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ الْمُخَالِفُونَ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ مَرْوَانَ الْفَزَارِيِّ عَنْ دَهْثَمِ بْنِ قُرَّانَ الْيَمَامِيِّ عَنْ نِمْرَانَ بْنِ جَارِيَةَ بْنِ ظَفَرٍ عَنْ أَبِيهِ «أَنَّ مَمْلُوكًا قَطَعَ يَدَ رَجُلٍ ثُمَّ لَقِيَ آخَرَ فَشَجَّهُ فَاخْتَصَمَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَدَفَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْعَبْدَ إِلَى الْمَقْطُوعِ يَدُهُ، ثُمَّ أَخَذَهُ مِنْهُ فَدَفَعَهُ إِلَى الْمَشْجُوجِ، فَصَارَ لَهُ وَرَجَعَ سَيِّدُ الْعَبْدِ وَالْمَقْطُوعُ يَدُهُ بِلَا شَيْءٍ» .

قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا يَصِحُّ، لِأَنَّ دَهْثَمَ بْنَ قُرَّانَ ضَعِيفٌ مُتَّفَقٌ مِنْ أَهْلِ النَّقْلِ عَلَى ضَعْفِهِ - وَنِمْرَانُ مَجْهُولٌ، فَلَمْ يَجُزِ الْقَوْلُ بِهِ، وَلَوْ صَحَّ لَمَا سَبَقُونَا إِلَى الْأَخْذِ بِهِ، وَقَدْ ادَّعَى بَعْضُ مَنْ لَا يُبَالِي بِالْكَذِبِ عَلَى أَهْلِ الْإِسْلَامِ الْإِجْمَاعَ عَلَى أَنَّ جِنَايَةَ الْعَبْدِ فِي رَقَبَتِهِ، وَقَدْ كَذَبَ هَذَا الْجَاهِلُ وَأَفِكَ، مَا جَاءَ فِي هَذَا [الْخَبَرِ] عَنْ أَحَدٍ مِنَ الصَّحَابَةِ

[15] **Qur'an references (L19828):** Qur'an 6:164 (Al-An'am).
[16] **Qur'an references (L19830):** Qur'an 4:29 (An-Nisa).

- رَضِيَ اللَّهُ عَنْهُمْ - فِي عِلْمِنَا إِلَّا مَا نَذْكُرُهُ إِنْ شَاءَ اللَّهُ تَعَالَى، وَمَا فَاتَنَا - بِحَوْلِ اللَّهِ تَعَالَى - فِي ذَلِكَ شَيْءٌ ثَابِتٌ أَصْلًا، وَلَعَلَّهُ لَمْ يَفُتْنَا أَيْضًا مَعْلُولٌ -: رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ هُوَ ابْنُ غِيَاثٍ - عَنْ حَجَّاجٍ هُوَ ابْنُ أَرْطَاةَ - عَنْ حُصَيْنٍ الْحَارِثِيِّ عَنْ الشَّعْبِيِّ عَنْ الْحَارِثِ هُوَ الْأَعْوَرُ - عَنْ عَلِيٍّ قَالَ: مَا جَنَى الْعَبْدُ فَفِي رَقَبَتِهِ، وَيَتَخَيَّرُ مَوْلَاهُ إِنْ شَاءَ فَدَاهُ وَإِنْ شَاءَ دَفَعَهُ. وَهَذِهِ فَضِيحَةُ الْحَجَّاجِ، وَالْحَارِثِ الْأَعْوَرِ، أَحَدُهُمَا كَانَ يَكْفِي.

To our knowledge, no report in this [text] from any Companion—may Allah be pleased with them—exists except what we shall mention, Allah willing. By the power of Allah the Exalted, we have not missed anything established in that regard fundamentally, and perhaps we have not even overlooked a defective report.

It was narrated to us via Ibn Abi Shaybah's chain: Hafs (Ibn Ghiyath) from Hajjaj (Ibn Arta'ah) from Husayn al-Hārithī, from al-Sha'bī, from al-Hārith (al-A'war) from Ali, who said: "Whatever offense a slave commits rests upon his own neck. His master may choose: if he wishes, he pays compensation, or if he wishes, he surrenders him." This exposes the disgrace of Hajjaj and al-Hārith al-A'war—either one of them would have sufficed.

وَقَدْ خَالَفُوا عَلِيَّ بْنَ أَبِي طَالِبٍ فِي إسْلَامِهِ الشَّاةَ إلَى أَوْلِيَاءِ الَّتِي نُطِحَتْ فَغَرِقَتْ فِي الْفُرَاتِ، فَمَا الَّذِي جَعَلَ حُكْمَهُ هُنَالِكَ أَوْلَى مِنْ حُكْمِهِ هَاهُنَا لَوْ صَحَّ عَنْهُ فَكَيْفَ وَهُوَ بَاطِلٌ؟ نَعَمْ، وَقَدْ خَالَفُوا عَلِيًّا فِي هَذِهِ الْقَضِيَّةِ نَفْسِهَا فَأَبُو حَنِيفَةَ يَقُولُ: مَا جَنَى الْعَبْدُ مِنْ دَمٍ عَمْدًا فَلَيْسَ فِي رَقَبَتِهِ، وَلَا يَفْدِيهِ سَيِّدُهُ، وَلَا يَدْفَعُهُ، إنَّمَا هُوَ الْقَوَدُ، أَوْ الْعَفْوُ، أَوْ مَا تَصَالَحُوا عَلَيْهِ. وَمَالِكٌ يَقُولُ: جِنَايَةُ الْعَبْدِ فِي مَالِهِ إنْ كَانَ لَهُ مَالٌ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ فَحِينَئِذٍ يَرْجِعُ إلَى سَيِّدِهِ - وَالشَّافِعِيُّ يَقُولُ: لَا يَلْزَمُ السَّيِّدُ أَنْ يَفْدِيَ عَبْدَهُ، وَلَا أَنْ يُسَلِّمَهُ، لَكِنْ يُبَاعُ فِي جِنَايَتِهِ فَقَطْ.

And they opposed Ali ibn Abi Talib regarding his delivery of the sheep - which had been gored and drowned - to the heirs. The Euphrates—so what makes the ruling there more appropriate than the ruling here, even if it were authentically reported from him [ʿAlī]? How can that be, given its invalidity? Yes, indeed, they opposed ʿAlī himself in this very matter. Abū Ḥanīfa states: "Any intentional homicide committed by a slave does not obligate his person. His master neither ransoms him nor surrenders him; it is only *qisas*, pardon, or mutually agreed compensation." Mālik states: "The slave's liability for his offense is from his wealth if he possesses wealth. If he has no wealth, it then reverts to his master." And al-Shāfiʿī states: "The master is not obligated to ransom his slave or surrender him, but the slave is sold to cover his offense."

L19835–19837

وَحَدِيثُ مَالِكٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ بْنِ حَاطِبٍ أَنَّ رَقِيقًا لِحَاطِبٍ سَرَقُوا نَاقَةً لِرَجُلٍ مِنْ مُزَيْنَةَ فَنَحَرُوهَا فَبَلَغَ ذَلِكَ عُمَرَ بْنَ الْخَطَّابِ فَأَمَرَ كَثِيرَ بْنَ الصَّلْتِ فَقَطَعَ أَيْدِيَهُمْ، ثُمَّ قَالَ عُمَرُ لِحَاطِبٍ: إنِّي أَرَاك تُجِيعُهُمْ لَأُغَرِّمَنَّكَ غُرْمًا يَشُقُّ عَلَيْك، ثُمَّ قَالَ لِلْمُزَنِيِّ: كَمْ ثَمَنُ نَاقَتِك؟ قَالَ: أَرْبَعُمِائَةِ دِرْهَمٍ قَالَ: فَأَعْطِهِ ثَمَانِمِائَةِ دِرْهَمٍ.

The narration of Malik from Hisham ibn Urwah from his father from Yahya ibn Abd al-Rahman ibn Hatib states that some slaves of Hatib stole a camel belonging to a man from Muzaynah and slaughtered it. When Umar ibn al-Khattab learned of this, he ordered Kathir ibn al-Salt to cut off their hands. Then Umar said to Hatib, "I see that you are depriving them of food; I will certainly impose a fine on you that will cause you severe hardship." He then said to the Muzayni man, "How much is your camel worth?" The man replied, "Four hundred dirhams." Umar said, "Give him eight hundred dirhams."

L19838

L19839 They oppose Umar in this.

وَهُمْ يُخَالِفُونَ عُمَرَ فِي هَذَا.

L19840 Oh, if only I knew what caused some portions of His ruling in a single case to be valid while others in that very same case are invalid! Truly, this is indeed the manifest deviation.

فَلَيْتَ شِعْرِي مَا الَّذِي جَعَلَ بَعْضَ حُكْمِهِ فِي قَضِيَّةٍ وَاحِدَةٍ حَقًّا وَبَعْضُهُ فِي تِلْكَ الْقَضِيَّةِ نَفْسِهَا بَاطِلًا، إنَّ هَذَا لَهُوَ الضَّلَالُ الْمُبِينُ.

L19841 A narration through the chain of Wakiʿ: Ibn Abī Dhi'b narrated to us from Muḥammad ibn Ibrāhīm al-Taymī, from his father, from al-Salūlī al-Aʿwar (the one-eyed), from Muʿādh ibn Jabal, from Abū ʿUbaydah, who said: "The diya (blood money) of a mudabbar (a slave granted deferred emancipation) falls upon his master." This is baseless, for al-Salūlī al-Aʿwar is unknown: it is not known who he is among Allah's creation, Exalted is He.

وَرِوَايَةٌ مِنْ طَرِيقِ وَكِيعٍ نا ابْنُ أَبِي ذِئْبٍ عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ التَّيْمِيِّ عَنْ أَبِيهِ عَنْ السَّلُولِيِّ الْأَعْوَرِ عَنْ مُعَاذِ بْنِ جَبَلٍ عَنْ أَبِي عُبَيْدَةَ قَالَ: جِنَايَةُ الْمُدَبَّرِ عَلَى مَوْلَاهُ - وَهَذَا بَاطِلٌ؛ لِأَنَّ السَّلُولِيَّ الْأَعْوَرَ لَا يُدْرَى مَنْ هُوَ فِي خَلْقِ اللَّهِ تَعَالَى؟ .

L19842 Then they contradicted this narration, for Mālik states: The master is not held liable for the offenses committed by his enslaved person, nor is he obligated to pay restitution. The ruling is that the enslaved person must labor solely to atone for their own offense.

ثُمَّ قَدْ خَالَفُوا هَذِهِ الرِّوَايَةَ فَمَالِكٌ يَقُولُ: لَا يَغْرَمُ عَنْهُ سَيِّدُهُ مَا جَنَى، وَلَا يَدْفَعُهُ، وَإِنَّمَا الْحُكْمُ أَنْ يُسْتَخْدَمَ فِي جِنَايَتِهِ فَقَطْ.

L19843–19845 Similarly, Abū Ḥanīfah also states regarding liability concerning property: If this were considered *ijma*, they would be the first to oppose the *ijma*. Who is more shameless than one who deems such a matter as *ijma* yet denies its correctness? How then could this be *Sunnah*? How could it be *ijma*? All of them surrendered their wealth in Khaybar for half the produce (crops or dates) without a fixed term. They permitted them to remain as long as Allah permitted them and expelled them whenever they wished during their lifetime. During the period of the Prophet—peace be upon him—then the period of Abu Bakr, then the period of Umar—may Allah be pleased with them both—no one differs regarding this. What wonder is more wondrous than this?

وَكَذَلِكَ يَقُولُ أَبُو حَنِيفَةَ أَيْضًا فِيمَا جَنَى فِي الْأَمْوَالِ فَإِنْ كَانَ ذَلِكَ إجْمَاعًا، فَهُمْ أَوَّلُ مَنْ خَالَفَ الْإِجْمَاعَ، فَمَنْ أَقَلُّ حَيَاءً مِمَّنْ يَجْعَلُ مِثْلَ هَذَا إجْمَاعًا ثُمَّ لَا يَرَى صَوَابًا فَكَيْفَ سُنَّةً؟ فَكَيْفَ إجْمَاعًا؟ دَفْعَهُمْ كُلُّهُمْ أَمْوَالَهُمْ بِخَيْبَرَ عَلَى نِصْفِ مَا يَخْرُجُ مِنْهَا مِنْ زَرْعٍ أَوْ ثَمَرٍ إلَى غَيْرِ أَجَلٍ، لَكِنْ يُقِرُّونَهُمْ مَا أَقَرَّهُمْ اللَّهُ، وَيُخْرِجُونَهُمْ إذَا شَاءُوا مُدَّةَ حَيَاةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ مُدَّةَ أَبِي بَكْرٍ ثُمَّ مُدَّةَ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - لَا أَحَدَ يُخَالِفُ فِي ذَلِكَ، فَأَيُّ عَجَبٍ أَعْجَبُ مِنْ هَذَا؟

L19846 Nor is the last prayer—performed by the Messenger of Allah (may Allah bless him and grant him peace) in the presence of all his attending companions (may Allah be pleased with them) after Abu Bakr had begun leading them in prayer—considered correct, a normative practice (Sunnah), or a matter of consensus. Nor was this concealed from those who were absent from it.

وَلَا يَرَى أَيْضًا آخِرَ صَلَاةٍ صَلَّاهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِجَمِيعِ الْحَاضِرِينَ مِنْ أَصْحَابِهِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَمْ يَخْفَ ذَلِكَ عَمَّنْ غَابَ مِنْهُ بَعْدَ أَنْ بَدَأَ أَبُو بَكْرٍ بِالصَّلَاةِ بِهِمْ صَوَابًا وَلَا سُنَّةً وَلَا إجْمَاعًا.

L19847 Abu Muhammad said: Then they differed. A group said: The one authorized

to engage in trade is not to be sold in lieu of his diyah, nor surrendered, nor does his master ransom him. As for the unauthorized, he is the one to be sold, surrendered, or ransomed by his master.

قَالَ أَبُو مُحَمَّد: ثُمَّ هُمْ مُخْتَلِفُونَ، فَقَالَتْ طَائِفَةٌ: لَا يُبَاعُ الْمَأْذُونُ لَهُ فِي التِّجَارَةِ فِي دِيَتِهِ، وَلَا يُسَلَّمُ، وَلَا يَفْدِيهِ سَيِّدُهُ، وَأَمَّا غَيْرُ الْمَأْذُونِ فَهُوَ الَّذِي يُبَاعُ، أَوْ يُسَلَّمُ، أَوْ يُفْدَى.

L19848 A group held: Neither the authorized slave nor the unauthorized slave may be sold to settle a debt, nor handed over [as compensation] nor ransomed [through payment]. However, if they commit a criminal offense, they may be sold for that offense, handed over, or ransomed.

وَقَالَتْ طَائِفَةٌ: لَا يُبَاعُ الْمَأْذُونُ، وَلَا غَيْرُ الْمَأْذُونِ فِي دَيْنٍ، وَلَا يُسَلَّمُ وَلَا يُفْدَى، وَأَمَّا جِنَايَتُهُمَا فَيُبَاعَانِ فِيهِمَا، أَوْ يُسَلَّمَانِ أَوْ يُفْدَيَانِ.

L19849 A group held: The authorized one and the unauthorized one are equal, and debt and criminal liability are equal. Both of them may be sold in all of that, or his master must either surrender him or pay his ransom.

وَقَالَتْ طَائِفَةٌ: الْمَأْذُونُ وَغَيْرُ الْمَأْذُونِ سَوَاءٌ، وَالدَّيْنُ وَالْجِنَايَةُ سَوَاءٌ، كِلَاهُمَا يُبَاعُ فِي كُلِّ ذَلِكَ، أَوْ يُسَلِّمُهُ سَيِّدُهُ أَوْ يَفْدِيهِ.

L19850 Thus, these are claims—as you see them. We need only to cite them to refute them, for every sect deems the others erroneous and invalidates their statements, yet all of them are invalid.

فَهَذِهِ أَقْوَالٌ كَمَا تَرَوْنَهَا مَا نَحْتَاجُ فِي رَدِّهَا إِلَى أَكْثَرَ مِنْ إِيرَادِهَا، لِأَنَّ كُلَّ طَائِفَةٍ تُخَطِّئُ الْأُخْرَى، وَتُبْطِلُ قَوْلَهَا وَكُلُّهَا بَاطِلٌ.

L19851 Abu Hanifa and his companions said: If a slave kills a free person, there is nothing but retaliation (qisas) or pardon. He remains the property of his master as before, provided the master pardons him. The same ruling applies to a slave contracted for eventual freedom (mudabbar) and a mother of the child (umm al-walad).

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: إِنْ قَتَلَ الْعَبْدُ حُرًّا فَلَيْسَ إِلَّا الْقَوَدُ أَوْ الْعَفْوُ، وَهُوَ لِسَيِّدِهِ كَمَا كَانَ، إِنْ عَفَا عَنْهُ - وَكَذَلِكَ الْمُدَبَّرُ وَأُمُّ الْوَلَدِ.

L19852 They said: If a slave kills a free person or a slave unintentionally, or intentionally or unintentionally causes harm short of death to a free person or a slave—whether the injury is minor or major—his master is obligated to surrender him to the injured party or their guardian—regardless of the number of victims—or to redeem him by paying the full indemnities prescribed for all offenses.

قَالُوا: فَإِنْ قَتَلَ الْعَبْدُ حُرًّا أَوْ عَبْدًا خَطَأً، أَوْ جَنَى عَلَى مَا دُونَ النَّفْسِ مِنْ حُرٍّ أَوْ عَبْدٍ عَمْدًا أَوْ خَطَأً - قَلَّتْ الْجِنَايَةُ أَوْ كَثُرَتْ - كُلِّفَ سَيِّدُهُ أَنْ يَدْفَعَهُ إِلَى الْمَجْنِيِّ عَلَيْهِ، أَوْ إِلَى وَلِيِّهِ - كَثُرَ الْمَجْنِيُّ عَلَيْهِمْ أَمْ قَلُّوا - أَوْ يَفْدِيهِ بِجَمِيعِ أُرُوشِ الْجِنَايَاتِ.

L19853 They said: If he commits an offense against property, neither he nor the master is liable unless the slave is sold for his offense. If his sale price covers the offenses, that suffices. If it does not cover them, neither the master nor the slave is liable. Any surplus belongs to the master.

قَالُوا: فَإِنْ جَنَى فِي مَالٍ فَلَيْسَ عَلَيْهِ وَلَا عَلَى السَّيِّدِ إِلَّا أَنْ يُبَاعَ فِي جِنَايَتِهِ فَإِنْ وَفَّى ثَمَنُهُ بِالْجِنَايَاتِ فَذَلِكَ، وَإِنْ لَمْ يَفِ بِهَا فَلَا شَيْءَ عَلَى السَّيِّدِ، وَلَا عَلَى الْعَبْدِ، وَإِنْ فَضَلَ فَضْلٌ كَانَ لِلسَّيِّدِ.

L19854–19856 They said: If the mudabbar (a slave designated for eventual emancipation) ac-

cidentally causes death or commits an offense less than homicide, the liability falls upon his master for the lesser of his market value, the arsh (compensation) for the offense, or the diyah (blood money). He bears no responsibility beyond that, unless the valuation of the offense amounts to ten. If the amount is thousands of dirhams or more, the master is only liable for ten thousand dirhams excluding ten dirhams. If he accidentally kills another person, there is no liability upon the master. However, everyone who subsequently has a claim may seek recourse against the initially injured party, and thus share with him in what was taken, and this continues perpetually.

قَالُوا: فَإِنْ جَنَى الْمُدَبَّرُ فَقَتَلَ خَطَأً، أَوْ جَنَى فِيمَا دُونَ النَّفْسِ، فَعَلَى سَيِّدِهِ الْأَقَلُّ مِنْ قِيمَتِهِ أَوْ أَرْشِ الْجِنَايَةِ، أَوْ الدِّيَةِ لَيْسَ عَلَيْهِ غَيْرُ ذَلِكَ، إِلَّا أَنْ تَكُونَ قِيمَةُ الْجِنَايَةِ عَشَرَةَ آلَافِ دِرْهَمٍ فَصَاعِدًا، فَلَا يَلْزَمُ السَّيِّدَ إِلَّا عَشَرَةُ آلَافٍ غَيْرَ عَشَرَةِ دَرَاهِمَ، فَإِنْ قَتَلَ آخَرَ خَطَأً فَلَا شَيْءَ عَلَى السَّيِّدِ، لَكِنْ يَرْجِعُ كُلُّ مَنْ جَنَى عَلَيْهِ بَعْدَ ذَلِكَ عَلَى الْمَجْنِيِّ عَلَيْهِ أَوَّلًا فَيُشَارِكُهُ فِيمَا أَخَذَ، وَهَكَذَا أَبَدًا.

L19857 Similarly, the *umm al-walad* (a slave mother who bears her master's child) in her liability applies to accidental killing and lesser harms than death.

وَهَكَذَا أُمُّ الْوَلَدِ فِي جِنَايَتِهَا فِي قَتْلِ الْخَطَأِ وَمَا دُونَ النَّفْسِ.

L19858 Abu Hanifah said: If the mudabbar (a slave designated for emancipation upon the master's death) or the umm al-walad (a slave woman who bore her master's child) cause damage to property, they must strive through their labor to compensate for the value of what they damaged. No liability is imposed on the master of the umm al-walad.

وَقَالَ أَبُو حَنِيفَةَ: فَإِنْ جَنَى الْمُدَبَّرُ، وَأُمُّ الْوَلَدِ عَلَى مَالٍ فَعَلَيْهِمَا السَّعْيُ فِي قِيمَةِ مَا جَنَيَا وَلَا شَيْءَ عَلَى سَيِّدِ أُمِّ الْوَلَدِ.

L19859 Abu Muhammad said: This ruling aligns with our view, and likewise all their penal acts—and those of slaves—should be treated without distinction. These distinctions are not recorded from any authority before Abu Hanifah. If someone were to assert that these inconsistencies contradict consensus, such a claim would not be far from the truth.

قَالَ أَبُو مُحَمَّد: هَذَا الْفَصْلُ مُوَافِقٌ لِقَوْلِنَا، وَكَذَلِكَ يَنْبَغِي أَنْ تَكُونَ سَائِرُ جِنَايَاتِهِمَا، وَجِنَايَاتِ الْعَبِيدِ وَلَا فَرْقَ، وَهَذِهِ تَفَارِيقُ لَا تُحْفَظُ عَنْ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ، وَلَوْ ادَّعَى مُدَّعٍ فِي هَذِهِ التَّخَالِيطِ خِلَافَ الْإِجْمَاعِ لَمَا بَعُدَ عَنْ الصِّدْقِ.

L19860 They said: If a slave under a manumission contract (mukatab) commits an offense and accidentally kills or causes non-fatal injury, he must work to pay the lesser of his own value or the prescribed compensation (arsh) for the crime, and nothing beyond that is incumbent upon him. If he commits an offense involving property, he must work to pay its full value, no matter how substantial.

وَقَالُوا: إِنْ جَنَى الْمُكَاتَبُ فَقَتَلَ خَطَأً، أَوْ فِيمَا دُونَ النَّفْسِ، فَعَلَيْهِ أَنْ يَسْعَى فِي الْأَقَلِّ مِنْ قِيمَتِهِ أَوْ مِنْ أَرْشِ الْجِنَايَةِ، وَلَا شَيْءَ عَلَيْهِ غَيْرُ ذَلِكَ فَإِنْ جَنَى فِي مَالٍ: سَعَى فِي قِيمَتِهِ بَالِغَةً مَا بَلَغَتْ.

L19861 Malik said: The liability of a slave for bloodshed and property offenses is equivalent. If the slave owns wealth, all such liabilities are covered by his wealth. If he possesses no wealth, his master may choose between redeeming him by paying the compensation for the offense or the equivalent value of the slave, or surrendering him to the victim as compensation. If a mudabbar

وَقَالَ مَالِكٌ: جِنَايَةُ الْعَبْدِ فِي الدِّمَاءِ وَالْأَمْوَالِ سَوَاءٌ، فَإِنْ كَانَ لِلْعَبْدِ مَالٌ فَكُلُّ ذَلِكَ فِي مَالِهِ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ فَسَيِّدُهُ مُخَيَّرٌ بَيْنَ أَنْ يَفْدِيَهُ بِأَرْشِ الْجِنَايَةِ أَوْ بِقَدْرِ الْمَالِ أَوْ يَدْفَعَهُ، فَإِنْ جَنَى الْمُدَبَّرُ كَذَلِكَ فَفِي مَالِهِ، فَإِنْ لَمْ يَفِ اُسْتُخْدِمَ فِي الْبَاقِي، فَإِنْ جَنَتْ

(a slave promised freedom upon the master's death) commits an offense, the liability is covered by his wealth. If he cannot fulfill it, he is compelled to work to settle the remaining debt. If an umm al-walad (a slave mother of her master's child) commits an offense, her master must redeem her by paying the lesser of her value or the compensation for the offense, whichever is lower. Each subsequent offense she commits obligates him to redeem her in the same manner. If a mukatab (a slave under a manumission contract) commits an offense, he is required to pay the compensation for his offense. If he proves unable or refuses, he is re-enslaved and reverts to the legal status of ordinary slaves.

أُمُّ الْوَلَدِ فَعَلَى سَيِّدِهَا أَنْ يَفْدِيَهَا بِالْأَقَلِّ مِنْ قِيمَتِهَا أَوْ مِنْ أَرْشِ الْجِنَايَةِ فَقَطْ، ثُمَّ كُلَّمَا جَنَتْ كَانَ عَلَيْهِ أَنْ يَفْدِيَهَا كَذَلِكَ، فَإِنْ جَنَى الْمُكَاتَبُ كَذَلِكَ كُلِّفَ أَنْ يُؤَدِّيَ أَرْشَ مَا جَنَى، فَإِنْ عَجَزَ أَوْ أَبَى رُقَّ وَعَادَ إِلَى حُكْمِ الْعَبِيدِ.

L19862 This is a set of distinctions that are also not preserved from any individual among people before him. If someone were to claim a position contrary to the consensus regarding them, his statement would not be far from the truth—except his assertion that criminal liabilities are borne by the property of the slave and the *mudabbar*, for this would have been valid had he not followed it with what we have mentioned.

وَهَذِهِ تَفَارِيقُ لَا تُحْفَظُ أَيْضًا عَنْ أَحَدٍ مِنَ النَّاسِ قَبْلَهُ، وَلَوِ ادَّعَى مُدَّعٍ خِلَافَ الْإِجْمَاعِ عَلَيْهَا لَمَا بَعُدَ عَنِ الصِّدْقِ إِلَّا قَوْلُهُ: إِنَّ الْجِنَايَاتِ فِي مَالِ الْعَبْدِ وَالْمُدَبَّرِ، فَهُوَ صَحِيحٌ لَوْ لَمْ يَتْبَعْهُ بِمَا ذَكَرْنَا.

L19863 Al-Shafi'i said: Regarding any criminal act committed by a mudabbar slave or a regular slave—whether involving bloodshed, property damage, or injuries short of death—the master is only required to sell the slave to cover the liability. If the proceeds suffice, that is sufficient. Any surplus belongs to the master, but if they do not suffice, neither the master nor the slave is liable for anything beyond this. The master is not required to surrender the slave nor to ransom him.

وَقَالَ الشَّافِعِيُّ: كُلُّ مَا جَنَى الْمُدَبَّرُ، وَالْعَبْدُ مِنْ دَمٍ، أَوْ فِي مَالٍ أَوْ مَا دُونَ النَّفْسِ فَإِنَّمَا يَلْزَمُ السَّيِّدَ بَيْعُهُ فِيهَا فَقَطْ، فَإِنْ وَفَّى فَذَلِكَ فَإِنْ فَضَلَ فَضْلٌ فَلِلسَّيِّدِ، وَإِنْ لَمْ يَفِ فَلَا شَيْءَ عَلَيْهِ وَلَا عَلَى الْعَبْدِ غَيْرُ ذَلِكَ، وَلَيْسَ عَلَيْهِ أَنْ يُسَلِّمَهُ وَلَا أَنْ يَفْدِيَهُ.

L19864–19865 If an umm al-walad (a slave woman who bore her master's child) causes harm, her master must compensate by paying the lesser of her value or the compensation for the injury. If she causes harm a second time, there are two opinions: the first is that he must compensate again, and this continues indefinitely.

فَإِنْ جَنَتْ أُمُّ الْوَلَدِ فَدَاهَا سَيِّدُهَا بِالْأَقَلِّ مِنْ قِيمَتِهَا وَمِنْ أَرْشِ الْجِنَايَةِ - فَإِنْ جَنَتْ ثَانِيَةً فَقَوْلَانِ -: أَحَدُهُمَا: يَفْدِيهَا أَيْضًا، وَهَكَذَا أَبَدًا.

L19866 The second: the other party seeks restitution from the preceding party, thus sharing with him in what he took – with nothing incumbent upon the master. This is also an opinion not preserved from any authority prior to him.

وَالثَّانِي: يَرْجِعُ الْآخَرُ عَلَى الَّذِي قَبْلَهُ فَيُشَارِكُهُ فِيمَا أَخَذَ وَلَا شَيْءَ عَلَى السَّيِّدِ - وَهَذَا أَيْضًا قَوْلٌ لَا يُحْفَظُ عَنْ أَحَدٍ قَبْلَهُ.

وَكُلُّ هَذِهِ الْأَقْوَالِ لَيْسَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا دَلِيلٌ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ فَاسِدَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ، وَمَا كَانَ هَكَذَا فَلَا يَجُوزُ الْقَوْلُ بِهِ.

L19867 All of these opinions lack any evidence for their validity—neither from the Quran, nor the Sunnah, nor a defective narration, nor the statement of a Companion, nor analogy, nor an opinion with sound juristic reasoning. Given this, it is impermissible to adopt such opinions.

فَإِنْ مَوَّهُوا بِأَنَّ الْعَبْدَ لَا مَالَ لَهُ، وَلَا يَمْلِكُ شَيْئًا؟ قُلْنَا: هَذَا بَاطِلٌ، بَلْ يَمْلِكُ كَمَا يَمْلِكُ الْحُرُّ، وَلَكِنْ هَبْكُمْ الْآنَ أَنَّهُ لَا يَمْلِكُ كَمَا تَدَّعُونَ عُدُّوهُ فَقِيرًا، وَأَتْبِعُوهُ بِهِ إِذَا مَلَكَ يَوْمًا مَا كَمَا يُتْبَعُ الْفَقِيرُ سَوَاءً بِسَوَاءٍ، وَلَا فَرْقَ.

L19868 If they deceptively argue that a slave has no property and owns nothing, we say: This is false. Rather, he owns just as a free person owns. But suppose now—as you claim—that he owns nothing: deem him poor, then follow him with it if he ever acquires property, as you follow the poor—equal in every respect, with no distinction.

وَاَللَّهُ تَعَالَى يَقُولُ: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ} [النور: ٣٢] فَقَدْ وَعَدَهُمْ اللَّهُ أَوْ مَنْ شَاءَ مِنْهُمْ بِالْغِنَى، فَانْتَظَرُوا بِهِمْ ذَلِكَ الْغِنَى، فَكَيْفَ وَالْبَرَاهِينُ عَلَى صِحَّةِ مِلْكِ الْعَبْدِ ظَاهِرَةٌ؟ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِيهِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: وَيُقَادُ لِلْمَمْلُوكِ مِنْ الْمَمْلُوكِ فِي كُلِّ عَمْدٍ يَبْلُغُ نَفْسَهُ فَمَا دُونَ ذَلِكَ مِنْ الْجِرَاحِ، فَإِنْ اصْطَلَحُوا عَلَى الْعَقْلِ فَقِيمَةُ الْمَقْتُولِ عَلَى مَالِ الْقَاتِلِ أَوْ الْجَارِحِ.

L19869 Allah the Exalted says: {Marry the unmarried among you and the righteous among your male slaves and female slaves. If they should be poor, Allah will enrich them from His bounty} [An-Nur: 32]. Thus Allah has promised them enrichment, or whom He wills among them, so wait for them to attain that enrichment. How can this be the case when the clear proofs affirming the validity of owning slaves are evident? It has been narrated to us through the chain of Abd al-Razzaq from Ibn Jurayj from Abd al-Aziz ibn Umar ibn Abd al-Aziz from his father that Umar ibn al-Khattab said: Retaliation is applicable for a slave against another slave in every intentional act causing death or injuries less severe than death. If they mutually agree to blood money [diya], the value of the killed person shall be taken from the wealth of the killer or injurer.[17]

قَالَ أَبُو مُحَمَّدٍ: هَذَا قَوْلُنَا وَلِلَّهِ تَعَالَى الْحَمْدُ، وَبَيَانُ [هَذَا] أَنَّ عُمَرَ بْنَ الْخَطَّابِ يَرَى الْعَبْدَ مَالِكًا.

L19870 Abū Muḥammad said: This is our position, and all praise is due to Allah the Exalted. The clarification of this is that ʿUmar ibn al-Khaṭṭāb holds the view that the slave is an owner.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ قَالَ أُخِذَ عَبْدٌ أَسْوَدُ آبِقٌ قَدْ عَدَا عَلَى رَجُلٍ فَشَجَّهُ لِيَذْهَبَ بِرَقَبَتِهِ، فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَلَمْ يَرَ لَهُ شَيْئًا.

L19871 From the narration of Hammad ibn Zayd, from Yahya ibn Sa'id al-Ansari, who said: A black slave who had fled was captured after transgressing against a man and striking him in the head to take his life. The matter was raised to Umar ibn Abd al-Aziz, and he deemed no legal consequence applicable to him.

[17] **Qur'an references (L19869):** Qur'an 24:32 (An-Nur).

وَهَذَا قَوْلُنَا: وَقَدْ جَاءَ هَذَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ حَنْبَلٍ نا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ حَدَّثَنِي أَبِي عَنْ قَتَادَةَ عَنْ أَبِي نَضْرَةَ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ «أَنَّ غُلَامًا لِأُنَاسٍ فُقَرَاءَ قَطَعَ أُذُنَ غُلَامٍ لِأُنَاسٍ أَغْنِيَاءَ فَأَتَى أَهْلُهُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: يَا رَسُولَ اللَّهِ إنَّا أُنَاسٌ فُقَرَاءُ؟ فَلَمْ يَجْعَلْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَيْهِ شَيْئًا.» ؟ قَالَ أَبُو مُحَمَّد: لَمْ يُسَلِّمْهُ وَلَا بَاعَهُ وَلَا أَلْزَمَهُ مَالًا يَمْلِكُهُ وَلَا أَلْزَمَ سَادَاتِهِ فِدَاءَهُ - وَهَذَا قَوْلُنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L19872–19874 This is our position: It has been narrated from the Prophet (peace and blessings of Allah be upon him), as transmitted to us through the chain of Abū Dāwūd; Aḥmad ibn Ḥanbal narrated to us, Muʿādh ibn Hishām al-Dastawā'ī narrated to us, my father narrated to me from Qatādah, from Abū Naḍrah, from ʿImrān ibn al-Ḥuṣayn. A boy belonging to poor people cut off the ear of a boy belonging to wealthy people. His family came to the Messenger of Allah (peace be upon him) and said, "O Messenger of Allah, we are poor people." So the Messenger of Allah (peace be upon him) did not impose anything upon them. Abu Muhammad said: He did not hand him over, nor sell him, nor oblige him to pay any wealth he possessed, nor oblige his masters to ransom him—and this is our opinion—and all praise is due to Allah, Lord of the worlds.

تَمَّ " كِتَابُ الْغَصْبِ وَالِاسْتِحْقَاقِ وَالْجِنَايَاتِ عَلَى الْأَمْوَالِ ".

L19875 The Book of Usurpation, Entitlement, and Criminal Offenses Against Property has been completed.

AL-MUHALLA

كِتَابُ الصُّلْحِ

The Book of Settlement

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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Chapter on Reconciliation Issue: Types of Reconciliation

1270 - Legal Question:

It is not permissible at all to conclude a settlement based on denial, nor on silence where there is neither acknowledgment nor denial, nor on waiving an oath that has become obligatory, nor on a person acknowledging [a claim] against another while the party from whom the settlement is sought denies [it]. Settlement is permissible only upon acknowledgment of liability - this is the opinion of Ibn Abi Layla, though he permitted settlement based on silence where there is neither acknowledgment nor denial.

This is the opinion of al-Shāfiʿī—except he permitted settlement through waiving the oath and allowing a person to admit liability on another's behalf and settle without authorization—which contradicts his foundational principle. It is also the opinion of Abū Sulaymān—except he permitted settlement through waiving the oath—which contradicts his foundational principle. It has been narrated to us through Ḥammād ibn Zayd's transmission from Ayyūb al-Sakhtiyānī from Muḥammad ibn Sīrīn, who said: "A man held a rightful claim against another, settled it with him, then retracted and brought the case to Shurayḥ. Shurayḥ told him: 'Produce two just witnesses that he abandoned the claim, and if he had wished, you would have fulfilled it to him.'"

Thus, Shurayh did not permit settlement (ṣulḥ) unless the claimant possessed the capacity to enforce his right by compelling the defendant to fulfill the obligation of delivering the right owed to him, and [required] its rescission if this condition was lacking - which is our position.

Via the chain of Ibn Abī Shaybah: Ibn Abī Zā'ida narrated from Ismāʿīl ibn Abī Khālid, from al-Shaʿbī, from Shurayḥ, who said: "If a woman has been settled with regarding her dower without clarifying what her husband left behind, then all that doubt remains entirely."

And this also clarifies that a settlement is only valid if based on acknowledgment of a clearly specified matter.

[كِتَابُ الصُّلْحِ] [مَسْأَلَةٌ أَنْوَاعِ الصُّلْحِ]

١٢٧٠ - مَسْأَلَةٌ:

لَا يَحِلُّ الصُّلْحُ أَلْبَتَّةَ عَلَى الْإِنْكَارِ، وَلَا عَلَى السُّكُوتِ الَّذِي لَا إنْكَارَ مَعَهُ، وَلَا إقْرَارَ، وَلَا عَلَى إسْقَاطِ يَمِينٍ قَدْ وَجَبَتْ، وَلَا عَلَى أَنْ يُصَالِحَ مُقِرٌّ عَلَى غَيْرِهِ وَذَلِكَ الَّذِي صُولِحَ عَنْهُ مُنْكِرٌ، وَإِنَّمَا يَجُوزُ الصُّلْحُ مَعَ الْإِقْرَارِ بِالْحَقِّ فَقَطْ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى إلَّا أَنَّهُ جَوَّزَ الصُّلْحَ عَلَى السُّكُوتِ الَّذِي لَا إقْرَارَ مَعَهُ وَلَا إنْكَارَ.

وَهُوَ قَوْلُ الشَّافِعِيِّ إلَّا أَنَّهُ جَوَّزَ الصُّلْحَ عَلَى إسْقَاطِ الْيَمِينِ، وَأَنْ يُقِرَّ إنْسَانٌ عَنْ غَيْرِهِ وَيُصَالِحَ عَنْهُ بِغَيْرِ أَمْرِهِ - وَهَذَا نَقْضٌ لِأَصْلِهِ - وَهُوَ أَيْضًا قَوْلُ أَبِي سُلَيْمَانَ، إلَّا أَنَّهُ جَوَّزَ الصُّلْحَ عَلَى إسْقَاطِ الْيَمِينِ - وَهَذَا نَقْضٌ لِأَصْلِهِ -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: كَانَ لِرَجُلٍ عَلَى رَجُلٍ حَقٌّ فَصَالَحَهُ عَنْهُ ثُمَّ رَجَعَ فِيهِ فَخَاصَمَهُ إلَى شُرَيْحٍ، فَقَالَ لَهُ شُرَيْحٌ: شَاهِدَانِ ذَوَا عَدْلٍ: أَنَّهُ تَرَكَهُ وَلَوْ شَاءَ أَدَّيْتُهُ إلَيْهِ.

فَهَذَا شُرَيْحٌ لَمْ يُجِزْ الصُّلْحَ إلَّا مَعَ قُدْرَةِ صَاحِبِ الْحَقِّ عَلَى أَخْذِ حَقِّهِ بِأَدَاءِ الَّذِي عَلَيْهِ الْحَقُّ إلَيْهِ حَقَّهُ، وَفَسْخِهِ إنْ يَكُنْ كَذَلِكَ - وَهُوَ قَوْلُنَا.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ أَبِي زَائِدَةَ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ قَالَ: أَيُّمَا امْرَأَةٍ صُولِحَتْ عَنْ ثَمَنِهَا وَلَمْ يُبَيَّنْ لَهَا مَا تَرَكَ زَوْجُهَا، فَتِلْكَ الرِّيبَةُ كُلُّهَا.

وَهَذَا أَيْضًا بَيَانُ أَنَّهُ لَمْ يَجُزْ الصُّلْحُ إلَّا عَلَى إقْرَارٍ بِمَعْلُومٍ.

L19884 Abu Hanifa and Malik said: Sulh is permissible in cases of denial or silence that is accompanied by neither admission nor denial.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: الصُّلْحُ عَلَى الْإِنْكَارِ، وَعَلَى السُّكُوتِ الَّذِي لَا إقْرَارَ مَعَهُ وَلَا إنْكَارَ جَائِزٌ.

L19885–19886 Abu Muhammad said: The proof for the validity of our position is the verse of Allah, the Exalted: "Do not consume your wealth among yourselves wrongfully unless it is a transaction by mutual consent among you" [An-Nisā' 4:29].[1]

قَالَ أَبُو مُحَمَّد: بُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

L19887 The statement of the Messenger of Allah—peace and blessings be upon him—"Indeed, your blood and your wealth are inviolable upon you," establishes that all wealth is forbidden to anyone other than its rightful owner. The owner is also forbidden from making it permissible for others to possess except in cases where the Quran and the Sunnah sanction its obligatory transfer or mandate its disbursement.

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَصَحَّ أَنَّ كُلَّ مَالٍ حَرَامٌ عَلَى غَيْرِ صَاحِبِهِ وَيَحْرُمُ عَلَى صَاحِبِهِ أَنْ يُبِيحَهُ لِغَيْرِهِ إلَّا حَيْثُ أَبَاحَ الْقُرْآنُ، وَالسُّنَّةُ إخْرَاجَهُ، أَوْ أَوْجَبَا إخْرَاجَهُ.

L19888 There is no textual evidence permitting settlement concerning any of the matters we have mentioned.

وَلَمْ يَأْتِ نَصٌّ بِجَوَازِ الصُّلْحِ عَلَى شَيْءٍ مِمَّا ذَكَرْنَا.

L19889 The well-known ḥadīth transmitted through Al-Zuhrī from 'Ubayd Allāh ibn 'Abd Allāh ibn 'Utbah from Abū Hurayrah and Zayd ibn Khālid al-Juhanī states: A Bedouin came to the Messenger of Allāh—peace and blessings of Allāh be upon him—and said: "O Messenger of Allāh, judge between us by the Book of Allāh." One of the two litigants said: "My son was a hired worker for this man and committed adultery with his wife. They said to me: 'Your son must be stoned,' so I ransomed my son with a hundred sheep and a slave girl. Then I asked the people of knowledge, and they said: 'Your son only deserves a hundred lashes and exile for one year, while stoning applies to his wife [as a married adulteress].'" The Messenger of Allāh—peace and blessings of Allāh be upon him—said: "I shall indeed judge between you by the Book of Allāh. As for the slave girl and sheep, they are to be returned to you. Your son shall receive a hundred lashes and exile for one year." The narrator then mentioned the rest of the report—whereupon the Messenger of Allāh—peace and blessings of Allāh be upon him—invalidated the aforementioned settlement and annulled it.

وَالْحَدِيثُ الْمَشْهُورُ مِنْ طَرِيقِ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ أَبِي هُرَيْرَةَ وَزَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ قَالَ: «جَاءَ أَعْرَابِيٌّ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ اقْضِ بَيْنَنَا بِكِتَابِ اللَّهِ، قَالَ أَحَدُ الْخَصْمَيْنِ: إنَّ ابْنِي كَانَ عَسِيفًا عَلَى هَذَا فَزَنَى بِامْرَأَتِهِ، فَقَالُوا لِي: عَلَى ابْنِكَ الرَّجْمُ فَفَدَيْتُ ابْنِي بِمِائَةٍ مِنْ الْغَنَمِ وَوَلِيدَةٍ، ثُمَّ سَأَلْتُ أَهْلَ الْعِلْمِ فَقَالُوا: إنَّمَا عَلَى ابْنِكَ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ وَإِنَّمَا الرَّجْمُ عَلَى امْرَأَتِهِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَأَقْضِيَنَّ بَيْنَكُمَا بِكِتَابِ اللَّهِ، أَمَّا الْوَلِيدَةُ، وَالْغَنَمُ فَرَدٌّ عَلَيْكَ وَعَلَى ابْنِكَ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ» وَذَكَرَ بَاقِيَ الْخَبَرِ - فَأَبْطَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الصُّلْحَ الْمَذْكُورَ وَفَسَخَهُ.

[1] **Qur'an references (L19886):** Qur'an 4:29 (An-Nisa).

L19890 Abū Muḥammad said: The later jurists who permitted reconciliation in cases of denial and all that we have mentioned cited as evidence the words of Allah, the Exalted: “Reconciliation is best” [al-Nisāʾ 128], and His statement: “Fulfill [your] contracts” [al-Māʾidah 1].[2]

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ الْمُتَأَخِّرُونَ الْمُجِيزُونَ لِلصُّلْحِ عَلَى الْإِنْكَارِ وَعَلَى سَائِرِ مَا ذَكَرْنَا بِقَوْلِ اللَّهِ تَعَالَى: {وَالصُّلْحُ خَيْرٌ} [النساء: ١٢٨] . وَبِقَوْلِ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] .

L19891 And according to what has been reported to us through the chain of Kathīr ibn ʿAbd Allāh (who is Kathīr ibn Zayd) from his father, from his grandfather, and from Al-Walīd ibn Rabāḥ from Abū Hurayrah - both of them narrate that the Messenger of Allāh, may the peace and blessings of Allāh be upon him, said: “A settlement is permissible among Muslim parties except one that permits what is forbidden or forbids what is lawful. Muslims are bound by their stipulations.”

وَبِمَا رُوِّينَا مِنْ طَرِيقِ كَثِيرِ بْنِ عَبْدِ اللَّهِ وَهُوَ كَثِيرُ بْنُ زَيْدٍ - عَنْ أَبِيهِ عَنْ جَدِّهِ، وَعَنْ الْوَلِيدِ بْنِ رَبَاحٍ عَنْ أَبِي هُرَيْرَةَ، كِلَاهُمَا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ إلَّا صُلْحًا أَحَلَّ حَرَامًا أَوْ حَرَّمَ حَلَالًا وَالْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» .

L19892–19894 And by what Ahmad ibn Umar ibn Anas narrated to us, Abu Dharr al-Harawi narrated to us, Khalil ibn Ahmad narrated to us, Abu Dawud al-Sijistani narrated to us, Yahya ibn Muhammad ibn Ṣāʿid narrated to us, Yusuf ibn Musa al-Qattan narrated to us, Ubayd Allah ibn Musa narrated to us. On the authority of ʿAbd al-Malik ibn al-Walīd ibn Maʿdān, from his father, who said: ʿUmar ibn al-Khaṭṭāb wrote to Abū Mūsā al-Ashʿarī: “Reconciliation is permissible among Muslims, except one that has prohibited what is lawful or permitted what is forbidden.”

وَبِمَا حَدَّثَنَاهُ أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا الْخَلِيلُ بْنُ أَحْمَدَ نا أَبُو دَاوُد السِّجِسْتَانِيُّ نا يَحْيَى بْنُ مُحَمَّدِ بْنِ صَاعِدٍ نا يُوسُفُ بْنُ مُوسَى الْقَطَّانُ نا عُبَيْدُ اللَّهِ بْنُ مُوسَى نا عَبْدُ الْمَلِكِ بْنُ الْوَلِيدِ بْنِ مَعْدَانَ عَنْ أَبِيهِ قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إلَى أَبِي مُوسَى الْأَشْعَرِيِّ: وَالصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ إلَّا صُلْحًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا.

L19895 And according to what has been narrated to us through numerous chains—among them Sufyān ibn ʿUyaynah, Wakīʿ, Hushaym, and Ibn Abī Zāʾidah, all of whom reported from Ismāʿīl ibn Abī Khālid, who reported from al-Shaʿbī—he said: ʿAlī ibn Abī Ṭālib was asked about a matter, and he said: “This is injustice. Had it not been a reconciliation settlement, I would have rejected it.”

وَبِمَا رُوِّينَا مِنْ طُرُقٍ كَثِيرَةٍ مِنْهَا عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ، وَوَكِيعٍ، وَهُشَيْمٍ، وَابْنِ أَبِي زَائِدَةَ، كُلُّهُمْ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: أُتِيَ عَلِيُّ بْنُ أَبِي طَالِبٍ فِي شَيْءٍ فَقَالَ: إنَّهُ لَجَوْرٌ، وَلَوْلَا أَنَّهُ صُلْحٌ لَرَدَدْته.

L19896 They also argued by citing Allah the Exalted’s words: {except it being a trade by mutual consent among you} [An-Nisa: 29]. They said: “Is not a settlement on disputed claims a trade by mutual consent between them?” Abu Muhammad responded: “This constitutes all their evidence, none of which contains valid proof for them—rather, all of it serves as evidence

وَاحْتَجُّوا أَيْضًا بِقَوْلِ اللَّهِ تَعَالَى: {إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] قَالُوا: وَالصُّلْحُ عَلَى الْإِنْكَارِ تِجَارَةٌ عَنْ تَرَاضٍ مِنْهُمَا؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا احْتَجُّوا بِهِ، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ بَلْ كُلُّهُ حُجَّةٌ عَلَيْهِمْ عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى -: أَمَّا قَوْله تَعَالَى: {وَالصُّلْحُ خَيْرٌ} [النساء: ١٢٨] ، {أَوْفُوا بِالْعُقُودِ} [المائدة: ١]

[2] **Qur’an references (L19890):** Qur’an 4:128 (An-Nisa); Qur’an 5:1 (Al-Ma’idah).

against them, as we shall clarify if Allah the Exalted wills. Regarding His statements: {Reconciliation is best} [An-Nisa: 128] and {Fulfill the contracts} [Al-Ma'idah: 1], our opponents in this matter—alongside all Muslims—agree with us that these two verses are not absolute in their generality. Allah the Exalted never intended every settlement or every contract. If a man were to settle on permitting illicit sexual relations for himself or his wife, or on consuming pork, wine, abandoning prayer, enslaving a free person, or contractually bind himself to such matters, this settlement would be invalid and impermissible, constituting a corrupt and rejected contract. Since this is indisputable, no settlement or contract may be lawfully upheld except those attested by the Quran and Sunnah as permissible."[3]

فَالْمُخَالِفُونَ لَنَا فِي هَذِهِ الْمَسْأَلَةِ وَجَمِيعُ أَهْلِ الْإِسْلَامِ مُوَافِقُونَ لَنَا عَلَى أَنَّ كِلْتَا هَاتَيْنِ الْآيَتَيْنِ لَيْسَتَا عَلَى عُمُومِهِمَا، وَأَنَّ اللَّهَ تَعَالَى لَمْ يُرِدْ قَطُّ كُلَّ صُلْحٍ، وَلَا كُلَّ عَقْدٍ، وَأَنَّ امْرَأً لَوْ صَالَحَ عَلَى إبَاحَةِ فَرْجِهِ، أَوْ فَرْجِ امْرَأَتِهِ، أَوْ عَلَى خِنْزِيرٍ، أَوْ عَلَى خَمْرٍ، أَوْ عَلَى تَرْكِ صَلَاةٍ، أَوْ عَلَى إرْقَاقِ حُرٍّ، أَوْ عَقَدَ عَلَى نَفْسِهِ كُلَّ هَذَا لَكَانَ هَذَا صُلْحًا بَاطِلًا لَا يَحِلُّ، وَعَقْدًا فَاسِدًا مَرْدُودًا، فَإِذْ لَا شَكَّ فِي هَذَا فَلَا يَكُونُ صُلْحٌ، وَلَا عَقْدٌ يَجُوزُ إمْضَاؤُهُمَا، إلَّا صُلْحٌ، أَوْ عَقْدٌ: شَهِدَ الْقُرْآنُ وَالسُّنَّةُ بِجَوَازِهِمَا.

L19897 If they say: Yes, but every reconciliation and every contract are binding except a reconciliation or a contract that the Qur'an or the Sunnah has declared invalid? We say: Yes, and this is our position. The Qur'an has commanded obedience to the Messenger of Allah (peace be upon him).

فَإِنْ قَالُوا: نَعَمْ، لَكِنْ كُلُّ صُلْحٍ وَكُلُّ عَقْدٍ فَلَازِمَانِ إلَّا صُلْحًا أَوْ عَقْدًا جَاءَ الْقُرْآنُ أَوْ السُّنَّةُ بِإِبْطَالِهِمَا؟ قُلْنَا: نَعَمْ، وَهُوَ قَوْلُنَا، وَقَدْ جَاءَ الْقُرْآنُ بِالطَّاعَةِ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L19898 And he (peace be upon him) said: "Every condition that is not in the Book of Allah is null and void."

وَقَالَ - عَلَيْهِ السَّلَامُ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» .

L19899–19901 Thus, it is established that the ruling regarding every condition is invalidation, except a condition that the Qur'an or the Sunnah has permitted. Every contract and every settlement is, without doubt, a condition; therefore, the ruling regarding them is perpetual invalidation until the Qur'an or Sunnah validate them. There is nothing in the Qur'an or the Sunnah that legitimizes a settlement in cases of denial or silence. Nor is it valid to waive an oath, nor a settlement made by someone on behalf of a person who did not authorize them, nor a legal acknowledgment imposed upon another - thus all such matters are invalidated with certainty.

فَصَحَّ أَنَّ كُلَّ شَرْطٍ فَحُكْمُهُ الْإِبْطَالُ، إلَّا شَرْطًا جَاءَ بِإِبَاحَتِهِ الْقُرْآنُ أَوْ السُّنَّةُ، وَكُلُّ عَقْدٍ، وَكُلُّ صُلْحٍ فَهُوَ بِلَا شَكٍّ شَرْطٌ، فَحُكْمُهُمَا الْإِبْطَالُ أَبَدًا حَتَّى يُصَحِّحَهُمَا قُرْآنٌ أَوْ سُنَّةٌ، وَلَيْسَ فِي الْقُرْآنِ، وَلَا فِي السُّنَّةِ تَصْحِيحُ الصُّلْحِ عَلَى الْإِنْكَارِ، وَلَا عَلَى السُّكُوتِ، وَلَا عَلَى إسْقَاطِ الْيَمِينِ، وَلَا صُلْحِ إنْسَانٍ عَنْ مَنْ لَمْ يَأْمُرْهُ، وَلَا إقْرَارِهِ عَلَى غَيْرِهِ، فَبَطَلَ كُلُّ ذَلِكَ بِيَقِينٍ.

L19902 As for the hadith stating "reconciliation is permissible among Muslims" and the statement of Umar - may Allah be pleased with him - it is impermissible to base legal rulings on either of them. The narration attributed to the Prophet

وَأَمَّا حَدِيثُ الصُّلْحِ جَائِزٌ بَيْنَ الْمُسْلِمِينَ، وَكَلَامُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فَكِلَاهُمَا لَا يَجُوزُ الْحُكْمُ بِهِ - أَمَّا الرِّوَايَةُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَاقِطَةٌ؛ لِأَنَّهُ انْفَرَدَ بِهَا

[3] **Qur'an references (L19896):** Qur'an 4:29 (An-Nisa); Qur'an 4:128 (An-Nisa); Qur'an 5:1 (Al-Ma'idah).

- peace and blessings be upon him - is invalid, as it is uniquely transmitted by Kathir ibn Abdullah ibn Zayd ibn Umar - who is discarded - with consensus on rejecting him, and narrating from him is not permissible.

كَثِيرُ بْنُ عَبْدِ اللَّهِ بْنِ زَيْدِ بْنِ عُمَرَ - وَهُوَ سَاقِطٌ - مُتَّفَقٌ عَلَى اطِّرَاحِهِ، وَأَنَّ الرِّوَايَةَ عَنْهُ لَا تَحِلُّ.

L19903 As for the narration transmitted from ‘Umar, it was solely reported by ‘Abd al-Malik ibn al-Walīd ibn Ma‘dān from his father—both of whom are of no account. Even if their reports were authentic, they would have been evidence in our favor, for a settlement based on denial or silence must necessarily involve one of two scenarios: either the claimant seeks a legitimate right while the respondent denies or delays a right, or the claimant pursues an invalid claim—with one of these two situations being unavoidable.

وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ فَانْفَرَدَ بِهَا عَبْدُ الْمَلِكِ بْنُ الْوَلِيدِ بْنِ مَعْدَانَ عَنْ أَبِيهِ وَكِلَاهُمَا لَا شَيْءَ، ثُمَّ لَوْ صَحَّا لَكَانَا حُجَّةً لَنَا؛ لِأَنَّ الصُّلْحَ عَلَى الْإِنْكَارِ وَعَلَى السُّكُوتِ، لَا يَخْلُو ضَرُورَةً مِنْ أَحَدِ وَجْهَيْنِ -: إمَّا أَنْ يَكُونَ الطَّالِبُ طَالِبَ حَقٍّ، وَالْمَطْلُوبُ مَانِعُ حَقٍّ أَوْ مُمَاطِلًا لِحَقٍّ - أَوْ يَكُونَ الطَّالِبُ طَالِبَ بَاطِلٍ - وَلَا بُدَّ مِنْ أَحَدِهِمَا.

L19904 If the claimant is in the right, then it is unequivocally forbidden—with no dissent from any Muslim—for the defendant to withhold his right or delay him despite being capable of fulfilling his obligation, thereby compelling him to relinquish part of his entitlement or take what is not lawfully his. In such circumstances, the defendant has unlawfully seized the claimant’s wealth through falsehood, oppression, withholding dues, and deceit—an act explicitly forbidden by the Qur’an’s decree.

فَإِنْ كَانَ الطَّالِبُ مُحِقًّا، فَحَرَامٌ عَلَى الْمَطْلُوبِ بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ أَنْ يَمْنَعَهُ حَقَّهُ، أَوْ أَنْ يُمْطِلَهُ - وَهُوَ قَادِرٌ عَلَى إنْصَافِهِ - حَتَّى يَضْطَرَّهُ إلَى إسْقَاطِهِ بَعْضَ حَقِّهِ، أَوْ أَخْذِ غَيْرِ حَقِّهِ، فَالْمَطْلُوبُ فِي هَذِهِ الْجِهَةِ أَكَلَ مَالَ الطَّالِبِ بِالْبَاطِلِ وَبِالظُّلْمِ، وَالْمَطْلِ، وَالْكَذِبِ، وَهُوَ حَرَامٌ بِنَصِّ الْقُرْآنِ.

L19905 If the claimant’s claim is invalid, it is impermissible for him to pursue a false claim or take anything from the respondent’s wealth without rightful entitlement, as there is no disagreement among Muslims and in accordance with the explicit texts of the Quran and Sunnah. In this context, the claimant unlawfully consumes the respondent’s wealth through falsehood, oppression, and deceit, and this is explicitly forbidden by the Quran.

وَإِنْ كَانَ الطَّالِبُ مُبْطِلًا فَحَرَامٌ عَلَيْهِ الطَّلَبُ بِالْبَاطِلِ، وَأَخْذُ شَيْءٍ مِنْ مَالِ الْمَطْلُوبِ بِغَيْرِ حَقٍّ، بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ وَبِنَصِّ الْقُرْآنِ، وَالسُّنَّةِ، فَالطَّالِبُ فِي هَذِهِ الْجِهَةِ: أَكَلَ مَالَ الْمَطْلُوبِ بِالْبَاطِلِ، وَالظُّلْمِ، وَالْكَذِبِ، وَهَذَا حَرَامٌ بِنَصِّ الْقُرْآنِ.

L19906 By my life, indeed, our astonishment is prolonged at how this matter—more evident than the sun—remains hidden from those who permit settlements without admission. For it necessarily entails the unlawful consumption of forbidden wealth by one of the two reconciling parties in both cases.

وَلَعَمْرِي، إنَّنَا لَيَطُولُ عَجَبُنَا كَيْفَ خَفِيَ هَذَا الَّذِي هُوَ أَشْهَرُ مِنْ الشَّمْسِ عَلَى مَنْ أَجَازَ الصُّلْحَ بِغَيْرِ الْإِقْرَارِ؟ إذْ لَا بُدَّ فِيهِ ضَرُورَةً مِنْ أَكْلِ مَالٍ مُحَرَّمٍ بِالْبَاطِلِ لِأَحَدِ الْمُتَصَالِحَيْنِ فِي كِلَا الْوَجْهَيْنِ.

L19907 As for reconciliation based on abandoning the oath, the oath by which the

وَأَمَّا الصُّلْحُ عَلَى تَرْكِ الْيَمِينِ فَلَا تَخْلُو تِلْكَ الْيَمِينُ الَّتِي يُطْلَبُ بِهَا الْمُنْكِرُ مِنْ أَنْ تَكُونَ صَادِقَةً إِنْ حَلَفَ بِهَا، أَوْ تَكُونَ كَاذِبَةً إِنْ حَلَفَ بِهَا وَلَا سَبِيلَ إِلَى ثَالِثٍ.

فَإِنْ كَانَ الْمَطْلُوبُ كَاذِبًا إِنْ حَلَفَ: فَقَدْ قَدَّمْنَا أَنَّهُ آكِلٌ مَالَ خَصْمِهِ بِالْبَاطِلِ، وَالظُّلْمِ وَالْكَذِبِ، وَلَا يَحِلُّ لَهُ ذَلِكَ.

وَإِنْ كَانَ الْمَطْلُوبُ صَادِقًا إِنْ حَلَفَ حَرَامٌ عَلَى الطَّالِبِ أَنْ يَأْخُذَ مِنْهُ فَلْسًا فَمَا فَوْقَهُ بِالْبَاطِلِ، وَهَذَا لَا خَفَاءَ بِهِ عَلَى أَحَدٍ يَتَأَمَّلُهُ وَيَسْمَعُهُ.

وَأَمَّا مُصَالَحَةُ الْمَرْءِ عَلَى غَيْرِهِ وَإِقْرَارُهُ عَلَى غَيْرِهِ فَهَذَا أَبْطَلُ الْبَاطِلِ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] فَإِقْرَارُ الْمَرْءِ عَلَى غَيْرِهِ كَسْبٌ عَلَى غَيْرِ نَفْسِهِ، فَهُوَ بَاطِلٌ، وَمُصَالَحَتُهُ عَنْ غَيْرِهِ لَا تَخْلُو أَيْضًا مِمَّا قَدَّمْنَا إِمَّا أَنْ يَكُونَ الَّذِي صُولِحَ عَنْهُ مَطْلُوبًا بِبَاطِلٍ، أَوْ مَطْلُوبًا بِحَقٍّ، وَلَا بُدَّ مِنْ أَحَدِهِمَا.

فَإِنْ كَانَ مَطْلُوبًا بِبَاطِلٍ حَرَامٌ عَلَى الطَّالِبِ أَنْ يَأْخُذَ فَلْسًا فَمَا فَوْقَهُ أَوْ شَيْئًا أَصْلًا بِطَلَبٍ بَاطِلٍ فَيَكُونُ أَكْلَ مَالٍ بِالْبَاطِلِ.

وَإِنْ كَانَ الَّذِي صُولِحَ عَنْهُ مَطْلُوبًا بِحَقٍّ، فَإِنْ كَانَ الْمُتَبَرِّعُ بِالصُّلْحِ عَنْهُ ضَامِنًا لِمَا عَلَى الْمَطْلُوبِ فَهَذَا جَائِزٌ، وَالْحَقُّ قَدْ تَحَوَّلَ حِينَئِذٍ عَلَى الْمُقِرِّ، فَإِنَّمَا صَالَحَ حِينَئِذٍ عَنْ نَفْسِهِ لَا عَنْ غَيْرِهِ، وَعَنْ حَقٍّ يَأْخُذُهُ بِهِ الطَّالِبُ كُلَّهُ إِنْ شَاءَ، وَهَذَا جَائِزٌ حَسَنٌ لَا نَمْنَعُ مِنْهُ.

denier is sought must necessarily be either truthful if he swears by it or false if he swears by it; there is no third possibility.

L19908 If the claimant is lying when he swears an oath, we have previously explained that he is consuming his opponent's property by falsehood, oppression, and lying, and this is impermissible for him.

L19909–19910 If the respondent is truthful when he takes the oath, it is forbidden for the claimant to wrongfully take from him even a single coin or anything beyond that. This is obvious to anyone who reflects upon it or hears of it.

L19911 As for a person's settlement on behalf of another or their admission concerning another's liability, this is the most invalid of invalidities due to Allah's statement: "No soul bears [sin] except against itself, nor does any burdened soul bear another's burden" [Al-An'ām 6:164]. A person's admission concerning another constitutes incurring liability for someone other than themselves, thus it is void. Similarly, their settlement on another's behalf is not free from what we have previously established: either the party subject to settlement is claimed against wrongfully or claimed against rightfully, and it must necessarily be one of the two.[4]

L19912 If a wrongful claim is made against someone, it is forbidden for the claimant to take even a single _fils_, anything beyond that, or anything at all by means of such a claim, as this constitutes consuming wealth unlawfully.

L19913 If the person on whose behalf the settlement is made is being pursued for a rightful claim, and the volunteer in the settlement on his behalf is a guarantor for what is owed by the pursued party, then this is permissible. The right is thereby transferred to the admitting party, for he is now settling on his own behalf, not on behalf of another, concerning a claim that the claimant may take all of it, if he so wishes. This is permissible and proper; we do not disallow it.

[4]**Qur'an references (L19911):** Qur'an 6:164 (Al-An'am).

L19914 Likewise, if he guarantees on his behalf part of what is owed by him, there is no distinction.

وَكَذَلِكَ إِنْ ضَمِنَ عَنْهُ بَعْضَ مَا عَلَيْهِ وَلَا فَرْقَ.

L19915 We only prohibit from settling on another's behalf without guaranteeing the obligation incumbent upon him (and this is of utmost clarity), and success is granted by Allah, the Most High.

وَإِنَّمَا نَمْنَعُ مِنْ أَنْ يُصَالِحَ عَنْ غَيْرِهِ دُونَ أَنْ يَضْمَنَ عَنْهُ الْحَقَّ الَّذِي عَلَيْهِ - وَهَذَا فِي غَايَةِ الْبَيَانِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L19916 Through this, it has been established that every reconciliation agreement made without acknowledgment [of rights] is one that makes lawful what is forbidden and makes unlawful what is lawful. If those two narrations had been authentic, they would have constituted decisive proof in our favor against them.

فَقَدْ صَحَّ بِهَذَا أَنَّ كُلَّ صُلْحٍ عَلَى غَيْرِ الْإِقْرَارِ فَهُوَ مُحِلٌّ حَرَامًا وَمُحَرِّمٌ حَلَالًا، ذَانِكَ الْأَثَرَانِ لَوْ صَحَّا لَكَانَا حُجَّةً لَنَا عَلَيْهِمْ قَاطِعَةً.

L19917 As for Muslims concerning their conditions, the conditions of Muslims are those which the Quran and the Sunnah have explicitly prescribed as obligatory or permissible. As for any condition not endorsed by the scriptural text as permissible or obligatory, it does not belong to the conditions of Muslims; rather, it is among the conditions of disbelievers or transgressors, as per the saying of the Messenger of Allah—peace and blessings be upon him: "Every condition not in the Book of Allah is void." Undoubtedly, invalid conditions are not among the conditions of the Muslims.[5]

وَأَمَّا الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ، فَإِنْ شُرُوطَ الْمُسْلِمِينَ هِيَ الشُّرُوطُ الَّتِي جَاءَ الْقُرْآنُ وَجَاءَتْ السُّنَّةُ بِإِيجَابِهَا وَإِبَاحَتِهَا، وَأَمَّا كُلُّ شَرْطٍ لَمْ يَأْتِ النَّصُّ بِإِبَاحَتِهِ أَوْ إِيجَابِهِ فَلَيْسَ مِنْ شُرُوطِ الْمُسْلِمِينَ، بَلْ هُوَ مِنْ شُرُوطِ الْكَافِرِينَ أَوْ الْفَاسِقِينَ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» وَلَيْسَ الْبَاطِلُ مِنْ شُرُوطِ الْمُسْلِمِينَ بِلَا شَكٍّ.

L19918 As for the report concerning Ali, it is an evil report—may Allah protect Ali in his precedence, virtue, and Imamah from enacting injustice while he acknowledges that it is injustice.

وَأَمَّا خَبَرُ عَلِيٍّ فَهُوَ خَبَرُ سُوءٍ، يُعِيذُ اللَّهُ عَلِيًّا فِي سَابِقَتِهِ، وَفَضْلِهِ، وَإِمَامَتِهِ مِنْ أَنْ يُنْفِذَ الْجَوْرَ وَهُوَ يُقِرُّ أَنَّهُ جَوْرٌ.

L19919–19921 Glory be to Allah! Is it permissible for a Muslim to enact oppression? If this were valid, usury would surely be practiced. Adultery and plundering people's wealth; because all of them are injustice.

وَيَا سُبْحَانَ اللَّهِ هَلْ يَجُوزُ لِمُسْلِمٍ أَنْ يُنْفِذَ جَوْرًا؟ لَئِنْ صَحَّ هَذَا لَيُنْفِذَنَّ الرِّبَا، وَالزِّنَى وَالْغَارَةُ عَلَى أَمْوَالِ النَّاسِ؛ لِأَنَّهُ كُلَّهُ جَوْرٌ.

L19922 The flaw in this narration and the calamity stem from its being mursal, for al-Sha'bi never heard a single word from 'Ali. Rather, he undoubtedly took this narration from al-Harith and his counterparts. This constitutes the defect inherent to the mursal.

وَالْآفَةُ فِي هَذَا الْخَبَرِ وَالْبَلِيَّةُ مِنْ قِبَلِ الْإِرْسَالِ؛ لِأَنَّ الشَّعْبِيَّ لَمْ يَسْمَعْ قَطُّ مِنْ عَلِيٍّ كَلِمَةً وَإِنَّمَا أَخَذَ هَذَا الْخَبَرَ بِلَا شَكٍّ، مِنْ قِبَلِ الْحَارِثِ وَأَشْبَاهِهِ، وَهَذَا عَيْبُ الْمُرْسَلِ.

[5] **Hadith references (L19917):** Sunan Ibn Majah 2521.

ثُمَّ الْعَجَبُ مِنْ احْتِجَاجِهِمْ بِهَذِهِ الْبَلِيَّةِ، وَهُمْ أَوَّلُ مُخَالِفٍ لَهَا فَلَا يَرَوْنَ إِنْفَاذَ الْجَوْرِ، لَا فِي صُلْحٍ وَلَا غَيْرِهِ، وَهَذَا تَلَاعُبٌ بِالدِّيَانَةِ، وَضَلَالٌ، وَإِضْلَالٌ.

L19923 Then, the astonishment lies in their citing of this affliction as proof, even though they are the first to oppose it, as they do not recognize the enforcement of injustice—neither in truce nor in other circumstances. This constitutes tampering with religion, misguidance, and leading others astray.

فَإِنْ قَالُوا: قَدْ جَاءَ عَنْ عُمَرَ أَنَّهُ قَالَ: رَدِّدُوا الْخُصُومَ حَتَّى يَصْطَلِحُوا فَإِنَّ فَصْلَ الْقَضَاءِ يُورِّثُ بَيْنَ الْقَوْمِ الضَّغَائِنَ؟ قُلْنَا: هَذَا لَا يَصِحُّ عَنْ عُمَرَ أَصْلًا، لِأَنَّنَا إِنَّمَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَارِبِ بْنِ دِثَارٍ عَنْ عُمَرَ، وَعُمَرُ لَمْ يُدْرِكْهُ مُحَارِبٌ، وَمُحَارِبٌ ثِقَةٌ، فَهُوَ مُرْسَلٌ.

L19924 If they say: "It is reported that 'Umar said: 'Keep sending the disputants back repeatedly until they reconcile, for adjudicating disputes bequeaths grudges among the people,'" we replied: This cannot be authentically attributed to 'Umar at all, for we only narrate it through Muharib ibn Dithar's chain attributed to 'Umar, and Muharib never met 'Umar. Though Muharib is trustworthy, this is a *mursal* narration (with a missing link in the chain).

وَيُعِيذُ اللَّهُ عُمَرَ مِنْ أَنْ يَقُولَ هَذَا الْقَوْلَ فَيَأْمُرُ بِتَرْدِيدِ ذِي الْحَقِّ وَلَا يَقْضِي لَهُ بِحَقِّهِ، هَذَا الظُّلْمُ وَالْجَوْرُ اللَّذَانِ نَزَّهَ اللَّهُ تَعَالَى عُمَرَ فِي إِمَامَتِهِ وَدِينِهِ وَصَرَامَتِهِ فِي الْحَقِّ مِنْ أَنْ يَفُوهَ بِهِ.

L19925 And Allah protects Umar from making such a statement that would oblige the repetition of the claimant's plea without granting them their due right. This is the injustice and tyranny from which Allah the Exalted has declared Umar free—in his leadership, his religion, and his uncompromising adherence to truth—absolving him of ever uttering such words.

ثُمَّ لَيْتَ شِعْرِي أَيُّهَا الْمُحْتَجُّونَ بِهَذَا الْقَوْلِ الَّذِي لَمْ يَصِحَّ قَطُّ عَرِّفُونَا مَا حَدُّ هَذَا التَّرْدِيدِ الَّذِي تُضِيفُونَهُ إِلَى أَمِيرِ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهُ - وَتَحْتَجُّونَ بِهِ وَتَأْمُرُونَ بِهِ؟ أَتَرْدِيدُ سَاعَةٍ فَإِنَّهُ تَرْدِيدٌ فِي اللُّغَةِ بِلَا شَكٍّ، أَمْ تَرْدِيدُ يَوْمٍ، أَمْ تَرْدِيدُ جُمُعَةٍ، أَمْ تَرْدِيدُ شَهْرٍ، أَوْ تَرْدِيدُ سَنَةٍ، أَمْ تَرْدِيدُ بَاقِي الْعُمْرِ؟ فَكُلُّ ذَلِكَ تَرْدِيدٌ، وَلَيْسَ بَعْضُ ذَلِكَ بِاسْمِ التَّرْدِيدِ بِأَوْلَى مِنْ بَعْضٍ، وَكُلُّ مَنْ حَدَّ فِي هَذَا التَّرْدِيدِ حَدًّا فَهُوَ كَذَّابٌ، قَائِلٌ بِالْبَاطِلِ فِي دِينِ اللَّهِ عَزَّ وَجَلَّ.

L19926 Then I wish I knew—O you who cite this baseless statement as evidence—explain to us the definition of this "repetition" you ascribe to the Commander of the Faithful (may Allah be pleased with him), which you invoke and command others to follow! Is it a repetition lasting an hour? For that is undeniably repetition in linguistic terms. Or is it a repetition of a day? A week? A month? A year? Or the remainder of one's life? All these are forms of repetition, yet no specific instance is more deserving of being named "repetition" than another. Whoever defines a fixed duration for this repetition is a liar, falsely asserting claims about the religion of Allah—the Exalted and Glorious.

وَأَيْضًا: فَإِنَّ تَرْكَ الْحُكْمِ بَيْنَهُمْ حَتَّى يَنْزِلَ الْمُحِقُّ عَلَى حُكْمِ الْبَاطِلِ، أَوْ يَتْرُكَ الطَّلَبَ، أَوْ يَمَلَّ مِنْ طَلَبِ الْمُبْطِلِ فَيُعْطِيَهُ مَالَهُ بِالْبَاطِلِ أَشَدُّ تَوْرِيثًا لِلضَّغَائِنِ بَيْنَ الْقَوْمِ مِنْ فَصْلِ الْقَضَاءِ بِلَا شَكٍّ.

L19927 Moreover, refraining from adjudicating between them until the rightful party submits to a false judgment, relinquishes their claim, or wearies of the unjust claimant's persistence and thus surrenders his property unjustly, undeniably breeds lasting enmity among the people far more than a judicial ruling ever would.

L19928 All praise is due to Allah, Who made the chain of transmission (*isnād*) in

our religion a decisive criterion that distinguishes truth from falsehood.

L19929–19931 If a narrator mentions the authentic report from the Prophet (peace and blessings be upon him) via the chain of transmission in Al-Bukhārī - from Ādam ibn Abī Iyās, from Ibn Abī Dhi'b, from Saʿīd al-Maqburī, from Abū Hurayrah - that the Messenger of Allah (peace and blessings be upon him) said: "Whoever..." If someone has wronged his brother in honor or any matter, let him seek absolution from him today before a time comes when there is no dinar or dirham. If he has righteous deeds, they will be taken from him proportionate to his wrongdoing. If he has no good deeds, the sins of his companion will be taken and loaded upon him.

L19932 Indeed, this report stands as one of the strongest proofs in this chapter, for it necessitates seeking release from every injustice. Such release is a necessity that cannot be achieved by denying the rightful claim entirely, as this constitutes persistence in injustice. Rather, release is attained solely through acknowledgment, repentance, remorse, and seeking to be absolved—which is our opinion. There is no inherent permissibility of an amicable settlement here whatsoever. The text instead refers to moving toward absolution, which only occurs by abandoning injustice. Whoever owes property must either restore it equitably or seek release from liability. Whoever has slandered another's honor must seek absolution. Whoever is subject to retribution must either submit to it or seek resolution through the victim's pardon—with nothing beyond this. And success is from Allah, the Most High.

L19933 **Issue: Acknowledgment through reconciliation when valid.**

L19934 ١٢٧١ (1271): Legal Question:

L19935 When the validity of the settlement is confirmed regarding property matters, it is only permissible through one of two methods with no third alternative: either the debtor gives the creditor a portion of what is owed to him, and the creditor willingly absolves him of the remaining debt. Had the creditor wished to claim what he relinquished, he could have done so. This is an

وَالْحَمْدُ لِلَّهِ الَّذِي جَعَلَ الْإِسْنَادَ فِي دِينِنَا فَصْلًا بَيْنَ الْحَقِّ وَالْكَذِبِ.

فَإِنْ ذَكَرَ ذَاكِرٌ الْخَبَرَ الصَّحِيحَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ آدَمَ بْنِ أَبِي إيَاسٍ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ كَانَتْ لَهُ مَظْلَمَةٌ لِأَخِيهِ مِنْ عِرْضِهِ أَوْ شَيْءٍ فَلْيَتَحَلَّلْهُ مِنْهُ الْيَوْمَ قَبْلَ أَنْ لَا يَكُونَ دِينَارٌ وَلَا دِرْهَمٌ، وَإِنْ كَانَ لَهُ عَمَلٌ صَالِحٌ أُخِذَ مِنْهُ بِقَدْرِ مَظْلِمَتِهِ، وَإِنْ لَمْ تَكُنْ لَهُ حَسَنَاتٌ أُخِذَ مِنْ سَيِّئَاتِ صَاحِبِهِ فَحُمِلَ عَلَيْهِ» .

فَإِنْ هَذَا الْخَبَرَ مِنْ أَعْظَمِ حُجَّةٍ فِي هَذَا الْبَابِ، فَإِنَّ فِيهِ إيجَابَ التَّحَلُّلِ مِنْ كُلِّ مَظْلَمَةٍ، وَالتَّحَلُّلُ ضَرُورَةً لَا يَكُونُ بِإِنْكَارِ الْحَقِّ أَصْلًا، بَلْ هَذَا إصْرَارٌ عَلَى الظُّلْمِ، وَإِنَّمَا التَّحَلُّلُ بِالِاعْتِرَافِ، وَالتَّوْبَةِ، وَالنَّدَمِ، وَطَلَبِ أَنْ يُجْعَلَ فِي حِلٍّ فَقَطْ - وَهُوَ قَوْلُنَا، وَلَيْسَ فِيهِ إبَاحَةُ صُلْحٍ أَصْلًا، وَإِنَّمَا فِيهِ الْخُرُوجُ إلَى الْحِلِّ، وَلَا يَكُونُ ذَلِكَ إلَّا بِالْخُرُوجِ عَنْ الظُّلْمِ، فَمَنْ كَانَ قِبَلَهُ مَالٌ أُنْصِفَ مِنْهُ أَوْ تَحَلَّلَ مِنْهُ، وَمَنْ كَانَ قِبَلَهُ سَبُّ عِرْضٍ طَلَبَ التَّحَلُّلَ، وَمَنْ كَانَ قِبَلَهُ قِصَاصٌ اقْتَصَّ مِنْ نَفْسِهِ أَوْ تَحَلَّلَ مِنْهُ بِالْعَفْوِ - وَلَا مَزِيدَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْإِقْرَارُ بِالصُّلْحِ إذَا صَحَّ]

١٢٧١ - مَسْأَلَةٌ:

فَإِذَا صَحَّ الْإِقْرَارُ بِالصُّلْحِ، فَإِمَّا أَنْ يَكُونَ فِي الْمَالِ فَلَا يَجُوزُ إلَّا بِأَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا -: إمَّا أَنْ يُعْطِيَهُ بَعْضَ مَا لَهُ عَلَيْهِ وَيُبْرِئَهُ الَّذِي لَهُ الْحَقُّ مِنْ بَاقِيهِ بِاخْتِيَارِهِ، وَلَوْ شَاءَ أَنْ يَأْخُذَ مَا أَبْرَأَهُ مِنْهُ لَفَعَلَ -: فَهَذَا حَسَنٌ جَائِزٌ بِلَا خِلَافٍ، وَهُوَ فِعْلُ خَيْرٍ.

excellent and unanimously permissible arrangement, constituting a virtuous act.

L19936 Or if the established right is a specific tangible asset—whether present or absent—and the two parties mutually agree that he sells it to him, then this is a valid sale. The rulings of permissibility and prohibition applicable to sales apply here without exception. Alternatively, it may be through leasing where leasing is permissible, due to the command of the Messenger of Allah (peace be upon him) concerning leasing.

L19937 Allah, the Most High, said: "Allah has made trade lawful and made usury unlawful" [Surah Al-Baqarah 2:275].[6]

L19938 It has been reported to us through the chain of al-Layth ibn Saʿd from Jaʿfar ibn Rabīʿah from al-Aʿraj: "'Abdullāh ibn Kaʿb ibn Mālik related to me from his father that he was owed money by ʿAbdullāh ibn Abī Ḥadrad. The Messenger of Allah (peace be upon him) passed by them and said: 'O Kaʿb!' He gestured with his hand as if to say, 'Half.' So he took half of what was due and left the remaining half."

L19939–19940 **Issue: It is not permissible in a settlement that includes a discharge to stipulate a condition of deferment.**

L19941 Issue:

L19942 It is impermissible in a settlement involving partial discharge [of debt] to stipulate deferment in principle, as this constitutes a condition not ordained in the Book of Allah and is therefore void. However, the debt becomes immediately due as an obligation on the debtor, and the creditor may discretionarily grant respite as he wishes without stipulation, for this constitutes an act of goodness.

L19943 **A Legal Question: Settlement Concerning Unspecified Property**

L19944 1273. Issue: It is not permissible to settle a dispute over property of un-

وَإِمَّا أَنْ يَكُونَ الْحَقُّ الْمُقَرُّ بِهِ عَيْنًا مُعَيَّنَةً حَاضِرَةً أَوْ غَائِبَةً فَتَرَاضَيَا عَلَى أَنْ يَبِيعَهَا مِنْهُ، فَهَذَا بَيْعٌ صَحِيحٌ يَجُوزُ فِيهِ مَا يَجُوزُ فِي الْبَيْعِ، وَيَحْرُمُ فِيهِ مَا يَحْرُمُ فِي الْبَيْعِ وَلَا مَزِيدَ، أَوْ بِالْإِجَارَةِ حَيْثُ تَجُوزُ الْإِجَارَةُ، لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمُؤَاجَرَةِ.

قَالَ اللَّهُ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥] .

وَرُوِّينَا مِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ عَنْ الْأَعْرَجِ: حَدَّثَنِي «عَبْدُ اللَّهِ بْنُ كَعْبِ بْنِ مَالِكٍ عَنْ أَبِيهِ أَنَّهُ كَانَ لَهُ عَلَى عَبْدِ اللَّهِ بْنِ أَبِي حَدْرَدٍ مَالٌ فَمَرَّ بِهِمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: أَيَا كَعْبُ فَأَشَارَ بِيَدِهِ كَأَنَّهُ يَقُولُ: النِّصْفَ، فَأَخَذَ نِصْفَ مَا عَلَيْهِ وَتَرَكَ نِصْفَهُ» .

[مَسْأَلَةٌ لَا يَجُوزُ فِي الصُّلْحِ الَّذِي يَكُونُ فِيهِ إبْرَاءٌ شَرْطُ تَأْجِيلٍ]

مَسْأَلَةٌ:

وَلَا يَجُوزُ فِي الصُّلْحِ الَّذِي يَكُونُ فِيهِ إبْرَاءٌ مِنْ الْبَعْضِ شَرْطُ تَأْجِيلٍ أَصْلًا، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ، فَهُوَ بَاطِلٌ، لَكِنَّهُ يَكُونُ حَالًّا فِي الذِّمَّةِ يُنْظِرُهُ بِهِ مَا شَاءَ بِلَا شَرْطٍ، لِأَنَّهُ فِعْلُ خَيْرٍ.

[مَسْأَلَةُ الصُّلْحِ عَلَى مَالٍ مَجْهُولٍ]

[6] **Qur'an references (L19937):** Qur'an 2:275 (Al-Baqarah).

known value, based on the statement of Allah the Exalted: “Do not consume one another’s wealth unjustly, but only through trade by consent” (Quran 4:29). Consent cannot exist in what is fundamentally unknown, for a person might presume their right to be small and thus feel content with it. If they learn it is large, their contentment would cease. However, settlement is permissible regarding matters where the value is known. What remains unknown is deferred until the Day of Reckoning.[7]

١٢٧٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ الصُّلْحُ عَلَى مَالٍ مَجْهُولِ الْقَدْرِ، لِقَوْلِ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] وَالرِّضَا لَا يَكُونُ فِي مَجْهُولٍ أَصْلًا، إِذْ قَدْ يَظُنُّ الْمَرْءُ أَنَّ حَقَّهُ قَلِيلٌ فَتَطِيبُ نَفْسُهُ بِهِ، فَإِذَا عَلِمَ أَنَّهُ كَثِيرٌ لَمْ تَطِبْ نَفْسُهُ بِهِ وَلَكِنْ مَا عُرِفَ قَدْرُهُ جَازَ الصُّلْحُ فِيهِ، وَمَا جُهِلَ فَهُوَ مُؤَخَّرٌ إِلَى يَوْمِ الْحِسَابِ.

L19945 Those who permitted that cited as evidence what we narrated through the chain of Muhammad ibn Ishaq in his *Maghazi* (Military Campaigns) from Hakim ibn Hakim ibn ‘Abbad ibn Hunayf, from Abu Ja‘far Muhammad ibn ‘Ali: “The Messenger of Allah—peace be upon him—sent ‘Ali to Banu Jadhimah after Khalid had inflicted harm upon them. He dispatched him—peace be upon him—with wealth to pay blood money and property compensation, even compensating them for something as minor as a dog’s bowl. When no bloodshed or property loss remained unsettled—all having been duly paid—some wealth remained with him. He asked them: ’Does any bloodshed or property remain uncompensated?’ They replied: ’No.’ He said: ’I give you this remaining wealth as a precaution on behalf of the Messenger of Allah—peace be upon him—to cover anything he might have been unaware of or you might have overlooked.’ He did so, then returned to the Messenger of Allah—peace be upon him—and informed him. The Prophet said: ’You judged rightly and acted excellently.’”

وَقَدْ احْتَجَّ مَنْ أَجَازَ ذَلِكَ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ إِسْحَاقَ فِي مَغَازِيهِ عَنْ حَكِيمِ بْنِ حَكِيمِ بْنِ عَبَّادِ بْنِ حُنَيْفٍ عَنْ أَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيٍّ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ عَلِيًّا إِلَى بَنِي جَذِيمَةَ إِذَا أَوْقَعَ بِهِمْ خَالِدٌ فَبَعَثَهُ - عَلَيْهِ السَّلَامُ - بِمَالٍ فَوَدَى لَهُمْ الدِّمَاءَ وَالْأَمْوَالَ حَتَّى إِنَّهُ لَيَدِيَ لَهُمْ مِيلَغَةَ الْكَلْبِ، حَتَّى إِذَا لَمْ يَبْقَ شَيْءٌ مِنْ مَالٍ وَلَا دَمٍ حَتَّى أَدَّاهُ وَبَقِيَتْ مَعَهُ بَقِيَّةٌ مِنْ الْمَالِ فَقَالَ لَهُمْ: هَلْ بَقِيَ لَكُمْ دَمٌ أَوْ مَالٌ؟ قَالُوا: لَا، قَالَ: فَإِنِّي أُعْطِيكُمْ هَذِهِ الْبَقِيَّةَ مِنْ الْمَالِ احْتِيَاطًا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِمَّا لَمْ يَعْلَمْ وَلَا تَعْلَمُونَ، فَفَعَلَ، فَرَجَعَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَهُ فَقَالَ لَهُ: أَصَبْتَ وَأَحْسَنْتَ» .

L19946 Abu Muhammad said: This is not valid because it is a Mursal narration. Furthermore, it is from Hakim ibn Hakim—who is weak. Even if it were authentic, they would have no proof in it whatsoever, for it does not mention a stipulated settlement conditioned upon seeking an unknown right—and this is what we have rejected. Rather, it refers to a voluntary concession to people who assert no claim at all, acknowledging that no claim remains for them whatsoever. We do not reject voluntary concessions from those against

قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا يَصِحُّ؛ لِأَنَّهُ مُرْسَلٌ، ثُمَّ هُوَ عَنْ حَكِيمِ بْنِ حَكِيمٍ وَهُوَ ضَعِيفٌ - ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ أَصْلًا، لِأَنَّهُ لَيْسَ فِيهِ صُلْحٌ مُشْتَرَطٌ عَلَى طَلَبِ حَقٍّ مَجْهُولٍ - وَهَذَا هُوَ الَّذِي أَنْكَرْنَا، وَإِنَّمَا هُوَ تَطَوُّعٌ لِقَوْمٍ لَا يَدَّعُونَ حَقًّا أَصْلًا، بَلْ هُمْ مُقِرُّونَ بِأَنَّهُمْ لَمْ يَبْقَ لَهُمْ طَلَبٌ أَصْلًا، وَنَحْنُ لَا نُنْكِرُ التَّطَوُّعَ مِمَّنْ لَا يُطْلَبُ بِحَقٍّ، بَلْ هُوَ فِعْلُ خَيْرٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[7] **Qur’an references (L19944):** Qur’an 4:29 (An-Nisa).

whom no right is claimed, for this is indeed an act of goodness. And success is from Allah, the Exalted, alone.

A juristic ruling on intentionally breaking a tooth.

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Settlement is not permissible regarding financial obligations other than those we have mentioned—those established through acknowledgment and evidence—except in four cases only: in khulʿ (we will mention it, God willing, in the Book of Marriage). Allah, the Exalted, said: "And if a woman fears from her husband aversion or neglect, there is no sin upon them if they arrange a settlement between them, for settlement is best" [Quran 4:128].[8]

Or in the intentional breaking of a tooth, the offender may reconcile by dropping retaliation. "Or [as compensation] for intentional injury in lieu of qisas (retaliation), or for killing a person in lieu of qisas—whether settled for less than the diya (blood money), more than it, or involving obligations outside the scope of diya requirements."

The evidence for this is what we mentioned before from the words of Allah, the Exalted: "Do not consume your wealth among yourselves wrongfully, except that it be trade by mutual consent among you" [An-Nisa: 29].[9]

The statement of the Messenger of Allah—peace and blessings be upon him—"Your blood and wealth are inviolable to you," therefore, it is impermissible to dispose of wealth except where the scriptural evidence permits or obligates it.

"By the statement of the Prophet — may the peace and blessings of Allah be upon him —: *'Every condition not in the Book of Allah is void,'* and since a

[8] **Qur'an references (L19949):** Qur'an 4:128 (An-Nisa).
[9] **Qur'an references (L19953):** Qur'an 4:29 (An-Nisa).

[مَسْأَلَةٌ كَسْر سِنٍّ عَمْدًا]

١٢٧٤ - مَسْأَلَةٌ:

وَلَا يَجُوزُ الصُّلْحُ فِي غَيْرِ مَا ذَكَرْنَا مِنْ الْأَمْوَالِ الْوَاجِبَةِ الْمَعْلُومَةِ بِالْإِقْرَارِ وَالْبَيِّنَةِ، إلَّا فِي أَرْبَعَةِ أَوْجُهٍ فَقَطْ -: فِي الْخُلْعِ وَنَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى فِي: (كِتَابِ النِّكَاحِ) قَالَ اللَّهُ تَعَالَى: {وَإِنِ امْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ} [النساء: ١٢٨] .

أَوْ فِي كَسْرِ سِنٍّ عَمْدًا، فَيُصَالِحُ الْكَاسِرُ فِي إسْقَاطِ الْقَوَدِ أَوْ فِي جِرَاحَةٍ عَمْدًا عِوَضًا مِنْ الْقَوَدِ أَوْ فِي قَتْلِ نَفْسٍ عِوَضًا مِنْ الْقَوَدِ بِأَقَلَّ مِنْ الدِّيَةِ، أَوْ بِأَكْثَرَ، وَبِغَيْرِ مَا يَجِبُ فِي الدِّيَةِ.

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَا قَبْلُ مِنْ قَوْلِ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

وَقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَحِلُّ إعْطَاءُ مَالٍ إلَّا حَيْثُ جَاءَ النَّصُّ بِإِبَاحَةِ ذَلِكَ أَوْ إيجَابِهِ.

وَلِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» وَالصُّلْحُ شَرْطٌ فَهُوَ بَاطِلٌ إلَّا حَيْثُ أَبَاحَهُ نَصٌّ وَلَا مَزِيدَ، وَلَمْ يُبِحْ النَّصُّ إلَّا حَيْثُ ذَكَرْنَا فَقَطْ.

settlement is a condition, it is void unless a textual evidence permits it, with no additions. The text permits it only in the cases we have mentioned."[10]

L19956 It was narrated to us through Abu Dawud, from Musaddad, from Al-Muʿtamir ibn Sulayman At-Taymi, from Humaid At-Tawil, from Anas ibn Malik, who said: "Ar-Rubayyiʿ, the sister of Anas ibn An-Nadr, broke the front tooth of a woman. They came to the Prophet—peace be upon him—and he ruled by the Book of Allah: retaliation. Ibn An-Nadr said: 'By Him who sent you with the truth, her tooth shall not be broken today!' The Prophet said: 'O Anas, the Book of Allah is retaliation.' They then accepted prescribed compensation (Arsh) and took it."

رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُسَدَّدٌ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «كَسَرَتْ الرُّبَيِّعُ أُخْتُ أَنَسِ بْنِ النَّضْرِ ثَنِيَّةَ امْرَأَةٍ فَأَتَوْا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَضَى بِكِتَابِ اللَّهِ الْقِصَاصَ فَقَالَ ابْنُ النَّضْرِ: وَالَّذِي بَعَثَك بِالْحَقِّ لَا تُكْسَرُ ثَنِيَّتُهَا الْيَوْمَ، قَالَ: يَا أَنَسُ كِتَابُ اللَّهِ الْقِصَاصُ، فَرَضُوا بِأَرْشٍ أَخَذُوه»

L19957 If it is objected, "You have narrated this report via the chain of Ḥammād ibn Salamah from Thābit al-Bunānī from Anas," then Anas mentioned that it was a wound and that they received the diyah.

فَإِنْ قِيلَ: فَإِنَّ هَذَا الْخَبَرَ رَوَيْتُمُوهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسٍ فَذَكَرَ أَنَّهَا كَانَتْ جِرَاحَةً، وَأَنَّهُمْ أَخَذُوا الدِّيَةَ.

L19958 It was narrated by you all via the chains of Bishr ibn al-Mufaḍḍal and Khālid al-Ḥadhdhā', both of whom reported from Ḥumayd al-Ṭawīl from Anas. Anas mentioned that they pardoned without referring to blood money (diyah) or compensatory injury payment ('arsh).

وَرَوَيْتُمُوهُ مِنْ طَرِيقِ بِشْرِ بْنِ الْمُفَضَّلِ، وَخَالِدٍ الْحَذَّاءِ، وَكِلَاهُمَا عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ أَنَسٍ، فَذَكَرَ أَنَّهُمْ عَفَوْا وَلَمْ يَذْكُرْ دِيَةً وَلَا أَرْشًا.

L19959–19961 You narrated it through the chain of Abū Khālid al-Aḥmar and Muḥammad ibn ʿAbd Allāh al-Anṣārī - both of whom reported from Ḥumayd al-Ṭawīl from Anās - and he mentioned the Prophet's command (peace and blessings be upon him) regarding retaliation exclusively. We replied: Yes. All of this is supremely authentic, with no contradiction between any part of it. This is because Sulaymān, Thābit, Bishr, and Khālid all supplemented the narrations of Abū Khālid and al-Anṣārī by mentioning the pardon from retaliation, whereas al-Anṣārī and Abū Khālid neither mentioned pardon nor stated their refusal to pardon. The addition by a just narrator is acceptable. Sulaymān and Thābit further added beyond what al-Anṣārī, Abū Khālid, and Bishr narrated - the mention of accepting land [as compensation]. These scholars did not mention any disagreement on the matter, and the addition of a just person is accepted. Thabit ruled it to be *diyah* (blood money), while Sulayman ruled it to be *arsh* (injury compensation).

وَرَوَيْتُمُوهُ مِنْ طَرِيقِ أَبِي خَالِدٍ الْأَحْمَرِ، وَمُحَمَّدِ بْنِ عَبْدِ اللَّهِ الْأَنْصَارِيِّ، كِلَاهُمَا عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ أَنَسٍ فَذَكَرَ أَمْرَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقِصَاصِ فَقَطْ؟ قُلْنَا: نَعَمْ، وَكُلُّ ذَلِكَ فِي غَايَةِ الصِّحَّةِ وَلَيْسَ شَيْءٌ مِنْهَا مُخَالِفًا لِسَائِرِ ذَلِكَ؛ لِأَنَّ سُلَيْمَانَ، وَثَابِتًا، وَبِشْرًا، وَخَالِدًا، زَادُوا كُلُّهُمْ عَلَى أَبِي خَالِدٍ، وَالْأَنْصَارِيِّ: الْعَفْوَ عَنْ الْقِصَاصِ، وَلَمْ يَذْكُرْ الْأَنْصَارِيُّ وَلَا أَبُو خَالِدٍ عَفْوًا، وَلَا أَنَّهُمْ لَمْ يَعْفُوا، وَزِيَادَةُ الْعَدْلِ مَقْبُولَةٌ، وَزَادَ سُلَيْمَانُ، وَثَابِتٌ عَلَى الْأَنْصَارِيِّ، وَأَبِي خَالِدٍ، وَبِشْرٍ، ذِكْرَ قَبُولِ الْأَرْضِ وَلَمْ يَذْكُرْ هَؤُلَاءِ خِلَافَ ذَلِكَ، وَزِيَادَةُ الْعَدْلِ مَقْبُولَةٌ، وَقَالَ ثَابِتٌ: دِيَةٌ، وَقَالَ سُلَيْمَانُ: أَرْشٌ.

[10] **Hadith references (L19955):** Sunan Ibn Majah 2521.

وَهَذَا لَيْسَ اخْتِلَافًا، لِأَنَّ كُلَّ دِيَةِ أَرْشٌ وَكُلَّ أَرْشٍ دِيَةٌ، إِلَّا أَنَّ مِنْ ذَلِكَ مَا يَكُونُ مُؤَقَّتًا مَحْدُودًا، وَمِنْهُ مَا يَكُونُ غَيْرَ مُؤَقَّتٍ وَلَا مَحْدُودٍ، وَالتَّوْقِيتُ لَا يُؤْخَذُ إِلَّا بِنَصٍّ وَارِدٍ بِهِ، فَوَجَبَ حَمْلُ مَا رُوِّينَاهُ عَلَى عُمُومِهِ، وَجَوَازُ مَا تَرَاضَوْا عَلَيْهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L19962 This is not a contradiction, for every diyah is arsh and every arsh is diyah, except that some compensations are fixed and limited while others are neither fixed nor limited. Fixing [amounts] is only determined through an explicit textual ruling. Therefore, it is obligatory to interpret what we have narrated according to its general applicability and to uphold the permissibility of what is mutually agreed upon. And success is from Allah, the Most High.

وَأَمَّا اخْتِلَافُ ثَابِتٍ، وَسُلَيْمَانَ، فَقَالَ أَحَدُهُمَا - وَهُوَ ثَابِتٌ -: جِرَاحَةٌ وَأَنَّ أُمَّ الرُّبَيِّعِ الَّتِي أَقْسَمَتْ أَنْ لَا يُقْتَصَّ مِنْهَا، وَقَالَ سُلَيْمَانُ: كَسْرُ سِنٍّ، وَأَنَّ أَنَسَ بْنَ النَّضْرِ أَقْسَمَ أَنْ لَا يُقْتَصَّ مِنْهَا - فَيُمْكِنُ أَنْ يَكُونَا حَدِيثَيْنِ فِي قَضِيَّتَيْنِ، وَيُمْكِنُ أَنْ يَكُونَ حَدِيثٌ وَاحِدٌ فِي قَضِيَّةٍ وَاحِدَةٍ، لِأَنَّ كَسْرَ السِّنِّ جِرَاحَةٌ، لِأَنَّهُ يُدْمِي وَيُؤَثِّرُ فِي اللِّثَةِ فَهِيَ جِرَاحَةٌ، فَزَادَ سُلَيْمَانُ بَيَانًا إِذْ بَيَّنَ أَنَّهُ كَسْرُ سِنٍّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L19963 As for the disagreement between Thābit and Sulaymān: one of them—Thābit—said, "It is an injury," referring to Umm al-Rubayyiʿ, who had sworn that retaliation would not be sought from her. Sulaymān said, "It is a broken tooth," referencing Anas ibn al-Naḍr's oath that retaliation would not be sought from her. These could be two ḥadīths pertaining to two distinct cases or a single ḥadīth in one case, for a broken tooth constitutes an injury—as it causes bleeding and affects the gums, thereby being an injury. Sulaymān provided further clarification by specifying it was a broken tooth. And success is from Allah, the Most High.

وَأَمَّا الْجِرَاحَةُ: فَرُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ دَاوُد بْنِ سُفْيَانَ عَنْ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ أَبَا جَهْمِ بْنَ حُذَيْفَةَ مُصَدِّقًا فَلَاجَّهُ رَجُلٌ فِي صَدَقَتِهِ، فَضَرَبَهُ أَبُو جَهْمٍ فَشَجَّهُ فَأَتَوْا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: الْقَوَدَ يَا رَسُولَ اللَّهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكُمْ كَذَا وَكَذَا؟ فَلَمْ يَرْضَوْا، فَقَالَ: لَكُمْ كَذَا وَكَذَا؟ فَلَمْ يَرْضَوْا، فَقَالَ: لَكُمْ كَذَا وَكَذَا، فَرَضُوا» .

L19964 As for injury: It was narrated to us through the chain of Muhammad ibn Dawud ibn Sufyan from Abd al-Razzaq, who informed us from Ma'mar, from al-Zuhri, from Urwah, from Aishah, the Mother of the Believers, that the Messenger of Allah (peace and blessings be upon him) sent Abu Jahm ibn Hudhayfah as a Zakat collector. A man disputed with him regarding the charity due from him, so Abu Jahm struck him, causing a head wound. They came to the Messenger of Allah (peace and blessings be upon him) and said: "Retaliation, O Messenger of Allah?" The Messenger of Allah (peace and blessings be upon him) said: "You may have such and such." But they were not satisfied. He said: "You may have such and such." Still, they were not satisfied. He then said: "You may have such and such," and they accepted.

فَهَذَا الصُّلْحُ عَلَى الشَّجَّةِ بِمَا يَتَرَاضَى بِهِ الْفَرِيقَانِ.

L19965 Thus, this settlement regarding the head wound is established by what the two parties agree upon.

فَإِنْ قِيلَ: فَإِنَّ هَذَا خَبَرٌ رَوَيْتُمُوهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ رَافِعٍ عَنْ عَبْدِ الرَّزَّاقِ بِالْإِسْنَادِ الْمَذْكُورِ فِيهِ، وَفِيهِ: «فَضَرَبَهُ أَبُو جَهْمٍ» وَلَمْ يَذْكُرْ شَجَّهُ؟ قُلْنَا: هَذِهِ بِلَا شَكٍّ قِصَّةٌ وَاحِدَةٌ،

L19966 If it is said: "But this is a report you have narrated through the chain of Muḥammad ibn Rāfiʿ from ʿAbd al-Razzāq with the chain mentioned therein, and in it is: 'Abū Jahm struck him,' without mentioning that he gashed his

head?" We respond: "This is undoubtedly a single incident and a single report. Muḥammad ibn Dāwūd added clarification by mentioning the gash to his head, while Muḥammad ibn Rāfiʿ did not mention it. The addition by a reliable narrator is acceptable."

وَخَبَرٌ وَاحِدٌ، وَزَادَ مُحَمَّدُ بْنُ دَاوُد بَيَانَ ذِكْرِ شَجَّهِ، وَلَمْ يَذْكُرْهَا مُحَمَّدُ بْنُ رَافِعٍ، وَزِيَادَةُ الْعَدْلِ مَقْبُولَةٌ.

L19967–19969 As for reconciliation concerning homicide: It has been narrated to us through the chain of transmission in Ṣaḥīḥ Muslim: Zuhayr ibn Ḥarb narrated to us, al-Walīd ibn Muslim narrated to us, al-Awzāʿī narrated to us, Yaḥyā ibn Abī Kathīr narrated to us, Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf narrated to us... Abu Hurairah narrated to me: "The Messenger of Allah—may Allah bless him and grant him peace—said after the conquest of Mecca: 'For anyone for whom a person is killed, he has the best of two options: either to accept blood money or to retaliate.'"

وَأَمَّا الصُّلْحُ فِي النَّفْسِ: فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ قَالَ: نا زُهَيْرُ بْنُ حَرْبٍ نا الْوَلِيدُ بْنُ مُسْلِمٍ نا الْأَوْزَاعِيُّ نا يَحْيَى بْنُ أَبِي كَثِيرٍ نا أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ حَدَّثَنِي أَبُو هُرَيْرَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ بَعْدَ فَتْحِ مَكَّةَ: وَمَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ: إمَّا أَنْ يَفْدِيَ، وَإِمَّا أَنْ يَقْتُلَ» .

L19970 If it is said: But you have narrated a report through the chain of Abū Shurayh al-Kaʿbī that the Messenger of God—peace and blessings be upon him—said: "For whom someone is killed after this statement of mine, his family has two preferable choices: either to take the blood money or to kill the killer"?

فَإِنْ قِيلَ: فَهَذَا خَبَرٌ رَوَيْتُمُوهُ مِنْ طَرِيقِ أَبِي شُرَيْحٍ الْكَعْبِيِّ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: فَمَنْ قُتِلَ لَهُ بَعْدَ مَقَالَتِي هَذِهِ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيرَتَيْنِ: بَيْنَ أَنْ يَأْخُذُوا الْعَقْلَ، وَبَيْنَ أَنْ يَقْتُلُوهُ» ؟ .

L19971 We said: Yes, both are valid, true, and permissible. It is permissible for the guardian of the slain to obligate the killer to pay blood money, and it is permissible for the killer to reconcile with the guardian at that very time by offering terms that satisfy him. Thus, both narrations are valid—and with Allah alone, the Exalted, is success.

قُلْنَا: نَعَمْ، كِلَاهُمَا صَحِيحٌ وَحَقٌّ وَجَائِزٌ أَنْ يُلْزِمَ وَلِيُّ الْقَتِيلِ الْقَاتِلَ الدِّيَةَ وَجَائِزٌ أَنْ يُصَالِحَهُ حِينَئِذٍ الْقَاتِلُ بِمَا يُرْضِيهِ بِهِ، فَكِلَا الْخَبَرَيْنِ صَحِيحٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19972 A jurisprudential issue involving the settlement of blood or a specified item in exchange for a specified item.

[مَسْأَلَةٌ صَالَحَ عَنْ دَمٍ أَوْ عَنْ شَيْءٍ مُعَيَّنٍ بِشَيْءٍ مُعَيَّنٍ]

L19973 1275 - Issue: If someone settles a blood claim, a broken tooth, a wound, or a specified thing in exchange for another specified thing, this is permissible. However, if he is entitled to part or all of that compensation, the settlement becomes invalid and his right to qisas (retribution) and other claims is restored. This is because he relinquished his right in exchange for something that was not valid for him; otherwise, he would retain his right. Thus, if that thing was not valid for him, he did not relinquish his right.

١٢٧٥ - مَسْأَلَةٌ: وَمَنْ صَالَحَ عَنْ دَمٍ، أَوْ كَسْرِ سِنٍّ، أَوْ جِرَاحَةٍ، أَوْ عَنْ شَيْءٍ مُعَيَّنٍ بِشَيْءٍ مُعَيَّنٍ، فَذَلِكَ جَائِزٌ، فَإِنْ اسْتَحَقَّ بَعْضَهُ، أَوْ كُلَّهُ بَطَلَتْ الْمُصَالَحَةُ وَعَادَ عَلَى حَقِّهِ فِي الْقَوَدِ وَغَيْرِهِ، لِأَنَّهُ إنَّمَا تَرَكَ حَقَّهُ بِشَيْءٍ لَمْ يَصِحَّ لَهُ وَإِلَّا فَهُوَ عَلَى حَقِّهِ، فَإِذَا لَمْ يَصِحَّ لَهُ ذَلِكَ الشَّيْءُ فَلَمْ يَتْرُكْ حَقَّهُ.

وَكَذَلِكَ لَوْ صَالَحَ مِنْ سِلْعَةٍ بِعَيْنِهَا بِسُكْنَى دَارٍ، أَوْ خِدْمَةِ عَبْدٍ فَمَاتَ الْعَبْدُ، وَانْهَدَمَتْ الدَّارُ، أَوْ اسْتَحَقَّا بَطَلَ الصُّلْحُ وَعَادَ عَلَى حَقِّهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19974 Similarly, if a settlement is made for part of a specific commodity in exchange for the occupancy of a house or the service of a slave, and the slave dies, the house collapses, or they are rightfully claimed, the settlement is invalidated, and the right reverts to the original claimant—and success comes only from Allah, the Exalted.

تَمَّ " كِتَابُ الصُّلْحِ " بِحَمْدِ اللَّهِ وَعَوْنِهِ.

L19975 *The Book of Ṣulḥ (Reconciliation)* has been completed with the praise of Allah and His assistance.



AL-MUHALLA

كِتَابُ الْمُدَايِنَاتِ وَالتَّفْلِيسِ

The Book of Debts and Insolvency

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْمُدَايِنَاتِ وَالتَّفْلِيسِ] [مَسْأَلَةٌ مَنْ ثَبَتَ لِلنَّاسِ عَلَيْهِ حُقُوقٌ]

١٢٧٦ - مَسْأَلَةٌ:

وَمَنْ ثَبَتَ لِلنَّاسِ عَلَيْهِ حُقُوقٌ مِنْ مَالٍ أَوْ مِمَّا يُوجِبُ غُرْمَ مَالٍ بِبَيِّنَةِ عَدْلٍ، أَوْ بِإِقْرَارٍ مِنْهُ صَحِيحٍ: بِيعَ عَلَيْهِ كُلُّ مَا يُوجَدُ لَهُ، وَأُنْصِفَ الْغُرَمَاءَ، وَلَا يَحِلُّ أَنْ يُسْجَنَ أَصْلًا، إلَّا أَنْ يُوجَدَ لَهُ مِنْ نَوْعِ مَا عَلَيْهِ فَيُنْصَفُ النَّاسُ مِنْهُ بِغَيْرِ بَيْعٍ، كَمَنْ عَلَيْهِ دَرَاهِمُ وَوُجِدَتْ لَهُ دَرَاهِمُ، أَوْ عَلَيْهِ طَعَامٌ وَوُجِدَ لَهُ طَعَامٌ، وَهَكَذَا فِي كُلِّ شَيْءٍ لِقَوْلِ اللَّهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] .

«وَلِتَصْوِيبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَوْلَ سَلْمَانَ: أَعْطِ كُلَّ ذِي حَقٍّ حَقَّهُ» ؛ وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَطْلُ الْغَنِيِّ ظُلْمٌ» .

فَسِجْنُهُ مَعَ الْقُدْرَةِ عَلَى إنْصَافِ غُرَمَائِهِ ظُلْمٌ لَهُ وَلَهُمْ مَعًا، وَحُكْمٌ بِمَا لَمْ يُوجِبْهُ اللَّهُ تَعَالَى قَطُّ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَا كَانَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سِجْنٌ قَطُّ -: رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ الْقَاسِمِ بْنِ سَلَامٍ نا أَحْمَدُ بْنُ خَالِدٍ الْوَهْبِيُّ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: حَبْسُ الرَّجُلِ فِي السِّجْنِ بَعْدَ مَا يَعْرِفُ مَا عَلَيْهِ مِنْ الدَّيْنِ ظُلْمٌ.

وَقَالَ الْحَنَفِيُّونَ: لَا يُبَاعُ شَيْءٌ مِنْ مَالِهِ، لَكِنْ يُسْجَنُ - وَإِنْ كَانَ مَالُهُ حَاضِرًا - حَتَّى يَكُونَ هُوَ الَّذِي يُنْصِفُ مِنْ نَفْسِهِ.

[The Book of Debts and Insolvency] [Issue Regarding a Person Against Whom Others Have Established Valid Claims]

1276 - Issue:

Whoever is proven to owe people rights—whether monetary or entailing a monetary liability—through conclusive evidence from upright witnesses or a valid admission of his own: all that he possesses must be sold, and the creditors must be fairly compensated. Imprisonment is not permissible at all unless he is found to possess assets of the same type as his debt, in which case the people are equitably compensated from it without sale. For instance, if one owes dirhams and possesses dirhams, or owes food and possesses food, and so on in all matters, in accordance with Allah's command: "Be upholders of justice" (Quran 4:135).[1]

And for the Messenger of Allah's approval (peace be upon him) of Salman's statement: "Give every right holder his right," and for the statement of the Messenger of Allah (peace be upon him): "The delay in payment by a wealthy person is injustice."

Therefore, imprisoning him despite his ability to equitably settle with his creditors constitutes an injustice to both him and them, and a judgment based on what Allah the Exalted has never ordained, nor His Messenger (peace and blessings be upon him)—for the Messenger of Allah (peace and blessings be upon him) never had a prison at all. It has been narrated to us through the chain of Abū ʿUbayd al-Qāsim ibn Salām: Aḥmad ibn Khālid al-Wahbī narrated to us from Muḥammad ibn Isḥāq from Muḥammad ibn ʿAlī ibn al-Ḥusayn, who said: ʿAlī ibn Abī Ṭālib declared: "Detaining a man in prison after he acknowledges the debt he owes is an injustice."

The Hanafis held: None of his property may be sold, but he is imprisoned—even if his property is present—until he himself discharges the obligation justly from himself.

Then they contradicted themselves, stating: "Except if the debt is in dirhams

[1] **Qur'an references (L19979):** Qur'an 4:135 (An-Nisa).

(silver) and dinars (gold) are found for it, or the debt is in dinars (gold) and dirhams (silver) are found for it - in which case what is available from those is sold to settle the debt owed in the same type."

ثُمَّ تَنَاقَضُوا فَقَالُوا: إلَّا إنْ كَانَ الدَّيْنُ دَرَاهِمَ فَتُوجَدُ لَهُ دَنَانِيرُ، أَوْ يَكُونَ الدَّيْنُ دَنَانِيرَ فَتُوجَدُ لَهُ دَرَاهِمُ، فَإِنَّ الَّذِي يُوجَدُ مِنْ ذَلِكَ يُبَاعُ فِيمَا عَلَيْهِ مِنْهَا.

L19984–19985 Would that I knew what the difference is between selling dinars and buying dirhams, and between selling commodities and purchasing what is incumbent upon them? Verily, Allah, the Exalted, has obligated upon us and upon everyone to be fair to those entitled to their rights, whether they arise from ourselves or from others.

فَلَيْتَ شِعْرِي مَا الْفَرْقُ بَيْنَ بَيْعِ الدَّنَانِيرِ وَابْتِيَاعِ دَرَاهِمَ، وَبَيْنَ بَيْعِ الْعُرُوضِ وَابْتِيَاعِ مَا عَلَيْهِ؟ وَإِنَّمَا أَوْجَبَ اللَّهُ تَعَالَى عَلَيْنَا، وَعَلَى كُلِّ أَحَدٍ إنْصَافَ ذِي الْحَقِّ مِنْ أَنْفُسِنَا، وَمِنْ غَيْرِنَا.

L19986 The Exalted restricted resorting to imprisonment by His saying: "Walk through its expanses and eat of His provision" [Surah Al-Mulk 67:15], and He prescribed attendance at Friday prayer and congregational prayers as obligatory.[2]

وَمَنَعَ تَعَالَى مِنْ السِّجْنِ بِقَوْلِهِ تَعَالَى: {فَامْشُوا فِي مَنَاكِبِهَا وَكُلُوا مِنْ رِزْقِهِ} [الملك: ١٥] وَافْتَرَضَ حُضُورَ الْجُمُعَةِ وَالْجَمَاعَاتِ.

L19987 They prevented the oppressed from attending congregational prayers, from attending the Jumuʿah prayer, and from walking freely across the earth. They prevented the rightful claimant from hastening the attainment of justice for him—despite being capable of that—thus wronging both parties.

فَمَنَعُوا الْمَدِينَ مِنْ حُضُورِ الصَّلَوَاتِ فِي الْجَمَاعَةِ، وَمِنْ حُضُورِ الْجُمُعَةِ، وَمِنْ الْمَشْيِ فِي مَنَاكِبِ الْأَرْضِ وَمَنَعُوا صَاحِبَ الْحَقِّ مِنْ تَعْجِيلِ إنْصَافِهِ - وَهُمْ قَادِرُونَ عَلَى ذَلِكَ - فَظَلَمُوا الْفَرِيقَيْنِ.

L19988 They cited weak narrations as evidence—among them is a report through the *isnād* of Abū Bakr ibn ʻAyyāsh from Anas: "That the Messenger of Allāh (peace and blessings be upon him) detained [someone] on the basis of an accusation."

وَاحْتَجُّوا بِآثَارٍ وَاهِيَةٍ -: مِنْهَا: رِوَايَةٌ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ عَيَّاشٍ عَنْ أَنَسٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَبَسَ فِي تُهْمَةٍ» .

L19989 Via the chain of Abd al-Razzaq, from Bahz ibn Hakim, from his father, from his grandfather: "The Messenger of Allah (peace and blessings be upon him) detained someone on suspicion."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ بَهْزِ بْنِ حَكِيمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَبَسَ فِي تُهْمَةٍ» .

L19990 From the narration of Abū Mijlaz: "Two men from Juhaynah co-owned a slave. One of them freed him, so the Messenger of Allah (peace be upon him) detained the slave until the other owner sold his share." From Al-Ḥasan: "A group of people fought, and a person was slain among them. The Messenger of Allah (peace be upon him) sent a message to them and imprisoned them."

وَمِنْ طَرِيقِ أَبِي مِجْلَزٍ: «أَنَّ غُلَامَيْنِ مِنْ جُهَيْنَةَ كَانَ بَيْنَهُمَا غُلَامٌ فَأَعْتَقَهُ أَحَدُهُمَا فَحَبَسَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى بَاعَ غَنِيمَتَهُ» وَعَنْ الْحَسَنِ: «أَنَّ قَوْمًا اقْتَتَلُوا فَقُتِلَ بَيْنَهُمْ قَتِيلٌ فَبَعَثَ إلَيْهِمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَحَبَسَهُمْ» .

[2] **Qur'an references (L19986):** Qur'an 67:15 (Al-Mulk).

قَالَ أَبُو مُحَمَّد: كُلُّ هَذَا بَاطِلٌ، أَمَّا حَدِيثُ أَنَسٍ فَفِيهِ أَبُو بَكْرِ بْنُ عَيَّاشٍ وَهُوَ ضَعِيفٌ وَانْفَرَدَ عَنْهُ أَيْضًا إبْرَاهِيمُ بْنُ زَكَرِيَّا الْوَاسِطِيُّ وَلَا يُدْرَى مَنْ هُوَ، وَحَدِيثُ بَهْزِ بْنِ حَكِيمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ ضَعِيفٌ.

L19991 Abu Muhammad said: All of this is baseless. As for the hadith of Anas, in its chain is Abu Bakr ibn Ayyash—who is weak—and Ibrahim ibn Zakariyya al-Wasiti—an unknown narrator (majhul)—is the only one who narrated it from him. The hadith of Bahz ibn Hakim from his father from his grandfather is weak.

وَمِنْ هَذِهِ الطَّرِيقِ بِعَيْنِهَا فِيمَنْ مَنَعَ الزَّكَاةَ: «إنَّا آخِذُوهَا وَشَطْرَ مَالِهِ عَزْمَةٌ مِنْ عَزَمَاتِ رَبِّنَا» فَإِنْ احْتَجُّوا بِهِ فِي الْحَبْسِ فِي التُّهَمَةِ فَلْيَأْخُذُوا بِرِوَايَتِهِ هَذِهِ وَإِلَّا فَالْقَوْمُ مُتَلَاعِبُونَ بِالدِّينِ.

L19992 From this very precedent regarding one who withholds zakāt: "We shall seize it and half his wealth as a binding command among the irrevocable decrees of our Lord." If they cite this as evidence for imprisonment based on mere suspicion, let them adhere to this narration of the Prophet; otherwise, these people are toying with the religion.

فَإِنْ قَالُوا: هَذَا مَنْسُوخٌ؟ قِيلَ لَهُمْ: أَتَرَوْنَ خَصْمَكُمْ يَعْجِزُ عَنْ أَنْ يَقُولَ لَكُمْ: وَالْحَبْسُ فِي التُّهَمَةِ مَنْسُوخٌ بِقَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» ؟ وَالْحَبْسُ فِي غَيْرِ التُّهَمَةِ مَنْسُوخٌ بِوُجُوبِ حُضُورِ الْجُمُعَةِ، وَالْجَمَاعَاتِ وَحَدِيثُ الْحَبْسِ حَتَّى بَاعَ غَنِيمَتَهُ مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ.

L19993–19994 If they say: "This is abrogated?" It is said to them: "Do you think your opponent is incapable of saying to you: 'Imprisonment based on suspicion is abrogated by the statement of the Prophet (may the peace and blessings of Allah be upon him), "Beware of suspicion, for suspicion is the most false of speech"?' And imprisonment not based on suspicion is abrogated by the obligation to attend Friday prayer and congregational prayers. The hadith stating that imprisonment continues until he sold his booty is *mursal*, and there is no authoritative evidence in a *mursal* hadith."

وَلَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ قَدْ يُخَافُ عَلَيْهِ الْهَرَبُ بِغَنِيمَتِهِ فَحُبِسَ لِيَبِيعَهَا، وَهَذَا حَقٌّ لَا نُنْكِرُهُ وَلَيْسَ فِيهِ الْحَبْسُ الَّذِي يَرَوْنَ هُمْ، وَلَا أَنَّهُ امْتَنَعَ مِنْ بَيْعِهَا. وَقَدْ يَكُونُ الضَّمِيرُ الَّذِي فِي بَاعَهَا رَاجِعًا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L19995 Even if it were valid, they would have no argument in it, because it is feared that he might flee with his plunder, so he was detained to compel him to sell it. This is a right we do not deny, and it does not involve the detention they assert, nor that he refused to sell it. The pronoun in "he sold it" may refer back to the Messenger of Allah—peace be upon him.

وَقَدْ يَكُونُ هَذَا الْحَبْسُ إمْسَاكًا فِي الْمَدِينَةِ.

L19996 This detention may constitute confinement within the city.

وَلَيْسَ فِيهِ أَصْلًا أَنَّهُ حُبِسَ فِي سِجْنٍ - فَلَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا، وَحَدِيثُ الْحَسَنِ مُرْسَلٌ.

L19997 And there is no basis in it at all that he was imprisoned in a prison—so they have no argument in it at all, and the narration of al-Ḥasan is mursal.

وَأَيْضًا: فَإِنَّمَا هُوَ حَبْسٌ فِي قَتِيلٍ، وَحَاشَا لِلَّهِ أَنْ يَكُونَ - عَلَيْهِ السَّلَامُ - يَحْبِسُ مَنْ لَمْ يَصِحَّ عَلَيْهِ قَتْلٌ بِسِجْنٍ فَيَسْجُنُ الْبَرِيءَ مَعَ النُّطَفِ، هَذَا فِعْلُ أَهْلِ الظُّلْمِ وَالْعُدْوَانِ،

L19998 Furthermore, it is merely imprisonment related to a slain person. Allah forbid that the Prophet—peace be upon him—would imprison someone for whom imprisonment for killing is not valid, thereby confining the innocent alongside the guilty. This is the practice of oppressors and enemies, not the conduct of the Prophet—peace be upon him. By Allah, ʿAbdullāh ibn

Sahl—may Allah be pleased with him—was killed while being among the most virtuous Companions—may Allah be pleased with them—amidst the worst of the community, the Jews—may Allah curse them. Yet the Prophet—peace be upon him—did not deem it permissible to imprison them. How then could he imprison a group of Muslims based on mere suspicion? This is sheer falsehood, beyond doubt.

L19999 Then, I wish I knew: How long will this detention under suspicion of blood-related crimes and other [accusations] besides it last? For whenever they enforce a punishment, they only increase their unjust control through falsehood.

لَا فِعْلُهُ - عَلَيْهِ السَّلَامُ -، وَاَللَّهِ لَقَدْ قُتِلَ عَبْدُ اللَّهِ بْنُ سَهْلٍ رِضْوَانُ اللَّهِ عَلَيْهِ وَهُوَ مِنْ أَفَاضِلِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِيمَا بَيْنَ أَظْهُرِ شَرِّ الْأُمَّةِ وَهُمْ الْيَهُودُ لَعَنَهُمْ اللَّهُ فَمَا اسْتَجَازَ - عَلَيْهِ السَّلَامُ - سِجْنَهُمْ، فَكَيْفَ أَنْ يَسْجُنَ فِي تُهْمَةٍ قَوْمًا مِنْ الْمُسْلِمِينَ؟ فَهَذَا الْبَاطِلُ الَّذِي لَا شَكَّ فِيهِ.

ثُمَّ لَيْتَ شِعْرِي إلَى مَتَى يَكُونُ هَذَا الْحَبْسُ فِي التُّهَمَةِ بِالدَّمِ وَغَيْرِهِ؟ فَإِنْ حَدُّوا حَدًّا زَادُوا فِي التَّحَكُّمِ بِالْبَاطِلِ.

وَإِنْ قَالُوا: إِلَى الْأَبَدِ، تَرَكُوا قَوْلَهُمْ، فَهُمْ أَبَدًا يَتَكَسَّعُونَ فِي ظُلْمَةِ الْخَطَأِ.

L20000 And if they say, “Forever,” they have contradicted their own claim, for they will forever stumble in the darkness of error.

وَاحْتَجُّوا أَيْضًا بِقَوْلِ اللَّهِ تَعَالَى: {وَاللاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ فَاسْتَشْهِدُوا عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلا} [النساء: ١٥] هَذِهِ أَحْكَامٌ مَنْسُوخَةٌ.

L20001 They also cited as evidence the words of Allah, the Most High: “And those who commit adultery among your women—seek testimony from four witnesses among you against them. If they testify, then confine them to their houses until death takes them or Allah ordains a way for them.” [An-Nisa: 15] These are abrogated rulings.[1]

فَمَنْ أَضَلَّ مِمَّنْ يَسْتَشْهِدُ بِآيَةٍ قَدْ نُسِخَتْ، وَبَطَلَ حُكْمُهَا فِيمَا لَمْ يَنْزِلْ فِيهِ أَيْضًا، وَفِيمَا لَيْسَ فِيهَا مِنْهُ لَا نَصَّ وَلَا دَلِيلَ وَلَا أَثَرَ.

L20002 Who is more astray than one who cites as evidence a verse that has been abrogated - its ruling invalidated also concerning matters for which it was not revealed, and in matters where there is nothing from it [the verse], neither an explicit text, nor proof, nor trace?

وَالْحَقُّ فِي هَذَا هُوَ قَوْلُنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: «أُصِيبَ رَجُلٌ فِي ثِمَارٍ ابْتَاعَهَا فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَثُرَ دَيْنُهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَصَدَّقُوا عَلَيْهِ؟ فَتَصَدَّقَ النَّاسُ عَلَيْهِ، فَلَمْ يَبْلُغْ ذَلِكَ وَفَاءَ دَيْنِهِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِغُرَمَائِهِ خُذُوا مَا وَجَدْتُمْ وَلَيْسَ لَكُمْ إِلَّا ذَلِكَ» .

L20003–20004 The correct ruling in this matter is our view, as we have been narrated through the transmission of Muslim ibn al-Ḥajjāj: Qutaybah ibn Saʿīd narrated to us, al-Layth (that is, Ibn Saʿd) narrated to us, from Bukayr ibn al-Ashajj, from ʿIyāḍ ibn ʿAbdullāh, from Abū Saʿīd al-Khudrī, who said: “A man incurred a loss on fruits he had purchased during the lifetime of the Messenger of Allah—peace and blessings be upon him—and his debt grew excessive. The Messenger of Allah—peace and blessings be upon him—said, ’Give charity to him.’ The people gave him charity, but this did not suffice to settle his debt. The Messenger of Allah—peace and blessings be upon him—then said to his creditors, ’Take what is available, for you have no right except to that.’”

فَهَذَا نَصٌّ جَلِيٌّ عَلَى أَنْ لَيْسَ لَهُمْ شَيْءٌ غَيْرَ مَا وَجَدُوا لَهُ، وَأَنَّهُ لَيْسَ لَهُمْ حَبْسُهُ، وَأَنَّ مَا وُجِدَ مِنْ مَالِهِ لِلْغُرَمَاءِ، وَهَذَا هُوَ الْحَقُّ الَّذِي لَا يَحِلُّ سِوَاهُ، فَإِنْ قِيلَ: رُوِيَ أَنَّهُ - عَلَيْهِ السَّلَامُ - بَاعَ لَهُمْ مَالَ مُعَاذٍ؟ قُلْنَا: هَكَذَا نَقُولُ - وَإِنْ لَمْ يَصِحَّ مِنْ طَرِيقِ السَّنَدِ، لِأَنَّهُ مُرْسَلٌ، لَكِنَّ الْحُكْمَ أَنَّهُ إِنَّمَا يَقْضِي لَهُمْ بِعَيْنِ مَالِهِ، ثُمَّ يُبَاعُ لَهُمْ وَيُقَسِّمُ عَلَيْهِمُ الْحِصَصُ؛ لِأَنَّهُ لَا سَبِيلَ إِلَى إِنْصَافِهِمْ بِغَيْرِ هَذَا.

L20005 This is a clear text stating they have no right to anything except what they found belonging to him, that they may not withhold it, and that any of his wealth found belongs to the creditors. This is the correct ruling, and no alternative is permissible. If it is said: “It is narrated that he (peace be upon him) sold Muʿādh’s property to them?” We reply: “This is our position (even if the narration is not validated through its chain, as it is *mursal*)—yet the legal ruling is that the judge must rule they are entitled to the specific property itself. It is then sold, and the shares are distributed among them, for there is no way to ensure their fair treatment otherwise.”

[1] **Qur’an references (L20001):** Qur’an 4:15 (An-Nisa).

L20006 If they deceive by citing what was narrated from ʿUmar, ʿAlī, Shurayḥ, and al-Shaʿbī, the narration about ʿUmar is only through Saʿīd ibn al-Musayyab: that ʿUmar detained the male agnates of a deceased person - the men, not the women - who covered his expenses, and that Nāfiʿ ibn ʿAbd al-Ḥārith bought a house for imprisonment from Ṣafwān ibn Umayyah for four thousand. If ʿUmar disapproved, then Ṣafwān would receive four hundred.

فَإِنْ مَوَّهُوا بِمَا رُوِيَ عَنْ عُمَرَ، وَعَلِيٍّ، وَشُرَيْحٍ، وَالشَّعْبِيِّ، فَإِنَّ الرِّوَايَةَ عَنْ عُمَرَ إِنَّمَا هِيَ مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ حَبَسَ عَصَبَةَ مَنْفُوسٍ يُنْفِقُونَ عَلَيْهِ الرِّجَالُ دُونَ النِّسَاءِ - وَأَنَّ نَافِعَ بْنَ عَبْدِ الْحَارِثِ اشْتَرَى دَارًا لِلسِّجْنِ مِنْ صَفْوَانَ بْنِ أُمَيَّةَ بِأَرْبَعَةِ آلَافٍ فَإِنْ لَمْ يَرْضَ عُمَرُ فَلِصَفْوَانَ أَرْبَعُمِائَةٍ.

L20007 These two reports provide no valid proof for them, because ʿUmar's custodial restraint of the agnates for the child's maintenance is merely retention, a judicial decision, and limitation—not imprisonment, since their refusal is not recorded.

وَهَذَانِ خَبَرَانِ لَا حُجَّةَ لَهُمْ فِيهِمَا، لِأَنَّ حَبْسَ عُمَرَ لِلْعَصَبَةِ لِلنَّفَقَةِ عَلَى الصَّبِيِّ إِنَّمَا هُوَ إِمْسَاكٌ وَحُكْمٌ وَقَصْرٌ، لَا سِجْنٌ، لِأَنَّ مِنَ الْبَاطِلِ أَنْ يَسْجُنَهُمْ أَبَدًا وَلَمْ يُذْكَرْ عَنْهُمُ امْتِنَاعٌ.

L20008–20010 Then they do not affirm the obligation of financial maintenance upon the paternal male relatives, [for] they have indeed opposed ʿUmar. How can they cite him as evidence in a matter where they were the first to oppose him? As for the second narration: none of them consider it a valid sale, but rather a defective and annulled one. How can a Muslim legitimize invoking a ruling they deem invalid? What is reliably preserved from ʿUmar aligns with our position, in accordance with what we will clarify. After this (if Allah, the Exalted, wills), the narration transmitted from Ali states that he was imprisoned due to debt. This narration comes through Jabir al-Juʿfi, who is a liar.

ثُمَّ هُمْ لَا يَقُولُونَ بِإِيجَابِ النَّفَقَةِ عَلَى الْعَصَبَةِ، فَقَدْ خَالَفُوا عُمَرَ، فَكَيْفَ يَحْتَجُّونَ بِهِ فِي شَيْءٍ هُمْ أَوَّلُ مُخَالِفٍ لَهُ؟ وَأَمَّا الْخَبَرُ الثَّانِي: فَكُلُّهُمْ لَا يَرَاهُ بَيْعًا صَحِيحًا، بَلْ فَاسِدًا مَفْسُوخًا، فَكَيْفَ يَسْتَجِيزُ مُسْلِمٌ أَنْ يَحْتَجَّ بِحُكْمٍ يَرَاهُ بَاطِلًا؟ وَالْمَحْفُوظُ عَنْ عُمَرَ مِثْلُ قَوْلِنَا عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى، وَالرِّوَايَةُ عَنْ عَلِيٍّ أَنَّهُ حَبَسَ فِي دَيْنٍ: هِيَ مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ وَهُوَ كَذَّابٌ.

L20011 And it has been narrated to us from ʿAlī a differing position regarding this matter, as we have mentioned and will mention.

وَقَدْ رُوِّينَا عَنْ عَلِيٍّ خِلَافَ هَذَا كَمَا ذَكَرْنَا وَنَذْكُرُ.

L20012 As for Shuraih and Al-Shaʿbī, we do not consider their legal rulings as authoritative evidence. The closest interpretation is that it is established from them that both the worker and the employer may annul the hire contract at will, even if the other party objects. Yet both of them contradict this ruling. Thus, Al-Shaʿbī and Shuraih are deemed authoritative when they wish, yet not authoritative when they wish—ugh! Such minds and religious stances! We previously cited ʿAlī's reported disapproval of imprisonment.

وَأَمَّا شُرَيْحٌ، وَالشَّعْبِيُّ، فَمَا عَلِمْنَا حُكْمَهُمَا حُجَّةً، وَأَقْرَبُ ذَلِكَ أَنَّهُمَا قَدْ ثَبَتَ عَنْهُمَا أَنَّ الْأَجِيرَ، وَالْمُسْتَأْجِرَ - كُلُّ وَاحِدٍ مِنْهُمَا يَفْسَخُ الْإِجَارَةَ إِذَا شَاءَ، وَإِنْ كَرِهَ الْآخَرُ، وَهُمْ كُلُّهُمْ مُخَالِفٌ لِهَذَا الْحُكْمِ، فَالشَّعْبِيُّ، وَشُرَيْحٌ حُجَّةٌ إِذَا اشْتَهَوْا، وَلَيْسَا حُجَّةً إِذَا اشْتَهَوْا، أُفٍّ لِهَذِهِ الْعُقُولِ، وَالْأَدْيَانِ، وَقَدْ ذَكَرْنَا قَبْلُ عَنْ عَلِيٍّ إِنْكَارَ السِّجْنِ.

L20013 It has been narrated to us from Umar ibn al-Khattab—as we have received it through the chain of Malik from Umar ibn Abd al-Rahman ibn Dilāf from his

وَقَدْ رُوِّينَا عَنْ عُمَرَ مَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ عُمَرَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ دِلَافٍ عَنْ أَبِيهِ أَنَّ رَجُلًا مِنْ جُهَيْنَةَ كَانَ يَشْتَرِي الرَّوَاحِلَ إِلَى أَجَلٍ فَيُغَالِي بِهَا فَأَفْلَسَ، فَرُفِعَ إِلَى عُمَرَ بْنِ الْخَطَّابِ؟ قَالَ: أَمَّا بَعْدُ أَيُّهَا النَّاسُ، فَإِنَّ الْأَسْفَعَ أَسْفَعَ بَنِي جُهَيْنَةَ رَضِيَ مِنْ دِينِهِ وَأَمَانَتِهِ بِأَنْ يُقَالَ: سَبَقَ الْحَاجُّ، وَأَنَّهُ ادَّانَ مُعْرِضًا، فَأَصْبَحَ قَدْ دِينَ بِهِ، فَمَنْ كَانَ لَهُ عَلَيْهِ شَيْءٌ فَلْيَغْدُ بِالْغَدَاةِ؟ فَإِنَّا قَاسِمُونَ مَالَهُ بِالْحِصَصِ - وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ.

From the path of Abū 'Ubayd, Ibn Abī Zā'ida reported to us from Ismā'īl ibn Ibrāhīm ibn Muhājir from 'Abd al-Malik ibn 'Umayr, who said: When a man would come to 'Alī ibn Abī Ṭālib with another man owing him a debt and say, "Imprison him?" 'Alī would ask, "Does he own property?" If the claimant said, "Yes, he has indeed hidden property," 'Alī would respond: "Produce clear evidence that he has hidden it. Otherwise, we will require him to swear by Allah that he did not hide it."

L20014

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا ابْنُ أَبِي زَائِدَةَ عَنْ إِسْمَاعِيلَ بْنِ إِبْرَاهِيمَ بْنِ مُهَاجِرٍ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ قَالَ: كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ إِذَا أَتَاهُ رَجُلٌ بِرَجُلٍ لَهُ عَلَيْهِ دَيْنٌ فَقَالَ: أَحْبِسْهُ؟ قَالَ لَهُ عَلِيٌّ: أَلَهُ مَالٌ؟ فَإِنْ قَالَ: نَعَمْ، قَدْ لَجَأَهُ مَالٌ؟ قَالَ: أَقِمْ الْبَيِّنَةَ عَلَى أَنَّهُ لَجَأَهُ وَإِلَّا أَحْلَفْنَاهُ بِاللَّهِ مَا لَجَأَهُ.

Via Abu 'Ubayd's chain of transmission: Ahmad ibn 'Uthman informed us from 'Abdullah ibn al-Mubarak, from Muhammad ibn Sulaym, from Ghalib al-Qattan, from Abu al-Muhazzim, from Abu Hurayrah: A man came to him with another and said, "I have a debt against this man." He asked the other, "What do you say?" He replied, "He has told the truth." He said, "Repay him." The man said, "I am unable to pay." He said to the other, "What do you want?" He said, "Imprison him?" Abu Hurayrah said, "No, but he should work to earn for you, himself, and his dependents." Ghalib al-Qattan said: I witnessed al-Hasan - while serving as a judge - issuing a ruling similar to that.

L20015

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا أَحْمَدُ بْنُ عُثْمَانَ عَنْ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ مُحَمَّدِ بْنِ سُلَيْمٍ عَنْ غَالِبٍ الْقَطَّانِ عَنْ أَبِي الْمُهَزِّمِ عَنْ أَبِي هُرَيْرَةَ: أَنَّ رَجُلًا أَتَاهُ بِآخَرَ فَقَالَ لَهُ إِنَّ لِي عَلَى هَذَا دَيْنًا؟ فَقَالَ لِلْآخَرِ: مَا تَقُولُ؟ قَالَ: صَدَقَ؟ قَالَ: فَاقْضِهِ قَالَ: إِنِّي مُعْسِرٌ، فَقَالَ لِلْآخَرِ: مَا تُرِيدُ؟ قَالَ: أَحْبِسُهُ؟ قَالَ أَبُو هُرَيْرَةَ: لَا، وَلَكِنْ يَطْلُبُ لَك وَلِنَفْسِهِ وَلِعِيَالِهِ - قَالَ غَالِبٌ الْقَطَّانُ: وَشَهِدْت الْحَسَنَ - وَهُوَ عَلَى الْقَضَاءِ - قَضَى بِمِثْلِ ذَلِكَ.

And from the narration of Ibn Abi Shaybah through Zayd ibn Hubab and Ubayd Allah—both transmitting from Abu Hilal, from Ghalib al-Qattan, from Abu al-Muhazzim, from Abu Hurayrah—who mentioned it as Ibn Abi Shaybah had cited it. Ibn Abi Shaybah added in his narration that Abu Hurayrah said to the creditor: "Do you know of any liquid assets belonging to him so

L20016–20018

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ زَيْدِ بْنِ حُبَابٍ، وَعُبَيْدِ اللَّهِ كِلَاهُمَا عَنْ أَبِي هِلَالٍ عَنْ غَالِبٍ الْقَطَّانِ عَنْ أَبِي الْمُهَزِّمِ عَنْ أَبِي هُرَيْرَةَ فَذَكَرَهُ كَمَا أَوْرَدْنَاهُ - وَزَادَ فِيهِ أَنَّ أَبَا

I may seize it for you?" The creditor replied: "No." He said: "Do you know of any immovable property he owns?" "Shall I break it?" He said: "No," then he mentioned his refusal to detain him as we have cited.

L20019 It is reported from 'Umar ibn 'Abd al-'Azīz that he ruled on the matter: the debtor's property should be distributed among the creditors, and he is then to be left until Allah provides for him.

L20020 Muhammad ibn Sa'eed ibn Nabat narrated to us, Ahmad ibn 'Abd al-Baseer narrated to us, Qasim ibn Asbagh narrated to us, Muhammad ibn 'Abd al-Salam al-Khushani narrated to us, Muhammad ibn al-Muthanna narrated to us, Abu 'Amir al-'Aqadi narrated to us from 'Amr ibn Maymun ibn Mihran: that 'Umar ibn 'Abd al-'Aziz would rent out the insolvent person in the worst kind of craft.

L20021 Abu Muhammad said: Allah, the Exalted, has commanded upholding justice and prohibited delaying payment and imprisonment. Imprisonment constitutes delayed payment and injustice, and preventing the rightful claimant from expediting their right is delayed payment and injustice. Similarly, neglecting one whose bankruptcy has been verified and who refuses to work for wages to repay his creditors is delayed payment and injustice. None of this is permissible. It is obligatory upon him to treat his creditors equitably and grant them their due. If he refuses to do so despite being capable of working for wages, is he not to be compelled? - and success is from Allah, the Exalted.

L20022 From the chain of Abū 'Ubayd: Yaḥyā ibn Bukayr related to me from al-Layth ibn Sa'd from 'Ubayd Allāh ibn Abī Ja'far regarding the bankrupt person. He said: He should not be detained, but rather he should be released to work toward settling his debt.

L20023 And this is the opinion of al-Layth ibn Sa'd—and Abū Sulaymān and his companions also hold this opinion—and success is with Allah, the Most High.

L20024 **A legal case concerning the debtor if no assets are found in his possession.**

هُرَيْرَةَ قَالَ لِصَاحِبِ الدَّيْنِ: هَلْ تَعْلَمُ لَهُ عَيْنُ مَالٍ فَآخُذُهُ بِهِ؟ قَالَ: لَا، قَالَ: هَلْ تَعْلَمُ لَهُ عَقَارًا أَكْسِرُهُ؟ قَالَ: لَا، ثُمَّ ذَكَرَ امْتِنَاعَهُ مِنْ أَنْ يَحْبِسَهُ كَمَا أَوْرَدْنَاهُ.

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ قَضَى فِي ذَلِكَ بِأَنْ يُقْسَمَ مَالُهُ بَيْنَ الْغُرَمَاءِ ثُمَّ يُتْرَكُ حَتَّى يَرْزُقَهُ اللَّهُ.

ونا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا أَبُو عَامِرٍ الْعَقَدِيُّ عَنْ عَمْرِو بْنِ مَيْمُونِ بْنِ مِهْرَانَ: أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ كَانَ يُؤَاجِرُ الْمُفْلِسَ فِي شَرِّ صَنْعَةٍ.

قَالَ أَبُو مُحَمَّد: أَمَرَ اللَّهُ تَعَالَى بِالْقِيَامِ بِالْقِسْطِ، وَنَهَى عَنْ الْمَطْلِ وَالسِّجْنِ، فَالسِّجْنُ مَطْلٌ وَظُلْمٌ، وَمَنْعُ الَّذِي لَهُ الْحَقُّ مِنْ تَعْجِيلِ حَقِّهِ مَطْلٌ وَظُلْمٌ، ثُمَّ تَرْكُ مَنْ صَحَّ إفْلَاسُهُ لَا يُؤَاجِرُ لِغُرَمَائِهِ مَطْلٌ وَظُلْمٌ فَلَا يَجُوزُ شَيْءٌ مِنْ ذَلِكَ، وَهُوَ مُفْتَرَضٌ عَلَيْهِ إنْصَافُ غُرَمَائِهِ وَإِعْطَاؤُهُمْ حَقَّهُمْ، فَإِنْ امْتَنَعَ مِنْ ذَلِكَ وَهُوَ قَادِرٌ عَلَيْهِ بِالْإِجَارَةِ؟ أُجْبِرَ عَلَى ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ حَدَّثَنِي يَحْيَى بْنُ بُكَيْرٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ فِي الْمُفْلِسِ قَالَ: لَا يَحْبِسُهُ، وَلَكِنْ يُرْسِلُهُ يَسْعَى فِي دَيْنِهِ.

وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ - وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْمدين إنْ لَمْ يُوجَدْ لَهُ مَالٌ]

L20025 Issue 1277: If no property is found for him, then if the claims are from a sale or loan, he shall be compelled to pay the debt and imprisoned until he proves insolvency. He shall not be barred from leaving to seek witnesses supporting this claim, nor shall his opponent be prevented from accompanying him wherever he goes, nor shall his agent be prohibited from accompanying him. If he proves insolvency, he shall be released after being compelled to swear an oath that he possesses no concealed assets. The opponent shall then be barred from accompanying him further, and the creditors shall be awarded compensation. Should any property subsequently become available to him, it shall be fairly taken from him to settle the debts.

١٢٧٧ - مَسْأَلَةٌ: فَإِنْ لَمْ يُوجَدْ لَهُ مَالٌ، فَإِنْ كَانَتْ الْحُقُوقُ مِنْ بَيْعٍ أَوْ قَرْضٍ؟ أُلْزِمَ الْغُرْمَ وَسُجِنَ حَتَّى يُثْبِتَ الْعَدَمَ، وَلَا يُمْنَعُ مِنْ الْخُرُوجِ فِي طَلَبِ شُهُودٍ لَهُ بِذَلِكَ، وَلَا يُمْنَعُ خَصْمُهُ مِنْ لُزُومِهِ وَالْمَشْيِ مَعَهُ حَيْثُ مَشَى، أَوْ وَكِيلُهُ عَلَى الْمَشْيِ مَعَهُ، فَإِنْ أَثْبَتَ عَدَمَهُ سُرِّحَ بَعْدَ أَنْ يُحَلِّفَهُ: مَا لَهُ مَالٌ بَاطِنٌ، وَمُنِعَ خَصْمُهُ مِنْ لُزُومِهِ، وَأُوجِرَ لِخُصُومِهِ، وَمَتَى ظَهَرَ لَهُ مَالٌ أُنْصِفَ مِنْهُ.

L20026 If the rights pertain to maintenance payments, dowry, guarantees, or blood money, his statement, accompanied by his oath, is upheld regarding his destitution, and no recourse is available until his opponent proves he possesses wealth. However, he is granted a delay, as mentioned earlier.

فَإِنْ كَانَتْ الْحُقُوقُ مِنْ نَفَقَاتٍ، أَوْ صَدَاقٍ، أَوْ ضَمَانٍ، أَوْ جِنَايَةٍ، فَالْقَوْلُ قَوْلُهُ مَعَ يَمِينِهِ فِي أَنَّهُ عَدِيمٌ، وَلَا سَبِيلَ إلَيْهِ، حَتَّى يُثْبِتَ خَصْمُهُ أَنَّ لَهُ مَالًا، لَكِنْ يُؤَاجَرُ كَمَا قَدَّمْنَا.

L20027 If it is confirmed that he has concealed wealth, he should be disciplined and beaten until he produces it or dies, in accordance with the statement of Allah, the Exalted: “Stand firmly for justice as witnesses for Allah” [Surah An-Nisa 4:135].[2]

وَإِنْ صَحَّ أَنَّ لَهُ مَالًا غَيَّبَهُ أُدِّبَ وَضُرِبَ حَتَّى يُحْضِرَهُ أَوْ يَمُوتَ، لِقَوْلِ اللَّهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥] .

L20028–20030 And based on what has been transmitted to us through Muslim’s chain: Muḥammad ibn al-Muthannā narrated to us, Muḥammad ibn Jaʿfar, Ghundar, narrated to us, Shuʿbah narrated to us. From Qays ibn Muslim, from Ṭāriq ibn Shihāb, who said: Abū Saʿīd al-Khudriyy reported: I heard the Messenger of Allah (peace be upon him) say: “Whoever among you witnesses a wrongful act, let him rectify it with his hand; if he cannot, then with his tongue; if he cannot, then with his heart—and that is the weakest level of faith.”[3]

وَلِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ قَالَ: قَالَ أَبُو سَعِيدٍ الْخُدْرِيِّ، سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِقَلْبِهِ وَذَلِكَ أَضْعَفُ الْإِيمَانِ» .

L20031 Through the narration of Muslim: Ahmad ibn Isa narrated to us, Ibn Wahb narrated to us, Amr ibn al-Harith informed me from Bukayr ibn al-Ashajj that Sulayman ibn Yasar narrated to them, saying: Abd al-Rahman ibn Jabir ibn Abd Allah narrated to me from his father from Abu Burdah al-Ansari, who heard the Messenger of Allah (peace and blessings be upon him) say:

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَحْمَدُ بْنُ عِيسَى نا ابْنُ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ أَنَّ سُلَيْمَانَ بْنَ يَسَارٍ حَدَّثَهُمْ قَالَ: حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِ عَنْ أَبِي بُرْدَةَ الْأَنْصَارِيِّ: أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا يُجْلَدُ أَحَدٌ فَوْقَ عَشَرَةِ أَسْوَاطٍ إلَّا فِي حَدٍّ مِنْ حُدُودِ اللَّهِ» .

[2] **Qur’an references (L20027):** Qur’an 4:135 (An-Nisa).
[3] **Hadith references (L20028):** Sahih Muslim 49a; Riyad as-Salihin 184.

"No one is to be flogged more than ten lashes except in a hadd punishment from Allah's prescribed penalties."[4]

L20032 The Messenger of Allah—peace and blessings be upon him—commanded forbidding evil through direct action. Among evils is the willful delay in payment by the wealthy debtor. Whoever's wealth is confirmed yet withholds the debt from his adversary has indeed committed evil and oppression, for all oppression is evil. Thus, it is obligatory for the ruler to enforce its removal by hand. The Messenger of Allah—peace and blessings be upon him—prohibited lashing anyone beyond ten strikes for offenses not requiring prescribed punishments. Therefore, ten lashes must be administered. If he acts justly, no further action is warranted. But if he persists in delaying, he introduces new evil beyond the initial offense, so he is to be lashed another ten. This continues perpetually until he fulfills justice, abandons oppression, or the truth and Allah's command cause his demise.

L20033 As for distinguishing between the categories of rights: if the basis of the obligation arises from debt or sale, it is established that the person has lawfully acquired property. Whoever is confirmed to have acquired property must have fairness ensured in the disposal of that property until it is verified that such property has perished - and he is the claimant of its loss. The Messenger of Allah - peace and blessings of Allah be upon him - ruled that conclusive proof is required from the claimant.

L20034 For anyone upon whom the original right exists through liability, criminal offense, dowry, or maintenance, the indisputable certainty acknowledged universally is that every person is born naked, destitute, possessing nothing. Thus poverty stands as an established certainty for all people. They remain upon what is established from them until it becomes evident that they acquired wealth. The claim that they acquired wealth is asserted against the defendant, and the Messenger of Allah—peace be upon him—ruled that the oath is administered to the defendant. This is the opinion of Abu Sulayman, Muhammad ibn Shujaa al-Balkhi, and others.

L20035–20036 Some overly rigorous scholars dissented on this matter, arguing: Allah, the

فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِتَغْيِيرِ الْمُنْكَرِ بِالْيَدِ، وَمِنْ الْمُنْكَرِ مَطْلُ الْغَنِيِّ، فَمَنْ صَحَّ غِنَاهُ وَمَنَعَ خَصْمَهُ فَقَدْ أَتَى مُنْكَرًا وَظُلْمًا، وَكُلُّ ظُلْمٍ مُنْكَرٌ، فَوَاجِبٌ عَلَى الْحَاكِمِ تَغْيِيرُهُ بِالْيَدِ، وَمَنَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَنْ يُجْلَدَ أَحَدٌ فِي غَيْرِ حَدٍّ أَكْثَرَ مِنْ عَشَرَةِ أَسْوَاطٍ، فَوَاجِبٌ أَنْ يُضْرَبَ عَشَرَةً، فَإِنْ أَنْصَفَ فَلَا سَبِيلَ إلَيْهِ، وَإِنْ تَمَادَى عَلَى الْمَطْلِ فَقَدْ أَحْدَثَ مُنْكَرًا آخَرَ غَيْرَ الَّذِي ضُرِبَ عَلَيْهِ فَيُضْرَبُ أَيْضًا عَشَرَةً، وَهَكَذَا أَبَدًا حَتَّى يُنْصِفَ، وَيَتْرُكَ الظُّلْمَ، أَوْ يَقْتُلَهُ الْحَقُّ وَأَمْرُ اللَّهِ تَعَالَى.

وَأَمَّا التَّفْرِيقُ بَيْنَ وُجُوهِ الْحُقُوقِ: فَإِنَّ مَنْ كَانَ أَصْلُ الْحَقِّ عَلَيْهِ مِنْ دَيْنٍ أَوْ بَيْعٍ فَقَدْ صَحَّ أَنَّهُ قَدْ مَلَكَ مَالًا، وَمَنْ صَحَّ أَنَّهُ قَدْ مَلَكَ مَالًا فَوَاجِبٌ أَنْ يُنْصَفَ مِنْ ذَلِكَ الْمَالِ حَتَّى يَصِحَّ أَنَّ ذَلِكَ الْمَالَ قَدْ تَلِفَ - وَهُوَ فِي تَلَفِهِ مُدَّعِي - وَقَدْ قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْبَيِّنَةِ عَلَى الْمُدَّعِي.

وَمَنْ كَانَ أَصْلُ الْحَقِّ عَلَيْهِ مِنْ ضَمَانٍ، أَوْ جِنَايَةٍ، أَوْ صَدَاقٍ، أَوْ نَفَقَةٍ، فَالْيَقِينُ الَّذِي لَا شَكَّ فِيهِ عِنْدَ أَحَدٍ: هُوَ أَنَّ كُلَّ أَحَدٍ وُلِدَ عُرْيَانَ لَا شَيْءَ لَهُ، فَالنَّاسُ كُلُّهُمْ قَدْ صَحَّ لَهُمْ الْفَقْرُ، فَهُمْ عَلَى مَا صَحَّ مِنْهُمْ حَتَّى يَصِحَّ أَنَّهُمْ كَسَبُوا مَالًا وَهُوَ فِي أَنَّهُ قَدْ كَسَبَ مَالًا مُدَّعًى عَلَيْهِ، وَقَدْ قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْيَمِينِ عَلَى الْمُدَّعَى عَلَيْهِ وَهَذَا قَوْلُ أَبِي سُلَيْمَانَ، وَمُحَمَّدِ بْنِ شُجَاعٍ الْبَلْخِيِّ، وَغَيْرِهِمَا.

[4] **Hadith references (L20031):** Sahih Muslim 1708.

Exalted, said: *“He created you, then provided for you, then causes you to die, then revives you”* [30:40]. This confirms that Allah, the Exalted, provides sustenance to all.[5]

وَخَالَفَ فِي هَذَا بَعْضُ الْمُتَعَسِّفِينَ فَقَالَ: قَالَ اللَّهُ تَعَالَى: {خَلَقَكُمْ ثُمَّ رَزَقَكُمْ ثُمَّ يُمِيتُكُمْ ثُمَّ يُحْيِيكُمْ} [الروم: ٤٠] فَصَحَّ أَنَّ اللَّهَ تَعَالَى رَزَقَ الْجَمِيعَ.

L20037 Abū Muḥammad said: We did not differ with him concerning sustenance. Rather, sustenance is certain. The first sustenance is the milk of the one who nursed him. Were it not for the sustenance of God, the Exalted, no one would live a day or longer. Debtholders are not given their due from all sustenance. They are only given their due share from the surplus of sustenance—those which God, the Exalted, cannot validly grant to a person except through clear evidence.

قَالَ أَبُو مُحَمَّدٍ: لَمْ نُخَالِفْهُ فِي الرِّزْقِ، بَلْ الرِّزْقُ مُتَيَقَّنٌ، وَأَوَّلُهُ لَبَنُ الَّتِي أَرْضَعَتْهُ، فَلَوْلَا رِزْقُ اللَّهِ تَعَالَى مَا عَاشَ أَحَدٌ يَوْمًا فَمَا فَوْقَهُ، وَلَيْسَ مِنْ كُلِّ الرِّزْقِ يُنْصَفُ الْغُرَمَاءُ، وَإِنَّمَا يُنْصَفُونَ مِنْ فُضُولِ الرِّزْقِ وَهِيَ الَّتِي لَا يَصِحُّ أَنَّ اللَّهَ تَعَالَى آتَاهَا الْإِنْسَانَ إلَّا بِبَيِّنَةٍ.

L20038 As for the mu’ājarah (lease): it is due to what we mentioned before in the preceding issue related to this. Success is from Allah, the Exalted. 1278 – Issue:

وَأَمَّا الْمُؤَاجَرَةُ: فَلِمَا ذَكَرْنَا قَبْلُ فِي الْمَسْأَلَةِ الْمُتَقَدِّمَةِ لِهَذِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. ١٢٧٨ - مَسْأَلَةٌ:

L20039 If it is asked: “Does Allah Almighty’s statement, ‘But if someone is in hardship, then deferment until a time of ease’ [Al-Baqarah: 280], prohibit compelling him to work?” We say: Rather, it necessitates compelling him to work, for ease comes about only through one of two means: either through effort or without effort. Allah Almighty has said, “And seek the bounty of Allah” [Al-Jumu‘ah: 10]. Therefore, we compel him to pursue the bounty of Allah Almighty, which He has commanded him to seek. Thus, we obligate him to earn a livelihood to treat his creditors fairly, provide for his dependents and himself, and we do not permit him to neglect himself, his dependents, or the obligation binding on him.[6]

فَإِنْ قِيلَ: إنَّ قَوْلَ اللَّهِ تَعَالَى: {وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَى مَيْسَرَةٍ} [البقرة: ٢٨٠] يَمْنَعُ مِنْ اسْتِئْجَارِهِ؟ قُلْنَا: بَلْ يُوجِبُ اسْتِئْجَارَهُ، لِأَنَّ الْمَيْسَرَةَ لَا تَكُونُ إلَّا بِأَحَدِ وَجْهَيْنِ -: إمَّا بِسَعْيٍ، وَإِمَّا بِلَا سَعْيٍ، وَقَدْ قَالَ تَعَالَى: {وَابْتَغُوا مِنْ فَضْلِ اللَّهِ} [الجمعة: ١٠] فَنَحْنُ نُجْبِرُهُ عَلَى ابْتِغَاءِ فَضْلِ اللَّهِ تَعَالَى الَّذِي أَمَرَهُ تَعَالَى بِابْتِغَائِهِ، فَنَأْمُرُهُ وَنُلْزِمُهُ التَّكَسُّبَ لِيُنْصِفَ غُرَمَاءَهُ وَيَقُومَ بِعِيَالِهِ وَنَفْسِهِ، وَلَا نَدَعُهُ يُضَيِّعُ نَفْسَهُ وَعِيَالَهُ وَالْحَقَّ اللَّازِمَ لَهُ.

Issue: If the debtor possesses sufficient means to fulfill his debt and has a surplus remaining for himself.

[مَسْأَلَةٌ الْمدين إذَا كَانَ لَهُ مَا يَفِي بِمَا عَلَيْهِ وَيَفْضُلُ لَهُ]

L20040 1279 – Question:

١٢٧٩ - مَسْأَلَةٌ:

L20041 The debtor must be in one of two situations: either he possesses property sufficient to fulfill his debt with a surplus remaining for himself—in which

وَلَا يَخْلُو الْمَطْلُوبُ بِالدَّيْنِ مِنْ أَنْ يَكُونَ يُوجَدُ لَهُ مَا يَفِي بِمَا عَلَيْهِ وَيَفْضُلُ لَهُ، فَهَذَا يُبَاعُ مِنْ مَالِهِ مَا يَفْضُلُ عَنْ حَاجَتِهِ فَيُنْصَفُ مِنْهُ غُرَمَاؤُهُ، وَمَا تَلِفَ مِنْ عَيْنِ الْمَالِ قَبْلَ

[5] **Qur’an references (L20036):** Qur’an 30:40 (Ar-Rum).

[6] **Qur’an references (L20039):** Qur’an 2:280 (Al-Baqarah); Qur’an 62:10 (Al-Jumu’ah).

أَنْ يُبَاعَ فَمِنْ مُصِيبَتِهِ لَا مِنْ مُصِيبَةِ الْغُرَمَاءِ، لِأَنَّ حُقُوقَهُمْ فِي ذِمَّتِهِ لَا فِي، شَيْءٍ بِعَيْنِهِ مِنْ مَالِهِ، أَوْ يَكُونَ كُلُّ مَا يُوجَدُ لَهُ يَفِي بِمَا عَلَيْهِ وَلَا يَفْضُلُ لَهُ شَيْءٌ، أَوْ لَا يَفِي بِمَا عَلَيْهِ -: فَهَذَانِ يَقْضِي بِمَا وُجِدَ لَهُمَا لِلْغُرَمَاءِ كَمَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ يُبَاعُ لَهُمْ إنْ اتَّفَقُوا عَلَى ذَلِكَ، فَمَا تَلِفَ بَعْدَ الْقَضَاءِ لَهُمْ بِمَالِهِ فَمِنْ مُصِيبَةِ الْغُرَمَاءِ وَيَسْقُطُ عَنْهُ مِنْ دَيْنِهِمْ بِقَدْرِ ذَلِكَ، لِأَنَّ عَيْنَ مَالِهِ قَدْ صَارَ لَهُمْ إنْ شَاءُوا اقْتَسَمُوهُ بِالْقِيمَةِ، وَإِنْ اتَّفَقُوا عَلَى، بَيْعِهِ بِيعَ لَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

case, whatever exceeds his essential needs is sold from his wealth, and his creditors are given their fair share. Any loss to the physical assets before their sale is borne by him, not the creditors, for their rights pertain to his liability, not to specific items of his wealth. Alternatively, he may possess property that exactly fulfills his debt with no surplus, or his assets may be insufficient to cover his debt. In these two cases, it is ruled that creditors are repaid from whatever is found for both cases, as done by the Messenger of Allah—peace and blessings be upon him. Then, if they agree, his property is sold for them. Any loss occurring after the judgment is made in their favor regarding his property is borne by the creditors, and an equivalent portion of his debt to them is waived. This is because the physical assets have now become theirs—if they wish, they may divide it according to its appraised value, and if they agree to its sale, it is sold on their behalf. And with Allah, the Exalted, is success.

L20043

بُرْهَانُ ذَلِكَ -: أَنَّهُ إذَا وَفَّى بَعْضَ مَالِهِ بِمَا عَلَيْهِ فَلَيْسَ شَيْءٌ مِنْهُ أَوْلَى بِأَنْ يُبَاعَ فِي ذَلِكَ مِنْ شَيْءٍ آخَرَ غَيْرِهِ، فَيُنْظَرُ: أَيُّ مَالِهِ هُوَ عَنْهُ فِي غِنًى فَيُبَاعُ، وَمَا لَا غِنَى بِهِ عَنْهُ فَلَا يُبَاعُ، لِأَنَّ هَذَا هُوَ التَّعَاوُنُ عَلَى الْبِرِّ وَالتَّقْوَى وَتَرْكُ الْمُضَارَّةِ، فَإِنْ كَانَ كُلُّهُ لَا غِنَى بِهِ عَنْهُ أُقْرِعَ عَلَى أَجْزَاءِ الْمَالِ، فَأَيُّهَا خَرَجَتْ قُرْعَتُهُ بِيعَ فِيمَا أُلْزِمَهُ.

The proof for this is that if he fulfills part of his obligation using some of his wealth, no portion of it holds greater priority for sale than another. Thus, it is examined: which of his wealth he can spare—this is sold—while what he cannot do without is not sold, for this constitutes cooperating in goodness and piety and avoiding inflicting harm. If all his wealth is indispensable to him, lots are cast among its portions, and whichever portion is drawn by lot is sold to discharge the obligation imposed upon him.

[مَسْأَلَةٌ مَالُ الْمُفْلِسِ يُقَسَّمُ بَيْنَ الْغُرَمَاءِ]

L20044–20045

Issue: The insolvent's assets are to be distributed among the creditors.

مَسْأَلَةٌ: وَيُقَسَّمُ مَالُ الْمُفْلِسِ الَّذِي يُوجَدُ لَهُ بَيْنَ الْغُرَمَاءِ بِالْحِصَصِ بِالْقِيمَةِ كَمَا يُقَسَّمُ الْمِيرَاثُ عَلَى الْحَاضِرِينَ الطَّالِبِينَ الَّذِينَ حَلَّتْ آجَالُ حُقُوقِهِمْ فَقَطْ، وَلَا يَدْخُلُ فِيهِمْ حَاضِرٌ لَا يَطْلُبُ، وَلَا غَائِبٌ لَمْ يُوَكِّلْ، وَلَا حَاضِرٌ أَوْ غَائِبٌ لَمْ يَحِلَّ أَجَلُ حَقِّهِ - طَلَبَ أَوْ لَمْ يَطْلُبْ -؛ لِأَنَّ مَنْ لَمْ يَحِلَّ أَجَلُ حَقِّهِ فَلَا حَقَّ لَهُ بَعْدُ، وَمَنْ لَمْ يَطْلُبْ

L20046

Issue: The existing assets of a bankrupt individual are divided among the creditors in shares proportionate to their value, just as inheritance is divided exclusively among present claimants whose rights have reached their due dates. Excluded are: a present creditor who does not claim, an absent creditor who has not appointed a representative, and a present or absent creditor whose right has not yet matured—whether they claim or do not claim. This is because whoever's right has not matured has no valid claim, and it is not necessary to give to one who does not claim what he has not claimed. It is religiously obligatory to equitably apportion shares to the

present claimant; thus, it is impermissible to defer payment of his claim by even a *fals* (smallest coin) or more.

L20047 The Messenger of Allah, peace and blessings be upon him, said to the present creditors: "Take what you find." When they take it, they acquire rightful ownership. Thus, it is unlawful to reclaim anything they have acquired - this being the opinion of Abu Sulayman and Abu Hanifah.

L20048 As for the deceased who is bankrupt: his estate discharges the debt for every creditor—whether present or absent, whether they claimed it or not—and for every creditor whose debt was time-bound or immediately payable, because all terms become due upon the death of the one entitled to the right or the one obligated by it, as we mentioned in *The Book of Loans*.

L20049 As for those who do not claim, based on the words of Allah the Most High regarding inheritance: {after any bequest he may have made or debt} [Quran 4:11], there is no inheritance except after the bequest and the debt. It is obligatory to settle debts to their creditors and bequests to their legatees. Thereafter, the heirs are given their shares from what remains. And success comes only from Allah, the Most High.[7]

L20050 ## The Issue of a Bankrupt Person's Acknowledgment of Debt

L20051 1281 - Issue: The acknowledgment of debt by a bankrupt person is binding, valid, and the debt is added to the creditors' claims. This is because acknowledgment must be accepted, and no one may invalidate it without a Quranic text or Sunnah. If he acknowledges after his property has been adjudicated to the creditors, the debt becomes binding upon him personally. However, he does not share with the creditors in property that has already been adjudicated to them and acquired by them prior to his acknowledgment. And success comes only from Allah, the Exalted.

[7] **Qur'an references (L20049):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

فَلَا يَلْزَمُ أَنْ يُعْطَى مَا لَمْ يَطْلُبْ، وَقَدْ وَجَبَ فَرْضًا إنْصَافُ الْحَاضِرِ الطَّالِبِ فَلَا يَحِلُّ مَطْلُهُ بِفَلْسٍ فَمَا فَوْقَهُ.

وَقَدْ «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْغُرَمَاءِ الْحَاضِرِينَ: خُذُوا مَا وَجَدْتُمْ» فَإِذَا أَخَذُوهُ فَقَدْ مَلَكُوهُ فَلَا يَحِلُّ أَخْذُ شَيْءٍ مِمَّا مَلَكُوهُ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَبِي حَنِيفَةَ.

وَأَمَّا الْمَيِّتُ بِفَلَسْ: فَإِنَّهُ يَقْضِي لِكُلِّ مِنْ حَضَرَ أَوْ غَابَ - طَلَبَا أَوْ لَمْ يَطْلُبَا - وَلِكُلِّ ذِي دَيْنٍ كَانَ إلَى أَجَلٍ مُسَمًّى أَوْ حَالًّا؛ لِأَنَّ الْآجَالَ تَحِلُّ كُلُّهَا بِمَوْتِ الَّذِي لَهُ الْحَقُّ، أَوْ الَّذِي عَلَيْهِ الْحَقُّ لِمَا ذَكَرْنَاهُ فِي " كِتَابِ الْقَرْضِ ".

وَأَمَّا مَنْ لَمْ يَطْلُبْ فَلِقَوْلِ اللَّهِ تَعَالَى فِي الْمَوَارِيثِ: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] فَلَا مِيرَاثَ إلَّا بَعْدَ الْوَصِيَّةِ وَالدَّيْنِ، فَوَاجِبٌ إخْرَاجُ الدُّيُونِ إلَى أَرْبَابِهَا وَالْوَصَايَا إلَى أَصْحَابِهَا، ثُمَّ يُعْطَى الْوَرَثَةُ حُقُوقَهُمْ فِيمَا أَبْقَى، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ إقْرَارُ الْمُفْلِسِ بِالدَّيْنِ]

١٢٨١ - مَسْأَلَةٌ: وَإِقْرَارُ الْمُفْلِسِ بِالدَّيْنِ لَازِمٌ مَقْبُولٌ وَيَدْخُلُ مَعَ الْغُرَمَاءِ؛ لِأَنَّ الْإِقْرَارَ وَاجِبٌ قَبُولُهُ وَلَيْسَ لِأَحَدٍ إبْطَالُهُ بِغَيْرِ نَصِّ قُرْآنٍ، أَوْ سُنَّةٍ، فَإِنْ أَقَرَّ بَعْدَ أَنْ قُضِيَ بِمَالِهِ لِلْغُرَمَاءِ لَزِمَهُ فِي ذِمَّتِهِ، وَلَا يَدْخُلُ مَعَ الْغُرَمَاءِ فِي مَالٍ قَدْ قُضِيَ لَهُمْ بِهِ وَمَلَكُوهُ قَبْلَ إقْرَارِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ حُقُوقُ اللَّهِ تَعَالَى مُقَدَّمَةٌ عَلَى حُقُوقِ النَّاسِ]

A jurisprudential principle: The rights of Allah, the Exalted, take precedence over the rights of people.

١٢٨٢ - مَسْأَلَةٌ: وَحُقُوقُ اللَّهِ تَعَالَى مُقَدَّمَةٌ عَلَى حُقُوقِ النَّاسِ فَيَبْدَأُ بِمَا فَرَّطَ فِيهِ مِنْ زَكَاةٍ أَوْ كَفَّارَةٍ فِي الْحَيِّ، وَالْمَيِّتِ، وَبِالْحَجِّ فِي الْمَيِّتِ، فَإِنْ لَمْ يَعُمَّ: قَسَّمَ ذَلِكَ عَلَى كُلِّ هَذِهِ الْحُقُوقِ بِالْحِصَصِ لَا يُبَدَّى مِنْهَا شَيْءٌ عَلَى شَيْءٍ.

1282. Issue: The rights of Allah, the Exalted, take precedence over the rights of people. Therefore, one should begin by addressing neglected obligations pertaining to the living and the deceased - such as zakāh, expiations, and Hajj owed by the deceased. If the assets are insufficient to cover all these obligations, they are proportionally allocated among every due right, with no category being prioritized over another.

وَكَذَلِكَ دُيُونُ النَّاسِ إنْ لَمْ يَفِ مَالُهُ بِجَمِيعِهَا أَخَذَ كُلُّ وَاحِدٍ بِقَدْرِ مَالِهِ مِمَّا وُجِدَ لِمَا ذَكَرْنَا فِي " كِتَابِ الْحَجِّ " مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «دَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى» ، «وَاقْضُوا اللَّهَ فَهُوَ أَحَقُّ بِالْوَفَاءِ» ، «كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ» .

Similarly, for debts owed to people—if his wealth is insufficient to cover all of them—each creditor receives a share proportionate to their debt from what is available. This is based on what we mentioned in the *Book of Hajj* regarding the statement of Allah's Messenger (peace be upon him): "Allah's right is most deserving of fulfillment," and "Fulfill what is due to Allah..." "He is more deserving of fulfillment; Allah's Book is more deserving, and Allah's covenant is more binding."

[مَسْأَلَةٌ فَلَّسَ فَوَجَدَ إنْسَانٌ سِلْعَتَهُ الَّتِي بَاعَهَا بِعَيْنِهَا عِنْدَهُ]

A legal issue: If a person became bankrupt and a person found the merchandise he had sold—the very same item—in the bankrupt's possession.

١٢٨٣ - مَسْأَلَةٌ:

وَمَنْ فَلَّسَ مِنْ حَيٍّ أَوْ مَيِّتٍ فَوَجَدَ إنْسَانٌ سِلْعَتَهُ الَّتِي بَاعَهَا بِعَيْنِهَا فَهُوَ أَوْلَى بِهَا مِنْ الْغُرَمَاءِ، وَلَهُ أَنْ يَأْخُذَهَا، فَإِنْ كَانَ قَبَضَ مِنْ ثَمَنِهَا شَيْئًا أَكْثَرَهُ أَوْ أَقَلَّهُ رَدَّهُ، وَإِنْ شَاءَ تَرَكَهَا وَكَانَ أُسْوَةَ الْغُرَمَاءِ.

1283 - Issue

If a person becomes insolvent, whether alive or dead, and a person finds his commodity that he sold in its exact form, he has priority over the creditors to reclaim it. He may take it back. If he received any part of its price—whether more of it or less of it—he must refund it. If he wishes, he may leave the item and be treated equally with the creditors.

فَإِنْ وَجَدَ بَعْضَهَا لَا كُلَّهَا فَسَوَاءٌ وَجَدَ أَكْثَرَهَا أَوْ أَقَلَّهَا لَا حَقَّ لَهُ فِيهَا وَهُوَ أُسْوَةُ الْغُرَمَاءِ.

If he obtains part of it but not all, then whether he obtains most or little of it, he has no right to it and is treated equally with the debt-claimants.

وَلَا يَكُونُ مُفْلِسًا مَنْ لَهُ مِنْ أَيْنَ يُنْصِفُ جَمِيعَ الْغُرَمَاءِ وَيَبْقَى لَهُ فَضْلٌ، إنَّمَا الْمُفْلِسُ مَنْ لَا يَبْقَى لَهُ شَيْءٌ بَعْدَ حَقِّ الْغُرَمَاءِ.

A person who possesses resources enabling them to equitably satisfy all creditors while retaining a surplus is not bankrupt. The bankrupt is solely one who retains nothing after fulfilling the creditors' claims.

L20062 As for one who finds his deposited property, what was wrongfully seized from him, what he sold through an invalid transaction, or what was taken from him without right, it remains his by necessity. He has no right of choice in other cases, for his ownership of this property has never ceased.

وَأَمَّا مَنْ وَجَدَ وَدِيعَتَهُ، أَوْ مَا غُصِبَ مِنْهُ، أَوْ مَا بَاعَهُ بَيْعًا فَاسِدًا، أَوْ أُخِذَ مِنْهُ بِغَيْرِ حَقٍّ فَهُوَ لَهُ ضَرُورَةً وَلَا خِيَارَ لَهُ فِي غَيْرِهِ؛ لِأَنَّ مِلْكَهُ لَمْ يَزُلْ قَطُّ عَنْ هَذَا.

L20063 As for the one who finds his commodity, which he sold in a valid sale or lent, he retains the option, as we have mentioned.

وَأَمَّا مَنْ وَجَدَ سِلْعَتَهُ الَّتِي بَاعَهَا بَيْعًا صَحِيحًا أَوْ أَقْرَضَهَا، فَمُخَيَّرٌ كَمَا ذَكَرْنَا.

L20064 The evidence for this is what we have narrated through the chains of transmission of Zuhayr ibn Muʿāwiyah, al-Layth ibn Saʿd, Mālik, Hushaym, Ḥammād ibn Zayd, Sufyān ibn ʿUyaynah, Yaḥyā ibn Saʿīd al-Qaṭṭān, and Ḥafṣ ibn Ghiyāth—all of them from Yaḥyā ibn Saʿīd al-Anṣārī, who said: Abū Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm informed me that ʿUmar ibn ʿAbd al-ʿAzīz informed him that Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām informed him that he heard Abū Hurayrah say: The Messenger of Allah (may Allah bless him and grant him peace) said, "Whoever finds his property in its original form with a man or a person who has become insolvent has a stronger claim to it than others." The wording is from Zuhayr, and the phrasing of the rest of them is similar to it, differing in no aspect of meaning.[8]

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ زُهَيْرِ بْنِ مُعَاوِيَةَ، وَاللَّيْثِ بْنِ سَعْدٍ، وَمَالِكٍ، وَهُشَيْمٍ، وَحَمَّادِ بْنِ زَيْدٍ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، وَيَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ وَحَفْصِ بْنِ غِيَاثٍ، كُلُّهُمْ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ قَالَ: أَخْبَرَنِي أَبُو بَكْرِ بْنُ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ: أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَخْبَرَهُ: أَنَّ أَبَا بَكْرِ بْنَ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ أَخْبَرَهُ: أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أَدْرَكَ مَالَهُ بِعَيْنِهِ عِنْدَ رَجُلٍ أَوْ إِنْسَانٍ قَدْ أَفْلَسَ فَهُوَ أَحَقُّ بِهِ مِنْ غَيْرِهِ» اللَّفْظُ لِزُهَيْرٍ، وَلَفْظُ سَائِرِهِمْ نَحْوُهُ لَا يُخَالِفُهُ فِي شَيْءٍ مِنَ الْمَعْنَى.

L20065–20067 From the chain of Abu ʻUbayd: Hushaym narrated to us from Yahya ibn Saʻid al-Ansari, from Abu Bakr ibn Muhammad ibn ʻAmr ibn Hazm, from ʻUmar ibn ʻAbd al-ʻAziz, from Abu Bakr ibn ʻAbd al-Rahman ibn al-Harith ibn Hisham, from Abu Hurayrah. The Messenger of Allah (peace and blessings of Allah be upon him) said: "Whoever finds the actual item of their property in the possession of an insolvent person holds a prior claim to it over other creditors."

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا هُشَيْمٌ أَنَا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ وَجَدَ عَيْنَ مَتَاعِهِ عِنْدَ رَجُلٍ قَدْ أَفْلَسَ فَهُوَ أَحَقُّ بِهِ مِمَّنْ سِوَاهُ مِنَ الْغُرَمَاءِ» .

L20068 And through the chain of Muslim: Ibn Abi ʻUmar narrated to us; Hisham ibn Sulaiman al-Makhzumi narrated to us from Ibn Jurayj. Ibn Abi Husayn narrated to me that Abu Bakr ibn Muhammad ibn ʻAmr ibn Hazm reported to him that ʻUmar ibn ʻAbd al-ʻAziz narrated to him from the narration of Abu Bakr ibn ʻAbd al-Rahman, from Abu Hurayrah, from the Prophet (peace and

وَمِنْ طَرِيقِ مُسْلِمٍ نا ابْنُ أَبِي عُمَرَ نا هِشَامُ بْنُ سُلَيْمَانَ الْمَخْزُومِيُّ عَنِ ابْنِ جُرَيْجٍ حَدَّثَنِي ابْنُ أَبِي حُسَيْنٍ أَنَّ أَبَا بَكْرِ بْنَ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ أَخْبَرَهُ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ حَدَّثَهُ عَنْ حَدِيثِ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ حَدِيثِ أَبِي هُرَيْرَةَ «عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ

[8] **Hadith references (L20064):** Sahih al-Bukhari 2402.

blessings be upon him) regarding the man executed as a legal punishment: “If the goods are found with him and he has not distributed them, they belong to their owner who sold them.”[9]

وَسَلَّمَ - فِي الرَّجُلِ الَّذِي يُعْدَمُ: إِذَا وُجِدَ عِنْدَهُ الْمَتَاعُ وَلَمْ يُفَرِّقْهُ أَنَّهُ لِصَاحِبِهِ الَّذِي بَاعَهُ» .

L20069 It was also narrated via the chain of Shu’bah, Hisham ad-Dastawā’ī, and Sa’id ibn Abi ’Arubah—all of them narrating from Qatadah, from an-Nadr ibn Anas, from Bashir ibn Nahik, from Abu Hurayrah, from the Prophet (peace and blessings of Allah be upon him).

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ شُعْبَةَ، وَهِشَامٍ الدَّسْتُوَائِيِّ، وَسَعِيدِ بْنِ أَبِي عَرُوبَةَ كُلِّهِمْ عَنْ قَتَادَةَ عَنْ النَّضْرِ بْنِ أَنَسٍ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L20070 And through the chain of ʿIrāk ibn Mālik from Abū Hurayrah from the Prophet—may Allah’s peace and blessings be upon him—it is a mass-transmitted and comprehensive report that makes it impermissible for anyone to oppose it. This constitutes a universal principle applicable to one who dies or declares bankruptcy while alive, a clear statement that if anything from it is distributed, it constitutes equal treatment for the creditors, and a general applicability to those who have claimed part of the price or none of it.

وَمِنْ طَرِيقِ عِرَاكِ بْنِ مَالِكٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ نَقْلٌ تَوَاتَرَ وَكَافَّةٌ لَا يَسَعُ أَحَدًا خِلَافُهُ، وَهَذَا عُمُومٌ لِمَنْ مَاتَ أَوْ فَلَّسَ حَيًّا، وَبَيَانٌ جَلِيٌّ أَنَّهُ إنْ فُرِّقَ مِنْهُ شَيْءٌ فَهُوَ أُسْوَةُ الْغُرَمَاءِ، وَعُمُومٌ لِمَنْ تَقَاضَى مِنْ الثَّمَنِ شَيْئًا أَوْ لَمْ يَتَقَاضَ مِنْهُ شَيْئًا.

L20071 And with this, the majority of the Salaf held the same opinion. It was narrated to us by Abu Ubayd, from Ismail ibn Ja‘far, from Muhammad ibn Abi Harmalah, from Sa‘id ibn al-Musayyab, who said: A client of Umm Habibah went bankrupt, and a dispute concerning him was brought to Uthman—may Allah be pleased with him. He ruled that whoever had claimed what was owed to them before his bankruptcy became evident retains ownership, and whoever identified their property in its specific form, it is theirs.

وَبِهِ قَالَ جُمْهُورُ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا إسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ مُحَمَّدِ بْنِ أَبِي حَرْمَلَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: أَفْلَسَ مَوْلًى لِأُمِّ حَبِيبَةَ فَاخْتُصِمَ فِيهِ إلَى عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - فَقَضَى أَنَّ مَنْ كَانَ اقْتَضَى مِنْ حَقِّهِ شَيْئًا قَبْلَ أَنْ يَتَبَيَّنَ إفْلَاسُهُ فَهُوَ لَهُ، وَمَنْ عَرَفَ مَتَاعَهُ بِعَيْنِهِ فَهُوَ لَهُ.

L20072 From the chain of Abū Dāwūd: Muḥammad ibn Bashshār narrated to us; Abū Dāwūd (al-Ṭayālisī) narrated to us; Ibn Abī Dhi’b narrated to us from Abū al-Mu‘tamir from ‘Umar ibn Khaldah, who said: “We came to Abū Hurayrah regarding a companion of ours who had become bankrupt, and he said: ’I will adjudicate between you by the ruling of the Messenger of Allah (peace be upon him): If someone becomes bankrupt or dies, and another person finds his goods intact, he has the most rightful claim to them.”’

وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ بَشَّارٍ نا أَبُو دَاوُد هُوَ الطَّيَالِسِيُّ - نا ابْنُ أَبِي ذِئْبٍ عَنْ أَبِي الْمُعْتَمِرِ عَنْ عُمَرَ بْنِ خَلْدَةَ قَالَ: «أَتَيْنَا أَبَا هُرَيْرَةَ فِي صَاحِبٍ لَنَا أَفْلَسَ فَقَالَ: لَأَقْضِيَنَّ بَيْنَكُمْ بِقَضَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ أَفْلَسَ أَوْ مَاتَ فَوَجَدَ رَجُلٌ مَتَاعَهُ بِعَيْنِهِ فَهُوَ أَحَقُّ بِهِ» .

L20073 Via the chain of ʿAbd al-Raḥmān ibn Mahdī, from Ḥammād ibn Salamah,

[9] **Hadith references (L20068):** Sahih Muslim 1559c.

from Hishām ibn ʿUrwah, from his father [ʿUrwah ibn al-Zubayr]: If a man becomes insolvent and [another] identifies his property intact and identifiable, the [original] owner has the rightful claim to it.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ: إذَا أَفْلَسَ الرَّجُلُ فَوَجَدَ الرَّجُلُ مَتَاعَهُ بِعَيْنِهِ فَهُوَ أَحَقُّ بِهِ.

L20074–20075 It has been authentically reported from ʿAṭāʾ: If you recover your property in kind, as it is, before any portion has been distributed, it is yours. But if some has been distributed, it is divided equally among the creditors.

وَصَحَّ عَنْ عَطَاءٍ: إذَا أَدْرَكْت مَالَك بِعَيْنِهِ كَمَا هُوَ قَبْلَ أَنْ يُفَرَّقَ مِنْهُ شَيْءٌ فَهُوَ لَك وَإِنْ فُرِّقَ بَعْضُهُ فَهُوَ بَيْنَ الْغُرَمَاءِ بِالسَّوِيَّةِ.

L20076 From the narration of Maʾmar, via Ibn Ṭāwūs, via his father: If the seller finds his commodity intact and in full, he has the strongest claim to it. But if the buyer has consumed any part of it—whether small or large—the seller is treated equally with the creditors. This was also narrated by Ibn Jurayj from ʿAṭāʾ.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ إنْ وَجَدَ سِلْعَتَهُ بِعَيْنِهَا وَافِرَةً فَهُوَ أَحَقُّ بِهَا وَإِنْ كَانَ الْمُشْتَرِي قَدْ اسْتَهْلَكَ مِنْهَا شَيْئًا قَلِيلًا أَوْ كَثِيرًا فَالْبَائِعُ أُسْوَةُ الْغُرَمَاءِ - وَقَالَهُ ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ.

L20077 Reported through the chain of Hammad ibn Salamah from Dawud ibn Abi Hind from al-Shaʾbi, who said: If the buyer is declared bankrupt, the seller has the prior claim to the merchandise.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ الشَّعْبِيِّ قَالَ: الْمُبْتَاعُ لَوْ أَفْلَسَ لَكَانَ الْبَائِعُ أَحَقَّ بِمَتَاعِهِ.

L20078 And from Al-Hasan: he is more entitled to it than the debt-creditors. There is a difference of opinion between Ash-Shaʾbi and Al-Hasan regarding this.

وَعَنْ الْحَسَنِ هُوَ أَحَقُّ بِهَا مِنْ الْغُرَمَاءِ - وَقَدْ اخْتَلَفَ فِي هَذَا عَنْ الشَّعْبِيِّ، وَالْحَسَنِ.

L20079 Abu Muhammad said: Our position on this matter aligns with the opinion of Al-Awzāʿī, Ubayd Allāh ibn al-Ḥasan, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhawayh, and Dāwūd.

قَالَ أَبُو مُحَمَّدٍ: وَقَوْلُنَا فِي هَذَا هُوَ قَوْلُ الْأَوْزَاعِيِّ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ وَأَحْمَدَ بْنِ حَنْبَلٍ وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَدَاوُد.

L20080 A difference of opinion has been reported regarding this matter. It has been narrated to us through the chain of Wakiʿ, from Hishām al-Dastuwāʾī, from Qatādah, from Khilās ibn ʿAmr, from ʿAlī ibn Abī Ṭālib, who said: "If a man dies while owing a debt and possesses a specific remaining commodity belonging to another individual in its identifiable form, that commodity becomes subject to the creditors' claims." This is also the opinion of Ibrāhīm al-Nakhaʿī and al-Ḥasan: "If a person becomes bankrupt or dies and the buyer finds the specific commodity they sold in its original identifiable state, that commodity becomes subject to the creditors' claims."

وَقَدْ رُوِيَ فِي هَذَا خِلَافٌ -: فَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: هُوَ فِيهَا أُسْوَةُ الْغُرَمَاءِ إذَا وَجَدَهَا بِعَيْنِهَا إذَا مَاتَ الرَّجُلُ وَعَلَيْهِ دَيْنٌ وَعِنْدَهُ سِلْعَةٌ قَائِمَةٌ لِرَجُلٍ بِعَيْنِهَا فَهُوَ فِيهَا أُسْوَةُ الْغُرَمَاءِ - وَهُوَ قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ، وَالْحَسَنِ -: إنَّ مَنْ أَفْلَسَ أَوْ مَاتَ فَوَجَدَ إنْسَانٌ سِلْعَتَهُ الَّتِي بَاعَ بِعَيْنِهَا فَهُوَ فِيهَا أُسْوَةُ الْغُرَمَاءِ.

L20081 Al-Shaʿbi said regarding one who entrusted capital to a person as a *mu-

darabah*, who then died, and his bag was found intact: the investor and the creditors have equal claim to it.

وَقَالَ الشَّعْبِيُّ فِيمَنْ أَعْطَى إِنْسَانًا مَالًا مُضَارَبَةً فَمَاتَ فَوَجَدَ كِيسَهُ بِعَيْنِهِ: فَهُوَ وَالْغُرَمَاءُ فِيهِ سَوَاءٌ.

L20082 The view of Abū Ḥanīfah, Ibn Shubrumah, and Wakīʿ is the same as that of Ibrāhīm.

وَقَوْلُ أَبِي حَنِيفَةَ، وَابْنِ شُبْرُمَةَ، وَوَكِيعٍ كَقَوْلِ إِبْرَاهِيمَ.

L20083 It is authentically reported from Umar ibn Abd al-Aziz that whoever has taken a portion of the price of his goods and then becomes bankrupt is made equal to the creditors. This is the opinion of al-Zuhri. Qatadah said: Whoever finds some of his goods, whether little or much, has a greater right to it than the other creditors.

وَصَحَّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّ مَنْ اقْتَضَى مِنْ ثَمَنِ سِلْعَتِهِ شَيْئًا ثُمَّ أَفْلَسَ فَهُوَ أُسْوَةُ الْغُرَمَاءِ - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَقَالَ قَتَادَةَ: مَنْ وَجَدَ بَعْضَ سِلْعَتِهِ - قَلَّ أَوْ كَثُرَ - فَهُوَ أَحَقُّ بِهَا مِنْ سَائِرِ الْغُرَمَاءِ.

L20084 Malik's opinion is that he has the most right to it or whatever portion of it he has acquired, whether he received part of the price or not. He holds priority over the creditors in bankruptcy during his lifetime. However, after death, he shares the same status as the creditors in it.

وَقَوْلُ مَالِكٍ: هُوَ أَحَقُّ بِهَا أَوْ بِمَا وَجَدَ مِنْهَا قَبَضَ مِنْ الثَّمَنِ شَيْئًا أَوْ لَمْ يَقْبِضْ هُوَ أَحَقُّ مِنْ الْغُرَمَاءِ فِي التَّفْلِيسِ فِي الْحَيَاةِ وَأَمَّا بَعْدَ الْمَوْتِ فَهُوَ أُسْوَةُ الْغُرَمَاءِ فِيهَا.

L20085–20086 Al-Shafi'i said: If he recovers the item or any portion of it, he holds greater entitlement to it or to whatever portion he retrieves from the debtors, without distinguishing whether [the debtor] is alive or deceased. He added: If he received part of the payment, his entitlement extends only to what corresponds to the remaining debt owed to him.

وَقَالَ الشَّافِعِيُّ: إنْ وَجَدَهَا أَوْ بَعْضَهَا فَهُوَ أَحَقُّ بِهَا أَوْ بِالَّذِي وَجَدَ مِنْهَا مِنْ الْغُرَمَاءِ وَلَمْ يَخُصَّ حَيَاةً مِنْ مَوْتٍ، قَالَ: فَإِنْ كَانَ قَبَضَ مِنْ الثَّمَنِ شَيْئًا فَهُوَ أَحَقُّ بِمَا قَابَلَ مَا بَقِيَ لَهُ فَقَطْ.

L20087 Ahmad said: He is most entitled to it during his lifetime, and as for upon death, he is on par with the creditors.

وَقَالَ أَحْمَدُ: هُوَ أَحَقُّ بِهَا فِي الْحَيَاةِ، وَأَمَّا فِي الْمَوْتِ فَهُوَ أُسْوَةُ الْغُرَمَاءِ.

L20088 Abu Muhammad said: As for those who follow the opinion of Abu Hanifah, they have publicly proclaimed falsehood and said: The Messenger of Allah (peace be upon him) only spoke regarding one who finds his entrusted property or what was usurped from him.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ ذَهَبَ إلَى قَوْلِ أَبِي حَنِيفَةَ فَإِنَّهُمْ جَاهَرُوا بِالْبَاطِلِ، وَقَالُوا: إنَّمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَنْ وَجَدَ وَدِيعَتَهُ أَوْ مَا غُصِبَ مِنْهُ.

L20089 Ali said: "This is a sheer lie falsely attributed to the Messenger of Allah, peace and blessings be upon him, for the explicit text has been established—as we have cited from the Prophet, peace and blessings be upon him—that it pertains to his companion who conducted the sale."

قَالَ عَلِيٌّ: وَهَذَا كَذِبٌ مُجَرَّدٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّهُ قَدْ جَاءَ النَّصُّ كَمَا أَوْرَدْنَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ لِصَاحِبِهِ الَّذِي بَاعَهُ.

L20090 And some of them added regarding the intentional falsehood against the Messenger of Allah—peace and blessings be upon him—with what testifies

to the insufficiency of his debt and the shamelessness of his countenance, stating: The Messenger of Allah—peace and blessings be upon him—only meant by affirming the seller's greater right to his goods over the buyer's taking possession of what was purchased without the seller's permission while the buyer is bankrupt, that the seller retains priority over his sold item until he is fairly compensated for the price or until it is sold for his benefit to the exclusion of the creditors.

وَزَادَ بَعْضُهُمْ فِي تَعَمُّدِ الْكَذِبِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَا يَشْهَدُ بِرِقَّةِ دِينِهِ وَصَفَاقَةِ وَجْهِهِ فَقَالَ: إِنَّمَا أَرَادَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّهُ أَحَقُّ بِسِلْعَتِهِ مِنْ قَبْضِ الْمُشْتَرِي مَا اشْتَرَى بِغَيْرِ إِذْنِ بَائِعِهِ - وَهُوَ مُفْلِسٌ - فَيَكُونُ الْبَائِعُ أَحَقَّ بِمَا بَاعَ حَتَّى يُنْصَفَ مِنْ الثَّمَنِ أَوْ يُبَاعَ لَهُ دُونَ الْغُرَمَاءِ.

L20091 Whoever purchased a commodity during his illness with evidence and took possession of it, then admitted a debt and died, does the owner of the commodity have greater right to it than the acknowledged creditors? It is said to him: Perhaps he intended "Banī Tamīm" specifically or "the people of Jurjān" specifically.

وَمَنْ اشْتَرَى سِلْعَةً فِي مَرَضِهِ بِبَيِّنَةٍ وَقَبَضَهَا ثُمَّ أَقَرَّ بِدَيْنٍ ثُمَّ مَاتَ فَصَاحِبُ السِّلْعَةِ أَحَقُّ بِهَا مِنْ الْغُرَمَاءِ الْمُقَرِّ لَهُمْ؟ فَيُقَالُ لَهُ: لَعَلَّهُ أَرَادَ " بَنِي تَمِيمٍ " خَاصَّةً أَوْ " أَهْلَ جُرْجَانَ " خَاصَّةً.

L20092 Such confusion is not engaged in by a person of faith or intellect, nor can this obsession and falsehood put forward by this ignorant person be ascribed to the Prophet—peace be upon him—except by those whom Allah the Almighty has forsaken.

وَمِثْلُ هَذَا مِنْ التَّخْلِيطِ لَا يَأْتِي بِهِ ذُو دِينٍ، وَلَا ذُو عَقْلٍ، وَلَا يَنْسِبُ هَذَا الْهَوَسَ وَهَذَا الْبَاطِلَ الَّذِي أَتَى بِهِ هَذَا الْجَاهِلُ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا مَنْ خَذَلَهُ اللَّهُ تَعَالَى.

L20093 Some of them said, "Perhaps it is from the narrator's wording?" We responded, "Whoever permits opposing the Prophet (peace be upon him) does not refrain from saying regarding every hadith that arises: 'Perhaps it is from the narrator's wording,' thereby invalidating Islam through that."

وَقَالَ بَعْضُهُمْ: لَعَلَّهُ مِنْ لَفْظِ الرَّاوِي؟ فَقُلْنَا: مِنْ اسْتَجَازَ خِلَافَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَعْجِزْ فِي كُلِّ حَدِيثٍ يَأْتِي أَنْ يَقُولَ: لَعَلَّهُ مِنْ لَفْظِ الرَّاوِي، فَيُبْطِلُ الْإِسْلَامَ بِذَلِكَ.

L20094–20096 Some of them cited as evidence the words of Allah the Exalted, {And do not consume one another's wealth unjustly} [Al-Baqarah: 188], and the ruling of the Prophet (peace and blessings of Allah be upon him) that "the wealth of a Muslim is not lawful except with his consent." This evidence is used against them, for what the Prophet (peace and blessings of Allah be upon him) ruled is the truth—that which brings contentment to the believer's soul. But the falsehood and misguidance lie solely in their judicial ruling to transfer the wealth of a Muslim to the sinful usurper and the disbeliever. Those who deny [this ruling], when they say: "Permitting the usurper to rent out usurped houses, and even if disbelievers take [such] rent from Muslims' wealth, it is

وَاحْتَجَّ بَعْضُهُمْ بِقَوْلِهِ تَعَالَى {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] وَبِحُكْمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّهُ «لَا يَحِلُّ مَالُ مُسْلِمٍ إلَّا بِطِيبِ نَفْسِهِ» . فَهَذَا الِاحْتِجَاجُ عَلَيْهِمْ؛ لِأَنَّ مَا قَضَى بِهِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ الْحَقُّ، وَهُوَ الَّذِي تَطِيبُ بِهِ نَفْسُ الْمُؤْمِنِ، وَإِنَّمَا الْبَاطِلُ وَالضَّلَالُ قَضَاؤُهُمْ بِمَالِ الْمُسْلِمِ لِلْغَاصِبِ الْفَاسِقِ وَلِلْكَافِرِ الْجَاحِدِ، إذْ يَقُولُونَ: إنَّ كِرَاءَ الدُّورِ الْمَغْصُوبَةِ لِلْغَاصِبِ وَإِنْ أَخَذَهُ الْكُفَّارُ مِنْ أَمْوَالِ الْمُسْلِمِينَ فَحَلَالٌ لَهُمْ، فَلَوْ اتَّقُوا اللَّهَ تَعَالَى لَكَانَ أَوْلَى بِهِمْ.

lawful for them [to keep]." Had they been mindful of Allah the Exalted, it would have been more appropriate for them.[10]

L20097 They cited as evidence two fabricated narrations. The first is reported by Abū ʿIṣmah Nūḥ ibn Abī Maryam, the judge of Marw, from al-Zuhrī, from Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām, from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said: "If the man becomes bankrupt and another finds his property, it is to be divided among his creditors." Abū ʿIṣmah is a notorious liar, widely known for fabricating ḥadīths attributed to the Messenger of Allah—peace and blessings be upon him.

وَاحْتَجُّوا بِخَبَرَيْنِ مَوْضُوعَيْنِ -: أَحَدُهُمَا: مِنْ رِوَايَةِ أَبِي عِصْمَةَ نُوحِ بْنِ أَبِي مَرْيَمَ قَاضِي مَرْوَ عَنْ الزُّهْرِيِّ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَفْلَسَ الرَّجُلُ وَوَجَدَ رَجُلٌ مَتَاعَهُ فَهُوَ بَيْنَ غُرَمَائِهِ» وَأَبُو عِصْمَةَ كَذَّابٌ مَشْهُورٌ بِوَضْعِ الْحَدِيثِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L20098 The other [narration] is from the narration of Ṣadaqah ibn Khālid through ʻUmar ibn Qays Sandal, through Ibn Abī Mulaykah, through Abū Hurayrah, from the Prophet—peace and blessings of Allah be upon him: "Whoever sells a sale and later finds the item intact while the man [buyer] has become insolvent, it remains his property among his creditors." ʻUmar ibn Qays is very weak.

وَالْآخَرُ: مِنْ رِوَايَةِ صَدَقَةَ بْنِ خَالِدٍ عَنْ عُمَرَ بْنِ قَيْسٍ سَنْدَلٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ بَاعَ بَيْعًا فَوَجَدَهُ بِعَيْنِهِ وَقَدْ أَفْلَسَ الرَّجُلُ فَهُوَ مَالُهُ بَيْنَ غُرَمَائِهِ» وَعُمَرُ بْنُ قَيْسٍ ضَعِيفٌ جِدًّا.

L20099 Then, if they were valid—and may Allah the Exalted protect us from that—the established narration from Abu Hurairah would be an addition, and these two narrations would align with the well-established principle. Upholding the additional narration is the obligatory stance that admits no alternative.

ثُمَّ لَوْ صَحَّا - وَقَدْ أَعَاذَ اللَّهُ تَعَالَى مِنْ ذَلِكَ - لَكَانَ الثَّابِتُ عَنْ أَبِي هُرَيْرَةَ زَائِدًا وَكَانَ هَذَانِ مُوَافِقَيْنِ لِمَعْهُودِ الْأَصْلِ، وَالْأَخْذُ بِالزَّائِدِ هُوَ الْوَاجِبُ الَّذِي لَا يَجُوزُ غَيْرُهُ.

L20100 The astonishment at their base roots of corruption is that when a companion narrates a tradition then contradicts it, this indicates its falsehood—though it is authentically established that Abū Hurayrah contradicted these two fabricated and forged narrations. Why, then, do they not deem this a flaw in these narrations? But their affairs are inverted, for they reject the established prophetic practices—peace and blessings be upon him—such as "washing a vessel seven times after a dog drinks from it" and other such rulings, by citing fabricated narrations claiming the narrator later abandoned them. Yet they do not consider rejecting fabricated narrations based on the authenti-

وَالْعَجَبُ مِنْ أَصْلِهِمْ الْخَبِيثِ أَنَّ الصَّاحِبَ إذَا رَوَى رِوَايَةً ثُمَّ خَالَفَهَا دَلَّ ذَلِكَ عَلَى بُطْلَانِهَا - وَقَدْ صَحَّ عَنْ أَبِي هُرَيْرَةَ خِلَافُ هَذَيْنِ الْأَثَرَيْنِ الْمَكْذُوبَيْنِ الْمَوْضُوعَيْنِ: فَهَلَّا جَعَلُوا ذَلِكَ عِلَّةً فِيهِمَا، وَلَكِنَّ أُمُورَهُمْ مَعْكُوسَةٌ؛ لِأَنَّهُمْ يَرُدُّونَ السُّنَنَ الثَّابِتَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلُ: «غَسْلِ الْإِنَاءِ مِنْ وُلُوغِ الْكَلْبِ سَبْعًا» وَغَيْرُ ذَلِكَ بِالرِّوَايَاتِ الْمَكْذُوبَةِ فِي أَنَّ الرَّاوِيَ لَهَا تَرَكَهَا، ثُمَّ لَا يَرَوْنَ رَدَّ الرِّوَايَاتِ الْمَوْضُوعَةِ بِأَنَّ مَنْ أُضِيفَتْ إلَيْهِ صَحَّ عَنْهُ خِلَافُهَا، فَتَعَسًا لِهَذِهِ الْعُقُولِ، وَنَحْمَدُ اللَّهَ عَلَى السَّلَامَةِ.

[10] **Qur'an references (L20094):** Qur'an 2:188 (Al-Baqarah).

cated contradictions of those to whom they are falsely ascribed. Perish such minds! We praise Allah for deliverance.

L20101 They argued: The buyer is not free from either owning what he purchased or not owning it. If he did not own it, his purchase is invalid—yet you do not hold this position. If he did own it, the seller cannot have a right to revoke it, and it belongs to all creditors collectively like the rest of his property.

L20102–20103 Abu Muhammad said: They have raised this objection in pre-emption as well. The matter is equivalent, but O these people, such reasoning cannot oppose the Messenger of Allah—peace and blessings of Allah be upon him—about whom Allah the Exalted said: "It is not for a believing man or woman, when Allah and His Messenger have decreed a matter, to have any choice in their affair" (33:36), and about whom their Lord the Exalted said: "The Prophet is closer to the believers than their own selves" (33:6). Such opposition is only directed against those who speak falsehood through their corrupt opinions—such as one who deems a Muslim's purchase from a ḥarbī of what was seized from Muslims as a valid sale granting ownership, except when the original owner seeks to reclaim it by paying the price, in which case the owner has greater right. It should be asked: Did the purchaser from the ḥarbī acquire ownership of what he bought or not? If he purchased and acquired ownership, why would the one from whom it was seized have greater right—whether through payment or otherwise? If he did not acquire ownership, then this is our position, not yours.[11]

L20104 And who has permitted the giver to revoke his gift? He is asked: Did the recipient acquire ownership of what was gifted, or not? If he did not own it, why do they permit him to benefit from it, engage in intercourse, and sell it? If he did own it, then by what means can one whose ownership has been nullified revoke it? This matter deserved their attention more than objecting to the Messenger of Allah (peace be upon him) with their foul opinions that do not equal even a dog's excrement.

وَقَالُوا: لَا يَخْلُو الْمُشْتَرِي مِنْ أَنْ يَكُونَ مَلَكَ مَا اشْتَرَى أَوْ لَمْ يَمْلِكْهُ، فَإِنْ كَانَ لَمْ يَمْلِكْهُ فَشِرَاؤُهُ بَاطِلٌ، وَأَنْتُمْ لَا تَقُولُونَ هَذَا، وَإِنْ كَانَ قَدْ مَلَكَهُ فَلَا يَجُوزُ أَنْ يَكُونَ لِلْبَائِعِ فِيهِ رُجُوعٌ، وَهُوَ لِلْغُرَمَاءِ كُلِّهِمْ كَسَائِرِ مَالِهِ.

قَالَ أَبُو مُحَمَّدٍ: اعْتَرَضُوا بِهَذَا فِي الشُّفْعَةِ أَيْضًا: فَالْأَمْرُ سَوَاءٌ، لَكِنَّ يَا هَؤُلَاءِ مِثْلُ هَذَا لَا يُعَارَضُ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي قَالَ اللَّهُ تَعَالَى فِيهِ: {وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] وَالَّذِي يَقُولُ فِيهِ رَبُّهُ تَعَالَى: {النَّبِيُّ أَوْلَى بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ} [الأحزاب: ٦] إنَّمَا يُعَارَضُ بِهِ مَنْ قَالَ الْبَاطِلَ بِرَأْيِهِ الْفَاسِدِ فَجَعَلَ شِرَاءَ الْمُسْلِمِ مِنْ الْحَرْبِيِّ مَا غَنِمَهُ مِنْ الْمُسْلِمِينَ شِرَاءً صَحِيحًا يَمْلِكُهُ إلَّا أَنْ يُرِيدَ الْأَوَّلُ أَخْذَهُ بِالثَّمَنِ فَهُوَ أَحَقُّ بِهِ؟ فَيُقَالُ لَهُ: هَلْ مَلَكَ الْمُشْتَرِي مِنْ الْحَرْبِيِّ مَا اشْتَرَاهُ أَوْ لَمْ يَمْلِكْهُ؟ فَإِنْ كَانَ اشْتَرَاهُ وَمَلَكَهُ، فَلِمَ يَكُونُ الَّذِي غَنِمَ مِنْهُ أَحَقُّ بِهِ بِالثَّمَنِ أَوْ بِغَيْرِ الثَّمَنِ؟ وَإِنْ كَانَ لَمْ يَمْلِكْهُ فَهَذَا قَوْلُنَا لَا قَوْلُكُمْ.

وَمَنْ جَعَلَ لِلْوَاهِبِ أَنْ يَرْجِعَ فِيمَا وَهَبَ؟ فَيُقَالُ لَهُ: هَلْ مَلَكَ الْمَوْهُوبُ مَا وُهِبَ لَهُ، أَمْ لَمْ يَمْلِكْ؟ فَإِنْ كَانَ لَمْ يَمْلِكْهُ فَلِمَ يُحِلُّونَ لَهُ الِانْتِفَاعَ، وَالْوَطْءَ، وَالْبَيْعَ؟ وَإِنْ كَانَ مَلَكَهُ فَبِأَيِّ شَيْءٍ يَرْجِعُ فِيهِ مَنْ قَدْ بَطَلَ مِلْكُهُ عَنْهُ؟ فَهَذَا كَانَ أَوْلَى بِهِمْ مِنْ الِاعْتِرَاضِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِآرَائِهِمْ الْمُنْتِنَةِ الَّتِي لَا تُسَاوِي رَجِيعَ كَلْبٍ.

[11] **Qur'an references (L20103):** Qur'an 33:36 (Al-Ahzab); Qur'an 33:6 (Al-Ahzab).

L20105 And it has been narrated to us through the transmission route of Abu ʿUbayd that he debated Muhammad ibn al-Hasan concerning this matter, but he found nothing more with him than his saying: "This is from the ḥadīth of Abu Hurayrah."

وَرُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ أَنَّهُ نَاظَرَ فِي هَذِهِ الْمَسْأَلَةِ مُحَمَّدَ بْنَ الْحَسَنِ فَلَمْ يَجِدْ عِنْدَهُ أَكْثَرَ مِنْ أَنْ قَالَ: هَذَا مِنْ حَدِيثِ أَبِي هُرَيْرَةَ.

L20106 Ali said: Yes, by Allah, it is from the hadith of Abu Hurairah, the righteous, truthful one, not from the hadith of someone like Muhammad ibn al-Hasan. It was said to Abdullah ibn al-Mubarak: "Who is more knowledgeable in jurisprudence: Abu Yusuf or Muhammad ibn al-Hasan?" He replied: "Say: Which of them is the greater liar?"

قَالَ عَلِيٌّ: نَعَمْ، هُوَ وَاَللَّهِ مِنْ حَدِيثِ أَبِي هُرَيْرَةَ الْبَرِّ الصَّادِقِ لَا مِنْ حَدِيثِ مِثْلِ مُحَمَّدِ بْنِ الْحَسَنِ الَّذِي قِيلَ لِعَبْدِ اللَّهِ بْنِ الْمُبَارَكِ: مَنْ أَفْقَهُ؟ أَبُو يُوسُفَ أَوْ مُحَمَّدُ بْنُ الْحَسَنِ؟ فَقَالَ: قُلْ: أَيُّهُمَا أَكْذَبُ.

L20107–20109 Abu Muhammad said: It is astonishing that they argue, "Whoever sells a commodity which the buyer does not take possession of before becoming bankrupt, the seller has a greater right to it"—yet this is precisely what they reject, for there is no distinction between one who has taken possession and one who has not. As for those who differentiate between death and life, or between paying part of the price and paying none of it, they have relied on mursal narrations. Among these are: a report via Mālik and Yūnus ibn ʿUbayd from al-Zuhrī from Abū Bakr ibn ʿAbd al-Raḥmān that the Messenger of Allah—peace and blessings of Allah be upon him—; a chain via Isrāʾīl from ʿAbd al-ʿAzīz ibn Rufayʿ from Ibn Abī Mulaykah that the Messenger of Allah—peace and blessings of Allah be upon him—; and a musnad via the chains of Ismāʿīl ibn ʿAyyāsh and Baqiyyah, both of whom narrated from al-Zubaydī. From al-Zuhri, from Abu Bakr ibn Abd al-Rahman, from Abu Hurairah, that the Messenger of Allah - peace be upon him - [narrated]. Baqiyyah and Ismaʿil are both deemed weak narrators.

قَالَ أَبُو مُحَمَّد: وَالْعَجَبُ أَنَّهُمْ يَقُولُونَ: مَنْ بَاعَ سِلْعَةً فَلَمْ يَقْبِضْهَا الْمُشْتَرِي حَتَّى فَلَّسَ فَالْبَائِعُ أَحَقُّ بِهَا وَهَذَا هُوَ الَّذِي أَنْكَرُوا، وَلَا فَرْقَ بَيْنَ مَنْ قَبَضَ وَبَيْنَ مَنْ لَمْ يَقْبِضْ، وَأَمَّا مَنْ فَرَّقَ بَيْنَ الْمَوْتِ، وَالْحَيَاةِ، وَبَيْنَ أَنْ يَدْفَعَ مِنَ الثَّمَنِ شَيْئًا أَوْ لَا يَدْفَعَ مِنْهُ شَيْئًا فَإِنَّهُمْ احْتَجُّوا بِآثَارٍ مُرْسَلَةٍ -: مِنْهَا -: مِنْ طَرِيقِ مَالِكٍ، وَيُونُسَ بْنِ عُبَيْدٍ عَنِ الزُّهْرِيِّ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِسْرَائِيلَ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنِ ابْنِ أَبِي مُلَيْكَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمُسْنَدٍ مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ عَيَّاشٍ، وَبَقِيَّةَ، كِلَاهُمَا عَنِ الزُّبَيْدِيِّ عَنِ الزُّهْرِيِّ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، بَقِيَّةُ، وَإِسْمَاعِيلُ ضَعِيفَانِ.

L20110 Another – through the chain of Isḥāq ibn Ibrāhīm ibn Jūtā from ʿAbd al-Razzāq from Mālik from Ibn Shihāb from Abū Bakr ibn ʿAbd al-Raḥmān from Abū Hurayrah that the Messenger of Allah – peace and blessings be upon him – said: "If a man sells goods to a buyer, and the buyer becomes bankrupt without the seller having received any portion of the price, then if the seller finds his specific goods intact, he has the prior claim to them. If the buyer dies, the seller ranks equally with the creditors." Now, Isḥāq ibn Ibrāhīm ibn Jūtā is unknown—and this narration is not recognized among

وَآخَرُ - مِنْ طَرِيقِ إِسْحَاقَ بْنِ إِبْرَاهِيمَ بْنِ جُوتَى عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَالِكٍ عَنِ ابْنِ شِهَابٍ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَيُّمَا رَجُلٍ بَاعَ رَجُلًا مَتَاعًا فَأَفْلَسَ الْمُبْتَاعُ وَلَمْ يَقْبِضِ الَّذِي بَاعَ مِنَ الثَّمَنِ شَيْئًا فَإِنْ وَجَدَ الْبَائِعُ سِلْعَتَهُ بِعَيْنِهَا فَهُوَ أَحَقُّ بِهَا، وَإِنْ مَاتَ الْمُشْتَرِي فَهُوَ أُسْوَةُ الْغُرَمَاءِ»

the reports from Mālik. Another report – through the chain of ʿAbd al-Razzāq from Wakīʿ from Hishām al-Dastawā'ī from Qatādah from Bashīr ibn Nahīk from Abū Hurayrah from the Prophet – peace and blessings be upon him – similar to al-Zuhrī's ḥadīth in content, though like this, he did not mention its text or wording.

فَإِنَّ إِسْحَاقَ بْنَ إِبْرَاهِيمَ بْنِ جُوتَى مَجْهُولٌ - وَهَذَا غَيْرُ مَعْرُوفٍ مِنْ حَدِيثِ مَالِكٍ. وَخَبَرٌ آخَرُ - مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ وَكِيعٍ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ قَتَادَةَ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلُ حَدِيثِ الزُّهْرِيِّ هَكَذَا لَمْ يَذْكُرْ مَتْنَهُ وَلَا لَفْظَهُ.

L20111 Then the chain is disconnected because Qatādah did not hear it directly from Bashīr ibn Nahīk, but rather heard it through al-Naḍr ibn Anas reporting from Bashīr ibn Nahīk, who reported from Abū Hurayrah - as we have transmitted it through the chains of Shuʿbah, Saʿīd ibn Abī ʿArūbah, and al-Dasūtā'ī, all of whom narrated from Qatādah in accordance with our earlier citation - thereby nullifying every objection they attempted to raise.

ثُمَّ هُوَ مُنْقَطِعٌ؛ لِأَنَّ قَتَادَةَ لَمْ يَسْمَعْهُ مِنْ بَشِيرِ بْنِ نَهِيكٍ إنَّمَا سَمِعَهُ مِنْ النَّضْرِ بْنِ أَنَسٍ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ أَبِي هُرَيْرَةَ - هَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ شُعْبَةَ، وَسَعِيدِ بْنِ أَبِي عَرُوبَةَ، والدستوائي، كُلُّهُمْ عَنْ قَتَادَةَ بِمِثْلِ قَوْلِنَا كَمَا أَوْرَدْنَاهُ قَبْلُ - فَسَقَطَ كُلُّ مَا شَغَبُوا بِهِ.

L20112 Then, if these narrations were authentic, all of them would contradict the opinions of Mālik and al-Shāfiʿī, because all of them distinguish between death and living state—whereas al-Shāfiʿī does not differentiate between the two—and all of them distinguish between whether any part of the consideration was received and whether none was received—whereas Mālik does not differentiate between the two. Thus, the opinions of both scholars are contradictory to all the narrations.

ثُمَّ لَوْ صَحَّتْ هَذِهِ الْآثَارُ لَكَانَتْ كُلُّهَا مُخَالِفَةً لِقَوْلِ مَالِكٍ، وَالشَّافِعِيِّ؛ لِأَنَّ فِي جَمِيعِهَا الْفَرْقَ بَيْنَ الْمَوْتِ، وَالْحَيَاةِ، وَالشَّافِعِيُّ، لَا يُفَرِّقُ بَيْنَهُمَا، وَفِي جَمِيعِهَا الْفَرْقُ بَيْنَ أَنْ يَكُونَ قُبِضَ مِنْ الثَّمَنِ شَيْئًا وَبَيْنَ أَنْ لَا يَكُونَ قُبِضَ، وَمَالِكٌ لَا يُفَرِّقُ بَيْنَهُمَا، فَصَحَّ قَوْلُهُمَا مُخَالِفًا لِكُلِّ الْآثَارِ.

L20113 They also argued by stating: "The legal responsibility of the deceased has ceased, while the legal responsibility of the living remains intact." We responded: "What does that entail? The Messenger of Allah (peace and blessings be upon him) did not differentiate between them; rather, he equalized between them, as we cited earlier."

وَاحْتَجُّوا أَيْضًا بِأَنْ قَالُوا: ذِمَّةُ الْمَيِّتِ قَدْ انْقَطَعَتْ، وَذِمَّةُ الْحَيِّ قَائِمَةٌ؟ قُلْنَا: فَكَانَ مَاذَا؟ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُفَرِّقْ بَيْنَهُمَا، بَلْ سَوَّى بَيْنَهُمَا، كَمَا أَوْرَدْنَا قَبْلُ.

L20114 Ali said: If one finds only part of their commodity and not in its actual form, the text applies only when they find it in its actual form and the buyer has not altered it, as we mentioned earlier: {Whoever transgresses Allah's limits has truly wronged himself} [At-Talāq: 1]. And with Allah, the Most High, is success.[12]

قَالَ عَلِيٌّ: وَأَمَّا إذَا لَمْ يَجِدْ إلَّا بَعْضَ سِلْعَتِهِ فَلَمْ يَجِدْهَا بِعَيْنِهَا وَإِنَّمَا جَاءَ النَّصُّ إذَا وَجَدَهَا بِعَيْنِهَا وَلَمْ يُفَرِّقْهَا الْمُشْتَرِي كَمَا أَوْرَدْنَا قَبْلُ {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[12] **Qur'an references (L20114):** Qur'an 65:1 (At-Talaq).

[مَسْأَلَةٌ غَصَبَ آخَرَ مَالًا فَمَاتَ وَلَمْ يَشْهَدْ لَهُ بِهِ]

A jurisprudential scenario wherein someone seized another's property unlawfully, then died without any witness testifying to his claim.

١٢٨٤ - مَسْأَلَةٌ: وَمَنْ غَصَبَ آخَرَ مَالًا، أَوْ خَانَهُ فِيهِ، أَوْ أَقْرَضَهُ فَمَاتَ وَلَمْ يَشْهَدْ لَهُ بِهِ، وَلَا بَيِّنَةَ لَهُ، أَوْلَهُ بَيِّنَةٌ فَظَفَرَ لِلَّذِي حَقُّهُ قَبْلَهُ بِمَالٍ، أَوْ ائْتَمَنَهُ عَلَيْهِ سَوَاءٌ كَانَ مِنْ نَوْعِ مَالِهِ عِنْدَهُ، أَوْ مِنْ غَيْرِ نَوْعِهِ، وَكُلُّ ذَلِكَ سَوَاءٌ - وَفَرْضٌ عَلَيْهِ أَنْ يَأْخُذَهُ وَيَجْتَهِدَ فِي مَعْرِفَةِ ثَمَنِهِ، فَإِذَا عَرَفَ أَقْصَاهُ بَاعَ مِنْهُ بِقَدْرِ حَقِّهِ، فَإِنْ كَانَ فِي ذَلِكَ ضَرَرٌ: فَإِنْ شَاءَ بَاعَهُ وَإِنْ شَاءَ أَخَذَهُ لِنَفْسِهِ حَلَالًا.

L20115

L20116–20118

1284 - Issue: If someone unlawfully seizes another's property, breaches trust in it, or lends to him and dies without testifying to the loan while the claimant has no evidence, or if the claimant has evidence but the one whose right precedes his succeeds in obtaining the property, or entrusts him with it - regardless of its type - His property in his possession, or of a different kind—all being equivalent—and it is obligatory upon him to take it and strive to ascertain its value. Once he ascertains its maximum value, he must sell a portion of it proportionate to his entitlement. If harm arises from this: he may either sell it or take it for himself lawfully.

وَسَوَاءٌ كَانَ مَا ظَفَرَ لَهُ بِهِ جَارِيَةً، أَوْ عَبْدًا، أَوْ عَقَارًا، أَوْ غَيْرَ ذَلِكَ، فَإِنْ وَفَّى بِمَالِهِ قَبْلَهُ فَذَاكَ وَإِنْ لَمْ يَفِ بَقِيَ حَقُّهُ فِيمَا لَمْ يَنْتَصِفْ مِنْهُ، وَإِنْ فَضَلَ فَضْلٌ رَدَّهُ إِلَيْهِ أَوْ إِلَى وَرَثَتِهِ، فَإِنْ لَمْ يَفْعَلْ ذَلِكَ فَهُوَ عَاصٍ لِلَّهِ عَزَّ وَجَلَّ إِلَّا أَنْ يُحَلِّلَهُ وَيُبْرِيَهُ فَهُوَ مَأْجُورٌ.

L20119

It is the same whether what he seized for him was a female slave, a male slave, real estate, or anything else. If he fulfills the debt with his own wealth before seizing it, that suffices. But if he does not fulfill it, his right remains valid for the portion from which he did not receive his fair share. If any surplus remains, he must return it to the creditor or to his heirs. If he fails to do this, he is disobedient to Allah Almighty unless the creditor releases him and absolves him of the debt, in which case the creditor is rewarded.

وَسَوَاءٌ كَانَ قَدْ خَاصَمَهُ أَوْ لَمْ يُخَاصِمْهُ، اسْتَحْلَفَهُ أَوْ لَمْ يَسْتَحْلِفْهُ فَإِنْ طُولِبَ بِذَلِكَ وَخَافَ إِنْ أَقَرَّ أَنْ يَغْرَمَ فَلْيُنْكِرْ وَلْيَحْلِفْ، وَهُوَ مَأْجُورٌ فِي ذَلِكَ.

L20120

Whether he had disputed him or not, or whether he had demanded an oath from him or not, if he is compelled regarding that [claim] and fears that admitting [to it] would make him incur a financial penalty, he should deny and swear an oath. He will be rewarded for doing so.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

L20121

This represents the position of Al-Shafiʿī, Abū Sulaymān, and the companions of both of them.

وَكَذَلِكَ عِنْدَنَا كُلُّ مَنْ ظَفَرَ لِظَالِمٍ بِمَالٍ فَفَرْضٌ عَلَيْهِ أَخْذُهُ وَإِنْصَافُ الْمَظْلُومِ مِنْهُ.

L20122

Similarly, according to our school, whoever acquires property for an oppressor is obligated to take it and restore justice to the wronged party from it.

L20123

The proof of that is the statement of Allah, the Most High: "And if you retaliate, then retaliate with the equivalent of what you were afflicted with" [An-Nahl: 126], and His statement: "As for those who retaliate after being

wronged, then there is no blame against them" [Ash-Shura: 41]. "Indeed, the blame falls only on those who wrong people and act unjustly on earth without right" [Ash-Shura: 42].[13]

L20124 And those who, when oppression befalls them, defend themselves (42:39). The requital for an evil deed is its equivalent, but whoever pardons and reforms, his reward lies with Allah (42:40).[14]

L20125 And the statement of Allah the Exalted: "The sacred months entail lawful retribution." [Al-Baqarah: 194][15]

L20126 And the statement of Allah, the Most High: "So whoever transgresses against you, then transgress against him in the same manner as he transgressed against you." [Al-Baqarah: 194][16]

L20127 And His statement, the Most High, is: {Except those who believed, did righteous deeds, remembered Allah abundantly, and sought victory after they were wronged} [Ash-Shuʿarā': 227].[17]

L20128 On the authority of Abu Dawud: Ahmad ibn Yunus reported to us, Zuhayr ibn Muʿāwiyah reported to us, Hishām ibn ʿUrwah reported from his father from ʿĀ'ishah, the Mother of the Believers, that Hind - the mother of Muʿāwiyah - came to the Messenger of Allah (peace be upon him) and said: "Abu Sufyān is a stingy man who does not give me what suffices me and my children. Is there any sin upon me if I take something from his wealth?" He replied: "Take what suffices you and your children in a reasonable manner."

L20129–20130 We have mentioned the statement of Allah's Messenger—peace and blessings be upon him—to the creditors of the one who incurred loss regarding fruits

[13] **Qur'an references (L20123):** Qur'an 16:126 (An-Nahl); Qur'an 42:41 (Ash-Shuraa); Qur'an 42:42 (Ash-Shuraa).

[14] **Qur'an references (L20124):** Qur'an 42:39 (Ash-Shuraa); Qur'an 42:40 (Ash-Shuraa).

[15] **Qur'an references (L20125):** Qur'an 2:194 (Al-Baqarah).

[16] **Qur'an references (L20126):** Qur'an 2:194 (Al-Baqarah).

[17] **Qur'an references (L20127):** Qur'an 26:227 (Ash-Shu'ara).

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] وقَوْله تَعَالَى: {وَلَمَنِ انْتَصَرَ بَعْدَ ظُلْمِهِ فَأُولَئِكَ مَا عَلَيْهِمْ مِنْ سَبِيلٍ} [الشورى: ٤١] {إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الأَرْضِ بِغَيْرِ الْحَقِّ} [الشورى: ٤٢] .

وقَوْله تَعَالَى: {وَالَّذِينَ إِذَا أَصَابَهُمُ الْبَغْيُ هُمْ يَنْتَصِرُونَ} [الشورى: ٣٩] {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: ٤٠] .

وقَوْله تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] .

وقَوْله تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

وقَوْله تَعَالَى: {إِلا الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ وَذَكَرُوا اللَّهَ كَثِيرًا وَانْتَصَرُوا مِنْ بَعْدِ مَا ظُلِمُوا} [الشعراء: ٢٢٧] .

وَمِنْ طَرِيق أَبِي دَاوُد نا أَحْمَدُ بْنُ يُونُسَ نا زُهَيْرُ بْنُ مُعَاوِيَةَ نا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ هِنْدًا أُمَّ مُعَاوِيَةَ جَاءَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: إِنَّ أَبَا سُفْيَانَ رَجُلٌ شَحِيحٌ، وَإِنَّهُ لَا يُعْطِينِي مَا يَكْفِينِي وَبَنِي، فَهَلْ عَلَيَّ مِنْ جُنَاحٍ أَنْ آخُذَ مِنْ مَالِهِ شَيْئًا؟ قَالَ: خُذِي مَا يَكْفِيكِ وَوَلَدَكِ بِالْمَعْرُوفِ» .

وَقَدْ ذَكَرْنَا «قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِغُرَمَاءِ الَّذِي أُصِيبَ فِي ثِمَارٍ ابْتَاعَهَا: خُذُوا مَا وَجَدْتُمْ وَلَيْسَ لَكُمْ إلَّا ذَلِكَ» وَهَذَا إطْلَاقٌ مِنْهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِصَاحِبِ الْحَقِّ عَلَى مَا وَجَدَ لِلَّذِي لَهُ عَلَيْهِ الْحَقُّ.

he had purchased: “Take what you find, for you have nothing beyond that.” This constitutes a general ruling from him—peace and blessings be upon him—empowering the rightful claimant with authority over whatever assets are found belonging to the obligated party.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - حَدَّثَنِي يَزِيدُ هُوَ ابْنُ أَبِي حَبِيبٍ - عَنْ أَبِي الْخَيْرِ هُوَ مَرْثَدُ بْنُ عَبْدِ اللَّهِ الْيَزَنِيِّ - عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ [قَالَ] : «قُلْنَا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّكَ تَبْعَثُنَا فَنَنْزِلَ بِقَوْمٍ لَا يَقْرُونَنَا، فَمَا تَرَى فِيهِ؟ فَقَالَ لَنَا - عَلَيْهِ السَّلَامُ -: إنْ نَزَلْتُمْ بِقَوْمٍ فَأُمِرَ لَكُمْ بِمَا يَنْبَغِي لِلضَّيْفِ فَاقْبَلُوا، فَإِنْ لَمْ يَفْعَلُوا فَخُذُوا مِنْهُمْ حَقَّ الضَّيْفِ» وَهُوَ قَوْلُ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَابْنِ سِيرِينَ. رُوِّينَا مِنْ طَرِيقِ خَالِدٍ الْحَذَّاءِ عَنْهُ أَنَّهُ قَالَ: إنْ أَخَذَ الرَّجُلُ مِنْك شَيْئًا فَخُذْ مِنْهُ مِثْلَهُ - وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إنْ أَخَذَ مِنْك شَيْئًا فَخُذْ مِنْهُ مِثْلَهُ.

L20131 From the path of Al-Bukhārī: ʿAbdullāh ibn Yūsuf narrated to us from Al-Layth—who is Ibn Saʿd—who narrated: Yazīd—who is Ibn Abī Ḥabīb—narrated to me from Abī Al-Khayr—who is Marthad ibn ʿAbdillāh Al-Yazanī—from ʿUqbah ibn ʿĀmir Al-Juhanī, who said: “We said to the Messenger of Allāh (peace and blessings be upon him): ’You send us, and we stay with people who do not offer us hospitality. What do you advise regarding this?’ He (peace be upon him) said to us: ’If you stay with people and they arrange for you what is due to a guest, accept it. If they do not, take from them the guest’s right.’” This is the opinion of ʿAlī ibn Abī Ṭālib and Ibn Sīrīn. It has been narrated to us via Khālid Al-Ḥadhdhā’ from Ibn Sīrīn that he said: “If a man takes something from you, take the equivalent from him.” And from the path of Sufyān Al-Thawrī, from Manṣūr, from Ibrāhīm Al-Nakhaʿī, who said: “If he takes something from you, take the equivalent from him.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ دَاوُد بْنِ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ قَالَ: لَا تَخُنْ مَنْ خَانَك، فَإِنْ أَخَذْت مِنْهُ مِثْلَ مَا أَخَذَ مِنْك فَلَيْسَ عَلَيْك بَأْسٌ.

L20132 From the narration of ʿAbd al-Razzāq, via al-Muʿtamir ibn Sulaymān al-Taymī, from Dāwūd ibn Abī Hind, from al-Shaʿbī, who said: Do not betray one who has betrayed you. If you take from him the like of what he took from you, there is no blame upon you.

وَعَنْ عَطَاءٍ حَيْثُ وَجَدْت مَتَاعَك فَخُذْهُ.

L20133 From ‘Aṭā’: Take your property wherever you found it.

قَالَ أَبُو مُحَمَّد: وَأَمَّا قَوْلُنَا: إنْ لَمْ يَفْعَلْ فَهُوَ عَاصٍ لِلَّهِ تَعَالَى، فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] فَمَنْ ظَفَرَ بِمِثْلِ مَا ظُلِمَ فِيهِ هُوَ، أَوْ مُسْلِمٌ، أَوْ ذِمِّيٌّ، فَلَمْ يُزِلْهُ عَنْ يَدِ الظَّالِمِ وَيَرُدَّ إلَى الْمَظْلُومِ حَقَّهُ

L20134 Abū Muḥammad said: As for our statement: If he does not do so, he is disobedient to God Almighty, this is based on the words of God, Mighty and Sublime: {Cooperate in righteousness and piety, and do not cooperate in sin and transgression} [Al-Mā’idah: 2]. Thus, whoever encounters a case similar to one in which he himself, a Muslim, or a dhimmī was wronged, yet fails to remove it from the oppressor’s grasp and restore the right to the wronged party, he is one of the oppressors. He has not assisted in righteousness and

piety but has instead assisted in sin and transgression. This is a matter known self-evidently.[18]

فَهُوَ أَحَدُ الظَّالِمِينَ، لَمْ يُعِنْ عَلَى الْبِرِّ وَالتَّقْوَى بَلْ أَعَانَ عَلَى الْإِثْمِ وَالْعُدْوَانِ، هَذَا أَمْرٌ يُعْلَمُ ضَرُورَةً.

L20135 Similarly, the command of the Messenger of Allah—peace and blessings of Allah be upon him—states: "Whoever among you sees an evil, let him change it with his hand if he is able." Thus, whoever is capable of restraining injustice, cutting it off, and giving every rightful person their due right but fails to do so has indeed had the capability to forbid the evil yet fails to act. Such a person has disobeyed Allah, the Almighty and Majestic, and opposed the command of the Messenger of Allah—peace and blessings of Allah be upon him—unless he relinquishes his own right, in which case he has undoubtedly done well without disagreement. The evidences for this are exceedingly numerous.

وَكَذَلِكَ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ رَأَى مِنْكُمْ مُنْكَرًا أَنْ يُغَيِّرَهُ بِيَدِهِ إِنْ اسْتَطَاعَ» فَمَنْ قَدَرَ عَلَى كَفِّ الظُّلْمِ وَقَطْعِهِ وَإِعْطَاءِ كُلِّ ذِي حَقٍّ حَقَّهُ فَلَمْ يَفْعَلْ فَقَدْ قَدَرَ عَلَى إِنْكَارِ الْمُنْكَرِ فَلَمْ يَفْعَلْ فَقَدْ عَصَى اللَّهَ عَزَّ وَجَلَّ وَخَالَفَ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا أَنْ يُحَلِّلَهُ مِنْ حَقِّ نَفْسِهِ فَقَدْ أَحْسَنَ بِلَا خِلَافٍ، وَالدَّلَائِلُ عَلَى هَذَا تَكْثُرُ جِدًّا.

L20136 A group opposed us in this matter—then a faction said: "One must not take anything from him."

وَخَالَفَنَا فِي هَذَا قَوْمٌ -: فَقَالَتْ طَائِفَةٌ: لَا يَأْخُذُ مِنْهُ شَيْئًا.

L20137 A group of scholars stated: If he recovers the exact property, he should take it; otherwise, he must not take anything else.

وَقَالَتْ طَائِفَةٌ: إِنْ ظَفَرَ بِعَيْنِ مَالِهِ فَلْيَأْخُذْهُ وَإِلَّا فَلَا يَأْخُذْ غَيْرَهُ.

L20138–20139 A group said: If he finds the same type as what was taken, he should take it; otherwise, he should not take anything other than its type. This group argued with what we narrated through the chain of Yūsuf ibn Māhak, who said: "I used to record expenses for a certain person who was their legal guardian—orphans whose funds they defrauded him of a thousand dirhams. He restored it to them, then obtained for them an equivalent amount from their own wealth. I said: 'Reclaim the thousand they took from you.' He replied: 'No. My father narrated to me that he heard Allah's Messenger (peace be upon him) say: "Deliver the trust to those who entrust you, and do not betray those who have betrayed you."'" A similar narration is reported from Ṭalq ibn Ghannām, from Sharīk and Qays—who is Ibn al-Rabīʿ—from Abū Ḥuṣayn, from Abū Ṣāliḥ, from Abū Hurayrah, from the Prophet (peace

وَقَالَتْ طَائِفَةٌ: إِنْ وَجَدَ مِنْ نَوْعِ مَا أُخِذَ مِنْهُ فَلْيَأْخُذْ وَإِلَّا فَلَا يَأْخُذْ غَيْرَ نَوْعِهِ. وَاحْتَجَّتْ هَذِهِ الطَّوَائِفُ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ يُوسُفَ بْنِ مَاهَكَ قَالَ: كُنْتُ أَكْتُبُ لِفُلَانٍ نَفَقَةَ أَيْتَامٍ كَانَ وَلِيُّهُمْ فَغَالَطُوهُ بِأَلْفِ دِرْهَمٍ فَأَدَّاهَا إِلَيْهِمْ، فَأَدْرَكَتْ لَهُمْ مِنْ مَالِهِمْ مِثْلَهَا، قُلْتُ: اقْبِضْ الْأَلْفَ الَّذِي ذَهَبُوا بِهَا مِنْكَ، قَالَ: لَا، حَدَّثَنِي أَبِي أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «أَدِّ إِلَى مَنْ ائْتَمَنَكَ وَلَا تَخُنْ مَنْ خَانَكَ» وَنَحْوُهُ -: عَنْ طَلْقِ بْنِ غَنَّامٍ عَنْ شَرِيكٍ، وَقَيْسٍ هُوَ ابْنُ الرَّبِيعِ - عَنْ أَبِي حُصَيْنٍ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَدِّ الْأَمَانَةَ إِلَى مَنْ ائْتَمَنَكَ وَلَا تَخُنْ مَنْ خَانَكَ» .

[18] **Qur'an references (L20134):** Qur'an 5:2 (Al-Ma'idah).

be upon him): “Deliver the trust to those who entrust you, and do not betray those who have betrayed you.”[19]

L20140 From the narration of ʿAbd ibn Ḥumayd, from Hāshim ibn al-Qāsim, from al-Mubārak ibn Faḍālah, from al-Ḥasan: A man said to the Prophet—peace and blessings of Allah be upon him—“I had a rightful claim against a man, and he denied me. Now he is owed a debt by me. Should I repudiate him?” He replied: “No. Fulfill the trust to those who entrust you, and do not betray one who betrayed you.”

وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ عَنْ هَاشِمِ بْنِ الْقَاسِمِ عَنْ الْمُبَارَكِ بْنِ فَضَالَةَ عَنْ الْحَسَنِ «قَالَ رَجُلٌ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ لِي حَقٌّ عَلَى رَجُلٍ فَجَحَدَنِي فَدَانَ لَهُ عِنْدِي حَقٌّ أَفَأَجْحَدُهُ؟ قَالَ: لَا، أَدِّ الْأَمَانَةَ إلَى مَنْ ائْتَمَنَكَ وَلَا تَخُنْ مَنْ خَانَكَ» .

L20141 From the chain of Ḥammād ibn Zayd, from Ayyūb, from a man of Banū Sadūs named Daysam: We said to Bashīr ibn al-Khaṣāṣiyyah, “We have neighbors such that **there is no stray she-camel that comes to us but they take it**, and items from their property come into our possession. May we take them?” He replied, “No.”

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ عَنْ رَجُلٍ مِنْ بَنِي سَدُوسٍ يُقَالُ لَهُ: دَيْسَمٌ قُلْنَا لِبَشِيرِ بْنِ الْخَصَاصِيَةِ: لَنَا جِيرَانٌ مَا تَشِذُّ لَنَا قَاصِيَةٌ إلَّا ذَهَبُوا بِهَا وَإِنَّهُ يَمْضِي لَنَا مِنْ أَمْوَالِهِمْ أَشْيَاءُ فَنَذْهَبُ بِهَا؟ قَالَ: لَا.

L20142 Abu Muhammad said: We do not know any proof for them except what we have mentioned - and all of this amounts to nothing - as for the narration of so-and-so from his father: not to mention this chain of transmission! I wish I knew who so-and-so is? We disavow to Allah the Exalted every religion taken from so-and-so whose identity is unknown, nor his name, nor who his father is, nor his father’s name.

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ مَا ذَكَرْنَا - وَكُلُّ هَذَا لَا شَيْءَ -: أَمَّا حَدِيثُ فُلَانٍ عَنْ أَبِيهِ نَاهِيكَ بِهَذَا السَّنَدِ، لَيْتَ شِعْرِي مِنْ فُلَانٍ؟ وَنَبْرَأُ إلَى اللَّهِ تَعَالَى مِنْ كُلِّ دِينٍ أُخِذَ عَنْ فُلَانٍ الَّذِي لَا يَدْرِي مَنْ هُوَ، وَلَا مَا اسْمُهُ، وَلَا مَنْ أَبُوهُ وَلَا اسْمُهُ.

L20143 And the other chain is Talq ibn Ghannam, narrated from Sharik and Qays ibn al-Rabi’, and all of them are weak narrators.

وَالْآخَرُ طَلْقُ بْنُ غَنَّامٍ عَنْ شَرِيكٍ، وَقَيْسِ بْنِ الرَّبِيعِ، وَكُلُّهُمْ ضَعِيفٌ.

L20144 The third is mursal, involving Al-Mubārak ibn Faḍāla in its chain—a narrator not considered strong.

وَالثَّالِثُ مُرْسَلٌ، وَفِيهِ الْمُبَارَكُ بْنُ فَضَالَةَ وَلَيْسَ بِالْقَوِيِّ.

L20145 The narration of Bashir from a man named Daisam is unknown.

وَحَدِيثُ بَشِيرٍ عَنْ رَجُلٍ يُسَمَّى دَيْسَمًا مَجْهُولٌ.

L20146 Furthermore, even if it were authentic, it would contain no valid proof, because its text states: “Do not betray one who betrayed you, and fulfill trusts to those who entrusted you.” A person’s pursuit of their rightful due is not betrayal; rather, it is an obligatory entitlement and the forbidding of evil. Betrayal only occurs when you wrongfully betray someone against

ثُمَّ لَوْ صَحَّتْ لَمَا كَانَ فِيهَا حُجَّةٌ؛ لِأَنَّ نَصَّهَا «لَا تَخُنْ مَنْ خَانَكَ، وَأَدِّ الْأَمَانَةَ إلَى مَنْ ائْتَمَنَكَ» وَلَيْسَ انْتِصَافُ الْمَرْءِ مِنْ حَقِّهِ خِيَانَةً، بَلْ هُوَ حَقٌّ وَاجِبٌ، وَإِنْكَارُ مُنْكَرٍ، وَإِنَّمَا الْخِيَانَةُ أَنْ تَخُونَ بِالظُّلْمِ وَالْبَاطِلِ مَنْ لَا حَقَّ لَك عِنْدَهُ، وَلَا مِنْ افْتَرَضَ اللَّهُ تَعَالَى

[19] **Hadith references (L20139):** Sunan Abi Dawud 3535; Sunan Abi Dawud 3534; Jami at-Tirmidhi 1264.

whom you have no legitimate claim, nor has Allah the Exalted obligated them to give you what constitutes your right, or its equivalent if your right is unavailable. Restoring usurped rights is not trust fulfillment; rather, it constitutes complicity in betrayal.

L20147–20148 Furthermore, there is no proof in these narrations except for one who entirely prohibits self-redress. As for one who differentiates and permits taking only the type of his property found, he contradicts these narrations and others—

L20149 And with Allah, the Exalted, is all success.

L20150 "The 'Book of Bankruptcy' has been completed, and praise be to Allah, Lord of the Worlds."

عَلَيْهِ أَنْ يُخْرِجَ إِلَيْك مِنْ حَقِّك، أَوْ مِنْ مِثْلِهِ إنْ عَدَمَ حَقَّك، وَلَيْسَ رَدُّ الْمَظْلَمَةِ أَدَاءَ أَمَانَةٍ، بَلْ هُوَ عَوْنٌ عَلَى الْخِيَانَةِ.

ثُمَّ لَا حُجَّةَ فِي هَذِهِ الْأَخْبَارِ إلَّا لِمَنْ مَنَعَ مِنْ الِانْتِصَافِ جُمْلَةً، وَأَمَّا مَنْ قَسَّمَ فَأَبَاحَ أَخْذَ مَا وَجَدَ مِنْ نَوْعِ مَالِهِ فَقَطْ فَمُخَالِفٌ لِهَذِهِ الْآثَارِ وَلِغَيْرِهَا -.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

تَمَّ " كِتَابُ التَّفْلِيسِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ

AL-MUHALLA

كِتَابُ الْإِجَارَاتِ وَالْأُجَرَاءِ

The Book of Leases and Hired Workers

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْإِجَارَاتِ وَالْأُجَرَاءِ] [مَسْأَلَةٌ الْإِجَارَةُ جَائِزَةٌ فِي كُلِّ شَيْءٍ لَهُ مَنْفَعَةٌ]

The Book of Lease Contracts and Contracted Workers: Legal Ruling: Leasing is permissible for all items that yield benefit.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الْإِجَارَاتِ وَالْأُجَرَاءِ ١٢٨٥ - مَسْأَلَةٌ: الْإِجَارَةُ جَائِزَةٌ فِي كُلِّ شَيْءٍ لَهُ مَنْفَعَةٌ فَيُؤَاجِرُ لِيَنْتَفِعَ بِهِ وَلَا يَسْتَهْلِكَ عَيْنَهُ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا يَحْيَى بْنُ حَمَّادٍ نا أَبُو عَوَانَةَ عَنْ سُلَيْمَانَ الشَّيْبَانِيِّ - هُوَ أَبُو إِسْحَاقَ - عَنْ عَبْدِ اللَّهِ بْنِ السَّائِبِ أَنَّهُمْ سَمِعُوا عَبْدَ اللَّهِ بْنَ مَعْقِلٍ يَقُولُ: زَعَمَ ثَابِتٌ - هُوَ ابْنُ الضَّحَّاكِ - «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ الْمُزَارَعَةِ وَأَمَرَ بِالْمُؤَاجَرَةِ وَقَالَ: لَا بَأْسَ بِهَا» .

L20153 In the name of Allah, the Most Gracious, the Most Merciful. The Book of Leases and Hiring. 1285 - Issue: Leasing is permissible for anything that has utility, so one may lease it to benefit from it without consuming the asset itself. We have reported through the chain in Ṣaḥīḥ Muslim: From Ishaq ibn Mansur, from Yahya ibn Hammad, from Abu ʻAwanah, from Sulayman al-Shaybani—who is Abu Ishaq—from ʻAbdullah ibn al-Sa'ib that they heard ʻAbdullah ibn Maʻqil say: Thabit—who is Ibn al-Dahhak—claimed that the Messenger of Allah, peace and blessings be upon him, prohibited sharecropping and enjoined hiring, saying, "There is no harm in it."[1]

قَالَ عَلِيٌّ: قَدْ صَحَّ سَمَاعُ عَبْدِ اللَّهِ بْنِ مَعْقِلٍ مِنْ ثَابِتِ بْنِ الضَّحَّاكِ، وَقَدْ جَاءَتْ فِي الْإِجَارَاتِ آثَارٌ، وَبِإِبَاحَتِهَا يَقُولُ جُمْهُورُ الْعُلَمَاءِ إِلَّا أَنَّ إِبْرَاهِيمَ بْنَ عُلَيَّةَ قَالَ: لَا تَجُوزُ لِأَنَّهَا أَكْلُ مَالٍ بِالْبَاطِلِ.

L20154 Ali said: The hearing of ʿAbd Allāh ibn Maʿqil from Thābit ibn al-Ḍaḥḥāk has been authenticated, and there exist traditions pertaining to lease contracts. The majority of scholars hold the view that they are permissible, except Ibrāhīm ibn ʿUlayya, who said: They are not permissible, as they constitute wrongful consumption of wealth.

قَالَ عَلِيٌّ: هَذَا بَاطِلٌ مِنْ قَوْلِهِ وَقَدْ «اسْتَأْجَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ابْنَ أُرَيْقِطٍ دَلِيلًا إلَى مَكَّةَ» .

L20155 Ali said: "This is baseless from his assertion, and verily the Messenger of Allah—may Allah bless him and grant him peace—hired Ibn Urayqiṭ as a guide to Mecca."

[مَسْأَلَةٌ الْإِجَارَةُ لَيْسَتْ بَيْعًا]

Issue: Leasing is not a sale.

١٢٨٦ - مَسْأَلَةٌ: وَالْإِجَارَةُ لَيْسَتْ بَيْعًا، وَهِيَ جَائِزَةٌ فِي كُلِّ مَا لَا يَحِلُّ بَيْعُهُ كَالْحُرِّ، وَالْكَلْبِ، وَالسِّنَّوْرِ، وَغَيْرِ ذَلِكَ.

L20157 1286 - Issue: Leasing is not a sale, and it is permissible for everything whose sale is unlawful, such as a free person, a dog, a cat, and other than that.

وَلَوْ كَانَتْ بَيْعًا لَمَا جَازَتْ إجَارَةُ الْحُرِّ، وَالْقَائِلُونَ إنَّهَا بَيْعٌ يُجِيزُونَ إجَارَةَ الْحُرِّ، فَتَنَاقَضُوا.

L20158 If it were a sale, the hiring of a free person would not be permissible, yet

[1] **Hadith references (L20153):** Sahih Muslim 1549b; Mishkat al-Masabih 2981.

those who assert it is a sale permit the hiring of a free person - thereby contradicting themselves.

L20159–20160 They do not differ in holding that a lease contract is solely the utilization of benefits from the leased object that has not yet been created, and it is impermissible to sell what has not yet been created. Thus, the invalidity of this assertion becomes evident.

L20161 **A legal issue: the lease of an item that is subject to destruction.**

L20162 1287. Issue: It is not permissible to lease items whose physical asset is fundamentally consumed by its very nature, such as wax for burning, food for eating, water for irrigation, and similar things, because this constitutes a sale, not a lease. A sale grants ownership of the asset, whereas a lease does not confer ownership of the asset.

L20163 **The issue of hire contracts where specifying the work contracted for is obligatory.**

L20164 1288. Issue: Among hire contracts, some require specifying only the work to be performed—such as tailoring, weaving, or riding an animal to a designated location—without mentioning duration. Others require specifying the duration—such as residing in a dwelling or riding an animal. A third category requires both stipulations together—such as service contracts—where both duration and work must be defined. This is because a hire contract lacking these stipulations becomes uncertain, and if uncertain, it is invalid and constitutes unlawful appropriation of wealth.

L20165 Entering into a contract for hire to teach the Quran and knowledge is permissible, as all such cases are included in the general ruling of the Prophet's (peace and blessings be upon him) directive on contractual hiring.

L20166 **Issue: He rented a slave from his master for service for a specified period.**

L20167 1289 - Issue: If someone hires a free person or a slave from the slave's master

وَلَا يَخْتَلِفُونَ فِي أَنَّ الْإِجَارَةَ إِنَّمَا هِيَ الِانْتِفَاعُ بِمَنَافِعِ الشَّيْءِ الْمُؤَاجَرِ الَّذِي لَمْ يُخْلَقْ بَعْدُ، وَلَا يَحِلُّ بَيْعُ مَا لَمْ يُخْلَقْ بَعْدُ، فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ.

[مَسْأَلَةُ إِجَارَةُ مَا تُتْلَفُ عَيْنُهُ]

١٢٨٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ إِجَارَةُ مَا تُتْلَفُ عَيْنُهُ أَصْلًا، مِثْلَ الشَّمْعِ لِلْوَقِيدِ، وَالطَّعَامِ لِلْأَكْلِ، وَالْمَاءِ لِلسَّقْيِ بِهِ، وَنَحْوِ ذَلِكَ، لِأَنَّ هَذَا بَيْعٌ لَا إِجَارَةٌ، وَالْبَيْعُ هُوَ تَمَلُّكُ الْعَيْنِ، وَالْإِجَارَةُ لَا تُمَلَّكُ بِهَا الْعَيْنُ.

[مَسْأَلَةُ الْإِجَارَاتِ الَّتِي لَا بُدَّ فِيهَا مِنْ ذِكْرِ الْعَمَلِ الَّذِي يُسْتَأْجَرُ عَلَيْهِ]

١٢٨٨ - مَسْأَلَةٌ: وَمِنْ الْإِجَارَاتِ مَا لَا بُدَّ فِيهِ مِنْ ذِكْرِ الْعَمَلِ الَّذِي يُسْتَأْجَرُ عَلَيْهِ فَقَطْ وَلَا يُذْكَرُ فِيهِ مُدَّةٌ كَالْخِيَاطَةِ وَالنَّسْجِ وَرُكُوبِ الدَّابَّةِ إلَى مَكَانٍ مُسَمًّى، وَنَحْوِ ذَلِكَ، وَمِنْهَا مَا لَا بُدَّ فِيهِ مِنْ ذِكْرِ الْمُدَّةِ كَسُكْنَى الدَّارِ وَرُكُوبِ الدَّابَّةِ وَنَحْوِ ذَلِكَ، وَمِنْهُ مَا لَا بُدَّ فِيهِ مِنْ الْأَمْرَيْنِ مَعًا كَالْخِدْمَةِ وَنَحْوِهَا فَلَا بُدَّ مِنْ ذِكْرِ الْمُدَّةِ وَالْعَمَلِ، لِأَنَّ الْإِجَارَةَ بِخِلَافِ مَا ذَكَرْنَا مَجْهُولَةٌ وَإِذَا كَانَتْ مَجْهُولَةً فَهِيَ أَكْلُ مَالٍ بِالْبَاطِلِ.

وَالْإِجَارَةُ عَلَى تَعْلِيمِ الْقُرْآنِ وَالْعِلْمِ جَائِزَةٌ، لِأَنَّ كُلَّ ذَلِكَ دَاخِلٌ فِي عُمُومِ أَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمُؤَاجَرَةِ.

[مَسْأَلَةُ اسْتَأْجَرَ عَبْدًا مِنْ سَيِّدِهِ لِلْخِدْمَةِ مُدَّةً مُسَمَّاةً]

for service for a specified period with a specified wage, that is permissible. He should employ them in tasks they are skilled at and capable of performing without causing them harm. We received narration through the chain of al-Bukhārī: Yaḥyā ibn Bukayr narrated to us, al-Layth ibn Saʿd narrated to us from ʿAqīl, who said: Ibn Shihāb said: ʿUrwah ibn al-Zubayr informed me that ʿĀ'ishah, the Mother of the Believers—may Allah be pleased with her—said: "Allah's Messenger—peace and blessings be upon him—and Abū Bakr hired a man from Banū al-Dīl as a skilled guide who was following the religion of the pagan Quraysh. They gave him their two riding camels and arranged to meet him at the cave of Thawr after three nights."

The Issue of Stipulating Immediate Wages

Issue 1290: It is impermissible to stipulate advance payment of the compensation or any part thereof, nor to stipulate deferment of the compensation to a specified period or deferment of any part thereof. The same ruling applies to both cases.

It is also impermissible to stipulate delaying the leased item or the work for which it is leased for the blink of an eye or more than that, because it is a condition not stipulated in the Book of Allah, the Exalted, and thus it is invalid.

This also includes renting a house already under lease, renting a contracted slave, renting an animal already under lease, hiring contracted labor, or other such arrangements before the completion of the rental term to which he is presently committed, because the contract stipulates delaying the taking of possession of the rented item or the labor hired for him.

Some people have permitted leasing what we mentioned two days prior to the expiration of its term, while the majority have prohibited it. This is corrupt arbitrariness and a false claim without proof. It must either be prohibited—in which case it is wholly prohibited—or permissible—in which case it is wholly permissible.

They said: "There is gharar in the prolonged period." We responded: "There

١٢٨٩ - مَسْأَلَةٌ: وَمَنْ اسْتَأْجَرَ حُرًّا أَوْ عَبْدًا مِنْ سَيِّدِهِ لِلْخِدْمَةِ مُدَّةً مُسَمَّاةً بِأُجْرَةٍ مُسَمَّاةٍ فَذَلِكَ جَائِزٌ، وليستعملهما فِيمَا يُحْسِنَانِهِ وَيُطِيقَانِهِ بِلَا إِضْرَارٍ بِهِمَا. رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا يَحْيَى بْنُ بُكَيْرٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ عَقِيلٍ قَالَ: قَالَ ابْنُ شِهَابٍ: أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - قَالَتْ: «اسْتَأْجَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبُو بَكْرٍ رَجُلًا مِنْ بَنِي الدِّيلِ هَادِيًا خِرِّيتًا وَهُوَ عَلَى دِينِ كُفَّارِ قُرَيْشٍ وَدَفَعَا إِلَيْهِ رَاحِلَتَيْهِمَا وَوَاعَدَاهُ غَارَ ثَوْرٍ بَعْدَ ثَلَاثِ لَيَالٍ» .

[مَسْأَلَةٌ اشْتِرَاطُ تَعْجِيلِ الْأُجْرَةِ]

١٢٩٠ - مَسْأَلَةٌ: وَلَا يَجُوزُ اشْتِرَاطُ تَعْجِيلِ الْأُجْرَةِ وَلَا تَعْجِيلِ شَيْءٍ مِنْهَا، وَلَا اشْتِرَاطُ تَأْخِيرِهَا إِلَى أَجَلٍ وَلَا تَأْخِيرِ شَيْءٍ مِنْهَا كَذَلِكَ.

وَلَا يَجُوزُ أَيْضًا اشْتِرَاطُ تَأْخِيرِ الشَّيْءِ الْمُسْتَأْجَرِ وَلَا تَأْخِيرِ الْعَمَلِ الْمُسْتَأْجَرِ لَهُ طَرْفَةَ عَيْنٍ فَمَا فَوْقَ ذَلِكَ، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ.

وَمِنْ هَذَا اسْتِئْجَارُ دَارٍ مُكْتَرَاةٍ، أَوْ عَبْدٍ مُسْتَأْجَرٍ، أَوْ دَابَّةٍ مُسْتَأْجَرَةٍ، أَوْ عَمَلٍ مُسْتَأْجَرٍ، أَوْ غَيْرِ ذَلِكَ قَبْلَ تَمَامِ الْإِجَارَةِ الَّتِي هُوَ مَشْغُولٌ فِيهَا، لِأَنَّ فِي الْعَقْدِ اشْتِرَاطَ تَأْخِيرِ قَبْضَةِ الشَّيْءِ الْمُسْتَأْجَرِ، أَوْ الْعَمَلِ الْمُسْتَأْجَرِ لَهُ.

وَقَدْ أَجَازَ بَعْضُ النَّاسِ إِجَارَةَ مَا ذَكَرْنَا قَبْلَ انْقِضَاءِ مُدَّتِهِ بِالْيَوْمَيْنِ، وَمَنَعَ مِنْهُ أَكْثَرُ - وَهَذَا تَحَكُّمٌ فَاسِدٌ وَدَعْوَى بَاطِلٍ بِلَا بُرْهَانٍ، وَلَيْسَ إِلَّا حَرَامٌ فَيَحْرُمُ جُمْلَةً أَوْ حَلَالٌ فَيَحِلُّ جُمْلَةً.

is also gharar in a moment, and there is no distinction, for none knows what will occur after the blink of an eye except Allah, the Exalted."

وَقَالُوا: هُوَ فِي الْمُدَّةِ الطَّوِيلَةِ غَرَرٌ. فَقُلْنَا: وَهُوَ أَيْضًا فِي السَّاعَةِ غَرَرٌ وَلَا فَرْقَ، إذْ لَا يَدْرِي أَحَدٌ مَا يَحْدُثُ بَعْدَ طَرْفَةِ عَيْنٍ إلَّا اللَّهُ تَعَالَى.

L20175 Additionally, they are obligated to specify the duration that is free from uncertainty and the duration in which there is uncertainty, and to provide evidence for that; otherwise, they are making statements in matters of religion about which they have no knowledge. If that is delayed without stipulation, then there is no harm. And with Allah, the Most High, is success.

وَأَيْضًا: فَيُكَلَّفُونَ إلَى تَحْدِيدِ الْمُدَّةِ الَّتِي لَا غَرَرَ فِيهَا وَالْمُدَّةِ الَّتِي فِيهَا غَرَرٌ، وَأَنْ يَأْتُوا بِالْبُرْهَانِ عَلَى ذَلِكَ، وَإِلَّا فَهُمْ قَائِلُونَ فِي الدِّينِ مَا لَا عِلْمَ لَهُمْ بِهِ، فَإِنْ تَأَخَّرَ ذَلِكَ بِلَا شَرْطٍ فَلَا بَأْسَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20176 [Issue: The death of the employee or the employer, or the destruction of the subject of employment]

[مَسْأَلَةُ مَوْتُ الْأَجِيرِ أَوْ الْمُسْتَأْجِرِ أَوْ هَلَاكُ الْمُسْتَأْجَرِ]

L20177 Issue 1291: The death of the employee, the death of the lessee, the destruction of the leased item, the manumission of a leased slave, the sale of the leased item from the house, or the slave, or the animal, or other items, or its exit from the ownership of the lessor by any means through which it exits—all these invalidate the lease contract specifically for the remaining period, whether little or much. The manumission, sale, and exit from ownership through gift, dowry, or charity remain valid.

١٢٩١ - مَسْأَلَةٌ: وَمَوْتُ الْأَجِيرِ، أَوْ مَوْتُ الْمُسْتَأْجِرِ، أَوْ هَلَاكُ الشَّيْءِ الْمُسْتَأْجَرِ، أَوْ عِتْقُ الْعَبْدِ الْمُسْتَأْجَرِ، أَوْ بَيْعُ الشَّيْءِ الْمُسْتَأْجَرِ مِنْ الدَّارِ، أَوْ الْعَبْدِ، أَوْ الدَّابَّةِ، أَوْ غَيْرِ ذَلِكَ، أَوْ خُرُوجُهُ عَنْ مِلْكِ مُؤَاجِرِهِ بِأَيِّ وَجْهٍ خَرَجَ كُلُّ ذَلِكَ يُبْطِلُ عَقْدَ الْإِجَارَةِ فِيمَا بَقِيَ مِنْ الْمُدَّةِ خَاصَّةً - قَلَّ أَوْ كَثُرَ وَيَنْفُذُ الْعِتْقُ، وَالْبَيْعُ، وَالْإِخْرَاجُ عَنْ الْمِلْكِ بِالْهِبَةِ، وَالْإِصْدَاقِ، وَالصَّدَقَةِ.

L20178 The proof of this is the statement of Allah, the Exalted: **"No person bears a burden except against itself"** (Surah Al-An'am 6:164), and the statement of the Messenger of Allah (PBUH): **"Indeed, your lives and property are inviolable for you."**[2]

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤] . وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L20179 When the lessor dies, the ownership of the leased item becomes the property of his heirs or creditors. The lessee only leased the usufruct of that item, and usufruct arises incrementally over time. It is impermissible for him to benefit from usufruct newly arising under the ownership of one from whom he had never leased anything at all. This constitutes flagrantly unlawful appropriation of property.

وَإِذَا مَاتَ الْمُؤَاجِرُ فَقَدْ صَارَ مِلْكُ الشَّيْءِ الْمُسْتَأْجَرِ لِوَرَثَتِهِ أَوْ لِلْغُرَمَاءِ، وَإِنَّمَا اسْتَأْجَرَ الْمُسْتَأْجِرُ مَنَافِعَ ذَلِكَ الشَّيْءِ، وَالْمَنَافِعُ إنَّمَا تَحْدُثُ شَيْئًا بَعْدَ شَيْءٍ، فَلَا يَحِلُّ لَهُ الِانْتِفَاعُ بِمَنَافِعَ حَادِثَةٍ فِي مِلْكِ مَنْ لَمْ يَسْتَأْجِرْ مِنْهُ شَيْئًا قَطُّ، وَهَذَا هُوَ أَكْلُ الْمَالِ بِالْبَاطِلِ جِهَارًا.

[2] **Qur'an references (L20178):** Qur'an 6:164 (Al-An'am).

L20180–20181 The heirs' property is not bound by a contract of the deceased whose ownership of that thing has been invalidated. Even if he had leased new usufructs in another's property, that would be void without disagreement—and this is precisely that itself.

وَلَا يَلْزَمُ الْوَرَثَةَ فِي أَمْوَالِهِمْ عَقْدُ مَيِّتٍ قَدْ بَطَلَ مِلْكُهُ عَنْ ذَلِكَ الشَّيْءِ، وَلَوْ أَنَّهُ آجَرَ مَنَافِعَ حَادِثَةً فِي مِلْكِ غَيْرِهِ لَكَانَ ذَلِكَ بَاطِلًا بِلَا خِلَافٍ وَهَذَا هُوَ ذَلِكَ بِعَيْنِهِ.

L20182 As for the death of the lessee: the contract of the property owner is with him personally, not with his heirs. Therefore, the lessor has no claim against the heirs, nor does any contractual obligation exist with them. The heirs do not inherit benefits that have yet to materialize, nor did their deceased ancestor ever acquire such benefits whatsoever - this is perfectly clear. Success comes solely from Allah, the Exalted.

وَأَمَّا مَوْتُ الْمُسْتَأْجِرِ: فَإِنَّمَا كَانَ عَقْدُ صَاحِبِ الشَّيْءِ مَعَهُ لَا مَعَ وَرَثَتِهِ فَلَا حَقَّ لَهُ عِنْدَ الْوَرَثَةِ، وَلَا عَقْدَ لَهُ مَعَهُمْ، وَلَا تَرِثُ الْوَرَثَةُ مَنَافِعَ لَهُمْ تُخْلَقُ بَعْدُ، وَلَا مَلَكَهَا مُوَرِّثُهُمْ قَطُّ - وَهَذَا فِي غَايَةِ الْبَيَانِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L20183 This is the opinion of Al-Sha'bi, Sufyan al-Thawri, Al-Layth ibn Sa'd, Abu Hanifah, Abu Sulayman, and the companions of both.

وَهُوَ قَوْلُ الشَّعْبِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَاللَّيْثِ بْنِ سَعْدٍ، وَأَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

L20184 And through the chain of Ibn Abī Shaybah: ʿAbdullāh ibn Idrīs al-Awdī reported to us from Muṭarrif ibn Ṭarīf, from al-Shaʿbī, who said: A deceased person cannot stipulate conditions.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ الْأَوْدِيُّ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ عَنْ الشَّعْبِيِّ قَالَ: لَيْسَ لِمَيِّتٍ شَرْطٌ.

L20185 From the chain of Ibn Abi Shaybah: Abd al-Samad—who is Ibn Abd al-Warith—narrated from Hammad ibn Salamah, from Humaid, from al-Hakam ibn Utaybah regarding someone who leased his house for ten years and died before that period. He said: "The lease is terminated." Makhul said: "Ibn Sirin and Iyas ibn Muawiyah said: 'The lease is not terminated.'" Uthman al-Batti, Malik, al-Shafi'i, and their followers said: "The lease is not terminated by the death of both parties nor by the death of either one of them."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الصَّمَدِ - هُوَ ابْنُ عَبْدِ الْوَارِثِ - عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ فِيمَنْ آجَرَ دَارِهِ عَشْرَ سِنِينَ فَمَاتَ قَبْلَ ذَلِكَ؟ قَالَ: تُنْتَقَضُ الْإِجَارَةِ. وَقَالَ مَكْحُولٌ: قَالَ ابْنُ سِيرِينَ، وَإِيَاسُ بْنُ مُعَاوِيَةَ: لَا تُنْتَقَضُ، وَقَالَ عُثْمَانُ الْبَتِّيُّ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمَا: لَا تُنْتَقَضُ الْإِجَارَةُ بِمَوْتِهِمَا، وَلَا بِمَوْتِ أَحَدِهِمَا.

L20186 The utmost argument they invoked was their claim: "The lease contract has been validly concluded, thus it cannot be nullified except by conclusive proof." We replied: "You have spoken truthfully, and we have come to you with that conclusive proof."

وَأَقْصَى مَا احْتَجُّوا بِهِ أَنْ قَالُوا: عَقْدُ الْإِجَارَةِ قَدْ صَحَّ، فَلَا يَجُوزُ أَنْ يُنْتَقَضَ إلَّا بِبُرْهَانٍ. قُلْنَا: صَدَقْتُمْ، وَقَدْ جِئْنَاكُمْ بِالْبُرْهَانِ.

L20187 They said: "How do you handle *waqfs*?" We replied: The corpus of the *waqf* property has no owner except God, and the beneficiaries of the

waqf have rights only to its usufruct. Therefore, the *ijarah* is not invalidated by the death of any beneficiary nor by the birth of someone entitled to a portion of the benefit. However, if the lessee dies, the *ijarah* is invalidated due to what we mentioned: that his contract becomes void upon his death and does not bind others, since the Quranic text has nullified this by the words of the Almighty: {No soul earns [blame] except against itself} [6:164].[3]

وَقَالُوا: فَكَيْفَ تَصْنَعُونَ فِي الْأَحْبَاسِ؟ قُلْنَا: رَقَبَةُ الشَّيْءِ الْمُحْبَسِ لَا مَالِكَ لَهَا إِلَّا اللَّهُ، وَإِنَّمَا لِلْمُحْبَسِ عَلَيْهِمْ الْمَنَافِعُ فَقَطْ، فَلَا تَنْتَقِضُ الْإِجَارَةُ بِمَوْتِ أَحَدِهِمْ، وَلَا بِوِلَادَةِ مَنْ يَسْتَحِقُّ بَعْضَ الْمَنْفَعَةِ، لَكِنْ إنْ مَاتَ الْمُسْتَأْجِرُ انْتَقَضَتْ الْإِجَارَةُ لِمَا ذَكَرْنَا مِنْ أَنَّ عَقْدَهُ قَدْ بَطَلَ بِمَوْتِهِ وَلَا يَلْزَمُ غَيْرَهُ، إذْ النَّصُّ مِنْ الْقُرْآنِ قَدْ أَبْطَلَ ذَلِكَ بِقَوْلِهِ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

L20188 If they say, "Indeed, the Messenger of Allah—peace and blessings be upon him—conducted an irrigation-based sharecropping agreement with the Jews of Khaybar and granted its ownership to the Muslims," then, undoubtedly, some Muslims and Jews died, yet the irrigation-based sharecropping persisted.

فَإِنْ قَالُوا: قَدْ سَاقَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْبَرَ الْيَهُودَ، وَمَلَّكَهَا لِلْمُسْلِمِينَ، بِلَا شَكٍّ فَقَدْ مَاتَ مِنْ الْمُسْلِمِينَ قَوْمٌ وَمِنْ الْيَهُودِ قَوْمٌ وَالْمُسَاقَاةُ بَاقِيَةٌ.

L20189–20190 We said: This narration is valid, and it contains no argument in their favor. Rather, it constitutes a proof for us against them for four reasons:

قُلْنَا: إنَّ هَذَا الْخَبَرَ حَقٌّ وَلَا حُجَّةَ لَهُمْ فِيهِ، بَلْ وَهُوَ حُجَّةٌ لَنَا عَلَيْهِمْ لِوُجُوهٍ أَرْبَعَةٍ:

L20191 The first is that the contract was not for a specified term but rather general, enabling them to evict the tenants whenever they wish and allow them to remain as long as they wish, as we will clarify in the chapter on *musāqāt* if Allah wills—and leasing does not follow this manner.

أَوَّلُهَا - أَنَّ ذَلِكَ الْعَقْدَ لَمْ يَكُنْ إلَى أَجَلٍ مَحْدُودٍ، بَلْ كَانَ مُجْمَلًا يُخْرِجُونَهُمْ إذَا شَاءُوا، وَيُقِرُّونَهُمْ مَا شَاءُوا، كَمَا نَذْكُرُهُ فِي " الْمُسَاقَاةِ " إنْ شَاءَ اللَّهُ تَعَالَى - وَلَيْسَتْ الْإِجَارَةُ هَكَذَا.

L20192 The second [point] is that if it has not been conveyed to us that he—peace be upon him—or his agent or overseer of those properties renewed the contract with the heirs of the deceased Jews and the heirs of the deceased Muslims, then it has not been reported either, nor has it been transmitted that he deemed the initial contract sufficient without requiring another renewal. Thus, there is no valid proof for them in this, nor for us. Rather, there is no doubt regarding the validity of renewing the contract in such a case.

وَالثَّانِي - أَنَّهُ إنْ كَانَ لَمْ يُنْقَلْ إلَيْنَا تَجْدِيدُ عَقْدِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ عَامِلِهِ النَّاظِرِ عَلَى تِلْكَ الْأَمْوَالِ مَعَ وَرَثَةِ مَنْ مَاتَ مِنْ الْيَهُودِ، وَوَرَثَةِ مَنْ مَاتَ مِنْ الْمُسْلِمِينَ، فَلَمْ يَأْتِ أَيْضًا، وَلَا نُقِلَ أَنَّهُ اكْتَفَى بِالْعَقْدِ الْأَوَّلِ عَنْ تَجْدِيدِ آخَرَ، فَلَا حُجَّةَ لَهُمْ فِيهِ، وَلَا لَنَا، بَلْ لَا شَكَّ فِي صِحَّةِ تَجْدِيدِ الْعَقْدِ فِي ذَلِكَ.

L20193 The third [point] is that they do not accept what is in this narration. It is invalid for a group that rejects a narration to invoke it against those who do accept it, for this is contradictory.

وَالثَّالِثُ - أَنَّهُمْ لَا يَقُولُونَ بِمَا فِي هَذَا الْخَبَرِ، وَمِنْ الْبَاطِلِ احْتِجَاجُ قَوْمٍ بِخَبَرٍ لَا يَقُولُونَ بِهِ عَلَى مَنْ يَقُولُ بِهِ، وَهَذَا مَعْكُوسٌ.

[3] **Qur'an references (L20187):** Qur'an 6:164 (Al-An'am).

وَالرَّابِعُ - أَنَّ هَذَا الْخَبَرَ إِنَّمَا هُوَ فِي " الْمُسَاقَاةِ وَالْمُزَارَعَةِ " وَكَلَامُنَا هَهُنَا فِي الْإِجَارَةِ وَهِيَ أَحْكَامٌ مُخْتَلِفَةٌ، وَأَوَّلُ مَنْ يُخَالِفُ بَيْنَهُمَا، فَالْمَالِكِيُّونَ وَالشَّافِعِيُّونَ الْمُخَالِفُونَ لَنَا فِي هَذَا الْمَكَانِ، فَلَا يُجِيزَانِ الْمُزَارَعَةَ أَصْلًا، قِيَاسًا عَلَى الْإِجَارَةِ، وَلَا يَرَيَانِ لِلْمُسَاقَاةِ حُكْمَ الْإِجَارَةِ، فَمِنْ الْمُحَالِ أَنْ لَا يَقِيسُوا الْإِجَارَةَ عَلَيْهِمَا وَهُمْ أَهْلُ الْقِيَاسِ ثُمَّ يُلْزِمُونَنَا أَنْ نَقِيسَهَا عَلَيْهِمَا وَنَحْنُ نُبْطِلُ الْقِيَاسَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20194 The fourth [point] is that this report pertains specifically to "musāqāh (tree sharecropping) and muzāraʿah (land sharecropping)," while our discussion here concerns ijārah (lease), and these are distinct legal categories. The first to differentiate between them are the Mālikīs and Shāfiʿīs—those who disagree with us on this issue—for they do not permit muzāraʿah at all, by analogy to ijārah, nor do they apply the ruling of ijārah to musāqāh. It is inconceivable that they—being proponents of analogy—would not analogize ijārah to these two contracts, yet compel us to analogize it to them even as we reject analogy in this context. And success is from Allah, the Exalted.

وَأَمَّا الْبَيْعُ، وَالْهِبَةُ، وَالْعِتْقُ، وَالْإِصْدَاقُ، وَغَيْرُ ذَلِكَ، فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَيَقُولُ {الْمُصَّدِّقِينَ وَالْمُصَّدِّقَاتِ} [الحديد: ١٨] . وَيَقُولُ {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] .

L20195 As for sale, gift, manumission, dower, and other such matters, Allah the Exalted says: "And Allah has permitted sale" [Al-Baqarah 2:275], and He says: "Those who give charity, men and women" [Al-Hadid 57:18], and He says: "Give women their dowers as a free gift" [An-Nisa 4:4].[4]

وَحَضَّ عَلَى الْعِتْقِ، فَعَمَّ تَعَالَى وَلَمْ يَخُصَّ، فَكُلُّ ذَلِكَ فِي كُلِّ مَا يَمْلِكُهُ الْمَرْءُ، فَإِذَا نَفَذَ كُلُّ ذَلِكَ فِيهِ فَقَدْ خَرَجَ عَنْ مِلْكِ مَالِكِهِ، فَإِذَا خَرَجَ عَنْ مِلْكِهِ فَقَدْ بَطَلَ عَقْدُهُ فِيهِ، إذْ لَا حُكْمَ لَهُ فِي مَالِ غَيْرِهِ.

L20196 He urged manumission, and the Exalted made it universal without restriction. All this applies to everything a person owns. When all these provisions are executed upon him, he is freed from his owner's ownership. When ownership over him ceases, the ownership contract concerning him becomes nullified, for the owner retains no legal claim over another's property.

وَلَا يَحِلُّ لِلْمُسْتَأْجِرِ مَنَافِعُ حَادِثَةٌ فِي مِلْكِ غَيْرِ مُؤَاجِرِهِ، وَخِدْمَةُ حُرٍّ لَمْ يُعَاقِدْهُ قَطُّ، لِأَنَّهَا حَرَامٌ عَلَيْهِ، لِأَنَّهَا بِغَيْرِ طِيبِ نَفْسِ مَالِكِهَا، وَبِغَيْرِ طِيبِ نَفْسِ الْحُرِّ، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ، فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] وَهَذَا عَقْدٌ لَازِمٌ حَقًّا. قُلْنَا: نَعَمْ، هُوَ مَأْمُورٌ بِالْوَفَاءِ بِالْعَقْدِ فِي مَالِهِ لَا فِي مَالِ غَيْرِهِ، بَلْ هُوَ مُحَرَّمٌ عَلَيْهِ التَّصَرُّفُ فِي مَالِ غَيْرِهِ. فَإِنْ قَالُوا: إخْرَاجُهُ لِلشَّيْءِ الَّذِي آجَرَ مِنْ مِلْكِهِ إبْطَالٌ لِلْوَفَاءِ بِالْعَقْدِ الَّذِي هُوَ مَأْمُورٌ بِالْوَفَاءِ بِهِ. قُلْنَا: وَقَوْلُكُمْ لَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا أَصْلًا:

L20197–20199 It is not permissible for the lessee to utilize newly arising benefits occurring in property belonging to someone other than the lessor, nor the service of a free person with whom no contract exists, because these [acts] are forbidden for him, as they occur without the free consent of the property's owner and without the free consent of the free individual, thus constituting unlawful appropriation of property. If they falsely cite Allah's statement, "Fulfill the contracts" [Al-Māʾidah 5:1], and this is a binding and valid contract, we say: Yes, one is commanded to fulfill a contract concerning his own property, not another's property. Rather, disposing of another's property is forbidden. If they say: His removal of the leased item from his ownership nullifies the fulfillment of the contract he is commanded to uphold, we say: Your

[4] **Qur'an references (L20195):** Qur'an 2:275 (Al-Baqarah); Qur'an 4:4 (An-Nisa); Qur'an 57:18 (Al-Hadid).

statement is confined to one of two aspects—there is absolutely no third possibility.[5]

L20200 Either prevent him from removing it from his ownership through the means Allah the Exalted has permitted him to use for its removal, owing to the Ijārah contract.

L20201 Alternatively, you [all] must permit him to remove it from his ownership through the valid methods Allah the Exalted has permitted him to use for its removal—one of the two must necessarily occur.

L20202 If you prevent him from transferring it out of his ownership through the lawful channels which Allah, the Exalted, has permitted him to use for this purpose, you have contradicted Allah, the Mighty and Majestic, and declared forbidden what He has made lawful—and such a prohibition is invalid.

L20203 The Messenger of Allah, peace be upon him, said: "What is the matter with people who stipulate conditions that are not in the Book of Allah (the Almighty and Majestic)? Whoever stipulates a condition not in the Book of Allah, it is invalid—even if there are a hundred conditions. The Book of Allah takes precedence, and Allah's stipulation is more binding."

L20204 It is conclusively established with certainty that their stipulation in the lease contract does not preclude what is in the Book of Allah the Exalted regarding the permissibility of sale, gift, charity, and dowry, and that Allah the Exalted's condition in permitting all of that has greater right, is more binding, and takes precedence over their stipulation in the lease contract. Thus, their lease contract is founded upon the permissibility of what is in the Book of Allah the Exalted, not upon prohibiting it or contravening it.

L20205 "And if you say: 'Rather, we permit all of that for him, and the lease contract remains valid despite all such permissions.'"

L20206–20207 We said: You have contradicted the statement of Allah, the Most High: "No soul bears a burden except against itself" [Al-An'am: 164], thereby you have

إِمَّا أَنْ تَمْنَعُوهُ مِنْ إِخْرَاجِهِ عَنْ مِلْكِهِ بِالْوُجُوهِ الَّتِي أَبَاحَ اللَّهُ تَعَالَى لَهُ إِخْرَاجَهُ بِهَا عَنْ مِلْكِهِ بِسَبَبِ عَقْدِ الْإِجَارَةِ.

وَإِمَّا أَنْ تُبِيحُوا لَهُ إِخْرَاجَهُ عَنْ مِلْكِهِ بِالْوُجُوهِ الَّتِي أَبَاحَ اللَّهُ تَعَالَى لَهُ إِخْرَاجَهُ بِهَا عَنْ مِلْكِهِ - لَا بُدَّ مِنْ أَحَدِهِمَا.

فَإِنْ مَنَعْتُمُوهُ إِخْرَاجَهُ عَنْ مِلْكِهِ بِالْوُجُوهِ الَّتِي أَبَاحَ اللَّهُ تَعَالَى لَهُ إِخْرَاجَهُ بِهَا عَنْ مِلْكِهِ كُنْتُمْ قَدْ خَالَفْتُمْ اللَّهَ عَزَّ وَجَلَّ، وَحَرَّمْتُمْ مَا أَحَلَّ، وَهَذَا بَاطِلٌ.

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا بَالُ أَقْوَامٍ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ - عَزَّ وَجَلَّ - مَنْ اشْتَرَطَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ وَإِنْ كَانَ مِائَةَ شَرْطٍ، كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ» .

فَصَحَّ يَقِينًا أَنَّ شَرْطَهُمَا فِي عَقْدِ الْإِجَارَةِ لَا يَمْنَعُ مَا فِي كِتَابِ اللَّهِ تَعَالَى مِنْ إِبَاحَةِ الْبَيْعِ وَالْهِبَةِ وَالصَّدَقَةِ وَالْإِصْدَاقِ، وَأَنَّ شَرْطَ اللَّهِ تَعَالَى فِي إِبَاحَةِ كُلِّ ذَلِكَ أَحَقُّ مِنْ شَرْطِهِمَا فِي عَقْدِ الْإِجَارَةِ وَأَوْثَقُ، وَمُتَقَدِّمٌ لَهُ، فَإِنَّمَا يَكُونُ عَقْدُهُمَا الْإِجَارَةَ عَلَى جَوَازِ مَا فِي كِتَابِ اللَّهِ تَعَالَى، لَا عَلَى الْمَنْعِ مِنْهُ وَمُخَالَفَتِهِ.

وَإِنْ قُلْتُمْ: بَلْ نُجِيزُ لَهُ كُلَّ ذَلِكَ وَيَبْقَى عَقْدُ الْإِجَارَةِ مَعَ كُلِّ ذَلِكَ.

قُلْنَا: خَالَفْتُمْ قَوْلَ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَأَوْجَبْتُمْ أَنْ تَكْسِبَ عَلَى غَيْرِهِ، وَأَنْ يَنْفُذَ عَقْدُهُ فِي مَالِ غَيْرِهِ.

[5] **Qur'an references (L20197):** Qur'an 5:1 (Al-Ma'idah).

obligated that one's burden affects another and that a binding agreement is enforced in another's property.[6]

وَخَالَفْتُمْ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَأَبَحْتُمْ لِلْمُسْتَأْجَرِ مَالَ غَيْرِهِ، وَأَبَحْتُمْ لَهُ مَالَ مَنْ لَمْ يَعْقِدْ مَعَهُ قَطُّ فِيهِ عَقْدًا، وَمَنَعْتُمْ صَاحِبَ الْحَقِّ مِنْ حَقِّهِ وَهَذَا حَرَامٌ، وَأَوْجَبْتُمْ لِلْبَائِعِ أَنْ يَأْخُذَ إِجَارَةً عَلَى مَنَافِعَ حَادِثَةٍ فِي مَالِ غَيْرِهِ، وَعَنْ خِدْمَةِ حُرٍّ لَا مِلْكَ لَهُ عَلَيْهِ؛ وَهَذَا أَكْلُ مَالٍ بِالْبَاطِلِ وَأَكْلُ إِجَارَةِ مَالٍ حَرَامٍ عَلَيْهِ عَيْنُهُ وَالتَّصَرُّفُ فِيهِ - وَهَذَا كُلُّهُ ظُلْمٌ وَبَاطِلٌ بِلَا شَكٍّ وَقَوْلُنَا هَذَا هُوَ قَوْلُ الشَّعْبِيِّ، وَالْحَسَنِ الْبَصْرِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَغَيْرِهِمْ.

L20208 You have opposed the statement of Allah's Messenger—peace and blessings be upon him—"Your blood and wealth are inviolable to you," by permitting the hired party to appropriate another's property, allowing him the wealth of one with whom he never established any contractual agreement. You have barred the rightful claimant from his due—this is unlawful. You have obligated the seller to claim payment for newly arising benefits in another's property and for the service of a free person over whom he holds no ownership. This constitutes unlawful consumption of wealth, taking payment for property that is itself forbidden to him, and transacting with it—all of which is undeniably oppression and falsehood. Our position aligns with the view of Al-Sha'bi, Al-Hasan Al-Basri, Sufyan Al-Thawri, and others.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ إِيَاسِ بْنِ مُعَاوِيَةَ فِيمَنْ دَفَعَ غُلَامَهُ إِلَى رَجُلٍ يُعَلِّمُهُ ثُمَّ أَخْرَجَهُ قَبْلَ انْقِضَاءِ شَرْطِهِ، قَالَ: يَرُدُّ عَلَى مُعَلِّمِهِ مَا أَنْفَقَ عَلَيْهِ.

L20209 Through the chain of Ibn Abi Shaybah: 'Abd al-Wahhāb al-Thaqafī reported to us from Khālid al-Hadhdhā' from Iyās ibn Mu'āwiyah regarding one who entrusts his servant to a man to teach him, then removes him before the expiration of the stipulated period. He said: He must repay his teacher what he spent on him.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا غُنْدَرٌ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ فِيمَنْ أَجَّرَ غُلَامَهُ سَنَةً فَأَرَادَ أَنْ يُخْرِجَهُ، قَالَ: لَهُ أَنْ يَأْخُذَهُ. قَالَ حَمَّادٌ: لَيْسَ لَهُ إِخْرَاجُهُ إِلَّا مِنْ مَضَرَّةٍ.

L20210 From the narration of Ibn Abī Shaybah: Ghundar reported to us from Shu'bah from al-Ḥakam ibn 'Utaybah regarding one who leased his slave for a year then sought to evict him. He [al-Ḥakam] said: "He may take him back." Ḥammād said: "He has no right to evict him except due to detriment."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: الْبَيْعُ يَقْطَعُ الْإِجَارَةَ. قَالَ أَيُّوبُ لَا يَقْطَعُهَا، قَالَ مَعْمَرٌ: وَسَأَلْت ابْنَ شُبْرُمَةَ عَنْ الْبَيْعِ أَيَقْطَعُ الْإِجَارَةَ؟ قَالَ نَعَمْ، قَالَ عَبْدُ الرَّزَّاقِ: وَقَالَ سُفْيَانُ الثَّوْرِيُّ: الْمَوْتُ وَالْبَيْعُ يَقْطَعَانِ الْإِجَارَةَ.

L20211 It was conveyed to us via the chain of 'Abd al-Razzāq, from Ma'mar, from Ayyūb, from al-Ḥasan al-Baṣrī, who said: "The sale terminates the lease." Ayyūb said: "It does not terminate it." Ma'mar said: "I asked Ibn Shubrumah about the sale: Does it terminate the lease?" He replied: "Yes." 'Abd al-Razzāq said: "Sufyān al-Thawrī stated: 'Death and sale terminate the lease.'"

L20212 Abu Muhammad said: Malik, Abu Yusuf, and Al-Shafi'i said: If the buyer is

[6] **Qur'an references (L20207):** Qur'an 6:164 (Al-An'am).

aware of the rental contract, the sale is valid, and he cannot take possession of the item he purchased except after the rental contract period is completed.

قَالَ أَبُو مُحَمَّد: وَقَالَ مَالِكٌ وَأَبُو يُوسُف، وَالشَّافِعِيُّ: إنْ عَلِمَ الْمُشْتَرِي بِالْإِجَارَةِ فَالْبَيْع صَحِيحٌ، وَلَا يَأْخُذُ الشَّيْءَ الَّذِي اشْتَرَى إلَّا بَعْدَ تَمَامِ مُدَّةِ الْإِجَارَةِ.

L20213 Similarly, emancipation and gifts are effectively executed, and the emancipator must maintain the service. The wage in each respective case belongs to the seller, the emancipator, or the donor. The scholars held: If the buyer was unaware of the sale, he may choose between validating the sale - whereby the lease compensation belongs to the seller - or annulling it, because he is not prevented from benefiting from what he purchased. This ruling is invalid due to what we previously presented.

وَكَذَلِكَ الْعِتْقُ نَافِذٌ وَالْهِبَةُ، وَعَلَى الْمُعْتِقِ إبْقَاءُ الْخِدْمَةِ، وَتَكُونُ الْأُجْرَةُ فِي كُلِّ ذَلِكَ لِلْبَائِعِ، وَالْمُعْتِقِ وَالْوَاهِبِ قَالُوا: فَإِنْ لَمْ يَعْلَمْ بِالْبَيْعِ، فَهُوَ مُخَيَّرٌ بَيْنَ إنْفَاذِ الْبَيْعِ وَتَكُونُ الْإِجَارَةُ لِلْبَائِعِ أَوْ رَدُّهُ، لِأَنَّهُ لَا يَمْتَنِعُ مِنْ الِانْتِفَاعِ بِمَا اشْتَرَى - وَهَذَا فَاسِدٌ بِمَا أَوْرَدْنَا آنِفًا.

L20214–20216 Abū Ḥanīfah held two positions: the first, that the lessee has the right to annul the sale; the second, that the lessee is given the choice. Between consent to the sale and non-consent to it; if he consents, his lease becomes void.

وَقَالَ أَبُو حَنِيفَةَ قَوْلَيْنِ - أَحَدُهُمَا: أَنَّ لِلْمُسْتَأْجِرِ نَقْضَ الْبَيْعِ. وَالْآخَرُ: أَنَّهُ مُخَيَّرٌ بَيْنَ الرِّضَا بِالْبَيْعِ وَبَيْنَ أَنْ لَا يَرْضَى بِهِ، فَإِنْ رَضِيَ بِهِ بَطَلَتْ إجَارَتُهُ.

L20217 And if he does not consent, the buyer may choose between upholding the sale while waiting until the lease period expires or rescinding the sale due to the impossibility of taking possession.

وَإِنْ لَمْ يَرْضَ بِهِ كَانَ الْمُشْتَرِي مُخَيَّرًا بَيْنَ إمْضَاءِ الْبَيْعِ وَالصَّبْرِ حَتَّى تَنْقَضِيَ مُدَّةُ الْإِجَارَةِ، وَبَيْنَ فَسْخِ الْبَيْعِ لِتَعَذُّرِ الْقَبْضِ.

L20218 Abu Muhammad said: These two statements are of the utmost corruption and confusion. They are not supported by the Quran, the Sunnah, any weak narration, the statement of anyone we know before Abu Hanifah, analogy, or sound opinion.

قَالَ أَبُو مُحَمَّد: هَذَانِ قَوْلَانِ فِي غَايَةِ الْفَسَادِ وَالتَّخْلِيطِ، لَا يَعْضُدُهُمَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ أَحَدٍ نَعْلَمُهُ قَبْلَ أَبِي حَنِيفَةَ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ سَدِيدٌ.

L20219 I wonder—if they grant the lessee the option to annul the sale, do you think they would also grant him the choice to return the freed slave or confirm his emancipation? This is astonishing! Or would they contradict themselves in that? It is impermissible in any of the cases we mentioned—where the leased property exits the owner's possession through sale, emancipation, gift, charity, or dower—to impose a condition upon the freed slave or the new property owner requiring the lease's continuity. For this is a condition not ordained in the Book of Allah the Exalted, and thus invalid.

وَلَيْتَ شِعْرِي إذَا جَعَلَ لِلْمُسْتَأْجِرِ الْخِيَارَ فِي فَسْخِ الْبَيْعِ، أَتَرَوْنَهُمْ يَجْعَلُونَ لَهُ الْخِيَارَ أَيْضًا فِي رَدِّ الْمُعْتَقِ أَوْ إمْضَائِهِ؟ إنَّ هَذَا لَعَجَبٌ أَوَ يَتَنَاقَضُونَ فِي ذَلِكَ؟ وَلَا يَحِلُّ فِي شَيْءٍ مِمَّا ذَكَرْنَا مِنْ خُرُوجِ الشَّيْءِ الْمُسْتَأْجِرِ عَنْ مِلْكِ الْمُؤَاجِرِ بِبَيْعٍ، أَوْ عِتْقٍ، أَوْ هِبَةٍ، أَوْ صَدَقَةٍ، أَوْ إصْدَاقٍ أَنْ يَشْتَرِطَ عَلَى الْمُعْتَقِ، وَعَلَى مَنْ صَارَ إلَيْهِ الْمِلْكُ: بَقَاءَ الْإِجَارَةِ، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، فَهُوَ بَاطِلٌ.

L20220 **Case: If either the lessee or the lessor is compelled to leave**

the city.

L20221 1292. Issue: Similarly, if the lessee is compelled to relocate from the locality, or the lessor is compelled to do so, the lease is annulled if its continuation would cause harm to either party, such as a debilitating illness, a paralyzing fear, or similar circumstances, in accordance with Allah's statement: "He has already detailed to you what He has forbidden you, except when compelled by necessity" (6:119).[7]

L20222 And the Exalted said: _He has not placed upon you in [observing] the religion any hardship_ [22:78].[8]

L20223 This is the opinion of Abū Ḥanīfah. It has been narrated to us through the chain of ʿAbd al-Razzāq: Sufyān al-Thawrī reported to us, stating: Al-Shaʿbī was asked about a man who rented an animal to a specific place but completed his journey before reaching that destination. He said: He owes a portion of the rental fee proportionate to the distance he actually traveled.

L20224 Through the chain of ʿAbd al-Razzāq from Maʿmar from Qatādah regarding one who rented an animal for travel to a specified destination but refused to depart. Qatādah said: If a circumstance occurs for which he is excused, he is not liable for the rent.

L20225 ## The Issue of the Destruction of the Leased Object

L20226 1293 - Issue: Similarly, if the leased object is destroyed, the lease is terminated. Abū Ḥanīfa, Mālik, and al-Shāfiʿī agreed with us on this.

L20227 Abu Thawr said: The lease (ijarah) is not invalidated by this either; rather, it remains valid until its term. The entire rent (ujrah) is obligatory for the lessee to pay to the lessor.

[مَسْأَلَةٌ اضْطَرَّ الْمُسْتَأْجِرُ أَوْ الْمُؤَاجِرُ إِلَى الرَّحِيلِ عَنْ الْبَلَدِ]

١٢٩٢ - مَسْأَلَةٌ: وَكَذَلِكَ إنْ اضْطَرَّ الْمُسْتَأْجِرُ إلَى الرَّحِيلِ عَنْ الْبَلَدِ، أَوْ اضْطَرَّ الْمُؤَاجِرُ إلَى ذَلِكَ، فَإِنَّ الْإِجَارَةَ تَنْفَسِخُ إذَا كَانَ فِي بَقَائِهَا ضَرَرٌ عَلَى أَحَدِهِمَا، كَمَرَضٍ مَانِعٍ، أَوْ خَوْفٍ مَانِعٍ، أَوْ غَيْرِ ذَلِكَ، لِقَوْلِ اللَّهِ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] .

وَقَالَ تَعَالَى: {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] .

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ. رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ قَالَ: سُئِلَ الشَّعْبِيُّ عَنْ رَجُلٍ اسْتَأْجَرَ دَابَّةً إلَى مَكَان فَقَضَى حَاجَتَهُ دُونَ ذَلِكَ الْمَكَانِ. قَالَ: لَهُ مِنْ الْأُجْرَةِ بِقَدْرِ الْمَكَانِ الَّذِي انْتَهَى إلَيْهِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِيمَنْ اكْتَرَى دَابَّةً إلَى أَرْضٍ مَعْلُومَةٍ فَأَبَى أَنْ يَخْرُجَ. قَالَ قَتَادَةَ: إذَا حَدَثَ نَازِلَةٌ يُعْذَرُ بِهَا لَمْ يَلْزَمْهُ الْكِرَاءُ.

[مَسْأَلَةٌ هَلَاكُ الشَّيْءِ الْمُسْتَأْجَرِ]

١٢٩٣ - مَسْأَلَةٌ: وَكَذَلِكَ إنْ هَلَكَ الشَّيْءُ الْمُسْتَأْجَرُ فَإِنَّ الْإِجَارَةَ تَنْفَسِخُ وَوَافَقَنَا عَلَى هَذَا أَبُو حَنِيفَةَ، وَمَالِكٌ وَالشَّافِعِيُّ.

وَقَالَ أَبُو ثَوْرٍ: لَا تَنْفَسِخُ الْإِجَارَةُ بِهَذَا أَيْضًا، بَلْ هِيَ بَاقِيَةٌ إلَى أَجَلِهَا، الْأُجْرَةُ كُلُّهَا وَاجِبَةٌ لِلْمُؤَاجِرِ عَلَى الْمُسْتَأْجِرِ.

[7] **Qur'an references (L20221):** Qur'an 6:119 (Al-An'am).
[8] **Qur'an references (L20222):** Qur'an 22:78 (Al-Hajj).

قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ، لِأَنَّهُ أَكْلُ مَالٍ بِالْبَاطِلِ، وَقَاسَ أَبُو ثَوْرٍ ذَلِكَ عَلَى الْبَيْعِ وَلَقَدْ يَلْزَمُ مَنْ رَأَى الْإِجَارَةَ كَالْبَيْعِ أَنْ يَقُولَ بِهَذَا.

Abu Muhammad said: This is erroneous, for it constitutes wrongful usurpation of wealth. Abu Thawr analogized this matter to sale. Indeed, it is incumbent upon anyone who considers lease to be like sale to uphold this view.

وَلَا فَرْقَ بَيْنَ إبْقَاءِ مَالِك، وَالشَّافِعِيِّ، الْإِجَارَةَ بِمَوْتِ الْمُؤَاجِرِ، وَالْمُسْتَأْجِرِ، وَبَيْنَ إبْقَاءِ أَبِي ثَوْرٍ إيَّاهَا بِهَلَاكِ الشَّيْءِ الْمُسْتَأْجَرِ حَتَّى قَالَ مَالِكٌ: مَنْ اُسْتُؤْجِرَتْ دَابَّتُهُ إلَى بَلَدٍ بِعَيْنِهِ فَمَاتَ الْمُسْتَأْجِرُ بِالْفَلَاةِ: أَنَّ الْإِجَارَةَ بَاقِيَةٌ فِي مَالِهِ، وَأَنَّ مِنْ الْوَاجِبِ أَنْ يُؤْتَى الْمُؤَاجِرُ ثَمَنَ نَقْلِهِ، كَنَقْلِ الْمَيِّتِ يَنْقُلُهُ إلَى ذَلِكَ الْبَلَدِ، وَهَذَا عَجَبٌ مَا مِثْلُهُ عَجَبٌ لَا سِيَّمَا مَعَ إبْطَالِهِ بَعْضَ الْإِجَارَةِ بِجَائِحَةٍ تَنْزِلُ كَاسْتِعْذَارٍ، أَوْ قَحْطٍ، فَاحْتَاطَ فِي أَحَدِ الْوَجْهَيْنِ وَلَمْ يَحْتَطْ فِي الْآخَرِ وَلَا تَبْطُلُ إجَارَةٌ بِغَيْرِ مَا ذَكَرْنَا - وَقَدْ رُوِيَ عَنْ شُرَيْحٍ وَالشَّعْبِيِّ. وَصَحَّ عَنْهُمَا أَنَّ كُلَّ وَاحِدٍ مِنْ الْمُسْتَأْجِرِ وَالْمُؤَاجِرِ يَنْقُضُ الْإِجَارَةَ إذَا شَاءَ قَبْلَ تَمَامِ الْمُدَّةِ - وَإِنْ كَرِهَ الْآخَرُ - وَكَانَا يَقْضِيَانِ بِذَلِكَ

L20228–20229 Abu Muhammad said: This is erroneous, for it constitutes wrongful usurpation of wealth. Abu Thawr analogized this matter to sale. Indeed, it is incumbent upon anyone who considers lease to be like sale to uphold this view.

L20230 There is no distinction between Mālik and al-Shāfiʿī maintaining the lease contract upon the death of the lessor or lessee, and Abū Thawr maintaining it upon the destruction of the leased object. Mālik even stated: "If someone's animal is leased for travel to a specific town and the lessee dies in the wilderness, the lease remains binding on his estate. The lessor must be paid the cost of transporting the deceased lessee to that town, akin to transporting a deceased person." This is truly perplexing—nothing like it is perplexing—especially given his nullification of part of the lease due to a calamity such as an inability to fulfill the contract or drought. He applied precaution in one legal scenario but neglected it in the other. No lease is invalidated except for the reasons we have mentioned. It is authentically reported from Shurayḥ and al-Shaʿbī that either the lessee or lessor may annul the lease at will before the term's completion, even against the other's objection, and they both ruled accordingly.

L20231 We do not uphold this view because it is a contract the two parties have concluded regarding property owned by the lessor, and it is obligatory to uphold the contract. Likewise, the contracting parties remain bound so long as they are both alive, and so long as that property remains under the ownership of the one who leased it. And success is from Allah, the Most High.

- وَلَا نَقُولُ بِهَذَا، لِأَنَّهُ عَقْدٌ عَقَدَاهُ فِي مَالٍ يَمْلِكُهُ الْمُؤَاجِرُ فَهُوَ مَأْمُورٌ بِإِنْفَاذِهِ، وَكَذَلِكَ مُعَاقِدُهُ مَا دَامَا حَيَّيْنِ، وَمَا دَامَ ذَلِكَ الشَّيْءُ فِي مِلْكِ مَنْ أَجَّرَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ اسْتِئْجَارُ الْعَبِيدِ وَالدُّورِ وَالدَّوَابِّ]

L20232 **Issue Regarding the Renting of Slaves, Houses, and Beasts of Burden.**

١٢٩٤ - مَسْأَلَةٌ: وَجَائِزٌ اسْتِئْجَارُ الْعَبِيدِ وَالدُّورِ وَالدَّوَابِّ، وَغَيْرِ ذَلِكَ، إلَى مُدَّةٍ قَصِيرَةٍ أَوْ طَوِيلَةٍ، إذَا كَانَتْ مِمَّا يُمْكِنُ بَقَاءُ الْمُؤَاجَرَةِ وَالْمُسْتَأْجِرِ وَالشَّيْءِ الْمُسْتَأْجَرِ إلَيْهَا، فَإِنْ كَانَ لَا يُمْكِنُ أَلْبَتَّةَ بَقَاءُ أَحَدِهِمْ إلَيْهَا، لَمْ يَجُزْ ذَلِكَ الْعَقْدُ، وَكَانَ مَفْسُوخًا أَبَدًا.

L20233 Issue 1294: It is permissible to lease slaves, houses, pack animals, and other items for a short or long period, provided the lease (ijārah), the lessee, and the leased item can remain validly existing until the duration of the term. If it is absolutely impossible for any of these to persist until the term's conclusion, the contract is invalid and null and void ab initio.

L20234 The proof of that is: specifying the duration is obligatory in rental agreements not tied to a specific task. Since this is the case, there is no distinction

between a particular duration and what is shorter or longer than it. Whoever differentiates between them is undoubtedly mistaken, for he has differentiated without Quran, Sunnah, weak narration, any statement of a Companion whatsoever, any statement of a Follower that we know of, analogical reasoning, or an opinion with a rationally conceivable basis. Risks are not mitigated in short periods, just as they are not mitigated in long ones.

بُرْهَانُ ذَلِكَ -: أَنَّ بَيَانَ الْمُدَّةِ وَاجِبٌ فِيمَا اُسْتُؤْجِرَ لَا لِعَمَلٍ مُعَيَّنٍ، فَإِذْ هُوَ كَذَلِكَ فَلَا فَرْقَ بَيْنَ مُدَّةٍ مَا وَبَيْنَ مَا أَقَلَّ مِنْهَا أَوْ أَكْثَرَ مِنْهَا؛ وَالْمُفَرِّقُ بَيْنَ ذَلِكَ مُخْطِئٌ بِلَا شَكٍّ، لِأَنَّهُ فَرَّقَ بِلَا قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ أَصْلًا، وَلَا قَوْلِ تَابِعٍ نَعْلَمُهُ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ يُعْقَلُ، وَالْمَخَاوِفُ لَا تُؤْمَنُ فِي قَصِيرِ الْمُدَدِ كَمَا لَا تُؤْمَنُ فِي طَوِيلِهَا.

L20235 If the lease contract is established for a duration wherein one is certain that one of the two parties must inevitably die before its expiration, or that the leased object must inevitably perish beforehand, then this is a condition that is undoubtedly invalid without doubt. This is because such a contract is either an imposition of obligations by the two parties upon someone other than themselves — which is impermissible — or a contract concerning something non-existent at the time of the contract — and this too is impermissible. Success comes from Allah, the Most High.

وَأَمَّا إِنْ عُقِدَتْ الْإِجَارَةُ إِلَى مُدَّةٍ يُوقِنُ أَنَّهُ لَا بُدَّ مِنْ أَنْ يُخْتَرَمَ أَحَدُهُمَا دُونَهَا، أَوْ لَا بُدَّ مِنْ ذَهَابِ الشَّيْءِ الْمُؤَاجَرِ دُونَهَا، فَهُوَ شَرْطٌ مُتَيَقَّنُ الْفَسَادِ بِلَا شَكٍّ، لِأَنَّهُ إمَّا عَقْدٌ مِنْهُمَا عَلَى غَيْرِهِمَا، وَهَذَا لَا يَجُوزُ - وَإِمَّا عَقْدٌ فِي مَعْدُومٍ، وَذَلِكَ لَا يَجُوزُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20236–20237 Indeed, it would logically follow for those among the Malikis and Shafi'is who hold that a lease is not invalidated by the death of either party, or among those who follow the school of Abū Thawr in asserting it is not invalidated by the destruction of the leased object, to permit lease contracts for land and other properties up to a thousand, ten thousand years, or more. Yet this is among the matters wherein they contradicted themselves; and in Allah, the Exalted, we seek support.

وَلَقَدْ كَانَ يَلْزَمُ مَنْ يَرَى الْإِجَارَةَ لَا تُنْتَقَضُ بِمَوْتِ أَحَدِهِمَا مِنْ الْمَالِكِيِّينَ وَالشَّافِعِيِّينَ، أَوْ لَا تُنْتَقَضُ بِهَلَاكِ الشَّيْءِ الْمُسْتَأْجَرِ مِمَّنْ ذَهَبَ مَذْهَبَ أَبِي ثَوْرٍ، أَنْ يُجِيزَ عَقْدَ الْإِجَارَةِ فِي الْأَرْضِ وَغَيْرِهَا إلَى أَلْفِ عَامٍ، وَإِلَى عَشَرَةِ آلَافِ عَامٍ، وَأَكْثَرَ، وَلَكِنْ هَذَا مِمَّا تَنَاقَضُوا فِيهِ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

L20238 The scriptural text has established hiring for a specified term, as we have narrated through the chain of Al-Bukhari: Sulayman ibn Harb narrated to us, Hammad ibn Zayd from Ayyub al-Sikhtiyani from Nafi' from Ibn 'Umar, who said: The Messenger of Allah—peace and blessings be upon him—used to say: "Your likeness and the likeness of the People of the Book is like that of a man who hired laborers and said: 'Who will work for me from dawn until midday for a qirāṭ?' So the Jews worked until the Zuhr prayer. Then he said: 'Who will work for me from midday until the 'Asr prayer for a qirāṭ?'

وَقَدْ جَاءَ النَّصُّ بِالْإِجَارَةِ إلَى أَجَلٍ مُسَمًّى، كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ: نا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَثَلُكُمْ وَمَثَلُ أَهْلِ الْكِتَابَيْنِ كَمَثَلِ رَجُلٍ اسْتَأْجَرَ أُجَرَاءَ فَقَالَ: مَنْ يَعْمَلُ لِي مِنْ غُدْوَةٍ إلَى نِصْفِ النَّهَارِ عَلَى قِيرَاطٍ؟ فَعَمِلَتْ الْيَهُودُ إلَى صَلَاةِ الظُّهْرِ، ثُمَّ قَالَ: مَنْ يَعْمَلُ لِي مِنْ نِصْفِ النَّهَارِ إلَى صَلَاةِ الْعَصْرِ عَلَى

So the Christians worked. Then he said: 'Who will work for me from 'Asr until sunset for two qirāṭs?' So you are they." And he mentioned the hadith.

A legal issue concerning the hiring of a lactating woman to breastfeed an infant for a specified period.

1295 - Issue: It is permissible to hire a lactating woman to breastfeed an infant for an agreed-upon duration.

The evidence for that is the statement of Allah, the Most High: "If they breastfeed for you, then give them their wages." (Surah At-Talaq 6)[9]

Issue: Leasing a sheep, cow, or camel for milking

Issue 1296: It is impermissible to lease a sheep, cow, camel, or similar animal (neither one nor more) for milking at all. This is because leasing applies exclusively to usufructuary benefits, not to ownership of physical entities. Here, the transaction entails acquiring ownership of the milk, which is a tangible, existing corporeal entity. Thus, it constitutes a sale, not a lease. Selling an item that has not been seen whatsoever, or whose specific properties are unknown, is invalid. This is the opinion of Abū Ḥanīfah and al-Shāfiʿī.

Malik did not permit leasing a sheep or two sheep for milking, but permitted leasing a herd of milk-producing animals for milking. He allowed leasing a cow for plowing and stipulating its milk. All of this is erroneous and contradictory, as he differentiated between small and large quantities without any foundational proof whatsoever.

Thereafter, he did not establish a clear boundary between what was forbidden and what was lawful, mingling the unlawful with the lawful without clarification. Do you not see this?

It is incumbent upon those who declare matters lawful or unlawful to elucidate to people what is forbidden to them from among what is permissible,

[9] **Qur'an references (L20241):** Qur'an 65:6 (At-Talaq).

قِيرَاطٍ؟ فَعَمِلَتْ النَّصَارَى، ثُمَّ قَالَ: مَنْ يَعْمَلُ لِي مِنْ الْعَصْرِ إلَى أَنْ تَغِيبَ الشَّمْسُ عَلَى قِيرَاطَيْنِ؟ فَأَنْتُمْ هُمْ» وَذَكَرَ الْحَدِيثَ.

[مَسْأَلَةٌ اسْتِئْجَارُ الْمَرْأَةِ ذَاتِ اللَّبَنِ لِإِرْضَاعِ الصَّغِيرِ مُدَّةً مُسَمَّاةً]

١٢٩٥ - مَسْأَلَةٌ: وَجَائِزٌ اسْتِئْجَارُ الْمَرْأَةِ ذَاتِ اللَّبَنِ لِإِرْضَاعِ الصَّغِيرِ مُدَّةً مُسَمَّاةً.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ} [الطلاق: ٦] .

[مَسْأَلَةٌ اسْتِئْجَارُ شَاةٍ أَوْ بَقَرَةٍ أَوْ نَاقَةٍ لِلْحَلْبِ]

١٢٩٦ - مَسْأَلَةٌ: وَلَا يَجُوزُ اسْتِئْجَارُ شَاةٍ أَوْ بَقَرَةٍ أَوْ نَاقَةٍ أَوْ غَيْرِ ذَلِكَ - لَا وَاحِدَةٍ وَلَا أَكْثَرَ - لِلْحَلْبِ أَصْلًا؛ لِأَنَّ الْإِجَارَةَ إنَّمَا هِيَ فِي الْمَنَافِعِ خَاصَّةً، لَا فِي تَمَلُّكِ الْأَعْيَانِ، وَهَذَا تَمَلُّكُ اللَّبَنِ، وَهُوَ عَيْنٌ قَائِمَةٌ، فَهُوَ بَيْعٌ لَا إجَارَةٌ، وَبَيْعُ مَا لَمْ يُرَ قَطُّ، وَلَا تُعْرَفُ صِفَتُهُ بَاطِلٌ. - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ.

وَلَمْ يُجِزْ مَالِكٌ إجَارَةَ الشَّاةِ وَلَا الشَّاتَيْنِ لِلْحَلْبِ، وَأَجَازَ إجَارَةَ الْقَطِيعِ مِنْ ذَوَاتِ اللَّبَنِ لِلْحَلْبِ - وَأَجَازَ اسْتِئْجَارَ الْبَقَرَةِ لِلْحَرْثِ، وَاشْتِرَاطَ لَبَنِهَا - وَهَذَا كُلُّهُ خَطَأٌ وَتَنَاقُضٌ؛ لِأَنَّهُ فَرَّقَ بَيْنَ الْقَلِيلِ وَالْكَثِيرِ بِلَا بُرْهَانٍ أَصْلًا.

ثُمَّ لَمْ يَأْتِ بِحَدٍّ بَيْنَ مَا حُرِّمَ وَمَا حُلِّلَ، فَمَزَجَ الْحَرَامَ بِالْحَلَالِ بِغَيْرِ بَيَانٍ، وَهَذَا كَمَا تَرَى؟

وَفَرْضٌ عَلَى كُلِّ مَنْ حَلَّلَ وَحَرَّمَ أَنْ يُبَيِّنَ لِلنَّاسِ مَا يَحْرُمُ عَلَيْهِمْ مِمَّا يَحِلُّ لَهُمْ إنْ كَانَ يَعْرِفُ ذَلِكَ، فَإِنْ لَمْ يَعْرِفْهُ فَالسُّكُوتُ هُوَ الْوَاجِبُ الَّذِي لَا يَحِلُّ غَيْرُهُ.

provided they possess such knowledge. However, if they lack this knowledge, silence becomes the sole obligation, with no permissible alternative.

L20248 Then he permitted this per head of cow - and this is a glaring contradiction.

L20249 Similarly, he permitted leasing a tree or a palm tree with the exception of its fruit, even if there were no fruit on it at the time of leasing, provided the fruit's portion in the lease agreement constitutes less than a third of the rent; otherwise, it is not permissible. This division is not known from anyone before him, nor is there any evidence to validate any part of it. Even if much of what we have mentioned is lawful, then a small portion of the lawful remains lawful; and if it is unlawful, then a small portion of the unlawful remains unlawful.

L20250 And this very thing they criticized the Ḥanafīs for—permitting small quantities of what intoxicates when consumed in large quantity—despite their agreement with us that leasing food to be eaten is prohibited. What then distinguishes their prohibition of that from their permission to lease houses in exchange for fruit not yet grown therein to be eaten, and between leasing sheep for milking?

L20251 If they say: "We analogized that to hiring a wet nurse," we say: "All analogy is entirely invalid. Then even if analogy were valid, it would be invalid here, for the soundest analogy in this case would be to compare hiring a single sheep for milking to hiring a single wet nurse for breastfeeding - thus you prohibited that. Then you analogized where no similarity exists between them, such as [hiring] a cow for ritual purification or a numerous herd in count. The precluding cause they cite against leasing a single animal for milking equally applies to the wet nurse without distinction. We have never seen anyone more ignorant of analogy than one whose analogy is such - and with Allah, the Exalted, is success."

L20252 ## An Issue: The Leasing of the Land

L20253 1297 - Issue: It is impermissible to lease land at all—neither for cultivation on it, nor for planting on it, nor for building on it, nor for anything

ثُمَّ أَجَازَ ذَلِكَ فِي الرَّأْسِ الْوَاحِدِ مِنْ الْبَقَرِ - وَهَذَا تَنَاقُضٌ فَاحِشٌ.

وَكَذَلِكَ أَجَازَ كِرَاءً تَكُونُ فِيهَا الشَّجَرَةُ أَوْ النَّخْلَةُ وَاسْتِثْنَاءَ ثَمَرَتِهَا وَإِنْ لَمْ تَكُنْ فِيهَا حِينَ الْإِجَارَةِ ثَمَرَةٌ إذَا كَانَتْ الثَّمَرَةُ أَقَلَّ مِنْ ثُلُثِ الْكِرَاءِ وَإِلَّا فَلَا يَجُوزُ - وَلَا يُعْرَفُ هَذَا التَّقْسِيمُ عَنْ أَحَدٍ قَبْلَهُ وَلَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهُ، وَلَئِنْ كَانَ الْكَثِيرُ مِمَّا ذَكَرْنَا حَلَالًا فَالْقَلِيلُ مِنْ الْحَلَالِ حَلَالٌ، وَإِنْ كَانَ حَرَامًا فَالْقَلِيلُ مِنْ الْحَرَامِ حَرَامٌ.

وَهَذَا بِعَيْنِهِ أَنْكَرُوا عَلَى الْحَنِيفِيِّينَ إذَا أَبَاحُوا الْقَلِيلَ مِمَّا يُسْكِرُ كَثِيرُهُ وَقَدْ وَافَقُونَا عَلَى أَنَّهُ لَا يَحِلُّ كِرَاءُ الطَّعَامِ لِيُؤْكَلَ - فَمَا الْفَرْقُ بَيْنَ ذَلِكَ وَبَيْنَ مَا أَبَاحُوهُ مِنْ كِرَاءِ الدَّارِ بِالثَّمَرَةِ الَّتِي لَمْ تُخْلَقْ فِيهَا لِتُؤْكَلَ، وَبَيْنَ كِرَاءِ الْغَنَمِ لِتَحْلُبَ.

فَإِنْ قَالُوا: قِسْنَا ذَلِكَ عَلَى اسْتِئْجَارِ الظِّئْرِ. قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَهُنَا بَاطِلًا لِأَنَّ أَصَحَّ الْقِيَاسِ هَهُنَا -: أَنْ يُقَاسَ اسْتِئْجَارُ الشَّاةِ الْوَاحِدَةِ لِلْحَلْبِ عَلَى اسْتِئْجَارِ الظِّئْرِ الْوَاحِدَةِ لِلرَّضَاعِ فَحَرَّمْتُمْ ذَلِكَ، ثُمَّ قِسْتُمْ حَيْثُ لَا تَشَابُهَ بَيْنَهُمَا مِنْ الْبَقَرَةِ لِلْحَدَثِ وَمِنْ الْقَطِيعِ الْكَثِيرِ عَدَدُهُ، وَالْعِلَّةُ الْمَانِعَةُ عِنْدَهُمْ مِنْ إجَارَةِ الرَّأْسِ الْوَاحِدِ لِلْحَلْبِ مَوْجُودَةٌ فِي الظِّئْرِ وَلَا فَرْقَ، وَمَا رَأَيْنَا أَجْهَلَ بِالْقِيَاسِ مِمَّنْ هَذَا قِيَاسُهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ إجَارَةُ الْأَرْضِ]

whatsoever at all, neither for a specified term whether short or long nor for an unspecified term, neither with dinars nor dirhams nor anything at all. Whenever annulment occurs, it is forever.

١٢٩٧ - مَسْأَلَةٌ: وَلَا تَجُوزُ إجَارَةُ الْأَرْضِ أَصْلًا، لَا لِلْحَرْثِ فِيهَا، وَلَا لِلْغَرْسِ فِيهَا، وَلَا لِلْبِنَاءِ فِيهَا، وَلَا لِشَيْءٍ مِنْ الْأَشْيَاءِ أَصْلًا، لَا لِمُدَّةٍ مُسَمَّاةٍ قَصِيرَةٍ وَلَا طَوِيلَةٍ، وَلَا لِغَيْرِ مُدَّةٍ مُسَمَّاةٍ، لَا بِدَنَانِيرَ وَلَا بِدَرَاهِمَ، وَلَا بِشَيْءٍ أَصْلًا - فَمَتَى وَقَعَ فَسْخٌ أَبَدًا.

L20254 The only permissible use of land is sharecropping (muzāraʿah) with a specified portion of its yield or a tree-planting contract (mughārasah) in the same manner. If there is a structure on the land, regardless of its size, leasing (ijārah) that structure is permissible, and the land becomes secondary to it without being included in the lease at all.

وَلَا يَجُوزُ فِي الْأَرْضِ إلَّا الْمُزَارَعَةُ بِجُزْءٍ مُسَمًّى مِمَّا يَخْرُجُ مِنْهَا، أَوْ الْمُغَارَسَةُ كَذَلِكَ فَقَطْ، فَإِنْ كَانَ فِيهَا بِنَاءٌ قَلَّ أَوْ كَثُرَ جَازَ اسْتِئْجَارُ ذَلِكَ الْبِنَاءِ وَتَكُونُ الْأَرْضُ تَبَعًا لِذَلِكَ الْبِنَاءِ غَيْرَ دَاخِلَةٍ فِي الْإِجَارَةِ أَصْلًا.

L20255–20256 The proof of that is what we have narrated through the chain of Muslim: Abdul Malik ibn Shuʿaib ibn al-Layth ibn Saʿd narrated to us, saying: My father narrated to me from my grandfather, thunni ʿUqayl ibn Khalid, from Ibn Shihab, who said: Salim ibn ʿAbdullah ibn ʿUmar informed me, saying: ʿAbdullah ibn ʿUmar met Rafiʿ ibn Khadij and asked him. Rafiʿ said to him: I heard my uncle—and both of them had witnessed Badr—narrating to the people of the household: "The Messenger of Allah—peace and blessings be upon him—prohibited the leasing of land." He mentioned the hadith, which states that Ibn ʿUmar abandoned the leasing of land.[10]

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا عَبْدُ الْمَلِكِ بْنُ شُعَيْبِ بْنِ اللَّيْثِ بْنِ سَعْدٍ حَدَّثَنِي أَبِي عَنْ جَدِّي ثَنِيّ عُقَيْلُ بْنُ خَالِدٍ عَنْ ابْنِ شِهَابٍ قَالَ: أَخْبَرَنِي سَالِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: لَقِيَ عَبْدُ اللَّهِ بْنُ عُمَرَ رَافِعَ بْنَ خَدِيجٍ فَسَأَلَهُ. فَقَالَ لَهُ رَافِعٌ: سَمِعْت عَمِّي - وَكَانَا قَدْ شَهِدَا بَدْرًا - يُحَدِّثَانِ [أَهْلَ الدَّارِ] : «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ كِرَاءِ الْأَرْضِ» فَذَكَرَ الْحَدِيثَ وَفِيهِ أَنَّ ابْنَ عُمَرَ تَرَكَ كِرَاءَ الْأَرْضِ.

L20257 Abū Muḥammad said: All the people of Badr are righteous. It was narrated to us through the chain of Ibn Abī Shaybah: Wakīʿ narrated to us from Sufyān al-Thawrī from Yaḥyā ibn Saʿīd from ʿAbāyah ibn Rifāʿah ibn Rāfiʿ ibn Khadīj from his grandfather Rāfiʿ ibn Khadīj, who said: "Gabriel, or an angel, came to the Messenger of Allāh - peace and blessings be upon him - and asked: 'How do you regard those who witnessed Badr among yourselves?' The Messenger of Allāh - peace and blessings be upon him - replied: 'The best of us.' He said: 'So too are they in our view.'"

قَالَ أَبُو مُحَمَّدٍ: أَهْلُ بَدْرٍ كُلُّهُمْ عُدُولٌ -: رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ عَبَايَةَ بْنِ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ عَنْ جَدِّهِ رَافِعِ بْنِ خَدِيجٍ، قَالَ: «جَاءَ جِبْرِيلُ أَوْ مَلَكٌ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: مَا تَعُدُّونَ مَنْ شَهِدَ بَدْرًا فِيكُمْ؟ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: خِيَارُنَا قَالَ: كَذَلِكَ هُمْ عِنْدَنَا» .

L20258 Ali said: Among those from whom we have transmitted narrations prohibit-

قَالَ عَلِيٌّ: وَمِمَّنْ رُوِّينَا عَنْهُ الْمَنْعَ مِنْ كِرَاءِ الْأَرْضِ جُمْلَةً جَابِرِ بْنِ عَبْدِ اللَّهِ، وَرَافِعِ بْنِ خَدِيجٍ، وَابْنُ عُمَرَ، وَطَاوُسٌ، وَمُجَاهِدٌ، وَالْحَسَنُ.

[10] **Hadith references (L20256):** Sahih Muslim 1536k; Sunan an-Nasai 3888; Sunan an-Nasai 3916.

ing land leasing in general are Jabir ibn Abdullah, Rafiʿ ibn Khadīj, Ibn Umar, Tawus, Mujahid, and al-Hasan.

L20259 Ali said: "When we discuss *muzāraʿah* (sharecropping), God, the Exalted, willing, we shall thoroughly examine the arguments raised by those who permit renting land and refute them all by the power and might of God, the Exalted."

قَالَ عَلِيٌّ: وَعِنْدَ ذِكْرِنَا " لِلْمُزَارَعَةِ " إنْ شَاءَ اللَّهُ تَعَالَى نَتَقَصَّى مَا شَغَبَ بِهِ مَنْ أَبَاحَ كِرَاءَ الْأَرْضِ وَنَقَضَ كُلَّ ذَلِكَ بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ.

L20260 **A jurisprudential ruling on renting a house, a slave, and a pack animal for a day that is not specified.**

[مَسْأَلَةٌ اسْتِئْجَارُ دَارٍ وَعَبْدٍ وَدَابَّةٍ لِيَوْمٍ غَيْرِ مُعَيَّنٍ]

L20261 1298 - Issue: It is not permissible to lease a house, a slave, an animal, or anything whatsoever for an unspecified day, nor for an unspecified month, nor for an unspecified year. This is because leasing cannot be valid for something in which the lessee does not know his right, for it is wrongful consumption of wealth and a void contract. And success comes from Allah, the Most High.

١٢٩٨ - مَسْأَلَةٌ: وَلَا يَجُوزُ اسْتِئْجَارُ دَارٍ وَلَا عَبْدٍ وَلَا دَابَّةٍ وَلَا شَيْءٍ أَصْلًا لِيَوْمٍ غَيْرِ مُعَيَّنٍ، وَلَا لِشَهْرٍ غَيْرِ مُعَيَّنٍ، وَغَلَا لِعَامٍ غَيْرِ مُعَيَّنٍ؛ لِأَنَّ الْكِرَاءَ لَمْ يَصِحَّ عَلَى شَيْءٍ لَمْ يَعْرِفْ فِيهِ الْمُسْتَأْجِرُ حَقَّهُ فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ وَعَقْدٌ فَاسِدٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20262 **Issue: Whenever a hired worker performs any of the tasks he was contracted to do, he is entitled to a wage proportionate to the work he has performed.**

[مَسْأَلَةٌ كُلُّ مَا عَمِلَ الْأَجِيرُ شَيْئًا مِمَّا اُسْتُؤْجِرَ لِعَمَلِهِ اسْتَحَقَّ مِنْ الْأُجْرَةِ بِقَدْرِ مَا عَمِلَ]

L20263 1299. Issue: Whenever a worker performs any part of the work for which they were hired, they are entitled to a portion of the wage proportionate to the work performed. They have the right to demand and collect this amount immediately, or to defer it unconditionally until completing the entire work or a substantial aggregate of it. This is because the wage is based on the work itself - each portion of the work corresponds to a portion of the wage.

١٢٩٩ - مَسْأَلَةٌ: وَكُلُّ مَا عَمِلَ الْأَجِيرُ شَيْئًا مِمَّا اُسْتُؤْجِرَ لِعَمَلِهِ اسْتَحَقَّ مِنْ الْأُجْرَةِ بِقَدْرِ مَا عَمِلَ فَلَهُ طَلَبُ ذَلِكَ وَأَخْذُهُ وَلَهُ تَأْخِيرُهُ بِغَيْرِ شَرْطٍ حَتَّى يُتِمَّ عَمَلَهُ أَوْ يُتِمَّ مِنْهُ جُمْلَةً مَا؛ لِأَنَّ الْأُجْرَةَ إنَّمَا هِيَ عَلَى الْعَمَلِ فَلِكُلِّ جُزْءٍ مِنْ الْعَمَلِ جُزْءٌ مِنْ الْأُجْرَةِ.

L20264 Similarly, whenever the lessee uses the leased property, he owes a proportionate amount of the lease payment, as we explained based on the evidence we cited - and success comes from Allah, the Most High.

وَكَذَلِكَ كُلُّ مَا اسْتَغَلَّ الْمُسْتَأْجِرُ الشَّيْءَ الَّذِي اسْتَأْجَرَ فَعَلَيْهِ مِنْ الْإِجَارَةِ بِقَدْرِ ذَلِكَ أَيْضًا، وَكَمَا ذَكَرْنَا لِلدَّلِيلِ الَّذِي ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20265 **A Juristic Issue on Leasing That Which Has Lawful Ownership**

[مَسْأَلَةٌ الِاسْتِئْجَارُ بِمَا يَحِلُّ مِلْكُهُ]

L20266–20268 1300. Issue: It is permissible to rent anything that is lawful to own, even if

selling it is not permissible, such as a dog, a cat, water, fruit whose ripeness has not yet become evident, and ears of grain that have not dried. He leases the house with a specifically identified dog or a dog described as a liability, with fruit that has appeared but whose ripeness has not yet become evident, with water described as a liability or specifically identified secured water, or with a cat similarly described—for leasing is not sale. The prohibition applies solely to selling these items, and equating leasing to sale through analogy is invalid even if analogy were valid—how much more invalid is it when analogy itself is entirely baseless? This is because they agree with us regarding leasing a free person's own labor while prohibiting their sale, and because sale involves transferring ownership of physical entities from one proprietor to another, whereas leasing grants rights to benefits not yet realized—and success comes solely from Allah, the Exalted.

Issue: If an invalid lease is detected, it is annulled.

Issue 1301: A defective lease is annulled if detected, or the portion already executed. If the lease lapses or any part becomes irrecoverable, the lapsed portion is judged by equivalent value based on Allah's decree: "Violations of sacred limits warrant retribution" [Al-Baqarah: 194]. Thus, whoever exploits another's property without right has violated a sanctity and must retaliate with its equivalent from their wealth - and success comes only from Allah, the Exalted.[11]

A legal issue concerning hiring [someone] for prayer and the call to prayer.

1302 - Issue: It is not permissible to hire someone for prayer or for the call to prayer (adhan). However, the Imam may allocate funds from the Muslims' wealth to those who perform them as a means of sustenance. Alternatively, the mosque congregation may hire two individuals to be present with them exclusively at the onset of prayer times for a specified period. Once present,

[11] **Qur'an references (L20270):** Qur'an 2:194 (Al-Baqarah).

١٣٠٠ - مَسْأَلَةٌ: وَجَائِزٌ الِاسْتِئْجَارُ بِكُلِّ مَا يَحِلُّ مِلْكُهُ وَإِنْ لَمْ يَحِلَّ بَيْعُهُ كَالْكَلْبِ، وَالْهِرِّ، وَالْمَاءِ، وَالثَّمَرَةِ الَّتِي لَمْ يَبْدُ صَلَاحُهَا، وَالسُّنْبُلِ الَّذِي لَمْ يَيْبَسْ - فَيَسْتَأْجِرُ الدَّارَ بِكَلْبٍ مُعَيَّنٍ أَوْ كَلْبٍ مَوْصُوفٍ فِي الذِّمَّةِ، وَبِثَمَرَةٍ قَدْ ظَهَرَتْ وَلَمْ يَبْدُ صَلَاحُهَا، وَبِمَاءٍ مَوْصُوفٍ فِي الذِّمَّةِ أَوْ مُعَيَّنٍ مُحَرَّزٍ، أَوْ بِهِرٍّ كَذَلِكَ؛ لِأَنَّ الْإِجَارَةَ لَيْسَتْ بَيْعًا، وَإِنَّمَا نُهِيَ فِي هَذِهِ الْأَشْيَاءِ عَنْ الْبَيْعِ - وَقِيَاسُ الْإِجَارَةِ عَلَى الْبَيْعِ بَاطِلٌ لَوْ كَانَ الْقِيَاسُ حَقًّا، فَكَيْفَ وَهُوَ كُلُّهُ بَاطِلٌ؟ لِأَنَّهُمْ مُوَافِقُونَ لَنَا عَلَى إجَارَةِ الْحُرِّ نَفْسَهُ، وَتَحْرِيمِهِمْ لِبَيْعِهِ، وَلِأَنَّ الْبَيْعَ تَمْلِيكٌ لِلْأَعْيَانِ بِالنَّقْلِ لَهَا عَنْ مِلْكٍ آخَرَ، وَالْإِجَارَةُ تَمْلِيكُ مَنَافِعَ لَمْ تَحْدُثْ بَعْدُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ الْإِجَارَةُ الْفَاسِدَةُ إنْ أُدْرِكَتْ فُسِخَتْ]

١٣٠١ - مَسْأَلَةٌ: وَالْإِجَارَةُ الْفَاسِدَةُ إنْ أُدْرِكَتْ فُسِخَتْ، أَوْ مَا أُدْرِكَ مِنْهَا، فَإِنْ فَاتَتْ أَوْ فَاتَ شَيْءٌ مِنْهَا قُضِيَ فِيهَا أَوْ فِيمَا فَاتَ بِأَجْرِ الْمِثْلِ لِقَوْلِ اللَّهِ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] فَمَنْ اسْتَغَلَّ مَالَ غَيْرٍ بِغَيْرِ حَقٍّ فَهِيَ حُرْمَةٌ انْتَهَكَهَا فَعَلَيْهِ أَنْ يُقَاصَّ بِمِثْلِهِ مِنْ مَالِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْإِجَارَةُ عَلَى الصَّلَاةِ وَالْأَذَانِ]

١٣٠٢ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْإِجَارَةُ عَلَى الصَّلَاةِ، وَلَا عَلَى الْأَذَانِ، لَكِنْ إمَّا أَنْ يُعْطِيَهُمَا الْإِمَامُ مِنْ أَمْوَالِ الْمُسْلِمِينَ عَلَى وَجْهِ الصِّلَةِ، وَإِمَّا أَنْ يَسْتَأْجِرَهُمَا أَهْلُ الْمَسْجِدِ عَلَى الْحُضُورِ مَعَهُمْ عِنْدَ حُلُولِ أَوْقَاتِ الصَّلَاةِ فَقَطْ مُدَّةً مُسَمَّاةً، فَإِذَا حَضَرَ تَعَيَّنَ الْأَذَانُ وَالْإِقَامَةُ عَلَى مَنْ يَقُومُ بِهِمَا.

the duty of performing the adhan and iqamah becomes binding upon the designated individual.

وَكَذَلِكَ لَا تَجُوزُ الْإِجَارَةُ عَلَى كُلِّ وَاجِبٍ تَعَيَّنَ عَلَى الْمَرْءِ مِنْ صَوْمٍ، أَوْ صَلَاةٍ، أَوْ حَجٍّ، أَوْ فَتْيًا، أَوْ غَيْرِ ذَلِكَ، وَلَا عَلَى مَعْصِيَةٍ أَصْلًا؛ لِأَنَّ كُلَّ ذَلِكَ أَكْلُ مَالٍ بِالْبَاطِلِ؛ لِأَنَّ الطَّاعَةَ الْمُفْتَرَضَةَ لَا بُدَّ لَهُ مِنْ عَمَلِهَا، وَالْمَعْصِيَةُ فَرْضٌ عَلَيْهِ اجْتِنَابُهَا فَأَخْذُ الْأُجْرَةِ عَلَى ذَلِكَ لَا وَجْهَ لَهُ، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ.

L20273 Similarly, it is impermissible to hire for any obligatory act incumbent upon a person—such as fasting, prayer, pilgrimage, issuing legal opinions (fatāwā), or other such obligations—nor for performing any sin whatsoever. This is because all such acts constitute wrongful consumption of wealth, for obligatory acts of obedience must necessarily be performed by the individual, and avoiding sins is an obligation upon them. Accepting payment for these matters has no valid justification, rendering it wrongful consumption of wealth.

وَكَذَلِكَ تَطَوُّعُ الْمَرْءِ عَنْ نَفْسِهِ لَا يَجُوزُ أَيْضًا اشْتِرَاطُ أَخْذِ مَالٍ عَلَيْهِ؛ لِأَنَّهُ يَكُونُ حِينَئِذٍ لِغَيْرِ اللَّهِ تَعَالَى.

L20274 Similarly, it is also impermissible to stipulate receiving payment for a person's voluntary devotional act, for this would render the act directed toward other than Allah the Exalted.

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ أَشْعَثَ - هُوَ ابْنُ عَبْدِ الْمَلِكِ الْحُمْرَانِيُّ - عَنْ الْحَسَنِ عَنْ عُثْمَانَ بْنِ أَبِي الْعَاصِ قَالَ: «كَانَ آخِرُ مَا عَهِدَ إلَيَّ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ لَا أَتَّخِذَ مُؤَذِّنًا يَأْخُذُ عَلَى أَذَانِهِ أَجْرًا» .

L20275 It was narrated to us through the chain of transmission of Ibn Abī Shaybah: Ḥafṣ ibn Ghiyāth narrated to us from Ashʿath—Ibn ʿAbd al-Malik al-Ḥumrānī—from al-Ḥasan from ʿUthmān ibn Abī al-ʿĀṣ, who said: "The final injunction the Prophet (peace be upon him) entrusted to me was that I must never appoint a *muʾadhdhin* who takes wages for his *adhān*."

[مَسْأَلَةٌ لِلْمَرْءِ أَنْ يَأْخُذَ الْأُجْرَةَ عَلَى أَدَاءِ شَيْءٍ عَنْ غَيْرِهِ]

The issue of a person receiving a wage for performing an act on behalf of another.

١٣٠٣ - مَسْأَلَةٌ: وَجَائِزٌ لِلْمَرْءِ أَنْ يَأْخُذَ الْأُجْرَةَ عَلَى فِعْلِ ذَلِكَ عَنْ غَيْرِهِ، مِثْلَ أَنْ يَحُجَّ عَنْهُ التَّطَوُّعَ، أَوْ يُصَلِّيَ عَنْهُ التَّطَوُّعَ، أَوْ يُؤَذِّنَ عَنْهُ التَّطَوُّعَ أَوْ يَصُومَ عَنْهُ التَّطَوُّعَ لِأَنَّ كُلَّ ذَلِكَ لَيْسَ وَاجِبًا عَلَى أَحَدِهِمَا وَلَا عَلَيْهِمَا، فَالْعَامِلُ يَعْمَلُهُ عَنْ غَيْرِهِ لَا عَنْ نَفْسِهِ فَلَمْ يُطِعْ وَلَا عَصَى، وَأَمَّا الْمُسْتَأْجِرُ فَأَنْفَقَ مَالَهُ فِي ذَلِكَ تَطَوُّعًا لِلَّهِ تَعَالَى، فَلَهُ أَجْرُ مَا اكْتَسَبَ بِمَالِهِ.

L20277–20279 1303 – Issue: It is permissible for a person to charge a fee for performing such an act on behalf of another, such as... One may perform supererogatory Hajj on his behalf, pray supererogatory prayers on his behalf, perform the call to prayer on his behalf voluntarily, or observe supererogatory fasting on his behalf, as none of these acts are obligatory upon either of them individually nor upon both collectively. The performer thereby acts for another rather than himself, thus neither fulfilling an obligation nor disobeying a command. As for the employer, he spends his wealth in this as a voluntary act for Allah the Exalted, thereby receiving the reward for what he sought through his wealth.

[مَسْأَلَةٌ الْإِجَارَةُ فِي أَدَاءِ فَرْضٍ]

The Jurisprudential Case of the Hire Contract Regarding

the Fulfillment of a Religious Obligation.

L20281 1304. Issue: It is not permissible to hire someone to perform an obligatory duty of that nature except on behalf of one who is incapable or deceased, due to the scriptural evidence we cited in the "Book of Hajj" and the "Book of Fasting" regarding this matter. It is permissible for a person to perform it on behalf of another. Therefore, hiring someone for that purpose is permissible because there is no prohibition against it, and it falls under the general command of the Prophet—peace be upon him—regarding hiring for compensation.

١٣٠٤ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْإِجَارَةُ فِي أَدَاءِ فَرْضٍ مِنْ ذَلِكَ إلَّا عَنْ عَاجِزٍ، أَوْ مَيِّتٍ لِمَا ذَكَرْنَا فِي " كِتَابِ الْحَجِّ " " وَكِتَابِ الصِّيَامِ " مِنْ النُّصُوصِ فِي ذَلِكَ وَجَوَازِ أَنْ يَعْمَلَهُ الْمَرْءُ عَنْ غَيْرِهِ فَالِاسْتِئْجَارُ فِي ذَلِكَ جَائِزٌ لِأَنَّهُ لَمْ يَأْتِ عَنْهُ نَهْيٌ، فَهُوَ دَاخِلٌ فِي عُمُومِ أَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمُؤَاجَرَةِ.

L20282 As for the obligatory prayer forgotten unintentionally, the prayer of one who slept through it, and the vowed prayer – these remain binding upon a person until the time of his death. These prayers are performed on behalf of the deceased, and it is permissible to hire someone to perform them on his behalf. As for one who deliberately abandons a prayer, he is not obligated to perform it, being incapable of performing it since its time has elapsed. Therefore, it is impermissible to perform on his behalf that which he was not commanded to fulfill. And with Allah the Exalted lies all success.

وَأَمَّا الصَّلَاةُ الْمَنْسِيَّةُ، وَالْمَنُومُ عَنْهَا، وَالْمَنْذُورَةُ فَهِيَ لَازِمَةٌ لِلْمَرْءِ إلَى حِينِ مَوْتِهِ فَهَذِهِ تُؤَدَّى عَنْ الْمَيِّتِ، فَالْإِجَارَةُ فِي أَدَائِهَا عَنْهُ جَائِزَةٌ، وَأَمَّا الْمُتَعَمِّدُ تَرْكَهَا فَلَيْسَ عَلَيْهِ أَنْ يُصَلِّيَهَا، إذْ لَيْسَ قَادِرًا عَلَيْهَا، إذْ قَدْ فَاتَتْ، فَلَا يَجُوزُ أَنْ يُؤَدَّى عَنْهُ مَا لَيْسَ هُوَ مَأْمُورًا بِأَدَائِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A legal issue concerning the contractual hiring for wailing and soothsaying.

[مَسْأَلَةُ الْإِجَارَةُ عَلَى النَّوْحِ وَالْكِهَانَةِ]

L20284 1305. Issue: It is not permissible to contract someone for wailing or soothsaying, as both are divinely prohibited acts. It is unlawful to perform them or facilitate their performance. Therefore, contracting for such acts or providing compensation for them is sinful and constitutes cooperation in wrongdoing and aggression.

١٣٠٥ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْإِجَارَةُ عَلَى النَّوْحِ، وَلَا عَلَى الْكِهَانَةِ، لِأَنَّهُمَا مَعْصِيَتَانِ مَنْهِيٌّ عَنْهُمَا لَا يَحِلُّ فِعْلُهُمَا وَلَا الْعَوْنُ عَلَيْهِمَا فَالْإِجَارَةُ عَلَى ذَلِكَ، أَوْ الْعَطَاءُ عَلَيْهِ مَعْصِيَةٌ، وَتَعَاوُنٌ عَلَى الْإِثْمِ وَالْعُدْوَانِ.

A legal issue concerning the lease for cupping.

[مَسْأَلَةُ الْإِجَارَةُ عَلَى الْحِجَامَةِ]

L20286 Issue: It is not permissible to hire someone for cupping. However, he may be given payment as voluntary compensation, and he may request it. If the payer consents, then it is acceptable; otherwise, his work is assessed after its completion—not before that—and he is given equivalent compensation.

١٣٠٦ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْإِجَارَةُ عَلَى الْحِجَامَةِ، وَلَكِنْ يُعْطَى عَلَى سَبِيلِ طِيبِ النَّفْسِ وَلَهُ طَلَبُ ذَلِكَ، فَإِنْ رَضِيَ وَإِلَّا قُدِّرَ عَمَلُهُ بَعْدَ تَمَامِهِ لَا قَبْلَ ذَلِكَ وَأُعْطِيَ مَا يُسَاوِي.

L20287 Similarly, leasing a male animal for breeding is fundamentally impermissible,

whether for a single mating or a specified number of matings. If the contract is until the female conceives, this makes it even more prohibited, invalid, and tantamount to consuming ill-gotten wealth, due to what we have narrated through the chain of Shuʿbah from al-Mughīrah ibn Miqsam, who said: I heard Ibn Abī Nuʿm say: I heard Abū Hurayrah say: "The Messenger of Allah—peace and blessings be upon him—prohibited the cupper's fee, the selling price of a dog, and the semen of the male animal."

وَكَذَلِكَ لَا تَحِلُّ الْإِجَارَةُ عَلَى إِنْزَاءِ الْفَحْلِ أَصْلًا، لَا نَزْوَةً وَلَا نَزَوَاتٍ مَعْلُومَةً، فَإِنْ كَانَ الْعَقْدُ إِلَى أَنْ تَحْمِلَ الْأُنْثَى كَانَ ذَلِكَ أَبْلَغَ فِي الْحَرَامِ وَالْبَاطِلِ وَأَكْلِ السُّحْتِ -: لِمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ قَالَ: سَمِعْت ابْنَ أَبِي نُعْمٍ قَالَ: سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ كَسْبِ الْحَجَّامِ وَثَمَنِ الْكَلْبِ وَعَسْبِ الْفَحْلِ» .

L20288–20290 We have been narrated through many well-authenticated chains from the Messenger of Allah the prohibition concerning payment for animal breeding and the cupper's earnings. Abu Hanifah, al-Shafi'i, Ahmad, and Abu Sulayman maintained that it is impermissible to lease a stud animal for its mating service.

وَرُوِّينَا النَّهْيَ عَنْ عَسْبِ الْفَحْلِ، وَكَسْبِ الْحَجَّامِ مِنْ طُرُقٍ كَثِيرَةٍ ثَابِتَةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَبُو سُلَيْمَانَ: لَا تَجُوزُ الْإِجَارَةُ عَلَى ضِرَابِ الْفَحْلِ.

L20291 And it has been narrated to us through the chain of ʿAbd al-Raḥmān ibn Mahdī, who narrated to us from Sufyān al-Thawrī, from Shawdhab Abi Muʿādh, who said: Al-Barāʾ ibn ʿĀẓib said to me: "The stud fee is not lawful."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ شَوْذَبٍ أَبِي مُعَاذٍ قَالَ: قَالَ لِي الْبَرَاءُ بْنُ عَازِبٍ: لَا يَحِلُّ عَسْبُ الْفَحْلِ.

L20292 From the narration of al-A'mash through 'Ata ibn Abi Rabah, who said: Abu Hurairah stated, "Four things are unlawful earnings: the fee for leasing a stallion (for breeding), the price of a dog, the mahr of prostitution, and the earnings of a cupper."

وَمِنْ طَرِيقِ الْأَعْمَشِ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: قَالَ أَبُو هُرَيْرَةَ «أَرْبَعٌ مِنْ السُّحْتِ، ضِرَابُ الْفَحْلِ، وَثَمَنُ الْكَلْبِ، وَمَهْرُ الْبَغِيِّ، وَكَسْبُ الْحَجَّامِ» .

L20293 'Aṭā' said: Do not compensate him for bringing the stud animal [to mate] unless you cannot find anyone to bring a stud animal to mate yours, and this is the view of Qatādah.

وَقَالَ عَطَاءٌ: لَا تُعْطِهِ عَلَى طِرَاقِ الْفَحْلِ أَجْرًا إلَّا أَنْ لَا تَجِدَ مَنْ يَطْرُقُك وَهُوَ قَوْلُ قَتَادَةَ.

L20294 Abu Muhammad said: Malik permitted charging a fee for the stud's mating for a specified number of matings—and we find no valid evidence in their favor whatsoever, neither textual nor inferential.

قَالَ أَبُو مُحَمَّدٍ وَأَبَاحَ مَالِكٌ الْأُجْرَةَ عَلَى ضِرَابِ الْفَحْلِ كُرَاتٍ مُسَمَّاةً - وَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا، لَا مِنْ نَصٍّ وَلَا مِنْ نَظَرٍ.

L20295 They narrated a corrupt, fabricated narration through the chain of Abd al-Malik ibn Habib—who is rejected—from Talq ibn al-Samh, and it is not known who he is. From Abd al-Jabbar ibn Umar—who is weak—that Rabi'ah

permitted that. And he mentioned it from Aqil ibn Abi Talib, that he had a male goat which he rented out for breeding purposes.

وَرَوَوْا رِوَايَةً فَاسِدَةً مَوْضُوعَةً مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ - وَهُوَ هَالِكٌ - عَنْ طَلْقِ بْنِ السَّمْحِ وَلَا يُدْرَى مَنْ هُوَ؟ عَنْ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ - وَهُوَ ضَعِيفٌ -: أَنَّ رَبِيعَةَ أَبَاحَ ذَلِكَ - وَذَكَرَهُ عَنْ عَقِيلِ بْنِ أَبِي طَالِبٍ: أَنَّهُ كَانَ لَهُ تَيْسٌ يُنْزِيه بِالْأُجْرَةِ.

L20296 Abu Muhammad said: Allah has exalted the status of ʿAqīl in his lineage and the loftiness of his status from being a goatherd who takes wages for herding upon his goat-herding staff.

قَالَ أَبُو مُحَمَّدٍ: قَدْ أَجَلَّ اللَّهُ قَدْرَ عَقِيلٌ فِي نَسَبِهِ وَعُلُوِّ قَدْرِهِ عَنْ أَنْ يَكُونَ تَيَّاسًا يَأْخُذُ الْأُجْرَةَ عَلَى قَضِيبِ تَيْسِهِ.

L20297 As for the cupper's fee, we have mentioned the prohibition narrated from Abū Hurayrah—and it was also narrated from ʿUthmān, the Commander of the Believers—and from other Companions—may Allah be pleased with them.

وَأَمَّا أُجْرَةُ الْحَجَّامِ فَقَدْ ذَكَرْنَا عَنْ أَبِي هُرَيْرَةَ تَحْرِيمَهَا - وَرُوِيَ عَنْ عُثْمَانَ أَمِيرِ الْمُؤْمِنِينَ أَيْضًا - وَعَنْ غَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L20298–20299 It has been narrated to us from Ibn Abbas that his earning is permissible.

وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ إبَاحَةَ كَسْبِهِ.

L20300 Those who permitted it cited as evidence what we have reported through the chain of Shuʿbah from Ḥumayd al-Ṭawīl from Anas, who said: "The Prophet - peace and blessings be upon him - summoned a young boy and had him cupped. He then ordered that he be given a ṣāʿ or two, spoke on his behalf, and so his land tax (kharāj) was reduced."

وَاحْتَجَّ مَنْ أَبَاحَهُ بِمَا رُوِّينَا عَنْ طَرِيقِ شُعْبَةَ عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ أَنَسٍ قَالَ: «دَعَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غُلَامًا فَحَجَمَهُ فَأَمَرَ لَهُ بِصَاعٍ أَوْ صَاعَيْنِ، وَكَلَّمَ فِيهِ فَخَفَّفَ مِنْ خَرَاجِهِ» .

L20301 Abu Muhammad said: The application of both narrations is obligatory. We found that the Prophet—peace and blessings of Allah be upon him—gave him without prior stipulation, thus stipulation is impermissible. Moreover, it is an unknown action, and there is no disagreement that that hadith is not to be taken according to its apparent meaning, for it contains a complete prohibition against a cupper's earnings. Yet he may earn from inheritance, a share of war spoils, an estate, trade, and all of that is unquestionably permissible for him.

قَالَ أَبُو مُحَمَّدٍ: فَاسْتِعْمَالُ الْخَبَرَيْنِ وَاجِبٌ فَوَجَدْنَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَاهُ عَنْ غَيْرِ مُشَارَطَةٍ فَكَانَتْ مُشَارَطَتُهُ لَا تَجُوزُ، وَلِأَنَّهُ أَيْضًا عَمَلٌ مَجْهُولٌ، وَلَا خِلَافَ فِي أَنَّ ذَلِكَ الْحَدِيثَ لَيْسَ عَلَى ظَاهِرِهِ، لِأَنَّ فِيهِ النَّهْيَ عَنْ كَسْبِ الْحَجَّامِ جُمْلَةً وَقَدْ يَكْسِبُ مِنْ مِيرَاثٍ، أَوْ مِنْ سَهْمٍ مِنْ الْمَغْنَمِ، وَمِنْ ضَيْعَةٍ، وَمِنْ تِجَارَةٍ، وَكُلُّ ذَلِكَ مُبَاحٌ لَهُ بِلَا شَكٍّ.

L20302 There is no disagreement whatsoever that cupping has never been prohibited. A person must necessarily have a means of livelihood to sustain himself, otherwise he would perish in destitution. Thus, it is established that his earn-

ing specifically through cupping is the forbidden act. Therefore, an exception must be made for the practice of Allah's Messenger—peace and blessings be upon him—from this ruling, thus rendering it lawful and virtuous, while all other instances remain forbidden. As we have been narrated through Ibn Abī Shaybah's chain: Waki' narrated to us, [who heard] from Ma'mar ibn Sālim, from Abū Ja'far (who is Ibn Muḥammad ibn 'Alī ibn al-Ḥusayn) who said: "There is no issue if a man undergoes cupping without charging a fee." This is the opinion of Abū Sulaymān and our companions.

وَلَمْ تَحْرُمُ الْحِجَامَةُ قَطُّ بِلَا خِلَافٍ وَلَا بُدَّ لَهُ مِنْ كَسْبٍ يَعِيشُ مِنْهُ، وَإِلَّا مَاتَ ضَيَاعًا، فَصَحَّ أَنَّ كَسْبَهُ بِالْحِجَامَةِ خَاصَّةً هُوَ الْمَنْهِيُّ عَنْهُ فَوَجَبَ أَنْ يُسْتَثْنَى مِنْ ذَلِكَ فِعْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيَكُونُ حَلَالًا حَسَنًا وَيَكُونُ مَا عَدَاهُ حَرَامًا - كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا مَعْمَرُ بْنُ سَالِمٍ عَنْ أَبِي جَعْفَرٍ - هُوَ ابْنُ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ - قَالَ: لَا بَأْسَ بِأَنْ يَحْتَجِمَ الرَّجُلُ وَلَا يُشَارِطَ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L20303 **Issue: Contracting for teaching the Quran and for teaching knowledge.**

[مَسْأَلَةٌ الْإِجَارَةُ عَلَى تَعْلِيمِ الْقُرْآنِ وَعَلَى تَعْلِيمِ الْعِلْمِ]

L20304 1307 - Issue: Hiring is permissible for teaching the Quran, teaching knowledge through monthly wages or lump sums, and all such arrangements are valid. This includes performing ruqya, copying Qurans, and copying books of knowledge, as no textual prohibition exists regarding these matters—rather, permissibility has been established. As transmitted through Bukhārī's chain: Abū Muḥammad Saydān ibn Muḍārib al-Bāhilī narrated to us: Abū Ma'shar al-Barā'—Yūsuf ibn Yazīd, who is trustworthy—reported to me: 'Ubaydullāh ibn al-Akhnas Abū Mālik narrated from Ibn Abī Mulaykah from Ibn 'Abbās: "A group of the companions of the Messenger of Allah (صلى الله عليه وسلم) passed by a watering place where there was a man who had been stung [by a scorpion] or [a man named] Salīm. A man from the locals approached them and asked, 'Is there among you a healer? There is a stung man or Salīm at the water.' One of them went and recited al-Fātiḥah in return for a sheep, and the man recovered. He brought the sheep to his companions, but they disapproved, saying, 'You took payment for reciting Allah's Book!' When they arrived in Medina, they asked, 'O Messenger of Allah, he took payment for Allah's Book!' The Messenger of Allah (صلى الله عليه وسلم) replied, 'The most deserving thing for which you may take payment is indeed the Book of Allah.'"

١٣٠٧ - مَسْأَلَةٌ: وَالْإِجَارَةُ جَائِزَةٌ عَلَى تَعْلِيمِ الْقُرْآنِ، وَعَلَى تَعْلِيمِ الْعِلْمِ مُشَاهَرَةً وَجُمْلَةً، وَكُلُّ ذَلِكَ جَائِزٌ - وَعَلَى الرُّقْيِ، وَعَلَى نَسْخِ الْمَصَاحِفِ، وَنَسْخِ كُتُبِ الْعِلْمِ؛ لِأَنَّهُ لَمْ يَأْتِ فِي النَّهْيِ عَنْ ذَلِكَ نَصٌّ، بَلْ قَدْ جَاءَتْ الْإِبَاحَةُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو مُحَمَّدٍ سَيْدَانُ بْنُ مُضَارِبٍ الْبَاهِلِيُّ نا أَبُو مَعْشَرٍ الْبَرَاءُ هُوَ صَدُوقٌ يُوسُفُ بْنُ يَزِيدَ حَدَّثَنِي عُبَيْدُ اللَّهِ بْنُ الْأَخْنَسِ أَبُو مَالِكٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ نَفَرًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَرُّوا بِمَاءٍ فِيهِمْ لَدِيغٌ أَوْ سَلِيمٌ فَعَرَضَ لَهُمْ رَجُلٌ مِنْ أَهْلِ الْمَاءِ فَقَالَ: هَلْ فِيكُمْ مِنْ رَاقٍ؟ إنَّ فِي الْمَاءِ رَجُلًا لَدِيغًا أَوْ سَلِيمًا فَانْطَلَقَ رَجُلٌ مِنْهُمْ فَقَرَأَ بِفَاتِحَةِ الْكِتَابِ عَلَى شَاءٍ فَبَرَأَ فَجَاءَ بِالشَّاءِ إلَى أَصْحَابِهِ فَكَرِهُوا ذَلِكَ وَقَالُوا: أَخَذْتَ عَلَى كِتَابِ اللَّهِ أَجْرًا حَتَّى قَدِمُوا الْمَدِينَةَ فَقَالُوا: يَا رَسُولَ اللَّهِ أَخَذَ عَلَى كِتَابِ اللَّهِ أَجْرًا؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ أَحَقَّ مَا أَخَذْتُمْ عَلَيْهِ أَجْرًا كِتَابُ اللَّهِ» .

وَالْخَبَرُ الْمَشْهُورُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَوَّجَ امْرَأَةً مِنْ رَجُلٍ بِمَا مَعَهُ مِنْ الْقُرْآنِ» أَيْ لِيُعَلِّمَهَا إيَّاهُ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L20305–20306 The widely transmitted report states that "the Messenger of Allah (peace and blessings be upon him) contracted the marriage of a woman to a man as a dowry for what he had of the Quran," meaning that he would teach it to her. This is the position of Mālik, al-Shāfiʿī, and Abū Sulaymān.

وَقَالَ أَبُو حَنِيفَةَ، وَالْحَسَنُ بْنُ حَيٍّ: لَا تَجُوزُ الْأُجْرَةُ عَلَى تَعْلِيمِ الْقُرْآنِ، وَاحْتَجَّ لَهُ مُقَلِّدُوهُ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا عَبْدُ اللَّهِ بْنُ رَوْحٍ نا شَبَابَةُ - هُوَ ابْنُ وَرْقَاءَ - نا أَبُو زَيْدٍ عَبْدُ اللَّهِ بْنُ الْعَلَاءِ الشَّامِيُّ نا بِشْرُ بْنُ عُبَيْدِ اللَّهِ عَنْ أَبِي إدْرِيسَ الْخَوْلَانِيِّ قَالَ: «كَانَ عِنْدَ أُبَيِّ بْنِ كَعْبٍ نَاسٌ يُقْرِئُهُمْ مِنْ أَهْلِ الْيَمَنِ فَأَعْطَاهُ أَحَدُهُمْ قَوْسًا يَتَسَلَّحُهَا فِي سَبِيلِ اللَّهِ تَعَالَى فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَتُحِبُّ أَنْ تَأْتِيَ بِهَا فِي عُنُقِكَ يَوْمَ الْقِيَامَةِ نَارًا» .

L20307 Abu Hanifah and al-Hasan ibn Ḥayy said: It is not permissible to receive payment for teaching the Quran. Their adherents cited a report we narrated via Qasim ibn Asbagh: 'Abdullah ibn Rawḥ reported from Shababah ibn Warqa', who reported from Abu Zayd 'Abdullah ibn al-'Ala' al-Shami, who reported from Bishr ibn 'Ubaydullah, from Abu Idris al-Khawlani, who said: "Some Yemeni men were with Ubayy ibn Ka'b learning the Quran. One of them gave him a bow to arm himself with in the cause of Allah Almighty. The Messenger of Allah—peace and blessings be upon him—said: 'Would you like to come on the Day of Resurrection with it around your neck as fire?'"

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ، وَحُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ الرُّؤَاسِيِّ عَنْ الْمُغِيرَةِ بْنِ زِيَادٍ الْمَوْصِلِيِّ عَنْ عُبَادَةَ بْنِ نُسَيٍّ قَاضِي الْأُرْدُنِّ عَنْ الْأَسْوَدِ بْنِ ثَعْلَبَةَ عَنْ عُبَادَةَ بْنِ الصَّامِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قِصَّةُ الْقَوْسِ وَأَيْضًا مِنْ طَرِيقِ أَبِي دَاوُد عَنْ عَمْرِو بْنِ عُثْمَانَ نا بَقِيَّةُ نا بِشْرُ بْنُ عَبْدِ اللَّهِ بْنِ يَسَارٍ عَنْ عُبَادَةَ بْنِ نُسَيٍّ عَنْ جُنَادَةَ بْنِ أَبِي أُمَيَّةَ عَنْ عُبَادَةَ بْنِ الصَّامِتِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِهِ.

L20308 It was narrated to us also through the chain of Ibn Abi Shaybah from Wakiʿ, and through the chain of Humayd ibn ʿAbd al-Rahman al-Ruʾāsī from al-Mughirah ibn Ziyad al-Mawṣilī from ʿUbadah ibn Nusayy, judge of al-Urdun, from al-Aswad ibn Thaʿlabah from ʿUbadah ibn al-Ṣamit from the Messenger of Allah—may Allah's peace and blessings be upon him—regarding the story of the bow. Additionally, it was narrated through the chain of Abu Dawud from ʿAmr ibn ʿUthman, from Baqiyyah, from Bishr ibn ʿAbd Allah ibn Yasar, from ʿUbadah ibn Nusayy, from Junadah ibn Abi Umayyah, from ʿUbadah ibn al-Ṣamit, from the Prophet—may Allah's peace and blessings be upon him—with the same narration.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ عَبْدِ رَبِّهِ بْنِ سُلَيْمَانَ بْنِ عُمَيْرِ بْنِ زَيْتُونٍ عَنْ الطُّفَيْلِ بْنِ عَمْرٍو عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ عَرَضَ لَهُ ذَلِكَ فِي الْقَوْسِ مَعَ أُبَيِّ بْنِ كَعْبٍ وَفِيهِ زِيَادَةٌ: «أَنَّهُ قَالَ: يَا رَسُولَ اللَّهِ إنَّا نَأْكُلُ

L20309 And through the narration of Sa'īd ibn Manṣūr from Ismāʿīl ibn ʿAyyāsh from ʿAbd Rabbihi ibn Sulaymān ibn ʿUmayr ibn Zaytūn from al-Ṭufayl ibn ʿAmr from the Messenger of Allah—peace and blessings of Allah be upon him—that this matter regarding the bow was presented to him along with Ubayy ibn Kaʿb, and it contains an addition: "He said: 'O Messenger of Allah, indeed we eat from their food.' He said: 'As for food prepared for someone other than you that you attend, there is no harm in eating it. But as for

what is prepared specifically for you, if you eat it, you are only consuming it against your own principles.”’

مِنْ طَعَامِهِمْ. قَالَ: أَمَّا طَعَامٌ صُنِعَ لِغَيْرِكَ فَحَضَرْتَهُ فَلَا بَأْسَ أَنْ تَأْكُلَهُ وَأَمَّا مَا صُنِعَ لَكَ فَإِنْ أَكَلْتَهُ فَإِنَّمَا تَأْكُلُهُ بِخِلَافِكَ» .

L20310 Through the chain of Ibn Abi Shaybah: Muhammad ibn Maysar Abu Sa‘d narrated to us from Musa ibn ‘Ali ibn Rabah from his father: “A man who used to teach Ubayy ibn Ka‘b the Quran hosted him for a meal. The Messenger of Allah, peace and blessings be upon him, said to him: ’If it is something he gifted you, there is no good in it. But if it is from his own food or his family’s food, there is no harm.”’

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ مَيْسَرٍ أَبُو سَعْدٍ عَنْ مُوسَى بْنِ عَلِيِّ بْنِ رَبَاحٍ عَنْ أَبِيهِ «أَنَّ أُبَيَّ بْنَ كَعْبٍ غَدَّاهُ رَجُلٌ كَانَ يُقْرِئُهُ الْقُرْآنَ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إنْ كَانَ شَيْءٌ يُتْحِفُكَ بِهِ فَلَا خَيْرَ فِيهِ، وَإِنْ كَانَ مِنْ طَعَامِهِ وَطَعَامِ أَهْلِهِ فَلَا بَأْسَ» .

L20311–20312 Through the chain of Ibn Abi Shaybah: Affān ibn Muslim narrated to us, Abān ibn Yazīd al-ʿAṭṭār narrated to us, Yaḥyā ibn Abī Kathīr related to me from Zayd—who is the son of Abī Sallām—from Abī Sallām—who is Mamṭūr al-Ḥabashī—from Abī Rāshid al-Ḥubrānī from ʿAbd al-Raḥmān ibn Shibl: I heard the Messenger of Allah—peace and blessings be upon him—say: “Learn the Quran, do not be haughty over it, do not neglect it, do not use it as a means to gain wealth, do not grow arrogant by it, and do not seek abundance through it.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَفَّانُ بْنُ مُسْلِمٍ نا أَبَانُ بْنُ يَزِيدَ الْعَطَّارُ حَدَّثَنِي يَحْيَى بْنُ أَبِي كَثِيرٍ عَنْ زَيْدٍ - هُوَ ابْنُ أَبِي سَلَّامٍ - عَنْ أَبِي سَلَّامٍ - هُوَ مَمْطُورٌ الْحَبَشِيُّ - عَنْ أَبِي رَاشِدٍ الْحُبْرَانِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ شِبْلٍ سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «تَعَلَّمُوا الْقُرْآنَ وَلَا تَعْلُوا عَنْهُ وَلَا تَجْفُوا فِيهِ وَلَا تَأْكُلُوا بِهِ وَلَا تَسْتَكْبِرُوا بِهِ وَلَا تَسْتَكْثِرُوا بِهِ» .

L20313 We have narrated it from ʿAwf ibn Mālik in a statement similar to this one, where he said regarding a bow gifted by someone to his Quran teacher: “Do you intend to hang a bow from fire?” It is authentically reported that when the commander gave ʿAbdullāh ibn Mughaffal money for leading people in Tarawih prayers during Ramadan, he refused and said: “We do not take payment for the Quran.”

وَرُوِّينَاهُ عَنْ عَوْفِ بْنِ مَالِكٍ مِنْ قَوْلِهِ مِثْلَ هَذَا أَنَّهُ قَالَ فِي قَوْسٍ أَهْدَاهَا إنْسَانٌ إلَى مَنْ كَانَ يُقْرِئُهُ أَتُرِيدُ أَنْ تُعَلِّقَ قَوْسًا مِنْ نَارٍ ". وَصَحَّ عَنْ عَبْدِ اللَّهِ بْنِ مُغَفَّلٍ أَنَّهُ أَعْطَاهُ الْأَمِيرُ مَالًا لِقِيَامِهِ بِالنَّاسِ فِي رَمَضَانَ فَأَبَى وَقَالَ: إنَّا لَا نَأْخُذُ لِلْقُرْآنِ أَجْرًا.

L20314 And through the chain of Sa‘īd ibn Manṣūr, narrated to us by Khālid ibn ‘Abdullāh—he is al-Ṭaḥḥān—from Sa‘īd ibn Iyās al-Jurayrī, from ‘Abdullāh ibn Shaqīq, who said: The Companions of the Messenger of Allah—peace and blessings be upon him—disliked selling copies of the Qur’an and teaching boys for payment, and they considered such acts gravely impermissible.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا خَالِدُ بْنُ عَبْدِ اللَّهِ - هُوَ الطَّحَّانُ - عَنْ سَعِيدِ بْنِ إيَاسٍ الْجُرَيْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ شَقِيقٍ قَالَ: كَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَكْرَهُونَ بَيْعَ الْمَصَاحِفِ وَتَعْلِيمِ الْغِلْمَانِ بِالْأَرْشِ وَيُعَظِّمُونَ ذَلِكَ.

L20315 It has been authentically reported from Ibrāhīm that he disliked the teacher stipulating a condition or accepting remuneration for teaching the Qur’ān.

وَصَحَّ عَنْ إبْرَاهِيمَ أَنَّهُ كَرِهَ أَنْ يَشْتَرِطَ الْمُعَلِّمُ وَأَنْ يَأْخُذَ أَجْرًا عَلَى تَعْلِيمِ الْقُرْآنِ.

L20316 From the transmission of Shuʿbah and Sufyān, both of whom narrated from Abū Isḥāq al-Shaybānī from Usayr ibn ʿAmr, Shuʿbah said in his narration: "'Ammār ibn Yāsir gave a stipend to a group who recited the Qur'ān in Ramadan. When this reached ʿUmar, he disapproved of it." Sufyān said in his narration: "Saʿd ibn Abī Waqqāṣ declared: 'Whoever recites the Qur'ān, I will grant him two thousand.' ʿUmar responded: 'Should monetary compensation be given for the Book of Allah?'"

وَمِنْ طَرِيقِ شُعْبَةَ، وَسُفْيَانَ، كِلَاهُمَا عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ أُسَيْرِ بْنِ عَمْرٍو قَالَ شُعْبَةُ فِي رِوَايَتِهِ: إِنَّ عَمَّارَ بْنَ يَاسِرٍ أَعْطَى قَوْمًا قَرَءُوا الْقُرْآنَ فِي رَمَضَانَ فَبَلَغَ ذَلِكَ عُمَرَ فَكَرِهَهُ - وَقَالَ سُفْيَانُ فِي رِوَايَتِهِ: إِنَّ سَعْدَ بْنَ أَبِي وَقَّاصٍ قَالَ: مَنْ قَرَأَ الْقُرْآنَ أَلْحَقْته عَلَى أَلْفَيْنِ. فَقَالَ عُمَرُ أَوَ يُعْطَى عَلَى كِتَابِ اللَّهِ ثَمَنًا؟ .

L20317 It is authentically established from Abdullah ibn Yazid and Shuraih: "Do not take a price for the Book of Allah."

وَصَحَّ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ، وَشُرَيْحٍ: لَا تَأْخُذْ لِكِتَابِ اللَّهِ ثَمَنًا.

L20318 And through the chain of Hammad ibn Salamah from Abdullah ibn Uthman al-Qurashi from Bilal ibn Sa'd al-Dimashqi from al-Dahhak ibn Qays that he said to a mu'adhdhin who teaches the Book of Allah: "I hate you for Allah's sake because you use melody in your call to prayer and take payment for the Book of Allah."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَبْدِ اللَّهِ بْنِ عُثْمَانَ الْقُرَشِيِّ عَنْ بِلَالِ بْنِ سَعْدٍ الدِّمَشْقِيِّ عَنْ الضَّحَّاكِ بْنِ قَيْسٍ أَنَّهُ قَالَ لِمُؤَذِّنٍ مُعَلِّمٍ كِتَابَ اللَّهِ: إنِّي لَأُبْغِضُك فِي اللَّهِ لِأَنَّك تَتَغَنَّى فِي أَذَانِك وَتَأْخُذُ لِكِتَابِ اللَّهِ أَجْرًا.

L20319 Ibn Sīrīn disliked charging fees for copying the Mushafs. It is reported that ʿAlqamah also disliked this.

وَكَرِهَ ابْنُ سِيرِينَ الْأُجْرَةَ عَلَى كِتَابَةِ الْمَصَاحِفِ. وَعَنْ عَلْقَمَةَ أَنَّهُ كَرِهَ ذَلِكَ أَيْضًا.

L20320 Abu Muhammad said: This is all that they cited as proof.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا احْتَجُّوا بِهِ.

L20321 We have now cited on the authority of Saʿd and ʿAmmār that they gave in exchange for the recitation of the Quran.

وَقَدْ ذَكَرْنَا عَنْ سَعْدٍ، وَعَمَّارٍ الْآنَ أَنَّهُمَا أَعْطَيَا عَلَى قِرَاءَةِ الْقُرْآنِ.

L20322–20323 It was narrated to us via the chain of Ibn Abi Shaybah, from Sadaqat al-Dimashqi, from al-Waḍīn ibn ʿAṭāʾ, who said: There were three teachers in Medina who taught children. ʿUmar ibn al-Khaṭṭāb would grant each of them fifteen [dirhams] every month.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ صَدَقَةَ الدِّمَشْقِيِّ عَنْ الْوَضِينِ بْنِ عَطَاءٍ قَالَ: كَانَ بِالْمَدِينَةِ ثَلَاثَةُ مُعَلِّمِينَ يُعَلِّمُونَ الصِّبْيَانَ، فَكَانَ عُمَرُ بْنُ الْخَطَّابِ يَرْزُقُ كُلَّ وَاحِدٍ مِنْهُمْ خَمْسَةَ عَشَرَ كُلَّ شَهْرٍ.

L20324 From the chain of Ibn Abi Shaybah: Waki' narrated to us; Mahdi ibn Maymun narrated to us from Ibn Sirin, who said: There was a teacher in Medina who instructed the sons of high-ranking nobles. They would honor his rightful dues during Nowruz and Mehregan.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا مَهْدِيُّ بْنُ مَيْمُونٍ عَنْ ابْنِ سِيرِينَ قَالَ: كَانَ بِالْمَدِينَةِ مُعَلِّمٌ عِنْدَهُ مِنْ أَبْنَاءِ أَوْلِيَاءِ الْفِخَامِ فَكَانُوا يَعْرِفُونَ حَقَّهُ فِي النَّيْرُوزِ وَالْمِهْرَجَانِ.

L20325 Abu Muhammad said: Muhammad ibn Sirin met the senior Companions

and learned from them, such as Ubayy ibn Kaʿb, Abu Qatadah, and those below them.

قَالَ أَبُو مُحَمَّد: مُحَمَّدُ بْنُ سِيرِينَ أَدْرَكَ أَكَابِرَ الصَّحَابَةِ، وَأَخَذَ عَنْهُمْ أُبَيّ بْنُ كَعْبٍ وَأَبُو قَتَادَةَ فَمَنْ دُونَهُمَا.

L20326 And through the chain of Ibn Abi Shaybah: Yazid ibn Harun narrated to us, Shuʿbah narrated to us from al-Hakam ibn ʿUtaybah, who said: "I know of no one who disapproved of the teacher's remuneration."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ نا شُعْبَةُ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: مَا عَلِمْت أَحَدًا كَرِهَ أَجْرَ الْمُعَلِّمِ.

L20327 It has been authentically reported from ʿAṭāʾ and Abū Qilābah that it is permissible for a teacher to receive compensation for instructing in the Qurʾān.

وَصَحَّ عَنْ عَطَاءٍ، وَأَبِي قِلَابَةَ إبَاحَةَ أَجْرِ الْمُعَلِّمِ عَلَى تَعْلِيمِ الْقُرْآنِ.

L20328 Al-Ḥasan and ʿAlqamah—each in one of his two opinions—permitted charging a fee for copying the Qurʾan. Abū Muḥammad said: As for the hadiths concerning that from the Messenger of Allah (peace be upon him), none of them are authentic.

وَأَجَازَ الْحَسَنُ، وَعَلْقَمَةُ فِي أَحَدِ قَوْلَيْهِ الْأُجْرَةَ عَلَى نَسْخِ الْمَصَاحِفِ قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْأَحَادِيثُ فِي ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا يَصِحُّ مِنْهَا شَيْءٌ.

L20329 As for the hadith narrated by Abu Idris al-Fulani from Ubayy ibn Kaʿb, it is disconnected (munqatiʿ), since no direct audition of Abu Idris with Ubayy is known to exist.

أَمَّا حَدِيثُ أَبِي إدْرِيسَ الْفُلَانِيِّ أَنَّ أُبَيَّ بْنَ كَعْبٍ فَمُنْقَطِعٌ، لَا يُعْرَفُ لِأَبِي إدْرِيسَ سَمَاعٌ مَعَ أُبَيٍّ.

L20330 The other narration is also disconnected because ʿAlī ibn Rabāḥ did not meet Ubayy ibn Kaʿb.

وَالْآخَرُ أَيْضًا مُنْقَطِعٌ؛ لِأَنَّ عَلِيَّ بْنَ رَبَاحٍ لَمْ يُدْرِكْ أُبَيَّ بْنَ كَعْبٍ.

L20331 As for the ḥadīth of ʿUbādah ibn al-Ṣāmit, one of its chains is from al-Aswad ibn Thaʿlabah—he is unknown (majhūl), and his status is undetermined, as stated by ʿAlī ibn al-Madīnī and others. The second chain is through Baqiyyah, and he is weak. The third is through Ismāʿīl ibn ʿAyyāsh, and he is weak; moreover, this chain is also disconnected.

وَأَمَّا حَدِيثُ عُبَادَةَ بْنِ الصَّامِتِ فَأَحَدُ طُرُقِهِ عَنْ الْأَسْوَدِ بْنِ ثَعْلَبَةَ وَهُوَ مَجْهُولٌ لَا يُدْرَى قَالَهُ عَلِيُّ بْنُ الْمَدِينِيِّ، وَغَيْرُهُ: وَالْآخَرُ مِنْ طَرِيقِ بَقِيَّةَ وَهُوَ ضَعِيفٌ. وَالثَّالِثُ مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ عَيَّاشٍ وَهُوَ ضَعِيفٌ؛ ثُمَّ هُوَ مُنْقَطِعٌ أَيْضًا.

L20332 As for the ḥadīth of ʿAbd al-Raḥmān ibn Shibl, it includes Abū Rāshid al-Ḥubrānī—a narrator of unknown status. Even if it were authentic, Abū Ḥanīfah and his companions would have opposed all these rulings, since they pertain solely to what was granted without compensation or prior agreement. Yet they permit this position while camouflaging it by citing ḥadīths containing none of what they prohibited—despite contradicting their content—thereby invalidating everything on this issue. The Companions (may Allah be pleased with them) differed in their views, leaving the two authentic narra-

وَأَمَّا حَدِيثُ عَبْدِ الرَّحْمَنِ بْنِ شِبْلٍ فَفِيهِ أَبُو رَاشِدٍ الْحُبْرَانِيُّ وَهُوَ مَجْهُولٌ. ثُمَّ لَوْ صَحَّتْ لَكَانَتْ كُلُّهَا قَدْ خَالَفَهَا أَبُو حَنِيفَةَ وَأَصْحَابُهُ؛ لِأَنَّهَا كُلَّهَا إنَّمَا جَاءَتْ فِيمَا أُعْطِيَ بِغَيْرِ أُجْرَةٍ وَلَا مُشَارَطَةٍ، وَهُمْ يُجِيزُونَ هَذَا الْوَجْهَ فَمَوَّهُوا بِإِيرَادِ أَحَادِيثَ لَيْسَ فِيهَا شَيْءٌ مِمَّا مَنَعُوا - وَهُمْ مُخَالِفُونَ لِمَا فِيهَا - فَبَطَلَ كُلُّ مَا فِي هَذَا الْبَابِ، وَالصَّحَابَةُ - رَضِيَ

tions from the Messenger of Allah (which we presented) without opposition. And success is from Allah, the Exalted.

L20333–20334 **An issue regarding a lease contract (Ijarah) for trade over a specified period on a specified asset.**

L20335 Issue: Ijarah (hire contracts) are permissible for trade involving specified property for a specified duration, or as a lump sum arrangement—such as for services or agency (wakālah). They are also valid for conveying the response of a litigant (whether claimant or respondent), procuring evidence and bringing them to the judge, administering oaths, pursuing rights, and summoning those whose presence is legally required. All these are specific tasks that fall under the directive of the Messenger of Allah (peace and blessings be upon him) concerning Ijarah.

L20336 **The jurisprudential issue regarding the leader's contractual appointment of a public adjudicator among the people.**

L20337 1309 - Issue: The Amir's contract of hire for one who judges between the people on a monthly basis is permissible for the reasons we have stated.

L20338 **A legal issue concerning a physician's stipulation upon cure.**

L20339 Issue 1310: It is absolutely impermissible to stipulate a guarantee of recovery with a physician in any way, for healing lies solely in Allah's hands, not in anyone's control. The physician is only one who treats and strengthens the bodily constitution by applying what counteracts the disease, and they cannot ascertain the measure of the medicine's potency compared to the disease's potency. Thus, no one can effect healing except Allah the Exalted.

L20340 **A jurisprudential ruling on hiring a physician to provide services for a specified number of days.**

L20341 Issue 1311: It is permissible to hire a physician for the service of specified days, as it is a defined task. If he is given something upon recovery without

اللَّهُ عَنْهُمْ - قَدْ اخْتَلَفُوا، فَبَقِيَ الْأَثَرَانِ الصَّحِيحَانِ عَنْ رَسُولِ اللَّهِ اللَّذَانِ أَوْرَدْنَا لَا مُعَارِضَ لَهُمَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْإِجَارَةُ عَلَى التِّجَارَةِ مُدَّةً مُسَمَّاةً فِي مَالٍ مُسَمًّى]

مَسْأَلَةٌ: وَالْإِجَارَةُ جَائِزَةٌ عَلَى التِّجَارَةِ مُدَّةً مُسَمَّاةً فِي مَالٍ مُسَمًّى، أَوْ هَكَذَا جُمْلَةً: كَالْخِدْمَةِ، وَالْوَكَالَةِ. وَعَلَى نَقْلِ جَوَابِ الْمُخَاصِمِ طَالِبًا كَانَ أَوْ مَطْلُوبًا، وَعَلَى جَلْبِ الْبَيِّنَةِ وَحَمْلِهِمْ إلَى الْحَاكِمِ، وَعَلَى تَقَاضِي الْيَمِينِ، وَعَلَى طَلَبِ الْحُقُوقِ، وَعَلَى الْمَجِيءِ بِمَنْ وَجَبَ إحْضَارُهُ، لِأَنَّ هَذِهِ كُلَّهَا أَعْمَالٌ مَحْدُودَةٌ دَاخِلَةٌ تَحْتَ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمُؤَاجَرَةِ.

[مَسْأَلَةٌ إجَارَةُ الْأَمِيرِ مَنْ يَقْضِي بَيْنَ النَّاسِ مُشَاهَرَةً]

١٣٠٩ - مَسْأَلَةٌ: وَإِجَارَةُ الْأَمِيرِ مَنْ يَقْضِي بَيْنَ النَّاسِ مُشَاهَرَةً جَائِزَةٌ لِمَا ذَكَرْنَا.

[مَسْأَلَةٌ مُشَارَطَةُ الطَّبِيبِ عَلَى الْبُرْءِ]

١٣١٠ - مَسْأَلَةٌ: وَلَا تَجُوزُ مُشَارَطَةُ الطَّبِيبِ عَلَى الْبُرْءِ أَصْلًا لِأَنَّهُ بِيَدِ اللَّهِ تَعَالَى لَا بِيَدِ أَحَدٍ، وَإِنَّمَا الطَّبِيبُ مُعَالِجٌ وَمُقَوٍّ لِلطَّبِيعَةِ بِمَا يُقَابِلُ الدَّاءَ، وَلَا يَعْرِفُ كَمِّيَّةَ قُوَّةِ الدَّوَاءِ مِنْ كَمِّيَّةِ قُوَّةِ الدَّاءِ، فَالْبُرْءُ لَا يَقْدِرُ عَلَيْهِ إلَّا اللَّهُ تَعَالَى.

[مَسْأَلَةٌ اسْتِئْجَار الطَّبِيب لِخِدْمَةِ أَيَّامٍ مَعْلُومَةٍ]

condition, it is lawful, in accordance with the Prophet's command (peace be upon him) to accept what is given to one without having requested it.

A juristic question on the contract of hire for digging a well.

Issue 1312: It is not permissible at all to contract a lease for digging a well, whether the land's nature is known in terms of its soil composition or not. This is because solid rock, friable soft soil, and hard soil may emerge within it. This involves uncertain work, as water may lie deep in one spot and be near in an adjacent area.

This is only permissible in hiring for daily wage labor, where the employer employs the worker in digging a well, as it is a limited and known task that he undertakes as much as he is capable of; and by Allah, the Exalted, is success.

Legal Issue: Hiring a Builder and His Equipment

1313 - Issue: It is not permissible to stipulate that the person hired for sewing must provide the threads, nor that the copyist must provide the ink, nor that the builder must provide the clay or stone, or the plasterer [to do likewise], and similarly in all matters.

This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān, since it constitutes both a lease and a sale wherein one is stipulated alongside the other. This is prohibited for two reasons: first, it is a condition not stipulated in the Book of Allah, the Exalted, and is therefore invalid.

The second [point] is that it is an unknown sale and an unknown lease, where it is unclear what pertains to the sale or what pertains to the lease.

١٣١١ - مَسْأَلَةٌ: وَجَائِزٌ أَنْ يُسْتَأْجَرَ الطَّبِيبُ لِخِدْمَةِ أَيَّامٍ مَعْلُومَةٍ، لِأَنَّهُ عَمَلٌ مَحْدُودٌ فَإِنْ أُعْطِيَ شَيْئًا عِنْدَ الْبُرْءِ بِغَيْرِ شَرْطٍ فَحَلَالٌ، لِأَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَخْذِ مَا أُعْطِيَ الْمَرْءُ مِنْ غَيْرِ مَسْأَلَةٍ.

[مَسْأَلَةٌ الْإِجَارَةُ عَلَى حَفْرِ بِئْرٍ]

١٣١٢ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْإِجَارَةُ عَلَى حَفْرِ بِئْرٍ أَلْبَتَّةَ، سَوَاءٌ كَانَتْ الْأَرْضُ مَعْرُوفَةً أَوْ لَمْ تَكُنْ، لِأَنَّهُ قَدْ يَخْرُجُ فِيهَا الصَّفَاةُ الصَّلْدَةُ، وَالْأَرْضُ الْمُنْحَلَّةُ الرَّخْوَةُ وَالصَّلِيبَةُ، وَهَذَا عَمَلٌ مَجْهُولٌ، وَقَدْ يَبْعُدُ الْمَاءُ فِي مَوْضِعٍ وَيَقْرُبُ فِيمَا هُوَ إلَى جَانِبِهِ.

وَإِنَّمَا يَجُوزُ ذَلِكَ فِي اسْتِئْجَارِ مُيَاوَمَةٍ ثُمَّ يَسْتَعْمِلُهُ فِيهَا فِي حَفْرِ الْبِئْرِ، لِأَنَّهُ عَمَلٌ مَحْدُودٌ مَعْلُومٌ يَتَوَلَّى مِنْهُ حَسَبَ مَا يَقْدِرُ عَلَيْهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ اسْتِئْجَارُ الْبَنَّاءِ وَآلَاتِهِ]

١٣١٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يَشْتَرِطَ عَلَى الْمُسْتَأْجَرِ لِلْخِيَاطَةِ إحْضَارَ الْخُيُوطِ، وَلَا عَلَى الْوَرَّاقِ الْقِيَامَ بِالْحِبْرِ، وَلَا عَلَى الْبَنَّاءِ الْقِيَامَ بِالطِّينِ أَوْ الصَّخْرِ، أَوْ الْجِيَارِ، وَهَكَذَا فِي كُلِّ شَيْءٍ.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، لِأَنَّهُ إجَارَةٌ وَبَيْعٌ مَعًا قَدْ اُشْتُرِطَ أَحَدُهُمَا مَعَ الْآخَرِ فَحُرِّمَ ذَلِكَ مِنْ وَجْهَيْنِ -: أَحَدُهُمَا - أَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ.

Thus, it constitutes wrongful consumption of wealth. However, if those we mentioned voluntarily procure what we mentioned without precondition, it is permissible, as it is an act of goodwill.

L20350 As for hiring a builder with his tools, a carpenter with his tools, a bookbinder with his pens, his scraper, his knife, his binding tool, his inkwell, a tailor with his needle and scraper—all of this is permissible and sound, for it constitutes a single contract. If any of these tools belong to another, it is not permissible, because it is unknown what may occur to the tool through such use or what may befall the worker, thus constituting wrongful consumption of wealth. And with Allah, the Exalted, is success.

L20351 As for the dyer, he is hired solely to immerse the cloth into the dye vat.

L20352 **A jurisprudential issue regarding a person who rented a house or something and then rented it out.**

L20353 1314. Issue: Whoever rents a house, a slave, a pack animal, or any item, then subleases it for a higher, lower, or equivalent rent, the transaction is lawful and permissible.

L20354 Similarly, the hired goldsmith commissioned to craft an item who then subcontracts another person to perform the work—whether for a lower, higher, or equal wage—all such arrangements are permissible, and the surplus is lawful for both parties. However, if the contract stipulates that the hired party must personally reside in the property, personally ride the animal, or personally perform the task, then it is impermissible to deviate from the terms stipulated in the contract. This is because there is no prohibition from the Prophet (peace be upon him) against such subcontracting, and it is subcontracting—indeed, he (peace be upon him) commanded subcontracting agreements. And success comes only from Allah, the Most High.

L20355 1315. Issue: Hire in exchange for hire is permissible—such as hiring the occupancy of a house in exchange for the occupancy of a house, or the service

وَالثَّانِي - أَنَّهُ بَيْعٌ مَجْهُولٌ، وَإِجَارَةُ مَجْهُولٍ لَا يَدْرِي مَا يَقَعُ مِنْ ذَلِكَ لِلْبَيْعِ وَلَا مَا يَقَعُ مِنْهُ لِلْإِجَارَةِ، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ، فَإِنْ تَطَوَّعَ كُلُّ مَنْ ذَكَرْنَا بِإِحْضَارِ مَا ذَكَرْنَا عَنْ غَيْرِ شَرْطٍ جَازَ ذَلِكَ؛ لِأَنَّهُ فِعْلُ خَيْرٍ.

وَأَمَّا اسْتِئْجَارُ الْبَنَّاءِ وَآلَاتِهِ، وَالنَّجَّارِ وَآلَاتِهِ، وَالْوَرَّاقِ وَأَقْلَامِهِ، وَجَلَمِهِ وَسِكِّينِهِ، وَمِلْزَمَتِهِ، وَمِحْبَرَتِهِ، وَالْخَيَّاطِ وَإِبْرَتِهِ وَجَلَمِهِ، فَكُلُّ ذَلِكَ جَائِزٌ حَسَنٌ؛ لِأَنَّهَا إِجَارَةٌ وَاحِدَةٌ كُلُّهَا. فَإِنْ كَانَ شَيْءٌ مِنْ ذَلِكَ لِغَيْرِهِ لَمْ يَجُزْ؛ لِأَنَّهُ لَا يَدْرِي مَا يَقَعُ مِنْ ذَلِكَ لِتِلْكَ الْآلَةِ، وَلَا مَا يَقَعُ لِلْعَامِلِ، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا الصَّبَّاغُ: فَإِنَّمَا اُسْتُؤْجِرَ لِإِدْخَالِ الثَّوْبِ فِي قِدْرِهِ فَقَطْ.

[مَسْأَلَةٌ اسْتَأْجَرَ دَارًا أَوْ شَيْئًا مَا ثُمَّ أَجَّرَهُ]

١٣١٤ - مَسْأَلَةٌ: وَمَنْ اسْتَأْجَرَ دَارًا أَوْ عَبْدًا أَوْ دَابَّةً أَوْ شَيْئًا مَا ثُمَّ أَجَّرَهُ بِأَكْثَرَ مِمَّا اسْتَأْجَرَهُ بِهِ أَوْ بِأَقَلَّ أَوْ بِمِثْلِهِ، فَهُوَ حَلَالٌ جَائِزٌ.

وَكَذَلِكَ الصَّائِغُ الْمُسْتَأْجَرُ لِعَمَلِ شَيْءٍ فَيَسْتَأْجِرُ هُوَ غَيْرَهُ لِيَعْمَلَهُ لَهُ بِأَقَلَّ أَوْ بِأَكْثَرَ أَوْ بِمِثْلِهِ فَكُلُّ ذَلِكَ حَلَالٌ، وَالْفَضْلُ جَائِزٌ لَهُمَا، إِلَّا أَنْ تَكُونَ الْمُعَاقَدَةُ وَقَعَتْ عَلَى أَنْ يَسْكُنَهَا بِنَفْسِهِ، أَوْ يَرْكَبَهَا بِنَفْسِهِ، أَوْ يَعْمَلَ الْعَمَلَ بِنَفْسِهِ، فَلَا يَجُوزُ غَيْرُ مَا وَقَعَتْ عَلَيْهِ الْإِجَارَةُ؛ لِأَنَّهُ لَمْ يَأْتِ نَهْيٌ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ، وَهِيَ مُؤَاجَرَةٌ وَقَدْ أَمَرَ - عَلَيْهِ السَّلَامُ - بِالْمُؤَاجَرَةِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

of a slave in exchange for the service of a slave, or occupancy in exchange for the service of a slave or for sewing. All of this is permissible because there is no textual prohibition against it. This is the opinion of Mālik. Abū Ḥanīfa said: It is not permissible to lease a house in exchange for leasing a house; it is permissible in exchange for the service of a slave. This is an invalid categorization.

١٣١٥ - مَسْأَلَةٌ: وَالْإِجَارَةُ بِالْإِجَارَةِ جَائِزَةٌ -: كَمَنْ أَجَّرَ سُكْنَى دَارٍ بِسُكْنَى دَارٍ أَوْ خِدْمَةَ عَبْدٍ بِخِدْمَةِ عَبْدٍ، أَوْ سُكْنَى بِخِدْمَةِ عَبْدٍ أَوْ بِخِيَاطَةٍ، كُلُّ ذَلِكَ جَائِزٌ، لِأَنَّهُ لَمْ يَأْتِ نَصٌّ بِالنَّهْيِ عَنْ ذَلِكَ - وَهُوَ قَوْلُ مَالِكٍ وَقَالَ أَبُو حَنِيفَةَ: لَا يَجُوزُ كِرَاءُ دَارٍ بِكِرَاءِ دَارٍ - وَيَجُوزُ بِخِدْمَةِ عَبْدٍ - وَهَذَا تَقْسِيمٌ فَاسِدٌ.

L20356 The remainder of the discussion on the preceding issue: Ali said: It was narrated to us through Ibn Abi Shaybah's chain - Abbad ibn al-Awwam reported from Umar ibn Amir, from Qatadah, from Nafi', from Ibn Umar - that he said regarding one who hires a worker then leases him out for more than what he hired him for: Ibn Umar stated, "The excess belongs to the first [employer]."

بَقِيَّةُ الْكَلَامِ فِي الْمَسْأَلَةِ الَّتِي قَبْلَ هَذِهِ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ عُمَرَ بْنِ عَامِرٍ عَنْ قَتَادَةَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ قَالَ فِيمَنْ اسْتَأْجَرَ أَجِيرًا فَأَجَّرَهُ بِأَكْثَرَ مِمَّا اسْتَأْجَرَهُ، قَالَ ابْنُ عُمَرَ: الْفَضْلُ لِلْأَوَّلِ.

L20357–20358 And via the narration of Waki': Shu'bah reported to us from Qatādah from Ibn 'Umar that he disapproved of it. It is authentically established from Ibrāhīm that he said, "The excess must be rejected; it constitutes usury." Mujāhid did not permit it, nor did Iyās ibn Mu'āwiyah, nor 'Ikrimah. Al-Zuhrī later disapproved of it after having previously permitted it.

وَمِنْ طَرِيقِ وَكِيعٍ نا شُعْبَةُ عَنْ قَتَادَةَ عَنْ ابْنِ عُمَرَ أَنَّهُ كَرِهَهُ. وَصَحَّ عَنْ إبْرَاهِيمَ: أَنَّهُ قَالَ: يُرَدُّ الْفَضْلُ، هُوَ رِبًا، وَلَمْ يُجِزْهُ مُجَاهِدٌ، وَلَا إيَاسُ بْنُ مُعَاوِيَةَ، وَلَا عِكْرِمَةُ، وَكَرِهَهُ الزُّهْرِيُّ بَعْدَ أَنْ كَانَ يُبِيحُهُ.

L20359 Maymūn ibn Mihrān, Ibn Sīrīn, Sa'īd ibn al-Musayyib, Shurayḥ, Masrūq, Muḥammad ibn 'Alī, al-Sha'bī, and Abū Salamah ibn 'Abd al-Raḥmān disliked it.

وَكَرِهَهُ مَيْمُونُ بْنُ مِهْرَانَ، وَابْنُ سِيرِينَ وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَشُرَيْحٌ، وَمَسْرُوقٌ، وَمُحَمَّدُ بْنُ عَلِيٍّ، وَالشَّعْبِيُّ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ.

L20360 Sulaymān ibn Yasār, 'Urwah ibn al-Zubayr, al-Ḥasan, and 'Aṭā' deemed it permissible.

وَأَبَاحَهُ سُلَيْمَانُ بْنُ يَسَارٍ، وَعُرْوَةُ بْنُ الزُّبَيْرِ، وَالْحَسَنُ، وَعَطَاءٌ.

L20361 Abu Muhammad said: Those who prohibit it argued that it is akin to usury - but this is invalid, but rather it is a valid lease. There is no difference between one who buys for a price and sells for more, and one who leases something and subleases it for more. The Malikis condemn those who oppose the Companion whose view has no known dissenter - yet this is one of the matters in which they contradicted themselves, for Ibn Umar did not permit it, and no dissent from the Companions (may Allah be pleased with them) is known regarding this matter.

وَقَالَ أَبُو مُحَمَّدٍ: احْتَجَّ الْمَانِعُونَ مِنْ ذَلِكَ بِأَنَّهُ كَالرِّبَا - وَهَذَا بَاطِلٌ، بَلْ هِيَ إجَارَةٌ صَحِيحَةٌ، وَلَا فَرْقَ بَيْنَ مَنْ ابْتَاعَ بِثَمَنٍ وَبَاعَ بِأَكْثَرَ، وَبَيْنَ مَنْ اكْتَرَى بِشَيْءٍ وَأَكْرَى بِأَكْثَرَ. وَالْمَالِكِيُّونَ يُشَنِّعُونَ بِخِلَافِ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ - وَهَذَا مِمَّا

تَنَاقَضُوا فِيهِ؛ لِأَنَّ ابْنَ عُمَرَ لَمْ يُجِزْهُ، وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

وَمِمَّنْ قَالَ بِقَوْلِ أَبِي حَنِيفَةَ فِي ذَلِكَ الشَّعْبِيُّ.

Al-Shaʿbī is among those who held the opinion of Abū Ḥanīfah regarding that.

قَالَ عَلِيٌّ: هَذَا قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ، وَالتَّقْلِيدُ لَا يَجُوزُ، وَالْعَجَبُ أَنَّهُمْ قَالُوا: يَتَصَدَّقُ بِالْفَضْلِ وَهَذَا بَاطِلٌ؛ لِأَنَّهُ إنْ كَانَ حَلَالًا فَلَا يَلْزَمُهُ أَنْ يَتَصَدَّقَ بِهِ إلَّا أَنْ يَشَاءَ، وَإِنْ كَانَ حَرَامًا عَلَيْهِ فَلَا يَحِلُّ لَهُ أَنْ يَتَصَدَّقَ بِمَا لَا يَمْلِكُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Ali said: This is a statement with no evidence for its validity, and blind imitation is impermissible. It is astonishing that they said: "He should give the excess in charity," and this is invalid. If it were lawful, he would not be obligated to give it in charity unless he voluntarily chooses. If it were unlawful for him, it would not be permissible to give in charity what he does not rightfully own - and with Allah alone, the Most High, is success.

[مَسْأَلَةٌ أُجْرَةُ تَنْقِيَةِ الْمِرْحَاضِ]

The Issue of Compensation for the Ritual Purification of the Toilet.

١٣١٦ - مَسْأَلَةٌ: وَتَنْقِيَةُ الْمِرْحَاضِ عَلَى الَّذِي مَلَأَهُ لَا عَلَى صَاحِبِ الدَّارِ، وَلَا يَجُوزُ اشْتِرَاطُهُ عَلَى صَاحِبِ الدَّارِ؛ لِأَنَّ عَلَى مَنْ وَضَعَ كُنَاسَةً أَوْ زِبْلًا أَوْ مَتَاعًا فِي أَرْضِ غَيْرِهِ الَّتِي هِيَ مَالُ غَيْرِهِ، لَمْ يَجُزْ لَهُ ذَلِكَ، وَعَلَيْهِ أَنْ يُزِيلَهُ عَنْ الْمَكَانِ الَّذِي لَا حَقَّ لَهُ فِيهِ، وَاشْتِرَاطُهُ عَلَى صَاحِبِ الدَّارِ بَاطِلٌ مِنْ وَجْهَيْنِ -:

1316 - Issue: The purification of the toilet falls upon the one who filled it, not upon the owner of the house. It is impermissible to stipulate this obligation upon the owner of the house, for if someone places dung, manure, or goods in another's land—which is another's property—he is not permitted to do so, and he must remove them from the place where he holds no rightful claim. Stipulating this upon the owner of the house is invalid for two reasons:

أَحَدُهُمَا - أَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ.

One of the two is that it is a condition not in the Book of Allah, so it is void.

وَالثَّانِي - أَنَّهُ مَجْهُولُ الْقَدْرِ فَهُوَ شَرْطٌ فَاسِدٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The second is that it is indeterminate in measure, rendering the condition invalid—and success comes only from Allah, the Most High.

١٣١٧ - مَسْأَلَةٌ: فَإِنْ كَانَ خَانًا يَبِيتُونَ فِيهِ لَيْلَةً ثُمَّ يَرْحَلُونَ، فَعَلَى صَاحِبِ الْخَانِ إحْضَارُ مَكَانٍ فَارِغٍ لِلْخَلَاءِ إنْ شَاءَ، وَإِلَّا يَتَبَرَّزُوا فِي الصُّعُدَاتِ إنْ أَبَى مِنْ ذَلِكَ.

Issue 1317: If travelers lodge in a caravanserai for one night then depart, the owner must provide an empty place for relieving himself if he so wishes. If he refuses to do so, they are permitted to relieve themselves in the alleys.

[مَسْأَلَةٌ الْأُجْرَةُ عَلَى كَنْسِ الْكُنُفِ]

The Legal Question of Wages for Sweeping Latrines

١٣١٨. مَسْأَلَةٌ: وَيَجُوزُ أَخْذُ الْأُجْرَةِ عَلَى كَنْسِ الْكُنُفِ. وَهُوَ

1318. Issue: It is permissible to receive wages for cleaning toilets. This is the

apparent [ruling] from the statements of Abū Ḥanīfah, Mālik, al-Shāfiʿī, and Abū Sulaymān, due to the generality of the Messenger of Allah's command – peace be upon him – regarding employment.

١٣١٨ - مَسْأَلَةٌ: وَالْأُجْرَةُ عَلَى كَنْسِ الْكُنُفِ جَائِزَةٌ - وَهُوَ الظَّاهِرُ مِنْ أَقْوَالِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، لِعُمُومِ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمُؤَاجَرَةِ.

L20371–20372 It has been reported to us through the chain of Saʿīd ibn Manṣūr, from Abū ʿAwānah, from al-Fuḍayl ibn Ṭalḥah, that Ibn ʿUmar said to a man who cleaned excrement when he informed him that he married using proceeds from it, earned a living from it, and performed Hajj using proceeds from it: "You are wicked, what you earned is ill-gotten, and the marriage you contracted is tainted, until you depart from it as you entered into it."

عَلَى أَنَّنَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو عَوَانَةَ عَنْ الْفُضَيْلِ بْنِ طَلْحَةَ أَنَّ ابْنَ عُمَرَ قَالَ لِرَجُلٍ كَنَّاسٍ لِلْعَذِرَةِ أَخْبَرَهُ أَنَّهُ مِنْهُ تَزَوَّجَ وَمِنْهُ كَسَبَ وَمِنْهُ حَجَّ فَقَالَ لَهُ ابْنُ عُمَرَ: أَنْتَ خَبِيثٌ، وَمَا كَسَبْت خَبِيثٌ، وَمَا تَزَوَّجْت خَبِيثٌ، حَتَّى تَخْرُجَ مِنْهُ كَمَا دَخَلْت فِيهِ.

L20373 Sa'id ibn Mansur said: Mahdi ibn Maymun narrated to us from Wasil, the freed slave of Abu 'Uyaynah, from 'Amr ibn Harim, from 'Abd al-Hamid ibn Mahmud: He heard Ibn 'Abbas when a man said to him, "I was a latrine cleaner—I used to sweep these cesspits—and I acquired wealth from it, married using it, had children through it, and performed Hajj with it." Ibn 'Abbas replied, "You and your wealth are impure, and your children are impure. No disagreement is known among the Companions regarding this verdict." Where are the Hanafis and Malikis concerning this if they rigidly follow their rulings? There is no valid proof in anyone's statement apart from that of the Messenger of Allah—peace and blessings be upon him.

قَالَ سَعِيدُ بْنُ مَنْصُورٍ: نا مَهْدِيُّ بْنُ مَيْمُونٍ عَنْ وَاصِلٍ مَوْلَى أَبِي عُيَيْنَةَ عَنْ عَمْرِو بْنِ هَرِمٍ عَنْ عَبْدِ الْحَمِيدِ بْنِ مَحْمُودٍ: أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ وَقَدْ قَالَ لَهُ رَجُلٌ: إنِّي كُنْت رَجُلًا كَنَّاسًا أَكْسَحُ هَذِهِ الْحُشُوشَ فَأَصَبْت مَالًا فَتَزَوَّجْت مِنْهُ، وَوُلِدَ لِي فِيهِ، وَحَجَجْت فِيهِ. فَقَالَ لَهُ ابْنُ عَبَّاسٍ: أَنْتَ وَمَالُك خَبِيثٌ وَوَلَدُك خَبِيثٌ، وَلَا يُعْرَفُ لَهُمَا مِنْ الصَّحَابَةِ مُخَالِفٌ - فَأَيْنَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ عَنْ هَذَا إنْ طَرَدُوا أَقْوَالَهُمْ؟ وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L20374 **Issue: Giving spun thread for weaving in exchange for a specified portion from it.**

[مَسْأَلَةُ إعْطَاءُ الْغَزْلِ لِلنَّسْجِ بِجُزْءٍ مُسَمًّى مِنْهُ]

L20375 1319 - Issue: It is permissible to give yarn for weaving in return for a specified portion of it, such as a quarter, a third, or the like. If the two parties mutually consent that the weaver will weave it together with the other party and they will both be partners in it, this is permissible. If either party refuses, they are not bound. In this case, the weaver is entitled to a wage from the portion of yarn designated for him, proportionate to the amount he weaves,

١٣١٩ - مَسْأَلَةٌ: وَجَائِزٌ إعْطَاءُ الْغَزْلِ لِلنَّسْجِ بِجُزْءٍ مُسَمًّى مِنْهُ كَرُبُعٍ، أَوْ ثُلُثٍ، أَوْ نَحْوِ ذَلِكَ، فَإِنْ تَرَاضَيَا عَلَى أَنْ يَنْسِجَهُ النَّسَّاجُ مَعًا وَيَكُونَا مَعًا شَرِيكَيْنِ فِيهِ: جَازَ ذَلِكَ - وَإِنْ أَبَى أَحَدُهُمَا لَمْ يَلْزَمْهُ، وَكَانَ لِلنَّسَّاجِ مِنْ الْغَزْلِ الَّذِي سُمِّيَ لَهُ أُجْرَةٌ بِمِقْدَارِ مَا يَنْسِجُ مِنْ الْأَجْرِ حَتَّى يُتِمَّ نَسْجَهُ وَيَسْتَحِقُّ جَمِيعَ مَا سُمِّيَ لَهُ.

until he completes the weaving and becomes entitled to the entire portion designated for him.

وَكَذَلِكَ يَجُوزُ إِعْطَاءُ الثَّوْبِ لِلْخَيَّاطِ بِجُزْءٍ مِنْهُ مُشَاعٍ أَوْ مُعَيَّنٍ، وَإِعْطَاءُ الطَّعَامِ لِلطَّحِينِ بِجُزْءٍ مِنْهُ كَذَلِكَ، وَإِعْطَاءُ الزَّيْتُونِ لِلْعَصِيرِ كَذَلِكَ، وَكَذَلِكَ الِاسْتِئْجَارُ لِجَمِيعِ هَذِهِ الزُّيُوتِ الْمَحْدُودَةِ بِجُزْءٍ مِنْهَا كَذَلِكَ، كُلُّ ذَلِكَ جَائِزٌ.

L20376 Similarly, it is permissible to give a garment to a tailor in exchange for an undivided or specified portion of it, to give food in exchange for a portion of its flour, to give olives in exchange for a portion of their juice, and to hire for all these limited oils in exchange for a portion of them. All of this is permissible.

وَكَذَلِكَ اسْتِئْجَارُ الرَّاعِي لِحِرَاسَةِ هَذِهِ الْغَنَمِ بِجُزْءٍ مِنْهَا مُسَمًّى كَذَلِكَ أَيْضًا، وَلَا يَجُوزُ بِجُزْءٍ مُسَمًّى مِنَ النَّسْلِ الَّذِي لَمْ يُولَدْ بَعْدُ، لِأَنَّ كُلَّ مَا ذَكَرْنَا قَبْلُ فَهِيَ إِجَارَةٌ مَحْدُودَةٌ فِي شَيْءٍ مَوْجُودٍ قَائِمٍ.

L20377 Similarly, leasing a shepherd to guard these sheep in exchange for a specified portion of them is also permissible. However, it is not permissible to stipulate a specified portion of the offspring that has not yet been born, because all that we previously mentioned is a limited lease contract pertaining to something existing and present.

وَلَا تَجُوزُ الْإِجَارَةُ بِمَا لَمْ يُخْلَقْ بَعْدُ، لِأَنَّهُ غَرَرٌ لَا يُدْرَى أَيَكُونُ أَمْ لَا؟ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنِ ابْنِ عَوْنٍ سَأَلْتُ مُحَمَّدَ بْنَ سِيرِينَ عَنْ دَفْعِ الثَّوْبِ إِلَى النَّسَّاجِ بِالثُّلُثِ وَدِرْهَمٍ، أَوْ بِالرُّبُعِ، أَوْ بِمَا تَرَاضَيَا عَلَيْهِ؟ قَالَ: لَا أَعْلَمُ بِهِ بَأْسًا: وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ قَالَ: أَجَازَ الْحَكَمُ إِجَارَةَ الرَّاعِي لِلْغَنَمِ بِثُلُثِهَا أَوْ رُبُعِهَا - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَرُوِيَ عَنِ الْحَسَنِ أَيْضًا نا ابْنُ أَبِي شَيْبَةَ نا ابْنُ عُلَيَّةَ عَنْ لَيْثٍ عَنْ عَطَاءٍ مِثْلَ قَوْلِ ابْنِ سِيرِينَ. نا ابْنُ أَبِي شَيْبَةَ نا عَبْدُ الْأَعْلَى عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ مِثْلَ قَوْلِ ابْنِ سِيرِينَ وَعَطَاءٍ.

L20378–20380 It is not permissible to lease what has not yet been created, due to the uncertainty involved, as it is unknown whether it will exist or not. It was narrated to us through Ibn Abī Shaybah's chain: Muḥammad ibn Abī ʻAdiyy reported from Ibn ʻAwn, who said: "I asked Muḥammad ibn Sīrīn about giving a garment to a weaver in exchange for a third of the garment and a dirham, or a quarter, or whatever they mutually agree upon." He replied: "I do not know of any harm in it." Through ʻAbd al-Razzāq's chain from Sufyān, it was stated: Al-Ḥakam permitted leasing a shepherd's services for a third or a quarter of the flock. This is also the opinion of Ibn Abī Laylā, and a similar report has been transmitted from al-Ḥasan. Ibn Abi Shaybah narrated to us: Ibn ʻUlayyah narrated to us from Layth from ʻAta', in accordance with the view of Ibn Sirin. Ibn Abi Shaybah narrated to us: ʻAbd al-Aʻla narrated to us from Maʻmar from al-Zuhri, in accordance with the views of Ibn Sirin and ʻAta'.

وَلَا تَجُوزُ الْإِجَارَةُ إِلَّا بِمَا يَجُوزُ بِهِ الْبَيْعُ، لِأَنَّهُ عَقْدُ مُعَاوَضَةٍ، فَلَا يَجُوزُ إِلَّا بِمَا يَجُوزُ بِهِ الْبَيْعُ، وَلَا يَجُوزُ بِمَا ل

Qatadah, who said: There is no harm in a third or a quarter of the price being paid to the weaver.

نا ابْنُ أَبِي شَيْبَةَ نا زَيْدُ بْنُ الْحُبَابِ عَنْ أَبِي هِلَالٍ عَنْ قَتَادَةَ قَالَ: لَا بَأْسَ أَنْ يُدْفَعَ إِلَى النَّسَّاجِ بِالثُّلُثِ، وَالرُّبُعِ.

L20383 Ibn Abi Shaybah narrated to us from Abdah ibn Sulayman from Sa'id ibn Abi Arubah from Qatadah from Sa'id ibn al-Musayyib that he said: There is no harm in a man tending palm trees and overseeing them in exchange for a third or a quarter [of the yield], provided he incurs no personal expenses from it.

نا ابْنُ أَبِي شَيْبَةَ نا عَبْدَةُ بْنُ سُلَيْمَانَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: لَا بَأْسَ بِأَنْ يُعَالِجَ الرَّجُلُ النَّخْلَ وَيَقُومُ عَلَيْهِ بِالثُّلُثِ وَالرُّبُعِ، مَا لَمْ يُنْفِقْ هُوَ مِنْهُ شَيْئًا.

L20384 Narrated by Ibn Abī Shaybah from Ibn ʻUlayyah, from Ayyūb al-Sikhtiyānī, from al-Fuḍayl, from Sālim, who said: "Date palms are granted to those who cultivated them as a share thereof." This is the view of Ibn Abī Laylā, al-Awzāʻī, and al-Laythī.

نا ابْنُ أَبِي شَيْبَةَ نا ابْنِ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنِ الْفُضَيْلِ عَنْ سَالِمٍ قَالَ: النَّخْلُ يُعْطَى مَنْ عَمِلَ فِيهِ مِنْهُ. وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَالْأَوْزَاعِيِّ، وَاللَّيْثِ.

L20385 And Ibrāhīm disliked all of that, as did Al-Ḥasan in one of his two opinions.

وَكَرِهَ كُلَّ ذَلِكَ إِبْرَاهِيمُ، وَالْحَسَنُ فِي أَحَدِ قَوْلَيْهِ.

L20386 Neither Abū Ḥanīfah, nor Mālik, nor al-Shāfiʻī permitted it.

وَلَمْ يُجِزْهُ أَبُو حَنِيفَةَ، وَلَا مَالِكٌ، وَلَا الشَّافِعِيُّ.

L20387 ## The Ruling on Hiring Ships

[مَسْأَلَةُ كِرَاءُ السُّفُنِ]

L20388 Issue 1320: It is permissible to hire ships, both large and small, for a specified share of what is carried in them, whether jointly shared by all or individually specified.

١٣٢٠ - مَسْأَلَةٌ: وَجَائِزٌ كِرَاءُ السُّفُنِ كِبَارِهَا وَصِغَارِهَا بِجُزْءٍ مُسَمًّى مِمَّا يُحْمَلُ فِيهَا مُشَاعٌ فِي الْجَمِيعِ أَوْ مُتَمَيِّزٌ.

L20389 Similarly, beasts of burden and oxen. The owner of the ship is entitled to a portion of the hire corresponding to the distance covered, whether the ship was damaged or remained intact, because it is a limited service.

وَكَذَلِكَ الدَّوَابُّ، وَالْعِجْلُ، وَيَسْتَحِقُّ صَاحِبُ السَّفِينَةِ مِنَ الْكِرَاءِ بِقَدْرِ مَا قَطَعَ مِنَ الطَّرِيقِ عَطِبَ أَوْ سَلِمَ؛ لِأَنَّهُ عَمَلٌ مَحْدُودٌ.

L20390 Mālik said: There is no rental agreement for him unless it reaches completion.

وَقَالَ مَالِكٌ: لَا كِرَاءَ لَهُ إِلَّا إِنْ بَلَغَ.

L20391 Ali said: This is an error and deeming the commandeering of a ship lawful without compensation and without the owner's willing consent.

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ وَاسْتِحْلَالُ تَسْخِيرِ السَّفِينَةِ بِلَا أُجْرَةٍ، وَبِلَا طِيبِ نَفْسِ صَاحِبِهَا.

L20392 There is no distinction between the ship and the riding animal in this mat-

ter. His statement regarding this constitutes a position unsupported by the Quran, the Sunnah, a weak narration, any statement from predecessors that we know of, analogical reasoning, or an opinion with a sound basis.

وَلَا فَرْقَ بَيْنَ السَّفِينَةِ وَالدَّابَّةِ فِي ذَلِكَ - وَقَوْلُهُ فِي هَذَا قَوْلٌ لَا يَعْضُدُهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ أَحَدٍ قَبْلَهُ نَعْلَمُهُ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ.

L20393 Similarly, hiring the service of a vessel is permissible, and they are entitled to wages according to the work they have performed - whether the vessel is damaged or remains safe - and with Allah, the Exalted, is success.

وَكَذَلِكَ اسْتِئْجَارُ خِدْمَةِ الْمَرْكَبِ جَائِزٌ، وَلَهُمْ مِنَ الْأُجْرَةِ بِقَدْرِ مَا عَمِلُوا - عَطِبَ الْمَرْكَبُ أَوْ سَلِمَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L20394–20395 Issue: If the sea becomes turbulent and they fear destruction, they should lighten the heaviest then the heaviest. There is no liability upon the people of the vessel in this matter, for they are commanded to save themselves. Allah the Exalted has said: “And do not kill yourselves” [An-Nisa: 29].[12]

مَسْأَلَةٌ: فَإِنْ هَالَ الْبَحْرُ وَخَافُوا الْعَطَبَ فَلْيُخَفِّفُوا الْأَثْقَلَ فَالْأَثْقَلَ، وَلَا ضَمَانَ فِيهِ عَلَى أَهْلِ الْمَرْكَبِ لِأَنَّهُمْ مَأْمُورُونَ بِتَخْلِيصِ أَنْفُسِهِمْ. قَالَ اللَّهُ تَعَالَى: {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] .

L20396 And He, the Exalted, said: “And do not throw yourselves with your hands into destruction” [Al-Baqarah: 195].[13]

وَقَالَ تَعَالَى: {وَلا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ} [البقرة: ١٩٥] .

L20397 So whoever does what he has been commanded to do is a doer of good. Allah, the Most High, says: “There is no blame against those who do good.” [At-Tawbah: 91][14]

فَمَنْ فَعَلَ مَا أُمِرَ بِهِ فَهُوَ مُحْسِنٌ، قَالَ اللَّهُ تَعَالَى: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] .

L20398 Malik said: One is financially liable for what is intended for trade, but not liable for what is destined for consumption or personal property. Nor is anyone who holds no ownership stake in the vessel liable for any such matters—all of this constitutes muddled reasoning utterly unsupported by evidence, a position we do not know anyone before him to have asserted. Success comes from Allah, the Exalted.

وَقَالَ مَالِكٌ: يَضْمَنُ مَا كَانَ لِلتِّجَارَةِ، وَلَا يَضْمَنُ مَا سِيقَ لِلْأَكْلِ، وَالْقُنْيَةِ، وَلَا يَضْمَنُ شَيْئًا مِنْ ذَلِكَ مَنْ لَا مَالَ لَهُ فِي الْمَرْكَبِ - وَهَذَا كُلُّهُ تَخْلِيطٌ لَا يَعْضُدُهُ دَلِيلٌ أَصْلًا، وَقَوْلٌ لَا نَعْلَمُ أَحَدًا تَقَدَّمَهُ قَبْلَهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L20399 If there is something lighter beneath the heaviest item, and if discarding the heaviest involves a difficulty that prolongs the task, risks the ship sinking, but salvation is hoped for through discarding the lighter item, then the lighter item should be discarded for the reason we have stated.

فَإِنْ كَانَ دُونَ الْأَثْقَلِ مَا هُوَ أَخَفُّ مِنْهُ، فَإِنْ كَانَ فِي رَمْيِ الْأَثْقَلِ كُلْفَةٌ يَطُولُ أَمْرُهَا، وَيُخَافُ غَرَقُ السَّفِينَةِ فِيهَا، وَيُرْجَى الْخَلَاصُ، بِرَمْيِ الْأَخَفِّ رُمِيَ الْأَخَفُّ حِينَئِذٍ لِمَا ذَكَرْنَا.

L20400 As for one who throws a lighter object while capable of throwing a heavier

[12] **Qur’an references (L20395):** Qur’an 4:29 (An-Nisa).
[13] **Qur’an references (L20396):** Qur’an 2:195 (Al-Baqarah).
[14] **Qur’an references (L20397):** Qur’an 9:91 (At-Tawbah).

one, he is liable for that which he threw; no one else is liable for it with him, based on the Prophet's statement (peace and blessings be upon him): "Your blood and your wealth are sacred to you."

وَأَمَّا مَنْ رَمَى الْأَخَفَّ وَهُوَ قَادِرٌ عَلَى رَمْيِ الْأَثْقَلِ فَهُوَ ضَامِنٌ لِمَا رَمَى مِنْ ذَلِكَ لَا يَضْمَنُهُ مَعَهُ غَيْرُهُ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L20401 An animal should not be thrown except in cases of necessity where one is certain **with that necessity** that deliverance will be achieved by throwing it. A human being must never be thrown under any circumstance—neither believer nor disbeliever—for it is impermissible to repel oppression from oneself by oppressing someone who has committed no wrong. Whoever prevents the disposal of his property **that is overloading the ship** is oppressing those aboard it. Thus, preventing their destruction by stopping him from oppressing them is an obligation.

وَلَا يُرْمَى حَيَوَانٌ إِلَّا لِضَرُورَةٍ يُوقِنُ مَعَهَا بِالنَّجَاةِ بِرَمْيِهِ، وَلَا يُلْقَى إِنْسَانٌ أَصْلًا لَا مُؤْمِنٌ وَلَا كَافِرٌ؛ لِأَنَّهُ لَا يَحِلُّ لِأَحَدٍ دَفْعُ ظُلْمٍ عَنْ نَفْسِهِ بِظُلْمِ مَنْ لَمْ يَظْلِمْهُ، وَالْمَانِعُ مِنْ إِلْقَاءِ مَالِهِ الْمُثْقِلِ لِلسَّفِينَةِ ظَالِمٌ لِمَنْ فِيهَا، فَدَفْعُ الْهَلَاكِ عَنْ أَنْفُسِهِمْ بِمَنْعِهِ مِنْ ظُلْمِهِمْ فَرْضٌ.

L20402 The Issue of Renting the Ḥammām

[مَسْأَلَةُ اسْتِئْجَارُ الْحَمَّامِ]

L20403 Issue 1322: Renting a bathhouse is permissible, with the well and water channel included as ancillary components. It is impermissible to contract a lease with one who enters it, though such a person may be granted access as a goodwill gesture. If the bathhouse owner rejects the offered compensation, he must be obligated, after the user exits, to accept payment equivalent only to the duration of his stay therein. This is because the period of his remaining before completing his use of it is uncertain, and establishing hire contracts based on uncertainty is invalid - as this constitutes unlawful consumption of wealth due to both parties' ignorance of the terms they mutually consented to. And with Allah, the Exalted, lies success.

١٣٢٢ - مَسْأَلَةٌ: وَاسْتِئْجَارُ الْحَمَّامِ جَائِزٌ، وَيَكُونُ الْبِئْرُ، وَالسَّاقِيَةُ تَبَعًا، وَلَا يَجُوزُ عَقْدُ إِجَارَةٍ مَعَ الدَّاخِلِ فِيهِ، لَكِنْ يُعْطَى مُكَارَمَةً، فَإِنْ لَمْ يَرْضَ صَاحِبُ الْحَمَّامِ بِمَا أُعْطِيَ أُلْزِمَ بَعْدَ الْخُرُوجِ مَا يُسَاوِي بَقَاؤُهُ فِيهِ فَقَطْ لِأَنَّ مُدَّةَ بَقَائِهِ قَبْلَ أَنْ يَسْتَوْفِيَهُ مَجْهُولَةٌ، وَلَا يَجُوزُ عَقْدُ الْكِرَاءِ عَلَى مَجْهُولٍ؛ لِأَنَّهُ أَكْلُ مَالٍ بِالْبَاطِلِ لِجَهْلِهِمَا، بِمَا يَتَرَاضَيَانِ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20404 Issue: He rented a house.

[مَسْأَلَةُ اسْتَأْجَرَ دَارًا]

L20405–20407 Issue 1323: If one rents a house containing a water wheel or a tree, these are not included in the rent at all - regardless of their significance (be it minor or major), whether the tree's fruit has become visible or not, or whether it is ripe or unripe. It becomes suitable—because prior to the fruit being produced and before attaining suitability, no contract is permissible regarding it whatsoever except musaqat (cultivation contract) alone. After the suitability becomes

١٣٢٣ - مَسْأَلَةٌ: وَمَنْ اسْتَأْجَرَ دَارًا فَإِنْ كَانَتْ فِيهَا دَالِيَةٌ، أَوْ شَجَرَةٌ، لَمْ يَجُزْ دُخُولُهَا فِي الْكِرَاءِ أَصْلًا - قَلَّ خَطَرُهَا أَمْ كَثُرَ، ظَهَرَ حَمْلُهَا أَوْ لَمْ يَظْهَرْ - طَابَ أَوْ لَمْ يَطِبْ -: لِأَنَّهَا قَبْلَ أَنْ تُخْلَقَ الثَّمَرَةُ، وَقَبْلَ أَنْ تَطِيبَ لَا يَحِلُّ فِيهَا عَقْدٌ أَصْلًا إِلَّا الْمُسَاقَاةُ فَقَطْ

evident, only sale is permissible concerning it, not leasing, because through leasing, ownership of the asset is not transferred nor is it consumed at all, whereas through sale, ownership of the asset and its full title are transferred. This constitutes a sale with an unknown price or a lease with unknown rent, both of which are forbidden in every respect. This is the position of Abū Ḥanīfa, al-Shāfiʿī, and Abū Sulaymān.

وَبَعْدَ ظُهُورِ الطِّيبِ لَا يَجُوزُ فِيهَا إِلَّا الْبَيْعُ، لَا الْإِجَارَةُ، لِأَنَّ الْإِجَارَةَ لَا تُمْلَكُ بِهَا الْعَيْنُ وَلَا تُسْتَهْلَكُ أَصْلًا، وَالْبَيْعُ تُمْلَكُ بِهِ الْعَيْنُ وَالرَّقَبَةُ، فَهُوَ بَيْعٌ بِثَمَنٍ مَجْهُولٍ، وَإِجَارَةٌ بِثَمَنٍ مَجْهُولٍ، فَهُوَ حَرَامٌ مِنْ كُلِّ جِهَةٍ؛ وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

The Issue of Leasing Musḥāʿ.

[مَسْأَلَةُ إِجَارَةُ الْمُشَاعِ]

L20408

1324. Issue: The leasing of jointly owned property is permissible—whether the property is divisible or indivisible, whether from a co-owner or a non-co-owner, and whether with a co-owner or in the absence of the co-owner. This is the opinion of Mālik, al-Shāfiʿī, Abū Yūsuf, Muḥammad ibn al-Ḥasan, Abū Sulaymān, and others.

١٣٢٤ - مَسْأَلَةٌ: وَإِجَارَةُ الْمُشَاعِ جَائِزَةٌ فِيمَا يَنْقَسِمُ، وَمَا لَا يَنْقَسِمُ مِنَ الشَّرِيكِ وَمِنْ غَيْرِ الشَّرِيكِ، وَمَعَ الشَّرِيكِ وَدُونَهُ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ.

L20410

Abu Hanifa said: It is not permissible to lease co-owned undivided property—neither divisible nor indivisible—except by the co-owner alone. He also said: It is not permissible to pledge co-owned undivided property—whether divisible or indivisible—neither with a co-owner in it nor with anyone else. However, if two people jointly take a pledge from a single person, that is permissible. He further stated: It is not permissible to gift co-owned undivided property if it is divisible, such as houses or land, but it is permissible for indivisible items, such as a sword, a pearl, and similar things.

وَقَالَ أَبُو حَنِيفَةَ: لَا تَجُوزُ إِجَارَةُ الْمُشَاعِ - لَا مَا يَنْقَسِمُ وَلَا مَا لَا يَنْقَسِمُ إِلَّا مِنَ الشَّرِيكِ وَحْدَهُ، وَقَالَ: لَا يَجُوزُ رَهْنُ الْمُشَاعِ - كَانَ مِمَّا يَنْقَسِمُ أَوْ مِمَّا لَا يَنْقَسِمُ - لَا عِنْدَ الشَّرِيكِ فِيهِ وَلَا عِنْدَ غَيْرِهِ. فَإِنْ ارْتَهَنَ اثْنَانِ مَعًا رَهْنًا مِنْ وَاحِدٍ جَازَ ذَلِكَ، وَقَالَ: لَا تَجُوزُ هِبَةُ الْمُشَاعِ إِنْ كَانَ مِمَّا يَنْقَسِمُ كَالدُّورِ وَالْأَرَضِينَ، وَيَجُوزُ فِيمَا لَا يَنْقَسِمُ كَالسَّيْفِ، وَاللُّؤْلُؤَةِ، وَنَحْوِ ذَلِكَ.

L20411

He permitted the sale of jointly owned property—whether divisible or not—from a co-owner or a non-co-owner. However, Zufar did not permit the *ijārah* of jointly owned property—neither from a co-owner nor from a non-co-owner.

وَأَجَازَ بَيْعَ الْمُشَاعِ - مَا انْقَسَمَ وَمَا لَا يَنْقَسِمُ - مِنَ الشَّرِيكِ وَغَيْرِ الشَّرِيكِ وَلَمْ يُجِزْ زُفَرُ إِجَارَةَ الْمُشَاعِ - لَا مِنَ الشَّرِيكِ وَلَا مِنْ غَيْرِهِ.

L20412

These divisions are utterly corrupt, involve baseless claims, and entail contradictions without any evidence whatsoever. We know of no one before Abū Ḥanīfah who espoused these divisions, and they have no proof for this except their claim that benefiting from jointly owned property is impossible without mutual consent for shared benefit—and in that lies benefiting from a co-owner's share.

وَهَذِهِ تَقَاسِيمُ فِي غَايَةِ الْفَسَادِ وَالدَّعْوَى بِالْبَاطِلِ وَالتَّنَاقُضِ بِلَا دَلِيلٍ أَصْلًا، وَلَا نَعْلَمُهَا عَنْ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ، وَلَا حُجَّةَ لَهُمْ فِي ذَلِكَ إِلَّا أَنْ قَالُوا: الِانْتِفَاعُ بِالْمُشَاعِ غَيْرُ مُمْكِنٍ إِلَّا بِالْمُهَايَأَةِ، وَفِي ذَلِكَ انْتِفَاعٌ بِحِصَّةِ شَرِيكِهِ.

L20413 Abū Muḥammad said: This applies to them in sale and ownership, with no difference. The Prophet - peace and blessings of Allah be upon him (ﷺ) - commanded leasing arrangements and did not specify undivided property from divided property. *"He does not speak from whim. It is nothing but revelation inspired"* [53:3-4]. *"Your Lord is never forgetful"* [19:64]. The religion has been perfected, and all praise belongs to Allah. We are in no need of the opinion of Abū Ḥanīfah and others - and success comes only from Allah, the Exalted.[15]

قَالَ أَبُو مُحَمَّد: وَهَذَا دَاخِلٌ عَلَيْهِمْ فِي الْبَيْعِ وَفِي التَّمَلُّكِ، وَلَا فَرْقَ، وَأَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمُؤَاجَرَةِ، وَلَمْ يَخُصَّ مُشَاعًا مِنْ غَيْرِ مُشَاعٍ {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] . وَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَقَدْ تَمَّ الدِّينُ وَلِلَّهِ الْحَمْدُ، وَنَحْنُ فِي غِنًى عَنْ رَأْيِ أَبِي حَنِيفَةَ وَغَيْرِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L20414 **[Issue: There is no liability upon a hired worker, whether shared [among employers] or non-shared.]**

[مَسْأَلَةٌ لَا ضَمَانَ عَلَى أَجِيرٍ مُشْتَرَكٍ أَوْ غَيْرِ مُشْتَرَكٍ]

L20415–20417 Issue 1325: There is no liability upon a hired worker - whether a shared worker or an independent worker - nor upon a craftsman at all, nor for what is established to have been exceeded in his mandate or lost through his negligence. The ruling in all such cases - unless clear evidence is established against him - depends on his testimony alongside his oath. If clear evidence is established against him of exceeding authority or causing loss, he becomes liable, while he remains entitled to his wage in all those cases. As for what was proven he had done, if evidence is not established, the owner of the goods must swear that he does not know that he did what the claimant alleges he did. In that case, nothing is incumbent upon him.

١٣٢٥ - مَسْأَلَةٌ: وَلَا ضَمَانَ عَلَى أَجِيرٍ مُشْتَرَكٍ أَوْ غَيْرِ مُشْتَرَكٍ، وَلَا عَلَى صَانِعٍ أَصْلًا، وَلَا مَا ثَبَتَ أَنَّهُ تَعَدَّى فِيهِ أَوْ أَضَاعَهُ - وَالْقَوْلُ فِي كُلِّ ذَلِكَ - مَا لَمْ تَقُمْ عَلَيْهِ بَيِّنَةٌ - قَوْلُهُ مَعَ يَمِينِهِ، فَإِنْ قَامَتْ عَلَيْهِ بَيِّنَةٌ بِالتَّعَدِّي، أَوْ الْإِضَاعَةِ ضَمِنَ، وَلَهُ فِي كُلِّ ذَلِكَ الْأُجْرَةُ فِيمَا أَثْبَتَ أَنَّهُ كَانَ عَمِلَهُ، فَإِنْ لَمْ تَقُمْ بَيِّنَةٌ حَلَفَ صَاحِبُ الْمَتَاعِ أَنَّهُ مَا يَعْلَمُ أَنَّهُ عَمِلَ مَا يَدَّعِي أَنَّهُ عَمِلَهُ، وَلَا شَيْءَ عَلَيْهِ حِينَئِذٍ.

L20418 The proof of this is the statement of Allah the Exalted: {Do not consume your wealth among yourselves unjustly} [Surah An-Nisa 4:29]. Thus, the property of the craftsman and the hired worker is forbidden for others. If he transgresses or squanders, he is then obligated to be held liable equivalent to his transgression, for squandering what he is required to preserve constitutes a transgression. He is bound to safeguard what he has been entrusted to handle, whether for a wage or without payment, due to the prohibition of the Messenger of Allah—peace and blessings be upon him—against squandering wealth and his ruling—peace be upon him—that the burden of proof lies upon the claimant against the respondent if the latter denies. Whoever is

وَبُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [النساء: ٢٩] فَمَالُ الصَّانِعِ وَالْأَجِيرِ حَرَامٌ عَلَى غَيْرِهِ، فَإِنْ اعْتَدَى أَوْ أَضَاعَ لَزِمَهُ حِينَئِذٍ أَنْ يُعْتَدَى عَلَيْهِ بِمِثْلِ مَا اعْتَدَى، وَالْإِضَاعَةُ لِمَا يَلْزَمُهُ حِفْظُهُ تَعَدٍّ وَهُوَ مُلْزَمٌ حِفْظَ مَا اُسْتُعْمِلَ فِيهِ بِأَجْرٍ أَوْ بِغَيْرِ أَجْرٍ، لِنَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ وَحُكْمِهِ - عَلَيْهِ السَّلَامُ - بِالْبَيِّنَةِ عَلَى مَنْ ادَّعَى عَلَى الْمَطْلُوبِ إذَا أَنْكَرَ، وَمَنْ طُلِبَ بِغَرَامَةِ مَالٍ أَوْ اُدُّعِيَ عَلَيْهِ مَا يُوجِبُ غَرَامَةً فَهُوَ الْمُدَّعَى عَلَيْهِ فَلَيْسَ عَلَيْهِ إلَّا الْيَمِينُ بِحُكْمِ اللَّهِ عَزَّ وَجَلَّ، وَالْبَيِّنَةُ عَلَى مَنْ يَدَّعِي لِنَفْسِهِ حَقًّا فِي مَالِ غَيْرِهِ.

[15] **Qur'an references (L20413):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 19:64 (Maryam).

demanded to provide monetary compensation or is accused of an act necessitating liability becomes the defendant, and he is only required to swear an oath by the judgment of Allah the Almighty. The burden of proof lies upon the one who claims a right to another's property.[16]

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَتْ طَائِفَةٌ كَمَا قُلْنَا -: رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَا يَضْمَنُ الصَّائِغُ، وَلَا الْقَصَّارُ، أَوْ قَالَ الْخَيَّاطُ، وَأَشْبَاهُهُ.

L20419 People have differed regarding this. A group held the same opinion as us: It was reported to us through the chain of Shuʿbah from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakhaʿī, who said: The jeweler is not liable, nor the fuller (or he said the tailor) and the like.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا جَبَلَةُ بْنُ عَطِيَّةَ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ مَوْهَبٍ قَالَ فِي حَمَّالٍ اُسْتُؤْجِرَ لِحَمْلِ قُلَّةِ عَسَلٍ فَانْكَسَرَتْ قَالَ: لَا ضَمَانَ عَلَيْهِ.

L20420 From the transmission of Hammad ibn Salamah, who narrated to us: Jabalah ibn 'Atiyyah reported from Yazid ibn 'Abdullah ibn Mawhab, who stated regarding a porter contracted to transport a jar of honey - and it broke: "There is no liability upon him."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَزْهَرُ السَّمَّانُ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ كَانَ لَا يَضْمَنُ الْأَجِيرُ إِلَّا مِنْ تَضْيِيعٍ.

L20421 Through the chain of Ibn Abī Shaybah, Azhar al-Sammān narrated to us from ʿAbdullāh ibn ʿAwn, from Muḥammad ibn Sīrīn, that he held the view that the hired worker is not liable except for negligence.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ إِسْمَاعِيلَ بْنِ سَالِمٍ عَنْ الشَّعْبِيِّ قَالَ: لَيْسَ عَلَى أَجِيرِ الْمُشَاهَرَةِ ضَمَانٌ.

L20422 And via the narration of Ibn Abī Shaybah from Ismāʿīl ibn Sālim from al-Shaʿbī, who said: "There is no financial liability upon a monthly-wage hired worker."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ عَنْ الشَّعْبِيِّ قَالَ: لَا يَضْمَنُ الْقَصَّارُ إِلَّا مَا جَنَتْ يَدُهُ.

L20423 And through the chain of Ibn Abī Shaybah: Wakīʿ narrated to us: Sufyān al-Thawrī from Muṭarrif ibn Ṭarīf, who narrated from al-Shaʿbī, who said: The launderer is liable only for what his own hands have committed.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مُطَرِّفٍ عَنْ الشَّعْبِيِّ قَالَ: يَضْمَنُ الصَّانِعُ مَا أَعْنَتَ بِيَدِهِ، وَلَا يَضْمَنُ مَا سِوَى ذَلِكَ.

L20424 From the chain of ʿAbd al-Raḥmān ibn Mahdī: Sufyān al-Thawrī narrated from Muṭarrif, from al-Shaʿbī, who said: "The craftsman is liable for what he damages with his own hand, and he is not liable for anything beyond that."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ حَفْصِ بْنِ غِيَاثٍ عَنْ أَشْعَثَ عَنْ ابْنِ سِيرِينَ عَنْ شُرَيْحٍ أَنَّهُ كَانَ لَا يَضْمَنُ الْمَلَّاحُ غَرَقًا وَلَا حَرَقًا.

L20425 And through the chain of Ibn Abi Shaybah from Hafs ibn Ghiyath from Ash'ath from Ibn Sirin from Shurayh: that he did not hold the ship captain liable for drowning or burning.

[16] **Qur'an references (L20418):** Qur'an 4:29 (An-Nisa).

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الْأَعْلَى عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: إذَا أَفْسَدَ الْقَصَّارُ فَهُوَ ضَامِنٌ وَكَانَ لَا يُضَمِّنُهُ غَرَقًا وَلَا حَرَقًا وَلَا عَدُوًّا مُكَابِرًا.

L20426–20427 From the chain of Ibn Abī Shaybah: ʿAbd al-Aʿlā narrated from Yūnus ibn ʿUbayd from al-Ḥasan al-Baṣrī, who said: "If the cloth-bleacher causes damage, he is financially responsible; however, he does not hold him liable for flooding, fire, or a mighty enemy."

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا نَصُّ قَوْلِنَا -: وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ مُسْلِمِ بْنِ خَالِدٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ طَاوُسٍ أَنَّهُ لَمْ يُضَمِّنْ الْقَصَّارَ.

L20428 Abu Muhammad said: This is the exact text of our statement—: transmitted via the chain of Sa'id ibn Mansur from Muslim ibn Khalid from Ibn Abi Najih from Tawus—that he did not hold the launderer liable.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ قَالَ: قَالَ ابْنُ شُبْرُمَةَ: لَا يَضْمَنُ الصَّانِعُ إلَّا مَا أَعْنَتَ بِيَدِهِ - وَقَالَ قَتَادَةُ: يَضْمَنُ إذَا ضَيَّعَ.

L20429 And via the chain of Abd al-Razzaq, who narrated to us from Maʿmar, Maʿmar said: Ibn Shubruma stated, "A craftsman is only liable for what he causes with his own hand." Qatadah said, "He is liable if he causes loss through negligence."

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ أَنَّ حَمَّادَ بْنَ أَبِي سُلَيْمَانَ كَانَ لَا يُضَمِّنُ أَحَدًا مِنْ الصُّنَّاعِ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَزُفَرَ، وَأَبِي ثَوْرٍ وَأَحْمَدَ، وَإِسْحَاقَ، وَالْمُزَنِيِّ، وَأَبِي سُلَيْمَانَ.

L20430 And through him [the preceding narrator], Abd al-Razzaq narrated to us from Sufyan al-Thawri, who reported that Hammad ibn Abi Sulayman would not hold craftsmen liable—this being the position of Abu Hanifah, al-Shafiʿi, Zufar, Abu Thawr, Ahmad, Ishaq, al-Muzani, and Abu Sulayman.

وَقَالَتْ طَائِفَةٌ: الصُّنَّاعُ كُلُّهُمْ ضَامِنُونَ مَا جَنَوْا وَمَا لَمْ يَجْنُوا.

L20431 A group of scholars maintained that all craftsmen are financially liable for what they have caused and what they have not caused.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ بَعْضِ أَصْحَابِهِ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ طَلْحَةَ بْنِ سَعِيدِ بْنِ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - ضَمَّنَ الصُّنَّاعَ - يَعْنِي: مَنْ عَمِلَ بِيَدِهِ.

L20432 It was reported to us through the chain of ʿAbd al-Razzāq from one of his associates from al-Layth ibn Saʿd from Ṭalḥah ibn Saʿīd ibn Bukayr ibn ʿAbd Allāh ibn al-Ashajj that ʿUmar ibn al-Khaṭṭāb—may Allāh be pleased with him—held craftsmen liable, meaning those who work with their hands.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو قَالَ: كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ يُضَمِّنُ الْأَجِيرَ.

L20433 Narrated through the chain of Hammad ibn Salamah, from Qatadah, from Khilas ibn ʿAmr, who said: "Ali ibn Abi Talib would hold the hired worker financially liable."

L20434 It is authentically reported through the chain of Ibn Abi Shaybah: Hatim ibn Ismaʿil narrated from Jaʿfar ibn Muhammad, from his father, that ʿAli would impose liability on cloth-washers and goldsmiths, stating: "People's affairs

are not set right except by this." It is also narrated that he held a carpenter liable.

وَصَحَّ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَاتِمُ بْنُ إسْمَاعِيلَ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّ عَلِيًّا كَانَ يُضَمِّنُ الْقَصَّارَ، وَالصَّوَّاغَ، وَقَالَ: لَا يُصْلِحُ النَّاسَ إلَّا ذَلِكَ - وَرُوِيَ عَنْهُ أَنَّهُ ضَمَّنَ نَجَّارًا.

L20435 It is established from Shuraih that the hired worker and launderer are liable for damages.

وَصَحَّ عَنْ شُرَيْحٍ تَضْمِينُ الْأَجِيرِ وَالْقَصَّارِ.

L20436–20438 Reported from Ibrahim is the ruling on the financial liability of craftsmen—and similarly from Abdullah ibn ʻUtbah ibn Masʻud— And from Makḥūl: He held every hired worker liable, even the innkeeper who safeguards people's animals - this being the opinion of Ibn Abī Laylā - to the extent of holding the shipowner liable if goods are damaged or perish within the vessel.

وَعَنْ إبْرَاهِيمَ أَيْضًا تَضْمِينُ الصُّنَّاعِ - وَكَذَلِكَ عَنْ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ - وَعَنْ مَكْحُولٍ أَنَّهُ كَانَ يُضَمِّنُ كُلَّ أَجِيرٍ حَتَّى صَاحِبَ الْفُنْدُقِ الَّذِي يَحْبِسُ لِلنَّاسِ دَوَابَّهُمْ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى حَتَّى إنَّهُ يُضَمِّنُ صَاحِبَ السَّفِينَةِ إذَا عَطِبَتْ الْأَمْتِعَةُ الَّتِي تَلِفَتْ فِيهَا.

L20439 A group said: Everyone who takes a fee is liable - and this was narrated from Ali, Abd al-Rahman ibn Yazid, and others besides them.

وَقَالَتْ طَائِفَةٌ: يَضْمَنُ كُلُّ مَنْ أَخَذَ أَجْرًا - وَرُوِيَ ذَلِكَ عَنْ عَلِيٍّ وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ وَغَيْرِهِمَا.

L20440 A school of jurists held: The general hired worker (i.e., the one employed for various tasks) is liable, while the restricted hired worker (i.e., the one employed for a fixed duration) is not. This constitutes the opinion of Abū Yūsuf and Muḥammad ibn al-Ḥasan. It is reported from Ibrāhīm al-Nakhaʻī that the general worker is liable, though no statement exempting the restricted worker is attributed to him.

وَقَالَتْ طَائِفَةٌ: يَضْمَنُ الْأَجِيرُ الْمُشْتَرَكُ - وَهُوَ الْعَامُّ - وَهُوَ الَّذِي اُسْتُؤْجِرَ عَلَى الْأَعْمَالِ، وَلَا يَضْمَنُ الْخَاصُّ، وَهُوَ الَّذِي اُسْتُؤْجِرَ لِمُدَّةٍ مَا - وَهُوَ قَوْلُ أَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ - رُوِيَ عَنْ إبْرَاهِيمَ يَضْمَنُ الْأَجِيرُ الْمُشْتَرَكُ، وَلَمْ يَأْتِ عَنْهُ لَا يَضْمَنُ الْخَاصُّ.

L20441 A group [of scholars] held: The craftsman is liable for what is not evident to him unless he provides clear proof that the item perished independently of his actions, in which case he is not liable. He bears no liability whatsoever for what is apparent unless clear proof is established against him demonstrating that he transgressed—this is the opinion of Mālik ibn Anas.

وَقَالَتْ طَائِفَةٌ: يَضْمَنُ الصَّانِعُ مَا غَابَ عَلَيْهِ إلَّا أَنْ يُقِيمَ بَيِّنَةً أَنَّهُ تَلِفَ بِعَيْنِهِ مِنْ غَيْرِ فِعْلِهِ فَلَا يَضْمَنُ، وَلَا يَضْمَنُ مَا ظَهَرَ أَصْلًا، إلَّا أَنْ تَقُومَ عَلَيْهِ بَيِّنَةٌ بِأَنَّهُ تَعَدَّى - وَهُوَ قَوْلُ مَالِكِ بْنِ أَنَسٍ.

L20442 Abu Muhammad said: As for Mālik's opinion, we know of no valid proof for it whatsoever—neither from the Qur'an, nor the Sunnah, nor a weak narration, nor the statement of anyone before him, nor analogy. Since it lacks these [sources], it has no valid basis. We found no specious argument

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مَالِكٍ فَمَا نَعْلَمُ لَهُ حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ قَبْلَهُ وَلَا مِنْ قِيَاسٍ، وَمَا كَانَ هَكَذَا فَلَا وَجْهَ لَهُ وَلَمْ نَجِدْ لَهُمْ

for their position except their claim: “We only did this as a precaution for the people.” We responded: “Then impose liability on custodians of deposits as a precaution for the people, for it is authentically established that ‘Umar ibn al-Khaṭṭāb held Anas ibn Mālk liable for them.”

L20443 Moreover, whoever considers those commissioning work more responsible for taking precaution toward them than the craftsmen—all being Muslims—then if someone were to reverse their argument against them, there would be no difference between him and them. This parallels one who states: “The more secure basis is the apparent unless evidence establishes that the item perished without his action or transgression, whereas the non-apparent matter is not more secure unless testimony of just witnesses proves it perished due to his transgression.” Indeed, this opinion is perhaps more cautious in legal reasoning. Similarly, this is the opinion of Abū Yūsuf and Muḥammad ibn al-Ḥasan.

L20444 And this, as you can see, is a matter wherein they opposed Umar and Ali ibn Abi Talib, while no one among the Companions—may Allah be pleased with them—is known to have opposed them both. Yet they revere such opposition when it aligns with their opinions, though they are—by their own (unjust) claim—proponents of analogy.

L20445–20447 Some proponents of analogical reasoning (qiyās) have stated: “We have found that what people pay to one another from their wealth divides into three categories—with no fourth—:” As for the category where the benefit is solely for the giver, not the recipient, we have agreed there is no financial liability in part of it, such as the deposit. Thus, it becomes obligatory to restore all matters outside of it to the deposit’s ruling.

L20448 A category from which both the giver and receiver benefit—we have agreed that there is no liability in some of its forms, such as the *qirad* (commenda partnership). Thus, anything outside [this category] must be restored to its original state. This includes pledged assets and what is entrusted to workers [for labor].

L20449 A third category is that which solely benefits the recipient. We have agreed

شُبْهَةً إِلَّا أَنَّهُمْ قَالُوا: إِنَّمَا فَعَلْنَا ذَلِكَ احْتِيَاطًا لِلنَّاسِ. فَقُلْنَا لَهُمْ: فَضَمِّنُوا الْوَدَائِعَ احْتِيَاطًا لِلنَّاسِ، فَقَدْ صَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ ضَمَّنَهَا أَنَسَ بْنَ مَالِكٍ.

وَأَيْضًا فَمَنْ جَعَلَ الْمُسْتَصْنِعِينَ أَوْلَى بِالِاحْتِيَاطِ لَهُمْ مِنَ الصُّنَّاعِ وَالْكُلُّ مُسْلِمُونَ، وَلَوْ عَكَسَ عَاكِسٌ عَلَيْهِمْ قَوْلَهُمْ لَمَا كَانَ بَيْنَهُ وَبَيْنَهُمْ فَضْلٌ كَمَنْ قَالَ: بَلْ أَضْمَنُ مَا ظَهَرَ إِلَّا أَنْ تَأْتِيَ بَيِّنَةٌ عَلَى أَنَّ الشَّيْءَ تَلِفَ مِنْ غَيْرِ فِعْلِهِ وَتَعَدِّيهِ، وَلَا أَضْمَنُ مَا بَطَنَ إِلَّا أَنْ تَقُومَ بَيِّنَةُ عَدْلٍ بِأَنَّهُ هَلَكَ مِنْ تَعَدِّيهِ، بَلْ لَعَلَّ هَذَا الْقَوْلَ أَحْوَطُ فِي النَّظَرِ. وَكَذَلِكَ قَوْلُ أَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ.

وَهَذَا كَمَا تَرَى خَالَفُوا فِيهِ عُمَرَ وَعَلِيَّ بْنَ أَبِي طَالِبٍ، وَلَا يُعْرَفُ لَهُمَا مِنَ الصَّحَابَةِ مُخَالِفٌ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إِذَا وَافَقَ آرَاءَهُمْ وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ.

وَقَدْ قَالَ بَعْضُهُمْ مِنْ أَصْحَابِ الْقِيَاسِ: وَجَدْنَا مَا يَدْفَعُهُ النَّاسُ بَعْضُهُمْ إِلَى بَعْضٍ مِنْ أَمْوَالِهِمْ يَنْقَسِمُ أَقْسَامًا ثَلَاثَةً لَا رَابِعَ لَهَا -: فَقِسْمٌ يَنْتَفِعُ بِهِ الدَّافِعُ وَحْدَهُ لَا الْمَدْفُوعُ إِلَيْهِ فَقَدْ اتَّفَقْنَا أَنَّهُ لَا ضَمَانَ فِي بَعْضِهِ كَالْوَدِيعَةِ، فَوَجَبَ رَدُّ كُلِّ مَا كَانَ مِنْ غَيْرِهَا إِلَيْهَا.

وَقِسْمٌ يَنْتَفِعُ بِهِ الدَّافِعُ وَالْمَدْفُوعُ إِلَيْهِ - فَقَدْ اتَّفَقْنَا عَلَى أَنَّهُ لَا ضَمَانَ فِي بَعْضِهِ كَالْقِرَاضِ، فَوَجَبَ رَدُّ مَا كَانَ مِنْ غَيْرِهِ إِلَيْهِ وَدَخَلَ فِي ذَلِكَ الرَّهْنُ، وَمَا دُفِعَ إِلَى الصُّنَّاعِ.

in some parts of it—such as a consumable loan (qarḍ)—that it is subject to liability. Therefore, it necessarily follows that the loan for use (ʿāriyyah) must likewise entail liability.

L20450 Abu Muhammad said: If any analogy in the world were valid, it would be this one. But they neither followed the traditions nor recognized analogy—and success is with Allah, the Exalted.

L20451 **A lease contract is not valid unless it entails a guaranteed, specified, and limited obligation as a liability.**

L20452 1326. Issue: A lease contract is not permissible except with either a specified, guaranteed item limited in liability or a distinct, identified asset with known boundaries and measure. This is the opinion of ʿUthmān, may Allah be pleased with him, and others.

L20453 Abu Muhammad said: Malik stated that it is permissible to hire a worker in exchange for his food. They adduced as proof a report from Abu Hurairah: "I was a hired worker for the daughter of Ghazwan in exchange for food for my stomach and the heel straps of my sandals."

L20454 Abū Muḥammad said: This may constitute mutual generosity without a binding contract. As for contracts that are concluded, they must only be based on a known quantity. Food varies: some is soft; some is coarse; and some is moderate. Relish also differs, and people's eating habits vary greatly. Thus, it is indeterminate and impermissible. Success is by Allah, the Most High.

L20455 "The lease" has been completed by the praise of Allah.

وَقِسْمٌ ثَالِثٌ يَنْتَفِعُ بِهِ الْمَدْفُوعُ إلَيْهِ وَحْدَهُ - فَقَدْ اتَّفَقْنَا فِي بَعْضِهِ عَلَى أَنَّهُ مَضْمُونٌ كَالْقَرْضِ، فَوَجَبَ أَنْ تَكُونَ الْعَارِيَّةُ مِثْلَهُ.

قَالَ أَبُو مُحَمَّدٍ: لَوْ صَحَّ قِيَاسٌ فِي الْعَالَمِ لَكَانَ هَذَا، وَلَكِنَّهُمْ لَا الْآثَارَ اتَّبَعُوا، وَلَا الْقِيَاسَ عَرَفُوا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا تَجُوزُ الْإِجَارَةُ إلَّا بِمَضْمُونٍ مُسَمًّى مَحْدُودٍ فِي الذِّمَّةِ]

١٣٢٦ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْإِجَارَةُ إلَّا بِمَضْمُونٍ مُسَمًّى مَحْدُودٍ فِي الذِّمَّةِ، أَوْ بِعَيْنٍ مُعَيَّنَةٍ مُتَمَيِّزَةٍ مَعْرُوفَةِ الْحَدِّ وَالْمِقْدَارِ - وَهُوَ قَوْلُ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - وَغَيْرِهِ.

قَالَ أَبُو مُحَمَّدٍ: وَقَالَ مَالِكٌ: يَجُوزُ كِرَاءُ الْأَجِيرِ بِطَعَامِهِ - وَاحْتَجُّوا بِخَبَرٍ عَنْ أَبِي هُرَيْرَةَ: كُنْت أَجِيرًا لِابْنَةِ غَزْوَانَ بِطَعَامِ بَطْنِي، وَعُقْبَةِ رِجْلِي.

قَالَ أَبُو مُحَمَّدٍ: قَدْ يَكُونُ هَذَا تَكَارُمًا مِنْ غَيْرِ عَقْدٍ لَازِمٍ - وَأَمَّا الْعُقُودُ الْمَقْضِيُّ بِهَا فَلَا تَكُونُ إلَّا بِمَعْلُومٍ، وَالطَّعَامُ يَخْتَلِفُ: فَمِنْهُ اللَّيِّنُ، وَمِنْهُ الْخَشِنُ وَمِنْهُ الْمُتَوَسِّطُ - وَيَخْتَلِفُ الْأُدْمُ، وَتَخْتَلِفُ النَّاسُ فِي الْأَكْلِ اخْتِلَافًا مُتَفَاوِتًا فَهُوَ مَجْهُولٌ لَا يَجُوزُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

تَمَّتْ " الْإِجَارَةُ " بِحَمْدِ اللَّهِ.



AL-MUHALLA

كِتَابُ الْجُعْلِ فِي الْآبِقِ وَغَيْرِهِ

The Book of Promised Rewards

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْجُعْلِ فِي الْآبِقِ وَغَيْرِهِ] [مَسْأَلَةٌ لَا يَجُوزُ الْحُكْمُ بِالْجُعْلِ عَلَى أَحَدٍ]

[Book on the Promised Reward Concerning the Runaway Slave and Other Such Cases] [Issue: No legal ruling may be validly based on a promised reward.]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الْجُعْلِ فِي الْآبِقِ وَغَيْرِهِ ١٣٢٧ - مَسْأَلَةٌ: لَا يَجُوزُ الْحُكْمُ بِالْجُعْلِ عَلَى أَحَدٍ، فَمَنْ قَالَ لِآخَرَ: إنْ جِئْتَنِي بِعَبْدِي الْآبِقِ فَلَكَ عَلَيَّ دِينَارٌ، أَوْ قَالَ: إنْ فَعَلْت كَذَا وَكَذَا فَلَكَ عَلَيَّ دِرْهَمٌ، أَوْ مَا أَشْبَهَ هَذَا فَجَاءَهُ بِذَلِكَ - أَوْ هتف وَأَشْهَدَ عَلَى نَفْسِهِ: مَنْ جَاءَنِي بِكَذَا فَلَهُ كَذَا، فَجَاءَهُ بِهِ لَمْ يُقْضَ عَلَيْهِ بِشَيْءٍ، وَيُسْتَحَبُّ لَوْ وَفَّى بِوَعْدِهِ.

In the name of Allah, the Most Gracious, the Most Merciful. The Book of Juʿlah (Stipulated Reward) for the Fugitive Slave and Other Matters (1327). Issue: It is impermissible to legally enforce a stipulated reward upon anyone. If a person says to another, “If you bring me my fugitive slave, you are entitled to a dinar,” or says, “If you do such-and-such, you are entitled to a dirham,” or anything resembling this, and the other fulfills the condition—or if one publicly proclaims and binds himself: “Whoever brings me such-and-such shall receive such-and-such,” and someone fulfills it—no legal liability is incurred by the promisor. However, it is recommended that he honor his pledge.

وَكَذَلِكَ مَنْ جَاءَهُ بِآبِقٍ، فَلَا يُقْضَى لَهُ بِشَيْءٍ سَوَاءٌ عَرَفَ بِالْمَجِيءِ بِالْإِبَاقِ أَوْ لَمْ يُعْرَفْ بِذَلِكَ، إلَّا أَنْ يَسْتَأْجِرَهُ عَلَى طَلَبِهِ مُدَّةً مَعْرُوفَةً، أَوْ لِيَأْتِيَهُ بِهِ مِنْ مَكَانٍ مَعْرُوفٍ، فَيَجِبُ لَهُ مَا اسْتَأْجَرَهُ بِهِ.

Similarly, whoever brings a runaway slave to the owner is not entitled to anything—whether the owner knew the runaway slave had been brought or not—unless the owner hires him to search for the runaway for a specified period or to bring him from a known location. In that case, he is entitled to the agreed-upon remuneration.

وَأَوْجَبَ قَوْمٌ الْجُعْلَ وَأَلْزَمُوهُ الْجَاعِلَ - وَاحْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] .

Some scholars deemed the promised reward obligatory and bound the promisor to it, invoking as evidence the command of Allah the Exalted: “Fulfill contracts” [Al-Mā’idah: 1].[1]

وَبِقَوْلِ يُوسُفَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَخَدَمَتُهُ عَنْهُ: {قَالُوا نَفْقِدُ صُوَاعَ الْمَلِكِ وَلِمَنْ جَاءَ بِهِ حِمْلُ بَعِيرٍ وَأَنَا بِهِ زَعِيمٌ} [يوسف: ٧٢] .

And by the saying of Yūsuf (peace be upon him) and his servants from him: “They said, ’We are missing the king’s measuring vessel. For whoever brings it, there is a camel’s load [of grain], and I am its guarantor.’” [Yūsuf 12:72][2]

وَبِحَدِيثِ الَّذِي رَقَى عَلَى قَطِيعٍ مِنْ الْغَنَمِ - وَقَدْ ذَكَرْنَاهُ فِي " الْإِجَارَاتِ " فَأَغْنَى عَنْ إعَادَتِهِ.

And by the hadith of the one who performed a healing incantation over a flock of sheep—which we have already discussed in *Al-Ijarat*—thereby rendering its repetition unnecessary.

وَأَبُو مُحَمَّدٍ: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ:

Abū Muḥammad said: And all of this—there is no proof on their part in it:

[1] **Qur’an references (L20460):** Qur’an 5:1 (Al-Ma’idah).
[2] **Qur’an references (L20461):** Qur’an 12:72 (Yusuf).

As for the words of Allah, the Exalted: {Fulfill the covenants} [Al-Mā'idah: 1], the Messenger of Allah—peace and blessings of Allah be upon him—said: "Indeed, your blood, your wealth, your honor, and your physical integrity are sacred for you."[3]

قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ -: أَمَّا قَوْلُ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] فَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

L20466 And He, the Most High, said: {It is not for a believing man or a believing woman, when Allah and His Messenger have decreed a matter, that they should have any choice in their affair} [Al-Ahzab: 36]. Thus, it is established that no one has the right to enter into a contract concerning their blood, wealth, honor, or physical body, nor to be bound by any ruling in any of these matters, except what the text explicitly obligates by His name or permits by His name. Therefore, it is established that the contracts Allah, the Most High, has commanded to fulfill are only those stipulated by their names, and that every contract beyond these is forbidden to enact.[4]

وَقَالَ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] فَصَحَّ أَنَّهُ لَيْسَ لِأَحَدٍ أَنْ يَعْقِدَ فِي دَمِهِ، وَلَا فِي مَالِهِ، وَلَا فِي عِرْضِهِ، وَلَا فِي بَشَرَتِهِ عَقْدًا، وَلَا أَنْ يَلْتَزِمَ فِي شَيْءٍ مِنْ ذَلِكَ حُكْمًا، إِلَّا مَا جَاءَ النَّصُّ بِإِيجَابِهِ بِاسْمِهِ، أَوْ بِإِبَاحَتِهِ بِاسْمِهِ. فَصَحَّ أَنَّ الْعُقُودَ الَّتِي أَمَرَ اللَّهُ تَعَالَى بِالْوَفَاءِ بِهَا إِنَّمَا هِيَ الْعُقُودُ الْمَنْصُوصُ عَلَيْهَا بِأَسْمَائِهَا، وَأَنَّ كُلَّ مَا عَدَاهَا فَحَرَامٌ عَقْدُهُ.

L20467 Moreover, Allah the Exalted says: "And never say of anything, 'I will surely do this tomorrow,' without [adding], 'If Allah wills'" [Al-Kahf:23-24]. Thus, it is established that whoever binds himself to do something without saying "If Allah wills" has opposed the command of Allah the Exalted. When one opposes the command of Allah the Exalted, no contract made in defiance of his Lord, the Mighty and Majestic's command is binding upon him. Rather, it constitutes an act of disobedience for which he is obliged to seek forgiveness from Allah the Exalted.[5]

وَأَيْضًا: فَإِنَّ اللَّهَ عَزَّ وَجَلَّ يَقُولُ: {وَلا تَقُولَنَّ لِشَيْءٍ إِنِّي فَاعِلٌ ذَلِكَ غَدًا} [الكهف: ٢٣] {إِلا أَنْ يَشَاءَ اللَّهُ} [الكهف: ٢٤] . فَصَحَّ أَنَّ مَنْ الْتَزَمَ أَنْ يَفْعَلَ شَيْئًا وَلَمْ يَقُلْ: إِنْ شَاءَ اللَّهُ، فَقَدْ خَالَفَ أَمْرَ اللَّهِ تَعَالَى، وَإِذَا خَالَفَ أَمْرَ اللَّهِ تَعَالَى لَمْ يَلْزَمْهُ عَقْدٌ خَالَفَ فِيهِ أَمْرَ رَبِّهِ عَزَّ وَجَلَّ، بَلْ هُوَ مَعْصِيَةٌ يَلْزَمُهُ أَنْ يَسْتَغْفِرَ اللَّهَ عَزَّ وَجَلَّ مِنْهُ.

L20468 The Messenger of Allah (peace be upon him) said: "Whoever does a deed not aligned with our command, it is rejected." If one says, "Unless Allah wills," we know with certain necessary knowledge that since they established that agreement through Allah Almighty's will yet neither enacted it nor fulfilled it, then Allah the Exalted did not will it. For had Allah willed it, He would have enacted and perfected it. Thus, one does not depart from their obliga-

قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» فَإِنْ قَالَ: إِلَّا أَنْ يَشَاءَ اللَّهُ، فَقَدْ عَلِمْنَا يَقِينًا عِلْمَ ضَرُورَةٍ إِذْ قَدْ عَقَدَ ذَلِكَ الْعَقْدَ بِمَشِيئَةِ اللَّهِ عَزَّ وَجَلَّ ثُمَّ لَمْ يُنَفِّذْهُ وَلَا فَعَلَهُ، فَإِنَّ اللَّهَ تَعَالَى لَمْ يَشَأْهُ، إِذْ لَوْ شَاءَهُ اللَّهُ لَأَنْفَذَهُ وَأَتَمَّهُ، فَلَمْ يَخْرُجْ عَمَّا الْتَزَمَ مِنْ كَوْنِ ذَلِكَ الْعَقْدِ إِنْ شَاءَهُ اللَّهُ تَعَالَى أَنْفَذَهُ وَأَتَمَّهُ وَإِلَّا فَلَا.

[3] **Qur'an references (L20463):** Qur'an 5:1 (Al-Ma'idah).
[4] **Qur'an references (L20466):** Qur'an 33:36 (Al-Ahzab).
[5] **Qur'an references (L20467):** Qur'an 18:23 (Al-Kahf); Qur'an 18:24 (Al-Kahf).

tion: that if Allah the Exalted wills the agreement, He enacts and perfects it; otherwise, not.[6]

وَأَيْضًا: فَإِنَّ الْمُخَالِفِينَ لَنَا فِي هَذَا لَا يَرَوْنَ جَمِيعَ الْعُقُودِ لَازِمَةً، وَلَا يَأْخُذُونَ بِعُمُومِ الْآيَةِ الَّتِي احْتَجُّوا بِهَا، بَلْ يَقُولُونَ فِيمَنْ عَقَدَ عَلَى نَفْسِهِ أَنْ يَصْبُغَ ثَوْبَهُ أَصْفَرَ، أَوْ أَنْ يَمْشِيَ إِلَى السُّوقِ، أَوْ نَحْوَ هَذَا: أَنَّهُ لَا يَلْزَمُهُ، فَقَدْ نَقَضُوا احْتِجَاجَهُمْ بِعُمُومِهَا، وَلَزِمَهُمْ أَنْ يَأْتُوا بِالْحَدِّ الْمُفَرِّقِ بَيْنَ مَا يَلْزَمُونَهُ مِنَ الْعُقُودِ وَبَيْنَ مَا لَا يَلْزَمُونَهُ، وَبِالْبُرْهَانِ عَلَى صِحَّةِ ذَلِكَ الْحَدِّ، وَذَلِكَ الْفَرْقُ وَإِلَّا فَقَوْلُهُمْ مَرْدُودٌ، لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ.

L20468

Moreover, those who oppose us in this matter do not consider all contracts to be binding, nor do they adhere to the general application of the Verse they themselves cited as evidence. Instead, they assert that if someone binds himself to dye his garment yellow, to walk to the market, or similar actions, it is not binding upon him. By this, they have nullified their own argument based on the Verse's generality, and they must establish the distinguishing criterion that differentiates between the contracts they deem binding and those they do not, along with evidence confirming the validity of this criterion and distinction. Otherwise, their claim is rejected, for it is an assertion without evidence, and anything of this sort is invalid.

قَالَ اللَّهُ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] .

L20470

Allah, the Most High, said: "Say, 'Bring your proof, if you are truthful.'" [Al-Baqarah: 111][7]

وَالْعَجَبُ: أَنَّ الْمُخَالِفِينَ لَنَا يَقُولُونَ: إِنْ وَكَّدَ كُلَّ عَقْدٍ عَقَدَهُ بِيَمِينٍ لَمْ يَلْزَمْهُ الْوَفَاءُ بِهِ، وَإِنَّمَا فِيهِ الْكَفَّارَةُ إِنْ لَمْ يَفِ بِهِ فَقَطْ، ثُمَّ يُلْزِمُونَهُ إِيَّاهُ إِذَا لَمْ يُؤَكِّدْهُ، فَتَرَاهُمْ كُلَّمَا أَكَّدَ الْعَاقِدُ عَقْدَهُ انْحَلَّ عَنْهُ، وَإِذَا يُؤَكِّدُهُ لَزِمَهُ، وَهَذَا مَعْكُوسٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L20471–20472

It is astonishing that those who oppose us assert: "If one confirms every contract he makes with an oath, he is not obligated to fulfill it - merely requiring expiation should he fail to fulfill it. Yet they obligate him to fulfill it if he does not confirm it with an oath." Thus you observe that whenever a contracting party confirms his contract with an oath, it becomes dissolved for him, but if he does not confirm it, he becomes bound by it. This is entirely inverted - and success comes solely from Allah, the Exalted.

وَأَمَّا قَوْلُ يُوسُفَ - عَلَيْهِ السَّلَامُ - فَلَا يَلْزَمُ لِوُجُوهٍ -:

L20473

As for the statement of Joseph (peace be upon him), it is not binding due to several reasons—

أَحَدُهَا: أَنَّ شَرِيعَةَ مَنْ قَبْلَنَا مِنَ الْأَنْبِيَاءِ - عَلَيْهِمُ السَّلَامُ - لَا تَلْزَمُنَا، قَالَ تَعَالَى: {لِكُلٍّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا} [المائدة: ٤٨] .

L20474

One of them is that the sharia of the prophets before us (peace be upon them) is not binding upon us. Allah, the Exalted, said: "For each [community] We have ordained a law and a clear path" [al-Mā'idah 5:48].[8]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فُضِّلْتُ عَلَى الْأَنْبِيَاءِ بِسِتٍّ، فَذَكَرَ - عَلَيْهِ السَّلَامُ - مِنْهَا: وَأُرْسِلْتُ إِلَى النَّاسِ كَافَّةً» .

L20475

The Messenger of Allah (peace be upon him) said, "I have been favored over

[6] **Hadith references (L20468):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[7] **Qur'an references (L20470):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

[8] **Qur'an references (L20474):** Qur'an 5:48 (Al-Ma'idah).

the prophets with six." Then he (peace be upon him) mentioned among them, "and I have been sent to all people."

L20476 And he (peace be upon him) also said: "I have been granted five favors never granted to anyone before me." Among these, he (peace be upon him) mentioned: "A prophet was sent exclusively to his own people, while I have been sent to all mankind." This was narrated to us through Jabir's chain of transmission, and the preceding report through Abu Hurayrah's chain.[9]

وَقَالَ - عَلَيْهِ السَّلَامُ - أَيْضًا: «أُعْطِيتُ خَمْسًا لَمْ يُعْطَهُنَّ أَحَدٌ قَبْلِي» فَذَكَرَ - عَلَيْهِ السَّلَامُ - مِنْهَا: «وَكَانَ النَّبِيُّ يُبْعَثُ إلَى قَوْمِهِ خَاصَّةً وَبُعِثْتُ إلَى النَّاسِ عَامَّةً» رُوِّينَا هَذَا مِنْ طَرِيقِ جَابِرٍ، وَالَّذِي قَبْلَهُ مِنْ طَرِيقِ أَبِي هُرَيْرَةَ.

L20477 Since this has been established, they were not sent to us. As they were not sent to us, we are not bound by a law we were not commanded to follow. Rather, we are obligated only to believe that they are the messengers of Allah the Exalted, and that what they brought is binding only on those to whom they were sent.

فَإِذْ قَدْ صَحَّ هَذَا فَلَمْ يُبْعَثُوا إلَيْنَا، وَإِذْ لَمْ يُبْعَثُوا إلَيْنَا فَلَا يَلْزَمُنَا شَرْعٌ لَمْ نُؤْمَرْ بِهِ، وَإِنَّمَا يَلْزَمُنَا الْإِيمَانُ بِأَنَّهُمْ رُسُلُ اللَّهِ تَعَالَى، وَأَنَّ مَا أَتَوْا بِهِ لَازِمٌ لِمَنْ بُعِثُوا إلَيْهِ فَقَطْ.

L20478 Moreover, those who cite this verse are the first to contradict it, for they do not obligate anyone who declares, "Whoever brings me such-and-such shall receive a camel's load," to fulfill his pledge. This is because the composition of this load remains undefined: is it pearls, gold, ashes, or dirt? Nor is it specified which of the camels are intended - among them are weak ones incapable of bearing twenty sa's, and strong, sound ones capable of bearing three hundred sa's. None is more flagrantly persistent in falsehood than those who cite something as evidence while being the foremost to violate it toward one who never upheld that foundational principle.

وَأَيْضًا: فَإِنَّ الْمُحْتَجِّينَ بِهَذِهِ الْآيَةِ أَوَّلُ مُخَالِفٍ لَهَا؛ لِأَنَّهُمْ لَا يُلْزِمُونَ مَنْ قَالَ: لِمَنْ جَاءَنِي بِكَذَا حِمْلُ بَعِيرٍ الْوَفَاءَ بِمَا قَالَ لِأَنَّ هَذَا الْحِمْلَ لَا يُدْرَى مِمَّ هُوَ؟ أَمِنْ اللُّؤْلُؤِ، أَوْ مِنْ ذَهَبٍ، أَوْ مِنْ رَمَادٍ، أَوْ مِنْ تُرَابٍ؟ وَلَا أَيُّ الْبُعْرَانِ هُوَ؟ وَمِنْ الْبُعْرَانِ الضَّعِيفُ الَّذِي لَا يَسْتَقِلُّ بِعِشْرِينَ صَاعًا، وَمِنْهُمْ الْقَوِيُّ وَالصَّحِيحُ الَّذِي يَسْتَقِلُّ بِثَلَاثِمِائَةِ صَاعٍ، وَلَا أَشَدَّ مُجَاهِرَةً بِالْبَاطِلِ مِمَّنْ يَحْتَجُّ بِشَيْءٍ هُوَ أَوَّلُ مُخَالِفٍ لَهُ عَلَى مَنْ لَمْ يَلْتَزِمْ قَطُّ ذَلِكَ الْأَصْلَ.

L20479–20481 Moreover, so even if it were present in our Sharia, it would not serve as binding proof against us, because that ruling is not in this verse. The obligation to enforce the judgment accordingly. However, in it [the ruling], this compensation was established solely, and this is not among the matters on which we disagreed with them. Thus, their reliance on both verses is invalidated, and all praise belongs to Allah, the Most High.

وَأَيْضًا: فَحَتَّى لَوْ كَانَ فِي شَرِيعَتِنَا لَمَا كَانَ حُجَّةً عَلَيْنَا؛ لِأَنَّهُ لَيْسَ فِي هَذِهِ الْآيَةِ إلْزَامُ الْقَضَاءِ بِذَلِكَ، وَإِنَّمَا فِيهَا: أَنَّهُ جُعِلَ ذَلِكَ الْجُعْلُ فَقَطْ، وَلَيْسَ هَذَا مِمَّا خَالَفْنَاهُمْ فِيهِ. فَبَطَلَ تَعَلُّقُهُمْ بِالْآيَتَيْنِ جَمِيعًا وَلِلَّهِ تَعَالَى الْحَمْدُ.

L20482 As for the Prophet's statement—may Allah bless him and grant him peace—in the hadith concerning the practitioner of *ruqyah*, it is authentic. However,

وَأَمَّا قَوْلُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثِ الرَّاقِي فَصَحِيحٌ، إلَّا أَنَّهُ لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّهُ لَيْسَ فِيهِ إلَّا إبَاحَةُ أَخْذِ مَا أَعْطَى الْجَاعِلَ عَلَى الرُّقْيَةِ فَقَطْ، وَهَكَذَا نَقُولُ، وَلَيْسَ

[9] **Hadith references (L20476):** Sahih al-Bukhari 335; Mishkat al-Masabih 5747.

فِيهِ الْقَضَاءُ عَلَى الْجَاعِلِ بِمَا جَعَلَ إنْ أَبَى أَنْ يُعْطِيَهُ - فَسَقَطَ كُلُّ مَا احْتَجُّوا بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

it contains no proof for their position, for it only permits accepting what the promisor offers in exchange for the *ruqyah*. This is our view as well. It does not entail a judicial obligation requiring the promisor to fulfill his pledge if he willfully refuses to give it. Thus, all the arguments they advanced are invalidated. And success is from Allah, the Most High.

فَإِنْ قِيلَ: إنَّهُ وَعْدٌ. قُلْنَا: قَدْ تَكَلَّمْنَا فِي الْوَعْدِ وَالْإِخْلَافِ فِي آخِرِ " كِتَابِ النُّذُورِ " بِمَا فِيهِ كِفَايَةٌ وَكَلَامُنَا هَهُنَا فِيهِ بَيَانُ أَنَّهُ لَيْسَ كُلُّ وَعْدٍ يَجِبُ الْوَفَاءُ بِهِ، وَإِنَّمَا يَجِبُ الْوَفَاءُ بِالْوَعْدِ بِالْوَاجِبِ الَّذِي افْتَرَضَهُ اللَّهُ تَعَالَى فَقَطْ، وَلَا يُلْزِمُ أَحَدًا مَا الْتَزَمَهُ، لَكِنْ مَا أَلْزَمَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ الَّذِي يَلْزَمُ - سَوَاءٌ الْتَزَمَهُ الْمَرْءُ أَوْ لَمْ يَلْتَزِمْهُ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

L20483 If it is said: "It is a promise," we say: We have already discussed promises and their violation in the conclusion of the "Book of Vows" with sufficient detail. Our discourse here clarifies that not every promise requires obligatory fulfillment. Rather, fulfillment is only obligatory for promises involving duties Allah the Exalted has ordained. No one is bound by self-assumed commitments except what Allah the Exalted has made binding through the tongue of His Prophet—peace and blessings be upon him—regardless of whether a person has committed to it or not. In Allah the Exalted we seek strength.

وَمِنْ الْعَجَائِبِ أَنَّ الْمُلْزِمِينَ الْوَفَاءَ بِالْجُعْلِ يَقُولُونَ: إنَّهُ لَا يَلْزَمُ الْمَجْعُولُ لَهُ أَنْ يَفْعَلَ مَا جُعِلَ لَهُ فِيهِ ذَلِكَ الْجُعْلُ، وَهُمْ بِزَعْمِهِمْ أَصْحَابُ أُصُولٍ يَرُدُّونَ إلَيْهَا فُرُوعَهُمْ فَفِي أَيِّ الْأُصُولِ وَجَدُوا عَقْدًا مُتَّفَقًا عَلَيْهِ، أَوْ مَنْصُوصًا عَلَيْهِ بَيْنَ اثْنَيْنِ يَلْزَمُ أَحَدُهُمَا وَلَا يَلْزَمُ الْآخَرُ.

L20484 Among the astonishing contradictions is that those who deem the fulfillment of the unilateral reward (ju'l) obligatory assert that the beneficiary is not bound to perform the act for which the reward was stipulated—while they claim to uphold foundational principles to which they subordinate their derivative rulings. Upon which juristic principle do they base a mutually agreed contract or textually stipulated agreement between two parties wherein one is bound while the other remains unbound?

وَقَالَ مَالِكٌ: مَا جَاءَ بِالْآبِقِ فَإِنْ كَانَ مِمَّنْ يُعْرَفُ بِطَلَبِ الْإِبَاقِ فَإِنَّهُ يُجْعَلُ لَهُ عَلَى قَدْرِ قُرْبِ الْمَوْضِعِ وَبُعْدِهِ، فَإِنْ لَمْ يَكُنْ ذَلِكَ شَأْنُهُ وَلَا عَمَلُهُ، فَلَا جُعْلَ لَهُ، لَكِنْ يُعْطَى مَا اُتُّفِقَ عَلَيْهِ فَقَطْ.

L20485 Malik said: Regarding one who brings back the runaway slave, if he is among those known for pursuing runaway slaves, he is entitled to a reward proportionate to the proximity or distance of the location. If this is not his customary role or occupation, there is no stipulated reward for him; he is only given what is mutually agreed upon.

وَقَالَ أَبُو حَنِيفَةَ: لَا يَجِبُ الْجُعْلُ فِي شَيْءٍ إلَّا فِي رَدِّ الْآبِقِ فَقَطْ - الْعَبْدُ وَالْأَمَةُ سَوَاءٌ - فَمَنْ رَدَّ آبِقًا، أَوْ آبِقَةً مِنْ مَسِيرَةِ ثَلَاثِ لَيَالٍ فَصَاعِدًا فَلَهُ عَلَى كُلِّ رَأْسٍ أَرْبَعُونَ دِرْهَمًا، فَإِنْ رَدَّهُمَا مَنْ أَقَلَّ مِنْ ثَلَاثٍ رُضِخَ لَهُ، وَلَا يَبْلُغُ بِذَلِكَ أَرْبَعِينَ دِرْهَمًا، فَإِنْ

L20486 Abu Hanifa said: Stipulated compensation is only obligatory for the return of a runaway slave—male and female slaves are equivalent in this ruling. Whoever returns a runaway male or female slave from a distance of three nights' journey or more is entitled to forty dirhams per individual. If someone returns them from less than three nights' journey, a trivial sum is granted, and by this compensation it must not amount to forty dirhams. If someone brings one of them from three nights' journey or more, and their value

equals forty dirhams or falls short by even one dirham, the compensation is reduced accordingly and does not attain forty dirhams.

جَاءَ بِأَحَدِهِمَا مِنْ مَسِيرَةِ ثَلَاثِ لَيَالٍ فَصَاعِدًا، وَهُوَ يُسَاوِي أَرْبَعِينَ دِرْهَمًا فَأَقَلَّ نَقْصٍ مِنْ قِيمَتِهِ دِرْهَمٌ وَاحِدٌ فَقَطْ.

L20487 Then Abū Yūsuf and Muḥammad ibn al-Ḥasan recanted this opinion. Muḥammad said: "Its value is reduced by ten dirhams." Abū Yūsuf said: "He receives forty dirhams even if the item was not worth more than a single dirham."

ثُمَّ رَجَعَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ عَنْ هَذَا الْقَوْلِ، فَقَالَ مُحَمَّدٌ: يَنْقُصُ مِنْ قِيمَتِهِ عَشَرَةُ دَرَاهِمَ، قَالَ أَبُو يُوسُفَ: لَهُ أَرْبَعُونَ دِرْهَمًا وَلَوْ لَمْ يُسَاوِ إِلَّا دِرْهَمًا وَاحِدًا.

L20488–20489 Abu Muhammad said: As for Mālik's statement, it is an error with absolutely no evidence supporting its validity whatsoever, for it distinguishes between matters that have no valid distinction without proof—neither from the Quran, nor the Sunnah, nor a weak narration, nor the statement of a Companion, nor qiyās, nor any opinion with a valid basis. We do not know of this view being reported from anyone before him.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مَالِكٍ فَخَطَأٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ أَصْلًا؛ لِأَنَّهُ تَفْرِيقٌ بَيْنَ مَا لَا فَرْقَ بَيْنَهُ بِلَا بُرْهَانٍ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ، وَمَا نَعْلَمُ هَذَا الْقَوْلَ عَنْ أَحَدٍ قَبْلَهُ.

L20490 It is obligatory that if a builder encounters a leaning wall, repairs it, and reinforces it, he is entitled to a wage. But if he is not a builder and does so, he receives no payment.

وَيَلْزَمُ عَلَيْهِ أَنَّ مَنْ كَانَ بَنَّاءً فَمَرَّ عَلَى حَائِطٍ مَائِلٍ فَأَصْلَحَهُ وَبَنَاهُ: أَنَّ لَهُ أُجْرَةً عَلَيْهِ، فَإِنْ لَمْ يَكُنْ بَنَّاءً وَبَنَاهُ فَلَا أَجْرَ لَهُ.

L20491 Similarly, if someone weaves yarn for another without being instructed to do so, then if he is a weaver, he is entitled to the wage, but if he is not a weaver, he is not entitled to any wage. This matter opens up significantly here: either they overstep in wrongfully controlling people's wealth, or they contradict themselves—they must inevitably adopt one of the two.

وَكَذَلِكَ مَنْ نَسَجَ غَزْلًا لِآخَرَ لَمْ يَأْمُرْهُ بِهِ، فَإِنْ كَانَ نَسَّاجًا فَلَهُ الْأُجْرَةُ، وَإِنْ لَمْ يَكُنْ نَسَّاجًا فَلَا أُجْرَةَ لَهُ - وَالْبَابُ يَتَّسِعُ هَهُنَا جِدًّا، فَإِمَّا أَنْ يَتَزَيَّدُوا مِنَ التَّحَكُّمِ فِي أَمْوَالِ النَّاسِ بِالْبَاطِلِ، وَإِمَّا أَنْ يَتَنَاقَضُوا، لَا بُدَّ مِنْ أَحَدِهِمَا.

L20492 As for the statement of Abū Ḥanīfa and his companions, it represents the utmost degree of invalidity and confusion, for they established a ḥadd punishment not supported by the Qur'ān, the Sunnah, any weak narration, the opinion of a Companion, a Successor, any predecessor before them, analogical reasoning, or a rationally sound opinion.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ وَأَصْحَابِهِ: فَفِي غَايَةِ الْفَسَادِ وَالتَّخْلِيطِ؛ لِأَنَّهُمْ حَدُّوا حَدًّا لَمْ يَأْتِ بِهِ قَطُّ قُرْآنٌ وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ وَلَا تَابِعٍ، وَلَا أَحَدٍ قَبْلَهُمْ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ يُعْقَلُ.

L20493 Then there is within it a contradiction that does not escape one of sound mind. They have ruled: Whoever kills a female slave valued at one hundred thousand dirhams or upwards, or down to five thousand dirhams, is liable for only five thousand dirhams minus five dirhams. And whoever kills a

ثُمَّ فِيهِ مِنَ التَّخَاذُلِ مَا لَا يَخْفَى عَلَى ذِي مُسْكَةِ عَقْلٍ، وَهُمْ قَدْ قَالُوا: مَنْ قَتَلَ جَارِيَةً تُسَاوِي مِائَةَ أَلْفِ دِرْهَمٍ فَصَاعِدًا، أَوْ أَقَلَّ إِلَى خَمْسَةِ آلَافِ دِرْهَمٍ لَمْ يَكُنْ عَلَيْهِ إِلَّا

male slave valued at twenty thousand dirhams or upwards, or down to ten thousand dirhams, is liable for only ten thousand dirhams minus ten dirhams.

خَمْسَةُ آلَافٍ غَيْرَ خَمْسَةِ دَرَاهِمَ - وَمَنْ قَتَلَ عَبْدًا يُسَاوِي عِشْرِينَ أَلْفَ دِرْهَمٍ فَصَاعِدًا، أَوْ أَقَلَّ إِلَى عَشَرَةِ آلَافِ دِرْهَمٍ لَمْ يَكُنْ عَلَيْهِ إِلَّا عَشَرَةُ آلَافِ دِرْهَمٍ غَيْرَ عَشَرَةِ دَرَاهِمَ.

L20494 Then they equalized the stipulated compensation for recovering a runaway slave between the woman and the man, and Abū Ḥanīfa deducted one dirham from its value if it did not amount to forty dirhams. Why did he not deduct ten dirhams from the male's price and five dirhams from the female's price, as he did regarding blood money? Or why did he not deduct a dirham there as he deducted here? I wish I knew from where they derived this dirham! Perhaps it is a hypothetical analogy as well, like the threshold he defined for impurities. Why did he not set it at half a dirham, a quarter dirham, or a fals? Then Abū Yūsuf's ruling to impose forty dirhams for the stipulated compensation even if its value was merely one dirham – By Allah! Oh Muslims! Who is more misguided in method, farther from truth, or less mindful of accountability than one who opposes the Messenger of Allah's ruling (peace be upon him) regarding the misrepresented livestock whose udder was tied – requiring its return along with a ṣāʿ of dates due to their folly and putrid opinions? They said: "What if he purchased it with half a ṣāʿ of dates?" Then he imposes such a ruling for the stipulated compensation wherein no Sunnah has ever been established.

ثُمَّ سَوَّوْا فِي جُعْلِ الْآبِقِ بَيْنَ الْمَرْأَةِ وَالرَّجُلِ، وَأَسْقَطَ أَبُو حَنِيفَةَ دِرْهَمًا مِنْ قِيمَتِهِ إِنْ لَمْ يُسَاوِ أَرْبَعِينَ دِرْهَمًا، فَهَلَّا أَسْقَطَ مِنْ ثَمَنِ الذَّكَرِ عَشَرَةَ دَرَاهِمَ وَمِنْ ثَمَنِ الْأَمَةِ خَمْسَةَ دَرَاهِمَ كَمَا فَعَلَ فِي الْقَتْلِ؟ أَوْ هَلَّا أَسْقَطَ هُنَالِكَ دِرْهَمًا كَمَا أَسْقَطَ هُنَا؟ وَلَيْتَ شِعْرِي مِنْ أَيْنَ قَصَدُوا إِلَى الدِّرْهَمِ؟ وَلَعَلَّهُ بَغْلِيٌّ أَيْضًا كَالَّذِي حَدَّ بِهِ النَّجَاسَاتِ، وَهَلَّا حَدَّ بِنِصْفِ دِرْهَمٍ أَوْ بِرُبُعِ دِرْهَمٍ أَوْ بِفَلْسٍ؟ ثُمَّ إِيجَابُ أَبِي يُوسُفَ أَرْبَعِينَ دِرْهَمًا فِي جُعْلِهِ وَإِنْ لَمْ يُسَاوِ إِلَّا دِرْهَمًا فَيَا لِلَّهِ وَيَا لِلْمُسْلِمِينَ مَنْ أَضَلُّ طَرِيقَةً، أَوْ أَبْعَدُ عَنْ الْحَقِيقَةِ، أَوْ أَقَلُّ مُرَاقَبَةً مِمَّنْ يُعَارِضُ حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمُصَرَّاةِ فِي أَنْ تُرَدَّ وَصَاعِ تَمْرٍ لِحَمَاقَتِهِمْ وَآرَائِهِمْ الْمُنْتِنَةِ فَقَالُوا: أَرَأَيْت إِنْ كَانَ اشْتَرَاهَا بِنِصْفِ صَاعِ تَمْرٍ؟ ثُمَّ يُوجِبُ مِثْلَ هَذَا فِي الْجُعْلِ الَّذِي لَمْ يَصِحَّ فِيهِ سُنَّةٌ قَطُّ.

L20495–20496 Why did they not exercise wisdom in their folly here? They ruled concerning the musarraah (an animal with tied udder): he must return it along with compensation equivalent to its value calculated from a sa' of dates if the quantity was less than a sa' (1 sa' = 4 mudds), except in cases of two dates, half a mudd, or similar quantities.

وَهَلَّا إِذْ حَمَّقُوا هَهُنَا؟ قَالُوا فِي الْمُصَرَّاةِ: يَرُدُّهَا وَقِيمَتَهَا مِنْ صَاعِ تَمْرٍ إِنْ كَانَتْ أَقَلَّ مِنْ صَاعٍ إِلَّا تَمْرَتَيْنِ، أَوْ إِلَّا نِصْفَ مُدٍّ أَوْ نَحْوَ ذَلِكَ.

L20497 Then they pretended to have followed in this matter a mursal narration and reports from the Companions—may Allah be pleased with them—but they lied in all of it. Rather, they contradicted the mursal narration itself and contradicted every report transmitted on this issue from a Companion or a Tābiʿī, as we will mention, if Allah, the Most High, wills.

ثُمَّ مَوَّهُوا بِأَنَّهُمْ اتَّبَعُوا فِي ذَلِكَ أَثَرًا مُرْسَلًا، وَرِوَايَاتٍ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَكَذَبُوا فِي ذَلِكَ كُلِّهِ، بَلْ خَالَفُوا الْأَثَرَ الْمُرْسَلَ فِي ذَلِكَ، وَخَالَفُوا كُلَّ رِوَايَةٍ رُوِيَتْ فِي ذَلِكَ عَنْ صَاحِبٍ أَوْ تَابِعٍ عَلَى مَا نَذْكُرُ إِنْ شَاءَ اللَّهُ تَعَالَى.

L20498 The most astonishing thing is their claim that Consensus has been established regarding that matter. If it were indeed Consensus, they have contradicted it - and whoever contradicts Consensus in their view has disbelieved: {So they will confess their sin, then away with the dwellers of the Blazing Fire!} [Al-Mulk: 11]. And if it is not Consensus, they have lied against the entire Ummah and against themselves: {See how they have lied against themselves} [Al-An'am: 24].[10]

L20499 It was narrated to us through the chain of Ibn Abī Shaybah: Ḥafṣ—that is, Ibn Ghiyāth—narrated from Ibn Jurayj, from ʿAṭāʾ or Ibn Abī Mulaykah, along with ʿAmr ibn Dīnār. Both said collectively: "We have continually heard that the Prophet—may Allah's peace and blessings be upon him—ruled concerning a runaway slave discovered outside the sanctuary: a dinar or ten dirhams."

وَأَعْجَبُ شَيْءٍ دَعْوَاهُمْ أَنَّ الْإِجْمَاعَ قَدْ صَحَّ فِي ذَلِكَ، فَإِنْ كَانَ إِجْمَاعًا فَقَدْ خَالَفُوهُ، وَمَنْ خَالَفَ الْإِجْمَاعَ عِنْدَهُمْ كَفَرَ {فَاعْتَرَفُوا بِذَنْبِهِمْ فَسُحْقًا لِأَصْحَابِ السَّعِيرِ} [الملك: ١١] وَإِنْ لَمْ يَكُنْ إِجْمَاعًا فَقَدْ كَذَبُوا عَلَى الْأُمَّةِ كُلِّهَا، وَعَلَى أَنْفُسِهِمْ {انْظُرْ كَيْفَ كَذَبُوا عَلَى أَنْفُسِهِمْ} [الأنعام: ٢٤] .

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ - هُوَ ابْنُ غِيَاثٍ - عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ - أَوْ ابْنِ أَبِي مُلَيْكَةَ، وَعَمْرِو بْنِ دِينَارٍ قَالَا جَمِيعًا: مَا زِلْنَا نَسْمَعُ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِي الْعَبْدِ الْآبِقِ يُوجَدُ خَارِجًا مِنَ الْحَرَمِ دِينَارًا أَوْ عَشَرَةَ دَرَاهِمَ» .

[10] **Qur'an references (L20498):** Qur'an 67:11 (Al-Mulk); Qur'an 6:24 (Al-An'am).

L20500 And via the chain of Waki‘, who narrated from Ibn Jurayj, from Ibn Abi Mulaykah and Amr ibn Dinar, they both said together: “The Messenger of Allah (peace be upon him) ordained a dinar for the fugitive slave when he is brought outside the sanctuary.”

وَمِنْ طَرِيقِ وَكِيعٍ نا ابْنُ جُرَيْجٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ وَعَمْرِو بْنِ دِينَارٍ قَالَا جَمِيعًا: «جَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْآبِقِ إِذَا جِيءَ بِهِ خَارِجَ الْحَرَمِ دِينَارًا» .

L20501 And through the chain of ʿAbd al-Razzāq, who narrated to us from Maʿmar, from ʿAmr ibn Dīnār, who said: “The Prophet—peace be upon him—ruled that a runaway found in the Sacred Precinct must pay ten dirhams.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ «قَضَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْآبِقِ يُوجَدُ فِي الْحَرَمِ عَشَرَةَ دَرَاهِمَ» .

L20502 This contradicts the position of the two groups despite their claim that the mursal report is equivalent to the musnad, for there is no mursal more authentic than this. This is because ʿAmr, ʿAṭāʾ, and Ibn Abī Mulaykah are trustworthy imams and luminaries. All of them encountered the Companions: ʿAṭāʾ met ʿĀʾishah, the Mother of the Believers, accompanied her and those beneath her in status. Ibn Abī Mulaykah encountered Ibn ʿAbbās, Ibn ʿUmar, Asmāʾ bint Abī Bakr, and Ibn al-Zubayr, heard from them, and sat with them.

وَهَذَا خِلَافُ قَوْلِ الطَّائِفَتَيْنِ مَعَ قَوْلِهِمَا أَنَّ الْمُرْسَلَ كَالْمُسْنَدِ، وَلَا مُرْسَلَ أَصَحُّ مِنْ هَذَا، لِأَنَّ عَمْرًا، وَعَطَاءً، وَابْنَ أَبِي مُلَيْكَةَ ثِقَاتٌ أَئِمَّةٌ نُجُومٌ، وَكُلُّهُمْ أَدْرَكَ الصَّحَابَةَ، فَعَطَاءٌ أَدْرَكَ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ وَصَحِبَهَا فَمَنْ دُونَهَا وَابْنُ أَبِي مُلَيْكَةَ أَدْرَكَ ابْنَ عَبَّاسٍ، وَابْنَ عُمَرَ، وَأَسْمَاءَ بِنْتَ أَبِي بَكْرٍ، وَابْنَ الزُّبَيْرِ، وَسَمِعَ مِنْهُمْ وَجَالَسَهُمْ.

L20503 Amr met Jabir and Ibn Abbas and accompanied them both, particularly given the statement of both—it matters not which—that they had persistently heard this.

وَعَمْرٌو أَدْرَكَ جَابِرًا، وَابْنَ عَبَّاسٍ وَصَحِبَهُمَا، لَا سِيَّمَا مَعَ قَوْلِ اثْنَيْنِ مِنْهُمَا - لَا نُبَالِي أَيَّهُمَا كَانَا -: أَنَّهُمَا مَا زَالَا يَسْمَعَانِ ذَلِكَ.

L20504 Thus, in the view of these individuals, opposing all of that became easy by imitating the errors of Abū Ḥanīfah and Mālik. They readily dismissed the established Sunnah by adhering to the narration of a sheikh from Banū Kinānah from ʿUmar: “A sale via clapping (ṣafqah) or an option (khiyār)”—along with all other weak mursal reports—whenever these aligned with the opinions of Abū Ḥanīfah and Mālik. Who is more astray than one whose approach to his religion is this? We seek refuge in Allah from being forsaken.

فَهَانَ عِنْدَ هَؤُلَاءِ مُخَالَفَةُ كُلِّ ذَلِكَ تَقْلِيدًا لِخَطَأِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَسَهُلَ عِنْدَهُمْ فِي رَدِّ السُّنَنِ الثَّابِتَةِ بِتَقْلِيدِ رِوَايَةِ شَيْخٍ مِنْ بَنِي كِنَانَةَ عَنْ عُمَرَ: الْبَيْعُ عَنْ صَفْقَةٍ أَوْ خِيَارٍ - وَسَائِرُ الْمُرْسَلَاتِ الْوَاهِيَةِ إِذَا وَافَقَتْ رَأْيَ أَبِي حَنِيفَةَ، وَمَالِكٍ، فَمَنْ أَضَلُّ مِمَّنْ هَذِهِ طَرِيقَتُهُ فِي دِينِهِ، وَنَعُوذُ بِاللَّهِ مِنْ الْخِذْلَانِ.

L20505–20506 From the narration of Ibn Abi Shaybah: Muhammad ibn Yazid narrated from Ayyub Abi al-ʿAlaʾ, from Qatadah and Abi Hashim, both of whom said: ʿUmar ibn al-Khattab ruled regarding the reward for apprehending a runaway slave - if he is captured outside his province, forty dirhams; but if he is captured within the province, twenty dirhams or ten dirhams.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ يَزِيدَ عَنْ أَيُّوبَ أَبِي الْعَلَاءِ عَنْ قَتَادَةَ وَأَبِي هَاشِمٍ، كِلَاهُمَا قَالَ: إِنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي جُعْلِ الْآبِقِ إِذَا أُصِيبَ فِي غَيْرِ مِصْرِهِ أَرْبَعِينَ دِرْهَمًا، فَإِنْ أُصِيبَ فِي الْمِصْرِ فَعِشْرِينَ دِرْهَمًا، أَوْ عَشَرَةَ دَرَاهِمَ.

L20507 And through the chain of Abdullah ibn Ahmad ibn Hanbal: My father narrated to us from Yazid ibn Harun, from Al-Hajjaj ibn Artah, from Amr ibn Shuʿayb, from Saʿid ibn al-Musayyib, from Umar ibn al-Khattab regarding the prescribed compensation for a runaway [slave] being one dinar or twelve dirhams. All of this contradicts the position of the Malikis and Hanafis.

وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا يَزِيدُ بْنُ هَارُونَ نا الْحَجَّاجُ بْنُ أَرْطَاةَ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُمَرَ بْنِ الْخَطَّابِ فِي جُعْلِ الْآبِقِ دِينَارٌ، أَوْ اثْنَا عَشَرَ دِرْهَمًا - وَهَذَا كُلُّهُ خِلَافُ قَوْلِ الْمَالِكِيِّينَ وَالْحَنَفِيِّينَ.

L20508 Through the transmission of Aḥmad ibn Ḥanbal and Ibn Abī Shaybah, both jointly stated: Reported to us Yazīd ibn Hārūn from al-Ḥajjāj ibn Arṭāʾa from al-Ḥuṣayn ibn ʿAbd al-Raḥmān from al-Shaʿbī from al-Ḥārith al-Aʿwar from ʿAlī ibn Abī Ṭālib, who said concerning the stipulated compensation for a runaway slave: "One dinar or twelve dirhams." Aḥmad added in his narration: "If the slave has left the town." This entire position opposes the view of the Mālikīs and Ḥanafīs.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ، وَابْنِ أَبِي شَيْبَةَ، قَالَا جَمِيعًا: نا يَزِيدُ بْنُ هَارُونَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ الْحُصَيْنِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الشَّعْبِيِّ عَنْ الْحَارِثِ الْأَعْوَرِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ فِي جُعْلِ الْآبِقِ دِينَارٌ، أَوْ اثْنَا عَشَرَ دِرْهَمًا - زَادَ أَحْمَدُ فِي رِوَايَتِهِ: إذَا كَانَ خَارِجًا مِنْ الْمِصْرِ - وَهَذَا كُلُّهُ خِلَافُ قَوْلِ الْمَالِكِيِّينَ وَالْحَنَفِيِّينَ.

L20509 And via the transmission of Ibn Abi Shaybah: narrated by Wakiʿ, narrated by Sufyan al-Thawri from Abu Ishaq, who said: "I was granted a Juʿalah of forty dirhams during Muʿāwiyah's time"—and this contradicts the opinion of the Hanafi and Maliki schools.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ قَالَ: أُعْطِيت الْجُعَلَ فِي زَمَنِ مُعَاوِيَةَ أَرْبَعِينَ دِرْهَمًا - وَهَذَا خِلَافُ قَوْلِ الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ.

L20510 Then, there is nothing in it stating that Muawiya ruled by that, nor that he ruled against Abu Ishaq, nor in what matter he gave him. Its apparent meaning is that he volunteered this action, and it is not known in what matter. Thus, they have no basis for this claim whatsoever—perhaps he gave him a stipulated contractual payment which Ziyad unlawfully obligated him to pay.

ثُمَّ لَيْسَ فِيهِ: أَنَّ مُعَاوِيَةَ قَضَى بِذَلِكَ، وَلَا أَنَّهُ قَضَى بِذَلِكَ عَلَى أَبِي إِسْحَاقَ وَلَا فِي أَيِّ شَيْءٍ أَعْطَاهُ، وَظَاهِرُهُ: أَنَّهُ تَطَوَّعَ بِذَلِكَ، وَلَا يُدْرَى فِي أَيِّ شَيْءٍ، فَلَا مُتَعَلَّقَ لَهُمْ بِهَذَا أَصْلًا - وَلَعَلَّهُ أَعْطَاهُ فِي جُعْلٍ شَرْطِيٍّ وَكَّلَهُ عَلَيْهِ زِيَادٌ ظُلْمًا.

L20511 Through the chain of transmission of Muḥammad ibn ʿAbd al-Salām al-Khushanī: Muḥammad ibn al-Muthannā narrated to us, Abū ʿĀmir al-ʿAqadī narrated to us, from Sufyān al-Thawrī, from Ibn Rabāḥ (ʿAbdullāh ibn Rabāḥ), from Abū ʿAmr al-Shaybānī, who said: I approached ʿAbdullāh ibn Masʿūd regarding a runaway slave (or fugitive). He said: "The wage and the liability." I said: "This is the wage. Then what is the liability?" He replied: "Forty dirhams per runaway slave."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ الْخُشَنِيِّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا أَبُو عَامِرٍ الْعَقَدِيُّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ رَبَاحٍ عَبْدِ اللَّهِ بْنِ رَبَاحٍ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ قَالَ: أَتَيْت عَبْدَ اللَّهِ بْنَ مَسْعُودٍ بِإِبَاقٍ، أَوْ بِآبِقٍ فَقَالَ: الْأَجْرُ وَالْغَنِيمَةُ قُلْت: هَذَا الْأَجْرُ، فَمَا الْغَنِيمَةُ؟ قَالَ: مِنْ كُلِّ رَأْسٍ أَرْبَعُونَ دِرْهَمًا.

L20512 Through the chain of Waki', who reported from Sufyan al-Thawri, from 'Abdullāh ibn Rabāḥ, from Abū 'Amr al-Shaybānī: A man apprehended a

fugitive slave (ābiq) at the source of dates and brought him forth, whereupon Ibn Mas‘ūd imposed forty dirhams upon him.

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ اللَّهِ بْنِ رَبَاحٍ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ: أَنَّ رَجُلًا أَصَابَ آبِقًا بِعَيْنِ التَّمْرِ فَجَاءَ بِهِ فَجَعَلَ فِيهِ ابْنُ مَسْعُودٍ أَرْبَعِينَ دِرْهَمًا.

L20513–20515 Through the chain of Al-Ḥajjāj ibn Al-Minhāl: Abū ‘Awanah reported to us, [and] an unnamed shaykh reported to us from Abū ‘Amr Al-Shaybānī that Ibn Mas‘ūd was asked about the stipulated compensation for a runaway slave. He said: “If he is outside Kufah, then forty dirhams, and if he is within Kufah, then ten dirhams.” This is all that has been narrated on this issue from the Companions—may Allah be pleased with them—and all of it contradicts Abū Ḥanīfah. As for Malik, neither Ibn Mas’ud nor anyone before him set a limit for a three-day journey requiring forty dirhams in provisions; then all of that is invalid.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ نا شَيْخٌ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ أَنَّ ابْنَ مَسْعُودٍ سُئِلَ عَنْ جُعْلِ الْآبِقِ؟ فَقَالَ: إِذَا كَانَ خَارِجًا مِنْ الْكُوفَةِ فَأَرْبَعِينَ، وَإِذَا كَانَ بِالْكُوفَةِ فَعَشَرَةً - هَذَا كُلُّ مَا رُوِيَ فِيهِ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَكُلُّهُ مُخَالِفٌ لِأَبِي حَنِيفَةَ وَمَالِكٌ، وَلَمْ يَحُدَّ ابْنُ مَسْعُودٍ، وَلَا أَحَدٌ قَبْلَهُ مَسِيرَةَ ثَلَاثٍ بِأَرْبَعِينَ دِرْهَمًا، ثُمَّ كُلُّ ذَلِكَ لَا يَصِحُّ.

L20516 As for the narration from ʿUmar, one of the two chains is interrupted, and the other [chain]. As for the narration from ʿAlī, both are transmitted through al-Ḥajjāj ibn Arṭāʾ, and he is rejected. As for the narration from Ibn Masʿūd, it is from an unknown *shaykh*. As for the narration from ʿAbdullāh ibn Rabāḥ al-Qurashī, he is not renowned for reliability.

أَمَّا عَنْ عُمَرَ فَأَحَدُ الطَّرِيقَيْنِ مُنْقَطِعٌ، وَالْأُخْرَى، وَالَّتِي عَنْ عَلِيٍّ، فَكِلَاهُمَا عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ وَهُوَ سَاقِطٌ - وَالَّتِي عَنْ ابْنِ مَسْعُودٍ عَنْ شَيْخٍ لَا يُدْرَى مَنْ هُوَ - وَعَنْ عَبْدِ اللَّهِ بْنِ رَبَاحٍ الْقُرَشِيِّ وَهُوَ غَيْرُ مَشْهُورٍ بِالْعَدَالَةِ.

L20517 As for the Successors: it is authentically reported from Shurayḥ and Ziyād that if a runaway slave is found within the city, the finder’s reward is ten dirhams, and if found outside the city, the reward is forty dirhams. This is also narrated from al-Shaʿbī—and it is the opinion held by Isḥāq ibn Rāhwayh.

وَأَمَّا التَّابِعُونَ -: فَصَحَّ عَنْ شُرَيْحٍ، وَزِيَادٍ: أَنَّ الْآبِقَ إنْ وُجِدَ فِي الْمِصْرِ فَجُعْلُ وَاجِدِهِ عَشَرَةُ دَرَاهِمَ - وَإِنْ وُجِدَ خَارِجَ الْمِصْرِ فَأَرْبَعُونَ دِرْهَمًا. وَرُوِيَ هَذَا أَيْضًا عَنْ الشَّعْبِيِّ - وَبِهِ يَقُولُ إِسْحَاقُ بْنُ رَاهْوَيْهِ

L20518 - And this contradicts the view of Abū Ḥanīfah and Mālik.

- وَهَذَا خِلَافُ قَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ.

L20519 It is authentically reported from Umar ibn Abd al-Aziz—via the chain of Ibn Abi Shaybah, al-Dahhak ibn Makhled, Ibn Jurayj, and Ibn Abi Mulaikah—that he ruled regarding the stipulated compensation for a runaway slave when captured after a journey of three days to be three dinars.

وَصَحَّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا الضَّحَّاكُ بْنُ مَخْلَدٍ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ أَبِي مُلَيْكَةَ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ قَضَى فِي جُعْلِ الْآبِقِ إذْ أُخِذَ عَلَى مَسِيرَةِ ثَلَاثٍ ثَلَاثَةُ دَنَانِيرَ.

L20520 Via the chain of Abd al-Razzaq from Ma’mar: Umar ibn Abd al-Aziz ruled

regarding the runaway slave - for one day, a dinar; for two days, two dinars; for three days, three dinars. If the absence reaches four days or more, the owner is only entitled to four. This ruling is entirely contrary to the opinions of Abu Hanifah and Malik.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَضَى عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي الْآبِقِ فِي يَوْمٍ دِينَارًا، وَفِي يَوْمَيْنِ دِينَارَيْنِ، وَفِي ثَلَاثَةِ أَيَّامٍ ثَلَاثَةَ دَنَانِيرَ، فَمَا زَادَ عَلَى أَرْبَعَةٍ فَلَيْسَ لَهُ إِلَّا أَرْبَعَةٌ - وَهَذَا كُلُّهُ خِلَافُ قَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ.

L20521 From the chain of Ahmad ibn Hanbal, narrated to us Muhammad ibn Salamah from Abu Abd al-Rahim from Zayd ibn Abi Shaybah from Hammad ibn Abi Sulayman from Ibrahim al-Nakha'i, who said: The stipulated reward for a runaway slave had been assigned for him - and it was set at forty dirhams. This is a general ruling, opposing the view of Abu Hanifah and Malik. Yet a contrary opinion to this has been transmitted from Ibrahim al-Nakha'i, and it is consistent with our opinion.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ نا مُحَمَّدُ بْنُ سَلَمَةَ عَنْ أَبِي عَبْدِ الرَّحِيمِ عَنْ زَيْدِ بْنِ أَبِي شَيْبَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: جُعْلُ الْآبِقِ قَدْ كَانَ يُجْعَلُ فِيهِ وَهُوَ الَّذِي يُعْمَلُ فِيهِ أَرْبَعُونَ دِرْهَمًا - فَهَذَا عُمُومٌ، وَخِلَافُ قَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ - وَقَدْ جَاءَ عَنْ إِبْرَاهِيمَ خِلَافُ هَذَا، وَمِثْلُ قَوْلِنَا.

L20522 Ahmad ibn Hanbal said: If it is found within the city, there is nothing; but if it is found outside the city, then forty dirhams.

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: إِنْ وُجِدَ فِي الْمِصْرِ فَلَا شَيْءَ، وَإِنْ وُجِدَ خَارِجَ الْمِصْرِ فَأَرْبَعُونَ دِرْهَمًا.

L20523–20525 Abu Muhammad said: They are three Companions, and no authentic report has ever been established from any of them at all. Moreover, they themselves held differing views. Similarly, they are five Successors who were also in disagreement. Despite this, the Hanafi jurists felt no shame in claiming consensus among the Companions regarding the legal ruling concerning the runaway slave, though no authentic report has ever been established from any of them except three alone, as we mentioned. Yet they contradicted the Companions despite this, and their consensus was not deemed valid among them: their consensus, based on certainty regarding... [text ends abruptly]. The irrigation contract in Khaybar without a fixed term was established by agreement without doubt during the era of the Prophet (peace and blessings be upon him), the era of Abu Bakr, and Umar (may Allah be pleased with them). They paid no heed to opposing more than twice the number of Companions (may Allah be pleased with them). It is authentically reported from them that legal retribution was applied for a slap, a whip strike, wiping over socks and turbans, and other such matters.

قَالَ أَبُو مُحَمَّدٍ: فَهُمْ ثَلَاثَةٌ مِنْ الصَّحَابَةِ لَمْ يَصِحَّ عَنْ أَحَدٍ مِنْهُمْ، وَهُمْ أَيْضًا مُخْتَلِفُونَ، وَهُمْ خَمْسَةٌ مِنْ التَّابِعِينَ مُخْتَلِفُونَ، فَلَمْ يَسْتَحِ الْحَنَفِيُّونَ مِنْ دَعْوَى الْإِجْمَاعِ مِنْ الصَّحَابَةِ عَلَى جُعْلِ الْآبِقِ، وَلَمْ يَصِحَّ عَنْ أَحَدٍ مِنْهُمْ قَطُّ وَلَا جَاءَ إِلَّا عَنْ ثَلَاثَةٍ فَقَطْ كَمَا ذَكَرْنَا، وَقَدْ خَالَفُوهُمْ مَعَ ذَلِكَ، ثُمَّ لَمْ يَكُنْ عِنْدَهُمْ إجْمَاعًا - إجْمَاعُهُمْ بِيَقِينٍ عَلَى الْمُسَاقَاةِ " فِي خَيْبَرَ إلَى غَيْرِ أَجَلٍ، وَقَدْ اتَّفَقُوا بِلَا شَكٍّ، عَلَى ذَلِكَ عَصْرُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَصْرُ أَبِي بَكْرٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا بَالَوْا بِمُخَالَفَةِ أَكْثَرَ مِنْ ضِعْفِ هَذَا الْعَدَدِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: صَحَّ عَنْهُمْ الْقِصَاصُ مِنْ اللَّطْمَةِ، وَمِنْ ضَرْبَةٍ بِالسَّوْطِ، وَالْمَسْحُ عَلَى الْجَوْرَبَيْنِ، وَالْعِمَامَةِ، وَغَيْرُ ذَلِكَ.

L20526 Then, it has been reported to us contrary to all this from some of the

Companions and the followers.

ثُمَّ قَدْ رُوِّينَا خِلَافَ هَذَا كُلِّهِ عَنْ بَعْضِ الصَّحَابَةِ وَالتَّابِعِينَ.

L20527 As narrated through ʿAbd al-Razzāq from al-Ḥasan ibn ʿUmārah from al-Ḥakam ibn ʿUtaybah from ʿAbd al-Raḥmān ibn Abī Laylā from ʿAlī ibn Abī Ṭālib regarding the runaway slave, he said: “Muslims return them to one another.”

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْحَسَنِ بْنِ عُمَارَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ فِي الْإِبَاقِ قَالَ: الْمُسْلِمُونَ يَرُدُّ بَعْضُهُمْ عَلَى بَعْضٍ.

L20528 And through the chain of Ibn Abi Shaybah: Waki‘ narrated to us from Isra’il, from Ibrahim ibn Muhajir, from Ibrahim al-Nakha‘i, who said: “A Muslim must return [the slave] to a Muslim, meaning in the case of a runaway slave.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ إِسْرَائِيلَ عَنْ إِبْرَاهِيمَ بْنِ مُهَاجِرٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: الْمُسْلِمُ يَرُدُّ عَلَى الْمُسْلِمِ -: يَعْنِي فِي الْآبِقِ.

L20529 From the chain of Waki‘, narrated to us by Sufyān from Jābir from al-Ḥakam ibn ‘Utaybah, who said regarding the runaway slave: “A Muslim returns to a Muslim.” This is the opinion of al-Shāfi‘ī, al-Awzā‘ī, al-Layth, al-Ḥasan ibn Ḥayy, and Abū Sulaymān—and one of the two views of Aḥmad ibn Ḥanbal. All of them state: “There is no promised reward for the runaway slave.”

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ عَنْ جَابِرٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ فِي الْآبِقِ: الْمُسْلِمُ يَرُدُّ عَلَى الْمُسْلِمِ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَالْأَوْزَاعِيِّ، وَاللَّيْثِ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي سُلَيْمَانَ - وَأَحَدُ قَوْلَيْ أَحْمَدَ بْنِ حَنْبَلٍ كُلُّهُمْ يَقُولُ: لَا جُعْلَ فِي الْآبِقِ.

L20530 It was narrated to us by Waki‘, who reported from Mis‘ar ibn Kaddām, from ‘Abd al-Karīm, who said: I asked ‘Abdullāh ibn ‘Utbah: “Does the ruling apply to the runaway slave?” He answered: “Yes.” I asked: “What about a free person?” He replied: “No.”

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا مِسْعَرٌ - هُوَ ابْنُ كَدَّامٍ - عَنْ عَبْدِ الْكَرِيمِ قَالَ: قُلْت لِعَبْدِ اللَّهِ بْنِ عُتْبَةَ: أَيُجْتَعَلُ فِي الْآبِقِ؟ قَالَ: نَعَمْ، قُلْت: الْحُرُّ قَالَ: لَا.

L20531 From the chain of Waki‘, from Isra’il, from Jabir, from ʿAbd al-Rahman ibn al-Qasim ibn Muhammad ibn Abi Bakr, who said: If he does not pay him the fee, he must release him in the place where he took him.

وَمِنْ طَرِيقِ وَكِيعٍ نا إِسْرَائِيلُ عَنْ جَابِرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ قَالَ: إنْ لَمْ يُعْطِهِ جُعْلًا فَلْيُرْسِلْهُ فِي الْمَكَانِ الَّذِي أَخَذَهُ.

L20532 Abu Muhammad said: Allah the Exalted said: {Muhammad is the Messenger of Allah, and those with him are firm against the disbelievers and compassionate toward one another} [Al-Fath: 29]. And the Messenger of Allah - peace and blessings be upon him - prohibited the squandering of wealth.[1]

قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ تَعَالَى: {مُحَمَّدٌ رَسُولُ اللَّهِ وَالَّذِينَ مَعَهُ أَشِدَّاءُ عَلَى الْكُفَّارِ رُحَمَاءُ بَيْنَهُمْ} [الفتح: ٢٩] وَنَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ.

L20533 Allah, the Exalted, said: **“And cooperate in righteousness and piety, and do not cooperate in sin and aggression”** [Al-Mā’idah: 2]. He thereby obligated every Muslim to safeguard his brother’s property when he finds it, and it is

وَقَالَ اللَّهُ تَعَالَى: {وتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] فَفَرَضَ عَلَى كُلِّ مُسْلِمٍ حِفْظَ مَالِ أَخِيهِ إذَا وَجَدَهُ، وَلَا يَحِلُّ لَهُ أَخْذُ مَالِهِ بِغَيْرِ

[1] **Qur’an references (L20532):** Qur’an 48:29 (Al-Fath).

impermissible for him to take his property without his willing consent. Thus, nothing is due to one who returns a runaway slave, because he has performed an obligation upon him, like prayer and fasting. And all success is from Allah, the Exalted.[2]

L20534 If he were to give it willingly, it would be praiseworthy; and if the Imam were to stipulate granting it to those who fulfill this act, it would likewise be praiseworthy—and success is by Allah, the Exalted.

L20535 The Book of al-Juʿl has been completed with the praise of Allah [and His assistance].

طِيبِ نَفْسِهِ فَلَا شَيْءَ لِمَنْ أَتَى بِآبِقٍ؛ لِأَنَّهُ فَعَلَ فِعْلًا هُوَ فَرْضٌ عَلَيْهِ، كَالصَّلَاةِ، وَالصِّيَامِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَلَوْ أَعْطَاهُ بِطِيبِ نَفْسِهِ لَكَانَ حَسَنًا، وَلَوْ أَنَّ الْإِمَامَ يُرَتِّبُ لِمَنْ فَعَلَ ذَلِكَ عَطَاهُ لَكَانَ حَسَنًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

تَمَّ " كِتَابُ الْجُعْلِ " بِحَمْدِ اللَّهِ [وَعَوْنِهِ] .

[2] **Qur'an references (L20533):** Qur'an 5:2 (Al-Ma'idah).

AL-MUHALLA

كِتَابُ الْمُزَارَعَةِ وَالْمُغَارَسَةِ

The Book of Sharecropping and Orchard Partnerships

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[Book of Sharecropping and Orchard Partnerships] [Issue: Abundance in Cultivation and Planting]

Issue 1328: Abundant planting and cultivation are virtuous and merit reward, provided this does not distract from jihad - whether occurring in the land of the Arabs, the land whose inhabitants embraced Islam, land under peace treaty, conquered land distributed among its people, or endowed land willingly dedicated for Muslim welfare: It was narrated to us through Bukhārī's chain - Qutaybah ibn Saʿīd narrated from Abū ʿAwānah from Qatādah from Anas ibn Mālik, who said: The Messenger of Allah (peace and blessings be upon him) stated: "No Muslim plants a sapling or sows a crop from which a bird, human, or beast eats, except that it is counted as charity (ṣadaqah) for him."

It was also narrated to us through the chain of Al-Laith that he heard Abū Az-Zubair, who heard Jābir narrate from the Prophet (peace be upon him) with a similar narration. Thus he (peace be upon him) generalized and did not specify.

Malik disliked cultivating crops in the land of the Arabs—which is erroneous and an arbitrary distinction lacking evidence—and some of his followers cited as evidence the narration we transmitted via Al-Bukhari's chain of transmission: Abdullah ibn Yusuf → Abdullah ibn Salim Al-Himsi → Muhammad ibn Ziyad Al-Alhani → Abu Umamah Al-Bahili, who reported seeing a plow and certain implements. Regarding plowing, he said: "I heard the Messenger of Allah—peace be upon him—say: 'This [plowing] does not enter the house of a people unless humiliation enters it.'"

Abū Muḥammad said: All the Anṣār without exception, along with every person to whom the Prophet—may Allāh bless him and grant him peace—assigned land from the conquests of Banū Qurayẓah and those among the Emigrants to whom he allocated land, used to cultivate and plant crops during his lifetime—may Allāh bless him and grant him peace. Similarly, all who embraced Islam from the inhabitants of Bahrain, Oman, Yemen, and

[كِتَابُ الْمُزَارَعَةِ وَالْمُغَارَسَةِ] [مَسْأَلَةٌ الْإِكْثَارُ مِنْ الزَّرْعِ وَالْغَرْسِ]

١٣٢٨ - مَسْأَلَةٌ: الْإِكْثَارُ مِنْ الزَّرْعِ وَالْغَرْسِ حَسَنٌ وَأَجْرٌ، مَا لَمْ يُشْغِلْ ذَلِكَ عَنْ الْجِهَادِ - وَسَوَاءٌ كَانَ كُلُّ ذَلِكَ فِي أَرْضِ الْعَرَبِ، أَوْ الْأَرْضِ الَّتِي أَسْلَمَ أَهْلُهَا عَلَيْهَا، أَوْ أَرْضِ الصُّلْحِ، أَوْ أَرْضِ الْعَنْوَةِ الْمَقْسُومَةِ عَلَى أَهْلِهَا أَوْ الْمَوْقُوفَةِ بِطِيبِ الْأَنْفُسِ لِمَصَالِحِ الْمُسْلِمِينَ -: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا أَبُو عَوَانَةَ عَنْ قَتَادَةَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَا مِنْ مُسْلِمٍ يَغْرِسُ غَرْسًا أَوْ يَزْرَعُ زَرْعًا فَيَأْكُلُ مِنْهُ طَائِرٌ أَوْ إنْسَانٌ أَوْ بَهِيمَةٌ إلَّا كَانَ لَهُ بِهِ صَدَقَةٌ» .

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ اللَّيْثِ أَنَّهُ سَمِعَ أَبَا الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرًا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِهِ - فَعَمَّ - عَلَيْهِ السَّلَامُ - وَلَمْ يَخُصَّ.

وَكَرِهَ مَالِكٌ الزَّرْعَ فِي أَرْضِ الْعَرَبِ - وَهَذَا خَطَأٌ، وَتَفْرِيقٌ بِلَا دَلِيلٍ - وَاحْتَجَّ لِهَذَا بَعْضُ مُقَلِّدِيهِ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا عَبْدُ اللَّهِ بْنُ سَالِمٍ الْحِمْصِيُّ نا مُحَمَّدُ بْنُ زِيَادٍ الْأَلْهَانِيُّ «عَنْ أَبِي أُمَامَةَ الْبَاهِلِيِّ: أَنَّهُ رَأَى سِكَّةً وَشَيْئًا مِنْ آلَةِ الْحَرْثِ فَقَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: لَا يَدْخُلُ هَذَا بَيْتَ قَوْمٍ إلَّا دَخَلَهُ الذُّلُّ» .

قَالَ أَبُو مُحَمَّدٍ: لَمْ تَزَلْ الْأَنْصَارُ كُلُّهُمْ، وَكُلُّ مَنْ قَسَمَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرْضًا مِنْ فُتُوحِ بَنِي قُرَيْظَةَ، وَمَنْ أَقْطَعَهُ أَرْضًا مِنْ الْمُهَاجِرِينَ يَزْرَعُونَ وَيَغْرِسُونَ

Ṭā’if followed this practice. He—peace be upon him—never once encouraged abandoning it.

بِحَضْرَتِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَذَلِكَ كُلُّ مَنْ أَسْلَمَ مِنْ أَهْلِ الْبَحْرَيْنِ، وَعُمَانَ، وَالْيَمَنِ، وَالطَّائِفِ، فَمَا حَضَّ - عَلَيْهِ السَّلَامُ - قَطُّ عَلَى تَرْكِهِ.

L20544 This narration is a general ruling, as you observe, and does not restrict it to anyone other than the people of the Arab lands—whether they are from among them or not. His speech (peace be upon him) is not contradictory.

وَهَذَا الْخَبَرُ عُمُومٌ كَمَا تَرَى لَمْ يَخُصَّ بِهِ غَيْرَ أَهْلِ بِلَادِ الْعَرَبِ مِنْ أَهْلِ بِلَادِ الْعَرَبِ، وَكَلَامُهُ - عَلَيْهِ السَّلَامُ - لَا يَتَنَاقَضُ.

L20545 It is established that the blameworthy cultivation—for which Allah the Exalted brings humiliation upon its practitioners—is that which one is distracted by from jihad. This differs from the cultivation for which its owner is granted reward by Allah. All of this, whether commendable or blameworthy, is the same regardless of occurring in Arab or non-Arab lands, as the rulings in this matter apply universally.

فَصَحَّ أَنَّ الزَّرْعَ الْمَذْمُومَ الَّذِي يُدْخِلُ اللَّهُ تَعَالَى عَلَى أَهْلِهِ الذُّلَّ هُوَ مَا تُشُوغِلَ بِهِ عَنْ الْجِهَادِ، وَهُوَ غَيْرُ الزَّرْعِ الَّذِي يُؤْجَرُ صَاحِبُهُ، وَكُلُّ ذَلِكَ حَسَنُهُ وَمَذْمُومُهُ سَوَاءٌ - كَانَ فِي أَرْضِ الْعَرَبِ أَوْ فِي أَرْضِ الْعَجَمِ - إذْ السُّنَنُ فِي ذَلِكَ عَلَى عُمُومِهَا.

L20546 They also cited as evidence what was narrated to us through the chain of Asad ibn Musa, from Muhammad ibn Rashid, from Makhul: that the Muslims cultivated crops in the Levant. When this reached Umar ibn al-Khattab, he ordered its burning after it had ripened, so it was burned. Mu’awiyah himself undertook its burning.

وَاحْتَجُّوا أَيْضًا بِمَا رُوِّينَا مِنْ طَرِيقِ أَسَدِ بْنِ مُوسَى عَنْ مُحَمَّدِ بْنِ رَاشِدٍ عَنْ مَكْحُولٍ: أَنَّ الْمُسْلِمِينَ زَرَعُوا بِالشَّامِ، فَبَلَغَ عُمَرَ بْنَ الْخَطَّابِ، فَأَمَرَ بِإِحْرَاقِهِ وَقَدْ ابْيَضَّ، فَأُحْرِقَ، وَأَنَّ مُعَاوِيَةَ تَوَلَّى حَرْقَهُ.

L20547 Narrated by Asad ibn Musa on the authority of Shurahbil ibn Abd al-Rahman al-Muradi: That Umar ibn al-Khattab said to Qays ibn Abd Yaghuth al-Muradi: “I will not permit you to cultivate unless you acknowledge humiliation, and I erase your name from the state stipend register.” Umar also wrote to the people of Syria: “Whoever cultivates land, engages in plowing, and is content with that, I have imposed the jizyah upon him.”

وَمِنْ طَرِيقِ أَسَدِ بْنِ مُوسَى عَنْ شُرَحْبِيلَ بْنِ عَبْدِ الرَّحْمَنِ الْمُرَادِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ لِقَيْسِ بْنِ عَبْدِ يَغُوثَ الْمُرَادِيِّ: لَا آذَنُ لَك بِالزَّرْعِ إلَّا أَنْ تُقِرَّ بِالذُّلِّ، وَأَمْحُو اسْمَك مِنْ الْعَطَاءِ - وَأَنَّ عُمَرَ كَتَبَ إلَى أَهْلِ الشَّامِ مَنْ زَرَعَ وَاتَّبَعَ أَذْنَابَ الْبَقَرِ وَرَضِيَ بِذَلِكَ جَعَلْت عَلَيْهِ الْجِزْيَةَ.

L20548 Abu Muhammad said: This is a mursal narration, and Asad is weak. May Allah protect the Commander of the Faithful from burning the crops of Muslims, destroying their wealth, and from imposing the jizyah (a tax on non-Muslims) upon Muslims. How astonishing that someone would cite this as evidence, when they themselves are the first to contradict it!

قَالَ أَبُو مُحَمَّدٍ: هَذَا مُرْسَلٌ، وَأَسَدٌ ضَعِيفٌ، وَيُعِيذُ اللَّهُ أَمِيرَ الْمُؤْمِنِينَ مِنْ أَنْ يُحْرِقَ زُرُوعَ الْمُسْلِمِينَ وَيُفْسِدَ أَمْوَالَهُمْ، وَمِنْ أَنْ يَضْرِبَ الْجِزْيَةَ عَلَى الْمُسْلِمِينَ، وَالْعَجَبُ مِمَّنْ يَحْتَجُّ بِهَذَا، وَهُوَ أَوَّلُ مُخَالِفٍ لَهُ

The Issue of Land Leasing

L20549

[مَسْأَلَةُ كِرَاءُ الْأَرْضِ]

L20550 Issue 1329: It is impermissible to lease land for anything at all—neither dinars, nor dirhams, nor movable property, nor specified type of food, nor for anything at all.

١٣٢٩ - مَسْأَلَةٌ: لَا يَجُوزُ كِرَاءُ الْأَرْضِ بِشَيْءٍ أَصْلًا لَا بِدَنَانِيرَ، وَلَا بِدَرَاهِمَ، وَلَا بِعَرْضٍ، وَلَا بِطَعَامٍ مُسَمًّى، وَلَا بِشَيْءٍ أَصْلًا.

L20551–20552 It is not lawful to cultivate the land except in one of three aspects:

وَلَا يَحِلُّ فِي زَرْعِ الْأَرْضِ إِلَّا أَحَدُ ثَلَاثَةِ أَوْجُهٍ -:

L20553 If one cultivates the land with his tools, laborers, seed, and beasts of burden.

إِمَّا أَنْ يَزْرَعَهَا الْمَرْءُ بِآلَتِهِ وَأَعْوَانِهِ وَبَذْرِهِ وَحَيَوَانِهِ.

L20554 Or that he permits someone else to cultivate it without taking anything from him. If they share the tools, animals, seeds, and helpers without taking rent from him for the land, then it is permissible.

وَإِمَّا أَنْ يُبِيحَ لِغَيْرِهِ زَرْعَهَا وَلَا يَأْخُذُ مِنْهُ شَيْئًا، فَإِنْ اشْتَرَكَا فِي الْآلَةِ وَالْحَيَوَانِ، وَالْبَذْرِ، وَالْأَعْوَانِ دُونَ أَنْ يَأْخُذَ مِنْهُ لِلْأَرْضِ كِرَاءً فَحَسَنٌ.

L20555 Or that he gives his land to someone to cultivate it with his seed, animals, laborers, and tools in exchange for a specified portion—whether half, a third, a quarter, or similar, more or less—of what Allah causes to be produced from it, with no obligation whatsoever imposed on the landowner to provide any of those things. The remainder belongs to the tenant farmer, whether he obtains little or much. If he obtains nothing, he receives nothing and owes nothing. These types of arrangements are permissible, and whoever refuses them may keep his land.

وَإِمَّا أَنْ يُعْطِيَ أَرْضَهُ لِمَنْ يَزْرَعُهَا بِبَذْرِهِ وَحَيَوَانِهِ وَأَعْوَانِهِ وَآلَتِهِ بِجُزْءٍ وَيَكُونُ لِصَاحِبِ الْأَرْضِ مِمَّا يُخْرِجُ اللَّهُ تَعَالَى مِنْهَا مُسَمًّى، إِمَّا نِصْفٌ، وَإِمَّا ثُلُثٌ، أَوْ رُبُعٌ، أَوْ نَحْوُ ذَلِكَ أَكْثَرُ أَوْ أَقَلُّ، وَلَا يُشْتَرَطُ عَلَى صَاحِبِ الْأَرْضِ أَلْبَتَّةَ شَيْءٌ مِنْ كُلِّ ذَلِكَ، وَيَكُونُ الْبَاقِي لِلزَّارِعِ قَلَّ مَا أَصَابَ أَوْ كَثُرَ فَإِنْ لَمْ يُصِبْ شَيْئًا فَلَا شَيْءَ لَهُ، وَلَا شَيْءَ عَلَيْهِ، فَهَذِهِ الْوُجُوهُ جَائِزَةٌ، فَمَنْ أَبَى فَلْيُمْسِكْ أَرْضَهُ.

L20556 The evidence for that is that it has been narrated to us from al-Awzāʿī, from ʿAṭāʾ, from Jābir ibn ʿAbdullāh, that the Messenger of Allah (peace and blessings be upon him) said: «Whoever owns land, let him cultivate it or grant it. If he refuses, let him retain his land.»

بُرْهَانُ ذَلِكَ -: أَنَّنَا قَدْ رُوِّينَا عَنْ الْأَوْزَاعِيِّ عَنْ عَطَاءٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا أَوْ لِيَمْنَحْهَا فَإِنْ أَبَى فَلْيُمْسِكْ أَرْضَهُ» .

L20557 And through the narrational route of Rāfiʿ ibn Khadīj from his uncle Ẓuhayr ibn Rāfiʿ, from the Messenger of Allah, peace be upon him, the same is related.

وَمِنْ طَرِيقِ رَافِعِ بْنِ خَدِيجٍ عَنْ عَمِّهِ ظُهَيْرِ بْنِ رَافِعٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلُهُ.

L20558 And through the chain of Rāfiʿ from his uncle, a Badrī (participant in the Battle of Badr), from the Prophet (peace be upon him), a similar report.

وَمِنْ طَرِيقِ رَافِعٍ عَنْ عَمٍّ لَهُ بَدْرِيٍّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلُهُ.

L20559 Through the chain of Al-Bukhari: Sulayman ibn Harb narrated to us, Ham-

mad ibn Zayd narrated to us from Ayyub al-Sikhtiyani from Nafi‘ from Ibn Umar (may Allah be pleased with them both) that he used to lease his agricultural lands. He went to Rafi‘ ibn Khadīj, and I accompanied him. When he asked him, Rafi‘ replied: The Messenger of Allah (peace and blessings be upon him) prohibited renting land.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - «أَنَّهُ كَانَ يُكْرِي مَزَارِعَهُ قَالَ: فَذَهَبَ إِلَى رَافِعِ بْنِ خَدِيجٍ وَذَهَبْتُ مَعَهُ فَسَأَلَهُ فَقَالَ رَافِعٌ: نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ كِرَاءِ الْأَرْضِ» .

L20560 Through the chain of Muslim: Muḥammad ibn Ḥātim narrated to us; Muʿallā ibn Manṣūr al-Rāzī narrated to us; Khālid—he is al-Khaddāʾ—narrated to us; al-Shaybānī—he is Abū Isḥāq—narrated to us from Bukayr ibn al-Akhnas, from ʿAṭāʾ, from Jābir ibn ʿAbd Allāh, who said: “The Messenger of Allāh—may Allāh’s peace and blessings be upon him—prohibited taking fixed rent or a share [of produce] for land.”[1]

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ حَاتِمٍ نا مُعَلَّى بْنُ مَنْصُورٍ الرَّازِيّ نا خَالِدٌ - وَهُوَ الْحَذَّاءُ - نا الشَّيْبَانِيُّ - هُوَ أَبُو إِسْحَاقَ - عَنْ بُكَيْرِ بْنِ الْأَخْنَسِ عَنْ عَطَاءٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُؤْخَذَ لِلْأَرْضِ أَجْرٌ أَوْ حَظٌّ» .

L20561–20563 From the chain of Muslim: Narrated to us Abū Tawbah—he is Rabīʿ ibn Nāfiʿ—narrated to us Muʿāwiyah—he is Ibn Sallām—from... Yahya ibn Abi Kathir reported from Abu Salama ibn Abd al-Rahman ibn Awf from Abu Hurairah that the Messenger of Allah (peace be upon him) said: “Whoever has land should cultivate it or grant it to his brother. If he refuses, then let him retain his land.”[2]

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو تَوْبَةَ - هُوَ الرَّبِيعُ بْنُ نَافِعٍ - نا مُعَاوِيَةُ - هُوَ ابْنُ سَلَّامٍ - عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا أَوْ لِيَمْنَحْهَا أَخَاهُ، فَإِنْ أَبَى فَلْيُمْسِكْ أَرْضَهُ» .

L20564 And through the chain of Ibn Wahb, narrated to us Malik ibn Anas from Dawud ibn al-Husayn that Abu Sufyan, the freed slave of Ibn Abi Ahmad, informed him that he heard Abu Sa’id al-Khudri say: “The Messenger of Allah, peace and blessings be upon him, prohibited muzabana and muhaqala.” He said: “Muhaqala is leasing the land.”

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ نا مَالِكُ بْنُ أَنَسٍ عَنْ دَاوُد بْنِ الْحُصَيْنِ أَنَّ أَبَا سُفْيَانَ مَوْلَى ابْنِ أَبِي أَحْمَدَ أَخْبَرَهُ أَنَّهُ سَمِعَ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنِ الْمُزَابَنَةِ وَالْمُحَاقَلَةِ قَالَ: وَالْمُحَاقَلَةُ كِرَاءُ الْأَرْضِ» .

L20565 On the authority of Hammad ibn Salamah, who reported from Amr ibn Dinar, who said: I heard Abdullah ibn Umar ibn al-Khattab say, “The Messenger of Allah—peace and blessings be upon him—prohibited renting land.”[3]

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا عَمْرُو بْنُ دِينَارٍ قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ عُمَرَ بْنِ الْخَطَّابِ يَقُولُ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ كِرَاءِ الْأَرْضِ» .

[1] **Hadith references (L20560):** Sahih Muslim 1536n.

[2] **Hadith references (L20561):** Sahih al-Bukhari 2632; Sahih Muslim 1544; Sunan Ibn Majah 2452.

[3] **Hadith references (L20565):** Sahih Muslim 1536j; Sunan Abi Dawud 3393; Sahih Muslim 1547k.

فَهَؤُلَاءِ شَيْخَانِ بَدْرِيَّانِ، وَرَافِعُ بْنُ خَدِيجٍ، وَجَابِرٌ، وَأَبُو سَعِيدٍ، وَأَبُو هُرَيْرَةَ، وَابْنُ عُمَرَ كُلُّهُمْ يَرْوِي عَنِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - النَّهْيَ عَنْ كِرَاءِ الْأَرْضِ جُمْلَةً، وَأَنَّهُ لَيْسَ إِلَّا أَنْ يَزْرَعَهَا صَاحِبُهَا أَوْ يَمْنَحَهَا غَيْرَهُ أَوْ يُمْسِكَ أَرْضَهُ فَقَطْ، فَهُوَ نَقْلُ تَوَاتُرٍ مُوجِبٍ لِلْعِلْمِ الْمُتَيَقَّنِ فَأَخَذَ بِهَذَا طَائِفَةٌ مِنَ السَّلَفِ.

L20566 These two Companions from the Battle of Badr, along with Rāfiʿ ibn Khadīj, Jābir, Abū Saʿīd, Abū Hurayrah, and Ibn ʿUmar—all of them narrate from the Prophet (peace be upon him) the complete prohibition against leasing land in any form, stating that there is no alternative except for the owner to cultivate it himself, grant its use to another, or simply keep his land without leasing it. This constitutes a mutawātir transmission necessitating definitive knowledge, and a group of the *Salaf* upheld this ruling.

كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي عَمْرٌو - هُوَ ابْنُ الْحَارِثِ - أَنَّ بُكَيْرًا - هُوَ ابْنُ الْأَشَجِّ - حَدَّثَهُ قَالَ: حَدَّثَنِي نَافِعٌ مَوْلَى ابْنِ عُمَرَ أَنَّهُ سَمِعَ ابْنَ عُمَرَ يَقُولُ: كُنَّا نُكْرِي أَرْضَنَا، ثُمَّ تَرَكْنَا ذَلِكَ حِينَ سَمِعْنَا حَدِيثَ رَافِعِ بْنِ خَدِيجٍ.

L20567 As transmitted to us through the chain of Ibn Wahb: ʻAmr ibn al-Ḥārith (son of al-Ḥārith) informed me that Bukayr ibn al-Ashajj (son of al-Ashajj) narrated to him, saying: Nāfiʻ, the freed servant of Ibn ʻUmar, related to me that he heard Ibn ʻUmar state: "We would lease our land but ceased doing so upon hearing the ḥadīth of Rāfiʻ ibn Khadīj."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ عِكْرِمَةَ بْنِ عَمَّارٍ عَنْ عَطَاءٍ عَنْ جَابِرٍ أَنَّهُ كَرِهَ كِرَاءَ الْأَرْضِ.

L20568 Through the chain of Ibn Abi Shaybah, Wakiʻ narrated to us from Ikrimah ibn ʻAmmar, from ʻAta', from Jabir, that he held it disapproved (makrūh) to lease the land.

وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ قَرَأْت عَلَى سَعِيدِ بْنِ يَعْقُوبَ الطَّالَقَانِيِّ قُلْت: أُحَدِّثُكُمْ عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ سَعِيدٍ أَبِي شُجَاعٍ حَدَّثَنِي عِيسَى بْنُ سَهْلِ بْنِ رَافِعٍ قَالَ: إنِّي يَتِيمٌ فِي حِجْرِ جَدِّي رَافِعِ بْنِ خَدِيجٍ، وَحَجَجْت مَعَهُ، فَجَاءَهُ أَخِي عِمْرَانُ بْنُ سَهْلٍ قَالَ: أَكْرَيْنَا أَرْضَنَا فُلَانَةَ بِمِائَتَيْ دِرْهَمٍ؟ فَقَالَ: دَعْهُ فَإِنَّ «النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ كِرَاءِ الْأَرْضِ» وَعَنْ عَمِّي رَافِعٍ نَحْوُهُ.

L20569–20570 And through the path of Abū Dāwūd al-Sijistānī: I read to Saʿīd ibn Yaʿqūb al-Ṭālaqānī, and I said: "I narrate to you from ʿAbdullāh ibn al-Mubārak, from Saʿīd Abū Shujāʿ. ʿĪsā ibn Sahl ibn Rāfiʿ narrated to me: 'I was an orphan under my grandfather Rāfiʿ ibn Khadīj's guardianship. I performed Hajj with him, and my brother ʿImrān ibn Sahl came to him and asked: "Did we rent our land to so-and-so for two hundred dirhams¿' He replied: "Abandon this, for the Prophet (peace and blessings of Allah be upon him) prohibited renting land for a fixed sum."' A similar narration is reported from my uncle Rāfiʻ."[4]

وَمِنَ التَّابِعِينَ -: كَمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا سُفْيَانُ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ قَالَ: لَا يَصْلُحُ مِنَ الزَّرْعِ إِلَّا أَرْضٌ تُمْلَكُ رَقَبَتُهَا، أَوْ أَرْضٌ يَمْنَحُكَهَا رَجُلٌ.

L20571 Cultivation is only permissible on land whose ownership is clearly established, or land granted to you by a man.

وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ بْنِ مَنْصُورٍ عَنْ مُجَاهِدٍ أَنَّهُ كَرِهَ إِجَارَةَ الْأَرْضِ.

L20572 Narrated by ʻAbd al-Raḥmān ibn Mahdī, via Sufyān ibn Manṣūr, via Mujāhid:

[4] **Hadith references (L20570):** Sunan an-Nasai 3919b; Sunan Abi Dawud 3401; Sunan an-Nasai 3915.

He disliked renting land (makrūh).

L20573 And through him to Waki‘ from Yazīd ibn Ibrāhīm, and Ismā‘īl ibn Muslim from al-Ḥasan: that he considered the leasing of land reprehensible.

وَبِهِ إِلَى وَكِيعٍ عَنْ يَزِيدَ بْنِ إِبْرَاهِيمَ، وَإِسْمَاعِيلَ بْنِ مُسْلِمٍ عَنْ الْحَسَنِ: أَنَّهُ كَرِهَ كِرَاءَ الْأَرْضِ.

L20574 Narrated by ʿAbd al-Razzāq, from Maʿmar, from Ibn Ṭāwūs, from his father, that he deemed it reprehensible (makrūh) to lease al-arḍ al-bayḍāʾ (uncultivated/public land).

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ كَانَ يَكْرَهُ كِرَاءَ الْأَرْضِ الْبَيْضَاءِ.

L20575 And via the chain of ʿAbd al-Razzāq from Maʿmar from ʿAbd al-Karīm al-Jazarī that ʿIkrimah, the client of Ibn ʿAbbās, said that it is not permissible to lease land.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ أَنَّ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ قَالَ: لَا يَصْلُحُ كِرَاءُ الْأَرْضِ.

L20576 Through the chain of Ahmad ibn Shuʿayb: From ʻAmr ibn ʻAli, from Abu ʻAsim, from ʻUthman ibn Murrah, who said: “I asked al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq about leasing land.” So Rafiʻ ibn Khadij said: “The Messenger of Allah (peace and blessings be upon him) prohibited leasing land.”[5]

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نا أَبُو عَاصِمٍ نا عُثْمَانُ بْنُ مُرَّةَ قَالَ: سَأَلْت الْقَاسِمَ بْنَ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ كِرَاءِ الْأَرْضِ؟ فَقَالَ رَافِعُ بْنُ خَدِيجٍ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ كِرَاءِ الْأَرْضِ» .

L20577 Abu Muhammad said: He then issued a fatwa to those who sought his ruling with the prohibition of leasing land.

قَالَ أَبُو مُحَمَّدٍ: فَأَفْتَى مَنْ اسْتَفْتَاهُ بِالنَّهْيِ عَنْ كِرَاءِ الْأَرْضِ.

L20578 Through the chain of Ibn al-Jahm: Ibrāhīm al-Ḥarbī narrated to us from Khallād ibn Aslam, from al-Naḍr ibn Shumayl, from Hishām ibn Ḥassān, who said: Muḥammad ibn Sīrīn disliked leasing land in exchange for gold and silver.

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا إِبْرَاهِيمُ الْحَرْبِيُّ نا خَلَّادُ بْنُ أَسْلَمَ نا النَّضْرُ بْنُ شُمَيْلٍ عَنْ هِشَامِ بْنِ حَسَّانَ قَالَ: كَانَ مُحَمَّدُ بْنُ سِيرِينَ يَكْرَهُ كِرَاءَ الْأَرْضِ بِالذَّهَبِ وَالْفِضَّةِ.

L20579 And through him to Ibrāhīm al-Ḥarbī, from Dāwūd ibn Rashīd, from al-Walīd ibn Muslim, from al-Awzāʿī, who said: ʿAṭāʾ, Makhūl, Mujāhid, and al-Ḥasan al-Baṣrī held that barren land is not validly transacted using dirhams, dinars, or any transaction unless a man cultivates his land or leases it out.

وَبِهِ إِلَى إِبْرَاهِيمَ الْحَرْبِيِّ نا دَاوُد بْنُ رَشِيدٍ نا الْوَلِيدُ بْنُ مُسْلِمٍ نا الْأَوْزَاعِيُّ قَالَ: كَانَ عَطَاءٌ، وَمَكْحُولٌ، وَمُجَاهِدٌ، وَالْحَسَنُ الْبَصْرِيُّ يَقُولُونَ: لَا تَصْلُحُ الْأَرْضُ الْبَيْضَاءُ بِالدَّرَاهِمِ وَلَا بِالدَّنَانِيرِ وَلَا مُعَامَلَةً إِلَّا أَنْ يَزْرَعَ الرَّجُلُ أَرْضَهُ أَوْ يَمْنَحَهَا.

L20580–20581 We received from Shuʿbah: Abū Isḥāq al-Sabīʿī reported from al-Shaʿbī from Masrūq that he disliked cultivation. Al-Shaʿbī said: “That is what prevented

[5] **Hadith references (L20576):** Sahih Muslim 1536j; Sunan Abi Dawud 3393; Sahih Muslim 1547k.

me—and indeed I was among the people of the Sawād with the largest estate—and this necessarily and inevitably entails that both of them disliked leasing land in its entirety."

وَمِنْ طَرِيقِ شُعْبَةَ نا أَبُو إِسْحَاقَ السَّبِيعِيُّ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّهُ كَانَ يَكْرَهُ الزَّرْعَ. قَالَ الشَّعْبِيُّ: فَذَلِكَ الَّذِي مَنَعَنِي وَلَقَدْ كُنْت مِنْ أَكْثَرِ أَهْلِ السَّوَادِ ضَيْعَةً - وَهَذَا يَقْتَضِي - وَلَا بُدَّ - ضَرُورَةً أَنَّهُمَا كَانَا يَكْرَهَانِ إجَارَةَ الْأَرْضِ جُمْلَةً.

L20582 These scholars—ʿAṭāʾ, Mujāhid, Masrūq, Al-Shaʿbī, Ṭāwūs, Al-Ḥasan, Ibn Sīrīn, and Al-Qāsim ibn Muḥammad—all do not consider leasing land permissible at all, whether for dinars, dirhams, or anything else. Thus, the prohibition against leasing land is established comprehensively. Then, we found that what we narrated through Al-Bukhārī's chain is authentic: Ibrāhīm ibn al-Mundhir narrated to us from Anas ibn ʿIyāḍ from ʿUbayd Allāh ibn ʿUmar from Nāfiʿ from Ibn ʿUmar, who reported: "The Messenger of Allah—peace and blessings be upon him—entered into a sharecropping contract with the people of Khaybar for half of what came forth from it, whether crops or fruits."

فَهَؤُلَاءِ: عَطَاءٌ، وَمُجَاهِدٌ، وَمَسْرُوقٌ، وَالشَّعْبِيُّ، وَطَاوُسٌ، وَالْحَسَنُ، وَابْنُ سِيرِينَ وَالْقَاسِمُ بْنُ مُحَمَّدٍ، كُلُّهُمْ، لَا يَرَى كِرَاءَ الْأَرْضِ أَصْلًا لَا بِدَنَانِيرَ وَلَا بِدَرَاهِمَ، وَلَا بِغَيْرِ ذَلِكَ. فَصَحَّ النَّهْيُ عَنْ كِرَاءِ الْأَرْضِ جُمْلَةً، ثُمَّ وَجَدْنَا قَدْ صَحَّ مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا إبْرَاهِيمُ بْنُ الْمُنْذِرِ نا أَنَسُ بْنُ عِيَاضٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ أَخْبَرَهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَامَلَ أَهْلَ خَيْبَرَ بِشَطْرِ مَا يَخْرُجُ مِنْهَا مِنْ زَرْعٍ أَوْ ثَمَرٍ» .

L20583 From the narration of Al-Bukhari: Musa ibn Isma'il narrated to us, Juwayriyah - he is the son of Asma - narrated to us, from Nafi', from 'Abdullah ibn 'Umar, who said: "The Prophet (peace be upon him) granted Khaybar to the Jews on the condition that they cultivate and plant it, and they would receive half of its produce."

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا مُوسَى بْنُ إسْمَاعِيلَ نا جُوَيْرِيَةُ - هُوَ ابْنُ أَسْمَاءَ - عَنْ نَافِعٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: «أَعْطَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْبَرَ الْيَهُودَ عَلَى أَنْ يَعْمَلُوهَا وَيَزْرَعُوهَا وَلَهُمْ شَطْرُ مَا يَخْرُجُ مِنْهَا» .

L20584 And through the transmission of Muslim: Ibn Rumḥ narrated to us, Al-Layth—who is Ibn Saʿd—narrated to us, from Muḥammad ibn ʿAbd al-Raḥmān, from Nāfiʿ, from Ibn ʿUmar, from the Prophet (peace and blessings of Allah be upon him), that he entrusted the palm trees of Khaybar and its land to the Jews of Khaybar on the condition that they cultivate it through their labor from their own funds, and the Messenger of Allah (peace and blessings of Allah be upon him) would receive half of its produce.

وَمِنْ طَرِيقِ مُسْلِمٍ نا ابْنُ رُمْحٍ نا اللَّيْثُ - هُوَ ابْنُ سَعْدٍ - عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ دَفَعَ إلَى يَهُودِ خَيْبَرَ نَخْلَ خَيْبَرَ وَأَرْضَهَا عَلَى أَنْ يَعْتَمِلُوهَا مِنْ أَمْوَالِهِمْ وَلِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نِصْفُ ثَمَرِهَا» .

L20585 And through the chain of Muslim: Muḥammad ibn Rāfiʿ narrated to me: ʿAbd al-Razzāq narrated to us: Ibn Jurayj narrated to us: Mūsā ibn ʿUqbah narrated from Nāfiʿ from Ibn ʿUmar, who said: "When the Messenger of Allah—peace and blessings of Allah be upon him—conquered Khaybar, he

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي مُحَمَّدُ بْنُ رَافِعٍ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ حَدَّثَنِي مُوسَى بْنُ عُقْبَةَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: «لَمَّا ظَهَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى

resolved to expel the Jews from it. They requested him—peace and blessings of Allah be upon him—to allow them to remain there on the condition that they would work the land in return for half the harvest. The Messenger of Allah—peace and blessings of Allah be upon him—said to them: 'We shall let you remain there on this condition for as long as we wish.' Thus, they remained there under this arrangement until 'Umar later expelled them."

L20586–20587 This indicates that the final action of the Messenger of Allah—peace and blessings be upon him—until his death was granting the land in exchange for half of what it produced in crops, fruits, and trees. Upon this practice, Abu Bakr, Umar—may Allah be pleased with them both—and all the Companions—may Allah be pleased with them—proceeded together. Therefore, it became obligatory to exempt a portion of its produce from the general prohibition that had been authentically established against leasing land or taking compensation or a share for it. This later practice abrogated the earlier prohibition against granting land for a portion of its produce, since the prohibition had been firmly established. Were this not the case, we would have deemed it merely an exception to the general prohibition rather than abrogation. However, since it is confirmed that the Messenger of Allah—peace and blessings be upon him—died while adhering to this practice, we decisively affirm the abrogation. Thus, it stands as a valid and certain abrogation beyond doubt. The general prohibition against leasing remains intact, as nothing has abrogated or specified it except sheer falsehood or worthless speculation—neither of which may lawfully be invoked in matters of religion.

L20588 If it is said: Only the prohibition against taking rent or a share for land is authentically reported from the Prophet—peace and blessings be upon him—and against leasing it for a third or a quarter, while it is authentically reported that he leased it for half. Should we then permit leasing it exclusively for half and prohibit leasing it for less or more? We say: This is not permissible, for when he—peace and blessings be upon him—permitted leasing half to them and half to the Muslims and himself, then by necessary perception and observable reality, everyone knows that a third, a quarter, what is less than

خَيْبَرَ أَرَادَ إخْرَاجَ الْيَهُودِ عَنْهَا، فَسَأَلُوهُ - عَلَيْهِ السَّلَامُ - أَنْ يُقِرَّهُمْ بِهَا عَلَى أَنْ يَكْفُوا عَمَلَهَا وَلَهُمْ نِصْفُ الثَّمَرِ؟ فَقَالَ لَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: نُقِرُّكُمْ بِهَا عَلَى ذَلِكَ مَا شِئْنَا فَقَرُّوا بِهَا حَتَّى أَجْلَاهُمْ عُمَرُ» .

فَفِي هَذَا أَنَّ آخِرَ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى أَنْ مَاتَ كَانَ إعْطَاءَ الْأَرْضِ بِنِصْفِ مَا يَخْرُجُ مِنْهَا مِنْ الزَّرْعِ وَمِنْ الثَّمَرِ وَمِنْ الشَّجَرِ، وَعَلَى هَذَا مَضَى أَبُو بَكْرٍ، وَعُمَرُ ج وَجَمِيعُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مَعَهُمْ، فَوَجَبَ اسْتِثْنَاءُ الْأَرْضِ بِبَعْضِ مَا يَخْرُجُ مِنْهَا مِنْ جُمْلَةِ مَا صَحَّ النَّهْيُ عَنْهُ مِنْ أَنْ تُكْرَى الْأَرْضُ أَوْ يُؤْخَذُ لَهَا أَجْرٌ أَوْ حَظٌّ، وَكَانَ هَذَا الْعَمَلُ الْمُتَأَخِّرُ نَاسِخًا لِلنَّهْيِ الْمُتَقَدِّمِ عَنْ إعْطَاءِ الْأَرْضِ بِبَعْضِ مَا يَخْرُجُ مِنْهَا؛ لِأَنَّ النَّهْيَ عَنْ ذَلِكَ قَدْ صَحَّ، فَلَوْلَا أَنَّهُ قَدْ صَحَّ لَقُلْنَا: لَيْسَ نَسْخًا، لَكِنَّهُ اسْتِثْنَاءٌ مِنْ جُمْلَةِ النَّهْيِ، وَلَوْلَا أَنَّهُ قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَاتَ عَلَى هَذَا الْعَمَلِ لَمَا قَطَعْنَا بِالنَّسْخِ، لَكِنْ ثَبَتَ أَنَّهُ آخِرُ عَمَلِهِ - عَلَيْهِ السَّلَامُ -. فَصَحَّ أَنَّهُ نَسْخٌ صَحِيحٌ مُتَيَقَّنٌ لَا شَكَّ فِيهِ، وَبَقِيَ النَّهْيُ عَنْ الْإِجَارَةِ جُمْلَةً بِحَسَبِهِ، إذْ لَمْ يَأْتِ شَيْءٌ يَنْسَخُهُ وَلَا يُخَصِّصُهُ أَلْبَتَّةَ إلَّا بِالْكَذِبِ الْبَحْتِ، أَوْ الظَّنِّ السَّاقِطِ الَّذِي لَا يَحِلُّ اسْتِعْمَالُهُ فِي الدِّينِ.

فَإِنْ قِيلَ: إنَّمَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النَّهْيُ عَنْ أَنْ يُؤْخَذَ لِلْأَرْضِ أَجْرٌ أَوْ حَظٌّ، وَعَنْ أَنْ تُكْرَى بِثُلُثٍ أَوْ بِرُبُعٍ، وَصَحَّ أَنَّهُ أَعْطَاهُ بِالنِّصْفِ فَأَجِيزُوا إعْطَاءَهَا بِالنِّصْفِ خَاصَّةً وَامْنَعُوا مِنْ إعْطَائِهَا بِأَقَلَّ أَوْ أَكْثَرَ؟ قُلْنَا: لَا يَجُوزُ هَذَا؛ لِأَنَّهُ إذَا أَبَاحَ - عَلَيْهِ السَّلَامُ - إعْطَاءَهَا بِالنِّصْفِ لَهُمْ وَالنِّصْفِ لِلْمُسْلِمِينَ وَلَهُ - عَلَيْهِ السَّلَامُ -، فَبِضَرُورَةِ

that, and what exceeds it among the portions less than half are included in the half. For he—peace and blessings be upon him—leased it for a quarter and more, and for a third and more. Thus, it is established that all of this is undoubtedly permissible—and with Allah lies all success.

الْحِسِّ، وَالْمُشَاهَدَةِ يَدْرِي كُلُّ أَحَدٍ أَنَّ الثُّلُثَ، وَالرُّبُعَ، وَمَا دُونَ ذَلِكَ، وَفَوْقَ ذَلِكَ مِنْ الْأَجْزَاءِ مِمَّا دُونَ النِّصْفِ دَاخِلٌ فِي النِّصْفِ، فَقَدْ أَعْطَاهَا - عَلَيْهِ السَّلَامُ - بِالرُّبُعِ وَزِيَادَةٍ وَبِالثُّلُثِ وَزِيَادَةٍ، فَصَحَّ أَنَّ كُلَّ ذَلِكَ مُبَاحٌ بِلَا شَكٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20589 قَالَ أَبُو مُحَمَّدٍ: وَمِمَّنْ أَجَازَ إعْطَاءَ الْأَرْضِ بِجُزْءٍ مُسَمًّى مِمَّا يَخْرُجُ مِنْهَا -: رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ زَائِدَةَ عَنْ حَجَّاجٍ عَنْ أَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيٍّ قَالَ: «عَامَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَهْلَ خَيْبَرَ بِالشَّطْرِ ثُمَّ أَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ» .

L20590 وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ قَالَ: عَامَلَ عُمَرُ بْنُ الْخَطَّابِ النَّاسَ عَلَى إنْ جَاءَ عُمَرُ بِالْبَذْرِ مِنْ عِنْدِهِ فَلَهُ الشَّطْرُ وَإِنْ جَاءُوا بِالْبَذْرِ فَلَهُمْ كَذَا.

L20591–20592 وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْحَارِثِ بْنِ حُصَيْرَةَ حَدَّثَنِي صَخْرُ بْنُ الْوَلِيدِ عَنْ عَمْرِو بْنِ صُلَيْعٍ أَنَّ رَجُلًا قَالَ لِعَلِيِّ بْنِ أَبِي طَالِبٍ: أَخَذْت أَرْضًا بِالنِّصْفِ أَكْرِي أَنْهَارَهَا وَأُصْلِحُهَا وَأَعْمُرُهَا؟ قَالَ عَلِيٌّ: لَا بَأْسَ بِهَا.

L20593 قَالَ عَبْدُ الرَّزَّاقِ: كِرَاءُ الْأَنْهَارِ هُوَ حَفْرُهَا.

L20594 وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ خَالِدٍ الْحَذَّاءِ أَنَّهُ سَمِعَ طَاوُسًا يَقُولُ: قَدِمَ عَلَيْنَا مُعَاذُ بْنُ جَبَلٍ فَأَعْطَى الْأَرْضَ عَلَى الثُّلُثِ وَالرُّبُعِ، فَنَحْنُ نَعْمَلُهَا إلَى الْيَوْمِ.

L20595 قَالَ أَبُو مُحَمَّدٍ: مَاتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمُعَاذٌ بِالْيَمَنِ عَلَى هَذَا الْعَمَلِ.
وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ قَالَ سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ مُجَاهِدٍ قَالَ: كَانَ ابْنُ عُمَرَ يُعْطِي أَرْضَهُ بِالثُّلُثِ، وَهَذَا عَنْهُ فِي غَايَةِ الصِّحَّةِ.

L20589 Abu Muhammad said: Among those who permitted granting land for a specified portion of its produce - we have been narrated via the transmission of Ibn Abi Shaybah: Ibn Zā'idah narrated to us from Ḥajjāj from Abū Ja'far Muḥammad ibn 'Alī, who said: "The Messenger of Allah, peace and blessings be upon him, worked with the people of Khaybar for half [the produce], then Abu Bakr, Umar, Uthman, and Ali."

L20590 It was narrated to us through Al-Bukhari's chain that ʿUmar ibn al-Khaṭṭāb entered into a sharecropping agreement with the people, stipulating that if ʿUmar provided the seed from his own resources, he would receive half; and if they provided the seed, they would receive such-and-such.

L20591–20592 And through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from al-Ḥārith ibn Ḥuṣayrah: Ṣakhr ibn al-Walīd reported to me from ʿAmr ibn Ṣulayʿ that a man said to ʿAlī ibn Abī Ṭālib, "I have taken land on a half-share: do I lease its canals, repair it, and cultivate it?" ʿAlī replied, "There is no harm in that."

L20593 Abd al-Razzaq said: The leasing of rivers (kirāʾ al-anhār) is their excavation.

L20594 Through the narration of Ḥammād ibn Salamah from Khālid al-Ḥadhdhāʾ, who heard Ṭāwus say: Muʿādh ibn Jabal was appointed among us and levied upon the land one-third and one-fourth, and we have continued to follow this practice to this day.

L20595 Abu Muhammad said: The Messenger of Allah—may Allah bless him and grant him peace—died while Mu'adh was in Yemen holding this position. From the transmission of 'Abd al-Razzāq: Sufyān al-Thawrī narrated from Manṣūr ibn al-Mu'tamir from Mujāhid, who said: Ibn 'Umar would give his land for a third, and this narration from him is of the highest authenticity.

وَقَدْ ذَكَرْنَا عَنْهُ رُجُوعَهُ عَنْ إِبَاحَةِ كِرَاءِ الْأَرْضِ.

L20596 And we have mentioned from him his retraction from permitting the renting of land.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ كُلَيْبِ بْنِ وَائِلٍ قَالَ: سَأَلْت ابْنَ عُمَرَ؟ فَقُلْت: أَرْضٌ تَقَبَّلْتهَا لَيْسَ فِيهَا نَهْرٌ جَارٍ وَلَا نَبَاتٌ عَشْرَ سِنِينَ بِأَرْبَعَةِ آلَافِ دِرْهَمٍ كُلَّ سَنَةٍ كَرَيْت أَنْهَارَهَا، وَعَمَّرْت فِيهَا قُرَاهَا، وَأَنْفَقْت فِيهَا نَفَقَةً كَثِيرَةً، وَزَرَعْتهَا لَمْ تَرُدَّ عَلَيَّ رَأْسَ مَالِي زَرَعْتهَا مِنْ الْعَامِ الْمُقْبِلِ فَأُضْعِفُ؟ قَالَ ابْنُ عُمَرَ: لَا يَصْلُحُ لَك إلَّا رَأْسُ مَالِكَ.

L20597 Through the narration of Al-Ḥajjāj ibn Al-Minhāl, who informed us: Abū ʿAwānah reported from Kulayb ibn Wā'il, who said: "I asked Ibn ʿUmar: 'A land I took on—with no flowing river or vegetation for ten years—for four thousand dirhams annually. Each year I maintained its canals, developed its villages, spent heavily on it, and cultivated it. Yet it did not return my capital. If I plant it next year, would I double [the yield]?' Ibn ʿUmar replied: 'Nothing beyond your capital is lawful for you.'"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ أَبِي زَائِدَةَ، وَأَبُو الْأَحْوَصِ، كِلَاهُمَا عَنْ كُلَيْبِ بْنِ وَائِلٍ قُلْت لِابْنِ عُمَرَ: رَجُلٌ لَهُ أَرْضٌ، وَمَاءٌ، لَيْسَ لَهُ بَذْرٌ، وَلَا بَقَرٌ، فَأَعْطَانِي أَرْضَهُ بِالنِّصْفِ، فَزَرَعْتهَا بِبَذْرِي وَبَقَرِي، ثُمَّ قَاسَمْته؟ قَالَ: حَسَنٌ.

L20598 From the chain of Ibn Abi Shaybah: Yahya ibn Abi Za'idah and Abu al-Ahwas reported from Kulayb ibn Wa'il: I said to Ibn Umar: "A man has land and water but no seeds or oxen. He gave me his land for half the produce, so I cultivated it with my seeds and oxen, then I divided the harvest with him." He said: "It is permissible."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو الْأَحْوَصِ، وَعُبَيْدُ اللَّهِ بْنُ إيَادِ بْنِ لَقِيطٍ كِلَاهُمَا عَنْ كُلَيْبِ بْنِ وَائِلٍ مِثْلُهُ أَيْضًا - فَهَذَانِ إسْنَادَانِ فِي غَايَةِ الصِّحَّةِ - عَنْ ابْنِ عُمَرَ أَنَّهُ سَأَلَهُ كُلَيْبُ بْنُ وَائِلٍ عَنْ كِرَاءِ الْأَرْضِ بِالدَّرَاهِمِ؟ فَلَمْ يُجِزْهُ وَلَا أَجَازَ مَا أَصَابَ فِيهَا زِيَادَةً عَلَى قَدْرِ مَا أَنْفَقَ، وَسَأَلَهُ عَنْ أَخْذِهَا بِالنِّصْفِ مِمَّا يَخْرُجُ فِيهَا، لَا يَجْعَلُ صَاحِبُهَا فِيهَا لَا بَذْرًا وَلَا عَمَلًا وَيَكُونُ الْعَمَلُ كُلُّهُ عَلَى الْعَامِلِ وَالْبَذْرُ؟ فَأَجَازَهُ - وَهَذَا هُوَ نَفْسُ قَوْلِنَا - وَلِلَّهِ الْحَمْدُ.

L20599 From the narration of Sa'īd ibn Manṣūr: Abū al-Aḥwaṣ and 'Ubayd Allāh ibn Iyād ibn Laqīṭ both narrated to us from Kulayb ibn Wā'il a similar report as well. These are two chains of transmission of the highest authenticity. It is reported from Ibn 'Umar that Kulayb ibn Wā'il asked him about leasing land for dirhams, and he did not permit it, nor did he permit taking anything acquired in excess of what was expended on it. He also asked him about taking half of what is produced from the land, where the owner neither provides seed nor labor, and the cultivator is responsible for all the work and the seed. He permitted this (and this is precisely our position), and all praise is due to Allah.

وَمِنْ طَرِيقِ سُفْيَانَ، وَأَبِي عَوَانَةَ وَأَبِي الْأَحْوَصِ وَغَيْرِهِمْ كُلُّهُمْ عَنْ إبْرَاهِيمَ بْنِ مُهَاجِرٍ عَنْ مُوسَى بْنُ طَلْحَةَ بْنُ عُبَيْدِ اللَّهِ أَنَّهُ شَاهَدَ جَارَيْهِ سَعْدِ بْنِ أَبِي وَقَّاصٍ، وَعَبْدِ اللَّهِ بْنِ مَسْعُودٍ يُعْطِيَانِ أَرْضَهُمَا عَلَى الثُّلُثِ.

L20600–20602 And through the narration of Sufyān, Abī ʿAwānah, Abī al-Aḥwaṣ, and others besides them, all of them. Narrated from Ibrahim ibn Muhajir, on the authority of Musa ibn Talha ibn Ubaydillah, that he witnessed his two neighbors Sa'd ibn Abi Waqqas and Abdullah ibn Mas'ud leasing their land for a third share.

L20603 From the narration of Ḥammād ibn Salamah, from al-Ḥajjāj ibn Arṭāʾ, from ʿUthmān ibn ʿAbdillāh ibn Mawhab, from Mūsā ibn Ṭalḥah: That Khabbāb ibn al-Aratt, Ḥudhayfah ibn al-Yamān, and Ibn Masʿūd would assign their uncultivated land for cultivation, taking one-third or one-quarter of the yield.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ عُثْمَانَ بْنِ عَبْدِ اللَّهِ بْنِ مَوْهَبٍ عَنْ مُوسَى بْنِ طَلْحَةَ: أَنَّ خَبَّابَ بْنَ الْأَرَتِّ، وَحُذَيْفَةَ بْنَ الْيَمَانِ، وَابْنَ مَسْعُودٍ كَانُوا يُعْطُونَ أَرْضَهُمْ الْبَيَاضَ عَلَى الثُّلُثِ وَالرُّبُعِ.

L20604 So these are Abū Bakr, ʿUmar, ʿUthman, ʿAlī, Saʿd, Ibn Masʿūd, Khabbāb, Ḥudhayfah, and Muʿādh in the presence of all the Companions of the Prophet.

فَهَؤُلَاءِ أَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ، وَسَعْدٌ، وَابْنُ مَسْعُودٍ، وَخَبَّابٌ، وَحُذَيْفَةُ، وَمُعَاذٌ بِحَضْرَةِ جَمِيعِ الصَّحَابَةِ.

L20605 And among the Followers: Through the chain of Abd al-Razzaq, who narrated to us: Maʿmar informed me that someone asked al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq about land given as payment for a third or quarter share. He replied: There is no objection to it.

وَمِنْ التَّابِعِينَ -: مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ أَخْبَرَنِي مَنْ سَأَلَ الْقَاسِمَ بْنَ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ الْأَرْضِ تُعْطَى بِالثُّلُثِ، وَالرُّبُعِ؟ فَقَالَ: لَا بَأْسَ بِهِ.

L20606 We have previously mentioned the prohibition against leasing land, and this is the verbatim of our ruling.

وَقَدْ ذَكَرْنَا قَبْلُ نَهْيَهُ عَنْ كِرَاءِ الْأَرْضِ وَهَذَا نَصُّ قَوْلِنَا.

L20607 And through the chain of Ibn Abi Shaybah, who narrated to us from al-Fudayl ibn Iyad from Hisham—that is, Ibn Hassan—from al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq and Ibn Sirin: They both did not deem it objectionable for one to give his land on the condition of granting the owner a third, a quarter, or a tenth of the yield, with no obligation upon the recipient to bear any expenses.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا الْفُضَيْلُ بْنُ عِيَاضٍ عَنْ هِشَامٍ - هُوَ ابْنُ حَسَّانَ - عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ، وَابْنِ سِيرِينَ: أَنَّهُمَا كَانَا لَا يَرَيَانِ بَأْسًا أَنْ يُعْطِيَ أَرْضَهُ عَلَى أَنْ يُعْطِيَهُ الثُّلُثَ، أَوْ الرُّبُعَ، وَالْعُشْرَ، وَلَا يَكُونُ عَلَيْهِ مِنْ النَّفَقَةِ شَيْءٌ.

L20608 And through the chain of Aḥmad ibn Shuʿayb al-Nasāʾī: Muḥammad ibn ʿAbd Allāh ibn al-Mubārak reported to us; Zakariyyā ibn ʿAdiyy reported to us; Ḥammād ibn Zayd reported to us from ʿAmr ibn Dīnār, who said: Ṭāwūs disapproved of renting out his land for gold or silver, but he saw no harm in [receiving] a third and a quarter [of the crop]. This is the explicit statement of our doctrine.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ النَّسَائِيِّ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنُ الْمُبَارَكِ نا زَكَرِيَّا بْنُ عَدِيٍّ نا حَمَّادُ بْنُ زَيْدٍ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: كَانَ طَاوُسٌ يَكْرَهُ أَنْ يُؤَاجِرَ أَرْضَهُ بِالذَّهَبِ وَالْفِضَّةِ، وَلَا يَرَى بِالثُّلُثِ وَالرُّبُعِ بَأْسًا وَهَذَا نَصُّ قَوْلِنَا.

L20609 And via the chain of Ḥammād ibn Salamah from Qatādah: Saʿīd ibn al-Musayyib and Ibn Sīrīn did not see any harm in leasing for a third or a quarter [of the produce] - referring to agricultural land.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ: أَنَّ سَعِيدَ بْنَ الْمُسَيِّبِ، وَابْنَ سِيرِينَ كَانَا لَا يَرَيَانِ بَأْسًا بِالْإِجَارَةِ عَلَى الثُّلُثِ وَالرُّبُعِ - يَعْنِي فِي الْأَرْضِ -.

L20610 We have mentioned Ibn Sīrīn's prohibition against leasing land, and his

وَقَدْ ذَكَرْنَا نَهْيَ ابْنِ سِيرِينَ عَنْ كِرَاءِ الْأَرْضِ فَقَوْلُهُ هُوَ قَوْلُنَا.

opinion is our opinion.

L20611 From the narration of Ḥammād ibn Salamah, from Ḥumayd, from Iyās ibn Muʿāwiyah: ʿUmar ibn ʿAbd al-ʿAzīz wrote, "Grant the land on the basis of a quarter share, a third share, a fifth share, down to a tenth share, and do not leave the land desolate."

L20612–20614 We have also narrated it through the chain of Ibn Abi Shaybah, who said: Hafs ibn Ghiyath and Abd al-Wahhab al-Thaqafi narrated to us. Hafs said: from Yahya ibn Sa'id al-Ansari; and Abd al-Wahhab said: from Khalid al-Ḥadhā'. Then Yahya and Khalid concurred that Umar ibn Abd al-Aziz ordered the land to be granted at a third and a quarter (of its yield).

L20615 Through the chain of Waki' who reported to us from Sharik, from Abdullah ibn Isa, who said: Abd al-Rahman ibn Abi Layla owned land in al-Fawwarah which he would lease for a third and a quarter. He would send me to apportion the shares among them.

L20616 Via the narration of ʿAbd al-Razzāq from Maʿmar: "I asked al-Zuhrī about leasing land for a third or a quarter. He replied: 'There is no objection to that.'"

L20617 And through the narration of Abd al-Razzaq from Sufyan al-Thawri, Qays ibn Muslim narrated to me on the authority of Abu Ja'far Muhammad ibn Ali ibn al-Husayn ibn Ali ibn Abi Talib, who said: "There is not a single family of the Emigrants in Medina except that they lease their land [for cultivation] in exchange for one-third or one-fourth [of the produce]."

L20618 From the narration of Abd al-Razzaq, who reported to us from Waki', who informed me from Amr ibn Uthman ibn Mawhab, who said: I heard Abu Ja'far Muhammad ibn Ali ibn al-Husayn say: "The families of Abu Bakr, the families of Umar, and the families of Ali lease their land [to tenants] for a third or a quarter of the harvest."

L20619 And from the route of Ibn Abī Shaybah: Al-Faḍl ibn Dukayn narrated to us from Bukayr ibn ʿĀmir from ʿAbd al-Raḥmān ibn al-Aswad ibn Yazīd, who said: "I would practice sharecropping for a third or a quarter share and bring

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ إِيَاسِ بْنِ مُعَاوِيَةَ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ كَتَبَ: أَنْ أَعْطُوا الْأَرْضَ عَلَى الرُّبُعِ، وَالثُّلُثِ، وَالْخُمُسِ، إِلَى الْعُشْرِ، وَلَا تَدَعُوا الْأَرْضَ خَرَابًا.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ قَالَ: نا حَفْصُ بْنُ غِيَاثٍ، وَعَبْدُ الْوَهَّابِ الثَّقَفِيُّ قَالَ حَفْصٌ: عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَقَالَ عَبْدُ الْوَهَّابِ: عَنْ خَالِدٍ الْحَذَّاءِ ثُمَّ اتَّفَقَ يَحْيَى، وَخَالِدٌ عَلَى أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَمَرَ بِإِعْطَاءِ الْأَرْضِ بِالثُّلُثِ، وَالرُّبُعِ.

وَمِنْ طَرِيقِ وَكِيعٍ نا شَرِيكٌ عَنْ عَبْدِ اللَّهِ بْنِ عِيسَى قَالَ: كَانَ لِعَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى أَرْضٌ بِالْفَوَّارَةِ فَكَانَ يَدْفَعُهَا بِالثُّلُثِ، وَالرُّبُعِ فَيُرْسِلُنِي فَأُقَاسِمُهُمْ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ سَأَلْت الزُّهْرِيَّ عَنْ إعْطَاءِ الْأَرْضِ بِالثُّلُثِ، وَالرُّبُعِ؟ فَقَالَ: لَا بَأْسَ بِذَلِكَ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ أَخْبَرَنِي قَيْسُ بْنُ مُسْلِمٍ عَنْ أَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ بْنِ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: مَا بِالْمَدِينَةِ أَهْلُ بَيْتِ هِجْرَةٍ إلَّا وَهُمْ يُعْطُونَ أَرْضَهُمْ بِالثُّلُثِ وَالرُّبُعِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا وَكِيعٌ أَخْبَرَنِي عَمْرُو بْنُ عُثْمَانَ بْنِ مَوْهَبٍ قَالَ: سَمِعْت أَبَا جَعْفَرٍ مُحَمَّدَ بْنَ عَلِيِّ بْنِ الْحُسَيْنِ يَقُولُ: آلُ أَبِي بَكْرٍ، وَآلُ عُمَرَ، وَآلُ عَلِيٍّ يَدْفَعُونَ أَرْضَهُمْ بِالثُّلُثِ، أَوْ الرُّبُعِ.

the yield to ʿAlqamah and al-Aswad. If they had perceived any harm in it, they would have prohibited me from it."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا الْفَضْلُ بْنُ دُكَيْنٍ عَنْ بُكَيْرِ بْنِ عَامِرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ بْنِ يَزِيدَ قَالَ: كُنْت أُزَارِعُ بِالثُّلُثِ وَالرُّبُعِ وَأَحْمِلُهُ إلَى عَلْقَمَةَ، وَالْأَسْوَدِ، فَلَوْ رَأَيَا بِهِ بَأْسًا لَنَهَيَانِي عَنْهُ.

L20620 This was also narrated to us from Abd al-Rahman ibn Yazid and Musa ibn Talhah ibn Ubaydullah - and this is the position of Ibn Abi Layla, Sufyan al-Thawri, al-Awza'i, Abu Yusuf, Muhammad ibn al-Hasan, and Ibn al-Mundhir.

وَرُوِّينَا ذَلِكَ أَيْضًا عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ، وَمُوسَى بْنِ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَسُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَابْنِ الْمُنْذِرِ.

L20621 Differing opinions were reported from Al-Layth concerning this. Ahmad and Isḥāq permitted it, except that they stipulated the seed must come from the landowner, while the cultivator is responsible for providing the oxen, tools, and labor. Some ḥadīth scholars permitted it and did not mind which of the two provided the seed.

وَاخْتُلِفَ فِيهَا عَنْ اللَّيْثِ، وَأَجَازَهَا أَحْمَدُ، وَإِسْحَاقُ إلَّا أَنَّهُمَا قَالَا: إنَّ الْبَذْرَ يَكُونُ مِنْ عِنْدِ صَاحِبِ الْأَرْضِ وَإِنَّمَا عَلَى الْعَامِلِ الْبَقَرُ، وَالْآلَةُ، وَالْعَمَلُ - وَأَجَازَهَا بَعْضُ أَصْحَابِ الْحَدِيثِ، وَلَمْ يُبَالِ مَنْ جَعَلَ الْبَذْرَ مِنْهُمَا.

L20622–20624 Abu Muhammad said: The stipulation of the Prophet (peace be upon him) upon the people of Khaybar to cultivate the land using their own wealth serves as a clarification that all seeds and expenses are entirely upon the cultivator. It is impermissible to stipulate any of that upon the landowner, because any condition not found in the Book of Allah the Exalted is invalid. However, if the landowner voluntarily offers to lend the cultivator the seed, part of it, the means to purchase cattle, tools, or resources needed for expansion, it is permissible. Without any stipulation in the contract, it is permissible because it is an act of goodness, and a loan is a means of divine reward and an act of righteousness. And success is from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: فِي اشْتِرَاطِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَهْلِ خَيْبَرَ أَنْ يَعْمَلُوهَا بِأَمْوَالِهِمْ: بَيَانٌ أَنَّ الْبَذْرَ وَالنَّفَقَةَ كُلَّهَا عَلَى الْعَامِلِ، وَلَا يَجُوزُ أَنْ يُشْتَرَطَ شَيْءٌ مِنْ ذَلِكَ عَلَى صَاحِبِ الْأَرْضِ؛ لِأَنَّ كُلَّ ذَلِكَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، فَإِنْ تَطَوَّعَ صَاحِبُ الْأَرْضِ بِأَنْ يُقْرِضَ الْعَامِلَ الْبَذْرَ، أَوْ بَعْضَهُ أَوْ مَا يَبْتَاعُ بِهِ الْبَقَرَ، أَوْ الْآلَةَ، أَوْ مَا يَتَّسِعُ فِيهِ مِنْ غَيْرِ شَرْطٍ فِي الْعَقْدِ فَهُوَ جَائِزٌ؛ لِأَنَّهُ فِعْلُ خَيْرٍ، وَالْقَرْضُ أَجْرٌ وَبِرٌّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20625 Abu Hanifah, Malik, Al-Shafi'i, Abu Yusuf, Muhammad, Zufar, and Abu Sulayman agreed on the permissibility of leasing land, though they also differed both regarding this matter and regarding sharecropping. All those we mentioned—except Malik alone—permitted leasing land in exchange for gold, silver, food quantified by measurement and owed as a liability (provided it is not stipulated that the food must come from the land itself), and all types of goods.

وَاتَّفَقَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو يُوسُفَ، وَمُحَمَّدٌ، وَزُفَرُ، وَأَبُو سُلَيْمَانَ عَلَى جَوَازِ كِرَاءِ الْأَرْضِ، وَاخْتَلَفُوا فِيهِ أَيْضًا، وَفِي الْمُزَارَعَةِ فَأَجَازَ كُلُّ مَنْ ذَكَرْنَا - حَاشَا مَالِكًا وَحْدَهُ - كِرَاءَ الْأَرْضِ بِالذَّهَبِ، وَالْفِضَّةِ، وَبِالطَّعَامِ الْمُسَمَّى كَيْلُهُ فِي الذِّمَّةِ - مَا لَمْ يُشْتَرَطْ أَنْ يَكُونَ مِمَّا تُخْرِجُهُ تِلْكَ الْأَرْضُ - وَبِالْعُرُوضِ كُلِّهَا.

وَقَالَ مَالِكٌ بِمِثْلِ ذَلِكَ، إِلَّا أَنَّهُ لَمْ يُجِزْ كِرَاءَ الْأَرْضِ بِشَيْءٍ مِمَّا يَخْرُجُ مِنْهَا، وَلَا بِشَيْءٍ مِنْ الطَّعَامِ، وَإِنْ لَمْ يَخْرُجْ مِنْهَا: كَالْعَسَلِ، وَالْمِلْحِ، وَالْمُرِّيِّ، وَنَحْوِ ذَلِكَ، وَأَجَازَ كِرَاءَهَا بِالْخَشَبِ وَالْحَطَبِ وَإِنْ كَانَا يَخْرُجَانِ مِنْهَا - وَهَذَا تَقْسِيمٌ لَا نَعْرِفُهُ عَنْ أَحَدٍ قَبْلَهُ، وَتَنَاقُضٌ ظَاهِرٌ - وَمَا نَعْلَمُ لِقَوْلِهِ هَذَا مُتَعَلَّقًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ مُتَقَدِّمٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ - يَعْنِي اسْتِثْنَاءَهُ الْعَسَلَ، وَالْمِلْحَ، وَإِجَازَتَهُ الْخَشَبَ، وَالْحَطَبَ.

L20626 Malik held a similar opinion, except he did not permit leasing land in exchange for anything produced from it nor for any food item - even if not originating from the land itself, such as honey, salt, murri, or similar substances. He permitted leasing it for wood and firewood even when sourced from it. This is a classification unknown from any predecessor and an evident contradiction. We find no basis for this ruling in the Quran, nor authentic Sunnah, nor weak narration, nor a predecessor's opinion, nor analogical reasoning, nor any defensible rationale - meaning his exclusion of honey and salt while permitting wood and firewood.

وَمَنَعَ أَبُو حَنِيفَةَ وَزُفَرُ إِعْطَاءَ الْأَرْضِ بِجُزْءٍ مُسَمًّى مِمَّا يُزْرَعُ فِيهَا بِوَجْهٍ مِنْ الْوُجُوهِ - وَقَالَ مَالِكٌ: لَا يَجُوزُ إِعْطَاءُ الْأَرْضِ بِجُزْءٍ مُسَمًّى مِمَّا تُخْرِجُ الْأَرْضُ، إِلَّا أَنْ تَكُونَ أَرْضٌ وَشَجَرٌ، فَيَكُونُ مِقْدَارُ الْبَيَاضِ مِنْ الْأَرْضِ ثُلُثَ مِقْدَارِ الْجَمِيعِ، وَيَكُونُ السَّوَادُ مِقْدَارَ الثُّلُثَيْنِ مِنْ الْجَمِيعِ، فَيَجُوزُ حِينَئِذٍ أَنْ تُعْطَى بِالثُّلُثِ وَالرُّبُعِ وَالنِّصْفِ عَلَى مَا يُعْطَى بِهِ ذَلِكَ السَّوَادُ.

L20627 Abu Hanifah and Zufar prohibited leasing land for a specified share of what is cultivated in it in any form. Malik said: It is impermissible to lease land for a specified share of what the land produces, except when it is land and trees. In such a case, the fallow portion of the land must constitute one-third of the total area, and the cultivated portion must constitute two-thirds of the total area. It is then permissible to lease the land for a third, a quarter, or half of the yield, according to what is given for that cultivated portion.

وَقَالَ الشَّافِعِيُّ: لَا يَجُوزُ إِعْطَاءُ الْأَرْضِ بِجُزْءٍ مُسَمًّى مِمَّا تُخْرِجُ إِلَّا أَنْ يَكُونَ فِي خِلَالِ الشَّجَرِ لَا يُمْكِنُ سَقْيُهَا وَلَا عَمَلُهَا إِلَّا بِعَمَلِ الشَّجَرِ وَحَفْرِهَا وَسَقْيِهَا، فَيَجُوزُ حِينَئِذٍ إِعْطَاؤُهَا بِثُلُثٍ، أَوْ رُبُعٍ أَوْ نِصْفٍ عَلَى مَا تُعْطَى بِهِ الشَّجَرُ.

L20628 Al-Shāfiʿī said: It is impermissible to grant land for a specified share of its produce unless it lies interspersed with trees, where irrigation and cultivation are only feasible through tending to the trees, digging the land, and irrigating it. In such a case, it becomes permissible to grant it for a third, quarter, or half [of the produce], according to the terms by which the trees are cultivated.

وَقَالَ أَبُو بَكْرِ بْنُ دَاوُد: لَا يَجُوزُ إِعْطَاءُ الْأَرْضِ بِجُزْءٍ مُسَمًّى مِمَّا يَخْرُجُ مِنْهَا إِلَّا أَنْ تُعْطَى هِيَ وَالشَّجَرُ فِي صَفْقَةٍ وَاحِدَةٍ فَيَجُوزُ ذَلِكَ حِينَئِذٍ.

L20629 Abu Bakr ibn Dawud said: It is impermissible to grant land for a specified share of its produce unless both the land and trees are given as part of a single transaction; only at that point is it permissible.

قَالَ أَبُو مُحَمَّدٍ: حُجَّةُ جَمِيعِهِمْ فِي الْمَنْعِ مِنْ ذَلِكَ «نَهْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إِعْطَاءِ الْأَرْضِ بِالنِّصْفِ، وَالثُّلُثِ، وَالرُّبُعِ» ؟ قَالَ عَلِيٌّ: وَلَسْنَا نُخَارِجُهُمْ الْآنَ

L20630–20632 Abū Muḥammad said: "The proof for all of them in prohibiting that practice is the Messenger of Allah's prohibition—may Allah bless him and grant him peace—against granting land for a half, third, or quarter [share]." ʿAlī said: "We are not excluding them now regarding the wording of that re-

port. Rather, he says: Yes, it has been authenticated." It is reported from the Prophet—peace be upon him—that he prohibited taking rent or a share for land. He said: "Whoever owns land must cultivate it himself or let others cultivate it. If he refuses, let him keep his land." This is a prohibition against granting the land in exchange for a portion of its produce. However, his practice—peace be upon him—in Khaybar abrogates this ruling, in accordance with what we explained earlier.

فِي أَلْفَاظِ ذَلِكَ الْحَدِيثِ بَلْ يَقُولُ: نَعَمْ، قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ نَهَى عَنْ أَنْ يُؤْخَذَ لِلْأَرْضِ أَجْرٌ أَوْ حَظٌّ، قَالَ: «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا أَوْ لِيُزْرِعْهَا، فَإِنْ أَبَى فَلْيُمْسِكْ أَرْضَهُ» وَهَذَا نَهْيٌ عَنْ إعْطَائِهَا بِجُزْءٍ مِمَّا يَخْرُجُ مِنْهَا، لَكِنْ فِعْلُهُ - عَلَيْهِ السَّلَامُ - فِي خَيْبَرَ هُوَ النَّاسِخُ عَلَى مَا بَيَّنَّا قَبْلُ.

L20633 As for Abū Ḥanīfa, he opposed the abrogating ruling and adhered to the abrogated one.

فَأَمَّا أَبُو حَنِيفَةَ فَخَالَفَ النَّاسِخَ وَأَخَذَ بِالْمَنْسُوخِ.

L20634 As for Mālik, al-Shāfiʿī, and Abū Sulaymān, the Prophet's action—peace and blessings of Allah be upon him—in the land of Khaybar perplexed them. Thus, they extrapolated it according to what we have cited from them, and all those juridical opinions amount to arbitrary judgment.

وَأَمَّا مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: فَحَيَّرَهُمْ فِعْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَرْضِ خَيْبَرَ فَأَخْرَجُوهُ عَلَى مَا ذَكَرْنَا عَنْهُمْ وَكُلُّ تِلْكَ الْوُجُوهِ تَحَكُّمٌ.

L20635 To one who follows Malik's school, it is said: What is your basis for defining the whiteness [of dawn] as one-third? No report has ever specified a third, nor is there evidence for it. Such a practice in Islamic law is impermissible.

وَيُقَالُ لِمَنْ قَلَّدَ مَالِكًا: مِنْ أَيْنَ لَكُمْ تَحْدِيدُ الْبَيَاضِ بِالثُّلُثِ؟ وَلَمْ يَأْتِ قَطُّ فِي شَيْءٍ مِنْ الْأَخْبَارِ تَحْدِيدُ ثُلُثٍ، وَلَا دَلِيلَ عَلَيْهِ، وَمِثْلُ هَذَا فِي الدِّينِ لَا يَجُوزُ.

L20636 They are asked: "What do you mean by the third? A third of the area, a third of the yield, or a third of the value?" Whichever of these aspects they lean toward, they are told: "On what basis have you specified this aspect over others? The yield may decrease or increase, and the value likewise. As for the area, a small one may produce the highest yield or hold more value than multiples thereof."

وَيُقَالُ لَهُمْ: مَاذَا تُرِيدُونَ بِالثُّلُثِ؟ أَثُلُثَ الْمِسَاحَةِ أَوْ ثُلُثَ الْغَلَّةِ أَمْ ثُلُثَ الْقِيمَةِ؟ فَإِلَى أَيِّ وَجْهٍ مَالُوا مِنْ هَذِهِ الْوُجُوهِ قِيلَ لَهُمْ: وَمِنْ أَيْنَ خَصَّصْتُمْ هَذَا الْوَجْهَ دُونَ غَيْرِهِ؟ وَالْغَلَّةُ قَدْ تَقِلُّ وَتَكْثُرُ، وَالْقِيمَةُ كَذَلِكَ وَأَمَّا الْمِسَاحَةُ فَقَدْ تَكُونُ مِسَاحَةً قَلِيلَةً أَعْظَمَ غَلَّةً أَوْ أَكْثَرَ قِيمَةً مِنْ أَضْعَافِهَا.

L20637 Moreover, Khaybar was not a single walled enclosure, nor a single assembly point, nor a single village, nor a single fortress. Rather, it comprised numerous fortresses that still exist today, which have remained unchanged—including al-Waṭīḥ, al-Salālim, Nāʿim, al-Qumūṣ, al-Katībah, al-Shaqq, al-Naṭāh, and others. What can be inferred about a land where two hundred horsemen—and many times their number in men—took their shares, amassed wealth from it, and became estate owners? How then does Imam Malik justify restricting their portion to one-third? Within it were purely cultivated

وَأَيْضًا: فَإِنَّ خَيْبَرَ لَمْ تَكُنْ حَائِطًا وَاحِدًا، وَلَا مَحْشَرًا وَاحِدًا، وَلَا قَرْيَةً وَاحِدَةً، وَلَا حِصْنًا وَاحِدًا، بَلْ كَانَتْ حُصُونًا كَثِيرَةً بَاقِيَةً إلَى الْيَوْمِ لَمْ تَتَبَدَّلْ مِنْهَا الْوَطِيحُ، وَالسَّلَالِمُ، وَنَاعِمُ، وَالْقُمُوصُ، وَالْكَتِيبَةُ، وَالشَّقُّ، وَالنَّطَاةُ، وَغَيْرُهَا - وَمَا الظَّنُّ بِبَلَدٍ أَخَذَ فِيهِ الْقِسْمَةَ مِائَتَا فَارِسٍ وَأَضْعَافُهُمْ مِنْ الرِّجَالِ فَتَمَوَّلُوا مِنْهَا وَصَارُوا أَصْحَابَ ضِيَاعٍ

lands, purely uncultivated lands, and cultivated areas within uncultivated expanses. Yet no textual evidence has ever explicitly detailed the one-third allocation he prescribed.

فَمِنْ أَيْنَ لِمَالِكٍ تَحْدِيدُ الثُّلُثِ؟ وَقَدْ كَانَ فِيهَا بَيَاضٌ لَا سَوَادَ فِيهِ، وَسَوَادٌ لَا بَيَاضَ فِيهِ، وَبَيَاضُ سَوَادٍ، فَمَا جَاءَ قَطُّ فِي شَيْءٍ مِنْ الْآثَارِ تَخْصِيصُ مَا خَصَّهُ.

L20638 If he says: "It has been reported from the Prophet (peace and blessings of Allah be upon him) that a third, and a third is a lot."

فَإِنْ قَالَ: قَدْ جَاءَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الثُّلُثُ، وَالثُّلُثُ كَثِيرٌ.

L20639 We said: Yes, and you have made the third small in this matter contrary to the transmitted precedent. Then it is said to them and to al-Shāfiʿī: From where do you derive that the Messenger of Allah—peace and blessings be upon him—granted the land of Khaybar half its produce solely because it was subordinate to the Sawad? Does anyone know this except one whom the Messenger of Allah—peace and blessings be upon him—informed them directly from himself? Otherwise, it is an oversight by those who asserted it and an insistence on conjecture. As for persisting in this after being alerted, it is nothing but sheer falsehood against him—peace and blessings be upon him.

قُلْنَا: نَعَمْ، وَأَنْتُمْ جَعَلْتُمْ فِي هَذِهِ الْمَسْأَلَةِ الثُّلُثَ قَلِيلًا بِخِلَافِ الْأَثَرِ - ثُمَّ يُقَالُ لَهُمْ وَلِلشَّافِعِيِّ: مِنْ أَيْنَ لَكُمْ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا أَعْطَى أَرْضَ خَيْبَرَ بِنِصْفِ مَا يَخْرُجُ مِنْهَا، لِأَنَّهَا كَانَتْ تَبَعًا لِلسَّوَادِ؟ وَهَلْ يَعْلَمُ هَذَا أَحَدٌ إلَّا مَنْ أَخْبَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ عَنْ نَفْسِهِ، وَإِلَّا فَهُوَ غَفْلَةٌ مِمَّنْ قَالَهُ وَقَطْعٌ بِالظَّنِّ؟ وَأَمَّا بَعْدَ التَّنْبِيهِ عَلَيْهِ فَمَا هُوَ إلَّا الْكَذِبُ الْبَحْتُ عَلَيْهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L20640–20642 However, the only clear ruling is that he—peace be upon him—assigned its land in exchange for half of its produce. He granted its crops, its palm trees, and its fruits in this manner. Thus, we say: This is a Sunnah and an eternal right. We do not add to it, and we know it abrogates what preceded it from matters that cannot be reconciled between them based on their two apparent meanings.

وَإِنَّمَا الْحَقُّ الْوَاضِحُ فَهُوَ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَعْطَى أَرْضَهَا بِنِصْفِ مَا يَخْرُجُ مِنْهَا مِنْ زَرْعٍ وَأَعْطَى نَخْلَهَا وَثِمَارَهَا كَذَلِكَ، فَنَحْنُ نَقُولُ: هَذَا سُنَّةٌ، وَحَقٌّ أَبَدًا، وَلَا نَزِيدُ، وَنَعْلَمُ أَنَّهُ نَاسِخٌ لِمَا تَقَدَّمَهُ مِمَّا لَا يُمْكِنُ الْجَمْعُ بَيْنَهُمَا بِظَاهِرِهِمَا.

L20643 Similarly, it is also said to those who adhere to the opinion of Abu Bakr ibn Dawud: "like for like." What is astonishing is that some of them stated: "The sharecropping contract (mukhabara) is derived from Khaybar," thereby indicating that the term originated after the conquest of Khaybar.

وَكَذَلِكَ أَيْضًا يُقَالُ لِمَنْ قَالَ بِقَوْلِ أَبِي بَكْرِ بْنِ دَاوُد سَوَاءً بِسَوَاءٍ، وَالْعَجَبُ أَنَّ بَعْضَهُمْ قَالَ: الْمُخَابَرَةُ مُشْتَقَّةٌ مِنْ خَيْبَرَ، فَدَلَّ أَنَّهَا بَعْدَ خَيْبَرَ.

L20644 Abū Muḥammad said: Had this speaker known the reprehensible nature of what he committed, he would have sought forgiveness from Allah the Exalted and covered himself in shame. As for the ignorant one's claim that Khaybar bore this name before the birth of Allah's Messenger (peace be upon him), that sharecropping was similarly termed, and that the Messenger of Allah (peace be upon him) maintained an agreement to give Khaybar half of its agricultural or fruit yield until his death (peace be upon him)—with this arrangement

قَالَ أَبُو مُحَمَّد: وَلَوْ عَلِمَ هَذَا الْقَائِلُ قَبِيحَ مَا أَتَى بِهِ لَاسْتَغْفَرَ اللَّهَ تَعَالَى مِنْهُ، وَلَتَقَنَّعَ حَيَاءً مِنْهُ، أَمَّا عِلْمُ الْجَاهِلِ أَنَّ خَيْبَرَ كَانَ هَذَا اسْمَهَا قَبْلَ مَوْلِدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّ الْمُخَابَرَةَ كَانَتْ تُسَمَّى بِهَذَا الِاسْمِ كَذَلِكَ، وَأَنَّ إعْطَاءَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْبَرَ بِنِصْفِ مَا يَخْرُجُ مِنْهَا مِنْ زَرْعٍ أَوْ ثَمَرٍ كَانَ إلَى يَوْمِ مَوْتِهِ - عَلَيْهِ

continuing after his death (peace be upon him)—how could any person of intellect or faith permit himself to assert that the Prophet's prohibition (peace be upon him) against sharecropping occurred afterward? Would one suppose his prohibition (peace be upon him) reached us from the afterlife after his death (peace be upon him)? This is sheer folly, corruption, and disgrace from one considered knowledgeable, who ventures into such madness. Thus, it is as certain as daylight that the prohibition of sharecropping and granting land for a portion of its yield undeniably preceded the Khaybar decree—and success is attained solely through Allah the Exalted.

السَّلَامُ -، وَاتَّصَلَ كَذَلِكَ بَعْدَ مَوْتِهِ - عَلَيْهِ السَّلَامُ -؟ فَكَيْف يَسُوغُ لِذِي عَقْلٍ أَوْ دِينٍ أَنْ يَقُولَ: إنَّ نَهْيَهُ - عَلَيْهِ السَّلَامُ - عَنْ الْمُخَابَرَةِ كَانَ بَعْدَ ذَلِكَ؟ أَتَرَى عَهْدَهُ - عَلَيْهِ السَّلَامُ - أَتَانَا مِنْ الْآخِرَةِ بَعْدَ مَوْتِهِ - عَلَيْهِ السَّلَامُ - بِالنَّهْيِ عَنْهَا؟ أَمَّا هَذَا مِنْ السُّخْفِ، وَالتَّلَوُّثِ، وَالْعَارِ مِمَّنْ يُنْسَبُ إلَى الْعِلْمِ، وَيَأْتِي بِمِثْلِ هَذَا الْجُنُونِ؟ فَصَحَّ يَقِينًا كَالشَّمْسِ أَنَّ النَّهْيَ عَنْ الْمُخَابَرَةِ وَعَنْ إعْطَاءِ الْأَرْضِ بِمَا يَخْرُجُ مِنْهَا كَانَ قَبْلَ أَمْرِ خَيْبَرَ بِلَا شَكٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20645 Those who permit leasing cited the hadith of Thabit ibn al-Dahhak as evidence: "The Messenger of Allah, may Allah bless him and grant him peace, prohibited sharecropping and commanded leasing contracts, stating: 'There is no harm in them.'"[6]

وَاحْتَجَّ الْمُجِيزُونَ لِلْكِرَاءِ بِحَدِيثِ ثَابِتِ بْنِ الضَّحَّاكِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ الْمُزَارَعَةِ وَأَمَرَ بِالْمُؤَاجَرَةِ وَقَالَ: لَا بَأْسَ بِهَا» .

L20646 And with the report we have narrated through the chain of Muslim: Isḥāq—he is Ibn Rāhawayh—narrated to us; ʿĪsā ibn Yūnus narrated to us; Al-Awzāʿī narrated to us from Rabīʿah ibn Abī ʿAbd al-Raḥmān: Ḥanẓalah ibn Qays al-Zuraqī narrated to me, saying: I asked Rāfiʿ ibn Khadīj about leasing land in exchange for gold and silver. He said: "There is no objection to it. People during the time of Allah's Messenger—peace and blessings be upon him—used to lease land for shares of the Mādhīyānāt (a portion of irrigated land), the heads of the canals, and portions of crops. Then one [crop] would perish while the other remained intact, and vice versa. Thus people had no leasing arrangement except this type. For this reason it was emphatically prohibited. As for something clearly defined and guaranteed, there is no objection to it." These are two authentic narrations.

وَبِالْخَبَرِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ - هُوَ ابْنُ رَاهْوَيْهِ - نا عِيسَى بْنُ يُونُسَ نا الْأَوْزَاعِيُّ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ حَدَّثَنِي حَنْظَلَةُ بْنُ قَيْسٍ الزُّرَقِيُّ قَالَ: سَأَلْت رَافِعَ بْنَ خَدِيجٍ عَنْ كِرَاءِ الْأَرْضِ بِالذَّهَبِ وَالْفِضَّةِ؟ فَقَالَ: لَا بَأْسَ بِهِ إنَّمَا كَانَ النَّاسُ يُؤَاجِرُونَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمَاذِيَانَاتِ، وَأَقْبَالِ الْجَدَاوِلِ وَأَشْيَاءَ مِنْ الزَّرْعِ، فَيَهْلِكُ هَذَا وَيَسْلَمُ هَذَا وَيَسْلَمُ هَذَا وَيَهْلِكُ هَذَا فَلَمْ يَكُنْ لِلنَّاسِ كِرَاءٌ إلَّا هَذَا فَلِذَلِكَ زَجَرَ عَنْهُ فَأَمَّا شَيْءٌ مَعْلُومٌ مَضْمُونٌ فَلَا بَأْسَ بِهِ، وَهَذَانِ خَبَرَانِ صَحِيحَانِ.

L20647–20649 And by what was narrated to us through the isnād of al-Bukhārī: ʿAlī ibn ʿAbd Allāh—that is, Ibn al-Madīnī—and Sufyān—that is, Ibn ʿUyaynah—narrated to us. Amr—he is the son of Dinar—said: I said to Tawus, "If you were to abandon *mukhabara* (sharecropping), since the Prophet—peace be upon him—prohibited it, what do they assert?" Tawus replied to me, "The

وَبِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ: نا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ ابْنُ الْمَدِينِيِّ - نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ قَالَ عَمْرٌو - هُوَ ابْنُ دِينَارٍ -: قُلْت لِطَاوُسٍ: لَوْ تُرِكَتْ الْمُخَابَرَةُ فَإِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْهَا فَمَا يَزْعُمُونَ؟ فَقَالَ لِي طَاوُسٌ: إنَّ أَعْلَمَهُمْ - يَعْنِي ابْنَ

[6] **Hadith references (L20645):** Sahih Muslim 1549b; Mishkat al-Masabih 2981.

most knowledgeable among them—meaning Ibn Abbas—informed me that the Prophet—peace be upon him—did not prohibit it, but rather said: *‘For one of you to grant his brother (land) is better for him than to take a known share for it.’*” This is also a sound narration. And with another narration we transmitted through the chain of Ibn Abi Shaybah: from Ibn ‘Ulayyah, from ‘Abd al-Rahman ibn Ishaq, from Abu ‘Ubaydah ibn ‘Ammar ibn Yasir, from Abu ‘Ubaydah ibn Muhammad ibn ‘Ammar ibn Yasir, from al-Walid ibn Abi al-Walid, from ‘Urwah ibn al-Zubayr, who said: Zayd ibn Thabit said, “May Allah forgive Rafi‘ ibn Khadij. By Allah, I am more knowledgeable about this Hadith than him. *‘Two men came to him (the Prophet) who had fought each other, so the Messenger of Allah—peace be upon him—said: If this is your situation, then do not lease out farmlands for sharecropping.’*”

L20650 Ali said: So we said to them: As for the narration of Zaid, it is not sound. However, we will make allowance for you in it and say: Granted, for your sake, that it were sound, no doubt can be established against Rafi‘ through such a thing. Rather, we say: Zaid spoke truthfully, and Rafi‘ spoke truthfully. Both of them are people of truthfulness and reliability. Since Zaid preserved at that time what Rafi‘ did not hear, Rafi‘ also heard on another occasion what Zaid did not hear. Zaid is not more deserving of being believed than Rafi‘, nor is Rafi‘ more deserving of being believed than Zaid. Rather, both of them are truthful.

L20651 Indeed, Jābir, Abū Hurayrah, Abū Saʿīd, and Ibn ʿUmar narrated the prohibition against leasing land as a whole - among them are those of higher status than Zayd.

L20652 Then we say to them: If you prioritize this narration over the hadith prohibiting renting, then prioritize it over the prohibition of mukhābara (labor-based sharecropping), and there is no distinction.

L20653 Such is the view regarding the hadith of Ibn Abbas, for he said: “The Prophet (peace be upon him) did not prohibit it.” And Jabir, Abu Hurairah, Abu Sa’id, and Ibn Umar said: “The Messenger of Allah (peace be upon him) prohibited it.” All are truthful, and each only reported what he knew.

عَبَّاسٍ - أَخْبَرَنِي أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَنْهَ عَنْهَا، وَلَكِنْ قَالَ: «لَأَنْ يَمْنَحَ أَحَدُكُمْ أَخَاهُ خَيْرٌ لَهُ مِنْ أَنْ يَأْخُذَ عَلَيْهَا خَرْجًا مَعْلُومًا» وَهَذَا أَيْضًا خَبَرٌ صَحِيحٌ. وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنِ عُلَيَّةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ إِسْحَاقَ، عَنْ أَبِي عُبَيْدَةَ بْنِ عَمَّارِ بْنِ يَاسِرٍ عَنْ أَبِي عُبَيْدَةَ بْنِ مُحَمَّدِ بْنِ عَمَّارِ بْنِ يَاسِرٍ عَنْ الْوَلِيدِ بْنِ أَبِي الْوَلِيدِ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: قَالَ زَيْدُ بْنُ ثَابِتٍ: يَغْفِرُ اللَّهُ لِرَافِعِ بْنِ خَدِيجٍ، أَنَا وَاَللَّهُ أَعْلَمُ بِالْحَدِيثِ مِنْهُ، «إِنَّمَا أَتَاهُ رَجُلَانِ قَدْ اقْتَتَلَا فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِنْ كَانَ هَذَا شَأْنُكُمْ فَلَا تُكْرُوا الْمَزَارِعَ» .

قَالَ عَلِيٌّ: فَقُلْنَا لَهُمْ: أَمَّا حَدِيثُ زَيْدٍ فَلَا يَصِحُّ، وَلَكَّا نُسَامِحُكُمْ فِيهِ فَنَقُولُ: هَبْكُمْ أَنَّهُ قَدْ صَحَّ فَإِنَّ رَافِعًا لَا يَثْبُتُ عَلَيْهِ الْوَهْمُ بِمِثْلِ هَذَا، بَلْ نَقُولُ: صَدَقَ زَيْدٌ، وَصَدَقَ رَافِعٌ، وَكِلَاهُمَا أَهْلُ الصِّدْقِ وَالثِّقَةِ، وَإِذْ حَفِظَ زَيْدٌ فِي ذَلِكَ الْوَقْتِ مَا لَمْ يَسْمَعْهُ رَافِعٌ فَقَدْ سَمِعَ رَافِعٌ أَيْضًا مَرَّةً أُخْرَى مَا لَمْ يَسْمَعْهُ زَيْدٌ، وَلَيْسَ زَيْدٌ بِأَوْلَى بِالتَّصْدِيقِ مِنْ رَافِعٍ، وَلَا رَافِعٌ أَوْلَى بِالتَّصْدِيقِ مِنْ زَيْدٍ، بَلْ كِلَاهُمَا صَادِقٌ.

وَقَدْ رَوَى النَّهْيَ عَنْ الْكِرَاءِ جُمْلَةً لِلْأَرْضِ: جَابِرٌ، وَأَبُو هُرَيْرَةَ، وَأَبُو سَعِيدٍ، وَابْنُ عُمَرَ، وَفِيهِمْ مَنْ هُوَ أَجَلُّ مِنْ زَيْدٍ.

ثُمَّ نَقُولُ لَهُمْ: إِنْ غَلَّبْتُمْ هَذَا الْخَبَرَ عَلَى حَدِيثِ النَّهْيِ عَنْ الْكِرَاءِ فَغَلِّبُوهُ عَلَى النَّهْيِ عَنْ الْمُخَابَرَةِ، وَلَا فَرْقَ.

وَهَكَذَا الْقَوْلُ فِي حَدِيثِ ابْنِ عَبَّاسٍ، لِأَنَّهُ يَقُولُ: لَمْ يَنْهَ عَنْهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَيَقُولُ جَابِرٌ، وَأَبُو هُرَيْرَةَ، وَأَبُو سَعِيدٍ، وَابْنُ عُمَرَ: نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكُلٌّ صَادِقٌ، وَكُلٌّ إِنَّمَا أَخْبَرَ بِمَا عِنْدَهُ.

L20654–20655 Ibn Abbas did not hear the prohibition, whereas these individuals did. Therefore, the one who affirms is more deserving than the one who denies, and the one who states that he knows is more deserving than the one who says, "I do not know."

وَابْنُ عَبَّاسٍ لَمْ يَسْمَعِ النَّهْيَ، وَهَؤُلَاءِ سَمِعُوهُ، فَمَنْ أَثْبَتَ أَوْلَى مِمَّنْ نَفَى، وَمَنْ قَالَ: إِنَّهُ عَلِمَ أَوْلَى مِمَّنْ قَالَ: لَا أَعْلَمُ.

L20656 As for the report of Ḥanẓalah ibn Qays from Rāfiʿ, it merely contains Rāfiʿ's own words - referring to his statement: "But as for something guaranteed, then no?" There have been differing reports from Rāfiʿ regarding this matter, as we previously cited. Sulaymān ibn Yasār narrated from him the prohibition against renting the land for specified food - so why did you permit it? The narration of Ḥanẓalah from Rāfiʿ is highly inconsistent. In any case, the one possessing greater knowledge is more deserving.

وَأَمَّا خَبَرُ حَنْظَلَةَ بْنِ قَيْسٍ عَنْ رَافِعٍ، فَالَّذِي فِيهِ إِنَّمَا هُوَ مِنْ كَلَامِ رَافِعٍ - يَعْنِي قَوْلَهُ -: وَأَمَّا شَيْءٌ مَضْمُونٌ فَلَا؟ وَقَدْ اُخْتُلِفَ عَنْ رَافِعٍ فِي ذَلِكَ كَمَا أَوْرَدْنَا قَبْلُ، وَرَوَى عَنْهُ سُلَيْمَانُ بْنُ يَسَارٍ النَّهْيَ عَنْ كِرَائِهَا بِطَعَامٍ مُسَمًّى فَلِمَ أَجَزْتُمُوهُ؟ وَرِوَايَةُ حَنْظَلَةَ عَنْ رَافِعٍ شَدِيدَةُ الِاضْطِرَابِ وَعَلَى كُلِّ حَالٍ فَالزَّائِدُ عِلْمًا أَوْلَى.

L20657 Imran ibn Sahl ibn Rafi', Ibn Umar, Nafi', Sulayman ibn Yasar, Abu al-Najashi, and others narrated from Rafi' ibn Khadij that there is a complete prohibition on leasing land in general, contrary to what Hanzala narrated from him. All of them are more reliable than Hanzala, so the strengthened narration takes precedence.

وَقَدْ رَوَى عِمْرَانُ بْنُ سَهْلِ بْنِ رَافِعٍ، وَابْنُ عُمَرَ، وَنَافِعٌ، وَسُلَيْمَانُ بْنُ يَسَارٍ، وَأَبُو النَّجَاشِيِّ وَغَيْرُهُمْ: النَّهْيَ عَنْ كِرَاءِ الْأَرْضِ جُمْلَةً عَنْ رَافِعِ بْنِ خَدِيجٍ خِلَافَ مَا رَوَى عَنْهُ حَنْظَلَةُ، وَكُلُّهُمْ أَوْثَقُ مِنْ حَنْظَلَةَ فَالزَّائِدُ أَوْلَى.

L20658 As for the ḥadīth commanding mu'ājarah (sharecropping), yes, it is authentic. The Prophet's prohibition—peace and blessings of Allāh be upon him—has been firmly established. The report permitting it aligns with the foundational legal principle, while the report prohibiting it constitutes additional evidence. The additional takes precedence. We hold absolute certainty that when the Prophet—peace and blessings of Allāh be upon him—prohibited kirā' (leasing), he undoubtedly outlawed what was previously permissible. It is impermissible to abandon certainty for conjecture. Whoever claims that the permissibility we have decisively invalidated has been reinstated is a falsifier, and the burden of proof lies upon him. Certainty cannot be discarded for false claims. The matter resolves solely to granting dominance to the

وَأَمَّا حَدِيثُ أَمَرَ بِالْمُؤَاجَرَةِ فَنَعَمْ، هُوَ صَحِيحٌ، وَقَدْ صَحَّ نَهْيُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَخَبَرُ الْإِبَاحَةِ مُوَافِقٌ لِمَعْهُودِ الْأَصْلِ، وَخَبَرُ النَّهْيِ زَائِدٌ، فَالزَّائِدُ أَوْلَى، وَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَ نَهَى عَنْ الْكِرَاءِ فَقَدْ حَرَّمَ مَا كَانَ مُبَاحًا مِنْ ذَلِكَ بِلَا شَكٍّ، وَلَا يَحِلُّ أَنْ يُتْرَكَ الْيَقِينُ لِلظَّنِّ، وَمَنْ ادَّعَى أَنَّ الْإِبَاحَةَ الَّتِي قَدْ تَيَقَّنَّا بُطْلَانَهَا قَدْ عَادَتْ فَهُوَ مُبْطِلٌ وَعَلَيْهِ الدَّلِيلُ، وَلَا يَجُوزُ تَرْكُ الْيَقِينِ بِالدَّعْوَى الْكَاذِبَةِ، وَلَيْسَ إِلَّا

prohibition—thereby nullifying kirā’ entirely and mukhābarah (sharecropping) entirely—or granting dominance to permissibility, thereby affirming kirā’ entirely and mukhābarah entirely, as stated by Abū Yūsuf, Muḥammad, and others.

تَغْلِيبُ النَّهْيِ، فَبَطَلَ الْكِرَاءُ جُمْلَةً، وَالْمُخَابَرَةُ جُمْلَةً، أَوْ تَغْلِيبُ الْإِبَاحَةِ، فَيَثْبُتُ الْكِرَاءُ جُمْلَةً، وَالْمُخَابَرَةُ جُمْلَةً، كَمَا يَقُولُ أَبُو يُوسُفَ، وَمُحَمَّدٌ، وَغَيْرُهُمَا.

L20659 As for arbitrarily favoring prohibition in one matter and prioritizing permissibility in another without proof, this is childish caprice and a statement that has no place in religion—and success comes only from Allah, the Exalted.

وَأَمَّا التَّحَكُّمُ فِي تَغْلِيبِ النَّهْيِ فِي جِهَةٍ، وَتَغْلِيبُ الْإِبَاحَةِ فِي أُخْرَى بِلَا بُرْهَانٍ فَتَحَكُّمُ الصِّبْيَانِ، وَقَوْلٌ لَا يَحِلُّ فِي الدِّينِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L20660–20662 As for the statement of Mālik, his followers argued in its favor with the ḥadīth of ʿAbd al-Ḥamīd ibn Jaʿfar from his father from Rāfiʿ ibn Usayd ibn Ẓuhayr from his father, who said: “The Messenger of Allah—peace be upon him—prohibited leasing land.” We said: “O Messenger of Allah, should we then lease it for some grain?” He said: “No.” We said: “Should we lease it for straw?” He replied: “No.” He said: “And we used to lease it for a share of the irrigated spring [produce]?” He said, “No, cultivate it yourself, or grant it to your brother.”

وَأَمَّا قَوْلُ مَالِكٍ: فَإِنَّ مُقَلِّدِيهِ احْتَجُّوا لَهُ بِحَدِيثِ عَبْدِ الْحَمِيدِ بْنِ جَعْفَرٍ عَنْ أَبِيهِ عَنْ رَافِعِ بْنِ أُسَيْدَ بْنِ ظُهَيْرٍ عَنْ أَبِيهِ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ كِرَاءِ الْأَرْضِ؟ قُلْنَا: يَا رَسُولَ اللَّهِ إِذًا نُكْرِيهَا بِشَيْءٍ مِنْ الْحَبِّ؟ قَالَ: لَا، قَالَ: نُكْرِيهَا بِالتِّبْنِ؟ فَقَالَ: لَا: قَالَ: وَكُنَّا نُكْرِيهَا عَلَى الرَّبِيعِ السَّاقِي؟ قَالَ: لَا، ازْرَعْهَا، أَوْ امْنَحْهَا أَخَاكَ» .

L20663 And in the narration of Mujāhid, Rāfi‘ said: “The Messenger of Allah (peace be upon him) forbade us from accepting land in exchange for a portion of its produce.”

وَبِحَدِيثِ مُجَاهِدٍ، قَالَ رَافِعٌ: «نَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَتَقَبَّلَ الْأَرْضَ بِبَعْضِ خَرْجِهَا» .

L20664 And by what we have narrated through a chain transmitted via Ya‘lā ibn Ḥakīm from Sulaymān ibn Yasār that Rāfi‘ ibn Khadīj said: Indeed, one of his uncles came to them and said: The Messenger of Allah (peace and blessings of Allah be upon him) said: “Whoever owns land should cultivate it himself or let another person cultivate it, and he must not lease it for a share of the produce—neither a third nor a quarter—nor for a predetermined measure of food.”

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَنْ يَعْلَى بْنِ حَكِيمٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ أَنَّ رَافِعَ بْنَ خَدِيجٍ قَالَ: إِنَّ بَعْضَ عُمُومَتِهِ أَتَاهُمْ فَقَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا أَوْ لِيُزْرِعْهَا أَخَاهُ وَلَا يُكَارِيهَا بِثُلُثٍ وَلَا بِرُبُعٍ وَلَا بِطَعَامٍ مُسَمًّى» .

L20665 And according to what we have narrated through the chain of Ahmad ibn Shu‘ayb: ‘Ubayd Allah ibn Sa‘d ibn Ibrahim narrated to us: my uncle narrated from my father, who narrated from Muhammad ibn ‘Ikrimah from Muhammad ibn ‘Abd al-Rahman ibn Labibah from Sa‘id ibn al-Musayyab from Sa‘d ibn Abi Waqqas, who said: “Owners of cultivated lands would lease their farms for a share of produce during the time of the Messenger of

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عُبَيْدُ اللَّهِ بْنُ سَعْدِ بْنِ إِبْرَاهِيمَ نا عَمِّي قَالَ: نا أَبِي عَنْ مُحَمَّدِ بْنِ عِكْرِمَةَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ لَبِيبَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ قَالَ: «كَانَ أَصْحَابُ الْمَزَارِعِ يُكْرُونَ مَزَارِعَهُمْ فِي زَمَانِ رَسُولِ اللَّهِ

Allah (peace and blessings be upon him) based on what came from the water channels in terms of crops. They came to the Messenger of Allah (peace and blessings be upon him) disputing, so the Messenger of Allah (peace and blessings be upon him) forbade them from leasing in that manner and said: 'Lease them for gold and silver currency.'"

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِمَّا يَكُونُ عَلَى السَّوَاقِي مِنْ الزَّرْعِ فَجَاءُوا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَخْتَصِمُونَ، فَنَهَاهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُكْرُوا بِذَلِكَ وَقَالَ: أَكْرُوا بِالذَّهَبِ، وَالْفِضَّةِ» .

L20666 We have also narrated it through the chain of ʿAbd al-Malik ibn Ḥabīb from Ibn al-Mājishūn from Ibrāhīm ibn Saʿd ibn Ibrāhīm from his father from Saʿīd ibn al-Musayyib from Saʿd ibn Abī Waqqāṣ, who said: "The Messenger of Allāh - peace be upon him - permitted leasing land with gold and silver."

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ عَنْ ابْنِ الْمَاجِشُونِ عَنْ إبْرَاهِيمَ بْنِ سَعْدِ بْنِ إبْرَاهِيمَ عَنْ أَبِيهِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ قَالَ: «أَرْخَصَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي كِرَاءِ الْأَرْضِ بِالذَّهَبِ، وَالْوَرِقِ» .

L20667 Through the chain of Sufyān ibn ʿUyaynah, from Yaḥyā ibn Saʿīd al-Anṣārī, from Ḥanẓalah ibn Qays al-Zuraqī, who heard Rāfiʿ ibn Khadīj say: "We would say to the one with whom we practiced *mukhābarah*: 'This plot is yours, and that plot is ours—we would cultivate them.' But sometimes one plot yielded produce while the other did not. The Messenger of Allah—peace and blessings be upon him—forbade us from that practice. As for [payment in] silver currency, he did not prohibit it."

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ نا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ نا حَنْظَلَةُ بْنُ قَيْسٍ الزُّرَقِيُّ أَنَّهُ سَمِعَ رَافِعَ بْنَ خَدِيجٍ يَقُولُ: «كُنَّا نَقُولُ لِلَّذِي نُخَابِرُهُ: لَك هَذِهِ الْقِطْعَةُ وَلَنَا هَذِهِ الْقِطْعَةُ نَزْرَعُهَا فَرُبَّمَا أَخْرَجَتْ هَذِهِ وَلَمْ تُخْرِجْ هَذِهِ فَنَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ، فَأَمَّا بِوَرِقٍ فَلَمْ يَنْهَ» .

L20668–20670 And through the chain of Ibn Abi Shaybah: Abu Al-Ahwas narrated from Tariq ibn Abd al-Rahman from Sa'id ibn al-Musayyib from Rafi' ibn Khadij from the Messenger of Allah—peace and blessings be upon him—who said: "Only three cultivate: a man who owns land..." He cultivates it; or a man granted land who cultivates it; or a man who leased land in exchange for gold or silver.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو الْأَحْوَصِ عَنْ طَارِقِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ رَافِعِ بْنِ خَدِيجٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّمَا يَزْرَعُ ثَلَاثَةٌ: رَجُلٌ لَهُ أَرْضٌ فَهُوَ يَزْرَعُهَا أَوْ رَجُلٌ مُنِحَ أَرْضًا فَهُوَ يَزْرَعُهَا أَوْ رَجُلٌ اسْتَكْرَى أَرْضًا بِذَهَبٍ أَوْ فِضَّةٍ» .

L20671 Abū Muḥammad said: As for the first ḥadīth—its chain of transmission is not sound. Furthermore, even if it were authentic, it would constitute evidence for us against them rather than evidence for them. For what it contains from the Prophet—peace and blessings of Allāh be upon him—is the comprehensive prohibition against leasing land altogether, and prohibiting cultivation by anyone other than its owner or the one who bestowed it. This contradicts their position.

قَالَ أَبُو مُحَمَّد: أَمَّا الْحَدِيثُ الْأَوَّلُ - فَسَنَدُهُ لَيْسَ بِالنَّيِّرِ، ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا عَلَيْهِمْ لَا حُجَّةً لَهُمْ، لِأَنَّ الَّذِي فِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ النَّهْيُ عَنْ كِرَاءِ الْأَرْضِ جُمْلَةً، وَالْمَنْعُ مِنْ غَيْرِ زَرِيعَتِهَا مِنْ قِبَلِ صَاحِبِهَا، أَوْ مِنْ قِبَلِ مَنْ مَنَحَهَا، وَهَذَا خِلَافُ قَوْلِهِمْ.

L20672 As for the ḥadīth of Mujāhid from Rāfiʿ—there is no disagreement that he

did not hear it from Rāfiʿ. Even if it were authentic, it would contain the prohibition against leasing land in exchange for some of what emerges from it, which contradicts their opinion. This is because they prohibit leasing it for honey and salt—neither of which originate from the land—while permitting its lease for firewood and timber, both being products of the land. Thus they have contradicted it in two aspects: adding what is not part of it and excluding what is part of it. Furthermore, gold and silver are among what emerges from the earth, yet they permit leasing land in exchange for them along with lead and copper—all of which are extracted from it.

وَأَمَّا حَدِيثُ مُجَاهِدٍ عَنْ رَافِعٍ - فَلَا خِلَافَ فِي أَنَّهُ لَمْ يَسْمَعْهُ مِنْ رَافِعٍ، ثُمَّ لَوْ صَحَّ لَكَانَ فِيهِ النَّهْيُ عَنْ كِرَاءِ الْأَرْضِ بِبَعْضِ مَا يَخْرُجُ مِنْهَا، وَهُوَ خِلَافٌ لِقَوْلِهِمْ مِنْ قِبَلِ أَنَّهُمْ يَمْنَعُونَ مِنْ كِرَائِهَا بِالْعَسَلِ، وَالْمِلْحِ، وَلَيْسَا مِمَّا يَخْرُجَانِ مِنْهَا، وَيُجِيزُونَ كِرَاءَهَا بِالْحَطَبِ، وَالْخَشَبِ، وَهُمَا مِنْ بَعْضِ مَا يَخْرُجُ مِنْهَا، فَقَدْ خَالَفُوهُ مِنْ وَجْهَيْنِ فَزَادُوا فِيهِ مَا لَيْسَ فِيهِ وَأَخْرَجُوا مِنْهُ مَا فِيهِ وَأَيْضًا - فَإِنَّ الذَّهَبَ، وَالْفِضَّةَ مِنْ بَعْضِ مَا يَخْرُجُ مِنْ الْأَرْضِ، وَهُمْ يُجِيزُونَ الْكِرَاءَ بِهِمَا، وَبِالرَّصَاصِ وَالنُّحَاسِ - وَكُلُّ ذَلِكَ خَارِجٌ مِنْهَا.

L20673 If they say: The Prophet—peace be upon him—only prohibited leasing it due to what specifically emerges from that particular land, we say: Produce your evidence for this specification. Otherwise, the wording of the ḥadīth remains general in application, and thus their argument is wholly nullified by this ḥadīth.

فَإِنْ قَالُوا: إنَّمَا مَنَعَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - مِنْ كِرَائِهَا بِمَا يَخْرُجُ مِنْ تِلْكَ الْأَرْضِ بِعَيْنِهَا؟ قُلْنَا: هَاتُوا دَلِيلَكُمْ عَلَى هَذَا التَّخْصِيصِ، وَإِلَّا فَلَفْظُ الْخَبَرِ عَلَى عُمُومِهِ، فَسَقَطَ قَوْلُهُمْ جُمْلَةً فِي هَذَا الْخَبَرِ.

L20674 Moreover, we adhere to what is in it [the ruling], then we exclude from it what has been established as abrogated with certainty—specifically, our obligation to allocate a designated portion of the land's produce. We prohibit anything beyond that, and thus, it serves as evidence for us, not for them.

ثُمَّ أَيْضًا - فَنَحْنُ نَقُولُ بِمَا فِيهِ ثُمَّ نَسْتَثْنِي مِنْهُ مَا صَحَّ نَسْخُهُ بِيَقِينٍ مِنْ إعْطَائِنَا الْأَرْضَ بِجُزْءٍ مِمَّا يَخْرُجُ مِنْهَا مُسَمًّى، وَنَمْنَعُ مِنْ غَيْرِ ذَلِكَ فَهُوَ حُجَّةٌ لَنَا لَا لَهُمْ.

L20675 As for the narration of Sulaymān ibn Yasār: the responsibility lies upon them, not in their favor, because it specifies that they may only cultivate the land themselves or have others cultivate it.

وَأَمَّا خَبَرُ سُلَيْمَانَ بْنِ يَسَارٍ: فَعَلَيْهِمْ لَا لَهُمْ؛ لِأَنَّ فِيهِ أَنْ يَزْرَعَهَا أَوْ يُزْرِعَهَا فَقَطْ.

L20676–20678 And likewise, it was narrated to us through the chain of Ahmad ibn Shu'ayb, who informed me: Ziyad ibn Ayyub narrated to me, from Ibn 'Ulayyah, from Ayyub al-Sikhtiyani, from Ya'la ibn Hakim, from Sulayman ibn Yasar, from Rafi' ibn Khadij, that a man among his paternal uncles said to them: "The Messenger of Allah—peace and blessings be upon him—forbade us from sharecropping land or leasing it in exchange for a third (of the produce)." The quarter share and the food are specified; the landowner is commanded

وَهَكَذَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي زِيَادُ بْنُ أَيُّوبَ نا ابْنِ عُلَيَّةَ نا أَيُّوبُ - هُوَ السِّخْتِيَانِيُّ - عَنْ يَعْلَى بْنِ حَكِيمٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ رَافِعِ بْنِ خَدِيجٍ أَنَّ رَجُلًا مِنْ عُمُومَتِهِ قَالَ لَهُمْ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نُحَاقِلَ بِالْأَرْضِ أَوْ نُكْرِيَهَا بِالثُّلُثِ وَالرُّبُعِ وَالطَّعَامُ مُسَمًّى، وَأَمَرَ رَبَّ الْأَرْضِ أَنْ يَزْرَعَهَا، أَوْ يُزْرِعَهَا، وَكَرِهَ كِرَاءَهَا، وَمَا سِوَى ذَلِكَ» .

to cultivate it himself or delegate its cultivation. Leasing is discouraged, and anything beyond that is prohibited.

L20679 As for the narration of Ḥanẓalah from Rāfiʿ—we have already mentioned that it originates from Rāfiʿ's own statement, specifically his remark: "As for silver coins, he did not prohibit them"—what we previously stated about it being Rāfiʿ's own utterance before the Prophet's (peace be upon him) prohibition has been authenticated. The Prophet (peace be upon him) indeed forbade that practice until he nullified the leasing of Banu Abīhi's land for dirhams. This narration holds greater validity due to several considerations:

L20680 One of them is that it is musnad to the Messenger of Allah—peace be upon him—whereas that one is mawqūf (attributed only to the companion Rāfiʿ).

L20681 The second [point] is that this [narration] is free from contradiction, whereas that [narration] is contradicted according to Rafiʿ.

L20682 And the third is that those who transmitted the general scope of the prohibition from Rāfiʿ—Ibn Umar, Uthman, Imran and Isa, the two sons of Sahl ibn Rāfiʿ, Sulayman ibn Yasar, and Abu al-Najashi, all of whom are more reliable than Hanzala ibn Qays—therefore, their connection to this report is invalidated.

L20683 As for the report of Saʿd ibn Abī Waqqāṣ, one of its two chains goes through ʿAbd al-Malik ibn Ḥabīb al-Andalusī (the Andalusian)—and he is abandoned—from ʿAbd al-Malik ibn al-Mājishūn, and he is weak.

L20684 And the other—via the chain of Muḥammad ibn ʿAbd al-Raḥmān ibn Labībah, an unknown narrator whose identity is undetermined—thus, the suspended narration through him is invalidated.

L20685 As for the report of Ṭāriq from Saʿīd from Rāfiʿ, Ibn Abī Shaybah narrated it as we cited from Abū al-Aḥwaṣ but erred in it. For we transmitted it through the chains of Qutaybah ibn Saʿīd, al-Faḍl ibn Dukayn, and Saʿīd ibn Manṣūr—all of them from Abū al-Aḥwaṣ from Ṭāriq ibn ʿAbd al-Raḥmān from Saʿīd ibn al-Musayyib from Rāfiʿ ibn Khadīj, who said: "The Messenger of Allāh—peace and blessings of Allāh be upon him—prohibited Muḥāqalah

وَأَمَّا خَبَرُ حَنْظَلَةَ عَنْ رَافِعٍ -: فَقَدْ ذَكَرْنَا أَنَّهُ مِنْ قَوْلِ رَافِعٍ - يَعْنِي قَوْلَهُ: فَأَمَّا بِوَرِقٍ فَلَمْ يَنْهَ - وَقَدْ صَحَّ عَنْ رَافِعٍ مَا ذَكَرْنَا أَنَّهُ مِنْ قَوْلِ رَافِعٍ قَبْلُ مِنْ نَهْيِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ حَتَّى أَبْطَلَ كِرَاءَ أَرْضِ بَنِي أَبِيهِ بِالدَّرَاهِمِ وَهَذِهِ الرِّوَايَةُ أَوْلَى لِوُجُوهٍ -:

أَحَدُهَا - أَنَّهَا مُسْنَدَةٌ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتِلْكَ مَوْقُوفَةٌ عَلَى رَافِعٍ.

وَالثَّانِي - أَنَّ هَذِهِ غَيْرُ مُضْطَرِبٍ فِيهَا، وَتِلْكَ مُضْطَرِبٌ فِيهَا عَلَى رَافِعٍ.

وَثَالِثُهَا - أَنَّ الَّذِينَ رَوَوْا عُمُومَ النَّهْيِ عَنْ رَافِعٍ: ابْنُ عُمَرَ، وَعُثْمَانُ، وَعِمْرَانُ، وَعِيسَى ابْنَا سَهْلِ بْنِ رَافِعٍ، وَسُلَيْمَانُ بْنُ يَسَارٍ، وَأَبُو النَّجَاشِيِّ، وَكُلُّهُمْ أَوْثَقُ مِنْ حَنْظَلَةَ بْنِ قَيْسٍ - فَسَقَطَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ.

وَأَمَّا خَبَرُ سَعْدِ بْنِ أَبِي وَقَّاصٍ فَأَحَدُ طَرِيقَيْهِ عَنْ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ - وَهُوَ هَالِكٌ - عَنْ عَبْدِ الْمَلِكِ بْنِ الْمَاجِشُونِ وَهُوَ ضَعِيفٌ.

وَالْأُخْرَى - مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ لَبِيبَةَ وَهُوَ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ - فَسَقَطَ التَّعْلِيقُ بِهِ.

وَأَمَّا خَبَرُ طَارِقٍ عَنْ سَعِيدٍ عَنْ رَافِعٍ فَإِنَّ ابْنَ أَبِي شَيْبَةَ رَوَاهُ كَمَا أَوْرَدْنَا عَنْ أَبِي الْأَحْوَصِ فَوَهَمَ فِيهِ، لِأَنَّنَا رُوِّينَاهُ مِنْ طَرِيقِ قُتَيْبَةَ بْنِ سَعِيدٍ، وَالْفَضْلِ بْنِ دُكَيْنٍ، وَسَعِيدِ بْنِ مَنْصُورٍ، كُلُّهُمْ عَنْ أَبِي الْأَحْوَصِ عَنْ طَارِقِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ سَعِيدِ

and Muzābanah, and said: 'Only three may cultivate: a man who owns land and cultivates it, a man granted land who cultivates what he was granted, or a man who rents land with gold or silver.'" This statement was excluded from the speech of the Messenger of Allāh—peace and blessings of Allāh be upon him—but Ibn Abī Shaybah assumed it was among the entirety of the Prophet's speech, so he excluded it while retaining the chain.[7]

بْنِ الْمُسَيِّبِ عَنْ رَافِعِ بْنِ خَدِيجٍ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْمُحَاقَلَةِ وَالْمُزَابَنَةِ، وَقَالَ: إنَّمَا يَزْرَعُ ثَلَاثَةٌ: رَجُلٌ لَهُ أَرْضٌ فَهُوَ يَزْرَعُهَا، أَوْ رَجُلٌ مُنِحَ أَرْضًا فَهُوَ يَزْرَعُ مَا مُنِحَ، أَوْ رَجُلٌ اسْتَكْرَى أَرْضًا بِذَهَبٍ أَوْ فِضَّةٍ» فَكَانَ هَذَا الْكَلَامُ مَخْزُولًا عَنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَظَنَّ ابْنُ أَبِي شَيْبَةَ أَنَّهُ مِنْ جُمْلَةِ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَخَزَلَهُ وَأَبْقَى السَّنَدَ.

L20686 This report has been conveyed through Tāriq via a chain comprising narrators more precise in memorization than Abū al-Aḥwaṣ, clarifying that it originates from the statement of Saʿīd ibn al-Musayyab – as transmitted to us through the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn ʿAlī informed me, Muḥammad reported to us, Sufyān reported from Ṭāriq, who said: I heard Saʿīd ibn al-Musayyab state: "No form of agricultural lease is valid except three: land whose ownership you hold, a granted plot for use, or uncultivated land you lease with gold or silver."

وَقَدْ جَاءَ هَذَا الْخَبَرُ عَنْ طَارِقٍ مِنْ طَرِيقٍ مَنْ هُوَ أَحْفَظُ مِنْ أَبِي الْأَحْوَصِ مُبَيِّنًا أَنَّهُ مِنْ كَلَامِ سَعِيدِ بْنِ الْمُسَيِّبِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ عَلِيٍّ نا مُحَمَّدٌ نا سُفْيَانُ عَنْ طَارِقٍ قَالَ: سَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ لَا يَصْلُحُ مِنْ الزَّرْعِ غَيْرُ ثَلَاثٍ، أَرْضٌ تَمْلِكُ رَقَبَتَهَا، أَوْ مِنْحَةٌ، أَوْ أَرْضٌ بَيْضَاءُ تَسْتَأْجِرُهَا بِذَهَبٍ أَوْ فِضَّةٍ.

L20687–20688 Ali said: Furthermore, even if it were confirmed that this originated from the Prophet's speech—peace and blessings be upon him—they would still be opposing him, for it contains the prohibition against leasing land except with gold or silver. Yet you permit it with all worldly commodities save for food or what the land produces. Thus you have opposed this prohibition in its entirety.

قَالَ عَلِيٌّ: وَأَيْضًا - فَلَوْ صَحَّ أَنَّهُ مِنْ كَلَامِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكَانُوا مُخَالِفِينَ لَهُ لِأَنَّ فِيهِ النَّهْيَ عَنْ كِرَاءِ الْأَرْضِ إلَّا بِذَهَبٍ، أَوْ فِضَّةٍ، وَأَنْتُمْ تُبِيحُونَهَا بِكُلِّ عَرْضٍ فِي الْعَالَمِ حَاشَا الطَّعَامَ، أَوْ مَا أَنْبَتَتْ الْأَرْضُ فَقَدْ خَالَفْتُمُوهَا كُلَّهَا.

L20689 If they assert here a consensus among those who permit leasing land for gold and silver, claiming that anything other than gold and silver is equivalent to them, then their audacity in advancing such a claim is unsurprising. The most blatant falsehood among their assertions is what we have transmitted through the chain of Saʿīd ibn Manṣūr: Abū al-Aḥwaṣ reported from ʿAbd al-Karīm al-Jazarī, from Saʿīd ibn Jubayr, from Ibn ʿAbbās, who said: "Arable land may not be leased except for gold and silver." This is an authentic and sound chain of transmission.

فَإِنْ ادَّعَوْا هَهُنَا إجْمَاعًا مِنْ الْقَائِلِينَ بِكِرَاءِ الْأَرْضِ بِالذَّهَبِ وَالْفِضَّةِ، عَلَى أَنَّ مَا عَدَا الذَّهَبَ وَالْفِضَّةَ كَالذَّهَبِ وَالْفِضَّةِ - فَمَا يَبْعُدُ عَنْهُمْ التَّجَاسُرُ وَالْهُجُومُ عَلَى مِثْلِ هَذَا: أَكْذَبُهُمْ مَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو الْأَحْوَصِ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا تُكْرَى الْأَرْضُ الْبَيْضَاءُ إلَّا بِالذَّهَبِ وَالْوَرِقِ - وَهَذَا إسْنَادٌ صَحِيحٌ جَيِّدٌ.

[7] **Hadith references (L20685):** Sunan an-Nasai 3890.

فَإِنْ قَالُوا: قِسْنَا عَلَى الذَّهَبِ وَالْفِضَّةِ مَا عَدَاهُمَا؟ قُلْنَا: فَقِيسُوا إعْطَاءَهَا بِالثُّلُثِ وَالرُّبُعِ عَلَى الْمُضَارَبَةِ.

L20690 If they say: "We have analogized [the ruling] to gold and silver—what about other items?" We respond: "Then apply the analogy of giving them with a third and a quarter to mudarabah."

فَإِنْ قَالُوا: قَدْ صَحَّ النَّهْيُ عَنْ ذَلِكَ؟ قُلْنَا: فَقَدْ صَحَّ النَّهْيُ عَنْ أَنْ يُؤْخَذَ لِلْأَرْضِ أَجْرٌ أَوْ حَظٌّ، وَنَصَّ - عَلَيْهِ السَّلَامُ - عَلَى أَنْ لَيْسَ لَهُ إلَّا أَنْ يَزْرَعَهَا صَاحِبُهَا أَوْ يَمْنَحَهَا أَوْ يُمْسِكَ أَرْضَهُ فَقَطْ.

L20691 If they say: "Has the prohibition of that been established?" We reply: Indeed, the prohibition against taking rent or a share from the land has been established, and he (PBUH) explicitly stipulated that its owner may only cultivate it, gift it, or retain ownership of the land.

فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ جُمْلَةً، وَأَنَّهُمْ لَمْ يَتَعَلَّقُوا بِشَيْءٍ أَصْلًا، وَاعْلَمُوا أَنَّهُ لَمْ يَصِحَّ كِرَاءُ الْأَرْضِ بِذَهَبٍ أَوْ فِضَّةٍ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ إلَّا عَنْ سَعْدٍ وَابْنِ عَبَّاسٍ - وَصَحَّ عَنْ رَافِعِ بْنِ خَدِيجٍ، وَابْنِ عُمَرَ، ثُمَّ صَحَّ رُجُوعُ ابْنِ عُمَرَ عَنْهُ، وَصَحَّ عَنْ رَافِعٍ الْمَنْعُ مِنْهُ أَيْضًا.

L20692 The invalidity of this statement has become entirely evident, and that they did not base their argument on anything at all. Know that leasing land for gold or silver has not been authentically reported from any of the Companions except Sa'd and Ibn 'Abbās. It was authentically reported from Rāfi' ibn Khadīj and Ibn 'Umar, then it was authentically reported that Ibn 'Umar retracted from it. It was also authentically reported that Rāfi' prohibited it.

قَالَ أَبُو مُحَمَّد: فَلَمْ يَبْقَ إلَّا تَغْلِيبُ الْإِبَاحَةِ فِي كِرَائِهَا بِكُلِّ عَرْضٍ وَكُلِّ شَيْءٍ مَضْمُونٍ مِنْ طَعَامٍ أَوْ غَيْرِهِ، وَالثُّلُثِ وَالرُّبُعِ كَمَا قَالَ سَعْدُ بْنُ أَبِي وَقَّاصٍ وَأَبُو يُوسُفَ؛ وَمُحَمَّدُ بْنُ الْحَسَنِ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ، وَغَيْرُهُمْ.

L20693 Abu Muhammad said: Nothing remains except the predominance of permissibility in its renting for all types of commodities and every secured item – whether food or otherwise – and the third and the quarter, as said by Sa'd ibn Abī Waqqāṣ; Abū Yūsuf, Muḥammad ibn al-Ḥasan, Aḥmad ibn Ḥanbal, Isḥāq, and others.

أَوْ تَغْلِيبُ الْمَنْعِ جُمْلَةً، كَمَا فَعَلَ رَافِعُ بْنُ خَدِيجٍ، وَعَطَاءٌ، وَمَكْحُولٌ، وَمُجَاهِدٌ، وَالْحَسَنُ الْبَصْرِيُّ، وَغَيْرُهُمْ.

L20694 Or the preponderance of prohibition in totality: as maintained by Rāfi' ibn Khadīj, 'Aṭā', Makhūl, Mujāhid, al-Ḥasan al-Baṣrī, and other scholars.

أَوْ أَنْ يُغَلَّبَ النَّهْيُ حَيْثُ لَمْ يُوقَنْ أَنَّهُ نُسِخَ وَيُؤْخَذُ بِالنَّاسِخِ إذَا تُيُقِّنَ، كَمَا فَعَلَ ابْنُ عُمَرَ، وَطَاوُسٌ، وَالْقَاسِمُ بْنُ مُحَمَّدٍ، وَمُحَمَّدُ بْنُ سِيرِينَ، وَغَيْرُهُمْ.

L20695 Or that the prohibition takes precedence unless its abrogation is certain, and the abrogating ruling is followed once certainty is established, as practiced by Ibn Umar, Tawus, al-Qasim ibn Muhammad, Muhammad ibn Sirin, and others.

فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا مَنْ غَلَّبَ الْإِبَاحَةَ قَدْ أَخْطَأَ، لِأَنَّ مَعْهُودَ الْأَصْلِ فِي ذَلِكَ هُوَ الْإِبَاحَةُ عَلَى مَا رَوَى رَافِعٌ وَغَيْرُهُ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدِمَ عَلَيْهِمْ

L20696–20698 So we examined that matter and found those who gave preponderance to permissibility had erred, for the established principle regarding it is... Permissibility is based on what Rāfi' and others narrated: "The Prophet (peace

be upon him) came to them while they were leasing their agricultural lands." There is no doubt that agricultural lands were leased before Allah's Messenger (peace be upon him) and after his commissioning as a prophet. This matter cannot be doubted by any rational person. It was then authentically established through chains from Jābir, Abū Hurayrah, Abū Saʿīd, Rāfiʿ, Ẓuhayr al-Badrī (a Badr veteran), another of the Badr veterans, and Ibn ʿUmar that "Allah's Messenger (peace be upon him) prohibited leasing agricultural land wholly." Thus, permissibility was nullified with absolute certainty beyond doubt.

L20699 Whoever claims that the abrogated ruling has been reinstated, and that the certainty of abrogation has been invalidated, is a liar and a denier, speaking without knowledge. This is forbidden by the explicit text of the Quran unless he provides proof—a means he can never bring into existence ever, except in allocating a [specified] portion of what comes out of it. For it is authentically established that the Messenger of Allah, peace and blessings be upon him, did this in Khaybar years after the prohibition, and he remained upon that until his death, peace be upon him.

L20700 Thus, it is established with certainty that the prohibition of that is abrogated, and that the prohibition of what is beyond that remains in force with certainty. The Almighty said: *"To make clear to mankind what has been sent down to them"* [An-Nahl: 44]. It is inconceivable that a ruling which has been abrogated and nullified would not then be clarified by Allah the Almighty to us as having been invalidated, nor that the abrogated ruling would be returned. Otherwise, it would be as though the religion is left unexplained—and this is false. All success comes from Allah, the Exalted. Thus, the ambiguity is resolved, and abundant praise be to Allah.[8]

L20701 ## The juristic ruling on the straw in *muzāraʿah*.

L20702 Issue 1330: The straw in sharecropping is allocated between the landowner and the cultivator according to their mutual agreement, because it is part of what Allah, the Exalted, has brought forth from the land.

[8] **Qur'an references (L20700):** Qur'an 16:44 (An-Nahl).

وَهُمْ يُكْرُونَ مَزَارِعَهُمْ» وَقَدْ كَانَتْ الْمَزَارِعُ بِلَا شَكٍّ تُكْرَى قَبْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبَعْدَ مَبْعَثِهِ، هَذَا أَمْرٌ لَا يُمْكِنُ أَنْ يَشُكَّ فِيهِ ذُو عَقْلٍ، ثُمَّ صَحَّ مِنْ طَرِيقِ جَابِرٍ، وَأَبِي هُرَيْرَةَ، وَأَبِي سَعِيدٍ، وَرَافِعٍ، وَظُهَيْرٍ الْبَدْرِيِّ وَآخَرَ مِنْ الْبَدْرِيِّينَ، وَابْنِ عُمَرَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ كِرَاءِ الْأَرْضِ جُمْلَةً» فَبَطَلَتْ الْإِبَاحَةُ بِيَقِينٍ لَا شَكَّ فِيهِ.

فَمَنْ ادَّعَى أَنَّ الْمَنْسُوخَ قَدْ رَجَعَ، وَأَنَّ يَقِينَ النَّسْخِ قَدْ بَطَلَ، فَهُوَ كَاذِبٌ مُكَذِّبٌ، قَائِلٌ مَا لَا عِلْمَ لَهُ بِهِ، وَهَذَا حَرَامٌ بِنَصِّ الْقُرْآنِ إلَّا أَنْ يَأْتِيَ عَلَى ذَلِكَ بِبُرْهَانٍ، وَلَا سَبِيلَ لَهُ إلَى وُجُودِهِ أَبَدًا، إلَّا فِي إعْطَائِهَا بِجُزْءٍ [مُسَمًّى] مِمَّا يَخْرُجُ مِنْهَا، فَإِنَّهُ قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَعَلَ ذَلِكَ بِخَيْبَرَ بَعْدَ النَّهْيِ بِأَعْوَامٍ، وَأَنَّهُ بَقِيَ عَلَى ذَلِكَ إلَى أَنْ مَاتَ - عَلَيْهِ السَّلَامُ -.

فَصَحَّ أَنَّ النَّهْيَ عَنْ ذَلِكَ مَنْسُوخٌ بِيَقِينٍ، وَأَنَّ النَّهْيَ عَمَّا عَدَا ذَلِكَ بَاقٍ بِيَقِينٍ، وَقَالَ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] فَمِنْ الْمُحَالِ أَنْ يُنْسَخَ حُكْمٌ قَدْ بَطَلَ وَنُسِخَ ثُمَّ لَا يُبَيِّنُ اللَّهُ تَعَالَى عَلَيْنَا أَنَّهُ قَدْ بَطَلَ، وَأَنَّ الْمَنْسُوخَ قَدْ عَادَ، وَإِلَّا فَكَأَنَّ الدِّينَ غَيْرُ مُبَيَّنٍ - وَهَذَا بَاطِلٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. فَارْتَفَعَ الْإِشْكَالُ وَالْحَمْدُ لِلَّهِ كَثِيرًا.

[مَسْأَلَةٌ التِّبْنُ فِي الْمُزَارَعَةِ]

١٣٣٠ - مَسْأَلَةٌ: وَالتِّبْنُ فِي الْمُزَارَعَةِ بَيْنَ صَاحِبِ الْأَرْضِ وَبَيْنَ الْعَامِلِ عَلَى مَا تَعَامَلَا عَلَيْهِ، لِأَنَّهُ مِمَّا أَخْرَجَ اللَّهُ تَعَالَى مِنْهَا.

[مَسْأَلَةٌ تَطَوَّعَ صَاحِبُ الْأَرْضِ بِأَنْ يُسَلِّفَ الْعَامِلَ بَذْرًا]

١٣٣١ - مَسْأَلَةٌ: فَإِنْ تَطَوَّعَ صَاحِبُ الْأَرْضِ بِأَنْ يُسَلِّفَ الْعَامِلَ بَذْرًا أَوْ دَرَاهِمَ أَوْ يُعِينَهُ بِغَيْرِ شَرْطٍ جَازَ؛ لِأَنَّهُ فِعْلُ خَيْرٍ وَتَعَاوُنٌ عَلَى بِرٍّ وَتَقْوَى، فَإِنْ كَانَ شَيْءٌ مِنْ ذَلِكَ عَنْ شَرْطٍ فِي نَفْسِ الْعَقْدِ بَطَلَ الْعَقْدُ وَفُسِخَ؛ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ، وَعَقْدُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعَ الَّذِينَ دَفَعَ إلَيْهِمْ خَيْبَرُ إنَّمَا كَانَ كَمَا أَوْرَدْنَا قَبْلَ أَنْ يَعْمَلُوهَا بِأَمْوَالِهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ اتَّفَقَا تَطَوُّعًا عَلَى شَيْءٍ يُزْرَعُ فِي الْأَرْضِ]

١٣٣٢ - مَسْأَلَةٌ: فَإِنْ اتَّفَقَا تَطَوُّعًا عَلَى شَيْءٍ يُزْرَعُ فِي الْأَرْضِ فَحَسَنٌ، وَإِنْ لَمْ يَذْكُرَا شَيْئًا فَحَسَنٌ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَذْكُرْ لَهُمْ شَيْئًا مِنْ ذَلِكَ وَلَا نَهَى عَنْ ذِكْرِهِ، فَهُوَ مُبَاحٌ، وَلَا بُدَّ مِنْ أَنْ يُزْرَعَ فِيهَا شَيْءٌ مَا فَلَا بُدَّ مِنْ ذِكْرِهِ، إلَّا أَنَّهُ إنْ شُرِطَ شَيْءٌ مِنْ ذَلِكَ فِي الْعَقْدِ، فَهُوَ شَرْطٌ فَاسِدٌ وَعَقْدٌ فَاسِدٌ؛ لِأَنَّهُ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، فَهُوَ بَاطِلٌ إلَّا أَنْ يَشْتَرِطَ صَاحِبُ الْأَرْضِ أَنْ لَا يَزْرَعَ فِيهَا مَا يَضُرُّ بِأَرْضِهِ أَوْ شَجَرِهِ - إنْ كَانَ لَهُ فِيهَا شَجَرٌ - فَهَذَا وَاجِبٌ وَلَا بُدَّ، لِأَنَّ خِلَافَهُ فَسَادٌ وَإِهْلَاكٌ لِلْحَرْثِ.

قَالَ اللَّهُ تَعَالَى: {إِنَّ اللَّهَ لا يُحِبُّ الْمُفْسِدِينَ} [القصص: ٧٧] .

وَقَالَ تَعَالَى: {وَيُهْلِكَ الْحَرْثَ وَالنَّسْلَ وَاللَّهُ لا يُحِبُّ الْفَسَادَ} [البقرة: ٢٠٥] .

L20703 **A case where the landowner voluntarily offered to provide the cultivator with seeds as a loan.**

L20704 1331 - Issue: If the landowner voluntarily provides the worker with seeds as a loan, dirhams, or assistance without stipulating any condition, it is permissible, as it is an act of goodness and a cooperation in righteousness and piety. However, if any of this is contingent on a condition stipulated in the contract itself, the contract is invalid and rescinded, for it is a condition not found in the Book of Allah and thus invalid. The contract of the Messenger of Allah—peace and blessings be upon him—with those to whom he entrusted Khaybar was only as we previously mentioned, before they cultivated it using their own funds. And with Allah, the Exalted, is success.

L20705 **A legal issue in which the two parties voluntarily agreed to cultivate something in the land.**

L20706 1332 - Issue: If they voluntarily agree on something to be cultivated in the land, this is valid. If they do not mention anything, this is also valid, because the Messenger of Allah (peace and blessings be upon him) did not mention anything of that nature to them nor prohibit its mention; thus it remains permissible. However, it is essential to cultivate something in the land, necessitating mutual agreement on the matter. If any such condition is stipulated in the contract, it becomes an invalid condition and an invalid contract, as it is not established in the Book of Allah the Exalted—hence void—unless the landowner stipulates prohibiting cultivation of what harms his land or trees (if he owns trees therein). In this case, such stipulation becomes obligatory and indispensable, for contravening it constitutes corruption and destruction of the tilth.

L20707–20708 Allah, the Most High, said: "Indeed, Allah does not love those who spread corruption" [Al-Qasas: 77].[9]

L20709 And Allah, the Exalted, said: "He destroys crops and livestock, and Allah does not love corruption." [Al-Baqarah: 205][10]

[9] **Qur'an references (L20708):** Qur'an 28:77 (Al-Qasas).
[10] **Qur'an references (L20709):** Qur'an 2:205 (Al-Baqarah).

L20710 Destroying crops without rightful cause is not permissible. By Allah, the Exalted, we are supported. Thus, this is a stipulation in the Book of Allah, the Exalted; therefore, it is sound and binding.

فَإِهْلَاكُ الْحَرْثِ بِغَيْرِ الْحَقِّ لَا يَحِلُّ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ، فَهَذَا شَرْطٌ فِي كِتَابِ اللَّهِ تَعَالَى، فَهُوَ صَحِيحٌ لَازِمٌ.

[مَسْأَلَةٌ عَقْدُ الْمُزَارَعَةِ إلَى أَجَلٍ مُسَمًّى]

L20711 **Issue: A contract of muzāraʿah (crop-sharing) for a stipulated term.**

L20712 1333 – Ruling: It is impermissible to contract sharecropping for a specified term; rather [it must be] unrestricted, because the Messenger of Allah (peace be upon him) contracted it in this manner, and upon this all the Companions (may Allah be pleased with them) proceeded.

١٣٣٣ - مَسْأَلَةٌ: وَلَا يَحِلُّ عَقْدُ الْمُزَارَعَةِ إلَى أَجَلٍ مُسَمًّى، لَكِنْ هَكَذَا مُطْلَقًا، لِأَنَّ هَكَذَا عَقَدَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَى هَذَا مَضَى جَمِيعُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L20713 Similarly, Umar—may Allah be pleased with him—expelled them when he wished at the end of his caliphate. Thus, stipulating a duration in that matter was a condition not found in the Book of Allah the Exalted—hence invalid—and contrary to the practice of the Prophet (peace be upon him). He (peace be upon him) said: "Whoever introduces into this matter of ours that which is not part of it, it is rejected." Opponents have indeed stated this in the context of mudarabah.

وَكَذَلِكَ أَخْرَجَهُمْ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - إذْ شَاءَ فِي آخِرِ خِلَافَتِهِ، فَكَانَ اشْتِرَاطُ مُدَّةٍ فِي ذَلِكَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى - فَهُوَ بَاطِلٌ - وَخِلَافٌ لِعَمَلِهِ - عَلَيْهِ السَّلَامُ -، وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» ؛ وَقَدْ قَالَ مُخَالِفُونَ بِذَلِكَ فِي الْمُضَارَبَةِ.

[مَسْأَلَةٌ أَقَرَّ وَارِثُ صَاحِبِ الْأَرْضِ الْعَامِلَ وَرَضِيَ الْعَامِلُ]

L20714 **A legal issue wherein the heir of the landowner formally recognized the cultivator's rights, and the cultivator consented.**

L20715 1334 - Issue: Whichever of them wishes to terminate the contract may do so as previously mentioned. If either of them dies, the transaction becomes void; because Allah the Exalted says: "No bearer of burdens will bear the burden of another" [Al-Anʿām 6:164].[11]

١٣٣٤ - مَسْأَلَةٌ: وَأَيُّهُمَا شَاءَ تَرْكَ الْعَمَلِ فَلَهُ ذَلِكَ لِمَا ذَكَرْنَا، وَأَيُّهُمَا مَاتَ بَطَلَتْ الْمُعَامَلَةُ؛ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

L20716 If the heir of the landowner acknowledges the worker and the worker consents, they are bound by their mutual agreement. Similarly, if the landowner acknowledges the worker's heirs with their consent, this is permissible according to the practice followed by the Messenger of Allah (peace and blessings be upon him) and those after him among the Companions (may Allah

فَإِنْ أَقَرَّ وَارِثُ صَاحِبِ الْأَرْضِ الْعَامِلَ وَرَضِيَ الْعَامِلُ، فَهُمَا عَلَى مَا تَرَاضَيَا عَلَيْهِ - وَكَذَلِكَ إنْ أَقَرَّ صَاحِبُ الْأَرْضِ وَرَثَةَ الْعَامِلِ بِرِضَاهُمْ فَذَلِكَ جَائِزٌ عَلَى مَا جَرَى عَلَيْهِ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَنْ بَعْدَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْهُمْ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[11] **Qur'an references (L20715):** Qur'an 6:164 (Al-An'am).

be pleased with them), without any disagreement from any of them. And success comes only from Allah, the Most High.

[مَسْأَلَةٌ أَرَادَ صَاحِبُ الْأَرْضِ إِخْرَاجَ الْعَامِلِ بَعْدَ أَنْ زَرَعَ]

١٣٣٥ - مَسْأَلَةٌ: وَإِذَا أَرَادَ صَاحِبُ الْأَرْضِ إِخْرَاجَ الْعَامِلِ بَعْدَ أَنْ زَرَعَ أَوْ أَرَادَ الْعَامِلُ الْخُرُوجَ بَعْدَ أَنْ زَرَعَ بِمَوْتِ أَحَدِهِمَا، أَوْ فِي حَيَاتِهِمَا فَذَلِكَ جَائِزٌ، وَعَلَى الْعَامِلِ خِدْمَةُ الزَّرْعِ كُلِّهِ وَلَا بُدَّ، وَعَلَى وَرَثَتِهِ حَتَّى يَبْلُغَ مَبْلَغَ الِانْتِفَاعِ بِهِ مِنْ كِلَيْهِمَا؛ لِأَنَّهُمَا عَلَى ذَلِكَ تَعَاقَدَا الْعَقْدَ الصَّحِيحَ فَهُوَ لَازِمٌ لِأَنَّهُ عَمِلَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ فِي كِتَابِ اللَّهِ تَعَالَى، فَهُوَ صَحِيحٌ لَازِمٌ، وَعَقْدٌ يَلْزَمُ الْوَفَاءُ بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَمَا عَدَاهُ إِضَاعَةٌ لِلْمَالِ، وَإِفْسَادٌ لِلْحَرْثِ، وَقَدْ صَحَّ النَّهْيُ عَنْهُ.

[مَسْأَلَةٌ أَرَادَ أَحَدُهُمَا تَرْكَ الْعَمَلِ وَقَدْ حَرَثَ وَقَلَبَ وَزَبَلَ وَلَمْ يَزْرَعْ]

١٣٣٦ - مَسْأَلَةٌ: فَإِنْ أَرَادَ أَحَدُهُمَا تَرْكَ الْعَمَلِ وَقَدْ حَرَثَ، وَقَلَبَ، وَزَبَلَ، وَلَمْ يَزْرَعْ فَذَلِكَ جَائِزٌ، وَيُكَلَّفُ صَاحِبُ الْأَرْضِ لِلْعَامِلِ أَجْرَ مِثْلِهِ فِيمَا عَمِلَ، وَقِيمَةَ زِبْلِهِ إِنْ لَمْ يَجِدْ لَهُ زِبْلًا مِثْلَهُ، إِنْ أَرَادَ صَاحِبُ الْأَرْضِ إِخْرَاجَهُ، لِأَنَّهُ لَمْ تَتِمَّ بَيْنَهُمَا الْمُزَارَعَةُ الَّتِي يَكُونُ كُلُّ مَا ذَكَرْنَا مُلْغًى بِتَمَامِهَا، وَقَالَ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] فَعَمَلُهُ حُرْمَةٌ، فَلَا بُدَّ لَهُ مِنْ أَنْ يَقْتَصَّ بِمِثْلِهَا، وَالزِّبْلُ مَالُهُ فَلَا يُحْمَلُ إِلَّا بِطِيبِ نَفْسِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L20717 **Issue: The landowner intended to evict the tenant farmer after the tenant farmer had planted.**

L20718 Issue 1335: If the landowner wishes to expel the worker after planting has occurred, or if the worker wishes to depart after planting - whether due to the death of either party or during their lifetimes - this is permissible. However, the worker remains fully obligated to tend to the entire crop without exception, and his heirs must continue this until the cultivation reaches the stage of benefit from both of them. This obligation exists because they mutually entered into a valid contract. It is binding as the Messenger of Allah (peace be upon him) practiced it, and it is in the Book of Allah the Exalted. It is therefore a valid binding contract that necessitates its fulfillment - and with Allah the Exalted lies all success.

L20719 Anything beyond that amounts to wasteful dissipation of wealth and corruption of crops, and the prohibition against it is firmly established.

L20720 **A case in which one of the two intended to cease cultivation after plowing, turning, and manuring, but had not yet sown.**

L20721–20723 1336 - Issue: If one of the two parties wishes to abandon work after having plowed, turned the soil, applied manure, but did not plant, this is permissible. The landowner must compensate the worker with a wage equivalent to the labor performed and the value of the manure if equivalent manure is unavailable, provided the landowner seeks to expel him. This is because the sharecropping arrangement between them was not concluded, which... Everything we have mentioned is rendered fully null and void. Allah the Exalted said: *"Violations of sacred ordinances warrant retaliation"* [Al-Baqarah 2:194]. Thus, his act violates a sanctity, necessitating equivalent

retaliation. As for his manure, it is his property and cannot be taken except with his willing consent. And success comes only from Allah, the Exalted.[12]

[مَسْأَلَةٌ كَانَ الْعَامِلُ هُوَ الْمَرِيدُ لِلْخُرُوجِ مِنْ الْأَرْض]

L20724 **A legal issue where the worker was the one who intended to leave the land.**

١٣٣٧ - مَسْأَلَةٌ: فَلَوْ كَانَ الْعَامِلُ هُوَ الْمَرِيدُ لِلْخُرُوجِ فَلَهُ ذَلِكَ وَلَا شَيْءَ لَهُ فِيمَا عَمِلَ، وَإِنْ أَمْكَنَهُ أَخْذُ زِبْلِهِ بِعَيْنِهِ أَخَذَهُ، وَإِلَّا فَلَا شَيْءَ لَهُ؛ لِأَنَّهُ مُخْتَارٌ لِلْخُرُوجِ وَلَمْ يَتَعَدَّ عَلَيْهِ صَاحِبُ الْأَرْضِ فِي شَيْءٍ، وَلَا مَنَعَهُ حَقًّا لَهُ فَهُوَ مُخَيَّرٌ بَيْنَ إتْمَامِ عَمَلِهِ وَتَمَامِ شَرْطِهِ وَالْخُرُوجِ بِاخْتِيَارِهِ، وَلَا شَيْءَ لَهُ؛ لِأَنَّهُ لَمْ يَتَعَدَّ عَلَيْهِ بِغَيْرِ طِيبِ نَفْسِهِ فِي شَيْءٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20725 1337 - Issue: If the worker is the one who chooses to leave, he may do so and has no entitlement for his labor. If he can take his manure itself, he may take it; otherwise, he has no claim. This is because he voluntarily elected to depart, and the landowner neither transgressed against him in any matter nor withheld any rightful due. He therefore has the choice either to complete his work in full and perfectly fulfill his contractual obligation, or to leave by his own decision - but he is entitled to nothing, as no action was taken against him without his free consent in any matter. And success is attained only through Allah, the Exalted.

[مَسْأَلَةٌ مَنْ أَصَابَ مِنْ صَاحِبِ الْأَرْضِ وَالْعَامِلِ مَا تَجِبُ فِيهِ الزَّكَاةُ فَعَلَيْهِ الزَّكَاةُ]

L20726 **Issue: If someone acquires assets subject to Zakat from the landowner and the Zakat collector, Zakat becomes obligatory on him.**

١٣٣٨ - مَسْأَلَةٌ: وَمَنْ أَصَابَ مِنْهُمَا مَا تَجِبُ فِيهِ الزَّكَاةُ فَعَلَيْهِ الزَّكَاةُ، وَمَنْ قَصُرَ نَصِيبُهُ عَنْ مَا فِيهِ الزَّكَاةُ فَلَا زَكَاةَ عَلَيْهِ.

L20727 1338: Issue: Whoever acquires from both of them an amount that obligates zakat is obligated to pay zakat. If someone's share falls short of the nisab obligating zakat, no zakat is due from him.

وَلَا يَحِلُّ اشْتِرَاطُ الزَّكَاةِ مِنْ أَحَدِهِمَا عَلَى الْآخَرِ، لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] وَلِكُلِّ أَحَدٍ حُكْمُهُ.

L20728 It is unlawful for either party to stipulate Zakat from one upon the other, due to Allah's statement: "No soul bears a burden except for itself, nor does any bearer of burdens bear the burden of another" [Al-An'am 6:164]. Each person is accountable for their own obligation.[13]

وَاشْتِرَاطُ إسْقَاطِ الزَّكَاةِ عَنْ نَفْسِهِ وَوَضْعِهَا عَلَى غَيْرِهِ شَرْطٌ لِلشَّيْطَانِ وَمُخَالَفَةٌ لِلَّهِ تَعَالَى فَلَا يَحِلُّ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20729 Stipulating the exemption of oneself from zakat and transferring it to others is a stipulation of Satan and an act of defiance against Allah the Exalted; thus, it is absolutely impermissible. And success is from Allah alone.

L20730 They could have achieved what they desired without this condemned con-

[12] **Qur'an references (L20721):** Qur'an 2:194 (Al-Baqarah).
[13] **Qur'an references (L20728):** Qur'an 6:164 (Al-An'am).

dition by stipulating that one of them receive four-tenths of the crop or four-fifths of a third, or similar terms, and thus the contract would be valid.

وَقَدْ كَانَا قَادِرَيْنِ عَلَى الْوُصُولِ إِلَى مَا يُرِيدَانِ مِنْ ذَلِكَ بِغَيْرِ هَذَا الشَّرْطِ الْمَلْعُونِ، وَذَلِكَ بِأَنْ يَكُونَا يَتَعَاقَدَانِ عَلَى أَنَّ لِأَحَدِهِمَا أَرْبَعَةَ أَعْشَارِ الزَّرْعِ أَوْ أَرْبَعَةَ أَخْمَاسِ الثُّلُثِ، أَوْ نَحْوَ هَذَا فَيَصِحُّ الْعَقْدُ.

L20731 **Issue: When a sharecropping contract is rendered invalid.**

[مَسْأَلَةٌ إِذَا وَقَعَتْ الْمُعَامَلَةُ فِي الْمُزَارَعَةِ فَاسِدَةً]

L20732 1339. Issue: If the transaction is defective, the equivalent of that land must be returned to the cultivator involved concerning what was cultivated therein, whether it exceeds or falls short of the contracted terms.

١٣٣٩ - مَسْأَلَةٌ: وَإِذَا وَقَعَتْ الْمُعَامَلَةُ فَاسِدَةً، رَدَّ إلَى مُزَارِعِهِ مِثْلَ تِلْكَ الْأَرْضِ فِيمَا زَرَعَ فِيهَا سَوَاءٌ كَانَ أَكْثَرَ مِمَّا تَعَاقَدَ أَوْ أَقَلَّ.

L20733 The proof of this is that it is not permissible on earth to take a wage or share except through sharecropping with a specified joint portion of what Allah, the Exalted, brings forth from it. Since this is so, it constitutes the right of the land. Therefore, it is impermissible to permit the use of the land and its produce to the worker without the landowner's free consent, in accordance with Allah's decree: "Do not consume your wealth among yourselves wrongfully" (an-Nisāʾ 4:29). Likewise, it is impermissible to permit the use of the worker's seed and labor to the landowner without the worker's free consent. Thus, both must be restored to the equivalent of each party's rightful share from what Allah, the Exalted, has brought forth, in accordance with His decree: "For violations of sanctities, there is retaliation" (al-Baqarah 2:194).[14]

بُرْهَانُ ذَلِكَ -: أَنَّهُ لَا يَحِلُّ فِي الْأَرْضِ أَخْذُ أَجْرٍ وَلَا حَظٍّ إلَّا الْمُزَارَعَةُ بِجُزْءٍ مُشَاعٍ مُسَمًّى بِمَا يُخْرِجُ اللَّهُ تَعَالَى مِنْهَا، فَإِذْ ذَلِكَ كَذَلِكَ فَهُوَ حَقُّ الْأَرْضِ فَلَا تَجُوزُ إبَاحَةُ الْأَرْضِ وَمَا أَخْرَجَتْ لِلْعَامِلِ بِغَيْرِ طِيبِ نَفْسِ صَاحِبِ الْأَرْضِ، لِقَوْلِ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [النساء: ٢٩] وَلَا يَجُوزُ إبَاحَةُ بَذْرِ الْعَامِلِ وَعَمَلِهِ لِصَاحِبِ الْأَرْضِ بِغَيْرِ طِيبِ نَفْسِهِ ذَلِكَ أَيْضًا، فَيُرَدَّانِ إلَى مِثْلِ حَقِّ كُلِّ وَاحِدٍ مِنْهُمَا مِمَّا أَخْرَجَ اللَّهُ تَعَالَى مِنْهَا، لِقَوْلِ اللَّهِ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] .

L20734–20735 The land is inviolable and protected as part of its owner's wealth and bodily integrity; thus, it is his, and among his rights is to seek retribution equivalent to its rightful due within the bounds of what Allah the Exalted has permitted in dealings concerning it. The sower's seed and labor are inviolable and protected as part of his wealth and bodily integrity; thus, they are his, and among his rights is to seek retribution equivalent to their rightful due within the bounds of what Allah the Exalted has permitted in dealings. Therefore, what we have stated is obligatory and necessarily so—and success comes only from Allah the Exalted.

فَالْأَرْضُ - حُرْمَةٌ مُحَرَّمَةٌ مِنْ مَالِ صَاحِبِهَا، وَبَشَرَتِهِ، فَلَهُ وَمِنْ حَقِّهِ أَنْ يَقْتَصَّ بِمِثْلِ حَقِّ مِثْلِهَا مِمَّا أَبَاحَهُ اللَّهُ تَعَالَى فِي الْمُعَامَلَةِ فِيهَا - وَبَذْرُ الزَّارِعِ وَعَمَلُهُ حُرْمَةٌ مُحَرَّمَةٌ مِنْ مَالِهِ، وَبَشَرَتِهِ، فَلَهُ وَمِنْ حَقِّهِ أَنْ يَقْتَصَّ بِمِثْلِ حَقِّ مِثْلِ ذَلِكَ مِمَّا أَبَاحَهُ اللَّهُ تَعَالَى فِي الْمُعَامَلَةِ، فَوَجَبَ مَا قُلْنَا وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[14] **Qur'an references (L20733):** Qur'an 4:29 (An-Nisa); Qur'an 2:194 (Al-Baqarah).

Mughārasah (Tree Planting Partnership).

[الْمُغَارَسَةُ]

A legal case in which a person transferred his untilled land to a person to cultivate it for him.

[مَسْأَلَةٌ دَفَعَ أَرْضًا لَهُ بَيْضَاءَ إِلَى إِنْسَانٍ لِيَغْرِسَهَا لَهُ]

Issue 1340: If someone transfers his uncultivated land to another person to cultivate it for him, this is only permissible through one of two arrangements: Either the transplants, stakes, seeds, or cuttings belong exclusively to the landowner, who then hires the worker to plant them, maintain them, and oversee them for a specified duration - with something specified being obligatory; or through allocating either a specified, demarcated portion of that land or a quantitatively proportionate, undivided share of the entire land. In this case, the worker becomes entitled through his labor, for every portion of the specified period that elapses, to a corresponding portion from what was contracted as compensation. This constitutes a hire contract like all other hire contracts.

١٣٤٠ - مَسْأَلَةٌ: مَنْ دَفَعَ أَرْضًا لَهُ بَيْضَاءَ إِلَى إِنْسَانٍ لِيَغْرِسَهَا لَهُ لَمْ يَجُزْ ذَلِكَ إِلَّا بِأَحَدِ وَجْهَيْنِ -: إِمَّا بِأَنْ تَكُونَ النُّقُولُ أَوْ الْأَوْتَادُ أَوْ النَّوَى أَوْ الْقُضْبَانُ لِصَاحِبِ الْأَرْضِ فَقَطْ، فَيَسْتَأْجِرَ الْعَامِلَ لِغَرْسِهَا وَخِدْمَتِهَا وَالْقِيَامِ عَلَيْهَا مُدَّةً مُسَمَّاةً وَلَا بُدَّ بِشَيْءٍ مُسَمًّى، أَوْ بِقِطْعَةٍ مِنْ تِلْكَ الْأَرْضِ مُسَمَّاةً مَحُوزَةً، أَوْ مَنْسُوبَةَ الْقَدْرِ مُشَاعَةً فِي جَمِيعِهَا، فَيَسْتَحِقُّ الْعَامِلُ بِعَمَلِهِ فِي كُلِّ مَا يَمْضِي مِنْ تِلْكَ الْمُدَّةِ مَا يُقَابِلُهَا مِمَّا اُسْتُؤْجِرَ بِهِ، فَهَذِهِ إِجَارَةٌ كَسَائِرِ الْإِجَارَاتِ.

Or that the worker undertakes all we have mentioned - including planting, maintenance, and service - and receives from all of that a share mutually agreed upon, whether half, a third, a quarter, or a specified portion, while having no inherent right to the land whatsoever. This is permissible and proper, except that it is only permissible when absolute, not for any fixed duration at all. Its ruling in all we have previously mentioned is exactly the same in every way as the ruling of muzāraʿah (sharecropping), without excluding anything from it.

وَإِمَّا بِأَنْ يَقُومَ الْعَامِلُ بِكُلِّ مَا ذَكَرْنَا وَبِغَرْسِهِ وَبِخِدْمَتِهِ وَلَهُ مِنْ ذَلِكَ كُلِّهِ مَا تَعَامَلَا عَلَيْهِ مِنْ نِصْفٍ أَوْ ثُلُثٍ أَوْ رُبُعٍ أَوْ جُزْءٍ مُسَمًّى كَذَلِكَ، وَلَا حَقَّ لَهُ فِي الْأَرْضِ أَصْلًا - فَهَذَا جَائِزٌ حَسَنٌ، إِلَّا أَنَّهُ لَا يَجُوزُ إِلَّا مُطْلَقًا لَا إِلَى مُدَّةٍ أَصْلًا - وَحُكْمُهُ فِي كُلِّ مَا ذَكَرْنَا قَبْلُ حُكْمُ الْمُزَارَعَةِ سَوَاءً سَوَاءً فِي كُلِّ شَيْءٍ لَا تُحَشْ مِنْهَا شَيْئًا.

A legal issue: If the cultivator intended to depart before deriving any benefit from what he planted.

[مَسْأَلَةٌ أَرَادَ الْعَامِلُ الْخُرُوجَ قَبْلَ أَنْ يَنْتَفِعَ فِيمَا غَرَسَ بِشَيْءٍ]

1341 - Issue: If the laborer wishes to depart before deriving any benefit from what he has planted and before it has yielded any benefit for him, he has the right to depart and may reclaim all that he planted.

١٣٤١ - مَسْأَلَةٌ: فَإِنْ أَرَادَ الْعَامِلُ الْخُرُوجَ قَبْلَ أَنْ يَنْتَفِعَ فِيمَا غَرَسَ بِشَيْءٍ، وَقَبْلَ أَنْ تُثْمِرَ لَهُ فَلَهُ ذَلِكَ، وَيَأْخُذُ كُلَّ مَا غَرَسَ.

Similarly, if the landowner removes him because he derived no benefit, but if he does not leave until he benefits and the planted crops grow, he is entitled only to what they agreed upon. This is because he has benefited from the

land, so the land's due becomes incumbent upon him, and its due is exactly what they agreed upon.

وَكَذَلِكَ إنْ أَخْرَجَهُ صَاحِبُ الْأَرْضِ؛ لِأَنَّهُ لَمْ يَنْتَفِعْ بِشَيْءٍ، فَإِنْ لَمْ يَخْرُجْ حَتَّى انْتَفَعَ وَنَمَا مَا غَرَسَ فَلَيْسَ لَهُ إلَّا مَا تَعَاقَدَا عَلَيْهِ؛ لِأَنَّهُ قَدْ انْتَفَعَ بِالْأَرْضِ فَعَلَيْهِ حَقُّهَا، وَحَقُّهَا هُوَ مَا تَعَاقَدَا عَلَيْهِ.

L20743 The proof of this is what we mentioned at the outset of our discussion on sharecropping regarding the Messenger of Allah—peace be upon him—allowing the Jews to cultivate Khaybar with their own labor and resources, entitling them to half of its produce—whether crops or fruits—and half of what comes out of it, unconditionally, in this manner.

بُرْهَانُ ذَلِكَ -: هُوَ مَا ذَكَرْنَاهُ فِي أَوَّلِ كَلَامِنَا فِي " الْمُزَارَعَةِ " مِنْ إعْطَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْبَرَ الْيَهُودَ عَلَى أَنْ يَعْمَلُوهَا بِأَنْفُسِهِمْ وَأَمْوَالِهِمْ وَلَهُمْ نِصْفُ مَا يَخْرُجُ مِنْهَا مِنْ زَرْعٍ أَوْ ثَمَرٍ وَنِصْفُ مَا يَخْرُجُ مِنْهَا، هَكَذَا مُطْلَقًا.

L20744–20745 Similarly, it was reported to us through the chain of Hammad ibn Salamah from 'Ubayd Allah ibn 'Umar from Nafi' from Ibn 'Umar, who said: "The Messenger of Allah, peace be upon him, granted Khaybar to the Jews on the condition that they would receive half of every crop, palm trees, and thing."

وَكَذَلِكَ رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «أَعْطَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْبَرَ لِلْيَهُودِ عَلَى أَنَّ لَهُمْ الشَّطْرَ مِنْ كُلِّ زَرْعٍ وَنَخْلٍ وَشَيْءٍ» .

L20746 This is a general ruling applicable to all that emerges [from the land] through one's labor - whether trees, crops, or fruits. All of this falls under labor exerted through their persons and wealth, with no distinction between planting, sowing, or maintaining trees. And divine enablement is from Allah, the Most High.

وَهَذَا عُمُومٌ لِكُلِّ مَا خَرَجَ مِنْهَا بِعَمَلِهِ مِنْ شَجَرٍ أَوْ زَرْعٍ أَوْ ثَمَرٍ، وَكُلُّ ذَلِكَ دَاخِلٌ تَحْتَ الْعَمَلِ بِأَنْفُسِهِمْ وَأَمْوَالِهِمْ وَلَا فَرْقَ بَيْنَ غَرْسٍ أَوْ زَرْعٍ أَوْ عِمَارَةِ شَجَرٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L20747 By necessity, every discerning person knows that Khaybar—where there were around two thousand workers and where approximately eighty thousand wasq of dates were harvested—remained in their possession for over fifteen years, specifically sixteen and a half years: four years during the lifetime of the Prophet (peace be upon him), two and a half years under the caliphate of Abu Bakr, and ten years under the caliphate of Umar (may Allah be pleased with them), until he expelled them in the final year of his rule. Undoubtedly, some among them cultivated the land they held, and there was necessarily interaction between them and the original Muslim landowners without doubt.

وَبِالضَّرُورَةِ يَدْرِي كُلُّ ذِي تَمْيِيزٍ أَنَّ خَيْبَرَ وَفِيهَا نَحْوُ أَلْفَيْ عَامِلٍ وَيُصَابُ فِيهَا نَحْوُ ثَمَانِينَ أَلْفَ وَسْقِ تَمْرٍ وَبَقِيَتْ بِأَيْدِيهِمْ أَزْيَدَ مِنْ خَمْسَةَ عَشَرَ عَامًا: أَرْبَعَةَ أَعْوَامٍ مِنْ حَيَاةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَامَيْنِ وَنِصْفِ عَامٍ مُدَّةَ أَبِي بَكْرٍ، وَعَشَرَةِ أَعْوَامٍ مِنْ خِلَافَةِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - حَتَّى أَجْلَاهُمْ فِي آخِرِ عَامٍ مِنْ خِلَافَتِهِ، فَلَا بُدَّ أَنَّ فِيهِمْ مَنْ غَرَسَ فِيمَا بِيَدِهِ مِنْ الْأَرْضِ فَكَانَ بَيْنَهُمْ وَبَيْنَ أَصْحَابِ الْأُصُولِ مِنْ الْمُسْلِمِينَ بِلَا شَكٍّ.

L20748 Malik said: Al-Mugharasah is granting uncultivated land to someone to

plant at his own expense, as he deems appropriate, until it reaches maturity. He is then entitled to the share mutually agreed upon from the ownership of the land and the ownership of what was planted.

L20749 Abū Muḥammad said: This is absolutely impermissible from the outset, for it constitutes an undefined lease whose terms remain unknown. It is unclear how much youthful development those saplings will attain—indeed, they may never reach it. Neither the type of plants nor their quantity is known. Most astonishing is his statement "until they attain some youthful stage," given that cultivated trees differ radically in their growth patterns—differences so extreme and divergent that they cannot be regulated whatsoever. Some plantings may develop while others fail to grow, and others still may be delayed in their maturation. This matter can never be confined to what is planted, particularly when perhaps only one or two trees are planted for him, yet he becomes obligated to claim half of a vast estate for that purpose. This constitutes a speculative sale (gharar) for an unknown price, combining both sale and lease, wrongful consumption of wealth, an undefined lease, and a condition not stipulated in the Book of Allah the Exalted—thus it is invalid. This opinion combines every form of calamity. We know of no one who espoused it before him, nor does this opinion possess any proof from the Quran, the Sunnah, a weak narration, the view of a Companion, a Successor (to our knowledge), analogical reasoning, or any opinion with a sound basis. Such a position cannot be validly upheld—and success comes from Allah the Exalted.

L20750 **An issue: The laborer planted crops, after which ownership of the land was transferred to someone other than the contracting parties.**

L20751–20753 1342 - Issue: If someone enters into a sharecropping agreement, a contractual agreement for trees, or a tree-planting contract, and the worker sows, cultivates the trees, and plants, then ownership of the land or trees transfers to someone other than the original contracting party through inheritance, gift, charity, dowry, or sale: As for the crop: whether it has appeared or not, it entirely belongs to the planter and to the one who owned the land based

وَقَالَ مَالِكٌ: الْمُغَارَسَةُ: هُوَ أَنْ يُعْطَى الْأَرْضَ الْبَيْضَاءَ لِيَغْرِسَهَا مِنْ مَالِهِ مَا رَأَى حَتَّى يَبْلُغَ شَبَابًا مَا، ثُمَّ لَهُ مَا تَعَاقَدَا مِنْ رَقَبَةِ الْأَرْضِ، وَمِنْ رِقَابِ مَا غَرَسَ.

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا يَجُوزُ أَصْلًا؛ لِأَنَّهُ إجَارَةٌ مَجْهُولَةٌ لَا يُدْرَى فِي كَمْ يَبْلُغُ ذَلِكَ الشَّبَابَ، وَلَعَلَّهَا لَا تَبْلُغُهُ، وَلَا يُدْرَى مَا غَرَسَ وَلَا عَدَدُهُ، وَأَعْجَبُ شَيْءٍ قَوْلُهُ " حَتَّى يَبْلُغَ شَبَابًا مَا " وَالْغُرُوسُ تَخْتَلِفُ فِي ذَلِكَ اخْتِلَافًا شَدِيدًا مُتَبَايِنًا، لَا يَنْضَبِطُ أَلْبَتَّةَ، فَقَدْ يَشِبُّ بَعْضُ مَا غَرَسَ وَيَبْطُلُ الْبَعْضُ، وَيَتَأَخَّرُ شَبَابُ الْبَعْضِ، فَهَذَا أَمْرٌ لَا يَنْحَصِرُ أَبَدًا فِيمَا يَغْرِسُ، وَلَعَلَّهُ لَا يَغْرِسُ لَهُ إلَّا شَجَرَةً وَاحِدَةً أَوْ اثْنَتَيْنِ، فَيُكَلَّفُ لِذَلِكَ اسْتِحْقَاقَ نِصْفِ أَرْضٍ عَظِيمَةٍ فَهُوَ بَيْعُ غَرَرٍ بِثَمَنٍ مَجْهُولٍ، وَبَيْعٌ وَإِجَارَةٌ مَعًا، وَأَكْلُ مَالٍ بِالْبَاطِلِ، وَإِجَارَةٌ مَجْهُولَةٌ، وَشَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، فَهُوَ بَاطِلٌ قَدْ جَمَعَ هَذَا الْقَوْلُ كُلَّ بَلَاءٍ، وَمَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ، وَلَا لِهَذَا الْقَوْلِ حُجَّةً لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا تَابِعٍ نَعْلَمُهُ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ، وَمَا كَانَ هَكَذَا لَمْ يَجُزْ الْقَوْلُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ زَرَعَ الْعَامِلُ ثُمَّ انْتَقَلَ مِلْكُ الْأَرْضِ إلَى غَيْرِ الْمُعَاقِدِ]

١٣٤٢ - مَسْأَلَةٌ: وَمَنْ عَقَدَ مُزَارَعَةً أَوْ مُعَامَلَةً فِي شَجَرٍ أَوْ مُغَارَسَةً، فَزَرَعَ الْعَامِلُ وَعَمِلَ فِي الشَّجَرِ وَغَرَسَ، ثُمَّ انْتَقَلَ مِلْكُ الْأَرْضِ أَوْ الشَّجَرِ إلَى غَيْرِ الْمُعَاقِدِ بِمِيرَاثٍ أَوْ بِهِبَةٍ أَوْ بِصَدَقَةٍ أَوْ بِإِصْدَاقٍ أَوْ بِبَيْعٍ -: فَأَمَّا الزَّرْعُ: ظَهَرَ أَوْ لَمْ يَظْهَرْ فَهُوَ كُلُّهُ لِلزَّارِعِ وَالَّذِي

كَانَتْ الْأَرْضُ لَهُ عَلَى شَرْطِهِمَا، وَلِلَّذِي انْتَقَلَ مِلْكُ الْأَرْضِ إِلَيْهِ أَخْذُهُمَا بِقَطْعِه أَوْ قَلْعِهِ فِي أَوَّلِ إِمْكَانِ الِانْتِفَاعِ بِهِ، لَا قَبْلَ ذَلِكَ؛ لِأَنَّهُ لَمْ يَزْرَعْ إِلَّا بِحَقٍّ، وَالزَّرْعُ بِلَا خِلَافٍ هُوَ غَيْرُ الْأَرْضِ الَّتِي انْتَقَلَ مِلْكُهَا إِلَى غَيْرِ مَالِكِهَا الْأَوَّلِ.

on their mutual condition. The party to whom land ownership has been transferred may take possession of the crop by cutting or uprooting it at the earliest possible opportunity to benefit from it, not before that, because the planter cultivated it only by lawful right. The crop – without scholarly disagreement – is distinct from the land whose ownership has been transferred to someone other than its first owner.

وَأَمَّا الْمُعَامَلَةُ فِي الشَّجَرِ بِبَعْضِ مَا يَخْرُجُ مِنْهَا، فَهُوَ مَا لَمْ يَخْرُجْ غَيْرَ مُتَمَلَّكٍ لِأَحَدٍ، فَإِذَا خَرَجَ فَهُوَ لِمَنْ الشَّجَرُ لَهُ، فَإِنْ أَرَادَ إِبْقَاءَ الْعَامِلِ عَلَى مُعَامَلَتِهِ فَلَهُ ذَلِكَ، وَإِنْ أَرَادَ تَجْدِيدَ مُعَامَلَةٍ فَلَهُمَا ذَلِكَ، وَإِنْ أَرَادَ إِخْرَاجَهُ فَلَهُ ذَلِكَ وَلِلْعَامِلِ عَلَى الَّذِي كَانَ الْمِلْكُ لَهُ أُجْرَةُ مِثْلِ عَمَلِهِ؛ لِأَنَّهُ عَمِلَ فِي مِلْكِهِ بِأَمْرِهِ.

As for the contractual agreement regarding a tree in exchange for a portion of its produce, this applies when the yield has not yet emerged and remains unowned. Once it emerges, it belongs to the tree's owner. If the owner wishes to maintain the existing agreement with the worker, he may do so. If he wishes to renew the contract, both parties must mutually agree. If he wishes to dismiss the worker, he may do so, and the worker is entitled to a customary wage for his labor from the party who owned the property at the time, because he worked on owned property under the owner's authorization.

وَأَمَّا الْغَرْسُ: فَلِلَّذِي انْتَقَلَ الْمِلْكُ إِلَيْهِ إِقْرَارُهُ عَلَى تِلْكَ الْمُعَامَلَةِ، أَوْ أَنْ يَتَّفِقَا عَلَى تَجْدِيدِ أُخْرَى، فَإِنْ أَرَادَ إِخْرَاجَهُ فَلَهُ ذَلِكَ، وَلِلْغَارِسِ قَلْعُ حِصَّتِهِ مِمَّا غَرَسَ، كَمَا لَوْ أَخْرَجَهُ الَّذِي كَانَ عَامِلُهُ أَوَّلًا، عَلَى مَا ذَكَرْنَا قَبْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

As for the plantings: the right belongs to the new owner to confirm the original transaction or for both parties to agree to renew another agreement. If the owner wishes to remove the planter, he may do so, and the planter may uproot his share of the plants he planted, just as if he had been removed by the original contracting party, as we previously explained. And success is from Allah, the Most High.

وَأَمَّا إِذَا انْتَقَلَ الْمِلْكُ بَعْدَ ظُهُورِ الثَّمَرَةِ، فَالثَّمَرَةُ بَيْنَ الْعَامِلِ وَبَيْنَ الَّذِي كَانَ الْمِلْكُ لَهُ عَلَى شَرْطِهِمَا، لَا شَيْءَ فِيهَا لِلَّذِي انْتَقَلَ الْمِلْكُ إِلَيْهِ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

If ownership was transferred after the fruit appeared, the fruit is divided between the cultivator and the one to whom the ownership originally belonged according to their stipulation. The one to whom ownership was transferred has no share in the fruit. And success is from Allah, the Exalted.

[تَمَّ " كِتَابُ الْمُزَارَعَةِ، وَالْمُغَارَسَةِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ]

***The Book of Agriculture and Arboriculture* has been completed, and all praise is due to Allah, the Lord of the worlds.**

AL-MUHALLA

كِتَابُ الْمُعَامَلَةِ فِي الثِّمَارِ

The Book of Transactions Concerning Fruits

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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The Book of Transactions Concerning Fruits *Issue: Transactions Concerning Fruits Are a Sunnah*

L20758–20759

[كِتَابُ الْمُعَامَلَةِ فِي الثِّمَارِ] [مَسْأَلَةٌ الْمُعَامَلَةِ فِي الثِّمَارِ سُنَّةٌ]

L20760 In the name of Allah, the Most Gracious, the Most Merciful. The Book of Transactions Concerning Fruits 1343 - Issue: The Sunnah regarding fruit transactions entails that a person entrusts his trees—whether date palms, grapevines, fig trees, jasmine, banana plants, or any other type—without excluding any tree that stands on a trunk and yields edible produce annually. This is to one who will dig around them, fertilize them, irrigate them (if they require irrigation by waterwheel, noria, or canal), pollinate date palms, prune grapevines, plow where necessary, guard the fruit until fully ripened and harvested, dried (for drying varieties), pressed for oil (for oil-producing types), or until reaching marketable condition (for those sold in such states), in exchange for a specified share of the fruit—whether half, third, quarter, more, or less—exactly as outlined in sharecropping agreements. The proof lies in what we cited there regarding the practice of Allah's Messenger, peace and blessings be upon him, at Khaybar.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الْمُعَامَلَةِ فِي الثِّمَارِ ١٣٤٣ - مَسْأَلَةٌ: الْمُعَامَلَةُ فِيهَا سُنَّةٌ، وَهِيَ أَنْ يَدْفَعَ الْمَرْءُ أَشْجَارَهُ أَيَّ شَجَرٍ كَانَ مِنْ نَخْلٍ، أَوْ عِنَبٍ، أَوْ تِينٍ، أَوْ يَاسَمِينٍ، أَوْ مَوْزٍ، أَوْ غَيْرِ ذَلِكَ، لَا تُحَاشِ شَيْئًا مِمَّا يَقُومُ عَلَى سَاقٍ وَيُطْعَمُ سَنَةً بَعْدَ سَنَةٍ لِمَنْ يَحْفِرُهَا وَيُزَبِّلُهَا وَيَسْقِيهَا - إِنْ كَانَتْ مِمَّا يُسْقَى بِسَانِيَةٍ، أَوْ نَاعُورَةٍ، أَوْ سَاقِيَةٍ، وَيُؤَبِّرُ النَّخْلَ، وَيُزَبِّرُ الدَّوَالِيَ، وَيَحْرُثُ مَا احْتَاجَ إِلَى حَرْثِهِ وَيَحْفَظُهُ حَتَّى يَتِمَّ وَيُجْمَعُ، أَوْ يَيْبَسُ إِنْ كَانَ مِمَّا يَيْبَسُ، أَوْ يُخْرِجُ دُهْنَهُ إِنْ كَانَ مِمَّا يُخْرَجُ دُهْنُهُ، أَوْ حَتَّى يَحِلَّ بَيْعُهُ إِنْ كَانَ مِمَّا يُبَاعُ كَذَلِكَ، عَلَى سَهْمٍ مُسَمًّى مِنْ ذَلِكَ الثَّمَرِ، أَوْ مِمَّا تَحْمِلُهُ الْأُصُولُ كَنِصْفٍ أَوْ ثُلُثٍ، أَوْ رُبُعٍ، أَوْ أَكْثَرَ، أَوْ أَقَلَّ، كَمَا قُلْنَا فِي " الْمُزَارَعَةِ " سَوَاءٌ سَوَاءٌ. بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَاهُ هُنَالِكَ مِنْ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِخَيْبَرَ.

L20761 It was narrated to us via the chain of Abū Dāwūd: Aḥmad ibn Ḥanbal → Yaʿqūb ibn Ibrāhīm ibn Saʿd → his father Ibrāhīm ibn Saʿd → Muḥammad ibn Isḥāq → Nāfiʿ, client of Ibn ʿUmar → ʿAbdullāh ibn ʿUmar, who said: ʿUmar ibn al-Khaṭṭāb addressed the people, declaring: "O people, the Messenger of Allāh (peace be upon him) contracted with the Jews of Khaybar on terms permitting us to expel them at will. Let whoever owns property retain it, for I am expelling the Jews." Thus he expelled them.

وَرُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ حَنْبَلٍ نا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ نا أَبِي عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ حَدَّثَنِي نَافِعٌ مَوْلَى ابْنِ عُمَرَ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ لِلنَّاسِ " أَيُّهَا النَّاسُ إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ عَامَلَ يَهُودَ خَيْبَرَ عَلَى أَنَّا نُخْرِجُهُمْ إِذَا شِئْنَا، فَمَنْ كَانَ لَهُ مَالٌ فَلْيَلْحَقْ بِهِ، فَإِنِّي مُخْرِجٌ يَهُودَ، فَأَخْرَجَهُمْ ".

L20762 Abū Muḥammad said: With this [opinion], the majority of people hold. However, it has been narrated to us from al-Ḥasan and Ibrāhīm that they expressed disapproval of it—and Abū Ḥanīfah did not validate it, nor did Zufar.

قَالَ أَبُو مُحَمَّد: وَبِهَذَا يَقُولُ جُمْهُورُ النَّاسِ، إِلَّا أَنَّنَا رُوِّينَا عَنْ الْحَسَنِ، وَإِبْرَاهِيمَ كَرَاهَةَ ذَلِكَ - وَلَمْ يُجِزْهُ أَبُو حَنِيفَةَ، وَلَا زُفَرُ.

L20763 Ibn Abī Laylā, Sufyān al-Thawrī, al-Awzāʿī, Abū Yūsuf, Muḥammad, al-Shāfiʿī, Mālik, Aḥmad, Abū Sulaymān, and others permitted it.

وَأَجَازَهُ ابْنُ أَبِي لَيْلَى، وَسُفْيَانُ الثَّوْرِيُّ، وَالْأَوْزَاعِيُّ، وَأَبُو يُوسُفَ، وَمُحَمَّدٌ، وَالشَّافِعِيُّ، وَمَالِكٌ، وَأَحْمَدُ، وَأَبُو سُلَيْمَانَ، وَغَيْرُهُمْ.

L20764–20765 Mālik permitted [the practice] for all trees with established roots, except those that regrow and are harvested repeatedly, such as bananas, sugarcane, and vegetables. He prohibited it for these crops and also disallowed it for vegetables except solely in matters of irrigation.

وَأَجَازَهُ مَالِكٌ فِي كُلِّ شَجَرٍ قَائِمِ الْأَصْلِ إِلَّا فِيمَا يُخْلَفُ وَيُجْنَى مَرَّةً بَعْدَ أُخْرَى كَالْمَوْزِ، وَالْقَصَبِ، وَالْبُقُولِ، فَلَمْ يُجِزْ فِيهَا، وَلَا أَجَازَ ذَلِكَ أَيْضًا فِي الْبُقُولِ إِلَّا فِي السَّقْيِ خَاصَّةً.

L20766 Al-Shāfiʿī did not permit it in the more well-known of his two opinions, except in the case of date palms and grapes only — and among Abū Sulaymān's companions, some did not permit that except regarding date palms only.

وَلَمْ يُجِزْهُ الشَّافِعِيُّ فِي أَشْهَرِ قَوْلَيْهِ، إِلَّا فِي النَّخْلِ، وَالْعِنَبِ فَقَطْ - وَمِنْ أَصْحَابِ أَبِي سُلَيْمَانَ مَنْ لَمْ يُجِزْ ذَلِكَ، إِلَّا فِي النَّخْلِ فَقَطْ.

L20767 Abu Muhammad said: Whoever forbids [others] from that except concerning palm trees alone, or palm trees and grapes, or in some cases while excluding others, or regarding irrigation while excluding rain-fed cultivation, has contradicted the ḥadīth of the Prophet—peace and blessings of Allāh be upon him—as we previously mentioned. Such a person thereby joins those who criticized Abū Ḥanīfah, and their statement carries no validity.

قَالَ أَبُو مُحَمَّد: مَنْ مَنَعَ مِنْ ذَلِكَ إِلَّا فِي النَّخْلِ وَحْدَهُ، أَوْ فِي النَّخْلِ وَالْعِنَبِ، أَوْ فِي بَعْضٍ دُونَ بَعْضٍ، أَوْ فِي سَقْيٍ دُونَ بَعْلٍ، فَقَدْ خَالَفَ الْحَدِيثَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا ذَكَرْنَا قَبْلُ وَدَخَلُوا فِي الَّذِينَ أَنْكَرُوا عَلَى أَبِي حَنِيفَةَ فَلَا مَعْنَى لِقَوْلِهِمْ.

L20768 Some of the followers adhering to Abū Ḥanīfah's school argued by stating that a hire contract is not permissible unless the compensation is specified.

وَاحْتَجَّ بَعْضُ الْمُقَلِّدِينَ لِأَبِي حَنِيفَةَ بِأَنْ قَالُوا: لَا تَجُوزُ الْإِجَارَةُ إِلَّا بِأُجْرَةٍ مَعْلُومَةٍ.

L20769 Abū Muḥammad said: Sharecropping and contracting trees for a portion of their yield are not classified as ijārah (lease contracts). The coining of religious terms is solely the prerogative of the Messenger of Allah—peace and blessings be upon him—as conveyed from his Lord, the Exalted. He, the Exalted, said: They are but names you have named—you and your forefathers—for which Allah has sent down no authority. [An-Najm 53:23][1]

قَالَ أَبُو مُحَمَّد: لَيْسَتْ الْمُزَارَعَةُ وَلَا إعْطَاءُ الشَّجَرِ بِبَعْضِ مَا يَخْرُجُ مِنْهَا: إجَارَةً، وَالتَّسْمِيَةُ فِي الدِّينِ إنَّمَا هِيَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ رَبِّهِ تَعَالَى قَالَ تَعَالَى: {إِنْ هِيَ إِلا أَسْمَاءٌ سَمَّيْتُمُوهَا أَنْتُمْ وَآبَاؤُكُمْ مَا أَنْزَلَ اللَّهُ بِهَا مِنْ سُلْطَانٍ} [النجم: ٢٣] .

L20770 They are told: "Why do you not invalidate the muḍārabah contract by this very proof and declare it a lease contract with an unknown wage?" If they say: "Muḍārabah is established by consensus," we respond: "Leasing land for a portion of its produce and leasing trees for a portion of their yield are decisively established by the certain practice of Allah's Messenger (peace be upon him) and the actions of all his Companions (may Allah be pleased

وَيُقَالُ لَهُمْ: هَلَّا أَبْطَلْتُمْ بِهَذَا الدَّلِيلِ بِعَيْنِهِ الْمُضَارَبَةَ، وَقُلْتُمْ: إنَّهَا إجَارَةٌ بِأُجْرَةٍ مَجْهُولَةٍ؟ فَإِنْ قَالُوا: إنَّ الْمُضَارَبَةَ مُتَّفَقٌ عَلَيْهَا؟ قُلْنَا: وَدَفْعُ الْأَرْضِ بِجُزْءٍ مِمَّا يَخْرُجُ مِنْهَا، وَدَفْعُ الشَّجَرِ مِمَّا يَخْرُجُ مِنْهَا: مُتَّفَقٌ عَلَيْهِ بِيَقِينٍ مِنْ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَمَلِ جَمِيعِ أَصْحَابِهِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا تُحَاشِ مِنْهُمْ أَحَدًا، فَمَا غَابَ مِنْهُمْ عَنْ

[1] **Qur'an references (L20769):** Qur'an 53:23 (An-Najm).

with them)—without excluding a single one of them except those excused by illness, weakness, or official duties. Moreover, every absentee for such reasons remained fully aware of Khaybar's affairs, with this matter persisting year after year until the end of ʿUmar's caliphate. This is the certain, decisive consensus—not their false claims and baseless assumptions regarding consensus on muḍārabah, which is only narrated from six Companions (may Allah be pleased with them)."

They object concerning Khaybar by arguing: "Its inhabitants must have been either slaves or free people. If slaves, it is permissible for one to enter into such a contractual arrangement with his slave. If free, what was taken from them would equate to the poll tax, since no reports indicate the Prophet (peace be upon him) ever collected poll tax or obligatory alms from them."

L20771–20772 Abu Muhammad said: This is among the matters wherein they have resorted to falsehood, slander, and brazen audacity. As for their claim that "the people of Khaybar cannot escape being slaves"—how could they utter this when they are the foremost opponents of this ruling? They do not dispute that people captured by force remain free, nor that if the Imam decides to reduce them to servitude, the fifth (khums) must first be taken from them, followed by the sale of their persons to distribute the proceeds.

L20773 Then how could they dare to claim, "Perhaps they were slaves," when it has been established that ʿUmar—contrary to the time of the Messenger of Allah (peace be upon him)—expelled them in the presence of the Companions (may Allah be pleased with them) through expelling the Jews from the Arabian Peninsula? How could ʿUmar possibly permit causing the loss of Muslims' slaves, in whom orphans and widows held a rightful share? Indeed, whoever ascribes this to ʿUmar is gravely misguided and misleading. Rather, [it should be attributed] to the Messenger of Allah (peace be upon him).

L20774 It has been authentically established that he (peace be upon him) intended to expel them, but they sought permission to remain, so he allowed them to stay on the condition that Muslims could expel them at any time. It is

خَيْبَرَ إِلَّا مَعْذُورٌ بِمَرَضٍ أَوْ ضَعْفٍ أَوْ وِلَايَةٍ تَشْغَلُهُ، وَمَعَ ذَلِكَ فَكُلُّ مَنْ غَابَ بِأَحَدِ هَذِهِ الْوُجُوهِ فَقَدْ عَرَفَ أَمْرَ خَيْبَرَ، وَاتَّصَلَ الْأَمْرُ فِيهَا عَامًا بَعْدَ عَامٍ إِلَى آخِرِ خِلَافَةِ عُمَرَ - فَهَذَا هُوَ الْإِجْمَاعُ الْمُتَيَقَّنُ الْمَقْطُوعُ عَلَيْهِ، لَا مَا يَدَّعُونَهُ مِنَ الْبَاطِلِ وَالظَّنِّ الْكَاذِبِ فِي الْإِجْمَاعِ عَلَى الْمُضَارَبَةِ الَّتِي لَا تُرْوَى إِلَّا عَنْ سِتَّةٍ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَاعْتَرَضُوا فِي أَمْرِ خَيْبَرَ بِأَنْ قَالُوا: لَا يَخْلُو أَهْلُ خَيْبَرَ مِنْ أَنْ يَكُونُوا عَبِيدًا أَوْ أَحْرَارًا، فَإِنْ كَانُوا عَبِيدًا فَمُعَامَلَةُ الْمَرْءِ لِعَبْدِهِ بِمِثْلِ هَذَا جَائِزٌ، وَإِنْ كَانُوا أَحْرَارًا فَيَكُونُ الَّذِي أُخِذَ مِنْهُمْ بِمَنْزِلَةِ الْجِزْيَةِ؛ لِأَنَّهُ لَمْ يَأْتِ فِي شَيْءٍ مِنَ الْأَخْبَارِ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ أَخَذَ مِنْهُمْ جِزْيَةً وَلَا زَكَاةً.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا مِمَّا جَرَوْا فِيهِ عَلَى الْكَذِبِ وَالْبَهْتِ وَالتَّوَقُّحِ الْبَارِدِ -: أَمَّا قَوْلُهُمْ: لَا يَخْلُو أَهْلُ خَيْبَرَ مِنْ أَنْ يَكُونُوا عَبِيدًا، فَكَيْفَ انْطَلَقَتْ أَلْسِنَتُهُمْ بِهَذَا، وَهُمْ أَوَّلُ مُخَالِفٍ لِهَذَا الْحُكْمِ؟ فَلَا يَخْتَلِفُونَ فِي أَنَّ أَهْلَ الْعَنْوَةِ أَحْرَارٌ، وَأَنَّهُ إِنْ رَأَى الْإِمَامُ إِرْقَاقَهُمْ فَلَا بُدَّ فِيهِمْ مِنَ التَّخْمِيسِ، وَالْبَيْعِ لِقِسْمَةِ أَثْمَانِهِمْ.

ثُمَّ كَيْفَ اسْتَجَازُوا أَنْ يَقُولُوا: لَعَلَّهُمْ كَانُوا عَبِيدًا وَقَدْ صَحَّ أَنَّ عُمَرَ أَجْلَاهُمْ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - عَنْ عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِإِخْرَاجِ الْيَهُودِ عَنْ جَزِيرَةِ الْعَرَبِ؟ فَكَيْفَ يُمْكِنُ أَنْ يَسْتَجِيزَ عُمَرُ تَفْوِيتَ عَبِيدِ الْمُسْلِمِينَ، وَفِيهِمْ حَظٌّ لِلْيَتَامَى وَالْأَرَامِلِ؟ إِنَّ مَنْ نَسَبَ هَذَا إِلَى عُمَرَ لَضَالٌّ مُضِلٌّ، بَلْ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

impermissible to ascribe to him (peace be upon him) the squandering of the Muslims' slaves.

وَقَدْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَرَادَ إجْلَاءَهُمْ فَرَغِبُوا فِي إقْرَارِهِمْ فَأَقَرَّهُمْ عَلَى أَنْ يُخْرِجَهُمْ إذَا شَاءَ الْمُسْلِمُونَ، وَهُوَ - عَلَيْهِ السَّلَامُ - لَا يَجُوزُ أَنْ يُنْسَبَ إلَيْهِ تَضْيِيعُ رَقِيقِ الْمُسْلِمِينَ.

L20775 It is inconceivable for them to be slaves exclusively to him (peace be upon him), for he (peace be upon him) had no share of the spoils except a fifth of the *khums*, and his portion was with the Muslims. Some have mentioned the *ṣafī*, but none among the people of Islam have ever stated that all those acquired by force are slaves to him (peace be upon him).

وَمِنْ الْمُحَالِ أَنْ يَكُونُوا عَبِيدًا لَهُ - عَلَيْهِ السَّلَامُ - خَاصَّةً؛ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَيْسَ لَهُ مِنْ الْمَغْنَمِ إلَّا خُمُسُ الْخُمُسِ وَسَهْمُهُ مَعَ الْمُسْلِمِينَ وَقَدْ قَالَ قَوْمٌ: وَالصَّفِيُّ، وَلَمْ يَقُلْ أَحَدٌ مِنْ أَهْلِ الْإِسْلَامِ: إنَّ جَمِيعَ مَنْ مَلَكَ عَنْوَةً عَبِيدٌ لَهُ - عَلَيْهِ السَّلَامُ -.

L20776 Then, if the falsehood they alleged—to which they were enslaved—could have emancipated them, it would have freed them without doubt. As narrated through Bukhārī's chain: Ibrāhīm ibn al-Ḥārith narrated to us; Yaḥyā ibn Abī Bukayr narrated to us; Zuhayr ibn Muʿāwiyah al-Juʿfī narrated to us; Abū Isḥāq al-Sabīʿī narrated from ʿAmr ibn al-Ḥārith—the brother-in-law of Allah's Messenger and brother of Umm al-Mu'minīn Juwayriyah bint al-Ḥārith—who said: "When Allah's Messenger—peace be upon him—died, he left no dinar, dirham, male slave, female slave, or anything except his white mule, his weapons, and a piece of land he had made charity."[2]

ثُمَّ لَوْ أَمْكَنَ أَنْ يَكُونَ مَا زَعَمُوا مِنْ الْبَاطِلِ - وَكَانُوا لَهُ عَبِيدًا - لَكَانَ قَدْ أَعْتَقَهُمْ بِلَا شَكٍّ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا إبْرَاهِيمُ بْنُ الْحَارِثِ نا يَحْيَى بْنُ أَبِي بُكَيْرٍ نا زُهَيْرٌ - هُوَ ابْنُ مُعَاوِيَةَ الْجُعْفِيُّ - نا أَبُو إسْحَاقَ - هُوَ السَّبِيعِيّ - عَنْ عَمْرِو بْنِ الْحَارِثِ [خَتَنِ رَسُولِ اللَّهِ] وَأَخِي أُمِّ الْمُؤْمِنِينَ جُوَيْرِيَةَ بِنْتِ الْحَارِثِ قَالَ «مَا تَرَكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِنْدَ مَوْتِهِ دِينَارًا وَلَا دِرْهَمًا وَلَا عَبْدًا وَلَا أَمَةً وَلَا شَيْئًا إلَّا بَغْلَتَهُ الْبَيْضَاءَ، وَسِلَاحَهُ، وَأَرْضًا جَعَلَهَا صَدَقَةً» .

L20777–20779 And he (peace be upon him) had apportioned those captured by force at Khaybar - as transmitted to us through the chain of Muslim: Zuhayr ibn Harb narrated from Ismāʿīl ibn ʿUlayyah, from ʿAbd al-ʿAzīz ibn Ṣuhayb, from Anas: "The Messenger of Allah (peace and blessings be upon him) raided Khaybar." He mentioned the ḥadīth containing: "We seized it by force. He gathered the captives, then Dihya came to him and said: 'O [...]'" O Messenger of Allah, grant me a female captive from the spoils. He said: Go and take a female captive. So he took Safiyyah bint Huyayy, and mentioned the Hadith.[3]

وَقَدْ قَسَمَ - عَلَيْهِ السَّلَامُ - مَنْ أُخِذَ عَنْوَةً بِخَيْبَرَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ نا إسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ عَنْ أَنَسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَزَا خَيْبَرَ» فَذَكَرَ الْحَدِيثَ وَفِيهِ: «قَالَ: فَأَصَبْنَاهَا عَنْوَةً، وَجُمِعَ السَّبْيُ فَجَاءَهُ دِحْيَةُ فَقَالَ: يَا رَسُولَ اللَّهِ أَعْطِنِي جَارِيَةً مِنْ السَّبْيِ؟ قَالَ: اذْهَبْ فَخُذْ جَارِيَةً، فَأَخَذَ صَفِيَّةَ بِنْتَ حُيَيٍّ» وَذَكَرَ الْحَدِيثَ.

[2] **Hadith references (L20776):** Mishkat al-Masabih 5974.

[3] **Hadith references (L20777):** Sunan Abi Dawud 3009; Sahih Muslim 1365g; Sunan an-Nasai 3380.

قَالَ أَبُو مُحَمَّد: وَكَانَتْ الْأَرْضُ كُلُّهَا عَنْوَةً، وَصَالَحَ أَهْلَ بَعْضِ الْحُصُونِ عَلَى الْأَمَانِ، فَنَزَلُوا ذِمَّةً أَحْرَارًا - وَقَدْ صَحَّ مِنْ حَدِيثِ عُمَرَ قَوْلُهُ كَمَا قَسَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْبَرَ، فَصَحَّ أَنَّ الْبَاقِينَ بِهَا أَحْرَارٌ.

L20780 Abu Muhammad said: The entire land was conquered by force, and the Muslims made peace with the inhabitants of some fortresses under terms of safe conduct. They entered into the dhimma covenant as free people. It is authentically reported from ʿUmar that he said: "As the Messenger of Allah—peace be upon him—divided Khaybar." Thus, it is confirmed that those remaining there are free people.

وَأَمَّا قَوْلُهُمْ: إنَّ ذَلِكَ الْمَأْخُوذَ مِنْهُمْ كَانَ مَكَانَ الْجِزْيَةِ، فَكَلَامُ مَنْ لَا يَتَّقِي اللَّهَ تَعَالَى، وَكَيْفَ يَجُوزُ أَنْ يَكُونَ ذَلِكَ النِّصْفُ مَكَانَ الْجِزْيَةِ؟

L20781 As for their claim that what was taken from them was in place of the jizyah, this is the speech of one who does not revere Allah Almighty. How can it be valid for that half to replace the jizyah?

وَإِنَّمَا كَانَ حُقُوقَ أَرْبَابِ الضِّيَاعِ الْمَقْسُومَةِ عَلَيْهِمْ الَّذِي عُومِلَ الْيَهُودُ عَلَى كِفَايَتِهِمْ الْعَمَلَ، وَالَّذِينَ خَطَبَهُمْ عُمَرُ كَمَا ذَكَرْنَا وَأَمَرَهُمْ أَنْ يَلْحَقُوا بِأَمْوَالِهِمْ فَلْيَنْظُرُوا فِيهَا إذَا أَرَادَ إجْلَاءَ الْيَهُودِ عَنْهَا.

L20782 The rights belonged to the owners of the apportioned agricultural estates—those managed by the Jews according to their labor capacity—and to those whom Umar addressed (as we mentioned), ordering them to reclaim their properties. They should inspect these estates when Umar resolved to expel the Jews from them.

وَالْآثَارُ بِهَذَا مُتَوَاتِرَةٌ مُتَظَاهِرَةٌ كَالْمَالِ الَّذِي حَصَلَ لِعُمَرَ بِهَا فَجَعَلَهُ صَدَقَةً وَكَقَوْلِ ابْنِ عُمَرَ فِي سَبَبِ إجْلَاءِ الْيَهُودِ: خَرَجْنَا إلَى خَيْبَرَ فَتَفَرَّقْنَا فِي أَمْوَالِنَا وَكَانَ إعْطَاءُ أُمَّهَاتِ الْمُؤْمِنِينَ بَعْضَ الْأَرْضِ وَالْمَاءِ، وَبَعْضِهِنَّ الْأَوْسَاقَ، وَأَنَّ بَقَايَا أَبْنَاءِ الْمُهَاجِرِينَ إلَيْهَا إلَى الْيَوْمِ عَلَى مَوَارِيثِهِمْ، فَظَهَرَ هَذَيَانُ هَؤُلَاءِ النَّوْكَى.

L20783 The narrations regarding this are successively transmitted and evident, such as the wealth that came to ʿUmar through it, which he designated as charity, and like the statement of Ibn ʿUmar regarding the reason for the expulsion of the Jews: "We went to Khaybar and dispersed into our properties." The Mothers of the Believers were granted portions of land and water, while some of them received specific measures. The remaining descendants of the Emigrants to it remain to this day upon their inheritances. Thus, the delusions of these imbeciles have become apparent.

وَالْعَجَبُ أَنَّهُمْ قَالُوا: لَوْ كَانَ إجْمَاعًا لَكَفَرَ أَبُو حَنِيفَةَ، وَزُفَرُ فَقُلْنَا: عُذْرًا بِجَهْلِهِمَا كَمَا يُعْذَرُ مَنْ قَرَأَ الْقُرْآنَ فَأَخْطَأَ فِيهِ وَبَدَّلَهُ وَزَادَ وَنَقَصَ وَهُوَ يَظُنُّ أَنَّهُ عَلَى صَوَابٍ، وَأَمَّا مَنْ قَامَتْ الْحُجَّةُ عَلَيْهِ وَتَمَادَى مُعَانِدًا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ كَافِرٌ بِلَا شَكٍّ.

L20784 The wonder is that they said: "If it were a consensus, Abū Ḥanīfah and Zufar would have disbelieved." We responded: "An excuse due to their ignorance, just as one who recites the Quran and errs in it—altering, adding, and omitting while believing he is correct—is excused. As for one against whom the proof is established and who persists in defiantly opposing the Messenger of Allah—peace and blessings be upon him—he is undoubtedly a disbeliever without doubt."

L20785 The adherents of Al-Shafi'i objected, asserting: Since musāqāt (a contract for tending trees in exchange for a share of produce) is valid for palm trees, it must necessarily apply to grapevines as well, because zakāt is obligatory on

both of them, and zakāt is not obligatory on any other agricultural produce besides these two.

وَشَغَبَ أَصْحَابُ الشَّافِعِيِّ بِأَنْ قَالُوا: لَمَّا صَحَّتْ الْمُسَاقَاةُ فِي النَّخْلِ وَجَبَ أَنْ يَكُونَ أَيْضًا فِي الْعِنَبِ، لِأَنَّ كِلَيْهِمَا فِيهِ الزَّكَاةُ، وَلَا تَجِبُ الزَّكَاةُ فِي شَيْءٍ مِنْ الثِّمَارِ غَيْرِهِمَا.

L20786–20788 Abu Muhammad said: This is invalid and a weak analogy. They are told: "Since the fruit of the date palm has a pit..." It is obligatory to analogically extend [the ruling] to all fruits with pits. Since the date fruit is sweet, the analogy must apply to all sweet fruits; otherwise, what serves as the proof for obligating zakāh to be given as a portion of their fruits? He further stated: "The date fruit is quantifiable, as is the grape." 'Alī added: "Similarly, the fig, the pistachio, and others."

قَالَ أَبُو مُحَمَّد: وَهَذَا فَاسِدٌ وَقِيَاسٌ بَارِدٌ، وَيُقَالُ لَهُمْ: لَمَّا كَانَ ثَمَرُ النَّخْلِ ذَا نَوًى وَجَبَ أَنْ يُقَاسَ عَلَيْهِ كُلُّ ذِي نَوًى، أَوْ لَمَّا كَانَ ثَمَرُ النَّخْلِ حُلْوًا وَجَبَ أَنْ يُقَاسَ عَلَيْهِ كُلُّ حُلْوٍ، وَإِلَّا فَمَا الَّذِي جَعَلَ وُجُوبَ الزَّكَاةِ حُجَّةً فِي إعْطَائِهَا بِسَهْمٍ مِنْ ثِمَارِهَا؟ وَقَالَ أَيْضًا: إنَّ ثَمَرَ النَّخْلِ ظَاهِرٌ يُحَاطُ بِهِ وَكَذَلِكَ الْعِنَبُ؟ وَقَالَ عَلِيٌّ: وَكَذَلِكَ التِّينُ، وَالْفُسْتُقُ، وَغَيْرُ ذَلِكَ.

L20789 As for the Mālikīs' prohibition of that regarding bananas and herbs—it is an unsupported claim.

وَأَمَّا مَنْعُ الْمَالِكِيِّينَ مِنْ ذَلِكَ فِي الْمَوْزِ وَالْبَقْلِ - فَدَعْوَى بِلَا دَلِيلٍ.

L20790 If they say: The term "musāqāh" denotes irrigation? We respond: Who has named this practice "musāqāh" that you would use this term as evidence? We have not known it to be from the Messenger of Allah—peace and blessings of Allah be upon him—nor from any of the Companions—may Allah be pleased with them. We only say it with you as assistance—and success is only with Allah, the Exalted.

فَإِنْ قَالُوا: لَفْظُ " الْمُسَاقَاةِ " يَدُلُّ عَلَى السَّقْيِ؟ فَقُلْنَا: وَمَنْ سَمَّى هَذَا الْعَمَلَ " مُسَاقَاةً " حَتَّى تَجْعَلُوا هَذِهِ اللَّفْظَةَ حُجَّةً؟ مَا عَلِمْنَاهَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَإِنَّمَا نَقُولُهَا مَعَكُمْ مُسَاعَدَةً فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20791 In Khaibar, without doubt, there were vegetables and all that grows in the land of the Arabs such as pomegranates, bananas, sugarcane, and legumes, so he (peace be upon him) contracted them on half of everything that comes out of it. And with Allah, the Most High, is success.

وَقَدْ كَانَ بِخَيْبَرَ بِلَا شَكٍّ بَقْلٌ وَكُلُّ مَا يَنْبُتُ فِي أَرْضِ الْعَرَبِ مِنْ الرُّمَّانِ، وَالْمَوْزِ، وَالْقَصَبِ، وَالْبُقُولِ، فَعَامَلَهُمْ - عَلَيْهِ السَّلَامُ - عَلَى نِصْفِ كُلِّ مَا يَخْرُجُ مِنْهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20792 The landowner is not required to provide a hired worker, a *qadus* [water wheel], or labor.

[مَسْأَلَةٌ لَا يُشْتَرَطُ عَلَى صَاحِبِ الْأَرْضِ أَجِيرٌ وَلَا قَادُوسٌ وَلَا عَمَلٌ]

L20793 1344: Issue: It is not permissible to stipulate as a condition imposed on the landowner in sharecropping, tree-planting contracts, or contracts for tending

tree fruits any of the following: a hired worker, a slave, a water wheel, an irrigation trough, a rope, a pail, labor, dung, or anything whatsoever.

١٣٤٤ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُشْتَرَطَ عَلَى صَاحِبِ الْأَرْضِ فِي " الْمُزَارَعَةِ " " وَالْمُغَارَسَةِ " " وَالْمُعَامَلَةِ فِي ثِمَارِ الشَّجَرِ " لَا أَجِيرٌ، وَلَا عَبْدٌ، وَلَا سَانِيَةٌ، وَلَا قَادُوسٌ، وَلَا حَبْلٌ، وَلَا دَلْوٌ، وَلَا عَمَلٌ، وَلَا زِبْلٌ، وَلَا شَيْءٌ أَصْلًا

L20794 All of that is incumbent upon the agent in accordance with the condition set by the Messenger of Allah—may Allah bless him and grant him peace—which imposes on them to fulfill it from their own wealth. Thus, the entire obligation rests upon the agent. If the owner of the wealth voluntarily contributes all or part of it, it is praiseworthy, as per the statement of Allah the Exalted: {Do not forget to show grace between yourselves} [Al-Baqarah: 237].[4]

وَكُلُّ ذَلِكَ عَلَى الْعَامِلِ لِشَرْطِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَيْهِمْ أَنْ يُعْمِلُوهَا مِنْ أَمْوَالِهِمْ فَوَجَبَ الْعَمَلُ كُلُّهُ عَلَى الْعَامِلِ، فَلَوْ تَطَوَّعَ صَاحِبُ الْأَصْلِ بِكُلِّ ذَلِكَ أَوْ بِبَعْضِهِ فَهُوَ حَسَنٌ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ} [البقرة: ٢٣٧] .

L20795 Issue 1345: All that we have mentioned regarding sharecropping applies here as well. Do not omit any of those issues, making it unnecessary to repeat them - and success is by Allah, the Exalted.

١٣٤٥ - مَسْأَلَةٌ: وَكُلُّ مَا قُلْنَاهُ فِي " الْمُزَارَعَةِ " فَهُوَ كَذَلِكَ هَهُنَا لَا تُحَاشِ شَيْئًا مِنْ تِلْكَ الْمَسَائِلِ، فَأَغْنَى عَنْ تَكْرَارِهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

An issue concerning stipulations in sharecropping.

[مَسْأَلَةُ الشَّرْطِ فِي الْمُزَارَعَةِ]

L20796–20799 Issue 1346: It is not permissible to stipulate in muzara'ah contracts or in granting agricultural assets for a specified share of their produce—a shared portion of all yield borne by the worker—any of the following: building a wall, repairing a breach, digging a well or cleaning it, excavating a spring or cleaning it, digging a waterwheel or cleaning it, digging a canal or cleaning it, constructing a reservoir or repairing it, building a house or repairing it, constructing a dwelling or repairing it, providing a water-lifting device, a horizontal waterwheel (khattārah), or a vertical waterwheel (nā'ūrah). All such conditions are not found in the Book of Allah the Exalted, so it is... It is invalid. However, if one voluntarily offers any of that without stipulation, it is permissible, for the Sunnah has only prescribed that their condition is to perform it solely with their wealth and selves. None of this constitutes the work of the land or the work of trees in any way.

١٣٤٦ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُشْتَرَطَ فِي " الْمُزَارَعَةِ " وَإِعْطَاءِ الْأُصُولِ بِجُزْءٍ مُسَمًّى مِمَّا يَخْرُجُ مِنْهَا مُشَاعٌ فِي جَمِيعِهَا عَلَى الْعَامِلِ: بِنَاءُ حَائِطٍ، وَلَا سَدُّ ثُلْمَةٍ، وَلَا حَفْرُ بِئْرٍ وَلَا تَنْقِيَتُهَا، وَلَا حَفْرُ عَيْنٍ وَلَا تَنْقِيَتُهَا، وَلَا حَفْرُ سَانِيَةٍ وَلَا تَنْقِيَتُهَا، وَلَا حَفْرُ نَهْرٍ وَلَا تَنْقِيَتُهُ، وَلَا عَمَلُ صِهْرِيجٍ وَلَا إصْلَاحُهُ، وَلَا بِنَاءُ دَارٍ وَلَا إصْلَاحُهَا، وَلَا بِنَاءُ بَيْتٍ وَلَا إصْلَاحُهُ، وَلَا آلَةٌ سَانِيَةٌ، وَلَا خَطَّارَةٌ، وَلَا نَاعُورَةٌ؛ لِأَنَّ كُلَّ ذَلِكَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ - فَإِنْ تَطَوَّعَ بِشَيْءٍ مِنْ ذَلِكَ بِغَيْرِ شَرْطٍ جَازَ؛ لِأَنَّ السُّنَّةَ إنَّمَا وَرَدَتْ بِأَنَّ الشَّرْطَ عَلَيْهِمْ أَنَّ يَعْتَمِلُوهَا بِأَمْوَالِهِمْ، وَبِأَنْفُسِهِمْ فَقَطْ -: وَكُلُّ هَذَا لَيْسَ مِنْ عَمَلِ الْأَرْضِ، وَلَا مِنْ عَمَلِ الشَّجَرِ فِي شَيْءٍ.

[4] **Qur'an references (L20794):** Qur'an 2:237 (Al-Baqarah).

L20800 As for all tools of plowing and digging, all tools of irrigation, tools of pruning, tools of manuring, beasts of burden, and hired workers—all these necessarily fall upon the tenant farmer, for the duty incumbent on them cannot be fulfilled without these provisions. Thus, providing these falls upon them. And success is from Allah, the Most High.

L20801 "The Book on Transactions Pertaining to Fruit Crops has been completed, and all praise is due to Allah, the Lord of the worlds."

وَأَمَّا آلَةُ الْحَرْثِ، وَالْحَفْرِ كُلُّهَا وَآلَةُ السَّقْيِ كُلُّهَا، وَآلَةُ التَّقْلِيمِ، وَآلَةُ التَّزْبِيلِ، وَالدَّوَابِّ، وَالْأُجَرَاءِ فَكُلُّ ذَلِكَ عَلَى الْعَامِلِ وَلَا بُدَّ؛ لِأَنَّهُ لَا يَكُونُ الْعَمَلُ الْوَاجِبُ عَلَيْهِمْ إِلَّا بِذَلِكَ، فَهُوَ عَلَيْهِمْ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[تَمَّ " كِتَابُ الْمُعَامَلَةِ فِي الثِّمَارِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ] .

AL-MUHALLA

كِتَابُ إِحْيَاءِ الْمَوَاتِ وَالْإِقْطَاعِ وَالْحِمَى وَالصَّيْدِ يَتَوَحَّشُ

The Book of Reviving Unowned Land, Land Grants and Protected Land

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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كِتَابُ إِحْيَاءِ الْمَوَاتِ

L20804 The Book of the Revival of the Dead Land

وَالْإِقْطَاعِ، وَالْحِمَى، وَالصَّيْدِ يَتَوَحَّشُ

L20805 And [the rulings on] land grants, protected sanctuaries, and the hunting of untamed game.

وَمَنْ تَرَكَ مَالَهُ بِمَضْيَعَةٍ، أَوْ عَطِبَ مَالُهُ فِي الْبَحْرِ

L20806 Whoever leaves his property in a place where it will perish, or if his property perishes at sea...

١٣٤٧ - مَسْأَلَةٌ: كُلُّ أَرْضٍ لَا مَالِكَ لَهَا وَلَا يُعْرَفُ أَنَّهَا عُمِّرَتْ فِي الْإِسْلَامِ فَهِيَ لِمَنْ سَبَقَ إِلَيْهَا وَأَحْيَاهَا - سَوَاءٌ بِإِذْنِ الْإِمَامِ فَعَلَ ذَلِكَ أَوْ بِغَيْرِ إِذْنِهِ - لَا إِذْنَ فِي ذَلِكَ لِلْإِمَامِ وَلَا لِلْأَمِيرِ - وَلَوْ أَنَّهُ بَيْنَ الدُّورِ فِي الْأَمْصَارِ - وَلَا لِأَحَدٍ أَنْ يَحْمِيَ شَيْئًا مِنَ الْأَرْضِ عَمَّنْ سَبَقَ إِلَيْهَا بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L20807 Issue 1347: Any land that has no owner and is not known to have been developed during Islam belongs to whoever first reaches it and revives it, whether they do so with the Imam's permission or without it. There is no permission in this matter for the Imam or the ruler - even if the land lies between houses in cities. No one may monopolize any part of the land against someone who reaches it after the Messenger of Allah (peace be upon him).

فَلَوْ أَنَّ الْإِمَامَ أَقْطَعَ إِنْسَانًا شَيْئًا لَمْ يَضُرَّهُ ذَلِكَ، وَلَمْ يَكُنْ لَهُ أَنْ يَحْمِيَهُ مِمَّنْ سَبَقَ إِلَيْهِ؛ فَإِنْ كَانَ إِحْيَاؤُهُ لِذَلِكَ مُضِرًّا بِأَهْلِ الْقَرْيَةِ ضَرَرًا ظَاهِرًا لَمْ يَكُنْ لِأَحَدٍ أَنْ يَنْفَرِدَ بِهِ لَا بِإِقْطَاعِ الْإِمَامِ وَلَا بِغَيْرِهِ، كَالْمِلْحِ الظَّاهِرِ، وَالْمَاءِ الظَّاهِرِ، وَالْمَرَاحِ وَرَحْبَةِ السُّوقِ وَالطَّرِيقِ، وَالْمُصَلَّى، وَنَحْوِ ذَلِكَ.

L20808 If the Imam were to grant someone a portion of land, this would not harm **the grantee**, nor may the grantee **exclude others from it** if someone **arrived there first**. However, if cultivating that land would cause apparent harm to the villagers, then no one may monopolize it—neither by the Imam's grant nor by any other means—such as surface salt deposits, open water sources, pastures, market squares, roads, prayer grounds, or **similar public resources**.

وَأَمَّا مَا مُلِكَ يَوْمًا مَا بِإِحْيَاءٍ أَوْ بِغَيْرِهِ ثُمَّ دَثَرَ وَأُشْغِرَ حَتَّى عَادَ كَأَوَّلِ حَالِهِ فَهُوَ مِلْكٌ لِمَنْ كَانَ لَهُ، لَا يَجُوزُ لِأَحَدٍ تَمَلُّكُهُ بِالْإِحْيَاءِ أَبَدًا، فَإِنْ جُهِلَ أَصْحَابُهُ فَالنَّظَرُ فِيهِ إِلَى الْإِمَامِ، وَلَا يُمْلَكُ إِلَّا بِإِذْنِهِ.

L20809 As for that which was owned at any time through revival or other means, then deteriorated and became desolate until it reverted to its original state, it remains the property of whoever it belonged to. It is never permissible for anyone to claim ownership of it through revival. If its owners are unknown, the Imam holds authority over its disposition, and it cannot be owned except with his permission.

L20810 People have differed regarding this: Abu Hanifah said, "The land does not

belong to the one who revives it unless the ruler grants him permission in that matter."

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَ أَبُو حَنِيفَةَ: لَا تَكُونُ الْأَرْضُ لِمَنْ أَحْيَاهَا إِلَّا بِإِذْنِ الْإِمَامِ لَهُ فِي ذَلِكَ.

L20811–20813 Mālik said: As for what people dispute over among lands near developed areas, it does not belong to anyone except By the decree of the Imam, as for protected areas in deserts and non-cultivated lands, they belong to whoever revives them. If the reviver abandons it for even a single day until it fully reverts to its original state, it becomes available to whoever revives it thereafter, and his ownership is nullified. This ruling similarly applies to game animals that were owned but returned to the wild: they belong to whoever captures them. If there remains an ear notch or similar mark in the animal's ear, the ear notch retains its original owner's claim while the game itself belongs to whoever captures it.

وَقَالَ مَالِكٌ: أَمَّا مَا يَتَشَاحُّ النَّاسُ فِيهِ مِمَّا يَقْرُبُ مِنْ الْعُمْرَانِ فَإِنَّهُ لَا يَكُونُ لِأَحَدٍ إِلَّا بِقَطِيعَةِ الْإِمَامِ، وَأَمَّا حِمَى مَا كَانَ فِي الصَّحَارِي وَغَيْرِ الْعُمْرَانِ فَهُوَ لِمَنْ أَحْيَاهُ فَإِنْ تَرَكَهُ يَوْمًا مَا حَتَّى عَادَ كَمَا كَانَ، فَقَدْ صَارَ أَيْضًا لِمَنْ أَحْيَاهُ وَسَقَطَ عَنْهُ مِلْكُهُ وَهَكَذَا قَالَ فِي الصَّيْدِ يُتَمَلَّكُ ثُمَّ يَتَوَحَّشُ فَإِنَّهُ لِمَنْ أَخَذَهُ، فَإِنْ كَانَ فِي أُذُنِهِ شَنْفٌ أَوْ نَحْوُ ذَلِكَ فَالشَّنْفُ الَّذِي كَانَ لَهُ وَالصَّيْدُ لِمَنْ أَخَذَهُ.

L20814 Al-Hasan ibn Ḥayy said: Dead land exists only in the land of the Arabs.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: لَيْسَ الْمَوَاتُ إِلَّا فِي أَرْضِ الْعَرَبِ فَقَطْ.

L20815 Abu Yusuf said: "Whoever revives dead land, it belongs to him, and the Imam's permission holds no significance. However, the criterion for 'dead land' according to him is [defined as] when a person stands in the closest settlement to it and calls out, but no sound is heard from it. As for land where the sound is heard, it cannot be revived except with the Imam's permission."

وَقَالَ أَبُو يُوسُفَ: مَنْ أَحْيَا الْمَوَاتَ فَهُوَ لَهُ، وَلَا مَعْنَى لِإِذْنِ الْإِمَامِ، إِلَّا أَنَّ حَدَّ الْمَوَاتِ عِنْدَهُ مَا إِذَا وَقَفَ الْمَرْءُ فِي أَدْنَى الْمِصْرِ إِلَيْهِ ثُمَّ صَاحَ لَمْ يُسْمَعْ فِيهِ، فَمَا سُمِعَ فِيهِ الصَّوْتُ لَا يَكُونُ إِلَّا بِإِذْنِ الْإِمَامِ.

L20816 Abdullah ibn al-Hasan, Muhammad ibn al-Hasan, Imam al-Shafi'i, Abu Thawr, Abu Sulayman, and his companions held the same view as we do.

وَقَالَ عَبْدُ اللَّهِ بْنُ الْحَسَنِ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَالشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ وَأَصْحَابُهُ: كَقَوْلِنَا.

L20817 As for those who adhere to the school of Abū Ḥanīfah, they cited as evidence a report transmitted through ʿAmr ibn Wāqid from Mūsā ibn Yasār from Makhūl from Junādah ibn Abī Umayyah, who said: We encamped at Dābiq under the command of Abū ʿUbaydah ibn al-Jarrāḥ. Ḥabīb ibn Maslamah killed a man from the Romans, whereupon Abū ʿUbaydah sought to allocate one-fifth of his spoils. Ḥabīb said to him: "The Messenger of Allah—peace be upon him—assigned the spoils to the killer." Muʿādh ibn Jabal then said to him: "Hold, O Ḥabīb! I heard the Messenger of Allah—peace be upon him—say: 'A person only retains what their leader's soul is content with.'" They

فَأَمَّا مَنْ ذَهَبَ مَذْهَبَ أَبِي حَنِيفَةَ فَاحْتَجُّوا بِخَبَرٍ مِنْ طَرِيقِ عَمْرِو بْنِ وَاقِدٍ عَنْ مُوسَى بْنِ يَسَارٍ عَنْ مَكْحُولٍ عَنْ جُنَادَةَ بْنِ أَبِي أُمَيَّةَ قَالَ: نَزَلْنَا دَابِقَ وَعَلَيْنَا أَبُو عُبَيْدَةَ بْنُ الْجَرَّاحِ فَقَتَلَ حَبِيبُ بْنُ مَسْلَمَةَ قَتِيلًا مِنْ الرُّومِ فَأَرَادَ أَبُو عُبَيْدَةَ أَنْ يُخَمِّسَ سَلَبَهُ فَقَالَ لَهُ حَبِيبٌ: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ السَّلَبَ لِلْقَاتِلِ؟ فَقَالَ لَهُ مُعَاذُ بْنُ جَبَلٍ: مَهْ يَا حَبِيبُ إِنِّي سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إِنَّمَا

لِلْمَرْءِ مَا طَابَتْ بِهِ نَفْسُ إِمَامِهِ» وَقَالُوا: لَمَّا كَانَ الْمَوَاتُ لَيْسَ أَحَدٌ أَوْلَى بِهِ مِنْ أَحَدٍ أَشْبَهَ مَا فِي بَيْتِ الْمَالِ، مَا نَعْلَمُ لَهُمْ شُبْهَةً غَيْرَ هَذَا.

قَالَ عَلِيٌّ: أَمَّا الْأَثَرُ فَمَوْضُوعٌ؛ لِأَنَّهُ مِنْ طَرِيقِ عَمْرِو بْنِ وَاقِدٍ وَهُوَ مَتْرُوكٌ بِاتِّفَاقٍ مِنْ أَهْلِ الْعِلْمِ بِالْآثَارِ - ثُمَّ هُوَ حُجَّةٌ عَلَيْهِمْ؛ لِأَنَّهُمْ أَوَّلُ مَنْ خَالَفَهُ فَأَبَاحُوا الصَّيْدَ لِمَنْ أَخَذَهُ بِغَيْرِ إِذْنِ الْإِمَامِ، فَإِنْ ادَّعَوْا إِجْمَاعًا كَذَبُوا لِأَنَّ فِي التَّابِعِينَ مَنْ مَنَعَ مِنَ الصَّيْدِ فِي دَارِ الْحَرْبِ وَجَعَلَهُ مِنَ الْمَغْنَمِ - وَلَا يُعَارَضُ بِمِثْلِ هَذَا الْأَثَرِ الْكَاذِبِ حُكْمُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالسَّلَبِ لِلْقَاتِلِ، وَبِالْأَرْضِ لِمَنْ أَحْيَاهَا.

وَأَمَّا تَشْبِيهُهُمْ ذَلِكَ بِمَا فِي بَيْتِ الْمَالِ فَهُوَ قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ؛ لِأَنَّ مَا فِي بَيْتِ الْمَالِ أَمْوَالٌ مَمْلُوكَةٌ، أُخِذَتْ بِجِزْيَةٍ أَوْ بِصَدَقَةٍ أَوْ مِنْ بَيْتِ مَالٍ كَانَ لَهُ رَبٌّ فَلَمْ يُعْرَفْ - وَلَا يَجُوزُ أَنْ يُشَبَّهَ مَا لَمْ يُعْرَفْ أَكَانَ لَهُ رَبٌّ أَمْ لَمْ يَكُنْ لَهُ رَبٌّ بِمَا يُوقَنُ أَنَّهُ كَانَ لَهُ رَبٌّ.

لَوْ كَانَ الْأَمْرُ بِالْقِيَاسِ حَقًّا لَكَانَ قِيَاسُ الْأَرْضِ الْمَوَاتِ الَّتِي لَمْ يَكُنْ لَهَا رَبٌّ بِالصَّيْدِ وَالْحَطَبُ أَوْلَى وَأَشْبَهُ، وَلَكِنْ لَا النُّصُوصَ يَتَّبِعُونَ، وَلَا الْقِيَاسَ يُحْسِنُونَ.

ثُمَّ لَوْ صَحَّ هَذَا الْخَبَرُ الْمَوْضُوعُ لَكَانَ حُجَّةً لَنَا، لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَضَى بِالْمَوَاتِ لِمَنْ أَحْيَاهُ، وَهُوَ - عَلَيْهِ السَّلَامُ - الْإِمَامُ الَّذِي لَا إِمَامَةَ لِمَنْ لَمْ يَأْتَمَّ بِهِ، وَهُوَ الَّذِي قَالَ فِيهِ تَعَالَى: {يَوْمَ نَدْعُوا كُلَّ أُنَاسٍ بِإِمَامِهِمْ} [الإسراء: ٧١] فَهُوَ إِمَامُنَا نُشْهِدُ اللَّهَ تَعَالَى عَلَى ذَلِكَ وَجَمِيعَ عِبَادِهِ، لَا إِمَامَ لَنَا دُونَهُ، وَنَسْأَلُ اللَّهَ أَنْ لَا يَدْعُونَا

further argued: Since ownerless land has no specific claimant with greater entitlement than another, it bears resemblance to what is held in the public treasury. We know of no other basis they presented beyond this.

L20818 Ali said: As for the narration, it is fabricated because it comes through the chain of ʿAmr ibn Wāqid, who is unanimously rejected by scholars of narrations. Furthermore, this narration constitutes an authoritative proof against them, for they were the first to oppose it by permitting hunting for those who take game without the Imam's permission. If they claim consensus, they lie, for among the Successors are those who prohibited hunting in enemy territory and considered it part of the spoils. Such a fabricated narration cannot challenge the ruling of Allah's Messenger—may Allah bless him and grant him peace—that the slain's possessions belong to the killer, and that land belongs to whoever revives it.

L20819 As for their likening of that to what is in the public treasury, this constitutes analogy (qiyās), and all analogy is invalid. For what is in the public treasury consists of owned wealth collected through jizyah, through charity, or sourced from a public treasury that had an owner whose identity became unknown. It is impermissible to equate something whose status remains uncertain - whether it ever had an owner or not - with something established beyond doubt to have had an owner.

L20820–20822 If the ruling were truly based on analogy, the analogy of barren land that had no owner would apply to hunting. The foundational case is more deserving and most analogous to this ruling, but they neither adhere to the textual sources nor apply *qiyas* properly.

L20823 Moreover, if this fabricated report were authentic, it would serve as evidence for our position, for the Prophet—peace and blessings of Allah be upon him—had ruled that dead land belongs to whoever revives it. He—peace be upon him—is the Imam whose leadership none can claim without following him. It is he about whom Allah the Exalted said: "On the Day We call every people with their Imam" (17:71). He is our Imam; we call Allah the Exalted and all His servants to witness this. We have no Imam other than him, and we implore Allah not to summon us with an Imam besides him. Whoever adopts

an Imam other than him—peace be upon him—favoring the judgment of that [Imam] over his judgment will be rejected and exposed, and we disavow him before Allah.[1]

L20824 As for the statement of Mālik: it is manifestly invalid because he made a division unknown to anyone before him, unsupported by the Qur'an, the Sunnah, a weak narration, or analogical reasoning.

L20825 The most astonishing aspect is that he did not grant ownership of nearby dead land—which never had an owner—to whoever revives it, despite Allah the Exalted having established this through the words of His Messenger (peace be upon him). Then he made owned property—which Allah declared inviolable in the Quran and on the tongue of His Messenger (peace be upon him) when he declared, "Your blood and your wealth are sacred to you"—into property for whoever seizes it, akin to his earlier view on dead land: that it is revived then parceled out, or like game that becomes wild again. He deemed the lapse of ownership obligatory due to inaccessibility or reversion to wildness, even though this has no basis in the Quran, the Sunnah, a weak narration, analogical reasoning, or any opinion with a valid basis.

L20826 Moreover, land adjacent to populated regions or subject to public dispute must either entail harm to the inhabitants of the village or populated region or not. If it entails harm, the Imam has no right to grant it as a concession to anyone nor to cause them harm. If it does not entail harm to them, what distinction exists between it and land distant from populated regions? Thus, it is confirmed that the Imam holds no authority in this matter whatsoever. Similarly, the ruling of Abū Yūsuf and al-Ḥasan ibn Ḥayy is also invalid, as it constitutes an assertion without proof and is therefore null and void.

L20827 Abu Muhammad said: The proof for the validity of our opinion is what we have transmitted through the chain of Ahmad ibn Shuʿayb al-Nasaʾi, who reported to us: Yunus ibn ʿAbd al-Aʿla → Yahya (Ibn Bukayr) → al-Layth (Ibn Saʿd) → ʿUbayd Allah ibn Abi Jaʿfar → Muhammad ibn ʿAbd al-Rahman ibn

[1] **Qur'an references (L20823):** Qur'an 17:71 (Al-Isra).

مَعَ إِمَامٍ غَيْرِهِ فَمَنْ اتَّخَذَ إِمَامًا دُونَهُ - عَلَيْهِ السَّلَامُ - يُغَلِّبُ - حُكْمَهُ عَلَى حُكْمِهِ - عَلَيْهِ السَّلَامُ - فَسَيُرَدُّ وَيُعْلَمُ - وَنَحْنُ إِلَى اللَّهِ مِنْهُ بُرَآءُ.

وَأَمَّا قَوْلُ مَالِكٍ - فَظَاهِرُ الْفَسَادِ، لِأَنَّهُ قَسَّمَ تَقْسِيمًا لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ، وَلَا جَاءَ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قِيَاسٌ.

وَأَعْجَبُ شَيْءٍ فِيهِ أَنَّهُ لَمْ يَجْعَلْ الْمَوَاتَ الْقَرِيبَ الَّذِي لَمْ يَكُنْ لَهُ قَطُّ مَالِكٌ لِمَنْ أَحْيَاهُ، وَقَدْ جَعَلَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ جَعَلَ الْمَالَ الْمُتَمَلَّكَ الَّذِي حَرَّمَهُ اللَّهُ تَعَالَى فِي الْقُرْآنِ، وَعَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ يَقُولُ «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَجَعَلَهَا مِلْكًا لِمَنْ أَخَذَهَا كَالْقَوْلِ الَّذِي ذَكَرْنَا عَنْهُ فِي الْمَوَاتِ يُعَمَّرُ ثُمَّ يُتَشَعَّرُ، وَمِثْلُ الصَّيْدِ يَتَوَحَّشُ، وَمَا وَجَبَ سُقُوطُ الْمِلْكِ بِالتَّوَعُّرِ وَالتَّوَحُّشِ لَا بِقُرْآنٍ، وَلَا بِسُنَّةٍ، وَلَا بِرِوَايَةٍ سَقِيمَةٍ، وَلَا بِقِيَاسٍ، وَلَا بِرَأْيٍ لَهُ وَجْهٌ.

وَأَيْضًا فَلَا يَخْلُو مَا قَرُبَ مِنْ الْعُمْرَانِ أَوْ تَشَاحَّ فِيهِ النَّاسُ مِنْ أَنْ يَكُونَ فِيهِ ضَرَرٌ عَلَى أَهْلِ الْقَرْيَةِ وَالْمِصْرِ، أَوْ لَا ضَرَرَ فِيهِ عَلَيْهِمْ، فَإِنْ كَانَ فِيهِ ضَرَرٌ فَمَا لِلْإِمَامِ أَنْ يَقْطَعَهُ أَحَدًا، وَلَا أَنْ يَضُرَّ بِهِمْ، وَإِنْ كَانَ لَا ضَرَرَ فِيهِ عَلَيْهِمْ، فَأَيُّ فَرْقٍ بَيْنَهُ وَبَيْنَ الْبَعِيدِ عَنْ الْعُمْرَانِ؟ فَصَحَّ أَنْ لَا مَعْنَى لِلْإِمَامِ فِي ذَلِكَ أَصْلًا: وَكَذَلِكَ تَقْسِيمُ أَبِي يُوسُفَ، وَالْحَسَنِ بْنِ حَيٍّ فَفَاسِدٌ أَيْضًا، لِأَنَّهُ قَوْلٌ بِلَا بُرْهَانٍ، فَهُوَ سَاقِطٌ.

قَالَ أَبُو مُحَمَّد: وَبُرْهَانُ صِحَّةِ قَوْلِنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ النَّسَائِيِّ نا يُونُسُ بْنُ عَبْدِ الْأَعْلَى نا يَحْيَى - هُوَ ابْنُ بُكَيْرٍ - عَنْ اللَّيْثِ - هُوَ ابْنُ سَعْدٍ - عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ نَوْفَلٍ - هُوَ أَبُو الْأَسْوَدِ - عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ

Nawfal (Abu al-Aswad) → ʿUrwah ibn al-Zubayr → ʿA’ishah, the Mother of the Believers → the Messenger of Allah (peace and blessings be upon him), that he said: “Whoever revives a dead land belonging to no one has a greater right to it.”

عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «مَنْ أَحْيَا أَرْضًا مَيْتَةً لَيْسَتْ لِأَحَدٍ فَهُوَ أَحَقُّ بِهَا» .

L20828–20829 Through Al-Bukhārī’s chain: Yaḥyā ibn Bukayr narrated to us, Al-Layth narrated to us from ʿUbayd Allāh ibn Abī Jaʿfar from Muḥammad ibn ʿAbd al-Raḥmān ibn ʿUrwah from ʿĀ’ishah from the Prophet—peace be upon him—who said: “Whoever revives a land that belongs to no one has the strongest claim to it.”

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا يَحْيَى بْنُ بُكَيْرٍ نا اللَّيْثُ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عُرْوَةَ عَنْ عَائِشَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ عَمَّرَ أَرْضًا لَيْسَتْ لِأَحَدٍ فَهُوَ أَحَقُّ بِهَا»

L20830 Urwah said: “Umar ibn al-Khattab issued a ruling on it.”

قَالَ عُرْوَةُ: وَقَضَى بِهِ عُمَرُ بْنُ الْخَطَّابِ.

L20831 Abu Muhammad said: This report constitutes the precise textual affirmation of our doctrine. It conclusively invalidates the position of those who restrict such authorization to permissions granted by authorities other than the Prophet - peace and blessings of Allah be upon him - whether as a general rule or restricted to specific locations, and it also refutes the view of those who assert: “Whoever develops land that was previously developed then left vacant, it rightfully belongs to the last person who developed it.” Allah the Exalted declared: {It is not for any believing man or believing woman, when Allah and His Messenger have decided a matter, to have any choice in their affair} [Al-Ahzab: 36].[2]

قَالَ أَبُو مُحَمَّدٍ: هَذَا الْخَبَرُ هُوَ نَصُّ قَوْلِنَا، وَهُوَ الْمُبْطِلُ لِقَوْلِ مَنْ لَمْ يَجْعَلْ ذَلِكَ إلَّا بِإِذْنِ غَيْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إمَّا عُمُومًا وَإِمَّا فِي مَكَان دُونَ مَكَان، وَلِقَوْلِ مَنْ قَالَ: مَنْ عَمَّرَ أَرْضًا قَدْ عُمِّرَتْ ثُمَّ أُشْغِرَتْ فَهِيَ لِلَّذِي عَمَّرَهَا آخِرًا قَالَ اللَّهُ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] .

L20832 Thus, it is established that every ruling decreed by the Messenger of Allah—peace and blessings be upon him—and every grant he bestowed—peace be upon him—no one after him, whether a leader or otherwise, may object to these rulings or introduce a new legal judgment into them. As you see, it has been established through continuity that ʿUmar ruled in accordance with that, and no opponent to him is known among the Companions—may Allah be pleased with them.

فَصَحَّ أَنَّ كُلَّ قَضِيَّةٍ قَضَاهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكُلَّ عَطِيَّةٍ أَعْطَاهَا - عَلَيْهِ السَّلَامُ - فَلَيْسَ لِأَحَدٍ يَأْتِي بَعْدَهُ لَا إمَامٍ وَلَا غَيْرِهِ أَنْ يَعْتَرِضَ فِيهَا وَلَا أَنْ يُدْخِلَ فِيهَا حُكْمًا - وَقَدْ اتَّصَلَ - كَمَا تَرَى - أَنَّ عُمَرَ قَضَى بِذَلِكَ، وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L20833 And through the chain of Abū Dāwūd: Muḥammad ibn al-Muthannā narrated to us, ʿAbd al-Wahhāb (who is Ibn ʿAbd al-Majīd al-Thaqafī) narrated to us, Ayyūb (who is al-Sikhtiyānī) narrated from Hishām ibn ʿUrwah from his

وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الْوَهَّابِ - هُوَ ابْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ - نا أَيُّوبُ - هُوَ السِّخْتِيَانِيُّ - عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ سَعِيدِ بْنِ زَيْدِ بْنِ عَمْرِو

[2] **Qur’an references (L20831):** Qur’an 33:36 (Al-Ahzab).

father from Saʿīd ibn Zayd ibn ʿAmr ibn Nufayl from the Prophet—peace and blessings of Allāh be upon him—who said: “Whoever revives a dead land, it belongs to him, and no right is due to an unjust root.”[3]

بْنِ نُفَيْلٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ وَلَيْسَ لِعِرْقٍ ظَالِمٍ حَقٌّ» .

L20834 And through the chain of Ahmad ibn Shuʿayb: From Yunus ibn ʿAbd al-Aʿlā, from Ibn Wahb, who informed us through Haywah ibn Shuraīḥ, from Muḥammad ibn ʿAbd al-Raḥmān ibn Nawfal, from ʿUrwah ibn al-Zubayr, that he said: The wrongful cultivation refers to a man who revives the ruined land belonging to people who were incapable of maintaining it, so they abandoned it until it became ruined.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا يُونُسُ بْنُ عَبْدِ الْأَعْلَى نا ابْنُ وَهْبٍ أَخْبَرَنِي حَيْوَةُ بْنُ شُرَيْحٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ نَوْفَلٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ أَنَّهُ قَالَ: الْعِرْقُ الظَّالِمُ هُوَ الرَّجُلُ يَعْمُرُ الْأَرْضَ الْخَرِبَةَ وَهِيَ لِلنَّاسِ قَدْ عَجَزُوا عَنْهَا فَتَرَكُوهَا حَتَّى خَرِبَتْ.

L20835–20837 And from the chain of Aḥmad ibn Shuʿayb, narrated to us Yūnus ibn ʿAbd al-Aʿlā, narrated to us Ibn Wahb; Ḥaywah ibn Shurayḥ informed me. From Muhammad ibn Abd al-Rahman ibn Nawfal, on the authority of Urwah ibn al-Zubayr, who said: The unjust claimant is one who revives desolate land that belonged to people who had become unable to maintain it, so they abandoned it, leaving it ruined.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا يُونُسُ بْنُ عَبْدِ الْأَعْلَى نا ابْنُ وَهْبٍ أَخْبَرَنِي حَيْوَةُ بْنُ شُرَيْحٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ نَوْفَلٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ أَنَّهُ قَالَ: الْعِرْقُ الظَّالِمُ هُوَ الرَّجُلُ يَعْمُرُ الْأَرْضَ الْخَرِبَةَ وَهِيَ لِلنَّاسِ قَدْ عَجَزُوا عَنْهَا فَتَرَكُوهَا حَتَّى خَرِبَتْ.

L20838 Abu Muhammad said: Urwah named this description an ’unjust vein,’ and Urwah spoke truthfully, for this is what the Maliki jurists permitted.

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا عُرْوَةُ سَمَّى هَذِهِ الصِّفَةَ عِرْقَ ظَالِمٍ، وَصَدَقَ عُرْوَةُ وَهَذَا [هُوَ] الَّذِي أَبَاحَهُ الْمَالِكِيُّونَ.

L20839 We were narrated through the chain of Ahmad ibn Shuʿayb: Muhammad ibn Yahya ibn Ayyub and ʿAli ibn Muslim narrated. Muhammad ibn Yahya narrated: ʿAbd al-Wahhab—he is Ibn ʿAbd al-Majid al-Thaqafi—narrated to us from Ayyub—he is al-Sikhtiyani. ʿAli ibn Muslim narrated: ʿAbbad ibn ʿAbbad al-Muhallabi narrated to us. Then the chains of Ayyub and ʿAbbad converged, both narrating from Hisham ibn ʿUrwah from Wahb ibn Kaysan from Jabir ibn ʿAbd Allah that the Messenger of Allah—peace be upon him—said: “Whoever revives a dead land will have reward for it, and whatever wild creatures consume from it shall be an act of charity for him.”

وَرُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ يَحْيَى بْنُ أَيُّوبَ، وَعَلِيُّ بْنُ مُسْلِمٍ، قَالَ مُحَمَّدُ بْنُ يَحْيَى: نا عَبْدُ الْوَهَّابِ - هُوَ ابْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ - نا أَيُّوبُ - هُوَ السِّخْتِيَانِيُّ - وَقَالَ عَلِيُّ بْنُ مُسْلِمٍ: نا عَبَّادُ بْنُ عَبَّادٍ الْمُهَلَّبِيُّ، ثُمَّ اتَّفَقَ أَيُّوبُ، وَعَبَّادٌ كِلَاهُمَا عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ وَهْبِ بْنِ كَيْسَانَ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَحْيَا أَرْضًا مَيْتَةً فَلَهُ فِيهَا أَجْرٌ، وَمَا أَكَلَتْ الْعَوَافِي مِنْهَا فَهُوَ لَهُ صَدَقَةٌ» .

L20840 Ali said: It is meaningless to seek the Imam’s opinion regarding charity or

[3] **Hadith references (L20833):** Sunan Abi Dawud 3073.

anything that entails divine reward. If he were to prohibit such matters, he would be disobedient to Allah, the Exalted.

قَالَ عَلِيٌّ: لَا مَعْنَى لِأَخْذِ رَأْيِ الْإِمَامِ فِي الصَّدَقَةِ، وَلَا مَا فِيهِ أَجْرٌ، وَلَوْ أَرَادَ الْمَنْعَ مِنْ ذَلِكَ لَكَانَ عَاصِيًا لِلَّهِ تَعَالَى.

L20841 And from the chain of Abū Dāwūd: Aḥmad ibn ʿAbdah al-Āmilī narrated to us, ʿAbdullāh ibn ʿUthmān narrated to us, ʿAbdullāh ibn al-Mubārak narrated to us, from Nāfiʿ ibn ʿUmar al-Jumaḥī, from Ibn Abī Mulaykah, from ʿUrwah ibn al-Zubayr, who said: "I bear witness that the Messenger of Allah (peace and blessings of Allah be upon him) ruled that the land belongs to Allah, the servants are Allah's servants, and whoever revives dead land becomes most entitled to it? This [ruling] was conveyed to us from the Prophet (peace be upon him) by those who transmitted the prayers from him."[4]

وَمِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ عَبْدَةَ الْآمِلِيُّ نا عَبْدُ اللَّهِ بْنُ عُثْمَانَ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ أَنَا نَافِعُ بْنُ عُمَرَ الْجُمَحِيُّ عَنِ ابْنِ أَبِي مُلَيْكَةَ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ «أَشْهَدُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى أَنَّ الْأَرْضَ أَرْضُ اللَّهِ، وَالْعِبَادَ عِبَادُ اللَّهِ، وَمَنْ أَحْيَا مَوَاتًا فَهُوَ أَحَقُّ بِهِ؟ جَاءَنَا بِهَذَا عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِينَ جَاءُوا بِالصَّلَوَاتِ عَنْهُ» .

L20842 On the authority of Abī Dāwūd al-Sarḥ, Ibn Wahb reported to us: Yūnus (i.e., Ibn Yazīd) informed me from Ibn Shihāb from ʻUbayd Allāh ibn ʻAbd Allāh ibn ʻUtbah from Ibn ʻAbbās from Ṣaʻb ibn Jaththāmah al-Laythī that the Messenger of Allāh (peace and blessings be upon him) said: «There is no reserve except for Allāh and His Messenger.»

وَمِنْ طَرِيقِ أَبِي دَاوُد السَّرْحِ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ - هُوَ ابْنُ يَزِيدَ - عَنِ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنِ ابْنِ عَبَّاسٍ عَنِ الصَّعْبِ بْنِ جَثَّامَةَ اللَّيْثِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا حِمَى إِلَّا لِلَّهِ وَلِرَسُولِهِ» .

L20843–20844 Thus, it is established that the ruler is not permitted to protect any part of the land from reviving.

فَصَحَّ أَنْ لَيْسَ لِلْإِمَامِ أَنْ يَحْمِيَ شَيْئًا مِنَ الْأَرْضِ عَنْ أَنْ تَحْيَا.

L20845 And through the chain of Abū Dāwūd: Aḥmad ibn Saʿīd al-Dārimī reported to us: Wahb ibn Jarīr ibn Ḥāzim reported to us, from his father, from Ibn Isḥāq, from Yaḥyā ibn ʿUrwah ibn al-Zubayr, from his father: "A man planted palm trees in another's land, so the Messenger of Allah (peace be upon him) ruled that the land belongs to its owner and ordered the owner of the palm trees to remove them from it."

وَمِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ سَعِيدٍ الدَّارِمِيُّ نا وَهْبُ بْنُ جَرِيرِ بْنِ حَازِمٍ عَنْ أَبِيهِ عَنِ ابْنِ إِسْحَاقَ عَنْ يَحْيَى بْنِ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ «أَنَّ رَجُلًا غَرَسَ نَخْلًا فِي أَرْضِ غَيْرِهِ فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِصَاحِبِ الْأَرْضِ بِأَرْضِهِ وَأَمَرَ صَاحِبَ النَّخْلِ أَنْ يُخْرِجَ نَخْلَهُ مِنْهَا» .

L20846 Urwah said: A man from the Companions of the Messenger of Allah (peace be upon him) told me—and I most suspect he was Abu Saʻid al-Khudri—and so I saw the man striking the bases of the palm trees.

قَالَ عُرْوَةُ: حَدَّثَنِي رَجُلٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَكْبَرُ ظَنِّي أَنَّهُ أَبُو سَعِيدٍ الْخُدْرِيُّ، فَأَنَا رَأَيْتُ الرَّجُلَ يَضْرِبُ فِي أُصُولِ النَّخْلِ.

[4] **Hadith references (L20841):** Sunan Abi Dawud 3076.

قَالَ أَبُو مُحَمَّد: هَذَا هُوَ الْحَقُّ الَّذِي لَا يَجُوزُ غَيْرُهُ، وَعُرْوَةُ لَا يَخْفَى عَلَيْهِ مَنْ صَحَّتْ صُحْبَتُهُ مِمَّنْ لَمْ تَصِحَّ، وَقَدْ اعْتَمَرَ مِنْ مَكَّةَ إِلَى الْمَدِينَةِ مَعَ عُمَرَ بْنِ الْخَطَّابِ، وَأَدْرَكَهُ فَمَنْ دُونَهُ، لَا قَوْلَ مَالِك: إِنَّهُ إِنْ لَمْ يَنْتَفِعْ بِالشَّجَرِ إِنْ قُلِعَتْ كَانَ لِغَارِسِهَا قِيمَتُهَا مَقْلُوعَةً أَحَبَّ أَمْ كَرِهَ، وَتُرِكَتْ لِصَاحِبِ الْأَرْضِ أَحَبَّ أَمْ كَرِهَ، وَمَا يَزَالُونَ يَقْضُونَ لِلنَّاسِ بِأَمْوَالِ النَّاسِ الْمُحَرَّمَةِ عَلَيْهِمْ بِغَيْرِ بُرْهَانٍ، وَالْمُتَعَدِّي وَإِنْ ظَلَمَ فَظُلْمُهُ لَا يَحِلُّ أَنْ يَظْلِمَ فَيُؤْخَذَ مِنْ مَالِهِ مَا لَمْ يُوجِبْ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخْذَهُ {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١]

L20847 Abu Muhammad said: This is the undeniable truth that permits no alternative. Urwah cannot fail to distinguish between those whose companionship is valid and those invalid. He performed umrah from Mecca to Medina with ʻUmar ibn al-Khaṭṭāb, encountering him and those below him in rank. Mālik's opinion is invalid when he states: "If the landowner derives no benefit from the tree when uprooted, the planter is entitled to its value when uprooted – whether he consents or objects – and leaving it for the landowner applies whether he consents or objects." They persistently issue rulings unlawfully transferring people's forbidden wealth to others, without evidence. As for the transgressor, even if he commits wrongdoing, his injustice does not justify wronging him [in return] by seizing from his wealth what neither Allah the Exalted nor His Messenger – peace and blessings be upon him – have mandated: *"Whoever transgresses the bounds of Allah has indeed wronged himself"* [65:1].[5]

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ حَدَّثَنِي أَحْمَدُ بْنُ خَالِدٍ الْحِمْصِيُّ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ يَخْطُبُ عَلَى هَذَا الْمِنْبَرِ يَقُولُ: يَا أَيُّهَا النَّاسُ مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ، وَجَاءَ أَيْضًا عَنْ عَلِيٍّ - فَهَذَا بِحَضْرَةِ الصَّحَابَةِ عَلَانِيَةً لَا يُنْكِرُهُ أَحَدٌ مِنْهُمْ.

L20848 And through the chain of Abū ʻUbayd, Aḥmad ibn Khālid al-Ḥimṣī narrated to me from Muḥammad ibn Isḥāq from al-Zuhrī from Sālim ibn ʻAbdullāh ibn ʻUmar from his father, who said: ʻUmar ibn al-Khaṭṭāb would deliver sermons upon this minbar, proclaiming: "O people, whoever revives a dead land, it belongs to him." It is also narrated from ʻAlī. This occurred openly in the presence of the Companions, and none of them denied it.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا أَحْمَدُ بْنُ عُثْمَانَ عَنْ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ حَكِيمِ بْنِ زُرَيْقٍ قَالَ: قَرَأْت كِتَابَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ إلَى أَبِي: مَنْ أَحْيَا أَرْضًا مَيْتَةً بِبُنْيَانٍ أَوْ حَرْثٍ مَا لَمْ تَكُنْ مِنْ أَمْوَالِ قَوْمٍ ابْتَاعُوهَا أَوْ أَحْيَوْا بَعْضًا وَتَرَكُوا بَعْضًا فَأَجَازَ لِلْقَوْمِ إحْيَاءَهُمْ وَأَمَّا مَا كَانَ مَكْشُوفًا فَلِجَمِيعِ الْمُسْلِمِينَ يَأْخُذُونَ مِنْهُ الْمَاءَ أَوْ الْمِلْحَ، أَوْ يُرِيحُونَ فِيهِ دَوَابَّهُمْ، فَلِأَنَّهُمْ قَدْ مَلَكُوهُ فَلَيْسَ لِأَحَدٍ أَنْ يَنْفَرِدَ بِهِ.

L20849 Through the transmission of Abu Ubayd, Ahmad ibn Uthman narrated to us from Abdullah ibn al-Mubarak, who narrated from Hakim ibn Zurayq, who said: I read the letter of Umar ibn Abd al-Aziz to my father: "Whoever revives a dead land through construction or cultivation—provided it is not from the property of a community that purchased it or revived part of it and left the rest—he permitted them to revive it. As for open communal land, it belongs to all Muslims: they may take water or salt from it, graze their livestock in it, or rest their animals there. Since this land is collectively owned, no one may appropriate it exclusively."

L20850–20852 We were narrated through Sufyān ibn ʻUyaynah on the authority of ʻAmr

[5] **Qur'an references (L20847):** Qur'an 65:1 (At-Talaq).

ibn Yaḥyā ibn Qays al-Māzinī, who narrated from his father. From Abyaḍ ibn Ḥamāl—he is al-Māzinī—who said: "I asked the Messenger of Allah—may Allah bless him and grant him peace—'May I be granted the salt mine in Ma'rib?' He allocated it to me. Someone then said to him: 'It is like perennial water.' He responded: 'In that case, do not do so.'"

L20853 Abū Muḥammad said: If it is asked, "The Messenger of Allāh—peace and blessings of Allāh be upon him—granted land allocations, as did Abū Bakr, ʿUmar, ʿUthmān, and Muʿāwiyah. What is the meaning of their allocations?" We reply: As for the Messenger of Allāh—peace and blessings of Allāh be upon him—he alone held the authority to designate reserved lands (ḥimā) and grant allocations. He is the one who, if he were to assign ownership of a free person's neck, it would become his slave. As for those after him—peace be upon him—they may grant such rights solely to cut off disputes and conflicts, and no proof can be derived from anyone after him—peace and blessings of Allāh be upon him.

L20854 Abū Muḥammad said: Pastureland is not owned property. Rather, whoever revives it owns it. Those with livestock are instructed: "Disperse and go far afield in pursuit of pasture," for ownership is established solely through revival - and success is from Allah, the Most High. Grazing does not constitute revival, for if it were considered revival, whoever grazed the land would own it. This is unequivocally void in both linguistic usage and Sharīʿah.

L20855 Some Malikis argued for their position on wild game with the most absurd counterargument ever heard. They said: "If game becomes wild, it is like someone who takes water from an owned well in his container, then spills it back into the well. Would he thereby become a co-owner of the water in the well?" Abu Muhammad responded: "The well and taking water from it must be either unowned or owned. If it is unowned, he may take from it many times the amount he spilled from his container if he wishes, or refrain if he chooses - just as people abandon possessions they consider worthless and permit others to take them, like date pits, straw, manure, and similar things."

وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ يَحْيَى بْنِ قَيْسٍ الْمَازِنِيِّ عَنْ أَبِيهِ عَنْ أَبْيَضَ بْنِ حَمَالٍ - هُوَ الْمَازِنِيُّ - قَالَ «اسْتَقْطَعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعْدِنَ الْمِلْحِ الَّذِي بِمَأْرِبَ؟ فَأَقْطَعَنِيهِ، فَقِيلَ لَهُ: إنَّهُ بِمَنْزِلَةِ الْمَاءِ الْعِدِّ قَالَ: فَلَا إذًا» .

قَالَ أَبُو مُحَمَّد: فَإِنْ قِيلَ: فَقَدْ أَقْطَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَقْطَعَ أَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ، وَمُعَاوِيَةُ فَمَا مَعْنَى إقْطَاعِهِمْ؟ قُلْنَا: أَمَّا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ الَّذِي لَهُ الْحِمَى وَالْإِقْطَاعُ، وَالَّذِي لَوْ مَلَّكَ إنْسَانًا رَقَبَةَ حُرٍّ لَكَانَ لَهُ عَبْدًا - وَأَمَّا مَنْ دُونَهُ - عَلَيْهِ السَّلَامُ - فَقَدْ يَفْعَلُونَ ذَلِكَ قَطْعًا لِلتَّشَاجِّ وَالتَّنَازُعِ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَهُ - عَلَيْهِ السَّلَامُ -.

قَالَ أَبُو مُحَمَّد: وَلَيْسَ الْمَرْعَى مُتَمَلَّكًا، بَلْ مَنْ أَحْيَا فِيهِ فَهُوَ لَهُ، وَيُقَالُ لِأَهْلِ الْمَاشِيَةِ: أَعْزِبُوا وَأَبْعِدُوا فِي طَلَبِ الْمَرْعَى، وَإِنَّمَا التَّمَلُّكُ بِالْإِحْيَاءِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - وَالرَّعْيُ لَيْسَ إحْيَاءً، وَلَوْ كَانَ إحْيَاءً لَمَلَكَ الْمَكَانَ مَنْ رَعَاهُ، وَهَذَا بَاطِلٌ مُتَيَقَّنٌ فِي اللُّغَةِ وَفِي الشَّرِيعَةِ.

وَاحْتَجَّ بَعْضُ الْمَالِكِيِّينَ لِقَوْلِهِمْ فِي الصَّيْدِ الْمُتَوَحِّشِ بِأَسْخَفِ مُعَارَضَةٍ سُمِعَتْ، وَهُوَ أَنَّهُ قَالَ: الصَّيْدُ إذَا تَوَحَّشَ بِمَنْزِلَةِ مَنْ أَخَذَ مَاءً مِنْ بِئْرٍ مُتَمَلَّكَةٍ فِي وِعَائِهِ فَانْهَرَقَ الْمَاءُ فِي الْبِئْرِ، أَيَكُونُ شَرِيكًا بِذَلِكَ فِي الْمَاءِ الَّذِي فِي الْبِئْرِ؟ قَالَ أَبُو مُحَمَّد: الْبِئْرُ وَأَخْذُ الْمَاءِ مِنْهَا لَا يَخْلُو أَنْ تَكُونَ مُبَاحَةً أَوْ مُتَمَلَّكَةً، فَإِنْ كَانَتْ مُبَاحَةً فَلَهُ أَنْ يَأْخُذَ مِنْهَا أَضْعَافَ مَا انْهَرَقَ لَهُ إنْ شَاءَ، وَلَهُ أَنْ يَتْرُكَ إنْ شَاءَ، كَمَا يَتْرُكُ النَّاسُ مَا لَا قِيمَةَ لَهُ عِنْدَهُمْ مِنْ أَمْوَالِهِمْ وَيُبِيحُونَهُ لِمَنْ أَخَذَهُ، كَالنَّوَى، وَالتِّبْنِ، وَالزِّبْلِ، وَنَحْوِ ذَلِكَ.

L20856 If the owner of any such thing had neither relinquished it nor permitted anyone to take it, it would rightfully remain his, and it would not be lawful for anyone to take it. Thus, no one's property—whether little or much—is permissible to take except with his explicit consent, or in cases where the religion ordained by Allah the Exalted has sanctioned it.

L20857–20859 The Messenger of Allah—peace and blessings be upon him—explicitly stated: "Whoever seizes unjustly with his right hand the right of a Muslim, Allah has decreed Hell for him, even if it were a twig of an arak tree." Yet whichever is greater in their estimation—they who claim to be proponents of qiyas (legal analogy)—a twig of an arak tree [is treated thus]. Or an ibex, or a wild donkey—each equivalent in value to wealth—or land equaling wealth. If the well is privately owned, the one taking water from it is either in need of what they take or not. If they are in need, they may take from it an amount equivalent to what has spilled (or more, even multiples of it) as required. If they are not in need, it is impermissible for them to take any of its water—neither the slightest amount nor the greatest—thus exposing the absurdity and confused arguments of this ignorant individual.

An Issue on the Definition of the Revival

L20860

L20861 1348 - Issue: Reviving dead land entails removing the grass, trees, or vegetation therein with the specific intention of revival—not merely intending to collect grass or firewood—or channeling water to it from a river, spring, or by digging a well within it for irrigation; or plowing it, planting it, fertilizing it, or actions equivalent to fertilization, such as transporting earth or ash to it, removing stones, or stripping salty soil from its surface to enable plowing or planting; or marking it with a walled enclosure for construction. All these acts constitute "revival" in the Arabic language—the language through which Allah, Exalted is He, addressed us by the tongue of His Prophet, peace and blessings be upon him. Thus, the reviver thereby attains the water in its gushing surge and abundance across all directions of the well, spring, river, or irrigation channel. He rightfully owns it because he revived it.

وَلَوْ أَنَّ صَاحِبَ كُلِّ ذَلِكَ لَمْ يُطْلِقْهُ، وَلَا أَبَاحَ أَخْذَهُ لِأَحَدٍ، لَكَانَ ذَلِكَ لَهُ، وَلَمَا حَلَّ لِأَحَدٍ أَخْذُهُ، فَلَا يَحِلُّ مَالُ أَحَدٍ - قَلَّ أَوْ كَثُرَ - إِلَّا بِإِبَاحَتِهِ لَهُ، أَوْ حَيْثُ أَبَاحَتْهُ الدِّيَانَةُ عَنْ اللَّهِ تَعَالَى.

وَقَدْ نَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَنَّ «مَنْ اقْتَطَعَ بِيَمِينِهِ حَقَّ مُسْلِمٍ أَوْجَبَ اللَّهُ لَهُ النَّارَ وَلَوْ كَانَ قَضِيبًا مِنْ أَرَاكٍ» ، فَأَيُّمَا أَكْثَرُ عِنْدَهُمْ - وَهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ - قَضِيبُ أَرَاكٍ، أَوْ أُيَّلٌ، أَوْ حِمَارُ وَحْشٍ، يُسَاوِي كُلُّ وَاحِدٍ مِنْهَا مَالًا، أَوْ أَرْضٌ تُسَاوِي الْأَمْوَالَ، وَإِنْ كَانَتْ الْبِئْرُ مُتَمَلَّكَةً، فَلَا يَخْلُو آخِذُ الْمَاءِ مِنْهَا مِنْ أَنْ يَكُونَ مُحْتَاجًا إلَى مَا أَخَذَ أَوْ غَيْرَ مُحْتَاجٍ، فَإِنْ كَانَ مُحْتَاجًا فَلَهُ أَنْ يَأْخُذَ مِنْهَا مِثْلَ مَا انْهَرَقَ لَهُ - أَوْ أَكْثَرَ أَوْ أَضْعَافَهُ - إذَا احْتَاجَ إلَيْهِ، وَإِنْ كَانَ غَيْرَ مُحْتَاجٍ لَمْ يَجُزْ لَهُ أَخْذُ شَيْءٍ مِنْ مَائِهَا - لَا مَا قَلَّ وَلَا مَا كَثُرَ - فَظَهَرَ هَذَرُ هَذَا الْجَاهِلِ وَتَخْلِيطُهُ.

[مَسْأَلَةٌ تَعْرِيف الْإِحْيَاءُ]

١٣٤٨ - مَسْأَلَةٌ: وَالْإِحْيَاءُ هُوَ قَلْعُ مَا فِيهَا مِنْ عُشْبٍ، أَوْ شَجَرٍ، أَوْ نَبَاتٍ، بِنِيَّةِ الْإِحْيَاءِ، لَا بِنِيَّةِ أَخْذِ الْعُشْبِ وَالِاحْتِطَابِ فَقَطْ، أَوْ جَلْبِ مَاءٍ إلَيْهَا مِنْ نَهْرٍ، أَوْ مِنْ عَيْنٍ، أَوْ حَفْرِ بِئْرٍ فِيهَا لِسَقْيِهَا مِنْهُ، أَوْ حَرْثِهَا، أَوْ غَرْسِهَا، أَوْ تَزْبِيلِهَا، أَوْ مَا يَقُومُ مَقَامَ التَّزْبِيلِ مِنْ نَقْلِ تُرَابٍ إلَيْهَا، أَوْ رَمَادٍ، أَوْ قَلْعِ حِجَارَةٍ، أَوْ جَرْدِ تُرَابِ مِلْحٍ عَنْ وَجْهِهَا حَتَّى يُمْكِنَ بِذَلِكَ حَرْثُهَا، أَوْ غَرْسُهَا، أَوْ أَنْ يُخْتَطَّ عَلَيْهَا بِحَظِيرٍ لِلْبِنَاءِ - فَهَذَا كُلُّهُ إحْيَاءٌ فِي لُغَةِ الْعَرَبِ الَّتِي بِهَا خَاطَبَنَا اللَّهُ تَعَالَى عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيَكُونُ

لَهُ بِذَلِكَ مَا أَدْرَكَ الْمَاءَ فِي فَوْرِهِ وَكَثْرَتِهِ فِي جَمِيعِ جِهَاتِ الْبِئْرِ، أَوْ الْعَيْنِ، أَوْ النَّهْرِ، أَوْ السَّاقِيَةِ، قَدْ مَلَكَهُ وَاسْتَحَقَّهُ؛ لِأَنَّهُ أَحْيَاهُ

وَلَا خِلَافَ فِي ضَرُورَةِ الْحِسِّ وَاللُّغَةِ أَنَّ الِاحْتِطَابَ وَأَخْذَ الْعُشْبِ لِلرَّعْيِ لَيْسَ إحْيَاءً وَمَا تَوَلَّى الْمَرْءُ مِنْ ذَلِكَ بِأُجَرَائِهِ وَأَعْوَانِهِ، فَهُوَ لَهُ، لَا لَهُمْ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى» .

L20862 There is no dispute—by sensory and linguistic necessity—that gathering firewood and cutting grass for grazing does not constitute reviving dead land. Whatever a person accomplishes of such acts through his hired workers and assistants belongs to him, not to them, according to the statement of the Messenger of Allah (peace and blessings be upon him): “Deeds are judged by intentions, and each person will have only what he intended.”[6]

[مَسْأَلَةٌ خَرَجَ فِي أَرْضِهِ مَعْدِنُ فِضَّةٍ]

L20863 **A jurisprudential case: A silver mine emerged in his land.**

١٣٤٩ - مَسْأَلَةٌ:

L20864 1349: Question:

وَمَنْ خَرَجَ فِي أَرْضِهِ مَعْدِنُ فِضَّةٍ، أَوْ ذَهَبٍ، أَوْ نُحَاسٍ أَوْ حَدِيدٍ، أَوْ رَصَاصٍ، أَوْ قَزْدِيرٍ، أَوْ زِئْبَقٍ، أَوْ مِلْحٍ، أَوْ شَبٍّ، أَوْ زِرْنِيخٍ، أَوْ كُحْلٍ، أَوْ يَاقُوتٍ، أَوْ زُمُرُّدٍ، أَوْ بَجَادِيٍّ، أَوْ رهوبي، أَوْ بِلَّوْرٍ، أَوْ كَذَّانٍ، أَوْ أَيِّ شَيْءٍ كَانَ فَهُوَ لَهُ، وَيُورَثُ عَنْهُ، وَلَهُ بَيْعُهُ، وَلَا حَقَّ لِلْإِمَامِ مَعَهُ فِيهِ، وَلَا لِغَيْرِهِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L20865 And whoever discovers in their land a mine of silver, gold, copper, iron, lead, tin, mercury, salt, alum, arsenic, kohl, ruby, emerald, bezoar, rahūbī, crystal, kadhdhan, or any substance whatsoever, it belongs to them, may be inherited by their heirs, and they may sell it. Neither the Imam nor others have any right to it. This is the opinion of Abu Hanifah, Al-Shafi’i, and Abu Sulayman.

وَقَالَ مَالِكٌ: تَصِيرُ الْأَرْضُ لِلسُّلْطَانِ.

L20866 Malik said: The land becomes the property of the governing authority.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ لِقَوْلِ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [النساء: ٢٩]

L20867–20868 Abu Muhammad said: This is invalid due to the statement of Allah, the Exalted: “Do not consume one another’s wealth between yourselves wrongfully” [Surah An-Nisa’ 4:29].[7]

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ وَلِعَقِبِهِ» .

L20869 And based on the statement of the Messenger of Allah (peace and blessings be upon him): “Whoever revives a dead land, it belongs to him and his offspring.”

[6] **Hadith references (L20862):** Sahih al-Bukhari 1; Sunan Abi Dawud 2201; Mishkat al-Masabih 1.

[7] **Qur’an references (L20868):** Qur’an 4:29 (An-Nisa).

L20870 And due to the statement of the Prophet (peace be upon him): “Whoever wrongfully seizes a handspan of land will have a collar from the seven earths placed around his neck on the Day of Resurrection.”

L20871 And because of his saying—peace be upon him—: “Verily, your blood and your wealth are inviolable to you.” If only I knew by what pretext his land—which he rightfully owned through inheritance, or which he revived through his own labor due to mineral deposits therein—could be seized! We find no basis for this claim in the Quran, nor the Sunnah, nor an unsound narration, nor any statement from those before him that we know of, nor analogical reasoning, nor sound opinion. We ask him: If a mineral deposit were discovered in a mosque, or in the Sacred Mosque, or in the Mosque of Allah’s Messenger—peace and blessings be upon him—or in a Muslim cemetery, would the ruler then seize the Sacred Mosque, seize the Mosque of Allah’s Messenger—peace and blessings be upon him—and the cemetery, thereby barring people from all these places and granting them to whomever he wishes? Fie! Fie upon this opinion and what leads to it!

A legal case concerning one who constructs an irrigation channel or excavates a well.

L20872

L20873 1350. Legal Question:

L20874 Whoever constructs an irrigation channel, digs a well, or digs a spring has the right to what he has channeled, as we have previously discussed.

L20875 No one may dig in a manner that harms that spring, that well, that irrigation channel, or that river, or in a way that merely diverts any of its water away from it. There is absolutely no inviolable zone for that except what we have mentioned, because when one owns that land, they own the water within it, and it is impermissible to take their property without a legitimate right.

L20876 It was narrated to us through the chain of Ismāʿīl ibn ʿUlayya, from a man, from Saʿīd ibn al-Musayyib.

L20877 Through the chain of Muhammad ibn Muslim al-Ta’ifi from Yahya ibn Sa’id

وَلِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «مَنْ غَصَبَ شِبْرًا مِنْ الْأَرْضِ طَوَّقَهُ يَوْمَ الْقِيَامَةِ مِنْ سَبْعِ أَرَضِينَ»

وَلِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ.» فَلَيْتَ شِعْرِي بِأَيِّ وَجْهٍ تَخْرُجُ أَرْضُهُ الَّتِي مَلَكَ بِإِرْثٍ، أَوْ الَّتِي أَحْيَا عَنْ يَدِهِ مِنْ أَجْلِ وُجُودِ الْمَعْدِنِ فِيهَا؟ وَمَا عَلِمْنَا لِهَذَا الْقَوْلِ مُتَعَلَّقًا لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ أَحَدٍ قَبْلَهُ نَعْلَمُهُ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ سَدِيدٍ، وَنَسْأَلُهُ عَنْ مَسْجِدٍ ظَهَرَ فِيهِ مَعْدِنٌ، أَوْ لَوْ ظَهَرَ مَعْدِنٌ فِي الْمَسْجِدِ الْحَرَامِ، أَوْ فِي مَسْجِدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ فِي مَقْبَرَةٍ لِلْمُسْلِمِينَ؟ أَيَكُونُ لِلْإِمَامِ أَخْذُ الْمَسْجِدِ الْحَرَامِ، وَأَخْذُ مَسْجِدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْمَقْبَرَةِ فَيَمْنَعُ النَّاسَ مِنْ كُلِّ ذَلِكَ وَيُقْطِعُهَا مَنْ أَرَادَ؟ أُفٍّ أُفٍّ لِهَذَا الْقَوْلِ وَمَا قَادَ إلَيْهِ.

[مَسْأَلَةٌ سَاقَ سَاقِيَةً أَوْ حَفَرَ بِئْرًا]

١٣٥٠ - مَسْأَلَةٌ:

وَمَنْ سَاقَ سَاقِيَةً، أَوْ حَفَرَ بِئْرًا، أَوْ عَيْنًا فَلَهُ مَا سَقَى كَمَا قَدَّمْنَا.

وَلَا يَحْفِرُ أَحَدٌ بِحَيْثُ يَضُرُّ بِتِلْكَ الْعَيْنِ، أَوْ بِتِلْكَ الْبِئْرِ، أَوْ بِتِلْكَ السَّاقِيَةِ، أَوْ ذَلِكَ النَّهْرِ، أَوْ بِحَيْثُ يَجْلِبُ شَيْئًا مِنْ مَائِهَا عَنْهَا فَقَطْ، لَا حَرِيمَ لِذَلِكَ أَصْلًا غَيْرَ مَا ذَكَرْنَا؛ لِأَنَّهُ إذَا مَلَكَ تِلْكَ الْأَرْضَ فَقَدْ مَلَكَ مَا فِيهَا مِنْ الْمَاءِ فَلَا يَجُوزُ أَخْذُ مَالِهِ بِغَيْرِ حَقٍّ.

وَرُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ ابْنِ عُلَيَّةَ عَنْ رَجُلٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ.

al-Ansari from Sa'id ibn al-Musayyab, that the Messenger of Allah (peace be upon him) said: "The protected area of a newly dug well is twenty-five cubits, and the protected area of an old well is fifty cubits."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ مُسْلِمٍ الطَّائِفِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «حَرِيمُ الْبِئْرِ الْمُحْدَثَةِ خَمْسٌ وَعِشْرُونَ ذِرَاعًا، وَحَرِيمُ الْبِئْرِ الْعَادِيَةِ خَمْسُونَ ذِرَاعًا» .

L20878–20879 From Sa'id ibn al-Musayyib and Yahya ibn Sa'id al-Ansari, from their statements, likewise. From Abu Hurairah, al-Sha'bi, and al-Hasan: The protected area of the well is forty cubits for the resting places of camels and sheep. From Ibn al-Musayyib: The protected area of an agricultural well is three hundred cubits.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ مِنْ قَوْلِهِمَا مِثْلُ ذَلِكَ. وَعَنْ أَبِي هُرَيْرَةَ، وَالشَّعْبِيِّ، وَالْحَسَنِ: حَرِيمُ الْبِئْرِ أَرْبَعُونَ ذِرَاعًا لِأَعْطَانِ الْإِبِلِ، وَالْغَنَمِ. وَعَنْ ابْنِ الْمُسَيِّبِ: حَرِيمُ بِئْرِ الزَّرْعِ ثَلَاثُمِائَةِ ذِرَاعٍ.

L20880 Al-Zuhri said: "I heard people say: The protected zone of a spring is five hundred cubits." It is reported from Ikrimah: "The protected zone between two water sources is two hundred cubits"—but there is no stipulated measurement in Malik's opinion on this matter.

قَالَ الزُّهْرِيُّ: سَمِعْت النَّاسَ يَقُولُونَ: حَرِيمُ الْعَيْنِ خَمْسُمِائَةِ ذِرَاعٍ. وَعَنْ عِكْرِمَةَ: حَرِيمُ مَا بَيْنَ الْعَيْنَيْنِ مِائَتَا ذِرَاعٍ - وَلَيْسَ عِنْدَ مَالِكٍ فِي ذَلِكَ حَدٌّ.

L20881 Abu Hanifah said: The inviolable area of a well at a camel resting place is forty cubits, the inviolable area of a pulley-drawn well is sixty cubits on every side unless the ropes of both are longer, and the inviolable area of a spring is five hundred cubits.

وَقَالَ أَبُو حَنِيفَةَ: حَرِيمُ بِئْرِ الْعَطَنِ أَرْبَعُونَ ذِرَاعًا، وَحَرِيمُ بِئْرِ النَّاضِحِ سِتُّونَ ذِرَاعًا مِنْ كُلِّ جِهَةٍ إلَّا أَنْ يَكُونَ حَبْلُهُمَا أَطْوَلَ، وَحَرِيمُ الْعَيْنِ خَمْسُمِائَةِ ذِرَاعٍ.

L20882 No predecessor of Abū Ḥanīfah is known to have held an opinion regarding the well of the water-drawing camel, and he contradicted the mursal in this ruling.

وَلَا يُعْلَمُ لِأَبِي حَنِيفَةَ سَلَفًا فِي قَوْلٍ فِي بِئْرِ النَّاضِحِ، وَقَدْ خَالَفَ الْمُرْسَلَ فِي هَذَا الْحُكْمِ.

L20883 Yahya ibn Sa'id said regarding his aforementioned statement: "It is the Sunnah." The Mālikīs cite, concerning a woman's fingers, the statement of Sa'id ibn al-Musayyib: "It is the Sunnah"—so why do they not cite here the statement of Yahya ibn Sa'id: "It is the Sunnah"?

وَقَالَ يَحْيَى بْنُ سَعِيدٍ فِي قَوْلِهِ الْمَذْكُورِ: هُوَ السُّنَّةُ، وَالْمَالِكِيُّونَ يَحْتَجُّونَ فِي أَصَابِعِ الْمَرْأَةِ بِقَوْلِ سَعِيدِ بْنِ الْمُسَيِّبِ: هِيَ السُّنَّةُ - فَهَلَّا احْتَجُّوا هَهُنَا بِقَوْلِ يَحْيَى بْنِ سَعِيدٍ: هِيَ السُّنَّةُ؟

L20884 **A legal case pertaining to drinking from a river that is not privately owned.**

[مَسْأَلَةُ الشُّرْبِ مِنْ نَهْرٍ غَيْرِ مُتَمَلَّكٍ]

L20885–20887 Issue 1351: Regarding drawing water from a non-owned river, the ruling is that irrigation priority belongs to the highest land first, then the next

highest, with the lower lands following afterward until the highest fulfills its need. The proper method requires spreading water over the land's surface so that the soil does not absorb it, then redirecting it back to the wall or fence. Thereafter, the water must be released without further retention. This applies equally whether the highest land's ownership or reviving dead land (iḥyā' al-mawāt) is newer than the lower, equal to it, or older. Ownership of water from a non-owned river is fundamentally invalid, as are claims to floodwater. Established water distribution cycles and allocations - even if long practiced - become void unless a people... They dug a canal and constructed it, so they have the right to divide its water according to their respective shares in it. The proof for this is what we have transmitted through the chain of Abū Dāwūd - who narrated to us from Abū al-Walīd (al-Ṭayālisī) - who reported from al-Layth ibn Saʿd - from al-Zuhrī - from ʿUrwah ibn al-Zubayr - from ʿAbdullāh ibn al-Zubayr, who said: "Al-Zubayr disputed with a man regarding the irrigation channels of al-Ḥarrah used for watering. The Anṣārī said to al-Zubayr: 'Let the water flow!' But al-Zubayr refused. The Messenger of Allah—peace be upon him—then said to al-Zubayr: 'Irrigate, O Zubayr, then release the water to your neighbor.' The Anṣārī became angry and said: 'O Messenger of Allah - is he the son of your aunt?' At this, the face of the Messenger of Allah—peace be upon him—changed color, and he said: 'Irrigate, then hold back the water until it returns to the wall.'"

١٣٥١ - مَسْأَلَةٌ: وَأَمَّا الشُّرْبُ مِنْ نَهْرٍ غَيْرِ مُتَمَلَّكٍ، فَالْحُكْمُ أَنَّ السَّقْيَ لِلْأَعْلَى فَالْأَعْلَى لَاحِقٌ لِلْأَسْفَلِ حَتَّى يَسْتَوْفِيَ الْأَعْلَى حَاجَتَهُ، وَحَقُّ ذَلِكَ أَنْ يُغَطِّيَ وَجْهَ الْأَرْضِ حَتَّى لَا تَشْرَبَهُ وَيَرْجِعُ لِلْجِدَارِ أَوْ السِّيَاجِ، ثُمَّ يُطْلِقُهُ وَلَا يُمْسِكُهُ أَكْثَرَ، وَسَوَاءٌ كَانَ الْأَعْلَى أَحْدَثَ مِلْكًا أَوْ إحْيَاءً مِنْ الْأَسْفَلِ، أَوْ مُسَاوِيًا لَهُ، أَوْ أَقْدَمَ مِنْهُ، وَلَا يُتَمَلَّكُ شِرْبُ نَهْرٍ غَيْرِ مُتَمَلَّكٍ أَصْلًا، وَلَا شِرْبُ سَيْلٍ، وَتَبْطُلُ الدُّوَلُ وَالْقِسْمَةُ فِيهَا - وَإِنْ تَقَدَّمَتْ - إلَّا أَنْ يَكُونَ قَوْمٌ حَفَرُوا سَاقِيَةً وَبَنَوْهَا، فَلَهُمْ أَنْ يَقْتَسِمُوا مَاءَهَا بِقَدْرِ حِصَصِهِمْ فِيهَا. بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا أَبُو الْوَلِيدِ - هُوَ الطَّيَالِسِيُّ - أَنَا اللَّيْثُ - هُوَ ابْنُ سَعْدٍ - عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ قَالَ «خَاصَمَ الزُّبَيْرُ رَجُلًا فِي شِرَاجِ الْحَرَّةِ الَّتِي يَسْقُونَ بِهَا، فَقَالَ الْأَنْصَارِيُّ لِلزُّبَيْرِ: سَرِّحْ الْمَاءَ يَمُرُّ؟ فَأَبَى عَلَيْهِ الزُّبَيْرُ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلزُّبَيْرِ: اسْقِ يَا زُبَيْرُ ثُمَّ أَرْسِلْ إلَى جَارِكَ؟ فَغَضِبَ الْأَنْصَارِيُّ وَقَالَ: يَا رَسُولَ اللَّهِ إنْ كَانَ ابْنُ عَمَّتِكَ؟ فَتَلَوَّنَ وَجْهُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ قَالَ: اسْقِ ثُمَّ احْتَبِسْ الْمَاءَ حَتَّى يَرْجِعَ إلَى الْجَدْرِ.»

Case: If a man planted trees in dead land.

[مَسْأَلَةٌ غَرَسَ أَشْجَارًا فِي أَرْضِ مَوَات]

Issue 1352: Whoever plants trees has the right to the area shaded by their branches upon their full maturity. If their branches scatter onto another's land, he is obligated to cut away what has scattered there. It has been narrated to us via the chain of Abu Dawud: Mahmud ibn Khalid reported that Muhammad ibn Uthman narrated to them, saying: Abdul Aziz ibn Muhammad—he is Ad-Dārawardī—narrated to us from Amr ibn Yahya al-Mazini, from his father, from Abu Sa'id al-Khudri, who said: "Two men brought a dispute to Allah's Messenger—peace be upon him—regarding the protected

١٣٥٢ - مَسْأَلَةٌ: وَمَنْ غَرَسَ أَشْجَارًا فَلَهُ مَا أَظَلَّتْ أَغْصَانُهَا عِنْدَ تَمَامِهَا، فَإِنْ انْتَثَرَتْ عَلَى أَرْضِ غَيْرِهِ أَخَذَ بِقَطْعِ مَا انْتَثَرَ مِنْهَا عَلَى أَرْضِ غَيْرِهِ. رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مَحْمُودُ بْنُ خَالِدٍ أَنَّ مُحَمَّدَ بْنَ عُثْمَانَ حَدَّثَهُمْ قَالَ: نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ - هُوَ الدَّرَاوَرْدِيُّ - عَنْ عَمْرِو بْنِ يَحْيَى الْمَازِنِيِّ عَنْ أَبِيهِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: «اخْتَصَمَ إلَى رَسُولِ

zone of a palm tree. He—peace be upon him—ordered a palm frond from its branches to be measured with a forearm's length, then ruled according to its extent." As for the scattering of branches onto another's land, this derives from Allah's Messenger's statement—peace be upon him—: "Your blood and your wealth are inviolable to you." Therefore, it is impermissible for anyone to benefit from another's property unless the owner willingly consents to it. Success comes solely from Allah, the Exalted.

L20890 **A juristic issue: A man left his animal in a desert, then someone took it, cared for it, and it became sound.**

L20891–20893 Issue 1353: If someone abandons his riding animal in a wilderness, leaving it lost, and another person takes it and tends to it so that it becomes sound; or if his belongings are damaged in a sea or river and the sea washes ashore his belongings which someone then takes, or if a person dives for them and retrieves them, then all such cases... That is for its original owner, and no right therein belongs to whoever takes anything from it, based on the statement of Allah's Messenger—peace and blessings of Allah be upon him: "Your blood and your wealth are inviolable to you." Differing opinions have been reported regarding this matter. As transmitted to us through the chain of Saʿīd ibn Manṣūr: Narrated to us Hushaym: Narrated to us Manṣūr—he is Ibn al-Muʿtamir—from ʿUbayd Allāh ibn Ḥumayd al-Ḥimyarī, who said: I heard al-Shaʿbī say: "Whoever's mount becomes incapacitated and he abandons it, it belongs to whoever revives it." I asked him: "From whom, O Abū ʿAmr?" He replied: "If you wish, I can enumerate for you such-and-such Companions of Allah's Messenger—peace and blessings of Allah be upon him." Through another chain: Saʿīd ibn Manṣūr: Narrated to us Khālid—he is Ibn ʿAbd Allāh al-Ṭaḥḥān al-Wāsiṭī—Narrated to us Muṭarrif—he is Ibn Ṭarīf—from al-Shaʿbī regarding a man who released his mount and another took it and rehabilitated it. Al-Shaʿbī said: "A ruling has been established for this case: If he released it in a pasture with security and water, its owner has the right to it. But if he released it in a hazardous place or wilderness, the one who took it has the right to it." Through the chain of Ibn Abī Shaybah: Narrated to us Abū Usāmah from ʿUthmān ibn Ghiyāth, who said: Al-Ḥasan was asked about a man who left his mount in barren land and another took

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَجُلاَنِ فِي حَرِيمِ نَخْلَةٍ فَأَمَرَ - عَلَيْهِ السَّلاَمُ - بِجَرِيدَةٍ مِنْ جَرِيدِهَا فَذُرِعَتْ فَقَضَى بِذَلِكَ» يَعْنِي بِمَبْلَغِهَا. وَأَمَّا انْتِثَارُهَا عَلَى أَرْضِ غَيْرِهِ فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلاَ يَحِلُّ لِأَحَدٍ الاِنْتِفَاعُ بِمَالِ غَيْرِهِ إِلَّا مَا دَامَتْ نَفْسُهُ لَهُ طَيِّبَةً بِذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَرَكَ دَابَّتَهُ بِفَلَاةٍ فَأَخَذَهَا إِنْسَانٌ فَقَامَ عَلَيْهَا فَصَلَحَتْ]

١٣٥٣ - مَسْأَلَةٌ: وَمَنْ تَرَكَ دَابَّتَهُ بِفَلَاةٍ ضَائِعَةً فَأَخَذَهَا إِنْسَانٌ فَقَامَ عَلَيْهَا فَصَلَحَتْ، أَوْ عَطِبَ فِي بَحْرٍ أَوْ نَهْرٍ فَرَمَى الْبَحْرُ مَتَاعَهُ فَأَخَذَهُ إِنْسَانٌ أَوْ غَاصَ عَلَيْهِ إِنْسَانٌ فَأَخَذَهُ، فَكُلُّ ذَلِكَ لِصَاحِبِهِ الْأَوَّلِ وَلَا حَقَّ فِيهِ لِمَنْ أَخَذَ شَيْئًا مِنْهُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» . وَقَدْ جَاءَ فِي ذَلِكَ خِلَافٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا مَنْصُورٌ - هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ عُبَيْدِ اللَّهِ بْنِ حُمَيْدٍ الْحِمْيَرِيِّ قَالَ: سَمِعْت الشَّعْبِيَّ يَقُولُ: مَنْ قَامَتْ عَلَيْهِ دَابَّتُهُ فَتَرَكَهَا فَهِيَ لِمَنْ أَحْيَاهَا: فَقُلْت لَهُ: عَمَّنْ يَا أَبَا عَمْرٍو؟ قَالَ: إنْ شِئْت عَدَّدْت لَك كَذَا وَكَذَا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا خَالِدٌ - هُوَ ابْنُ عَبْدِ اللَّهِ الطَّحَّانُ الْوَاسِطِيُّ - أَنَا مُطَرِّفٌ - هُوَ ابْنُ طَرِيفٍ - عَنْ الشَّعْبِيِّ فِي رَجُلٍ سَيَّبَ دَابَّتَهُ فَأَخَذَهَا رَجُلٌ فَأَصْلَحَهَا؟ فَقَالَ الشَّعْبِيُّ: هَذَا قَدْ قَضَى فِيهِ إنْ كَانَ سَيَّبَهَا فِي كَلَأٍ، وَأَمْنٍ، وَمَاءٍ، فَصَاحِبُهَا أَحَقُّ بِهَا، وَإِنْ كَانَ سَيَّبَهَا فِي مَخَافَةٍ أَوْ مَفَازَةٍ فَالَّذِي أَخَذَهَا أَحَقُّ بِهَا. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو أُسَامَةَ عَنْ عُثْمَانَ بْنِ غِيَاثٍ قَالَ: سُئِلَ الْحَسَنُ عَمَّنْ تَرَكَ دَابَّتَهُ بِأَرْضِ قَفْرٍ فَأَخَذَهَا رَجُلٌ فَقَامَ عَلَيْهَا حَتَّى

it and maintained it until it recovered. He replied: “It belongs to whoever revived it.” He added: Al-Ḥasan was also asked about a ship sinking at sea containing merchandise belonging to various parties. He said: “What the sea casts upon its shore, and whoever retrieves something by diving owns it.” Abū Muḥammad said: This is the opinion of al-Layth. Indeed, anyone who disparages an opinion attributed to a Companion—when no opposing view to it is known—must adopt the opinion of al-Shaʿbī and al-Ḥasan, as it is transmitted from a group of Companions with no known opposition among them.

L20894 **An issue: One who finds his property is not obligated to reimburse what was spent on it.**

L20895 1354. Issue: If someone retrieves their lost property, they are not required to reimburse the person who possessed it for any expenses incurred, as the spender acted without authorization and thus voluntarily. We have been narrated through the chain of Saʿīd ibn Manṣūr: Hushaym reported to us, from Dāwūd ibn Abī Hind, from al-Shaʿbī, that a man lost a young camel. Another man took it, spent on its care until it became healthy and fattened. The owner discovered it in his possession and disputed the matter before ʿUmar ibn ʿAbd al-ʿAzīz, who ruled that the finder must be reimbursed for the expenses and must return the camel to its owner. Al-Shaʿbī said: “As for me, I maintain that one reclaims their property as they find it—whether fattened or emaciated—and owes nothing.”

L20896 **the elbows (in ablution)**

L20897 **It is a juristic principle that anyone may create whatever opening they wish in their own boundary wall.**

L20898–20900 Section 1355 – Issue: Anyone may open in their wall what they wish – such as a window, a door, or... He may demolish it if he wishes in his neighbor’s property, in a dead-end alley, or a passable alley. It is said to his neighbor: “Build within your right what will conceal yourself!” except that he is only prevented from intrusive viewing. This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān. Mālik said: “He is prevented

صَلَحَتْ؟ قَالَ: هِيَ لِمَنْ أَحْيَاهَا. قَالَ: وَسُئِلَ الْحَسَنُ عَنْ السَّفِينَةِ تَغْرَقُ فِي الْبَحْرِ فِيهَا مَتَاعٌ لِقَوْمٍ شَتَّى؟ فَقَالَ: مَا أَلْقَى الْبَحْرُ عَلَى سَاحِلِهِ، وَمَنْ غَاصَ عَلَى شَيْءٍ فَاسْتَخْرَجَهُ فَهُوَ لَهُ. قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ اللَّيْثِ وَلَقَدْ كَانَ يَلْزَمُ مَنْ شَنَّعَ بِقَوْلِ الصَّاحِبِ لَا يُعْرَفُ لَهُ مُخَالِفٌ أَنْ يَقُولَ بِقَوْلِ الشَّعْبِيِّ، وَالْحَسَنِ؛ لِأَنَّهُ عَنْ جَمَاعَةٍ مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْهُمْ.

[مَسْأَلَةٌ لَا يَلْزَمُ مَنْ وَجَدَ مَتَاعَهُ أَنْ يُؤَدِّيَ مَا أُنْفِقَ عَلَيْهِ]

١٣٥٤ - مَسْأَلَةٌ: وَلَا يَلْزَمُ مَنْ وَجَدَ مَتَاعَهُ إذَا أَخَذَهُ أَنْ يُؤَدِّيَ إلَى الَّذِي وَجَدَهُ عِنْدَهُ مَا أَنْفَقَ عَلَيْهِ، لِأَنَّهُ لَمْ يَأْمُرْهُ بِذَلِكَ، فَهُوَ مُتَطَوِّعٌ بِمَا أَنْفَقَ. وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ أَنَّ رَجُلًا أَضَلَّ بَعِيرًا لَهُ نِضْوًا فَأَخَذَهُ رَجُلٌ فَأَنْفَقَ عَلَيْهِ حَتَّى صَلَحَ وَسَمِنَ، فَوَجَدَهُ صَاحِبُهُ عِنْدَهُ فَخَاصَمَهُ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ؟ فَقَضَى لَهُ بِالنَّفَقَةِ وَرَدِّ الدَّابَّةِ إلَى صَاحِبِهَا - قَالَ الشَّعْبِيُّ: أَمَّا أَنَا فَأَقُولُ: يَأْخُذُ مَالَهُ حَيْثُ وَجَدَهُ سَمِينًا أَوْ مَهْزُولًا، وَلَا شَيْءَ عَلَيْهِ.

[الْمَرْفِقُ]

[مَسْأَلَةٌ لِكُلِّ أَحَدٍ أَنْ يَفْتَحَ مَا شَاءَ فِي حَائِطِهِ]

الْمَرْفِقُ ١٣٥٥ - مَسْأَلَةٌ: وَلِكُلِّ أَحَدٍ أَنْ يَفْتَحَ مَا شَاءَ فِي حَائِطِهِ مِنْ كُوَّةٍ أَوْ بَابٍ، أَوْ أَنْ يَهْدِمَهُ إنْ شَاءَ فِي دَارِ جَارِهِ، أَوْ فِي دَرْبٍ غَيْرِ نَافِذٍ أَوْ نَافِذٍ، وَيُقَالُ لِجَارِهِ: ابْنِ فِي حَقِّك مَا تَسْتُرُ بِهِ عَلَى نَفْسِك؟ إلَّا أَنَّهُ يُمْنَعُ مِنْ الِاطِّلَاعِ فَقَطْ. وَهُوَ قَوْلُ أَبِي حَنِيفَةَ،

from all that." Abū Muḥammad said: "This is erroneous, for every one entitled to a right has precedence in exercising it. It is impermissible for a neighbor to benefit from his neighbor's wall except where the Text explicitly permits. There is no distinction between demolishing his own wall (without being obligated to rebuild it) while telling his neighbor, 'Conceal yourself if you wish,' and demolishing his own wall entirely. No difference exists between a roof permitting intrusive viewing and a house's courtyard permitting such viewing. No distinction lies between opening a window for light and opening it for other purposes, as both enable intrusive viewing. No Qur'an, Sunnah, weakly transmitted report, or statement of a Companion has ever prohibited a person from creating openings within their right and their wall as they desire. If they cite the report, 'No harm or reciprocated harm,' this is an unsound report—it is transmitted discontinuously or through a chain containing Zuhayr ibn Thābit, who is weak—though its meaning is valid. No greater harm exists than preventing a person from managing their own property to accommodate another's benefit; this constitutes true harm. As for intrusive viewing, its prohibition is obligatory, based on what we transmitted through al-Bukhārī's chain: ʿAlī ibn ʿAbdillāh ibn al-Madīnī reported to us, from Sufyān ibn ʿUyaynah, from Abū al-Zināد, from al-Aʿraj, from Abū Hurayrah, who said: Abū al-Qāsim—may Allah's peace and blessings be upon him—said: 'If someone spies on you without permission and you strike him with a stick, blinding his eye, you bear no blame.' We also transmitted it through another chain with 'a pebble,' which is more authentic."

وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ. وَقَالَ مَالِكٌ: يُمْنَعُ مِنْ كُلِّ ذَلِكَ. قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ، لِأَنَّ كُلَّ ذِي حَقٍّ أَوْلَى بِحَقِّهِ. وَلَا يَحِلُّ لِلْجَارِ أَنْ يَنْتَفِعَ بِحَائِطِ جَارِهِ إِلَّا حَيْثُ جَاءَ النَّصُّ بِذَلِكَ. وَلَا فَرْقَ بَيْنَ أَنْ يَهْدِمَ حَائِطَهُ فَلَا يُكَلَّفُ بُنْيَانَهُ وَيَقُولُ لِجَارِهِ: اُسْتُرْ عَلَى نَفْسِكَ إِنْ شِئْتَ، وَبَيْنَ أَنْ يَهْدِمَ هُوَ حَائِطَ نَفْسِهِ. وَلَا فَرْقَ بَيْنَ السَّقْفِ وَالِاطِّلَاعِ مِنْهُ وَبَيْنَ قَاعِ الدَّارِ وَالِاطِّلَاعِ مِنْهُ - وَلَا فَرْقَ بَيْنَ فَتْحِ كُوَّةٍ لِلضَّوْءِ وَبَيْنَ فَتْحِهَا هَكَذَا وَكِلَا الْأَمْرَيْنِ، يُمْكِنُ الِاطِّلَاعُ مِنْهُ، وَلَمْ يَأْتِ قَطُّ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ يَمْنَعُ الْمَرْءَ مِنْ أَنْ يَفْتَحَ فِي حَقِّهِ وَفِي حَائِطِهِ مَا شَاءَ. فَإِنْ احْتَجُّوا بِالْخَبَرِ «لَا ضَرَرَ وَلَا ضِرَارَ» هَذَا خَبَرٌ لَا يَصِحُّ، لِأَنَّهُ إِنَّمَا جَاءَ مُرْسَلًا، أَوْ مِنْ طَرِيقٍ فِيهَا زُهَيْرُ بْنُ ثَابِتٍ - وَهُوَ ضَعِيفٌ - إِلَّا أَنَّ مَعْنَاهُ صَحِيحٌ. وَلَا ضَرَرَ أَعْظَمَ مِنْ أَنْ يُمْنَعَ الْمَرْءُ مِنْ التَّصَرُّفِ فِي مَالِ نَفْسِهِ مُرَاعَاةً لِنَفْعِ غَيْرِهِ فَهَذَا هُوَ الضَّرَرُ حَقًّا. وَأَمَّا الِاطِّلَاعُ فَمَنْعُهُ وَاجِبٌ -: لِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ بْنِ الْمَدِينِيِّ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا أَبُو الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ أَبُو الْقَاسِمِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَوْ أَنَّ امْرَأً اطَّلَعَ عَلَيْكَ بِغَيْرِ إِذْنٍ فَحَذَفْتَهُ بِعَصًا فَفَقَأْتَ عَيْنَهُ لَمْ يَكُنْ عَلَيْكَ جُنَاحٌ» وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقٍ أُخْرَى «بِحَصَاةٍ» هُوَ أَصَحُّ.

A legal issue: No one may divert water from their roof or property onto their neighbor's property.

L20901–20902

L20903 Issue: It is not permissible for anyone to channel water from his roof or house onto his neighbor's land at all. If the neighbor permits this, he retains the right to revoke his permission whenever he wishes, based on the statement of Allah's Messenger—peace and blessings be upon him: "Your blood and your wealth are inviolable to you." Channeling water from his house

[مَسْأَلَةٌ لَيْسَ لِأَحَدٍ أَنْ يُرْسِلَ مَاءَ سَقْفِهِ أَوْ دَارِهِ عَلَى أَرْضِ جَارِهِ]

مَسْأَلَةٌ: وَلَيْسَ لِأَحَدٍ أَنْ يُرْسِلَ مَاءَ سَقْفِهِ أَوْ دَارِهِ عَلَى أَرْضِ جَارِهِ أَصْلًا، فَإِنْ أَذِنَ لَهُ كَانَ لَهُ الرُّجُوعُ مَتَى شَاءَ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَإِطْلَاقُهُ مَاءَ دَارِهِ عَلَى أَرْضِ جَارِهِ تَصَرُّفٌ مِنْهُ فِي مَالِ غَيْرِهِ

onto his neighbor's land constitutes interference with another's property—and this is forbidden upon him—and such permission is valid only as long as it remains permission, for it does not transfer ownership. Permission for something today is not equivalent to permission for it tomorrow, without doubt. And with Allah lies success.

L20904 **A jurisprudential matter: It is not permissible for anyone to smoke in a way that harms their neighbor.**

L20905 Issue 1357: It is not permissible for anyone to smoke in a manner that harms his neighbor, as this constitutes injury, and Allah the Exalted has prohibited harming a Muslim. Every person may raise the height of their building as they wish - even if it blocks the neighbor's access to breeze and sunlight - because it does not involve obstruction through impermissible means. Every person may construct on their property whatever they desire, whether a bathhouse, oven, mill, vault, or other structures, since no explicit textual prohibition exists against any of these matters.

L20906 **Issue: One may not prevent their neighbor from inserting wood into his wall.**

L20907 Issue 1358: It is not permissible for anyone to prevent his neighbor from inserting wood into his [the preventer's] wall, and the one preventing must be compelled to allow it—whether he likes it or dislikes it—even without his permission. If the owner of the wall wishes to demolish it, he may do so, provided he informs his neighbor: "Support your wood or remove it, for I am demolishing my wall." The owner of the wood is then compelled to comply. This ruling derives from the narration transmitted through Mālik's chain from Ibn Shihāb, from al-Aʿraj, from Abū Hurayrah, that the Messenger of Allah—peace and blessings be upon him—said: "None of you should prevent his neighbor from driving a wooden beam into his wall." Abū Hurayrah then declared: "Why do I see you turning away from this? By Allah, I will cast it between your shoulders!" This is the statement of Abū Hurayrah, with no

- وَهُوَ عَلَيْهِ حَرَامٌ - وَالْإِذْنُ فِي ذَلِكَ إِنَّمَا هُوَ مَا دَامَ إِذْنًا، لِأَنَّهُ لَمْ يُمَلِّكْهُ الرَّقَبَةَ، وَالْإِذْنُ فِي شَيْءٍ مَا الْيَوْمَ غَيْرُ مَا لَمْ يُؤْذَنْ لَهُ فِيهِ غَدًا بِلَا شَكٍّ - وَبِاللَّهِ التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يَجُوزُ لِأَحَدٍ أَنْ يُدَخِّنَ عَلَى جَارِهِ]

١٣٥٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ لِأَحَدٍ أَنْ يُدَخِّنَ عَلَى جَارِهِ، لِأَنَّهُ أَذًى، وَقَدْ حَرَّمَ اللَّهُ تَعَالَى أَذَى الْمُسْلِمِ. وَلِكُلِّ أَحَدٍ أَنْ يُعَلِّيَ بُنْيَانَهُ مَا شَاءَ - وَإِنْ مَنَعَ جَارَهُ الرِّيحَ وَالشَّمْسَ - لِأَنَّهُ لَمْ يُبَاشِرْ مَنْعَهُ بِغَيْرِ مَا أُبِيحَ لَهُ. وَلِكُلِّ أَحَدٍ أَنْ يَبْنِيَ فِي حَقِّهِ مَا شَاءَ مِنْ حَمَّامٍ، أَوْ فُرْنٍ، أَوْ رَحًى، أَوْ كَمَرٍ أَوْ غَيْرِ ذَلِكَ، إِذْ لَمْ يَأْتِ نَصٌّ بِالْمَنْعِ مِنْ شَيْءٍ مِنْ ذَلِكَ.

[مَسْأَلَةٌ لَا يَمْنَعُ جَارَهُ مِنْ أَنْ يُدْخِلَ خَشَبًا فِي جِدَارِهِ]

١٣٥٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَمْنَعَ جَارَهُ مِنْ أَنْ يُدْخِلَ خَشَبًا فِي جِدَارِهِ وَيُجْبَرَ عَلَى ذَلِكَ - أَحَبَّ أَمْ كَرِهَ - إِنْ لَمْ يَأْذَنْ لَهُ، فَإِنْ أَرَادَ صَاحِبُ الْحَائِطِ هَدْمَ حَائِطِهِ كَانَ لَهُ ذَلِكَ، وَعَلَيْهِ أَنْ يَقُولَ لِجَارِهِ: دَعِّمْ خَشَبَكَ أَوْ انْزَعْهُ فَإِنِّي أَهْدِمُ حَائِطِي، وَيُجْبَرُ صَاحِبُ الْخَشَبِ عَلَى ذَلِكَ -: لِمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَمْنَعُ أَحَدُكُمْ جَارَهُ أَنْ يَغْرِزَ خَشَبَةً فِي جِدَارِهِ» ثُمَّ يَقُولُ أَبُو هُرَيْرَةَ: مَالِي أَرَاكُمْ عَنْهَا مُعْرِضِينَ وَاَللَّهِ لَأَرْمِيَنَّ بِهَا بَيْنَ أَكْتَافِكُمْ فَهَذَا قَوْلُ أَبِي هُرَيْرَةَ وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهُوَ قَوْلُ أَصْحَابِنَا.

known opposition from the Companions—may Allah be pleased with them. It is also the doctrine of our companions.[8]

L20908–20909 Abu Hanifah and Malik said: He has no right to place his wood in his neighbor's wall. Abu Muhammad said: This is mere opposition to the narration, and we know of no valid proof from them whatsoever, except that some of them cited the statement of Allah's Messenger—peace and blessings be upon him—: "Your blood and your wealth are inviolable to you."

L20910 Ali said: He who said this is the same as He who said that, and all His speech is truth from Allah the Exalted. All of it obligates us to hear and obey, with no part opposing another. Allah the Exalted said: *"It is not for any believing man or believing woman, when Allah and His Messenger have decreed a matter, to have any choice in their affair"* [Quran 33:36]. He who decreed preemption, the nullification of ownership after its completion, the invalidation of a sale after its validity, the ruling of collective liability (al-ʿāqilah), the obligation to pay compensation for acts they did not commit, and the permissibility of using their wealth for this—whether they like or dislike—is the same who decreed that a neighbor may insert his wooden beam into his neighbor's wall and forbade preventing him from doing so. Had they applied this ruling when permitting the fruit of palm trees and renting usurped properties—allowing such benefits to those who illegitimately purchased from usurpers—it would have been more appropriate. It is obligatory to apply all the Sunnahs. Thus we declare: Our wealth is forbidden to others except where permitted by He who forbade it. Some said: "This narration mentions *'a beam'* in the accusative case as singular." We replied: Yet you do not permit him even one beam or more—what relief does this narration bring you? Every beam in the world is simply a beam. A neighbor has no right to prevent another from placing it in his wall. The ruling is the same in both narrations—and divine success is from Allah the Exalted.[9]

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَيْسَ لَهُ أَنْ يَضَعَ خَشَبَهُ فِي جِدَارِ جَارِهِ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خِلَافٌ مُجَرَّدٌ لِلْخَبَرِ وَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا، إِلَّا أَنَّ بَعْضَهُمْ ذَكَرَ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

قَالَ عَلِيٌّ: الَّذِي قَالَ هَذَا هُوَ الَّذِي قَالَ ذَلِكَ، وَقَوْلُهُ كُلُّهُ حَقٌّ وَعَنْ اللَّهِ تَعَالَى، وَكُلُّهُ وَاجِبٌ عَلَيْنَا السَّمْعُ لَهُ وَالطَّاعَةُ، وَلَيْسَ بَعْضُهُ مُعَارِضًا لِبَعْضٍ قَالَ اللَّهُ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] وَالَّذِي قَضَى بِالشُّفْعَةِ وَإِسْقَاطِ الْمِلْكِ بَعْدَ تَمَامِهِ، وَإِبْطَالِ الشِّرَاءِ بَعْدَ صِحَّتِهِ وَقَضَى بِالْعَاقِلَةِ، وَأَنْ يَغْرَمُوا مَا لَمْ يَجْنُوا، وَأَبَاحَ أَمْوَالَهُمْ فِي ذَلِكَ - أَحَبُّوا أَمْ كَرِهُوا - هُوَ الَّذِي قَضَى بِأَنْ يَغْرِزَ الْجَارُ خَشَبَهُ فِي جِدَارِ جَارِهِ، وَنَهَى عَنْ مَنْعِهِ مِنْ ذَلِكَ. وَلَوْ أَنَّهُمْ اسْتَعْمَلُوا هَذَا الْحُكْمَ حَيْثُ أَبَاحُوا ثَمَرَ النَّخْلِ، وَكِرَاءِ الدَّارِ الْمَغْصُوبَةِ -: كُلُّ ذَلِكَ لِمَنْ اشْتَرَاهُ مِنْ الْغَاصِبِ بِالْبَاطِلِ لَكَانَ أَوْلَى بِهِمْ، وَالْوَاجِبُ اسْتِعْمَالُ جَمِيعِ السُّنَنِ. فَنَقُولُ: أَمْوَالُنَا حَرَامٌ عَلَى غَيْرِنَا، إِلَّا حَيْثُ أَبَاحَهَا الَّذِي حَرَّمَهَا. وَقَالَ بَعْضُهُمْ: قَدْ رُوِيَ هَذَا الْخَبَرُ «خَشَبَةً» بِالنَّصْبِ عَلَى أَنَّهَا وَاحِدَةٌ؟ فَقُلْنَا: فَأَنْتُمْ لَا تُجِيزُونَ لَهُ لَا وَاحِدَةً وَلَا أَكْثَرَ مِنْ وَاحِدَةٍ، فَأَيُّ رَاحَةٍ لَكُمْ فِي هَذِهِ الرِّوَايَةِ؟ وَكُلُّ خَشَبَةٍ فِي الْعَالَمِ فَهِيَ خَشَبَةٌ، وَلَيْسَ لِلْجَارِ مَنْعُ جَارِهِ مِنْ أَنْ يَضَعَهَا فِي جِدَارِهِ، فَالْحُكْمُ وَاحِدٌ فِي كِلْتَا الرِّوَايَتَيْنِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[8] **Hadith references (L20907):** Sahih Muslim 1609a; Sunan Ibn Majah 2336.

[9] **Qur'an references (L20910):** Qur'an 33:36 (Al-Ahzab).

[مَسْأَلَةٌ مَلَكَ مَاءً فِي نَهْرٍ حَفَرَهُ أَوْ سَاقِيَةٍ حَفَرَهَا]

١٣٥٩ - مَسْأَلَةٌ: وَكُلُّ مَنْ مَلَكَ مَاءً فِي نَهْرٍ حَفَرَهُ، أَوْ سَاقِيَةٍ حَفَرَهَا، أَوْ عَيْنٍ اسْتَخْرَجَهَا، أَوْ بِئْرٍ اسْتَنْبَطَهَا - فَهُوَ أَحَقُّ بِمَاءِ كُلِّ ذَلِكَ مَا دَامَ مُحْتَاجًا إلَيْهِ، وَلَا يَحِلُّ لَهُ مَنْعُ الْفَضْلِ، بَلْ يُجْبَرُ عَلَى بَذْلِهِ لِمَنْ يَحْتَاجُ إلَيْهِ، وَلَا يَحِلُّ لَهُ أَخْذُ عِوَضٍ عَنْهُ، لَا بِبَيْعٍ وَلَا غَيْرِهِ -: لِمَا رُوِّينَا مِنْ طَرِيقِ جَرِيرٍ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يُمْنَعُ فَضْلُ الْمَاءِ لِيُمْنَعَ بِهِ الْكَلَأُ» .

وَمِنْ طَرِيقِ أَبِي دَاوُد، نا النُّفَيْلِيُّ نا دَاوُد بْنُ عَبْدِ الرَّحْمَنِ الْعَطَّارِ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي الْمِنْهَالِ عَنْ إيَاسِ بْنِ عَبْدٍ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ فَضْلِ الْمَاءِ»

[مَسْأَلَةٌ مَا غَلَبَ عَلَيْهِ الْمَاءُ مِنْ نَهْرٍ، أَوْ نَشْعٍ أَوْ سَيْلٍ فَاسْتَغَارَ]

١٣٦٠ - مَسْأَلَةٌ: وَمَا غَلَبَ عَلَيْهِ الْمَاءُ مِنْ نَهْرٍ، أَوْ نَشْعٍ، أَوْ سَيْلٍ، فَاسْتَغَارَ فَهُوَ لِصَاحِبِهِ كَمَا كَانَ، فَإِنْ انْتَقَلَ عَنْهُ يَوْمًا مَا - وَلَوْ بَعْدَ أَلْفِ عَامٍ - فَهُوَ لَهُ وَلِوَرَثَتِهِ، وَمَا رَمَى النَّهْرُ مِنْ أَحَدِ عَدْوَتَيْهِ إلَى أُخْرَى فَهُوَ بَاقٍ بِحَسْبِهِ كَمَا كَانَ لِمَنْ كَانَ لَهُ.

وَقَالَ الْمَالِكِيُّونَ: بِخِلَافِ ذَلِكَ - وَهَذَا بَاطِلٌ لِأَنَّ تَبَدُّلَ مَجْرَى الْمَاءِ لَا يُسْقِطُ مِلْكًا عَنْ مَالِكِهِ، وَلَا يُحِلُّ مَالًا مُحَرَّمًا لِمَنْ حَرَّمَهُ اللَّهُ تَعَالَى عَلَيْهِ، وَهَذَا حُكْمٌ فِي الدِّينِ بِلَا

L20911 **An issue: one who owned water in a river he excavated or a canal he dug.**

L20912 Issue 1359: Every person who owns water in a channel they dug, an irrigation channel they excavated, a spring they developed, or a well they excavated has the foremost right to all such water for as long as they require it. It is impermissible for them to withhold the surplus; rather, they must be compelled to provide it to those in need. It is also impermissible for them to accept compensation for it, whether through sale or otherwise. This is based on what has been narrated to us through the chain of Jarīr from Al-Aʿmash from Abī Ṣāliḥ from Abī Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—stated, "Excess water must not be withheld to prevent access to pastureland."

L20913–20914 From the chain of Abū Dāwūd: Al-Nufaylī narrated to us, from Dāwūd ibn ʿAbd al-Raḥmān al-ʿAṭṭār, from ʿAmr ibn Dīnār, from Abī al-Minhāl, from Iyās ibn ʿAbd, who said: "The Messenger of Allah (peace be upon him) prohibited the sale of surplus water."[10]

L20915 **A legal case concerning water that has predominated over [an area] from a river, seasonal rivulet, or flood, and then spread abundantly.**

L20916 Issue 1360: If water from a river, rivulet, or flood engulfs a piece of land, it remains the property of its owner as originally established. Should the water recede from it at any time—even after a thousand years—the land remains his and his heirs'. Whatever the river deposits from one of its banks to the other remains in its original state, belonging to whoever owned it previously.

L20917 The Malikis held a contrary opinion. This is invalid because altering a watercourse does not strip ownership from its owner, nor does it render forbidden wealth lawful for those upon whom Allah the Exalted has prohib-

[10] **Hadith references (L20914):** Sunan Ibn Majah 2477; Sahih Muslim 1565a.

ited it. This constitutes a religious ruling without evidence. The Messenger of Allah (PBUH) said: “Your blood and wealth are inviolable to you.”

L20918 **Issue: Land does not become [legally valid] through revival (إحياء) except by a Muslim.**

L20919 1361 – Jurisprudential Issue:

L20920 The land does not become [property] through revival except for a Muslim, and as for the *dhimmi*, it does not, due to the statement of Allah, the Most High: “Indeed, the earth belongs to Allah; He bequeaths it to whom He wills of His servants” [Al-A‘rāf 7:128].[11]

L20921 And His statement, the Exalted: {Indeed, the earth is inherited by My righteous servants} [Al-Anbiya: 105], and we are those ones—not the disbelievers—for we are the ones whom Allah, the Exalted, has made inherit the earth. Much praise be to Him.[12]

[11] **Qur’an references (L20920):** Qur’an 7:128 (Al-A’raf).
[12] **Qur’an references (L20921):** Qur’an 21:105 (Al-Anbya).

بُرْهَانٍ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ».

[مَسْأَلَةٌ لَا تَكُونُ الْأَرْضُ بِالْإِحْيَاءِ إِلَّا لِمُسْلِمٍ]

١٣٦١ - مَسْأَلَةٌ:

وَلَا تَكُونُ الْأَرْضُ بِالْإِحْيَاءِ إِلَّا لِمُسْلِمٍ، وَأَمَّا الذِّمِّيُّ فَلَا، لِقَوْلِ اللَّهِ تَعَالَى: {إِنَّ الأَرْضَ لِلَّهِ يُورِثُهَا مَنْ يَشَاءُ مِنْ عِبَادِهِ} [الأعراف: ١٢٨]

وقَوْله تَعَالَى: {أَنَّ الأَرْضَ يَرِثُهَا عِبَادِيَ الصَّالِحُونَ} [الأنبياء: ١٠٥] وَنَحْنُ أُولَئِكَ لَا الْكُفَّارُ، فَنَحْنُ الَّذِينَ أَوْرَثَنَا اللَّهُ تَعَالَى الْأَرْضَ - فَلَهُ الْحَمْدُ كَثِيرًا.



AL-MUHALLA

كِتَابُ الْوَكَالَةِ

The Book of Agency (Wakalah)

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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The Book of Wakālah (Delegation) Issue: Wakālah is permissible.

L20922–20923

L20924 In the name of Allah, the Most Gracious, the Most Merciful. The Book of Agency [1362] – Chapter: Agency is permissible for administering properties, performing ritual slaughter, claiming rights and transferring them, seeking retribution for homicide or lesser harms, solemnizing marriage, selling, purchasing, leasing as a lessor, and renting as a lessee. These permissions apply equally to those present or absent, and to the sick or healthy. Pursuing all rights is obligatory without appointing an agent, unless the right-holder relinquishes their right.

L20925–20927 The proof of this is: “The Messenger of Allah (may Allah’s blessings and peace be upon him) sent governors to establish Hudud, enforce rights over people, collect Zakat, and distribute it.” Bilal was in charge of the expenditures of the Messenger of Allah (may Allah’s blessings and peace be upon him), and he had overseers managing his lands in Khaybar and Fadak. It has been reported to us in the Book of Sacrificial Rites through the chain of Al-Layth from Yazīd ibn Abī Ḥabīb from Abū al-Khayr from ʻUqbah ibn ʻĀmir al-Juhanī: “From the Messenger of Allah (may Allah’s blessings and peace be upon him) that he granted him sheep to distribute among his companions.” We mentioned in the Book of Hajj through the chain of Sufyān ibn ʻUyaynah from Ibn Abī Najīḥ from Mujāhid from ʻAbd al-Raḥmān ibn Abī Laylā from ʻAlī, who said: “The Messenger of Allah (may Allah’s blessings and peace be upon him) commanded me to oversee his sacrificial camels and distribute their hides and trappings.” Through the chain of Abū Dāwūd: ʻUbayd Allāh ibn Saʻd ibn Ibrāhīm ibn Saʻd reported to us from [his uncle—he is Yaʻqūb ibn Ibrāhīm] from his father Ibrāhīm ibn Saʻd from Muḥammad ibn Isḥāq from Abū Nuʻaym Wahb ibn Kaysān: “I heard Jābir ibn ʻAbd Allāh say: ʻI resolved to depart to...’” At Khaybar, the Messenger of Allah—peace and blessings be upon him—said to me: “When you come to my agent in Khaybar, take fifteen wasqs from him. If he seeks a sign from you, place your hand on his collarbone.” This narration confirms the Messenger’s validation of truthfulness when the governor recognizes his truthfulness without requiring evidence.

[كِتَابُ الْوَكَالَةِ] [مَسْأَلَةٌ الْوَكَالَةُ جَائِزَةٌ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الْوَكَالَةِ ١٣٦٢ - مَسْأَلَةٌ: الْوَكَالَةُ جَائِزَةٌ فِي الْقِيَامِ عَلَى الْأَمْوَالِ، وَالتَّذْكِيَةِ، وَطَلَبِ الْحُقُوقِ وَإِعْطَائِهَا، وَأَخْذِ الْقِصَاصِ فِي النَّفْسِ فَمَا دُونَهَا، وَتَبْلِيغِ الْإِنْكَاحِ، وَالْبَيْعِ، وَالشِّرَاءِ، وَالْإِجَارَةِ، وَالِاسْتِئْجَارِ -: كُلُّ ذَلِكَ مِنْ الْحَاضِرِ، وَالْغَائِبِ سَوَاءٌ، وَمِنْ الْمَرِيضِ وَالصَّحِيحِ سَوَاءٌ، وَطَلَبُ الْحَقِّ كُلُّهُ وَاجِبٌ بِغَيْرِ تَوْكِيلٍ، إلَّا أَنْ يُبْرِئَ صَاحِبَ الْحَقِّ مِنْ حَقِّهِ.

بُرْهَانُ ذَلِكَ -: «بِعْثَةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْوُلَاةَ لِإِقَامَةِ الْحُدُودِ، وَالْحُقُوقِ عَلَى النَّاسِ، وَلِأَخْذِ الصَّدَقَاتِ وَتَفْرِيقِهَا» . وَقَدْ كَانَ بِلَالٌ عَلَى نَفَقَاتِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ كَانَ لَهُ نُظَّارٌ عَلَى أَرْضِهِ بِخَيْبَرَ، وَفَدَكَ، وَقَدْ رُوِّينَا فِي " كِتَابِ الْأَضَاحِيِّ " مِنْ طَرِيقِ اللَّيْثِ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ أَبِي الْخَيْرِ عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَعْطَاهُ غَنَمًا يَقْسِمُهَا بَيْنَ أَصْحَابِهِ» . وَذَكَرْنَا فِي " الْحَجِّ " مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ عَلِيٍّ قَالَ: أَمَرَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ أَقُومَ عَلَى بُدْنِهِ وَأَنْ أُقَسِّمَ جُلُودَهَا وَجِلَالَهَا وَمِنْ طَرِيقِ أَبِي دَاوُد نا عُبَيْدُ اللَّهِ بْنُ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ سَعْدٍ نا [عَمِّي - هُوَ يَعْقُوبُ بْنُ إبْرَاهِيمَ] نا أَبِي - هُوَ إبْرَاهِيمُ بْنُ سَعْدٍ - عَنْ مُحَمَّدِ بْنِ إسْحَاقَ عَنْ أَبِي نُعَيْمٍ وَهْبِ بْنِ كَيْسَانَ: سَمِعْت جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: أَرَدْت الْخُرُوجَ إلَى خَيْبَرَ فَقَالَ لِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَتَيْت وَكِيلِي بِخَيْبَرَ فَخُذْ مِنْهُ خَمْسَةَ عَشَرَ وَسْقًا فَإِنْ ابْتَغَى مِنْك آيَةً فَضَعْ يَدَك عَلَى تَرْقُوَتِهِ» . وَفِي هَذَا الْخَبَرِ تَصْدِيقُ الرَّسُولِ إذَا عَلِمَ الْوَالِي بِصِدْقِهِ بِغَيْرِ بَيِّنَةٍ.

L20928 And through the chain of Muslim: Salama ibn Shabib narrated to us, Al-Ḥasan ibn Aʿyan narrated to us, Maʿqil narrated to us via Abī Qazaʿah al-Bāhilī via Abī Naḍrah via Abī Saʿīd al-Khudrī, who mentioned the ḥadīth regarding dates, in which the Messenger of Allah (peace be upon him) said: "Sell their dates and buy for us from this."

وَمِنْ طَرِيقِ مُسْلِمٍ نا سَلَمَةُ بْنُ شَبِيبٍ نا الْحَسَنُ بْنُ أَعْيَنَ نا مَعْقِلٌ عَنْ أَبِي قَزَعَةَ الْبَاهِلِيِّ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ فَذَكَرَ حَدِيثَ التَّمْرِ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «بِيعُوا تَمْرَهَا وَاشْتَرُوا لَنَا مِنْ هَذَا» .

L20929 From the path of Abu Dawud, who narrated to us: Hajjaj ibn Abi Yaʿqub al-Thaqafi narrated to us, Muʿalla ibn Mansur narrated to us, Abdullah ibn al-Mubarak narrated to us, Maʿmar narrated to us from al-Zuhri from Urwah ibn al-Zubayr from Umm Habibah, the Mother of the Believers, that she was married to Ubayd Allah ibn Jahsh, who died in the land of Abyssinia. The Negus married her to the Prophet (peace be upon him), gave her a dowry of four thousand on his behalf, and sent her to the Messenger of Allah (peace be upon him) with Shurahbil ibn Hasanah. This is a report transmitted through mass transmission.

وَمِنْ طَرِيقِ أَبِي دَاوُد نا حَجَّاجُ بْنُ أَبِي يَعْقُوبَ الثَّقَفِيُّ حَدَّثَنَا مُعَلَّى بْنُ مَنْصُورٍ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ حَدَّثَنَا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أُمِّ حَبِيبَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا كَانَتْ تَحْتَ عُبَيْدِ اللَّهِ بْنِ جَحْشٍ فَمَاتَ بِأَرْضِ الْحَبَشَةِ فَزَوَّجَهَا النَّجَاشِيُّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَمْهَرَهَا عَنْهُ أَرْبَعَةَ آلَافٍ وَبَعَثَ بِهَا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعَ شُرَحْبِيلَ بْنِ حَسَنَةَ - وَهَذَا خَبَرٌ مَنْقُولٌ نَقْلَ الْكَافَّةِ.

L20930 And he (peace be upon him) commanded retaliation for murder, stoning, flogging, and amputation [of the hand].

«وَأَمَرَ - عَلَيْهِ السَّلَامُ - بِأَخْذِ الْقَوَدِ، وَبِالرَّجْمِ، وَالْجَلْدِ، وَبِالْقَطْعِ» .

L20931 From the chain of Abu Dawud: Ubaydullah ibn Umar ibn Maysarah reported to us, from Hammad ibn Zayd, from Yahya ibn Saʿid al-Ansari, from Bashir ibn Yasar, from Sahl ibn Abi Hathma and Rafiʿ ibn Khadij: "Muhayyisa ibn Masʿud and Abdullah ibn Sahl set out for Khaybar and parted ways among the palm groves. Abdullah ibn Sahl was killed, and they accused the Jews. His brother Abd al-Rahman ibn Sahl and his cousins Huwayyisa and Muhayyisa came to the Messenger of Allah (peace and blessings be upon him). Abd al-Rahman spoke about his brother's matter though he was the youngest among them. The Messenger of Allah (peace and blessings be upon him) said: 'The elder, the elder!' or he said: 'Let the eldest begin.' So the two of them spoke about their companion's matter."

وَمِنْ طَرِيقِ أَبِي دَاوُد نا عُبَيْدُ اللَّهِ بْنِ عُمَرَ بْنِ مَيْسَرَةَ نا حَمَّادُ بْنُ زَيْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ بَشِيرِ بْنِ يَسَارٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ، وَرَافِعِ بْنِ خَدِيجٍ «أَنَّ مُحَيِّصَةَ بْنَ مَسْعُودٍ، وَعَبْدَ اللَّهِ بْنَ سَهْلٍ انْطَلَقَا إلَى خَيْبَرَ فَتَفَرَّقَا فِي النَّخْلِ فَقُتِلَ عَبْدُ اللَّهِ بْنُ سَهْلٍ فَاتَّهَمُوا الْيَهُودَ فَجَاءَ أَخُوهُ عَبْدُ الرَّحْمَنِ بْنُ سَهْلٍ وَابْنَا عَمِّهِ حُوَيِّصَةُ وَمُحَيِّصَةُ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَتَكَلَّمَ عَبْدُ الرَّحْمَنِ فِي أَمْرِ أَخِيهِ وَهُوَ أَصْغَرُهُمْ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: الْكُبْرَ الْكُبْرَ أَوْ قَالَ: لِيَبْدَأْ الْأَكْبَرُ؟ فَتَكَلَّمَا فِي أَمْرِ صَاحِبِهِمَا» .

L20932–20934 Abu Hanifah said: I do not accept the agency of a person who is present, nor of one who is absent for less than the travel distance that permits shortening prayers. There are three exceptions: unless the present individual or the aforementioned is ill, or unless the litigant consents. This contradicts the

Sunnah, imposes a restriction without evidence, and asserts a claim no one has expressed before.

وَقَالَ أَبُو حَنِيفَةَ: لَا أَقْبَلُ تَوْكِيلَ حَاضِرٍ، وَلَا مَنْ كَانَ غَائِبًا عَلَى أَقَلَّ مِنْ مَسِيرَةِ ثَلَاثٍ، إِلَّا أَنْ يَكُونَ الْحَاضِرُ، أَوْ مَنْ ذَكَرْنَا مَرِيضًا، إِلَّا بِرِضَى الْخَصْمِ - وَهَذَا خِلَافُ السُّنَّةِ وَتَحْدِيدٌ بِلَا بُرْهَانٍ وَقَوْلٌ لَا نَعْلَمُ أَحَدًا قَالَ قَبْلَهُ.

L20935 The Mālikīs said: "We do not speak regarding rights except with the authorization of their owner"—but this is invalid due to what we have mentioned—and due to Allah's statement: {Be upholders of justice, witnesses for Allah} [4:135], and His saying: {Cooperate in righteousness and piety, and do not cooperate in sin and aggression} [5:2]. Therefore, rejecting oppression and demanding rights for present and absent parties is obligatory based on what we have mentioned, provided the present [party] has not relinquished his right—whether through authorization or without it. Asserting rights is obligatory, and the statement of one who says: 'Perhaps the owner does not wish to demand it' cannot prevent this obligation. It is said to him: "Allah the Exalted has commanded its pursuit; thus, this certainty cannot be nullified by mere speculative expectation."[1]

وَقَالَ الْمَالِكِيُّونَ: لَا نَتَكَلَّمُ فِي الْحُقُوقِ إِلَّا بِتَوْكِيلِ صَاحِبِهَا - وَهَذَا بَاطِلٌ لِمَا ذَكَرْنَا - وَلِقَوْلِ اللَّهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥] . وقَوْله تَعَالَى: {وتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] فَوَاجِبٌ بِمَا ذَكَرْنَا إنْكَارُ الظُّلْمِ، وَطَلَبُ الْحَقِّ لِحَاضِرٍ وَغَائِبٍ، مَا لَمْ يَتْرُكْ حَقَّهُ الْحَاضِرَ - سَوَاءٌ بِتَوْكِيلٍ أَوْ بِغَيْرِ تَوْكِيلٍ. وَطَلَبُ الْحَقِّ قَدْ وَجَبَ، وَلَا يَمْنَعُ مِنْ طَلَبِهِ قَوْلُ الْقَائِلِ: لَعَلَّ صَاحِبَهُ لَا يُرِيدُ طَلَبَهُ، وَيُقَالُ لَهُ: قَدْ أَمَرَ اللَّهُ تَعَالَى بِطَلَبِهِ، فَلَا يُسْقِطُ هَذَا الْيَقِينَ مَا يَتَوَقَّعُهُ بِالظَّنِّ.

A Jurisprudential Case Concerning Proxy Authorization for Divorce.

[مَسْأَلَةُ الْوَكَالَةِ عَلَى طَلَاقٍ]

L20937 Issue: It is not permissible to appoint a proxy for divorce, for manumission, for conditional manumission, for revocation, for embracing Islam, for repentance, for admission, for denial, for contracting a gift, for pardoning, for discharge of debt, for contracting a suretyship, for apostasy, for false accusation of adultery, for reconciliation, or for contracting a valid marriage without identifying the bride and groom. This is because all such acts involve imposing a ruling that was never binding, dissolving an existing contract, or transferring ownership through mere words.

١٣٦٣ - مَسْأَلَةٌ: وَلَا تَجُوزُ وَكَالَةٌ عَلَى طَلَاقٍ، وَلَا عَلَى عِتْقٍ، وَلَا عَلَى تَدْبِيرٍ، وَلَا عَلَى رَجْعَةٍ، وَلَا عَلَى إسْلَامٍ، وَلَا عَلَى تَوْبَةٍ، وَلَا عَلَى إقْرَارٍ، وَلَا عَلَى إنْكَارٍ، وَلَا عَلَى عَقْدِ الْهِبَةِ، وَلَا عَلَى الْعَفْوِ، وَلَا عَلَى الْإِبْرَاءِ، وَلَا عَلَى عَقْدِ ضَمَانٍ، وَلَا عَلَى رِدَّةٍ، وَلَا عَلَى قَذْفٍ، وَلَا عَلَى صُلْحٍ، وَلَا عَلَى إنْكَاحِ مُطَاقٍ بِغَيْرِ تَسْمِيَةِ الْمُنْكَحَةِ وَالنَّاكِحِ؛ لِأَنَّ كُلَّ ذَلِكَ إلْزَامُ حُكْمٍ لَمْ يَلْزَمْ قَطُّ، وَحَلُّ عَقْدٍ ثَابِتٍ، وَنَقْلُ مِلْكٍ بِلَفْظٍ.

L20938 It is not permissible for anyone to speak on behalf of another unless a textual evidence obligates it. Nor is there any textual evidence explicitly permitting agency in any of these cases.

فَلَا يَجُوزُ أَنْ يَتَكَلَّمَ أَحَدٌ عَنْ أَحَدٍ إلَّا حَيْثُ أَوْجَبَ ذَلِكَ نَصٌّ، وَلَا نَصَّ عَلَى جَوَازِ الْوَكَالَةِ فِي شَيْءٍ مِنْ هَذِهِ الْوُجُوهِ.

[1] **Qur'an references (L20935):** Qur'an 4:135 (An-Nisa); Qur'an 5:2 (Al-Ma'idah).

L20939 The fundamental principle is that it is impermissible for anyone to make a claim against another or pass judgment upon another, as per the statement of Allah, the Exalted: {No soul bears a burden except against itself, nor does any laden soul bear another's burden} [Al-An'ām 6:164]. All that we have mentioned constitutes imposing a burden on another and enforcing a false judgment that one executes upon another. And success is from Allah, the Exalted.[2]

وَالْأَصْلُ أَنْ لَا يَجُوزَ قَوْلُ أَحَدٍ عَلَى غَيْرِهِ، وَلَا حُكْمُهُ عَلَى غَيْرِهِ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] وَكُلُّ مَا ذَكَرْنَا كَسْبٌ عَلَى غَيْرِهِ وَحُكْمٌ بِالْبَاطِلِ يُمْضِيهِ أَحَدٌ عَلَى أَحَدٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L20940 **A ruling: It is impermissible for an agent to exceed the instructions of his principal.**

[مَسْأَلَةٌ لَا يَحِلُّ لِلْوَكِيلِ تَعَدِّي مَا أَمَرَهُ بِهِ مُوَكِّلُهُ]

L20941–20943 1364. Issue: It is not permissible for an agent to exceed the limits of what his principal has authorized him to do. If he does so, his action is invalid. If it results in a loss, he is liable for compensation, based on Allah's statement—the Exalted: {And do not transgress. Indeed, Allah does not love transgressors} [Al-Baqarah: 190], and Allah, the Exalted, says: {So whoever has transgressed against you, then transgress against him in the same manner as he transgressed against you} [Al-Baqarah: 194]. It is therefore established that if a principal instructs his agent to purchase something on his behalf at a specified price or to sell it on his behalf, the agent must adhere strictly to those terms. If [the agent acts] for a specified price, then sells or buys it for more or less—even by a fals—the deviation is not binding on the principal. The sale is not valid for the principal at all, nor does the sale take effect, because the agent was not authorized to do so.[3]

١٣٦٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْوَكِيلِ تَعَدِّي مَا أَمَرَهُ بِهِ مُوَكِّلُهُ فَإِنْ فَعَلَ لَمْ يَنْفُذْ فِعْلُهُ فَإِنْ فَاتَ ضَمِنَ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَعْتَدُوا إِنَّ اللَّهَ لا يُحِبُّ الْمُعْتَدِينَ} [البقرة: ١٩٠] وَلِقَوْلِهِ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] فَوَجَبَ مِنْ هَذَا أَنَّ مَنْ أَمَرَهُ مُوَكِّلُهُ بِأَنْ يَبْتَاعَ لَهُ شَيْئًا بِثَمَنٍ مُسَمًّى، أَوْ يَبِيعَهُ لَهُ بِثَمَنٍ مُسَمًّى، فَبَاعَهُ أَوْ ابْتَاعَهُ بِأَكْثَرَ أَوْ بِأَقَلَّ - وَلَوْ بِفَلْسٍ - فَمَا زَادَ لَمْ يَلْزَمْ الْمُوَكِّلَ، وَلَمْ يَكُنْ الْبَيْعُ لَهُ أَصْلًا، وَلَمْ يَنْفُذْ الْبَيْعُ؛ لِأَنَّهُ لَمْ يُؤْمَرْ بِذَلِكَ.

L20944 If he appoints him as an agent to sell or purchase on his behalf, then if he purchases for him at an equivalent value or sells at that value, it is binding. Otherwise, it is rejected. Similarly, if someone purchases for another or sells for him without being commanded to do so, the sale is not binding at all, and the other party may not ratify it, as such ratification is invalid and impermissible. The purchase remains binding upon the agent. Any opinion contrary to this is a claim without proof and a ruling based on falsehood.

فَلَوْ وَكَّلَهُ عَلَى أَنْ يَبِيعَ لَهُ أَوْ يَبْتَاعَ لَهُ، فَإِنْ ابْتَاعَ لَهُ بِمَا يُسَاوِي، أَوْ بَاعَ بِذَلِكَ لَزِمَ، وَإِلَّا فَهُوَ مَرْدُودٌ - وَكَذَلِكَ مَنْ ابْتَاعَ لِآخَرَ، أَوْ بَاعَ لَهُ بِغَيْرِ أَنْ يَأْمُرَهُ لَمْ يَلْزَمْ فِي الْبَيْعِ أَصْلًا، وَلَا جَازَ لِلْآخَرِ إمْضَاؤُهُ؛ لِأَنَّهُ إمْضَاءٌ بَاطِلٌ لَا يَجُوزُ، وَكَانَ الشِّرَاءُ لَازِمًا لِلْوَكِيلِ - وَمَا عَدَا هَذَا فَقَوْلٌ بِلَا بُرْهَانٍ، وَحُكْمٌ بِالْبَاطِلِ.

[2] **Qur'an references (L20939):** Qur'an 6:164 (Al-An'am).

[3] **Qur'an references (L20941):** Qur'an 2:190 (Al-Baqarah); Qur'an 5:87 (Al-Ma'idah); Qur'an 2:194 (Al-Baqarah).

L20945 A group argued for the permissibility of that by citing the hadiths of Urwah al-Bāriqī and Ḥakīm ibn Ḥizām: "The Messenger of Allah (peace be upon him) commanded each of them to purchase a sheep for him with a dinar. Each purchased two sheep, sold one of them for a dinar, and brought the dinar to the Prophet (peace be upon him) along with the sheep." These are two disconnected (broken-chain) reports that are not valid.

A Jurisprudential Ruling on the Acts of the Agent

L20946–20947

L20948 Issue: The agent's action is valid in matters the principal has authorized and remains binding on the principal unless the agent validly ascertains that his appointment has been revoked. Once this is confirmed, the legal effect of his actions ceases from that moment, and what he performed is annulled.

L20949 As for all actions the agent performed as instructed by the principal from the time of his dismissal until he received notification of it, they are valid regardless of whether the period between those two events was long or short.

L20950–20951 The same ruling applies to the Imam's dismissal of a commander, governor, or judge, and to the dismissal by these authorities of those whose appointment was delegated to them. There is no legal distinction – for he dismissed him without notifying him after having appointed him and granted him unrestricted authority over selling, purchasing, slaughtering, legal retribution, and marriage to a specifically named woman or man. This constitutes deception and cheating. Allah the Exalted said: "They deceive Allah and those who believe, but they deceive none except themselves" [Al-Baqarah: 9].[4]

L20952 The Messenger of Allah (peace be upon him) said: "Whoever deceives us is not one of us." Therefore, the dismissal of his agent by the principal is invalid unless he declares verbally, writes to him, or instructs someone to inform him: "When my messenger reaches you, I have dismissed you." This is valid because the principal has the right to manage his own rights as he wills. Once the notice reaches the agent, the dismissal becomes legally effective. The opposing litigant has no right to prevent the principal from

[4]**Qur'an references (L20951):** Qur'an 2:9 (Al-Baqarah).

وَاحْتَجَّ قَوْمٌ فِي إِجَازَةِ ذَلِكَ بِحَدِيثِ عُرْوَةَ الْبَارِقِيِّ، وَحَكِيمِ بْنِ حِزَامٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ كُلَّ وَاحِدٍ مِنْهُمَا بِأَنْ يَبْتَاعَ لَهُ شَاةً بِدِينَارٍ فَابْتَاعَ شَاتَيْنِ فَبَاعَ أَحَدَهُمَا بِدِينَارٍ وَأَتَى بِهِ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِالشَّاةِ» وَهُمَا خَبَرَانِ مُنْقَطِعَانِ لَا يَصِحَّانِ.

[مَسْأَلَةُ فِعْلُ الْوَكِيلِ]

مَسْأَلَةٌ: وَفِعْلُ الْوَكِيلِ نَافِذٌ فِيمَا أَمَرَ بِهِ الْمُوَكِّلُ لَازِمٌ لِلْمُوَكِّلِ مَا لَمْ يَصِحَّ عِنْدَهُ أَنَّ مُوَكِّلَهُ قَدْ عَزَلَهُ، فَإِذَا صَحَّ ذَلِكَ عِنْدَهُ لَمْ يَنْفُذْ حُكْمُهُ مِنْ حِينَئِذٍ وَيَفْسَخُ مَا فَعَلَ.

وَأَمَّا كُلُّ مَا فَعَلَ مِمَّا أَمَرَهُ بِهِ الْمُوَكِّلُ مِنْ حِينِ عَزْلِهِ إِلَى حِينِ بُلُوغِ الْخَبَرِ إِلَيْهِ فَهُوَ نَافِذٌ طَالَتْ الْمُدَّةُ بَيْنَ ذَلِكَ أَوْ قَصُرَتْ.

وَهَكَذَا الْقَوْلُ فِي عَزْلِ الْإِمَامِ لِلْأَمِيرِ، وَلِلْوَالِي، وَلِلْقَاضِي، وَفِي عَزْلِ هَؤُلَاءِ لِمَنْ جُعِلَ إلَيْهِمْ أَنْ يُوَلُّوهُ وَلَا فَرْقَ - لِأَنَّهُ عَزَلَهُ بِغَيْرِ أَنْ يُعْلِمَهُ بَعْدَ أَنْ وَلَّاهُ وَأَطْلَقَهُ عَلَى الْبَيْعِ، وَعَلَى الِابْتِيَاعِ، وَعَلَى التَّذْكِيَةِ، وَالْقِصَاصِ، وَالْإِنْكَاحِ لِمُسَمَّاةٍ وَمُسَمًّى -: خَدِيعَةٌ وَغِشٌّ، قَالَ اللَّهُ تَعَالَى: {يُخَادِعُونَ اللَّهَ وَالَّذِينَ آمَنُوا وَمَا يَخْدَعُونَ إِلا أَنْفُسَهُمْ} [البقرة: ٩]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ غَشَّنَا فَلَيْسَ مِنَّا» فَعَزْلُهُ لَهُ بَاطِلٌ إلَّا أَنْ يَقُولَ، أَوْ يَكْتُبَ إلَيْهِ أَوْ يُوصِي إلَيْهِ: إذَا بَلَغَك رَسُولِي فَقَدْ عَزَلْتُك - فَهَذَا صَحِيحٌ؛ لِأَنَّ لَهُ أَنْ يَتَصَرَّفَ فِي حُقُوقِ نَفْسِهِ كَمَا يَشَاءُ، فَإِذَا بَلَغَهُ فَقَدْ صَحَّ عَزْلُهُ، وَلَيْسَ لِلْخَصْمِ

dismissing his agent and appointing another, for the agency appointment in such matters is valid. There is no proof that the opposing litigant may obstruct the principal from dismissing whoever he chooses or appointing whoever he wishes.

L20953 If it is said: "There is harm upon the litigant in this?" We respond: There is absolutely no harm to the litigant in this whatsoever. Rather, all harm lies in preventing a person from pursuing their rights without a Quranic proof that necessitates such prevention or a Sunnah—for this is the divine law that Allah the Exalted has not permitted.

L20954 **Issue: The agency becomes void upon the death of the principal.**

L20955 1366 – Issue:

L20956–20958 The agency is nullified by the death of the appointing party, whether this reaches the agent or not—unlike the death of the Imam. If he dies, all rulers' rulings remain in effect until the succeeding Imam dismisses them. This is based on Allah's statement: {No soul bears the burden of another} [Al-An'am 6:164]. The wealth transfers to the heirs upon the appointing party's death, so no ruling by someone they did not appoint is permissible over their wealth. This does not apply to the Imam, for Muslims must have someone to manage their affairs, "and indeed, the commanders of the Messenger of Allah—peace and blessings be upon him—were killed…" He was pleased with all of them at Mu'tah. Then Khālid ibn al-Walīd took charge of the matter without having been appointed by the Messenger of Allah (peace and blessings of Allah be upon him) until he returned with the Muslims, and he (peace be upon him) approved of that. He (peace be upon him) had died while his governors were in Yemen, Makkah, Bahrain, and other regions, and their judgments were implemented before news of his death (peace be upon him) reached them. None of the Companions disagreed on that (may Allah be pleased with them), and with Allah, the Exalted, lies all success.[5]

أَنْ يَمْنَعَ مَنْ يُخَاصِمُهُ مِنْ عَزْلِ وَكِيلِهِ وَتَوْلِيَةِ آخَرَ؛ لِأَنَّ التَّوْكِيلَ فِي ذَلِكَ قَدْ صَحَّ، وَلَا بُرْهَانَ عَلَى أَنَّ لِلْخَصْمِ مَنْعَهُ مِنْ عَزْلِ مَنْ شَاءَ وَتَوْلِيَةِ مَنْ شَاءَ.

فَإِنْ قِيلَ: إِنَّ فِي ذَلِكَ ضَرَرًا عَلَى الْخَصْمِ؟ قُلْنَا: لَا ضَرَرَ عَلَيْهِ فِي ذَلِكَ أَصْلًا، بَلْ الضَّرَرُ كُلُّهُ هُوَ الْمَنْعُ مِنْ تَصَرُّفِ الْمَرْءِ فِي طَلَبِ حُقُوقِهِ بِغَيْرِ قُرْآنٍ أَوْجَبَ ذَلِكَ، وَلَا سُنَّةٍ - وَهَذَا هُوَ الشَّرْعُ الَّذِي لَمْ يَأْذَنْ اللَّهُ تَعَالَى بِهِ.

[مَسْأَلَةٌ الْوَكَالَةُ تَبْطُلُ بِمَوْتِ الْمُوَكِّلِ]

١٣٦٦ - مَسْأَلَةٌ:

وَالْوَكَالَةُ تَبْطُلُ بِمَوْتِ الْمُوَكِّلِ بَلَغَ ذَلِكَ إلَى الْوَكِيلِ، أَوْ لَمْ يَبْلُغْ بِخِلَافِ مَوْتِ الْإِمَامِ، فَإِنَّهُ إنْ مَاتَ فَالْوُلَاةُ كُلُّهُمْ نَافِذَةٌ أَحْكَامُهُمْ حَتَّى يَعْزِلَهُمْ الْإِمَامُ الْوَالِي، وَذَلِكَ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَالْمَالُ قَدْ انْتَقَلَ بِمَوْتِ الْمُوَكِّلِ إلَى وَرَثَتِهِ، فَلَا يَجُوزُ فِي مَالِهِمْ حُكْمُ مَنْ لَمْ يُوَكِّلُوهُ، وَلَيْسَ كَذَلِكَ الْإِمَامُ؛ لِأَنَّ الْمُسْلِمِينَ لَا بُدَّ لَهُمْ مِمَّنْ يَقُومُ بِأَمْرِهِمْ، «وَقَدْ قُتِلَ أُمَرَاءُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرَضِيَ عَنْهُمْ بِمُؤْتَةَ كُلُّهُمْ فَتَوَلَّى الْأَمْرَ خَالِدُ بْنُ الْوَلِيدِ مِنْ غَيْرِ أَنْ يُؤَمِّرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى رَجَعَ بِالْمُسْلِمِينَ وَصَوَّبَ - عَلَيْهِ السَّلَامُ - ذَلِكَ» وَقَدْ مَاتَ - عَلَيْهِ السَّلَامُ - وَوُلَاتُهُ بِالْيَمَنِ، وَمَكَّةَ، وَالْبَحْرَيْنِ، وَغَيْرِهَا، فَنَفَذَتْ أَحْكَامُهُمْ قَبْلَ أَنْ يَبْلُغَهُمْ مَوْتُهُ - عَلَيْهِ السَّلَامُ - وَلَمْ يَخْتَلِفْ فِي ذَلِكَ أَحَدٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[5] **Qur'an references (L20956):** Qur'an 6:164 (Al-An'am).



AL-MUHALLA

كِتَابُ الْمُضَارَبَةِ وَهِيَ الْقِرَاضُ

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Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْمُضَارَبَةِ وَهِيَ الْقِرَاضُ] [مَسْأَلَةٌ الْقِرَاضُ كَانَ فِي الْجَاهِلِيَّةِ]

١٣٦٧ - مَسْأَلَةٌ: الْقِرَاضُ كَانَ فِي الْجَاهِلِيَّةِ، وَكَانَتْ قُرَيْشٌ أَهْلَ تِجَارَةٍ لَا مَعَاشَ لَهُمْ مِنْ غَيْرِهَا وَفِيهِمْ الشَّيْخُ الْكَبِيرُ الَّذِي لَا يُطِيقُ السَّفَرَ، وَالْمَرْأَةُ وَالصَّغِيرُ، وَالْيَتِيمُ، فَكَانُوا وَذَوُو الشُّغْلِ وَالْمَرَضِ يُعْطُونَ الْمَالَ مُضَارَبَةً لِمَنْ يَتَّجِرُ بِهِ بِجُزْءٍ مُسَمًّى مِنْ الرِّبْحِ فَأَقَرَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ فِي الْإِسْلَامِ وَعَمِلَ بِهِ الْمُسْلِمُونَ عَمَلًا مُتَيَقَّنًا لَا خِلَافَ فِيهِ، وَلَوْ وُجِدَ فِيهِ خِلَافٌ مَا الْتَفَتَ إلَيْهِ؛ لِأَنَّهُ نَقْلُ كَافَّةٍ بَعْدَ كَافَّةٍ إلَى زَمَنِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعِلْمِهِ بِذَلِكَ.

«وَقَدْ خَرَجَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي قِرَاضٍ بِمَالِ خَدِيجَةَ - رَضِيَ اللَّهُ عَنْهَا -» .

[مَسْأَلَةٌ الْقِرَاضُ بِالدَّنَانِيرِ وَالدَّرَاهِمِ]

١٣٦٨ - مَسْأَلَةٌ: وَالْقِرَاضُ إنَّمَا هُوَ بِالدَّنَانِيرِ وَالدَّرَاهِمِ - وَلَا يَجُوزُ بِغَيْرِ ذَلِكَ، إلَّا بِأَنْ يُعْطِيَهُ الْعَرَضَ فَيَأْمُرُهُ بِبَيْعِهِ بِثَمَنٍ مَحْدُودٍ، وَبِأَنْ يَأْخُذَ الثَّمَنَ فَيَعْمَلُ بِهِ قِرَاضًا، لِأَنَّ هَذَا مُجْمَعٌ عَلَيْهِ، وَمَا عَدَاهُ مُخْتَلَفٌ فِيهِ وَلَا نَصَّ بِإِيجَابِهِ، وَلَا حُكْمَ لِأَحَدٍ فِي مَالِهِ إلَّا بِمَا أَبَاحَهُ لَهُ النَّصُّ.

وَمِمَّنْ مَنَعَ مِنْ الْقِرَاضِ بِغَيْرِ الدَّنَانِيرِ، وَالدَّرَاهِمِ: الشَّافِعِيُّ، وَمَالِكٌ، وَأَبُو حَنِيفَةَ، وَأَبُو سُلَيْمَانَ، وَغَيْرُهُمْ.

[مَسْأَلَةٌ الْقِرَاضُ إلَى أَجَلٍ مُسَمًّى]

L20959–20960 **Book on Mudarabah (Qirad) Issue: Qirad was practiced during the pre-Islamic era.**

L20961 Issue 1367: The qirāḍ (commenda partnership, also known as muḍāraba) existed during the pre-Islamic era. The Quraysh were a trading people who had no livelihood apart from commerce. Among them were the elderly man too frail to travel, women, minors, orphans, those preoccupied with responsibilities, and the infirm. They would entrust their wealth through a muḍāraba arrangement to those who traded with it, in exchange for a specified share of the profits. The Messenger of Allah (peace be upon him) ratified this practice in Islam, and Muslims upheld it with certainty. Had there been any disagreement about it, no heed would have been given to such dissent, for its validity was transmitted through successive generations up to the time of the Messenger of Allah (peace be upon him) and his explicit acknowledgment of it.

L20962 He (peace be upon him) ventured into a qiraḍ partnership using Khadijah's wealth (may Allah be pleased with her).

L20963 **[A question regarding Mudarabah with Dinars and Dirhams]**

L20964 Issue 1368: The commenda partnership (qirad) is valid exclusively with dinars and dirhams. It is impermissible with other forms except when one gives merchandise to another and instructs him to sell it for a fixed price, or when one takes the price and invests it in a qirad. This is because such practice is unanimously agreed upon, while alternatives remain disputed. No text requires it, nor does anyone have authority over his own property except what the text has permitted.

L20965 Al-Shāfiʿī, Mālik, Abū Ḥanīfah, Abū Sulaymān, and others prohibited conducting qirāḍ (commenda partnership) with anything other than the dinars and dirhams.

L20966 **Issue: *Qirad* Contract for a Fixed Term**

L20967 1369 – Issue: It is fundamentally impermissible to establish a commenda partnership (qirāḍ) for a specified term, except that which is established by a textual source or consensus (ijmāʿ).

١٣٦٩ - مَسْأَلَةٌ: وَلَا يَجُوزُ الْقِرَاضُ إلَى أَجَلٍ مُسَمًّى أَصْلًا إلَّا مَا جَاءَ بِهِ نَصٌّ، أَوْ إجْمَاعٌ.

L20968 It is impermissible to stipulate [the inclusion of] a slave or hired worker who labors alongside him, or a share of profits for so-and-so, for this is a condition not in the Book of Allah, the Exalted and Majestic, and is therefore invalid.

وَلَا يَجُوزُ أَنْ يَشْتَرِطَ عَبْدًا يَعْمَلُ مَعَهُ، أَوْ أَجِيرًا يَعْمَلُ مَعَهُ، أَوْ جُزْءًا مِنْ الرِّبْحِ لِفُلَانٍ؛ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ.

L20969–20970 As for the Mālikīs and Shāfiʿīs, they contradicted each other here: they held the same view as we do regarding *qirāḍ* (commenda partnership), but asserted that *musāqāt* (orchard-sharing contract) is not permissible at all except with a specified term.

وَأَمَّا الْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: فَتَنَاقَضُوا هَهُنَا فَقَالُوا فِي الْقِرَاضِ كَمَا قُلْنَا، وَقَالُوا فِي " الْمُسَاقَاةِ " لَا تَجُوزُ أَلْبَتَّةَ إلَّا إلَى أَجَلٍ مُسَمًّى.

L20971 Similarly, they stated regarding "sharecropping" in the context where they permitted it - there being no distinction between any aspect of this - alongside their disagreement over "sharecropping" and "orchard partnership" concerning the Sunnah pertaining to that, and their abandonment of analogy as well. And success comes solely from Allah, the Exalted.

وَكَذَلِكَ قَالُوا فِي " الْمُزَارَعَةِ " فِي الْمَوْضِعِ الَّذِي أَجَازُوهَا فِيهِ - وَلَا فَرْقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ مَعَ خِلَافِهِمْ فِي " الْمُزَارَعَةِ " و " الْمُسَاقَاةِ " السُّنَّةَ الْوَارِدَةَ فِي ذَلِكَ، وَتَرَكُوا الْقِيَاسَ أَيْضًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20972 **An issue concerning the designation of the profit share that the two parties mutually stipulate.**

[مَسْأَلَةٌ تَسْمِيَةَ السَّهْمِ الَّذِي يَتَقَارَضَانِ عَلَيْهِ مِنْ الرِّبْحِ]

L20973 1370 - Issue: A *qirad* contract is only valid if both parties specify the share from the profit they mutually agree upon—such as a sixth, quarter, third, half, or similar—and specify the portion each of them receives from the profit. If this condition is not met, the contract is neither a valid *qirad* nor a customary practice that the worker follows, and thus it is void. Success is by Allah, the Most High.

١٣٧٠ - مَسْأَلَةٌ: وَلَا يَجُوزُ الْقِرَاضُ إلَّا بِأَنْ يُسَمِّيَا السَّهْمَ الَّذِي يَتَقَارَضَانِ عَلَيْهِ مِنْ الرِّبْحِ، كَسُدُسٍ، أَوْ رُبُعٍ، أَوْ ثُلُثٍ، أَوْ نِصْفٍ، أَوْ نَحْوِ ذَلِكَ، وَيُبَيِّنَا مَا لِكُلِّ وَاحِدٍ مِنْهُمَا مِنْ الرِّبْحِ؛ لِأَنَّهُ إنْ لَمْ يَكُنْ هَكَذَا لَمْ يَكُنْ قِرَاضًا وَلَا عُرْفًا مَا يَعْمَلُ الْعَامِلُ عَلَيْهِ فَهُوَ بَاطِلٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20974 **A legal issue: It is not permissible for the agent of a commenda to take anything from the capital.**

[مَسْأَلَةٌ لَا يَحِلُّ لِعَامِلِ الْقِرَاضِ أَنْ يَأْكُلَ مِنْ الْمَالِ شَيْئًا]

L20975 Issue 1371: It is impermissible for a public official to consume or wear anything from public wealth, whether during travel or at home.

١٣٧١ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْعَامِلِ أَنْ يَأْكُلَ مِنْ الْمَالِ شَيْئًا وَلَا أَنْ يَلْبَسَ مِنْهُ شَيْئًا، لَا فِي سَفَرٍ وَلَا فِي حَضَرٍ.

L20976 It has been reported to us through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Hishām ibn Ḥassān, from Ibn Sīrīn, who said: Whatever the *mudārib* (working partner) eats is a debt upon him.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ ابْنِ سِيرِينَ قَالَ: مَا أَكَلَ الْمُضَارِبُ فَهُوَ دَيْنٌ عَلَيْهِ.

L20977 It is soundly established from Ibrāhīm and al-Ḥasan: his maintenance must be provided from the entirety of the estate. Ibrāhīm said, "His clothing is likewise from it." Ibn Sīrīn said, "This is not the case."

وَصَحَّ عَنْ إِبْرَاهِيمَ، وَالْحَسَنِ: أَنَّ نَفَقَتَهُ مِنْ جَمِيعِ الْمَالِ - قَالَ إِبْرَاهِيمُ: وَكِسْوَتُهُ كَذَلِكَ قَالَ ابْنُ سِيرِينَ لَيْسَ كَذَلِكَ.

L20978 Our opinion here is the opinion of Al-Shāfiʿī, Aḥmad, and Abī Sulaymān.

وَقَوْلُنَا هَهُنَا هُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ.

L20979 Abu Hanifa and Malik said: As for while in residence, it is as we have stated, but during travel, he may eat from it, clothe himself from it, and ride from it in a customary manner—if the property is abundant—otherwise, he may not. However, Malik said: He may use small coins from it to sustain himself while in residence.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: أَمَّا فِي الْحَضَرِ فَكَمَا قُلْنَا، وَأَمَّا فِي السَّفَرِ فَيَأْكُلُ مِنْهُ وَيَكْتَسِي مِنْهُ وَيَرْكَبُ مِنْهُ بِالْمَعْرُوفِ - إِذَا كَانَ الْمَالُ كَثِيرًا - وَإِلَّا فَلَا، إِلَّا أَنَّ مَالِكًا قَالَ: لَهُ فِي الْحَضَرِ أَنْ يَتَغَذَّى مِنْهُ بِالْأَفْلُسِ.

L20980 This is an utterly invalid categorization because it lacks any proof. I wish I knew—what is the measure of the large amount of wealth for which they permitted this, and what is the measure of the small amount for which they prohibited it? All of this is invalid because it is a condition not found in the Book of Allah Almighty, so stipulating such a condition is impermissible. If no such condition is stipulated, then it constitutes wrongful consumption of wealth.

وَهَذَا تَقْسِيمٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ بِلَا دَلِيلٍ، وَلَيْتَ شِعْرِي مَا مِقْدَارُ الْمَالِ الْكَثِيرِ الَّذِي أَبَاحُوا هَذَا فِيهِ؟ وَمَا مِقْدَارُ الْقَلِيلِ الَّذِي مَنَعُوهُ فِيهِ؟ وَهَذَا كُلُّهُ بَاطِلٌ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَلَا يَجُوزُ اشْتِرَاطُهُ - فَإِنْ لَمْ يُشْتَرَطْ فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ.

L20981 Moreover, the wealth becomes uncertain, so one cannot discern what is spent from it or what remains. A small amount of what is ḥarām (unlawful) remains ḥarām—even if it is as insignificant as a speck—and a large amount of what is ḥalāl (lawful) remains ḥalāl—even if it encompasses the entire world and all that it contains.

ثُمَّ أَيْضًا يَعُودُ الْمَالُ إِلَى الْجَهَالَةِ فَلَا يَدْرِي مَا يَخْرُجُ مِنْهُ؟ وَلَا مَا يَبْقَى مِنْهُ؟ وَقَلِيلُ الْحَرَامِ حَرَامٌ - وَلَوْ أَنَّهُ مِقْدَارُ ذَرَّةٍ، وَكَثِيرُ الْحَلَالِ حَلَالٌ - وَلَوْ أَنَّهُ الدُّنْيَا وَمَا فِيهَا.

L20982 What if they say he is striving for the benefit of the wealth?

فَإِنْ قَالُوا هُوَ سَاعٍ فِي مَصْلَحَةِ الْمَالِ؟

L20983–20984 We said: Yes, so what ensued? He is merely striving for a gain he hopes to attain, as he acts only for his own interest.

قُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ وَإِنَّمَا هُوَ سَاعٍ لِرِبْحٍ يَرْجُوهُ، فَإِنَّمَا يَسْعَى فِي حَظِّ نَفْسِهِ.

L20985 **A scenario where the capital owner and the working partner shared the profit.**

[مَسْأَلَةُ صَاحِبِ الْمَالِ وَالْعَامِلِ اقْتَسَمَا الرِّبْحَ]

L20986 1372 - Issue: Every profit they acquire may be divided between them. If they do not divide it and leave the matter as is, then a loss occurs in the capital, the active partner is entitled to no profit. If they divide the profit, each of them owns their respective share, and their ownership is not forfeited, since their transaction was predicated on each partner being entitled to a share of the profit. If they divide it, this constitutes their contract mutually agreed upon as permissible. If they do not divide it, they have waived their right to it, and this is permissible.

١٣٧٢ - مَسْأَلَةٌ: وَكُلُّ رِبْحٍ رَبِحَاهُ فَلَهُمَا أَنْ يَتَقَاسَمَاهُ، فَإِنْ لَمْ يَفْعَلَا وَتَرَكَا الْأَمْرَ بِحَسَبِهِ ثُمَّ خَسِرَ فِي الْمَالِ فَلَا رِبْحَ لِلْعَامِلِ، وَأَمَّا إذَا اقْتَسَمَا الرِّبْحَ فَقَدْ مَلَكَ كُلُّ وَاحِدٍ مِنْهُمَا مَا صَارَ لَهُ، فَلَا يَسْقُطُ مِلْكُهُ عَنْهُ؛ لِأَنَّهُمَا عَلَى هَذَا تَعَامَلَا، وَعَلَى أَنْ يَكُونَ لِكُلِّ وَاحِدٍ مِنْهُمَا حَظٌّ مِنْ الرِّبْحِ، فَإِذَا اقْتَسَمَاهُ فَهُوَ عَقْدُهُمَا الْمُتَّفَقُ عَلَى جَوَازِهِ، فَإِنْ لَمْ يَقْتَسِمَاهُ فَقَدْ تَطَوَّعَا بِتَرْكِ حَقِّهِمَا وَذَلِكَ مُبَاحٌ.

[مَسْأَلَةٌ لَا ضَمَانَ عَلَى الْعَامِلِ فِيمَا تَلِفَ مِنْ الْمَالِ]

L20987 **Issue: There is no liability upon the custodian for property that perished.**

L20988 Issue 1373: The worker bears no liability for property that is lost - even if all of it is lost - nor for losses incurred in its management. They have no claim against the property owner unless they exceed their authority or neglect [their duty], in which case they become liable. This is based on the statement of Allah's Messenger - peace and blessings be upon him: "Your blood and your wealth are sacred to you."

١٣٧٣ - مَسْأَلَةٌ: وَلَا ضَمَانَ عَلَى الْعَامِلِ فِيمَا تَلِفَ مِنْ الْمَالِ - وَلَوْ تَلِفَ كُلُّهُ - وَلَا فِيمَا خَسِرَ فِيهِ، وَلَا شَيْءَ لَهُ عَلَى رَبِّ الْمَالِ، إلَّا أَنْ يَتَعَدَّى أَوْ يُضَيِّعَ فَيَضْمَنُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

[مَسْأَلَةٌ رَبّ الْمَال وَعَامِل الْقِرَاض أَيُّهُمَا أَرَادَ تَرْكَ الْعَمَلِ فَلَهُ ذَلِكَ]

L20989 **A legal question: If the capital owner or the working partner in a *qirad* wishes to withdraw from the partnership, whichever of the two seeks to do so has that right.**

١٣٧٤ - مَسْأَلَةٌ:

L20990 1374: Issue

وَأَيُّهُمَا أَرَادَ تَرْكَ الْعَمَلِ فَلَهُ ذَلِكَ وَيُجْبَرُ الْعَامِلُ عَلَى بَيْعِ السِّلَعِ مُعَجِّلًا - خَسِرَ أَوْ رَبِحَ - لِأَنَّهُ لَا مُدَّةَ فِي الْقِرَاضِ، فَإِذْ لَيْسَ فِيهِ مُدَّةٌ فَلَا يَجُوزُ أَنْ يُجْبَرَ الْآبِي مِنْهُمَا عَلَى التَّمَادِي فِي عَمَلٍ لَا يُرِيدُهُ أَحَدُهُمَا فِي مَالِهِ، وَلَا يُرِيدُهُ الْآخَرُ فِي عَمَلِهِ، وَلَا يَجُوزُ التَّأْخِيرُ فِي ذَلِكَ؛ لِأَنَّهُ لَا يَدْرِي كَمْ يَكُونُ التَّأْخِيرُ؟ وَقَدْ تَسْمُو قِيمَةُ السِّلَعِ، وَقَدْ تَنْحَطُّ، فَإِيجَابُ التَّأْخِيرِ فِي ذَلِكَ خَطَأٌ، وَلَا يَلْزَمُ أَحَدًا أَنْ يُبِيحَ مَالَهُ لِغَيْرِهِ لِيُمَوِّلَهُ بِهِ. وَالْعَجَبُ مِمَّنْ

L20991 Whichever of them wishes to terminate the transaction may do so, and the agent is compelled to sell the goods immediately—whether at a loss or profit—because the *qirad* has no stipulated duration. Since no duration is specified, neither of the two parties may be compelled to persist in a transaction that one rejects for their capital or the other for their labor. Postponement in this matter is impermissible, for how long the delay might be is unknown. The value of the goods may rise or fall, and thus imposing postponement here is erroneous. No one is obligated to permit another to utilize their wealth for financing. It is perplexing that some enforce compelling the capital owner to wait until the goods find a market—thereby financing the

agent with another's wealth—while they do not deem it obligatory to compel one to assist relatives or others facing starvation by providing sustenance. This is contrary to established realities—and success is attained only through Allah, the Exalted.

A case where the mudarib in the mudarabah overstepped his authority and thereby profited.

Question 1375:

If the agent transgresses and thereby profits, and if he purchased on his own liability by drawing funds from the commenda capital, his legal status is that of a usurper. He becomes liable for the entire capital if it perishes or for what is lost from it due to his transgression, and the profit belongs to him because he undertook the purchase.

If he purchased something using the qirad (commenda) capital itself, the transaction is null and void. If the investor (owner of the capital) cannot be identified from it, the profit is allocated to the needy, as it is wealth with no identifiable owner.

This is the opinion of Al-Nakha'i, Al-Sha'bi, Hammad ibn Abi Sulayman, Ibn Shubrumah, and Abu Sulayman. And by Allah, the Exalted, is success.

A legal case involving the death of both the capital owner and the qirāḍ agent.

Issue: Moreover, if either of them dies, the *qirad* contract becomes void. As for the death of the capital provider, this is because the capital has passed to the heirs. The Messenger of Allah (peace be upon him) said: "Your blood and your wealth are sacred for you."

أَلْزَمَ هَهُنَا إِجْبَارَ صَاحِبِ الْمَالِ عَلَى الصَّبْرِ حَتَّى يَكُونَ لِلسِّلَعِ سُوقٌ لِيُمَوِّلَ بِذَلِكَ الْعَامِلَ مِنْ مَالِ غَيْرِهِ، وَهُوَ لَا يَرَى إِجْبَارَهُ عَلَى تَدَارُكِ مَنْ يَمُوتُ جُوعًا مِنْ ذَوِي رَحِمِهِ، أَوْ غَيْرِهِمْ، بِمَا يُقِيمُ رَمَقَهُ، وَهَذَا عَكْسُ الْحَقَائِقِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَعَدَّى عَامِلُ الْمُضَارَبَةِ فَرَبِحَ]

١٣٧٥ - مَسْأَلَةٌ:

وَإِنْ تَعَدَّى الْعَامِلُ فَرَبِحَ، فَإِنْ كَانَ اشْتَرَى فِي ذِمَّتِهِ وَوَزَنَ مِنْ مَالِ الْقِرَاضِ فَحُكْمُهُ حُكْمُ الْغَاصِبِ - وَقَدْ صَارَ ضَامِنًا لِلْمَالِ إنْ تَلِفَ أَوْ لِمَا تَلِفَ مِنْهُ بِالتَّعَدِّي، وَيَكُونُ الرِّبْحُ لَهُ، لِأَنَّ الشِّرَى لَهُ.

وَإِنْ كَانَ اشْتَرَى بِمَالِ الْقِرَاضِ نَفْسِهِ فَالشِّرَى فَاسِدٌ مَفْسُوخٌ، فَإِنْ لَمْ يُوجَدْ صَاحِبُهُ الْبَائِعُ مِنْهُ فَالرِّبْحُ لِلْمَسَاكِينِ، لِأَنَّهُ مَالٌ لَا يُعْرَفُ لَهُ صَاحِبٌ.

وَهَذَا قَوْلُ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَابْنِ شُبْرُمَةَ، وَأَبِي سُلَيْمَانَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَاتَ رَبُّ الْمَالِ وَعَامِلِ الْقِرَاضِ]

مَسْأَلَةٌ: وَأَيُّهُمَا مَاتَ بَطَلَ الْقِرَاضُ -: أَمَّا فِي مَوْتِ صَاحِبِ الْمَالِ فَلِأَنَّ الْمَالَ قَدْ صَارَ لِلْوَرَثَةِ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L21000 As for the death of the agent, it is based on the statement of Allah the Exalted: {No soul earns [a burden] except against itself} [Surah Al-An'am 6:164]. The contract of the owner of the wealth was solely with the deceased, not with his heir. However, the agent's action after the death of the owner of the wealth is not considered a transgression, and the heir's action after the agent's death is considered rectification of the wealth.[1]

أَمَّا فِي مَوْتِ الْعَامِلِ، فَلِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَعَقْدُ الَّذِي لَهُ الْمَالُ إِنَّمَا كَانَ مَعَ الْمَيِّتِ لَا مَعَ وَارِثِهِ، إِلَّا أَنَّ عَمَلَ الْعَامِلِ بَعْدَ مَوْتِ صَاحِبِ الْمَالِ لَيْسَ تَعَدِّيًا، وَعَمَلَ الْوَارِثِ بَعْدَ مَوْتِ الْعَامِلِ إِصْلَاحٌ لِلْمَالِ.

L21001 Allah the Most High has said: *"And cooperate in righteousness and piety"* [Al-Mā'idah: 2]. Thus, there is no liability upon the agent or his heir if the property is destroyed without transgression. The entire profit belongs to the owner of the capital or his heir, while the agent here—or his heirs—is entitled only to a wage equivalent to his labor. This is based on His statement, the Most High: *"For sacred things, there is just equivalence"* [Al-Baqarah: 194]. Therefore, the sanctity of his labor entitles him to equivalent compensation, for he is a benefactor assisting in righteousness. And with Allah the Most High lies all success.[2]

وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢] فَلَا ضَمَانَ عَلَى الْعَامِلِ، وَلَا عَلَى وَارِثِهِ إِنْ تَلِفَ الْمَالُ بِغَيْرِ تَعَدٍّ، وَيَكُونُ الرِّبْحُ كُلُّهُ لِصَاحِبِ الْمَالِ، أَوْ لِوَارِثِهِ، وَيَكُونُ لِلْعَامِلِ هَهُنَا أَوْ لِوَرَثَتِهِ أَجْرُ مِثْلِ عَمَلِهِ فَقَطْ، لِقَوْلِهِ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] فَحُرْمَةُ عَمَلِهِ يَجِبُ لَهُ أَنْ يُقَاصَّ بِمِثْلِهَا؛ لِأَنَّهُ مُحْسِنٌ مُعِينٌ عَلَى بِرٍّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ اشْتَرَى عَامِلُ الْقِرَاضِ مِنْ مَالِ الْقِرَاضِ جَارِيَةً فَوَطِئَهَا]

L21002 **Issue: The commenda agent purchased a slave girl from the commenda's capital and had sexual intercourse with her.**

١٣٧٧ - مَسْأَلَةٌ: وَإِنْ اشْتَرَى الْعَامِلُ مِنْ مَالِ الْقِرَاضِ جَارِيَةً فَوَطِئَهَا فَهُوَ زَانٍ عَلَيْهِ حَدُّ الزِّنَا؛ لِأَنَّ أَصْلَ الْمِلْكِ لِغَيْرِهِ، وَوَلَدُهُ مِنْهَا رَقِيقٌ لِصَاحِبِ الْمَالِ.

L21003 1377 – Issue: If the working partner in the commenda (qirāḍ) purchases an enslaved girl from the commenda capital and has intercourse with her, he is guilty of zinā (unlawful intercourse), and the ḥadd punishment for zinā applies to him, because the fundamental ownership [of her] belongs to another. His child from her becomes an enslaved person belonging to the capital owner.

وَكَذَلِكَ وَلَدُ الْمَاشِيَةِ، وَمَمَرُّ الشَّجَرِ، وَكِرَى الدُّورِ؛ لِأَنَّهُ شَيْءٌ حَدَثَ فِي مَالِهِ، وَإِنَّمَا لِلْعَامِلِ حَظُّهُ مِنَ الرِّبْحِ فَقَطْ، وَلَا يُسَمَّى رِبْحًا إِلَّا مَا نَمَا بِالْبَيْعِ فَقَطْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L21004 Likewise, the offspring of livestock, the passage between trees, and the rent of dwellings are subject to the ruling, because they are something that occurred within his property. The laborer is entitled solely to his share of the profit, and profit is only what grows through sale alone. Success comes only from Allah, the Most High.

[1] **Qur'an references (L21000):** Qur'an 6:164 (Al-An'am).
[2] **Qur'an references (L21001):** Qur'an 5:2 (Al-Ma'idah); Qur'an 2:194 (Al-Baqarah).



AL-MUHALLA

كِتَابُ الْإِقْرَارِ

The Book of Acknowledgement

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْإِقْرَارِ] [مَسْأَلَةٌ أَقَرَّ لِآخَرَ أَوْ لِلَّهِ تَعَالَى بِحَقٍّ فِي مَالٍ]

١٣٧٨ - مَسْأَلَةٌ: مَنْ أَقَرَّ لِآخَرَ، أَوْ لِلَّهِ تَعَالَى بِحَقٍّ فِي مَالٍ، أَوْ دَمٍ، أَوْ بَشَرَةٍ - وَكَانَ الْمُقِرُّ عَاقِلًا بَالِغًا غَيْرَ مُكْرَهٍ - وَأَقَرَّ إِقْرَارًا تَامًّا، وَلَمْ يَصِلْهُ بِمَا يُفْسِدُهُ -: فَقَدْ لَزِمَهُ، وَلَا رُجُوعَ لَهُ بَعْدَ ذَلِكَ، فَإِنْ رَجَعَ لَمْ يَنْتَفِعْ بِرُجُوعِهِ وَقَدْ لَزِمَهُ مَا أَقَرَّ بِهِ عَلَى نَفْسِهِ مِنْ دَمٍ، أَوْ حَدٍّ، أَوْ مَالٍ.

فَإِنْ وَصَلَ الْإِقْرَارُ بِمَا يُفْسِدُهُ بَطَلَ كُلُّهُ وَلَمْ يَلْزَمْهُ شَيْءٌ، لَا مِنْ مَالٍ، وَلَا قَوَدٍ، وَلَا حَدٍّ -: مِثْلَ أَنْ يَقُولَ: لِفُلَانٍ عَلَيَّ مِائَةُ دِينَارٍ، أَوْ يَقُولُ: قَذَفْت فُلَانًا بِالزِّنَى، أَوْ يَقُولُ زَنَيْت، أَوْ يَقُولُ: قَتَلْت فُلَانًا، أَوْ نَحْوَ ذَلِكَ -: فَقَدْ لَزِمَهُ، فَإِنْ رَجَعَ عَنْ ذَلِكَ لَمْ يَلْتَفِتْ.

فَإِنْ قَالَ: كَانَ لِفُلَانٍ عَلَيَّ مِائَةُ دِينَارٍ وَقَدْ قَضَيْته إيَّاهَا، أَوْ قَالَ: قَذَفْت فُلَانًا وَأَنَا فِي غَيْرِ عَقْلِي، أَوْ قَتَلْت فُلَانًا؛ لِأَنَّهُ أَرَادَ قَتْلِي وَلَمْ أَقْدِرْ عَلَى دَفْعِهِ عَنْ نَفْسِي، أَوْ قَالَ: زَنَيْت وَأَنَا فِي غَيْرِ عَقْلِي، أَوْ نَحْوَ هَذَا، فَإِنَّ هَذَا كُلَّهُ يَسْقُطُ وَلَا يَلْزَمُهُ شَيْءٌ، وَالْحُرُّ، وَالْعَبْدُ، وَالذَّكَرُ، وَالْأُنْثَى - ذَاتُ الزَّوْجِ، وَالْبِكْرُ ذَاتُ الْأَبِ، وَالْيَتِيمَةُ فِيمَا ذَكَرْنَا سَوَاءٌ - وَإِنَّمَا هَذَا كُلُّهُ إذَا لَمْ تَكُنْ بَيِّنَةٌ فَإِذَا كَانَتْ الْبَيِّنَةُ فَلَا مَعْنَى لِلْإِنْكَارِ، وَلَا لِلْإِقْرَارِ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا هَدَّابُ بْنُ خَالِدٍ نا هَمَّامٌ - هُوَ ابْنُ يَحْيَى - نا قَتَادَةُ عَنْ أَنَسٍ: «أَنَّ جَارِيَةً وُجِدَ رَأْسُهَا قَدْ رُضَّ بَيْنَ حَجَرَيْنِ، فَسَأَلُوهَا مَنْ صَنَعَ هَذَا بِكِ؟ فُلَانٌ؟

L21005–21006 **The Book of Acknowledgement | Issue: Acknowledging a Right in Property for Another Person or for Allah, the Most High**

L21007 Issue 1378: If a person acknowledges to another or to Allah the Exalted a right concerning property, blood money, or bodily injury - provided the acknowledger is sane, adult, uncoerced, makes a complete acknowledgment, and does not associate it with anything that invalidates it - the acknowledgment is binding upon him with no retraction permitted afterward. If he retracts, his retraction is of no effect, and what he acknowledged against himself - whether blood money, *ḥadd* punishment, or property - remains binding.

L21008 If a confession is coupled with what invalidates it, the entire confession is nullified, and nothing becomes binding upon him—neither property, retaliatory punishment, nor prescribed punishment. For example, if he states: "I owe so-and-so one hundred dinars," "I accused so-and-so of adultery," "I committed adultery," "I killed so-and-so," or similar—it becomes binding. If he retracts afterward, no heed is given to his retraction.

L21009 If he says: "I owed so-and-so a hundred dinars and have repaid him," or says: "I accused so-and-so of adultery while not in my right mind," or "I killed so-and-so because he intended to kill me when I could not defend myself," or says: "I committed adultery while not in my right mind," or anything similar—all such statements are invalidated, and nothing becomes binding upon him. Free individuals, slaves, males, and females (whether a married woman, a virgin under her father's guardianship, or a female orphan) are equivalent in the rulings we have mentioned. This applies only in the absence of conclusive evidence. When evidence exists, neither denial nor confession holds significance.

We have been narrated through Muslim's chain: Haddāb ibn Khālid reported to us, Hammām—that is, ibn Yaḥyā—reported to us, Qatādah reported from Anas: "A girl was found with her head crushed between two stones. They questioned her: 'Who did this to you? Was it so-and-so? So-and-so?' until

فُلَانٌ؟ حَتَّى ذَكَرُوا يَهُودِيًّا فَأَوْمَأَتْ بِرَأْسِهَا، فَأُخِذَ الْيَهُودِيُّ فَأَقَرَّ فَأَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُرَضَّ رَأْسُهُ بِالْحِجَارَةِ» .

they named a Jew. She nodded her head affirmatively. The Jew was apprehended, confessed, and the Messenger of Allah—peace and blessings be upon him—ordered his head to be crushed with stones."

L21010–21012 وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رُمْحٍ نا اللَّيْثُ - هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ أَبِي هُرَيْرَةَ وَزَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ، فَذَكَرَ الْحَدِيثَ، وَفِيهِ قَوْلُ الْقَائِلِ: «إِنَّ ابْنِي كَانَ عَسِيفًا عَلَى هَذَا فَزَنَى بِامْرَأَتِهِ، وَإِنِّي أُخْبِرْتُ أَنَّ عَلَى ابْنِي الرَّجْمَ، فَافْتَدَيْتُ مِنْهُ بِمِائَةِ شَاةٍ وَوَلِيدَةٍ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: وَالَّذِي نَفْسِي بِيَدِهِ لَأَقْضِيَنَّ بَيْنَكُمَا بِكِتَابِ اللَّهِ: الْوَلِيدَةُ وَالْغَنَمُ رَدٌّ، وَعَلَى ابْنِكَ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ، اُغْدُ يَا أُنَيْسُ عَلَى امْرَأَةِ هَذَا، فَإِنْ اعْتَرَفَتْ فَارْجُمْهَا، فَغَدَا عَلَيْهَا فَاعْتَرَفَتْ، فَأَمَرَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرُجِمَتْ» فَقُتِلَ - عَلَيْهِ السَّلَامُ - بِالْإِقْرَارِ وَرُجِمَ بِهِ، وَرُدَّ بِهِ الْمَالُ مِمَّنْ كَانَ بِيَدِهِ إلَى غَيْرِهِ.

And from the chain of Muslim: Muhammad ibn Rumh narrated to us, al-Layth - who is Ibn Sa'd - narrated to us, from Ibn Shihab, from 'Ubayd Allah ibn 'Abd Allah ibn 'Utbah ibn Mas'ud, from Abu Hurayrah and Zayd ibn Khalid al-Juhani, and he mentioned. The narration includes the statement of the speaker: "My son was a hired worker for this man and committed adultery with his wife. I was informed that my son is subject to stoning, so I ransomed him with a hundred sheep and a slave girl." The Messenger of Allah—peace and blessings be upon him—said: "By the One in Whose Hand is my soul, I will judge between you by Allah's decree: the slave girl and the sheep must be returned, and your son shall receive a hundred lashes and exile for one year. Go early in the morning, O Unais, to the wife of this man. If she confesses, stone her." Unais went to her at dawn, and she confessed. The Messenger of Allah—peace and blessings be upon him—then ordered her execution by stoning. Thus, she was put to death through her confession and stoning was carried out. The payment was thereby returned from its possessor to another.

L21013 وَأَمَّا إذَا وَصَلَ بِهِ مَا يُفْسِدُهُ فَلَمْ يُقِرَّ بِشَيْءٍ، وَلَا يَجُوزُ أَنْ يُلْزَمَ بَعْضَ إقْرَارِهِ وَلَا يُلْزَمَ سَائِرَهُ؛ لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ.

As for when something that invalidates the act is connected to him while he has not acknowledged anything, it is not permissible to compel him to acknowledge part of it nor the rest of it: because this has not been obligated by the Quran, the Sunnah, or Ijma.

L21014 وَقَدْ تَنَاقَضَ هَهُنَا الْمُخَالِفُونَ فَقَالُوا: إنْ قَالَ: لَهُ عَلَيَّ دِينَارٌ إلَّا رُبْعَ دِينَارٍ فَهُوَ كَمَا قَالَ - وَإِنْ قَالَ: ابْتَعْت مِنْهُ دَارِهِ بِمِائَةِ دِينَارٍ، فَأَنْكَرَ الْآخَرُ الْبَيْعَ وَقَالَ: قَدْ أَقَرَّ لِي بِمِائَةِ دِينَارٍ وَادَّعَى ابْتِيَاعَ دَارِي، فَإِنَّهُمْ لَا يَقُصُّونَ عَلَيْهِ بِشَيْءٍ أَصْلًا - وَهَذَا تَنَاقُضٌ ظَاهِرٌ.

Here the opponents have contradicted themselves. They said: If one says, "I owe him a dinar **minus a quarter dinar**," it is as he stated. But if he says, "I purchased **his** house from him for a hundred dinars," and the other party denies the sale and says, "He has admitted to owing me a hundred dinars and claims to have purchased my house," they do not **enforce any claim** against him whatsoever. This is an evident contradiction.

L21015 وَقَالَ مَالِكٌ: مَنْ قَالَ: أَحْسَنَ اللَّهُ جَزَاءَ فُلَانٍ فَإِنَّهُ أَسْلَفَنِي مِائَتَيْ دِينَارٍ، وَأَمْهَلَنِي حَتَّى أَدَّيْتهَا كُلَّهَا إلَيْهِ، فَإِنَّهُ لَا يَقْضِي لِذَلِكَ الْفُلَانِ عَلَيْهِ بِشَيْءٍ إنْ طَلَبَهُ بِهَذَا الْإِقْرَارِ.

Mālik said: Whoever says, "May Allāh reward so-and-so well as a non-binding expression of gratitude, for he advanced me two hundred dinars and allowed me time until I repaid them all to him," the judge shall not rule

in favor of that so-and-so against him if he demands repayment based on this legal admission.

وَلَا يَخْتَلِفُونَ فِيمَنْ قَالَ: قَتَلْتُ رَجُلًا مُسْلِمًا الْآنَ أَمَامَكُمْ، أَوْ قَالَ: أَخَذْت مِنْ هَذَا

L21016–21018 They do not differ regarding one who says, "I have killed a Muslim man now before you," or says, "I have taken a hundred dinars from this person now in your presence," for no ruling is imposed on him—and they did not say, "If he confesses, then regrets," nor did they accept parts of a statement while rejecting others, and this is a manifest contradiction. It has been narrated to us through the chain of ʻAbd al-Razzāq from Maʻmar from al-Zuhrī from al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq: A man sought hospitality from some people of Hudhayl. They sent a servant girl to gather firewood. The guest became infatuated with her, followed her, and attempted to assault her. She resisted, so he grappled with her. She broke free and threw a stone at him, rupturing his liver and killing him. She returned to her people and informed them. They went to ʻUmar ibn al-Khaṭṭāb and relayed the matter. ʻUmar declared, "By Allah, Allah's slain shall never be compensated!" And through the chain of Ḥammād ibn Salamah from Thābit al-Bunānī, Ḥumayd, and Muṭarrif—all of them from ʻAbdullāh ibn ʻUbayd ibn ʻUmayr—it is related: A man went to battle, and a Jewish man committed adultery with his wife. A Muslim man passed by him at dawn prayer time while he was saying: Disheveled, Islam's allure from me captivated him... I illuminated his wedding on the night of the full moon.

مِائَةَ دِينَارٍ الْآنَ بِحَضْرَتِكُمْ، فَإِنَّهُ لَا يَقْضِي عَلَيْهِ بِشَيْءٍ - وَلَمْ يَقُولُوا: إنْ أَقَرَّ، ثُمَّ نَدِمَ، وَلَا أَخَذُوا بِبَعْضِ قَوْلٍ دُونَ بَعْضٍ، وَهَذَا تَنَاقُضٌ ظَاهِرٌ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ، أَبِي بَكْرٍ الصِّدِّيقِ أَنَّ رَجُلًا اسْتَضَافَ نَاسًا مِنْ هُذَيْلٍ فَأَرْسَلُوا جَارِيَةً تَحْتَطِبُ فَأَعْجَبَتْ الضَّيْفَ فَتَبِعَهَا فَأَرَادَهَا فَامْتَنَعَتْ، فَعَارَكَهَا فَانْفَلَتَتْ فَرَمَتْهُ بِحَجَرٍ فَفَضَّتْ كَبِدَهُ فَمَاتَ، فَأَتَتْ أَهْلَهَا فَأَخْبَرَتْهُمْ، فَأَتَوْا عُمَرَ بْنَ الْخَطَّابِ فَأَخْبَرُوهُ؟ فَقَالَ عُمَرُ: قَتِيلُ اللَّهِ لَا يُودَى وَاَللَّهِ أَبَدًا؟ وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ، وَحُمَيْدٍ، وَمُطَرِّفٍ، كُلِّهِمْ عَنْ عَبْدِ اللَّهِ بْنِ عُبَيْدِ بْنِ عُمَيْرٍ قَالَ: غَزَا رَجُلٌ فَخَلَّفَ عَلَى امْرَأَتِهِ رَجُلٌ مِنْ يَهُودَ، فَمَرَّ بِهِ رَجُلٌ مِنْ الْمُسْلِمِينَ عِنْدَ صَلَاةِ الْفَجْرِ وَهُوَ يَقُولُ: وَأَشْعَثَ غَرَّهُ الْإِسْلَامُ مِنِّي ... جَلَوْت بِعُرْسِهِ لَيْلَ التَّمَامِ

L21019 I spend the night upon her collarbones, and evening falls upon a sleek mare clinging to the fastened girth.

أَبِيت عَلَى تَرَائِبِهَا وَيُمْسِي ... عَلَى جَرْدَاءَ لَاحِقَةِ الْحِزَامِ

L21020 As though the clusters of their patched garments were a throng, standing and rising to join the bands.

كَأَنَّ مَجَامِعَ الرَّبَلَاتِ مِنْهَا ... قِيَامٌ يَنْهَضُونَ إلَى قِيَامِ

L21021 He entered upon him and struck him with his sword until he killed him. The Jews came seeking compensation for his blood. The man then came and informed him of the matter, whereupon Umar ibn al-Khattab dismissed the blood claim.

فَدَخَلَ عَلَيْهِ فَضَرَبَهُ بِسَيْفِهِ حَتَّى قَتَلَهُ فَجَاءَتْ الْيَهُودُ يَطْلُبُونَ دَمَهُ فَجَاءَ الرَّجُلُ فَأَخْبَرَهُ بِالْأَمْرِ، فَأَبْطَلَ عُمَرُ بْنُ الْخَطَّابِ دَمَهُ.

L21022 From the path of Muhammad ibn al-Muthanna, narrated by Abdullah ibn Idris al-Awdi, from Asim ibn Kulayb, from his father, from Abu Musa al-Ash'ari, who said: A woman was brought to me while I was in Yemen, and

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ اللَّهِ بْنُ إدْرِيسَ الْأَوْدِيُّ نا عَاصِمُ بْنُ كُلَيْبٍ عَنْ أَبِيهِ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ قَالَ أُتِيتُ وَأَنَا بِالْيَمَنِ بِامْرَأَةٍ فَسَأَلْتهَا؟ فَقَالَتْ: مَا تَسْأَلُ

عَنْ امْرَأَةٍ حُبْلَى ثَيِّبٍ مِنْ غَيْرِ بَعْلٍ، أَمَا وَاللَّهِ مَا خَالَلْت خَلِيلًا وَلَا خَادَنْتُ خِدْنًا، مُذْ أَسْلَمْت، وَلَكِنِّي بَيْنَمَا أَنَا نَائِمَةٌ بِفِنَاءِ بَيْتِي، فَوَاَللَّهِ مَا أَيْقَظَنِي إلَّا الرَّجُلُ حِينَ رَكِبَنِي وَأَلْقَى فِي بَطْنِي مِثْلَ الشِّهَابِ؟ فَقَالَ: فَكَتَبْت فِيهَا إلَى عُمَرَ بْنِ الْخَطَّابِ فَكَتَبَ إلَيَّ: أَنْ وَافِنِي بِهَا وَبِنَاسٍ مِنْ قَوْمِهَا؟ فَوَافَيْته بِهَا فِي الْمَوْسِمِ، فَسَأَلَ عَنْهَا قَوْمَهَا؟ فَأَثْنَوْا خَيْرًا، وَسَأَلَهَا؟ فَأَخْبَرَتْهُ كَمَا أَخْبَرَتْنِي، فَقَالَ عُمَرُ: شَابَّةٌ تِهَامِيَّةٌ تَنَوَّمَتْ قَدْ كَانَ ذَلِكَ يُفْعَلُ، فَمَارَّهَا عُمَرُ وَكَسَاهَا، وَأَوْصَى بِهَا قَوْمَهَا خَيْرًا - هَذَا خَبَرٌ فِي غَايَةِ الصِّحَّةِ.

I questioned her. She said: "Why do you question a pregnant non-virgin woman without a husband? By Allah, I have not had any intimate companion nor secret male companion since I embraced Islam. But while I was sleeping in the courtyard of my house, by Allah, nothing awakened me except a man when he had intercourse with me and placed in my womb something like a shooting star." He said: So I wrote to Umar ibn al-Khattab about her, and he wrote back to me: "Meet me with her and some people from her tribe." I met him with her during the pilgrimage season. He inquired about her among her people, and they praised her well. He questioned her, and she informed him as she had informed me. Umar said: "A young woman from Tihamah who fell asleep—such things have been done before." Then Umar compensated her, clothed her, and instructed her people to treat her well. This is a narration of the highest authenticity.

L21023 وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَامِرِ بْنِ أَبِي الْحَكَمِ عَنْ الْحَسَنِ: أَنَّ رَجُلًا رَأَى مَعَ امْرَأَتِهِ رَجُلًا فَقَتَلَهُ، فَارْتَفَعُوا إلَى عُثْمَانَ بْنِ عَفَانِ فَأَبْطَلَ دَمَهُ.

Through the chain of Hammad ibn Salamah, from Amir ibn Abi al-Hakam, from al-Hasan: A man found another man in a compromising situation with his wife and killed him. The case was referred to Uthman ibn Affan, who invalidated the killer's immunity, deeming his blood permissible for retaliation.

L21024 وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، وَسُلَيْمَانَ بْنِ يَسَارٍ، قَالَا جَمِيعًا: إنَّ رَجُلًا أَتَى امْرَأَةً لَيْلًا فَجَعَلَتْ تَسْتَصْرِخُ فَلَمْ يُصْرِخْهَا أَحَدٌ، فَلَمَّا رَأَتْ ذَلِكَ قَالَتْ: رُوَيْدَك حَتَّى أَسْتَعِدَّ وَأَتَهَيَّأَ، فَأَخَذَتْ فِهْرًا فَقَامَتْ خَلْفَ الْبَابِ، فَلَمَّا دَخَلَ ثَلَغَتْ بِهِ رَأْسَهُ فَارْتَفَعُوا إلَى الضَّحَّاكِ بْنِ قَيْسٍ، فَأَبْطَلَ دَمَهُ.

From the narration of Hammad ibn Salamah from Yahya ibn Sa'id al-Ansari from Sa'id ibn al-Musayyab and Sulayman ibn Yasar, both of whom said: A man came to a woman at night, and she began screaming for help, but no one responded to her cries. When she saw this, she said, "Wait until I prepare and get ready." She then took a stone pestle and stood behind the door. When he entered, she struck his head with it. They referred the case to al-Dahhak ibn Qays, who nullified the liability for his blood.

L21025–21027 وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَخْبَرَنَا أَبُو عُقْبَةَ أَنَّ رَجُلًا ادَّعَى عَلَى رَجُلٍ أَلْفَ دِرْهَمٍ وَلَمْ تَكُنْ لَهُ بَيِّنَةٌ فَاخْتَصَمَا إلَى عَبْدِ الْمَلِكِ بْنِ يَعْلَى فَقَالَ: قَدْ كَانَتْ لَهُ عِنْدِي أَلْفُ دِرْهَمٍ فَقَضَيْته فَقَالَ: أَصْلَحَك اللَّهُ قَدْ أَقَرَّ؟ فَقَالَ لَهُ عَبْدُ الْمَلِكِ بْنُ يَعْلَى: إنْ شِئْت أَخَذْت

From the narration of Ḥammād ibn Salamah, Abū ʿUqbah informed us that a man filed a claim against another man for one thousand dirhams without evidence. They took their dispute before ʿAbd al-Malik ibn Yaʿlā, who stated: "He did indeed have one thousand dirhams with me." So I judged it, and he said: "May Allah set you right—has he confessed?" Then Abd al-Malik ibn Ya'la said to him: "If you wish, you may accept his statement in full; if you prefer, you may nullify it in full"—Abd al-Malik ibn Ya'la was among the Successors—. He was appointed to the judgeship of Basra.

بِقَوْلِهِ أَجْمَعَ، وَإِنْ شِئْت أَبْطَلْته أَجْمَعَ - عَبْدُ الْمَلِكِ بْنُ يَعْلَى مِنْ التَّابِعِينَ - وَلِيَ قَضَاءَ الْبَصْرَةِ.

L21028 And narrated by Abd al-Razzaq from Ma’mar, from Abdullah ibn Tawus, from his father, who said: “Whoever admits to a claim regarding something in his possession, his statement shall prevail.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: مَنْ أَقَرَّ بِشَيْءٍ فِي يَدِهِ فَالْقَوْلُ قَوْلُهُ.

L21029 Through the chain of Hammad ibn Salamah, from Iyas ibn Muʿāwiyah, who said: “Whoever possesses something, the claim regarding it is his claim.” Our opinion on this matter aligns with the view of Uthman al-Batti, Abu Sulayman, and one of the two opinions of al-Shafiʿi.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ إيَاسِ بْنِ مُعَاوِيَةَ قَالَ: كُلُّ مَنْ كَانَ فِي يَدِهِ شَيْءٌ فَالْقَوْلُ فِيهِ قَوْلُهُ - وَقَوْلُنَا فِيمَا ذَكَرْنَا هُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ، وَأَبِي سُلَيْمَانَ، وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ.

L21030 As for retracting a confession: all agree with our position except regarding retracting a confession that entails a ḥadd punishment. The Ḥanafīs and Mālikīs said: If he retracts, nothing is imposed upon him—but this is invalid. Though these groups profess adherence to qiyās *as they claim*, why did they not apply analogy to confessions entailing ḥadd punishments as they do to those entailing rights *uniformly*? Moreover, the ḥadd punishment becomes binding through his confession. Anyone who claims it is dropped due to his retraction makes an assertion without evidence. They supported their position with two arguments:

وَأَمَّا - الرُّجُوعُ عَنْ الْإِقْرَارِ: فَكُلُّهُمْ مُتَّفِقٌ عَلَى مَا قُلْنَا، إلَّا فِي الرُّجُوعِ عَنْ الْإِقْرَارِ بِمَا يُوجِبُ الْحَدَّ، فَإِنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، قَالُوا: إنْ رَجَعَ لَمْ يَكُنْ عَلَيْهِ شَيْءٌ - وَهَذَا بَاطِلٌ، وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، فَهَلَّا قَاسُوا الْإِقْرَارَ بِالْحَدِّ عَلَى الْإِقْرَارِ بِالْحُقُوقِ سَوَاءً؟ وَأَيْضًا - فَإِنَّ الْحَدَّ قَدْ لَزِمَهُ بِإِقْرَارِهِ، فَمَنْ ادَّعَى سُقُوطَهُ بِرُجُوعِهِ فَقَدْ ادَّعَى مَا لَا بُرْهَانَ لَهُ بِهِ، وَاحْتَجُّوا بِشَيْئَيْنِ:

L21031 One of the two [cases] is the Hadith of Ma’iz.

أَحَدُهُمَا: حَدِيثُ مَاعِزٍ.

L21032 The second is that they said: “Prescribed punishments are averted due to doubts.”

وَالثَّانِي: أَنْ قَالُوا: إنَّ الْحُدُودَ تُدْرَأُ بِالشُّبُهَاتِ.

L21033–21035 Ali said: As for the ḥadīth of Māʿiz—there is no proof for them in it whatsoever, because it contains nothing indicating that Māʿiz ever retracted his confession entirely—neither by explicit text nor by evidence. Nor does it state that the Messenger of Allāh—peace and blessings be upon him—said: “If he retracted his confession before he even retracted completely”—so how can a Muslim justify misleading the heedless with a report that contains none of what he [the claimant] alleges? What has been narrated is merely from some Companions who said: “We used to discuss that if Māʿiz and

قَالَ عَلِيٌّ: أَمَّا حَدِيثُ مَاعِزٍ - فَلَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا، لِأَنَّهُ لَيْسَ فِيهِ: أَنَّ مَاعِزًا رَجَعَ عَنْ الْإِقْرَارِ أَلْبَتَّةَ، لَا بِنَصٍّ، وَلَا بِدَلِيلٍ - وَلَا فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: إنْ رَجَعَ عَنْ إقْرَارِهِ قَبْلَ رُجُوعِهِ أَيْضًا أَلْبَتَّةَ، فَكَيْفَ يَسْتَحِلُّ مُسْلِمٌ أَنْ يُمَوِّهَ عَلَى أَهْلِ الْغَفْلَةِ بِخَبَرٍ لَيْسَ فِيهِ شَيْءٌ مِمَّا يَزْعُمُ؟ وَإِنَّمَا رُوِيَ عَنْ بَعْضِ الصَّحَابَةِ

the Ghāmidiyyah had retracted after their confessions, or had not retracted after their confessions, he would not have pursued them"—this is how we narrated it through the chain of Abū Aḥmad al-Zubayrī from Bashīr ibn al-Muhājir from Ibn Buraidah from his father, who made this statement. Yet this is conjecture, and conjecture cannot form the basis of definitive rulings. The claim that "if so-and-so had done such, the Messenger of Allāh—peace and blessings be upon him—would have done such"—is baseless, since that individual never performed that act, nor did anyone else ever do so, nor did the Prophet—peace and blessings be upon him—ever enact it. Jābir stated: "I am the most knowledgeable regarding Māʿiz's case. The Messenger of Allāh—peace and blessings be upon him—merely said: 'Why did you not leave him and bring him to me?'"—so that he might ascertain the truth from him. As for abandoning the prescribed punishment—no. This is the definitive text. The statement of Jābir—for he is more knowledgeable about that matter—and Māʿiz never retracted his confession. He only said: "Take me back to the Messenger of Allāh (peace and blessings of Allāh be upon him), for my people have killed me, misled me about myself, and told me that the Messenger of Allāh (peace and blessings of Allāh be upon him) would not execute me." This is how we have transmitted all that we mentioned through the chain of Abū Dāwūd: from ʿUbaydullāh ibn ʿUmar ibn Maysarah, who narrated from Yazīd ibn Zurayʿ, who narrated from Muḥammad ibn Isḥāq, that ʿĀṣim ibn ʿUmar ibn Qatādah said: Ḥasan ibn Muḥammad ibn ʿAlī ibn Abī Ṭālib narrated to me, that Jābir ibn ʿAbdullāh said to him: "All we have mentioned is verbatim"—thus their obfuscation through the ḥadīth of Māʿiz is invalidated.

L21036 As for the statement "Avert the prescribed punishments due to doubts," it has never been transmitted from the Prophet (peace be upon him) through any chain containing sound narrators. Nor do we know of it having been transmitted from him (peace be upon him) also—neither with a complete chain nor a disconnected one. Rather, it is a statement reported only from Ibn Masʿud and ʿUmar. Even if it were authentic, the Hanafis and Malikis would have been the first to oppose it, for we know of none stricter than them in applying prescribed punishments despite doubts.

أَنَّهُ قَالَ: كُنَّا نَتَحَدَّثُ أَنَّ مَاعِزًا، وَالْغَامِدِيَّةَ لَوْ رَجَعَا بَعْدَ اعْتِرَافِهِمَا، أَوْ لَمْ يَرْجِعَا بَعْدَ اعْتِرَافِهِمَا لَمْ يَطْلُبْهُمَا -: هَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي أَحْمَدَ الزُّبَيْرِيِّ عَنْ بَشِيرِ بْنِ الْمُهَاجِرِ عَنْ ابْنِ بُرَيْدَةَ عَنْ أَبِيهِ أَنَّهُ قَالَ هَذَا الْقَوْلَ - وَهَذَا ظَنٌّ، وَالظَّنُّ لَا يَجُوزُ الْقَطْعُ بِهِ، وَقَوْلُ الْقَائِلِ: لَوْ فَعَلَ فُلَانٌ كَذَا لَفَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمْرًا كَذَا -: لَيْسَ بِشَيْءٍ، إذْ لَمْ يَفْعَلْ ذَلِكَ الْفُلَانُ، وَلَا غَيْرُهُ ذَلِكَ الْفِعْلَ قَطُّ وَلَا فَعَلَهُ - عَلَيْهِ السَّلَامُ - قَطُّ، وَقَدْ قَالَ جَابِرٌ: أَنَا أَعْلَمُ النَّاسِ بِأَمْرِ مَاعِزٍ إنَّمَا «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: هَلَّا تَرَكْتُمُوهُ وَجِئْتُمُونِي بِهِ» ؟ لِيَسْتَثْبِتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْهُ، فَأَمَّا لِتَرْكِ حَدٍّ فَلَا -: هَذَا نَصُّ كَلَامِ جَابِرٍ، فَهُوَ أَعْلَمُ بِذَلِكَ، وَلَمْ يَرْجِعْ مَاعِزٌ قَطُّ عَنْ إقْرَارِهِ، وَإِنَّمَا قَالَ: رُدُّونِي إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنَّ قَوْمِي قَتَلُونِي وَغَرُّونِي مِنْ نَفْسِي، وَأَخْبَرُونِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَيْرُ قَاتِلِي - هَكَذَا رُوِّينَا كُلَّ مَا ذَكَرْنَا مِنْ طَرِيقِ أَبِي دَاوُد نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ بْنِ مَيْسَرَةَ نا يَزِيدُ بْنُ زُرَيْعٍ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ: أَنَّ عَاصِمَ بْنَ عُمَرَ بْنِ قَتَادَةَ قَالَ: حَدَّثَنِي حَسَنُ بْنُ مُحَمَّدِ بْنِ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّ جَابِرَ بْنَ عَبْدِ اللَّهِ قَالَ لَهُ: كُلُّ مَا ذَكَرْنَا عَلَى نَصِّهِ - فَبَطَلَ تَمْوِيهُهُمْ بِحَدِيثِ مَاعِزٍ.

وَأَمَّا " ادْرَءُوا الْحُدُودَ بِالشُّبُهَاتِ " فَمَا جَاءَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ مِنْ طَرِيقٍ فِيهَا خَيْرٌ، وَلَا نَعْلَمُهُ أَيْضًا جَاءَ عَنْهُ - عَلَيْهِ السَّلَامُ - أَيْضًا، لَا مُسْنَدًا، وَلَا مُرْسَلًا وَإِنَّمَا هُوَ قَوْلٌ رُوِيَ عَنْ ابْنِ مَسْعُودٍ، وَعُمَرَ، فَقَطْ - وَلَوْ صَحَّ لَكَانُوا أَوَّلَ مُخَالِفٍ لَهُ؛ لِأَنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ لَا نَعْلَمُ أَحَدًا أَشَدَّ إقَامَةً لِلْحُدُودِ بِالشُّبُهَاتِ مِنْهُمْ.

فَالْمَالِكِيُّونَ يَحُدُّونَ فِي الزِّنَى بِالرَّجْمِ وَالْجَلْدِ بِالْحَبَلِ فَقَطْ - وَهِيَ مُنْكِرَةٌ - وَقَدْ تُسْتَكْرَهُ وَتُوطَأُ بِنِكَاحٍ صَحِيحٍ لَمْ يَشْتَهِرْ، أَوْ وَهِيَ فِي غَيْرِ عَقْلِهَا، وَيَقْتُلُونَ بِدَعْوَى الْمَرِيضِ: أَنَّ فُلَانًا قَتَلَهُ، وَفُلَانٌ مُنْكِرٌ وَلَا بَيِّنَةَ عَلَيْهِ.

L21037 The Malikis impose stoning and flogging for adultery solely in cases of pregnancy - a rejected position - where she is forcibly compelled and subjected to intercourse through a valid marriage that was not publicly known, or if she is mentally incapacitated. They kill based on the claim of a sick person that "so-and-so killed him," while the accused denies it and no evidence exists against him.

وَيَحُدُّونَ فِي الْخَمْرِ بِالرَّائِحَةِ، وَقَدْ تَكُونُ رَائِحَةَ تُفَّاحٍ، أَوْ كُمَّثْرَى شَتْوِيٍّ.

L21038 They apply the *hadd* punishment for wine based on its scent, which may be the scent of apples or winter pears.

وَيَقْطَعُونَ فِي السَّرِقَةِ مَنْ يَقُولُ: صَاحِبُ الْمَنْزِلِ بَعَثَنِي فِي هَذَا الشَّيْءِ - وَصَاحِبُ الْمَنْزِلِ مُقِرٌّ لَهُ بِذَلِكَ.

L21039 They amputate the hand of the one who commits theft while claiming "The owner of the house sent me to take this property" - even though the owner of the house formally admits this claim.

وَيَحُدُّونَ فِي الْقَذْفِ بِالتَّعْرِيضِ - وَهَذَا كُلُّهُ هُوَ إقَامَةُ - الْحُدُودِ بِالشُّبُهَاتِ.

L21040 They impose the *hadd* punishment for slander by insinuation—and all of this is the enforcement of the *hadd* punishments based on ambiguities.

وَأَمَّا الْحَنَفِيُّونَ فَإِنَّهُمْ يَقْطَعُونَ مَنْ دَخَلَ مَعَ آخَرَ فِي مَنْزِلِ إنْسَانٍ لِلسَّرِقَةِ فَلَمْ يَتَوَلَّ أَخْذَ شَيْءٍ وَلَا إخْرَاجَهُ، وَإِنَّمَا سَرَقَ الَّذِي دَخَلَ فِيهِ فَقَطْ، فَيَقْطَعُونَهُمَا جَمِيعًا - فِي كَثِيرٍ لَهُمْ مِنْ مِثْلِ هَذَا قَدْ تَقَصَّيْنَاهُ فِي غَيْرِ هَذَا الْمَكَانِ.

L21041 As for the Ḥanafīs, they amputate the hand of anyone who enters with another into a person's home for theft, even if he did not actually take anything or remove it, for only the one who entered the home itself actually stole. So they amputate both of them. In many of their similar cases, we have already detailed this elsewhere.

فَمَنْ أَعْجَبُ شَأْنًا مِمَّنْ يَحْتَجُّ بِقَوْلِ قَائِلٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ هُوَ أَوَّلُ مُخَالِفٍ لِمَا احْتَجَّ بِهِ مِنْ ذَلِكَ، وَأَمَّا تَسْوِيَتُنَا بَيْنَ الْحُرِّ، وَالْعَبْدِ، وَالذَّكَرِ، وَالْأُنْثَى ذَاتِ الْأَبِ الْبِكْرِ، وَغَيْرِ الْبِكْرِ، وَالْيَتِيمَةِ، وَذَاتِ الزَّوْجِ فَلِأَنَّ الدِّينَ وَاحِدٌ عَلَى الْجَمِيعِ، وَالْحُكْمَ وَاحِدٌ عَلَى الْجَمِيعِ، إلَّا أَنْ يَأْتِيَ بِالْفَرْقِ بَيْنَ شَيْءٍ مِنْ ذَلِكَ: قُرْآنٌ أَوْ سُنَّةٌ - وَلَا قُرْآنَ، وَلَا سُنَّةَ، وَلَا قِيَاسَ، وَلَا إجْمَاعَ عَلَى الْفَرْقِ بَيْنَ شَيْءٍ مِمَّا ذَكَرْنَا وَبِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ أَهْلِ الْأَرْضِ مِنْ الْمُسْلِمِينَ فِي أَنَّ اللَّهَ تَعَالَى خَاطَبَ كُلَّ مَنْ ذَكَرْنَا خِطَابًا

L21042–21044 Who is more astonishing in circumstance than one who cites the statement of a speaker instead of the Messenger of Allah—peace and blessings be upon him—then becomes the first to oppose the very evidence he cited from that? As for our equalizing between the free and the enslaved, the male and the female, the virgin who has a father and the non-virgin, the orphaned female, and the one with a husband, it is because the religion is one for all, and the ruling applies equally to all—unless a distinction is established between any of these through the Quran or Sunnah. Yet there exists no Quranic verse, no Prophetic precedent, no analogical reasoning, nor scholarly consensus establishing any distinction between what we have mentioned, nor any disagreement from any of the people of... The land of the Muslims in that Allah the Exalted addressed everyone we have mentioned with an address intended for each individual among them within their own selves, as

He says: “Be steadfast maintainers of justice, witnesses for Allah, even if it be against yourselves or your parents and relatives.” [An-Nisa: 135][1]

L21045 Therefore, everyone we have mentioned is commanded to acknowledge the truth concerning himself, and it is a definitive invalidity to impose upon them what cannot be accepted from them.

L21046 Some scholars have opined: A slave’s confession to an act entailing a hadd punishment is not binding, because he is property; for he is merely confessing as part of his master’s property. And Allah, the Exalted, says: “No soul bears [sin] except against itself” [al-Anʿām 6:164].[2]

L21047 Ali said: Even if he is property, he is a human being bound by religious rulings. This verse is our proof for that, because he is accountable for himself through his own admission.

L21048 They concur with our position: if a hired worker confesses to a ḥadd offense against himself, the punishment becomes obligatory. Such a confession invalidates his employment contract if he admits to an act inherently necessitating execution or amputation - provided he is not exploiting this confession to gain advantage over others. Success is granted by Allah, the Exalted.

L21049 ## Acknowledgment of the Hired Worker

L21050 1379 - Question:

L21051 By a single confession, all the aforementioned penalties—whether ḥadd (prescribed punishment), execution, or monetary compensation—become obligatory. The Ḥanafīs hold that the ḥadd penalty for zinā (unlawful sexual intercourse) is not imposed except after four confessions.

L21052 Abu Yusuf said: Liability for theft is only established through two separate confessions, and they equated this to testimony. Malik, al-Shāfiʿī, and Abū

[1] **Qur’an references (L21042):** Qur’an 4:135 (An-Nisa).
[2] **Qur’an references (L21046):** Qur’an 6:164 (Al-An’am).

قَصَدَ بِهِ إِلَى كُلِّ وَاحِدٍ مِنْهُمْ فِي ذَاتِ نَفْسِهِ بِقَوْلِهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَى أَنْفُسِكُمْ أَوِ الْوَالِدَيْنِ وَالأَقْرَبِينَ} [النساء: ١٣٥]

فَكُلُّ مَنْ ذَكَرْنَا مَأْمُورٌ بِالْإِقْرَارِ بِالْحَقِّ عَلَى نَفْسِهِ، وَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يُفْتَرَضَ عَلَيْهِمْ مَا لَا يُقْبَلُ مِنْهُمْ.

وَقَدْ قَالَ قَوْمٌ: إقْرَارُ الْعَبْدِ بِمَا يُوجِبُ الْحَدَّ لَا يَلْزَمُ؛ لِأَنَّهُ مَالٌ فَإِنَّمَا هُوَ مُقِرٌّ فِي مَالِ سَيِّدِهِ، وَاَللَّهُ تَعَالَى يَقُولُ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤]

قَالَ عَلِيٌّ: هُوَ وَإِنْ كَانَ مَالًا فَهُوَ إنْسَانٌ تَلْزَمُهُ أَحْكَامُ الدِّيَانَةِ، وَهَذِهِ الْآيَةُ حُجَّتُنَا فِي ذَلِكَ؛ لِأَنَّهُ كَاسِبٌ عَلَى نَفْسِهِ بِإِقْرَارِهِ.

وَقَدْ وَافَقُونَا: لَوْ أَنَّ أَجِيرًا أَقَرَّ عَلَى نَفْسِهِ بِحَدٍّ لَلَزِمَهُ، وَفِي إقْرَارِهِ بِذَلِكَ إبْطَالُ إجَارَتِهِ إنْ أَقَرَّ بِمَا يُوجِبُ قَتْلًا أَوْ قَطْعًا وَلَيْسَ بِذَلِكَ كَاسِبًا عَلَى غَيْرِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[إقْرَار الْأَجِير]

١٣٧٩ - مَسْأَلَةٌ:

وَبِإِقْرَارِهِ مَرَّةً يَلْزَمُ كُلُّ مَا ذَكَرْنَا مِنْ حَدٍّ، أَوْ قَتْلٍ، أَوْ مَالٍ - وَقَالَ الْحَنَفِيُّونَ: لَا يَلْزَمُ الْحَدُّ فِي الزِّنَى إلَّا بِإِقْرَارِ أَرْبَعِ مَرَّاتٍ.

Sulaymān held the same opinion as ours. The Ḥanafīs adduced as evidence that the Messenger of Allah (peace be upon him) sent back Māʿiz four times.

وَقَالَ أَبُو يُوسُفَ: لَا يَلْزَمُ فِي السَّرِقَةِ إِلَّا بِإِقْرَارٍ مَرَّتَيْنِ، وَأَقَامُوا ذَلِكَ مَقَامَ الشَّهَادَةِ - وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ كَقَوْلِنَا وَاحْتَجَّ الْحَنَفِيُّونَ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «رَدَّ مَاعِزًا أَرْبَعَ مَرَّاتٍ» .

L21053–21055 Ali (peace be upon him) said: This has been authenticated. It is reported that the Prophet (peace be upon him) rejected the confession due to its lesser validity, while other narrations mention its rejection despite greater validity. He (peace be upon him) dismissed it solely because he questioned the confessor's mental capacity and doubted his understanding of what constitutes zinā. This is explicitly stated in the ḥadīth text where he (peace be upon him) said: "Examine him - has he drunk wine?" or similar wording. It is further narrated that he (peace be upon him) sent messengers to the man's tribe to inquire about his mental state, and that he (peace be upon him) asked him: "Do you comprehend what zinā means? Perhaps you merely touched someone improperly or kissed them?" Since all these accounts are authenticated, and no narration - whether sound or weak - has ever stated that the Prophet (peace be upon him) said: "The punishment shall not be implemented until four confessions are made," it becomes impermissible to impose this condition when executing Allah's ordained punishments. Those who claim adherence to analogical reasoning are bound by their own principle: if they accept confession as equivalent to evidence in some cases, they must apply this equivalency universally. Thus, they should not rule against anyone confessing to financial claims until he confesses four times, just as they require for ḥudūd. Twice—and they do not do this—the Messenger of Allah (peace and blessings be upon him) killed the Jew who killed the girl based on a confession without hesitation. Killing is the most severe of the hudud (prescribed punishments), and success is from Allah, the Most High.

قَالَ عَلِيٌّ: قَدْ صَحَّ هَذَا وَجَاءَ أَنَّهُ رَدَّهُ أَقَلَّ، وَرُوِيَ أَكْثَرَ - إِنَّمَا رَدَّهُ - عَلَيْهِ السَّلَامُ - لِأَنَّهُ اتَّهَمَ عَقْلَهُ، وَاتَّهَمَهُ أَنَّهُ لَا يَدْرِي مَا الزِّنَى؟ هَكَذَا فِي نَصِّ الْحَدِيثِ أَنَّهُ قَالَ: اسْتَنْكِهُوهُ هَلْ شَرِبَ خَمْرًا؟ أَوْ كَمَا قَالَ - عَلَيْهِ السَّلَامُ -؟ «وَأَنَّهُ - عَلَيْهِ السَّلَامُ - بَعَثَ إلَى قَوْمِهِ يَسْأَلُهُمْ عَنْ عَقْلِهِ» ؟ وَأَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ لَهُ: «أَتَدْرِي مَا الزِّنَى؟ لَعَلَّكَ غَمَزْتَ أَوْ قَبَّلْتَ» ؟ فَإِذْ قَدْ صَحَّ هَذَا كُلُّهُ، وَلَمْ يَأْتِ قَطُّ فِي رِوَايَةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: لَا يُحَدُّ حَتَّى يُقِرَّ أَرْبَعَ مَرَّاتٍ، فَلَا يَجُوزُ أَنْ يُزَادَ هَذَا الشَّرْطُ فِيمَا تُقَامُ بِهِ حُدُودُ اللَّهِ تَعَالَى، وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، فَيَلْزَمُهُمْ إذْ أَقَامُوا الْإِقْرَارَ مَقَامَ الْبَيِّنَةِ فِي بَعْضِ الْمَوَاضِعِ أَنْ يُقِيمُوهُ مَقَامَهَا فِي كُلِّ مَوْضِعٍ، فَلَا يَقْضُوا عَلَى أَحَدٍ أَقَرَّ بِمَالٍ حَتَّى يُقِرَّ مَرَّتَيْنِ - وَهُمْ لَا يَفْعَلُونَ هَذَا، وَقَدْ «قَتَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْيَهُودِيَّ الَّذِي قَتَلَ الْجَارِيَةَ» بِإِقْرَارٍ غَيْرِ مُرَدَّدٍ، وَالْقَتْلُ أَعْظَمُ الْحُدُودِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

An Issue Regarding the Acknowledgment of the Sick Person

[مَسْأَلَةٌ إقْرَارُ الْمَرِيضِ]

L21056

L21057 1380 – Issue: A sick person's acknowledgment during a terminal illness or an illness from which they recovered – whether to an heir or non-heir – is

executable against the estate's capital, akin to the acknowledgment of a sane and healthy person. No distinction is made.

١٣٨٠ - مَسْأَلَةٌ: وَإِقْرَارُ الْمَرِيضِ فِي مَرَضِ مَوْتِهِ، وَفِي مَرَضٍ أَفَاقَ مِنْهُ لِوَارِثٍ وَلِغَيْرِ وَارِثٍ - نَافِذٌ مِنْ رَأْسِ الْمَالِ كَإِقْرَارِ الصَّحِيحِ وَلَا فَرْقَ.

L21058 It has been narrated to us through ʿAbd al-Razzāq, who reported from some of our companions, from al-Layth ibn Saʿd, from Nāfiʿ, the freed slave of Ibn ʿUmar, from Ibn ʿUmar, who said: "If a sick person acknowledges a debt owed to someone during his illness, it is permissible." Ibn ʿUmar generalized this ruling and did not specify any exceptions.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا بَعْضُ أَصْحَابِنَا عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ عَنْ ابْنِ عُمَرَ قَالَ: إذَا أَقَرَّ الْمَرِيضُ فِي مَرَضِهِ بِدَيْنٍ لِرَجُلٍ فَإِنَّهُ جَائِزٌ - فَعَمَّ ابْنُ عُمَرَ وَلَمْ يَخُصَّ.

L21059 From the chain of Ibn Abī Shaybah: He narrated to us from Ibn Ulayyah, from Layth, from Ṭāwūs, who said: If one acknowledges a debt owed to an heir, it is valid - meaning during illness.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ عُلَيَّةَ عَنْ لَيْثٍ عَنْ طَاوُسٍ قَالَ: إذَا أَقَرَّ لِوَارِثٍ بِدَيْنٍ جَازَ - يَعْنِي فِي الْمَرَضِ -.

L21060 And through him to Ibn ʿUlayyah from ʿĀmir al-Aḥwal, who said: Al-Ḥasan was asked about it, and he replied: "I hold him liable for it, but I do not bear liability for it on his behalf."

وَبِهِ إلَى ابْنِ عُلَيَّةَ عَنْ عَامِرٍ الْأَحْوَلِ قَالَ: سُئِلَ الْحَسَنُ عَنْهُ؟ فَقَالَ: أُحَمِّلُهَا إيَّاهُ وَلَا أَتَحَمَّلُهَا عَنْهُ.

L21061 Via Ibn Abi Shaybah: Zayd ibn al-Hubab narrated to us, Hammad ibn Salamah narrated to us, from Qays ibn Saʿd, from 'Ata' regarding one who acknowledges a debt in favor of an heir. He said: It is permissible.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا زَيْدُ بْنُ الْحُبَابِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ عَطَاءٍ فِيمَنْ أَقَرَّ لِوَارِثٍ بِدَيْنٍ، قَالَ: جَائِزٌ.

L21062 From the transmission of Ibn Abī Shaybah: ʿUmar ibn Ayyūb al-Mawṣilī narrated to us [from Jaʿfar—meaning Ibn Burqān—from Maymūn—meaning Ibn Mihrān]: If one acknowledges a debt during terminal illness, I maintain that it is permissible for it to stand against him, for if he had acknowledged it while in sound health, it would be valid. The most credible acknowledgment is that made at the time of death. This is the position of al-Shāfiʿī, Abū Sulaymān, and their respective disciples.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عُمَرُ بْنُ أَيُّوبَ الْمَوْصِلِيُّ عَنْ جَعْفَرٍ - هُوَ ابْنُ بُرْقَانَ - عَنْ مَيْمُونٍ هُوَ ابْنُ مِهْرَانَ - إذَا أَقَرَّ بِدَيْنٍ فِي مَرَضِهِ، فَأَرَى أَنْ يَجُوزَ عَلَيْهِ؛ لِأَنَّهُ لَوْ أَقَرَّ بِهِ - وَهُوَ صَحِيحٌ - جَازَ وَأَصْدَقُ مَا يَكُونُ عِنْدَ مَوْتِهِ - وَهَذَا هُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

L21063 A group said: It is fundamentally impermissible for a sick person to acknowledge debt, as we have reported via Ibn Abi Shaybah from Wakīʿ, from Sufyān, from Ibn Jurayj, from ʿAṭāʾ, who said: "A sick person's acknowledgment of debt is not valid." This is also the view of Yāsīn al-Zayyāt, except that he said: "It is to be taken from the third of the estate." Another group made a distinction—as we have reported from Shurayḥ, who deemed a sick

وَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ إقْرَارُ الْمَرِيضِ أَصْلًا، كَمَا رُوِّينَا عَنْ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ سُفْيَانَ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: لَا يَجُوزُ إقْرَارُ الْمَرِيضِ بِالدَّيْنِ، وَهُوَ قَوْلُ يَاسِينَ الزَّيَّاتِ إلَّا أَنَّهُ قَالَ: هُوَ مِنْ الثُّلُثِ. وَقَسَّمَتْ طَائِفَةٌ -: كَمَا رُوِّينَا عَنْ شُرَيْحٍ أَنَّهُ كَانَ

person's acknowledgment of debt to someone other than an heir valid when made near death, but did not accept it for an heir unless supported by testimonial evidence. This is the opinion of Ibrāhīm and Ibn Udhaynah, and it is reliably transmitted from them. We have also reported it from al-Ḥakam and al-Shaʿbī—and it is the view of Abū Ḥanīfah, except that, according to him, debts contracted during health take precedence over debts incurred during terminal illness.

يُجِيزُ اعْتِرَافَ الْمَرِيضِ عِنْدَ مَوْتِهِ بِالدَّيْنِ لِغَيْرِ الْوَارِثِ، وَلَا يُجِيزُهُ لِلْوَارِثِ إِلَّا بِبَيِّنَةٍ - وَهُوَ قَوْلُ إِبْرَاهِيمَ، وَابْنِ أُذَيْنَةَ - صَحَّ ذَلِكَ عَنْهُمَا. وَرُوِّينَاهُ أَيْضًا عَنِ الْحَكَمِ، وَالشَّعْبِيِّ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ - إِلَّا أَنَّ دَيْنَ الصِّحَّةِ عِنْدَهُ مُقَدَّمٌ عَلَى دَيْنِ الْمَرَضِ.

L21064–21065 They unanimously agreed that the acknowledgment by a legally competent person of a debt in favor of an heir or non-heir is permissible from the principal of the wealth, regardless of whether the debtor had a child or not.

وَاتَّفَقُوا عَلَى أَنَّ إِقْرَارَ الصَّحِيحِ لِلْوَارِثِ وَلِغَيْرِ الْوَارِثِ بِالدَّيْنِ جَائِزٌ مِنْ رَأْسِ الْمَالِ - كَانَ لَهُ وَلَدٌ أَوْ لَمْ يَكُنْ -.

L21066 Mālik and Abū Ḥanīfa said: If a sick person acknowledges [something] to an heir and then recovers from his illness, this acknowledgment is binding upon him, payable from his principal wealth.

وَقَالَ مَالِكٌ، وَأَبُو حَنِيفَةَ: إِنْ أَقَرَّ الْمَرِيضُ لِوَارِثٍ فَأَفَاقَ مِنْ مَرَضِهِ فَهُوَ لَازِمٌ لَهُ مِنْ رَأْسِ مَالِهِ.

L21067 There are differing reports from Mālik regarding the case if he dies from that illness. The report transmitted by Ibn al-Qāsim from him states that such an acknowledgment is not permissible. Abū Qurrah narrated from Mālik that it is impermissible except in trivial matters which he deems unaffected by it due to their insignificance.

وَاخْتَلَفَ عَنْ مَالِكٍ فِي ذَلِكَ إِنْ مَاتَ مِنْ ذَلِكَ الْمَرَضِ فَرِوَايَةُ ابْنِ الْقَاسِمِ عَنْهُ: أَنَّهُ لَا يَجُوزُ ذَلِكَ الْإِقْرَارُ - وَرَوَى أَبُو قُرَّةَ عَنْ مَالِكٍ: لَا يَجُوزُ إِلَّا فِي الشَّيْءِ الْيَسِيرِ الَّذِي يَرَى أَنَّهُ لَا يُؤَثِّرُ بِهِ لِتَفَاهَتِهِ.

L21068 It has also been narrated from Mālik that if a person acknowledges a debt or right to an heir, his acknowledgment to that heir is invalid. However, if he acknowledges a debt or right to an estranged heir, his acknowledgment is valid for him, as it would be for a non-relative.

وَرُوِيَ عَنْ مَالِكٍ أَيْضًا: أَنَّهُ إِنْ أَقَرَّ لِوَارِثٍ بِإِرْبِهِ لَمْ يَجُزْ إِقْرَارُهُ لَهُ، فَإِنْ أَقَرَّ لِوَارِثٍ عَاقٍّ جَازَ إِقْرَارُهُ لَهُ كَالْأَجْنَبِيِّ.

L21069 If it is the case that a man acknowledges to his wife a debt or dower (mahr): If he has a child from another woman and there is no known cessation of his obligations toward the wife nor bias in her favor, his acknowledgment to her is permissible from his capital. However, if he is known to show bias toward her—and there exists escalating conflict between him and his child from another woman—his acknowledgment to her is not permissible.

وَقَالَ فِي إِقْرَارِهِ لِزَوْجَتِهِ بِدَيْنٍ أَوْ مَهْرٍ: فَإِنَّهُ إِنْ كَانَ لَهُ وَلَدٌ مِنْ غَيْرِهَا وَلَمْ يُعْرَفْ لَهُ انْقِطَاعٌ إِلَى الزَّوْجَةِ، وَلَا مَيْلٌ إِلَيْهَا فَإِقْرَارُهُ لَهَا جَائِزٌ مِنْ رَأْسِ الْمَالِ، فَإِنْ عُرِفَ لَهُ مَيْلٌ إِلَيْهَا - وَكَانَ بَيْنَهُ وَبَيْنَ وَلَدِهِ مِنْ غَيْرِهَا تَفَاقُمٌ - لَمْ يَجُزْ إِقْرَارُهُ لَهَا.

L21070 He said: The rest of the heirs are not equivalent to the wife in this matter, for he is not suspected regarding the wife—if he has no affection for her—of diverting his wealth from his children to her. He said: If he is inherited by

قَالَ: وَلَيْسَ سَائِرُ الْوَرَثَةِ فِي ذَلِكَ كَالزَّوْجَةِ، لِأَنَّهُ لَا يُتَّهَمُ فِي الزَّوْجَةِ إِذَا لَمْ يَكُنْ لَهُ إِلَيْهَا مَيْلٌ أَنْ يَصْرِفَ مَالَهُ عَنْ وَلَدِهِ إِلَيْهَا، قَالَ: فَإِنْ وَرِثَهُ بَنُونَ أَوْ إِخْوَةٌ لَمْ يَجُزْ إِقْرَارُهُ

sons or brothers, his acknowledgment to some of them to the exclusion of others during his illness is invalid. If he leaves only a daughter and agnates, and he acknowledges a right for some agnates, this is permissible.

L21071 He said: It is impermissible for him to make a legal acknowledgment in favor of his close associate if his parents or agnatic relatives inherit from him. But if a child or a child's child inherits from him, his acknowledgment to him is permissible.

L21072 Abū Muḥammad said: These are statements founded—without difference of opinion—upon misguided conjectures and corrupt accusations. The Messenger of Allāh—peace and blessings be upon him—said: "Beware of suspicion, for suspicion is the most false of speech."

L21073 And Allah, the Exalted, said: "They follow nothing but assumption, and indeed assumption avails nothing against the truth." [An-Najm: 28][3]

L21074 None of these opinions are preserved from anyone prior to him.

L21075–21077 In their view, if they suspect him in this matter, his acknowledgment cannot escape being classified by them as either a gift or a bequest. If it is a gift, then according to their school, granting a gift to some heirs to the exclusion of others is permissible from the capital, and no distinction has ever been made between the gift of a sick person and that of a healthy one.

L21078 If it is a bequest, the bequest of a healthy person and a sick person are equal; it is only permissible from one-third of the estate. Thus, it is evident that distinguishing between them is invalid.

L21079 If they cite the narration concerning the emancipation of the six slaves and the Prophet's (peace be upon him) casting lots among them—freeing two and retaining four in servitude—this bears no relation to acknowledgment whatsoever. For acknowledgment is solely a declaration of a right he has

لِبَعْضِهِمْ دُونَ بَعْضٍ فِي مَرَضِهِ، فَإِنْ لَمْ يَتْرُكْ إِلَّا ابْنَةً، وَعَصَبَةً، فَأَقَرَّ لِبَعْضِ الْعَصَبَةِ جَازَ ذَلِكَ.

وَقَالَ: وَلَا يَجُوزُ إِقْرَارُهُ لِصَدِيقِهِ الْمُلَاطِفِ إِذَا وَرِثَهُ أَبَوَاهُ أَوْ عَصَبَتُهُ، فَإِنْ وَرِثَهُ وَلَدٌ أَوْ وَلَدُ وَلَدٍ: جَازَ إِقْرَارُهُ لَهُ.

قَالَ أَبُو مُحَمَّد: هَذِهِ أَقْوَالٌ مَبْنِيَّةٌ - بِلَا خِلَافٍ - عَلَى الظُّنُونِ الزَّائِغَةِ وَعَلَى التُّهَمَةِ الْفَاسِدَةِ وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» .

وَقَالَ اللَّهُ تَعَالَى: {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨] .

وَكُلُّ هَذِهِ الْأَقْوَالِ لَا تُحْفَظُ عَنْ أَحَدٍ قَبْلَهُ.

وَلَا يَخْلُو إِقْرَارُ الْمَرِيضِ عِنْدَهُمْ إِذَا اتَّهَمُوهُ فِيهِ مِنْ أَنْ يَكُونَ عِنْدَهُمْ هِبَةً أَوْ يَكُونَ وَصِيَّةً -: فَإِنْ كَانَ هِبَةً، فَالْهِبَةُ عِنْدَهُمْ لِبَعْضِ الْوَرَثَةِ دُونَ بَعْضٍ جَائِزَةٌ مِنْ رَأْسِ الْمَالِ وَمَا جَاءَ قَطُّ فَرْقٌ بَيْنَ هِبَةِ مَرِيضٍ وَلَا هِبَةِ صَحِيحٍ.

وَإِنْ كَانَ وَصِيَّةً: فَوَصِيَّةُ الصَّحِيحِ، وَالْمَرِيضِ، سَوَاءٌ لَا تَجُوزُ إِلَّا مِنْ الثُّلُثِ - فَظَهَرَ أَنَّ تَفْرِيقَهُمْ فَاسِدٌ.

فَإِنْ ذَكَرُوا حَدِيثَ عِتْقِ السِّتَّةِ الْأَعْبُدِ، وَإِقْرَاعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمْ، فَأَعْتَقَ اثْنَيْنِ وَأَرَقَّ أَرْبَعَةً، فَلَيْسَ هَذَا مِنْ الْإِقْرَارِ فِي شَيْءٍ أَصْلًا - وَالْإِقْرَارُ إِنَّمَا هُوَ

[3] **Qur'an references (L21073):** Qur'an 53:28 (An-Najm).

acknowledged, not a gift or bequest in any form. We shall mention the narration of the six slaves, God, the Exalted, willing, in "Emancipation," with its chain of transmission clarified. And success is from God, the Exalted.

L21080 **An issue: He said, "This thing belonged to so-and-so, and he gifted it to me."**

L21081 1381 - Issue:

L21082 Whoever says, "This thing"—referring to something in his possession—"belonged to so-and-so, and he gifted it to me," or says, "He sold it to me," is truthful, and no judgment is passed against him, due to the reasons previously mentioned and because wealth and ownership rights, without doubt, transfer from one hand to another. This is a matter we know for certain.

L21083 If judgment were passed against him based on part of his admission here without considering the rest, it would necessitate confiscating all people's property from their possession—or most of it—for you undoubtedly know that houses, lands, imported garments, slaves, and beasts of burden were owned by others before coming into the hands of their current possessors without doubt. Even if it is possible for some of that to be established through lineage, the mother and the maternal grandmother—without doubt—were owned by someone else.

L21084 Similarly, crops cultivated from what one owns and grows—thus, the invalidity of this view has become wholly evident.

L21085 If evidence is presented regarding something in his possession—whether he admitted to it or not—that it belonged to another, the ruling is issued in favor of that party at that time. The transfer of what the evidence has proven to belong to a specific person is not validated at all unless corroborated by evidence—and this is unanimously agreed upon. "The Messenger of Allah, peace and blessings be upon him, judged and ruled in favor of the claimant based on evidence."

L21086 **An issue: He said to a certain person, "I owe one hundred**

إِخْبَارٌ بِحَقٍّ ذَكَرَهُ - وَلَيْسَ عَطِيَّةً أَصْلًا، وَلَا وَصِيَّةً - وَحَدِيثُ السِّتَّةِ الْأَعْبُدِ سَنَذْكُرُهُ إِنْ شَاءَ اللَّهُ تَعَالَى فِي " الْعِتْقِ " بِإِسْنَادِهِ مُبَيَّنًا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَالَ هَذَا الشَّيْءُ كَانَ لِفُلَانٍ وَوَهَبَهُ لِي]

١٣٨١ - مَسْأَلَةٌ:

وَمَنْ قَالَ: هَذَا الشَّيْءُ - لِشَيْءٍ فِي يَدِهِ - كَانَ لِفُلَانٍ، وَوَهَبَهُ لِي، أَوْ قَالَ: بَاعَهُ مِنِّي -: صَدَقَ، وَلَمْ يُقْضَ عَلَيْهِ بِشَيْءٍ، لِمَا ذَكَرْنَا قَبْلُ، وَلِأَنَّ الْأَمْوَالَ، وَالْأَمْلَاكَ بِلَا شَكٍّ مُنْتَقِلَةٌ مِنْ يَدٍ إلَى يَدٍ: هَذَا أَمْرٌ نَعْلَمُهُ يَقِينًا.

فَلَوْ قُضِيَ عَلَيْهِ بِبَعْضِ إقْرَارِهِ هُنَا دُونَ سَائِرِهِ لَوَجَبَ إخْرَاجُ جَمِيعِ أَمْلَاكِ النَّاسِ عَنْ أَيْدِيهِمْ، أَوْ أَكْثَرِهَا؛ لِأَنَّك لَا تَشُكُّ فِي الدُّورِ، وَالْأَرَضِينَ، وَالثِّيَابِ الْمَجْلُوبَةِ وَالْعَبِيدِ، وَالدَّوَابِّ: أَنَّهَا كَانَتْ قَبْلُ مَنْ هِيَ بِيَدِهِ لِغَيْرِهِ بِلَا شَكٍّ، وَإِنْ أَمْكَنَ فِي بَعْضِ ذَلِكَ أَنْ يُنْتِجَهُ فَإِنَّ الْأُمَّ وَأُمَّ الْأُمِّ - بِلَا شَكٍّ - كَانَتْ لِغَيْرِهِ.

وَكَذَلِكَ الزَّرِيعَةُ مِمَّا بِيَدِهِ مِمَّا يَنْبُتُ - فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ جُمْلَةً.

فَإِنْ قَامَتْ بَيِّنَةٌ فِي شَيْءٍ مِمَّا بِيَدِهِ مِمَّا أَقَرَّ بِهِ، أَوْ مِمَّا لَمْ يُقِرَّ بِهِ: أَنَّهُ كَانَ لِغَيْرِهِ قَضَى بِهِ لِذَلِكَ الْغَيْرِ حِينَئِذٍ، وَلَمْ يُصَدَّقْ عَلَى انْتِقَالِ مَا قَامَتْ بِهِ الْبَيِّنَةُ لِإِنْسَانٍ بِعَيْنِهِ أَلْبَتَّةَ إلَّا بِبَيِّنَةٍ - وَهَذَا مُتَّفَقٌ عَلَيْهِ، «وَقَدْ حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَضَى بِالْبَيِّنَةِ لِلْمُدَّعِي»

[مَسْأَلَةٌ قَالَ لِفُلَانٍ عِنْدِي مِائَةُ دِينَارٍ دَيْنٌ وَلِي عِنْدَهُ مِائَةُ قَفِيزِ قَمْحٍ]

dinars as a debt, and he holds one hundred qafīz of wheat belonging to me."

L21087 1382 – Legal Issue:

L21088 If someone states: "So-and-so has a debt of one hundred dinars with me, while I have one hundred qafīz of wheat with him," or says: "except one hundred qafīz of dates," or similar stipulations, or "except a female slave"—and no clear proof exists for either party—the wheat he claims shall be appraised. If it equals the value of the one hundred dinars he acknowledged, or exceeds it, he bears no liability. If it equals less than that value, only the difference is adjudicated in favor of the party to whom he made the acknowledgment.

L21089 The proof of this is that he never made a complete confession for himself; rather, he coupled it with a condition that invalidated his initial declaration. Thus, nothing was ever established against himself based on his own admission.

L21090–21091 If it were permissible to take part of someone's statement while ignoring another part, it would necessarily follow that whoever says, "There is no god but Allah," should be put to death. This is because half of his statement—when isolated—constitutes genuine disbelief: namely, his saying "There is no god." It would then be said to him: "You disbelieved, then repented"—and this is an utterly invalid statement.

L21092 It would also necessarily entail the nullification of the entire exception in such a case, because it nullifies what was established in the initial statement prior to making the exception that was stipulated.

L21093 A group of scholars have stated: An exception is valid only if it pertains to the same type as what precedes it, not to a different type.

L21094 Abu Muhammad said: This is false, for Allah, the Exalted, says: "Indeed, the messengers do not fear in My presence [An-Naml 27:10], except those who have wronged [An-Naml 27:11]."[4]

١٣٨٢ - مَسْأَلَةٌ:

وَمَنْ قَالَ: لِفُلَانٍ عِنْدِي مِائَةُ دِينَارٍ دَيْنٌ وَلِي عِنْدَهُ مِائَةُ قَفِيزِ قَمْحٍ، أَوْ قَالَ: إلَّا مِائَةَ قَفِيزِ تَمْرٍ، أَوْ نَحْوَ ذَلِكَ، أَوْ إلَّا جَارِيَةً - وَلَا بَيِّنَةَ عَلَيْهِ بِشَيْءٍ وَلَا لَهُ - قُوِّمَ الْقَمْحُ الَّذِي ادَّعَاهُ، فَإِنْ سَاوَى الْمِائَةَ الدِّينَارَ الَّتِي أَقَرَّ بِهَا، أَوْ سَاوَى أَكْثَرَ: فَلَا شَيْءَ عَلَيْهِ - وَإِنْ سَاوَى أَقَلَّ: قُضِيَ بِالْفَضْلِ فَقَطْ لِلَّذِي أَقَرَّ لَهُ.

بُرْهَانُ ذَلِكَ -: أَنَّهُ لَمْ يُقِرَّ لَهُ قَطُّ إقْرَارًا تَامًّا، بَلْ وَصَلَهُ بِمَا أَبْطَلَ بِهِ أَوَّلَ كَلَامِهِ، فَلَمْ يَثْبُتْ لَهُ قَطُّ عَلَى نَفْسِهِ شَيْئًا.

وَلَوْ جَازَ أَنْ يُؤْخَذَ بِبَعْضِ كَلَامِهِ دُونَ بَعْضٍ لَوَجَبَ أَنْ يُقْتَلَ مَنْ قَالَ: لَا إلَهَ إلَّا اللَّهُ؛ لِأَنَّ نِصْفَ كَلَامِهِ إذَا انْفَرَدَ -: كُفْرٌ صَحِيحٌ - وَهُوَ قَوْلُهُ " لَا إلَهَ " فَيُقَالُ لَهُ: كَفَرْت، ثُمَّ نَدِمْت - وَهُوَ قَوْلٌ فَاسِدٌ جِدًّا

وَلَوَجَبَ أَيْضًا أَنْ يَبْطُلَ الِاسْتِثْنَاءُ كُلُّهُ بِمِثْلِ هَذَا، لِأَنَّهُ إبْطَالٌ لِمَا أَثْبَتَهُ بِأَوَّلِ كَلَامِهِ قَبْلَ أَنْ يَسْتَثْنِيَ مَا اسْتَثْنَى.

وَقَدْ قَالَ قَوْمٌ: إنَّمَا يَجُوزُ الِاسْتِثْنَاءُ مِنْ نَوْعِ مَا قَبْلَهُ لَا مِنْ نَوْعٍ غَيْرِهِ

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {إِنِّي لا يَخَافُ لَدَيَّ الْمُرْسَلُونَ} [النمل: ١٠] {إِلا مَنْ ظَلَمَ} [النمل: ١١] .

[4] **Qur'an references (L21094):** Qur'an 27:10 (An-Naml); Qur'an 4:148 (An-Nisa); Qur'an 27:11 (An-Naml).

L21095 And He, the Most High, said: {So the angels prostrated, all of them together} [Al-Hijr: 30] {Except Iblīs} [Al-Hijr: 31]. Thus He excluded Iblīs from the angels—and he was not of them, but rather of the jinn who procreate, whereas the angels do not procreate. The Most High excluded {whoever wrongs} [An-Naml: 11] (and then repents) from the messengers, for they were not of their kind. And the poet said:[5]

وَقَالَ تَعَالَى: {فَسَجَدَ الْمَلَائِكَةُ كُلُّهُمْ أَجْمَعُونَ} [الحجر: ٣٠] {إِلا إِبْلِيسَ} [الحجر: ٣١] فَاسْتَثْنَى إِبْلِيسَ مِنْ الْمَلَائِكَةِ وَلَيْسَ مِنْهُمْ، بَلْ مِنْ الْجِنِّ الَّذِينَ يَنْسِلُونَ، وَالْمَلَائِكَةُ لَا تَنْسِلُ، وَاسْتَثْنَى تَعَالَى: {مَنْ ظَلَمَ} [النمل: ١١] مِنْ الْمُرْسَلِينَ، وَلَيْسُوا مِنْ أَهْلِ صِفَتِهِمْ، وَقَالَ الشَّاعِرُ:

L21096 A land with no inhabitants—except swallows flitting, and except pale camels pacing.

وَبَلْدَةٌ لَيْسَ بِهَا أَنِيسُ ... إِلَّا الْيَعَافِيرُ وَإِلَّا الْعِيسُ

L21097 Neither the gazelles nor the camels with white legs are considered part of the tame livestock, and the eloquent Arab poet exempted them.

وَلَيْسَ " الْيَعَافِيرُ " وَ " الْعِيسُ " مِنْ " الْأَنِيسِ " وَقَدْ اسْتَثْنَاهُمْ الشَّاعِرُ الْعَرَبِيُّ الْفَصِيحُ.

[5]**Qur'an references (L21095):** Qur'an 15:30 (Al-Hijr); Qur'an 38:73 (Sad); Qur'an 15:31 (Al-Hijr); Qur'an 27:11 (An-Naml).

AL-MUHALLA

كِتَابُ اللُّقَطَةِ وَالضَّالَّةِ وَالْآبِقِ

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[كِتَابُ اللُّقَطَةِ وَالضَّالَّةِ وَالْآبِقِ] [مَسْأَلَةٌ وَجَدَ مَالًا فِي قَرْيَةٍ أَوْ مَدِينَةٍ]

١٣٨٣ - مَسْأَلَةٌ: مَنْ وَجَدَ مَالًا فِي قَرْيَةٍ - أَوْ مَدِينَةٍ، أَوْ صَحْرَاءَ فِي أَرْضِ الْعَجَمِ، أَوْ أَرْضِ الْعَرَبِ الْعَنْوَةِ أَوْ الصُّلْحِ مَدْفُونًا أَوْ غَيْرَ مَدْفُونٍ إلَّا أَنَّ عَلَيْهِ عَلَامَةً أَنَّهُ مِنْ ضَرْبِ مُدَّةِ الْإِسْلَامِ - أَوْ وَجَدَ مَالًا - قَدْ سَقَطَ - أَيَّ مَالٍ كَانَ -: فَهُوَ لُقَطَةٌ، وَفُرِضَ عَلَيْهِ أَخْذُهُ، وَأَنْ يُشْهِدَ عَلَيْهِ عَدْلًا وَاحِدًا فَأَكْثَرَ، ثُمَّ يُعَرِّفُهُ وَلَا يَأْتِي بِعَلَامَتِهِ، لَكِنَّ تَعْرِيفَهُ هُوَ أَنْ يَقُولَ فِي الْمَجَامِعِ الَّذِي يَرْجُو وُجُودَ صَاحِبِهِ فِيهَا أَوْ لَا يَرْجُو: مَنْ ضَاعَ لَهُ مَالٌ فَلْيُخْبِرْ بِعَلَامَتِهِ، فَلَا يَزَالُ كَذَلِكَ سَنَةً قَمَرِيَّةً، فَإِنْ جَاءَ مَنْ يُقِيمُ عَلَيْهِ بَيِّنَةً، أَوْ مَنْ يَصِفُ عِفَاصَهُ وَيُصَدَّقُ فِي صِفَتِهِ، وَيَصِفُ وِعَاءَهُ وَيُصَدَّقُ فِيهِ، وَيَصِفُ رِبَاطَهُ وَيُصَدَّقُ فِيهِ، وَيَعْرِفُ عَدَدَهُ وَيُصَدَّقُ فِيهِ، أَوْ يَعْرِفُ مَا كَانَ لَهُ مِنْ هَذَا.

أَمَّا الْعَدَدُ، وَالْوِعَاءُ، إنْ كَانَ لَا عِفَاصَ لَهُ وَلَا وِكَاءَ، أَوْ الْعَدَدُ إنْ كَانَ مَنْثُورًا فِي غَيْرِ وِعَاءٍ -: دَفَعَهَا إلَيْهِ - كَانَتْ لَهُ بَيِّنَةٌ أَوْ لَمْ تَكُنْ.

وَيُجْبَرُ الْوَاجِدُ عَلَى دَفْعِهِ إلَيْهِ وَلَا ضَمَانَ عَلَيْهِ بَعْدَ ذَلِكَ.

وَلَوْ جَاءَ مَنْ يُثْبِتُهُ بِبَيِّنَةٍ فَإِنْ لَمْ يَأْتِ أَحَدٌ يَصْدُقُ فِي صِفَتِهِ بِمَا ذَكَرْنَا وَلَا بَيِّنَةَ فَهُوَ عِنْدَ تَمَامِ السَّنَةِ مَالٌ مِنْ مَالِ الْوَاجِدِ - غَنِيًّا كَانَ أَوْ فَقِيرًا يَفْعَلُ فِيهِ مَا شَاءَ، وَيُورَثُ عَنْهُ، إلَّا أَنَّهُ مَتَى قَدِمَ مَنْ يُقِيمُ فِيهِ بَيِّنَةً أَوْ يَصِفُ شَيْئًا مِمَّا ذَكَرْنَا فَيَصْدُقُ ضَمِنَهُ لَهُ - إنْ كَانَ حَيًّا، أَوْ ضَمِنَهُ لَهُ الْوَرَثَةُ - إنْ كَانَ الْوَاجِدُ لَهُ مَيِّتًا.

[Book of Lost Property, Stray Animals, and Fugitive Slaves]
[Issue: Finding Lost Property in a Village or City]

Issue 1383: If someone finds money in a village, city, desert, in the land of non-Arabs, or in Arab land acquired by conquest or treaty—whether buried or unburied but bearing markings indicating it was struck during the Islamic period—or finds any fallen property regardless of type: this constitutes lost property. The finder must take possession, secure testimony from one or more upright witnesses, then publicly announce it without describing its identifiers. The announcement shall be made in public assemblies—whether the finder hopes for the owner's presence there or not—by declaring: "Whoever lost property should report its distinguishing marks." The finder shall persist in this manner for a full lunar year. If someone appears who either produces evidence, accurately describes the container's stopper and is believed, describes its container and is believed, describes its closure and is believed, states its exact quantity and is believed, or knows any of these distinguishing aspects that belong to him—the property shall be restored to him.

As for the counted items and the container—if the container has no lid or closure, or the counted items are scattered outside a container—he must deliver them to him, whether he has evidence or not.

The finder is compelled to return it to him, and there is no liability upon him after that.

If someone comes forward to establish it with evidence, then if no one comes who truthfully describes its attributes as we mentioned nor provides evidence, upon completing the year, it becomes property from the possessions of the finder—whether wealthy or poor, he may do with it as he wishes, and it is inherited from him. However, whenever someone comes who produces evidence for it or describes any of the attributes we mentioned truthfully, the finder—if alive—must guarantee it to him, or the heirs must guarantee it—if the finder is deceased.

If what is found is a single item—such as one dinar, one dirham, a single pearl, a single garment, or any similar item that has no binding, container, or

pouch—it belongs to the one who finds it from the moment it is found, and he must announce it perpetually throughout his lifetime. If someone ever comes forward who establishes conclusive proof against him (the finder), the finder must guarantee the item's return to its owner. The exclusive right belongs solely to him—or his heirs after him. If this right is not exercised, ownership remains with him or his heirs. He may dispose of it as he wishes through sale or other transactions, and his heirs after him hold the same authority. Any actions they execute regarding it are irrevocable.

فَإِنْ كَانَ مَا وَجَدَ شَيْئًا وَاحِدًا كَدِينَارٍ وَاحِدٍ، أَوْ دِرْهَمٍ وَاحِدٍ، أَوْ لُؤْلُؤَةٍ وَاحِدَةٍ، أَوْ ثَوْبٍ وَاحِدٍ، أَوْ أَيِّ شَيْءٍ كَانَ كَذَلِكَ لَا رِبَاطَ لَهُ، وَلَا وِعَاءَ، وَلَا عِفَاصَ -: فَهُوَ لِلَّذِي يَجِدُهُ مِنْ حِينِ يَجِدُهُ وَيُعَرِّفُهُ أَبَدًا طُولَ حَيَاتِهِ، فَإِنْ جَاءَ مَنْ يُقِيمُ عَلَيْهِ بَيِّنَةً قَطُّ: ضَمِنَهُ لَهُ فَقَطْ - هُوَ أَوْ وَرَثَتُهُ بَعْدَهُ - وَإِلَّا فَهُوَ لَهُ، أَوْ لِوَرَثَتِهِ يَفْعَلُ فِيهِ مَا شَاءَ مِنْ بَيْعٍ أَوْ غَيْرِهِ، وَكَذَلِكَ وَرَثَتُهُ بَعْدَهُ وَلَا يُرَدُّ مَا أَنْفَذُوا فِيهِ.

L21107 If this occurs within the sacred precinct of Mecca—may Allah the Exalted protect it—or among a group of people traveling with the intent to perform ʿUmrah or Ḥajj, he must declare it perpetually, and it is not permissible for him to claim ownership of it. Rather, it must be placed in waqf (endowment). If he conclusively loses hope of identifying its owner, it is to be allocated for the general welfare of the Muslim community.

فَإِنْ كَانَ ذَلِكَ فِي حَرَمِ مَكَّةَ حَرَسَهَا اللَّهُ تَعَالَى، أَوْ فِي رُفْقَةِ قَوْمٍ نَاهِضِينَ إِلَى الْعُمْرَةِ أَوْ الْحَجِّ: عَرَّفَ أَبَدًا، وَلَمْ يَحِلَّ لَهُ تَمَلُّكُهُ، بَلْ يَكُونُ مَوْقُوفًا - فَإِنْ يَئِسَ بِيَقِينٍ عَنْ مَعْرِفَةِ صَاحِبِهِ فَهُوَ فِي جَمِيعِ مَصَالِحِ الْمُسْلِمِينَ.

L21108 The evidence for this is what we have narrated through the chain of Muslim: Isḥāq ibn Manṣūr narrated to us, ʿUbaydullāh ibn Mūsā al-ʿAbsī narrated to us from Shaybān from Yaḥyā—he is Ibn Abī Kathīr—who informed me: Abū Salama—he is the son of ʿAbd al-Raḥmān ibn ʿAwf—reported to me: Abū Hurayrah said, "The Messenger of Allah—peace and blessings be upon him—delivered a sermon during the year of the conquest of Mecca and said: 'Verily, Allah restrained the Elephant from Mecca and granted authority over it to His Prophet and the believers. Know that it was not lawful for anyone before me, nor will it be lawful for anyone after me. Know that it was made lawful for me for an hour of the day. Know that it is now inviolable during this hour of mine: its thorns shall not be shaken, its trees shall not be felled, and its lost property shall not be picked up except by one who announces it publicly.'"

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ مَنْصُورٍ نا عُبَيْدُ اللَّهِ بْنُ مُوسَى الْعَبْسِيُّ عَنْ شَيْبَانَ عَنْ يَحْيَى - هُوَ ابْنُ أَبِي كَثِيرٍ - أَخْبَرَنِي أَبُو سَلَمَةَ - هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - أَخْبَرَنِي أَبُو هُرَيْرَةَ قَالَ: «خَطَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَامَ فَتْحِ مَكَّةَ فَقَالَ: إِنَّ اللَّهَ حَبَسَ عَنْ مَكَّةَ الْفِيلَ، وَسَلَّطَ عَلَيْهَا نَبِيَّهُ وَالْمُؤْمِنِينَ، أَلَا وَإِنَّهَا لَمْ تَحِلَّ لِأَحَدٍ قَبْلِي، وَلَا تَحِلُّ لِأَحَدٍ بَعْدِي، أَلَا وَإِنَّهَا أُحِلَّتْ لِي سَاعَةً مِنْ النَّهَارِ، أَلَا وَإِنَّهَا سَاعَتِي هَذِهِ حَرَامٌ، لَا يُخْبَطُ شَوْكُهَا، وَلَا يُعْضَدُ شَجَرُهَا وَلَا يَلْتَقِطُ سَاقِطَتَهَا إِلَّا مُنْشِدٌ» .

L21109 Abū Muḥammad said: Mecca itself constitutes the entire Haram exclusively, being the possessor of the mentioned sanctity - excluding what lies beyond the Haram, without differing.

قَالَ أَبُو مُحَمَّدٍ: مَكَّةُ هِيَ الْحَرَمُ كُلُّهُ فَقَطْ، وَهِيَ ذَاتُ الْحُرْمَةِ الْمَذْكُورَةِ، لَا مَا عَدَا الْحَرَمَ بِلَا خِلَافٍ -.

L21110 We have also narrated it from Ibn Abbas, from the Prophet (peace and

وَرُوِّينَاهُ أَيْضًا عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَيْضًا.

blessings of Allah be upon him) also.

L21111 And via the chain of Muslim: Abu al-Tahir narrated to us; Ibn Wahb informed me, reporting from 'Amr ibn al-Harith from Bukayr ibn 'Abdullah ibn al-Ashajj from Yahya ibn 'Abd al-Rahman ibn Hatib from 'Abd al-Rahman ibn 'Uthman al-Taymi: that the Messenger of Allah (peace and blessings of Allah be upon him) "prohibited taking the lost property of pilgrims."

وَمِنْ طَرِيقِ مُسْلِمٍ نِي أَبُو الطَّاهِرِ نا ابْنُ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ بْنِ حَاطِبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عُثْمَانَ التَّيْمِيِّ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «نَهَى عَنْ لُقَطَةِ الْحَاجِّ»

L21112 Abu Muhammad said: Linguistically, Ḥajj refers to intention. From this meaning, the path (al-maḥajjah) is termed maḥajjah. Therefore, one who departs from his home intending Ḥajj or ʿUmrah is fulfilling the intention that constitutes Ḥajj, until he completes all the rites of his Ḥajj or ʿUmrah. This is based on the statement of the Messenger of Allah (peace and blessings of Allah be upon him): "'Umrah is incorporated into Ḥajj until the Day of Resurrection." Once completed, he is no longer called a pilgrim, though he was a pilgrim and has performed Ḥajj. Success comes solely from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: الْحَجُّ فِي اللُّغَةِ هُوَ الْقَصْدُ، وَمِنْهُ سُمِّيَتْ الْمَحَجَّةُ مَحَجَّةً، فَالْقَاصِدُ مِنْ بَيْتِهِ إلَى الْحَجِّ أَوْ الْعُمْرَةِ هُوَ فَاعِلٌ لِلْقَصْدِ الَّذِي هُوَ الْحَجُّ إلَى أَنْ يُتِمَّ جَمِيعَ أَعْمَالِ حَجِّهِ أَوْ عُمْرَتِهِ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «دَخَلَتْ الْعُمْرَةُ فِي الْحَجِّ إلَى يَوْمِ الْقِيَامَةِ» فَإِذَا تَمَّتْ فَلَيْسَ حَاجًّا، لَكِنَّهُ كَانَ حَاجًّا، وَقَدْ حَجَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L21113–21114 This has been narrated to us from ʿUmar ibn al-Khaṭṭāb and Sa'id ibn al-Musayyib.

وَرُوِّينَا هَذَا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ الْمُسَيِّبِ.

L21115 It was narrated to us through the chain of Al-Ḥajjāj ibn al-Minhāl: Al-Aswad ibn Shaybān reported from Abū Nawfal—who is Ibn Abī ʿAqrab—from his father that he found a stray she-camel during the pilgrimage season in the era of ʿUmar ibn al-Khaṭṭāb. He announced it publicly, but no one recognized it. He brought it to ʿUmar among the people and said: "I have announced it, so relieve me of it." ʿUmar replied: "I will not do that." The man said: "O Commander of the Believers, what do you instruct me?" ʿUmar said: "Keep it until you present it at next year's pilgrimage season." He did so, announced it again, but no one recognized it. He brought it to ʿUmar and informed him he had fulfilled the command by presenting it as instructed, yet no claimant emerged. He repeated: "Relieve me of it." ʿUmar replied: "I will not do so, but if you wish, I will show you its lawful resolution: You may give it in charity. If its owner later comes, offer him the choice between the property and the reward. If he chooses the property, return it to him, and the reward will be yours. If he prefers the reward, it will be yours based

رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا الْأَسْوَدُ بْنُ شَيْبَانَ عَنْ أَبِي نَوْفَلٍ - هُوَ ابْنُ أَبِي عَقْرَبٍ - عَنْ أَبِيهِ أَنَّهُ أَصَابَ بَدْرَةً بِالْمَوْسِمِ عَلَى عَهْدِ عُمَرَ بْنِ الْخَطَّابِ فَعَرَّفَهَا فَلَمْ يَعْرِفْهَا أَحَدٌ فَأَتَى بِهَا عُمَرُ عِنْدَ النَّفَرِ وَقَالَ لَهُ: قَدْ عَرَّفْتُهَا فَأَغْنِهَا عَنِّي قَالَ: مَا أَنَا بِفَاعِلٍ قَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ فَمَا تَأْمُرُنِي؟ قَالَ: أَمْسِكْهَا حَتَّى تُوَافِيَ بِهَا الْمَوْسِمَ قَابِلًا فَفَعَلَ، فَعَرَّفَهَا فَلَمْ يَعْرِفْهَا أَحَدٌ، فَأَتَى بِهَا عُمَرُ فَأَخْبَرَهُ: أَنَّهُ قَدْ وَافَاهُ بِهَا كَمَا أَمَرَهُ، وَعَرَّفَهَا فَلَمْ يَعْرِفْهَا أَحَدٌ، وَقَالَ لَهُ: أَغْنِهَا عَنِّي؟ قَالَ لَهُ عُمَرُ: مَا أَنَا بِفَاعِلٍ، وَلَكِنْ إنْ شِئْت أَخْبَرْتُك بِالْمَخْرَجِ مِنْهَا، أَوْ سَبِيلِهَا: إنْ شِئْت تَصَدَّقْت بِهَا، فَإِنْ جَاءَ صَاحِبُهَا خَيَّرْتَهُ، فَإِنْ اخْتَارَ الْمَالَ رَدَدْت عَلَيْهِ الْمَالَ، وَكَانَ الْأَجْرُ لَك، وَإِنْ اخْتَارَ الْأَجْرَ كَانَ لَك نِيَّتُك فَهَذَا فِعْلُ عُمَرَ فِي لُقَطَةِ الْمَوْسِمِ.

on your intention." This was ʿUmar's practice regarding lost property during the pilgrimage season.

وَفَعَلَ فِي لُقَطَةِ غَيْرِ الْمَوْسِمِ مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي إِسْمَاعِيلُ بْنُ أُمَيَّةَ أَنَّ مُعَاوِيَةَ بْنَ عَبْدِ اللَّهِ بْنِ بَدْرٍ الْجُهَنِيَّ أَخْبَرَهُ، أَنَّ أَبَاهُ عَبْدَ اللَّهِ - قَالَ إِسْمَاعِيلُ: وَقَدْ سَمِعْت أَنَّ لَهُ صُحْبَةً - أَقْبَلَ مِنْ الشَّامِ فَوَجَدَ صُرَّةً فِيهَا ذَهَبٌ مِائَةٌ فَأَخَذَهَا، فَجَاءَ بِهَا إلَى عُمَرَ بْنِ الْخَطَّابِ؟ فَقَالَ لَهُ عُمَرُ: اُنْشُدْهَا الْآنَ عَلَى بَابِ الْمَسْجِدِ ثَلَاثَةَ أَيَّامٍ، ثُمَّ عَرِّفْهَا سَنَةً، فَإِنْ اعْتَرَفَتْ، وَإِلَّا فَهِيَ لَك، قَالَ: فَعَلْت فَلَمْ تُعْرَفْ، فَقَسَّمْتهَا بَيْنَ امْرَأَتَيْنِ لِي.

L21116 He acted concerning a lost item found outside the pilgrimage season as we have transmitted via Abd al-Razzaq from Ibn Jurayj, who informed me that Ismail ibn Umayyah reported: Muawiyah ibn Abdullah ibn Badr al-Juhani informed him that his father Abdullah—Ismail said, "I have heard he was a Companion (of the Prophet)"—returned from Syria and found a purse containing one hundred gold dinars. He took it and brought it to Umar ibn al-Khattab. Umar instructed him: "Announce this at the mosque's entrance for three days, then publicize it for a year. If someone claims it, give it to them; otherwise, it becomes yours." He said: "I did so, but no claimant came forward. I then divided it between my two wives."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ قَتَادَةَ قَالَ: كُنْت أَطُوفُ بِالْبَيْتِ فَوَطِئْت عَلَى ذَهَبٍ، أَوْ فِضَّةٍ، فَلَمْ آخُذْهُ، فَذَكَرْت ذَلِكَ لِسَعِيدِ بْنِ الْمُسَيِّبِ؟ فَقَالَ: بِئْسَ مَا صَنَعْت، كَانَ يَنْبَغِي لَك أَنْ تَأْخُذَهُ تُعَرِّفَهُ سَنَةً، فَإِنْ جَاءَ صَاحِبُهُ رَدَدْتَهُ إلَيْهِ، وَإِلَّا تَصَدَّقْت بِهِ عَلَى ذِي فَاقَةٍ مِمَّنْ لَا تَعُولُ.

L21117 From the chain of Al-Ḥajjāj ibn al-Minhāl, Abū ʿAwānah reported to us from Qatādah, who said: While performing circumambulation around the House, I stepped upon gold or silver but did not take it. When I mentioned this to Saʿīd ibn al-Musayyib, he said: What a terrible thing you did! You should have taken it and made it known for a year. If its owner comes, return it to him; otherwise, give it in charity to a needy person whom you do not support.

وَقَالَ فِي لُقَطَةِ غَيْرِ الْحَرَمِ مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي إِسْمَاعِيلُ بْنُ أُمَيَّةَ: أَنَّ زَيْدَ بْنَ الْأَخْنَسِ الْخُزَاعِيَّ أَخْبَرَهُ أَنَّهُ قَالَ لِسَعِيدِ بْنِ الْمُسَيِّبِ: وَجَدْت لُقَطَةً أَفَأَتَصَدَّقُ بِهَا؟ قَالَ: لَا تُؤْجَرُ أَنْتَ وَلَا صَاحِبُهَا، قُلْت: أَفَأَدْفَعُهَا إلَى الْأُمَرَاءِ؟ قَالَ: إذًا يَأْكُلُونَهَا أَكْلًا سَرِيعًا قُلْت: وَكَيْفَ تَأْمُرُنِي؟ قَالَ: عَرِّفْهَا سَنَةً، فَإِنْ اعْتَرَفَتْ وَإِلَّا فَهِيَ لَك كَمَالِك فَهَذَا سَعِيدُ بْنُ الْمُسَيِّبِ يَقُولُ: بِإِيجَابِ أَخْذِ اللُّقَطَةِ وَلَا بُدَّ، وَيَرَاهَا بَعْدَ الْحَوْلِ قَدْ صَارَتْ مِنْ مَالِ الْمُلْتَقِطِ، إلَّا لُقَطَةَ مَكَّةَ.

L21118 Regarding lost property outside the Sacred Precinct, he said—as we have narrated through the chain of Abd al-Razzaq from Ibn Jurayj, who informed me that Isma'il ibn Umayyah reported: Zayd ibn al-Akhnaṣ al-Khuza'i informed him that he asked Sa'id ibn al-Musayyib: "I found a lost item—should I give it in charity?" He replied: "Neither you nor its owner will be rewarded." I said: "Should I hand it over to the authorities?" He said: "Then they will consume it swiftly." I asked: "What do you instruct me to do?" He said: "Announce it for a lunar year. If it is claimed, return it; otherwise, it becomes yours as its owner." Thus, Sa'id ibn al-Musayyib affirms the obligation to take charge of lost property, considering it necessary, and deems it to transfer to the finder's possession after the lunar year—except for lost property within Mecca.

L21119–21120 Our opinion regarding the found property of Mecca corresponds to the

opinion of ʿAbd al-Raḥmān ibn Mahdī and Abū ʿUbayd. Aḥmad ibn Muḥammad ibn al-Jasūr reported this to us, stating: Muḥammad ibn ʿĪsā ibn Rifāʿah narrated to us, ʿAlī ibn ʿAbd al-ʿAzīz narrated to us from Abū ʿUbayd, who narrated from ʿAbd al-Raḥmān ibn Mahdī to this effect. And from Abū ʿUbayd's own statement.

وَقَوْلُنَا فِي لُقَطَةِ مَكَّةَ هُوَ قَوْلُ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ، وَأَبِي عُبَيْدٍ، نَا بِذَلِكَ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ قَالَ: نا مُحَمَّدُ بْنُ عِيسَى بْنُ رِفَاعَةَ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا أَبُو عُبَيْدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ بِذَلِكَ - وَعَنْ أَبِي عُبَيْدٍ مِنْ قَوْلِهِ.

L21121 As for lost items other than those of the Haram and the pilgrim, this is based on what was reported to us through the chain of Abu Dawud—Musaddad reported to us: Khalid al-Hadhdha' reported to us: Abu al-'Ala' (Yazid ibn 'Abdullah ibn al-Shikhkhir) reported from Mutarrif (ibn 'Abdullah ibn al-Shikhkhir), from 'Iyad ibn Himar al-Mujashi'i, who said: The Messenger of Allah (peace and blessings be upon him) said, "Whoever finds a lost item must have one upright witness or two upright witnesses, and must neither conceal nor misappropriate it. If he finds its owner, he must return it to him; otherwise, it becomes the property of Allah, the Exalted and Majestic—He grants it to whom He wills."

وَأَمَّا مَا عَدَا لُقَطَةَ الْحَرَمِ، وَالْحَاجِّ، فَلِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُسَدَّدٌ نا خَالِدٌ - هُوَ الْحَذَّاءُ - عَنْ أَبِي الْعَلَاءِ - هُوَ يَزِيدُ بْنُ عَبْدِ اللَّهِ بْنِ الشِّخِّيرِ - عَنْ مُطَرِّفٍ - هُوَ ابْنُ عَبْدِ اللَّهِ بْنِ الشِّخِّيرِ - عَنْ عِيَاضِ بْنِ حِمَارٍ الْمُجَاشِعِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أَخَذَ لُقَطَةً فَلْيُشْهِدْ ذَا عَدْلٍ، أَوْ ذَوِي عَدْلٍ، وَلَا يَكْتُمْ، وَلَا يَغِيبُ، فَإِنْ وَجَدَ صَاحِبَهَا فَلْيَرُدَّهَا عَلَيْهِ، وَإِلَّا فَهُوَ مَالُ اللَّهِ عَزَّ وَجَلَّ يُؤْتِيهِ مَنْ شَاءَ» .

L21122 We have narrated it through Hushaym from Khalid al-Ḥadhā' with his *isnād*. He said: "Let him have two just witnesses testify."

وَرُوِّينَاهُ مِنْ طَرِيقِ هُشَيْمٍ عَنْ خَالِدٍ الْحَذَّاءِ بِإِسْنَادِهِ فَقَالَ: «فَلْيُشْهِدْ ذَوَيْ عَدْلٍ» .

L21123 Abu Muhammad said: Musaddad added as we mentioned, and it is not a doubt. It is not permissible to interpret anything reported from the Prophet—peace and blessings of Allah be upon him—as being doubt unless there is certainty that it is doubt. Otherwise, the outward aspect is the _isnad_.

قَالَ أَبُو مُحَمَّدٍ: وَزَادَ مُسَدَّدٌ كَمَا ذَكَرْنَا وَلَيْسَ شَكًّا، وَلَا يَجُوزُ أَنْ يُحْمَلَ شَيْءٌ مِمَّا رُوِيَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَنَّهُ شَكٌّ إلَّا بِيَقِينِ أَنَّهُ شَكٌّ، وَإِلَّا فَظَاهِرُهُ الْإِسْنَادُ.

L21124–21126 And through the chain of Hammad from Rabi'ah from Yazid, the freed slave of al-Munbaʿith, from Zayd ibn Khalid al-Juhani, that the Messenger of Allah—peace and blessings of Allah be upon him—was asked about a lost item. He said: "Identify its seal, its count, and its container. If its owner comes and recognizes it, then hand it over to him; otherwise, it is yours." And from Muslim's transmission: Abu Tahir Ahmad ibn Amr ibn al-Sarh narrated to me; Ibn Wahb narrated to us. Al-Dahhak ibn Uthman narrated from Abu al-Nadr—he was the freed slave of Umar ibn Ubayd Allah—from Busr ibn Sa'id from Zayd ibn Khalid al-Juhani, who said: "The Messenger of Allah (peace and blessings of Allah be upon him) was asked about found property. He said: 'Announce it publicly for a year. If it is not claimed, then

وَمِنْ طَرِيقِ حَمَّادٍ عَنْ رَبِيعَةَ عَنْ يَزِيدَ مَوْلَى الْمُنْبَعِثِ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «سُئِلَ عَنْ اللُّقَطَةِ فَقَالَ: اعْرِفْ عِفَاصَهَا وَعِدَّتَهَا وَوِعَاءَهَا، فَإِنْ جَاءَ صَاحِبُهَا فَعَرَفَهَا فَادْفَعْهَا إلَيْهِ وَإِلَّا فَهِيَ لَكَ» . وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي أَبُو الطَّاهِرِ أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ نا ابْنُ وَهْبٍ نا الضَّحَّاكُ بْنُ عُثْمَانَ عَنْ أَبِي النَّضْرِ - هُوَ مَوْلَى عُمَرَ بْنِ عُبَيْدِ اللَّهِ - عَنْ بُسْرِ بْنِ سَعِيدٍ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ

note its pouch and fastening, then preserve it intact. If its owner comes, return it to him.'"

L21127 From the path of Hammad ibn Salamah: Salamah ibn Kuhayl narrated to us from Suwayd ibn Ghufalah that Ubayy ibn Kaʿb said to him that he had asked the Prophet—peace be upon him—about a lost item. The Messenger of Allah said to him: "Recognize its number, its binding string, and its container, then you may use it. If its owner comes and recognizes its number, its binding string, and its container, give it to him; otherwise, it is yours."

L21128 As for a single item that has neither a stopper, a bag, nor a receptacle, this is because the Messenger of Allah—peace and blessings be upon him—commanded announcing lost items for a year only in cases where they possess countable items, a bag, a stopper, or similar attributes. However, what lacks a bag, receptacle, stopper, or countable items falls outside the scope of this narration. Its ruling is derived from the hadith of ʿIyāḍ ibn Ḥimār, which stipulates that such items must be proclaimed indefinitely, based on the Prophet's statement—peace be upon him—"One must not conceal nor hide [lost property]," and his saying—peace be upon him—"It is Allah's property, which He grants to whom He wills." Thus, Allah has bestowed it upon its finder.

It was narrated to us through the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn Rāfiʿ narrated to us; Ḥujayn ibn al-Muthannā narrated to us; ʿAbd al-ʿAzīz—that is, Ibn Abī Salamah al-Mājishūn—narrated from ʿAbdullāh ibn al-Faḍl, from Salamah ibn Kuhayl, who said: Suwayd ibn Ghafalah, Zayd ibn Ṣuḥān, and a third companion were traveling when one of them—undoubtedly Suwayd—found a whip and took it. His two companions urged him, "Abandon it!" He replied, "I will make use of it. If its owner comes, I will return it—it is better to use it and return it to its owner than to leave it for wild animals to destroy." Later, he met Ubayy ibn Kaʿb and related the incident. Ubayy said, "You were correct, and they erred." This indicates that Ubayy ibn Kaʿb upheld the obligation to take possession of lost property.

قَالَ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ اللُّقَطَةِ؟ فَقَالَ: عَرِّفْهَا سَنَةً فَإِنْ لَمْ تُعْتَرَفْ فَاعْرِفْ عِفَاصَهَا وَوِكَاءَهَا، ثُمَّ كَمِّلْهَا فَإِنْ جَاءَ صَاحِبُهَا فَأَدِّهَا إلَيْهِ» .

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا سَلَمَةُ بْنُ كُهَيْلٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ أَنَّ أُبَيَّ بْنَ كَعْبٍ قَالَ لَهُ: أَنَّهُ سَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ اللُّقَطَةِ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «اعْرِفْ عَدَدَهَا، وَوِكَاءَهَا، وَوِعَاءَهَا، ثُمَّ اسْتَمْتِعْ بِهَا، فَإِنْ جَاءَ صَاحِبُهَا فَعَرَفَ عَدَدَهَا وَوِكَاءَهَا وَوِعَاءَهَا فَأَعْطِهَا إيَّاهُ وَإِلَّا فَهِيَ لَكَ»

وَأَمَّا الشَّيْءُ الْوَاحِدُ الَّذِي لَا وِكَاءَ لَهُ، وَلَا عِفَاصَ، وَلَا وِعَاءَ فَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا أَمَرَ بِتَعْرِيفِ السَّنَةِ فِيمَا لَهُ عَدَدٌ، وَعِفَاصٌ، وَوِكَاءٌ، أَوْ بَعْضُ هَذِهِ - فَأَمَّا مَا لَا عِفَاصَ لَهُ، وَلَا وِعَاءَ، وَلَا وِكَاءَ، وَلَا عَدَدَ: فَهُوَ خَارِجٌ مِنْ هَذَا الْخَبَرِ، وَحُكْمُهُ فِي حَدِيثِ عِيَاضِ بْنِ حِمَارٍ: فَحُكْمُهُ أَنْ يُنْشَدَ ذَلِكَ أَبَدًا لِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «لَا يَكْتُمُ وَلَا يُغَيِّبُ» وَلِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «هُوَ مَالُ اللَّهِ يُؤْتِيهِ مَنْ يَشَاءُ» فَقَدْ آتَاهُ اللَّهُ وَاجِدَهُ رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ رَافِعٍ نا حُجَيْنُ بْنُ الْمُثَنَّى نا عَبْدُ الْعَزِيزِ - هُوَ ابْنُ أَبِي سَلَمَةَ - الْمَاجِشُونِ عَنْ عَبْدِ اللَّهِ بْنِ الْفَضْلِ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ قَالَ: كَانَ سُوَيْدُ بْنُ غَفَلَةَ، وَزَيْدُ بْنُ صُوحَانَ وَثَالِثٌ مَعَهُمَا فِي سَفَرٍ فَوَجَدَ أَحَدُهُمْ - هُوَ سُوَيْدٌ بِلَا شَكٍّ - سَوْطًا فَأَخَذَهُ، فَقَالَ لَهُ صَاحِبَاهُ: أَلْقِهِ فَقَالَ: أَسْتَمْتِعُ بِهِ فَإِنْ جَاءَ صَاحِبُهُ أَدَّيْته إلَيْهِ خَيْرٌ مِنْ أَنْ تَأْكُلَهُ السِّبَاعُ - فَلَقِيَ أُبَيَّ بْنَ كَعْبٍ فَذَكَرَ ذَلِكَ لَهُ فَقَالَ: أَصَبْت وَأَخْطَآ - فَفِي هَذَا أَنَّ أُبَيَّ بْنَ كَعْبٍ رَأَى وُجُوبَ أَخْذِ اللُّقَطَةِ.

L21129 Abu Muhammad said: There is disagreement regarding what we have mentioned. Among this is that some said: "The luqṭah (found property) should not be taken at all," while others said: "Taking it is permissible, and leaving it is permissible." As for those who forbade taking it, this was due to what we just mentioned.

قَالَ أَبُو مُحَمَّد: فِيمَا ذَكَرْنَا اخْتِلَافٌ، فَمِنْ ذَلِكَ أَنَّ قَوْمًا قَالُوا: لَا تُؤْخَذُ اللُّقَطَةُ أَصْلًا، وَقَالَ آخَرُونَ: مُبَاحٌ أَخْذُهَا وَتَرْكُهَا مُبَاحٌ، فَأَمَّا مَنْ نَهَى عَنْ أَخْذِهَا فَلِمَا ذَكَرْنَا آنِفًا.

L21130 It was narrated to us from Ibn Wahb from ʿAmr ibn al-Ḥārith from Jaʿfar ibn Rabīʿah that al-Walīd ibn Saʿd narrated to him, saying: "I was with Ibn ʿUmar when I saw a dinar. I moved to take it, but Ibn ʿUmar struck my hand and said: 'What is it to you? Leave it.'" And through the narration of Qābūs ibn Abī Ẓabyān from his father from Ibn ʿAbbās: "Do not lift lost property; you have no part in it. Leaving it is better than taking it."

وَكَمَا رُوِّينَا عَنْ ابْنِ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ أَنَّ الْوَلِيدَ بْنَ سَعْدٍ حَدَّثَهُ قَالَ: كُنْت مَعَ ابْنِ عُمَرَ فَرَأَيْت دِينَارًا فَذَهَبْت لِآخُذَهُ فَضَرَبَ ابْنُ عُمَرَ يَدِي وَقَالَ: مَا لَك وَلَهُ اُتْرُكْهُ. وَمِنْ طَرِيقِ قَابُوسِ بْنِ أَبِي ظَبْيَانَ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ لَا تَرْفَعْ اللُّقَطَةَ لَسْت مِنْهَا فِي شَيْءٍ، تَرْكُهَا خَيْرٌ مِنْ أَخْذِهَا.

L21131–21132 Through the chain of Sufyan al-Thawri from Ibrahim ibn Abd al-A'la: Saʿid ibn Jubayr was asked about fruit found on the road. He replied, "It may not be eaten without the permission of its owner." Al-Rabiʿ ibn Khaytham is reported to have disapproved of taking lost property, and Shurayh is reported to have passed by a dirham and left it.

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ إبْرَاهِيمَ بْنِ عَبْدِ الْأَعْلَى سُئِلَ سَعِيدُ بْنُ جُبَيْرٍ عَنْ الْفَاكِهَةِ تُوجَدُ فِي الطَّرِيقِ؟ قَالَ: لَا تُؤْكَلُ إلَّا بِإِذْنِ رَبِّهَا. وَعَنْ الرَّبِيعِ بْنِ خَيْثَمٍ أَنَّهُ كَرِهَ أَخْذَ اللُّقَطَةِ. وَعَنْ شُرَيْحٍ أَنَّهُ مَرَّ بِدِرْهَمٍ فَتَرَكَهُ.

L21133 Abu Hanifah and Malik said: Both matters are permissible, but the superior course is to take them. Al-Shafiʿi once stated: Taking them is superior. On another occasion, he said: Piety is abandoning them.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: كِلَا الْأَمْرَيْنِ مُبَاحٌ، وَالْأَفْضَلُ أَخْذُهَا. وَقَالَ الشَّافِعِيُّ مَرَّةً: أَخْذُهَا أَفْضَلُ - وَمَرَّةً قَالَ: الْوَرَعُ تَرْكُهَا.

L21134 Abu Muhammad said: As for the one who permitted both matters, we do not know of any proof for him at all. If they interpret his command (peace be upon him) to accept it as a recommendation, it is said to them: Then interpret his command to define it as a recommendation, for there is no difference.

قَالَ أَبُو مُحَمَّد: أَمَّا مَنْ أَبَاحَ كِلَا الْأَمْرَيْنِ فَمَا نَعْلَمُ لَهُ حُجَّةً أَصْلًا، فَإِنْ حَمَلُوا أَمْرَهُ - عَلَيْهِ السَّلَامُ - بِأَخْذِهَا عَلَى النَّدْبِ؟ قِيلَ لَهُمْ: فَاحْمِلُوا أَمْرَهُ بِتَعْرِيفِهَا عَلَى النَّدْبِ وَلَا فَرْقَ.

L21135 If they say: "People's wealth is forbidden?" We reply: "Squandering it is forbidden—there is no distinction." As for those who prohibit taking it, they cite the Messenger of Allah's (peace and blessings be upon him) statement: 'Your blood and your wealth are inviolable to you.' We respond: "Indeed, but we never commanded him to deem it lawful in the first place. Rather, we commanded him to fulfill his obligation to preserve it and avoid its unlawful

فَإِنْ قَالُوا: أَمْوَالُ النَّاسِ مُحَرَّمَةٌ؟ قُلْنَا: وَإِضَاعَتُهَا مُحَرَّمَةٌ وَلَا فَرْقَ. وَأَمَّا مَنْ مَنَعَ مِنْ أَخْذِهَا؟ فَإِنَّهُمْ احْتَجُّوا بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَقُلْنَا لَهُمْ: نَعَمْ، وَمَا أَمَرْنَاهُ بِاسْتِحْلَالِهَا أَصْلًا، لَكِنْ أَمَرْنَاهُ بِالْمُفْتَرَضِ عَلَيْهِ مِنْ حِفْظِهَا وَتَرْكِ إضَاعَتِهَا الْمُحَرَّمَةِ عَلَيْهِ، ثُمَّ جَعَلْنَاهَا لَهُ حَيْثُ جَعَلَهَا

waste. We then entrust it to him as Allah—Who forbade our wealth to us except through what He permitted—has decreed. It is impermissible to abandon any of the Prophet's commands, for he has a greater claim over us than our own selves. Whoever harbors reluctance in his heart against what the Prophet has decreed has disbelieved."

L21136 They also cited as evidence the ḥadīth of al-Mundhir ibn Jarīr from his father from the Prophet, peace be upon him: "No one takes in a stray animal except a misguided person," and the ḥadīth of Abū Muslim al-Jarmī—or al-Ḥaramī—from al-Jārūd from the Prophet, peace be upon him, who said: "A Muslim's stray animal is the burning of the Fire."

L21137–21138 These two reports are unsound because Al-Mundhir ibn Jarīr and Abū Muslim Al-Jarmī or Al-Ḥaramī are unknown. However, "The lost property of a Muslim is fuel for the Fire" has been authenticated through another chain—a general statement elaborated by other narrations. It is a report we narrated via Ḥammād ibn Salamah from Ḥumayd from Al-Ḥasan from Muṭarrif ibn ʿAbdullāh ibn Ash-Shikhkhīr from his father, who asked the Messenger of Allah—peace and blessings be upon him—about stray camels. He—peace be upon him—responded: "The lost property of a Muslim is fuel for the Fire." They were the first to dissent, yet they instructed to take stray camels. Even if these two reports were sound, they would hold no legal weight, for sheltering lost property contravenes the Prophet's command—peace and blessings be upon him—regarding "fuel for the Fire," and is undoubtedly misguidance. We have never unconditionally commanded its sheltering, only its public announcement and perpetual liability. A stronger narration than theirs exists, as transmitted through Ibn Wahb: ʿAmr ibn Al-Ḥārith narrated to me from Bakr ibn Sawādah from Abū Sālim Al-Jayshānī from Zayd ibn Khālid Al-Juhanī that the Messenger of Allah—peace and blessings be upon him—said: "Whoever takes lost property remains astray until he announces it."

L21139 **The duration for announcing the found item.**

لَهُ الَّذِي حَرَّمَ أَمْوَالَنَا عَلَيْنَا إِلَّا بِمَا أَبَاحَهَا لَنَا، لَا يَجُوزُ تَرْكُ شَيْءٍ مِنْ أَوَامِرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ أَوْلَى بِنَا مِنْ أَنْفُسِنَا، وَقَدْ كَفَرَ مَنْ وَجَدَ فِي نَفْسِهِ حَرَجًا مِمَّا قَضَى.

وَاحْتَجُّوا أَيْضًا بِحَدِيثِ الْمُنْذِرِ بْنِ جَرِيرٍ عَنْ أَبِيهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَأْوِي الضَّالَّةَ إِلَّا ضَالٌّ» وَبِحَدِيثِ أَبِي مُسْلِمٍ الْجَرْمِيِّ - أَوْ الْحَرَمِيِّ - عَنْ الْجَارُودِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «ضَالَّةُ الْمُسْلِمِ حَرْقُ النَّارِ» .

وَهَذَانِ خَبَرَانِ لَا يَصِحَّانِ، لِأَنَّ الْمُنْذِرَ بْنَ جَرِيرٍ، وَأَبَا مُسْلِمٍ الْجَرْمِيَّ أَوْ الْحَرَمِيَّ - غَيْرُ مَعْرُوفَيْنِ، لَكِنْ «ضَالَّةُ الْمُسْلِمِ حَرْقُ النَّارِ» قَدْ صَحَّ مِنْ طَرِيقٍ أُخْرَى وَهَذَا لَفْظٌ مُجْمَلٌ فَسَّرَهُ سَائِرُ الْآثَارِ - وَهُوَ خَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ عَنْ مُطَرِّفِ بْنِ عَبْدِ اللَّهِ بْنِ الشِّخِّيرِ عَنْ أَبِيهِ أَنَّهُ سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ضَوَالِّ الْإِبِلِ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -: «ضَالَّةُ الْمُسْلِمِ حَرْقُ النَّارِ» وَهُمْ أَوَّلُ مُخَالِفٍ، فَأَمَرُوا بِأَخْذِ ضَوَالِّ الْإِبِلِ، ثُمَّ لَوْ صَحَّا لَمَا كَانَ لَهُمْ فِيهِمَا حُجَّةٌ، لِأَنَّ إِيوَاءَ الضَّالَّةِ بِخِلَافِ مَا أَمَرَ بِهِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَرْقُ النَّارِ، وَضَلَالٌ بِلَا شَكٍّ، وَمَا أَمَرْنَاهُ قَطُّ بِإِيوَائِهَا مُطْلَقًا، لَكِنْ بِتَعْرِيفِهَا وَضَمَانِهَا فِي الْأَبَدِ، وَقَدْ جَاءَ بِهَذَا حَدِيثٌ أَحْسَنُ مِنْ حَدِيثِهِمْ: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ حَدَّثَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ بَكْرِ بْنِ سَوَادَةَ عَنْ أَبِي سَالِمٍ الْجَيْشَانِيِّ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - [أَنَّهُ قَالَ] : «مَنْ أَخَذَ لُقَطَةً فَهُوَ ضَالٌّ مَا لَمْ يُعَرِّفْهَا» .

[مُدَّةُ تَعْرِيفِ اللُّقَطَةِ]

L21140 Among them is the duration for announcing [lost property]. It has been narrated to us from ‘Umar (may Allah be pleased with him) that the announcement period is three days at the mosque’s entrance, then one year – and this is the opinion of al-Layth ibn Sa‘d.

وَمِنْهَا مُدَّةُ التَّعْرِيفِ، وَقَدْ رُوِّينَا عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - التَّعْرِيفَ ثَلَاثَةَ أَيَّامٍ عَلَى بَابِ الْمَسْجِدِ، ثُمَّ سَنَةً - وَبِهِ يَقُولُ اللَّيْثُ بْنُ سَعْدٍ.

L21141–21143 This opinion is substantiated by what we have transmitted through the chain of Ahmad ibn Shu’ayb, who narrated from Yazid ibn Muhammad ibn ’Abd al-Samad, from ’Ali ibn ’Ayyash, from al-Layth, meaning Ibn Sa’d, who stated: It was conveyed to me by a reliable authority from Isma’il ibn Umayyah, from Rabi’ah ibn Abi ’Abd al-Rahman, from ’Abdullah ibn Yazid, the freed slave of al-Munba’ith, from a man among the Companions of the Messenger of Allah—peace and blessings be upon him—who reported that the Prophet—peace and blessings be upon him—said when asked about a lost item: “Recognize its bag and fastening, then publicly make it known for three days at the mosque’s entrance. If its owner comes, deliver it to him. If not, make it known for a full year. If its owner comes, give it to him; otherwise, you may dispose of it.” This is a weak hadith, for al-Layth did not name the one from whom he received it, and a virtuous narrator may deem reliable someone whom others do not. He approves. This is Sufyan al-Thawri saying: “I have not seen anyone more truthful than Jabir al-Juʿfi”—yet Jabir is notorious for lying.

وَيُحْتَجُّ لِهَذَا الْقَوْلِ بِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا يَزِيدُ بْنُ مُحَمَّدِ بْنِ عَبْدِ الصَّمَدِ نا عَلِيُّ بْنُ عَيَّاشٍ نا اللَّيْثُ - هُوَ ابْنُ سَعْدٍ - حَدَّثَنِي مَنْ أَرْضَى عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ مَوْلَى الْمُنْبَعِثِ عَنْ رَجُلٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ - وَقَدْ سُئِلَ عَنِ الضَّالَّةِ -: «اعْرِفْ عِفَاصَهَا وَوِكَاءَهَا، ثُمَّ عَرِّفْهَا ثَلَاثَةَ أَيَّامٍ عَلَى بَابِ الْمَسْجِدِ، فَإِنْ جَاءَ صَاحِبُهَا فَادْفَعْهَا إِلَيْهِ، وَإِنْ لَمْ يَأْتِ فَعَرِّفْهَا سَنَةً، فَإِنْ جَاءَ صَاحِبُهَا وَإِلَّا فَشَأْنُكَ بِهَا» . وَهَذَا حَدِيثٌ هَالِكٌ، لِأَنَّ اللَّيْثَ لَمْ يُسَمِّ مَنْ أَخَذَ عَنْهُ وَقَدْ يَرْضَى الْفَاضِلُ مَنْ لَا يَرْضَى، هَذَا سُفْيَانُ الثَّوْرِيُّ يَقُولُ: لَمْ أَرَ أَصْدَقَ مِنْ جَابِرٍ الْجُعْفِيِّ - وَجَابِرٌ مَشْهُورٌ بِالْكَذِبِ.

L21144 Moreover, it is a mistake because he attributed to it: “From ʿAbdullāh ibn Yazīd,” when in fact it is from Yazīd (a different narrator), not from ʿAbdullāh ibn Yazīd.

ثُمَّ هُوَ خَطَأٌ، لِأَنَّهُ قَالَ فِيهِ: عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ وَإِنَّمَا هُوَ عَنْ يَزِيدَ لَا عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ.

L21145 Another perspective: As narrated to us through the chain of Ḥammād ibn Salamah, from Yaḥyā ibn Saʿīd al-Anṣārī, from Muʿāwiyah ibn ʿAbdillāh ibn Badr, who said: My father found one hundred dinars in a camel’s resting place and asked ʿUmar ibn al-Khaṭṭāb about it. ʿUmar said to him: “Announce them for one year.” He announced them for a year but found no claimant for them. ʿUmar then said to him: “Announce them for three years.” He did so but still found no claimant for them. ʿUmar then said to him: “They are yours.”

وَوَجْهٌ آخَرُ كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا يَحْيَى بْنُ سَعِيدٍ - هُوَ الْأَنْصَارِيُّ - عَنْ مُعَاوِيَةَ بْنِ عَبْدِ اللَّهِ بْنِ بَدْرٍ قَالَ: وَجَدَ أَبِي فِي مَبْرَكِ بَعِيرٍ مِائَةَ دِينَارٍ فَسَأَلَ عُمَرَ بْنَ الْخَطَّابِ عَنْ ذَلِكَ؟ فَقَالَ لَهُ: عَرِّفْهَا عَامًا، فَعَرَّفَهَا عَامًا فَلَمْ يَجِدْ لَهَا عَارِفًا؟ فَقَالَ لَهُ عُمَرُ: عَرِّفْهَا ثَلَاثَةَ أَعْوَامٍ، فَلَمْ يَجِدْ لَهَا عَارِفًا، فَقَالَ لَهُ عُمَرُ: هِيَ لَكَ.

L21146 The evidence for this is what we have narrated through the chain of Ahmad

ibn Shu'ayb: Muhammad ibn Qudamah narrated to us, Jarir narrated to us from al-A'mash from Salama ibn Kuhayl from Suwayd ibn Ghafala, who said: Ubayy ibn Ka'b said to me: "I found a purse containing one hundred dinars, so I brought it to the Messenger of Allah, peace be upon him. He said: 'Announce it for a lunar year.' I announced it for a lunar year. Then I said: 'O Messenger of Allah, I have announced it for a lunar year.' He said: 'Announce it for another year.' So I announced it for another year. Then I said: 'O Messenger of Allah, I have announced it for a year.' He said: 'Announce it for another year.' I announced it for another year. Then I informed him, peace be upon him, of this, and he said: 'Use it for yourself, but note its binding, its cloth, and keep track of its amount. Then, if its owner comes...'" Jarir said: "I did not memorize what follows this."

وَيُحْتَجُّ لِهَذَا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ قُدَامَةَ نا جَرِيرٌ عَنْ الْأَعْمَشِ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ قَالَ: قَالَ لِي أُبَيّ بْنُ كَعْبٍ: «الْتَقَطْتُ صُرَّةً فِيهَا مِائَةُ دِينَارٍ فَأَتَيْتُ بِهَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: عَرِّفْهَا حَوْلًا فَعَرَّفْتُهَا حَوْلًا، فَقُلْتُ: يَا رَسُولَ اللَّهِ قَدْ عَرَّفْتُهَا حَوْلًا فَقَالَ: عَرِّفْهَا سَنَةً أُخْرَى فَعَرَّفْتُهَا سَنَةً أُخْرَى ثُمَّ قُلْتُ: يَا رَسُولَ اللَّهِ عَرَّفْتُهَا سَنَةً فَقَالَ: عَرِّفْهَا سَنَةً أُخْرَى فَعَرَّفْتُهَا سَنَةً أُخْرَى ثُمَّ أَخْبَرْتُهُ - عَلَيْهِ السَّلَامُ - بِذَلِكَ، فَقَالَ: انْتَفِعْ بِهَا وَاعْرِفْ وِكَاءَهَا وَخِرْقَتَهَا وَاحْصِ عَدَدَهَا فَإِنْ جَاءَ صَاحِبُهَا» قَالَ جَرِيرٌ: لَمْ أَحْفَظْ مَا بَعْدَ هَذَا.

L21147 And likewise, we have narrated it through the chain of Zayd ibn Abi Unaysah and Ubayd Allah ibn Umar—both al-Raqqiyyayn (from Raqqa)—both narrating from Salamah ibn Kuhayl, from Suwayd ibn Ghafalah, from Ubayy ibn Ka'b, from the Prophet (peace and blessings of Allah be upon him).

وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ زَيْدِ بْنِ أَبِي أُنَيْسَةَ، وَعُبَيْدِ اللَّهِ بْنِ عُمَرَ الرَّقِّيِّينِ كِلَاهُمَا عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ عَنْ أُبَيِّ بْنِ كَعْبٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L21148 Abu Muhammad said: This is a hadith whose outward appearance suggests the soundness of its chain, except that Salamah ibn Kuhayl undoubtedly erred in it; for we have narrated it via the chain of Hammad ibn Salamah, from Salamah ibn Kuhayl, from Suwayd ibn Ghafalah, from Ubayy ibn Ka'b, from the Prophet—peace be upon him—in which he said: "I did not find an expert for her for two or three years."

قَالَ أَبُو مُحَمَّد: هَذَا حَدِيثٌ ظَاهِرُهُ صِحَّةُ السَّنَدِ، إلَّا أَنَّ سَلَمَةَ بْنَ كُهَيْلٍ أَخْطَأَ فِيهِ بِلَا شَكٍّ، لِأَنَّنَا رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ عَنْ أُبَيِّ بْنِ كَعْبٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ فِيهِ: فَلَمْ أَجِدْ لَهَا عَارِفًا عَامَيْنِ أَوْ ثَلَاثَةً.

L21149–21151 We were narrated through the route of ʿAbd al-ʿAzīz ibn Abī Salamah al-Mājishūn, from ʿAbd Allāh ibn al-Faḍl, from Salamah ibn Kuhayl, from Suwayd ibn Ghafala, from Ubayy ibn Ka'b, from the Prophet—peace be upon him—who said regarding it, "Make her known." He said, "I publicized her [as lost property], but she was not claimed. I returned [to the authority], and he said, 'Publicize her for a year, repeating this twice or thrice.'" This is a doubt expressed by Salamah ibn Kuhayl.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الْعَزِيزِ بْنِ أَبِي سَلَمَةَ الْمَاجِشُونِ عَنْ عَبْدِ اللَّهِ بْنِ الْفَضْلِ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ عَنْ أُبَيِّ بْنِ كَعْبٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ فِيهِ: «عَرِّفْهَا عَامًا» قَالَ: فَعَرَّفْتُهَا، فَلَمْ تُعْتَرَفْ، فَرَجَعْت فَقَالَ: «عَرِّفْهَا عَامًا مَرَّتَيْنِ أَوْ ثَلَاثًا» فَهَذَا شَكٌّ مِنْ سَلَمَةَ بْنِ كُهَيْلٍ.

L21152 Then we narrated it via the route of Muslim ibn al-Ḥajjāj, who said: Abu

Bakr ibn Nāfiʿ reported to me → Ghundar reported to us → Shuʿbah reported to us → from Salamah ibn Kuhayl, who said: “I heard Suwayd ibn Ghaflah say: ’I met Ubayy ibn Kaʿb, and he mentioned [it].’”

ثُمَّ رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ قَالَ: حَدَّثَنِي أَبُو بَكْرِ بْنُ نَافِعٍ نا غُنْدَرٌ نا شُعْبَةُ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ قَالَ: سَمِعْت سُوَيْدُ بْنَ غَفَلَةَ قَالَ: لَقِيت أُبَيَّ بْنَ كَعْبٍ فَذَكَرَ.

L21153 The narration states that the Messenger of Allah—peace be upon him—said to him: “Announce her for a year.” So I announced her but found no one to recognize her. Then I came to him, and he said: “Announce her for a year.” So I announced her but found no one to recognize her. Then I came to him, and he said: “Announce her for a year.” So I announced her but found no one to recognize her.“ He mentioned the rest of the narration: Shuʿbah said: ”I met him afterward in Makkah, and he said: ’I do not know whether it was three years or one year.’“

الْحَدِيثَ وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: «عَرِّفْهَا حَوْلًا، فَعَرَّفْتُهَا فَلَمْ أَجِدْ مَنْ يَعْرِفُهَا، ثُمَّ أَتَيْتُهُ فَقَالَ: عَرِّفْهَا حَوْلًا، فَلَمْ أَجِدْ مَنْ يَعْرِفُهَا ثُمَّ أَتَيْتُهُ فَقَالَ: عَرِّفْهَا حَوْلًا فَلَمْ أَجِدْ مَنْ يَعْرِفُهَا» ، وَذَكَرَ بَاقِي الْحَدِيثِ: قَالَ شُعْبَةُ: فَلَقِيتُهُ بَعْدَ ذَلِكَ بِمَكَّةَ فَقَالَ: لَا أَدْرِي ثَلَاثَةُ أَحْوَالٍ أَوْ حَوْلٌ وَاحِدٌ

L21154 Thus, this is an explicit declaration from Salamah ibn Kuhayl with doubt, and the Sharia is not accepted on the basis of doubt.

فَهَذَا تَصْرِيحٌ مِنْ سَلَمَةَ بْنِ كُهَيْلٍ بِالشَّكِّ، وَالشَّرِيعَةُ لَا تُؤْخَذُ بِالشَّكِّ.

L21155 We also narrated it through the path of Muslim: ʿAbd al-Raḥmān ibn Bishr al-ʿAbdī narrated to me; Bahz—he is Ibn Asad—informed us; Shuʿbah informed us; Salamah ibn Kuhayl informed us, said: I heard Suwayd ibn Ghaflah narrate the ḥadīth in detail. Shuʿbah said: Then, after ten years, I heard him say: “Make it known for one year.”

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ بِشْرٍ الْعَبْدِيُّ نا بَهْزٌ - هُوَ ابْنُ أَسَدٍ - نا شُعْبَةُ نا سَلَمَةُ بْنُ كُهَيْلٍ قَالَ: سَمِعْت سُوَيْدُ بْنَ غَفَلَةَ فَاقْتَصَّ الْحَدِيثَ - قَالَ شُعْبَةُ: فَسَمِعْتُهُ بَعْدَ عَشْرِ سِنِينَ يَقُولُ: عَرِّفْهَا عَامًا وَاحِدًا.

L21156 It became evident that Salamah ibn Kuhayl ascertained [the matter] and actively recalled [it], then became certain of a single year after experiencing doubt—thereby establishing that it had been an erroneous assumption. He then sought to recall again, which led him to doubt, but upon further recollection attained certainty. It was conclusively established that specifying the year is obligatory, while specifying any period beyond it was rendered invalid—and all praise belongs to Allah, Lord of the worlds.

فَصَحَّ أَنَّ سَلَمَةَ بْنَ كُهَيْلٍ تَثَبَّتَ وَاسْتَذْكَرَ، فَثَبَتَ عَلَى عَامٍ وَاحِدٍ، بَعْدَ أَنْ شَكَّ، فَصَحَّ أَنَّهُ وَهْمٌ ثُمَّ اسْتَذْكَرَ، فَشَكَّ ثُمَّ اسْتَذْكَرَ فَتَيَقَّنَ، وَثَبَتَ وُجُوبُ تَعْرِيفِ الْعَامِ وَبَطَلَ تَعْرِيفُ مَا زَادَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L21157 Abu Muhammad said: Here are two other reports. One of them: We related it through the chain of Abd al-Razzaq from Abu Bakr—he is Ibn Abi Maysarah—from Sharik ibn Abd Allah from Ata ibn Yasar from Abu Sa’id al-Khudri: “Ali came to the Messenger of Allah—peace and blessings be upon him—with a dinar he found in the market. The Prophet—peace and blessings be upon him—said: ’Publicize it for three days.’ He did so but found

قَالَ أَبُو مُحَمَّد: وَهَهُنَا أَثَرَانِ آخَرَانِ - أَحَدُهُمَا: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي بَكْرٍ - هُوَ ابْنُ أَبِي مَيْسَرَةَ - عَنْ شَرِيكِ بْنِ عَبْدِ اللَّهِ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ عَلِيًّا جَاءَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِدِينَارٍ وَجَدَهُ فِي السُّوقِ

no one acknowledging it. The Prophet—peace and blessings be upon him—then told him: 'Consume it.'" The entire hadith was mentioned, and at its end: "He established the waiting period for a dinar and its equivalent value as three days." Regarding this hadith, Abu Muhammad said: We do not know from whose words this addition originates. This is an unsound report because it comes through Ibn Abi Sabrah—who is notorious for forging hadiths and lying—from Sharik, a narrator who practices *tadlis* by concealing flaws through transmitting discredited narrations from weak authorities to trustworthy ones.

فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَرِّفْهُ ثَلَاثًا فَفَعَلَ فَلَمْ يَجِدْ أَحَدًا يَعْتَرِفُهُ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: كُلْهُ فَذَكَرَ الْحَدِيثَ كُلَّهُ - وَفِي آخِرِهِ فَجَعَلَ أَجَلَ الدِّينَارِ وَشَبَهِهُ ثَلَاثَةَ أَيَّامٍ» لِهَذَا الْحَدِيثِ قَالَ أَبُو مُحَمَّدٍ: لَا نَدْرِي مِنْ كَلَامِ مَنْ هَذِهِ الزِّيَادَةُ، وَهَذَا خَبَرُ سُوءٍ لِأَنَّهُ مِنْ طَرِيقِ ابْنِ أَبِي سَبْرَةَ وَهُوَ مَشْهُورٌ بِوَضْعِ الْحَدِيثِ وَالْكَذِبِ، عَنْ شَرِيكٍ وَهُوَ مُدَلِّسٌ يُدَلِّسُ الْمُنْكَرَاتِ عَنْ الضُّعَفَاءِ إلَى الثِّقَاتِ.

L21158–21159 It has been narrated through the chain of Isra'il from 'Umar ibn 'Abd Allāh ibn Ya'lā from his grandmother Hakīmah from her father that the Messenger of Allāh — peace and blessings be upon him — said: "Whoever finds a lost item of insignificant value, such as a dirham, a rope, or the like, let him announce it for three days. If it exceeds that, let him announce it for six days." This is baseless! Isra'il is weak, 'Umar ibn 'Abd Allāh is unknown, and Hakīmah's narration from her father is utterly rejected. These are layers of darkness, one upon another.

وَرُوِيَ مِنْ طَرِيقِ إسْرَائِيلَ عَنْ عُمَرَ بْنِ عَبْدِ اللَّهِ بْنِ يَعْلَى عَنْ جَدَّتِهِ حَكِيمَةَ عَنْ أَبِيهَا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ الْتَقَطَ لُقَطَةً يَسِيرَةً دِرْهَمًا أَوْ حَبْلًا أَوْ شِبْهَ ذَلِكَ فَلْيُعَرِّفْهُ ثَلَاثَةَ أَيَّامٍ، فَإِنْ كَانَ فَوْقَ ذَلِكَ فَلْيُعَرِّفْهُ سِتَّةَ أَيَّامٍ» وَهَذَا لَا شَيْءَ: إسْرَائِيلُ ضَعِيفٌ، وَعُمَرُ بْنُ عَبْدِ اللَّهِ مَجْهُولٌ، وَحَكِيمَةُ عَنْ أَبِيهَا أَنْكَرُ وَأَنْكَرُ، ظُلُمَاتٌ بَعْضُهَا فَوْقَ بَعْضٍ.

L21160 Abū Muḥammad said: It has been reported to us from Mālik, al-Shāfiʿī, Abū Sulaymān, and al-Awzāʿī that publicizing the found item (luqṭah) lasts one year – this being the well-known position attributed to Abū Ḥanīfah, though a contradictory report is also narrated from him. A report from ʿUmar ibn al-Khaṭṭāb states: "Publicizing the found item lasts three months." Another report from him – through the chain of Sharīk from Abū Yaʿqūb al-ʿAbdī from Abū Shaykh al-ʿAbdī from Zayd ibn Ṣuḥḥān al-ʿAbdī – relates that ʿUmar ordered a found necklace to be publicized for four months. If someone came forward to identify it, otherwise, it was deposited in the public treasury. These are five opinions from ʿUmar – may Allah be pleased with him. Abū Nuʿaym reported from Sufyān al-Thawrī: "Whoever finds a dirham must publicize it for four days." Al-Ḥasan ibn Ḥayy and Abū Ḥanīfah – in the narration of Hishām ibn ʿUbayd Allāh al-Rāzī from Muḥammad ibn al-Ḥasan from him, i.e., Abū Ḥanīfah – held that items worth ten dirhams or more require publicizing for one year. They differed regarding items of lesser value: al-Ḥasan ibn Ḥayy ruled they must be publicized for three days.

قَالَ أَبُو مُحَمَّدٍ: رُوِّينَا عَنْ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَالْأَوْزَاعِيِّ تَعْرِيفَ اللُّقَطَةِ سَنَةً - وَهُوَ الْقَوْلُ الظَّاهِرُ عَنْ أَبِي حَنِيفَةَ، وَقَدْ رُوِيَ عَنْهُ خِلَافُهُ. وَرُوِيَ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَيْضًا: تَعْرِيفُ اللُّقَطَةِ ثَلَاثَةَ أَشْهُرٍ. وَرُوِيَ أَيْضًا عَنْهُ مِنْ طَرِيقِ شَرِيكٍ عَنْ أَبِي يَعْقُوبَ الْعَبْدِيِّ عَنْ أَبِي شَيْخٍ الْعَبْدِيِّ عَنْ زَيْدِ بْنِ صُوحَانَ الْعَبْدِيِّ أَنَّ عُمَرَ أَمَرَ أَنْ يُعَرَّفَ قِلَادَةً الْتَقَطَهَا أَرْبَعَةَ أَشْهُرٍ، فَإِنْ جَاءَ مَنْ يَعْرِفُهَا وَإِلَّا وَضَعَهَا فِي بَيْتِ الْمَالِ - فَهَذِهِ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - خَمْسَةُ أَقْوَالٍ. وَرَوَى أَبُو نُعَيْمٍ عَنْ سُفْيَانَ الثَّوْرِيِّ مَنْ الْتَقَطَ دِرْهَمًا فَإِنَّهُ يُعَرِّفُهُ أَرْبَعَةَ أَيَّامٍ وَقَالَ الْحَسَنُ بْنُ حَيٍّ، وَأَبُو حَنِيفَةَ فِي رِوَايَةِ هِشَامِ بْنِ عُبَيْدِ اللَّهِ الرَّازِيِّ عَنْ مُحَمَّدِ بْنِ الْحَسَنِ عَنْهُ: أَنَّ مَا بَلَغَ عَشَرَةَ دَرَاهِمَ فَصَاعِدًا فَإِنَّهُ يُعَرَّفُ سَنَةً. وَاخْتَلَفَا فِيمَا كَانَ أَقَلَّ فَقَالَ الْحَسَنُ بْنُ حَيٍّ: يُعَرَّفُ ثَلَاثَةَ أَيَّامٍ.

وَقَالَ أَبُو حَنِيفَةَ: يُعَرَّفُ عَلَى قَدْرِ مَا يَرَى الْمُلْتَقِطُ - وَهَذِهِ آرَاءٌ فَاسِدَةٌ كَمَا تَرَى، وَمِنْهَا: دَفْعُ اللُّقَطَةِ إلَى مَنْ عَرَفَ الْعِفَاصَ، وَالْوِكَاءَ، وَالْعَدَدَ، وَالْوِعَاءَ فَقَالَ مَالِكٌ، وَأَبُو سُلَيْمَانَ كَمَا قُلْنَا.

L21161 Abu Hanifah said: The lost item must be announced for a duration the finder deems sufficient. These are invalid opinions, as is evident, such as handing over the lost item to someone who recognizes the pouch, fastener, number of items, or container. Malik and Abu Sulaiman stated the same as we have stated.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: لَا يَدْفَعُهَا إلَيْهِ بِذَلِكَ، فَإِنْ فَعَلَ ضَمِنَهَا؛ لِأَنَّهُ قَدْ يَسْمَعُ صَاحِبَهَا يَصِفُهَا فَيَعْرِفُ صِفَتَهَا فَيَأْتِي بِهَا -. وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْجَبَ الْبَيِّنَةَ عَلَى الْمُدَّعِي وَالْيَمِينَ عَلَى الْمُدَّعَى عَلَيْهِ، وَنَهَى عَنْ أَنْ يُعْطَى أَحَدٌ بِدَعْوَاهُ. وَقَالَ - عَلَيْهِ السَّلَامُ -: «شَاهِدَاكَ أَوْ يَمِينُهُ لَيْسَ لَكَ غَيْرُ ذَلِكَ» .

L21162 Abu Hanifa and Al-Shafi'i said: The defendant must not deliver it to him based on that claim, for if he does so, he becomes liable for it—because he might hear its owner describe it, recognize the description, and then present it. They substantiated this by citing that the Messenger of Allah—peace be upon him—mandated evidence for the claimant and an oath for the defendant, and prohibited granting anyone anything based on his mere claim. He—peace be upon him—said: "Your two witnesses or his oath—you have nothing beyond that."

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّهُ حَقٌّ، وَالَّذِي قَالَهُ هُوَ الَّذِي أَمَرَ بِأَنْ تُعْطَى اللُّقَطَةُ مَنْ عَرَفَ الْعِفَاصَ، وَالْوِكَاءَ، وَالْعَدَدَ، وَالْوِعَاءَ، وَلَيْسَ كَلَامُهُ مُتَعَارِضًا، وَلَا حُكْمُهُ مُتَنَاقِضًا، وَلَا يَحِلُّ ضَرْبُ بَعْضِهِ بِبَعْضٍ، وَلَا تَرْكُ بَعْضِهِ وَأَخْذُ بَعْضٍ، فَكُلُّهُ حَقٌّ، وَكُلُّهُ وَحْيٌ مِنْ عِنْدِ اللَّهِ عَزَّ وَجَلَّ، وَهُمْ مُجْمِعُونَ مَعَنَا عَلَى أَنَّ الْمُدَّعَى عَلَيْهِ إنْ أَقَرَّ قُضِيَ عَلَيْهِ بِغَيْرِ بَيِّنَةٍ، فَقَدْ جَعَلُوا لِلْمُدَّعِي شَيْئًا غَيْرَ الشَّاهِدَيْنِ أَوْ يَمِينَ الْمُدَّعَى عَلَيْهِ. فَإِنْ قَالُوا: قَدْ صَحَّ الْحُكْمُ بِالْإِقْرَارِ؟ قُلْنَا: وَقَدْ صَحَّ دَفْعُ اللُّقَطَةِ بِأَنْ يَصِفَ الْمُدَّعِي وِكَاءَهَا، وَعَدَدَهَا، وَعِفَاصَهَا وَوِعَاءَهَا، وَلَا فَرْقَ، وَلَيْسَ كُلُّ الْأَحْكَامِ تُوجَدُ فِي خَبَرٍ وَاحِدٍ، وَلَا تُؤْخَذُ مِنْ خَبَرٍ وَاحِدٍ، وَلَكِنْ تُضَمُّ السُّنَنُ بَعْضُهَا إلَى بَعْضٍ وَيُؤْخَذُ بِهَا كُلُّهَا، وَلَوْ أَنَّ الْحَنَفِيِّينَ اعْتَرَضُوا أَنْفُسَهُمْ بِهَذِهِ الِاعْتِرَاضَاتِ فِي قَبُولِهِمْ امْرَأَةً وَاحِدَةً فِي عُيُوبِ النِّسَاءِ، وَالْوِلَادَةِ، وَلَوْ عَارَضُوا أَنْفُسَهُمْ بِهَذَا فِي حُكْمِهِمْ لِلزَّوْجَيْنِ يَخْتَلِفَانِ فِي مَتَاعِ الْبَيْتِ أَنَّ مَا أَشْبَهَ أَنْ يَكُونَ لِلرِّجَالِ كَانَ لِلرَّجُلِ مَعَ يَمِينِهِ، وَمَا أَشْبَهَ أَنْ يَكُونَ لِلنِّسَاءِ كَانَ لِلْمَرْأَةِ بِيَمِينِهَا بِغَيْرِ

L21163–21164 Abū Muḥammad said: All of this is true, and what he stated is the directive that lost property be given to one who recognizes its container, binding, count, and receptacle. His statements are not contradictory, nor are his rulings inconsistent. It is unlawful to invalidate some parts by others or abandon certain rulings while accepting others. All of it is truth, and all of it is revelation from Allah—Exalted is He. They unanimously agree with us that if a defendant confesses, judgment is passed against him without requiring evidence. Thus, they have granted the claimant an alternative to two witnesses or the oath of the accused. If they argue, "The ruling based on confession is valid," we respond, "Equally valid is the restitution of lost property when the claimant describes its binding, count, container, and receptacle. There is no distinction." Not all rulings are found in a single report nor derived from one; rather, the prophetic precedents are combined together and all are upheld. If the Ḥanafīs were to apply these objections to their own rulings—such as accepting a single woman's testimony in matters of female flaws or childbirth, or their judgment that disputed household items conventionally associated with men be granted to the husband with his oath, and those associated with women to the wife with her oath without evidence—they would not apply this to a brother and sister disputing shared household items. Were they to confront themselves with this critique regarding their stance that a foundling

بَيِّنَةً، وَلَا يَحْكُمُونَ بِذَلِكَ فِي الْأُخْتِ وَالْأَخِ يَخْتَلِفَانِ فِي مَتَاعِ الْبَيْتِ الَّذِي هُمَا فِيهِ، وَلَوْ عَارَضُوا أَنْفُسَهُمْ بِهَذَا الِاعْتِرَاضِ فِي قَوْلِهِمْ: إنَّ مَنْ ادَّعَى لَقِيطًا هُوَ وَغَيْرُهُ فَأَتَى بِعَلَامَاتٍ فِي جَسَدِهِ قُضِيَ لَهُ بِهِ، وَلَا يَقْضُونَ بِذَلِكَ فِيمَنْ ادَّعَى مَعَ آخَرَ عَبْدًا فَأَتَى أَحَدُهُمَا بِعَلَامَاتٍ فِي جَسَدِهِ؟ وَفِي قَوْلِهِمْ: لَوْ أَنَّ مُسْتَأْجِرَ الدَّارِ تَدَاعَى مَعَ صَاحِبِ الدَّارِ فِي جُذُوعٍ مَوْضُوعَةٍ فِي الدَّارِ وَأَحَدِ مِصْرَاعَيْنِ فِي الدَّارِ: أَنَّ تِلْكَ الْجُذُوعَ إنْ كَانَتْ تُشْبِهُ الْجُذُوعَ الَّتِي فِي الْبِنَاءِ وَالْمِصْرَاعِ الْقَائِمِ كَانَ كُلُّ ذَلِكَ لِصَاحِبِ الدَّارِ بِلَا بَيِّنَةٍ - وَسَائِرُ تِلْكَ التَّخَالِيطِ الَّتِي لَا تُعْقَلُ، ثُمَّ لَا يُبَالُونَ بِمُعَارَضَةِ أَوَامِرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِآرَائِهِمْ الْفَاسِدَةِ.

is awarded to a claimant who provides distinctive bodily marks—yet they do not rule likewise when two parties claim a slave and one presents identifying traits—or concerning their view that disputed beams in a house resembling construction materials or a door panel matching the existing one are granted to the homeowner without evidence—along with the rest of those illogical inconsistencies—they carelessly oppose the commands of Allah's Messenger (ﷺ) with their corrupt opinions.

وَأَمَّا الشَّافِعِيُّ فَإِنَّهُ قَضَى فِي الْقَتِيلِ يُوجَدُ فِي مَحَلَّةِ أَقْوَامٍ أَعْدَاءٌ لَهُ أَنَّ الْمُدَّعِينَ بِقَتْلِهِ عَلَيْهِ يَحْلِفُونَ خَمْسِينَ يَمِينًا ثُمَّ يُقْضَى لَهُمْ بِالدِّيَةِ فَأَعْطَاهُمْ بِدَعْوَاهُمْ.

L21165 As for Al-Shafi'i, he ruled regarding a slain person found in an enemy's neighborhood that the claimants asserting his murder must swear fifty oaths to substantiate their case, after which the diya would be awarded to them. Thus, he granted them the blood money based on their claim.

فَإِنْ قَالُوا: إنَّ السُّنَّةَ جَاءَتْ بِهَذَا؟ قُلْنَا لَهُمْ: وَالسُّنَّةُ جَاءَتْ بِدَفْعِ اللُّقَطَةِ إلَى مَنْ عَرَفَ عِفَاصَهَا، وَوِكَاءَهَا، وَعَدَدَهَا، وَوِعَاءَهَا - وَلَا فَرْقَ. وَقَالُوا: قَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فَإِنْ جَاءَ صَاحِبُهَا فَأَدِّهَا إلَيْهِ» قُلْنَا: نَعَمْ، وَصَاحِبُهَا هُوَ الَّذِي أَمَرَ - عَلَيْهِ السَّلَامُ - بِدَفْعِهَا إلَيْهِ إذَا وَصَفَ مَا ذَكَرْنَا. وَأَمَّا قَوْلُهُمْ: قَدْ يَسْمَعُهَا مُتَحَيِّلٌ؟ فَيُقَالُ لَهُمْ: وَقَدْ تَكْذِبُ الشُّهُودُ وَلَا فَرْقَ. وَقَالُوا: قَدْ قَالَ أَبُو دَاوُد السِّجِسْتَانِيُّ: هَذِهِ الزِّيَادَةُ - فَإِنْ عَرَفَ عِفَاصَهَا وَوِكَاءَهَا، وَعَدَدَهَا، فَادْفَعْهَا إلَيْهِ -: غَيْرُ مَحْفُوظَةٍ. قَالَ أَبُو مُحَمَّد: وَهَذَا لَا شَيْءَ، وَلَا يَجُوزُ أَنْ يُقَالَ فِيمَا رَوَاهُ الثِّقَاتُ مُسْنَدًا: هَذَا غَيْرُ مَحْفُوظٍ - وَلَا يَعْجِزُ أَحَدٌ عَنْ هَذِهِ الدَّعْوَى فِيمَا شَاءَ مِنْ السُّنَنِ الثَّوَابِتِ. وَقَدْ أَخَذَ الْحَنَفِيُّونَ

L21166–21168 If they say: "Has the Sunnah addressed this?" We reply to them: "The Sunnah has stipulated returning the lost item to whoever identifies its container, its tying cord, its count, and its wrapper—and no distinction is made between them." They said: "The Messenger of Allah—peace and blessings be upon him—indeed said: 'If its owner comes, then hand it over to him.'" We said: Yes, and its owner is the one whom he — peace be upon him — commanded to deliver it to if he specified what we mentioned. As for their statement: "Might one who employs legal stratagems hear it?" It is responded to them: "Witnesses might also lie, and there is no difference." They said: Abū Dāwūd al-Sijistānī stated: "This addition — 'If he recognizes its bag, its tie, and its count, then deliver it to him' — is not reliably transmitted." Abū Muḥammad said: "This is baseless. It is impermissible to declare regarding what trustworthy narrators transmitted with a connected chain: 'This is not reliably transmitted.' No one is barred from making such claims about whichever authentic Sunnahs they wish. The Ḥanafīs adopted an addition in the ḥadīth

of Ḥammād ibn Salamah concerning zakāh — though it is rejected and not reliably transmitted. Had its chain been authentic, we would not have labeled it 'not reliably transmitted.' They also adopted the narration on istisʿāʾ (seeking expanded testimony), though one greater than Abū Dāwūd stated: 'Istisʿāʾ is not reliably transmitted; it merely originates from the speech of Ibn Abī ʿArūbah.' They further adopted the narration: 'Whoever possesses a mahram relative, he is free,' while the majority of ḥadīth scholars assert it is not reliably transmitted."

بِزِيَادَةٍ جَاءَتْ فِي حَدِيثِ حَمَّادِ بْنِ سَلَمَةَ فِي الزَّكَاةِ - وَهِيَ سَاقِطَةٌ غَيْرُ مَحْفُوظَةٍ - وَلَوْ صَحَّ إِسْنَادُهَا مَا قُلْنَا فِيهِ: غَيْرُ مَحْفُوظٍ. وَأَخَذُوا بِخَبَرِ الِاسْتِسْعَاءِ، وَقَدْ قَالَ مَنْ هُوَ أَجَلُّ مِنْ أَبِي دَاوُد: وَلَيْسَ الِاسْتِسْعَاءُ مَحْفُوظًا وَإِنَّمَا هُوَ مِنْ كَلَامِ ابْنِ أَبِي عَرُوبَةَ. وَأَخَذُوا بِالْخَبَرِ «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ فَهُوَ حُرٌّ» وَجُمْهُورُ أَصْحَابِ الْحَدِيثِ يَقُولُونَ: إِنَّهُ غَيْرُ مَحْفُوظٍ.

L21169 Al-Shāfiʿī adopted for Zakāt al-Fiṭr the wording reported by one whose opinion is not relied upon—"from those you maintain"—and this is unquestionably a rejected narration, not preserved. Even if its chain of transmission were authentic, we would not permit ourselves to classify it as "unpreserved."

وَأَخَذَ الشَّافِعِيُّ فِي زَكَاةِ الْفِطْرِ بِاللَّفْظَةِ الَّتِي ذَكَرَهَا مَنْ لَا يُعْتَدُّ بِهِ «مِمَّنْ تَعُولُونَ» وَهِيَ بِلَا شَكٍّ سَاقِطَةٌ غَيْرُ مَحْفُوظَةٍ - وَلَوْ صَحَّتْ مِنْ طَرِيقِ الْإِسْنَادِ مَا اسْتَحْلَلْنَا أَنْ نَقُولَ فِيهَا: غَيْرُ مَحْفُوظَةٍ.

L21170 Then we say: Abu Dawud erred in his statement that it is not preserved—rather, it is preserved. For even if only Hammad ibn Salamah alone had narrated it, that would suffice due to his trustworthiness and authority as an imam. How could it not be when Sufyan al-Thawri corroborated it through his narration from Rabiʿah from Yazid, the client of al-Munbaʾith, from Zayd ibn Khalid al-Juhani from the Prophet (peace be upon him)? Sufyan also narrated it from Salamah ibn Kuhayl from Suwayd ibn Ghafalah from Ubayy ibn Kaʿb from the Prophet (peace be upon him). Thus, the claim of those who said it is not preserved is invalidated. Rather, it is widely attested and preserved.

ثُمَّ نَقُولُ: أَخْطَأَ أَبُو دَاوُد فِي قَوْلِهِ: هِيَ غَيْرُ مَحْفُوظَةٍ - بَلْ هِيَ مَحْفُوظَةٌ، لِأَنَّهَا لَوْ لَمْ يَرْوِهَا إِلَّا حَمَّادُ بْنُ سَلَمَةَ وَحْدَهُ لَكَفَى، لِثِقَتِهِ وَإِمَامَتِهِ - وَكَيْفَ وَقَدْ وَافَقَهُ عَلَيْهَا سُفْيَانُ الثَّوْرِيُّ عَنْ رَبِيعَةَ عَنْ يَزِيدَ مَوْلَى الْمُنْبَعِثِ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَسُفْيَانُ أَيْضًا عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ عَنْ أُبَيِّ بْنِ كَعْبٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَطَلَ قَوْلُ مَنْ قَالَ: هِيَ غَيْرُ مَحْفُوظَةٍ، بَلْ هِيَ مَشْهُورَةٌ مَحْفُوظَةٌ.

L21171–21173 Among them is the ownership of the lost property after a lunar year: Our ruling has been narrated to us from ʿUmar ibn al-Khaṭṭāb and others, as has been narrated to us via the chain of Aḥmad ibn Shuʿayb—Abū ʿUbaydah ibn Abī al-Safar reported to us, from Abū Usāmah, from al-Walīd ibn Kathīr, from ʿAmr ibn Shuʿayb, from ʿAmr and ʿĀṣim, the two sons of Sufyān ibn ʿAbdullāh, from their father: that he... A man picked up a bag and brought it to Umar ibn al-Khattab, who ordered him to publicly announce it for a

وَمِنْهَا تَمَلُّكُ اللُّقَطَةِ بَعْدَ الْحَوْلِ -: رُوِّينَا قَوْلَنَا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَغَيْرِهِ، كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا أَبُو عُبَيْدَةَ بْنُ أَبِي السَّفَرِ نا أَبُو أُسَامَةَ عَنِ الْوَلِيدِ بْنِ كَثِيرٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ عَمْرٍو، وَعَاصِمٍ: ابْنَيْ سُفْيَانَ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِمَا: أَنَّهُ الْتَقَطَ عَيْبَةً فَأَتَى بِهَا عُمَرُ بْنُ الْخَطَّابِ فَأَمَرَهُ أَنْ يُعَرِّفَهَا حَوْلًا، فَفَعَلَ، ثُمَّ أَخْبَرَهُ فَقَالَ: هِيَ

year. He did so, then informed him, and Umar said: “It is yours, for the Messenger of Allah—peace and blessings be upon him—commanded us to do this.” The man replied: “I have no need for it,” so Umar ordered it to be placed in the treasury. It is authentically reported from Umar through numerous channels, and from a group of the Companions of the Messenger of Allah—peace and blessings be upon him. Among the narrations from Ibn Umar is that he saw a date lying on the road, took it, and ate it. From Ali ibn Abi Talib: he picked up a pomegranate seed and ate it. From Ibn Abbas: “Whoever finds a lost item from dropped goods—such as a whip, a pair of sandals, a stick, or a small amount of goods—let him use it and announce it. If it is rendered fat, let him use it as a condiment and announce it. If it is provisions, let him consume them and announce them. If the owner comes, he must compensate him.”

L21174 This is an opinion also reported from Ṭāwūs, Ibn al-Musayyib, Jābir ibn Zayd, and ʿAṭāʾ in one of his two opinions, as well as al-Shāfiʿī, Abū Sulaymān, and others. A group said: one should give it in charity; if the owner comes forward, **the owner** is given the choice between the reward and liability. This was also reported from ʿUmar, ʿAlī, Ibn Masʿūd, Ibn ʿAbbās, and Ibn ʿUmar, who said: “I do not command you to consume it”—and from Ṭāwūs and ʿIkrimah as well. This is the opinion of Abū Ḥanīfah, al-Ḥasan ibn Ḥayy, and Sufyān. They cited as evidence the narration reported through al-Bazzār’s chain: Khālid ibn Yūsuf reported to us from his father, who reported to us from Ziyād ibn Saʿd, who reported to us from Sumayy, from Abū Ṣāliḥ, from Abū Hurayrah, who said: “The Messenger of Allah—peace and blessings be upon him—was asked about lost property. He said: ’It is impermissible to retain lost property. Whoever finds something must publicly announce it for a year. If its owner comes, he must return it. If no one comes, he should give it in charity. If the owner later appears, he must offer him the choice between the reward and his rightful claim.’”

L21175 Abū Muḥammad said: This is baseless, because Yūsuf ibn Khālid and his father are unknown. Moreover, even if it were authentic, it would not constitute authoritative evidence for them, because the statement “The lost item is not permissible to keep” is true, and it is not permissible before announc-

لَك، إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَنَا بِذَلِكَ، قُلْت: لَا حَاجَةَ لِي بِهَا، وَأَمَرَ بِهَا فَأُلْقِيَتْ فِي بَيْتِ الْمَالِ. وَقَدْ صَحَّ عَنْ عُمَرَ مِنْ طُرُقٍ جَمَّةٍ، وَعَنْ جَمَاعَةٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمِنْ طَرِيقِ ابْنِ عُمَرَ: أَنَّهُ رَأَى تَمْرَةً مَطْرُوحَةً فِي السِّكَّةِ فَأَخَذَهَا فَأَكَلَهَا. وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّهُ الْتَقَطَ حَبَّ رُمَّانٍ فَأَكَلَهُ. وَعَنْ ابْنِ عَبَّاسٍ مَنْ وَجَدَ لُقَطَةً مِنْ سَقْطِ الْمَتَاعِ: سَوْطًا، أَوْ نَعْلَيْنِ، أَوْ عَصًا، أَوْ يَسِيرًا مِنْ الْمَتَاعِ، فَلْيَسْتَمْتِعْ بِهِ وَلْيُنْشِدْهُ، فَإِنْ كَانَ وَدَكًا فَلْيَأْتَدِمْ بِهِ وَلْيُنْشِدْهُ، وَإِنْ كَانَ زَادًا فَلْيَأْكُلْهُ وَلْيُنْشِدْهُ، فَإِنْ جَاءَ صَاحِبُهُ فَلْيَغْرَمْ لَهُ.

وَهُوَ قَوْلٌ رُوِيَ أَيْضًا عَنْ طَاوُسٍ، وَابْنِ الْمُسَيِّبِ، وَجَابِرِ بْنِ زَيْدٍ وَعَطَاءٍ فِي أَحَدِ قَوْلَيْهِ، وَالشَّافِعِيُّ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ - وَقَالَتْ طَائِفَةٌ: يَتَصَدَّقُ بِهَا، فَإِنْ عُرِّفَتْ خُيِّرَ صَاحِبُهَا بَيْنَ الْأَجْرِ وَالضَّمَانِ. رُوِّينَا ذَلِكَ أَيْضًا: عَنْ عُمَرَ، وَعَلِيٍّ، وَابْنِ مَسْعُودٍ، وَابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ، قَالَ: لَا آمُرُك أَنْ تَأْكُلَهَا - وَعَنْ طَاوُسٍ أَيْضًا، وَعِكْرِمَةَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالْحَسَنِ بْنِ حَيٍّ، وَسُفْيَانَ وَاحْتَجَّ هَؤُلَاءِ بِمَا رُوِيَ مِنْ طَرِيقِ الْبَزَّارِ نا خَالِدُ بْنُ يُوسُفَ نا أَبِي نا زِيَادُ بْنُ سَعْدٍ نا سُمَيٌّ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ اللُّقَطَةِ؟ فَقَالَ: لَا تَحِلُّ اللُّقَطَةُ، فَمَنْ الْتَقَطَ شَيْئًا فَلْيُعَرِّفْهُ سَنَةً، فَإِنْ جَاءَ صَاحِبُهُ فَلْيَرُدَّهُ إلَيْهِ، وَإِنْ لَمْ يَأْتِ فَلْيَتَصَدَّقْ بِهِ، فَإِنْ جَاءَ فَلْيُخَيِّرْهُ بَيْنَ الْأَجْرِ وَبَيْنَ الَّذِي لَهُ» .

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا شَيْءَ؛ لِأَنَّ يُوسُفَ بْنَ خَالِدٍ، وَأَبَاهُ، مَجْهُولَانِ - ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّ قَوْلَ لَا تَحِلُّ اللُّقَطَةُ حَقٌّ، وَلَا تَحِلُّ قَبْلَ التَّعْرِيفِ، وَأَمْرُهُ

ing it publicly [to find the owner]. His instruction to give it in charity is tied to his command—peace be upon him—to spend/utilize it and treat it as part of one's wealth. Had this been valid, some of his commands—peace be upon him—would have been deemed more worthy of obedience than others, yet it is impermissible to contravene any of his commands—peace be upon him—in favor of another. Rather, all are true and obligatory to implement. We do not forbid the finder from giving it in charity if he so wishes, so how could this be used as an argument against us? Thus, their reliance on this report becomes void even if it were authentic—so how could it be valid when it is not authentic?

L21176–21181 If they claim consensus regarding giving it as charity, they are proven false by what we have narrated through ʿAbd al-Razzāq's chain from Ibn Jurayj: that Zayd ibn al-Akhnas al-Khuzāʿī informed him he asked Saʿīd ibn al-Musayyib, "I found a lost item—should I give it as charity?" He replied, "You will not be rewarded, nor will its owner." I said, "Should I hand it over to the rulers?" He said, "Then they would consume it quickly." I asked, "What do you instruct me to do?" He said, "Publicize it for a year. If the owner comes forward, return it; otherwise, it is yours." How astonishing that some cite their erroneous opinion here as evidence by Allah's words: {Do not consume your wealth among yourselves unlawfully} [4:29]. ʿAlī said: "This ignorant person's use of this verse here demonstrates the frailty of his faith, for he deems what Allah's Messenger—peace be upon him—commanded as invalid. Had he possessed faith, he would not have opposed the ruling of Allah's Messenger—peace be upon him." If only he had directed this refutation against their accursed claim that a usurper of Muslims' homes and farms may occupy and lease them, considering the rent lawful for himself, and their cultivation permissible without liability—or their claim that whoever acquires something through an invalid sale owns it through unlawful means, permitting him to dispose of unlawfully acquired wealth through marital relations, manumission, and other corrupt assertions—then he would have been correct. Most astounding is their injunction to give it as charity, for if the owner appears, they obligate the poor to compensate it if they are found. By their own principle, this too constitutes unlawful consumption of wealth. What dif-

بِالصَّدَقَةِ بِهَا مَضْمُومٌ إِلَى أَمْرِهِ - عَلَيْهِ السَّلَامُ - بِاسْتِنْفَاقِهَا وَبِكَوْنِهَا مِنْ جُمْلَةِ مَالِهِ، إِذْ لَوْ صَحَّ هَذَا لَكَانَ بَعْضُ أَمْرِهِ - عَلَيْهِ السَّلَامُ - أَوْلَى بِالطَّاعَةِ مِنْ بَعْضٍ، وَلَا يَحِلُّ مُخَالَفَةُ شَيْءٍ مِنْ أَوَامِرِهِ - عَلَيْهِ السَّلَامُ - لِآخَرَ مِنْهَا، بَلْ كُلُّهَا حَقٌّ وَاجِبٌ اسْتِعْمَالُهُ، وَنَحْنُ لَمْ نَمْنَعْ وَاجِدَهَا مِنَ الصَّدَقَةِ بِهَا إِنْ أَرَادَ فَيُحْتَجُّ عَلَيْنَا بِهَذَا؟ فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ لَوْ صَحَّ، فَكَيْفَ وَهُوَ لَا يَصِحُّ؟

فَإِنْ ادَّعُوا إِجْمَاعًا عَلَى الصَّدَقَةِ بِهَا كُذِّبُوا، لِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَنَّ زَيْدَ بْنَ الْأَخْنَسِ الْخُزَاعِيَّ أَخْبَرَهُ أَنَّهُ قَالَ لِسَعِيدِ بْنِ الْمُسَيِّبِ: وَجَدْتُ لُقَطَةً أَفَأَتَصَدَّقُ بِهَا؟ قَالَ: لَا تُؤْجَرُ أَنْتَ وَلَا صَاحِبُهَا؟ قُلْتُ: أَفَأَدْفَعُهَا إِلَى الْأُمَرَاءِ؟ قَالَ: إِذًا يَأْكُلُونَهَا أَكْلًا سَرِيعًا، قُلْتُ: فَكَيْفَ تَأْمُرُنِي؟ قَالَ: عَرِّفْهَا سَنَةً فَإِنْ اعْتَرَفَتْ، وَإِلَّا فَهِيَ لَكَ. وَالْعَجَبُ أَنَّ بَعْضَهُمُ احْتَجَّ لِمَذْهَبِهِ الْخَطَأِ فِي هَذَا بِقَوْلِ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [النساء: ٢٩] . قَالَ عَلِيٌّ: احْتِجَاجُ هَذَا الْجَاهِلِ بِهَذِهِ الْآيَةِ فِي هَذَا الْمَكَانِ دَلِيلٌ عَلَى رِقَّةِ دِينِهِ، إِذْ جَعَلَ مَا أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَاطِلًا، وَلَوْ كَانَ لَهُ دِينٌ لَمَا عَارَضَ حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَلَوْ أَنَّهُ جَعَلَ هَذِهِ الْمُعَارَضَةَ لِقَوْلِهِمُ الْمَلْعُونِ: أَنَّ الْغَاصِبَ لِدُورِ الْمُسْلِمِينَ وَضِيَاعِهِمْ يَسْكُنُهَا وَيُكْرِيهَا، فَالْكِرَاءُ لَهُ حَلَالٌ، وَاحْتِرَاثُ ضِيَاعِهِمْ لَهُ حَلَالٌ لَا يَلْزَمُهُ فِي ذَلِكَ شَيْءٌ. وَقَوْلُهُمْ: مَنِ اشْتَرَى شَيْئًا شِرَاءً فَاسِدًا فَقَدْ مَلَكَهُ مِلْكًا فَاسِدًا وَأَبَاحُوا لَهُ التَّصَرُّفَ فِيمَا اشْتَرَى بِالْبَاطِلِ بِالْوَطْءِ، وَالْعِتْقِ، وَسَائِرِ أَقْوَالِهِمُ الْخَبِيثَةِ لَكَانُوا قَدْ وَافَقُوا. ثُمَّ أَعْجَبُ شَيْءٍ أَمْرُهُمْ بِالصَّدَقَةِ بِهَا، فَإِنْ جَاءَ صَاحِبُهَا ضَمَّنُوا الْمَسَاكِينَ إِنْ

وَجَدُوهُمْ، فَعَلَى أَصْلِهِمْ هُوَ أَيْضًا أَكْلُ مَالٍ بِالْبَاطِلِ. وَأَيُّ فَرْقٍ بَيْنَ أَنْ يَأْكُلَهَا الْوَاجِدُ وَضَمَانُهَا عَلَيْهِ، وَبَيْنَ أَنْ يَأْكُلُوهَا الْمَسَاكِينُ وَضَمَانُهَا عَلَيْهِمْ؟ فَإِنْ لَمْ يُوجَدُوا فَعَلَيْهِ، وَلَئِنْ كَانَ أَحَدُ الْوَجْهَيْنِ أَكْلَ مَالٍ بِالْبَاطِلِ فَإِنَّ الْآخَرَ أَكْلُ مَالٍ بِالْبَاطِلِ، وَلَا فَرْقَ، وَلَئِنْ كَانَ أَحَدُهُمَا أَكْلَ مَالٍ بِحَقٍّ، فَإِنَّ الْآخَرَ أَكْلُ مَالٍ بِالْحَقِّ، وَلَا فَرْقَ، إِذْ الضَّمَانُ فِي الْعَاقِبَةِ فِي كِلَا الْوَجْهَيْنِ، وَلَكِنَّهُمْ قَوْمٌ لَا يَعْقِلُونَ. وَاحْتَجُّوا بِمَا ذَكَرْنَا قَبْلُ: أَنَّهُ لَا يَصِحُّ مِنْ ضَالَّةِ الْمُسْلِمِ حَرْقُ النَّارِ، وَلَا يَأْوِي الضَّالَّةَ إِلَّا ضَالٌّ، وَلَوْ صَحَّا لَكَانَا عَلَيْهِمْ أَعْظَمَ حُجَّةً؛ لِأَنَّهُمْ يُبِيحُونَ أَخْذَ ضَوَالِّ الْإِبِلِ الَّتِي فِيهَا وَرَدَ النَّصُّ الْمَذْكُورُ، فَاعْجَبُوا لِهَذِهِ الْعُقُولِ وَأَعْجَبُ شَيْءٍ احْتِجَاجُهُمْ هَهُنَا بِرِوَايَةٍ خَبِيثَةٍ رَوَاهَا أَبُو يُوسُفَ عَنْ عَبْدِ الْمَلِكِ بْنِ الْعَرْزَمِيِّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ: أَنَّ أُبَيَّ بْنَ كَعْبٍ، ثُمَّ ذَكَرَ بَاقِي الْحَدِيثِ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: «فَإِنَّكَ ذُو حَاجَةٍ إِلَيْهَا» . قَالَ أَبُو مُحَمَّدٍ: هَذَا مُنْقَطِعٌ لِأَنَّ سَلَمَةَ لَمْ يُدْرِكْ أُبَيًّا، ثُمَّ الْعَرْزَمِيُّ ضَعِيفٌ جِدًّا، وَأَبُو يُوسُفَ لَا يَبْعُدُ عَنْهُ، فَمَنْ أَضَلُّ مِمَّنْ يَرُدُّ مَا رَوَاهُ سُفْيَانُ الثَّوْرِيُّ، وَحَمَّادُ بْنُ سَلَمَةَ، كِلَاهُمَا عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ عَنْ أُبَيِّ بْنِ كَعْبٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَيَأْخُذُ بِمَا رَوَاهُ أَبُو يُوسُفَ الْمَغْمُوزُ عَنْ الْعَرْزَمِيِّ الضَّعِيفِ عَنْ سَلَمَةَ عَنْ أُبَيٍّ وَهُوَ لَمْ يَلْقَ أُبَيًّا قَطُّ، فَفِي مِثْلِ هَذَا فَلْيَعْتَبِرْ أُولُو الْأَبْصَارِ. ثُمَّ لَوْ صَحَّتْ لَهُمْ هَذِهِ الزِّيَادَةُ الَّتِي لَا تَصِحُّ لَمَا كَانَ لَهُمْ فِيهَا حُجَّةٌ؛ لِأَنَّهُ لَيْسَ فِيهَا إِلَّا إبَاحَةُ اللُّقَطَةِ لِلْمُحْتَاجِ وَلَسْنَا نُنْكِرُ هَذَا، بَلْ هُوَ قَوْلُنَا، وَلَيْسَ فِيهَا مَنْعُ الْغَنِيِّ مِنْهَا لَا بِنَصٍّ وَلَا بِدَلِيلٍ. ثُمَّ الْعَجَبُ كُلُّهُ رَدُّهُمْ كُلُّهُمْ فِي هَذَا الْمَكَانِ نَفْسِهِ حَدِيثَ عَلِيِّ بْنِ أَبِي طَالِبٍ فِي الْتِقَاطِهِ الدِّينَارَ وَإِبَاحَةِ

ference exists between the finder consuming it with liability upon him, and the poor consuming it with liability upon them? If the poor are untraceable, liability reverts to him. If one case is consumption of wealth unlawfully, the other is equally so—no distinction. If one is consumption by right, the other is consumption by right—no difference, since liability ultimately applies in both cases. But they are a people devoid of understanding. They cite as evidence what we previously mentioned: that burning a Muslim's lost property is invalid, and none shelters lost property except the misguided. Were these proofs valid, they would stand as the greatest argument against them, for they permit seizing stray camels mentioned in the explicit textual ruling. Marvel, then, at these intellects! The most astonishing aspect is their reliance here on a corrupt narration reported by Abū Yūsuf from ʿAbd al-Malik ibn al-ʿArzamī. From Salama ibn Kuhayl: that Ubayy ibn Kaʿb—then he mentioned the remainder of the hadith—and that the Messenger of Allah (peace be upon him) said to him, "Indeed, you have a need for it." Abu Muhammad said: This chain is interrupted because Salama did not meet Ubayy. Al-ʿArzami is extremely weak, and Abu Yusuf is not far from him. Who is more misguided than one who rejects what Sufyan al-Thawri and Hammad ibn Salama both narrated—each from Salama ibn Kuhayl from Suwayd ibn Ghaflah from Ubayy ibn Kaʿb from the Prophet (peace be upon him)—yet accepts what Abu Yusuf the criticized narrated from al-ʿArzami, the utmost in weakness, from Salama from Ubayy, though Salama never met Ubayy? In such matters, let those of insight reflect. Even if this unsound addition were valid for them, it would not constitute proof, for it only permits taking lost property for the needy—a position we do not deny, as it aligns with our view. It contains no explicit or implicit prohibition against the wealthy taking it. The height of astonishment is their rejection of Ali ibn Abi Talib's hadith concerning his finding a dinar and the Messenger of Allah (peace be upon him) permitting him to spend it, dismissing it as mursal (a hadith with a missing link). Yet they cite the version narrated by Sharik—a weak narrator—so a mursal narrated by a weak transmitter is deemed inadmissible if it contradicts Abu Hanifah's opinion, while a mursal narrated by al-ʿArzami—the utmost in weakness—is not abandoned if it supports Abu Hanifah's view. By Allah, those who follow this path in religion will endure prolonged regret

on a day when remorse avails nothing. This is not the way of those who believe in the Day of Reckoning—it is misguidance and leading astray. We seek refuge with Allah from abandonment. They have lied. The hadith of Ali has been narrated through chains other than Sharik's and is fully traced via Abu Dawud's chain: Jaʿfar ibn Musafir al-Tinnisi narrated to us from Ibn Abi Fudayk from Musa ibn Yaʿqub al-Zamʿi—he is Musa ibn Yaʿqub ibn ʿAbdullah ibn Wahb ibn Zamʿah—from Abu Hazim from Sahl ibn Saʿd, who reported: "Ali ibn Abi Talib found al-Husayn and al-Hasan crying from hunger. He went out and found a dinar in the market, brought it to Fatimah, and informed her. She said, 'Go to so-and-so the Jew and get us flour.' He went to the Jew and purchased flour. The Jew asked, 'Are you the son-in-law of the one who claims to be the Messenger of Allah (peace be upon him)?' He replied, 'Yes.' The Jew said, 'Take your dinar, and the flour is yours.' Ali returned to Fatimah and informed her. She said, 'Go to so-and-so the butcher and get us a dirham's worth of meat.' He went and pawned the dinar for a dirham's meat. He brought it, and she kneaded dough, let it rise, baked it, then sent for the Prophet (peace be upon him). When he came, she said, 'O Messenger of Allah, I will tell you. If you deem it lawful for us, we will eat, and you will eat with us.'" They said, "What about such-and-such?" He—peace be upon him—responded: "Eat in Allah's name," so they ate. While they remained seated, suddenly a youth appeared invoking Allah the Exalted and Islam to claim a dinar. The Messenger of Allah—may Allah bless him and his family and grant him peace—ordered him to be summoned. The Messenger of Allah questioned him, and he said: "I lost it in the marketplace." The Messenger of Allah—may Allah bless him and his family and grant him peace—then said: "O Ali, go to the butcher and tell him: The Messenger of Allah—may Allah bless him and his family and grant him peace—says to you: 'Send me the dinar, and I will repay you your dirham.'" The butcher sent it, and the Messenger of Allah—may Allah bless him and his family and grant him peace—returned it without proof.[1]

رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهُ اسْتِنْفَاقَهُ بِأَنْ قَالُوا هُوَ مُرْسَلٌ، وَرَوَاهُ شَرِيكٌ - وَهُوَ ضَعِيفٌ - فَالْمُرْسَلُ الَّذِي يَرْوِيهِ الضَّعِيفُ لَا يَجُوزُ الْأَخْذُ بِهِ إِذَا خَالَفَ رَأْيَ أَبِي حَنِيفَةَ، وَالْمُرْسَلُ الَّذِي رَوَاهُ الْعَرْزَمِيُّ - وَهُوَ الْغَايَةُ فِي الضَّعْفِ - لَا يَجُوزُ تَرْكُهُ إِذَا وَافَقَ رَأْيَ أَبِي حَنِيفَةَ، وَاَللَّهِ لَتَطُولُنَّ نَدَامَةُ مَنْ هَذَا سَبِيلُهُ فِي دِينِهِ يَوْمَ لَا يُغْنِي النَّدَمُ عَنْهُ شَيْئًا، وَمَا هَذِهِ طَرِيقُ مَنْ يَدِينُ بِيَوْمِ الْحِسَابِ، لَكِنَّهُ الضَّلَالُ وَالْإِضْلَالُ - نَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ. ثُمَّ قَدْ كَذَبُوا، بَلْ قَدْ رُوِيَ حَدِيثُ عَلِيٍّ مِنْ غَيْرِ طَرِيقِ شَرِيكٍ، وَأُسْنِدَ مِنْ طَرِيقِ أَبِي دَاوُد نا جَعْفَرُ بْنُ مُسَافِرٍ التِّنِّيسِيُّ نا ابْنُ أَبِي فُدَيْكٍ نا مُوسَى بْنُ يَعْقُوبَ الزَّمْعِيُّ - هُوَ مُوسَى بْنُ يَعْقُوبَ بْنِ عَبْدِ اللَّهِ بْنِ وَهْبِ بْنِ زَمْعَةَ - عَنْ أَبِي حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ أَخْبَرَهُ: «أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ وَجَدَ الْحُسَيْنَ وَالْحَسَنَ يَبْكِيَانِ مِنْ الْجُوعِ، فَخَرَجَ فَوَجَدَ دِينَارًا بِالسُّوقِ، فَجَاءَ بِهِ إلَى فَاطِمَةَ فَأَخْبَرَهَا؟ فَقَالَتْ لَهُ: اذْهَبْ إلَى فُلَانٍ الْيَهُودِيِّ فَخُذْ لَنَا دَقِيقًا؟ فَذَهَبَ إلَى الْيَهُودِيِّ فَاشْتَرَى بِهِ دَقِيقًا؟ فَقَالَ الْيَهُودِيُّ: أَنْتَ خَتَنُ هَذَا الَّذِي يَزْعُمُ أَنَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ قَالَ: نَعَمْ قَالَ: فَخُذْ دِينَارَكَ وَلَكَ الدَّقِيقُ، فَخَرَجَ عَلِيٌّ حَتَّى جَاءَ بِهِ فَاطِمَةَ، فَأَخْبَرَهَا فَقَالَتْ لَهُ اذْهَبْ إلَى فُلَانٍ الْجَزَّارِ فَخُذْ لَنَا بِدِرْهَمٍ لَحْمًا فَذَهَبَ فَرَهَنَ الدِّينَارَ بِدِرْهَمِ لَحْمٍ، فَجَاءَ بِهِ فَعَجَنَتْ وَنَصَبَتْ وَخَبَزَتْ، وَأَرْسَلَتْ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَاءَهُمْ؟ فَقَالَتْ لَهُ: يَا رَسُولَ اللَّهِ أَذْكُرُ لَك، فَإِنْ رَأَيْتَهُ لَنَا حَلَالًا أَكَلْنَا وَأَكَلْتَ مَعَنَا مِنْ شَأْنِه كَذَا وَكَذَا؟ فَقَالَ - عَلَيْهِ السَّلَامُ - كُلُوا بِاسْمِ اللَّهِ، فَأَكَلُوا، فَبَيْنَمَا هُمْ مَكَانَهُمْ إذَا غُلَامٌ يَنْشُدُ اللَّهَ تَعَالَى وَالْإِسْلَامَ الدِّينَارَ، فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَدُعِيَ لَهُ فَسَأَلَهُ فَقَالَ: سَقَطَ مِنِّي فِي السُّوقِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

[1] **Qur'an references (L21177):** Qur'an 4:29 (An-Nisa).

-: يَا عَلِيُّ اذْهَبْ إِلَى الْجَزَّارِ فَقُلْ لَهُ: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ لَكَ: أَرْسِلْ إِلَيَّ بِالدِّينَارِ، وَدِرْهَمُكَ عَلَيَّ، فَأَرْسَلَ بِهِ، فَدَفَعَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِلَا بَيِّنَةٍ» .

L21182 Abu Muhammad said: This narration is superior to theirs. As for him [the Prophet] (peace be upon him), along with Ali, Fatimah, Hasan, and Husayn (may Allah be pleased with them), charity is not permissible for them, whether they were wealthy or poor. This narration has permitted purchasing flour with a dinar, for he took it solely through purchase. Then the Jew presented the dinar to him as a gift, and similarly he pledged the dinar as collateral for the meat. The authentic narration suffices for all this.

قَالَ أَبُو مُحَمَّدٍ: هَذَا خَبَرٌ خَيْرٌ مِنْ خَبَرِهِمْ، وَهُوَ - عَلَيْهِ السَّلَامُ -، وَعَلِيٌّ، وَفَاطِمَةُ، وَالْحَسَنُ، وَالْحُسَيْنُ - رَضِيَ اللَّهُ عَنْهُمْ -: لَا تَحِلُّ لَهُمْ الصَّدَقَةُ أَغْنِيَاءَ كَانُوا أَوْ فُقَرَاءَ. وَقَدْ أَبَاحَ فِي هَذَا الْخَبَرِ شِرَاءَ الدَّقِيقِ بِالدِّينَارِ، فَإِنَّمَا أَخَذَهُ ابْتِيَاعًا، ثُمَّ أَهْدَى إلَيْهِ الْيَهُودِيُّ الدِّينَارَ، وَكَذَلِكَ رَهَنَ الدِّينَارَ فِي اللَّحْمِ، وَالْخَبَرُ الصَّحِيحُ يَكْفِي مِنْ كُلِّ هَذَا.

L21183–21185 It was narrated to us through al-Bukhari's chain: Muhammad ibn Yusuf narrated to us, Sufyan narrated to us from Mansur ibn al-Mu'tamir from Talhah ibn Musarrif from Anas ibn Malik who said: "Allah's Messenger (peace be upon him) passed by a discarded date on the road and said: 'Were it not that I fear it might be from charity, I would have eaten it.'" This is Allah's Messenger (peace be upon him) - wealthy, not poor, by Allah Almighty's testimony when He says: {And He found you in need and enriched you} [Ad-Duha 93:8]. He considers it lawful to consume lost property, yet merely feared it might be from charity. Some of them said: "This confirms its actual status as charity since it was lost property" - this being the speech of one devoid of intellect, shame, and religion, for it constitutes irrational speech contradicting the understood meaning of Allah's Messenger's words (peace be upon him), being blatant lies - insipid and baseless. Most astonishing is the claim by some: "Consensus has been established that no one other than him would give it to a wealthy person, thus he acted accordingly." Abu Muhammad said: "Nothing is easier for these people than blatant lies. Their falsehoods are against Allah Almighty, against His Messenger (peace be upon him), against all Muslims, against intellects, and against senses. I wonder when I ever agreed with them on this, or who agreed with them on this matter - the remnants..." The pebbles, the gravel—and where did they find this consensus? Rather, they lied in that matter. If the lost item enters his

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدُ بْنُ يُوسُفَ نا سُفْيَانُ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ طَلْحَةَ بْنِ مُصَرِّفٍ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ «مَرَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِتَمْرَةٍ مَطْرُوحَةٍ فِي الطَّرِيقِ فَقَالَ: لَوْلَا أَنِّي أَخَافُ أَنْ تَكُونَ مِنْ الصَّدَقَةِ لَأَكَلْتُهَا» فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَنِيٌّ لَا فَقِيرٌ بِشَهَادَةِ اللَّهِ تَعَالَى لَهُ إذْ يَقُولُ: {وَوَجَدَكَ عَائِلا فَأَغْنَى} [الضحى: ٨] يَسْتَحِلُّ أَكْلَ اللُّقَطَةِ، وَإِنَّمَا تَوَقَّعَ أَنْ تَكُونَ مِنْ الصَّدَقَةِ. فَقَالَ بَعْضُهُمْ: هَذَا عَلَى تَحْقِيقِ الصِّفَةِ أَنَّهَا مِنْ الصَّدَقَةِ لِأَنَّهَا لُقَطَةٌ - وَهَذَا كَلَامُ إنْسَانٍ عَدِيمِ عَقْلٍ وَحَيَاءٍ وَدِينٍ، لِأَنَّهُ كَلَامٌ لَا يُعْقَلُ، وَخِلَافٌ لِمَفْهُومِ لَفْظِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَذِبٌ مُجَاهَرٌ بِهِ، بَارِدٌ غَثٌّ - وَأَعْجَبُ شَيْءٍ قَوْلُ بَعْضِهِمْ: قَدْ صَحَّ الْإِجْمَاعُ عَلَى أَنَّهُ لَا يُعْطِيهَا غَنِيًّا غَيْرُهُ، فَكَانَ هُوَ كَذَلِكَ. قَالَ أَبُو مُحَمَّدٍ: لَا شَيْءَ أَسْهَلُ مِنْ الْكَذِبِ الْمَفْضُوحِ عِنْدَ هَؤُلَاءِ الْقَوْمِ، ثُمَّ كَذِبُهُمْ إنَّمَا هُوَ عَلَى اللَّهِ تَعَالَى، وَعَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَى جَمِيعِ أَهْلِ الْإِسْلَامِ وَعَلَى الْعُقُولِ، وَالْحَوَاسِّ،

ownership after completing the year during which he announced it, then if he gives it to a wealthy person, the wealthy, Qarun (if he found him alive), or Solomon, or the Messenger of Allah—peace and blessings be upon him and his family—if the finder lived in his time, this would be permissible with no element of reprehensibility. They said: Yaḥyā ibn Saʿīd expressed doubt regarding the ruling of the finder spending the lost item—is it from the statement of Yazīd, freed slave of al-Munbaʿith, or from the statement of the Messenger of Allah—peace and blessings be upon him and his family? He later decisively affirmed it was from Yazīd's statement. We replied: Yaḥyā also narrated it with a chain—all of this is valid, for he once heard it as an authenticated report and heard Yazīd say: "From two of his youths as well."[2]

لَيْتَ شِعْرِي مَتَى أُجْمِعُ مَعَهُمْ عَلَى هَذَا، وَمَنْ أَجْمَعَ مَعَهُمْ عَلَى هَذَا، أَبْقِيَةِ الْجَنْدَلِ، وَالْكَنْكَثِ وَأَيْنَ وَجَدُوا هَذَا الإِجْمَاعَ؟ بَلْ كَذَبُوا فِي ذَلِكَ وَإِذَا أُدْخِلَتْ اللُّقَطَةُ فِي مِلْكِهِ بِانْقِضَاءِ الْحَوْلِ الَّذِي عَرَّفَهَا فِيهِ، فَإِنْ أَعْطَاهَا غَنِيًّا، أَوْ أَغْنِيَاءَ، أَوْ قَارُونُ - لَوْ وَجَدَهُ حَيًّا - أَوْ سُلَيْمَانُ - رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَوْ كَانَ فِي عَصْرِهِ لَكَانَ ذَلِكَ مُبَاحًا لَا شَيْءَ مِنْ الْكَرَاهِيَةِ فِيهِ. وَقَالُوا: قَدْ شَكَّ يَحْيَى بْنُ سَعِيدٍ فِي أَمْرِ الْمُلْتَقِطِ بِأَنْ يَسْتَنْفِقَهَا، أَهُوَ مِنْ قَوْلِ يَزِيدَ مَوْلَى الْمُنْبَعِثِ؟ أَوْ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ وَقَطَعَ مَرَّةً أُخْرَى عَلَى أَنَّهُ مِنْ قَوْلِ يَزِيدَ قُلْنَا: وَقَدْ أَسْنَدَهُ يَحْيَى أَيْضًا - وَهَذَا كُلُّهُ صَحِيحٌ فِيهِ؛ لِأَنَّهُ سَمِعَهُ مَرَّةً مُسْنَدًا، وَسَمِعَ يَزِيدَ يَقُولُ: مِنْ فَتَيَاهُ أَيْضًا.

L21186–21188 Then he states: However, Rabi'ah did not doubt that it was the statement of Allah's Messenger—peace be upon him—and likewise Busr ibn Sa'id did not doubt that it was the statement of the Messenger of Allah—peace be upon him—transmitting from Zayd ibn Khālid al-Juhanī. Mālik and Sufyān al-Thawrī narrated from Rabi'ah from Yazīd, the freed slave of al-Munba'ith, from Zayd ibn Khālid from the Prophet—peace be upon him: "If its owner comes, otherwise it is your responsibility." Hammād ibn Salamah narrated from Rabi'ah from Yazīd ibn Khālid from the Prophet—peace be upon him: "If its owner comes, otherwise it is your responsibility." Hammād ibn Salamah also narrated from Rabi'ah from Yazīd from Zayd ibn Khālid from the Prophet—peace be upon him: "If its owner comes and recognizes it, then deliver it to him; otherwise, it is yours." Sufyān ibn 'Uyaynah narrated that Rabi'ah informed him that Yazīd, the freed slave of al-Munba'ith, reported to him from Zayd ibn Khālid "from the Prophet—peace be upon him—that he was asked about lost property. He said: 'Publicize it for a year. If it is recognized, return it; otherwise, incorporate it into your wealth.'" We have transmitted this through the chain of Sa'īd ibn Manṣūr, narrated to us by 'Abd al-'Azīz ibn Muhammad—al-Darāwardī. I heard Rabi'ah nar-

ثُمَّ يَقُولُ: لَكِنَّ رَبِيعَةَ لَمْ يَشُكَّ فِي أَنَّهُ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَكَذَلِكَ أَيْضًا لَمْ يَشُكَّ بُسْرُ بْنُ سَعِيدٍ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -. رَوَى مَالِكٌ، وَسُفْيَانُ الثَّوْرِيُّ عَنْ رَبِيعَةَ عَنْ يَزِيدَ مَوْلَى الْمُنْبَعِثِ عَنْ زَيْدِ بْنِ خَالِدٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «فَإِنْ جَاءَ صَاحِبُهَا وَإِلَّا فَشَأْنُكَ بِهَا» . وَرَوَى حَمَّادُ بْنُ سَلَمَةَ عَنْ رَبِيعَةَ عَنْ يَزِيدَ بْنِ خَالِدٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «فَإِنْ جَاءَ صَاحِبُهَا وَإِلَّا فَشَأْنُكَ بِهَا» . وَرَوَى حَمَّادُ بْنُ سَلَمَةَ عَنْ رَبِيعَةَ عَنْ يَزِيدَ عَنْ زَيْدِ بْنِ خَالِدٍ عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ -: «فَإِنْ جَاءَ صَاحِبُهَا فَعَرَفَهَا فَادْفَعْهَا إلَيْهِ وَإِلَّا فَهِيَ لَكَ» . وَرَوَى سُفْيَانُ بْنُ عُيَيْنَةَ: أَنَّ رَبِيعَةَ أَخْبَرَهُ أَنَّ يَزِيدَ مَوْلَى الْمُنْبَعِثِ حَدَّثَهُ عَنْ زَيْدِ بْنِ خَالِدٍ «عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ - أَنَّهُ سُئِلَ عَنْ اللُّقَطَةِ؟ فَقَالَ: عَرِّفْهَا سَنَةً، فَإِنْ اعْتَرَفَتْ وَإِلَّا فَاخْلِطْهَا بِمَالِكَ.» وَرُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ - هُوَ الدَّرَاوَرْدِيُّ - سَمِعْت رَبِيعَةَ يُحَدِّثُ عَنْ يَزِيدَ مَوْلَى

[2] **Qur'an references (L21183):** Qur'an 93:8 (Ad-Duhaa).

rate from Yazid, the freed slave of al-Munba'ith, from Zayd ibn Khalid from the Messenger of Allah—peace and blessings of Allah be upon him—as he mentioned the hadith, concluding with: "If its owner comes, deliver it to him; otherwise, utilize it as you would your own property." Abu al-Nadr, the freed slave of Amr ibn Ubaidullah, narrated it from Busr ibn Sa'id from Zayd ibn Khalid al-Juhani from the Messenger of Allah—peace and blessings of Allah be upon him and his family—regarding the lost item, stating: "Announce it for a year. If it remains unrecognized, identify its bag and binding cord, then utilize it. If its owner comes, deliver it to him." Hammad ibn Salamah narrated from Salamah ibn Kuhayl from Suwayd ibn Ghaflah that Ubayy ibn Ka'b said: "The Messenger of Allah—peace and blessings of Allah be upon him—instructed him concerning the lost item: 'If its owner comes, have him identify its quantity, binding cord, and container, then give it to him; otherwise, it belongs to you.'"

الْمُنْبَعِثِ عَنْ زَيْدِ بْنِ خَالِدٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ الْحَدِيثَ، وَفِي آخِرِهِ: «فَإِنْ جَاءَ صَاحِبُهَا فَأَدِّهَا إِلَيْهِ وَإِلَّا فَاصْنَعْ بِهَا مَا تَصْنَعُ بِمَالِكَ» . وَرَوَاهُ أَبُو النَّضْرِ مَوْلَى عُمَرَ بْنِ عُبَيْدِ اللَّهِ عَنْ بُسْرِ بْنِ سَعِيدٍ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي اللُّقَطَةِ قَالَ: «عَرِّفْهَا سَنَةً فَإِنْ لَمْ تَعْتَرِفْ فَاعْرِفْ عِفَاصَهَا، وَوِكَاءَهَا، ثُمَّ كُلْهَا فَإِنْ جَاءَ صَاحِبُهَا فَأَدِّهَا إِلَيْهِ» . وَرَوَاهُ حَمَّادُ بْنُ سَلَمَةَ نا سَلَمَةُ بْنُ كُهَيْلٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ: أَنَّ أُبَيَّ بْنَ كَعْبٍ قَالَ لَهُ: «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهُ فِي اللُّقَطَةِ: فَإِنْ جَاءَ صَاحِبُهَا فَعَرِّفْ عَدَدَهَا، وَوِكَاءَهَا، وَوِعَاءَهَا فَأَعْطِهَا إِيَّاهُ، وَإِلَّا فَهِيَ لَكَ» .

"This is supported by the hadith of Iyad ibn Himar and Abu Hurairah—unlike those fabricated composites of *mursal*, unknown narrators, or those of no merit. And with Allah, the Exalted, lies all success. A report has come through a chain that opponents persistently cite when it suits them: We have been narrated through the chain of Ibn Wahb: Amr ibn al-Harith informed me from Amr ibn Shu'ayb, from his father, from his grandfather: "A man came to the Prophet (peace and blessings of Allah be upon him) and said, 'What do you say about what is found on a frequently used road or in an inhabited village?' He said, 'Announce it for a year. If its claimant comes, hand it over to him; otherwise, it is yours to keep. If its seeker comes one day in the future, return it to him. As for what is found on a road that is not frequently used or in a village that is uninhabited: the ruling applies to it, and for treasure troves, one-fifth is due.'"

L21189

وَعَلَى هَذَا دَلَّ حَدِيثُ عِيَاضِ بْنِ حِمَارٍ، وَأَبِي هُرَيْرَةَ، لَا مِثْلَ تِلْكَ الْمُلَفَّقَاتِ الْمَكْذُوبَةِ مِنْ مُرْسَلٍ، وَمَجْهُولٍ، وَمَنْ لَا خَيْرَ فِيهِ -. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَقَدْ جَاءَ خَبَرٌ مِنْ طَرِيقٍ لَا يَزَالُ الْمُخَالِفُونَ يَحْتَجُّونَ بِهَا إذَا وَافَقَتْهُمْ -: رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ: أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ رَجُلًا أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: كَيْفَ تَرَى مَا وُجِدَ فِي الطَّرِيقِ الْمِيتَاءِ، أَوْ فِي الْقَرْيَةِ الْمَسْكُونَةِ؟ قَالَ: عَرِّفْ سَنَةً، فَإِنْ جَاءَ بَاغِيهِ فَادْفَعْهُ إِلَيْهِ وَإِلَّا فَشَأْنَكَ بِهِ، فَإِنْ جَاءَ طَالِبُهَا يَوْمًا مِنْ الدَّهْرِ فَأَدِّهَا إِلَيْهِ، وَمَا كَانَ فِي الطَّرِيقِ غَيْرِ الْمِيتَاءِ، وَفِي الْقَرْيَةِ غَيْرِ الْمَسْكُونَةِ: فَفِيهِ، وَفِي الرِّكَازِ: الْخُمُسُ» .

L21190

وَأَمَّا نَحْنُ فَهَذِهِ صَحِيفَةٌ لَا نَأْخُذُ بِهَا، فَهَذَا حُكْمُ اللُّقَطَةِ مِنْ غَيْرِ الْحَيَوَانِ. وَأَمَّا الضَّوَالُّ مِنْ الْحَيَوَانِ فَلَهَا ثَلَاثَةُ أَحْكَامٍ -: أَمَّا الضَّأْنُ وَالْمَعْزُ فَقَطْ - بِكِبَارِهَا وَصِغَارِهَا - تُوجَدُ بِحَيْثُ يُخَافُ عَلَيْهَا الذِّئْبَ، أَوْ مَنْ يَأْخُذُهَا مِنْ النَّاسِ، وَلَا حَافِظَ لَهَا، وَلَا هِيَ بِقُرْبِ

As for us, this is a text we do not follow. This is the ruling concerning lost property other than animals. As for stray animals, they have three rulings: First, regarding sheep and goats specifically—both adults and young—if found in a place where they are feared to be preyed upon by wolves or seized by people, with no guardian present, and not near any water belonging to them,

they are permissible for whoever takes them. This applies whether the owner comes or does not come, and whether they are found alive, slaughtered, cooked, or eaten—the owner has no claim over them.

L21191–21195 As for camels capable of grazing and reaching water sources, it is not permissible for anyone to take them. The ruling concerning them is that they must be left without exception. Whoever takes them is liable for them if they perish in his possession in any manner whatsoever. Except if there is any among the things we mentioned—lost property or stray animals whose owner is identifiable—the ruling for all such cases is that they must be returned to their owner without public announcement. As for all other things we mentioned: camels incapable of reaching water and pasture, all cattle, horses, mules, donkeys, all owned game animals, runaway male and female slaves, those among them whose owners have lost them, sheep that stray where they are not feared for wolves or humans, and all other similar cases—the obligation is to take them, retain them, and announce them indefinitely. If the owner's identity becomes impossible to ascertain, the ruler or the finder must allocate them for the general welfare of the Muslims. Success is from Allah alone. This applies equally whether what we mentioned was neglected by its owner due to necessity, fear, emaciation, or straying—there is no distinction. The proof for this is what we narrate via al-Bukhārī: Qutaybah ibn Saʿīd reported to us, Ismāʿīl ibn Jaʿfar reported to us from Rabīʿah ibn Abī ʿAbd al-Raḥmān from Yazīd, the freed slave of al-Munbaʿith, from Zayd ibn Khālid al-Juhanī: "The Messenger of Allah (peace and blessings be upon him and his family) was asked about lost property. He said: 'Announce it for a year, then note its fastener and container, and use it. If its owner comes, return it to him.' The questioner asked: 'O Messenger of Allah, what about stray sheep?' He replied: 'Take them, for they are yours to keep, your brother's, or the wolf.' The man asked: 'O Messenger of Allah, what about stray camels?' The Prophet (peace and blessings be upon him and his family) grew angry until his cheeks reddened or his face reddened and said: 'What concern is it of yours? They have their hooves and water-bearing capacity until their owner finds them.'" Another narration via al-Bukhārī: Ismāʿīl ibn ʿAbd Allāh ibn Abī Uways reported to us, Sulaymān ibn Bilāl reported to us from Yaḥyā

مَاءٍ مِنْهَا: فَهِيَ حَلَالٌ لِمَنْ أَخَذَهَا سَوَاءٌ جَاءَ صَاحِبُهَا، أَوْ لَمْ يَجِئْ، وَجَدَهَا حَيَّةً، أَوْ مَذْبُوحَةً، أَوْ مَطْبُوخَةً، أَوْ مَأْكُولَةً - لَا سَبِيلَ لَهُ عَلَيْهَا.

وَأَمَّا الْإِبِلُ الْقَوِيَّةُ عَلَى الرَّعْيِ، وَوُرُودِ الْمَاءِ: فَلَا يَحِلُّ لِأَحَدٍ أَخْذُهَا، وَإِنَّمَا حُكْمُهَا: أَنْ تُتْرَكَ وَلَا بُدَّ، فَمَنْ أَخَذَهَا ضَمِنَهَا - إِنْ تَلِفَتْ عِنْدَهُ بِأَيِّ وَجْهٍ تَلِفَتْ - وَكَانَ عَاصِيًا بِذَلِكَ، إِلَّا أَنْ يَكُونَ شَيْءٌ مِنْ كُلِّ مَا ذَكَرْنَا مِنْ لُقَطَةٍ، أَوْ ضَالَّةٍ، يُعَرِّفُ صَاحِبَهَا، فَحُكْمُ كُلِّ ذَلِكَ أَنْ تُرَدَّ إِلَيْهِ وَلَا تُعَرَّفُ فِي ذَلِكَ. وَأَمَّا كُلُّ مَا عَدَا مَا ذَكَرْنَا مِنْ إِبِلٍ لَا قُوَّةَ بِهَا عَلَى وُرُودِ الْمَاءِ وَالرَّعْيِ وَسَائِرُ الْبَقَرِ، وَالْخَيْلِ، وَالْبِغَالِ، وَالْحَمِيرِ، وَالصُّيُودِ كُلِّهَا، الْمُتَمَلَّكَةِ، وَالْأُبَّاقِ مِنَ الْعَبِيدِ وَالْإِمَاءِ، وَمَا أَضَلَّ صَاحِبُهُ مِنْهَا، وَالْغَنَمِ الَّتِي تَكُونُ ضَوَالَّ بِحَيْثُ لَا يُخَافُ عَلَيْهَا الذِّئْبَ، وَلَا إِنْسَانٌ، وَغَيْرُ ذَلِكَ - كُلِّهِ - فَفَرْضٌ أَخْذُهُ وَضَمُّهُ وَتَعْرِيفُهُ أَبَدًا، فَإِنْ يَئِسَ مِنْ مَعْرِفَةِ صَاحِبِهَا أَدْخَلَهَا الْحَاكِمُ أَوْ وَاجِدُهَا فِي جَمِيعِ مَصَالِحِ الْمُسْلِمِينَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. سَوَاءٌ كَانَ كُلُّ مَا ذَكَرْنَا مِمَّا أَهْمَلَهُ صَاحِبُهُ لِضَرُورَةٍ، أَوْ لِخَوْفٍ، أَوْ لِهُزَالٍ أَوْ مِمَّا ضَلَّ وَلَا فَرْقَ. بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ عَنْ يَزِيدَ مَوْلَى الْمُنْبَعِثِ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - سُئِلَ عَنْ اللُّقَطَةِ؟ فَقَالَ: عَرِّفْهَا سَنَةً ثُمَّ اعْرِفْ وِكَاءَهَا وَعِفَاصَهَا ثُمَّ اسْتَنْفِقْ بِهَا، فَإِنْ جَاءَ رَبُّهَا فَأَدِّهَا إِلَيْهِ؟ فَقَالَ: يَا رَسُولَ اللَّهِ فَضَالَّةُ الْغَنَمِ؟ قَالَ: خُذْهَا فَإِنَّمَا هِيَ لَكَ أَوْ لِأَخِيكَ أَوْ لِلذِّئْبِ، قَالَ: يَا رَسُولَ اللَّهِ فَضَالَّةُ الْإِبِلِ؟ فَغَضِبَ - عَلَيْهِ السَّلَامُ - حَتَّى احْمَرَّتْ وَجْنَتَاهُ أَوْ احْمَرَّ وَجْهُهُ وَقَالَ: مَا لَكَ وَلَهَا مَعَهَا حِذَاؤُهَا وَسِقَاؤُهَا حَتَّى يَلْقَاهَا رَبُّهَا» . وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا إِسْمَاعِيلُ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي أُوَيْسٍ نا سُلَيْمَانُ

ibn Saʿīd al-Anṣārī from Yazīd, the freed slave of al-Munbaʿith, who heard Zayd ibn Khālid al-Juhanī say: "The Messenger of Allah (peace and blessings be upon him and his family) was asked about stray sheep. The Prophet (peace and blessings be upon him and his family) said: 'Take them, for they are yours to keep, your brother's, or the wolf.' He was then asked: 'What about stray camels?' He replied: 'Leave them, for they have their hooves and water-bearing capacity. They will drink water and graze until their owner finds them.'" Thus, the Prophet (peace and blessings be upon him and his family) commanded taking stray sheep feared for wolves or humans but leaving camels that can drink water and graze until their owner reclaims them. He singled out these specific cases among all found items and stray livestock, excluding others. Thus, it is impermissible for anyone to act contrary to this ruling. Abu Muhammad said: Regarding what has a recognized owner, it is not considered stray livestock, for it has not entirely gone astray. Rather, it remains identifiable. Stray livestock refers exclusively to what has completely gone astray - where its owner cannot locate it, and its finder cannot identify its owner. This is what the Prophet (peace be upon him) commanded to be publicly proclaimed in gatherings.[3]

L21196 The ruling concerning all animals remains contingent upon the statement of Allah, the Exalted: *"And cooperate in righteousness and piety"* [Al-Mā'idah: 2]—except what we have mentioned. Preserving the property of a Muslim or a Dhimmi is part of righteousness and piety. The Messenger of Allah (peace be upon him) said: *"Your blood and your wealth are inviolable to you."* Thus, it is unlawful for anyone to take from another's wealth except what Allah, the Exalted, and His Messenger (peace be upon him) have permitted.[4]

L21197 It was narrated to us through the chain of Abd al-Razzaq from Ma'mar from al-Zuhri from Sa'id ibn al-Musayyib, who said: Umar ibn al-Khattab wrote to his governors, "Do not gather stray camels. Camels used to multiply as ownerless herds, coming to water sources without anyone interfering with them until someone who recognized them would come and take them. But

بْنُ بِلَالٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ يَزِيدَ مَوْلَى الْمُنْبَعِثِ أَنَّهُ سَمِعَ زَيْدَ بْنَ خَالِدٍ الْجُهَنِيَّ يَقُولُ: «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَيْفَ تَرَى فِي ضَالَّةِ الْغَنَمِ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: خُذْهَا فَإِنَّمَا هِيَ لَكَ أَوْ لِأَخِيكَ أَوْ لِلذِّئْبِ فَقَالَ: كَيْفَ تَرَى فِي ضَالَّةِ الْإِبِلِ؟ قَالَ: دَعْهَا، فَإِنَّ مَعَهَا حِذَاءَهَا وَسِقَاءَهَا تَرِدُ الْمَاءَ وَتَأْكُلُ الشَّجَرَ حَتَّى يَجِدَهَا رَبُّهَا» فَأَمَرَ - عَلَيْهِ السَّلَامُ - بِأَخْذِ ضَالَّةِ الْغَنَمِ الَّتِي يَخَافُ عَلَيْهَا الذِّئْبَ أَوْ الْعَادِي وَيَتْرُكُ الْإِبِلَ الَّتِي تَرِدُ الْمَاءَ وَتَأْكُلُ الشَّجَرَ، وَخَصَّهَا بِذَلِكَ دُونَ سَائِرِ اللُّقَطَاتِ وَالضَّوَالِّ فَلَا يَحِلُّ لِأَحَدٍ خِلَافُ ذَلِكَ. قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا مَا عَرَفَ رَبُّهُ فَلَيْسَ ضَالَّةً؛ لِأَنَّهَا لَمْ تَضِلَّ جُمْلَةً، بَلْ هِيَ مَعْرُوفَةٌ وَإِنَّمَا الضَّالَّةُ مَا ضَلَّتْ جُمْلَةً فَلَمْ يَعْرِفْهَا صَاحِبُهَا أَيْنَ هِيَ؟ وَلَا عَرَفَ وَاجِدُهَا لِمَنْ هِيَ، وَهِيَ الَّتِي أَمَرَ - عَلَيْهِ السَّلَامُ - بِنَشْدِهَا.

وَبَقِيَ حُكْمُ الْحَيَوَانِ كُلِّهِ حَاشَا مَا ذَكَرْنَا مَوْقُوفًا عَلَى قَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢] وَمِنْ الْبِرِّ وَالتَّقْوَى إحْرَازُ مَالِ الْمُسْلِمِ أَوْ الذِّمِّيِّ. وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَحِلُّ لِأَحَدٍ مِنْ مَالِ أَحَدٍ إلَّا مَا أَحَلَّهُ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إلَى عُمَّالِهِ لَا تَضُمُّوا الضَّوَالَّ فَلَقَدْ كَانَتْ الْإِبِلُ تُنَاتَجُ هَمَلًا وَتَرِدُ الْمِيَاهَ لَا يَعْرِضُ لَهَا أَحَدٌ حَتَّى يَأْتِيَ مَنْ يَعْتَرِفُهَا فَيَأْخُذُهَا، حَتَّى إذَا كَانَ عُثْمَانُ كَتَبَ: أَنْ ضُمُّوهَا وَعَرِّفُوهَا؟ فَإِنْ جَاءَ مَنْ يَعْرِفُهَا وَإِلَّا فَبِيعُوهَا وَضَعُوا أَثْمَانَهَا فِي بَيْتِ الْمَالِ، فَإِنْ

[3] **Hadith references (L21191):** Sunan Abi Dawud 1704; Sahih Muslim 1722b; Mishkat al-Masabih 3033.

[4] **Qur'an references (L21196):** Qur'an 5:2 (Al-Ma'idah).

when Uthman became caliph, he wrote: 'Gather them and announce them. If someone who recognizes them comes, give them to him; otherwise, sell them and deposit their prices in the public treasury. If someone who recognizes them comes later, give the prices to her.'"

Through another chain from Ibn Wahb, Anas ibn Iyad narrated to me from Salamah ibn Wardan: I asked Salim ibn Abd Allah ibn Umar about a sheep found in uninhabited land. He replied, "Announce her to those near you. If she is recognized, give her to the one who recognizes her; otherwise, it is your sheep and the wolf's sheep—consume her."

جَاءَ مَنْ يَعْتَرِفُهَا فَادْفَعُوا إِلَيْهَا الْأَثْمَانَ. وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي أَنَسُ بْنُ عِيَاضٍ عَنْ سَلَمَةَ بْنِ وَرْدَانَ سَأَلْت سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ الشَّاةِ تُوجَدُ بِالْأَرْضِ الَّتِي لَيْسَ بِهَا أَحَدٌ، فَقَالَ لِي: عَرِّفْهَا مَنْ دَنَا لَك، فَإِنْ عُرِفَتْ فَادْفَعْهَا إلَى مَنْ عَرَفَهَا وَإِلَّا فَشَاتُك وَشَاةُ الذِّئْبِ فَكُلْهَا.

L21198 And through the narration of Wakīʿ, Salama ibn Wardān narrated to us, saying: I asked Sālim ibn ʿAbd Allāh ibn ʿUmar about stray camels. He said: "They have their water-skins and footgear with them—leave them unless you identify their owner, in which case return them to him."

وَمِنْ طَرِيقِ وَكِيعٍ حَدَّثَنَا سَلَمَةُ بْنُ وَرْدَانَ قَالَ: سَأَلْت سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ ضَالَّةِ الْإِبِلِ؟ فَقَالَ: مَعَهَا سِقَاؤُهَا وَحِذَاؤُهَا دَعْهَا إلَّا أَنْ تَعْرِفَ صَاحِبَهَا فَتَدْفَعُهَا إلَيْهِ.

L21199 It has been narrated to us through the chain of Abd al-Razzaq from Ma'mar and Sufyan al-Thawri—both transmitting from Abu Ishaq al-Sabi'i from his wife, who reported: A woman came to Aisha, the Mother of the Believers, and said, "I found a ewe." Aisha replied, "Feed it, milk it, and declare its ownership." When the woman returned to her three times, Aisha said, "Do you wish me to order you to slaughter it?" Through another chain from Ibn Abi Shaybah: Abu al-Ahwas narrated to us from Zayd ibn Jubayr that he heard Ibn Umar say to a man who asked him about a lost animal he had found. Ibn Umar instructed him, "Maintain it properly and announce [its discovery]." The man asked, "Is there any obligation on me if I drank from its milk?" He replied, "I see no obligation upon you for that."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ: وَسُفْيَانَ الثَّوْرِيِّ كِلَاهُمَا عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ امْرَأَتِهِ قَالَ: جَاءَتْ امْرَأَةٌ إلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَقَالَتْ: إنِّي وَجَدْت شَاةً؟ فَقَالَتْ: اعْلِفِي وَاحْلِبِي وَعَرِّفِي، ثُمَّ عَادَتْ إلَيْهَا ثَلَاثَ مَرَّاتٍ، فَقَالَتْ: تُرِيدِينَ أَنْ آمُرُك بِذَبْحِهَا. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو الْأَحْوَصِ عَنْ زَيْدِ بْنِ جُبَيْرٍ: أَنَّهُ سَمِعَ ابْنَ عُمَرَ يَقُولُ لِرَجُلٍ سَأَلَهُ عَنْ ضَالَّةٍ وَجَدَهَا؟ فَقَالَ لَهُ ابْنُ عُمَرَ: أَصْلِحْ إلَيْهَا وَانْشُدْ، قَالَ: فَهَلْ عَلَيَّ إنْ شَرِبْت مِنْ لَبَنِهَا؟ قَالَ: مَا أَرَى عَلَيْك فِي ذَلِكَ.

L21200–21201 Abu Hanifa and his companions said: Lost camels are to be taken in the same manner as other lost animals.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: تُؤْخَذُ ضَالَّةُ الْإِبِلِ كَمَا تُؤْخَذُ غَيْرُهَا.

L21202 Al-Shafi'i said: Horses, cows, and mules that are strong enough to reach water and graze are not subject to zakāh by analogy to camels. Those among them and other animals that do not resist being taken are liable.

وَقَالَ الشَّافِعِيُّ: مَا كَانَ مِنْ الْخَيْلِ، وَالْبَقَرِ، وَالْبِغَالِ، قَوِيًّا يَرِدُ الْمَاءَ، وَيَرْعَى لَمْ يُؤْخَذْ قِيَاسًا عَلَى الْإِبِلِ، وَمَا كَانَ مِنْهَا وَمِنْ سَائِرِ الْحَيَوَانِ لَا يَمْتَنِعُ أُخِذَ.

L21203 Abu Hanifah and Al-Shafi'i stated: Whoever takes a stray sheep is liable for it if he consumes it. Malik said: Regarding stray sheep near settlements,

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: مَنْ أَخَذَ ضَالَّةً مِنْ الْغَنَمِ فَعَلَيْهِ ضَمَانُهَا إنْ أَكَلَهَا - وَقَالَ مَالِكٌ: أَمَّا ضَالَّةُ الْغَنَمِ فَمَا كَانَ بِقُرْبِ الْقُرَى فَلَا يَأْكُلُهَا، وَلَكِنْ يَضْمَنُهَا إلَى أَقْرَبِ الْقُرَى، فَيُعَرِّفُهَا هُنَالِكَ، وَأَمَّا مَا كَانَ فِي الْفَلَوَاتِ وَالْمَهَامِهِ، فَإِنَّهُ يَأْكُلُهَا أَوْ يَأْخُذُهَا، فَإِنْ جَاءَ صَاحِبُهَا فَوَجَدَهَا حَيَّةً فَهُوَ أَحَقُّ بِهَا، وَإِنْ وَجَدَهَا مَأْكُولَةً فَلَا شَيْءَ لَهُ، وَلَا يَضْمَنُهَا لَهُ وَاجِدُهَا الَّذِي أَكَلَهَا. وَاخْتَلَفَ أَصْحَابُهُ فِيهَا إنْ وَجَدَهَا مَذْبُوحَةً لَمْ تُؤْكَلْ بَعْدُ. قَالَ: وَأَمَّا الْبَقَرُ فَإِنْ خِيفَ عَلَيْهَا السَّبُعَ فَحُكْمُهَا حُكْمُ الْغَنَمِ، وَإِنْ لَمْ يُخَفْ عَلَيْهَا السَّبُعَ فَحُكْمُهَا حُكْمُ الْإِبِلِ يُتْرَكُ كُلُّ ذَلِكَ وَلَا يُعْتَرَضُ لَهُ وَلَا يُؤْخَذُ. وَأَمَّا الْخَيْلُ، وَالْبِغَالُ، وَالْحَمِيرُ، فَلْتُعَرَّفْ ثُمَّ يُتَصَدَّقُ بِهَا. قَالَ أَبُو مُحَمَّد: أَمَّا تَقْسِيمُ مَالِكٍ فَخَطَأٌ، لِأَنَّهُ لَمْ يَتْبَعْ النَّصَّ، إذْ فَرَّقَ بَيْنَ أَحْوَالِ وُجُودِ ضَالَّةِ الْغَنَمِ، وَلَيْسَ فِي النَّصِّ شَيْءٌ مِنْ ذَلِكَ، وَكَذَلِكَ تَفْرِيقُهُ بَيْنَ وُجُودِ الشَّاةِ صَاحِبُهَا حَيَّةً أَوْ مَأْكُولَةً، فَلَيْسَ فِي الْخَبَرِ شَيْءٌ مِنْ ذَلِكَ أَصْلًا - لَا بِنَصٍّ وَلَا بِدَلِيلٍ وَلَا الْقِيَاسَ طَرَدَ - وَلَا قَوْلٍ مُتَقَدِّمٍ الْتَزَمَ؛ لِأَنَّ الْقِيَاسَ أَنْ لَا يُبِيحَ الشَّاةَ لِوَاجِدِهَا أَصْلًا، كَمَا لَا يُبِيحُ سَائِرَ اللُّقَطَاتِ، إلَّا إنْ كَانَ فَقِيرًا بَعْدَ تَعْرِيفِ عَامٍ - وَلَا نَعْلَمُ فُرُوقَهُ هَذِهِ عَنْ أَحَدٍ قَبْلَهُ، وَلَا نَعْلَمُ لِقَوْلِهِ حُجَّةً أَصْلًا.

وَأَمَّا أَبُو حَنِيفَةَ فَإِنَّهُ خَالَفَ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلَّهُ جِهَارًا فَمَنَعَ مِنْ الشَّاةِ جُمْلَةً، وَأَمَرَ بِأَخْذِ ضَالَّةِ الْإِبِلِ - وَقَدْ غَضِبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ ذَلِكَ غَضَبًا احْمَرَّ لَهُ وَجْهُهُ - وَنَعُوذُ بِاَللَّهِ مِنْ ذَلِكَ، فَأَمَّا هُوَ - يَعْنِي أَبَا حَنِيفَةَ - فَيُعْذَرُ لِجَهْلِهِ بِالْآثَارِ، وَأَمَّا هَؤُلَاءِ الْخَاسِرُونَ فَوَاَللَّهِ مَا لَهُمْ عُذْرٌ، بَلْ هُمْ قَدْ أَقْدَمُوا عَلَى مَا أَغْضَبَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَلَانِيَةً، فَخَصَلُوا فِي

one must not eat them but rather return them to the nearest settlement and announce them there. As for those found in deserts or remote wastelands, one may consume or take them. If the owner arrives and finds the animal alive, he retains priority. If he finds it consumed, he has no claim, nor is the finder who ate it liable. Malik's companions disagreed on the ruling if a slaughtered sheep was found uneaten. He said: Concerning cattle - if predator threat exists, their ruling follows the same as that for sheep. If no predator threat exists, their ruling follows camels: they are left undisturbed and not taken. As for horses, mules, and donkeys, they must be announced then held in trust for charitable use if unclaimed. Abu Muhammad remarked: Malik's classification is erroneous, for he neither followed textual precedent - having differentiated between contexts of finding stray sheep absent any textual basis - nor consistently distinguished between finding sheep alive or consumed, this distinction being entirely absent in narrations with no basis in explicit text, evidence, analogy, or established precedent. By analogy, sheep should not be permitted to the finder at all, just as all other lost property is prohibited unless the finder is impoverished after a year's announcement. We know of no predecessor endorsing these distinctions, nor any valid proof supporting his view.

L21204 As for Abū Ḥanīfah, he openly opposed the entire command of Allah's Messenger—peace and blessings of Allah be upon him—by prohibiting **the sheep entirely** and mandating the seizure of stray camels, **though Allah's Messenger—peace and blessings of Allah be upon him—had become so angered by this that his face reddened**—we seek refuge in Allah from such matters. As for him—meaning Abū Ḥanīfah—he is excused due to his ignorance of **the narrations**. But concerning **these losers**—**by Allah, indeed!**—they have no excuse. Rather, they have **boldly committed** what angered Allah's Messenger—peace and blessings of Allah be upon him and his family—openly, thereby joining those about whom Allah the Exalted

said: *“That is because they followed what aroused Allah’s wrath and spurned His pleasure”* [Muḥammad 47:28]. **How fearful we are for them concerning the entirety of this verse**, for the decisive proof has been established against them.[5]

L21205–21206 If they say: “Wealth is unlawful for those not entitled to it, and it is obligatory to preserve it, so we do not adopt a contrary position based on a solitary report?” We respond to them: “You have relied on that very report in what you yourselves rejected, commanding its disposal through charity after a year of publicizing. Thus, at one time, the report becomes a proof in your view, and at another time, it becomes invalid, though it is the very same report. What is this sheer misguidance?” We have narrated for them from the Mother of the Believers and Ibn Umar the permissibility of drinking the milk of lost livestock, yet they do not accept this. As for Al-Shāfiʿī, he contradicted his own principle by not permitting the taking of the sheep and introduced into the ruling of the report what is not stated in it. He extended to camels what was not mentioned in the text, making access to water and grazing on trees a basis for analogy, though he has no evidence for the validity of this. Indeed, a sheep may drink from water and graze on what it reaches from trees, just as camels do, and is prevented from what it cannot reach, just as camels are prevented from what they cannot reach. A wolf devours a camel just as it devours a sheep, and the camel has no defense against it. Only cattle can resist it—this is a matter known through observation.

L21207 They said: The statement of the Prophet—peace and blessings of Allah be upon him—“It is for you, or your brother, or the wolf” does not constitute granting ownership to the wolf; thus, likewise, it does not constitute granting ownership to the finder? We replied: This assertion of yours is invalid, for the wolf cannot own while the finder can own. The finder is subject to legal obligations, whereas the wolf is not addressed by the law. The finder has been commanded to take it, so your addition is false and rejected against you—and with Allah alone is success. Thus, the invalidity of all these claims is conclusively evident, as each of them selectively adopted part of the narration as proof while discarding another part and disregarding its authority. They

جُمْلَةِ مَنْ قَالَ اللَّهُ تَعَالَى فِيهِمْ: {ذَلِكَ بِأَنَّهُمُ اتَّبَعُوا مَا أَسْخَطَ اللَّهَ وَكَرِهُوا رِضْوَانَهُ} [محمد: ٢٨] فَمَا أَخْوَفُنَا عَلَيْهِمْ مِنْ تَمَامِ الْآيَةِ لِأَنَّ الْحُجَّةَ قَدْ قَامَتْ عَلَيْهِمْ.

فَإِنْ قَالُوا: إِنَّ الْأَمْوَالَ حَرَامٌ عَلَى غَيْرِ أَهْلِهَا، وَوَاجِبٌ حِفْظُهَا، فَلَا نَأْخُذُ بِخِلَافِ ذَلِكَ بِخَبَرٍ وَاحِدٍ؟ قُلْنَا لَهُمْ: قَدْ أَخَذْتُمْ بِذَلِكَ الْخَبَرِ بِعَيْنِهِ فِيمَا أَنْكَرْتُمُوهُ نَفْسَهُ فَأَمَرْتُمْ بِإِتْلَافِهَا بِالصَّدَقَةِ بِهَا بَعْدَ تَعْرِيفِ سَنَةً، فَمَرَّةً صَارَ عِنْدَكُمُ الْخَبَرُ حُجَّةً، وَمَرَّةً صَارَ عِنْدَكُمْ بَاطِلًا، وَهُوَ ذَلِكَ الْخَبَرُ بِعَيْنِهِ فَمَا هَذَا الضَّلَالُ؟ وَقَدْ رُوِّينَا لَهُمْ عَنْ أُمِّ الْمُؤْمِنِينَ، وَابْنِ عُمَرَ: إِبَاحَةَ شُرْبِ لَبَنِ الضَّالَّةِ، وَهُمْ لَا يَقُولُونَ بِذَلِكَ. وَأَمَّا الشَّافِعِيُّ فَنَقَضَ أَصْلَهُ وَلَمْ يَرَ أَخْذَ الشَّاةِ، وَأَقْحَمَ فِي حُكْمِ الْخَبَرِ مَا لَيْسَ فِيهِ، فَأَلْحَقَ بِالْإِبِلِ مَا لَمْ يُذْكَرْ فِي النَّصِّ، وَجَعَلَ وُرُودَ الْمَاءِ، وَرَعْيَ الشَّجَرِ عِلَّةً قَاسَ عَلَيْهَا، وَلَا دَلِيلَ لَهُ عَلَى صِحَّةِ ذَلِكَ، وَإِنَّ الشَّاةَ لَتَرِدُ الْمَاءَ، وَتَرْعَى مَا أَدْرَكَتْ مِنَ الشَّجَرِ، كَمَا تَفْعَلُ الْإِبِلُ، وَيَمْتَنِعُ مِنْهَا مَا لَمْ تُدْرِكْهُ، كَمَا يَمْتَنِعُ عَلَى الْإِبِلِ مَا لَا تُدْرِكُهُ، وَإِنَّ الذِّئْبَ لَيَأْكُلُ الْبَعِيرَ كَمَا يَأْكُلُ الشَّاةَ، وَلَا مَنَعَةَ عِنْدَ الْبَعِيرِ مِنْهُ، وَإِنَّمَا يَمْتَنِعُ مِنْهُ الْبَقَرُ فَقَطْ - هَذَا أَمْرٌ مَعْلُومٌ بِالْمُشَاهَدَةِ.

وَقَالُوا: قَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «هِيَ لَكَ أَوْ لِأَخِيكَ أَوْ لِلذِّئْبِ» لَيْسَ تَمْلِيكًا لِلذِّئْبِ، فَكَذَلِكَ لَيْسَ تَمْلِيكًا لِلْوَاجِدِ؟ فَقُلْنَا: هَذَا بَاطِلٌ مِنْ قَوْلِكُمْ، لِأَنَّ الذِّئْبَ لَا يَمْلِكُ وَالْوَاجِدُ يَمْلِكُ، وَالْوَاجِدُ مُخَاطَبٌ، وَالذِّئْبُ لَيْسَ مُخَاطَبًا، وَقَدْ أُمِرَ الْوَاجِدُ بِأَخْذِهَا، فَزِيَادَتُكُمْ كَاذِبَةٌ مَرْدُودَةٌ عَلَيْكُمْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. فَظَهَرَ سُقُوطُ هَذِهِ الْأَقْوَالِ كُلِّهَا بِتَيَقُّنٍ، وَأَنَّ كُلَّ وَاحِدٍ مِنْهُمْ أَخَذَ بِبَعْضِ الْخَبَرِ وَجَعَلَهُ حُجَّةً وَتَرَكَ بَعْضَهُ وَلَمْ يَرَهُ حُجَّةً. وَاخْتَلَفُوا فِي ذَلِكَ: فَأَخَذَ هَذَا مَا تَرَكَ هَذَا، وَتَرَكَ هَذَا مَا أَخَذَ الْآخَرُ،

[5] **Qur’an references (L21204):** Qur’an 47:28 (Muhammad).

وَهَذَا مَا لَا طَرِيقَ لِلصَّوَابِ إلَيْهِ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَلَئِنْ كَانَ الْخَبَرُ حُجَّةً فِي مَوْضِعٍ فَإِنَّهُ لَحُجَّةٌ فِي كُلِّ مَا فِيهِ، إلَّا أَنْ تَأْتِيَ مُخَالَفَةٌ لَهُ بِنَاسِخٍ مُتَيَقَّنٍ، وَإِنْ كَانَ لَيْسَ حُجَّةً فِي شَيْءٍ مِنْهُ فَكُلُّهُ لَيْسَ حُجَّةً، وَالتَّحَكُّمُ فِي أَوَامِرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَجُوزُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

diverged in this: one accepted what another rejected, and another rejected what the first accepted. This is a position wholly lacking validity—and with Allah alone is success. If the narration is authoritative in one instance, it is authoritative in everything it contains, unless contradicted by a certainly established abrogation. If it lacks authority in any part, then none of it holds authority. Arbitrary interference with the commands of the Messenger of Allah—peace and blessings of Allah be upon him—is impermissible—and with Allah alone is success.



AL-MUHALLA

كِتَابُ اللَّقِيطِ

The Book of Foundlings

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[The Chapter on the Foundling] [A Legal Question Concerning the Discovery of a Young Cast-Off Child]

Issue: If an abandoned infant is found, it is obligatory upon whoever is present to care for the child without fail, due to Allah's statement: "Cooperate in righteousness and piety, and do not cooperate in sin and aggression" (Al-Mā'idah 5:2), and His statement: "Whoever saves a life, it is as though they have saved all humankind" (Al-Mā'idah 5:32). There is no greater sin than neglecting a child born into Islam - a young, innocent being who has committed no sin - until the child dies of hunger and cold or is devoured by dogs. Such a person is without doubt an intentional killer of a soul. It has been authentically reported from the Messenger of Allah - peace and blessings be upon him: "Whoever does not show mercy to people, Allah will not show mercy to them."[1]

Issue: The foundling is free, and no allegiance is owed by him to anyone.

1385. Issue: The foundling is free, and no one has a claim of clientage over him, for all people are the children of Adam and his wife Eve—peace be upon them—both of whom were free. The children of a free woman are free without any dissent, thus everyone is free unless a Quranic text or Sunnah necessitates reducing someone to servitude. There exists no text in either mandating the reduction of a foundling to servitude. Since no servitude applies to him, no one holds clientage over him, for clientage only arises after valid servitude of a person or of a close or distant father from whom he traces his lineage. The Messenger of Allah (peace and blessings be upon him) said: "Clientage belongs solely to the emancipator." This is the view of Abu Hanifa, Malik, al-Shafi'i, and Dawood.

It has been authentically reported from Umar ibn al-Khattab—may Allah be pleased with him—as we narrated through the chain of Malik from Ibn Shihab from Sinin Abu Jamila that he found an abandoned child and brought

[1] **Qur'an references (L21210):** Qur'an 5:2 (Al-Ma'idah); Qur'an 5:32 (Al-Ma'idah).

[كِتَابُ اللَّقِيطِ] [مَسْأَلَةٌ وَجَدَ صَغِيرًا مَنْبُوذًا]

١٣٨٤ - مَسْأَلَةٌ: إنْ وُجِدَ صَغِيرٌ مَنْبُوذٌ فَفَرْضٌ عَلَى مَنْ بِحَضْرَتِهِ أَنْ يَقُومَ بِهِ وَلَا بُدَّ، لِقَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] . وَلِقَوْلِ اللَّهِ تَعَالَى: {وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا} [المائدة: ٣٢] . وَلَا إثْمَ أَعْظَمَ مِنْ إثْمِ مَنْ أَضَاعَ نَسَمَةً مَوْلُودَةً عَلَى الْإِسْلَامِ - صَغِيرَةً لَا ذَنْبَ لَهَا - حَتَّى تَمُوتَ جُوعًا وَبَرْدًا أَوْ تَأْكُلَهُ الْكِلَابُ هُوَ قَاتِلُ نَفْسٍ عَمْدًا بِلَا شَكٍّ. وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ لَا يَرْحَمُ النَّاسَ لَا يَرْحَمُهُ اللَّهُ»

[مَسْأَلَةٌ اللَّقِيطُ حُرٌّ وَلَا وَلَاءَ عَلَيْهِ لِأَحَدٍ]

١٣٨٥ - مَسْأَلَةٌ: وَاللَّقِيطُ حُرٌّ وَلَا وَلَاءَ عَلَيْهِ لِأَحَدٍ لِأَنَّ النَّاسَ كُلَّهُمْ أَوْلَادُ آدَمَ وَزَوْجِهِ حَوَّاءَ - عَلَيْهِمَا السَّلَامُ - وَهُمَا حُرَّانِ وَأَوْلَادُ الْحُرَّةِ أَحْرَارٌ بِلَا خِلَافٍ مِنْ أَحَدٍ فَكُلُّ أَحَدٍ فَهُوَ حُرٌّ إلَّا أَنْ يُوجِبَ نَصُّ قُرْآنٍ، أَوْ سُنَّةٍ وَلَا نَصَّ فِيهِمَا يُوجِبُ إرْقَاقَ اللَّقِيطِ، وَإِذْ لَا رِقَّ عَلَيْهِ فَلَا وَلَاءَ لِأَحَدٍ عَلَيْهِ؛ لِأَنَّهُ لَا وَلَاءَ إلَّا بَعْدَ صِحَّةِ رِقٍّ عَلَى الْمَرْءِ، أَوْ عَلَى أَبٍ لَهُ قَرِيبٍ أَوْ بَعِيدٍ يَرْجِعُ إلَيْهِ بِنَسَبِهِ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ» وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَدَاوُد.

وَقَدْ صَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ سِنِينَ أَبِي جَمِيلَةَ أَنَّهُ وَجَدَ مَنْبُوذًا فَأَتَى بِهِ إلَى عُمَرَ بْنِ الْخَطَّابِ فَقَالَ لَهُ عُمَرُ: هُوَ حُرٌّ، وَوَلَاؤُهُ لَك، وَنَفَقَتُهُ مِنْ بَيْتِ الْمَالِ.

him to Umar ibn al-Khattab. Umar said to him: “He is free, his guardianship is assigned to you, and his maintenance is from the Bayt al-Mal.”

وَرُوِّينَا أَيْضًا هَذَا عَنْ شُرَيْحٍ أَنَّهُ جَعَلَ وَلَاءَ اللَّقِيطِ لِمَنْ الْتَقَطَهُ وَصَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ مَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ نا شُعْبَةُ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: اللَّقِيطُ عَبْدٌ. وَقَدْ رُوِّينَا هَذَا عَنْ عُمَرَ بْنِ الْخَطَّابِ كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا سُفْيَانُ عَنْ سُلَيْمَانَ - هُوَ أَبُو إِسْحَاقَ الشَّيْبَانِيِّ - عَنْ حَوْطٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: قَالَ عُمَرُ: هُمْ مَمْلُوكُونَ - يَعْنِي اللُّقَطَاءَ -. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ الزُّهْرِيِّ عَنْ رَجُلٍ مِنْ الْأَنْصَارِ قَالَ: إنَّ عُمَرَ أَعْتَقَ لَقِيطًا.

L21214–21215 It has also been narrated to us from Shuraih that he assigned the patronage of the foundling to whoever found him. It is authentically established from Ibrahim al-Nakha’i - as narrated to us through the chain of Muhammad ibn Ja’far: Shu’bah narrated to us from Mansur ibn al-Mu’tamir from Ibrahim al-Nakha’i - who said: “The foundling is a slave.” This has similarly been narrated to us from Umar ibn al-Khattab, as narrated through Ibn Abi Shaybah’s chain: Waki‘ narrated to us, Sufyan narrated to us from Sulayman - Abu Ishaq al-Shaybani - from Hawt from Ibrahim al-Nakha’i, who said: “Umar declared: ’They are owned slaves’ - meaning the foundlings.” Through another chain of Ibn Abi Shaybah: Sufyan - Ibn Uyaynah - narrated to us from Amr ibn Dinar from al-Zuhri from a man of the Ansar, who stated: “Amr emancipated a foundling.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا الْأَعْمَشُ عَنْ زُهَيْرٍ الْعَنْسِيِّ أَنَّ رَجُلًا الْتَقَطَ لَقِيطًا فَأَتَى بِهِ عَلِيَّ بْنَ أَبِي طَالِبٍ فَأَعْتَقَهُ. قَالَ أَبُو مُحَمَّدٍ: لَا يَعْتِقُ إلَّا مَمْلُوكٌ. قَالَ عَلِيٌّ: فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا شُعْبَةُ قَالَ: سَأَلْت حَمَّادَ بْنَ أَبِي سُلَيْمَانَ، وَالْحَكَمَ عَنْ اللَّقِيطِ؟ فَقَالَا جَمِيعًا: هُوَ حُرٌّ فَقُلْت: عَمَّنْ؟ فَقَالَ الْحَكَمُ: عَنْ الْحَسَنِ عَنْ عَلِيٍّ.

L21216 From the chain of Ibn Abī Shaybah: Waki‘ narrated to us, al-A‘mash narrated to us from Zuhayr al-‘Ansī that a man found a foundling and brought him to ‘Alī ibn Abī Ṭālib, who manumitted him. Abū Muḥammad said: “Only a slave can be manumitted.” ‘Alī said: “If it is said: ‘You have narrated through Ibn Abī Shaybah’s chain: Waki‘ narrated to us, Shu‘bah narrated to us. He said: I asked Ḥammād ibn Abī Sulaymān and al-Ḥakam about the foundling,’ they both said: ‘He is free.’ I asked: ‘From whom?’ Al-Ḥakam replied: ‘From al-Ḥasan, from ‘Alī.’”“

وَرَوَيْتُمْ عَنْ وَكِيعٍ عَنْ سُفْيَانَ عَنْ زُهَيْرِ بْنِ أَبِي ثَابِتٍ، وَمُوسَى الْجُهَنِيِّ قَالَ مُوسَى: رَأَيْت وَلَدَ زِنًا أَلْحَقَهُ عَلِيٌّ فِي مَائِهِ.

L21217 And you narrated from Waki‘ from Sufyan from Zuhayr ibn Abi Thabit and Musa al-Juhani. Musa said: I saw an illegitimate child whom ‘Ali legally ascribed to himself as his own offspring through his semen.

وَقَالَ زُهَيْرٌ عَنْ ذُهْلِ بْنِ أَوْسٍ عَنْ تَمِيمِ بْنِ مَسِيحٍ قَالَ: وَجَدْت لَقِيطًا فَأَتَيْت بِهِ عَلِيَّ بْنَ أَبِي طَالِبٍ فَأَلْحَقَهُ فِي مَائِهِ؟ قُلْنَا: لَيْسَ فِي هَذَا خِلَافٌ لِمَا ذَكَرْنَا قَبْلُ، لِأَنَّ قَوْلَ عُمَرَ هُوَ حُرٌّ، وَقَوْلَ الْحَسَنِ عَنْ عَلِيٍّ هُوَ حُرٌّ، إذَا ضُمَّ إلَى مَا رُوِيَ عَنْهُمَا مِنْ أَنَّ كُلَّ وَاحِدٍ

L21218 Zuhayr reported from Duhl ibn Aws, from Tamim ibn Masih, who said: “I found a foundling and brought him to Ali ibn Abi Talib, so he affiliated him to his lineage.” We said: There is no disagreement here regarding what we previously mentioned, for Umar’s statement—“He is free”—and Al-Hasan’s report from Ali—“He is free”—when combined with the narrations from

both that each manumitted the foundling, alongside Umar's report that such foundlings are enslaved and his allegiance belongs to the finder, collectively agree that their declaration, may Allah be pleased with them, "He is free" constitutes their manumission of him at that time.

مِنْهُمَا أَعْتَقَ اللَّقِيطَ، مَعَ مَا رُوِيَ عَنْ عُمَرَ مِنْ أَنَّهُمْ مَمْلُوكُونَ، وَأَنَّ وَلَاءَهُ لِمَنْ وَجَدَهُ، اتَّفَقَ كُلُّ ذَلِكَ عَلَى أَنَّ قَوْلَهُمَا - رَضِيَ اللَّهُ عَنْهُمَا - هُوَ حُرٌّ -: أَنَّهُ إِعْتَاقٌ مِنْهُمَا لَهُ فِي ذَلِكَ الْوَقْتِ.

L21219–21221 It is truly astonishing that one would abandon the definitively established Sunnah due to a narration attributed to ʿUmar ibn al-Khaṭṭāb via a narrator from Banū Kināna, who reported him as saying: "A sale is [based on] a transaction or option." Had we heard this from ʿUmar, it would not have contradicted the Sunnah's ruling that "there is no [valid] sale between them in two sales until they separate or one grants the other an option," but rather it would have been consistent with it. As for the Sunnah, the transaction is separation, and the option is choice. What Sunayn—who was a Companion—narrated from ʿUmar (may Allah be pleased with him) is not considered authoritative evidence, whereas what Ibrāhīm al-Nakhaʿī narrated constitutes authoritative evidence from ʿUmar. By Allah, he is more distinguished and clearer than a sheikh from Banū Kināna. No opinion is recorded from ʿUmar on this matter, and ʿAlī (may Allah be pleased with him) held a differing opinion among the Companions—may Allah be pleased with them all—especially since a narration indicates they would consistently adhere to weaker evidence than this. This refers to what we reported through the chain of Muḥammad ibn al-Jahm, from ʿAbd al-Karīm ibn al-Haytham, from Yazīd ibn ʿAbd Rabbihi, from Muḥammad ibn Ḥarb al-Khawlānī, from ʿUmar ibn Ruʾbah, who said: I heard ʿAbd al-Wāḥid al-Naṣrī say: I heard Wāthilah ibn al-Asqaʿ say: The Prophet—peace and blessings of Allah be upon him—said, "A woman acquires three inheritances: her foundling, her freed slave, and her child for whom there is no disgrace upon her."

وَإِنَّ الْعَجَبَ لَيَطُولُ مِمَّنْ تَرَكَ السُّنَّةَ الثَّابِتَةَ لِرِوَايَةِ شَيْخٍ مِنْ بَنِي كِنَانَةَ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ " الْبَيْعُ عَنْ صَفْقَةٍ أَوْ خِيَارٍ " وَلَوْ سَمِعْنَا هَذَا مِنْ عُمَرَ لَمَا كَانَ خِلَافًا لِلسُّنَّةِ فِي أَنَّ الْبَيْعَيْنِ لَا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا، أَوْ يُخَيِّرَ أَحَدُهُمَا الْآخَرَ، بَلْ كَانَ يَكُونُ مُوَافِقًا لِلسُّنَّةِ، فَالصَّفْقَةُ التَّفَرُّقُ، وَالْخِيَارُ التَّخْيِيرُ، ثُمَّ لَا يَجْعَلُ مَا رَوَى سُنَيْنٌ - وَلَهُ صُحْبَةٌ - عَنْ عُمَرَ حُجَّةً، وَمَا رَوَاهُ إِبْرَاهِيمُ النَّخَعِيُّ حُجَّةً عَنْ عُمَرَ، وَهُوَ وَاللَّهِ أَجَلُّ وَأَوْضَحُ مِنْ شَيْخٍ مِنْ بَنِي كِنَانَةَ، وَلَا يُعْرَفُ لِعُمَرَ، وَعَلِيٍّ هَهُنَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، لَا سِيَّمَا وَقَدْ جَاءَ أَثَرٌ هُمْ أَبَدًا يَأْخُذُونَ بِمَا دُونَهُ -: وَهُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْجَهْمِ نا عَبْدُ الْكَرِيمِ بْنُ الْهَيْثَمِ نا يَزِيدُ بْنُ عَبْدِ رَبِّهِ نا مُحَمَّدُ بْنُ حَرْبٍ الْخَوْلَانِيُّ نا عُمَرُ بْنُ رُؤْبَةَ قَالَ: سَمِعْت عَبْدَ الْوَاحِدِ النَّصْرِيَّ يَقُولُ: سَمِعْت وَاثِلَةَ بْنَ الْأَسْقَعِ يَقُولُ: إنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «تُحْرِزُ الْمَرْأَةُ ثَلَاثَةَ مَوَارِيثَ، لَقِيطَهَا، وَعَتِيقَهَا، وَوَلَدَهَا الَّذِي لَا عَنَتْ عَلَيْهِ» .

L21222 Abu Muhammad said: Umar ibn Ru'bah and Abd al-Wahid al-Nasri are unknown [narrators]. Had their reports been sound, we would have accepted them. As for them, they disregard this. Yet every one of them is more recognized and renowned than a shaykh from Banu Kinanah, and still, they have abandoned the established Sunnah in favor of that shaykh's narration.

قَالَ أَبُو مُحَمَّدٍ: عُمَرُ بْنُ رُؤْبَةَ وَعَبْدُ الْوَاحِدِ النَّصْرِيُّ مَجْهُولَانِ، وَلَوْ صَحَّ لَقُلْنَا بِهِ، وَأَمَّا هُمْ فَلَا يُبَالُونَ بِهَذَا، وَلَا أَحَدٌ إلَّا وَهُوَ أَعْرَفُ وَأَشْهَرُ مِنْ شَيْخٍ مِنْ بَنِي كِنَانَةَ، وَقَدْ تَرَكُوا السُّنَّةَ الثَّابِتَةَ لِرِوَايَتِهِ.

L21223 If they say: "And on what basis does he become enslaved when his origin

is freedom?" We say: "Glory be to God, O you people: How swiftly you forget your own stance! Are you not those who assert: 'If a Qurayshi man were to defect to the abode of war as an apostate—he and his Qurayshi wife likewise—and she were to bear children there, then their children would indeed be slaves who are owned and can be sold?'"

فَإِنْ قَالُوا: وَبِأَيِّ وَجْهٍ يَرِقُّ وَأَصْلُهُ الْحُرِّيَّةُ؟ قُلْنَا: يَا سُبْحَانَ اللَّهِ يَا هَؤُلَاءِ: مَا أَسْرَعَ مَا نَسِيتُمْ أَنْفُسَكُمْ، أَوَ لَسْتُمُ الْقَائِلِينَ: إِنَّ رَجُلًا قُرَشِيًّا لَوْ لَحِقَ بِدَارِ الْحَرْبِ مُرْتَدًّا هُوَ وَامْرَأَتُهُ الْقُرَشِيَّةُ مُرْتَدَّةً، فَوَلَدَتْ هُنَالِكَ أَوْلَادًا، فَإِنَّ أَوْلَادَهُمْ أَرِقَّاءُ مَمْلُوكُونَ يُبَاعُونَ؟ .

L21224–21226 The Hanafis said: A Qurayshite woman may be sold and owned. Alternatively, is the narration from Ibn al-Qāsim not derived either directly from Mālik or based on the established principle of Mālik - that if the people of the Abode of War were to become dhimmis dwelling among us, or if they held in their possession free Muslim men and women whom they had captured (while these captives persisted in Islam during their bondage), then such Muslims would become enslaved to the dhimmis among Jews and Christians who trade them whenever they wish? This ruling is explicitly stated by Ibn al-Qāsim in al-Mustakhraja. Which is more abhorrent and outrageous: all of this, or enslaving a foundling whose mother's status as freewoman or slave is unknown? Indeed, Muḥammad ibn ʿAbdullāh al-Bakrī al-Tadmīrī - the most exemplary I knew among them, and I would not accept reports from any senior scholar of theirs - informed me that he used to issue legal verdicts: that a merchant [text breaks off here]. Or the Messenger, when he enters the abode of war and they gift him prisoners from among the free Muslim men and women as a grant, they become his male and female slaves; he may lawfully have sexual relations with them and sell them as with the rest of his possessions. How can this mufti and those who follow him face this ruling? Abu Muhammad said: Another opinion has been reported to us from Ibrahim, as transmitted through Ibn Abi Shaybah who narrated to us by Wakiʿ, from Sufyan al-Thawri, from Mansur, from Ibrahim al-Nakhaʿī concerning the foundling. He said: His status depends on his intention. If he intended to be free, he is free, and if he intended to be a slave, he is a slave.

وَقَالَ الْحَنَفِيُّونَ: إِنَّ تِلْكَ الْقُرَشِيَّةَ تُبَاعُ وَتُمْلَكُ، أَوْ لَيْسَ الرِّوَايَةُ عَنِ ابْنِ الْقَاسِمِ إِمَّا عَنْ مَالِكٍ وَإِمَّا عَلَى مَا عُرِفَ مِنْ أَصْلِ مَالِكٍ أَنَّ أَهْلَ دَارِ الْحَرْبِ لَوْ صَارُوا ذِمَّةً سُكَّانًا بَيْنَنَا، أَوْ بِأَيْدِيهِمْ رِجَالٌ وَنِسَاءٌ مِنَ الْمُسْلِمِينَ أَحْرَارٌ وَحَرَائِرُ، أَسَرُوهُمْ وَبَقُوا عَلَى الْإِسْلَامِ فِي حَالِ أَسْرِهِمْ، فَإِنَّهُمْ مَمْلُوكُونَ لِأَهْلِ الذِّمَّةِ مِنَ الْيَهُودِ وَالنَّصَارَى يَتَبَايَعُونَهُمْ مَتَى شَاءُوا، وَهَذَا مَنْصُوصٌ عَنْهُ فِي الْمُسْتَخْرَجَةِ، فَأَيُّهُمَا أَشْنَعُ وَأَفْظَعُ، هَذَا كُلُّهُ، أَوْ إِرْقَاقُ لَقِيطٍ لَا يَدْرِي عَنْ أُمِّهِ أَحُرَّةٌ أَمْ أَمَةٌ؟ حَتَّى لَقَدْ أَخْبَرَنِي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْبَكْرِيُّ التَّدْمِيرِيُّ وَمَا عَلِمْتُ فِيهِمْ أَفْضَلَ مِنْهُ، وَلَا أُصَدِّقُ عَنْ شَيْخٍ مِنْ كِبَارِهِمْ: أَنَّهُ كَانَ يُفْتِي: أَنَّ التَّاجِرَ، أَوِ الرَّسُولَ، إِذَا دَخَلَ دَارَ الْحَرْبِ فَأَعْطَوْهُ أُسَرَاءَ مِنْ أَحْرَارِ الْمُسْلِمِينَ وَحَرَائِرِهِمْ عَطِيَّةً، فَهُمْ عَبِيدٌ وَإِمَاءٌ لَهُ يَطَأُ وَيَبِيعُ كَسَائِرِ مَا يَمْلِكُ، شَاهَ وَجْهُ هَذَا الْمُفْتِي وَمَنِ اتَّبَعَهُ عَلَى هَذَا؟ قَالَ أَبُو مُحَمَّدٍ: وَرُوِّينَا عَنْ إِبْرَاهِيمَ قَوْلًا آخَرَ، كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي اللَّقِيطِ، قَالَ: لَهُ نِيَّتُهُ إِنْ نَوَى أَنْ يَكُونَ حُرًّا فَهُوَ حُرٌّ، وَإِنْ نَوَى أَنْ يَكُونَ عَبْدًا فَهُوَ عَبْدٌ.

L21227 Our assertion that no enslavement applies to him - this is the position of ʿUmar ibn ʿAbd al-ʿAzīz, ʿAṭāʾ, al-Shaʿbī, al-Ḥakam, and Ḥammād. It has also been narrated from Ibrāhīm. We have known them to say regarding what contradicts legal principles and analogical reasoning when it aligns with their

views: “Such a matter is not decided by personal opinion.” Why then did they not say the same here? Success comes from Allah, the Exalted.

A legal issue concerning what property was found with a foundling.

Issue 1386: Any property found with a foundling belongs to him, since a minor possesses ownership rights. Moreover, whatever is in the possession of one who owns is rightfully theirs, and the guardian must expend from that property for their maintenance.

A legal issue: He claimed that the foundling is his son.

1387: Issue: Any Muslim, whether free or a slave, who claims that that foundling is his son shall be believed if it is possible for his claim to be true. But if his falsehood is conclusively established, his claim is not considered.

The proof of this is that births are not established except through the statements of fathers and mothers, and thus the lineages of all people [are determined], unless lying is confirmed.

We said to the Muslims, based on what is authentically established from the Messenger of Allah—peace and blessings of Allah be upon him—in his statement: “Every newborn is born upon the innate disposition and upon the natural creed,” and his statement—peace and blessings of Allah be upon him—relaying from his Lord, the Exalted, in the hadith of ʿIyāḍ ibn Ḥimār al-Mujāshiʿī: “I created My servants upright in innate monotheism, all of them,” and in light of the Exalted’s words: {When your Lord took from the loins of the children of Adam their descendants and made them testify against themselves, “Am I not your Lord?” They said, “Yes, we testify”—lest you

وَقَوْلُنَا: بِأَنَّهُ لَا رِقَّ عَلَيْهِ -: هُوَ قَوْلُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَعَطَاءٍ، وَالشَّعْبِيِّ، وَالْحَكَمِ، وَحَمَّادٍ - وَرُوِّيناهُ أَيْضًا عَنْ إبْرَاهِيمَ، وَعَهِدنَا بِهِمْ يَقُولُونَ فِيمَا خَالَفَ الْأُصُولَ، وَالْقِيَاسَ إذَا وَافَقَ آرَاءَهُمْ: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، فَهَلَّا قَالُوا هَهُنَا هَذَا؟ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ مَا وُجِدَ مَعَ اللَّقِيطِ مِنْ مَالٍ]

١٣٨٦ - مَسْأَلَةٌ: وَكُلُّ مَا وُجِدَ مَعَ اللَّقِيطِ مِنْ مَالٍ فَهُوَ لَهُ؛ لِأَنَّ الصَّغِيرَ يَمْلِكُ، وَكُلُّ مَنْ يَمْلِكُ فَكُلُّ مَا كَانَ بِيَدِهِ فَهُوَ لَهُ، وَيُنْفَقُ عَلَيْهِ مِنْهُ

[مَسْأَلَةٌ ادَّعَى أَنَّ اللَّقِيطَ ابْنُهُ]

١٣٨٧ - مَسْأَلَةٌ: وَكُلُّ مَنْ ادَّعَى أَنَّ ذَلِكَ اللَّقِيطَ ابْنُهُ مِنْ الْمُسْلِمِينَ حُرًّا كَانَ، أَوْ عَبْدًا: صُدِّقَ، إنْ أَمْكَنَ أَنْ يَكُونَ مَا قَالَ حَقًّا، فَإِنْ تُيُقِّنَ كَذِبُهُ لَمْ يُلْتَفَتْ.

بُرْهَانُ ذَلِكَ -: أَنَّ الْوِلَادَاتِ لَا تُعْرَفُ إلَّا بِقَوْلِ الْآبَاءِ وَالْأُمَّهَاتِ، وَهَكَذَا أَنْسَابُ النَّاسِ كُلِّهِمْ، مَا لَمْ يُتَيَقَّنْ الْكَذِبُ.

وَإِنَّمَا قُلْنَا - لِلْمُسْلِمِينَ - لِلثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ: «كُلُّ مَوْلُودٍ يُولَدُ عَلَى الْفِطْرَةِ وَعَلَى الْمِلَّةِ» وَقَوْلِهِ - عَلَيْهِ السَّلَامُ - عَنْ رَبِّهِ تَعَالَى فِي حَدِيثِ عِيَاضِ بْنِ حِمَارٍ الْمُجَاشِعِيِّ: «خَلَقْتُ عِبَادِي حُنَفَاءَ كُلَّهُمْ» . وَلِقَوْلِهِ تَعَالَى: {وَإِذْ أَخَذَ رَبُّكَ مِنْ بَنِي آدَمَ مِنْ ظُهُورِهِمْ ذُرِّيَّتَهُمْ وَأَشْهَدَهُمْ عَلَى أَنْفُسِهِمْ أَلَسْتُ بِرَبِّكُمْ قَالُوا بَلَى شَهِدْنَا أَنْ تَقُولُوا يَوْمَ الْقِيَامَةِ إِنَّا كُنَّا عَنْ هَذَا غَافِلِينَ} [الأعراف: ١٧٢] .

should say on the Day of Resurrection, “We were heedless of this”} [Al-Aʿrāf: 172].[2]

L21234–21236 If a non-Muslim claims it, he is not to be believed, for affirming his claim would remove him from the valid Islam that has been established for him. This is impermissible except where permitted by the textual evidence—specifically regarding one born on the marital bed of a non-Muslim [father] from a non-Muslim woman exclusively. There is no distinction between a free person and a slave in the rulings we have mentioned. The Hanafis said: The slave’s testimony is not accepted, because accepting it would result in the enslavement of the child—but they lied in this matter, for the child of a slave and a free woman is free, particularly according to their own established doctrine that a slave has no right to take a concubine.

L21237 As for us, we have stated: People are presumed to be free, and the wife of a slave is only deemed free, so his child is free until it is proven that his status has deviated from his origin—and with Allah alone is success, the Most High.

فَإِنْ ادَّعَاهُ كَافِرٌ لَمْ يُصَدَّقْ، لِأَنَّ فِي تَصْدِيقِهِ إِخْرَاجَهُ عَنْ مَا قَدْ صَحَّ لَهُ مِنْ الْإِسْلَامِ، وَلَا يَجُوزُ ذَلِكَ إلَّا حَيْثُ أَجَازَهُ النَّصُّ مِمَّنْ وُلِدَ عَلَى فِرَاشِ كَافِرٍ مِنْ كَافِرَةٍ فَقَطْ، وَلَا فَرْقَ بَيْنَ حُرٍّ وَعَبْدٍ فِيمَا ذَكَرْنَا وَقَالَ الْحَنَفِيُّونَ: لَا يُصَدَّقُ الْعَبْدُ، لِأَنَّ فِي تَصْدِيقِهِ إرْقَاقَ الْوَلَدِ - وَكَذَبُوا فِي هَذَا وَلَدُ الْعَبْدِ مِنْ الْحُرَّةِ حُرٌّ، لَا سِيَّمَا عَلَى أَصْلِهِمْ فِي أَنَّ الْعَبْدَ لَا يَتَسَرَّى

وَأَمَّا نَحْنُ فَقَدْ قُلْنَا: إنَّ النَّاسَ عَلَى الْحُرِّيَّةِ، وَلَا تَحِلُّ امْرَأَةُ الْعَبْدِ إلَّا عَلَى أَنَّهَا حُرَّةٌ فَوَلَدُهُ حُرٌّ، حَتَّى يَثْبُتَ انْتِقَالُهُ عَنْ أَصْلِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[2] **Qur’an references (L21233):** Qur’an 7:172 (Al-A’raf).



AL-MUHALLA

كِتَابُ الْوَدِيعَةِ

The Book of Deposits

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْوَدِيعَةِ] [مَسْأَلَةٌ مَنْ أَوْدَعْت عِنْدَهُ وَدِيعَةً]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الْوَدِيعَةِ ١٣٨٨ - مَسْأَلَةٌ: فَرْضٌ عَلَى مَنْ أَوْدَعْت عِنْدَهُ وَدِيعَةً حِفْظُهَا وَرَدُّهَا إلَى صَاحِبِهَا إذَا طَلَبَهَا مِنْهُ لِقَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢] وَلِقَوْلِهِ تَعَالَى: {إنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الأَمَانَاتِ إلَى أَهْلِهَا} [النساء: ٥٨] وَمِنْ الْبِرِّ حِفْظُ مَالِ الْمُسْلِمِ أَوْ الذِّمِّيِّ، وَقَدْ صَحَّ «نَهْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ» ، وَهَذَا عُمُومٌ لِمَالِ الْمَرْءِ وَمَالِ غَيْرِهِ.

[مَسْأَلَةٌ تَلَف الْوَدِيعَة مِنْ غَيْرِ تَعَدٍّ]

١٣٨٩ - مَسْأَلَةٌ: فَإِنْ تَلِفَتْ مِنْ غَيْرِ تَعَدٍّ مِنْهُ وَلَا تَضْيِيعٍ لَهَا فَلَا ضَمَانَ عَلَيْهِ فِيهَا، لِأَنَّهُ إذَا حَفِظَهَا وَلَمْ يَتَعَدَّ وَلَا ضَيَّعَ فَقَدْ أَحْسَنَ، وَاَللَّهُ تَعَالَى يَقُولُ: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] .

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَمَالُ هَذَا الْمُودِعِ حَرَامٌ عَلَى غَيْرِهِ مَا لَمْ يُوجِبْ أَخْذَهُ مِنْهُ نَصٌّ - وَقَدْ صَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ تَضْمِينُ الْوَدِيعَةِ - وَرُوِيَ عَنْهُ وَعَنْ غَيْرِهِ أَنْ لَا تُضَمَّنَ.

[مَسْأَلَةٌ صِفَةُ حِفْظِ الْوَدِيعَة]

١٣٩٠ - مَسْأَلَةٌ: وَصِفَةُ حِفْظِهَا هُوَ أَنْ يَفْعَلَ فِيهَا مِنْ الْحِفْظِ مَا يَفْعَلُ بِمَالِهِ، وَأَنْ لَا يُخَالِفَ فِيهَا مَا حَدَّ لَهُ صَاحِبُهَا إلَّا أَنْ يَكُونَ فِيمَا حَدَّ لَهُ يَقِينُ هَلَاكِهَا: فَعَلَيْهِ حِفْظُهَا؛

[The Book of the Deposit] [A legal question pertaining to one with whom a deposit has been placed]

In the name of Allah, the Most Gracious, the Most Merciful. The Book of Deposits (1388) – A Question: It is obligatory upon the person with whom you deposited a trust to safeguard it and return it to its owner when demanded, based on Allah's statement: "And cooperate in righteousness and piety" [Al-Mā'idah: 2], and His statement: "Indeed, Allah commands you to return trusts to their rightful owners" [An-Nisā': 58]. Among acts of righteousness is safeguarding the wealth of a Muslim or a Dhimmi, and it is authentically established that the Messenger of Allah—peace and blessings be upon him—forbade the squandering of wealth. This applies generally to one's own wealth and the wealth of others.[1]

Legal ruling on the destruction of a deposit without misconduct [by the custodian].

Issue 1389: If it perishes without any wrongful act on his part or neglect of it, there is no liability upon him for it, for if he safeguards it and neither commits a wrongful act nor neglects it, he has done good. Allah the Exalted says: "There is no cause against the doers of good" [At-Tawbah: 91].[2]

Due to the statement of the Messenger of Allah - peace and blessings of Allah be upon him -: "Indeed, your blood and your wealth are sacred to you," the property of this depositor is forbidden upon others unless a textual evidence mandates taking it from him. It has been authentically reported from Umar ibn al-Khattab that the custodian is financially liable for the deposit, and it has been narrated from him and others that no liability applies.

A legal issue on the method of safeguarding a deposit.

Issue 1390: The manner of preserving it is to do in its preservation what he would do for his own wealth, and that he must not contradict what its

[1] **Qur'an references (L21240):** Qur'an 5:2 (Al-Ma'idah); Qur'an 4:58 (An-Nisa).
[2] **Qur'an references (L21242):** Qur'an 9:91 (At-Tawbah).

owner stipulated unless the stipulation entails certainty of its destruction. In that case, he is obligated to preserve it, for this constitutes proper preservation. Anything beyond that is considered transgression according to linguistic norms and common understanding. And success is from Allah, the Exalted.

L21246 **A legal issue wherein the bailee overstepped their custodial duties regarding the deposit, resulting in its destruction.**

L21247 Issue 1391: If the depositary breaches his duty in safeguarding the deposit or negligently mishandles it, resulting in its damage or loss, he becomes liable to compensate for it. Even if he breaches his duty regarding a portion of it rather than another, he is liable solely for that specific portion in which he transgressed. This is because mishandling, too, constitutes a breach of the obligations he was commanded to uphold.

L21248–21249 Transgression is exceeding limits in the language in which the Quran was revealed and in which the Messenger of Allah (peace be upon him) addressed us. Allah the Exalted says: {So whoever transgresses against you, then transgress against him in the same manner as he has transgressed against you} [Al-Baqarah: 194]. Thus, the transgressor is liable like the usurper in all that we have mentioned regarding the rulings of usurpation—and with Allah, the Exalted, lies success.[3]

L21250 **Issue: The ruling on the destruction of the deposit or its return to the depositor.**

L21251 Issue 1392: The ruling concerning the loss of a deposit, its return to its owner, or its delivery to someone the owner has instructed: The testimony of the custodian, accompanied by his oath, is accepted whether the deposit was entrusted to him with evidence or without evidence. This is because his property is inviolable, as we have mentioned. He is the defendant in a claim requiring him to compensate for damages, for "the Messenger of Allah—peace and blessings be upon him—ruled that the oath rests upon the

[3] **Qur'an references (L21249):** Qur'an 2:194 (Al-Baqarah).

لِأَنَّ هَذَا هُوَ صِفَةُ الْحِفْظِ وَمَا عَدَاهُ هُوَ التَّعَدِّي فِي اللُّغَةِ وَمَعْرِفَةُ النَّاسِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَعَدَّى الْمُودَعُ فِي الْوَدِيعَةِ فَتَلِفَتْ]

١٣٩١ - مَسْأَلَةٌ: فَإِنْ تَعَدَّى الْمُودَعُ فِي الْوَدِيعَةِ أَوْ أَضَاعَهَا فَتَلِفَتْ لَزِمَهُ ضَمَانُهَا، وَلَوْ تَعَدَّى عَلَى بَعْضِهَا دُونَ بَعْضٍ لَزِمَهُ ضَمَانُ ذَلِكَ الْبَعْضِ الَّذِي تَعَدَّى فِيهِ فَقَطْ؛ لِأَنَّهُ فِي الْإِضَاعَةِ أَيْضًا مُتَعَدٍّ لِمَا أُمِرَ بِهِ.

وَالتَّعَدِّي هُوَ التَّجَاوُزُ فِي اللُّغَةِ الَّتِي نَزَلَ بِهَا الْقُرْآنُ، وَبِهَا خَاطَبَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاَللَّهُ تَعَالَى يَقُولُ: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] فَيُضَمَّنُ ضَمَانَ الْغَاصِبِ فِي كُلِّ مَا ذَكَرْنَا فِي حُكْمِ الْغَصْبِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْقَوْلُ فِي هَلَاكِ الْوَدِيعَةِ أَوْ فِي رَدِّهَا إلَى صَاحِبِهَا]

١٣٩٢ - مَسْأَلَةٌ: وَالْقَوْلُ فِي هَلَاكِ الْوَدِيعَةِ أَوْ فِي رَدِّهَا إلَى صَاحِبِهَا، أَوْ فِي دَفْعِهَا إلَى مَنْ أَمَرَهُ صَاحِبُهَا بِدَفْعِهَا إلَيْهِ: قَوْلُ الَّذِي أُودِعَتْ عِنْدَهُ مَعَ يَمِينِهِ، سَوَاءٌ دُفِعَتْ إلَيْهِ بِبَيِّنَةٍ أَوْ بِغَيْرِ بَيِّنَةٍ؛ لِأَنَّ مَالَهُ مُحَرَّمٌ كَمَا ذَكَرْنَا فَهُوَ مُدَّعًى عَلَيْهِ وُجُوبُ غَرَامَةٍ، وَقَدْ «حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ الْيَمِينَ عَلَى مَنْ أُدُّعِيَ عَلَيْهِ» . وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

one against whom the claim is made." This is the opinion of Abu Hanifah, al-Shafi'i, and Abu Sulaiman.

وَهَهُنَا خِلَافٌ فِي مَوَاضِعَ -: مِنْهَا أَنَّ مَالِكًا فَرَّقَ بَيْنَ الثِّقَةِ وَغَيْرِ الثِّقَةِ، فَرَأَى أَنْ لَا يَمِينَ عَلَى الثِّقَةِ، وَهَذَا خَطَأٌ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ أَوْجَبَ الْيَمِينَ عَلَى مَنْ ادُّعِيَ عَلَيْهِ لَمْ يُفَرِّقْ بَيْنَ ثِقَةٍ وَغَيْرِ ثِقَةٍ، وَالْمَالِكِيُّونَ مُوَافِقُونَ لَنَا فِي أَنَّ نَصْرَانِيًّا، أَوْ يَهُودِيًّا، أَوْ فَاسِقًا مِنْ الْمُسْلِمِينَ - مُعْلِنًا لِلْفِسْقِ - يَدَّعِي دَيْنًا عَلَى صَاحِبٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا بَيِّنَةَ لَهُ: وَجَبَتْ الْيَمِينُ عَلَى الصَّاحِبِ، وَلَا فَرْقَ بَيْنَ دَعْوَى جَحْدِ الدَّيْنِ، وَبَيْنَ دَعْوَى جَحْدِ الْوَدِيعَةِ أَوْ تَضْيِيعِهَا، وَالْمُقْرَضُ مُؤْتَمَنٌ عَلَى مَا أُقْرِضَ، وَعَلَى مَا عُومِلَ فِيهِ، كَمَا أَنَّ الْمُودَعَ مُؤْتَمَنٌ وَلَا فَرْقَ، وَفَرْقٌ أَيْضًا بَيْنَ الْوَدِيعَةِ تُدْفَعُ بِبَيِّنَةٍ وَبَيْنَهَا إذَا دُفِعَتْ بِغَيْرِ بَيِّنَةٍ، فَرَأَى إيجَابَ الضَّمَانِ فِيهَا إذَا دُفِعَتْ بِبَيِّنَةٍ - وَهَذَا لَا مَعْنَى لَهُ، لِأَنَّهُ لَمْ يَأْتِ بِالْفَرْقِ بَيْنَ ذَلِكَ: قُرْآنٌ، وَلَا سُنَّةٌ، وَالْأَيْمَانُ لَا تَسْقُطُ، وَالْغَرَامَةُ لَا تَجِبُ، إلَّا حَيْثُ أَوْجَبَهَا اللَّهُ تَعَالَى أَوْ رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَوْ حَيْثُ أَسْقَطَهَا اللَّهُ تَعَالَى، أَوْ رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَفَرَّقَ قَوْمٌ بَيْنَ قَوْلِ الْمُودَعِ: هَلَكَتْ الْوَدِيعَةُ، فَصَدَّقُوهُ: إمَّا بِبَيِّنَةٍ وَإِمَّا بِغَيْرِ بَيِّنَةٍ، وَبَيْنَ قَوْلِهِ: قَدْ صَرَفْتهَا إلَيْك -: فَأَلْزَمُوهُ الضَّمَانَ، وَكَذَلِكَ فِي قَوْلِهِ: أَمَرْتنِي بِدَفْعِهَا إلَى فُلَانٍ - فَضَمِنُوهُ.

L21252 Here, there is disagreement in certain matters: One of them is that Mālik differentiated between a trustworthy person and an untrustworthy person, holding that an oath should not be imposed on a trustworthy person. This is erroneous, because when the Messenger of Allah—peace and blessings be upon him—obligated the oath on the defendant, he did not distinguish between a trustworthy and an untrustworthy person. The Mālikīs agree with us that if a Christian, a Jew, or a sinful Muslim—openly sinful—claims a debt against a Companion of the Prophet—may Allah be pleased with them—without evidence, the oath is obligated upon the Companion. There is no difference between a claim denying a debt and a claim denying a deposit or causing its loss. The borrower is entrusted with both the loan and its use, just as the depositary is entrusted, and there is no distinction. There is also a difference between a deposit handed over with evidence and one handed over without evidence. Mālik held that financial liability is imposed in the former case—but this is meaningless, because he provided no distinction between the two based on neither the Quran nor the Sunnah, nor the principle that oaths are not waived and financial liability is not imposed except where Allah the Exalted or His Messenger—peace and blessings be upon him—obligated them, or where Allah the Exalted or His Messenger—peace and blessings be upon him—waived them. Some scholars differentiated between a depositary's statement, "The deposit was destroyed," which they validated either with or without evidence, and his statement, "I transferred it to you," in which case they imposed liability on him. Similarly, if he said, "You ordered me to hand it over to so-and-so," they held him liable.

قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ، لِأَنَّهُ لَمْ يَأْتِ بِالْفَرْقِ بَيْنَ ذَلِكَ: قُرْآنٌ، وَلَا سُنَّةٌ - وَالْوَجْهُ فِي هَذَا هُوَ أَنَّ كُلَّ مَا قَالَهُ الْمُودَعُ، مِمَّا يُسْقِطُ بِهِ عَنْ نَفْسِهِ الْغَرَامَةَ، وَلَا تَخْرُجُ عَيْنُ الْوَدِيعَةِ عَنْ مِلْكِ الْمُودِعِ: فَالْقَوْلُ قَوْلُهُ مَعَ يَمِينِهِ، لِأَنَّ مَالَهُ مُحَرَّمٌ، إلَّا بِقُرْآنٍ أَوْ سُنَّةٍ،

L21253–21255 Abu Muhammad said: This is erroneous, because he did not provide the distinction between that being Quran or Sunnah. The correct legal reasoning here is that any statement made by the depository—through which he seeks to waive liability from himself while the deposited property remains within the depositor's ownership—his statement is upheld upon his oath, because his property is inviolable except by Quran or Sunnah. This applies uniformly. The deposit was recognized for the depositor through evidence or judicial

knowledge, whether known or not. There is no distinction between any of the things they differentiated through their invalid opinions.

سَوَاءٌ كَانَتْ الْوَدِيعَةُ مَعْرُوفَةً لِلْمُودِعِ بِبَيِّنَةٍ، أَوْ بِعِلْمِ الْحَاكِمِ أَوْ لَمْ تَكُنْ، وَلَا فَرْقَ بَيْنَ شَيْءٍ مِمَّا فَرَّقُوا بَيْنَهُ بِآرَائِهِمْ الْفَاسِدَةِ.

L21256 As for when the depositary makes a claim that transfers the deposit from the depositor's ownership to another's ownership, the matter is examined. If the deposit's ownership by the depositor is only established through the depositary's statement, then the depositary's statement - along with his oath - is accepted regarding everything he asserts about being instructed to sell it, donate it as charity, gift it, or the claim that it was gifted to him, and all other cases without differentiation. This applies because the depositary has not acknowledged anything pertaining to the depositor's property or liability - neither a debt nor a transgression - nor has any evidence been established by the claimant against him concerning a rightful claim or wrongdoing, for the depositor's property is forbidden to others.

وَأَمَّا إذَا ادَّعَى الْمُودَعُ شَيْئًا يَنْقُلُ بِهِ الْوَدِيعَةَ عَنْ مِلْكِ الْمُودِعِ إلَى مِلْكِ غَيْرِهِ فَإِنَّهُ يَنْظُرُ، فَإِنْ كَانَتْ الْوَدِيعَةُ لَا تُعْرَفُ لِلْمُودِعِ إلَّا بِقَوْلِ الْمُودَعِ، فَالْقَوْلُ أَيْضًا قَوْلُ الْمُودَعِ مَعَ يَمِينِهِ فِي كُلِّ مَا ذَكَرَ لَهُ مِنْ أَمْرِهِ إيَّاهُ بِبَيْعِهَا، أَوْ الصَّدَقَةِ بِهَا، أَوْ بِهِبَتِهَا، أَوْ أَنَّهُ وَهَبَهَا لَهُ وَسَائِرِ الْوُجُوهِ وَلَا فَرْقَ؛ لِأَنَّهُ لَمْ يُقِرَّ لَهُ بِشَيْءٍ فِي مَالِهِ، وَلَا بِشَيْءٍ فِي ذِمَّتِهِ، لَا بِدَيْنٍ وَلَا بِتَعَدٍّ، وَلَا قَامَتْ لَهُ عَلَيْهِ بَيِّنَةٌ بِحَقٍّ وَلَا بِتَعَدٍّ، وَمَالُهُ مُحَرَّمٌ عَلَى غَيْرِهِ.

L21257 If the deposited item is specifically identifiable to the depositor through conclusive proof or the judge's personal knowledge, then the custodian is claiming the transfer of the depositor's ownership thereof. He is not believed except through conclusive proof. At that time, he has acknowledged regarding another's property what God Almighty has forbidden, as He states: {No soul earns except against itself} [al-An'am 6:164]. Thus, he is liable, and success is from God Almighty.[4]

وَأَمَّا إنْ كَانَتْ الْوَدِيعَةُ مَعْرُوفَةَ الْعَيْنِ لِلْمُودِعِ بِبَيِّنَةٍ، أَوْ بِعِلْمِ الْحَاكِمِ فَإِنَّ الْمُودَعَ مُدَّعٍ نَقْلَ مِلْكِ الْمُودِعِ عَنْهَا، فَلَا يُصَدَّقُ إلَّا بِبَيِّنَةٍ، وَقَدْ أَقَرَّ حِينَئِذٍ فِي مَالِ غَيْرِهِ بِمَا قَدْ مَنَعَ اللَّهُ تَعَالَى مِنْهُ إذْ يَقُولُ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَهُوَ ضَامِنٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

Issue: The depositor encountered the bailee in a location different from where the deposit was originally entrusted.

[مَسْأَلَةٌ لَقِيَ الْمُودِعُ مَنْ أَوْدَعَهُ فِي غَيْرِ الْمَوْضِعِ الَّذِي أَوْدَعَهُ فِيهِ]

L21258

L21259 Issue: If the depositor encounters the depositee in a location other than the designated deposit site, he has no right to demand the deposit. Transporting and returning the deposit falls upon the depositor, not the depositee. The depositee's sole obligation is not to prevent it from its owner, as both his person and property are inviolable. This differs from the usurper or one who transgresses regarding a deposit or other matters. Taking property without rightful claim necessitates its return upon the transgressor and usurper.

١٣٩٣ - مَسْأَلَةٌ: وَإِنْ لَقِيَ الْمُودِعُ مَنْ أَوْدَعَهُ فِي غَيْرِ الْمَوْضِعِ الَّذِي أَوْدَعَهُ فِيهِ مَا أَوْدَعَهُ، فَلَيْسَ لَهُ مُطَالَبَتُهُ الْوَدِيعَةَ، وَنَقْلُ الْوَدِيعَةِ بِالْحَمْلِ، وَالرَّدِّ عَلَى الْمُودِعِ لَا عَلَى الْمُودَعِ، وَإِنَّمَا عَلَى الْمُودَعِ أَنْ لَا يَمْنَعَهَا مِنْ صَاحِبِهَا فَقَطْ؛ لِأَنَّ بَشَرَتَهُ وَمَالَهُ مُحَرَّمَانِ، وَهَذَا بِخِلَافِ الْغَاصِبِ، وَالْمُتَعَدِّي فِي الْوَدِيعَةِ، أَوْ غَيْرِهَا، وَأَخْذُ الْمَالِ بِغَيْرِ حَقٍّ فَرْدُّهُ

[4] **Qur'an references (L21257):** Qur'an 6:164 (Al-An'am).

Taking it without rightful claim to its owner applies wherever encountered within the lands of Allah, the Exalted, for it is obligatory to desist from injustice and delay perpetually in every time and place - success comes solely through Allah, the Exalted.

عَلَى الْمُتَعَدِّي وَالْغَاصِبِ، وَأَخْذُهُ بِغَيْرِ حَقٍّ إِلَى صَاحِبِهِ حَيْثُ لَقِيَهُ مِنْ بِلَادِ اللَّهِ تَعَالَى؛ لِأَنَّ فَرْضًا عَلَيْهِ الْخُرُوجُ مِنْ الظُّلْمِ وَالْمَطْلِ فِي كُلِّ أَوَانٍ وَمَكَانٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.



AL-MUHALLA

كِتَابُ الْحَجْرِ

The Book of Restrictions on Legal Capacity

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْحَجْرِ] [مَسْأَلَةٌ لَا يَجُوزُ الْحَجْرُ عَلَى أَحَدٍ فِي مَالِهِ]

[Book of Restriction of Legal Capacity] [Issue: It is not permissible to impose restriction of legal capacity on anyone's property.]

١٣٩٤ - مَسْأَلَةٌ: لَا يَجُوزُ الْحَجْرُ عَلَى أَحَدٍ فِي مَالِهِ إلَّا عَلَى مَنْ لَمْ يَبْلُغْ أَوْ عَلَى مَجْنُونٍ فِي حَالِ جُنُونِهِ -: فَهَذَانِ خَاصَّةً لَا يَنْفُذُ لَهُمَا أَمْرٌ فِي مَالِهِمَا، فَإِذَا بَلَغَ الصَّغِيرُ، وَأَفَاقَ الْمَجْنُونُ جَازَ أَمْرُهُمَا فِي مَالِهِمَا كَغَيْرِهِمَا وَلَا فَرْقَ، سَوَاءٌ فِي ذَلِكَ كُلِّهِ الْحُرُّ، وَالْعَبْدُ، وَالذَّكَرُ، وَالْأُنْثَى، وَالْبِكْرُ ذَاتُ الْأَبِ وَغَيْرُ ذَاتِ الْأَبِ، وَذَاتُ الزَّوْجِ، وَالَّتِي لَا زَوْجَ لَهَا، فِعْلُ كُلِّ مَا ذَكَرْنَا فِي أَمْوَالِهِمْ مِنْ عِتْقٍ، أَوْ هِبَةٍ، أَوْ بَيْعٍ، أَوْ غَيْرِ ذَلِكَ: نَافِذٌ إذَا وَافَقَ الْحَقَّ مِنْ الْوَاجِبِ، أَوْ الْمُبَاحَ - وَمَرْدُودٌ فِعْلُ كُلِّ أَحَدٍ فِي مَالِهِ إذَا خَالَفَ الْمُبَاحَ، أَوْ الْوَاجِبَ، وَلَا فَرْقَ، وَلَا اعْتِرَاضَ لِأَبٍ، وَلَا لِزَوْجٍ، وَلَا لِحَاكِمٍ فِي شَيْءٍ مِنْ ذَلِكَ إلَّا مَا كَانَ مَعْصِيَةً لِلَّهِ تَعَالَى فَهُوَ بَاطِلٌ مَرْدُودٌ.

L21260–21261 **[Book of Restriction of Legal Capacity] [Issue: It is not permissible to impose restriction of legal capacity on anyone's property.]**

L21262 Issue 1394: It is impermissible to impose legal interdiction over anyone's property except a minor who has not reached puberty or an insane person during their state of insanity. Specifically, no action these two take concerning their property is valid. When the minor attains puberty and the insane person regains sanity, their authority over their property becomes permissible like others - with no distinction. This ruling applies equally to all: free persons and slaves, males and females, the unmarried woman (whether under paternal guardianship or not), the married woman, and the woman without a husband. Any action mentioned regarding their property - including manumission, gift-giving, sale, or other transactions - is valid if it conforms to what is right under divine law, whether obligatory or permissible. Conversely, any action by anyone concerning their property that contravenes what is permissible or obligatory under divine law is invalid and rejected, without exception. No father, husband, or judge may object to any of these matters unless the action constitutes disobedience to God Almighty, in which case it is null and void.

وَمِنْ مَعْصِيَةِ اللَّهِ تَعَالَى: الصَّدَقَةُ، وَالْعَطِيَّةُ، بِمَا لَا يَبْقَى بَعْدَهُ لِلْمُتَصَدِّقِ أَوْ الْوَاهِبِ غِنًى، فَإِنْ أَرَادَ السَّيِّدُ إبْطَالَ فِعْلِ الْعَبْدِ فِي مَالِهِ فَلْيُعْلِنْ بِانْتِزَاعِهِ مِنْهُ، وَلَا يَجُوزُ لِلْعَبْدِ حِينَئِذٍ تَصَرُّفٌ فِي شَيْءٍ مِنْهُ.

L21263 Among the acts that constitute disobedience to Allah the Exalted is giving charity or a gift in a manner that leaves the giver or donor without financial independence afterward. If the master intends to nullify the slave's disposal of their property, he must publicly announce the revocation of it from him, and the slave is thereafter prohibited from disposing of any part of it.

بُرْهَانُ ذَلِكَ - مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ نا ابْنُ وَهْبٍ أَخْبَرَنِي جَرِيرُ بْنُ حَازِمٍ عَنْ سُلَيْمَانَ الْأَعْمَشِ عَنْ أَبِي ظَبْيَانَ وَهُوَ حُصَيْنُ بْنُ جُنْدَبٍ الْجَنْبِيُّ عَنْ ابْنِ عَبَّاسٍ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ لِعُمَرَ بْنِ الْخَطَّابِ: أَوَ مَا تَذْكُرُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ عَنْ الْمَجْنُونِ الْمَغْلُوبِ

L21264–21266 The proof of this is what we have narrated through the chain of Abu Dawud: Ahmad ibn Amr ibn al-Sarh narrated to us, Ibn Wahb narrated to us, Jarir ibn Hazim informed me from Sulayman al-A'mash from Abu Zabiyan—who is Husayn ibn Jundab al-Janbi—from Ibn Abbas: that Ali ibn Abi Talib said to Umar ibn al-Khattab, "Do you not recall that the Messenger of Allah—peace and blessings be upon him—said, 'The pen is lifted from three: the insane person overcome by madness until he regains sanity, the sleeper until he awakens, and the child until he reaches puberty'?" And through the chain of

Abu Dawud: Musa ibn Isma'il narrated to us, Wuhaib (Ibn Khalid) narrated to us from Khalid al-Khadda'. From Abu al-Duha, from Ali ibn Abi Talib, from the Prophet—peace and blessings of Allah be upon him—something similar. Abu Ẓabyan is trustworthy; he met Ali ibn Abi Talib and heard from him and from Ibn Abbas. Also from another chain via Abu Dawud: Uthman ibn Abi Shaybah narrated to us, Yazid ibn Harun narrated to us, Hammad ibn Salama narrated to us, from Hammad ibn Abi Sulayman, from Ibrahim al-Nakha'i, from al-Aswad, from Aisha, the Mother of the Believers, that the Messenger of Allah—peace and blessings of Allah be upon him—said: "The pen is lifted from three: from the sleeper until they awaken, from the afflicted until they recover, and from the child until they grow up."[1]

عَلَى عَقْلِهِ حَتَّى يُفِيقَ وَعَنْ النَّائِمِ حَتَّى يَسْتَيْقِظَ وَعَنْ الصَّبِيِّ حَتَّى يَحْتَلِمَ» ؟ وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُوسَى بْنُ إِسْمَاعِيلَ نا وُهَيْبٌ - هُوَ ابْنُ خَالِدٍ - عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي الضُّحَى عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَحْوُهُ، أَبُو ظَبْيَانَ ثِقَةٌ، لَقِيَ عَلِيَّ بْنَ أَبِي طَالِبٍ وَسَمِعَ مِنْهُ، وَمِنْ ابْنِ عَبَّاسٍ. وَمِنْ طَرِيقِ أَبِي دَاوُد أَيْضًا نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ الْأَسْوَدِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ: عَنْ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنْ الْمُبْتَلَى حَتَّى يَبْرَأَ، وَعَنْ الصَّبِيِّ حَتَّى يَكْبُرَ» .

L21267 Ali said: The meaning of three is three persons.

قَالَ عَلِيٌّ: مَعْنَى ثَلَاثٍ: ثَلَاثُ نُفُوسٍ.

L21268 And He, the Exalted, said: {You will never attain righteousness until you spend from what you love} [Āl ʿImrān: 92]. And He, the Exalted, said: {those men and women who give charity} [Al-Aḥzāb: 35]. And He, the Exalted, said: {And strive with your wealth and your lives in the cause of Allah} [Al-Tawbah: 41]. And He, the Exalted, said: {What has caused you to enter Saqar? They said, "We were not of those who prayed, nor did we feed the poor"} [Al-Muddaththir: 42-44]. And He urged people to free slaves.[2]

وَقَالَ تَعَالَى: {لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ} [آل عمران: ٩٢] . وَقَالَ تَعَالَى: {وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ} [الأحزاب: ٣٥] . وَقَالَ تَعَالَى: {وَجَاهِدُوا بِأَمْوَالِكُمْ وَأَنْفُسِكُمْ فِي سَبِيلِ اللَّهِ} [التوبة: ٤١] وَقَالَ تَعَالَى: {مَا سَلَكَكُمْ فِي سَقَرَ} [المدثر: ٤٢] {قَالُوا لَمْ نَكُ مِنَ الْمُصَلِّينَ} [المدثر: ٤٣] {وَلَمْ نَكُ نُطْعِمُ الْمِسْكِينَ} [المدثر: ٤٤] وَحَضَّ عَلَى الْعِتْقِ.

L21269 The Messenger of Allah (peace be upon him) said: "Guard yourselves against the Fire, even with half a date." And the Almighty said: "Marry from the women those lawful to you—two, three, or four." (An-Nisa 4:3)[3]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «اتَّقُوا النَّارَ وَلَوْ بِشِقِّ تَمْرَةٍ» . وَقَالَ تَعَالَى: {فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعَ} [النساء: ٣]

[1] **Hadith references (L21264):** Sunan Abi Dawud 4401.

[2] **Qur'an references (L21268):** Qur'an 3:92 (Ali 'Imran); Qur'an 9:41 (At-Tawbah); Qur'an 74:42 (Al-Muddaththir); Qur'an 74:43 (Al-Muddaththir); Qur'an 74:44 (Al-Muddaththir); Qur'an 33:35 (Al-Ahzab).

[3] **Qur'an references (L21269):** Qur'an 4:3 (An-Nisa).

L21270 And He, the Exalted, said: {And give women their dowers as a gracious gift} [An-Nisa: 4]. Thus, it is established that everyone is religiously urged to perform good deeds, charity, freeing slaves, and spending in the paths of righteousness to shield themselves thereby from the Fire of Hell.[4]

وَقَالَ تَعَالَى: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] فَصَحَّ أَنَّ كُلَّ أَحَدٍ مَنْدُوبٌ إِلَى فِعْلِ الْخَيْرِ، وَالصَّدَقَةِ، وَالْعِتْقِ، وَالنَّفَقَةِ فِي وُجُوهِ الْبِرِّ لِيَقِيَ نَفْسَهُ بِذَلِكَ نَارَ جَهَنَّمَ.

L21271 There is no disagreement that all those we have mentioned—the slave, the woman with a father, the virgin, and the married woman—are commanded, prohibited, threatened with the Fire, encouraged, and promised Paradise. They are in need of rescuing themselves from it as others are, utterly equal, without any distinction. Thus, none are exempt from this ruling except those exempted by the text. The text exempts only the insane while they remain in their state of insanity and those who have not yet reached puberty. Yet those who distinguish between those we have mentioned—permitting some regarding charity, gift-giving, or marriage while forbidding others without any invalidating text—are prohibiting what Allah the Exalted has encouraged and obstructing acts of goodness.

وَلَا خِلَافَ فِي أَنَّ كُلَّ مَنْ ذَكَرْنَا مِنْ عَبْدٍ، وَذَاتِ أَبٍ، وَبِكْرٍ، وَذَاتِ زَوْجٍ، مَأْمُورُونَ، مَنْهِيُّونَ، مُتَوَعَّدُونَ بِالنَّارِ، مَنْدُوبُونَ مَوْعُودُونَ بِالْجَنَّةِ، فُقَرَاءُ إِلَى إِنْقَاذِ أَنْفُسِهِمْ مِنْهَا كَفَقْرِ غَيْرِهِمْ سَوَاءً سَوَاءً، وَلَا مَزِيَّةَ، فَلَا يَخْرُجُ مِنْ هَذَا الْحُكْمِ إِلَّا مَنْ أَخْرَجَهُ النَّصُّ، وَلَمْ يُخْرِجِ النَّصُّ إِلَّا الْمَجْنُونَ مَا دَامَ فِي حَالِ جُنُونِهِ - وَالَّذِي لَمْ يَبْلُغْ إِلَى أَنْ يَبْلُغَ فَقَطْ، فَكَانَ الْمُفَرِّقُ بَيْنَ مَنْ ذَكَرْنَا فَيُطْلِقُ بَعْضًا عَلَى الصَّدَقَةِ، وَالْهِبَةِ، وَالنِّكَاحِ، وَيَمْنَعُ بَعْضًا بِغَيْرِ نَصٍّ مُبْطِلٍ، مُحَرِّمًا مَا نَدَبَ اللَّهُ تَعَالَى إِلَيْهِ، مَانِعًا مِنْ فِعْلِ الْخَيْرِ.

L21272–21274 Ali said: It was reported to us from Muḥammad ibn Jaʿfar Ghundar, who narrated from Shuʿbah; al-Mughīrah; Ibrāhīm al-Nakhaʿī, who said: "No restriction [of legal capacity] may be imposed upon a free person." Aḥmad ibn ʿUmar al-ʿUdhri narrated to me through Abū Dharr al-Harawī, from ʿAbdullāh ibn Aḥmad ibn Ḥamawayh al-Sarakhsī, from Ibrāhīm ibn Khuzaym, from ʿAbdullāh ibn Ḥumayd, from Abū ʿĀṣim al-Ḍaḥḥāk ibn Makhled, from ʿAbdullāh ibn ʿAwn, from Muḥammad ibn Sīrīn that he deemed legal interdiction upon a free person utterly invalid—a view held by a group of the Companions—may Allah be pleased with them—and constituting the position of Mujāhid, ʿUbaydullāh ibn al-Ḥasan, and others.

قَالَ عَلِيٌّ: وَرُوِّينَا عَنْ مُحَمَّدِ بْنِ جَعْفَرٍ غُنْدَرٍ نا شُعْبَةُ عَنْ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَا يُحْجَرُ عَلَى حُرٍّ وَحَدَّثَنِي أَحْمَدُ بْنُ عُمَرَ الْعُذْرِيُّ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَوَيْهِ السَّرَخْسِيُّ نا إِبْرَاهِيمُ بْنُ خُزَيْمٍ نا عَبْدُ بْنُ حُمَيْدٍ نا أَبُو عَاصِمٍ الضَّحَّاكُ بْنُ مَخْلَدٍ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ كَانَ لَا يَرَى الْحَجْرَ عَلَى الْحُرِّ شَيْئًا - وَهُوَ قَوْلُ جَمَاعَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَقَوْلُ مُجَاهِدٍ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ وَغَيْرِهِ.

L21275 Abu Hanifah said: A free person shall not be placed under interdiction—neither for extravagance, debt, bankruptcy, nor any other reason—nor does he consider a judge's interdiction over him to be binding. He maintains that the person's disposal of his property and his acknowledgment of claims regarding it—whether substantial or minor—after the judge's interdiction, and likewise before it, are equally valid. However, he added: Whoever reaches

وَقَالَ أَبُو حَنِيفَةَ: لَا يُحْجَرُ عَلَى حُرٍّ لَا لِتَبْذِيرٍ، وَلَا لِدَيْنٍ، وَلَا لِتَفْلِيسٍ، وَلَا لِغَيْرِهِ، وَلَا يَرَى حَجْرَ الْقَاضِي عَلَيْهِ لَازِمًا - وَيَرَى تَصَرُّفَهُ فِي مَالِهِ وَإِقْرَارَهُ بَعْدَ حَجْرِ الْقَاضِي عَلَيْهِ لَازِمًا [وَيَرَى تَصَرُّفَهُ فِي مَالِهِ وَإِقْرَارَهُ بَعْدَ حَجْرِ الْقَاضِي] وَقَبْلَهُ سَوَاءٌ، كُلُّ ذَلِكَ نَافِذٌ إِلَّا أَنَّهُ زَادَ فَقَالَ: مَنْ بَلَغَ وَلَمْ يُؤْنَسْ مِنْهُ رُشْدٌ حِيلَ بَيْنَهُ وَبَيْنَ مَالِهِ إِلَّا أَنَّهُ إِنْ بَاعَ

[4] **Qur'an references (L21270):** Qur'an 4:4 (An-Nisa).

puberty without evidence of sound judgment being found in him shall be barred from his property. Yet if he sells anything—whether substantial or minor—his sale remains valid, and if he acknowledges a claim regarding it—whether substantial or minor—his acknowledgment remains valid. When he reaches twenty-five years of age, his property is handed over to him—even if sound judgment is not evidenced in him. This addition is utterly corrupt. The first flaw is that we know of no one who held this view before him.

L21276 Moreover, this is a contradictory statement, for if selling it and his confession are permissible, what purpose remains in prohibiting him from his property? This is incoherence unparalleled.

L21277 Then his specification of it as twenty-five years stems from one of the wonders of the world, and we do not know by what religious justification one permits withholding wealth and releasing it through such opinions without a command from Allah the Exalted? The most astonishing thing is the argument of some whom Allah has forsaken for his blind imitation of them, for he said: "A child is born to a person at twelve and a half years of age, making him a father. Then a child is similarly born to his son, making him a grandfather, with no rank beyond grandfatherhood." Abu Muhammad said: "This is an utterly foolish statement"—to which it is said: "Suppose it is as you say—what then? When has Allah the Exalted differentiated between one who is a grandfather and one who is a father regarding legal rulings on their wealth? In what rational mind has this been accepted? Moreover: A child may be born to him at twelve years of age, and similarly to his son—this totals twenty-four years."

L21278–21280 Moreover, after the grandfather, the great-grandfather [inherits]. They extended this rule up to thirty-seven years or forty years. The age of forty years, in accordance with the statement of Allah, the Most High: {Until he attains his full maturity and reaches forty years} [Al-Ahqāf: 15]. Thus, the invalidity of this addition became entirely manifest—and with Allah, the Most High, lies all success.[5]

L21281 Others upheld the position of interdiction. Mālik said: Whoever is deceived

شَيْئًا - كَثُرَ أَوْ قَلَّ - نَفَذَ بَيْعُهُ، وَإِنْ أَقَرَّ فِيهِ - كَثُرَ أَوْ قَلَّ - نَفَذَ إِقْرَارُهُ، حَتَّى إِذَا تَمَّتْ لَهُ خَمْسٌ وَعِشْرُونَ سَنَةً دُفِعَ إِلَيْهِ مَالُهُ - وَإِنْ لَمْ يُؤْنَسْ مِنْهُ رُشْدٌ -: وَهَذِهِ الزِّيَادَةُ فِي غَايَةِ الْفَسَادِ -: أَوَّلُ ذَلِكَ: أَنَّهُ لَا نَعْلَمُ أَحَدًا قَالَ بِهَا قَبْلَهُ.

وَأَيْضًا: فَإِنَّهُ قَوْلٌ مُتَنَاقِضٌ، لِأَنَّهُ إِذَا جَازَ بَيْعُهُ وَإِقْرَارُهُ فَأَيُّ مَعْنًى لِلْمَنْعِ لَهُ مِنْ مَالِهِ - هَذَا تَخْلِيطٌ لَا نَظِيرَ لَهُ.

ثُمَّ تَحْدِيدُهُ بِخَمْسٍ وَعِشْرِينَ سَنَةً مِنْ إِحْدَى عَجَائِبِ الدُّنْيَا، وَمَا نَدْرِي بِأَيِّ وَجْهٍ يَسْتَحِلُّ فِي الدِّينِ مَنْعَ مَالٍ وَإِطْلَاقَهُ بِمِثْلِ هَذِهِ الْآرَاءِ بِغَيْرِ إِذْنٍ مِنَ اللَّهِ تَعَالَى؟ وَأَعْجَبُ شَيْءٍ احْتِجَاجُ بَعْضِ مَنْ خَذَلَهُ اللَّهُ تَعَالَى بِتَقْلِيدِهِ إِيَّاهُ فَقَالَ: يُولَدُ لِلْمَرْءِ مِنْ اثْنَيْ عَشَرَ عَامًا وَنِصْفٍ فَيَصِيرُ أَبًا، ثُمَّ يُولَدُ لِابْنِهِ كَذَلِكَ فَيَصِيرُ جَدًّا، وَلَيْسَ بَعْدَ الْجَدِّ مَنْزِلَةٌ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كَلَامٌ أَحْمَقُ بَارِدٌ - وَيُقَالُ لَهُ: هَبْكَ أَنَّهُ كَمَا تَقُولُ فَكَانَ مَاذَا؟ وَمَتَى فَرَّقَ اللَّهُ تَعَالَى بَيْنَ مَنْ يَكُونُ جَدًّا وَبَيْنَ مَنْ يَكُونُ أَبًا فِي أَحْكَامِ مَالِهِمَا، وَفِي أَيِّ عَقْلٍ وُجِدَ تَمَّ هَذَا؟ وَأَيْضًا: فَقَدْ يُولَدُ لَهُ مِنْ اثْنَيْ عَشَرَ عَامًا، وَلِابْنِهِ كَذَلِكَ، فَهَذِهِ أَرْبَعَةٌ وَعِشْرُونَ عَامًا.

وَأَيْضًا: فَبَعْدَ الْجَدِّ أَبُو جَدٍّ، فَبَلَّغُوهُ هَكَذَا إِلَى سَبْعٍ وَثَلَاثِينَ سَنَةً، أَوْ إِلَى أَرْبَعِينَ سَنَةً لِقَوْلِ اللَّهِ تَعَالَى: {حَتَّى إِذَا بَلَغَ أَشُدَّهُ وَبَلَغَ أَرْبَعِينَ سَنَةً} [الأحقاف: ١٥] فَظَهَرَ فَسَادُ هَذِهِ الزِّيَادَةِ جُمْلَةً - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[5] **Qur'an references (L21278):** Qur'an 46:15 (Al-Ahqaf).

in transactions and fails to properly manage his wealth shall be placed under interdiction. Consequently, his acts of emancipation, charity, sale, gift, or marriage are not valid, nor may he act as his daughter's guardian in marriage. Any loan he obtains does not obligate repayment, nor can judgment be passed against him for it—even if he later regains legal competence. He stated: Whatever he did before the judge imposes interdiction upon him remains valid and irrevocable until the interdiction is formally enacted. He permitted the guardian to provide monthly upkeep or similar expenses.

وَذَهَبَ آخَرُونَ إِلَى الْحَجْرِ فَقَالَ مَالِكٌ: مَنْ كَانَ يُخْدَعُ فِي الْبُيُوعِ وَلَا يُحْسِنُ ضَبْطَ مَالِهِ: حُجِرَ عَلَيْهِ، فَلَمْ يَنْفُذْ لَهُ عِتْقٌ، وَلَا صَدَقَةٌ، وَلَا بَيْعٌ، وَلَا هِبَةٌ، وَلَا نِكَاحٌ، وَلَا يَكُونُ وَلِيًّا لِابْنَتِهِ فِي النِّكَاحِ وَكُلُّ مَا أَخَذَهُ قَرْضًا لَمْ يَلْزَمْهُ أَدَاؤُهُ وَلَا قُضِيَ عَلَيْهِ بِهِ - وَإِنْ رَشَدَ بَعْدَ ذَلِكَ. وَقَالَ: مَا فَعَلَ قَبْلَ أَنْ يَحْجُرَ الْقَاضِي عَلَيْهِ فَفِعْلُهُ نَافِذٌ غَيْرُ مَرْدُودٍ إِلَى أَنْ يَحْجُرَ الْقَاضِي عَلَيْهِ - وَأَجَازَ لِوَلِيِّهِ أَنْ يَدْفَعَ نَفَقَةَ شَهْرٍ وَنَحْوَ ذَلِكَ.

L21282 He said: If competence becomes apparent in him, the ruling was not thereby rendered effective until the judge lifts the legal interdiction from him. He permitted one who had not been placed under interdiction to give away all he owns—whether in a single act or repeatedly—and enforced it upon him. This is a manifest error and a severe contradiction in many respects.

قَالَ: فَإِنْ ظَهَرَ مِنْهُ الرُّشْدُ لَمْ يَكُنْ بِذَلِكَ نَافِذَ الْأَمْرِ حَتَّى يَفُكَّ الْقَاضِي عَنْهُ الْحَجْرَ، وَأَجَازَ لِمَنْ لَمْ يُحْجَرْ عَلَيْهِ إِعْطَاءَ كُلِّ مَا يَمْلِكُ فِي ضَرْبَةٍ وَفِي مَرَّاتٍ وَأَنْفَذَهُ عَلَيْهِ - وَهَذَا خَطَأٌ ظَاهِرٌ وَتَنَاقُضٌ شَدِيدٌ فِي وُجُوهٍ جَمَّةٍ -:

L21283 One of them, and the greatest, is nullifying righteous deeds which Allah the Exalted has exhorted towards and made as means of salvation from the Fire—such as manumission and charity—and nullifying trade which Allah the Exalted has permitted. This constitutes obstructing the path of Allah the Exalted and collaborating in sin and transgression, not in righteousness and piety, without any clear evidence—neither from the Qur'an nor the Sunnah.

أَحَدُهَا وَأَعْظَمُهَا - إِبْطَالُهُ أَعْمَالَ الْبِرِّ الَّتِي نَدَبَ اللَّهُ تَعَالَى إِلَيْهَا وَجَعَلَهَا مُنْقِذَاتٍ مِنْ النِّيرَانِ: كَالْعِتْقِ، وَالصَّدَقَةِ، وَإِبْطَالُهُ الْبَيْعَ الَّذِي أَبَاحَهُ اللَّهُ تَعَالَى - وَهَذَا صَدٌّ عَنْ سَبِيلِ اللَّهِ تَعَالَى، وَتَعَاوُنٌ عَلَى الْإِثْمِ وَالْعُدْوَانِ، لَا عَلَى الْبِرِّ وَالتَّقْوَى بِغَيْرِ بُرْهَانٍ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ.

L21284–21286 The second aspect is invalidating the guardianship of one whom God Almighty has appointed as guardian **for her** in marriage. If in their view he holds the legal status of minors and the insane—**those two** who are not addressed by divine injunctions, not obligated to save themselves, and granted no legal authority—then let them exempt him from prayer and fasting. But if according to them he is legally accountable, addressed by divine commands, bound by obligations and prohibitions, encouraged toward recommended acts, entitled to reward, and liable to punishment, why do they obstruct him from what God Almighty has **directed him to** and placed within his authority through guardianship, as stated in His words: *"Marry the unmarried among you and the righteous among your male and female

وَثَانِيهَا - إِبْطَالُهُ الْوَلَايَةَ لِمَنْ جَعَلَهُ اللَّهُ تَعَالَى وَلِيًّا لَهَا فِي الْإِنْكَاحِ - فَإِنْ كَانَ عِنْدَهُمْ فِي حُكْمِ الصَّغِيرِ، وَالْمَجْنُونِ، اللَّذَيْنِ هُمَا غَيْرُ مُخَاطَبَيْنِ، وَلَا مُكَلَّفَيْنِ إِنْقَاذَ أَنْفُسِهِمَا مِنْ النَّارِ، وَلَا وَلَايَةَ لَهُمَا، فَلْيُسْقِطُوا عَنْهُ الصَّلَاةَ، وَالصَّوْمَ، وَإِنْ كَانَ عِنْدَهُمْ مُكَلَّفًا مُخَاطَبًا مَأْمُورًا مَنْهِيًّا مَنْدُوبًا مَوْعُودًا مُتَوَعَّدًا: فَمَا بَالُهُمْ يَحُولُونَ بَيْنَهُ وَبَيْنَ مَا نَدَبَهُ اللَّهُ تَعَالَى إِلَيْهِ، وَجَعَلَهُ فِي يَدَيْهِ مِنْ الْوَلَايَةِ بِقَوْلِهِ تَعَالَى: {وَأَنْكِحُوا الْأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] وَمَا الَّذِي أَسْقَطَ عَنْهُ هَذَا الْخِطَابَ وَأَوْقَعَ عَلَيْهِ

servants”* [24:32]? What nullifies this divine address for him, while the obligations of prayer, fasting, prohibitions, permissions, and enforcement of legal penalties still apply? We cannot comprehend this. Should they argue, “Had we known he intends this for God’s sake, we would not have prevented him,” we reply: **Your knowledge of this from him, or your ignorance of it from him, is no different from your knowledge and ignorance regarding others** whom you permit to fulfill all such obligations and validate their actions. Perhaps he is farther from God’s piety and lesser... Taking pride in religion—and even more transgressing than this is what you have interposed, through false assumptions, between him and the truth he acknowledges from his Lord, the Exalted.[6]

الْخِطَابُ الصَّلَاةَ، وَالصَّوْمَ، وَالتَّحْرِيمَ وَالتَّحْلِيلَ، وَإِقَامَةَ الْحُدُودِ؟ وَمَا نَدْرِي مَا هَذَا؟ فَإِنْ قَالُوا: لَوْ عَلِمْنَا أَنَّهُ يَقْصِدُ بِذَلِكَ اللَّهَ تَعَالَى، لَمْ نَمْنَعْهُ. قُلْنَا لَهُمْ: مَا عِلْمُكُمْ بِهَذَا مِنْهُ، وَلَا جَهْلُكُمْ بِهِ مِنْهُ، إِلَّا كَعِلْمِكُمْ بِهِ وَجَهْلِكُمْ مِنْ غَيْرِهِ، مِمَّنْ تُطْلِقُونَهُ عَلَى كُلِّ ذَلِكَ وَتُنَفِّذُونَهُ مِنْهُ، وَلَعَلَّهُ أَبْعَدُ مِنْ تَقْوَى اللَّهِ تَعَالَى، وَأَقَلُّ اهْتِبَالًا بِالدِّينِ، وَأَطْغَى مِنْ هَذَا الَّذِي حُلْتُمْ بَيْنَهُ وَبَيْنَ مَا يُقِرُّ بِهِ مِنْ رَبِّهِ تَعَالَى بِالظُّنُونِ الْكَاذِبَةِ.

L21287 The third is their invalidation of people’s wealth obtained through sale or loan—both of which Allah the Almighty has permitted—and this is a grave enormity among the gravest. How did they derive this ruling? We seek refuge in Allah from it. This constitutes wrongful appropriation of wealth, and Allah the Exalted has also forbidden this. If they absolve him of the people’s binding rights owed to him—namely the sale prices and repayment of loans stipulated by the explicit text of the Quran—then let them absolve him of retaliation for crimes against people’s wealth and lives. Otherwise, they have contradicted themselves in the most repugnant manner—and this is blatant collaboration in sin and transgression.

وَثَالِثُهَا - إِبْطَالُهُمْ أَمْوَالَ النَّاسِ الَّتِي يَأْخُذُهَا بِالْبَيْعِ أَوْ الْقَرْضِ اللَّذَيْنِ أَبَاحَهُمَا اللَّهُ عَزَّ وَجَلَّ - وَهَذِهِ عَظِيمَةٌ مِنْ الْعَظَائِمِ مَا نَدْرِي أَيْنَ وَجَدُوا هَذَا الْحُكْمَ؟ وَنَعُوذُ بِاَللَّهِ مِنْهُ، وَهَذَا إيكَالٌ لِلْمَالِ بِالْبَاطِلِ، وَقَدْ حَرَّمَ اللَّهُ تَعَالَى هَذَا أَيْضًا وَإِذَا أَسْقَطُوا عَنْهُ حُقُوقَ النَّاسِ اللَّازِمَةَ لَهُ مِنْ أَثْمَانِ الْبَيْعِ وَرَدِّ الْقَرْضِ بِنَصِّ الْقُرْآنِ، فَلْيُسْقِطُوا عَنْهُ قِصَاصَ الْجِنَايَاتِ فِي أَمْوَالِ النَّاسِ وَدِمَائِهِمْ، وَإِلَّا فَقَدْ تَنَاقَضُوا أَقْبَحَ تَنَاقُضٍ - وَهَذَا هُوَ التَّعَاوُنُ عَلَى الْإِثْمِ وَالْعُدْوَانِ جِهَارًا.

L21288 The fourth—and most flagrant in contradiction—is his enforcement of the squandering that is truly corruptive and fraudulent transactions prior to the judge’s interdiction upon him, alongside his rejection of the charitable acts and manumissions performed after the judge’s interdiction. Thus, the judge’s ruling becomes more effective than the ruling of Allah the Exalted, and no respect is accorded to the judge’s authority, whoever he may be. For Allah the Exalted has never made the judge’s ruling a means of legitimizing or prohibiting; the judge is merely an executor through his juridical authority against those who refuse compliance alone—he possesses no other attribute or purpose beyond this. Otherwise, let them bring us a verse or prophetic precedent contradicting this. Allah rejects such notions—and all of this, we

وَرَابِعُهَا - وَهُوَ أَفْحَشُهَا فِي التَّنَاقُضِ: إنْفَاذُهُ مَا فَعَلَ مِنْ التَّبْذِيرِ الْمُفْسِدِ حَقًّا، وَبُيُوعِ الْغَبْنِ قَبْلَ أَنْ يَحْجُرَ عَلَيْهِ الْقَاضِي، وَرَدِّهِ مَا فَعَلَ مِنْ الصَّدَقَةِ وَالْعِتْقِ بَعْدَ حَجْرِ الْقَاضِي عَلَيْهِ، فَكَانَ حُكْمُ الْقَاضِي أَنْفَذَ مِنْ حُكْمِ اللَّهِ تَعَالَى، وَلَا كَرَامَةَ لِوَجْهِ الْقَاضِي كَائِنًا مَنْ كَانَ، فَمَا جَعَلَ اللَّهُ تَعَالَى قَطُّ حُكْمَ الْقَاضِي مُحَلِّلًا وَلَا مُحَرِّمًا، إنَّمَا الْقَاضِي مُنَفِّذٌ بِسُلْطَانِهِ عَلَى مَنْ امْتَنَعَ فَقَطْ - لَا خَصْلَةَ لَهُ غَيْرُهَا وَلَا مَعْنًى سِوَى هَذَا - وَإِلَّا فَلْيَأْتُونَا بِآيَةٍ، أَوْ سُنَّةٍ، بِخِلَافِ هَذَا، وَيَأْبَى اللَّهُ مِنْ ذَلِكَ - وَهَذَا كُلُّهُ لَا نَدْرِي مِنْ أَيْنَ أَخَذُوهُ؟

[6] **Qur’an references (L21284):** Qur’an 24:32 (An-Nur).

know not from where they derived it. The fifth is his nullification of all the individual's actions, even if sound, unless the judge lifts the interdiction from him—this ruling is akin to the preceding one.

وَخَامِسُهَا - إِبْطَالُهُ جَمِيعَ أَفْعَالِهِ وَإِنْ كَانَتْ رُشْدًا مَا لَمْ يَفُكَّ الْقَاضِي عَنْهُ الْحَجْرَ - وَهَذِهِ كَالَّتِي قَبْلَهَا.

L21289 The sixth point is his permitting the guardian to provide a month's expenses while releasing his authority over it. Would that I knew from whence this strange categorization emerged! What difference exists between releasing authority over a month's expenses and releasing it over a year's expenses or two years' expenses? If they say: "A month's expenses are negligible," we respond: There may be cases where a month's expenses constitute a substantial amount, and cases where ten years' expenses constitute a trivial amount. The guardian's transfer of the ward's wealth cannot escape being either obligatory or forbidden. If obligatory, transferring all of it becomes obligatory. If forbidden, even a small portion of the forbidden remains forbidden. Is this not the identical argument they condemned the followers of Abū Ḥanīfah for - permitting minor intoxicants while prohibiting substantial ones?

وَسَادِسُهَا - إِجَازَتُهُ أَنْ يُعْطِيَهُ الْوَلِيُّ نَفَقَةَ شَهْرٍ يُطْلِقُ يَدَهُ عَلَيْهَا، فَلَيْتَ شَعْرِي مِنْ أَيْنَ خَرَجَ هَذَا التَّقْسِيمُ الْعَجِيبُ؟ وَمَا الْفَرْقُ بَيْنَ إِطْلَاقِ يَدِهِ عَلَى نَفَقَةِ شَهْرٍ وَبَيْنَ إِطْلَاقِهَا عَلَى نَفَقَةِ سَنَةٍ أَوْ نَفَقَةِ سَنَتَيْنِ؟ فَإِنْ قَالُوا: نَفَقَةُ شَهْرٍ قَلِيلَةٌ؟ قُلْنَا: قَدْ يَكُونُ مَالٌ تَكُونُ نَفَقَةُ شَهْرٍ فِيهِ كَثِيرًا وَيَكُونُ مَالٌ نَفَقَةُ عَشْرَةِ أَعْوَامٍ فِيهِ قَلِيلًا، وَلَا يَخْلُو دَفْعُ مَالِهِ إِلَيْهِ مِنْ أَنْ يَكُونَ وَاجِبًا، أَوْ حَرَامًا، فَإِنْ كَانَ وَاجِبًا فَدَفْعُهُ كُلُّهُ إِلَيْهِ وَاجِبٌ، وَإِنْ كَانَ حَرَامًا فَقَلِيلُ الْحَرَامِ حَرَامٌ - وَهَذَا بِعَيْنِهِ أَنْكَرُوا عَلَى أَصْحَابِ أَبِي حَنِيفَةَ فِي إِبَاحَتِهِمْ قَلِيلَ الْمُسْكِرِ وَتَحْرِيمِهِمْ كَثِيرَهُ؟

L21290–21292 And the seventh of them is their carrying out the actions of the immoral wrongdoers who transgress against Muslims through every evil deed—those who purchase intoxicants and profit from immorality when they amass wealth by any means possible. Through wrongdoing and other means, they permit their sales, purchases, and gifts—even if these predominantly and ostensibly serve other than Allah the Exalted—even if it consumes all they possess, leaving them afterward as impoverished beggars. Yet they enforce from it the squandering Allah the Exalted has prohibited and the extravagance that leaves one afterward blameworthy and exhausted, while prohibiting manumission and charity of a dirham—even if the donor has vast wealth and is among those deceived in sales—and they describe him as one who fails to safeguard his wealth. What contradiction is more glaring than claiming one's foundation is the preservation and protection of wealth, yet permitting a person to give away all his wealth until he and his dependents are left starving—enforcing this on him—while preventing another from manumitting a slave, giving a dirham in charity, or purchasing fruit to consume, though he retains sufficient wealth to sustain himself and his dependents? They then

وَسَابِعُهَا - إِنْفَاذُهُمْ أَفْعَالَ الْفُسَّاقِ الظَّلَمَةِ الْمُتَعَدِّينَ عَلَى الْمُسْلِمِينَ بِكُلِّ بَائِقَةٍ الْمُبْتَاعِينَ لِلْخُمُورِ الْمُنْهَمِكِينَ فِي أَجْرِ الْفِسْقِ إِذَا كَانُوا جَمَّاعِينَ لِلْمَالِ مِنْ أَيِّ وَجْهٍ أَمْكَنَ بِالظُّلْمِ وَغَيْرِهِ، فَيُجِيزُونَ بَيْعَهُمْ وَشِرَاءَهُمْ وَهِبَاتِهِمْ - وَإِنْ كَانَتْ فِي الْأَغْلَبِ وَالْأَظْهَرِ لِغَيْرِ اللَّهِ تَعَالَى - وَإِنْ أَتَى ذَلِكَ عَلَى كُلِّ مَا يَمْلِكُونَهُ وَبَقُوا بَعْدَهُ فُقَرَاءَ مُتَكَفِّفِينَ -: فَأَنْفَذُوا مِنْهُ التَّبْذِيرَ الَّذِي حَرَّمَ اللَّهُ تَعَالَى، وَالْبَسْطَ الَّذِي يَقْعُدُ عَلَيْهِ بَعْدَهُ مَلُومًا مَحْسُورًا، وَرَدَّهُمْ الْعِتْقَ، وَالصَّدَقَةَ بِدِرْهَمٍ، وَإِنْ كَانَ ذَا مَالٍ عَظِيمٍ مِمَّنْ يُخْدَعُ فِي الْبُيُوعِ وَيَصِفُونَهُ بِأَنَّهُ لَا يُحْسِنُ ضَبْطَ مَالِهِ - فَأَيُّ تَنَاقُضٍ أَفْحَشُ مِمَّنْ يُجْعَلُ أَصْلُهُ بِزَعْمِهِ ضَبْطَ الْمَالِ وَحِفْظَهُ؟ ثُمَّ يُجِيزُونَ مِنْ وَاحِدٍ إِعْطَاءَ مَالِهِ كُلِّهِ حَتَّى يَبْقَى هُوَ وَعِيَالُهُ جَاعَةً وَيُنْفِذُونَهُ عَلَيْهِ، وَيَمْنَعُونَ آخَرَ مِنْ عِتْقِ: عَبْدٍ، وَصَدَقَةِ بِدِرْهَمٍ، وَابْتِيَاعِ فَاكِهَةٍ يَأْكُلُهَا، وَوَرَاءَهُ مِنْ

assert his foundation is supposedly to shield him from deception regarding his wealth, while permitting blatant deception in others' vast wealth. What is this calamity? What is this negligence? To what extent does this contradiction reach? Issuing religious rulings based on such claims—without Quran, Sunnah, companion's opinion, valid analogy, or rationally acceptable view—we seek refuge in Allah from such affliction.

الْمَالِ مَا يَقُومُ بِأَمْثَالِهِ وَأَمْثَالِ عِيَالِهِ، ثُمَّ يَجْعَلُونَ أَصْلَهُ بِزَعْمِهِمْ دَفْعَ الْخَدِيعَةِ لَهُ عَنْ مَالِهِ. وَهُمْ يُجِيزُونَ الْخَدِيعَةَ الْمَكْشُوفَةَ فِي الْمَالِ الْعَظِيمِ لِغَيْرِهِ - فَمَا هَذَا الْبَلَاءُ، وَمَا هَذَا التَّخَاذُلُ، وَكَمْ هَذَا التَّنَاقُضُ؟ وَالْحُكْمُ فِي الدِّينِ بِمِثْلِ هَذِهِ الْأَقْوَالِ بِلَا قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ يُعْقَلُ - وَنَعُوذُ بِاللَّهِ مِنْ الْبَلَاءِ.

L21293 Al-Shafi'i held the same position in all of this, except that he stated: If he is a spendthrift, all his actions are nullified—whether the judge has placed him under guardianship or not. If he attains sound judgment, all his actions are effective—whether the judge has lifted the guardianship restriction or not. Everything we have applied to Malik applies to him, except what pertains solely to these two scenarios.

وَقَالَ الشَّافِعِيُّ بِمِثْلِ هَذَا كُلِّهِ، إلَّا أَنَّهُ قَالَ: إنْ كَانَ مُفْسِدًا فَجَمِيعُ أَفْعَالِهِ مَرْدُودَةٌ - حَجَرَ عَلَيْهِ الْقَاضِي أَوْ لَمْ يَحْجُرْ، وَإِذَا رَشَدَ فَجَمِيعُ أَفْعَالِهِ نَافِذَةٌ - حَلَّ عَنْهُ الْقَاضِي الْحَجْرَ أَوْ لَمْ يَحِلَّ - وَكُلُّ مَا أَدْخَلْنَا عَلَى مَالِكٍ يَدْخُلُ عَلَيْهِ، حَاشَا مَا يَدْخُلُ فِي هَذَيْنِ الْوَجْهَيْنِ فَقَطْ.

L21294 Abu Muhammad said: The clear truth is what we have stated—that every adult is addressed by and obligated under the rulings of the Sharīʿa. Their rulings are entirely uniform: all are recommended to give charity and emancipate slaves, permitted to engage in selling, marriage, and buying, and prohibited from unjustly destroying or squandering wealth, or defrauding others concerning it, as well as giving charity in a way that does not leave them with sufficient means, as the Messenger of Allah (peace and blessings be upon him) said: "Charity is to be given from surplus wealth. Begin with those under your care."

قَالَ أَبُو مُحَمَّدٍ: وَالْحَقُّ الْوَاضِحُ هُوَ مَا قُلْنَاهُ، وَهُوَ أَنَّ كُلَّ بَالِغٍ مُخَاطَبٌ مُكَلَّفٌ أَحْكَامَ الشَّرِيعَةِ، فَحُكْمُهُمْ، كُلُّهُمْ سَوَاءٌ فِي أَنَّهُمْ مَنْدُوبُونَ إلَى الصَّدَقَةِ، وَالْعِتْقِ، مُبَاحٌ لَهُمْ الْبَيْعُ وَالنِّكَاحُ وَالشِّرَاءُ، مُحَرَّمٌ عَلَيْهِمْ إتْلَافُ الْمَالِ بِالْبَاطِلِ، وَإِضَاعَتُهُ وَالْخَدِيعَةُ عَنْهُ وَالصَّدَقَةُ بِمَا لَا يُبْقِي لَهُمْ غِنًى كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الصَّدَقَةُ عَنْ ظَهْرِ غِنًى وَابْدَأْ بِمَنْ تَعُولُ» .

L21295–21297 And as he - peace be upon him - said: "Religion is sincere counsel." They asked: "For whom, O Messenger of Allah?" He said: "For Allah, His Messenger, His Book, the leaders of the Muslims, and their common people." And as he - peace be upon him - said: "Whoever deceives us is not one of us." And as Allah the Exalted said: "They deceive Allah and those who believe, but they deceive none except themselves" [Al-Baqarah: 9]. And as He, the Exalted, said: "Do not squander" [Al-Isra: 26], and as He said: "Do

وَكَمَا قَالَ - عَلَيْهِ السَّلَامُ -: «الدِّينُ النَّصِيحَةُ؟ قِيلَ لِمَنْ يَا رَسُولَ اللَّهِ؟ قَالَ: لِلَّهِ وَلِرَسُولِهِ وَلِكِتَابِهِ وَلِأَئِمَّةِ الْمُسْلِمِينَ وَعَامَّتِهِمْ» . وَكَمَا قَالَ - عَلَيْهِ السَّلَامُ -: «لَيْسَ مِنَّا مَنْ غَشَّنَا» . وَكَمَا قَالَ اللَّهُ تَعَالَى: {يُخَادِعُونَ اللَّهَ وَالَّذِينَ آمَنُوا وَمَا يَخْدَعُونَ إِلا أَنْفُسَهُمْ} [البقرة: ٩] وَكَمَا قَالَ تَعَالَى: {وَلا تُبَذِّرْ تَبْذِيرًا} [الإسراء: ٢٦] وَكَمَا قَالَ تَعَالَى: {وَلا تَجْعَلْ يَدَكَ مَغْلُولَةً إِلَى عُنُقِكَ وَلا تَبْسُطْهَا كُلَّ الْبَسْطِ فَتَقْعُدَ مَلُومًا مَحْسُورًا} [الإسراء: ٢٩]

not withhold your hand nor stretch it out fully, lest you sit blameworthy and regretful" [Al-Isra: 29].[7]

وَكُلُّ مَنْ تَصَدَّقَ وَأَعْتَقَ، وَفَعَلَ الْخَيْرَ عَنْ ظَهْرِ غِنًى -: نَفَذَ، وَلَمْ يَحِلَّ رَدُّهُ وَكُلُّ مَنْ أَعْتَقَ وَتَصَدَّقَ عَنْ غَيْرِ ظَهْرِ غِنًى -: رَدَّ وَبَطَلَ؛ لِأَنَّهُ لَا طَاعَةَ إِلَّا مَا أَمَرَ اللَّهُ تَعَالَى بِهِ، وَلَا مَعْصِيَةَ إِلَّا مَا نَهَى اللَّهُ عَنْهُ، فَالصَّدَقَةُ بِمَا لَا يُبْقِي غِنًى مَعْصِيَةٌ، وَالصَّدَقَةُ بِمَا يُبْقِي غِنًى طَاعَةٌ.

L21298 Every person who gives charity, frees a slave, or performs good deeds from a manifestation of sufficiency—their action remains valid and may not be rejected. Conversely, every person who frees a slave or gives charity without a manifestation of sufficiency—their action is rejected and nullified. For there is no obedience except in what Allah the Exalted has commanded, and no sin except in what Allah has prohibited. Thus, charity that deprives one of sufficiency constitutes sin, while charity that preserves sufficiency constitutes obedience.

وَكُلُّ مَنْ بَاعَ أَوْ اشْتَرَى فَخُدِعَ أَوْ خَدَعَ -: فَمَرْدُودٌ؛ لِأَنَّ اللَّهَ تَعَالَى حَرَّمَ الْخَدِيعَةَ وَالْغِشَّ، وَكُلُّ مَنْ بَاعَ أَوْ اشْتَرَى فَلَمْ يَغْبِنْ وَلَا غَشَّ فَنَافِذٌ؛ لِأَنَّ اللَّهَ تَعَالَى أَبَاحَ الْبَيْعَ.

L21299 Every person who sells or buys and is either deceived or deceives others—the transaction is revocable, for Allah the Exalted has prohibited deception and fraud. And every person who sells or buys without being defrauded or committing fraud—it is valid, for Allah the Exalted has permitted sale.

وَكُلُّ مَنْ أَنْفَقَ فِي مَعْصِيَةٍ فَلْسًا فَمَا فَوْقَهُ - فَمَرْدُودٌ.

L21300 Anyone who spends a *fals* or more in disobedience, it is rejected.

وَكُلُّ مَنْ أَنْفَقَ كَمَا أُمِرَ قَلَّ أَوْ كَثُرَ -: فَنَافِذٌ لَازِمٌ، وَمَا أَبَاحَ اللَّهُ تَعَالَى قَطُّ إِبْطَالَ حَقٍّ وَلَا الْمَنْعَ مِنَ الطَّاعَةِ مِنْ أَجْلِ مَعْصِيَةٍ عَصَاهَا ذَلِكَ الْمَمْنُوعُ، أَوْ خِيفَ أَنْ يَعْصِيَهَا وَلَمْ يَعْصِ بَعْدُ كَمَا لَمْ يُبِحْ أَنْ تَنْفُذَ مَعْصِيَةٌ، وَأَنْ يَمْضِيَ بَاطِلٌ مِنْ أَجْلِ بَاطِلٍ عَمِلَ بِهِ ذَلِكَ الْمُخِلُّ وَمَعْصِيَتِهِ، بَلِ الْبَاطِلُ مُبْطَلٌ قَلَّ وُجُودُهُ مِنَ الْمَرْءِ أَوْ كَثُرَ، وَالْحَقُّ نَافِذٌ قَلَّ وُجُودُهُ مِنَ الْمَرْءِ أَوْ كَثُرَ -.

L21301 Every act of spending—whether small or large—performed as commanded is valid and binding. Allah the Exalted has never permitted the nullification of a right nor the prevention of obedience due to a sin committed by the one being restricted, nor out of fear that he might sin when no sin has yet occurred—just as He has not permitted a sin to be executed or falsehood to persist on account of falsehood enacted by the transgressor through his disobedience. Rather, falsehood is invalidated whether it occurs little or much in a person, and the right is executed whether it occurs little or much in a person.

هَذَا هُوَ الَّذِي جَاءَ بِهِ الْقُرْآنُ وَالسُّنَنُ وَشَهِدَتْ لَهُ الْعُقُولُ، وَمَا عَدَا هَذَا فَبَاطِلٌ لَا خَفَاءَ بِهِ، وَتَنَاقُضٌ لَا يَحِلُّ، وَقَوْلٌ مُخَالِفٌ لِلْقُرْآنِ، وَالسُّنَنِ، وَالْعُقُولِ.

L21302 This is what the Qur'an and the Sunnah have brought, and what the intellects have attested to. Whatever diverges from this is manifest falsehood, an irreconcilable contradiction, and a statement contrary to the Qur'an, the Sunnah, and the intellects.

[7] **Qur'an references (L21295):** Qur'an 2:9 (Al-Baqarah); Qur'an 17:26 (Al-Isra); Qur'an 17:29 (Al-Isra).

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: إِنْ أَعْتَقَ الْمَحْجُورُ نَفَذَ عِتْقُهُ، وَعَلَى الْعَبْدِ أَنْ يَسْعَى لَهُ فِي قِيمَتِهِ - فَكَانَتْ هَذِهِ طَرِيفَةً جِدًّا وَلَا نَدْرِي مِنْ أَيْنَ اسْتَحَلَّ إِلْزَامَ الْعَبْدِ السَّعْيَ هَهُنَا فِي هَذِهِ الْغَرَامَةِ؟ وَقَالَ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا: مَنْ بَلَغَ مُبَذِّرًا فَهُوَ عَلَى الْحَجْرِ كَمَا كَانَ؛ لِأَنَّهُ مَحْجُورٌ عَلَيْهِ بِيَقِينٍ فَلَا يُفَكُّ عَنْهُ إِلَّا بِيَقِينٍ آخَرَ.

L21303 Muhammad ibn al-Hasan said: If a legally restricted person manumits a slave, his manumission takes effect, and the slave must labor for him to compensate for his [the slave's] value. This is an extremely peculiar ruling, and we do not know from what source he deemed it permissible to obligate the slave to labor here for this financial liability. Abu Sulayman and our colleagues stated: Whoever reaches maturity as a squanderer remains under interdiction as before, for he is judged with certainty to be a spendthrift. Thus he cannot be released from interdiction unless another certainty [of rectification] is established.

قَالُوا: فَإِنْ رَشَدَ ثُمَّ ظَهَرَ تَبْذِيرُهُ لَمْ يُحْجَرْ عَلَيْهِ، لَكِنْ يَنْفُذُ مِنْ أَفْعَالِهِ مَا وَافَقَ الْحَقَّ وَيُرَدُّ مِمَّا خَالَفَ الْحَقَّ كَغَيْرِهِ سَوَاءً.

L21304 They said: If he attains sound judgment but subsequently manifests squandering, he is not placed under interdiction. However, his actions that conform to the truth are upheld, and those that contravene it are rejected - equally as with others.

قَالَ عَلِيٌّ: أَمَّا قَوْلُهُمْ: قَدْ لَزِمَهُ الْحَجْرُ بِيَقِينٍ، فَلَا يَنْحَلُّ عَنْهُ إِلَّا بِيَقِينٍ آخَرَ -: فَقَوْلٌ صَحِيحٌ، وَالْيَقِينُ قَدْ وَرَدَ، وَهُوَ أَمْرُ اللَّهِ تَعَالَى لَهُ بِالصَّدَقَةِ، وَأَنْ يَتَّقِيَ النَّارَ بِالْعِتْقِ، بِإِطْلَاقِهِ عَلَى الْبَيْعِ إِذَا بَلَغَ، وَعَلَى النِّكَاحِ إِذَا كَانَ مُخَاطَبًا بِسَائِرِ الشَّرَائِعِ وَلَا فَرْقَ.

L21305–21306 Ali said: As for their statement, "The interdiction has been imposed upon him with certainty, so it can only be dissolved through another certainty"—this is a sound position. The certainty has indeed been established, which is the command of Allah, the Exalted, to him to give charity and to ward off the Fire through manumission, as His command extends to sale when he reaches maturity and to marriage when he becomes legally accountable for all religious obligations, with no distinction made.

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ الْمُخَالِفُونَ بِأَشْيَاءَ يَجِبُ إِيرَادُهَا، وَبَيَانُ فَاسِدِ احْتِجَاجِهِمْ بِهَا، وَوَضْعِهِمْ النُّصُوصَ فِي غَيْرِ مَوَاضِعِهَا، وَبَيَانُ ذَلِكَ بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ.

L21307 Abu Muhammad said: The opponents have argued using matters that we must present, clarify the invalidity of their arguments based on them, and expose their misapplication of texts to improper contexts—all by the might of Allah, the Exalted, and His power.

قَالَ أَبُو مُحَمَّدٍ: قَالُوا: قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَابْتَلُوا الْيَتَامَى حَتَّى إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ} [النساء: ٦] قَالُوا: فَإِنَّمَا أَمَرَ اللَّهُ تَعَالَى بِأَنْ نَدْفَعَ إِلَيْهِمْ أَمْوَالَهُمْ مَعَ إِينَاسِ الرُّشْدِ مِنْهُمْ، لَا فِي غَيْرِ هَذِهِ الْحَالِ.

L21308 Abu Muhammad said: They said: Allah, the Mighty and Sublime, declared: {Test the orphans until they reach puberty; then, if you perceive sound judgment in them, hand over their wealth to them} [An-Nisa: 6]. They said: Allah the Exalted has commanded us to hand over their wealth to them only upon perceiving sound judgment in them, not in any other circumstance.[8]

L21309 And He, the Exalted, said: {And do not entrust the foolish with your wealth

[8] **Qur'an references (L21308):** Qur'an 4:6 (An-Nisa).

which Allah has made a means of sustenance for you. Provide for them from it, clothe them, and speak to them a kind word} [An-Nisa: 5]. Thus, Allah, the Almighty and Majestic, has prohibited giving wealth to the foolish, permitting only that they be provided food from it in eating, clothed, and addressed with kind words.[9]

L21310 And the Almighty has said: {If the one owing the debt is a spendthrift, weak, or unable to dictate himself, let his guardian dictate with fairness} [Al-Baqarah: 282]. Thus, He mandated guardianship over the spendthrift and the weak.[10]

L21311 And He, the Exalted, said: {Those who, when they spend, are neither extravagant nor stingy, but maintain a just balance between the two} [Al-Furqān: 67]. And He, the Exalted, said: {Do not be wasteful} [Al-Isrā': 26], {Indeed, the wasteful are brothers of the devils} [Al-Isrā': 27]. And He, the Exalted, said: {Do not exceed limits. He does not love the extravagant} [Al-An'ām: 141]. Therefore, Allah, the Exalted, has prohibited extravagance, stinginess, and wastefulness.[11]

L21312 And He, the Exalted, said: {Do not bind your hand to your neck, nor stretch it forth to the utmost, lest you end up blameworthy and destitute} [Al-Isrāʾ: 29]. This is all they have cited from the Quran, and all of it constitutes evidence against them and contradicts their statements—as we will clarify, if Allah the Exalted wills—We know of no evidence from the Quran at all other than this fundamentally.[12]

L21313–21315 They mentioned from the Sunnah the authentic report from Al-Mughīrah ibn Shu'bah: "The Messenger of Allah—peace and blessings be upon him—prohibited the waste of wealth." They also mentioned a report we have narrated through the chain of Abū 'Ubayd: 'Amr ibn Hārūn narrated to us from... Yahya ibn Muhammad ibn Abd al-Rahman ibn Abi Lubaybah reported

وَقَالَ تَعَالَى: {وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَامًا وَارْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ وَقُولُوا لَهُمْ قَوْلا مَعْرُوفًا} [النساء: ٥] فَنَهَى عَزَّ وَجَلَّ عَنْ إِيتَاءِ السُّفَهَاءِ الْمَالَ، وَلَمْ يَجْعَلْ لَهُمْ إِلَّا أَنْ يُرْزَقُوا مِنْهَا فِي الْأَكْلِ وَيُكْسَوْا، وَيُقَالَ لَهُمْ قَوْلٌ مَعْرُوفٌ.

وَقَالَ عَزَّ وَجَلَّ: {فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لا يَسْتَطِيعُ أَنْ يُمِلَّ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ} [البقرة: ٢٨٢] فَأَوْجَبَ الْوَلَايَةَ عَلَى السَّفِيهِ، وَالضَّعِيفِ.

وَقَالَ تَعَالَى: {وَالَّذِينَ إِذَا أَنْفَقُوا لَمْ يُسْرِفُوا وَلَمْ يَقْتُرُوا وَكَانَ بَيْنَ ذَلِكَ قَوَامًا} [الفرقان: ٦٧] وَقَالَ تَعَالَى: {وَلا تُبَذِّرْ تَبْذِيرًا} [الإسراء: ٢٦] {إِنَّ الْمُبَذِّرِينَ كَانُوا إِخْوَانَ الشَّيَاطِينِ} [الإسراء: ٢٧] وَقَالَ تَعَالَى: {وَلا تُسْرِفُوا إِنَّهُ لا يُحِبُّ الْمُسْرِفِينَ} [الأنعام: ١٤١] فَحَرَّمَ اللَّهُ تَعَالَى السَّرَفَ، وَالتَّقْتِيرَ، وَالتَّبْذِيرَ.

وَقَالَ تَعَالَى: {وَلا تَجْعَلْ يَدَكَ مَغْلُولَةً إِلَى عُنُقِكَ وَلا تَبْسُطْهَا كُلَّ الْبَسْطِ فَتَقْعُدَ مَلُومًا مَحْسُورًا} [الإسراء: ٢٩] هَذَا كُلُّ مَا ذَكَرُوا مِنَ الْقُرْآنِ، وَكُلُّهُ حُجَّةٌ لَنَا عَلَيْهِمْ، وَمُخَالِفٌ لِأَقْوَالِهِمْ - عَلَى مَا نُبَيِّنُ إِنْ شَاءَ اللَّهُ تَعَالَى - مَا نَعْلَمُ مِنَ الْقُرْآنِ حُجَّةً غَيْرَ هَذَا أَصْلًا.

وَذَكَرُوا مِنَ السُّنَّةِ الْخَبَرَ الصَّحِيحَ عَنِ الْمُغِيرَةِ بْنِ شُعْبَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ إِضَاعَةِ الْمَالِ» . وَذَكَرُوا خَبَرًا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا عَمْرُو بْنُ هَارُونَ عَنْ يَحْيَى بْنُ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَبِيبَةَ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَيُّمَا رَجُلٍ كَانَ عِنْدَهُ يَتِيمٌ فَحَالَ بَيْنَهُ وَبَيْنَ أَنْ يَتَزَوَّجَ فَزَنَى فَالْإِثْمُ بَيْنَهُمَا» .

[9] **Qur'an references (L21309):** Qur'an 4:5 (An-Nisa).
[10] **Qur'an references (L21310):** Qur'an 2:282 (Al-Baqarah).
[11] **Qur'an references (L21311):** Qur'an 25:67 (Al-Furqan); Qur'an 17:26 (Al-Isra); Qur'an 17:27 (Al-Isra); Qur'an 6:141 (Al-An'am); Qur'an 7:31 (Al-A'raf).
[12] **Qur'an references (L21312):** Qur'an 17:29 (Al-Isra).

from his father that the Messenger of Allah (peace be upon him) said: “Any man who has an orphan in his care and prevents him from marrying, leading the orphan to commit adultery—the sin is shared between them.”

L21316 We do not know of any narration attributed to them besides these two, and both serve as an argument for us against them, opposing their assertions, as we will elucidate after this, if Allah, the Exalted, wills.

مَا نَعْلَمُ لَهُمْ خَبَرًا غَيْرَ هَذَيْنِ، وَكِلَاهُمَا حُجَّةٌ لَنَا عَلَيْهِمْ، وَمُخَالِفٌ لِأَقْوَالِهِمْ عَلَى مَا نُبَيِّنُ [بَعْدَ هَذَا] إِنْ شَاءَ اللَّهُ تَعَالَى.

L21317 They related from the Companions—may Allah be pleased with them—what was transmitted to us through Hishām ibn ʿUrwah from his father: ʿAlī ibn Abī Ṭālib approached ʿUthmān ibn ʿAffān and said, “Ibn Jaʿfar has purchased a sale for such and such—interdict him!” Al-Zubayr interjected, “I am his partner in this transaction.” ʿUthmān responded, “How can I interdict a man in a sale where al-Zubayr is his partner?” Through the chain of Abū ʿUbayd: ʿAffān ibn Muslim narrated to me from Ḥammād ibn Zayd from Hishām ibn Ḥassān from Ibn Sīrīn, who said: ʿUthmān said to ʿAlī, “Will you not interdict your nephew”—referring to ʿAbdullāh ibn Jaʿfar—“and interdict him? He bought a barren tract for sixty thousand. I would not desire it even if offered to me for the price of a sandal.”

وَذَكَرُوا عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مَا رُوِّينَا عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أَتَى عُثْمَانَ بْنَ عَفَّانَ فَقَالَ لَهُ: إنَّ ابْنَ جَعْفَرٍ اشْتَرَى بَيْعًا كَذَا وَكَذَا فَاحْجُرْ عَلَيْهِ؟ فَقَالَ الزُّبَيْرُ: أَنَا شَرِيكُهُ فِي الْبَيْعِ؟ فَقَالَ عُثْمَانُ: كَيْفَ أَحْجُرُ عَلَى رَجُلٍ فِي بَيْعٍ شَرِيكُهُ فِيهِ الزُّبَيْرُ؟ وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ حَدَّثَنِي عَفَّانُ بْنُ مُسْلِمٍ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ ابْنِ سِيرِينَ قَالَ: قَالَ عُثْمَانُ لِعَلِيٍّ: أَلَا تَأْخُذُ عَلَى يَدَيْ ابْنِ أَخِيك - يَعْنِي عَبْدَ اللَّهِ بْنَ جَعْفَرٍ - وَتَحْجُرُ عَلَيْهِ؟ اشْتَرَى سَبْخَةً بِسِتِّينَ أَلْفًا مَا يَسُرُّنِي أَنَّهَا لِي بِنَعْلِي.

L21318 And what we have narrated through the chain of Abu Ubayd: Muhammad ibn Kathir reported from al-Awza’i, from al-Zuhri, from al-Tufayl ibn al-Harith, who said: It reached Ibn al-Zubayr that Aisha, the Mother of the Believers, intended to sell her residential properties. He declared: “She must desist, or I shall most certainly impose interdiction upon her.” Through another chain of Abu Ubayd: Sa’id ibn al-Hakam ibn Abi Maryam reported from Abdullah ibn Lahi’ah, from Abu al-Aswad Muhammad ibn Abd al-Rahman ibn Nawfal, from Urwah ibn al-Zubayr, who said: Whenever a youth among us came of age, Abdullah ibn al-Zubayr would impose interdiction upon him.

وَمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا مُحَمَّدُ بْنُ كَثِيرٍ عَنْ الْأَوْزَاعِيِّ عَنْ الزُّهْرِيِّ عَنْ الطُّفَيْلِ بْنِ الْحَارِثِ قَالَ: بَلَغَ ابْنَ الزُّبَيْرِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَرَادَتْ بَيْعَ رُبَاعِهَا: فَقَالَ: لَتَنْتَهِيَنَّ، أَوْ لَأَحْجُرَنَّ عَلَيْهَا؟ وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا سَعِيدُ بْنُ الْحَكَمِ بْنِ أَبِي مَرْيَمَ عَنْ عَبْدِ اللَّهِ بْنِ لَهِيعَةَ عَنْ أَبِي الْأَسْوَدِ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ نَوْفَلٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: كَانَ عَبْدُ اللَّهِ بْنُ الزُّبَيْرِ إذَا نَشَأَ مِنَّا نَاشِئٌ حَجَرَ عَلَيْهِ.

L21319 From the narration of Al-Hajjaj ibn Artah, from Abdul Malik ibn Al-Mughirah Al-Taifi, from Ibn Abbas: He was asked about an elderly man whose mental capacity is deemed deficient—should he be placed under guardianship? He replied: Yes. From the narration of Yazid ibn Hurmuz,

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ عَبْدِ الْمَلِكِ بْنِ الْمُغِيرَةِ الطَّائِفِيِّ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ سُئِلَ عَنْ الشَّيْخِ الْكَبِيرِ يُنْكَرُ عَقْلُهُ أَيُحْجَرُ عَلَيْهِ؟ قَالَ: نَعَمْ. وَمِنْ طَرِيقِ يَزِيدَ بْنِ هُرْمُزَ

from Ibn Abbas: He wrote to Najdah ibn Uwaymir in response to his inquiry: “You asked me about when an orphan’s orphanhood ceases. By my life, a man may grow a beard yet remain weak in managing his own affairs and deficient in dispensing from his wealth. If he begins to undertake for himself the beneficial matters that people pursue for their interests, his orphanhood ends. However, orphanhood does not cease for the orphan until he reaches maturity and is perceived to have sound judgment. When he reaches puberty (marriageable age) and is perceived to have sound judgment, his wealth is entrusted to him—thus his orphanhood is terminated.”

عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ كَتَبَ إِلَى نَجْدَةَ بْنِ عُوَيْمِرٍ وَكَتَبْت تَسْأَلُنِي عَنْ الْيَتِيمِ مَتَى يَنْقَضِي يُتْمُهُ؟ فَلَعَمْرِي، إنَّ الرَّجُلَ لَتَنْبُتُ لِحْيَتُهُ، وَإِنَّهُ لَضَعِيفُ الْأَخْذِ لِنَفْسِهِ، ضَعِيفُ الْعَطَاءِ مِنْهَا، وَإِذَا أَخَذَ لِنَفْسِهِ مِنْ مَصَالِحِ مَا يَأْخُذُ النَّاسُ فَقَدْ ذَهَبَ عَنْهُ الْيُتْمُ، وَإِنَّهُ لَا يَنْقَطِعُ عَنْ الْيَتِيمِ الْيُتْمُ حَتَّى يَبْلُغَ وَيُؤْنَسَ مِنْهُ رُشْدٌ، وَإِذَا بَلَغَ النِّكَاحَ وَأُونِسَ مِنْهُ رُشْدٌ: دُفِعَ إلَيْهِ مَالُهُ، فَقَدْ انْقَضَى عَنْهُ يُتْمُهُ.

L21320–21321 Abu Muhammad said: We have gathered all these terms because they are part of what we transmitted through paths of transmission entirely traceable to Yazid ibn Hurmuz from Ibn Abbas. We restricted ourselves to mentioning only those through whom all of them were transmitted, and all of them have sound chains of transmission.

قَالَ أَبُو مُحَمَّد: جَمَعْنَا هَذِهِ الْأَلْفَاظَ كُلَّهَا، لِأَنَّهَا مِمَّا رُوِّينَاهُ مِنْ طُرُقٍ كُلِّهَا رَاجِعٌ إلَى يَزِيدَ بْنِ هُرْمُزَ عَنْ ابْنِ عَبَّاسٍ، فَاقْتَصَرْنَا عَلَى ذِكْرِ مَنْ رُوِيَ جَمِيعُهَا عَنْهُ فَقَطْ، وَكُلُّهَا صَحِيحُ السَّنَدِ.

L21322 Narrated through Sharik, from Simak, from Ikrimah, from Ibn Abbas regarding the verse {If you perceive in them sound judgment} [An-Nisa: 6]: The orphan is handed over his property when he attains puberty, intellect, and dignity. We know of no other opinion from the Companions (may Allah be pleased with them) besides this. This ruling entirely contradicts their view, stands as evidence against them, and mostly aligns with our position.[13]

وَمِنْ طَرِيقٍ فِيهَا شَرِيكٌ عَنْ سِمَاكٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ {فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا} [النساء: ٦] قَالَ: الْيَتِيمُ يُدْفَعُ إلَيْهِ مَالُهُ بِحُلُمٍ وَعَقْلٍ وَوَقَارٍ - مَا نَعْلَمُ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - شَيْئًا غَيْرَ هَذَا، وَكُلُّهُ مُخَالِفٌ لِقَوْلِهِمْ، وَحُجَّةٌ عَلَيْهِمْ، وَأَكْثَرُهُ مُوَافِقٌ لِقَوْلِنَا.

L21323 From the *Tabi’in*, Al-Hasan Al-Basri commented on the verse, “If you perceive sound judgment in them, then deliver their property to them” [4:6], stating: “Integrity in his religious conduct and safeguarding of his wealth.” From Al-Sha‘bi: “A man might grow grey-haired without sound judgment being perceived in him.” It has been narrated to us that similar statements are attributed to Shuraih, Al-Qasim ibn Muḥammad, Rabi‘ah, and ‘Aṭā’. We have narrated from Al-Ḍaḥḥāk: “No wealth is to be delivered to him until integrity is perceived in him. However, no narration has come from Shuraih or Al-Qasim prohibiting him from manumission, charity, or sales that do

وَعَنْ التَّابِعِينَ عَنْ الْحَسَنِ الْبَصْرِيِّ {فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إلَيْهِمْ أَمْوَالَهُمْ} [النساء: ٦] قَالَ: صَلَاحٌ فِي دِينِهِ وَحِفْظٌ لِمَالِهِ. وَعَنْ الشَّعْبِيِّ: إنْ كَانَ الرَّجُلُ لَيَشْمَطُ وَمَا أُونِسَ مِنْهُ رُشْدٌ. وَرُوِّينَا مِثْلَ قَوْلِهِمْ عَنْ شُرَيْحٍ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ، وَرَبِيعَةَ، وَعَطَاءٍ. وَرُوِّينَا عَنْ الضَّحَّاكِ: أَنَّهُ لَا يُدْفَعُ إلَيْهِ مَالٌ حَتَّى يُؤْنَسَ مِنْهُ صَلَاحٌ إلَّا أَنَّهُ لَمْ يَأْتِ، عَنْ شُرَيْحٍ، وَلَا عَنْ الْقَاسِمِ مَنْعُهُ مِنْ عِتْقٍ، وَصَدَقَةٍ، وَبَيْعٍ، لَا يَضُرُّ مَالَهُ، إنَّمَا جَاءَ ذَلِكَ عَنْ رَبِيعَةَ، وَعَطَاءٍ فَقَطْ.

[13] **Qur’an references (L21322):** Qur’an 4:6 (An-Nisa).

not harm his wealth. Such restrictions are only narrated from Rabi'ah and 'Aṭā'."[14]

L21324 Ali said: We do not know of anything from the Successors (Tabi'in) regarding them other than this, and part of it aligns with our opinion.

L21325 Abu Muhammad said: As for Allah's statement, Exalted is He: {Test the orphans until they reach the age of puberty. Then, if you discern sound judgment in them, deliver their wealth to them} [An-Nisa: 6], it is imperative to determine what constitutes the "sound judgment" that Allah commands to be recognized in them to justify transferring their wealth. We examined the Quran—which elucidates what Allah has obligated upon us—and found that "sound judgment" therein refers solely to adherence to faith and opposition to misguidance, not at all to knowledge of earning wealth. He said: {There is no compulsion in religion. Sound judgment has been clearly distinguished from misguidance. Whoever rejects idolatrous tyranny and believes in Allah has grasped the firmest handhold} [Al-Baqarah: 256]. He also said: {These are the people of sound judgment} [Al-Hujurat: 7], and: {Pharaoh's command was not sound} [Hud: 97].[15]

L21326–21328 It is established that whoever reaches the age of discernment distinguishing faith from disbelief has had the sound judgment - for which no other sound judgment exists whatsoever - recognized in him. Thus, it becomes obligatory to hand over his wealth to him. No believer or disbeliever doubts that Pharaoh and his companions were the most severe. He demonstrated greater care for wealth, managed it more meticulously, acquired it in greater abundance, and possessed deeper knowledge of the diverse avenues for accumulating it than Moses, peace be upon him. Indeed, Pharaoh was never defrauded in any matter pertaining to his wealth.

L21329 And indeed Moses—peace be upon him—and Khidr—peace be upon him—came to the people of a village and asked them for food, but they refused to

[14]**Qur'an references (L21323):** Qur'an 4:6 (An-Nisa).

[15]**Qur'an references (L21325):** Qur'an 4:6 (An-Nisa); Qur'an 2:256 (Al-Baqarah); Qur'an 49:7 (Al-Hujurat); Qur'an 11:97 (Hud).

قَالَ عَلِيٌّ: مَا نَعْلَمُ لَهُمْ عَنْ التَّابِعِينَ غَيْرَ هَذَا، وَبَعْضُهُ مُوَافِقٌ لِقَوْلِنَا.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ اللَّهِ تَعَالَى: {وَابْتَلُوا الْيَتَامَى حَتَّى إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ} [النساء: ٦] فَيَنْبَغِي أَنْ يُعْرَفَ مَا الرُّشْدُ الَّذِي أَمَرَ اللَّهُ تَعَالَى مَنْ أُونِسَ مِنْهُ بِدَفْعِ مَالِهِ إلَيْهِ؟ فَنَظَرْنَا فِي الْقُرْآنِ الَّذِي هُوَ الْمُبَيِّنُ لَنَا مَا أَلْزَمَنَا اللَّهُ تَعَالَى إيَّاهُ، فَوَجَدْنَاهُ كُلَّهُ لَيْسَ الرُّشْدُ فِيهِ إلَّا الدِّينَ، وَخِلَافَ الْغَيِّ فَقَطْ، لَا الْمَعْرِفَةَ بِكَسْبِ الْمَالِ أَصْلًا، قَالَ تَعَالَى: {لا إِكْرَاهَ فِي الدِّينِ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ فَمَنْ يَكْفُرْ بِالطَّاغُوتِ وَيُؤْمِنْ بِاللَّهِ فَقَدِ اسْتَمْسَكَ بِالْعُرْوَةِ الْوُثْقَى} [البقرة: ٢٥٦] وَقَالَ تَعَالَى: {أُولَئِكَ هُمُ الرَّاشِدُونَ} [الحجرات: ٧] وَقَالَ تَعَالَى: {وَمَا أَمْرُ فِرْعَوْنَ بِرَشِيدٍ} [هود: ٩٧].

فَصَحَّ أَنَّ مَنْ بَلَغَ مُمَيِّزًا لِلْإِيمَانِ مِنْ الْكُفْرِ فَقَدْ أُونِسَ مِنْهُ الرُّشْدُ الَّذِي لَا رُشْدَ سِوَاهُ أَصْلًا، فَوَجَبَ دَفْعُ مَالِهِ إلَيْهِ، وَمَا يَشُكُّ مُؤْمِنٌ وَلَا كَافِرٌ أَنَّ فِرْعَوْنَ وَأَصْحَابَهُ كَانُوا أَشَدَّ عِنَايَةً بِالْمَالِ، وَأَضْبَطَ لَهُ، وَأَكْثَرَ وَأَعْرَفَ بِوُجُوهِ جَمْعِهِ مِنْ مُوسَى - عَلَيْهِ السَّلَامُ -، وَأَنَّ فِرْعَوْنَ لَمْ يَكُنْ قَطُّ مَغْبُونًا فِي مَالِهِ.

وَلَقَدْ أَتَى مُوسَى - عَلَيْهِ السَّلَامُ -، وَالْخَضِرُ - عَلَيْهِ السَّلَامُ -، إلَى أَهْلِ قَرْيَةٍ فَاسْتَطْعَمَاهُمْ؟ فَأَبَوْا أَنْ يُضَيِّفُوهُمَا، فَبَاتَا لَيْلَتَهُمَا بِغَيْرِ قِرًى، وَمَا بَلَغَ فِرْعَوْنَ فِي مُلْكِهِ قَطُّ هَذَا الْمَبْلَغَ.

host them. So they spent the night without hospitality, and Pharaoh, in his kingdom, never reached this extent.

L21330 Similarly, there is no doubt that the affluent among Quraysh such as Abū Lahab, al-Walīd ibn al-Mughīrah, and Ibn Judʿan were more astute and swifter than the Messenger of Allah, peace and blessings of Allah be upon him, in acquiring wealth through any feasible means—whether by exploiting the labor of female slaves, usury, or other such practices.

L21331 We have been narrated through the chain of Imam Muslim: Abu Bakr ibn Abi Shaybah and ʻAmr al-Nāqid, both of whom said together: Aswad ibn ʻĀmir narrated to us from Ḥammād ibn Salamah, who narrated from Hishām ibn ʻUrwah and Thābit al-Bunānī. Hishām narrated from his father, from ʻĀ'ishah, the Mother of the Believers, while Thābit narrated from Anas. Then they concurred—Anas and the Mother of the Believers—in narrating the ḥadīth of date palm pollination, wherein the Messenger of Allah (peace and blessings be upon him) said: "You know best your worldly matters." Thus, it is confirmed that sound judgment is neither earning wealth nor withholding it from rightful dues and acts of righteousness, for that is prodigality. True sound judgment lies in obeying Allah the Exalted, earning wealth through means that neither harm religion nor tarnish one's honor, spending it on obligations and in ways that draw near to Allah the Exalted for deliverance from the Fire, preserving what sustains oneself and dependents through moderation and contentment. This is sound judgment.

L21332 And He, the Exalted, said: **"I will turn away from My signs those who act arrogantly on earth without right. If they see every sign, they will not believe in it. If they see the path of guidance, they will not take it as a path, and if they see the path of error, they will take it as a path"** [Al-A'raf: 146]. And likewise, every place in the Quran where guidance is mentioned.[16]

L21333 Similarly, we have not found in any part of the Arabic language that rushd refers to being astute in accumulating wealth and managing it. Thus, their interpretation of rushd based on the verse is invalidated, as is their transfer of wealth based on instilled confidence.

وَكَذَلِكَ لَا شَكَّ فِي أَنَّ الْمُقْتَطِرَ مِنْ قُرَيْشٍ كَأَبِي لَهَبٍ، وَالْوَلِيدِ بْنِ الْمُغِيرَةِ وَابْنِ جُدْعَانَ: كَانُوا أَبْصَرَ وَأَسْرَعَ إِلَى كَسْبِ الْمَالِ مِنْ أَيِّ وَجْهٍ أَمْكَنَ مِنْ مُسَاعَاةِ الْإِمَاءِ، وَالرِّبَا، وَغَيْرِ ذَلِكَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَعَمْرٌو النَّاقِدُ قَالَا جَمِيعًا: حَدَّثَنَا أَسْوَدُ بْنُ عَامِرٍ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ: وَثَابِتٍ الْبُنَانِيِّ قَالَ هِشَامٌ: عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ وَقَالَ ثَابِتٌ: عَنْ أَنَسٍ، ثُمَّ اتَّفَقَ أَنَسٌ، وَأُمُّ الْمُؤْمِنِينَ فَذَكَرَا حَدِيثَ تَلْقِيحِ النَّخْلِ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَنْتُمْ أَعْلَمُ بِأَمْرِ دُنْيَاكُمْ» . فَصَحَّ أَنَّ الرُّشْدَ لَيْسَ هُوَ كَسْبَ الْمَالِ، وَلَا مَنْعَهُ مِنْ الْحُقُوقِ، وَوُجُوهِ الْبِرِّ، بَلْ هَذَا هُوَ السَّفَهُ، وَإِنَّمَا الرُّشْدُ طَاعَةُ اللَّهِ تَعَالَى، وَكَسْبُ الْمَالِ مِنْ الْوُجُوهِ الَّتِي لَا تَثْلِمُ الدِّينَ، وَلَا تَخْلُقُ الْعِرْضَ، وَإِنْفَاقُهُ فِي الْوَاجِبَاتِ، وَفِيمَا يُتَقَرَّبُ بِهِ إلَى اللَّهِ تَعَالَى لِلنَّجَاةِ مِنْ النَّارِ، وَإِبْقَاءُ مَا يَقُومُ بِالنَّفْسِ، وَالْعِيَالِ، عَلَى التَّوَسُّطِ وَالْقَنَاعَةِ، فَهَذَا هُوَ الرُّشْدُ.

وَقَالَ تَعَالَى: {سَأَصْرِفُ عَنْ آيَاتِيَ الَّذِينَ يَتَكَبَّرُونَ فِي الأَرْضِ بِغَيْرِ الْحَقِّ وَإِنْ يَرَوْا كُلَّ آيَةٍ لا يُؤْمِنُوا بِهَا وَإِنْ يَرَوْا سَبِيلَ الرُّشْدِ لا يَتَّخِذُوهُ سَبِيلا وَإِنْ يَرَوْا سَبِيلَ الْغَيِّ يَتَّخِذُوهُ سَبِيلا} [الأعراف: ١٤٦] وَهَكَذَا كُلُّ مَكَانٍ فِي الْقُرْآنِ ذُكِرَ فِيهِ الرُّشْدُ.

وَكَذَلِكَ لَمْ نَجِدْ فِي شَيْءٍ مِنْ لُغَةِ الْعَرَبِ: أَنَّ الرُّشْدَ هُوَ الْكَيْسُ فِي جَمْعِ الْمَالِ وَضَبْطِهِ، فَبَطَلَ تَأْوِيلُهُمْ فِي الرُّشْدِ بِالْآيَةِ، وَفِي دَفْعِ الْمَالِ بِإِينَاسِهِ.

[16] **Qur'an references (L21332):** Qur'an 7:146 (Al-A'raf).

وَصَحَّ أَنَّهَا مُوَافِقَةٌ لِقَوْلِنَا، وَأَنَّ مُرَادَ اللَّهِ تَعَالَى يَقِينًا بِهَا: إنَّمَا هُوَ أَنَّ مَنْ بَلَغَ عَاقِلًا مُمَيِّزًا مُسْلِمًا وَجَبَ دَفْعُ مَالِهِ إلَيْهِ، وَجَازَ فِيهِ مِنْ جَمِيعِ أَفْعَالِهِ مَا يَجُوزُ مِنْ فِعْلِ سَائِرِ النَّاسِ كُلِّهِمْ، وَيُرَدُّ مِنْ أَفْعَالِهِ مَا يُرَدُّ مِنْ أَفْعَالِ سَائِرِ النَّاسِ كُلِّهِمْ، وَلَا فَرْقَ، وَأَنَّ مَنْ بَلَغَ غَيْرَ عَاقِلٍ، وَلَا مُمَيِّزٍ لِلدِّينِ، لَمْ يُدْفَعْ إلَيْهِ مَالُهُ.

L21334–21336 And it is established that this aligns with our position, and that Allah's intended meaning with certainty is that whoever reaches maturity as a sane, discerning Muslim, it becomes obligatory to hand over his wealth to him, and what is permissible from the actions of all people is permissible in all his actions. All of them, and his actions are rejected as are rejected the actions of all other people entirely, with no distinction. And whoever attains adulthood without mental capacity or discernment in religious matters, their wealth shall not be given to them.

وَلَوْ كَانَ الَّذِي قَالُوا فِي الرُّشْدِ، وَفِي السَّفَهِ قَوْلًا صَحِيحًا - وَمَعَاذَ اللَّهِ مِنْ ذَلِكَ - لَكَانَ طَوَائِفُ مِنْ الْيَهُودِ، وَالنَّصَارَى، وَعُبَّادِ الْأَوْثَانِ ذَوِي رُشْدٍ، وَلَكَانَ طَوَائِفُ، مِنْ الْمُسْلِمِينَ سُفَهَاءَ، وَحَاشَ لِلَّهِ مِنْ هَذَا.

L21337 If what they asserted regarding sound judgment and recklessness were a valid statement—and God forbid such a thing—then factions among the Jews, Christians, and worshippers of idols would possess sound judgment, while factions among the Muslims would be reckless. God is far removed from this!

وَأَمَّا قَوْله تَعَالَى: {وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ} [النساء: ٥] وقَوْله تَعَالَى: {فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا} [البقرة: ٢٨٢] فَإِنَّ السَّفَهَ فِي لُغَةِ الْعَرَبِ الَّتِي نَزَلَ بِهَا الْقُرْآنُ، وَبِهَا خُوطِبْنَا، لَا يَقَعُ إلَّا عَلَى ثَلَاثَةِ مَعَانٍ لَا رَابِعَ لَهَا أَصْلًا -:

L21338 As for the statement of Allah the Exalted: {Do not entrust the foolish with your property} [An-Nisa: 5] and His statement: {If the party liable for the claim is foolish or weak} [Al-Baqarah: 282], the term "foolishness" (safah) in the Arabic tongue—the language in which the Quran was revealed and through which we are addressed—applies exclusively to three meanings, with no fourth meaning whatsoever.[17]

أَحَدُهَا - الْبَذَاءُ وَالسَّبُّ بِاللِّسَانِ، وَهُمْ لَا يَخْتَلِفُونَ أَنَّ مَنْ هَذِهِ صِفَتُهُ لَا يُحْجَرُ عَلَيْهِ فِي مَالِهِ - فَسَقَطَ الْكَلَامُ فِي هَذَا الْوَجْهِ.

L21339 One of these [cases] is vulgarity and verbal abuse. The scholars unanimously agree that someone characterized by these traits cannot have their legal capacity over their property restricted—hence, the discussion on this matter is dismissed.

وَالْوَجْهُ الثَّانِي - الْكُفْرُ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَإِذَا قِيلَ لَهُمْ آمِنُوا كَمَا آمَنَ النَّاسُ قَالُوا أَنُؤْمِنُ كَمَا آمَنَ السُّفَهَاءُ أَلا إِنَّهُمْ هُمُ السُّفَهَاءُ} [البقرة: ١٣] . وَقَالَ تَعَالَى حَاكِيًا عَنْ مُوسَى - عَلَيْهِ السَّلَامُ -: أَنَّهُ قَالَ لِلَّهِ تَعَالَى {أَتُهْلِكُنَا بِمَا فَعَلَ السُّفَهَاءُ مِنَّا} [الأعراف: ١٥٥] يَعْنِي كَفَرَةَ بَنِي إسْرَائِيلَ.

L21340 The second aspect—disbelief. Allah the Exalted said: {When it is said to them, "Believe as the people have believed," they say, "Should we believe as the foolish have believed?" Unquestionably, it is they who are the foolish, but they do not know} [Al-Baqarah: 13]. And the Almighty said, quoting Moses, peace be upon him, that he said to Allah the Exalted: {Will You destroy us for what the foolish among us have done?} [Al-A'rāf: 155], referring to the disbelievers of the Children of Israel.[18]

[17] **Qur'an references (L21338):** Qur'an 4:5 (An-Nisa); Qur'an 2:282 (Al-Baqarah).
[18] **Qur'an references (L21340):** Qur'an 2:13 (Al-Baqarah); Qur'an 7:155 (Al-A'raf).

L21341 And He, the Exalted, said: {The foolish will say, "What has diverted them from their qiblah which they used to face?"} [Al-Baqarah 142]. And He, the Exalted, said: {And who would turn away from the religion of Abraham except one who fools himself?} [Al-Baqarah 130].[19]

L21342 And He, the Exalted, said—narrating from the believing jinn whom He affirmed and was pleased with—their statement: "And that the foolish among us would utter outrageous falsehood about Allah" [Al-Jinn: 4]. This constitutes a second meaning. There is no disagreement from them nor from us that disbelievers are not to be deprived of their wealth, that all their transactions in buying, selling, and gifts—all such dealings—are permissible, and that His statement, the Exalted: "Do not entrust the foolish with your wealth" [An-Nisā': 5] and His statement: "If the one liable is foolish or weak" [Al-Baqarah: 282]—He, the Exalted, never intended by this the disbelievers, nor those given to obscenity in their speech.[20]

L21343–21345 The third meaning is the absence of a rational faculty that negates eligibility for legal accountability, such as the insane and young children alone. By consensus between us and them, these are the ones God the Exalted intended in the two verses. Those characterized by this attribute do not... They are granted their wealth, yet clothed from it, sustained, and spoken to gently. Their own acknowledgment is not accepted, but their appointed guardian acknowledges on their behalf. This is confirmed as valid with certainty.

L21346 Whoever claims that a person disadvantaged in transactions and incapable of properly safeguarding his wealth—even if he is mentally competent, religiously accountable, and discerning in matters of faith—falls under the designation of "financial imprudence" mentioned in the two verses has certainly spoken falsehood. He has ascribed to Allah—the Exalted—what he knows nothing about, blindly followed matters beyond his knowledge, and asserted claims without evidence. All of this is unlawful, and it is impermissible to endorse such an opinion.

وَقَالَ تَعَالَى: {سَيَقُولُ السُّفَهَاءُ مِنَ النَّاسِ مَا وَلاهُمْ عَنْ قِبْلَتِهِمُ الَّتِي كَانُوا عَلَيْهَا} [البقرة: ١٤٢] وَقَالَ تَعَالَى: {وَمَنْ يَرْغَبُ عَنْ مِلَّةِ إِبْرَاهِيمَ إِلا مَنْ سَفِهَ نَفْسَهُ} [البقرة: ١٣٠].

وَقَالَ تَعَالَى حَاكِيًا عَنْ مُؤْمِنِي الْجِنِّ الَّذِينَ صَدَّقَهُمْ وَرَضِيَ عَنْهُمْ قَوْلُهُمْ: {وَأَنَّهُ كَانَ يَقُولُ سَفِيهُنَا عَلَى اللَّهِ شَطَطًا} [الجن: ٤] فَهَذَا مَعْنًى ثَانٍ، وَلَا خِلَافَ مِنْهُمْ وَلَا مَنَّا فِي أَنَّ الْكُفَّارَ لَا يُمْنَعُونَ أَمْوَالَهُمْ، وَأَنَّ مُعَامَلَتَهُمْ فِي الْبَيْعِ وَالشِّرَاءِ وَهِبَاتِهِمْ جَائِزٌ كُلُّ ذَلِكَ، وَأَنَّ قَوْله تَعَالَى: {وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ} [النساء: ٥] وقَوْله تَعَالَى: {فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا} [البقرة: ٢٨٢] لَمْ يُرِدْ بِهِ تَعَالَى قَطُّ الْكُفَّارَ، وَلَا ذَوِي الْبَذَاءِ فِي أَلْسِنَتِهِمْ.

وَالْمَعْنَى الثَّالِثُ - وَهُوَ عَدَمُ الْعَقْلِ الرَّافِعِ لِلْمُخَاطَبَةِ كَالْمَجَانِينِ وَالصِّبْيَانِ فَقَطْ، وَهَؤُلَاءِ بِإِجْمَاعٍ مِنَّا وَمِنْهُمْ هُمُ الَّذِينَ أَرَادَ اللَّهُ تَعَالَى فِي الْآيَتَيْنِ، وَأَنَّ أَهْلَ هَذِهِ الصِّفَةِ لَا يُؤْتَوْنَ أَمْوَالَهُمْ، لَكِنْ يُكْسَوْنَ فِيهَا، وَيُرْزَقُونَ، وَيُرْفَقُ بِهِمْ فِي الْكَلَامِ، وَلَا يُقْبَلُ إِقْرَارُهُمْ، لَكِنْ يُقِرُّ عَنْهُمْ وَلِيُّهُمُ النَّاظِرُ لَهُمْ، فَصَحَّ هَذَا بِيَقِينٍ.

فَمَنْ قَالَ: إِنَّ مَنْ يُغْبَنُ فِي الْبَيْعِ وَلَا يُحْسِنُ حِفْظَ مَالِهِ - وَإِنْ كَانَ عَاقِلًا مُخَاطَبًا بِالدِّينِ مُمَيِّزًا لَهُ -: دَاخِلٌ فِي " اسْمِ السَّفَهِ " الْمَذْكُورِ فِي الْآيَتَيْنِ، فَقَدْ قَالَ الْبَاطِلَ، وَقَالَ عَلَى اللَّهِ تَعَالَى مَا لَا عِلْمَ لَهُ بِهِ، وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَمَا لَا بُرْهَانَ لَهُ عَلَى صِحَّتِهِ - وَهَذَا كُلُّهُ حَرَامٌ لَا يَحِلُّ الْقَوْلُ بِهِ.

[19] **Qur'an references (L21341):** Qur'an 2:142 (Al-Baqarah); Qur'an 2:130 (Al-Baqarah).

[20] **Qur'an references (L21342):** Qur'an 72:4 (Al-Jinn); Qur'an 4:5 (An-Nisa); Qur'an 2:282 (Al-Baqarah).

قَالَ تَعَالَى: {وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لا تَعْلَمُونَ} [البقرة: ١٦٩] . وَقَالَ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] فَإِذْ لَا بُرْهَانَ لَهُمْ فَلَيْسُوا صَادِقِينَ فِيهِ بِلَا شَكٍّ.

L21347 He, the Exalted, said: "And that you assert about Allah what you do not know" [Al-Baqarah: 169]. He also said: "Say, 'Bring forth your proof if you are truthful'" [Al-Baqarah: 111]. Since they have no proof, they are undoubtedly untruthful in it.[21]

فَصَحَّ أَنَّ الْآيَتَيْنِ مُوَافِقَتَانِ لِقَوْلِنَا مُخَالِفَتَانِ لِقَوْلِهِمْ، وَمَا سَمَّى اللَّهُ تَعَالَى قَطُّ فِي الْقُرْآنِ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا الْعَرَبِيُّ الْجَاهِلُ بِكَسْبِ مَالِهِ، أَوْ الْمَغْبُونُ فِي الْبَيْعِ: سَفِيهًا. " وَالسَّفِيهُ " الَّذِي ذُكِرَ فِي الْآيَةِ هُوَ الَّذِي لَا عَقْلَ لَهُ لِجُنُونِهِ، وَالضَّعِيفُ الَّذِي لَا قُوَّةَ لَهُ، قَالَ تَعَالَى: {ثُمَّ جَعَلَ مِنْ بَعْدِ قُوَّةٍ ضَعْفًا} [الروم: ٥٤] وَالَّذِي لَا يَسْتَطِيعُ أَنْ يُمِلَّ: هُوَ مَنْ بِهِ آفَةٌ فِي لِسَانِهِ تَمْنَعُهُ نُكَرَسٍ، أَوْ نَحْوِ ذَلِكَ.

L21348 Thus, it is established that the two verses align with our position and contradict their position. Neither Allah the Exalted in the Quran, nor His Messenger—may Allah bless him and grant him peace—nor the Arabs have ever referred to one who is inexperienced in managing his wealth or swindled in trade as *safih*. The *safih* mentioned in the verse is the one who lacks reason due to mental impairment, and the "weak" is the one who lacks strength. Allah the Exalted said: *Then He made, after strength, weakness* [Ar-Rum: 54]. The one who is unable to dictate is someone who has a defect in his tongue that prevents him, such as muteness or similar conditions.[22]

وَلَا يَجُوزُ أَنْ يُفَسَّرَ كَلَامُ اللَّهِ تَعَالَى إِلَّا بِكَلَامِهِ، أَوْ بِكَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ بِلُغَةِ الْعَرَبِ الَّتِي أَخْبَرَ اللَّهُ تَعَالَى: أَنَّهُ أَنْزَلَ بِهَا الْقُرْآنَ، وَبِالْيَقِينِ الَّذِي لَا شَكَّ فِيهِ: أَنَّهُ مُرَادُ اللَّهِ تَعَالَى - فَهَذِهِ طَرِيقُ النَّجَاةِ، وَأَمَّا بِالظُّنُونِ، وَمَا لَا بُرْهَانَ عَلَيْهِ، فَمَعَاذَ اللَّهِ مِنْ هَذَا.

L21349 It is not permissible to interpret the words of Allah, the Exalted, except by His own words, or by the words of His Messenger—may the peace and blessings of Allah be upon him—or by the Arabic language in which Allah, the Exalted, has informed that He revealed the Quran in it, and with certainty that leaves no doubt that it is the intended meaning of Allah, the Exalted. This is the path of salvation. As for interpretations based on conjectures and that which has no proof upon it, Allah forbid such a thing.

رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ فِي قَوْلِ اللَّهِ تَعَالَى: {فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا} [النساء: ٦] قَالَ: الْعَقْلُ، لَا يُدْفَعُ إلَى الْيَتِيمِ مَالُهُ - وَإِنْ شَمِطَ - حَتَّى يُؤْنَسَ مِنْهُ رُشْدٌ، وَهَذَا هُوَ الْحَقُّ الْمُتَيَقَّنُ.

L21350 It has been narrated to us through the chain of Saʿīd ibn Manṣūr—who narrated to us from Jarīr, from Manṣūr, from Mujāhid—regarding the statement of Allah the Exalted: *"If you perceive in them sound judgment"* [4:6]. He said: (This refers to) rational judgment. Do not hand over the orphan's wealth to him—even if he turns gray-haired—until sound judgment is perceived in him. This is the unequivocal truth.[23]

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا يُونُسُ عَنْ الْحَسَنِ فِي قَوْله تَعَالَى: {وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ} [النساء: ٥] قَالَ: السُّفَهَاءُ: الصِّغَارُ، وَالنِّسَاءُ: مِنْ السُّفَهَاءِ.

L21351 From the chain of Saʿīd ibn Manṣūr: Yunus narrated to us from al-Ḥasan regarding the statement of the Exalted: "Do not give your wealth to those

[21] **Qur'an references (L21347):** Qur'an 2:169 (Al-Baqarah); Qur'an 7:33 (Al-A'raf); Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

[22] **Qur'an references (L21348):** Qur'an 30:54 (Ar-Rum); Qur'an 2:282 (Al-Baqarah).

[23] **Qur'an references (L21350):** Qur'an 4:6 (An-Nisa).

lacking judgment” [al-Nisāʾ 4:5]. He said, “Those lacking judgment are minors, and women are included among those lacking judgment.”[24]

L21352–21354 And through him to Sa’id ibn Mansur, Awn ibn Musa narrated to us: I heard Mu’awiyah ibn Qurrah saying: Accustom women to “no,” for she lacks judgment; if you obey her, she will destroy you. And through the chain of Ismāʿīl ibn Isḥāq from Yaḥyā ibn ʿAbd al-Ḥamīd al-Ḥimmānī, who narrated from his father, Ḥumayd al-Ruāsī, and ʿAbd Allāh ibn al-Mubārak. Al-Ruāsī reported: From al-Ḥasan ibn Ṣāliḥ, from al-Suddī - who attributed it to ʿAbd Allāh - concerning God’s verse “And do not give the foolish your wealth” [Quran 4:5], he stated: “Women and children.” Ibn al-Mubārak reported through Ismāʿīl from Abī Mālik: “Women and children.” He said: And my father reported from Salamah ibn Nubayṭ, from al-Ḍaḥḥāk, who said: “Women and children.”[25]

L21355 Through the same chain to Ismāʿīl: Naṣr ibn ʿAlī and Muḥammad ibn ʿAbd Allāh ibn Numayr narrated to us. Naṣr said: Abū Aḥmad narrated to us from Ibn Abī Ghaniyyah from al-Ḥakam ibn ʿUtaybah. Ibn Numayr said: My father narrated to us: al-Aʿmash narrated to us from Mujāhid. Then al-Ḥakam and Mujāhid concurred regarding Allah’s statement: {Do not give the foolish your wealth} [4:5]. Both said: “Women and children.”

Through the same chain to Ismāʿīl: Yaḥyā ibn Khalaf narrated to us: Abū ʿĀṣim narrated to us from ʿĪsā: Ibn Najīḥ narrated to us from Mujāhid concerning Allah’s statement: {Do not give the foolish your wealth which Allah has made a foundation for you} [4:5]. Mujāhid said: “Allah forbade men to give their wealth to women. The foolish are those who are wives, mothers, or daughters.”[26]

L21356 To Ismail: Yahya ibn Abd al-Hamid al-Himmani narrated to us through Shurayk, from Salim, from Saʿid—who is Ibn Jubayr—regarding the verse “And do not entrust those lacking in judgment with your wealth” [4:5]. He

وَبِهِ إِلَى سَعِيدِ بْنِ مَنْصُورٍ نا عَوْنُ بْنُ مُوسَى سَمِعْت مُعَاوِيَةَ بْنَ قُرَّةَ يَقُولُ: عَوِّدُوا النِّسَاءَ " لَا " فَإِنَّهَا سَفِيهَةٌ إنْ أَطَعْتهَا أَهْلَكَتْك وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ عَنْ يَحْيَى بْنِ عَبْدِ الْحَمِيدِ الْحِمَّانِيِّ نا أَبِي، وَحُمَيْدٌ الرُّؤَاسِيُّ، وَعَبْدُ اللَّهِ بْنُ الْمُبَارَكِ، قَالَ الرُّؤَاسِيُّ: عَنْ الْحَسَنِ بْنِ صَالِحٍ عَنْ السُّدِّيِّ - رَدَّهُ إلَى عَبْدِ اللَّهِ: - قَالَ فِي قَوْله تَعَالَى: {وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ} [النساء: ٥] قَالَ: النِّسَاءُ، وَالصِّبْيَانُ. وَقَالَ ابْنُ الْمُبَارَكِ عَنْ إسْمَاعِيلَ عَنْ أَبِي مَالِكٍ: النِّسَاءُ، وَالصِّبْيَانُ، قَالَ: وَقَالَ أَبِي: عَنْ سَلَمَةَ بْنِ نُبَيْطٍ عَنْ الضَّحَّاكِ، قَالَ: النِّسَاءُ، وَالصِّبْيَانُ.

وَبِهِ إلَى إسْمَاعِيلَ نا نَصْرُ بْنُ عَلِيٍّ، وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ، قَالَ نَصْرٌ: نا أَبُو أَحْمَدَ عَنْ ابْنِ أَبِي غَنِيَّةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَقَالَ ابْنُ نُمَيْرٍ: نَا أَبِي نَا الْأَعْمَشُ عَنْ مُجَاهِدٍ، ثُمَّ اتَّفَقَ الْحَكَمُ، وَمُجَاهِدٌ فِي قَوْلِ اللَّهِ تَعَالَى: {وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ} [النساء: ٥] قَالَا جَمِيعًا: النِّسَاءُ، وَالصِّبْيَانُ. وَبِهِ إلَى إسْمَاعِيلَ نا يَحْيَى بْنُ خَلَفٍ نا أَبُو عَاصِمٍ عَنْ عِيسَى نا ابْنُ نَجِيحٍ عَنْ مُجَاهِدٍ فِي قَوْلِ اللَّهِ تَعَالَى: {وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَامًا} [النساء: ٥] قَالَ: نَهَى الرِّجَالَ أَنْ يُعْطُوا النِّسَاءَ أَمْوَالَهُمْ، وَالسُّفَهَاءُ: مَنْ كُنَّ أَزْوَاجًا، أَوْ أُمَّهَاتٍ، أَوْ بَنَاتٍ.

وَبِهِ إلَى إسْمَاعِيلَ نا يَحْيَى بْنُ عَبْدِ الْحَمِيدِ الْحِمَّانِيُّ نا شَرِيكٌ عَنْ سَالِمٍ عَنْ سَعِيدٍ هُوَ ابْنُ جُبَيْرٍ {وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ} [النساء: ٥] قَالَ: النِّسَاءُ. قَالَ أَبُو مُحَمَّدٍ: فَاتَّفَقَ الْحَسَنُ، وَالْحَكَمُ، وَمُعَاوِيَةُ بْنُ قُرَّةَ، وَمُجَاهِدٌ، وَالضَّحَّاكُ وَسَعِيدُ بْنُ جُبَيْرٍ، وَأَبُو مَالِكٍ،

[24] **Qur’an references (L21351):** Qur’an 4:5 (An-Nisa).
[25] **Qur’an references (L21352):** Qur’an 4:5 (An-Nisa).
[26] **Qur’an references (L21355):** Qur’an 4:5 (An-Nisa).

said: “Women.” Abu Muhammad said: Al-Hasan, Al-Hakam, Mu‘awiyah ibn Qurrah, Mujahid, Al-Dahhak, Sa‘id ibn Jubayr, Abu Malik, and Abdullah—either Ibn Mas‘ud (the more evident) or Ibn Abbas—agreed that women are considered lacking in judgment and that they are among those intended in this verse.[27]

وَعَبْدُ اللَّهِ - إمَّا ابْنُ مَسْعُودٍ وَهُوَ الْأَظْهَرُ، وَإِمَّا ابْنُ عَبَّاسٍ - عَلَى أَنَّ النِّسَاءَ سُفَهَاءُ، وَأَنَّهُنَّ مِنْ الْمُرَادِ فِي هَذِهِ الْآيَةِ.

L21357 Mujahid unequivocally declared that they are the mothers, wives, and daughters. Where, then, are those who vilify [others] in opposition to the majority? All present dissenters who disagree with us on this issue reject this opinion.

وَصَرَّحَ مُجَاهِدٌ بِأَنَّهُنَّ الْأُمَّهَاتُ وَالزَّوْجَاتُ، وَالْبَنَاتُ، فَأَيْنَ الْمُشَنِّعُونَ بِخِلَافِ الْجُمْهُورِ؟ وَجَمِيعُ الْحَاضِرِينَ مِنْ الْمُخَالِفِينَ لَنَا فِي هَذِهِ الْمَسْأَلَةِ مُخَالِفُونَ لِهَذَا الْقَوْلِ.

L21358 Abū Muḥammad said: As for children, yes; but as for women, no—because neither Quranic verse nor Sunnah has stated that they are prodigal. Rather, Allah the Exalted has mentioned them alongside men in righteous deeds, as He said: *“And the men who give charity and the women who give charity…”* [al-Aḥzāb 35] and in all other righteous deeds. Thus, their reliance on this verse is invalidated—and praise be to Allah, Lord of the worlds.[28]

قَالَ أَبُو مُحَمَّد: أَمَّا الصِّبْيَانُ فَنَعَمْ، وَأَمَّا النِّسَاءُ فَلَا، لِأَنَّهُ لَمْ يَأْتِ قُرْآنٌ، وَلَا سُنَّةٌ، بِأَنَّهُنَّ سُفَهَاءُ، بَلْ قَدْ ذَكَرَهُنَّ اللَّهُ تَعَالَى مَعَ الرِّجَالِ فِي أَعْمَالِ الْبِرِّ فَقَالَ: {وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ} [الأحزاب: ٣٥] وَفِي سَائِرِ أَعْمَالِ الْبِرِّ، فَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْآيَةِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L21359–21360 As for the prohibition by Him, Exalted is He, of squandering, extravagance, and excessive giving to the fullest extent—this is the truth and our doctrine, while they oppose all of this wrongfully. They permit one who is not deceived in trade to give away his entire wealth either as charity, as a gift to a poet, or as a dower for a woman. Indeed, they even permit him to incur a heavy debt for her after transferring all his wealth to her. This constitutes the prohibited squandering, the prohibited extravagance, and the prohibited excessive giving until he becomes blameworthy and depleted. We, however, forbid all of this, invalidate it, and reject it.

وَأَمَّا تَحْرِيمُهُ تَعَالَى التَّبْذِيرَ، وَالْإِسْرَافَ، وَبَسْطَ الْيَدِ كُلَّ الْبَسْطِ فَحَقٌّ، وَهُوَ قَوْلُنَا، وَهُمْ مُخَالِفُونَ لِكُلِّ ذَلِكَ جَهْلًا، فَيُجِيزُونَ مِنْ الَّذِي لَا يُخْدَعُ فِي الْبَيْعِ إعْطَاءَ مَالِهِ كُلِّهِ إمَّا صَدَقَةً وَإِمَّا هِبَةً لِشَاعِرٍ، أَوْ فِي صَدَاقِ امْرَأَةٍ، نَعَمْ، حَتَّى إنَّهُ لَيَكْتُبُ لَهَا عَلَى نَفْسِهِ بَعْدَ خُرُوجِهِ لَهَا عَنْ جَمِيعِ مَالِهِ الدَّيْنَ الثَّقِيلَ، وَهَذَا هُوَ التَّبْذِيرُ الْمُحَرَّمُ، وَالْإِسْرَافُ الْمُحَرَّمُ، وَبَسْطُ الْيَدِ كُلَّ الْبَسْطِ حَتَّى يَقْعُدَ مَلُومًا مَحْسُورًا، وَنَحْنُ نَمْنَعُ مِنْ هَذَا كُلِّهِ وَنُبْطِلُهُ وَنَرُدُّهُ.

L21361 Then they prevent others from giving charity of a dirham during his lifetime, and permit one who frees his slave even if he owns a hundred slaves. They enforce the execution of their wills even if they are extensive after their death, yet restrict charity and emancipation involving small or large amounts

ثُمَّ يَمْنَعُونَ آخَرِينَ مِنْ الصَّدَقَةِ بِدِرْهَمٍ فِي حَيَاتِهِ، وَمَنْ عَتَقَ عَبْدَهُ وَإِنْ كَانَ لَهُ مِائَةُ عَبْدٍ، وَيُنْفِذُونَ وَصِيَّتَهُمْ وَإِنْ عَظُمَتْ بَعْدَ مَوْتِهِمْ وَيَحْجُرُونَ الصَّدَقَةَ، وَالْعِتْقَ بِالْيَسِيرِ وَالْكَثِيرِ، عَلَى مَنْ يُخْدَعُ فِي الْبَيْعِ، وَلَا يَحْجُرُونَ عَلَى مَنْ يَبْتَاعُ الْخُمُورَ، وَيُعْطِي أَجْرَ الْفِسْقِ، وَيُنْفِقُ عَلَى النُّدْمَانِ، وَفِي الْقِمَارِ، وَإِنْ أَكْثَرَ ذَلِكَ إذَا كَانَ بَصِيرًا بِكَسْبِ

[27] **Qur’an references (L21356):** Qur’an 4:5 (An-Nisa).
[28] **Qur’an references (L21358):** Qur’an 37:182 (As-Saffat); Qur’an 33:35 (Al-Ahzab).

upon those deceived in transactions. They impose no restrictions on those who purchase intoxicants, pay wages for immorality, spend on companions, or engage in gambling—even if done extensively—provided they are fully aware of acquiring wealth through oppression or lawful means, controlling it through lawful and unlawful channels while withholding Zakāh and charity. These are contradictions of utmost absurdity, with evident error lacking any rational basis. At times, they freely allow the total reckless waste of wealth in falsehood; at others, they exercise excessive caution by rejecting charity of a dirham or the emancipation of a single soul, though neither causes harm to the estate.

الْمَالِ مِنْ ظُلْمٍ وَغَيْرِ ظُلْمٍ ضَابِطًا لَهُ مِنْ حَقٍّ وَغَيْرِ حَقٍّ، وَمَانِعًا مِنْ زَكَاةٍ وَصَدَقَةٍ، وَهَذِهِ تَنَاقُضَاتٌ فِي غَايَةِ السَّمَاجَةِ، وَظُهُورُ الْخَطَأِ بِغَيْرِ وَجْهٍ يُعْرَفُ، فَمَرَّةً يُطْلِقُونَ إتْلَافَ الْمَالِ جُمْلَةً فِي الْبَاطِلِ، وَمَرَّةً يَحْتَاطُونَ فَيَرُدُّونَ صَدَقَةَ دِرْهَمٍ، وَعِتْقَ رَقَبَةٍ لَا ضَرَرَ عَلَى الْمَالِ فِيهِمَا.

L21362 At times, they permit deception in sales of thousands and do not disapprove of it, saying, "A sale is deception." At other times, they invalidate a valid sale containing no deception out of fear that someone might be deceived again. This is a contradiction akin to the preceding one, and constitutes upholding what is irrational—neither attested by the Quran, nor the Sunnah, nor rational basis, nor sound opinion.

وَمَرَّةً يُجِيزُونَ الْخَدِيعَةَ فِي الْأُلُوفِ فِي الْبَيْعِ وَلَا يَكْرَهُونَهَا وَيَقُولُونَ: الْبَيْعُ خُدْعَةٌ، وَمَرَّةً يُبْطِلُونَ الْبَيْعَ الصَّحِيحَ الَّذِي لَا خَدِيعَةَ فِيهِ خَوْفَ أَنْ يُخْدَعَ مَرَّةً أُخْرَى، وَهَذَا فِي التَّنَاقُضِ كَالَّذِي قَبْلَهُ، وَفِي الْقَوْلِ بِمَا لَا يُعْقَلُ وَلَا يَشْهَدُ لَهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا مَعْقُولٌ، وَلَا رَأْيٌ سَدِيدٌ.

L21363 As for us, we reject deception and fraud wherever they occur—whether rare or frequent—and from whomever they occur. We permit valid sales free of deception wherever found, and from whomever found. We reject every gift given for wrongful purposes—whether small or large—and validate every gift given rightfully—whether small or large. This is what the revealed texts have established, what sound intellects testify to, and what the correct opinions they adhere to confirm. By these principles, they judge according to the religion of Allah, the Exalted. All praise is to Allah, Lord of the worlds.

وَأَمَّا نَحْنُ فَنَرُدُّ الْخَدِيعَةَ وَالْغِشَّ حَيْثُ وُجِدَا، وَمِمَّنْ وُجِدَا - قَلَّا أَمْ كَثُرَا - وَنُجِيزُ الْبَيْعَ الصَّحِيحَ الَّذِي لَا خَدِيعَةَ فِيهِ حَيْثُ وُجِدَ، وَمِمَّنْ وُجِدَ، وَنَرُدُّ كُلَّ عَطِيَّةٍ فِي بَاطِلٍ - قَلَّتْ أَمْ كَثُرَتْ - وَنُمْضِي كُلَّ عَطِيَّةٍ فِي حَقٍّ - قَلَّتْ أَمْ كَثُرَتْ - وَبِهَذَا جَاءَتْ النُّصُوصُ، وَلَهُ شَهِدَتْ الْعُقُولُ، وَالْآرَاءُ الصِّحَاحُ الَّتِي إلَيْهِمَا يَنْتَمُونَ، وَبِهَا فِي دِينِ اللَّهِ تَعَالَى يَقْضُونَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L21364 Abu Muhammad said: With the help of Allah the Exalted, we interpret squandering, extravagance, and stretching one's hand to the utmost limit of excess—all that Allah the Exalted has forbidden and rebuked—unlike their interpretation, which they neither understand nor understand at all. There is no might nor power except with Allah, the Most High, the Almighty.

قَالَ أَبُو مُحَمَّد: وَنَحْنُ نُفَسِّرُ بِعَوْنِ اللَّهِ تَعَالَى التَّبْذِيرَ، وَالْإِسْرَافَ، وَبَسْطَ الْيَدِ كُلَّ الْبَسْطِ الَّتِي حَرَّمَ اللَّهُ تَعَالَى وَزَجَرَ عَنْهَا، لَا كَتَفْسِيرِهِمْ الَّذِي لَا يَفْهَمُونَهُ، وَلَا يَفْهَمُونَهُ أَصْلًا، وَلَا حَوْلَ وَلَا قُوَّةَ إلَّا بِاَللَّهِ الْعَلِيِّ الْعَظِيمِ.

L21365–21367 Ali said: These prohibited actions—their entire meaning is one, and it en-

compasses that every expenditure Allah the Exalted has permitted and enjoined—whether abundant or modest—is neither wastefulness, nor squandering, nor complete extravagance in the fullest sense, because it... Exalted is He. He does not permit what He has prohibited at the same time. There is no doubt that what He permits is entirely distinct from what He forbids—and this is precisely our doctrine, and all praise is due to Allah.

قَالَ عَلِيٌّ: هَذِهِ الْأَعْمَالُ الْمُحَرَّمَةُ مَعْنَاهَا كُلُّهَا وَاحِدٌ وَيَجْمَعُهُ أَنَّ كُلَّ نَفَقَةٍ أَبَاحَهَا اللَّهُ تَعَالَى وَأَمَرَ بِهَا - كَثُرَتْ أَمْ قَلَّتْ - فَلَيْسَتْ إسْرَافًا وَلَا تَبْذِيرًا وَلَا بَسْطَ الْيَدِ كُلَّ الْبَسْطِ؛ لِأَنَّهُ تَعَالَى لَا يُحِلُّ مَا حَرَّمَ مَعًا، فَلَا شَكَّ فِي أَنَّ الَّذِي أَبَاحَ هُوَ غَيْرُ الَّذِي نَهَى عَنْهُ، وَهُوَ نَفْسُ قَوْلِنَا - وَلِلَّهِ الْحَمْدُ.

L21368 Every expenditure that Allah the Exalted has prohibited—whether small or large—is extravagance, squandering, and excessive spending in full measure. For there is no doubt that what Allah has explicitly prohibited in detail corresponds to what He prohibited in general terms. Praise be to Allah abundantly, and this is supported by authentic reports—it has been transmitted to us through the chain of Ismail ibn Ishaq, from Muhammad ibn Kathir, from Sulayman ibn Kathir, from Husayn, from Ikrimah, from Ibn Abbas, who said regarding the squanderer: "He is the one who spends unlawfully."

وَكُلُّ نَفَقَةٍ نَهَى اللَّهُ تَعَالَى عَنْهَا - قَلَّتْ أَمْ كَثُرَتْ - فَهِيَ الْإِسْرَافُ وَالتَّبْذِيرُ وَبَسْطُ الْيَدِ كُلَّ الْبَسْطِ، لِأَنَّهُ لَا شَكَّ فِي أَنَّ الَّذِي نَهَى اللَّهُ تَعَالَى عَنْهُ مُفَسَّرًا هُوَ الَّذِي نَهَى عَنْهُ مُجْمَلًا - وَلِلَّهِ الْحَمْدُ كَثِيرًا، وَبِهَذَا جَاءَتْ الْآثَارُ -: رُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ نا مُحَمَّدُ بْنُ كَثِيرٍ أَنَا سُلَيْمَانُ بْنُ كَثِيرٍ عَنْ حُصَيْنٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ فِي الْمُبَذِّرِ: هُوَ الَّذِي يُنْفِقُ فِي غَيْرِ حَقٍّ.

L21369 And from the chain of Yahya ibn Sa'id al-Qattan, from Sufyan al-Thawri, from Abu'l-'Ubaydayn, from Ibn Mas'ud regarding the saying of Allah, the Exalted: {And do not squander extravagantly} [Al-Isra: 26], he said: Spending in ways contrary to its rightful purpose.[29]

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي الْعُبَيْدَيْنِ عَنْ ابْنِ مَسْعُودٍ فِي قَوْلِ اللَّهِ تَعَالَى: {وَلا تُبَذِّرْ تَبْذِيرًا} [الإسراء: ٢٦] قَالَ: الْإِنْفَاقُ فِي غَيْرِ حَقِّهِ.

L21370 And through the chain of Ibn Wahb, Khalid ibn Humayd reported to me from 'Uqayl ibn Khalid from al-Zuhri that he would comment on Allah's words: {Do not make your hand tied to your neck, nor stretch it out completely} [Al-Isra: 29], saying: Do not withhold it from a right, nor spend it in falsehood.[30]

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي خَالِدُ بْنُ حُمَيْدٍ عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنْ الزُّهْرِيِّ أَنَّهُ كَانَ يَقُولُ فِي قَوْلِ اللَّهِ تَعَالَى: {وَلا تَجْعَلْ يَدَكَ مَغْلُولَةً إِلَى عُنُقِكَ وَلا تَبْسُطْهَا كُلَّ الْبَسْطِ} [الإسراء: ٢٩] قَالَ: لَا تَمْنَعْهُ مِنْ حَقٍّ وَلَا تُنْفِقْهُ فِي بَاطِلٍ.

L21371 Al-Zuhri said: Similarly, the words of Allah, the Most High – "And those who, when they spend, are neither extravagant nor miserly" [Al-Furqan: 67].[31]

قَالَ الزُّهْرِيُّ: وَكَذَلِكَ قَوْله تَعَالَى: {وَالَّذِينَ إِذَا أَنْفَقُوا لَمْ يُسْرِفُوا وَلَمْ يَقْتُرُوا} [الفرقان: ٦٧] .

L21372 Abu Muhammad said: It has been confirmed that these verses are the explicit

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ أَنَّ هَذِهِ الْآيَاتِ هِيَ نَصُّ قَوْلِنَا وَأَنَّهُمْ مُخَالِفُونَ لَهَا أَوْضَحَ خِلَافٍ.

[29] **Qur'an references (L21369):** Qur'an 17:26 (Al-Isra).
[30] **Qur'an references (L21370):** Qur'an 17:29 (Al-Isra).
[31] **Qur'an references (L21371):** Qur'an 25:67 (Al-Furqan).

text of our position, and that they contradict them in the clearest opposition.

L21373 Ali said: Every purchase for food, clothing, or a ride, every act of manumission, charity, or gift that preserves sufficiency is permissible—and the permissible is that which avoids wastefulness, extravagance, or excessive liberality.

L21374–21376 The lawful may not be rejected. Whatever does not maintain sufficiency from that which one cannot do without constitutes extravagance and squandering. Total lavish expenditure is entirely null and void for whoever commits it and must be rejected. Likewise, any spending on prohibited matters – such as alcohol, payment for immoral acts, gambling, or similar things, whether little or much – is null and void. And with Allah, the Exalted, lies all success. Thus, everything they clung to from the Quran is rendered void from them. As for the prohibition of the Messenger of Allah—peace and blessings be upon him—against squandering wealth, it is correct and our doctrine. Squandering wealth means pouring it onto the road or spending it on unlawful matters, as we stated regarding wastefulness, extravagance, and reckless open-handedness.

L21377 The proof of that is the statement of the Messenger of Allah (peace be upon him) which we previously mentioned concerning sharecropping: "Whoever owns land should cultivate it himself or let his brother cultivate it. If he refuses, then let him retain his land." The Prophet (peace be upon him) did not consider leaving the land unworked to be a squandering of wealth if its owner has no need for that.

L21378 We know of no disagreement that it is permissible for one who has sufficient provision for himself and his dependents to abandon seeking to increase wealth through acquisition, and that his turning at that time to deeds for the Hereafter is superior to his immersion in pursuing additional wealth—thus, the corruption of their argument is manifest in every aspect.

L21379 The most astonishing thing is their statement: "Indeed, whoever fails to make his wealth fruitful is financially incompetent," yet they permit one who wrongfully consumes people's wealth through usurpation, sale, or any feasible means. Then when claimants demand their rights and seize what is found

قَالَ عَلِيٌّ: كُلُّ شِرَاءٍ لِمَأْكُولٍ، أَوْ مَلْبُوسٍ، أَوْ مَرْكُوبٍ، وَكُلُّ عِتْقٍ، وَصَدَقَةٍ، وَهِبَةٍ، أَبْقَى غِنًى فَهُوَ حَلَالٌ -. وَالْحَلَالُ هُوَ غَيْرُ التَّبْذِيرِ، وَالْإِسْرَافِ، وَبَسْطِ الْيَدِ كُلَّ الْبَسْطِ.

وَالْحَلَالُ لَا يَجُوزُ رَدُّهُ وَكُلُّ مَا لَمْ يُبْقِ غِنًى مِنْ كُلِّ ذَلِكَ مِمَّا لَيْسَ بِالْمَرْءِ عَنْهُ غِنًى فَهُوَ الْإِسْرَافُ وَالتَّبْذِيرُ، وَبَسْطُ الْيَدِ كُلَّ الْبَسْطِ فَهُوَ كُلُّهُ بَاطِلٌ مِمَّنْ فَعَلَهُ مَرْدُودٌ، وَهَكَذَا كُلُّ نَفَقَةٍ فِي مُحَرَّمٍ كَالْخَمْرِ، وَأُجْرَةِ الْفِسْقِ، وَالْقِمَارِ، وَغَيْرِ ذَلِكَ - قَلَّ أَوْ كَثُرَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. فَبَطَلَ عَنْهُمْ كُلُّ مَا تَعَلَّقُوا بِهِ مِنْ الْقُرْآنِ، وَأَمَّا نَهْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ فَحَقٌّ وَهُوَ قَوْلُنَا، وَإِضَاعَتُهُ هُوَ صَبُّهُ فِي الطَّرِيقِ، أَوْ إنْفَاقُهُ فِي مُحَرَّمٍ كَمَا قُلْنَا فِي التَّبْذِيرِ، وَالْإِسْرَافِ، وَبَسْطِ الْيَدِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَاهُ آنِفًا فِي " الْمُزَارَعَةِ «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا أَوْ فَلْيُزْرِعْهَا أَخَاهُ فَإِنْ أَبَى فَلْيُمْسِكْ أَرْضَهُ» فَلَمْ يَجْعَلْ - عَلَيْهِ السَّلَامُ - تَرْكَ الْأَرْضِ لَا تَعْمُرُ إضَاعَةً لِلْمَالِ إذَا لَمْ يَحْتَجْ صَاحِبُهَا إلَى ذَلِكَ.

وَمَا نَعْلَمُ خِلَافًا فِي أَنَّ تَرْكَ التَّزَيُّدِ مِنْ كَسْبِ الْمَالِ لِمَنْ مَعَهُ الْكَفَافُ لَهُ وَلِعِيَالِهِ مُبَاحٌ، وَأَنَّ إقْبَالَهُ حِينَئِذٍ عَلَى الْعَمَلِ لِلْآخِرَةِ أَفْضَلُ مِنْ إكْبَابِهِ عَلَى طَلَبِ التَّزَيُّدِ مِنْ الْمَالِ - فَظَهَرَ فَسَادُ قَوْلِهِمْ مِنْ كُلِّ وَجْهٍ.

وَأَعْجَبُ شَيْءٍ قَوْلُهُمْ: إنَّ مَنْ لَمْ يُثَمِّرْ مَالَهُ فَهُوَ سَفِيهٌ، ثُمَّ أَبَاحُوا لِمَنْ تَعَدَّى فَأَكَلَ أَمْوَالَ النَّاسِ ظُلْمًا أَوْ غَصْبًا، وَبِالْبَيْعِ، وَبِأَيِّ وَجْهٍ أَمْكَنَهُ، فَلَمَّا طَلَبَ بِالْحُقُوقِ، وَأَخَذَ مَا

for him—or if nothing is found—he must refrain from earning anything to equitably fulfill the rights of those entitled before his own. This opposes realities: at times they forbid him from charity, manumission, or sale for lacking wealth management skills; at others, they permit him to leave his wealth unproductive even when harming those entitled to rights against him. What contradictions!

وُجِدَ لَهُ، أَوْ لَمْ يُوجَدْ لَهُ شَيْءٌ أَنْ يَقْعُدَ مَكَانَهُ فَلَا يَتَكَسَّبُ شَيْئًا يُنْصِفُ مِنْهُ أَهْلَ الْحُقُوقِ قَبْلَهُ - وَهَذِهِ ضِدُّ الْحَقَائِقِ، مَرَّةً يَمْنَعُونَهُ مِنْ الصَّدَقَةِ، وَالْعِتْقِ، وَالْبَيْعِ، لِأَنَّهُ لَا يُحْسِنُ تَثْمِيرَ مَالِهِ، وَمَرَّةً يُطْلِقُونَ لَهُ أَنْ لَا يُثَمِّرَ مَالَهُ وَإِنْ أَضَرَّ ذَلِكَ بِأَهْلِ الْحُقُوقِ قِبَلَهُ، فَوَاخِلَافَاهُ.

L21380 It was narrated to us through the chain of Muḥammad ibn al-Muthannā: from Yaʿlā ibn ʿUbayd al-Ṭanāfisī, from Muḥammad ibn Sūqah, from Ibn Saʿīd ibn Jubayr, who said: My father was asked about squandering wealth, and he replied: "It is when Allah the Exalted grants you wealth and you spend it on what He has prohibited for you."

رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا يَعْلَى بْنُ عُبَيْدٍ الطَّنَافِسِيُّ نا مُحَمَّدُ بْنُ سُوقَةَ نا ابْنُ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: سُئِلَ أَبِي عَنْ إضَاعَةِ الْمَالِ؟ فَقَالَ: أَنْ يَرْزُقَك اللَّهُ تَعَالَى مَالًا فَتُنْفِقَهُ فِيمَا حُرِّمَ عَلَيْك.

L21381 Abu Muhammad said: The sons of Saʿīd ibn Jubayr are three: ʿAbdullāh, ʿAbd al-Malik, and Isḥāq. All of them are well-known, trustworthy narrators. Whichever one it was, he is trustworthy.

قَالَ أَبُو مُحَمَّدٍ: أَوْلَادُ سَعِيدِ بْنِ جُبَيْرٍ هُمْ ثَلَاثَةٌ، عَبْدُ اللَّهِ، وَعَبْدُ الْمَلِكِ، وَإِسْحَاقُ: كُلُّهُمْ ثِقَاتٌ مَشَاهِيرُ، فَأَيُّهُمْ كَانَ فَهُوَ ثِقَةٌ -.

L21382 It has been narrated to us from Mālik that wasteful spending is expenditure on acts of disobedience. Thus, it has become evident that this narration aligns with our opinion and contradicts theirs.

وَقَدْ رُوِّينَا عَنْ مَالِكٍ: أَنَّ الْإِسْرَافَ هُوَ النَّفَقَةُ فِي الْمَعَاصِي - فَظَهَرَ أَنَّ هَذَا الْخَبَرَ هُوَ قَوْلُنَا، وَأَنَّهُ مُخَالِفٌ لِقَوْلِهِمْ.

L21383 As for the other report: "Any man under whose care an orphan resides, who prevents the orphan from marrying, and the orphan commits adultery—the sin is shared between them."

وَأَمَّا الْخَبَرُ الْآخَرُ «أَيُّمَا رَجُلٍ كَانَ عِنْدَهُ يَتِيمٌ فَحَالَ بَيْنَهُ وَبَيْنَ أَنْ يَتَزَوَّجَ فَزَنَى فَالْإِثْمُ بَيْنَهُمَا» .

L21384–21386 If it were valid, it would constitute the greatest argument against them and the strongest opposition to their claim, for it contains nothing but a prohibition against the guardian interposing between the orphan and marriage under the severest threat. This is their view, because they... They command the guardian of the orphan to intervene between him and marriage, and they invalidate his marriage if he marries without his guardian's permission, so that the guardian becomes the one who gives him in marriage to whomever the guardian desires, not to whomever the one under guardianship desires.

فَلَوْ صَحَّ لَكَانَ أَعْظَمَ حُجَّةً عَلَيْهِمْ، وَأَشَدَّ خِلَافًا لِقَوْلِهِمْ؛ لِأَنَّهُ لَيْسَ فِيهِ إلَّا نَهْيُ الْوَلِيِّ عَنْ أَنْ يَحُولَ بَيْنَ الْيَتِيمِ وَبَيْنَ التَّزْوِيجِ بِأَشَدِّ الْوَعِيدِ، وَهَذَا هُوَ قَوْلُهُمْ؛ لِأَنَّهُمْ يَأْمُرُونَ وَلِيَّ الْيَتِيمِ بِأَنْ يَحُولَ بَيْنَهُ وَبَيْنَ التَّزْوِيجِ وَيَرُدُّونَ زَوَاجَهُ إنْ تَزَوَّجَ بِغَيْرِ إذْنِ وَلِيِّهِ حَتَّى يَكُونَ وَلِيُّهُ هُوَ الَّذِي يُزَوِّجُهُ مِمَّنْ أَرَادَ الْوَلِيُّ، لَا مِمَّنْ أَرَادَ الْمُولَى عَلَيْهِ.

L21387 What could be more astonishing than a people invoking as proof what stands

as a greater proof against them? Thus, it became invalid for them to have any attachment to anything from the Quran, anything from the Sunnahs, or any narration whatsoever. It became evident that the Quran and the Sunnahs contradict their assertions in this matter.

فَأَيُّ عَجَبٍ أَعْجَبُ مِنْ احْتِجَاجِ قَوْمٍ بِمَا هُوَ أَعْظَمُ حُجَّةً عَلَيْهِمْ. فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ بِشَيْءٍ مِنْ الْقُرْآنِ، أَوْ بِشَيْءٍ مِنْ السُّنَنِ، أَوْ بِرِوَايَةٍ أَصْلًا وَلَاحَ أَنَّ الْقُرْآنَ، وَالسُّنَنَ مُخَالِفَانِ لِأَقْوَالِهِمْ هَهُنَا.

L21388 As for the narrations from the Companions—may Allah be pleased with them—none of them constitute valid evidence for their position; rather, these narrations undermine it. Regarding the report from Uthman in his statement to Ali: "Will you not impose legal restraint on your nephew and curb him? He purchased a salt flat belonging to the family of so-and-so for sixty thousand [units]—I wouldn't take it even for my sandal!" There is no doubt that Ibn Jafar was never placed under legal restraint. If legal restraint were obligatory, why did Uthman neglect to impose it, thereby treating it as a mere personal view? This confirms he did not consider legal restraint obligatory. Even if Ali or Uthman had viewed it as obligatory, they would not have been permitted to forgo its implementation. This is an incomplete narration we have transmitted in full through Hammad ibn Zayd's chain from Ayyub al-Sakhtiyani, from Muhammad ibn Sirin: Uthman said to Ali, "Curb your nephew. He purchased the salt flat of the family of so-and-so for sixty thousand [units]—I wouldn't take it even for my sandal!" then he retracted. Abdullah ibn Jafar divided it into eight shares, deployed laborers, and the land became productive. When Uthman passed by it, he asked, "To whom does this belong?" They replied, "Abdullah ibn Jafar." He said, "O nephew, grant me two shares." Abdullah responded, "No, by Allah—not until you bring those before whom you denounced me as imprudent to plead with me!" Uthman complied, whereupon Abdullah said, "By Allah, I will not sell you two shares for less than one hundred twenty thousand!" Uthman replied, "I have taken them."

وَأَمَّا الرِّوَايَاتُ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَكُلُّهَا لَا حُجَّةَ لَهُمْ فِيهَا، بَلْ هِيَ عَلَيْهِمْ -: أَمَّا الرِّوَايَةُ عَنْ عُثْمَانَ مِنْ قَوْلِهِ لِعَلِيٍّ: أَلَا تَحْجُرُ عَلَى ابْنِ أَخِيك وَتَأْخُذُ عَلَى يَدِهِ اشْتَرَى سَبَخَةً بِسِتِّينَ أَلْفًا مَا أُحِبُّ أَنَّهَا لِي بِنَعْلِي؟ فَلَا شَكَّ فِي أَنَّ ابْنَ جَعْفَرٍ لَمْ يُحْجَرْ عَلَيْهِ قَطُّ، فَإِنْ كَانَ الْحَجْرُ وَاجِبًا فَلِمَ تَرَكَهُ عُثْمَانُ وَلَمْ يَحْجُرْ عَلَيْهِ، حَتَّى يَخْرُجَ ذَلِكَ مَخْرَجَ الرَّأْيِ يَرَاهُ؟ فَصَحَّ أَنَّهُ لَمْ يَرَ الْحَجْرَ وَاجِبًا وَلَوْ رَآهُ عَلِيٌّ، أَوْ عُثْمَانُ وَاجِبًا، لَمَا حَلَّ لَهُمَا أَنْ لَا يُمْضِيَاهُ - وَهَذَا خَبَرٌ نَاقِصٌ رُوِّينَاهُ بِتَمَامِهِ مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ عُثْمَانَ قَالَ لِعَلِيٍّ: خُذْ عَلَى يَدِ ابْنِ أَخِيك اشْتَرَى سَبَخَةَ آلِ فُلَانٍ بِسِتِّينَ أَلْفًا، مَا أُحِبُّ أَنَّهَا لِي بِنَعْلِي فَأَقَلَّ، قَالَ: فَجَزَّأَهَا عَبْدُ اللَّهِ بْنُ جَعْفَرٍ ثَمَانِيَةَ أَجْزَاءٍ، وَأَلْقَى فِيهَا الْعُمَّالَ فَأَقْبَلَتْ الْأَرْضُ، فَمَرَّ بِهَا عُثْمَانُ فَقَالَ: لِمَنْ هَذِهِ؟ قَالُوا: لِعَبْدِ اللَّهِ بْنِ جَعْفَرٍ فَقَالَ: يَا ابْنَ أَخِي وَلِّنِي جُزْأَيْنِ مِنْهَا؟ فَقَالَ عَبْدُ اللَّهِ بْنُ جَعْفَرٍ: لَا وَاَللَّهِ حَتَّى تَأْتِيَنِي بِالَّذِينَ سَفَّهْتَنِي عِنْدَهُمْ فَيَطْلُبُونَ إلَيَّ؟ فَفَعَلَ، فَقَالَ: وَاَللَّهِ لَا أَنْقُصُك جُزْأَيْنِ مِنْهَا مِنْ مِائَةٍ وَعِشْرِينَ أَلْفًا؟ قَالَ عُثْمَانُ: قَدْ أَخَذْتُهُمَا -.

L21389 Thus, it became evident that this statement was an opinion of Uthman which he had recanted, because he did not restrict it at all from his prohibition of the purchase until the land yielded produce.

فَصَحَّ أَنَّ ذَلِكَ الْقَوْلَ كَانَ مِنْ عُثْمَانَ رَأْيٌ قَدْ رَجَعَ عَنْهُ؛ لِأَنَّهُ لَمْ يَحْجُرْ عَلَيْهِ أَصْلًا مَا بَيْنَ إنْكَارِهِ لِلشِّرَاءِ إلَى أَنْ أَقْبَلَتْ الْأَرْضُ.

L21390–21392 As for the other narration reported from Ali: he informed Uthman that

he was imposing interdiction on Abdullah ibn Ja'far regarding a sale he had made. Az-Zubayr then said to him: "I am his partner in this." This is a narration we vehemently reject because this sale must either necessitate interdiction over the one involved or not necessitate it. If it necessitates interdiction, then interdiction becomes obligatory on Az-Zubayr just as it is on Abdullah. If it does not necessitate interdiction over Az-Zubayr, then it does not necessitate interdiction over Abdullah or anyone else. Allah protected Uthman—may Allah be pleased with him—from neglecting any obligatory right [text incomplete]. Because Az-Zubayr was on the path, and Allah protected Az-Zubayr - may Allah be pleased with him - from intervening between the truth and its implementation, and Allah protected Ali - may Allah be pleased with him - from speaking about what was not clear to him.

وَأَمَّا الرِّوَايَةُ الْأُخْرَى عَنْ عَلِيٍّ: أَنَّهُ ذَكَرَ لِعُثْمَانَ أَنَّهُ يَحْجُرُ عَلَى عَبْدِ اللَّهِ بْنِ جَعْفَرٍ فِي بَيْعٍ ابْتَاعَهُ فَقَالَ لَهُ الزُّبَيْرُ: أَنَا شَرِيكُهُ فِيهِ، فَرِوَايَةٌ نُنْكِرُهَا جِدًّا، وَلَا يَخْلُو ذَلِكَ الْبَيْعُ مِنْ أَنْ يَكُونَ يُوجِبُ الْحَجْرَ عَلَى صَاحِبِهِ أَوْ لَا يُوجِبُهُ، فَإِنْ كَانَ يُوجِبُ الْحَجْرَ، فَالْحَجْرُ وَاجِبٌ عَلَى الزُّبَيْرِ، كَمَا هُوَ عَلَى عَبْدِ اللَّهِ، وَإِنْ كَانَ لَا يُوجِبُ الْحَجْرَ عَلَى الزُّبَيْرِ فَمَا يُوجِبُهُ عَلَى عَبْدِ اللَّهِ وَلَا عَلَى غَيْرِهِ، وَقَدْ أَعَاذَ اللَّهُ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - مِنْ أَنْ يَكُونَ يَتْرُكُ حَقًّا وَاجِبًا مِنْ أَجْلِ أَنَّ الزُّبَيْرَ فِي الطَّرِيقِ، وَقَدْ أَعَاذَ اللَّهُ الزُّبَيْرَ - رَضِيَ اللَّهُ عَنْهُ - مِنْ أَنْ يَحُولَ بَيْنَ الْحَقِّ وَبَيْنَ إنْفَاذِهِ، وَقَدْ أَعَاذَ اللَّهُ عَلِيًّا - رَضِيَ اللَّهُ عَنْهُ - فِي أَنْ يَتَكَلَّمَ فِيمَا لَمْ يَتَبَيَّنْ لَهُ.

L21393 If it is said: Uthman only refrained from imposing interdiction upon Abdullah because of Az-Zubayr, since he knew Az-Zubayr would not be deceived in the sale, thus he knew through Az-Zubayr's involvement that this was a sale where interdiction does not apply in such cases? We respond: Indeed, Ali proceeded in error when he sought to impose interdiction in a sale where interdiction is not permissible. All this confirms that this was an opinion from those among them who held it, yet Abdullah ibn Ja'far opposed them and did not deem interdiction upon himself applicable in that matter, though he was a Companion. Thus, their reliance on these two narrations is nullified.

فَإِنْ قِيلَ: إنَّمَا تَرَكَ عُثْمَانُ الْحَجْرَ عَلَى عَبْدِ اللَّهِ مِنْ أَجْلِ الزُّبَيْرِ، لِأَنَّهُ عَلِمَ أَنَّ الزُّبَيْرَ لَا يُخْدَعُ فِي الْبَيْعِ فَعَلِمَ بِدُخُولِ الزُّبَيْرِ فِيهِ أَنَّهُ بَيْعٌ لَا يَحْجُرُ فِي مِثْلِهِ؟ قُلْنَا: فَقَدْ مَشَى عَلِيٌّ فِي خَطَأٍ إذَا أَرَادَ الْحَجْرَ فِي بَيْعٍ لَا يَجُوزُ الْحَجْرُ فِيهِ، وَصَحَّ بِهَذَا كُلِّهِ أَنَّهُ رَأْيُ مَنْ رَآهُ مِنْهُمْ، وَقَدْ خَالَفَهُمْ عَبْدُ اللَّهِ بْنُ جَعْفَرٍ فَلَمْ يَرَ الْحَجْرَ عَلَى نَفْسِهِ فِي ذَلِكَ، وَهُوَ صَاحِبٌ مِنْ الصَّحَابَةِ. فَبَطَلَ تَعَلُّقُهُمْ بِهَذَيْنِ الْخَبَرَيْنِ.

L21394 As for the narration concerning Ibn al-Zubayr, it constitutes an enduring calamity. We do not comprehend how a Muslim could legitimize citing as proof a sin, oversight, or lapse committed by Ibn al-Zubayr—though Allah the Exalted forgives him—when someone like him, being among the youngest Companions, presumed to impose interdiction over the Mother of the Believers, whom Allah the Exalted extolled with the ultimate praise in the Quranic text, while he scarcely merits a share compared to her before Allah the Exalted. This is a report we transmitted through Abd al-Razzaq's chain from Ma'mar, from al-Zuhri, from Awf ibn al-Harith—nephew of Aisha, Mother of the Believers—through his mother (who was the sister of Aisha), that Aisha,

وَأَمَّا الرِّوَايَةُ عَنْ ابْنِ الزُّبَيْرِ فَطَامَّةُ الْأَبَدِ، لَا نَدْرِي كَيْفَ اسْتَحَلَّ مُسْلِمٌ أَنْ يَحْتَجَّ بِخَطِيئَةٍ، وَوَهْلَةٍ، وَزَلَّةٍ كَانَتْ مِنْ ابْنِ الزُّبَيْرِ وَاَللَّهُ تَعَالَى يَغْفِرُ لَهُ إذْ أَرَادَ مِثْلُهُ فِي كَوْنِهِ مِنْ أَصَاغِرِ الصَّحَابَةِ أَنْ يَحْجُرَ عَلَى مِثْلِ أُمِّ الْمُؤْمِنِينَ الَّتِي أَثْنَى اللَّهُ تَعَالَى عَلَيْهَا أَعْظَمَ الثَّنَاءِ فِي نَصِّ الْقُرْآنِ وَهُوَ لَا يَكَادُ يَتَجَزَّأُ مِنْهَا فِي الْفَضْلِ عِنْدَ اللَّهِ تَعَالَى. وَهَذَا خَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عَوْفِ بْنِ الْحَارِثِ ابْنِ أَخِي

عَائِشَةَ أُمِّ الْمُؤْمِنِينَ لِأُمِّهَا أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ حَدَّثَتْ " أَنَّ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ قَالَ فِي بَيْعٍ أَوْ عَطَاءٍ أَعْطَتْهُ: وَاللَّهِ لَتَنْتَهِيَنَّ عَائِشَةُ أَوْ لَأَحْجُرَنَّ عَلَيْهَا؟ فَقَالَتْ عَائِشَةُ: أَوْ قَالَ هَذَا؟ قَالُوا: نَعَمْ، فَقَالَتْ عَائِشَةُ: هُوَ لِلَّهِ عَلَيَّ نَذْرٌ أَنْ لَا أُكَلِّمَ ابْنَ الزُّبَيْرِ كَلِمَةً أَبَدًا - ثُمَّ ذَكَرَ الْحَدِيثَ بِطُولِهِ وَتَشَفُّعَهُ إِلَيْهَا، وَبُكَاهُ لِعَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ بْنِ عَبْدِ يَغُوثَ، وَالْمِسْوَرِ بْنِ مَخْرَمَةَ الزُّهْرِيَّيْنِ حَتَّى كَلَّمَتْهُ وَأَعْتَقَتْ فِي نَذْرِهَا أَنْ لَا تُكَلِّمَهُ أَرْبَعِينَ رَقَبَةً.

قَالَ أَبُو مُحَمَّد: قَدْ بَلَغَتْ بِهِ عَائِشَةُ - رَضِيَ اللَّهُ عَنْهَا - الْإِنْكَارَ حَيْثُ بَلَغَتْهُ فَلَا يَخْلُو الْأَمْرُ مِنْ أَنْ يَكُونَ ابْنُ الزُّبَيْرِ أَخْطَأَ وَأَصَابَتْ هِيَ، وَهُوَ كَذَلِكَ بِلَا شَكٍّ، فَلَا يُحْتَجُّ بِقَوْلٍ أَخْطَأَ فِيهِ صَاحِبُهُ - أَوْ يَكُونُ ابْنُ الزُّبَيْرِ أَصَابَ وَأَخْطَأَتْ هِيَ، وَمَعَاذَ اللَّهِ مِنْ هَذَا، وَمِنْ أَنْ تَكُونَ أُمُّ الْمُؤْمِنِينَ تُوصَفُ بِسَفَهٍ وَتَسْتَحِقُّ أَنْ يُحْجَرَ عَلَيْهَا - نَعُوذُ بِاَللَّهِ مِنْ هَذَا الْقَوْلِ.

فَصَحَّ أَنَّ ابْنَ الزُّبَيْرِ أَخْطَأَ فِي قَوْلِهِ، وَعَلَى كُلِّ حَالٍ فَقَدْ اخْتَلَفَتْ الصَّحَابَةُ فِي ذَلِكَ، وَإِذَا اخْتَلَفُوا فَالْوَاجِبُ الرُّجُوعُ إلَى الْقُرْآنِ، وَالسُّنَّةِ كَمَا أَمَرَ اللَّهُ تَعَالَى، وَفِي الْقُرْآنِ، وَالسُّنَّةِ: إبَاحَةُ الْبَيْعِ الَّذِي لَا خَدِيعَةَ فِيهِ وَلَا غِشَّ، وَالْحَضُّ عَلَى الصَّدَقَةِ، وَالْعِتْقِ: فِيمَا أَبْقَى غِنًى وَالْمَنْعُ مِمَّا عَدَا ذَلِكَ - فَوَاجِبٌ إمْضَاءُ ذَلِكَ كُلِّهِ مِنْ كُلِّ مَنْ فَعَلَهُ؛ لِأَنَّ الْكُلَّ مَنْدُوبٌ إلَى ذَلِكَ، مُبَاحٌ لَهُ ذَلِكَ، وَوَاجِبٌ رَدُّ كُلِّ بَيْعٍ فِيهِ خَدِيعَةٌ وَغِشٌّ، وَكُلِّ صَدَقَةٍ وَعَطِيَّةٍ لَمْ يَبْقَ بَعْدَهُمَا غِنًى مِنْ كُلِّ مَنْ فَعَلَهُ؛ لِأَنَّ الْكُلَّ مَنْهِيٌّ عَنْ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Mother of the Believers, recounted: "Abdullah ibn al-Zubayr declared regarding a sale or gift she had granted: 'By Allah, Aisha must desist, or I shall legally restrict her!' Aisha responded: 'Did he truly utter this?' They affirmed. Thereupon Aisha declared: 'I vow to Allah never to speak a single word to Ibn al-Zubayr ever.'" The narration then mentions the hadith in full, detailing his intercession to her and his weeping before Abd al-Rahman ibn al-Aswad ibn Abd Yaghuth and al-Miswar ibn Makhramah, the two Zuhris, until she conversed with him and emancipated forty slaves in fulfillment of her vow.

L21395 Abu Muhammad said: Aisha—may Allah be pleased with her—had brought him to the point of being censured. Thus, the matter can only be one of two scenarios: either Ibn al-Zubayr erred and she was correct—and this is undoubtedly so—in which case no argument can be made based on a statement in which its proponent erred; or Ibn al-Zubayr was correct and she erred. But Allah forbid this, and Allah forbid that the Mother of the Believers should be described with folly or deemed worthy of legal interdiction. We seek refuge in Allah from such a claim.

L21396–21398 Thus, it is correct that Ibn al-Zubayr erred in his statement. In any case, the Companions differed regarding that matter, and when they differ, it is obligatory to refer back to the Qur'an and the Sunnah as Allah the Exalted commanded. In the Qur'an and the Sunnah is the permissibility of a sale in which there is no deceit or fraud, and the encouragement toward charity. Manumission is obligatory if it preserves sufficiency, while prohibition applies to what is contrary to that. It is incumbent to enforce all these rulings upon every person who performs such acts, for they are collectively deemed recommended and permissible. Similarly, it is obligatory to nullify every transaction involving deception or fraud, and every act of charity or gift that leaves the giver without sufficiency afterwards, as all such acts are divinely prohibited. Ultimate success lies with Allah, the Most High.

L21399 As for the narrations from Ibn Abbas, there is no valid proof in any of them, for they only state that facial hair may grow on one who is weak in receiving

and giving, and that when a youth acquires for himself the sound of what people take, his orphanhood ceases—and this is our position: when sound judgment is ascertained in a youth and he acquires for himself the best of what people take, his orphanhood ends. They are seven, as we mentioned: Uthman, Ali, al-Zubayr, Ibn al-Zubayr, the Mother of the Believers, Abdullah ibn Ja'far, and Ibn Abbas.

وَأَمَّا الرِّوَايَاتُ عَنْ ابْنِ عَبَّاسٍ فَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهَا، لِأَنَّهُ لَيْسَ فِيهَا إِلَّا أَنَّهُ قَدْ تَنْبُتُ اللِّحْيَةُ لِمَنْ هُوَ ضَعِيفُ الْأَخْذِ وَالْإِعْطَاءِ، وَأَنَّهُ إِذَا أَخَذَ لِنَفْسِهِ مِنْ صَالِحِ مَا يَأْخُذُ النَّاسُ فَقَدْ انْقَضَى يُتْمُهُ - وَهَكَذَا نَقُولُ إِذَا عُقِلَ الرُّشْدُ مِنْ الْفَتَى فَقَدْ أَخَذَ لِنَفْسِهِ بِأَصْلَحَ مَا يَأْخُذُ النَّاسُ، فَإِنَّمَا هُمْ - كَمَا أَوْرَدْنَا - سَبْعَةٌ: عُثْمَانُ، وَعَلِيٌّ وَالزُّبَيْرُ، وَابْنُ الزُّبَيْرِ، وَأُمُّ الْمُؤْمِنِينَ، وَعَبْدُ اللَّهِ بْنُ جَعْفَرٍ، وَابْنُ عَبَّاسٍ

L21400 It has been narrated to us in this matter statements aligning with our view, which we will mention at the end of the chapter if God Almighty wills. Three of them - ʿUthmān, ʿAlī, and Ibn al-Zubayr - have reports attributed to them about indicating ḥajr without elaboration, clarification from them, or any of them: What defines this ḥajr? If it refers to rescinding a sale involving fraud, then this is our doctrine - not the opponents' position. In any case, it is not [valid] to rescind charity, manumission, marriage, or a sale through it - and there is no fraud in it. Three others among them - ʿĀ'ishah, Ibn Ja'far, and al-Zubayr - are reported to have rejected both the ḥajr itself and the opinion advocating it.

وَقَدْ رُوِّينَا أَيْضًا فِي ذَلِكَ كَلَامًا مُوَافِقًا لِقَوْلِنَا نَذْكُرُهُ فِي آخِرِ الْبَابِ إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ، ثَلَاثَةٌ مِنْهُمْ رُوِيَ عَنْهُمْ الْإِشَارَةُ بِالْحَجْرِ وَلَا مَزِيدَ، وَلَا بَيَانَ عَنْهُمْ، وَلَا عَنْ أَحَدٍ مِنْهُمْ: مَا صِفَةُ ذَلِكَ الْحَجْرِ؟ فَإِنْ كَانَ هُوَ رَدُّ الْبَيْعِ الَّذِي فِيهِ الْغَبْنُ فَهَكَذَا نَقُولُ - وَهَذَا هُوَ قَوْلُنَا لَا قَوْلُ الْمُخَالِفِينَ، وَهُمْ: عُثْمَانُ، وَعَلِيٌّ، وَابْنُ الزُّبَيْرِ، وَعَلَى كُلِّ حَالٍ فَلَيْسَ، فِيهِ رَدُّ صَدَقَةٍ، وَلَا عِتْقٍ، وَلَا نِكَاحٍ وَلَا بَيْعٍ، لَا غَبْنَ فِيهِ - وَثَلَاثَةٌ مِنْهُمْ جَاءَ عَنْهُمْ إنْكَارُ الْحَجْرِ، وَالْقَوْلِ بِهِ، وَهُمْ: عَائِشَةُ، وَابْنُ جَعْفَرٍ، وَالزُّبَيْرُ.

L21401 As for Ibn Abbas, there is nothing reported from him that aligns with those who oppose us. Rather, he only stated regarding an elderly person whose mental capacity is disputed that they should be placed under guardianship—and this is our very position concerning one whose mental state has altered. They disagree, as we have noted, but even if they were to agree, there is no one with proof except the Messenger of Allah—peace and blessings of Allah be upon him.

وَأَمَّا ابْنُ عَبَّاسٍ فَلَيْسَ عَنْهُ شَيْءٌ يُوَافِقُ الْمُخَالِفِينَ لَنَا، بَلْ إنَّمَا قَالَ فِي الشَّيْخِ الَّذِي يُنْكَرُ عَقْلُهُ أَنَّهُ يُحْجَرُ عَلَيْهِ - وَهَذَا قَوْلُنَا نَفْسُهُ فِيمَنْ تَغَيَّرَ عَقْلُهُ، فَهُمْ مُخْتَلِفُونَ كَمَا أَوْرَدْنَا، وَلَوْ اتَّفَقُوا فَمَا فِي أَحَدٍ حُجَّةٌ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L21402 And how many instances are there where they opposed more Companions than these—may Allah be pleased with them—with none of the Companions opposing them? The closest example is this very issue, for it is definitively established that no report has come from any Companion supporting what they mentioned regarding the invalidation of manumission.

وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا أَكْثَرَ مِنْ هَؤُلَاءِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا مُخَالِفَ لَهُمْ مِنْهُمْ؟ وَأَقْرَبُ ذَلِكَ هَذِهِ الْمَسْأَلَةُ نَفْسُهَا، فَإِنَّهُ لَمْ يَأْتِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ قَطْعًا مَا ذَكَرُوهُ مِنْ إبْطَالِ الْعِتْقِ.

وَرَدِّ الصَّدَقَةِ فِي الْمَحْجُورِ - فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُوَافِقٌ مِنْ الصَّحَابَةِ فِي هَذِهِ الْمَسْأَلَةِ - وَقَدْ خَالَفُوا أَكْثَرَ مِنْ هَذَا الْعَدَدِ فِي الْمَسْحِ عَلَى الْجَوْرَبَيْنِ، وَنَحْوِ ذَلِكَ.

L21403 The invalidity of charity given by an interdicted person—since the possibility of their having any Companion's agreement on this matter is nullified—and they opposed more Companions than this number regarding wiping over khuffs and similar matters.

وَأَمَّا التَّابِعُونَ فَقَدْ اخْتَلَفُوا كَمَا ذَكَرْنَا، فَمَا الَّذِي جَعَلَ قَوْلَ عَطَاءٍ، وَالْقَاسِمِ، وَرَبِيعَةَ، وَشُرَيْحٍ: أَوْلَى مِنْ قَوْلِ إبْرَاهِيمَ، وَابْنِ سِيرِينَ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ؟

L21404 As for the Successors, they differed as we mentioned. What then makes the view of Aṭā', al-Qāsim, Rabīʿah, and Shurayḥ more authoritative than the view of Ibrāhīm, Ibn Sīrīn, and ʿUmar ibn ʿAbd al-ʿAzīz?

هَذَا وَلَيْسَ عَنْ الْقَاسِمِ، وَشُرَيْحٍ إبْطَالُ صَدَقَةٍ، وَلَا عِتْقٍ، وَلَا بَيْعٍ، وَإِنَّمَا عَنْهُمَا إمْسَاكُ مَالٍ عَنْهُ فَقَطْ، وَإِنَّمَا جَاءَ إبْطَالُ الْبَيْعِ، وَالْعِتْقِ، وَالنِّكَاحِ عَنْ رَبِيعَةَ، وَعَطَاءٍ فَقَطْ.

L21405–21406 This—there is no annulment of charity, manumission, or sale attributed to al-Qāsim and Shurayḥ. Rather, only the withholding of property from him is attributed to them. The annulment of sale, manumission, and marriage is reported only from Rabīʿah and ʿAṭāʾ.

وَقَدْ جَاءَ كَمَا أَوْرَدْنَا عَنْ سَبْعَةٍ مِنْ التَّابِعِينَ، وَوَاحِدٍ مِنْ الصَّحَابَةِ: أَنَّ السُّفَهَاءَ هُمْ النِّسَاءُ، وَهُمْ: الْحَسَنُ، وَالْحَكَمُ، وَمُعَاوِيَةُ بْنُ قُرَّةَ، وَأَبُو مَالِكٍ، وَالضَّحَّاكُ، وَمُجَاهِدٌ، وَسَعِيدُ بْنُ جُبَيْرٍ، فَخَالَفُوهُمْ كُلَّهُمْ - فَمَنْ جَعَلَ قَوْلَ اثْنَيْنِ مِنْ التَّابِعِينَ قَدْ خَالَفَهُمْ ثَلَاثَةٌ مِنْهُمْ حُجَّةً، وَلَمْ يَجْعَلْ قَوْلَ سَبْعَةٍ مِنْهُمْ حُجَّةً.

L21407 It has been reported, as we cited, from seven Followers and one Companion that "the foolish ones are women." These authorities are: al-Ḥasan, al-Ḥakam, Muʿāwiyah ibn Qurrah, Abū Mālik, al-Ḍaḥḥāk, Mujāhid, and Saʿīd ibn Jubayr from the Followers, along with one Companion. Yet they were all opposed. How can one consider the opinion of two Followers - though three from their own ranks contradicted them - as authoritative evidence, while not granting the same status to the opinion of seven Followers?

وَأَمَّا الْحَسَنُ، وَالشَّعْبِيُّ: فَلَيْسَ فِيمَا رُوِيَ عَنْهُمَا شَيْءٌ يُخَالِفُ قَوْلَنَا أَصْلًا؛ لِأَنَّ الْحَسَنَ قَالَ: الرُّشْدُ صَلَاحُ الدِّينِ، وَحِفْظُ الْمَالِ - وَكَذَلِكَ نَقُولُ، وَكُلُّ مُسْلِمٍ فَلَهُ حَظٌّ مِنْ الصَّلَاحِ، وَلَا يَسْتَوْعِبُ صَلَاحَ الدِّينِ أَحَدٌ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا بُدَّ مِنْ نَقْصٍ عَنْهُ، وَمَنْ لَمْ يُنْفِقْ مَالَهُ فِي مَعْصِيَةٍ فَقَدْ حَفِظَهُ.

L21408 As for Al-Ḥasan and Al-Shaʿbī, nothing reported from them contradicts our position in any way. This is because Al-Ḥasan said: "Right guidance consists of righteousness in religion and preservation of wealth"—and we hold the same view. Every Muslim has a share of righteousness, yet none after Allah's Messenger—peace and blessings be upon him—can fully attain righteousness in religion. There must inevitably be a shortcoming compared to his standard. Whoever does not expend his wealth in disobedience has indeed preserved it.

وَقَالَ الشَّعْبِيُّ: إنَّ الرَّجُلَ لَيَشْمَطُ وَمَا أُونِسَ مِنْهُ رُشْدٌ، وَصَدَقَ: قَدْ يَبْلُغُ الشَّيْخُ وَهُوَ مَجْنُونٌ، فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ أَصْلًا.

L21409 Al-Shaʿbi said: "A man may turn gray without any sign of maturity being perceived in him," and he spoke the truth: an old man may reach old age while remaining mentally incompetent. Thus, there remains no valid basis for their stance at all.

L21410 It was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar

from ʿAbd al-Karīm al-Jazarī, who said: "'Umar ibn ʿAbd al-ʿAzīz wrote to ʿAdī ibn ʿAdī al-Kindī: 'Whatever you limit the imprudent in, do not limit them in three matters: emancipation, divorce, and marriage.'"

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ إِلَى عَدِيِّ بْنِ عَدِيٍّ الْكِنْدِيِّ: مَهْمَا أَقَلَّتَ السُّفَهَاءَ فِيهِ مِنْ شَيْءٍ فَلَا تُقِلْهُمْ فِي ثَلَاثٍ: عِتْقٍ، وَطَلَاقٍ، وَنِكَاحٍ.

L21411 Abu Muhammad said: We say to them: When do you impose interdiction upon a person? Is it when he is first disadvantaged in a sale, or after being repeatedly wronged in transactions? If they say: Upon the first instance, we say: Then according to you, there is no one on earth except that he deserves interdiction, since no one can engage in trade without being disadvantaged.

قَالَ أَبُو مُحَمَّدٍ: وَنَقُولُ لَهُمْ: مَتَى تَحْجُرُونَ عَلَى الْمَرْءِ؟ أَبِأَوَّلِ مَرَّةٍ يُغْبَنُ فِيهَا فِي الْبَيْعِ أَمْ بِأَنْ يُغْبَنَ مَرَّةً بَعْدَ مَرَّةٍ؟ فَإِنْ قَالُوا: بِأَوَّلِ مَرَّةٍ؟ قُلْنَا: فَمَا عَلَى الْأَرْضِ أَحَدٌ إِلَّا وَهُوَ عِنْدَكُمْ مُسْتَحِقٌّ لِلْحَجْرِ عَلَيْهِ، إِذْ لَا سَبِيلَ أَنْ يُوجَدَ أَحَدٌ يَبِيعُ وَيَشْتَرِي إِلَّا وَهُوَ يُغْبَنُ.

L21412 And if they say, "But for each instance after another?" We respond: Define for us the specific number which, when attained by he who reaches it, nullifies his prohibition from selling, invalidates his emancipation and marriage, and necessitates the return of his charity - these are grave matters not to be trivialized through recklessness nor leniency, for Hellfire lies at their extremity. Should they define it, they become obligated to furnish proof, thereby increasing their arbitrary enforcement of falsehood in the religion of Allah the Exalted. If they fail to establish a defined limit for this, they thereby admit their ignorance of when the ruling they apply becomes binding upon them or ceases to be so, acknowledging that they judge through acts of ignorance and blindness.

وَإِنْ قَالُوا بَلْ لِلْمَرَّةِ بَعْدَ الْمَرَّةِ؟ قُلْنَا: حُدُّوا لَنَا الْعَدَدَ الَّذِي مَنْ بَلَغَهُ فُسِخَ مَنْعُهُ مِنَ الْبَيْعِ، وَفُسِخَ عِتْقُهُ وَنِكَاحُهُ، وَرُدَّتْ صَدَقَتُهُ - فَهَذِهِ عَظَائِمُ لَا تُسْتَسْهَلُ مُطَارَفَةً، وَلَا مُسَامَحَةً، بَلْ النَّارُ فِي طَرَفِهَا - فَإِنْ حَدُّوهُ كُلِّفُوا الْبُرْهَانَ، وَكَانُوا قَدْ زَادُوا تَحَكُّمًا بِالْبَاطِلِ فِي دِينِ اللَّهِ تَعَالَى، وَإِنْ لَمْ يَحُدُّوا فِي ذَلِكَ حَدًّا كَانُوا قَدْ أَقَرُّوا بِأَنَّهُمْ لَا يَدْرُونَ مَتَى يَلْزَمُهُمْ الْحُكْمُ بِمَا بِهِ يَحْكُمُونَ وَلَا مَتَى لَا يَلْزَمُهُمْ، وَأَنَّهُمْ يَحْكُمُونَ بِالْجَهَالَاتِ وَالْعَمَى.

L21413–21414 Similarly, we ask them: When do they impose interdiction on him if he is defrauded by an amount exceeding what people tolerate as common practice in similar transactions, or when defrauded by a substantial amount? If they respond: "By what exceeds customary tolerance in comparable exchanges," we counter: In your view, there is no one on the face of the earth who would not warrant interdiction, for every person who buys and sells may be defrauded to this extent. If they say: "Only when it exceeds that?" they must then define the legal threshold at which such grave consequences become obligatory—invalidating his sales, exempting him from liability for what he consumed of others' wealth through purchases while withholding payment, revoking his charitable donations, annulling his emancipations and

وَكَذَلِكَ نَسْأَلُهُمْ: مَتَى يَحْجُرُونَ عَلَيْهِ إِذَا غُبِنَ بِمَا يَزِيدُ عَلَى مَا يَتَغَابَنُ النَّاسُ بِهِ بِمِثْلِهِ أَمْ إِذَا غُبِنَ بِالْكَثِيرِ؟ فَإِنْ قَالُوا: بَلْ بِمَا يَزِيدُ عَلَى مَا يَتَغَابَنُ النَّاسُ بِمِثْلِهِ؟ قُلْنَا: مَا عَلَى أَدِيمِ الْأَرْضِ أَحَدٌ إِلَّا وَهُوَ مُسْتَحِقٌّ لِلْحَجْرِ عِنْدَكُمْ، إِذْ لَيْسَ أَحَدٌ إِلَّا وَقَدْ يُغْبَنُ بِهَذَا الْقَدْرِ مِمَّنْ يَبِيعُ وَيَشْتَرِي، وَإِنْ قَالُوا: بَلْ بِأَكْثَرَ مِنْ ذَلِكَ؟ كُلِّفُوا أَنْ يُبَيِّنُوا الْحَدَّ الَّذِي عِنْدَهُ تَجِبُ هَذِهِ الْعَظَائِمُ مِنْ فَسْخِ بُيُوعِهِ، وَأَنْ لَا يُعْدَى عَلَيْهِ فِيمَا أَكَلَ مِنْ أَمْوَالِ النَّاسِ بِالشِّرَاءِ وَمَنْعِ الثَّمَنِ، وَأَنْ تُرَدَّ صَدَقَاتُهُ، وَعِتْقُهُ، وَنِكَاحُهُ، وَمَتَى لَا تَجِبُ؟ فَإِنْ حَدُّوا

marriages—and specify when these are not obligatory. Should they set a threshold, they compound their reprehensibility and rule falsely. If they refrain, they adjudicate by ignorance. This contains inherent issues.

زَادُوا شَنْعًا وَحُكْمًا بِالْبَاطِلِ، وَإِنْ لَمْ يَحُدُّوا كَانُوا حَاكِمِينَ بِمَا لَا يَدْرُونَ، وَفِي هَذَا مَا فِيهِ.

L21415 It suffices concerning this that they are unable—until the end of time—to produce a single known, non-fabricated narration at the time it was in the Prophet's era (peace and blessings be upon him), nor in the era of Abu Bakr, nor the era of Umar—truly, nor the era of Uthman, nor the era of Ali (may Allah be pleased with them)—[narrating] about any religiously knowledgeable Muslim who prevented through legal interdiction from [giving] charity, emancipation, or marriage—none of which would harm his wealth—nor from a sale free from fraud. This they will never find. Woe to every legal ruling devised after their time! And with Allah, the Most High, is success.

وَيَكْفِي مِنْ هَذَا أَنَّهُمْ لَا يَقْدِرُونَ - إِلَى مُنْتَهَى الْأَبَدِ - عَلَى أَنْ يَأْتُوا بِرِوَايَةٍ مَعْرُوفَةٍ غَيْرِ مَوْضُوعَةٍ فِي الْوَقْتِ عَلَى أَنَّهُ كَانَ فِي عَهْدِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا فِي عَهْدِ أَبِي بَكْرٍ، وَلَا عَهْدِ عُمَرَ. نَعَمْ، وَلَا عَهْدِ عُثْمَانَ، وَلَا عَهْدِ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمْ - إِنْسَانٌ مُسْلِمٌ يَفْهَمُ الدِّينَ يَمْنَعُ بِالْحَجْرِ مِنْ صَدَقَةٍ، وَعِتْقٍ، وَنِكَاحٍ، لَا يَضُرُّ شَيْءٌ مِنْ ذَلِكَ بِمَالِهِ، وَلَا مِنْ بَيْعٍ لَا غَبْنَ فِيهِ - هَذَا مَا لَا يَجِدُونَهُ أَبَدًا، فَأُفٍّ لِكُلِّ شَرِيعَةٍ تَفَطَّنَ لَهَا مَنْ بَعْدَهُمْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L21416 Among the grave evils and abominations of this worldly life is their assertion that a legally restricted person need not atone through emancipation for his *dhihār*, nor for his intercourse during Ramadan, nor for accidental killing, nor for his oaths—except by fasting—even if he owns wealth beyond enumeration except by Allah the Exalted. This contradicts the Quran and the Sunnah, yet they obligate him to pay *zakāh*, provide maintenance for relatives, and support his wife. Is there any distinction between these two matters? The obligation of emancipation in what we have mentioned is established in the Quran, just as *zakāh* is mandated—alike, alike. Would that I knew from where this corrupt categorization emerged! Verily, this is truly astounding!

وَمِنْ طَوَامِّ الدُّنْيَا وَشَنْعِهَا قَوْلُهُمْ: إِنَّ الْمَحْجُورَ عَلَيْهِ لَا يُكَفِّرُ فِي ظِهَارِهِ، وَلَا فِي وَطْئِهِ فِي رَمَضَانَ، وَلَا فِي قَتْلِهِ الْخَطَأَ، وَلَا فِي أَيْمَانِهِ إِلَّا بِالصِّيَامِ وَإِنْ كَانَ صَاحِبَ أَمْوَالٍ لَا يُحْصِيهَا إِلَّا اللَّهُ تَعَالَى، خِلَافًا لِلْقُرْآنِ، وَالسُّنَنِ، وَهُمْ يُلْزِمُونَهُ الزَّكَاةَ، وَالنَّفَقَاتِ عَلَى الْأَقَارِبِ، وَعَلَى الزَّوْجَةِ، فَهَلْ بَيْنَ الْأَمْرَيْنِ فَرْقٌ؟ وَقَدْ جَاءَ إِيجَابُ الْعِتْقِ فِيمَا ذَكَرْنَا فِي الْقُرْآنِ، كَمَا جَاءَتْ الزَّكَاةُ سَوَاءً سَوَاءً فَلَيْتَ، شِعْرِي مِنْ أَيْنَ خَرَجَ هَذَا التَّقْسِيمُ الْفَاسِدُ؟ إِنَّ هَذَا لَعَجَبٌ.

L21417–21419 Abu Muhammad said: An authentic narration from the Prophet—peace and blessings be upon him—confirming our view and invalidating their claim has been reported, as transmitted to us through the route of Ahmad ibn Shuʿayb: from Yūsuf ibn Ḥammād, from ʿAbd al-Aʿlā, from Saʿīd ibn Abī ʿArūbah, from Qatādah, from Anas: "A man suffered from weakness in his potency, and his family came to the Prophet and said: 'O...'" "O Prophet of Allah, should I forbid him?" The Messenger of Allah — peace and blessings be upon him — called him and prohibited him. He said: "O Prophet of Allah, I cannot

قَالَ أَبُو مُحَمَّد: وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلُ قَوْلِنَا مِمَّا يُبْطِلُ قَوْلَهُمْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا يُوسُفُ بْنُ حَمَّادٍ أَنَا عَبْدُ الْأَعْلَى عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ أَنَسٍ «أَنَّ رَجُلًا كَانَ فِي عُقْدَتِهِ ضَعْفٌ، وَأَنَّ أَهْلَهُ أَتَوْا النَّبِيَّ

refrain from deception in selling." The Prophet — peace and blessings be upon him — replied: "When you sell, say: 'There is no deception.'"

فَقَالُوا: يَا نَبِيَّ اللَّهِ اُحْجُرْ عَلَيْهِ؟ فَدَعَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَنَهَاهُ؟ فَقَالَ: يَا نَبِيَّ اللَّهِ إِنِّي لَا أَصْبِرُ عَلَى الْبَيْعِ فَقَالَ - عَلَيْهِ السَّلَامُ -: إِذَا بِعْتَ فَقُلْ: لَا خِلَابَةَ» .

L21420 Through the chain of Mālik ibn Anas from ʿAbdullāh ibn Dīnār from ʿAbdullāh ibn ʿUmar, who said: "A man mentioned to the Messenger of Allah (peace be upon him) that he was being deceived in transactions. The Messenger of Allah (peace be upon him) said to him: 'When you conduct a transaction, say: "There is no deception."' He said: "Thereafter, whenever the man engaged in a transaction, he would say: 'There is no deception.'"

وَمِنْ طَرِيقِ مَالِكِ بْنِ أَنَسٍ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: «ذَكَرَ رَجُلٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ يُخْدَعُ فِي الْبَيْعِ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِذَا بَايَعْتَ فَقُلْ: لَا خِلَابَةَ» ؟ قَالَ: فَكَانَ الرَّجُلُ إِذَا بَايَعَ يَقُولُ: لَا خِلَابَةَ ".

L21421 From the transmission of Qāsim ibn Aṣbagh, who narrated to us Muḥammad ibn Waḍḍāḥ, who narrated to us Ḥāmid ibn Yaḥyā al-Balkhī, who narrated to us Sufyān ibn ʿUyaynah, who narrated to us Muḥammad ibn Isḥāq on the authority of Nāfiʿ on the authority of Ibn ʿUmar, who said: "Munqidh was struck on his head with a cranial wound during the pre-Islamic era, causing impairment to his speech, which led to him being deceived in transactions. The Messenger of Allah (peace be upon him) said to him: 'Sell and say: "No deception," then you retain the option for three days from your sale."' Ibn ʿUmar said: "I heard him say whenever he conducted a transaction: 'No deception, no deception.'"

وَمِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا حَامِدُ بْنُ يَحْيَى الْبَلْخِيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «إِنَّ مُنْقِذًا سُقِعَ فِي رَأْسِهِ مَأْمُومَةً فِي الْجَاهِلِيَّةِ فَجُبِلَتْ لِسَانُهُ، فَكَانَ يُخْدَعُ فِي الْبَيْعِ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: بِعْ، وَقُلْ: لَا خِلَابَةَ، ثُمَّ أَنْتَ بِالْخِيَارِ ثَلَاثًا مِنْ بَيْعِكَ» ، قَالَ ابْنُ عُمَرَ: فَسَمِعْته يَقُولُ إِذَا بَايَعَ: لَا خِلَابَةَ لَا خِلَابَةَ ".

L21422 Ali said: These two narrations are of the utmost authenticity. Whoever advocates after hearing them for imposing interdiction on those deceived in sales transactions, or for enforcing a sale involving deceit, is none other than someone heedless of the truth, emboldened to commit major sins. For the Messenger of Allah (peace and blessings be upon him) neither considered their statements "Impose interdiction on him" nor "There is no interdiction," nor prohibited him from selling. Rather, he granted him the right of option to annul his purchase for three days, and commanded him not to sell except with full disclosure to prevent deceit. This is our position - and all praise belongs to Allah.

قَالَ عَلِيٌّ: هَذَانِ أَثَرَانِ فِي غَايَةِ الصِّحَّةِ وَمَا يَقُولُ بَعْدَ سَمَاعِهِمَا بِالْحَجْرِ عَلَى مَنْ يُخْدَعُ فِي الْبُيُوعِ، أَوْ بِإِنْفَاذِ بَيْعٍ فِيهِ خَدِيعَةٌ إِلَّا ذَاهِلٌ عَنْ الْحَقِّ، مُقْدِمٌ عَلَى الْعَظَائِمِ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَلْتَفِتْ إلَى قَوْلِهِمْ: اُحْجُرْ عَلَيْهِ، وَلَا حَجْرَ عَلَيْهِ، وَلَا مَنَعَهُ مِنْ الْبَيْعِ، بَلْ جَعَلَ لَهُ الْخِيَارَ فِيمَا اشْتَرَى ثَلَاثًا، وَأَمَرَهُ أَنْ لَا يُبَايِعَ إلَّا بِبَيَانٍ: أَنْ لَا خِلَابَةَ، وَهَكَذَا نَقُولُ - وَلِلَّهِ الْحَمْدُ.

L21423–21425 From the chain of Al-Bukhārī: Yaḥyā ibn Bukayr narrated to us, Al-Layth ibn Saʿd narrated to us from ʿUqayl ibn Khālid, who said: Ibn Shihāb reported: ʿUrwah ibn Al-Zubayr informed me that ʿĀ'ishah, the Mother of the

Believers, related in a lengthy ḥadīth about the Messenger of Allah (peace and blessings be upon him). She mentioned his arrival in Medina after emigrating from Mecca, then he—meaning the Messenger of Allah (peace and blessings be upon him)—mounted his she-camel and traveled until it knelt near his mosque (peace and blessings be upon him) in Medina. And he was praying there at that time, along with Muslim men. It had been a drying ground for dates belonging to Suhayl and Sahl, two orphan boys under the guardianship of... As'ad ibn Zurārah narrated: Then the Messenger of Allah (peace be upon him) summoned the two youths and haggled with them over the price of the Mirbad [a date-drying area] to build it into a mosque. They said, "Rather, we gift it to you, O Messenger of Allah!" But the Messenger of Allah (peace be upon him) refused to accept it from them as a gift until he purchased it from them. Then he built it as a mosque.

وَمِنْ طَرِيقِ الْبُخَارِيِّ: نا يَحْيَى بْنُ بُكَيْرٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ عُقَيْلِ بْنِ خَالِدٍ قَالَ ابْنُ شِهَابٍ: أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ قَالَتْ فِي حَدِيثٍ طَوِيلٍ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَكَرَتْ فِيهِ إتْيَانَهُ إلَى الْمَدِينَةِ إذْ هَاجَرَ مِنْ مَكَّةَ ثُمَّ رَكِبَ -. تَعْنِي رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَاقَتَهُ فَسَارَ حَتَّى بَرَكَتْ عِنْدَ مَسْجِدِهِ - عَلَيْهِ السَّلَامُ - بِالْمَدِينَةِ وَهُوَ يُصَلِّي فِيهِ يَوْمَئِذٍ رِجَالٌ مِنْ الْمُسْلِمِينَ، وَكَانَ مِرْبَدًا لِلتَّمْرِ لِسُهَيْلٍ وَسَهْلٍ غُلَامَيْنِ يَتِيمَيْنِ فِي حِجْرِ أَسْعَدَ بْنِ زُرَارَةَ، ثُمَّ دَعَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْغُلَامَيْنِ فَسَاوَمَهَا بِالْمِرْبَدِ لِيَتَّخِذَهُ مَسْجِدًا، فَقَالَا: بَلْ نَهَبُهُ لَك يَا رَسُولَ اللَّهِ، فَأَبَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَقْبَلَهُ مِنْهُمَا هِبَةً حَتَّى ابْتَاعَهُ مِنْهُمَا، ثُمَّ بَنَاهُ مَسْجِدًا» .

L21426 So this Messenger of Allah—may Allah bless him and grant him peace—knew they were two orphans under another's guardianship. Yet he neither bargained with him, nor consulted him, nor bought from him. Rather, he bargained with them and validated their sale of it. He did not grant the one in whose care they were any authority in that matter.

فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ عَلِمَ أَنَّهُمَا فِي حِجْرِ غَيْرِهِمَا يَتِيمَانِ فَلَمْ يُسَاوِمْهُ وَلَا شَاوَرَهُ، وَلَا ابْتَاعَهُ مِنْهُ، بَلْ سَاوَمَهُمَا وَأَنْفَذَ بَيْعَهُمَا فِيهِ، وَلَمْ يَجْعَلْ لِلَّذِي كَانَا فِي حِجْرِهِ فِي ذَلِكَ أَمْرًا.

L21427 If it is said: "Did he not accept their gift to him?" We reply: He had done the same with Abu Bakr about a month or less prior, when he (peace and blessings of Allah be upon him) intended to emigrate. Abu Bakr (may Allah be pleased with him) offered him one of his two she-camels, saying: "This is for you, O Messenger of Allah." But the Messenger of Allah (peace and blessings of Allah be upon him) refused to ride it unless he paid its price, so he purchased it. Thus, his (peace and blessings of Allah be upon him) rejection of the orphans' gift paralleled his rejection of Abu Bakr's gift—there being no distinction. This was not because such gifts were impermissible for them to offer.

فَإِنْ قِيلَ: لَمْ يَقْبَلْ هِبَتَهُمَا إيَّاهُ؟ قُلْنَا: قَدْ فَعَلَ مِثْلَ ذَلِكَ بِأَبِي بَكْرٍ قَبْلَ ذَلِكَ بِأَقَلَّ مِنْ شَهْرٍ، أَوْ شَهْرٍ، «إذْ أَرَادَ - عَلَيْهِ السَّلَامُ - الْهِجْرَةَ فَقَدَّمَ إلَيْهِ أَبُو بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - إحْدَى نَاقَتَيْنِ لَهُ، وَقَالَ لَهُ: هِيَ لَكَ يَا رَسُولَ اللَّهِ، فَأَبَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَرْكَبَهَا إلَّا بِالثَّمَنِ فَابْتَاعَهَا مِنْهُ» فَرَدُّهُ - عَلَيْهِ السَّلَامُ - هِبَةَ الْيَتِيمَيْنِ كَرَدِّهِ هِبَةَ أَبِي بَكْرٍ وَلَا فَرْقَ - لَيْسَ؛ لِأَنَّ ذَلِكَ، لَا يَجُوزُ مِنْهُمْ.

L21428 The proof for this is his permission—upon him be peace—regarding their sale, with no disagreement among opposing schools that whoever is un-

restricted in selling remains unrestricted in gift-giving within this context. They differentiated between gift and sale solely in cases involving a sick person or a married woman, specifically regarding preferential treatment exceeding one-third. This is an authentic narration without flaw. ʻUqayl—one of al-Zuhrī's exclusive specialists, verified in his transmissions, and his constant companions—is reported thus, as is ʻUrwah's association with ʻĀ'ishah (may Allah be pleased with her).

وَبُرْهَانُ هَذَا إجَازَتُهُ - عَلَيْهِ السَّلَامُ - بَيْعَهُمَا، وَلَا خِلَافَ بَيْنَ الْمُخَالِفِينَ لَنَا فِي أَنَّ مَنْ لَمْ يُحْجَرْ عَلَيْهِ بَيْعُهُ لَمْ يُحْجَرْ عَلَيْهِ هِبَتُهُ فِي هَذَا الْمَكَانِ، وَإِنَّمَا فَرَّقُوا بَيْنَ الْهِبَةِ وَالْبَيْعِ فِي الْمَرِيضِ، وَالْمَرْأَةِ ذَاتِ الزَّوْجِ، فِي الْمُحَابَاةِ فِيمَا زَادَ عَلَى الثُّلُثِ خَاصَّةً - وَهَذَا أَثَرٌ صَحِيحٌ لَا مَغْمَزَ فِيهِ، وَعُقَيْلٌ أَحَدُ الْمُخْتَصِّينَ بِالزُّهْرِيِّ، الْمُتَحَقِّقِينَ بِهِ، الْمُلَازِمِينَ لَهُ - وَكَذَلِكَ عُرْوَةُ بِعَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا -.

L21429 We have been narrated a report which—if others had obtained its like—they would have transgressed with it, just as we have been narrated through the chain of Abū Dāwūd: from Aḥmad ibn Ṣāliḥ, from Yaḥyā ibn Muḥammad al-Madanī, from ʿAbdullāh ibn Khālid ibn Saʿīd ibn Abī Maryam, from Saʿīd ibn ʿAbd al-Raḥmān ibn Ruqaysh, that he heard his elders from Banū ʿAmr ibn ʿAwf and his maternal uncle ʿAbdullāh ibn Abī Aḥmad say: ʿAlī ibn Abī Ṭālib said: I memorized from the Messenger of Allāh (peace and blessings be upon him): "There is no orphanhood after puberty."

وَقَدْ رُوِّينَا خَبَرًا لَوْ ظَفِرُوا بِمِثْلِهِ لَبَغَوْا، كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ صَالِحٍ نا يَحْيَى بْنُ مُحَمَّدٍ الْمَدِينِيُّ نا عَبْدُ اللَّهِ بْنُ خَالِدِ بْنِ سَعِيدِ بْنِ أَبِي مَرْيَمَ عَنْ سَعِيدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ رُقَيْشٍ أَنَّهُ سَمِعَ شُيُوخَهُ مِنْ بَنِي عَمْرِو بْنِ عَوْفٍ وَمِنْ خَالِهِ عَبْدِ اللَّهِ بْنِ أَبِي أَحْمَدَ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: حَفِظْت مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يُتْمَ بَعْدَ احْتِلَامٍ».

L21430 Abu Muhammad said: At minimum, this narration constitutes a mawqūf report attributed to Ali ibn Abi Talib. This contradicts their reliance on his position regarding legal interdiction [al-hajr]—which lacks explicit textual basis—as being fully aligned with their opinion in any circumstance.

قَالَ أَبُو مُحَمَّدٍ: وَأَقَلُّ مَا فِي هَذَا الْأَثَرِ أَنْ يَكُونَ مَوْقُوفًا عَلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَهُوَ خِلَافٌ لِمَا تَعَلَّقُوا بِهِ عَنْهُ فِي الْحَجْرِ الَّذِي لَا بَيَانَ فِيهِ أَنَّهُ مُوَافِقٌ لِقَوْلِهِمْ عَلَى كُلِّ حَالٍ.

L21431–21432 I am Ahmad ibn Umar ibn Anas al-Udhri. Abu Dharr al-Harawi narrated to me. Ubayd Allah ibn Muhammad ibn Ishaq ibn Hubabah narrated to me in Baghdad. Abdullah ibn Muhammad ibn Abdul Aziz al-Baghawi narrated to me. Musʿab ibn Abdullah ibn Musʿab ibn Thabit ibn Abdullah ibn al-Zubayr ibn al-Awwam narrated to me. My father narrated to me from Rabiʿah ibn Uthman from Zayd ibn Aslam that he heard Umar ibn al-Khattab say to Suhayb: "O Suhayb, there is nothing in you I censure except three traits. Were it not for them, I would not have preferred anyone over you." Suhayb said to him: "What are they, for you are a fault-finder?" Umar said after a remark: "I see you squandering your wealth, adopting a kunya named after a prophet, and claiming Arab lineage while your tongue is non-Arab." Suhayb

وَنَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا عُبَيْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ إِسْحَاقَ بْنِ حُبَابَةَ بِبَغْدَادَ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَبْدِ الْعَزِيزِ الْبَغَوِيّ نا مُصْعَبُ بْنُ عَبْدِ اللَّهِ بْنِ مُصْعَبِ بْنِ ثَابِتِ بْنِ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ بْنِ الْعَوَّامِ نَا أَبِي عَنْ رَبِيعَةَ بْنِ عُثْمَانَ عَنْ زَيْدِ بْنِ أَسْلَمَ " أَنَّهُ سَمِعَ عُمَرَ بْنَ الْخَطَّابِ يَقُولُ لِصُهَيْبٍ: يَا صُهَيْبُ مَا فِيك شَيْءٌ أَعِيبُهُ عَلَيْك إلَّا ثَلَاثَ خِصَالٍ، وَلَوْلَاهُنَّ مَا قَدَّمْت عَلَيْك أَحَدًا، فَقَالَ لَهُ صُهَيْبٌ: مَا هُنَّ فَإِنَّك طَعَّانٌ؟ فَقَالَ عُمَرُ بَعْدَ كَلَامٍ: أَرَاك تُبَذِّرُ مَالَك، وَتُكْتَنَى بِاسْمِ نَبِيٍّ، وَتَنْتَسِبُ

replied: “As for my spending, I expend wealth only in rightful causes. As for my kunya, the Messenger of Allah—may Allah bless him and grant him peace—named me Abu Yahya. Shall I discard it due to your objection? As for my Arab lineage, the Romans captured me as a child. I recall nothing of my kin—if a dung heap were to split open for me, I would claim lineage to it!” Thus, Umar deemed Suhayb’s conduct wasteful yet did not legally forbid him. This suffices as evidence. And success is by Allah, the Exalted, alone.

عَرَبِيًّا، وَلِسَانُك أَعْجَمِيٌّ، فَقَالَ لَهُ صُهَيْبٌ: أَمَّا تَبْذِيرِي مَالِي فَمَا أُنْفِقُهُ إلَّا فِي حَقِّهِ، وَأَمَّا اكْتِنَائِي فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَنَّانِي بِأَبِي يَحْيَى، أَفَأَتْرُكُهَا لِقَوْلِك؟ وَأَمَّا انْتِسَابِي إلَى الْعَرَبِ فَإِنَّ الرُّومَ سَبَتْنِي وَأَنَا صَغِيرٌ، فَإِنِّي لَا أَذْكُرُ أَهْلَ أَبَيَاتِي وَلَوْ انْفَلَقَتْ عَنِّي رَوْثَةٌ لَانْتَسَبْت إلَيْهَا - فَهَذَا عُمَرُ يَرَى فِعْلَ صُهَيْبٍ تَبْذِيرًا وَلَمْ يَحْجُرْ عَلَيْهِ، وَفِي هَذَا كِفَايَةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: The ill, the pregnant woman, the one detained for execution, and the captive in confinement are equal.

[مَسْأَلَةٌ الْمَرِيضُ وَالْحَامِلُ وَالْمَوْقُوفُ لِلْقَتْلِ وَالْأَسِيرُ فِي الْحَجْرِ سَوَاءٌ]

1395 - Question: A person afflicted with a terminal or curable illness, a pregnant woman from conception until childbirth or death, one sentenced to lawful execution for qisas, ḥadd, or unjustly, a captive held by those who kill prisoners or spare them, one facing imminent destruction, and a combatant engaged between two battle lines—all are equal. As for the rest of people, their wealth remains [subject to ordinary rulings], with no distinction in their charities, sales, emancipations, gifts, or the rest of their wealth.

١٣٩٥ - مَسْأَلَةٌ: وَالْمَرِيضُ مَرَضًا يَمُوتُ مِنْهُ أَوْ يَبْرَأُ مِنْهُ، وَالْحَامِلُ مُذْ تَحْمِلُ إلَى أَنْ تَضَعَ أَوْ تَمُوتَ، وَالْمَوْقُوفُ لِلْقَتْلِ بِحَقٍّ فِي قَوَدٍ أَوْ حَدٍّ أَوْ بِبَاطِلٍ، وَالْأَسِيرُ عِنْدَ مَنْ يَقْتُلُ الْأَسْرَى أَوْ مَنْ لَا يَقْتُلُهُمْ، وَالْمُشْرِفُ عَلَى الْعَطَبِ، وَالْمُقَاتِلُ بَيْنَ الصَّفَّيْنِ كُلُّهُمْ سَوَاءٌ، وَسَائِرُ النَّاسِ فِي أَمْوَالِهِمْ، وَلَا فَرْقَ فِي صَدَقَاتِهِمْ، وَبُيُوعِهِمْ، وَعِتْقِهِمْ وَهِبَاتِهِمْ وَسَائِرِ أَمْوَالِهِمْ.

A school of jurists ruled that legal restriction (ḥajr) must be imposed upon these individuals concerning any portion of their estate exceeding one-third.

وَقَالَ قَوْمٌ: بِالْحَجْرِ عَلَى هَؤُلَاءِ فِيمَا زَادَ عَلَى الثُّلُثِ.

Abu Sulayman said: Our companions hold the same opinion as ours except specifically and exclusively regarding manumission, for they stated that the manumission of a sick person exclusively—excluding the rest of those we mentioned—only takes effect within one-third of the estate, regardless of whether he recovers from his illness or dies during it, irrespective of the nature of the illness.

وَقَالَ أَبُو سُلَيْمَانَ: وَأَصْحَابُنَا كَقَوْلِنَا إلَّا فِي الْعِتْقِ خَاصَّةً فَقَطْ، فَإِنَّهُمْ قَالُوا: عِتْقُ الْمَرِيضِ خَاصَّةً دُونَ سَائِرِ مَنْ ذَكَرْنَا لَا يَنْفُذُ إلَّا مِنْ الثُّلُثِ، سَوَاءٌ أَفَاقَ مِنْ مَرَضِهِ، أَوْ مَاتَ مِنْهُ - أَيِّ مَرَضٍ كَانَ.

It has been narrated to us through the chain of Ibn Abī Shaybah: ʻAlī ibn Mushir narrated to us: Ismāʻīl ibn Abī Khālid narrated to us from al-Shaʻbī from Masrūq that he was asked about one who emancipated his slave during his illness while possessing no property besides him. Masrūq said: “I uphold

the emancipation in full - a thing God has decreed. I do not reject it." Shurayḥ said: "I uphold one-third of it and require the slave to work for the remaining two-thirds."

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَلِيُّ بْنُ مُسْهِرٍ نا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّهُ سُئِلَ عَمَّنْ أَعْتَقَ عَبْدًا لَهُ فِي مَرَضِهِ وَلَيْسَ لَهُ مَالٌ غَيْرُهُ؟ فَقَالَ مَسْرُوق: أُجِيزُهُ بِرُمَّتِهِ، شَيْءٌ جَعَلَهُ اللَّهُ لَا أَرُدُّهُ - وَقَالَ شُرَيْحٌ: أُجِيزُ ثُلُثَهُ وَأَسْتَسْعِيهِ فِي ثُلُثَيْهِ.

L21438 Al-Shaʿbī said: The legal view of Masrūq is most favored by me in issuing fatwas, the legal view of Shurayḥ is most favored by me in judicial verdicts - and the legal view of al-Nakhaʿī corresponds to that of Shurayḥ.

قَالَ الشَّعْبِيُّ: قَوْلُ مَسْرُوقٍ أَحَبُّ إلَيَّ فِي الْفُتْيَا، وَقَوْلُ شُرَيْحٍ أَحَبُّ إلَيَّ فِي الْقَضَاءِ - وَقَوْلُ النَّخَعِيِّ كَقَوْلِ شُرَيْحٍ.

L21439 Narrated via Qatadah, on the authority of Al-Ḥasan, on the authority of Ibn Masʿūd regarding a person who manumits his slave while on his own deathbed when the slave is his sole property: He said, "The emancipation is valid for one-third of his estate."

وَمِنْ طَرِيقِ قَتَادَةَ عَنْ الْحَسَنِ عَنْ ابْنِ مَسْعُودٍ فِيمَنْ أَعْتَقَ عَبْدًا لَهُ فِي مَرَضِهِ لَا مَالَ لَهُ غَيْرُهُ؟ قَالَ: اعْتِقْ ثُلُثَهُ.

L21440–21441 From the chain of Maʾmar via ʾAbd al-Rahman ibn ʾAbd Allah via al-Qasim ibn ʾAbd al-Rahman: A man purchased a slave girl during his illness and freed her at his death. Those who sold her came to collect her price but found no wealth belonging to him. Ibn Masʾud said: "Work to pay your price."

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ أَنَّ رَجُلًا اشْتَرَى جَارِيَةً فِي مَرَضِهِ فَأَعْتَقَهَا عِنْدَ مَوْتِهِ فَجَاءَ الَّذِينَ بَاعُوهَا بِثَمَنِهَا فَلَمْ يَجِدُوا لَهُ مَالًا فَقَالَ ابْنُ مَسْعُودٍ: اسْعِي فِي ثَمَنِك.

L21442 From the chain of Al-Ḥajjāj ibn Arṭāʾah, from Qatādah, from Al-Ḥasan: ʿAlī was asked about someone who emancipated his slave at the time of his death while owning no property besides the slave and owing debts. He said: "The slave is emancipated but must work to settle the debt equivalent to his assessed value."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ سُئِلَ عَلِيٌّ عَمَّنْ أَعْتَقَ عَبْدًا لَهُ عِنْدَ مَوْتِهِ، وَلَيْسَ لَهُ مَالٌ غَيْرُهُ وَعَلَيْهِ دَيْنٌ؟ قَالَ: يَعْتِقُ وَيَسْعَى فِي الْقِيمَةِ

L21443 Al-Nakhaʿī ruled regarding one who emancipates a slave at the time of his death while possessing no property other than the slave and owing debt: the value of the slave is assessed and utilized to settle the debt. If any surplus remains, one-third is allocated to the emancipated slave as a grant from the estate, and two-thirds belong to the heirs.

وَقَالَ النَّخَعِيُّ فِيمَنْ أَعْتَقَ عَبْدًا عِنْدَ مَوْتِهِ لَا مَالَ لَهُ غَيْرُهُ وَعَلَيْهِ دَيْنٌ: أَنَّهُ يَسْعَى فِي قِيمَتِهِ فَيَقْضِي الدَّيْنَ، فَإِنْ فَضَلَ شَيْءٌ فَلَهُ ثُلُثُهُ وَلِلْوَرَثَةِ ثُلُثَاهُ.

L21444 Al-Ḥasan and ʿAṭāʾ said: The manumission by a gravely ill person is drawn from the third of the estate - and this is the opinion of Qatādah, Saʿīd ibn al-Musayyib, Abān ibn ʿUthmān, Sulaymān ibn Mūsā, and Makhūl. They later disagreed: some invalidated what exceeded the third, while others enforced

the full manumission, obliging the enslaved person to work for the heirs regarding what exceeded the third.

وَقَالَ الْحَسَنُ، وَعَطَاءٌ: عِتْقُ الْمَرِيضِ مِنْ الثُّلُثِ - وَهُوَ قَوْلُ قَتَادَةَ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَأَبَانَ بْنِ عُثْمَانَ، وَسُلَيْمَانَ بْنِ مُوسَى، وَمَكْحُولٍ - ثُمَّ اخْتَلَفُوا، فَمِنْ مُرِقٍّ مِنْهُ مَا زَادَ عَلَى الثُّلُثِ، وَمِنْ مُعْتِقٍ بِجَمِيعِهِ وَيَسْتَسْعِيهِ فِيمَا زَادَ عَلَى الثُّلُثِ.

L21445 As for his selling and buying: It has been narrated through the chain of Sufyān al-Thawrī, from Jābir al-Juʿfī, from al-Shaʿbī regarding a sick person who engages in selling and buying. Al-Shaʿbi said: Such transactions are valid within the third of his estate, even if he remains alive for ten years.

وَأَمَّا بَيْعُهُ وَشِرَاؤُهُ: فَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الشَّعْبِيِّ: فِي الْمَرِيضِ يَبِيعُ وَيَشْتَرِي، قَالَ: هُوَ فِي الثُّلُثِ وَإِنْ مَكَثَ عَشْرَ سِنِينَ.

L21446 As for the pregnant woman: It was narrated to us through Sufyan al-Thawri, via Jabir al-Juʿfi, al-Shaʿbi, and Shurayh, that he held the view that whatever the pregnant woman disposes of during her pregnancy is limited to the allowable third. Sufyan said: “We do not accept this position; rather, we maintain that whatever she disposes of is valid unless she is ill from a cause unrelated to pregnancy or her delivery is imminent” (meaning childbirth could harm her). ‘Ata’ said: “Is whatever the pregnant woman disposes of during her pregnancy considered a bequest?” I asked: “Is this your personal opinion?” He replied: “No, we received it through narration”—this being the view of Qatadah and ‘Ikrimah. Al-Hasan, al-Nakhaʿi, Makhūl, and al-Zuhri stated: “The gift of a pregnant woman holds the same legal weight as that of a legally competent person.”

وَأَمَّا الْحَامِلُ: فَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ أَنَّهُ كَانَ يَرَى مَا صَنَعَتْ الْحَامِلُ فِي حَمْلِهَا مِنْ الثُّلُثِ؟ قَالَ سُفْيَانُ: وَنَحْنُ لَا نَأْخُذُ بِهَذَا، بَلْ نَقُولُ: مَا صَنَعَتْ فَهُوَ جَائِزٌ، إلَّا أَنْ تَكُونَ مَرِيضَةً مِنْ غَيْرِ الْحَمْلِ، أَوْ يَدْنُو مَخَاضُهَا - يُرِيدُ أَنْ يَضُرَّ بِهَا الطَّلْقُ وَقَالَ عَطَاءٌ: مَا صَنَعَتْ الْحَامِلُ فِي حَمْلِهَا فَهُوَ وَصِيَّةٌ؟ قُلْتُ: أَرَأْيٌ؟ قَالَ: بَلْ سَمِعْنَاهُ - وَهُوَ قَوْلُ قَتَادَةَ: وَعِكْرِمَةَ - وَقَالَ الْحَسَنُ، وَالنَّخَعِيُّ، وَمَكْحُولٌ وَالزُّهْرِيِّ: عَطِيَّةُ الْحَامِلِ كَعَطِيَّةِ الصَّحِيحِ.

L21447 From the chain of narration of Ibn Wahb, from ʿAmr ibn al-Ḥārith, from Yaḥyā ibn Saʿīd al-Anṣārī, that he heard al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq say: “Whatever a pregnant woman gives to an heir or spouse must come from her principal wealth, unless she is terminally ill.” Rabīʿah said: “The ruling remains the same, except if her pregnancy reaches an advanced stage or she enters childbirth.”

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّهُ سَمِعَ الْقَاسِمَ بْنَ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ قَالَ: مَا أَعْطَتْ الْحَامِلُ لِوَارِثٍ، أَوْ لِزَوْجٍ، فَمِنْ رَأْسِ مَالِهَا، إلَّا أَنْ تَكُونَ مَرِيضَةً - وَقَالَ رَبِيعَةُ: كَذَلِكَ، إلَّا أَنْ تَثْقُلَ، أَوْ يَحْضُرَهَا نِفَاسٌ.

L21448–21450 Ibn Wahb said, and I was also informed of this from Ibn al-Musayyib, Yahya ibn Saʿid, and Ibn Hujayrah al-Khawlani—and this is the opinion of Ahmad and Ishaq—. And al-Nakhaʿi, Makhul, and Yahya ibn Saʿid al-Ansari said. Al-Awzaʿī, ʿUbaydullāh ibn al-Ḥasan, and al-Shāfiʿī hold the same opinion as

قَالَ ابْنُ وَهْبٍ وَأَخْبَرَت بِهَذَا أَيْضًا عَنْ ابْنِ الْمُسَيِّبِ، وَيَحْيَى بْنِ سَعِيدٍ، وَابْنِ حُجَيْرَةَ الْخَوْلَانِيِّ - وَهُوَ قَوْلُ أَحْمَدَ، وَإِسْحَاقَ - وَقَالَ النَّخَعِيُّ، وَمَكْحُولٌ وَيَحْيَى بْنُ سَعِيدٍ

Sufyān al-Thawrī regarding the grant to a pregnant woman—this is also the opinion of Abū Ḥanīfah.

الْأَنْصَارِيُّ وَالْأَوْزَاعِيُّ، وَعُبَيْدُ اللَّهِ بْنُ الْحَسَنِ، وَالشَّافِعِيُّ فِي عَطِيَّةِ الْحَامِلِ كَقَوْلِ سُفْيَانَ الثَّوْرِيِّ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ.

L21451 It is narrated from Saʿīd ibn al-Musayyib: "The bequest for a warrior is to be taken from the third [of the estate]." Makḥūl said: "Rather, it is from the principal of his wealth, unless he is actively engaged in battle. The bequest for a maritime traveler is subject to the same ruling."

وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: عَطِيَّةُ الْغَازِي مِنَ الثُّلُثِ - وَقَالَ مَكْحُولٌ: بَلْ مِنْ رَأْسِ مَالِهِ، إِلَّا أَنْ تَقَعَ الْمُسَايَفَةُ وَعَطِيَّةُ رَاكِبِ الْبَحْرِ كَذَلِكَ.

L21452 Al-Ḥasan said: He is like the healthy person, and similarly the seafarer, and whoever is in a land where a plague has occurred. Makḥūl said: Likewise in the case of the seafarer as long as the sea has not become turbulent.

وَقَالَ الْحَسَنُ: هُوَ كَالصَّحِيحِ، وَكَذَلِكَ رَاكِبُ الْبَحْرِ، وَمَنْ كَانَ فِي بَلَدٍ قَدْ وَقَعَ فِيهِ الطَّاعُونُ. وَقَالَ مَكْحُولٌ: كَذَلِكَ فِي رَاكِبِ الْبَحْرِ مَا لَمْ يَهِجِ الْبَحْرُ.

L21453 Al-Ḥasan said regarding Iyās ibn Muʿāwiyah when al-Ḥajjāj imprisoned him: "He is entitled to nothing of his wealth except a third." When Iyās learned of this statement, he remarked: "No one gains jurisprudential understanding without their opinion of people becoming poor."

وَقَالَ الْحَسَنُ فِي إِيَاسِ بْنِ مُعَاوِيَةَ لَمَّا حَبَسَهُ الْحَجَّاجُ: لَيْسَ لَهُ مِنْ مَالِهِ، إِلَّا الثُّلُثُ، فَقَالَ إِيَاسٌ إِذْ بَلَغَهُ قَوْلُهُ: مَا فَقِهَ أَحَدٌ إِلَّا سَاءَ ظَنُّهُ بِالنَّاسِ.

L21454 Al-Shaʿbī said: "What the traveler allocates is from the third, from where his saddle is fixed in the insertion." Al-Nakhaʿī said: "Rather, it is from the principal of the estate."

وَقَالَ الشَّعْبِيُّ: مَا صَنَعَ الْمُسَافِرُ فَمِنَ الثُّلُثِ مِنْ حَيْثُ يَقَعُ رَحْلُهُ فِي الْغَرْزِ - قَالَ النَّخَعِيُّ: بَلْ مِنْ رَأْسِ الْمَالِ.

L21455 And Az-Zuhri said: Whatever the captive commits is to be taken from the Third of the estate.

وَقَالَ الزُّهْرِيُّ: مَا صَنَعَ الْأَسِيرُ فَمِنَ الثُّلُثِ.

L21456 Abu Hanifah said: A sick person may not settle debts with some creditors without settling with others.

وَقَالَ أَبُو حَنِيفَةَ: لَيْسَ لِلْمَرِيضِ أَنْ يَقْضِيَ بَعْضَ غُرَمَائِهِ دُونَ بَعْضٍ.

L21457 They held that his preferential pricing in sales, his gifts, his charitable donations, and his manumissions—all these acts are charged against the third of the estate if he dies from that illness. However, the manumission is fully executed, and the heirs are required to make up the portion exceeding the third. If he recovers from that illness, all these acts are fulfilled from his entire estate.

وَرَأَوْا مُحَابَاتَهُ فِي الْبَيْعِ، وَهِبَاتِهِ، وَصَدَقَاتِهِ، وَعِتْقِهِ، كُلُّ ذَلِكَ مِنَ الثُّلُثِ إِنْ مَاتَ مِنْ ذَلِكَ الْمَرَضِ، إِلَّا أَنَّ الْعِتْقَ يَنْفُذُ كُلُّهُ وَيُسْتَسْعَى فِيمَا لَا يَحْمِلُهُ الثُّلُثُ مِنْهُ، فَإِنْ أَفَاقَ مِنْ ذَلِكَ الْمَرَضِ نَفَذَ كُلُّ ذَلِكَ مِنْ رَأْسِ مَالِهِ.

L21458 As for one prevented from completing pilgrimage and one stationed in battle formation, their rulings are treated as those of a person in full legal capacity.

وَأَمَّا الْمَحْصُورُ، وَالْوَاقِفُ فِي صَفِّ الْحَرْبِ فَكَالصَّحِيحِ. وَأَمَّا الَّذِي يُقَدَّمُ لِلْقَتْلِ فِي قِصَاصٍ، أَوْ رَجْمٍ فَكَالْمَرِيضِ.

As for one designated for execution in cases of qisas (retaliation) or rajm (stoning), his ruling is equivalent to that of one with a valid legal excuse.

وَمَنْ اشْتَرَى ابْنَهُ فِي مَرَضِهِ الَّذِي مَاتَ فِيهِ فَإِنْ خَرَجَ مِنْ ثُلُثِهِ عَتَقَ وَوَرِثَهُ، وَإِنْ لَمْ يَخْرُجْ مِنْ ثُلُثِهِ عَتَقَ وَلَمْ يَرِثْهُ، وَاسْتَسْعَى فِيمَا زَادَ عَلَى الثُّلُثِ كَسَائِرِ الْوَرَثَةِ، فَإِنْ أَقَرَّ بِوَلَدِ أَمَتِهِ فِي مَرَضِ مَوْتِهِ لَحِقَ بِهِ وَوَرِثَهُ، وَإِنْ وَطِئَ أَمَةً فِي مَرَضِ مَوْتِهِ فَحَمَلَتْ فَهِيَ أُمُّ وَلَدٍ مِنْ رَأْسِ مَالِهِ وَيَرِثُهُ وَلَدُهَا. وَوَافَقَهُ عَلَى ذَلِكَ كُلِّهِ أَبُو يُوسُفَ، وَمُحَمَّدٌ، إِلَّا أَنَّ الَّذِي يَشْتَرِي وَلَدَهُ فِي مَرَضِهِ وَلَا يَحْمِلُهُ الثُّلُثُ فَإِنَّهُمَا قَالَا: يَرِثُهُ عَلَى كُلِّ حَالٍ، وَيُسْتَسْعَى فِيمَا يَقَعُ مِنْ قِيمَتِهِ لِلْوَرَثَةِ فَيَأْخُذُونَهُ.

L21459 If a man purchases his son during his terminal illness and the emancipation falls within the third of his estate reserved for discretionary bequests, the son is emancipated and inherits from him. If it does not fall within the third, he is emancipated but does not inherit, and he is required to work to compensate for the excess over the third like the rest of the heirs. If he acknowledges a child born to his female slave during his terminal illness, the child is recognized as his and inherits from him. If he has intercourse with a female slave during his terminal illness and she conceives, she becomes an *umm walad* (mother of a child by her master) from the assets of his estate, and her child inherits from him. Abū Yūsuf and Muḥammad agreed with all of this except regarding the purchase of one's son during an illness when the third does not encompass the cost. They held that the son inherits in all cases, and he is required to work for the portion of his value that pertains to the heirs, which they claim.

وَقَالُوا كُلُّهُمْ: إِنَّمَا هَذَا فِي الْمَرَضِ الْمُخِيفِ كَالْحُمَّى الصَّالِبِ وَالْبِرْسَامِ، وَالْبَطْنِ، وَنَحْوِ ذَلِكَ، وَلَمْ يَرَوْا ذَلِكَ فِي الْجُذَامِ، وَلَا حُمَّى الرِّبْعِ، وَلَا السُّلِّ وَلَا مَنْ يَذْهَبُ وَيَجِيءُ فِي مَرَضِهِ.

L21460–21461 And all of them said: This applies only to a dreaded illness such as ardent fever, pleurisy, abdominal ailment, and the like, but they did not consider this applicable to leprosy, nor to quartan fever, nor to consumption, nor to those whose illness comes and goes.

وَقَالَ مَالِكٌ: كَقَوْلِ أَبِي حَنِيفَةَ فِي كُلِّ مَا ذَكَرْنَا إِلَّا فِي الْحَامِلِ فَإِنَّ أَفْعَالَهَا عِنْدَهُ كَالصَّحِيحِ إِلَى أَنْ تُتِمَّ سِتَّةَ أَشْهُرٍ، فَإِذَا أَتَمَّتْهَا فَأَفْعَالُهَا فِي مَالِهَا كَالْمَرِيضِ. حَتَّى أَنَّهُ مَنَعَهَا مِنْ مُرَاجَعَةِ زَوْجِهَا الَّذِي طَلَّقَهَا طَلَاقًا بَائِنًا وَاحِدَةً أَوْ اثْنَتَيْنِ وَإِلَّا الِاسْتِسْعَاءُ فَلَمْ يَرَهُ، بَلْ أَرَقَّ مَا لَمْ يَحْمِلْ الثُّلُثُ مِنْهُ، وَإِلَّا فِيمَنْ اشْتَرَى ابْنَهُ فِي مَرَضِهِ وَلَمْ يَحْمِلْهُ الثُّلُثُ فَإِنَّهُ أَعْتَقَ مِنْهُ مَا حَمَلَ الثُّلُثُ وَأَرَقَّ الْبَاقِيَ.

L21462 Malik said: His opinion aligns with Abu Hanifah's in all we have mentioned except regarding the pregnant woman, for her legal acts in his view remain valid like those of a healthy person until she completes six months of pregnancy. When she completes the six months, her financial acts are treated as those of an ill person. He even prohibited her from resuming the marriage with her husband who had divorced her with one or two irrevocable divorces, unless appointing arbitrators was sought – but he rejected this. Rather, he ordered the sale [of assets] provided the third [of the estate] was not exceeded, except in the case of one who ransomed his son [from slavery] during his illness without the third [of the estate] being exceeded. In that scenario, he emancipated the portion equivalent to a third and sold the remainder.

وَقَالَ الشَّافِعِيُّ، وَسُفْيَانُ الثَّوْرِيُّ لِلْمَرِيضِ أَنْ يَقْضِيَ بَعْضَ غُرَمَائِهِ دُونَ بَعْضٍ - وَقَالَ الشَّافِعِيُّ: فِعْلُ الْمَرِيضِ مَرَضًا مُخِيفًا مِنْ الثُّلُثِ، فَإِنْ أَفَاقَ فَمِنْ رَأْسِ مَالِهِ - وَاخْتَلَفَ قَوْلُهُ فِي الَّذِي يُقَدَّمُ لِلْقَتْلِ؟ فَمَرَّةً قَالَ: هُوَ كَالصَّحِيحِ وَمَرَّةً قَالَ: هُوَ كَالْمَرِيضِ.

L21463 Al-Shafi'i and Sufyan al-Thawri stated that a sick person may settle some creditors while excluding others. Al-Shafi'i said: Acts performed by a person afflicted with a serious illness are deducted from one-third of his estate. If he recovers, such acts are drawn from his personal wealth. His rulings differed regarding one sentenced to execution - sometimes stating he is considered like a healthy person, and other times like a sick person.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مَالِكٍ، وَأَبِي حَنِيفَةَ: أَنَّهُ لَيْسَ لِلْمَرِيضِ أَنْ يَقْضِيَ بَعْضَ غُرَمَائِهِ دُونَ بَعْضٍ -: فَخَطَأٌ فِي تَفْرِيقِهِمَا فِي ذَلِكَ بَيْنَ الصَّحِيحِ، وَالْمَرِيضِ، وَالْحَقُّ فِي ذَلِكَ هُوَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِأَنْ يُعْطَى كُلُّ ذِي حَقٍّ حَقَّهُ، فَهُوَ فِي إنْصَافِهِ بَعْضَ غُرَمَائِهِ دُونَ بَعْضٍ مُعْطِي ذَلِكَ الَّذِي أَنْصَفَ حَقَّهُ، وَمَنْ فَعَلَ مَا أَمَرَ بِهِ فَهُوَ مُحْسِنٌ، وَالْإِحْسَانُ لَا يُرَدُّ، فَإِنْ كَانَ الَّذِي لَمْ يُنْصِفْهُ حَاضِرًا طَالِبًا حَقَّهُ فَهُوَ عَاصٍ فِي أَنَّهُ لَمْ يُنْصِفْهُ، وَهُمَا قَضِيَّتَانِ أَصَابَ فِي إحْدَاهُمَا، وَظَلَمَ فِي الْأُخْرَى - وَالْحَقُّ لَا يُبْطِلُهُ ظُلْمُ فَاعِلِهِ فِي قِصَّةٍ أُخْرَى وَحَقُّ الْغَرِيمِ إنَّمَا هُوَ فِي ذِمَّةِ الْمَدِينِ لَا فِي عَيْنِ مَالِهِ مَا دَامَ حَيًّا لَمْ يُفْلِسْ، فَإِذْ ذَلِكَ كَذَلِكَ فَقَدْ نَفَذَ الَّذِي أَعْطَى مَا أَعْطَاهُ بِحَقٍّ وَلَزِمَهُ أَنْ يُنْصِفَ مَنْ بَقِيَ إذْ حَقُّهُ فِي ذِمَّتِهِ لَا فِي عَيْنِ مَا أَعْطَى الْآخَرَ - وَلَمْ يَأْتِ نَصٌّ فِي الْفَرْقِ بَيْنَ صَحِيحٍ، وَمَرِيضٍ، وَمَا نَعْلَمُ لَهُمَا فِي قَوْلِهِمَا هَذَا سَلَفًا.

L21464–21466 Abu Muhammad said: As for the statement of Mālik and Abū Ḥanīfah that a sick person may not repay some creditors while excluding others - this is an error in their distinction between the rulings for the healthy and the sick in this matter. The truth regarding... That is to say that the Messenger of Allah—peace and blessings of Allah be upon him—commanded that every rightful claimant be given their due. Thus, in his equitable treatment of some creditors while excluding others, he granted what fulfilled the right of those he treated justly. Whoever acts according to this command performs benevolence, and benevolence is not rejected. If the creditor who was not given their due is present demanding their right, the debtor transgresses by withholding it. These are two cases: in one he was correct, in the other he committed injustice. The right itself is not nullified by the debtor's wrongdoing in another matter. The creditor's right resides solely in the debtor's personal obligation, not in specific property, as long as the debtor lives and remains solvent. Since this is so, what the debtor rightfully gave to one creditor remains validly discharged, while he remains obligated to fulfill the remaining creditors' rights—which persist in his personal obligation, not in the specific property given to others. No explicit text distinguishes between healthy and sick persons in this matter, and we know of no earlier predecessors for their opinion in this statement.

وَأَمَّا قَوْلُهُمَا فِيمَنْ اشْتَرَى وَلَدَهُ فِي مَرَضِهِ فَلَمْ يَحْمِلْهُ الثُّلُثُ أَنَّهُ لَا يَرِثُهُ، فَإِنْ حَمَلَهُ الثُّلُثُ عَتَقَ وَوَرِثَ -: فَقَوْلٌ فِي غَايَةِ الْفَسَادِ وَالْمُنَاقَضَةِ، وَلَا نَعْلَمُ لَهُمَا فِيهِ سَلَفًا مُتَقَدِّمًا، لِأَنَّهُ إنْ كَانَ وَصِيَّةً، فَالْوَصِيَّةُ لِلْوَارِثِ لَا تَجُوزُ - فَيَنْبَغِي عَلَى أَصْلِهِمْ أَنْ لَا يَنْفُذَ عِتْقُهُ أَصْلًا حَمَلَهُ الثُّلُثُ أَوْ لَمْ يَحْمِلْهُ - وَقَدْ قَالَ بِهَذَا بَعْضُ الشَّافِعِيِّينَ.

L21467 As for their statement regarding one who purchased his child during his illness, such that the third [of the estate] did not suffice for it—[asserting] that the child does not inherit him—but if the third sufficed, the child is emancipated and inherits—this is a statement at the peak of corruption and contradiction. We know of no predecessor among earlier scholars who upheld their view, for if this were considered a bequest, a bequest to an heir is invalid. By their own principles, the emancipation should not take effect

at all, whether the third suffices for it or not. Indeed, some Shāfiʿī scholars have held this view.

L21468 Others among them said: The purchase is invalid because it constitutes a bequest to an heir. Even if it is not considered a bequest, why would he not inherit when emancipated through his father's ownership of him? Their contradiction is evident in the case of a sick man who has intercourse with his female slave and impregnates her - thus she is freed at the expense of his estate, and her child inherits him. If they argue: "Her pregnancy is not his act?" We respond: But his intercourse with her is his act, his acknowledgment of the child's parentage is his act, while the child's manumission in any case is not his act. As for Mālik's ruling regarding the pregnant woman, it is an opinion for which we know no prior precedent. Some of his followers sought to justify it by citing Allah's statement: {When he had intercourse with her, she carried a light burden and went about with it. When she became heavy, they both supplicated to Allah, their Lord} [Al-Aʿrāf 7:189].[32]

L21469 Abu Muhammad said: This is their misleading implication to argue using what provides no valid proof for them whatsoever, for Allah the Exalted did not state that undue burden is restricted to the completion of six months. Thus their obfuscation by means of what they have no valid basis for is laid bare.

L21470 Then, if only I knew who among them would assert that burdens in their entirety are included under the ruling applicable to the sick—when indeed a carrier may bear a heavy burden, yet would not thereby fall under the ruling of the sick in their view.

L21471–21472 If they say: She can give birth after six months? We say: She may miscarry before that, and miscarriage is more dangerous than childbirth or similar to it. Thus, the invalidity of this statement is completely evident. And success is through Allah, the Most High.

L21473 Ali said: "Then we take by the power and strength of Allah the Exalted in the opinion of those who say that the actions of a sick person or one feared to be near death are taken from one-third?" Abu Muhammad said:

[32]**Qur'an references (L21468):** Qur'an 7:189 (Al-A'raf).

وَقَالَ آخَرُونَ مِنْهُمْ: الشِّرَاءُ فَاسِدٌ، لِأَنَّهُ وَصِيَّةٌ لِوَارِثٍ وَإِنْ كَانَ لَيْسَ وَصِيَّةً فَمَا بَالُهُ لَا يَرِثُ وَقَدْ صَارَ حُرًّا بِمِلْكِ أَبِيهِ لَهُ، ثُمَّ مُنَاقَضَتُهُمْ فِي الْمَرِيضِ يَطَأُ أَمَتَهُ فَتَحْمِلُ أَنَّهَا مِنْ رَأْسِ مَالِهِ حُرَّةٌ وَيَرِثُهُ وَلَدُهَا، فَإِنْ قَالُوا: حَمْلُهَا لَيْسَ مِنْ فِعْلِهِ؟ قُلْنَا: لَكِنَّ وَطْأَهُ لَهَا مِنْ فِعْلِهِ، وَإِقْرَارَهُ بِوَلَدِهَا مِنْ فِعْلِهِ، وَعِتْقَ الْوَلَدِ فِي كُلِّ حَالٍ لَيْسَ مِنْ فِعْلِهِ. وَأَمَّا قَوْلُ مَالِكٍ فِي الْحَامِلِ فَقَوْلٌ أَيْضًا لَا نَعْلَمُ لَهُ فِيهِ سَلَفًا، وَاحْتَجَّ لَهُ بَعْضُ مُقَلِّدِيهِ بِقَوْلِ اللَّهِ تَعَالَى: {فَلَمَّا تَغَشَّاهَا حَمَلَتْ حَمْلا خَفِيفًا فَمَرَّتْ بِهِ فَلَمَّا أَثْقَلَتْ دَعَوَا اللَّهَ رَبَّهُمَا} [الأعراف: ١٨٩] .

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا إيهَامٌ مِنْهُمْ لِلِاحْتِجَاجِ بِمَا لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَقُلْ إنَّ الْإِثْقَالَ لَمْ تَكُنْ إلَّا بِتَمَامِ سِتَّةِ أَشْهُرٍ -: فَظَهَرَ تَمْوِيهُهُمْ بِمَا لَيْسَ لَهُمْ فِيهِ مُتَعَلَّقٌ.

ثُمَّ لَيْتَ شِعْرِي مَنْ لَهُمْ بِأَنَّ الْإِثْقَالَ جُمْلَةً يُدْخِلُهَا فِي حُكْمِ الْمَرِيضِ، وَقَدْ يَحْمِلُ الْحَمَّالُ حِمْلًا ثَقِيلًا فَلَا يَكُونُ بِذَلِكَ فِي حُكْمِ الْمَرِيضِ عِنْدَهُمْ.

فَإِنْ قَالُوا: قَدْ تَلِدُ لِسِتَّةِ أَشْهُرٍ؟ قُلْنَا، وَقَدْ تُسْقِطُ قَبْلَ ذَلِكَ، وَالْإِسْقَاطُ أَخْوَفُ مِنْ الْوِلَادَةِ أَوْ مِثْلُهَا - فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ جُمْلَةً. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

قَالَ عَلِيٌّ: ثُمَّ نَأْخُذُ بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ فِي قَوْلِ مَنْ قَالَ: بِأَنَّ أَفْعَالَ الْمَرِيضِ، وَمَنْ خِيفَ عَلَيْهِ الْمَوْتُ مِنْ الثُّلُثِ؟ قَالَ أَبُو مُحَمَّدٍ: احْتَجُّوا بِالْخَبَرِ الثَّابِتِ الْمَشْهُورِ مِنْ

"They cited as evidence the well-established, renowned report through Ibn Sirin and Abi Al-Muhallab, both narrating from Imran ibn Al-Husayn: 'A man freed six slaves he owned at his death, having no property other than them. The Messenger of Allah—may Allah bless him and grant him peace—summoned them, divided them into thirds, then drew lots among them. He freed two and enslaved four.'"

L21474 In some narrations, it is mentioned that he—peace be upon him—spoke firmly regarding it. According to the authentic, well-established report transmitted via the chains of Mālik, Ibn ʿUyaynah, and Ibrāhīm ibn Saʿd from al-Zuhrī, from ʿĀmir ibn Saʿd ibn Abī Waqqāṣ, from his father, who said: "Allah's Messenger—may Allah's blessings and peace be upon him—came to visit me during an illness that had severely afflicted me. I said, 'O Messenger of Allah, the pain I endure is as severe as you witness, and I possess wealth, yet none will inherit me except a daughter. Should I donate two-thirds of my wealth?' He—peace be upon him—replied, 'No.' I asked, 'Then half?' He said, 'No.' Then he—peace be upon him—said, 'A third, and a third is a significant portion. Indeed, leaving your heirs wealthy is better than leaving them impoverished, reduced to begging from people.'" He then related the rest of the report.

L21475 They said: He (peace be upon him) did not permit him to allocate charitable bequests exceeding a third of his estate.

L21476–21478 And with a report we have narrated through the chain of Muḥammad ibn ʿAbd al-Malik ibn Ayman: narrated to us Yazīd ibn Muḥammad al-ʿUqaylī; narrated to us Ḥafṣ ibn ʿUmar ibn Maymūn, from Thawr ibn Yazīd, from Makhūl, from al-Ṣunābiḥī, from Abū Bakr al-Ṣiddīq. The Messenger of Allah—peace and blessings be upon him—said: "Indeed, Allah has bestowed upon you the charity of a third of your wealth to bequeath at the time of your death, as a mercy to you and an increase in your deeds and virtuous acts."

L21479 And through the chain of Sulaymān ibn Mūsā, I heard that the Messenger of Allah—may Allah's blessings and peace be upon him—said: "A third of your wealth has been ordained as an increase in your deeds."

طَرِيقِ ابْنِ سِيرِينَ، وَأَبِي الْمُهَلَّبِ، كِلَاهُمَا عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ: «أَنَّ رَجُلًا أَعْتَقَ سِتَّةَ مَمْلُوكِينَ لَهُ عِنْدَ مَوْتِهِ لَمْ يَكُنْ لَهُ مَالٌ غَيْرَهُمْ فَدَعَاهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَزَّأَهُمْ أَثْلَاثًا، ثُمَّ أَقْرَعَ بَيْنَهُمْ فَأَعْتَقَ اثْنَيْنِ، وَأَرَقَّ أَرْبَعَةً» .

وَجَاءَ فِي بَعْضِ الرِّوَايَاتِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ فِيهِ قَوْلًا شَدِيدًا. وَبِالْخَبَرِ الصَّحِيحِ الثَّابِتِ مِنْ طَرِيقِ مَالِكٍ، وَابْنِ عُيَيْنَةَ، وَإِبْرَاهِيمَ بْنِ سَعْدٍ عَنْ الزُّهْرِيِّ عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ قَالَ: «جَاءَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَعُودُنِي مِنْ وَجَعٍ اشْتَدَّ بِي فَقُلْتُ: يَا رَسُولَ اللَّهِ قَدْ بَلَغَنِي مِنْ الْوَجَعِ مَا تَرَى، وَأَنَا ذُو مَالٍ وَلَا يَرِثُنِي إلَّا ابْنَةٌ لِي. أَفَأَتَصَدَّقُ بِثُلُثَيْ مَالِي؟ قَالَ - عَلَيْهِ السَّلَامُ -: لَا، قُلْتُ: فَالشَّطْرُ؟ قَالَ: لَا، ثُمَّ قَالَ - عَلَيْهِ السَّلَامُ -: الثُّلُثُ، وَالثُّلُثُ كَثِيرٌ، إنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ» وَذَكَرَ بَاقِيَ الْخَبَرِ

قَالُوا: فَلَمْ يَأْذَنْ لَهُ - عَلَيْهِ السَّلَامُ - بِالصَّدَقَةِ بِأَكْثَرَ مِنْ الثُّلُثِ.

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا يَزِيدُ بْنُ مُحَمَّدٍ الْعُقَيْلِيُّ نا حَفْصُ بْنُ عُمَرَ بْنِ مَيْمُونٍ عَنْ ثَوْرِ بْنِ يَزِيدَ عَنْ مَكْحُولٍ عَنْ الصُّنَابِحِيِّ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّ اللَّهَ قَدْ تَصَدَّقَ عَلَيْكُمْ بِثُلُثِ أَمْوَالِكُمْ عِنْدَ مَوْتِكُمْ رَحْمَةً لَكُمْ وَزِيَادَةً فِي أَعْمَالِكُمْ وَحَسَنَاتِكُمْ»

وَمِنْ طَرِيقِ سُلَيْمَانَ بْنِ مُوسَى سَمِعْت أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «جُعِلَ لَكُمْ ثُلُثُ أَمْوَالِكُمْ زِيَادَةً فِي أَعْمَالِكُمْ» .

L21480 And from the chain of Ma’mar from Ayyub from Abu Qilabah: The Prophet (peace and blessings of Allah be upon him) said in a narration from Allah the Exalted: “I have made a portion of your wealth existent at the time of your death by which I will have mercy on you.” And from the chain of Ma’mar from Qatadah, he said: The Messenger of Allah (peace and blessings of Allah be upon him) said: “Redeem yourselves before your Lord, O people! Behold, nothing belongs to any person. Beware! Let it not be that I come to know of a man who withheld Allah’s rightful due until when death approaches him, he begins to scatter his wealth in every direction.”

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ أَبِي قِلَابَةَ «قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي خَبَرٍ عَنْ اللَّهِ تَعَالَى: أَنَّهُ قَالَ: جَعَلْتُ لَكَ طَائِفَةً مِنْ مَالِكَ عِنْدَ مَوْتِكَ أَرْحَمُكَ بِهِ» . وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «ابْتَاعُوا أَنْفُسَكُمْ مِنْ رَبِّكُمْ أَيُّهَا النَّاسُ، أَلَا إنَّهُ لَيْسَ لِامْرِئٍ شَيْءٌ، أَلَا لَا أَعْرِفَنَّ امْرَأً بَخِلَ بِحَقِّ اللَّهِ حَتَّى إذَا حَضَرَهُ الْمَوْتُ أَخَذَ يُذَعْذِعُ مَالَهُ هَهُنَا هَهُنَا» .

L21481–21482 And from the chain of Wakīʿ, from Ṭalḥah—he is Ibn ʿAmr al-Makkī—from ʿAṭāʾ, from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said: “Verily Allah has given you a third of your wealth as charity (ṣadaqah) upon your death, as an increase for your deeds.” From the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us: Ḥajjāj from al-ʿAlāʾ ibn Badr, from Abū Yaḥyā al-Makkī: “A man manumitted his slave at his death when he owned no property other than the slave and owed debts. The Messenger of Allah—peace and blessings of Allah be upon him—commanded the man to have the slave work to pay his value.”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ طَلْحَةَ - هُوَ ابْنُ عَمْرٍو الْمَكِّيُّ - عَنْ عَطَاءٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ اللَّهَ تَصَدَّقَ عَلَيْكُمْ بِالثُّلُثِ مِنْ أَمْوَالِكُمْ عِنْدَ وَفَاتِكُمْ زِيَادَةً لَكُمْ فِي أَعْمَالِكُمْ» . وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا حَجَّاجٌ عَنْ الْعَلَاءِ بْنِ بَدْرٍ عَنْ أَبِي يَحْيَى الْمَكِّيِّ: «أَنَّ رَجُلًا أَعْتَقَ غُلَامًا لَهُ عِنْدَ مَوْتِهِ لَيْسَ لَهُ مَالٌ غَيْرَهُ، وَعَلَيْهِ دَيْنٌ، فَأَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَسْعَى فِي قِيمَتِهِ» .

L21483 Via the chain of Saʿīd ibn Manṣūr: Hushaym reported to us, saying, “I [heard] from Khālid, from Abī Qilābah, from a man of Banī ʻUdhrah: A man among them manumitted a slave at his death while owning no property besides him. This matter was presented to the Messenger of Allāh (peace be upon him), who manumitted one-third of the slave and obligated him to work for the remaining two-thirds.” They said: It is authentically established from Abū Bakr that he told ʻĀ’ishah (may Allāh be pleased with her) at his death: “I irrevocably gifted you twenty wasqs from my property. Had you taken possession and secured it, it would have been yours. But today, it belongs to the heir’s property.” They said: Abū Bakr declared this before the Companions, affirming that when one approaches death, his property becomes the heir’s property.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا خَالِدٌ عَنْ أَبِي قِلَابَةَ عَنْ رَجُلٍ مِنْ بَنِي عُذْرَةَ «أَنَّ رَجُلًا مِنْهُمْ أَعْتَقَ غُلَامًا عِنْدَ مَوْتِهِ وَلَمْ يَكُنْ لَهُ مَالٌ غَيْرَهُ، فَرَفَعَ ذَلِكَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَعْتَقَ مِنْهُ الثُّلُثَ وَاسْتَسْعَى فِي الثُّلُثَيْنِ» : وَقَالُوا قَدْ صَحَّ عَنْ أَبِي بَكْرٍ أَنَّهُ قَالَ لِعَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - عِنْدَ مَوْتِهِ " إنِّي كُنْتُ نَحَلْتُكِ جَادَّ عِشْرِينَ وَسْقًا مِنْ مَالِي فَلَوْ كُنْتِ جَدَدْتِيهِ وَحُزْتِيهِ لَكَانَ لَكِ، وَإِنَّمَا هُوَ الْيَوْمَ مَالُ الْوَارِثِ " قَالُوا: فَأَخْبَرَ أَبُو بَكْرٍ بِحَضْرَةِ الصَّحَابَةِ أَنَّ مَنْ قَارَبَ الْمَوْتَ فَمَالُهُ مَالُ الْوَارِثِ.

L21484 They said: What we have cited from Ali and Ibn Mas’ud has indeed been established, and no dissenting opinion opposing them is known among the

Companions (may Allah be pleased with them) - thus it is consensus (ijmaʿ). They further said: We have analogically compared it to the testamentary will.

وَقَالُوا: قَدْ جَاءَ مَا أَوْرَدْنَا عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ، وَلَا مُخَالِفَ لَهُمَا يُعْرَفُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَهُوَ إجْمَاعٌ، وَقَالُوا: قِسْنَاهُ عَلَى الْوَصِيَّةِ.

L21485 Abū Muḥammad said: This is all they have disputed, and none of it provides valid evidence for them. As for the narration of a man from Banū ʻUdhrah: it is a *mursal* report transmitted from an unknown narrator. Moreover, even if it were authentic, it would contradict the positions of Mālik and al-Shāfiʻī, for they do not recognize the validity of *istisʻā'*.

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّ مَا شَغَبُوا بِهِ، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ -: أَمَّا حَدِيثُ رَجُلٍ مِنْ بَنِي عُذْرَةَ: فَمُرْسَلٌ، وَعَنْ مَجْهُولٍ، ثُمَّ لَوْ صَحَّ لَكَانَ مُخَالِفًا لِقَوْلِ مَالِكٍ، وَالشَّافِعِيِّ؛ لِأَنَّهُمَا لَا يَرَيَانِ الِاسْتِسْعَاءَ.

L21486 As for the report of Abū Yaḥyā al-Mālikī: it is invalid because it is _mursal_ (transmitted without a complete chain), and from Ḥajjāj—who is discarded. Moreover, even if it were authentic, it would contradict the doctrines of Mālik and al-Shāfiʻī.

وَأَمَّا خَبَرُ أَبِي يَحْيَى الْمَالِكِيِّ: فَهَالِكٌ، لِأَنَّهُ مُرْسَلٌ، وَعَنْ حَجَّاجٍ، وَهُوَ سَاقِطٌ، ثُمَّ لَوْ صَحَّ لَكَانَ مُخَالِفًا لِقَوْلِ مَالِكٍ وَالشَّافِعِيِّ.

L21487 As for the ḥadīth of Abū Hurayrah, its chain includes Ṭalḥah ibn ʻAmr al-Makkī - and he is a fabricator.

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ: فَفِيهِ طَلْحَةُ بْنُ عَمْرٍو الْمَكِّيُّ وَهُوَ كَذَّابٌ.

L21488–21490 As for the ḥadīth of Qatādah: it is mursal. Furthermore, even if it were authentic, they would have no valid proof in it, because stinginess in a right... By Allah, the Exalted, we do not disagree with them that it is impermissible, and that profligate dispersal of wealth here and there is not permissible according to us; neither in a state of health nor sickness. Therefore, this report does not conflict with our view.

وَأَمَّا حَدِيثُ قَتَادَةَ: فَمُرْسَلٌ، ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّ الْبُخْلَ بِحَقِّ اللَّهِ تَعَالَى لَا نُخَالِفُهُمْ أَنَّهُ لَا يَحِلُّ، وَأَنَّ ذَعْذَعَةَ الْمَالِ هَهُنَا وَهَهُنَا لَا تَجُوزُ عِنْدَنَا، لَا فِي صِحَّةٍ، وَلَا فِي مَرَضٍ، فَلَيْسَ ذَلِكَ الْخَبَرُ مُخَالِفًا لِقَوْلِنَا.

L21491 As for the ḥadīth of Abū Qilābah, it is *mursal*, and likewise the ḥadīth of Sulaymān ibn Mūsā is *mursal*.

وَأَمَّا حَدِيثُ أَبِي قِلَابَةَ: فَمُرْسَلٌ، وَكَذَلِكَ حَدِيثُ سُلَيْمَانَ بْنِ مُوسَى.

L21492 As for the narration of Abū Bakr, its chain of transmission is not widely recognized, and we do not know the status of Ḥafṣ ibn ʻUmar ibn Maymūn. Even if this narration and all the other traditions we mentioned were authentic, they would not constitute any valid proof whatsoever, because all of them merely indicate that Allah—Exalted and Glorified—bestows upon us as charity a third of our wealth at the time of our death. This corresponds to the bequest, which is indisputably valid after death. It is established in the linguistic convention by which the Messenger of Allah—peace and blessings be upon him—addressed us that Arabs say: "Such an affair occurred at the

وَأَمَّا حَدِيثُ أَبِي بَكْرٍ فَسَنَدُهُ غَيْرُ مَشْهُورٍ، وَلَا نَدْرِي حَالَ حَفْصِ بْنِ عُمَرَ بْنِ مَيْمُونٍ، ثُمَّ لَوْ صَحَّ هُوَ وَجَمِيعُ الْآثَارِ الَّتِي ذَكَرْنَا لَمْ يَكُنْ لَهُمْ فِي شَيْءٍ مِنْهَا حُجَّةٌ أَصْلًا؛ لِأَنَّهُ لَيْسَ فِيهَا كُلِّهَا إلَّا أَنَّ اللَّهَ عَزَّ وَجَلَّ تَصَدَّقَ عَلَيْنَا عِنْدَ مَوْتِنَا بِثُلُثِ أَمْوَالِنَا -: فَهَذَا يَخْرُجُ عَلَى أَنَّهُ الْوَصِيَّةُ الَّتِي هِيَ بِلَا خِلَافٍ نَافِذَةٌ بَعْدَ الْمَوْتِ، وَمَعْرُوفٌ فِي اللُّغَةِ الَّتِي بِهَا خَاطَبَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ الْعَرَبَ تَقُولُ: كَانَ أَمْرُ كَذَا عِنْدَ

time of so-and-so's death," as in "The Arabs apostatized at the time of the Messenger of Allah's death—peace and blessings be upon him—" and "'Umar was appointed leader at the time of Abū Bakr's death." This is a widely recognized and established matter. All these narrations conform perfectly to this interpretation and align with our actual position, excepting the narration of Al-ʿAlāʾ ibn Badr from Abū Yaḥyā al-Makkī, which cannot be reconciled with our view or the view of any of them. They have no right to cite a narration they themselves contradict, for Abū Ḥanīfa states: "If the debt does not exhaust the slave's entire value, he is required to work solely to repay the debt, then for two-thirds of the remaining value thereafter"—which coincides with our ruling when emancipation is bequeathed. We maintain: "If the debt exhausts his entire value, the manumission is invalid"—and this is the position of Mālik and Al-Shāfiʿī.

مَوْتِ فُلَانٍ، وَارْتَدَّتْ الْعَرَبُ عِنْدَ مَوْتِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَوُلِّيَ عُمَرُ عِنْدَ مَوْتِ أَبِي بَكْرٍ - هَذَا أَمْرٌ مَعْرُوفٌ مَشْهُورٌ. فَجَمِيعُ هَذِهِ الْأَخْبَارِ خَارِجَةٌ عَلَى هَذَا أَحْسَنَ خُرُوجٍ، وَمُوَافِقَةٌ لِقَوْلِنَا عَلَى الْحَقِيقَةِ، حَاشَا خَبَرَ الْعَلَاءِ بْنِ بَدْرٍ عَنْ أَبِي يَحْيَى الْمَكِّيِّ، فَإِنَّهُ لَا يُخَرَّجُ لَا عَلَى قَوْلِنَا وَلَا عَلَى قَوْلِ أَحَدٍ مِنْهُمْ، فَلَيْسَ لَهُمْ أَنْ يَحْتَجُّوا بِخَبَرٍ يُخَالِفُونَهُ؛ لِأَنَّ أَبَا حَنِيفَةَ يَقُولُ: إنْ كَانَ الدَّيْنُ لَا يَسْتَغْرِقُ جَمِيعَ قِيمَةِ الْعَبْدِ فَإِنَّمَا يَسْعَى فِي الدَّيْنِ فَقَطْ، ثُمَّ فِي ثُلُثَيْ مَا يَبْقَى مِنْ قِيمَتِهِ بَعْدَ الدَّيْنِ فَقَطْ - وَهُوَ قَوْلُنَا إذَا أَوْصَى بِعِتْقِهِ، وَنَحْنُ نَقُولُ: إنْ كَانَ الدَّيْنُ يَسْتَغْرِقُ جَمِيعَ قِيمَتِهِ، فَالْعِتْقُ بَاطِلٌ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ.

L21493 Each group among them has contradicted that ḥadīth. Moreover, all of them oppose these narrations entirely, for there is nothing in them except the phrase "at the time of his death" and "at the time of your death," with no mention whatsoever of illness in any of them. Illness is an element they added through their personal opinions—no explicit text in any narration nor any evidence supports it. A healthy person may die suddenly or from a minor ailment, so from where did their restriction to illness originate? Why did they not adhere to what the narrations explicitly state—"at the time of his death"—and thus deem valid the act of whoever performed it "at the time of his death," whether healthy or as a sick person (bequeathing) from the third? Why did they not treat what people enact during health or illness—if death follows thereafter—as deriving from the capital of their wealth? Thus, it becomes evident that all these narrations contradict their opinion, and that they belong to the category of evidence they cite for their rulings, though none of these narrations pertains to what they argue for. This constitutes a repugnant ambiguity on their part and deception in matters of religion—thereby nullifying their reliance upon them.

فَكُلُّ طَائِفَةٍ مِنْهُمْ قَدْ خَالَفَتْ ذَلِكَ الْحَدِيثَ. ثُمَّ جَمِيعُهُمْ مُخَالِفٌ لِجَمِيعِ هَذِهِ الْآثَارِ؛ لِأَنَّهُ لَيْسَ فِيهَا إلَّا: " عِنْدَ مَوْتِهِ، وَعِنْدَ مَوْتِكُمْ " وَلَيْسَ فِي شَيْءٍ مِنْهَا ذِكْرٌ لِمَرَضٍ أَصْلًا، فَالْمَرَضُ شَيْءٌ زَادُوهُ بِآرَائِهِمْ لَيْسَ فِي شَيْءٍ مِنْ الْآثَارِ نَصٌّ مِنْهُ، وَلَا دَلِيلٌ عَلَيْهِ، وَقَدْ يَمُوتُ الصَّحِيحُ فَجْأَةً، وَمِنْ مَرَضٍ خَفِيفٍ، فَاقْتِصَارُهُمْ عَلَى الْمَرَضِ مِنْ أَيْنَ خَرَجَ؟ وَهَلَّا رَاعُوا مَا جَاءَتْ بِهِ الْآثَارُ مِنْ لَفْظِ " عِنْدَ مَوْتِهِ " فَجَعَلُوا مَنْ فَعَلَ ذَلِكَ " عِنْدَ مَوْتِهِ " صَحِيحًا فَعَلَهُ؟ أَوْ مَرِيضًا مِنْ الثُّلُثِ، وَجَعَلُوا مَا فَعَلُوا فِي صِحَّتِهِ أَوْ مَرَضِهِ مِمَّا تَأَخَّرَ عَنْهُ مَوْتُهُ مِنْ رَأْسِ مَالِهِ؟ فَظَهَرَ أَنَّ جَمِيعَ هَذِهِ الْآثَارِ مُخَالِفَةٌ لِقَوْلِهِمْ، وَأَنَّهَا مِنْ النَّوْعِ الَّذِي احْتَجُّوا بِهِ لِأَقْوَالٍ لَهُمْ، لَيْسَ مِنْهَا شَيْءٌ فِيمَا احْتَجُّوا لَهُ بِهِ، وَهَذَا إيهَامٌ مِنْهُمْ قَبِيحٌ، وَتَدْلِيسٌ فِي الدِّينِ - فَسَقَطَ تَعَلُّقُهُمْ بِهَا.

L21494–21495 As for the hadith of Sa'd, we have narrated it through the chain of Sufyan

al-Thawri from Sa’d ibn Ibrahim from ’Amir ibn Sa’d ibn Abi Waqqas from his father.

وَأَمَّا حَدِيثُ سَعْدٍ: فَإِنَّا رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ سَعْدِ بْنِ إِبْرَاهِيمَ عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ.

L21496 And from the route of Maʿmar from al-Zuhri from ʿĀmir ibn Saʿd from his father. And from the route of Marwān ibn Muʿāwiyah al-Fazārī from Hāshim ibn Hāshim ibn ʿUtbah ibn Abī Waqqāṣ from ʿĀmir ibn Saʿd from his father.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ عَامِرِ بْنِ سَعْدٍ عَنْ أَبِيهِ. وَمِنْ طَرِيقِ مَرْوَانَ بْنِ مُعَاوِيَةَ الْفَزَارِيِّ عَنْ هَاشِمِ بْنِ هَاشِمِ بْنِ عُتْبَةَ بْنِ أَبِي وَقَّاصٍ عَنْ عَامِرِ بْنِ سَعْدٍ عَنْ أَبِيهِ.

L21497 And via the chain of Abd al-Malik ibn Umayr, from Musʿab ibn Saʿd ibn Abi Waqqas, from his father.

وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ عَنْ مُصْعَبِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ.

L21498 And via the chain of Ayyub al-Sikhtiyānī from ʿAmr ibn Saʿīd from Ḥumayd ibn ʿAbd al-Raḥmān from three from among the children of Saʿd, all of whom narrate from Saʿd.

وَمِنْ طَرِيقِ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عَمْرِو بْنِ سَعِيدٍ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ ثَلَاثَةٍ مِنْ وَلَدِ سَعْدٍ، كُلُّهُمْ عَنْ سَعْدٍ

L21499 And via the chain of Qatadah, from Yunus ibn Jubayr, from Muhammad ibn Sa‘d ibn Abi Waqqas, from his father [Sa‘d ibn Abi Waqqas].

وَمِنْ طَرِيقِ قَتَادَةَ عَنْ يُونُسَ بْنِ جُبَيْرٍ عَنْ مُحَمَّدِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ.

L21500 And via the chain of ʿAṭāʾ ibn al-Sāʾib, from Abū ʿAbd al-Raḥmān al-Sulamī, from Saʿd ibn Abī Waqqāṣ.

وَمِنْ طَرِيقِ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ.

L21501 And through the chain of Wakīʿ from Hishām ibn ʿUrwah from his father from Saʿd and ʿĀʾishah, the Mother of the Believers—all of whom related in this report: "Shall I bequeath all my wealth, two-thirds of it, or half of it, O Messenger of God?"—this being a single report. Thus, it is confirmed that those who transmitted the wording "Shall I give in charity" from al-Zuhrī undoubtedly intended by it the bequest, not charity during one's lifetime, for it is entirely a single report concerning a single situation, from one man, regarding one ruling. Every bequest is charity, but not every charity is a bequest. Furthermore, this report has been transmitted to us through the chain of Abū Dāwūd: Abū al-Walīd al-Ṭayālisī narrated to us, saying: ʿAbd al-ʿAzīz ibn al-Mājishūn and Ibrāhīm ibn Saʿd both narrated from al-Zuhrī from ʿĀmir ibn Saʿd from his father, who said: "I fell severely ill and recovered. The Messenger of God—peace and blessings be upon him—visited me, and I said: 'O Messenger of God, I have abundant wealth, and only one daughter will inherit me. Shall I give all my wealth in charity?' He replied: 'No.' I asked: 'Shall I bequeath half?' He said: 'No.' I said: 'O Messenger of God, what then should I bequeath?' He answered: 'A third—and a third is ample. Indeed, leaving your heirs wealthy is better than leaving them dependent, begging from people.'"

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ سَعْدٍ، وَعَائِشَةَ أُمِّ الْمُؤْمِنِينَ، كُلُّهُمْ قَالَ فِي هَذَا الْخَبَرِ: أَفَأُوصِي بِمَالِي أَوْ بِثُلُثَيْ مَالِي يَا رَسُولَ اللَّهِ؟ ثُمَّ بِنِصْفِهِ - وَهُوَ خَبَرٌ وَاحِدٌ. فَصَحَّ أَنَّ الَّذِينَ رَوَوْا لَفْظَ " أَفَأَتَصَدَّقُ " عَنْ الزُّهْرِيِّ إنَّمَا عَنَوْا بِهِ الْوَصِيَّةَ بِلَا شَكٍّ، لَا الصَّدَقَةَ فِي حَالِ الْحَيَاةِ، لِأَنَّهُ كُلَّهُ خَبَرٌ وَاحِدٌ، عَنْ مَقَامٍ وَاحِدٍ، عَنْ رَجُلٍ وَاحِدٍ، فِي حُكْمٍ وَاحِدٍ، وَكُلُّ وَصِيَّةٍ صَدَقَةٌ. وَلَيْسَ كُلُّ صَدَقَةٍ وَصِيَّةً. نَعَمْ: وَرُوِّينَا هَذَا الْخَبَرَ مِنْ طَرِيقِ أَبِي دَاوُد نا أَبُو الْوَلِيدِ الطَّيَالِسِيُّ قَالَ: نَا عَبْدُ الْعَزِيزِ بْنُ الْمَاجِشُونِ، وَإِبْرَاهِيمُ بْنُ سَعْدٍ، كِلَاهُمَا عَنْ الزُّهْرِيِّ عَنْ عَامِرِ بْنِ سَعْدٍ عَنْ أَبِيهِ قَالَ: «مَرِضْتُ مَرَضًا شَدِيدًا فَأُشْفِيتُ مِنْهُ فَدَخَلَ عَلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْتُ: يَا رَسُولَ اللَّهِ إنَّ لِي مَالًا كَثِيرًا وَإِنَّمَا تَرِثُنِي ابْنَةٌ لِي وَاحِدَةٌ، أَفَأَتَصَدَّقُ بِمَالِي كُلِّهِ؟ قَالَ: لَا، قُلْتُ: فَأُوصِي بِالشَّطْرِ، قَالَ: لَا قُلْتُ: يَا رَسُولَ اللَّهِ فَبِمَ أُوصِي؟ قَالَ: الثُّلُثَ وَالثُّلُثُ كَثِيرٌ، إنَّك أَنْ تَدَعَ وَرَثَتَك أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَدَعَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ»

L21502–21503 Malik narrated from al-Zuhri from ʿĀmir ibn Saʿd from his father: "Should I give charity?"; Ibn ʿUyaynah narrated from al-Zuhri from ʿĀmir ibn Saʿd from his father. Ibrāhīm ibn Saʿd narrated from al-Zuhri from ʿĀmir ibn Saʿd from his father in one version: "Should I give charity?" and in another: "Should I make a bequest?" Maʿmar and Saʿd ibn Ibrāhīm narrated from ʿĀmir ibn Saʿd from his father: "Should I make a bequest?" They are not inferior to Malik and Ibn ʿUyaynah in the chain.

فَرَوَى مَالِكٌ، وَابْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ عَامِرِ بْنِ سَعْدٍ عَنْ أَبِيهِ أَفَأَتَصَدَّقُ؟ وَرَوَى إبْرَاهِيمُ بْنُ سَعْدٍ عَنْ الزُّهْرِيِّ عَنْ عَامِرِ بْنِ سَعْدٍ عَنْ أَبِيهِ مُرَّةَ: أَفَأَتَصَدَّقُ، وَمَرَّةً: أَفَأُوصِي؟ وَرَوَى مَعْمَرٌ، وَسَعْدُ بْنُ إبْرَاهِيمَ عَنْ عَامِرِ بْنِ سَعْدٍ عَنْ أَبِيهِ أَفَأُوصِي؟ وَلَيْسَا دُونَ مَالِكٍ، وَابْنِ عُيَيْنَةَ.

L21504 All those we have mentioned agreed on the wording: "I bequeath," thereby entirely removing the difficulty.

وَاتَّفَقَ سَائِرُ مَنْ ذَكَرْنَا عَلَى لَفْظِ: " أُوصِي " فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً.

L21505 Moreover, there is no explicit text or evidence in this narration—in any manner—indicating that this ruling applies exclusively to illness to the exclusion of health. Therefore, whoever claims it is specific to illness has certainly lied and fabricated statements against the Messenger of Allah (peace and blessings be upon him) that he did not utter, and this is among the gravest major sins.

وَأَيْضًا: فَلَيْسَ فِي هَذَا الْخَبَرِ نَصٌّ وَلَا دَلِيلٌ بِوَجْهٍ مِنْ الْوُجُوهِ عَلَى أَنَّ ذَلِكَ الْحُكْمَ فِي الْمَرَضِ خَاصَّةً دُونَ الصِّحَّةِ، فَمَنْ قَالَ: إنَّهُ فِي الْمَرَضِ خَاصَّةً فَقَدْ كَذَبَ وَقَوَّلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْ، وَهَذَا مِنْ أَكْبَرِ الْكَبَائِرِ.

L21506 Moreover, the Messenger of Allah (peace be upon him) knew that Sa'd would recover and leave significant contributions in Islam, thus it invalidated the ruling that this illness would be fatal. It was narrated to us through the chain of Abū Dāwūd: 'Uthmān ibn Muḥammad ibn Abī Shaybah narrated to us, from Jarīr, from Al-A'mash, from Abū Wā'il, from Ḥudhayfah, who said: The Messenger of Allah (peace be upon him) stood among us and left nothing related to what would occur in that position until the establishment of the Hour except that he informed us of it. Those who preserved it did so, and those who forgot it did so. These companions of mine know that when I convey something, I recognize it and mention it, just as a man remembers another's face in his absence, and he recognizes him upon seeing him.

وَأَيْضًا: فَقَدْ عَلِمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ سَعْدًا سَيَبْرَأُ وَتَكُونُ لَهُ آثَارٌ فِي الْإِسْلَامِ، فَبَطَلَ أَنْ يَكُونَ ذَلِكَ حُكْمَ الْمَرَضِ الَّذِي يَمُوتُ الْمَرْءُ مِنْهُ -: رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا عُثْمَانُ بْنُ مُحَمَّدِ بْنِ أَبِي شَيْبَةَ نا جَرِيرٌ عَنْ الْأَعْمَشِ عَنْ أَبِي وَائِلٍ عَنْ حُذَيْفَةَ قَالَ: قَامَ فِينَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَائِمًا فَمَا تَرَكَ شَيْئًا يَكُونُ فِي مَقَامِهِ ذَلِكَ إلَى قِيَامِ السَّاعَةِ إلَّا أَخْبَرَ بِهِ، حَفِظَهُ مَنْ حَفِظَهُ، وَنَسِيَهُ مَنْ نَسِيَهُ، قَدْ عَلِمَ أَصْحَابِي هَؤُلَاءِ أَنَّهُ لَيَكُونُ مِنِّي الشَّيْءُ فَأَعْرِفُهُ فَأَذْكُرُهُ كَمَا يَذْكُرُ الرَّجُلُ وَجْهَ الرَّجُلِ إذَا غَابَ عَنْهُ فَإِذَا رَآهُ عَرَفَهُ.

L21507 Abu Muhammad said: Sa'd achieved the greatest victory, deposed the Persian king from his throne, seized his palaces, homes, and cities, thereby invalidating any claim they had to this matter.

قَالَ أَبُو مُحَمَّد: وَسَعْدٌ قَدْ فَتَحَ أَعْظَمَ الْفُتُوحِ، وَأَنْزَلَ مَلِكَ الْفُرْسِ عَنْ سَرِيرِهِ، وَافْتَتَحَ قُصُورَهُ، وَدُورَهُ، وَمَدَائِنَهُ، فَبَطَلَ أَنْ يَكُونَ لَهُمْ بِهَذَا الْخَبَرِ مُتَعَلَّقٌ أَصْلًا.

L21508–21510 As for the report of 'Imrān ibn al-Ḥuṣayn concerning the six slaves, the people least worthy of being cited as evidence are Abū Ḥanīfah and his companions who feel no shame in declaring: "Is this not gambling? Is it not a void action and a ruling of injustice?" May the face of whoever says such things about the judgment of Allah's Messenger—peace and blessings be upon him—be disgraced! The discussion regarding it thus persists with the Mālikīs, Shāfi'īs, and our companions who assert it. 'Alī said: We say—and success comes from Allah—that they have no valid proof whatsoever for three reasons. First: It concerns emancipation alone. Their insertion of all a sick person's actions alongside emancipation is erroneous, a transgression of Allah's boundaries, and an invalid analogy. Even if valid in principle, it

وَأَمَّا خَبَرُ عِمْرَانَ بْنِ الْحُصَيْنِ فِي السِّتَّةِ الْأَعْبُدِ، فَأَوْلَى النَّاسِ أَنْ لَا يُحْتَجَّ بِهِ: أَبُو حَنِيفَةَ، وَأَصْحَابُهُ الَّذِينَ لَا يَسْتَحْيُونَ مِنْ أَنْ يَقُولُوا: إنَّهُ قِمَارٌ، وَإِنَّهُ فِعْلٌ بَاطِلٌ، وَحُكْمُ جَوْرٍ؟ شَاهَ وَجْهُ مَنْ قَالَ ذَلِكَ فِي حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَقِيَ الْكَلَامُ فِيهِ مَعَ الْمَالِكِيِّينَ وَالشَّافِعِيِّينَ، وَأَصْحَابِنَا الْقَائِلِينَ بِهِ -: قَالَ عَلِيٌّ: فَنَقُولُ - وَبِاَللَّهِ التَّوْفِيقُ -: إنَّهُ لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا لِوُجُوهٍ ثَلَاثَةٍ -: أَوَّلُهَا: أَنَّهُ لَيْسَ فِيهِ إلَّا الْعِتْقُ وَحْدَهُ، فَإِقْحَامُهُمْ مَعَ الْعِتْقِ جَمِيعَ أَفْعَالِ الْمَرِيضِ خَطَأٌ وَتَعَدٍّ لِحُدُودِ اللَّهِ تَعَالَى، وَالْقِيَاسُ بَاطِلٌ، وَلَوْ كَانَ

would remain void here because they... They differentiate between the ruling of manumission and other judgments, obligating that if one frees their share of a slave, the remaining portion must be appraised against him to emancipate the slave entirely. Yet they do not deem it necessary—for one who donates half their slave, endows half their house, half their horse, donates half their garment, or half their agricultural estate—to appraise the remainder against him or validate his act over the entirety. From where, then, did they derive the obligation to analogize to manumission in this case, while exempting it in those? This is indeed a baseless presumption.

The second consideration: There exists no explicit wording, implication, or allusion in the sick person's act. The text merely states "he freed upon his death." Thus, their obligation should have been to apply this ruling exclusively to one who emancipated upon death—whether healthy or ill—and died immediately afterward, not to one who freed while sick or healthy but whose death was delayed. For the latter undeniably did not free at the point of death.

Herein lies their contradiction of the very textual evidence they cited as proof: they inserted into it what it does not contain and invoked it for matters entirely absent from it. These are grave, ruinous corruptions—we seek refuge in Allah from such.

L21511 The third point is that this narration serves as decisive evidence for us against them, for this individual retained absolutely nothing for himself. As the ḥadīth states, he owned no property besides them. According to our school, such an action is invalid whether the person was healthy or sick, and it is impermissible for anyone to perform voluntary manumission, voluntary charity, or an irrevocable donation from their wealth unless they retain sufficient means to remain self-sufficient, as the Prophet (peace be upon him) said: "Charity is given from what suffices you."

L21512 The Messenger of Allah—peace and blessings be upon him—nullified the emancipation of a healthy man owned by someone possessing no property other than the slave, as transmitted through the chains of Al-Bukhari and Ahmad ibn Shuʿayb al-Nasāʾī. Al-Bukhari stated: Narrated to us by ʿAsim ibn

حَقًّا لَكَانَ هَهُنَا بَاطِلًا؛ لِأَنَّهُمْ يُفَرِّقُونَ بَيْنَ حُكْمِ الْعِتْقِ وَسَائِرِ الْأَحْكَامِ، فَيُوجِبُونَ فِيمَنْ أَعْتَقَ شِقْصًا لَهُ مِنْ عَبْدٍ أَنْ يُقَوَّمَ عَلَيْهِ بَاقِيهِ فَيَعْتِقُهُ، وَلَا يَرَوْنَ فِيمَنْ تَصَدَّقَ بِنِصْفِ عَبْدِهِ أَوْ أَوْقَفَ نِصْفَ دَارِهِ، أَوْ نِصْفَ فَرَسِهِ، أَوْ تَصَدَّقَ بِنِصْفِ ثَوْبِهِ أَوْ بِنِصْفِ ضَيْعَتِهِ: أَنْ يُقَوَّمَ عَلَيْهِ بَاقِي ذَلِكَ، وَيَنْفُذَ فِعْلُهُ فِي جَمِيعِهِ -: فَمِنْ أَيْنَ وَجَبَ أَنْ يُقَاسَ عَلَى الْعِتْقِ هَهُنَا؟ وَلَمْ يَجِبْ أَنْ يُقَاسَ عَلَيْهِ هُنَالِكَ؟ إِنَّ هَذَا لَتَحَكُّمٌ فَاسِدٌ؟ وَالْوَجْهُ الثَّانِي: أَنَّهُ لَيْسَ فِيهِ: مِنْ فِعْلِ الْمَرِيضِ كَلِمَةٌ، وَلَا دَلَالَةٌ، وَلَا إِشَارَةٌ بِوَجْهٍ مِنْ الْوُجُوهِ: إِنَّمَا فِيهِ " أَعْتَقَ عِنْدَ مَوْتِهِ " فَكَانَ الْوَاجِبُ عَلَيْهِمْ: أَنْ يَجْعَلُوا هَذَا الْحُكْمَ فِيمَنْ أَعْتَقَ عِنْدَ مَوْتِهِ - صَحِيحًا أَوْ مَرِيضًا. فَمَاتَ إثْرَ ذَلِكَ، لَا فِيمَنْ أَعْتَقَ مَرِيضًا، أَوْ صَحِيحًا، ثُمَّ تَرَاخَى مَوْتُهُ، فَإِنَّ هَذَا لَمْ يَعْتِقْ عِنْدَ مَوْتِهِ بِلَا شَكٍّ - وَهَذَا مِمَّا خَالَفُوا فِيهِ الْخَبَرَ الَّذِي احْتَجُّوا بِهِ فِيمَا فِيهِ، وَأَقْحَمُوا فِيهِ مَا لَيْسَ فِيهِ وَاحْتَجُّوا بِهِ فِيمَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ أَصْلًا، وَهَذِهِ قَبَائِحُ مُوبِقَةٌ - نَعُوذُ بِاَللَّهِ مِنْهَا.

وَالثَّالِثُ: أَنَّ هَذَا الْخَبَرَ حُجَّةٌ لَنَا عَلَيْهِمْ قَاطِعَةٌ؛ لِأَنَّ هَذَا الْإِنْسَانَ لَمْ يُبْقِ لِنَفْسِهِ شَيْئًا أَصْلًا، هَكَذَا فِي الْحَدِيثِ أَنَّهُ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُمْ، وَهَذَا عِنْدَنَا مَرْدُودُ الْفِعْلِ - صَحِيحًا كَانَ أَوْ مَرِيضًا - وَلَا يَجُوزُ لِأَحَدٍ فِي مَالِهِ عِتْقُ تَطَوُّعٍ، وَلَا صَدَقَةُ تَطَوُّعٍ، وَلَا هِبَةٌ يَبُتُّ بِهَا إلَّا فِيمَا أَبْقَى غِنًى، كَمَا قَالَ - عَلَيْهِ السَّلَامُ - «الصَّدَقَةُ عَنْ ظَهْرِ غِنًى» .

وَقَدْ أَبْطَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِتْقَ إنْسَانٍ صَحِيحٍ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ، وَأَحْمَدَ بْنِ شُعَيْبٍ، قَالَ الْبُخَارِيُّ: نا عَاصِمُ بْنُ عَلِيٍّ،

وَقَالَ أَحْمَدُ: أَنَا عُبَيْدُ اللَّهِ بْنُ سَعْدِ بْنِ إِبْرَاهِيمَ نا أَبِي وَعَمِّي - هُوَ يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ - ثُمَّ اتَّفَقَ عَاصِمٌ، وَسَعْدٌ، وَيَعْقُوبُ أَبْنَاءُ إِبْرَاهِيمَ، قَالُوا كُلُّهُمْ: نا ابْنُ أَبِي ذِئْبٍ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَجُلًا أَعْتَقَ عَبْدًا لَهُ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ فَرَدَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَابْتَاعَهُ مِنْهُ نُعَيْمُ بْنُ النَّحَّامِ» قَالَ الزُّهْرِيُّونَ فِي رِوَايَتِهِمْ: فَرَدَّهُ - عَلَيْهِ السَّلَامُ -: فَهَذَا إِسْنَادٌ كَالشَّمْسِ لَا يَسَعُ أَحَدًا خِلَافُهُ.

'Ali. Ahmad said: Narrated to me by 'Ubaydullah ibn Sa'd ibn Ibrahim from my father and uncle—Ya'qub ibn Ibrahim ibn Sa'd. Then the chains of 'Asim, Sa'd, and Ya'qub—the sons of Ibrahim—converged. All said: Narrated to us by Ibn Abi Dhi'b from Muhammad ibn al-Munkadir from Jabir ibn 'Abdullah: "A man emancipated his slave while owning no property besides him. The Messenger of Allah—peace and blessings be upon him—reversed this, and Nu'aym ibn al-Naḥḥām purchased the slave from him." The narrators from al-Zuhri's school stated: "He nullified it—peace be upon him." This is a chain like the sun, leaving no room for anyone's opposition.

فَصَحَّ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا رَدَّ عِتْقَ أُولَئِكَ الْأَعْبُدِ؛ لِأَنَّ مُعْتِقَهُمْ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُمْ، وَكَانَ عِتْقُهُ - عَلَيْهِ السَّلَامُ - لِثُلُثِهِمْ - وَاَللَّهُ أَعْلَمُ - كَمَا رُوِيَ فِي بَعْضِ الْأَخْبَارِ: «أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ لِكَعْبِ بْنِ مَالِكٍ إِذْ جَعَلَ عَلَى نَفْسِهِ إِذْ تَابَ اللَّهُ عَلَيْهِ: يُجْزِيكَ مِنْ ذَلِكَ الثُّلُثُ» وَإِنْ كَانَ هَذَا اللَّفْظُ لَا يَصِحُّ، لَكِنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ لَهُ: «أَمْسِكْ عَلَيْكَ بَعْضَ مَالِكَ» ؛ فَأَمْسَكَ سَهْمَهُ بِخَيْبَرَ، فَقَدْ يَكُونُ ذَلِكَ الْمُعْتِقُ لَهُ فِي أَرْبَعَةٍ مِنْهُمْ غِنًى.

It is established that the Prophet—peace and blessings be upon him—rejected L21513–21515 the emancipation of those particular slaves solely because their emancipator had no property other than them. His emancipation—peace and blessings be upon him—pertained to a third of them—and Allah knows best—as narrated in certain reports: "When Allah had accepted his repentance, he—peace and blessings be upon him—said to Ka'b ibn Mālik after he had imposed an obligation upon himself: 'This will suffice you for that matter.'" "One-third," even if this wording is not authentic, he (peace be upon him) said to him: "Keep some of your wealth for yourself," so he retained his share in Khaybar. It may be that the emancipator attained sufficiency among four of them.

وَبُرْهَانُ هَذَا -: أَنَّ الرِّوَايَةَ الثَّانِيَةَ فِي ذَلِكَ الْخَبَرِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - إِنَّمَا أَعْتَقَ اثْنَيْنِ، وَأَرَقَّ أَرْبَعَةً وَلَمْ يَذْكُرْ قِيمَةً، وَالثُّلُثُ عِنْدَ الْمُحْتَجِّينَ بِهَذَا الْخَبَرِ لَا يَكُونُ هَكَذَا أَصْلًا، وَلَا يَكُونُ إِلَّا بِالْقِيمَةِ.

The proof of this is that the second narration in that report states he (peace L21516 be upon him) emancipated only two and kept four as slaves, without mentioning value. According to those who uphold this narration as proof, the third is not like this at all, nor can it apply except through valuation.

وَوَجْهٌ رَابِعٌ - وَهُوَ أَنَّنَا رُوِّينَا هَذَا الْخَبَرَ مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - وَابْنُ أَبِي عُمَرَ كِلَاهُمَا عَنِ الثَّقَفِيِّ - هُوَ عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ: «أَنَّ رَجُلًا أَوْصَى عِنْدَ مَوْتِهِ فَأَعْتَقَ سِتَّةَ مَمْلُوكِينَ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُمْ، فَدَعَا بِهِمْ رَسُولُ اللَّهِ -

A fourth perspective—and it is that we have transmitted this report through L21517 the chain of Muslim: Isḥāq ibn Ibrāhīm (he is Ibn Rāhwayh) and Ibn Abī 'Umar narrated to us, both from al-Thaqafī (he is 'Abd al-Wahhāb ibn 'Abd al-Majīd), from Ayyūb al-Sikhtiyānī, from Abī Qilābah, from Abī al-Muhallab, from 'Imrān ibn al-Ḥuṣayn: "A man, upon his death, emancipated six slaves whom he owned exclusively. The Messenger of Allah—peace and blessings of Allah be upon him—summoned them, divided them into thirds, then drew lots among them. He emancipated two and retained four in bondage, rebuk-

ing him harshly." Thus, it is confirmed that this emancipation constituted a bequest, with no dispute that the ruling applies equally to the healthy and the terminally ill, being permissible only within a third of the estate. If the two narrations are a single ḥadīth—which is the most evident interpretation, nearly impossible to disregard and impermissible to contradict—then the dispute is resolved, invalidating their reliance on it. If they are two distinct reports—a remote possibility—both nevertheless align with our position and oppose theirs. In any case, none of the texts mention illness, any action during illness whatsoever, or that the rejection stemmed from emancipation occurring during an illness—success is from Allah, the Exalted. Thus, all the embellished narrations they cited collapse, for they are the first to contradict them, and all these narrations have reverted as decisive proofs against them in our favor.

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَزَّأَهُمْ أَثْلَاثًا ثُمَّ أَقْرَعَ بَيْنَهُمْ فَأَعْتَقَ اثْنَيْنِ، وَأَرَقَّ أَرْبَعَةً، وَقَالَ لَهُ قَوْلًا شَدِيدًا» . فَصَحَّ أَنَّ ذَلِكَ الْعِتْقَ إنَّمَا كَانَ وَصِيَّةً، وَلَا خِلَافَ أَنَّهَا الصَّحِيحُ وَالْمَرِيضُ سَوَاءٌ، وَلَا تَجُوزُ إلَّا بِالثُّلُثِ، فَإِنْ كَانَتْ الرِّوَايَتَانِ حَدِيثًا وَاحِدًا - وَهُوَ الْأَظْهَرُ الَّذِي لَا يَكَادُ يُمْكِنُ وَلَا يَجُوزُ غَيْرُهُ - فَقَدْ ارْتَفَعَ الْكَلَامُ، وَبَطَلَ تَعَلُّقُهُمْ بِهِ، وَإِنْ كَانَا خَبَرَيْنِ - وَهَذَا مُمْكِنٌ بَعِيدٌ - فَكِلَاهُمَا لَنَا، وَمُوَافِقٌ لِقَوْلِنَا وَمُخَالِفٌ لِقَوْلِهِمْ، وَعَلَى كُلِّ حَالٍ فَلَيْسَ فِي شَيْءٍ مِنْهُ ذِكْرٌ لِمَرَضٍ وَلَا لِفِعْلٍ فِي مَرَضٍ أَصْلًا، وَلَا لِأَنَّ الرَّدَّ إنَّمَا كَانَ، لِأَنَّ الْعِتْقَ وَقَعَ فِي مَرَضٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - فَبَطَلَ عَنْهُمْ كُلُّ مَا مَوَّهُوا بِهِ مِنْ الْآثَارِ الَّتِي هُمْ أَوَّلُ مُخَالِفٍ لَهَا، وَعَادَتْ كُلُّهَا لَنَا عَلَيْهِمْ حُجَّةً.

L21518–21520 As for what they reported concerning that from the Companions—may Allah be pleased with them—the matter is likewise. They are only three: Abu Bakr—may Allah be pleased with him—Ali—may Allah be pleased with him—and Ibn Mas'ud. Regarding Abu Bakr, they rely solely on his statement: "Indeed, it is now the heir's property." This provides them no valid basis whatsoever, for there is no disagreement between two parties—and they too concur with us—that he—may Allah be pleased with him—meant only that it becomes the heir's property after the ill person's death. He did not intend that the property of an ill person who dies from that illness belongs to the heir while any soul remains in the ill person. There is no dispute that if Asma' had died—when he said... Abu Bakr said this to her when her children—Abdullah, Urwah, and Al-Munthir—inherited from his wealth neither a mustard seed, nor its value, nor anything beyond that.

وَأَمَّا مَا رَوَوْا فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَكَذَلِكَ أَيْضًا، وَإِنَّمَا هُمْ ثَلَاثَةٌ: أَبُو بَكْرٍ، وَعَلِيٌّ، وَابْنُ مَسْعُودٍ -: فَأَمَّا أَبُو بَكْرٍ فَإِنَّمَا تَعَلَّقُوا عَنْهُ بِقَوْلِهِ: وَإِنَّمَا هُوَ الْيَوْمَ مَالُ الْوَارِثِ وَهَذَا لَا مُتَعَلَّقَ لَهُمْ بِهِ أَصْلًا، لِأَنَّهُ لَا يَخْتَلِفُ اثْنَانِ - وَهُمْ مَعَنَا أَيْضًا - فِي أَنَّهُ - رَضِيَ اللَّهُ عَنْهُ - إنَّمَا عَنَى أَنَّهُ مَالُ الْوَارِثِ بَعْدَ مَوْتِهِ، وَأَنَّهُ لَمْ يَعْنِ بِذَلِكَ أَنَّ مَالَ الْمَرِيضِ الَّذِي يَمُوتُ مِنْ ذَلِكَ الْمَرَضِ لِلْوَارِثِ مَا دَامَ شَيْءٌ مِنْ الرُّوحِ فِي الْمَرِيضِ، وَلَا خِلَافَ فِي أَنَّ أَسْمَاءَ لَوْ مَاتَتْ - إذْ قَالَ أَبُو بَكْرٍ هَذَا الْقَوْلَ لَهَا - لَمَا وَرِثَ عَبْدُ اللَّهِ، وَعُرْوَةُ، وَالْمُنْذِرُ، أَوْلَادُهَا مِنْ مَالِ أَبِي بَكْرٍ حَبَّةَ خَرْدَلٍ، وَلَا قِيمَتَهَا، فَمَا فَوْقَ ذَلِكَ.

L21521 If the sick person's property had become the heir's property during his illness, the heir's own heirs would inherit from him should he die during the sick person's lifetime. This is something no one asserts—neither a fool nor a sane person.

وَلَوْ كَانَ مَالُ الْمَرِيضِ. قَدْ صَارَ مَالًا لِلْوَارِثِ فِي مَرَضِهِ لَوَرِثَهُ عَنْهُ إنْ مَاتَ وَرِثَتُهُ فِي حَيَاةِ الْمَرِيضِ، وَهَذَا لَا يَقُولُهُ أَحَدٌ، وَلَا أَحْمَقُ، وَلَا عَاقِلٌ.

L21522 Furthermore, there is no disagreement—whether among us or among them—that if an heir were to have intercourse with the female slave of a

terminally ill person before his death, he would be deemed an adulterer liable to the ḥadd punishment, just as he would be punished had he done so while the man was healthy, with no distinction. Similarly, if he were to steal from the sick person's property before his death, amputation would be mandated in such a case—his hand would be severed just as it would be severed had he stolen from him while he was healthy. Thus, their obfuscation, fabrications, and deception in religion have been exposed through their implantation of falsehood in those deluded by them and their promotion of misguided confidence in their methodologies.

وَأَيْضًا فَلَا خِلَافَ - مِنَّا وَمِنْهُمْ - فِي أَنَّ الْوَارِثَ لَوْ وَطِئَ أَمَةَ الْمَرِيضِ قَبْلَ مَوْتِهِ لَكَانَ زَانِيًا يُحَدُّ حَيْثُ يُحَدُّ لَوْ وَطِئَهَا وَهُوَ صَحِيحٌ وَلَا فَرْقَ وَأَنَّهُ لَوْ سَرَقَ مِنْ مَالِهِ قَبْلَ مَوْتِهِ شَيْئًا فِي مِثْلِهِ الْقَطْعُ لَقُطِعَتْ يَدُهُ حَيْثُ تُقْطَعُ يَدُهُ لَوْ سَرَقَ مِنْهُ وَهُوَ صَحِيحٌ -: فَظَهَرَ تَمْوِيهُهُمْ وَبُرْدُهُمْ وَتَدْلِيسُهُمْ فِي الدِّينِ بِإِيهَامِهِمْ الْبَاطِلَ مَنْ اغْتَرَّ بِهِمْ، وَأَحْسَنَ الظَّنَّ بِطُرُقِهِمْ.

L21523 If they come to us seeking to divert the reports we previously mentioned from their apparent meaning with a proof like this, it becomes obligatory to submit to the truth. But if they bring us nothing but sheer falsehood, corrupt conjecture, and deceptive obscurity, then the disgrace thereof and its fire [of punishment] will have no end—neither for them nor for us—and success is by Allah, the Exalted. Thus, their reliance on the report of Abū Bakr—may Allah be pleased with him—is wholly invalidated.

فَإِنْ أَتَوْنَا فِي صَرْفِ الْأَخْبَارِ الَّتِي ذَكَرْنَا قَبْلُ عَنْ ظَاهِرِهَا بِبُرْهَانٍ مِثْلِ هَذَا وَجَبَ الِانْقِيَادُ لِلْحَقِّ، وَإِنْ لَمْ يَأْتُونَا إلَّا بِالْكَذِبِ الْبَحْتِ، وَبِالظَّنِّ الْفَاسِدِ، وَبِالتَّمْوِيهِ الْمُلْبِسِ، فَعَارُ ذَلِكَ وَنَارُهُ لَا زِمَانَ لَهُمْ، لَا لَنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - فَبَطَلَ تَعَلُّقُهُمْ بِخَبَرِ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - جُمْلَةً.

L21524 As for the report concerning Ibn Masʿūd, it is a narration with an interrupted chain since al-Ḥasan and al-Qāsim ibn ʿAbd al-Raḥmān did not meet him. Moreover, even if it were authentic, it would not serve as authoritative evidence for their position, for in one of the two narrations about him, it is mentioned that he purchased her during his illness, upheld the sale as valid, emancipated her at his death, and instructed her to work to earn her price for the creditor.

وَأَمَّا الْخَبَرُ عَنْ ابْنِ مَسْعُودٍ فَمُرْسَلٌ؛ لِأَنَّ الْحَسَنَ، وَالْقَاسِمَ بْنَ عَبْدِ الرَّحْمَنِ، لَمْ يُدْرِكَاهُ - ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّ فِي إحْدَى الرِّوَايَتَيْنِ عَنْهُ: أَنَّهُ ابْتَاعَهَا فِي مَرَضِهِ، فَأَجَازَ بَيْعَهُ وَأَعْتَقَهَا عِنْدَ مَوْتِهِ، فَأَمَرَهَا بِأَنْ تَسْعَى فِي ثَمَنِهَا لِلْغَرِيمِ.

L21525 In the other case, a man freed his slave during his illness while owning no property other than him. Ibn Masʿud said: "He is freed [as] one-third." The opinion regarding this aligns with some of the earlier narrations, which indicate that this was invalidated because he owned no property besides the slave, thereby preserving his self-sufficiency.

وَفِي الْأُخْرَى أَعْتَقَ عَبْدَهُ فِي مَرَضِهِ لَا مَالَ لَهُ غَيْرُهُ، فَقَالَ ابْنُ مَسْعُودٍ: عَتَقَ، ثُلُثُهُ - وَالْقَوْلُ فِي هَذَا كَالْقَوْلِ فِي بَعْضِ الْأَخْبَارِ الْمُتَقَدِّمَةِ مِنْ أَنَّهُ إنَّمَا رَدَّ ذَلِكَ؛ لِأَنَّهُ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ، فَرَاعَى مَا أَبْقَى لَهُ غِنًى.

L21526 It has been narrated to us through the chain of Ibn Abī Shaybah, from Ḥafṣ—who is Ibn Ghiyāth—from Ḥajjāj, from al-Qāsim ibn ʿAbd al-Raḥmān, who said: A woman freed a slave girl she owned, though she had no property other than the slave girl. ʿAbdullāh ibn Masʿūd ruled: "She must labor to compensate for the slave girl's value." Thus, ʿAbdullāh deemed it obligatory

وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ - هُوَ ابْنُ غِيَاثٍ - عَنْ حَجَّاجٍ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: أَعْتَقَتْ امْرَأَةٌ جَارِيَةً لَهَا لَيْسَ لَهَا مَالٌ غَيْرُهَا، فَقَالَ عَبْدُ اللَّهِ بْنُ

for her to labor in compensation for the slave girl's value since she owned no other property, and he did not mention at all that this occurred during an illness. Therefore, Ibn Masʿūd's ruling—if authentic—would itself constitute evidence against their position. How can this be, when no valid proof exists in the words or deeds of anyone apart from the Messenger of Allah—peace and blessings be upon him? Does this not invalidate their reliance on Ibn Masʿūd and expose their contradiction of him?

L21527–21528 As for the narration attributed to ʿAlī, it is disconnected because al-Ḥasan did not hear anything from ʿAlī. Even if it were authentic, they would have no valid basis for their argument whatsoever, because ʿAlī—may Allah be pleased with him—did not state that he acted thus solely due to emancipating the slave during his illness. Nor does that narration mention—neither by explicit text nor implicit indication—that this occurred during an illness. It merely states that he emancipated him at the time of his death. The most evident view is that ʿAlī obligated the istisʿāʾ in that case because he possessed no wealth other than the slave and had outstanding debts. This is the explicit content of the report, which conforms to our position, not all of their opinions. Similarly, we affirm the istisʿāʾ in such a scenario if the value of emancipation exceeds the debt—whether little or much. There is no contradiction between this ruling and that report. Thus, it is manifestly clear—and to Allah belongs abundant praise—that every textual evidence they cite, whether sound or weak, or attributed to a Companion, contains nothing whatsoever supporting their claim. Their invocation of such evidence constitutes obfuscation, insinuation of falsehood, and baseless conjecture. In truth, all or most of it substantiates our position and aligns with our doctrine. Praise be to Allah, Lord of the worlds.[1]

L21529 As for their argument citing the Followers and their claim of consensus in that matter, this is unsurprising given their trivialization of lying against all Muslims. We have already presented at the outset of this issue - through the most authentic chain of transmission from Masrūq - a contradiction of their view: that the manumission by a sick person from his capital remains valid even if he dies from that illness, and that Masrūq maintained this position

مَسْعُودٍ: تَسْعَى فِي قِيمَتِهَا - فَهَذَا عَبْدُ اللَّهِ قَدْ رَأَى السَّعْيَ فِي قِيمَتِهَا إِذْ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهَا، وَلَمْ يَذْكُرْ أَنَّ ذَلِكَ كَانَ فِي مَرَضٍ أَصْلًا، فَعَادَ فِعْلُ ابْنُ مَسْعُودٍ - لَوْ صَحَّ - حُجَّةً عَلَيْهِمْ، فَكَيْفَ وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ وَلَا فِعْلِهِ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَبَطَلَ تَعَلُّقُهُمْ بِابْنِ مَسْعُودٍ وَلَاحَ خِلَافُهُمْ لَهُ؟

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ فَمُنْقَطِعَةٌ، لِأَنَّ الْحَسَنَ لَمْ يَسْمَعْ مِنْ عَلِيٍّ شَيْئًا، ثُمَّ لَوْ صَحَّتْ لَمَا كَانَ لَهُمْ بِهَا مُتَعَلَّقٌ أَصْلًا، لِأَنَّهُ لَمْ يَقُلْ عَلِيٌّ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ إِنَّمَا فَعَلَ ذَلِكَ، لِأَنَّهُ أَعْتَقَهُ فِي مَرَضِهِ أَلْبَتَّةَ وَلَا فِي تِلْكَ الرِّوَايَةِ ذِكْرٌ: أَنَّ ذَلِكَ كَانَ فِي مَرَضٍ لَا بِنَصٍّ وَلَا بِدَلِيلٍ، وَإِنَّمَا فِيهِ: أَنَّهُ أَعْتَقَهُ عِنْدَ مَوْتِهِ فَقَطْ، وَالْأَظْهَرُ أَنَّ عَلِيًّا إِنَّمَا أَوْجَبَ الِاسْتِسْعَاءَ فِي ذَلِكَ، لِأَنَّهُ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ وَعَلَيْهِ دَيْنٌ، فَهَذَا هُوَ نَصُّ الْخَبَرِ، وَهُوَ قَوْلُنَا لَا قَوْلُهُمْ كُلُّهُمْ، وَكَذَلِكَ نَقُولُ بِالِاسْتِسْعَاءِ فِي هَذَا إِذَا فَضَلَ مِنْ قِيمَةِ الْعِتْقِ عَنْ الدَّيْنِ شَيْءٌ قَلَّ أَوْ كَثُرَ، وَلَيْسَ فِي ذَلِكَ الْخَبَرِ خِلَافٌ لِهَذَا، فَلَاحَ وَلِلَّهِ الْحَمْدُ كَثِيرًا أَنَّ كُلَّ مَا احْتَجُّوا بِهِ مِنْ أَثَرٍ صَحِيحٍ أَوْ سَقِيمٍ، أَوْ عَنْ صَاحِبٍ فَلَيْسَ مِنْهُ شَيْءٌ أَصْلًا مُوَافِقًا لِقَوْلِهِمْ، وَأَنَّ إِيرَادَهُمْ لِكُلِّ ذَلِكَ تَمْوِيهٌ، وَإِيهَامٌ بِالْبَاطِلِ، وَالظَّنِّ الْكَاذِبِ، وَأَنَّ كُلَّهُ أَوْ أَكْثَرَهُ حُجَّةٌ لَنَا، وَمُوَافِقٌ لِقَوْلِنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَأَمَّا احْتِجَاجُهُمْ بِالتَّابِعِينَ، وَدَعْوَاهُمْ الْإِجْمَاعَ فِي ذَلِكَ فَغَيْرُ مُنْكَرٍ مِنْ اسْتِهَالِهِمْ الْكَذِبَ عَلَى جَمِيعِ أَهْلِ الْإِسْلَامِ - وَقَدْ أَوْرَدْنَا فِي صَدْرِ هَذِهِ الْمَسْأَلَةِ بِأَصَحِّ طَرِيقٍ عَنْ مَسْرُوقٍ خِلَافَ قَوْلِهِمْ، وَأَنَّ عِتْقَ الْمَرِيضِ مِنْ رَأْسِ مَالِهِ، وَإِنْ مَاتَ مِنْ مَرَضِهِ ذَلِكَ، وَأَنَّهُ إِنَّمَا قَالَ بِذَلِكَ، لِأَنَّهُ شَيْءٌ جَعَلَهُ لِلَّهِ تَعَالَى، فَلَا يُرَدُّ.

[1] **Qur'an references (L21528):** Qur'an 37:182 (As-Saffat).

because it constitutes an act consecrated to God Almighty, which cannot therefore be revoked.

L21530 It has been established that whatever a sick person does for Allah Almighty - whether he dies from his illness or survives - comes from his principal wealth according to Masrūq. Thus, their lie in the claim of consensus became evident. How could this be, when there have come narrations regarding this matter from only fourteen Successors: Shurayh; al-Shaʿbī; al-Nakhaʿī; Saʿīd ibn al-Musayyab; al-Qāsim; Sālim; al-Zuhrī; Rabīʿah; Yaḥyā ibn Saʿīd al-Anṣārī; ʿIkrimah; Makḥūl; ʿAṭāʾ; al-Ḥasan; and Qatādah? Most of these are not authentically attributed to them, as they come through Jābir al-Juʿfī and others like him.

فَصَحَّ أَنَّ كُلَّ مَا فَعَلَهُ الْمَرِيضُ لِلَّهِ تَعَالَى فَمَاتَ مِنْ مَرَضِهِ أَوْ عَاشَ، فَمِنْ رَأْسِ مَالِهِ عِنْدَ مَسْرُوقٍ، فَظَهَرَ كَذِبُهُمْ فِي دَعْوَى الْإِجْمَاعِ، فَكَيْفَ وَإِنَّمَا جَاءَتْ فِي ذَلِكَ آثَارٌ عَنْ أَرْبَعَةَ عَشَرَ مِنْ التَّابِعِينَ فَقَطْ؟ شُرَيْحٍ، وَالشَّعْبِيِّ، وَالنَّخَعِيِّ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَالْقَاسِمِ، وَسَالِمٍ، وَالزُّهْرِيِّ، وَرَبِيعَةَ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَعِكْرِمَةَ، وَمَكْحُولٍ، وَعَطَاءٍ، وَالْحَسَنِ، وَقَتَادَةَ، أَكْثَرُ ذَلِكَ لَا يَصِحُّ عَنْهُمْ؛ لِأَنَّهَا مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ وَمِثْلِهِ.

L21531–21533 Then they differ. Among them are those who hold that a traveler, from the moment he places his foot in the stirrup, cannot validly execute any testamentary decree concerning his wealth except from one-third of it. Among them are those who apply this ruling comprehensively to pregnant women. Among them are those who apply it universally to captives. The Malikis, Hanafis, and Shafi'is oppose all these positions. Their interpretation of terminal illnesses further contradicts all the aforementioned schools. If these schools are considered a consensus, they have effectively admitted their own contradiction of consensus. If it is not a consensus, they possess no valid proof against the opinion of those who— [text ends abruptly]. Other than the Companions when there was no consensus among them, how can this be valid when we have received narrations from Masruq and al-Sha'bi contradicting this matter?

ثُمَّ هُمْ مُخْتَلِفُونَ، فَمِنْهُمْ مَنْ رَأَى الْمُسَافِرَ مِنْ حِينِ يَضَعُ رِجْلَهُ فِي الْغَرْزِ لَا يَنْفُذُ لَهُ أَمْرٌ فِي مَالٍ إِلَّا مِنْ ثُلُثِهِ - وَمِنْهُمْ مَنْ يَرَى ذَلِكَ فِي الْحَامِلِ جُمْلَةً. وَمِنْهُمْ مَنْ يَرَى ذَلِكَ فِي الْأَسِيرِ جُمْلَةً، وَالْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ: مُخَالِفُونَ لِكُلِّ هَذَا. ثُمَّ قَوْلُهُمْ فِي تَفْسِيرِ الْأَمْرَاضِ مُخَالِفٌ لِجَمِيعِهِمْ، فَإِنْ كَانَ هَؤُلَاءِ إجْمَاعًا فَقَدْ أَقَرُّوا عَلَى أَنْفُسِهِمْ بِخِلَافِ الْإِجْمَاعِ، وَإِنْ كَانَ لَيْسَ إجْمَاعًا فَلَا حُجَّةَ لَهُمْ فِي قَوْلِ مَنْ دُونَ الصَّحَابَةِ إذَا لَمْ يَكُنْ إجْمَاعًا عِنْدَهُمْ، فَكَيْفَ وَقَدْ رُوِّينَا عَنْ مَسْرُوقٍ، وَالشَّعْبِيِّ، خِلَافَ هَذَا.

L21534 It was narrated to us via Muḥammad ibn al-Muthannā from ʿAbd al-Raḥmān ibn Mahdī from Sufyān al-Thawrī from Ibn Abī Laylā from al-Ḥakam ibn ʿUtaybah from Ibrāhīm al-Nakhaʿī, who said: "If a woman releases her husband from her dowry during her illness, this is permissible." Sufyān said: "It is not permissible." Thus, it was established that Ibrāhīm specifically meant her terminal illness from which she would die. He did not consider the one-third [limit], nor did he consider it a bequest.

وَرُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إذَا أَبْرَأَتْ الْمَرْأَةُ زَوْجَهَا مِنْ صَدَاقِهَا فِي مَرَضِهَا فَهُوَ جَائِزٌ، وَقَالَ سُفْيَانُ: لَا يَجُوزُ -: فَصَحَّ أَنَّ إبْرَاهِيمَ إنَّمَا عَنَى مَرَضَهَا الَّذِي تَمُوتُ مِنْهُ، وَلَمْ يُرَاعِ ثُلُثًا، وَلَا رَآهُ وَصِيَّةً.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي الرَّجُلِ يَتَصَدَّقُ بِمَالِهِ كُلِّهِ؟ قَالَ: إذَا وَضَعَ مَالَهُ كُلَّهُ فِي حَقٍّ فَلَا أَحَدَ أَحَقُّ بِمَالِهِ مِنْهُ، وَإِذَا أَعْطَى بَعْضَ الْوَرَثَةِ دُونَ بَعْضٍ فَلَيْسَ لَهُ إلَّا الثُّلُثُ.

L21535 Through the chain of Abd al-Razzaq from Ma'mar, who said: Umar ibn Abd al-Aziz was asked about a man who donates all his wealth as charity. He replied: If he dedicates his entire wealth to a rightful cause, no one has a stronger claim to it than himself. But if he gives to some heirs while excluding others, he may not exceed one-third.

قَالَ أَبُو مُحَمَّدٍ: لَا يَخْلُو عُمَرُ بْنُ عَبْدِ الْعَزِيزِ مِنْ أَنْ يَكُونَ أَرَادَ الصَّحِيحَ، وَالْمَرِيضَ مَعًا، أَوْ الْمَرِيضَ وَحْدَهُ، أَوْ الصَّحِيحَ وَحْدَهُ -: فَإِنْ أَرَادَ الصَّحِيحَ فَقَطْ فَقَدْ رَدَّ فِعْلَهُ فِي صَدَقَتِهِ بِمَالِهِ كُلِّهِ، وَإِنْ كَانَ أَرَادَ الْمَرِيضَ -: فَقَدْ أَمْضَى فِعْلَهُ فِي مَالِهِ كُلِّهِ - فَهَذَا خِلَافٌ ظَاهِرٌ؟ وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، وَعُبَيْدِ اللَّهِ بْنِ عُمَرَ كِلَاهُمَا عَنْ نَافِعٍ: أَنَّ رَجُلًا رَأَى فِيمَا يَرَى النَّائِمُ: أَنَّهُ يَمُوتُ إلَى ثَلَاثَةِ أَيَّامٍ فَطَلَّقَ نِسَاءَهُ طَلْقَةً طَلْقَةً، وَقَسَّمَ مَالَهُ؟ فَقَالَ عُمَرُ بْنُ الْخَطَّابِ لَهُ: أَجَاءَك الشَّيْطَانُ فِي مَنَامِك فَأَخْبَرَك: أَنَّك تَمُوتُ إلَى ثَلَاثَةِ أَيَّامٍ فَطَلَّقْتَ نِسَاءَك وَقَسَّمْتَ مَالَك؟ رُدَّهُ وَلَوْ مِتَّ لَرَجَمْتُ قَبْرَك كَمَا يُرْجَمُ قَبْرُ أَبِي رِغَالٍ؟ فَرَدَّ مَالَهُ وَنِسَاءَهُ، وَقَالَ لَهُ عُمَرُ: مَا أَرَاك تَلْبَثُ إلَّا يَسِيرًا حَتَّى تَمُوتَ؟ وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا يُونُسُ بْنُ عُبَيْدٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ امْرَأَةً رَأَتْ فِيمَا يَرَى النَّائِمُ أَنَّهَا تَمُوتُ إلَى ثَلَاثَةِ أَيَّامٍ فَشَذَّبَتْ مَالَهَا وَهِيَ صَحِيحَةٌ، ثُمَّ مَاتَتْ فِي الْيَوْمِ الثَّالِثِ فَأَمْضَى أَبُو مُوسَى الْأَشْعَرِيُّ فِعْلَهَا.

L21536 Abu Muhammad said: Umar ibn Abd al-Aziz could only have intended either the healthy and the sick together, the sick alone, or the healthy alone. If he intended solely the healthy, he invalidated his own act of donating his entire wealth as charity. If he intended the sick, he validated his act concerning his entire wealth. Is this not a clear contradiction? Through the chain of Hammad ibn Salama from Ayyub al-Sikhtiyani and Ubayd Allah ibn Umar, both from Nafi': A man saw in a dream that he would die within three days, so he divorced each of his wives once and distributed his wealth. Umar ibn al-Khattab said to him: "Did Satan come to you in your sleep declaring you would die in three days, making you divorce your wives and dispose of your wealth? Reverse your actions! Even were you to die, I would stone your grave as Abu Righal's grave is stoned." The man revoked his wealth and [the divorces of] his wives. Umar told him: "I foresee you will not endure except briefly before death." Through the chain of Hammad ibn Salama: Yunus ibn Ubayd reported from Muhammad ibn Sirin: A woman saw in a dream that she would die within three days, so she disposed of part of her wealth while healthy, then died on the third day. Abu Musa al-Ash'ari upheld her action.

فَإِنْ كَانَ لِلْمُوقِنِ بِالْمَوْتِ حُكْمُ الْمَرِيضِ فِي مَالِهِ فَقَدْ أَمْضَاهُ أَبُو مُوسَى، فَهَذَا خِلَافُ قَوْلِهِمْ، وَإِنْ كَانَ لَهُ حُكْمُ الصَّحِيحِ فَقَدْ رَدَّهُ عُمَرُ، وَلَمْ يُمْضِ مِنْهُ ثُلُثًا وَلَا شَيْئًا، وَهَذَا خِلَافُ قَوْلِهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ وَمَنْ أَقْبَحُ مُجَاهَرَةً مِمَّنْ يَجْعَلُ مِثْلَ مَنْ ذَكَرْنَا قَبْلُ إجْمَاعًا ثُمَّ لَا يُبَالِي بِمُخَالَفَةِ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَخَالِدِ بْنِ الْوَلِيدِ، وَأَبِي مُوسَى، وَابْنِ الزُّبَيْرِ، وَغَيْرِهِمْ، وَطَوَائِفَ مِنْ التَّابِعِينَ فِي الْقِصَاصِ مِنْ اللَّطْمَةِ، وَضَرْبَةِ السَّوْطِ،

L21537–21539 If the legal status of one certain of death concerning his wealth is that of a sick person, then Abû Mûsâ upheld this. This contradicts their opinion. But if his legal status is that of a healthy person, then 'Umar revoked it and did not authorize even a third or any portion of it. This too contradicts their opinion. Success is attained only through Allah, the Exalted. And who is more reprehensible in open defiance than one who treats the opinions of those we previously mentioned as consensus, then indifferently contradicts Abu Bakr, Umar, Uthman, Khalid ibn al-Walid, Abu Musa, Ibn al-Zubayr,

لَا مُخَالِفَ لَهُمْ يُعْرَفُ مِنْ الصَّحَابَةِ، وَمِثْلُ هَذَا كَثِيرٌ جِدًّا قَدْ تَقَصَّيْنَا مِنْهُ جُزْءًا صَالِحًا فِي مَوْضِعٍ آخَرَ.

وَأَمَّا قَوْلُهُمْ: قِسْنَا ذَلِكَ عَلَى الْوَصِيَّةِ، فَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّ الْوَصِيَّةَ إنَّمَا تَنْفُذُ بَعْدَ الْمَوْتِ - وَهِيَ مِنْ الْمَرِيضِ.

وَالصَّحِيحُ سَوَاءٌ - بِلَا خِلَافٍ - لَا تَجُوزُ إلَّا فِي الثُّلُثِ فَمَا دُونَهُ، فَإِذَا قِيسَ فِعْلُ الْمَرِيضِ عَلَيْهَا وَجَبَ أَنْ يَكُونَ فِي الْحَيَاةِ فِعْلُ الْمَرِيضِ كَفِعْلِ الصَّحِيحِ سَوَاءً سَوَاءً.

وَأَيْضًا: لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ لَا شَيْءَ أَشْبَهَ بِشَيْءٍ وَأَوْلَى بِأَنْ يُقَاسَ عَلَيْهِ مِنْ شَيْئَيْنِ شَبَّهَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمَا -: وَقَدْ رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا قُتَيْبَةُ نا أَبُو الْأَحْوَصِ عَنْ أَبِي حَبِيبَةَ عَنْ أَبِي الدَّرْدَاءِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الَّذِي يَعْتِقُ عِنْدَ الْمَوْتِ كَالَّذِي يُهْدِي بَعْدَ مَا يَشْبَعُ» .

قَالَ عَلِيٌّ: وَلَا يَخْتَلِفُونَ فِي أَنَّ الَّذِي يُهْدِي بَعْدَ مَا يَشْبَعُ فَهَدِيَّتُهُ مِنْ رَأْسِ مَالِهِ، فَإِنْ كَانَ الْقِيَاسُ حَقًّا فَالْمُعْتِقُ عِنْدَ الْمَوْتِ مِثْلُهُ سَوَاءً سَوَاءً، فَوَاجِبٌ أَنْ يَكُونَ مِنْ رَأْسِ مَالِهِ، قَالَ تَعَالَى: {وَأَنْفِقُوا مِنْ مَا رَزَقْنَاكُمْ مِنْ قَبْلِ أَنْ يَأْتِيَ أَحَدَكُمُ الْمَوْتُ فَيَقُولَ رَبِّ لَوْلَا أَخَّرْتَنِي إِلَى أَجَلٍ قَرِيبٍ فَأَصَّدَّقَ وَأَكُنْ مِنَ الصَّالِحِينَ - وَلَنْ يُؤَخِّرَ اللَّهُ نَفْسًا إِذَا جَاءَ أَجَلُهَا} [المنافقون: ١٠ - ١١]

others as well as groups among the Followers regarding retributive punishment for a slap or whip strike - when no dissenter from the Companions is known regarding their rulings? Such cases are extremely numerous, and we have already examined a sufficient portion of them elsewhere.

L21540 As for their statement, "We analogized that to the bequest," all analogy is invalid. Even if analogy were valid, this case would itself be the epitome of invalidity, because the bequest only takes effect after death - and it is from the sick person.

L21541 The sound opinion is unequivocal—without disagreement—that a bequest is only permissible within one-third or less of the estate. When the act of a sick person is analogized to it [the ruling on the third], it is necessary that during life, the sick person's act be exactly the same as the legally competent person's act in every respect.

L21542 Furthermore, if analogy were valid, nothing would be more similar between two things or more deserving of analogy than the two matters between which the Messenger of Allah—peace and blessings be upon him—established a comparison. We have been narrated through the chain of Aḥmad ibn Shuʿayb: from Qutaybah, from Abū al-Aḥwaṣ, from Abū Ḥabībah, from Abū al-Dardāʾ, that the Messenger of Allah—peace and blessings be upon him—said: "Freeing a slave on one's deathbed is like giving a gift after being satiated."

L21543 Ali said: They do not differ regarding the fact that he who gives a gift after being satiated, his gift is from his capital. If analogy is valid, then the one who manumits a slave at the approach of death is exactly the same. It is therefore obligatory that it be from his capital. He, the Exalted, said: *"And spend from what We have provided you before death comes to one of you, and then he will say, 'My Lord, if only You would delay me for a brief term so I might give charity and be among the righteous!' But never will Allah delay a soul when its time has come"* (al-Munāfiqūn 63:10–11).[2]

[2]**Qur'an references (L21543):** Qur'an 63:10 (Al-Munafiqun); Qur'an 63:11 (Al-Munafiqun).

وَهَذَا نَصٌّ جَلِيٌّ لَا يَحْتَمِلُ تَأْوِيلًا عَلَى جَوَازِ الصَّدَقَةِ لِلصَّحِيحِ وَالْمَرِيضِ مَا لَمْ يَأْتِهِ الْمَوْتُ وَيَجِئْ حُلُولُ أَجَلِهِ دُونَ تَأْخِيرٍ قَرِيبٍ أَوْ بَعِيدٍ، وَلَكِنَّهُمْ لَا النُّصُوصَ يَتَّبِعُونَ وَلَا الْقِيَاسَ يُحْسِنُونَ. وَأَيْضًا: فَلَا خِلَافَ بَيْنَهُمْ أَصْلًا فِي أَنَّ مَا اشْتَرَاهُ الْمَرِيضُ مِنْ فَاكِهَةٍ، وَلَحْمٍ، وَنَحْوِ ذَلِكَ مِمَّا هُوَ عَنْهُ فِي غِنًى، وَمَا تَصَدَّقَ بِهِ عَلَى سَائِلٍ بِالْبَابِ، فَإِنَّهُ مِنْ رَأْسِ مَالِهِ، فَلَوْ كَانَ فَعَلَهُ فِي مَرَضِهِ مِنَ الثُّلُثِ لَكَانَ هَذَا مِنَ الثُّلُثِ، بَلْ لَوْ لَمْ يَكُنْ لَهُ مِنْ مَالِهِ إِلَّا الثُّلُثُ، فِي مَرَضِهِ الَّذِي يَمُوتُ مِنْهُ لَمَا وَجَبَ أَنْ يُعَدَّ أَكْلُهُ وَنَفَقَتُهُ عَلَى نَفْسِهِ وَعِيَالِهِ إِلَّا مِنَ الثُّلُثِ؛ لِأَنَّ بَاقِيَ ذَلِكَ لَا حُكْمَ لَهُ فِيهِ وَهُمْ لَا يَقُولُونَ بِهَذَا - فَظَهَرَ مِنْ تَخَاذُلِهِمْ وَتَنَاقُضِهِمْ وَفَسَادِ أَقْوَالِهِمْ فِي هَذِهِ الْمَسْأَلَةِ مَا بَعْضُهُ يَكْفِي - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

This is an explicit text that does not admit interpretation regarding the permissibility of charity for the healthy and the sick before death approaches them and their appointed term arrives without delay, whether near or far. Yet they neither follow the scriptural texts nor apply analogy correctly. Moreover, there is absolutely no disagreement among them concerning what a sick person purchases, such as fruits, meat, or similar items. That is from what he has no obligation over, and whatever he gave in charity to a petitioner at the door is from his original estate. If he had done so during his illness, [the charity] would be from the third [of his estate]. Indeed, if he possessed nothing from his wealth except the third during his terminal illness from which he dies, his sustenance and expenses for himself and his dependents would not be counted except from the third, as the remainder has no legal validity for him—and they [the jurists] do not uphold this opinion. Thus, the extent of their negligence, contradiction, and the invalidity of their statements in this matter becomes evident—some of which suffices. And success is by Allah's grace, the Exalted.

[مَسْأَلَةٌ الْحَجْرُ عَلَى امْرَأَةٍ ذَاتِ زَوْجٍ]

Issue: Interdiction on a married woman.

١٣٩٦ - مَسْأَلَةٌ: وَكَذَلِكَ لَا يَجُوزُ الْحَجْرُ أَيْضًا عَلَى امْرَأَةٍ ذَاتِ زَوْجٍ، وَلَا بِكْرٍ ذَاتِ أَبٍ، وَلَا غَيْرِ ذَاتِ أَبٍ - وَصَدَقَتُهُمَا، وَهِبَتُهُمَا -: نَافِذٌ كُلُّ ذَلِكَ مِنْ رَأْسِ الْمَالِ إِذَا حَاضَتْ كَالرَّجُلِ سَوَاءً سَوَاءً - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

1396. Issue: Similarly, interdiction is also impermissible on a married woman, nor on a virgin, whether she has a father or not. Their sadaqah (charitable acts) and gift transactions are valid; all such transactions are valid directly from the principal wealth when she attains puberty (marked by menstruation), exactly equal to a man, without exception. This is the opinion of Sufyān al-Thawrī, Abū Ḥanīfa, al-Shāfiʿī, Abū Thawr, Abī Sulaymān, and their adherents.

وَقَالَ مَالِكٌ: لَيْسَ لِذَاتِ الزَّوْجِ إِلَّا الثُّلُثُ فَقَطْ تَهَبُهُ وَتَتَصَدَّقُ بِهِ - أَحَبَّ زَوْجُهَا أَمْ كَرِهَ - فَإِذَا مَضَتْ لَهَا مُدَّةٌ جَازَ لَهَا فِي ثُلُثِ مَا بَقِيَ أَيْضًا أَنْ تَفْعَلَ فِيهِ مَا شَاءَتْ - أَحَبَّ زَوْجُهَا أَمْ كَرِهَ - وَهَكَذَا أَبَدًا، فَإِنْ كَانَ ذَلِكَ قَرِيبًا مِنْ فِعْلِهَا فِي الْأَوَّلِ: فُسِخَ - فَإِنْ زَادَتْ عَلَى الثُّلُثِ رَدَّ الْكُلَّ أَوَّلَهُ عَنْ آخِرِهِ، بِخِلَافِ الْمَرِيضِ إِنْ شَاءَ زَوْجُهَا

Malik said: A wife has no entitlement except one-third only, which she may gift or donate—whether her husband approves or disapproves. When a period has elapsed for her, she becomes entitled to dispose of one-third of what remains also as she wills—whether her husband approves or disapproves—and this applies perpetually. If her subsequent transaction resembles her initial one, the subsequent transaction is annulled. If she exceeds one-third, the entire transaction is invalidated from beginning to end, unlike the case

of the sick person: if her husband wishes to reject it, he may do so, but if he ratifies it, it is upheld. Should this remain concealed from her husband until her death or his divorce of her, the entirety is upheld. Al-Mughīrah ibn ʿAbd al-Raḥmān, his companion, said: Rather, the husband may only reject what exceeds one-third, while the one-third remains valid for her—as with the sick person.

أَنْ يَرُدَّهُ، وَإِنْ أَنْفَذَهُ نَفَذَ، فَإِنْ خَفِيَ ذَلِكَ عَنْ زَوْجِهَا حَتَّى تَمُوتَ أَوْ يُطَلِّقَهَا نَفَذَ كُلُّهُ - قَالَ الْمُغِيرَةُ بْنُ عَبْدِ الرَّحْمَنِ صَاحِبُهُ: بَلْ لَا يَرُدُّ الزَّوْجُ إِلَّا مَا زَادَ عَلَى الثُّلُثِ فَقَطْ، وَيَنْفُذُ لَهَا الثُّلُثُ كَالْمَرِيضِ.

L21550 Malik said: If she has gifted all her wealth to her husband, that is valid. As for her selling and purchasing, it is permissible—whether her husband likes it or not—provided there is no favoritism.

قَالَ مَالِكٌ: فَإِنْ وَهَبَتْ لِزَوْجِهَا. مَالَهَا كُلَّهُ نَفَذَ ذَلِكَ، وَأَمَّا بَيْعُهَا وَابْتِيَاعُهَا فَجَائِزٌ - أَحَبَّ زَوْجُهَا أَمْ كَرِهَ - إِذَا لَمْ يَكُنْ فِيهِ مُحَابَاةٌ.

L21551 He said: As for the never-married woman, she remains under guardianship in all circumstances—whether she has a father or not—and is prohibited from taking any action regarding her wealth or any portion thereof. She may not reduce any part of the dowry owed by her husband, even if she remains unmarried, until she enters her husband's home and her circumstances become known. If she gave a gift before marriage and later married, she has the right to reclaim what she gifted unless it was of nominal value. He said: As for the woman who was married and then became widowed, she holds the same legal capacity as a man regarding the validity of her financial dispositions over all her wealth.

قَالَ: وَأَمَّا الْبِكْرُ فَمَحْجُورَةٌ عَلَى كُلِّ حَالٍ - ذَاتَ أَبٍ كَانَتْ أَوْ غَيْرَ ذَاتِ أَبٍ - لَا يَجُوزُ لَهَا فِعْلٌ فِي مَالِهَا، وَلَا فِي شَيْءٍ مِنْهُ، وَلَا أَنْ تَضَعَ عَنْ زَوْجِهَا مِنْ الصَّدَاقِ وَإِنْ عَنَسَتْ حَتَّى تَدْخُلَ بَيْتَ زَوْجِهَا، وَيُعْرَفُ مِنْ حَالِهَا فَإِنْ وَهَبَتْ قَبْلَ أَنْ تَتَزَوَّجَ ثُمَّ تَزَوَّجَتْ: كَانَ لَهَا أَنْ تَرْجِعَ فِيمَا وَهَبَتْ إِلَّا إِنْ كَانَ يَسِيرًا، قَالَ: وَأَمَّا الَّتِي كَانَ لَهَا زَوْجٌ ثُمَّ تَأَيَّمَتْ فَكَالرَّجُلِ فِي نَفَاذِ حُكْمِهَا فِي مَالِهَا كُلِّهِ.

L21552–21554 As for the early scholars: narrations have been conveyed to us from them. It was transmitted to us through the chain of Ibn Abī Shaybah—Wakīʿ narrated from Ismāʿīl ibn Khālid and Zakariyyā ibn Abī Zāʾidah, both from al-Shaʿbī, from Shurayḥ, who said: "He entrusted to me..." Umar ibn al-Khattab would not validate the gift of a female slave until she gives birth to a child or completes a full year in her house.

وَأَمَّا الْمُتَقَدِّمُونَ: فَرُوِّينَا عَنْهُمْ أَقْوَالًا: رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ إِسْمَاعِيلِ بْنِ خَالِدٍ، وَزَكَرِيَّا بْنِ أَبِي زَائِدَةَ، كِلَاهُمَا عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ قَالَ: عَهِدَ إِلَيَّ عُمَرُ بْنُ الْخَطَّابِ أَنْ لَا أُجِيزَ عَطِيَّةَ جَارِيَةٍ حَتَّى تَلِدَ وَلَدًا، أَوْ تَحُولَ فِي بَيْتِهَا حَوْلًا.

L21555 From the narration of Saʿīd ibn Manṣūr: Ḥushaym reported to us, Ismāʿīl ibn Abī Khālid reported to us, al-Shaʿbī said: Shurayḥ said: ʿUmar ibn al-Khaṭṭāb commanded me not to approve a gift for an owned female slave until she has remained in her husband's household for a full year or gives birth to a child. I said to al-Shaʿbī: Did ʿUmar write this to him? He replied: Rather, he conveyed it to him verbally through direct speech.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ نا الشَّعْبِيُّ قَالَ: قَالَ شُرَيْحٌ: أَمَرَنِي عُمَرُ بْنُ الْخَطَّابِ أَنْ لَا أُجِيزَ لِجَارِيَةٍ مُلَكَّةٍ عَطِيَّةً حَتَّى تَحِيلَ فِي بَيْتِ زَوْجِهَا حَوْلًا أَوْ تَلِدَ وَلَدًا، قَالَ: فَقُلْت لِلشَّعْبِيِّ: كَتَبَ إِلَيْهِ عُمَرُ فَقَالَ: بَلْ شَافَهَهُ بِهِ مُشَافَهَةً.

L21556 On the authority of Ibn Abi Shaybah, from Ibn Abi Za'idah, from Mujalid, from Al-Sha'bi, who said: I read 'Umar's letter to Shuraih concerning this ruling. This occurred when a Qurashī girl - while being legally competent - was told by her brother: "Donate your inheritance from your father to me as an irrevocable charity (ṣadaqah)." She complied, but later demanded her inheritance back, and he restored it to her.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ أَبِي زَائِدَةَ عَنْ مُجَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: قَرَأْت كِتَابَ عُمَرَ إلَى شُرَيْحٍ بِذَلِكَ، وَذَلِكَ أَنَّ جَارِيَةً مِنْ قُرَيْشٍ قَالَ لَهَا أَخُوهَا وَهِيَ مُمَلَّكَةٌ: تَصَدَّقِي عَلَيَّ بِمِيرَاثِك مِنْ أَبِيك؟ فَفَعَلَتْ، ثُمَّ طَلَبَتْ مِيرَاثَهَا فَرَدَّهُ عَلَيْهَا

L21557 We have also narrated it via the chain of Al-Ḥajjāj ibn Al-Minhal: Yazīd ibn Zuraiʿ narrated to us from Dāwūd ibn Abī Hind from Khilās ibn ʿAmr, who said: ʿUmar ibn Al-Khaṭṭāb wrote: "Do not approve the dower of a virgin woman until she completes a year in her husband's house or gives birth to a child."

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ حَدَّثَنَا يَزِيدُ بْنُ زُرَيْعٍ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ خِلَاسِ بْنِ عَمْرٍو قَالَ: وَكَتَبَ عُمَرُ بْنُ الْخَطَّابِ: لَا تُجِيزُوا نَحْلَ امْرَأَةٍ بِكْرٍ حَتَّى تَحِيلَ حَوْلًا فِي بَيْتِ زَوْجِهَا أَوْ تَلِدَ وَلَدًا.

L21558 Abū Muḥammad said: This is the opinion of Shuraīḥ, as narrated to us through the chain of Ḥammād ibn Salamah from Qatādah, Ayyūb al-Sikhtiyānī, and Hishām ibn Ḥassān—all of them from Muḥammad ibn Sīrīn—that Shuraīḥ said regarding a woman who donates from her wealth: Her donation is not valid until she gives birth to a child or reaches puberty, whichever occurs, and it is a sunnah.

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ شُرَيْحٍ كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ، وَأَيُّوبَ السِّخْتِيَانِيِّ، وَهِشَامِ بْنِ حَسَّانَ كُلُّهُمْ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ شُرَيْحًا قَالَ فِي الْمَرْأَةِ إذَا وَهَبَتْ مِنْ مَالِهَا: فَإِنَّهُ لَا تَجُوزُ لَهَا هِبَتُهَا حَتَّى تَلِدَ وَلَدًا، أَوْ تَبْلُغَ، أَنَّى ذَلِكَ وَهُوَ سُنَّةٌ.

L21559 And through the chain of Ibn Abi Shaybah from Abu Dawud al-Tayalisi from Sa'id ibn Abd al-Rahman from al-Hasan and Muhammad ibn Sirin: Muhammad said, "A woman's gift is not valid unless a full year has elapsed or she has given birth to a child." Then al-Hasan said, "Until she gives birth to a child or reaches maturity—on what basis is that?"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي دَاوُد الطَّيَالِسِيِّ عَنْ سَعِيدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الْحَسَنِ، وَمُحَمَّدِ بْنِ سِيرِينَ، قَالَ مُحَمَّدٌ: لَا تَجُوزُ لِامْرَأَةٍ عَطِيَّةٌ حَتَّى تَحُولَ حَوْلًا أَوْ تَلِدَ وَلَدًا، فَقَالَ الْحَسَنُ: حَتَّى تَلِدَ وَلَدًا أَوْ تَبْلُغَ، أَنَّى ذَلِكَ.

L21560 From the chain of Ibn Abī Shaybah: ʿUbaydullāh ibn ʿUthmān ibn al-Aswad narrated to us from ʿAṭāʾ and Mujāhid, both of whom said together: "An orphan girl is subject to two restrictions: she is not permitted anything from her wealth until she bears a child or completes a year in her husband's house." This is the opinion of Qatādah and al-Shaʿbī, though a differing report is narrated from al-Shaʿbī if she reaches ʿAnis (spinsterhood) before that period. We were narrated via Wakīʿ's chain from Ismāʿīl ibn Abī Khālid, who said: "I asked al-Shaʿbī, 'What is your view if she reaches ʿAnis—is her [act of] gifting [wealth] permissible?' He replied, 'Yes.'"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عُبَيْدُ اللَّهِ بْنُ عُثْمَانَ بْنِ الْأَسْوَدِ عَنْ عَطَاءٍ وَمُجَاهِدٍ قَالَا جَمِيعًا: لِلْيَتِيمَةِ خِنَاقَانِ لَا يَجُوزُ لَهَا شَيْءٌ مِنْ مَالِهَا حَتَّى تَلِدَ وَلَدًا، أَوْ تَمْضِيَ عَلَيْهَا سَنَةٌ فِي بَيْتِ زَوْجِهَا - وَهُوَ قَوْلُ قَتَادَةَ، وَالشَّعْبِيِّ، إلَّا أَنَّهُ اخْتَلَفَ عَنْهُ إذَا عَنَسَتْ قَبْلَ ذَلِكَ - فَرُوِّينَا عَنْهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ قَالَ: قُلْت لِلشَّعْبِيِّ: أَرَأَيْت إنْ عَنَسَتْ أَيَجُوزُ - يَعْنِي هِبَتَهَا؟ قَالَ: نَعَمْ.

L21561–21563 And it has been narrated to us from him through the chain of Ibn Abī

وَرُوِّينَا عَنْهُ مِنْ طَرِيقِ ابْنِ أَبِي زَائِدَةَ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ قُلْت لِلشَّعْبِيِّ: أَرَأَيْت إنْ عَنَسَتْ؟ قَالَ: لَا يَجُوزُ، كِلَاهُمَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ، وَابْنِ أَبِي زَائِدَةَ وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو الْأَحْوَصِ عَنْ الْمُغِيرَةِ عَنْ الشَّعْبِيِّ قَالَ: إذَا حَالَتْ فِي بَيْتِهَا حَوْلًا جَازَ لَهَا مَا صَنَعَتْ، قَالَ الْمُغِيرَةُ، وَقَالَ إبْرَاهِيمُ: إذَا وَلَدَتْ الْجَارِيَةُ أَوْ وَلَدَ مِثْلُهَا جَازَتْ هِبَتُهَا - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ.

Zāʾidah from Ismāʿīl ibn Abī Khālid: I said to Al-Shaʿbī, "What is your view if she remains unmarried past the usual age?" He said, "It is not permissible." Both are transmitted through Ibn Abī Shaybah's chain—from Wakīʿ and Ibn Abī Zāʾidah, respectively. And through the chain of Ibn Abī Shaybah who narrated to us: Abū al-Aḥwaṣ reported from al-Mughīrah from al-Shaʿbī, who said: If she has completed a year in her home, what she has done becomes permissible. Al-Mughīrah said, and Ibrāhīm said: If the female slave gives birth, or one like her does, her gift is deemed permissible—and this is the view of al-Awzāʿī, Aḥmad ibn Ḥanbal, and Isḥāq ibn Rāhawayh.

وَقَوْلٌ آخَرُ رُوِيَ عَنْ أَنَسِ بْنِ مَالِكٍ، وَهُوَ أَنَّهُ لَا يَجُوزُ لِذَاتِ زَوْجٍ عَطِيَّةٌ فِي شَيْءٍ مِنْ مَالِهَا إلَّا بِإِذْنِ زَوْجِهَا. وَمِنْ طَرِيقِ الْعَرْزَمِيِّ عَبْدِ الْمَلِكِ عَنْ عَطَاءٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: لَا يَحِلُّ لِلْمَرْأَةِ أَنْ تَتَصَدَّقَ مِنْ بَيْتِ زَوْجِهَا إلَّا بِإِذْنِهِ، وَأَنَّ صَفِيَّةَ بِنْتَ أَبِي عُبَيْدٍ كَانَتْ لَا تَعْتِقُ - وَلَهَا سِتُّونَ سَنَةً إلَّا بِإِذْنِ ابْنِ عُمَرَ.

L21564 Another opinion is narrated from Anas ibn Malik, stating that a married woman may not donate any portion of her wealth without her husband's permission. Through the chain of Al-ʻAzrami ʻAbd al-Malik, from ʻAta', from Abu Hurayrah, who said: "It is impermissible for a woman to give charity from her husband's property except with his permission." It is also reported that Safiyyah bint Abi ʻUbayd, who was sixty years old, would not emancipate without the permission of Ibn ʻUmar.

قَالَ أَبُو مُحَمَّد: هَذَا لَيْسَ فِيهِ دَلِيلٌ عَلَى أَنَّهُ لَا يَرَى لَهَا ذَلِكَ جَائِزًا دُونَ إذْنِهِ، لَكِنَّهُ عَلَى حُسْنِ الصُّحْبَةِ فَقَطْ.

L21565 Abu Muhammad said: This provides no evidence that he does not deem it permissible for her to do so without his permission; rather, it pertains solely to good companionship.

وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: لَا تَجُوزُ لِامْرَأَةٍ عَطِيَّةٌ إلَّا بِإِذْنِ زَوْجِهَا - وَقَدْ رُوِيَ هَذَا عَنْ الْحَسَنِ، وَمُجَاهِدٍ وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ، فَلَمْ يُجِزْ لِذَاتِ الزَّوْجِ عِتْقًا، وَلَا حُكْمًا فِي صَدَاقِهَا وَلَا غَيْرِهِ إلَّا بِإِذْنِ زَوْجِهَا - إلَّا الشَّيْءُ الْيَسِيرُ الَّذِي لَا بُدَّ لَهَا مِنْهُ فِي صِلَةِ رَحِمٍ أَوْ مَا يُتَقَرَّبُ بِهِ إلَى اللَّهِ عَزَّ وَجَلَّ.

L21566 It has been narrated to us through the chain of Sufyān ibn ʿUyaynah from ʿAbdullāh ibn Ṭāwūs from his father, who said: A woman's gift is not valid except with her husband's permission. This has been reported from al-Ḥasan and Mujāhid, and it is the opinion of al-Layth ibn Saʿd. He did not permit a married woman to emancipate a slave, exercise legal authority over her dowry, nor engage in any other such matter without her husband's permission. An exception is made for a trivial amount essential for maintaining kinship ties or what is used to draw closer to Allah, the Almighty.

وَمِمَّنْ رُوِيَ عَنْهُ مِثْلُ قَوْلِنَا: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عُبَيْدٍ الْغُبَرِيُّ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ أَبِي مُلَيْكَةَ أَنَّ أَسْمَاءَ بِنْتَ أَبِي بَكْرٍ الصِّدِّيقِ قَالَتْ:

L21567–21569 Among those from whom a statement similar to ours has been narrated: As reported through the chain of Muslim, Muḥammad ibn ʻUbayd al-Ghabarī narrated to us, Ḥammād ibn Zayd narrated to us from Ayyūb al-Sakhtiyānī from Ibn Abī Mulaykah that Asmā' bint Abī Bakr al-Ṣiddīq said: "I used to

serve al-Zubayr with household chores, tend to his horse, gather fodder for it, and care for it. Nothing was more burdensome to me than tending to the horse. Then a captive was brought to the Prophet (peace be upon him), and he gave her a servant." She then mentioned a hadith in which she stated that she sold the servant. She said: "Al-Zubayr entered while he appraised her in my lap, and he said, 'Gift her to me.' I replied, 'How could I? I have already given her as charity.'" Thus, al-Zubayr and Asmā' bint al-Ṣiddīq: she donated the proceeds from her servant's sale as charity and her selling [the servant] without her husband's permission, perhaps because she owned nothing else, or it was most of what she had. As reported through the chain of Aḥmad ibn Shu'ayb — I, al-Ḥasan ibn Muḥammad (Ibn al-Ṣabbāḥ), from Ḥajjāj (Ibn Muḥammad al-A'war), from Ibn Jurayj, who informed me from Ibn Abī Mulaykah from 'Abbād ibn 'Abdullāh ibn al-Zubayr from Asmā' bint Abī Bakr that she came to the Prophet (peace be upon him) and said, "O Prophet..." "By Allah, I have nothing except what al-Zubayr provides me. Is there any blame on me if I give a portion of what he provides?" He said: "Give as much as you can, and do not withhold, lest it be withheld from you." Al-Zubayr did not reject that.

كُنْت أَخْدِمُ الزُّبَيْرَ خِدْمَةَ الْبَيْتِ، وَأَسُوسُ فَرَسَهُ، كُنْت أَحْتَشُّ لَهُ، وَأَقُومُ عَلَيْهِ، فَلَمْ يَكُنْ شَيْءٌ أَشَدَّ عَلَيَّ مِنْ سِيَاسَةِ الْفَرَسِ - ثُمَّ جَاءَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَبِيٌّ فَأَعْطَاهَا خَادِمًا، ثُمَّ ذَكَرَتْ حَدِيثًا وَفِيهِ أَنَّهَا بَاعَتْهَا، قَالَتْ: فَدَخَلَ الزُّبَيْرُ وَثَمَنُهَا فِي حِجْرِي فَقَالَ: هَبِيهَا إِلَيَّ؟ قَالَتْ: أَنِّي، لَكِنْ تَصَدَّقْت بِهَا - فَهَذَا الزُّبَيْرُ، وَأَسْمَاءُ بِنْتُ الصِّدِّيقِ، قَدْ أَنْفَذَتْ الصَّدَقَةَ بِثَمَنِ خَادِمِهَا، وَبَيْعَهَا بِغَيْرِ إِذْنِ زَوْجِهَا، وَلَعَلَّهَا لَمْ تَكُنْ تَمْلِكُ شَيْئًا غَيْرَهَا، أَوْ كَانَ أَكْثَرَ مَا مَعَهَا - كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا الْحَسَنُ بْنُ مُحَمَّدٍ - هُوَ ابْنُ الصَّبَّاحِ - عَنْ حَجَّاجٍ - هُوَ ابْنُ مُحَمَّدٍ الْأَعْوَرُ - عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ أَبِي مُلَيْكَةَ عَنْ عَبَّادِ بْنِ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ «عَنْ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ أَنَّهَا جَاءَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ يَا نَبِيَّ اللَّهِ لَيْسَ لِي شَيْءٌ إِلَّا مَا أَدْخَلَ عَلَيَّ الزُّبَيْرُ، فَهَلْ عَلَيَّ جُنَاحٌ فِي أَنْ أَرْضَخَ مِمَّا يُدْخِلُ عَلَيَّ؟ قَالَ: ارْضَخِي مَا اسْتَطَعْتُ وَلَا تُوكِي فَيُوكَى عَلَيْكَ» فَلَمْ يُنْكِرْ الزُّبَيْرُ ذَلِكَ.

L21570 It has been narrated to us via Hammad ibn Salamah, who reported from Yunus ibn 'Ubayd, from Muhammad ibn Sirin, that a woman saw in her dream that she would die in three days. She devoted herself to memorizing the remaining portion of the Quran incumbent upon her, organized her wealth, and did this while in good health. On the third day, she visited her neighbors and proceeded to say repeatedly: "O so-and-so, I entrust you to God's care and bid you farewell with peace." They responded, "You will not die today, you will not die today—God willing." Yet she died. Her husband asked Abu Musa Al-Ash'ari about this, and Abu Musa said, "What kind of woman was your wife?" He replied, "I know no one more deserving of Paradise than her except a martyr. Yet she did all this while she was in good health?" Abu Musa said, "She is as you say. She did what she did while in good health," and Abu Musa did not challenge his statement.

وَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا يُونُسُ بْنُ عُبَيْدٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ امْرَأَةً رَأَتْ فِيمَا يَرَى النَّائِمُ أَنَّهَا تَمُوتُ إِلَى ثَلَاثَةِ أَيَّامٍ فَأَقْبَلَتْ عَلَى مَا بَقِيَ مِنْ الْقُرْآنِ عَلَيْهَا فَتَعَلَّمَتْهُ، وَشَذَّبَتْ مَالَهَا، وَهِيَ صَحِيحَةٌ، فَلَمَّا كَانَ يَوْمُ الثَّالِثِ دَخَلَتْ عَلَى جَارَاتِهَا فَجَعَلَتْ تَقُولُ: يَا فُلَانَةُ أَسْتَوْدِعُك اللَّهَ، وَأَقْرَأُ عَلَيْك السَّلَامَ؟ فَجَعَلْنَ يَقُلْنَ لَهَا: لَا تَمُوتِينَ الْيَوْمَ، لَا تَمُوتِينَ الْيَوْمَ - إِنْ شَاءَ اللَّهُ - فَمَاتَتْ، فَسَأَلَ زَوْجُهَا أَبَا مُوسَى الْأَشْعَرِيَّ عَنْ ذَلِكَ؟ فَقَالَ لَهُ أَبُو مُوسَى: أَيُّ امْرَأَةٍ كَانَتْ امْرَأَتُك؟ فَقَالَ: مَا أَعْلَمُ أَحَدًا كَانَ أَحْرَى مِنْهَا أَنْ تَدْخُلَ الْجَنَّةَ إِلَّا الشَّهِيدَ، وَلَكِنَّهَا فَعَلَتْ مَا فَعَلَتْ، وَهِيَ صَحِيحَةٌ؟ فَقَالَ أَبُو مُوسَى: هِيَ كَمَا تَقُولُ فَعَلَتْ مَا فَعَلَتْ، وَهِيَ صَحِيحَةٌ فَلَمْ يَرُدَّهُ أَبُو مُوسَى.

L21571 From the narration of Ḥammād ibn Salamah, from ʿAdī ibn ʿAdī al-Kindī, who said: I wrote to ʿUmar ibn ʿAbd al-ʿAzīz inquiring about a woman giving from her wealth without her husband's permission. He responded: If she is either a spendthrift or acting harmfully, it is impermissible for her; but if she is neither a spendthrift nor acting harmfully, it is permissible.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَدِيِّ بْنِ عَدِيٍّ الْكِنْدِيِّ قَالَ: كَتَبْت إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَسْأَلُهُ عَنْ الْمَرْأَةِ تُعْطِي مِنْ مَالِهَا بِغَيْرِ إذْنِ زَوْجِهَا؟ فَكَتَبَ: إمَّا هِيَ سَفِيهَةٌ أَوْ مُضَارَّةٌ؟ فَلَا يَجُوزُ لَهَا، وَإِمَّا هِيَ غَيْرُ سَفِيهَةٍ وَلَا مُضَارَّةٍ فَيَجُوزُ.

L21572 From the narration of Abd al-Razzaq, from Ma'mar, from Simak ibn al-Fadl, who said: Umar ibn Abd al-Aziz wrote concerning a woman who gave from her wealth: If she is neither wasteful nor causing harm to herself, then validate her gift.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ سِمَاكِ بْنِ الْفَضْلِ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي امْرَأَةٍ أَعْطَتْ مِنْ مَالِهَا: إنْ كَانَتْ غَيْرَ سَفِيهَةٍ وَلَا مُضَارَّةٍ فَأَجِزْ عَطِيَّتَهَا.

L21573 A woman must not be prevented from exercising moderation in using her wealth to preserve a life, uphold kinship ties, or engage in recognized acts of kindness. If she is not permitted to give anything from her wealth, it is better for her not to marry, for she would then be akin to a bondwoman.

وَعَنْ رَبِيعَةَ أَنَّهُ قَالَ: لَا يُحَالُ بَيْنَ الْمَرْأَةِ وَبَيْنَ أَنْ تَأْتِيَ الْقَصْدَ فِي مَالِهَا فِي حِفْظِ رُوحٍ أَوْ صِلَةِ رَحِمٍ، أَوْ فِي مَوَاضِعِ الْمَعْرُوفِ، إذَا لَمْ يَجُزْ لِلْمَرْأَةِ أَنْ تُعْطِيَ مِنْ مَالِهَا شَيْئًا، كَانَ خَيْرًا لَهَا أَنْ لَا تُنْكَحَ، وَأَنَّهَا إذًا تَكُونُ بِمَنْزِلَةِ الْأَمَةِ.

L21574 And from the narration of Hammad ibn Salamah from Qays—who is Ibn Sa'd—that 'Ata' ibn Abi Rabah said: A woman's gift from her wealth is permissible.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسٍ - هُوَ ابْنُ سَعْدٍ - قَالَ: قَالَ عَطَاءُ بْنُ أَبِي رَبَاحٍ: تَجُوزُ عَطِيَّةُ الْمَرْأَةِ فِي مَالِهَا.

L21575–21576 Through the chain of ʿAbd al-Razzāq from Maʿmar from Ayyūb al-Sikhtiyānī from Ibn Sīrīn, who said: If a married woman who has recently reached puberty gives a gift before the year, and does not retract it until she dies, then it is permissible.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ سِيرِينَ قَالَ: إذَا أَعْطَتْ الْمَرْأَةُ الْحَدِيثَةُ السِّنِّ ذَاتُ الزَّوْجِ قَبْلَ السَّنَةِ عَطِيَّةً، فَلَمْ تَرْجِعْ حَتَّى تَمُوتَ، فَهُوَ جَائِزٌ.

L21577 From the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: If a woman donates from her wealth in the absence of imprudence or harm, her gift is permissible, even if her husband dislikes it.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: إذَا أَعْطَتْ الْمَرْأَةُ مِنْ مَالِهَا فِي غَيْرِ سَفَهٍ وَلَا ضِرَارٍ جَازَتْ عَطِيَّتُهَا، وَإِنْ كَرِهَ زَوْجُهَا.

L21578 Abu Muhammad said: As for Mālik's statement, we do not know of any basis for it—neither from the Quran, nor from the Sunnah, nor from a weak narration, nor from the opinion of a Companion, nor a Successor, nor anyone before him that we are aware of—except for a narration from ʿUmar ibn ʿAbd al-ʿAzīz, though authentic reports from him contradict that narration, as we

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مَالِكٍ فَمَا نَعْلَمُ لَهُ مُتَعَلَّقًا، لَا مِنْ الْقُرْآنِ، وَلَا مِنْ السُّنَنِ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا أَحَدَ قَبْلَهُ نَعْلَمُهُ، إلَّا رِوَايَةً عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَدْ صَحَّ عَنْهُ خِلَافُهَا كَمَا ذَكَرْنَا آنِفًا، وَلَمْ يَأْتِ عَنْهُ أَيْضًا تَقْسِيمُهُمْ

mentioned earlier. Moreover, the aforementioned categorization of Malik and his school's does not originate from him, nor from anyone we know, nor from any analogical reasoning, nor from any sound opinion. Rather, what we have mentioned contradicts his statement here, as we will clarify, God, the Exalted, willing.

الْمَذْكُورُ وَلَا عَنْ أَحَدٍ نَعْلَمُهُ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ، بَلْ كَانَ مَا ذَكَرْنَا مُخَالِفًا لِقَوْلِهِ هَهُنَا - عَلَى مَا نُبَيِّنُ إِنْ شَاءَ اللَّهُ تَعَالَى.

L21579 The narration from ʿUmar ibn ʿAbd al-ʿAzīz—reported via ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī—states: ʿUmar ibn ʿAbd al-ʿAzīz ruled for a woman who said, "I wish to uphold what Allah has commanded [of kinship ties]," while her husband objected, "She is causing me hardship." He thereby authorized her to allocate a third [of the property] during her lifetime.

وَالرِّوَايَةُ عَنْ عُمَرَ رُوِّينَاهَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: جَعَلَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ لِلْمَرْأَةِ إِذَا قَالَتْ: أُرِيدُ أَنْ أَصِلَ مَا أَمَرَ اللَّهُ بِهِ؟ وَقَالَ زَوْجُهَا: هِيَ تُضَارُّنِي؟ فَأَجَازَ لَهَا الثُّلُثَ فِي حَيَاتِهَا.

L21580 They have opposed ʿUmar ibn ʿAbd al-ʿAzīz regarding his prostration at "When the sky is split apart" and in dozens of juridical matters—and here they have opposed ʿUmar ibn al-Khaṭṭāb, Anas ibn Mālik, Abū Hurayrah, Abū Mūsā al-Ashʿarī, al-Zubayr, Asmāʾ, all the Companions (as we shall mention, God willing, the Exalted), Shurayḥ, al-Shaʿbī, al-Nakhaʿī, ʿAṭāʾ, Ṭāwūs, Mujāhid, al-Ḥasan, Ibn Sīrīn, Qatādah, ʿUmar ibn ʿAbd al-ʿAzīz, and others.

وَهُمْ قَدْ خَالَفُوا عُمَرَ بْنَ عَبْدِ الْعَزِيزِ فِي سُجُودِهِ: إِذَا السَّمَاءُ انْشَقَّتْ وَفِي عَشَرَاتٍ مِنْ الْقَضَايَا - وَهُمْ قَدْ خَالَفُوا هَهُنَا: عُمَرَ بْنَ الْخَطَّابِ، وَأَنَسَ بْنَ مَالِكٍ، وَأَبَا هُرَيْرَةَ وَأَبَا مُوسَى الْأَشْعَرِيَّ، وَالزُّبَيْرَ، وَأَسْمَاءَ، وَجَمِيعَ الصَّحَابَةِ - عَلَى مَا نَذْكُرُ إِنْ شَاءَ اللَّهُ تَعَالَى - وَشُرَيْحًا، وَالشَّعْبِيَّ، وَالنَّخَعِيَّ، وَعَطَاءً وَطَاوُسًا، وَمُجَاهِدًا، وَالْحَسَنَ وَابْنَ سِيرِينَ، وَقَتَادَةَ، وَعُمَرَ بْنَ عَبْدِ الْعَزِيزِ، وَغَيْرَهُمْ.

L21581 It is astonishing that they imitate ʿUmar—may Allah be pleased with him—regarding the ruling on the wife of a missing man, the hadd punishment they ascribe to him for drinking wine as eighty lashes, his stipulation to delay the impotent man for a year, and his prohibition against a man who marries and consummates a marriage during the waiting period ever marrying her again—despite other Companions opposing him in all these matters and his own retraction of some rulings. Yet they do not imitate him here.

وَالْعَجَبُ مِنْ تَقْلِيدِهِمْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فِي امْرَأَةِ الْمَفْقُودِ، وَفِي مَا يَدَّعُونَهُ عَلَيْهِ مِنْ الْحَدِّ فِي الْخَمْرِ ثَمَانِينَ، وَمِنْ تَأْجِيلِ الْعِنِّينِ سَنَةً، وَمِنْ تَحْرِيمِهِ عَلَى مَنْ تَزَوَّجَ فِي الْعِدَّةِ وَدَخَلَ أَنْ يَتَزَوَّجَهَا فِي الْأَبَدِ - وَقَدْ خَالَفَهُ غَيْرُهُ مِنْ الصَّحَابَةِ فِي كُلِّ ذَلِكَ ورجع هُوَ عَنْ بَعْضِ ذَلِكَ، ثُمَّ لَمْ يُقَلِّدُوهُ هَهُنَا.

L21582 Why did they not say here: Such a matter is not determined by opinion, as they said regarding many of the matters we mentioned? For indeed, ʿUmar and those we mentioned with him invalidated the woman's act wholly before she gives birth or remains in her husband's house for a year. Later, he permitted it wholly and did not grant the husband any involvement in such

وَهَلَّا قَالُوا هَهُنَا: مِثْلَ هَذَا لَا يُقَالُ بِالرَّأْيِ، كَمَا قَالُوهُ فِي كَثِيرٍ مِمَّا ذَكَرْنَا فَإِنَّ عُمَرَ وَمَنْ ذَكَرْنَا مَعَهُ أَبْطَلُوا فِعْلَ الْمَرْأَةِ جُمْلَةً قَبْلَ أَنْ تَلِدَ، أَوْ تَبْقَى فِي بَيْتِ زَوْجِهَا سَنَةً، ثُمَّ أَجَازَ بَعْدَ ذَلِكَ جُمْلَةً وَلَمْ يَجْعَلْ لِلزَّوْجِ فِي شَيْءٍ مِنْ ذَلِكَ مَدْخَلًا، وَلَا حَدَّ ثُلُثًا مِنْ أَقَلَّ، وَلَا مِنْ أَكْثَرَ.

matters, nor did he set a limit of one-third, whether from a lesser or greater amount.

وَأَمَّا الْحَنَفِيُّونَ فَيَلْزَمُهُمْ مِثْلُ هَذَا سَوَاءً سَوَاءً؛ لِأَنَّهُمْ قَلَّدُوا عُمَرَ فِي حَدِّ الْخَمْرِ، وَفِي تَأْجِيلِ الْعِنِّينِ سَنَةً، وَفِيمَا ادَّعَوْا عَلَيْهِ مِنْ شُرْبِ النَّبِيذِ الْمُسْكِرِ - وَكَذَبُوا فِي ذَلِكَ، فَهَلَّا قَلَّدُوهُ هَهُنَا وَقَالُوا: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، وَلَكِنَّ الْقَوْمَ فِي غَيْرِ حَقِيقَةٍ - وَنَحْمَدُ اللَّهَ تَعَالَى عَلَى نِعَمِهِ.

L21583–21584 As for the Ḥanafīs, the same applies to them equally, for they followed ‘Umar’s precedent in the prescribed punishment (ḥadd) for wine, in granting a man unable to consummate marriage a year’s delay, and in their allegation that he drank intoxicating *nabīdh*—and they lied in that. So why did they not follow him here and say: “Such a matter is not established through opinion”? But these people are not upon the truth. And we praise Allāh, Exalted is He, for His blessings.

قَالَ أَبُو مُحَمَّدٍ: وَمَوَّهَ الْمَالِكِيُّونَ بِأَنْ قَالُوا: صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «تُنْكَحُ الْمَرْأَةُ لِمَالِهَا وَجَمَالِهَا وَحَسَبِهَا وَدِينِهَا» قَالُوا: فَإِذَا نَكَحَهَا لِمَالِهَا فَلَهُ فِي مَالِهَا مُتَعَلَّقٌ؛ وَقَالُوا: قِسْنَاهَا عَلَى الْمَرِيضِ وَالْمُوصِي.

L21585 Abu Muhammad said: The Malikis justified their stance by citing the authentic report from the Prophet (peace be upon him): “A woman is sought in marriage for her wealth, beauty, lineage, and religion.” They argued that if a man marries her for her wealth, he thereby acquires a right to her wealth. They added that they had analogized this ruling to the terminally ill person and the testator.

قَالَ عَلِيٌّ: وَهَذَا تَحْرِيفٌ لِلسُّنَّةِ عَنْ مَوَاضِعِهَا وَأَغَثُّ مَا يَكُونُ مِنَ الْقِيَاسِ وَأَشَدُّهُ بُطْلَانًا - أَمَّا الْخَبَرُ الْمَذْكُورُ فَلَا مَدْخَلَ فِيهِ لِشَيْءٍ مِنْ قَوْلِهِمْ فِي إِجَازَةِ الثُّلُثِ وَإِبْطَالِ مَا زَادَ، وَإِنَّمَا يُمْكِنُ أَنْ يَتَعَلَّقَ بِهِ مَنْ يَذْهَبُ إِلَى مَا رُوِيَ عَنْ أَبِي هُرَيْرَةَ، وَأَنَسٍ، وَطَاوُسٍ، وَاللَّيْثِ تَعَلُّقًا مُمَوَّهًا أَيْضًا عَلَى مَا نُبَيِّنُ إِنْ شَاءَ اللَّهُ تَعَالَى.

L21586 Ali said: “This is a distortion of the Sunnah from its proper contexts, the most baseless form of juristic analogy, and the most utterly void. As for the aforementioned report, it leaves no room for their assertions about permitting a third and invalidating anything beyond it. Only those who adhere to what has been reported from Abu Hurairah, Anas, Tawus, and Al-Layth could speciously rely on it - a specious reliance, as we shall clarify, God the Exalted willing.”

وَأَمَّا قِيَاسُهُمُ الْمَرْأَةَ عَلَى الْمَرِيضِ فَهُوَ قِيَاسٌ لِلْبَاطِلِ عَلَى الْبَاطِلِ، وَاحْتِجَاجٌ لِلْخَطَأِ بِالْخَطَأِ، ثُمَّ لَوْ صَحَّ لَهُمْ فِي الْمَرِيضِ مَا ذَهَبُوا إِلَيْهِ لَكَانُوا قَدْ أَخْطَئُوا مِنْ وُجُوهٍ -: أَحَدُهَا - أَنَّ الْمَرْأَةَ صَحِيحَةٌ وَإِنَّمَا احْتَاطُوا بِزَعْمِهِمْ عَلَى الْمَرِيضِ لَا عَلَى الصَّحِيحِ، وَقِيَاسُ الصَّحِيحِ عَلَى الْمَرِيضِ بَاطِلٌ عِنْدَ كُلِّ مَنْ يَقُولُ بِالْقِيَاسِ لِأَنَّهُمْ إِنَّمَا يَقِيسُونَ الشَّيْءَ عَلَى مِثْلِهِ لَا عَلَى ضِدِّهِ.

L21587 As for their analogy of a woman to a sick person, it constitutes an analogy of falsehood upon falsehood and arguing error with error. Even if their position regarding the sick person were valid, they would still have erred in multiple aspects. The first of these is that the woman is healthy, whereas, by their claim, they only applied precaution to the sick person, not the healthy one. Analogizing the healthy to the sick is false according to all proponents of analogy. For they only analogize a thing to its equivalent, not its opposite.

L21588 The second [reason] is that there is no legal cause (‘illah) connecting the

ritually sound woman and the sick one, nor any analogical resemblance between them whatsoever. The legal cause, according to those who uphold it, either rests on a comprehensive legal cause bridging the two rulings or on an analogical resemblance between them.

وَالثَّانِي - أَنَّهُ لَا عِلَّةَ تَجْمَعُ بَيْنَ الْمَرْأَةِ الصَّحِيحَةِ وَبَيْنَ الْمَرِيضِ وَلَا شَبَهَ بَيْنَهُمَا أَصْلًا، وَالْعِلَّةُ عِنْدَ الْقَائِلِينَ بِهِ إمَّا عَلَى عِلَّةٍ جَامِعَةٍ بَيْنَ الْحُكْمَيْنِ، وَإِمَّا عَلَى شَبَهٍ بَيْنَهُمَا.

L21589 The third [point] is that they execute the acts of the sick person within the third and invalidate anything beyond it. Yet here, they invalidate both the third and what exceeds it—thereby invalidating their own analogy.

وَالثَّالِثُ - أَنَّهُمْ يُمْضُونَ فِعْلَ الْمَرِيضِ فِي الثُّلُثِ، وَيُبْطِلُونَ مَا زَادَ عَلَى الثُّلُثِ، وَهَهُنَا يُبْطِلُونَ الثُّلُثَ، وَمَا زَادَ عَلَى الثُّلُثِ - فَقَدْ أَبْطَلُوا قِيَاسَهُمْ.

L21590 The fourth is that they permit a woman to allot a third after a third, yet they do not permit this for a sick person. Thus, they have, in this matter, combined both a contradiction of Analogical Reasoning (Qiyās) and a nullification of their basis in safeguarding the husband's share, for she may keep allocating a third after a third until she depletes the entire estate except for a negligible portion—this constitutes a confusion without parallel.

وَالرَّابِعُ - أَنَّهُمْ يُجِيزُونَ لِلْمَرْأَةِ ثُلُثًا بَعْدَ ثُلُثٍ، وَلَا يُجِيزُونَ ذَلِكَ لِلْمَرِيضِ - فَجَمَعُوا فِي هَذَا الْوَجْهِ مُنَاقَضَةَ الْقِيَاسِ، وَإِبْطَالَ أَصْلِهِمْ فِي الْحِيَاطَةِ لِلزَّوْجِ؛ لِأَنَّهَا لَا تَزَالُ تُعْطِي ثُلُثًا بَعْدَ ثُلُثٍ حَتَّى تُذْهِبَ الْمَالَ إلَّا مَا لَا قَدْرَ لَهُ - وَهَذَا تَخْلِيطٌ لَا نَظِيرَ لَهُ.

L21591–21592 If they say, "Did we analogize it to the testator?" we respond: The executor is not the same as the testator, and all that we introduced earlier in their analogy to the sick person also applies to them.

فَإِنْ قَالُوا: قِسْنَاهَا عَلَى الْمُوصِي؟ قُلْنَا: الْمُنَفِّذُ غَيْرُ الْمُوصِي وَدَخَلَ عَلَيْهِمْ كُلُّ مَا أَدْخَلْنَاهُ آنِفًا فِي قِيَاسِهِمْ عَلَى الْمَرِيضِ.

L21593 If they say: "Does the husband have a claim over her property since he married her with wealth?" We will—God, the Exalted, willing—subsequently present in our discourse against those who deny her authority over any part of her property what invalidates this assertion. For this argument in fact belongs to them, not the Malikis; rather, it counters their own stance. Were it valid, it would necessitate preventing her from even a small or large amount of her property. However, we ask them about the free woman married to an enslaved husband, the non-Muslim woman married to a Muslim man, and the woman who embraces Islam while married to a non-Muslim: Are these women prohibited from giving charity beyond a third of their property or not? If they say "No," they contradict themselves. If they say "Yes," they compound inconsistency.

فَإِنْ قَالُوا: إنَّ لِلزَّوْجِ طَرِيقًا فِي مَالِهَا إذْ قَدْ تَزَوَّجَ بِالْمَالِ؟ فَسَنَذْكُرُ مَا يَفْسُدُ بِهِ هَذَا الْقَوْلُ إنْ شَاءَ اللَّهُ تَعَالَى إثْرَ هَذَا فِي كَلَامِنَا عَلَى مَنْ يَمْنَعُهَا مِنْ الْحُكْمِ فِي شَيْءٍ مِنْ مَالِهَا؛ لِأَنَّ هَذَا الِاحْتِجَاجَ إنَّمَا هُوَ لَهُمْ، لَا لِلْمَالِكِيِّينَ، بَلْ هُوَ عَلَيْهِمْ؛ لِأَنَّهُ لَوْ صَحَّ لَكَانَ مُوجِبًا لِلْمَنْعِ مِنْ قَلِيلِ مَالِهَا وَكَثِيرِهِ. لَكِنْ نَسْأَلُهُمْ عَنْ الْحُرَّةِ لَهَا زَوْجٌ عَبْدٌ، وَالْكَافِرَةِ لَهَا زَوْجٌ مُسْلِمٌ، وَالَّتِي تُسْلِمُ تَحْتَ كَافِرٍ، هَلْ لِهَؤُلَاءِ مَنْعُهُنَّ مِنْ الصَّدَقَةِ بِأَكْثَرَ مِنْ الثُّلُثِ أَمْ لَا؟ فَإِنْ قَالُوا: لَا، تَنَاقَضُوا، وَإِنْ قَالُوا: نَعَمْ، زَادُوا أُخْلُوقَةً.

L21594 If they say: She is in need of means to draw nearer to God Almighty, so it is impermissible to bar her from all her wealth—yet a third is deemed insufficient? We respond: This argument is invalid for several reasons: First:

فَإِنْ قَالُوا: هِيَ مُحْتَاجَةٌ إلَى مَا يُتَقَرَّبُ بِهِ إلَى اللَّهِ عَزَّ وَجَلَّ فَلَمْ يَجُزْ مَنْعُهَا مِنْ جَمِيعِ مَالِهَا، وَكَانَ الثُّلُثُ قَلِيلًا؟ قُلْنَا: هَذَا يَفْسُدُ مِنْ وُجُوهٍ: - أَحَدُهَا: أَنَّهَا إنْ كَانَتْ مُحْتَاجَةً

If she is in need of means to draw nearer to God Almighty, what justifies preventing her from drawing closer to Him through the excess over a third, as others are permitted, without distinction? Second: We say to them: By your own admission, the legally restricted spendthrift (سفيه) is obligated to acts that draw him nearer to God Almighty—just as you obligate him to prayer, fasting, zakāh, pilgrimage, and other religious obligations. By this very absurd rationale, you should likewise permit him the excess over a third of his wealth.

إِلَى مَا يُتَقَرَّبُ بِهِ إِلَى اللَّهِ تَعَالَى فَمَا الَّذِي أَوْجَبَ أَنْ تُمْنَعَ مِنْ التَّقَرُّبِ إِلَى اللَّهِ تَعَالَى بِالْكَثِيرِ الزَّائِدِ عَلَى الثُّلُثِ كَغَيْرِهَا، وَلَا فَرْقَ؟ وَثَانِيهَا: أَنْ نَقُولَ لَهُمْ: وَالْمَحْجُورُ السَّفِيهُ بِإِقْرَارِكُمْ إِلَى مَا يَتَقَرَّبُ إِلَى اللَّهِ تَعَالَى بِهِ كَمَا تُوجِبُونَ عَلَيْهِ الصَّلَاةَ. وَالصِّيَامَ، وَالزَّكَاةَ، وَالْحَجَّ، وَسَائِرَ الشَّرَائِعِ فَأَبِيحُوا لَهُ الثُّلُثَ أَيْضًا بِهَذَا الدَّلِيلِ السَّخِيفِ نَفْسِهِ.

L21595 If they say: A woman is not deemed prodigal in financial matters.

فَإِنْ قَالُوا: الْمَرْأَةُ لَيْسَتْ سَفِيهَةً.

L21596 We said: Let her keep her wealth and abandon this confusion—this irrationality! The third point is that the Prophet (peace be upon him) said: "A third—and a third is much." Yet you said: "It is little." Let this suffice you—we seek refuge in God from the like of this!

قُلْنَا: فَأَطْلِقُوهَا عَلَى مَالِهَا وَدَعُوا هَذَا التَّخْلِيطَ بِمَا لَا يُعْقَلُ؟ وَثَالِثُهَا: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الثُّلُثُ وَالثُّلُثُ كَثِيرٌ» فَقُلْتُمْ أَنْتُمْ: إنَّهُ قَلِيلٌ - وَحَسْبُكُمْ هَذَا الَّذِي نَسْتَعِيذُ اللَّهَ مِنْ مِثْلِهِ.

L21597–21599 The fourth objection is that according to your view, the third portion is sometimes deemed excessive—so you reject it as in cases of crop blight—and sometimes considered insufficient, so you implement it in situations like this and similar cases. How grave is this contradiction! How can one speak about Allah's religion using such arbitrary opinions? The fifth objection is that the husband's legal claim to her wealth equates to that of a child, parent, or sibling. Indeed, the inheritance shares of these heirs are greater, for when the husband exists alongside a child, he receives only a quarter while the child receives three-quarters. Like the husband, the parent and child cannot be excluded from inheritance under any circumstance. Therefore, you must bar her [from disposing of her wealth] along with the child... And the parent, from charity exceeding a third through this corrupt precaution—particularly since the parents' right in what is obligatory according to their school and ours outweighs the spouse's right. For if parents become impoverished, the jurists rule that she must provide their sustenance, clothing, housing, and care from her wealth, whether she likes or dislikes—while they do not rule for the spouse to receive anything from her wealth, even if he were to perish from hunger or cold. How then did they take precaution for the lesser

وَرَابِعُهَا: أَنَّ الثُّلُثَ عِنْدَكُمْ مَرَّةً كَثِيرٌ فَتَرُدُّونَهُ كَالْجَوَائِحِ، وَمَرَّةً قَلِيلٌ فَتُنْفِذُونَهُ مِثْلَ هَذَا الْمَوْضِعِ وَشِبْهِهُ - فَكَمْ هَذَا التَّنَاقُضُ وَالْقَوْلُ فِي دِينِ اللَّهِ تَعَالَى بِمِثْلِ هَذِهِ الْآرَاءِ؟ وَخَامِسُهَا: أَنَّ حُجَّةَ الزَّوْجِ فِي مَالِهَا كَحُجَّةِ الْوَلَدِ، أَوْ الْوَالِدِ، أَوْ الْأَخِ، بَلْ مِيرَاثُ هَؤُلَاءِ أَكْثَرُ؛ لِأَنَّ الزَّوْجَ مَعَ الْوَلَدِ لَيْسَ لَهُ إلَّا الرُّبُعُ، وَلِلْوَلَدِ ثَلَاثَةُ الْأَرْبَاعِ - وَالْوَالِدُ وَالْوَلَدُ كَالزَّوْجِ فِي أَنَّهُمْ لَا يَحْجُبُهُمْ أَحَدٌ عَنْ الْمِيرَاثِ أَصْلًا، فَامْنَعُوهَا مَعَ الْوَلَدِ، وَالْوَالِدِ، مِنْ الصَّدَقَةِ بِأَكْثَرَ مِنْ الثُّلُثِ بِهَذَا الِاحْتِيَاطِ الْفَاسِدِ، لَا سِيَّمَا وَحَقُّ الْأَبَوَيْنِ فِيمَا أُوجِبَ عِنْدَهُمْ وَعِنْدَنَا مِنْ حَقِّ الزَّوْجِ، لِأَنَّ الْأَبَوَيْنِ إنْ افْتَقَرَا قَضَوْا بِنَفَقَتِهِمَا وَكِسْوَتِهِمَا وَإِسْكَانِهِمَا وَخِدْمَتِهِمَا عَلَيْهَا فِي مَالِهَا أَحَبَّتْ أَمْ كَرِهَتْ - وَلَا يَقْضُونَ لِلزَّوْجِ فِي مَالِهَا بِشَيْءٍ - وَلَوْ مَاتَ جُوعًا وَبَرْدًا - فَكَيْفَ احْتَاطُوا لِلْأَقَلِّ حَقًّا وَلَمْ يَحْتَاطُوا لِلْأَكْثَرِ حَقًّا - فَلَاحَ فَسَادُ هَذَا الْقَوْلِ الَّذِي لَا نَدْرِي كَيْفَ يَنْشَرِحُ صَدْرُ مَنْ لَهُ أَدْنَى تَمْيِيزٍ لِتَقْلِيدِ

مَنْ أَخْطَأَ فِيهِ الْخَطَأَ الَّذِي لَا خَفَاءَ بِهِ، وَخَالَفَ فِيهِ كُلَّ مُتَقَدِّمٍ نَعْلَمُهُ، إِلَّا رِوَايَةً عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَدْ صَحَّ عَنْهُ خِلَافُهَا لَيْسَ أَيْضًا فِي تَقْسِيمِهِمْ ذَلِكَ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

right while neglecting the greater right? Thus, the corruption of this opinion becomes evident. We cannot fathom how the heart of anyone with the slightest discernment could find ease in blindly following one who erred in such an unmistakable error, opposing every predecessor we know—except for a narration from ʿUmar ibn ʿAbd al-ʿAzīz, which is authentically reported to contradict this view. Nor is there [any basis] in their apportionment of this matter. And success is from Allah, the Exalted.

وَأَمَّا مَنْ مَنَعَهَا مِنْ أَنْ تُنَفِّذَ فِي مَالِهَا شَيْئًا إِلَّا بِإِذْنِهِ فَإِنَّهُمْ احْتَجُّوا بِالْخَبَرِ الْمَذْكُورِ، وَبِقَوْلِهِ تَعَالَى: {الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ} [النساء: ٣٤] . وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ اللَّيْثِ عَنْ ابْنِ عَجْلَانَ عَنْ سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ، «قِيلَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَيُّ النِّسَاءِ خَيْرٌ؟ قَالَ: الَّذِي تَسُرُّهُ إِذَا نَظَرَ، وَتُطِيعُهُ إِذَا أَمَرَ، وَلَا تُخَالِفُهُ فِي نَفْسِهَا وَمَالِهَا بِمَا يَكْرَهُ» .

L21600 As for those who prevent her from disposing of anything in her wealth without his permission, they have cited as evidence the aforementioned report, the words of Allah the Exalted: {Men are caretakers over women by what Allah has favored some with over others and by what they spend from their wealth} [An-Nisa': 34], and what we have narrated via Al-Layth ibn Sa'd from Ibn 'Ajlan from Sa'īd al-Maqburī from Abū Hurayrah: "It was said to the Messenger of Allah (peace and blessings be upon him), 'Which women are best?' He said: 'She who pleases him when he looks at her, obeys him when he commands, and does not oppose him regarding herself or her wealth in what he dislikes.'"[3]

وَبِمَا حَدَّثَنَاهُ أَحْمَدُ بْنُ عُمَرَ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ نُوحٍ الْأَصْبَهَانِيُّ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ الْحَسَنِ الْمَدِينِيُّ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ الصَّائِغُ نا الْحَسَنُ بْنُ عَبْدِ الْغَفَّارِ بْنِ دَاوُد نا مُوسَى بْنُ أَعْيَنَ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ عَبْدِ الْمَلِكِ - قَالَ الصَّائِغُ: لَيْسَ هُوَ الْعَرْزَمِيُّ - عَنْ عَطَاءٍ عَنِ ابْنِ عُمَرَ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا حَقُّ الزَّوْجِ عَلَى زَوْجَتِهِ؟ قَالَ: لَا تَصَدَّقُ إِلَّا بِإِذْنِهِ، فَإِنْ فَعَلَتْ كَانَ لَهُ الْأَجْرُ. وَكَانَ عَلَيْهَا الْوِزْرُ» .

L21601 And according to what Ahmad ibn Umar narrated to us: Muhammad ibn Ahmad ibn Nuh al-Asbahani narrated to us: Abdullah ibn Muhammad ibn al-Hasan al-Madini narrated to us: Muhammad ibn Isma'il al-Sa'igh narrated to us: al-Hasan ibn Abd al-Ghaffar ibn Dawud narrated to us: Musa ibn A'yan narrated from Layth ibn Abi Sulaym from Abd al-Malik—al-Sa'igh said: He is not al-ʿArzami—from Ata' from Ibn Umar: "The Messenger of Allah (peace be upon him) was asked: What is the husband's right over his wife? He said: She must not give charity except with his permission. If she does so, the reward is his, and she bears the sin."

وَمِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ أَنَّ أَبَاهُ حَدَّثَهُ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا فَتَحَ مَكَّةَ خَطَبَ فَقَالَ: لَا تَجُوزُ لِامْرَأَةٍ عَطِيَّةٌ فِي مَالِهَا إِلَّا بِإِذْنِ زَوْجِهَا» . وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ وَعَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ قَالَ الرَّجُلُ: عَنْ عِكْرِمَةَ، وَقَالَ ابْنُ طَاوُسٍ: عَنْ أَبِيهِ، ثُمَّ اتَّفَقَا: أَنَّ

L21602–21604 And through the chain of ʿAmr ibn Shuʿayb that his father reported from ʿAbd Allāh ibn ʿAmr ibn al-ʿĀṣ: "When the Messenger of Allāh—peace and blessings of Allāh be upon him—conquered Mecca, he delivered a sermon and said: 'A woman may not give a gift from her wealth except with her husband's permission.'" And through the chain of ʿAbd al-Razzāq from Maʿmar from an

[3] **Qur'an references (L21600):** Qur'an 4:34 (An-Nisa).

unnamed man and from ʿAbd Allāh ibn Ṭāwūs. The unnamed man reported from ʿIkrimah, and Ibn Ṭāwūs from his father. Then their chains meet: that the Messenger of Allāh—peace and blessings of Allāh be upon him—said: "It is not lawful..." "A woman has no right to dispose of anything in her property without her husband's permission"—this is the wording of Tawus, while the wording of Ikrimah is "anything in her property." We do not know of any other opinion from them besides this at all.

رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَحِلُّ لِامْرَأَةٍ شَيْءٌ فِي مَالِهَا إِلَّا بِإِذْنِ زَوْجِهَا» هَذَا لَفْظُ طَاوُسٍ، وَلَفْظُ عِكْرِمَةَ " فِي مَالِهَا شَيْءٌ " مَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ هَذَا أَصْلًا

L21605 All these texts—the verse and the reports, those authenticated and those unauthenticated—are both definitive proof against the Malikis and an invalidation of their opinion permitting the third and their prohibition of what exceeds it.

وَكُلُّ هَذِهِ النُّصُوصِ الْآيَةِ وَالْأَخْبَارِ مَا صَحَّ مِنْهَا وَمَا لَمْ يَصِحَّ حُجَّةٌ عَلَى الْمَالِكِيِّينَ، وَمُبْطِلٌ لِقَوْلِهِمْ فِي إِبَاحَةِ الثُّلُثِ وَمَنْعِهِمْ مِمَّا زَادَ.

L21606 As for the ḥadīth, "A woman is married for four [things]," there is no inducement to pride in that, nor encouragement toward it, nor its permissibility—let alone anything beyond that. Rather, it contains a reproof against marrying her for anything other than religion, due to his statement—peace be upon him—in this very ḥadīth: "So, seek a woman of religion," thereby restricting his command to a woman of religion. Thus, whoever marries for wealth is not praised in that intention of his.

فَأَمَّا الْخَبَرُ «تُنْكَحُ الْمَرْأَةُ لِأَرْبَعٍ» فَلَيْسَ فِيهِ التَّغْبِيطُ بِذَلِكَ، وَلَا الْحَضُّ عَلَيْهِ، وَلَا إِبَاحَتُهُ فَضْلًا عَنْ غَيْرِ ذَلِكَ، بَلْ فِيهِ الزَّجْرُ عَنْ أَنْ تُنْكَحَ لِغَيْرِ الدِّينِ لِقَوْلِهِ - عَلَيْهِ السَّلَامُ - فِي هَذَا الْخَبَرِ نَفْسِهِ «فَاظْفَرْ بِذَاتِ الدِّينِ» فَقَصَرَ أَمْرَهُ عَلَى ذَاتِ الدِّينِ، فَصَارَ مَنْ نَكَحَ لِلْمَالِ غَيْرَ مَحْمُودٍ فِي نِيَّتِهِ تِلْكَ.

L21607 Then, suppose it is permissible and recommended? What evidence exists to prohibit her from her wealth merely because he is among those who greedily seek wealth that is unlawful for him—nothing being lawful for him from it except what would be lawful regarding his neighbor's wealth? For this is limited to what her own soul and the neighbor's soul willingly accept, with no excess.

ثُمَّ هَبْكَ أَنَّهُ مُبَاحٌ مُسْتَحَبٌّ؟ أَيُّ دَلِيلٍ فِيهِ عَلَى أَنَّهَا مَمْنُوعَةٌ مِنْ مَالِهَا بِكَوْنِهِ أَحَدَ الطَّمَّاعِينَ فِي مَالٍ لَا يَحِلُّ لَهُ مِنْهُ شَيْءٌ إِلَّا مَا يَحِلُّ مِنْ مَالِ جَارِهِ؟ وَهُوَ مَا طَابَتْ لَهُ بِهِ نَفْسُهَا وَنَفْسُ جَارِهِ وَلَا مَزِيدَ.

L21608 Moreover, Allah the Exalted has decreed in the Quran and the Sunnah—which the people of Islam have unanimously agreed upon with a conclusive and certain consensus—that husbands are obligated to provide for their wives' maintenance, clothing, housing, and dower (mahr). He has granted women inheritance from men just as He has granted men inheritance from them, with absolute parity. Thus, it is firmly established in the mind of every person of sound mind that a wife's right to her husband's wealth is an obligatory, binding, and lawful entitlement, daily, monthly, yearly, at every

وَأَيْضًا: فَإِنَّ اللَّهَ تَعَالَى افْتَرَضَ فِي الْقُرْآنِ وَالسُّنَّةِ الَّتِي أَجْمَعَ أَهْلُ الْإِسْلَامِ عَلَيْهِمَا إِجْمَاعًا مَقْطُوعًا بِهِ مُتَيَقَّنًا أَنَّ عَلَى الْأَزْوَاجِ نَفَقَاتِ الزَّوْجَاتِ، وَكِسْوَتَهُنَّ، وَإِسْكَانَهُنَّ، وَصَدُقَاتِهِنَّ، وَجَعَلَ لَهُنَّ الْمِيرَاثَ مِنَ الرِّجَالِ كَمَا جَعَلَهُ لِلرِّجَالِ مِنْهُنَّ سَوَاءً سَوَاءً - فَصَارَ بِيَقِينٍ مِنْ كُلِّ ذِي مَسْكَةِ عَقْلٍ حَقُّ الْمَرْأَةِ فِي مَالِ زَوْجِهَا وَاجِبًا لَازِمًا، حَلَالًا يَوْمًا بِيَوْمٍ، وَشَهْرًا بِشَهْرٍ، وَعَامًا بِعَامٍ، وَفِي كُلِّ سَاعَةٍ، وَكَرَّةِ الطَّرْفِ، لَا تَخْلُو ذِمَّتُهُ مِنْ

moment, and in the blink of an eye. His responsibility is never free of her rightful claim to his wealth. This contrasts starkly with his total exclusion from her wealth and the prohibition against him taking anything from it except what she willingly permits. Furthermore, she is entitled to inherit from him after his death, just as he is entitled to inherit from her, with no difference. If this necessitates a man's restriction of her access to her wealth, then it is even more incumbent for a woman to restrict his access to his wealth unless she permits it—for she has a legally mandated share in his wealth, whereas he has no claim to hers except total abstention and legal prohibition. How astonishing is the inversion of rulings!

حَقٍّ لَهَا فِي مَالِهِ. بِخِلَافِ مَنْعِهِ مِنْ مَالِهَا جُمْلَةً، وَتَحْرِيمِهِ عَلَيْهِ، إِلَّا مَا طَابَتْ لَهُ نَفْسُهَا بِهِ، ثُمَّ تَرْجُو مِنْ مِيرَاثِهِ بَعْدَ الْمَوْتِ كَمَا يَرْجُو الزَّوْجُ فِي مِيرَاثِهَا وَلَا فَرْقَ. فَإِنْ كَانَ ذَلِكَ مُوجِبًا لِلرَّجُلِ مَنْعَهَا مِنْ مَالِهَا فَهُوَ لِلْمَرْأَةِ أَوْجَبُ، وَأَحَقُّ فِي مَنْعِهِ مِنْ مَالِهِ إِلَّا بِإِذْنِهَا؛ لِأَنَّ لَهَا شِرْكًا وَاجِبًا فِي مَالِهِ، وَلَيْسَ لَهُ فِي مَالِهَا إِلَّا التَّبُّ وَالزَّجْرُ، فَيَا لَلْعَجَبِ فِي عَكْسِ الْأَحْكَامِ.

L21609 If her right is not absolute—such that his preventing her from his wealth due to fear he might become impoverished would nullify her inalienable right—then by Allah, it is far-fetched and invalid that such a scenario could justify his depriving her of wealth in which he has neither right nor share, any more than an elephant has a portion in flight.

فَإِنْ لَمْ يَكُنْ ذَلِكَ مُطْلَقًا لَهَا مَنْعَهُ مِنْ مَالِهِ خَوْفَ أَنْ يَفْتَقِرَ فَيَبْطُلُ حَقُّهَا اللَّازِمُ؟ فَأُبْعِدَ وَاللَّهِ وَأُبْطِلَ أَنْ يَكُونَ ذَلِكَ مُوجِبًا لَهُ مَنْعَهَا مِنْ مَالٍ لَا حَقَّ لَهُ فِيهِ، وَلَا حَظَّ إِلَّا حَظُّ الْفِيلِ مِنْ الطَّيَرَانِ.

L21610–21612 The utmost perplexity stems from their authorization for him to prohibit her wealth or any portion thereof... and he, if [text breaks off here]. He died of hunger, exhaustion, emaciation, or cold, yet they did not allocate to him from its wealth even a seed to eat nor an animal skin to cover himself with. How, then, did they deem this permissible? Verily, this is indeed astonishing! Thus, their reliance on this claim is entirely invalidated.

وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ إِطْلَاقِهِمْ لَهُ الْمَنْعَ مِنْ مَالِهَا أَوْ مِنْ شَيْءٍ مِنْهُ - وَهُوَ لَوْ مَاتَ جُوعًا، أَوْ جَهْدًا، أَوْ هُزَالًا، أَوْ بَرْدًا، لَمْ يُقْضُوا لَهُ فِي مَالِهَا بِنَوَاةٍ يَزْدَرِدُهَا، وَلَا بِجِلْدٍ يَسْتَتِرُ بِهِ، فَكَيْفَ اسْتَجَازُوا هَذَا؟ إِنَّ هَذَا لَعَجَبٌ؟ فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ جُمْلَةً.

L21613 As for Allah the Most High's statement: "Men are protectors and maintainers over women by virtue of what Allah has favored some of them over others, and by virtue of what they spend from their wealth" [An-Nisā': 34], Allah the Most High did not restrict this statement to a husband acting as a paternal or fraternal guardian.[4]

وَأَمَّا قَوْلُ اللَّهِ تَعَالَى: {الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ} [النساء: ٣٤] فَإِنَّ اللَّهَ تَعَالَى لَمْ يَخُصَّ بِهَذَا الْكَلَامِ زَوْجًا مِنْ أَبٍ، وَلَا مِنْ أَخٍ.

L21614 Moreover, had there been an explicit text in it concerning husbands exclusively, there would have been no text or evidence in it indicating his right to prevent her from her wealth or any portion thereof. Rather, it would have stipulated that others should oversee the management of their wealth—since they categorically do not grant this authority to the husband. Indeed,

ثُمَّ لَوْ كَانَ فِيهَا نَصٌّ عَلَى الْأَزْوَاجِ دُونَ غَيْرِهِمْ لَمَا كَانَ فِيهَا نَصٌّ وَلَا دَلِيلٌ عَلَى أَنَّ لَهُ مَنْعَهَا مِنْ مَالِهَا، وَلَا مِنْ شَيْءٍ مِنْهُ، وَإِنَّمَا كَانَ يَكُونُ فِيهِ أَنْ يَقُومُوا بِالنَّظَرِ فِي أَمْوَالِهِنَّ - وَهُمْ لَا يَجْعَلُونَ هَذَا لِلزَّوْجِ أَصْلًا بَلْ لَهَا عِنْدَهُمْ أَنْ تُوَكِّلَ فِي النَّظَرِ فِي مَالِهَا مَنْ شَاءَتْ

[4] **Qur'an references (L21613):** Qur'an 4:34 (An-Nisa).

عَلَى رَغْمِ أَنْفِ زَوْجِهَا؟ وَلَا خِلَافَ فِي أَنَّهَا لَا يَنْفُذُ عَلَيْهَا بَيْعُ زَوْجِهَا لِشَيْءٍ مِنْ مَالِهَا - لَا مَا قَلَّ وَلَا مَا كَثُرَ - لَا لِنَظَرٍ وَلَا لِغَيْرِهِ، وَلَا ابْتِيَاعِهِ لَهَا أَصْلًا - فَصَارَتْ الْآيَةُ مُخَالِفَةً لَهُمْ فِيمَا يَتَأَوَّلُونَهُ فِيهَا. وَصَحَّ أَنَّ الْمُرَادَ بِقَوْلِهِ تَعَالَى: {الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ} [النساء: ٣٤] مَا لَا خِلَافَ فِيهِ مِنْ وُجُوبِ نَفَقَتِهِنَّ وَكِسْوَتِهِنَّ عَلَيْهِمْ، فَذَاتُ الزَّوْجِ عَلَى الزَّوْجِ، وَغَيْرُ ذَاتِ الزَّوْجِ إنْ احْتَاجَتْ عَلَى أَهْلِهَا فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - فَصَارَتْ الْآيَةُ حُجَّةً عَلَيْهِمْ، وَكَاسِرَةً لِقَوْلِهِمْ.

according to them, she may delegate whomever she wishes to manage her wealth, even against her husband's objection. There is no dispute that her husband's sale of any part of her wealth—whether minor or substantial—is not binding on her, neither for oversight nor any other purpose, nor does his purchasing on her behalf hold any validity at all. Thus, the verse contradicts their interpretation of it. It is established that the intended meaning of Allah's statement, *Men are guardians and maintainers of women* [al-Nisāʾ 4:34], refers to what is undisputed: the obligation to provide for the women's maintenance and clothing. A wife's provision falls upon her husband, while an unmarried woman in need is solely the responsibility of her family—and success comes from Allah, the Most High. Thus, the verse stands as a decisive proof against them, shattering their claim.[5]

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ: فَإِنَّ يَحْيَى بْنَ بُكَيْرٍ رَوَاهُ عَنْ اللَّيْثِ - وَهُوَ أَوْثَقُ النَّاسِ فِيهِ - عَنْ ابْنِ عَجْلَانَ عَنْ سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ فِيهِ: «وَلَا تُخَالِفُهُ فِي نَفْسِهَا وَمَالِهِ بِمَا يَكْرَهُ» .

L21615 As for the narration of Abu Hurairah: Yahya ibn Bukayr reported it from al-Layth—who is the most trustworthy in narrating from him—from Ibn ʿAjlan, from Saʿid al-Maqburi, from Abu Hurairah, from the Prophet (peace be upon him), who said: "She must not oppose him concerning herself or his wealth in anything he dislikes."

وَهَكَذَا رُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ: أَنَا عَمْرُو بْنُ عَلِيٍّ نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - نَا ابْنُ عَجْلَانَ نا سَعِيدُ بْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ عَنْ أَبِي هُرَيْرَةَ: «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ خَيْرِ النِّسَاءِ؟ قَالَ: الَّتِي تُطِيعُ إذَا أَمَرَ، وَتَسُرُّ إذَا نَظَرَ، وَتَحْفَظُهُ فِي نَفْسِهَا وَمَالِهِ» ثُمَّ لَوْ صَحَّ - وَمَالَهَا دُونَ مُعَارِضٍ - لَمَا كَانَ لَهُمْ فِي تِلْكَ الرِّوَايَةِ مُتَعَلَّقٌ؛ لِأَنَّ هَذَا اللَّفْظَ إنَّمَا فِيهِ النَّدْبُ فَقَطْ لَا الْإِيجَابُ، وَإِنَّمَا الطَّاعَةُ فِي الطَّاعَةِ، وَالْمَنْعُ مِنْ الصَّدَقَةِ، وَفِعْلِ الْخَيْرِ لَيْسَ طَاعَةً، بَلْ هُوَ صَدٌّ عَنْ سَبِيلِ اللَّهِ تَعَالَى - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ.

L21616–21618 And likewise, we have narrated it through the chain of Aḥmad ibn Shuʿayb: From ʿAmr ibn ʿAlī, from Yaḥyā—he being Ibn Saʿīd al-Qaṭṭān—from Ibn ʿAjlān, from Saʿīd ibn Abī Saʿīd al-Maqburī, from Abū Hurayrah: "The Messenger of Allah—peace and blessings be upon him—was asked about the best of women. He replied: 'She who obeys when commanded, delights him when he gazes [upon her], and safeguards his rights concerning herself and his wealth.'" Even if this were authentic—with her wealth being undisputed and uncontested—they would find no grounds in that narration, for this wording merely denotes a recommended act (mandūb), not an obligation. Obedience pertains solely to obeying Allah, and the prohibition pertains to [...] Charity and performing good deeds are not acts of obedience; rather, it is a deterrent from the path of Allah, the Exalted - thus their reliance upon this report is invalidated.

L21619 As for the report of Ibn Umar: it is rejected because it includes Musa ibn

[5]**Qur'an references (L21614):** Qur'an 4:34 (An-Nisa).

A'yan—who is unknown—and Layth ibn Abi Sulaym—who is not reliable. As for the hadith of Abdullah ibn Amr: it is a disconnected written record. Furthermore, even if it were authentic, it would be abrogated by the report of Ibn Abbas, which we will mention hereafter if God, the Exalted, wills.

وَأَمَّا خَبَرُ ابْنِ عُمَرَ: فَهَالِكٌ، لِأَنَّ فِيهِ مُوسَى بْنَ أَعْيَنَ - وَهُوَ مَجْهُولٌ - وَلَيْثَ بْنَ أَبِي سُلَيْمٍ - وَلَيْسَ بِالْقَوِيِّ - وَأَمَّا حَدِيثُ عَبْدِ اللَّهِ بْنِ عَمْرٍو: فَصَحِيفَةٌ مُنْقَطِعَةٌ - ثُمَّ لَوْ صَحَّ لَكَانَ مَنْسُوخًا بِخَبَرِ ابْنِ عَبَّاسٍ الَّذِي نَذْكُرُهُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى.

L21620 As for the reports of Ṭāwūs and ʿIkrimah, they are mursal reports—thus, all that they argued with is invalidated. And success is from Allah, the Exalted. Abū Muḥammad said: Since these opinions have been refuted, the restriction transmitted from ʿUmar—may Allah be pleased with him—and those who followed him in the ruling that it is not permissible for her to grant a gift until after she gives birth or remains in her husband's house for a year, holds no authority. For there is no proof in the opinion of any person apart from the Messenger of Allah—peace and blessings of Allah be upon him. Indeed, Allah, the Exalted, has ordained recourse to the Quran and the Sunnah in case of disputes, not to the opinions of anyone apart from these two sources. And success is from Allah, the Exalted.

وَأَمَّا خَبَرُ طَاوُسٍ، وَعِكْرِمَةَ فَمُرْسَلَانِ - فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. قَالَ أَبُو مُحَمَّد: فَإِذْ قَدْ سَقَطَتْ هَذِهِ الْأَقْوَالُ فَالتَّحْدِيدُ الْوَارِدُ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَمَنْ اتَّبَعَهُ فِي أَنْ لَا يَجُوزَ لَهَا عَطِيَّةٌ إلَّا بَعْدَ أَنْ تَلِدَ. أَوْ تَبْقَى فِي بَيْتِ زَوْجِهَا سَنَةً، فَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا افْتَرَضَ اللَّهُ تَعَالَى الرُّجُوعَ عِنْدَ التَّنَازُعِ إلَى الْقُرْآنِ، وَالسُّنَّةِ، لَا إلَى قَوْلِ أَحَدٍ دُونَ ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L21621 Ali said: All statements were rendered void except our statement; and all praise is due to Allah, the Exalted.

قَالَ عَلِيٌّ: فَبَطَلَتْ الْأَقْوَالُ كُلُّهَا إلَّا قَوْلَنَا وَلِلَّهِ تَعَالَى الْحَمْدُ.

L21622 Among the proofs for our position is Allah's statement: {It is not lawful for you to inherit women by coercion} [al-Nisā': 19]. This invalidates preventing her from accessing her wealth out of hope that the preventer - whether he be a father or husband - might inherit it. Allah also states: {The charitable men and charitable women} [al-Aḥzāb: 35], and says: {Spend from what We have provided you before death approaches any of you} [al-Munāfiqūn: 10]. The Almighty made no distinction between men and women in urging charity - neither between a virgin under her father's guardianship, nor a previously married woman without paternal guardianship, nor a married woman, nor a widow. Therefore, differentiating between these categories constitutes certain invalidity and manifest injustice from those who, after

وَمِنْ الْحُجَّةُ لِقَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {لا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرْهًا} [النساء: ١٩] فَبَطَلَ بِهَذَا مَنْعُهَا مِنْ مَالِهَا طَمَعًا فِي أَنْ يَحْصُلَ لِلْمَانِعِ بِالْمِيرَاثِ أَبًا كَانَ، أَوْ زَوْجًا. وَقَوْلُ اللَّهِ تَعَالَى: {وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ} [الأحزاب: ٣٥] وَقَالَ تَعَالَى: {وَأَنْفِقُوا مِنْ مَا رَزَقْنَاكُمْ مِنْ قَبْلِ أَنْ يَأْتِيَ أَحَدَكُمُ الْمَوْتُ} [المنافقون: ١٠] فَلَمْ يُفَرِّقْ عَزَّ وَجَلَّ بَيْنَ الرِّجَالِ فِي الْحَضِّ عَلَى الصَّدَقَةِ وَبَيْنَ امْرَأَةٍ وَرَجُلٍ، وَلَا بَيْنَ ذَاتِ أَبٍ بِكْرٍ، أَوْ غَيْرِ ذَاتِ أَبٍ ثَيِّبٍ، وَلَا بَيْنَ ذَاتِ زَوْجٍ. وَلَا أَرْمَلَةٍ - فَكَانَ التَّفْرِيقُ بَيْنَ ذَلِكَ بَاطِلًا مُتَيَقَّنًا، وَظُلْمًا ظَاهِرًا مِمَّنْ قَامَتْ الْحُجَّةُ عَلَيْهِ فِي ذَلِكَ فَقَلَّدَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

facing established proofs, have blindly followed [such distinctions]. Success comes solely from Allah the Exalted.[6]

وَقَدْ ذَكَرْنَا فِي صَدْرِ هَذَا الْبَابِ «أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَسْمَاءَ بِالصَّدَقَةِ وَلَمْ يَشْتَرِطْ عَلَيْهَا إِذْنَ الزُّبَيْرِ، وَلَا ثُلُثًا فَمَا دُونَ فَمَا فَوْقَ، بَلْ قَالَ لَهَا: ارْضَخِي مَا اسْتَطَعْتِ وَلَا تُوكِي فَيُوكَى عَلَيْكِ» .

L21623 We have mentioned at the beginning of this chapter that "the Messenger of Allah—may Allah bless him and grant him peace—commanded Asmā' to give charity without requiring her to seek al-Zubayr's permission, nor stipulating anything less or more than a third. Rather, he told her: 'Give what you can, and do not withhold—or it will be withheld from you.'"

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ نا أَيُّوبُ السِّخْتِيَانِيُّ سَمِعْت عَطَاءً قَالَ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ: «أَشْهَدُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَصَلَّى قَبْلَ الْخُطْبَةِ - ثُمَّ خَطَبَ فَرَأَى أَنَّهُ لَمْ يُسْمِعْ النِّسَاءَ فَأَتَاهُنَّ فَذَكَّرَهُنَّ وَوَعَظَهُنَّ وَأَمَرَهُنَّ بِالصَّدَقَةِ وَبِلَالٌ قَائِلٌ بِثَوْبِهِ، فَجَعَلَتْ الْمَرْأَةُ تُلْقِي: الْخَاتَمَ، وَالْخُرْصَ، وَالشَّيْءَ» .

L21624–21626 From the transmission of Sufyān ibn 'Uyaynah, Ayyūb al-Sikhtiyānī reported to us that he heard 'Aṭā' say: "I heard Ibn 'Abbās…" He said: "I testify concerning the Messenger of Allah (peace be upon him) that he prayed before the sermon, then delivered the sermon. When he realized he had not made the women hear, he went to them, reminded them, admonished them, and commanded them to give charity. Bilal was spreading out his garment, and the women began casting into it: rings, gold pieces, and other items."

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو الرَّبِيعِ الزَّهْرَانِيُّ نا حَمَّادٌ - هُوَ ابْنُ زَيْدٍ - نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أُمِّ عَطِيَّةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ «أَمَرَ أَنْ يَخْرُجَ فِي الْعِيدَيْنِ الْعَوَاتِقُ وَذَوَاتُ الْخُدُورِ» .

L21627 From the transmission of Muslim: Abu Rabīʿ al-Zahrānī reported to us: Ḥammād ibn Zayd reported to us: Ayyūb al-Sikhtiyānī reported to us from Muḥammad ibn Sīrīn from Umm ʿAṭiyyah from the Prophet—peace and blessings of Allah be upon him—that he "commanded mature girls and women observing modesty to attend the two Eids."

وَمِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ نا إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ دَاوُد بْنِ قَيْسٍ عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي سَرْحٍ الْعَامِرِيِّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَخْرُجُ يَوْمَ الْأَضْحَى، وَيَوْمَ الْفِطْرِ، وَكَانَ يَقُولُ: تَصَدَّقُوا تَصَدَّقُوا، وَكَانَ أَكْثَرُ مَنْ يَتَصَدَّقُ النِّسَاءُ» فَهَذَا أَمْرُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النِّسَاءَ بِالصَّدَقَةِ عُمُومًا.

L21628 From the transmission of Muslim: Qutaybah narrated to us, Ismāʿīl ibn Jaʿfar narrated to us from Dāwūd ibn Qays from ʿIyāḍ ibn ʿAbdullāh ibn Abī Sarḥ al-ʿĀmirī from Abū Saʿīd al-Khudrī: "The Messenger of Allāh - peace and blessings be upon him - would go out on Eid al-Adha and Eid al-Fitr, and he would say: 'Give charity, give charity.' The majority of those who gave charity were women." This constitutes the Prophet's - peace and blessings be upon him - general command to women to give charity.

نَعَمْ، وَجَاءَ «وَلَوْ مِنْ حُلِيِّكُنَّ» ، وَفِيهِنَّ الْعَوَاتِقُ الْمُخَدَّرَاتُ ذَوَاتُ الْآبَاءِ وَذَوَاتُ الْأَزْوَاجِ " فَمَا خَصَّ مِنْهُنَّ بَعْضًا دُونَ بَعْضٍ، وَفِيهِنَّ الْمُقِلَّةُ، وَالْغَنِيَّةُ فَمَا خَصَّ مِقْدَارًا

L21629 Yes, and the injunction "even from your jewelry" (as per the Quranic directive) was revealed, encompassing secluded young women—those under

[6] **Qur'an references (L21622):** Qur'an 4:19 (An-Nisa); Qur'an 63:10 (Al-Munafiqun); Qur'an 33:35 (Al-Ahzab).

their fathers' guardianship and married women—with no distinction made between them. Among them are those with limited means and the affluent, yet no specific amount was stipulated. This was his final action (peace be upon him), performed before all the Companions, with authentic narrations firmly established—and all praise belongs to Allah, the Exalted.

A legal question regarding a woman giving charity from her husband's wealth.

L21631 Issue 1397: A woman has an additional right - she may give charity from her husband's wealth whether he likes it or dislikes it, and without his permission provided she does not cause harm. She is rewarded for this. He is absolutely forbidden to give any charity from her wealth unless she permits it. Allah the Exalted said: {No soul bears the burden of another} [6:164]. Thus, by this, any ruling of anyone over another's wealth is invalidated.[7]

L21632 It is therefore obligatory to single out from that which Allah, the Exalted, singled out through the words of His Messenger—peace be upon him—as we mentioned through the narration of Asmāʾ bint Abī Bakr al-Ṣiddīq in the previous chapter.

L21633 It was narrated to us via the narration of Muslim: Muhammad ibn Rafi' narrated to us, from Abd al-Razzaq, from Ma'mar, from Hammam ibn Munabbih, from Abu Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said: "A woman must not fast while her husband is [at home and] present except with his permission, and she must not..." [text cut off].

L21634–21635 She is not permitted in his house while he is present unless he consents. Whatever she spends from his earnings without his command, half the reward thereof is his.[8]

L21636 And from the chain of Aḥmad ibn Shuʿayb: Aḥmad ibn Ḥarb informed us

دُونَ مِقْدَارٍ، وَهَذَا آخِرُ فِعْلِهِ - عَلَيْهِ السَّلَامُ -، وَبِحَضْرَةِ جَمِيعِ الصَّحَابَةِ، وَآثَارٌ ثَابِتَةٌ - وَلِلَّهِ تَعَالَى الْحَمْدُ.

[مَسْأَلَةٌ لِلْمَرْأَةِ أَنْ تَتَصَدَّقَ مِنْ مَالِ زَوْجِهَا]

١٣٩٧ - مَسْأَلَةٌ: وَلِلْمَرْأَةِ حَقٌّ زَائِدٌ، وَهُوَ أَنَّ لَهَا أَنْ تَتَصَدَّقَ مِنْ مَالِ زَوْجِهَا أَحَبَّ أَمْ كَرِهَ، وَبِغَيْرِ إِذْنِهِ غَيْرَ مُفْسِدَةٍ، وَهِيَ مَأْجُورَةٌ بِذَلِكَ، وَلَا يَجُوزُ لَهُ أَنْ يَتَصَدَّقَ مِنْ مَالِهَا بِشَيْءٍ أَصْلًا إِلَّا بِإِذْنِهَا، قَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَبَطَلَ بِهَذَا حُكْمُ أَحَدٍ فِي مَالِ غَيْرِهِ.

ثُمَّ وَجَبَ أَنْ يُخَصَّ مِنْ ذَلِكَ مَا خَصَّهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا ذَكَرْنَا مِنْ طَرِيقِ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ فِي الْبَابِ الَّذِي قَبْلَ هَذَا.

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رَافِعٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَصُمْ الْمَرْأَةُ وَبَعْلُهَا شَاهِدٌ إِلَّا بِإِذْنِهِ وَلَا.

تَأْذَنْ فِي بَيْتِهِ وَهُوَ شَاهِدٌ إِلَّا بِإِذْنِهِ، وَمَا أَنْفَقَتْ مِنْ كَسْبِهِ مِنْ غَيْرِ أَمْرِهِ فَإِنَّ نِصْفَ أَجْرِهِ لَهُ» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي أَحْمَدُ بْنُ حَرْبٍ نا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ سُفْيَانَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ.

[7] **Qur'an references (L21631):** Qur'an 6:164 (Al-An'am).
[8] **Hadith references (L21633):** Sahih Muslim 1026.

from Abū Muʿāwiyah from al-Aʿmash from Sufyān from ʿĀ'ishah the Mother of the Believers.

قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا أَنْفَقَتْ الْمَرْأَةُ مِنْ بَيْتِ زَوْجِهَا غَيْرَ مُفْسِدَةٍ كَانَ لَهُ أَجْرُهُ بِمَا كَسَبَ، وَلَهَا مِثْلُهُ بِمَا أَنْفَقَتْ، وَلِلْخَازِنِ مِثْلُ ذَلِكَ مِنْ غَيْرِ أَنْ يَنْقُصَ مِنْ أُجُورِهِمْ شَيْءٌ» وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ نا شُعْبَةُ عَنْ عَمْرِو بْنِ مُرَّةَ قَالَ: سَمِعْت أَبَا وَائِلٍ يُحَدِّثُ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا تَصَدَّقَتْ الْمَرْأَةُ مِنْ بَيْتِ زَوْجِهَا كَانَ لَهَا أَجْرٌ وَلِلزَّوْجِ مِثْلُ ذَلِكَ، وَلِلْخَازِنِ مِثْلُ ذَلِكَ، وَلَا يَنْقُصُ كُلُّ وَاحِدٍ مِنْهُمَا مِنْ أَجْرِ صَاحِبِهِ شَيْئًا» .

L21637 She said: The Messenger of Allah (peace be upon him) said, "When a woman spends from her husband's household without causing corruption, he receives his reward for what he earned, she receives an equal reward for what she spent, and the treasurer receives the same as well - none of their rewards being diminished." We have also narrated it through the chain of Muhammad ibn Jaʿfar who informed us: Shuʿbah reported from ʿAmr ibn Murrah, who said: I heard Abu Wa'il narrating from ʿAishah, the Mother of the Believers, from the Prophet (peace be upon him), who said, "When a woman gives in charity from her husband's household, she receives a reward, the husband receives an equal reward, and the treasurer receives the same. None of the two [the woman and husband] has their reward diminished by the other's share."[9]

قَالَ أَبُو مُحَمَّدٍ: أَبُو وَائِلٍ أَدْرَكَ الْجَاهِلِيَّةَ، وَأَدْرَكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَغَيْرُ مُنْكَرٍ أَنْ يَسْمَعَهُ مِنْ أُمِّ الْمُؤْمِنِينَ وَمِنْ مَسْرُوقٍ عَنْهَا أَيْضًا.

L21638 Abu Muhammad said: Abu Wa'il lived through the pre-Islamic era and met the Messenger of Allah, may Allah bless him and grant him peace. It is not denied that he heard the narration from the Mother of the Believers and from Masruq, who narrated it from her as well.

قَالَ عَلِيٌّ: وَاعْتَرَضَ بَعْضُ الْجُهَّالِ فِي هَذِهِ الْآثَارِ الْقَوِيَّةِ بِرِوَايَةٍ تُشْبِهُهُ مِنْ طَرِيقِ الْعَرْزَمِيِّ عَنْ عَطَاءٍ عَنْ أَبِي هُرَيْرَةَ " لَا يَحِلُّ لِلْمَرْأَةِ أَنْ تَتَصَدَّقَ مِنْ بَيْتِ زَوْجِهَا بِغَيْرِ إذْنِهِ " وَهَذَا جَهْلٌ شَدِيدٌ، لِأَنَّهُ لَا يَصِحُّ عَنْ أَبِي هُرَيْرَةَ لِضَعْفِ الْعَرْزَمِيِّ.

L21639 Ali said: Some ignorant people have objected to these strong narrations by citing a narration resembling them through the chain (*isnād*) of al-ʿArzamī from ʿAṭā' from Abū Hurayrah: "It is not permissible for a woman to give charity from her husband's household without his permission." This is profound ignorance, for the narration is not authentically ascribed to Abū Hurayrah due to al-ʿArzamī's weakness as a transmitter.

ثُمَّ لَوْ صَحَّ فَلَا يُعَارِضُ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِرَأْيِ مَنْ دُونَهُ إلَّا فَاسِقٌ - فَإِنْ قَالُوا: أَبُو هُرَيْرَةَ رَوَى هَذَا وَهُوَ تَرَكَهُ؟ قُلْنَا: قَدْ مَضَى الْجَوَابُ، وَإِنَّمَا افْتُرِضَ عَلَيْنَا الِانْقِيَادُ لِمَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا لِلْبَاطِلِ الَّذِي لَمْ يَصِحَّ عَمَّنْ دُونَهُ، نَعَمْ، وَلَا لِمَا صَحَّ عَمَّنْ دُونَهُ، وَالْحُجَّةُ فِي رِوَايَةِ أَبِي هُرَيْرَةَ لَا فِي رَأْيِهِ، وَقَدْ أَفْرَدْنَا لَمَّا تَنَاقَضُوا فِي هَذَا الْمَكَانِ بَابًا ضَخْمًا فَكَيْفَ وَقَدْ صَحَّ عَنْ غَيْرِ أَبِي هُرَيْرَةَ الْقَوْلُ بِهَذَا؟

L21640–21642 Then, even if it were authentic, the statement of Allah's Messenger - peace and blessings of Allah be upon him - cannot be opposed by the opinion of anyone beneath him except a transgressor. If they say: "Abu Hurairah narrated this and then abandoned it?" We respond: "The answer has already been given. We are only obligated to submit to what is authentically established from the Prophet - peace and blessings of Allah be upon him - not to baseless claims that remain unauthenticated from those beneath him. In-

[9] **Hadith references (L21637):** Sunan an-Nasai 2539.

deed, not even to what is authentically reported from others beneath him. The decisive proof lies in Abu Hurairah's transmission, not in his personal opinion. We have devoted an extensive chapter to their contradictions in this matter. How could this be, when the same position has been authentically transmitted from others besides Abu Hurairah?" As reported to us through Abd al-Razzaq's chain from Sufyan ibn Uyaynah, from Ismail ibn Abi Khalid. From Qays ibn Abī Ḥāzim's wife: She was with ʿĀ'ishah, the Mother of the Believers, when a woman asked, "May a woman give charity from her husband's household?" ʿĀ'ishah replied, "Yes, provided she does not substitute her own share with his wealth."

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ امْرَأَتِهِ: أَنَّهَا كَانَتْ عِنْدَ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَسَأَلَتْهَا امْرَأَةٌ هَلْ تَتَصَدَّقُ الْمَرْأَةُ مِنْ بَيْتِ زَوْجِهَا؟ فَقَالَتْ عَائِشَةُ: نَعَمْ، مَا لَمْ تَتِ مَالَهَا بِمَالِهِ.

L21643 If they mention what was narrated to us through the transmission path of ʿAbd al-Razzāq from Ismāʿīl ibn ʿAyyāsh from Shuraḥbīl ibn Muslim al-Khawlānī from Abū Umāmah al-Bāhilī: "I heard the Messenger of Allah—peace and blessings be upon him—say: 'A woman must not spend anything from her husband's household except with her husband's permission.' It was said: 'O Messenger of Allah, not even the food?' He replied: 'That is the most precious of our possessions.'"

فَإِنْ ذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إِسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ شُرَحْبِيلَ بْنِ مُسْلِمٍ الْخَوْلَانِيِّ عَنْ أَبِي أُمَامَةَ الْبَاهِلِيِّ " سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا تُنْفِقُ الْمَرْأَةُ شَيْئًا مِنْ بَيْتِ زَوْجِهَا إلَّا بِإِذْنِ زَوْجِهَا، قِيلَ: يَا رَسُولَ اللَّهِ وَلَا الطَّعَامَ؟ قَالَ: ذَلِكَ أَفْضَلُ أَمْوَالِنَا» .

L21644 And what has been narrated to us through the chain of Ḥammād ibn Salmah from Qatādah from Muwarriq al-'Ijli: "A woman asked the Messenger of Allah (peace and blessings be upon him), 'What is permissible from their husbands' wealth?' He replied, 'Fresh dates—you may eat them and give them as gifts.'"

وَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ مُوَرِّقٍ الْعِجْلِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَأَلَتْهُ امْرَأَةٌ مَا يَحِلُّ مِنْ أَمْوَالِ أَزْوَاجِهِنَّ؟ قَالَ: الرُّطَبُ تَأْكُلِينَهُ وَتُهْدِينَهُ» .

L21645 And through the chain of Ḥammād ibn Salamah from Yūnus ibn ʿUbayd from Ziyād from the Prophet—peace and blessings be upon him—a similar narration is reported, except that he said "al-raṭbu" with the ra' with a fatha (opening) and the ṭā' with a sukun (resting), whereas in the first narration, the ra' with a ḍammah (rounding) and the ṭā' with a fatha (opening).

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ زِيَادٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلُهُ: إلَّا أَنَّهُ قَالَ " الرَّطْبُ " بِفَتْحِ الرَّاءِ وَإِسْكَانِ الطَّاءِ - وَفِي الْأَوَّلِ بِضَمِّ الرَّاءِ وَفَتْحِ الطَّاءِ.

L21646–21648 Abū Muḥammad said: All of this is baseless. The ḥadīth of 'Abd al-Razzāq from Ismāʿīl ibn 'Ayyāsh—who is weak—from Shuraḥbīl ibn Muslim, who is unknown, cannot counter the established reports mass-transmitted through the chains of Asmā', 'Ā'ishah, and Abū Hurayrah: via Ibn Abī Mulaykah, 'Abbād ibn 'Ubayd Allāh ibn al-Zubayr, Fāṭimah bint al-Mundhir from Asmā';

قَالَ أَبُو مُحَمَّد: فَهَذَا كُلُّهُ لَا شَيْءَ، حَدِيثُ عَبْدِ الرَّزَّاقِ عَنْ إِسْمَاعِيلَ بْنِ عَيَّاشٍ - وَهُوَ ضَعِيفٌ - عَنْ شُرَحْبِيلَ بْنِ مُسْلِمٍ وَهُوَ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ، لَا يُعَارَضُ بِمِثْلِهِ الثَّابِتِ مِنْ طَرِيقِ أَسْمَاءَ، وَعَائِشَةَ، وَأَبِي هُرَيْرَةَ، الْمُتَوَاتِرِ عَنْهُمْ مِنْ طَرِيقِ ابْنِ أَبِي مُلَيْكَةَ،

وَعَبَّادِ بْنِ عُبَيْدِ اللَّهِ بْنِ الزُّبَيْرِ، وَفَاطِمَةَ بِنْتِ الْمُنْذِرِ عَنْ أَسْمَاءَ، وَمَسْرُوقٍ، وَشَقِيقٍ عَنْ عَائِشَةَ، وَالْأَعْرَجِ، وَهَمَّامِ بْنِ مُنَبِّهٍ عَنْ أَبِي هُرَيْرَةَ، هَذَا نَقْلُ تَوَاتُرٍ يُوجِبُ الْعِلْمَ فِي أَعْلَامٍ مَشَاهِيرَ بِمِثْلِ هَذَا السُّقُوطِ وَالضَّعْفِ الَّذِي لَوْ انْفَرَدَ عَنْ مُعَارِضٍ لَمْ يَحِلَّ الْأَخْذُ بِهِ. وَالْآخَرَانِ مُرْسَلَانِ، عَلَى أَنَّ فِيهِمَا خِلَافًا لِقَوْلِ الْمُخَالِفِ، لِأَنَّ فِيهِ إِبَاحَةَ الرُّطَبِ جُمْلَةً، وَقَدْ تَعْظُمُ قِيمَتُهُ، وَقَدْ رُوِيَتْ مَرَاسِيلُ أَحْسَنُ مِنْ هَذَا بِخِلَافِ قَوْلِهِمْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا يَزِيدُ بْنُ زُرَيْعٍ نا يُونُسُ بْنُ عُبَيْدٍ عَنْ الْحَسَنِ «قَالَ رَجُلٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: صَاحِبَتِي تَتَصَدَّقُ مِنْ مَالِي، وَتُطْعِمُ مِنْ طَعَامِي؟ قَالَ: أَنْتُمَا شَرِيكَانِ قَالَ: أَرَأَيْتَ إِنْ نَهَيْتَهَا عَنْ ذَلِكَ؟ قَالَ: لَهَا مَا نَوَتْ وَلَكَ مَا بَخِلْتَ» .

Masrūq and Shaqīq from ʻĀ'ishah; al-Aʻraj; and Hammām ibn Munabbih from Abū Hurayrah. This constitutes a mass-transmitted (tawātur) report that yields certainty, conveyed through eminent and renowned figures, unlike this narration whose unreliability and weakness are such that even if it were solitary without opposing reports, it would not be permissible to rely upon it. The other two reports are disconnected (mursal), though they contain elements contradicting the opponent's position, as they include the permissibility of consuming fresh dates. In sum, its value may be significant, and *mursal* narrations superior to this have been reported, contrary to their claim - as we have transmitted through the chain of al-Ḥajjāj ibn al-Minhal, narrated by Yazīd ibn Zuraiʿ, narrated by Yūnus ibn ʿUbayd from al-Ḥasan: "A man said to the Messenger of Allah (peace be upon him), 'My wife gives charity from my wealth and feeds from my food?' He replied, 'You are both partners.' The man said, 'What if I forbid her from that?' He said, 'She gets what she intended, and you get what you withheld due to stinginess.'"

L21649 وَمِنْ طَرِيقِ ابْنِ عَبَّاسٍ أَنَّ امْرَأَةً قَالَتْ لَهُ آخُذُ مِنْ مَالِ زَوْجِي فَأَتَصَدَّقُ بِهِ؟ قَالَ: الْخُبْزُ وَالتَّمْرُ، قَالَتْ: فَدَرَاهِمُهُ؟ قَالَ: أَتُحِبِّينَ أَنْ يَتَصَدَّقَ عَلَيْكِ؟ قَالَتْ: لَا، قَالَ: فَلَا تَأْخُذِي دَرَاهِمَهُ إِلَّا بِإِذْنِهِ - أَوْ نَحْوُ هَذَا.

Through the chain of narration of Ibn Abbas, a woman asked him: "May I take from my husband's wealth and give it in charity?" He replied: "Bread and dates." She asked: "What about his dirhams?" He said: "Would you like him to give charity to you?" She said: "No." He said: "Then do not take his dirhams except with his permission—or something similar."

L21650 قَالَ عَلِيٌّ: يَكْفِي مِنْ هَذَا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " غَيْرَ مُفْسِدَةٍ " فَهَذَا يَجْمَعُ الْبَيَانَ كُلَّهُ.

Ali said: "This suffices from the statement of Allah's Messenger (peace and blessings be upon him): 'Without corruption,' for this encompasses all clarification entirely."

L21651 وَقَالَ تَعَالَى: {النَّبِيُّ أَوْلَى بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ} [الأحزاب: ٦] . وَقَالَ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] فَمَنْ خَالَفَ هَذَا لَمْ يُلْتَفَتْ إِلَيْهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

And He, the Most High, said: {The Prophet has more right over the believers than their own selves} [Al-Ahzab: 6]. He also said: {It is not for a believing man or a believing woman, when Allah and His Messenger have decided a matter, to have any choice in their affair} [Al-Ahzab: 36]. Thus, whoever contradicts this, he is not to be heeded. And with Allah, the Most High, is success.[10]

[10]**Qur'an references (L21651):** Qur'an 33:6 (Al-Ahzab); Qur'an 33:36 (Al-Ahzab).

[مَسْأَلَةٌ الْعَبْدُ فِي جَوَازِ صَدَقَتِهِ وَهِبَتِهِ وَبَيْعِهِ وَشِرَائِهِ كَالْحُرِّ]

L21652 **In legal terms, a slave's capacity regarding charity (ṣadaqah), gifts, selling, and purchasing holds the same legal status as a free person.**

L21653 1398. Issue: The male slave, regarding the permissibility of his charity, gift, selling, and buying, is equivalent to a free man, and the female slave is equivalent to a free woman, provided their master does not seize their property.

L21654 The proof of that is:— what we have previously mentioned regarding Allah the Exalted's command to give charity, and His Messenger's—peace and blessings of Allah be upon him—command concerning it. And His words the Exalted: "O you who believe! Let not your wealth nor your children divert you from Allah's remembrance. For whoever does this—it is they who are the losers. And spend from what We have bestowed upon you before death approaches any of you, whereupon he will plead: 'My Lord, if only You would grant me respite for a short term, that I might give charity and be among the righteous!'" [Al-Munāfiqūn: 9–10][11]

L21655 And His statement, the Exalted: "Allah has permitted trade and forbidden usury." [Al-Baqarah: 275][12]

L21656–21658 There is no disagreement that the male slave and the female slave are addressed by Islam and its laws, and are obligated to purify, Their two selves and drawing near to Allah the Exalted through righteous deeds are both promised Paradise and both threatened with Hellfire like free people, with no distinction. Thus, differentiating between them is erroneous except where the text establishes a distinction between them? Ali said: As for the Malikis, their grave contradiction here lies in permitting concubinage with his master's permission, while Allah the Exalted states: "And those who guard their private parts except from their spouses or those whom their right hands pos-

[11] **Qur'an references (L21654):** Qur'an 63:9 (Al-Munafiqun); Qur'an 63:10 (Al-Munafiqun).

[12] **Qur'an references (L21655):** Qur'an 2:275 (Al-Baqarah).

١٣٩٨ - مَسْأَلَةٌ: وَالْعَبْدُ فِي جَوَازِ صَدَقَتِهِ، وَهِبَتِهِ، وَبَيْعِهِ، وَشِرَائِهِ كَالْحُرِّ، وَالْأَمَةِ كَالْحُرَّةِ مَا لَمْ يَنْتَزِعْ سَيِّدُهُمَا مَالَهُمَا.

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَاهُ قَبْلُ مِنْ أَمْرِ اللَّهِ تَعَالَى بِالصَّدَقَةِ، وَأَمْرِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهَا. وقَوْله تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تُلْهِكُمْ أَمْوَالُكُمْ وَلا أَوْلادُكُمْ عَنْ ذِكْرِ اللَّهِ وَمَنْ يَفْعَلْ ذَلِكَ فَأُولَئِكَ هُمُ الْخَاسِرُونَ - وَأَنْفِقُوا مِنْ مَا رَزَقْنَاكُمْ مِنْ قَبْلِ أَنْ يَأْتِيَ أَحَدَكُمُ الْمَوْتُ فَيَقُولَ رَبِّ لَوْلا أَخَّرْتَنِي إِلَى أَجَلٍ قَرِيبٍ فَأَصَّدَّقَ وَأَكُنْ مِنَ الصَّالِحِينَ} [المنافقون: ٩ - ١٠]

وقَوْله تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥]

وَلَا خِلَافَ فِي أَنَّ الْعَبْدَ، وَالْأَمَةَ مُخَاطَبَانِ بِالْإِسْلَامِ وَشَرَائِعِهِ، مُلْزَمَانِ بِتَخْلِيصِ أَنْفُسِهِمَا، وَالتَّقَرُّبِ إلَى اللَّهِ تَعَالَى بِصَالِحِ الْأَعْمَالِ، مُوعَدَانِ بِالْجَنَّةِ، مُتَوَعَّدَانِ بِالنَّارِ كَالْأَحْرَارِ وَلَا فَرْقَ، فَالتَّفْرِيقُ بَيْنَهُمَا خَطَأٌ إلَّا حَيْثُ جَاءَ النَّصُّ بِالْفَرْقِ بَيْنَهُمَا؟ قَالَ عَلِيٌّ: أَمَّا الْمَالِكِيُّونَ فَفُحْشُ اضْطِرَابِهِمْ هَهُنَا وَذَلِكَ أَنَّهُمْ أَبَاحُوا التَّسَرِّي بِإِذْنِ مَوْلَاهُ، وَاَللَّهُ تَعَالَى يَقُولُ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] {فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧]

sess - for indeed, they are not to be blamed. But whoever seeks beyond that, it is they who are the transgressors" (23:5-7).[13]

L21659 There is no disagreement among anyone that if a slave has intercourse with his master's female slave, is he not an adulterer? Thus, it is said to the Mālikīs: This concubine whose private part you have permitted to the slave must either be lawfully owned by him—and this is our position, for his ownership of her as his property is valid, thereby exposing their contradiction—or she is not lawfully owned by him but rather lawfully owned by his master, making him a transgressing adulterer. There is no escape from this. If he owns her, he undoubtedly owns both the price for which he purchased her and the price for which he may sell her.

L21660 And He, the Exalted, said: {And whoever among you cannot afford to marry free believing women, then [let him marry] from the believing female slaves whom your right hands possess. Allah knows best about your faith—you are [all] from one another. So marry them with the permission of their masters, and give them their bridal gifts in fairness.} [An-Nisa: 25]. Thus, the Exalted commanded that the female slave be given her bridal gift (mahr), declaring it her property and right. For Allah, the Exalted, does not command anyone to give away the wealth of another. Therefore, it is established that they are proprietors just as free women are, and there is no distinction.[14]

L21661 As for the Ḥanafīs and Shāfiʿīs, they stated: A slave fundamentally does not own anything, and they did not permit him to take a concubine. However, the Shāfiʿīs contradicted themselves, for they obligated him to provide his wife's maintenance and clothing. For were it not that he owns, it would not be valid to hold him financially responsible for the expenses of maintaining and clothing one who is not permitted to own, nor one who lacks the capacity to own.

L21662 As for the Ḥanafīs, they did not impose any maintenance obligation upon him whatsoever. Rather, they deemed him—through his marriage—a per-

وَلَا خِلَافَ بَيْنَ أَحَدٍ فِي أَنَّ الْعَبْدَ إِنْ وَطِئَ أَمَةَ سَيِّدِهِ فَإِنَّهُ زَانٍ؟ فَيُقَالُ لِلْمَالِكِيِّينَ: لَا تَخْلُو هَذِهِ السُّرِّيَّةُ الَّتِي أَبَحْتُمْ فَرْجَهَا لِلْعَبْدِ مِنْ أَنْ تَكُونَ مِلْكَ يَمِينِهِ، فَهَذَا قَوْلُنَا، فَقَدْ صَحَّ مِلْكُهُ لِمَالِهِ، وَظَهَرَ تَنَاقُضُهُمْ أَوْ تَكُونَ لَيْسَتْ مِلْكَ يَمِينِهِ وَإِنَّمَا هِيَ مِلْكُ يَمِينِ سَيِّدِهِ، فَهُوَ زَانٍ عَادٍ، وَهَذَا مَا لَا مَخْرَجَ مِنْهُ، وَإِذَا مَلَكَهَا فَقَدْ مَلَكَ - بِلَا شَكٍّ - ثَمَنَهَا الَّذِي اشْتَرَاهَا بِهِ، وَالَّذِي يَبِيعُهَا بِهِ.

وَقَالَ تَعَالَى: {وَمَنْ لَمْ يَسْتَطِعْ مِنْكُمْ طَوْلا أَنْ يَنْكِحَ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ فَمِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ فَتَيَاتِكُمُ الْمُؤْمِنَاتِ وَاللَّهُ أَعْلَمُ بِإِيمَانِكُمْ بَعْضُكُمْ مِنْ بَعْضٍ فَانْكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ وَآتُوهُنَّ أُجُورَهُنَّ بِالْمَعْرُوفِ} [النساء: ٢٥] فَأَمَرَ تَعَالَى بِإِعْطَاءِ الْأَمَةِ صَدَاقَهَا، وَجَعَلَهُ مِلْكًا لَهَا، وَحَقًّا لَهَا، وَاَللَّهُ تَعَالَى لَا يَأْمُرُ بِأَنْ يُعْطِيَ أَحَدٌ مَالَ غَيْرِهِ، فَصَحَّ أَنَّهُنَّ مَالِكَاتٌ كَسَائِرِ النِّسَاءِ الْحَرَائِرِ وَلَا فَرْقَ

وَأَمَّا الْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ، فَقَالُوا: لَا يَمْلِكُ الْعَبْدُ أَصْلًا، وَلَمْ يُبِيحُوا لَهُ التَّسَرِّيَ، إِلَّا أَنَّ الشَّافِعِيِّينَ تَنَاقَضُوا أَيْضًا؛ لِأَنَّهُمْ أَوْجَبُوا عَلَيْهِ نَفَقَةَ زَوْجِهِ وَكِسْوَتَهَا، فَلَوْلَا أَنَّهُ يَمْلِكُ لَمَا جَازَ أَنْ يَلْزَمَ غَرَامَةَ نَفَقَةٍ وَكِسْوَةِ مَنْ لَا يَجُوزُ أَنْ يَمْلِكَ، وَلَا مَنْ لَا يُمْكِنُ أَنْ يَمْلِكَ.

وَأَمَّا الْحَنَفِيُّونَ فَلَمْ يُوجِبُوا عَلَيْهِ نَفَقَةً أَصْلًا، لَكِنْ جَعَلُوهُ بِزَوَاجِهِ جَانِيًا جِنَايَةً تُوجِبُ أَنْ يُقْضَى بِرَقَبَتِهِ لِزَوْجَتِهِ فَيَنْفَسِخُ النِّكَاحُ إِذَا مَلَكَتْهُ؟ فَهَلْ سُمِعَ بِأَبْرَدَ مِنْ هَذِهِ الْوَسَاوِسِ الْمُضَادَّةِ لِأَحْكَامِ الْقُرْآنِ، وَالسُّنَنِ، وَالْمَعْقُولِ بِلَا دَلِيلٍ أَصْلًا؟ وَاحْتَجَّ الْمَانِعُونَ مِنْ

[13] **Qur'an references (L21656):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun); Qur'an 70:31 (Al-Ma'arij).

[14] **Qur'an references (L21660):** Qur'an 4:25 (An-Nisa).

petrator of a criminal offense necessitating the surrender of his person to his wife, whereby the marriage becomes annulled if she gains ownership over him. Has anything more preposterous than these baseless notions—contradicting the rulings of the Qur'an, the Sunnah, and rational principles without any evidence whatsoever—ever been heard? Those who prohibit owning slaves argued by citing Allah's statement: {Allah sets forth the example of an owned slave who has no power over anything, and one whom We have granted good provision from Us, so he spends from it} [16:75].[15]

L21663–21664 Abu Muhammad said: They argued that a slave neither inherits nor is inherited from, so is it valid that he owns nothing? They argued: A slave is a commodity among commodities. We know of no foundational basis for their position other than this—(the entirety of their claim lacks proof). As for Allah's statement, "Allah presents the example of an owned slave who has no power over anything" [16:75], this contains no evidence for them for several reasons. First, Allah did not state this as a universal description of all owned slaves, but rather mentioned among slaves one possessing this attribute. Similarly, He said, "Allah presents the example of two men: one mute, powerless over anything, a dependent burden on his master—wherever he directs him, he brings no good" [16:76]. Would it then follow from this that such a description applies to every mute person, or that a mute person owns nothing? This is something they would never say, and there is no distinction between the two verses.[16]

L21665 We do not deny that among the free and the enslaved there may be those who possess nothing of justice, are incapable of anything - and are not all of them like that? The second point is that this verse contains no explicit text, evidence, or allusion to the mention of ownership or wealth. Rather, it negates only capability and power, whether due to weakness, illness, or similar causes.

L21666 The third [point] is that if they invalidate his ownership through this verse,

[15] **Qur'an references (L21662):** Qur'an 16:75 (An-Nahl).

[16] **Qur'an references (L21664):** Qur'an 16:75 (An-Nahl); Qur'an 16:76 (An-Nahl).

مِلْكِ الْعَبْدِ بِأَنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {ضَرَبَ اللَّهُ مَثَلا عَبْدًا مَمْلُوكًا لا يَقْدِرُ عَلَى شَيْءٍ وَمَنْ رَزَقْنَاهُ مِنَّا رِزْقًا حَسَنًا فَهُوَ يُنْفِقُ مِنْهُ} [النحل: ٧٥] .

قَالَ أَبُو مُحَمَّدٍ: وَقَالُوا: الْعَبْدُ لَا يَرِثُ وَلَا يُورَّثُ، فَصَحَّ أَنَّهُ لَا يَمْلِكُ؟ وَقَالُوا: الْعَبْدُ سِلْعَةٌ مِنْ السِّلَعِ، مَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ هَذَا أَصْلًا - كُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ -: أَمَّا قَوْلُ اللَّهِ تَعَالَى: {ضَرَبَ اللَّهُ مَثَلا عَبْدًا مَمْلُوكًا لا يَقْدِرُ عَلَى شَيْءٍ} [النحل: ٧٥] فَلَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّهُ لَمْ يَقُلْ اللَّهُ تَعَالَى: إنَّ هَذِهِ صِفَةُ كُلِّ عَبْدٍ مَمْلُوكٍ، وَإِنَّمَا ذَكَرَ مِنْ الْمَمَالِيكِ مَنْ هَذِهِ صِفَتُهُ، وَقَدْ قَالَ تَعَالَى: {وَضَرَبَ اللَّهُ مَثَلا رَجُلَيْنِ أَحَدُهُمَا أَبْكَمُ لا يَقْدِرُ عَلَى شَيْءٍ وَهُوَ كَلٌّ عَلَى مَوْلاهُ أَيْنَمَا يُوَجِّهْهُ لا يَأْتِ بِخَيْرٍ} [النحل: ٧٦] فَهَلْ يَجِبُ مِنْ هَذَا أَنْ تَكُونَ، هَذِهِ صِفَةَ كُلِّ أَبْكَمَ، أَوْ أَنْ يَكُونَ الْأَبْكَمُ لَا يَمْلِكُ شَيْئًا؟ هَذَا مَا لَا يَقُولُونَهُ، وَلَا فَرْقَ بَيْنَ وُرُودِ الْآيَتَيْنِ.

وَنَحْنُ لَا نُنْكِرُ أَنْ يَكُونَ فِي الْأَحْرَارِ، وَفِي الْعَبِيدِ مَنْ لَا يَمْلِكُ شَيْئًا الْعِدْلَ، وَلَا يَقْدِرُ عَلَى شَيْءٍ، وَلَيْسَ كُلُّهُمْ كَذَلِكَ؟ وَالثَّانِي - هُوَ أَنَّ هَذِهِ الْآيَةَ لَيْسَ فِيهَا نَصٌّ، وَلَا دَلِيلَ، وَلَا إشَارَةَ عَلَى ذِكْرِ مِلْكٍ، وَلَا مَالٍ، وَإِنَّمَا فِيهَا: أَنَّهُ لَا يَقْدِرُ عَلَى شَيْءٍ، فَإِنَّمَا فِيهَا نَفْيُ الْقُدْرَةِ وَالْقُوَّةِ فَقَطْ، إمَّا بِضَعْفٍ وَإِمَّا بِمَرَضٍ أَوْ نَحْوِ ذَلِكَ.

وَالثَّالِثُ - أَنَّهُمْ إذَا أَسْقَطُوا مِلْكَهُ بِهَذِهِ الْآيَةِ فَأَحْرَى بِهِمْ أَنْ يُسْقِطُوا عَنْهُ بِهَا الصَّلَاةَ وَالصَّوْمَ؛ لِأَنَّهُمَا شَيْئَانِ - وَفِيهَا أَنَّهُ لَا يَقْدِرُ عَلَى شَيْءٍ فَوَضَحَ فَسَادُ تَعَلُّقِهِمْ بِهَا جُمْلَةً.

then it is more incumbent upon them to exempt him from prayer and fasting based on it—because they are two things—as the verse [itself] states his incapacity to perform anything. Thus, the invalidity of their entire reliance on it becomes evident.

L21667 As for their statement that a slave neither inherits nor can be inherited from - indeed, this is correct, as the Sunnah has established it. Yet this does not serve as evidence that he cannot own property. The paternal aunt does not inherit, but this does not indicate that she cannot own property. Allah the Exalted singles out for inheritance whom He wills, as He says: "Allah instructs you concerning your children: for the male a share equivalent to that of two females" [An-Nisa: 11].[17]

L21668 And He, the Exalted, said: {And the wives of your sons who are from your loins} [An-Nisa: 23]. Thus, the sons of daughters are included in this ruling and excluded from the former category, yet there was no evidence in that to indicate they are not our children. As for their statement that a slave is a commodity—yes, what then? If they claim that because he is a commodity, they render him unable to own—so as to exempt him from prayer, ritual purity, fasting, and prescribed penalties—since commodities are not bound by any of these obligations.[18]

L21669–21670 Abū Muḥammad said: Sufficient regarding this is Allāh the Exalted's statement: "And marry those unmarried (including widowed or divorced) among you and the righteous among your male slaves and female slaves. If they should be poor, Allāh will enrich them from His bounty" [24:32]. For Allāh the Exalted has promised them enrichment, and He has informed that poverty and wealth may apply to male and female slaves. It is not permissible to describe someone as poor except one who owns property and thus experiences destitution at one time and enrichment at another. As for one who owns nothing at all, it is not permissible to describe them as poor or wealthy, like camels, cattle, predators, and inanimate objects. This is evident. The Qur'an and Sunnah, in most of their contexts, attest to all of this, affirm-

[17] **Qur'an references (L21667):** Qur'an 4:11 (An-Nisa).
[18] **Qur'an references (L21668):** Qur'an 4:23 (An-Nisa).

وَأَمَّا قَوْلُهُمْ: إِنَّ الْعَبْدَ لَا يَرِثُ وَلَا يُوَرَّثُ، فَنَعَمْ؛ لِأَنَّ السُّنَّةَ وَرَدَتْ بِذَلِكَ، وَلَيْسَ فِي هَذَا دَلِيلٌ عَلَى أَنَّهُ لَا يَمْلِكُ - وَالْعَمَّةُ لَا تَرِثُ، وَلَيْسَ ذَلِكَ دَلِيلًا عَلَى أَنَّهَا لَا تَمْلِكُ وَيَخُصُّ اللَّهُ تَعَالَى بِالْمِيرَاثِ مَنْ شَاءَ كَمَا قَالَ تَعَالَى: {يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ} [النساء: ١١] .

وَقَالَ تَعَالَى: {وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ} [النساء: ٢٣] فَدَخَلَ فِي هَذَا بَنُو الْبَنَاتِ وَخَرَجُوا مِنْ الْأُولَى، لَمْ يَكُنْ فِي ذَلِكَ دَلِيلٌ عَلَى أَنَّهُمْ لَيْسُوا لَنَا أَوْلَادًا. وَأَمَّا قَوْلُهُمْ: الْعَبْدُ سِلْعَةٌ، فَنَعَمْ، فَكَانَ مَاذَا؟ إنْ كَانُوا مِنْ أَجْلِ أَنَّهُ سِلْعَةٌ جَعَلُوهُ لَا يَمْلِكُ؟ لِيُسْقِطُوا عَنْهُ الصَّلَاةَ، وَالطَّهَارَةَ، وَالصَّوْمَ، وَالْحُدُودَ؛ لِأَنَّ السِّلَعَ لَا يَلْزَمُهَا شَيْءٌ مِنْ ذَلِكَ.

قَالَ أَبُو مُحَمَّدٍ: يَكْفِي مِنْ هَذَا قَوْلُ اللَّهِ تَعَالَى: {وَأَنْكِحُوا الْأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ} [النور: ٣٢] فَقَدْ وَعَدَهُمْ اللَّهُ تَعَالَى بِالْغِنَى، وَأَخْبَرَ أَنَّ الْفَقْرَ وَالْغِنَى جَائِزَانِ عَلَى الْعَبِيدِ وَالْإِمَاءِ. وَلَا يَجُوزُ أَنْ يُوصَفَ بِالْفَقْرِ إلَّا مَنْ يَمْلِكُ فَيَعْدَمُ مَرَّةً وَيَسْتَغْنِي أُخْرَى، وَأَمَّا مَنْ لَا يَمْلِكُ أَصْلًا فَلَا يَجُوزُ أَنْ يُوصَفَ بِفَقْرٍ وَلَا بِغِنًى، كَالْإِبِلِ، وَالْبَقَرِ، وَالسِّبَاعِ، وَالْجَمَادَاتِ، وَهَذَا وَاضِحٌ - وَالْقُرْآنُ، وَالسُّنَنُ فِي أَكْثَرِ عُهُودِهِمَا شَاهِدُ كُلِّ ذَلِكَ بِصِحَّةِ قَوْلِنَا هَهُنَا، إذْ لَمْ يَأْتِ فَرْقٌ فِي شَيْءٍ مِنْ الْأَوَامِرِ بِالْفَرْقِ فِي الْأَمْوَالِ بَيْنَ حُرٍّ وَعَبْدٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

ing the correctness of our view here, since no command has been revealed that differentiates between free persons and slaves in matters of wealth. And success is from Allāh, the Exalted.[19]

L21671 It has been authentically established that the Messenger of Allah (peace be upon him) would accept the invitation of a slave. Had he not owned his property, he (peace be upon him) would not have accepted his invitation. He (peace be upon him) accepted the gift of Salman while he was a slave and ate it. As informed to us by Ahmad ibn Muhammad al-Talamanki: Ibn Mufarrij narrated to us; Ibrahim ibn Ahmad ibn Farras narrated to us; Ahmad ibn Muhammad ibn Salim al-Naysaburi narrated to us; Ishaq ibn Rahawayh informed us: Yahya ibn Adam narrated to us; Ibn Idris (who is Abdullah) narrated to us; Muhammad ibn Ishaq narrated from Asim ibn Umar ibn Qatadah from Mahmud ibn Labid from Ibn Abbas: "Salman al-Farisi narrated to me directly, saying: 'I was among the people of Isfahan and strove earnestly in Zoroastrianism'—then he mentioned the hadith at length—'and that I contracted with a caravan from the tribe of Kalb to carry me to their land. They wronged me and sold me as a slave to a Jewish man, who then sold me to a Jew from the tribe of Banu Qurayzah.' He then mentioned the Prophet's arrival (peace be upon him) in Medina: 'When evening came, I gathered what I had and went to the Messenger of Allah (peace be upon him) at Qiba, where he was with a group of his companions. I said: "I had something set aside for charity and considered you the most deserving of it, so I brought it to you." He (peace be upon him) said: "Eat," but he himself refrained. Then he (peace be upon him) moved to Medina. I gathered another offering, came to him, greeted him, and said: "I noticed you do not eat from charity. I have something I wish to honor you with as a gift." He and his companions ate it. I then embraced Islam, but enslavement preoccupied me until I missed the Battle of Badr. Later, the Messenger of Allah (peace be upon him) said to me: "Write your contract of manumission,"' then he mentioned the hadith. Thus, he (peace be upon him) permitted the charity and gift of a slave, leaving no valid argument for anyone against this. Success comes solely from Allah, the Most High."

وَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُجِيبُ دَعْوَةَ الْمَمْلُوكِ، فَلَوْ لَمْ يَكُنْ مَالِكًا لِمَالِهِ لَمْ يُجِبْ - عَلَيْهِ السَّلَامُ - دَعْوَتَهُ، وَقَدْ قَبِلَ هَدِيَّةَ سَلْمَانَ وَهُوَ مَمْلُوكٌ وَأَكَلَهَا - عَلَيْهِ السَّلَامُ -: كَمَا أَخْبَرَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا إبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ فَرَّاسٍ نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ سَالِمٍ النَّيْسَابُورِيُّ نا إِسْحَاقُ بْنُ رَاهْوَيْهِ أَنَا يَحْيَى بْنُ آدَمَ نا ابْنُ إدْرِيسَ - هُوَ عَبْدُ اللَّهِ - نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ عَاصِمِ بْنِ عُمَرَ بْنِ قَتَادَةَ عَنْ مَحْمُودِ بْنِ لَبِيدٍ عَنْ ابْنِ عَبَّاسٍ «حَدَّثَنِي سَلْمَانُ الْفَارِسِيُّ مِنْ فِيهِ قَالَ: كُنْت مِنْ أَهْلِ أَصْبَهَانَ وَاجْتَهَدْت فِي الْمَجُوسِيَّةِ - ثُمَّ ذَكَرَ الْحَدِيثَ بِطُولِهِ - وَأَنَّهُ عَامَلَ رَكْبًا مِنْ كَلْبٍ عَلَى أَنْ يَحْمِلُوهُ إلَى أَرْضِهِمْ، قَالَ: فَظَلَمُونِي فَبَاعُونِي عَبْدًا مِنْ رَجُلٍ يَهُودِيٍّ، ثُمَّ بَاعَهُ ذَلِكَ الْيَهُودِيُّ مِنْ يَهُودِيٍّ مِنْ بَنِي قُرَيْظَةَ، ثُمَّ ذَكَرَ قُدُومَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَدِينَةَ، قَالَ: فَلَمَّا أَمْسَيْتُ جَمَعْتُ مَا كَانَ عِنْدِي ثُمَّ خَرَجْتُ حَتَّى جِئْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ بِقُبَا وَمَعَهُ نَفَرٌ مِنْ أَصْحَابِهِ، فَقُلْتُ: كَانَ عِنْدِي شَيْءٌ وَضَعْتُهُ لِلصَّدَقَةِ، رَأَيْتُكُمْ أَحَقَّ النَّاسِ بِهِ فَجِئْتُكُمْ بِهِ، فَقَالَ - عَلَيْهِ السَّلَامُ -: كُلُوا، وَأَمْسَكَ هُوَ - ثُمَّ تَحَوَّلَ - عَلَيْهِ السَّلَامُ - إلَى الْمَدِينَةِ، فَجَمَعْتُ شَيْئًا، ثُمَّ جِئْتُ فَسَلَّمْتُ عَلَيْهِ، فَقُلْتُ: رَأَيْتُكَ لَا تَأْكُلُ الصَّدَقَةَ، وَكَانَ عِنْدِي شَيْءٌ أُحِبُّ أَنْ أُكْرِمَكَ بِهِ هَدِيَّةً؟ فَأَكَلَ هُوَ وَأَصْحَابُهُ، ثُمَّ أَسْلَمْتُ ثُمَّ شَغَلَنِي الرِّقُّ حَتَّى فَاتَتْنِي بَدْرٌ، ثُمَّ قَالَ لِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَاتِبْ» ، وَذَكَرَ الْحَدِيثَ -: فَقَدْ أَجَازَ - عَلَيْهِ السَّلَامُ - صَدَقَةَ الْعَبْدِ، وَهَدِيَّتَهُ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[19] **Qur'an references (L21670):** Qur'an 24:32 (An-Nur).

L21672–21673 Yes, those present among his Companions (peace be upon him) concurred with him in permitting it, and there was absolutely no dissenter among them whatsoever.

L21674 Some of them cited as evidence the words of Allah, the Most High: “He sets forth a parable for you from yourselves: Do you have among those whom your right hands possess any partners in what We have provided you, so that you share equally in it?” [Ar-Rum: 28][20]

L21675 Abu Muhammad said: There is no valid proof for them in this matter, because we do not disagree with them regarding the fact that our slaves neither own our wealth nor share partnership with us in it. Our disagreement with them lies solely in whether they own their own wealth and earnings or not. Abu Muhammad said: As for the master’s appropriation of his slave’s property, this is permissible. The Sunnah has affirmed this in the case of the enslaved boy who performed cupping for the Messenger of Allah (peace and blessings of Allah be upon him). The boy asked the Messenger of Allah (peace be upon him) about his share, and when he was informed of it, the Prophet (peace be upon him) commanded that his required portion be reduced.

L21676 It is valid that the master may claim the earnings of his slave. If the master states, “I have confiscated your earnings,” the slave’s ownership over them is nullified, and they become the master’s property. And success is from Allah, the Exalted.

L21677 **The issue of guardianship imposed on one who has not attained legal maturity.**

L21678 1399 - Issue: As for those who have not reached puberty, those who attained puberty while lacking discernment or mental capacity, or those whose discernment ceased after reaching puberty despite having attained it as a discerning person - these are not subject to legal obligations, and none of their financial decisions are valid. This ruling is based on the statement of the Messenger of Allah, peace and blessings be upon him: “The pen is lifted

[20] **Qur’an references (L21674):** Qur’an 30:28 (Ar-Rum).

نَعَمْ، وَأَجَازَهَا مَعَهُ - عَلَيْهِ السَّلَامُ - الْحَاضِرُونَ مِنْ أَصْحَابِهِ وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ أَصْلًا.

وَاحْتَجَّ بَعْضُهُمْ بِقَوْلِ اللَّهِ تَعَالَى: {ضَرَبَ لَكُمْ مَثَلا مِنْ أَنْفُسِكُمْ هَلْ لَكُمْ مِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ شُرَكَاءَ فِي مَا رَزَقْنَاكُمْ فَأَنْتُمْ فِيهِ سَوَاءٌ} [الروم: ٢٨]

قَالَ أَبُو مُحَمَّد: وَلَا حُجَّةَ لَهُمْ فِيهَا، لِأَنَّا لَمْ نُخَالِفْهُمْ فِي أَنَّ عَبِيدَنَا لَا يَمْلِكُونَ أَمْوَالَنَا، وَلَا هُمْ شُرَكَاءُ لَنَا فِيهَا، وَإِنَّمَا خَالَفْنَاهُمْ: هَلْ يَمْلِكُونَ أَمْوَالَهُمْ وَكَسْبَهُمْ أَمْ لَا؟ قَالَ أَبُو مُحَمَّد: وَأَمَّا انْتِزَاعُ السَّيِّدِ مَالَ عَبْدِهِ فَمُبَاحٌ، قَدْ جَاءَتْ السُّنَّةُ بِذَلِكَ فِي «الْغُلَامِ الَّذِي حَجَمَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ خَرَاجِهِ؟ فَأُخْبِرَ، فَأَمَرَ - عَلَيْهِ السَّلَامُ - بِأَنْ يُخَفَّفَ عَنْهُ» .

فَصَحَّ أَنَّ لِلسَّيِّدِ أَخْذَ كَسْبِ عَبْدِهِ، فَإِذَا قَالَ السَّيِّدُ: قَدْ انْتَزَعْت كَسْبَك؟ فَقَدْ سَقَطَ مِلْكُ الْعَبْدِ عَنْهُ وَصَارَ لِلسَّيِّدِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْحَجْرِ عَلَى مَنْ لَمْ يَبْلُغْ]

١٣٩٩ - مَسْأَلَةٌ: وَأَمَّا مَنْ لَمْ يَبْلُغْ، أَوْ بَلَغَ وَهُوَ لَا يُمَيِّزُ وَلَا يَعْقِلُ أَوْ ذَهَبَ تَمْيِيزُهُ بَعْدَ أَنْ بَلَغَ مُمَيِّزًا -: فَهَؤُلَاءِ غَيْرُ مُخَاطَبِينَ وَلَا يَنْفُذُ لَهُمْ أَمْرٌ فِي شَيْءٍ مِنْ مَالِهِمْ لِمَا ذَكَرْنَا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ، فَذَكَرَ الصَّبِيَّ حَتَّى يَبْلُغَ، وَالْمَجْنُونَ حَتَّى يَبْرَأَ» .

from three: the child until they reach puberty, and the insane until they recover their sanity."

فَإِنْ كَانَ الْمَجْنُونُ يُفِيقُ تَارَةً وَيَعْقِلُ، وَيُجَنُّ أُخْرَى -: جَازَ فِعْلُهُ فِي السَّاعَاتِ الَّتِي يُفِيقُ فِيهَا، وَبَطَلَ فِعْلُهُ فِي السَّاعَاتِ الَّتِي يُجَنُّ فِيهَا لِمَا ذَكَرْنَا آنِفًا وَلِأَنَّهُ مُخَاطَبٌ فِي سَاعَاتِ عَقْلِهِ غَيْرُ مُخَاطَبٍ فِي سَاعَاتِ جُنُونِهِ.

L21679 If the insane person regains consciousness at times and is rational, and becomes insane at others, his actions are valid during the hours when he is conscious, and his actions are invalid during the hours when he becomes insane, for the reasons we previously mentioned and because he is legally accountable during his hours of sanity but not during his hours of insanity.

قَالَ عَلِيٌّ: وَمَنْ حُجِرَ عَلَيْهِ مَالُهُ لِصِغَرٍ أَوْ جُنُونٍ، فَسَوَاءٌ كَانَ عَلَيْهِ وَصِيٌّ مِنْ أَبٍ أَوْ مِنْ قَاضٍ كُلُّ مَنْ نَظَرَ لَهُ نَظَرًا حَسَنًا فِي بَيْعٍ أَوْ ابْتِيَاعٍ، أَوْ عَمَلٍ مَا -: فَهُوَ نَافِذٌ لَازِمٌ لَا يُرَدُّ، وَإِنْ أَنْفَذَ عَلَيْهِ الْوَصِيُّ مَا لَيْسَ نَظَرًا لَمْ يَجُزْ، لِقَوْلِ اللَّهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥]- رَحِمَهُمُ اللَّهُ -: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلَا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L21680 Ali said: It is the same for one whose property is restricted due to minority or insanity—whether appointed a guardian by a father or a judge—any sale, purchase, or action conducted with the guardian's sound judgment remains valid, binding, and irreversible. If the guardian implements what lacks proper judgment, it becomes impermissible, based on Allah's words—"Be upholders of justice, witnesses for Allah" [4:135]—may Allah have mercy on them—and "Cooperate in righteousness and piety, and do not cooperate in sin and transgression" [5:2].[21]

لِقَوْلِ اللَّهِ تَعَالَى: {إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ فَأَصْلِحُوا بَيْنَ أَخَوَيْكُمْ} [الحجرات: ١٠] .

L21681–21682 Allah, the Exalted, says: "The believers are only brothers, so reconcile between your two brothers" [Surah Al-Hujurat 49:10].[22]

وقَوْله تَعَالَى: {وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [التوبة: ٧١] وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ» .

L21683 And the statement of Allah the Exalted: {The believing men and believing women are allies of one another} [At-Tawbah: 71], and the statement of the Messenger of Allah—peace and blessings be upon him—: "The Muslim is the brother of the Muslim; he does not wrong him nor forsake him."[23]

فَصَحَّ أَنَّ كُلَّ مُسْلِمٍ فَهُوَ وَلِيٌّ لِكُلِّ مُسْلِمٍ، وَأَنَّهُ مَأْمُورٌ بِالنَّظَرِ لَهُ بِالْأَحْوَطِ وَبِالْقِيَامِ لَهُ بِالْقِسْطِ، وَبِالتَّعَاوُنِ عَلَى الْبِرِّ وَالتَّقْوَى؛ فَكُلُّ بِرٍّ وَتَقْوَى أَنْفَذَهُ الْمُسْلِمُ لِلصَّغِيرِ، وَالَّذِي لَا يَعْقِلُ فَهُوَ نَافِذٌ بِنَصِّ الْقُرْآنِ، وَلَمْ يَأْتِ قَطُّ نَصٌّ بِإِفْرَادِ الْوَصِيِّ بِذَلِكَ وَرَدَ مَا سِوَاهُ.

L21684 Thus, it is established that every Muslim is a guardian to every other Muslim, and that he is commanded to consider the most precautionary approach for him, to establish justice for him, and to cooperate in righteousness and piety. Every act of righteousness and piety that a Muslim implements for a minor or for one lacking legal capacity is valid by the explicit text of the Quran. No text has ever specified the guardian exclusively for that while excluding others.

[21] **Qur'an references (L21680):** Qur'an 4:135 (An-Nisa); Qur'an 5:2 (Al-Ma'idah).
[22] **Qur'an references (L21682):** Qur'an 49:10 (Al-Hujurat).
[23] **Qur'an references (L21683):** Qur'an 9:71 (At-Tawbah).

L21685 If it is said: “Then permit this for a minor who has a father?” We say: “Yes, thus we hold, and even if his father were to mishandle his oversight, he would be prevented from doing so.”

L21686 If they say: “Then permit this among the Muslims—some having authority over others on this very night?” We respond: We are prevented from this by Allah’s statement, the Exalted: {No soul earns [anything] except against itself} (6:164). Thus, the legally accountable person addressed by the law who owns his property—none may impose upon him what another has earned. As for one who is neither addressed by the law, nor legally accountable, nor entrusted with his property, there is no doubt that another is commanded to manage his property. Whoever hastens to fulfill this obligation has the right to do so. Similarly, in the case of an absent person who neglects his property, whoever first undertakes proper oversight of it may implement that, except in prohibited matters if carried out, where there is no harm in abstaining from implementation. In such cases, none may implement it upon him, for the reason we have mentioned. And success is from Allah, the Exalted.[24]

L21687 **An issue: It is impermissible to give anything to one who has not attained any portion of his wealth.**

L21688 Issue 1400: It is impermissible to hand over anything from the minor’s wealth—nor even the daily expense, let alone anything beyond that—except what is consumed at its proper time and what he wears to ward off heat and cold, such as clothing suitable for his peers. He is to be amply provided for in all such matters.

L21689 1401. Issue: If someone sells what must be sold for a minor, a non-discerning person under guardianship, a bankrupt individual, or an absent party with a rightful claim; or purchases for them what must be purchased; or sells in executing a deceased’s will; or transacts with himself on their behalf (whether selling his own property to the ward, minor, creditors of the bankrupt, or absent party, or purchasing from himself for them) – this is equivalent to purchasing for them from others or selling to them from oth-

[24]**Qur’an references (L21686):** Qur’an 6:164 (Al-An’am).

فَإِنْ قِيلَ: فَأَجِيزُوا هَذَا فِي الصَّغِيرِ الَّذِي لَهُ أَبٌ؟ قُلْنَا: نَعَمْ، هَكَذَا نَقُولُ، وَلَوْ أَنَّ أَبَاهُ يُسِيءُ لَهُ النَّظَرَ لَمُنِعَ مِنْ ذَلِكَ.

فَإِنْ قَالُوا: فَأَجِيزُوا هَذَا مِنْ الْمُسْلِمِينَ بَعْضِهِمْ عَلَى بَعْضٍ بِهَذَا اللَّيْلِ نَفْسِهِ؟ قُلْنَا: مَنَعَنَا مِنْ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَالْمُخَاطَبُ الْمُكَلَّفُ الْمُتَمَلِّكُ مَالَهُ لَا يَجُوزُ لِأَحَدٍ أَنْ يَكْسِبَ عَلَيْهِ غَيْرُهُ، وَأَمَّا مَنْ لَيْسَ مُخَاطَبًا وَلَا مُكَلَّفًا وَلَا مُمَلَّكًا مَالَهُ فَلَا شَكَّ فِي أَنَّ غَيْرَهُ هُوَ الْمَأْمُورُ بِإِصْلَاحِ مَالِهِ، فَمَنْ سَارَعَ إلَى مَا أُمِرَ بِهِ مِنْ ذَلِكَ فَهُوَ حَقُّهُ، وَكَذَلِكَ الْغَائِبُ الَّذِي يُضَيِّعُ مَالَهُ، فَكُلُّ مَنْ سَبَقَ إلَى حُسْنِ النَّظَرِ فِيهِ نَفَذَ ذَلِكَ، إلَّا فِيمَا يُمْنَعُ مِنْهُ إذَا قُدِّمَ وَكَانَ لَا ضَرَرَ فِي تَرْكِ إنْفَاذِهِ فَهَذَا لَيْسَ لِأَحَدٍ إنْفَاذُهُ عَلَيْهِ لِمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يُدْفَعَ إلَى مَنْ لَمْ يَبْلُغْ شَيْءٌ مِنْ مَالِهِ]

١٤٠٠ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُدْفَعَ إلَى مَنْ لَمْ يَبْلُغْ شَيْءٌ مِنْ مَالِهِ، وَلَا نَفَقَةُ يَوْمٍ - فَضْلًا عَنْ ذَلِكَ - إلَّا مَا يَأْكُلُ فِي وَقْتِهِ، وَمَا يَلْبَسُ لِطَرْدِ الْحَرِّ وَالْبَرْدِ مِنْ لِبَاسِ مِثْلِهِ، وَيُوَسَّعُ عَلَيْهِ فِي كُلِّ ذَلِكَ.

١٤٠١ - مَسْأَلَةٌ: وَمَنْ بَاعَ مَا وَجَبَ بَيْعُهُ لِصَغِيرٍ، أَوْ لِمَحْجُورٍ غَيْرِ مُمَيِّزٍ، أَوْ لِمُفْلِسٍ، أَوْ لِغَائِبٍ بِحَقٍّ، أَوْ ابْتَاعَ لَهُمْ مَا وَجَبَ ابْتِيَاعُهُ، أَوْ بَاعَ فِي وَصِيَّةِ الْمَيِّتِ، أَوْ ابْتَاعَ مِنْ نَفْسِهِ لِلْمَحْجُورِ، أَوْ لِلصَّغِيرِ، أَوْ لِغُرَمَاءِ الْمُفْلِسِ أَوْ لِلْغَائِبِ، أَوْ بَاعَ لَهُمْ مِنْ نَفْسِهِ فَهُوَ سَوَاءٌ، كَمَا لَوْ ابْتَاعَ لَهُمْ مِنْ غَيْرِهِ، أَوْ بَاعَ لَهُمْ مِنْ غَيْرِهِ وَلَا فَرْقَ، إنْ لَمْ يُحَابِ نَفْسَهُ فِي كُلِّ ذَلِكَ، وَلَا غَيْرَهُ -: جَازَ، وَإِنْ حَابَى نَفْسَهُ، أَوْ غَيْرَهُ: بَطَلَ؛ لِأَنَّهُ مَأْمُورٌ بِالْقِيَامِ

ers. There is no distinction, provided he does not favor himself or others in any of these matters. If he refrains from favoritism, it is valid. But if he favors himself or others, it becomes void, for he is commanded to uphold justice and cooperate in acts of goodness. When he fulfills his duty, he is doing good, and "there is no blame upon those who do good" (Quran 9:91). Moreover, has any Quranic text or Sunnah ever prohibited a guardian from purchasing his own property for those under his care or buying from himself on their behalf?[25]

بِالْقِسْطِ، وَالتَّعَاوُنِ عَلَى الْبِرِّ، فَإِذَا فَعَلَ مَا أُمِرَ بِهِ فَهُوَ مُحْسِنٌ، وَإِذْ هُوَ مُحْسِنٌ، فَ {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] وَلَمْ يَأْتِ قَطُّ نَصُّ قُرْآنٍ، وَلَا سُنَّةٍ بِالْمَنْعِ مِنْ ابْتِيَاعٍ مِمَّنْ يَنْظُرُ لَهُ لِنَفْسِهِ أَوْ يَشْتَرِي لَهُ مِنْ نَفْسِهِ؟

L21690–21691 If it is said: Indeed, Ibn Mas'ud prohibited that—as we have related through the chain of 'Abd al-Razzaq from Sufyan from Abu Ishaq from Silah ibn Zufar, who said: A man came to Ibn Mas'ud on a horse and said: My uncle bequeathed his estate to me, and this horse is part of [the estate]. May I buy it [from the estate]? He said: No, and do not borrow anything from their wealth. We said: We have indeed related what Ibn Mas'ud narrated to us. Abu Sa'id al-Ja'fari said: Abu Bakr Muhammad ibn 'Ali al-Muqri narrated to us; Ahmad ibn Muhammad ibn Isma'il al-Nahwi narrated to us from al-Hasan ibn Ghulayb ibn Sa'id; Yusuf ibn 'Adi narrated to us; Abu al-Ahwas narrated to us; Abu Ishaq narrated to us from Yarfa', the freed slave of 'Umar ibn al-Khattab, who said: I placed the wealth of Allah the Exalted in my possession at the status of an orphan's wealth. If I needed it, I took from it, and when I was able, I repaid. This shows that 'Umar does not disapprove of borrowing from the orphan's wealth.

فَإِنْ قِيلَ: إِنَّ ابْنَ مَسْعُودٍ قَدْ مَنَعَ مِنْ ذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ عَنْ أَبِي إِسْحَاقَ عَنْ صِلَةَ بْنِ زُفَرَ، قَالَ: جَاءَ رَجُلٌ إِلَى ابْنِ مَسْعُودٍ عَلَى فَرَسٍ، فَقَالَ: إِنَّ عَمِّي أَوْصَى إِلَيَّ بِتَرِكَتِهِ وَهَذَا مِنْهَا أَفَأَشْتَرِيهِ؟ قَالَ: لَا، وَلَا تَسْتَقْرِضْ مِنْ أَمْوَالِهِمْ شَيْئًا قُلْنَا: قَدْ رُوِّينَا مَا حَدَّثْنَاهُ. أَبُو سَعِيدٍ الْجَعْفَرِيُّ قَالَ: نا أَبُو بَكْرٍ مُحَمَّدُ بْنُ عَلِيٍّ الْمُقْرِي نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ إِسْمَاعِيلَ النَّحْوِيُّ عَنْ الْحَسَنِ بْنِ غُلَيْبِ بْنِ سَعِيدٍ عَنْ يُوسُفَ بْنِ عَدِيٍّ نا أَبُو الْأَحْوَصِ نا أَبُو إِسْحَاقَ عَنْ يَرْفَا مَوْلَى عُمَرَ بْنِ الْخَطَّابِ قَالَ: أَنْزَلْت مَالَ اللَّهِ تَعَالَى مِنِّي بِمَنْزِلَةِ مَالِ الْيَتِيمِ، إِنْ احْتَجْت إلَيْهِ أَخَذْت مِنْهُ، فَإِذَا أَيْسَرْتُ قَضَيْت. فَهَذَا عُمَرُ لَا يُنْكِرُ الِاسْتِقْرَاضَ مِنْ مَالِ الْيَتِيمِ.

L21692 Similarly, it has been authentically reported from Ibn 'Umar. There is no distinction between taking the orphan's wealth as a loan and returning its equivalent afterward, and purchasing it for its equivalent price or value and giving its equivalent in cash.

وَكَذَلِكَ صَحَّ عَنْ ابْنِ عُمَرَ أَيْضًا. وَلَا فَرْقَ بَيْنَ أَخْذِ مَالِ الْيَتِيمِ قَرْضًا وَرَدِّ مِثْلِهِ بَعْدَ ذَلِكَ وَبَيْنَ ابْتِيَاعِهِ بِمِثْلِ ثَمَنِهِ وَقِيمَتِهِ وَإِعْطَاءِ مِثْلِهِ نَقْدًا.

L21693 If they say, "Is he suspected in that?" We reply, "He is also suspected of deceiving in what he purchases for the ward from others or sells to the ward from others, thereby misappropriating and breaching the trust in both scenarios. There is no distinction between one who deems the specific bequest permissible and one in guardianship who buys from himself for the ward

فَإِنْ قَالُوا: يُتَّهَمُ فِي ذَلِكَ؟ قُلْنَا: وَيُتَّهَمُ أَيْضًا أَنَّهُ يُدَلِّسُ أَيْضًا فِيمَا يَبْتَاعُ لَهُ مِنْ غَيْرِهِ، أَوْ يَبِيعُهُ لَهُ مِنْ غَيْرِهِ، فَيَأْكُلُ وَيَخُونُ فِي الْأَمْرَيْنِ، وَلَا فَرْقَ بَيْنَ مَنْ اسْتَجَازَ عَيْنَ الْوَصِيَّةِ وَمَنْ فِي وِلَايَتِهِ فِيمَا يَبْتَاعُ لَهُ مِنْ نَفْسِهِ، أَوْ مَا يَشْتَرِي مِنْهُ لِنَفْسِهِ، وَبَيْنَ أَنْ يَسْتَجِيزَ

[25] **Qur'an references (L21689):** Qur'an 9:91 (At-Tawbah).

ذَلِكَ فِيمَا يَبْتَاعُ لَهُ مِنْ غَيْرِهِ، أَوْ يَبِيعُ لَهُ مِنْ غَيْرِهِ - وَمَا جَعَلَ اللَّهُ قَطُّ بَيْنَ الْأَمْرَيْنِ فَرْقًا يُعْقَلُ.

or purchases from the ward for himself, and one who deems it permissible to engage in such acts when acquiring for the ward from others or selling to the ward from others. Allah has never at all established any discernible distinction between these two matters."

وَقَالَ أَبُو حَنِيفَةَ: لَا يَبْتَاعُ لِنَفْسِهِ مِنْ مَالِ يَتِيمِهِ شَيْئًا - وَرُوِيَ هَذَا عَنْ الشَّافِعِيِّ، وَقَالَ أَبُو حَنِيفَةَ مَرَّةً أُخْرَى: إنْ ابْتَاعَ مِنْهُ بِأَكْثَرَ مِنْ الْقِيمَةِ جَازَ وَأَمَّا بِالْقِيمَةِ فَأَقَلَّ فَلَا - وَقَالَ مَالِكٌ يُحْمَلُ إلَى السُّوقِ فَإِنْ بَلَغَ أَكْثَرَ بَطَلَ عَقْدُهُ، وَإِلَّا فَهُوَ لَهُ لَازِمٌ.

L21694 Abu Hanifa said: He may not purchase anything for himself from his orphan's property. This has been reported from Al-Shafi'i. Abu Hanifa also stated in another ruling: If he buys from it for more than its value, it is permissible; but if at the value or less, it is not. Malik said: It must be taken to the market. If its value reaches more, his contract is invalidated; otherwise, it remains binding upon him.

وَالْعَجَبُ أَنَّهُمْ مَنَعُوا مِنْ هَذَا وَأَجَازُوا أَنْ يَرْهَنَ عَنْ نَفْسِهِ مَالَ يَتِيمِهِ، وَأَبَاحَ الْمَالِكِيُّونَ أَنْ يُعْتِقَ عَبْدَ يَتِيمِهِ - وَهَذَا تَنَاقُضٌ وَعَكْسٌ لِلْحَقَائِقِ.

L21695 It is astonishing that they prohibited this yet permitted pledging the orphan's property for himself, while the Malikis permitted manumitting the orphan's own slave - this constitutes a contradiction and an inversion of fundamental truths.

وَقَالَ بِقَوْلِنَا أَبُو يُوسُفَ، وَأَبُو سُلَيْمَانَ، وَسُفْيَانُ الثَّوْرِيُّ فِي أَحَدِ قَوْلَيْهِ فَعَلَى، كُلِّ حَالٍ قَدْ خَالَفُوا ابْنَ مَسْعُودٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L21696 Abu Yusuf, Abu Sulayman, and Sufyan al-Thawri in one of his two opinions adopted our view. In any case, they have opposed Ibn Mas'ūd—and success is from Allah, the Exalted.

[مَسْأَلَةٌ الْوَصِيّ لَا يَأْكُل مِنْ مَالِ مَنْ إلَى نَظَرِهِ مُطَارَفَةً]

A legal ruling: The trustee must not consume the wealth of those under his guardianship through extravagance.

١٤٠٢ - مَسْأَلَةٌ: مُسْتَدْرَكَةٌ -: وَلَا يَحِلُّ لِلْوَصِيِّ أَنْ يَأْكُلَ مِنْ مَالِ مَنْ إلَى نَظَرِهِ مُطَارَفَةً، لَكِنْ إنْ احْتَاجَ اسْتَأْجَرَهُ لَهُ الْحَاكِمُ بِأُجْرَةِ مِثْلِ عَمَلِهِ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَقْرَبُوا مَالَ الْيَتِيمِ إِلا بِالَّتِي هِيَ أَحْسَنُ} [الأنعام: ١٥٢]

L21698–21700 Issue 1402: Addendum – It is impermissible for an executor to consume from the wealth of those under his supervision. Prohibition of squandering. However, if the guardian requires it, the judge must hire someone for him with a wage equivalent to the required work, in accordance with the words of Allah, the Exalted: "And do not approach the wealth of the orphan except in the best manner" (6:152).[26]

فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ} [النساء: ٦] قُلْنَا: قَدْ قَالَ بَعْضُ السَّلَفِ: إنَّ هَذَا الْأَكْلَ الْمَأْمُورَ بِهِ إنَّمَا هُوَ فِي مَالِ نَفْسِهِ، لَا فِي مَالِ الْيَتِيمِ - وَهُوَ الْأَظْهَرُ؛ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَى ظُلْمًا إِنَّمَا يَأْكُلُونَ

L21701 If they mention Allah's statement: {And whoever is poor, let him eat according to what is customary} [4:6], we respond: Some predecessors affirmed that this commanded consumption applies solely to one's own wealth, not to an orphan's property—and this is the most apparent view, for Allah says: {Those who unjustly consume orphans' wealth merely consume fire into their bellies,

[26] **Qur'an references (L21698):** Qur'an 6:152 (Al-An'am); Qur'an 17:34 (Al-Isra).

and they will blaze in a Scorching Flame} [4:10]. Thus, it is utterly forbidden except through fair compensation or lawful sale permitted by Allah. And with Allah, the Exalted, lies all success.[27]

فِي بُطُونِهِمْ نَارًا وَسَيَصْلَوْنَ سَعِيرًا} [النساء: ١٠] فَهِيَ حَرَامٌ أَشَدُّ التَّحْرِيمِ إِلَّا عَلَى سَبِيلِ الْأُجْرَةِ أَوْ الْبَيْعِ اللَّذَيْنِ أَبَاحَهُمَا اللَّهُ تَعَالَى - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[27] **Qur'an references (L21701):** Qur'an 4:6 (An-Nisa); Qur'an 4:10 (An-Nisa).



AL-MUHALLA

كِتَابُ الْإِكْرَاهِ

The Book of Coercion

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْإِكْرَاهِ] [مَسْأَلَةٌ الْإِكْرَاهُ يَنْقَسِمُ قِسْمَيْنِ]

Book of Coercion: Issue – Coercion is divided into two categories.

١٤٠٣ - مَسْأَلَةٌ: الْإِكْرَاهُ يَنْقَسِمُ قِسْمَيْنِ: إكْرَاهٌ عَلَى كَلَامٍ، وَإِكْرَاهٌ عَلَى فِعْلٍ -: فَالْإِكْرَاهُ عَلَى الْكَلَامِ لَا يَجِبُ بِهِ شَيْءٌ، وَإِنْ قَالَهُ الْمُكْرَهُ، كَالْكُفْرِ، وَالْقَذْفِ، وَالْإِقْرَارِ، وَالنِّكَاحِ، وَالْإِنْكَاحِ، وَالرَّجْعَةِ، وَالطَّلَاقِ، وَالْبَيْعِ، وَالِابْتِيَاعِ، وَالنَّذْرِ، وَالْإِيمَانِ، وَالْعِتْقِ، وَالْهِبَةِ، وَإِكْرَاهِ الذِّمِّيِّ الْكِتَابِيِّ عَلَى الْإِيمَانِ، وَغَيْرِ ذَلِكَ؛ لِأَنَّهُ فِي قَوْلِهِ مَا أُكْرِهَ عَلَيْهِ إنَّمَا هُوَ حَاكٍ لِلَّفْظِ الَّذِي أُمِرَ أَنْ يَقُولَهُ، وَلَا شَيْءَ عَلَى الْحَاكِي بِلَا خِلَافٍ وَمَنْ فَرَّقَ بَيْنَ الْأَمْرَيْنِ فَقَدْ تَنَاقَضَ قَوْلُهُ وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» فَصَحَّ أَنَّ كُلَّ مَنْ أُكْرِهَ عَلَى قَوْلٍ وَلَمْ يَنْوِهِ مُخْتَارًا لَهُ فَإِنَّهُ لَا يَلْزَمُهُ.

Issue 1403: Coercion is divided into two categories: coercion to speak and coercion to act. Coercion to speak does not obligate anything, even if the coerced person speaks it, such as disbelief, slander, confession, marriage, contracting a marriage, revocation of divorce, divorce, sale, purchase, vow, declarations of faith, manumission, gift, coercing a dhimmi from the People of the Book to embrace faith, and other such matters. This is because, in his statement of what he was coerced to do, he is merely reproducing the words he was compelled to utter, and there is no obligation upon the one who reproduces them—this is agreed upon without disagreement. Whoever differentiates between the two matters has contradicted his own statement. The Messenger of Allah—peace and blessings be upon him—said: "Actions are only by intentions, and every person will have what they intended." Thus, it is established that anyone who is coerced to make a statement and did not willingly intend it is not bound by it.

وَالْإِكْرَاهُ عَلَى الْفِعْلِ يَنْقَسِمُ قِسْمَيْنِ -: أَحَدُهُمَا - كُلُّ مَا تُبِيحُهُ الضَّرُورَةُ، كَالْأَكْلِ وَالشُّرْبِ فَهَذَا يُبِيحُهُ الْإِكْرَاهُ؛ لِأَنَّ الْإِكْرَاهَ ضَرُورَةٌ، فَمَنْ أُكْرِهَ عَلَى شَيْءٍ مِنْ هَذَا فَلَا شَيْءَ عَلَيْهِ؛ لِأَنَّهُ أَتَى مُبَاحًا لَهُ إتْيَانُهُ.

Coercion regarding an action is divided into two categories: one of them includes all matters permitted by necessity, such as eating and drinking. Coercion renders such acts permissible because it constitutes a necessity. Therefore, whoever is coerced into any of these actions incurs no sin or liability, as he has performed an act that was permissible for him to do.

وَالثَّانِي - مَا لَا تُبِيحُهُ الضَّرُورَةُ، كَالْقَتْلِ، وَالْجِرَاحِ، وَالضَّرْبِ، وَإِفْسَادِ الْمَالِ، فَهَذَا لَا يُبِيحُهُ الْإِكْرَاهُ، فَمَنْ أُكْرِهَ عَلَى شَيْءٍ مِنْ ذَلِكَ لَزِمَهُ الْقَوَدُ وَالضَّمَانُ؛ لِأَنَّهُ أَتَى مُحَرَّمًا عَلَيْهِ إتْيَانُهُ.

The second category comprises acts that necessity does not permit, such as killing, wounding, striking, or destroying property. Coercion does not sanction these acts. Whoever is compelled to commit any such act becomes liable to retaliation (qiṣās) and compensatory liability (ḍamān), for he has committed an act that is strictly forbidden for him to commit.

وَالْإِكْرَاهُ: هُوَ كُلُّ مَا سُمِّيَ فِي اللُّغَةِ إكْرَاهًا، وَعُرِفَ بِالْحِسِّ أَنَّهُ إكْرَاهٌ كَالْوَعِيدِ بِالْقَتْلِ مِمَّنْ لَا يُؤْمَنُ مِنْهُ إنْفَاذُ مَا تَوَعَّدَ بِهِ، وَالْوَعِيدُ بِالضَّرْبِ كَذَلِكَ أَوْ الْوَعِيدُ بِالسَّجْنِ كَذَلِكَ، أَوْ الْوَعِيدُ بِإِفْسَادِ الْمَالِ كَذَلِكَ، أَوْ الْوَعِيدُ فِي مُسَلَّمٍ غَيْرِهِ بِقَتْلٍ، أَوْ ضَرْبٍ،

Coercion (ikrāh) refers to anything linguistically designated as coercion and recognized through sensory perception as such. This includes threats of killing by someone from whom there is no assurance they will refrain from executing what they threatened, threats of beating similarly, threats of imprisonment similarly, threats of property damage similarly, or threats against

another Muslim involving killing, beating, or... Imprisonment, or corruption of property, based on the saying of the Messenger of Allah (peace and blessings of Allah be upon him), “A Muslim is the brother of another Muslim; he neither wrongs him nor betrays him.”

L21710 **A jurisprudential issue concerning one who is compelled to drink wine or eat pork.**

L21711 Issue 1404: If a person is compelled to drink alcohol, eat pork, carrion, blood, some other prohibited things, or unlawfully consume the property of a Muslim or a dhimmi - it becomes permissible for them to eat or drink, and they bear no responsibility toward anyone nor any liability. This is based on the words of Allah, may He be exalted: “He has made clear to you what He has forbidden you, except what you are compelled to [consume]” (Quran 6:119); His statement, the Most High: “But whoever is compelled, neither intending sin nor transgressing, bears no sin” (Quran 2:173); and His words, the Most High: “But whoever is compelled by severe hunger, without inclination to sin” (Quran 5:3).[1]

L21712 If the one compelled to consume a Muslim’s property possesses available wealth, he must pay the value of what he consumed, for this is the ruling applicable to one compelled by necessity. If he possesses no available wealth, he is not liable for what he consumed, due to what we have previously mentioned—and success is by Allah, the Exalted.

L21713 If it is said: “Why do you not permit for the one under duress [to commit] killing a soul, unlawful sexual intercourse, wounding, striking, and destruction of property based on this line of reasoning?” We answer: Because the revealed texts never permit one to repel injustice against himself by committing injustice against others who have not transgressed against him. Rather, what is obligatory is to repel the oppressor or fight him, in accordance with Allah’s saying: *“Cooperate in righteousness and piety, and do not cooperate in sin and aggression”* [al-Mā’idah 5:2], and the Messenger of Allah—peace

[1] **Qur’an references (L21711):** Qur’an 6:119 (Al-An’am); Qur’an 2:173 (Al-Baqarah); Qur’an 5:3 (Al-Ma’idah).

أَوْ سَجْنٍ، أَوْ إفْسَادِ مَالٍ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ» .

[مَسْأَلَةٌ أُكْرِهَ عَلَى شُرْبِ الْخَمْرِ أَوْ أَكْلِ الْخِنْزِيرِ]

١٤٠٤ - مَسْأَلَةٌ: فَمَنْ أُكْرِهَ عَلَى شُرْبِ الْخَمْرِ، أَوْ أَكْلِ الْخِنْزِيرِ، أَوْ الْمَيْتَةِ، أَوْ الدَّمِ، أَوْ بَعْضِ الْمُحَرَّمَاتِ، أَوْ أَكْلِ مَالِ مُسْلِمٍ، أَوْ ذِمِّيٍّ -: فَمُبَاحٌ لَهُ أَنْ يَأْكُلَ، وَيَشْرَبَ، وَلَا شَيْءَ عَلَيْهِ لِأَحَدٍ، وَلَا ضَمَانَ، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] . وقَوْله تَعَالَى: {فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَلا عَادٍ فَلا إِثْمَ عَلَيْهِ} [البقرة: ١٧٣] . وَلِقَوْلِهِ تَعَالَى: {فَمَنِ اضْطُرَّ فِي مَخْمَصَةٍ غَيْرَ مُتَجَانِفٍ لِإِثْمٍ} [المائدة: ٣] .

فَإِنْ كَانَ الْمُكْرَهُ عَلَى أَكْلِ مَالِ مُسْلِمٍ لَهُ مَالٌ حَاضِرٌ فَعَلَيْهِ قِيمَةُ مَا أَكَلَ؛ لِأَنَّ هَكَذَا هُوَ حُكْمُ الْمُضْطَرِّ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ حَاضِرٌ فَلَا شَيْءَ عَلَيْهِ فِيمَا أَكَلَ لِمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَإِنْ قِيلَ: فَهَلَّا أَبَحْتُمْ قَتْلَ النَّفْسِ لِلْمُكْرَهِ، وَالزِّنَى، وَالْجِرَاحِ، وَالضَّرْبِ، وَإِفْسَادَ الْمَالِ بِهَذَا الِاسْتِدْلَالِ؟ قُلْنَا: لِأَنَّ النَّصَّ لَمْ يُبِحْ لَهُ قَطُّ أَنْ يَدْفَعَ عَنْ نَفْسِهِ ظُلْمًا بِظُلْمٍ غَيْرِهِ مِمَّنْ لَمْ يَتَعَدَّ عَلَيْهِ، وَإِنَّمَا الْوَاجِبُ عَلَيْهِ دَفْعُ الظَّالِمِ أَوْ قِتَالُهُ لِقَوْلِهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ فَإِنْ لَمْ يَسْتَطِعْ

and blessings be upon him—saying: *"Whoever among you sees an evil, let him change it with his hand if he is able; if he cannot, then with his tongue; and if he cannot, then with his heart—that being the weakest degree of faith. Beyond that, there is no faith whatsoever."*[2]

L21714 Thus, it is established that He never permitted him to assist in oppression - neither due to necessity nor otherwise - but merely allowed him (if incapable) not to change it through his hand or tongue. It remains obligatory upon him to change it with his heart - and this is unavoidable - and to patiently endure solely the decree of Allah the Most High. By the Quran's explicit text, eating and drinking are permitted in cases of severe starvation, and in necessity. And success is from Allah, the Most High.

L21715 **A legal case: A woman was detained until he committed fornication with her.**

L21716–21718 1405 – Issue: If a woman is restrained until someone commits zina with her, or if a man is restrained so that his penis is inserted into a woman's vagina, there is no liability upon him or her: whether there was an erection or not, or ejaculation occurred or not. Whether she emitted or did not emit; because they did not perform any action whatsoever, as the spreading and emission are natural functions created by Allah the Exalted inherent in a person—whether one likes it or dislikes it—with no choice existing for him in that matter.

L21719 **A jurisprudential issue where someone is engaged in an act of disobedience and finds nothing to eat except carrion.**

L21720 1406. Issue: If someone is on a course of disobedience, such as an unlawful journey or illegitimate fighting, and finds nothing to eat except carrion, blood, swine, the flesh of wild beasts, or some of what is prohibited to him, it is not permissible for him to eat unless he repents. If he repents, let him eat lawful food. If he does not repent, then eating constitutes consuming what is forbidden, while abstaining still leaves him disobedient to Allah the Exalted

[2] **Qur'an references (L21713):** Qur'an 5:2 (Al-Ma'idah).

فَبِلِسَانِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِقَلْبِهِ وَذَلِكَ أَضْعَفُ الْإِيمَانِ، لَيْسَ وَرَاءَ ذَلِكَ مِنْ الْإِيمَانِ شَيْءٌ» .

فَصَحَّ أَنَّهُ لَمْ يُبِحْ لَهُ قَطُّ الْعَوْنَ عَلَى الظُّلْمِ - لَا لِضَرُورَةٍ وَلَا لِغَيْرِهَا - وَإِنَّمَا فَسَّحَ لَهُ - إنْ عَجَزَ - فِي أَنْ لَا يُغَيِّرَهُ بِيَدِهِ وَلَا بِلِسَانِهِ، وَبَقِيَ عَلَيْهِ التَّغْيِيرُ بِقَلْبِهِ وَلَا بُدَّ، وَالصَّبْرُ لِقَضَاءِ اللَّهِ تَعَالَى فَقَطْ، وَأُبِيحَ لَهُ فِي الْمَخْمَصَةِ بِنَصِّ الْقُرْآنِ -: الْأَكْلُ، وَالشُّرْبُ، وَعِنْدَ الضَّرُورَةِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ أُمْسِكَتْ امْرَأَةٌ حَتَّى زَنَى بِهَا]

١٤٠٥ - مَسْأَلَةٌ: فَلَوْ أُمْسِكَتْ امْرَأَةٌ حَتَّى زَنَى بِهَا، أَوْ أُمْسِكَ رَجُلٌ فَأُدْخِلَ إحْلِيلُهُ فِي فَرْجِ امْرَأَةٍ، فَلَا شَيْءَ عَلَيْهِ وَلَا عَلَيْهَا، سَوَاءٌ انْتَشَرَ أَوْ لَمْ يَنْتَشِرْ، أَمْنَى أَوْ لَمْ يُمْنِ، أَنْزَلَتْ هِيَ أَوْ لَمْ تُنْزِلْ، لِأَنَّهُمَا لَمْ يَفْعَلَا شَيْئًا أَصْلًا وَالِانْتِشَارُ وَالْإِمْنَاءُ فِعْلُ الطَّبِيعَةِ الَّذِي خَلَقَهُ اللَّهُ تَعَالَى فِي الْمَرْءِ - أَحَبَّ أَمْ كَرِهَ - لَا اخْتِيَارَ لَهُ فِي ذَلِكَ.

[مَسْأَلَةٌ كَانَ فِي سَبِيلِ مَعْصِيَةٍ فَلَمْ يَجِدْ شَيْئًا يَأْكُلُ إلَّا الْمَيْتَةَ]

١٤٠٦ - مَسْأَلَةٌ: وَمَنْ كَانَ فِي سَبِيلِ مَعْصِيَةٍ كَسَفَرٍ لَا يَحِلُّ، أَوْ قِتَالٍ لَا يَحِلُّ، فَلَمْ يَجِدْ شَيْئًا يَأْكُلُ إلَّا الْمَيْتَةَ، أَوْ الدَّمَ، أَوْ خِنْزِيرًا، أَوْ لَحْمَ سَبُعٍ أَوْ بَعْضَ مَا حُرِّمَ عَلَيْهِ -: لَمْ يَحِلَّ لَهُ أَكْلُهُ إلَّا حَتَّى يَتُوبَ، فَإِنْ تَابَ فَلْيَأْكُلْ حَلَالًا، وَإِنْ لَمْ يَتُبْ فَإِنْ أَكَلَ أَكَلَ حَرَامًا، وَإِنْ لَمْ يَأْكُلْ، فَهُوَ عَاصٍ لِلَّهِ تَعَالَى بِكُلِّ حَالٍ. وَهَذَا قَوْلُ الشَّافِعِيِّ وَأَبِي سُلَيْمَانَ - وَقَالَ مَالِكٌ: يَأْكُلُ.

in all cases. This is the opinion of al-Shāfiʿī and Abū Sulaymān. Mālik said: He should eat.

L21721 Abu Muhammad said: This contradicts the Quran without any burden, for Allah the Exalted only permitted him this in a state where he would neither deviate toward sin, act oppressively, nor commit aggression. His consumption of this strengthens him to commit sin and transgression, empowers him to engage in highway robbery, corrupt the rightful way, and kill Muslims. This is an exceedingly grave matter.

L21722 They said the meaning of Allah's words, {غَيْرَ بَاغٍ وَلا عَادٍ} (not transgressing nor aggressing) [Al-Baqarah 2:173], is: "That is, not transgressing in eating nor aggressing in it?" We replied: This is false, and it is attributing to Allah, the Exalted, an addition in the Quran without evidence—which is not permissible at all, as it constitutes distorting the words from their proper positions.[3]

L21723 If they say, "God Almighty has said, 'Do not kill yourselves' [Quran 4:29]—is he not killing himself if he does not eat?" We respond: God's word is true. We have never commanded him to kill himself. Rather, we tell him: "Fulfill what God has obligated upon you—repentance. Abandon what He has forbidden you—striving to spread corruption and oppression on earth. Eat lawful, wholesome food at the proper time." If you add to your opposition the Quran's permission for him to avoid repentance and its command to persist in spreading corruption on earth, then what we sought from you was less than this. The Ḥanafī scholars said: "Compulsion is not valid in enforcing sales, purchases, confessions, gifts, or charitable donations. None of these are permissible under compulsion."[4]

L21724–21726 They said: If he is coerced into marriage, divorce, retraction of divorce, manumission, a vow, or... The oath: all of that became binding upon him and was established through it. That marriage was valid, that divorce was

قَالَ أَبُو مُحَمَّد: وَهَذَا خِلَافٌ لِلْقُرْآنِ بِلَا كُلْفَةٍ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُبِحْ لَهُ ذَلِكَ إِلَّا فِي حَالٍ يَكُونُ فِيهَا غَيْرَ مُتَجَانِفٍ لِإِثْمٍ، وَلَا بَاغِيًا، وَلَا عَادِيًا، وَأَكْلُهُ ذَلِكَ عَوْنٌ عَلَى الْإِثْمِ وَالْعُدْوَانِ، وَقُوَّةٌ لَهُ عَلَى قَطْعِ الطَّرِيقِ وَفَسَادِ السَّبِيلِ، وَقَتْلِ الْمُسْلِمِينَ، وَهَذَا عَظِيمٌ جِدًّا.

فَقَالُوا مَعْنَى قَوْلِهِ تَعَالَى: {غَيْرَ بَاغٍ وَلا عَادٍ} [البقرة: ١٧٣] أَيْ غَيْرَ بَاغٍ فِي الْأَكْلِ وَلَا عَادٍ فِيهِ؟ فَقُلْنَا: هَذَا الْبَاطِلُ، وَالْقَوْلُ عَلَى اللَّهِ تَعَالَى بِزِيَادَةٍ فِي الْقُرْآنِ بِلَا بُرْهَانٍ، وَهَذَا لَا يَحِلُّ، أَصْلًا لِأَنَّهُ تَحْرِيفٌ لِلْكَلِمِ عَنْ مَوَاضِعِهِ.

فَإِنْ قَالُوا قَدْ قَالَ اللَّهُ تَعَالَى: {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] فَهُوَ إِنْ لَمْ يَأْكُلْ قَاتِلٌ نَفْسَهُ؟ فَقُلْنَا: قَوْلُ اللَّهِ حَقٌّ، وَمَا أَمَرْنَاهُ قَطُّ بِقَتْلِ نَفْسِهِ بَلْ قُلْنَا لَهُ: افْعَلْ مَا افْتَرَضَ اللَّهُ عَلَيْكَ مِنَ التَّوْبَةِ، وَاتْرُكْ مَا حَرَّمَ عَلَيْكَ مِنَ السَّعْيِ فِي الْأَرْضِ بِالْفَسَادِ، وَالْبَغْيِ، وَكُلْ فِي الْوَقْتِ حَلَالًا طَيِّبًا، فَإِنْ أَضَفْتُمْ إِلَى خِلَافِكُمْ الْقُرْآنَ الْإِبَاحَةَ لَهُ أَنْ لَا يَتُوبَ، وَأَمْرَهُ بِأَنْ يُصِرَّ عَلَى الْفَسَادِ فِي الْأَرْضِ، فَمَا أَرَدْنَا مِنْكُمْ إِلَّا أَقَلَّ مِنْ هَذَا؟ وَقَالَ الْحَنَفِيُّونَ: لَا يَلْزَمُ الْإِكْرَاهُ عَلَى الْبَيْعِ، وَلَا عَلَى الشِّرَاءِ، وَلَا عَلَى الْإِقْرَارِ، وَلَا عَلَى الْهِبَةِ، وَلَا عَلَى الصَّدَقَةِ وَلَا يَجُوزُ عَلَيْهِ شَيْءٌ مِنْ ذَلِكَ.

قَالُوا: فَإِنْ أُكْرِهَ عَلَى النِّكَاحِ أَوْ الطَّلَاقِ، أَوْ الرَّجْعَةِ، أَوْ الْعِتْقِ، أَوْ النَّذْرِ، أَوْ الْيَمِينِ -: لَزِمَهُ كُلُّ ذَلِكَ، وَقُضِيَ عَلَيْهِ بِهِ، وَصَحَّ ذَلِكَ النِّكَاحُ، وَذَلِكَ الطَّلَاقُ، وَذَلِكَ الْعِتْقُ، وَتِلْكَ الرَّجْعَةُ، وَلَزِمَهُ ذَلِكَ النَّذْرُ، وَتِلْكَ الْيَمِينُ.

[3] **Qur'an references (L21722):** Qur'an 2:173 (Al-Baqarah); Qur'an 6:145 (Al-An'am); Qur'an 16:115 (An-Nahl).

[4] **Qur'an references (L21723):** Qur'an 4:29 (An-Nisa).

valid, that manumission was valid, and that revocation was valid. That vow became binding upon him, including the oath itself.

L21727 It was narrated to us through the chain of Ḥammād ibn Salamah, from ʿAbd al-Malik ibn Qudāmah al-Jumaḥī, who reported from his father: A man lowered himself on a rope to collect honey, and his wife swore an oath to him: "By Allah, either you cut the rope or you must divorce me three times!" So he pronounced three divorces at once. When he emerged, he went to ʿUmar ibn al-Khaṭṭāb and informed him. ʿUmar said to him: "Return to your wife, for this does not count as a valid divorce."

وَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا عَبْدُ الْمَلِكِ بْنُ قُدَامَةَ الْجُمَحِيُّ حَدَّثَنِي أَبِي: أَنَّ رَجُلًا تَدَلَّى بِحَبْلٍ لِيَشْتَارَ عَسَلًا فَحَلَفَتْ لَهُ امْرَأَتُهُ لَتَقْطَعَنَّ الْحَبْلَ أَوْ لَيُطَلِّقَنَّهَا ثَلَاثًا؟ فَطَلَّقَهَا ثَلَاثًا، فَلَمَّا خَرَجَ أَتَى عُمَرَ بْنَ الْخَطَّابِ فَأَخْبَرَهُ، فَقَالَ لَهُ عُمَرُ: ارْجِعْ إلَى امْرَأَتِك، فَإِنَّ هَذَا لَيْسَ طَلَاقًا.

L21728 Narrated through the chain of Hammad ibn Salamah, from Humaid, from al-Ḥasan: that Ali ibn Abi Talib said, "There is no divorce for one who is coerced."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لَيْسَ لِمُسْتَكْرَهٍ طَلَاقٌ.

L21729 Al-Hasan said: A man's wife's family detained him and forced him to divorce her if he failed to send her maintenance by the end of a month. When the deadline passed and he sent nothing, they sued him before Ali. He said: "You oppressed him until he declared her divorced," and he restored her to him.

قَالَ الْحَسَنُ: وَأَخَذَ رَجُلًا أَهْلُ امْرَأَتِهِ فَطَلَّقَهَا إنْ لَمْ يَبْعَثْ بِنَفَقَتِهَا إلَى شَهْرٍ، فَجَاءَ الْأَجَلُ وَلَمْ يَبْعَثْ شَيْئًا، فَخَاصَمُوهُ إلَى عَلِيٍّ، فَقَالَ: اضْطَهَدْتُمُوهُ حَتَّى جَعَلَهَا طَالِقًا فَرَدَّهَا عَلَيْهِ.

L21730 Through the chain of Al-Ḥajjāj ibn al-Minhāl from Hushaym from ʿAbdullāh ibn Ṭalḥah al-Khuzaʿī from Abū Yazīd al-Madanī from Ibn ʿAbbās, who said: "No divorce [is valid] for a coerced person."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هُشَيْمٌ نا عَبْدُ اللَّهِ بْنُ طَلْحَةَ الْخُزَاعِيُّ نا أَبُو يَزِيدَ الْمَدَنِيُّ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ قَالَ: لَيْسَ لِمُكْرَهٍ طَلَاقٌ.

L21731 It has also been authentically established through multiple chains from Ibn ʿUmar that he deemed a coerced divorce invalid. Thābit al-Aʿraj narrated: "I asked every jurist in Medina about a coerced divorce, and they replied, 'It is null and void.' Then I approached Ibn al-Zubayr and Ibn ʿUmar, and they restored my wife to me, as I had been forced to divorce her three times."

وَصَحَّ أَيْضًا: عَنْ ابْنِ عُمَرَ مِنْ طُرُقٍ أَنَّهُ لَمْ يُجِزْ طَلَاقَ الْمُكْرَهِ. وَمِنْ طَرِيقِ ثَابِتٍ الْأَعْرَجِ قَالَ: سَأَلْت كُلَّ فَقِيهٍ بِالْمَدِينَةِ عَنْ طَلَاقِ الْمُكْرَهِ؟ فَقَالُوا: لَيْسَ بِشَيْءٍ، ثُمَّ أَتَيْت ابْنَ الزُّبَيْرِ، وَابْنَ عُمَرَ، فَرَدَّا عَلَيَّ امْرَأَتِي، وَكَانَ قَدْ أُكْرِهَ عَلَى طَلَاقِهَا ثَلَاثًا.

L21732 This has also been authenticated as reported by Jābir ibn Zayd, al-Ḥasan, ʿAṭāʾ, Ṭāwūs, Shurayḥ, and ʿUmar ibn ʿAbd al-ʿAzīz - and it constitutes the opinion of Mālik, al-Awzāʿī, al-Shāfiʿī, Aḥmad, Abū Sulaymān, and all their companions. The permissibility of coerced divorce has likewise been authenticated as reported by Ibn ʿUmar.

وَصَحَّ هَذَا أَيْضًا: عَنْ جَابِرِ بْنِ زَيْدٍ، وَالْحَسَنِ، وَعَطَاءٍ، وَطَاوُسٍ، وَشُرَيْحٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ - وَهُوَ قَوْلُ مَالِكٍ، وَالْأَوْزَاعِيِّ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِهِمْ. وَصَحَّ إجَازَةُ طَلَاقِ الْمُكْرَهِ أَيْضًا: عَنْ ابْنِ عُمَرَ.

وَرُوِيَ عَنْ عُمَرَ، وَعَلِيٍّ، وَلَمْ يَصِحَّ عَنْهُمَا -. وَصَحَّ عَنْ الزُّهْرِيِّ، وَقَتَادَةَ، وَالنَّخَعِيِّ، وَسَعِيدِ بْنِ جُبَيْرٍ.

L21733 It has been reported from ʻUmar and ʻAli—though not authenticated from them. It is authenticated from Az-Zuhrī, Qatādah, An-Nakhaʿī, and Saʿīd ibn Jubayr.

وَاحْتَجَّ الْمُجِيزُونَ لِذَلِكَ بِعُمُومِ قَوْلِهِ تَعَالَى: {فَإِنْ طَلَّقَهَا فَلا تَحِلُّ لَهُ مِنْ بَعْدُ} [البقرة: ٢٣٠] قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَمْوِيهٌ مِنْهُمْ، لِأَنَّ اللَّهَ تَعَالَى الَّذِي قَالَ هَذَا هُوَ الَّذِي قَالَ: {وَلَكِنْ يُؤَاخِذُكُمْ بِمَا كَسَبَتْ قُلُوبُكُمْ} [البقرة: ٢٢٥] وَالْمُكْرَهُ لَمْ يُطَلِّقْ قَطُّ، إنَّمَا قِيلَ لَهُ: قُلْ: هِيَ طَالِقٌ ثَلَاثًا؟ فَحَكَى قَوْلَ الْمُكْرِهِ لَهُ فَقَطْ.

L21734–21736 Proponents of its permissibility cited the generality of the wording of the Most High: {If he divorces her, she is not lawful to him thereafter} [Al-Baqarah: 230]. Abū Muḥammad said: This is obfuscation on their part, for Allah the Exalted—who said this—is the One who said: *But He will hold you accountable for what your hearts have earned* [Al-Baqarah: 225]. The coerced person has not divorced at all; rather, he was told: “Say: She is divorced three times.” Thus, he only narrated the statement of the coercer.[5]

وَالْعَجَبُ مِنْ تَخْلِيطِهِمْ، وَقِلَّةِ حَيَائِهِمْ يَحْتَجُّونَ بِعُمُومِ هَذِهِ الْآيَةِ فِي إجَازَةِ طَلَاقِ الْمُكْرَهِ، ثُمَّ لَا يُجِيزُونَ بَيْعَ الْمُكْرَهِ، وَاَللَّهُ تَعَالَى يَقُولُ: {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥] فَإِنْ قَالُوا: الْبَيْعُ لَا يَكُونُ إلَّا عَنْ تَرَاضٍ؟ قُلْنَا: وَالطَّلَاقُ لَا يَكُونُ إلَّا عَنْ رِضًا مِنْ الْمُطَلِّقِ وَنِيَّةٍ لَهُ بِالنُّصُوصِ الَّتِي قَدَّمْنَا.

L21737 It is astonishing how they confuse matters and lack shame by invoking the generality of this verse to justify permitting a coerced person to divorce, yet they do not validate the sale conducted under coercion—even though Allah the Exalted states: {Allah has permitted trade and forbidden usury} [Al-Baqarah: 275]. If they retort: “A sale is only valid through mutual consent,” we counter: “Divorce is only valid if there is consent from the divorcer and intention on their part,” in accordance with the textual evidences we have already established.[6]

ثُمَّ قَدْ خَالَفُوا هَذَا الْعُمُومَ وَلَمْ يُجِيزُوا طَلَاقَ الصَّبِيِّ، وَلَا طَلَاقَ النَّائِمِ، فَإِنْ قَالُوا: لَيْسَ هَذَانِ مُطَلِّقَيْنِ؟ قُلْنَا: وَلَا الْمُكْرَهُ مُطَلِّقًا.

L21738–21739 Moreover, they have contradicted this general principle by not permitting the divorce pronounced by a minor or a sleeping person. If they argue: “Are these two not excluded from those who pronounce divorce?” We respond: “Nor is the coerced person considered one who pronounces divorce.”

وَأَطْرَفُ شَيْءٍ أَنَّهُمْ احْتَجُّوا هَهُنَا فَقَالُوا: الْبَيْعُ يُرَدُّ بِالْغَيْبِ؟ فَقُلْنَا: نَعَمْ، وَلَكِنْ بَعْدَ صِحَّةٍ، فَأَخْبِرُونَا هَلْ وَقَعَ بَيْعُ الْمُكْرَهِ صَحِيحًا أَمْ لَا؟ فَإِنْ قُلْتُمْ: وَقَعَ صَحِيحًا، فَلَا سَبِيلَ إلَى رَدِّهِ إلَّا بِرِضَاهُمَا، أَوْ بِنَصٍّ فِي ذَلِكَ، وَإِنْ قُلْتُمْ: لَمْ يَقَعْ صَحِيحًا وَهُوَ قَوْلُهُمْ؟ قُلْنَا: فَقِيَاسُكُمْ مَا لَمْ يَصِحَّ عَلَى مَا صَحَّ بَاطِلٌ فِي الْقِيَاسِ، لِأَنَّهُ قِيَاسُ الشَّيْءِ عَلَى ضِدِّهِ، وَعَلَى مَا لَا يُشْبِهُهُ. وَقُلْنَا لَهُمْ أَيْضًا: وَكَذَلِكَ الطَّلَاقُ مِنْ الْمُكْرَهِ وَقَعَ بَاطِلًا، وَاحْتَجُّوا

L21740 The most astonishing aspect is that they presented an argument here, asking: “Can a sale be revoked due to non-disclosure?” We responded: “Yes, but only after its validity is confirmed. Inform us: Was the coerced sale validly executed or not?” If you say: “It was validly executed,” then revocation is only permissible by mutual consent or through an explicit text on the matter. If you say: “It was not validly executed”—which is their position—we reply: “Your analogy comparing invalid transactions to valid ones is flawed in juristic terms, for it analogizes a thing to its opposite and what bears no

[5] **Qur’an references (L21734):** Qur’an 2:230 (Al-Baqarah); Qur’an 2:225 (Al-Baqarah).
[6] **Qur’an references (L21737):** Qur’an 2:275 (Al-Baqarah).

بِأَخْبَارٍ فَاسِدَةٍ -: مِنْهَا: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا إِسْمَاعِيلُ بْنُ عَيَّاشٍ حَدَّثَنِي الْغَازِي بْنُ جَبَلَةَ الْجُبْلَانِيُّ عَنْ صَفْوَانَ بْنِ عِمْرَانَ الطَّائِيِّ «أَنَّ رَجُلًا جَعَلَتْ امْرَأَتُهُ سِكِّينًا عَلَى حَلْقِهِ وَقَالَتْ: طَلِّقْنِي ثَلَاثًا أَوْ لَأَذْبَحَنَّكَ فَنَاشَدَهَا اللَّهَ تَعَالَى، فَأَبَتْ، فَطَلَّقَهَا ثَلَاثًا، فَذُكِرَ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَا قَيْلُولَةَ فِي الطَّلَاقِ» .

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ نُعَيْمِ بْنِ حَمَّادٍ عَنْ بَقِيَّةَ عَنْ الْغَازِي بْنِ جَبَلَةَ عَنْ صَفْوَانَ الطَّائِيِّ عَنْ رَجُلٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَهَذَا كُلُّهُ لَا شَيْءَ؛ لِأَنَّ إسْمَاعِيلَ بْنَ عَيَّاشٍ، وَبَقِيَّةَ: ضَعِيفَانِ، وَالْغَازِي بْنَ جَبَلَةَ مَجْهُولٌ، وَصَفْوَانَ ضَعِيفٌ، ثُمَّ هُوَ مُرْسَلٌ.

وَذَكَرُوا حَدِيثًا مِنْ طَرِيقِ مُطَيَّنٍ عَنْ حُسَيْنِ بْنِ يُوسُفَ التَّمِيمِيِّ - وَهُوَ مَجْهُولٌ - عَنْ مُحَمَّدِ بْنِ مَرْوَانَ - وَهُوَ مَجْهُولٌ - عَنْ عَطَاءِ بْنِ عَجْلَانَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ الطَّلَاقِ جَائِزٌ إلَّا طَلَاقَ الْمَعْتُوهِ الْمَغْلُوبِ عَلَى عَقْلِهِ» . قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قِلَّةُ حَيَاءٍ مِنْهُمْ أَنْ يَحْتَجُّوا بِرِوَايَةِ عَطَاءِ بْنِ عَجْلَانَ وَهُوَ مَذْكُورٌ بِالْكَذِبِ، ثُمَّ هُمْ يَقُولُونَ: إنَّ الصَّاحِبَ إذَا رَوَى خَبَرًا وَخَالَفَهُ فَذَلِكَ دَلِيلٌ، عَلَى سُقُوطِ ذَلِكَ الْخَبَرِ، وَإِنَّمَا رُوِيَ هَذَا مِنْ طَرِيقِ ابْنِ عَبَّاسٍ

وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ الْأَوْزَاعِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: إنَّ ابْنَ عَبَّاسٍ لَمْ يَرَ طَلَاقَ الْمُكْرَهِ، فَيَلْزَمُهُمْ عَلَى أَصْلِهِمْ الْفَاسِدِ أَنْ يُسْقِطُوا كُلَّ هَذِهِ الْأَخْبَارِ؛ لِأَنَّ ابْنَ عَبَّاسٍ رَوَى بَعْضَهَا، وَخَالَفَهُ كَمَا فَعَلُوا فِيمَا كَذَبُوا فِيهِ عَلَى أَبِي هُرَيْرَةَ مِنْ تَرْكِهِ مَا رَوَى هُوَ وَغَيْرُهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مِنْ

resemblance to it." We also told them: "Likewise, a divorce issued by the coerced is invalid." They cited unreliable narrations as evidence—including one we have narrated through Abū ʿUbayd: Ismāʿīl ibn ʿAyyāsh reported to us, from al-Ghāzī ibn Jabalah al-Jublānī, from Ṣafwān ibn ʿImrān al-Ṭāʾī: "A man's wife held a knife to his throat and said: 'Divorce me three times, or I will slaughter you!' He implored her by Allah Almighty, but she refused. He then divorced her three times. When this was mentioned to the Messenger of Allah (peace be upon him), he said: 'The divorce is invalid.'"

L21741 We have also narrated it through another chain: from Nuʿaym ibn Ḥammād to Baqiyyah to al-Ghāzī ibn Jabalah to Ṣafwān al-Ṭāʾī to a man among the Companions of the Messenger of Allah (peace and blessings be upon him) to the Prophet (peace and blessings be upon him). All of this is baseless, for Ismāʿīl ibn ʿAyyāsh and Baqiyyah are weak narrators, al-Ghāzī ibn Jabalah is undocumented, Ṣafwān is deemed weak, and the narration is mursal (with a broken chain).

L21742–21744 And they mentioned a narration through the chain of Muṭayyin from Ḥusayn ibn Yūsuf al-Tamīmī—and he is unverified—from Muhammad ibn Marwan—who is unknown—narrated from Ata ibn Ajlan from Ikrimah from Ibn Abbas from the Messenger of Allah (peace and blessings be upon him): "All forms of divorce are permissible except the divorce of a mentally deficient person who is mentally incapacitated." Abu Muhammad said: This demonstrates their impudence—that they would cite the narration of Ata ibn Ajlan, who is known for lying. Yet they themselves assert: "When a companion narrates a report and others contradict him, this indicates the invalidity of that report." However, this narration is only transmitted through the chain of Ibn Abbas.

L21745 It has been narrated to us through the chain of ʿAbd al-Razzāq from ʿAbdullāh ibn al-Mubārak from al-Awzāʿī from Yaḥyā ibn Abī Kathīr, who said: Verily, Ibn ʿAbbās did not consider the divorce of a coerced person valid. Thus, their corrupt foundational principle obliges them to invalidate all these narrations, since Ibn ʿAbbās narrated some of them, yet they opposed him—just as they did when they fabricated lies against Abū Hurayrah concerning his rejection of what he and other Companions—may Allah be pleased with

them—narrated regarding washing a vessel licked by a dog seven times. But they are a people who lack understanding. Moreover, they are the foremost in opposing this narration, for they do not validate the divorce of a sleeping person who utters divorce in his sleep, nor the divorce of a minor—neither of these two is insane nor those who have lost control of their faculties.

غَسْلِ الْإِنَاءِ مِنْ وُلُوغِ الْكَلْبِ سَبْعًا، وَلَكِنَّهُمْ قَوْمٌ لَا يَعْقِلُونَ. وَأَيْضًا: فَهُمْ أَوَّلُ مُخَالِفٍ لِهَذَا الْخَبَرِ، لِأَنَّهُمْ لَا يُجِيزُونَ طَلَاقَ النَّائِمِ يَتَكَلَّمُ فِي نَوْمِهِ بِالطَّلَاقِ، وَلَا طَلَاقَ الصَّبِيِّ، وَلَيْسَا مَعْتُوهَيْنِ، وَلَا مَغْلُوبَيْنِ عَلَى عُقُولِهِمَا.

L21746 They say regarding one who says to his wife in anger: "You are released," "You are finally divorced," "You are absolved," "You are forbidden," or "The decision is yours"—if he intended a single divorce, then it is binding; if he intended three divorces, it remains binding as one; and if he intended two instances, one becomes binding while the other is not legally enforced.

وَيَقُولُونَ فِيمَنْ قَالَ لِامْرَأَتِهِ فِي غَضَبٍ: أَنْتِ خَلِيَّةٌ، أَوْ بَائِنٌ، أَوْ بَرِيَّةٌ، أَوْ حَرَامٌ، أَوْ أَمْرُكِ بِيَدِكِ - وَنَوَى طَلْقَةً وَاحِدَةً فَهِيَ لَازِمَةٌ - وَإِنْ نَوَى ثَلَاثًا فَهِيَ لَازِمَةٌ - وَإِنْ نَوَى اثْنَتَيْنِ لَزِمَتْ وَاحِدَةٌ وَلَمْ تَلْزَمْ الْأُخْرَى.

L21747 Who is more lax in faith than one who cites a narration he himself first contradicts, against someone who does not consider it valid evidence at all? They cited the transmitted narrations: "Three matters: their earnestness is earnest, and their jest is earnest." Abū Muḥammad said: All these narrations are weak - none are sound. Even if they were sound, they would contain no valid evidence for the claimants whatsoever, for the coerced person is neither earnest nor jesting in his divorce pronouncement. Thus, it necessarily follows that no ruling applies to them in this matter.

فَمَنْ أَرَقُّ دِينًا مِمَّنْ يَحْتَجُّ بِخَبَرٍ هُوَ أَوَّلُ مُخَالِفٍ لَهُ عَلَى مَنْ لَا يَرَاهُ حُجَّةً أَصْلًا، وَاحْتَجُّوا بِالْآثَارِ الْوَارِدَةِ «ثَلَاثٌ جِدُّهُنَّ جِدٌّ وَهَزْلُهُنَّ جِدٌّ.» قَالَ أَبُو مُحَمَّدٍ: وَهِيَ آثَارٌ وَاهِيَةٌ كُلُّهَا لَا يَصِحُّ مِنْهَا شَيْءٌ، ثُمَّ لَوْ صَحَّتْ لَمْ يَكُنْ لَهُمْ فِيهَا حُجَّةٌ أَصْلًا، لِأَنَّ الْمُكْرَهَ لَيْسَ مُجِدًّا فِي طَلَاقِهِ، وَلَا هَازِلًا، فَخَرَجَ أَنْ يَكُونَ لَهُمْ حُكْمٌ فِي ذَلِكَ.

L21748–21749 Ali said: "What is more astonishing than one who relies on these fabrications - which are either narrated by a liar, an unknown figure, a weak transmitter, or constitute a mursal report - then objects to what we have transmitted through the chain of al-Rabiʿ ibn Sulaymān the Muezzin, from Bishr ibn Bakr, from al-Awzāʿī, from ʿAṭāʾ, from Ibn ʿAbbās, from the Prophet - peace be upon him -: 'My nation is pardoned for errors, forgetfulness, and what they are coerced into.'"

قَالَ عَلِيٌّ: وَأَيُّ عَجَبٍ أَكْثَرُ مِمَّنْ يَحْتَجُّ بِهَذِهِ الْأُكْذُوبَاتِ الَّتِي هِيَ إمَّا مِنْ رِوَايَةِ كَذَّابٍ، أَوْ مَجْهُولٍ، أَوْ ضَعِيفٍ، أَوْ مُرْسَلَةٌ، ثُمَّ يَعْتَرِضُ عَلَى مَا رُوِّينَاهُ مِنْ طَرِيقِ الرَّبِيعِ بْنِ سُلَيْمَانَ الْمُؤَذِّنِ عَنْ بِشْرِ بْنِ بَكْرٍ عَنْ الْأَوْزَاعِيِّ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «عُفِيَ لِأُمَّتِي عَنْ الْخَطَأِ وَالنِّسْيَانِ وَمَا اُسْتُكْرِهُوا عَلَيْهِ.»

L21750 If he said, "Did ʿAbdullāh ibn Aḥmad ibn Ḥanbal ask his father about this ḥadīth?" his father replied: "Indeed, a Shaykh narrated it from al-Walīd ibn Muslim, who narrated from al-Awzāʿī and Mālik."

فَإِنْ قَالَ: سَأَلَ عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ أَبَاهُ عَنْ هَذَا الْحَدِيثِ؟ فَقَالَ لَهُ: إنَّهُ رَوَاهُ شَيْخٌ عَنْ الْوَلِيدِ بْنِ مُسْلِمٍ عَنْ الْأَوْزَاعِيِّ، وَمَالِكٌ.

L21751 Mālik said: From Nāfiʿ, from Ibn ʿUmar, from the Prophet (ṣallā Allāhu ʿalayhi wa-sallam).

قَالَ مَالِكٌ: عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L21752 Al-Awzāʿī said: On the authority of ʿAṭāʾ, on the authority of Ibn ʿAbbās, on the authority of the Prophet (peace be upon him).

وَقَالَ الْأَوْزَاعِيّ: عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L21753 Ahmad said: This is a lie and falsehood. It is not narrated except through Al-Hasan from the Prophet (peace and blessings of Allah be upon him) - so marvel at this astonishment! Indeed, Ahmad (may Allah have mercy on him) rejected the authenticity of those who narrated this report via Malik from Nafiʿ from Ibn ʿUmar, and via Al-Walid ibn Muslim from Al-Awzaʿi from ʿAta' from Ibn ʿAbbas. Ahmad spoke truthfully in this matter - for this [claim] never occurred through Malik from Nafiʿ from Ibn ʿUmar, nor through Al-Walid ibn Muslim from Al-Awzaʿi from ʿAta' from Ibn ʿAbbas. It only came through Bishr ibn Bakr from Al-Awzaʿi from ʿAta' from Ibn ʿAbbas from the Prophet, peace and blessings of Allah be upon him. Whoever alters the chains of transmission has erred or lied if he did so intentionally.

فَقَالَ أَحْمَدُ: هَذَا كَذِبٌ، وَبَاطِلٌ، لَيْسَ يُرْوَى إلَّا الْحَسَنُ عَنْ النَّبِيِّ - فَاعْجَبُوا لِلْعَجَبِ إنَّمَا كَذَّبَ أَحْمَدُ - رَحِمَهُ اللَّهُ - مَنْ رَوَى هَذَا الْخَبَرَ مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ - وَمِنْ طَرِيقِ الْوَلِيدِ بْنِ مُسْلِمٍ عَنْ الْأَوْزَاعِيِّ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ وَصَدَقَ أَحْمَدُ فِي ذَلِكَ -: فَهَذَا لَمْ يَأْتِ قَطُّ مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ وَلَا مِنْ طَرِيقِ الْوَلِيدِ بْنِ مُسْلِمٍ عَنْ الْأَوْزَاعِيِّ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ، إنَّمَا جَاءَ مِنْ طَرِيقِ بِشْرِ بْنِ بَكْرٍ عَنْ الْأَوْزَاعِيِّ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَنْ بَدَّلَ الْأَسَانِيدَ فَقَدْ أَخْطَأَ، أَوْ كَذَبَ إنْ تَعَمَّدَ ذَلِكَ.

L21754 Then, all wonder is directed at them concerning this report—which is a mursal narration transmitted through al-Ḥasan's chain—while they themselves cite as evidence in this very issue the weakest of mursal narrations. Is this not astonishing in itself? Then they said: How can people be absolved of what they were compelled to do when they have already committed it? This constitutes an objection against the Messenger of Allah (peace and blessings of Allah be upon him).

ثُمَّ الْعَجَبُ كُلُّهُ عَلَيْهِمْ هَذَا الْخَبَرُ بِأَنَّهُ مُرْسَلٌ مِنْ طَرِيقِ الْحَسَنِ، وَهُمْ يَحْتَجُّونَ فِي هَذِهِ الْمَسْأَلَةِ نَفْسِهَا بِأَنْتَنَ مَا يَكُونُ مِنْ الْمَرَاسِيلِ، أَمَا هَذَا عَجَبٌ؟ ثُمَّ قَالُوا: كَيْفَ يُرْفَعُ عَنْ النَّاسِ مَا اُسْتُكْرِهُوا عَلَيْهِ وَقَدْ وَقَعَ مِنْهُمْ؟ وَهَذَا اعْتِرَاضٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L21755 Then their lack of religious adherence and absence of shame led them to this objection which inherently rebounds upon them, just as their lifting of the legal ruling on coercion in sales, purchases, acknowledgments or confessions, and charity rebounds. Moreover, this constitutes frivolous speech on their part, for the Prophet (peace be upon him) never stated that a coerced person did not utter what he was compelled to say or did not perform what he was coerced to do. Rather, he (peace be upon him) informed that accountability for the legal ruling concerning all such matters is lifted from him - just as the praying person is exempted from accountability for his action due to forgetfulness in the Taslim or speech, the fasting person is exempted for

ثُمَّ حَمَلَهُمْ قِلَّةُ الدِّينِ وَعَدَمُ الْحَيَاءِ عَلَى مِثْلِ هَذَا الِاعْتِرَاضِ الَّذِي هُوَ عَائِدٌ عَلَيْهِمْ بِذَاتِهِ كَمَا هُوَ عَائِدٌ فِي رَفْعِهِمْ الْإِكْرَاهَ فِي الْبَيْعِ، وَالشِّرَاءِ، وَالْإِقْرَارِ، وَالصَّدَقَةِ. ثُمَّ هُوَ كَلَامٌ سَخِيفٌ مِنْهُمْ؛ لِأَنَّهُ لَمْ يَقُلْ - عَلَيْهِ السَّلَامُ - قَطُّ: إنَّ الْمُكْرَهَ لَمْ يَقُلْ مَا أُكْرِهَ عَلَى أَنْ يَقُولَهُ، وَلَا أَنَّهُ لَمْ يَفْعَلْ مَا أُكْرِهَ عَلَى فِعْلِهِ، لَكِنَّهُ أَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّهُ رُفِعَ عَنْهُ حُكْمُ كُلِّ ذَلِكَ، كَمَا رُفِعَ عَنْ الْمُصَلِّي فِعْلُهُ بِالسَّهْوِ فِي السَّلَامِ، وَالْكَلَامِ، وَعَنْ الصَّائِمِ أَكْلُهُ، وَشُرْبُهُ، وَجِمَاعُهُ سَهْوًا، وَعَنْ الْبَائِعِ مُكْرَهًا بَيْعُهُ - وَبِاَللَّهِ التَّوْفِيقُ.

unintentional eating, drinking, or intercourse, and the seller is exempted for a coerced sale - and success is with Allah.

قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ مَا مَوَّهُوا بِهِ فِي هَذَا فَهُوَ مُبْطِلٌ لِقَوْلِهِمْ فِي إبْطَالِ بَيْعِ الْمُكْرَهِ وَابْتِيَاعِهِ، وَإِقْرَارِهِ، وَهِبَتِهِ، وَصَدَقَتِهِ، مِثْلُ قَوْلِهِمْ: إنَّنَا وَجَدْنَا الْمُكْرَهَةَ عَلَى إرْضَاعِ الصَّبِيِّ خَمْسَ رَضَعَاتٍ يُحَرِّمْنَ عَلَيْهِ وَيُحَرِّمُ عَلَيْهِ مِمَّا يُحَرَّمُ عَلَيْهِ مِنْ جِهَتِهَا لَوْ أَرْضَعَتْهُ طَائِعَةً.

L21756–21758 Abu Muhammad said: All the arguments they have deceptively framed in this matter invalidate their own assertions in nullifying the coerced party's sale, purchase, acknowledgment, gift, and charitable act – as in their statement: "Indeed, we hold the coerced party [to be compelled] in breastfeeding..." Five breastfeedings establish prohibition for the boy, forbidding him the same relationships that would be prohibited through her lineage, provided she breastfed him willingly.

قَالَ عَلِيٌّ: وَهَذَا عَلَيْهِمْ فِي الْإِكْرَاهِ عَلَى الْبَيْعِ، وَالِابْتِيَاعِ، وَالصَّدَقَةِ، وَالْإِقْرَارِ - ثُمَّ نَقُولُ لَهُمْ: إنَّ الرَّضَاعَ لَا يُرَاعَى فِيهِ نِيَّةٌ، بَلْ رَضَاعُ الْمَجْنُونَةِ، وَالنَّائِمَةِ، كَرَضَاعِ الْعَاقِلَةِ، لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يُحَرِّمُ مِنْ الرَّضَاعِ مَا يُحَرِّمُ مِنْ النَّسَبِ» فَلَا مَدْخَلَ لِلْإِرَادَةِ فِي الرَّضَاعِ، وَلَا هُوَ عَمَلٌ أُمِرَتْ بِهِ فَيُرَاعَى فِيهِ نِيَّتُهَا -.

L21759 Ali said: This ruling applies to them regarding coercion in selling, purchasing, charitable giving, and legal acknowledgment. Then we say to them: No intention is considered in breastfeeding - rather, the breastfeeding by a mentally incapacitated or sleeping woman equals that of a sane woman, according to the Prophet's statement (peace be upon him): "What is prohibited through lineage is prohibited through breastfeeding." Thus, there is no role for will in breastfeeding, nor is it a commanded act requiring consideration of her intention.

وَقَالُوا: وَجَدْنَا مَنْ أُكْرِهَ عَلَى وَطْءِ امْرَأَةِ ابْنِهِ يُحَرِّمُهَا عَلَى الِابْنِ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا عَلَيْهِمْ فِي الْبَيْعِ، وَالصَّدَقَةِ، وَالْإِقْرَارِ -.

L21760 They said: We found that someone compelled to have intercourse with his son's wife renders her forbidden to the son. Abu Muhammad said: And this is upon them in sale, charity, and confession –

وَجَوَابُنَا نَحْنُ أَنَّهُ إنْ أُخِذَ فَرْجُهُ فَأُدْخِلَ فِي فَرْجِهَا لَمْ يُحَرِّمْ شَيْئًا؛ لِأَنَّهُ لَمْ يَنْكِحْهَا - وَأَمَّا إنْ تُهُدِّدَ، أَوْ ضُرِبَ حَتَّى جَامَعَهَا بِنَفْسِهِ قَاصِدًا -: فَهُوَ زَانٍ مُخْتَارٌ قَاصِدٌ، وَعَلَيْهِ الْحَدُّ، وَتُحَرَّمُ؛ لِأَنَّهُ لَا حُكْمَ لِلْإِكْرَاهِ هَهُنَا.

L21761 Our answer is that if his penis is seized and inserted into her vagina, it does not make her unlawful, because he did not engage with her willingly. As for the case where he is threatened or beaten until he deliberately engages in intercourse with her intentionally, then he is a willing and intentional adulterer. The ḥadd punishment applies to him, and she becomes forbidden to him, for coercion holds no legal weight here.

قَالَ عَلِيٌّ: وَنَقُولُ لَهُمْ: هَبْكُمْ أَنَّكُمْ وَجَدْتُمْ فِي الطَّلَاقِ، وَالْعِتْقِ: هَذِهِ الْآثَارَ الْمَكْذُوبَةَ، فَأَيُّ شَيْءٍ وَجَدْتُمْ فِي النِّكَاحِ؟ وَبِأَيِّ شَيْءٍ أَلْزَمْتُمُوهُ؟ وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إبْطَالُهُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ

L21762 Ali said: And we say to them: Suppose you have found these spurious traditions concerning divorce and manumission—what then have you found regarding marriage? By what principle have you obligated him to it? Yet it has been authentically reported from the Prophet—peace and blessings of Allah be upon him—that he invalidated such practices, as transmitted through the chain of Malik, from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad, from

his father, from ʿAbd al-Raḥmān and Mujammiʿ—the two sons of Yazīd ibn Jāriyah al-Anṣārī—from Khaṅsāʾ bint Khidhām al-Anṣāriyyah: that her father married her off while she was a thayyib, but she disliked it. She came to the Prophet—peace and blessings of Allah be upon him—and he annulled the marriage contract.

عَنْ أَبِيهِ عَنْ عَبْدِ الرَّحْمَنِ، وَمُجَمِّعٍ، ابْنَيْ يَزِيدَ بْنِ جَارِيَةَ الْأَنْصَارِيِّ «عَنْ خَنْسَاءَ بِنْتِ خِذَامٍ الْأَنْصَارِيَّةِ أَنَّ أَبَاهَا زَوَّجَهَا وَهِيَ ثَيِّبٌ، فَكَرِهَتْ ذَلِكَ، فَأَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَدَّ نِكَاحَهُ» .

L21763 From the path of Ahmad ibn Shu'ayb: Muhammad ibn Dawud al-Miṣṣīṣī narrated to us; al-Husayn ibn Muhammad narrated to us; Jarir ibn Hazim narrated to us from Ayyub al-Sikhtiyānī from Ikrimah from Ibn Abbas: "A virgin came to the Prophet (peace be upon him) and said: 'My father has married me off'—and she was unwilling—so the Prophet (peace be upon him) invalidated her marriage."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ دَاوُد الْمِصِّيصِيُّ نا الْحُسَيْنُ بْنُ مُحَمَّدٍ نا جَرِيرُ بْنُ حَازِمٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ جَارِيَةً بِكْرًا أَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: إنَّ أَبِي زَوَّجَنِي - وَهِيَ كَارِهَةٌ - فَرَدَّ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نِكَاحَهَا» .

L21764–21766 These two chains are of the utmost validity, with no opposing [ruling] to them. Abū Muḥammad said: Whoever rules to uphold the marriage of a coerced person, the divorce of a coerced person, or the manumission of a coerced person... The ruling is perpetually invalid. If he marries the divorced or emancipated woman, intercourse in such a marriage, after such a divorce, or after such emancipation constitutes adultery. The adulterer shall be lashed and executed by stoning if he is a married person, or lashed one hundred times and exiled for a year if he is unmarried.

وَهَذَانِ سَنَدَانِ فِي غَايَةِ الصِّحَّةِ لَا مُعَارِضَ لَهُمَا. قَالَ أَبُو مُحَمَّدٍ: فَمَنْ حَكَمَ بِإِمْضَاءِ نِكَاحِ مُكْرَهٍ، أَوْ طَلَاقِ مُكْرَهٍ، أَوْ عِتْقِ مُكْرَهٍ، فَحُكْمُهُ مَرْدُودٌ أَبَدًا، الْوَطْءُ فِي ذَلِكَ النِّكَاحِ، وَبَعْدَ ذَلِكَ الطَّلَاقِ، وَبَعْدَ ذَلِكَ الْعِتْقِ - إنْ تَزَوَّجَ الْمُطَلَّقَةَ وَالْمُعْتَقَةَ -: زِنًا يُجْلَدُ، وَيُرْجَمُ إنْ كَانَ مُحْصَنًا، وَيُجْلَدُ مِائَةً وَيُغَرَّبُ عَامًا إنْ كَانَ غَيْرَ مُحْصَنٍ.

L21767 It is astonishing that they do not consider coercion into apostasy as effecting the wife's divorce, while apostasy according to them causes her divorce—and this constitutes a contradiction in their endorsement of divorce through compulsion.

وَالْعَجَبُ أَنَّهُمْ لَا يَرَوْنَ الْإِكْرَاهَ عَلَى الرِّدَّةِ تُبِينُ الزَّوْجَةَ، وَالرِّدَّةُ عِنْدَهُمْ تُبِينُهَا - وَهَذَا تَنَاقُضٌ مِنْهُمْ فِي إجَازَتِهِمْ الطَّلَاقَ بِالْكُرْهِ.

L21768 1407 - Issue: If someone is compelled to prostrate before an idol or a cross, let him prostrate to Allah, the Most High, promptly. Let him not concern himself with any direction in which the idol or cross may be. Allah, the Most High, said: "So wherever you turn, there is the Face of Allah" [2:115].[7]

١٤٠٧ - مَسْأَلَةٌ: وَمَنْ أُكْرِهَ عَلَى سُجُودٍ لِصَنَمٍ، أَوْ لِصَلِيبٍ، فَلْيَسْجُدْ لِلَّهِ تَعَالَى مُبَادِرًا إلَى ذَلِكَ، وَلَا يُبَالِي فِي أَيِّ جِهَةٍ كَانَ ذَلِكَ الصَّنَمُ، وَالصَّلِيبُ، قَالَ اللَّهُ تَعَالَى: {فَأَيْنَمَا تُوَلُّوا فَثَمَّ وَجْهُ اللَّهِ} [البقرة: ١١٥]

[مَسْأَلَةٌ لَا فَرْقَ بَيْنَ إكْرَاهِ السُّلْطَانِ أَوْ اللُّصُوصِ]

L21769 **Issue: There is no difference between coercion whether**

[7] **Qur'an references (L21768):** Qur'an 2:115 (Al-Baqarah).

from a ruler or bandits.

L21770 Issue 1408: There is no distinction between coercion by a ruler, thieves, or someone without authority. All of that is equal in everything we have mentioned, because Allah the Exalted did not differentiate between any of these matters, nor did His Messenger (peace be upon him).

L21771 **An issue: coercion by striking with a whip.**

L21772 1409 – Issue: The Hanafis stated that duress by striking a single whip, two whip strikes, or imprisonment for a day does not constitute duress.

L21773 Abū Muḥammad said: This is a flawed categorization, for it is not supported by the Quran, the Sunnah, or rational reasoning. All flogging constitutes lash after lash up to a hundred thousand or more. Yet they censure the statement of the Companion - with no known opposition to him - while we have been narrated through Shu'bah's chain: Abū Ḥayyān Yaḥyā ibn Sa'd al-Taymī reported to us from his father, who said: Al-Ḥārith ibn Suwayd told me: I heard 'Abdullāh ibn Mas'ūd say: "There is no authority holder who seeks to compel me to speak words that would ward off one or two lashes from me except that I would speak them." No opposition to him is known from the Companions (may Allah be pleased with them).

L21774 **The Issue of the Binding Nature of Vows and Oaths Made Under Compulsion.**

L21775 Issue 1410: They argued for the obligation of vows and oaths made under compulsion using an unsound hadith transmitted through Ḥudhayfah: "The polytheists seized him at Badr while he was intending to reach the Messenger of Allah, peace be upon him, and made him swear not to approach the Prophet, peace be upon him. He came to the Prophet, peace be upon him, and informed him. The Prophet said: 'Fulfill their covenant in accordance with them, and we seek Allah's help against them.'"

١٤٠٨ - مَسْأَلَةٌ: وَلَا فَرْقَ بَيْنَ إكْرَاهِ السُّلْطَانِ، أَوْ اللُّصُوصِ، أَوْ مَنْ لَيْسَ سُلْطَانًا، كُلُّ ذَلِكَ سَوَاءٌ فِي كُلِّ مَا ذَكَرْنَا؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يُفَرِّقْ بَيْنَ شَيْءٍ مِنْ ذَلِكَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَةٌ الْإِكْرَاهُ بِضَرْبِ سَوْطٍ]

١٤٠٩ - مَسْأَلَةٌ: وَقَالَ الْحَنَفِيُّونَ: الْإِكْرَاهُ بِضَرْبِ سَوْطٍ أَوْ سَوْطَيْنِ أَوْ حَبْسِ يَوْمٍ -: لَيْسَ إكْرَاهًا.

قَالَ أَبُو مُحَمَّد: وَهَذَا تَقْسِيمٌ فَاسِدٌ؛ لِأَنَّهُ لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا مَعْقُولٌ، وَالضَّرْبُ كُلُّهُ سَوْطٌ ثُمَّ سَوْطٌ إلَى مِائَةِ أَلْفٍ أَوْ أَكْثَرَ. وَهُمْ يُشَنِّعُونَ بِقَوْلِ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ -: وَقَدْ رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ، قَالَ: نا أَبُو حَيَّانَ يَحْيَى بْنُ سَعْدٍ التَّيْمِيُّ عَنْ أَبِيهِ، قَالَ: قَالَ لِي الْحَارِثُ بْنُ سُوَيْدٌ: سَمِعْت عَبْدَ اللَّهِ بْنَ مَسْعُودٍ يَقُولُ: مَا مِنْ ذِي سُلْطَانٍ يُرِيدُ أَنْ يُكَلِّفَنِي كَلَامًا يَدْرَأُ عَنِّي سَوْطًا أَوْ سَوْطَيْنِ إلَّا كُنْت مُتَكَلِّمًا بِهِ - وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ.

[مَسْأَلَةٌ إلْزَامِ النَّذْرِ وَالْيَمِينِ بِالْكُرْهِ]

١٤١٠ - مَسْأَلَةٌ: وَاحْتَجُّوا فِي إلْزَامِ النَّذْرِ، وَالْيَمِينِ بِالْكُرْهِ: بِحَدِيثٍ فَاسِدٍ مِنْ طَرِيقِ حُذَيْفَةَ «أَنَّ الْمُشْرِكِينَ أَخَذُوهُ - وَهُوَ يُرِيدُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِبَدْرٍ فَأَحْلَفُوهُ أَنْ لَا يَأْتِيَ مُحَمَّدًا، فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَهُ، فَقَالَ: نَفِي لَهُمْ بِعَهْدِهِمْ، وَنَسْتَعِينُ اللَّهَ عَلَيْهِمْ» .

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ حَدِيثٌ مَكْذُوبٌ وَمَا كَانَ الْمُشْرِكُونَ الْمَانِعُونَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ فِي طَرِيقِ بَدْرٍ، وَحُذَيْفَةُ لَمْ يَكُنْ مِنْ أَهْلِ مَكَّةَ، إنَّمَا هُوَ مِنْ أَهْلِ الْمَدِينَةِ حَلِيفٌ لِلْأَنْصَارِ وَنَصُّ الْقُرْآنِ. يُخْبِرُ بِأَنَّهُمْ لَمْ يَجْتَمِعُوا بِبَدْرٍ عَنْ وَعْدٍ، وَلَا عِلْمِ بَعْضِهِمْ بِبَعْضٍ، حَتَّى قَرُبَ الْعَسْكَرَانِ، وَلَمْ يَكُنْ بَيْنَهُمْ إلَّا كَثِيبُ رَمْلٍ فَقَطْ - وَمِثْلُهُمْ احْتَجَّ بِمِثْلِ هَذَا، وَحَاشَ لِلَّهِ أَنْ يَأْمُرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِإِنْفَاذِ عَهْدٍ بِمَعْصِيَةٍ.

L21776–21778 Abu Muhammad said: This is a fabricated hadith, for the polytheists never prevented the Prophet (may God's blessings and peace be upon him) from proceeding on the route to Badr. Hudhayfah was not among the people of Mecca; rather, he was a confederate among the people of Medina by pact. For the Ansar and the explicit text of the Quran. It informs that they did not assemble at Badr due to any prior promise, nor did some of them know of others until the two armies drew near, with nothing between them but a sand dune. Those akin to them have argued using such reasoning, and far removed is Allah that the Messenger of Allah—may Allah's blessings and peace be upon him—would command the fulfillment of a covenant through disobedience.

لَيْتَ شِعْرِي لَوْ عَاهَدُوا إنْسَانًا عَلَى أَنْ لَا يُصَلِّيَ، أَوْ أَنْ يَأْتِيَ أُمَّهُ، أَكَانَ يَلْزَمُهُمْ هَذَا عِنْدَهُمْ؟ إنَّ هَذَا لَعَجَبٌ؟ وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L21779 I wish I knew: if they were to bind a person by a covenant not to pray, or to commit incest with his mother, would this be deemed binding upon them in their view? Truly, this is indeed astonishing! And we seek refuge in Allah from abandonment.



AL-MUHALLA

كِتَابُ الْبُيُوعِ

The Book of Sales

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْبُيُوعِ] [مَسْأَلَةٌ الْبَيْعُ قِسْمَانِ]

The Book of Sales. Issue: The Sale is Divided into Two Categories.

١٤١١ - مَسْأَلَةٌ: - الْبَيْعُ قِسْمَانِ -: إمَّا بَيْعُ سِلْعَةٍ حَاضِرَةٍ مَرْئِيَّةٍ مُقَلَّبَةٍ بِسِلْعَةٍ كَذَلِكَ، أَوْ بِسِلْعَةٍ بِعَيْنِهَا غَائِبَةٍ مَعْرُوفَةٍ مَوْصُوفَةٍ، أَوْ بِدَنَانِيرَ، أَوْ بِدَرَاهِمَ -: كُلُّ ذَلِكَ حَاضِرٌ مَقْبُوضٌ، أَوْ إلَى أَجَلٍ مُسَمًّى، أَوْ حَالَّةٍ فِي الذِّمَّةِ وَإِنْ لَمْ يَقْبِضْ.

1411. Issue: Sale is of two types: either the exchange of a present, visible, and inspected commodity for another such commodity, or for a specific absent commodity that is known and described, or for dinars, or for dirhams—all of which are either present and received, deferred to a specified term, or due in the liability even if not physically received.

وَالْقِسْمُ الثَّانِي: بَيْعُ سِلْعَةٍ بِعَيْنِهَا غَائِبَةٍ مَعْرُوفَةٍ أَوْ مَوْصُوفَةٍ بِمِثْلِهَا، أَوْ بِدَنَانِيرَ، أَوْ بِدَرَاهِمَ -: كُلُّ ذَلِكَ حَاضِرٌ مَقْبُوضٌ، أَوْ إلَى أَجَلٍ مُسَمًّى، أَوْ حَالَّةٍ فِي الذِّمَّةِ وَإِنْ لَمْ يَقْبِضْ.

The second category: the sale of a specific absent commodity that is either known or described by its equivalent, or sold for dinars or dirhams. All such sales are either present and physically possessed, deferred to a specified term, or an existing obligation in the liability—even if the buyer has not taken possession.

أَمَّا بَيْعُ الْحَاضِرِ الْمَرْئِيِّ الْمُقَلَّبِ بِمِثْلِهِ أَوْ بِدَنَانِيرَ أَوْ دَرَاهِمَ حَاضِرَةٍ مَقْبُوضَةٍ أَوْ إلَى أَجَلٍ مُسَمًّى، أَوْ حَالَّةٍ فِي الذِّمَّةِ -: فَمُتَّفَقٌ عَلَى جَوَازِهِ.

As for the sale of a present, visible, and examined item for its equivalent, or for Dinars or Dirhams that are present and in hand, or for a specified term, or a deferred debt obligation—there is scholarly consensus on its permissibility.

وَأَمَّا بَيْعُ سِلْعَةٍ غَائِبَةٍ بِعَيْنِهَا مَرْئِيَّةٍ مَوْصُوفَةٍ مُعَيَّنَةٍ، فَفِيهِ خِلَافٌ فَأَحَدُ قَوْلَيْ الشَّافِعِيِّ: الْمَنْعُ مِنْ بَيْعِ الْغَائِبِ جُمْلَةً - وَقَالَ مَرَّةً: هُوَ جَائِزٌ وَلَهُ خِيَارُ الرُّؤْيَةِ، وَقَالَ مَرَّةً: مِثْلَ قَوْلِنَا فِي جَوَازِ بَيْعِ الْغَائِبِ وَجَوَازِ النَّقْدِ فِيهِ وَلُزُومِ الْبَيْعِ إذَا وُجِدَ عَلَى الصِّفَةِ الَّتِي وَقَعَ الْبَيْعُ عَلَيْهَا بِلَا خِيَارٍ فِي ذَلِكَ.

As for the sale of a specifically determined, visibly described absent commodity, there is disagreement. One of the two positions of al-Shāfiʿī prohibits selling absent commodities categorically. He once stated: "It is permissible but grants the buyer khiyar al-ru'yah (option of inspection)." On another occasion, he said: "This aligns with our view permitting the sale of absent commodities, the permissibility of immediate payment in such transactions, and the finality of the contract if the item conforms to the stipulated description without granting any rescission option in that case."

وَأَجَازَ مَالِكٌ بَيْعَ الْغَائِبَاتِ إلَّا أَنَّهُ لَمْ يُجِزْ النَّقْدَ فِيهَا جُمْلَةً فِي أَحَدِ قَوْلَيْهِ -: رَوَاهُ ابْنُ وَهْبٍ عَنْهُ - وَأَجَازَ ابْنُ الْقَاسِمِ عَنْهُ النَّقْدَ فِي الضِّيَاعِ وَالدُّورِ - قَرُبَتْ أَمْ بَعُدَتْ - وَأَمَّا الْعُرُوضُ فَإِنَّهُ أَجَازَ النَّقْدَ فِيهِ إنْ كَانَ قَرِيبًا وَلَا يَجُوزُ إنْ كَانَ بَعِيدًا.

Malik permitted the sale of unseen items, but he prohibited lump-sum cash payment in them in one of his two opinions—as narrated by Ibn Wahb from him. Ibn al-Qasim, applying Malik's position, permitted cash payment for farmlands and houses whether near or distant. As for merchandise, he permitted cash payment if it was nearby but prohibited it if distant.

وَقَالَ أَبُو حَنِيفَةَ: بَيْعُ الْغَائِبِ جَائِزٌ مَوْصُوفًا كَانَ أَوْ غَيْرَ مَوْصُوفٍ، وَالنَّقْدُ فِي ذَلِكَ جَائِزٌ. وَكَيْفَ

Abu Hanifah said: The sale of unseen items is permissible whether described or undescribed, and cash payment in such transactions is permissible. How-

ever, the option remains with the buyer when he inspects what he purchased. At that point, he may either annul the sale or ratify it, whether it conforms to the description or differs from it.

وَقَالَ أَبُو حَنِيفَةَ: بَيْعُ الْغَائِبَاتِ جَائِزٌ مَوْصُوفَةً وَغَيْرَ مَوْصُوفَةٍ، وَالنَّقْدُ فِي ذَلِكَ جَائِزٌ إِلَّا أَنَّ الْخِيَارَ لِلْمُشْتَرِي إِذَا رَأَى مَا اشْتَرَى، فَلَهُ حِينَئِذٍ أَنْ يَرُدَّ الْبَيْعَ، وَأَنْ يُمْضِيَهُ سَوَاءٌ وَجَدَهُ كَمَا وُصِفَ لَهُ، أَوْ وَجَدَهُ بِخِلَافِ مَا وُصِفَ لَهُ.

L21788–21789 He also has the option to annul the sale or confirm it before he sees what he has purchased.

وَلَهُ الْخِيَارُ أَيْضًا فِي فَسْخِ الْبَيْعِ أَوْ إِمْضَائِهِ قَبْلَ أَنْ يَرَى مَا اشْتَرَى.

L21790 Even if he were to formally attest against himself that he has waived his right of option and that he has finalized the sale and bound himself to it, none of that becomes binding upon him, and he retains the right of option as before. If he sees the face of the female slave he purchased while she is absent (i.e., without full access to inspect her) and does not examine the rest of her, the sale becomes binding, his right of option is forfeited, and he may not return her except due to a defect. The ruling applies equally and without distinction to a male slave.

وَلَوْ أَشْهَدَ عَلَى نَفْسِهِ أَنَّهُ قَدْ أَسْقَطَ مَالَهُ مِنَ الْخِيَارِ، وَأَنَّهُ قَدْ أَمْضَى الْبَيْعَ وَالْتَزَمَهُ: لَمْ يَلْزَمْهُ شَيْءٌ مِنْ ذَلِكَ وَهُوَ بِالْخِيَارِ كَمَا كَانَ - فَإِذَا رَأَى وَجْهَ الْجَارِيَةِ الَّتِي اشْتَرَى وَهِيَ غَائِبَةٌ وَلَمْ يُقَلِّبْ سَائِرَهَا فَقَدْ لَزِمَتْهُ وَسَقَطَ خِيَارُهُ، وَلَا يَرُدُّهَا إِلَّا مِنْ عَيْبٍ - وَكَذَلِكَ الْقَوْلُ فِي الْعَبْدِ سَوَاءً سَوَاءً.

L21791 He said: If one purchases an unseen animal and subsequently sees its hindquarters, the sale becomes binding on him even if he does not see the remainder of it. He cannot rescind the sale except due to a defect. This ruling applies to all animals, excluding the children of Adam.

قَالَ: فَإِنْ اشْتَرَى دَابَّةً غَائِبَةً فَرَأَى عَجُزَهَا لَزِمَتْهُ وَإِنْ لَمْ يَرَ سَائِرَهَا وَلَا يَرُدُّهَا إِلَّا مِنْ عَيْبٍ - وَكَذَلِكَ سَائِرُ الْحَيَوَانِ حَاشَا بَنِي آدَمَ.

L21792 He said: If someone purchases garments—whether absent or present in a folded state—and inspects their exterior surfaces and folded sections without unfolding them, the sale becomes binding, his right to rescind is nullified, and he may not return them except due to a defect.

قَالَ: فَإِنْ اشْتَرَى ثِيَابًا غَائِبَةً أَوْ حَاضِرَةً مَطْوِيَّةً فَرَأَى ظُهُورَهَا وَمَوَاضِعَ طَيِّهَا وَلَمْ يَنْشُرْهَا فَقَدْ لَزِمَتْهُ وَسَقَطَ خِيَارُهُ وَلَا يَرُدُّهَا إِلَّا مِنْ عَيْبٍ.

L21793 He said: If one purchases Herati clothes in a bag, Zutti clothes in a bale, ghee in skin containers, oil likewise, wheat in a grain sack, goods not measured by volume or weight, or an animal—and has not seen any of these—they retain the right to inspect until they have seen all that was purchased.

قَالَ: فَإِنْ اشْتَرَى ثِيَابًا هَرَوِيَّةً فِي جِرَابٍ أَوْ ثِيَابًا زُطِّيَّةً فِي عِدْلٍ، أَوْ سَمْنًا، فِي زُقَاقٍ، أَوْ زَيْتًا كَذَلِكَ، أَوْ حِنْطَةً فِي غِرَارَةٍ، أَوْ عُرُوضًا مِمَّا لَا يُكَالُ وَلَا يُوزَنُ، أَوْ حَيَوَانًا وَلَمْ يَرَ شَيْئًا مِنْ ذَلِكَ: فَإِنَّ لَهُ خِيَارَ الرُّؤْيَةِ حَتَّى يَرَى كُلَّ مَا اشْتَرَى مِنْ ذَلِكَ.

L21794 If he has seen all the garments except one or all beasts of burden except one, he may rescind the sale if he wishes—regardless of whether what he found matched the description given to him or contradicted it. However, for clarified butter, oil, or wheat: if he saw part of these items and the unseen

وَلَوْ رَأَى جَمِيعَ الثِّيَابِ إِلَّا وَاحِدًا مِنْهَا أَوْ جَمِيعَ الدَّوَابِّ إِلَّا وَاحِدًا مِنْهَا فَلَهُ فَسْخُ الْبَيْعِ إِنْ شَاءَ، وَسَوَاءٌ وَجَدَ كُلَّ مَا رَأَى كَمَا وُصِفَ لَهُ بِخِلَافِ مَا وُصِفَ لَهُ، إِلَّا السَّمْنَ

portion was identical to what he observed, the sale becomes binding and his option is forfeited. The author stated: If one buys a house after viewing its exterior without inspecting the interior, the sale becomes binding, the option of inspection is forfeited, and he may only return it due to a defect. It is narrated from Zufar that the option remains valid unless the buyer inspects part of its land in addition.

وَالزَّيْتَ، وَالْحِنْطَةَ، فَإِنَّهُ إِنْ رَأَى بَعْضَ ذَلِكَ فَكَانَ مَا لَمْ يَرَ مِنْهُ مِثْلَ الَّذِي رَأَى: فَقَدْ لَزِمَهُ الْبَيْعُ وَسَقَطَ خِيَارُهُ. قَالَ: فَإِنْ ابْتَاعَ دَارًا فَرَآهَا مِنْ خَارِجِهَا وَلَمْ يَرَهَا مِنْ دَاخِلٍ: فَقَدْ لَزِمَتْهُ وَسَقَطَ خِيَارُ الرُّؤْيَةِ وَلَا يَرُدُّهَا إِلَّا مِنْ عَيْبٍ - وَرُوِيَ عَنْ زُفَرَ: أَنَّهُ لَا يَسْقُطُ خِيَارُهُ إِلَّا حَتَّى يَرَى مَعَ ذَلِكَ شَيْئًا مِنْ أَرْضِهَا.

L21795 Abu Yusuf said: A blind person's physical inspection (by touch) of the door and walls of the house nullifies his right to rescind the sale, binds him to the transaction, and he cannot return it unless a defect is discovered.

وَقَالَ أَبُو يُوسُفَ: لَمْسُ الْأَعْمَى لِبَابِ الدَّارِ وَلِحَائِطِهَا: يُسْقِطُ خِيَارَهُ وَيَلْزَمُهُ الْبَيْعُ، وَلَا يَرُدُّهَا إِلَّا مِنْ عَيْبٍ.

L21796 Abu Hanifa and his companions stated: One may not rescind a sale after viewing the purchased item except in the seller's presence. If two people jointly purchase an unseen item through a single transaction, then inspect it, and one party rescinds the sale while the other approves it, the rescission is not permissible whatsoever unless both rescind it together.

قَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: وَلَيْسَ لَهُ أَنْ يَرُدَّ الْبَيْعَ إِذَا رَأَى مَا ابْتَاعَ إِلَّا بِمَحْضَرِ الْبَائِعِ، فَلَوْ اشْتَرَى اثْنَانِ شِرَاءً وَاحِدً غَائِبًا فَرَأَيَاهُ فَرَدَّ أَحَدُهُمَا الْبَيْعَ وَأَجَازَهُ الْآخَرُ فَلَا يَجُوزُ الرَّدُّ إِلَّا أَنْ يَرُدَّاهُ مَعًا.

L21797–21798 They said: If he sends a messenger to receive what he purchased on his behalf, and the messenger sees the sold item and takes possession of it, the buyer retains his right of option. But if he appoints an agent, and the agent sees the sold item and takes possession of it, the buyer's right of option lapses according to Abū Ḥanīfah's view, whereas it does not lapse in the opinion of Abū Yūsuf and Muḥammad. Abū Ḥanīfah once stated—but later retracted—that the seller also has a right of option if he sells something unseen, just as the buyer does.

قَالُوا: فَإِنْ أَرْسَلَ رَسُولًا لِيَقْبِضَ لَهُ مَا اشْتَرَى فَرَأَى الرَّسُولُ الشَّيْءَ الْمَبِيعَ وَقَبَضَهُ فَالْمُشْتَرِي بَاقٍ عَلَى خِيَارِهِ، فَلَوْ وَكَّلَ وَكِيلًا فَرَأَى الْوَكِيلُ الشَّيْءَ الْمَبِيعَ وَقَبَضَهُ فَقَدْ سَقَطَ خِيَارُ الْمُشْتَرِي فِي قَوْلِ أَبِي حَنِيفَةَ، وَلَمْ يَسْقُطْ عِنْدَ أَبِي يُوسُفَ، وَمُحَمَّدٍ - وَقَالَ أَبُو حَنِيفَةَ مَرَّةً: الْخِيَارُ أَيْضًا لِلْبَائِعِ إِذَا بَاعَ مَا لَمْ يَرَ كَمَا لِلْمُشْتَرِي، ثُمَّ رَجَعَ عَنْ ذَلِكَ.

L21799 Abu Muhammad said: It has been narrated from the predecessors regarding this matter, and there is a narration concerning it. It states that 'Uthmān sold a plot of land in Kūfah to Ṭalḥah (may Allah be pleased with them both). 'Uthmān was told, "You have been defrauded." He replied, "The option is mine, for I sold what I had not seen." Ṭalḥah countered, "Rather, the option is mine, for I bought what I had not seen." Jubayr ibn Muṭ'im judged between them and ruled that the option belonged to Ṭalḥah, not to 'Uthmān. Ibn Shubrumah said: The option of inspection applies to both the seller and the buyer together, as was related from 'Uthmān.

قَالَ أَبُو مُحَمَّدٍ: وَرُوِيَ فِي ذَلِكَ عَنْ السَّلَفِ وَفِي ذَلِكَ أَثَرٌ، وَهُوَ أَنَّ عُثْمَانَ بَاعَ مِنْ طَلْحَةَ - رَضِيَ اللَّهُ عَنْهُمَا - أَرْضًا بِالْكُوفَةِ، فَقِيلَ لِعُثْمَانَ: إنَّك قَدْ غَبَنْت، فَقَالَ عُثْمَانُ: لِي الْخِيَارُ لِأَنِّي بِعْتُ مَا لَمْ أَرَ، وَقَالَ طَلْحَةُ: بَلْ لِي الْخِيَارُ لِأَنِّي اشْتَرَيْت مَا لَمْ أَرَ -: فَحَكَمَ بَيْنَهُمَا جُبَيْرُ بْنُ مُطْعِمٍ، فَقَضَى: أَنَّ الْخِيَارَ لِطَلْحَةَ لَا لِعُثْمَانَ - وَقَالَ ابْنُ شُبْرُمَةَ: بِخِيَارِ الرُّؤْيَةِ لِلْبَائِعِ وَلِلْمُشْتَرِي مَعًا كَمَا رُوِيَ عَنْ عُثْمَانَ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا هُشَيْمٌ عَنْ إِسْمَاعِيلَ بْنِ سَالِمٍ، وَيُونُسَ بْنِ عُبَيْدٍ وَالْمُغِيرَةِ، قَالَ إِسْمَاعِيلُ: عَنْ الشَّعْبِيِّ، وَقَالَ يُونُسُ: عَنْ الْحَسَنِ، وَقَالَ الْمُغِيرَةُ: عَنْ إِبْرَاهِيمَ، ثُمَّ اتَّفَقُوا كُلُّهُمْ فِيمَنْ اشْتَرَى شَيْئًا لَمْ يَنْظُرْ إلَيْهِ كَائِنًا مَا كَانَ، قَالُوا: هُوَ بِالْخِيَارِ إنْ شَاءَ أَخَذَ وَإِنْ شَاءَ تَرَكَ، وَقَالَ إبْرَاهِيمُ: هُوَ بِالْخِيَارِ وَإِنْ وَجَدَهُ كَمَا شَرَطَ لَهُ، وَرُوِيَ أَيْضًا عَنْ مَكْحُولٍ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ - وَالنَّقْدُ عِنْدَهُمْ فِي كُلِّ ذَلِكَ جَائِزٌ.

L21800 From the narration of Ibn Abi Shaybah: Hushaym narrated to us from Ismail ibn Salim, Yunus ibn Ubayd, and al-Mughirah. Ismail reported from al-Sha'bi, Yunus reported from al-Hasan, and al-Mughirah reported from Ibrahim. They all agreed regarding one who purchases something without having inspected it, whatever it may be. They said: "He has the right of khiyar—if he wishes, he may take it, and if he wishes, he may leave it." Ibrahim said: "He retains the right of khiyar even if he finds it as stipulated." This ruling is also narrated from Makhul—and it is the position of al-Awzaʿi and Sufyan al-Thawri—and immediate payment is permissible in all such cases in their view.

وَخَالَفَهُمْ غَيْرُهُمْ، كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: إذَا ابْتَاعَ الرَّجُلُ الْبَيْعَ وَلَمْ يَرَهُ وَنُعِتَ لَهُ فَوَافَقَ النَّعْتَ وَجَبَ فِي عِتْقِهِ. قَالَ الْحَجَّاجُ: وَحَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ عَنْ ابْنِ سِيرِينَ: إذَا ابْتَاعَ الْبَيْعَ وَلَمْ يَرَهُ فَوَصَفَهُ لَهُ الْبَائِعُ فَجَاءَ عَلَى الْوَصْفِ فَهُوَ لَهُ.

L21801 Others disagreed with them, as we have reported through the chain of Al-Ḥajjāj ibn Al-Minhāl from Ḥammād ibn Salamah from Ayyūb Al-Sikhtiyānī from Muḥammad ibn Sīrīn, who said: "If a man purchases the sold object without seeing it, and it is described to him, and it matches the description, the slave must be emancipated." Al-Ḥajjāj said: "And Ḥammād ibn Zayd narrated to us from Ayyūb from Ibn Sīrīn: 'If he purchases the sold object without seeing it, and the seller describes it to him, and it conforms to the description, then it is his.'"

وَقَالَ الْحَسَنُ: هُوَ بِالْخِيَارِ إذَا رَآهُ.

L21802 And Al-Ḥasan said: He has the option upon seeing it.

قَالَ أَيُّوبُ: وَلَا أَعْلَمُ رَجُلًا اشْتَرَى بَيْعًا لَمْ يَرَهُ فَوَصَفَهُ لَهُ الْبَائِعُ فَوَجَدَهُ عَلَى مَا وَصَفَهُ لَهُ فَرَدَّهُ عَلَيْهِ إلَّا هُوَ مِنْ الظَّالِمِينَ؟ وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرٌ عَنْ الْمُغِيرَةِ عَنْ الْحَارِثِ الْعُكْلِيِّ فِيمَنْ اشْتَرَى الْعِدْلَ مِنْ الْبُرِّ فَنَظَرَ بَعْضُ التُّجَّارِ إلَى بَعْضِهِ فَقَدْ وَجَبَ عَلَيْهِ إذَا لَمْ يَرَ عُوَارًا فِيمَا لَمْ يَنْظُرْ إلَيْهِ.

L21803–21805 Ayyūb said: I do not know of any man who purchased an item he had not seen, whereupon the seller described it to him and he found it exactly as described, yet he returned it to the seller except that such a man would be among the wrongdoers. Through the chain of Ibn Abī Shaybah: Jarīr narrated to us from al-Mughīrah from al-Ḥārith al-'Uklī concerning one who purchased. The just measure from wheat—then when some merchants examine a portion of it, liability becomes binding upon them if they fail to detect defects in what they did not inspect.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ، وَحَمَّادٍ فِيمَنْ اشْتَرَى عَبْدًا قَدْ رَآهُ بِالْأَمْسِ وَلَمْ يَرَهُ يَوْمَ اشْتَرَاهُ، قَالَا جَمِيعًا: لَا يَجُوزُ حَتَّى يَرَاهُ يَوْمَ اشْتَرَاهُ.

L21806 From the narration of Shu'bah via Al-Ḥakam and Ḥammād regarding one who purchased a slave he had inspected the previous day but did not inspect on the day of purchase, they both said: It is impermissible until the buyer inspects the slave on the day of purchase.

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّهُ مَا نَعْلَمُهُ عَنْ الْمُتَقَدِّمِينَ - فَأَمَّا أَقْوَالُ أَبِي حَنِيفَةَ الَّتِي ذَكَرْنَا فَأَقْوَالٌ فِي غَايَةِ الْفَسَادِ لَا تُؤْثَرُ عَنْ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ قَبْلَهُ - نَعْنِي الْفَرْقَ بَيْنَ مَا يُسْقِطُ الْخِيَارَ مِمَّا يَرَى مِنْ الرَّقِيقِ، وَمِمَّا يَرَى مِنْ الدَّوَابِّ، وَمِمَّا يَرَى مِنْ الثِّيَابِ الزُّطِّيَّةِ فِي الْوِعَاءِ، وَمَا يَرَى مِنْ الثِّيَابِ الَّتِي لَيْسَتْ فِي عِدْلٍ، وَمَا يَرَى مِنْ السَّمْنِ، وَالزَّيْتِ، وَالْحِنْطَةِ، وَالدُّورِ، وَكُلُّ ذَلِكَ وَسَاوِسُ لَا حَظَّ لَهَا فِي شَيْءٍ مِنْ الْعَقْلِ، وَلَا لَهَا مَجَازٌ عَلَى الْقُرْآنِ، وَلَا السُّنَنِ، وَلَا الرِّوَايَاتِ الْفَاسِدَةِ، وَلَا قَوْلِ أَحَدٍ مِنْ السَّلَفِ، وَلَا مِنْ قِيَاسٍ - لَا جَلِيٍّ وَلَا خَفِيٍّ - وَلَا مِنْ رَأْيٍ لَهُ حَظٌّ مِنْ السَّدَادِ، وَمَا كَانَ هَكَذَا فَلَا يَحِلُّ لِأَحَدٍ الْقَوْلُ بِهِ.

L21807 Abū Muḥammad said: All of this is what we know from the predecessors. As for the statements of Abū Ḥanīfah that we mentioned, they are rulings of extreme corruption, not transmitted from any individual among the people of Islam before him—referring to his distinction regarding what nullifies the option [to rescind] concerning slaves he deems, animals he deems, Zutti garments in bundles he deems, garments not in sealed containers he deems, butter, oil, wheat, and dwellings he deems. All of this comprises baseless notions with no share in reason, no basis in the Qur'ān, the Sunnah, corrupt narrations, the statement of any predecessor, nor any analogy—neither evident nor subtle—nor any opinion possessing a trace of correctness. Whatever is like this, it is impermissible for anyone to uphold it.

وَأَمَّا قَوْلَا مَالِك جَمِيعًا فَكَذَلِكَ أَيْضًا سَوَاءً سَوَاءً، وَلَا نَعْلَمُهُمَا عَنْ أَحَدٍ قَبْلَهُ، وَمَا لَهُمْ شُبْهَةٌ أَصْلًا، إلَّا أَنَّ بَعْضَهُمْ ادَّعَى الْعَمَلَ فِي ذَلِكَ، وَهَذَا بَاطِلٌ؛ لِأَنَّهُمَا عَنْهُ قَوْلَانِ كَمَا ذَكَرْنَا كَلَاهُمَا مُخَالِفٌ لِصَاحِبِهِ - فَإِنْ كَانَ الْعَمَلُ عَلَى أَحَدِهِمَا فَقَدْ خَالَفَ الْعَمَلَ فِي قَوْلِهِ الْآخَرِ، وَخِلَافُ الْمَرْءِ لِمَا يَرَاهُ حُجَّةً قَاطِعَةً فِي الدِّينِ عَظِيمٌ جِدًّا، وَلَيْسَ فِي الْمُمْكِنِ أَنْ يَكُونَ الْعَمَلُ عَلَى كِلَيْهِمَا.

L21808 As for Mālik's two opinions collectively, they are precisely equivalent, exactly alike. We do not know of both being transmitted from anyone before him, and there exists no legitimate basis for doubt whatsoever. However, some have claimed practical implementation regarding this matter, yet this is invalid, for both represent conflicting positions from him—as we indicated—each opposing the other. If practice were established upon one of them, it would contradict the practice based on his other opinion. A person's opposition to what he himself considers decisive religious evidence constitutes an extremely grave matter. It is fundamentally impossible for practice to be founded upon both opinions.

وَأَيْضًا: فَإِنَّ تَحْدِيدَهُ جَوَازَ النَّقْدِ - إنْ كَانَ الْمَبِيعُ قَرِيبًا - وَمَنْعَهُ مِنْ النَّقْدِ إنْ كَانَ الْمَبِيعُ بَعِيدًا - وَهُوَ لَمْ يَحُدَّ مِقْدَارَ الْبُعْدِ الَّذِي يُحَرَّمُ فِيهِ النَّقْدُ مِنْ الْقُرْبِ الَّذِي يَجُوزُ فِيهِ النَّقْدُ عَجَبٌ جِدًّا؟ وَأَيُّ عَجَبٍ أَعْجَبُ مِمَّنْ يُحَرِّمُ وَيُحَلِّلُ ثُمَّ لَا يُبَيِّنُ لِمَنْ يَتْبَعُهُ الْعَمَلَ الْمُحَرَّمَ لِيَجْتَنِبَهُ مِنْ الْمُحَلَّلِ لِيَأْتِيَهُ.

L21809 Moreover, his stipulation permitting cash payment if the sold item is nearby and prohibiting cash payment if it is distant—while failing to define the measure of distance that prohibits cash payment and the proximity that permits it—is this not a grave inconsistency? What greater contradiction is there than one who prohibits and permits, yet fails to clarify for his followers the prohibited action to avoid and the permitted action to perform?

L21810 Some of his adherents in taqlīd who prohibited cash payment in that mat-

ter—which is the opinion of al-Layth—argued, saying: If he pays cash for it and then finds it not as described, and thus revokes the sale, the seller would have benefited from the price during the interim period, rendering it a salaf loan (interest-free loan) entailing a benefit? Abu Muḥammad said: This argument is more flawed than the opinion it supports.

وَاحْتَجَّ بَعْضُ مُقَلِّدِيهِ فِي الْمَنْعِ مِنْ النَّقْدِ فِي ذَلِكَ - وَهُوَ قَوْلُ اللَّيْثِ - بِأَنْ قَالَ: إنْ نَقَدَ فِي ذَلِكَ ثُمَّ وَجَدَهُ عَلَى خِلَافِ مَا وُصِفَ لَهُ فَرَدَّ الْبَيْعَ كَانَ الْبَائِعُ قَدْ انْتَفَعَ بِالثَّمَنِ مُدَّةً فَصَارَ ذَلِكَ سَلَفًا جَرَّ مَنْفَعَةً؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا الِاحْتِجَاجُ أَفْسَدُ مِنْ الْقَوْلِ الَّذِي احْتَجَّ لَهُ.

L21811–21812 We say to them: Yes, so what? There has never been a loan that brought benefit—rather, it is a sale like all other sales with absolutely no distinction. Then where did you find the prohibition of a loan that brings benefit? In which book of Allah the Almighty did you find this? Or in which Sunnah of Allah's Messenger (peace be upon him)? Or in which saying of a Companion? The greatest wonder is that there exists no loan on earth except that it brings benefit to the borrower, for had he not benefited from it, he would not have sought it. Have we ever heard anything more absurd or baseless than this claim? Moreover, if their argument were valid, it would necessitate invalidating all sales entirely, for there is no sale in the world without this legal defect existing within it. Every sale inherently carries the possibility of being rightfully revoked or returned due to a defect. Why then do they not prohibit immediate payment in every sale for this reason? For if a sale is revoked, the seller returns the price to the buyer after having benefited from it, thereby making it a loan that brings benefit. How can any pious person deem it permissible to entangle Muslims in such a corrupt argument? We seek Allah's protection—thus this claim is entirely invalidated.

وَنَقُولُ لَهُمْ: نَعَمْ فَكَانَ مَاذَا؟ وَمَا صَارَ قَطُّ سَلَفًا جَرَّ مَنْفَعَةً بَلْ هُوَ بَيْعٌ كَسَائِرِ الْبُيُوعِ وَلَا فَرْقَ. ثُمَّ أَيْنَ وَجَدْتُمْ الْمَنْعَ مِنْ سَلَفٍ جَرَّ مَنْفَعَةً؟ فِي أَيِّ كِتَابِ اللَّهِ عَزَّ وَجَلَّ وَجَدْتُمْ ذَلِكَ؟ أَمْ فِي أَيِّ سُنَّةٍ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ أَمْ فِي أَيِّ قَوْلِ صَاحِبٍ؟ ثُمَّ الْعَجَبُ كُلُّهُ أَنَّهُ لَيْسَ عَلَى ظَهْرِ الْأَرْضِ سَلَفٌ إلَّا وَهُوَ يَجُرُّ مَنْفَعَةً لِلْمُسْتَسْلِفِ، وَلَوْلَا أَنَّهُ يَنْتَفِعُ بِهِ مَا اسْتَسْلَفَهُ، فَمَا سَمِعْنَا بِأَبْرَدَ وَلَا بِأَغَثَّ مِنْ هَذَا الْقَوْلِ؟ ثُمَّ لَوْ كَانَ مَا ذَكَرُوا لَوَجَبَ بِذَلِكَ إبْطَالُ جَمِيعِ الْبُيُوعِ كُلِّهَا، لِأَنَّهُ لَا بَيْعَ فِي الْعَالَمِ إلَّا وَهَذِهِ الْعِلَّةُ مَوْجُودَةٌ فِيهِ، لِأَنَّهُ لَا بَيْعَ إلَّا وَمُمْكِنٌ أَنْ يُسْتَحَقَّ فَيُرَدَّ، أَوْ يُوجَدَ فِيهِ عَيْبٌ فَيُرَدَّ بِهِ، فَهَلَّا مَنَعُوا النَّقْدَ فِي كُلِّ بَيْعٍ مِنْ أَجْلِ ذَلِكَ؟ لِأَنَّهُ إذَا رَدَّ صَارَ الْبَائِعُ قَدْ رَدَّ إلَى الْمُشْتَرِي الثَّمَنَ بَعْدَ أَنْ انْتَفَعَ بِهِ فَيَصِيرُ سَلَفًا جَرَّ مَنْفَعَةً؟ وَمَا نَدْرِي كَيْفَ يَسْتَجِيزُ ذُو وَرَعٍ أَنْ يُغْرِ قَوْمًا مِنْ الْمُسْلِمِينَ بِمِثْلِ هَذَا الِاحْتِجَاجِ الْفَاسِدِ؟ وَنَسْأَلُ اللَّهَ الْعَافِيَةَ - فَسَقَطَ هَذَا الْقَوْلُ جُمْلَةً.

L21813–21815 As for Al-Shafi'i's statement prohibiting the sale of absent goods, his followers argued using the Messenger of Allah's (peace be upon him) prohibition against sales involving uncertainty (gharar), touch-based transactions (mulamasa), and throw-based transactions (munabadha). We know no foundational evidence for their position beyond this, nor any valid proof within it. For when the sale of absent goods is described based on sight, expertise, and knowledge - with verified ownership of the purchased item - where then lies the uncertainty? Should they argue: "The commodity might perish before

وَأَمَّا قَوْلُ الشَّافِعِيِّ فِي الْمَنْعِ مِنْ بَيْعِ الْغَائِبِ فَإِنَّ أَصْحَابَهُ احْتَجُّوا لَهُ بِنَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ، وَعَنْ الْمُلَامَسَةِ، وَالْمُنَابَذَةِ، لَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا أَصْلًا، وَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ بَيْعَ الْغَائِبِ إذَا وُصِفَ عَنْ رُؤْيَةٍ، وَخِبْرَةٍ، وَمَعْرِفَةٍ، وَقَدْ صَحَّ مِلْكُهُ لِمَا اشْتَرَى، فَأَيْنَ الْغَرَرُ؟ فَإِنْ قَالُوا: قَدْ تَهْلَكُ السِّلْعَةُ قَبْلَ حِينِ الْبَيْعِ فَيَقَعُ

the time of the sale, rendering the transaction invalid," we respond: "Similarly, the commodity might be lawfully claimed, rendering the sale invalid - and there is no distinction." By this reasoning, if they invalidate all sales due to this type of uncertainty, they would nullify every transaction on earth. Yet no uncertainty exists here at all, except what exists in all other sales collectively - with no distinction.

الْبَيْعُ فَاسِدًا؟ قُلْنَا: وَقَدْ تُسْتَحَقُّ السِّلْعَةُ فَيَقَعُ الْبَيْعُ فَاسِدًا وَلَا فَرْقَ فَأَبْطَلُوا بِهَذَا النَّوْعِ مِنْ الْغَرَرِ كُلَّ بَيْعٍ فِي الْأَرْضِ، فَلَا غَرَرَ هَهُنَا أَصْلًا، إلَّا كَالْغَرَرِ فِي سَائِرِ الْبُيُوعِ كُلِّهَا وَلَا فَرْقَ. وَأَمَّا الْمُنَابَذَةُ، وَالْمُلَامَسَةُ - فَرُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ [قَالَ] سَمِعْت عُبَيْدَ اللَّهِ - هُوَ ابْنُ عُمَرَ - عَنْ خُبَيْبِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ حَفْصِ بْنِ عَاصِمٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَّهُ نَهَى عَنْ بَيْعَتَيْنِ: الْمُنَابَذَةِ وَالْمُلَامَسَةِ» ، وَزَعَمَ أَنَّ الْمُلَامَسَةَ أَنْ يَقُولَ الرَّجُلُ لِلرَّجُلِ: أَبِيعُك ثَوْبِي بِثَوْبِك، وَلَا يَنْظُرُ وَاحِدٌ مِنْهُمَا إلَى ثَوْبِ الْآخَرِ وَلَكِنْ يَلْمِسُهُ لَمْسًا وَالْمُنَابَذَةُ أَنْ يَقُولَ: أَنْبِذُ مَا مَعِي وَتَنْبِذُ مَا مَعَك لِيَشْتَرِيَ أَحَدُهُمَا مِنْ الْآخَرِ، وَلَا يَدْرِي كُلُّ وَاحِدٍ مِنْهُمَا كَمْ مَعَ الْآخَرِ، وَنَحْوٌ مِنْ ذَا ".

Regarding munabadha (throw-based sales) and mulamasa (touch-based sales) - we have been narrated through Ahmad ibn Shu'ayb's chain: Muhammad ibn Abd al-A'la reported to us, al-Mu'tamir ibn Sulayman reported to us, saying: I heard Ubayd Allah (son of Umar) narrate from Khubayb ibn Abd al-Rahman, from Hafs ibn Asim, from Abu Hurayrah, that the Prophet (peace be upon him) said: "He prohibited two types of sales:" The "Munabadha" and "Mulamasa." He stated that Mulamasa occurs when a man says to another: "I sell my garment for your garment," with neither of them looking at the other's garment but merely touching it with a touch. Munabadha occurs when he says: "I cast forth what I have, and you cast forth what you have," so that one of them may buy from the other, while neither knows the quantity the other possesses, and the like of this.

L21816 From the path of Ahmad ibn Shu'ayb: He narrated from Abu Dawud al-Tayalisi, who narrated from Ya'qub ibn Ibrahim ibn Sa'd ibn Ibrahim ibn 'Abd al-Rahman ibn 'Awf, who narrated from his father, from Salih—who is Ibn Kaysan—from Ibn Shihab, that 'Amir ibn Sa'd ibn Abi Waqqas narrated to him that Abu Sa'id al-Khudri—may Allah be pleased with him—said: "The Messenger of Allah—peace and blessings of Allah be upon him—prohibited mulamasah (touch-based sale), and mulamasah is donning a garment without looking at it; and he prohibited munabadah (casting sale), and munabadah is when a man throws his garment to another before examining it by turning it over." Abu Muhammad said: "This is undeniably forbidden, and it is the interpretation of Abu Hurayrah and Abu Sa'id—may Allah be pleased with them both. They are the decisive authorities in Islamic law and the Arabic language, with no dissenting opinion regarding this interpretation. This is categorically not the sale of an absent item, but rather the sale of a

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَبُو دَاوُد الطَّيَالِسِيُّ نا يَعْقُوبُ بْنُ إبْرَاهِيمَ بْنِ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ نا أَبِي عَنْ صَالِحٍ - هُوَ ابْنُ كَيْسَانَ - عَنْ ابْنِ شِهَابٍ أَنَّ عَامِرَ بْنَ سَعْدِ بْنِ أَبِي وَقَّاصٍ أَخْبَرَهُ أَنَّ أَبَا سَعِيدٍ الْخُدْرِيِّ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْمُلَامَسَةِ، وَالْمُلَامَسَةُ لُبْسُ الثَّوْبِ لَا يَنْظُرُ إلَيْهِ - وَعَنْ الْمُنَابَذَةِ، وَالْمُنَابَذَةُ طَرْحُ الرَّجُلِ ثَوْبَهُ إلَى الرَّجُلِ قَبْلَ أَنْ يُقَلِّبَهُ» . قَالَ أَبُو مُحَمَّد: وَهَذَا حَرَامٌ بِلَا شَكٍّ، وَهَذَا تَفْسِيرُ أَبِي هُرَيْرَةَ، وَأَبِي سَعِيدٍ - رَضِيَ اللَّهُ عَنْهُمَا -، وَهُمَا الْحُجَّةُ فِي الشَّرِيعَةِ، وَاللُّغَةِ، وَلَا مُخَالِفَ لَهُمَا فِي هَذَا التَّفْسِيرِ، وَلَيْسَ هَذَا بَيْعَ غَائِبٍ أَلْبَتَّةَ، بَلْ هُوَ بَيْعُ حَاضِرٍ - فَظَهَرَ تَمْوِيهُ مَنْ احْتَجَّ مِنْهُمْ بِهَذَيْنِ الْخَبَرَيْنِ.

present item. Thus, the obfuscation of those who cited these two narrations as evidence has been exposed."

L21817 Ali said: However, these two reports serve as proof against Abū Ḥanīfah regarding his approval of selling absent and present items that are neither described nor seen.

قَالَ عَلِيٌّ: إِلَّا أَنَّ هَذَيْنِ الْخَبَرَيْنِ هُمَا حُجَّةٌ عَلَى أَبِي حَنِيفَةَ فِي إِجَازَتِهِ بَيْعَ الْغَائِبِ وَالْحَاضِرِ غَيْرَ مَوْصُوفَيْنِ وَلَا مَرْئِيَّيْنِ.

L21818 Ali said: Among what invalidates Al-Shafi'i's opinion is that Muslims have continuously exchanged estates by description, even those located in distant lands. Uthman sold his property in Khaybar to Ibn Umar – may Allah be pleased with them both – in exchange for Ibn Umar's property in Wadi al-Qura. This is a well-known matter.

قَالَ عَلِيٌّ: وَمِمَّا يُبْطِلُ قَوْلَ الشَّافِعِيِّ أَنَّهُ لَمْ يَزَلْ الْمُسْلِمُونَ يَتَبَايَعُونَ الضِّيَاعَ بِالصِّفَةِ، وَهِيَ فِي الْبِلَادِ الْبَعِيدَةِ، قَدْ بَايَعَ عُثْمَانُ ابْنَ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمْ - مَالًا لِعُثْمَانَ بِخَيْبَرَ بِمَالٍ لِابْنِ عُمَرَ بِوَادِي الْقُرَى، وَهَذَا أَمْرٌ مَشْهُورٌ.

L21819 What if they cite the Prophet's prohibition—may the peace and blessings of Allah be upon him—against selling what is not in your possession?

فَإِنْ احْتَجُّوا بِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ مَا لَيْسَ عِنْدَكَ؟ .

L21820 We said: Yes, and the absent item is considered to be in the seller's possession, not from what is not in his possession. For there is no dispute in the Arabic language regarding the correctness of the speaker's claim when stating: "I have estates," "I have houses," "I have slaves and possessions"—whether absent or present—provided all such items are under his ownership. What is not considered to be in a person's possession is exclusively what he does not own, even if it is physically held by him.

قُلْنَا: نَعَمْ، وَالْغَائِبُ هُوَ عِنْدَ بَائِعِهِ لَا مِمَّا لَيْسَ عِنْدَهُ، لِأَنَّهُ لَا خِلَافَ فِي لُغَةِ الْعَرَبِ فِي صِدْقِ الْقَائِلِ: عِنْدِي ضِيَاعٌ، وَعِنْدِي دُورٌ، وَعِنْدِي رَقِيقٌ وَمَتَاعٌ - غَائِبٌ وَحَاضِرٌ - إذَا كَانَ كُلُّ ذَلِكَ فِي مِلْكِهِ، وَإِنَّمَا لَيْسَ عِنْدَ الْمَرْءِ مَا لَيْسَ فِي مِلْكِهِ فَقَطْ، وَإِنْ كَانَ فِي يَدِهِ.

L21821–21822 The proof of the invalidity of Al-Shāfiʿī's opinion is this: the statement of Allah, the Exalted: {Allah has permitted trade} [Al-Baqarah: 275], and His statement: {Do not consume your wealth among yourselves wrongfully, unless it is a transaction by mutual consent from you} [An-Nisā': 29].[1]

وَالْبُرْهَانُ عَلَى فَسَادِ قَوْلِ الشَّافِعِيِّ هَذَا هُوَ قَوْلُ اللَّهِ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] . وقَوْله تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

L21823 The sale of an unseen item is a sale included in what Allah the Exalted has permitted and within transactions mutually agreed upon by both parties. All of this is lawful except for a sale prohibited by Allah the Exalted on the tongue of His Messenger (peace and blessings of Allah be upon him) in the Qur'an and the established Sunnah.

فَبَيْعُ الْغَائِبِ بَيْعٌ دَاخِلٌ فِيمَا أَحَلَّهُ اللَّهُ تَعَالَى، وَفِي التِّجَارَةِ الَّتِي يَتَرَاضَى بِهَا الْمُتَبَايِعَانِ، فَكُلُّ ذَلِكَ حَلَالٌ إلَّا بَيْعًا حَرَّمَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْقُرْآنِ، وَالسُّنَّةِ الثَّابِتَةِ.

[1] **Qur'an references (L21822):** Qur'an 2:275 (Al-Baqarah); Qur'an 4:29 (An-Nisa).

وَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يَكُونَ اللَّهُ تَعَالَى يُحَرِّمُ عَلَيْنَا بَيْعًا مِنْ الْبُيُوعِ فَيُجْمِلُ لَنَا إبَاحَةَ الْبَيْعِ جُمْلَةً وَلَا يُبَيِّنُهُ لَنَا عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَأْمُورِ بِالْبَيَانِ، هَذَا أَمْرٌ قَدَّمْنَاهُ - وَلِلَّهِ تَعَالَى الْحَمْدُ - لِقَوْلِهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] . وَلَيْسَ فِي وُسْعِنَا أَنْ نَعْرِفَ مَا حَرَّمَ اللَّهُ عَلَيْنَا، وَمَا أَحَلَّهُ لَنَا، وَمَا أَوْجَبَهُ عَلَيْنَا، إلَّا بِوُرُودِ النَّصِّ بِذَلِكَ، وَمَا نَعْلَمُ لِلشَّافِعِيِّ فِي الْمَنْعِ مِنْ بَيْعِ الْغَائِبَاتِ الْمَوْصُوفَاتِ سَلَفًا.

L21824 Among the certainly false matters is that Allah the Exalted would forbid us a specific sale while permitting sales collectively without clarifying it through the tongue of His Prophet—peace be upon him—who was commanded to explain. This is a matter we have previously established—praise be to Allah the Exalted—due to His saying: {Allah does not burden a soul beyond its capacity} [Al-Baqarah: 286]. It is not within our capacity to know what Allah has forbidden for us, permitted for us, or obligated upon us except through the arrival of a revealed text. We find no precedent from earlier scholars regarding Al-Shāfiʿī's stance on prohibiting the sale of unseen, pre-described items.[2]

فَإِنْ قِيلَ: فَأَيْنَ قَوْلُ الْحَكَمِ، وَحَمَّادٍ، الَّذِي رَوَيْتُمُوهُ آنِفًا؟ قُلْنَا: إنَّهُمَا لَمْ يَمْنَعَا مِنْ بَيْعِ الْغَائِبِ، وَإِنَّمَا مَنَعَا مِنْ بَيْعِ مَا لَمْ يَرَهُ الْمُشْتَرِي يَوْمَ الشِّرَاءِ - وَقَدْ يَرَاهُ فِي أَوَّلِ النَّهَارِ وَيَغِيبُ بَعْدَ ذَلِكَ - فَلَمْ يَشْتَرِطَا حُضُورَهُ فِي حِينِ عَقْدِ الْبَيْعِ، وَلَا يَحِلُّ أَنْ يَقُولَ أَحَدٌ مَا لَمْ يَقُلْ بِالظَّنِّ الْكَاذِبِ وَبِاَللَّهِ التَّوْفِيقُ.

L21825 If it is said: Then where is the statement of Al-Hakam and Hammad, which you narrated earlier? We say: They did not prohibit the sale of an absent item, but rather prohibited the sale of what the buyer did not see on the day of purchase—though he may see it at the beginning of the day and it becomes absent afterward. Thus, they did not stipulate its presence at the time of concluding the sale, nor is it permissible for anyone to assert what they did not say based on false presumption. And success is from Allah.

قَالَ عَلِيٌّ: فَسَقَطَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا، وَبَقِيَ قَوْلُ مَنْ أَوْجَبَ خِيَارَ الرُّؤْيَةِ جُمْلَةً عَلَى مَا رُوِّينَا عَنْ إبْرَاهِيمَ، وَالْحَسَنِ، وَالشَّعْبِيِّ، وَمَكْحُولٍ، وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ، فَوَجَدْنَاهُمْ يَذْكُرُونَ أَثَرًا رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ الْحَسَنِ بْنِ حَيٍّ عَنْ الْحَسَنِ الْبَصْرِيِّ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ اشْتَرَى بَيْعًا فَهُوَ بِالْخِيَارِ حَتَّى يَنْظُرَ إلَيْهِ» .

L21826 Ali said: All these opinions were rejected, and the view of those who universally upheld the option of inspection remained—as we have reported from Ibrāhīm, al-Ḥasan, al-Shaʿbī, Makhūl, and one of the two positions of al-Shāfiʿī. We found them citing a tradition we reported through the chain of Wakīʿ, from al-Ḥasan ibn Ḥayyin, from al-Ḥasan al-Baṣrī: "The Messenger of Allah—peace and blessings of Allah be upon him—said: 'Whoever buys something retains the option until he sees it.'"

قَالَ أَبُو مُحَمَّد: وَهَذَا مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ، ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ: أَنَّ لَهُ الْخِيَارَ إذَا وَجَدَهُ كَمَا وُصِفَ لَهُ، وَظَاهِرُهُ قَطْعُ الْخِيَارِ بِالنَّظَرِ، فَهُوَ مُخَالِفٌ لِقَوْلِ أَبِي حَنِيفَةَ جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -.

L21827 Abū Muḥammad said: This is a mursal, and no valid proof exists in a mursal. Furthermore, even if it were authentic, it would not constitute evidence for their position, because it does not state that he has the option if he finds it as described. Its apparent meaning indicates the termination of the option upon inspection. Thus, it entirely contradicts the view of Abū Ḥanīfah—and success is from Allah, the Exalted.

[2] **Qur'an references (L21824):** Qur'an 2:286 (Al-Baqarah).

وَهَذَا مِمَّا تَرَكَهُ الْمَالِكِيُّونَ، وَهُمْ يَقُولُونَ بِالْمُرْسَلِ، لِأَنَّهُمْ لَا يَجْعَلُونَ لَهُمْ خِيَارًا قَبْلَ أَنْ يَرَاهُ أَصْلًا. وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ إِسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي مَرْيَمَ عَنْ مَكْحُولٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ اشْتَرَى شَيْئًا لَمْ يَرَهُ فَهُوَ بِالْخِيَارِ إِذَا رَآهُ، إِنْ شَاءَ أَخَذَهُ، وَإِنْ شَاءَ رَدَّهُ» . وَإِسْمَاعِيلُ ضَعِيفٌ، وَأَبُو بَكْرِ بْنُ مَرْيَمَ مَذْكُورٌ بِالْكَذِبِ، وَمُرْسَلٌ مَعَ ذَلِكَ، ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ يَحْتَمِلُ أَنْ يُرِيدَ لَهُ رَدَّهُ إِنْ وَجَدَهُ بِخِلَافِ مَا وُصِفَ لَهُ.

This is among what the Malikis have rejected, as they uphold the *mursal*—a hadith with an incomplete chain—since they do not grant the buyer an option before seeing the item as a fundamental principle. They cited what was narrated to us through the chain of Sa'īd ibn Manṣūr from Ismā'īl ibn 'Ayyāsh from Abū Bakr ibn 'Abd Allāh ibn Abī Maryam from Makhūl: "The Messenger of Allah, peace and blessings be upon him, said: 'Whoever buys something he has not seen has the option when he sees it: if he wishes, he may keep it or return it.'" Ismā'īl is weak (in narration), and Abū Bakr ibn 'Abd Allāh ibn Abī Maryam is noted for dishonesty, in addition to the hadith being *mursal*. Furthermore, even if it were authentic, it would not serve as proof for them, because it could be interpreted to mean that the buyer may return it if he finds it contrary to what was described to him.

[مَسْأَلَةٌ وَجَدَ مُشْتَرِي السِّلْعَةِ الْغَائِبَةِ مَا اشْتَرَى كَمَا وُصِفَ لَهُ]

A case: The buyer of the unseen commodity found the purchased item as it had been described to him.

١٤١٢ - مَسْأَلَةٌ: فَإِنْ وَجَدَ مُشْتَرِي السِّلْعَةِ الْغَائِبَةِ مَا اشْتَرَى كَمَا وُصِفَ لَهُ فَالْبَيْعُ لَهُ لَازِمٌ، وَإِنْ وَجَدَهُ بِخِلَافِ ذَلِكَ فَلَا بَيْعَ بَيْنَهُمَا إِلَّا بِتَجْدِيدِ صِفَةٍ أُخْرَى بِرِضَاهُمَا جَمِيعًا.

1412. Legal Case: If the buyer of an absent commodity discovers the purchased item matches its description, the sale remains legally binding. If he finds it contrary to the description, no sale exists between them unless they establish a new description by mutual consent.

بُرْهَانُ ذَلِكَ -: أَنَّهُ اشْتَرَى شِرَاءً صَحِيحًا إِذَا وَجَدَ الصِّفَةَ كَمَا اشْتَرَى كَمَا ذَكَرْنَا آنِفًا، فَإِنْ وَجَدَ الصِّفَةَ بِخِلَافِ مَا عُقِدَ الِابْتِيَاعُ عَلَيْهِ فَبِيَقِينٍ نَدْرِي أَنَّهُ لَمْ يَشْتَرِ تِلْكَ السِّلْعَةَ الَّتِي وَجَدَ، لِأَنَّهُ اشْتَرَى سِلْعَةً بِصِفَةِ كَذَا، لَا سِلْعَةً بِالصِّفَةِ الَّتِي وَجَدَ، فَالَّتِي وَجَدَ غَيْرُ الَّتِي اشْتَرَى بِلَا شَكٍّ مِنْ أَحَدٍ فَإِنْ لَمْ يَشْتَرِهَا فَلَيْسَتْ لَهُ.

The proof of this is that his purchase remains valid if he finds the commodity with the attributes as stipulated in the contract, as we previously mentioned. If he finds attributes contradicting those upon which the sale contract was established, we know with certainty - as agreed by all - that he did not purchase that commodity he encountered. For he purchased a commodity with specified attributes, not one possessing the attributes he discovered. Therefore, what he found is unquestionably distinct from what he purchased. If he did not purchase it, the commodity does not belong to him.

فَإِنْ قِيلَ: فَأَلْزِمُوا الْبَائِعَ إِحْضَارَ سِلْعَةٍ بِالصِّفَةِ الَّتِي بَاعَ؟ قُلْنَا: لَا يَحِلُّ هَذَا، لِأَنَّهُ إِنَّمَا بَاعَ عَيْنًا مُعَيَّنَةً لَا صِفَةً مَضْمُونَةً، فَلَا يَجُوزُ إِلْزَامُهُ إِحْضَارَ مَا لَمْ يَبِعْ - فَصَحَّ أَنَّ

If it is said: "[Objection:] Then obligate the seller to produce a commodity according to the description with which he sold it?" We respond: This is impermissible, for he sold only a specific entity, not a warranted attribute. Thus, it is invalid to compel him to produce what he did not sell. Hence, it is confirmed that his contract is invalid because it did not pertain to anything at

all. Success is from Allah, the Exalted. This is the opinion of Abū Sulaymān and others.

A ruling on the sale of something from absent items without a detailed description.

Issue 1413: If an item from unseen goods is sold without description - neither being something the seller has known through sight nor through a credible account from one who saw the sold item, nor being something the seller has made known to the buyer through sight or a credible description - then the sale is inherently void and perpetually annulled, with no validity to the contract whatsoever.

It is permissible for a person to purchase what the seller has described to him, whether he believed him or did not believe him.

It is permissible for a person to sell what the buyer has described to him—whether the seller confirms the description or not. If the sold item is found to match that description, the sale is binding. If it is found contrary to it, the sale is unequivocally invalid.

The Hanafis permitted the sale of an unknown, undescribed object, stipulating within it the option of inspection, as we mentioned. Our statement that it is impermissible unless knowledge of its description exists is the view of Malik in some cases of this matter, or the opinion of Abu Sulayman and others besides these two.

Abu Muhammad said: The Hanafis argued for their position by citing the established report from the Messenger of Allah—peace and blessings be upon him—that he "prohibited selling grain before it hardens." They stated: This implies the permissibility of selling it after it has hardened while still in its husks, though no one has seen it and its characteristics remain unknown.

Ali said: This is among the deceptions they contrived, creating the illusion of it being proof for their position - though it is not - for this narration contains only the prohibition of selling grain before hardening, without permitting its sale after hardening nor prohibiting it. Marvel at these people's

عَقْدَهُ فَاسِدٌ، لِأَنَّهُ لَمْ يَقَعْ عَلَى شَيْءٍ أَصْلًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ - وَهَذَا قَوْلُ أَبِي سُلَيْمَانَ وَغَيْرِهِ.

[مَسْأَلَةٌ بَيْعِ شَيْءٌ مِنْ الْغَائِبَاتِ بِغَيْرِ صِفَةٍ]

١٤١٣ - مَسْأَلَةٌ: فَإِنْ بِيعَ شَيْءٌ مِنْ الْغَائِبَاتِ بِغَيْرِ صِفَةٍ وَلَمْ يَكُنْ مِمَّا عَرَفَهُ الْبَائِعُ لَا بِرُؤْيَةٍ وَلَا بِصِفَةِ مَنْ يُصَدَّقُ مِمَّنْ رَأَى مَا بَاعَهُ وَلَا مِمَّا عَرَّفَهُ لِلْمُشْتَرِي بِرُؤْيَةٍ، أَوْ بِصِفَةِ مَنْ يُصَدَّقُ، فَالْبَيْعُ فَاسِدٌ مَفْسُوخٌ أَبَدًا، لَا خِيَارَ فِي جَوَازِهِ أَصْلًا.

وَيَجُوزُ ابْتِيَاعُ الْمَرْءِ مَا وَصَفَهُ لَهُ الْبَائِعُ صَدَّقَهُ - أَوْ لَمْ يُصَدِّقْهُ.

وَيَجُوزُ بَيْعُ الْمَرْءِ مَا وَصَفَهُ لَهُ الْمُشْتَرِي - صَدَّقَهُ أَوْ لَمْ يُصَدِّقْهُ - فَإِنْ وَجَدَ الْمَبِيعَ بِتِلْكَ الصِّفَةِ، فَالْمَبِيعُ لَازِمٌ، وَإِنْ وَجَدَ بِخِلَافِهَا، فَالْمَبِيعُ بَاطِلٌ وَلَا بُدَّ.

وَأَجَازَ الْحَنَفِيُّونَ بَيْعَ الْعَيْنِ الْمَجْهُولَةِ غَيْرِ الْمَوْصُوفَةِ، وَجَعَلُوا فِيهَا خِيَارَ الرُّؤْيَةِ، كَمَا ذَكَرْنَا - وَقَوْلُنَا فِي أَنَّهُ لَا يَجُوزُ إِلَّا بِمَعْرِفَةِ وَصْفِهِ: هُوَ قَوْلُ مَالِكٍ فِي بَعْضِ ذَلِكَ، أَوْ قَوْلُ أَبِي سُلَيْمَانَ، وَغَيْرِهِمَا.

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ الْحَنَفِيُّونَ لِقَوْلِهِمْ بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ «نَهَى عَنْ بَيْعِ الْحَبِّ قَبْلَ أَنْ يَشْتَدَّ» ، قَالُوا: فَفِي هَذَا إبَاحَةُ بَيْعِهِ بَعْدَ اشْتِدَادِهِ وَهُوَ فِي أَكْمَامِهِ بَعْدُ لَمْ يَرَهُ أَحَدٌ وَلَا تُدْرَى صِفَتُهُ.

قَالَ عَلِيٌّ: وَهَذَا مِمَّا مَوَّهُوا بِهِ وَأَوْهَمُوا أَنَّهُ حُجَّةٌ لَهُمْ، وَلَيْسَ كَذَلِكَ، لِأَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ إِلَّا النَّهْيُ عَنْ بَيْعِهِ قَبْلَ اشْتِدَادِهِ فَقَطْ، وَلَيْسَ فِيهِ إبَاحَةُ بَيْعِهِ بَعْدَ اشْتِدَادِهِ، وَلَا

audacity against Allah Almighty through falsehood, as they cite this narration to support what it contains not a single trace of, while opposing its explicit text by permitting grain sales before hardening on the condition of immediate possession. How misguided this approach is!

Abu Muhammad said: Another wonder is their fabrication in this narration by inserting what contains neither explicit text nor trace regarding permitting grain sales after hardening. Not content with this grave error, they mandated through this narration what has no mention or allusion whatsoever: selling unseen items whose attributes are unknown to both seller and buyer, undescribed by anyone. Then they swiftly nullified this like the blink of an eye, prohibiting ram's meat before slaughter, date pits without dates before consumption, olive oil before pressing, and milk in udders - arguing these involve uncertainty in attributes. This constitutes deception and trifling with religion - we seek Allah's refuge from such.

Ali said: We permit the sale of grain after it has hardened as it is in its husks with its husks; the sale of a ram alive and slaughtered - the entirety of its meat with its skin; the sale of a sheep with the milk present in its udder; and the sale of The pits are with the dates because all of it is visibly apparent. It is not permissible to sell them without their spathes, as they are unknown—no one can ascertain their attributes. Similarly, it is not permissible to sell meat without the hide, pits without the dates, or milk without the sheep.

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Abu Muhammad said: The sale of all such [items] before their manifestation cannot occur without the production being stipulated either on the seller, the buyer, both of them, someone else, or no one. If the stipulation is on the seller or the buyer, this constitutes a sale with an unknown price or a hire contract with unknown compensation—and this is invalid. For sale is not permissible—by the explicit text of the Quran—except through mutual consent, and mutual consent, by necessary perception, is only possible with

L21845

الْمَنْعُ مِنْ ذَلِكَ؟ فَاعْجَبُوا لِجُرْأَةِ هَؤُلَاءِ الْقَوْمِ عَلَى اللَّهِ تَعَالَى بِالْبَاطِلِ، إذْ احْتَجُّوا بِهَذَا الْخَبَرِ مَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ، وَخَالَفُوهُ فِيمَا جَاءَ فِيهِ نَصٌّ، فَهُمْ يُجِيزُونَ بَيْعَ الْحَبِّ قَبْلَ أَنْ يَشْتَدَّ عَلَى شَرْطِ الْقَطْعِ، فَيَا لَضَلَالِ هَذِهِ الطَّرِيقَةُ قَالَ أَبُو مُحَمَّدٍ: وَعَجَبٌ آخَرُ -: أَنَّهُمْ كَذَبُوا فِي هَذَا الْخَبَرِ فَأَقْحَمُوا فِيهِ مَا لَيْسَ فِيهِ مِنْهُ نَصٌّ وَلَا أَثَرٌ مِنْ إبَاحَةِ بَيْعِ الْحَبِّ بَعْدَ أَنْ يَشْتَدَّ، ثُمَّ لَمْ يَقْنَعُوا بِهَذِهِ الطَّامَّةِ حَتَّى أَوْجَبُوا بِهَذَا الْخَبَرِ مَا لَيْسَ فِيهِ لَهُ ذِكْرٌ وَلَا إشَارَةٌ إلَيْهِ بِوَجْهٍ مِنْ الْوُجُوهِ: مِنْ بَيْعِ الْغَائِبَاتِ الَّتِي لَا تُعْرَفُ صِفَاتُهَا، وَلَا عَرَفَهَا الْبَائِعُ، وَلَا الْمُشْتَرِي، وَلَا وَصَفَهَا لَهُمَا أَحَدٌ، ثُمَّ لَمْ يَلْبَثُوا أَنْ نَقَضُوا ذَلِكَ كَكَرَّةِ الطَّرْفِ فَحَرَّمُوا بَيْعَ لَحْمِ الْكَبْشِ قَبْلَ ذَبْحِهِ، وَالنَّوَى دُونَ التَّمْرِ قَبْلَ أَكْلِهِ، وَبَيْعَ الزَّيْتِ فِي الزَّيْتُونِ قَبْلَ عَصْرِهِ، وَبَيْعَ الْأَلْبَانِ فِي الضُّرُوعِ - وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّهُ كُلُّهُ مَجْهُولٌ لَا تُدْرَى صِفَتُهُ، وَهَذَا مُوقٍ وَتَلَاعُبٍ بِالدِّينِ - وَنَعُوذُ بِاَللَّهِ مِنْ مِثْلِهِ.

قَالَ عَلِيٌّ: وَنَحْنُ نُجِيزُ بَيْعَ الْحَبِّ بَعْدَ اشْتِدَادِهِ كَمَا هُوَ فِي أَكْمَامِهِ بِأَكْمَامِهِ، وَبَيْعَ الْكَبْشِ حَيًّا وَمَذْبُوحًا كُلِّهِ لَحْمِهِ مَعَ جِلْدِهِ، وَبَيْعَ الشَّاةِ بِمَا فِي ضَرْعِهَا مِنْ اللَّبَنِ، وَبَيْعَ النَّوَى مَعَ التَّمْرِ، لِأَنَّهُ كُلَّهُ ظَاهِرٌ مَرْئِيٌّ - وَلَا يَحِلُّ بَيْعُهُ دُونَ أَكْمَامِهِ، لِأَنَّهُ مَجْهُولٌ لَا يَدْرِي أَحَدٌ صِفَتَهُ، وَلَا بَيْعُ اللَّحْمِ دُونَ الْجِلْدِ، وَلَا النَّوَى دُونَ التَّمْرِ، وَلَا اللَّبَنِ دُونَ الشَّاةِ كَذَلِكَ.

قَالَ أَبُو مُحَمَّدٍ: وَلَا يَخْلُو بَيْعُ كُلِّ ذَلِكَ قَبْلَ ظُهُورِهِ مِنْ أَنْ يَكُونَ إخْرَاجُهُ مُشْتَرَطًا عَلَى الْبَائِعِ، أَوْ عَلَى الْمُشْتَرِي، أَوْ عَلَيْهِمَا، أَوْ عَلَى غَيْرِهِمَا، أَوْ لَا عَلَى أَحَدٍ، فَإِنْ كَانَ مُشْتَرَطًا عَلَى الْبَائِعِ، أَوْ عَلَى الْمُشْتَرِي: فَهُوَ بَيْعٌ بِثَمَنٍ مَجْهُولٍ وَإِجَارَةٌ بِثَمَنٍ مَجْهُولٍ - وَهَذَا بَاطِلٌ؛

what is known, not what is unknown. Similarly, the same applies if the stipulation is on both of them or on someone else.

L21846 Moreover, every condition not stipulated in the Book of Allah the Exalted is invalid. If a condition is not stipulated upon anyone, it constitutes wrongful appropriation of wealth in reality, because the purchaser does not obtain what he purchased. Ali said: "The proof for the invalidity of selling what is not known through visual inspection or description lies in the authenticity of the Prophet's prohibition (peace and blessings be upon him) against the sale of uncertainty (gharar)." This constitutes the essence of gharar, for one does not know what he has bought or sold.

L21847 The statement of Allah, the Most High: {Except when it is trade by mutual consent among you} [An-Nisa: 29]. It is fundamentally impossible for mutual consent to occur regarding something whose quantity or attributes are unknown. We distinguished between two matters: (1) the description given by the seller to the buyer or the buyer to the seller—whether one of them believes the other or not—in which case we permitted the sale based on that, and (2) the description given by someone other than these two parties, which we did not permit unless the one being described confirms it. This distinction exists because the sale is based on the description given by the seller to the buyer or the buyer to the seller, and through this description their mutual consent occurs. If the sold item is later found to match that description, we know the sale was concluded rightfully and according to what validates mutual consent; otherwise, it is not valid.[3]

L21848 If someone other than the two parties described the item to them, and the recipient of the description did not believe the describer, then the sale here did not occur based on any description whatsoever. Consequently, the contract was concluded on an unknown on the part of one of them or both - and this is forbidden and impermissible. But if the describer was someone whom the recipient believed, then this affirmation necessitates knowledge.

[3]**Qur'an references (L21847):** Qur'an 4:29 (An-Nisa).

لِأَنَّ الْبَيْعَ لَا يَحِلُّ - بِنَصِّ الْقُرْآنِ - إلَّا بِالتَّرَاضِي، وَالتَّرَاضِي بِضَرُورَةِ الْحِسِّ لَا يُمْكِنُ أَنْ يَكُونَ إلَّا بِمَعْلُومٍ لَا بِمَجْهُولٍ، فَكَذَلِكَ إنْ كَانَ مُشْتَرَطًا عَلَيْهِمَا، أَوْ عَلَى غَيْرِهِمَا.

وَأَيْضًا: فَإِنَّ كُلَّ ذَلِكَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، فَإِنْ لَمْ يَشْتَرِطْ عَلَى أَحَدٍ فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ حَقًّا؛ لِأَنَّهُ لَا يَصِلُ إلَى أَخْذِ مَا اشْتَرَاهُ؟ قَالَ عَلِيٌّ: وَالْبُرْهَانُ عَلَى بُطْلَانِ بَيْعِ مَا لَمْ يُعْرَفْ بِرُؤْيَةٍ وَلَا بِصِفَةٍ: صِحَّةُ «نَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ» وَهَذَا عَيْنُ الْغَرَرِ، لِأَنَّهُ لَا يَدْرِي مَا اشْتَرَى أَوْ بَاعَ.

وَقَوْلُ اللَّهِ، تَعَالَى: {إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] . وَلَا يُمْكِنُ أَصْلًا وُقُوعُ التَّرَاضِي عَلَى مَا لَا يُدْرَى قَدْرُهُ وَلَا صِفَاتُهُ، وَإِنَّمَا فَرَّقْنَا بَيْنَ صِفَةِ الْبَائِعِ لِلْمُشْتَرِي، أَوْ الْمُشْتَرِي لِلْبَائِعِ - صَدَّقَ أَحَدُهُمَا الْآخَرَ أَوْ لَمْ يُصَدِّقْهُ - فَأَجَزْنَا الْبَيْعَ بِذَلِكَ وَبَيْنَ صِفَةِ غَيْرِهِمَا، فَلَمْ يُجِزْهُ إلَّا مِمَّنْ يُصَدِّقُهُ الْمَوْصُوفُ لَهُ، فَلِأَنَّ صِفَةَ الْبَائِعِ لِلْمُشْتَرِي، أَوْ صِفَةَ الْمُشْتَرِي لِلْبَائِعِ عَلَيْهَا وَقَعَ الْبَيْعُ، وَبِهَا تَرَاضَيَا، فَإِنْ وَجَدَ الْمَبِيعَ كَذَلِكَ عَلِمْنَا أَنَّ الْبَيْعَ وَقَعَ صَحِيحًا عَلَى حَقٍّ وَعَلَى مَا يَصِحُّ بِهِ التَّرَاضِي وَإِلَّا فَلَا.

وَأَمَّا إذَا وَصَفَهُ لَهُمَا غَيْرُهُمَا مِمَّنْ لَا يُصَدِّقُهُ الْمَوْصُوفُ لَهُ فَإِنَّ الْبَيْعَ هَهُنَا لَمْ يَقَعْ عَلَى صِفَةٍ أَصْلًا، فَوَقَعَ الْعَقْدُ عَلَى مَجْهُولٍ مِنْ أَحَدِهِمَا أَوْ مِنْ كِلَيْهِمَا - وَهَذَا حَرَامٌ لَا يَحِلُّ. فَإِنْ وَصَفَهُ مَنْ صَدَّقَهُ الْمَوْصُوفُ لَهُ، فَالتَّصْدِيقُ يُوجِبُ الْعِلْمَ، فَإِنَّمَا اشْتَرَى مَا عَلِمَ، أَوْ بَاعَ الْبَائِعُ مَا عَلِمَ، فَالْعَقْدُ صَحِيحٌ، وَالتَّرَاضِي صَحِيحٌ.

Thus, the buyer purchased what he knew, or the seller sold what he knew, making both the contract and the mutual consent valid.

فَإِنْ وَجَدَ الْمَبِيعَ كَذَلِكَ عَلِمَ أَنَّ الْبَيْعَ انْعَقَدَ عَلَى صِحَّةٍ، وَإِنْ وَجَدَ بِخِلَافِ ذَلِكَ عَلِمَ أَنَّ الْبَيْعَ لَمْ يَنْعَقِدْ عَلَى صِحَّةٍ، كَمَا لَوْ وَجَدَهُ قَدْ اسْتَحَالَ عَمَّا عَرَفَهُ عَلَيْهِ وَلَا فَرْقَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L21849–21851 If he finds the subject matter of the sale as described, he knows the sale was validly concluded; but if he finds it contrary to that description, he knows the sale is invalid. He knew the sale had not been validly concluded, just as if he discovered it had become legally invalid contrary to what he had known, with no distinction between the two cases—and success comes from Allah, the Exalted.

[مَسْأَلَةُ بَيْعُ الثَّوْبِ الْوَاحِدِ الْمَطْوِيِّ]

L21852

Issue on the Sale of a Single Folded Garment

١٤١٤ - مَسْأَلَةٌ: وَجَائِزٌ بَيْعُ الثَّوْبِ الْوَاحِدِ الْمَطْوِيِّ، أَوْ فِي جِرَابِهِ، أَوْ الثِّيَابِ الْكَبِيرَةِ كَذَلِكَ، إذَا وَصَفَ كُلَّ ذَلِكَ، فَإِنْ وَجَدَ كُلَّ ذَلِكَ كَمَا وَصَفَ فَالْبَيْعُ لَازِمٌ، وَإِلَّا فَالْبَيْعُ بَاطِلٌ.

L21853 Issue 1414: It is permissible to sell a single folded garment, or one in its bag, or large garments in the same manner, provided it is described in all those aspects. If all those aspects are found as described, the sale is binding; otherwise, the sale is invalid.

قَالَ عَلِيٌّ: التَّفْرِيقُ بَيْنَ الْوَاحِدِ، وَالْكَثِيرِ، خَطَأٌ، وَلَيْسَ إلَّا حَرَامٌ، فَقَلِيلُهُ وَكَثِيرُهُ حَرَامٌ، أَوْ حَلَالٌ، فَقَلِيلُهُ وَكَثِيرُهُ حَلَالٌ - وَهَذَا بِعَيْنِهِ هَوَّلُوا وَشَنَّعُوا عَلَى الْحَنَفِيِّينَ فِي إبَاحَتِهِمْ قَلِيلَ الْمُسْكِرِ وَتَحْرِيمِهِمْ كَثِيرَهُ، وَلَا يُقْبَلُ مِثْلُ هَذَا إلَّا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، وَمَا نَعْلَمُ لَهُمْ شَيْئًا شَغَبُوا بِهِ إلَّا أَنَّهُمْ قَالُوا: أَمْرُ الثَّوْبِ الْوَاحِدِ يَسْهُلُ نَشْرُهُ وَتَقْلِيبُهُ وَطَيُّهُ، وَهَذَا يَصْعُبُ فِي الْكَثِيرِ؟ فَقُلْنَا لَهُمْ: وَأَيْنَ وَجَدْتُمْ هَذِهِ الشَّرِيعَةَ أَنْ تَكُونَ صُعُوبَةُ الْعَمَلِ تُبِيحُ الْمُحَرَّمَاتِ، وَالْبُيُوعَ الْمُحَرَّمَةَ؟ ثُمَّ نَقُولُ لَهُمْ: مَا تَقُولُونَ فِي ثَوْبَيْنِ مُدْرَجَيْنِ فِي جِرَابٍ أَوْ جِرَابَيْنِ؟ فَإِنْ أَبَاحُوا ذَلِكَ، سَأَلْنَاهُمْ عَنْ الثَّلَاثَةِ، ثُمَّ عَنْ الْأَرْبَعَةِ، ثُمَّ نَزِيدُهُمْ هَكَذَا، وَاحِدًا فَوَاحِدًا؟ فَإِنْ حَرَّمُوا سَأَلْنَاهُمْ عَنْ الدَّلِيلِ عَلَى تَحْلِيلِ مَا أَحَلُّوا مِنْ ذَلِكَ وَتَحْرِيمِ مَا حَرَّمُوا، وَعَنْ الدَّلِيلِ عَلَى صُعُوبَةِ مَا جَعَلُوهُ لِصُعُوبَتِهِ حَلَالًا، وَعَلَى سُهُولَةِ مَا جَعَلُوهُ لِسُهُولَتِهِ حَرَامًا وَهَذَا مَا لَا سَبِيلَ إلَيْهِ.

L21854 Ali said: Differentiating between the single and the multiple is erroneous, for there is only prohibition—so both its small and large quantities are prohibited—or permissibility—so both its small and large quantities are permissible. This precise issue is what they magnified and censured the Hanafis for, concerning their allowance of a small quantity of intoxicants while prohibiting their large quantity. Such differentiation cannot be accepted except from the Messenger of Allah—peace and blessings be upon him—alone. We know of no substantive objection they raised except their statement: "The matter of a single garment is easy to spread, turn over, and fold, whereas this becomes difficult with many garments." We responded: Where did you find this legal principle that difficulty in action permits prohibited matters and unlawful transactions? Then we ask them: What is your ruling on two garments rolled up in one sack or two sacks? If they permit this, we question them about three garments, then four, incrementally increasing the number. If they prohibit it, we demand evidence for the permissibility they granted, evidence for the prohibition they imposed, evidence for the difficulty they

cited to justify permissibility, and evidence for the ease they cited to justify prohibition. This is untenable.

L21855 Moreover, for many garments, spreading them out and folding them is easier than spreading and folding a single garment. This is a matter known by necessity, such as the Mervi fabric imported from Baghdad, which no one can refold after it has been spread out except one in a thousand. The legal ruling in this matter is based on validating mutual consent through knowledge of its attributes and the elimination of gharar (excessive uncertainty) in the sales contract solely from uncertainty. And success comes from Allah, the Exalted.

L21856 **The jurisprudential issue of deferred payment sale to a specified term.**

L21857 Issue 1415: It is obligatory for both parties in any sale transaction—whether minor or substantial—to have their exchange witnessed by two just men from among the just, or one just man and two just women from among the just. If they cannot find just witnesses, the obligation of testimony is nullified as we previously explained. If they fail to secure witnesses while being capable of doing so, both parties have disobeyed Allah the Almighty, though the sale remains legally valid.

L21858–21859 If the sale involves a price payable at a specified term, it is a farḍ (obligation) upon both parties - along with the stipulated witnessing - to document it. If they do not document it, they have indeed disobeyed Allah, the Exalted and Majestic, and the sale remains valid.

L21860 If they both are unable to find a scribe, the obligation of the written contract is waived from them both.

L21861 The evidence for this is the statement of Allah, the Most High: "O you who believe, when you contract a debt for a specified term, document it. Let a scribe write between you with justice. Let no scribe refuse to write as Allah has taught him; let him write, and let the one liable for the right dictate. Let him fear Allah, his Lord, and not diminish anything from it. If the liable party is immature, weak, or incapable of dictating, let his guardian dictate with justice. Appoint two witnesses from your men. If two men are not available, then one man and two women from those you approve

وَأَيْضًا: فَرُبَّ ثِيَابٍ يَكُونُ نَشْرُهَا وَطَيُّهَا أَسْهَلَ مِنْ نَشْرِ ثَوْبٍ وَاحِدٍ وَطَيِّهِ، هَذَا أَمْرٌ يُعْرَفُ ضَرُورَةً، كَالْمَرْوِيِّ الْمَجْلُوبِ مِنْ بَغْدَادَ الَّذِي لَا يَقْدِرُ عَلَى إِعَادَةِ طَيِّهِ بَعْدَ نَشْرِهِ إِلَّا وَاحِدٌ بَيْنَ أُلُوفٍ، وَإِنَّمَا الْحُكْمُ فِي ذَلِكَ كَوُجُوهِ صِحَّةِ التَّرَاضِي بِعِلْمِهَا بِالصِّفَةِ، وَارْتِفَاعِ الْغَرَرِ فِي عَقْدِ الْبَيْعِ عَنْ الْجَهَالَةِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْمُدَايَنَةِ إلَى أَجَلٍ مُسَمًّى]

١٤١٥ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى كُلِّ مُتَبَايِعَيْنِ - لِمَا قَلَّ أَوْ كَثُرَ - أَنْ يُشْهِدَا عَلَى تَبَايُعِهِمَا رَجُلَيْنِ، أَوْ رَجُلًا وَامْرَأَتَيْنِ مِنْ الْعُدُولِ، فَإِنْ لَمْ يَجِدَا عُدُولًا سَقَطَ فَرْضُ الْإِشْهَادِ كَمَا ذَكَرْنَا، فَإِنْ لَمْ يُشْهِدَا - وَهُمَا يَقْدِرَانِ عَلَى الْإِشْهَادِ - فَقَدْ عَصَيَا اللَّهَ عَزَّ وَجَلَّ، وَالْبَيْعُ تَامٌّ.

فَإِنْ كَانَ الْبَيْعُ بِثَمَنٍ - إلَى أَجَلٍ مُسَمًّى - فَفَرْضٌ عَلَيْهِمَا مَعَ الْإِشْهَادِ الْمَذْكُورِ أَنْ يَكْتُبَاهُ، فَإِنْ لَمْ يَكْتُبَاهُ، فَقَدْ عَصَيَا اللَّهَ عَزَّ وَجَلَّ وَالْبَيْعُ تَامٌّ.

فَإِنْ لَمْ يَقْدِرَا عَلَى كَاتِبٍ فَقَدْ سَقَطَ عَنْهُمَا فَرْضُ الْكِتَابِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ وَلْيَكْتُبْ بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ وَلا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلا يَبْخَسْ مِنْهُ شَيْئًا فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لا يَسْتَطِيعُ أَنْ يُمِلَّ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ وَاسْتَشْهِدُوا شَهِيدَيْنِ

as witnesses—so that if one of them errs, the other can remind her. Let the witnesses not refuse when summoned. Do not weary of writing it—whether small or large—to its term. This is more just with Allah, firmer for testimony, and closer to avoiding doubt, unless it is an immediate trade transaction you conduct among yourselves—then there is no blame upon you for not documenting it. Have witnesses present when you trade. Let no harm be caused to the scribe or the witness. If you do so, it is certainly disobedience by you. Fear Allah, and Allah teaches you. Allah knows all things. If you are traveling and find no scribe, then security deposits held. If one of you entrusts another, let the entrusted one fulfill his trust, and let him fear Allah, his Lord. Do not conceal testimony." [Al-Baqarah: 282-283][4]

مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَاهُمَا الأُخْرَى وَلا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا وَلا تَسْأَمُوا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَى أَجَلِهِ ذَلِكُمْ أَقْسَطُ عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَى أَلا تَرْتَابُوا إِلا أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلا تَكْتُبُوهَا وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ وَلا يُضَارَّ كَاتِبٌ وَلا شَهِيدٌ وَإِنْ تَفْعَلُوا فَإِنَّهُ فُسُوقٌ بِكُمْ وَاتَّقُوا اللَّهَ وَيُعَلِّمُكُمُ اللَّهُ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ - وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَقْبُوضَةٌ فَإِنْ أَمِنَ بَعْضُكُمْ بَعْضًا فَلْيُؤَدِّ الَّذِي اؤْتُمِنَ أَمَانَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلا تَكْتُمُوا الشَّهَادَةَ} [البقرة: ٢٨٢ - ٢٨٣] .

L21862 Abu Muhammad said: These are emphatic, reiterated commands that admit no interpretation. He ordained documentation for deferred debts to specified terms, required witnessing in such recurrent trade transactions, and instructed witnesses not to reject any fair obligation. How then did these people come to consider one command obligatory while neglecting the other? The Almighty declared that if the scribe causes harm - and undoubtedly, refusal to document constitutes a harmful act, while the witness's refusal to testify when summoned is sinful disobedience - then He reinforced this with the strongest emphasis, forbidding us to grow weary of writing what He commanded to be recorded, be it minor or major.

قَالَ أَبُو مُحَمَّد: فَهَذِهِ أَوَامِرُ مُغَلَّظَةٌ مُؤَكَّدَةٌ لَا تَحْتَمِلُ تَأْوِيلًا أَمَرَ بِالْكِتَابِ، فِي الْمُدَايَنَةِ إِلَى أَجَلٍ مُسَمًّى، وَبِالْإِشْهَادِ فِي ذَلِكَ فِي التِّجَارَةِ الْمُدَارَةِ، كَمَا أَمَرَ الشُّهَدَاءَ أَنْ لَا يَأْبَوْا أَمْرًا مُسْتَوِيًا، فَمِنْ أَيْنَ صَارَ عِنْدَ هَؤُلَاءِ الْقَوْمِ أَحَدُ الْأَوَامِرِ فَرْضًا وَالْآخَرُ هَمَلًا؟ وَأَخْبَرَ تَعَالَى أَنَّ الْكَاتِبَ إِنْ ضَارَّ - وَلَا شَكَّ فِي أَنَّ امْتِنَاعَهُ مِنَ الْكِتَابِ مُضَارَّةٌ، وَأَنَّ امْتِنَاعَ الشَّاهِدِ مِنَ الشَّهَادَةِ إِذْ دُعِيَ - فُسُوقٌ ثُمَّ أَكَّدَ تَعَالَى أَشَدَّ تَأْكِيدٍ وَنَهَانَا أَنْ نَسْأَمَ كِتَابَ مَا أَمَرَنَا بِكِتَابِهِ صَغِيرًا كَانَ أَوْ كَبِيرًا.

L21863 The Almighty has informed that this is more just in the sight of Allah, more upright for testimony, and closer to preventing doubt. He absolved from sin for omitting written contracts specifically without requiring witnesses in ongoing trade transactions, but He did not absolve from sin for omitting written contracts concerning debts with specified terms.

وَأَخْبَرَ تَعَالَى أَنَّ ذَلِكَ أَقْسَطُ عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَى مِنْ أَنْ لَا نَرْتَابَ، وَأَسْقَطَ الْجُنَاحَ فِي تَرْكِ الْكِتَابِ خَاصَّةً دُونَ الْإِشْهَادِ فِي التِّجَارَةِ الْمُدَارَةِ، وَلَمْ يُسْقِطِ الْجُنَاحَ فِي تَرْكِ الْكِتَابِ فِيمَا كَانَ دَيْنًا إِلَى أَجَلٍ مُسَمًّى.

L21864–21866 And in this, the Sunnah has come—as we were narrated through the chain of Jundar from Shu'bah from Firās al-Khārifī from al-Sha'bī from Abū Burdah

وَبِهَذَا جَاءَتِ السُّنَّةُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ غُنْدَرٍ عَنْ شُعْبَةَ عَنْ فِرَاسٍ الْخَارِفِيِّ عَنِ الشَّعْبِيِّ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ قَالَ: ثَلَاثَةٌ يَدْعُونَ اللَّهَ تَعَالَى فَلَا

[4] **Qur'an references (L21861):** Qur'an 2:282 (Al-Baqarah); Qur'an 2:283 (Al-Baqarah).

ibn Abī Mūsā al-Ashʿarī from his father, who said: “Three [types of] people supplicate to Allah the Exalted, so He does not [respond]—[text cut off].” Their supplication is answered—and he mentioned among them a man who had a debt owed to him by another man but did not have it witnessed—and Muʿadh ibn al-Muthannā narrated it from his father, from Shuʿbah, from Firās, from al-Shaʿbī, from Abu Burdah, from his father, from the Prophet, peace and blessings be upon him.

يُسْتَجَابُ لَهُمْ - وَذَكَرَ فِيهِمْ: وَرَجُلٌ كَانَ لَهُ عَلَى رَجُلٍ دَيْنٌ فَلَمْ يُشْهِدْ عَلَيْهِ - وَقَدْ أَسْنَدَهُ مُعَاذُ بْنُ الْمُثَنَّى عَنْ أَبِيهِ عَنْ شُعْبَةَ عَنْ فِرَاسٍ عَنِ الشَّعْبِيِّ عَنْ أَبِي بُرْدَةَ عَنْ أَبِيهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L21867 From the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: ʿAlī ibn ʿAbdullāh—who is Ibn al-Madīnī—narrated to us, from al-Muʾammal ibn Ismāʿīl, from Sufyān al-Thawrī, from Layth ibn Abī Sulaym, from Mujāhid regarding Allah’s statement: {And take witnesses when you engage in mutual trade} [al-Baqarah 2:282]. Mujāhid said: When Ibn ʿUmar sold for naqd [immediate payment], he would have a witness. When he sold for nasiʾah [deferred payment], he would document the transaction and have a witness.[5]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ ابْنُ الْمَدِينِيِّ - أَخْبَرَنَا الْمُؤَمَّلُ بْنُ إِسْمَاعِيلَ نا سُفْيَانُ الثَّوْرِيُّ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ مُجَاهِدٍ فِي قَوْلِ اللَّهِ تَعَالَى: {وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ} [البقرة: ٢٨٢] قَالَ مُجَاهِدٌ: كَانَ ابْنُ عُمَرَ إِذَا بَاعَ بِنَقْدٍ أَشْهَدَ، وَإِذَا بَاعَ بِنَسِيئَةٍ كَتَبَ وَأَشْهَدَ.

L21868 From the chain of Ismail: Ali ibn Abdullah narrated from Hassan ibn Ibrahim al-Karmani, who narrated from Ibrahim—he is Ibn Maymun the Goldsmith—who narrated from Ata ibn Abi Rabah, who said: “You must call witnesses for everything you buy or sell, even if it is for a dirham, half a dirham, a quarter of a dirham, or less. For Allah the Exalted says: *’And take witnesses when you engage in trade’* [al-Baqarah 2:282].”[6]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا حَسَّانُ بْنُ إِبْرَاهِيمَ الْكَرْمَانِيُّ نا إِبْرَاهِيمُ - هُوَ ابْنُ مَيْمُونٍ الصَّائِغُ - عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: تُشْهِدُ عَلَى كُلِّ شَيْءٍ تَشْتَرِيهِ وَتَبِيعُهُ وَلَوْ كَانَ بِدِرْهَمٍ أَوْ بِنِصْفِ دِرْهَمٍ أَوْ بِرُبْعِ دِرْهَمٍ أَوْ أَقَلَّ فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ} [البقرة: ٢٨٢] .

L21869 Narrated by Abu Sa’id al-Fata, from Muhammad ibn Ali al-Idfawi, from Ahmad ibn Muhammad ibn Isma’il ibn al-Nahhas the grammarian, from Ja’far ibn Mujashi’, from Ibrahim ibn Ishaq, from Shuja’, from Hushaym, from al-Mughirah ibn Miqsam, from Ibrahim al-Nakha’i, who said: “Take witnesses when you sell and when you buy – even for a dustaja of herbs.” Ibn al-Nahhas said: Muhammad ibn Jarir al-Tabari stated: It is not permissible for a Muslim to sell or purchase without having witnesses, otherwise he would be opposing the Book of Allah Almighty. Likewise, if the transaction

نا أَبُو سَعِيدٍ الْفَتَى نا مُحَمَّدُ بْنُ عَلِيٍّ الإدفوي نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ إِسْمَاعِيلَ بْنِ النَّحَّاسِ النَّحْوِيُّ نا جَعْفَرُ بْنُ مُجَاشِعٍ نا إِبْرَاهِيمُ بْنُ إِسْحَاقَ نا شُجَاعٌ نا هُشَيْمٌ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ " أَشْهِدْ إِذَا بِعْتَ وَإِذَا اشْتَرَيْتَ - وَلَوْ عَلَى دُسْتُجَةِ بَقْلٍ - قَالَ ابْنُ النَّحَّاسِ: وَقَالَ مُحَمَّدُ بْنُ جَرِيرٍ الطَّبَرِيُّ: لَا يَحِلُّ لِمُسْلِمٍ إِذَا بَاعَ وَاشْتَرَى إِلَّا أَنْ يُشْهِدَ، وَإِلَّا كَانَ مُخَالِفًا لِكِتَابِ اللَّهِ عَزَّ وَجَلَّ - وَهَكَذَا إِنْ كَانَ إِلَى أَجَلٍ فَعَلَيْهِ أَنْ يَكْتُبَ وَيُشْهِدَ إِذَا وَجَدَ كَاتِبًا - وَهُوَ قَوْلُ جَابِرِ بْنِ زَيْدٍ، وَغَيْرِهِ.

[5] **Qur’an references (L21867):** Qur’an 2:282 (Al-Baqarah).
[6] **Qur’an references (L21868):** Qur’an 2:282 (Al-Baqarah).

is deferred, he must document it and take witnesses when he finds a scribe – this being the opinion of Jabir ibn Zayd and others.

L21870 From the chain of Ismāʿīl ibn Isḥāq: narrated to us Yaḥyā ibn Khalaf: narrated to us Abū ʿĀṣim—he is Al-Ḍaḥḥāk ibn Khalaf—from ʿĪsā via Ibn Abī Najīḥ, who narrated to us from Mujāhid regarding the statement of Allah the Exalted: {And let no scribe refuse} [Al-Baqarah: 282]. [Mujāhid] said: "He obligated the scribe to write." All of the above is the view of Abū Sulaymān and our colleagues.[7]

L21871 The Hanafis, Malikis, and Shafi'is maintained that neither the witnessing mentioned nor the written document prescribed are obligatory, nor is the scribe compelled to write. It has been narrated to us from Abu Sa'id al-Khudri that he recited this verse, and when he reached Allah's statement: *"But if one of you entrusts another, let the one entrusted fulfill their trust"* [Al-Baqarah 2:283], he said: "Has this verse abrogated what preceded it?"[8]

L21872–21873 Abu Muhammad said: The apparent meaning of Abu Sa'id's statement—may Allah be pleased with him—is that it abrogated the command regarding the pledge, for it was the one immediately preceding it and connected to it. It is not permissible to presume that Abu Sa'id meant it abrogated all that was written before it of the Quran, nor all that was revealed before it of the Quran. Since there is no doubt about this, it is impermissible to include in Abu Sa'id's statement the claim that it abrogated the command for testimony and written contracts—a far-fetched, invalid assertion without evidence. However, this has been reported from al-Hasan and al-Hakam.

L21874 It has been reported from Al-Shaʿbī that the ruling concerning all these matters is a recommendation—which is the view of Abū Qilābah, Ṣafwān ibn Muḥriz, and Ibn Sīrīn.

L21875 Abū Muḥammad said: A general claim of abrogation is impermissible except with definitive proof, for the speech of Allah the Exalted was revealed to be acted upon and obeyed through its implementation—not to be abandoned.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا يَحْيَى بْنُ خَلَفٍ نا أَبُو عَاصِمٍ - هُوَ الضَّحَّاكُ بْنُ خَلَفٍ - عَنْ عِيسَى نا ابْنُ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ فِي قَوْلِ اللَّهِ تَعَالَى: {وَلا يَأْبَ كَاتِبٌ} [البقرة: ٢٨٢] قَالَ: وَأَوْجَبَ عَلَى الْكَاتِبِ أَنْ يَكْتُبَ - وَكُلُّ هَذَا قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

وَذَهَبَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ إِلَى أَنَّهُ لَيْسَ الْإِشْهَادُ الْمَذْكُورُ، وَلَا الْكِتَابُ الْمَذْكُورُ، الْمَأْمُورُ بِهِ: وَاجِبًا - وَلَا يَلْزَمُ الْكَاتِبُ أَنْ يَكْتُبَ -: رُوِّينَا عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّهُ قَرَأَ هَذِهِ الْآيَةَ فَلَمَّا بَلَغَ إِلَى قَوْلِ اللَّهِ تَعَالَى: {فَإِنْ أَمِنَ بَعْضُكُمْ بَعْضًا فَلْيُؤَدِّ الَّذِي اؤْتُمِنَ أَمَانَتَهُ} [البقرة: ٢٨٣] قَالَ: نَسَخَتْ هَذِهِ الْآيَةُ مَا قَبْلَهَا؟

قَالَ أَبُو مُحَمَّدٍ: الظَّاهِرُ مِنْ قَوْلِ أَبِي سَعِيدٍ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهَا نَسَخَتْ، الْأَمْرَ بِالرَّهْنِ، لِأَنَّهُ هُوَ الَّذِي قَبْلَهَا مُتَّصِلًا بِهَا، وَلَا يَجُوزُ أَنْ يُظَنَّ بِأَبِي سَعِيدٍ أَنَّهُ يَقُولُ: إِنَّهَا نَسَخَتْ كُلَّ مَا كُتِبَ قَبْلَهَا مِنْ الْقُرْآنِ، وَلَا كُلَّ مَا نَزَلَ قَبْلَهَا مِنْ الْقُرْآنِ، فَإِذْ لَا شَكَّ مِنْ هَذَا: فَلَا يَجُوزُ أَنْ يَدْخُلَ فِي قَوْلِ أَبِي سَعِيدٍ أَنَّهَا نَسَخَتْ الْأَمْرَ بِالْإِشْهَادِ وَالْكِتَابِ بِالدَّعْوَى الْبَعِيدَةِ الْفَاسِدَةِ بِلَا بُرْهَانٍ، إِلَّا أَنَّهُ قَدْ رُوِيَ هَذَا عَنْ الْحَسَنِ، وَالْحَكَمِ.

وَرُوِيَ عَنْ الشَّعْبِيِّ أَنَّ الْأَمْرَ بِكُلِّ ذَلِكَ: نَدْبٌ - وَهُوَ قَوْلُ أَبِي قِلَابَةَ، وَصَفْوَانَ بْنِ مُحْرِزٍ، وَابْنِ سِيرِينَ.

قَالَ أَبُو مُحَمَّدٍ: دَعْوَى النَّسْخِ جُمْلَةً لَا يَجُوزُ إِلَّا بِبُرْهَانٍ مُتَيَقَّنٍ، لِأَنَّ كَلَامَ اللَّهِ تَعَالَى إِنَّمَا وَرَدَ لِيُؤْتَمَرَ لَهُ وَيُطَاعَ بِالْعَمَلِ بِهِ، لَا لِتَرْكِهِ، وَالنَّسْخُ يُوجِبُ التَّرْكَ، فَلَا يَجُوزُ لِأَحَدٍ

[7] **Qur'an references (L21870):** Qur'an 2:282 (Al-Baqarah).
[8] **Qur'an references (L21871):** Qur'an 2:283 (Al-Baqarah).

Abrogation necessitates abandonment. Thus, it is impermissible for anyone to assert regarding any matter Allah the Exalted has commanded: "I am not bound to obey this," except through another text from Allah—the Almighty and Majestic—or His Messenger (peace be upon him) declaring its abrogation. Otherwise, such a claim is impermissible.

أَنْ يَقُولَ فِي شَيْءٍ أَمَرَهُ اللَّهُ تَعَالَى بِهِ: هَذَا لَا تَلْزَمُنِي طَاعَتُهُ إِلَّا بِنَصٍّ آخَرَ عَنْ اللَّهِ عَزَّ وَجَلَّ، أَوْ عَنْ رَسُولِهِ - عَلَيْهِ السَّلَامُ - بِأَنَّهُ قَدْ نُسِخَ، وَإِلَّا فَالْقَوْلُ بِذَلِكَ لَا يَجُوزُ.

L21876 Similarly, the claim of recommendation is also invalid unless supported by another piece of textual evidence. This is because the meaning of recommendation is "do it if you wish, or refrain if you wish." In the Arabic language, the imperative "do" followed by "do not do, if you wish" cannot be understood as conveying obligation unless evidence exists to make it obligatory. Thus, both claims are invalidated with unequivocal certainty, leaving no room for ambiguity.

وَكَذَلِكَ دَعْوَى النَّدْبِ بَاطِلٌ أَيْضًا إِلَّا بِبُرْهَانٍ آخَرَ مِنْ النَّصِّ كَذَلِكَ، لِأَنَّ مَعْنَى النَّدْبِ إنْ شِئْت فَافْعَلْ وَإِنْ شِئْت فَلَا تَفْعَلْ، وَلَا يُفْهَمُ فِي اللُّغَةِ الْعَرَبِيَّةِ فِي لَفْظَةِ افْعَلْ لَا تَفْعَلْ إنْ شِئْت إلَّا بِبُرْهَانٍ يُوجِبُ ذَلِكَ، فَبَطَلَتْ الدَّعْوَتَانِ مَعًا بِيَقِينٍ لَا إشْكَالَ فِيهِ.

L21877 I wish I knew what the distinction is between Allah's saying, exalted is He: "Hasten to the remembrance of Allah and abandon trade" [Al-Jumuʿah: 9], and His saying, exalted is He: "Do not disdain to write it—whether small or large—for its appointed term" [Al-Baqarah: 282]. The Malikis stated regarding that case: it is obligatory, yet they declared here: it is recommended—asserting this through arbitrary judgment without proof.[9]

وَلَيْتَ شِعْرِي مَا الْفَرْقُ بَيْنَ قَوْلِ اللَّهِ تَعَالَى: {فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ} [الجمعة: ٩] وَبَيْنَ قَوْله تَعَالَى: {وَلا تَسْأَمُوا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَى أَجَلِهِ} [البقرة: ٢٨٢] وَقَدْ قَالَ الْمَالِكِيُّونَ فِي ذَلِكَ: هُوَ فَرْضٌ، وَقَالُوا هَهُنَا: هُوَ نَدْبٌ تَحَكُّمًا بِلَا بُرْهَانٍ.

L21878 And similarly, the Exalted's statement: "And give them from Allah's wealth which He has granted you" [24:33]. The Shafiʿī scholars affirmed this as obligatory, yet here they declare it merely recommended - an arbitrary ruling without textual basis.[10]

وَكَذَلِكَ قَوْله تَعَالَى: {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] وَقَدْ قَالَ الشَّافِعِيُّونَ: إنَّهُ فَرْضٌ، وَقَالُوا هَهُنَا: هُوَ نَدْبٌ تَحَكُّمًا بِلَا دَلِيلٍ.

L21879 Likewise, the statement of the Exalted: {The Station of Abraham, and whoever enters it is safe} [Āl ʿImrān: 97]. The Ḥanafīs said: "This is an obligation, and no ḥadd penalty is to be enforced in Makkah." Here they said: "It is a recommendation - an arbitrary ruling without proof."[11]

وَكَذَلِكَ قَوْله تَعَالَى: {مَقَامُ إِبْرَاهِيمَ وَمَنْ دَخَلَهُ كَانَ آمِنًا} [آل عمران: ٩٧] فَقَالَ الْحَنَفِيُّونَ: هَذَا فَرْضٌ وَلَا يُقَامُ بِمَكَّةَ حَدٌّ، وَقَالُوا هَهُنَا: هُوَ نَدْبٌ تَحَكُّمًا بِلَا حُجَّةٍ.

L21880 And what difference is there between His Exalted command regarding testimony and documentation, and His Exalted command concerning the expiation of oaths, the expiation of *ẓihār*, the ruling on *īlāʾ*, the ruling on

وَأَيُّ فَرْقٍ بَيْنَ أَمْرِهِ تَعَالَى بِالْإِشْهَادِ، وَالْكِتَابِ، وَبَيْنَ أَمْرِهِ تَعَالَى بِمَا أَمَرَ فِي كَفَّارَةِ الْأَيْمَانِ، وَكَفَّارَةِ الظِّهَارِ، وَحُكْمِ الْإِيلَاءِ، وَحُكْمِ اللِّعَانِ، وَسَائِرِ أَوَامِرِ الْقُرْآنِ؟ وَنَعُوذُ بِاَللَّهِ مِنْ أَنْ نَجْعَلَ {الْقُرْآنَ عِضِينَ} [الحجر: ٩١] فَنُوجِبُ بَعْضًا وَنُلْغِي بَعْضًا.

[9] **Qur'an references (L21877):** Qur'an 62:9 (Al-Jumu'ah); Qur'an 2:282 (Al-Baqarah).
[10] **Qur'an references (L21878):** Qur'an 24:33 (An-Nur).
[11] **Qur'an references (L21879):** Qur'an 3:97 (Ali 'Imran).

li'ān, and all other commands of the Quran? We seek refuge in Allah from making 'the Quran into parts' [Al-Hijr: 91], thereby enforcing some portions and nullifying others.[12]

L21881–21882 If they cite the words of Allah, the Exalted: {If one of you entrusts another, let the one entrusted fulfill his trust} [Al-Baqarah: 283], we say: This is refuted as pertaining to matters connected to collateral, and it is not permissible to interpret it as abrogating the obligation to require testimony and written contracts through a claim without evidence.[13]

L21883 Similarly, whoever states that "it is a communal obligation"—because all such claims are devoid of proof, and anything characterized thus is invalid and rejected. Allah, the Exalted, said: "Say, 'Produce your proof if you are truthful'" [Al-Baqarah: 111].[14]

L21884 Among the strangest matters is their haste to claim that some Quranic commands are recommended. When we said to them: "What is your proof for this claim?" they answered: "The words of Allah the Exalted: {When you have exited the state of *ihram*, then hunt} [Al-Ma'idah: 2]."[15]

L21885 "When the Friday prayer is concluded, disperse in the land" [Al-Jumu'ah 62:10].[16]

L21886 So we said to them: "This is truly astonishing! By what religion or reason have you concluded that if a single command of Allah the Exalted is established as abrogated or recommended (mustaḥabb), then all His Exalted commands must be presumed abrogated or recommended?" Never has a more astounding argument than this corrupt one been heard, for they sought through it to demolish the Quran without any proof.

فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {فَإِنْ أَمِنَ بَعْضُكُمْ بَعْضًا فَلْيُؤَدِّ الَّذِي اؤْتُمِنَ أَمَانَتَهُ} [البقرة: ٢٨٣] ؟ قُلْنَا: هَذَا مَرْدُودٌ عَلَى مَا يَتَّصِلُ بِهِ مِنْ الرَّهْنِ، وَلَا يَجُوزُ أَنْ يُحْمَلَ عَلَى إسْقَاطِ وُجُوبِ الْأَمْرِ بِالْإِشْهَادِ، وَالْكِتَابِ، بِالدَّعْوَى بِلَا بُرْهَانٍ.

وَكَذَلِكَ مَنْ قَالَ: هُوَ فَرْضٌ عَلَى الْكِفَايَةِ؛ لِأَنَّ كُلَّ ذَلِكَ دَعْوَى عَارِيَّةٌ مِنْ الْبُرْهَانِ، وَمَا كَانَ بِهَذِهِ الصِّفَةِ فَهُوَ بَاطِلٌ مُطْرَحٌ قَالَ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] .

وَمِنْ أَطْرَفِ شَيْءٍ مُبَادَرَتُهُمْ إذَا ادَّعَوْا فِي شَيْءٍ مِنْ أَوَامِرِ الْقُرْآنِ أَنَّهُ نَدْبٌ؟ فَقُلْنَا لَهُمْ: مَا بُرْهَانُكُمْ عَلَى هَذِهِ الدَّعْوَى؟ قَالُوا: قَوْلُ اللَّهِ تَعَالَى: {وَإِذَا حَلَلْتُمْ فَاصْطَادُوا} [المائدة: ٢] .

{فَإِذَا قُضِيَتِ الصَّلاةُ فَانْتَشِرُوا فِي الأَرْضِ} [الجمعة: ١٠] .

فَقُلْنَا لَهُمْ: إنَّ هَذَا لَعَجَبٌ لَيْتَ شِعْرِي فِي أَيِّ دِينٍ وَجَدْتُمْ أَمْ فِي أَيِّ عَقْلٍ: أَنَّهُ إذَا صَحَّ فِي أَمْرٍ مِنْ أَوَامِرِ اللَّهِ تَعَالَى أَنَّهُ مَنْسُوخٌ، أَوْ أَنَّهُ نَدْبٌ وَجَبَ أَنْ تُحْمَلَ سَائِرُ أَوَامِرِهِ تَعَالَى عَلَى أَنَّهَا مَنْسُوخَةٌ، وَعَلَى أَنَّهَا نَدْبٌ؟ فَمَا سُمِعَ بِأَعْجَبَ مِنْ هَذَا الِاحْتِجَاجِ الْفَاسِدِ إذْ قَصَدُوا بِهِ هَدْمَ الْقُرْآنِ بِلَا بُرْهَانٍ.

وَلَا فَرْقَ بَيْنَ فِعْلِهِمْ هَذَا هَهُنَا وَبَيْنَ مَنْ قَصَدَ إلَى أَيِّ آيَةٍ شَاءَ مِنْ الْقُرْآنِ فَقَالَ: هِيَ مَنْسُوخَةٌ؟ فَإِذَا قِيلَ لَهُ: مَا بُرْهَانُك عَلَى ذَلِكَ؟ قَالَ: نَسْخُ اللَّهِ تَعَالَى الِاسْتِقْبَالَ إلَى بَيْتِ الْمَقْدِسِ، وَنَسْخُهُ لِإِعْدَادِ الْمُتَوَفَّى عَنْهَا سَنَةً.

[12] **Qur'an references (L21880):** Qur'an 15:91 (Al-Hijr).
[13] **Qur'an references (L21882):** Qur'an 2:283 (Al-Baqarah).
[14] **Qur'an references (L21883):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).
[15] **Qur'an references (L21884):** Qur'an 5:2 (Al-Ma'idah).
[16] **Qur'an references (L21885):** Qur'an 62:10 (Al-Jumu'ah).

L21887 There is no difference between their action in this matter and one who deliberately selects any verse he wishes from the Quran and declares: “This is abrogated.” When asked: “What is your proof for this?” he responds: “Allah’s naskh (abrogation) of the qibla (direction of prayer) toward Bayt al-Maqdis (Jerusalem), and His naskh of the year-long waiting period (ʿiddah) prescribed for widows.”

L21888 Abu Muhammad said: We do not deny the occurrence of abrogation in some commands, or their reduction to a recommendation or restriction in specificity—provided another text clarifies that. But as for [abrogation] based on mere claim, we do not accept it.

L21889–21891 If it is established in a matter from the Qur’an or Sunnah that it is abrogated, recommended, or specified by another text, should we affirm this ruling and refrain from extending it to cases lacking evidence that diverts it from its original subject and inherent requirement? ʿAlī said: They cited as evidence the transmitted report through al-Zuhrī from ʿUmārah ibn Khuzaymah ibn Thābit—that his uncle informed him: “The Messenger of Allah (ﷺ) purchased a horse from a Bedouin and asked him to accompany him so he could give him.” They disagreed about the price, so the Prophet (peace be upon him) hastened while the Bedouin delayed. Men kept haggling with the Bedouin over the horse, and the bid increased. The Bedouin called out to the Prophet: “If you are buying this horse, then buy it; otherwise I will sell it.” The Prophet replied: “Have I not already bought it from you?” The Bedouin said: “By Allah, I did not sell it to you! Bring a witness to testify that I sold it to you!” Khuzaymah said: “I testify that you sold it to him.” The Prophet asked: “On what basis do you testify?” He answered: “Based on my trust in your truthfulness.” Thereupon the Prophet established that Khuzaymah’s testimony would equal the testimony of two men.

L21892 And through the chain of Hammad ibn Salamah from Abu Ja’far from Umarah ibn Khuzaymah ibn Thabit, a similar narration is reported, with an addition: “The Messenger of Allah—peace and blessings be upon him—

قَالَ أَبُو مُحَمَّدٍ: وَنَحْنُ لَا نُنْكِرُ وُجُودَ النَّسْخِ فِي بَعْضِ الْأَوَامِرِ، أَوْ كَوْنَهُ عَلَى النَّدْبِ، أَوْ عَلَى الْخُصُوصِ: إِذَا جَاءَ نَصٌّ آخَرُ بِبَيَانِ ذَلِكَ وَأَمَّا بِالدَّعْوَى فَلَا.

فَإِذَا صَحَّ فِي أَمْرٍ مِنْ الْقُرْآنِ أَوْ السُّنَّةِ أَنَّهُ مَنْسُوخٌ، أَوْ مَنْدُوبٌ، أَوْ مَخْصُوصٌ، بِنَصٍّ آخَرَ؟ قُلْنَا بِذَلِكَ وَلَمْ نَتَعَدَّهُ بِهَذَا الْحُكْمِ إلَى مَا لَمْ يَأْتِ فِيهِ دَلِيلٌ يَصْرِفُهُ عَنْ مَوْضُوعِهِ وَمُقْتَضَاهُ؟ قَالَ عَلِيٌّ: وَاحْتَجُّوا بِالْخَبَرِ الْمَأْثُورِ مِنْ طَرِيقِ الزُّهْرِيِّ عَنْ عُمَارَةَ بْنِ خُزَيْمَةَ بْنِ ثَابِتٍ: أَنَّ عَمَّهُ أَخْبَرَهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ابْتَاعَ فَرَسًا مِنْ أَعْرَابِيٍّ فَاسْتَتْبَعَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُعْطِيَهُ الثَّمَنَ، فَأَسْرَعَ النَّبِيُّ وَأَبْطَأَ الْأَعْرَابِيُّ فَطَفِقَ رِجَالٌ يُسَاوِمُونَ الْأَعْرَابِيَّ بِالْفَرَسِ، وَزِيدَ عَلَى السَّوْمِ، فَنَادَى الْأَعْرَابِيُّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنْ كُنْتَ مُبْتَاعًا هَذَا الْفَرَسَ فَابْتَعْهُ وَإِلَّا بِعْتُهُ؟ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوَ لَيْسَ قَدْ ابْتَعْتُهُ مِنْكَ؟ قَالَ الْأَعْرَابِيُّ: وَاَللَّهِ مَا بِعْتُكَهُ هَلُمَّ شَهِيدًا يَشْهَدُ أَنِّي بَايَعْتُكَ؟ فَقَالَ خُزَيْمَةُ: أَنَا أَشْهَدُ أَنَّكَ بَايَعْتَهُ، فَأَقْبَلَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: بِمَ تَشْهَدُ؟ قَالَ: بِتَصْدِيقِكَ، فَجَعَلَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَهَادَةَ خُزَيْمَةَ شَهَادَةَ رَجُلَيْنِ» .

returned it and said: 'O Allah, if he has lied, do not bless the transaction for him.' The next morning, it became lame in its leg." They said: "So here is the Messenger of Allah—peace and blessings be upon him—who bought without having witnesses present."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي جَعْفَرٍ عَنْ عُمَارَةَ بْنِ خُزَيْمَةَ بْنِ ثَابِتٍ نَحْوُهُ وَزَادَ فِيهِ: «فَرَدَّهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ: اللَّهُمَّ إنْ كَانَ كَذَبَ فَلَا تُبَارِكْ لَهُ فِيهَا فَأَصْبَحَتْ شَاصِيَةً بِرِجْلِهَا» فَقَالُوا: فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ ابْتَاعَ وَلَمْ يُشْهِدْ.

L21893 Abu Muhammad said: This holds no validity as evidence for their stance due to several reasons. The first reason is that it constitutes an unreliable narration, as it is ascribed to Umāra ibn Khuzayma - and he is an unknown narrator.

قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ -: أَوَّلُهَا: أَنَّهُ خَبَرٌ لَا يَصِحُّ لِأَنَّهُ رَاجِعٌ إلَى عُمَارَةَ بْنِ خُزَيْمَةَ - وَهُوَ مَجْهُولٌ.

L21894 The second is that even if it were valid, it would not serve as proof for them, because the narration does not indicate that the matter was delayed for a period allowing sufficient time for attestation by witnesses, and he (peace be upon him) did not have it witnessed. Rather, it states that the Messenger of Allah (peace be upon him) purchased a horse from a Bedouin, then took him along to hand over the payment. The Prophet (peace be upon him) hastened while the Bedouin lingered - and a sale is only concluded through bodily separation. Thus, the Prophet (peace be upon him) separated from him to finalize the sale, otherwise it had not been concluded yet. Attestation by witnesses is only required after the sale's valid completion and legal soundness, not before its conclusion.

وَالثَّانِي: أَنَّهُ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَيْسَ فِيهِ: أَنَّ الْأَمْرَ تَأَخَّرَ مِقْدَارَ مُدَّةٍ يُمْكِنُ فِيهَا الْإِشْهَادُ، فَلَمْ يُشْهِدْ - عَلَيْهِ السَّلَامُ -، وَإِنَّمَا فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ابْتَاعَ مِنْهُ الْفَرَسَ ثُمَّ اسْتَتْبَعَهُ لِيُوَفِّيَهُ الثَّمَنَ فَأَسْرَعَ - عَلَيْهِ السَّلَامُ - وَأَبْطَأَ الْأَعْرَابِيُّ - وَالْبَيْعُ لَا يَتِمُّ إلَّا بِالتَّفَرُّقِ بِالْأَبْدَانِ - فَفَارَقَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيَتِمَّ الْبَيْعُ، وَإِلَّا فَلَمْ يَكُنْ تَمَّ بَعْدُ، وَإِنَّمَا يَجِبُ الْإِشْهَادُ بَعْدَ تَمَامِ الْبَيْعِ وَصِحَّتِهِ، لَا قَبْلَ أَنْ يَتِمَّ.

L21895 The third argument: Even if their report were sound—though it is not—and even if it were sound in stating that he (peace be upon him) omitted the attestation despite being capable of it after the completion of the sale—and this scenario never occurs—the report contains no indication that this happened after the revelation of the verse. We acknowledge that the obligation of attestation was established solely by the revelation of the verse, not prior to it. It is impermissible to abandon the certain ruling of Allah—the Almighty and Majestic—based on a false presumption that cannot be definitively affirmed. Thus, their entire reliance on this report is rendered completely invalid.

وَالثَّالِثُ: أَنَّهُ حَتَّى لَوْ صَحَّ لَهُمْ الْخَبَرُ - وَهُوَ لَا يَصِحُّ - ثُمَّ صَحَّ فِيهِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - تَرَكَ الْإِشْهَادَ وَهُوَ قَادِرٌ عَلَيْهِ بَعْدَ تَمَامِ الْبَيْعِ، وَهَذَا لَا يُوجَدُ أَبَدًا، فَلَيْسَ فِيهِ: أَنَّهُ كَانَ بَعْدَ نُزُولِ الْآيَةِ - وَنَحْنُ نُقِرُّ بِأَنَّ الْإِشْهَادَ إنَّمَا وَجَبَ بِنُزُولِ الْآيَةِ لَا قَبْلَ نُزُولِهَا - وَلَا يَجُوزُ تَرْكُ يَقِينِ حُكْمِ اللَّهِ عَزَّ وَجَلَّ بِظَنٍّ كَاذِبٍ لَا يَحِلُّ الْقَطْعُ بِهِ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ جُمْلَةً.

L21896 Abu Muhammad said: Our experience with them is that they say contrary to this narration, for they all assert: A judge may not rule on his own case.

قَالَ أَبُو مُحَمَّدٍ: وَعَهْدُنَا بِهِمْ يَقُولُونَ بِخِلَافِ هَذَا الْخَبَرِ، لِأَنَّ جَمِيعَهُمْ يَقُولُ: لَا يَحْكُمُ الْحَاكِمُ لِنَفْسِهِ.

وَفِي الْمُسْنَدِ مِنْ طَرِيقَيْ هَذَا الْخَبَرِ أَنَّهُ حَكَمَ - عَلَيْهِ السَّلَامُ - لِنَفْسِهِ، فَمِنْ عَجَائِبِ الدُّنْيَا تَرْكُهُمْ الْحُكْمَ بِخَبَرٍ فِيمَا وَرَدَ فِيهِ وَاحْتِجَاجُهُمْ بِهِ فِي مَا لَيْسَ مِنْهُ فِيهِ أَثَرٌ، وَلَا نَصٌّ، وَلَا دَلِيلٌ.

L21897 In the *Musnad*, through both chains of this report, it is stated that he—peace be upon him—ruled for himself. Among the marvels of this world is their abandonment of rulings based on a report in matters where it is mentioned, while invoking it as evidence in matters where there is no trace, explicit text, or proof from it.

فَإِنْ قَالُوا: أَخَذْنَا بِالْمُرْسَلِ فِي أَنَّهُ - عَلَيْهِ السَّلَامُ - رَدَّهَا؟ قُلْنَا: وَمَا الَّذِي جَعَلَ الْمُرْسَلَ مِنْ هَذَا الْخَبَرِ أَقْوَى مِنْ الْمُسْنَدِ، ثُمَّ لَيْسَ فِي الْمُرْسَلِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - رَدَّهَا لِوُجُوبِ الْحُكْمِ بِرَدِّهَا، بَلْ قَدْ يَهَبُهَا - عَلَيْهِ السَّلَامُ - لَهُ كَمَا أَخْبَرَ عَنْ نَفْسِهِ الْمُقَدَّسَةِ أَنَّهُ لَا يَسْأَلُهُ أَحَدٌ مَا لَا تَطِيبُ بِهِ نَفْسُهُ فَيُعْطِيهِ إيَّاهُ إلَّا لَمْ يُبَارَكْ لَهُ فِيهِ - فَهَذَا حَسَنٌ وَإِعْطَاءٌ حَلَالٌ، وَالدُّعَاءُ عَلَيْهِ بِالْعُقُوبَةِ لِكَذِبِهِ، وَلَا يَجُوزُ غَيْرُ ذَلِكَ لَوْ صَحَّ الْخَبَرُ أَصْلًا لِأَنَّهُ لَا يَحِلُّ لِمُسْلِمٍ أَنْ يَظُنَّ بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَطْلَقَ يَدَ الْفَاسِقِ عَلَى حَرَامٍ وَهُوَ يَعْلَمُهُ حَرَامًا إذْ كَانَ يَكُونُ مُعِينًا عَلَى الْإِثْمِ وَالْعُدْوَانِ، وَعَلَى أَخْذِ الْحَرَامِ عَمْدًا وَظُلْمًا، وَاَللَّهُ تَعَالَى يَقُولُ: {وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَمَنْ نَسَبَ هَذَا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ خَرَجَ عَنْ الْإِسْلَامِ.

L21898–21899 If they say: "We have relied on the *mursal* report that he—peace be upon him—rejected it," we reply: What makes the *mursal* report in this narration stronger than the *musnad*? Moreover, the *mursal* does not state that he—peace be upon him—rejected it due to an obligation to rule by its rejection. Rather, he—peace be upon him—might have gifted it to him, as he informed about his noble self that if someone asks him for something he is reluctant to give and he grants it, it will not be blessed for him. This is commendable and lawful giving, while supplicating for his punishment due to his falsehood. No other ruling is permissible even if the report were authentic in the first place, for it is unlawful for a Muslim to presume that the Messenger of Allah—peace and blessings of Allah be upon him—empowered a transgressor over forbidden matters while knowing them forbidden, as this would constitute aiding in sin and transgression, and in deliberately seizing the unlawful through injustice. Allah the Exalted says: *"And do not cooperate in sin and aggression"* (5:2). Whoever ascribes this to the Messenger of Allah—peace and blessings of Allah be upon him—has apostatized from Islam.[17]

وَعَهْدُنَا بِالْحَنَفِيِّينَ لَا يَسْتَحْيُونَ مِنْ مُخَالَفَةِ الْخَبَرِ الثَّابِتِ فِي أَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ بِالْيَمِينِ مَعَ الشَّاهِدِ» ؛ لِأَنَّهُ بِزَعْمِهِمْ خِلَافُ مَا فِي الْقُرْآنِ، وَرَدُّوا الْخَبَرَ الثَّابِتَ فِي تَغْرِيبِ الزَّانِي سَنَةً؛ لِأَنَّهُ زِيَادَةٌ عَلَى مَا فِي الْقُرْآنِ، وَقَالُوا: لَا نَأْخُذُ بِخَبَرِ الْوَاحِدِ إذَا كَانَ زَائِدًا عَلَى مَا فِي الْقُرْآنِ، وَفَعَلُوا هَذَا كُلُّهُمْ فِي جَلْدِ الْمُحْصَنِ مَعَ

L21900 Our position regarding the Hanafis is that they are not ashamed to contradict the established report that "Allah's Messenger (peace be upon him) ruled by an oath combined with a witness," because in their view it conflicts with the Quran. They rejected the established report concerning the banishment of a fornicator for one year because it constitutes an addition to what is in the Quran. They stated: "We do not accept single-narrator reports (āḥād) when

[17] **Qur'an references (L21899):** Qur'an 5:2 (Al-Ma'idah).

they add to what is in the Quran." Yet all of them applied this principle in the matter of flogging a married fornicator alongside stoning. Then here they show no concern about adopting a weak, unauthentic report—which they claim contradicts the Quran—though how could this be, when even if it were authentic, it would not conflict with the Quran as we have clarified? And with Allah, the Exalted, lies all success.

الرَّجْمِ، ثُمَّ لَا يُبَالُونَ هَهُنَا بِالْأَخْذِ بِخَبَرٍ ضَعِيفٍ لَا يَصِحُّ، مُخَالِفٍ - بِزَعْمِهِمْ - لِمَا فِي الْقُرْآنِ، فَكَيْفَ وَلَوْ صَحَّ لَمَا كَانَ فِيهِ خِلَافٌ لِلْقُرْآنِ عَلَى مَا بَيَّنَّاهُ؟ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L21901 Abū Muḥammad said: Some of them have indulged excessively in idle talk and mixing, bringing forth numerous authentic reports—such as his death—peace be upon him—with his armor pledged for thirty ṣāʿ of barley, his purchase of the virgin from ʿUmar, the camel from Jābir, the purchase of Barīrah, the purchase of Ṣafiyyah for seven heads, the exchange of one slave for two slaves, and a garment for two garments in gambling.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ زَادَ بَعْضُهُمْ فِي الْهَذْرِ وَالتَّخْلِيطِ فَأَتَوْا بِأَخْبَارٍ كَثِيرَةٍ صِحَاحٍ، كَمَوْتِهِ - عَلَيْهِ السَّلَامُ - وَدِرْعُهُ مَرْهُونَةٌ فِي ثَلَاثِينَ صَاعًا مِنْ شَعِيرٍ - وَكَابْتِيَاعِهِ الْبِكْرَ مِنْ عُمَرَ، وَالْجَمَلِ مِنْ جَابِرٍ، وَابْتِيَاعِ بَرِيرَةَ، وَابْتِيَاعِ صَفِيَّةَ بِسَبْعَةِ أَرْؤُسٍ، وَالْعَبْدِ بِالْعَبْدَيْنِ، وَالثَّوْبِ بِالثَّوْبَيْنِ إِلَى الْمَيْسَرَةِ.

L21902 Every narration that mentions him (peace be upon him) having sold or purchased something is met with their claim that these accounts contain no mention of witnessing. All of this provides them with no juristic basis, for none of these reports state that he (peace be upon him) did not involve witnesses or that he did involve witnesses.

وَكُلُّ خَبَرٍ ذُكِرَ فِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - بَاعَ أَوْ ابْتَاعَ، قَالُوا: وَلَيْسَ فِيهَا ذِكْرُ الْإِشْهَادِ وَكُلُّ ذَلِكَ لَا مُتَعَلَّقَ لَهُمْ بِشَيْءٍ مِنْهُ؛ لِأَنَّ جَمِيعَهَا لَيْسَ فِي شَيْءٍ مِنْهَا: أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُشْهِدْ، وَلَا أَنَّهُ أَشْهَدَ.

L21903–21905 We found that most of them contain no mention of a price, and this obligates them to permit sales without mentioning a price, since it is silent about it - just as it was silent about mentioning witnessing. The omission of mentioning all rulings in many narrations does not nullify them, just as the words of Allah the Exalted: "Eat and drink" (2:60) do not imply the permissibility of what He prohibited among foods. As for the methodologies—nay, all texts are interwoven together, taken according to what each contains even if not mentioned in others. What differs from this is corruption in the intellect, corruption of religion, and claims of ultimate falsehood.[18]

وَوَجَدْنَا أَكْثَرَهَا لَيْسَ فِيهَا ذِكْرُ ثَمَنٍ فَيَلْزَمُهُمْ عَلَى هَذَا أَنْ يُجِيزُوا الْبَيْعَ بِغَيْرِ ذِكْرِ ثَمَنٍ؛ لِأَنَّهُ مَسْكُوتٌ عَنْهُ كَمَا سَكَتَ عَنْ ذِكْرِ الْإِشْهَادِ، وَلَيْسَ تَرْكُ ذِكْرِ جَمِيعِ الْأَحْكَامِ فِي كَثِيرٍ مِنَ الْأَخْبَارِ بِمُسْقِطٍ لَهَا، كَمَا أَنَّ قَوْلَهُ تَعَالَى: {كُلُوا وَاشْرَبُوا} [البقرة: ٦٠] لَيْسَ فِيهِ إِبَاحَةُ مَا حَرَّمَ مِنَ الْمَآكِلِ، وَالْمَشَارِبِ، بَلِ النُّصُوصُ كُلُّهَا مَضْمُومٌ بَعْضُهَا إِلَى بَعْضٍ، مَأْخُوذٌ بِمَا فِي كُلِّ وَاحِدٍ مِنْهَا، وَإِنْ لَمْ تُذْكَرْ فِي غَيْرِ مِنْهَا - وَمَا عَدَا هَذَا فَفَسَادٌ فِي الْعَقْلِ، وَإِفْسَادٌ لِلدِّينِ، وَدَعَاوَى فِي غَايَةِ الْبُطْلَانِ.

L21906 Moreover, however much they may differ with us concerning the obligation of formal witnessing and documentation, they unanimously agree with us

وَأَيْضًا: فَإِنَّهُمْ مَهْمَا خَالَفُونَا فِي وُجُوبِ الْإِشْهَادِ، وَالْكِتَابِ، فَإِنَّهُمْ مُجْمِعُونَ مَعَنَا عَلَى أَنَّهُمَا فِعْلٌ حَسَنٌ مَنْدُوبٌ إِلَيْهِ، فَإِنْ كَانَ السُّكُوتُ عَنْ ذِكْرِ الْإِشْهَادِ فِي هَذِهِ الْأَخْبَارِ دَلِيلًا

[18] **Qur'an references (L21903):** Qur'an 2:60 (Al-Baqarah).

that these are virtuous and recommended acts. If the silence regarding the mention of witnessing in these reports constitutes evidence for the cessation of its obligation, then it equally constitutes evidence for the cessation of its preferential status, since he—peace be upon him—does not abandon the superior in all his actions in favor of the inferior.

عَلَى سُقُوطِ وُجُوبِهِ فَهُوَ دَلِيلٌ عَلَى سُقُوطِ اخْتِيَارِهِ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يَتْرُكُ الْأَفْضَلَ فِي جَمِيعِ أَعْمَالِهِ لِلْأَدْنَى.

L21907 Among their astonishing aspects (referring to the Ḥanafīs and Mālikīs) is their citation of this verse as evidence in their opposition to the Sunnah's stipulation that no sale is valid between the two parties to the transaction except after physical parting. They argued: "Allah the Exalted said: {And take witnesses when you conduct a sale} [Al-Baqarah: 282], yet He did not mention parting."[19]

وَمِنْ عَجَائِبِهِمْ احْتِجَاجُهُمْ بِهَذِهِ الْآيَةِ - يَعْنِي الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ - فِي مُخَالَفَتِهِمْ السُّنَّةَ أَنْ لَا بَيْعَ بَيْنَ الْمُتَبَايِعَيْنِ إلَّا بَعْدَ التَّفَرُّقِ فَقَالُوا: قَالَ اللَّهُ تَعَالَى: {وَأَشْهِدُوا إذَا تَبَايَعْتُمْ} [البقرة: ٢٨٢] وَلَمْ يَذْكُرْ التَّفَرُّقَ.

L21908 Then they invalidated the ruling of this verse through other narrations lacking any mention of the requirement for witnesses. This principle - if validated - would nullify the entire religion from its beginning to its end, for they will inevitably encounter other textual proofs omitting elements present in those hadiths, thereby annulling their rulings. This cycle would persist perpetually: whenever a text emerges omitting certain rulings, all unmentioned rulings must be invalidated. Subsequently, the ruling of that very text would itself be annulled, as it too would be omitted in another text. This is a path whereby whoever treads it merely confirms the corruption of their religion, their lack of modesty, and their intellectual deficiency - and we seek refuge in Allah from being forsaken.

ثُمَّ أَبْطَلُوا حُكْمَ هَذِهِ الْآيَةِ بِأَخْبَارٍ أُخَرَ لَيْسَ فِيهَا ذِكْرُ الْإِشْهَادِ، وَهَذَا بَابٌ يَبْطُلُ بِهِ - لَوْ صَحَّ - جَمِيعُ الدِّينِ أَوَّلِهِ عَنْ آخِرِهِ، لِأَنَّهُمْ لَا يَعْدَمُونَ نُصُوصًا أُخَرَ لَمْ يُذْكَرْ فِيهَا مَا فِي تِلْكَ الْأَحَادِيثِ فَيُبْطِلُونَ لِذَلِكَ أَحْكَامَهَا، وَهَكَذَا أَبَدًا كُلَّمَا وَرَدَ نَصٌّ لَمْ يُذْكَرْ فِيهِ سَائِرُ الْأَحْكَامِ وَجَبَ بُطْلَانُ مَا لَمْ يُذْكَرْ فِيهِ، ثُمَّ يَبْطُلُ حُكْمُ ذَلِكَ النَّصِّ أَيْضًا، لِأَنَّهُ لَمْ يُذْكَرْ أَيْضًا فِي نَصٍّ آخَرَ - وَهَذِهِ طَرِيقٌ مَنْ سَلَكَهَا فَلَمْ يَزْدَ عَلَى أَنْ أَثْبَتَ فَسَادَ دِينِهِ وَقِلَّةَ حَيَائِهِ وَضَعْفَ عَقْلِهِ وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ - فَإِنْ قَالُوا: هَذَا مِمَّا تَعُمُّ بِهِ الْبَلْوَى فَلَوْ كَانَ وَاجِبًا مَا خَفِيَ عَلَى كَثِيرٍ مِنْ الْعُلَمَاءِ؟ قُلْنَا: هَبْكُمْ مَوَّهْتُمْ بِهَذَا فِي أَخْبَارِ الْآحَادِ أَتَرَوْنَ هَذَا يَسُوغُ لَكُمْ فِي الْقُرْآنِ الَّذِي لَمْ يَبْقَ مَنْ لَمْ يَعْلَمْهُ؟ وَهَلَّا قُلْتُمْ هَذَا لِأَنْفُسِكُمْ فِي قَوْلِ مَنْ قَالَ مِنْكُمْ: لَا يَتِمُّ الْبَيْعُ إلَّا بِالتَّسْلِيمِ لِلْمَبِيعِ وَهَذَا أَمْرٌ تَعُمُّ بِهِ الْبَلْوَى وَلَا يَعْرِفُهُ أَكْثَرُ النَّاسِ - وَفِي قَوْلِ مَنْ قَالَ مِنْكُمْ: لَا يَتِمُّ الْبَيْعُ إلَّا بِالتَّفَرُّقِ، وَهَذَا أَمْرٌ تَعُمُّ بِهِ الْبَلْوَى وَلَا يَعْرِفُهُ كَثِيرٌ مِنْ النَّاسِ، وَفِي قَوْلِ مَنْ قَالَ مِنْكُمْ بِعُهْدَةِ الرَّقِيقِ فِي السَّنَةِ

If they argue: "This concerns a matter of widespread practical relevance - had it been obligatory, how could it remain concealed from most scholars?" We counter: Suppose we concede your obfuscation regarding solitary narrations - do you deem this reasoning applicable to the Quran, which none remain ignorant of? Why do you not apply this logic to your own positions: to those among you claiming "A sale is invalid without physical transfer of the sold item" - a matter of frequent occurrence unknown to most people? Or to those asserting "A sale is invalid unless buyer and seller separate" - a widespread practice unrecognized by many? Or to those imposing warranty

[19] **Qur'an references (L21907):** Qur'an 2:282 (Al-Baqarah).

periods of one and three years for slaves, or calamities affecting crops - matters of common experience unknown except to your own adherents? Thus, the arbitrary imposition of falsehood in their assertions and proofs becomes evident. And with Allah alone lies success.

L21909–21910 We have stated that if one omits witnessing and the written contract, he has disobeyed God Almighty. However, the sale remains valid. The disobedience is due to opposing God's command in this matter. As for the permissibility of the sale, it is because witnessing and the written contract are two acts distinct from the sale itself. God Almighty ordained them only after the sale's completion and validity. Thus, once the sale is concluded, subsequent disobedience does not nullify it, for every act has its own ruling: *"So whoever does a speck's weight of good will see it"* (Quran 99:7), *"and whoever does a speck's weight of evil will see it"* (Quran 99:8).[20]

L21911 ## Issue: The Terms of Sale

L21912 Issue 1416: A sale is only valid when conducted using the term "sale," "purchase," "trade," or a term equivalent to "sale" in other languages. If the price consists of gold or silver not taken possession of but either immediately due or deferred to a specified term, it is also permissible to use the terms "debt" or "deferred payment." None of that is valid if conducted using the term "gift," "charity," or any term other than those we have mentioned at all.

L21913 The proof of this is Allah's statement, the Most High: "And Allah has permitted trade and forbidden interest" [Al-Baqarah: 275].[21]

L21914 The words of Allah, the Exalted: *"Do not consume your wealth among yourselves by false means unless it is trade by mutual consent among you"* [al-Nisāʾ 4:29]. And His words: *"When you transact a debt for a specified term, write it down"* [al-Baqarah 2:282].[22]

وَالثَّلَاثِ، وَبِالْجَوَائِحِ فِي الثِّمَارِ، وَهِيَ أُمُورٌ تَكْثُرُ بِهَا الْبَلْوَى وَلَا يَعْرِفُهَا غَيْرُ الْقَائِلِينَ بِذَلِكَ مِنْكُمْ فَظَهَرَ التَّحَكُّمُ بِالْبَاطِلِ فِي أَقْوَالِهِمْ وَاسْتِدْلَالِهِمْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَإِنَّمَا قُلْنَا: إِنَّهُ إِنْ تَرَكَ الْإِشْهَادَ، وَالْكِتَابَ فَقَدْ عَصَى اللَّهَ تَعَالَى وَالْبَيْعُ تَامٌّ فَالْمَعْصِيَةُ لِخِلَافِهِ أَمْرَ اللَّهِ تَعَالَى بِذَلِكَ، وَأَمَّا جَوَازُ الْبَيْعِ فَلِأَنَّ الْإِشْهَادَ وَالْكِتَابَ عَمَلَانِ غَيْرَ الْبَيْعِ وَإِنَّمَا أَمَرَ اللَّهُ تَعَالَى بِهِمَا بَعْدَ تَمَامِ الْبَيْعِ وَصِحَّتِهِ فَإِذَا تَمَّ الْبَيْعُ لَمْ تُبْطِلْهُ مَعْصِيَةٌ حَدَثَتْ بَعْدَهُ وَلِكُلِّ عَمَلٍ حُكْمُهُ {فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ} [الزلزلة: ٧] {وَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ} [الزلزلة: ٨]

[مَسْأَلَةٌ أَلْفَاظُ الْبَيْعِ]

١٤١٦ - مَسْأَلَةٌ: وَلَا يَجُوزُ الْبَيْعُ إلَّا بِلَفْظِ الْبَيْعِ، أَوْ بِلَفْظِ الشِّرَاءِ، أَوْ بِلَفْظِ التِّجَارَةِ، أَوْ بِلَفْظٍ يُعَبَّرُ بِهِ فِي سَائِرِ اللُّغَاتِ عَنْ الْبَيْعِ، فَإِنْ كَانَ الثَّمَنُ ذَهَبًا أَوْ فِضَّةً غَيْرَ مَقْبُوضَيْنِ لَكِنْ حَالَّيْنِ، أَوْ إلَى أَجَلٍ مُسَمًّى: جَازَ أَيْضًا بِلَفْظِ الدَّيْنِ أَوْ الْمُدَايَنَةِ، وَلَا يَجُوزُ شَيْءٌ مِنْ ذَلِكَ بِلَفْظِ الْهِبَةِ، وَلَا بِلَفْظِ الصَّدَقَةِ، وَلَا بِشَيْءٍ غَيْرَ مَا ذَكَرْنَا أَصْلًا.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥] .

وَقَوْله تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] . وَقَوْله تَعَالَى: {إذَا تَدَايَنْتُمْ بِدَيْنٍ إلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ} [البقرة: ٢٨٢] .

[20] **Qur'an references (L21910):** Qur'an 99:7 (Az-Zalzalah); Qur'an 99:8 (Az-Zalzalah).
[21] **Qur'an references (L21913):** Qur'an 2:275 (Al-Baqarah).
[22] **Qur'an references (L21914):** Qur'an 4:29 (An-Nisa); Qur'an 2:282 (Al-Baqarah).

فَصَحَّ أَنَّ مَا حَرَّمَ اللَّهُ تَعَالَى فَهُوَ حَرَامٌ، وَمَا أَحَلَّ فَهُوَ حَلَالٌ، فَمَتَى أُخِذَ مَالٌ بِغَيْرِ الِاسْمِ الَّذِي أَبَاحَ اللَّهُ تَعَالَى بِهِ أَخْذَهُ كَانَ بَاطِلًا بِنَصِّ الْقُرْآنِ.

L21915 Thus, it is established that whatever Allah, the Exalted, has forbidden is forbidden, and whatever He has permitted is lawful. So, whenever wealth is acquired through other than the name by which Allah, the Exalted, has permitted its taking, it is invalid by the explicit text of the Quran.

وَصِفَةُ الْبَيْعِ وَالرِّبَا وَاحِدَةٌ وَالْعَمَلُ فِيهِمَا وَاحِدٌ، وَإِنَّمَا فَرَّقَ بَيْنَهُمَا الِاسْمُ فَقَطْ، وَإِنَّمَا هُمَا مُعَاوَضَةُ مَالٍ بِمَالٍ: أَحَدُهُمَا حَلَالٌ طَيِّبٌ، وَالْآخَرُ حَرَامٌ خَبِيثٌ، كَبِيرَةٌ مِنْ الْكَبَائِرِ، قَالَ تَعَالَى {وَعَلَّمَ آدَمَ الأَسْمَاءَ كُلَّهَا ثُمَّ عَرَضَهُمْ عَلَى الْمَلائِكَةِ فَقَالَ أَنْبِئُونِي بِأَسْمَاءِ هَؤُلاءِ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ٣١] {قَالُوا سُبْحَانَكَ لا عِلْمَ لَنَا إِلا مَا عَلَّمْتَنَا} [البقرة: ٣٢].

L21916 The description of sale and riba is the same, and the transaction in both is identical. Only the name distinguishes between them. They are merely an exchange of one form of wealth for another: one is lawful and wholesome, while the other is forbidden and vile—a major sin among the major sins. Allah, the Exalted, said: And He taught Adam all the names, then presented those to the angels and said, “Inform Me of the names of these, if you are truthful.” [Al-Baqarah: 31] They replied, “Glory be to You! We have no knowledge except what You have taught us.” [Al-Baqarah: 32][23]

وَقَالَ تَعَالَى: {إِنْ هِيَ إِلا أَسْمَاءٌ سَمَّيْتُمُوهَا أَنْتُمْ وَآبَاؤُكُمْ مَا أَنْزَلَ اللَّهُ بِهَا مِنْ سُلْطَانٍ} [النجم: ٢٣].

L21917 And He, the Exalted, said: “It is nothing but names that you and your forefathers have named, for which Allah has sent down no authority.” [An-Najm: 23][24]

فَصَحَّ أَنَّ الْأَسْمَاءَ كُلَّهَا تَوْقِيفٌ مِنْ اللَّهِ تَعَالَى، لَا سِيَّمَا أَسْمَاءُ أَحْكَامِ الشَّرِيعَةِ الَّتِي لَا يَجُوزُ فِيهَا الْإِحْدَاثُ، وَلَا تُعْلَمُ إلَّا بِالنُّصُوصِ، وَلَا خِلَافَ بَيْنَ الْحَاضِرِينَ مِنَّا وَمِنْ خُصُومِنَا فِي أَنَّ امْرَءًا لَوْ قَالَ لِلْآخَرِ: أَقْرِضْنِي هَذَا الدِّينَارَ وَأَقْضِيك دِينَارًا إلَى شَهْرِ كَذَا، وَلَمْ يَحُدَّ وَقْتًا فَإِنَّهُ حَسَنٌ، وَأَجْرٌ، وَبِرٌّ.

L21918–21920 Thus, it is established that all names are established by divine designation from Allah, the Most High, particularly the names of legal rulings in the Sharīʿah, in which innovation is not permissible. These names cannot be known except through textual sources, and there exists no disagreement among those present from us and... [text cut off]. Our opponents maintain that if a man were to say to another, “Lend me this dinar, and I will repay you a dinar by the month of such-and-such,” without specifying a precise time, then it is virtuous, divinely rewarded, and righteous.

وَعِنْدَنَا إنْ قَضَاهُ دِينَارَيْنِ أَوْ نِصْفَ دِينَارٍ فَقَطْ وَرَضِيَ كِلَاهُمَا فَحَسَنٌ.

L21921 In our view, if he settles the debt with only two dinars or half a dinar, and both consented to it, then it is valid.

وَلَوْ قَالَ لَهُ: بِعْنِي هَذَا الدِّينَارَ بِدِينَارٍ إلَى شَهْرٍ، وَلَمْ يُسَمِّ أَجَلًا، فَإِنَّهُ رِبًا، وَإِثْمٌ، وَحَرَامٌ، وَكَبِيرَةٌ مِنْ الْكَبَائِرِ - وَالْعَمَلُ وَاحِدٌ، وَإِنَّمَا فَرَّقَ بَيْنَهُمَا الِاسْمُ فَقَطْ.

L21922 If he said to him: “Sell me this dinar in exchange for a dinar deferred until a month [passes],” without specifying a maturity date, then it is usury—sinful, forbidden, and a grave sin among the gravest sins—because the transaction is one and the same, and the distinction between them is merely in name.

[23] **Qur’an references (L21916):** Qur’an 2:31 (Al-Baqarah); Qur’an 2:32 (Al-Baqarah).
[24] **Qur’an references (L21917):** Qur’an 53:23 (An-Najm).

L21923 Similarly, if a man were to say to a woman, “Permit me to have intercourse with you whenever I wish,” and she consents with her guardian’s approval, that act—if carried out—would constitute unlawful sexual intercourse, which incurs capital punishment in some jurisdictions according to certain legal schools.

وَكَذَلِكَ لَوْ قَالَ رَجُلٌ لِامْرَأَةٍ: أَبِيحِي لِي جِمَاعَك مَتَى شِئْت؟ فَفَعَلَتْ، وَرَضِيَ وَلِيُّهَا، لَكَانَ ذَلِكَ زِنًا - إنْ وَقَعَ - يُبِيحُ الدَّمَ فِي بَعْضِ الْمَوَاضِعِ.

L21924 If he said to her, “Marry me yourself,” and she did so, and her guardian consented, it would be lawful, proper, and righteous. Such is the case—in our school—in all matters.

وَلَوْ قَالَ لَهَا: أَنْكِحِينِي نَفْسَك؟ فَفَعَلَتْ، وَرَضِيَ وَلِيُّهَا لَكَانَ حَلَالًا، وَحَسَنًا، وَبِرًّا، وَهَكَذَا - عِنْدَنَا - فِي كُلِّ شَيْءٍ.

L21925 As for the term al-shirā (buying and selling), it is based on what we were transmitted through al-Bukhārī’s chain of transmission: via ʿAlī ibn ʿAyyāsh, from Abū Ghassān Muḥammad ibn Muṭarrif, who reported: Ibn al-Munkadir narrated to me from Jābir ibn ʿAbd Allāh that the Messenger of Allah (peace be upon him) said: “May Allah grant mercy to a person who is lenient when he sells, when he buys, and when he demands repayment.”

وَأَمَّا لَفْظُ الشِّرَى، فَلِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَلِيُّ بْنُ عَيَّاشٍ نا أَبُو غَسَّانَ مُحَمَّدُ بْنُ مُطَرِّفٍ حَدَّثَنِي ابْنُ الْمُنْكَدِرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «رَحِمَ اللَّهُ امْرَءًا سَمْحًا إذَا بَاعَ، وَإِذَا اشْتَرَى، وَإِذَا اقْتَضَى» .

A legal issue: Physical separation of the contracting parties by bodily departure that renders the sale binding.

[مَسْأَلَةُ التَّفَرُّقُ بِالْأَبْدَانِ الْمُوجِبُ لِلْبَيْعِ]

L21927 1417 - Issue: Any two parties engaged in a currency exchange (ṣarf) or other transaction — the sale between them is never valid, even if they have exchanged the commodity and the price, unless they bodily separate from the place where they concluded the contract. Each retains the right to invalidate that contract whether the other approves or objects — even if they remain in that state for their entire lifetime — unless one says to the other (it does not matter which of them is the speaker after completing the contract): “Choose to ratify the sale or invalidate it?” If he says: “I have ratified it,” the sale becomes binding — whether they separate or not — and neither party may rescind it except due to defect. So long as they do not bodily separate and neither offers the other this choice, the sold item remains the seller’s property as before, and the price remains the buyer’s property as before. The legal ruling pertaining to what each owns is enforced upon them respectively, not the ruling pertaining to the other’s property.

١٤١٧ - مَسْأَلَةٌ: وَكُلُّ مُتَبَايِعَيْنِ صَرْفًا أَوْ غَيْرَهُ فَلَا يَصِحُّ الْبَيْعُ بَيْنَهُمَا أَبَدًا وَإِنْ تَقَابَضَا السِّلْعَةَ وَالثَّمَنَ، مَا لَمْ يَتَفَرَّقَا بِأَبْدَانِهِمَا مِنْ الْمَكَانِ الَّذِي تَعَاقَدَا فِيهِ الْبَيْعَ، وَلِكُلِّ وَاحِدٍ مِنْهُمَا إبْطَالُ ذَلِكَ الْعَقْدِ أَحَبَّ الْآخَرُ أَمْ كَرِهَ - وَلَوْ بَقِيَا كَذَلِكَ دَهْرَهُمَا - إلَّا أَنْ يَقُولَ أَحَدُهُمَا لِلْآخَرِ - لَا تُبَالِ أَيُّهُمَا كَانَ الْقَائِلُ بَعْدَ تَمَامِ التَّعَاقُدِ -: اخْتَرْ أَنْ تُمْضِيَ الْبَيْعَ، أَوْ أَنْ تُبْطِلَهُ؟ فَإِنْ قَالَ: قَدْ أَمْضَيْته فَقَدْ تَمَّ الْبَيْعُ بَيْنَهُمَا - تَفَرَّقَا أَوْ لَمْ يَتَفَرَّقَا - وَلَيْسَ لَهُمَا وَلَا لِأَحَدِهِمَا فَسْخُهُ إلَّا بِعَيْبٍ، وَمَتَى مَا لَمْ يَتَفَرَّقَا بِأَبْدَانِهِمَا وَلَا خَيَّرَ أَحَدُهُمَا الْآخَرَ، فَالْمَبِيعُ بَاقٍ عَلَى مِلْكِ الْبَائِعِ كَمَا كَانَ، وَالثَّمَنُ بَاقٍ عَلَى مِلْكِ الْمُشْتَرِي كَمَا كَانَ، يَنْفُذُ فِي كُلِّ وَاحِدٍ مِنْهُمَا حُكْمُ الَّذِي هُوَ عَلَى مِلْكِهِ لَا حُكْمُ الْآخَرِ.

L21928–21930 The proof of that is the statement of the Prophet—peace and blessings of

Allah be upon him—which we have reported via the path of al-Bukhārī: Abū al-Nuʿmān (he is Muḥammad ibn al-Faḍl ʿĀrim) narrated to us, Ḥammād ibn Zayd narrated to us from Ayyūb al-Sikhtiyānī, from Nāfiʿ, from Ibn ʿUmar. The Messenger of Allah - peace and blessings be upon him - said: "The buyer and seller have the option as long as they have not separated, or one says to his companion: Choose, and perhaps he said: 'or it be an option contract.'"

بُرْهَانُ ذَلِكَ -: قَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو النُّعْمَانِ - هُوَ مُحَمَّدُ بْنُ الْفَضْلِ عَارِمٌ - نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْبَيِّعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا أَوْ يَقُولُ أَحَدُهُمَا لِصَاحِبِهِ: اخْتَرْ وَرُبَّمَا قَالَ: أَوْ يَكُونُ بَيْعَ خِيَارٍ» .

L21931 From the transmission of Ahmad ibn Shuʿayb: Muḥammad ibn ʿAlī ibn Ḥarb narrated to us, Muḥriz ibn al-Waḍḍāḥ narrated to us from Ismāʿīl—he is Ibn Jaʿfar—from Nāfiʿ from Ibn ʿUmar, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said: "The two parties engaged in a sale retain the option [to rescind] as long as they have not separated, unless the sale was already based on a stipulated option. For if the sale was based on a stipulated option, then the sale becomes binding."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ عَلِيِّ بْنِ حَرْبٍ نا مُحْرِزُ بْنُ الْوَضَّاحِ عَنْ إِسْمَاعِيلَ - هُوَ ابْنُ جَعْفَرٍ - عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْمُتَبَايِعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا إِلَّا أَنْ يَكُونَ الْبَيْعُ كَانَ عَنْ خِيَارٍ، فَإِنْ كَانَ الْبَيْعُ عَنْ خِيَارٍ فَقَدْ وَجَبَ الْبَيْعُ» .

L21932 Abu Muhammad said: This clarifies that the mentioned option refers solely to one party telling the other: "Choose," not a sale contracted with an option for a specified period. This is because the Prophet (peace be upon him) stated: "If the sale is with an option, the sale becomes binding"—and this differs from the ruling of a sale contract established with an option for a specified period according to those who hold this opinion.

قَالَ أَبُو مُحَمَّدٍ: هَذَا يُبَيِّنُ أَنَّ الْخِيَارَ الْمَذْكُورَ إِنَّمَا هُوَ قَوْلُ أَحَدِهِمَا لِلْآخَرِ: اخْتَرْ، لَا عَقَدَ الْبَيْعَ عَلَى خِيَارِ مُدَّةٍ مُسَمَّاةٍ، لِأَنَّهُ قَالَ - عَلَيْهِ السَّلَامُ -: إِنْ كَانَ الْبَيْعُ عَنْ خِيَارٍ، فَقَدْ وَجَبَ الْبَيْعُ - وَهَذَا خِلَافُ حُكْمِ الْبَيْعِ الْمَعْقُودِ عَلَى خِيَارِ مُدَّةٍ عِنْدَ الْقَائِلِينَ بِهِ.

L21933 From the path of Yaḥyā ibn Saʿīd al-Qaṭṭān, narrated by ʿUbayd ibn ʿUmar, reported by Nāfiʿ from Ibn ʿUmar from the Messenger of Allah (may Allah bless him and grant him peace) who said: "Every sale between two parties: there is no sale between them until they part ways or there is a *khiyar*."

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نا عُبَيْدُ بْنُ عُمَرَ أَخْبَرَنِي نَافِعٌ عَنِ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كُلُّ بَيِّعَيْنِ لَا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا أَوْ يَكُونَ خِيَارًا» .

L21934 Similarly, Hushaym reported via Yahya ibn Sa'id al-Ansari, via Nafi', via Ibn 'Umar, from the Prophet (peace be upon him) that there is absolutely no sale whatsoever between them.

وَهَكَذَا رَوَاهُ هُشَيْمٌ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ لَا بَيْعَ بَيْنَهُمَا.

L21935 And thus we have narrated it from Isma'il ibn Ja'far, Sufyan al-Thawri, and Shu'bah—all of them from Abdullah ibn Dinar from Ibn Umar from the

Messenger of Allah (peace be upon him): “There is no sale between them until they separate.”

وَهَكَذَا رُوِّينَاهُ عَنْ إِسْمَاعِيلَ بْنِ جَعْفَرٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَشُعْبَةَ، كُلُّهُمْ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا» .

L21936 From the narration of Muslim: Qutaybah ibn Sa’id narrated to us from Al-Layth ibn Sa’d, who narrated to him from Nāfiʿ from Ibn ʻUmar from the Messenger of Allah—peace and blessings be upon him—who said: “When two men conclude a sale, each of them retains the option as long as they have not separated and remain together, or until one of them grants the other the choice. If one grants the other the choice and they finalize the sale upon that condition, the sale becomes binding. If they separate after concluding the sale and neither has withdrawn from it, the sale becomes binding.”[25]

وَمِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ عَنِ اللَّيْثِ بْنِ سَعْدٍ حَدَّثَهُ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا تَبَايَعَ الرَّجُلَانِ فَكُلُّ وَاحِدٍ مِنْهُمَا بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا وَكَانَا جَمِيعًا أَوْ يُخَيِّرُ أَحَدُهُمَا الْآخَرَ، فَإِنْ خَيَّرَ أَحَدُهُمَا الْآخَرَ فَتَبَايَعَا عَلَى ذَلِكَ فَقَدْ وَجَبَ الْبَيْعُ، وَإِنْ تَفَرَّقَا بَعْدَ أَنْ تَبَايَعَا وَلَمْ يَتْرُكْ وَاحِدٌ مِنْهُمَا الْبَيْعَ فَقَدْ وَجَبَ الْبَيْعُ» .

L21937 Abu Muhammad said: This hadith resolves every difficulty, clarifies every ambiguity, and nullifies the fabricated interpretations that opponents have clamored with.

قَالَ أَبُو مُحَمَّدٍ: هَذَا الْحَدِيثُ يَرْفَعُ كُلَّ إِشْكَالٍ، وَيُبَيِّنُ كُلَّ إِجْمَالٍ، وَيُبْطِلُ التَّأْوِيلَاتِ الْمَكْذُوبَةَ الَّتِي شَغَبَ بِهَا الْمُخَالِفُونَ.

L21938–21939 From the chain of Muḥammad ibn ʿAbd al-Malik ibn Ayman: Muḥammad ibn Ismāʿīl al-Tirmidhī narrated to us, from al-Ḥumaydī, from Sufyān ibn ʿUyaynah, from Ibn Jurayj, who said: Nāfiʿ dictated to me on my tablets, saying: I heard ʿAbdullāh ibn ʿUmar say: The Messenger of Allah (peace be upon him) said: “When the buyer and seller conclude a sale, each of them has the option in their sale so long as they have not physically separated, or unless their sale is subject to a conditional option.”

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ نا الْحُمَيْدِيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا ابْنُ جُرَيْجٍ قَالَ: أَمْلَى عَلَيَّ نَافِعٌ فِي أَلْوَاحِي قَالَ: سَمِعْتُ عَبْدَ اللَّهِ بْنَ عُمَرَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا تَبَايَعَ الْمُتَبَايِعَانِ الْبَيْعَ فَكُلُّ وَاحِدٍ مِنْهُمَا بِالْخِيَارِ مِنْ بَيْعِهِ مَا لَمْ يَتَفَرَّقَا أَوْ يَكُنْ بَيْعُهُمَا عَنْ خِيَارٍ» .

L21940 Nafiʿ said: Whenever Ibn ʻUmar made a purchase and wished for the sale to become binding upon him, he would walk a short distance and then return.

قَالَ نَافِعٌ: فَكَانَ ابْنُ عُمَرَ إِذَا ابْتَاعَ الْبَيْعَ فَأَرَادَ أَنْ يَجِبَ لَهُ: - مَشَى قَلِيلًا ثُمَّ رَجَعَ.

L21941 From the chain of Muslim: Muḥammad ibn al-Muthannā and ʿAmr ibn ʿAlī narrated to us. Ibn al-Muthannā said: Yaḥyā ibn Saʿīd al-Qaṭṭān narrated to us. ʿAmr ibn ʿAlī said: ʿAbd al-Raḥmān ibn Mahdī narrated to us. Then Yaḥyā and ʿAbd al-Raḥmān both narrate from Shuʿbah, from Qatādah, from

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى، وَعَمْرُو بْنُ عَلِيٍّ قَالَ ابْنُ الْمُثَنَّى: نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ، وَقَالَ عَمْرُو بْنُ عَلِيٍّ: نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، ثُمَّ اتَّفَقَ يَحْيَى، وَعَبْدُ الرَّحْمَنِ، كِلَاهُمَا عَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ أَبِي الْخَلِيلِ - هُوَ صَالِحُ بْنُ أَبِي مَرْيَمَ - عَنْ عَبْدِ اللَّهِ

[25] **Hadith references (L21936):** Sunan Ibn Majah 2181; Sahih Muslim 1531c.

Abī al-Khalīl—he is Ṣāliḥ ibn Abī Maryam—from ʿAbd Allāh ibn al-Ḥārith ibn Nawfal ibn al-Ḥārith ibn ʿAbd al-Muṭṭalib, from Ḥakīm ibn Ḥizām, from the Prophet (PBUH), who said: "The buyer and the seller have the option as long as they have not parted. If they are truthful and clarify, their transaction is blessed. But if they lie and conceal, the blessing of their transaction is nullified."

بْنِ الْحَارِثِ بْنِ نَوْفَلِ بْنِ الْحَارِثِ بْنِ عَبْدِ الْمُطَّلِبِ عَنْ حَكِيمِ بْنِ حِزَامٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: قَالَ «الْبَيِّعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا، فَإِنْ صَدَقَا وَبَيَّنَا بُورِكَ لَهُمَا فِي بَيْعِهِمَا، وَإِنْ كَذَبَا، وَكَتَمَا مُحِقَ بَرَكَةُ بَيْعِهِمَا» .

L21942 We have also narrated it through the chain of Hammam ibn Yahya and Sa'id ibn Abi 'Arubah, both of whom narrate from Qatadah with the chain (isnād).

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ هَمَّامِ بْنِ يَحْيَى - وَسَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ بِإِسْنَادِهِ.

L21943 And via the chain of Abū al-Tayyāḥ from ʿAbdullāh ibn al-Ḥārith, with his isnād.

وَمِنْ طَرِيقِ أَبِي التَّيَّاحِ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ بِإِسْنَادِهِ.

L21944 These are mass-transmitted, manifestly consistent, and widespread chains of transmission that compel certain knowledge.

وَهَذِهِ أَسَانِيدُ مُتَوَاتِرَةٌ مُتَظَاهِرَةٌ مُنْتَشِرَةٌ تُوجِبُ الْعِلْمَ الضَّرُورِيَّ.

L21945 From the narration of Abū Dāwūd al-Sijistānī: Musaddad narrated to us, Ḥammād ibn Zayd narrated to us from Jamīl ibn Murrah from Abī al-Waḍīʾ, who said: We embarked on a military expedition and encamped at a site. One of our companions sold a horse to a young man, and they remained there for the remainder of their day and night. When dawn broke the next day and the time for departure arrived, he approached his horse to saddle it but regretted the sale. The buyer came to claim the horse through the transaction, but the seller refused to deliver it. The buyer said: "Let Abū Barzah, the Companion of the Messenger of Allah (ﷺ), arbitrate between us." They went to Abū Barzah at the outskirts of the camp and presented the case to him. He asked: "Do you both accept that I judge between you according to the ruling of the Messenger of Allah (ﷺ)?" The Messenger of Allah (ﷺ) said: **"The buyer and seller retain the option to rescind the transaction as long as they have not separated from one another."**

وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نا مُسَدَّدٌ نا حَمَّادُ بْنُ زَيْدٍ عَنْ جَمِيلِ بْنِ مُرَّةَ عَنْ أَبِي الْوَضِيءِ قَالَ: غَزَوْنَا غَزْوَةً لَنَا فَنَزَلْنَا مَنْزِلًا فَبَاعَ صَاحِبٌ لَنَا فَرَسًا لِغُلَامٍ، ثُمَّ أَقَامَا بَقِيَّةَ يَوْمِهِمَا وَلَيْلَتِهِمَا، فَلَمَّا أَصْبَحَا مِنْ الْغَدِ حَضَرَ الرَّحِيلُ قَامَ إلَى فَرَسِهِ لِيُسَرِّجَهُ فَنَدِمَ فَأَتَى الرَّجُلُ لِيَأْخُذَهُ بِالْبَيْعِ فَأَبَى أَنْ يَدْفَعَهُ إلَيْهِ، فَقَالَ لَهُ: بَيْنِي وَبَيْنَك أَبُو بَرْزَةَ صَاحِبُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: فَأَتَيَا أَبَا بَرْزَةَ فِي نَاحِيَةِ الْعَسْكَرِ فَقَالَا لَهُ: هَذِهِ الْقِصَّةَ فَقَالَ: أَتَرْضَيَانِ أَنْ أَقْضِيَ بَيْنَكُمَا بِقَضَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْبَيِّعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا» .

L21946 Hisham ibn Hassan said: Jamil ibn Murrah said: Abu Barzah said: I do not see you two having parted.

قَالَ هِشَامُ بْنُ حَسَّانَ: قَالَ جَمِيلُ بْنُ مُرَّةَ: قَالَ أَبُو بَرْزَةَ: مَا أَرَاكُمَا افْتَرَقْتُمَا.

L21947 Abū Muḥammad said: Abū al-Waḍīʾ—that is, ʿAbbād ibn Nuṣayb, a trustworthy Tabiʿī—heard ʿAlī ibn Abī Ṭālib, Abū Hurayrah, and Abū Barzah. These three Companions transmitted narrations received from the Messenger of

Allah—peace be upon him—and from them, the Imāms among the Tabiʿīn and subsequent generations transmitted narrations.

قَالَ أَبُو مُحَمَّدٍ: أَبُو الْوَضِيءِ - هُوَ عَبَّادُ بْنُ نَسِيبٍ تَابِعِيٌّ ثِقَةٌ - سَمِعَ عَلِيَّ بْنَ أَبِي طَالِبٍ، وَأَبَا هُرَيْرَةَ، وَأَبَا بَرْزَةَ، فَهَؤُلَاءِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَلَاثَةٌ مِنْ الصَّحَابَةِ، وَعَنْهُمْ الْأَئِمَّةُ مِنْ التَّابِعِينَ وَمَنْ بَعْدَهُمْ.

L21948–21950 Muḥammad ibn Saʿīd ibn ʿAmr ibn Nabāt said: ʿAbd Allāh ibn Muḥammad ibn Qāsim al-Qalaʿī reported to us... Muhammad ibn Ahmad al-Sawwaf in Baghdad narrated: Bishr ibn Musa ibn Salih ibn Shaykh ibn Umayr al-Asadi narrated: Abdullah ibn al-Zubayr al-Humaydi narrated: Sufyan—he is Ibn Uyaynah—narrated: Bishr ibn Asim al-Thaqafi said: I heard Sa'id ibn al-Musayyab narrate from Ubayy ibn Ka'b, who said: Umar ibn al-Khattab and al-Abbas ibn Abd al-Muttalib brought their dispute to him regarding a house owned by al-Abbas adjacent to the mosque. Umar sought to acquire it to expand the mosque, but al-Abbas refused. Ubayy said to them: When Solomon was commanded to build the Holy Temple, its land belonged to a man. Solomon purchased it from him. Upon completing the purchase, the man asked: "Is what you took from me better, or what you gave me?" Solomon replied: "What I took from you is better." The man said: "Then I do not validate the sale," so Solomon withdrew the offer. He increased the price and approached him again, but the man refused. Solomon persisted—raising the offer and attempting to purchase it, inquiring each time—but the man kept rejecting the terms. This continued until Solomon bought it by his own judgment, stipulating that he would not ask him again, having resorted to extensive arbitration. The matter overwhelmed Solomon, whereupon Allah revealed to him: "If you give him from your own wealth, cease. But if you give him from Our provision, continue until he is satisfied." Thus, he ruled in favor of al-Abbas.

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ عَمْرِ بْنِ نَبَاتٍ قَالَ: نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ الْقَلَعِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ الصَّوَّافُ بِبَغْدَادَ نا بِشْرُ بْنُ مُوسَى بْنِ صَالِحِ بْنِ شَيْخِ بْنِ عُمَيْرٍ الْأَسَدِيُّ نا عَبْدُ اللَّهِ بْنُ الزُّبَيْرِ الْحُمَيْدِيُّ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - نا بِشْرُ بْنُ عَاصِمٍ الثَّقَفِيُّ قَالَ: سَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ يُحَدِّثُ عَنْ أُبَيِّ بْنِ كَعْبٍ قَالَ: إنَّ عُمَرَ بْنَ الْخَطَّابِ، وَالْعَبَّاسَ بْنَ عَبْدِ الْمُطَّلِبِ تَحَاكَمَا إلَيْهِ فِي دَارٍ لِلْعَبَّاسِ إلَى جَانِبِ الْمَسْجِدِ أَرَادَ عُمَرُ أَخْذَهَا لِيَزِيدَهَا فِي الْمَسْجِدِ فَأَبَى الْعَبَّاسُ، فَقَالَ لَهُمَا أُبَيٌّ: لَمَّا أُمِرَ سُلَيْمَانُ بِبِنَاءِ بَيْتِ الْمَقْدِسِ كَانَتْ أَرْضُهُ لِرَجُلٍ فَاشْتَرَاهَا مِنْهُ سُلَيْمَانُ فَلَمَّا اشْتَرَاهَا قَالَ لَهُ الرَّجُلُ: الَّذِي أَخَذْت مِنِّي خَيْرٌ أَمْ الَّذِي أَعْطَيْتنِي؟ قَالَ سُلَيْمَانُ: بَلْ الَّذِي أَخَذْت مِنْك، قَالَ: فَإِنِّي لَا أُجِيزُ الْبَيْعَ، فَرَدَّهُ، فَزَادَهُ، ثُمَّ سَأَلَهُ فَأَخْبَرَهُ، فَأَبَى أَنْ يُجِيزَهُ، فَلَمْ يَزَلْ يَزِيدُهُ وَيَشْتَرِي مِنْهُ، فَيَسْأَلُهُ فَيُخَيِّرُهُ، فَلَا يُجِيزُ الْبَيْعَ، حَتَّى اشْتَرَاهَا مِنْهُ بِحُكْمِهِ عَلَى أَنْ لَا يَسْأَلَهُ، فَاحْتَكَمَ شَيْئًا كَثِيرًا، فَتَعَاظَمَهُ سُلَيْمَانُ، فَأَوْحَى اللَّهُ إلَيْهِ: إنْ كُنْت إنَّمَا تُعْطِيهِ مِنْ عِنْدِك فَلَا تُعْطِهِ، وَإِنْ كُنْت إنَّمَا تُعْطِيه مِنْ رِزْقِنَا فَأَعْطِهِ حَتَّى يَرْضَى بِهَا، فَقَضَى بِهَا لِلْعَبَّاسِ.

L21951 It has been narrated to us through the chain of Al-Bukhārī that Al-Layth ibn Sa'd said: 'Abd al-Raḥmān ibn Khālid ibn Musāfir related to me, from Ibn Shihāb, from Sālim ibn 'Abd Allāh ibn 'Umar, from his father, who said: "I sold property of mine in al-Wādī to the Commander of the Faithful 'Uthmān in exchange for his property in Khaybar. When we concluded the transaction, I immediately retraced my steps and left his house, fearing he might demand

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ قَالَ اللَّيْثُ هُوَ ابْنُ سَعْدٍ -: حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ خَالِدِ بْنِ مُسَافِرٍ عَنْ ابْنِ شِهَابٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: بِعْت مِنْ

I rescind the sale. The established Sunnah was that the two parties to the transaction retain the right of choice until they separate from one another."

أَمِيرِ الْمُؤْمِنِينَ عُثْمَانَ مَالًا بِالْوَادِي بِمَالٍ لَهُ بِخَيْبَرَ، فَلَمَّا تَبَايَعْنَا رَجَعْت عَلَى عَقِبَيَّ حَتَّى خَرَجْت مِنْ بَيْتِهِ خَشْيَةَ أَنْ يُرَادَّنِي الْبَيْعَ وَكَانَتْ السُّنَّةُ أَنَّ الْمُتَبَايِعَيْنِ بِالْخِيَارِ حَتَّى يَتَفَرَّقَا.

L21952 And via Al-Layth's narration as well: From Yunus ibn Yazid, from Ibn Shihāb, from Sālim ibn ʻAbdillāh ibn ʻUmar, who said: ʻAbdullāh ibn ʻUmar stated: "When we entered into transactions, each of us retained the option of khiyār so long as the two parties had not separated. I once sold ʻUthmān ibn ʻAffān my asset in the Valley in exchange for his asset in Khaybar. When I concluded the sale with him, I began backing away on my heels, fearing ʻUthmān might revoke the sale before I departed from him."

وَمِنْ طَرِيقِ اللَّيْثِ أَيْضًا: عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ عُمَرَ: كُنَّا إذَا تَبَايَعْنَا كَانَ كُلُّ وَاحِدٍ مِنَّا بِالْخِيَارِ مَا لَمْ يَتَفَرَّقْ الْمُتَبَايِعَانِ فَتَبَايَعْت أَنَا وَعُثْمَانُ بْنُ عَفَّانَ فَبِعْته مَالًا لِي بِالْوَادِي بِمَالٍ لَهُ بِخَيْبَرَ، فَلَمَّا بَايَعْته طَفِقْت أَنْكُصُ عَلَى عَقِبَيَّ الْقَهْقَرَى خَشْيَةَ أَنْ يُرَادَّنِي عُثْمَانُ الْبَيْعَ قَبْلَ أَنْ أُفَارِقَهُ.

L21953 Thus, Ibn ʻUmar reports that this is the doctrine of the Companions, their practice, and the doctrine of ʻUthman ibn ʻAffān, because he feared that ʻUthman would revoke the sale before physical separation. Had this not been ʻUthman's doctrine, Ibn ʻUmar would not have feared such from him, and he reports that this is the Sunnah.

فَهَذَا ابْنُ عُمَرَ يُخْبِرُ بِأَنَّ هَذَا مَذْهَبُ الصَّحَابَةِ وَعَمَلُهُمْ، وَمَذْهَبُ عُثْمَانَ بْنِ عَفَّانَ؛ لِأَنَّهُ خَشِيَ أَنْ يُرَادَّهُ الْبَيْعَ قَبْلَ التَّفَرُّقِ بِالْأَبْدَانِ، فَلَوْ لَمْ يَكُنْ ذَلِكَ مَذْهَبَ عُثْمَانَ مَا خَافَ ابْنُ عُمَرَ ذَلِكَ مِنْهُ وَيُخْبِرُ بِأَنَّ ذَلِكَ هُوَ السُّنَّةُ.

L21954–21956 And that has also been narrated to us from Abū Hurayrah, Abū Zurʻah ibn ʻAmr ibn Jarīr, and Tāwus - as has been narrated to us. From ʻAbd al-Razzāq, who narrated to us: Sufyān al-Thawrī narrated from Abū ʻAttāb, from Abū Zurʻah: A man negotiated with him to purchase his horse. When he concluded the sale, he granted him three options to rescind, then said, "Choose." Each of them granted the other three options to rescind. Then Abū Zurʻah said: I heard Abū Hurayrah say, "This sale is by mutual consent." Moreover, ʻUmar and al-ʻAbbās both heard Ubayy ruling to ratify the rescission of the sale after its conclusion, and they did not disapprove of that. Thus, it is confirmed that they all (Umar and Abbas) held this opinion, alongside ʻUthmān, Abū Hurayrah, Abū Barzah, Ibn ʻUmar, and the Companions collectively—may Allah be pleased with them.

وَرُوِّينَا ذَلِكَ أَيْضًا: عَنْ أَبِي هُرَيْرَةَ، وَأَبِي زُرْعَةَ بْنِ عَمْرِو بْنِ جَرِيرٍ، وَطَاوُسٍ - كَمَا رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي عَتَّابٍ عَنْ أَبِي زُرْعَةَ، أَنَّ رَجُلًا سَاوَمَهُ بِفَرَسٍ لَهُ فَلَمَّا بَايَعَهُ خَيَّرَهُ ثَلَاثًا، ثُمَّ قَالَ: اخْتَرْ؟ فَخَيَّرَ كُلُّ وَاحِدٍ مِنْهُمَا صَاحِبَهُ ثَلَاثًا، ثُمَّ قَالَ أَبُو زُرْعَةَ: سَمِعْت أَبَا هُرَيْرَةَ، يَقُولُ: هَذَا الْبَيْعُ عَنْ تَرَاضٍ -: فَهَذَا عُمَرُ، وَالْعَبَّاسُ، يَسْمَعَانِ أُبَيًّا يَقْضِي بِتَصْوِيبِ رَدِّ الْبَيْعِ بَعْدَ عَقْدِهِ فَلَا يُنْكِرَانِ ذَلِكَ - فَصَحَّ أَنَّهُمْ كُلَّهُمْ قَائِلُونَ بِذَلِكَ وَمَعَهُمْ عُثْمَانُ، وَأَبُو هُرَيْرَةَ وَأَبُو بَرْزَةَ، وَابْنُ عُمَرَ، وَالصَّحَابَةُ جُمْلَةً - رَضِيَ اللَّهُ عَنْهُمْ -.

L21957 Through the chain of ʿAbd al-Razzāq, from Sufyān ibn ʿUyaynah, from Su-

laymān al-Aḥwal: I heard Ṭāwus swear by Allah, “There is no option except after the sale.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ سُلَيْمَانَ الْأَحْوَلِ سَمِعْت: طَاوُسًا يَحْلِفُ بِاَللَّهِ: مَا التَّخْيِيرُ إلَّا بَعْدَ الْبَيْعِ.

L21958 And through the chain of Saʿīd ibn Manṣūr: Hushaym reported to us: “I am Muḥammad ibn ʿAlī al-Sulamī. I heard Abū al-Ḍuḥā narrate that he witnessed Shurayḥ adjudicating a dispute between two men. One had purchased a house from the other for four thousand dirhams and concluded the contract. The buyer then reconsidered the transaction before departing from the seller, declaring: ’I no longer want it.’ The seller countered: ’I sold it to you and concluded the contract.’ We brought our dispute to Shurayḥ, who said: ’The buyer retains the right to rescind as long as they have not physically separated.’” Muḥammad ibn ʿAlī added: “I witnessed al-Shaʿbī issuing rulings according to this principle.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا مُحَمَّدُ بْنُ عَلِيٍّ السُّلَمِيُّ سَمِعْت أَبَا الضُّحَى يُحَدِّثُ أَنَّهُ شَهِدَ شُرَيْحًا اخْتَصَمَ إلَيْهِ رَجُلَانِ اشْتَرَى أَحَدُهُمَا دَارًا مِنْ الْآخَرِ بِأَرْبَعَةِ آلَافٍ، فَأَوْجَبَهَا لَهُ، ثُمَّ بَدَا لَهُ فِي بَيْعِهَا قَبْلَ أَنْ يُفَارِقَ صَاحِبَهُ فَقَالَ: لَا حَاجَةَ لِي فِيهَا، فَقَالَ الْبَائِعُ: قَدْ بِعْتُك وَأَوْجَبْت لَك، فَاخْتَصَمْنَا إلَى شُرَيْحٍ، فَقَالَ شُرَيْحٌ: هُوَ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا قَالَ مُحَمَّدُ بْنُ عَلِيٍّ: وَشَهِدْت الشَّعْبِيَّ يَقْضِي بِهَذَا.

L21959 Through the chain of Ibn Abi Shaybah: Jarir narrated to us from Mughirah from Al-Sha‘bi that a man bought an inferior horse and sought to return it before they separated. Al-Sha‘bi ruled that the sale was binding upon him. Then Abu Al-Duḥā bore witness before him that Shurayh had been approached with a similar case and returned it to the seller. Thereupon Al-Sha‘bi reverted to Shurayh’s ruling.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرٌ عَنْ مُغِيرَةَ عَنْ الشَّعْبِيِّ أَنَّ رَجُلًا اشْتَرَى بِرْذَوْنًا فَأَرَادَ أَنْ يَرُدَّهُ قَبْلَ أَنْ يَتَفَرَّقَا، فَقَضَى الشَّعْبِيُّ: أَنَّهُ قَدْ وَجَبَ عَلَيْهِ، فَشَهِدَ عِنْدَهُ أَبُو الضُّحَى: أَنَّ شُرَيْحًا أُتِيَ فِي مِثْلِ ذَلِكَ فَرَدَّهُ عَلَى الْبَائِعِ فَرَجَعَ الشَّعْبِيُّ إلَى قَوْلِ شُرَيْحٍ.

L21960 It has also been narrated to us through Ma’mar’s chain from Ayyub al-Sakhtiyani, from Muhammad ibn Sirin, that he witnessed Shurayh adjudicating between two disputants. One had purchased from the other through a sale transaction, whereupon the buyer declared, “I did not consent to this,” while the seller asserted, “You did indeed consent.” Shurayh ruled: “Either you both produce evidence that you mutually retracted consent after the sale, or [evidence of] the rescission option, or he must swear by Allah that you both neither mutually retracted consent after the transaction nor exercised the rescission option.” This position corresponds to the legal view of Hisham ibn Yusuf and his son Abd al-Rahman.

وَرُوِّينَا أَيْضًا: مِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ شَهِدَ شُرَيْحًا يَقْضِي بَيْنَ الْمُخْتَصِمَيْنِ اشْتَرَى أَحَدُهُمَا مِنْ الْآخَرِ بَيْعًا فَقَالَ: إنِّي لَمْ أَرْضَهُ، وَقَالَ الْآخَرُ: بَلْ قَدْ رَضِيتَهُ فَقَالَ شُرَيْحٌ: بَيِّنَتُكُمَا أَنَّكُمَا تَصَادَرْتُمَا عَنْ رِضًا بَعْدَ الْبَيْعِ أَوْ خِيَارٍ أَوْ يَمِينُهُ بِاَللَّهِ مَا تَصَادَرْتُمَا عَنْ رِضًا بَعْدَ الْبَيْعِ وَلَا خِيَارٍ -: وَهُوَ قَوْلُ هِشَامِ بْنِ يُوسُفَ، وَابْنِهِ عَبْدِ الرَّحْمَنِ.

L21961 And Al-Bukhari said: It is the statement of ʿAṭāʾ Ibn Abī Rabāḥ and Ibn Abī Mulaykah.

وَقَالَ الْبُخَارِيُّ: هُوَ قَوْلُ عَطَاءِ بْنِ أَبِي رَبَاحٍ، وَابْنِ أَبِي مُلَيْكَةَ.

L21962–21964 This is the opinion of Al-Ḥasan, Saʿīd ibn al-Musayyib, Al-Zuhrī, Ibn Abī

Dhi'b, Sufyān al-Thawrī, Sufyān ibn ʿUyaynah, Al-Awzāʿī, Al-Layth, ʿUbayd Allāh ibn al-Ḥasan al-Qāḍī (the Judge), Al-Shāfiʿī, Abū Thawr, all his disciples, Isḥāq ibn Rāhūyah, Aḥmad ibn Ḥanbal, and Abū ʿUbayd. My father Sulaymān, Muḥammad ibn Naṣr al-Marwazī, Muḥammad ibn Jarīr al-Ṭabarī, the people of Ḥadīth, and the people of Madīnah.

وَهُوَ قَوْلُ الْحَسَنِ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَالزُّهْرِيِّ، وَابْنِ أَبِي ذِئْبٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، وَالْأَوْزَاعِيِّ، وَاللَّيْثِ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ الْقَاضِي، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَجَمِيعِ أَصْحَابِهِ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي عُبَيْدٍ وَأَبِي سُلَيْمَانَ، وَمُحَمَّدِ بْنِ نَصْرٍ الْمَرْوَزِيِّ، وَمُحَمَّدِ بْنِ جَرِيرٍ الطَّبَرِيِّ، وَأَهْلِ الْحَدِيثِ، وَأَهْلِ الْمَدِينَةِ.

L21965 As we were informed through the chain of Ibn Ayman—Abdullah ibn Ahmad ibn Hanbal narrated—he said: My father told me: "It reached me that Ibn Abi Dhi'b had been informed of Malik ibn Anas's statement: 'The two parties to a sale do not have the option [to rescind]?'" Ibn Abi Dhi'b then commented: "This is a hadith trodden in Medina"—meaning it is well-known.

كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَيْمَنَ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ قَالَ: قَالَ لِي أَبِي: بَلَغَنِي عَنْ ابْنِ أَبِي ذِئْبٍ أَنَّهُ بَلَغَهُ قَوْلُ مَالِكِ بْنِ أَنَسٍ: لَيْسَ الْبَيِّعَانِ بِالْخِيَارِ؟ فَقَالَ ابْنُ أَبِي ذِئْبٍ: هَذَا حَدِيثٌ مَوْطُوءٌ بِالْمَدِينَةِ - يَعْنِي مَشْهُورًا -.

L21966 Abu Muhammad said: However, Al-Awzaʿī stated: In every sale, the buyer and seller retain the right to rescind the transaction until they physically separate, except in three cases: war booty; co-heirs mutually assessing the value of inherited assets; and trade partners assessing the value of their shared commerce.

قَالَ أَبُو مُحَمَّد: إِلَّا أَنَّ الْأَوْزَاعِيَّ قَالَ: كُلُّ بَيْعٍ فَالْمُتَبَايِعَانِ فِيهِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا بِأَبْدَانِهِمَا، إِلَّا بُيُوعًا ثَلَاثَةً: الْمَغْنَمَ، وَالشُّرَكَاءَ فِي الْمِيرَاثِ يَتَقَاوَمُونَهُ، وَالشُّرَكَاءَ فِي التِّجَارَةِ يَتَقَاوَمُونَهَا.

L21967 Al-Awzaʿī said: The definition of separation is that each of them becomes absent from their companion until they no longer see each other. Aḥmad said: As we have stated, except that he does not acknowledge the *takhyīr* (option), and he recognizes no separation except solely through physical absence of the bodies.

قَالَ الْأَوْزَاعِيُّ: وَحَدُّ التَّفَرُّقِ أَنْ يَغِيبَ كُلُّ وَاحِدٍ مِنْهُمَا عَنْ صَاحِبِهِ حَتَّى لَا يَرَاهُ - وَقَالَ أَحْمَدُ: كَمَا قُلْنَا، إِلَّا أَنَّهُ لَا يَعْرِفُ التَّخْيِيرَ، وَلَا يَعْرِفُ إِلَّا التَّفَرُّقَ بِالْأَبْدَانِ فَقَطْ.

L21968 And this al-Shaʿbi had annulled his legal ruling afterward and returned to the truth. Abu Hanifah, Malik, and those who followed them deviated entirely from all this. The two said: The sale is concluded by verbal agreement even if the parties have not physically separated, and neither granted the other an option to rescind. They contradicted the established Sunnah and the Companions, and no opposing view is known at all from those we mentioned among them. We know of no predecessors for them among the Followers except Ibrahim alone—as we transmitted through the chain

وَهَذَا الشَّعْبِيُّ قَدْ فَسَخَ قَضَاءَهُ بَعْدَ ذَلِكَ وَرَجَعَ إِلَى الْحَقِّ، فَشَذَّ عَنْ هَذَا كُلِّهِ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَمَنْ قَلَّدَهُمَا، وَقَالَا: الْبَيْعُ يَتِمُّ بِالْكَلَامِ وَإِنْ لَمْ يَتَفَرَّقَا بِأَبْدَانِهِمَا، وَلَا خَيَّرَ أَحَدُهُمَا الْآخَرَ، وَخَالَفُوا السُّنَنَ الثَّابِتَةَ، وَالصَّحَابَةَ، وَلَا يُعْرَفُ لِمَنْ ذَكَرْنَا مِنْهُمْ

of Sa'id ibn Mansur, who narrated to us from Hushaym, from al-Mughirah, from Ibrahim, who said: When the transaction becomes binding, there is no option.

L21969 From the path of Ibn Abi Shaybah: Wakiʿ reported to us: Sufyān reported to us from Mughīrah from Ibrāhīm, who said: "The sale is permissible even if the two parties have not physically parted ways"—and a fabricated, forged narration is transmitted from al-Ḥajjāj ibn Arṭāʾah (and his rejection as a narrator suffices) from al-Ḥakam from Shurayḥ, who said: "When a man concludes a sale verbally, the sale becomes binding upon him." The authentic report from Shurayḥ conforms to the truth—as we previously cited through the narration of Abū al-Ḍuḥā and Ibn Sīrīn from him.

L21970 By my life, Ibrahim's statement is indeed interpreted as referring to every transaction other than sale, such as leasing, marriage, and gifts, for this is plausible, since he did not mention sale at all, and thus they reached this conclusion without precedent.

L21971 His statement, "The sale is permissible even if the two parties do not physically separate," is valid. We did not declare it impermissible, nor did he assert it is binding; rather, he affirmed it is permissible.

L21972–21974 Abu Muhammad said: They obfuscated [the truth] with utterly devious sophistries - among them their assertion: "Is the meaning of 'separation' [merely] through speech?!" We responded: Had it been as they claim... It would align with our position and contradict yours, for when the two contracting parties state "I accept it for ten," and the other responds "No, rather for twenty," no person of sound judgment doubts that they have diverged through speech. But if one says "Fifteen," and the other responds "Yes, I have sold it to you for fifteen," they have now reached agreement without divergence. Does the right to rescind then become incumbent upon them since they did not part ways without agreement according to the explicit wording of the ḥadīth? Proceed as you wish - whoever opposes the truth is instantly disgraced and exposed.

L21975 Moreover, we say to them: Your assertion that "disunity through speech is a

مُخَالِفٌ أَصْلًا، وَمَا نَعْلَمُ لَهُمْ مِنْ التَّابِعِينَ سَلَفًا إِلَّا إبْرَاهِيمَ وَحْدَهُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ قَالَ: إذَا وَجَبَتْ الصَّفْقَةُ فَلَا خِيَارَ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا سُفْيَانُ عَنْ مُغِيرَةَ عَنْ إبْرَاهِيمَ قَالَ: الْبَيْعُ جَائِزٌ وَإِنْ لَمْ يَتَفَرَّقَا - وَرِوَايَةٌ مَكْذُوبَةٌ مَوْضُوعَةٌ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ وَكَفَى بِهِ سُقُوطًا عَنْ الْحَكَمِ عَنْ شُرَيْحٍ قَالَ: " إذَا كَلَّمَ الرَّجُلُ بِالْبَيْعِ وَجَبَ عَلَيْهِ الْبَيْعُ، وَالصَّحِيحُ عَنْ شُرَيْحٍ هُوَ مُوَافَقَةُ الْحَقِّ -: كَمَا أَوْرَدْنَا قَبْلُ مِنْ رِوَايَةِ أَبِي الضُّحَى، وَابْنِ سِيرِينَ عَنْهُ.

وَلَعَمْرِي، إنَّ قَوْلَ إبْرَاهِيمَ لَيُخَرَّجُ عَلَى أَنَّهُ عَنَى كُلَّ صَفْقَةٍ غَيْرَ الْبَيْعِ، لَكِنْ الْإِجَارَةَ، وَالنِّكَاحَ، وَالْهِبَاتِ، فَهَذَا مُمْكِنٌ، لِأَنَّهُ لَمْ يَذْكُرْ الْبَيْعَ أَصْلًا فَخَصَلُوا بِلَا سَلَفٍ.

وَقَوْلُهُ: الْبَيْعُ جَائِزٌ وَإِنْ لَمْ يَتَفَرَّقَا: صَحِيحٌ - وَمَا قُلْنَا: إنَّهُ غَيْرُ جَائِزٍ، وَلَا قَالَ هُوَ: إنَّهُ لَازِمٌ، وَإِنَّمَا قَالَ: إنَّهُ جَائِزٌ.

قَالَ أَبُو مُحَمَّد: وَمَوَّهُوا بِتَمْوِيهَاتٍ فِي غَايَةِ الْفَسَادِ -: مِنْهَا: أَنَّهُمْ قَالُوا: مَعْنَى التَّفَرُّقِ أَيْ بِالْكَلَامِ؟ فَقُلْنَا: لَوْ كَانَ كَمَا يَقُولُونَ لَكَانَ مُوَافِقًا لِقَوْلِنَا وَمُخَالِفًا لِقَوْلِكُمْ، لِأَنَّ قَوْلَ الْمُتَبَايِعَيْنِ آخُذُهُ بِعَشَرَةٍ، فَيَقُولُ الْآخَرُ: لَا، وَلَكِنْ بِعِشْرِينَ لَا شَكَّ عِنْدَ كُلِّ ذِي حِسٍّ سَلِيمٍ أَنَّهُمَا مُتَفَرِّقَانِ بِالْكَلَامِ، فَإِذَا قَالَ أَحَدُهُمَا بِخَمْسَةَ عَشَرَ، وَقَالَ الْآخَرُ: نَعَمْ قَدْ بِعْتُكَهُ بِخَمْسَةَ عَشَرَ، فَالْآنَ اتَّفَقَا وَلَمْ يَتَفَرَّقَا فَالْآنَ وَجَبَ الْخِيَارُ لَهُمَا إذْ لَمْ يَتَفَرَّقَا بِنَصِّ الْحَدِيثِ؟ فَاذْهَبُوا كَيْفَ شِئْتُمْ مَنْ عَارَضَ الْحَقَّ بَلَحَ وَافْتَضَحَ.

lie" is itself false and an unproven claim. It is impermissible to uphold both these positions in matters of religion.

وَأَيْضًا: فَنَقُولُ لَهُمْ: قَوْلُكُمْ: التَّفَرُّقُ بِالْكَلَامِ كَذِبٌ، دَعْوَى بِلَا بُرْهَانٍ، لَا يَحِلُّ الْقَوْلُ بِهِمَا فِي الدِّينِ.

L21976 Additionally: the narration of al-Layth.

وَأَيْضًا: فَرِوَايَةُ اللَّيْثِ.

L21977 From Nāfiʿ, from Ibn ʿUmar: What we cited from Rāfiʿah for every dispute clarifies that it entails physical separation from the site with one's body, and this is necessary.

عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ الَّتِي أَوْرَدْنَا رَافِعَةٌ لِكُلِّ شَغَبٍ، وَمُبَيِّنَةٌ أَنَّهُ التَّفَرُّقُ عَنْ الْمَكَانِ بِالْأَبْدَانِ وَلَا بُدَّ.

L21978 Some of them said: The meaning of "the two transacting parties" here refers specifically to the buyer and seller engaged in negotiation, just as an animal intended for slaughter is termed "the slaughtered one" prior to the actual slaughter. They cited the Almighty's statement: *"So they have approached their prescribed waiting period..."* [Al-Baqarah: 231], meaning they have drawn near to the conclusion of their designated term.[26]

وَقَالَ بَعْضُهُمْ: مَعْنَى الْمُتَبَايِعَيْنِ هَهُنَا: إنَّمَا هُمَا الْمُتَسَاوِمَانِ، كَمَا سُمِّيَ الذَّبِيحُ وَلَمْ يُذْبَحْ - وَقَالَ: كَمَا قَالَ تَعَالَى: {فَبَلَغْنَ أَجَلَهُنَّ} [البقرة: ٢٣١] : إنَّمَا أَرَادَ تَقَارَبْنَ بُلُوغَ أَجَلِهِنَّ.

L21979 Others among them said: The intent of his statement—peace be upon him—"as long as they have not separated" is merely the period between one of them saying, "I have sold you this commodity of mine for a dinar?" In this scenario, the option persists until the other party says, "I have accepted that," and between one saying to the other party, "I have bought this commodity of yours for a dinar," where the option remains valid until the other says, "I have sold it to you as you stated."

وَقَالَ آخَرُونَ مِنْهُمْ: إنَّمَا أَرَادَ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «مَا لَمْ يَتَفَرَّقَا» إنَّمَا هُوَ مَا بَيْنَ قَوْلِ أَحَدِهِمَا: قَدْ بِعْتُك سِلْعَتِي هَذِهِ بِدِينَارٍ؟ فَهُوَ بِالْخِيَارِ مَا لَمْ يَقُلْ لَهُ الْآخَرُ: قَدْ قَبِلْت ذَلِكَ، وَبَيْنَ قَوْلِهِ لِصَاحِبِهِ: قَدْ ابْتَعْت سِلْعَتَك هَذِهِ بِدِينَارٍ فَهُوَ بِالْخِيَارِ مَا لَمْ يَقُلْ لَهُ الْآخَرُ: قَدْ بِعْتُكَهَا بِمَا قُلْت.

L21980–21982 Others said: It refers solely to the period between the statement of the one who says, "Sell me your commodity for a dinar?" At that point, he has the option as long as... The other says: "I have done," and regarding the statement of one who says: "Buy this merchandise of mine for a dinar," he retains the option as long as the other has not said: "I have done." The response to all these claims is clear and concise: it must be stated that the speaker of this has lied, fabricated, and sinned. For he has distorted the words of Allah's Messenger—peace and blessings of Allah be upon him—from their proper contexts without any foundational proof, merely pursuing frivolity

وَقَالَ آخَرُونَ: إنَّمَا هُوَ مَا بَيْنَ قَوْلِ الْقَائِلِ: بِعْنِي سِلْعَتَك بِدِينَارٍ؟ فَهُوَ بِالْخِيَارِ مَا لَمْ يَقُلْ لَهُ الْآخَرُ: قَدْ فَعَلْت، وَبَيْنَ قَوْلِ الْقَائِلِ: اشْتَرِ مِنِّي سِلْعَتِي هَذِهِ بِدِينَارٍ، فَلَهُ الْخِيَارُ مَا لَمْ يَقُلْ لَهُ الْآخَرُ: قَدْ فَعَلْت؟ فَجَوَابُ هَذِهِ الْأَقْوَالِ كُلِّهَا وَاضِحٌ مُخْتَصَرٌ، وَهُوَ أَنْ يُقَالَ: كَذَبَ قَائِلُ هَذَا وَأَفَكَ وَأَثِمَ، لِأَنَّهُ حَرَّفَ كَلَامَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ مَوَاضِعِهِ بِلَا بُرْهَانٍ أَصْلًا، لَكِنْ مُطَارَفَةً وَمُجَاهَرَةً بِالدَّعْوَى الْبَاطِلِ، فَمِنْ أَيْنَ لَكُمْ هَذِهِ الْأَقْوَالُ؟ وَمَنْ أَخْبَرَكُمْ بِأَنَّ هَذَا هُوَ مُرَادُهُ - عَلَيْهِ السَّلَامُ -؟ وَأَمَّا قَوْلُكُمْ: كَمَا

[26] **Qur'an references (L21978):** Qur'an 2:231 (Al-Baqarah).

and openly proclaiming false claims. From where do you derive these assertions? Who informed you that this was his intended meaning—peace be upon him? As for your statement: "Like naming the slaughtered one without slaughtering him"—Allah the Exalted never named him "slaughtered," nor has this ever been authentically reported from Allah's Messenger—peace and blessings of Allah be upon him. Since this is the case, it is merely an absolute layman's statement devoid of proof. Those who employed this term did so either out of leniency or because the Close Friend—peace be upon him—placed the knife against his throat, an act described by its doer as "slaughter." We pay no heed to this labeling, for it has never been established by the Quran or Sunnah. Thus, it cannot constitute valid proof for anything whatsoever.

سُمِّيَ الذَّبِيحُ وَلَمْ يُذْبَحْ؟ فَمَا سَمَّاهُ اللَّهُ تَعَالَى قَطُّ ذَبِيحًا، وَلَا صَحَّ ذَلِكَ أَيْضًا قَطُّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِذَا كَانَ هَكَذَا فَإِنَّمَا هُوَ قَوْلٌ مُطْلَقٌ عَامِّيٌّ لَا حُجَّةَ فِيهِ، وَإِنَّمَا أَطْلَقَ ذَلِكَ مَنْ أَطْلَقَ مُسَامَحَةً، أَوْ لِأَنَّهُ حَمَلَ الْخَلِيلُ - عَلَيْهِ السَّلَامُ - السِّكِّينَ عَلَى حَلْقِهِ، وَهَذَا فِعْلٌ يُسَمَّى مِنْ فَاعِلِهِ ذَبْحًا، وَمَا نُبَالِي عَنْ هَذِهِ التَّسْمِيَةِ؛ لِأَنَّهَا لَمْ يَأْتِ بِهَا قَطُّ قُرْآنٌ، وَلَا سُنَّةٌ، فَلَا يَقُومُ بِهَا حُجَّةٌ فِي شَيْءٍ أَصْلًا.

L21983 As for Allah's statement, the Exalted: *"When they have reached their term"* [Quran 2:231], Allah has spoken the truth, and those who claim He intended *proximity to the end of the term* have lied—far be it from Allah! Had their assumption been valid, retaining [wives] or revoking the divorce would only be permissible near the term's completion—not before—yet this is undeniably false. The verse's interpretation conforms to its apparent meaning without falsehood or addition. Without doubt, He the Exalted intended divorced women to complete their waiting period by observing it from the moment the divorce occurs until its conclusion. Throughout this entire duration, the husband may withhold [from finalizing the divorce], revoke it without any disagreement among scholars, or persist in upholding the divorce.[27]

وَأَمَّا قَوْله تَعَالَى: {فَبَلَغْنَ أَجَلَهُنَّ} [البقرة: ٢٣١] فَصَدَقَ اللَّهُ تَعَالَى وَكَذَبَ مَنْ قَالَ: إنَّهُ تَعَالَى أَرَادَ الْمُقَارَبَةَ، حَاشَ لِلَّهِ مِنْ هَذَا - وَلَوْ كَانَ مَا ظَنُّوهُ لَكَانَ الْإِمْسَاكُ وَالرَّجْعَةُ لَا يَجُوزُ إلَّا فِي قُرْبِ بُلُوغِ الْأَجَلِ، لَا قَبْلَ ذَلِكَ، وَهَذَا بَاطِلٌ بِلَا خِلَافٍ - وَتَأْوِيلُ الْآيَةِ مُوَافِقٌ لِظَاهِرِهَا بِلَا كَذِبٍ وَلَا تَزِيُّدٍ، وَإِنَّمَا أَرَادَ تَعَالَى - بِلَا شَكٍّ - بُلُوغَ الْمُطَلَّقَاتِ أَجَلَ الْعِدَّةِ بِكَوْنِهِنَّ فِيهَا مِنْ دُخُولِهِنَّ إيَّاهَا إلَى إثْرِ الطَّلَاقِ إلَى خُرُوجِهِنَّ عَنْهَا، وَهَذِهِ الْمُدَّةُ كُلُّهَا لِلزَّوْجِ فِيهَا الرَّجْعَةُ وَالْإِمْسَاكُ بِلَا خِلَافٍ، أَوْ التَّمَادِي عَلَى حُكْمِ الطَّلَاقِ.

L21984 Even if what they have put forth of falsehood were valid for them, they would have no valid claim to it. For the fact that some speech is interpreted contrary to its apparent meaning due to evidence does not necessitate interpreting all speech contrary to its apparent meaning without evidence. In this lies the corruption of mutual understanding, rational principles, and the entire Sharia. How then [can this be], when the narration of Ubayd Allāh ibn 'Umar from Nāfi' from Ibn 'Umar from the Prophet—peace be upon him—who said, "Every two parties to a sale have no binding sale until they separate," completely debunks this falsehood and invalidates singling out some of

وَحَتَّى لَوْ صَحَّ لَهُمْ مَا أَطْلَقُوا فِيهِ الْبَاطِلَ لَكَانَ لَا مُتَعَلَّقَ لَهُمْ بِهِ؛ لِأَنَّهُ لَيْسَ إذَا وُجِدَ كَلَامٌ قَدْ صُرِفَ عَنْ ظَاهِرِهِ بِدَلِيلٍ وَجَبَ أَنْ يُصْرَفَ كُلُّ كَلَامٍ عَنْ ظَاهِرِهِ بِلَا دَلِيلٍ، وَفِي هَذَا إفْسَادُ التَّفَاهُمِ، وَالْمَعْقُولِ، وَالشَّرِيعَةِ كُلِّهَا، فَكَيْفَ وَرِوَايَةُ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ - قَالَ: «كُلُّ بَيِّعَيْنِ لَا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا» فَاضِحٌ لِهَذَا الْكَذِبِ كُلِّهِ، وَمُبْطِلٌ لِتَخْصِيصِ بَعْضِ مَنْ يَقَعُ عَلَيْهِ اسْمُ بَيِّعٍ مِنْ سَائِرِ مَنْ يَقَعُ عَلَيْهِ هَذَا الِاسْمُ.

[27] **Qur'an references (L21983):** Qur'an 2:231 (Al-Baqarah).

those to whom the term ‘sale’ applies from others who fall under the same designation.

L21985 They said: This separation mentioned in the Hadith is like the separation mentioned in Allah’s saying, the Exalted: “And if they separate, Allah will enrich both from His abundance.” [An-Nisā: 130].[28]

L21986–21987 We said: Yes, without doubt, and that separation mentioned in the verse is a separation through speech that necessarily entails physical separation. The separation mentioned in the ḥadīth is likewise a separation through speech that necessarily entails physical separation. Yet you claim that the separation considered in rulings invalidating or validating currency exchange is solely physical separation. Why then do you not say here—on this basis—that the separation mentioned in this ḥadīth is also physical separation, were it not for your baseless imposition driven by whims?

L21988 They disguised [their wrongdoing] with the statement of Allah, the Most High: {Unless it is a trade by mutual consent among you} [An-Nisa’ 4:29].[29]

L21989 So the Exalted permitted consumption after mutual consent. They said, “And this is evidence for the validity of ownership through contract.”

L21990 Abu Muhammad said: The one who brought us this verse is the one through whom we learn: What constitutes permissible trade for us, as distinct from what has been prohibited to us? And what defines mutual consent that transfers ownership as opposed to mutual consent that does not transfer ownership? Were it not for him, we would not have known anything of that.

L21991 He is the one who informed us that a contract is not a sale, nor is it a trade, nor is it mutual agreement, nor does it transfer ownership until it incorporates separation from their original agreement or the offering of choice. This is the sale, the trade, and the mutual agreement—not what the ignorant presume based on their opinions without proof, but through false claims.

وَقَالُوا: هَذَا التَّفْرِيقُ الْمَذْكُورُ فِي الْحَدِيثِ: هُوَ مِثْلُ التَّفْرِيقِ الْمَذْكُورِ فِي قَوْلِه تَعَالَى: {وَإِنْ يَتَفَرَّقَا يُغْنِ اللَّهُ كُلا مِنْ سَعَتِهِ} [النساء: ١٣٠] .

فَقُلْنَا: نَعَمْ، بِلَا شَكٍّ، وَذَلِكَ التَّفَرُّقُ الْمَذْكُورُ فِي الْآيَةِ تَفَرُّقٌ بِالْقَوْلِ يَقْتَضِي التَّفَرُّقَ بِالْأَبْدَانِ وَلَا بُدَّ، وَالتَّفَرُّقُ الْمَذْكُورُ فِي الْحَدِيثِ كَذَلِكَ أَيْضًا تَفَرُّقٌ بِالْقَوْلِ يَقْتَضِي التَّفَرُّقَ بِالْأَبْدَانِ وَلَا بُدَّ، وَأَنْتُمْ تَقُولُونَ: إِنَّ التَّفَرُّقَ الْمُرَاعَى فِيمَا يَحْرُمُ بِهِ الصَّرْفُ أَوْ يَصِحُّ إِنَّمَا هُوَ تَفَرُّقُ الْأَبْدَانِ، فَهَلَّا قُلْتُمْ عَلَى هَذَا هَهُنَا: إِنَّ التَّفَرُّقَ الْمَذْكُورَ فِي هَذَا الْخَبَرِ هُوَ أَيْضًا تَفَرُّقُ الْأَبْدَانِ، لَوْلَا التَّحَكُّمُ الْبَارِدُ حَيْثُ تَهْوُونَ.

وَمَوَّهُوا بِقَوْلِ اللَّهِ تَعَالَى: {إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

فَأَبَاحَ تَعَالَى الْأَكْلَ بَعْدَ التَّرَاضِي، قَالُوا: وَهَذَا دَلِيلٌ عَلَى صِحَّةِ الْمِلْكِ بِالْعَقْدِ.

قَالَ أَبُو مُحَمَّد: الَّذِي أَتَانَا بِهَذِهِ الْآيَةِ هُوَ الَّذِي مِنْ عِنْدِهِ نَدْرِي: مَا هِيَ التِّجَارَةُ الْمُبَاحَةُ لَنَا مِمَّا حُرِّمَ عَلَيْنَا، وَمَا هُوَ التَّرَاضِي النَّاقِلُ لِلْمِلْكِ مِنْ التَّرَاضِي الَّذِي لَا يَنْقُلُ الْمِلْكَ؟ وَلَوْلَاهُ لَمْ نَعْرِفْ شَيْئًا مِنْ ذَلِكَ.

وَهُوَ الَّذِي أَخْبَرَنَا: أَنَّ الْعَقْدَ لَيْسَ بَيْعًا، وَلَا هُوَ تِجَارَةً، وَلَا هُوَ تَرَاضِيًا وَلَا يَنْقُلُ مِلْكًا إِلَّا حَتَّى يَسْتَضِيفَ إِلَيْهِ التَّفَرُّقَ عَنْ مَوْضِعِهِمَا، أَوْ التَّخْيِيرَ، فَهَذَا هُوَ الْبَيْعُ، وَالتِّجَارَةُ، وَالتَّرَاضِي، لَا مَا ظَنَّهُ أَهْلُ الْجَهْلِ بِآرَائِهِمْ بِلَا بُرْهَانٍ، لَكِنْ بِالدَّعْوَى الْفَاسِدَةِ.

[28] **Qur’an references (L21985):** Qur’an 4:130 (An-Nisa).
[29] **Qur’an references (L21988):** Qur’an 4:29 (An-Nisa).

L21992 They cited as evidence Allah's statement: "Fulfill [your] contracts" [Al-Mā'idah: 1], and this is true. However, the One who commanded us through His Prophet's words—He, the Exalted—ordered His Messenger (peace be upon him) to inform us that such a contractual agreement is neither valid nor perfected, nor does it constitute a contract unless the parties depart from their place [of agreement] or one grants the other an option [to annul it] after contracting. Otherwise, fulfilling that contract is not obligatory. They unanimously agree with us that no one is bound to fulfill every contract they make, for indeed fulfilling many contracts is forbidden—such as one who binds himself to commit adultery or drink wine.[30]

وَاحْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] وَهَذَا حَقٌّ إِلَّا أَنَّ الَّذِي أَمَرَنَا بِهَذَا عَلَى لِسَانِ نَبِيِّهِ هُوَ تَعَالَى الْآمِرُ لِرَسُولِهِ - عَلَيْهِ السَّلَامُ - أَنْ يُخْبِرَنَا أَنَّهُ لَا يَصِحُّ هَذَا التَّعَاقُدُ وَلَا يَتِمُّ، وَلَا يَكُونُ عَقْدًا إِلَّا بِالتَّفَرُّقِ عَنْ مَوْضِعِهِمَا أَوْ بِأَنْ يُخَيِّرَ أَحَدُهُمَا الْآخَرَ بَعْدَ التَّعَاقُدِ، وَإِلَّا فَلَا يَلْزَمُ الْوَفَاءُ بِذَلِكَ الْعَقْدِ، وَهُمْ مُجْمِعُونَ مَعَنَا عَلَى أَنَّهُ لَا يَلْزَمُ أَحَدًا الْوَفَاءُ بِكُلِّ عَقْدٍ عَقَدَهُ، بَلْ أَكْثَرُ الْعُقُودِ حَرَامٌ الْوَفَاءُ بِهَا، كَمَنْ عَقَدَ عَلَى نَفْسِهِ أَنْ يَزْنِيَ، أَوْ أَنْ يَشْرَبَ الْخَمْرَ.

L21993 Yes, and most contracts are not binding in their view or ours, such as contracts to buy, sell, sing, dance, or recite poetry.

نَعَمْ، وَأَكْثَرُ الْعُقُودِ لَا يَلْزَمُ الْوَفَاءُ بِهِ عِنْدَهُمْ وَعِنْدَنَا، كَمَنْ عَقَدَ أَنْ يَشْتَرِيَ، أَوْ أَنْ يَبِيعَ، أَوْ أَنْ يُغَنِّيَ، أَوْ أَنْ يَزْفِنَ أَوْ أَنْ يُنْشِدَ شِعْرًا.

L21994–21996 Thus, it was conclusively established that fulfilling a contractual obligation is not required in principle, except for a contract explicitly mandated by name in the scriptural text. The Ḥanafīs maintain that if two parties pledge mutual agreement over an absent item while expressly waiving the right to exercise the option of seeing, such a contract remains revocable.

فَصَحَّ يَقِينًا أَنَّهُ لَا يَلْزَمُ الْوَفَاءُ بِعَقْدٍ أَصْلًا، إِلَّا عَقْدًا أَتَى النَّصُّ بِالْوَفَاءِ بِهِ بِاسْمِهِ وَعَيْنِهِ، وَهُمْ يَقُولُونَ - يَعْنِي الْحَنَفِيِّينَ - أَنَّ مَنْ بَايَعَ آخَرَ شَيْئًا غَائِبًا وَتَعَاقَدَا إِسْقَاطَ خِيَارِ الرُّؤْيَةِ أَنَّهُ عَقْدٌ لَا يَلْزَمُ.

L21997 The Malikis state: Whoever purchases fruit while stipulating exemption from liability for catastrophic loss and enters such a condition binding himself, this constitutes a contract not binding upon him. How then can their argument hold based on Allah's injunction "Fulfill [your] contracts" [5:1]? Should they retort: "These are contracts for which evidences establish that fulfillment is not required," we counter: The sale contract itself is one for which valid proof confirms that fulfillment becomes binding only after physical separation or the conclusion of the option period - unlike the invalid proofs through which you have arbitrarily restricted certain contractual obligations you specified.[31]

وَالْمَالِكِيُّونَ يَقُولُونَ: مَنْ ابْتَاعَ ثَمَرَةً وَاشْتَرَطَ أَنْ لَا يَقُومَ بِجَائِحَةٍ، وَعَقَدَ ذَلِكَ عَلَى نَفْسِهِ، فَإِنَّهُ عَقْدٌ لَا يَلْزَمُهُ، فَأَيْنَ احْتِجَاجُهُمْ بِقَوْلِ اللَّهِ تَعَالَى {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] . فَإِنْ قَالُوا: هَذِهِ عُقُودٌ قَامَتْ الْأَدِلَّةُ عَلَى أَنَّهُ لَا يَلْزَمُ الْوَفَاءُ بِهَا؟ قُلْنَا: وَعَقْدُ الْبَيْعِ عَقْدٌ قَدْ قَامَ الْبُرْهَانُ حَقًّا عَلَى أَنَّهُ لَا يَلْزَمُ الْوَفَاءُ بِهِ إِلَّا بَعْدَ التَّفَرُّقِ بِالْأَبْدَانِ، أَوْ بَعْدَ التَّخْيِيرِ، بِخِلَافِ الْأَدِلَّةِ الْفَاسِدَةِ الَّتِي خَصَّصْتُمْ بِهَا مَا خَصَّصْتُمْ مِنْ الْعُقُودِ الْمَذْكُورَةِ.

L21998 They also covered up by citing the words of Allah, the Exalted: {And take wit-

وَمَوَّهُوا أَيْضًا بِقَوْلِ اللَّهِ تَعَالَى: {وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ} [البقرة: ٢٨٢] وَإِنَّ الْحَيَاءَ لَقَلِيلٌ فِي وَجْهِ مَنْ احْتَجَّ بِهَذِهِ الْآيَةِ فِي هَذَا الْمَكَانِ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّهُمْ أَوَّلُ مُخَالِفٍ لِهَذِهِ

[30] **Qur'an references (L21992):** Qur'an 5:1 (Al-Ma'idah).
[31] **Qur'an references (L21997):** Qur'an 5:1 (Al-Ma'idah).

الْآيَةِ فِيمَا وَرَدَتْ فِيهِ مِنْ وُجُوبِ الْإِشْهَادِ فَكَيْفَ يَسْتَحِلُّونَ الِاحْتِجَاجَ بِأَنَّهُمْ قَدْ عَصَوْا اللَّهَ تَعَالَى فِيهَا وَخَالَفُوهَا، وَلَمْ يَرَوْهَا حُجَّةً فِي وُجُوبِ الْإِشْهَادِ فِي الْبَيْعِ؟ وَالثَّانِي - أَنَّهُ لَيْسَ فِي الْآيَةِ نَصٌّ وَلَا دَلِيلٌ عَلَى بُطْلَانِ التَّفَرُّقِ الْمَذْكُورِ فِي الْخَبَرِ وَلَا ذُكِرَ مِنْهُ أَصْلًا.

nesses when you contract} [Al-Baqarah: 282]. Little shame resides in those who cite this verse as evidence in this context, for several reasons: First—they are the foremost violators of this verse regarding what it addresses concerning the obligation of witnessing. How can they deem it permissible to cite it as evidence when they have disobeyed Allah the Exalted in it, opposed it, and not regarded it as authoritative evidence for the obligation of witnessing in sales? Second—the verse contains neither explicit text nor proof invalidating the dissolution mentioned in the hadith, nor does it even mention this matter at all.[32]

وَالثَّالِثُ: أَنَّ نَصَّ الْآيَةِ إِنَّمَا هُوَ إِيجَابُ الْإِشْهَادِ إِذَا تَبَايَعْنَا، وَالَّذِي جَاءَنَا بِهَذِهِ الْآيَةِ - وَلَوْلَاهُ لَمْ نَدْرِ مَا الْمَبِيعُ الْمُبَاحُ مِنَ الْمُحَرَّمِ أَلْبَتَّةَ - هُوَ الَّذِي أَخْبَرَنَا أَنَّهُ لَا بَيْعَ أَصْلًا إِلَّا بَعْدَ التَّفَرُّقِ عَنْ مَوْضِعِهِمَا أَوِ التَّخْيِيرِ. فَصَحَّ يَقِينًا أَنَّ قَوْلَ اللَّهِ تَعَالَى: {وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ} [البقرة: ٢٨٢] إِنَّمَا هُوَ أَمْرٌ بِالْإِشْهَادِ بَعْدَ التَّفَرُّقِ، أَوِ التَّخْيِيرِ الَّذِي لَا بَيْعَ بَيْنَهُمَا أَصْلًا إِلَّا بَعْدَ أَحَدِهِمَا وَإِنْ رَغِمَتْ أُنُوفُ الْمُخَالِفِينَ؟ ثُمَّ مَوَّهُوا بِإِيرَادِ أَخْبَارٍ ثَابِتَةٍ وَغَيْرِ ثَابِتَةٍ، مِثْلِ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إِذَا ابْتَعْتَ بَيْعًا فَلَا تَبِعْهُ حَتَّى تَقْبِضَهُ» وَالْقَوْلُ فِيهِ كَالْقَوْلِ فِي الْآيَةِ سَوَاءً سَوَاءً، لِأَنَّهُ لَا بَيْعَ بَيْنَهُمَا إِلَّا بَعْدَ التَّفَرُّقِ أَوِ التَّخْيِيرِ، وَإِلَّا فَلَمْ يَبْتَعِ الْمُبْتَاعُ أَصْلًا وَلَا بَاعَ الْبَائِعُ أَلْبَتَّةَ.

L21999–22001 The third point is that the verse's text specifically obligates witnessing when you engage in trade. The one who brought us this verse—and without whom we would not have known **entirely** what constitutes a permissible sold item versus a forbidden one—is the same who informed us that there is no valid sale **whatsoever** except after the parties physically separate from their place of transaction or after the granting of choice. Thus, it is **certainly** and firmly established that Allah's statement, {And take witnesses when you trade} [Al-Baqarah: 282], is exclusively a command to appoint witnesses **after** separation from the transaction's location or after the granting of choice—with no sale being valid **at all** unless one of these conditions is met, even if it displeases the dissenters. They then muddied the waters by citing narrations—some authenticated, others not—such as his saying, peace be upon him: "When you purchase something, do not…" "Accompany him until you take possession of it. The ruling here is exactly the same as that of the Quranic verse, because no sale is valid between them except after parting ways or exercising the option. Otherwise, the buyer has not purchased anything at all, and the seller has not sold anything whatsoever."[33]

[32] **Qur'an references (L21998):** Qur'an 2:282 (Al-Baqarah).

[33] **Qur'an references (L21999):** Qur'an 2:282 (Al-Baqarah).

L22002 Similarly, the case of one who sells a slave who owns property: his property belongs to the seller.

وَمِثْلِ مَنْ بَاعَ عَبْدًا وَلَهُ مَالٌ فَمَالُهُ لِلْبَائِعِ.

L22003 Similarly, the case of one who sells palm trees that have been pollinated: their fruit belongs to the seller unless the buyer stipulates it as a condition.

وَمِثْلِ مَنْ بَاعَ نَخْلًا قَدْ أُبِرَتْ فَثَمَرَتُهَا لِلْبَائِعِ إِلَّا أَنْ يَشْتَرِطَهَا الْمُبْتَاعُ.

L22004 Similarly, it is prohibited to sell food until the two sa's have been measured in it.

وَمِثْلِ النَّهْيِ عَنْ بَيْعِ الطَّعَامِ حَتَّى يَجْرِيَ فِيهِ الصَّاعَانِ.

L22005 If the buyer and seller disagree, the seller's statement shall prevail.

وَإِذَا اخْتَلَفَ الْمُتَبَايِعَانِ فَالْقَوْلُ مَا قَالَ الْبَائِعُ.

L22006 And there are numerous narrations mentioning the contract of sale. The ruling regarding all these narrations—as we stated earlier—is that all these rulings were mentioned concerning the contract of sale. The One who ordained the validity of these rulings is the same who declared, judged, and said: "Indeed, no sale exists between the two parties to the sale while they remain together without separation, or if one grants the other an option." Perdition to whoever disobeys Him.

وَأَخْبَارٌ كَثِيرَةٌ جَاءَ فِيهَا ذِكْرُ الْبَيْعِ، وَالْقَوْلُ فِيهَا كُلِّهَا - كَمَا قُلْنَا آنِفًا: أَنَّ كُلَّ هَذِهِ الْأَحْكَامِ إِنَّمَا وَرَدَتْ فِي الْبَيْعِ وَالَّذِي أَمَرَ بِمَا صَحَّ مِنْهَا هُوَ الَّذِي أَخْبَرَ وَحَكَمَ وَقَالَ: إِنَّهُ لَا بَيْعَ بَيْنَ الْمُتَبَايِعَيْنِ مَا كَانَا مَعًا وَلَمْ يَتَفَرَّقَا، أَوْ خَيَّرَ أَحَدُهُمَا الْآخَرَ، فَتبًّا لِمَنْ عَصَاهُ.

L22007 What is astonishing is that most of these reports are contradicted by the very people [responsible for them], who oppose what is in their texts. They were not content with this until they added to it the deception of those who assumed the best—misleading them into believing something of which there is absolutely no trace in these reports whatsoever.

وَالْعَجَبُ أَنَّ أَكْثَرَ هَذِهِ الْأَخْبَارِ هُمْ مُخَالِفُونَ لِمَا فِي نُصُوصِهَا، فَلَمْ يَقْنَعُوا بِذَلِكَ حَتَّى أَضَافُوا إِلَى ذَلِكَ غُرُورَ مَنْ أَحْسَنَ الظَّنَّ فِي أَنْ أَوْهَمُوهُمْ مَا لَيْسَ فِيهَا مِنْهُ شَيْءٌ أَصْلًا.

L22008 There is no distinction between those who cite all we have mentioned to invalidate the established Sunnah—such as the ruling that no sale is valid between transacting parties until bodily separation or the exercise of choice—and those who cite the Sunnah to permit every sale not mentioned in it, such as those involving usury, uncertainty (gharar), pebble-throwing (al-ḥaṣāh), touching (al-mulāmasah), hurling (al-munābadhah), and the like. Rather, all such practices constitute a single act, from which we seek refuge with Allah.

وَلَا فَرْقَ بَيْنَهُمْ فِي احْتِجَاجِهِمْ بِكُلِّ مَا ذَكَرْنَا فِي إِبْطَالِ السُّنَّةِ الثَّابِتَةِ مِنْ أَنْ لَا بَيْعَ بَيْنَ الْمُتَبَايِعَيْنِ إِلَّا بَعْدَ التَّفَرُّقِ بِالْأَبْدَانِ أَوْ التَّخْيِيرِ، وَبَيْنَ مَنْ احْتَجَّ بِهَا فِي إِبَاحَةِ كُلِّ بَيْعٍ لَمْ يُذْكَرْ فِيهَا مِنْ الرِّبَا، وَالْغَرَرِ، وَالْحَصَاةِ، وَالْمُلَامَسَةِ، وَالْمُنَابَذَةِ، وَغَيْرِ ذَلِكَ، بَلْ هُوَ كُلُّهُ عَمَلٌ وَاحِدٌ، نَعُوذُ بِاَللَّهِ مِنْهُ.

L22009 Among their marvels is their argument in this matter using the authentic hadith that "a child cannot fully repay a parent unless he finds him enslaved, purchases him, and frees him."

وَمِنْ عَجَائِبِهِمْ احْتِجَاجُهُمْ فِي هَذَا بِالْخَبَرِ الثَّابِتِ مِنْ أَنَّهُ «لَا يَجْزِي وَلَدٌ وَالِدًا إِلَّا أَنْ يَجِدَهُ مَمْلُوكًا فَيَشْتَرِيَهُ فَيُعْتِقَهُ» .

L22010 Abu Muhammad said: Were it not that these people indulge in much false-

hood and practice deception in the name of Islam for those deluded by them, this prolonged, meaningless discourse would not be deemed a danger to them.

قَالَ أَبُو مُحَمَّد: وَلَوْلَا أَنَّ الْقَوْمَ مُسْتَكْثِرُونَ مِنْ الْبَاطِلِ، وَالْخَدِيعَةِ فِي الْإِسْلَامِ لِمَنْ اغْتَرَّ بِهِمْ لَمْ يُخَفْ عَلَيْهِمْ هَذَا التَّطْوِيلُ بِلَا مَعْنًى.

L22011 Yes, the report is correct. One who does not physically separate from his seller, nor exercise his option after the contract, nor ever take ownership has not validly purchased his father as a slave. Rather, he remains in the ownership of his seller as before until the buyer either exercises his option or physically separates from him. At that point, the slave becomes manumitted at the buyer's obligation. Otherwise, he is not freed—by the explicit ruling of Allah Almighty as decreed through the words of the Messenger of Allah (peace be upon him).

وَنَعَمْ، الْخَبَرُ صَحِيحٌ وَمَا اشْتَرَى قَطُّ أَبَاهُ مَنْ لَمْ يُفَارِقْ بَائِعَهُ بِبَدَنِهِ وَلَا خَيَّرَهُ بَعْدَ الْعَقْدِ وَلَا مَلَّكَهُ قَطُّ، بَلْ هُوَ فِي مِلْكِ بَائِعِهِ كَمَا كَانَ حَتَّى يُخَيِّرَهُ الْمُبْتَاعُ أَوْ يُفَارِقَهُ بِبَدَنِهِ، فَحِينَئِذٍ يَعْتِقُ عَلَيْهِ، وَإِلَّا فَلَا بِنَصِّ حُكْمِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L22012–22013 They also mentioned: "Muslims are bound by their stipulations." This is a fabricated narration, for it was only transmitted by Kathīr ibn Zayd - who is weak - and narrators weaker than him, or as a *mursal* report from 'Aṭā'.

وَذَكَرُوا أَيْضًا «: الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» وَهَذَا خَبَرٌ مَكْذُوبٌ؛ لِأَنَّهُ إنَّمَا رَوَاهُ كَثِيرُ بْنُ زَيْدٍ - وَهُوَ سَاقِطٌ - وَمَنْ هُوَ دُونَهُ، أَوْ مُرْسَلٌ عَنْ عَطَاءٍ.

L22014 Then, if it were valid, it would serve as evidence for us against them, because the conditions of Muslims are not all free from disagreement. Rather, they are only those conditions commanded [by Islamic law] or permitted by their explicit naming in the Quran and authentic Sunnah compilations.

ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا عَلَيْهِمْ؛ لِأَنَّ شُرُوطَ الْمُسْلِمِينَ لَيْسَتْ كُلَّ شَرْطٍ بِلَا خِلَافٍ، بَلْ إنَّمَا هِيَ الشُّرُوطُ الْمَأْمُورُ بِهَا، أَوْ الْمُبَاحَةُ بِأَسْمَائِهَا فِي الْقُرْآنِ وَصَحِيحِ السُّنَنِ.

L22015 If what they insinuated were true, then the conditions of adultery, procurement, consuming intoxicants, and usury would become binding obligations. Allah is far removed from such deviant notions.

وَلَوْ كَانَ مَا أَوْهَمُوا بِهِ لَكَانَ شَرْطُ الزِّنَى، وَالْقِيَادَةِ، وَشُرْبِ الْخَمْرِ، وَالرِّبَا: شُرُوطًا لَوَازِمَ، وَحَاشَ لِلَّهِ مِنْ هَذَا الضَّلَالِ.

L22016 It has been authentically reported from the Messenger of Allah: "Every condition not in the Book of Allah is void. The Book of Allah is more deserving, and Allah's stipulation is more binding." Allah's condition refers to either the physical separation of parties after concluding the sale contract or the stipulated option - otherwise, no condition there is fundamentally binding. The most astonishing matter is how some argue that when one conducts a sale as binding without the *khiyar*, the *khiyar* is thereby invalidated.

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ» فَشَرْطُ اللَّهِ تَعَالَى هُوَ التَّفَرُّقُ بِالْأَبْدَانِ بَعْدَ الْعَقْدِ لِلْبَيْعِ أَوْ التَّخْيِيرُ، وَإِلَّا فَلَا شَرْطَ هُنَالِكَ يَلْزَمُ أَصْلًا - وَأَعْجَبُ شَيْءٍ احْتِجَاجُ بَعْضِهِمْ بِأَنَّ مَنْ بَاعَ بَيْعًا عَلَى أَنَّهُ ثَابِتٌ بِلَا خِيَارٍ أَنَّ الْخِيَارَ سَاقِطٌ.

L22017 Abū Muḥammad said: I wish I knew who would agree with them in this madness? No, certainly not! Rather, if two contracting parties were to

conclude their sale upon nullifying the obligatory right of option granted to them before departing from the contractual session and before exercising the option, it would be a cursed condition, a voidable contract, and a ruling of misguidance - because they stipulated the nullification of what Allah the Exalted and His Messenger (peace be upon him) has established.

قَالَ أَبُو مُحَمَّدٍ: لَيْتَ شِعْرِي مَنْ وَافَقَهُمْ عَلَى هَذَا الْجُنُونِ؟ لَا، وَلَا كَرَامَةَ بَلْ لَوْ أَنَّ مُتَبَايِعَيْنِ عَقَدَا بَيْعَهُمَا عَلَى إسْقَاطِ الْخِيَارِ الْوَاجِبِ لَهُمَا قَبْلَ التَّفَرُّقِ بِأَبْدَانِهِمَا، وَقَبْلَ التَّخْيِيرِ لَكَانَ شَرْطًا مَلْعُونًا، وَعَقْدًا فَاسِدًا، وَحُكْمَ ضَلَالٍ لِأَنَّهُمَا اشْتَرَطَا إبْطَالَ مَا أَثْبَتَهُ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L22018 They further argued: Since the marriage contract; divorce contract; lease contract; khulʿ (wife-initiated divorce); manumission; and kitābah (manumission contract) are valid without requiring physical separation, the same principle applies to the sale contract.

وَمَوَّهُوا أَيْضًا بِأَنْ قَالُوا: لَمَّا كَانَ عَقْدُ النِّكَاحِ، وَعَقْدُ الطَّلَاقِ، وَعَقْدُ الْإِجَارَةِ، وَالْخُلْعُ، وَالْعِتْقُ، وَالْكِتَابَةُ تَصِحُّ، وَلَا يُرَاعَى فِيهَا التَّفَرُّقُ بِالْأَبْدَانِ وَجَبَ مِثْلُ ذَلِكَ فِي الْبَيْعِ.

L22019 Abu Muhammad said: This is analogy, and all analogy is invalid. Moreover, even if analogy were valid, this would be the epitome of invalidity, due to their consensus with us that every ruling among those they mentioned has distinct legal effects and applications, making it impermissible to combine them in such a ruling. For in a sale, ownership of the corpus of the sold item and its price is transferred – a principle absent in any of the rulings they cited. As for marriage, it permits access to intimacy that was formerly prohibited without ownership of the spouse's person, and it is impermissible at all to stipulate contractual options (such as rescission rights) or deferred terms within it.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِإِجْمَاعِهِمْ مَعَنَا عَلَى أَنَّ كُلَّ حُكْمٍ مِنْ هَذِهِ الَّتِي ذَكَرُوا لَهُ أَحْكَامٌ وَأَعْمَالٌ مُخَالِفَةٌ لِسَائِرِهَا، لَا يَجُوزُ أَنْ يُجْمَعَ بَيْنَهُمَا فِيهِ، فَالْبَيْعُ يَنْتَقِلُ فِيهِ مِلْكُ رَقَبَةِ الْمَبِيعِ وَثَمَنِهِ، وَلَيْسَ ذَلِكَ فِي شَيْءٍ مِنْ الْأَحْكَامِ الَّتِي ذَكَرُوا، وَالنِّكَاحُ فِيهِ إبَاحَةُ فَرْجٍ كَانَ مُحَرَّمًا بِغَيْرِ مِلْكِ رَقَبَتِهِ وَلَا يَجُوزُ فِيهِ اشْتِرَاطُ خِيَارٍ أَصْلًا وَلَا تَأْجِيلٌ.

L22020–22022 They permit the stipulated option to rescind in sales and deferred-payment transactions, and they do not deem it permissible to analogize one of them to the other in this matter. Divorce prohibits the [previously] lawful marital intimacy, either at its specified time or for a defined period, without transference. Ownership, and no stipulations may be made after its conclusion whatsoever, unlike sale. Leasing permits the use of benefits in exchange for compensation without transferring ownership of the corpus, unlike sale. It is permissible for a free person, unlike sale, and must be for a term—either determinate or indeterminate (if tied to a limited task)—unlike sale.

وَهُمْ يُجِيزُونَ الْخِيَارَ الْمُشْتَرَطَ فِي الْبَيْعِ وَالتَّأْجِيلِ، وَلَا يَرَوْنَ قِيَاسَ أَحَدِهِمَا عَلَى الْآخَرِ فِي ذَلِكَ جَائِزًا، وَالطَّلَاقُ تَحْرِيمُ فَرْجٍ مُحَلَّلٍ إمَّا فِي وَقْتِهِ وَإِمَّا إلَى مُدَّةٍ بِغَيْرِ نَقْلِ مِلْكٍ، وَلَا يَجُوزُ فِيهِ اشْتِرَاطُ بَعْدَ إيقَاعِهِ أَصْلًا، بِخِلَافِ الْبَيْعِ - وَالْإِجَارَةُ إبَاحَةُ مَنَافِعَ بِعِوَضٍ لَا تُمَلَّكُ بِهِ الرَّقَبَةُ، بِخِلَافِ الْبَيْعِ، وَيَجُوزُ فِي الْحُرِّ بِخِلَافِ الْبَيْعِ، وَهِيَ إلَى أَجَلٍ وَلَا بُدَّ، إمَّا مَعْلُومٍ وَإِمَّا مَجْهُولٍ إنْ كَانَ فِي عَمَلٍ مَحْدُودٍ، بِخِلَافِ الْبَيْعِ.

L22023 Khulʿ is a divorce entailing financial compensation in which—unlike in sales transactions—a conditional option cannot be stipulated according to their view. The same ruling applies to emancipation and the contractual manu-

mission (kitāba). This exposes the absurdity of their analogy, demonstrating it to be mere caprice and muddled reasoning.

وَالْخُلْعُ طَلَاقٌ بِمَالٍ لَا يَجُوزُ فِيهِ عِنْدَهُمْ خِيَارٌ مُشْتَرَطٌ، بِخِلَافِ الْبَيْعِ، وَالْعِتْقُ كَذَلِكَ، وَالْكِتَابَةُ - فَظَهَرَ سُخْفُ قِيَاسِهِمْ هَذَا وَأَنَّهُ هَوَسٌ وَتَخْلِيطٌ.

L22024 How many cases have they ruled on regarding the option in divorce, obligating the choice as long as the spouses remain in their gathering, yet nullified it upon their physical separation—where neither the Lord of the Worlds ever obligated it, nor His Messenger (peace be upon him), nor the statement of a Companion, nor any rational basis, nor any analogy falsely compared to it, but rather through corrupt opinions? Then they invalidated it where Allah the Exalted obligated it through the words of His Messenger (may Allah's blessings and peace be upon him). Thus we praise Allah the Exalted for preservation from what He has afflicted them with.

وَكَمْ قِصَّةٍ لَهُمْ فِي التَّخْيِيرِ فِي الطَّلَاقِ أَوْجَبُوا فِيهِ الْخِيَارَ مَا دَامَا فِي مَجْلِسِهِمَا وَقَطَعُوهُ بِالتَّفَرُّقِ بِأَبْدَانِهِمَا حَيْثُ لَمْ يُوجِبْهُ قَطُّ رَبُّ الْعَالَمِينَ، وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -، وَلَا قَوْلُ صَاحِبٍ، وَلَا مَعْقُولٌ، وَلَا قِيَاسٌ شُبِّهَ بِهِ، لَكِنْ بِالْآرَاءِ الْفَاسِدَةِ؟ ثُمَّ أَبْطَلُوهُ حَيْثُ أَوْجَبَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَنَحْمَدُ اللَّهَ تَعَالَى عَلَى السَّلَامَةِ مِمَّا ابْتَلَاهُمْ بِهِ.

[التَّفَرُّقُ بِالْأَبْدَانِ فِي الصَّرْفِ قَبْلَ الْقَبْضِ]

The physical separation of the parties in a currency exchange (ṣarf) before taking possession of the exchanged items.

L22025

وَقَالَ بَعْضُهُمْ: التَّفَرُّقُ بِالْأَبْدَانِ فِي الصَّرْفِ قَبْلَ الْقَبْضِ يُبْطِلُ الْعَقْدَ - فَمِنْ الْمُحَالِ أَنْ يَكُونَ مَا يُبْطِلُ الْعَقْدَ هُوَ الَّذِي يُثْبِتُهُ.

L22026 Some of them said: Physical separation in a ṣarf [currency exchange] transaction before taking possession invalidates the contract, for it is illogical that what nullifies the contract should simultaneously be what validates it.

قَالَ عَلِيٌّ: وَهَذَا كَلَامٌ فِي غَايَةِ الْفَسَادِ، وَلَا نُنْكِرُ هَذَا إذَا جَاءَ بِهِ النَّصُّ فَقَدْ وَجَدْنَا النَّقْدَ وَتَرْكَ، الْأَجَلِ يُفْسِدُ السَّلَمَ عِنْدَهُمْ، وَيُصَحِّحُ الْبُيُوعَ الَّتِي يَقَعُ فِيهَا الرِّبَا حَتَّى لَا تَصِحَّ إلَّا بِهِ.

L22027 Ali said: This is an utterly corrupt statement, and we do not deny this when supported by textual evidence, for indeed we have found that immediate payment and abandoning the deferred payment period invalidates the salam contract according to their view, while validating sales involving riba such that they are not valid except through them.

فَكَيْفَ وَالْمَعْنَى فِيمَا رَامُوا الْفَرْقَ بَيْنَهُ وَاحِدٌ؟ وَهُوَ أَنَّ الْمُتَصَارِفَيْنِ لَمْ يَمْلِكَا شَيْئًا وَلَا تَبَايَعَا أَصْلًا قَبْلَ التَّقَابُضِ، وَكُلُّ مُتَبَايِعَيْنِ فَلَمْ يَتِمَّ بَيْنَهُمَا بَيْعٌ أَصْلًا قَبْلَ التَّفَرُّقِ أَوْ التَّخْيِيرِ - مُتَصَارِفَيْنِ كَانَا أَوْ غَيْرَ مُتَصَارِفَيْنِ - فَإِنْ تَفَرَّقَ كُلُّ مَنْ ذَكَرْنَا بِأَبْدَانِهِمْ قَبْلَ

L22028 How can this hold when the meaning they sought to differentiate is one? That is, the two parties to a ṣarf contract neither owned anything nor engaged in any sale prior to taking possession. For any two parties to a sale where the transaction was not finalized before departure [from the contractual session] or the option period (khiyār)—whether they were parties to a ṣarf contract or not—if those we have mentioned depart before the sale is finalized, then whoever concluded a valid contract sees it finalized upon de-

parture. Whoever did not conclude a valid contract has no transaction here that is finalized through departure.

مَا يَتِمُّ بِهِ الْبَيْعُ، فَمَنْ كَانَ قَدْ عَقَدَ عَقْدًا أُبِيحَ لَهُ تَمَّ لَهُ بِالتَّفَرُّقِ، وَمَنْ كَانَ لَمْ يَعْقِدْ عَقْدًا أُبِيحَ لَهُ فَلَيْسَ هَهُنَا شَيْءٌ يَتِمُّ لَهُ بِالتَّفَرُّقِ.

L22029–22031 They also said—interrogating the words of Allah's Messenger (peace be upon him) and rejecting his teaching—that the two parties in a transaction are only considered "transacting parties" while the contract is in effect, not afterward, like mutually fighting or mutually killing parties. How can they simultaneously be transacting parties and annulling parties? Abū Muḥammad said: This is the speech of one devoid of intellect, knowledge, religion, and shame—for it is feeble sophistry. Indeed, the two transacting parties are only considered as such at the moment of their contractual agreement. However... Their contract in that matter is invalid and is only finalized through separation or the exercise of an option after the contract, as commanded by the One who does not deem anyone's blood inviolable except through submission to Him, or by his payment of jizyah (if he is a Kitabi) while in a state of humiliation.

وَقَالُوا أَيْضًا: مُتَعَقِّبِينَ لِكَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَادِّينَ عَلَيْهِ: الْمُتَبَايِعَانِ إنَّمَا يَكُونَانِ مُتَبَايِعَيْنِ مَا دَامَا فِي حَالِ الْعَقْدِ لَا بَعْدَ ذَلِكَ، كَالْمُتَضَارِبِينَ وَالْمُتَقَاتِلَيْنِ فَمِنْ الْمُحَالِ أَنْ يَكُونَا مُتَبَايِعَيْنِ مُتَفَاسِخَيْنِ مَعًا؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كَلَامُ مَنْ لَا عَقْلَ لَهُ، وَلَا عِلْمَ، وَلَا دِينَ، وَلَا حَيَاءَ، لِأَنَّهُ سَفْسَطَةٌ بَارِدَةٌ، وَنَعَمْ، فَإِنَّ الْمُتَبَايِعَيْنِ لَا يَكُونَانِ مُتَبَايِعَيْنِ إلَّا فِي حِينِ تَعَاقُدِهِمَا لَكِنَّ عَقْدَهُمَا بِذَلِكَ لَيْسَ بِشَيْءٍ وَلَا يَتِمُّ إلَّا بِالتَّفَرُّقِ أَوْ التَّخْيِيرِ بَعْدَ الْعَقْدِ، كَمَا أَمَرَ مَنْ لَا يُحَرِّمُ دَمَ أَحَدٍ إلَّا بِاتِّبَاعِهِ، أَوْ بِجِزْيَةٍ يَغْرَمُهَا - إنْ كَانَ كِتَابِيًّا - وَهُوَ صَاغِرٌ.

L22032 Among the curious anecdotes of theirs is their argument in opposing this report with the ḥadīth of ʿAmr ibn Shuʿayb—on the authority of his father, on the authority of his grandfather—that the Prophet (peace be upon him) said: "The buyer and seller retain the option as long as they have not separated, unless it is a transaction involving an option. It is not permissible for one to separate fearing that he may seek rescission." They said: "Rescission cannot occur except after the completion of the sale and the valid transfer of ownership."

وَمِنْ طَرِيفِ نَوَادِرِهِمْ احْتِجَاجُهُمْ فِي مُعَارَضَةِ هَذَا الْخَبَرِ بِحَدِيثِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْبَيِّعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا إلَّا أَنْ تَكُونَ صَفْقَةَ خِيَارٍ، وَلَا يَحِلُّ لَهُ أَنْ يُفَارِقَهُ خَشْيَةَ أَنْ يَسْتَقِيلَهُ» . قَالُوا: فَالِاسْتِقَالَةُ لَا تَكُونُ إلَّا بَعْدَ تَمَامِ الْبَيْعِ وَصِحَّةِ انْتِقَالِ الْمِلْكِ.

L22033 Ali said: Before all else, this narration is unsound, and we are not among those who cite invalid evidence for themselves. Allah the Exalted has protected us from that. Even if it were sound, it would align with our position except regarding preventing separation to avoid rescission alone—this we do not hold, for the mentioned report is unsound. Had it been sound, we would have upheld its prohibition of separation with this intent. The rescission mentioned here is not what these ignorant ones presume, but rather the annulment by the regretful party in the sale—whether the other consents

قَالَ عَلِيٌّ: قَبْلَ كُلِّ شَيْءٍ فَهَذَا حَدِيثٌ لَا يَصِحُّ وَلَسْنَا مِمَّنْ يَحْتَجُّ لِنَفْسِهِ بِمَا لَا يَصِحُّ، وَقَدْ أَعَاذَنَا اللَّهُ تَعَالَى مِنْ ذَلِكَ، وَلَوْ صَحَّ لَكَانَ مُوَافِقًا لِقَوْلِنَا، إلَّا فِي الْمَنْعِ مِنْ الْمُفَارَقَةِ خَوْفَ الِاسْتِقَالَةِ فَقَطْ فَلَسْنَا نَقُولُ بِهِ، لِأَنَّ الْخَبَرَ الْمَذْكُورَ لَا يَصِحُّ، وَلَوْ صَحَّ لَقُلْنَا بِمَا فِيهِ مِنْ تَحْرِيمِ الْمُفَارَقَةِ عَلَى هَذِهِ النِّيَّةِ، وَلَيْسَتْ الِاسْتِقَالَةُ الْمَذْكُورَةُ فِي هَذَا الْخَبَرِ مَا ظَنَّ هَؤُلَاءِ الْجُهَّالُ، وَإِنَّمَا هِيَ فَسْخُ النَّادِمِ مِنْهُمَا لِلْبَيْعِ - رَضِيَ الْآخَرُ أَمْ كَرِهَ - لِأَنَّ الْعَرَبَ

or objects—for Arabs say: “I rescinded from my ailment” and “I rescinded what escaped me,” meaning to reclaim it. The decisive proof validating our position and invalidating their false interpretation is that physical separation does not prevent the rescission they attribute to the report. Rather, rescission remains perpetually possible even after decades. Thus, the report on this basis would lack meaning, reality, or benefit. This confirms that the rescission which separation undoubtedly prevents is physical separation that makes the sale binding and inevitably precludes its annulment. No alternative exists, nor can the report’s wording bear any other meaning. Thus, this report becomes a burden upon their burden, for they authenticated it yet contradicted its content—permitting separation whether fearing rescission or not. Ali said: This is all their obfuscation, wholly rebounding against them, exposing the frailty of their knowledge and paucity of understanding. We—Allah the Exalted willing—shall present what they deem their strongest argument and clarify its decisive refutation for any who might cling to it. And success is only from Allah, the Exalted.

تَقُولُ اسْتَقَلْت مِنْ عِلَّتِي، وَاسْتَقَلْت مَا فَاتَ عَنِّي: إذَا اسْتَدْرَكَهُ. وَالْبُرْهَانُ عَلَى صِحَّةِ قَوْلِنَا هَذَا وَعَلَى فَسَادِ تَأْوِيلِهِمْ وَكَذِبِهِ هُوَ أَنَّ الْمُفَارَقَةَ بِالْأَبْدَانِ لَا تَمْنَعُ مِنْ الِاسْتِقَالَةِ الَّتِي حَمَلُوا الْخَبَرَ عَلَيْهَا، بَلْ هِيَ مُمْكِنَةٌ أَبَدًا، وَلَوْ بَعْدَ عَشَرَاتِ أَعْوَامٍ، فَكَانَ الْخَبَرُ عَلَى هَذَا لَا مَعْنَى لَهُ وَلَا حَقِيقَةَ، وَلَا فَائِدَةَ. فَصَحَّ أَنَّهَا الِاسْتِقَالَةُ الَّتِي تَمْنَعُ مِنْهَا الْمُفَارَقَةُ بِلَا شَكٍّ، وَهِيَ التَّفَرُّقُ بِالْأَبْدَانِ الْمُوجِبُ لِلْبَيْعِ، الْمَانِعُ مِنْ فَسْخِهِ وَلَا بُدَّ، وَلَا يُمْكِنُ غَيْرُ هَذَا، وَلَا يَحْتَمِلُ لَفْظُ الْخَبَرِ مَعْنًى سِوَاهُ أَلْبَتَّةَ. فَصَارَ هَذَا الْخَبَرُ ثِقْلًا عَلَيْهِمْ عَلَى ثِقْلٍ، لِأَنَّهُمْ صَحَّحُوهُ وَخَالَفُوا مَا فِيهِ، وَأَبَاحُوا لَهُ مُفَارَقَتَهُ - خَشِيَ أَنْ يَسْتَقِيلَهُ أَوْ لَمْ يَخْشَ. قَالَ عَلِيٌّ: هَذَا كُلُّ مَا مَوَّهُوا بِهِ وَكُلُّهُ عَائِدٌ عَلَيْهِمْ وَمُبْدٍ تَخَاذُلَ عِلْمِهِمْ وَقِلَّةَ فَهْمِهِمْ وَنَحْنُ - إنْ شَاءَ اللَّهُ تَعَالَى - نَذْكُرُ مَا هُوَ أَقْوَى شُبْهَةً لَهُمْ، وَنُبَيِّنُ حَسْمَ التَّعَلُّقِ بِهِ لِمَنْ عَسَى أَنْ يَفْعَلَ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22034–22035 It was narrated to us through the chain of Al-Bukhari, who said: Al-Humaydi narrated from Sufyān ibn ‘Uyaynah, who narrated from ‘Amr, who informed us from Ibn ‘Umar—may Allah be pleased with them both—who said: “We were traveling with the Prophet—peace and blessings of Allah be upon him—and I was riding an unruly young camel belonging to ‘Umar. It would overpower me and advance ahead of the group. ‘Umar would rebuke it and bring it back, but it would advance again, and ‘Umar would rebuke it and bring it back. The Prophet—peace and blessings of Allah be upon him—said to ‘Umar: ‘Sell it to me.’ He replied: ‘It is yours, O Messenger of Allah.’ The Prophet repeated: ‘Sell it to me.’ So ‘Umar sold it to the Messenger of Allah—peace and blessings of Allah be upon him. The Prophet then said: ‘It is yours, O ‘Abdullāh ibn ‘Umar—do with it as you wish.’” They said: “This constitutes a valid sale without the parties separating, and it is a gift of that which the

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ قَالَ: وَقَالَ الْحُمَيْدِيُّ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ نا عَمْرٌو «عَنْ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ: كُنَّا مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَفَرٍ فَكُنْتُ عَلَى بَكْرٍ صَعْبٍ لِعُمَرَ فَكَانَ يَغْلِبُنِي فَيَتَقَدَّمُ أَمَامَ الْقَوْمِ فَيَزْجُرُهُ عُمَرُ وَيَرُدُّهُ ثُمَّ يَتَقَدَّمُ فَيَزْجُرُهُ عُمَرُ وَيَرُدُّهُ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِعُمَرَ: بِعْنِيهِ؟ قَالَ: هُوَ لَكَ يَا رَسُولَ اللَّهِ، قَالَ: بِعْنِيهِ؟ فَبَاعَهُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ لَكَ يَا عَبْدَ اللَّهِ بْنَ عُمَرَ تَصْنَعُ بِهِ مَا شِئْتَ» قَالُوا فَهَذَا بَيْعٌ صَحِيحٌ لَا تَفَرُّقَ فِيهِ وَهِبَةٌ لِمَا ابْتَاعَ - عَلَيْهِ السَّلَامُ - قَبْلَ التَّفَرُّقِ بِلَا شَكٍّ.

Prophet—peace and blessings of Allah be upon him—had purchased before their separation, without any doubt."[1]

قَالَ أَبُو مُحَمَّد: هَذَا خَبَرٌ لَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّهُ وَإِنْ لَمْ يَكُنْ فِيهِ تَفَرُّقٌ

L22036 Abu Muhammad said: This report provides no valid proof for them for several reasons. The first is that even if the contract does not terminate, it inherently allows for the option [to choose] after its conclusion. Silence regarding this does not negate its validity, for the sale's validity necessarily requires it. Furthermore, no price was mentioned in this report either. Thus, they ought to permit sales without any mention of a price whatsoever, since no price was specified in it.

فِيهِ التَّخْيِيرُ بَعْدَ الْعَقْدِ، وَلَيْسَ السُّكُوتُ عَنْهُ بِمَانِعٍ مِنْ كَوْنِهِ؛ لِأَنَّ صِحَّةَ الْبَيْعِ تَقْتَضِيه وَلَا بُدَّ - وَلَمْ يُذْكَرْ فِي هَذَا الْخَبَرِ ثَمَنٌ أَيْضًا، فَيَنْبَغِي لَهُمْ أَنْ يُجِيزُوا الْبَيْعَ بِغَيْرِ ذِكْرِ ثَمَنٍ أَصْلًا؛ لِأَنَّهُ لَمْ يُذْكَرْ فِيهِ ثَمَنٌ.

L22037 If they say: "A price is indispensable without doubt, for a sale cannot be valid without it?" We reply: "Similarly, parting or the option is indispensable, for a sale cannot be considered a sale nor is it fundamentally valid except through one of them. There is no difference between their use of this narration to discard the ruling of what was not mentioned in it—the option after the contract—and one who cites it to justify sales involving religiously prohibited (haram) matters, since no price is mentioned in it whatsoever. This is deemed a gift for what was sold before taking possession, contrary to the Hanafi opinion, thus forming an argument against them. Likewise, the ruling regarding attestation is entirely equivalent."

فَإِنْ قَالُوا: لَا بُدَّ مِنْ الثَّمَنِ بِلَا شَكٍّ، لِأَنَّ الْبَيْعَ لَا يَصِحُّ إلَّا بِهِ؟ قُلْنَا: وَلَا بُدَّ مِنْ التَّفَرُّقِ أَوْ التَّخْيِيرِ، لِأَنَّ الْبَيْعَ لَا يَكُونُ بَيْعًا، وَلَا يَصِحُّ أَصْلًا إلَّا بِأَحَدِهِمَا، وَلَا فَرْقَ بَيْنَهُمْ فِي احْتِجَاجِهِمْ بِهَذَا الْخَبَرِ فِي إسْقَاطِ حُكْمِ مَا لَمْ يُذْكَرْ فِيهِ مِنْ التَّخْيِيرِ بَعْدَ الْعَقْدِ، وَبَيْنَ مَنْ احْتَجَّ بِهِ فِي الْبَيْعِ بِالْمُحَرَّمَاتِ، لِأَنَّهُ لَمْ يُذْكَرْ فِيهِ ثَمَنٌ أَصْلًا، وَهَذِهِ هِبَةٌ لِمَا اُبْتِيعَ قَبْلَ الْقَبْضِ بِخِلَافِ رَأْيِ الْحَنَفِيِّينَ فَهُوَ حُجَّةٌ عَلَيْهِمْ، وَكَذَلِكَ الْقَوْلُ فِي الْإِشْهَادِ سَوَاءٌ سَوَاءٌ.

L22038 The second aspect is that even if it were valid for them [to claim] that there was neither choice nor any witnessing at all in this sale—and it is never valid—how can they assert that this incident occurred after the Messenger of Allah's statement (peace and blessings of Allah be upon him): "No sale is concluded between two parties until they separate or one grants the other the choice"? And after Allah the Exalted's command regarding witnessing? Whoever claims knowledge of this is a lying forger who will—if Allah the Exalted wills—occupy his seat in the Fire for lying against the Messenger of Allah (peace and blessings of Allah be upon him).

وَالْوَجْهُ الثَّانِي - أَنَّهُ حَتَّى لَوْ صَحَّ لَهُمْ أَنَّهُ لَمْ يَكُنْ فِي هَذَا الْبَيْعِ تَخْيِيرٌ وَلَا إشْهَادٌ أَصْلًا وَهُوَ لَا يَصِحُّ أَبَدًا - فَمَنْ لَهُمْ أَنَّ هَذِهِ الْقِصَّةَ كَانَتْ بَعْدَ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ بَيِّعَيْنِ لَا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا أَوْ يُخَيِّرَ أَحَدُهُمَا الْآخَرَ» ؟ وَبَعْدَ أَمْرِ اللَّهِ تَعَالَى بِالْإِشْهَادِ، وَمَنْ ادَّعَى عِلْمَ ذَلِكَ فَهُوَ كَذَّابٌ أَفَّكٌ يَتَبَوَّأُ - إنْ شَاءَ اللَّهُ تَعَالَى - مَقْعَدَهُ مِنْ النَّارِ لِكَذِبِهِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L22039–22041 If this narration predates all of that, then we say: The sale at that time would be concluded through the contract even if they did not separate and neither party granted the other an option, while attestation was not oblig-

فَإِنْ كَانَ هَذَا الْخَبَرُ قَبْلَ ذَلِكَ كُلِّهِ؟ فَنَحْنُ نَقُولُ: إنَّ الْبَيْعَ حِينَئِذٍ كَانَ يَتِمُّ بِالْعَقْدِ وَإِنْ لَمْ يَتَفَرَّقَا وَلَا خَيَّرَ أَحَدُهُمَا الْآخَرَ، وَإِنَّ الْإِشْهَادَ لَمْ يَكُنْ لَازِمًا وَإِنَّمَا وَجَبَ كُلُّ مَا

[1] **Hadith references (L22035):** Sahih al-Bukhari 2115.

atory. Rather, everything we have mentioned became incumbent. Only at the time of the command concerning it, not prior to that. As for us, we firmly assert that the Messenger of Allah—may Allah bless him and grant him peace—does not contradict the command of his Lord, the Most High, nor does he do what he has forbidden his nation to do. This is what is beyond doubt in our view, and whoever doubts this or permits its occurrence is a disbeliever. We draw near to Allah, the Most High, by dissociating from him.

ذَكَرْنَا حِينَ الْأَمْرِ بِهِ لَا قَبْلَ ذَلِكَ، وَأَمَّا نَحْنُ فَنَقْطَعُ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُخَالِفُ أَمْرَ رَبِّهِ تَعَالَى، وَلَا يَفْعَلُ مَا نَهَى عَنْهُ أُمَّتَهُ، هَذَا مَا لَا شَكَّ فِيهِ عِنْدَنَا، وَمَنْ شَكَّ فِي هَذَا أَوْ أَجَازَ كَوْنَهُ فَهُوَ كَافِرٌ، نَتَقَرَّبُ إلَى اللَّهِ تَعَالَى بِالْبَرَاءَةِ مِنْهُ.

L22042 Similarly, we definitively conclude that he (peace be upon him), had he abrogated any command given to us, would have made it clear so that no scholar well-versed in his Sunnah would doubt that he indeed abrogated what he abrogated and affirmed what he affirmed.

وَكَذَلِكَ نَقْطَعُ بِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَوْ نَسَخَ مَا أَمَرَنَا بِهِ لَبَيَّنَهُ حَتَّى لَا يَشُكَّ عَالِمٌ بِسُنَّتِهِ فِي أَنَّهُ قَدْ نَسَخَ مَا نَسَخَ وَأَثْبَتَ مَا أَثْبَتَ.

L22043 If it were permissible for other than this—and I seek refuge in Allah—then the religion of Islam would be corrupt, with no one knowing what is forbidden for him from what is permissible for him from what his Lord, the Exalted, has enjoined upon him. Far is Allah from this! Indeed, this is the clear misguidance that Allah, the Exalted, declares false, as He says: “the clarification for all things” [An-Nahl 16:89] and “so that you [O Prophet] may clarify to the people what has been sent down to them” [An-Nahl 16:44].[2]

وَلَوْ جَازَ غَيْرُ هَذَا - وَأَعُوذُ بِاَللَّهِ - لَكَانَ دِينُ الْإِسْلَامِ فَاسِدًا لَا يَدْرِي أَحَدٌ مَا يَحْرُمُ عَلَيْهِ مِمَّا يَحِلُّ لَهُ مِمَّا أَوْجَبَ رَبُّهُ تَعَالَى عَلَيْهِ حَاشَ لِلَّهِ مِنْ هَذَا، إنَّ هَذَا لَهُوَ الضَّلَالُ الْمُبِينُ الَّذِي يُكَذِّبُهُ اللَّهُ تَعَالَى إذْ يَقُولُ: {تِبْيَانًا لِكُلِّ شَيْءٍ} [النحل: ٨٩] وَ {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] .

L22044 Guidance has become clear from misguidance, for the entire religion is guidance while opposition to every part of it constitutes misguidance. Had all this not become clear, Allah the Exalted would have been a liar, and the Messenger—peace be upon him—would not have clarified nor conveyed, and the religion would be perishing and corrupted. This is pure disbelief on the part of anyone who permits its existence.

وَقَدْ تَبَيَّنَ الرُّشْدُ مِنْ الْغَيِّ، وَالدِّينُ كُلُّهُ رُشْدٌ وَخِلَافُ كُلِّ شَيْءٍ مِنْهُ غَيٌّ، فَلَوْ لَمْ يَتَبَيَّنْ كُلُّ ذَلِكَ لَكَانَ اللَّهُ تَعَالَى كَذِبًا، وَالرَّسُولُ - عَلَيْهِ السَّلَامُ - لَمْ يُبَيِّنْ، وَلَمْ يُبَلِّغْ وَالدِّينُ ذَاهِبًا فَاسِدًا - وَهَذَا هُوَ الْكُفْرُ الْمَحْضُ مِمَّنْ أَجَازَ كَوْنَهُ.

L22045 The third aspect is that they argue: The narrator among the Companions is more knowledgeable about what he transmitted. Ibn Umar—the transmitter of this narration—maintained that a sale is not completed unless physical separation occurs between the parties. Therefore, according to their own principle, he would be the most knowledgeable about what was transmitted.

وَالْوَجْهُ الثَّالِثُ - أَنَّهُمْ يَقُولُونَ: إنَّ الرَّاوِيَ مِنْ الصَّحَابَةِ أَعْلَمُ بِمَا رَوَى وَابْنُ عُمَرَ هُوَ رَاوِي هَذَا الْخَبَرِ، وَهُوَ الَّذِي كَانَ لَا يَرَى الْبَيْعَ يَتِمُّ إلَّا بِالتَّفَرُّقِ بِالْأَبْدَانِ، فَهُوَ عَلَى أَصْلِهِمْ أَعْلَمُ بِمَا رُوِيَ.

وَسَقَطَ عَلَى أَصْلِهِمْ هَذَا تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ جُمْلَةً - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[2] **Qur’an references (L22043):** Qur’an 16:89 (An-Nahl); Qur’an 16:44 (An-Nahl).

L22046 And their entire reliance on this report was grounded in their foundational basis—and all praise is due to Allah, Lord of the worlds.

وَقَالَ بَعْضُهُمْ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ» ، وَمِنْ الْغَرَرِ أَنْ يَكُونَ لَهُمَا خِيَارٌ لَا يَدْرِيَانِ مَتَى يَنْقَطِعُ.

L22047 Some of them said, “The Messenger of Allah—peace and blessings be upon him—forbade sales involving uncertainty (gharar).” Among such uncertainties is when both parties retain an option (khiyar) without knowing when it will cease.[3]

قَالَ أَبُو مُحَمَّد: وَهَذَا كَلَامٌ فَاسِدٌ مِنْ وُجُوهٍ -: أَحَدُهَا - أَنَّ الْعَقْدَ قَبْلَ التَّفَرُّقِ بِالْأَبْدَانِ، أَوْ التَّخْيِيرِ: لَيْسَ بَيْعًا أَصْلًا لَا بَيْعَ غَرَرٍ وَلَا بَيْعَ سَلَامَةٍ، كَمَا قَالَ - عَلَيْهِ السَّلَامُ -: «إنَّهُ لَا بَيْعَ بَيْنَهُمَا مَا كَانَا مَعًا» فَهُوَ غَيْرُ دَاخِلٍ فِي بَيْعِ الْغَرَرِ الْمَنْهِيِّ عَنْهُ.

L22048 Abu Muhammad said: This is an invalid statement for several reasons. One of them is that a contract formed before physical separation or the option period is not a sale at all—neither a *gharar* sale nor a *salam* sale—as the Prophet, peace be upon him, said: “There is no sale between them as long as they remain together.” Thus, it does not fall under the prohibited *gharar* sale.

وَالْوَجْهُ الثَّانِي - أَنَّهُ لَيْسَ كَمَا قَالُوا: مِنْ أَنَّ لَهُمَا خِيَارًا لَا يَدْرِيَانِ مَتَى يَنْقَطِعُ، بَلْ أَيُّهُمَا شَاءَ قَطْعَهُ قَطَعَهُ فِي الْوَقْتِ، بِأَنْ يُخَيِّرَ صَاحِبَهُ فَإِمَّا يُمْضِيَهُ فَيَتِمُّ الْبَيْعُ وَيَنْقَطِعُ الْخِيَارُ، وَإِمَّا يَفْسَخُهُ فَيَبْطُلُ حُكْمُ الْعَقْدِ وَتَمَادِيهِ، أَوْ بِأَنْ يَقُومَ فَيُفَارِقَ صَاحِبَهُ كَمَا كَانَ يَفْعَلُ ابْنُ عُمَرَ فَظَهَرَ بِرَدِّ هَذَا الِاعْتِرَاضِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالرَّأْيِ السَّخِيفِ، وَالْعَقْلِ الْهَجِينِ.

L22049–22051 The second aspect is that it is not as they claimed - that both parties have an option whose termination timing they do not know. Rather, whichever of the two wishes to terminate it may do so immediately by offering their counterpart the choice: either to proceed with it, thereby completing the sale and causing the option to be terminated, or to annul it, thereby nullifying the contract’s validity and its continuation. Alternatively, they may stand up and leave their counterpart, as Ibn ’Umar used to do. Thus, the flaw in this objection against the Messenger of Allah (peace be upon him) was glaringly exposed through a rebuttal that relied on a frivolous opinion and a base intellect.

وَالْوَجْهُ الثَّالِثُ - أَنَّهُ لَا يَكُونُ غَرَرًا شَيْءٌ أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّهُ لَا يَأْمُرُ بِمَا نَهَى عَنْهُ مَعًا حَاشَ لَهُ مِنْ ذَلِكَ، وَإِنَّمَا الْغَرَرُ مَا أَجَازَهُ هَؤُلَاءِ بِآرَائِهِمْ الْفَاسِدَةِ مِنْ بَيْعِهِمْ اللَّبَنَ الَّذِي لَمْ يُخْلَقْ فِي ضُرُوعِ الْغَنَمِ شَهْرًا أَوْ شَهْرَيْنِ.

L22052 The third aspect is that anything the Messenger of Allah (peace be upon him) commanded cannot entail *gharar*, for he would never enjoin what he simultaneously forbade—far be it from him. Rather, *gharar* is what these people have permitted through their corrupt opinions, such as their practice of selling milk that has not yet formed in the udders of the sheep and goats for a month or two.

وَبَيْعِ الْجَزَرِ الْمُغَيَّبِ فِي الْأَرْضِ الَّذِي لَمْ يَرَهُ إنْسِيٌّ وَلَا عَرَفَ صِفَتَهُ، وَلَا أَهُوَ جَزَرٌ أَمْ هُوَ مَعْفُونٌ مُسَوَّسٌ لَا خَيْرَ فِيهِ؟ وَبَيْعِ أَحَدِ ثَوْبَيْنِ لَا يَدْرِي أَيُّهُمَا هُوَ الْمُشْتَرَى.

L22053 And the sale of unseen carrots still in the ground that no human has seen, known their attributes, or determined whether they are viable carrots or

[3] **Hadith references (L22047):** Sunan Ibn Majah 2194; Sunan Ibn Majah 2195; Jami at-Tirmidhi 1230.

rotten, worm-eaten things with no good in them. And the sale of one of two garments without knowing which one is the purchased item.

وَالْمَقَاثِي الَّتِي لَمْ تُخْلَقْ، وَالْغَائِبِ الَّذِي لَمْ يُوصَفْ وَلَا عُرِفَ - فَهَذَا هُوَ الْغَرَرُ الْمُحَرَّمُ الْمَفْسُوخُ الْبَاطِلُ حَقًّا.

L22054 And the growing crops that have not yet developed, and the absent item that is neither described nor known - this constitutes the prohibited uncertainty: invalidated, void, and truly null in reality.

فَإِنْ ذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ هَاشِمِ بْنِ الْقَاسِمِ عَنْ أَيُّوبَ بْنِ عُتْبَةَ الْيَمَامِيِّ عَنْ أَبِي كَثِيرٍ السُّحَيْمِيِّ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْبَيِّعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا مِنْ بَيْعِهِمَا أَوْ يَكُونُ بَيْعُهُمَا بِخِيَارٍ» .

L22055 If they mention what we have narrated through the chain of Ibn Abi Shaybah from Hashim ibn al-Qasim from Ayyub ibn ‘Utbah al-Yamami from Abu Kathir al-Suhaymi from Abu Hurayrah from the Prophet (peace be upon him): “The two parties to a sale retain the option as long as they have not parted ways from their transaction, or the sale is subject to an option.”

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا عَجَبٌ جِدًّا، لِأَنَّهُ عَلَيْهِمْ لَوْ صَحَّ، وَالتَّفَرُّقُ مِنْ الْبَيْعِ لَا يَكُونُ إلَّا بِأَحَدِ أَمْرَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا بِتَفَرُّقِ الْأَبْدَانِ فَيَتِمُّ الْبَيْعُ حِينَئِذٍ وَيَتَفَرَّقَانِ مِنْهُ حِينَئِذٍ، لَا قَبْلَ ذَلِكَ، وَإِمَّا أَنْ يَتَفَرَّقَا مِنْهُ بِفَسْخِهِ وَإِبْطَالِهِ -: لَا يُمْكِنُ غَيْرُ هَذَا؟ فَكَيْفَ وَأَيُّوبُ بْنُ عُتْبَةَ ضَعِيفٌ لَا نَرْضَى الِاحْتِجَاجَ بِرِوَايَتِهِ أَصْلًا وَإِنْ كَانَتْ لَنَا.

L22056 Abū Muḥammad said: This is exceedingly astonishing, for if it were valid upon them, separation from the sale could only occur through one of two matters with no third alternative: either through the separation of their bodies, at which point the sale is completed and they separate from it at that moment—not before—or through separation from it by its rescission and annulment. Is nothing else possible? How then [can this be] when Ayyūb ibn ‘Utbah is weak? We do not approve of using his narration as evidence at all, even if it were in our favor.

وَأَتَى بَعْضُهُمْ بِطَامَّةٍ تَدُلُّ عَلَى رِقَّةِ دِينِهِ وَضَعْفِ عَقْلِهِ، فَقَالَ: مَعْنَى مَا لَمْ يَفْتَرِقَا: إنَّمَا أَرَادَ مَا لَمْ يَتَّفِقَا، كَمَا يُقَالُ لِلْقَوْمِ: عَلَى مَاذَا افْتَرَقْتُمْ؟ أَيْ عَلَى مَاذَا اتَّفَقْتُمْ - فَأَرَادَ عَلَى مَاذَا افْتَرَقْتُمَا عَنْ كَلَامِكُمَا.

L22057 And one of them committed a grave error revealing weakness in his religion and deficiency in intellect, stating: “The meaning of ’what the two had not differed on’ is that he intended ’what the two had not agreed upon,’ just as people say to a group: ’On what did you part ways?’ meaning ’On what did you agree?’ Thus, he meant: ’On what did you two diverge from your statements?’”

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ مِنْ وُجُوهٍ -: أَوَّلُهَا: أَنَّ هَذِهِ دَعْوَى كَاذِبَةٌ بِلَا دَلِيلٍ، وَمَنْ لَكُمْ بِصَرْفِ هَذَا اللَّفْظِ إلَى هَذَا التَّأْوِيلِ؟ وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ.

L22058 Abu Muhammad said: This is invalid for several reasons—the first being that this is a false claim without evidence. Who can divert this wording to such an interpretation? And anything that is like this is invalid.

وَالثَّانِي: أَنْ يُقَالَ: هَذَا هُوَ السَّفْسَطَةُ بِعَيْنِهِ، وَرَدُّ الْكَلَامِ إلَى ضِدِّهِ أَبَدًا، وَلَا يَصِحُّ مَعَ هَذَا حَقِيقَةٌ، وَلَا يَعْجِزُ أَحَدٌ عَنْ أَنْ يَقُولَ كَذَلِكَ فِي كُلِّ مَا جَاءَ عَنْ الْقُرْآنِ، وَالسُّنَنِ.

L22059 The second is to say: This is sophistry itself, and to perpetually reduce speech to its opposite. With this, no truth can hold valid, nor could anyone refrain from applying this logic to all that derives from the Quran and the Sunnahs.

وَهَذِهِ سَبِيلُ الرَّوَافِضِ، إِذْ يَقُولُونَ: إِنَّ الْجِبْتَ وَالطَّاغُوتَ إِنَّمَا هُمَا إِنْسَانَانِ بِعَيْنِهِمَا، وَأَنْ تَذْبَحُوا بَقَرَةً إِنَّمَا هِيَ فُلَانَةُ بِعَيْنِهَا.

L22060–22061 And this is the way of the Rawāfiḍ, for they claim that al-Jibt and al-Ṭāghūt are precisely two specific individuals, and that to slaughter a cow refers solely to a specific cow named Fulānah.

وَالثَّالِثُ: أَنْ نَقُولَ لَهُمْ: فَكَيْفَ، وَلَوْ جَازَ هَذَا التَّأْوِيلُ لَكَانَ مَا رَوَاهُ اللَّيْثُ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا تَبَايَعَ الرَّجُلَانِ فَكُلُّ وَاحِدٍ مِنْهُمَا بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا وَكَانَا جَمِيعًا، أَوْ يُخَيِّرُ أَحَدُهُمَا الْآخَرَ فَإِنْ خَيَّرَ أَحَدُهُمَا الْآخَرَ فَتَبَايَعَا عَلَى ذَلِكَ وَجَبَ الْبَيْعُ وَإِنْ تَفَرَّقَا بَعْدَ أَنْ تَبَايَعَا وَلَمْ يَتْرُكْ وَاحِدٌ مِنْهُمَا الْبَيْعَ، فَقَدْ وَجَبَ الْبَيْعُ» مُكَذِّبًا لِهَذَا التَّأْوِيلِ الْكَاذِبِ الْمُدَّعَى بِلَا دَلِيلٍ، وَمُبَيِّنًا أَنَّ التَّفَرُّقَ الَّذِي بِهِ يَصِحُّ الْبَيْعُ لَا يَكُونُ أَلْبَتَّةَ عَلَى رَغْمِ أُنُوفِهِمْ، إِلَّا بَعْدَ التَّبَايُعِ، كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا كَمَا ظَنَّ أَهْلُ الْجَهْلِ مِنْ أَنَّهُ فِي حَالِ التَّبَايُعِ وَمَعَ آخِرِ كَلَامِهِمَا.

L22062 Thirdly: We say to them: How can this be? For if this interpretation were valid, then the hadith narrated by Al-Layth from Nāfiʿ from Ibn ʿUmar from the Prophet—peace and blessings of Allah be upon him—"When two men enter into a sale, each retains the right of rescission as long as they remain together without separating, or until one grants the other the choice. If one grants the choice and they complete the transaction accordingly, the sale becomes binding. If they separate after entering into the sale without revoking it, the sale becomes binding"—would decisively refute this false interpretation asserted without evidence. It demonstrates that the physical separation validating the sale cannot occur at all—despite their objections—except after the transaction is finalized, as the Messenger of Allah—peace and blessings of Allah be upon him—explicitly stated, contrary to the presumption of the ignorant who claim it occurs during the transaction or upon concluding their dialogue.

قَالَ أَبُو مُحَمَّد: وَهَذَا مِمَّا خَالَفُوا فِيهِ طَائِفَةً مِنَ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، وَهُمْ يُعَظِّمُونَ هَذَا - وَهَذَا مِمَّا خَالَفُوا فِيهِ جُمْهُورَ الْعُلَمَاءِ إِلَّا رِوَايَةً عَنْ إِبْرَاهِيمَ، ثُمَّ جَاءَ بَعْضُهُمْ بِعَجَبٍ وَهُوَ أَنَّهُمْ زَادُوا فِي الْكَذِبِ، فَأَتَوْا بِرِوَايَةٍ رُوِّينَاهَا مِنْ طَرِيقِ عَطَاءٍ: أَنَّ عُمَرَ قَالَ: الْبَيْعُ صَفْقَةٌ أَوْ خِيَارٌ - وَرُوِيَ أَيْضًا مِنْ طَرِيقِ الشَّعْبِيِّ أَنَّ عُمَرَ - وَعَنِ الْحَجَّاجِ بْنِ أَرْطَاةَ أَنَّ عُمَرَ قَالَ: إِنَّمَا الْبَيْعُ عَنْ صَفْقَةٍ أَوْ خِيَارٍ، وَالْمُسْلِمُ عِنْدَ شَرْطِهِ. وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ مُحَمَّدِ بْنِ خَالِدِ بْنِ الزُّبَيْرِ عَنْ شَيْخٍ مِنْ بَنِي كِنَانَةَ أَنَّ عُمَرَ قَالَ: الْبَيْعُ عَنْ صَفْقَةٍ أَوْ خِيَارٍ، وَلِكُلِّ مُسْلِمٍ شَرْطُهُ.

L22063 Abu Muhammad said: This is among the matters wherein they opposed a group of the Companions—no dissenter is known among them—while they themselves hold this in high esteem. This is also among the matters wherein they opposed the majority of scholars, except for a narration from Ibrahim. Then some of them came with an astonishing matter: they increased in lying and brought forth a narration we have transmitted through ʿAṭāʾ's chain, stating that ʿUmar said, "A sale arises from a transaction or option." It is also narrated through al-Shaʿbī's chain, and through al-Ḥajjāj ibn Arṭāh's chain, that ʿUmar said, "A sale arises only from a transaction or option, and a Muslim is at his stipulation." Through al-Ḥajjāj ibn Arṭāh's chain, from Muḥammad ibn Khālid ibn al-Zubayr, from a shaykh of Banū Kinānah, it is narrated that ʿUmar said, "A sale arises from a transaction or option, and every Muslim is at his stipulation."

L22064 Abu Muhammad said: Among the wonders of this world and a manifest proof of complete detachment from modesty is the attempt to cite these narrations in opposition to the Sunnah—all of which have multiple flaws

against them. First: none of them are valid, for they are either mursal narrations or transmitted through Al-Ḥajjāj ibn Arṭā'ah—and he is Malik—from some shaykh of Banū Kinānah. Do you even realize what a "shaykh of Banū Kinānah" implies? I wish I knew—will they use this as proof when they stand in the court of judgment on the Day of Resurrection? O Allah, I seek refuge in You from trifling with religion.

قَالَ أَبُو مُحَمَّدٍ: مِنْ عَجَائِبِ الدُّنْيَا، وَمِنْ الْبُرْهَانِ عَلَى الْبَرَاءَةِ مِنْ الْحَيَاءِ: الِاحْتِجَاجُ بِهَذِهِ الرِّوَايَاتِ فِي مُعَارَضَةِ السُّنَنِ، وَكُلُّهَا عَلَيْهِمْ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّهُ لَيْسَ شَيْءٌ مِنْهَا يَصِحُّ؛ لِأَنَّهَا مُرْسَلَاتٌ، أَوْ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ مَالِكٌ - عَنْ شَيْخٍ مِنْ بَنِي كِنَانَةَ وَمَا أَدْرَاكَ مَا شَيْخٌ مِنْ بَنِي كِنَانَةَ؟ لَيْتَ شِعْرِي أَبِهَذَا يَحْتَجُّونَ إذَا وَقَفُوا فِي عَرْصَةِ الْقَضَاءِ يَوْمَ الْقِيَامَةِ؟ عِيَاذُك اللَّهُمَّ مِنْ التَّلَاعُبِ بِالدِّينِ.

L22065 Then, even if they were valid, they would have no valid foundation therein, because there is nothing within them that nullifies what Allah the Exalted decreed as articulated by His Messenger—peace and blessings of Allah be upon him—regarding "no sale being permissible except after physical separation or the right to rescind."

ثُمَّ لَوْ صَحَّتْ لَمَا كَانَ لَهُمْ فِيهَا مُتَعَلَّقٌ، لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْهَا إبْطَالُ مَا حَكَمَ بِهِ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَنَّهُ «لَا بَيْعَ إلَّا بَعْدَ التَّفَرُّقِ أَوْ التَّخْيِيرِ» .

L22066–22067 This statement of Umar—had we heard it from Umar himself—would not contradict our position, for a valid sale is one concluded upon separation, and a valid option is one established through granting choice, as the Prophet (peace be upon him) ruled: "There is no sale between the two parties to the sale unless they separate or one grants the other the option." How then could this be, when an explicit text matching our view is authentically reported from Umar? As transmitted to us through the chain of Muslim: Qutaybah reported to us: Layth—he is Ibn Sa'd—reported to us from Ibn Shihab from Malik ibn Aws ibn al-Hadathān, who said: I approached saying, "Who will exchange dirhams?" Talha ibn 'Ubayd Allah, who was with Umar ibn al-Khattab, said, "Show us your gold, then return when our attendant arrives, and we will give you your silver." Umar said to him, "Absolutely not, by Allah! You must either give him his silver now or return his dirham to him."

وَكَلَامُ عُمَرَ هَذَا لَوْ سَمِعْنَاهُ مِنْ عُمَرَ لَمَا كَانَ خِلَافًا لِقَوْلِنَا، لِأَنَّ الصَّفْقَةَ مَا صَحَّ مِنْ الْبَيْعِ بِالتَّفَرُّقِ، وَالْخِيَارَ مَا صَحَّ مِنْ الْبَيْعِ بِالتَّخْيِيرِ، كَمَا قَالَ - عَلَيْهِ السَّلَامُ -، وَحَكَمَ أَنْ «لَا بَيْعَ بَيْنَ الْبَيِّعَيْنِ إلَّا بِأَنْ يَتَفَرَّقَا أَوْ يُخَيِّرَ أَحَدُهُمَا الْآخَرَ» فَكَيْفَ، وَقَدْ صَحَّ عَنْ عُمَرَ مِثْلُ قَوْلِنَا نَصًّا؟ كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ نا لَيْثٌ - هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ مَالِكِ بْنِ أَوْسِ بْنِ الْحَدَثَانِ قَالَ: أَقْبَلْت أَقُولُ: مَنْ يَصْطَرِفُ الدَّرَاهِمَ؟ فَقَالَ طَلْحَةُ بْنُ عُبَيْدِ اللَّهِ وَهُوَ عِنْدَ عُمَرَ بْنِ الْخَطَّابِ أَرِنَا ذَهَبَك؟ ثُمَّ جِئْنَا إذَا جَاءَ خَادِمُنَا نُعْطِيك وَرِقَك؟ فَقَالَ لَهُ عُمَرُ: كَلَّا وَاَللَّهِ لَتُعْطِيَنَّهُ وَرِقَهُ أَوْ لَتَرُدَّنَّ إلَيْهِ دِرْهَمَهُ.

L22068 So this is 'Umar permitting him to return the gold after the completion of the contract and abandoning the transaction.

فَهَذَا عُمَرُ يُبِيحُ لَهُ رَدَّ الذَّهَبِ بَعْدَ تَمَامِ الْعَقْدِ وَتَرْكِ الصَّفْقَةِ.

L22069 If it is said: Was the sale between them not finalized? We respond: This is erroneous, for this is a report we have narrated through the chain of Mālik, from Ibn Shihāb, from Mālik ibn Aws ibn al-Ḥadathān al-Naṣrī, who

فَإِنْ قِيلَ: لَمْ يَكُنْ تَمَّ الْبَيْعُ بَيْنَهُمَا؟ قُلْنَا: هَذَا خَطَأٌ، لِأَنَّ هَذَا خَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ مَالِكِ بْنِ أَوْسِ بْنِ الْحَدَثَانِ النَّصْرِيِّ أَنَّهُ أَخْبَرَهُ أَنَّهُ الْتَمَسَ،

informed him that he sought to exchange currency for one hundred dinars. He said: Ṭalḥah ibn ʿUbayd Allāh summoned me, and we negotiated until he finalized the exchange with me and took the gold coins. He then turned them over in his hand and said: "Wait until my treasurer comes to me from the Ghābah [a known area]"—while ʿUmar listens. ʿUmar said: "By Allah, you will not leave him until you take them."

صَرْفًا بِمِائَةِ دِينَارٍ؟ قَالَ: فَدَعَانِي طَلْحَةُ بْنُ عُبَيْدِ اللَّهِ فَتَرَاوَضْنَا حَتَّى اصْطَرَفَ مِنِّي وَأَخَذَ ذَهَبَهُ فَقَلَّبَهَا فِي يَدِهِ ثُمَّ قَالَ: حَتَّى يَأْتِيَنِي خَازِنِي مِنْ الْغَابَةِ وَعُمَرُ يَسْمَعُ؟ فَقَالَ عُمَرُ: وَاَللَّهِ لَا تُفَارِقُهُ حَتَّى تَأْخُذَهُ.

L22070 This clarifies that the currency exchange had indeed been concluded between them. Thus, it is established that ʿUmar, along with Ṭalḥah and the rest of the Companions present, hold the view that the sale is annulled before physical parting.

فَهَذَا بَيَانُ أَنَّ الصَّرْفَ قَدْ كَانَ قَدْ انْعَقَدَ بَيْنَهُمَا - فَصَحَّ أَنَّ عُمَرَ وَبِحَضْرَتِهِ طَلْحَةُ وَسَائِرُ الصَّحَابَةِ يَرَوْنَ فَسْخَ الْبَيْعِ قَبْلَ التَّفَرُّقِ بِالْأَبْدَانِ.

L22071 Moreover, even if what they attributed to Umar were authentic, his statement would neither constitute proof alongside the Messenger of Allah—peace and blessings be upon him—nor against him. How many incidents have they opposed Umar in, whether the Sunnah was with him or not? The first of these is this very report itself, for they narrated from Umar—as you see—"A Muslim is bound by his conditions," yet they invalidate a great many conditions.

ثُمَّ لَوْ صَحَّ عَنْ عُمَرَ مَا ادَّعَوْهُ مَا كَانَ فِي قَوْلِهِ حُجَّةٌ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا عَلَيْهِ، وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا عُمَرَ وَمَعَهُ السُّنَّةُ أَوْ لَيْسَ مَعَهُ؟ أَوَّلُ ذَلِكَ هَذَا الْخَبَرُ نَفْسُهُ، فَإِنَّهُمْ رَوَوْا عَنْ عُمَرَ كَمَا تَرَى " وَالْمُسْلِمُ عِنْدَ شَرْطِهِ " وَهُمْ يُبْطِلُونَ شُرُوطًا كَثِيرَةً جِدًّا.

L22072 And they forgot their disagreement with ʿUmar concerning his statement: "Water cannot be made impure by anything."

وَنَسُوا خِلَافَهُمْ لِعُمَرَ فِي قَوْلِهِ: الْمَاءُ لَا يُنَجِّسُهُ شَيْءٌ.

L22073 And the taking of Zakat from enslaved persons is ten dirhams or a dinar per individual.

وَأَخْذِهِ الصَّدَقَةَ مِنْ الرَّقِيقِ مِنْ كُلِّ رَأْسٍ عَشَرَةَ دَرَاهِمَ أَوْ دِينَارًا.

L22074 And His imposition of Zakat on the growth of the orphan.

وَإِيجَابِهِ الزَّكَاةَ فِي نَاضِّ الْيَتِيمِ.

L22075–22076 His exclusion from zakat in the yield estimation of palm trees regarding what his family consumes—and wiping over the turban [during ablution]—with over a hundred rulings being added—hence, the false presumption in the fabricated narration ascribed to Umar served as a pretext for rejecting the Sunnah.

وَتَرْكِهِ فِي الْخَرْصِ فِي النَّخْلِ مَا يَأْكُلُ أَهْلُهُ - وَالْمَسْحِ عَلَى الْعِمَامَةِ، وَأَزِيدَ مِنْ مِائَةِ قَضِيَّةٍ - فَصَارَ هَهُنَا الظَّنُّ الْكَاذِبُ فِي الرِّوَايَةِ الْكَاذِبَةِ عَنْ عُمَرَ: حُجَّةً فِي رَدِّ السُّنَنِ.

L22077 How then, when this very narration has been transmitted to us through the chain of Ḥammād ibn Salamah from al-Ḥajjāj ibn Arṭāh from Khālid ibn Muḥammad ibn Khālid ibn al-Zubayr, that ʿUmar ibn al-Khaṭṭāb said: "There is no sale except through a transaction and an option"—as indicated by the

فَكَيْفَ وَقَدْ رُوِّينَا هَذِهِ الرِّوَايَةَ نَفْسَهَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ خَالِدِ بْنِ مُحَمَّدِ بْنِ خَالِدِ بْنِ الزُّبَيْرِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إنَّهُ لَيْسَ بَيْعٌ إلَّا عَنْ

conjunctive 'and'—and this contradicts their position, aligns with our view, and necessitates that ʿUmar considered a sale valid only when combining the contract and the option, while the option is separate from the contract. We have also previously cited this from ʿUmar through an authentic chain of transmission. Thus, the invalidity of the basis of their reliance becomes evident from every perspective.

صَفْقَةٍ وَتَخَايُرٍ - هَكَذَا بِوَاوِ الْعَطْفِ - وَهَذَا مُخَالِفٌ لِقَوْلِهِمْ، وَمُوَافِقٌ لِقَوْلِنَا، وَمُوجِبٌ أَنَّ عُمَرَ لَمْ يَرَ الْبَيْعَ إِلَّا مَا جَمَعَ الْعَقْدَ، وَالتَّخْيِيرُ سِوَى الْعَقْدِ، وَقَدْ ذَكَرْنَاهُ عَنْ عُمَرَ أَيْضًا قَبْلُ مِنْ طَرِيقٍ صَحِيحَةٍ، فَظَهَرَ فَسَادُ تَعَلُّقِهِمْ مِنْ كُلِّ جِهَةٍ.

L22078 Some of them mentioned the statement of Ibn ʿUmar that is firmly established as being narrated from him: "If you find the transaction intact and complete, it belongs to the buyer"—We narrated it through the chain of Ibn Wahb from Yunus ibn Yazīd from al-Zuhrī from Hamzah ibn ʿAbdillāh ibn ʿUmar from his father.

وَذَكَرَ بَعْضُهُمْ قَوْلَ ابْنِ عُمَرَ الثَّابِتِ عَنْهُ: مَا أَدْرَكْت الصَّفْقَةَ حَيًّا مَجْمُوعًا فَهُوَ مِنْ الْمُبْتَاعِ -: رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ الزُّهْرِيِّ عَنْ حَمْزَةَ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ.

L22079 Abū Muḥammad said: This is among their peculiarities, for they are the first to contradict this report—the Ḥanafīs say: Rather, it is upon the seller unless the buyer has seen it or the seller delivers it to him. The Mālikīs say: Rather, if it is in a state of extended absence, it is upon the seller.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا مِنْ عَجَائِبِهِمْ، لِأَنَّهُمْ أَوَّلُ مُخَالِفٍ لِهَذَا الْخَبَرِ -: فَالْحَنَفِيُّونَ يَقُولُونَ: بَلْ هُوَ مِنْ الْبَائِعِ مَا لَمْ يَرَهُ الْمُبْتَاعُ أَوْ يُسَلِّمْهُ إلَيْهِ الْبَائِعُ - وَالْمَالِكِيُّونَ يَقُولُونَ: بَلْ إنْ كَانَ غَائِبًا غِيبَةً بَعِيدَةً فَهُوَ مِنْ الْبَائِعِ.

L22080 Who is more perplexing than one who cites a narration that is against him, not for him, and boldly persists in such a claim? There is nothing in this statement of Ibn Umar that contradicts what has been authentically narrated from him—that a sale is not valid except by bodily separation.

فَمَنْ أَعْجَبُ مِمَّنْ يَحْتَجُّ بِخَبَرٍ هُوَ عَلَيْهِ لَا لَهُ، وَيُجَاهِرُ هَذِهِ الْمُجَاهَرَةَ؟ وَمَا فِي كَلَامِ ابْنِ عُمَرَ هَذَا شَيْءٌ يُخَالِفُ مَا صَحَّ عَنْهُ مِنْ أَنَّ الْبَيْعَ لَا يَصِحُّ إلَّا بِالتَّفَرُّقِ بِالْأَبْدَانِ.

L22081 And so his statement, "I did not finalize the transaction," was meant solely to indicate a complete and binding sale without any doubt.

فَقَوْلُهُ: مَا أَدْرَكْت الصَّفْقَةَ، إنَّمَا أَرَادَ الْبَيْعَ التَّامَّ بِلَا شَكٍّ.

L22082 And among his famous sayings is that no sale is entirely perfected unless through physical separation or by means of the option to choose after the binding agreement.

وَمِنْ قَوْلِهِ الْمَشْهُورِ عَنْهُ: إنَّهُ لَا بَيْعَ يَتِمُّ أَلْبَتَّةَ إلَّا بِالتَّفَرُّقِ بِالْأَبْدَانِ، أَوْ بِالتَّخْيِيرِ بَعْدَ الْعَقْدِ.

L22083 Ali said: The enormity of their outrageousness in this matter became manifest, and the magnitude of their contradiction within it, while they claim that the *mursal* (report with an incomplete chain) is treated as the *musnad* (report with a complete chain). Some of them say: "Rather, it is stronger than it," invoking it as evidence whenever it aligns with their position. We have been narrated through the chain of ʿAbd al-Razzāq from Maʿmar from

قَالَ عَلِيٌّ: فَظَهَرَ عَظِيمُ فُحْشِهِمْ فِي هَذِهِ الْمَسْأَلَةِ، وَعَظِيمُ تَنَاقُضِهِمْ فِيهَا، وَهُمْ يَقُولُونَ: إنَّ الْمُرْسَلَ كَالْمُسْنَدِ، وَبَعْضُهُمْ يَقُولُ: بَلْ أَقْوَى مِنْهُ، وَيَحْتَجُّونَ بِهِ إذَا وَافَقَهُمْ. وَقَدْ رُوِّينَا

Ibn Ṭāwūs from his father that "the Messenger of Allah—peace and blessings of Allah be upon him—established the option to retract after concluding the sale."

L22084 Abu Muhammad said: We have previously mentioned from Tawus that the option applies only after the sale, and they say: The narrator is most knowledgeable about what he narrates.

L22085–22086 And through the chain of Abū Bakr ibn Abī Shaybah, who reported to us from Wakīʿ, who reported to us from Qāsim al-Juʿfī, from his father, from Maymūn ibn Mihrān, the Messenger of Allah (peace and blessings be upon him) said: "A sale is [valid] by mutual consent, and the right of option [exists] after concluding the transaction. It is not lawful for a Muslim to cheat another Muslim."

L22087 These two are among the finest mursal reports, nullifying their vile claim that opposes the Sunnahs. Where do they stand concerning this? Yet they utter what they do not practice. Greatly detestable to Allah is that they say what they do not act upon—we seek refuge in Allah from His Hatred. Ali said: We have previously mentioned that some ignorant and frivolous people asserted: "This is a report transmitted through divergent wordings, rendering it disrupted."[4]

L22088 Ali said: He has indeed lied. Rather, all his words are firmly established, transmitted through mass transmission (tawātur) from the Messenger of Allah - peace and blessings be upon him. None of them is contradictory in essence. Rather, they are expressions that clarify one another, just as he - peace be upon him - was commanded to elucidate the revelation of his Lord, the Exalted.

L22089 An Issue Concerning the Right of Choice in Sale

L22090 Issue 1418: If it is asked, "Why have you not mandated the option (khiyar) in sales three times?" - due to what you narrated through the chain of Hisham al-Dastuwā'ī from Qatādah, from al-Ḥasan, from Samurah - that the

[4] **Qur'an references (L22087):** Qur'an 61:3 (As-Saf).

مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ الْخِيَارَ بَعْدَ الْبَيْعِ» .

قَالَ أَبُو مُحَمَّد: وَقَدْ ذَكَرْنَا عَنْ طَاوُسٍ أَنَّ التَّخْيِيرَ لَيْسَ إلَّا بَعْدَ الْبَيْعِ، وَهُمْ يَقُولُونَ: الرَّاوِي أَعْلَمُ بِمَا رَوَى.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا قَاسِمٌ الْجُعْفِيُّ عَنْ أَبِيهِ عَنْ مَيْمُونِ بْنِ مِهْرَانَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْبَيْعُ عَنْ تَرَاضٍ وَالتَّخْيِيرُ بَعْدَ الصَّفْقَةِ، وَلَا يَحِلُّ لِمُسْلِمٍ أَنْ يَغْبِنَ مُسْلِمًا» .

فَهَذَانِ مُرْسَلَانِ مِنْ أَحْسَنِ الْمَرَاسِيلِ، مُبْطِلَانِ لِقَوْلِهِمْ الْخَبِيثِ الْمُعَارِضِ لِلسُّنَنِ، فَأَيْنَ هُمْ عَنْهُ؟ لَكِنَّهُمْ يَقُولُونَ مَا لَا يَفْعَلُونَ كَبُرَ مَقْتًا عِنْدَ اللَّهِ أَنْ يَقُولُوا مَا لَا يَفْعَلُونَ - نَعُوذُ بِاَللَّهِ مِنْ مَقْتِهِ قَالَ عَلِيٌّ: وَقَدْ ذَكَرْنَا أَنَّ بَعْضَ أَهْلِ الْجَهْلِ وَالسُّخْفِ قَالَ: هَذَا خَبَرٌ جَاءَ بِأَلْفَاظٍ شَتَّى فَهُوَ مُضْطَرِبٌ.

قَالَ عَلِيٌّ: وَقَدْ كَذَبَ بَلْ أَلْفَاظُهُ كُلُّهَا ثَابِتَةٌ مَنْقُولَةٌ نَقْلَ التَّوَاتُرِ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَيْسَ شَيْءٌ مِنْهَا مُخْتَلِفًا أَصْلًا، لَكِنَّهَا أَلْفَاظٌ يُبَيِّنُ بَعْضُهَا بَعْضًا، كَمَا أُمِرَ - عَلَيْهِ السَّلَامُ - بِبَيَانِ وَحْيِ رَبِّهِ تَعَالَى.

[مَسْأَلَةٌ التَّخْيِيرِ فِي الْبَيْعِ]

١٤١٨ - مَسْأَلَةٌ: فَإِنْ قِيلَ: فَهَلَّا أَوْجَبْتُمْ التَّخْيِيرَ فِي الْبَيْعِ ثَلَاثَ مَرَّاتٍ؟ لِمَا رَوَيْتُمُوهُ مِنْ طَرِيقِ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ سَمُرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ

Messenger of Allah (peace and blessings be upon him) said: “The two parties to a sale retain their option until they separate, allowing each party to take what they passionately desire from the sale, or to mutually invoke the option three times.”

عَلَيْهِ وَسَلَّمَ - قَالَ: «الْبَيِّعَانِ بِالْخِيَارِ حَتَّى يَتَفَرَّقَا وَيَأْخُذَ كُلُّ وَاحِدٍ مِنْهُمَا مِنَ الْبَيْعِ مَا هَوِيَ أَوْ يَتَخَايَرَانِ ثَلَاثَ مِرَارٍ» .

L22091 And through the chain of Al-Bukhari: Ishaq reported to us, Hayyan reported to us, Hammam reported to us, Qatadah reported from Abi Al-Khalil from Abdullah ibn Al-Harith from Hakim ibn Hizam that the Messenger of Allah—peace and blessings be upon him—said: “The two parties to a sale retain the option until they separate.” Hammam said: I found in my book: “He may choose three times. If they are truthful and clarify, blessing is granted to their sale. But if they lie and conceal, perhaps they may gain profit yet erase the blessing of their sale.” We have also transmitted it thus through the chain of Affan from Hammam. We stated: Al-Hasan’s narration from Samurah is disconnected, for nothing was heard from him except the Aqiqah hadith alone.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا إِسْحَاقُ أَنَا حَيَّانُ نا هَمَّامٌ نا قَتَادَةُ عَنْ أَبِي الْخَلِيلِ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ عَنْ حَكِيمِ بْنِ حِزَامٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْبَيِّعَانِ بِالْخِيَارِ حَتَّى يَتَفَرَّقَا» قَالَ هَمَّامٌ: وَجَدْت فِي كِتَابِي «يَخْتَارُ ثَلَاثَ مِرَارٍ، فَإِنْ صَدَقَا وَبَيَّنَا بُورِكَ لَهُمَا فِي بَيْعِهِمَا وَإِنْ كَذَبَا وَكَتَمَا فَعَسَى أَنْ يَرْبَحَا رِبْحًا وَيَمْحَقَا بَرَكَةَ بَيْعِهِمَا» وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ عَفَّانَ عَنْ هَمَّامٍ أَيْضًا؟ قُلْنَا: رِوَايَةُ الْحَسَنِ عَنْ سَمُرَةَ مُرْسَلَةٌ لَمْ يُسْمَعْ مِنْهُ إِلَّا حَدِيثُ الْعَقِيقَةِ وَحْدَهُ.

L22092 As for Hammām’s narration, he did not transmit this wording; rather, he reported that he found it in his book. He neither committed to it, transmitted it, nor provided an *isnād* for it. Whatever is like this is impermissible to rely upon and cannot constitute valid evidence.

وَأَمَّا رِوَايَةُ هَمَّامٍ فَإِنَّهُ لَمْ يُحَدِّثْ بِهَذِهِ اللَّفْظَةِ، وَإِنَّمَا أَخْبَرَ أَنَّهُ وَجَدَهَا فِي كِتَابِهِ، وَلَمْ يَلْتَزِمْهَا وَلَا رَوَاهَا، وَلَا أَسْنَدَهَا، وَمَا كَانَ هَكَذَا فَلَا يَجُوزُ الْأَخْذُ بِهِ وَلَا تَقُومُ بِهِ حُجَّةٌ.

L22093–22094 Hammam has narrated this report from Abu al-Tayyah from Abdullah ibn al-Harith from Hakim, and he did not mention in it three times.

وَقَدْ رَوَى هَذَا الْخَبَرَ هَمَّامٌ عَنْ أَبِي التَّيَّاحِ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ عَنْ حَكِيمٍ فَلَمْ يَذْكُرْ فِيهِ: ثَلَاثَ مَرَّاتٍ.

L22095 It was narrated by Shu‘bah, Sa‘īd ibn Abī ‘Arūbah, and Ḥammād ibn Salamah—all of them from Qatādah with his isnād and wording—but none of them mentioned the phrase “three repetitions.”

وَرَوَاهُ شُعْبَةُ، وَسَعِيدُ بْنُ أَبِي عَرُوبَةَ، وَحَمَّادُ بْنُ سَلَمَةَ، كُلُّهُمْ عَنْ قَتَادَةَ بِإِسْنَادِهِ وَلَفْظِهِ، فَلَمْ يَذْكُرْ أَحَدٌ مِنْهُمْ: ثَلَاثَ مِرَارٍ.

L22096 Hisham ibn Sa‘id al-Khayr narrated to us: ‘Abd al-Jabbar ibn Ahmad al-Muqri narrated to us: al-Hasan ibn al-Husayn ibn ‘Abd Rabbihi al-Najirami narrated to us: Ja‘far ibn Muhammad al-Asbahani narrated to us: Yunus ibn Habib al-Zubayri narrated to us: Abu Dawud al-Tayalisi narrated to us: Shu‘bah and Hammam, both from Qatadah. Shu‘bah said in his narration: He heard Salih Abu al-Khalil narrating from ‘Abdullah ibn al-Harith from Hakim

وَقَدْ حَدَّثَنَا هِشَامُ بْنُ سَعِيدٍ الْخَيْرِ نا عَبْدُ الْجَبَّارِ بْنُ أَحْمَدَ الْمُقْرِي نا الْحَسَنُ بْنُ الْحُسَيْنِ بْنِ عَبْدِ رَبِّهِ النَّجِيرَمِيُّ نا جَعْفَرُ بْنُ مُحَمَّدٍ الْأَصْبَهَانِيُّ نا يُونُسُ بْنُ حَبِيبٍ الزُّبَيْرِيُّ نا أَبُو دَاوُد الطَّيَالِسِيُّ نا شُعْبَةُ، وَهَمَّامٌ، كِلَاهُمَا عَنْ قَتَادَةَ، قَالَ شُعْبَةُ فِي حَدِيثِهِ: إِنَّهُ سَمِعَ

ibn Hizam, who said: The Messenger of Allah (peace be upon him) said: “The buyer and seller have the option [to cancel] as long as they have not separated. If they are truthful and clarify, they are blessed in their transaction. But if they lie and conceal, the blessing of their transaction is eradicated.”

صَالِحًا أَبَا الْخَلِيلِ يُحَدِّث عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ عَنْ حَكِيمِ بْنِ حِزَامٍ، قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْبَيِّعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا، فَإِنْ صَدَقَا وَبَيَّنَا بُورِكَ لَهُمَا فِي بَيْعِهِمَا، وَإِنْ كَذَبَا وَكَتَمَا مُحِقَ بَرَكَةُ بَيْعِهِمَا» .

L22097 Abu Dawud said: The hadith of Hammam is similar to this, so the ambiguity was lifted. Hammam remained steadfast in omitting this wording, and when he found it in his book, he did not state that it was from his narration. By Allah, had Hammam—or another trustworthy narrator—affirmed it in his narration, we would have accepted it, for it would have been an addition.

قَالَ أَبُو دَاوُد: وَحَدِيثُ هَمَّامٍ مِثْلُ هَذَا فَارْتَفَعَ الْإِشْكَالُ وَثَبَتَ هَمَّامٌ عَلَى تَرْكِ هَذِهِ اللَّفْظَةِ، وَلَمْ يَقُلْ إذْ وَجَدَهَا فِي كِتَابِهِ: إنَّهَا مِنْ رِوَايَتِهِ، وَوَاَللَّهِ لَوْ ثَبَتَ هَمَّامٌ عَلَيْهَا مِنْ رِوَايَتِهِ، أَوْ غَيْرُهُ - مِنْ الثِّقَاتِ - لَقُلْنَا بِهَا، لِأَنَّهَا كَانَتْ تَكُونُ زِيَادَةً.

L22098 **A case where two individuals mutually transacted a sale on the premises, then one of them exited it or entered his designated commercial space.**

[مَسْأَلَةٌ تَبَايَعَا فِي بَيْتٍ فَخَرَجَ أَحَدُهُمَا عَنْهُ أَوْ دَخَلَ حَنِيَّتِهِ]

L22099 Issue 1419: If two parties conclude a sale within a house and one exits from the house or enters a niche within it, they have parted ways and the sale is concluded. Or if they conclude a sale in a niche of one of them connected to the house, they have parted ways and the sale is concluded.

١٤١٩ - مَسْأَلَةٌ: فَإِنْ تَبَايَعَا فِي بَيْتٍ فَخَرَجَ أَحَدُهُمَا عَنْ الْبَيْتِ، أَوْ دَخَلَ حَنِيَّةً فِي الْبَيْتِ: فَقَدْ تَفَرَّقَا وَتَمَّ الْبَيْعُ، أَوْ تَبَايَعَا فِي حَنِيَّةِ أَحَدِهِمَا إلَى الْبَيْتِ: فَقَدْ تَفَرَّقَا وَتَمَّ الْبَيْعُ.

L22100 If two people agree to a sale in the courtyard of a house and one enters the house, they are considered to have separated, and the sale is finalized.

فَلَوْ تَبَايَعَا فِي صَحْنِ دَارٍ فَدَخَلَ أَحَدُهُمَا الْبَيْتَ: فَقَدْ تَفَرَّقَا وَتَمَّ الْبَيْعُ.

L22101 If they conclude a sale within a house or walled garden, and one of them exits to the road, or if they conclude a sale on a road and one of them enters a house or walled garden, they have parted ways conclusively, finalizing the sale. If they conclude a sale on a ship and one of them enters the hold, the storage compartment, proceeds to the inn, or ascends the mast, they have parted ways conclusively, finalizing the sale.

فَلَوْ تَبَايَعَا فِي دَارٍ، أَوْ خُصٍّ فَخَرَجَ أَحَدُهُمَا إلَى الطَّرِيقِ، أَوْ تَبَايَعَا فِي طَرِيقٍ فَدَخَلَ أَحَدُهُمَا دَارًا، أَوْ خُصًّا: فَقَدْ تَفَرَّقَا وَتَمَّ الْبَيْعُ. فَإِنْ تَبَايَعَا فِي سَفِينَةٍ فَدَخَلَ أَحَدُهُمَا الْبَلِّيجَ، أَوْ الْخِزَانَةَ، أَوْ مَضَى إلَى الفندقوق، أَوْ صَعِدَ الصَّارِي: فَقَدْ تَفَرَّقَا وَتَمَّ الْبَيْعُ.

L22102–22104 Similarly, if the two parties entered into a sale in one of these locations and one of them left for the ship, the sale is deemed concluded. When the two parties part, if they conclude a sale in a shop and one moves to another shop or goes out into the street, the sale is concluded and they have parted ways.

وَكَذَلِكَ لَوْ تَبَايَعَا فِي أَحَدِ هَذِهِ الْمَوَاضِعِ فَخَرَجَ أَحَدُهُمَا إلَى السَّفِينَةِ: فَقَدْ تَمَّ الْبَيْعُ إذْ تَفَرَّقَا - فَإِنْ تَبَايَعَا فِي دُكَّانٍ فَزَالَ أَحَدُهُمَا إلَى دُكَّانٍ آخَرَ، أَوْ خَرَجَ إلَى الطَّرِيقِ فَقَدْ تَمَّ الْبَيْعُ وَتَفَرَّقَا.

L22105 If two parties contract a sale on the road and one of them enters a shop, the

sale is thereby finalized and they separate.

L22106 If they conclude a sale contract during travel or in an open space, the sale is not dissolved unless a barrier—linguistically termed *tafrīq* (separation)—arises between them, or one party disappears from the other's sight within the traveling group, behind a mound, a tree, or in a ditch—for only what is linguistically defined as *tafrīq* is taken into account. And success is by Allah, the Exalted.

L22107 **A case in which the buyer and seller are in dispute, and one of them said: "We have parted ways and the sale is finalized."**

L22108 Issue 1420: If the two parties to a sale dispute, where one says: "We separated and the sale was finalized," or states: "You granted me the option," or declares: "I granted you the option and you chose—or I chose—to finalize the sale," while the other contends: "No, we did not separate until I rescinded it, and you neither granted me the option nor did I grant you one," or acknowledges the option but asserts: "I did not exercise the option," or says: "You are the one who finalized the sale"—then if the sold item is established as belonging to the seller through conclusive evidence or the judge's judicial notice, we disregard at that point which party holds the item or possesses the price. If the item is not established except by being in his possession while the price remains with the buyer—then in all such cases, the statement of whichever party invalidates the sale—regardless of identity—is accepted alongside his oath. This is because he is the one claimed against regarding a sale contract he does not acknowledge, with no evidence established against him. Thus, nothing is required of him except the oath, in accordance with the ruling of Allah's Messenger—peace and blessings be upon him—that the oath rests upon the defendant.

L22109 If the commodity is in the possession of the buyer and is unknown to the seller, while the price is still with the seller, then the statement of whichever party affirms the validity of the sale is accepted, provided he swears an oath. This is because the claim pertains to transferring something from his posses-

وَلَوْ تَبَايَعَا فِي الطَّرِيقِ فَدَخَلَ أَحَدُهُمَا الدُّكَّانَ فَقَدْ تَمَّ الْبَيْعُ وَتَفَرَّقَا.

فَلَوْ تَبَايَعَا فِي سَفَرٍ أَوْ فِي فَضَاءٍ فَإِنَّهُمَا لَا يَفْتَرِقَانِ إِلَّا بِأَنْ يَصِيرَ بَيْنَهُمَا حَاجِزٌ يُسَمَّى تَفْرِيقًا فِي اللُّغَةِ، أَوْ بِأَنْ يَغِيبَ عَنْ بَصَرِهِ فِي الرُّفْقَةِ، أَوْ خَلْفَ رَبْوَةٍ، أَوْ خَلْفَ شَجَرَةٍ، أَوْ فِي حُفْرَةٍ - وَإِنَّمَا يُرَاعَى مَا يُسَمَّى فِي اللُّغَةِ تَفْرِيقًا فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَنَازَعَ الْمُتَبَايِعَانِ فَقَالَ أَحَدُهُمَا تَفَرَّقْنَا وَتَمَّ الْبَيْعُ]

١٤٢٠ - مَسْأَلَةٌ: فَلَوْ تَنَازَعَ الْمُتَبَايِعَانِ فَقَالَ أَحَدُهُمَا: تَفَرَّقْنَا وَتَمَّ الْبَيْعُ، أَوْ قَالَ: خَيَّرْتَنِي، أَوْ قَالَ: خَيَّرْتُك فَاخْتَرْتَ أَوْ اخْتَرْتُ تَمَامَ الْبَيْعِ - وَقَالَ الْآخَرُ: بَلْ مَا تَفَرَّقْنَا حَتَّى فَسَخْتُ وَمَا خَيَّرْتَنِي وَلَا خَيَّرْتُك، أَوْ أَقَرَّ بِالتَّخْيِيرِ وَقَالَ: فَلَمْ أَخْتَرْ أَنَا، أَوْ قَالَ: أَنْتَ تَمَامُ الْبَيْعِ -: فَإِنْ كَانَتْ السِّلْعَةُ الْمَبِيعَةُ مَعْرُوفَةً لِلْبَائِعِ بِبَيِّنَةٍ، أَوْ بِعِلْمِ الْحَاكِمِ وَلَا نُبَالِي حِينَئِذٍ فِي يَدِ مَنْ كَانَتْ مِنْهُمَا وَلَا فِي يَدِ مَنْ كَانَ الثَّمَنُ مِنْهُمَا - أَوْ كَانَتْ غَيْرَ مَعْرُوفَةٍ إلَّا أَنَّهَا فِي يَدِهِ وَالثَّمَنُ عِنْدَ الْمُشْتَرِي - فَإِنَّ الْقَوْلَ فِي كُلِّ هَذَا قَوْلُ مُبْطِلِ الْبَيْعِ مِنْهُمَا - كَائِنًا مَنْ كَانَ - مَعَ يَمِينِهِ، لِأَنَّهُ مُدَّعًى عَلَيْهِ عَقْدُ بَيْعٍ لَا يُقِرُّ بِهِ، وَلَا بَيِّنَةَ عَلَيْهِ بِهِ، فَلَيْسَ عَلَيْهِ إلَّا الْيَمِينُ بِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْيَمِينِ عَلَى الْمُدَّعَى عَلَيْهِ.

sion, and whoever has possession of something is legally presumed to own it. Therefore, he is only required to swear the oath.

فَإِنْ كَانَتْ السِّلْعَةُ فِي يَدِ الْمُشْتَرِي وَهِيَ غَيْرُ مَعْرُوفَةٍ لِلْبَائِعِ وَكَانَ الثَّمَنُ عِنْدَ الْبَائِعِ بَعْدُ: فَالْقَوْلُ قَوْلُ مُصَحِّحِ الْبَيْعِ مِنْهُمَا - كَائِنًا مَنْ كَانَ - مَعَ يَمِينِهِ؛ لِأَنَّهُ مُدَّعًى عَلَيْهِ نَقْلُ شَيْءٍ عَنْ يَدِهِ، وَمَنْ كَانَ فِي يَدِهِ شَيْءٌ فَهُوَ فِي الْحُكْمِ لَهُ: فَلَيْسَ عَلَيْهِ إلَّا الْيَمِينُ.

L22110 If both the commodity and the price are in the possession of one of the two parties, his statement stands alongside his oath, as he is the defendant. And success comes solely from Allah, the Exalted.

فَلَوْ كَانَتْ السِّلْعَةُ وَالثَّمَنُ مَعًا فِي يَدِ أَحَدِهِمَا فَالْقَوْلُ قَوْلُهُ مَعَ يَمِينِهِ لِأَنَّهُ مُدَّعًى عَلَيْهِ كَمَا قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22111 The same ruling applies to all disputes between the two parties in a sale. For instance, if one says, "I purchased it for cash," while the other says, "Rather, it was on credit"; or one says, "For such and such," while the other says, "Rather, it was for more"; or one says, "In exchange for goods," while the other says, "In exchange for different goods," or "for a tangible asset."

وَهَكَذَا الْقَوْلُ فِي كُلِّ مَا اخْتَلَفَ فِيهِ الْمُتَبَايِعَانِ، مِثْلُ أَنْ يَقُولَ أَحَدُهُمَا: ابْتَعْته بِنَقْدٍ، وَيَقُولَ الْآخَرُ: بَلْ بِنَسِيئَةٍ، أَوْ قَالَ أَحَدُهُمَا: بِكَذَا أَوْ كَذَا، أَوْ قَالَ الْآخَرُ: بَلْ أَكْثَرُ - أَوْ قَالَ أَحَدُهُمَا: بِعَرَضٍ وَقَالَ الْآخَرُ: بِعَرَضٍ آخَرَ، أَوْ بِعَيْنٍ.

L22112 Or one of them says, "in dinars," and the other says, "in dirhams" - or one of them specifies a description such as such-and-such and mentions what invalidates the sale, while the other states [their terms].

أَوْ قَالَ أَحَدُهُمَا: بِدَنَانِيرَ، وَقَالَ الْآخَرُ بِدَرَاهِمَ - أَوْ قَالَ أَحَدُهُمَا بِصِفَةِ كَذَا وَذَكَرَ مَا يُبْطِلُ بِهِ الْبَيْعُ وَقَالَ الْآخَرُ.

L22113–22115 Rather, a valid sale. If there was in the statement of either party an admission directed at the other... By a valid supplemental acknowledgment, he is necessarily bound to what he has acknowledged. If the goods are in the seller's possession and the price in the buyer's possession, in such a case each of them is a defendant. The seller shall swear by Allah: "I did not sell it to him in the manner he claims nor for what he claims," and the buyer shall swear by Allah: "He did not sell it to me for what he claims nor in the manner he claims." Each of them is thereby released from liability toward the other's demand, and the sale they mentioned becomes invalidated.

بَلْ بَيْعًا صَحِيحًا -: فَإِنْ كَانَ فِي قَوْلِ أَحَدِهِمَا إقْرَارٌ لِلْآخَرِ بِزِيَادَةِ إقْرَارًا صَحِيحًا أُلْزِمَ مَا أَقَرَّ بِهِ وَلَا بُدَّ -: فَإِنْ كَانَتْ السِّلْعَةُ بِيَدِ الْبَائِعِ وَالثَّمَنُ بِيَدِ الْمُشْتَرِي، فَهُنَا هُوَ كُلُّ وَاحِدٍ مِنْهُمَا مُدَّعًى عَلَيْهِ فَيَحْلِفُ الْبَائِعُ بِاَللَّهِ مَا بِعْتُهَا مِنْهُ كَمَا يَذْكُرُ وَلَا بِمَا يَذْكُرُ، وَيَحْلِفُ الْمُشْتَرِي بِاَللَّهِ مَا بَاعَهَا مِنِّي بِمَا يَذْكُرُ وَلَا كَمَا يَذْكُرُ، وَيَبْرَأُ كُلُّ وَاحِدٍ مِنْهُمَا مِنْ طَلَبِ الْآخَرِ، وَيَبْطُلُ مَا ذَكَرَا مِنْ الْبَيْعِ.

L22116 A group held the opinion that if the two sellers disagreed, they mutually rescind the sale without oaths - this being the view of Ibn Mas'ūd, Al-Sha'bī, and Aḥmad ibn Ḥanbal.

وَذَهَبَ قَوْمٌ إلَى أَنَّ الْبَيِّعَيْنِ إذَا اخْتَلَفَا تَرَادَّا الْبَيْعَ دُونَ أَيْمَانٍ - وَهُوَ قَوْلُ ابْنِ مَسْعُودٍ، وَالشَّعْبِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ.

L22117 As we were narrated through the chain of Abd al-Razzaq: Sufyan al-Thawri narrated from Ma'n ibn Abd al-Rahman, from al-Qasim ibn Abd al-Rahman

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَعْنِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّ ابْنَ مَسْعُودٍ بَاعَ مِنْ الْأَشْعَثِ بْنِ قَيْسٍ بَيْعًا فَاخْتَلَفَا فِي الثَّمَنِ، فَقَالَ ابْنُ مَسْعُودٍ: بِعِشْرِينَ، وَقَالَ الْأَشْعَثُ: بِعَشَرَةٍ، فَقَالَ لَهُ ابْنُ مَسْعُودٍ: اجْعَلْ بَيْنِي وَبَيْنَك رَجُلًا؟ فَقَالَ لَهُ الْأَشْعَثُ: أَنْتَ بَيْنِي وَبَيْنَ نَفْسِك، قَالَ ابْنُ مَسْعُودٍ: فَإِنِّي أَقُولُ بِمَا قَضَى بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا اخْتَلَفَ الْمُتَبَايِعَانِ فَالْقَوْلُ مَا قَالَ رَبُّ الْمَالِ، أَوْ يَتَرَادَّانِ الْبَيْعَ» .

ibn Abd Allah ibn Mas’ud, that Ibn Mas’ud conducted a sale with al-Ash’ath ibn Qays, but they disagreed over the price. Ibn Mas’ud said, “For twenty,” while al-Ash’ath said, “For ten.” Ibn Mas’ud then said to him, “Appoint a man between me and you.” Al-Ash’ath replied, “You may act as the judge between us.” Ibn Mas’ud said, “Then I say according to what the Messenger of Allah—peace and blessings of Allah be upon him—ruled: ’If the two parties in a sale disagree, the statement is what the owner of the property said, or they annul the sale mutually.”’

وَرُوِيَ عَنْ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّهُ قَالَ: يَحْلِفُ الْبَائِعُ فَإِنْ شَاءَ الْمُشْتَرِي أَخَذَ وَإِنْ شَاءَ تَرَكَ - وَلَمْ يَذْكُرْ عَلَيْهِ يَمِينًا.

L22118–22119 It has been reported from Abu Ubaydah ibn Abdullah ibn Mas‘ud that he said: “The seller takes an oath. Then, if the buyer wishes, he may take it, and if he wishes, he may leave it, and he did not mention an oath being incumbent upon him.”

وَقَالَ قَوْمٌ: إنْ كَانَتْ السِّلْعَةُ قَائِمَةً تَحَالَفَا وَفُسِخَ الْبَيْعُ، وَإِنْ كَانَتْ قَدْ هَلَكَتْ فَالْقَوْلُ قَوْلُ الْمُشْتَرِي مَعَ يَمِينِهِ، هَذَا إذَا لَمْ تَكُنْ هُنَالِكَ بَيِّنَةٌ - وَهُوَ قَوْلُ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَأَبِي حَنِيفَةَ، وَأَبِي يُوسُفَ، وَمَالِكٍ - وَقَالَ إبْرَاهِيمُ، وَالثَّوْرِيُّ، وَالْأَوْزَاعِيُّ فِي الْمُسْتَهْلَكَةِ بِذَلِكَ.

L22120 A group said: If the commodity is present, the two parties swear oaths and the sale is annulled. If it has been destroyed, the buyer’s claim is upheld upon his oath—this applies when no evidence is available. This is the opinion of Ḥammād ibn Abī Sulaymān, Abū Ḥanīfa, Abū Yūsuf, and Mālik. Ibrāhīm, al-Thawrī, and al-Awzāʿī held the opinion concerning the destroyed goods in that case.

وَقَالَ قَوْمٌ: إذَا اخْتَلَفَ الْمُتَبَايِعَانِ حَلَفَا جَمِيعًا، فَإِنْ حَلَفَا أَوْ نَكَلَا فُسِخَ الْبَيْعُ - وَإِنْ حَلَفَ أَحَدُهُمَا وَنَكَلَ الْآخَرُ قُضِيَ بِقَوْلِ الَّذِي حَلَفَ سَوَاءٌ كَانَتْ قَائِمَةً أَوْ مُسْتَهْلَكَةً - وَهُوَ قَوْلُ شُرَيْحٍ، وَالشَّافِعِيِّ، وَمُحَمَّدِ بْنِ الْحَسَنِ، إلَّا أَنَّهُمَا قَالَا: يَتَرَادَّانِ ثَمَنَ الْمُسْتَهْلَكَةِ، وَقَالَ عَطَاءٌ يُرَدُّ الْبَيْعُ إلَّا أَنْ يَتَّفِقَا - وَقَالَ زُفَرُ بْنُ الْهُذَيْلِ فِي السِّلْعَةِ الْقَائِمَةِ: يَتَحَالَفَانِ وَيَتَرَادَّانِ، وَأَمَّا الْمُسْتَهْلَكَةُ فَإِنْ اتَّفَقَا عَلَى أَنَّ الثَّمَنَ كَانَ مِنْ جِنْسٍ وَاحِدٍ فَالْقَوْلُ قَوْلُ الْمُشْتَرِي، فَإِنْ اخْتَلَفَا فِي الْجِنْسِ تَحَالَفَا وَتَرَادَّا قِيمَةَ الْمَبِيعِ -.

L22121 A group of scholars held: If the two parties to a transaction disagree, both shall take oaths. If they swear or recant, the sale is annulled. If one swears while the other recants, judgment is rendered according to the oath-taker’s claim, whether the item remains extant or has been consumed. This is the position of Shuraih, Al-Shafi’i, and Muhammad ibn Al-Hasan, though the latter two specified: They mutually return the price of the consumed item. ’Ata maintained: The sale is revoked unless mutual agreement is reached. Zufar ibn Al-Hudhayl ruled concerning extant merchandise: Both swear oaths and mutually return it. As for consumed goods, if they concur the price belonged to a single category, the buyer’s assertion prevails. If they dispute the category, they swear oaths and mutually return the value of the sold item.

وَقَالَ أَبُو سُلَيْمَانَ، وَأَبُو ثَوْرٍ: الْقَوْلُ فِي ذَلِكَ - قَائِمَةً كَانَتْ السِّلْعَةُ أَوْ مُسْتَهْلَكَةً - قَوْلُ الْمُشْتَرِي مَعَ يَمِينِهِ.

L22122 Abu Sulayman and Abu Thawr said: The opinion concerning this matter—whether the commodity is existing or consumed—is the buyer's assertion, accompanied by his oath.

قَالَ أَبُو مُحَمَّدٍ: فَأَمَّا قَوْلُ ابْنِ مَسْعُودٍ، وَالشَّعْبِيِّ، وَأَحْمَدَ، فَإِنَّهُمْ احْتَجُّوا بِالْحَدِيثِ الَّذِي ذَكَرْنَا فِيهِ - وَرُوِّينَاهُ بِلَفْظٍ آخَرَ، وَهُوَ «إذَا اخْتَلَفَ الْمُتَبَايِعَانِ فَالْقَوْلُ مَا قَالَ الْبَائِعُ، وَالْمُبْتَاعُ بِالْخِيَارِ» فَاللَّفْظُ الْأَوَّلُ رُوِّينَاهُ كَمَا ذَكَرْنَاهُ.

L22123 Abu Muhammad said: As for the position of Ibn Mas'ud, Al-Sha'bi, and Ahmad, they cited as evidence the hadith in which we mentioned - and we transmitted it with another wording: "If the two parties to a sale disagree, the statement is what the seller said, and the buyer has the option." We transmitted the first wording exactly as we mentioned it.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ حَفْصِ بْنِ غِيَاثٍ عَنْ أَبِي عُمَيْسٍ أَخْبَرَنِي عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ قَيْسِ بْنِ مُحَمَّدِ بْنِ الْأَشْعَثِ بْنِ قَيْسٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ ابْنُ مَسْعُودٍ - وَمِنْ طَرِيقِ أَبِي عُمَيْسٍ أَيْضًا عَنْ عَبْدِ الرَّحْمَنِ بْنِ مُحَمَّدِ بْنِ الْأَشْعَثِ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ ابْنُ مَسْعُودٍ - مِنْ طَرِيقِ هُشَيْمٍ نا ابْنُ أَبِي لَيْلَى - هُوَ مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ الْقَاضِي - عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ أَبِيهِ: أَنَّ ابْنَ مَسْعُودٍ -: وَأَمَّا اللَّفْظُ الثَّانِي فَرُوِّينَاهُ مِنْ طَرِيقِ ابْنِ عَجْلَانَ عَنْ عَوْنِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ: أَنَّ ابْنَ مَسْعُودٍ.

L22124 We have also transmitted it through the chain of Hafs ibn Ghiyath from Abu Umays, who reported: 'Abd al-Rahman ibn Muhammad ibn Qays ibn Muhammad ibn al-Ash'ath ibn Qays informed me, from his father, from his grandfather, that Ibn Mas'ud said...' Through another chain from Abu Umays as well: 'Abd al-Rahman ibn Muhammad ibn al-Ash'ath reported from his father, from his grandfather, that Ibn Mas'ud said...' Through the chain of Hushaym, who narrated to us from Ibn Abi Layla—who is Muhammad ibn 'Abd al-Rahman, the judge—from al-Qasim ibn 'Abd al-Rahman ibn 'Abd Allah ibn Mas'ud, from his father: that Ibn Mas'ud... As for the second wording, we have transmitted it through the chain of Ibn 'Ajlan from 'Awn ibn 'Abd Allah ibn 'Utbah ibn Mas'ud: that Ibn Mas'ud...

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كُلُّهُ لَا حُجَّةَ فِيهِ، وَلَا يَصِحُّ شَيْءٌ مِنْهُ؛ لِأَنَّهَا كُلَّهَا مُرْسَلَاتٌ - وَعَبْدُ الرَّحْمَنِ بْنُ مَسْعُودٍ كَانَ لَهُ - إذْ مَاتَ أَبُوهُ - رَضِيَ اللَّهُ عَنْهُ - سِتُّ سِنِينَ فَقَطْ، لَمْ يَحْفَظْ مِنْهُ كَلِمَةً، وَالرَّاوِي عَنْهُ أَيْضًا مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنُ أَبِي لَيْلَى - وَهُوَ سَيِّئُ الْحِفْظِ - وَعَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ الْأَشْعَثِ - ظَالِمٌ مِنْ ظَلَمَةِ الْحَجَّاجِ - لَا حُجَّةَ فِي رِوَايَتِهِ - وَأَيْضًا فَلَمْ يَسْمَعْ مِنْهُ أَبُو عُمَيْسٍ شَيْئًا لِتَأَخُّرِ سِنِّهِ عَنْ لِقَائِهِ - وَأَيْضًا فَهُوَ خَطَأٌ، وَإِنَّمَا

L22125–22127 Abū Muḥammad said: None of this contains any proof, nor is any of it valid, because they are all *mursal* reports— When ʿAbd al-Raḥmān ibn Masʿūd's father—may Allāh be pleased with him—died, ʿAbd al-Raḥmān was merely six years old and had retained no words from him. The narrator transmitting from him is Muḥammad ibn ʿAbd al-Raḥmān ibn Abī Laylā—who was deficient in memory—and ʿAbd al-Raḥmān ibn Muḥammad ibn al-Ashʿath—a tyrant among al-Ḥajjāj's agents of oppression, from whose narration no valid proof can be established. Furthermore, Abū ʿUmayṣ heard nothing from him due to the disparity in their ages preventing any encounter. Moreover, this is erroneous; rather, he is ʿAbd al-Raḥmān ibn Muḥammad ibn Qays ibn Muḥammad ibn al-Ashʿath—an unknown [narrator], son of an unknown [narrator]. Additionally, Muḥammad ibn al-Ashʿath did not hear [any

narration] from Ibn Masʿūd. Thus, any attribution to him is entirely invalidated.

هُوَ عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ قَيْسِ بْنِ مُحَمَّدِ بْنِ الْأَشْعَثِ - وَهُوَ مَجْهُولُ ابْنُ مَجْهُولٍ - وَأَيْضًا مُحَمَّدُ بْنُ الْأَشْعَثِ لَمْ يَسْمَعْ مِنْ ابْنِ مَسْعُودٍ -: فَبَطَلَ التَّعَلُّقُ بِهِ جُمْلَةً.

L22128 As for the statement of Abū Ubaydah ibn ʿAbdullāh ibn Masʿūd, it is substantiated by what we were narrated through the chain of Aḥmad ibn Shuʿayb: Ibrāhīm ibn al-Ḥusayn reported to me, Ḥajjāj—who is Ibn Muḥammad—informed us. Ibn Jurayj said: Ismāʿīl ibn Umayyah informed me from ʿAbd al-Malik ibn ʿUbayd that he heard Abū Ubaydah ibn ʿAbdullāh ibn Masʿūd say: Ibn Masʿūd stated, "The Messenger of Allāh—peace and blessings be upon him—commanded concerning two parties engaged in a sale regarding a commodity, where one says, 'I took it for such-and-such,' and the other says, 'I sold it for such-and-such,' that the seller is put under oath, after which the buyer may choose: if he wishes, he takes it; otherwise, he abandons it."

وَأَمَّا قَوْلُ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ فَإِنَّهُ يُحْتَجُّ لَهُ بِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ، أَخْبَرَنِي إِبْرَاهِيمُ بْنُ الْحُسَيْنِ نا حَجَّاجٌ - هُوَ ابْنُ مُحَمَّدٍ - قَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي إِسْمَاعِيلُ بْنُ أُمَيَّةَ عَنْ عَبْدِ الْمَلِكِ بْنِ عُبَيْدٍ أَنَّهُ سَمِعَ أَبَا عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ يَقُولُ: قَالَ ابْنُ مَسْعُودٍ «أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمُتَبَايِعَيْنِ سِلْعَةً يَقُولُ أَحَدُهُمَا: أَخَذْتُهَا بِكَذَا وَكَذَا، وَقَالَ الْآخَرُ: بِعْتُهَا بِكَذَا وَكَذَا، بِأَنْ يُسْتَحْلَفَ الْبَائِعُ، ثُمَّ يُخَيَّرَ الْمُبْتَاعُ، فَإِنْ شَاءَ أَخَذَ وَإِنْ شَاءَ تَرَكَ» .

L22129 We have also narrated it through the chain of Ismāʿīl ibn Umayyah from ʿAbd al-Malik ibn ʿUbayd from a son of ʿAbdullāh ibn Masʿūd from his father from the Messenger of Allāh—peace and blessings be upon him. This is baseless, for when Abū ʿUbaydah ibn ʿAbdullāh ibn Masʿūd was asked, "Do you recall anything from your father?" he replied, "No." ʿAbdullāh—may Allāh be pleased with him—had no children except Abū ʿUbaydah (the eldest), ʿAbd al-Raḥmān (whom he left as a six-year-old son), ʿUtbah (the youngest), and ʿAbd al-Malik ibn ʿUbayd (the aforementioned narrator, who is unknown). Thus, this statement is dismissed. Abū Muḥammad said: As for the remaining opinions, they possess no evidence whatsoever—particularly those who distinguish between existing merchandise and consumable goods, and those who oblige the buyer to swear. This is entirely absent from all transmitted reports, except that they made rulings without restriction, showing leniency in their lack of scrupulous piety—referring to the Ḥanafīs and Mālikīs. They persistently assert in their writings: "The Messenger of Allāh—peace and blessings be upon him—said: 'When the two parties to the transaction disagree while the merchandise remains present, they must swear oaths and nullify the transaction.'" This is never found—neither in unanchored nor

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ عَبْدِ الْمَلِكِ بْنِ عُبَيْدٍ عَنْ ابْنٍ لِعَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ أَبِيهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا لَا شَيْءَ - لِأَنَّ أَبَا عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ سُئِلَ أَتَذْكُرُ مِنْ أَبِيكَ شَيْئًا؟ قَالَ: لَا - وَلَمْ يَكُنْ لِعَبْدِ اللَّهِ - رَضِيَ اللَّهُ عَنْهُ - مِنَ الْوَلَدِ إِلَّا أَبُو عُبَيْدَةَ - وَهُوَ أَكْبَرُهُمْ - وَعَبْدُ الرَّحْمَنِ تَرَكَهُ ابْنَ سِتِّ سِنِينَ، وَعُتْبَةُ - وَكَانَ أَصْغَرَهُمْ - وَعَبْدُ الْمَلِكِ بْنُ عُبَيْدٍ الْمَذْكُورُ مَجْهُولٌ -: فَسَقَطَ هَذَا الْقَوْلُ. قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا سَائِرُ الْأَقْوَالِ فَلَا حُجَّةَ لَهُمْ أَصْلًا، لَا سِيَّمَا مَنْ فَرَّقَ بَيْنَ السِّلْعَةِ الْقَائِمَةِ وَالْمُسْتَهْلَكَةِ، وَمَنْ حَلَّفَ الْمُشْتَرِيَ -: فَإِنَّهُ لَا يُوجَدُ ذَلِكَ فِي شَيْءٍ مِنَ الْآثَارِ أَصْلًا، إِلَّا أَنَّهُمْ أَطْلَقُوا إِطْلَاقًا سَامَحُوا فِيهِ قِلَّةَ الْوَرَعِ - يَعْنِي الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ - فَلَا يَزَالُونَ يَقُولُونَ فِي كُتُبِهِمْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -:

authenticated chains, neither in sound nor weak transmissions—unless fabricated on the spot.

«إِذَا اخْتَلَفَ الْمُتَبَايِعَانِ وَالسِّلْعَةُ قَائِمَةٌ فَإِنَّهُمَا يَتَحَالَفَانِ وَيَتَرَادَّانِ» . وَهَذَا لَا يُوجَدُ أَبَدًا لَا فِي مُرْسَلٍ وَلَا فِي مُسْنَدٍ، لَا فِي قَوِيٍّ وَلَا فِي ضَعِيفٍ، إِلَّا أَنْ يُوضَعَ لِلْوَقْتِ.

L22130–22131 Ali said: And this is among the matters in which they contradicted one another, for they opposed the cited *mursal* narration and opposed Ibn Masʿūd, and no opposing Companion is known to have disagreed with him – may Allah be pleased with them.

قَالَ عَلِيٌّ: وَهَذَا مِمَّا تَنَاقَضُوا فِيهِ، فَخَالَفُوا الْمُرْسَلَ الْمَذْكُورَ، وَخَالَفُوا ابْنَ مَسْعُودٍ، وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L22132 Some of them cited as proof for their opinion by saying: Since each is both a claimant and a defendant, the oath is jointly required of both. For the seller claims against the buyer either the sale price or a contract that the buyer does not acknowledge, while the buyer claims against the seller a contract that the seller does not acknowledge.

وَاحْتَجَّ بَعْضُهُمْ لِقَوْلِهِمْ فِي ذَلِكَ بِأَنْ قَالَ: لَمَّا كَانَ كِلَاهُمَا مُدَّعِيًا وَمُدَّعًى عَلَيْهِ وَجَبَ عَلَيْهِمَا الْيَمِينُ جَمِيعًا، فَإِنَّ الْبَائِعَ يَدَّعِي عَلَى الْمُشْتَرِي ثَمَنًا أَوْ عَقْدًا لَا يُقِرُّ بِهِ الْمُشْتَرِي، وَالْمُشْتَرِي يَدَّعِي عَلَى الْبَائِعِ عَقْدًا لَا يُقِرُّ بِهِ الْبَائِعُ.

L22133 Abū Muḥammad said: This does not apply universally as they claimed, for when someone possesses an item without acknowledging another's right to it, and a person says to him: "This is mine – I sold it to you for two mithqāls," while the possessor responds: "Rather, I bought it from you for one mithqāl and have treated you fairly," then the possessor is not making any claim against the other party whatsoever. The legal principle is that whatever is in a person's possession belongs to them. If a claimant asserts ownership, the possessor must swear an oath and is thereby absolved, provided he has never acknowledged the claimant's ownership through an absolute admission. Thus, the seller in this case is not the subject of any claim at all.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ هَذَا فِي كُلِّ مَكَانٍ كَمَا ذَكَرُوا، لِأَنَّ مَنْ كَانَ بِيَدِهِ شَيْءٌ لَا يَعْرِفُ لِغَيْرِهِ، وَقَالَ لَهُ إنْسَانٌ: هَذَا لِي بِعْته مِنْك بِمِثْقَالَيْنِ، وَقَالَ الَّذِي هُوَ فِي يَدِهِ: بَلْ ابْتَعْته مِنْك بِمِثْقَالٍ وَقَدْ أَنْصَفْتُك، فَإِنَّ الَّذِي الشَّيْءُ بِيَدِهِ لَيْسَ مُدَّعِيًا عَلَى الْآخَرِ بِشَيْءٍ أَصْلًا؛ لِأَنَّ الْحُكْمَ أَنَّ كُلَّ مَا بِيَدِ الْمَرْءِ فَهُوَ لَهُ، فَإِنْ ادَّعَى فِيهِ مُدَّعٍ: حَلَفَ الَّذِي هُوَ بِيَدِهِ وَبَرِئَ وَلَمْ يُقِرَّ لَهُ قَطُّ بِمِلْكِهِ إقْرَارًا مُطْلَقًا، فَلَيْسَ الْبَائِعُ هَهُنَا مُدَّعًى عَلَيْهِ أَصْلًا.

L22134 Their contradiction here has greatly increased, particularly their differentiation between durable goods and consumable goods. This is something not required by the Qur'an, nor the Sunnah, nor a weak narration, nor the opinion of a Companion, nor analogy, nor logical reasoning, nor any valid opinion.

وَقَدْ عَظُمَ تَنَاقُضُهُمْ هَهُنَا، لَا سِيَّمَا تَفْرِيقُهُمْ بَيْنَ السِّلْعَةِ الْقَائِمَةِ وَالْمُسْتَهْلَكَةِ فَهُوَ شَيْءٌ لَا يُوجِبُهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ وَلَا قِيَاسٌ، وَلَا مَعْقُولٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ.

L22135 They object by citing the evidence our companions and Abū Thawr advanced **in support of their view** that the legal presumption always favors the buyer **accompanied by his oath**, since both parties agreed upon the sale and the transfer of ownership to the buyer. Subsequently, the seller makes a claim against the buyer which the buyer refuses to acknowledge.

وَيُعَارِضُونَ بِمَا احْتَجَّ لَهُ أَصْحَابُنَا، وَأَبُو ثَوْرٍ، فِي قَوْلِهِمْ: إنَّ الْقَوْلَ قَوْلُ الْمُشْتَرِي عَلَى كُلِّ حَالٍ مَعَ يَمِينِهِ؛ لِأَنَّهُمَا جَمِيعًا قَدْ اتَّفَقَا عَلَى الْبَيْعِ، وَعَلَى انْتِقَالِ الْمِلْكِ إلَى الْمُشْتَرِي، ثُمَّ

This position is more akin to the foundational principles of the Ḥanafīs and Mālikīs **based on their statements** concerning legal acknowledgment.

L22136 Abu Muhammad said: This is also not valid, because the seller never agreed to the buyer's claim regarding the property. Rather, he merely acknowledged the transfer of ownership and the sale under terms to which the buyer did not consent. Therefore, it is impermissible to rule in favor of the buyer based on an acknowledgment that is false against him.

L22137 Thus, it is confirmed that the correct opinion is as we have stated: that whatever is in a person's actual possession belongs to them, unless evidence establishing another's ownership exists. This is the doctrine of Īyās ibn Muʿāwiyah, and the Sunnah affirms this.

L22138–22140 It is astonishing that the Hanafis, Malikis, and Shafiʿis maintain an ambiguous stance: they claim to uphold the mentioned ḥadīth while having entirely contradicted it, as we have cited—especially the Shafiʿis, for they assert that ruling by a *mursal* is impermissible, yet here they have adopted a *mursal*. If only they had been truthful in their adoption of it! Rather, [...] They opposed him, and all of them contradicted each other. Nevertheless, their legal opinions on the branches of this issue exhibit numerous contradictions—and success comes from Allah, the Exalted.

L22141 The most astonishing thing in this is the Malikis' practice of making the seller and buyer swear oaths: requiring the seller to swear, "By Allah, I sold it for such-and-such amount," and the buyer to swear, "By Allah, I bought it from you for such-and-such amount." Thus they combine two marvels in this practice: first, their swearing concerns their own claims rather than denying what each party alleges against the other; second, they make them swear in this manner yet do not grant them what they swore about. What purpose does making them swear in this way serve? For the defendant should only swear to deny the allegation made against him, thereby being absolved.

ادَّعَى الْبَائِعُ عَلَى الْمُشْتَرِي بِمَا لَا يُقِرُّ لَهُ بِهِ الْمُشْتَرِي، وَهَذَا أَشْبَهُ بِأُصُولِ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ: مِنْ أَقْوَالِهِمْ فِي الْإِقْرَارِ.

قَالَ أَبُو مُحَمَّد: وَلَيْسَ هَذَا أَيْضًا صَحِيحًا، لِأَنَّ الْبَائِعَ لَمْ يُوَافِقْ الْمُشْتَرِيَ قَطُّ عَلَى مَا ادَّعَاهُ فِي مَالِهِ، وَإِنَّمَا أَقَرَّ لَهُ بِانْتِقَالِ الْمِلْكِ وَبِالْبَيْعِ عَلَى صِفَةٍ لَمْ يُصَدِّقْهُ الْمُشْتَرِي فِيهَا، فَلَا يَجُوزُ أَنْ يَقْضِيَ لِلْمُشْتَرِي بِإِقْرَارٍ هُوَ مَكْذُوبٌ لَهُ.

فَصَحَّ أَنَّ الْقَوْلَ مَا قُلْنَاهُ: مِنْ أَنَّ كُلَّ مَا كَانَ بِيَدِ إنْسَانٍ فَهُوَ لَهُ، إلَّا أَنْ تَقُومَ بِمِلْكِهِ بَيِّنَةٌ لِغَيْرِهِ - وَهُوَ قَوْلُ إيَاسِ بْنِ مُعَاوِيَةَ، وَبِهَذَا جَاءَتْ السُّنَّةُ.

وَالْعَجَبُ مِنْ إيهَامِ الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ: أَنَّهُمْ يَقُولُونَ بِالْحَدِيثِ الْمَذْكُورِ وَهُمْ قَدْ خَالَفُوهُ جُمْلَةً كَمَا أَوْرَدْنَا، لَا سِيَّمَا الشَّافِعِيِّينَ، فَإِنَّهُمْ يَقُولُونَ: لَا يَجُوزُ الْحُكْمُ بِالْمُرْسَلِ، ثُمَّ أَخَذُوا هَهُنَا بِمُرْسَلٍ، وَلَيْتَهُمْ صَدَقُوا فِي أَخْذِهِمْ بِهِ، بَلْ خَالَفُوهُ، وَتَنَاقَضُوا كُلُّهُمْ مَعَ ذَلِكَ فِي، فَتَاوِيهِمْ فِي فُرُوعِ هَذِهِ الْمَسْأَلَةِ تَنَاقُضًا كَثِيرًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَعْجَبُ شَيْءٍ فِي هَذَا تَحْلِيفُ الْمَالِكِيِّينَ لِلْبَائِعِ، وَالْمُشْتَرِي: بِأَنْ يَحْلِفَ الْبَائِعُ: بِاَللَّهِ لَقَدْ بِعْتُكَهَا بِكَذَا وَكَذَا، وَبِأَنْ يَحْلِفَ الْمُشْتَرِي: بِاَللَّهِ لَقَدْ اشْتَرَيْتهَا مِنْك بِكَذَا وَكَذَا، فَيَجْمَعُونَ فِي هَذَا أُعْجُوبَتَيْنِ: إحْدَاهُمَا - تَحْلِيفُهُمَا عَلَى مَا يَدَّعِيَانِهِ لَا عَلَى نَفْيِ مَا يَدَّعِي بِهِ كُلُّ وَاحِدٍ مِنْهُمَا عَلَى الْآخَرِ، وَالْأُخْرَى أَنَّهُمْ يُحَلِّفُونَهُمَا كَذَلِكَ ثُمَّ لَا يُعْطُونَهُمَا مَا حَلَفَا عَلَيْهِ، فَأَيُّ مَعْنًى لِتَحْلِيفِهِمَا بِذَلِكَ؟ وَإِنَّمَا يَحْلِفُ الْمُدَّعَى عَلَيْهِ عَلَى نَفْيِ مَا يَدَّعِي بِهِ كُلُّ وَاحِدٍ مِنْهُمَا عَلَى الْآخَرِ، وَالْأُخْرَى أَنَّهُمْ يُحَلِّفُونَهُمَا كَذَلِكَ ثُمَّ لَا يُعْطُونَهُمَا مَا

حَلَفَا عَلَيْهِ، فَأَيُّ مَعْنًى لِتَحْلِيفِهِمَا بِذَلِكَ؟ وَإِنَّمَا يَحْلِفُ الْمُدَّعَى عَلَيْهِ عَلَى نَفْيِ مَا ادُّعِيَ عَلَيْهِ بِهِ وَيَبْرَأُ.

L22142 As for them and those who hold the view of rebutting the oath: the defendant swears regarding what is claimed against him, and they rule in favor of the claimant based on it. Yet in this case, they have violated their own foundational principles in the most reprehensible and corrupting manner, without any evidence whatsoever.

وَأَمَّا هُمْ وَمَنْ يَرَى رَدَّ الْيَمِينِ: فَإِنَّهُ يَحْلِفُ الْمُدَّعِي عَلَى مَا ادَّعَى وَيَقْضُونَ لَهُ بِهِ، وَنَقَضُوا هَهُنَا أُصُولَهُمْ أَقْبَحَ نَقْضٍ وَأَفْسَدَهُ بِلَا دَلِيلٍ أَصْلًا.

L22143 If one of them claims the validity of the act while the other asserts its invalidity, the ruling favors the claimant of validity—though it is unknown from where this originated for them? And with Allah, the Exalted, is success.

وَقَالُوا أَيْضًا: إِنْ ادَّعَى أَحَدُهُمَا صِحَّةَ الْعَمَلِ، وَالْآخَرُ فَسَادَهُ: الْقَوْلُ قَوْلُ مُدَّعِي الصِّحَّةِ وَلَا يُدْرَى مِنْ أَيْنَ وَقَعَ لَهُمْ هَذَا؟ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L22144 The Issue of Cash in Sales with an Option

[مَسْأَلَةُ النَّقْدُ فِي بَيْعِ الْخِيَارِ]

L22145 1421 – Issue: Every sale concluded with a condition of option for the seller, the buyer, both together, or another party – whether the option is for an hour, a day, three days, longer, or shorter – is void, regardless of whether they choose to enforce it or not. If the buyer takes possession of the item with the seller's permission and it perishes in his custody without his own fault, he bears no liability. If he takes possession without the seller's permission – whether by judicial ruling or otherwise – he guarantees it with the liability of misappropriation. Similarly, if he causes damage to it, he guarantees it with the liability of transgression.

١٤٢١ - مَسْأَلَةٌ: وَكُلُّ بَيْعٍ وَقَعَ بِشَرْطِ خِيَارٍ لِلْبَائِعِ، أَوْ لِلْمُشْتَرِي، أَوْ لَهُمَا جَمِيعًا، أَوْ لِغَيْرِهِمَا: خِيَارَ سَاعَةٍ، أَوْ يَوْمٍ، أَوْ ثَلَاثَةِ أَيَّامٍ، أَوْ أَكْثَرَ أَوْ أَقَلَّ: فَهُوَ بَاطِلٌ - تَخَيَّرَا إِنْفَاذَهُ أَوْ لَمْ يَتَخَيَّرَا - فَإِنْ قَبَضَهُ الْمُشْتَرِي بِإِذْنِ بَائِعِهِ فَهَلَكَ فِي يَدِهِ بِغَيْرِ فِعْلِهِ فَلَا شَيْءَ عَلَيْهِ، فَإِنْ قَبَضَهُ بِغَيْرِ إِذْنِ صَاحِبِهِ - لَكِنْ بِحُكْمِ حَاكِمٍ، أَوْ بِغَيْرِ حُكْمِ حَاكِمٍ -: ضَمِنَهُ ضَمَانَ الْغَصْبِ. وَكَذَلِكَ إِنْ أَحْدَثَ فِيهِ حَدَثًا ضَمِنَهُ ضَمَانَ التَّعَدِّي.

L22146 Abu Hanifah said: A sale with an option is permissible for each of the two parties, for both together, and for a third party. If the party entitled to the option rejects the sale, it is annulled, and if they ratify it, it becomes binding. However, he does not permit the option period to exceed three days; rather, the option period must be three days or fewer. If they stipulate an option period longer than three days, the sale becomes invalid. If they conclude the sale with an option without specifying a duration, the option period is valid for up to three days.

وَقَالَ أَبُو حَنِيفَةَ: بَيْعُ الْخِيَارِ جَائِزٌ لِكُلِّ وَاحِدٍ مِنْهُمَا، وَلَهُمَا مَعًا، وَلِإِنْسَانٍ غَيْرِهِمَا، فَإِنْ رَدَّ الَّذِي لَهُ الْخِيَارُ الْبَيْعَ فَهُوَ مَرْدُودٌ، وَإِنْ أَمْضَاهُ فَهُوَ مَاضٍ، إِلَّا أَنَّهُ لَا يُجِيزُ مُدَّةَ الْخِيَارِ أَكْثَرَ مِنْ ثَلَاثَةِ أَيَّامٍ - لَكِنْ ثَلَاثَةَ أَيَّامٍ فَأَقَلَّ - فَإِنْ اشْتَرَطَ الْخِيَارَ أَكْثَرَ مِنْ ثَلَاثَةِ أَيَّامٍ بَطَلَ الْبَيْعُ، فَإِنْ تَبَايَعَا بِخِيَارٍ وَلَمْ يَذْكُرَا مُدَّةً فَهُوَ إِلَى ثَلَاثَةِ أَيَّامٍ.

L22147–22149 Abū Yūsuf and Muḥammad disagreed with him, stating that the option

(*khiyar*) is permissible until the time mutually agreed upon by the two parties, whether the period is long or short. They concurred on all other matters. In their view, cash payment is valid in a sale involving an option (*khiyar*) by mutual consent. The buyer is not bound by any condition originally. If they stipulate cash payment, the sale becomes void. If the party entitled to the option dies during the option period, the sale becomes binding on his estate. If the item is destroyed during the option period: If the option belongs to the buyer, the sale becomes binding on him for the agreed price. If the option belongs to the seller, the buyer is liable for its market value, not the agreed price. The party entitled to the option may affirm the contract without the other's presence, but they may not rescind the sale except in the presence of the other party. The obligation of Zakat al-Fitr rests upon the buyer if the sale is confirmed through consent, and upon the seller if the sale is revoked.

وَخَالَفَهُ أَبُو يُوسُفَ، وَمُحَمَّدٌ، فَقَالَا: الْخِيَارُ جَائِزٌ إِلَى مَا تَعَاقَدَاهُ طَالَتْ الْمُدَّةُ أَمْ قَصُرَتْ - وَاتَّفَقُوا فِي كُلِّ مَا عَدَا ذَلِكَ - وَالنَّقْدُ جَائِزٌ عِنْدَهُمْ فِي بَيْعِ الْخِيَارِ بِتَطَوُّعِ الْمُشْتَرِي لَا بِشَرْطٍ أَصْلًا - فَإِنْ تَشَارَطَا النَّقْدَ فَسَدَ الْبَيْعُ، فَإِنْ مَاتَ الَّذِي لَهُ الْخِيَارُ فِي مُدَّةِ الْخِيَارِ فَقَدْ لَزِمَهُ الْبَيْعُ، فَإِنْ تَلِفَ الشَّيْءُ فِي مُدَّةِ الْخِيَارِ -: فَإِنْ كَانَ الْخِيَارُ لِلْمُشْتَرِي فَقَدْ لَزِمَهُ الْبَيْعُ بِذَلِكَ الثَّمَنِ، وَإِنْ كَانَ الْخِيَارُ لِلْبَائِعِ فَعَلَى الْمُشْتَرِي قِيمَتُهُ لَا ثَمَنُهُ، وَلِلَّذِي لَهُ الْخِيَارُ مِنْهُمَا إنْفَاذُ الرِّضَا بِغَيْرِ مَحْضَرِ الْآخَرِ، وَلَيْسَ لَهُ أَنْ يَرُدَّ الْبَيْعَ إلَّا بِمَحْضَرِ الْآخَرِ - وَزَكَاةُ الْفِطْرِ إنْ تَمَّ الْبَيْعُ بِالرِّضَا عَلَى الْمُشْتَرِي، وَإِنْ لَمْ يَتِمَّ الْبَيْعُ بِالرَّدِّ عَلَى الْبَائِعِ.

L22150 Abū Muḥammad said: These are baseless insinuations, rulings with no established foundation, oaths and judgments not preserved from any predecessor. Mālik stated: "The sale with an option is permissible as Abū Ḥanīfah and his companions held, except that the option period differs in his view. Regarding garments, the option is only valid in his opinion for up to two days. Any duration exceeding this invalidates the option."

قَالَ أَبُو مُحَمَّد: وَهَذِهِ وَسَاوِسُ، وَأَحْكَامٌ لَا يُعْرَفُ لَهَا أَصْلٌ، وَأَقْسَامٌ وَأَحْكَامٌ لَا تُحْفَظُ عَنْ أَحَدٍ قَبْلَهُ - وَقَالَ مَالِكٌ: بَيْعُ الْخِيَارِ جَائِزٌ كَمَا قَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ، إلَّا أَنَّ مُدَّةَ الْخِيَارِ عِنْدَهُ تَخْتَلِفُ: أَمَّا فِي الثَّوْبِ فَلَا يَجُوزُ الْخِيَارُ عِنْدَهُ إلَّا يَوْمَيْنِ فَأَقَلَّ، فَمَا زَادَ فَلَا خَيْرَ فِيهِ.

L22151 As for the female slave, the option right is permissible in her case only for a week or less. Any period beyond that does not permit the option. One must examine her background, her physical condition, and her conduct.

وَأَمَّا الْجَارِيَةُ فَلَا يَجُوزُ الْخِيَارُ عِنْدَهُ فِيهَا إلَّا جُمُعَةً فَأَقَلَّ، فَمَا زَادَ فَلَا خَيْرَ فِيهِ -: يَنْظُرُ إلَى خَبَرِهَا، وَهَيْئَتِهَا، وَعَمَلِهَا.

L22152 As for the riding animal, a day or less, or the journey of a barid or less.

وَأَمَّا الدَّابَّةُ فَيَوْمٌ فَأَقَلُّ، أَوْ سَيْرُ الْبَرِيدِ فَأَقَلُّ.

L22153 As for the property, the minimum period is a month. The option remains with him solely to consult and examine the sale. Regarding extending the duration for the sake of the option, no option is permitted in such extension, as it constitutes gharar [prohibited uncertainty].

وَأَمَّا الدَّارُ فَالشَّهْرُ فَأَقَلُّ - وَإِنَّمَا الْخِيَارُ عِنْدَهُ لِيَسْتَشِيرَ وَيَخْتَبِرَ الْبَيْعَ وَأَمَّا مَا بَعُدَ مِنْ أَجْلِ الْخِيَارِ فَلَا خَيْرَ فِيهِ، لِأَنَّهُ غَرَرٌ.

L22154 According to his [Abū Ḥanīfah's] view, cash payment is impermissible in an option-based sale - whether stipulated or not. If the two parties mutually

وَلَا يَجُوزُ عِنْدَهُ النَّقْدُ فِي بَيْعِ الْخِيَارِ - لَا بِشَرْطٍ وَلَا بِغَيْرِ شَرْطٍ - فَإِنْ تَشَارَطَاهُ فَسَدَ الْبَيْعُ، فَإِنْ مَاتَ الَّذِي لَهُ الْخِيَارُ فَوَرَثَتُهُ يَقُومُونَ مَقَامَهُ.

stipulate it, the sale becomes invalid. If the one entitled to the option dies, his heirs assume his position [regarding it].

فَإِنْ تَلِفَ الْمَبِيعُ فِي يَدِ الْمُشْتَرِي مِنْ غَيْرِ فِعْلِهِ فِي مُدَّةِ الْخِيَارِ فَهُوَ مِنْ مُصِيبَةِ الْبَائِعِ وَلَا ضَمَانَ عَلَى الْمُشْتَرِي، سَوَاءٌ كَانَ الْخِيَارُ لِلْمُشْتَرِي أَوْ لِلْبَائِعِ أَوْ لَهُمَا أَوْ لِغَيْرِهِمَا، وَلِلَّذِي لَهُ الْخِيَارُ الرَّدُّ وَالرِّضَا بِغَيْرِ مَحْضَرِ الْآخَرِ وَبِمَحْضَرِهِ - وَزَكَاةُ الْفِطْرِ عَلَى الْبَائِعِ فِي كُلِّ ذَلِكَ.

L22155 If the sold item perishes in the buyer's possession without any action on their part during the option period, the loss falls upon the seller, and the buyer bears no liability. This applies whether the option right belongs to the buyer, the seller, both parties, or a third party. The option holder may unilaterally rescind or ratify the transaction, whether the other party is present or not. In all these cases, Zakat al-Fitr remains obligatory upon the seller.

قَالَ: فَإِنْ انْقَضَى أَمَدُ الْخِيَارِ وَلَمْ يَرُدَّ وَلَا رَضِيَ -: فَلَهُ الرَّدُّ بَعْدَ ذَلِكَ بِيَوْمٍ، فَإِنْ لَمْ يَرُدَّ فِي هَذَا الْقَدْرِ لَزِمَهُ الْبَيْعُ.

L22156 He said: If the option period has expired and he has neither revoked nor accepted, then he has the right to revoke for a day thereafter. If he does not revoke during this period, the sale becomes binding upon him.

وَهَذِهِ أَقْوَالٌ فِي الْفَسَادِ كَالَّتِي قَبْلَهَا، وَلَا تُحْفَظُ عَنْ أَحَدٍ قَبْلَهُ، وَتَحْدِيدَاتٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّ كُلَّ مَا ذَكَرْنَا مِنَ الْجَارِيَةِ، وَالثَّوْبِ، وَالدَّارِ، وَالدَّابَّةِ: قَدْ يُخْتَبَرُ، وَيُسْتَشَارُ فِيهِ فِي أَقَلَّ مِنَ الْمُدَدِ الَّتِي ذَكَرُوا، وَفِي أَقَلَّ مِنْ نِصْفِهَا - وَقَدْ يَخْفَى مِنْ عُيُوبِ كُلِّ ذَلِكَ أَشْيَاءُ فِي أَضْعَافِ تِلْكَ الْمُدَدِ، فَكُلُّ ذَلِكَ شَرْعٌ لَمْ يَأْذَنِ اللَّهُ تَعَالَى بِهِ، وَلَا أَوْجَبَتْهُ سُنَّةٌ، وَلَا رِوَايَةٌ ضَعِيفَةٌ، وَلَا قِيَاسٌ وَلَا قَوْلٌ مُتَقَدِّمٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ.

L22157–22159 These are statements concerning defects similar to those preceding them, not transmitted from anyone before him, with determinations regarding the utmost degree of defect. This is because all that we mentioned—the female slave, the garment, the house, and the beast of burden—may be tested and consulted upon within periods shorter than those they stipulated, and in less than half their durations. Moreover, some of the flaws in all these items may remain concealed. Things within the prescribed multiples of those durations: all of that constitutes legislation which Allah the Exalted has not authorized, nor has the Sunnah established it as obligatory, nor does a weak narration support it, nor does analogy uphold it, nor does a prior scholarly opinion validate it, nor does an opinion with a sound basis justify it.

وَلَيْتَ شِعْرِي مَا قَوْلُهُمْ إِنْ كَانَ الْخِيَارُ لِأَجْنَبِيٍّ فَمَاتَ فِي أَمَدِ الْخِيَارِ: أَيَقُومُ وَرَثَتُهُ مَقَامَهُ فِي ذَلِكَ أَمْ لَا؟ فَإِنْ قَالُوا: لَا، تَنَاقَضُوا، وَجَعَلُوا الْخِيَارَ مَرَّةً يُورَّثُ، وَمَرَّةً لَا يُورَّثُ وَإِنْ قَالُوا: نَعَمْ؟ قُلْنَا: فَلَعَلَّهُمْ صِغَارٌ، أَوْ سُفَهَاءُ، أَوْ غُيَّبٌ، أَوْ لَا وَارِثَ لَهُ فَيَكُونَ الْخِيَارُ لِلْإِمَامِ، أَوْ لِمَنْ شَاءَ اللَّهُ، إِنَّ هَذِهِ لَعَجَائِبُ؟ وَقَالَ الشَّافِعِيُّ: يَجُوزُ الْخِيَارُ لِأَحَدِهِمَا وَلَهُمَا

L22160 I wish I knew their position if the option belongs to a third party who dies during its term: Do his heirs take his place in that matter or not? If they say no, they contradict themselves, making the option inheritable at times and not inheritable at others. If they say yes, we respond: Perhaps the heirs are minors, prodigals, absentees, or there is no heir - thus the option would pass to the Imam or to whom Allah wills. Are these not contradictions? Al-Shāfiʿī stated: The option is permissible for either party or both together, and it may not exceed three days. His rulings differed regarding mutual sales where the

option is granted to a third party: At times he permitted it, and at others invalidated the sale unless under the concept of agency.

مَعًا، وَلَا يَجُوزُ أَكْثَرَ مِنْ ثَلَاثَةِ أَيَّامٍ - وَاخْتَلَفَ قَوْلُهُ فِي التَّبَايُعِ عَلَى أَنْ يَكُونَ الْخِيَارُ لِأَجْنَبِيٍّ؟ فَمَرَّةً أَجَازَهُ، وَمَرَّةً أَبْطَلَ الْبَيْعَ بِهِ، إلَّا عَلَى مَعْنَى الْوَكَالَةِ.

L22161 Cash payment is permissible in a sale with an option in his view. If the party entitled to the option dies, his heirs assume his position. If the item perishes in the buyer's possession during the option period: when the option belongs to the seller or to both parties jointly, the buyer is obligated to compensate its value. If the option belongs solely to the buyer, the sale becomes binding on him for the stipulated price. The party holding the option in his opinion may rescind the transaction and consent to it, whether the other party is present or absent.

وَالنَّقْدُ جَائِزٌ عِنْدَهُ فِي بَيْعِ الْخِيَارِ، فَإِنْ مَاتَ الَّذِي لَهُ الْخِيَارُ فَوَرَثَتُهُ يَقُومُونَ مَقَامَهُ، فَإِنْ تَلِفَ الشَّيْءُ فِي يَدِ الْمُشْتَرِي فِي مُدَّةِ الْخِيَارِ، فَإِنْ كَانَ الْخِيَارُ لِلْبَائِعِ أَوْ لَهُمَا مَعًا: فَعَلَى الْمُشْتَرِي ضَمَانُ الْقِيمَةِ، وَإِنْ كَانَ الْخِيَارُ لِلْمُشْتَرِي فَقَدْ لَزِمَهُ الْبَيْعُ بِالثَّمَنِ الَّذِي ذَكَرَا - وَلِلَّذِي لَهُ الْخِيَارُ عِنْدَهُ أَنْ يَرُدَّ وَأَنْ يَرْضَى بِغَيْرِ مَحْضَرِ الْآخَرِ وَبِمَحْضَرِهِ.

L22162 He and Abū Ḥanīfah argued that the option cannot exceed three based on the report concerning the sheep whose udder was tied to withhold milk and the report about the man who was deceived in sales, to whom the Prophet—peace and blessings of Allah be upon him—granted the option of three, instructing him to say when selling: "There is no deception."

وَاحْتَجَّ هُوَ، وَأَبُو حَنِيفَةَ: فِي أَنَّ الْخِيَارَ لَا يَكُونُ أَكْثَرَ مِنْ ثَلَاثٍ بِخَبَرِ الْمُصَرَّاةِ - وَبِخَبَرِ الَّذِي كَانَ يُخْدَعُ فِي الْبُيُوعِ فَجَعَلَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْخِيَارَ ثَلَاثًا، وَأَمَرَهُ أَنْ يَقُولَ إذَا بَاعَ: لَا خِلَابَةَ.

L22163 The Hanafis cited as evidence for this what we have narrated through the chain of al-Ḥudhāfī Muḥammad ibn Yūsuf, who said: Muḥammad ibn ʿAbd al-Raḥīm ibn Shurūs reported to me, Ḥafṣ ibn Sulaymān al-Kūfī reported to me, Abān reported to me from Anas: "A man purchased a camel and stipulated a legal option of four days, so the Prophet (peace and blessings be upon him) nullified the sale and said: 'The legal option is only three days.'" Al-Ḥudhāfī said: And ʿAbd al-Razzāq narrated to us from a man who heard Abān narrate from al-Ḥasan [al-Baṣrī]: "A man purchased and set the legal option as four days? The Messenger of God (peace and blessings be upon him) said: 'The sale is revoked, for the legal option is only three days.'"

وَاحْتَجَّ الْحَنَفِيُّونَ فِي ذَلِكَ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْحُذَافِيِّ مُحَمَّدِ بْنِ يُوسُفَ قَالَ: أَخْبَرَنِي مُحَمَّدُ بْنُ عَبْدِ الرَّحِيمِ بْنِ شُرُوسٍ، أَخْبَرَنِي حَفْصُ بْنُ سُلَيْمَانَ الْكُوفِيُّ، أَخْبَرَنِي أَبَانُ عَنْ أَنَسٍ: «أَنَّ رَجُلًا اشْتَرَى بَعِيرًا وَاشْتَرَطَ الْخِيَارَ أَرْبَعَةَ أَيَّامٍ، فَأَبْطَلَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْبَيْعَ وَقَالَ: إنَّمَا الْخِيَارُ ثَلَاثَةُ أَيَّامٍ» قَالَ الْحُذَافِيُّ: وَحَدَّثَنَا عَبْدُ الرَّزَّاقِ نا رَجُلٌ سَمِعَ أَبَانًا يَقُولُ: عَنْ الْحَسَنِ «اشْتَرَى رَجُلٌ وَجَعَلَ الْخِيَارَ أَرْبَعَةَ أَيَّامٍ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: الْبَيْعُ مَرْدُودٌ وَإِنَّمَا الْخِيَارُ ثَلَاثَةُ أَيَّامٍ» .

L22164–22166 Abu Muhammad said: As for the argument of Abu Hanifah and al-Shafiʿi citing the hadith of Munqidh—that the Prophet (peace be upon him) granted him a three-day option regarding what he purchased?—this is a wonder, a truly astounding wonder, that they would be the first to oppose this very ruling. The ḥadīth, and their assertion that his sale is entirely invalid—if he

قَالَ أَبُو مُحَمَّدٍ: أَمَّا احْتِجَاجُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ: بِحَدِيثِ مُنْقِذٍ، وَأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ لَهُ الْخِيَارَ ثَلَاثَةَ أَيَّامٍ فِيمَا اشْتَرَى؟ فَعَجَبٌ عَجِيبٌ جِدًّا أَنْ يَكُونَا

warrants guardianship and is deceived in transactions—or entirely permissible, only voidable due to defect—if he does not warrant guardianship—how can a person of piety deem it permissible to disobey the Messenger of Allāh—may Allāh's blessings and peace be upon him—in what he commanded, then attribute to him what he did not say? This report contains no sale enacted with an option for either buyer or seller or both—yet in this they were contested. Alas, my grief for them! As for Abū Ḥanīfah's argument using the ḥadīth of the animal with withheld milk: it is a calamity among the calamities of this age! He was the first to oppose, disparage, and attack it, rejecting all its contents. At times, the person of scrupulous piety among them claims it was abrogated by the prohibition of usury—they lie in this, for usury has no relevance here! At times, they deem it fabricated and malign Abū Hurayrah—may Allāh the Exalted recompense them in this world and the next—for they are the people of falsehood, not the virtuous and righteous Abū Hurayrah—may Allāh be pleased with him and all the Companions. May the slanderer of any among them be cast face-first!

أَوَّلَ مُخَالِفٍ لِهَذَا الْحَدِيثِ، وَقَوْلُهُمَا بِفَسَادِ بَيْعِهِ جُمْلَةً - إِنْ كَانَ يَسْتَحِقُّ الْحَجْرَ وَيُخْدَعُ فِي الْبُيُوعِ - أَوْ جَوَازِ بَيْعِهِ جُمْلَةً، وَلَا يَرُدُّهُ إِلَّا مِنْ عَيْبٍ - إِنْ كَانَ لَا يَسْتَحِقُّ الْحَجْرَ - فَكَيْفَ يَسْتَحِلُّ ذُو وَرَعٍ أَنْ يَعْصِيَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَا أَمَرَ بِهِ ثُمَّ يُقَوِّلُهُ مَا لَمْ يَقُلْ ذَلِكَ؟ وَلَيْسَ فِي هَذَا الْخَبَرِ بَيْعٌ وَقَعَ بِخِيَارٍ مِنْ الْمُتَبَايِعَيْنِ لِأَحَدِهِمَا أَوْ لَهُمَا - وَفِي هَذَا نُوزِعُوا، فَوَا أَسَفَاهُ عَلَيْهِمْ؟ وَأَمَّا احْتِجَاجُ أَبِي حَنِيفَةَ بِحَدِيثِ الْمُصَرَّاةِ: فَطَامَّةٌ مِنْ طَوَامِّ الدَّهْرِ؟ وَهُوَ أَوَّلُ مُخَالِفٍ لَهُ، وَزَارٍ عَلَيْهِ وَطَاعِنٍ فِيهِ، مُخَالِفٍ كُلَّ مَا فِيهِ، فَمَرَّةً يَجْعَلُهُ ذُو التَّوَرُّعِ مِنْهُمْ: مَنْسُوخًا بِتَحْرِيمِ الرِّبَا، وَكَذَبُوا فِي ذَلِكَ مَا لِلرِّبَا هَهُنَا مَدْخَلٌ؟ وَمَرَّةً يَجْعَلُونَهُ كَذِبًا، وَيُعَرِّضُونَ بِأَبِي هُرَيْرَةَ - وَاَللَّهُ تَعَالَى يَجْزِيهِمْ بِذَلِكَ فِي الدُّنْيَا وَالْآخِرَةِ - وَهُمْ أَهْلُ الْكَذِبِ، لَا الْفَاضِلُ الْبَرُّ أَبُو هُرَيْرَةَ - رَضِيَ اللَّهُ عَنْهُ - وَعَنْ جَمِيعِ الصَّحَابَةِ، وَكُبَّ الطَّاعِنُ عَلَى أَحَدٍ مِنْهُمْ لِوَجْهِهِ وَمَنْخَرَيْهِ.

L22167 Then, they do not feel ashamed to cite it as evidence for matters entirely unrelated to its content, for they merely seek to validate sales transactions stipulating an option clause for the seller, the buyer, both parties, or a third party. Yet in the narration concerning *al-muṣarrāh* there is no trace of this—no explicit text, no allusion, no implied meaning. What could be more astonishing than this? As for the two ḥadīths of al-Ḥudhāfī—the *musnad* (chained narration) and the *mursal* (disconnected narration)—both are transmitted through Abān ibn Yazīd al-Raqāshī, a discredited and discarded transmitter. The *musnad* comes via Ḥafṣ ibn Sulaymān al-Kūfī, likewise discredited and abandoned, while the *mursal* is narrated by an anonymous man. Both are scandalous and tainted by caprice; none would rely on them in religious matters except one deprived of divine guidance.

ثُمَّ لَا يَسْتَحْيُونَ مِنْ أَنْ يَحْتَجُّوا بِهِ فِيمَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ؛ لِأَنَّهُمْ إِنَّمَا يُرِيدُونَ نَصْرَ تَصْحِيحِ بَيْعٍ وَقَعَ بِشَرْطِ خِيَارٍ لِلْبَائِعِ، أَوْ لِلْمُشْتَرِي، أَوْ لَهُمَا مَعًا أَوْ لِغَيْرِهِمَا، وَلَيْسَ مِنْ هَذَا كُلِّهِ فِي خَبَرِ الْمُصَرَّاةِ أَثَرٌ، وَلَا نَصٌّ، وَلَا إِشَارَةٌ، وَلَا مَعْنًى، فَأَيُّ عَجَبٍ أَكْثَرُ مِنْ هَذَا؟ وَأَمَّا حَدِيثَا: الْحُذَافِيِّ الْمُسْنَدُ، وَالْمُرْسَلُ -: فَهُمَا مِنْ طَرِيقِ أَبَانَ بْنِ يَزِيدَ الرَّقَاشِيِّ - وَهُوَ هَالِكٌ مُطَّرَحٌ - وَالْمُسْنَدُ مِنْ طَرِيقِ حَفْصِ بْنِ سُلَيْمَانَ الْكُوفِيِّ - وَهُوَ هَالِكٌ أَيْضًا مَتْرُوكٌ - وَأَمَّا الْمُرْسَلُ فَعَنْ رَجُلٍ لَمْ يُسَمَّ، فَهُمَا فَضِيحَةٌ وَشَهْوَةٌ، لَا يَأْخُذُ بِهِمَا فِي دِينِهِ إِلَّا مَحْرُومُ التَّوْفِيقِ.

L22168 By my life, the Malikis have indeed contradicted their principles here, for there is no burden upon them to adopt similar practices in matters of degra-

dation and baseness if it conforms to their juristic tradition. They also claimed: "Have we agreed on permitting a three-day option period but differed regarding any extension?" Abū Muḥammad said: "This is false—they never agreed on this. For Mālik permits the option for a garment only up to two days at most, and for a riding animal only up to one day at most." Thus, all they disguised with such specious arguments is nullified—and success comes solely from Allah, the Exalted.

وَلَعَمْرِي لَقَدْ خَالَفَ الْمَالِكِيُّونَ هَهُنَا أُصُولَهُمْ فَإِنَّهُ لَا مُؤْنَةَ عَلَيْهِمْ مِنْ الْأَخْذِ بِمِثْلِهَا فِي الدَّنَاءَةِ وَالرَّذَالَةِ إذَا وَافَقَ تَقْلِيدَهُمْ، وَقَالُوا أَيْضًا: قَدْ اتَّفَقْنَا عَلَى جَوَازِ الْخِيَارِ ثَلَاثًا وَاخْتَلَفْنَا فِيمَا زَادَ؟ قَالَ أَبُو مُحَمَّدٍ وَهَذَا كَذِبٌ مَا وُفِّقُوا قَطُّ عَلَى ذَلِكَ: هَذَا مَالِكٌ لَا يُجِيزُ الْخِيَارَ فِي الثَّوْبِ إلَّا يَوْمَيْنِ فَأَقَلَّ، وَلَا فِي الدَّابَّةِ إلَّا الْيَوْمَ فَأَقَلَّ -: فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22169–22171 They are countered by the authentic hadith containing: "There is a prohibition against intercepting incoming traders (talaqqi al-rukban). Whoever intercepts anything through such practice, the seller has the option (khiyar) upon arriving at the market." This is an authentic hadith, and in it, the option remains valid until entry into the market. And perhaps he does not enter it except after a year or more - and we will mention it with its chain of transmission after this, if Allah the Exalted wills. Thus, the invalidity of their statements was wholly exposed as baseless, being mere contradictory opinions they innovated without any basis or precedent from earlier scholars in this matter.

وَيُعَارَضُونَ بِالْخَبَرِ الَّذِي فِيهِ: «النَّهْيُ عَنْ تَلَقِّي الرُّكْبَانِ، فَمَنْ تَلَقَّى شَيْئًا مِنْ ذَلِكَ فَصَاحِبُهُ بِالْخِيَارِ إذَا أَتَى السُّوقَ» ، هُوَ خَبَرٌ صَحِيحٌ، وَفِيهِ الْخِيَارُ إلَى دُخُولِ السُّوقِ - وَلَعَلَّهُ لَا يَدْخُلُهُ إلَّا بَعْدَ عَامٍ فَأَكْثَرَ - وَسَنَذْكُرُهُ بِإِسْنَادِهِ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى، فَظَهَرَ فَسَادُ أَقْوَالِ هَؤُلَاءِ جُمْلَةً وَأَنَّهَا آرَاءٌ أَحْدَثُوهَا مُتَخَاذِلَةٌ لَا أَصْلَ لَهَا وَلَا سَلَفَ لَهُمْ فِيهَا.

L22172 Ibn Abi Layla said: The stipulation of an option in a sale is permissible for both parties, or for one of them, or for a third party, and it is permissible for a distant or near term.

وَقَالَ ابْنُ أَبِي لَيْلَى: شَرْطُ الْخِيَارِ فِي الْبَيْعِ جَائِزٌ لَهُمَا، أَوْ لِأَحَدِهِمَا، أَوْ لِأَجْنَبِيٍّ، وَيَجُوزُ إلَى أَجَلٍ بَعِيدٍ أَوْ قَرِيبٍ.

L22173 Al-Layth said: The option is valid for three days or fewer.

وَقَالَ اللَّيْثُ: يَجُوزُ الْخِيَارُ إلَى ثَلَاثَةِ أَيَّامٍ فَأَقَلَّ.

L22174 Al-Ḥasan ibn Ḥayy said: It is permissible to stipulate an option in a sale. Even if both parties stipulate it indefinitely, it remains valid. I do not recognize any validity beyond the three [days] except for the buyer: if he sells what he purchased with the option, he has thereby approved it, and it becomes binding upon him. If the purchased item is a virgin slave girl and he has intercourse with her, he has accepted her, and she becomes binding upon him.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: يَجُوزُ شَرْطُ الْخِيَارِ فِي الْبَيْعِ، وَلَوْ شَرَطَاهُ أَبَدًا فَهُوَ كَذَلِكَ: لَا أَدْرِي مَا الثَّلَاثُ إلَّا الْمُشْتَرِي إنْ بَاعَ مَا اشْتَرَى بِخِيَارٍ فَقَدْ رَضِيَهُ وَلَزِمَهُ - وَإِنْ كَانَتْ جَارِيَةً بِكْرًا فَوَطِئَهَا فَقَدْ رَضِيَهَا وَلَزِمَتْهُ.

L22175 Ubaydullah ibn al-Hasan said: I disapprove of a lengthy option condition in

a sale unless the buyer retains the stipulated option with the seller's consent.

وَقَالَ عُبَيْدُ اللَّهِ بْنُ الْحَسَنِ: لَا يُعْجِبُنِي شَرْطُ الْخِيَارِ الطَّوِيلِ فِي الْبَيْعِ إِلَّا أَنَّ الْخِيَارَ لِلْمُشْتَرِي مَا رَضِيَ الْبَائِعُ.

L22176 Ibn Shubruma and Sufyan al-Thawri said: A sale is not permissible if the option to rescind is stipulated in favor of the seller or both parties. Sufyan said: The sale is void because of this. However, if the option to rescind is stipulated in favor of the buyer for ten days or more, it is permissible.

وَقَالَ ابْنُ شُبْرُمَةَ، وَسُفْيَانُ الثَّوْرِيُّ: لَا يَجُوزُ الْبَيْعُ إِذَا شُرِطَ فِيهِ الْخِيَارُ لِلْبَائِعِ أَوْ لَهُمَا - وَقَالَ سُفْيَانُ: الْبَيْعُ فَاسِدٌ بِذَلِكَ، فَإِنْ شَرَطَ الْخِيَارَ لِلْمُشْتَرِي عَشَرَةَ أَيَّامٍ أَوْ أَكْثَرَ جَازَ.

L22177 Narrations have been related to us regarding that matter from the predecessors, as has been transmitted to us through the chain of Waki'—Zakariyya, Ibn Abi Za'idah—from al-Sha'bi, who said: Umar purchased a horse with the stipulation that he would retain it if he approved it, otherwise no sale would be binding between them. Umar then had a man ride the horse, causing it to become injured. They appointed Shurayh as an arbitrator between them. Shurayh said to Umar: "Deliver what you purchased or return what you took." Umar responded: "You have judged with the bitter severity of truth."

وَرُوِّينَا فِي ذَلِكَ عَنْ الْمُتَقَدِّمِينَ آثَارًا كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ الشَّعْبِيِّ قَالَ: اشْتَرَى عُمَرُ فَرَسًا وَاشْتَرَطَ حَبْسَهُ إِنْ رَضِيَهُ وَإِلَّا فَلَا بَيْعَ بَيْنَهُمَا بَعْدُ، فَحَمَلَ عُمَرُ عَلَيْهِ رَجُلًا فَعَطِبَ الْفَرَسُ، فَجَعَلَا بَيْنَهُمَا شُرَيْحًا؟ فَقَالَ شُرَيْحٌ لِعُمَرَ: سَلِّمْ مَا ابْتَعْت أَوْ رُدَّ مَا أَخَذْت؟ فَقَالَ عُمَرُ: قَضَيْتَ بِمُرِّ الْحَقِّ.

L22178 It was narrated to us from Abd al-Razzaq from Sufyan al-Thawri from Amr ibn Dinar from Abd al-Rahman ibn Farrukh from his father, who said: Nafi ibn Abd al-Harith purchased from Safwan ibn Umayyah ibn Khalaf a house to be used as a prison for four thousand dirhams, stipulating: "If Umar approves, the sale is binding, and if he does not approve, Safwan receives four hundred dirhams." Umar then took the four hundred dirhams. Through the same chain to Sufyan al-Thawri from Abdullah ibn Dinar, who said: I heard Ibn Umar state: "I used to purchase contingent upon approval until Abdullah ibn Mutīʿ purchased a she-camel contingent upon approval. He remarked: 'A man may approve and then make a claim.' It was as though he awakened me, so thereafter he would purchase and say: 'Here, take it if you accept.'"

وَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ فَرُّوخَ عَنْ أَبِيهِ قَالَ: اشْتَرَى نَافِعُ بْنُ عَبْدِ الْحَارِثِ مِنْ صَفْوَانَ بْنِ أُمَيَّةَ بْنِ خَلَفٍ دَارًا لِلسِّجْنِ بِأَرْبَعَةِ آلَافٍ فَإِنْ رَضِيَ عُمَرُ فَالْبَيْعُ بَيْعُهُ، وَإِنْ لَمْ يَرْضَ فَلِصَفْوَانَ أَرْبَعُمِائَةِ دِرْهَمٍ فَأَخَذَهَا عُمَرُ. وَبِهِ إِلَى سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ قَالَ: سَمِعْت ابْنَ عُمَرَ يَقُولُ: كُنْت أَبْتَاعُ إِنْ رَضِيت حَتَّى ابْتَاعَ عَبْدُ اللَّهِ بْنُ مُطِيعٍ نَجِيبَةً إِنْ رَضِيَهَا فَقَالَ: إِنَّ الرَّجُلَ لَيَرْضَى ثُمَّ يَدَّعِي -: فَكَأَنَّمَا أَيْقَظَنِي، فَكَانَ يَبْتَاعُ وَيَقُولُ: هَا إِنْ أَخَذْت.

L22179–22180 From the path of ʿAbd al-Razzāq, who narrated to us from Ibn Jurayj, who informed me that Sulaymān ibn al-Barṣāʾ said: "I concluded a sale contract with Ibn ʿUmar, and he said to me: 'If our payment reaches us within three nights, the sale stands confirmed. But if our payment does not reach us by then, no sale exists between us and you, and the goods are yours.'" Abū Muḥammad said: We know of nothing from the Companions—may Allah be

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي سُلَيْمَانُ بْنُ الْبَرْصَاءِ قَالَ: بَايَعْت ابْنَ عُمَرَ بَيْعًا فَقَالَ لِي: إِنْ جَاءَتْنَا نَفَقَتُنَا إِلَى ثَلَاثِ لَيَالٍ فَالْبَيْعُ بَيْعُنَا، وَإِنْ لَمْ تَأْتِنَا نَفَقَتُنَا إِلَى ذَلِكَ فَلَا بَيْعَ بَيْنَنَا وَبَيْنَك، وَلَك سِلْعَتُك؟ قَالَ أَبُو مُحَمَّدٍ: لَا نَعْلَمُ عَنْ الصَّحَابَةِ - رَضِيَ

pleased with them—regarding option-based sales except this, and it entirely opposes the opinions of Abū Ḥanīfah, Mālik, and al-Shāfiʿī. These [transactions] are deemed invalid and annulled according to them. So where is their exaggerated emphasis on the Companion for whom no opponent is known? Indeed, even if an opponent is acknowledged.

اللَّهُ عَنْهُمْ - فِي بَيْعِ الْخِيَارِ شَيْئًا غَيْرَ هَذَا، وَهُوَ كُلُّهُ خِلَافٌ لِأَقْوَالِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَهَذِهِ عِنْدَهُمْ بُيُوعٌ فَاسِدَةٌ مَفْسُوخَةٌ، فَأَيْنَ تَهْوِيلُهُمْ بِالصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ؟ نَعَمْ، وَإِنْ عُرِفَ لَهُ مُخَالِفٌ.

L22181 And where is their rejection of the established Sunnah that no sale is valid between either of the two parties until they separate or one grants the other an option after the sale, according to the narration of a shaykh belonging to Banū Kinānah from ʿUmar: "The sale is either a binding contract (ṣafqah) or an option (khiyār)"? There is no contradiction to the Sunnah in this, even if [the narration] were valid. Rather, authentic reports from ʿUmar and other Companions confirm alignment with the Sunnah in this matter, permitting the cancellation of the sale before granting the option or separation.

وَأَيْنَ رَدُّهُمْ السُّنَّةَ الثَّابِتَةَ فِي أَنْ لَا بَيْعَ بَيْنَ أَحَدٍ مِنْ الْمُتَبَايِعَيْنِ حَتَّى يَتَفَرَّقَا أَوْ يُخَيِّرَ أَحَدُهُمَا الْآخَرَ بَعْدَ الْبَيْعِ بِرِوَايَةِ شَيْخٍ مِنْ بَنِي كِنَانَةَ عَنْ عُمَرَ الْبَيْعُ عَنْ صَفْقَةٍ أَوْ خِيَارٍ؟ وَلَيْسَ فِي هَذَا لَوْ صَحَّ خِلَافٌ لِلسُّنَّةِ، بَلْ قَدْ صَحَّ عَنْ عُمَرَ وَغَيْرِ عُمَرَ مِنْ الصَّحَابَةِ مُوَافَقَةُ السُّنَّةِ فِي ذَلِكَ، وَإِجَازَةُ رَدِّ الْبَيْعِ قَبْلَ التَّخْيِيرِ وَالتَّفَرُّقِ.

L22182 Then, it became trivial here for them to differ with the practice of Umar ibn al-Khattab, Nafiʿ ibn al-Harith, and Safwan ibn Umayyah—all being Companions—the well-known practice that could not possibly have remained concealed in the presence of the Companions in Medina and Mecca. No opponent to their position is known in that matter, nor any denier from among those who fundamentally permit sales with an option clause—by the soundest method and most established [precedent] in the most famous incident: the purchase of a house to serve as a prison in Mecca, where no house had existed for a prison there at all prior to that.

ثُمَّ هَانَ عَلَيْهِمْ هَهُنَا خِلَافُ عَمَلِ عُمَرَ بْنِ الْخَطَّابِ، وَنَافِعِ بْنِ الْحَارِثِ، وَصَفْوَانَ بْنِ أُمَيَّةَ - وَكُلُّهُمْ صَحَابَةٌ -: الْعَمَلَ الْمَشْهُورَ الَّذِي لَا يُمْكِنُ أَنْ يَخْفَى بِحَضْرَةِ الصَّحَابَةِ بِالْمَدِينَةِ، وَمَكَّةَ، وَلَا يُعْرَفُ لَهُمْ فِي ذَلِكَ مُخَالِفٌ، وَلَا عَلَيْهِمْ مِنْهُمْ مُنْكِرٌ مِمَّنْ يُجِيزُ الْبَيْعَ بِشَرْطِ الْخِيَارِ أَصْلًا بِأَصَحِّ طَرِيقٍ وَأَثْبَتِهِ فِي أَشْهَرِ قِصَّةٍ، وَهِيَ ابْتِيَاعُ دَارٍ لِلسِّجْنِ بِمَكَّةَ، وَمَا كَانَ قَبْلَ ذَلِكَ بِهَا لِلسِّجْنِ دَارٌ أَصْلًا.

L22183 Then Ibn ʿUmar and Ibn Muṭīʿ—both being partners—engaged in buying as is evident with the option, if they entered into [the transaction] without a specified time limit. Likewise, ʿUmar before that, Ṣafwān, and Nāfiʿ conducted transactions by mutual consent without a specified time limit, with no known opposition from those who permit sales conditional on an option. So be astonished at the statements of these people? As for the Successors: It has been narrated to us via the chain of ʿAbd al-Razzāq—who narrated from Maʿmar—from Ibn Ṭāwūs—from his father—regarding a man who buys a commodity by mutual consent. He said: "The option belongs to both of them until they part ways with mutual consent."

ثُمَّ فَعَلَ ابْنُ عُمَرَ، وَابْنُ مُطِيعٍ - وَهُمَا صَاحِبَانِ - يَبْتَاعَانِ كَمَا تَرَى بِخِيَارٍ إنْ أَخَذَا إلَى غَيْرِ مُدَّةٍ مُسَمَّاةٍ - وَعُمَرُ قَبْلَ ذَلِكَ، وَصَفْوَانُ، وَنَافِعٌ يَتَبَايَعُونَ عَلَى الرِّضَا إلَى غَيْرِ مُدَّةٍ مُسَمَّاةٍ، لَا يُعْرَفُ لَهُمْ فِي ذَلِكَ مُخَالِفٌ مِمَّنْ يُجِيزُ الْبَيْعَ بِشَرْطِ خِيَارٍ، فَاعْجَبُوا لِأَقْوَالِ هَؤُلَاءِ الْقَوْمِ؟ وَأَمَّا التَّابِعُونَ: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ فِي الرَّجُلِ يَشْتَرِي السِّلْعَةَ عَلَى الرِّضَا؟ قَالَ: الْخِيَارُ لِكِلَيْهِمَا حَتَّى يَفْتَرِقَا عَنْ رِضًا.

وَبِهِ إِلَى مَعْمَرٍ عَنْ أَيُّوبَ عَنْ ابْنِ سِيرِينَ إِذَا بِعْت شَيْئًا عَلَى الرِّضَا فَلَا تَخْلِطْ الْوَرِقَ بِغَيْرِهَا حَتَّى تَنْظُرَ أَيَأْخُذُ أَمْ يَرُدُّ.

L22184 And through him to Maʿmar, from Ayyub, from Ibn Sirin: If you sell something with consent, do not mix silver coins with other items until you verify whether it will be accepted or rejected.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يُونُسُ عَنْ الْحَسَنِ قَالَ: إذَا أَخَذَ الرَّجُلُ مِنْ الرَّجُلِ الْبَيْعَ عَلَى أَنَّهُ فِيهِ بِالْخِيَارِ فَهَلَكَ مِنْهُ؟ فَإِنْ كَانَ سَمَّى الثَّمَنَ فَهُوَ لَهُ ضَامِنٌ، وَإِنْ لَمْ يُسَمِّهِ فَهُوَ أَمِينٌ وَلَا ضَمَانَ عَلَيْهِ.

L22185–22187 Through the route of Saʿīd ibn Manṣūr: Hushaym informed us: Yunus informed us, from al-Ḥasan, who said: When a man takes... If a seller makes a sale stipulating that he retains the option in the transaction, and the item perishes while in his possession, then if he specified the price, he is liable for it. But if he did not specify the price, he is deemed a trustee and bears no liability.

وَعَنْ شُرَيْحٍ مَا ذَكَرْنَا قَبْلُ مَا نَعْلَمُ فِي هَذَا عَنْ أَحَدٍ مِنْ التَّابِعِينَ غَيْرَ مَا ذَكَرْنَا، وَكُلُّهُ مُخَالِفٌ لِقَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ؛ لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْهُ ذِكْرُ مُدَّةٍ أَصْلًا.

L22188 From Shurayh is what we mentioned earlier. We are unaware of anything known in this regard from the Followers other than what we have mentioned. All of it contradicts the opinions of Abū Ḥanīfah, Mālik, and al-Shāfiʿī, for none of it mentions a specific timeframe at all.

وَفِي قَوْلِ الْحَسَنِ: جَوَازُ ذَلِكَ بِغَيْرِ ذِكْرِ ثَمَنٍ.

L22189 And in the statement of Al-Ḥasan: the validity of that without mentioning a price.

وَفِي قَوْلِ ابْنِ سِيرِينَ: جَوَازُ النَّقْدِ فِيهِ، وَلَمْ يَخُصَّ بِشَرْطٍ وَلَا بِغَيْرِ شَرْطٍ وَأَمَّا قَوْلُ طَاوُسٍ فَمُوَافِقٌ لِقَوْلِنَا؛ لِأَنَّهُ قَطَعَ بِأَنَّ كُلَّ بَيْعٍ يَكُونُ فِيهِ شَرْطُ خِيَارٍ فَإِنَّ الْخِيَارَ يَجِبُ فِيهِ لِلْبَائِعِ وَلِلْمُشْتَرِي حَتَّى يَتَّفِقَا، فَصَحَّ أَنَّهُ لَيْسَ هُوَ عِنْدَهُ بَيْعًا أَصْلًا، وَأَنَّهُ بَاقٍ عَلَى حُكْمِهِ كَمَا كَانَ - وَهَذَا قَوْلُنَا، فَصَحَّ يَقِينًا أَنَّ أَقْوَالَ مَنْ ذَكَرْنَا مُخَالِفَةٌ لِكُلِّ مَا رُوِيَ فِي ذَلِكَ عَنْ صَاحِبٍ أَوْ تَابِعٍ، وَأَنَّهُمَا لَا سَلَفَ لَهُمْ فِيهَا، وَتَفْرِيقُ سُفْيَانَ، وَابْنِ شُبْرُمَةَ مِنْ كَوْنِ الْخِيَارِ لِلْبَائِعِ أَوْ لَهُمَا، فَلَمْ يُجِيزَاهُ، وَبَيْنَ أَنْ يَكُونَ الْخِيَارُ لِلْمُشْتَرِي وَحْدَهُ؟ فَأَجَازَهُ سُفْيَانُ، لَا مَعْنَى لَهُ؛ لِأَنَّهُ لَمْ يَأْتِ بِالْفَرْقِ بَيْنَ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلٌ مُتَقَدِّمٌ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ - وَلَيْسَ إلَّا جَوَازُ كُلِّ ذَلِكَ أَوْ بُطْلَانُ كُلِّ ذَلِكَ. وَقَدْ رُوِّينَا بُطْلَانَ ذَلِكَ عَنْ جَمَاعَةٍ مِنْ السَّلَفِ.

L22190 In the statement of Ibn Sīrīn: the permissibility of cash in it, without specifying whether with a condition or without a condition. As for the statement of Ṭāwūs, it aligns with our view because he decisively ruled that in every sale containing an option condition, the option must apply to both the seller and buyer until they agree. Thus, it becomes clear that this is not considered a sale at all in his view, but rather remains in its original legal status as before - and this is our position. Therefore, it is conclusively established that the opinions of those we mentioned contradict everything narrated on this matter from any Companion or Follower, and that they have no precedent from the early scholars (Salaf) in this matter. The distinction made by Sufyān and Ibn Shubrumah regarding whether the option belongs to the seller or both parties - they did not validate this distinction. As for when the option is exclusively for the buyer alone, Sufyān permitted this, but this differentiation lacks any basis, for no Quranic verse, Sunnah, weak narration, prior opinion, analogy, or rationally sound view distinguishes between these cases. The only possibilities are either the validity of all such transactions or

the invalidity of all such transactions. We have received reports about the invalidity of such transactions from a group of the early scholars (Salaf).

L22191 It has been narrated to us via Abd al-Razzaq - who narrated to us from Sufyan al-Thawri, from Asim ibn Ubayd Allah, from al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq - that Aisha, the Mother of the Believers, disliked that an enslaved woman be sold with a stipulated condition.

L22192 From Abd al-Razzaq, who narrated to us: Ma'mar reported from al-Zuhri from Ubayd Allah ibn Abd Allah ibn Utbah ibn Mas'ud, who said: Ibn Mas'ud sought to purchase a female slave from his wife to take as a concubine. She said, "I will not sell her to you unless I stipulate that if my soul later desires her, I retain prior claim to the price." Ibn Mas'ud responded, "I must consult Umar first." When he asked him, Umar said, "Do not approach her while any stipulation favoring another party remains attached to her."

From Abd al-Razzaq's transmission: Ma'mar reported from Amr ibn Muslim, who said: I asked Ikrimah, the freedman of Ibn Abbas, about a man who took a garment from another, declaring, "I will take it with me; if it satisfies me, I will keep it." The taker then sold it before returning it to the garment's owner. Ikrimah ruled, "It is not permissible for him to retain the profit."

L22193–22194 And via the narration of ʿAbd al-Razzāq from Ibn Jurayj, who said: ʿAṭāʾ stated, "Any sale that includes a stipulated condition is invalid." Ṭāwūs upheld the same ruling as we mentioned earlier.

L22195 Abu Muhammad said: All of this is, in the view of every person of sound judgment, clearer in invalidating sales contingent on options than their claim that Umar opposed the Sunnah in stating that no sale is binding between two parties until they separate - unsupported by any authentic report from him regarding his statement: "The sale is based on an agreement or an option." Similarly, their analogous claim concerning Ibn Umar regarding his statement: "If you find the transaction intact and in their original state, the responsibility lies with the seller," contains no indication of contradicting the aforementioned Sunnah. Rather, authentic reports from both of them indicate their compliance with the Sunnah in that matter.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَاصِمِ بْنِ عُبَيْدِ اللَّهِ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ كَرِهَتْ أَنْ تُبَاعَ الْأَمَةُ بِشَرْطٍ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ قَالَ: أَرَادَ ابْنُ مَسْعُودٍ أَنْ يَشْتَرِيَ جَارِيَةً يَتَسَرَّاهَا مِنْ امْرَأَتِهِ؟ فَقَالَتْ: لَا أَبِيعُكَهَا حَتَّى أَشْتَرِطَ عَلَيْك إنْ اتَّبَعَتْهَا نَفْسِي فَأَنَا أَوْلَى بِالثَّمَنِ؟ فَقَالَ ابْنُ مَسْعُودٍ: حَتَّى أَسْأَلَ عُمَرَ، فَسَأَلَهُ؟ فَقَالَ لَهُ عُمَرُ: لَا تَقْرَبْهَا وَفِيهَا شَرْطٌ لِأَحَدٍ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَمْرِو بْنِ مُسْلِمٍ قَالَ: سَأَلْت عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ عَنْ رَجُلٍ أَخَذَ مِنْ رَجُلٍ ثَوْبًا؟ فَقَالَ: أَذْهَبُ بِهِ فَإِنْ رَضِيتُهُ أَخَذْتُهُ، فَبَاعَهُ الْآخِذُ قَبْلَ أَنْ يَرْجِعَ إلَى صَاحِبِ الثَّوْبِ؟ فَقَالَ عِكْرِمَةُ: لَا يَحِلُّ لَهُ الرِّبْحُ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ عَطَاءٌ: كُلُّ بَيْعٍ فِيهِ شَرْطٌ فَلَيْسَ بَيْعًا - وَقَالَ طَاوُسٌ بِمَا ذَكَرْنَا قَبْلُ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّهُ عِنْدَ كُلِّ ذِي حِسٍّ سَلِيمٍ أَوْضَحُ فِي إبْطَالِ الْبَيْعِ بِشَرْطِ الْخِيَارِ مِنْ دَعْوَاهُمْ أَنَّ عُمَرَ مُخَالِفٌ لِلسُّنَّةِ فِي أَنْ لَا بَيْعَ بَيْنَ الْمُتَبَايِعَيْنِ حَتَّى يَتَفَرَّقَا بِمَا لَمْ يَصِحَّ عَنْهُ مِنْ قَوْلِهِ: الْبَيْعُ عَنْ صَفْقَةٍ أَوْ خِيَارٍ، وَمِنْ دَعْوَاهُمْ مِثْلُ ذَلِكَ عَلَى ابْنِ عُمَرَ فِي قَوْلِهِ: مَا أَدْرَكْت الصَّفْقَةَ حَيًّا مَجْمُوعًا فَمِنْ الْبَائِعِ، وَلَيْسَ فِي هَذَا إشَارَةٌ إلَى خِلَافِ السُّنَّةِ الْمَذْكُورَةِ، بَلْ قَدْ صَحَّ عَنْهُمَا مُوَافَقَةُ السُّنَّةِ فِي ذَلِكَ.

قَالَ عَلِيٌّ: فَإِنْ كَانَ مَا رُوِيَ عَنْ الصَّحَابَةِ، وَالتَّابِعِينَ فِي ذَلِكَ إجْمَاعٌ فَقَدْ خَالَفُوهُ، فَهُمْ مُخَالِفُونَ لِلْإِجْمَاعِ كَمَا أَقَرُّوا عَلَى أَنْفُسِهِمْ، وَإِنْ لَمْ يَكُنْ إجْمَاعًا فَلَا حُجَّةَ فِي قَوْلٍ لَمْ يَأْتِ بِهِ نَصٌّ وَلَا إجْمَاعٌ.

L22196 Ali said: If the reports from the Companions and Followers concerning this matter constitute a consensus, then they have contradicted it, thereby opposing the consensus as they themselves have acknowledged. But if it is not a consensus, then there is no valid argument for an opinion not supported by a scriptural text or consensus.

فَإِنْ احْتَجُّوا فِي إبَاحَةِ بَيْعِ الْخِيَارِ بِمَا رُوِيَ «: الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» فَهَذَا لَا يَصِحُّ لِأَنَّهُ عَنْ كَثِيرِ بْنِ زَيْدٍ وَهُوَ مُطَّرَحٌ بِاتِّفَاقٍ، وَلَا يَحِلُّ الِاحْتِجَاجُ بِمَا رَوَى.

L22197 If they argue for the permissibility of sales involving options by citing the narration "Muslims are bound by their stipulations," this is invalid because it is transmitted from Kathīr ibn Zayd - who is unanimously deemed a discarded narrator - and it is impermissible to rely on his transmissions as proof.

وَمِنْ طَرِيقٍ أُخْرَى عَنْ كَذَّابٍ عَنْ مَجْهُولٍ عَنْ مَجْهُولٍ مُرْسَلٍ مَعَ ذَلِكَ وَعَنْ عَطَاءٍ مُرْسَلٌ، وَلَوْ صَحَّ مَعَ ذَلِكَ لَمَا كَانَ لَهُمْ فِيهِ مُتَعَلَّقٌ أَصْلًا؛ لِأَنَّ شُرُوطَ الْمُسْلِمِينَ لَيْسَ هِيَ كُلَّ مَا اشْتَرَطُوهُ، لَوْ كَانَ ذَلِكَ لَلَزِمَ شَرْطُ الزِّنَى، وَالسَّرِقَةِ، وَهُمْ قَدْ أَبْطَلُوا أَكْثَرَ مِنْ أَلْفِ شَرْطٍ أَبَاحَهَا غَيْرُهُمْ، وَإِنَّمَا شُرُوطُ الْمُسْلِمِينَ: الشُّرُوطُ الَّتِي جَاءَ الْقُرْآنُ، وَالسُّنَّةُ بِإِبَاحَتِهَا نَصًّا فَقَطْ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» .

L22198 And from another chain via a fabricator, from an unknown narrator, from an unknown narrator in a mursal chain, along with that and a mursal report from 'Aṭā'. Even if such reports were authenticated, they would have no basis for reliance whatsoever, for the conditions of Muslims are not every stipulation they formulated. Were that the case, it would necessitate the condition of adultery and theft, while they have invalidated over a thousand stipulations others deemed permissible. The conditions of Muslims are solely those explicitly permitted by the Quran and Sunnah through explicit text alone. The Messenger of Allah—peace and blessings be upon him—said, "Every condition not found in Allah's Book is void."[5]

قَالَ عَلِيٌّ: فَإِنْ احْتَجَّ مَنْ يُجِيزُ بَيْعَ الْخِيَارِ بِمَا قَدْ ذَكَرْنَاهُ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ بَيِّعَيْنِ لَا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا إلَّا بَيْعَ الْخِيَارِ» فَلَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَدْ بَيَّنَ ذَلِكَ الْخِيَارَ مَا هُوَ؟ وَأَنَّهُ قَوْلُ أَحَدِهِمَا لِلْآخَرِ: اخْتَرْ.

وَبَيَّنَهُ أَيْضًا اللَّيْثُ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ بِمِثْلِهِ.

L22199 Ali said: If those who permit the sale with the option argue using what we have mentioned from the statement of Allah's Messenger - peace and blessings be upon him - "No sale is concluded between two parties until they separate except the option sale," then this contains no proof for them. For Ayyub reported from Nafi', who reported from Ibn Umar, that he clarified what that option actually is: namely, that it is when one of them says to the other, "Choose."[6]

L22200 Al-Layth also explained it with a similar narration via Nāfiʿ, from Ibn ʿUmar.

[5] **Hadith references (L22198):** Sunan Ibn Majah 2521.

[6] **Hadith references (L22199):** Sahih al-Bukhari 2113; Sunan an-Nasai 4475; Sunan an-Nasai 4477.

وَأَوْضَحَهُ إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «الْمُتَبَايِعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا إِلَّا أَنْ يَكُونَ الْبَيْعُ عَنْ خِيَارٍ، فَإِنْ كَانَ الْبَيْعُ عَنْ خِيَارٍ فَقَدْ وَجَبَ الْبَيْعُ» .

L22201 Ismail ibn Ja'far narrated from Nafi' from Ibn 'Umar that the Prophet (peace and blessings of Allah be upon him) said: "The two parties in a sale retain the option as long as they have not separated, unless the sale is based on a stipulated option. If the sale is based on a stipulated option, the sale becomes binding."

فَصَحَّ ضَرُورَةً أَنَّ هَذَا الْخِيَارَ إنَّمَا هُوَ التَّخْيِيرُ مِنْ أَحَدِهِمَا لِلْآخَرِ فَقَطْ.

L22202 Thus, it is valid by necessity that this contractual option constitutes solely the right to choose granted exclusively by one party to the other.

وَذَكَرُوا أَيْضًا خَبَرَ " الْمُصَرَّاةِ " وَسَنَذْكُرُهُ فِي هَذَا الْكِتَابِ بِإِسْنَادِهِ إنْ شَاءَ اللَّهُ تَعَالَى، «وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ الْخِيَارَ لِوَاجِدِهَا ثَلَاثًا، فَإِنْ رَضِيَهَا أَمْسَكَهَا وَإِنْ كَرِهَهَا رَدَّهَا، وَرَدَّ مَعَهَا صَاعًا مِنْ تَمْرٍ» .

L22203–22204 They also mentioned the report of *al-Muṣarrāh*, and we will mention it in this book with its chain of transmission, Allah the Exalted willing. "The Messenger of Allah—peace and blessings be upon him—granted the discoverer of the defect an option of three days: if satisfied, they may keep it; if dissatisfied, they should return it and return along with it a *ṣā'* of dates."

وَخَبَرَ «مُنْقِذٍ إذْ أَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ يَقُولَ إذَا بَاعَ أَوْ ابْتَاعَ: لَا خِلَابَةَ، ثُمَّ جَعَلَ لَهُ الْخِيَارَ ثَلَاثًا» ، وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الْحَجْرِ " مِنْ دِيوَانِنَا هَذَا.

L22205 And the report of Munqidh when the Messenger of Allah—may Allah bless him and grant him peace—commanded him to say when selling or purchasing: "No deception," then granted him the option for three [days]. We have mentioned this in "The Book of Legal Incapacity" within this compilation of ours.

وَخَبَرَ تَلَقِّي السِّلَعِ وَالنَّهْيِ عَنْهُ، وَأَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ لِلْبَائِعِ الْخِيَارَ إذَا دَخَلَ السُّوقَ، وَبِالْخِيَارِ فِي رَدِّ الْبَيْعِ يُوجَدُ فِيهِ الْعَيْبُ.

L22206 And the report concerning receiving goods before they reach the market and the prohibition thereof, and that the Prophet—peace and blessings of Allah be upon him—granted the seller the option to annul the sale if he enters the market after being intercepted, with the option to revoke the sale existing if a defect is found in the goods.

قَالَ أَبُو مُحَمَّد: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ، وَاحْتِجَاجُهُمْ بِهِ فِي إبَاحَةِ بَيْعِ الْخِيَارِ إثْمٌ وَعَارٌ، لِأَنَّ خَبَرَ الْمُصَرَّاةِ إنَّمَا فِيهِ الْخِيَارُ لِلْمُشْتَرِي - أَحَبَّ الْبَائِعُ أَمْ كَرِهَ - لَا بِرِضًا مِنْهُ أَصْلًا وَلَا بِأَنْ يَشْتَرِطَ فِي حَالِ عَقْدِ الْبَيْعِ فَكَيْفَ يَسْتَجِيزُ ذُو فَهْمٍ أَنْ يَحْتَجَّ بِهَذَا الْخِيَارِ فِي إبَاحَةِ بَيْعٍ يَتَّفِقُ فِيهِ الْبَائِعُ وَالْمُشْتَرِي عَلَى الرِّضَا بِشَرْطِ خِيَارٍ لِأَحَدِهِمَا أَوْ لِكِلَيْهِمَا أَوْ لِغَيْرِهِمَا؟ وَأَمَّا خَبَرُ مُنْقِذٍ فَكَذَلِكَ أَيْضًا، لِأَنَّهُ إنَّمَا هُوَ خِيَارٌ يَجِبُ لِمَنْ قَالَ عِنْدَ التَّبَايُعِ: لَا خِلَابَةَ، بَائِعًا كَانَ أَوْ مُشْتَرِيًا سَوَاءٌ رَضِيَ بِذَلِكَ مُعَامَلَةً أَوْ لَمْ يَرْضَ

L22207 Abu Muhammad said: All of this provides no valid evidence for them in any matter. Their reliance on it to justify permitting conditional sales stipulating khiyar constitutes a moral transgression and reproach. For the narration regarding the withheld milk (al-muṣarrāh) merely establishes the buyer's right to annul the transaction—whether the seller consents or objects—without requiring the seller's initial approval or any stipulation during the contract's formation. How could any discerning person deem it permissible to cite this type of khiyar as evidence for validating sales where both parties mutually agree, through their consent, to stipulate an option for one party, both parties, or third parties? As for Munqidh's narration, it similarly establishes khiyar

لَمْ يَشْتَرِطْهُ الَّذِي جَعَلَ لَهُ فِي نَفْسِ الْعَقْدِ، فَأَيُّ شَبَهٍ بَيْنَ هَذَيْنِ الْحُكْمَيْنِ وَبَيْنَ خِيَارٍ يَتَّفِقَانِ بِرِضَاهُمَا عَلَى اشْتِرَاطِهِ لِأَحَدِهِمَا أَوْ لِغَيْرِهِمَا، وَكُلُّهُمْ لَا يَقُولُ بِهَذَا الْخَبَرِ أَصْلًا؟ وَأَمَّا خَبَرُ تَلَقِّي السِّلَعِ فَكَذَلِكَ أَيْضًا إِنَّمَا هُوَ خِيَارٌ جُعِلَ لِلْبَائِعِ - أَحَبَّ الْمُشْتَرِي أَمْ كَرِهَ - لَمْ يَشْتَرِطَاهُ فِي الْعَقْدِ -.

only for whoever declares at the moment of concluding the sale contract: "No deception"—whether acting as seller or buyer—regardless of the counterparty's acceptance. The party granted this right did not stipulate it during the contract's actual formation. What resemblance exists between these two rulings and a khiyar that both parties voluntarily stipulate for themselves or others, particularly when none of them actually uphold this narration? Regarding the narration about intercepting goods before market arrival, it likewise establishes khiyar solely for the seller—whether the buyer accepts or rejects—without either party having stipulated it in the contract.

وَهُوَ أَيْضًا خِيَارٌ إِلَى غَيْرِ مُدَّةٍ مَحْدُودَةٍ وَكُلُّهُمْ لَا يُجِيزُ هَذَا أَصْلًا.

L22208 It is also a contractual option with no fixed duration, and none of them permit this at all.

فَأَيُّ عَجَبٍ يَفُوقُ قَوْلَ قَوْمٍ يُبْطِلُونَ الْأَصْلَ وَلَا يُجِيزُونَ الْقَوْلَ بِهِ، وَيُصَحِّحُونَ الْقِيَاسَ عَلَيْهِ فِي مَا لَا يُشْبِهُهُ وَيُخَالِفُونَ السُّنَنَ فِيمَا جَاءَتْ فِيهِ، ثُمَّ يَحْتَجُّونَ بِهَا فِيمَا لَيْسَ فِيهَا مِنْهُ أَثَرٌ وَلَا دَلِيلٌ وَلَا مَعْنًى؟ فَخَالَفُوا الْحَقَائِقَ جُمْلَةً وَنَحْمَدُ اللَّهَ تَعَالَى عَلَى مَا مَنَّ بِهِ مِنَ التَّوْفِيقِ.

L22209 What could be more astonishing than the claim of people who nullify the foundational principle while forbidding speech based on it, yet validate analogy rooted in it for matters bearing no resemblance to it—who oppose the Sunnah in matters it addresses, then cite it as evidence in cases where no trace, proof, or meaning from it (the Sunnah) exists? Thus they wholly contradict the truths, and we praise Allah the Exalted for the success He has bestowed through His favor.

فَإِنْ قَالُوا: لَمَّا جَازَ فِي هَذِهِ الْأَخْبَارِ فِي أَحَدِهَا الْخِيَارُ لِلْبَائِعِ، وَفِي الْآخَرِ الْخِيَارُ لِلْمُشْتَرِي، وَفِي الثَّالِثِ الْخِيَارُ لِلْمَرْءِ بَائِعًا كَانَ أَوْ مُشْتَرِيًا، وَكَانَ فِي الشُّفْعَةِ الْخِيَارُ لِغَيْرِ الْبَائِعِ وَالْمُشْتَرِي بِغَيْرِ أَنْ يُشْتَرَطَ فِي الْعَقْدِ شَيْءٌ مِنْ ذَلِكَ، مِنْ غَيْرِ أَنْ يَلْتَفِتَ رِضَا الْآخَرِ أَوْ رِضَا الْبَائِعِ وَالْمُشْتَرِي كَانَ إِذَا اشْتَرَطَاهُ بِتَرَاضِيهِمَا لِأَحَدِهِمَا أَوْ - لَهُمَا أَوْ لِغَيْرِهِمَا أَحْرَى أَنْ يَجُوزَ؟ قُلْنَا: هَذَا حُكْمُ الشَّيْطَانِ لَا حُكْمَ اللَّهِ عَزَّ وَجَلَّ، وَهَذَا هُوَ تَعَدِّي حُدُودِ اللَّهِ تَعَالَى الَّذِي قَالَ اللَّهُ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] وَتِلْكَ دَعْوَى مِنْكُمْ لَا بُرْهَانَ عَلَى صِحَّتِهَا، بَلِ الْبُرْهَانُ قَائِمٌ عَلَى بُطْلَانِهَا بِقَوْلِهِ تَعَالَى: {شَرَعُوا لَهُمْ مِنَ الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ} [الشورى: ٢١] .

L22210–22211 If they argue: Given that in these reports, one grants the option to the seller, another to the buyer, and the third to the individual—whether seller or buyer—while in preemption the option is assigned to someone other than the seller and buyer without any such condition in the contract, and without considering the consent of the other, the seller, or the buyer—then if they stipulate it by mutual consent for one of them, for both, or for another, would it not be more justified to deem it permissible? We respond: This is a ruling of Satan, not the ruling ordained by Allah Almighty. This constitutes transgressing the boundaries set by Allah the Exalted, as He stated: "Whoever transgresses Allah's boundaries has certainly wronged themselves" (65:1). This is a mere assertion of yours with no evidence to support it. Rather, evidence affirms its invalidity through the words of the Exalted: "They invented religious laws not authorized by Him" (42:21).[7]

[7] **Qur'an references (L22211):** Qur'an 65:1 (At-Talaq); Qur'an 42:21 (Ash-Shuraa).

L22212 Neither you nor anyone else knows from where you derived this claim of yours. Even if analogical reasoning (qiyas) were valid, this would be the very essence of falsehood from it, for according to those who uphold it, the comparison of the analogized case (farʿ) cannot be valid unless the original case (aṣl) is valid. Yet none of you validates the ruling of any of these narrations except the case of withheld milk (al-muṣarra) and pre-emption (al-shufʿa) alone. How then do you deem it permissible to rule by a judgment merely because it resembles a judgment that is impermissible to act upon? Has anything more foolish than this action ever been heard of? Those among you who validate the ruling of al-muṣarra do not disagree that it is permissible to analogize based on the returning of a ṣāʿ of dates along with the item the returner chooses to return. So how did you permit analogical reasoning based on some elements of that narration while prohibiting it based on others? Does this not perplex the minds of the rational? Similarly, pre-emption (al-shufʿa) in your view applies only to a partner or a neighbor in the sale of jointly owned real estate specifically. How then did it occur to you, O you people, to prohibit analogical reasoning in cases where jointly owned non-real estate is sold, also to the partner?

وَمَا تَدْرُونَ أَنْتُمْ وَلَا غَيْرُكُمْ مِنْ أَيْنَ قُلْتُمْ بِدَعْوَاكُمْ هَذِهِ؟ ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ الْقِيَاسَ عِنْدَ الْقَائِلِينَ بِهِ لَا يَصِحُّ تَشْبِيهُ الْمُشَبَّهِ إِلَّا حَتَّى يَصِحَّ الْمُشَبَّهُ بِهِ، وَلَيْسَ مِنْكُمْ أَحَدٌ يُصَحِّحُ حُكْمَ شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ إِلَّا الْمُصَرَّاةَ، وَالشُّفْعَةَ فَقَطْ، فَكَيْفَ تَسْتَحِلُّونَ أَنْ تَحْكُمُوا بِحُكْمٍ لِأَنَّهُ يُشْبِهُ حُكْمًا لَا يَجُوزُ الْعَمَلُ بِهِ؟ وَهَلْ سُمِعَ بِأَحْمَقَ مِنْ هَذَا الْعَمَلِ؟ وَالَّذِينَ يُصَحِّحُونَ مِنْكُمْ حُكْمَ الْمُصَرَّاةِ لَا يَخْتَلِفُونَ فِي أَنَّهُ يَجُوزُ الْقِيَاسُ عَلَى مَا فِيهِ مِنْ رَدِّ صَاعِ تَمْرٍ مَعَ الشَّيْءِ الَّذِي يَخْتَارُ الرَّادُّ رَدَّهُ، فَمِنْ أَيْنَ جَازَ عِنْدَكُمْ الْقِيَاسُ عَلَى بَعْضِ مَا فِي ذَلِكَ الْخَبَرِ وَحُرِّمَ الْقِيَاسُ عَلَى بَعْضِ مَا فِيهِ؟ أَلَيْسَ هَذَا مِمَّا تَحْتَارُ فِيهِ أَوْهَامُ الْعُقَلَاءِ؟ وَكَذَلِكَ الشُّفْعَةُ إِنَّمَا هِيَ لِشَرِيكٍ عِنْدَكُمْ، أَوْ لِلْجَارِ فِيمَا بِيعَ مِنْ مُشَاعٍ فِي الْعَقَارِ خَاصَّةً، فَمِنْ أَيْنَ وَقَعَ بِكُمْ يَا هَؤُلَاءِ أَنْ تُحَرِّمُوا الْقِيَاسَ عَلَى ذَلِكَ مَا بِيعَ أَيْضًا مِنْ الْمُشَاعِ فِي غَيْرِ الْعَقَارِ لِلشَّرِيكِ أَيْضًا.

L22213 If there had ever existed a valid analogy throughout time, this would be the most evident and sound analogy, given their equivalence in legal cause and resemblance according to every observer. Yet you analogize matters fundamentally dissimilar to it—such as stipulating an option for the seller, buyer, both, or a third party—a ruling wholly opposed to the former. For that [case] applies to a partner while this [applies] to a non-partner; that pertains to jointly held property and this to non-jointly held property; that is stipulated while this is not stipulated; that [applies] without time restriction and this [applies] within a specified period. What is this confusion and arbitrariness?

وَلَوْ صَحَّ قِيَاسٌ فِي الدَّهْرِ كَانَ هَذَا أَوْضَحَ قِيَاسٍ وَأَصَحَّهُ لِتَسَاوِيهِمَا فِي الْعِلَّةِ وَالشَّبَهِ عِنْدَ كُلِّ نَاظِرٍ ثُمَّ تَقِيسُونَ عَلَيْهِ مَا لَا يُشْبِهُهُ أَصْلًا مِنْ اشْتِرَاطِ اخْتِيَارٍ لِلْبَائِعِ أَوْ لِلْمُشْتَرِي أَوْ لَهُمَا أَوْ لِأَجْنَبِيٍّ، وَهُوَ ضِدُّ ذَلِكَ الْحُكْمِ جُمْلَةً، فَذَلِكَ لِلشَّرِيكِ وَهَذَا لِغَيْرِ الشَّرِيكِ، وَذَلِكَ فِي الْمُشَاعِ وَهَذَا فِي غَيْرِ الْمُشَاعِ، وَذَلِكَ مُشْتَرَطٌ، وَهَذَا غَيْرُ مُشْتَرَطٍ، وَذَلِكَ إِلَى غَيْرِ مُدَّةٍ وَهَذَا إِلَى مُدَّةٍ، فَمَا هَذَا التَّخْلِيطُ، وَالْخَبْطُ؟

L22214–22215 As for the option to return the sold item, the ruling concerning it is exactly the same as the ruling on the right of preemption, in that there is no similarity whatsoever between it and stipulating a contractual option in the sale in any respect, due to what we previously stated. Thus, the invalidity of their argument as a whole based on narrations and analogy becomes evident.

وَأَمَّا الْخِيَارُ فِي رَدِّ الْمَبِيعِ فَالْقَوْلُ فِيهِ كَالْقَوْلِ فِي خِيَارِ الشُّفْعَةِ سَوَاءً سَوَاءً، مِنْ أَنَّهُ لَا شَبَهَ بَيْنَهُ وَبَيْنَ اشْتِرَاطِ الْخِيَارِ فِي الْبَيْعِ بِوَجْهٍ مِنْ الْوُجُوهِ لِمَا قُلْنَا آنِفًا، فَظَهَرَ فَسَادُ احْتِجَاجِهِمْ جُمْلَةً بِالْأَخْبَارِ، وَبِالْقِيَاسِ -.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L22216 And success is from Allah, the Exalted.

وَأَيُّ قَوْلٍ أَفْسَدَ مِنْ قَوْلِ مَنْ يُبْطِلُ الْخِيَارَ الَّذِي أَوْجَبَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْمُتَبَايِعَيْنِ قَبْلَ التَّفَرُّقِ بِأَبْدَانِهِمَا، وَقَبْلَ أَنْ يُخَيِّرَ أَحَدُهُمَا الْآخَرَ فَيَخْتَارَ إمْضَاءً أَوْ رَدًّا. وَالْخِيَارُ الْوَاجِبُ لِمَنْ قَالَ عِنْدَ الْبَيْعِ: لَا خِلَابَةَ.

L22217 And what statement is more corrupt than that of one who nullifies the obligatory option which Allah the Exalted has ordained through His Messenger (peace and blessings of Allah be upon him) for both parties to a sale before they separate with their bodies, and before either of them offers the other the choice, so that he may choose to confirm or reject. The obligatory option belongs to whoever declares during the sale: "No fraud [is intended]."

وَالْخِيَارُ لِمَنْ بَاعَ سِلْعَتَهُ مِمَّنْ تَلَقَّاهَا إذَا دَخَلَ السُّوقَ.

L22218 The option belongs to the seller against the buyer who received the goods once the buyer enters the marketplace.

وَالْخِيَارُ الْوَاجِبُ لِمَنْ ابْتَاعَ مُصَرَّاةً.

L22219 The obligatory option is granted to one who purchases a muṣarra'ah.

وَالْخِيَارُ الْوَاجِبُ لِمَنْ بَاعَ شِرْكًا مِنْ مَالٍ هُوَ فِيهِ شَرِيكٌ ثُمَّ أَوْجَبَ خِيَارًا لَمْ يُوجِبْهُ اللَّهُ تَعَالَى قَطُّ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L22220 The obligatory option applies to one who sells a share from a property in which he is a partner and then imposes an option that Allah, Exalted is He, and His Messenger (peace be upon him) have never legislated.

وَمِنْ الْبُرْهَانِ عَلَى بُطْلَانِ كُلِّ بَيْعٍ يُشْتَرَطُ فِيهِ خِيَارٌ لِلْبَائِعِ أَوْ لِلْمُشْتَرِي أَوْ لَهُمَا أَوْ لِغَيْرِهِمَا -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَا بَالُ أَقْوَامٍ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ، مَنْ اشْتَرَطَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ وَإِنْ اشْتَرَطَهُ مِائَةَ مَرَّةٍ وَإِنْ كَانَ مِائَةَ شَرْطٍ كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ، كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ» .

L22221 Among the proofs for the invalidity of every sale stipulating an option for the seller, the buyer, both of them, or others besides them is the statement of Allah's Messenger - peace and blessings be upon him: «What is the matter with people who stipulate conditions not found in Allah's Book? Whoever stipulates a condition absent from Allah's Book, it is invalid even if he stipulates it a hundred times. Even if there are a hundred conditions, every condition absent from Allah's Book remains invalid. Allah's Book holds greater authority, and Allah's condition is more binding.»

وَكَانَ اشْتِرَاطُ الْخِيَارِ الْمَذْكُورِ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى وَلَا فِي شَيْءٍ مِنْ سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَوْ كَانَ فِيهَا لَكَانَ فِي كِتَابِ اللَّهِ تَعَالَى؛ لِأَنَّ اللَّهَ تَعَالَى أَمَرَ فِي كِتَابِهِ بِطَاعَةِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَجَبَ بُطْلَانُ الشَّرْطِ الْمَذْكُورِ يَقِينًا، وَإِذْ هُوَ بَاطِلٌ فَكُلُّ عَقْدٍ لَمْ يُصَحَّحْ إلَّا بِصِحَّةِ مَا لَمْ يَصِحَّ فَلَا صِحَّةَ لَهُ

L22222 The stipulation of the mentioned option (khiyar) was a condition not found in the Book of Allah the Exalted nor in anything from the Sunnah of Allah's Messenger (PBUH). Had it been present in the Sunnah, it would have been in the Book of Allah the Exalted, because Allah the Exalted commanded in His Book to obey His Messenger (PBUH). Therefore, it is certainly obligatory to nullify this mentioned condition. Since it is invalid, any contract whose validity depends on the validity of what is inherently invalid undoubtedly possesses no validity. Consequently, the sale contract established upon the

condition of khiyar must be nullified as we have mentioned. Allah the Exalted said: {Indeed, Allah does not rectify the deeds of those who spread corruption} [Yūnus: 81].[8]

بِلَا شَكٍّ، فَوَجَبَ بُطْلَانُ الْبَيْعِ الَّذِي عُقِدَ عَلَى شَرْطِ خِيَارٍ كَمَا ذَكَرْنَا، قَالَ اللَّهُ تَعَالَى: {إِنَّ اللَّهَ لا يُصْلِحُ عَمَلَ الْمُفْسِدِينَ} [يونس: ٨١] .

L22223–22225 Abū Muḥammad said: Our covenant with them is that they take pride in following the Messenger and that it is like the *Musnad*. It has been narrated to us through the chain of Abū Bakr ibn Abī Shaybah, from Ismāʿīl ibn ʿUlayyah, from Ayyūb al-Sakhtiyānī, from Abū Qilābah, who said: The Messenger of Allah (peace and blessings be upon him) stated, "No two parties to a sale may separate except by mutual consent." This is among the finest juridical correspondence, so where do they stand regarding it? It contains the prohibition against retaining the option after the parties have parted. We ask them about the sale with an option: has the seller's ownership ceased over it, and has the buyer acquired ownership, or not, when the option is stipulated for the seller or both parties? If they say no, this is our position, and it is established that there is no sale at all in such a case, for a sale entails the transfer of the seller's ownership and the establishment of the buyer's ownership.

قَالَ أَبُو مُحَمَّد: وَعَهْدُنَا بِهِمْ يَفْتَخِرُونَ بِاتِّبَاعِ الْمُرْسَلِ وَأَنَّهُ كَالْمُسْنَدِ -: وَقَدْ رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَتَفَرَّقُ بَيِّعَانِ إِلَّا عَنْ تَرَاضٍ» وَهَذَا مِنْ أَحْسَنِ الْمُرَاسِلِ، فَأَيْنَ هُمْ عَنْهُ؟ وَفِيهِ النَّهْيُ عَنْ بَقَاءٍ عَنْ الْخِيَارِ بَعْدَ التَّفَرُّقِ؟ وَنَسْأَلُهُمْ عَنْ بَيْعِ الْخِيَارِ هَلْ زَالَ مِلْكُ بَائِعِهِ عَنْهُ وَمَلَكَهُ الْمُشْتَرِي لَهُ أَمْ لَا، إذَا اُشْتُرِطَ الْخِيَارَ لِلْبَائِعِ أَوْ لَهُمَا؟ فَإِنْ قَالُوا: لَا، فَهُوَ قَوْلُنَا وَصَحَّ أَنَّهُ لَا بَيْعَ هُنَالِكَ أَصْلًا؛ لِأَنَّ الْبَيْعَ نَقْلُ مِلْكِ الْبَائِعِ وَإِيقَاعُ مِلْكِ الْمُشْتَرِي.

L22226 And if they say: Yes, we say: Then the option has no meaning, nor is it valid for something whose ownership has been validly established for him. Their statements, however, indicate the contrary of this.

وَإِنْ قَالُوا: نَعَمْ، قُلْنَا: فَالْخِيَارُ لَا مَعْنَى لَهُ، وَلَا يَصِحُّ فِي شَيْءٍ قَدْ صَحَّ مِلْكُهُ عَلَيْهِ - وَأَقْوَالُهُمْ تَدُلُّ عَلَى خِلَافِ هَذَا.

L22227 If they say, "The seller has sold, but the buyer has not yet purchased?" We reply: This is muddled reasoning and void, self-evident; for a sale cannot occur unless there is a seller, a buyer, and a transfer of ownership.

فَإِنْ قَالُوا قَدْ بَاعَ الْبَائِعُ وَلَمْ يَشْتَرِ الْمُشْتَرِي بَعْدُ؟ قُلْنَا: هَذَا تَخْلِيطٌ وَبَاطِلٌ لَا خَفَاءَ بِهِ؛ لِأَنَّهُ لَا يَكُونُ بَيْعٌ إلَّا وَهُنَالِكَ بَائِعٌ وَمُبْتَاعٌ وَانْتِقَالُ مِلْكٍ.

L22228 And likewise, if the option is granted solely to the seller, it is impossible for the sale to be binding on the buyer without also being binding on the seller.

وَهَكَذَا إنْ كَانَ الْخِيَارُ لِلْبَائِعِ فَقَطْ، فَمِنْ الْمُحَالِ أَنْ يَنْعَقِدَ بَيْعٌ عَلَى الْمُشْتَرِي وَلَمْ يَنْعَقِدْ ذَلِكَ الْبَيْعُ عَلَى الْبَائِعِ.

L22229 If the right of rescission is for both parties or a third party, this sale has not been concluded - neither for the seller nor for the buyer - thus it is invalid.

فَإِنْ كَانَ الْخِيَارُ لَهُمَا أَوْ لِأَجْنَبِيٍّ: فَهَذَا بَيْعٌ لَمْ يَنْعَقِدْ لَا عَلَى الْبَائِعِ وَلَا عَلَى الْمُبْتَاعِ فَهُوَ بَاطِلٌ - وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ.

[8] **Qur'an references (L22222):** Qur'an 10:81 (Yunus).

This is the position asserted by the proponents of analogy according to their claim.

L22230 They have unanimously agreed that a marriage contract stipulating an option is invalid. Why then did they not apply this analogy to sales and other transactions where they permit options—just as they used this very analogy to oppose the Sunnah when invalidating options after the sale but before the parties separate? Thus, they neither adhered to textual sources nor consistently applied analogy. The proofs invalidating sales with options are numerous, and their contradictions regarding it are manifold. Their statements on the matter are merely unsubstantiated claims—divergent and mutually conflicting—as we previously mentioned. And with Allah the Exalted lies all success.

L22231 **Issue: If a valid and perfected sale occurs, and the object of sale perishes immediately after its completion.**

L22232 Issue 1422: In every valid and completed sale, if the sold item perishes after the sale is finalized, the loss is borne by the buyer, and the buyer has no recourse against the seller.

L22233–22235 Similarly, every instance involving a sale or defect applies equally in all such cases, whether the sold item is absent or... If the item is present, or if the sold item was a male or female slave who became insane, developed leukoderma, or leprosy after the conclusion of the sale and thereafter, or if it was fruit that had ripened for sale, then all, most, or the lesser part of it was blighted—all such losses are borne by the buyer, and he has no legal recourse whatsoever against the seller. This is the opinion of Abī Sulaymān, al-Shāfiʿī, and their followers.

L22236 Abū Ḥanīfah said: The seller is obligated to deliver what he sold. If it perishes before delivery, its loss falls upon the seller. Mālik agreed with our opinion except specifically regarding slaves and crops. He said: Any harm that befalls a slave within three days after the sale of the principal item — such as fleeing, a defect, death, or other occurrences — is the seller's liability. Once this period ends, the seller is absolved except in cases of insanity, leprosy, or

وَقَدْ أَجْمَعُوا عَلَى أَنَّ النِّكَاحَ بِالْخِيَارِ لَا يَجُوزُ، فَهَلَّا قَاسُوا عَلَى ذَلِكَ الْبَيْعَ وَسَائِرَ مَا أَجَازُوا فِيهِ الْخِيَارَ، كَمَا فَعَلُوا فِي مُعَارَضَةِ السُّنَّةِ بِهَذَا الْقِيَاسِ نَفْسِهِ فِي إبْطَالِهِمْ الْخِيَارَ بَعْدَ الْبَيْعِ قَبْلَ التَّفَرُّقِ، فَلَا نُصُوصَ الْتَزَمُوا وَلَا الْقِيَاسَ طَرَدُوا، وَالدَّلَائِلُ عَلَى إبْطَالِ بَيْعِ الْخِيَارِ تَكْثُرُ، وَمُنَاقَضَاتُهُمْ فِيهِ جَمَّةٌ، وَإِنَّمَا أَقْوَالُهُمْ فِيهِ دَعَاوَى - بِلَا بُرْهَانٍ - مُخْتَلِفَةٌ مُتَدَافِعَةٌ كَمَا ذَكَرْنَاهَا قَبْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ بَيْعٍ صَحَّ وَتَمَّ فَهَلَكَ الْمَبِيعُ إثْرَ تَمَامِ الْبَيْعِ]

١٤٢٢ - مَسْأَلَةٌ: وَكُلُّ بَيْعٍ صَحَّ وَتَمَّ فَهَلَكَ الْمَبِيعُ إثْرَ تَمَامِ الْبَيْعِ فَمُصِيبَتُهُ مِنْ الْمُبْتَاعِ وَلَا رُجُوعَ لَهُ عَلَى الْبَائِعِ.

وَكَذَلِكَ كُلُّ مَا عُرِضَ فِيهِ مِنْ بَيْعٍ أَوْ نَقْصٍ سَوَاءٌ فِي كُلِّ ذَلِكَ كَانَ الْمَبِيعُ غَائِبًا أَوْ حَاضِرًا، أَوْ كَانَ عَبْدًا أَوْ أَمَةً فَجُنَّ أَوْ بَرِصَ أَوْ جُذِمَ إثْرَ تَمَامِ الْبَيْعِ فَمَا بَعْدَ ذَلِكَ، أَوْ كَانَ ثَمَرًا قَدْ حَلَّ بَيْعُهُ، فَأُجِيحَ كُلُّهُ أَوْ أَكْثَرُهُ أَوْ أَقَلُّهُ، فَكُلُّ ذَلِكَ مِنْ الْمُبْتَاعِ وَلَا رُجُوعَ لَهُ عَلَى الْبَائِعِ بِشَيْءٍ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمَا.

وَقَالَ أَبُو حَنِيفَةَ: عَلَى الْبَائِعِ تَسْلِيمُ مَا بَاعَ، فَإِنْ هَلَكَ قَبْلَ أَنْ يُسَلِّمَهُ فَمُصِيبَتُهُ مِنْ الْبَائِعِ - وَقَالَ مَالِكٌ بِقَوْلِنَا، إلَّا فِي الرَّقِيقِ وَالثِّمَارِ خَاصَّةً، فَإِنَّهُ قَالَ: مَا أَصَابَ الرَّقِيقَ فِي ثَلَاثَةِ أَيَّامٍ بَعْدَ بَيْعِ الرَّأْسِ مِنْ إبَاقٍ، أَوْ عَيْبٍ، أَوْ مَوْتٍ، أَوْ غَيْرِ ذَلِكَ، فَمِنْ مُصِيبَةِ الْبَائِعِ، فَإِذَا انْقَضَتْ بَرِئَ الْبَائِعُ، إلَّا مِنْ الْجُنُونِ، وَالْجُذَامِ، وَالْبَرَصِ: فَإِنَّ هَذِهِ الْأَدْوَاءَ

vitiligo. If any of these three ailments afflict the sold principal item before a full year has passed since the time of purchase, the buyer has the right to return him for that reason.

L22237 He said: Such rulings are only to be adjudicated in regions where the custom of their people has been established to rule based on such practices. As for regions where their people's custom has not been established in this regard, no ruling is imposed upon them in that matter.

L22238 He said: Whoever sells with exemption, the ruling of liability is voided concerning him. The authority completely nullifies it when selling to a creditor or from an orphan's property. He permits cash payment in a one-year liability but does not permit it in a three-year liability.

L22239 As for fruits, whoever sells a fruit after it becomes permissible to sell the fruit and standing crops, then if a third or more of it is lost, the buyer may seek recourse from the seller. If less than a third is lost—whether little or much—it is a loss borne by the buyer, and he has no recourse against the seller.

L22240 He said: If it is vegetables and damage affects them—whether slight or extensive—the buyer can seek recourse from the seller for it. He differed in his statements regarding bananas: sometimes saying they are considered equivalent to fruits in accounting for one-third, and sometimes saying they are considered equivalent to vegetables in allowing recourse for minor or major damage.

L22241 And on one occasion he said: One may not rescind due to a catastrophic loss that befell all, most, or less of it.

L22242 Abu Muhammad said: As for the obligation to transfer possession, we know the Hanafis have no evidence whatsoever for this—neither from the Quran, nor the Sunnah, nor a weak narration, nor a Companion's opinion, nor analogy, nor sound opinion. The seller is only required not to prevent the buyer from taking possession of what was sold. If he does so, he becomes sinful and is only liable in the manner of usurpation. It is unlawful to impose any ruling not established by the Quran or the Sunnah. Allah the Exalted

الثَّلَاثَةَ إِنْ أَصَابَ شَيْءٌ مِنْهَا الرَّأْسَ الْمَبِيعَ قَبْلَ انْقِضَاءِ عَامٍ مِنْ حِينِ ابْتِيَاعِهِ كَانَ لَهُ الرَّدُّ بِذَلِكَ.

قَالَ: وَلَا يَقْضِي بِذَلِكَ إِلَّا فِي الْبِلَادِ الَّتِي جَرَتْ عَادَةُ أَهْلِهَا بِالْحُكْمِ بِذَلِكَ فِيهَا - وَأَمَّا الْبِلَادُ الَّتِي لَمْ تَجْرِ عَادَةُ أَهْلِهَا بِالْحُكْمِ بِذَلِكَ فِيهَا: فَلَا حُكْمَ عَلَيْهِمْ بِذَلِكَ.

قَالَ: وَمَنْ بَاعَ بِالْبَرَاءَةِ بَطَلَ عَنْهُ حُكْمُ الْعُهْدَةِ، وَأَسْقَطَهَا جُمْلَةً فِيمَا بَاعَهُ السُّلْطَانُ لِغَرِيمٍ، أَوْ مِنْ مَالِ يَتِيمٍ - وَأَجَازَ النَّقْدَ فِي عُهْدَةِ السَّنَةِ، وَلَمْ يُجِزْهُ فِي عُهْدَةِ الثَّلَاثِ.

وَأَمَّا الثِّمَارُ فَمَنْ بَاعَ ثَمَرَةً كَانَتْ بَعْدَ أَنْ يَحِلَّ بَيْعُهَا وَالْمَقَاثِي، فَإِذَا أُجِيحَ مِنْ ذَلِكَ الثُّلُثُ فَصَاعِدًا رَجَعَ بِذَلِكَ عَلَى الْبَائِعِ، فَإِنْ أُجِيحَ مَا دُونَ الثُّلُثِ - بِمَا قَلَّ أَوْ كَثُرَ - فَهُوَ مِنْ مُصِيبَةِ الْمُشْتَرِي وَلَا رُجُوعَ لَهُ عَلَى الْبَائِعِ.

قَالَ: فَإِنْ كَانَ بَقْلًا فَأَصَابَتْهُ جَائِحَةٌ - قَلَّتْ أَوْ كَثُرَتْ - فَإِنَّهُ يَرْجِعُ بِذَلِكَ عَلَى الْبَائِعِ - وَاخْتَلَفَ قَوْلُهُ فِي الْمَوْزِ، فَمَرَّةً قَالَ: هُوَ بِمَنْزِلَةِ الثِّمَارِ فِي مُرَاعَاةِ الثُّلُثِ، وَمَرَّةً قَالَ: هُوَ بِمَنْزِلَةِ الْبَقْلِ فِي الرُّجُوعِ بِقَلِيلِ الْجَائِحَةِ وَكَثِيرِهَا.

وَمَرَّةً قَالَ: لَا يَرْجِعُ بِجَائِحَةٍ أَصَابَتْهُ كُلَّهُ أَوْ أَكْثَرَهُ أَوْ أَقَلَّهُ.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا إِيجَابُ التَّسْلِيمِ فَمَا نَعْلَمُ فِيهِ لِلْحَنَفِيِّينَ حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ ضَعِيفَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ، وَإِنَّمَا عَلَى الْبَائِعِ أَنْ لَا يَحُولَ بَيْنَ الْمُشْتَرِي وَبَيْنَ قَبْضِ مَا بَاعَ مِنْهُ فَقَطْ، فَإِنْ فَعَلَ صَارَ عَاصِيًا وَضَمِنَ ضَمَانَ الْغَصْبِ فَقَطْ، وَلَا يَحِلُّ أَنْ يُلْزِمَ أَحَدٌ حُكْمًا لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ،

said: “They have legislated in religion what Allah has not authorized” [42:21]. Thus, this opinion is rendered void.[9]

قَالَ تَعَالَى: {شَرَعُوا لَهُمْ مِنَ الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ} [الشورى: ٢١] فَسَقَطَ هَذَا الْقَوْلُ.

L22243–22244 As for Mālik’s statement concerning enslaved persons: his followers cite as evidence the narration we transmitted via the chain narrated by Abū Dāwūd—reported by Muslim ibn Ibrāhīm, reported by Abān (who is Ibn Yazīd al-ʻAṭṭār), reported by Qatādah, reported by al-Ḥasan al-Baṣrī, reported by ʻUqbah ibn ʻĀmir al-Juhanī—that the Messenger of Allah, peace be upon him, said: “The defect warranty period for enslaved persons is three days.”

وَأَمَّا قَوْلُ مَالِكٍ فِي الرَّقِيقِ: فَإِنَّ مُقَلِّدِيهِ يَحْتَجُّونَ لَهُ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا مُسْلِمُ بْنُ إِبْرَاهِيمَ نا أَبَانُ - هُوَ ابْنُ يَزِيدَ الْعَطَّارُ - عَنْ قَتَادَةَ عَنْ الْحَسَنِ الْبَصْرِيِّ عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «عُهْدَةُ الرَّقِيقِ ثَلَاثَةُ أَيَّامٍ» .

L22245 From the transmission of Abu Bakr ibn Abi Shaybah, reported to us by Abdah and Muhammad ibn Bishr from Saʿid ibn Abi ʿArubah from Qatadah from al-Hasan from Samurah ibn Jundub, who said: The Messenger of Allah, peace and blessings be upon him, said, “The liability period for an enslaved person is three days.”

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدَةُ، وَمُحَمَّدُ بْنُ بِشْرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «عُهْدَةُ الرَّقِيقِ ثَلَاثٌ» .

L22246 They said: He ruled with the three-day liability period due to the quartan fever; because it does not manifest in less than three days.

وَقَالُوا: إنَّمَا قَضَى بِعُهْدَةِ الثَّلَاثِ لِأَجْلِ حُمَّى الرِّبْعِ، لِأَنَّهَا لَا تَظْهَرُ فِي أَقَلَّ مِنْ ثَلَاثَةِ أَيَّامٍ.

L22247 They mentioned what we have narrated through Malik’s transmission from Abdullah ibn Abi Bakr ibn Muhammad ibn Amr ibn Hazm, that he heard Aban ibn Uthman ibn Affan and Hisham ibn Isma‘il ibn Hisham mention in their two khutbahs the three-day warranty period for slaves from the time one purchases a male slave or female slave, and the one-year warranty period, and that the two of them command this.

وَذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ أَنَّهُ سَمِعَ أَبَانَ بْنَ عُثْمَانَ بْنِ عَفَّانَ، وَهِشَامَ بْنَ إسْمَاعِيلَ بْنِ هِشَامٍ يَذْكُرَانِ فِي خُطْبَتِهِمَا عُهْدَةَ الرَّقِيقِ فِي الْأَيَّامِ الثَّلَاثَةِ مِنْ حِينِ يَشْتَرِي الْعَبْدَ أَوْ الْوَلِيدَةَ وَعُهْدَةَ السَّنَةِ، وَيَأْمُرَانِ بِذَلِكَ.

L22248 And via the transmission chain of Ibn Wahb from Abd al-Rahman ibn Abi al-Zinad from his father, who said: Umar ibn Abd al-Aziz ruled regarding a slave who was purchased and died within three days, placing the liability upon the seller.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ عَنْ أَبِيهِ قَالَ: قَضَى عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي عَبْدٍ اُشْتُرِيَ فَمَاتَ فِي الثَّلَاثَةِ الْأَيَّامِ فَجَعَلَهُ عُمَرُ مِنْ الَّذِي بَاعَهُ.

[9] **Qur’an references (L22242):** Qur’an 42:21 (Ash-Shuraa).

قَالَ ابْنُ وَهْبٍ: وَحَدَّثَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ، قَالَ: الْقُضَاةُ مُنْذُ أَدْرَكْنَا يَقْضُونَ فِي الْجُنُونِ وَالْجُذَامِ، وَالْبَرَصِ: سَنَةً.

L22249 Ibn Wahb said: Yunus narrated to me from Ibn Shihab, who said: "Jurists, since we have known, have ruled in cases of insanity, leprosy, and vitiligo: a waiting period of one year."

قَالَ ابْنُ شِهَابٍ: وَسَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ: الْعِدَّةُ مِنْ كُلِّ دَاءٍ عُضَالٍ نَحْوَ الْجُنُونِ، وَالْجُذَامِ، وَالْبَرَصِ: سَنَةٌ.

L22250 Ibn Shihab said: I heard Saʿīd ibn al-Musayyib say: The prescribed waiting period [for rulings related to] chronic diseases such as insanity, leprosy, and vitiligo is one year.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي ابْنُ سَمْعَانَ، قَالَ: سَمِعْت رِجَالًا مِنْ عُلَمَائِنَا مِنْهُمْ يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ يَقُولُونَ: لَمْ تَزَلْ الْوُلَاةُ بِالْمَدِينَةِ فِي الزَّمَانِ الْأَوَّلِ يَقْضُونَ فِي الرَّقِيقِ بِعُهْدَةِ السَّنَةِ مِنْ الْجُنُونِ وَالْجُذَامِ، وَالْبَرَصِ إنْ ظَهَرَ بِالْمَمْلُوكِ شَيْءٌ فِي ذَلِكَ قَبْلَ أَنْ يَحُولَ الْحَوْلُ عَلَيْهِ فَهُوَ رَدٌّ إلَى الْبَائِعِ، وَيَقْضُونَ فِي عُهْدَةِ الرَّقِيقِ بِثَلَاثِ لَيَالٍ فَإِنْ حَدَثَ فِي الرَّأْسِ فِي تِلْكَ الثَّلَاثِ حَدَثٌ - مِنْ مَوْتٍ أَوْ سَقَمٍ - فَهُوَ مِنْ الْأَوَّلِ، وَإِنَّمَا كَانَتْ عُهْدَةُ الثَّلَاثِ مِنْ الرُّبْعِ، وَلَا يَسْتَبِينُ الرُّبْعُ إلَّا فِي ثَلَاثِ لَيَالٍ.

L22251–22253 Ibn Wahb said: Ibn Sam'ān informed me, saying: I heard men from our scholars—among them Yaḥyā ibn Saʿīd al-Anṣārī—they were saying: The rulers in Medina never ceased during the earlier period to adjudicate cases involving slaves under a one-year warranty that covered insanity, leprosy, and vitiligo. If any such condition manifested in the slave before... If a full year passes over it, it must be returned to the seller. They rule that the warranty period for slaves comprises three nights. If an incident occurs at the beginning of those three nights—whether death or illness—it is attributed to the original owner. The three-night warranty is derived from the quarter (three months), and the three-month period is not discernible except within three nights.

هَذَا كُلُّ مَا شَغَبُوا بِهِ، وَمَا نَعْلَمُ لَهُمْ فِي ذَلِكَ شَيْئًا غَيْرَ مَا أَوْرَدْنَا، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ -: أَمَّا الْحَدِيثَانِ فَسَاقِطَانِ، لِأَنَّ الْحَسَنَ لَمْ يَسْمَعْ مِنْ عُقْبَةَ بْنِ عَامِرٍ شَيْئًا قَطُّ، وَلَا سَمِعَ مِنْ سَمُرَةَ إلَّا حَدِيثَ الْعَقِيقَةِ فَصَارَا مُنْقَطِعَيْنِ، وَلَا حُجَّةَ فِي مُنْقَطِعٍ.

L22254 This is all they have objected to, and we know of nothing they have in that regard besides what we have presented. None of it provides any valid proof for them in any part of it. As for the two ḥadīths, they are discarded because Ḥasan never heard anything from 'Uqbah ibn 'Āmir whatsoever, nor did he hear from Samurah except the 'Aqabah ḥadīth, rendering both chains disconnected. There is no valid proof in a disconnected chain.

وَقَدْ رُوِّينَاهُمَا بِغَيْرِ اللَّفْظِ، لَكِنْ كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي مَسْلَمَةُ بْنُ عَلِيٍّ عَمَّنْ حَدَّثَهُ عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «عُهْدَةُ الرَّقِيقِ أَرْبَعَةُ أَيَّامٍ وَثَلَاثَةٌ» .

L22255 We have transmitted both of them without the exact wording, but as we have transmitted it through the chain of Ibn Wahb: Maslamah ibn Ali informed me from someone who narrated to him from Uqbah ibn Amir al-Juhani, who said: The Messenger of Allah—peace and blessings be upon him—said, "The warranty period for a slave is four days and three."

وَمِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا مُحَمَّدُ بْنُ الْجَهْمِ نا عَبْدُ الْوَهَّابِ - هُوَ ابْنُ عَطَاءٍ الْخَفَّافُ - نا هِشَامٌ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ عُقْبَةَ بْنِ عَامِرٍ قَالَ: عُهْدَةُ الرَّقِيقِ أَرْبَعُ لَيَالٍ.

L22256 From the chain of Qāsim ibn Aṣbagh: Muḥammad ibn al-Jahm narrated to us, ʿAbd al-Wahhāb narrated to us (i.e., Ibn ʿAṭāʾ al-Khaffāf), from Hishām,

from Qatādah, from al-Ḥasan, from ʿUqbah ibn ʿĀmir, who said: The warranty period for enslaved people is four nights.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ زِيَادٍ الْأَعْلَمِ عَنْ الْحَسَنِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا عُهْدَةَ إلَّا بَعْدَ أَرْبَعَةِ أَيَّامٍ» .

L22257 And through the chain of Ḥammād ibn Salamah from Ziyād al-Aʿlam from al-Ḥasan that the Messenger of Allah—may Allah bless him and grant him peace—said: "There is no liability period except [one lasting] four days."

قَالَ أَبُو مُحَمَّد: وَهَذَا مِمَّا نَقَضُوا فِيهِ أُصُولَهُمْ فَإِنَّ الْحَنَفِيِّينَ يَقُولُونَ: الْمُنْقَطِعُ، وَالْمُتَّصِلُ: سَوَاءٌ، وَقَدْ تَرَكُوا هَهُنَا هَذِهِ الْأَخْبَارَ، وَمَا عَابُوهَا إلَّا بِالِانْقِطَاعِ فَقَطْ.

L22258 Abu Muhammad said: This is among the matters wherein they contradicted their principles, for the Ḥanafīs say: "The interrupted and the continuous are equivalent." Yet here they have abandoned these narrations, criticizing them only for interruption.

وَالْمَالِكِيُّونَ تَرَكُوا هَهُنَا الْأَخْذَ بِالزِّيَادَةِ، فَهَلَّا جَعَلُوا الْعُهْدَةَ أَرْبَعَ لَيَالٍ بِالْآثَارِ الَّتِي أَوْرَدْنَا؟ فَظَهَرَ تَنَاقُضُهُمْ وَأَنَّهُمْ لَا يَثْبُتُونَ عَلَى أَصْلٍ.

L22259 The Malikis abandoned adopting the addition here. Why did they not establish the liability period as four nights in accordance with the textual evidences we cited? Thus their contradiction became evident, exposing their failure to adhere to any foundational principle.

قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَنَقُولُ: إنَّ اللَّهَ تَعَالَى افْتَرَضَ عَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُبَيِّنَ لَنَا مَا نُزِّلَ إلَيْنَا وَمَا أَلْزَمَنَا إيَّاهُ، وَلَمْ يَجْعَلْ عَلَيْنَا فِي الدِّينِ مِنْ حَرَجٍ، وَقَوْلُ الْقَائِلِ " عُهْدَةُ الرَّقِيقِ ثَلَاثٌ " كَلَامٌ لَا يُفْهَمُ، وَلَا تَدْرِي " الْعُهْدَةَ " مَا هِيَ فِي لُغَةِ الْعَرَبِ، وَمَا فَهِمَ قَطُّ أَحَدٌ مِنْ قَوْلِ قَائِلٍ " عُهْدَةُ الرَّقِيقِ ثَلَاثَةُ أَيَّامٍ " أَنَّ مَعْنَاهُ مَا أَصَابَ الرَّقِيقَ الْمَبِيعَ فِي ثَلَاثَةِ أَيَّامٍ، فَمِنْ مُصِيبَةِ الْبَائِعِ، وَلَا يَعْقِلُ أَحَدٌ هَذَا الْحُكْمَ مِنْ هَذَا اللَّفْظِ - فَصَحَّ يَقِينًا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقُلْهُ قَطُّ، وَلَوْ قَالَهُ لَبَيَّنَ عَلَيْنَا مَا أَرَادَ بِهِ.

L22260–22262 Ali said: As for us, we say: Indeed, Allah the Exalted enjoined upon His Messenger—may Allah bless him and grant him peace—to clarify for us what has been revealed to us and what He has made incumbent upon us, while imposing no hardship upon us in matters of religion. The statement "The 'uhdah for slaves is three" constitutes incomprehensible speech. One does not understand what "'uhdah" signifies in the Arabic language. Never has anyone comprehended from the utterance "The 'uhdah for slaves is three days" that its meaning refers to what befalls the sold slave within three days. Hence, from... It is a misfortune for the seller, and no one can comprehend this ruling from this wording. Thus, it was established with certainty that the Messenger of Allah (peace be upon him) never uttered it at all, for had he said it, he would have clarified to us what he meant by it.

وَلَا يَفْرَحُ الْحَنَفِيُّونَ بِهَذَا الِاعْتِرَاضِ فَإِنَّهُ إنَّمَا يَسُوغُ وَيَصِحُّ عَلَى أُصُولِنَا لَا عَلَى أُصُولِهِمْ؛ لِأَنَّ الْحَنَفِيِّينَ إذْ رَزَقَهُمْ اللَّهُ تَعَالَى عُقُولًا كَهَّنُوا بِهَا مَا مَعْنَى الْكَذِبِ الْمُضَافِ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ نَهَى عَنْ " الْبُتَيْرَاءِ " حَتَّى فَهِمُوا أَنَّ الْبُتَيْرَاءَ:

L22263 The Hanafis do not rejoice at this objection, for it is only tenable and valid according to our principles, not theirs. This is because when Allah Almighty granted the Hanafis intellects, they employed them to engage in baseless speculation about the meaning of the lie attributed to the Messenger of Allah (peace and blessings be upon him)—that he prohibited the "Butayrā"—until they claimed to understand that the Butayrā refers to performing Witr with

one rakʿah instead of three. Yet no human or jinn could deduce this from the mere term "Butayrā." They did not hesitate to multiply lies against the Messenger of Allah (peace and blessings be upon him) by reporting from him what he never stated about himself. So what prevents them from similarly conjecturing here about the meaning of al-ʿuhdah? There is no difference between the two matters.

هِيَ أَنْ يُوتِرَ الْمَرْءُ بِرَكْعَةٍ وَاحِدَةٍ لَا بِثَلَاثٍ، عَلَى أَنَّ هَذَا لَا يَفْهَمُهُ إِنْسِيٌّ وَلَا جِنِّيٌّ مِنْ لَفْظَةِ " الْبُتَيْرَاءِ " وَلَمْ يُبَالُوا بِالتَّزَيُّدِ مِنَ الْكَذِبِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْإِخْبَارِ عَنْهُ بِمَا لَمْ يُخْبِرْ بِهِ عَنْ نَفْسِهِ، فَمَا الْمَانِعُ لَهُمْ مِنْ أَنْ يُكَهِّنُوا أَيْضًا هَهُنَا مَعْنَى الْعُهْدَةِ؟ فَمَا بَيْنَ الْأَمْرَيْنِ فَرْقٌ.

L22264 As for us, we do not derive the exposition of any matter of the religion except from the exposition of the Prophet—peace and blessings of Allah be upon him—alone. For his exposition alone constitutes the conclusive evidence for the one standing tomorrow before Allah the Exalted, and nothing else.

وَأَمَّا نَحْنُ فَلَا نَأْخُذُ بِبَيَانِ شَيْءٍ مِنَ الدِّينِ إِلَّا مِنْ بَيَانِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، فَهُوَ الَّذِي تَقُومُ بِهِ حُجَّةُ الْوَاقِفِ غَدًا بَيْنَ يَدَيِ اللَّهِ تَعَالَى لَا بِمَا سِوَاهُ.

L22265 As for the Mālikīs, they are—by their own assertion—proponents of analogy. The ruling concerning pre-emption in sales was established by the Messenger of Allah—may Allah's peace and blessings be upon him—and they analogized based on it to apply pre-emption in dowry matters through their personal opinions.

وَأَمَّا الْمَالِكِيُّونَ فَهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَقَدْ جَاءَ الْحُكْمُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالشُّفْعَةِ فِي الْبَيْعِ، فَقَاسُوا عَلَيْهِ الشُّفْعَةَ فِي الصَّدَاقِ بِآرَائِهِمْ.

L22266 The text explicitly specified the prohibition of hand amputation for theft of less than a quarter of a dinar. They analogized this ruling to the bridal gift (mahr) but did not apply the analogy to usurpation, and it bears closer resemblance to theft than to marriage in the judgment of every possessor of a sound intellect.

وَجَاءَ النَّصُّ بِتَحْدِيدِ الْمَنْعِ مِنَ الْقَطْعِ فِي سَرِقَةٍ أَقَلَّ مِنْ رُبْعِ دِينَارٍ فَقَاسُوا عَلَيْهِ الصَّدَاقَ وَلَمْ يَقِيسُوا عَلَيْهِ الْغَصْبَ وَهُوَ أَشْبَهُ بِالسَّرِقَةِ مِنَ النِّكَاحِ عِنْدَ كُلِّ ذِي مَسْكَةِ عَقْلٍ.

L22267 The text explicitly mentions usury in the six categories, so they applied analogy to cumin and almonds based on these categories. Why did they not analogize here to the report regarding the guarantee in slaves and other animals? But they neither adhere to the texts nor apply analogy properly! Among their curiosities here is that they analogized the case of one who gives his wife a slave or fruit as dowry after its soundness becomes apparent, then the slave dies, flees, or becomes defective before three days elapse, or the fruit suffers disaster exceeding a third. The wife must bear the loss from the disaster, but she has no claim regarding the slave under the three-day guarantee. This was indeed exceedingly peculiar.

وَقَدْ جَاءَ النَّصُّ بِالرِّبَا فِي الْأَصْنَافِ السِّتَّةِ فَقَاسُوا عَلَيْهَا: الْكَمُّونَ، وَاللَّوْزَ، فَهَلَّا قَاسُوا هَهُنَا عَلَى خَبَرِ " الْعُهْدَةِ " فِي الرَّقِيقِ سَائِرَ الْحَيَوَانِ؟ وَلَكِنْ لَا النُّصُوصَ يَلْتَزِمُونَ وَلَا الْقِيَاسَ يُحْسِنُونَ؟ وَمِنْ طَرَائِفِهِمْ هَهُنَا: أَنَّهُمْ قَاسُوا مَنْ أَصْدَقَ امْرَأَتَهُ عَبْدًا أَوْ ثَمَرَةً بَعْدَ أَنْ بَدَا صَلَاحُهَا فَمَاتَ الْعَبْدُ أَوْ أَبَقَ أَوْ أَصَابَهُ عَيْبٌ قَبْلَ انْقِضَاءِ ثَلَاثَةِ أَيَّامٍ، وَأُجِيحَتْ الثَّمَرَةُ بِأَكْثَرَ مِنَ الثُّلُثِ؟ فَلِلْمَرْأَةِ الْقِيَامُ بِالْجَائِحَةِ، وَلَا قِيَامَ لَهَا فِي الْعَبْدِ بِعُهْدَةِ الثَّلَاثِ - فَكَانَ " هَذَا طَرِيفًا جِدًّا.

L22268–22270 And in both matters, they have relied upon a textual report and a practice,

without any distinction? As for their argument that "the three-day custodial period" was instituted solely due to quartan fever, this must be one of two cases: either this rationale is self-derived or attributed to the Messenger of Allah (peace be upon him)—it must necessarily be [...] If they attribute one of the two to the Messenger of Allah—peace and blessings be upon him—that would be sheer falsehood warranting the Fire, even if they originated it from themselves? We said to them: Why then do you extend this ruling to a slave's absconding, death, and all other defects they acknowledge as indisputably contingent, such as losing an eye from a thrown object and the like of this? This is truly astonishing! This is not a matter for analogy due to the absence of a shared legal cause.

وَكِلَا الْأَمْرَيْنِ تَعَلَّقُوا فِيهِ بِخَبَرٍ وَعَمَلٍ وَلَا فَرْقَ؟ وَأَمَّا احْتِجَاجُهُمْ بِأَنَّ " عُهْدَةَ الثَّلَاثِ " إنَّمَا جُعِلَتْ مِنْ أَجْلِ حُمَّى الرِّبْعِ، فَلَا يَخْلُو مِنْ أَنْ تَكُونَ هَذِهِ الْعِلَّةُ مُخْرَجَةً مِنْ عِنْدِ أَنْفُسِهِمْ، أَوْ مُضَافَةً إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا بُدَّ مِنْ أَحَدِهِمَا، فَإِنْ أَضَافُوهَا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ ذَلِكَ كَذِبًا بَحْتًا مُوجِبًا لِلنَّارِ، وَإِنْ كَانُوا أَخْرَجُوهَا مِنْ عِنْدِ أَنْفُسِهِمْ؟ قُلْنَا لَهُمْ: فَلِمَ تَعَدَّيْتُمْ بِالْحُكْمِ بِذَلِكَ إلَى الْإِبَاقِ، وَالْمَوْتِ، وَسَائِرِ الْعُيُوبِ الَّتِي يُقِرُّونَ بِأَنَّهَا حَادِثَةٌ بِلَا شَكٍّ، كَذَهَابِ الْعَيْنِ مِنْ رَمْيَةٍ، وَنَحْوِ ذَلِكَ؟ فَهَذَا عَجَبٌ جِدًّا؟ وَلَيْسَ هَذَا مَوْضِعَ قِيَاسٍ لِافْتِرَاقِ الْعِلَّةِ.

L22271 Furthermore, if you have done this due to this legal cause, we observe that you have discarded the transmitted report concerning this matter and confined yourselves to a rationale of utmost corruption? As for the narrations they disputed through, they have no valid connection to any of them, for no binding proof exists in anyone apart from the Messenger of Allah—peace and blessings be upon him. Moreover, Hishām ibn Ismāʿīl is among those whose narrations we do not know to constitute binding proof—how then could his sermon be considered so? Regarding Abān ibn ʿUthmān's sermon on that matter—we find that they opposed Abān in his ruling that a single irrevocable divorce (al-battah) suffices, in his invalidation of the intoxicated person's divorce, and in other matters. Thus, Abān's ruling is sometimes considered authoritative and sometimes not—this constitutes severe confusion and an impermissible practice.

وَأَيْضًا: فَإِنْ كُنْتُمْ فَعَلْتُمْ ذَلِكَ لِهَذِهِ الْعِلَّةِ فَنَرَاكُمْ قَدْ اطَّرَحْتُمْ الْخَبَرَ الْوَارِدَ فِي ذَلِكَ وَاقْتَصَرْتُمْ عَلَى عِلَّةٍ فِي غَايَةِ الْفَسَادِ؟ ؟ وَأَمَّا الْآثَارُ الَّتِي شَغَبُوا بِهَا فَلَا مُتَعَلَّقَ لَهُمْ بِشَيْءٍ مِنْهَا، لِأَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَيْضًا - فَإِنَّ هِشَامَ بْنَ إسْمَاعِيلَ مِمَّنْ لَا نَعْلَمُهُ تَجِبُ الْحُجَّةُ بِرِوَايَتِهِ فَكَيْفَ بِخُطْبَتِهِ؟ وَأَمَّا خُطْبَةُ أَبَانَ بْنِ عُثْمَانَ بِذَلِكَ - فَعَهْدُنَا بِهِمْ قَدْ خَالَفُوا أَبَانًا فِي قَوْلِهِ: إنَّ أَلْبَتَّةَ فِي الطَّلَاقِ وَاحِدَةٌ، وَفِي إبْطَالِهِ طَلَاقُ السَّكْرَانِ، وَغَيْرِ ذَلِكَ: فَمَرَّةً يَكُونُ حُكْمُ أَبَانَ حُجَّةً، وَمَرَّةً لَا يَكُونُ حُجَّةً - وَهَذَا تَخْلِيطٌ شَدِيدٌ وَعَمَلٌ لَا يَحِلُّ.

L22272 As for Umar ibn Abd al-Aziz, the narration from him regarding this matter is invalid because it comes through Ibn Abi al-Zinad—the first to weaken his transmissions was Malik (who is himself very weak). They discarded the rulings of Umar ibn Abd al-Aziz that were firmly established from him, while the Sunnah aligns with his public command for people to prostrate at "When the sky is split apart" and his very many other legal rulings. Now he has become a proof here, though he was not accepted as proof there. How reprehensible is this action in religion.

وَأَمَّا عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فَالرِّوَايَةُ عَنْهُ بِذَلِكَ سَاقِطَةٌ، لِأَنَّهَا مِنْ طَرِيقِ ابْنِ أَبِي الزِّنَادِ، وَأَوَّلُ مَنْ ضَعَّفَ رِوَايَتَهُ فَمَالِكٌ - وَهُوَ ضَعِيفٌ جِدًّا - وَهُمْ قَدْ اطَّرَحُوا حُكْمَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ الثَّابِتَ عَنْهُ، وَالسُّنَّةُ مَعَهُ فِي أَمْرِهِ النَّاسَ عَلَانِيَةً بِالسُّجُودِ فِي " إذَا السَّمَاءُ انْشَقَّتْ " وَغَيْرِ ذَلِكَ مِنْ أَحْكَامِهِ كَثِيرٌ جِدًّا، فَالْآنَ صَارَ حُجَّةً وَهُنَالِكَ لَيْسَ حُجَّةً، مَا أَقْبَحَ هَذَا الْعَمَلَ فِي الدِّيَانَةِ.

L22273 As for the statement of Yaḥyā ibn Saʿīd al-Anṣārī, it is from the narration of Ibn Samʿān, who is notorious for falsehood - it is impermissible to narrate from him. As for the statements of al-Zuhrī and Saʿīd ibn al-Musayyab: they are authentically transmitted from both, but there exists no valid proof in religious matters through anyone's opinion apart from the Messenger of Allah - peace and blessings of Allah be upon him. Saʿīd's opinion contradicts theirs, for he considered the one-year liability period applicable to every chronic disease without restricting it specifically to insanity, leprosy, or vitiligo. Every rational being knows that gangrene, mortal wounds, and swellings are among chronic diseases. Thus all their pretexts are invalidated, and we find no basis whatsoever in the one-year liability period regarding the mentioned diseases - neither any primary evidence, nor a Companion's ruling, nor analogical reasoning.

وَأَمَّا قَوْلُ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، فَمِنْ رِوَايَةِ ابْنِ سَمْعَانَ، وَهُوَ مَذْكُورٌ بِالْكَذِبِ لَا تَحِلُّ الرِّوَايَةُ عَنْهُ. وَأَمَّا قَوْلُ الزُّهْرِيِّ، وَسَعِيدِ بْنِ الْمُسَيِّبِ: فَصَحِيحٌ عَنْهُمَا، وَلَا حُجَّةَ فِي الدِّينِ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَوْلُ سَعِيدٍ مُخَالِفٌ لَهُمْ؛ لِأَنَّهُ رَأَى عُهْدَةَ السَّنَةِ مِنْ كُلِّ دَاءٍ عُضَالٍ، وَلَمْ يَخُصَّ الْجُنُونَ، وَالْجُذَامَ، وَالْبَرَصَ فَقَطْ، وَقَدْ عَلِمَ كُلُّ ذِي حِسٍّ أَنَّ الْأَكَلَةَ، وَالْجِرْبَةَ، وَالْأَدْرَةَ: مِنْ الْأَدْوَاءِ الْعُضَالِ، فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ، وَمَا نَعْلَمُ لَهُمْ فِي عُهْدَةِ السَّنَةِ مِنْ الْأَدْوَاءِ الْمَذْكُورَةِ أَثَرًا أَصْلًا، وَلَا قَوْلَ صَاحِبٍ، وَلَا قِيَاسًا.

L22274–22275 And some of them said: These diseases do not manifest clearly except after a full year.

وَقَالَ بَعْضُهُمْ: هَذِهِ الْأَدْوَاءُ لَا تَظْهَرُ بِبَيَانٍ إلَّا بَعْدَ عَامٍ.

L22276 Abu Muhammad said: This is a false claim and a statement without proof. Whatever is as such, its ruling is that it must be discarded, and it is not permissible to act upon it. This has never been recognized - not in medicine, nor in the Arabic language, nor in Sharia.

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ دَعْوَى كَاذِبَةٌ، وَقَوْلٌ بِلَا بُرْهَانٍ، وَمَا كَانَ هَكَذَا فَحُكْمُهُ الْإِطْرَاحُ، وَلَا يَحِلُّ الْأَخْذُ بِهِ، وَمَا عُلِمَ هَذَا قَطُّ، لَا فِي طِبٍّ، وَلَا فِي لُغَةٍ عَرَبِيَّةٍ، وَلَا فِي شَرِيعَةٍ.

L22277 Ali said: They also mentioned what we have narrated via the chain of Al-Ḥajjāj ibn Al-Minhāl, from Hammām, from Qatādah that he used to say: If one observes a defect within three nights, he must return the defective item without evidence. However, if he observes a defect after three nights, he must not return it except with evidence.

قَالَ عَلِيٌّ: وَذَكَرُوا أَيْضًا: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هَمَّامٌ عَنْ قَتَادَةَ أَنَّهُ كَانَ يَقُولُ: إنْ رَأَى عَيْبًا فِي ثَلَاثِ لَيَالٍ رَدَّ بِغَيْرِ بَيِّنَةٍ، وَإِنْ رَأَى عَيْبًا بَعْدَ ثَلَاثٍ لَمْ يَرُدَّ إلَّا بِبَيِّنَةٍ.

L22278 From the narration of Ḥammād ibn Salamah, from Ḥumayd, from ʿAbd al-Malik ibn Yaʿlā regarding one who purchases a slave and finds him insane: He said, "If this [defect] becomes apparent within the year, the buyer may compel the seller to swear by Allah, 'I sold him while he was free from insanity.' If it emerges after the year, the seller's oath by Allah—based on his knowledge [at the time of sale]—suffices."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ عَبْدِ الْمَلِكِ بْنِ يَعْلَى فِيمَنْ ابْتَاعَ غُلَامًا فَوَجَدَهُ مَجْنُونًا؟ قَالَ: إنْ ظَهَرَ ذَلِكَ فِي السَّنَةِ فَإِنَّهُ يَسْتَحْلِفُ الْبَائِعَ لَقَدْ بَاعَهُ وَمَا بِهِ جُنُونٌ، وَإِنْ كَانَ بَعْدَ السَّنَةِ فَيَمِينُهُ بِاَللَّهِ عَلَى عِلْمِهِ.

L22279 Some of them mentioned that ʿUmar ibn al-Khaṭṭāb and Ibn al-Zubayr were asked about the option period (al-ʿuhdah), and they said: "We find no better

example than the hadith of Ḥibbān ibn Munqidh when he was deceived in sales. The Prophet (peace be upon him) granted him the option for three days: if he wishes, he may keep [the item], and if he wishes, he may rescind [the sale]."

وَذَكَرَ بَعْضُهُمْ أَنَّ عُمَرَ بْنَ الْخَطَّابِ، وَابْنَ الزُّبَيْرِ سُئِلَا عَنْ الْعُهْدَةِ فَقَالَا: لَا نَجِدُ أَمْثَلَ مِنْ حَدِيثِ «حِبَّانَ بْنِ مُنْقِذٍ إذْ كَانَ يُخْدَعُ فِي الْبُيُوعِ فَجَعَلَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْخِيَارَ ثَلَاثًا إنْ شَاءَ أَخَذَ وَإِنْ شَاءَ رَدَّ» .

L22280 And a report from ʿAlī ibn Abī Ṭālib that he deferred [the case of] the girl afflicted with leprosy and the [specific] disease for a year.

وَخَبَرٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَجَّلَ الْجَارِيَةَ بِهَا الْجُذَامُ، وَالدَّاءُ: سَنَةً.

L22281 Ali said: "None of this constitutes a valid argument for them. As for the report of ʿUmar and Ibn al-Zubayr, there is no indication that they endorse their stance at all. Rather, it demonstrates that it contradicts their opinion, since the two of them clarified it in accordance with the ḥadīth of Ḥabbān ibn Munqidh."

قَالَ عَلِيٌّ: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ -: أَمَّا خَبَرُ عُمَرَ، وَابْنِ الزُّبَيْرِ، فَلَا بَيَانَ فِيهِ بِأَنَّهُمَا يَقُولَانِ بِقَوْلِهِمْ أَصْلًا، بَلْ فِيهِ أَنَّهُ خِلَافُ قَوْلِهِمْ " لِأَنَّهُمَا بَيَّنَاهُ عَلَى حَدِيثِ حِبَّانَ بْنِ مُنْقِذٍ ".

L22282 The Malikis contradict that report. The statements of ʿUmar and Ibn al-Zubayr constitute conclusive evidence against them, as there is absolutely no conformity in the report with their position whatsoever. This is because it mentions only the choice between returning and accepting, without any reference to the existence of a defect, nor does it restrict this ruling to slaves rather than other matters. Thus, it stands as conclusive evidence against them, not for them.

وَالْمَالِكِيُّونَ مُخَالِفُونَ لِذَلِكَ الْخَبَرِ، فَقَوْلُ عُمَرَ، وَابْنِ الزُّبَيْرِ: حُجَّةٌ عَلَيْهِمْ، وَلَا وِفَاقَ فِيهِ لِقَوْلِهِمْ أَصْلًا لِأَنَّهُ إنَّمَا فِيهِ الْخِيَارُ بَيْنَ الرَّدِّ وَالْأَخْذِ فَقَطْ، دُونَ ذِكْرِ وُجُودِ عَيْبٍ، وَلَا فِيهِ تَخْصِيصٌ لِلرَّقِيقِ دُونَ سَائِرِ ذَلِكَ، فَهُوَ حُجَّةٌ عَلَيْهِمْ لَا لَهُمْ.

L22283 And we uphold this position when the purchaser states what Munqidh was instructed to say.

وَنَحْنُ نَقُولُ بِهَذَا إذَا قَالَ الْمُشْتَرِي: مَا أُمِرَ مُنْقِذٌ أَنْ يَقُولَهُ.

L22284–22286 As for the narration of ʿAlī: there is even nothing in it that indicates agreement with their opinion, nor is there any mention of rejection whatsoever. They deceive by using a report containing wording resembling some expressions from their own positions, causing those who do not examine carefully to presume it aligns with their stance—though it does not. Rather, it predominantly opposes their position, or it may neither align nor conflict with it, as is also the case.

وَأَمَّا خَبَرُ عَلِيٍّ: فَلَيْسَ فِيهِ أَيْضًا شَيْءٌ يَدُلُّ عَلَى مُوَافَقَةِ قَوْلِهِمْ، وَلَا ذِكْرُ رَدٍّ أَصْلًا، وَإِنَّمَا يُمَوِّهُونَ بِالْخَبَرِ يَكُونُ فِيهِ لَفْظٌ كَبَعْضِ أَلْفَاظِ قَوْلِهِمْ، فَيَظُنُّ مَنْ لَا يُمْعِنُ النَّظَرَ أَنَّ ذَلِكَ الْخَبَرَ مُوَافِقٌ لِقَوْلِهِمْ، وَلَيْسَ هُوَ كَذَلِكَ، بَلْ هُوَ مُخَالِفٌ لِقَوْلِهِمْ فِي الْأَكْثَرِ، أَوْ لَا مُوَافِقٌ وَلَا مُخَالِفٌ كَذَلِكَ أَيْضًا.

L22287 Abu Muhammad said: Ibn Jurayj reported that he asked Al-Zuhri about the guarantee period of three [days/months] and a year. He replied, "I know of no established precedent regarding this matter."

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ رَوَى ابْنُ جُرَيْجٍ أَنَّهُ سَأَلَ الزُّهْرِيَّ عَنْ عُهْدَةِ الثَّلَاثِ وَالسَّنَةِ؟ فَقَالَ: مَا عَلِمْت فِيهِ أَمْرًا سَالِفًا.

L22288 Ibn Jurayj said, “I asked ʿAṭāʾ about that matter.” He replied, “There was no prior liability concerning the land.” I inquired, “What is the ruling for three days?” He responded, “No obligation applies.”

L22289 Ali said: Allah, the Exalted, said: {No soul earns [sin] except against itself, and no bearer of burdens will bear the burden of another} [Al-An’am 6:164]. It is therefore null and void for a female slave to be owned by Zayd (for whom her sexual relations are lawful), while her legal responsibility rests upon Khālid. Far removed is Allah from this.[10]

L22290 It has been authentically reported from Ibn ‘Umar: “If I found the transaction alive and gathered, it belongs to the buyer”—with no opposing view to it known from the Companions (may Allah be pleased with them).

L22291 We have reported it through the chain of Ibn Wahb from Yunus ibn Yazid from al-Zuhri from Hamzah ibn Abdullah ibn Umar from his father (and this nullifies the three-day waiting period and the one-year period) - and with Allah alone is success, the Exalted.

L22292 Abu Muhammad said: Then we say to them: Inform us about the ruling concerning the trust of the three and the year—is it a Sunnah and an obligation, or is it neither a Sunnah nor an obligation, with one of the two necessarily unavoidable? If they say: “It is a Sunnah and an obligation,” we say: Then how did you deem it permissible to refrain from ruling by it in lands whose inhabitants have agreed to abandon ruling by it? When have you ever seen a Sunnah that is allowed to be neglected or opposed by people? Allah is exalted above such a thing.

L22293 If they say, “This is neither Sunnah nor a rightful claim,” we reply: On what basis have you legitimized seizing people’s forbidden wealth to forcibly transfer it to others? Perhaps the one judged against is a destitute and ruined individual, while the claimant is a wealthy arrogant man. The Messenger of Allah—peace and blessings be upon him—declared: “Your blood and wealth are inviolable upon you.” Yet you have annulled valid transactions through

قَالَ ابْنُ جُرَيْجٍ: وَسَأَلْت عَطَاءً عَنْ ذَلِكَ؟ فَقَالَ: لَمْ يَكُنْ فِيمَا مَضَى عُهْدَةٌ فِي الْأَرْضِ، قُلْت: فَمَا ثَلَاثَةُ أَيَّامٍ؟ قَالَ: لَا شَيْءَ.

قَالَ عَلِيٌّ: قَالَ اللَّهُ تَعَالَى: {وَلا تكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] فَمِنْ الْبَاطِلِ أَنْ تَكُونَ جَارِيَةٌ مِلْكُهَا لِزَيْدٍ وَفَرْجُهَا لَهُ حَلَالٌ وَيَكُونَ ضَمَانُهَا عَلَى خَالِدٍ، حَاشَ لِلَّهِ مِنْ هَذَا.

وَقَدْ صَحَّ عَنْ ابْنِ عُمَرَ: مَا أَدْرَكْت الصَّفْقَةَ حَيًّا مَجْمُوعًا فَهُوَ مِنْ الْمُبْتَاعِ - وَلَا يُعْلَمُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ الزُّهْرِيِّ عَنْ حَمْزَةَ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ - وَهَذَا يُبْطِلُ عُهْدَةَ الثَّلَاثِ، وَالسَّنَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَقُولُ لَهُمْ: أَخْبِرُونَا عَنْ الْحُكْمِ بِعُهْدَةِ الثَّلَاثِ، وَالسَّنَةِ: أَسُنَّةٌ هُوَ وَحَقٌّ أَمْ لَيْسَ سُنَّةً وَلَا حَقًّا، وَلَا بُدَّ مِنْ أَحَدِهِمَا؟ فَإِنْ قَالُوا: هُوَ سُنَّةٌ وَحَقٌّ؟ قُلْنَا: فَمِنْ أَيْنَ اسْتَحْلَلْتُمْ أَنْ لَا تَحْكُمُوا بِهَا فِي الْبِلَادِ الَّتِي اصْطَلَحَ أَهْلُهَا عَلَى تَرْكِ الْحُكْمِ بِهَا فِيهَا؟ وَمَتَى رَأَيْتُمْ سُنَّةً يُفْسَحُ لِلنَّاسِ فِي تَرْكِهَا وَمُخَالَفَتِهَا؟ حَاشَ لِلَّهِ مِنْ هَذَا.

وَإِنْ قَالُوا: لَيْسَتْ سُنَّةً وَلَا حَقًّا؟ قُلْنَا: بِأَيِّ وَجْهٍ اسْتَحْلَلْتُمْ أَنْ تَأْخُذُوا بِهَا أَمْوَالَ النَّاسِ الْمُحَرَّمَةَ فَتُعْطُوهَا غَيْرَهُمْ بِالْكُرْهِ مِنْهُمْ؟ وَلَعَلَّ الْمَحْكُومَ عَلَيْهِ فَقِيرٌ هَالِكٌ، وَالْمَحْكُومَ لَهُ غَنِيٌّ أَشِرٌ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ

[10] **Qur’an references (L22289):** Qur’an 6:164 (Al-An’am).

what is neither Sunnah nor truth, since you permitted abandoning judgment according to the Sunnah and rightful claim. There is no escape for you from either of them. This is as you see.

حَرَامٌ» فَفَسَخْتُمْ الْبُيُوعَ الصَّحِيحَةَ بِمَا لَيْسَ سُنَّةً وَلَا حَقًّا، إذْ أَبَحْتُمْ تَرْكَ الْحُكْمِ بِالسُّنَّةِ وَالْحَقِّ، وَلَا مُخَلِّصَ لَكُمْ مِنْ أَحَدِهِمَا، وَهَذَا كَمَا تَرَى.

L22294–22295 As for Mālik's ruling on crop blights: no precedent is known from any predecessor concerning the division he mentioned—between fruits and cucurbits, and between vegetables and bananas. His opinion on this matter finds no support in the Quran, the Sunnah, any unsound narration whatsoever, the view of any earlier scholar, analogical reasoning (qiyas), or any valid legal opinion.

وَأَمَّا قَوْلُ مَالِكٍ فِي الْجَوَائِحِ: فَإِنَّهُ لَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُ مِمَّا ذَكَرْنَا عَنْهُ مِنْ التَّقْسِيمِ بَيْنَ الثِّمَارِ، وَالْمَقَاثِي، وَبَيْنَ الْبُقُولِ، وَالْمَوْزِ وَلَا يُعَضِّدُ قَوْلَهُ فِي ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ أَصْلًا، وَلَا قَوْلُ أَحَدٍ مِمَّنْ سَلَفَ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ.

L22296 They have weak narrations regarding the allocation of the third, which we will also mention—if Allah, the Exalted, wills—and explain their weakness. Our position on this matter is the view of Abū Ḥanīfah, Sufyān al-Thawrī, Abī Sufyān, one of the two opinions of al-Shāfiʿī, and the opinion of the majority of the Salaf.

وَلَهُمْ فِي تَخْصِيصِ الثُّلُثِ آثَارٌ سَاقِطَةٌ نَذْكُرُهَا أَيْضًا إنْ شَاءَ اللَّهُ تَعَالَى وَنُبَيِّنُ وَهْيَهَا - وَقَوْلُنَا فِي هَذَا هُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَبِي سُفْيَانَ - وَأَحَدِ قَوْلَيْ الشَّافِعِيِّ، وَقَوْلِ جُمْهُورِ السَّلَفِ.

L22297 As has been narrated to us through the chain of Abu Ubaydah - Abdullah ibn Salih narrated from al-Layth ibn Sa'd - Abu Bakr ibn Sahl ibn Hunayf informed me that the members of his household would impose liability for calamities (al-jā'iḥah) upon the buyer. Al-Layth said: "It reached me that Uthman ibn Affan ruled that the calamity (al-jā'iḥah) is borne by the buyer."

كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدَةَ نا عَبْدُ اللَّهِ بْنُ صَالِحٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ أَخْبَرَنِي أَبُو بَكْرِ بْنُ سَهْلِ بْنِ حُنَيْفٍ أَنَّ أَهْلَ بَيْتِهِ كَانُوا يُلْزِمُونَ الْمُشْتَرِيَ الْجَائِحَةَ - قَالَ اللَّيْثُ: وَبَلَغَنِي عَنْ عُثْمَانَ بْنِ عَفَّانَ أَنَّهُ قَضَى بِالْجَائِحَةِ عَلَى الْمُشْتَرِي.

L22298 Abu Muhammad said: Ahmad ibn Hanbal, Abu Ubayd, and Al-Shafi'i—in the initial part of his statement—held the view that the remission of calamity affecting fruits from the buyer is mandated, whether minor or extensive. This opinion of his is supported by an authentic narration, which we shall mention, God willing, and elucidate its rationale and ruling by the power and strength of God Almighty.

قَالَ أَبُو مُحَمَّدٍ: وَذَهَبَ أَحْمَدُ بْنُ حَنْبَلٍ: وَأَبُو عُبَيْدٍ، وَالشَّافِعِيُّ، فِي أَوَّلِ قَوْلِهِ إلَى حَطِّ الْجَائِحَةِ فِي الثِّمَارِ عَنْ الْمُشْتَرِي - قَلَّتْ أَوْ كَثُرَتْ - وَهَذَا قَوْلٌ لَهُ مُتَعَلَّقٌ بِأَثَرٍ صَحِيحٍ، نَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى وَنُبَيِّنُ وَجْهَهُ وَحُكْمَهُ بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ.

L22299 It has been narrated to us through the chain of Muslim ibn al-Ḥajjāj: Muḥammad ibn ʿAbbād reported to us; Abū Ḍamrah reported to us from Ibn Jurayj from Abū al-Zubayr that he heard Jābir ibn ʿAbd Allāh say: The Messenger of Allah (peace and blessings of Allah be upon him) said: "If you sell fruit **to** your brother and it is struck by **a destructive calamity**, it is not lawful for you to **demand payment from him**. By what right do you take your brother's property without legitimate claim?"

رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا مُحَمَّدُ بْنُ عَبَّادٍ نا أَبُو ضَمْرَةَ عَنْ ابْنِ جُرَيْجٍ عَنْ أَبِي الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَوْ بِعْتَ مِنْ أَخِيكَ ثَمَرًا فَأَصَابَتْهُ جَائِحَةٌ فَلَا يَحِلُّ أَنْ تَأْخُذَ مِنْهُ شَيْئًا، بِمَ تَأْخُذُ مَالَ أَخِيكَ بِغَيْرِ حَقٍّ؟» .

وَمِنْ طَرِيقِ مُسْلِمٍ نا بِشْرُ بْنُ الْحَكَمِ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ حُمَيْدٍ الْأَعْرَجِ عَنْ سُلَيْمَانَ بْنِ عَتِيقٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِوَضْعِ الْجَوَائِحِ» .

L22300 And through the transmission of Muslim: Bishr ibn al-Ḥakam reported to us, Sufyān—who is Ibn ʿUyaynah—reported to us, from Ḥumayd al-Aʿraj, from Sulaymān ibn ʿAtīq, from Jābir ibn ʿAbd Allāh: "That the Prophet—peace and blessings be upon him—commanded the waiver for crop disasters."

قَالَ عَلِيٌّ: وَهَذَانِ أَثَرَانِ صَحِيحَانِ.

L22301 Ali said, "These two are authentic narrations."

وَقَالُوا أَيْضًا: عَلَى بَائِعِ الثَّمَرَةِ إسْلَامُهَا إلَى الْمُشْتَرِي طَيِّبَةً كُلَّهَا فَإِذَا لَمْ يَفْعَلْ، سَقَطَ عَنْ الْمُشْتَرِي بِمِقْدَارِ مَا لَمْ يُسَلَّمْ إلَيْهِ كَمَا يَلْزَمُ.

L22302 They also said: The seller is obligated to formally deliver the entire fruit to the buyer in a wholly wholesome condition. If the seller fails to do so, the buyer is relieved of their obligation proportionally to the undelivered portion, as necessitated by the ruling.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ أَنَسِ بْنِ عِيَاضٍ أَنَّ أَبَا إِسْحَاقَ مُقَدَّمًا مَوْلَى أُمِّ الْحَكَمِ بِنْتِ عَبْدِ الْحَكَمِ حَدَّثَهُ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ قَضَى بِوَضْعِ الْجَوَائِحِ.

L22303–22304 Via the chain of Ibn Wahb from Anas ibn Iyad: Abu Ishaq al-Muqaddam, the client of Umm al-Hakam bint Abd al-Hakam, narrated to him that Umar ibn Abd al-Aziz decreed the remission of tax obligations due to crop calamities.

وَبِهِ إلَى ابْنِ وَهْبٍ عَنْ عُثْمَانَ بْنِ الْحَكَمِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: الْجَوَائِحُ كُلُّ ظَاهِرٍ مُفْسِدٍ مِنْ مَطَرٍ أَوْ بَرَدٍ أَوْ رِيحٍ أَوْ حَرِيقٍ أَوْ جَرَادٍ.

L22305 Narrated by Ibn Wahb, from Uthman ibn al-Hakam, from Ibn Jurayj, from Ata, who said: "Agricultural disasters refer to every widespread ruinous event, such as excessive rain, hail, destructive winds, wildfires, or locusts."

قَالَ أَبُو مُحَمَّدٍ: إنْ لَمْ يَأْتِ مَا يُبَيِّنُ أَنَّ هَذَيْنِ الْخَبَرَيْنِ الْمَذْكُورَيْنِ عَلَى غَيْرِ ظَاهِرِهِمَا وَإِلَّا فَلَا يَحِلُّ خِلَافُ مَا فِيهِمَا، وَعَلَى كُلِّ حَالٍ فَلَا حُجَّةَ فِيهِمَا لِقَوْلِ مَالِكٍ، بَلْ هُمَا حُجَّةٌ عَلَيْهِ؛ لِأَنَّهُ لَيْسَ فِيهِمَا تَخْصِيصُ ثُلُثٍ مِنْ غَيْرِهِ.

L22306 Abū Muḥammad said: If no evidence emerges to clarify that these two mentioned narrations contradict their apparent meaning, then it is impermissible to contravene their rulings. In any case, they provide no proof for Mālik's opinion; rather, they constitute proof against him, as they do not specify a third distinct from the remainder.

فَنَظَرْنَا هَلْ جَاءَ فِي هَذَا الْحُكْمِ غَيْرُ هَذَيْنِ الْخَبَرَيْنِ؟ فَوَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا لَيْثُ بْنُ سَعْدٍ عَنْ بُكَيْرٍ - هُوَ ابْنُ الْأَشَجِّ - عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: «أُصِيبَ رَجُلٌ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ثِمَارٍ ابْتَاعَهَا، فَكَثُرَ دَيْنُهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: تَصَدَّقُوا عَلَيْهِ

L22307 We examined whether there were any reports besides these two narrations regarding this ruling. We found what we have narrated through Imam Muslim's chain: Qutaybah ibn Saʿīd narrated to us, Layth ibn Saʿd narrated to us, from Bukayr — who is Ibn al-Ashajj — from ʿIyāḍ ibn ʿAbd Allāh, from Abū Saʿīd al-Khudrī, who said: "A man during the time of the Messenger of Allāh — Peace and Blessings be upon Him — suffered a loss in fruits he had purchased, and his debts multiplied. The Messenger of Allāh — Peace and Blessings be upon Him — said: 'Give charity to him.' The people gave him

charity, but it did not suffice to settle his debt. The Messenger of Allāh — Peace and Blessings be upon Him — then said to his creditors: 'Take what you find, and you are entitled to nothing beyond that.'" Did the Messenger of Allāh — Peace and Blessings be upon Him — not take out from his own wealth for the creditors, without waiving anything from the debtor due to the agricultural calamity? We then examined this narration alongside the two preceding narrations of Jābir.[11]

فَتَصَدَّقَ النَّاسُ عَلَيْهِ فَلَمْ يَبْلُغْ ذَلِكَ وَفَاءَ دَيْنِهِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِغُرَمَائِهِ: خُذُوا مَا وَجَدْتُمْ وَلَيْسَ لَكُمْ إِلَّا ذَلِكَ» فَأَخْرَجَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ مَالِهِ لِغُرَمَائِهِ، وَلَمْ يُسْقِطْ عَنْهُ لِأَجْلِ الْجَائِحَةِ شَيْئًا؟ فَنَظَرْنَا فِي هَذَا الْخَبَرِ مَعَ خَبَرَيْ جَابِرٍ الْمُتَقَدِّمَيْنِ.

L22308 We found two reports from the chains of Jābir and Anas that came with a clarification reconciling all these reports—by the praise of Allah, the Exalted.

فَوَجَدْنَا خَبَرَيْنِ مِنْ طَرِيقِ جَابِرٍ، وَأَنَسٍ، قَدْ وَرَدَا بِبَيَانٍ تَتَأَلَّفُ بِهِ هَذِهِ الْأَخْبَارُ كُلُّهَا - بِحَمْدِ اللَّهِ تَعَالَى.

L22309 As we were narrated through the chain of Muslim: Abu Tahir reported to me - I am Ibn Wahb - Malik informed me from Humaid at-Tawil from Anas that "Allah's Messenger - peace and blessings be upon him - prohibited selling fruit until it begins to show color." They asked: "What is 'showing color'?" He replied: "When it turns red. Do you not see - if Allah prevents the fruit from maturing, by what means do you claim lawful ownership of your brother's property?"

كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي أَبُو الطَّاهِرِ أَنَا ابْنُ وَهْبٍ أَخْبَرَنِي مَالِكٌ عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ أَنَسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ بَيْعِ الثَّمَرِ حَتَّى تُزْهِيَ قَالُوا: وَمَا تُزْهِي؟ قَالَ: تَحْمَرُّ، أَرَأَيْتَ إِذَا مَنَعَ اللَّهُ الثَّمَرَةَ بِمَ تَسْتَحِلُّ مَالَ أَخِيكَ؟» .

L22310–22312 And from the path of Ahmad ibn Shu'ayb: Qutaybah informed us: Sufyan—he is Ibn Uyaynah—informed us from Humaid al-A'raj. From Jābir, through Sulaymān ibn 'Atīq: "The Prophet—peace and blessings of Allah be upon him—forbade selling fruit for multiple years." These two narrations confirm that the crop failures the Messenger of Allah—peace and blessings of Allah be upon him—commanded to be waived are those affecting fruit sold for multiple years before it blooms. The calamity not waived—holding the buyer fully responsible for the loss and requiring him to bear it entirely—is that which strikes the sold fruit after its ripeness becomes evident and its sale becomes permissible. Success is attained only through Allah, the Exalted.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنَا قُتَيْبَةُ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ حُمَيْدٍ الْأَعْرَجِ عَنْ سُلَيْمَانَ بْنِ عَتِيقٍ عَنْ جَابِرٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ بَيْعِ الثَّمَرِ السِّنِينَ» . فَصَحَّ بِهَذَيْنِ الْخَبَرَيْنِ أَنَّ الْجَوَائِحَ الَّتِي أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِوَضْعِهَا هِيَ الَّتِي تُصِيبُ مَا بِيعَ مِنْ الثَّمَرِ سِنِينَ، وَقَبْلَ أَنْ يُزْهِيَ، وَأَنَّ الْجَائِحَةَ الَّتِي لَمْ يُسْقِطْهَا وَأَلْزَمَ الْمُشْتَرِيَ مُصِيبَتَهَا، وَأَخْرَجَهُ عَنْ جَمِيعِ مَالِهِ بِهَا -: هِيَ الَّتِي تُصِيبُ الثَّمَرَ الْمَبِيعَ بَعْدَ ظُهُورِ الطَّيِّبِ فِيهِ وَجَوَازِ بَيْعِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L22313 Moreover, the Messenger of Allah - peace and blessings be upon him - said: "If you sell dates to your brother and a calamity befalls them, it is not lawful for you to take anything from him." He - peace be upon him - did not

وَأَيْضًا: فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَوْ بِعْتَ مِنْ أَخِيكَ تَمْرًا فَأَصَابَتْهُ جَائِحَةٌ فَلَا يَحِلُّ لَكَ أَنْ تَأْخُذَ مِنْهُ شَيْئًا» فَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - شَجَرًا فِي وَرِقِهِ

[11] **Hadith references (L22307):** Sahih Muslim 1556a; Jami at-Tirmidhi 655.

مِنْ ثَمَرٍ مَوْضُوعٍ الْأَرْضِ وَهُمْ يَخُصُّونَ ذَلِكَ بِآرَائِهِمْ، فَقَدْ صَحَّ خِلَافُهُمْ لِهَذَا الْخَبَرِ وَتَخْصِيصُهُمْ لَهُ، وَبَطَلَ احْتِجَاجُهُمْ بِهِ عَلَى عُمُومِهِ وَالْأَخْذُ فِيهِ.

distinguish between a tree in its foliage and harvested fruits deposited on the ground, yet they have specified this distinction through their opinions. Thus, their disagreement with this report and their specification of it have been confirmed, invalidating their argument against its general applicability and their juristic application thereof.

وَأَمَرَ بِوَضْعِ الْجَوَائِحِ وَلَمْ يَذْكُرْ فِي ثَمَرٍ وَلَا فِي غَيْرِهِ، وَلَا فِي أَيِّ جَائِحَةٍ هُوَ - فَصَحَّ أَنَّهُمْ مُخَالِفُونَ لَهُ أَيْضًا، وَبَطَلَ أَنْ يَحْتَجُّوا بِهِ عَلَى عُمُومِهِ، وَصَارَ قَوْلُهُمْ، وَقَوْلُنَا فِي هَذَيْنِ الْخَبَرَيْنِ سَوَاءً فِي تَخْصِيصِهِمْ، إِلَّا أَنَّهُمْ خَصُّوهُمَا بِلَا دَلِيلٍ؟ قَالَ أَبُو مُحَمَّد: وَالْخَسَارَةُ لِانْحِطَاطِ السِّعْرِ جَائِحَةٌ بِلَا شَكٍّ، وَهُمْ لَا يَضَعُونَ عَنْهُ شَيْئًا لِذَلِكَ - وَأَمَّا قَوْلُهُمْ عَلَى الْبَائِعِ أَنْ يُسَلِّمَهَا طَيِّبَةً إلَى الْمُشْتَرِي؟ فَبَاطِلٌ مَا عَلَيْهِ ذَلِكَ، إنَّمَا عَلَيْهِ أَنْ يُسَلِّمَ إلَيْهِ مَا بَاعَ بَيْعًا جَائِزًا فَقَطْ، إذْ لَمْ يُوجِبْ عَلَيْهِ غَيْرَ ذَلِكَ نَصٌّ وَلَا إجْمَاعٌ - وَهَذَا مِمَّا خَالَفَ فِيهِ الْمَالِكِيُّونَ الْقِيَاسَ، وَالْأُصُولَ، إذَا جَعَلُوا مَالًا رِبْحُهُ وَمِلْكُهُ لِزَيْدٍ، وَخَسَارَتُهُ عَلَى عَمْرٍو: الَّذِي لَا يَمْلِكُهُ.

He ordered the remission of debts for agricultural calamities but did not mention whether this applies to fruits or other produce, nor specify what type of calamity it pertains to. This establishes that they contradict him as well, nullifies their reliance on this as evidence for general applicability, and equates their stance with ours in particularizing these two reports—except that they particularized them without evidence. Abū Muḥammad said: Loss due to price decrease is undoubtedly a calamity, yet they remit nothing for it. As for their claim that the seller must deliver the goods in sound condition to the buyer, this is invalid. He is only obligated to deliver what was sold through a valid sale, as no scriptural text or consensus imposes more than this. Herein the Mālikīs opposed legal analogy (qiyās) and juristic principles (uṣūl) by attributing an asset's profit and ownership to Zayd while burdening its loss on ʻAmr—who does not own it.

قَالَ عَلِيٌّ: وَأَمَّا الْآثَارُ الْوَاهِيَةُ الَّتِي احْتَجَّ بِهَا مُقَلِّدُو مَالِكٍ -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ نا مُطَرِّفٌ عَنْ أَبِي طُوَالَةَ عَنْ أَبِيهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا أُصِيبَ ثُلُثُ الثَّمَرِ فَقَدْ وَجَبَ عَلَى الْبَائِعِ الْوَضِيعَةُ» .

Ali said: As for the weak narrations cited by the followers of Mālik as evidence - we have been narrated through the chain of ʻAbd al-Malik ibn Ḥabīb al-Andalusī, from Muṭarrif, from Abū Ṭuwālah, from his father: "The Messenger of Allah - peace and blessings be upon him - said: 'If a third of the fruit is afflicted, the seller becomes liable for bearing the loss.'"

قَالَ عَبْدُ الْمَلِكِ: وَحَدَّثَنِي أَصْبَغُ بْنُ الْفَرَجِ عَنْ السَّبِيعِيِّ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ عَنْ رَبِيعَةَ الرَّأْيِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِوَضْعِ الْجَائِحَةِ إذَا بَلَغَتْ ثُلُثَ الثَّمَرِ فَصَاعِدًا» .

Abd al-Malik said: Asbagh ibn al-Faraj narrated to me from al-Sabīʻī ʻAbd al-Jabbār ibn ʻUmar from Rabīʻah al-Raʾy that the Messenger of Allah—peace and blessings be upon him—commanded that agricultural dues be waived for crop losses when the calamity reached one-third of the crops or more.

قَالَ عَبْدُ الْمَلِكِ: وَحَدَّثَنِي عُبَيْدُ اللَّهِ بْنُ مُوسَى عَنْ خَالِدِ بْنِ إيَاسٍ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ:

Abd al-Malik said: Ubayd Allah ibn Musa narrated to me from Khalid ibn Iyas from Yahya ibn Sa'id from Abu al-Zubayr from Jabir, who said:

قَالَ عَبْدُ الْمَلِكِ: وَحَدَّثَنِي عُبَيْدُ اللَّهِ بْنُ مُوسَى عَنْ خَالِدِ بْنِ إِيَاسٍ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «خَمْسٌ مِنَ الْجَوَائِحِ: الرِّيحُ، وَالْبَرَدُ، وَالْحَرِيقُ، وَالْجَرَادُ، وَالسَّيْلُ» .

The Messenger of Allah—peace be upon him—said: “Five are among the calamities [that destroy crops]: wind, hail, fire, locusts, and flood.”

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّهُ كَذِبٌ: عَبْدُ الْمَلِكِ مَذْكُورٌ بِالْكَذِبِ.

L22319 Abu Muhammad said: All of this is falsehood: Abd al-Malik is mentioned as a liar.

وَالْأَوَّلُ مُرْسَلٌ مَعَ ذَلِكَ.

L22320 The first is nevertheless a *mursal*.

وَالسَّبِيعِيُّ مَجْهُولٌ لَا يَدْرِي أَحَدٌ مَنْ هُوَ؟ وَعَبْدُ الْجَبَّارِ بْنُ عُمَرَ ضَعِيفٌ وَهُوَ أَيْضًا مُرْسَلٌ - فَسَقَطَ كُلُّ ذَلِكَ، وَخَالِدُ بْنُ إِيَاسٍ سَاقِطٌ - ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ أَمْرٌ بِإِسْقَاطِ الْجَوَائِحِ أَصْلًا، لَا بِنَصٍّ، وَلَا بِدَلِيلٍ، إلَّا أَنَّ الْحَنَفِيِّينَ الَّذِينَ يَحْتَجُّونَ بِرِوَايَاتِ الْكَذَّابِينَ وَمُرْسَلَاتِهِمْ: كَمُبَشِّرِ بْنِ عُبَيْدٍ الْحَلَبِيِّ، وَجَابِرٍ الْجُعْفِيِّ، وَغَيْرِهِمَا: فَلَا عُذْرَ لَهُمْ فِي أَنْ لَا يَأْخُذُوا بِهَذِهِ الْمَرَاسِيلِ - وَهَذَا مِمَّا تَنَاقَضُوا فِيهِ.

L22321 Al-Sabiʿī is unknown—does anyone know who he is? ʿAbd al-Jabbār ibn ʿUmar is weak and his narration is mursal. Thus, all of that has been rejected, and Khālid ibn Iyās is rejected. Moreover, even if it were authentic, it would contain no directive whatsoever to waive compensation for crop disasters—neither through explicit text nor any evidence. Yet the Ḥanafīs, who rely on narrations from liars and their mursal reports like Mubashshir ibn ʿUbayd al-Ḥalabī, Jābir al-Juʿfī, and others, have no excuse for rejecting these mursal narrations. This is among the matters in which they have contradicted themselves.

وَذَكَرَ الْمَالِكِيُّونَ عَمَّنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ نا ابْنُ أَبِي أُوَيْسٍ عَنْ الْحُسَيْنِ بْنِ عَبْدِ اللَّهِ بْنِ ضُمَيْرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّهُ كَانَ يَقْضِي بِوَضْعِ الْجَائِحَةِ إذَا بَلَغَتْ ثُلُثَ الثَّمَرِ فَصَاعِدًا.

L22322 The Malikis cited from those other than the Messenger of Allah—peace and blessings of Allah be upon him—what we have transmitted through the chain of ʿAbd al-Malik ibn Ḥabīb, who narrated from Ibn Abī Uways, from al-Ḥusayn ibn ʿAbd Allāh ibn Ḍumayrah, from his father, from his grandfather, from ʿAlī ibn Abī Ṭālib: that he decreed the remission of obligations in cases of crop damage when it affected one-third of the fruit or more.

وَمِنْ طَرِيقِ ابْنِ حَبِيبٍ أَيْضًا حَدَّثَنِي الْحُذَافِيُّ عَنْ الْوَاقِدِيِّ عَنْ مُوسَى بْنِ إبْرَاهِيمَ التَّيْمِيِّ عَنْ أَبِيهِ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: بَاعَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ مِنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَيْنًا لَهُ فَأَصَابَهُ الْجَرَادُ فَأَذْهَبَهُ أَوْ أَكْثَرَهُ، فَاخْتَصَمَا إلَى عُثْمَانَ فَقَضَى عَلَى عَبْدِ الرَّحْمَنِ بِرَدِّ الثَّمَنِ إلَى سَعْدٍ.

L22323 And through the chain of Ibn Habib as well, Al-Hudhafi narrated to me from Al-Waqidi from Musa ibn Ibrahim al-Taymi from his father from Sulayman ibn Yasar, who said: Abd al-Rahman ibn Awf sold his tangible property to Sa’d ibn Abi Waqqas, and locusts afflicted it, destroying it or most of it. They disputed before Uthman, who ruled that Abd al-Rahman must return the price to Sa’d.

قَالَ الْوَاقِدِيُّ: وَكَانَ سَهْلُ بْنُ أَبِي حَثْمَةَ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ، وَالْقَاسِمُ، وَسَالِمٌ، وَعَلِيُّ بْنُ الْحُسَيْنِ، وَسُلَيْمَانَ بْنِ يَسَارٍ، وَعَطَاءُ بْنُ أَبِي رَبَاحٍ -: يَرَوْنَ الْجَائِحَةَ مَوْضُوعَةً عَنْ الْمُشْتَرِي إذَا بَلَغَتْ الثُّلُثَ فَصَاعِدًا.

L22324 Al-Waqidi said: Sahl ibn Abi Hathma, Umar ibn Abd al-Aziz, al-Qasim, Salim, Ali ibn al-Husayn, Sulayman ibn Yasar, and Ataa ibn Abi Rabah held that the ja'ihah (natural disaster) is waived for the buyer if it reaches one-third or upwards.

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّهُ بَاطِلٌ، لِأَنَّهُ كُلُّهُ مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ، ثُمَّ الْحُسَيْنِ بْنِ عَبْدِ اللَّهِ بْنِ ضُمَيْرَةَ مُطْرَحٌ، مُتَّفَقٌ عَلَى أَنْ لَا يُحْتَجَّ بِرِوَايَتِهِ، وَأَبُوهُ مَجْهُولٌ، وَالْوَاقِدِيُّ مَذْكُورٌ بِالْكَذِبِ.

L22325 Abu Muhammad said: All of this is null and void, because it is entirely transmitted through ʿAbd al-Malik ibn Ḥabīb, then al-Ḥusayn ibn ʿAbd Allāh ibn Ḍumayrah—discarded, as there is consensus that his narration is not to be relied upon, and his father is unknown, while al-Wāqidī is cited for dishonesty.

ثُمَّ لَوْ صَحَّ حَدِيثُ عُثْمَانَ لَكَانَ فِيهِ أَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ لَمْ يَرَ رَدَّ الْجَائِحَةِ وَإِنْ أَتَتْ عَلَى الثَّمَرِ كُلِّهِ أَوْ أَكْثَرَ - وَإِذَا وَقَعَ الْخِلَافُ فَلَا حُجَّةَ فِي قَوْلِ بَعْضِهِمْ دُونَ بَعْضٍ، وَالثَّابِتُ فِي هَذَا عَنْ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَهُوَ عَالِمُ أَهْلِ الْمَدِينَةِ فِي عَصْرِهِ - مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ مُحَمَّدٌ نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَبِيعُوا الثَّمَرَ حَتَّى يَبْدُوَ صَلَاحُهُ» ، فَقِيلَ لِابْنِ عُمَرَ: مَا صَلَاحُهُ؟ قَالَ: تَذْهَبُ عَاهَتُهُ ".

L22326–22327 Furthermore, if the hadith of Uthman were authentic, it would indicate that Abd al-Rahman ibn Awf did not recognize compensation for crop calamity even if it afflicted all or most of the fruit. When disagreement arises, there is no conclusive evidence in the opinion of one party over another. What is firmly established in this matter from Ibn Umar—may Allah be pleased with him, the preeminent scholar among the people of Medina in his time—is the narration transmitted to us through Abdullah ibn Yusuf via Ahmad ibn Fath, via Abd al-Wahhab Muhammad, via Ahmad ibn Muhammad, via Ahmad ibn Ali, via Muslim ibn al-Hajjaj, via Muhammad ibn al-Muthanna, via Muhammad ibn Ja'far, via Shu'bah, from Abdullah ibn Dinar, from Ibn Umar, who said: The Messenger of Allah—peace and blessings be upon him—stated, "Do not sell fruit until its ripeness becomes apparent." When asked, "What constitutes its ripeness?" Ibn Umar responded, "When its defects disappear."

قَالَ أَبُو مُحَمَّد: تَأَمَّلُوا هَذَا فَإِنَّ ابْنَ عُمَرَ رَوَى نَهْيَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الثَّمَرِ قَبْلَ، بُدُوِّ صَلَاحِهِ - وَفَسَّرَ ابْنُ عُمَرَ بِأَنَّ بُدُوَّ صَلَاحِ الثَّمَرِ: هُوَ ذَهَابُ عَاهَتِهِ.

L22328 Abu Muhammad said: Reflect on this, for Ibn ʿUmar reported the Prophet's prohibition—peace and blessings be upon him—against selling fruit before the onset of its ripeness, and Ibn ʿUmar explained that the onset of the fruit's ripeness is the disappearance of its defects.

L22329 Thus, it was certainly established that the calamity (al-ʿāha, i.e., al-jā'iḥa) according to Ibn ʿUmar occurs only before the fruit's readiness becomes apparent, and that there is no calamity (ʿāha) or disaster (jā'iḥa) after the fruit's readiness becomes evident. This is the explicit text of our position—praise be

to Allah, Lord of the Worlds—and no other contrary to this is authentically transmitted from any of the Companions—may Allah be pleased with them.

فَصَحَّ يَقِينًا أَنَّ الْعَاهَةَ وَهِيَ الْجَائِحَةُ لَا تَكُونُ عِنْدَ ابْنِ عُمَرَ إِلَّا قَبْلَ بُدُوِّ صَلَاحِ الثَّمَرِ، وَأَنَّهُ لَا عَاهَةَ، وَلَا جَائِحَةَ بَعْدَ بُدُوِّ صَلَاحِ الثَّمَرِ، وَهَذَا هُوَ نَصُّ قَوْلِنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - وَلَا يَصِحُّ غَيْرُ هَذَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L22330 Among the inconsistencies of the Mālikīs in this matter is their statement regarding one who sells fruit that has ripened for consumption and reached its harvest time, but later all or part of it is destroyed: that nothing from the price is reduced due to this occurrence.

وَمِنْ تَنَاقُضِ الْمَالِكِيِّينَ فِي هَذَا أَنَّهُمْ يَقُولُونَ فِيمَنْ بَاعَ ثَمَرًا قَدْ طَابَ أَكْلُهُ وَحَضَرَ جِدَادُهُ فَأُجِيحَ كُلُّهُ أَوْ بَعْضُهُ -: لَمْ يَسْقُطْ عَنْهُ لِذَلِكَ شَيْءٌ مِنْ الثَّمَنِ -.

L22331 And this is wholly contrary to all the subjects we have previously mentioned.

وَهَذَا خِلَافُ كُلِّ مَا ذَكَرْنَا آنِفًا مِنْ الْمَوْضُوعَاتِ جُمْلَةً.

L22332 If they cite as evidence in that matter the saying of the Prophet—peace and blessings be upon him—"A third, and a third is much."

فَإِنْ احْتَجُّوا فِي ذَلِكَ بِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الثُّلُثُ وَالثُّلُثُ كَثِيرٌ» .

L22333 We said: Yes, this applies to bequests, but from where do you derive that extensive crop losses are reduced below minor ones, to the extent of limiting this to one-third? You yourselves assert regarding a wealthy man possessing one hundred thousand dinars who buys produce for three dirhams, suffers loss in one-third of the crop, then sells the remainder for one dinar: that the crop loss is waived for him.

قُلْنَا: نَعَمْ هَذَا فِي الْوَصِيَّةِ، وَلَكِنْ مِنْ أَيْنَ لَكُمْ أَنَّ الْكَثِيرَ مِنْ الْجَوَائِحِ يُوضَعُ دُونَ الْقَلِيلِ حَتَّى تَحُدُّوا ذَلِكَ بِالثُّلُثِ؟ وَأَنْتُمْ تَقُولُونَ فِي غَنِيٍّ لَهُ مِائَةُ أَلْفِ دِينَارٍ ابْتَاعَ ثَمَرًا بِثَلَاثَةِ دَرَاهِمَ فَأُجِيحَ فِي ثُلُثِ الثَّمَرَةِ ثُمَّ بَاعَ الْبَاقِيَ بِدِينَارٍ -: أَنَّهُ تُوضَعُ عَنْهُ الْجَائِحَةُ.

L22334 And you say regarding a poor person who purchased a fruit for a dinar, then a quarter of it was lost, after which the fruits depreciated in value, so he sold the remainder for a dirham—that nothing is reduced from him, and "much" and "little" are merely by relation, as you observe, not absolute.

وَتَقُولُونَ فِي مِسْكِينٍ ابْتَاعَ ثَمَرَةً بِدِينَارٍ فَذَهَبَ رُبْعُهَا ثُمَّ رَخُصَ الثَّمَرُ فَبَاعَ الْبَاقِيَ بِدِرْهَمٍ -: أَنَّهُ لَا يُحَطُّ عَنْهُ شَيْءٌ، وَالْكَثِيرُ وَالْقَلِيلُ إنَّمَا هُمَا بِإِضَافَةٍ كَمَا تَرَى لَا عَلَى الْإِطْلَاقِ.

L22335–22336 Then they soon contradicted themselves through the most base, most despicable contradiction - one most removed from correctness: permitting a married woman to dispose of a third of her wealth for charity without her husband's consent, while prohibiting her from exceeding a third without his permission. Thus they deemed a third here to be small (equating it with amounts below a third), yet in cases of agricultural calamity treated a third as substantial, contrary to amounts less than a third.

ثُمَّ لَمْ يَلْبَثُوا أَنْ تَنَاقَضُوا أَسْمَجَ تَنَاقُضٍ وَأَغَثَّهُ وَأَبْعَدَهُ عَنْ الصَّوَابِ لِلْمَرْأَةِ ذَاتِ الزَّوْجِ أَنْ تَحْكُمَ فِي الصَّدَقَةِ بِالثُّلُثِ مِنْ مَالِهَا فَأَقَلَّ بِغَيْرِ رِضَا زَوْجِهَا، وَلَا يَجُوزُ لَهَا ذَلِكَ فِيمَا كَانَ أَكْثَرَ مِنْ الثُّلُثِ إلَّا بِإِذْنِ زَوْجِهَا، فَجَعَلُوا الثُّلُثَ هَهُنَا قَلِيلًا كَمَا هُوَ دُونَ الثُّلُثِ وَجَعَلُوهُ فِي الْجَائِحَةِ كَثِيرًا بِخِلَافِ مَا دُونَهُ.

L22337 If one stipulates the third or more as the endowed portion, the endowment is invalid. But if one stipulates less than a third, it is permissible and the

endowment is valid—thus they ruled that a third here is excessive, unlike amounts below it.

ثُمَّ قَالُوا: إنَّ اشْتَرَطَ الْمُحْبَسِ مِمَّا حَبَسَ الثُّلُثَ فَمَا زَادَ بَطَلَ الْحَبْسُ، فَإِنْ اشْتَرَطَ أَقَلَّ مِنْ الثُّلُثِ جَازَ وَصَحَّ الْحَبْسُ - فَجَعَلُوا الثُّلُثَ هَهُنَا كَثِيرًا بِخِلَافِ مَا دُونَهُ.

L22338 Then they said: Whoever sells a sword adorned with silver or a Quran similarly adorned with silver—if the silver on them amounts to a third of the total value of the entire item or less, this is considered minor, and it is permissible to sell them for silver. But if the silver on them constitutes more than a third of the total value of the entire item, it is entirely impermissible to sell them for silver. Thus, they deemed the third in this case to be minor, treating it under the ruling applicable to smaller proportions.

ثُمَّ قَالُوا: مَنْ بَاعَ سَيْفًا مُحَلًّى بِفِضَّةٍ أَوْ مُصْحَفًا كَذَلِكَ يَكُونُ مَا عَلَيْهِمَا مِنْ الْفِضَّةِ ثُلُثَ قِيمَةِ الْجَمِيعِ فَأَقَلَّ فَهَذَا قَلِيلٌ، وَيَجُوزُ بَيْعُهُ بِالْفِضَّةِ وَإِنْ كَانَ مَا عَلَيْهِمَا مِنْ الْفِضَّةِ أَكْثَرَ مِنْ الثُّلُثِ لَمْ يَجُزْ أَنْ يُبَاعَا بِفِضَّةٍ أَصْلًا - فَجَعَلُوا الثُّلُثَ هَهُنَا قَلِيلًا فِي حُكْمِ مَا دُونَهُ.

L22339 They permitted a person to reserve a portion of the fruit of his trees or crops of his land when selling it by measured volume, amounting to a third or less, and prohibited him from reserving anything exceeding a third. Therefore, they deemed a third to be a small amount, treated under the same legal ruling as amounts below it.

وَأَبَاحُوا أَنْ يَسْتَثْنِيَ الْمَرْءُ مِنْ ثَمَرِ شَجَرِهِ وَمِنْ زَرْعِ أَرْضِهِ إذَا بَاعَهَا مَكِيلَةً تَبْلُغُ الثُّلُثَ فَأَقَلَّ - وَمَنَعُوا مِنْ اسْتِثْنَاءِ مَا زَادَ عَلَى الثُّلُثِ - فَجَعَلُوا الثُّلُثَ هَهُنَا قَلِيلًا فِي حُكْمِ مَا دُونَهُ.

L22340 Then they prohibited anyone who sold a sheep while reserving portions of its meat (in *ratls*) for themselves from reserving an amount equivalent to a third or more of the total meat. They permitted reserving quantities less than a third (in *ratls*) - thereby considering a third here as excessive compared to smaller amounts below it.

ثُمَّ مَنَعُوا مَنْ بَاعَ شَاةً وَاسْتَثْنَى مِنْ لَحْمِهَا لِنَفْسِهِ أَرْطَالًا أَنْ يَسْتَثْنِيَ مِنْهَا مِقْدَارَ ثُلُثِهَا فَصَاعِدًا، وَأَبَاحُوا لَهُ أَنْ يَسْتَثْنِيَ مِنْهَا أَرْطَالًا أَقَلَّ مِنْ الثُّلُثِ - فَجَعَلُوا الثُّلُثَ هَهُنَا كَثِيرًا بِخِلَافِ مَا دُونَهُ.

L22341 They then permitted one who purchased a house containing trees with fruit not yet ready for use to include the fruit in the house's rent, provided a third of the total value derived from both the fruit and the house's rent. However, they prohibited this if the share amounted to a third or more. Thus, they treated a third here as insignificant, subjecting it to the ruling applicable to amounts below a third.

ثُمَّ أَبَاحُوا لِمَنْ اشْتَرَى دَارًا فِيهَا شَجَرٌ فِيهَا ثَمَرٌ لَمْ يَبْدُ صَلَاحُهُ أَنْ يُدْخِلَ الثَّمَرَ فِي كِرَاءِ الدَّارِ إنْ كَانَ الثُّلُثُ بِالْقِيمَةِ مِنْهُ وَمِنْ كِرَاءِ الدَّارِ - وَمَنَعُوا مِنْ ذَلِكَ إذَا كَانَ الثُّلُثَ فَأَكْثَرَ -: فَجَعَلُوا الثُّلُثَ هَهُنَا قَلِيلًا فِي حُكْمِ مَا دُونَهُ.

L22342 Then they considered a tenth [increase] as negligible and anything exceeding it as excessive. They ruled concerning one who instructed another to purchase a servant for thirty dinars - if the agent bought her for thirty-three dinars - that the mandator becomes liable because this [three-dinar] increase is negligible. They said: "If he bought her for more than a tenth extra, the mandator is not liable because that is excessive." This resembles arbitrari-

ثُمَّ جَعَلُوا الْعُشْرَ قَلِيلًا وَمَا زَادَ عَلَيْهِ كَثِيرًا فَقَالُوا فِيمَنْ أَمَرَ آخَرَ بِأَنْ يَشْتَرِيَ لَهُ خَادِمًا بِثَلَاثِينَ دِينَارًا فَاشْتَرَاهَا لَهُ بِثَلَاثَةٍ وَثَلَاثِينَ دِينَارًا: أَنَّهَا تَلْزَمُ الْآمِرَ؛ لِأَنَّ هَذَا قَلِيلٌ، قَالُوا: فَإِنْ اشْتَرَاهَا لَهُ بِأَكْثَرَ لَمْ يَلْزَمْ الْآمِرَ؛ لِأَنَّهُ كَثِيرٌ - وَهَذَا يُشْبِهُ اللَّعِبَ، فَيَا لَلنَّاسِ؟ أَبِهَذِهِ

ness. O people! Are these mere opinions the foundation for establishing divine laws, declaring prohibitions and permissions, permitting the sale of forbidden wealth, and opposing the Sunnah? Allah suffices us, and what an excellent Trustee!

L22343 It has been narrated to us through the chain of Ibn Wahb, from Uthman ibn al-Hakam, from Yahya ibn Sa'id al-Ansari, who said: No catastrophic loss [is recognized in Islamic law] for damages incurred below one-third of the principal capital.

L22344–22345 Through another chain from ʿAbd al-Razzāq, Maʿmar narrated to us, reporting from a narrator who heard al-Zuhrī state: I inquired, "What constitutes an agricultural calamity?" He replied, "Half."

L22346 Ali said: "So this al-Zuhrī does not deem a calamity (jā'iḥah) valid unless it amounts to half [the yield]."

L22347 And this is Yaḥyā ibn Saʿīd, the jurist of Madinah, who does not recognize the agricultural calamity except in one-eighth of the crop, not in the physical crop itself—and all of that is contrary to Mālik's opinion. And success is granted by Allāh, the Exalted.

L22348 ## A Legal Issue: The Sale of the Ābiq Runaway Slave

L22349 Issue 1423: The sale of an absconded slave—whether his location is known or unknown—is valid. Similarly, the sale of a stray camel—whether its location is known or unknown—is valid.

L22350 Similarly, a stray from all animals, or birds that have escaped or otherwise strayed, is permissible for sale only if legally established ownership over it existed beforehand; otherwise, its sale is impermissible.

L22351 As for anything not yet owned by anyone, no one has a greater claim to it than anyone else. Whoever sells it is selling what they have no right to, and this amounts to wrongful appropriation of wealth without rightful claim.

L22352 As for all that we have mentioned besides this, the ownership of its owner

الْآرَاءِ تُشَرَّعُ الشَّرَائِعُ وَتُحَرَّمُ وَتُحَلَّلُ، وَتُبَاعُ الْأَمْوَالُ الْمُحَرَّمَةُ وَتُعَارَضُ السُّنَنُ؟ حَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عُثْمَانَ بْنِ الْحَكَمِ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ قَالَ: لَا جَائِحَةَ فِيمَا أُصِيبَ دُونَ ثُلُثِ رَأْسِ الْمَالِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ حَدَّثَنَا مَعْمَرٌ أَخْبَرَنِي مَنْ سَمِعَ الزُّهْرِيَّ قَالَ: قُلْت مَا الْجَائِحَةُ؟ قَالَ: النِّصْفُ.

قَالَ عَلِيٌّ: فَهَذَا الزُّهْرِيُّ لَا يَرَى الْجَائِحَةَ إلَّا النِّصْفَ.

وَهَذَا يَحْيَى بْنُ سَعِيدٍ فَقِيهُ الْمَدِينَةِ لَا يَرَى الْجَائِحَةَ إلَّا فِي الثُّمْنِ، لَا فِي عَيْنِ الثَّمَرَةِ - وَكُلُّ ذَلِكَ خِلَافُ قَوْلِ مَالِكٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ بَيْعُ الْعَبْدِ الْآبِقِ]

١٤٢٣ - مَسْأَلَةٌ: وَبَيْعُ الْعَبْدِ الْآبِقِ - عُرِفَ مَكَانُهُ أَوْ لَمْ يُعْرَفْ - جَائِزٌ وَكَذَلِكَ بَيْعُ الْجَمَلِ الشَّارِدِ - عُرِفَ مَكَانُهُ أَوْ لَمْ يُعْرَفْ.

وَكَذَلِكَ الشَّارِدُ مِنْ سَائِرِ الْحَيَوَانِ، وَمِنْ الطَّيْرِ الْمُتَفَلِّتِ وَغَيْرِهِ، إذَا صَحَّ الْمِلْكُ عَلَيْهِ قَبْلَ ذَلِكَ، وَإِلَّا فَلَا يَحِلُّ بَيْعُهُ.

وَأَمَّا كُلُّ مَا لَمْ يَمْلِكْ أَحَدٌ بَعْدُ فَإِنَّهُ لَيْسَ أَحَدٌ أَوْلَى بِهِ مِنْ أَحَدٍ، فَمَنْ بَاعَهُ فَإِنَّمَا بَاعَ مَا لَيْسَ لَهُ فِيهِ حَقٌّ، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ.

وَأَمَّا مَا عَدَا ذَلِكَ مِنْ كُلِّ مَا ذَكَرْنَا فَقَدْ صَحَّ مِلْكُ مَالِكِهِ لَهُ، وَكُلُّ مَا مَلَكَهُ الْمَرْءُ فَحُكْمُهُ فِيهِ نَافِذٌ بِالنَّصِّ -: إنْ شَاءَ وَهَبَهُ، وَإِنْ شَاءَ بَاعَهُ، وَإِنْ شَاءَ أَمْسَكَهُ، وَإِنْ مَاتَ فَهُوَ مَوْرُوثٌ عَنْهُ لَا خِلَافَ فِي أَنَّهُ مِلْكٌ وَمَوْرُوثٌ عَنْهُ، فَمَا الَّذِي حَرَّمَ بَيْعَهُ وَهِبَتَهُ؟ وَقَدْ أَبْطَلْنَا قَبْلُ قَوْلَ مَنْ فَرَّقَ بَيْنَ الصَّيْدِ يَتَوَحَّشُ، وَبَيْنَ الْإِبِلِ، وَالْغَنَمِ، وَالْبَقَرِ، وَالْخَيْلِ يَتَوَحَّشُ - وَكَذَلِكَ لَا فَرْقَ بَيْنَ الصَّيْدِ مِنْ السَّمَكِ، وَمِنْ الطَّيْرِ، وَمِنْ النَّحْلِ، وَمِنْ ذَوَاتِ الْأَرْبَعِ كُلُّ مَا مُلِكَ مِنْ ذَلِكَ -: فَهُوَ مَالٌ مِنْ مَالِ مَالِكِهِ بِلَا خِلَافٍ مِنْ أَحَدٍ.

over it is established, and whatever a person owns, the ruling concerning it is effective *by the divine text*: if he wishes to gift it, sell it, or keep it; and if he dies, it is inherited from him. There is no disagreement that it is owned and inherited from him. So what prohibits its sale and gifting? We have previously nullified the opinion of those who distinguished between game that becomes wild and camels, sheep, cattle, and horses that become wild. Similarly, there is no distinction between the hunting of fish, birds, bees, or four-legged animals—all that is owned from these is property of its owner without any dispute from anyone.

L22353 فَمَنْ ادَّعَى سُقُوطَ الْمِلْكِ عَنْهُ بِتَوَحُّشِهِ، أَوْ بِرُجُوعِهِ إلَى النَّهْرِ أَوْ الْبَحْرِ -: فَقَدْ قَالَ الْبَاطِلَ، وَأَحَلَّ حَرَامًا بِغَيْرِ دَلِيلٍ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ تَوَرُّعٍ، وَلَا مِنْ رَأْيٍ يُعْقَلُ؟ فَإِنْ قَالَ قَائِلٌ: فَإِنَّهُ لَا يَعْرِفُهُ أَبَدًا صَاحِبُهُ، وَلَا غَيْرُ صَاحِبِهِ؟ قُلْنَا: فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ وَجَبَ عِنْدَكُمْ سُقُوطُ مِلْكِ الْمُسْلِمِ عَنْ مَالِهِ بِجَهْلِهِ بِعَيْنِهِ؟ وَبِأَنَّهُ لَا يُمَيِّزُهُ، وَمَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ الْعَبْدِ يَأْبَقُ فَلَا تُمَيِّزُهُ صُورَتُهُ أَبَدًا، وَالْبَعِيرُ كَذَلِكَ، وَالْفَرَسُ كَذَلِكَ؟ أَفَتَرَوْنَ الْمِلْكَ يَسْقُطُ عَنْ كُلِّ ذَلِكَ مِنْ أَجْلِ أَنَّهُ لَا يُمَيِّزُهُ أَحَدٌ أَبَدًا، لَا صَاحِبُهُ وَلَا غَيْرُهُ؟

Whoever claims that ownership is nullified due to its becoming wild or returning to the river or sea has spoken falsehood and legalized the unlawful without evidence—neither from the Qur'an, nor the Sunnah, nor a weak narration, nor a Companion's opinion, nor analogy, nor scrupulous avoidance, nor sound rational opinion. If someone asks: "But neither its owner nor anyone else will ever recognize it?" We respond: So what? On what basis do you assert that a Muslim's ownership of their property is nullified merely by their ignorance of its specific identity or their inability to identify it? What distinguishes this from a runaway slave whose appearance is perpetually indistinguishable, or a camel or horse in similar circumstances? Do you deem ownership nullified in all such cases solely because no one—neither the owner nor others—can ever identify it?

L22354–22355 وَلَئِنْ كَانَ النَّاسُ لَا يَعْرِفُونَهُ وَلَا يُمَيِّزُونَهُ، فَإِنَّ اللَّهَ تَعَالَى يَعْرِفُهُ وَيُمَيِّزُهُ {لا يَضِلُّ رَبِّي وَلا يَنْسَى} [طه: ٥٢] بَلْ هُوَ عَزَّ وَجَلَّ عَارِفٌ بِهِ، وَبِتَقَلُّبِهِ وَمَثْوَاهُ، كَاتِبٌ لِصَاحِبِهِ أَجْرَ مَا نِيلَ مِنْهُ، وَمَا يَتَنَاسَلُ مِنْهُ فِي الْأَبَدِ.

Even if people neither recognize him nor discern him, Allah, the Exalted, recognizes and discerns him: *"My Lord neither errs nor forgets"* [20:52]. Rather, He, the Mighty and Majestic, is fully aware of him, his movements, and his abode, recording for the one associated with him the reward of what is obtained from him and what is multiplied from him eternally.[12]

L22356 What is the difference between this and land that becomes mixed so that it is neither demarcated nor distinguishable? Do you suppose ownership thereby

[12] **Qur'an references (L22355):** Qur'an 20:52 (Taha).

ceases for it? Allah is far removed from this! Rather, the unequivocal truth is that all of that remains under its owner's ownership until the Day of Resurrection.

مَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ الْأَرْضِ تَخْتَلِطُ فَلَا تُحَازُ وَلَا تُمَيَّزُ؟ أَتَرَوْنَ الْمِلْكَ يَسْقُطُ عَنْهَا بِذَلِكَ؟ حَاشَ لِلَّهِ مِنْ هَذَا، بَلْ الْحَقُّ الْيَقِينُ أَنَّ كُلَّ ذَلِكَ بَاقٍ عَلَى مِلْكِ صَاحِبِهِ إلَى يَوْمِ الْبَعْثِ.

L22357 And we—even if we rule regarding property whose owner's identification is despaired of, through the apparent ruling, to be allocated for the interests of the Muslims, the poor and needy, or the one who first takes possession of it among the believers—this does not extinguish the owner's right. Should the owner come at any time and establish his rightful claim, we would restore it to him. Such property constitutes a found item among lost items, owned by the one awarded it through the explicit ruling of the Messenger of Allah—peace and blessings be upon him—until its owner comes, if he ever does.

وَنَحْنُ وَإِنْ حَكَمْنَا فِيمَا يُئِسَ مِنْ مَعْرِفَةِ صَاحِبِهِ بِالْحُكْمِ الظَّاهِرِ مِنْ أَنَّهُ فِي جَمِيعِ مَصَالِحِ الْمُسْلِمِينَ، أَوْ لِلْفُقَرَاءِ وَالْمَسَاكِينِ، أَوْ لِمَنْ سَبَقَ إلَيْهِ مِنْ الْمُؤْمِنِينَ -: فَإِنَّهُ لَا يَسْقُطُ بِذَلِكَ حَقُّ صَاحِبِهِ، وَلَوْ جَاءَ يَوْمًا وَثَبَتَ أَنَّهُ حَقُّهُ لَصَرَفْنَاهُ إلَيْهِ، وَهُوَ لُقَطَةٌ مِنْ اللُّقَطَاتِ يَمْلِكُهُ مَنْ قُضِيَ لَهُ بِنَصِّ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى يَأْتِيَ صَاحِبُهُ إنْ جَاءَ.

L22358 Some people prohibited the sale of all such things and said: "We only prohibited selling them due to their absence." Ali said: "We have nullified—by the assistance of Allah, the Most High—this opinion and established proof for the obligation of selling absent items. Others prohibited this, arguing that its delivery is impossible. This is baseless, for delivery is neither required nor mandated by the Quran, the Sunnah, or any evidence whatsoever. The only obligation is that the seller must not obstruct the buyer from accessing what he purchased. If he does so, he becomes sinful and unjust. Another group prohibited it, arguing that it involves gharar (uncertainty), as 'the Messenger of Allah—peace and blessings be upon him—forbade the sale of gharar.'" Abu Muhammad said: "This is not gharar, for it is the sale of something whose ownership by the seller is confirmed, with known attributes and quantity. Thus, it is sold, and the buyer validly acquires ownership of it. If he obtains it, then that is acceptable; if not, he has received a reward as compensation—a reward better than this world and all it contains—and his deal has been profitable."[13]

وَمَنَعَ قَوْمٌ مِنْ بَيْعِ كُلِّ ذَلِكَ؟ وَقَالُوا: إنَّمَا مَنَعْنَا مِنْ بَيْعِهِ لِمَغِيبِهِ؟ قَالَ عَلِيٌّ: وَقَدْ أَبْطَلْنَا - بِعَوْنِ اللَّهِ تَعَالَى -: هَذَا الْقَوْلَ وَأَتَيْنَا بِالْبُرْهَانِ عَلَى وُجُوبِ بَيْعِ الْغَائِبَاتِ، وَمَنَعَ قَوْمٌ مِنْ ذَلِكَ، وَاحْتَجُّوا بِأَنَّهُ لَا يُقْدَرُ عَلَى تَسْلِيمِهِ -: وَهَذَا لَا شَيْءَ؛ لِأَنَّ التَّسْلِيمَ لَا يَلْزَمُ وَلَا يُوجِبُهُ قُرْآنٌ، وَلَا سُنَّةٌ وَلَا دَلِيلٌ أَصْلًا، وَإِنَّمَا اللَّازِمُ أَنْ لَا يَحُولَ الْبَائِعُ بَيْنَ الْمُشْتَرِي وَبَيْنَ مَا اشْتَرَى مِنْهُ فَقَطْ فَيَكُونَ إنْ فَعَلَ ذَلِكَ عَاصِيًا ظَالِمًا، وَمَنَعَ آخَرُونَ مِنْ ذَلِكَ وَاحْتَجُّوا بِأَنَّهُ غَرَرٌ؛ وَقَدْ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ» ؟ قَالَ أَبُو مُحَمَّد: لَيْسَ هَذَا غَرَرًا لِأَنَّهُ بَيْعُ شَيْءٍ قَدْ صَحَّ مِلْكُ بَائِعِهِ عَلَيْهِ وَهُوَ مَعْلُومُ الصِّفَةِ وَالْقَدْرِ، فَعَلَى ذَلِكَ يُبَاعُ وَيَمْلِكُهُ الْمُشْتَرِي مِلْكًا صَحِيحًا، فَإِنْ وَجَدَهُ فَذَلِكَ، وَإِنْ لَمْ يَجِدْهُ فَقَدْ اسْتَعَاضَ الْأَجْرَ الَّذِي هُوَ خَيْرٌ مِنْ الدُّنْيَا وَمَا فِيهَا وَرَبِحَتْ صَفْقَتُهُ.

L22359 If this were considered uncertainty (gharar), then the sale of all animals—

وَلَوْ كَانَ هَذَا غَرَرًا لَكَانَ بَيْعُ الْحَيَوَانِ كُلِّهِ حَاضِرِهِ وَغَائِبِهِ غَرَرًا لَا يَحِلُّ وَلَا يَجُوزُ؛ لِأَنَّهُ لَا يَدْرِي مُشْتَرِيه أَيَعِيشُ سَاعَةً بَعْدَ ابْتِيَاعِهِ أَمْ يَمُوتُ، وَلَا يَدْرِي أَيَسْلَمُ أَمْ يَسْقَمُ

[13] **Hadith references (L22358):** Sunan Ibn Majah 2194; Sunan Ibn Majah 2195; Jami at-Tirmidhi 1230.

whether present or absent—would involve impermissible and invalid uncertainty, because the buyer does not know whether the animal will survive an hour after purchase or die, nor whether it will remain healthy or fall ill with a minor ailment that alters its condition, a severe ailment that ruins it, or most of it. However, what is anticipated in renewed agreements is not considered uncertainty, because divine decrees proceed according to what is unknown and beyond human power to repel, and because it pertains to the unseen. Allah Almighty says: "Say, 'None in the heavens and earth knows the unseen except Allah'" (27:65).[14]

L22360–22361 He, the Exalted, said: "It may well be that their appointed time has already drawn near." [Al-A'raf: 185][15]

L22362 Gharar refers to a transaction concluded based on ignorance of its quantity or characteristics at the time of contracting.

L22363 If they say: Suppose he was dead at the time of the contract, or his attributes had changed? We respond: He is deemed alive under the life status confirmed as valid until his death is verified, and his attributes remain as ascertained until their alteration is validly established. If his death is verified, the transaction is annulled, and if the alteration is confirmed, the same ruling applies.

L22364 And if you say, "This invalidates its sale," then invalidate the sale of every absent animal—even if it is behind a wall—for it might have died at the very moment the transaction was concluded, or changed due to a fracture, pain, or blindness in one eye.

L22365 Yes, and forbid the sale of eggs, walnuts, almonds, and anything with a shell, since they may be spoiled - is there no distinction between any of these? The gharar (prohibited uncertainty) lies in what you have permitted: selling unseen commodities that no one has ever observed - such as carrots, herbs, and radishes, which may be soiled or rotten; and what some of you have permitted by selling what has not yet been created, like the contents of

[14] **Qur'an references (L22359):** Qur'an 27:65 (An-Naml).

[15] **Qur'an references (L22361):** Qur'an 7:185 (Al-A'raf).

سَقَمًا قَلِيلًا يُحِيلُهُ أَوْ سَقَمًا كَثِيرًا يُفْسِدُهُ أَوْ أَكْثَرَهُ؟ وَلَيْسَ مَا يُتَوَقَّعُ فِي الْمُسْتَأْنَفِ غَرَرًا لِأَنَّ الْأَقْدَارَ تَجْرِي بِمَا لَا يُعْلَمُ وَلَا يُقْدَرُ عَلَى رَدِّهِ، وَلِأَنَّهُ غَيْبٌ، قَالَ اللَّهُ تَعَالَى: {قُلْ لَا يَعْلَمُ مَنْ فِي السَّمَاوَاتِ وَالأَرْضِ الْغَيْبَ إِلا اللَّهُ} [النمل: ٦٥] .

وَقَالَ تَعَالَى: {وَأَنْ عَسَى أَنْ يَكُونَ قَدِ اقْتَرَبَ أَجَلُهُمْ} [الأعراف: ١٨٥] .

وَإِنَّمَا الْغَرَرُ مَا عُقِدَ عَلَى جَهْلٍ بِمِقْدَارِهِ وَصِفَاتِهِ حِينَ الْعَقْدِ.

فَإِنْ قَالُوا: فَلَعَلَّهُ مَيِّتٌ حِينَ الْعَقْدِ، أَوْ قَدْ تَغَيَّرَتْ صِفَاتُهُ؟ قُلْنَا: هُوَ عَلَى الْحَيَاةِ الَّتِي قَدْ صَحَّتْ لَهُ حَتَّى يُوقَنَ مَوْتُهُ، وَعَلَى مَا تُيُقِّنَ مِنْ صِفَاتِهِ حَتَّى يَصِحَّ تَغْيِيرُهُ، فَإِنْ صَحَّ مَوْتُهُ رُدَّتْ الصَّفْقَةُ، وَإِنْ صَحَّ تَغَيُّرُهُ فَكَذَلِكَ أَيْضًا.

وَلَئِنْ قُلْتُمْ: إِنَّ هَذَا يَمْنَعُ مِنْ بَيْعِهِ فَامْنَعُوا مِنْ بَيْعِ كُلِّ غَائِبٍ مِنْ الْحَيَوَانِ - وَلَوْ أَنَّهُ خَلْفَ الْجِدَارِ - إِذْ لَعَلَّهُ قَدْ مَاتَ لِلْوَقْتِ حِينَ عَقَدَ الصَّفْقَةَ أَوْ تَغَيَّرَ بِكَسْرٍ، أَوْ وَجَعٍ، أَوْ عَوَرٍ.

نَعَمْ، وَامْنَعُوا مِنْ بَيْعِ الْبَيْضِ، وَالْجَوْزِ، وَاللَّوْزِ، وَكُلِّ ذِي قِشْرٍ، إِذْ لَعَلَّهُ فَاسِدٌ وَلَا فَرْقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ؟ وَإِنَّمَا الْغَرَرُ مَا أَجَزْتُمُوهُ مِنْ بَيْعِ الْمُغَيَّبَاتِ الَّتِي لَمْ يَرَهَا أَحَدٌ قَطُّ: مِنْ الْجَزَرِ، وَالْبَقْلِ، وَالْفُجْلِ، وَلَعَلَّهَا مُسْتَاسَةٌ أَوْ مَعْفُونَةٌ، وَمَا أَجَازَهُ بَعْضُكُمْ مِنْ بَيْعِ مَا لَمْ يُخْلَقْ بَعْدُ مِنْ بُطُونِ الْمَقَاثِي الَّتِي لَعَلَّهَا لَا تُخْلَقُ أَبَدًا - وَمِنْ لَبَنِ الْغَنَمِ شَهْرَيْنِ أَوْ ثَلَاثَةً، وَلَعَلَّهَا تَمُوتُ، أَوْ تُحَارَدُ، فَلَا يَدُرُّ لَهَا شَخْبٌ.

gourds that may never exist at all, and selling sheep's milk for two or three months when the sheep might die, be stolen, or cease to flow milk entirely.

وَمِنْ بَيْعِ لَحْمِ شَاةٍ مَذْبُوحَةٍ لَمْ تُسْلَخْ بَعْدُ، فَلَا يَدْرِي أَحَدٌ مِنْ خَلْقِ اللَّهِ تَعَالَى مَا صِفَتُهُ - فَهَذَا وَأَشْبَاهُهُ هُوَ بَيْعُ الْغَرَرِ الْمُحَرَّمِ، وَقَدْ أَجَزْتُمُوهُ، لَا مَا صَحَّ مِلْكُهُ، وَعُرِفَتْ صِفَاتُهُ.

L22366 And from the sale of a slaughtered sheep's meat that has not yet been skinned - such that none of Allah's creation knows its characteristic - this and similar transactions constitute the prohibited sale of gharar, yet you have permitted it instead of what has valid ownership and whose characteristics are known.

وَقَالَ بَعْضُهُمْ: إِنَّمَا مَنَعْنَا مِنْ ذَلِكَ بِالنَّصِّ الْوَارِدِ فِيهِ؟ فَقُلْنَا: تِلْكَ آثَارٌ مَكْذُوبَةٌ لَا يَحِلُّ الِاحْتِجَاجُ بِهَا، وَلَوْ صَحَّتْ لَكُنَّا أَبْدَرَ إِلَى الْأَخْذِ بِهَا مِنْكُمْ.

L22367 Some of them said: "We only prohibited that based on the transmitted text concerning it." We replied: "These are fabricated traditions; it is impermissible to rely on them as proof. Had they been authentic, we would have been the first to adopt them before you."

وَهِيَ كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ يَحْيَى بْنِ الْعَلَاءِ عَنْ جَهْضَمِ بْنِ عَبْدِ اللَّهِ عَنْ مُحَمَّدِ بْنِ زَيْدٍ الْعَبْدِيِّ عَنْ شَهْرِ بْنِ حَوْشَبٍ الْأَشْعَرِيِّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْعَبْدِ وَهُوَ آبِقٌ، وَعَنْ أَنْ تُبَاعَ الْمَغَانِمُ قَبْلَ أَنْ تُقْسَمَ، وَعَنْ بَيْعِ الصَّدَقَاتِ قَبْلَ أَنْ تُقْبَضَ» .

L22368–22370 And it is as we have narrated through the chain of ʿAbd al-Razzāq from Yaḥyā ibn al-ʿAlāʾ from Jahḍam ibn ʿAbd Allāh from Muḥammad ibn Zayd al-ʿAbdī from Shahr ibn Ḥawshab al-Ashʿarī from Abū Saʿīd al-Khudrī: He prohibited The Messenger of Allah (peace be upon him) prohibited selling a runaway slave, selling war booty before it is distributed, and selling obligatory alms (Zakat) before they are received.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا حَاتِمُ بْنُ إِسْمَاعِيلَ عَنْ جَهْضَمِ بْنِ عَبْدِ اللَّهِ عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ الْبَاهِلِيِّ عَنْ مُحَمَّدِ بْنِ زَيْدٍ عَنْ شَهْرِ بْنِ حَوْشَبٍ عَنْ أَبِي سَعِيدٍ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ شِرَاءِ مَا فِي بُطُونِ الْأَنْعَامِ حَتَّى تَضَعَ، وَعَنْ مَا فِي ضُرُوعِهَا إِلَّا بِكَيْلٍ، وَعَنْ شِرَاءِ الْعَبْدِ الْآبِقِ، وَعَنْ شِرَاءِ الْمَغَانِمِ حَتَّى تُقْسَمَ، وَعَنْ شِرَاءِ الصَّدَقَاتِ حَتَّى تُقْبَضَ، وَعَنْ ضَرْبَةِ الْغَائِصِ» .

L22371 From the transmission path of Abū Bakr ibn Abī Shaybah: Ḥātim ibn Ismāʿīl he narrated to us from Jahḍam ibn ʿAbd Allāh from Muḥammad ibn Ibrāhīm al-Bāhilī from Muḥammad ibn Zayd from Shahr ibn Ḥawshab from Abū Saʿīd: "The Messenger of Allāh (peace and blessings be upon him) prohibited the purchase of what is in the wombs of livestock until they give birth, the purchase of what is in their udders except by measure, the purchase of a runaway slave, the purchase of undistributed war spoils until they are divided, the purchase of alms until they are collected, and the sale of the diver's unrecovered catch."

قَالَ أَبُو مُحَمَّدٍ: جَهْضَمٌ، وَمُحَمَّدُ بْنُ إِبْرَاهِيمَ، وَمُحَمَّدُ بْنُ زَيْدٍ الْعَبْدِيُّ: مَجْهُولُونَ، وَشَهْرٌ مَتْرُوكٌ - ثُمَّ لَوْ صَحَّحُوهُ فَهُوَ دَمَارٌ عَلَيْهِمْ؛ لِأَنَّهُمْ مُخَالِفُونَ لِمَا فِيهِ، وَكُلُّهُمْ - يَعْنِي الْحَاضِرِينَ مِنْ خُصُومِنَا - يُجِيزُونَ بَيْعَ الْأَجِنَّةِ فِي بُطُونِ الْأُمَّهَاتِ مَعَ الْأُمَّهَاتِ.

L22372 Abū Muḥammad said: Jahḍam, Muḥammad ibn Ibrāhīm, and Muḥammad ibn Zayd al-ʿAbdī are unknown, and Shahr is disregarded. Moreover, if they were to authenticate it, it would lead to their ruin, for they contradict its contents. All of them—meaning those present among our opponents—permit the sale of fetuses in their mothers' wombs along with the mothers.

L22373 The Malikis permit the sale of milk that has not yet been created or is still

in the udders without measurement, but two months or approximately that duration.

وَالْمَالِكِيُّونَ يُجِيزُونَ بَيْعَ اللَّبَنِ الَّذِي لَمْ يُخْلَقْ بَعْدُ وَالَّذِي فِي الضُّرُوعِ بِغَيْرِ كَيْلٍ لَكِنْ شَهْرَيْنِ أَوْ نَحْوَ ذَلِكَ.

L22374 They permit purchasing spoils before they are distributed—rather, it is considered obligatory and preferable according to them. The Hanafis allow taking monetary equivalents for obligatory zakah—this constitutes selling zakah before taking possession of it, and this is truly a sale of uncertainty (gharar), for one does not know what was sold, nor which item was sold, nor the value of what was taken [as substitute]—this is truly unlawful consumption of wealth, truly gharar, and truly prohibited.

وَيُجِيزُونَ شِرَاءَ الْمَغَانِمِ قَبْلَ أَنْ تُقْسَمَ بَلْ هُوَ الْوَاجِبُ عِنْدَهُمْ وَالْأَوْلَى؟ وَالْحَنَفِيُّونَ يُجِيزُونَ أَخْذَ الْقِيمَةِ عَنْ الصَّدَقَةِ الْوَاجِبَةِ - وَهَذَا هُوَ بَيْعُ الصَّدَقَةِ قَبْلَ أَنْ تُقْبَضَ، وَهَذَا بَيْعُ الْغَرَرِ حَقًّا؛ لِأَنَّهُ لَا يَدْرِي مَا بَاعَ وَلَا أَيَّهَا بَاعَ، وَلَا قِيمَةَ مَاذَا أَخَذَ -: فَهُوَ أَكْلُ الْمَالِ بِالْبَاطِلِ حَقًّا، وَالْغَرَرُ حَقًّا، وَالْحَرَامُ حَقًّا.

L22375 They cited a report transmitted by Yazīd ibn Abī Ziyād—who is weak—containing a prohibition against selling fish in the water. Furthermore, even if it were authentic, it would not serve as proof for them, because it would only constitute a prohibition against selling them before they are caught—and this is our position, just as they interpreted their report regarding the prohibition against selling an absconding slave as applying while he is absconding: No, even if he is within one's control.

وَاحْتَجُّوا بِخَبَرٍ فِيهِ يَزِيدُ بْنُ أَبِي زِيَادٍ - وَهُوَ ضَعِيفٌ - فِيهِ النَّهْيُ عَنْ بَيْعِ السَّمَكِ فِي الْمَاءِ، ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ إنَّمَا يَكُونُ نَهْيًا عَنْ بَيْعِهِ قَبْلَ أَنْ يُصَادَ - وَهَكَذَا نَقُولُ، كَمَا حَمَلُوا خَبَرَهُمْ فِي النَّهْيِ عَنْ بَيْعِ الْآبِقِ عَلَى أَنَّهُ فِي حَالِ إبَاقِهِ: لَا، وَهُوَ مَقْدُورٌ عَلَيْهِ.

L22376 Among the wonders of the world is their use of their own narration as evidence while they are the first to oppose it, and they thereby prohibit what is not mentioned in it as part of the sale of a stray camel. If they say: "We analogized the stray camel to the runaway slave," we say: "All analogy is invalid." Then we say to the Hanafis: "How could you not analogize the stray camel in applying the stipulated reward for it to that of the runaway slave?"

وَمِنْ عَجَائِبِ الدُّنْيَا احْتِجَاجُهُمْ بِخَبَرِهِمْ أَوَّلُ مُخَالِفٍ لَهُ، وَحَرَّمُوا بِهِ مَا لَيْسَ فِيهِ مِنْ بَيْعِ الْجَمَلِ الشَّارِدِ؟ فَإِنْ قَالُوا: قِسْنَا الْجَمَلَ الشَّارِدَ عَلَى الْعَبْدِ الْآبِقِ؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ نَقُولُ لِلْحَنَفِيِّينَ: هَلَّا قِسْتُمْ الْجَمَلَ الشَّارِدَ فِي إيجَابِ الْجُعْلِ فِيهِ عَلَى الْجُعْلِ فِي الْعَبْدِ الْآبِقِ؟

L22377–22378 If they say: "The narration does not mention the runaway slave?" We respond: "Does this rejected narration (also) not pertain specifically to the runaway slave?" Ali said: "It has been transmitted to us from Sinān ibn Salama and Ikrimah that they did not permit selling a runaway slave." Ikrimah added: "Nor a stray camel." Among those from whom reports have reached us, sharing our opinion, is what was transmitted through Ibn Abi Shaybah's chain: 'Abdah ibn Sulaymān narrated from 'Ubayd Allāh ibn 'Umar from Nāfi' from Ibn 'Umar that he purchased a camel while it was stray.

فَإِنْ قَالُوا: لَمْ يَأْتِ الْأَثَرُ فِي الْآبِقِ؟ قُلْنَا: وَلَا جَاءَ هَذَا الْأَثَرُ السَّاقِطُ - أَيْضًا - إلَّا فِي الْآبِقِ؟ قَالَ عَلِيٌّ: وَرُوِّينَا عَنْ سِنَانِ بْنِ سَلَمَةَ، وَعِكْرِمَةَ: أَنَّهُمَا لَمْ يُجِيزَا بَيْعَ الْعَبْدِ الْآبِقِ، قَالَ عِكْرِمَةُ: وَلَا الْجَمَلِ الشَّارِدِ - وَمِمَّنْ رُوِّينَا عَنْهُ مِثْلَ قَوْلِنَا -: مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ

أَبِي شَيْبَةَ نا عَبْدَةُ بْنُ سُلَيْمَانُ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ: أَنَّهُ اشْتَرَى بَعِيرًا وَهُوَ شَارِدٌ.

L22379 قَالَ عَلِيٌّ: مَا نَعْلَمُ لَهُ مُخَالِفًا مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ وَالثِّقَةِ، وَهُمْ يُعَظِّمُونَ خِلَافَ مِثْلِ هَذَا إِذَا وَافَقَهُمْ وَيَجْعَلُونَهُ إِجْمَاعًا، وَعَهْدُنَا بِالْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ يَقُولُونَ: إِذَا رَوَى الصَّاحِبُ خَبَرًا وَخَالَفَهُ فَهُوَ أَعْلَمُ بِمَا رَوَى، وَهُوَ حُجَّةٌ فِي تَرْكِ الْخَبَرِ.

L22380 وَقَدْ رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ مُوسَى بْنِ عُبَيْدَةَ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنِ ابْنِ عُمَرَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ» .

L22381 وَقَدْ صَحَّ عَنِ ابْنِ عُمَرَ: إِبَاحَةُ بَيْعِ الْجَمَلِ الشَّارِدِ - فَلَوْ كَانَ عِنْدَهُ غَرَرًا مَا خَالَفَ مَا

L22382 رَوَى، هَذَا لَازِمٌ لَهُمْ عَلَى أُصُولِهِمْ، وَإِلَّا فَالتَّنَاقُضُ حَاصِلٌ، وَهَذَا أَخَفُّ شَيْءٍ عَلَيْهِمْ.

L22383 وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرٌ عَنِ الْمُغِيرَةِ عَنِ الشَّعْبِيِّ عَنْ شُرَيْحٍ: أَنَّ رَجُلًا أَتَاهُ فَقَالَ: إِنَّ لِي عَبْدًا آبِقًا، وَإِنَّ رَجُلًا يُسَاوِمُنِي بِهِ، أَفَأَبِيعُهُ مِنْهُ؟ قَالَ: نَعَمْ، فَإِنَّكَ إِذَا رَأَيْتَهُ فَأَنْتَ بِالْخِيَارِ إِنْ شِئْتَ أَجَزْتَ الْبَيْعَ وَإِنْ شِئْتَ لَمْ تُجِزْهُ - قَالَ الشَّعْبِيُّ: إِذَا أَعْلَمَهُ مِنْهُ مَا كَانَ يَعْلَمُ مِنْهُ جَازَ بَيْعُهُ وَلَمْ يَكُنْ لَهُ خِيَارٌ.

L22384 From the narration of Hammad ibn Salamah: Ayyub al-Sikhtiyani reported from Muhammad ibn Sirin that a man's slave absconded. A man said to him,

[16] **Hadith references (L22380):** Sunan Ibn Majah 2194; Sunan Ibn Majah 2195; Jami at-Tirmidhi 1230.

"Sell me your slave," so he sold him. They then disputed and took their case to Shurayh. Shurayh said, "If he disclosed to him what he knew, the sale is valid."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ فَإِنَّ أَيُّوبَ السِّخْتِيَانِيَّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ رَجُلًا أَبَقَ غُلَامُهُ، فَقَالَ لَهُ رَجُلٌ: بِعْنِي غُلَامَكَ؟ فَبَاعَهُ مِنْهُ، ثُمَّ اخْتَصَمَا إِلَى شُرَيْحٍ: فَقَالَ شُرَيْحٌ: إِنْ كَانَ أَعْلَمَهُ مِثْلَ مَا عَلِمَ فَهُوَ جَائِزٌ.

L22385 From the narration of ʿAbd al-Razzāq: Maʿmar reported from Ayyūb al-Sikhtiyānī, who said: A man's slave absconded, and another man who knew his location purchased him from him. Later, the original owner brought a dispute against him to Shurayḥ. Ibn Sīrīn said: I heard Shurayḥ ask him, "Did you inform him of the slave's location and then buy him?" He nullified the sale because he had not informed him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، قَالَ: أَبَقَ غُلَامٌ لِرَجُلٍ فَعَلِمَ مَكَانَهُ رَجُلٌ آخَرُ فَاشْتَرَاهُ مِنْهُ، فَخَاصَمَهُ إِلَى شُرَيْحٍ بَعْدَ ذَلِكَ، قَالَ ابْنُ سِيرِينَ: فَسَمِعْتُ شُرَيْحًا يَقُولُ لَهُ: أَكُنْتَ أَعْلَمْتَهُ مَكَانَهُ ثُمَّ اشْتَرَيْتَهُ؟ فَرَدَّ الْبَيْعَ، لِأَنَّهُ لَمْ يَكُنْ أَعْلَمَهُ.

L22386–22387 Abu Muhammad said: This is correct, because concealing it is its proper place while he is aware of it—whichever of them knows it and conceals it, this constitutes deception and deceit, and due to both deception and deceit, the sale is invalidated.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا صَحِيحٌ، لِأَنَّ كِتْمَانَهُ مَكَانَهُ وَهُوَ يَعْلَمُهُ، أَيُّهُمَا عَلِمَهُ فَكَتَمَهُ غِشٌّ وَخَدِيعَةٌ، وَالْغِشُّ، وَالْخَدِيعَةُ يُرَدُّ مِنْهُمَا الْبَيْعُ.

L22388 From the chain of al-Ḥajjāj ibn al-Minhāl, narrated to us Ḥammād ibn Zayd from Ayyūb al-Sikhtiyānī: Muḥammad ibn Sīrīn saw no harm in purchasing the runaway slave when their knowledge about him was the same.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ: أَنَّ مُحَمَّدَ بْنَ سِيرِينَ كَانَ لَا يَرَى بَأْسًا بِشِرَاءِ الْعَبْدِ الْآبِقِ إِذَا كَانَ عِلْمُهُمَا فِيهِ وَاحِدًا.

L22389 From the transmission of Ibn Abi Shaybah: Abu Sa'd narrated to us from Ibn Jurayj from Ibn Ṭāwūs from his father that he saw no objection to a man purchasing an absent animal if he had previously seen it. He said: "If it is sound, then it belongs to me." He did not exclude any case except distinguishing one stray from another, and a stray is absent.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو سَعْدٍ عَنِ ابْنِ جُرَيْجٍ عَنِ ابْنِ طَاوُسٍ عَنْ أَبِيهِ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يَشْتَرِيَ الرَّجُلُ الدَّابَّةَ الْغَائِبَةَ إِذَا كَانَ قَدْ رَآهَا، وَيَقُولُ إِنْ كَانَتْ صَحِيحَةً فَهِيَ لِي، وَلَمْ يَخُصَّ غَيْرَ شَارِدَةٍ مِنْ شَارِدَةٍ وَالشَّارِدَةُ غَائِبَةٌ.

L22390 Among those who permitted the sale of a stray camel and a habitually runaway slave are ʿUthmān al-Battī, Abū Bakr ibn Dāwūd, and our companions - and success comes only from Allah, the Exalted.

وَمِمَّنْ أَجَازَ بَيْعَ الْجَمَلِ الشَّارِدِ، وَالْعَبْدِ الْآبِقِ: عُثْمَانُ الْبَتِّيُّ وَأَبُو بَكْرِ بْنُ دَاوُد، وَأَصْحَابُنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L22391 An issue concerning the sale of musk while still in its gland, along with the gland itself.

[مَسْأَلَةٌ بَيْعُ الْمِسْكِ فِي نَافِجَتِهِ مَعَ النَّافِجَةِ]

L22392 Issue 1424: The sale of musk within its gland along with the gland, date pits within dates along with the dates, the contents of an egg along with

the egg itself, carrots, almonds with their shell, pistachios, pine nuts, acorns, chestnuts, and every item with a covering—whether it has two coverings or one—along with its covering, honey with wax within its wax along with the wax, and a slaughtered sheep with its skin (still attached)—all of this is permissible.

١٤٢٤ - مَسْأَلَةٌ: وَبَيْعُ الْمِسْكِ فِي نَافِجَتِهِ مَعَ النَّافِجَةِ، وَالنَّوَى فِي التَّمْرِ مَعَ التَّمْرِ، وَمَا فِي دَاخِلِ الْبَيْضِ مَعَ الْبَيْضِ، وَالْجَزَرِ، وَاللَّوْزِ، وَالْفُسْتُقِ، وَالصَّنَوْبَرِ، وَالْبَلُّوطِ، وَالْقَسْطَلِ، وَكُلِّ ذِي قِشْرٍ مَعَ قِشْرِهِ - كَانَ عَلَيْهِ قِشْرَانِ أَوْ وَاحِدٌ - وَالْعَسَلِ مَعَ الشَّمْعِ فِي شَمْعِهِ، وَالشَّاةِ الْمَذْبُوحَةِ فِي جِلْدِهَا مَعَ جِلْدِهَا: جَائِزٌ كُلُّ ذَلِكَ.

L22393 And thus, everything Allah, Exalted is He, has created—as it inherently exists among creation—contains what is within it as an integral part of itself.

وَهَكَذَا كُلُّ مَا خَلَقَهُ اللَّهُ تَعَالَى كَمَا هُوَ مِمَّا يَكُونُ مَا فِي دَاخِلِهِ بَعْضًا لَهُ.

L22394 Likewise, the olive with the oil it contains, sesame with the oil it contains, female livestock with the milk in their udders, hulled wheat and sorghum in their husks with the husks, and in their ears of grain with the ears—all of this is permissible and valid.

وَكَذَلِكَ الزَّيْتُونُ بِمَا فِيهِ مِنْ الزَّيْتِ، وَالسِّمْسِمُ بِمَا فِيهِ مِنْ الدُّهْنِ، وَالْإِنَاثُ بِمَا فِي ضُرُوعِهَا مِنْ اللَّبَنِ، وَالْبُرُّ، وَالْعَلَسُ فِي أَكْمَامِهِ مَعَ الْأَكْمَامِ، وَفِي سُنْبُلِهِ مَعَ السُّنْبُلِ: كُلُّ ذَلِكَ جَائِزٌ حَسَنٌ.

L22395 It is impermissible to sell anything concealed within another item that people have hidden if it is among items that no one has seen—neither with its container nor without it. However, if it is among items that have been seen, selling it based on its description is permissible, such as honey, ghee in its container, milk likewise, wheat in its container, and all other similar items including carrots, onions, leeks, turnips, and radishes—all before they are uprooted.

وَلَا يَحِلُّ بَيْعُ شَيْءٍ مَغِيبٍ فِي غَيْرِهِ مِمَّا غَيَّبَهُ النَّاسُ إذَا كَانَ مِمَّا لَمْ يَرَهُ أَحَدٌ - لَا مَعَ وِعَائِهِ وَلَا دُونَهُ - فَإِنْ كَانَ مِمَّا قَدْ رُئِيَ: جَازَ بَيْعُهُ عَلَى الصِّفَةِ، كَالْعَسَلِ، وَالسَّمْنِ فِي ظَرْفِهِ، وَاللَّبَنِ كَذَلِكَ، وَالْبُرِّ فِي وِعَائِهِ، وَغَيْرِ ذَلِكَ كُلِّهِ الْجَزَرِ، وَالْبَصَلِ، وَالْكُرَّاثِ، وَالسَّلْجَمِ، وَالْفُجْلِ، قَبْلَ أَنْ يُقْلَعَ.

L22396 Al-Shafi'i said: If something has two husks, it is not permissible to sell it until the outer husk is removed.

وَقَالَ الشَّافِعِيُّ: مَا لَهُ قِشْرَانِ فَلَا يَجُوزُ بَيْعُهُ حَتَّى يُزَالَ الْقِشْرُ الْأَعْلَى.

L22397 Abū Muḥammad said: Every physical entity that Allah the Exalted created possesses length, width, and depth. Allah the Exalted stated: "Allah has made lawful selling" [Al-Baqarah: 275]. Therefore, the sale of everything we have mentioned is likewise permissible by the explicit textual ruling of the Quran.[17]

قَالَ أَبُو مُحَمَّدٍ: كُلُّ جِسْمٍ خَلَقَهُ اللَّهُ تَعَالَى فَلَهُ طُولٌ، وَعَرْضٌ، وَعُمْقٌ، قَالَ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَكُلُّ مَا ذَكَرْنَا فَكَذَلِكَ بَيْعُهُ بِنَصِّ الْقُرْآنِ جَائِزٌ.

L22398–22399 The scholars have unanimously agreed, and the established Sunnahs affirmed by consensus confirm the permissibility of selling dates, grapes, and raisins,

وَقَدْ أَجْمَعُوا وَصَحَّتْ السُّنَنُ الْمُجْمَعُ عَلَيْهَا عَلَى جَوَازِ بَيْعِ التَّمْرِ، وَالْعِنَبِ، وَالزَّبِيبِ، وَفِيهَا النَّوَى، وَأَنَّ النَّوَى دَاخِلٌ فِي الْبَيْعِ.

[17] **Qur'an references (L22397):** Qur'an 2:275 (Al-Baqarah).

and that the pits of dates and the seeds of grapes and raisins are included in the sale.

وَأَجْمَعُوا عَلَى جَوَازِ بَيْعِ الْبَيْضِ كَمَا هُوَ، وَإِنَّمَا الْغَرَضُ مِنْهُ مَا فِي دَاخِلِهِ، وَدَخَلَ الْقِشْرُ فِي الْبَيْعِ بِلَا خِلَافٍ مِنْ أَحَدٍ.

L22400 They unanimously agreed upon the permissibility of selling eggs in their natural state, for the purpose is solely their interior contents. The shell is included in the sale without any disagreement from anyone.

وَكَذَلِكَ الزَّيْتُونُ بِمَا فِيهِ مِنْ الزَّيْتِ، وَالسِّمْسِمُ بِمَا فِيهِ مِنْ الدُّهْنِ، وَالشَّاةُ الْمَذْبُوحَةُ كَمَا هِيَ - فَلَيْتَ شِعْرِي: مَا الْفَرْقُ بَيْنَ ذَلِكَ وَبَيْنَ مَا اخْتَلَفُوا فِيهِ، الْمِسْكُ فِي نَافِجَتِهِ مَعَ النَّافِجَةِ، وَالْعَسَلُ فِي شَمْعِهِ مَعَ الشَّمْعِ؟ وَلَا سَبِيلَ إلَى فَرْقٍ لَا فِي قُرْآنٍ، وَلَا فِي سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا تَابِعٍ وَلَا قِيَاسٍ، وَلَا مَعْقُولٍ، وَلَا رَأْيٍ يَصِحُّ، وَكُلُّ ذَلِكَ بَيْعٌ قَدْ أَبَاحَهُ اللَّهُ تَعَالَى وَلَمْ يَخُصَّ مِنْهُ شَيْئًا، وَقَدْ قَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] لَوْ كَانَ حَرَامًا لَفَصَّلَهُ اللَّهُ تَعَالَى لَنَا، فَإِذْ لَمْ يُفَصِّلْهُ فَهُوَ مَنْصُوصٌ عَلَى تَحْلِيلِهِ.

L22401 Similarly, the olive with its oil, the sesame with its oil, and the slaughtered ewe as it is—Oh, would that I knew: what distinguishes these from what they disputed, such as musk in its gland along with the gland, or honey in its comb along with the comb? There is no basis for distinction—neither in the Quran, nor the Sunnah, nor a weak narration, nor the statement of a Companion, nor a Follower, nor analogy, nor reason, nor any valid opinion. All these are transactions Allah the Exalted has permitted without singling out anything. He says: "And He has detailed for you what He has forbidden upon you" (6:119). Had it been forbidden, Allah would have specified it. Since He did not detail it, its permissibility is textually established.[18]

فَإِنْ قَالُوا: هُوَ غَرَرٌ؟ قُلْنَا: أَوَلَيْسَ عَلَى قَوْلِكُمْ هَذَا سَائِرُ مَا ذَكَرْنَا غَرَرًا أَيْضًا؟ وَإِلَّا فَمَا الْفَرْقُ، وَأَمَّا الْحَقُّ فَإِنَّهُ لَيْسَ شَيْءٌ مِنْهُ غَرَرًا، لِأَنَّهُ جِسْمٌ وَاحِدٌ خَلَقَهُ اللَّهُ عَزَّ وَجَلَّ كَمَا هُوَ وَكُلُّ مَا فِي دَاخِلِهِ بَعْضُ جُمْلَتِهِ.

L22402 If they say, "This is gharar," we respond: "By your own assertion, is not all that we have mentioned also gharar? Otherwise, what is the difference?" As for the correct ruling, none of it constitutes gharar, for it is a single entity created by Allah, the Almighty and Majestic, as it is, and everything within it is a part of its whole.

وَأَمَّا قَوْلُ الشَّافِعِيِّ فَظَاهِرُ الْفَسَادِ، لِأَنَّهُ لَا فَرْقَ فِي مُغَيَّبِ الْمَعْرِفَةِ بِصِفَةِ مَا فِي الْقِشْرِ - بَيْنَ كَوْنِهِ فِي قِشْرٍ وَاحِدٍ، وَبَيْنَ كَوْنِهِ فِي قِشْرَيْنِ، أَوْ أَكْثَرَ - وَهُوَ قَدْ أَجَازَ بَيْعَ الْبَيْضِ فِي غُلَافَيْنِ بِالْعِيَانِ، إحْدَاهُمَا: الْقِشْرُ الظَّاهِرُ، وَهُوَ الْقَيْضُ، وَالثَّانِي: الْغِرْقِئُ، وَلَا غَرَضَ لِلْمُشْتَرِي إلَّا فِيمَا فِيهِمَا، لَا فِيهِمَا - مَعَ أَنَّهُ قَوْلٌ لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ.

L22403 As for al-Shāfiʿī's statement, it is evidently invalid because there is no distinction in the concealed state of knowledge regarding the quality of what lies within the shell—whether it is in one shell, two shells, or more. Yet he permitted the sale of eggs with two coverings through visible inspection: one being the qayḍ (the outer shell), and the second being the ghirqīʾ (membrane). The buyer's interest is solely in what is within them, not in the coverings themselves; a position we do not know to have been held by anyone before him.

[18] **Qur'an references (L22401):** Qur'an 6:119 (Al-An'am).

If it is said: “We are able to remove whatever we can of gharar, are we obligated to remove it?” We respond: “Indeed, you are capable of removing the secondary layer—so you must remove it without fail, for it is gharar.”

If they say: “Is that not harmful to almonds, walnuts, chestnuts, and acorns?” We say: No, there is no harm to acorns, nor to chestnuts, nor to almonds—in most cases.

Furthermore, there is no harm in removing pits from dates.

Moreover, we do not know of any prohibition that is made permissible due to fear of harm to a fruit if harm is feared for it. If a man had fresh dates (rutab) that cannot dry and could find no buyer for them except in exchange for dried dates (tamr), it would not be lawful for him to sell them out of fear of harm.

Similarly, if a man fears an oppressive enemy [may harm] his fruit, and its readiness [for harvest] has not yet become evident, it is impermissible to sell it due to the fear of harm befalling it.

The Legal Question of Selling a Pregnant Animal Along with Its Fetus.

1425 – Issue

Among these rulings is the sale of a pregnant female along with her fetus if she was impregnated by someone other than her owner, because the fetus is created by Allah, the Exalted, from the man’s semen, the woman’s semen, and her blood. Thus, it is part of her organs and her contents as long as the soul has not been breathed into it. Allah, the Most High, says: “We created man from an extract of clay” [23:12], “then We made him a sperm-drop in a firm resting place” [23:13], “then We created the sperm-drop into a clinging clot, then We created the clot into a lump of flesh, then We created the lump into bones, then We clothed the bones with flesh, then We produced him as another creation. So blessed is Allah, the best of creators” [23:14]. Therefore,

فَإِنْ قِيلَ: إنَّ مَا قَدَرْنَا عَلَى إزَالَتِهِ مِنْ الْغَرَرِ فَعَلَيْنَا أَنْ نُزِيلَهُ؟ قُلْنَا: وَإِنَّكُمْ لَقَادِرُونَ عَلَى إزَالَةِ الْقِشْرِ الثَّانِي فَأَزِيلُوهُ وَلَا بُدَّ، لِأَنَّهُ غَرَرٌ -.

فَإِنْ قَالُوا: لَا ذَلِكَ ضَرَرٌ عَلَى اللَّوْزِ، وَالْجَوْزِ، وَالْقَسْطَلِ، وَالْبَلُّوطِ؟ قُلْنَا: لَا، مَا فِيهِ ضَرَرٌ عَلَى الْبَلُّوطِ، وَلَا عَلَى الْقَسْطَلِ، وَلَا عَلَى اللَّوْزِ - فِي الْأَكْثَرِ -.

وَأَيْضًا: فَلَا ضَرَرَ عَلَى التَّمْرِ فِي إزَالَةِ نَوَاهُ.

وَأَيْضًا: فَمَا عَلِمْنَا حَرَامًا يُحِلُّهُ خَوْفُ ضَرَرٍ عَلَى فَاكِهَةٍ لَوْ خِيفَ عَلَيْهَا، وَلَوْ أَنَّ امْرَءًا لَهُ رُطَبٌ لَا يَيْبَسُ وَلَمْ يَجِدْ مَنْ يَشْتَرِيهِ مِنْهُ إلَّا بِتَمْرٍ يَابِسٍ لَمَا حَلَّ لَهُ بَيْعُهُ خَوْفَ الضَّرَرِ.

وَكَذَلِكَ لَوْ أَنَّ امْرَءًا خَافَ عَدُوًّا ظَالِمًا عَلَى ثَمَرَتِهِ وَلَمْ يَكُنْ بَدَا صَلَاحُهَا لَمْ يَحِلَّ بَيْعُهَا خَوْفَ الضَّرَرِ عَلَيْهَا؟

[مَسْأَلَةُ بَيْعُ الْحَامِلِ بِحَمْلِهَا]

١٤٢٥ - مَسْأَلَةٌ

: وَمِنْ هَذَا بَيْعُ الْحَامِلِ بِحَمْلِهَا إذَا كَانَتْ حَامِلًا مِنْ غَيْرِ سَيِّدِهَا، لِأَنَّ الْحَمْلَ خَلَقَهُ اللَّهُ عَزَّ وَجَلَّ مِنْ مَنِيِّ الرَّجُلِ وَمَنِيِّ الْمَرْأَةِ وَدَمِهَا، فَهُوَ بَعْضُ أَعْضَائِهَا وَحَشْوَتِهَا، مَا لَمْ يُنْفَخْ فِيهِ الرُّوحُ، قَالَ تَعَالَى: {وَلَقَدْ خَلَقْنَا الإِنْسَانَ مِنْ سُلالَةٍ مِنْ طِينٍ} [المؤمنون: ١٢] {ثُمَّ جَعَلْنَاهُ نُطْفَةً فِي قَرَارٍ مَكِينٍ} [المؤمنون: ١٣] {ثُمَّ خَلَقْنَا النُّطْفَةَ عَلَقَةً فَخَلَقْنَا الْعَلَقَةَ مُضْغَةً فَخَلَقْنَا الْمُضْغَةَ عِظَامًا فَكَسَوْنَا الْعِظَامَ لَحْمًا ثُمَّ أَنْشَأْنَاهُ خَلْقًا آخَرَ فَتَبَارَكَ اللَّهُ أَحْسَنُ الْخَالِقِينَ} [المؤمنون: ١٤] فَبَيْعُهَا بِحَمْلِهَا كَمَا هِيَ جَائِزٌ، وَهِيَ وَحَمْلُهَا لِلْمُشْتَرِي.

selling her along with her fetus as she is, is permissible, and both she and her fetus belong to the buyer.[19]

فَإِذَا نُفِخَ فِيهِ الرُّوحُ، فَقَدْ اخْتَلَفَ أَهْلُ الْعِلْمِ؟ فَقَالَتْ طَائِفَةٌ: هُوَ بَعْدَ ذَلِكَ غَيْرُهَا، لِأَنَّهَا أُنْثَى، وَقَدْ يَكُونُ الْجَنِينُ ذَكَرًا وَهِيَ فَرْدَةٌ وَقَدْ يَكُونُ فِي بَطْنِهَا اثْنَانِ، وَقَدْ تَكُونُ هِيَ كَافِرَةً وَمَا فِي بَطْنِهَا مُؤْمِنًا، وَقَدْ يَمُوتُ أَحَدُهُمَا وَيَعِيشُ الْآخَرُ، وَيَكُونُ أَحَدُهُمَا مَعِيبًا وَالْآخَرُ صَحِيحًا، وَيَكُونُ أَحَدُهُمَا أَسْوَدَ وَالْآخَرُ أَبْيَضَ - وَلَوْ وَجَبَ عَلَيْهَا قَتْلٌ لَمْ تُقْتَلْ هِيَ حَتَّى تَلِدَ.

L22413 When the soul is breathed into it, the scholars have indeed differed. A faction of scholars said: The fetus is distinct from her after that, for she is female while the fetus may be male, though she is singular. There may be two in her womb; she might be a disbeliever while what is in her womb is a believer; one of them might die while the other survives; one might be defective while the other is sound; or one might be black while the other is white. Were she to be sentenced to death, she would not be executed until she delivers.

فَصَحَّ أَنَّهُ غَيْرُهَا، فَلَا يَجُوزُ دُخُولُهُ فِي بَيْعِهَا - وَهَكَذَا فِي إِنَاثِ سَائِرِ الْحَيَوَانِ - حَاشَ اخْتِلَافَ الدِّينِ فَقَطْ، أَوْ الْقَتْلَ فَقَطْ.

L22414 Thus, it is confirmed that it is other than her, so it is not permissible to include it in her sale (and similarly for females of other animals), except for difference in religion alone, or killing alone.

فَقَالَ آخَرُونَ: هُوَ كَذَلِكَ إِلَّا أَنَّهُ حَتَّى الْآنَ مِمَّا خَلَقَهُ اللَّهُ تَعَالَى فِيهَا وَوَلَدَهُ مِنْهَا، وَلَمْ يُزَايِلْهَا بَعْدُ، فَحُكْمُهُ فِي الْبَيْعِ كَمَا كَانَ حَتَّى يُزَايِلَهَا - وَلَيْسَ كَوْنُهُ غَيْرَهَا، وَكَوْنُ اسْمِهِ غَيْرَ اسْمِهَا، وَصِفَاتُهُ غَيْرَ صِفَاتِهَا -: بِمُخْرِجٍ لَهُ عَمَّا كَانَ لَهُ مِنْ الْحُكْمِ إِلَّا بِنَصٍّ وَارِدٍ فِي ذَلِكَ. وَهَذَا النَّوَى هُوَ بِلَا شَكٍّ غَيْرُ التَّمْرِ، وَإِنَّمَا يُقَالُ: نَوَى التَّمْرِ، وَصِفَاتُهُ غَيْرُ صِفَاتِ التَّمْرِ، وَاسْمُهُ غَيْرُ اسْمِ التَّمْرِ - وَكَذَلِكَ قِشْرُ الْبَيْضِ أَيْضًا.

L22415 Others said: It remains as such except that until now, it constitutes part of what Allah the Exalted created within the date and its offspring from it, since it has not yet separated. Thus, its ruling in sale persists as before until separation occurs. The fact that it is distinct from the date, its name differs from the date's name, and its attributes differ from the date's attributes does not remove it from its original legal ruling except through specific textual evidence. These pits are undoubtedly distinct from the date itself, though it is merely called "the date's pits," with attributes differing from the date's attributes and a name distinct from the date's name. Similarly, the eggshell is also [treated likewise].

وَكَذَلِكَ بَيْضُ ذَاتِ الْبَيْضِ قَبْلَ أَنْ تَبِيضَهُ، وَكُلُّ ذَلِكَ جَائِزٌ بَيْعُهُ كَمَا هُوَ لِأَنَّ اللَّهَ تَعَالَى خَلَقَ كُلَّ ذَلِكَ كَمَا هُوَ وَمَا زَالَ النَّاسُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِعِلْمِهِ يَبِيعُونَ التَّمْرَ، وَيَتَوَاهَبُونَهُ.

L22416–22418 Similarly, the eggs of a hen before they are laid, and all such items—their sale is permissible in their current state because Allah... Exalted is He, He created all of that as it is. During the time of the Messenger of Allah (peace and blessings be upon him), people continued, by His knowledge, to sell dates and give them as gifts to one another.

وَيَبِيعُونَ الْبَيْضَ وَيَتَهَادَوْنَهُ مِنْ بَيْضِ الدَّجَاجِ، وَالضِّبَابِ، وَالنَّعَامِ.

L22419 They sell eggs and exchange them as gifts, specifically eggs of chickens,

[19] **Qur'an references (L22412):** Qur'an 23:12 (Al-Mu'minun); Qur'an 23:13 (Al-Mu'minun); Qur'an 23:14 (Al-Mu'minun).

spiny-tailed lizards, and ostriches.

وَيَتَبَايَعُونَ الْعَسَلَ وَيَتَهَادَوْنَهُ، كَمَا يَشْتَرُونَهُ فِي شَمْعِهِ.

L22420 They trade honey and reciprocally exchange it, just as they purchase it still in the comb.

وَيَتَبَايَعُونَ إِنَاثَ الضَّأْنِ، وَالْبَقَرِ، وَالْخَيْلِ، وَالْمَعْزِ، وَالْإِبِلِ، وَالْإِمَاءِ وَالظِّبَاءِ - حَوَامِلَ وَغَيْرَ حَوَامِلَ - وَيَغْنَمُونَ كُلَّ ذَلِكَ وَيَقْتَسِمُونَهُنَّ، وَيَتَوَارَثُونَهُنَّ وَيَقْتَسِمُونَهُنَّ كَمَا هُنَّ، فَمَا جَاءَ قَطُّ نَصٌّ بِأَنَّ لِلْأَوْلَادِ حُكْمًا آخَرَ قَبْلَ الْوَضْعِ، فَبَيْعُ الْحَامِلِ بِحَمْلِهَا جَائِزٌ كَمَا هُوَ مَا لَمْ تَضَعْهُ.

L22421 They trade female sheep, female cows, female horses, female goats, female camels, female gazelles, and female slaves—whether pregnant or not—and seize all such as war spoils, divide them, inherit them, and distribute them as they are. No text has ever stipulated a different ruling for unborn offspring before birth. Therefore, selling a pregnant female along with her pregnancy is permissible as long as she has not delivered.

قَالَ عَلِيٌّ: وَهَذَا هُوَ الصَّوَابُ عِنْدَنَا وَبِهِ نَقُولُ؛ لِأَنَّهُ كُلُّهُ بَابٌ وَاحِدٌ، وَعَمَلٌ وَاحِدٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L22422 Ali said: "This is the correct view according to us, and with this we assert; for it is entirely a single legal section and a unified action - and with Allah the Exalted is success."

[مَسْأَلَةٌ مَا تَوَلَّى الْمَرْءُ وَضْعَهُ فِي الشَّيْءِ كَالْبَذْرِ يُزْرَعُ]

An issue concerning what a person takes responsibility for placing in an object, like a seed that is sown.

١٤٢٦ - مَسْأَلَةٌ: وَلَيْسَ كَذَلِكَ مَا تَوَلَّى الْمَرْءُ وَضْعَهُ فِي الشَّيْءِ كَالْبَذْرِ يُزْرَعُ، وَالنَّوَى يُغْرَسُ، فَإِنَّ هَذَا شَيْءٌ أَوْدَعَهُ الْمَرْءُ فِي شَيْءٍ آخَرَ مُبَايِنٍ لَهُ، بَلْ هَذَا وَوَضْعُهُ الدَّرَاهِمَ وَالدَّنَانِيرَ فِي الْكِيسِ، وَالْبُرَّ فِي الْوِعَاءِ، وَالسَّمْنَ فِي الْإِنَاءِ سَوَاءٌ، وَلَا يَدْخُلُ حُكْمُ أَحَدِهِمَا فِي الْآخَرِ.

L22424 1426 - Issue: This is not the case with what a person undertakes to place within the thing, such as seeds sown or pits planted. For this involves depositing one entity into another distinct from it. Rather, this and placing dirhams and dinars in a purse, wheat in a container, or ghee in a vessel are equivalent. The legal ruling applicable to one does not extend to the other.

وَمَنْ بَاعَ مِنْ مَالِهِ شَيْئًا لَمْ يَلْزَمْهُ بَيْعُ شَيْءٍ آخَرَ غَيْرِهِ، وَإِنْ كَانَ مَقْرُونًا مَعَهُ، وَمُضَافًا إِلَيْهِ.

L22425 Whoever sells an item from their property is not obligated to sell another item separate from it, even if it is linked to it or added to it.

فَمَنْ بَاعَ أَرْضًا فِيهِ بَذْرٌ مَزْرُوعٌ وَنَوًى مَغْرُوسٌ - ظَهَرَا أَوْ لَمْ يَظْهَرَا - فَكُلُّ ذَلِكَ لِلْبَائِعِ وَلَا يَدْخُلُ فِي الْبَيْعِ لِمَا ذَكَرْنَا.

L22426 Whoever sells land containing sown seeds and planted date pits—whether they have emerged or not—all such [seeds and pits] belong to the seller and are excluded from the sale, for the reason we have stated.

L22427 Malik said: As for what has visibly sprouted from the crop, it is excluded

from the sale of the crop specifically, whereas what has not appeared remains included in the sale.

وَقَالَ مَالِكٌ: أَمَّا مَا يَظْهَرُ نَبَاتُهُ فَلَا يَدْخُلُ فِي الْبَيْعِ مِنْ الزَّرْعِ خَاصَّةً، وَأَمَّا مَا لَمْ يَظْهَرْ فَهُوَ فِي الْبَيْعِ.

L22428 Abu Muhammad said: This is an invalid distinction because there is no evidence for its validity—neither from the Qur'an, nor the Sunnah, nor a weak narration, nor analogy, nor the statement of any of the Salaf, nor precautionary measures, nor an opinion with a sound basis. Rather, the Qur'an invalidates this by the statement of the Exalted: "Do not consume one another's wealth wrongfully unless it be through trade by mutual consent" (Quran 4:28).[20]

قَالَ أَبُو مُحَمَّد: وَهَذَا فَرْقٌ فَاسِدٌ، لِأَنَّهُ لَا دَلِيلَ عَلَى صِحَّتِهِ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ قَوْلِ أَحَدٍ مِنْ السَّلَفِ، وَلَا مِنْ احْتِيَاطٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ، بَلْ الْقُرْآنُ يُبْطِلُ هَذَا بِقَوْلِهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

L22429–22430 We have established that seeds and date pits are unquestionably the seller's property. Thus, it is not lawful for anyone else to take them except through consent that grants ownership. And with Allah, the Most High, is success.

وَوَجَدْنَا الْبَذْرَ، وَالنَّوَى: مَالًا لِلْبَائِعِ بِلَا شَكٍّ، فَلَا يَحِلُّ لِغَيْرِهِ أَخْذُهُ إلَّا بِالرِّضَا الَّذِي مَلَّكَهُ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22431 Issue: The sale of musk without the musk sac prior to its removal from it.

[مَسْأَلَةٌ بَيْعُ الْمِسْكِ دُونَ النَّافِجَةِ قَبْلَ إخْرَاجِهِ مِنْهَا]

L22432 Issue 1427: It is impermissible to sell any of the aforementioned absent items, except for what is originally attached to them. Specifically, it is impermissible to sell date pits—of any kind—before they are extracted and made visible, except for what is attached to them.

١٤٢٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ شَيْءٍ مِنْ الْمُغَيَّبَاتِ الْمَذْكُورَةِ كُلِّهَا دُونَ مَا عَلَيْهَا أَصْلًا -: لَا يَحِلُّ بَيْعُ النَّوَى - أَيُّ نَوًى كَانَ - قَبْلَ إخْرَاجِهِ وَإِظْهَارِهِ دُونَ مَا عَلَيْهِ.

L22433 The sale of musk without the musk gland before extracting it from the musk gland is not permissible.

وَلَا بَيْعُ الْمِسْكِ دُونَ النَّافِجَةِ قَبْلَ إخْرَاجِهِ مِنْ النَّافِجَةِ.

L22434 The sale of eggs without their shells is invalid unless the shells have already been removed.

وَلَا بَيْعُ الْبَيْضِ دُونَ الْقِشْرِ قَبْلَ إخْرَاجِهِ عَنْهُ.

L22435 The sale of walnuts, almonds, pistachios, pine nuts, acorns, chestnuts, hazelnuts, or any item still encased within its outer shell is not permitted before extracting it from its shell.

وَلَا بَيْعُ حَبِّ الْجَوْزِ، وَاللَّوْزِ، وَالْفُسْتُقِ، وَالصَّنَوْبَرِ، وَالْبَلُّوطِ، وَالْقَسْطَلِ، وَالْجُلَّوْزِ، وَكُلِّ ذِي قِشْرَةٍ دُونَ قِشْرِهِ قَبْلَ إخْرَاجِهِ مِنْ قِشْرِهِ.

L22436 The sale of honey is invalid if sold without its wax before the honey has been separated from it.

وَلَا بَيْعُ الْعَسَلِ دُونَ شَمْعِهِ قَبْلَ إخْرَاجِهِ مِنْ شَمْعِهِ.

[20] **Qur'an references (L22428):** Qur'an 4:29 (An-Nisa).

وَلَا لَحْمِ شَاةٍ مَذْبُوحَةٍ دُونَ جِلْدِهَا قَبْلَ سَلْخِهَا.

L22437 Nor the meat of a slaughtered sheep taken without its skin before it is skinned.

وَلَا بَيْعُ زَيْتٍ دُونَ الزَّيْتُونِ قَبْلَ عَصْرِهِ.

L22438 Nor is it permissible to sell oil without the olives before they are pressed.

وَلَا بَيْعُ شَيْءٍ مِنْ الْأَدْهَانِ دُونَ مَا هُوَ فِيهِ قَبْلَ إخْرَاجِهِ مِنْهَا.

L22439 It is impermissible to sell any of the oils while still in their source before extracting them from it.

وَلَا بَيْعُ حَبِّ الْبُرِّ دُونَ أَكْمَامِهِ قَبْلَ إخْرَاجِهِ مِنْهَا.

L22440 It is invalid to sell wheat grains while they are still in their husks.

وَلَا بَيْعُ سَمْنٍ مِنْ لَبَنٍ قَبْلَ إخْرَاجِهِ، وَلَا بَيْعُ لَبَنٍ قَبْلَ حَلْبِهِ أَصْلًا.

L22441 Nor is the sale of clarified butter before its extraction from milk permissible, nor is the sale of milk before it is milked absolutely.

وَلَا بَيْعُ الْجَزَرِ، وَالْبَصَلِ، وَالْكُرَّاثِ، وَالْفُجْلِ قَبْلَ قَلْعِهِ - لَا مَعَ الْأَرْضِ وَلَا دُونَهَا - لِأَنَّ كُلَّ ذَلِكَ بَيْعُ غَرَرٍ، لَا يُدْرَى مِقْدَارُهُ وَلَا صِفَتُهُ وَلَا رَآهُ أَحَدٌ فَيَصِفُهُ.

L22442 The sale of carrots, onions, leeks, and radishes before its uprooting—neither with the land nor without it—is prohibited, for all such sales constitute gharar, as its quantity and quality cannot be known, and no one has seen it to describe it.

وَهُوَ أَيْضًا أَكْلُ مَالٍ بِالْبَاطِلِ، قَالَ اللَّهُ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

L22443 And it is also wrongful consumption of wealth. Allah the Exalted said: “Do not consume your wealth among yourselves wrongfully, unless it be a trade conducted by mutual consent between you” [Quran 4:29].[21]

وَبِالضَّرُورَةِ يَدْرِي كُلُّ أَحَدٍ أَنَّهُ لَا يُمْكِنُ أَلْبَتَّةَ وُجُودُ الرِّضَا عَلَى مَجْهُولٍ وَإِنَّمَا يَقَعُ التَّرَاضِي عَلَى مَا عُلِمَ وَعُرِفَ، فَإِذْ لَا سَبِيلَ إلَى مَعْرِفَةِ صِفَاتِ كُلِّ مَا ذَكَرْنَا وَلَا مِقْدَارِهِ فَلَا سَبِيلَ إلَى التَّرَاضِي بِهِ، وَإِذْ لَا سَبِيلَ إلَى التَّرَاضِي بِهِ فَلَا يَحِلُّ بَيْعُهُ، وَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ.

L22444 By necessity, everyone knows that consent cannot possibly apply to anything unknown, for mutual consent can only pertain to what is known and established. Since there is no means to determine the attributes or measure of anything we have mentioned, mutual consent about it becomes impossible. When mutual consent is impossible, selling such things becomes unlawful, amounting to the unlawful consumption of wealth.

وَأَمَّا الْجَزَرُ، وَالْبَصَلُ، وَالْكُرَّاثُ، وَالْفُجْلُ، فَكُلُّ ذَلِكَ شَيْءٌ لَمْ يَرَهُ قَطُّ أَحَدٌ، وَلَا تُدْرَى صِفَتُهُ: فَهُوَ بَيْعُ غَرَرٍ، وَأَكْلُ مَالٍ بِالْبَاطِلِ - إذَا بِيعَ وَحْدَهُ - وَأَمَّا بَيْعُهُ بِالْأَرْضِ مَعًا فَلَيْسَ مِمَّا ابْتَدَأَ اللَّهُ تَعَالَى خَلْقَهُ فِي الْأَرْضِ فَيُكَوِّنُ بَعْضَهَا، وَإِنَّمَا هُوَ شَيْءٌ مِنْ مَالِ الزَّارِعِ لَهَا، أَوْدَعَهُ فِي الْأَرْضِ كَمَا لَوْ أَوْدَعَ فِيهَا شَيْئًا مِنْ سَائِرِ مَالِهِ وَلَا فَرْقَ، فَمَا لَمْ

L22445–22447 As for carrots, onions, leeks, and radishes—all these are items no one has seen at all, and their attributes remain unknown. When sold alone, this constitutes a speculative sale (gharar) and wrongful consumption of property. However, selling them alongside the land is permissible. It is not among what Allah, the Exalted, first created in the earth such that it constitutes part of it. Rather, it is something from the farmer’s wealth allocated for the earth that

[21] **Qur’an references (L22443):** Qur’an 4:29 (An-Nisa).

he deposited in it, just as if he had deposited any part of his other wealth in it—there being no difference between this and that. As long as the seed has not detached from its original form, its sale is permissible with the land or without it, because it is a specified item of known quantity, and the seller or the one who described it has seen it. Therefore, its sale is permissible since mutual consent about it is feasible. However, if it transforms from its state, it ceases to be possible to know its condition or attributes. It is not part of the earth but something added to it, rendering its attributes wholly unknown. Selling something with unspecified attributes is impermissible in any manner, as it constitutes a sale involving uncertainty (gharar) until it is uprooted and inspected. And success comes only from Allah, the Exalted.

يَسْتَحِلَّ الْبَذْرُ عَنْ هَيْئَتِهِ فَبَيْعُهُ جَائِزٌ مَعَ الْأَرْضِ وَدُونَهَا لِأَنَّهُ شَيْءٌ مَوْصُوفٌ مَعْرُوفُ الْقَدْرِ، وَقَدْ رَآهُ بَائِعُهُ أَوْ مَنْ وَصَفَهُ لَهُ، فَبَيْعُهُ جَائِزٌ، لِأَنَّ التَّرَاضِيَ بِهِ مُمْكِنٌ وَأَمَّا إِذَا اسْتَحَالَ عَنْ حَالِهِ فَقَدْ بَطَلَ أَنْ يَعْرِفَ كَيْفَ هُوَ وَمَا صِفَتُهُ، وَلَيْسَ هُوَ مِنَ الْأَرْضِ، وَلَكِنَّهُ شَيْءٌ مُضَافٌ إِلَيْهَا، فَهُوَ مَجْهُولُ الصِّفَةِ جُمْلَةً، وَلَا يَحِلُّ بَيْعُ مَجْهُولِ الصِّفَةِ بِوَجْهٍ مِنَ الْوُجُوهِ، لِأَنَّهُ بَيْعُ غَرَرٍ حَتَّى يُقْلَعَ وَيُرَى - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L22448 Among those who invalidated the sale of these unseen items in the earth are Al-Shāfiʿī, Aḥmad ibn Ḥanbal, and Abū Sulaymān.

وَمِمَّنْ أَبْطَلَ بَيْعَ هَذِهِ الْمُغَيَّبَاتِ فِي الْأَرْضِ: الشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَبُو سُلَيْمَانَ.

L22449 Our opponents present here have contradicted much of what we have mentioned: Abū Ḥanīfa permitted selling the meat of the slaughtered sheep before skinning and required the seller to perform the skinning.

وَقَدْ تَنَاقَضَ الْحَاضِرُونَ مِنْ مُخَالِفِينَا فِي كَثِيرٍ مِمَّا ذَكَرْنَا -: فَأَجَازَ أَبُو حَنِيفَةَ بَيْعَ لَحْمِ الشَّاةِ مَذْبُوحَةً قَبْلَ السَّلْخِ وَأَوْجَبَ السَّلْخَ عَلَى الْبَائِعِ.

L22450 He permitted the sale of wheat without the straw and chaff before threshing and winnowing, and placed the responsibility of threshing and winnowing on the seller.

وَأَجَازَ بَيْعَ الْبُرِّ دُونَ التِّبْنِ وَالْأَكْمَامِ قَبْلَ أَنْ يُدْرَسَ وَيُصَفَّى، وَجَعَلَ الدَّرْسَ وَالتَّصْفِيَةَ عَلَى الْبَائِعِ.

L22451 He permitted the sale of carrots, onions, and other similar crops concealed in the ground.

وَأَجَازَ بَيْعَ الْجَزَرِ، وَالْبَصَلِ، وَغَيْرِ ذَلِكَ مُغَيَّبًا فِي الْأَرْضِ.

L22452 He obligated the seller to remove a sample from it sufficient to show the buyer. If the buyer approves it, the obligation falls upon the buyer to remove the rest of it. If the buyer undertakes to remove a sample himself and does not approve it, the sale is not binding on him. If he removes more than a sample from it, the sale becomes binding on him whether he likes it or not.

وَأَوْجَبَ عَلَى الْبَائِعِ أَنْ يَقْلَعَ مِنْهُ أُنْمُوذَجًا قَدْرَ مَا يُرِيهِ الْمُشْتَرِيَ فَإِنْ رَضِيَهُ كَانَ عَلَى الْمُشْتَرِي قَلْعُ سَائِرِهِ - فَلَوْ أَنَّ الْمُشْتَرِيَ يَتَوَلَّى بِنَفْسِهِ قَلْعَ أُنْمُوذَجٍ مِنْهُ فَلَمْ يَرْضَهُ لَمْ يَلْزَمْهُ الْبَيْعُ - فَلَوْ قَلَعَ مِنْهُ أَكْثَرَ مِنْ أُنْمُوذَجٍ فَقَدْ لَزِمَهُ الْبَيْعُ أَحَبَّ أَمْ كَرِهَ.

L22453 And Abu Yusuf said: I do not permit the seller or the buyer to uproot anything from that. If they dispute, I invalidate the sale.

وَقَالَ أَبُو يُوسُفَ: لَا أُجِيزُ الْبَائِعَ وَلَا الْمُشْتَرِيَ عَلَى قَلْعِ شَيْءٍ مِنْ ذَلِكَ فَإِنْ تَشَاحَّا أَبْطَلْتُ الْبَيْعَ.

L22454 If the buyer removes from it the minimum measurable quantity in dry mea-

sures, he has the option to uphold or annul the sale. But if he removes more than that, he is obligated to complete the entire sale.

فَإِنْ قَلَعَ الْمُشْتَرِي مِنْهُ أَقَلَّ مَا يَقَعُ فِي الْمَكَايِيلِ فَلَهُ الْخِيَارُ فِي إمْضَاءٍ أَوْ فَسْخٍ، فَإِنْ قَلَعَ أَكْثَرَ مِنْ ذَلِكَ فَقَدْ لَزِمَهُ الْبَيْعُ كُلُّهُ.

L22455–22457 Abū Muḥammad said: There is indeed astonishment in this. I wish I knew from where it became obligatory that the seller should be compelled to thresh, winnow, and skin, yet is not compelled to uproot carrots, onions, leeks, and radishes? Has anything more foolish than this division ever been heard? And I wish I knew: What is this "unmūdhaj" that is not an Arabic word from the language in which the Quran was revealed and with which the Messenger of Allah—may Allah bless him and grant him peace—addressed us? Nor is there a legal term, then Abū Ḥanīfah came to enact through it the legal rulings - prohibiting and permitting. Thus, upon the model lie effacement and striking the nape, and upon every legal ruling enacted through the model.

قَالَ أَبُو مُحَمَّد: إنَّ فِي هَذَا لَعَجَبًا، لَيْتَ شِعْرِي مِنْ أَيْنَ وَجَبَ أَنْ يُجْبَرَ الْبَائِعَ عَلَى الدَّرْسِ، وَالتَّصْفِيَةِ، وَالسَّلْخِ، وَلَا يُجْبَرُ عَلَى قَلْعِ الْجَزَرِ، وَالْبَصَلِ وَالْكُرَّاثِ، وَالْفُجْلِ؟ وَهَلْ سُمِعَ بِأَسْخَفَ مِنْ هَذَا التَّقْسِيمِ؟ وَلَيْتَ شِعْرِي مَا هَذَا " الْأُنْمُوذَجُ " الَّذِي لَا هُوَ لَفْظَةٌ عَرَبِيَّةٌ مِنْ اللُّغَةِ الَّتِي بِهَا نَزَلَ الْقُرْآنُ وَخَاطَبَنَا بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا لَفْظَةٌ شَرْعِيَّةٌ، ثُمَّ صَارَ يُشَرِّعُ بِهَا أَبُو حَنِيفَةَ الشَّرَائِعَ فَيُحَرِّمُ وَيُحَلِّلُ، فَعَلَى " الْأُنْمُوذَجِ " الْعَفَاءُ، وَصَفْعُ الْقَفَاءِ، وَعَلَى كُلِّ شَرِيعَةٍ تُشَرَّعُ بِالْأُنْمُوذَجِ.

L22458 Then Abū Yūsuf's determination of that by the smallest customary measure—not measures—even though sellers may use extremely small measures. We have not known carrots or radishes [to be such that] they are sold by measurement, so from where did he derive this legal ruling with its corrupt criterion—and we praise Allah the Exalted for well-being? Would that I knew: From where did they derive the permissibility of selling these absent items apart from the land? They prohibited selling a fetus without its mother, yet both matters are equal, with no distinction between any part of them. Both involve uncertainty and the sale of an unknown.

ثُمَّ تَحْدِيدُ أَبِي يُوسُفَ ذَلِكَ بِأَقَلِّ مَا يَقَعُ لَا الْمَكَايِيلَ، وَقَدْ يَتَّخِذُ الْبَاعَةُ مَكَايِيلَ صِغَارًا جِدًّا، وَمَا عَهِدْنَا بِالْجَزَرِ، وَلَا الْفُجْلِ: يَقَعَانِ فِي الْكَيْلِ، فَمِنْ أَيْنَ خَرَجَ لَهُ تَحْدِيدُ هَذِهِ الشَّرِيعَةِ بِهَذَا الْحَدِّ الْفَاسِدِ - وَنَحْمَدُ اللَّهَ تَعَالَى عَلَى السَّلَامَةِ؟ وَلَيْتَ شِعْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ جَوَازُ بَيْعِ هَذِهِ الْمُغَيَّبَاتِ دُونَ الْأَرْضِ؟ وَمَنَعُوا مِنْ بَيْعِ الْجَنِينِ دُونَ أُمِّهِ، وَكِلَا الْأَمْرَيْنِ سَوَاءٌ لَا فَرْقَ بَيْنَ شَيْءٍ مِنْهُمَا، وَكِلَاهُمَا غَرَرٌ وَبَيْعُ مَجْهُولٍ.

L22459 Furthermore, the most marginal of all these restrictions: their prohibition against selling wool still on sheep's backs, a measured cubit from this edge of this garment stretching from beginning to end, or a quantified cubit extending to the edge of a present piece of wood, and the ornamentation of this sword excluding its scabbard and blade - they falsely asserted this to constitute *gharar* and a conditional act invalidating the sale. Yet they did not consider threshing, winnowing, or flaying to involve *gharar* or conditional acts nullifying sales. Do the proponents of these contradictory opinions possess any legitimate claim to knowledge? Moreover, they permitted selling immature crops on stalks and fruits not yet visibly sound on the branch.

ثُمَّ أَطْرَفُ مِنْ هَذَا كُلِّهِ: مَنْعُهُمْ مِنْ بَيْعِ الصُّوفِ عَلَى ظُهُورِ الْغَنَمِ، وَذِرَاعٍ مَحْدُودَةٍ مِنْ هَذَا الطَّرْفِ مِنْ هَذَا الثَّوْبِ مِنْ أَوَّلِهِ إلَى آخِرِهِ، أَوْ ذِرَاعٍ مَحْدُودٍ إلَى طَرْفِهِ مِنْ خَشَبَةٍ حَاضِرَةٍ، وَحِلْيَةِ هَذَا السَّيْفِ دُونَ جَفْنِهِ وَنَصْلِهِ؟ وَرَأَوْا هَذَا غَرَرًا وَعَمَلًا مُشْتَرَطًا يُفْسِدُ الْبَيْعَ - وَكَذَبُوا فِي ذَلِكَ. وَلَمْ يَرَوْا الدَّرْسَ، وَالتَّصْفِيَةَ، وَالسَّلْخَ غَرَرًا، وَلَا عَمَلًا

مُشْتَرَطًا يُفْسِدُ الْبَيْعَ؟ فَهَلْ لِأَصْحَابِ هَذِهِ الْأَقْوَالِ الْمُتَخَاذِلَةِ حَظٌّ مِنَ الْعِلْمِ؟ ثُمَّ أَجَازُوا بَيْعَ الْقَصِيلِ عَلَى الْقَطْعِ وَالثَّمَرَةِ الَّتِي لَمْ يَبْدُ صَلَاحُهَا عَلَى الْقَطْعِ.

L22460 They permitted the sale of a palm tree stump on the ground and did not consider its severance to involve gharar or a stipulated labor invalidating the sale. Would anyone possessing a modicum of intellect doubt that cutting a bordered hem of a garment with shears or prying off an ornament from a sword's scabbard - actions not arduous for an adolescent boy - are easier and lighter than threshing a thousand kurr (a dry measure), winnowing them, and skinning a she-camel? Yet this represents the scope of their legal reasoning and jurisprudence.

وَأَجَازُوا بَيْعَ جِذْلِ نَخْلَةٍ عَلَى ظَهْرِ الْأَرْضِ، وَلَمْ يَرَوْا قَطْعَهُ غَرَرًا، وَلَا عَمَلًا مُشْتَرَطًا يُفْسِدُ الْبَيْعَ؟ وَهَلْ يَشُكُّ ذُو مُسْكَةٍ مِنْ عَقْلٍ فِي أَنَّ إِدْخَالَ الْجِلْمِ إِلَى حَاشِيَةٍ مَحْدُودَةٍ مِنْ ثَوْبٍ وَقَطْعَهُ، وَقَلْعَ حِلْيَةٍ عَلَى غِمْدِ سَيْفٍ لَا يَتَعَذَّرُ عَلَى غُلَامٍ مُرَاهِقٍ: أَسْهَلُ وَأَخَفُّ مِنْ دَرْسِ أَلْفِ كُرٍّ وَتَصْفِيَتِهَا وَمِنْ سَلْخِ نَاقَةٍ؟ وَلَكِنَّ هَذَا مِقْدَارُ نَظَرِهِمْ وَفِقْهِهِمْ.

L22461 "Some of them argued: 'Wool grows, and it is unclear where the cutting applies - to the wool itself or the garment?' We responded: 'The rootstock likewise grows, and it is unclear where the cutting applies to it - there is no juristic difference.'"

وَقَالَ بَعْضُهُمْ: الصُّوفُ يُنَمَّى وَلَا يُدْرَى أَيْنَ يَقَعُ الْقَطْعُ مِنْهُ وَمِنَ الثَّوْبِ؟ فَقُلْنَا: وَالْجِذْلُ يُنَمَّى وَلَا يُدْرَى أَيْنَ يَقَعُ الْقَطْعُ مِنْهُ وَلَا فَرْقَ.

L22462 If they say: "It has been authentically reported from Ibn Abbas the prohibition of selling wool on the sheep's backs, and no opposing view is known among the Companions - may Allah be pleased with them -"?

فَإِنْ قَالُوا: قَدْ صَحَّ عَنِ ابْنِ عَبَّاسٍ الْمَنْعُ مِنْ بَيْعِ الصُّوفِ عَلَى ظُهُورِ الْغَنَمِ وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؟

L22463–22464 We said: It has been authentically reported from Ibn Umar regarding a sale involving an undefined portion - "The obligation falls upon the seller," with no known disagreement from the Companions, yet you oppose his ruling. What makes one of these two positions more valid than the other? They responded: If a land divided into plots of one hundred cubits by one hundred cubits, or a similarly measured house, were to have its owner sell ten cubits as an undivided share in the entire property, such a sale would be invalid.

قُلْنَا: وَقَدْ صَحَّ عَنِ ابْنِ عُمَرَ مَا أَدْرَكْتِ الصَّفْقَةَ مَجْمُوعًا حَيًّا فَمِنَ الْبَائِعِ، وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنَ الصَّحَابَةِ فَخَالَفْتُمُوهُ، فَمَا الَّذِي جَعَلَ أَحَدَهُمَا أَوْلَى مِنَ الْآخَرِ؟ وَقَالُوا: لَوْ أَنَّ أَرْضًا تَكْسِيرُهَا مَعْلُومٌ مِائَةُ ذِرَاعٍ فِي مِثْلِهَا، أَوْ دَارًا كَذَلِكَ: فَبَاعَ صَاحِبُهَا مِنْهَا عَشَرَةَ أَذْرُعٍ فِي مِثْلِهَا مُشَاعًا فِي جَمِيعِهَا لَمْ يَجُزْ ذَلِكَ.

L22465 If he sells ten shares from a total of one hundred shares as undivided shares across the entirety of the property, this is permissible.

فَلَوْ بَاعَ مِنْهَا عَشَرَةَ أَسْهُمٍ مِنْ مِائَةِ سَهْمٍ مُشَاعًا فِي جَمِيعِهَا جَازَ ذَلِكَ -.

L22466 This is utmost confusion—prohibiting something and permitting the very same thing; both matters are precisely the sale of a tenth share in undivided co-ownership.

وَهَذَا تَخْلِيطٌ نَاهِيكَ بِهِ، وَتَحْرِيمُ شَيْءٍ وَإِبَاحَتُهُ بِعَيْنِهِ، وَكِلَا الْأَمْرَيْنِ إِنَّمَا هُوَ بَيْعُ الْعُشْرِ مُشَاعًا.

L22467 They did not permit the sale of a sword's blade, its hilt, or half of its or-

namentation as undivided joint property, and they said: “This is harm” - If only I knew! What harm is there in this? As for the Mālikīs, they permitted the sale of wool still on the sheep and were justified in this ruling, except they stipulated: “provided it is taken at the time of its shearing; otherwise, it is not permitted.”

وَلَمْ يُجِيزُوا بَيْعَ نَصْلِ السَّيْفِ وَحَمَائِلِهِ وَنِصْفِ حِلْيَتِهِ مُشَاعًا، وَقَالُوا: هَذَا ضَرَرٌ - فَلَيْتَ شِعْرِي أَيُّ ضَرَرٍ فِي هَذَا؟ وَأَمَّا الْمَالِكِيُّونَ فَأَجَازُوا بَيْعَ الصُّوفِ عَلَى ظُهُورِ الْغَنَمِ، وَوَفَّقُوا فِي ذَلِكَ، إِلَّا أَنَّهُمْ قَالُوا: إِنْ أُخِذَ فِي جَزَازِهِ وَإِلَّا فَلَا.

L22468 And they permitted the sale of milk from numerous sheep that is two months old or less.

وَأَجَازُوا بَيْعَ لَبَنِ الْغَنَمِ الْكَثِيرَةِ شَهْرَيْنِ فَأَقَلَّ -.

L22469 This is a statement of evident invalidity: it involves the sale of something that has not been created and constitutes a sale of *gharar*.

وَهَذَا قَوْلٌ ظَاهِرُ الْفَسَادِ، أَنَّهُ بَيْعُ شَيْءٍ لَمْ يُخْلَقْ، وَبَيْعُ غَرَرٍ.

L22470 They prohibited the sale of all the milk from a single sheep, saying: “This is gharar (uncertainty), for the sheep may die.” We responded: “But even a large number (of sheep) may die, or some of them may die.”

وَمَنَعُوا مِنْ بَيْعِ لَبَنِ شَاةٍ وَاحِدَةٍ كُلِّهِ، وَقَالُوا: هَذَا غَرَرٌ وَقَدْ تَمُوتُ؟ فَقُلْنَا: وَقَدْ تَمُوتُ الْكَثِيرَةُ أَوْ يَمُوتُ بَعْضُهَا.

L22471 We ask them similarly about selling the milk of two ewes? If they prohibit that, we ask them about the milk of three ewes. We keep adding one at a time until they define what they prohibit from what they permit. Then we ask them about the distinction? This is something for which there is no justification.

وَنَسْأَلُهُمْ عَنْ بَيْعِ لَبَنِ شَاتَيْنِ كَذَلِكَ؟ فَإِنْ مَنَعُوا مِنْ ذَلِكَ سَأَلْنَاهُمْ عَنْ لَبَنِ ثَلَاثِ شِيَاهٍ؟ وَلَا نَزَالُ نَزِيدُهُمْ وَاحِدَةً فَوَاحِدَةً حَتَّى يَحُدُّوا مَا يُحَرِّمُونَ مِمَّا يُحَلِّلُونَ، ثُمَّ نَسْأَلُهُمْ عَنْ الْفَرْقِ؟ وَذَلِكَ مَا لَا سَبِيلَ إِلَيْهِ.

L22472 They permitted the sale of squash interiors, jasmine, and portions of young crops before Allah the Exalted had brought these things into existence, yet did not deem this gharar. But they considered the sale of a runaway slave, a stray camel, and usurped property to be gharar. Oh, such marvels!

وَأَجَازُوا بَيْعَ بُطُونِ الْمَقَاثِي، وَالْيَاسَمِينِ، وَجِزَّاتِ الْقَصِيلِ قَبْلَ أَنْ يَخْلُقَ اللَّهُ تَعَالَى ذَلِكَ كُلَّهُ، وَلَمْ يَرَوْهُ غَرَرًا، وَرَأَوْا بَيْعَ الْعَبْدِ الْآبِقِ، وَالْجَمَلِ الشَّارِدِ وَالْمَالِ الْمَغْصُوبِ: غَرَرًا، فَيَا لَهَذِهِ الْعَجَائِبِ.

L22473 They permitted the sale of the meat of a sheep while it is still alive, excluding its skin.

وَأَجَازُوا بَيْعَ لَحْمِ الشَّاةِ وَهِيَ حَيَّةٌ دُونَ جِلْدِهَا.

L22474 They permitted the seller to exclude a small number of *arṭāls* (a unit of weight) from its meat, amounting to a third or less.

وَأَجَازُوا اسْتِثْنَاءَ أَرْطَالٍ يَسِيرَةٍ مِنْ لَحْمِهَا لِلْبَائِعِ الثُّلُثَ فَأَقَلَّ.

L22475 They forbade excluding the majority—would that I knew from which of its constituent parts those arṭāls [units of weight] are derived, when they differ in attributes and values?

وَمَنَعُوا مِنْ اسْتِثْنَاءِ أَكْثَرَ - فَلَيْتَ شِعْرِي مِنْ أَيِّ أَعْضَائِهَا تَكُونُ تِلْكَ الْأَرْطَالُ وَهِيَ مُخْتَلِفَةُ الصِّفَاتِ وَالْقِيَمِ؟

L22476–22477 They said: If one excludes the thigh, liver, or abdomen, this is impermissible.

قَالُوا: فَإِنْ اسْتَثْنَى الْفَخْذَ، أَوْ الْكَبِدَ، أَوْ الْبَطْنَ لَمْ يَجُزْ.

L22478 If he excludes the head and shed parts? He replied: If he is a traveler, it is permissible, but if he is not a traveler, it is not permissible. Thus, these were peculiar oddities - we know of no such classification from any predecessor - and contradictory statements unsupported by the Quran, the Sunnah, the statements of predecessors, or qiyās (analogical reasoning).

فَإِنْ اسْتَثْنَى الرَّأْسَ وَالسَّوَاقِطَ؟ قَالَ: إِنْ كَانَ مُسَافِرًا جَازَ، وَإِنْ كَانَ غَيْرَ مُسَافِرٍ لَمْ يَجُزْ - فَكَانَتْ هَذِهِ أَعَاجِيبَ، لَا نَعْلَمُ تَقْسِيمَهَا عَنْ أَحَدٍ قَبْلَهُ، وَأَقْوَالًا مُتَنَاقِضَةً لَا يُعَضِّدُهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قَوْلُ مُتَقَدِّمٍ، وَلَا قِيَاسٌ.

L22479 They permitted the sale of carrots, onions, and radishes still in the ground. Abū Muḥammad said: Some of them argued against me regarding this by citing Allah's statement, the Exalted: *"They believe in the unseen"* [Al-Baqarah: 3]. I replied: Then by this verse, permit the sale of the fetus in its mother's womb separate from its mother—since that would constitute belief in the unseen. This is an argument (we seek Allah's protection from such) in distorting the speech of Allah, the Exalted, from its proper contexts to matters entirely unrelated to it? It was narrated to us through ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Abū Isḥāq al-Sabīʿī, from ʿIkrimah, from Ibn ʿAbbās: *Do not purchase wool upon sheep's backs nor milk within their udders.*[22]

وَأَجَازُوا بَيْعَ الْجَزَرِ، وَالْبَصَلِ، وَالْفُجْلِ: الْمُغَيَّبَةِ فِي الْأَرْضِ؟ قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ بَعْضُهُمْ عَلَيَّ فِي ذَلِكَ بِقَوْلِ اللَّهِ تَعَالَى: {يُؤْمِنُونَ بِالْغَيْبِ} [البقرة: ٣] فَقُلْتُ: فَأَبِحْ بِهَذِهِ الْآيَةِ بَيْعَ الْجَنِينِ فِي بَطْنِ أُمِّهِ دُونَ أُمِّهِ، لِأَنَّهُ مِنْ الْإِيمَانِ بِالْغَيْبِ - وَهَذَا احْتِجَاجٌ نَسْأَلُ اللَّهَ السَّلَامَةَ مِنْ مِثْلِهِ فِي تَحْرِيفِ كَلَامِ اللَّهِ تَعَالَى عَنْ مَوَاضِعِهِ إلَى مَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ؟ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا تَشْتَرُوا الصُّوفَ عَلَى ظُهُورِ الْغَنَمِ وَلَا اللَّبَنَ فِي ضُرُوعِهَا.

L22480 Via al-Ḥajjāj ibn al-Minhāl → Mulāzim ibn ʿAmr → Zufar ibn Yazīd ibn ʿAbd al-Raḥmān → his father—who was among the companions of Abū Hurayrah—who said: "I asked Abū Hurayrah about selling milk in the udders of sheep and goats. He replied: 'There is no good in it.' I also asked him about exchanging a sheep for two sheep on deferred terms. He said: 'No, except hand to hand.'"

Via al-Ḥajjāj ibn al-Minhāl → Abū ʿAwānah → al-Mughīrah → Ibrāhīm al-Nakhaʿī, who said: "The early Muslims disapproved of purchasing milk in the udders of sheep." Mujāhid and Ṭāwūs likewise disapproved of it. A narration from Ṭāwūs states he permitted it only when sold by measure.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا مُلَازِمِ بْنِ عَمْرٍو نا زُفَرُ بْنُ يَزِيدَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ وَكَانَ مِنْ جُلَسَاءِ أَبِي هُرَيْرَةَ قَالَ: سَأَلْتُ أَبَا هُرَيْرَةَ عَنْ بَيْعِ اللَّبَنِ فِي ضُرُوعِ الْغَنَمِ؟ فَقَالَ لَا خَيْرَ فِيهِ - وَسَأَلْته عَنْ الشَّاةِ بِالشَّاتَيْنِ إلَى أَجَلٍ؟ فَقَالَ: لَا إلَّا يَدًا بِيَدٍ. وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانُوا يَكْرَهُونَ أَنْ يُشْتَرَى اللَّبَنُ فِي ضُرُوعِ الشَّاةِ - وَكَرِهَهُ مُجَاهِدٌ، وَطَاوُسٌ - وَرُوِيَ عَنْ طَاوُسٍ أَنَّهُ أَجَازَهُ بِالْكَيْلِ فَقَطْ.

L22481 It is reported that Saʿīd ibn Jubayr permitted the sale of milk in the udder

[22] **Qur'an references (L22479):** Qur'an 2:3 (Al-Baqarah).

and wool on the backs of sheep. It is also reported from Al-Ḥasan that he permitted the sale of a ewe's milk as a total quantity to be delivered for several months. However, Abū Ḥanīfah, nor Al-Shāfiʿī, nor Aḥmad, nor Isḥāq, nor Abū Sulaymān permitted it. These two scholars have no opposition whatsoever from the Companions—may Allah be pleased with them—in origin. Ibrāhīm mentions this from those he encountered, and they both were among the senior Followers. They would hold such rulings in high esteem when they aligned with their own opinions.

وَرُوِيَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ إجَازَةُ بَيْعِ اللَّبَنِ فِي الضُّرُوعِ، وَالصُّوفِ عَلَى ظُهُورِ الْغَنَمِ - وَرُوِيَ عَنْ الْحَسَنِ أَنَّهُ أَجَازَ بَيْعَ لَبَنِ الشَّاةِ جُمْلَةً أَشْهُرًا. وَلَمْ يُجِزْهُ أَبُو حَنِيفَةَ، وَلَا الشَّافِعِيُّ، وَلَا أَحْمَدُ، وَلَا إسْحَاقُ، وَلَا أَبُو سُلَيْمَانَ - فَهَذَانِ صَاحِبَانِ لَا يُعْرَفُ لَهُمَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ أَصْلًا، وَإِبْرَاهِيمُ يَذْكُرُ ذَلِكَ عَمَّنْ أَدْرَكَ، وَهُمَا أَكَابِرُ التَّابِعِينَ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا وَافَقَ آرَاءَهُمْ.

L22482 They cited as evidence in this matter the permissibility of a contract of hiring for a wet nurse's breastfeeding—is this valid?

وَاحْتَجُّوا فِي هَذَا بِجَوَازِ إجَارَةِ الظِّئْرِ لِلرَّضَاعِ؟

L22483–22484 So we said: Are we speaking with you regarding a lease or a sale? Lease differs from sale, for we lease the free woman for breastfeeding and did not buy her milk from her at all.

فَقُلْنَا: أَفِي إجَارَةٍ تَكَلَّمْنَا مَعَكُمْ أَمْ فِي بَيْعٍ؟ وَالْإِجَارَةُ غَيْرُ الْبَيْعِ، لِأَنَّا نُؤَاجِرُ الْحُرَّةَ لِلرَّضَاعِ وَلَمْ نَبْتَعْ مِنْهَا لَبَنَهَا أَصْلًا.

L22485 Then the strangest thing is their argument in this matter using what we mentioned about hiring a wet nurse, while they prohibit selling the milk of a single sheep, a single cow, or a single camel. This situation more closely resembles hiring a single wet nurse, yet they only permit that with numerous flocks of sheep and goats. Be astonished at the flimsiness of this analogy and the severity of its inconsistency, for they prohibited what resembles the very case they analogized to permit, while permitting through analogy to it what bears no resemblance.

ثُمَّ أَعْرَبُ شَيْءٍ احْتِجَاجُهُمْ فِي هَذَا بِمَا ذَكَرْنَا مِنْ إجَارَةِ الظِّئْرِ، وَهُمْ يُحَرِّمُونَ بَيْعَ لَبَنِ الشَّاةِ الْوَاحِدَةِ، وَالْبَقَرَةِ الْوَاحِدَةِ وَالنَّاقَةِ الْوَاحِدَةِ، وَهَذَا أَشْبَهُ بِإِجَارَةِ الظِّئْرِ الْوَاحِدَةِ، وَإِنَّمَا يُجِيزُونَ ذَلِكَ فِي الْغَنَمِ الْكَثِيرَةِ - فَاعْجَبُوا لِسَخَافَةِ هَذَا الْقِيَاسِ وَشِدَّةِ تَنَاقُضِهِ، إذْ حَرَّمُوا مَا يُشْبِهُ مَا قَاسُوا عَلَى إبَاحَتِهِ، وَأَبَاحُوا قِيَاسًا عَلَيْهِ مَا لَا يُشْبِهُهُ.

L22486 Abu Muhammad said: If the wool increases, the two parties are in dispute. The presumption lies with the seller contingent on his oath, provided the sheep are acknowledged as his or in his possession. If they are not acknowledged as his and are in the possession of the other party, the presumption shifts to the other party contingent on his oath.

قَالَ أَبُو مُحَمَّد: فَإِنْ زَادَ الصُّوفُ؟ فَهُمَا مُتَدَاعِيَانِ، وَالْقَوْلُ قَوْلُ الْبَائِعِ مَعَ يَمِينِهِ إنْ كَانَتْ الْغَنَمُ مَعْرُوفَةً لَهُ أَوْ فِي يَدِهِ، فَإِنْ لَمْ تَكُنْ مَعْرُوفَةً لَهُ وَكَانَتْ فِي يَدِ الْآخَرِ، فَالْقَوْلُ قَوْلُ الْآخَرِ مَعَ يَمِينِهِ.

L22487 If it is in the possession of both parties jointly or not, their ruling follows the ruling of two disputants regarding a matter that is in their possession or not, according to what we will clarify—if Allah the Exalted wills—in the section on litigation within legal cases. And success is from Allah, the Exalted.

فَإِنْ كَانَتْ فِي أَيْدِيهِمَا، أَوْ فِي غَيْرِ أَيْدِيهِمَا مَعًا، فَحُكْمُهُمَا حُكْمُ الْمُتَدَاعِيَيْنِ فِي الشَّيْءِ يَكُونُ بِأَيْدِيهِمَا، أَوْ بِغَيْرِ أَيْدِيهِمَا عَلَى مَا نَذْكُرُ - إنْ شَاءَ اللَّهُ تَعَالَى - فِي التَّدَاعِي فِي الْأَقْضِيَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ بَيْعُ الظَّاهِرِ دُونَ الْمَغِيبِ]

١٤٢٨ - مَسْأَلَةٌ: وَأَمَّا بَيْعُ الظَّاهِرِ دُونَ الْمَغِيبِ فِيهَا فَحَلَالٌ، إلَّا أَنْ يَمْنَعَ مِنْ شَيْءٍ مِنْهُ نَصٌّ، فَجَائِزٌ بَيْعُ الثَّمَرَةِ وَاسْتِثْنَاءُ نَوَاهَا، وَبَيْعُ جِلْدِ النَّافِجَةِ دُونَ الْمِسْكِ الَّذِي فِيهَا، وَالْجِرَابِ، وَالظُّرُوفِ كُلِّهَا دُونَ مَا فِيهَا، وَقِشْرِ الْبَيْضِ، وَاللَّوْزِ، وَالْجَوْزِ، وَالْجُلَّوْزِ، وَالْفُسْتُقِ، وَالْبُلُّوطِ، وَالْقَسْطَلِ، وَكُلِّ قِشْرٍ لَا تُحَاشِي شَيْئًا دُونَ مَا تَحْتَهَا، وَبَيْعُ الشَّمْعِ دُونَ الْعَسَلِ الَّذِي فِيهِ، وَبَيْعُ التِّبْنِ دُونَ الْحَبِّ الَّذِي فِيهِ، وَجِلْدِ الْحَيَوَانِ الْمَذْبُوحِ أَوْ الْمَنْحُورِ دُونَ لَحْمِهِ، أَوْ دُونَ عُضْوٍ مُسَمًّى مِنْهَا، وَبَيْعُ الْأَرْضِ دُونَ مَا فِيهَا مِنْ بَذْرٍ، أَوْ خَضْرَاوَاتٍ مُغَيَّبَةٍ أَوْ ظَاهِرَةٍ، وَدُونَ الزَّرْعِ الَّذِي فِيهَا، وَدُونَ الشَّجَرِ الَّذِي فِيهَا، وَالْحَيَوَانِ اللَّبُونِ دُونَ لَبَنِهِ الَّذِي اجْتَمَعَ فِي ضُرُوعِهِ، وَلَا يَحِلُّ اسْتِثْنَاءُ لَبَنٍ لَمْ يَحْدُثْ بَعْدُ وَلَا اجْتَمَعَ فِي ضُرُوعِهِ.

وَيَجُوزُ بَيْعُ الْحَامِلِ دُونَ حَمْلِهَا سَوَاءٌ نُفِخَ فِيهِ الرُّوحُ أَوْ لَمْ يُنْفَخْ. وَلَا يَحِلُّ بَيْعُ حَيَوَانٍ حَيٍّ وَاسْتِثْنَاءُ عُضْوٍ مِنْهُ أَصْلًا.

وَيَجُوزُ بَيْعُ عُصَارَةِ الزَّيْتُونِ، وَالسِّمْسِمِ، دُونَ الدُّهْنِ قَبْلَ عَصْرِهِ.

وَلَا يَحِلُّ بَيْعُ جِلْدِ حَيَوَانٍ حَيٍّ دُونَ لَحْمِهِ، وَلَا دُونَ عُضْوٍ مُسَمًّى مِنْهُ أَصْلًا.

وَلَا يَجُوزُ بَيْعُ مَخِيضِ لَبَنٍ قَبْلَ أَنْ يُمْخَضَ، وَلَا الْمَيْشِ قَبْلَ أَنْ يَخْرُجَ.

بُرْهَانُ كُلِّ مَا ذَكَرْنَا -: قَوْلُ اللَّهِ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

وقَوْله تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

Issue: Selling the Visible Without the Unseen.

1428. Issue: Selling the apparent part excluding the unseen contents is lawful unless prohibited by explicit text. Permissible sales include: selling fruit while excluding its stone; selling the hide of a female musk deer excluding the musk within it; selling sacks and all containers excluding their contents; selling eggshell, almond shell, walnut shell, hazelnut shell, pistachio shell, acorn shell, chestnut shell, and any shell not adhering to what lies beneath it; selling wax excluding the honey within it; selling straw excluding the grain within it; selling the hide of a slaughtered animal or throat-slaughtered animal excluding its meat or any specifically named organ thereof; selling land excluding the seeds within it, or vegetables (whether unseen or visible), excluding the crops therein, and excluding the trees therein; and selling a milch animal excluding the milk accumulated in its udders. It is impermissible to exclude milk that has not yet been produced or collected in the udders.

It is permissible to sell a pregnant animal without its fetus, whether the fetus has been ensouled or not. It is impermissible in principle to sell a living animal while excluding a limb from it.

It is permissible to sell the extracted oil from olives and sesame, but not the oil prior to its extraction.

It is not permissible to sell the skin of a living animal without its meat, nor without a specified organ from it at all.

It is not permissible to sell buttermilk before it is churned, nor nascent butter before it emerges.

The evidence for all we have stated is the words of Allah, the Most High: “And Allah has permitted trade” [Al-Baqarah 275].[23]

[23] **Qur’an references (L22495):** Qur’an 2:275 (Al-Baqarah).

L22496 And His saying, the Most High: “And He has detailed for you what He has forbidden to you.” (Al-An’am 6:119)[24]

L22497 Every sale whose prohibition is not mentioned by name in detailed terms in the Quran or the Sunnah is permissible by the explicit wording of Allah the Exalted’s speech. Thus, all that we have mentioned constitutes the seller’s property, which he rightfully owns: he may sell whatever he wishes from it (for it is his property) and keep whatever he wishes (for it is his property). Whatever portion of his property becomes apparent and is seen, or is described by one who has seen it—its sale is permissible. He may retain what neither he nor others have seen, because the sale involving uncertainty is impermissible (as we previously stated) or because he does not wish to sell it—and that is his right—even if the item is visible and present or described but absent.

فَكُلُّ بَيْعٍ لَمْ يَأْتِ فِي الْقُرْآنِ، وَلَا فِي السُّنَّةِ تَحْرِيمُهُ بِاسْمِهِ مُفَصَّلًا فَهُوَ حَلَالٌ بِنَصِّ كَلَامِ اللَّهِ تَعَالَى - وَكُلُّ مَا ذَكَرْنَا فَمَالٌ لِلْبَائِعِ وَمِلْكٌ لَهُ يَبِيعُ مِنْهُ مَا شَاءَ فَهُوَ مِنْ مَالِهِ وَيُمْسِكُ مِنْهُ مَا شَاءَ فَهُوَ مِنْ مَالِهِ، فَمَا ظَهَرَ مِنْ مَالِهِ وَرُئِيَ، أَوْ وَصَفَهُ مَنْ رَآهُ: فَبَيْعُهُ جَائِزٌ - وَيُمْسِكُ مَا لَمْ يَرَهُ هُوَ وَلَا غَيْرُهُ، لِأَنَّهُ لَا يَحِلُّ بَيْعُ الْمَجْهُولِ - كَمَا قَدَّمْنَا - أَوْ لِأَنَّهُ لَا يُرِيدُ بَيْعَهُ فَذَلِكَ لَهُ، وَإِنْ كَانَ مَرْئِيًّا حَاضِرًا أَوْ مَوْصُوفًا غَائِبًا.

L22498 As for our statement: It is not permissible to make an exception for milk that has not yet come into existence, this is because it only comes into existence when Allah the Exalted creates it in another’s property. Therefore, it is impermissible to stipulate anything from another’s property unless the price is solely for what is sold, for such a condition is invalid as it is not in the Book of Allah the Exalted. Indeed, we have prohibited the sale of an animal unless the sale is of a specified part thereof.

وَأَمَّا قَوْلُنَا: لَا يَحِلُّ اسْتِثْنَاءُ لَبَنٍ لَمْ يَحْدُثْ بَعْدُ، فَلِأَنَّهُ إِنَّمَا يَحْدُثُ إِذَا أَحْدَثَهُ اللَّهُ تَعَالَى فِي مَالِ غَيْرِهِ فَلَا يَحِلُّ لَهُ أَنْ يَشْتَرِطَ مِنْ مَالِ غَيْرِهِ شَيْئًا إِلَّا أَنْ يَكُونَ الثَّمَنُ فِيمَا بَاعَ فَقَطْ، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ - وَإِنَّمَا مَنَعْنَا مِنْ بَيْعِ حَيَوَانٍ إِلَّا عُضْوًا مُسَمًّى مِنْهُ.

L22499 We permitted the sale of a pregnant living being without its fetus, for such a living being must either be human or from other animals. If it is from other animals, stipulating the exclusion of a specified organ constitutes unlawful appropriation of wealth, as no benefit is derived from it except through slaughter. In this sale, the seller of the organ is required to slaughter that living being, or the seller of the living being except for a specified organ is required to do so. Since this condition is not stipulated in the Book of Allah the Exalted, it is invalid. If the living being is human, the ruling remains the same, constituting a total waste of wealth. This is a matter wherein all our present adversaries in debate unanimously concur with us.

وَأَجَزْنَا بَيْعَ الْحَامِلِ دُونَ حَمْلِهَا، فَإِنَّ ذَلِكَ الْحَيَوَانَ لَا يَخْلُو مِنْ أَنْ يَكُونَ مِنْ بَنِي آدَمَ، أَوْ مِنْ سَائِرِ الْحَيَوَانِ، فَإِنْ كَانَ مِنْ سَائِرِ الْحَيَوَانِ فَاسْتِثْنَاءُ الْعُضْوِ الْمُعَيَّنِ مِنْهُ: أَكْلُ مَالٍ بِالْبَاطِلِ، لِأَنَّهُ لَا يُنْتَفَعُ بِهِ إِلَّا بِذَبْحِهِ، فَفِي هَذَا الْبَيْعِ اشْتِرَاطُ ذَبْحِ ذَلِكَ الْحَيَوَانِ عَلَى بَائِعِ الْعُضْوِ مِنْهُ، أَوْ عَلَى بَائِعِهِ إِلَّا عُضْوًا مِنْهُ، وَهَذَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، وَإِنْ كَانَ ذَلِكَ الْحَيَوَانُ مِنْ بَنِي آدَمَ فَكَذَلِكَ أَيْضًا، وَهُوَ إِضَاعَةٌ لِلْمَالِ جُمْلَةً، وَهَذَا مِمَّا يُوَافِقُنَا الْحَاضِرُونَ كُلُّهُمْ مِنْ خُصُومِنَا.

[24]**Qur’an references (L22496):** Qur’an 6:119 (Al-An’am).

وَأَمَّا الْحَمْلُ، وَالصُّوفُ، وَالْوَبَرُ، وَالشَّعْرُ، وَقَرْنُ الْإِبِلِ، وَكُلُّ مَا يُزَايِلُ الْحَيَوَانَ بِغَيْرِ مُثْلَةٍ وَلَا تَعْذِيبٍ، فَكَمَا قَدَّمْنَا أَنَّهُ مَالٌ لِبَائِعِهِ يَبِيعُ مِنْ مَالِهِ مَا شَاءَ وَيُمْسِكُ مَا شَاءَ إِلَّا أَنْ يَكُونَ فِي ذَلِكَ إِضَاعَةُ مَالٍ، أَوْ مُثْلَةٌ بِحَيَوَانٍ أَوْ إِضْرَارٌ بِهِ فَلَا يَحِلُّ لِصِحَّةِ النَّهْيِ عَنْ الْمُثْلَةِ، وَعَنْ تَعْذِيبِ الْحَيَوَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22500 As for the fetus, wool, camel undercoat, hair, the camel's hump, and anything that detaches from an animal without disfigurement or suffering—as we have previously established—these belong to the seller. He may sell from his possessions what he chooses and retain what he chooses, unless such action constitutes waste of resources, disfigurement of an animal, or harm to it. In such instances, it is unlawful due to the valid prohibition against disfigurement and against causing suffering to animals. And with Allah, the Exalted, is success.

وَأَمَّا مَنْعُنَا مِنْ بَيْعِ الْمَخِيضِ دُونَ السَّمْنِ قَبْلَ الْمَخْضِ، وَمِنْ بَيْعِ الْمَيْشِ دُونَ الْجُبْنِ قَبْلَ عَصْرِهِ، فَلِأَنَّهُ لَا يُرَى، وَلَا يَتَمَيَّزُ، وَلَا يُعْرَفُ مِقْدَارُهُ، فَقَدْ يَخْرُجُ الْمَخْضُ وَالْعَصِيرُ قَلِيلًا، وَقَدْ يَخْرُجُ كَثِيرًا - وَهَذَا بِخِلَافِ بَيْعِ عُصَارَةِ الزَّيْتُونِ، وَالسِّمْسِمِ، دُونَ الدُّهْنِ قَبْلَ الْعَصْرِ؛ لِأَنَّ الزَّيْتُونَ، وَالسِّمْسِمَ، وَاللَّوْزَ، وَالْجَوْزَ كُلُّ ذَلِكَ مَرْئِيٌّ مَعْرُوفٌ، وَإِنَّمَا الْخَافِي فَهُوَ الدُّهْنُ فَقَطْ، وَيَحِلُّ بَيْعُهُ قَبْلَ ظُهُورِهِ - وَيَجُوزُ اسْتِثْنَاؤُهُ؛ لِأَنَّهُ إبْقَاءٌ لَهُ فِي مِلْكِ مَالِكِهِ - وَهَذَا مُبَاحٌ حَسَنٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22501–22503 As for our prohibition against selling buttermilk without ghee prior to churning, and selling partially coagulated milk without cheese before pressing, this is because its form cannot be discerned, it cannot be differentiated, nor can its quantity be ascertained—for the yield from churning or pressing may be little or much. This differs from selling the pressed juice of olives and sesame without oil prior to pressing, for olives, sesame, almonds, and walnuts: all these are visible, distinct, and quantifiable. The concealed [element] is none other than the oil exclusively. Its sale is permissible before it becomes manifest. Reserving it [from the sale] is allowed because it retains the item within the ownership of its owner—this is permissible and ethically sound. And success is from Allah, the Most High.

وَقَدْ جَاءَتْ فِي هَذَا آثَارٌ -: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حِبَّانُ بْنُ عَلِيٍّ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ» .

L22504 There are narrations related to this matter: It was narrated to us through Sa'īd ibn Manṣūr → Ḥibbān ibn 'Alī narrated to us → Muḥammad ibn Isḥāq narrated to us from Nāfi' from Ibn 'Umar, who said: The Messenger of Allah ﷺ prohibited sales involving _gharar_.[1]

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ ابْنِ إِدْرِيسَ - هُوَ عَبْدُ اللَّهِ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ» .

L22505 And from the narration of Ibn Abi Shaybah, from Ibn Idris (who is Abdullah), from Ubaydullah ibn Umar, from Abu al-Zinad, from al-A'raj, from Abu Hurayrah: "The Messenger of Allah (may peace and blessings be upon him) prohibited sales of gharārāt (speculative risks)."[2]

[1] **Hadith references (L22504):** Sunan Ibn Majah 2194; Sunan Ibn Majah 2195; Jami at-Tirmidhi 1230.

[2] **Hadith references (L22505):** Sunan Ibn Majah 2194; Sunan Ibn Majah 2195; Jami at-Tirmidhi 1230.

وَقَدْ أَبَاحَهُ بَعْضُ السَّلَفِ - كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ هِشَامٍ - هُوَ ابْنُ حَسَّانَ - عَنْ ابْنِ سِيرِينَ عَنْ شُرَيْحٍ أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِبَيْعِ الْغَرَرِ إِذَا كَانَ عِلْمُهُمَا فِيهِ سَوَاءً.

L22506 Some of the early predecessors permitted it, as reported to us through the chain of Ibn Abī Shaybah - from Abbād ibn al-Awwām, from Hishām - who is Ibn Hassan - from Ibn Sīrīn, from Shurayḥ, that he saw no harm in the sale involving *gharar* when both parties possessed equal knowledge of it.

وَكَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ عُلَيَّةَ - هُوَ إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ - عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: لَا أَعْلَمُ بِبَيْعِ الْغَرَرِ بَأْسًا. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حِبَّانُ بْنُ عَلِيٍّ نا الْمُغِيرَةُ عَنْ إِبْرَاهِيمَ قَالَ: مِنْ الْغَرَرِ مَا يَجُوزُ وَمِنْهُ مَا لَا يَجُوزُ، فَأَمَّا مَا يَجُوزُ فَشِرَاءُ السِّلْعَةِ الْمَرِيضَةِ، وَأَمَّا مَا لَا يَجُوزُ فَشِرَاءُ السَّمَكِ فِي الْمَاءِ.

L22507 And as has been reported to us through the chain of Ibn Abī Shaybah: Ibn ʿUlayyah narrated to us - who is Ismāʿīl ibn Ibrāhīm - from ʿAbdullāh ibn ʿAwn from Muḥammad ibn Sīrīn, who said: "I find no harm in sales involving *gharar*." And through the chain of Saʿīd ibn Manṣūr: Ḥibbān ibn ʿAlī narrated to us from al-Mughīrah from Ibrāhīm, who said: "Among *gharar*, some are permissible and some are not. As for what is permissible, it is purchasing a sick commodity. As for what is impermissible, it is purchasing uncaptured fish in the water."

وَقَدْ رُوِّينَا إِجَازَةَ بَيْعِ السَّمَكِ فِي الْمَاءِ قَبْلَ أَنْ يُتَصَيَّدَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَبِهِ يَقُولُ ابْنُ أَبِي لَيْلَى.

L22508 It has been narrated to us that the permissibility of selling fish while they are still in the water before being caught is transmitted from ʿUmar ibn ʿAbd al-ʿAzīz, and this is the opinion Ibn Abī Laylā holds.

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالَّذِي ذَكَرَ إِبْرَاهِيمُ لَيْسَ شَيْءٌ مِنْهُ غَرَرًا، أَمَّا الْمَرِيضَةُ فَكُلُّ النَّاسِ يَمْرَضُ وَيَمُوتُ، وَقَدْ يَمُوتُ الصَّحِيحُ فَجْأَةً، وَيَبْرَأُ الْمَرِيضُ الْمُدْنَفُ، فَلَا غَرَرَ هَهُنَا أَصْلًا.

L22509 Abu Muhammad said: There is no valid proof in anyone apart from the Messenger of Allah (peace be upon him). As for what Ibrahim mentioned, none of it contains elements of Gharar. Regarding the sick person: all people fall ill and die, indeed a healthy person may die suddenly, while a debilitated sick person may recover. Thus there is no Gharar here whatsoever.

وَأَمَّا السَّمَكُ فِي الْمَاءِ فَإِنْ كَانَ قَدْ مُلِكَ قَبْلُ فَلَيْسَ بَيْعُهُ غَرَرًا بَلْ هُوَ بَيْعٌ صَحِيحٌ، وَقَدْ وَافَقَنَا الْحَاضِرُونَ مِنْ خُصُومِنَا عَلَى أَنَّ بِرْكَةً فِي دَارِ لِإِنْسَانٍ صَغِيرَةً صَادَ صَاحِبُهَا سَمَكَةً وَرَمَاهَا فِيهَا حَيَّةً، فَإِنَّ بَيْعَهَا فِيهَا جَائِزٌ، وَأَمَّا مَا لَمْ يُمْلَكْ مِنْ السَّمَكِ بَعْدُ فَلَمْ يَجُزْ بَيْعُهُ؛ لِأَنَّهُ غَرَرٌ، حَتَّى وَلَوْ كَانَتْ السَّمَكَةُ مَقْدُورًا عَلَيْهَا بِالضَّمَانِ مَا حَلَّ بَيْعُهَا، وَإِنَّمَا حُرِّمَ لِأَنَّهُ بَيْعُ مَا لَيْسَ لَهُ وَهَذَا أَكْلُ مَالٍ بِالْبَاطِلِ.

L22510 As for fish in water, if they have been previously owned, their sale is not invalid due to *gharar* but rather constitutes a valid transaction. Those present among our opponents concur with us that if a person owns a small pond within their property where they caught a fish and released it alive, selling it within that pond is permissible. However, fish not yet owned remain impermissible to sell due to *gharar*. Even if the fish is assuredly obtainable through guaranteed means, its sale remains unlawful, as it constitutes selling unowned property. This amounts to wrongful appropriation of wealth.

L22511–22512 It has been narrated to us through Ibn Abi Shaybah: Qurrah ibn Sulayman narrated to us from Muḥammad ibn Fuḍayl, from his father, from Ibn ʿUmar

regarding one who sells a female slave while excepting what is in her womb. He said: “His right is to retain the offspring.” This has also been authentically reported from Ibn ʿUmar in the context of manumission.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا قُرَّةُ بْنُ سُلَيْمَانَ عَنْ مُحَمَّدِ بْنِ فُضَيْلٍ عَنْ أَبِيهِ عَنْ ابْنِ عُمَرَ فِيمَنْ بَاعَ أَمَةً وَاسْتَثْنَى مَا فِي بَطْنِهَا؟ قَالَ: لَهُ ثُنْيَاهُ - وَقَدْ صَحَّ هَذَا أَيْضًا عَنْ ابْنِ عُمَرَ فِي الْعِتْقِ.

L22513 It has been narrated to us through the chain of Ibn Abi Shaybah, who narrated to us from Hushaym, from al-Mughirah, from Ibrāhīm al-Nakhaʿī, who said: Whoever sells a pregnant woman or manumits her while excluding what is in her womb—does his exception hold regarding what has manifested its form? If its form has become apparent, his exception is valid. But if its form has not become apparent, he has no claim.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا هُشَيْمٌ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: مَنْ بَاعَ حُبْلَى، أَوْ أَعْتَقَهَا وَاسْتَثْنَى مَا فِي بَطْنِهَا؟ فَلَهُ ثُنْيَاهُ فِيمَا قَدْ اسْتَبَانَ خَلْقُهُ، فَإِنْ لَمْ يَسْتَبِنْ خَلْقُهُ فَلَا شَيْءَ لَهُ.

L22514 Ali said: Whether its form becomes discernible or not, he has two options based on our earlier reasoning—since it is his property, he may exclude it if he wishes, either by not selling it or by including it in the sale of its mother. This is because it remains part of her before the soul is breathed into it and continues to be part of her after ensoulment. However, if one excludes the fetus of a pregnant animal sold—as we explained—then whatever she delivers (if human) within nine months less one hour belongs to him, unless he is certain that her pregnancy began after the sale, in which case he has no claim, as it occurred within another’s property. The same consideration applies to other animals: offspring born within the maximum period that animal bears belong to the excluding party, while those exceeding this duration do not—for the reason stated. Success comes solely from Allah, the Exalted.

قَالَ عَلِيٌّ: سَوَاءٌ اسْتَبَانَ خَلْقُهُ، أَوْ لَمْ يَسْتَبِنْ؟ لَهُ ثُنْيَاهُ لِمَا قَدْ ذَكَرْنَاهُ مِنْ أَنَّهُ مَالُهُ يَسْتَثْنِيه إنْ شَاءَ فَلَا يَبِيعُهُ، أَوْ يَدْخُلُ فِي صَفْقَةِ أُمِّهِ، لِأَنَّهُ بَعْضُهَا مَا لَمْ يُنْفَخْ فِيهِ الرُّوحُ، وَمِنْ جُمْلَتِهَا بَعْدَ نَفْخِ الرُّوحِ فِيهِ، وَلَكِنْ مَنْ اسْتَثْنَى حَمْلَ الْحَامِلِ الَّذِي بَاعَ كَمَا ذَكَرْنَا فَمَا وَلَدَتْ إنْ كَانَتْ مِنْ بَنِي آدَمَ إلَى تِسْعَةِ أَشْهُرٍ غَيْرَ سَاعَةٍ، فَهُوَ لَهُ إلَّا أَنْ يُوقِنَ أَنَّ حَمْلَهَا بِهِ كَانَ بَعْدَ الْبَيْعِ فَلَا شَيْءَ لَهُ، لِأَنَّهُ حَدَثَ فِي مَالِ غَيْرِهِ وَيُنْظَرُ فِي سَائِرِ الْحَيَوَانِ كَذَلِكَ، فَمَا وَلَدَتْ لِأَقْصَى مَا يَلِدُ لَهُ ذَلِكَ الْحَيَوَانُ فَهُوَ لِلَّذِي اسْتَثْنَاهُ، وَمَا وَلَدَتْ لِأَكْثَرَ فَلَيْسَ لَهُ لِمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22515 From the transmission chain of Ibn Abī Shaybah: He narrated to us from Hushaym, from Yūnus, from al-Ḥasan al-Baṣrī that he deemed the conditional stipulation regarding pregnancy permissible in sales but impermissible in manumission. This is the position of Abū Sulaymān and Abū Thawr concerning both sales and manumission. This accords with what we have cited from a Companion for whom no opposing view is known from the Companions, and they hold such an opinion in high regard when it aligns with their practice of taqlīd.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا هُشَيْمٌ عَنْ يُونُسَ عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّهُ كَانَ يُجِيزُ ثُنْيَا الْحَمْلِ فِي الْبَيْعِ، وَلَا يُجِيزُهُ فِي الْعِتْقِ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَبِي ثَوْرٍ فِي الْبَيْعِ وَالْعِتْقِ، وَهُوَ كَمَا أَوْرَدْنَا قَوْلُ صَاحِبٍ لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا وَافَقَ تَقْلِيدَهُمْ.

L22516 It has been narrated to us via the route of Ibn Ayman: From Abdullah

ibn Ahmad ibn Hanbal, from Ubayy, from Abd al-Rahman ibn Mahdi, from Abbad ibn Habib ibn al-Muhallab—a trustworthy and reliable narrator—from Ubayd Allah ibn Umar, from Nafi', the freed slave of Ibn Umar, who said: "Ibn Umar emancipated his female slave but excluded what was in her womb." This is the opinion of Ubayd Allah ibn Umar.

وَرُوِّينَا: مِنْ طَرِيقِ ابْنِ أَيْمَنَ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أُبَيٌّ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا عَبَّادُ بْنُ حَبِيبِ بْنِ الْمُهَلَّبِ - ثِقَةٌ مَأْمُونٌ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ قَالَ: أَعْتَقَ ابْنُ عُمَرَ أَمَةً لَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا - وَبِهِ يَقُولُ عُبَيْدُ اللَّهِ بْنُ عُمَرَ.

L22517–22519 And via the chain of Ibn Abi Shaybah: Yahya ibn Sa'id (al-Qattan) narrated to us from Hisham (Ibn Hassān) from Muhammad ibn Sirin concerning one who emancipated his female slave while excepting what was in her womb. He said: "His two exceptions are valid." And via the chain of Ibn Abi Shaybah: Yahya ibn Yaman narrated to us from Sufyan (al-Thawri) from Jabir, Mansur ibn al-Mu'tamir, and Ibn Jurayj. Jabir narrated from al-Sha'bi, and Mansur said: from... Ibrāhīm, and Ibn Jurayj reported from ʿAṭāʾ. Then al-Shaʿbī, Ibrāhīm al-Nakhaʿī, and ʿAṭāʾ all said: If he manumits her while excluding what is in her womb, his stipulation holds.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ سَعِيدٍ - هُوَ الْقَطَّانُ - عَنْ هِشَامٍ - هُوَ ابْنُ حَسَّانَ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ فِيمَنْ أَعْتَقَ أَمَتَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا فَقَالَ: لَهُ - ثُنْيَاهُ. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ يَمَانٍ عَنْ سُفْيَانَ - هُوَ الثَّوْرِيُّ - عَنْ جَابِرٍ، وَمَنْصُورِ بْنِ الْمُعْتَمِرِ، وَابْنِ جُرَيْجٍ، قَالَ جَابِرٌ: عَنْ الشَّعْبِيِّ، وَقَالَ مَنْصُورٌ: عَنْ إبْرَاهِيمَ، وَقَالَ ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ - ثُمَّ اتَّفَقَ الشَّعْبِيُّ وَإِبْرَاهِيمُ النَّخَعِيُّ، وَعَطَاءٌ، قَالُوا كُلُّهُمْ: إذَا أَعْتَقَهَا وَاسْتَثْنَى مَا فِي بَطْنِهَا: فَلَهُ ثُنْيَاهُ.

L22520 And through him to Ibn Abi Shaybah: Harami ibn 'Umarah ibn Abi Hafsah narrated to us from Shu'bah, who said: I asked al-Hakam and Hammad ibn Abi Sulayman about that - meaning one who manumits his female slave while excluding what is in her womb - and they both said unanimously: He retains that right.

وَبِهِ إلَى ابْنِ أَبِي شَيْبٍ نا حَرَمِيُّ بْنُ عُمَارَةَ بْنِ أَبِي حَفْصَةَ عَنْ شُعْبَةَ قَالَ: سَأَلْتُ الْحَكَمَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَنْ ذَلِكَ - يَعْنِي مَنْ أَعْتَقَ أَمَتَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا - فَقَالَا جَمِيعًا: ذَلِكَ لَهُ.

L22521 Narrated by Humām from ʿAbdullāh ibn ʿAlī al-Bājī from Muḥammad ibn ʿAbd al-Malik ibn Ayman from Aḥmad ibn Muslim from Abū Thawr from Asbāṭ from Sufyān al-Thawrī from Manṣūr ibn al-Muʿtamir from Ibrāhīm al-Nakhaʿī, who said: "Whoever enters into a kitābah contract with his female slave and excludes what is in her womb, there is no objection to that."

نا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ عَلِيٍّ الْبَاجِيَّ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَحْمَدُ بْنُ مُسْلِمٍ نا أَبُو ثَوْرٍ نا أَسْبَاطٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: مَنْ كَاتَبَ أَمَتَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا فَلَا بَأْسَ بِذَلِكَ.

L22522 And in accordance with this, Abū Thawr and Aḥmad ibn Ḥanbal state regarding manumission and sale.

وَبِهِ يَقُولُ أَبُو ثَوْرٍ، وَأَحْمَدُ بْنُ حَنْبَلٍ فِي الْعِتْقِ، وَالْبَيْعِ.

L22523 And according to it, Isḥāq and Abū Sulaymān also say.

وَبِهِ يَقُولُ أَيْضًا إسْحَاقُ، وَأَبُو سُلَيْمَانَ.

فَهَؤُلَاءِ جُمْهُورُ التَّابِعِينَ -: الْحَسَنُ، وَابْنُ سِيرِينَ، وَإِبْرَاهِيمُ، وَالشَّعْبِيُّ، وَعَطَاءٌ، وَالْحَكَمُ بْنُ عُتَيْبَةَ، وَحَمَّادُ بْنُ أَبِي سُلَيْمَانَ، بَعْضُهُمْ فِي الْبَيْعِ، وَبَعْضُهُمْ فِي الْعِتْقِ، وَبَعْضُهُمْ فِي الْأَمْرَيْنِ مَعًا - وَمَا نَعْلَمُ الْآنَ مُخَالِفًا لَهُمْ إِلَّا الزُّهْرِيَّ، وَقَالَ بِقَوْلِنَا هَذَا مِنَ الْفُقَهَاءِ كَمَا ذَكَرْنَا -: عُبَيْدُ اللَّهِ بْنُ عُمَرَ، وَأَحْمَدُ، وَأَبُو ثَوْرٍ، وَإِسْحَاقُ، وَأَبُو سُلَيْمَانَ، وَغَيْرُهُمْ، وَلَيْتَ شِعْرِي أَيْنَ هُمْ عَنْ حُجَّتِهِمْ بِالْمُسْلِمِينَ عِنْدَ شُرُوطِهِمْ؟ وَأَمَّا اسْتِثْنَاءُ الْجِلْدِ، وَالسَّوَاقِطِ: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ نا أَصْبَغُ عَنِ ابْنِ وَهْبٍ عَنِ اللَّيْثِ بْنِ سَعْدٍ عَنْ عُمَارَةَ بْنِ غَزِيَّةَ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا خَرَجَ هُوَ وَأَبُو بَكْرٍ مُهَاجِرَيْنِ، إِلَى الْمَدِينَةِ اشْتَرَيَا مِنْ رَاعِي غَنَمٍ شَاةً وَشَرَطَا لَهُ إِهَابَهَا» .

L22524 These are the majority of the Successors: Al-Ḥasan, Ibn Sīrīn, Ibrāhīm, Al-Shaʿbī, ʿAṭāʾ, Al-Ḥakam ibn ʿUtaybah, and Ḥammād ibn Abī Sulaymān—some of them regarding sale, some regarding manumission, and some regarding both matters together. We do not know now of any opponent to them except Al-Zuhrī. Among the jurists who said this opinion of ours—as we mentioned—are ʿUbayd Allāh ibn ʿUmar, Aḥmad, Abū Thawr, Isḥāq, Abū Sulaymān, and others. If only I knew where they stand regarding their argument about the conditions set by Muslims! As for the exception of flogging and miscarried fetuses, we have been narrated through the chain of ʿAbd al-Malik ibn Ḥabīb al-Andalusī, from Aṣbagh, from Ibn Wahb, from Al-Layth ibn Saʿd, from ʿUmārah ibn Ghaziyyah, from ʿUrwah ibn al-Zubayr: "When the Messenger of Allah—peace and blessings be upon him—and Abū Bakr emigrated to Medina, they bought a sheep from a shepherd and stipulated its skin for him."

قَالَ أَبُو مُحَمَّد: هَذَا بَاطِلٌ - عَبْدُ الْمَلِكِ هَالِكٌ، وَعُمَارَةُ ضَعِيفٌ - ثُمَّ هُوَ مُرْسَلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ مَنْسُوخًا، لِأَنَّهُ كَمَا تَرَى قَبْلَ الْهِجْرَةِ، وَقَدْ جَاءَ النَّهْيُ عَنْ بَيْعِ الْغَرَرِ بَعْدَ ذَلِكَ، وَبَيْعُ لَحْمِ شَاةٍ حَيَّةٍ غَرَرٌ؛ لِأَنَّهُ لَا يَدْرِي أَهَزِيلٌ أَمْ سَمِينٌ.

L22525 Abū Muḥammad said: This is invalid—ʿAbd al-Malik is discredited, and ʿUmārah is weak. Moreover, it is mursal. Furthermore, even if it were authentic, it would be abrogated, because, as evident, it predates the Hijrah, and the prohibition of uncertain transactions came afterward. Selling the meat of a live sheep is an uncertain transaction, because one cannot know whether it is lean or fat.

أَوْ ذُو عَاهَةٍ أَمْ سَالِمٌ، ثُمَّ مِنْ أَيْنَ لَهُمْ أَنَّ ذَلِكَ إِنَّمَا جَازَ لِأَجْلِ السَّفَرِ، فَإِنَّ هَذَا ظَنٌّ لَا يَصِحُّ.

L22526 Or one with an ailment or a healthy one? Then from where do they have that this was permitted because of travel? For this is an invalid assumption.

فَإِنْ قَالُوا: كَانَ فِي سَفَرٍ؟ قُلْنَا: وَكَانَ فِي طَرِيقِ الْمَدِينَةِ لَا تُجِيزُوهُ فِي غَيْرِهِ.

L22527 If they say, "He was on a journey," we reply, "He was on the path to Madinah. Do not permit it in other cases."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ الْجُعْفِيِّ عَنِ الشَّعْبِيِّ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّ رَجُلًا بَاعَ بَقَرَةً وَاشْتَرَطَ رَأْسَهَا ثُمَّ بَدَا لَهُ فَأَمْسَكَهَا فَقَضَى لَهُ زَيْدٌ بِشَرْوَى رَأْسِهَا، قَالَ سُفْيَانُ: نَحْنُ نَقُولُ: الْبَيْعُ فَاسِدٌ.

L22528–22529 Through the chain of Abd al-Razzaq from Sufyan al-Thawri from Jabir al-Ju'fi from al-Sha'bi from Zayd ibn Thabit: A man sold a cow while stipulating that he retain ownership of its head, then reconsidered and withheld the cow. Zayd ruled in his favor for the value of its head. Sufyan said: "We maintain the sale is defective."

وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ حَدَّثَنَا أُبَيٌّ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ نُسَيْرِ بْنِ ذُعْلُوقٍ عَنْ عَمْرِو بْنِ رَاشِدٍ الْأَشْجَعِيِّ أَنَّ رَجُلًا بَاعَ بُخْتِيَّةً وَاشْتَرَطَ ثُنْيَاهَا فَبَرِئَتْ فَرَغِبَ فِيهَا فَاخْتَصَمَا إلَى عُمَرَ بْنِ الْخَطَّابِ؟ فَقَالَ: اذْهَبَا إلَى عَلِيٍّ، فَقَالَ عَلِيٌّ: اذْهَبْ بِهَا إلَى السُّوقِ فَإِذَا بَلَغَتْ أَفْضَلَ ثَمَنِهَا، فَأَعْطُوهُ حِسَابَ ثُنْيَاهَا مِنْ ثَمَنِهَا.

L22530 Abdullah ibn Ahmad ibn Hanbal reported to us through his chain: Ubayy narrated to us from Abdurrahman ibn Mahdi, from Sufyan ath-Thawri, from Nusayr ibn Dhu'lūq, from Amr ibn Rashid al-Ashja'i: A man sold a bukhtiyyah camel stipulating its two front incisors as a condition. When the camel was found lacking them, he disputed the condition. They brought their case to Umar ibn al-Khattab, who said: "Go to Ali." Ali ruled: "Take it to the market. When it reaches the highest market price, give him the value of its two front incisors from its price."

وَرَيْنَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ نُسَيْرِ بْنِ ذُعْلُوقٍ عَنْ عَمْرِو بْنِ رَاشِدٍ أَنَّ رَجُلًا بَاعَ بَعِيرًا مَرِيضًا وَاسْتَثْنَى جِلْدَهُ فَبَرَأَ الْبَعِيرُ؟ فَقَالَ عَلِيٌّ: يُقَوَّمُ الْبَعِيرُ فِي السُّوقِ، ثُمَّ يَكُونُ لَهُ شِرَاؤُهُ.

L22531 We found it narrated through the chain of Waki' from Sufyan al-Thawri, from Nusayr ibn Dhu'luq, from 'Amr ibn Rashid: A man sold a sick camel while reserving its skin, but the camel later recovered. So 'Ali said, "The camel must be valued in the market, then the purchase of it reverts to him."

وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ حَدَّثَنِي أَصْبَغُ عَنْ ابْنِ وَهْبٍ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ اشْتَرَى رَجُلٌ رَأْسَ جَمَلٍ وَنَقَدَ ثَمَنَهُ وَاشْتَرَى آخَرُ بَقِيَّتَهُ وَنَقَدَ ثَمَنَهُ لِيَنْحَرَاهُ فَعَاشَ الْجَمَلُ وَصَلُحَ؟ فَقَالَ مُشْتَرِي الْجَمَلِ لِمُشْتَرِي الرَّأْسِ: إنَّمَا لَك ثَمَنُ الرَّأْسِ؟ فَاخْتَصَمَا إلَى شُرَيْحٍ، فَقَالَ شُرَيْحٌ: هُوَ شَرِيكُك فِيهِ بِحِصَّةِ مَا نَقَدَ وَبِحُكْمِ شُرَيْحٌ هَذَا يَأْخُذُ عُثْمَانُ الْبَتِّيُّ، وَأَحْمَدُ، وَإِسْحَاقُ.

L22532 Through the transmission chain of 'Abd al-Malik ibn Ḥabīb al-Andalusī: Aṣbagh narrated to me from Ibn Wahb from Ismā'īl ibn 'Ayyāsh: A man purchased a camel's head and paid its value upfront, while another purchased the remaining portion and paid its value upfront so they could slaughter it. But the camel recovered and became sound? The purchaser of the camel said to the purchaser of the head, "Are you only entitled to the value of the head?" They brought their dispute to Shurayḥ, who ruled, "He is your partner in it in proportion to the share he paid upfront." In accordance with this ruling of Shurayḥ, 'Uthmān al-Battī, Aḥmad, and Isḥāq adopt this opinion.

وَلَمْ يُجِزْ مَالِكٌ اسْتِثْنَاءَ الْجِلْدِ وَالرَّأْسِ إلَّا فِي السَّفَرِ، لَا فِي الْحَضَرِ، فَخَالَفَ كُلَّ مَنْ ذَكَرْنَا - وَلَمْ يُجِزْهُ أَبُو حَنِيفَةَ، وَلَا الشَّافِعِيُّ أَصْلًا.

L22533 Mālik did not permit the exception of the leather and the head except during travel, not while resident, thereby disagreeing with all those we have mentioned - and neither Abū Ḥanīfah nor al-Shāfi'ī permitted it at all.

وَأَجَازَ الْأَوْزَاعِيُّ اسْتِثْنَاءَ الْيَدِ أَوْ الرَّأْسِ أَوْ الْجِلْدِ عِنْدَ الذَّبْحِ خَاصَّةً، وَكَرِهَهُ إنْ تَأَخَّرَ الذَّبْحُ - وَالْحَنَفِيُّونَ - وَالْمَالِكِيُّونَ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْهُمْ - وَخَالَفُوا هَهُنَا: زَيْدَ بْنَ ثَابِتٍ، وَعُمَرَ بْنَ الْخَطَّابِ، وَلَا يُعْرَفُ لَهُمَا مِنْ الصَّحَابَةِ مُخَالِفٌ. وَأَمَّا الْمَالِكِيُّونَ: فَإِنَّهُمْ رَأَوْا فِيمَنْ بَاعَ بَعِيرًا وَاسْتَثْنَى جِلْدَهُ، فَاسْتَحْيَاهُ الَّذِي

L22534–22536 Al-Awzā'ī permitted the exclusion of the hand, head, or skin specifically during slaughter but disliked it if the slaughter was delayed. The Ḥanafīs and Mālikīs give great weight to the contrary opinion of a Companion who has no known opponent among them. Here, however, they contradicted the rulings of Zayd ibn Thābit and 'Umar ibn al-Khaṭṭāb, though no opponent from the Companions is known for them. As for the Mālikīs: they held that if someone sold a camel while excluding its skin, and the buyer kept it alive,

the seller has a right to the proceeds from the skin's sale or its appraised value – this applies exclusively during journeys. This contradicts the ruling of ʿUmar, ʿAlī, and Zayd, for they ruled this absolutely without distinguishing between journey and residence. And it has been narrated to us similar to our statement from some of the early predecessors—as narrated to us via Ibn Abī Shaybah: Abū Al-Aḥwaṣ narrated to us from Abū Ḥamzah: I said to Ibrāhīm, "Can I sell a sheep while reserving part of it?" He replied, "No. Rather say: I sell you half of it." Ibn Abī Shaybah narrated: ʿAbd Al-Ṣamad ibn Abī Al-Jārūd narrated to us: I asked Jābir ibn Zayd about one who sells an item while reserving part of it. He said, "That is not valid."

L22537 **Case: If one sells an absent item, its sale is permissible with a description.**

L22538 1429. Issue: If a seller from those we mentioned sells the apparent excluding the concealed, or sells a concealed item, its sale is permissible through description—such as wool within a mattress, honey in a vessel, or a garment in a bag. If the place belongs to the seller, they must enable the buyer to take possession of the purchased item; otherwise, they become a usurper depriving of a right. The buyer must remove their property from another's place; otherwise, they become a usurper of the place, depriving of a right. If the place belongs to the buyer, the seller must remove their property from another's place; otherwise, they become an oppressor depriving of a right. If the place is jointly owned by both, whichever party wishes to expedite their use of their property must take it, and the other cannot be forced to take possession of their property sooner than they desire.

L22539 If the place belongs to someone other than the two of them, both are collectively required to remove their respective properties from another's place. Otherwise, each one is an oppressor withholding a right, according to the statement of the Messenger of Allah (peace be upon him): "Your blood and your wealth are inviolable for you."

L22540 "And due to the Prophet's narration (peace be upon him) of when Salman

اشْتَرَاهُ: أَنَّ لَهُ شَرْوَى جِلْدِهِ أَوْ قِيمَتَهُ - هَذَا فِي السَّفَرِ خَاصَّةً، وَهَذَا خِلَافُ حُكْمِ عُمَرَ، وَعَلِيٍّ، وَزَيْدٍ؛ لِأَنَّهُمْ حَكَمُوا بِذَلِكَ مُطْلَقًا، لَمْ يَخُصُّوا سَفَرًا مِنْ حَضَرٍ؛ وَرُوِّينَا مِثْلَ قَوْلِنَا عَنْ بَعْضِ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو الْأَحْوَصِ عَنْ أَبِي حَمْزَةَ قُلْتُ لِإِبْرَاهِيمَ: أَبِيعُ الشَّاةَ وَأَسْتَثْنِي بَعْضَهَا؟ قَالَ: لَا، وَلَكِنْ قُلْ: أَبِيعُك نِصْفَهَا - قَالَ ابْنُ أَبِي شَيْبَةَ: نَا عَبْدُ الصَّمَدِ بْنُ أَبِي الْجَارُودِ سَأَلْت جَابِرَ بْنَ زَيْدٍ عَمَّنْ بَاعَ بَيْعًا وَاسْتَثْنَى بَعْضَهُ؟ قَالَ: لَا يَصِحُّ ذَلِكَ.

[مَسْأَلَةٌ بَاعَ مُغَيَّبًا يَجُوزُ بَيْعُهُ بِصِفَةٍ]

١٤٢٩ - مَسْأَلَةٌ: وَمَنْ بَاعَ مِمَّنْ ذَكَرْنَا الظَّاهِرَ دُونَ الْمُغَيَّبِ، أَوْ بَاعَ مُغَيَّبًا: يَجُوزُ بَيْعُهُ بِصِفَةٍ، كَالصُّوفِ فِي الْفِرَاشِ، وَالْعَسَلِ فِي الظَّرْفِ، وَالثَّوْبِ فِي الْجِرَابِ، فَإِنَّهُ إنْ كَانَ الْمَكَانُ لِلْبَائِعِ فَعَلَيْهِ تَمْكِينُ الْمُشْتَرِي مِنْ أَخْذِ مَا اشْتَرَى وَلَا بُدَّ، وَإِلَّا كَانَ غَاصِبًا مَانِعَ حَقٍّ، وَعَلَى الْمُشْتَرِي إزَالَةُ مَالِهِ عَنْ مَكَانِ غَيْرِهِ، وَإِلَّا كَانَ غَاصِبًا لِلْمَكَانِ مَانِعَ حَقٍّ، فَإِنْ كَانَ الْمَكَانُ لِلْمُشْتَرِي فَعَلَى الْبَائِعِ نَزْعُ مَالِهِ عَنْ مَكَانِ غَيْرِهِ، وَإِلَّا كَانَ ظَالِمًا مَانِعَ حَقٍّ، فَإِنْ كَانَ الْمَكَانُ لَهُمَا جَمِيعًا فَأَيُّهُمَا أَرَادَ تَعْجِيلَ انْتِفَاعِهِ بِمَتَاعِهِ فَعَلَيْهِ أَخْذُهُ، وَلَا يُجْبَرُ الْآخَرُ عَلَى مَا لَا يُرِيدُ تَعْجِيلَهُ مِنْ أَخْذِ مَتَاعِهِ.

فَإِنْ كَانَ الْمَكَانُ لِغَيْرِهِمَا فَعَلَيْهِمَا جَمِيعًا أَنْ يَنْزِعَ كُلُّ وَاحِدٍ مِنْهُمَا مَالَهُ مِنْ مَكَانِ غَيْرِهِ، وَإِلَّا فَهُوَ ظَالِمٌ مَانِعُ حَقٍّ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

said to Abu al-Darda: 'Give every rightful claimant their due,' the Prophet affirmed his statement and endorsed it."

«وَلِقَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ قَالَ سَلْمَانُ لِأَبِي الدَّرْدَاءِ أَعْطِ كُلَّ ذِي حَقٍّ حَقَّهُ، فَصَدَّقَهُ - عَلَيْهِ السَّلَامُ -، وَصَوَّبَ قَوْلَهُ» .

L22541 If someone sells dates without their pits, the responsibility of taking the dates and separating them from the pits falls on the buyer, as he is commanded to take his purchased goods, transport them, and leave the pits in their place—provided the place belongs to the seller. If the buyer refuses, he may be compelled, and someone may be hired at his expense to separate the dates from the pits. The seller is not obligated to do this unless he wishes, as he is not required to open another's fruit or perform any work on it.

فَمَنْ بَاعَ تَمْرًا دُونَ نَوَاهَا، فَأَخْذُ التَّمْرَةِ وَتَخْلِيصُهَا مِنْ النَّوَى عَلَى الْمُشْتَرِي لِأَنَّهُ مَأْمُورٌ بِأَخْذِ مَتَاعِهِ وَنَقْلِهِ وَتَرْكِ النَّوَى مَكَانَهُ - إنْ كَانَ الْمَكَانُ لِلْبَائِعِ - فَإِنْ أَبَى أُجْبِرَ، وَاسْتُؤْجِرَ عَلَيْهِ مَنْ يُزِيلُ التَّمْرَ عَنْ النَّوَى، وَلَا يُكَلَّفُ الْبَائِعُ ذَلِكَ إلَّا أَنْ يَشَاءَ؛ لِأَنَّهُ لَا يَلْزَمُهُ فَتْحُ ثَمَرَةِ غَيْرِهِ، وَلَا أَنْ يَعْمَلَ لَهُ فِيهِ عَمَلًا.

L22542 If the place belongs to the buyer, then if the buyer wishes to uproot his fruit, he has the right to do so, and he does not allow others to leave for him any undesired traces in it. If the buyer refuses this, the seller must remove their pits and relocate it in the gentlest manner possible, and he bears no responsibility. But if he transgresses, he is liable for the extent of his transgression in spoiling the fruit.

فَإِنْ كَانَ الْمَكَانُ لِلْمُشْتَرِي، فَإِنْ أَرَادَ الْمُشْتَرِي قَلْعَ ثَمَرَتِهِ فَلَهُ ذَلِكَ، وَلَا يَتْرُكُ غَيْرَهُ يُؤَثِّرُ لَهُ فِيهَا أَثَرًا لَا يُرِيدُهُ، فَإِنْ أَبَى الْمُشْتَرِي مِنْ ذَلِكَ فَعَلَى الْبَائِعِ إخْرَاجُ نَوَاهُ وَنَقْلُهُ عَلَى أَلْطَفِ مَا يُمْكِنُ، وَلَا شَيْءَ عَلَيْهِ فَإِنْ تَعَدَّى ضَمِنَ مِقْدَارَ تَعَدِّيهِ فِي إفْسَادِ الثَّمَرَةِ.

L22543–22544 If the place is jointly owned? Then as we stated: whichever of them wishes to expedite retrieving his belongings may do so. If the one entitled to the date pits wishes this, he may remove the date pits he owns in the gentlest manner possible, since this is unavoidable for him, and he incurs no liability, for he has performed a permissible action. But if he exceeds permissible limits, he is liable.

فَإِنْ كَانَ الْمَكَانُ لَهُمَا؟ فَكَمَا قُلْنَا: أَيُّهُمَا أَرَادَ تَعْجِيلَ أَخْذِ مَتَاعِهِ فَلَهُ أَخْذُهُ، فَإِنْ أَرَادَ ذَلِكَ الَّذِي لَهُ النَّوَى كَانَ لَهُ إخْرَاجُ نَوَاهُ بِأَلْطَفِ مَا يُمْكِنُ، إذْ لَا بُدَّ لَهُ مِنْ ذَلِكَ، وَلَا شَيْءَ عَلَيْهِ؛ لِأَنَّهُ فَعَلَ مُبَاحًا لَهُ، فَإِنْ تَعَدَّى ضَمِنَ.

L22545 If the place belongs to someone other than the two of them, they are both compelled to cooperate in recovering their respective properties.

فَإِنْ كَانَ الْمَكَانُ لِغَيْرِهِمَا أُجْبِرَا جَمِيعًا عَلَى الْعَمَلِ مَعًا فِي تَخْلِيصِ كُلِّ وَاحِدٍ مِنْهُمَا مَالَهُ.

L22546 The ruling similarly applies to the musk pod, containers excluding their contents, shells excluding their contents, wax excluding honey, straw excluding grain, the skin of an animal slaughtered by dhabh or nahr, the flesh of olives, sesame seeds, and all oil-bearing materials.

وَهَكَذَا الْقَوْلُ فِي نَافِجَةِ الْمِسْكِ، وَالظُّرُوفِ دُونَ مَا فِيهَا، وَالْقُشُورِ دُونَ مَا فِيهَا، وَالشَّمْعِ دُونَ الْعَسَلِ، وَالتِّبْنِ دُونَ الْحَبِّ، وَجِلْدِ الْحَيَوَانِ الْمَذْبُوحِ أَوْ الْمَنْحُورِ، وَلَحْمَةِ الزَّيْتُونِ، وَالسِّمْسِمِ، وَكُلِّ ذِي دُهْنٍ.

L22547 As for one who sells land without including the seed, crop, trees, or building, harvesting is incumbent on the crop's owner; uprooting on the tree's

owner; and removing the building and cutting [plants] likewise fall upon their respective owners—because each is obligated to remove his property from another's land.

وَأَمَّا مَنْ بَاعَ الْأَرْضَ دُونَ الْبَذْرِ، أَوْ دُونَ الزَّرْعِ، أَوْ دُونَ الشَّجَرِ، أَوْ دُونَ الْبِنَاءِ، فَالْحَصَادُ عَلَى الَّذِي لَهُ الزَّرْعُ، وَالْقَلْعُ عَلَى الَّذِي لَهُ الشَّجَرُ، وَالْبِنَاءُ وَالْقَطْعُ أَيْضًا عَلَيْهِ؛ لِأَنَّ فَرْضًا عَلَيْهِ إزَالَةُ مَالِهِ عَنْ أَرْضِ غَيْرِهِ.

L22548 Whoever sells an animal excluding [the rights to] its milk or pregnancy, the milking obligation falls upon the milk's owner. The payment for the milker is also incumbent upon him, because he is obligated to remove his milk from another's animal's udder. The animal's owner is only required to enable this milking process, not to assist in the actual milking itself.

وَمَنْ بَاعَ الْحَيَوَانَ دُونَ اللَّبَنِ، أَوْ دُونَ الْحَمْلِ، فَالْحَلْبُ عَلَى الَّذِي لَهُ اللَّبَنُ وَلَا بُدَّ - وَأُجْرَةُ الْقَابِلَةِ عَلَيْهِ أَيْضًا؛ لِأَنَّ وَاجِبًا عَلَيْهِ إزَالَةُ لَبَنِهِ عَنْ ضَرْعِ حَيَوَانِ غَيْرِهِ، وَلَيْسَ عَلَى صَاحِبِ الْحَيَوَانِ إلَّا إمْكَانُهُ مِنْ ذَلِكَ فَقَطْ، لَا خِدْمَتُهُ فِي حَلْبِ لَبَنِهِ.

L22549 Similarly, the one possessing ownership rights over the child is required to act in assisting the retrieval of his male or female slave from the womb of another person's female slave, using the means permitted to him in this regard.

وَكَذَلِكَ عَلَى الَّذِي لَهُ مِلْكُ الْوَلَدِ: الْعَمَلُ فِي الْعَوْنِ فِي أَخْذِ مَمْلُوكِهِ، أَوْ مَمْلُوكَتِهِ فِي بَطْنِ أَمَةِ غَيْرِهِ بِمَا أُبِيحَ لَهُ مِنْ ذَلِكَ.

L22550 Whoever sells a wooden or stone pillar within a building obligates the buyer to remove it using the gentlest methods possible, including reinforcing the structure surrounding the pillar and demolishing adjacent areas necessary for its removal. The buyer bears no responsibility in this matter, as they have the right to take their property as they are able.

وَمَنْ بَاعَ سَارِيَةَ خَشَبٍ، أَوْ حَجَرٍ فِي بِنَاءٍ فَعَلَى الْمُشْتَرِي قَلْعُ ذَلِكَ بِأَلْطَفِ مَا يَقْدِرُ عَلَيْهِ مِنْ التَّدْعِيمِ لِمَا حَوْلَ السَّارِيَةِ مِنْ الْبِنَاءِ، وَهَدْمُ مَا حَوَالَيْهَا مِمَّا لَا بُدَّ لَهُ مِنْ هَدْمِهِ، وَلَا شَيْءَ عَلَيْهِ فِي ذَلِكَ؛ لِأَنَّ لَهُ أَخْذَ مَتَاعِهِ كَمَا يَقْدِرُ.

L22551 And whoever is commanded to do something and acts within it, there is no liability upon him, because he is doing good in what he does of that. Allah the Exalted has said: **"No blame is upon the doers of good"** [9:91], and **"Blame lies only against those who wrong people and seek oppression in the land without right"** [42:42]. If he transgresses, he becomes liable for what we have mentioned.[3]

وَمَنْ هُوَ مَأْمُورٌ بِشَيْءٍ، وَيَعْمَلُ فِي شَيْءٍ فَلَا ضَمَانَ عَلَيْهِ؛ لِأَنَّهُ يَفْعَلُ مَا يَفْعَلُ مِنْ ذَلِكَ: مُحْسِنٌ، وَقَدْ قَالَ اللَّهُ تَعَالَى: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] ، {إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الأَرْضِ بِغَيْرِ الْحَقِّ} [الشورى: ٤٢] فَإِنْ تَعَدَّى ضَمِنَ لِمَا ذَكَرْنَا.

The sale of wool, camel hair, or hair on the animal.

L22552

[مَسْأَلَةٌ بَاعَ صُوفًا أَوْ وَبَرًا أَوْ شَعْرًا عَلَى الْحَيَوَانِ]

L22553–22555 1430. Issue: If someone sells wool, hair, or camel fur while still on the animal, the shearing falls upon the owner of these materials, because they

١٤٣٠ - مَسْأَلَةٌ: وَمَنْ بَاعَ صُوفًا، أَوْ وَبَرًا، أَوْ شَعْرًا عَلَى الْحَيَوَانِ فَالْجَزُّ عَلَى الَّذِي لَهُ الصُّوفُ، وَالشَّعْرُ، وَالْوَبَرُ؛ لِأَنَّ عَلَيْهِ إزَالَةَ مَالِهِ عَنْ مَالِ غَيْرِهِ، وَمَكَانِ الشَّعْرِ، وَالْوَبَرِ،

[3] **Qur'an references (L22551):** Qur'an 9:91 (At-Tawbah); Qur'an 42:42 (Ash-Shuraa).

must remove their property from another's property, given that the hair and camel fur remain attached to the animal. As for wool—and it is the skin of the animal—the one to whom all of that belongs must remove his wool and skin from another's place, while the owner of the place need only enable him to do so.

L22556 Similarly, whoever purchases a storage jar in a house must remove it. He may demolish whatever parts of the door of the house are necessary for removing the jar, and he incurs no liability for that, since there is no way for him to perform the task he is charged with except through that. And success is from Allah, the Most High.

L22557 ## The Issue of Selling Goldsmiths' Dust

L22558 Issue 1431: It is impermissible to sell goldsmiths' dust in any way whatsoever, because the buyer intends only the silver and gold particles within it - which are unknown and indeterminable - thus constituting uncertainty (gharar). The Messenger of Allah (peace and blessings be upon him) "prohibited transactions involving gharar."[4]

L22559 ## A question concerning the ruling on the sale of what has been sifted by dust-sifters from the dust.

L22560 Issue 1432: Whatever dust sifters extract from soil, clay washers separate from clay, or is retrieved from goldsmiths' dust constitutes lost property if identifiable - such as a gemstone, dinar, or dirham. As for additional items, they must be announced according to the procedure we outlined in the rulings on lost property. The finder may keep them but remains liable to the owner if they come forward. Items that can never be identified - like fragments or similar objects - are permissible for the finder according to the principles we detailed in the chapter on lost property. Success comes solely from Allah, the Exalted.

L22561 ## A question regarding the ruling on the sale of mineral dust.

[4] **Hadith references (L22558):** Sunan Ibn Majah 2194; Sunan Ibn Majah 2195; Jami at-Tirmidhi 1230.

وَالصُّوفِ - وَهُوَ جِلْدُ الْحَيَوَانِ - فَعَلَى الَّذِي لَهُ كُلُّ ذَلِكَ إزَالَةُ مَالِهِ عَنْ مَكَانِ غَيْرِهِ، وَعَلَى الَّذِي لَهُ الْمَكَانُ أَنْ يُمَكِّنَهُ مِنْ ذَلِكَ فَقَطْ.

وَكَذَلِكَ مَنْ اشْتَرَى خَابِيَةً فِي بَيْتٍ فَعَلَيْهِ إخْرَاجُهَا، وَلَهُ أَنْ يَهْدِمَ مِنْ بَابِ الْبَيْتِ مَا لَا بُدَّ لَهُ مِنْ هَدْمِهِ لِإِخْرَاجِ الْخَابِيَةِ - وَلَا ضَمَانَ عَلَيْهِ فِي ذَلِكَ، إذْ لَا سَبِيلَ لَهُ إلَى عَمَلِ مَا كُلِّفَ إلَّا بِذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ بَيْعُ تُرَابِ الصَّاغَةِ]

١٤٣١ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ تُرَابِ الصَّاغَةِ أَصْلًا بِوَجْهٍ مِنْ الْوُجُوهِ لِأَنَّهُ إنَّمَا يَقْصِدُ الْمُشْتَرِي مَا فِيهِ مِنْ قَطْعِ الْفِضَّةِ وَالذَّهَبِ - وَهُوَ مَجْهُولٌ لَا يُعْرَفُ - فَهُوَ غَرَرٌ، وَقَدْ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ» .

[مَسْأَلَةٌ حُكْمُ بَيْعِ مَا نَخَلَهُ الْغَبَّارُونَ مِنْ التُّرَابِ]

١٤٣٢ - مَسْأَلَةٌ: وَكُلُّ مَا نَخَلَهُ الْغَبَّارُونَ مِنْ التُّرَابِ، أَوْ اسْتَخْرَجَهُ غَسَّالُوا الطِّينِ مِنْ الطِّينِ، أَوْ اُسْتُخْرِجَ مِنْ تُرَابِ الصَّاغَةِ، فَهُوَ لُقَطَةٌ مَا أَمْكَنَ أَنْ يُعَرَّفَ، كَالْفَصِّ، أَوْ الدِّينَارِ، أَوْ الدِّرْهَمِ، فَمَا زَادَ فَتَعْرِيفُهُ كَمَا ذَكَرْنَا فِي اللُّقَطَةِ ثُمَّ هُوَ لِلْمُلْتَقِطِ مَضْمُونًا لِصَاحِبِهِ إنْ جَاءَ - وَمَا كَانَ مِنْهُ لَا يُمْكِنُ أَنْ يُعْرَفَ صَاحِبُهُ أَبَدًا مِنْ قِطْعَةٍ أَوْ غَيْرِ ذَلِكَ: فَهُوَ حَلَالٌ لِوَاجِدِهِ عَلَى مَا ذَكَرْنَا فِي " كِتَابِ اللُّقَطَةِ " وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حُكْمُ بَيْعِ تُرَابُ الْمَعَادِنِ]

L22562 Ruling 1433: As for soil from mines—any that is from a gold mine, it is absolutely impermissible to sell it in any way, for the gold within it is created within it, its quantity being indeterminable.

١٤٣٣ - مَسْأَلَةٌ: وَأَمَّا تُرَابُ الْمَعَادِنِ: فَمَا كَانَ مِنْهُ مَعْدِنَ ذَهَبٍ فَلَا يَحِلُّ بَيْعُهُ أَلْبَتَّةَ بِوَجْهٍ مِنْ الْوُجُوهِ، لِأَنَّ الذَّهَبَ فِيهِ مَخْلُوقٌ فِي خِلَالِهِ مَجْهُولُ الْمِقْدَارِ.

L22563 If the gold in which the visible portion is entirely encased is in such a state: its sale becomes permissible according to what makes the sale of gold permissible—as we will mention after this, if Allah, the Exalted, wills.

فَلَوْ كَانَ الذَّهَبُ الَّذِي فِيهِ مَرْئِيًّا كُلُّهُ مُحَاطًا بِهِ: جَازَ بَيْعُهُ بِمَا يَجُوزُ بِهِ بَيْعُ الذَّهَبِ - عَلَى مَا نَذْكُرُهُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

L22564 What is in the form of silver mine dust: its sale is permissible for dirhams and gold as cash, for deferred payment or without deferment, and in exchange for goods as cash. A salam transaction is permissible for it.

وَمَا كَانَ مِنْهُ تُرَابَ مَعْدِنِ فِضَّةٍ: جَازَ بَيْعُهُ بِدَرَاهِمَ وَبِذَهَبٍ نَقْدًا، وَإِلَى أَجَلٍ وَإِلَى غَيْرِ أَجَلٍ، وَبِالْعَرْضِ نَقْدًا، وَجَازَ السَّلَمُ فِيهِ.

L22565 Similarly, the soil of all mineral ores—since it contains no silver whatsoever in its original state, being merely pure soil—does not become silver except through processing and smelting. A portion of it then transforms into silver, just as water transforms into salty water, eggs transform into chicks, and seeds transform into trees. There is no difference.

وَكَذَلِكَ تُرَابُ سَائِرِ الْمَعَادِنِ؛ لِأَنَّهُ لَيْسَ فِيهِ شَيْءٌ مِنْ الْفِضَّةِ أَصْلًا، وَإِنَّمَا هُوَ تُرَابٌ مَحْضٌ، لَا يَصِيرُ فِضَّةً إلَّا بِمُعَانَاةٍ وَطَبْخٍ، فَيَسْتَحِيلُ بَعْضُهُ فِضَّةً كَمَا يَسْتَحِيلُ الْمَاءُ مِلْحًا، وَالْبَيْضُ فَرَارِيجَ، وَالنَّوَى شَجَرًا - وَلَا فَرْقَ.

[مَسْأَلَةُ حُكْمِ بَيْعِ الْقَصِيلِ قَبْلَ أَنْ يُسَنْبِلَ]

[Issue: The ruling on the sale of young crops before they develop grain heads.]

L22566–22567

L22568 Issue: Selling young crops before they form ears is permissible. The seller may voluntarily allow the buyer to leave them as long as he wishes - whether until he grazes them, harvests them, or they dry - without stipulation. If the buyer neglects the crop until new offshoots emerge from its root that were not visibly present at the time of purchase, and they dispute ownership of these offshoots: whichever party establishes evidence regarding the quantity sold will receive the ruling in their favor. The buyer is entitled only to the amount purchased, while the additional offshoots belong to the seller. If the seller lacks evidence, both must swear oaths, and the disputed offshoots shall be divided between them.

مَسْأَلَةٌ: وَبَيْعُ الْقَصِيلِ قَبْلَ أَنْ يُسَنْبِلَ: جَائِزٌ وَلِلْبَائِعِ أَنْ يَتَطَوَّعَ لِلْمُشْتَرِي بِتَرْكِهِ مَا شَاءَ إلَى أَنْ يَرْعَاهُ، أَوْ إلَى أَنْ يَحْصُدَهُ، أَوْ إلَى أَنْ - يَيْبَسَ بِغَيْرِ شَرْطٍ، فَإِنْ غَفَلَ عَنْهُ حَتَّى زَادَ فِيهِ أَوْلَادًا مِنْ أَصْلِهِ لَمْ تَكُنْ ظَاهِرَةً إذَا اشْتَرَاهُ فَاخْتَصَمَا فِيهَا: فَأَيُّهُمَا أَقَامَ الْبَيِّنَةَ بِمِقْدَارِ الْمَبِيعِ: قُضِيَ بِهَا، وَلَمْ يَكُنْ لِلْمُشْتَرِي إلَّا الْقَدْرُ الَّذِي اشْتَرَى، وَكَانَتْ الزِّيَادَةُ مِنْ الْأَوْلَادِ لِلْبَائِعِ، فَإِنْ لَمْ تَكُنْ لَهُ بَيِّنَةٌ: حَلَفَا، وَقُسِّمَتْ الزِّيَادَةُ الَّتِي يَتَدَاعَيَانِهَا بَيْنَهُمَا.

L22569 As for the ears of grain, carob, and seeds: they belong to the purchaser in all circumstances. Likewise, whatever increases in its length. When the crop forms ears, its sale is absolutely impermissible—neither when cut nor when left—until it matures. Once it matures, its sale becomes permissible then.

وَأَمَّا السُّنْبُلُ، وَالْحَرُّوبُ، وَالْحَبُّ: فَلِلْمُشْتَرِي عَلَى كُلِّ حَالٍ، وَكَذَلِكَ مَا زَادَ فِي طُولِهِ، فَإِذَا سَنْبَلَ الزَّرْعُ لَمْ يَحِلَّ بَيْعُهُ أَصْلًا - لَا عَلَى الْقَطْعِ وَلَا عَلَى التَّرْكِ - إلَّا حَتَّى يَشْتَدَّ، فَإِذَا اشْتَدَّ: حَلَّ بَيْعُهَا حِينَئِذٍ.

L22570 The evidence for the validity of selling tender crops before they form ears is the Statement of Allah, the Most High: "And Allah has made lawful trade" [Al-Baqarah (The Cow) 275].[5]

بُرْهَانُ صِحَّةِ بَيْعِ الْقَصِيلِ قَبْلَ أَنْ يُسَنْبِلَ -: قَوْلُ اللَّهِ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

L22571 And His statement, the Exalted: "Do not consume your wealth among yourselves wrongfully unless it be through trade with mutual consent." [An-Nisa: 29] Thus, all sales are permissible except those prohibited by an explicit text of the Quran or the Sunnah. No explicit text whatsoever has been revealed prohibiting the sale of crops from the time they sprout until they form ears.[6]

وَقَوْله تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] فَالْبَيْعُ كُلُّهُ حَلَالٌ، إلَّا بَيْعًا مَنَعَ مِنْهُ نَصُّ قُرْآنٍ أَوْ سُنَّةٍ، وَلَمْ يَأْتِ فِي مَنْعِ بَيْعِ الزَّرْعِ مُذْ يَنْبُتُ إلَى أَنْ يُسَنْبِلَ: نَصٌّ أَصْلًا.

L22572 The evidence for the prohibition of selling grain when it forms ears until it hardens is what we have narrated in *Ṣaḥīḥ Muslim* via the chain from ʿAlī ibn Ḥajar and Zuhayr ibn Ḥarb, who both stated: "We were narrated by Ismāʿīl Ibn ʿUlayyah, from Ayyūb al-Sikhtiyānī, from Nāfiʿ, from Ibn ʿUmar, who said: 'The Messenger of Allah (peace and blessings be upon him) prohibited selling dates until they bear fruit and selling ears of grain until they whiten and become secure from blight. He prohibited the seller and the buyer alike.'"[7]

وَبُرْهَانُ تَحْرِيمِ بَيْعِهِ إذَا سَنْبَلَ إلَى أَنْ يَشْتَدَّ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا عَلِيُّ بْنُ حُجْرٍ، وَزُهَيْرُ بْنُ حَرْبٍ، قَالَا جَمِيعًا: نا إسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ بَيْعِ النَّخْلِ حَتَّى يَزْهُوَ وَعَنْ السُّنْبُلِ حَتَّى يَبْيَضَّ وَيَأْمَنَ الْعَاهَةَ - نَهَى الْبَائِعَ وَالْمُشْتَرِيَ» .

L22573 From the chain of narration of Abū Dāwūd, narrated by al-Ḥasan ibn ʿAlī, narrated by Abū al-Walīd—al-Ṭayālisī—narrated by Ḥammād ibn Salamah, narrated by Ḥumayd, narrated by Anas: "The Prophet, peace of Allah be upon him, prohibited selling grapes until they darken and selling grain until it ripens fully." No other narration is authentic at all.[8]

وَمِنْ طَرِيقِ أَبِي دَاوُد نا الْحَسَنُ بْنُ عَلِيٍّ نا أَبُو الْوَلِيدِ - هُوَ الطَّيَالِسِيُّ - عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ أَنَسٍ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «نَهَى عَنْ بَيْعِ الْعِنَبِ حَتَّى يَسْوَدَّ وَعَنْ بَيْعِ الْحَبِّ حَتَّى يَشْتَدَّ» وَلَا يَصِحُّ غَيْرُ هَذَا أَصْلًا.

L22574–22576 And likewise, it has been narrated to us from the majority of the Salaf: It

وَهَكَذَا رُوِّينَا عَنْ جُمْهُورِ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا إسْرَائِيلُ بْنُ يُونُسَ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَبْدُ اللَّهِ بْنُ مَسْعُودٍ، قَالَا جَمِيعًا: لَا يُبَاعُ النَّخْلُ حَتَّى يَحْمَرَّ، وَلَا السُّنْبُلُ حَتَّى يَصْفَرَّ.

[5] **Qur'an references (L22570):** Qur'an 2:275 (Al-Baqarah).
[6] **Qur'an references (L22571):** Qur'an 4:29 (An-Nisa).
[7] **Hadith references (L22572):** Sunan Abi Dawud 3368; Sahih Muslim 1535.
[8] **Hadith references (L22573):** Sunan Abi Dawud 3371; Jami at-Tirmidhi 1228.

has been narrated to us via the chain of Waki‘ - he narrated to us: Isrā’īl ibn Yūnus reported from Jābir, from al-Sha‘bī, from Masrūq, from... Umar ibn al-Khattab and Abdullah ibn Masud both said: The date palm is not to be sold until it reddens, nor the ears of grain until they yellow.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ سِيرِينَ قَالَ: نَهْيِ عَنْ بَيْعِ الثَّمَرَةِ حَتَّى يَبْدُوَ صَلَاحُهَا، وَعَنْ السُّنْبُلِ حَتَّى يَبْيَضَّ.

L22577 Via the chain of Abd al-Razzaq from Ma‘mar, from Ayyub al-Sikhtiyani, from Ibn Sirin, who said: “It is prohibited to sell the fruit until its ripeness becomes evident, and to sell the ears of grain until they turn white.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرٌ - هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ عَاصِمٍ عَنْ ابْنِ سِيرِينَ قَالَ: لَا يُشْتَرَى السُّنْبُلُ حَتَّى يَبْيَضَّ.

L22578 And via the chain of Ibn Abi Shaybah, he narrated to us: Jarir—he is Ibn Abd al-Hamid—from Asim from Ibn Sirin, who said: It is impermissible to purchase unripe ears of grain in the husk until they turn white.

وَمِنْ طَرِيقِ وَكِيعٍ نا الرَّبِيعُ - هُوَ ابْنُ صُبَيْحٍ - عَنْ الْحَسَنِ أَنَّهُ كَرِهَ بَيْعَ السُّنْبُلِ حَتَّى يَبْيَضَّ.

L22579 Through Waki’’s chain: Ar-Rabi‘—he is the son of Subayḥ—narrated to us from Al-Ḥasan that he deemed reprehensible the sale of unripe grain until it whitens.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَلِيُّ بْنُ مُسْهِرٍ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ، قَالَ: سَأَلْت عِكْرِمَةَ عَنْ بَيْعِ الْقَصِيلِ؟ فَقَالَ: لَا بَأْسَ، فَقُلْت: إنَّهُ يُسْنْبِلُ؟ فَكَرِهَهُ - وَهَذَا هُوَ نَفْسُ قَوْلِنَا، فَلَمْ يَسْتَثْنِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ مَنَعَ مِنْ بَيْعِ السُّنْبُلِ حَتَّى يَشْتَدَّ، أَوْ يَبْيَضَّ: جَوَازَ بَيْعِهِ عَلَى الْحَصَادِ {وَمَا يَنطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] ، {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L22580 From the narration chain of Ibn Abi Shaybah: Ali ibn Mushir narrated to us from Abu Ishaq al-Shaybani, who said: I asked Ikrimah about selling green fodder. He replied: “There is no objection.” I said: “But it will develop ears?” He deemed it disliked. This corresponds precisely to our opinion, for the Messenger of Allah—peace and blessings be upon him—made no exception when prohibiting the sale of grain ears until they harden or whiten, having permitted its sale upon harvesting. {He does not speak from whim} [53:3], {it is but revelation inspired} [53:4], {and your Lord is never forgetful} [19:64].[9]

وَكَذَلِكَ عُمَرُ بْنُ الْخَطَّابِ، وَابْنُ مَسْعُودٍ، لَا مُخَالِفَ لَهُمَا نَعْلَمُهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L22581 Likewise, in the case of ‘Umar ibn al-Khaṭṭāb and Ibn Mas‘ūd, there is no opponent to them that we know of from the Companions - may Allah be pleased with them.

قَالَ أَبُو مُحَمَّد: فَإِنَّ حَصَادَ السُّنْبُلِ رُطَبًا لَمْ يَجُزْ بَيْعُهُ أَيْضًا؛ لِأَنَّهُ سُنْبُلٌ يُمْكِنُ فِيهِ بَعْدَ أَنْ يَشْتَدَّ وَيَبْيَضَّ - وَكَذَلِكَ إنْ صُفِّيَ فَصَارَ حَبًّا وَلَا فَرْقَ، لِلنَّهْيِ عَنْ ذَلِكَ أَيْضًا.

L22582 Abu Muhammad said: Harvesting ears of grain while they are still moist is also impermissible to sell, because it is an ear of grain that may still undergo changes after hardening and whitening. Similarly, if it is winnowed and

[9] **Qur’an references (L22580):** Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm); Qur’an 19:64 (Maryam).

becomes grain, there is no distinction in the ruling, due to the prohibition of that as well.

L22583 If it is such that, when left, it does not dry but spoils, its sale is permissible. This is because it no longer possesses the attribute that formed the basis for the prohibition against selling items characterized by it.

L22584 The term *sunbul* (ear of grain) is known in the Arabic language, and it applies to wheat, barley, rye, millet, naked barley, and all that is termed *sunbul* in the language.

L22585 **A juristic question on the ruling of selling green crops before they develop ears, upon being cut.**

L22586–22588 1435. Issue: As for selling young crops before they form ears, subject to cutting, it is permissible because it is incumbent upon everyone to remove their property from another's land and not occupy the land with it. This is an obligatory, prescribed condition. If the landowner voluntarily allows them to remain without stipulation, it is acceptable, because it is permissible for anyone to allow [it]. His land is for whomever he wills and for whatever purpose he wills, provided it is not prohibited. If there is surplus, the owner of the land may voluntarily give the excess, for it is his wealth; he may grant it to whomever he wishes unless prevented by the Qur'an or Sunnah. A gift is an act of goodness and grace. Allah, the Exalted, said: "And do good" [Al-Ḥajj: 77], and He, the Exalted, said: "And do not neglect grace among yourselves" [Al-Baqarah: 237].[10]

L22589 If he refuses, then evidence (bayyinah) is required. If there is no evidence, they are litigants over the surplus—which is jointly held by them—each claiming, "It is mine." They must both swear an oath (yamin), as each is a defendant against whom a claim is made. Thereafter, each retains what he holds, for his oath absolves him of his opponent's claim. And with Allah, the Exalted, lies all success.

L22590 Abu Hanifah, Malik, and al-Shafiʿi prohibited the sale of green crops until

فَإِنْ كَانَ إِنْ تُرِكَ لَمْ يَيْبَسْ، وَلَكِنْ يَفْسُدُ: جَازَ بَيْعُهُ؛ لِأَنَّهُ قَدْ خَرَجَ عَنْ الصِّفَةِ الَّتِي جَاءَ النَّهْيُ عَنْ بَيْعِ مَا هِيَ فِيهِ.

وَالسُّنْبُلُ فِي لُغَةِ الْعَرَبِ مَعْرُوفٌ وَهُوَ فِي الْقَمْحِ وَالشَّعِيرِ، وَالْعَلَسِ، وَالدُّخْنِ، وَالسَّلْتِ، وَسَائِرِ مَا يُسَمَّى فِي اللُّغَةِ " سُنْبُلًا "

[مَسْأَلَةٌ حُكْمُ بَيْعُ الْقَصِيلِ قَبْلَ أَنْ يُسَنْبِلَ عَلَى الْقَطْعِ]

١٤٣٥ - مَسْأَلَةٌ: وَأَمَّا بَيْعُ الْقَصِيلِ قَبْلَ أَنْ يُسَنْبِلَ عَلَى الْقَطْعِ فَجَائِزٌ؛ لِأَنَّ فَرْضًا عَلَى كُلِّ أَحَدٍ أَنْ يُزِيلَ مَالَهُ عَنْ أَرْضِ غَيْرِهِ، وَأَنْ لَا يَشْغَلَهَا بِهِ، فَهَذَا شَرْطٌ وَاجِبٌ، مُفْتَرَضٌ، فَإِنْ تَطَوَّعَ لَهُ رَبُّ الْأَرْضِ بِالتَّرْكِ مِنْ غَيْرِ شَرْطٍ: فَحَسَنٌ؛ لِأَنَّ لِكُلِّ أَحَدٍ إبَاحَةُ أَرْضِهِ لِمَنْ شَاءَ، وَلِمَا شَاءَ، مِمَّا لَمْ يَنْهَ عَنْهُ، فَإِنْ زَادَ فَلِصَاحِبِ الْمَالِ أَنْ يَتَطَوَّعَ لَهُ بِالزِّيَادَةِ؛ لِأَنَّهُ مَالُهُ يَهَبُهُ لِمَنْ شَاءَ مَا لَمْ يَمْنَعْهُ قُرْآنٌ، أَوْ سُنَّةٌ، وَالْهِبَةُ فِعْلُ خَيْرٍ وَفَضْلٍ، قَالَ اللَّهُ تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] ، وَقَالَ تَعَالَى: {وَلا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ} [البقرة: ٢٣٧] .

فَإِنْ أَبَى فَالْبَيِّنَةُ، فَإِنْ لَمْ تَكُنْ بَيِّنَةٌ فَهُمَا مُتَدَاعِيَانِ فِي الزِّيَادَةِ - وَهِيَ بِأَيْدِيهِمَا مَعًا - فَكُلُّ وَاحِدٍ يَقُولُ: هِيَ لِي، فَيَحْلِفَانِ، لِأَنَّ كُلَّ وَاحِدٍ مِنْهُمَا مُدَّعًى عَلَيْهِ، ثُمَّ يَبْقَى لِكُلِّ أَحَدٍ مَا بِيَدِهِ لِبَرَاءَتِهِ مِنْ دَعْوَى خَصْمِهِ بِيَمِينِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[10] **Qur'an references (L22586):** Qur'an 2:237 (Al-Baqarah); Qur'an 22:77 (Al-Hajj).

وَمَنَعَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، مِنْ بَيْعِ الْقَصِيلِ حَتَّى يَصِيرَ حَبًّا يَابِسًا، وَلَمْ يَأْتِ بِهَذَا نَصٌّ أَصْلًا - ثُمَّ تَنَاقَضُوا، فَأَجَازُوا بَيْعَهُ عَلَى الْقَطْعِ -.

they become dry grain, and no scriptural text whatsoever supported this ruling. Then they contradicted their own ruling by permitting its sale once cut.

وَكُلُّ هَذَا بِلَا بُرْهَانٍ أَصْلًا لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ، وَلَا دَلِيلَ لَهُمْ عَلَى مَا مَنَعُوا مِنْ ذَلِكَ، وَلَا عَلَى مَا أَبَاحُوا مِنْهُ.

L22591 All of this is without any proof at all—neither from the Quran, nor the Sunnah, nor the statement of a Companion, nor analogy, nor any opinion with a valid basis. Nor do they have proof for what they prohibited or permitted of it.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ، وَابْنُ أَبِي لَيْلَى: لَا يَجُوزُ بَيْعُ الْقَصِيلِ لَا عَلَى الْقَطْعِ وَلَا عَلَى التَّرْكِ - وَقَوْلُ هَؤُلَاءِ أَطْرَدُ وَأَصَحُّ فِي السُّنْبُلِ قَبْلَ أَنْ يَشْتَدَّ.

L22592 Sufyan al-Thawri and Ibn Abi Layla said: The sale of unripe standing crops is not permissible, whether contingent on cutting them or leaving them intact. The opinion of these scholars is more consistent with legal principles and more sound regarding ears of grain before they harden.

وَاخْتَلَفُوا إِنْ تُرِكَ الزَّرْعُ فَزَادَ؟ فَقَالَ مَالِكٌ: يَنْفَسِخُ الْبَيْعُ جُمْلَةً.

L22593 They differed if the crop was left and it increased. Mālik said: "The sale is completely nullified."

وَقَالَ أَبُو حَنِيفَةَ: لِلْمُشْتَرِي الْمِقْدَارُ الَّذِي اشْتَرَى وَيَتَصَدَّقُ بِالزِّيَادَةِ - وَيُرْوَى عَنْهُ أَنَّهُ رَجَعَ فَقَالَ: لِلْمُشْتَرِي الْمِقْدَارُ الَّذِي اشْتَرَى، وَأَمَّا الزِّيَادَةُ فَلِلْبَائِعِ.

L22594 Abu Hanifah said: The buyer is entitled to the quantity he purchased and must give the excess as charity. It is narrated that he retracted and said: The buyer is entitled to the quantity he purchased, and as for the excess, it belongs to the seller.

وَقَالَ الشَّافِعِيُّ: الْبَائِعُ مُخَيَّرٌ بَيْنَ أَنْ يَدَعَ لَهُ الزِّيَادَةَ فَيَجُوزُ الْبَيْعُ وَالْهِبَةُ مَعًا أَوْ يَفْسَخَ الْبَيْعَ - وَقَالَ أَبُو سُلَيْمَانَ: الزِّيَادَةُ لِلْمُشْتَرِي مَعَ مَا اشْتَرَى.

L22595 Al-Shāfiʿī said: The seller has the choice between leaving the additional amount to the buyer, in which case both the sale and gift are permissible, and rescinding the sale. Abū Sulaymān said: The additional amount belongs to the buyer along with what he purchased.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا فَسْخُ مَالِكٍ لِلْبَيْعِ فَقَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ أَصْلًا، وَلِأَيِّ مَعْنًى يَفْسَخُ بَيْعًا وَقَعَ عَلَى صِحَّةٍ بِإِقْرَارِهِ؟ هَذَا مَا لَا يَجُوزُ إِلَّا بِقُرْآنٍ، أَوْ سُنَّةٍ.

L22596 Abu Muhammad said: As for Malik's rescission of the sale, this is an opinion without any evidence for its validity at all. For what reason would he rescind a sale that was validly concluded by his own admission? This is impermissible except by [authority of] the Quran or the Sunnah.

وَأَمَّا أَوَّلُ قَوْلَيْ أَبِي حَنِيفَةَ خَطَأٌ، لِأَنَّ الزِّيَادَةَ إِذْ جَعَلَهَا لِلْمُشْتَرِي فَلِأَيِّ شَيْءٍ يَأْمُرُهُ بِالصَّدَقَةِ بِهَا دُونَ أَنْ يَأْمُرَهُ بِأَنْ يَتَصَدَّقَ بِالْقَدْرِ الَّذِي اشْتَرَى وَكِلَاهُمَا لَهُ - وَأَمَّا

L22597 As for the first of Abū Ḥanīfah's two opinions, it is incorrect because if he assigns the excess to the buyer, why would he instruct him to give it as charity instead of ordering him to donate the amount he purchased? Both are his. As for the opinion he ultimately adopted—that the excess belongs to the seller—it is valid when there is clear evidence establishing the excess and the quantity purchased.

الْقَوْلُ الَّذِي رَجَعَ إِلَيْهِ مِنْ أَنَّ الزِّيَادَةَ لِلْبَائِعِ: فَصَحِيحٌ، إِذَا قَامَتْ الْبَيِّنَةُ بِهَا وَبِمِقْدَارِ مَا اشْتَرَى.

L22598–22600 As for al-Shāfiʿī's statement, it is manifestly erroneous. For when he attributed the surplus to the seller, what justification is there for compelling him? Is it regarding her gift to the buyer or the rescission of the sale? By what proof did he prevent him from claiming his right, disputing over it, and persisting in it?

وَأَمَّا قَوْلُ الشَّافِعِيِّ فَظَاهِرُ الْخَطَأِ، لِأَنَّهُ إِذْ جَعَلَ الزِّيَادَةَ لِلْبَائِعِ، فَلِأَيِّ مَعْنًى أَجْبَرَهُ عَلَى هِبَتِهَا لِلْمُشْتَرِي أَوْ فَسْخِ الْبَيْعِ؟ وَلِأَيِّ دَلِيلٍ مَنَعَهُ مِنْ طَلَبِ حَقِّهِ وَالْخِصَامِ فِيهِ وَالْبَقَاءِ عَلَيْهِ؟

L22601 These are the views of the people, as you see, regarding the declaring of lawful and unlawful.

فَهَذِهِ آرَاءُ الْقَوْمِ كَمَا تَرَى فِي التَّحْلِيلِ وَالتَّحْرِيمِ.

L22602 As for Abū Sulaymān's assertion that the increase belongs to the buyer, it is mistaken. This is because the buyer purchased only a defined quantity, entitling him solely to what emerges from the specific asset he acquired. The seller owns the increase in what he retained for himself and did not sell to the buyer. Therefore, the growth in the stalk belongs to the seller for the reason we stated - since the buyer is entitled only to the produce of what he purchased, and the increase derives from the original root.

وَأَمَّا قَوْلُ أَبِي سُلَيْمَانَ: إِنَّ الزِّيَادَةَ لِلْمُشْتَرِي فَخَطَأٌ، لِأَنَّ الْمُشْتَرِيَ إِنَّمَا اشْتَرَى قَدْرًا مَعْلُومًا فَلَهُ مَا حَدَثَ فِي الْعَيْنِ الَّذِي اشْتَرَى، وَلِلْبَائِعِ مَا زَادَ فِيمَا اسْتَبْقَى لِنَفْسِهِ وَلَمْ يَبِعْهُ مِنْ الْمُشْتَرِي، فَالزِّيَادَةُ فِي طُولِ السَّاقِ لِلْبَائِعِ لِمَا ذَكَرْنَا لِأَنَّهُ لَيْسَ لِلْمُشْتَرِي إِلَّا زَرْعُ مَا اشْتَرَى فَقَطْ، وَإِنَّمَا تَأْتِي الزِّيَادَةُ مِنْ الْأَصْلِ.

L22603 As for the ears of grain, grains, blossoms, leaves, hay, and carob, they belong to the buyer because they arose within the specific property of the buyer. It has been reported regarding this from some of the *Tabi'un* (as narrated through the chain of ʿAbd al-Razzāq from Maʿmar from Yaḥyā ibn Abī Kuthayyir), who said: There is no harm in selling barley as fodder before its ripeness becomes apparent, provided it is harvested from where it grows. If he neglects it until it matures into consumable grain, there is no harm in it.

وَأَمَّا السُّنْبُلُ، وَالْحَبُّ، وَالنَّوْرُ، وَالْوَرَقُ، وَالتِّبْنُ، وَالْخَرُّوبُ فَلِلْمُشْتَرِي لِأَنَّهُ فِي عَيْنِ مَالِهِ حَدَثَ - وَقَدْ جَاءَ فِي هَذَا عَنْ بَعْضِ التَّابِعِينَ -: مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: لَا بَأْسَ بِبَيْعِ الشَّعِيرِ لِلْعَلَفِ قَبْلَ أَنْ يَبْدُوَ صَلَاحُهُ إِذَا كَانَ يَحْصُدُهُ مِنْ مَكَانِهِ، فَإِنْ غَفَلَ عَنْهُ حَتَّى يَصِيرَ طَعَامًا فَلَا بَأْسَ بِهِ.

A ruling on the sale of the visible yield from vine crops.

[مَسْأَلَةٌ بَيْعُ مَا ظَهَرَ مِنْ الْمَقَاثِي]

L22604

L22605 Issue 1436: It is permissible to sell what has emerged from trellised crops like cucumbers (al-maqāthī)—even if extremely small—because it is edible. However, it is not permissible to sell what has not yet emerged from such trellised crops, jasmine, citrus blossoms, or other similar plants, nor a second cutting of green fodder. This is because all such sales involve selling what

١٤٣٦ - مَسْأَلَةٌ: وَيَجُوزُ بَيْعُ مَا ظَهَرَ مِنْ الْمَقَاثِي - وَإِنْ كَانَ صَغِيرًا جِدًّا - لِأَنَّهُ يُؤْكَلُ - وَلَا يَحِلُّ بَيْعُ مَا لَمْ يَظْهَرْ بَعْدُ مِنْ الْمَقَاثِي، وَالْيَاسَمِينِ، وَالنَّوْرِ، وَغَيْرِ ذَلِكَ، وَلَا جَزَّةً ثَانِيَةً مِنْ الْقَصِيلِ، لِأَنَّ كُلَّ ذَلِكَ بَيْعُ مَا لَمْ يُخْلَقْ - وَلَعَلَّهُ لَا يُخْلَقُ - وَإِنْ خُلِقَ فَلَا

has not yet been created—and perhaps may never be created. Even if created, none except Allah the Exalted knows its quantity or attributes. Therefore, such a sale is entirely forbidden, as it constitutes a gharar (speculative uncertainty) transaction and unlawful appropriation of wealth.

يَدْرِي أَحَدٌ غَيْرُ اللَّهِ تَعَالَى مَا كَمِّيَّتُهُ، وَلَا مَا صِفَاتُهُ: فَهُوَ حَرَامٌ بِكُلِّ وَجْهٍ، وَبَيْعُ غَرَرٍ، وَأَكْلُ مَالٍ بِالْبَاطِلِ.

L22606 Mālik permitted all of that, and we know of no predecessor for him in specifying these things, nor anyone before him who stated it, nor any evidence.

وَأَجَازَ مَالِكٌ كُلَّ ذَلِكَ وَمَا نَعْلَمُ لَهُ فِي تَخْصِيصِ هَذِهِ الْأَشْيَاءِ سَلَفًا، وَلَا أَحَدٌ قَالَهُ غَيْرُهُ قَبْلَهُ، وَلَا حُجَّةً.

L22607 Some of them argued by citing the hiring of a wet nurse - and this is a distortion of Allah's words, the Exalted, from its rightful place. For how does hiring equate to sale? Moreover, what relation does suckled milk have with cucumbers and jasmine? Yet they prohibit the sale of a sheep's milk before milking without drawing analogy to the wet nurse, then proceed to analogize based on it the sale of cucumbers, blossoms, and jasmine before they are created. It has been narrated to us through the chain of Saʿīd ibn Manṣūr: Hushaym reported to us - Yūnus ibn ʿUbayd - al-Ḥasan, that he disliked selling fresh dates two portions at a time.

وَاحْتَجَّ بَعْضُهُمْ بِاسْتِئْجَارِ الظِّئْرِ - وَهَذَا تَحْرِيفٌ لِكَلَامِ اللَّهِ تَعَالَى عَنْ مَوْضِعِهِ وَأَيْنَ الِاسْتِئْجَارُ مِنَ الْبَيْعِ، ثُمَّ أَيْنَ اللَّبَنُ الْمُرْتَضَعُ مِنَ الْقِثَّاءِ، وَالْيَاسَمِينِ؟ وَهُمْ يُحَرِّمُونَ بَيْعَ لَبَنِ شَاةٍ قَبْلَ حَلْبِهِ، وَلَا يَقِيسُونَهُ عَلَى الظِّئْرِ ثُمَّ يَقِيسُونَ عَلَيْهِ بَيْعَ الْقِثَّاءِ، وَالنَّوْرِ، وَالْيَاسَمِينِ قَبْلَ أَنْ يُخْلَقَ -: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يُونُسُ بْنُ عُبَيْدٍ عَنِ الْحَسَنِ أَنَّهُ كَرِهَ بَيْعَ الرِّطَابِ جِزَّتَيْنِ جِزَّتَيْنِ.

L22608–22609 And it has been narrated to us through the chain of Ibn Abī Shaybah: Shariq, from al-Mughīrah, from Ibrāhīm al-Nakhaʿī and al-Shaʿbī—both said: There is no harm in selling fresh dates by estimated measure.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا شَرِيكٌ عَنِ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ وَالشَّعْبِيِّ، قَالَا جَمِيعًا: لَا بَأْسَ بِبَيْعِ الرِّطَابِ جِزَّةً جِزَّةً.

L22610 Through the narration of Waki' from Buraid ibn 'Abdullah ibn Abi Burdah, who said: "I asked 'Ata ibn Abi Rabah about selling fresh dates in two units." He replied: "It is only valid as one unit."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ بُرَيْدِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي بُرْدَةَ قَالَ: سَأَلْتُ عَطَاءَ بْنَ أَبِي رَبَاحٍ عَنْ بَيْعِ الرَّطْبَةِ جِزَّتَيْنِ؟ فَقَالَ: لَا تَصْلُحُ إِلَّا جِزَّةً.

L22611 Through the chain of Waki' from Muḥammad ibn Muslim from Ibn Abī Najīḥ from Mujāhid that he disapproved of selling freshly cut green fodder and henna unless as bundles, and disapproved of selling cucumbers and muskmelons unless fully ripe.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ مُحَمَّدِ بْنِ مُسْلِمٍ عَنِ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ أَنَّهُ كَرِهَ بَيْعَ الْقَضْبِ، وَالْحِنَّاءِ، إِلَّا جِزَّةً - وَكَرِهَ بَيْعَ الْخِيَارِ وَالْخِرْبِزِ إِلَّا جَنِيَّةً.

L22612 And through the chain of Waki' from Israʾīl, from Jābir who narrates from Ibn Ashwaʿ, and from Al-Qasim: they both disliked the sale of fresh dates except by the heap - and this is the opinion of Abū Ḥanīfah, Al-Shāfiʿī, Aḥmad, Abū Sulaymān, and others.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْرَائِيلَ عَنْ جَابِرٍ عَنِ ابْنِ أَشْوَعَ، وَالْقَاسِمِ: أَنَّهُمَا كَرِهَا بَيْعَ الرِّطَابِ إِلَّا جِزَّةً - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ.

[مَسْأَلَةٌ بَاعَهُ الْمَقْثَأَةَ بِأُصُولِهَا وَالْمَوْزَ بِأُصُولِهِ]

١٤٣٧ - مَسْأَلَةٌ: فَلَوْ بَاعَهُ الْمَقْثَأَةَ بِأُصُولِهَا، وَالْمَوْزَ بِأُصُولِهِ، وَتَطَوَّعَ لَهُ إبْقَاءَ كُلِّ ذَلِكَ فِي أَرْضِهِ بِغَيْرِ شَرْطٍ جَازَ ذَلِكَ - فَإِذَا مَلَكَ مَا ابْتَاعَ كَانَ لَهُ كُلُّ مَا تَوَلَّدَ فِيهِ؛ لِأَنَّهُ تَوَلَّدَ فِي مَالِهِ، وَلَهُ أَخْذُهُ بِقَلْعِ كُلِّ ذَلِكَ مَتَى شَاءَ لِأَنَّهُ أُمْلَكُ بِمَالِهِ.

وَلَا يَحِلُّ لَهُ اشْتِرَاطُ إبْقَاءِ ذَلِكَ فِي أَرْضِهِ مُدَّةً مُسَمَّاةً أَوْ غَيْرَ مُسَمَّاةٍ؛ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ - فَإِنْ احْتَجُّوا ب " الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ "، قُلْنَا: هَذَا لَا يَصِحُّ، وَأَنْتُمْ تُصَحِّحُونَهُ، فَأَيْنَ أَنْتُمْ عَنْهُ فِي مَنْعِكُمْ جَوَازَ بَيْعِ الْقَصِيلِ عَلَى شَرْطِ التَّرْكِ، وَإِبَاحَتِكُمْ بَيْعَهُ بِشَرْطِ الْقَطْعِ، وَكِلَاهُمَا شَرْطٌ مُجَرَّدٌ لَمْ يَأْتِ بِهِ نَصُّ قُرْآنٍ، وَلَا سُنَّةٍ أَصْلًا، فَفَرَّقْتُمْ بِلَا دَلِيلٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ بَيْعُ الْأَمَةِ وَبَيَانُ أَنَّهَا حَامِلٌ مِنْ غَيْرِ سَيِّدِهَا]

١٤٣٨ - مَسْأَلَةٌ: وَبَيْعُ الْأَمَةِ، وَبَيَانُ أَنَّهَا حَامِلٌ مِنْ غَيْرِ سَيِّدِهَا، لَكِنْ مِنْ زَوْجٍ، أَوْ زِنًى، أَوْ إكْرَاهٍ -: بَيْعٌ صَحِيحٌ، سَوَاءٌ كَانَتْ رَائِعَةً أَوْ وَخْشًا كَانَ الْبَيْعُ فِي أَوَّلِ الْحَمْلِ أَوْ فِي وَسَطِهِ أَوْ فِي آخِرِهِ.

وَقَالَ مَالِكٌ: يَجُوزُ فِي الْوَخْشِ وَلَا يَجُوزُ فِي الرَّائِعَةِ - وَهَذَا قَوْلٌ لَا دَلِيلَ عَلَيْهِ صْلًا، وَمَا نَعْلَمُ أَحَدًا سَبَقَهُ إلَيْهِ أَصْلًا، وَقَالَ تَعَالَى {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَمَا

L22613 **A legal question: A man sold another cucumber plants with their roots and banana plants with their roots.**

L22614 1437 - Issue: If he sells to him the gourd plants with their roots and the banana plants with their roots, and voluntarily permits him to retain all of that in his land without stipulating a condition, this is permissible. When he acquires ownership of what he purchased, he is entitled to everything generated within it, as it is produced within his property. He also has the right to take possession by uprooting all of that whenever he wishes, for he has the greater entitlement regarding his property.

L22615 It is impermissible for him to stipulate retaining that on his land for a specified or unspecified period, as this is a condition not found in the Book of Allah, the Exalted, and is thus invalid. If they cite the principle, "Muslims are bound by their stipulations," we respond: This is invalid, yet you validate it. Where do you stand in prohibiting the permissibility of selling young crops on the condition of leaving them, while permitting their sale on the condition of cutting them? Both are baseless conditions unsupported by any Quranic text or Sunnah whatsoever, yet you differentiate between them without evidence. And success is only by Allah, the Exalted.

L22616 **A jurisprudential issue concerning the sale of a female slave and establishing that she is pregnant from someone other than her master.**

L22617 1438. Issue: The sale of a female slave is valid even when disclosing her pregnancy - whether conceived by her husband, through illicit intercourse, or coercion, rather than her owner - regardless of her being attractive or coarse in appearance, and whether the sale occurs at the pregnancy's beginning, middle, or end.

L22618–22620 Malik said: It is permissible in coarse goods but not permissible in superior goods — and this is an opinion without any evidence whatsoever, and we know of no one who held this opinion before him at all. The Most High said: *"And Allah has permitted sale"* [Al-Baqarah: 275]. He did not distinguish a pregnant animal from a barren one, nor a shepherdess from her flock, nor

a woman from the rest of female animals—"And your Lord is not forgetful" [Maryam 19:64].[11]

Issue: the sale of a sword without its sheath.

1439. Legal ruling: The sale of a sword sold separately from its scabbard is valid.

The sale of the scabbard without the blade is permissible.

The sale of ornaments other than gold and silver is permissible; selling half of it undivided, a third, a tenth, or a specified part of it—all of that is permissible, "And Allah has permitted sale" (Quran 2:275).[12]

Abu Hanifah prohibited some of that—and we do not know anyone who said it before him, nor do we know any evidence for it at all. And with Allah, the Exalted, is success.

Similarly, selling pieces cut from a cloth or from a specific and bounded piece of wood is lawfully valid, for "Allah has permitted sale" [Quran 2:275].[13]

Issue: The sale of the ring's band without the bezel.

Issue 1440: Selling the ring's band without the bezel is permissible, and removing the bezel in that case is the responsibility of the seller. Selling the bezel without the band is permissible, and removing the bezel in that case is the responsibility of the buyer. This is because the Messenger of Allah—peace and blessings be upon him—said: "Your blood and your wealth are inviolable to you." The bezel is in the band, and the band serves as a place for the bezel. Therefore, the owner of the bezel is obligated to remove it

خَصَّ حَامِلًا مِنْ حَائِلٍ، وَلَا رَائِعَةً مِنْ وَحْشٍ، وَلَا امْرَأَةً مِنْ سَائِرِ إِنَاثِ الْحَيَوَانِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

[مَسْأَلَةُ بَيْعُ السَّيْفِ دُونَ غِمْدِهِ]

١٤٣٩ - مَسْأَلَةٌ: وَبَيْعُ السَّيْفِ دُونَ غِمْدِهِ جَائِزٌ.

وَبَيْعُ الْغِمْدِ دُونَ النَّصْلِ جَائِزٌ.

وَبَيْعُ الْحِلْيَةِ دُونَهُمَا جَائِزٌ - وَبَيْعُ نِصْفِهَا مُشَاعٌ، أَوْ ثُلُثِهَا، أَوْ عُشْرِهَا، أَوْ شَيْءٍ مِنْهَا بِعَيْنِهِ: كُلُّ ذَلِكَ جَائِزٌ {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

وَمَنَعَ أَبُو حَنِيفَةَ مِنْ بَعْضِ ذَلِكَ - وَمَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ، وَمَا نَعْلَمُ لَهُ دَلِيلًا أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَكَذَلِكَ بَيْعُ قِطَعٍ مِنْ ثَوْبٍ أَوْ مِنْ خَشَبَةٍ مُعَيَّنَةٍ مَحْدُودَةٍ: جَائِزٌ {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

[مَسْأَلَةُ بَيْعُ حَلْقَةِ الْخَاتَمِ دُونَ الْفَصِّ]

١٤٤٠ - مَسْأَلَةٌ: وَبَيْعُ حَلْقَةِ الْخَاتَمِ دُونَ الْفَصِّ جَائِزٌ، وَقَلْعُ الْفَصِّ حِينَئِذٍ عَلَى الْبَائِعِ، وَبَيْعُ الْفَصِّ دُونَ الْحَلْقَةِ جَائِزٌ، وَقَلْعُ الْفَصِّ حِينَئِذٍ عَلَى الْمُشْتَرِي؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَالْفَصُّ فِي الْحَلْقَةِ فَهِيَ مَكَانٌ لِلْفَصِّ، فَفُرِضَ عَلَى الَّذِي لَهُ الْفَصُّ إِخْرَاجُ الْفَصِّ مِنْ مَالِ غَيْرِهِ وَلَيْسَ لَهُ

[11] **Qur'an references (L22618):** Qur'an 2:275 (Al-Baqarah); Qur'an 19:64 (Maryam).
[12] **Qur'an references (L22624):** Qur'an 2:275 (Al-Baqarah).
[13] **Qur'an references (L22626):** Qur'an 2:275 (Al-Baqarah).

from another's property, as he has no right to occupy another's property without permission. The band's owner is only required to enable him to do so and must not obstruct access to his property.

L22629 The one tasked with extracting the gemstone may widen the ring's band as necessary for retrieving his property, and he bears no liability, as he has performed what he was commanded to do. If he exceeds this, he becomes liable.

L22630 And such is the ruling concerning the tree trunk sold independently of the wall, the wall sold independently of it, the tree sold independently of the land, or the land sold independently of the tree: there is no distinction, and success is by Allah, the Most High.

L22631 **In a case where a person sold an item, the buyer stated: "I will not pay the price until I receive what I have purchased."**

L22632 1441. Issue: If someone sells an item and the buyer states, "I will not pay the price until I receive what I purchased," while the seller declares, "I will not deliver until I receive the payment," both must be compelled to exchange the sold item and the price simultaneously. This is because neither party has a greater right to fair treatment and redress than the other. Each holds a right belonging to the other, and it is incumbent upon each to fulfill the other's entitlement. Thus, it is impermissible to favor either party with precedence, as such action constitutes iniquity, wrongdoing, and oppression. This is the position of our scholarly companions and Ubayd-Allah ibn al-Hasan.

L22633–22634 **A case where the buyer refused to pay the price except after possession.**

L22635 Issue: If the buyer refuses to pay the price from his possession for what he purchased, saying: "I will not pay the price until I receive what I purchased," then the seller may withhold the sold item until he secures his right and ensures fairness jointly. If the item perishes in his custody without misconduct on his part, it is the buyer's liability, and he remains obliged to pay

أَنْ يَشْغَلَ مَالَ غَيْرِهِ بِغَيْرِ إِذْنِهِ، وَلَيْسَ عَلَى صَاحِبِ الْحَلْقَةِ إِلَّا إِمْكَانُهُ مِنْ ذَلِكَ فَقَطْ، وَأَنْ لَا يَحُولَ بَيْنَهُ وَبَيْنَ مَالِهِ.

وَلِمُتَوَلِّي إِخْرَاجِ الْفَصِّ تَوْسِيعُ الْحَلْقَةِ بِمَا لَا بُدَّ مِنْهُ فِي اسْتِخْرَاجِ مَتَاعِهِ، وَلَا ضَمَانَ عَلَيْهِ، لِأَنَّهُ فَعَلَ مَا هُوَ مَأْمُورٌ بِفِعْلِهِ، فَإِنْ تَعَدَّى ضَمِنَ.

وَهَكَذَا الْقَوْلُ فِي الْجِذْعِ يُبَاعُ دُونَ الْحَائِطِ، أَوْ الْحَائِطِ يُبَاعُ دُونَهُ وَالشَّجَرَةِ دُونَ الْأَرْضِ، أَوْ الْأَرْضِ دُونَ الشَّجَرَةِ وَلَا فَرْقَ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ بَاعَ شَيْئًا فَقَالَ الْمُشْتَرِي لَا أَدْفَعُ الثَّمَنَ حَتَّى أَقْبِضَ مَا ابْتَعْت]

١٤٤١ - مَسْأَلَةٌ: وَمَنْ بَاعَ شَيْئًا فَقَالَ الْمُشْتَرِي: لَا أَدْفَعُ الثَّمَنَ حَتَّى أَقْبِضَ مَا ابْتَعْت؟ وَقَالَ الْبَائِعُ: لَا أَدْفَعُ حَتَّى أَقْبِضَ: أُجْبِرَا مَعًا عَلَى دَفْعِ الْمَبِيعِ وَالثَّمَنِ مَعًا، لِأَنَّهُ لَيْسَ أَحَدُهُمَا أَحَقَّ بِالْإِنْصَافِ وَالِانْتِصَافِ مِنْ الْآخَرِ وَبِيَدِ كُلِّ وَاحِدٍ مِنْهُمَا حَقٌّ لِلْآخَرِ، وَفَرْضٌ عَلَى كُلِّ وَاحِدٍ مِنْهُمَا أَنْ يُعْطِيَ الْآخَرَ حَقَّهُ، فَلَا يَجُوزُ أَنْ يُخَصَّ أَحَدُهُمَا بِالتَّقَدُّمِ، وَفِعْلُ ذَلِكَ جَوْرٌ، وَحَيْفٌ، وَظُلْمٌ - وَهَذَا قَوْلُ أَصْحَابِنَا، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ.

[مَسْأَلَةٌ أَبَى الْمُشْتَرِي أَنْ يَدْفَعَ الثَّمَنَ إلَّا بَعْدَ الْقَبْضِ]

مَسْأَلَةٌ: فَإِنْ أَبَى الْمُشْتَرِي مِنْ أَنْ يَدْفَعَ الثَّمَنَ مِنْ قَبْضِهِ لِمَا اشْتَرَى وَقَالَ: لَا أَدْفَعُ الثَّمَنَ إلَّا بَعْدَ أَنْ أَقْبِضَ مَا اشْتَرَيْتُ؟ فَلِلْبَائِعِ أَنْ يَحْبِسَ مَا بَاعَ حَتَّى يَنْتَصِفَ وَيَنْصِفَ مَعًا، فَإِنْ تَلِفَ عِنْدَهُ مِنْ غَيْرِ تَعَدٍّ مِنْهُ فَهُوَ مِنْ مُصِيبَةِ الْمُشْتَرِي وَعَلَيْهِ دَفْعُ الثَّمَنِ، وَلَا ضَمَانَ

the price. The seller bears no responsibility for what perished in his custody without his transgression, as his withholding was legally justified. Allah the Exalted said: "So whoever transgresses against you, retaliate against him proportionally to his transgression" [Al-Baqarah: 194]. However, if part of the withheld item suffices to cover the price, the seller becomes liable for the excess beyond this amount, for he exceeded rightful retention in response to the buyer's initial refusal. This ruling applies if the item is divisible. If it cannot be divided without rendering it unusable or diminishing its value, then the seller bears no liability whatsoever.[14]

L22636 If the seller states, "I will not deliver except after receiving the payment," and the buyer invites him to accept payment and hand over the goods at the same time, but he refuses, then the seller is liable in this case because he is transgressing by withholding what he has withheld, as he was called to act fairly but refused. And success is from Allah, the Most High.

L22637 **A juridical question: It is stated that no deceptive practice is permissible when one engages in selling or buying.**

L22638 1443. Issue: If someone, when selling or purchasing, declares, "There are no defects," they retain the option to rescind the transaction for three consecutive nights and their intervening days. They may revoke it whether there is a defect or not, fraud or not, exploitation through unfair pricing or not. If they wish, they may retain it. Once the three nights elapse, their option becomes void, the sale becomes binding, and revocation is no longer permitted—except if a defect is discovered. The three-night period is calculated anew from the contract's conclusion. If the contract is concluded before sunset—even moments before, or as early as sunrise—the three-night period begins at that time. In such cases, the option to rescind also applies during that same daylight period.

L22639 If he concludes a sale after sunset, he has the right of option from that moment until the same time on the fourth night –:

عَلَى الْبَائِعِ فِيمَا هَلَكَ عِنْدَهُ مِنْ غَيْرِ تَعَدِّيهِ، لِأَنَّهُ احْتَبَسَ بِحَقٍّ؟ قَالَ اللَّهُ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] إِلَّا أَنْ يَكُونَ فِي بَعْضِ مَا حَبَسَ وَفَاءً بِالثَّمَنِ، فَإِنَّهُ يَضْمَنُ مَا زَادَ عَلَى هَذَا الْمِقْدَارِ، لِأَنَّهُ مُتَعَدٍّ بِاحْتِبَاسِهِ أَكْثَرَ مِمَّا تَعَدَّى عَلَيْهِ فِيهِ الْآخَرُ - هَذَا إِنْ كَانَ مِمَّا يُمْكِنُ أَنْ يَنْقَسِمَ، فَإِنْ كَانَ مِمَّا لَا يُمْكِنُ قِسْمَتُهُ إِلَّا بِفَسَادِهِ، أَوْ حَطِّ ثَمَنِهِ فَلَا ضَمَانَ عَلَيْهِ أَصْلًا.

فَلَوْ قَالَ الْبَائِعُ: لَا أَدْفَعُ إِلَّا بَعْدَ قَبْضِ الثَّمَنِ، وَدَعَاهُ الْمُشْتَرِي إِلَى أَنْ يَقْبِضَ وَيَدْفَعَ مَعًا فَأَبَى، فَهُوَ هَهُنَا ضَامِنٌ، لِأَنَّهُ مُتَعَدٍّ بِاحْتِبَاسِهِ مَا حَبَسَ، وَقَدْ دُعِيَ إِلَى الْإِنْصَافِ فَأَبَى - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَالَ حِينَ يَبِيعُ أَوْ يَبْتَاعُ لَا خِلَابَةَ]

١٤٤٣ - مَسْأَلَةٌ: وَمَنْ قَالَ حِينَ يَبِيعُ أَوْ يَبْتَاعُ: لَا خِلَابَةَ؟ فَلَهُ الْخِيَارُ ثَلَاثَ لَيَالٍ بِمَا فِي خِلَالِهِنَّ مِنَ الْأَيَّامِ، إِنْ شَاءَ رَدَّ بِعَيْبٍ أَوْ بِغَيْرِ عَيْبٍ، أَوْ بِخَدِيعَةٍ أَوْ بِغَيْرِ خَدِيعَةٍ، وَبِغَبْنٍ أَوْ بِغَيْرِ غَبْنٍ، وَإِنْ شَاءَ أَمْسَكَ -: فَإِذَا انْقَضَتِ اللَّيَالِي الثَّلَاثُ بَطَلَ خِيَارُهُ وَلَزِمَهُ الْبَيْعُ، وَلَا رَدَّ لَهُ، إِلَّا مِنْ عَيْبٍ إِنْ وُجِدَ وَاللَّيَالِي الثَّلَاثُ مُسْتَأْنَفَةٌ مِنْ حِينِ الْعَقْدِ، فَإِنْ بَايَعَ قَبْلَ غُرُوبِ الشَّمْسِ - بِقَلِيلٍ أَوْ كَثِيرٍ وَلَوْ مِنْ حِينِ طُلُوعِهَا -: فَإِنَّهُ يَسْتَأْنِفُ الثَّلَاثَ مُبْتَدِئَةً وَلَهُ الْخِيَارُ أَيْضًا فِي يَوْمِهِ ذَلِكَ.

وَإِنْ بَايَعَ بَعْدَ غُرُوبِ الشَّمْسِ فَلَهُ الْخِيَارُ مِنْ حِينَئِذٍ إِلَى مِثْلِ ذَلِكَ الْوَقْتِ مِنَ اللَّيْلَةِ الرَّابِعَةِ -:

[14] **Qur'an references (L22635):** Qur'an 2:194 (Al-Baqarah).

L22640 Hammam narrated to us: Abbas ibn Asbagh narrated to us: Muhammad ibn Abd al-Malik ibn Ayman narrated to us: Muhammad ibn Isma'il al-Tirmidhi narrated to us: al-Humaydi narrated to us: Sufyan ibn Uyaynah narrated to us: Muhammad ibn Ishaq narrated from Nafi' from Ibn Umar, who said: "In pre-Islamic times, Munqidh was struck on his head, causing a cranial wound penetrating to the brain membrane that impaired his speech. Whenever he engaged in transactions, he was deceived in his transactions. The Messenger of Allah—peace and blessings be upon him—said to him: 'Sell and say: "No deception," then you retain the right to rescind.'"

حَدَّثَنَا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ نا الْحُمَيْدِيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: «إِنَّ مُنْقِذًا سُفِعَ فِي رَأْسِهِ فِي الْجَاهِلِيَّةِ مَأْمُومَةً فَخَبَلَتْ لِسَانَهُ، فَكَانَ إِذَا بَايَعَ خُدِعَ فِي الْبَيْعِ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: بَايِعْ وَقُلْ: لَا خِلَابَةَ ثُمَّ أَنْتَ بِالْخِيَارِ» .

L22641–22644 I am Ahmad ibn Qasim, narrated from Abu Qasim ibn Muhammad ibn Qasim, narrated from my grandfather Qasim ibn Asbagh, narrated from Muhammad ibn Waddāḥ. Hāmid ibn Yaḥyā al-Balkhī narrated to us, Sufyān ibn ʿUyaynah narrated to us, Muḥammad ibn Isḥāq narrated to us from Nāfiʿ, the freed slave of Ibn ʿUmar, from Ibn ʿUmar, who said: "Munqidh was afflicted with a *ma'mūmah* (skull-penetrating wound) to his head in the pre-Islamic era, which impaired his speech and left him vulnerable to deception in transactions. The Messenger of Allah—peace and blessings be upon him—said to him: 'Sell and say, "There is no deception," then you retain the option to cancel the sale for three days after your sale.'"

نا أَحْمَدُ بْنُ قَاسِمٍ أَنَا أَبُو قَاسِمِ بْنِ مُحَمَّدِ بْنِ قَاسِمٍ أَنَا جَدِّي قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ وَضَّاحٍ نا حَامِدُ بْنُ يَحْيَى الْبَلْخِيّ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ عَنِ ابْنِ عُمَرَ قَالَ: «إِنَّ مُنْقِذًا سُفِعَ فِي رَأْسِهِ مَأْمُومَةً فِي الْجَاهِلِيَّةِ فَخَبَلَتْ لِسَانَهُ فَكَانَ يُخْدَعُ فِي الْبَيْعِ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: بِعْ، وَقُلْ: لَا خِلَابَةَ، ثُمَّ أَنْتَ بِالْخِيَارِ ثَلَاثًا مِنْ بَيْعِكَ» .

L22645 Ibn Umar said: I heard him say when making a pledge of allegiance: "No deceit, no deceit." 1444 AH –

قَالَ ابْنُ عُمَرَ: فَسَمِعْته يَقُولُ إِذَا بَايَعَ: لَا خِلَابَةَ لَا خِلَابَةَ. ١٤٤٤ -.

L22646 Issue: If one is unable to utter "There is no deception" due to a speech impediment or language barrier, they should say it to the best of their ability. If completely incapable, they may express the equivalent meaning in their own language. They retain the aforementioned choice [to annul the transaction], whether the seller consents or objects.

مَسْأَلَةٌ: فَإِنْ لَمْ يَقْدِرْ عَلَى أَنْ يَقُولَ " لَا خِلَابَةَ " قَالَهَا كَمَا يَقْدِرُ لِآفَةٍ بِلِسَانِهِ أَوْ لِعُجْمَةٍ، فَإِنْ عَجَزَ جُمْلَةً قَالَ بِلُغَتِهِ مَا يُوَافِقُ مَعْنَى " لَا خِلَابَةَ " وَلَهُ الْخِيَارُ الْمَذْكُورُ، أَحَبَّ الْبَائِعُ أَمْ كَرِهَ.

L22647 The proof of that is: "The Messenger of Allah—peace and blessings be upon him—commanded Munqidh to say it, and Allah knew he would say nothing but, 'There is no Khidhābah.'" And Allah, the Exalted, said: {Allah does not burden a soul beyond its capacity} [al-Baqarah 2:286].[15]

بُرْهَانُ ذَلِكَ -: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ مُنْقِذًا أَنْ يَقُولَهَا، وَقَدْ عَلِمَ أَنَّهُ لَا يَقُولُ إلَّا: لَا خِذَابَةَ» وَقَالَ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

[15] **Qur'an references (L22647):** Qur'an 2:286 (Al-Baqarah).

L22648 1445 AH. Issue: If he ratifies the sale within three days and relinquishes his option, the transaction becomes binding upon him. This is because the Messenger of Allah, peace be upon him, granted him the option period of three days. Were ratification within three days not binding, it would imply that the Messenger of Allah, peace be upon him, only granted him the option to revoke the sale - not to confirm it - which is invalid. For the Messenger of Allah, peace be upon him, comprehensively outlined this option as covering every choice the buyer may make, whether ratification or revocation.

١٤٤٥ - مَسْأَلَةٌ: فَإِنْ رَضِيَ فِي الثَّلَاثِ وَأَسْقَطَ خِيَارَهُ لَزِمَهُ الْبَيْعُ، وَذَلِكَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ لَهُ الْخِيَارَ ثَلَاثًا، فَلَوْ كَانَ لَا يَلْزَمُهُ الرِّضَا إنْ رَضِيَ فِي الثَّلَاثِ لَكَانَ إنَّمَا جَعَلَ لَهُ - عَلَيْهِ السَّلَامُ - الْخِيَارَ فِي الرَّدِّ فَقَطْ لَا فِي الرِّضَا - وَهَذَا بَاطِلٌ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَجْمَلَ لَهُ الْخِيَارَ فَكَانَ عُمُومًا لِكُلِّ مَا يَخْتَارُ مِنْ رِضًا أَوْ رَدٍّ.

L22649–22651 If the option were not terminated by relinquishing it and affirming consent, it would necessarily follow that his option would not terminate even if he rejects the sale until the three days expire—this is impossible. The apparent wording and meaning indicate he holds the option throughout the three days: if he wishes to reject, the sale becomes void with no valid consent after rejection; if he wishes to consent, the sale becomes binding with no valid rejection after consent. The directive of the Prophet (peace be upon him) cannot possibly bear any other interpretation. If he neither declares consent nor rejection, he cannot be compelled to either action, and his option remains until the three days expire—he may reject or retain it. If the three days expire without rejection, the sale becomes binding upon him because [...] A valid sale wherein the option period (*khiyār*) to return it was granted to him for three, no more. If he does not invalidate it within the three, he may no longer invalidate it afterward except due to a defect, as with all other sales. The sale remained valid and has not been invalidated. And success is from Allah, the Most High. 1446 -.

وَلَوْ كَانَ الْخِيَارُ لَا يَنْقَطِعُ بِإِسْقَاطِهِ إيَّاهُ وَإِقْرَارِهِ بِالرِّضَا لَوَجَبَ أَيْضًا ضَرُورَةَ أَنْ لَا يَنْقَطِعَ خِيَارُهُ وَإِنْ رَدَّ الْبَيْعَ حَتَّى يَنْقَضِيَ الثَّلَاثُ وَهَذَا مُحَالٌ -: فَظَاهِرُ اللَّفْظِ وَمَعْنَاهُ: أَنَّ لَهُ الْخِيَارَ مُدَّةَ الثَّلَاثِ إنْ شَاءَ رَدَّ فَيَبْطُلَ الْبَيْعُ وَلَا رِضَا لَهُ بَعْدَ الرَّدِّ، وَإِنْ شَاءَ رَضِيَ فَيَصِحَّ الْبَيْعُ وَلَا رَدَّ لَهُ بَعْدَ الرِّضَا -: لَا يَحْتَمِلُ أَمْرُهُ - عَلَيْهِ السَّلَامُ - غَيْرَ هَذَا أَصْلًا فَإِنْ لَمْ يَلْفِظْ بِالرِّضَا وَلَا بِالرَّدِّ: لَمْ يَجُزْ أَنْ يُجْبَرَ عَلَى شَيْءٍ مِنْ ذَلِكَ، وَبَقِيَ عَلَى خِيَارِهِ إلَى انْقِضَاءِ الثَّلَاثِ - إنْ شَاءَ رَدَّ وَإِنْ شَاءَ أَمْسَكَ - فَإِنْ انْقَضَتْ الثَّلَاثُ وَلَمْ يَرُدَّ فَقَدْ لَزِمَهُ الْبَيْعُ؛ لِأَنَّهُ بَيْعٌ صَحِيحٌ جُعِلَ لَهُ الْخِيَارُ فِي رَدِّهِ ثَلَاثًا، لَا أَكْثَرَ - فَإِنْ لَمْ يُبْطِلْهُ فَلَا إبْطَالَ لَهُ بَعْدَ الثَّلَاثِ، إلَّا مِنْ عَيْبٍ كَسَائِرِ الْبُيُوعِ، وَبَقِيَ الْبَيْعُ بِصِحَّتِهِ لَمْ يَبْطُلْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. ١٤٤٦ -.

L22652 Issue: If one stipulates terms other than “no deception”—such as “no deceit,” “no fraud,” “no trickery,” “no inequity,” “no deception,” “no defect,” “no harm,” “on the basis of soundness,” “no disease,” “no hidden defect,” “no malice,” or similar—he does not acquire the option (khiyar) granted to one who stipulates “no deception.” However, if he finds anything the sale was conditioned against, the sale is void. If no such thing is found, the sale becomes binding upon him.

مَسْأَلَةٌ: فَإِنْ قَالَ لَفْظًا غَيْرَ " لَا خِلَابَةَ " لَكِنْ أَنْ يَقُولَ: لَا خَدِيعَةَ، أَوْ لَا غِشَّ، أَوْ لَا كَيْدَ، أَوْ لَا غَبْنَ، أَوْ لَا مَكْرَ، أَوْ لَا عَيْبَ، أَوْ لَا ضَرَرَ، أَوْ عَلَى السَّلَامَةِ، أَوْ لَا دَاءَ، وَلَا غَائِلَةَ، أَوْ لَا خُبْثَ، أَوْ نَحْوَ هَذَا -: لَمْ يَكُنْ لَهُ الْخِيَارُ الْمَجْعُولُ لِمَنْ قَالَ: لَا خِلَابَةَ، لَكِنْ إنْ وَجَدَ شَيْئًا مِمَّا بَايَعَ عَلَى أَنْ لَا يَعْقِدَ بَيْعُهُ عَلَيْهِ: بَطَلَ الْبَيْعُ، وَإِنْ لَمْ يَجِدْهُ لَزِمَهُ الْبَيْعُ.

L22653 The proof of this is: When the Messenger of Allah—peace and blessings of Allah be upon him—issues a religious command and stipulates it with a particular wording, it is impermissible to transgress that wording—whether it is in its meaning or not—as long as one is capable of adhering to that wording, except through another text demonstrating that it is allowed; for he—peace be upon him—has established a limit in this matter, so how could transgressing it be lawful? Allah the Exalted said: "And whoever disobeys Allah and His Messenger and transgresses His limits, He will make him enter Fire to abide therein forever" (4:14).[16]

L22654 The Exalted said, "Nor does he speak from his own inclination" [An-Najm 3], "It is not but a revelation revealed" [An-Najm 4].[17]

L22655 The Most High said: "Whoever transgresses the boundaries of Allah has truly wronged his own soul" [Surah At-Talaq 65:1].[18]

L22656 If it were permissible to do otherwise, the call to prayer would be valid by saying: "The Mighty, indeed. You are our Lord other than the Most Gracious. You are the son of Abdullah ibn Abdul-Muttalib, sent by the Most Gracious. Hasten to the noon prayer. Hasten to the everlasting. The Mighty is the Greatest. We have no Lord except the Most Merciful."

L22657 Abu Muhammad said: Whoever gives the call to prayer in this manner - should he not be called to repent? If he repents, [it is accepted]; otherwise, he is killed, for he is mocking the signs of Allah, the Mighty and Majestic, and transgressing the boundaries of Allah.

L22658 There is no distinction between what we have mentioned and what he—peace be upon him—commanded regarding the prescribed wording of prayer, the *adhān*, the *iqāmah*, the *talbiyah*, marriage, divorce, and the rest of the Sharia. The burden of proof lies upon whoever asserts a distinction—otherwise, his assertion is invalid.

L22659–22661 As for those who permit deviating from the precisely defined wording trans-

[16] **Qur'an references (L22653):** Qur'an 4:14 (An-Nisa).
[17] **Qur'an references (L22654):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).
[18] **Qur'an references (L22655):** Qur'an 65:1 (At-Talaq).

بُرْهَانُ ذَلِكَ -: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا أَمَرَ فِي الدِّيَانَةِ بِأَمْرٍ، وَنَصَّ فِيهِ بِلَفْظٍ مَا: لَمْ يَجُزْ تَعَدِّي ذَلِكَ اللَّفْظِ إلَى غَيْرِهِ - وَسَوَاءٌ كَانَ فِي مَعْنَاهُ أَوْ لَمْ يَكُنْ - مَا دَامَ قَادِرًا عَلَى ذَلِكَ اللَّفْظِ، إلَّا بِنَصٍّ آخَرَ يُبَيِّنُ أَنَّ لَهُ ذَلِكَ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ حَدَّ فِي ذَلِكَ حَدًّا فَلَا يَحِلُّ تَعَدِّيهِ؟ قَالَ اللَّهُ تَعَالَى: {وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ يُدْخِلْهُ نَارًا خَالِدًا فِيهَا} [النساء: ١٤] .

وَقَالَ تَعَالَى: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤]

وَقَالَ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١]

وَلَوْ جَازَ غَيْرُ هَذَا لَجَازَ الْأَذَانُ بِأَنْ يَقُولَ: الْعَزِيزُ أَجَلْ، أَنْتَ لَنَا رَبٌّ إلَّا الرَّحْمَنُ، أَنْتَ ابْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْمُطَّلِبِ مَبْعُوثٌ مِنْ الرَّحْمَنِ، هَلُمُّوا نَحْوِ الظُّهْرِ، هَلُمُّوا نَحْوَ الْبَقَاءِ، الْعَزِيزُ أَعْظَمُ، لَيْسَ لَنَا رَبٌّ إلَّا الرَّحِيمُ.

قَالَ أَبُو مُحَمَّد: مَنْ أَذَّنَ هَكَذَا فَحَقُّهُ أَنْ يُسْتَتَابَ؟ فَإِنْ تَابَ وَإِلَّا قُتِلَ، لِأَنَّهُ مُسْتَهْزِئٌ بِآيَاتِ اللَّهِ عَزَّ وَجَلَّ مُتَعَدٍّ لِحُدُودِ اللَّهِ.

وَلَا فَرْقَ بَيْنَ مَا ذَكَرْنَاهُ وَبَيْنَ مَا أَمَرَ بِهِ - عَلَيْهِ السَّلَامُ - فِي أَلْفَاظِ الصَّلَاةِ، وَالْأَذَانِ، وَالْإِقَامَةِ، وَالتَّلْبِيَةِ، وَالنِّكَاحِ، وَالطَّلَاقِ، وَسَائِرِ الشَّرِيعَةِ، وَعَلَى الْمُفَرِّقِ الدَّلِيلُ؟ وَإِلَّا فَهُوَ مُبْطِلٌ.

وَأَمَّا مَنْ أَجَازَ مُخَالَفَةَ الْأَلْفَاظِ الْمَحْدُودَةِ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْأَذَانِ وَالْإِقَامَةِ، وَأَجَازَ تَنْكِيسَهَا، وَقِرَاءَةَ الْقُرْآنِ فِي الصَّلَاةِ بِالْأَعْجَمِيَّةِ - وَهُوَ فَصِيحٌ

mitted from Allah's Messenger—peace and blessings be upon him—in the call to prayer (adhān) and its establishment (iqāmah), who allow inverting their prescribed order, and who sanction reciting the Quran during prayer in a non-Arabic language—despite the reciter's proficiency in the Quranic text—what would prevent them from logically arguing for the inversion of prayer itself? They would then begin it with the Taslim (concluding salutation), followed by the sitting position and Tashahhud, then proceed to prostration, and subsequently... In bowing, then in standing, then in saying the *takbīr*, reciting while sitting, reciting the *tashahhud* while standing, fasting at night during Ramadan and breaking the fast by day, postponing the Hajj, substituting Quranic words with others sharing their meaning, rearranging its words forward or backward provided the meaning remains intact, writing the *Mus'haf* in such manner, reciting it in prayer likewise, teaching people the Quran likewise, and altering religious laws — we declare our innocence before Allah, the Exalted, from all this and from transgressing any boundary set for us by Allah's Messenger — peace and blessings of Allah be upon him. We possess no knowledge except what He has taught us, and we abundantly praise Allah for this.

بِالْقُرْآنِ -: فَمَا عَلَيْهِ أَنْ يَقُولَ بِتَنْكِيسِ الصَّلَاةِ؟ فَيَبْدَؤُهَا بِالتَّسْلِيمِ، ثُمَّ بِالْقُعُودِ، وَالتَّشَهُّدِ، ثُمَّ بِالسُّجُودِ، ثُمَّ بِالرُّكُوعِ، ثُمَّ بِالْقِيَامِ، ثُمَّ بِالتَّكْبِيرِ وَيَقْرَأُ فِي الْجُلُوسِ، وَيَتَشَهَّدُ فِي الْقِيَامِ، وَأَنْ يَصُومَ اللَّيْلَ فِي رَمَضَانَ، وَيُفْطِرَ النَّهَارَ، وَيُحِيلَ الْحَجَّ، وَيُبَدِّلَ أَلْفَاظَ الْقُرْآنِ بِغَيْرِهَا مِمَّا هُوَ فِي مَعْنَاهَا، وَيُقَدِّمَ أَلْفَاظَهُ وَيُؤَخِّرَهَا مَا لَمْ يَفْسُدْ الْمَعْنَى، وَيَكْتُبَ الْمُصْحَفَ كَذَلِكَ، وَيَقْرَأَ فِي الصَّلَاةِ كَذَلِكَ، وَيُقْرِئَ النَّاسَ كَذَلِكَ، وَيُبَدِّلَ الشَّرَائِعَ - وَنَحْنُ نَبْرَأُ إلَى اللَّهِ تَعَالَى مِنْ ذَلِكَ، وَمِنْ أَنْ نَتَعَدَّى شَيْئًا مِمَّا حَدَّهُ لَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَيْنَا، لَا عِلْمَ لَنَا إلَّا مَا عَلَّمَنَا - وَنَحْمَدُ اللَّهَ كَثِيرًا عَلَى ذَلِكَ.

L22662 Many of our opponents have concurred with us that the term "sale" does not substitute for the term *salam*. This *Munqidh*—the one commanded to use the specified term—did not consider it appropriate to extend it to other terms, even if they shared its meaning. Rather, he stated it precisely as he was commanded, as was decreed, and as he was tasked.

وَقَدْ وَافَقَنَا كَثِيرٌ مِنْ مُخَالِفِينَا أَنَّ لَفْظَ " الْبَيْعِ " لَا يَنُوبُ عَنْ لَفْظِ " السَّلَمِ " وَهَذَا " مُنْقِذٌ " الْمَأْمُورُ بِاللَّفْظِ الْمَذْكُورِ لَمْ يَرَ أَنْ يَتَعَدَّاهُ إلَى غَيْرِهِ، وَإِنْ كَانَ فِي مَعْنَاهُ - بَلْ قَالَهُ كَمَا أَمَرَ، وَكَمَا قَدَّرَ، وَكَمَا كُلِّفَ.

L22663 We ask those who oppose us in this matter about the distinction between the wording stipulated in legal rulings, the times stipulated in legal rulings, the places stipulated in legal rulings, and the states and actions stipulated in legal rulings. They have no valid basis for any distinction whatsoever. If they equate all these categories in being obligatory, they are rightly guided—and this is our position. But if they equate all these in the permissibility of substitution, they have disbelieved—there is no disagreement on this—distorted the entirety of the religion, and utterly apostatized from it.

وَنَسْأَلُ الْمُخَالِفَ لَنَا فِي هَذَا عَنْ الْفَرْقِ بَيْنَ الْأَلْفَاظِ الْمَأْمُورِ بِهَا فِي الْأَحْكَامِ وَبَيْنَ الْأَوْقَاتِ الْمَأْمُورِ بِهَا فِي الْأَحْكَامِ، وَبَيْنَ الْمَوَاضِعِ الْمَأْمُورِ بِهَا فِي الْأَحْكَامِ، وَبَيْنَ الْأَحْوَالِ وَالْأَعْمَالِ الْمَأْمُورِ بِهَا فِي الْأَحْكَامِ، وَلَا سَبِيلَ لَهُ إلَى فَرْقٍ أَصْلًا، فَإِنْ سَوَّى بَيْنَ الْجَمِيعِ فِي الْإِيجَابِ وُفِّقَ - وَهُوَ قَوْلُنَا - وَإِنْ سَوَّى بَيْنَ الْجَمِيعِ فِي جَوَازِ التَّبْدِيلِ -: كَفَرَ، بِلَا خِلَافٍ، وَبَدَّلَ الدِّينَ كُلَّهُ، وَخَرَجَ عَنْهُ.

L22664 The Prophet—peace and blessings of Allah be upon him—taught Al-Barā'

ibn ʿĀẓib a supplication to recite, which included: “I have believed in Your Book which You have revealed, and Your Prophet whom You have sent.” Al-Barā’ began to commit it to memory and said: “And Your Messenger whom You have sent?” The Prophet—peace and blessings of Allah be upon him—responded: “And Your Prophet whom You have sent.” He did not permit him to replace the word he was instructed to use with another, though the meaning is the same.

وَقَدْ «عَلَّمَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْبَرَاءَ بْنَ عَازِبٍ دُعَاءً يَقُولُهُ، وَفِيهِ آمَنْتُ بِكِتَابِكَ الَّذِي أَنْزَلْتَ، وَنَبِيِّكَ الَّذِي أَرْسَلْتَ فَذَهَبَ الْبَرَاءُ يَسْتَذْكِرُهُ فَقَالَ: وَبِرَسُولِكَ الَّذِي أَرْسَلْتَ؟ فَقَالَ لَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنَبِيِّكَ الَّذِي أَرْسَلْتَ» فَلَمْ يَدَعْهُ أَنْ يُبَدِّلَ لَفْظَةً مَكَانَ الَّتِي أَمَرَهُ بِهَا، وَالْمَعْنَى وَاحِدٌ.

L22665 And who is more astonishing and misguided than one who permits altering an expression commanded by the Messenger of Allah—peace and blessings be upon him—then says: If the witness states, “I inform you” or “I notify you that I know this person has a dinar in the possession of that person,” it is not valid testimony, nor can judgment be based on it until he says, “I testify”—then marvel at how these people reverse the truths?

وَمَنْ أَعْجَبُ وَأَضَلُّ مِمَّنْ يُجِيزُ تَبْدِيلَ لَفْظٍ أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ يَقُولُ: إنْ قَالَ الشَّاهِدُ: أُخْبِرُك أَوْ أُعْلِمُك بِأَنِّي أَعْلَمُ أَنَّ لِهَذَا عِنْدَ هَذَا دِينَارًا: أَنَّهَا لَيْسَتْ شَهَادَةً، وَلَا يَحْكُمُ بِهَا حَتَّى يَقُولَ: أَشْهَدُ، فَاعْجَبُوا لِعَكْسِ هَؤُلَاءِ الْقَوْمِ لِلْحَقَائِقِ؟

L22666 As for other terms, they are words with established meanings that were mutually agreed upon. Thus, the parties are entitled to what they pledged upon if it is verified as such, for this constitutes part of their mutual consent, as Allah the Exalted said: “except it be a trade by mutual consent” [An-Nisā’ 4:29].[19]

وَأَمَّا الْأَلْفَاظُ الْأُخَرُ فَهِيَ أَلْفَاظٌ مَعْرُوفَةُ الْمَعَانِي بَايَعَ عَلَيْهَا فَلَهُ مَا بَايَعَ عَلَيْهِ إنْ وَجَدَهُ كَذَلِكَ، لِأَنَّهُ مِمَّا تَرَاضَيَا عَلَيْهِ، كَمَا قَالَ اللَّهُ تَعَالَى: {إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩]

L22667–22669 If he finds other than what they mutually agreed upon in their sale, then he neither found what he sold nor what he purchased, and he has nothing else. Therefore, it is not permissible for him to take anything from another’s wealth unless he enters into a mutual agreement for it with the consent of both parties, and this is evident—and success is from Allah, the Exalted.

فَإِنْ وَجَدَ غَيْرَ مَا تَرَاضَيَا بِهِ فِي بَيْعِهِ، فَلَمْ يَجِدْ مَا بَاعَ وَلَا مَا ابْتَاعَ، وَلَيْسَ لَهُ غَيْرُ ذَلِكَ، فَلَا يَحِلُّ لَهُ مِنْ مَالِ غَيْرِهِ مَا لَمْ يُبَايِعْهُ فِيهِ عَنْ تَرَاضٍ مِنْهُمَا، وَهَذَا بَيِّنٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. -

L22670 A legal issue: Every condition stipulated in a sale contract by both parties, or by one of them with the consent of the other.

[مَسْأَلَةٌ كُلُّ شَرْطٍ وَقَعَ فِي بَيْعٍ مِنْهُمَا أَوْ مِنْ أَحَدِهِمَا بِرِضَا الْآخَرِ]

L22671 Issue 1447: Any condition stipulated in a sale by either party—or by one party with the other’s consent—whether stipulated before the contract’s conclusion, after the sale’s completion through physical separation from the place of transaction or khiyār (right to rescind), or at either of the two times (mean-

١٤٤٧ - مَسْأَلَةٌ: وَكُلُّ شَرْطٍ وَقَعَ فِي بَيْعٍ مِنْهُمَا، أَوْ مِنْ أَحَدِهِمَا، بِرِضَا الْآخَرِ فَإِنَّهُمَا إنْ عَقَدَاهُ قَبْلَ عَقْدِ الْبَيْعِ أَوْ بَعْدَ تَمَامِ الْبَيْعِ بِالتَّفَرُّقِ بِالْأَبْدَانِ، أَوْ بِالتَّخْيِيرِ، أَوْ فِي أَحَدِ

[19] **Qur’an references (L22666):** Qur’an 4:29 (An-Nisa).

ing before or after the contract), provided it was not mentioned during the contract itself—renders the sale valid and complete, while the condition becomes religiously invalid and legally non-binding.

الْوَقْتَيْنِ - يَعْنِي قَبْلَ الْعَقْدِ أَوْ بَعْدَهُ - وَلَمْ يَذْكُرَاهُ فِي حِينِ عَقْدِ الْبَيْعِ، فَالْبَيْعُ صَحِيحٌ تَامٌّ، وَالشَّرْطُ بَاطِلٌ لَا يَلْزَمُ.

L22672 If both parties mention that condition at the time of concluding the sale, the sale is void and rescinded, and the condition is invalidated—no matter what the condition may be—except for seven conditions alone. These are binding, and the sale remains valid if stipulated in the sale. They are:

فَإِنْ ذَكَرَا ذَلِكَ الشَّرْطَ فِي حَالِ عَقْدِ الْبَيْعِ فَالْبَيْعُ بَاطِلٌ مَفْسُوخٌ، وَالشَّرْطُ بَاطِلٌ - أَيَّ شَرْطٍ كَانَ لَا تُحَاشِ شَيْئًا - إِلَّا سَبْعَةَ شُرُوطٍ فَقَطْ، فَإِنَّهَا لَازِمَةٌ، وَالْبَيْعُ صَحِيحٌ، إِنْ اُشْتُرِطَتْ فِي الْبَيْعِ - وَهِيَ:

L22673 The requirement of collateral in a mutually contracted transaction for a specified term.

اشْتِرَاطُ الرَّهْنِ فِيمَا تَبَايَعَاهُ إِلَى أَجَلٍ مُسَمًّى.

L22674 The stipulation to defer the price—if it is in dinars or dirhams—to a specified term.

وَاشْتِرَاطُ تَأْخِيرِ الثَّمَنِ إِنْ كَانَ دَنَانِيرَ أَوْ دَرَاهِمَ إِلَى أَجَلٍ مُسَمًّى.

L22675 Stipulating that the price be paid at the time of financial ease, even if the two parties do not stipulate a period.

وَاشْتِرَاطُ أَدَاءِ الثَّمَنِ إِلَى الْمَيْسَرَةِ - وَإِنْ لَمْ يَذْكُرَا أَجَلًا.

L22676 The stipulation of the attributes of the sold item that the two parties mutually agree upon and conclude the sale on the condition that the item possesses those attributes.

وَاشْتِرَاطُ صِفَاتِ الْمَبِيعِ الَّتِي يَتَرَاضَيَانِهَا مَعًا وَيَتَبَايَعَانِ ذَلِكَ الشَّيْءَ عَلَى أَنَّهُ بِتِلْكَ الصِّفَةِ.

L22677 And the stipulation that there is no deceit.

وَاشْتِرَاطُ أَنْ لَا خِلَابَةَ.

L22678 The sale of a male slave or female slave, wherein the buyer stipulates their entire property or a specifically named and designated portion thereof, or an apportioned undivided share in all of it — regardless of whether their property is entirely unknown, entirely known, partly known and partly unknown.

وَبَيْعُ الْعَبْدِ، أَوْ الْأَمَةِ، فَيَشْتَرِطُ الْمُشْتَرِي مَالَهُمَا أَوْ بَعْضَهُ مُسَمًّى مُعَيَّنًا، أَوْ جُزْءًا مَنْسُوبًا مُشَاعًا فِي جَمِيعِهِ، سَوَاءٌ كَانَ مَالُهُمَا مَجْهُولًا كُلُّهُ، أَوْ مَعْلُومًا كُلُّهُ، أَوْ مَعْلُومًا بَعْضُهُ، مَجْهُولًا بَعْضُهُ.

L22679 Or the sale of date palm roots/trunks containing fruit that was artificially pollinated before or after ripening, where the buyer stipulates exclusive ownership of the fruit for himself, a specific portion of it, or a designated undivided share of the entire fruit.

أَوْ بَيْعُ أُصُولِ نَخْلٍ فِيهَا ثَمَرَةٌ قَدْ أُبِرَتْ قَبْلَ الطِّيبِ أَوْ بَعْدَهُ، فَيَشْتَرِطُ الْمُشْتَرِي الثَّمَرَةَ لِنَفْسِهِ أَوْ جُزْءًا مُعَيَّنًا مِنْهَا أَوْ مُسَمًّى مُشَاعًا فِي جَمِيعِهَا.

L22680 This is valid and nothing more, and all other such transactions are void, as we have previously established: such as one who sells a slave on the condition of emancipation, or a female slave on the condition of her bearing a child, or

فَهَذِهِ وَلَا مَزِيدَ، وَسَائِرُهَا بَاطِلٌ كَمَا قَدَّمْنَا -: كَمَنْ بَاعَ مَمْلُوكًا بِشَرْطِ الْعِتْقِ، أَوْ أَمَةً بِشَرْطِ الْإِيلَادِ، أَوْ دَابَّةً وَاشْتَرَطَ رُكُوبَهَا مُدَّةً مُسَمَّاةً - قَلَّتْ أَوْ كَثُرَتْ - أَوْ إلَى مَكَانٍ مُسَمًّى قَرِيبٍ أَوْ بَعِيدٍ.

a beast of burden while stipulating riding it for a specified period—whether brief or extended—or to a specified place—whether near or far.

أَوْ دَارًا وَاشْتَرَطَ سُكْنَاهَا سَاعَةً فَمَا فَوْقَهَا، أَوْ غَيْرَ ذَلِكَ مِنْ الشُّرُوطِ كُلِّهَا.

L22681 or a house and stipulated occupancy of it for an hour or longer, or other than that from all the conditions.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ أَنَا أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ الْهَمْدَانِيُّ أَنَا أَبُو أُسَامَةَ - هُوَ حَمَّادُ بْنُ أُسَامَةَ - أَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ قَالَ: أَخْبَرَتْنِي عَائِشَةُ أُمُّ الْمُؤْمِنِينَ فَذَكَرَتْ حَدِيثًا قَالَتْ فِيهِ «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَطَبَ النَّاسَ فَحَمِدَ اللَّهَ وَأَثْنَى عَلَيْهِ بِمَا هُوَ أَهْلُهُ ثُمَّ قَالَ: أَمَّا بَعْدُ فَمَا بَالُ أَقْوَامٍ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ مَا كَانَ مِنْ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ وَإِنْ كَانَ مِائَةَ شَرْطٍ كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

L22682–22684 The proof of that is—what we have reported through Muslim ibn al-Ḥajjāj: I am Abū Kurayb Muḥammad ibn al-ʿAlāʾ al-Hamadānī. I am Abu Usamah—he is Hammad ibn Usamah—I am Hisham ibn Urwah from his father, who said: Aisha, the Mother of the Believers, informed me and mentioned a hadith in which she said: "The Messenger of Allah (peace be upon him) addressed the people, praised Allah, and extolled Him as He deserves. Then he said: 'Now then: what is the matter with people who stipulate conditions not found in the Book of Allah, the Almighty and Majestic? Any condition not present in the Book of Allah, the Almighty and Majestic, is void, even if it be a hundred conditions. Allah's Book holds greater authority, and Allah's stipulation is more binding.'" He then recounted the remainder of the narrative.

وَمِنْ طَرِيقِ أَبِي دَاوُد حَدَّثَنَا الْقَعْنَبِيُّ، وَقُتَيْبَةُ بْنُ سَعِيدٍ قَالَا جَمِيعًا: نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: إنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَخْبَرَتْهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَامَ فَقَالَ: مَا بَالُ أُنَاسٍ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ، مَنْ اشْتَرَطَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ فَلَيْسَ لَهُ وَإِنْ اشْتَرَطَ مِائَةَ مَرَّةٍ، شَرْطُ اللَّهِ أَحَقُّ وَأَوْثَقُ» .

L22685 And through the chain of Abī Dāwūd: Al-Qaʿnabī and Qutaybah ibn Saʿīd both said: Al-Layth ibn Saʿd narrated to them from Ibn Shihāb from ʿUrwah ibn Al-Zubayr, who said: ʿĀʾishah, the Mother of the Believers, informed ʿUrwah that the Messenger of Allah—peace and blessings be upon him—stood and said: "What is the matter with people who impose conditions not found in the Book of Allah? Whoever imposes a condition not in the Book of Allah has no right to it, even if he repeats it a hundred times. Allah's condition is more rightful and binding."

فَهَذَا الْأَثَرُ كَالشَّمْسِ صِحَّةً وَبَيَانًا يَرْفَعُ الْإِشْكَالَ كُلَّهُ.

L22686 This narration is like the sun in authenticity and clarity, dispelling all difficulties.

L22687 Since all conditions—except what we have mentioned—are invalid, every contract of sale or other type concluded upon an invalid condition is invalid, utterly invalid, and necessarily so. This is because the contract is concluded

on the premise that it cannot be valid except through the validity of its condition, while the condition has no validity. Thus, a contract contingent on a condition that lacks validity cannot possess validity, as it depends on the validity of that which is itself invalid.

فَلَمَّا كَانَتْ الشُّرُوطُ كُلُّهَا بَاطِلَةً - غَيْرَ مَا ذَكَرْنَا - كَانَ كُلُّ عَقْدٍ مِنْ بَيْعٍ أَوْ غَيْرِهِ: عُقِدَ عَلَى شَرْطٍ بَاطِلٍ بَاطِلًا وَلَا بُدَّ، لِأَنَّهُ عُقِدَ عَلَى أَنَّهُ لَا يَصِحُّ إلَّا بِصِحَّةِ الشَّرْطِ، وَالشَّرْطُ لَا صِحَّةَ لَهُ، فَلَا صِحَّةَ لِمَا عُقِدَ بِأَنْ لَا صِحَّةَ لَهُ إلَّا بِصِحَّةِ مَا لَا يَصِحُّ.

L22688 Abu Muhammad said: As for our validation of the seven conditions we mentioned, they are textually stipulated as valid. Whatever the Messenger of Allah - peace and blessings be upon him - stipulated is found in the Book of Allah the Almighty and Majestic. He Most High said: {We have sent down the Reminder to you so that you may clarify to the people what has been sent down to them} [An-Nahl 16:44].[20]

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا تَصْحِيحُنَا الشُّرُوطَ السَّبْعَةَ الَّتِي ذَكَرْنَا، فَإِنَّهَا مَنْصُوصٌ عَلَى صِحَّتِهَا، وَكُلُّ مَا نَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَيْهِ فَهُوَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ قَالَ تَعَالَى: {وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] .

L22689 And He, the Exalted, said: "He does not speak out of desire. It is nothing but a revelation being revealed." [An-Najm 53:3, 4].[21]

وَقَالَ تَعَالَى: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] .

L22690 And He, the Exalted, said: "Whoever obeys the Messenger has indeed obeyed Allah" [An-Nisa: 80].[22]

وَقَالَ تَعَالَى: {مَنْ يُطِعِ الرَّسُولَ فَقَدْ أَطَاعَ اللَّهَ} [النساء: ٨٠] .

L22691 As for stipulating collateral in a sale with a deferred term, it is based on the statement of the Exalted: "But if you do not find a scribe, then a security deposit shall be taken." [Al-Baqarah: 283][23]

فَأَمَّا اشْتِرَاطُ الرَّهْنِ فِي الْبَيْعِ إلَى أَجَلٍ مُسَمًّى فَلِقَوْلِهِ تَعَالَى: {وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَقْبُوضَةٌ} [البقرة: ٢٨٣] .

L22692 As for stipulating that the price be paid at a specified term, this is based on the statement of Allah the Exalted: "When you contract a debt for a specified term, put it in writing" [Al-Baqarah: 282].[24]

وَأَمَّا اشْتِرَاطُ الثَّمَنِ إلَى أَجَلٍ مُسَمًّى فَلِقَوْلِ اللَّهِ تَعَالَى: {إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ} [البقرة: ٢٨٢] .

L22693–22694 As for the stipulation of "no deception," we have previously cited the relevant hadith on this matter approximately four issues earlier in this text.

وَأَمَّا اشْتِرَاطُ " أَنْ لَا خِلَابَةَ " فَقَدْ ذَكَرْنَا الْخَبَرَ فِي ذَلِكَ قَبْلَ هَذَا الْمَكَانِ بِنَحْوِ أَرْبَعِ مَسَائِلَ.

L22695 As for stipulating the attributes upon which the two parties mutually agree

وَأَمَّا اشْتِرَاطُ الصِّفَاتِ الَّتِي يَتَبَايَعَانِ عَلَيْهَا مِنْ السَّلَامَةِ، أَوْ مِنْ أَنْ لَا خَدِيعَةَ، وَمِنْ صِنَاعَةِ الْعَبْدِ، أَوْ الْأَمَةِ، أَوْ سَائِرِ صِفَاتِ الْمَبِيعِ، فَلِقَوْلِ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ

[20] **Qur'an references (L22688):** Qur'an 16:44 (An-Nahl).
[21] **Qur'an references (L22689):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).
[22] **Qur'an references (L22690):** Qur'an 4:80 (An-Nisa).
[23] **Qur'an references (L22691):** Qur'an 2:283 (Al-Baqarah).
[24] **Qur'an references (L22692):** Qur'an 2:282 (Al-Baqarah).

in a sale—such as integrity, absence of deceit, the skill or craft of a male or female slave, or the remaining attributes of the sold item—this is based on Allah the Exalted's decree: "Do not consume one another's wealth unjustly, but only through trade by mutual consent" (4:29). Thus, the Exalted has explicitly ordained mutual consent between them, and mutual consent can only be achieved by agreeing on the attributes of the sold item and the attributes of the price as a necessity.[25]

بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] فَنَصَّ تَعَالَى عَلَى التَّرَاضِي مِنْهُمَا وَالتَّرَاضِي لَا يَكُونُ إِلَّا عَلَى صِفَاتِ الْمَبِيعِ، وَصِفَاتِ الثَّمَنِ ضَرُورَةً.

L22696 As for stipulating deferment of the price until a time of financial ease, this is based on the statement of Allah, the Exalted: {And if one is in financial hardship, then deferment until a time of ease} [Al-Baqarah: 280].[26]

وَأَمَّا اشْتِرَاطُ الثَّمَنِ إِلَى الْمَيْسَرَةِ فَلِقَوْلِ اللَّهِ تَعَالَى: {وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَى مَيْسَرَةٍ} [البقرة: ٢٨٠] .

L22697 It was narrated to us through the chain of Shu'bah: 'Umarah ibn Abi Hafsah narrated to me from 'Ikrimah from 'Ā'ishah, the Mother of the Believers, that the Messenger of Allah (ﷺ) sent to a Jew—to whom garments had come—saying: "Send me two garments on credit," and the remainder of the report was mentioned.

وَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ أَخْبَرَنِي عُمَارَةُ بْنُ أَبِي حَفْصَةَ عَنْ عِكْرِمَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ إِلَى يَهُودِيٍّ قَدِمَتْ عَلَيْهِ ثِيَابٌ: ابْعَثْ إِلَيَّ بِثَوْبَيْنِ إِلَى الْمَيْسَرَةِ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

L22698 As for the wealth of a male slave or female slave and its stipulation, and the stipulation regarding the fruit of pollinated palm trees: This is based on what was transmitted to us through the chain of ʿAbd al-Razzāq—Maʿmar—al-Zuhrī—Sālim ibn ʿAbd Allāh ibn ʿUmar—his father, that the Messenger of Allāh—peace and blessings be upon him—said: "Whoever sells a slave who owns property, the property belongs to the seller unless the buyer stipulates it. And whoever sells palm trees that have been pollinated, its fruit belongs to the seller unless the buyer stipulates it."[27]

وَأَمَّا مَالُ الْعَبْدِ، أَوْ الْأَمَةِ وَاشْتِرَاطُهُ، وَاشْتِرَاطُ ثَمَرِ النَّخْلِ الْمُؤَبَّرِ -: فَلِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ بَاعَ عَبْدًا وَلَهُ مَالٌ فَمَالُهُ لِلْبَائِعِ إِلَّا أَنْ يَشْتَرِطَهُ الْمُبْتَاعُ» وَمَنْ بَاعَ نَخْلًا قَدْ أُبِّرَتْ فَثَمَرَتُهَا لِلْبَائِعِ إِلَّا أَنْ يَشْتَرِطَ الْمُبْتَاعُ.

L22699–22701 Abu Muhammad said: Had we found a valid and unabrogated report other than these conditions, we would have followed it without opposing it. We will mention – if Allah the Exalted wills – the ruling of these two conditions, since we have already mentioned others apart from them- All praise is due to Allah, Lord of the worlds, and we have mentioned the report of ʿAbd

قَالَ أَبُو مُحَمَّد: وَلَوْ وَجَدْنَا خَبَرًا يَصِحُّ فِي غَيْرِ هَذِهِ الشُّرُوطِ بَاقِيًا غَيْرَ مَنْسُوخٍ لَقُلْنَا بِهِ وَلَمْ نُخَالِفْهُ، وَسَنَذْكُرُ إِنْ شَاءَ اللَّهُ تَعَالَى حُكْمَ هَذَيْنِ الشَّرْطَيْنِ إِذْ قَدْ ذَكَرْنَا غَيْرَهُمَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - وَقَدْ ذَكَرْنَا رِوَايَةَ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: كُلُّ بَيْعٍ فِيهِ شَرْطٌ فَلَيْسَ بَيْعًا.

[25] **Qur'an references (L22695):** Qur'an 4:29 (An-Nisa).
[26] **Qur'an references (L22696):** Qur'an 2:280 (Al-Baqarah).
[27] **Hadith references (L22698):** Sunan Abi Dawud 3433.

al-Razzāq from Ibn Jurayj from ʿAṭāʾ, who said: Every sale containing a condition is not a sale.

L22702 Ali said: If an opposing interlocutor argues against us by citing the words of Allah, the Exalted: *"Fulfill the contracts"* [Al-Ma'idah: 1] and His command: *"And fulfill the covenant of Allah when you have made a covenant"* [An-Nahl: 91].[28]

L22703 And according to what has been narrated: "Muslims are bound by their conditions."

L22704 We said: As for Allah's command to fulfill contracts—no two people disagree that it is neither bound by its generality nor its apparent meaning. The Quran instructs us to avoid His prohibitions and acts of disobedience. Thus, whoever enters a contract for sinful purposes, fulfilling it is ḥarām. Since this is beyond doubt, it is established that every condition not in the Book of Allah is null and void, and what is null is prohibited. Therefore, fulfilling anything prohibited is impermissible.

L22705 And likewise, the statement of Allah the Exalted: {And fulfill the covenant of Allah when you make a covenant} [An-Nahl: 91]. Thus, the covenant of Allah can only be understood through an explicit textual source addressing it. We know that every covenant Allah has forbidden is not the covenant of Allah the Exalted; rather, it is the covenant of Satan, so fulfilling it is not permissible. The Messenger of Allah (peace and blessings be upon him) authoritatively declared that "Every condition not in the Book of Allah is invalid," and it is impermissible to fulfill what is invalid.[29][30]

L22706 As for the report concerning this—it has been related through Ibn Wahb: Sulayman ibn Bilal narrated to me from Kathir ibn Zayd, from al-Walid ibn Rabah, from Abu Hurayrah, who said: The Messenger of Allah, peace and blessings be upon him, said, "Muslims are bound by their stipulations."

قَالَ عَلِيٌّ: فَإِنْ احْتَجَّ مُعَارِضٌ لَنَا بِقَوْلِ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] وقَوْله تَعَالَى: {وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ} [النحل: ٩١] .

وَبِمَا رُوِيَ «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» .

قُلْنَا: أَمَّا أَمْرُ اللَّهِ تَعَالَى بِالْوَفَاءِ بِالْعُقُودِ: لَا يَخْتَلِفُ اثْنَانِ فِي أَنَّهُ لَيْسَ عَلَى عُمُومِهِ وَلَا عَلَى ظَاهِرِهِ، وَقَدْ جَاءَ الْقُرْآنُ بِأَنْ نَجْتَنِبَ نَوَاهِيَ اللَّهِ تَعَالَى وَمَعَاصِيَهُ، فَمَنْ عَقَدَ عَلَى مَعْصِيَةٍ فَحَرَامٌ عَلَيْهِ الْوَفَاءُ بِهَا، فَإِذْ لَا شَكَّ فِي هَذَا فَقَدْ صَحَّ أَنَّ كُلَّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، وَالْبَاطِلُ مُحَرَّمٌ، فَكُلُّ مُحَرَّمٍ فَلَا يَحِلُّ الْوَفَاءُ بِهِ.

وَكَذَلِكَ قَوْله تَعَالَى: {وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ} [النحل: ٩١] فَلَا يُعْلَمُ مَا هُوَ عَهْدُ اللَّهِ إِلَّا بِنَصٍّ وَارِدٍ فِيهِ، وَقَدْ عَلِمْنَا أَنَّ كُلَّ عَهْدٍ نَهَى اللَّهُ عَنْهُ فَلَيْسَ هُوَ عَهْدَ اللَّهِ تَعَالَى، بَلْ هُوَ عَهْدُ الشَّيْطَانِ فَلَا يَحِلُّ الْوَفَاءُ بِهِ، وَقَدْ نَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَنَّ «كُلَّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» ، وَالْبَاطِلُ لَا يَحِلُّ الْوَفَاءُ بِهِ.

وَأَمَّا الْأَثَرُ فِي ذَلِكَ -: فَإِنَّنَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ حَدَّثَنِي سُلَيْمَانُ بْنُ بِلَالٍ أَنَا كَثِيرُ بْنُ زَيْدٍ عَنْ الْوَلِيدِ بْنِ رَبَاحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» .

[28] **Qur'an references (L22702):** Qur'an 16:91 (An-Nahl); Qur'an 5:1 (Al-Ma'idah).
[29] **Hadith references (L22705):** Sunan Ibn Majah 2521.
[30] **Qur'an references (L22705):** Qur'an 16:91 (An-Nahl).

L22707 We have also transmitted it through the chain of Abd al-Malik ibn Habib al-Andalusi: al-Hizami narrated to me from Muhammad ibn Umar from Abd al-Rahman ibn Muhammad ibn Abi Bakr ibn Amr ibn Hazm from Umar ibn Abd al-Aziz, who reported that the Messenger of Allah, peace and blessings be upon him, said: "Muslims are bound by their conditions."

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ حَدَّثَنِي الْحِزَامِيُّ عَنْ مُحَمَّدِ بْنِ عُمَرَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُسْلِمُونَ عَلَى شُرُوطِهِمْ» .

L22708 And from the chain of Ibn Abi Shaybah: Yahya ibn Abi Za'idah from Abd al-Malik, from Ata': It has been transmitted to us that the Prophet (peace be upon him) said: "Muslims are bound by their conditions."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا يَحْيَى بْنُ أَبِي زَائِدَةَ عَنْ عَبْدِ الْمَلِكِ عَنْ عَطَاءٍ: بَلَغَنَا أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» .

L22709 And narrated by Abū Bakr ibn Abī Shaybah from al-Ḥajjāj ibn Arṭā'ah from Khālid ibn Muḥammad from a shaykh of the Banū Kinānah: I heard ʿUmar say: "A Muslim is bound by their conditions."

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ خَالِدِ بْنِ مُحَمَّدٍ عَنْ شَيْخٍ مِنْ بَنِي كِنَانَةَ سَمِعْت عُمَرَ يَقُولُ: الْمُسْلِمُ عِنْد شَرْطِهِ.

L22710–22711 From the transmission of Ibn Abi Shaybah: Ibn ʿUyaynah narrated from Yazeed ibn Yazeed ibn Jabir, from Isma'eel ibn ʿUbaydullah, from ʿAbdur-Rahman ibn Ghanm, who reported that ʿUmar ibn al-Khattab said, "Verily, the cessation of rights is determined by conditions."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ عُيَيْنَةَ عَنْ يَزِيدَ بْنِ يَزِيدَ بْنِ جَابِرٍ عَنْ إسْمَاعِيلَ بْنِ عُبَيْدِ اللَّهِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ غَنْمٍ قَالَ عُمَرُ بْنُ الْخَطَّابِ " إنَّ مَقَاطِعَ الْحُقُوقِ، عِنْدَ الشُّرُوطِ ".

L22712 And via the chain of Ibn Abī Shaybah: I [heard] from Hafs ibn Ghiyath, who narrated from Jaʿfar ibn Muḥammad, from his father, from ʿAlī, who said: "Muslims are bound by their conditions."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا حَفْصُ بْنُ غِيَاثٍ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَلِيٍّ قَالَ: " الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ ".

L22713 Abū Muḥammad said: Kathīr ibn Zayd is Kathīr ibn ʿAbd Allāh ibn ʿAmr ibn Zayd - rejected and abandoned by consensus - al-Walīd ibn Rabāḥ - unknown - the other is ʿAbd al-Malik ibn Ḥabīb - rejected - Muḥammad ibn ʿUmar - he is al-Wāqidī, noted for lying - ʿAbd al-Raḥmān ibn Muḥammad - unknown, unrecognized - and also mursal; the third is likewise mursal. The narration through ʿUmar's chain contains al-Ḥajjāj ibn Arṭāh - he is rejected - Khālid ibn Muḥammad - unknown - a shaykh from Banū Kinānah - the other chain contains Ismāʿīl ibn ʿUbayd Allāh, whom I do not recognize.

قَالَ أَبُو مُحَمَّد: كَثِيرُ بْنُ زَيْدٍ هُوَ كَثِيرُ بْنُ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ زَيْدٍ - هَالِكٌ مَتْرُوكٌ بِاتِّفَاقٍ - وَالْوَلِيدُ بْنُ رَبَاحٍ - مَجْهُولٌ - وَالْآخَرُ عَبْدُ الْمَلِكِ بْنُ حَبِيبٍ - هَالِكٌ - وَمُحَمَّدُ بْنُ عُمَرَ - هُوَ الْوَاقِدِيُّ مَذْكُورٌ بِالْكَذِبِ - وَعَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدٍ - مَجْهُولٌ لَا يُعْرَفُ - وَمُرْسَلٌ أَيْضًا، وَالثَّالِثُ مُرْسَلٌ أَيْضًا، وَالَّذِي مِنْ طَرِيقِ عُمَرَ فِيهِ الْحَجَّاجُ بْنُ أَرْطَاةَ - وَهُوَ هَالِكٌ - وَخَالِدُ بْنُ مُحَمَّدٍ - مَجْهُولٌ - وَشَيْخٌ مِنْ بَنِي كِنَانَةَ - وَالْآخَرُ فِيهِ إسْمَاعِيلُ بْنُ عُبَيْدِ اللَّهِ وَلَا أَعْرِفُهُ.

L22714 The narration of ʿAlī is mursal (with a broken chain). Furthermore, even if all we mentioned were authentic, it would constitute evidence for us without contradicting our position, for the contractual stipulations upheld by Muslims are those Allah has permitted them—not those He prohibited. As for the stipulations they were forbidden from, these are not the stipulations of Muslims.

وَخَبَرُ عَلِيٍّ مُرْسَلٌ - ثُمَّ لَوْ صَحَّ كُلُّ مَا ذَكَرْنَا لَكَانَ حُجَّةً لَنَا وَغَيْرَ مُخَالِفٍ ، لِقَوْلِنَا، لِأَنَّ شُرُوطَ الْمُسْلِمِينَ هِيَ الشُّرُوطُ الَّتِي أَبَاحَهَا اللَّهُ لَهُمْ، لَا الَّتِي نَهَاهُمْ عَنْهَا، وَأَمَّا الَّتِي نُهُوا عَنْهَا فَلَيْسَتْ شُرُوطَ الْمُسْلِمِينَ.

L22715 The Messenger of Allah—peace and blessings be upon him—explicitly stated that “every condition not found in the Book of Allah the Exalted is void, even if it were a hundred conditions or stipulated a hundred times,” and that it is invalid for the one who stipulates it. Thus, it is established that every condition not in the Book of Allah the Exalted is void, and it does not belong to the stipulations of Muslims. Therefore, our statement is established with certainty.

وَقَدْ نَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَنَّ «كُلَّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، وَإِنْ كَانَتْ مِائَةَ شَرْطٍ، أَوْ اشْتَرَطَ مِائَةَ مَرَّةٍ» وَأَنَّهُ لَا يَصِحُّ لِمَنْ اشْتَرَطَهُ -: فَصَحَّ أَنَّ كُلَّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَبَاطِلٌ، فَلَيْسَ هُوَ مِنْ شُرُوطِ الْمُسْلِمِينَ، فَصَحَّ قَوْلُنَا بِيَقِينٍ.

L22716 Then, indeed, the Hanafi, Maliki, and Shafiʿi schools are the most inconsistent and contradictory in this matter. For they permit conditions and prohibit others—all of which are equally invalid because they are not in the Book of Allah Almighty and Exalted—and they permit conditions and prohibit others—all of which are equally valid because they are in the Book of Allah the Exalted.

ثُمَّ إِنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، أَشَدُّ النَّاسِ اضْطِرَابًا وَتَنَاقُضًا فِي ذَلِكَ؛ لِأَنَّهُمْ يُجِيزُونَ شُرُوطًا وَيَمْنَعُونَ شُرُوطًا كُلُّهَا سَوَاءٌ فِي أَنَّهَا بَاطِلٌ لَيْسَتْ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ، وَيُجِيزُونَ شُرُوطًا وَيَمْنَعُونَ شُرُوطًا كُلُّهَا سَوَاءٌ فِي أَنَّهَا حَقٌّ؛ لِأَنَّهَا فِي كِتَابِ اللَّهِ تَعَالَى.

L22717 The Hanafis and the Shafi’is prohibit the buyer from stipulating the slave’s property and the fruit of the pre-pollinated palm tree, and they do not permit this under any circumstance except via a sale compliant with the rulings governing sales.

فَالْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ يَمْنَعُونَ اشْتِرَاطَ الْمُبْتَاعِ مَالَ الْعَبْدِ، وَثَمَرَةَ النَّخْلِ الْمُؤَبَّرِ، وَلَا يُجِيزُونَ لَهُ ذَلِكَ أَلْبَتَّةَ إِلَّا بِالشِّرَاءِ عَلَى حُكْمِ الْبُيُوعِ.

L22718–22720 The Malikis, Hanafis, and Shafi’is do not permit sales leading to gambling (al-maysarah), nor do they allow stipulations contingent on verbal statements. There is no fraud in sales, and both of them are established in the Book of Allah, the Mighty and Majestic, by the command of the Prophet (peace be upon him) regarding them both. Yet here they forget “Muslims are bound by their conditions.”

وَالْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ: لَا يُجِيزُونَ الْبَيْعَ إِلَى الْمَيْسَرَةِ، وَلَا شَرْطَ قَوْلٍ: لَا خِلَابَةَ، عِنْدَ الْبَيْعِ، وَكِلَاهُمَا فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ، لِأَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهِمَا، وَيَنْسَوْنَ هَهُنَا " الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ ".

L22721 All of them permit the sale of fruit whose readiness has not yet become apparent, on the condition that it is plucked. This is a condition not found

in the Book of Allah the Exalted. Rather, the prohibition of this sale has been clearly established as a general principle, and similar cases are numerous.

وَكُلُّهُمْ يُجِيزُ بَيْعَ الثَّمَرَةِ الَّتِي لَمْ يَبْدُ صَلَاحُهَا بِشَرْطِ الْقَطْعِ، وَهُوَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، بَلْ قَدْ صَحَّ النَّهْيُ عَنْ هَذَا الْبَيْعِ جُمْلَةً، وَمِثْلُ هَذَا كَثِيرٌ.

L22722 Abu Muhammad said: Every condition stipulated in a sale or other transaction must necessarily fall into one of three categories—there being no fourth.

قَالَ أَبُو مُحَمَّدٍ: وَلَا يَخْلُو كُلُّ شَرْطٍ اُشْتُرِطَ فِي بَيْعٍ أَوْ غَيْرِهِ مِنْ أَحَدِ ثَلَاثَةِ أَوْجُهٍ لَا رَابِعَ لَهَا -:

L22723 Either the permissibility of wealth not stipulated in the contract, or the obligation of an action, or the prohibition of an action—and actions involve bodily integrity or pertain solely to wealth. All of this is forbidden by explicit textual evidence. The Messenger of Allah (peace and blessings be upon him) said: "Your blood, your wealth, and your bodily integrity are sacred and forbidden upon you."

إمَّا إبَاحَةُ مَالٍ لَمْ يَجِبْ فِي الْعَقْدِ، وَإِمَّا إيجَابُ عَمَلٍ، وَإِمَّا الْمَنْعُ مِنْ عَمَلٍ، وَالْعَمَلُ يَكُونُ بِالْبَشَرَةِ، أَوْ بِالْمَالِ فَقَطْ - وَكُلُّ ذَلِكَ حَرَامٌ بِالنَّصِّ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

L22724 As for preventing deeds, Allah the Exalted says: {Why do you prohibit what Allah has made lawful for you} [At-Tahrim: 1].[31]

وَأَمَّا الْمَنْعُ مِنْ الْعَمَلِ فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {لِمَ تُحَرِّمُ مَا أَحَلَّ اللَّهُ لَكَ} [التحريم: ١] .

L22725 Thus, the invalidity of all conditions in their entirety is confirmed, except for a condition permitted by a text from the Quran or the Sunnah. Here, God willing, we shall mention relevant narrations and clarify them, so that no ignorant person or agitator may raise objections concerning them.

فَصَحَّ بُطْلَانُ كُلِّ شَرْطٍ جُمْلَةً إلَّا شَرْطًا جَاءَ النَّصُّ مِنْ الْقُرْآنِ أَوْ السُّنَّةِ بِإِبَاحَتِهِ - وَهَهُنَا أَخْبَارٌ نَذْكُرُهَا، وَنُبَيِّنُهَا - إنْ شَاءَ اللَّهُ تَعَالَى - لِئَلَّا يَعْتَرِضَ بِهَا جَاهِلٌ أَوْ مُشَغِّبٌ.

L22726 Muhammad ibn Ismāʿīl al-ʿUdhriyy, the judge of Zaragoza, narrated to me: Muhammad ibn ʿAlī al-Rāziyy al-Muṭṭawiʿī narrated to us; Muhammad ibn ʿAbd Allāh al-Ḥākim al-Naysābūriyy narrated to us; Jaʿfar ibn Muḥammad al-Khuldiyy narrated to us; ʿAbd Allāh ibn Ayyūb ibn Zādhān al-Ḍarīr narrated to us; Muḥammad ibn Sulaymān al-Dhuhliyy narrated to us: ʿAbd al-Wārith—he is Ibn Saʿīd al-Tannūriyy—said: I arrived in Makkah and found there Abū Ḥanīfah, Ibn Abī Laylā, and Ibn Shubrumah. I asked Abū Ḥanīfah about someone who conducts a sale with a stipulation. He said: "The sale is void, and the stipulation is void." Then I asked Ibn Abī Laylā about that, and he said: "The sale is valid, and the stipulation is void." Then I asked Ibn Shubrumah about that, and he said: "The sale is valid, and the stipulation is valid." I returned to Abū Ḥanīfah and informed him of what they said.

حَدَّثَنِي مُحَمَّدُ بْنُ إسْمَاعِيلَ الْعُذْرِيُّ الْقَاضِي بِسَرَقُسْطَةَ أَنَا مُحَمَّدُ بْنُ عَلِيٍّ الرَّازِيّ الْمُطَّوِّعِيُّ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْحَاكِمِ النَّيْسَابُورِيُّ أَنَا جَعْفَرُ بْنُ مُحَمَّدٍ الْخُلْدِيُّ أَنَا عَبْدُ اللَّهِ بْنُ أَيُّوبَ بْنِ زَاذَانَ الضَّرِيرُ أَنَا مُحَمَّدُ بْنُ سُلَيْمَانَ الذُّهْلِيُّ أَنَا عَبْدُ الْوَارِثِ - هُوَ ابْنُ سَعِيدٍ التَّنُّورِيُّ - قَدِمْت مَكَّةَ فَوَجَدْت بِهَا أَبَا حَنِيفَةَ، وَابْنَ أَبِي لَيْلَى، وَابْنَ شُبْرُمَةَ، فَسَأَلْتُ أَبَا حَنِيفَةَ عَمَّنْ بَاعَ بَيْعًا وَاشْتَرَطَ شَرْطًا؟ فَقَالَ: الْبَيْعُ بَاطِلٌ وَالشَّرْطُ بَاطِلٌ ثُمَّ سَأَلْتُ ابْنَ أَبِي لَيْلَى عَنْ ذَلِكَ؟ فَقَالَ الْبَيْعُ جَائِزٌ وَالشَّرْطُ بَاطِلٌ ثُمَّ سَأَلْتُ ابْنَ شُبْرُمَةَ عَنْ ذَلِكَ؟ فَقَالَ: الْبَيْعُ جَائِزٌ وَالشَّرْطُ جَائِزٌ؟ فَرَجَعْت إلَى أَبِي حَنِيفَةَ فَأَخْبَرْتُهُ بِمَا قَالَا؟ فَقَالَ: لَا أَدْرِي

[31] **Qur'an references (L22724):** Qur'an 66:1 (At-Tahrim).

He replied: “I do not know what they said.” ʿAmr ibn Shuʿayb narrated to us from his father, from his grandfather, that the Messenger of Allāh—peace and blessings be upon him—“forbade a sale with a stipulation.” The sale is void, and the stipulation is void.

مَا قَالَا - حَدَّثَنَا عَمْرُو بْنُ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «نَهَى عَنْ بَيْعٍ وَشَرْطٍ» الْبَيْعُ بَاطِلٌ وَالشَّرْطُ بَاطِلٌ؟

L22727–22728 She went to Ibn Abī Laylā and informed him of what they had said. He replied, “I do not know what they said.” Hishām ibn ʿUrwah narrated to us from his father, from ʿĀ’ishah, the Mother of the Believers, that the Messenger of Allāh—peace and blessings be upon him—said, “Purchase Barīrah and stipulate for them the clientage.” The sale is valid, and the stipulation is void. Then I went to Ibn Shubrumah and informed him of what they had said. He replied, “I do not know what they said.” I, Misʿar ibn Kidām, narrated from Muḥārib ibn Dithār, from Jābir ibn ʿAbdillāh, “that he sold a camel from the Messenger of Allāh—peace and blessings be upon him—and stipulated its back to Medina.” The sale is valid, and the stipulation is valid.

فَأَتَيْت ابْنَ أَبِي لَيْلَى فَأَخْبَرْته بِمَا قَالَا؟ فَقَالَ: لَا أَدْرِي مَا قَالَا - حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «اشْتَرِي بَرِيرَةَ وَاشْتَرِطِي لَهُمْ الْوَلَاءَ» الْبَيْعُ جَائِزٌ وَالشَّرْطُ بَاطِلٌ فَأَتَيْت ابْنَ شُبْرُمَةَ فَأَخْبَرْته بِمَا قَالَا؟ فَقَالَ: لَا أَدْرِي مَا قَالَا؟ أَنَا مِسْعَرُ بْنُ كِدَامٍ عَنْ مُحَارِبِ بْنِ دِثَارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّهُ بَاعَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَمَلًا وَاشْتَرَطَ ظَهْرَهُ إلَى الْمَدِينَةِ» الْبَيْعُ جَائِزٌ وَالشَّرْطُ جَائِزٌ.

L22729 Here is a fourth narration: We have transmitted it through the chain of Aḥmad ibn Shuʿayb—I am Ziyād ibn Ayyūb—I am Ibn ʿUlayyah—Ayyūb al-Sikhtiyānī narrated to us—I am ʿAmr ibn Shuʿayb—my father narrated to me from his father from his father—until he mentioned ʿAbd Allāh ibn ʿAmr ibn al-ʿĀṣ, who said: The Messenger of Allah—peace and blessings be upon him—said, “A loan and a sale are not permissible, nor two conditions in a sale, nor profit from what is not guaranteed.”[32]

وَهَهُنَا خَبَرٌ رَابِعٌ -: رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا زِيَادُ بْنُ أَيُّوبَ أَنَا ابْنُ عُلَيَّةَ نا أَيُّوبُ السِّخْتِيَانِيُّ أَنَا عَمْرُو بْنُ شُعَيْبٍ حَدَّثَنِي أَبِي عَنْ أَبِيهِ عَنْ أَبِيهِ حَتَّى ذَكَرَ عَبْدَ اللَّهِ بْنَ عَمْرِو بْنِ الْعَاصِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَحِلُّ سَلَفٌ وَبَيْعٌ، وَلَا شَرْطَانِ فِي بَيْعٍ، وَلَا رِبْحُ مَا لَمْ يُضْمَنْ» .

L22730 Ahmad ibn Hanbal adopts this view, invalidating the sale if it contains two conditions while permitting it if it contains one condition. Abū Thawr held the view to follow all these ḥadīths, stating: If the seller stipulates retaining some usage rights of his property—such as residing in a house for a specified period, for his entire lifetime, the service of a slave, riding an animal, or wearing a garment—the sale and condition are valid, because the principal asset and its benefits belong to him. Thus, he may sell what he wishes and retain what he wishes. Any sale in which a condition pertains to something arising in the buyer’s ownership—such as walā’ (a legal patronage relation-

وَبِهِ يَأْخُذُ أَحْمَدُ بْنُ حَنْبَلٍ فَيُبْطِلُ الْبَيْعَ إذَا كَانَ فِيهِ شَرْطَانِ، وَيُجِيزُهُ إذَا كَانَ فِيهِ شَرْطٌ وَاحِدٌ - وَذَهَبَ أَبُو ثَوْرٍ إلَى الْأَخْذِ بِهَذِهِ الْأَحَادِيثِ كُلِّهَا فَقَالَ: إنْ اشْتَرَطَ الْبَائِعُ بَعْضَ مِلْكِهِ كَسُكْنَى الدَّارِ مُدَّةً مُسَمَّاةً، أَوْ دَهْرَهُ كُلَّهُ أَوْ خِدْمَةَ الْعَبْدِ كَذَلِكَ، أَوْ رُكُوبَ الدَّابَّةِ كَذَلِكَ، أَوْ لِبَاسَ الثَّوْبِ كَذَلِكَ: جَازَ الْبَيْعُ وَالشَّرْطُ؛ لِأَنَّ الْأَصْلَ لَهُ، وَالْمَنَافِعَ لَهُ، فَبَاعَ مَا شَاءَ وَأَمْسَكَ مَا شَاءَ، وَكُلُّ بَيْعٍ اُشْتُرِطَ فِيهِ مَا يَحْدُثُ فِي

[32] **Hadith references (L22729):** Sunan an-Nasai 4630; Jami at-Tirmidhi 1234; Mishkat al-Masabih 2870.

ship) or similar matters—the sale is valid, but the condition is void. Every sale in which a condition imposes an action or financial obligation on the seller or an action on the buyer renders both the sale and the condition invalid.

L22731–22733 Abū Muḥammad said: This is an error on Abū Thawr's part, for the usufruct of what the seller sold - whether a house, a slave, an animal, a garment, or anything else - belongs to him only as long as it remains under his ownership. Once it leaves his ownership, it becomes invalid and impossible for him to own what Allah the Exalted has not yet created from the usufruct of what he sold. If it is later brought into existence... Allah, the Exalted—for verily He created it within the ownership of another—thus it belongs to the one in whose ownership it was created. This nullifies the reasoning of Abū Thawr, as well as the rest of his categorization, for it is an assertion without proof.

L22734 As for Ahmad's statement, it is also erroneous: because the Messenger of Allah's (peace and blessings be upon him) prohibition of two conditions in one sale does not permit a single condition nor prohibit it. Rather, it is silent on the matter in this narration. Thus, it becomes obligatory to seek its ruling elsewhere, where we find his statement (peace and blessings be upon him): "Every condition not in the Book of Allah is void."[33]

L22735 Thus, the single stipulation is void, and anything not validly contracted except by fulfilling it. And with Allah, the Exalted, lies all divine enablement.

L22736 There remains the ḥadīth of Barirah and Jābir concerning the Battle of the Camel; thus, we conclude—and all success is from Allah, the Most High.

L22737–22739 We have narrated what Muḥammad ibn Saʿīd ibn Nabāt narrated to us, that Muḥammad ibn Aḥmad ibn Mufarrij informed us, that ʿAbdullāh ibn Jaʿfar ibn al-Ward informed us, that Yaḥyā ibn Ayyūb ibn Bādī al-ʿAllāf informed us, that Yaḥyā ibn Bukayr informed us, that al-Layth ibn Saʿd narrated from Hishām ibn ʿUrwah from ʿUrwah from ʿĀ'ishah, who said: Barīrah came to me and said, "I contracted with my owners for nine ounces - one ounce each

[33] **Hadith references (L22734):** Sunan Ibn Majah 2521.

مِلْكِ الْمُشْتَرِي فَالْبَيْعُ جَائِزٌ وَالشَّرْطُ بَاطِلٌ، كَالْوَلَاءِ وَنَحْوِهِ، وَكُلُّ بَيْعٍ اُشْتُرِطَ فِيهِ عَمَلٌ أَوْ مَالٌ عَلَى الْبَائِعِ أَوْ عَمَلُ الْمُشْتَرِي فَالْبَيْعُ وَالشَّرْطُ بَاطِلَانِ مَعًا.

قَالَ أَبُو مُحَمَّدٍ: هَذَا خَطَأٌ مِنْ أَبِي ثَوْرٍ، لِأَنَّ مَنَافِعَ مَا بَاعَ الْبَائِعُ مِنْ دَارٍ، أَوْ عَبْدٍ، أَوْ دَابَّةٍ، أَوْ ثَوْبٍ، أَوْ غَيْرِ ذَلِكَ، فَإِنَّمَا هِيَ لَهُ مَا دَامَ كُلُّ ذَلِكَ فِي مِلْكِهِ، فَإِذَا خَرَجَ عَنْ مِلْكِهِ فَمِنَ الْبَاطِلِ وَالْمُحَالِ أَنْ يَمْلِكَ مَا لَمْ يَخْلُقْهُ اللَّهُ تَعَالَى بَعْدُ، مِنْ مَنَافِعِ مَا بَاعَ، فَإِذَا أَحْدَثَهَا اللَّهُ تَعَالَى، فَإِنَّمَا أَحْدَثَهَا اللَّهُ تَعَالَى فِي مِلْكِ غَيْرِهِ، فَهِيَ مِلْكٌ لِمَنْ حَدَثَتْ فِي مِلْكِهِ - فَبَطَلَ تَوْجِيهُ أَبِي ثَوْرٍ، وَكَذَلِكَ بَاقِي تَقْسِيمِهِ، لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ.

وَأَمَّا قَوْلُ أَحْمَدَ: فَخَطَأٌ أَيْضًا: لِأَنَّ تَحْرِيمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الشَّرْطَيْنِ فِي بَيْعٍ لَيْسَ مُبِيحًا لِشَرْطٍ وَاحِدٍ وَلَا مُحَرِّمًا لَهُ، لَكِنَّهُ مَسْكُوتٌ عَنْهُ فِي هَذَا الْخَبَرِ، فَوَجَبَ طَلَبُ حُكْمِهِ فِي غَيْرِهِ، فَوَجَدْنَا قَوْلَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» .

فَبَطَلَ الشَّرْطُ الْوَاحِدُ، وَكُلُّ مَا لَمْ يُعْقَدْ إِلَّا بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَبَقِيَ حَدِيثُ بَرِيرَةَ، وَجَابِرٍ فِي الْجَمَلِ، فَنَقُولُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

إِنَّنَا رُوِّينَا مَا حَدَّثَنَاهُ مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ مُفَرِّجٍ أَنَا عَبْدُ اللَّهِ بْنُ جَعْفَرِ بْنِ الْوَرْدِ أَنَا يَحْيَى بْنُ أَيُّوبَ بْنِ بَادِيٍّ الْعَلَّافُ أَنَا يَحْيَى بْنُ بُكَيْرٍ أَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ عُرْوَةَ عَنْ «عَائِشَةَ قَالَتْ جَاءَتْنِي بَرِيرَةُ فَقَالَتْ: كَاتَبْتُ أَهْلِي عَلَى تِسْعِ أَوَاقٍ فِي كُلِّ عَامٍ أُوقِيَّةٌ فَأَعِينِينِي؟ فَقَالَتْ عَائِشَةُ: إِنْ أَحَبَّ أَهْلُكِ أَنْ

year. Will you assist me?" ʿĀʾishah replied, "If your owners agree that I pay them the entire sum at once, and that the right of patronage (walāʾ) over you belongs to me, I will do so." She presented this to them, but they refused unless the patronage (walāʾ) remained with them. When Allah's Messenger (peace and blessings be upon him) heard of this, he asked her, and she informed him. He said, "Take her and stipulate against them the patronage (walāʾ), for the patronage belongs only to the one who frees the slave." So she did. Later, Allah's Messenger (peace and blessings be upon him) stood before the people in the evening, praised Allah, the Mighty and Majestic, then said, "What is the matter with some men who impose conditions not ordained in Allah's Book? What..." Any condition not in the Book of Allah is void—even if there are a hundred conditions—for Allah's decree is more rightful, and His condition is firmer. He then narrated the remainder of the report.

أَعُدَّهَا لَهُمْ عِدَّةً وَاحِدَةً، وَيَكُونَ لِي وَلَاؤُكِ فَعَلْتُ؟ فَعَرَضَتْهَا عَلَيْهِمْ، فَأَبَوْا إِلَّا أَنْ يَكُونَ الْوَلَاءُ لَهُمْ فَسَمِعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ، فَسَأَلَهَا، فَأَخْبَرَتْهُ، فَقَالَ: خُذِيهَا وَاشْتَرِطِي لَهُمُ الْوَلَاءَ، فَإِنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ فَفَعَلَتْ، فَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَشِيَّةً فِي النَّاسِ، فَحَمِدَ اللَّهَ عَزَّ وَجَلَّ، ثُمَّ قَالَ: مَا بَالُ رِجَالٍ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ، مَا كَانَ مِنْ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ - وَإِنْ كَانَ مِائَةَ شَرْطٍ - قَضَاءُ اللَّهِ أَحَقُّ، وَشَرْطُ اللَّهِ أَوْثَقُ» وَذَكَرَ بَاقِيَ الْخَبَرِ ".

L22740 From the transmission of Al-Bukhari: I am Abu Nu'aym, narrated by 'Abdul Wahid ibn Ayman, narrated by my father, who said: "I entered upon 'Aishah (may Allah be pleased with her), and she said: 'Barirah entered—while she was a mukātabah slave—and said: 'Purchase me and emancipate me¡' 'Aishah replied: 'Yes." Barirah then said: 'Do not sell me unless they stipulate my al-walā' (right of patronage)." 'Aishah responded: 'I have no need for that¿' The Messenger of Allah (peace be upon him) then told her: 'Purchase her, emancipate her, and allow them to stipulate whatever they wish." 'Aishah purchased her, emancipated her, and her owners stipulated the al-walā'. The Messenger of Allah (peace be upon him) declared: 'Al-walā' belongs to the emancipator, even if there are a hundred conditions.'"

وَمِنْ طَرِيقِ الْبُخَارِيِّ أَنَا أَبُو نُعَيْمٍ أَنَا عَبْدُ الْوَاحِدِ بْنُ أَيْمَنَ أَنَا أَبِي قَالَ: «دَخَلْتُ عَلَى عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - فَقَالَتْ: دَخَلَتْ بَرِيرَةُ - وَهِيَ مُكَاتَبَةٌ - وَقَالَتْ: اشْتَرِينِي وَأَعْتِقِينِي؟ قَالَتْ: نَعَمْ، قَالَتْ: لَا تَبِيعُونِي حَتَّى يَشْتَرِطُوا وَلَائِي؟ فَقَالَتْ عَائِشَةُ: لَا حَاجَةَ لِي بِذَلِكَ؟ فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اشْتَرِيهَا وَأَعْتِقِيهَا وَدَعِيهِمْ يَشْتَرِطُوا مَا شَاءُوا؟ فَاشْتَرَتْهَا عَائِشَةُ فَأَعْتَقَتْهَا، وَاشْتَرَطَ أَهْلُهَا الْوَلَاءَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْوَلَاءُ لِمَنْ أَعْتَقَ وَإِنْ كَانَ مِائَةَ شَرْطٍ» .

L22741 Abū Muḥammad said: The position concerning this report is to adhere to its apparent meaning without addition, nor false conjecture attributed to the Messenger of Allah—peace and blessings of Allah be upon him—nor distortion of the wording. If one stipulated the right of patronage over the buyer in a sale intended for manumission, this would not invalidate the sale in any way. The sale under such a condition would remain permissible, proper, and allowed, even though the right of patronage in such cases remains with the emancipator. The seller's stipulation of patronage for himself was permissi-

قَالَ أَبُو مُحَمَّد: فَالْقَوْلُ فِي هَذَا الْخَبَرِ هُوَ عَلَى ظَاهِرِهِ دُونَ تَزَيُّدٍ، وَلَا ظَنٍّ كَاذِبٍ، مُضَافٍ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا تَحْرِيفِ اللَّفْظِ، وَهُوَ إنْ اشْتَرَطَ الْوَلَاءَ عَلَى الْمُشْتَرِي فِي الْمَبِيعِ لِلْعِتْقِ كَانَ لَا يَضُرُّ الْبَيْعَ شَيْئًا، وَكَانَ الْبَيْعُ عَلَى هَذَا الشَّرْطِ جَائِزًا حَسَنًا مُبَاحًا، وَإِنْ كَانَ الْوَلَاءُ مَعَ ذَلِكَ لِلْمُعْتِقِ، وَكَانَ اشْتِرَاطُ الْبَائِعِ الْوَلَاءَ لِنَفْسِهِ مُبَاحًا غَيْرَ مَنْهِيٍّ عَنْهُ، ثُمَّ نَسَخَ اللَّهُ عَزَّ وَجَلَّ ذَلِكَ وَأَبْطَلَهُ، إذْ خَطَبَ رَسُولُ اللَّهِ

ble and not prohibited. Then Allah the Almighty abrogated and nullified this when the Messenger of Allah—peace and blessings of Allah be upon him—addressed the matter as we mentioned. At that point, He prohibited stipulating this condition or any other conditions in totality, except those stipulated in the Book of Allah—with no basis for such a prohibition existing prior to that at all. Allah the Exalted has said: {It is not for a believing man or woman, when Allah and His Messenger have decreed a matter, to have any choice in their affair} [Al-Aḥzāb 33:36].[34]

L22742 And He, the Exalted, said: {The Prophet has more right over the believers than their own selves} [Al-Ahzab: 6].[35]

L22743 The proof of this is that he (peace be upon him) permitted it, and he (peace be upon him) does not sanction what is unlawful, nor does he delude or deceive anyone. If it is asked: "Why do you [jurists] not permit the sale conditional upon emancipation in this narration?"

L22744 We said: There is no stipulation whatsoever requiring them to manumit her, and had such a stipulation existed, we would have upheld it. It is conceivable that they stipulated their right to her walā' (allegiance) if she were manumitted at any time, or if a female master manumitted her, since the ḥadīth explicitly states they stipulated her walā' exclusively for themselves. It is impermissible to add anything to the transmitted reports—neither in wording nor meaning—and whoever does so becomes a liar. However, we definitively assert that if sale conditional upon manumission were valid, the Messenger of Allah—peace and blessings of Allah be upon him—would have explicitly legislated it. Since he did not, this constitutes a condition absent from the Book of Allah and is therefore invalid. There is no distinction between sale conditional upon manumission, charity, gift, or tadbīr (deferred manumission)—all such conditions are impermissible.

L22745–22746 As for the narration of Jabir: We have transmitted it via al-Bukhari's chain: Abu Nu'aym → Zakariyyā → 'Āmir al-Sha'bī, who said: Jābir ibn 'Abdullāh

[34]**Qur'an references (L22741):** Qur'an 33:36 (Al-Ahzab).
[35]**Qur'an references (L22742):** Qur'an 33:6 (Al-Ahzab).

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ - كَمَا ذَكَرْنَا - فَحِينَئِذٍ حَرَّمَ أَنْ يُشْتَرَطَ هَذَا الشَّرْطُ أَوْ غَيْرُهُ جُمْلَةً، إلَّا شَرْطًا فِي كِتَابِ اللَّهِ تَعَالَى، لَا قَبْلَ ذَلِكَ أَصْلًا - وَقَدْ قَالَ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] .

وَقَالَ تَعَالَى: {النَّبِيُّ أَوْلَى بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ} [الأحزاب: ٦]

بُرْهَانُ ذَلِكَ -: أَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ أَبَاحَ ذَلِكَ، وَهُوَ - عَلَيْهِ السَّلَامُ - لَا يُبِيحُ الْبَاطِلَ، وَلَا يَغُرُّ أَحَدًا وَلَا يَخْدَعُهُ - فَإِنْ قِيلَ: فَهَلَّا أَجَزْتُمْ الْبَيْعَ بِشَرْطِ الْعِتْقِ فِي هَذَا الْحَدِيثِ؟

قُلْنَا: لَيْسَ فِيهِ اشْتِرَاطُهُمْ عِتْقَهَا أَصْلًا وَلَوْ كَانَ لَقُلْنَا بِهِ، وَقَدْ يُمْكِنُ أَنَّهُمْ اشْتَرَطُوا وَلَاءَهَا إنْ أُعْتِقَتْ يَوْمًا مَا، أَوْ إنْ أَعْتَقَتْهَا، إذْ إنَّمَا فِي الْحَدِيثِ أَنَّهُمْ اشْتَرَطُوا وَلَاءَهَا لِأَنْفُسِهِمْ فَقَطْ، وَلَا يَحِلُّ أَنْ يُزَادَ فِي الْأَخْبَارِ شَيْءٌ، لَا لَفْظًا وَلَا مَعْنًى، فَيَكُونُ مَنْ فَعَلَ ذَلِكَ كَاذِبًا، إلَّا أَنَّا نَقْطَعُ وَنَبُتُّ أَنَّ الْبَيْعَ بِشَرْطِ الْعِتْقِ لَوْ كَانَ جَائِزًا لَنَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَيْهِ وَبَيَّنَهُ، فَإِذْ لَمْ يَفْعَلْ فَهُوَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ، وَلَا فَرْقَ بَيْنَ الْبَيْعِ بِشَرْطِ الْعِتْقِ وَبَيْنَ بَيْعِهِ بِشَرْطِ الصَّدَقَةِ، أَوْ بِشَرْطِ الْهِبَةِ، أَوْ بِشَرْطِ التَّدْبِيرِ - وَكُلُّ ذَلِكَ لَا يَجُوزُ.

وَأَمَّا حَدِيثُ جَابِرٍ: فَإِنَّنَا رُوِّينَاه مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا أَبُو نُعَيْمٍ أَنَا زَكَرِيَّا سَمِعْتُ عَامِرًا الشَّعْبِيَّ يَقُولُ: حَدَّثَنِي «جَابِرُ بْنُ عَبْدِ اللَّهِ أَنَّهُ كَانَ يَسِيرُ عَلَى جَمَلٍ لَهُ قَدْ أَعْيَا فَمَرَّ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَضَرَبَهُ، فَدَعَا لَهُ، فَسَارَ سَيْرًا لَيْسَ يَسِيرُ مِثْلَهُ، ثُمَّ قَالَ: بِعْنِيهِ

narrated to me that he was traveling on his camel which had grown weary. The Prophet—peace and blessings of Allah be upon him—passed by, struck it, and supplicated for it. The camel then moved in a manner unlike any movement before. He said, “Sell it to me for an uqiyyah?” I replied, “No.” He repeated, “Sell it to me for an uqiyyah?” So I sold it to him but stipulated retaining its use to transport my belongings to my family. When we arrived, I brought him the camel, and he paid me its price. As I departed, he sent someone after me and said, “I would not take your camel. Take your camel—it is your property.”

بِأُوقِيَّةٍ؟ قُلْتُ: لَا، ثُمَّ قَالَ: بِعْنِيهِ بِأُوقِيَّةٍ؟ فَبِعْتُهُ وَاسْتَثْنَيْتُ حُمْلَانَهُ إِلَى أَهْلِي - فَلَمَّا قَدِمْنَا أَتَيْتُهُ بِالْجَمَلِ وَنَقَدَنِي ثَمَنَهُ ثُمَّ انْصَرَفْتُ فَأَرْسَلَ عَلَى إِثْرِي، فَقَالَ: مَا كُنْتُ لِآخُذَ جَمَلَكَ، فَخُذْ جَمَلَكَ ذَلِكَ، فَهُوَ مَالُكَ» .

L22747 Via the chain of Muslim: I am Ibn Numayr, from my father, from Zakariyya—who is Ibn Abi Za’idah—from Amir al-Sha‘bi: Jabir ibn Abdullah narrated to me and mentioned this account, in which it states: “The Messenger of Allah—peace and blessings be upon him—said to me, ’Sell it to me.’ So I sold it to him for an *awqiyyah*, stipulating that he load it to my family. When I arrived, I brought him the camel, and he paid me its price. Then I returned, so he sent someone after me and said, ’Do you think I bargained with you to take your camel? Take your camel and your *dirhams*—it is yours.’”

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا ابْنُ نُمَيْرٍ أَنَا أَبِي أَنَا زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ عَامِرٍ الشَّعْبِيِّ حَدَّثَنِي جَابِرُ بْنُ عَبْدِ اللَّهِ فَذَكَرَ هَذَا الْخَبَرَ وَفِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: بِعْنِيهِ؟ فَبِعْتُهُ بِأُوقِيَّةٍ، وَاسْتَثْنَيْتُ عَلَيْهِ حُمْلَانَهُ إِلَى أَهْلِي - فَلَمَّا بَلَغْتُ أَتَيْتُهُ بِالْجَمَلِ فَنَقَدَنِي ثَمَنَهُ، ثُمَّ رَجَعْتُ فَأَرْسَلَ فِي إِثْرِي، فَقَالَ: أَتَرَانِي مَاكَسْتُكَ لِآخُذَ جَمَلَكَ، خُذْ جَمَلَكَ وَدَرَاهِمَكَ، فَهُوَ لَكَ» .

L22748 From the narration chain of Ahmad ibn Shu’ayb: Muhammad ibn al-‘Ala’ narrated to us, Abu Mu‘awiyah narrated to us, from al-A‘mash, from Salim ibn Abi al-Ja‘d, from Jabir ibn ‘Abd Allah, who mentioned this narration. In it: “The Messenger of Allah (peace and blessings be upon him) said to him: ’What became of the camel? Sell it to me.’ I said: ’O Messenger of Allah, rather it is yours.’ He said: ’No, rather, sell it to me.’ I said: ’No, rather it is yours.’ He said: ’No, rather, sell it to me. I have acquired it for an ūqiyyah. Ride it, and when you reach Medina, bring it to us.’ When I arrived in Medina, I brought it to him. He said to Bilal: ’O Bilal, weigh for him an ūqiyyah and add a qīrāṭ to it.’”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ الْعَلَاءِ أَنَا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ فَذَكَرَ هَذَا الْخَبَرَ، وَفِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: مَا فَعَلَ الْجَمَلُ بِعْنِيهِ؟ قُلْت: يَا رَسُولَ اللَّهِ بَلْ هُوَ لَكَ قَالَ: لَا، بَلْ بِعْنِيهِ؟ قُلْتُ: لَا، بَلْ هُوَ لَكَ؟ قَالَ لَا، بَلْ بِعْنِيهِ، قَدْ أَخَذْتُهُ بِأُوقِيَّةٍ، ارْكَبْهُ، فَإِذَا قَدِمْتَ الْمَدِينَةَ فَأْتِنَا بِهِ؟ فَلَمَّا قَدِمْتُ الْمَدِينَةَ جِئْتُهُ بِهِ، فَقَالَ لِبِلَالٍ يَا بِلَالُ زِنْ لَهُ أُوقِيَّةً وَزِدْهُ قِيرَاطًا» .

L22749 Thus, we have transmitted it through the *isnād* of ʿAṭāʾ ibn Jābir.

هَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ عَطَاءِ بْنِ جَابِرٍ.

L22750 Abu Muhammad said: It is narrated that the riding of Jabir’s camel was a voluntary act by the Messenger of Allah—peace and blessings be upon him.

There is a discrepancy in the narrations transmitted through al-Sha'bi and Abu al-Zubayr. It is narrated from both of them, on the authority of Jabir, that it was a stipulation from Jabir. It is also narrated from them that it was a voluntary act by the Messenger of Allah.

قَالَ أَبُو مُحَمَّدٍ: رُوِيَ هَذَا أَنَّ رُكُوبَ جَابِرٍ الْجَمَلَ كَانَ تَطَوُّعًا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاخْتُلِفَ فِيهِ عَلَى الشَّعْبِيِّ، وَأَبِي الزُّبَيْرِ فَرُوِيَ عَنْهُمَا عَنْ جَابِرٍ، أَنَّهُ كَانَ شَرْطًا مِنْ جَابِرٍ - وَرُوِيَ عَنْهُمَا أَنَّهُ كَانَ تَطَوُّعًا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L22751–22752 We concede to them that it was a condition, and then we say to them—and with Allah, the Exalted, is success—: Indeed, it has been soundly established that the Messenger of Allah—peace and blessings be upon him—said: "I took it for an Uqiyyah."

فَنَحْنُ نُسَلِّمُ لَهُمْ أَنَّهُ كَانَ شَرْطًا، ثُمَّ نَقُولُ لَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّهُ قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «قَدْ أَخَذْتُهُ بِأُوقِيَّةٍ» .

L22753 It has been authentically reported from him (peace be upon him) that he said: "Do you think I haggled with you to take your camel? I would never take your camel. Take that camel of yours, for it is your property," as we mentioned earlier.

وَصَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - أَنَّهُ قَالَ: «أَتَرَانِي مَاكَسْتُكَ لِآخُذَ جَمَلَكَ؟ مَا كُنْتُ لِآخُذَ جَمَلَكَ فَخُذْ جَمَلَكَ ذَلِكَ، فَهُوَ مَالُكَ» كَمَا أَوْرَدْنَا آنِفًا.

L22754 It is established with certainty that there are two distinct acts of taking: one which the Messenger of Allah—peace and blessings be upon him—performed, and another he did not perform, but rather entirely disavowed. Whoever claims all of this constitutes a single act of taking has belied the Messenger of Allah—peace and blessings be upon him—in his statements, and this is pure disbelief. Therefore, it must necessarily be that there are two distinct acts of taking, for the act of taking he—peace and blessings be upon him—reported about himself is undoubtedly different from the act he wholly disavowed. There remains no alternative but to adhere to the apparent meaning of the narration: that he—peace and blessings be upon him—took possession and concluded the purchase, then exercised his choice before departing to relinquish taking it.

صَحَّ يَقِينًا أَنَّهُمَا أَخْذَانِ: أَحَدُهُمَا فَعَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْآخَرُ لَمْ يَفْعَلْهُ، بَلْ انْتَفَى عَنْهُ، وَمَنْ جَعَلَ كُلَّ ذَلِكَ أَخْذًا وَاحِدًا فَقَدْ كَذَّبَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي كَلَامِهِ، وَهَذَا كُفْرٌ مَحْضٌ، فَإِذْ لَا بُدَّ مِنْ أَنَّهُمَا أَخْذَانِ، لِأَنَّ الْأَخْذَ الَّذِي أَخْبَرَ بِهِ - عَلَيْهِ السَّلَامُ - عَنْ نَفْسِهِ هُوَ بِلَا شَكٍّ غَيْرُ الْأَخْذِ الَّذِي انْتَفَى عَنْهُ أَلْبَتَّةَ، فَلَا سَبِيلَ إلَى غَيْرِ مَا يُحْمَلُ عَلَيْهِ ظَاهِرُ الْخَبَرِ، وَهُوَ إنَّهُ - عَلَيْهِ السَّلَامُ - أَخَذَهُ وَابْتَاعَهُ، ثُمَّ تَخَيَّرَ قَبْلَ التَّفَرُّقِ تَرْكَ أَخْذِهِ.

L22755 And it has been established that during the act of haggling, that [practice] also applied to the Prophet (peace be upon him) personally, for he informed him that he had not haggled with him in order to take his camel.

وَصَحَّ أَنَّ فِي حَالِ الْمُمَاكَسَةِ كَانَ ذَلِكَ أَيْضًا فِي نَفْسِهِ - عَلَيْهِ السَّلَامُ -؛ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - أَخْبَرَهُ أَنَّهُ لَمْ يُمَاكِسْهُ لِيَأْخُذَ جَمَلَهُ -.

L22756 Thus, it is confirmed that the sale was never finalized in it at all, for Jābir stipulated only the riding of his own camel. This is the implication of the texts of the reports when their phrases are gathered.

فَصَحَّ أَنَّ الْبَيْعَ لَمْ يَتِمَّ فِيهِ قَطُّ، فَإِنَّمَا اشْتَرَطَ جَابِرٌ رُكُوبَ جَمَلِ نَفْسِهِ فَقَطْ، وَهَذَا هُوَ مُقْتَضَى لَفْظِ الْأَخْبَارِ، إِذَا جُمِعَتْ أَلْفَاظُهَا.

L22757 Since it has been established that this sale was not completed, and there is no basis whatsoever in any wording of that report indicating the sale was completed with that condition, it is therefore invalid that there could be any valid argument in this report regarding the permissibility of selling an animal while excluding riding it whatsoever. And success is only from Allah, the Exalted.

فَإِذْ قَدْ صَحَّ أَنَّ ذَلِكَ الْبَيْعَ لَمْ يَتِمَّ وَلَمْ يُوجَدْ فِي شَيْءٍ مِنْ أَلْفَاظِ ذَلِكَ الْخَبَرِ أَصْلًا: أَنَّ الْبَيْعَ تَمَّ بِذَلِكَ الشَّرْطِ، فَقَدْ بَطَلَ أَنْ يَكُونَ فِي هَذَا الْخَبَرِ: حُجَّةٌ فِي جَوَازِ بَيْعِ الدَّابَّةِ وَاسْتِثْنَاءِ رُكُوبِهَا أَصْلًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L22758 As for the Ḥanafī and Shāfiʿī schools, they do not permit this condition at all. The discussion regarding it exists solely between us and the Mālikī school. This text does not specify a day, nor does it distinguish a short distance from a long one. Whoever claims that has told a lie. How then did they derive the specification of one measure over another?

فَأَمَّا الْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ: فَلَا يَقُولُونَ بِجَوَازِ هَذَا الشَّرْطِ أَصْلًا، فَإِنَّمَا الْكَلَامُ بَيْنَنَا وَبَيْنَ الْمَالِكِيِّينَ فِيهِ فَقَطْ، وَلَيْسَ فِي هَذَا الْخَبَرِ تَحْدِيدُ يَوْمٍ، وَلَا مَسَافَةٍ قَلِيلَةٍ مِنْ كَثِيرَةٍ، وَمَنْ ادَّعَى ذَلِكَ فَقَدْ كَذَبَ، فَمِنْ أَيْنَ خَرَجَ لَهُمْ تَحْدِيدُ مِقْدَارٍ دُونَ مِقْدَارٍ؟

L22759 They are obligated because they did not permit the sale of an animal on the condition of riding it for a month - nor ten days - invalidated this condition, permitted its sale with the stipulation of riding it for a short distance, to define the measure that prohibits what they prohibited versus the measure they permitted. This is an obligation upon them; otherwise, they have abandoned those who follow them in the rashness of their eye's impulse and in matters they cannot know - perhaps they might commit what is unlawful or prevent what is lawful, and this is manifest error. If they define any specific measure for this, they would be asked to provide proof for it if they are truthful. Thus, the invalidity of this position becomes evident with undeniable certainty beyond doubt.

وَيَلْزَمُهُمْ إِذْ لَمْ يُجِيزُوا بَيْعَ الدَّابَّةِ عَلَى شَرْطِ رُكُوبِهَا شَهْرًا - وَلَا عَشَرَةَ أَيَّامٍ - وَأَبْطَلُوا هَذَا الشَّرْطَ، وَأَجَازُوا بَيْعَهَا، وَاشْتِرَاطَ رُكُوبِهَا مَسَافَةً يَسِيرَةً: أَنْ يَحُدُّوا الْمِقْدَارَ الَّذِي يُحَرَّمُ بِهِ مَا حَرَّمُوهُ مِنْ ذَلِكَ الْمِقْدَارِ الَّذِي حَلَّلُوهُ، هَذَا فَرْضٌ عَلَيْهِمْ، وَإِلَّا فَقَدْ تَرَكُوا مَنْ اتَّبَعَهُمْ فِي سُخْنَةِ عَيْنِهِ، وَفِي مَا لَا يَدْرِي لَعَلَّهُ يَأْتِي حَرَامًا أَوْ يَمْنَعُ حَلَالًا، وَهَذَا ضَلَالٌ مُبِينٌ، فَإِنْ حَدُّوا فِي ذَلِكَ مِقْدَارًا مَا، سُئِلُوا عَنِ الْبُرْهَانِ فِي ذَلِكَ إِنْ كَانُوا صَادِقِينَ؟ فَلَاحَ فَسَادُ هَذَا الْقَوْلِ بِيَقِينٍ لَا شَكَّ فِيهِ.

L22760–22761 Among the certain falsehoods is that Allah the Exalted would prohibit us from what He has not explicitly detailed for us from beginning to end for us to avoid it and engage in alternatives, if He were to impose upon us what is beyond our capability - such as knowing the unseen - when Allah the Exalted has already safeguarded us from that.

وَمِنَ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يُحَرِّمَ اللَّهُ تَعَالَى عَلَيْنَا مَا لَا يُفَصِّلُهُ لَنَا مِنْ أَوَّلِهِ لِآخِرِهِ لِنَجْتَنِبَهُ وَنَأْتِيَ مَا سِوَاهُ، إِذَا كَانَ تَعَالَى يُكَلِّفُنَا مَا لَيْسَ فِي وُسْعِنَا، مِنْ أَنْ نَعْلَمَ الْغَيْبَ وَقَدْ أَمَّنَّا اللَّهُ تَعَالَى مِنْ ذَلِكَ.

L22762 If they say, "Indeed, some wordings of the report indicate that this occurred when the two neared the city?"

فَإِنْ قَالُوا: إِنَّ فِي بَعْضِ أَلْفَاظِ الْخَبَرِ: أَنَّ ذَلِكَ كَانَ حِينَ دَنَوَا مِنَ الْمَدِينَةِ؟

قُلْنَا: الدُّنُوُّ يَخْتَلِفُ، وَلَا يَكُونُ إِلَّا بِالْإِضَافَةِ، فَمَنْ أَتَى مِنْ تَبُوكَ فَكَانَ مِنَ الْمَدِينَةِ عَلَى سِتِّ مَرَاحِلَ أَوْ خَمْسٍ فَقَدْ دَنَا مِنْهَا، وَيَكُونُ الدُّنُوُّ أَيْضًا عَلَى رُبْعِ مِيلٍ - وَأَقَلَّ أَوْ أَكْثَرَ - فَالسُّؤَالُ بَاقٍ عَلَيْكُمْ بِحَسَبِهِ.

We said: Proximity varies and exists only through relative measurement. For one who travels from Tabuk and is five or six stages distant from Medina is thereby near to it. Proximity may also be a quarter of a mile (or slightly less or more). Thus, the question remains for you to resolve according to this principle.

وَأَيْضًا: فَإِنَّ هَذِهِ اللَّفْظَةَ إِنَّمَا هِيَ فِي رِوَايَةِ سَالِمِ بْنِ أَبِي الْجَعْدِ، وَهُوَ إِنَّمَا رَوَى: أَنَّ رُكُوبَ جَابِرٍ كَانَ تَطَوُّعًا مِنَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَشَرْطًا.

Moreover, this wording is only found in the narration of Salim ibn Abi al-Ja‘d, who narrated that Jabir’s riding was a voluntary act from the Prophet—may Allah bless him and grant him peace—and a condition.

وَفِي رِوَايَةِ الْمُغِيرَةِ عَنِ الشَّعْبِيِّ عَنْ جَابِرٍ دَلِيلٌ عَلَى أَنَّ ذَلِكَ كَانَ فِي مَسِيرِهِمْ مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى غَزَاةٍ - وَأَيْضًا فَلَيْسَ فِيهِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنَعَ مِنْ ذَلِكَ الشَّرْطِ إِلَّا فِي مِثْلِ تِلْكَ الْمَسَافَةِ، فَإِذْ لَمْ يَقِيسُوا عَلَى تِلْكَ الْمَسَافَةِ سَائِرَ الْمَسَافَاتِ فَلَا تَقِيسُوا عَلَى تِلْكَ الطَّرِيقِ سَائِرَ الطُّرُقِ وَلَا تَقِيسُوا عَلَى اشْتِرَاطِ ذَلِكَ فِي رُكُوبِ جَمَلٍ سَائِرَ الدَّوَابِّ، وَإِلَّا فَأَنْتُمْ مُتَنَاقِضُونَ مُتَحَكِّمُونَ بِالْبَاطِلِ.

In the narration of Al-Mughīrah from Al-Sha‘bī from Jābir, there is evidence that this occurred during their journey with the Prophet—may Allah’s blessings and peace be upon him—to a military campaign. Furthermore, it does not indicate that the Prophet—may Allah’s blessings and peace be upon him—prohibited that condition except in such a distance. Since they did not analogize from that specific distance to all other distances, do not apply analogy from that route to other routes, nor analogize the stipulation of that in riding a camel to all other beasts of burden. Otherwise, you are contradicting yourselves and imposing falsehood.

وَإِذْ قِسْتُمْ عَلَى تِلْكَ الطَّرِيقِ سَائِرَ الطُّرُقِ، وَعَلَى الْجَمَلِ سَائِرَ الدَّوَابِّ فَقِيسُوا عَلَى تِلْكَ الْمَسَافَةِ سَائِرَ الْمَسَافَاتِ؟ كَمَا فَعَلْتُمْ فِي صَلَاتِهِ - عَلَيْهِ السَّلَامُ - رَاكِبًا مُتَوَجِّهًا إِلَى خَيْبَرَ إِلَى غَيْرِ الْقِبْلَةِ: فَقِسْتُمْ عَلَى تِلْكَ الْمَسَافَةِ سَائِرَ الْمَسَافَاتِ: فَلَاحَ أَنَّهُمْ لَا مُتَعَلَّقَ لَهُمْ فِي هَذَا الْخَبَرِ أَصْلًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

And when you applied qiyas to that path for all other paths, and to the camel for all riding animals, then apply qiyas to that distance for all other distances? Just as you did regarding the Prophet’s prayer—peace be upon him—while riding toward Khaybar without facing the qibla: you applied qiyas to that distance for all other distances. Thus it became evident that they have no valid basis in this report whatsoever—and success is from Allah, the Exalted.

وَقَدْ جَاءَتْ عَنِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - آثَارٌ فِي الشُّرُوطِ فِي الْبَيْعِ خَالَفُوهَا، فَمِنْ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ.

There have come from the Companions—may Allah be pleased with them—traditions regarding conditions in sales that they opposed. Among these is what we have narrated via the transmission of ʿAbd al-Razzāq from Maʿmar, from al-Zuhrī, from Saʿīd ibn al-Musayyab, who said:

The Companions of the Messenger of Allah—peace and blessings be upon him and his family—said: “We wished that Uthman ibn Affan and Abd al-

قَالَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: وَدِدْنَا لَوْ أَنَّ عُثْمَانَ بْنَ عَفَّانَ، وَعَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ، قَدْ تَبَايَعَا حَتَّى نَنْظُرَ أَيُّهُمَا أَعْظَمُ جِدًّا فِي التِّجَارَةِ، فَاشْتَرَى عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ مِنْ عُثْمَانَ فَرَسًا بِأَرْضٍ أُخْرَى بِأَرْبَعِينَ أَلْفًا أَوْ نَحْوِهَا إِنْ أَدْرَكَتْهَا الصَّفْقَةُ وَهِيَ سَالِمَةٌ، ثُمَّ أَجَازَ قَلِيلًا، ثُمَّ رَجَعَ فَقَالَ: أَزِيدُكَ سِتَّةَ آلَافٍ إِنْ وَجَدَهَا رَسُولِي سَالِمَةً؟

Rahman ibn Awf had engaged in a transaction so we might observe which of them was more vigorous in commerce. Then Abd al-Rahman ibn Awf purchased a horse from Uthman in exchange for another plot of land and forty thousand—or around that amount—if the transaction is completed in time while the land remains intact. He then went a short way, then returned and said: 'I will add six thousand more to you if my messenger finds the land intact.'"

قَالَ نَعَمْ، فَوَجَدَهَا رَسُولُ عَبْدِ الرَّحْمَنِ قَدْ هَلَكَتْ، وَخَرَجَ مِنْهَا بِالشَّرْطِ الْآخَرِ.

L22769–22770 He said, "Yes," and the agent of ʿAbd al-Raḥmān found that she had perished, and he concluded with the other condition.

قِيلَ لِلزُّهْرِيِّ: فَإِنْ لَمْ يَشْتَرِطْ قَالَ: فَهِيَ مِنَ الْبَائِعِ.

L22771 Al-Zuhri was asked, "What if he did not stipulate?" He replied, "Then it falls upon the seller."

فَهَذَا عَمَلُ عُثْمَانَ، وَعَبْدِ الرَّحْمَنِ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَعِلْمِهِمْ لَا مُخَالِفَ لَهُمْ يُعْرَفُ مِنْهُمْ، وَلَمْ يُنْكِرْ ذَلِكَ سَعِيدٌ، وَصَوَّبَهُ الزُّهْرِيُّ.

L22772 This is the action of ʿUthmān and ʿAbd al-Raḥmān in the presence of the Companions (may Allah be pleased with them) and with their knowledge, with no dissenter known among them opposing them. Saʿīd did not reject this, and al-Zuhrī affirmed it.

فَخَالَفَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: كُلَّ هَذَا، وَقَالُوا: لَعَلَّ الرَّسُولَ يُخْطِئُ أَوْ يُبْطِئُ أَوْ يَعْرِضُهُ عَارِضٌ، فَلَا يَدْرِي مَتَى يَصِلُ، وَهُمْ يُشَنِّعُونَ مِثْلَ هَذَا إِذَا خَالَفَ تَقْلِيدَهُمْ.

L22773 The Hanafis, Malikis, and Shafi'is opposed all of this and said: "Perhaps the Messenger might err, delay, or encounter an obstacle, so he would not know when he would arrive." Yet they would condemn such a thing if it contradicted their taqlid.

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا مُحَمَّدُ بْنُ قَيْسٍ الْأَسَدِيُّ عَنْ عَوْنِ بْنِ عَبْدِ اللَّهِ عَنْ عُتْبَةَ بْنِ مَسْعُودٍ قَالَ: إِنَّ تَمِيمًا الدَّارِيَّ بَاعَ دَارِهِ وَاشْتَرَطَ سُكْنَاهَا حَيَاتَهُ وَقَالَ: إِنَّمَا مَثَلِي مَثَلُ أُمِّ مُوسَى رُدَّ عَلَيْهَا وَلَدُهَا، وَأُعْطِيَتْ أَجْرَ رَضَاعِهَا.

L22774 From Waki'ʿ's transmission: Muhammad ibn Qays al-Asadi narrated from ʻAwn ibn ʻAbdullah from ʻUtbah ibn Masʻud, who said: Tamim al-Dari sold his house but stipulated the right to reside in it during his lifetime. He remarked: "Indeed, my example is like that of the mother of Musa: her child was returned to her, and she was granted the reward for nursing him."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ مُرَّةَ بْنِ شَرَاحِيلَ قَالَ: بَاعَ صُهَيْبٌ دَارَه مِنْ عُثْمَانَ وَاشْتَرَطَ سُكْنَاهَا - وَبِهِ يَأْخُذُ أَبُو ثَوْرٍ، فَخَالَفُوهُ، وَلَا مُخَالِفَ لِذَلِكَ مِنَ الصَّحَابَةِ مِمَّنْ يُجِيزُ الشَّرْطَ فِي الْبَيْعِ.

L22775 From the narration of Waki' through Sufyan al-Thawri through Abu Ishaq al-Sabi'i through Murrah ibn Sharahil, who said: Suhayb sold his house to Uthman with the condition that he retain residency in it – and this is the position Abu Thawr adopts. Others opposed him, but none of the Companions who permit contractual conditions in sales objected to this ruling.

وَقَدْ ذَكَرْنَا قَبْلُ ابْتِيَاعَ نَافِعِ بْنِ عَبْدِ الْحَارِثِ دَارًا بِمَكَّةَ لِلسِّجْنِ مِنْ صَفْوَانَ بِأَرْبَعَةِ آلَافٍ عَلَى إِنْ رَضِيَ عُمَرُ فَالْبَيْعُ تَامٌّ، فَإِنْ لَمْ يَرْضَ فَلِصَفْوَانَ أَرْبَعُمِائَةٍ -: فَخَالَفُوهُمْ كُلُّهُمْ.

We mentioned earlier Nafi‘ ibn ‘Abd al-Harith’s purchase of a house in Makkah from Safwan for four thousand to use as a state prison, on the condition that if ‘Umar approves, the sale is valid; but if he does not approve, Safwan shall receive four hundred. However, they all rejected this ruling.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ أَخْبَرَنِي نَافِعٌ عَنْ ابْنِ عُمَرَ: أَنَّهُ اشْتَرَى بَعِيرًا بِأَرْبَعَةِ أَبْعِرَةٍ عَلَى أَنْ يُوَفُّوهُ إِيَّاهَا بِالرَّبَذَةِ - وَلَيْسَ فِيهِ وَقْتُ ذِكْرِ الْإِيفَاءِ -: فَخَالَفُوهُ.

From the narration of Yahya ibn Sa’id al-Qattan, from ’Ubayd Allah ibn ’Umar, who reported to me from Nafi’, from Ibn ’Umar: He purchased a camel on credit for four camels, stipulating that they deliver them to him at al-Rabadhah – with no time for delivery specified in the contract – but they violated the agreement.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ النُّعْمَانِ بْنِ حُمَيْدٍ قَالَ: أَصَابَ عَمَّارُ بْنُ يَاسِرٍ مَغْنَمًا فَقَسَّمَ بَعْضَهُ وَكَتَبَ إلَى عُمَرَ يُشَاوِرُهُ؟ فَتَبَايَعَ النَّاسُ إلَى قُدُومِ الرَّاكِبِ - وَهَذَا عَمَلُ عَمَّارٍ وَالنَّاسُ بِحَضْرَتِهِ -: فَخَالَفُوهُ.

From the narration of Hammad ibn Salamah, from Simak ibn Harb, from al-Nu’man ibn Humaid, who said: Ammar ibn Yasir acquired spoils of war and distributed a portion of them, then wrote to Umar to consult him? The people pledged allegiance until the arrival of Umar’s messenger—and this was Ammar’s ruling while the people were in his presence—but they opposed him.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؛ وَحَكَمَ عَلِيٌّ بِشَرْطِ الْخَلَاصِ، وَلِلْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ: تَنَاقُضٌ عَظِيمٌ فِيمَا أَجَازُوهُ مِنْ الشُّرُوطِ فِي الْبَيْعِ وَمَا مَنَعُوا مِنْهُ فِيهَا، قَدْ ذَكَرْنَا بَعْضَهُ وَنَذْكُرُ فِي مَكَانٍ آخَرَ - إنْ شَاءَ اللَّهُ تَعَالَى - مَا يَسَّرَ اللَّهُ تَعَالَى لِذِكْرِهِ؛ لِأَنَّ الْأَمْرَ أَكْثَرُ مِنْ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

As for us, we accept no authoritative evidence for anyone besides the Messenger of Allah—may Allah bless him and grant him peace—and success comes only from Allah, the Most High. Ali ruled according to the condition of exemption, while the Hanafis, Malikis, and Shafi’is exhibit grave contradictions in the rulings they have permitted. Among the conditions in a sale—and what [jurists] have prohibited therein—we have mentioned some of them, and we will mention in another place, Allah the Exalted willing, what He has facilitated for explanation, for the matter is more extensive than that. And success is from Allah, the Exalted.

[مَسْأَلَةٌ بَاعَ بَيْعًا فَاسِدًا]

Issue: He concluded a defective sale.

١٤٤٨ - مَسْأَلَةٌ: وَكُلُّ مَنْ بَاعَ بَيْعًا فَاسِدًا فَهُوَ بَاطِلٌ، وَلَا يَمْلِكُهُ الْمُشْتَرِي، وَهُوَ بَاقٍ عَلَى مِلْكِ الْبَائِعِ، وَهُوَ مَضْمُونٌ عَلَى الْمُشْتَرِي إنْ قَبَضَهُ ضَمَانَ الْغَصْبِ سَوَاءٌ سَوَاءٌ،

Issue 1448: Every invalid sale is void. The buyer does not acquire ownership of the item; it remains the property of the seller. The buyer is liable for it as in cases of usurpation if they take possession, without any distinction whatsoever. The seller is likewise liable for the price if they receive it. The passage of time does not validate the sale, nor do changes in market prices,

deterioration of the goods, their loss, the death of both contracting parties, or any such factor at all.

وَالثَّمَنُ مَضْمُونٌ عَلَى الْبَائِعِ إنْ قَبَضَهُ -: وَلَا يُصَحِّحُهُ طُولُ الْأَزْمَانِ، وَلَا تَغَيُّرُ الْأَسْوَاقِ، وَلَا فَسَادُ السِّلْعَةِ، وَلَا ذَهَابُهَا، وَلَا مَوْتُ الْمُتَبَايِعَيْنِ أَصْلًا.

L22784 Abu Hanifah held the same opinion as we have mentioned regarding some of these matters, and regarding some of them he said: "Whoever concludes a defective sale which the buyer takes possession of, acquires ownership defectively, and he permitted the buyer to manumit the slave in such a case."

وَقَالَ أَبُو حَنِيفَةَ فِي بَعْضِ ذَلِكَ كَمَا قُلْنَا، وَقَالَ فِي بَعْضِ ذَلِكَ: مَنْ بَاعَ بَيْعًا فَاسِدًا فَقَبَضَهُ الْمُشْتَرِي فَقَدْ مَلَكَهُ مِلْكًا فَاسِدًا، وَأَجَازَ عِتْقَهُ فِيهِ.

L22785 Mālik said regarding some of these as we have previously stated, and regarding others he said: "Among the invalid sales are those that are to be rescinded unless a long time passes or market conditions change, in which case they then become valid."

وَقَالَ مَالِكٌ فِي بَعْضِ ذَلِكَ: كَمَا قُلْنَا، وَقَالَ فِي بَعْضِ ذَلِكَ: إنَّ مِنْ الْبُيُوعِ الْفَاسِدَةِ بُيُوعًا تُفْسَخُ إلَّا أَنْ يَطُولَ الْأَمْرُ، أَوْ تَتَغَيَّرَ الْأَسْوَاقُ: فَتَصِحُّ حِينَئِذٍ.

L22786 Abu Muhammad said: These are two opinions whose corruption is not hidden from anyone who reflects honestly upon themselves. As for Abu Hanifah's statement - that he held ownership which is defective - this constitutes an utterly corrupt assertion. No one has ever recognized in the religion of Allah the Exalted such a thing as defective ownership. If it constitutes ownership, then it is valid; if it does not constitute ownership, then it is invalid. Anything beyond this is inconceivable.

قَالَ أَبُو مُحَمَّد: وَهَذَانِ قَوْلَانِ لَا خَفَاءَ بِفَسَادِهِمَا عَلَى مَنْ نَصَحَ نَفْسَهُ، أَمَّا قَوْلُ أَبِي حَنِيفَةَ: فَقَدْ مَلَكَهُ مِلْكًا فَاسِدًا - فَكَلَامٌ فِي غَايَةِ الْفَسَادِ، وَمَا عَلِمَ أَحَدٌ قَطُّ فِي دِينِ اللَّهِ تَعَالَى مِلْكًا فَاسِدًا، إنَّمَا هُوَ مِلْكٌ فَهُوَ صَحِيحٌ، أَوْ لَا مِلْكٌ فَلَيْسَ صَحِيحًا، وَمَا عَدَا هَذَا فَلَا يُعْقَلُ.

L22787 And when they acknowledged that sovereignty is corrupt, for indeed He, the Exalted, has said: "Allah does not love corruption" [Al-Baqarah: 205]. Therefore, it is not permissible for anyone to rule by enforcing what Allah, the Exalted and Majestic, does not love.[36]

وَإِذْ أَقَرُّوا أَنَّ الْمُلْكَ فَاسِدٌ فَقَدْ قَالَ تَعَالَى: {وَاللَّهُ لا يُحِبُّ الْفَسَادَ} [البقرة: ٢٠٥] فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَحْكُمَ بِإِنْفَاذِ مَا لَا يُحِبُّهُ اللَّهُ عَزَّ وَجَلَّ.

L22788 And He, the Exalted, said: "Indeed, Allah does not rectify the deeds of the corrupters" (10:81).[37]

وَقَالَ تَعَالَى: {إِنَّ اللَّهَ لا يُصْلِحُ عَمَلَ الْمُفْسِدِينَ} [يونس: ٨١] .

L22789 Whoever thereby permits something that Allah the Exalted has explicitly stated does not rectify it has opposed Allah the Exalted in His judgment, and this is an immensely grave matter. Some of them have invoked the Hadith of Barirah as proof in this matter.

فَمَنْ أَجَازَ شَيْئًا نَصَّ اللَّهُ تَعَالَى عَلَى أَنَّهُ لَا يُصْلِحُهُ فَقَدْ عَارَضَ اللَّهَ تَعَالَى فِي حُكْمِهِ، وَهَذَا عَظِيمٌ جِدًّا، وَقَدْ احْتَجَّ بَعْضُهُمْ فِي هَذَا بِحَدِيثِ بَرِيرَةَ.

L22790 Abū Muḥammad said: This is the argument of one whose religion is corrupt,

[36] **Qur'an references (L22787):** Qur'an 2:205 (Al-Baqarah).
[37] **Qur'an references (L22788):** Qur'an 10:81 (Yunus).

and we disavow to Allah the Exalted anyone who ascribes to the Messenger of Allah—may Allah bless him and his family and grant him peace—that he enacted falsehood or sanctioned corruption. By Allah, no Muslim's soul could rest upon this.

قَالَ أَبُو مُحَمَّدٍ: هَذَا احْتِجَاجُ فَاسِدِ الدِّينِ، وَنَبْرَأُ إِلَى اللَّهِ تَعَالَى مِمَّنْ نَسَبَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ أَنْفَذَ الْبَاطِلَ، وَأَجَازَ الْفَاسِدَ - وَاَللَّهِ مَا تَقِرُّ عَلَى هَذَا نَفْسُ مُسْلِمٍ.

L22791 Some of them argued that the seller granted him authority over it.

وَاحْتَجَّ بَعْضُهُمْ بِأَنَّ الْبَائِعَ سَلَّطَهُ عَلَيْهِ.

L22792–22794 Abu Muhammad said: No one may authorize another to control any part of his wealth with what Allah, the Exalted, has not permitted. In this matter, they should permit him, on this basis, to exercise authority over intercourse with his *umm walad* (a slave woman who bore him a child) and his female slave. This is clear frivolity and misguidance.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ لِأَحَدٍ أَنْ يُسَلِّطَ غَيْرَهُ عَلَى شَيْءٍ مِنْ مَالِهِ بِمَا لَمْ يَأْذَنْ اللَّهُ تَعَالَى فِيهِ، فَلْيُجِيزُوا عَلَى هَذَا أَنْ يُسَلِّطَهُ عَلَى وَطْءِ أُمِّ وَلَدِهِ وَأَمَتِهِ، وَهَذِهِ مَلَاعِبُ وَضَلَالٌ لَا خَفَاءَ بِهِ.

L22795 As for Mālik's position, the first thing to say to his adherents is: Define for us the period after which a voidable sale becomes valid in your school by its passing; otherwise, you have surely strayed and misled others.

وَأَمَّا قَوْلُ مَالِكٍ: فَأَوَّلُ مَا يُقَالُ لِمَنْ قَلَّدَهُ: حُدُّوا لَنَا الْمُدَّةَ الَّتِي إِذَا مَضَتْ صَحَّ الْبَيْعُ الْفَاسِدُ عِنْدَكُمْ بِمُضِيِّهَا، وَإِلَّا فَقَدْ ضَلَلْتُمْ وَأَضْلَلْتُمْ.

L22796 Specify for us the parameters of market fluctuations by which you have permitted forbidden matters, for an increase or decrease of even half a dirham or a single grain is indisputably a market fluctuation.

وَحُدُّوا لَنَا تَغَيُّرَ الْأَسْوَاقِ الَّذِي أَبَحْتُمْ بِهِ الْمُحَرَّمَاتِ، فَإِنَّ زِيَادَةَ نِصْفِ دِرْهَمٍ وَحَبَّةٍ، وَنُقْصَانَ ذَلِكَ تَغَيُّرُ سُوقٍ بِلَا شَكٍّ.

L22797 If they permit the validity of the voidable transaction to this extent, then every voidable sale would be considered valid, for it is unavoidable that prices fluctuate to this extent or something similar every day.

فَإِنْ أَجَازُوا صِحَّةَ الْفَاسِدِ بِهَذَا الْمِقْدَارِ فَقَدْ صَحَّ كُلُّ بَيْعٍ فَاسِدٍ؛ لِأَنَّهُ لَا بُدَّ مِنْ تَقَلُّبِ الْقِيَمِ بِمِثْلِ هَذَا أَوْ شَبَهِهِ فِي كُلِّ يَوْمٍ.

L22798 Then we ask them for evidence to support what they have asserted. There is no valid basis for it—neither from the Quran, nor the Sunnah, nor a weak narration, nor the statement of anyone acknowledged before him, nor analogy, nor any opinion with a sound rationale. Rather, it is permitting the wrongful consumption of wealth.

ثُمَّ نَسْأَلُهُمُ الدَّلِيلَ عَلَى مَا قَالُوهُ مِنْ ذَلِكَ؟ وَلَا سَبِيلَ إِلَيْهِ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ يُعْرَفُ قَبْلَهُ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ، بَلْ هُوَ إِبَاحَةُ أَكْلِ الْمَالِ بِالْبَاطِلِ.

L22799 If they cite in that regard the ḥadīth of al-Nuʿmān ibn Bashīr from the Prophet—may the peace and blessings of Allah be upon him—"The lawful is clear, the unlawful is clear, and between them are ambiguous matters many

people do not recognize. Whoever avoids what is doubtful to him has thereby absolved himself from what is unlawful, and has preserved the integrity of his religion and honor," or words to this effect.

فَإِنْ ذَكَرُوا فِي ذَلِكَ حَدِيثَ النُّعْمَانِ بْنِ بَشِيرٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْحَلَالُ بَيِّنٌ وَالْحَرَامُ بَيِّنٌ وَبَيْنَهُمَا مُشْتَبِهَاتٌ لَا يَعْلَمُهَا كَثِيرٌ مِنَ النَّاسِ، فَمَنْ تَرَكَ مَا اشْتَبَهَ عَلَيْهِ كَانَ لِمَا سِوَاهُ أَتْرَكُ، وَاسْتَبْرَأَ لِدِينِهِ وَعِرْضِهِ» أَوْ كَلَامًا هَذَا مَعْنَاهُ؟

L22800 We said: You are the foremost in contradicting this report. For if you say, "You merely issued these two rulings regarding matters where you confused prohibition with permissibility"—?

قُلْنَا: أَنْتُمْ أَوَّلُ مُخَالِفٍ لِهَذَا الْخَبَرِ، لِأَنَّكُمْ إِنْ قُلْتُمْ: إِنَّكُمْ إِنَّمَا حَكَمْتُمْ بِهَذَيْنِ الْحُكْمَيْنِ فِيمَا اشْتَبَهَ عَلَيْكُمْ تَحْرِيمُهُ مِنْ تَحْلِيلِهِ؟

L22801 He said: Either you have lied, or you have spoken truthfully. If you have lied, then lying is forbidden, sinful, and wounding. If you have spoken truthfully, then you have failed to adhere to what is in the narration you cited as evidence—to abstain from speech and judgment regarding matters ambiguous to you. Rather, you dared to commit the most heinous transgression by transferring forbidden properties and declaring prohibited funds lawful, despite acknowledging with your tongues that its prohibition or permissibility remains unclear to you. Thus, you have wholly contradicted that narration.

قَالَ: إِمَّا كَذَبْتُمْ، وَإِمَّا صَدَقْتُمْ، فَإِنْ كُنْتُمْ كَذَبْتُمْ: فَالْكَذِبُ حَرَامٌ وَمَعْصِيَةٌ وَجُرْحَةٌ، وَإِنْ كُنْتُمْ صَدَقْتُمْ فَمَا أَخَذْتُمْ بِمَا فِي الْحَدِيثِ الَّذِي احْتَجَجْتُمْ بِهِ: مِنِ اجْتِنَابِ الْقَوْلِ وَالْحُكْمِ فِيمَا اشْتَبَهَ عَلَيْكُمْ، بَلْ جَسَرْتُمْ أَشْنَعَ الْجَسْرِ، فَنَقَلْتُمُ الْأَمْلَاكَ الْمُحَرَّمَةَ، وَأَبَحْتُمُ الْأَمْوَالَ الْمَحْظُورَةَ فِيمَا أَقْرَرْتُمْ بِأَلْسِنَتِكُمْ: أَنَّهُ لَمْ يَتَبَيَّنْ لَكُمْ تَحْرِيمُهُ مِنْ تَحْلِيلِهِ، فَخَالَفْتُمْ مَا فِي ذَلِكَ الْخَبَرَ جُمْلَةً.

L22802 And if you say, "We ruled by that in situations where we presumed it was forbidden, but were not certain of it?"

وَإِنْ قُلْتُمْ: حَكَمْنَا بِذَلِكَ حَيْثُ ظَنَنَّا أَنَّهُ حَرَامٌ وَلَمْ نَقْطَعْ بِذَلِكَ؟

L22803 We said: Allah, the Exalted, and His Messenger, peace and blessings be upon him, have forbidden this to you. He, the Exalted, said: "They follow nothing but conjecture, and indeed conjecture avails nothing against the truth" [An-Najm: 28].[38]

قُلْنَا: قَدْ حَرَّمَ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَذَا عَلَيْكُمْ، قَالَ تَعَالَى: {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨] .

L22804–22805 And he condemned a people who judged based on what they assumed without being certain of it.

وَذَمَّ قَوْمًا حَكَمُوا فِيمَا ظَنُّوهُ وَلَمْ يَسْتَيْقِنُوهُ.

L22806 The Messenger of Allah—peace and blessings be upon him—said: "Avoid suspicion entirely, for suspicion is the falsest of speech." It is obligatory upon one who harbors suspicion without attaining certainty to withhold judgment: he should neither judge nor rush to act in matters where he lacks certainty. When he has attained certainty, he must then judge.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» وَالْفَرْضُ عَلَى مَنْ ظَنَّ وَلَمْ يَسْتَيْقِنْ أَنْ يُمْسِكَ: فَلَا يَحْكُمُ وَلَا يَتَسَرَّعُ فِيمَا لَا يَقِينَ عِنْدَهُ فِيهِ، فَإِذَا تَيَقَّنَ حَكَمَ حِينَئِذٍ.

[38] **Qur'an references (L22803):** Qur'an 53:28 (An-Najm).

وَقَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤]

L22807 And Abu Muhammad said: Allah, the Exalted, said, “So that you [Muhammad] may make clear to the people what has been sent down to them” [An-Nahl: 44].[39]

وَقَالَ تَعَالَى: {تِبْيَانًا لِكُلِّ شَيْءٍ} [النحل: ٨٩]

L22808 And He, the Most High, said: “As an exposition for all things” [Surah An-Nahl 16:89].[40]

وَقَالَ تَعَالَى: {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣]

L22809 And He, the Most High, said: “Today I have perfected for you your religion” [Al-Ma’idah 3].[41]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L22810 The Messenger of Allah (peace and blessings of Allah be upon him) said: “Whoever does a deed not in accordance with our command, it is invalid.”[42]

وَرُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ قَالَ: لَا يَنْبَغِي لِقَاضٍ أَنْ يَقْضِيَ حَتَّى يَتَبَيَّنَ لَهُ الْحَقُّ كَمَا يَتَبَيَّنُ اللَّيْلُ مِنْ النَّهَارِ، فَبَلَغَ ذَلِكَ عُمَرَ بْنَ الْخَطَّابِ فَقَالَ: صَدَقَ أَبُو مُوسَى.

L22811 It was narrated to us through the chain of Abu Bakr ibn Abi Shaybah, who narrated to us: Yazid ibn Harun narrated to us; Hammad ibn Salamah narrated to us, from Qatadah, that Abu Musa al-Ash’ari said: “It is not permissible for a judge to issue a ruling until the matter becomes clear to him as distinctly as night is distinguished from day.” When this reached Umar ibn al-Khattab, he said: “Abu Musa has spoken truthfully.”

قَالَ عَلِيٌّ: الْمُفْتِي قَاضٍ، لِأَنَّهُ قَدْ قَضَى بِوُجُوبِ مَا أَوْجَبَ، وَتَحْرِيمِ مَا حَرَّمَ، أَوْ إبَاحَةِ مَا أَبَاحَ، فَمَنْ أَيْقَنَ تَحْرِيمَ شَيْءٍ بِنَصٍّ مِنْ الْقُرْآنِ أَوْ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَابِتٍ فَلْيُحَرِّمْهُ وَلْيُبْطِلْهُ أَبَدًا.

L22812 Ali said: The mufti is a judge, for he has decreed the obligation of what he made obligatory, the prohibition of what he forbade, or the permissibility of what he permitted. Whoever is certain of the prohibition of something through a confirmed text from the Quran or from the Messenger of Allah (peace and blessings be upon him) (i.e., the Sunnah) must prohibit it and invalidate it perpetually.

وَمَنْ أَيْقَنَ بِإِبَاحَتِهِ بِنَصٍّ كَمَا ذَكَرْنَا فَلْيُبِحْهُ وَلْيَنْفُذْهُ أَبَدًا.

L22813 And whoever is certain of its permissibility through textual evidence, as we have mentioned, let him consider it permissible and implement it perpetually.

وَمَنْ أَيْقَنَ بِوُجُوبِ شَيْءٍ بِنَصٍّ كَمَا ذَكَرْنَا فَلْيُوجِبْهُ وَلْيَنْفُذْهُ أَبَدًا، وَلَيْسَ فِي الدِّينِ قِسْمٌ رَابِعٌ أَصْلًا، وَمَا لَمْ يَتَبَيَّنْ لَهُ حُكْمُهُ مِنْ النَّصِّ الْمَذْكُورِ فَلْيُمْسِكْ عَنْهُ وَلْيَقُلْ كَمَا قَالَتْ الْمَلَائِكَةُ: {لَا عِلْمَ لَنَا إلَّا مَا عَلَّمْتَنَا} [البقرة: ٣٢] وَمَا عَدَا هَذَا فَضَلَالٌ نَعُوذُ بِاَللَّهِ مِنْهُ.

L22814 Whoever is certain of the obligation of something through a text as we have mentioned, let him consider it obligatory and implement it perpetually. There is fundamentally no fourth category in religion at all. Whatever ruling remains unclear to him from the aforementioned text, let him abstain from

[39] **Qur’an references (L22807):** Qur’an 16:44 (An-Nahl).
[40] **Qur’an references (L22808):** Qur’an 16:89 (An-Nahl).
[41] **Qur’an references (L22809):** Qur’an 5:3 (Al-Ma’idah).
[42] **Hadith references (L22810):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

it and say as the angels said: “We have no knowledge except what You have taught us” [Al-Baqarah: 32]. Whatever lies beyond this is misguidance. We seek refuge in Allah from it.[43]

L22815 He, the Exalted, said: “So what is there after the truth except misguidance?” [Yunus: 32].[44]

L22816 **An issue: If someone purchased a male or female slave, both of whom have property...**

L22817 Issue 1449: If someone purchases a male or female slave each of whom has property, their property belongs to the seller unless the buyer stipulates the property as a condition, in which case the property belongs to him. The buyer has no share from the price - whether it increases or decreases - nor is he subject to the legal ruling of the sale whatsoever.

L22818 If there is a large or small amount of gold in the property of a male or female slave, and the slave is purchased with gold that is less than, equal to, or more than that gold—whether as cash payment, immediate debt, or deferred payment for a term—all such transactions are permissible. Similarly, if silver is present in the property, there is no difference.

L22819 If he becomes aware of a defect in the male slave or female slave, he may return them while retaining the price; he does not refund it.

L22820–22821 If he finds a defect in the property, he does not return the male slave or the female slave because of it.

L22822 If he sells half of his male slave, half of his female slave, or a specified undivided share derived from both of them, that is permissible. However, stipulating the price is entirely impermissible here.

L22823 Likewise, if he sells his share of a slave co-owned with another person, there is no distinction.

L22824 If two individuals jointly sell a slave, it is permissible for the buyer to stipulate property rights, for the Messenger of Allah—peace and blessings be

[43] **Qur’an references (L22814):** Qur’an 2:32 (Al-Baqarah).
[44] **Qur’an references (L22815):** Qur’an 10:32 (Yunus).

قَالَ تَعَالَى: {فَمَاذَا بَعْدَ الْحَقِّ إِلا الضَّلالُ} [يونس: ٣٢] .

[مَسْأَلَةٌ ابْتَاعَ عَبْدًا أَوْ أَمَةً لَهُمَا مَالٌ]

١٤٤٩ - مَسْأَلَةٌ: وَمَنْ ابْتَاعَ عَبْدًا أَوْ أَمَةً لَهُمَا مَالٌ فَمَالُهُمَا لِلْبَائِعِ إِلَّا أَنْ يَشْتَرِطَهُ الْمُبْتَاعُ فَيَكُونَ لَهُ، وَلَا حِصَّةَ لَهُ مِنْ الثَّمَنِ - كَثُرَ أَوْ قَلَّ - وَلَا لَهُ حُكْمُ الْبَيْعِ أَصْلًا.

فَإِنْ كَانَ فِي مَالِ الْعَبْدِ أَوْ الْأَمَةِ: ذَهَبٌ كَثِيرٌ أَوْ قَلِيلٌ، وَقَدْ ابْتَاعَ الْأَمَةَ أَوْ الْعَبْدَ بِذَهَبٍ أَقَلَّ مِنْ ذَلِكَ الذَّهَبِ أَوْ مِثْلِهِ أَوْ أَكْثَرَ: نَقْدًا أَوْ حَالًّا فِي الذِّمَّةِ، أَوْ إلَى أَجَلٍ -: جَازَ كُلُّ ذَلِكَ - وَكَذَلِكَ إنْ كَانَ فِيهِ فِضَّةٌ وَلَا فَرْقَ.

فَإِنْ اطَّلَعَ عَلَى عَيْبٍ فِي الْعَبْدِ أَوْ الْأَمَةِ: رَدَّهُ أَوْ رَدَّهَا وَالْمَالُ لَهُ لَا يَرُدُّهُ مَعَهُ.

فَإِنْ وَجَدَ بِالْمَالِ عَيْبًا: لَا يَرُدُّ الْعَبْدَ مِنْ أَجْلِ ذَلِكَ، وَلَا الْأَمَةَ.

فَإِنْ بَاعَ نِصْفَ عَبْدِهِ أَوْ نِصْفَ أَمَتِهِ أَوْ جُزْءًا مُسَمًّى مُشَاعًا فِيهِمَا مِنْهُمَا: جَازَ ذَلِكَ، وَلَا يَجُوزُ هُنَا اشْتِرَاطُ الْمَالِ أَصْلًا.

وَكَذَلِكَ لَوْ بَاعَ نَصِيبَهُ مِنْ عَبْدٍ بَيْنَهُ وَبَيْنَ آخَرَ وَلَا فَرْقَ.

فَلَوْ بَاعَ اثْنَانِ عَبْدًا بَيْنَهُمَا: جَازَ لِلْمُشْتَرِي اشْتِرَاطُ الْمَالِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - ذَكَرَ ذَلِكَ بِلَفْظِ الِاشْتِرَاطِ كَمَا قَدَّمْنَا وَالِاشْتِرَاطُ غَيْرُ الْبَيْعِ فَلَيْسَ لَهُ

upon him and his family—explicitly mentioned this using the term "conditional clause" as we previously established. The conditional clause constitutes an extrinsic element to the sale contract and is therefore not governed by rulings specific to sales. The Prophet—peace and blessings be upon him—did not differentiate between known and unknown elements, one measure and another measure, nor one property and another property. Hence, no distinction may be made within these categories. The buyer rightfully owns the property through a valid conditional clause, and since this does not fall under revocable transactions, he is not obligated to return the slave due to a defect in the property stipulated or a defect in the sold item.

حُكْمُ الْبَيْعِ، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - مَعْلُومًا مِنْ مَجْهُولٍ وَلَا مِقْدَارًا مِنْ مِقْدَارٍ، وَلَا مَالًا مِنْ مَالٍ: فَلَا يَجُوزُ تَخْصِيصُ شَيْءٍ مِنْ ذَلِكَ وَقَدْ مَلَكَ الْمَالَ بِالشَّرْطِ الصَّحِيحِ، وَلَيْسَ مِمَّا دَخَلَ فِي صَفْقَةِ الرَّدِّ فَلَيْسَ عَلَيْهِ رَدُّهُ بِعَيْبٍ فِيهِ وَلَا بِعَيْبٍ فِي الْمَبِيعِ.

L22825 Whoever sells half of a slave held in undivided joint ownership or half of his own slave, the buyer does not thereby acquire a slave. Rather, he—peace be upon him—established the monetary stipulation for one who purchases a slave. If someone purchases a slave from two [owners], he is considered to have acquired a slave and thus has the right to the monetary stipulation.

وَمَنْ بَاعَ نِصْفَ عَبْدٍ مُشَاعٍ أَوْ نِصْفَ عَبْدِهِ فَلَمْ يَشْتَرِ الْمُشْتَرِي عَبْدًا وَإِنَّمَا جَعَلَ - عَلَيْهِ السَّلَامُ - اشْتِرَاطَ الْمَالِ لِمَنْ اشْتَرَى عَبْدًا وَإِذَا اشْتَرَى عَبْدًا مِنْ اثْنَيْنِ فَقَدْ ابْتَاعَ عَبْدًا فَلَهُ اشْتِرَاطُ الْمَالِ.

L22826 All of this is the position of our companions. Mālik agreed with our position regarding stipulations involving gold and silver, ambiguity (gharar) in the subject matter, large quantities, and small quantities.

وَهَذَا كُلُّهُ قَوْلُ أَصْحَابِنَا، وَقَالَ مَالِكٌ كَقَوْلِنَا فِي اشْتِرَاطِ الذَّهَبِ، وَالْفِضَّةِ، وَالْمَجْهُولِ، وَالْكَثِيرِ، وَالْقَلِيلِ.

L22827 Abu Hanifah and al-Shafi'i said: This is impermissible except under the rules governing sales - a mere contradiction to the hadith. Thus, they repudiated what Allah the Exalted has permitted of conditions and sanctioned what He has nullified thereof.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: لَا يَجُوزُ ذَلِكَ إِلَّا بِحُكْمِ الْبُيُوعِ - وَهَذَا خِلَافٌ لِلْحَدِيثِ مُجَرَّدٌ، فَرَدُّوا مَا أَبَاحَ اللَّهُ تَعَالَى مِنْ الشُّرُوطِ، وَأَجَازُوا مَا أَبْطَلَ اللَّهُ تَعَالَى مِنْهَا.

L22828 From the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us, Ubayd Allāh ibn ʿUmar narrated from Nāfiʿ from Ibn ʿUmar from ʿUmar, who said: "Whoever sells a slave who owns property, the slave's property belongs to the seller unless the buyer stipulates."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ عُمَرَ أَنَّهُ قَالَ: مَنْ بَاعَ عَبْدًا وَلَهُ مَالٌ فَمَالُهُ لِلْبَائِعِ إِلَّا أَنْ يَشْتَرِطَ الْمُبْتَاعُ.

L22829 From the chain of Saʿīd ibn Manṣūr: I [heard] from Abū al-Aḥwaṣ, from Ashʿath ibn Abī al-Shaʿthāʾ, who said: A man sold his slave, and neither party stipulated ownership of his property. When the slave's property was discovered, Shurayḥ awarded it to the seller.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو الْأَحْوَصِ أَنَا أَشْعَثُ بْنُ أَبِي الشَّعْثَاءِ قَالَ: بَاعَ رَجُلٌ غُلَامَهُ وَلَمْ يَشْتَرِطْ وَاحِدٌ مِنْهُمَا مَالَهُ، فَوُجِدَ لِلْغُلَامِ مَالٌ فَقَضَى بِهِ شُرَيْحٌ لِلْبَائِعِ.

L22830–22832 From the chain of Saʿīd ibn Manṣūr: I [Hushaym] narrate from Yūnus,

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يُونُسُ، وَمُغِيرَةُ، وَأَبُو إِسْحَاقَ الشَّيْبَانِيُّ، وَبَعْضُ أَصْحَابِنَا عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ، قَالَ يُونُسُ: عَنْ الْحَسَنِ، وَقَالَ مُغِيرَةُ: عَنْ إبْرَاهِيمَ، وَقَالَ الشَّيْبَانِيُّ: عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ، وَقَالَ بَعْضُ أَصْحَابِنَا: عَنْ الشَّعْبِيِّ، ثُمَّ اتَّفَقُوا كُلُّهُمْ: الْحَسَنُ، وَالنَّخَعِيُّ، وَشُرَيْحٌ، وَالشَّعْبِيُّ: عَلَى أَنَّ مَنْ بَاعَ عَبْدًا وَلَهُ مَالٌ فَمَالُهُ لِلْمُشْتَرِي، وَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Mughīrah, Abū Isḥāq al-Shaybānī, and some of our colleagues, from al-Shaʿbī, from Shurayḥ. Yūnus said: From al-Ḥasan. Mughīrah said: From Ibrāhīm al-Nakhaʿī. Al-Shaybānī said: From al-Shaʿbī, from Shurayḥ. Some of our colleagues narrated via al-Shaʿbī. Thereafter, all of them concurred upon the position of al-Ḥasan, Ibrāhīm al-Nakhaʿī, Shurayḥ, and al-Shaʿbī that if someone sells a slave who owns property... So his property belongs to the buyer, and no one's proof holds validity alongside the Messenger of Allah (peace and blessings be upon him). Success is from Allah, the Most High. 1450-

١٤٥٠ -.

مَسْأَلَةٌ: وَلِلْمُبْتَاعِ أَنْ يَشْتَرِطَ شَيْئًا مُسَمًّى بِعَيْنِهِ مِنْ مَالِ الْعَبْدِ أَوْ الْأَمَةِ، وَلَهُ أَنْ يَشْتَرِطَ ثُلُثًا أَوْ رُبُعًا، أَوْ نَحْوَ ذَلِكَ - وَمَنَعَ مِنْ ذَلِكَ: مَالِكٌ، وَأَبُو سُلَيْمَانَ، وَقَالَا: لَا يَجُوزُ أَنْ يَشْتَرِطَ إلَّا الْجَمِيعَ أَوْ يَدَعَ.

L22833 Issue: The buyer may stipulate a specific item from the property of a male or female slave, or a portion such as a third or a quarter. Mālik and Abū Sulaymān prohibited this, stating: "It is not permissible to stipulate anything except the entirety or to abandon it."

قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَمْ يَقُلْ فَمَالُهُ لِلْبَائِعِ إلَّا أَنْ يَشْتَرِطَ كُلَّهُ الْمُبْتَاعُ - وَبَعْضُ الْمَالِ مَالٌ - فَهُوَ دَاخِلٌ فِي نَصِّ مُقْتَضَى لَفْظِهِ - عَلَيْهِ السَّلَامُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. ١٤٥١ -.

L22834 Abu Muhammad said: This is an error, because the Messenger of Allah (peace and blessings be upon him and his family) did not say, "His property belongs to the seller unless the buyer stipulates all of it." Since some property is property, it falls under the explicit implication of his wording (peace be upon him). Success comes only from Allah, the Exalted. 1451.

مَسْأَلَةٌ: فَإِنْ قِيلَ: إنَّمَا جَاءَ النَّصُّ فِي الْعَبْدِ فَمِنْ أَيْنَ قُلْتُمْ بِذَلِكَ فِي الْأَمَةِ؟ قُلْنَا: لَفْظَةُ " الْعَبْدِ " تَقَعُ فِي اللُّغَةِ الْعَرَبِيَّةِ عَلَى جِنْسِ الْعَبِيدِ وَالْإِمَاءِ لِأَنَّ الْعَرَبَ تَقُولُ عَبْدٌ وَعِبْدَةٌ، وَ " الْعَبْدُ " اسْمُ جِنْسٍ كَمَا تَقُولُ: الْإِنْسَانُ وَالْفَرَسُ وَالْحِمَارُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22835 If it is asked: "The textual ruling specifically pertains to the male slave, so on what basis do you conclude this applies to the female slave?" We respond: The term "the slave" in the Arabic language applies to the category encompassing both male and female slaves, for the Arabs say "male slave" (ʿabd) and "female slave" (ʿibdah). "The slave" functions as a generic noun, just as one says: "the human being," "the horse," or "the donkey"—and success comes from God, the Exalted.

وَإِنَّ أَحَقَّ النَّاسِ بِأَنْ يُعْكَسَ عَلَيْهِ هَذَا الِاعْتِرَاضُ، وَيُلْزَمَ هَذَا السُّؤَالَ مَنْ فَرَّقَ بَيْنَ الْعَبْدِ، وَالْأَمَةِ فِي الْحُكْمِ فَرَأَى الزِّنَى فِي الْأَمَةِ عَيْبًا يَجِبُ بِهِ الرَّدُّ، وَلَمْ يَرَهُ فِي الْعَبْدِ الذَّكَرِ عَيْبًا يَجِبُ بِهِ الرَّدُّ مِنْ الْحَنَفِيِّينَ.

L22836 Indeed, those most deserving of having this objection reversed upon them and being compelled to address this question are the Ḥanafīs who differentiated between male slaves and female slaves in legal rulings, deeming fornication in a female slave a defect necessitating nullification, while not deeming it a defect necessitating nullification in a male slave.

وَمَنْ رَأَى أَنَّ لِلرَّجُلِ أَنْ يُجْبِرَ أَمَتَهُ عَلَى النِّكَاحِ وَلَا يُجْبِرُ الْعَبْدَ الذَّكَرَ عَلَى النِّكَاحِ مِنْ الْمَالِكِيِّينَ، فَإِنْ كَانَتْ الْأَمَةُ فِي اسْتِثْنَاءِ مَالِهَا فِي الْبَيْعِ إنَّمَا وَجَبَ قِيَاسًا عَلَى الْعَبْدِ، فَلْيَقِيسُوهَا عَلَيْهِ فِي الرَّدِّ بِالْعَيْبِ، وَفِي الْإِكْرَاهِ فِي النِّكَاحِ، وَإِلَّا فَقَدْ تُحَكَّمُوا.

Whoever holds the opinion—among the Mālikīs—that a man may compel his female slave to marry but does not compel a male slave to marry: if the female slave is excluded from ownership of her property in the sale, this ruling is only obligated by analogy to the male slave. They must analogically extend this ruling to her regarding rescission due to defects and to compulsion in marriage. Otherwise, they have been subjected to capricious ruling.

[مَسْأَلَةٌ بَاعَ نَخْلًا قَدْ أُبِرَتْ]

A legal case involving the sale of palm trees that had been pollinated [via *taleeq*].

١٤٥٢ - مَسْأَلَةٌ: وَمَنْ بَاعَ نَخْلًا قَدْ أُبِرَتْ فَثَمَرَتُهَا لِلْبَائِعِ إلَّا أَنْ يَشْتَرِطَهَا الْمُبْتَاعُ، وَالتَّأْبِيرُ فِي النَّخْلِ: هُوَ أَنْ يُشَقَّقَ الطَّلْعُ، وَيُذَرَّ فِيهِ دَقِيقُ الْفُحَّالِ وَأَمَّا قَبْلَ الْإِبَارِ فَالطَّلْعُ لِلْمُبْتَاعِ، وَلَا يَجُوزُ فِي ثَمَرَةِ النَّخْلِ إلَّا الِاشْتِرَاطُ فَقَطْ، وَأَمَّا الْبَيْعُ فَلَا حَتَّى يَصِيرَ زَهْوًا، فَإِذَا أَزْهَى جَازَ فِيهِ الِاشْتِرَاطُ مَعَ الْأُصُولِ، وَجَازَ فِيهَا الْبَيْعُ مَعَ الْأُصُولِ وَدُونَ الْأُصُولِ، وَلَيْسَ هَذَا الْحُكْمُ إلَّا فِي النَّخْلِ الْمَأْبُورِ وَحْدِهِ كَمَا جَاءَ النَّصُّ، وَلَوْ ظَهَرَتْ ثَمَرَةُ النَّخْلِ بِغَيْرِ إبَارٍ لَمْ يَحِلَّ اشْتِرَاطُهَا أَصْلًا؛ لِأَنَّهُ خِلَافُ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

Issue: If someone sells a palm tree that has been pollinated, its fruit belongs to the seller unless the buyer stipulates it. Pollination in palm trees involves splitting the spathe and placing pollen from the male palm tree within it. Before pollination, the spathe belongs to the buyer. Regarding palm fruit, only stipulation is permissible; sale is not allowed until it reaches the pollination stage. When pollination occurs, stipulation with the parent tree becomes permissible, and sale is permitted both with and without the parent tree. This ruling applies exclusively to pollinated palm trees as explicitly stated. If palm fruit appears without pollination, stipulation is entirely impermissible, for this is contrary to the instruction of the Messenger of Allah—peace and blessings be upon him.

وَأَمَّا سَائِرُ الثِّمَارِ فَإِنَّ مَنْ بَاعَ الْأُصُولَ وَفِيهَا ثَمَرَةٌ قَدْ ظَهَرَتْ أَوْ لَمْ يَبْدُ صَلَاحُهَا، فَالثَّمَرَةُ - ضَرُورَةً وَلَا بُدَّ - لِلْبَائِعِ، لَا يَحِلُّ بَيْعُهَا إلَّا مَعَ الْأُصُولِ وَلَا دُونَهَا، وَلَا اشْتِرَاطُهَا أَصْلًا.

As for other fruits, if one sells the plants while they bear a fruit that has already appeared or whose readiness is not yet evident... Thus, the fruit—necessarily and inevitably—belongs to the seller. It is impermissible to sell it except together with the parent trees, nor may it be sold without them, nor is it permissible to stipulate its sale at all.

وَلَا يَجُوزُ لِمُشْتَرِي الْأُصُولِ أَنْ يُلْزِمَ الْبَائِعَ قَلْعَ الثَّمَرَةِ أَصْلًا، إلَّا حَتَّى يَبْدُوَ صَلَاحُهَا، فَإِذَا بَدَا صَلَاحُهَا فَلَهُ أَنْ يُلْزِمَهُ أَخْذَ مَا يُمْكِنُ النَّفْعُ فِيهِ بِوَجْهٍ مَا مِنْ الْوُجُوهِ، وَلَا يُلْزِمُهُ أَخْذَ مَا لَا يُمْكِنُ الِانْتِفَاعُ بِهِ بِوَجْهٍ مِنْ الْوُجُوهِ.

It is not permissible for the purchaser of trees to compel the seller to uproot the fruit at all until its ripeness becomes evident. When its ripeness becomes evident, he may compel the seller to harvest what can provide benefit through any possible means, but he may not compel him to remove what cannot yield benefit in any manner.

As for specifying palm trees with what we mentioned, this is because the

textual evidence applies solely to them, despite the existence of wells. Analogy is invalid, and the justification based on the appearance of the fruit is invalid because it is a false claim without evidence.

وَأَمَّا تَخْصِيصُ النَّخْلِ بِمَا ذَكَرْنَا، فَلِأَنَّ النَّصَّ لَمْ يَرِدْ إِلَّا فِيهَا فَقَطْ، مَعَ وُجُودِ الْإِبَارِ وَالْقِيَاسُ بَاطِلٌ - وَالتَّعْلِيلُ بِظُهُورِ الثَّمَرَةِ بَاطِلٌ، لِأَنَّهُ دَعْوَى كَاذِبَةٌ بِلَا دَلِيلٍ.

L22845 As for our statement that only stipulation is permissible regarding palm fruits before they reach the *izhā* stage (begin to ripen), this is due to what we previously mentioned from "the prohibition of the Prophet (peace be upon him) against selling the fruit until it reaches the *izhā* stage and turns red." Therefore, selling them before they reach *izhā* is fundamentally impermissible. He (peace be upon him) permitted stipulating conditions regarding them, so what he permitted is permissible, and what he prohibited is forbidden: {He does not speak from whim; it is but revelation inspired} [53:3-4]. {And whoever transgresses the limits set by Allah has indeed wronged himself} [65:1].[45]

وَأَمَّا قَوْلُنَا: لَا يَجُوزُ فِي ثَمَرَةِ النَّخْلِ إِلَّا الِاشْتِرَاطُ فَقَطْ مَا لَمْ تُزْهِ، فَلِمَا ذَكَرْنَا قَبْلُ مِنْ «نَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الثَّمَرَةِ حَتَّى تُزْهِيَ وَتَحْمَرَّ» ، فَلَا يَجُوزُ بَيْعُهَا قَبْلَ أَنْ تُزْهِيَ أَصْلًا، وَأَبَاحَ - عَلَيْهِ السَّلَامُ - اشْتِرَاطَهَا، فَيَجُوزُ مَا أَجَازَهُ - عَلَيْهِ السَّلَامُ - وَيَحْرُمُ مَا نَهَى عَنْهُ: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

L22846 The Shafi'is and Malikis analogized all other fruits to palm trees, and they [Shafi'is/Malikis] along with the Hanafis permitted the sale of fruit before its ripeness becomes evident and before its readiness becomes manifest for harvesting either separately or with the trunk. This contradicts the prohibition of the Messenger of Allah—may Allah bless him and his family and grant him peace—and amounts to permitting what he prohibited. He—peace be upon him—never failed to specify except regarding harvesting separately or with the trunk, and whatever they claim is a law Allah the Exalted has not authorized.

وَقَاسَ الشَّافِعِيُّونَ، وَالْمَالِكِيُّونَ: سَائِرَ الثِّمَارِ عَلَى النَّخْلِ، وَأَجَازُوا هُمْ، وَالْحَنَفِيُّونَ: بَيْعَ الثَّمَرَةِ قَبْلَ بُدُوِّ صَلَاحِهَا، وَقَبْلَ أَنْ تُزْهِيَ عَلَى الْقَطْعِ أَوْ مَعَ الْأُصُولِ - وَهَذَا خِلَافُ نَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَإِبَاحَةُ مَا حَرَّمَ، وَمَا عَجَزَ - عَلَيْهِ السَّلَامُ - قَطُّ عَنْ أَنْ يَقُولَ إِلَّا عَلَى الْقَطْعِ، أَوْ مَعَ الْأُصُولِ، وَمَا قَالَهُ - عَلَيْهِ السَّلَامُ - قَطُّ، فَهُوَ شَرْعٌ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى.

L22847 Among those who prohibited the absolute sale of fruit before the appearance of its ripeness - without stipulating harvesting or other conditions - are Sufyān al-Thawrī and Ibn Abī Laylā. It was narrated to us through the chain of Muslim: Yaḥyā ibn Yaḥyā reported from Mālik from Nāfi' from Ibn 'Umar, who said: "The Messenger of Allāh - peace and blessings of Allāh be upon him - forbade the sale of fruit until its ripeness begins to show, prohibiting both the seller and the buyer."

وَمِمَّنْ مَنَعَ بَيْعَ الثَّمَرَةِ قَبْلَ بُدُوِّ صَلَاحِهَا جُمْلَةً لَا بِشَرْطِ الْقَطْعِ وَلَا بِغَيْرِهِ: سُفْيَانُ الثَّوْرِيُّ، وَابْنُ أَبِي لَيْلَى -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا يَحْيَى بْنُ يَحْيَى عَنْ مَالِكٍ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ بَيْعِ الثَّمَرَةِ حَتَّى يَبْدُوَ صَلَاحُهَا، نَهَى الْبَائِعَ وَالْمُشْتَرِيَ» .

L22848 And it was also narrated by us through the chains of Ayyūb, 'Ubaydullāh ibn

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ أَيُّوبَ، وَعُبَيْدِ اللَّهِ بْنِ عُمَرَ، وَمُوسَى بْنِ عُقْبَةَ، وَيَحْيَى بْنِ سَعِيدٍ، كُلُّهُمْ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[45] **Qur'an references (L22845):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 65:1 (At-Talaq).

ʿUmar, Mūsā ibn ʿUqbah, and Yaḥyā ibn Saʿīd—all of them from Nāfiʿ, from Ibn ʿUmar, from the Messenger of Allāh (peace and blessings be upon him).

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ جَعْفَرٍ، وَشُعْبَةَ، كِلَاهُمَا عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ ابْنِ عُمَرَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَبِيعُوا الثَّمَرَ حَتَّى يَبْدُوَ صَلَاحُهُ».

L22849–22850 And we have also reported it through the chain of Ismāʿīl ibn Jaʿfar and Shuʿbah, both of whom narrated from ʿAbdullāh ibn Dīnār from Ibn ʿUmar from the Prophet (peace and blessings be upon him) who said: "Do not sell produce until its ripeness becomes evident."

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ ابْنِ شِهَابٍ عَنْ سَالِمٍ عَنْ أَبِيهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L22851 We have also narrated it through the chain of Ibn Shihāb, from Sālim, from his father, from the Prophet (peace be upon him).

وَمِنْ طَرِيقِ أَبِي الزُّبَيْرِ، وَعَمْرِو بْنِ دِينَارٍ، كِلَاهُمَا عَنْ جَابِرٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L22852 And through the chain of Abi al-Zubayr and Amr ibn Dinar, both of whom narrated from Jabir from the Prophet—may Allah's blessings and peace be upon him and his family.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، كِلَاهُمَا عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَصَارَ نَقْلَ تَوَاتُرٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَمِنَ الصَّحَابَةِ، وَإِلَى التَّابِعِينَ، وَفِيمَنْ دُونَهُمْ.

L22853 Through the chain of Saʿīd ibn al-Musayyib and Abū Salama ibn ʿAbd al-Raḥmān—both narrating from Abū Hurayrah from the Prophet (peace be upon him and his family and grant him peace)—this became a mutawatir transmission from the Prophet (peace be upon him and his family and grant him peace), through the Companions, extending to the Successors and those below them.

فَإِنْ قُطِعَ شَيْءٌ مِنَ الثَّمَرَةِ، فَإِنْ كَانَ إِنْ تُرِكَ أَزْهَى إِنْ كَانَ بَلَحًا أَوْ بُسْرًا، أَوْ ظَهَرَ فِيهِ الطِّيبُ إِنْ كَانَ مِنْ سَائِرِ الثِّمَارِ -: لَمْ يَحِلَّ بَيْعُهُ حَتَّى يَصِيرَ فِي الْحَالِ الَّتِي أَبَاحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بَيْعَهُ فِيهَا - فَإِنْ كَانَ إِنْ تُرِكَ لَمْ يَزْهُ أَبَدًا، وَلَا ظَهَرَ فِيهِ الطِّيبُ أَبَدًا -: حَلَّ بَيْعُهُ بَعْدَ الْقَطْعِ لَا قَبْلَهُ؛ لِأَنَّهُ حِينَئِذٍ قَدْ خَرَجَ عَنِ الصِّفَةِ الَّتِي أَحَلَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - جَوَازَ بَيْعِهِ إِلَيْهَا.

L22854 If a portion of the fruit is severed, then if leaving it would allow young dates (balah) to mature into rutab or unripe dates (busr) to ripen, or if fragrance manifests in it – when dealing with all other fruits – the sale is not permissible until it reaches the state in which the Messenger of Allah (peace be upon him and his family) permitted its sale. But if leaving it would never result in maturation for dates or manifestation of fragrance for other fruits, its sale becomes lawful after severing, not before, for it has then departed from the attribute to which the Messenger of Allah linked the permissibility of its sale.

وَبِيَقِينٍ يَدْرِي كُلُّ ذِي فَهْمٍ وَتَمْيِيزٍ أَنَّ نَهْيَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ بَيْعِ ثَمَرَةِ النَّخْلِ حَتَّى تُزْهِيَ، وَعَنْ بَيْعِ الثِّمَارِ حَتَّى يَبْدُوَ صَلَاحُهَا: إِنَّمَا هُوَ بِلَا شَكٍّ فِيمَا إِنْ تُرِكَ أَزْهَى أَوْ ظَهَرَ صَلَاحُهُ لَا يُمْكِنُ غَيْرُ ذَلِكَ، وَأَمَّا مَا لَا يُمْكِنُ أَنْ يَصِيرَ

L22855 And with certainty, every person of understanding and discernment knows that the Messenger of Allah's prohibition—peace and blessings be upon him and his family—against selling date fruits until they flower and against selling fruits until their fitness for harvest becomes evident applies only—without doubt—to what, if left, would inevitably reach the stage of flowering or man-

ifest fitness for harvest. As for what can never attain flowering nor ever manifest fitness for harvest, it is not the subject prohibited by him—peace and blessings be upon him and his family—from being sold until it flowers or until its fitness appears. Since it is not the prohibited sale, Allah the Exalted has said: {And Allah has permitted trade} [al-Baqarah: 275].[46]

L22856 As for our statement that it is not permissible for the purchaser of the trees to demand the seller uproot the trees bearing his fruit before the purchaser can benefit from them, what is established from the Messenger of Allah—peace and blessings be upon him and his family—via al-Mughīrah ibn Shuʿbah's narration is that he prohibited "the waste of wealth." The seller has not transgressed by the presence of his fruit on their trees, thus he would be the one wasting his own wealth.

L22857–22859 Similarly, the ruling applies to one who sells land containing his seeds or date stones without selling the seeds or stones themselves. The buyer of the land may not uproot and take the crop until it has reached the initial phase at which benefit can be derived from it in a proper manner. Therefore, at that time, he has no right to usurp another's land or trees through his property without the permission of the owner of the source property. And success comes only from Allah, the Most High. 1453 –

L22860 Legal ruling: As for after the emergence of fragrance in date fruits, conditional stipulations are permissible if the parent trees are sold. It is also permissible to sell them either with or without the parent trees. The validity of stipulations is due to the establishment of the attribute upon them, as indicated by his statement—peace be upon him—"It has been pollinated"—meaning this fruit has undergone pollination. As for the permissibility of selling them with or without the parent trees, this derives from the Messenger of Allah's authorization—may Allah bless him and grant him peace—to sell them when their spathe emerges. Success comes through Allah, the Exalted.

L22861 **[Issue: He sold date palms containing fruit that had been pollinated.]**

إِلَى الْإِزْهَاءِ أَبَدًا، وَلَا أَنْ يَبْدُوَ صَلَاحُهُ أَبَدًا، فَلَيْسَ هُوَ الَّذِي نَهَى - عَلَيْهِ السَّلَامُ - عَنْ بَيْعِهِ حَتَّى يُزْهِيَ أَوْ حَتَّى يَبْدُوَ صَلَاحُهُ، فَإِذْ لَيْسَ هُوَ الْمَنْهِيُّ عَنْ بَيْعِهِ فَقَدْ قَالَ اللَّهُ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

وَأَمَّا قَوْلُنَا: لَا يَجُوزُ لِمُشْتَرِي الْأُصُولِ أَنْ يَأْخُذَ الْبَائِعَ بِقَلْعِ ثَمَرَتِهِ قَبْلَ أَنْ يُمْكِنَهُ الِانْتِفَاعُ بِهَا، فَالثَّابِتُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ طَرِيقِ الْمُغِيرَةِ بْنِ شُعْبَةَ أَنَّهُ - عَلَيْهِ السَّلَامُ -: «نَهَى عَنْ إِضَاعَةِ الْمَالِ» وَالْبَائِعُ لَمْ يَتَعَدَّ فِي كَوْنِ ثَمَرَتِهِ فِي أُصُولِهَا فَيَكُونُ هُوَ الْمُضَيِّعُ لِمَالِهِ.

وَكَذَلِكَ الْقَوْلُ فِيمَنْ بَاعَ أَرْضًا وَفِيهَا بَذْرٌ لَهُ وَنَوًى وَلَمْ يَبِعْ الْبَذْرَ وَلَا النَّوَى، فَلَيْسَ لِمُشْتَرِي الْأَرْضِ أَخْذُهُ بِقَلْعِ ذَلِكَ إِلَّا حَتَّى يَصِيرَ النَّبَاتُ فِي أَوَّلِ حُدُودِ الِانْتِفَاعِ بِهِ فِي وَجْهٍ مَا، فَلَيْسَ لَهُ حِينَئِذٍ أَنْ يَغُلَّ أَرْضَ غَيْرِهِ، وَلَا شَجَرَ غَيْرِهِ، بِمَتَاعِهِ بِغَيْرِ إِذْنِ صَاحِبِ الْأَصْلِ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. ١٤٥٣ -.

مَسْأَلَةٌ: وَأَمَّا بَعْدَ ظُهُورِ الطِّيبِ فِي ثَمَرَةِ النَّخْلِ فَإِنَّهُ يَجُوزُ فِيهَا الِاشْتِرَاطُ إِنْ بِيعَتْ الْأُصُولُ، وَيَجُوزُ فِيهَا الْبَيْعُ مَعَ الْأُصُولِ وَدُونَهَا - أَمَّا الِاشْتِرَاطُ فَلِوُقُوعِ الصِّفَةِ عَلَيْهَا وَهِيَ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «قَدْ أُبِّرَتْ» فَهَذِهِ ثَمَرَةٌ قَدْ أُبِّرَتْ - وَأَمَّا جَوَازُ بَيْعِهَا مَعَ الْأُصُولِ وَدُونَهَا لِإِبَاحَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْعَهَا إِذَا أَزْهَتْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ بَاعَ أُصُولَ نَخْلٍ وَفِيهَا ثَمَرَةٌ قَدْ أُبِّرَتْ]

[46] **Qur'an references (L22855):** Qur'an 2:275 (Al-Baqarah).

L22862 1454 - Issue: If someone sells palm trees containing fruits that have been pollinated, the buyer may stipulate receiving all of them if he wishes, or half of them, a third of them, a specified undivided share in all of them, or a specific part thereof.

١٤٥٤ - مَسْأَلَةٌ: وَمَنْ بَاعَ أُصُولَ نَخْلٍ وَفِيهَا ثَمَرَةٌ قَدْ أُبِرَتْ فَلِلْمُشْتَرِي أَنْ يَشْتَرِطَ جَمِيعَهُمَا إنْ شَاءَ أَوْ نِصْفَهَا أَوْ ثُلُثَهَا أَوْ جُزْءًا كَذَلِكَ مُسَمًّى مُشَاعًا فِي جَمِيعِهَا، أَوْ شَيْئًا مِنْهَا مُعَيَّنًا.

L22863 If he finds a defect in the palm tree, he may return it without being obligated to return the fruit, because part of the fruit constitutes individual fruits. The Prophet's statement (peace be upon him)—"If it contains fruit that has been pollinated, its fruit belongs to the seller unless the buyer stipulates it"—applies to anything from it that is designated as fruit of the palm tree. Stipulations differ from the sale itself; thus, stipulated conditions are not voided by returning the purchased item due to rejecting what was bought, as no explicit Quranic text or Sunnah mandates this.

فَإِنْ وَجَدَ بِالنَّخْلِ عَيْبًا رَدَّهَا وَلَمْ يَلْزَمْهُ رَدُّ الثَّمَرَةِ؛ لِأَنَّ بَعْضَ الثَّمَرَةِ ثَمَرَةٌ، وَقَوْلُهُ - عَلَيْهِ السَّلَامُ -: «وَفِيهَا ثَمَرَةٌ قَدْ أُبِّرَتْ فَثَمَرَتُهَا لِلْبَائِعِ إلَّا أَنْ يَشْتَرِطَهَا الْمُبْتَاعُ» يَقَعُ عَلَى كُلِّ مَا كَانَ مِنْهَا يُسَمَّى ثَمَرَةً لِلنَّخْلِ - وَالِاشْتِرَاطُ غَيْرُ الْبَيْعِ، فَلَا يَرُدُّ مَا اشْتَرَطَ مِنْ أَجْلِ رَدِّهِ لِمَا اشْتَرَى، إذْ لَمْ يُوجِبْ ذَلِكَ نَصُّ قُرْآنٍ، وَلَا سُنَّةٍ.

L22864 If someone purchases date fruit after the appearance of ripeness, or purchases fruits of other trees, then discovers the appearance of ripeness, or finds a defect in the rootstock and returns it, or finds a defect in the fruit and returns it.

فَلَوْ اشْتَرَى ثَمَرَةَ النَّخْلِ بَعْدَ ظُهُورِ الطِّيبِ، أَوْ ثَمَرَ أَشْجَارٍ غَيْرِ النَّخْلِ، ثُمَّ وَجَدَ ظُهُورَ الطِّيبِ، أَوْ ثَمَرَ أَشْجَارٍ غَيْرِ النَّخْلِ، ثُمَّ وَجَدَ بِالْأُصُولِ عَيْبًا فَرَدَّهَا، أَوْ وَجَدَ بِالثَّمَرَةِ عَيْبًا فَرَدَّهَا.

L22865 If he purchased the fruit along with the rootstocks in a single transaction, he must either return all of them without exception or keep all of them without exception, because it is a single transaction.

فَإِنْ كَانَ اشْتَرَى الثَّمَرَةَ مَعَ الْأُصُولِ صَفْقَةً وَاحِدَةً رَدَّ الْجَمِيعَ وَلَا بُدَّ، أَوْ أَمْسَكَ الْجَمِيعَ وَلَا بُدَّ؛ لِأَنَّهَا صَفْقَةٌ وَاحِدَةٌ.

L22866 If the produce had been purchased in a separate transaction, he would not return it when returning the principal assets due to a defect, nor may he return the principal assets unless he returns the produce due to a defect.

فَلَوْ كَانَ اشْتَرَى الثَّمَرَةَ فِي صَفْقَةٍ أُخْرَى لَمْ يَرُدَّهَا - إنْ رَدَّ الْأُصُولَ بِعَيْبٍ - وَلَا يَرُدُّ الْأُصُولَ إلَّا إنْ رَدَّ الثَّمَرَةَ بِعَيْبٍ.

L22867–22869 If one purchased palm tree trunks and stipulated the fruit or part of it, then found the sale invalid—necessitating its return—the fruit must necessarily be returned. He remains liable for it if he destroyed it or if it perished, because the Messenger of Allah—peace and blessings be upon him and his family—only permitted stipulation for the buyer, and a buyer is none other than one whose sale is valid. As for one whose sale is invalid, he is not the one whom the Messenger of Allah—peace and blessings be upon him

فَلَوْ اشْتَرَى الْأُصُولَ مِنْ النَّخْلِ وَاشْتَرَطَ الثَّمَرَةَ أَوْ بَعْضَهَا فَوَجَدَ الْبَيْعَ فَاسِدًا فَوَجَبَ رَدُّهُ رَدَّ الثَّمَرَةَ وَلَا بُدَّ، وَضَمِنَهَا إنْ كَانَ أَتْلَفَهَا أَوْ تَلِفَتْ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَمْ يُبِحْ الِاشْتِرَاطَ إلَّا لِلْمُبْتَاعِ، وَلَا يَكُونُ مُبْتَاعًا إلَّا مَنْ قَدْ صَحَّ بَيْعُهُ، وَأَمَّا مَنْ لَمْ يَصِحَّ بَيْعُهُ فَلَيْسَ هُوَ الَّذِي جَعَلَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

and his family—granted permission to stipulate the fruit. Since he does not qualify for this permission, what he stipulated becomes unlawful—in opposition to the command of the Messenger of Allah—peace and blessings be upon him and his family. And he is a transgressor. Allah, the Exalted, says: “So whoever transgresses against you, retaliate against him to the same extent as he transgressed against you” [Al-Baqarah: 194].[47]

A case where someone sold a date palm or two date palms with fruit that has been pollinated.

Issue 1455: If someone sells one or two date palms containing fruit that has begun to develop after pollination, the buyer is invalidated from claiming ownership of their fruit entirely. This ruling applies only when three palms and upwards are sold.

If someone sells their undivided share in palm trees, and if their share—were it to be divided—amounts to three palm trees or more, the buyer may stipulate the inclusion of the fruit. Otherwise, it is not permissible. In all cases we have mentioned, the fruit necessarily belongs to the seller, based on the statement of the Messenger of Allah—peace be upon him: “Whoever sells palm trees after they have been fertilized, their fruit belongs to the seller unless the buyer stipulates it.” The Prophet—peace be upon him—applied this ruling exclusively to palm trees.

The minimum number to which the term “nakhl” (date palms) applies is three or more. This is because the dual form denoting two is recognized in the language in which the Qur’an was revealed and in which the Messenger of Allah—peace and blessings be upon him—addressed us, whereas the initial plural form applies exclusively to three or more.

If they mention the words of Allah, the Most High: {Indeed, both your hearts have inclined} [At-Tahrim: 4].[48]

We said: It is well-known among the Arabs that any two things are referred to using the plural wording [instead of the dual], as the *rajaz* poet said:

اشْتِرَاطَ الثَّمَرِ، فَإِذْ لَيْسَ هُوَ ذَلِكَ فَحَرَامٌ عَلَيْهِ مَا اشْتَرَطَهُ بِخِلَافِ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهُوَ مُتَعَدٍّ، قَالَ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤]

[مَسْأَلَةٌ بَاعَ نَخْلَةً أَوْ نَخْلَتَيْنِ وَفِيهَا ثَمَرٌ قَدْ أُبِرَ]

١٤٥٥ - مَسْأَلَةٌ: وَمَنْ بَاعَ نَخْلَةً أَوْ نَخْلَتَيْنِ وَفِيهَا ثَمَرٌ قَدْ أُبِرَ لَمْ يَجُزْ لِلْمُبْتَاعِ اشْتِرَاطُ ثَمَرَتِهَا أَصْلًا، وَلَا يَجُوزُ ذَلِكَ إلَّا فِي ثَلَاثَةٍ فَصَاعِدًا.

وَمَنْ بَاعَ حِصَّةً لَهُ مُشَاعَةً فِي نَخْلٍ، فَإِنْ كَانَ يَقَعُ لَهُ فِي حِصَّتِهِ مِنْهَا - لَوْ قُسِّمَتْ -: ثَلَاثُ نَخَلَاتٍ فَصَاعِدًا، جَازَ لِلْمُبْتَاعِ اشْتِرَاطُ الثَّمَرَةِ، وَإِلَّا فَلَا - وَالثَّمَرَةُ فِي كُلِّ مَا قُلْنَا لِلْبَائِعِ وَلَا بُدَّ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ بَاعَ نَخْلًا قَدْ أُبِّرَتْ فَثَمَرَتُهَا لِلْبَائِعِ، إلَّا أَنْ يَشْتَرِطَهُ الْمُبْتَاعُ» فَلَمْ يَحْكُمْ - عَلَيْهِ السَّلَامُ - بِذَلِكَ إلَّا فِي نَخْلٍ.

وَأَقَلُّ مَا يَقَعُ عَلَيْهِ اسْمُ " نَخْلٍ " ثَلَاثُ فَصَاعِدًا، لِأَنَّ لَفْظَ التَّثْنِيَةِ الْوَاقِعَ عَلَى اثْنَيْنِ مَعْرُوفٌ فِي اللُّغَةِ الَّتِي بِهَا نَزَلَ الْقُرْآنُ، وَخَاطَبَنَا بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَوَّلُ لَفْظِ الْجَمْعِ إنَّمَا يَقَعُ عَلَى الثَّلَاثِ فَصَاعِدًا.

فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {فَقَدْ صَغَتْ قُلُوبُكُمَا} [التحريم: ٤] .

قُلْنَا: الْمَعْرُوفُ عِنْدَ الْعَرَبِ: أَنَّ كُلَّ اثْنَيْنِ مِنْ اثْنَيْنِ فَإِنَّهُ يُخْبَرُ عَنْهُ بِلَفْظِ الْجَمْعِ، وَقَدْ قَالَ الرَّاجِزُ:

[47] **Qur’an references (L22867):** Qur’an 2:194 (Al-Baqarah).
[48] **Qur’an references (L22874):** Qur’an 66:4 (At-Tahrim).

L22876 And two vast entities cast twice, their backs akin to the backs of two shields.

وَمِهْمَهَيْنِ قَذَفَيْنِ مَرَّتَيْنِ ... ظَهْرَاهُمَا مِثْلُ ظُهُورِ التُّرْسَيْنِ

L22877 If it is argued: "A plural is the addition of one thing to another," then does this mean the dual [form] is also considered a plural?

فَإِنْ قِيلَ: الْجَمْعُ ضَمُّ شَيْءٍ إِلَى شَيْءٍ فَالِاثْنَانِ جَمْعٌ؟

L22878 We said: This is invalid, for if it were as you claimed, it would be permissible to report about a singular entity using a plural expression, such as saying: "Zayd stood" and "The man killed," since a singular entity is also composed of parts, some of which are aggregated to others. And success is through Allah, the Most High.

قُلْنَا: هَذَا بَاطِلٌ، وَلَوْ كَانَ كَمَا قُلْتُمْ لَجَازَ أَنْ نُخْبِرَ عَنْ الْوَاحِدِ بِلَفْظِ الْجَمْعِ فَيُقَالُ: زَيْدٌ قَامُوا، وَالرَّجُلُ قَتَلُوا؛ لِأَنَّ الْوَاحِدَ أَيْضًا أَجْزَاءٌ مَجْمُوعٌ بَعْضُهَا إلَى بَعْضٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22879 **A legal issue concerning the sale of goods with the stipulation that the price be settled in full in a specified location.**

[مَسْأَلَةُ بَيْعُ سِلْعَةٍ عَلَى أَنْ يُوَفِّيَهُ الثَّمَنَ فِي مَكَان مُسَمًّى]

L22880–22882 1456 – Issue: It is not permissible to sell a commodity on the condition that he fulfills the price in full in a specified place, nor on... That he delivers the commodity in full at a specified place, for this is a condition not stipulated in the Book of Allah the Almighty, and thus it is invalid. However, the seller may collect the price once it is paid in full wherever the two parties are located, or wherever he or his agent finds the buyer within the lands of Allah—provided the payment is immediate, in accordance with Allah the Exalted's command through His Messenger's decree (may Allah's peace and blessings be upon him and his family) to grant every rightful claimant their due. The seller is only required not to obstruct the buyer from accessing what he sold.

١٤٥٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ سِلْعَةٍ عَلَى أَنْ يُوَفِّيَهُ الثَّمَنَ فِي مَكَان مُسَمًّى وَلَا عَلَى أَنْ يُوَفِّيَهُ السِّلْعَةَ فِي مَكَان مُسَمًّى؛ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ، لَكِنْ يَأْخُذُهُ الْبَائِعُ بِإِيفَائِهِ الثَّمَنَ حَيْثُ هُمَا، أَوْ حَيْثُ وَجَدَهُ هُوَ أَوْ وَكِيلُهُ مِنْ بِلَادِ اللَّهِ تَعَالَى، إنْ كَانَ الثَّمَنُ حَالًّا لِأَمْرِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِإِعْطَاءِ كُلِّ ذِي حَقٍّ حَقَّهُ - وَلَيْسَ عَلَى الْبَائِعِ إلَّا أَنْ لَا يَحُولَ بَيْنَ الْمُشْتَرِي وَبَيْنَ مَا بَاعَ مِنْهُ فَقَطْ.

L22883 And success is by Allah, the Exalted.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22884 **A legal case concerning the sale of a female slave on the condition that she be entrusted to the custody of a trustworthy person until she menstruates.**

[مَسْأَلَةُ بَيْعُ جَارِيَةٍ بِشَرْطِ أَنْ تُوضَعَ عَلَى يَدَيْ عَدْلٍ حَتَّى تَحِيضَ]

L22885 Issue 1457: It is impermissible to sell a female slave on the condition that she be placed under the custody of a morally upright custodian until she menstruates - whether she is sexually mature or not - and a sale with this stipulation is vitiated. If the stipulation is overridden, however, the sale

remains valid. This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān.

١٤٥٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ جَارِيَةٍ بِشَرْطِ أَنْ تُوضَعَ عَلَى يَدَيْ عَدْلٍ حَتَّى تَحِيضَ - رَائِعَةً كَانَتْ أَوْ غَيْرَ رَائِعَةٍ - وَالْبَيْعُ بِهَذَا الشَّرْطِ فَاسِدٌ، فَإِنْ غَلَبَ عَلَى ذَلِكَ فَبَيْعُهُ تَامٌّ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L22886 وَأَوْجَبَهُ مَالِكٌ فِي الرَّائِعَةِ، وَلَمْ يُوجِبْهُ فِي غَيْرِ الرَّائِعَةِ -: وَهَذَا أَوَّلُ التَّنَاقُضِ، وَفَسَادُ الْقَوْلِ، لِأَنَّ غَيْرَ الرَّائِعَةِ تُوطَأُ كَمَا تُوطَأُ الرَّائِعَةُ، وَتَحْمِلُ كَمَا تَحْمِلُ الرَّائِعَةُ.

L22887 ثُمَّ أَعْظَمُ التَّنَاقُضِ قَوْلُهُمْ: إِنَّ الْحَيْضَ لَا يَكُونُ بَرَاءَةً مِنَ الْحَمْلِ، وَإِنَّ الْحَامِلَ قَدْ تَحِيضُ؟ فَقُلْنَا لَهُمْ: يَا هَؤُلَاءِ فَلِأَيِّ مَعْنًى أَوْجَبْتُمْ مَنْعَ الْمُشْتَرِي مِنْ جَارِيَتِهِ، وَأَوْجَبْتُمْ هَذَا الشَّرْطَ الْفَاسِدَ الَّذِي لَمْ يُوجِبْهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ فَاسِدَةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَلَا تَوَرُّعٌ، وَلَا رَأْيٌ يُعْقَلُ؟

L22888 وَأَنْتُمْ تَقُولُونَ: إِنَّهَا إِذَا حَاضَتْ أُسْلِمَتْ إِلَيْهِ، وَحَلَّ لَهُ التَّلَذُّذُ مِنْهَا فِيمَا فَوْقَ الْمِئْزَرِ، وَحَلَّ لَهُ وَطْؤُهَا بَعْدَ الطُّهْرِ، وَمُمْكِنٌ - عِنْدَكُمْ - أَنْ تَكُونَ حَامِلًا مِنَ الْبَائِعِ حِينَئِذٍ، فَأَيُّ فَرْقٍ بَيْنَ مَا أَبَحْتُمْ لَهُ الْآنَ، وَبَيْنَ مَا مَنَعْتُمُوهُ مِنْهُ قَبْلَ أَنْ تَحِيضَ، وَخَوْفُ الْحَمْلِ -: وَفَسَادُ الْمَبِيعِ مَوْجُودٌ فِي كِلْتَا الْحَالَتَيْنِ؟ فَأَيُّ عَجَبٍ أَعْجَبُ مِنْ هَذَا

L22889 وَلَا خِلَافَ بَيْنَنَا وَبَيْنَكُمْ فِي أَنَّهُ إِنْ ظَهَرَ بِهَا حَمْلٌ بَعْدَ الْحَيْضِ، وَبَعْدَ إِبَاحَتِكُمْ لَهُ وَطْأَهَا، فَوَلَدَتْهُ لِأَقَلَّ مِنْ سِتَّةِ أَشْهُرٍ -: فَإِنَّ الْبَيْعَ مَفْسُوخٌ، وَهِيَ مَرْدُودَةٌ إِلَى الْبَائِعِ وَوَلَدُهَا بِهِ لَاحِقٌ، إِنْ كَانَ قَدْ أَقَرَّ بِوَطْئِهَا وَلَمْ يَدَّعِ اسْتِبْرَاءً - فَأَيُّ مَنْفَعَةٍ لِلْمُوَاضَعَةِ، أَوْ أَيُّ مَعْنًى لَهَا؟

L22890–22891 If they say, “We merely followed the transmitted text: ’Do not have inter-

course with a woman in the waiting period (ʿiddah) until she has menstruated?"

فَإِنْ قَالُوا: إِنَّمَا اتَّبَعْنَا النَّصَّ الْوَارِدَ: «لَا تُوطَأُ حَائِلٌ حَتَّى تَحِيضَ» ؟

L22892 We said: Far from it! Rather, you have contradicted this very text itself, for you differentiated between the menstruating woman and the non-menstruating woman—a distinction absent in the textual evidence, nor stated by any known scholar before you. You also differentiated between the woman who has not had intercourse and others, though this too lacks basis in the textual evidence. You cannot claim consensus in this matter, for the Ḥanafīs assert: The woman who has not had intercourse and others are equivalent—neither may be lawfully engaged in intercourse with until she menstruates or undergoes the waiting period to confirm she is not pregnant, as required for those who do not menstruate. This narration is not validated; even if it were, we would adhere to it. However, we maintain: The seller must not sell her until he ensures she undergoes one menstrual cycle, nor may the purchaser have intercourse with her until he similarly confirms this, solely as a precaution against pregnancy. If we conclusively determine she is pregnant by the seller, the sale is unlawful if she is his umm walad (a concubine who bears her master's child). If the pregnancy is from another, the sale is permissible, but intercourse remains forbidden until she delivers and her postpartum bleeding ceases.

قُلْنَا: كَلَّا، بَلْ خَالَفْتُمْ هَذَا النَّصَّ بِعَيْنِهِ، لِأَنَّكُمْ فَرَّقْتُمْ بَيْنَ الرَّائِعَةِ وَغَيْرِ الرَّائِعَةِ، وَلَيْسَ هَذَا فِي الْخَبَرِ، وَلَا قَالَهُ أَحَدٌ نَعْلَمُهُ قَبْلَكُمْ، وَفَرَّقْتُمْ بَيْنَ الْبِكْرِ وَغَيْرِ الْبِكْرِ، وَلَيْسَ ذَلِكَ فِي الْخَبَرِ، وَلَيْسَ لَكُمْ أَنْ تَدَّعُوا هَهُنَا إِجْمَاعًا، فَإِنَّ الْحَنَفِيِّينَ يَقُولُونَ: إِنَّ الْبِكْرَ وَغَيْرَ الْبِكْرِ سَوَاءٌ، لَا تُوطَأُ وَاحِدَةٌ مِنْهُمَا حَتَّى تَحِيضَ، أَوْ حَتَّى تَسْتَبْرِئَ بِمَا تَسْتَبْرِئُ بِهِ الَّتِي لَا تَحِيضُ -: وَهَذَا خَبَرٌ لَمْ يَصِحَّ وَلَوْ صَحَّ لَقُلْنَا بِهِ - لَكِنَّا نَقُولُ: لَا يَبِيعُهَا حَتَّى يَسْتَبْرِئَهَا بِحَيْضَةٍ، وَلَا يَطَؤُهَا الْمُشْتَرِي حَتَّى يَسْتَبْرِئَهَا كَذَلِكَ احْتِيَاطًا خَوْفَ الْحَمْلِ فَقَطْ، فَإِنْ أَيْقَنَّا أَنَّ بِهَا حَمْلًا مِنَ الْبَائِعِ فَالْبَيْعُ حَرَامٌ إِنْ كَانَتْ أُمَّ وَلَدِهِ، وَإِنْ كَانَ الْحَمْلُ مِنْ غَيْرِهِ فَالْبَيْعُ حَلَالٌ، وَالْوَطْءُ حَرَامٌ حَتَّى تَضَعَ وَتَطْهُرَ.

L22893 He is entrusted with that just as he is entrusted with what is prohibited for him regarding intercourse with menstruating women and postpartum women, with no difference, since no textual source has indicated otherwise. There is no difference between his being entrusted over the one he purchased and your being entrusted over the one you place her with him for that purpose.

وَهُوَ مُؤْتَمَنٌ عَلَى ذَلِكَ كَائْتِمَانِهِ عَلَى مَا حُرِّمَ عَلَيْهِ مِنْ وَطْءِ الْحَائِضِ، وَالنُّفَسَاءِ وَلَا فَرْقَ، إِذْ لَمْ يَأْتِ نَصٌّ بِغَيْرِ ذَلِكَ، وَلَا فَرْقَ بَيْنَ ائْتِمَانِهِ عَلَى الَّتِي اشْتَرَى وَبَيْنَ ائْتِمَانِكُمْ مَنْ تَضَعُونَهَا عِنْدَهُ لِذَلِكَ.

L22894 You do not distinguish between the trustworthy and the non-trustworthy here, yet you distinguish between the excellent opinion and the non-excellent one—and this is confusion and contradiction.

وَأَنْتُمْ لَا تُفَرِّقُونَ بَيْنَ الثِّقَةِ وَبَيْنَ غَيْرِ الثِّقَةِ هَهُنَا، وَفَرَّقْتُمْ بَيْنَ الرَّائِعَةِ وَغَيْرِ الرَّائِعَةِ - وَهَذَا تَخْلِيطٌ وَتَنَاقُضٌ.

L22895 As for the ruling concerning her if pregnancy becomes apparent, we will mention it, God the Exalted willing, in the "Book of Istibrāʾ" with its proof.

وَأَمَّا الْحُكْمُ فِيهَا إِنْ ظَهَرَ بِهَا حَمْلٌ فَسَنَذْكُرُهُ إِنْ شَاءَ اللَّهُ تَعَالَى فِي " كِتَابِ الِاسْتِبْرَاءِ " بِبُرْهَانِهِ - وَلَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ الْعَلِيِّ الْعَظِيمِ.

There is no power nor strength except with Allah, the Most High, the Almighty.

[مَسْأَلَةٌ بَيْعُ عَبْدٍ أَوْ أَمَةٍ عَلَى أَنْ يُعْطِيَهُمَا الْبَائِعُ كِسْوَةً]

L22896 **A legal issue: The sale of a male slave or a female slave on the condition that the seller provides him or her with a garment.**

١٤٥٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ عَبْدٍ أَوْ أَمَةٍ عَلَى أَنْ يُعْطِيَهُمَا الْبَائِعُ كِسْوَةً - قَلَّتْ أَوْ كَثُرَتْ - وَلَا بَيْعُ دَابَّةٍ عَلَى أَنْ يُعْطِيَهَا الْبَائِعُ إكَافَهَا، أَوْ رَسَنَهَا، أَوْ بُرْدَعَتَهَا، وَالْبَيْعُ بِهَذَا الشَّرْطِ بَاطِلٌ مَفْسُوخٌ لَا يَحِلُّ فَمَنْ قُضِيَ عَلَيْهِ بِذَلِكَ قَسْرًا فَهُوَ ظُلْمٌ لَحِقَهُ وَالْبَيْعُ جَائِزٌ.

L22897 1458. Issue: It is not permissible to sell a male slave or female slave on the condition that the seller provides the slave clothing—whether little or much—nor to sell a riding animal on the condition that the seller provides its saddle, bridle, or bit. A sale with such a condition is invalid, annulled, and impermissible. If a judgment is enforced upon someone compelling this forcibly, it constitutes an injustice against him, and the sale itself is permissible.

بُرْهَانُ ذَلِكَ: أَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ، وَقَالَ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩]

L22898–22899 The evidence for this is that it is a condition not stipulated in the Book of Allah, the Almighty and Majestic, hence it is invalid. He, the Exalted, said: “Do not consume your wealth among yourselves wrongfully, except as trade through mutual consent among you” [An-Nisa: 29].[49]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L22900 The Messenger of Allah (peace be upon him) said, “Your blood and your wealth are inviolable for you.”

فَسَمَّى اللَّهُ تَعَالَى أَخْذَ الْمَرْءِ مَالَ غَيْرِهِ مِنْ غَيْرِ تَرَاضٍ بِالتِّجَارَةِ: بَاطِلًا، وَحَرَّمَهُ، إذْ نَهَى عَنْهُ، وَعَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - أَيْضًا.

L22901 Allah the Exalted has declared the act of seizing another’s property without mutual consent under the guise of trade to be null and void, prohibited it - as He has forbidden such acts - and affirmed this prohibition through the explicit pronouncements of His Messenger (peace be upon him).

وَالْكِسْوَةُ مَالُ الْبَائِعِ وَلَمْ يَبِعْهَا بِرِضًا مِنْهُ، فَلَا يَحِلُّ أَخْذُهَا مِنْهُ أَصْلًا - وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L22902 The garment is the property of the seller, and he did not sell it with his consent. Therefore, it is absolutely impermissible to take it from him; this is the opinion of Abū Ḥanīfah, Al-Shāfiʿī, Abū Sulaymān, and their companions.

وَقَالَ مَالِكٌ يُجْبَرُ عَلَى كِسْوَةِ مِثْلِهَا لِلشِّتَاءِ إنْ بِيعَتْ فِي الشِّتَاءِ، وَعَلَى كِسْوَةِ مِثْلِهَا فِي الصَّيْفِ إنْ بِيعَتْ فِي الصَّيْفِ - كِسْوَةً تَجُوزُ الصَّلَاةُ فِي مِثْلِهَا - فَكَانَتْ هَذِهِ شَرِيعَةً لَمْ يَأْتِ بِهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ سَدِيدٌ، وَلَا قَوْلُ

L22903 Mālik said: The buyer is compelled to provide winter clothing equivalent to hers if she is sold in winter, and summer clothing equivalent to hers if sold in summer – clothing of the type in which prayer is permissible to be performed. This constituted a Sharīʿah ruling not brought by the Qur’ān,

[49] **Qur’an references (L22899):** Qur’an 4:29 (An-Nisa).

nor the Sunnah, nor a weak report, nor analogy, nor sound personal judgment, nor any opinion we know of from anyone before him – we intend this categorization. It has been narrated from Ibn ʻUmar: "All jewelry and clothing on a female slave displayed on her at the time of sale are included in the sale" – yet Mālik and his companions do not uphold this position.

أَحَدٍ نَعْلَمُهُ قَبْلَهُ - نَعْنِي بِهَذَا التَّقْسِيمِ -. وَقَدْ رُوِيَ عَنْ ابْنِ عُمَرَ: كُلُّ حُلِيٍّ وَكِسْوَةٍ عَلَى الْأَمَةِ عُرِضَتْ فِيهَا لِلْبَيْعِ فَهِيَ دَاخِلَةٌ فِي الْبَيْعِ - وَهُمْ لَا يَقُولُونَ بِهَذَا.

L22904 If they say, "Her clothing is from her wealth?" We respond: You have contradicted yourselves here in two aspects. First—if it is from her wealth, then you have permitted stipulating some of her wealth, yet this is forbidden according to you. Second—we ask you: How can it be from her wealth when you compel the seller to provide it (willingly or unwillingly) from wherever the seller wishes?

فَإِنْ قَالُوا: كِسْوَتُهَا مِنْ مَالِهَا؟ قُلْنَا: تَنَاقَضْتُمْ هَهُنَا فِي مَوْضِعَيْنِ: أَحَدُهُمَا - أَنَّهَا إِنْ كَانَتْ مِنْ مَالِهَا فَقَدْ أَجَزْتُمْ اشْتِرَاطَ بَعْضِ مَالِهَا، وَهَذَا حَرَامٌ عِنْدَكُمْ، وَالثَّانِي - أَنْ نَقُولَ لَكُمْ: كَيْفَ هِيَ مِنْ مَالِهَا وَأَنْتُمْ تُجْبِرُونَ الْبَائِعَ عَلَى إِحْضَارِهَا - أَحَبَّ أَمْ كَرِهَ - مِنْ حَيْثُ شَاءَ؟

L22905 Then, suppose the garment is from the property of the female slave—do you consider the saddlecloth and halter as belonging to the donkey and mule, given your claim that "it cannot be sold unless accompanied by a saddlecloth and halter"? Then why did you not apply this reasoning to the saddle and bridle? These are strange absurdities and abominations: we do not know from where they emerged.

ثُمَّ هَبْكُمْ أَنَّ الْكِسْوَةَ مِنْ مَالِ الْأَمَةِ، أَتَرَوْنَ الْبَرْذَعَةَ وَالرَّسَنَ مِنْ مَالِ الْحِمَارِ وَالْبَغْلِ؟ إِذْ قُلْتُمْ: لَا يُبَاعُ إِلَّا وَمَعَهُ بَرْذَعَةٌ وَرَسَنٌ؟ ثُمَّ مِنْ أَيْنَ لَمْ تَقُولُوا بِهَذَا فِي السَّرْجِ، وَاللِّجَامِ؟ وَهَذِهِ أَعَاجِيبُ وَشُنَعٌ لَا نَدْرِي مِنْ أَيْنَ خَرَجَتْ؟

L22906 Why have you not obligated him to provide a month's or two months' maintenance to sustain her, just as you have obligated him to provide a year's or half a year's clothing? What is the difference between clothing and maintenance? Rather, maintenance is more essential, for she cannot live without it.

وَهَلَّا أَوْجَبْتُمْ عَلَيْهِ نَفَقَةَ شَهْرٍ أَوْ شَهْرَيْنِ تَصْحَبُهَا إِيَّاهَا كَمَا أَوْجَبْتُمْ عَلَيْهِ كِسْوَةَ عَامٍ أَوْ نِصْفَ عَامٍ؟ وَمَا الْفَرْقُ بَيْنَ الْكِسْوَةِ وَالنَّفَقَةِ، بَلْ النَّفَقَةُ أَوْكَدُ؛ لِأَنَّهَا لَا تَعِيشُ دُونَهَا.

L22907 Then if they say, "Does her buyer provide for her?"

فَإِنْ قَالُوا: مُشْتَرِيهَا يُنْفِقُ عَلَيْهَا؟

L22908–22909 We said: And her purchaser (husband) must also clothe her, just as he is obligated to clothe his wife, nor does it obligate her father or her brother who marries her off to provide her clothing from the time she gets married.

قُلْنَا: وَمُشْتَرِيهَا يَكْسُوهَا أَيْضًا، كَمَا يَلْزَمُهُ أَنْ يَكْسُوَ زَوْجَتَهُ، وَلَا يَلْزَمُ أَبَاهَا وَلَا أَخَاهَا الَّذِي يُزَوِّجُهَا كِسْوَتَهَا مُذْ تَتَزَوَّجُ.

L22910 If they say: "Does he sell it naked?" We reply: "Does he sell it hungry? Is there no distinction?"

فَإِنْ قَالُوا: أَيَبِيعُهَا عُرْيَانَةً؟ قُلْنَا: أَيَبِيعُهَا جَائِعَةً - وَلَا فَرْقَ؟

L22911 Some of them said: "Clothing is one of its pillars." We replied: "This

is simultaneously a lie and folly, for we know of no pillars established for humans wherein clothing forms a part of them."

L22912 If they were to claim the practice of the people of Medina, we said: The one who says this has lied. It is a certain falsehood that this Sharia would be with the people of Medina, and then Umar, Uthman, Ali, Muawiyah, Hasan, and Abdullah ibn Zubair—may Allah be pleased with them—would conceal it, such that none would know it except Malik and those who emulated him. And with Allah, the Exalted, is success.

L22913 **A juristic issue: the sale of a commodity for a price its owner determines for the buyer.**

L22914 Issue 1459: It is not permissible to sell an item to another party at a price set by its owner. Any amount exceeding that price belongs to the party conducting the sale.

L22915 It was narrated to us through the chain of Ibn Abi Shaybah: Hushaym reported from Amr ibn Dinar, from Ata', from Ibn Abbas, that he saw no harm in a man giving another man a garment and saying, "Sell it for such-and-such price; whatever profit you gain beyond that is yours." No opposing view from any of the Companions is known regarding this matter.

L22916 And it was permitted by Shurayḥ, al-Ḥakam, ash-Shaʿbī, az-Zuhrī, and ʿAṭāʾ.

L22917 It has been narrated to us through the chain of Muhammad ibn al-Muthanna, from Abd al-Rahman ibn Mahdi, from Hammad ibn Zayd, from Ayyub al-Sakhtiyani, from Muhammad ibn Sirin: that he saw no harm in a man giving another man a garment or an item while saying to him, "Whatever you add beyond such-and-such or its equivalent, it is yours."

L22918 And by him to ʿAbd al-Raḥmān ibn Mahdī from Shuʿbah and Sufyān al-Thawrī, both of them from al-Mughīrah ibn Miqsam from Ibrāhīm al-Nakhaʿī: that he disliked that, and al-Ḥasan disliked it, and Ṭāwūs.

وَقَالَ بَعْضُهُمْ: الْكِسْوَةُ رُكْنٌ مِنْ أَرْكَانِهَا؟ فَقُلْنَا: هَذَا كَذِبٌ وَحُمْقٌ مَعًا، وَمَا عَلِمْنَا لِلْإِنْسَانِ أَرْكَانًا تَكُونُ الْكِسْوَةُ بَعْضَهَا.

فَإِنْ ادَّعَوْا عَمَلَ أَهْلِ الْمَدِينَةِ؟ قُلْنَا: كَذَبَ مَنْ قَالَ هَذَا، وَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ تَكُونَ هَذِهِ الشَّرِيعَةُ عِنْدَ أَهْلِ الْمَدِينَةِ ثُمَّ يَكْتُمُهَا عُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ، ومُعَاوِيَةُ، وَالْحَسَنُ، وَعَبْدُ اللَّهِ بْنُ الزُّبَيْرِ - رَضِيَ اللَّهُ عَنْهُمْ - حَتَّى لَا يَدْرِيَهَا أَحَدٌ إلَّا مَالِكٌ وَمَنْ قَلَّدَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ بَيْعُ سِلْعَةٍ بِثَمَنٍ يَحُدُّهُ لَهُ صَاحِبُهَا]

١٤٥٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ سِلْعَةٍ لِآخَرَ بِثَمَنٍ يَحُدُّهُ لَهُ صَاحِبُهَا فَمَا اسْتَزَادَ عَلَى ذَلِكَ الثَّمَنِ فَلِمُتَوَلِّي الْبَيْعِ.

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا هُشَيْمٌ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يُعْطِيَ الرَّجُلُ الرَّجُلَ الثَّوْبَ فَيَقُولُ: بِعْهُ بِكَذَا فَمَا ازْدَدْت فَلَكَ، وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ فِي ذَلِكَ مُخَالِفٌ.

وَأَجَازَهُ شُرَيْحٌ، وَالْحَكَمُ، وَالشَّعْبِيُّ، وَالزُّهْرِيُّ، وَعَطَاءٌ.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يُعْطِيَ الرَّجُلُ الرَّجُلَ الثَّوْبَ أَوْ الشَّيْءَ فَيَقُولُ لَهُ: مَا ازْدَدْتَ عَلَى كَذَا أَوْ كَذَا فَهُوَ لَك.

وَبِهِ إِلَى عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ شُعْبَةَ، وَسُفْيَانَ الثَّوْرِيِّ، كِلَاهُمَا عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ: أَنَّهُ كَرِهَ ذَلِكَ، وَكَرِهَهُ الْحَسَنُ، وَطَاوُسٌ.

L22919 Abu Muhammad said: This is a condition not stipulated in the Book of Allah the Exalted. If the appointed deputy sells it under this condition, the sale is invalid because it constitutes a defective agency. One may not sell anything except through the owner's personal execution or a valid authorization - otherwise, it becomes a voidable act.

قَالَ أَبُو مُحَمَّد: هَذَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَإِنْ بَاعَهُ الْمَأْمُورُ عَلَى هَذَا الشَّرْطِ فَالْبَيْعُ بَاطِلٌ لِأَنَّهَا وَكَالَةٌ فَاسِدَةٌ، وَلَا يَجُوزُ بَيْعُ شَيْءٍ إلَّا بِتَوَلِّي صَاحِبِهِ، أَوْ بِوَكَالَةٍ صَحِيحَةٍ - وَإِلَّا فَهُوَ عَمَلٌ فَاسِدٌ.

L22920–22922 If he says to him, "Sell it for such-and-such, and if you obtain more, it is yours," then this is not a valid condition, and the sale remains valid. It is valid as a non-binding and unenforceable condition, for it is impermissible to take property without the owner's consent, and consent is only valid with disclosed terms. One might sell it at an exorbitant markup that the owner of the goods would not willingly accept if aware of its extent—and success is from Allah, the Exalted.

فَلَوْ قَالَ لَهُ: بِعْهُ بِكَذَا وَكَذَا، فَإِنْ أَخَذْت أَكْثَرَ فَهُوَ لَك؟ فَلَيْسَ شَرْطًا وَالْبَيْعُ صَحِيحٌ، وَهِيَ عِدَّةٌ لَا تَلْزَمُ، وَلَا يُقْضَى بِهَا؛ لِأَنَّهُ لَا يَحِلُّ مَالُ أَحَدٍ بِغَيْرِ رِضَاهُ، وَالرِّضَا لَا يَكُونُ إلَّا بِمَعْلُومٍ، وَقَدْ يَبِيعُهُ بِزِيَادَةٍ كَثِيرَةٍ لَا تَطِيبُ بِهَا نَفْسُ صَاحِبِ السِّلْعَةِ إذَا عَلِمَ مِقْدَارَهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22923 **Issue: The sale of a non-specified item from within an aggregated whole.**

[مَسْأَلَةٌ بَيْعُ شَيْءٍ غَيْرِ مُعَيَّنٍ مِنْ جُمْلَةٍ مُجْتَمِعَةٍ]

L22924 1460: Issue: It is not permissible to sell anything unspecified from an aggregated collection—neither by count, weight, nor volume measurement—such as selling a ritl, qafīz, ṣāʿ, mudd, or ūqiyya from this aggregated collection of dates, wheat, meat, flour, or any volumetrically measured item in the world, or similarly weighed commodity.

١٤٦٠ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ شَيْءٍ غَيْرِ مُعَيَّنٍ مِنْ جُمْلَةٍ مُجْتَمِعَةٍ، لَا بِعَدَدٍ، وَلَا بِوَزْنٍ، وَلَا بِكَيْلٍ - كَمَنْ بَاعَ رِطْلًا، أَوْ قَفِيزًا، أَوْ صَاعًا، أَوْ مُدًّا أَوْ أُوقِيَّةً مِنْ هَذِهِ الْجُمْلَةِ مِنْ التَّمْرِ، أَوْ الْبُرِّ، أَوْ اللَّحْمِ، أَوْ الدَّقِيقِ، أَوْ كُلِّ مَكِيلٍ فِي الْعَالَمِ، أَوْ مَوْزُونٍ كَذَلِكَ.

L22925 And like one who sells three of these items or four, or any number, or from all that is counted; or like one who sells a cubit or two cubits, or similar to that of all that is measured by cubits – whether all that is equal in its parts or not. Rather, bargaining must first take place. Then when they mutually consent, let them measure by capacity, weigh, measure by cubits, or count.

وَكَمَنْ بَاعَ ثَلَاثَةً مِنْ هَذِهِ الْبَيْضِ أَوْ أَرْبَعَةً، أَوْ أَيَّ عَدَدٍ كَانَ، أَوْ مِنْ كُلِّ مَا يُعَدُّ، أَوْ كَمَنْ بَاعَ ذِرَاعًا أَوْ ذِرَاعَيْنِ، أَوْ نَحْوَ ذَلِكَ مِنْ كُلِّ مَا يُذْرَعُ سَوَاءٌ اسْتَوَتْ أَبْعَاضُ كُلِّ ذَلِكَ أَوْ لَمْ تَسْتَوِ، وَإِنَّمَا تَجِبُ أَوَّلًا الْمُسَاوَمَةُ، فَإِذَا تَرَاضَيَا: كَالَ أَوْ وَزَنَ، أَوْ ذَرَعَ، أَوْ عَدَّ.

L22926 When that is completed, the sale contract is concluded upon that specific tan-

gible item—whether measured by volume, weighed, measured by length, or counted. Thereafter, the option remains for either party to ratify or rescind, or for both to separate by physical departure (through one withdrawing from the other), as we have previously mentioned.

فَإِذَا تَمَّ ذَلِكَ تَعَاقَدَ الْبَيْعُ حِينَئِذٍ عَلَى تِلْكَ الْعَيْنِ الْمَكِيلَةِ أَوْ الْمَوْزُونَةِ، أَوْ الْمَذْرُوعَةِ، أَوْ الْمَعْدُودَةِ، ثُمَّ بَقِيَ التَّخْيِيرُ مِنْ أَحَدِهِمَا لِلْآخَرِ فَيُمْضِي، أَوْ يَرُدُّ، أَوْ يَتَفَرَّقَا بِأَبْدَانِهِمَا - بِزَوَالِ أَحَدِهِمَا عَنْ الْآخَرِ - كَمَا قَدَّمْنَا قَبْلُ.

L22927 If they conclude the sale contract before the measurement by volume, weighing, counting, or surveying we mentioned, it is not a valid sale—and is null and void. The Malikis permit this for homogeneous items such as flour, meat, dates, raisins, and similar commodities, but they prohibit it for heterogeneous items such as watermelons, cucumbers, eggs, female slaves, fish, all animals, precious substances, and analogous items.

فَلَوْ تَعَاقَدَا الْبَيْعَ قَبْلَ مَا ذَكَرْنَا مِنْ الْكَيْلِ، أَوْ الْوَزْنِ، أَوْ الْعَدِّ، أَوْ الذَّرْعِ: لَمْ يَكُنْ بَيْعًا - وَلَيْسَ بِشَيْءٍ - وَأَجَازَهُ الْمَالِكِيُّونَ فِيمَا اسْتَوَتْ أَبْعَاضُهُ: كَالدَّقِيقِ وَاللَّحْمِ، وَالتَّمْرِ، وَالزَّبِيبِ، وَنَحْوِ ذَلِكَ، وَلَمْ يُجِيزُوهُ فِيمَا اخْتَلَفَتْ أَبْعَاضُهُ: كَالْبِطِّيخِ، وَالْقِثَّاءِ، وَالْبَيْضِ، وَالْجَوَارِي، وَالْحِيتَانِ، وَسَائِرِ الْحَيَوَانِ وَالْجَوْهَرِ، وَنَحْوِ ذَلِكَ.

L22928 Abu Hanifah permitted the sale of a garment without specifying its exact identity from two garments or from three garments—with the buyer choosing—but he did not permit it from four garments. This is confounding uncertainty—is this not sufficient to deter you?

وَأَجَازَ أَبُو حَنِيفَةَ بَيْعَ ثَوْبٍ بِغَيْرِ عَيْنِهِ مِنْ ثَوْبَيْنِ أَوْ مِنْ ثَلَاثَةٍ يَخْتَارُهُ الْمُشْتَرِي، وَلَمْ يُجِزْهُ مِنْ أَرْبَعَةِ أَثْوَابٍ - وَهَذَا تَخْلِيطٌ نَاهِيكَ بِهِ؟

L22929 The proof for the validity of our view is Allah's statement: "Do not consume your wealth among yourselves wrongfully, unless it is a trade by mutual consent among you" [An-Nisā': 29]. Thus, Allah the Exalted has prohibited a person from taking another's wealth without mutual consent from both parties, and He has termed it unlawful.[50]

بُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] فَحَرَّمَ اللَّهُ تَعَالَى أَخْذَ الْمَرْءِ مَالَ غَيْرِهِ بِغَيْرِ تَرَاضٍ مِنْهُمَا وَسَمَّاهُ بَاطِلًا.

L22930 By necessity of inherent perception, everyone knows that mutual consent is absolutely impossible except regarding a specified and distinct matter. How if the seller says, "I will provide you from this side," and the buyer says, "Rather from the other"—how can this be resolved? Whoever deems one party more entitled to impose coercion than the other regarding what they reject of that matter has committed an injustice that is in no way concealed.

وَبِضَرُورَةِ الْحِسِّ يَدْرِي كُلُّ أَحَدٍ أَنَّ التَّرَاضِيَ لَا يُمْكِنُ أَلْبَتَّةَ إلَّا فِي مَعْلُومٍ مُتَمَيِّزٍ، وَكَيْفَ إنْ قَالَ الْبَائِعُ: أُعْطِيك مِنْ هَذِهِ الْجِهَةِ، وَقَالَ الْمُشْتَرِي: بَلْ مِنْ هَذِهِ الْأُخْرَى كَيْفَ الْعَمَلُ؟ وَمَنْ جَعَلَ أَحَدَهُمَا بِالْإِجْبَارِ عَلَى مَا يَكْرَهُ مِنْ ذَلِكَ أَوْلَى مِنْ الْآخَرِ، وَهَذَا ظُلْمٌ لَا خَفَاءَ بِهِ.

L22931–22932 Another proof is "the prohibition by the Messenger of Allah—peace and blessings be upon him—against transactions involving gharar," and there is no gharar greater than that the seller does not know what thing it is that he

[50] **Qur'an references (L22929):** Qur'an 4:29 (An-Nisa).

sold, nor does the buyer know what thing it is that he purchased. This is forbidden without doubt.[51]

وَبُرْهَانٌ آخَرُ - وَهُوَ «نَهْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ» ، وَلَا غَرَرَ أَكْثَرُ مِنْ أَنْ لَا يَدْرِي الْبَائِعُ أَيَّ شَيْءٍ هُوَ الَّذِي بَاعَ وَلَا يَدْرِي الْمُشْتَرِي أَيَّ شَيْءٍ اشْتَرَى، وَهَذَا حَرَامٌ بِلَا شَكٍّ.

L22933 A third argument: They all unanimously agree with us that whoever enters into a sale contract with another party under this aspect or this other, or purchases from him—as for these aspects or these others—then such a sale is invalid, annulled, and impermissible. Yet this very same transaction is what they have permitted here. We do not say it is analogous; rather, we affirm it is precisely the same, necessarily so.

وَبُرْهَانٌ ثَالِثٌ -: وَهُوَ أَنَّهُمْ كُلَّهُمْ مُجْمِعُونَ مَعَنَا فِيمَنْ عَقَدَ مَعَ آخَرَ بَيْعًا عَلَى هَذِهِ الْجِهَةِ، أَوْ هَذِهِ الْأُخْرَى، أَوْ اشْتَرَى مِنْهُ أَمَّا هَذِهِ الْجِهَاتُ، أَوْ هَذِهِ الْأُخْرَى -: فَإِنَّهُ بَيْعٌ بَاطِلٌ مَفْسُوخٌ لَا يَحِلُّ، وَهَذَا نَفْسُهُ هُوَ الَّذِي أَجَازُوا هَهُنَا، لَا نَقُولُ: إنَّهُ تَشْبِيهٌ، بَلْ نَقُولُ: هُوَ نَفْسُهُ وَلَا بُدَّ.

L22934 Fourth Proof: It is that the salam contract, according to Abū Ḥanīfah and Mālik, is not permissible with immediate delivery. For them, the salam contract is valid only if concluded upon any specified measure, number, volume, or weight. It is not permissible according to them, nor according to the Shāfiʿīs, when applied to a specific heap of goods. This is precisely what they prohibited. Our position here is the view of Abū Sulaymān and our companions. We know of no argument at all from the opponents—neither from the Quran, nor the Sunnah, nor any weak narration. Nor do we mention now any precedent from earlier scholars, any analogy, or any precaution whatsoever.

وَبُرْهَانٌ رَابِعٌ -: وَهُوَ أَنَّ السَّلَمَ عِنْدَ أَبِي حَنِيفَةَ، وَمَالِكٍ لَا يَجُوزُ حَالًّا، وَالسَّلَمُ عِنْدَهُمْ إنَّمَا هُوَ يُعْقَدُ عَلَى ذَرْعٍ مَا، أَوْ عَدَدٍ مَا، أَوْ كَيْلٍ مَا، أَوْ وَزْنٍ مَا، وَلَا يَجُوزُ عِنْدَهُمْ، وَلَا عِنْدَ الشَّافِعِيِّينَ فِي بَعْضِ صُبْرَةٍ بِعَيْنِهَا، وَهَذَا هُوَ نَفْسُهُ الَّذِي مَنَعُوا مِنْهُ - وَقَوْلُنَا هَهُنَا: هُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا، وَمَا نَعْلَمُ لِلْمُخَالِفِينَ حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا نَذْكُرُهُ الْآنَ، مِنْ قَوْلِ مُتَقَدِّمٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ تَوَرُّعٍ أَصْلًا.

L22935 Among the wonders of the world is the Hanafis' permission of this sale while prohibiting the sale of a cubit from this cloth delimited in this aspect - whether in terms of a cubit, the cloth's width, or its length. Thus, they permitted uncertainty and the reprehensible but prohibited the recognized - and success comes only from Allah, the Most High.

وَمِنْ عَجَائِبِ الدُّنْيَا -: إجَازَةُ الْحَنَفِيِّينَ هَذَا الْبَيْعَ، وَمَنْعُهُمْ مِنْ بَيْعِ ذِرَاعٍ مِنْ هَذَا الثَّوْبِ، مَحْدُودٍ هَذِهِ الْجِهَةَ، إمَّا فِي ذِرَاعٍ، وَإِمَّا فِي عَرْضِ الثَّوْبِ، أَوْ فِي طُولِهِ: فَأَجَازُوا الْمَجْهُولَ، وَالْمُنْكَرَ، وَمَنَعُوا الْمَعْرُوفَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22936 **A legal issue concerning the sale of something as a single aggregated entity.**

[مَسْأَلَةٌ بَيْعُ الْمَرْءِ جُمْلَةً مَجْمُوعَةً]

[51] **Hadith references (L22932):** Sunan Ibn Majah 2194; Sunan Ibn Majah 2195; Jami at-Tirmidhi 1230.

L22937 1461 - Issue: It is not permissible to sell goods in bulk except by a specified measure thereof, or except by a specified weight thereof, or except by a specified number thereof, whatever the commodity may be.

١٤٦١ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ الْمَرْءِ جُمْلَةً مَجْمُوعَةً إلَّا كَيْلًا مُسَمًّى مِنْهَا، أَوْ إلَّا وَزْنًا مُسَمًّى مِنْهَا، أَوْ إلَّا عَدَدًا مُسَمًّى مِنْهَا، أَيَّ شَيْءٍ كَانَ.

L22938 Similarly, it is not permissible to sell this garment or this piece of wood unless it is by a clearly defined cubit measurement taken from it.

وَكَذَلِكَ لَا يَحِلُّ أَنْ يَبِيعَ هَذَا الثَّوْبَ أَوْ هَذِهِ الْخَشَبَةَ إلَّا ذَرْعًا مُسَمًّى مِنْهَا.

L22939 Similarly, it is impermissible to sell fruit after its ripening while making an exception for a designated measure specified from it, a designated weight specified from it, or a designated number specified from it in principle - whether that quantity is small or large.

وَكَذَلِكَ لَا يَحِلُّ بَيْعُ الثَّمَرَةِ بَعْدَ طِيبِهَا وَاسْتِثْنَاءُ مَكِيلَةٍ مُسَمَّاةٍ مِنْهَا، أَوْ وَزْنٍ مُسَمًّى مِنْهَا، أَوْ عَدَدٍ مُسَمًّى مِنْهَا أَصْلًا، قَلَّ ذَلِكَ أَوْ كَثُرَ.

L22940–22942 It is not permissible to sell palm trees from their roots or their fruit on the condition of excluding a palm tree from them without specifying it; rather, the buyer must select the excluded one. All such transactions are forbidden, permanently annulled, and whatever is taken from them in its entirety is treated as unlawfully seized property. The only lawful method in such cases is to exclude from the whole—whatever that whole may be, whether an animal or... half of all that as a joint share, two-thirds of all that, more, or less—a specified, apportioned share held jointly among all.

وَلَا يَحِلُّ بَيْعُ نَخْلٍ مِنْ أُصُولِهَا، أَوْ ثَمَرَتِهَا، عَلَى أَنْ يَسْتَثْنِيَ مِنْهَا نَخْلَةً بِغَيْرِ عَيْنِهَا، لَكِنْ يَخْتَارُهَا الْمُشْتَرِي - هَذَا كُلُّهُ حَرَامٌ مَفْسُوخٌ أَبَدًا، مَحْكُومٌ فِيمَا قَبَضَ مِنْهُ كُلِّهِ بِحُكْمِ الْغَصْبِ وَإِنَّمَا الْحَلَالُ فِي ذَلِكَ أَنْ يَسْتَثْنِيَ مِنْ الْجُمْلَةِ إنْ شَاءَ أَيَّ جُمْلَةٍ كَانَتْ: حَيَوَانًا، أَوْ غَيْرَهُ، أَوْ مِنْ الثَّمَرَةِ: نِصْفَ كُلِّ ذَلِكَ مُشَاعًا، أَوْ ثُلُثَيْ كُلِّ ذَلِكَ، أَوْ أَكْثَرَ، أَوْ أَقَلَّ؛ جُزْءًا مُسَمًّى مَنْسُوبًا مُشَاعًا فِي الْجَمِيعِ.

L22943 Or he sells a portion of the whole as an undivided share, or excludes from it a specific, possessed item - whether abundant or scarce - this is the correct position with no disagreement about its permissibility from anyone, except in one case we will mention, if Allah the Exalted wills.

أَوْ يَبِيعُ جُزْءًا كَذَلِكَ مِنْ الْجُمْلَةِ مُشَاعًا، أَوْ يَسْتَثْنِي مِنْهَا عَيْنًا مُعَيَّنَةً مَحُوزَةً - كَثُرَتْ أَوْ قَلَّتْ - فَهَذَا هُوَ الْحَقُّ الَّذِي لَا خِلَافَ مِنْ أَحَدٍ فِي جَوَازِهِ، إلَّا فِي مَكَانٍ وَاحِدٍ نَذْكُرُهُ - إنْ شَاءَ اللَّهُ تَعَالَى.

L22944 Malik permitted the sale of one hundred date palms while excluding ten palms without specifying which ones, and similarly for sheep and goats, but prohibited such exclusion in large numbers. He allowed the sale of a fruit harvest while excluding a measured quantity of it amounting to a third or less. If one excludes more than a third, it is impermissible.

وَأَجَازَ مَالِكٌ بَيْعَ مِائَةِ نَخْلَةٍ يُسْتَثْنَى مِنْهَا عَشْرُ نَخَلَاتٍ بِغَيْرِ عَيْنِهَا، وَكَذَلِكَ مِنْ الْغَنَمِ، وَمَنَعَ مِنْ ذَلِكَ فِي الْكَثِيرِ - وَأَجَازَ بَيْعَ الثَّمَرَةِ وَاسْتِثْنَاءَ مَكِيلَةٍ مِنْهَا تَكُونُ الثُّلُثَ فَأَقَلَّ، فَإِنْ اسْتَثْنَى أَكْثَرَ مِنْ الثُّلُثِ لَمْ يَجُزْ.

L22945 Mālik said: If one buys the fruit of four palm trees from an orchard without specifying the trees themselves at the time of sale, but the buyer selects them afterward, the sale is invalid. However, if they are purchased in this manner

وَقَالَ مَالِكٌ: إنْ ابْتَاعَ ثَمَرَ أَرْبَعِ نَخَلَاتٍ مِنْ حَائِطٍ بِغَيْرِ عَيْنِهَا لَكِنْ يَخْتَارُهَا الْمُبْتَاعُ لَمْ يَجُزْ، فَلَوْ ابْتَاعَهَا كَذَلِكَ بِأُصُولِهَا جَازَ، إذَا لَمْ يَكُنْ فِيهَا ثَمَرٌ كَالْعُرُوضِ.

along with the trees themselves, it becomes permissible—provided there is no fruit on them, as with merchandise.

وَأَجَازَ لِلْبَائِعِ أَنْ يَبِيعَ ثَمَرَ حَائِطِهِ وَيَسْتَثْنِيَ مِنْهُ ثَمَرَ أَرْبَعِ نَخَلَاتٍ بِغَيْرِ عَيْنِهَا، لَكِنْ يَخْتَارُهَا الْبَائِعُ -: أَجَازَ هَذَا بَعْدَ أَنْ تَوَقَّفَ فِيهِ أَرْبَعِينَ لَيْلَةً، وَأَجَازَ ذَلِكَ فِي الْغَنَمِ - وَكَرِهَهُ ابْنُ الْقَاسِمِ فِي النَّخْلِ قَالَ: فَإِنْ وَقَعَ أَجَزْته لِقَوْلِ مَالِكٍ؟

L22946 He permitted the seller to sell the fruit of his orchard while excluding the fruit of four palm trees without specifying their exact identity, provided the seller selects them. He permitted this after deliberating on it for forty nights and also approved it for sheep. However, Ibn al-Qasim juristically disapproved of this practice regarding palm trees, stating: "If such a sale occurs, would I permit it in accordance with Malik's opinion?"

قَالَ أَبُو مُحَمَّدٍ: فِي هَذِهِ الْأَقْوَالِ عِبْرَةٌ لِمَنْ اعْتَبَرَ مِنْ التَّفْرِيقِ بَيْنَ الْبَائِعِ، وَالْمُشْتَرِي فِي اخْتِيَارِ الثَّمَرِ، وَمِنْ الْفَرْقِ بَيْنَ اخْتِيَارِ الْمُشْتَرِي لِثَمَرِ أَرْبَعِ نَخَلَاتٍ فَمَنَعَ مِنْهُ، وَبَيْنَ اخْتِيَارِ الْبَائِعِ لَهُ فَأَجَازَهُ.

L22947 Abū Muḥammad said: There is a lesson in these statements for whoever reflects from the distinction between the seller and the buyer regarding the choice of fruit, and from the difference between the buyer's choice of fruit from four palm trees, which was prohibited, and the seller's choice of it, which was permitted.

وَلَيْتَ شِعْرِي مَا قَوْلُهُ فِي سِتِّ نَخَلَاتٍ أَوْ سَبْعٍ، وَنَزِيدُهُ هَكَذَا وَاحِدَةً وَاحِدَةً، فَإِمَّا يَتَمَادَى عَلَى الْإِبَاحَةِ، وَإِمَّا يَمْنَعُ، فَيُكَلِّفُوا الْبُرْهَانَ عَلَى مَا حَرَّمُوا وَمَا حَلَّلُوا، أَوْ يَتَحَيَّرُوا فَلَا يَدْرُوا مَا يُحَلِّلُونَ وَمَا يُحَرِّمُونَ، وَلَا بُدَّ مِنْ أَحَدِ هَذِهِ الْوُجُوهِ ضَرُورَةً.

L22948 I wish I knew his ruling concerning six or seven palm trees, as we add to it one by one in this manner. Either he would persist in permissibility, or he would prohibit, thereby obliging them to provide proof for what they forbade and permitted, or they would become perplexed, not knowing what to permit or prohibit. They must necessarily adopt one of these options by necessity.

ثُمَّ نَسْأَلُهُمْ عَمَّا أَجَازُوا فِي الْأَرْبَعِ نَخَلَاتٍ، فَنَقُولُ: أَتُجِيزُونَ ذَلِكَ إنْ لَمْ يَكُنْ فِي الْحَائِطِ إلَّا خَمْسُ نَخَلَاتٍ؟ فَإِنْ أَجَازُوا، سَأَلْنَاهُمْ مِنْ أَيْنَ خَصُّوا الْأَرْبَعَ نَخَلَاتٍ بِالْإِجَازَةِ دُونَ مَا هُوَ أَكْثَرُ أَوْ أَقَلُّ؟ فَإِنْ مَنَعُوا زِدْنَاهُمْ فِي عَدَدِ نَخْلِ الْحَائِطِ نَخْلَةً نَخْلَةً - وَهَذِهِ تَخَالِيطُ لَا نَظِيرَ لَهَا؟

L22949 Then we ask them about what they permitted concerning the four date palms. We say: Do you permit this if there are only five date palms in the orchard? If they permit it, we ask them: Why did they specifically allow four date palms while excluding what is greater or fewer? If they forbid it, we add one palm at a time to the number of palms in the orchard. Are these not confusions without parallel?

وَهَذَا يُبْطِلُ دَعْوَاهُمْ فِي عَمَلِ أَهْلِ الْمَدِينَةِ، إذْ لَوْ كَانَ ذَلِكَ عَمَلًا ظَاهِرًا مَا احْتَاجَ إلَى أَنْ يَتَوَقَّفَ فِيهِ أَرْبَعِينَ لَيْلَةً، وَإِنَّ فِي إجَازَةِ ابْنِ الْقَاسِمِ الْعَمَلَ الَّذِي مَنَعَ مِنْهُ - إنْ وَقَعَ - مِنْ أَجْلِ إجَازَةِ مَالِكٍ لَهُ لَعَجَبًا.

L22950–22952 And this invalidates their claim regarding the practice of the people of Medina, since if that had been a manifest practice, there would have been no need. until he refrains from it for forty nights. How astonishing it is that Ibn al-Qasim would certify an action he himself had prohibited—if it occurred—merely because of Malik's certification to him!

وَنَحْمَدُ اللَّهَ عَلَى عَظِيمِ نِعْمَتِهِ عَلَيْنَا فِي تَيْسِيرِنَا لِطَاعَةِ كَلَامِهِ، وَكَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَنْفِيرِنَا عَنْ تَقْلِيدِ مَا دُونَ ذَلِكَ حَمْدًا كَثِيرًا كَمَا هُوَ أَهْلُهُ.

L22953 We praise Allah for the immense favor He has bestowed upon us in facilitating our obedience to His speech and the speech of His Messenger - may Allah bless him and grant him peace - and in deterring us from blindly imitating anything inferior to that, with abundant praise as is His due.

وَأَمَّا الْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ، فَإِنَّهُمْ مَنَعُوا مِنْ هَذَا كُلِّهِ.

L22954 As for the Ḥanafīs and the Shāfiʿīs, they categorically prohibited all of this.

قَالَ أَبُو مُحَمَّد: وَتَنَاقَضُوا هَهُنَا أَقْبَحَ تَنَاقُضٍ؛ لِأَنَّهُ لَا فَرْقَ بَيْنَ مَا حَرَّمُوا هَهُنَا مِنْ بَيْعِ جُمْلَةٍ وَاسْتِثْنَاءِ مِقْدَارٍ مِنْهَا بِغَيْرِ عَيْنِهِ، وَبَيْنَ مَا أَجَازُوا فِي الْمَسْأَلَةِ الَّتِي قَبْلَ هَذِهِ مِنْ بَيْعِ بَعْضِ جُمْلَةٍ بِكَيْلٍ أَوْ بِوَزْنٍ، أَوْ بِعَدَدٍ بِغَيْرِ عَيْنِهِ فَهُوَ ذَلِكَ نَفْسُهُ وَنَحْمَدُ اللَّهَ تَعَالَى عَلَى السَّلَامَةِ، وَكِلَا الْأَمْرَيْنِ بَيْعُ بَعْضِ جُمْلَةٍ وَإِمْسَاكُ بَعْضِهَا، {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] ، {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

L22955 Abū Muḥammad said: They contradicted themselves here in the most repugnant manner, for there is no distinction between what they prohibited here—selling an aggregate while excluding a quantified portion without specifying its identity—and what they permitted in the preceding issue: selling part of an aggregate by measure, weight, or number without specifying its identity. This is the very same thing! We praise Allah the Exalted for safety, as both cases involve selling part of an aggregate and retaining ownership of another part. “Allah has permitted trade” [Al-Baqarah: 275], and “He has detailed for you what He has forbidden upon you” [Al-Anʿām: 119].[52]

وَأَمَّا الْمَكَانُ الَّذِي اُخْتُلِفَ فِيهِ مِمَّا ذَكَرْنَا، فَإِنَّ الْمَالِكِيِّينَ مَنَعُوا مِنْ بَيْعِ جُمْلَةٍ إِلَّا ثُلُثَيْهَا، وَقَالُوا: لَا يَجُوزُ الِاسْتِثْنَاءُ إِلَّا فِي الْأَقَلِّ.

L22956 As for the specific point of disagreement among the matters we mentioned, the Mālikīs prohibited selling the whole unless two-thirds were excluded, asserting that exclusion applies only to the minority portion.

قَالَ عَلِيٌّ: وَهَذَا بَاطِلٌ؛ لِأَنَّهُ لَمْ يُوجِبْ مَا قَالُوهُ: لَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ، وَلَا لُغَةٌ أَصْلًا.

L22957 Ali said: This is invalid, for their claim is not supported by the Quran, the Sunnah, a weak narration, a Companion’s statement, analogy, a substantiated opinion, nor any linguistic basis whatsoever.

وَأَيْضًا: فَإِنَّ اسْتِثْنَاءَ الْأَكْثَرِ أَوْ الْأَقَلِّ، إنَّمَا هُوَ مَنْعُ بَعْضِ الْجُمْلَةِ فَقَطْ دُونَ سَائِرِهَا، وَلَا خِلَافَ فِي جَوَازِ هَذَا، وَهُوَ الَّذِي مَنَعُوا مِنْهُ نَفْسُهُ بِعَيْنِهِ.

L22958 Furthermore, the exception of the majority or minority pertains solely to excluding a part of the whole without affecting the remainder. There is no disagreement about the validity of this, yet it is precisely this same act itself that they prohibited.

وَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ سَأَلْت أَبَا بَكْرِ بْنَ أَبِي مُوسَى عَنْ الرَّجُلِ يَبِيعُ بَيْعًا وَيَسْتَثْنِي نِصْفَهُ؟ فَكَرِهَهُ - الْحَجَّاجُ هَالِكٌ -.

L22959 And it was narrated to us through the chain of Ḥammād ibn Salamah from al-Ḥajjāj ibn Arṭāh: I asked Abū Bakr ibn Abī Mūsā about a man who sells something but reserves half of it. He disliked it [al-Ḥajjāj is deemed unreliable].

[52] **Qur’an references (L22955):** Qur’an 2:275 (Al-Baqarah); Qur’an 6:119 (Al-An’am).

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُثْمَانَ الْبَتِّيِّ قَالَ: إذَا اسْتَثْنَى الْبَائِعُ نِصْفًا وَنَقَدَ الْمُشْتَرِي نِصْفًا، فَهُوَ بَيْنَهُمَا نِصْفَانِ.

L22960 On the authority of Ḥammād ibn Salamah, from ʿUthmān al-Battī, who said: If the seller excludes half [of the item] and the buyer pays half [the price] in cash, then [the transaction] is equally shared between them.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ، وَالْأَعْمَشِ، كِلَاهُمَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يَبِيعَ السِّلْعَةَ وَيَسْتَثْنِيَ نِصْفَهَا.

L22961 And through the chain of Muḥammad ibn al-Muthannā: I received from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, who narrated from Manṣūr and al-Aʿmash, both of whom narrated from Ibrāhīm al-Nakhaʿī: That he saw no harm in selling an item while excepting half of it.

قَالَ أَبُو مُحَمَّد: بُرْهَانُ صِحَّةِ قَوْلِنَا هَهُنَا هِيَ الْبَرَاهِينُ الَّتِي أَوْرَدْنَا فِي الْمَسْأَلَةِ الَّتِي قَبْلَهَا سَوَاءً سَوَاءً، وَهَهُنَا بُرْهَانٌ زَائِدٌ -: وَهُوَ مَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا زِيَادُ بْنُ أَيُّوبَ أَنَا عَبَّادُ بْنُ الْعَوَّامِ أَنَا سُفْيَانُ بْنُ حُسَيْنٍ أَنَا يُونُسُ بْنُ عُبَيْدٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ الثُّنْيَا حَتَّى تُعْلَمَ» .

L22962–22964 Abu Muhammad said: The proof validating our position here is the proofs we presented in the issue that... Before it, explicitly equal terms, and here is additional evidence: as narrated via the chain of Ahmad ibn Shu'ayb—Ziyad ibn Ayyub—'Abbad ibn al-'Awwam—Sufyan ibn Husayn—Yunus ibn 'Ubayd—'Ata' ibn Abi Rabah—Jabir ibn 'Abdullah: "The Messenger of Allah (peace be upon him) prohibited reserved conditional sales until the conditions are disclosed."

فَصَحَّ أَنَّ الِاسْتِثْنَاءَ لَا يَحِلُّ إلَّا مَعْلُومًا مِنْ مَعْلُومٍ.

L22965 Thus, it is established that the exception is permissible only as a specified entity derived from a specified entity.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي الزُّبَيْرِ، وَسَعِيدِ بْنِ مِينَاءَ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْمُزَابَنَةِ، وَالْمُحَاقَلَةِ، وَالْمُعَاوَمَةِ، وَالْمُخَابَرَةِ» .

L22966 If it is said: You have narrated through the chain of Ḥammād ibn Zayd from Ayyūb al-Sikhtiyānī from Abū al-Zubayr, and through the chain of Saʿīd ibn Mīnāʾ from Jābir ibn ʿAbdullāh, who said: "The Messenger of Allah (peace and blessings of Allah be upon him) prohibited al-Muzābana, al-Muḥāqala, al-Muʿāwama, and al-Mukhābara."

قَالَ أَحَدُهُمَا: بَيْعُ السِّنِينَ، وَهِيَ الْمُعَاوَمَةُ، وَهِيَ الثُّنْيَا؟

L22967 One of them said: "The sale of years—which is muʿāwamah, also known as thunyā?"

قُلْنَا: هَذَا تَفْسِيرٌ لَا تَقُومُ بِهِ حُجَّةٌ لِأَنَّهُ مِنْ كَلَامِ أَبِي الزُّبَيْرِ وَرَأْيِهِ، أَوْ كَلَامِ سَعِيدِ بْنِ مِينَاءَ وَرَأْيِهِ، وَلَا حُجَّةَ فِي كَلَامِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L22968 We said: This interpretation cannot establish definitive proof, for it derives from the statements and opinions of either Abu al-Zubayr or Sa'id ibn Mina'. No definitive proof exists in the statements of anyone other than the Messenger of Allah (peace be upon him).

L22969 The *thunyā* (exception): a well-known Arabic expression. As He, the

وَالثُّنْيَا: لَفْظَةٌ مَعْرُوفَةٌ عَرَبِيَّةٌ، قَالَ تَعَالَى: {كَمَا بَلَوْنَا أَصْحَابَ الْجَنَّةِ إِذْ أَقْسَمُوا لَيَصْرِمُنَّهَا مُصْبِحِينَ} [القلم: ١٧] {وَلا يَسْتَثْنُونَ} [القلم: ١٨] وَإِنَّمَا الثُّنْيَا اسْتِثْنَاءُ شَيْءٍ مِنْ شَيْءٍ فَقَطْ.

Exalted, said: *"Just as We tested the companions of the garden when they vowed to pluck its fruits at dawn"* [Al-Qalam: 17], *"and they did not make an exception"* [Al-Qalam: 18]. Verily, the *thunyā* is solely the exception of one thing from another.[53]

وَمِنْ الْمُحَالِ الْبَاطِلِ الْمُتَيَقَّنِ: أَنْ يَكُونَ لِلثُّنْيَا مَعْنًى غَيْرُ هَذَا فَيَنْهَانَا عَنْهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ لَا يُبَيِّنُهَا عَلَيْنَا، حَاشَ لِلَّهِ مِنْ هَذَا، وَهُوَ الَّذِي افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ أَنْ يُبَيِّنَ لَنَا دِينَنَا.

L22970 Among the impossible, invalid, and definitively certain falsehoods is that the dual transaction (thunyā) could have any meaning other than this, whereupon the Messenger of Allah—may Allah bless him and grant him peace—would prohibit us from it then fail to clarify it to us. Far removed is Allah from such a thing! He is the one whom Allah the Exalted obligated to clarify our religion to us.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ جَاءَتْ فِي الثُّنْيَا آثَارٌ -:

L22971 Abu Muhammad said: Traditions have come regarding the thunyā:

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ، وَابْنُ أَبِي زَائِدَةَ، كِلَاهُمَا عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، قَالَ: مَا كُنَّا نَرَى بِالثُّنْيَا بَأْسًا لَوْلَا أَنَّ ابْنَ عُمَرَ كَرِهَهَا، وَكَانَ عِنْدَنَا مَرْضِيًّا - قَالَ ابْنُ عُلَيَّةَ: لَوْلَا ابْنُ عَوْنٍ: فَتَحَدَّثْنَا أَنَّ ابْنَ عُمَرَ كَانَ يَقُولُ: لَا أَبِيعُ هَذِهِ النَّخْلَةَ، وَلَا هَذِهِ النَّخْلَةَ.

L22972 It has been narrated to us through the chain of Ibn Abi Shaybah: "Ismail ibn Ulayyah and Ibn Abi Za'idah both narrated to us—each transmitting from Abdullah ibn Awn, from al-Qasim ibn Muhammad—who said: 'We saw no harm in the dual sale were it not that Ibn Umar disapproved of it, and he was regarded as a reliable authority among us.'" Ibn Ulayyah added: "Were it not for Ibn Awn, we would have related that Ibn Umar used to say: 'I will not sell this palm tree or that palm tree.'"

قَالَ عَلِيٌّ: سَمِعَ ابْنُ عَوْنٍ هَذَا الْخَبَرَ مِنْ الْقَاسِمِ بْنِ مُحَمَّدٍ.

L22973–22974 Ali said: Ibn Awn heard this report from al-Qasim b. Muhammad.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ يَعْقُوبَ بْنِ إِبْرَاهِيمَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: يُكْرَهُ أَنْ يَبِيعَ النَّخْلَ وَيَسْتَثْنِيَ مِنْهُ كَيْلًا مَعْلُومًا - قَالَ سُفْيَانُ: وَلَكِنْ يَسْتَثْنِي هَذِهِ النَّخْلَةَ، وَهَذِهِ النَّخْلَةَ.

L22975 And from the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Yahya ibn Sa'id al-Ansari, from Ya'qub ibn Ibrahim, from Sa'id ibn al-Musayyab, who said: It is disliked to sell palm trees while reserving a known measure of their dates. Sufyan said: Rather, one should reserve these specific palm trees.

L22976 From the path of al-Ḥajjāj ibn al-Minhāl: Ḥammād ibn Zayd reported that Ayyūb al-Sakhtiyānī narrated from ʿAmr ibn Shuʿayb that he asked Saʿīd ibn al-Musayyib about stipulated conditions. He disapproved of them unless

[53] **Qur'an references (L22969):** Qur'an 68:17 (Al-Qalam); Qur'an 68:18 (Al-Qalam).

one explicitly exempts specific, identifiable palm trees. ʿAmr added: Saʿīd prohibited me from renouncing responsibility for alms when concluding a sale.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا حَمَّادُ بْنُ زَيْدٍ أَنَا أَيُّوبُ - هُوَ السِّخْتِيَانِيُّ - عَنْ عَمْرِو بْنِ شُعَيْبٍ أَنَّهُ سَأَلَ سَعِيدَ بْنَ الْمُسَيِّبِ عَنْ الثُّنْيَا فَكَرِهَهَا إِلَّا أَنْ يَسْتَثْنِيَ نَخَلَاتٍ مَعْلُومَاتٍ، قَالَ عَمْرٌو: وَنَهَانِي سَعِيدٌ أَنْ أَبْرَأَ مِنْ الصَّدَقَةِ إِذَا بَايَعْت.

L22977 And through the chain of Ibn Abi Shaybah: from Ibn ʿUlayyah, from Ayyub al-Sikhtiyani, from ʿAmr ibn Shuʿayb, who said: I asked Saʿid ibn al-Musayyab: "May I sell my land's produce while reserving a portion?" He replied: "Do not reserve except known trees, and do not exempt yourself from zakah." Ayyub said: I mentioned this to Muhammad ibn Sirin, and it was as though he evidently approved.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قُلْت لِسَعِيدِ بْنِ الْمُسَيِّبِ: أَبِيعُ ثَمَرَةَ أَرْضِي وَأَسْتَثْنِي؟ قَالَ: لَا تَسْتَثْنِ إلَّا شَجَرًا مَعْلُومًا، وَلَا تَبْرَأَنَّ مِنْ الصَّدَقَةِ - قَالَ أَيُّوبُ فَذَكَرْته لِمُحَمَّدِ بْنِ سِيرِينَ فَكَأَنَّهُ أَعْجَبَهُ.

L22978 From the narration of Ibn Abi Shaybah: I am Abu al-Ahwas, reporting from Abu Hamzah that he said: "I asked Ibrahim: 'Can I sell the sheep while retaining a portion of it?' He replied: 'No, but say: "I sell to you half of it."'"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا أَبُو الْأَحْوَصِ عَنْ أَبِي حَمْزَةَ، قُلْت لِإِبْرَاهِيمَ: أَبِيعُ الشَّاةَ وَأَسْتَثْنِي بَعْضَهَا؟ قَالَ: لَا، وَلَكِنْ قُلْ: أَبِيعُك نِصْفَهَا.

L22979 From Ibn Abi Shaybah: From Abd al-Rahman ibn Mahdi, from Sufyan, from Mansur, from Ibrahim, who said: "There is no harm in selling a commodity while reserving half of it."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ قَالَ: لَا بَأْسَ بِبَيْعِ السِّلْعَةِ وَيَسْتَثْنِي نِصْفَهَا.

L22980 Through the chain of Ibn Abi Shaybah: Abdul A'la reported from Yunus, from Al-Hasan regarding one who sells the produce of his land while excluding a *kurr* (volume measure). He said: He approved of marking palm trees.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الْأَعْلَى عَنْ يُونُسَ عَنْ الْحَسَنِ فِيمَنْ بَاعَ ثَمَرَةَ أَرْضِهِ فَاسْتَثْنَى كُرًّا؟ قَالَ: كَانَ يُعْجِبُهُ أَنْ يَعْلَمَ نَخْلًا.

L22981 And through the chain of Ibn Abī Shaybah: Ibn Abī Zāʾidah from Yazīd - who is Ibn Ibrāhīm - from Ibn Sīrīn that he held the view there was no harm in selling his produce and reserving half, a third, a quarter of it.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ أَبِي زَائِدَةَ عَنْ يَزِيدَ - هُوَ ابْنُ إبْرَاهِيمَ - عَنْ ابْنِ سِيرِينَ أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يَبِيعَ ثَمَرَتَهُ وَيَسْتَثْنِيَ نِصْفَهَا، ثُلُثَهَا، رُبْعَهَا.

L22982 Abu Muhammad said: The Malikis cited as evidence the report we narrated through the chain of Abd al-Razzaq: Maʿmar narrated to us, "I heard al-Zubayr ibn Adiyy say: I heard Ibn Umar, while he was selling his produce, say: 'I sell it to you for four thousand and the food of the youths who work it.'"

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ الْمَالِكِيُّونَ بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ حَدَّثَنَا مَعْمَرٌ سَمِعْت الزُّبَيْرَ بْنَ عَدِيٍّ سَمِعْت ابْنَ عُمَرَ وَهُوَ يَبِيعُ ثَمَرَةً لَهُ فَقَالَ: أَبِيعُكُمُوهَا بِأَرْبَعَةِ آلَافٍ وَطَعَامِ الْفِتْيَانِ الَّذِينَ يَعْمَلُونَهَا.

L22983 From the chain of Ibn Abi Shaybah: Waki' reported from Ibrāhīm, from

Ismāʿīl ibn Mujammiʿ, from Sālim ibn ʿAbdullāh ibn ʿUmar that he saw no harm in selling his fruit while reserving a specified measured quantity from it.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ إِبْرَاهِيمَ عَنْ إِسْمَاعِيلَ بْنِ مُجَمِّعٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يَبِيعَ ثَمَرَتَهُ وَيَسْتَثْنِيَ مِنْهَا مَكِيلَةً مَعْلُومَةً.

L22984–22986 And on the authority of Mālik, from ʿAbdullāh ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm, that his grandfather narrated... Muhammad ibn ʿAmr sold the fruit of his palm grove, known as al-Afrāq, for four thousand dirhams, reserving from it eight hundred dirhams' worth of dates as part of the payment—and we know of no other precedent applicable to their case besides this.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ: أَنَّ جَدَّهُ مُحَمَّدَ بْنَ عَمْرٍو بَاعَ ثَمَرَ حَائِطٍ لَهُ يُقَالُ لَهُ: الْأَفْرَاقُ بِأَرْبَعَةِ آلَافِ دِرْهَمٍ وَاسْتَثْنَى مِنْهُ بِثَمَانِمِائَةِ دِرْهَمٍ تَمْرًا - وَمَا نَعْلَمُ لَهُمْ غَيْرَ هَذَا.

L22987 The narration from Ibn ʿUmar: they are the first to oppose this ruling, because if the servants' sustenance is excepted from the produce, it becomes unknown—what its type would be and what its quantity would be. If it is imposed on the buyer in addition to the price, the same uncertainty applies.

فَالرِّوَايَةُ عَنْ ابْنِ عُمَرَ: هُمْ أَوَّلُ مُخَالِفٍ لَهَا، لِأَنَّ طَعَامَ الْفِتْيَانِ إِنْ كَانَ مُسْتَثْنًى مِنْ الثَّمَرَةِ فَهُوَ مَجْهُولٌ، لَا يُدْرَى مَا يَكُونُ نَوْعُهُ، وَلَا مِقْدَارُ مَا يَكُونُ، فَإِنْ كَانَ مُضَافًا عَلَى الْمُشْتَرِي إلَى الثَّمَنِ فَكَذَلِكَ أَيْضًا -.

L22988 The Malikis do not permit either of these two aspects—indeed, they have opposed it—and the authentic report from Ibn ʿUmar is like our statement, as we have previously cited.

وَالْمَالِكِيُّونَ لَا يُجِيزُونَ شَيْئًا مِنْ هَذَيْنِ الْوَجْهَيْنِ - فَقَدْ خَالَفُوهُ، وَالصَّحِيحُ عَنْ ابْنِ عُمَرَ مِثْلُ قَوْلِنَا كَمَا أَوْرَدْنَا آنِفًا.

L22989 As for the ḥadīth of Sālim, it did not specify a third from a lesser amount nor from a greater amount.

وَأَمَّا حَدِيثُ سَالِمٍ فَلَمْ يَخُصَّ ثُلُثًا مِنْ أَقَلَّ، وَلَا أَكْثَرَ -.

L22990 The Malikis do not permit more than a third, since they have opposed it.

وَالْمَالِكِيُّونَ لَا يُجِيزُونَ أَكْثَرَ مِنْ الثُّلُثِ - فَقَدْ خَالَفُوهُ.

L22991 As for the narration of Muḥammad ibn ʿAmr ibn Ḥazm, he excepted from the produce he sold—four thousand dates in exchange for eight hundred dirhams, which constituted one-fifth. Thus, he reserved one-fifth of what he sold, and this is permissible and valid. It was thereby clear that there was absolutely no basis for a Salam contract in what they asserted.

وَأَمَّا حَدِيثُ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ فَإِنَّمَا اسْتَثْنَى مِنْ ثَمَرٍ بَاعَهُ بِأَرْبَعَةِ آلَافٍ تَمْرًا بِثَمَانِمِائَةِ دِرْهَمٍ، وَهُمْ الْخُمُسُ، فَإِنَّمَا اسْتَثْنَى خُمُسَ مَا بَاعَ، وَهَذَا جَائِزٌ حَسَنٌ - فَلَاحَ أَنَّهُ لَا سَلَفَ لَهُمْ أَصْلًا فِيمَا قَالُوهُ ذَلِكَ.

L22992 It has been transmitted to us that exceptions are entirely prohibited, as transmitted through the chain of Ibn Abi Shaybah: ʻAbd al-Ṣamad ibn Abī al-Jārūd said, "I asked Jābir ibn Zayd about one who sells something and excepted a part of it." He said, "That is not valid."

وَقَدْ رُوِّينَا الْمَنْعَ مِنْ الِاسْتِثْنَاءِ جُمْلَةً كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الصَّمَدِ بْنُ أَبِي الْجَارُودِ قَالَ: سَأَلْت جَابِرَ بْنَ زَيْدٍ عَمَّنْ بَاعَ شَيْئًا وَاسْتَثْنَى بَعْضًا؟ قَالَ: لَا يَصْلُحُ ذَلِكَ.

L22993 Abū Muḥammad said: If he intended an unknown, then it is correct. But if he intended the entirety of the exception, then it is erroneous, for "Allah's Messenger—peace and blessings of Allah be upon him—permitted the conditional exception when it is known," and no one's argument holds validity alongside his—peace be upon him.

قَالَ أَبُو مُحَمَّدٍ: إنْ كَانَ عَنَى مَجْهُولًا فَصَحِيحٌ وَإِنْ كَانَ عَنَى جُمْلَةَ الِاسْتِثْنَاءِ فَخَطَأٌ، لِأَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبَاحَ الثُّنْيَا إذَا عُلِمَتْ» ، وَلَا حُجَّةَ فِي أَحَدٍ مَعَهُ - عَلَيْهِ السَّلَامُ -.

[مَسْأَلَةٌ بَيْعِ مَالِ غَيْرِهِ بِغَيْرِ إذْنِ صَاحِبِ الْمَالِ لَهُ فِي بَيْعِهِ]

L22994 **A Juridical Case: The Ruling on Selling Another's Property Without the Owner's Permission [and the Liability of the Seller].**

L22995 Issue 1462: It is impermissible for anyone to sell another's property without the owner's authorization for him to sell it. If such a sale occurs, it is annulled in perpetuity - whether the owner is present and witnesses this or absent. His silence does not constitute consent to the sale - whether the duration is lengthy or brief - even after a hundred years or longer. Rather, the owner and his heirs after him can take his property forever.

١٤٦٢ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَبِيعَ مَالَ غَيْرِهِ بِغَيْرِ إذْنِ صَاحِبِ الْمَالِ لَهُ فِي بَيْعِهِ، فَإِنْ وَقَعَ فُسِخَ أَبَدًا - سَوَاءٌ كَانَ صَاحِبُ الْمَالِ حَاضِرًا يَرَى ذَلِكَ أَوْ غَائِبًا - وَلَا يَكُونُ سُكُوتُهُ رِضًا بِالْبَيْعِ - طَالَتْ الْمُدَّةُ أَمْ قَصُرَتْ - وَلَوْ بَعْدَ مِائَةِ عَامٍ أَوْ أَكْثَرَ، بَلْ يَأْخُذُ مَالَهُ أَبَدًا هُوَ وَوَرَثَتُهُ بَعْدَهُ.

L22996 It is not permissible for the owner of the property to validate that sale whatsoever unless he and the buyer mutually consent to establish a sale contract pertaining to it. The one who takes possession is liable upon himself for the liability of usurpation.

وَلَا يَجُوزُ لِصَاحِبِ الْمَالِ أَنْ يُمْضِيَ ذَلِكَ الْبَيْعَ أَصْلًا إلَّا أَنْ يَتَرَاضَى هُوَ وَالْمُشْتَرِي عَلَى ابْتِدَاءِ عَقْدِ بَيْعٍ فِيهِ - وَهُوَ مَضْمُونٌ عَلَى مَنْ قَبَضَهُ ضَمَانَ الْغَصْبِ.

L22997–22999 Similarly, no one is obligated to have another purchase on their behalf, nor to instruct another to do so. If someone purchases on their behalf without authorization... The purchase belongs to the buyer and does not transfer to the one who purchased it for him—whether he intended ownership or not—except through initiating a purchase contract with the one who purchased it. Excepted is the absent person who is certain that something from his property is spoiling in a manner that would lead to its destruction before consultation—in such case, the judge or others may sell it for him. Similarly, purchasing what is indispensable for his dependents is permitted, or what is sold upon him as a binding obligatory right to allow a creditor to claim his due, or for the expenses of those he is obligated to provide for—this is binding upon him whether present or absent, consenting or refusing.

وَكَذَلِكَ لَا يُلْزِمُ أَحَدًا شِرَاءَ غَيْرِهِ لَهُ لَا أَنْ يَأْمُرَهُ بِذَلِكَ، فَإِنْ اشْتَرَى لَهُ دُونَ أَمْرِهِ فَالشِّرَاءُ لِلْمُشْتَرِي وَلَا يَكُونُ لِلَّذِي اشْتَرَاهُ لَهُ - أَرَادَ كَوْنَهُ لَهُ أَوْ لَمْ يُرِدْ - إلَّا بِابْتِدَاءِ عَقْدِ شِرَاءٍ مَعَ الَّذِي اشْتَرَاهُ، إلَّا الْغَائِبَ الَّذِي يُوقِنُ بِفَسَادِ شَيْءٍ مِنْ مَالِهِ فَسَادًا يَتْلَفُ بِهِ قَبْلَ أَنْ يُشَاوِرَ، فَإِنَّهُ يَبِيعُهُ لَهُ الْحَاكِمُ أَوْ غَيْرُهُ، وَنَحْوُ ذَلِكَ، وَيَشْتَرِي لِأَهْلِهِ مَا لَا بُدَّ لَهُمْ مِنْهُ - وَيَجُوزُ ذَلِكَ أَوْ مَا بِيعَ عَلَيْهِ بِحَقٍّ وَاجِبٍ لِيَنْتَصِفَ غَرِيمٌ مِنْهُ، أَوْ فِي نَفَقَةِ مَنْ تَلْزَمُهُ نَفَقَتُهُ، فَهَذَا لَازِمٌ لَهُ - حَاضِرًا كَانَ أَوْ غَائِبًا، رَضِيَ أَمْ سَخِطَ.

L23000 The proof of that is the statement of Allah, the Most High: “No soul bears except upon itself” [Al-An’am 6:164].[1]

L23001 And the statement of the Messenger of Allah—peace be upon him—: “Indeed, your blood, your wealth, your honor, and your bodies are inviolable for you.”

L23002 No one has the right to permit what Allah the Exalted has prohibited regarding his wealth, skin, or blood except through the manner sanctioned by the explicit text of the Quran or the Sunnah. Whoever does this, his action is invalidated according to the statement of Allah’s Messenger (peace be upon him): “Whoever performs a deed contrary to our teachings, it is rejected.” Silence does not signify consent except in relation to two matters exclusively.[2]

L23003 One of them is the Messenger of Allah—may Allah bless him and grant him peace—who was commanded to clarify, whom falsehood cannot approach from before him or behind him, who does not endorse falsehood, and regarding whom the divine text establishes that whatever he remained silent about constitutes something excused and permissible. Nothing is forbidden except what he explicitly prohibited for us, no obligation exists except what he commanded, and no prohibition except what he forbade. Thus, whatever he neither commanded nor prohibited is excluded from being obligatory or forbidden, inescapably remaining permissible. By logical necessity, his silence—which constitutes neither command nor prohibition—falls into this category of the permissible.[3]

L23004 The second case is that of a virgin in her marriage, applicable solely due to the textual evidence reported in that regard. As for all other cases beyond what we have mentioned, silence does not count as consent until one verbally affirms their consent and formally implements it.

L23005 The one who claims that the silence of those other than these two constitutes

[1] **Qur’an references (L23000):** Qur’an 6:164 (Al-An’am).

[2] **Hadith references (L23002):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[3] **Qur’an references (L23003):** Qur’an 41:42 (Fussilat).

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤]

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَلَيْسَ لِأَحَدٍ أَنْ يُحِلَّ مَا حَرَّمَ اللَّهُ تَعَالَى مِنْ مَالِهِ، وَلَا مِنْ بَشَرَتِهِ، وَلَا مِنْ دَمِهِ إِلَّا بِالْوَجْهِ الَّذِي أَبَاحَهُ بِهِ نَصُّ الْقُرْآنِ، أَوْ السُّنَّةِ، وَمَنْ فَعَلَ ذَلِكَ فَهُوَ مَرْدُودٌ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَالسُّكُوتُ لَيْسَ رِضًا إِلَّا مِنْ اثْنَيْنِ فَقَطْ -.

أَحَدُهُمَا: رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَأْمُورُ بِالْبَيَانِ الَّذِي لَا يَأْتِيهِ الْبَاطِلُ مِنْ بَيْنِ يَدَيْهِ وَلَا مِنْ خَلْفِهِ، الَّذِي لَا يُقِرُّ عَلَى بَاطِلٍ، وَالَّذِي وَرَدَ النَّصُّ بِأَنَّ مَا سَكَتَ عَنْهُ فَهُوَ عَفْوٌ جَائِزٌ، وَالَّذِي لَا حَرَامَ إِلَّا مَا فَصَّلَ لَنَا تَحْرِيمَهُ، وَلَا وَاجِبَ إِلَّا مَا أَمَرَنَا بِهِ وَلَا نَهَانَا عَنْهُ فَقَدْ خَرَجَ عَنْ أَنْ يَكُونَ فَرْضًا أَوْ حَرَامًا، فَبَقِيَ أَنْ يَكُونَ مُبَاحًا وَلَا بُدَّ، فَدَخَلَ سُكُوتُهُ الَّذِي لَيْسَ أَمْرًا وَلَا نَهْيًا فِي هَذَا الْقِسْمِ ضَرُورَةً.

وَالثَّانِي: الْبِكْرُ فِي نِكَاحِهَا لِلنَّصِّ الْوَارِدِ فِي ذَلِكَ فَقَطْ - وَأَمَّا كُلُّ مَنْ عَدَا مَا ذَكَرْنَا فَلَا يَكُونُ سُكُوتُهُ رِضًا حَتَّى يُقِرَّ بِلِسَانِهِ بِأَنَّهُ رَاضٍ بِهِ مُنَفِّذٌ.

وَيُسْأَلُ مَنْ قَالَ: إِنَّ سُكُوتَ مَنْ عَدَا هَذَيْنِ رِضًا: مَا الدَّلِيلُ عَلَى صِحَّةِ قَوْلِكُمْ: إِنَّ الرِّضَا يَكُونُ بِالسُّكُوتِ، وَإِنَّ الْإِنْكَارَ لَا يَكُونُ إِلَّا بِالْكَلَامِ؟ وَمِنْ أَيْنَ قُلْتُمْ ذَلِكَ؟

consent is to be asked: What evidence validates your assertion that consent indeed occurs through silence and that denial cannot occur except through speech? From where have you derived this?

فَإِنْ ادَّعَوْا نَصًّا، كَذَبُوا، وَإِنْ ادَّعَوْا عِلْمَ ضَرُورَةٍ، كَابَرُوا؛ لِأَنَّ جُمْهُورَ النَّاسِ مُخَالِفُونَ لَهُمْ فِي ذَلِكَ، وَهُمْ لَا يَعْرِفُونَ الضَّرُورَةَ الَّتِي يَدَّعُونَ، وَلَا فَرْقَ بَيْنَ دَعْوَاهُمْ عَلَى غَيْرِهِمْ عِلْمَ الضَّرُورَةِ هَهُنَا وَبَيْنَ دَعْوَى غَيْرِهِمْ عَلَيْهِمْ عِلْمَ الضَّرُورَةِ فِي بُطْلَانِ ذَلِكَ، وَفِي أَنَّ الْإِنْكَارَ يَكُونُ بِالسُّكُوتِ، وَأَنَّ الرِّضَا لَا يَكُونُ إِلَّا بِالْكَلَامِ؟

L23006 If they claim a textual basis, they have lied; and if they claim knowledge of necessity, they have acted arrogantly—for the majority oppose them in this, and they do not recognize the necessity they claim. There is no distinction between their claim against others concerning the knowledge of necessity here and others' claim against them concerning the knowledge of necessity in the invalidity of that position, nor in the principle that denial is expressed through silence and consent is only conveyed through speech.

فَبَطَلَتْ الدَّعْوَتَانِ لِتَعَارُضِهِمَا، وَلَمْ يَبْقَ إِلَّا أَنَّ السَّاكِتَ مُمْكِنٌ أَنْ يَكُونَ رَاضِيًا، وَمُمْكِنٌ أَنْ يَكُونَ غَيْرَ رَاضٍ، وَهَذَا هُوَ الَّذِي لَا شَكَّ فِيهِ، وَالرِّضَا يَكُونُ بِالسُّكُوتِ وَبِالْكَلَامِ، وَالْإِنْكَارُ يَكُونُ بِالسُّكُوتِ وَبِالْكَلَامِ.

L23007–23008 Thus, the two claims are invalidated due to their contradiction, leaving only the possibility that the silent party could be consenting or could be non-consenting. This is undoubtedly the case. Consent may be given by silence or speech, and denial may likewise be expressed by silence or speech.

فَإِذْ ذَلِكَ كَذَلِكَ فَإِنَّمَا هُوَ الظَّنُّ فَقَطْ، وَلَا تَحِلُّ الْأَمْوَالُ الْمُحَرَّمَةُ بِالظَّنِّ.

L23009 Since this is so, it is nothing but mere assumption, and forbidden wealth cannot be legitimized by assumption.

قَالَ تَعَالَى: {وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨]

L23010 The Exalted said: "Indeed, assumption avails nothing against the truth" [53:28][4]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» .

L23011 The Messenger of Allah, peace be upon him, said: "Avoid suspicion, for suspicion is the most false of speech."

فَإِنْ قَالُوا: قِسْنَا ذَلِكَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَى نِكَاحِ الْبِكْرِ؟

L23012 If they say: "Have we drawn an analogy with the Messenger of Allah (peace and blessings be upon him) and the marriage of a virgin?"

قُلْنَا: الْقِيَاسُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَهُنَا فِي غَايَةِ الْبَاطِلِ؛ لِأَنَّ مَنْ عَدَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَسْكُتُ تَقِيَّةً أَوْ تَدْبِيرًا فِي أَمْرِهِ وَتَرْوِيَةً، أَوْ لِأَنَّهُ يَرَى أَنَّ سُكُوتَهُ لَا يَلْزَمُهُ بِهِ شَيْءٌ، وَهَذَا هُوَ الْحَقُّ، رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَتَّقِي فِي اللَّهِ تَعَالَى أَحَدًا، وَلَا يَحْكُمُ فِي شَيْءٍ مِنَ الدِّينِ بِغَيْرِ الْوَحْيِ مِنْ رَبِّهِ تَعَالَى،

L23013 We said: Analogy is invalid. Moreover, even if it were valid, here it would represent the height of falsehood. For whoever besides the Messenger of Allah—peace be upon him—remains silent does so out of dissimulation, strategizing in his affairs, deliberation, or because he considers his silence non-binding. This is the truth: the Messenger of Allah—peace be upon him—fears none regarding Allah Almighty, judges no religious matter except by

[4] **Qur'an references (L23010):** Qur'an 53:28 (An-Najm).

وَلَا يَجُوزُ لَهُ السُّكُوتُ عَلَى الْبَاطِلِ فَلَا يُنْكِرُهُ، لِأَنَّهُ كَانَ يَكُونُ غَيْرَ مُبَيِّنٍ وَقَدْ أَمَرَهُ اللَّهُ تَعَالَى بِالْبَيَانِ وَالتَّبْلِيغِ وَالْأَمْرِ بِالْوَاجِبَاتِ، وَتَفْصِيلِ الْحَرَامِ، فَسُكُوتُهُ خَارِجٌ عَنْ هَذَيْنِ الْوَجْهَيْنِ، وَلَيْسَ غَيْرُهُ كَذَلِكَ، وَطُولُ الْمَدَدِ لَا يُعِيدُ الْبَاطِلَ حَقًّا أَبَدًا، وَلَا الْحَقَّ بَاطِلًا - وَيَلْزَمُ الْمُخَالِفَ لِهَذَا أَنَّ مَنْ قِيلَ لَهُ: يَا كَافِرُ فَسَكَتَ أَنَّهُ قَدْ لَزِمَهُ حُكْمُ الْكُفْرِ، وَمَنْ قِيلَ لَهُ: إِنَّك طَلَّقْت امْرَأَتَك فَسَكَتَ أَنْ يَلْزَمَهُ الطَّلَاقُ، وَأَنَّ مَنْ قُتِلَ وَلَدُهُ - وَهُوَ يَرَى - فَسَكَتَ أَنَّهُ قَدْ بَطَلَ طَلَبُهُ وَلَزِمَهُ الرِّضَا - وَهُمْ لَا يَقُولُونَ بِشَيْءٍ مِنْ هَذَا.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: مَنْ بَاعَ مَالَ آخَرَ بِغَيْرِ أَمْرِهِ فَلِصَاحِبِ الْمَالِ إجَازَةُ ذَلِكَ أَوْ رَدُّهُ - وَاحْتَجُّوا بِالْخَبَرِ الثَّابِتِ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فِي الَّذِي اسْتَأْجَرَ أَجِيرًا بِفَرَقٍ مِنْ ذُرَةٍ فَأَعْطَيْتُهُ فَأَبَى، فَعَمَدْتُ إلَى ذَلِكَ الْفَرَقِ فَزَرَعْتُهُ حَتَّى اشْتَرَيْتُ مِنْهُ بَقَرًا وَرَاعِيَهَا، ثُمَّ جَاءَ فَقَالَ: يَا عَبْدَ اللَّهِ أَعْطِنِي حَقِّي؟ فَقُلْتُ: انْطَلِقْ إلَى تِلْكَ الْبَقَرِ وَرَاعِيهَا؟ فَقَالَ: أَتَسْتَهْزِئُ بِي؟ قُلْتُ: مَا أَسْتَهْزِئُ بِك، وَلَكِنَّهَا لَك - فَذَكَرَ الْخَبَرَ، وَأَنَّ اللَّهَ فَرَّجَ عَنْهُمْ الصَّخْرَةَ الْمُطْبِقَةَ عَلَى فَمِ الْغَارِ» .

فَإِنَّ هَذَا خَبَرٌ لَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ، بَلْ هُوَ حُجَّةٌ عَلَيْهِمْ، وَمُبْطِلٌ لِقَوْلِهِمْ -: فَأَوَّلُهَا: أَنَّ ذَلِكَ كَانَ فِيمَنْ قَبْلَنَا، وَلَا تَلْزَمُنَا شَرَائِعُهُمْ.

وَالثَّانِي: أَنَّهُ لَيْسَ فِيهِ أَنَّ الْإِجَارَةَ كَانَتْ بِفَرَقِ ذُرَةٍ بِعَيْنِهِ، بَلْ ظَاهِرُهُ أَنَّهُ كَانَ بِفَرَقِ ذُرَةٍ فِي الذِّمَّةِ، فَإِذْ ذَلِكَ كَذَلِكَ فَلَمْ يَبِعْ لَهُ شَيْئًا، بَلْ بَاعَ مَالَهُ ثُمَّ تَطَوَّعَ بِمَا أَعْطَاهُ - وَهَذَا حَسَنٌ، وَهُوَ قَوْلُنَا.

revelation from his Lord, and may never remain silent on falsehood without denouncing it. For this would mean failing to clarify, though Allah commanded him to elucidate, convey, enjoin obligations, and specify prohibitions. Thus his silence transcends these two considerations, whereas others differ. The passage of time never transforms falsehood into truth, nor truth into falsehood. Opponents of this position must concede that one addressed as “O disbeliever!” who remains silent incurs the ruling of disbelief; one told “You divorced your wife” without objection is bound by divorce; and one whose child is slain while he witnesses it yet remains silent forfeits legal redress and incurs compliance—yet they do not accept any of this.

L23014 Abu Hanifah and his companions said: Whoever sells another’s property without his authorization, the owner may ratify or rescind it. They substantiated this with the authenticated narration from Ibn Umar regarding the Prophet (peace be upon him): “Concerning a man who hired a laborer for a farq of corn. When I gave it to him, he refused. I took that farq and cultivated it until I bought from it cows and their herder. Later he came and said: ’O Abdullah, give me my right!’ I replied: ’Go to those cows and their herder.’ He asked: ’Are you mocking me?’ I said: ’I do not mock you - they are yours.’” He then recounted the full narration, including how Allah relieved them of the boulder that had sealed the cave’s mouth.

L23015–23017 For indeed this is a narration that provides no proof for them due to various reasons; rather, it constitutes evidence against them and invalidates their argument: The first of these is that that existed among previous communities, and their laws are not incumbent upon us.

L23018 The second is that there is no indication the lease was for a specific *farq* of grain. Rather, its apparent meaning is that it was for a *farq* of grain as an obligation. Given this, he did not sell him anything. Instead, he sold his property and then voluntarily gave what he provided him. This is commendable and is our position.

L23019 The third is that even if it stipulated a specific measure and occurred within Islam, they would have no valid claim regarding it. This is because he granted him more than his rightful due, so he accepted and absolved him of the spe-

cific right itself. Both parties are voluntarily giving this without stipulation—and this is permissible according to our school and is highly regarded.

وَالثَّالِثُ: أَنَّهُ حَتَّى لَوْ كَانَ فِيهِ أَنَّهُ كَانَ فَرَقًا بِعَيْنِهِ، وَأَنَّهُ كَانَ فِي الْإِسْلَامِ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ أَعْطَاهُ أَكْثَرَ مِنْ حَقِّهِ فَرَضِيَ وَأَبْرَأَهُ مِنْ عَيْنِ حَقِّهِ، وَكِلَاهُمَا مُتَبَرِّعٌ بِذَلِكَ مِنْ غَيْرِ شَرْطٍ - وَهَذَا جَائِزٌ عِنْدَنَا حَسَنٌ جِدًّا.

L23020 As for it being a proof against them, it lies in the fact that he presented his right to him, but he refused to take it, abandoned it, and departed. Thus, according to their foundational principle, his right has been invalidated since he remained silent about taking it, and he has no claim to it thereafter.

وَأَمَّا كَوْنُهُ حُجَّةً عَلَيْهِمْ فَإِنَّ فِيهِ: أَنَّهُ عَرَضَ عَلَيْهِ حَقَّهُ فَأَبَى مِنْ أَخْذِهِ وَتَرَكَهُ وَمَضَى فَعَلَى أَصْلِهِمْ قَدْ بَطَلَ حَقُّهُ، إذْ سَكَتَ عَنْ أَخْذِهِ، فَلَا طَلَبَ لَهُ فِيهِ بَعْدَ ذَلِكَ.

L23021 They cited as evidence what we have narrated through the chain of Ibn Abi Shaybah: Sufyan ibn Uyaynah narrated to us from Shu'ayb ibn Gharqadah from Urwah al-Bariqi that the Messenger of Allah (peace be upon him) gave him a dinar to buy a sheep. Urwah said: "I bought two sheep for him with it, then he sold one of them for a dinar. He came to the Prophet (peace be upon him) with a dinar and a sheep," whereupon the Prophet (peace be upon him) invoked blessings for him.

وَاحْتَجُّوا: بِمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ شُعَيْبِ بْنِ غَرْقَدَةَ عَنْ عُرْوَةَ الْبَارِقِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَاهُ دِينَارًا يَشْتَرِي لَهُ بِهِ شَاةً قَالَ: فَاشْتَرَيْتُ لَهُ شَاتَيْنِ فَبَاعَ إحْدَاهُمَا بِدِينَارٍ، فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِدِينَارٍ وَشَاةٍ فَدَعَا لَهُ بِالْبَرَكَةِ» .

L23022 And it was narrated to us through the chain of Abū Dāwūd: al-Ḥasan ibn al-Ṣabbāḥ, from Abū al-Mundhir, from Saʿīd ibn Zayd, from al-Zubayr ibn al-Ḥārith, from Abī Labīd, from ʿUrwah al-Bāriqī—and he related it.

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ أَبِي دَاوُد أَنَا الْحَسَنُ بْنُ الصَّبَّاحِ أَنَا أَبُو الْمُنْذِرِ أَنَا سَعِيدُ بْنُ زَيْدٍ أَنَا الزُّبَيْرُ بْنُ الْحَارِثِ عَنْ أَبِي لَبِيدٍ عَنْ عُرْوَةَ الْبَارِقِيِّ - فَذَكَرَهُ.

L23023 From the chain of Ibn Abi Shaybah, from Waki', from Sufyan, from Abu Husayn, from a man among the people of Medina, from Hakim ibn Hizam: "The Prophet—peace and blessings of Allah be upon him—sent him to purchase a sacrificial animal for one dinar. He bought it, then sold it for two dinars. He bought a sheep for one dinar and brought another dinar. The Messenger of Allah—peace and blessings of Allah be upon him—invoked blessings for him and commanded him to give the dinar in charity."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ سُفْيَانَ عَنْ أَبِي حُصَيْنٍ عَنْ رَجُلٍ مِنْ أَهْلِ الْمَدِينَةِ عَنْ حَكِيمِ بْنِ حِزَامٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَهُ لِيَشْتَرِيَ لَهُ أُضْحِيَّةً بِدِينَارٍ فَاشْتَرَاهَا ثُمَّ بَاعَهَا بِدِينَارَيْنِ فَاشْتَرَى شَاةً بِدِينَارٍ وَجَاءَ بِدِينَارٍ فَدَعَا لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْبَرَكَةِ وَأَمَرَهُ أَنْ يَتَصَدَّقَ بِالدِّينَارِ» .

L23024 This is all they have disguised with it, and all of it is nothing.

هَذَا كُلُّ مَا مَوَّهُوا بِهِ، وَكُلُّهُ لَا شَيْءَ.

L23025–23026 As for the ḥadīth of Ḥakīm: it is narrated from an unnamed man, and it is not known who he is among the people. Proof in the religion of Allah, the Exalted, cannot be established through the like of this.

أَمَّا حَدِيثُ حَكِيمٍ: فَعَنْ رَجُلٍ لَمْ يُسَمَّ، وَلَا يُدْرَى مَنْ هُوَ مِنْ النَّاسِ، وَالْحُجَّةُ فِي دِينِ اللَّهِ تَعَالَى لَا تَقُومُ بِمِثْلِ هَذَا.

L23027 As for the ḥadīth of ʿUrwah, one of its two chains is transmitted from Saʿīd ibn Zayd—brother of Ḥammād ibn Zayd—who is weak. It also includes Abū Labīd, who is Lumāzah ibn Zabbār, not recognized for his reliability. The other chain is defective despite its apparent soundness, this being because Shabīb ibn Gharqadah did not hear it from ʿUrwah.

وَأَمَّا حَدِيثُ عُرْوَةَ فَأَحَدُ طَرِيقَيْهِ عَنْ سَعِيدِ بْنِ زَيْدٍ أَخِي حَمَّادِ بْنِ زَيْدٍ وَهُوَ ضَعِيفٌ، وَفِيهِ أَيْضًا أَبُو لَبِيدٍ وَهُوَ لُمَازَةُ بْنُ زَبَّارٍ وَلَيْسَ بِمَعْرُوفِ الْعَدَالَةِ، وَالطَّرِيقُ الْأُخْرَى مُعْتَلَّةٌ وَإِنْ كَانَ ظَاهِرُهَا الصِّحَّةَ، وَهِيَ أَنَّ شَبِيبَ بْنَ غَرْقَدَةَ لَمْ يَسْمَعْهُ مِنْ عُرْوَةَ.

L23028 It was narrated to us through the chain of Abū Dāwūd al-Sijistānī: Musaddad narrated from Sufyān—Ibn ʿUyaynah—from Shabīb ibn Gharqadah, who said: Al-Ḥayy narrated to me from ʿUrwah—meaning Ibn al-Jaʿd al-Bāriqī—who said: "The Prophet—peace and blessings be upon him—gave him a dinar to buy a sacrificial animal or a sheep. He purchased two, sold one for a dinar, and brought the Prophet a sheep and a dinar. The Prophet then prayed for blessings upon him." However, the chain occurred as interrupted, thereby invalidating its use as evidence.

كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ أَنَا مُسَدَّدٌ أَنَا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ شَبِيبِ بْنِ غَرْقَدَةَ حَدَّثَنِي الْحَيُّ عَنْ عُرْوَةَ يَعْنِي ابْنَ الْجَعْدِ الْبَارِقِيَّ قَالَ «أَعْطَاهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دِينَارًا لِيَشْتَرِيَ لَهُ أُضْحِيَّةً أَوْ شَاةً فَاشْتَرَى اثْنَتَيْنِ فَبَاعَ إحْدَاهُمَا بِدِينَارٍ فَأَتَاهُ بِشَاةٍ وَدِينَارٍ فَدَعَا لَهُ بِالْبَرَكَةِ» فَحَصَلَ مُنْقَطِعًا فَبَطَلَ الِاحْتِجَاجُ بِهِ.

L23029 Then, even if the ḥadīth of Ḥakīm and ʿUrwah were authentic, they would hold no proof for their position. When the Prophet—peace and blessings be upon him—commanded him to purchase a sheep for him, yet he bought two sheep, the purchase unquestionably belonged to ʿUrwah without doubt, for he acted according to his own intent rather than complying with the Prophet's command—peace and blessings be upon him. Furthermore, the value of the Prophet's dinar constituted either a loan to be repaid or an act of transgression, thereby indisputably establishing the dinar as a liability upon him. He then sold his own sheep for a dinar, transferred it to the Prophet—peace and blessings be upon him—as obligated, and gifted him the sheep. All this reflects the apparent meaning of the report, which contains absolutely no basis—neither textual nor evidentiary—indicating that the Prophet—peace and blessings be upon him—permitted or upheld this purchase. Therefore, it is impermissible to assert a position unsupported by the narration.

ثُمَّ لَوْ صَحَّ حَدِيثُ حَكِيمٍ، وَعُرْوَةَ: لَمْ يَكُنْ لَهُمْ فِيهِمَا حُجَّةٌ؛ لِأَنَّهُ إذْ أَمَرَهُ - عَلَيْهِ السَّلَامُ - أَنْ يَشْتَرِيَ لَهُ شَاةً فَاشْتَرَى لَهُ شَاتَيْنِ، صَارَ الشِّرَاءُ لِعُرْوَةَ بِلَا شَكٍّ، لِأَنَّهُ إنَّمَا اشْتَرَى كَمَا أَرَادَ لَا كَمَا أَمَرَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ وَزْنُ دِينَارِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إمَّا مُسْتَقْرَضًا لَهُ لِيَرُدَّهُ، وَإِمَّا مُتَعَدِّيًا فَصَارَ الدِّينَارُ فِي ذِمَّتِهِ بِلَا شَكٍّ، ثُمَّ بَاعَ شَاةَ نَفْسِهِ بِدِينَارٍ فَصَرَفَهُ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا لَزِمَهُ وَأَهْدَى إلَيْهِ الشَّاةَ، فَهَذَا كُلُّهُ هُوَ ظَاهِرُ الْخَبَرِ، وَلَيْسَ فِيهِ أَصْلًا لَا بِنَصٍّ وَلَا بِدَلِيلٍ عَلَى أَنَّ الشِّرَاءَ جَوَّزَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْتَزَمَهُ، فَلَا يَجُوزُ الْقَوْلُ بِمَا لَيْسَ فِي الْخَبَرِ.

L23030 As for the report of Hakim, he transgressed in the sale of the sheep, thus incurring liability for it. He purchased it for a dinar as he commanded, and a dinar remained. The Prophet (peace be upon him) then ordered him to give it in charity, since its owner was unknown.

وَأَمَّا خَبَرُ حَكِيمٍ فَإِنَّهُ تَعَدَّى فِي بَيْعِ الشَّاةِ فَلَزِمَهُ ضَمَانُهَا، فَابْتَاعَهَا بِدِينَارٍ كَمَا أَمَرَ وَفَضَلَ دِينَارٌ، فَأَمَرَهُ - عَلَيْهِ السَّلَامُ - بِالصَّدَقَةِ إذْ لَمْ يُعْرَفْ صَاحِبُهُ.

L23031 Abu Muhammad said: Then we ask them about one who sold the property

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَسْأَلُهُمْ عَمَّنْ بَاعَ مَالَ غَيْرِهِ فَنَقُولُ -:

of another, so we say -:

L23032 Inform us whether, by that contract, the buyer acquires ownership of what he purchased and the owner of the sold item acquires ownership of the price, or not? It must necessarily be one of the two. If they say: No—and this is the truth, which is our position—then it is absurd that a contract would be invalid at its conclusion and later become valid after its stipulated time, unless this is commanded by the One who is not questioned about His actions. Thus we hear and obey Allah the Exalted. As for one who is questioned about his actions, such a claim is fundamentally unacceptable from him, since Allah the Exalted has not mandated the acceptance of this [contract] from him.

أَخْبِرُونَا هَلْ مَلَكَ الْمُشْتَرِي مَا اشْتَرَى وَمَلَكَ صَاحِبُ الشَّيْءِ الْمَبِيعِ الثَّمَنَ بِذَلِكَ الْعَقْدِ أَمْ لَا؟ وَلَا بُدَّ مِنْ أَحَدِهِمَا؟ فَإِنْ قَالُوا: لَا، وَهُوَ الْحَقُّ، وَهُوَ قَوْلُنَا، فَمِنْ الْبَاطِلِ أَنْ لَا يَصِحَّ عَقْدٌ حِينَ عَقْدِهِ ثُمَّ يَصِحُّ فِي غَيْرِ حِينِ عَقْدِهِ، إلَّا أَنْ يَأْمُرَ بِذَلِكَ الَّذِي لَا يُسْأَلُ عَمَّا يَفْعَلُ، فَنَسْمَعُ وَنُطِيعُ اللَّهَ تَعَالَى وَأَمَّا مَنْ يُسْأَلُ عَمَّا يَفْعَلُ فَلَا يُقْبَلُ مِنْهُ مِثْلُ هَذَا أَصْلًا إذْ لَمْ يُوجِبْ اللَّهُ تَعَالَى قَبُولَهُ مِنْهُ.

L23033–23034 If they say: "The buyer has acquired ownership of what he purchased, and the owner of the sold item has acquired ownership of the price?" We respond: "On what basis have you decreed for him the nullification of a contract that was validly concluded without any Quran or Sunnah being cited for it? This is unlawful, as it amounts to arbitrary judgment in the religion of Allah Almighty."

وَإِنْ قَالُوا: قَدْ مَلَكَ الْمُشْتَرِي مَا اشْتَرَى، وَمَلَكَ الَّذِي لَهُ الشَّيْءُ الْمَبِيعُ الثَّمَنَ؟ قُلْنَا: فَمِنْ أَيْنَ جَعَلْتُمْ لَهُ إبْطَالَ عَقْدٍ قَدْ صَحَّ بِغَيْرِ أَنْ يَأْتِيَ بِذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ؟ وَهَذَا لَا يَحِلُّ؛ لِأَنَّهُ تَحَكُّمٌ فِي دِينِ اللَّهِ تَعَالَى.

L23035 Our position in this matter is the opinion of Ahmad ibn Hanbal - it has been narrated to us from him that if someone's house is sold while he remains silent, such a sale is invalid until he consents, orders, or permits the sale of his house. This is also the view of Abu Sulayman, all our juridical companions, and the opinion of al-Shafi'i, except that a disagreement is reported from him regarding one whose property was sold and he became aware of it? It is narrated from him that the sale is void and necessarily so, while another narration states he may ratify it if he wishes. There is no disagreement reported from him that silence does not constitute consent in any form.

وَقَوْلُنَا فِي هَذَا هُوَ قَوْلُ أَحْمَدَ بْنِ حَنْبَلٍ، رُوِّينَا عَنْهُ: أَنَّ مَنْ بِيعَتْ دَارُهُ وَهُوَ سَاكِتٌ فَإِنَّ ذَلِكَ لَا يَجُوزُ حَتَّى يَرْضَى أَوْ يَأْمُرَ أَوْ يَأْذَنَ فِي بَيْعِ دَارِهِ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا، وَهُوَ قَوْلُ الشَّافِعِيِّ، إلَّا أَنَّهُ اخْتَلَفَ عَنْهُ فِيمَنْ بِيعَ مَالُهُ فَعَلِمَ بِذَلِكَ؟ فَرُوِيَ عَنْهُ أَنَّهُ بَاطِلٌ وَلَا بُدَّ وَرُوِيَ عَنْهُ أَنَّ لَهُ أَنْ يُجِيزَ ذَلِكَ إنْ شَاءَ، وَلَمْ يَخْتَلِفْ عَنْهُ فِي أَنَّ السُّكُوتَ لَيْسَ رِضًا أَصْلًا.

L23036 As for Abū Ḥanīfah, silence does not constitute an admission in his view except in five cases:

وَأَمَّا أَبُو حَنِيفَةَ: فَإِنَّ السُّكُوتَ عِنْدَهُ لَا يَكُونُ إقْرَارًا إلَّا فِي خَمْسَةِ مَوَاضِعَ -:

L23037 One of them: Whoever sees his slave buying and selling in the manner of an authorized agent in trade and remains silent; the slave indeed becomes authorized through that silence.

أَحَدُهَا: مَنْ رَأَى عَبْدَهُ يَبِيعُ وَيَشْتَرِي كَمَا يَفْعَلُ الْمَأْذُونُ لَهُ فِي التِّجَارَةِ فَيَسْكُتُ، فَإِنَّ الْعَبْدَ يَصِيرُ بِذَلِكَ مَأْذُونًا لَهُ.

L23038 The right of pre-emption: If the pre-emptor becomes aware of it and re-

mains silent without testifying that he is a claimant to it, his silence amounts to a waiver of his right to pursue the claim.

وَالشُّفْعَةُ: يَعْلَمُهَا الشَّفِيعُ فَيَسْكُتُ وَلَا يَشْهَدُ عَلَى أَنَّهُ طَالِبٌ لَهَا، فَسُكُوتُهُ إِسْقَاطٌ لِحَقِّهِ فِي الطَّلَبِ.

L23039 A person is sold while present and aware of the transaction. Then he is told: "Stand up with your master," so he stands. This constitutes his confession of enslavement, even if he did not verbally state it.

وَالْإِنْسَانُ يُبَاعُ وَهُوَ حَاضِرٌ عَالِمٌ بِذَلِكَ، ثُمَّ يُقَالُ لَهُ: قُمْ مَعَ مَوْلَاكَ فَيَقُومُ، فَهَذَا إِقْرَارٌ مِنْهُ بِالرِّقِّ وَإِنْ لَمْ يَتَكَلَّمْ بِهِ.

L23040 If a seller sells an item for an immediate price and the buyer takes possession of it while the seller remains silent, this constitutes permission from him for the possession—and the virgin woman in marriage.

وَالْبَائِعُ لِلشَّيْءِ بِثَمَنٍ حَالٍّ فَيَقْبِضُهُ الْمُشْتَرِي وَالْبَائِعُ سَاكِتٌ، فَهَذَا إِذْنٌ مِنْهُ فِي الْقَبْضِ - وَالْبِكْرُ فِي النِّكَاحِ.

L23041 Abu Muhammad said: These four are aspects: falsehood, muddled reasoning, a claim without proof—neither from the Quran, nor the Sunnah, nor a weak narration, nor the opinion of predecessors, nor analogy, nor sound reasoning that differentiates between them and others. Whatever is thus, it is impermissible to uphold such a view.

قَالَ أَبُو مُحَمَّد: هَذِهِ الْأَرْبَعَةُ وُجُوهٍ: بَاطِلٌ، وَتَخْلِيطٌ، وَدَعْوَى بِلَا دَلِيلٍ، وَلَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ مُتَقَدِّمٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ يُفَرِّقُ بَيْنَهَا وَبَيْنَ غَيْرِهَا، وَمَا كَانَ هَكَذَا فَإِنَّ الْقَوْلَ لَا يَحِلُّ بِهِ.

L23042 As for Mālik, he said, "Whoever saw his property being sold and remained silent, the sale has become binding upon him - whether the sold item was a slave woman, a slave, or anything else."

وَأَمَّا مَالِكٌ: فَإِنَّهُ قَالَ: " مَنْ رَأَى مَالَهُ يُبَاعُ فَسَكَتَ فَقَدْ لَزِمَهُ الْبَيْعُ - أَمَةً كَانَتْ الْمَبِيعَةُ أَوْ عَبْدًا أَوْ غَيْرَ ذَلِكَ -

L23043 If someone's property is usurped and the usurper dies, and the owner witnesses his property being divided and remains silent, his right to it is invalidated.

وَمَنْ غُصِبَ مَالُهُ فَمَاتَ الْغَاصِبُ فَرَأَى مَالَهُ يُقَسَّمُ فَسَكَتَ، فَإِنَّ حَقَّهُ قَدْ بَطَلَ.

L23044 Whoever remains silent when a debt is claimed against them is thereby liable for what has been claimed against them.

وَمَنْ أُدُّعِيَ عَلَيْهِ بِدَيْنٍ فَسَكَتَ، فَقَدْ لَزِمَهُ مَا أُدُّعِيَ بِهِ عَلَيْهِ.

L23045–23046 He did not consider silence from demanding the debt—even if he sees [the obligated party] taking an oath—as annulling his right to claim it. Nor did he view silence from demanding the right of pre-emption as consent to waive it unless a full year had passed. Thus, his silence after the year constitutes consent to waive it in his view.

وَلَمْ يَرَ السُّكُوتَ عَنْ طَلَبِ الدَّيْنِ - وَإِنْ رَآهُ يُقْسِمُ - مُسْقِطًا لِحَقِّهِ فِي الطَّلَبِ - وَلَا رَأَى السُّكُوتَ عَنْ طَلَبِ الشُّفْعَةِ رِضًا بِإِسْقَاطِهَا إِلَّا حَتَّى تَمْضِيَ لَهُ سَنَةٌ، فَسُكُوتُهُ بَعْدَ السَّنَةِ رِضًا بِإِسْقَاطِهَا عِنْدَهُ.

L23047–23049 He did not consider the silence of a man whose wife attempts to contract a marriage with another in his presence as constituting a divorce, nor that

she is thereby irrevocably separated from him - and this... Contradictions for which there is no evidence to validate any of them—neither from a textual source, nor from the statement of any predecessor, nor from a weak narration, nor from analogy, nor from an opinion possessing a sound basis.

وَلَمْ يَرَ سُكُوتَ مَنْ تَتَزَوَّجُ امْرَأَتُهُ بِحَضْرَتِهِ طَلَاقًا وَلَا أَنَّهَا بَانَتْ عَنْهُ بِذَلِكَ - وَهَذِهِ مُنَاقَضَاتٌ لَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا، لَا مِنْ نَصٍّ، وَلَا مِنْ قَوْلِ أَحَدٍ تَقَدَّمَهُ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ.

L23050 The most astonishing aspect is that he deemed the silence of the virgin who has remained unmarried past the marriageable age as consent to marriage only if she explicitly voiced her agreement—and this openly contradicts the Text.

وَأَعْجَبُ ذَلِكَ: أَنَّهُ لَمْ يَرَ سُكُوتَ الْبِكْرِ الْعَانِسِ رِضًا بِالنِّكَاحِ إِلَّا حِينَ تَنْطِقُ بِالرِّضَا - وَهَذَا خِلَافُ النَّصِّ جِهَارًا.

L23051 According to those who hold the opinion that if a person's house is built and demolished, and a stranger manages it while he remains silent for ten years, the predominant view is that it has thereby exited his ownership. If he remained silent for less than seven years, they held that it has not exited his ownership. There are conflicting reports from him regarding his silence for seven, eight, or nine years, and it was narrated from him that all such periods terminate his right.

وَرَأَى عَلَى مَنْ رَأَى دَارِهِ تُبْنَى وَتُهْدَمُ وَيَتَصَرَّفُ فِيهَا أَجْنَبِيٌّ فَسَكَتَ عَشْرَ سِنِينَ فَأَكْثَرَ أَنَّهَا قَدْ خَرَجَتْ عَنْ مِلْكِهِ بِذَلِكَ - وَإِنْ سَكَتَ عَنْ ذَلِكَ أَقَلَّ مِنْ سَبْعِ سِنِينَ أَنَّهَا لَمْ تَخْرُجْ عَنْ مِلْكِهِ بِذَلِكَ - وَاخْتُلِفَ عَنْهُ فِي سُكُوتِهِ سَبْعَ سِنِينَ، أَوْ ثَمَانِي سِنِينَ، أَوْ تِسْعَ سِنِينَ، فَرُوِيَ عَنْهُ أَنَّ كُلَّ ذَلِكَ قَطْعٌ لِحَقِّهِ -.

L23052 It has been reported from him that this does not constitute annulment of his right, nor did he consider a person's silence regarding that matter for some of his relatives to annul his right except after seventy years had passed.

وَرُوِيَ عَنْهُ أَنَّهُ لَيْسَ ذَلِكَ قَطْعًا لِحَقِّهِ " وَلَمْ يَرَ سُكُوتَ، الْمَرْءِ عَنْ ذَلِكَ لِبَعْضِ أَقَارِبِهِ قَطْعًا لِحَقِّهِ إِلَّا بَعْدَ سَبْعِينَ سَنَةً -

L23053 And these are statements, as you see—we seek refuge with Allah from them—for they involve the reckless legalization of forbidden wealth. And with Allah alone is success, the Most High.

وَهَذِهِ أَقْوَالٌ كَمَا تَرَى نَعُوذُ بِاللَّهِ مِنْهَا، فَفِيهَا إِبَاحَةُ الْأَمْوَالِ الْمُحَرَّمَةِ جُزَافًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ بَيْعُ شَيْءٍ لَا يَدْرِي بَائِعُهُ مَا هُوَ]

A juristic question: The sale of an item whose seller does not know what it is.

L23055 1463 - Issue: It is not permissible to sell something whose seller does not know what it is even if the buyer knows it, nor something whose buyer does not know what it is even if the seller knows it, nor something unknown to both parties.

١٤٦٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ بَيْعُ شَيْءٍ لَا يَدْرِي بَائِعُهُ مَا هُوَ وَإِنْ دَرَاهُ الْمُشْتَرِي، وَلَا مَا لَا يَدْرِي الْمُشْتَرِي مَا هُوَ وَإِنْ دَرَاهُ الْبَائِعُ، وَلَا مَا جَهِلَاهُ جَمِيعًا.

L23056–23058 The sale is not valid unless the seller and the buyer know what the item is and both see it together, or it is described to them from the description and knowledge of someone who has seen it. For example, if someone purchases

وَلَا يَجُوزُ الْبَيْعُ إِلَّا حَتَّى يَعْلَمَ الْبَائِعُ وَالْمُشْتَرِي مَا هُوَ، وَيَرَيَاهُ جَمِيعًا، أَوْ يُوصَفُ لَهُمَا عَنْ صِفَةِ مَنْ رَآهُ وَعِلْمِهِ كَمَنْ اشْتَرَى زُبْرَةً يَظُنُّهَا قَزْدِيرًا فَوَجَدَهَا فِضَّةً، أَوْ فَصًّا لَا يَدْرِي أَزُجَاجٌ هُوَ أَمْ يَاقُوتٌ؟ فَوَجَدَهُ يَاقُوتًا أَمْ زُمُرُّدًا أَوْ زُجَاجًا - وَهَكَذَا فِي كُلِّ شَيْءٍ - وَسَوَاءٌ وَجَدَهُ أَعْلَى مِمَّا ظَنَّ أَوْ أَدْنَى، أَوْ الَّذِي ظَنَّ -: كُلُّ ذَلِكَ بَاطِلٌ مَفْسُوخٌ أَبَدًا، لَا يَجُوزُ لَهُمَا تَصْحِيحُهُ بَعْدَ عِلْمِهِمَا بِهِ إِلَّا بِابْتِدَاءِ عَقْدِ رِضَاهُمَا مَعًا، وَإِلَّا فَلَا - وَهُوَ مَضْمُونٌ عَلَى مَنْ قَبَضَهُ ضَمَانَ الْغَصْبِ.

a lump they assume to be tin but find it to be silver, or a gemstone they are unsure whether it is glass or a ruby, and then discover it to be a ruby, an emerald, or glass—and similarly for all things—whether they find it to be of higher value, lower value, the same type as assumed, or a different type altogether, all such transactions are invalid and irrevocably annulled, not—It is permissible for both of them to correct it after they become aware of it, except by initiating a contract with their mutual consent; otherwise, it is not permissible. The one who took possession of it is liable for it under the liability of usurpation.

L23059 بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] وَلَا يُمْكِنُ بِبَدِيهَةِ الْعَقْلِ، وَضَرُورَةِ الْحِسِّ رِضًا بِمَا لَا يَعْرِفُ وَلَا يَكُونُ الرِّضَا إِلَّا بِمَعْلُومِ الْمَاهِيَّةِ وَلَا شَكَّ فِي أَنَّهُ إنْ قَالَ: رَضِيت: أَنَّهُ قَدْ لَا يَرْضَى إذَا عَلِمَ مَا هُوَ - وَإِنْ كَانَ دَيِّنًا جِدًّا - وَقَدْ سَمَّى اللَّهُ تَعَالَى مَا لَمْ يَكُنْ عَنْ تَرَاضٍ أَكْلَ مَالٍ بِالْبَاطِلِ.

L23059 The evidence for this is—Allah the Exalted's statement: "Do not consume your wealth among yourselves wrongfully unless it be a trade arising from mutual consent" [An-Nisā' 4:29]. By the self-evident nature of reason and the necessity of innate perception, consent cannot exist regarding something unknown. Consent only occurs regarding something whose essence is known. Undoubtedly, if one says "I consent," they might not consent when they learn what it truly is—even if they are very devout. Allah the Exalted has designated anything not arising from mutual consent as wrongful consumption of wealth.[5]

وَأَيْضًا: فَهُوَ بَيْعُ غَرَرٍ، لِأَنَّهُ لَا يَدْرِي مَا ابْتَاعَ وَلَا مَا بَاعَ، وَقَدْ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ» ، وَهَذَا أَعْظَمُ الْغَرَرِ - وَهَذَا قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَقَدْ ذَكَرْنَا عَنْ مَالِكٍ إجَازَةَ هَذَا الْبَيْعِ - وَهُوَ قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ أَصْلًا.

L23060 Moreover, it is a sale of gharar because he does not know what he has bought nor what he has sold. The Messenger of Allah (peace be upon him) prohibited the sale of gharar, and this constitutes the greatest form of gharar. This is the opinion of Al-Shāfiʿī and Abū Sulaymān. We have previously cited Mālik's allowance of this sale, but this is an opinion for which there exists absolutely no evidence supporting its validity.[6]

وَمِنْ عَجَائِبِ الدُّنْيَا إجَازَتُهُ هَذَا الْبَيْعَ الْفَاسِدَ، وَمَنْعَهُ مِنْ بَيْعِ صُبْرَةٍ مَرْئِيَّةٍ مُحَاطٍ بِهَا عَلِمَ الْبَائِعُ مَكِيلَتَهَا وَلَمْ يَعْلَمْ الْمُشْتَرِي مَكِيلَتَهَا وَهَذَا عَجَبٌ لَا نَظِيرَ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23061 Among the wonders of the world is the jurist's permission of this invalid sale and his prohibition of selling a visible, delimited heap where the seller knew its measurement but the buyer did not—an astonishing anomaly without parallel. With Allah, the Exalted, lies all success.

[مَسْأَلَةٌ بَيْعُ شَيْءٍ بِأَكْثَرَ مِمَّا يُسَاوِي]

[5] **Qur'an references (L23059):** Qur'an 4:29 (An-Nisa).

[6] **Hadith references (L23060):** Sunan Ibn Majah 2194; Sunan Ibn Majah 2195; Jami at-Tirmidhi 1230.

A legal question regarding the sale of an item for more than its actual worth.

Issue 1464: It is impermissible to sell anything for more or less than its equivalent value if the seller or buyer stipulates exoneration from liability, except with both the seller and buyer jointly knowing the extent of unfair pricing in that transaction and mutually consenting to it. If one party stipulates exoneration and the sale is concluded as described, and they do not know the extent of unfair pricing - or if the party not subjected to unfair pricing knows it while the aggrieved party does not - then the sale is invalid, rescinded, permanently annulled, and the recipient is liable as one who unlawfully seizes property. They may not retroactively validate it except through initiating a new contract.

١٤٦٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ شَيْءٍ بِأَكْثَرَ مِمَّا يُسَاوِي وَلَا بِأَقَلَّ مِمَّا يُسَاوِي إذَا اشْتَرَطَ الْبَائِعُ أَوْ الْمُشْتَرِي السَّلَامَةَ إلَّا بِمَعْرِفَةِ الْبَائِعِ وَالْمُشْتَرِي مَعًا بِمِقْدَارِ الْغَبْنِ فِي ذَلِكَ وَرِضَاهُمَا بِهِ، فَإِنْ اشْتَرَطَ أَحَدُهُمَا السَّلَامَةَ وَوَقَعَ الْبَيْعُ كَمَا ذَكَرْنَا، وَلَمْ يَعْلَمَا قَدْرَ الْغَبْنِ، أَوْ عَلِمَهُ، غَيْرُ الْمَغْبُونِ مِنْهُمَا وَلَمْ يَعْلَمْهُ الْمَغْبُونُ: فَهُوَ بَيْعٌ بَاطِلٌ، مَرْدُودٌ، مَفْسُوخٌ، أَبَدًا، مَضْمُونٌ عَلَى مَنْ قَبَضَهُ ضَمَانَ الْغَصْبِ وَلَيْسَ لَهُمَا إجَازَتُهُ إلَّا بِابْتِدَاءِ عَقْدٍ.

If they did not stipulate exemption from defects, nor did either of them do so, and a defect is subsequently found affecting one of them without prior knowledge, the defrauded party may enforce the sale or rescind it. If the sold item is lost, the defrauded party may recover from them the extent of the defect. This is the opinion of Abū Thawr. As for our companions, they said: Mutual consent to the detriment is not permissible at all.

فَإِنْ لَمْ يَشْتَرِطَا السَّلَامَةَ وَلَا أَحَدُهُمَا، ثُمَّ وُجِدَ غَبْنٌ عَلَى أَحَدِهِمَا وَلَمْ يَكُنْ عَلِمَ بِهِ، فَلِلْمَغْبُونِ إنْفَاذُ الْبَيْعِ أَوْ رَدُّهُ، فَإِنْ فَاتَ الشَّيْءُ الْمَبِيعُ رَجَعَ الْمَغْبُونُ مِنْهُمَا بِقَدْرِ الْغَبْنِ - وَهُوَ قَوْلُ أَبِي ثَوْرٍ، وَقَوْلُ أَصْحَابِنَا إلَّا أَنَّهُمْ قَالُوا: لَا يَجُوزُ رِضَاهُمَا بِالْغَبْنِ أَصْلًا.

Abū Ḥanīfah and Mālik said.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ.

Al-Shafi'i holds that neither the seller nor the buyer may rescind the sale due to price exploitation (ghabn), whether the disparity is large or small.

وَالشَّافِعِيُّ: لَا رُجُوعَ لِلْبَائِعِ وَلَا لِلْمُشْتَرِي بِالْغَبْنِ فِي الْبَيْعِ - كَثُرَ أَوْ قَلَّ.

Ibn al-Qaṣṣār reported from Mālik that if a sale involves fraudulent overpricing by one-third, it must be revoked.

وَذَكَرَ ابْنُ الْقَصَّارِ عَنْ مَالِكٍ: أَنَّ الْبَيْعَ إذَا كَانَ فِيهِ الْغَبْنُ مِقْدَارَ الثُّلُثِ فَإِنَّهُ يُرَدُّ.

The proof for the validity of our statement is the statement of Allah, the Exalted: "Do not consume your wealth among yourselves wrongfully, unless it be a trade by mutual consent among yourselves." [Surah An-Nisa 4:29][7]

بُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

Mutual consent is absolutely never valid unless the quantity is specified. There is no doubt that whoever is unaware of the exploitation and its extent cannot have consented to it. Thus, it is jurisprudentially established that such

[7] **Qur'an references (L23069):** Qur'an 4:29 (An-Nisa).

a sale constitutes wrongfully devouring wealth through falsehood. Allah's words, "They seek to deceive Allah and the believers, yet they deceive none but themselves" [Al-Baqarah: 9]. Thus, the Almighty, glorified and exalted, has prohibited fraudulent deception.[8]

وَلَا يَكُونُ التَّرَاضِي أَلْبَتَّةَ إِلَّا عَلَى مَعْلُومِ الْقَدْرِ، وَلَا شَكَّ فِي أَنَّ مَنْ لَمْ يَعْلَمْ بِالْغَبْنِ وَلَا بِقَدْرِهِ فَلَمْ يَرْضَ بِهِ - فَصَحَّ أَنَّ الْبَيْعَ بِذَلِكَ أَكْلُ مَالٍ بِالْبَاطِلِ. وقَوْله تَعَالَى {يُخَادِعُونَ اللَّهَ وَالَّذِينَ آمَنُوا وَمَا يَخْدَعُونَ إِلا أَنْفُسَهُمْ} [البقرة: ٩] فَحَرَّمَ عَزَّ وَجَلَّ الْخَدِيعَةَ.

L23071 None should doubt that a person selling something for more than its worth to someone unaware of that is deception against the buyer, and that a person selling something for less than its worth while unaware of that is deception against the seller. Deception is forbidden and invalid.

وَلَا يَمْتَرِي أَحَدٌ فِي أَنَّ بَيْعَ الْمَرْءِ بِأَكْثَرَ مَا يُسَاوِي مَا بَاعَ مِمَّنْ لَا يَدْرِي ذَلِكَ: خَدِيعَةٌ لِلْمُشْتَرِي، وَأَنَّ بَيْعَ الْمَرْءِ بِأَقَلَّ مِمَّا يُسَاوِي مَا بَاعَ، وَهُوَ لَا يَدْرِي ذَلِكَ: خَدِيعَةٌ لِلْبَائِعِ، وَالْخَدِيعَةُ حَرَامٌ لَا تَصِحُّ.

L23072 It has been narrated to us from Abu Dawud, from Ahmad ibn Hanbal, from Sufyan ibn Uyaynah, from al-Ala ibn Abd al-Rahman, from his father, from Abu Hurayrah: The Messenger of Allah (peace be upon him) passed by a man selling food and asked, "How do you sell?" When the man responded, Allah the Exalted inspired him [the Prophet] to put his hand into it. He inserted his hand and found it adulterated with moisture. The Messenger of Allah (peace be upon him) then said, "Whoever deceives is not of us."

وَمَا رُوِّينَا عَنْ أَبِي دَاوُد أَنَا أَحْمَدُ بْنُ حَنْبَلٍ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَرَّ بِرَجُلٍ يَبِيعُ طَعَامًا فَسَأَلَهُ كَيْفَ تَبِيعُ؟ فَأَخْبَرَهُ، فَأَوْحَى اللَّهُ تَعَالَى إلَيْهِ أَنْ أَدْخِلْ يَدَكَ فِيهِ، فَأَدْخَلَ يَدَهُ فِيهِ فَإِذَا هُوَ مَبْلُولٌ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَيْسَ مِنَّا مَنْ غَشَّ» .

L23073 He (peace be upon him) said: "Indeed, your blood and your wealth are inviolable for you."

وَقَالَ - عَلَيْهِ السَّلَامُ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L23074 From the chain of Abd al-Rahman ibn Mahdi, from Sufyan al-Thawri, from Suhayl ibn Abi Salih, from Ata ibn Yazid al-Laythi, from Tamim al-Dari, who said: The Messenger of Allah—peace and blessings be upon him—said: "Religion is sincere counsel, religion is sincere counsel, religion is sincere counsel." We asked: "To whom, O Messenger of Allah?" He replied: "To Allah, to His Messenger, to His Book, to the Imams, and to the collective body of Muslims."

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ عَطَاءِ بْنِ يَزِيدَ اللَّيْثِيِّ عَنْ تَمِيمٍ الدَّارِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الدِّينُ النَّصِيحَةُ، الدِّينُ النَّصِيحَةُ، الدِّينُ النَّصِيحَةُ؟ قُلْنَا: لِمَنْ يَا رَسُولَ اللَّهِ؟ قَالَ: لِلَّهِ وَلِرَسُولِهِ، وَلِكِتَابِهِ، وَلِلْأَئِمَّةِ، وَلِجَمَاعَةِ الْمُسْلِمِينَ» .

L23075–23076 The Prophet's prohibition—peace and blessings be upon him—against bid rigging in sales constitutes conclusive proof for our position here, for through this he prohibited deception and trickery in sales altogether. Undoubtedly,

«وَنَهْيُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ النَّجْشِ فِي الْبَيْعِ» : بُرْهَانٌ صَحِيحٌ عَلَى قَوْلِنَا هَهُنَا؛ لِأَنَّهُ نَهَى بِذَلِكَ عَنْ الْغُرُورِ - وَالْخَدِيعَةِ فِي الْبَيْعِ جُمْلَةً، بِلَا شَكٍّ يَدْرِي النَّاسُ

[8] **Qur'an references (L23070):** Qur'an 2:9 (Al-Baqarah).

all people know that whoever charges another more than the item's fair value in what he sells to him without the buyer's knowledge or consent, or pays another less than its fair value in what he buys from him without the seller's knowledge or consent, has deceived him and failed to offer him sincere counsel. And whoever deceives and fails to counsel sincerely has indeed committed a forbidden act.

كُلُّهُمْ: أَنَّ مَنْ أَخَذَ مِنْ آخَرَ فِيمَا يَبِيعُ مِنْهُ أَكْثَرَ مِمَّا يُسَاوِي بِغَيْرِ عِلْمِ الْمُشْتَرِي وَلَا رِضَاهُ، وَمَنْ أَعْطَاهُ آخَرُ فِيمَا يَشْتَرِي مِنْهُ أَقَلَّ مِمَّا يُسَاوِي بِغَيْرِ عِلْمِ الْبَائِعِ وَلَا رِضَاهُ فَقَدْ غَشَّهُ وَلَمْ يَنْصَحْهُ، وَمَنْ غَشَّ وَلَمْ يَنْصَحْ فَقَدْ أَتَى حَرَامًا.

L23077 The Messenger of Allah (peace be upon him) said: "Whoever does a deed that is not in accordance with our command, it is rejected."[9]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L23078 It has been established that this transaction is invalid and must be revoked by the explicit ruling of the Prophet—peace be upon him. This aligns with the position of the early scholars, as narrated through the chain of Hammād ibn Zayd: from Ayyūb and Hishām—who is Ibn Ḥassān—all of whom reported from Muḥammad ibn Sīrīn: A man arrived in Medina with slave girls and stayed with Ibn ʿUmar. He mentioned the ḥadīth, which states that the man sold a slave girl to Ibn Jaʿfar. Later, the man came to Ibn ʿUmar and said: "O Abū ʿAbd al-Raḥmān, I was defrauded in the price by seven hundred dirhams." Ibn ʿUmar then approached ʿAbd Allāh ibn Jaʿfar and said: "He suffered exploitation in the price amounting to seven hundred dirhams. You must either compensate him this amount or revoke the sale." Ibn Jaʿfar responded: "Rather, we shall compensate him." This demonstrates that Ibn Jaʿfar and Ibn ʿUmar both upheld voiding the sale due to exploitation in pricing.

فَصَحَّ أَنَّهُ بَاطِلٌ مَرْدُودٌ بِنَصِّ أَمْرِهِ - عَلَيْهِ السَّلَامُ -، وَهُوَ قَوْلُ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ أَنَا أَيُّوبُ، وَهِشَامٌ - هُوَ ابْنُ حَسَّانٍ - كُلُّهُمْ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ رَجُلًا قَدِمَ الْمَدِينَةَ بِجَوَارٍ فَنَزَلَ عَلَى ابْنِ عُمَرَ فَذَكَرَ الْحَدِيثَ - وَفِيهِ أَنَّهُ بَاعَ جَارِيَةً مِنْ ابْنِ جَعْفَرٍ، ثُمَّ جَاءَ الرَّجُلُ إلَى ابْنِ عُمَرَ فَقَالَ: يَا أَبَا عَبْدِ الرَّحْمَنِ غُبِنْت بِسَبْعمِائَةِ دِرْهَمٍ، فَأَتَى ابْنُ عُمَرَ إلَى عَبْدِ اللَّهِ بْنِ جَعْفَرٍ فَقَالَ: إنَّهُ غُبِنَ بِسَبْعمِائَةِ دِرْهَمٍ فَإِمَّا أَنْ تُعْطِيَهَا إيَّاهُ وَإِمَّا أَنْ تَرُدَّ عَلَيْهِ بَيْعَهُ؟ فَقَالَ ابْنُ جَعْفَرٍ: بَلْ نُعْطِيهَا إيَّاهُ - فَهَذَا ابْنُ جَعْفَرٍ، وَابْنُ عُمَرَ: قَدْ رَأَيَا رَدَّ الْبَيْعِ مِنْ الْغَبْنِ فِي الْقِيمَةِ.

L23079 From the path of Abd al-Razzaq: Ma'mar narrated to us from Yunus ibn Ubayd from a man from Jarir ibn Abdullah al-Bajali: That he bargained with a man over a horse. The man offered him five hundred dirhams, repeating: "If you accept this?" Jarir replied: "Your horse is worth more than that. For you is six hundred," then increased it until the offer reached six hundred, then continued increasing until it reached eight hundred dirhams, while the man persisted each time: "If you accept this?" Jarir finally said: "Your horse is worth more than that, and I will not increase my offer." The man told him: "Take it!" Someone asked Jarir: "What prevented you from taking it for five

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ رَجُلٍ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ الْبَجَلِيِّ: أَنَّهُ سَاوَمَ رَجُلًا بِفَرَسٍ فَسَامَهُ، فَسَامَهُ الرَّجُلُ خَمْسَمِائَةِ دِرْهَمٍ إنْ رَأَيْت ذَلِكَ؟ فَقَالَ لَهُ جَرِيرٌ: فَرَسُك خَيْرٌ مِنْ ذَلِكَ، وَلَك سِتُّمِائَةٍ حَتَّى بَلَغَ ثَمَانَمِائَةٍ، وَهُوَ يَقُولُ: إنْ رَأَيْت ذَلِكَ؟ فَقَالَ جَرِيرٌ: فَرَسُك خَيْرٌ مِنْ ذَلِكَ، وَلَك سِتُّمِائَةٍ حَتَّى بَلَغَ سَبْعمِائَةٍ حَتَّى بَلَغَ ثَمَانَمِائَةٍ، وَهُوَ يَقُولُ: إنْ رَأَيْت ذَلِكَ؟ فَقَالَ جَرِيرٌ: فَرَسُك خَيْرٌ مِنْ ذَلِكَ، وَلَا أَزِيدُك؟ فَقَالَ لَهُ الرَّجُلُ: خُذْهَا؟ فَقِيلَ لَهُ: مَا مَنَعَك أَنْ تَأْخُذَهَا بِخَمْسِمِائَةٍ؟ فَقَالَ جَرِيرٌ: لِأَنَّا

[9] **Hadith references (L23077):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

hundred?" He answered: "Because we pledged to Allah's Messenger - peace and blessings be upon him - not to cheat anyone" (or he said: "a Muslim"). And from Ibn Umar: "I am free from deceit."

بَايَعْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَنْ لَا نَغُشَّ أَحَدًا، أَوْ قَالَ: مُسْلِمًا - وَعَنْ ابْنِ عُمَرَ لَيْسَ لِي غِشٌّ.

L23080–23081 And through the chain of ʿAbd al-Raḥmān ibn Mahdī from Sufyān al-Thawrī from Zubayd al-Yāmī from Maysarah from Ibn ʿUmar, as we have previously mentioned in "The Chapter on That Without Which the Sale Is Not Valid, Pertaining to Separation."

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ زُبَيْدٍ الْيَامِيِّ عَنْ مَيْسَرَةَ عَنْ ابْنِ عُمَرَ وَقَدْ ذَكَرْنَاهُ قَبْلُ فِي " بَابِ مَا لَا يَتِمُّ الْبَيْعُ إلَّا بِهِ مِنْ التَّفَرُّقِ ".

L23082 Through the narration of Sufyān ibn 'Uyaynah: Bishr ibn 'Āṣim al-Thaqafī reported: I heard Sa'īd ibn al-Musayyib narrate from Ubayy ibn Ka'b that 'Umar ibn al-Khaṭṭāb and al-'Abbās ibn 'Abd al-Muṭṭalib brought their dispute to him concerning a house owned by al-'Abbās adjacent to the mosque. 'Umar sought to acquire it to expand the mosque, but al-'Abbās refused. Ubayy ibn Ka'b said to them: "When Sulaymān commanded the construction of Bayt al-Maqdis, its land belonged to a man. Sulaymān purchased it from him. After completing the purchase, the man asked: 'Is what you have taken from me better, or what you have given me?' Sulaymān replied: 'No, what I took from you?' The man said: 'Then I do not ratify the sale.' Sulaymān therefore revoked it. He increased the offer, then asked him again, and the man informed him [of his refusal]. But he persisted in rejecting it"—and he [the narrator] recounted the ḥadīth.

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ أَنَا بِشْرُ بْنُ عَاصِمٍ الثَّقَفِيُّ سَمِعَ سَعِيدَ بْنَ الْمُسَيِّبِ يُحَدِّثُ عَنْ أُبَيِّ بْنِ كَعْبٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ، وَالْعَبَّاسَ بْنَ عَبْدِ الْمُطَّلِبِ تَحَاكَمَا إلَيْهِ فِي دَارٍ كَانَتْ لِلْعَبَّاسِ إلَى جَانِبِ الْمَسْجِدِ أَرَادَ عُمَرُ أَخْذَهَا لِيَزِيدَهَا فِي الْمَسْجِدِ، وَأَبَى الْعَبَّاسُ، فَقَالَ أُبَيُّ بْنُ كَعْبٍ لَهُمَا: لَمَّا أَمَرَ سُلَيْمَانُ بِبِنَاءِ بَيْتِ الْمَقْدِسِ كَانَتْ أَرْضُهُ لِرَجُلٍ فَاشْتَرَاهَا سُلَيْمَانُ مِنْهُ، فَلَمَّا اشْتَرَاهَا قَالَ لَهُ الرَّجُلُ: الَّذِي أَخَذْت مِنِّي خَيْرٌ أَمْ الَّذِي أَعْطَيْتنِي؟ قَالَ سُلَيْمَانُ: بَلْ الَّذِي أَخَذْت مِنْك؟ قَالَ: فَإِنِّي لَا أُجِيزُ الْبَيْعَ فَرَدَّهُ، فَزَادَهُ، ثُمَّ سَأَلَهُ؟ فَأَخْبَرَهُ، فَأَبَى أَنْ يُجِيزَهُ - وَذَكَرَ الْحَدِيثَ.

L23083 Here, Ubayy presents this matter as a legal ruling in the presence of Umar ibn al-Khattab and Al-Abbas—may Allah be pleased with them—and they correct his statement. Thus, these individuals—Umar, his son, Al-Abbas, Abdullah ibn Ja'far, Ubayy, and Jarīr—with no dissenting opinion among the Companions, may Allah be pleased with them, hold the view that invalidating the sale is warranted due to deception in the reduction of the price relative to the market value of the sold item.

فَهَذَا أُبَيٌّ يُورِدُ هَذَا عَلَى سَبِيلِ الْحُكْمِ بِهِ بِحَضْرَةِ عُمَرَ بْنِ الْخَطَّابِ، وَالْعَبَّاسِ - رَضِيَ اللَّهُ عَنْهُمْ - فَيُصَوِّبَانِ قَوْلَهُ - فَهَؤُلَاءِ عُمَرُ، وَابْنُهُ، وَالْعَبَّاسُ، وَعَبْدُ اللَّهِ بْنُ جَعْفَرٍ، وَأُبَيٌّ، وَجَرِيرٌ، وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: يَرَوْنَ رَدَّ الْبَيْعِ مِنْ الْخَدِيعَةِ فِي نُقْصَانِ الثَّمَنِ عَنْ قِيمَةِ الْمَبِيعِ.

L23084 And through the chain of transmission of Wakīʿ from Isrāʾīl from Jābir from al-Qāsim ibn ʿAbd al-Raḥmān: he rescinded the sale due to a mistake, but al-Shaʿbī did not rescind it and said: "The sale is a form of bargaining."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إسْرَائِيلَ عَنْ جَابِرٍ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ أَنَّهُ رَدَّ الْبَيْعَ مِنْ الْغَلَطِ، وَلَمْ يَرُدَّهُ الشَّعْبِيُّ وَقَالَ: الْبَيْعُ خُدْعَةٌ.

L23085 Abu Muhammad said: The height of astonishment lies in the statements

of our present opponents. They annul a sale on account of a defect that reduces the price when discovered, deeming it deceitful in their view. Yet they permit a sale even though the gravest deceit has occurred in it, and [the seller] takes from the buyer more than the item's actual value. This is utterly baffling and a crude contradiction.

قَالَ أَبُو مُحَمَّد: وَالْعَجَبُ كُلُّهُ مِنْ أَقْوَالِ الْحَاضِرِينَ مِنْ خُصُومِنَا فَإِنَّهُمْ يَرُدُّونَ الْبَيْعَ مِنْ الْعَيْبِ يَحُطُّ مِنْ الثَّمَنِ يُوجَدُ فِيهِ؛ لِأَنَّهُ عِنْدَهُمْ غِشٌّ، ثُمَّ يُجِيزُونَ الْبَيْعَ وَقَدْ غَشَّ فِيهِ بِأَعْظَمِ الْغِشِّ، وَأَخَذَ فِيهِ مِنْهُ، أَكْثَرَ مِنْ ثَمَنِهِ، هَذَا عَجَبٌ جِدًّا وَتَنَاقُضٌ سَمْجٌ.

L23086 Another wonder: They allow annulling the sale due to a defect found in the item, even if the buyer acquired it at its explicitly determined price, yet they do not permit annulling the sale when the seller suffers gross undervaluation. We do not comprehend from where did this concern for the buyer arise, and this animosity toward the seller. Is this not an unparalleled wonder?

وَعَجَبٌ آخَرُ: وَهُوَ أَنَّهُمْ يَرُدُّونَ الْبَيْعَ مِنْ الْعَيْبِ يُوجَدُ فِيهِ، وَإِنْ كَانَ قَدْ أَخَذَهُ الْمُشْتَرِي بِقِيمَتِهِ مُعَيَّنًا، وَلَا يَرُدُّونَ الْبَيْعَ إذَا غُبِنَ الْبَائِعُ فِيهِ الْغَبْنَ الْعَظِيمَ، فَلَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ هَذِهِ الْعِنَايَةُ بِالْمُشْتَرِي؟ وَهَذَا الْحَنَقُ عَلَى الْبَائِعِ، إنَّ هَذَا لَعَجَبٌ لَا نَظِيرَ لَهُ؟

L23087–23089 A third point of astonishment: They—we refer to the Mālikīs and Shāfiʿīs—impose restrictions on those who practice deception in sales to the point of preventing them from manumitting slaves, giving charity, or engaging in valid sales that involve no fraudulent loss, and they invalidate all such acts. Yet they simultaneously enforce those sales transactions involving fraudulent loss without invalidating them. Truly, if... Those sales in which he was deceived were indeed valid and permissible. For what reason did they impose restrictions on him because of them when they are valid and sound?

وَعَجَبٌ ثَالِثٌ: وَهُوَ أَنَّهُمْ - نَعْنِي الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ - يَحْجُرُونَ عَلَى الَّذِي يَخْدَعُ فِي الْبُيُوعِ حَتَّى يَمْنَعُوهُ مِنْ الْعِتْقِ، وَالصَّدَقَةِ، وَمِنْ الْبَيْعِ الصَّحِيحِ الَّذِي لَا غَبْنَ فِيهِ وَيَرُدُّونَ كُلَّ ذَلِكَ، وَهُمْ يُنَفِّذُونَ مَعَ ذَلِكَ تِلْكَ الْبُيُوعَ الَّتِي غُبِنَ فِيهَا وَلَا يَرُدُّونَهَا، فَلَئِنْ كَانَتْ تِلْكَ الْبُيُوعُ الَّتِي خُدِعَ فِيهَا حَقًّا وَجَائِزَةً فَلِأَيِّ مَعْنًى حَجَرُوا عَلَيْهِ مِنْ أَجْلِهَا وَهِيَ حَقٌّ وَصَحِيحَةٌ؟

L23090 And if those sales in which deception occurred are null and void and impermissible, then for what reason do they permit them? Indeed, these are shameful calamities, crude confusion, and sheer opposition to all that the Messenger of Allah—peace be upon him—ruled. For it was mentioned to him that someone was being rescued and that he was being deceived in sales, yet he did not impose a restriction on him. Rather, he commanded him to say, "No fraud!" at the time of sale and granted him a three-day right of option to ratify or revoke the sale. Thus, he—peace be upon him—nullified fraud but upheld his sound sales and those he chose to finalize after becoming aware of them, and did not prohibit it—this is contrary to all they rule. Sufficient for us is Allah, and what an excellent Trustee He is!

وَلَئِنْ كَانَتْ تِلْكَ الْبُيُوعُ الَّتِي خُدِعَ فِيهَا بَاطِلًا وَغَيْرَ جَائِزَةٍ فَلِأَيِّ مَعْنًى يُجِيزُونَهَا، إنَّ هَذِهِ لَطَوَامُّ فَاحِشَةٌ، وَتَخْلِيطٌ سَمْجٌ، وَخِلَافٌ مُجَرَّدٌ لِكُلِّ مَا حَكَمَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنَّهُ ذُكِرَ لَهُ مُنْقِذٌ، وَأَنَّهُ يُخْدَعُ فِي الْبُيُوعِ فَلَمْ يَحْجُرْ عَلَيْهِ، لَكِنْ أَمَرَهُ أَنْ يَقُولَ: " لَا خِلَابَةَ " عِنْدَ الْبَيْعِ، وَجَعَلَ لَهُ الْخِيَارَ ثَلَاثًا فِي إنْفَاذِ الْبَيْعِ أَوْ رَدِّهِ، فَأَبْطَلَ - عَلَيْهِ السَّلَامُ -: " الْخِلَابَةَ " وَأَنْفَذَ بُيُوعَهُ الصِّحَاحَ وَالَّتِي يَخْتَارُ إنْفَاذَهَا بَعْدَ الْمَعْرِفَةِ بِهَا، وَلَمْ يَحْجُرْ عَلَيْهِ - وَهَذَا عَكْسُ كُلِّ مَا يَحْكُمُونَ بِهِ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

An issue of exploitation in a sale where freedom from defects was stipulated.

[مَسْأَلَةٌ غَبَنَ فِي بَيْعٍ اُشْتُرِطَ فِيهِ السَّلَامَةُ]

1465: Issue: If someone defrauds in a sale where defect-free condition was stipulated, the sale is nullified. This is because a sale involving definite deceit fundamentally differs from a defect-free sale involving no deceit—a matter known through direct observation. Thus, the sale contractually established between them in essence is not the one the stipulator of defect-free condition agreed upon. It is religiously invalid to impose obligations beyond what was mutually contracted, nor may the defrauder insist on terms not stipulated in the sale they mutually consented to. For the other party's property remains religiously forbidden to him except through mutual agreement, just as his property is likewise forbidden to the other party.

١٤٦٥ - مَسْأَلَةٌ: فَمَنْ غَبَنَ فِي بَيْعٍ اُشْتُرِطَ فِيهِ السَّلَامَةُ فَهُوَ بَيْعٌ مَفْسُوخٌ؛ لِأَنَّ بَيْعَ الْغِشِّ بِيَقِينٍ هُوَ غَيْرُ بَيْعِ السَّلَامَةِ الَّذِي لَا غِشَّ فِيهِ، هَذَا أَمْرٌ يُعْلَمُ بِالْمُشَاهَدَةِ، فَإِذَا هُوَ كَذَلِكَ فَالْبَيْعُ الْمُنْعَقِدُ بَيْنَهُمَا فِي الْبَاطِنِ لَيْسَ هُوَ الَّذِي عَقَدَ عَلَيْهِ مُشْتَرِطُ السَّلَامَةِ وَلَا يَحِلُّ أَنْ يُلْزَمَ غَيْرَ مَا عَقَدَ عَلَيْهِ، وَلَا يَحِلُّ لَهُ أَنْ يَتَمَسَّكَ بِمَا لَمْ يَعْقِدْ عَلَيْهِ بَيْعَهُ الَّذِي تَرَاضَى بِهِ، لِأَنَّ مَالَ الْآخَرِ حَرَامٌ عَلَيْهِ إِلَّا مَا تَرَاضَى مَعَهُ، وَكَذَلِكَ مَالُهُ عَلَى الْآخَرِ أَيْضًا.

If both parties knew the extent of the exploitation and mutually agreed to it, then it is a valid contract, a consensual transaction, and a sale free from defects.

وَأَمَّا إِذَا عَلِمَ بِقَدْرِ الْغَبْنِ كِلَاهُمَا، وَتَرَاضَيَا جَمِيعًا بِهِ، فَهُوَ عَقْدٌ صَحِيحٌ، وَتِجَارَةٌ عَنْ تَرَاضٍ، وَبَيْعٌ لَا دَاخِلَةَ فِيهِ.

If neither party knows, or one of them does not know the extent of the fraud, and neither has stipulated a warranty of soundness, the buyer retains the right of option to return [the item] or retain it upon discovery. This is because the sale was legally sound in its general framework, and thus it remains a legally sound sale.

وَأَمَّا إِذَا لَمْ يَعْلَمَا أَوْ أَحَدُهُمَا بِقَدْرِ الْغَبْنِ، وَلَمْ يَشْتَرِطَا السَّلَامَةَ وَلَا أَحَدُهُمَا فَلَهُ الْخِيَارُ إِذَا عَرَفَ فِي رَدٍّ أَوْ إِمْسَاكٍ؛ لِأَنَّ الْبَيْعَ وَقَعَ سَالِمًا عَلَى الْجُمْلَةِ، فَهُوَ بَيْعٌ صَحِيحٌ.

Then we found that the Prophet (peace and blessings of Allah be upon him) had granted the right to rescind to the one who declared, "No fraud! No fraud! No fraud!" If he wishes, he may retain it, and if he wishes, he may rescind it. Thus, it became obligatory that any excess obtained by the defrauder from the defrauded is impermissible except with the defrauded's awareness and willing consent. If he agrees to relinquish his right, that is his right. But if he refuses, it is unlawful for him to take what he purchased without the seller's consent. He may return it.

ثُمَّ وَجَدْنَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ جَعَلَ الْخِيَارَ لِمَنْ قَالَ: " لَا خِلَابَةَ ثَلَاثًا " إِنْ شَاءَ أَمْسَكَ وَإِنْ شَاءَ رَدَّ فَوَجَبَ أَنْ لَا يَحِلَّ مَا تَزَيَّدَ فِيهِ الْخَادِعُ عَلَى الْمَخْدُوعِ إِلَّا بِعِلْمِ الْمَخْدُوعِ وَطِيبِ نَفْسِهِ، فَإِنْ رَضِيَ بِتَرْكِ حَقِّهِ فَذَلِكَ لَهُ، وَإِنْ أَبَى لَمْ يَجُزْ لَهُ أَخْذُ مَا ابْتَاعَ بِغَيْرِ رِضَى الْبَائِعِ، فَلَهُ أَنْ يَرُدَّهُ.

It is conclusively established by authentic consensus that he holds the right of revocation...

وَقَدْ صَحَّ الْإِجْمَاعُ الْمَقْطُوعُ بِهِ عَلَى أَنَّ لَهُ الرَّدَّ -

People have differed: does he have the right to withhold or not? And Allah

the Most High has said: “except when it is a trade by mutual consent among you” [An-Nisa’ 4:29].[10]

وَاخْتَلَفَ النَّاسُ: هَلْ لَهُ الْإِمْسَاكُ أَمْ لَا؟ وَقَدْ قَالَ اللَّهُ تَعَالَى {إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

L23098 Thus, it is established that when he is satisfied with what he has purchased, then that suffices—and with Allah, the Exalted, lies divine facilitation.

فَصَحَّ أَنَّهُ إِذَا رَضِيَ مَا ابْتَاعَ فَذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L23099–23100 Ali said: There are two prices agreed upon by all people of Islam, past and present. Merchants during the time of the Messenger of Allah (peace and blessings be upon him) would sell what they bought in pursuit of profit; this is an established fact. One price is that at which merchants purchase goods—they do not exceed it except for a valid legal cause—and another price is that at which merchants sell goods—they neither reduce nor exceed it except for a valid legal cause. These two prices are observed, each considered according to its specific circumstance.

قَالَ عَلِيٌّ: وَالْقِيمَةُ قِيمَتَانِ بِاتِّفَاقِ جَمِيعِ أَهْلِ الْإِسْلَامِ - قَدِيمًا وَحَدِيثًا - فَقَدْ كَانَ التُّجَّارُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَبِيعُونَ مَا يَشْتَرُونَ طَلَبَ الرِّبْحِ، هَذَا أَمْرٌ مُتَيَقَّنٌ، فَقِيمَةٌ يَبْتَاعُ بِهَا التُّجَّارُ السِّلَعَ لَا يَتَجَاوَزُونَهَا إِلَّا لِعِلَّةٍ، وَقِيمَةٌ يَبِيعُ بِهَا التُّجَّارُ السِّلَعَ لَا يَحُطُّونَ عَنْهَا وَلَا يَتَجَاوَزُونَهَا إِلَّا لِعِلَّةٍ، فَهَاتَانِ الْقِيمَتَانِ تُرَاعَيَانِ لِكُلِّ قِيمَةٍ فِي حَالِهَا.

L23101 Abu Muhammad said: Our companions argued in invalidating the sale for more than its equivalent value—even if both parties knew this and mutually consented to it—by stating: “Allah’s Messenger, peace and blessings be upon him, prohibited the squandering of wealth.” They said: “The buyer purchasing an item for more than its value and the seller selling it for less than its value—both of them are squandering their wealth.”

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ أَصْحَابُنَا فِي إِبْطَالِهِمْ الْبَيْعَ بِأَكْثَرَ مِمَّا يُسَاوِي - وَإِنْ عَلِمَا جَمِيعًا بِذَلِكَ وَتَرَاضَيَا بِهِ بِأَنْ قَالُوا: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ» ، قَالُوا: وَالْمُشْتَرِي الشَّيْءَ، بِأَكْثَرَ مِنْ قِيمَتِهِ وَالْبَائِعُ لَهُ بِأَقَلَّ مِنْ قِيمَتِهِ كِلَاهُمَا مُضَيِّعٌ لِمَالِهِ.

L23102 They said: It is impermissible to divest property of ownership except either in exchange for a reward from Allah the Exalted - for that is the best form of compensation - or in exchange for worldly compensations, such as labor in a lease, merchandise in trade, ownership of sexual rights in marriage, the dissolution of his ownership in khulʿ, and the like thereof, as stipulated by textual sources.

قَالُوا: وَلَا يَجُوزُ إخْرَاجُ الْمَالِ عَنْ الْمِلْكِ إلَّا بِعِوَضِ أَجْرٍ مِنْ اللَّهِ تَعَالَى فَهُوَ أَفْضَلُ عِوَضٍ، وَإِمَّا بِعِوَضٍ مِنْ أَعْرَاضِ الدُّنْيَا كَعَمَلٍ فِي الْإِجَارَةِ، أَوْ عَرَضٍ فِي التِّجَارَةِ، أَوْ مِلْكِ بُضْعٍ فِي النِّكَاحِ، أَوْ انْحِلَالِ مِلْكِهِ فِي الْخُلْعِ، وَنَحْوِ ذَلِكَ مِمَّا جَاءَتْ بِهِ النُّصُوصُ.

L23103 They said: “Whoever sells a fruit for a thousand dinars or a gem for a fals, this is indeed squandering, extravagance, extravagant spending in full measure, and wrongful consumption of wealth.” Abū Muḥammad said: “They have no proof beyond what we have mentioned. We say to them—and by Al-

قَالُوا: وَمَنْ بَاعَ ثَمَرَةً بِأَلْفِ دِينَارٍ، أَوْ يَاقُوتَةً بِفَلْسٍ، فَإِنَّ هَذَا هُوَ التَّبْذِيرُ، وَالسَّرَفُ، وَبَسْطُ الْيَدِ كُلَّ الْبَسْطِ، وَأَكْلُ الْمَالِ بِالْبَاطِلِ - قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ لَهُمْ غَيْرَ مَا ذَكَرْنَا. قَالَ أَبُو مُحَمَّدٍ: فَنَقُولُ لَهُمْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّ الَّذِي قُلْتُمْ إنَّمَا هُوَ فِيمَا لَا يَعْلَمُ

[10] **Qur’an references (L23097):** Qur’an 4:29 (An-Nisa).

lah's grace alone is success attained—what you have described applies only to matters where the value is unknown. However, when one knows the extent of the fraudulent disparity in value and consents to it willingly, this constitutes a righteous act carried out through a transaction with full contentment, and he is rewarded for it. For he has done good, shown kindness to another person, ceded wealth to him, or granted him property. True squandering, extravagance, wasting wealth, and wrongful consumption are only what Allah, the Mighty and Majestic, has prohibited, as we detailed in the 'Book of Interdiction' within this compendium of ours. As for trade conducted by mutual consent, Allah the Exalted has never forbidden it; rather, He has permitted it."

بِقَدْرِهِ، وَأَمَّا إِذَا عَلِمَ بِقَدْرِ الْغَبْنِ وَطَابَتْ بِهِ نَفْسُهُ فَهُوَ بِرٌّ بِرَّ بِهِ مُعَامَلَةً بِطِيبِ نَفْسِهِ، فَهُوَ مَأْجُورٌ، لِأَنَّهُ فَعَلَ خَيْرًا، وَأَحْسَنَ إِلَى إِنْسَانٍ، وَتَرَكَ لَهُ مَالًا، أَوْ أَعْطَاهُ مَالًا، وَلَيْسَ التَّبْذِيرُ، وَالسَّرَفُ، وَإِضَاعَةُ الْمَالِ، وَأَكْلُهُ بِالْبَاطِلِ إِلَّا مَا حَرَّمَهُ اللَّهُ عَزَّ وَجَلَّ عَلَى مَا بَيَّنَّا فِي: " كِتَابِ الْحَجْرِ " مِنْ دِيوَانِنَا هَذَا وَأَمَّا التِّجَارَةُ عَنْ تَرَاضٍ فَمَا حَرَّمَهَا اللَّهُ تَعَالَى قَطُّ، بَلْ أَبَاحَهَا.

L23104 Abu Muhammad said: The only permissible supererogatory act of increasing in purchase is that which preserves sufficiency, for this constitutes a recognized good in trade. The Messenger of Allah (peace and blessings be upon him) said: "Every act of goodness is charity," and he (peace and blessings be upon him) said: "Charity is given from surplus beyond sufficiency."

قَالَ أَبُو مُحَمَّدٍ: وَإِنَّمَا يَجُوزُ مِنَ التَّطَوُّعِ بِالزِّيَادَةِ فِي الشِّرَاءِ مَا أَبْقَى غِنًى، لِأَنَّهُ مَعْرُوفٌ مِنَ الْبَيْعِ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ مَعْرُوفٍ صَدَقَةٌ» وَقَالَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الصَّدَقَةُ عَنْ ظَهْرِ غِنًى» .

L23105 As for actions that fail to dispel need, they are rejected and impermissible, according to the statement of the Messenger of Allah (peace and blessings be upon him): "Whoever introduces into our practice something not part of it, it is rejected."[11]

وَأَمَّا مَا لَمْ يُبْقِ غِنًى فَمَرْدُودٌ لَا يَحِلُّ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L23106–23108 Ali said: Among what clarifies the soundness of our position is what we have narrated through Muslim's chain: I am Abu Kamil—he is Fuḍayl ibn Ḥusayn al-Jaḥdarī. ʿAbd al-Wāḥid ibn Ziyād said: I heard from al-Jurayrī, who heard from Abū Naḍrah, who heard from Jābir ibn ʿAbd Allāh, who said: "We were with the Messenger of Allāh (ṣallallāhu ʿalayhi wa-sallam) on a journey when my watering camel lagged behind." He mentioned the ḥadīth, and in it: "He kept increasing for me [reward] and saying: 'By Allāh, He forgives you.'"

قَالَ عَلِيٌّ: وَمِمَّا يُبَيِّنُ صِحَّةَ قَوْلِنَا: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو كَامِلٍ - هُوَ فُضَيْلُ بْنُ حُسَيْنٍ الْجَحْدَرِيُّ أَنَا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ أَنَا الْجُرَيْرِيُّ عَنْ أَبِي نَضْرَةَ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ «كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَفَرٍ فَتَخَلَّفَ نَاضِحِي؛ فَذَكَرَ الْحَدِيثَ وَفِيهِ فَمَا زَالَ يَزِيدُنِي وَيَقُولُ: وَاَللَّهُ يَغْفِرُ لَكَ» .

L23109 Abu Muhammad said: The first payment the Messenger of Allah—peace and blessings be upon him—gave regarding the camel cannot escape being either equal to the camel's value, less than its value, or greater than its value.

قَالَ أَبُو مُحَمَّدٍ: فَلَا يَخْلُو أَوَّلُ عَطَاءٍ أَعْطَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْجَمَلِ مِنْ أَنْ يَكُونَ هُوَ قِيمَةَ الْجَمَلِ أَوْ أَقَلَّ مِنْ قِيمَتِهِ أَوْ أَكْثَرَ مِنْ قِيمَتِهِ فَإِنْ كَانَ قِيمَتَهُ فَقَدْ زَادَهُ بَعْدَ ذَلِكَ، وَفِي هَذَا جَوَازُ الْبَيْعِ بِالزِّيَادَةِ عَلَى الْقِيمَةِ عَنْ رِضَاهُمَا مَعًا - وَإِنْ كَانَ

[11] **Hadith references (L23105):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

أَعْطَاهُ أَوَّلًا أَقَلَّ مِنْ الْقِيمَةِ أَوْ أَكْثَرَ - فَهَذَا هُوَ قَوْلُنَا وَهُوَ - عَلَيْهِ السَّلَامُ - لَا يَسُومُ بِمَا لَا يَحِلُّ وَلَا يَخْدَعُ وَلَا يَغُرُّ وَلَا يَغُشُّ - فَهَذَا نَفْسُ قَوْلِنَا وَلِلَّهِ الْحَمْدُ.

If it was equal to the value, he later increased it, and this demonstrates the permissibility of selling above the value by mutual consent—whether he initially gave less or more than the value. This is our doctrine, and he—peace be upon him—would not insist on what is unlawful, nor deceive, mislead, nor defraud. This precisely aligns with our position, and all praise belongs to Allah.

وَكَذَلِكَ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «لَا يَسُمْ أَحَدُكُمْ عَلَى سَوْمِ أَخِيهِ» فِيهِ إبَاحَةُ الْمُسَاوِمَةِ، وَهِيَ عِنْدَ كُلِّ مَنْ يَدْرِي اللُّغَةَ الْعَرَبِيَّةَ مَعْرُوفَةٌ، وَهِيَ أَنْ يَسْأَلَ أَحَدُهُمَا ثَمَنًا يُعْطِيهِ الْآخَرُ أَقَلَّ - فَلَوْ كَانَ إعْطَاءُ أَقَلَّ مِنْ الْقِيمَةِ أَوْ طَلَبُ أَكْثَرَ مِنْهَا طَلَبًا بَاطِلًا لَمَا أَبَاحَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ.

L23110 Similarly, his statement – peace be upon him – "None of you should interfere with his brother's bargaining" affirms the permissibility of bargaining. This is known to anyone familiar with the Arabic language, as it refers to one party asking for a price and the other offering less. If giving less than the value or asking for more than it were unlawful acts, Allah the Exalted would not have permitted it through His Messenger.

فَصَحَّ أَنَّ كُلَّ ذَلِكَ جَائِزٌ إذَا عَرَفَاهُ وَعَرَفَا مِقْدَارَهُ وَتَرَاضَيَا مَعًا بِهِ، وَلَمْ يَكُنْ خَدِيعَةً وَلَا غِشًّا.

L23111 Thus, it is established that all of that is permissible if they both know it and its extent, mutually agree upon it together, and that there is no deceit or fraud.

وَكَذَلِكَ مَا جَعَلَ - عَلَيْهِ السَّلَامُ - لِمُنْقِذٍ مِنْ الْخِيَارِ فِي رَدِّ الْبَيْعِ أَوْ إمْضَائِهِ وَكَانَ يُخْدَعُ فِي الْبُيُوعِ فِيهِ إجَازَةُ الْبَيْعِ الَّذِي فِيهِ الْخَدِيعَةِ إذَا رَضِيَهَا الْمَخْدُوعُ وَعَرَفَهَا.

L23112 Similarly, what the Prophet (peace be upon him) established for the party granted the option (khiyār) to annul or uphold a sale - and they were deceived in transactions - is the permissibility of a sale involving deceit when the deceived party consents to it and acknowledges it.

وَكَذَلِكَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ أَبِي هُرَيْرَةَ، وَزَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ عَنْ الْأَمَةِ إذَا زَنَتْ؟ فَقَالَ: إذَا زَنَتْ فَاجْلِدُوهَا، ثُمَّ إنْ زَنَتْ فَاجْلِدُوهَا، ثُمَّ إنْ زَنَتْ فَاجْلِدُوهَا، ثُمَّ إنْ زَنَتْ فَبِيعُوهَا، وَلَوْ بِضَفِيرٍ أَوْ بِحَبْلٍ مِنْ شَعْرٍ» فَأَبَاحَ - عَلَيْهِ السَّلَامُ - بَيْعَهَا بِحَبْلٍ مِنْ شَعْرٍ إذَا رَضِيَ بَائِعُهَا بِذَلِكَ.

L23113 Similarly, what we have narrated through the chain of Malik from Ibn Shihab from 'Ubayd Allah ibn 'Abd Allah ibn 'Utbah ibn Mas'ud from Abu Hurairah and Zayd ibn Khalid al-Juhani: "The Messenger of Allah - peace be upon him - was asked about a female slave who commits illicit sexual intercourse. He said: 'If she commits it, flog her; then if she commits it again, flog her; then if she commits it again, flog her; then if she commits it again, sell her, even if it is for a plaited rope or a hair cord.'" Thus, he - peace be upon him - permitted selling her for a hair cord if the seller consents to that.

وَقَدْ أَجَازَ أَصْحَابُنَا الَّذِي أَنْكَرُوا هَهُنَا فِي حَسِّ مَسٍّ إذْ أَجَازُوا بَيْعَ عَبْدٍ بِعَشَرَةِ دَنَانِيرَ، وَاشْتِرَاطَ مَالٍ وَهُوَ أَنَّهُ عَشَرَةُ آلَافِ دِينَارٍ، وَلَمْ يُنْكِرُوهُ أَصْلًا، وَكَيْفَ يُنْكِرُونَهُ وَرَسُولُ

L23114–23115 Our companions—those who rejected ḥass-mass (uncertain barter) in this context—permitted selling a slave for ten dinars and stipulating a fixed sum of ten thousand dinars, without objecting to it at all. How could they reject

it when the Messenger of Allah (peace be upon him and his family) has permitted it in general terms? Such transactions constitute acquiring property without charitable intent or reciprocal consideration.

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدْ أَبَاحَهُ جُمْلَةً؟ وَهَذَا أَخْذُ مَالٍ بِغَيْرِ صَدَقَةٍ وَلَا عِوَضٍ.

L23116 Abu Muhammad said: There is nothing in any of these reports to support those who permit a sale involving prohibited deceit and fraud arising from unfair pricing that the defrauded party is unaware of.

قَالَ أَبُو مُحَمَّد: وَلَيْسَ فِي شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ مُتَعَلَّقٌ لِمَنْ أَجَازَ الْبَيْعَ الَّذِي فِيهِ الْخَدِيعَةُ الْمُحَرَّمَةُ وَالْغِشُّ الْمُحَرَّمُ مِنْ الْغَبْنِ الَّذِي لَا يَدْرِيهِ الْمَغْبُونُ.

L23117 For it contains no evidence for any of that; rather, it only indicates the permissibility when the consenting party in his sale knows it exclusively. Consent to the unknown is fundamentally invalid, being contrary to human nature and inherently unfeasible. A person might declare, "I consent, I agree!" regarding matters whose extent he ignores, yet when confronted with reality, he utterly rejects them. This constitutes a perceptible fact observable in every individual and all circumstances.

لِأَنَّهُ لَيْسَ فِيهَا دَلِيلٌ عَلَى شَيْءٍ مِنْ ذَلِكَ، إنَّمَا فِيهَا جَوَازُ ذَلِكَ إذَا عَلِمَهُ الرَّاضِي بِهِ فِي بَيْعِهِ فَقَطْ، وَلَا يَجُوزُ الرِّضَا بِمَجْهُولٍ أَصْلًا؛ لِأَنَّهُ مُمْتَنِعٌ فِي الْجِبِلَّةِ، مُحَالٌ فِي الْخِلْقَةِ، وَقَدْ يَقُولُ الْمَرْءُ: رَضِيت رَضِيت، فِيمَا لَا يَعْلَمُ قَدْرَهُ، فَإِذَا وَقَفَ عَلَيْهِ لَمْ يَرْضَهُ أَصْلًا، هَذَا أَمْرٌ مَحْسُوسٌ فِي كُلِّ أَحَدٍ، وَفِي كُلِّ شَيْءٍ.

L23118 Ali said: The aforementioned cited as evidence what was transmitted to us through the isnād of ʿAbd al-Malik ibn Ḥabīb al-Andalusī, who said: "It was reported to me from Ibn ʿUmar that he would say when dispatching someone to purchase a commodity for him: 'Hold him accountable.'"

قَالَ عَلِيٌّ: وَاحْتَجَّ الْمَذْكُورُونَ بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ قَالَ: بَلَغَنِي عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ يَقُولُ إذَا بَعَثَ مَنْ يَبْتَاعُ لَهُ سِلْعَةً: ارْثِمْ أَنْفَهُ.

L23119 From the chain of Ibn Ḥabīb: ʿAbd al-ʿAzīz al-Uwaysī and ʿAbd al-Malik ibn Maslamah narrated to me from Ismāʿīl ibn ʿAyyāsh from ʿAmr ibn al-Muhājir from ʿUmar ibn ʿAbd al-ʿAzīz that he said: "I wish I neither sold nor bought anything unless I openly clarified matters with the other party."

وَمِنْ طَرِيقِ ابْنِ حَبِيبٍ حَدَّثَنِي عَبْدُ الْعَزِيزِ الْأُوَيْسِيُّ، وَعَبْدُ الْمَلِكِ بْنِ مَسْلَمَةَ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ عَمْرِو بْنِ الْمُهَاجِرِ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ قَالَ: وَدِدْت أَنِّي لَا أَبِيعُ شَيْئًا وَلَا أَبْتَاعُهُ إلَّا بَطَحْت بِصَاحِبِهِ.

L23120 Is the statement "Sale is prudent dealing" what we have cited from al-Shaʿbī?

وَبِمَا ذَكَرْنَا عَنْ الشَّعْبِيِّ مِنْ قَوْلِهِ: الْبَيْعُ خُدْعَةٌ؟

L23121 Abu Muhammad said: All of this is invalid, and Ibn Habib is abandoned. Moreover, it is a false unattributed report ascribed to Ibn Umar. Even if it were authentic, no one would infer from it the permissibility of fraudulent overpricing or deceit. The meaning of "break his nose" is to take the finest of what he possesses—and this is lawful if both parties consent to it willingly, and the seller gives it with full approval.

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّهُ بَاطِلٌ، وَابْنُ حَبِيبٍ مَتْرُوكٌ، ثُمَّ هُوَ عَنْ ابْنِ عُمَرَ بَلَاغٌ كَاذِبٌ، ثُمَّ لَوْ صَحَّ لَمَا فَهِمَ مِنْهُ أَحَدٌ إبَاحَةَ غَبْنٍ، وَلَا خَدِيعَةٍ، إنَّمَا مَعْنَى " ارْثِمْ أَنْفَهُ " خُذْ أَفْضَلَ مَا عِنْدَهُ - وَهَذَا مُبَاحٌ إذَا تَرَاضَيَا بِذَلِكَ، وَأَعْطَاهُ إيَّاهُ بِطِيبِ نَفْسِهِ.

L23122–23124 As for the narration of Umar ibn Abd al-Aziz, Ismāʿīl ibn ʿAyyāsh is deemed weak. How many incidents are there where they contradicted Umar ibn Abd al-Aziz? Such as his prostration during the recitation of *When the sky is split asunder* [Al-Inshiqaq: 1] and his permitting of it. Selling fish in water before they are caught and numerous cases—it is invalid to hold that what is authentically established from the Prophet is not authoritative proof while what is unauthenticated is regarded as proof. And success is by Allah, the Most High.[12]

وَأَمَّا حَدِيثُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَإِسْمَاعِيلُ بْنُ عَيَّاشٍ لَا شَيْءَ - وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا عُمَرُ بْنُ عَبْدِ الْعَزِيزِ؟ كَسُجُودِهِ فِي {إِذَا السَّمَاءُ انْشَقَّتْ} [الانشقاق: ١] وَإِبَاحَتِهِ بَيْعَ السَّمَكِ فِي الْمَاءِ قَبْلَ أَنْ يُصَادَ، وَعَشَرَاتٍ مِنْ الْقَضَايَا، فَمِنْ الْبَاطِلِ أَنْ يَكُونَ مَا صَحَّ عَنْهُ لَيْسَ حُجَّةً وَمَا لَمْ يَصِحَّ عَنْهُ حُجَّةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23125 And the narration that came through Al-Sha'bi's chain originates from Jabir Al-Ju'fi's chain. Al-Qasim and others differed from Jabir Al-Ju'fi, and no proof exists in anyone apart from the Messenger of Allah (peace and blessings be upon him).

وَالَّذِي جَاءَ مِنْ طَرِيقِ الشَّعْبِيِّ هُوَ مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ، وَقَدْ خَالَفَهُ الْقَاسِمُ، وَغَيْرُهُ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L23126 ## Issue: The Sale with an Undetermined Price

[مَسْأَلَةٌ الْبَيْعُ بِثَمَنٍ مَجْهُولٍ]

L23127 1466. Issue: It is not permissible to sell for an unknown price or to an unknown term, such as harvest, threshing, stipend, cultivation, juice, or similar matters. This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān. This is because all that we have mentioned can be advanced or delayed in days. For example, harvest and threshing may be delayed by days if the rain is continuous, or advanced by hot weather and lack of rain. Similarly, juice varies in timing. As for cultivation, it may be delayed by two months or more due to lack of rain. As for the stipend, it may be entirely discontinued.

١٤٦٦ - مَسْأَلَةٌ: وَلَا يَجُوزُ الْبَيْعُ بِثَمَنٍ مَجْهُولٍ، وَلَا إلَى أَجَلٍ مَجْهُولٍ كَالْحَصَادِ، وَالْجِدَادِ، وَالْعَطَاءِ، وَالزَّرِيعَةِ، وَالْعَصِيرِ، وَمَا أَشْبَهَ هَذَا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ؛ لِأَنَّ كُلَّ مَا ذَكَرْنَا يَتَقَدَّمُ بِالْأَيَّامِ وَيَتَأَخَّرُ فَالْحَصَادُ، وَالْجِدَادُ، يَتَأَخَّرَانِ أَيَّامًا إنْ كَانَ الْمَطَرُ مُتَوَاتِرًا، وَيَتَقَدَّمَانِ بِحَرِّ الْهَوَاءِ وَعَدَمِ الْمَطَرِ، وَكَذَلِكَ الْعَصِيرُ، وَأَمَّا الزَّرِيعَةُ فَتَتَأَخَّرُ شَهْرَيْنِ وَأَكْثَرَ لِعَدَمِ الْمَطَرِ - وَأَمَّا الْعَطَاءُ فَقَدْ يَنْقَطِعُ جُمْلَةً.

L23128 Furthermore, any condition not in the Book of Allah is invalid. The permissibility of setting a term applies only to what does not delay or advance by even an hour—such as Arab or non-Arab months, the rising or setting of the sun, the rising or setting of the moon, or the rising or setting of a named star. All these have precisely defined timings among those who know them. Allah the Exalted said: "They ask you about the crescent moons. Say, 'They are appointed times for people and for pilgrimage'" (Quran 2:189). Except for the sale linked to gambling that we mentioned, it is valid due to the explicit

وَأَيْضًا: فَكُلُّ ذَلِكَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ، وَإِنَّمَا يَجُوزُ الْأَجَلُ إلَى مَا لَا يَتَأَخَّرُ سَاعَةً وَلَا يَتَقَدَّمُ، كَالشُّهُورِ الْعَرَبِيَّةِ وَالْعَجَمِيَّةِ؛ أَوْ كَطُلُوعِ الشَّمْسِ أَوْ غُرُوبِهَا، أَوْ طُلُوعِ الْقَمَرِ أَوْ غُرُوبِهِ، أَوْ طُلُوعِ كَوْكَبٍ مُسَمًّى أَوْ غُرُوبِهِ، فَكُلُّ هَذَا مَحْدُودُ الْوَقْتِ عِنْدَ مَنْ يَعْرِفُهَا، قَالَ اللَّهُ تَعَالَى {يَسْأَلُونَكَ عَنِ الأَهِلَّةِ قُلْ هِيَ مَوَاقِيتُ لِلنَّاسِ

[12] **Qur'an references (L23122):** Qur'an 84:1 (Al-Inshiqaq).

textual evidence on this matter and because it is Allah's ruling for everyone who cannot repay their debt.[13]

L23129 It is not permissible to set a term extending to the fasting of Christians or Jews, or their breaking of the fast, nor to any of their festivals, for these are part of their religious adornments. Perhaps it will become apparent to them in these two practices, and this is possible.

L23130 Al-Shafi'i said: "A designated period is only valid when determined by the sighting of the new moons," and he cited this verse in which Allah, the Mighty and Majestic, states: {Indeed, the number of months with Allah is twelve months in His Book, on the day He created the heavens and the earth. Among them are four sacred...} [9:36].[14]

L23131 Abu Muhammad said: Allah the Exalted stated: {When you contract a debt for a specified term, write it down} [Al-Baqarah: 282]. Thus, He the Most High generalized all specified terms without restriction. This verse is an addition to those two verses, and it is impermissible to disregard such an addition. Neither of those two verses prohibits setting terms based on other than lunar months nor does it permit it. It is therefore obligatory to seek the ruling on this matter from other sources. If evidence permitting it is found, it is affirmed; otherwise, it is not. This is the opinion of Al-Ḥasan ibn Ḥayy, Abu Sulayman, and our companions.[15]

L23132–23133 Malik permitted sales to a stipend in excluded cases. He said: As for today, it is not, because it is not customary now, and it was customary before that time.

L23134 He permitted the sale until harvest, reaping, and pressing for juice.

L23135 He said: Consideration is given to the magnitude and abundance of that, neither to its beginning nor to its end.

وَالْحَجِّ} [البقرة: ١٨٩] حَاشَا مَا ذَكَرْنَا مِنْ الْمَبِيعِ إلَى الْمَيْسَرَةِ فَهُوَ حَقٌّ لِلنَّصِّ فِي ذَلِكَ، وَلِأَنَّهُ حُكْمُ اللَّهِ تَعَالَى فِي كُلِّ مَنْ لَا يَجِدُ أَدَاءَ دَيْنِهِ.

وَلَا يَجُوزُ الْأَجَلُ إلَى صَوْمِ النَّصَارَى أَوْ الْيَهُودِ أَوْ فِطْرِهِمْ، وَلَا إلَى عِيدٍ مِنْ أَعْيَادِهِمْ؛ لِأَنَّهَا مِنْ زِينَتِهِمْ وَلَعَلَّهُمْ سَيَبْدُو لَهُمْ فِيهِمَا، فَهَذَا مُمْكِنٌ.

وَقَالَ الشَّافِعِيُّ: لَا يَجُوزُ الْأَجَلُ إلَّا بِالْأَهِلَّةِ فَقَطْ وَذَكَرَ هَذِهِ الْآيَةَ، وَقَوْلَ اللَّهِ عَزَّ وَجَلَّ: {إنَّ عِدَّةَ الشُّهُورِ عِنْدَ اللَّهِ اثْنَا عَشَرَ شَهْرًا فِي كِتَابِ اللَّهِ يَوْمَ خَلَقَ السَّمَاوَاتِ وَالْأَرْضَ مِنْهَا أَرْبَعَةٌ حُرُمٌ} [التوبة: ٣٦]

قَالَ أَبُو مُحَمَّد: قَالَ اللَّهُ عَزَّ وَجَلَّ: {إذَا تَدَايَنْتُمْ بِدَيْنٍ إلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ} [البقرة: ٢٨٢] فَعَمَّ تَعَالَى كُلَّ أَجَلٍ مُسَمًّى وَلَمْ يَخُصَّ، فَكَانَتْ هَذِهِ الْآيَةُ زَائِدَةً عَلَى تِلْكَ الْآيَتَيْنِ، وَالزِّيَادَةُ لَا يَحِلُّ تَرْكُهَا، وَلَيْسَ فِي تِلْكَ الْآيَتَيْنِ مَنْعٌ مِنْ عَقْدِ الْآجَالِ إلَى غَيْرِ الْأَهِلَّةِ وَلَا إبَاحَةٌ، فَوَاجِبٌ طَلَبُ حُكْمِ ذَلِكَ مِنْ غَيْرِهِمَا، فَإِنْ وُجِدَ مَا يَدُلُّ عَلَى جَوَازِهِ قِيلَ بِهِ، وَإِلَّا فَلَا - وَهَذَا قَوْلُ الْحَسَنِ بْنِ حَيٍّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

وَأَبَاحَ مَالِكٌ الْبَيْعَ إلَى الْعَطَاءِ فِيمَا خَلَا، قَالَ: وَأَمَّا الْيَوْمَ فَلَا، لِأَنَّهُ لَيْسَ الْآنَ مَعْرُوفًا، وَكَانَ مَعْرُوفًا قَبْلَ ذَلِكَ -

وَأَجَازَ الْبَيْعَ إلَى الْحَصَادِ، وَالْجِدَادِ، وَالْعَصِيرِ.

قَالَ: وَيُنْظَرُ إلَى عِظَمِ ذَلِكَ وَكَثْرَتِهِ، لَا إلَى أَوَّلِهِ وَلَا إلَى آخِرِهِ.

[13] **Qur'an references (L23128):** Qur'an 2:189 (Al-Baqarah).
[14] **Qur'an references (L23130):** Qur'an 9:36 (At-Tawbah).
[15] **Qur'an references (L23131):** Qur'an 2:282 (Al-Baqarah).

L23136 Abu Muhammad said: We know of no greater ignorance than this restriction, nor any gharar more immense than it.

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ فِي الْجَهَالَةِ أَكْثَرَ مِنْ هَذَا التَّحْدِيدِ وَلَا غَرَرَ أَعْظَمَ مِنْهُ.

L23137 Ali said: The people pledged allegiance in the presence of ʿAmmār and those Companions with him (may Allah be pleased with them) contingent upon the arrival of the rider. Yet the Ḥanafīs and Mālikīs opposed this, though they vehemently censure even minor issues compared to this when such matters align with their adherence [to a school]. In this context, they neglected their own reliance on the transmitted tradition: "Muslims are bound by their stipulated conditions."

قَالَ عَلِيٌّ: وَقَدْ تَبَايَعَ النَّاسُ بِحَضْرَةِ عَمَّارٍ وَمَنْ مَعَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إلَى قُدُومِ الرَّاكِبِ - فَخَالَفَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ ذَلِكَ، وَهُمْ يُشَنِّعُونَ بِأَقَلَّ مِنْ هَذَا، إذَا وَافَقَ تَقْلِيدَهُمْ، وَنَسَوْا فِي هَذَا الْبَابِ احْتِجَاجَهُمْ بِالْأَثَرِ الْوَارِدِ، «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» .

L23138 Among the oddities in their arguments is that both groups cited the report we narrated through Ibn Wahb's chain from Jarīr ibn Ḥāzim from Abū Isḥāq al-Sabīʿī from Umm Yunus: that ʿĀ'ishah, Mother of the Believers, was addressed by Umm Maḥabbah - the umm walad of Zayd ibn Arqam - who said: "O Mother of the Believers, I sold a slave to Zayd ibn Arqam on credit for eight hundred dirhams. When he needed the payment, I repurchased it from him before maturity for six hundred dirhams." ʿĀ'ishah responded: "Evil is your selling on credit and evil is your buying! Inform Zayd that his jihad with Allah's Messenger - peace and blessings be upon him - is invalidated unless he repents." The woman asked: "What if I relinquish and take the six hundred dirhams?" She answered: "Yes, {Whoever heeds his Lord's admonition and desists, he shall have what is past} [Al-Baqarah 2:275]."[16]

وَمِنْ غَرَائِبِ احْتِجَاجِهِمْ أَنَّ كِلْتَا الطَّائِفَتَيْنِ ذَكَرَتْ الْخَبَرَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ أُمِّ يُونُسَ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ قَالَتْ لَهَا أُمُّ مَحَبَّةَ أُمُّ وَلَدِ زَيْدِ بْنِ أَرْقَمَ: يَا أُمَّ الْمُؤْمِنِينَ، إنِّي بِعْت زَيْدَ بْنَ أَرْقَمَ عَبْدًا إلَى الْعَطَاءِ بِثَمَانِمَائَةِ دِرْهَمٍ فَاحْتَاجَ إلَى الثَّمَنِ فَاشْتَرَيْته مِنْهُ قَبْلَ مَحِلِّ الْأَجَلِ بِسِتِّمَائَةٍ، فَقَالَتْ عَائِشَةُ: بِئْسَ مَا أَشَرَيْت وَبِئْسَ مَا اشْتَرَيْت، أَبْلِغِي زَيْدًا أَنَّهُ قَدْ بَطَلَ جِهَادُهُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنْ لَمْ يَتُبْ فَقَالَتْ: أَرَأَيْت إنْ تَرَكْت وَأَخَذْت السِّتَّمِائَةِ؟ قَالَتْ: نَعَمْ: {فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ} [البقرة: ٢٧٥] .

L23139 The Hanafis and Malikis ruled that the aforementioned sale is prohibited by emulating Aisha, the Mother of the Believers (may Allah be pleased with her), and did not adopt Zayd ibn Arqam's position permitting it. They argued that such a statement from the Mother of the Believers could only originate from explicit instruction by the Messenger of Allah (peace and blessings be upon him). Yet they did not assert that Zayd's action necessarily derived from such instruction, for when a ruling is based on explicit prophetic guidance, Aisha is not more authoritative in this matter than Zayd ibn Arqam.

فَقَالَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ: بِتَحْرِيمِ الْبَيْعِ الْمَذْكُورِ تَقْلِيدًا لِعَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - وَلَمْ يُقَلِّدُوا زَيْدَ بْنَ أَرْقَمَ فِي جَوَازِهِ، وَقَالُوا: مِثْلُ هَذَا الْقَوْلِ عَنْ أُمِّ الْمُؤْمِنِينَ لَا يَكُونُ إلَّا عَنْ تَوْقِيفٍ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَقُولُوا: إنَّ فِعْلَ زَيْدٍ لَا يَكُونُ إلَّا عَنْ تَوْقِيفٍ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّ مَا كَانَ طَرِيقُهُ التَّوْقِيفَ فَلَيْسَتْ هِيَ أَوْلَى بِالْقَوْلِ مِنْ زَيْدِ بْنِ أَرْقَمَ.

[16] **Qur'an references (L23138):** Qur'an 2:275 (Al-Baqarah).

وَالْتَزَمَ الْحَنَفِيُّونَ هَذَا الِاحْتِجَاجَ فِي الْبَيْعِ إِلَى الْعَطَاءِ، وَلَمْ يَرْضَهُ الْمَالِكِيُّونَ فِيهِ؟ فَقُلْنَا لَهُمْ: يَا هَؤُلَاءِ أَيْنَ أَنْتُمْ عَنْ هَذَا الِاحْتِجَاجِ الْكَاذِبِ فِي كُلِّ مَا تَرَكْتُمْ فِيهِ التَّوْقِيفَ الصَّرِيحَ: مِنْ أَنَّ كُلَّ بَيِّعَيْنِ لَا بَيْعَ بَيْنَهُمَا مَا لَمْ يَتَفَرَّقَا إِلَّا أَنْ يُخَيِّرَ أَحَدُهُمَا الْآخَرَ.

L23140 The Hanafis upheld this argument concerning gift-giving in sales, but why did the Malikis not accept it? We said to them: "O you, how can you overlook this deceitful argument regarding every matter where you abandoned the explicit textual injunction: that between any two contracting parties, no sale exists until they separate, except when one grants the other the option to choose."

وَالنَّهْيُ عَنْ بَيْعِ الثَّمَرِ قَبْلَ أَنْ يَبْدُوَ صَلَاحُهُ فَأَبَحْتُمُوهُ عَلَى الْقَطْعِ.

L23141 The prohibition against selling fruit before its ripeness becomes evident, so you have permitted it once harvested.

وَالنَّهْيُ عَنْ بَيْعِ الْمَاءِ فَأَبَحْتُمُوهُ وَسَائِرَ التَّوْقِيفَاتِ الثَّابِتَةِ؟ فَهَانَ عَلَيْكُمْ تَرْكُهَا لِآرَائِكُمْ الْمُجَرَّدَةِ، وَتَأْوِيلَاتِكُمْ الْفَاسِدَةِ، ثُمَّ الْتَزَمْتُمْ الْقَوْلَ بِظَنٍّ كَاذِبٍ لَا يَحِلُّ الْقَوْلُ بِهِ أَنَّ هَهُنَا تَوْقِيفًا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَمَتْهُ أُمُّ الْمُؤْمِنِينَ وَلَمْ تُبَلِّغْهُ، وَهَذَا هُوَ الْكَذِبُ، عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَكْشُوفُ وَقَبِيحُ الْوَصْفِ لِأُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا -.

L23142–23144 And the textual prohibition against selling water—so you permitted it and all other firmly established scripturally ordained rulings? Thus, you trivialized abandoning them. You have clung to your baseless opinions and corrupt interpretations, then persisted in asserting a false presumption that is impermissible to voice—claiming there exists in this matter a divinely stipulated injunction from the Messenger of Allah (peace and blessings be upon him) that the Mother of the Believers (may Allah be pleased with her) concealed it and failed to convey it. This is the manifest falsehood against the Messenger of Allah (peace and blessings be upon him) and the vile characterization of the Mother of the Believers (may Allah be pleased with her).

فَإِنْ قَالُوا: تَرَكْنَا دَلِيلَ النُّصُوصِ لِتَأْوِيلٍ تَأَوَّلْنَاهُ وَاجْتِهَادٍ رَأَيْنَاهُ؟

L23145 If they say, "We abandoned the evidence of textual sources due to an interpretation we adopted and an *ijtihād* we considered," [would that be valid]?

فَقُلْنَا: وَمَنْ أَبَاحَ لَكُمْ ذَلِكَ وَحَظَرَهُ عَلَى زَيْدِ بْنِ أَرْقَمَ - وَقُلَامَةُ ظُفُرِهِ وَاَللَّهِ قَبْلَ أَنْ تُفَارِقَهُ - خَيْرٌ مِنْ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَكُلِّ مَنْ اتَّبَعَهُمَا؟ وَهُوَ الَّذِي صَدَّقَهُ اللَّهُ تَعَالَى فِي الْقُرْآنِ، وَحَتَّى لَوْ كَانَ هَهُنَا نَصٌّ ثَابِتٌ بِخِلَافِ قَوْلِهِ، فَمَنْ أَحَقُّ بِالتَّأْوِيلِ مِنْهُ فِي أَنْ يُعْذَرَ فِي ذَلِكَ لَوْ أَخْطَأَ مُجْتَهِدًا فِي خِلَافِ الْقُرْآنِ؟

L23146 So we said: Is the one who permitted this for you and forbade it to Zayd ibn Arqam—and, by Allah, even the clipping of his fingernail before it separated from him—not superior to Abu Hanifah, Malik, and all who followed them? He is the one whom Allah the Exalted has attested to in the Quran. Even if there were an authentic text here contradicting his statement, who is more entitled to interpretive discretion than him, to be excused in that if he erred while exercising independent judgment contrary to the Quran?

كَمَا تَأَوَّلَ ابْنُ مَسْعُودٍ أَنْ لَا يَتَيَمَّمَ الْجُنُبُ وَلَا يُصَلِّيَ وَلَوْ لَمْ يَجِدَ الْمَاءَ شَهْرًا.

L23147 Just as Ibn Mas'ud ruled that a person in a state of major impurity must neither perform dry ablution nor pray, even if he cannot find water for an entire month.

L23148 And just as Umar interpreted when he delivered a sermon and prohibited increasing the dowry above five hundred dirhams, and when he declared that

the Messenger of Allah—peace and blessings be upon him—did not die, nor will he die, until he is the last of us.

وَكَمَا تَأَوَّلَ عُمَرُ إِذْ خَطَبَ فَمَنَعَ الزِّيَادَةَ فِي الصَّدَاقِ عَلَى خَمْسمِائَةِ دِرْهَمٍ، وَإِذْ أَعْلَنَ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَمُتْ وَلَا يَمُوتُ حَتَّى يَكُونَ آخِرَنَا.

L23149 The Mother of the Believers—may Allah be pleased with her—would only have made this statement if she had indeed said it at all. Yet no one whose narration constitutes conclusive proof has reported it from her.

وَأُمُّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - إِنَّمَا قَالَتْ هَذَا الْقَوْلَ إِنْ كَانَتْ قَالَتْهُ أَيْضًا فَلَمْ يَرْوِ ذَلِكَ عَنْهَا مَنْ يَقُومُ بِنَقْلِهِ حُجَّةٌ.

L23150 It is truly astonishing that one would reject the narration of Fāṭimah bint Qays—the emigrant who pledged allegiance to the Prophet (peace and blessings of Allah be upon him)—yet oblige people to accept as evidence the narrations of Umm Yūnus and Umm Muḥibbah. For there are no narrators more numerous than Umm Yūnus and Umm Muḥibbah [to warrant such preference], yet they rely on them due to an opinion held by the Mother of the Believers, which Zayd ibn Arqam opposed her on.

وَإِنَّ الْعَجَبَ لَيَطُولُ مِمَّنْ رَدَّ رِوَايَةَ فَاطِمَةَ بِنْتِ قَيْسٍ الْمُهَاجِرَةِ الْمُبَايِعَةِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ يُلْزِمُ النَّاسَ الْحُجَّةَ بِرِوَايَةِ أُمِّ يُونُسَ، وَأُمِّ مُحَبَّةَ، فَلَا أَكْثَرَ مِنْ أُمِّ يُونُسَ، وَأُمِّ مُحَبَّةَ، لِرَأْيٍ رَأَتْهُ أُمُّ الْمُؤْمِنِينَ خَالَفَهَا فِيهِ زَيْدُ بْنُ أَرْقَمَ.

L23151 Abu Muhammad said: Those who permitted deferred payment sales until the stipend cited as evidence what we have narrated through al-Ḥajjāj ibn Arṭā'ah's transmission from ʿAṭāʾ, and [another report] from Jaʿfar ibn ʿAmr ibn Ḥurayth. ʿAṭāʾ said: "Ibn ʿUmar used to purchase on credit against the stipend." Jaʿfar reported from his father: "A Persian landowner sent a gold-thread woven brocade garment to ʿAlī ibn Abī Ṭālib, and ʿAmr ibn Ḥurayth bought it from him on deferred payment until the stipend for four thousand dirhams." Al-Ḥajjāj said: "The Mothers of the Believers used to engage in mutual transactions on credit against the stipend distribution."

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ مَنْ أَبَاحَ الْبَيْعَ إِلَى الْعَطَاءِ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ عَطَاءٍ، وَجَعْفَرِ بْنِ عَمْرِو بْنِ حُرَيْثٍ، قَالَ عَطَاءٌ: كَانَ ابْنُ عُمَرَ يَشْتَرِي إِلَى الْعَطَاءِ، وَقَالَ جَعْفَرٌ عَنْ أَبِيهِ: إِنَّ دِهْقَانًا بَعَثَ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ ثَوْبَ دِيبَاجٍ مَنْسُوجٍ بِالذَّهَبِ فَابْتَاعَهُ مِنْهُ عَمْرُو بْنُ حُرَيْثٍ إِلَى الْعَطَاءِ بِأَرْبَعَةِ آلَافِ دِرْهَمٍ، قَالَ حَجَّاجٌ: وَكَانَ أُمَّهَاتُ الْمُؤْمِنِينَ يَتَبَايَعْنَ إِلَى الْعَطَاءِ.

L23152 And via the chain of Isra'il from Jabir al-Ju'fi from al-Sha'bi: There is no harm in selling until the stipend. – And from Ibn Abi Shaybah: I am Abu Bakr al-Hanafi, from Nuh ibn Abi Bilal: 'Ali ibn al-Husayn purchased food from me until his stipend.

وَمِنْ طَرِيقِ إِسْرَائِيلَ عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الشَّعْبِيِّ: لَا بَأْسَ بِالْبَيْعِ إِلَى الْعَطَاءِ - وَعَنْ ابْنِ أَبِي شَيْبَةَ أَنَا أَبُو بَكْرٍ الْحَنَفِيُّ عَنْ نُوحِ بْنِ أَبِي بِلَالٍ: اشْتَرَى مِنِّي عَلِيُّ بْنُ الْحُسَيْنِ طَعَامًا إِلَى عَطَائِهِ.

L23153–23155 Ali said: All of this is from Ḥajjāj ibn Arṭāʾah—and how glaring his weakness is!—and from Jābir, who is even weaker than him. Ḥajjāj ibn Daraj, and I do not know who Nuḥ ibn Abī Hilāl is. It was incumbent upon the Ḥanafīs, who argue using the narration of Ḥajjāj ibn Arṭāʾa that 'Umrah is

قَالَ عَلِيٌّ: كُلُّ هَذَا عَنْ حَجَّاجِ بْنِ أَرْطَاةَ وَنَاهِيكَ بِهِ ضَعْفًا، وَعَنْ جَابِرٍ وَهُوَ دُونَ حَجَّاجٍ بِدَرَجٍ، وَلَا أَدْرِي نُوحَ بْنَ أَبِي هِلَالٍ مَنْ هُوَ؟ وَلَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ الْمُحْتَجِّينَ

voluntary, to cite his narration here. Since they emulated the Mother of the Believers in matters where Zayd ibn Arqam disagreed with her, they should have emulated her here too – alongside her companions: the Mothers of the Believers, ʿAlī, ʿAmr ibn Ḥurayth, ʿAmmār ibn Yāsir, and others. But these people are frivolous.

بِرِوَايَةِ حَجَّاجِ بْنِ أَرْطَاةَ فِي أَنَّ الْعُمْرَةَ تَطَوُّعٌ أَنْ يَحْتَجُّوا هَهُنَا بِرِوَايَتِهِ، وَلَقَدْ كَانَ يَلْزَمُهُمْ إِذْ قَلَّدُوا أُمَّ الْمُؤْمِنِينَ فِيمَا خَالَفَهَا فِيهِ زَيْدُ بْنُ أَرْقَمَ أَنْ يُقَلِّدُوهَا هَهُنَا وَمَعَهَا صَوَاحِبُهَا أُمَّهَاتُ الْمُؤْمِنِينَ، وَعَلِيٌّ، وَعَمْرُو بْنُ حُرَيْثٍ، وَأَيْضًا عَمَّارُ بْنُ يَاسِرٍ وَغَيْرُهُ، وَلَكِنَّ الْقَوْمَ مُتَلَاعِبُونَ.

L23156 Ali said: It has been reported to us through the chain of Sufyān ibn ʿUyaynah, from ʿAbd al-Karīm al-Jazari, from ʿIkrimah, from Ibn ʿAbbās: "Do not conclude a salam contract for grape juice, nor for standing crops, nor for al-andar" [meaning the threshing floor].

قَالَ عَلِيٌّ: وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ لَا يُسْلِمُ إِلَى عَصِيرٍ، وَلَا إِلَى الْعَطَاءِ، وَلَا إِلَى الْأَنْدَرِ - يَعْنِي الْبَيْدَرَ.

L23157 Do not sell [contingent] on the harvest, nor on date harvesting, nor on threshing; rather, name a month.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ بُكَيْرِ بْنِ عَتِيقٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ لَا تَبِعْ إِلَى الْحَصَادِ، وَلَا إِلَى الْجِدَادِ، وَلَا إِلَى الدِّرَاسِ وَلَكِنْ سَمِّ شَهْرًا.

L23158 And from the chain of Ibn Abi Shaybah: I am Muhammad ibn Abi ʿAdi, from ʿAbdullah ibn ʿAwn. Muhammad ibn Sirin was asked about selling [deferred] until the ʿaṭā' [stipend/payment]. He said: "I do not know; what is it?"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ سُئِلَ مُحَمَّدُ بْنُ سِيرِينَ عَنِ الْبَيْعِ إِلَى الْعَطَاءِ؟ قَالَ: لَا أَدْرِي مَا هُوَ؟

L23159 And via the route of Ibn Abi Shaybah: I, Jarir, reported from Mansur from Ibrahim that he disliked purchasing tied to the grant or the harvest, but he would specify a month.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ: أَنَّهُ كَرِهَ الشِّرَاءَ إِلَى الْعَطَاءِ، وَالْحَصَادِ، وَلَكِنْ يُسَمِّي شَهْرًا.

L23160 Through the chain of Ibn Abi Shaybah: From Humaid ibn Abd al-Rahman, from al-Hasan ibn Salih ibn Ḥayy, from al-Mughirah, from al-Hakam: that he disliked the sale linked to the public grant—and this is the opinion of Salim ibn Abdullah ibn Umar and ʿAṭāʾ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ عَنِ الْحَسَنِ بْنِ صَالِحِ بْنِ حَيٍّ عَنِ الْمُغِيرَةِ عَنِ الْحَكَمِ: أَنَّهُ كَرِهَ الْبَيْعَ إِلَى الْعَطَاءِ - وَهُوَ قَوْلُ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، وَعَطَاءٍ.

L23161 A legal ruling: It is prohibited to outbid another's negotiation or sell over another's sale.

[مَسْأَلَةٌ لَا يَسُومُ عَلَى سَوْمِ آخَرَ وَلَا يَبِيعُ عَلَى بَيْعِهِ]

L23162 Issue 1467: It is not permissible for anyone to outbid another's bid or to sell over another's sale (Muslims and Dhimmis are treated equally). If someone does so, the sale becomes void. If a seller withholds their goods

to seek a higher price, or if a buyer intends to purchase from the seller without focusing on a specific individual but merely acting cautiously, then competitive bidding becomes permissible at that point - provided no prior bid was made. If a buyer begins bargaining with a specific seller, offers less than the fair value, and insists on that [low price], others may then increase the bid to match the fair value or exceed it.

١٤٦٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَسُومَ عَلَى سَوْمِ آخَرَ، وَلَا أَنْ يَبِيعَ عَلَى بَيْعِهِ - الْمُسْلِمُ، وَالذِّمِّيُّ سَوَاءٌ - فَإِنْ فَعَلَ فَالْبَيْعُ مَفْسُوخٌ، فَإِنْ وَقَفَ سِلْعَتَهُ لِطَلَبِ الزِّيَادَةِ، أَوْ قَصَدَ الشِّرَاءَ مِمَّنْ بَاعَهُ لَا مِنْ إنْسَانٍ بِعَيْنِهِ، لَكِنْ مُحْتَاطًا لِنَفْسِهِ جَازَتْ الْمُزَايَدَةُ حِينَئِذٍ هَذَا إذَا لَمْ يَبْتَدِ بِسَوْمٍ آخَرَ فَقَطْ، فَإِنْ بَدَأَ بِمُسَاوِمَةِ إنْسَانٍ بِعَيْنِهِ فَلَمْ يَزِدْهُ الْمُشْتَرِي عَلَى أَقَلَّ مِنْ الْقِيمَةِ وَوَقَفَ عَلَى ذَلِكَ فَلِغَيْرِهِ أَنْ يُبَلِّغَهُ إلَى الْقِيمَةِ وَأَكْثَرَ حِينَئِذٍ.

L23163 Similarly, if the seller demands more than the market value and refuses to accept it at all, it is then permissible for others to offer their goods to the buyer at the market value or lower.

وَكَذَلِكَ لَوْ طَلَبَ الْبَائِعُ أَكْثَرَ مِنْ الْقِيمَةِ وَلَمْ يُجَبْ إلَى الْقِيمَةِ أَصْلًا فَلِغَيْرِهِ حِينَئِذٍ أَنْ يَعْرِضَ عَلَى الْمُشْتَرِي سِلْعَتَهُ بِقِيمَتِهَا وَبِأَقَلَّ.

L23164–23166 The proof of that is: what we have narrated through Malik's chain from Nafi'. Abu Zinad—Abu Zinad said— From al-A'raj on the authority of Abū Hurayrah, and Nāfi' reported from Ibn 'Umar. Then Abū Hurayrah and Ibn 'Umar concurred, both narrating from the Messenger of Allah (peace be upon him) that he said: "Do not outbid one another."

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ، وَأَبِي الزِّنَادِ، قَالَ أَبُو الزِّنَادِ، عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ، وَقَالَ نَافِعٌ: عَنْ ابْنِ عُمَرَ، ثُمَّ اتَّفَقَ أَبُو هُرَيْرَةَ، وَابْنُ عُمَرَ، كِلَاهُمَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «لَا يَبِعْ بَعْضُكُمْ عَلَى بَيْعِ بَعْضٍ» .

L23167 From the narration of Abd al-Razzaq, from Ma'mar, from al-Zuhri, from Sa'id ibn al-Musayyib, from Abu Hurayrah, the Prophet (peace be upon him) said: "Do not sell over your brother's sale."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «لَا يَبِعْ أَحَدُكُمْ عَلَى بَيْعِ أَخِيهِ» .

L23168 Ali said: This is a report whose meaning is a command, for if its meaning were a report, it would be false due to its contradiction. Lying is conclusively far removed from the Prophet—peace and blessings of Allah be upon him—and none but a disbeliever, whose blood is lawful, would permit it to be ascribed to him.

قَالَ عَلِيٌّ: هَذَا خَبَرٌ مَعْنَاهُ الْأَمْرُ؛ لِأَنَّهُ لَوْ كَانَ مَعْنَاهُ الْخَبَرَ لَكَانَ كَذِبًا لِوُجُودِ خِلَافِهِ، وَالْكَذِبُ مَقْطُوعٌ بِبُعْدِهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا يُجِيزُهُ عَلَيْهِ إلَّا كَافِرٌ حَلَالٌ دَمُهُ.

L23169 From the chain of Shu'bah from al-A'mash from Abu Salih—he is al-Sammān, the oil seller—from Abu Hurayrah: "The Messenger of Allah (ﷺ) said: 'A Muslim must not outbid another Muslim's bargaining.'"

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ - هُوَ السَّمَّانُ - عَنْ أَبِي هُرَيْرَةَ: " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَسُمْ الْمُسْلِمُ عَلَى سَوْمِ الْمُسْلِمِ» .

L23170 Ali said: This is part of what is contained in the hadith of Abu Hurairah and Ibn Umar, because a sale contingent on another sale necessarily includes price negotiation. For a sale cannot occur at all except after price negotiation, and price negotiation cannot exist at all except for the purpose of a sale - otherwise, it is not price negotiation. Therefore, if the sale is forbidden, price negotiation pertaining to it becomes forbidden. And if price negotiation is forbidden, the sale becomes forbidden by necessity.

قَالَ عَلِيٌّ: هَذَا بَعْضُ مَا فِي حَدِيثِ أَبِي هُرَيْرَةَ، وَابْنِ عُمَرَ؛ لِأَنَّ الْبَيْعَ عَلَى الْبَيْعِ يَدْخُلُ فِيهِ السَّوْمُ ضَرُورَةً؛ لِأَنَّهُ لَا يُمْكِنُ الْبَيْعُ أَلْبَتَّةَ إلَّا بَعْدَ سَوْمٍ، وَلَا يَكُونُ السَّوْمُ أَلْبَتَّةَ إلَّا لِلْبَيْعِ، وَإِلَّا فَلَيْسَ سَوْمًا، فَإِذَا حَرُمَ الْبَيْعُ حَرُمَ السَّوْمُ عَلَيْهِ، وَإِذَا حَرُمَ السَّوْمُ حَرُمَ الْبَيْعُ ضَرُورَةً.

L23171 It is not permissible to engage in bargaining for what cannot be lawfully sold, such as the sale of a free person and bargaining over it, nor is bargaining permissible in usury - as stated by some Companions (may Allah be pleased with them).

وَلَا يَجُوزُ السَّوْمُ بِمَا لَا يَجُوزُ بَيْعُهُ كَبَيْعِ الْحُرِّ وَالسَّوْمِ فِيهِ، وَفِي الرِّبَا - وَبِهَذَا قَالَ بَعْضُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L23172–23173 Abu Muhammad said: Malik stated, “This applies only when they have settled and come to terms”—this is an interpretation not supported by the explicit wording of the ḥadīth. As for one who displays his merchandise to solicit a higher price or seeks a buyer who will offer a lower price, he is not haggling with a specific individual; thus, this prohibition does not apply to him. However, if one observes a haggler or seller who does not intend to revert to the fair value but seeks to cheat his counterpart without their knowledge, it becomes obligatory upon him to offer sincere counsel to the Muslim. This case is also excluded from the prohibition based on the saying of the Messenger of Allah—peace and blessings be upon him: ’Religion is sincere counsel.‘“

قَالَ أَبُو مُحَمَّد: وَقَالَ مَالِكٌ: إنَّمَا هَذَا إذَا رَكَنَا وَتَقَارَبَا - وَهَذَا تَفْسِيرٌ لَا يَدُلُّ عَلَيْهِ لَفْظُ الْحَدِيثِ، فَأَمَّا مَنْ أَوْقَفَ سِلْعَتَهُ طَلَبَ الزِّيَادَةِ فِيهِ أَوْ طَلَبَ بَيْعٍ يَسْتَرْخِصُهُ فَلَيْسَ مُسَاوِمًا لِإِنْسَانٍ بِعَيْنِهِ، فَلَا يَلْزَمُهُ هَذَا النَّهْيُ، وَأَمَّا مَنْ رَأَى الْمُسَاوِمَ أَوْ الْمُبَايِعَ لَا يُرِيدُ الرُّجُوعَ إلَى الْقِيمَةِ، لَكِنْ يُرِيدُ غَبْنَ صَاحِبِهِ بِغَيْرِ عِلْمِهِ فَهَذَا فَرْضٌ عَلَيْهِ نَصِيحَةُ الْمُسْلِمِ، فَقَدْ خَرَجَ عَنْ هَذَا النَّهْيِ أَيْضًا بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الدِّينُ النَّصِيحَةُ» .

L23174 It has been narrated to us through the chain of Waki‘, from Hizam ibn Hisham al-Khuza‘i, from his father: “I witnessed Umar ibn al-Khattab selling camels from the alms (zakat) collection to the highest bidder.”

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ حِزَامِ بْنِ هِشَامٍ الْخُزَاعِيِّ عَنْ أَبِيهِ شَهِدْت عُمَرَ بْنَ الْخَطَّابِ بَاعَ إبِلًا مِنْ إبِلِ الصَّدَقَةِ فِيمَنْ يَزِيدُ.

L23175 From the chain of Hammad ibn Salamah from Abu Ja‘far al-Khitmi from al-Mughirah ibn Shu‘bah: that he sold the spoils by auction. And from the chain of Ibn Abi Shaybah—I [narrate] from Mu‘tamir ibn Sulayman from al-Akhdar ibn ‘Ajlan from Abu Bakr al-Hanafi from Anas ibn Malik from a man from the Ansar: that the Messenger of Allah (peace and blessings of Allah be upon him) sold a saddle blanket and a cup by auction.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي جَعْفَرٍ الْخِطْمِيِّ عَنْ الْمُغِيرَةِ بْنِ شُعْبَةَ: أَنَّهُ بَاعَ الْمَغَانِمَ فِيمَنْ يَزِيدُ - وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا مُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ الْأَخْضَرِ بْنِ عَجْلَانَ عَنْ أَبِي بَكْرٍ الْحَنَفِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ عَنْ رَجُلٍ مِنْ الْأَنْصَارِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَاعَ حِلْسًا وَقَدَحًا فِيمَنْ يَزِيدُ» .

The Issue of Sale by Najsh.

Issue 1468: Najsh (fraudulent bidding) is impermissible. It occurs when one intending to sell appoints a person to increase the bidding during the sale, though this person does not intend to purchase but rather to deceive others into raising their bids. If such a sale is concluded at a price exceeding the item's fair value, the buyer has the option to annul it. The sinner and the one prohibited is solely the practitioner of Najsh. Similarly, if the seller consents to it, the sale itself remains distinct from both Najsh and consenting to Najsh. Since the sale is separate from these two matters, it is impermissible to annul a valid sale due to the corruption of something else. No prohibition has ever been issued against a sale in which the practitioner of Najsh engages in Najsh, for Allah the Exalted said: "And Allah has permitted sale" (Surah Al-Baqarah 2:275).[17]

It has been reported to us through Mālik's chain from Nāfiʿ, from Ibn ʿUmar, who said: «The Messenger of Allah, peace and blessings be upon him, prohibited price manipulation (*al-najsh*).»[18]

And from the chain of ʿAbd al-Razzāq through Ismāʿīl ibn ʿAyyāsh through ʿUbayd ibn Muhājir, who said: "'Umar ibn ʿAbd al-ʿAzīz dispatched ʿUbayd ibn Muslim to sell the captives. When ʿUbayd ibn Muslim completed the task, he came to ʿUmar. ʿUmar said to him: 'The sale was...'" "It would have remained unsold had I not raised the bids and spent on it?" Umar said to him, "You were increasing the bids, yet you had no intention to purchase?" He replied, "Yes." Umar then declared, "This is _najsh_ (fraudulent bidding), and _najsh_ is unlawful. Dispatch an announcer to proclaim: 'The transaction is void, and _najsh_ is prohibited.'"

An Issue on Accepting Transported Goods

Issue 1469: It is impermissible for anyone to intercept incoming goods -

[17] **Qur'an references (L23177):** Qur'an 2:275 (Al-Baqarah).
[18] **Hadith references (L23178):** Sahih Muslim 1516.

[مَسْأَلَةُ بَيْعُ النَّجْش]

١٤٦٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ النَّجْشُ وَهُوَ أَنْ يُرِيدَ الْبَيْعَ فَيَنْتَدِبُ إِنْسَانًا لِلزِّيَادَةِ فِي الْبَيْعِ، وَهُوَ لَا يُرِيدُ الشِّرَاءَ لَكِنْ لِيَغْتَرَّ غَيْرُهُ فَيَزِيدُ بِزِيَادَتِهِ - فَهَذَا بَيْعٌ إِذَا وَقَعَ بِزِيَادَةٍ عَلَى الْقِيمَةِ فَلِلْمُشْتَرِي الْخِيَارُ، وَإِنَّمَا الْعَاصِي وَالْمَنْهِيُّ هُوَ النَّاجِشُ، وَكَذَلِكَ رِضَا الْبَائِعِ إِنْ رَضِيَ بِذَلِكَ، وَالْبَيْعُ غَيْرُ النَّجْشِ وَغَيْرُ الرِّضَا بِالنَّجْشِ، وَإِذْ هُوَ غَيْرُهُمَا فَلَا يَجُوزُ أَنْ يُفْسَخَ بَيْعٌ صَحَّ بِفَسَادِ شَيْءٍ غَيْرِهِ، وَلَمْ يَأْتِ نَهْيٌ قَطُّ عَنْ الْبَيْعِ الَّذِي يَنْجُشُ فِيهِ النَّاجِشُ، بَلْ قَالَ اللَّهُ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

وَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ النَّجْشِ» .

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ عُبَيْدِ بْنِ مُهَاجِرٍ قَالَ: بَعَثَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ عُبَيْدَ بْنَ مُسْلِمٍ يَبِيعُ السَّبْيَ فَلَمَّا فَرَغَ أَتَى عُمَرَ فَقَالَ لَهُ: إنَّ الْبَيْعَ كَانَ كَاسِدًا لَوْلَا أَنِّي كُنْت أَزِيدُ عَلَيْهِمْ وَأُنْفِقُهُ؟ فَقَالَ لَهُ عُمَرُ: كُنْت تَزِيدُ عَلَيْهِمْ، وَلَا تُرِيدُ أَنْ تَشْتَرِيَ؟ قَالَ: نَعَمْ فَقَالَ عُمَرُ: هَذَا نَجْشٌ، وَالنَّجْشُ لَا يَحِلُّ، ابْعَثْ مُنَادِيًا يُنَادِي: أَنَّ الْبَيْعَ مَرْدُودٌ، وَأَنَّ النَّجْشَ لَا يَحِلُّ.

[مَسْأَلَةُ تَلَقِّي الْجَلَبِ]

whether one travels for that purpose or resides along the transporters' route, and whether the place of interception is distant or near (even if occurring in the marketplace at a cubit's distance or farther). This prohibition applies neither for a sacrificial animal, nor for sustenance, nor for any other purpose whatsoever, irrespective of whether it harms people or not.

L23185 Whoever receives transported goods—of any kind—and purchases them, the transporter retains the option right to confirm or rescind the sale whenever he enters the market, even after many years. If he rescinds it, the ruling applies as in sales returned due to defects—not as recovery of unlawfully seized property. The transporter's consent is valid only through explicit verbal declaration; silence—whether aware or unaware—does not suffice. If the buyer dies, the seller's option right remains effective. If the seller dies before rescinding or confirming [the sale], the sale becomes binding.

L23186 The proof of this is what has been narrated to us through Muslim—Ibn Numayr (Muhammad ibn ʿAbdullāh ibn Numayr) reported—from Ubayy, on the authority of ʿUbaydullāh ibn ʿUmar, from Nāfiʿ, from Ibn ʿUmar, who said: "The Messenger of Allāh—peace and blessings be upon him—forbade intercepting goods before they reach the markets."[19]

L23187 And through the chain of Abu Bakr ibn Abi Shaybah: From Abdullah ibn al-Mubarak, from al-Taymi—he is Sulayman—from Abu Uthman al-Nahdi, from Abdullah ibn Mas'ud, from the Prophet—peace be upon him—: "He forbade intercepting sales."

L23188–23189 And a similar narration was transmitted to us as a musnad ḥadīth with an authentic chain through the chain of Ibn Abbas.

L23190 And also from the chain of transmission of Ali.

L23191 Through the chain of Muslim: Ibn Abi Umar narrated to us, saying: I am

[19] **Hadith references (L23186):** Sahih Muslim 1517a.

١٤٦٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ تَلَقِّي الْجَلَبِ -: سَوَاءٌ خَرَجَ لِذَلِكَ أَوْ كَانَ سَاكِنًا عَلَى طَرِيقِ الْجَلَّابِ، وَسَوَاءٌ بَعُدَ مَوْضِعُ تَلَقِّيهِ أَمْ قَرُبَ - وَلَوْ أَنَّهُ عَلَى السُّوقِ عَلَى ذِرَاعٍ فَصَاعِدًا، لَا لِأُضْحِيَّةٍ، وَلَا لِقُوتٍ، وَلَا لِغَيْرِ ذَلِكَ، أَضَرَّ ذَلِكَ بِالنَّاسِ أَوْ لَمْ يَضُرَّ.

فَمَنْ تَلَقَّى جَلَبًا - أَيَّ شَيْءٍ كَانَ - فَاشْتَرَاهُ فَإِنَّ الْجَالِبَ بِالْخِيَارِ إِذَا دَخَلَ السُّوقَ مَتَى مَا دَخَلَهُ وَلَوْ بَعْدَ أَعْوَامٍ فِي إِمْضَاءِ الْبَيْعِ، أَوْ رَدِّهِ، فَإِنْ رَدَّهُ حُكِمَ فِيهِ بِالْحُكْمِ فِي الْبَيْعِ بِرَدِّ الْعَيْبِ لَا فِي الْمَأْخُوذِ بِغَيْرِ حَقٍّ، وَلَا يَكُونُ رِضَا الْجَالِبِ إِلَّا بِأَنْ يَلْفِظَ بِالرِّضَا، لَا بِأَنْ يَسْكُتَ - عَلِمَ أَوْ لَمْ يَعْلَمْ - فَإِنْ مَاتَ الْمُشْتَرِي فَالْخِيَارُ لِلْبَائِعِ بَاقٍ، فَإِنْ مَاتَ الْبَائِعُ قَبْلَ أَنْ يَرُدَّ أَوْ يُمْضِيَ فَالْبَيْعُ تَامٌّ.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا ابْنُ نُمَيْرٍ - هُوَ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ - أَنَا أُبَيٌّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى أَنْ تُتَلَقَّى السِّلَعُ حَتَّى تَبْلُغَ الْأَسْوَاقَ» .

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ التَّيْمِيِّ - هُوَ سُلَيْمَانُ - عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّهُ نَهَى عَنْ تَلَقِّي الْبُيُوعِ» .

وَرُوِّينَا نَحْوَهُ مُسْنَدًا صَحِيحًا مِنْ طَرِيقِ ابْنِ عَبَّاسٍ.

وَمِنْ طَرِيقِ عَلِيٍّ أَيْضًا.

Hisham ibn Sulaiman, from Ibn Jurayj, who informed me through Hisham al-Qurdusi (Ibn Hassan) from Ibn Sirin, who said: I heard Abu Hurayrah state: "The Messenger of Allah (peace be upon him) said: 'Do not intercept incoming goods. Whoever intercepts them and purchases from them, then when its owner reaches the market, he has the option.'"[20]

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنَا ابْنُ أَبِي عُمَرَ: أَنَا هِشَامُ بْنُ سُلَيْمَانَ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي هِشَامٌ الْقُرْدُوسِيُّ - هُوَ ابْنُ حَسَّانٍ - عَنْ ابْنِ سِيرِينَ قَالَ: سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ " إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَلَقَّوا الْجَلَبَ فَمَنْ تَلَقَّاهُ فَاشْتَرَى مِنْهُ فَإِذَا أَتَى سَيِّدُهُ السُّوقَ فَهُوَ بِالْخِيَارِ» .

L23192 Narrated through Abu Dawud: Ar-Rabi' ibn Nafi' Abu Tawbah narrated from 'Ubaydullah ibn 'Amr Ar-Raqqi, from Ayyub As-Sikhtiyani, from Muhammad ibn Sirin, from Abu Hurairah: "The Prophet (peace and blessings be upon him and his family) prohibited intercepting incoming merchandise. If an interceptor acquires it, the owner of the goods retains the right of choice when the merchandise reaches the market."

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا الرَّبِيعُ بْنُ نَافِعٍ أَبِي تَوْبَةَ حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ عَمْرٍو الرَّقِّيّ عَنْ أَيُّوبَ السِّخْتِيَانِيُّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَهَى عَنْ تَلَقِّي الْجَلَبِ فَإِنْ تَلَقَّاهُ مُتَلَقٍّ فَاشْتَرَاهُ فَصَاحِبُ السِّلْعَةِ بِالْخِيَارِ إذَا وَرَدَتْ السُّوقَ» .

L23193 Abū Muḥammad said: This is a narration of tawātur: it was narrated by five Companions, and narrated by others from them—and this is what the Salaf said.

قَالَ أَبُو مُحَمَّدٍ: هَذَا نَقْلُ تَوَاتُرٍ، رَوَاهُ خَمْسَةٌ مِنْ الصَّحَابَةِ، وَرَوَاهُ عَنْهُمْ النَّاسُ - وَبِهَذَا قَالَ السَّلَفُ -:

L23194 It has been narrated to us through the chain of 'Abd al-Razzāq: I, Ma'mar, from Ayyūb al-Sikhtiyānī, from Muḥammad ibn Sīrīn, from Abū Hurayrah that he prohibited intercepting incoming goods. If someone intercepts incoming goods and purchases from them, the seller has the option when the market is established—and this is the explicit wording of our statement, with no disagreement known from the Companions, may Allah be pleased with them, especially this chain of transmission, which is as clear as the sun.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ نَهَى عَنْ تَلَقِّي الْجَلَبِ فَمَنْ تَلَقَّى جَلَبًا فَاشْتَرَى مِنْهُ فَالْبَائِعُ بِالْخِيَارِ إذَا وَقَعَ السُّوقَ - وَهَذَا نَصُّ قَوْلِنَا، وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ، لَا سِيَّمَا هَذِهِ الطَّرِيقُ الَّتِي كَأَنَّهَا الشَّمْسُ.

L23195–23196 From the chain of al-Ḥajjāj ibn al-Minhāl: Abū Hilāl reported from Muḥammad ibn Sīrīn, who said: He disliked that imported goods be received outside of the town. If the goods are received outside of the town, the owner of the goods has the choice upon arrival—if he wishes, he may sell, and if he wishes, he may withhold. This is also the explicit text of our position.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا أَبُو هِلَالٍ أَنَا مُحَمَّدُ بْنُ سِيرِينَ قَالَ: كَانَ يَكْرَهُ أَنْ يُتَلَقَّى الْجَلَبُ خَارِجَ الْبَلَدِ فَإِذَا تُلُقِّيَ الْجَلَبُ خَارِجًا مِنْ الْبَلَدِ فَرَبُّ الْجَلَبِ بِالْخِيَارِ إذَا قَدِمَ إنْ شَاءَ بَاعَ وَإِنْ شَاءَ أَمْسَكَ، وَهَذَا أَيْضًا نَصُّ قَوْلِنَا.

[20] **Hadith references (L23191):** Sahih Muslim 1519b; Sunan an-Nasai 4501; Mishkat al-Masabih 2848.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ الْمُبَارَكِ عَنْ أَبِي جَعْفَرٍ الرَّازِيِّ عَنْ لَيْثٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عُمَرَ قَالَ: لَا تَلَقَّوُا الْبُيُوعَ بِأَفْوَاهِ السِّكَكِ.

L23197 And via the chain of Ibn Abi Shaybah: He said, “Ibn al-Mubarak narrated to us from Abu Ja’far al-Razi from Layth from Mujahid from Ibn ’Umar, who said: Do not intercept sales at the mouths of the roads.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا أَبُو دَاوُد الطَّيَالِسِيُّ عَنْ إيَاسِ بْنِ دَغْفَلٍ: قُرِئَ عَلَيْنَا كِتَابُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ -: لَا تَلَقَّوُا الرُّكْبَانَ.

L23198 Through the narration chain of Ibn Abi Shaybah: I, Abū Dāwūd al-Ṭayālisī, report from Iyās ibn Daghfal: “The letter of ʿUmar ibn ʿAbd al-ʿAzīz was recited to us: ’Do not intercept riders.’”

وَمِمَّنْ نَهَى عَنْ تَلَقِّي الرُّكْبَانِ الْجَالِبِينَ جُمْلَةً: اللَّيْثُ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L23199 And among those who prohibited intercepting incoming traders bringing goods in bulk are: Al-Layth, Al-Ḥasan ibn Ḥayy, Ahmad ibn Hanbal, Ishaq, Al-Shafi’i, Abu Sulayman, and their followers.

وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: بِإِيجَابِ الْخِيَارِ لِلْبَائِعِ إذَا قَدِمَ السُّوقَ - وَنَهَى عَنْهُ الْأَوْزَاعِيُّ إنْ كَانَ بِالنَّاسِ إلَيْهِ حَاجَةٌ.

L23200 Al-Shafi‘i and Abu Sulayman held that the right of option is obligatory for the seller when arriving at the marketplace, while Al-Awza‘i prohibited this practice if there was a need for it among the people.

وَأَبَاحَهُ أَبُو حَنِيفَةَ جُمْلَةً، إلَّا أَنَّهُ كَرِهَهُ إنْ أَضَرَّ ذَلِكَ بِأَهْلِ الْبَلَدِ دُونَ أَنْ يَحْظُرَهُ، وَأَجَازَهُ بِكُلِّ حَالٍ - وَهَذَا خِلَافٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L23201 Abu Hanifah permitted it in general but disliked it if it harmed the towns-people, though he refrained from prohibiting it, and he allowed it in all circumstances. This contradicts the ruling of the Messenger of Allah, peace be upon him.

وَخِلَافُ صَاحِبَيْنِ لَا يُعْرَفُ لَهُمَا مِنْ الصَّحَابَةِ مُخَالِفٌ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا وَافَقَ تَقْلِيدَهُمْ.

L23202 The disagreement of two Companions—when no opposing Companion is known among the Companions—is venerated by the scholars of a legal school if it conforms to their practice of taqlīd.

وَمَا نَعْلَمُ لِأَبِي حَنِيفَةَ فِي هَذَا الْقَوْلِ أَحَدًا قَالَهُ قَبْلَهُ.

L23203 We do not know of anyone in this opinion attributed to Abū Ḥanīfah who stated it before him.

وَقَالَ مَالِكٌ: لَا يَجُوزُ ذَلِكَ لِلتِّجَارَةِ خَاصَّةً، وَيُؤَدَّبُ مَنْ فَعَلَ ذَلِكَ فِي نَوَاحِي الْمِصْرِ فَقَطْ - وَلَا بَأْسَ بِالتَّلَقِّي لِابْتِيَاعِ الْقُوتِ مِنْ الطَّعَامِ وَالْأُضْحِيَّةِ.

L23204 Mālik said: This is impermissible if done purely for trade, and whoever does so is to be disciplined, but only in the vicinity of the city. However, there is no harm in meeting [sellers] to procure necessities such as food or a sacrificial animal.

وَهَذِهِ تَقَاسِيمُ مُخَالِفَةٌ لِلسُّنَّةِ الْوَارِدَةِ فِي ذَلِكَ، وَلَا نَعْلَمُهَا عَنْ أَحَدٍ قَبْلَ مَالِكٍ أَصْلًا.

L23205 These divisions contradict the transmitted Sunnah pertaining to that matter, and we are not aware of anyone before Mālik who held them at all.

L23206 Abu Muhammad said: The ruling of the Messenger of Allah — may Allah’s

blessings and peace be upon him — regarding the seller's option is a clarification of the sale's validity, except that the seller retains the choice to annul or uphold it. The option does not exist at all nor is it permissible except for those to whom the Messenger of Allah (ﷺ) assigned it. Whoever considers it inheritable has transgressed the limit established by the Messenger of Allah (ﷺ), for the option is not inheritable property. Were it inheritable, the beneficiaries of the will would receive their allotted share of it.

قَالَ أَبُو مُحَمَّد: وَحُكْمُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْخِيَارِ لِلْبَائِعِ بَيَانٌ بِصِحَّةِ الْبَيْعِ إِلَّا أَنَّ لِلْبَائِعِ خِيَارًا فِي رَدِّهِ أَوْ إِمْضَائِهِ، وَالْخِيَارُ لَا يَكُونُ أَلْبَتَّةَ وَلَا يَجُوزُ إِلَّا لِمَنْ جَعَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهُ، وَمَنْ جَعَلَهُ يُورَثُ فَقَدْ تَعَدَّى مَا حَدَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَيْسَ الْخِيَارُ مَالًا يُورَثُ، وَلَوْ وُرِثَ لَكَانَ لِأَهْلِ الْوَصِيَّةِ مِنْهُ نَصِيبُهُمْ.

L23207–23208 Sufyan al-Thawri said: Intercepting goods is prohibited if done at a distance where prayer shortening to that location is not required. If intercepted at the distance where prayer shortening becomes obligatory or beyond, there is no harm in it.

قَالَ سُفْيَانُ الثَّوْرِيُّ: تَلَقِّي السِّلَعِ مَنْهِيٌّ عَنْهُ مَنْ تَلَقَّاهَا بِحَيْثُ لَا تُقْصَرُ الصَّلَاةُ إِلَيْهِ، فَإِنْ تَلَقَّاهَا بِحَيْثُ تُقْصَرُ الصَّلَاةُ فَصَاعِدًا فَلَا بَأْسَ بِذَلِكَ.

L23209 Ali said: Therefore, this is an invalid division because it is an assertion without proof.

قَالَ عَلِيٌّ: فَهَذَا تَقْسِيمٌ فَاسِدٌ، لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ.

L23210 Al-Layth said: The item is taken from the buyer and returned to the seller. If the buyer dies, the item is taken from him, sold in the market, and its price is given to the seller.

وَقَالَ اللَّيْثُ: يُنْزَعُ مِنْ الْمُشْتَرِي وَيُرَدُّ إِلَى الْبَائِعِ، فَإِنْ مَاتَ نُزِعَتْ مِنْ الْمُشْتَرِي وَبِيعَتْ فِي السُّوقِ وَدُفِعَ ثَمَنُهَا إِلَى الْبَائِعِ.

L23211 Abu Muhammad said: Those who permitted meeting incoming caravans cited as evidence the narration we reported via al-Bukhari's chain from Musa ibn Isma'il from Juwayriyya from Nafi' from Ibn Umar (may Allah be pleased with them), who said: "We used to meet incoming caravans and buy food from them, but the Prophet (peace and blessings be upon him) forbade us from selling it until it reaches the food market."

قَالَ أَبُو مُحَمَّد: احْتَجَّ مَنْ أَجَازَ تَلَقِّي الرُّكْبَانِ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ مُوسَى بْنِ إِسْمَاعِيلَ عَنْ جُوَيْرِيَةَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ: «كُنَّا نَتَلَقَّى الرُّكْبَانَ فَنَشْتَرِي مِنْهُمْ الطَّعَامَ فَنَهَانَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَبِيعَهُ حَتَّى يُبْلَغَ بِهِ سُوقَ الطَّعَامِ» .

L23212 From the narration of al-Bukhārī: I, Ibrāhīm ibn al-Mundhir, [narrate] from Abū Ḍamrah—he is Anas ibn ʿIyāḍ—from Mūsā ibn ʿUqbah, from Nāfiʿ, from Ibn ʿUmar: "During the time of the Messenger of Allah—may Allah's peace and blessings be upon him—they used to purchase food from traveling riders. He would send someone to prevent them from selling it where they had purchased it until they move it to the marketplace."

وَمِنْ طَرِيقِ الْبُخَارِيِّ أَنَا إِبْرَاهِيمُ بْنُ الْمُنْذِرِ أَنَا أَبُو ضَمْرَةَ - هُوَ أَنَسُ بْنُ عِيَاضٍ - أَنَا مُوسَى بْنُ عُقْبَةَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «أَنَّهُمْ كَانُوا يَشْتَرُونَ الطَّعَامَ مِنْ الرُّكْبَانِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيَبْعَثُ عَلَيْهِ مَنْ يَمْنَعُهُمْ أَنْ يَبِيعُوهُ حَيْثُ اشْتَرَوْهُ حَتَّى يَنْقُلُوهُ حَيْثُ يُبَاعُ الطَّعَامُ» .

L23213 From the chain of Ibn Ayman: I am Hisham, I am Abu Salih. Al-Laith ibn Sa'd narrated to me: Ibn Ghanj narrated to me, from Nafi', from Ibn Umar, that he narrated: "They used to purchase food during the time of Allah's Messenger (peace and blessings be upon him) from caravan riders. The Prophet (peace and blessings be upon him) forbade them to sell it in the very spot where they bought it until they transported it to the food market."

وَمِنْ طَرِيقِ ابْنِ أَيْمَنَ أَنَا هِشَامٌ أَنَا أَبُو صَالِحٍ حَدَّثَنِي اللَّيْثُ بْنُ سَعْدٍ حَدَّثَنِي ابْنُ غَنْجٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ حَدَّثَهُ: «أَنَّهُمْ كَانُوا يَشْتَرُونَ الطَّعَامَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ الرُّكْبَانِ فَنَهَاهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَبِيعُوهُ فِي مَكَانِهِمْ الَّذِي ابْتَاعُوهُ فِيهِ حَتَّى يَنْقُلُوهُ إلَى سُوقِ الطَّعَامِ» .

L23214 Abū Muḥammad said: This does not constitute a valid proof for them, due to six aspects:

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِسِتَّةِ وُجُوهٍ -:

L23215 One of them is that those who cite this as evidence are the ones who assert that when a Companion narrates a report from the Prophet—peace and blessings be upon him—then contradicts it or interprets it in a specific way, he is more knowledgeable regarding what he has interpreted, and his statement serves as authoritative evidence to reject the narration. Ibn Umar is the transmitter of this report, and it has been authentically established that he issued a legal ruling prohibiting the pre-emptive purchase of goods, as mentioned earlier, and upholding the transmitted prohibition against it.

أَحَدُهَا - أَنَّ الْمُحْتَجِّينَ بِهَذَا هُمْ الْقَائِلُونَ بِأَنَّ الصَّاحِبَ إذَا رَوَى خَبَرًا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ خَالَفَهُ أَوْ حَمَلَهُ عَلَى تَفْسِيرِ مَا فَهُوَ أَعْلَمُ بِمَا فَسَّرَ، وَقَوْلُهُ حُجَّةٌ فِي رَدِّ الْخَبَرِ، وَابْنُ عُمَرَ هُوَ رَاوِي هَذَا الْخَبَرِ، وَقَدْ صَحَّ عَنْهُ الْفُتْيَا بِتَرْكِ التَّلَقِّي كَمَا وَرَدَ آنِفًا، وَالْأَخْذُ بِمَا رُوِيَ مِنْ النَّهْيِ عَنْ التَّلَقِّي.

L23216–23218 And the second [point] is that these two are narrations, and they are the first opponent to disagree with us concerning them. Thus, there is no dislike in their view regarding the sale of... The food is valid from where he acquired it, and no method is worse than that of one who cites a proof he is the first to nullify and contradict what it necessitates.

وَثَانِيهَا - أَنَّ هَذَيْنِ خَبَرَانِ هُمْ أَوَّلُ مُخَالِفٍ لَنَا فِيهِمَا، فَلَا كَرَاهَةَ عِنْدَهُمْ فِي بَيْعِ الطَّعَامِ حَيْثُ ابْتَاعَهُ، وَلَا أَسْوَأَ طَرِيقَةً مِمَّنْ يَحْتَجُّ بِحُجَّةٍ هُوَ أَوَّلُ مُبْطِلٍ لَهَا، وَمُخَالِفٍ لِمُوجِبِهَا.

L23219 The third is that both align with our view, because the meaning of the Messenger of Allah's prohibition—peace and blessings be upon him—against them selling it until they bring it to the food market is a prohibition upon the seller to sell it and upon the buyer to purchase it until he brings it to the market. It is well-known and uncontested in the Arabic language that "I sold" can mean "I bought," and the narration of Musa ibn 'Uqbah is explained according to this as well—that the Prophet—peace and blessings be upon him—prohibited the sellers from selling it in the same location where the buyers bought it from them. This is a sound meaning with no impermissibility in it.

وَالثَّالِثُ - أَنَّهُمَا مُوَافِقَانِ لِقَوْلِنَا، لِأَنَّ مَعْنَى نَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَبِيعُوهُ حَتَّى يَبْلُغُوا بِهِ سُوقَ الطَّعَامِ هُوَ نَهْيٌ لِلْبَائِعِ أَنْ يَبِيعَهُ وَلِلْمُشْتَرِي أَنْ يَبْتَاعَهُ حَتَّى يَبْلُغَ بِهِ السُّوقَ، وَمَشْهُورٌ غَيْرُ مَنْكُورٍ فِي لُغَةِ الْعَرَبِ " بِعْت بِمَعْنَى ابْتَعْت " وَيُخَرَّجُ خَبَرُ مُوسَى بْنِ عُقْبَةَ عَلَى هَذَا أَيْضًا، وَأَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى الْبَائِعِينَ أَنْ يَبِيعُوهُ فِي مَكَانِهِمْ الَّذِي ابْتَاعَهُ الْمُشْتَرُونَ مِنْهُمْ - وَهَذَا مَعْنًى صَحِيحٌ لَا دَاخِلَةَ فِيهِ.

وَالرَّابِعُ - أَنَّهُ حَتَّى لَوْ كَانَ فِيهِمَا نَصٌّ عَلَى جَوَازِ تَلَقِّي الرُّكْبَانِ وَلَيْسَ ذَلِكَ فِيهِمَا لَكَانَ النَّهْيُ نَاسِخًا وَلَا بُدَّ بِيَقِينٍ لَا شَكَّ فِيهِ، لِأَنَّ التَّلَقِّي كَانَ مُبَاحًا بِلَا شَكٍّ قَبْلَ النَّهْيِ، فَكَانَ هَذَانِ الْخَبَرَانِ مُوَافِقَيْنِ لِلْحَالِ الْمُتَقَدِّمَةِ بِلَا شَكٍّ، وَبِالْيَقِينِ يَدْرِي كُلُّ ذِي فَهْمٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ نَهَى عَنْ التَّلَقِّي فَقَدْ بَطَلَتْ الْإِبَاحَةُ بِلَا شَكٍّ، فَقَدْ بَطَلَ حُكْمُ هَذَيْنِ الْخَبَرَيْنِ وَنُسِخَ لَوْ صَحَّ فِيهِمَا إبَاحَةُ التَّلَقِّي، فَكَيْفَ وَلَيْسَ ذَلِكَ فِيهِمَا؟ وَهَذَا بُرْهَانٌ قَاطِعٌ لَا مَحِيدَ عَنْهُ، وَمَنْ ادَّعَى عَوْدَ حُكْمٍ قَدْ نُسِخَ فَقَدْ كَذَبَ، وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَادَّعَى عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ لَمْ يُبَيِّنْ كَمَا أُمِرَ، وَأَنَّ الدِّينَ مُخْتَلِطٌ لَا يَدْرِي أَحَدٌ حَرَامَهُ مِنْ حَلَالِهِ مِنْ وَاجِبِهِ، وَحَاشَ لِلَّهِ مِنْ هَذَا.

L23220 The fourth point is that even if there were explicit texts in both sources stating the permissibility of receiving riders—and such texts are not present within them—the prohibition would necessarily be the abrogating factor with absolute certainty, beyond doubt. For receiving riders was undoubtedly permissible before the prohibition. These two narrations undoubtedly conformed to the earlier state of affairs. With certainty, every person of understanding knows that when the Messenger of Allah—peace and blessings be upon him—prohibited receiving riders, the permissibility was undoubtedly nullified. Thus, the rulings of these two narrations would have been invalidated and abrogated, even if they had established the permissibility of receiving riders. How then, when they contain no such [permissibility]? This is a decisive proof from which there is no escape. Whoever claims the return of a ruling that has been abrogated has lied, followed what he has no knowledge of, and claimed against the Messenger of Allah—peace and blessings be upon him—that he did not clarify as he was commanded, and that the religion is disordered, with no one distinguishing its prohibitions from its permissions from its obligations. Allah is far removed from such a thing.

وَخَامِسُهَا - أَنْ يُضَمَّ هَذَانِ الْخَبَرَانِ إلَى أَخْبَارِ النَّهْيِ، فَيَكُونُ الْبَائِعُونَ تَخَيَّرُوا إمْضَاءَ الْبَيْعِ فَأُمِرَ الْمُبْتَاعُونَ بِنَقْلِهِ حِينَئِذٍ إلَى السُّوقِ، فَتَتَّفِقُ الْأَخْبَارُ كُلُّهَا وَلَا تُحْمَلُ عَلَى التَّضَادِّ.

L23221 The fifth point is that these two narrations be combined with the narrations of prohibition, such that the sellers have chosen to finalize the sale, after which the buyers are commanded to transfer it to the marketplace. This harmonizes all the narrations without them being interpreted as contradictory.

وَسَادِسُهَا - أَنَّنَا رُوِّينَا هَذَا الْخَبَرَ بِبَيَانٍ صَحِيحٍ رَافِعٍ لِلْإِشْكَالِ مِنْ طَرِيقِ مَنْ هُوَ أَحْفَظُ وَأَضْبَطُ مِنْ جُوَيْرِيَةَ - كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا مُسَدَّدٌ أَنَا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ عُبَيْدِ اللَّهِ - هُوَ ابْنُ عُمَرَ - حَدَّثَهُ نَافِعٌ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: «كَانُوا يَبْتَاعُونَ الطَّعَامَ فِي أَعْلَى السُّوقِ وَيَبِيعُونَهُ فِي مَكَانِهِ فَنَهَاهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَبِيعُوهُ فِي مَكَانِهِ حَتَّى يَنْقُلُوهُ» .

L23222 The sixth point is that we have been narrated this report with a sound clarification resolving the ambiguity via narrators more precise in memorization and accurate than Juwayriyah's chain—as we have been narrated through al-Bukhārī's transmission: from Musaddad, from Yaḥyā—he is Ibn Saʿīd al-Qaṭṭān—from ʿUbayd Allāh—he is Ibn ʿUmar—to whom Nāfiʿ reported, from ʿAbd Allāh ibn ʿUmar, who said: "They used to purchase food in the upper market area and sell it in the same spot. The Prophet—peace and blessings of Allah be upon him—forbade them from selling it in its place until they transport it."

L23223–23224 From the chain of Muslim: Abu Bakr ibn Abi Shaybah and Muhammad ibn Abdullah ibn Numayr narrated. Ibn Abi Shaybah said: I [narrate] from Ali

ibn Mushir, while Abu Bakr said: I am Ubayy. Then Ali ibn Mushir and Muhammad ibn Abdullah ibn Numayr's chains merged, both narrating from Ubaydullah ibn Umar, from Nafi', from Ibn Umar, who said: "We used to purchase food from caravan traders without measuring, so the Messenger of Allah (peace be upon him) forbade us from selling it until we had moved it from its place."[21]

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ قَالَ ابْنُ أَبِي شَيْبَةَ: أَنَا عَلِيُّ بْنُ مُسْهِرٍ، وَقَالَ أَبُو بَكْرٍ: أَنَا أَبِي، ثُمَّ اتَّفَقَ عَلِيُّ بْنُ مُسْهِرٍ، وَعَبْدُ اللَّهِ بْنُ نُمَيْرٍ، كِلَاهُمَا عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: «كُنَّا نَشْتَرِي الطَّعَامَ مِنْ الرُّكْبَانِ جُزَافًا فَنَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَبِيعَهُ حَتَّى نَنْقُلَهُ مِنْ مَكَانِهِ» .

L23225 This clarifies that the sale occurred in the marketplace - though specifically in its upper section - and particularly in juzāf sales, where buyers were prohibited from such practices. Some of them also cited as evidence a rather unusual point, mentioning a narration from Hisham al-Qurdusi from Ibn Sirin from Abu Hurayrah, which states: "Whoever purchases it has the option to rescind," adding: "This wording also entitles the buyer to the option."

فَهَذَا يُبَيِّنُ أَنَّ الْبَيْعَ كَانَ فِي السُّوقِ إلَّا أَنَّهُ فِي أَعْلَاهُ، وَفِي الْجُزَافِ خَاصَّةً فَنُهِيَ الْمُشْتَرُونَ عَنْ ذَلِكَ - وَاحْتَجَّ أَيْضًا بَعْضُهُمْ بِشَيْءٍ طَرِيفٍ جِدًّا، وَهُوَ أَنَّهُ ذَكَرَ رِوَايَةً عَنْ هِشَامٍ الْقُرْدُوسِيِّ عَنْ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ، وَفِيهِ: فَمَنْ اشْتَرَاهُ فَهُوَ بِالْخِيَارِ، وَقَالَ: إنَّ هَذَا اللَّفْظَ يُوجِبُ الْخِيَارَ لِلْمُشْتَرِي أَيْضًا.

L23226 Abu Muhammad said: This is among the things they have pursued according to their vile habit of insinuation and obfuscation—that they present arguments while bringing forth nothing—because what this speaker has said is invalid. If he had brought this wording, it would have been general, but the narration of Ayyub from Ibn Sirin from Abu Hurairah explains this very report, and that the option belongs solely to the seller. And thus said Abu Hurairah and Ibn Sirin in their fatwas.

قَالَ أَبُو مُحَمَّد: وَهَذَا مِمَّا جَرَوْا بِهِ عَلَى عَادَتِهِمْ الْخَبِيثَةِ فِي الْإِيهَامِ وَالتَّمْوِيهِ بِأَنَّهُمْ يَحْتَجُّونَ - وَهُمْ لَا يَأْتُونَ بِشَيْءٍ - لِأَنَّ هَذَا الَّذِي قَالَهُ هَذَا الْقَائِلُ بَاطِلٌ، وَلَوْ جَاءَ بِهَذَا اللَّفْظِ لَكَانَ مُجْمَلًا تُفَسِّرُهُ رِوَايَةُ أَيُّوبَ عَنْ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ لِهَذَا الْخَبَرِ نَفْسِهِ، وَأَنَّ الْخِيَارَ إنَّمَا هُوَ لِلْبَائِعِ، وَهَكَذَا قَالَ أَبُو هُرَيْرَةَ، وَابْنُ سِيرِينَ فِي فُتْيَاهُمَا.

L23227 Then, imagine if another option were valid for the buyer—what benefit would they have in this? Yet they do not uphold this. If there were any modesty or piety here, it would have restrained them from such obfuscation—all of which is wholly attributable to them.

ثُمَّ هَبْكَ لَوْ صَحَّ خِيَارٌ آخَرُ لِلْمُشْتَرِي فَأَيُّ مَنْفَعَةٍ لَهُمْ فِي هَذَا؟ وَهُمْ لَا يَقُولُونَ بِهَذَا، فَلَوْ كَانَ هَهُنَا حَيَاءٌ، أَوْ وَرَعٌ لَرَدَعَ عَنْ التَّمْوِيهِ بِمِثْلِ هَذَا مِمَّا هُوَ كُلُّهُ عَلَيْهِمْ.

L23228 Abu Muhammad reported that some people held the view: "He (peace be upon him) commanded this purely as a precautionary measure for caravanners, not for settled residents."

قَالَ أَبُو مُحَمَّد: وَقَالَ بَعْضُ النَّاسِ: إنَّمَا أَمَرَ - عَلَيْهِ السَّلَامُ - بِهَذَا حِيَاطَةً لِلْجُلَّابِ دُونَ أَهْلِ الْحَضَرِ -

L23229 Ali said, "Some of them said, 'Rather, protection for the urban residents,

قَالَ عَلِيٌّ: وَقَالَ بَعْضُهُمْ: بَلْ حِيَاطَةً عَلَى أَهْلِ الْحَضَرِ دُونَ الْجُلَّابِ.

[21] **Hadith references (L23224):** Sunan Ibn Majah 2229.

excluding the merchants.'"

قَالَ أَبُو مُحَمَّد: وَكِلَا الْقَوْلَيْنِ فَاسِدٌ، وَمَا حِيَاطَةُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَهْلِ الْحَضَرِ إِلَّا كَحِيَاطَتِهِ لِلْجُلَّابِ سَوَاءٌ سَوَاءٌ، قَالَ اللَّهُ تَعَالَى: {لَقَدْ جَاءَكُمْ رَسُولٌ مِنْ أَنْفُسِكُمْ عَزِيزٌ عَلَيْهِ مَا عَنِتُّمْ حَرِيصٌ عَلَيْكُمْ بِالْمُؤْمِنِينَ رَءُوفٌ رَحِيمٌ} [التوبة: ١٢٨] .

L23230 Abu Muhammad said: Both statements are invalid, and the Prophet's protective care for urban dwellers—(peace be upon him)—is no different from his care for the traveling merchants; they are exactly the same without distinction. Allah the Exalted said: "There has certainly come to you a messenger from among yourselves. Grievous to him is what distresses you; he is eager for your guidance, compassionate and merciful to the believers" [At-Tawbah 9:128].[22]

فَهُوَ - عَلَيْهِ السَّلَامُ - ذُو رَأْفَةٍ وَرَحْمَةٍ بِالْمُؤْمِنِينَ كَمَا وَصَفَهُ رَبُّهُ تَعَالَى، وَلَمْ يُفَرِّقْ بَيْنَ الْمُؤْمِنِينَ مِنْ أَهْلِ الْحَضَرِ وَالْمُؤْمِنِينَ مِنَ الْجَالِبِينَ، وَكُلُّهُمْ مُؤْمِنُونَ فَكُلُّهُمْ فِي رَأْفَتِهِ وَرَحْمَتِهِ سَوَاءٌ، وَلَكِنَّهَا الشَّرَائِعُ يُوحِيهَا إِلَيْهِ بَاعِثُهُ عَزَّ وَجَلَّ فَيُؤَدِّيهَا كَمَا أُمِرَ، لَا يُبَدِّلُهَا مِنْ تِلْقَاءِ نَفْسِهِ، وَلَا يَنْطِقُ عَنِ الْهَوَى، وَلَا عِلَّةَ لِشَيْءٍ مِنْ أَحْكَامِ الشَّرِيعَةِ إِلَّا مَا قَالَهُ اللَّهُ عَزَّ وَجَلَّ: {لِيَبْلُوَكُمْ أَيُّكُمْ أَحْسَنُ عَمَلًا} [هود: ٧] وَ {لا يُسْأَلُ عَمَّا يَفْعَلُ وَهُمْ يُسْأَلُونَ} [الأنبياء: ٢٣] ، {لا مُعَقِّبَ لِحُكْمِهِ} [الرعد: ٤١] ، وَمَا عَدَا هَذَا فَبَاطِلٌ وَإِفْكٌ مُفْتَرًى.

L23231–23233 He—peace be upon him—is endowed with compassion and mercy toward the believers, as his Lord, the Exalted, has described him. He did not distinguish between believers from settled communities and believers from distant lands, for all are believers, and all are equal in his compassion and mercy. However, the Sharia ordinances are revealed to him by the One who sent him, the Almighty and Majestic, and he implements them as he was commanded. He does not alter them of his own accord, nor does he speak from personal inclination. There is no cause for anything in the rulings of the Sharia except what Allah, the Almighty and Majestic, has said. And He, the Exalted: "To test which of you is best in deed" [Hūd 11:7], "He is not questioned about what He does, but they are questioned" [Al-Anbiyā' 21:23], "None can reverse His decree" [Ar-Ra'd 13:41]. Whatever opposes this is falsehood and invented lies.[23]

فَإِنْ قَالَ قَائِلٌ: فَمَا يَقُولُونَ: فِي خَبَرِ ابْنِ عُمَرَ الْمَذْكُورِ - وَهُوَ صَحِيحٌ - وَأَنْتُمْ الْمُنْتَسِبُونَ إِلَى الْقَوْلِ بِالسُّنَنِ؟

L23234 If someone were to say: What do they say about the aforementioned report of Ibn Umar—and it is authentic—while you yourselves ascribe to the position of following the Sunnah?

قُلْنَا: نَعَمْ، وَلِلَّهِ الْحَمْدُ كَثِيرًا، وَسَنَذْكُرُ الْحُكْمَ الَّذِي فِي هَذَا الْخَبَرِ مِنْ نَقْلِ الطَّعَامِ عَنْ مَوْضِعِ ابْتِيَاعِهِ وَأَنَّهُ فِي الْجُزَافِ خَاصَّةً بَعْدَ هَذَا - إِنْ شَاءَ اللَّهُ تَعَالَى - مِنْ خَبَرٍ آخَرَ.

L23235 We said: Yes, and to Allah belongs abundant praise. We will mention the ruling in this narration concerning the transfer of food from its place of purchase—specifically pertaining to approximation sales (juzaf)—and after this—Allah the Exalted willing—from another narration.

وَأَمَّا هَذَا الْخَبَرُ الَّذِي ذَكَرْنَا هَهُنَا فَهُوَ كَمَا ذَكَرْنَا وَلَا بُدَّ -: إِمَّا أَمْرٌ لِلْبَائِعِينَ وَهُمُ الرُّكْبَانُ الْجَالِبُونَ لَهُ، بِأَنْ نُهُوا عَنْ ذَلِكَ الْبَيْعِ هُنَالِكَ، وَنُهِيَ الْمُشْتَرُونَ عَنِ التَّلَقِّي - وَإِمَّا أَنَّهُ

L23236 As for this report we have mentioned here, it is as we have stated, and it

[22] **Qur'an references (L23230):** Qur'an 9:128 (At-Tawbah).

[23] **Qur'an references (L23231):** Qur'an 11:7 (Hud); Qur'an 67:2 (Al-Mulk); Qur'an 21:23 (Al-Anbya); Qur'an 13:41 (Ar-Ra'd).

مَفْسُوخٌ بِالنَّهْيِ عَنْ التَّلَقِّي أَوْ فِي الْجُزَافِ خَاصَّةً، كَمَا فِي خَبَرِ عُبَيْدِ اللَّهِ، لَا بُدَّ مِنْ أَحَدِ هَذِهِ الْأُمُورِ لِمَا ذَكَرْنَا، وَلَا يَحْتَمِلُ غَيْرَ هَذَيْنِ الْوَجْهَيْنِ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

necessarily entails one of the following: either it is a command directed at the sellers—who are the traveling merchants bringing the goods—wherein they are prohibited from engaging in that sale there, and the buyers are prohibited from intercepting; or it is that the sale is invalidated due to the prohibition against intercepting, or specifically in the case of bulk sales without precise measurement, as in the narration of ʻUbayd Allāh. It must necessarily be one of these matters for the reason we have mentioned, and it does not admit any other interpretations at all beyond these two. And success is from Allah, the Most High.

[مَسْأَلَةٌ لَا يَتَوَلَّى الْبَيْعَ سَاكِنُ مِصْرٍ أَوْ قَرْيَةٍ]

An issue: A resident of a town or village may not act as an agent for the sale.

١٤٧٠ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يَتَوَلَّى الْبَيْعَ سَاكِنُ مِصْرٍ، أَوْ قَرْيَةٍ، أَوْ مِحْشَرٍ لِخَصَّاصٍ لَا فِي الْبَدْوِ وَلَا فِي شَيْءٍ مِمَّا يَجْلِبُهُ الْخَصَّاصُ إلَى الْأَسْوَاقِ، وَالْمُدُنِ، وَالْقُرَى، أَصْلًا وَلَا أَنْ يَبْتَاعَ لَهُ شَيْئًا لَا فِي حَضَرٍ وَلَا فِي بَدْوٍ، فَإِنْ فَعَلَ فُسِخَ الْبَيْعُ وَالشِّرَاءُ أَبَدًا، وَحُكِمَ فِيهِ بِحُكْمِ الْغَصْبِ، وَلَا خِيَارَ لِأَحَدٍ فِي إمْضَائِهِ، وَلَكِنْ يَدَعُهُ يَبِيعُ لِنَفْسِهِ، أَوْ يَشْتَرِي لِنَفْسِهِ، أَوْ يَبِيعُ لَهُ خَصَّاصٌ مِثْلُهُ، وَيَشْتَرِي لَهُ كَذَلِكَ، لَكِنْ يَلْزَمُ السَّاكِنَ فِي الْمَدِينَةِ، أَوْ الْقَرْيَةِ، أَوْ الْمِحْشَرِ: أَنْ يَنْصَحَ لِلْخَصَّاصِ فِي شِرَائِهِ وَبَيْعِهِ، وَيَدُلَّهُ عَلَى السُّوقِ، وَيُعَرِّفَهُ بِالْأَسْعَارِ، وَيُعِينَهُ عَلَى رَفْعِ سِلْعَتِهِ إنْ لَمْ يُرِدْ بَيْعَهَا وَعَلَى رَفْعِ مَا يَشْتَرِي.

L23237

L23238 Issue 1470: It is impermissible for a resident of a city, village, or marketplace to conduct sales on behalf of a supplier - neither in desert areas nor in anything the supplier brings to markets, cities, or villages fundamentally. Nor may he purchase anything for the supplier in urban or rural regions. If he does so, the sale and purchase are permanently annulled and judged as usurpation. No party has the right to enforce it. Instead, the resident must let the supplier sell for himself, purchase for himself, or have another supplier of the same status conduct sales and purchases for him. However, the resident in the city, village, or marketplace is obligated to counsel the supplier in his transactions, direct him to the marketplace, inform him of prices, assist him in removing his merchandise if he does not wish to sell it, and help carry what he purchases.

وَجَائِزٌ لِلْخَصَّاصِ أَنْ يَتَوَلَّى الْبَيْعَ، وَالشِّرَاءَ لِسَاكِنِ الْمِصْرِ، وَالْقَرْيَةِ، وَالْمِحْشَرِ - وَجَائِزٌ لِسَاكِنِ الْمِصْرِ، وَالْقَرْيَةِ، وَالْمِحْشَرِ أَنْ يَبِيعَ وَيَشْتَرِيَ لِمَنْ هُوَ سَاكِنٌ فِي شَيْءٍ مِنْهَا.

L23239 It is permissible for an agent to conduct buying and selling on behalf of residents of the city, village, or assembly area. It is likewise permissible for residents of the city, village, or assembly area to buy and sell for those residing in any of these areas.

L23240–23241 The proof of that is what we have related through the chain of Muslim: Zuhayr ibn Harb on the authority of Sufyan ibn ʾUyaynah on the authority of al-Zuhri on the authority of Sa'id ibn al-Musayyib on the authority of Abu Hurayrah that the Prophet (peace and blessings of Allah be upon him) forbade a city dweller to sell for a desert dweller.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا زُهَيْرُ بْنُ حَرْبٍ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَّهُ نَهَى أَنْ يَبِيعَ حَاضِرٌ لِبَادٍ» .

L23242 Through the narration of Muslim: Yahya ibn Yahya narrated from Hushaym, from Yunus ibn ʻUbayd, from Ibn Sirin, from Anas ibn Malik, who said: We were forbidden that a townsman sell on behalf of a nomad, even if he was his brother or father.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا يَحْيَى بْنُ يَحْيَى أَنَا هُشَيْمٌ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ ابْنِ سِيرِينَ عَنْ أَنَسِ بْنِ مَالِكٍ، قَالَ: نُهِينَا أَنْ يَبِيعَ حَاضِرٌ لِبَادٍ، وَإِنْ كَانَ أَخَاهُ أَوْ أَبَاهُ.

L23243 And through the chain of Muslim: I, Ishaq ibn Ibrahim (he is Ibn Rāhawayh), from Abd al-Razzaq, from Maʻmar, from Ibn Tawus, from his father, from Ibn Abbas, who said: “The Messenger of Allah (peace be upon him) prohibited intercepting merchants on their way to the market and an urban resident selling on behalf of a rural dweller.”[24]

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - أَنَا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تُتَلَقَّى الرُّكْبَانُ وَأَنْ يَبِيعَ حَاضِرٌ لِبَادٍ» .

L23244 Tawus said: “I asked Ibn Abbas, ’What does he mean by his statement ”a settled person acting on behalf of a Bedouin“?”’

قَالَ طَاوُسٍ: فَقُلْت لِابْنِ عَبَّاسٍ: مَا قَوْلُهُ حَاضِرٌ لِبَادٍ؟

L23245 He said: He must not be a broker for him.

قَالَ: لَا يَكُونُ لَهُ سِمْسَارًا.

L23246 From the chain of narration of Ahmad ibn Shuʻayb, from Ibrāhīm ibn al-Ḥasan, from Ḥajjāj ibn Muḥammad, who said: Ibn Jurayj said: Abū al-Zubayr narrated to me that he heard Jābir ibn ʻAbd Allāh say: The Messenger of Allah—peace and blessings be upon him—said: “A townsman must not sell on behalf of a bedouin. Leave the people alone, for Allah provides sustenance to some of them through others.”[25]

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إِبْرَاهِيمُ بْنُ الْحَسَنِ أَنَا حَجَّاجٌ - هُوَ ابْنُ مُحَمَّدٍ - قَالَ: قَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ: أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَبِعْ حَاضِرٌ لِبَادٍ، دَعُوا النَّاسَ يَرْزُقُ اللَّهُ بَعْضَهُمْ مِنْ بَعْضٍ» .

L23247 From the transmission path of Ibn Abi Shaybah: I am Shababah, from Ibn Abi Dhi’b – Muslim the tailor narrated to me – from Ibn Umar, who said: “The Messenger of Allah, peace and blessings of Allah be upon him, prohibited a city dweller from acting as an intermediary in selling for a Bedouin.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا شَبَابَةُ عَنْ ابْنِ أَبِي ذِئْبٍ حَدَّثَنِي مُسْلِمٌ الْخَيَّاطُ عَنْ ابْنِ عُمَرَ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ حَاضِرٍ لِبَادٍ» .

L23248 This is the transmission of five Companions through authentic chains,

فَهَذَا نَقْلُ خَمْسَةٍ مِنْ الصَّحَابَةِ بِالطُّرُقِ الثَّابِتَةِ، فَهُوَ نَقْلُ تَوَاتُرٍ، وَبِهِ تَأْخُذُ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ -: كَمَا رُوِّينَا آنِفًا ابْنُ عَبَّاسٍ مُفَسِّرًا مُبَيِّنًا.

[24] **Hadith references (L23243):** Sahih Muslim 1521.
[25] **Hadith references (L23246):** Sahih Muslim 1522a; Mishkat al-Masabih 2852.

thereby constituting a mutawatir transmission (a transmission with an uninterrupted chain). The Companions – may Allah be pleased with them – adhere to this, as was narrated to us earlier: Ibn ʿAbbās, the interpreter and clarifier.

L23249–23251 Through the chain of Ibn Abi Shaybah: Waki‘ narrated from Sufyan al-Thawri, from Abu Musa, from al-Sha‘bi: The early Muslim Emigrants used to disapprove of a townsman acting as an intermediary in the sale for a desert-dweller. Al-Sha‘bī said: “And indeed, I most certainly do it.”

L23252 Abū Muḥammad said: It is preferable that the statement of al-Shaʿbī—“And indeed I do it,” meaning “I dislike it as they disliked it”—be applied to this ruling. Through the transmission of Saʿīd ibn Manṣūr: I am Sufyān ibn ʿUyaynah, narrating from Muslim the cloth merchant, that he heard Abū Hurayrah prohibiting an urban resident from selling on behalf of a Bedouin.

L23253 Ibn Abī Shaybah reported via Ibn ʿUyaynah, from Muslim al-Khayyāṭ, that he heard Abū Hurayrah say: “It was prohibited for a settled person to sell on behalf of a Bedouin.” And ʿUmar was heard saying: “A settled person must not sell on behalf of a Bedouin.”

L23254 Through the narration of Waki‘ from Sufyān al-Thawrī from Abū Ḥamzah from Ibrāhīm al-Nakhaʿī, who reported that ʿUmar ibn al-Khaṭṭāb said: “Guide them to the market, guide them to the way, and inform them of the price.”

L23255 Through the narration chain of Abu Dawud, I heard Hafs ibn Umar say: I am Abu Hilal; I am Muhammad ibn Sirin—narrating from Anas ibn Malik, who said: It was said, “Let no urban dweller sell on behalf of a Bedouin”—a comprehensive phrase meaning he must neither sell anything for them nor purchase anything for them.

L23256 From the chain of Ibn Abi Shaybah: I narrate from Abu Usamah, from Abdullah ibn Awn, from Ibn Sirin, from Anas, who said: An urban resident must not sell for a rural dweller.

L23257 From the chain of Abū Dāwūd: I am Mūsā ibn Ismāʿīl, from Ḥammād

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي مُوسَى عَنْ الشَّعْبِيِّ: كَانَ الْمُهَاجِرُونَ يَكْرَهُونَ بَيْعَ حَاضِرٍ لِبَادٍ قَالَ الشَّعْبِيُّ: وَإِنِّي لَأَفْعَلُهُ.

قَالَ أَبُو مُحَمَّد: الْأَوْلَى أَنْ يُحْمَلَ عَلَيْهِ قَوْلُ الشَّعْبِيِّ، " وَإِنِّي لَأَفْعَلُهُ " أَيْ إنِّي أَكْرَهُهُ كَمَا كَرِهُوهُ -: وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ مُسْلِمٍ الْخَيَّاطِ: أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَنْهَى أَنْ يَبِيعَ حَاضِرٌ لِبَادٍ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ عُيَيْنَةَ عَنْ مُسْلِمٍ الْخَيَّاطِ: أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: نُهِيَ أَنْ يَبِيعَ حَاضِرٌ لِبَادٍ - وَسُمِعَ عُمَرُ يَقُولُ: لَا يَبِيعُ حَاضِرٌ لِبَادٍ.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي حَمْزَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: دُلُّوهُمْ عَلَى السُّوقِ، دُلُّوهُمْ عَلَى الطَّرِيقِ، وَأَخْبِرُوهُمْ بِالسِّعْرِ.

وَمِنْ طَرِيقِ أَبِي دَاوُد سَمِعْت حَفْصَ بْنَ عُمَرَ يَقُولُ: أَنَا أَبُو هِلَالٍ أَنَا مُحَمَّدُ بْنُ سِيرِينَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: كَانَ يُقَالُ: لَا يَبِعْ حَاضِرٌ لِبَادٍ - وَهِيَ كَلِمَةٌ جَامِعَةٌ لَا يَبِيعُ لَهُ شَيْئًا وَلَا يَبْتَاعُ لَهُ شَيْئًا.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا أَبُو أُسَامَةَ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ ابْنِ سِيرِينَ عَنْ أَنَسٍ قَالَ: لَا يَبِعْ حَاضِرٌ لِبَادٍ.

ibn Salamah, from Muḥammad ibn Isḥāq, from Sālim al-Mālikī: A Bedouin informed him that he came with his desert trade goods during the lifetime of the Messenger of Allah—peace be upon him—and stayed with Ṭalḥah ibn ʿAbdullāh. Ṭalḥah said to him: "The Prophet—peace be upon him—has forbidden a city dweller from selling for a Bedouin. But go to the market, observe who negotiates a deal with you, then consult me so I may command you or forbid you."

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُوسَى بْنُ إِسْمَاعِيلَ أَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ سَالِمٍ الْمَالِكِيِّ: أَنَّ «أَعْرَابِيًّا حَدَّثَهُ أَنَّهُ قَدِمَ بِجَلُوبَةٍ لَهُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَنَزَلَ عَلَى طَلْحَةَ بْنِ عَبْدِ اللَّهِ، فَقَالَ لَهُ طَلْحَةُ: إِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى أَنْ يَبِيعَ حَاضِرٌ لِبَادٍ، وَلَكِنْ اذْهَبْ إِلَى السُّوقِ فَانْظُرْ مَنْ بَايَعَكَ فَشَاوِرْنِي حَتَّى آمُرَكَ أَوْ أَنْهَاكَ» .

L23258 These Muhajirun as a group—Umar ibn al-Khattab, Anas, Ibn Abbas, Abu Hurairah, and Talhah—with no known dissenter among the Companions opposing them, may Allah be pleased with them, and this is the view of Aṭāʾ and Umar ibn Abd al-Aziz.

فَهَؤُلَاءِ الْمُهَاجِرُونَ جُمْلَةً، وَعُمَرُ بْنُ الْخَطَّابِ، وَأَنَسٌ، وَابْنُ عَبَّاسٍ، وَأَبُو هُرَيْرَةَ، وَطَلْحَةُ، لَا مُخَالِفَ لَهُمْ يُعْرَفُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهُوَ قَوْلُ عَطَاءٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

L23259 And it has been narrated to us from some of the Tābiʿūn his differing.

وَرُوِّينَا عَنْ بَعْضِ التَّابِعِينَ خِلَافُهُ.

L23260 It has been narrated to us from al-Ḥasan that he saw no harm in purchasing from a Bedouin for another Bedouin. When asked: "Then can it be purchased from him for the Muhājir [emigrant]?" he replied: "No."

رُوِّينَا عَنْ الْحَسَنِ أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يَشْتَرِيَ مِنْ الْأَعْرَابِيِّ لِلْأَعْرَابِيِّ، قِيلَ لَهُ: فَيُشْتَرَى مِنْهُ لِلْمُهَاجِرِ؟ قَالَ لَا.

L23261–23262 From the narration of Saʿīd ibn Manṣūr: Hushaym Abū Ḥurrah said: I heard al-Ḥasan say: "Buy on behalf of the Bedouin, but do not sell on his behalf." From the narration of Ibn Abī Shaybah: Abū Dāwūd al-Ṭayālisī narrated from Iyās ibn Daghfal: "The letter of ʿUmar ibn ʿAbd al-ʿAzīz was recited to us, stating: 'A settled person must not sell on behalf of a desert dweller.'" From the narration of Saʿīd ibn Manṣūr: Sufyān narrated from Ibn Abī Najīḥ from Mujāhid, who said: "The Messenger of Allah—peace and blessings be upon him—prohibited a settled person from selling on behalf of a desert dweller because he sought to prevent Muslims from taking advantage of their naivety. As for today, there is no harm." ʿAṭāʾ said: "It is not suitable today." From the narration of Wakīʿ from Ibn Khuthaym: I asked ʿAṭāʾ: "A group of Bedouins come to us—should we purchase goods for them?" He replied: "There is no harm." From the narration of Wakīʿ from Sufyān al-Thawrī from al-Mughīrah from Ibrāhīm, who said: "They favored acquiring

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَبُو حُرَّةَ سَمِعْت الْحَسَنَ يَقُولُ: اشْتَرِ لِلْبَدْوِيِّ وَلَا تَبِعْ لَهُ. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا أَبُو دَاوُد - هُوَ الطَّيَالِسِيُّ - عَنْ إيَاسِ بْنِ دَغْفَلٍ: قُرِئَ عَلَيْنَا كِتَابُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: لَا يَبِعْ حَاضِرٌ لِبَادٍ. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُفْيَانُ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: إنَّمَا نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَبِيعَ حَاضِرٌ لِبَادٍ، لِأَنَّهُ أَرَادَ أَنْ يُصِيبَ الْمُسْلِمُونَ مَنْ غِرَّتِهِمْ، فَأَمَّا الْيَوْمَ فَلَا بَأْسَ - وَقَالَ عَطَاءٌ: لَا يَصْلُحُ الْيَوْمَ. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ ابْنِ خُثَيْمٍ قُلْت لِعَطَاءٍ: قَوْمٌ مِنْ الْأَعْرَابِ يَقْدَمُونَ عَلَيْنَا أَفَنَشْتَرِي لَهُمْ؟ قَالَ: لَا بَأْسَ. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ

goods at lower prices from the Bedouins." This is the opinion of al-Awzāʿī, Sufyān al-Thawrī, Aḥmad, Isḥāq, al-Shāfiʿī, Abū Sulaymān, Mālik, and al-Layth. Al-Awzāʿī said: "One must not sell on their behalf, but may advise them, for advice does not constitute a sale." However, al-Shāfiʿī stated: "If the sale is concluded, it is not invalidated."

L23263–23265 Al-Layth and Malik said: One should not offer advice to him. Malik said: The urban dweller must not sell to villagers either, and there is no harm in an urban dweller purchasing on behalf of a rural dweller—the prohibition applies solely to selling on his behalf. He then said: A city resident must not sell to an Egyptian resident, nor an Egyptian resident to a city resident, but each may advise the other and inform him of the prevailing rate. Abū Ḥanīfa said: The urban dweller may sell to the rural dweller; there is no harm in that. Abū Muḥammad said: As for our invalidating the sale, it is a forbidden transaction performed by one prohibited from such sales, for the Messenger of God—peace and blessings be upon him—said: "Whoever acts contrary to our instruction, his deed is rejected." Al-Shāfiʿī contradicted himself here by not voiding this sale while nullifying other prohibited transactions without distinguishing evidence. As for those who claim the prohibition aims to protect the Bedouin from deception and to favor urban residents, Thus, this is invalid—how could it ever apply to the Messenger of Allah (may Allah bless him and his family and grant him peace)—for he is the one about whom his Lord, the Exalted, said: "Kind and merciful to the believers" [Al-Tawbah: 128]. The Bedouins are believers like urban dwellers, so his care and guardianship (peace be upon him) are equally extended to all. This corrupt interpretation is invalidated through sound reasoning: if such consideration were specific to urban dwellers, it would permit a city resident to broker sales between Bedouins or purchase from them for himself—yet both acts remain impermissible. Thus, it becomes clear that this is a corrupt effec-

الثَّوْرِيِّ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ، قَالَ: كَانَ يُعْجِبُهُمْ أَنْ يُصِيبُوا مِنْ الْأَعْرَابِ رُخْصَةً - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَمَالِك، وَاللَّيْثِ. قَالَ الْأَوْزَاعِيُّ: لَا يَبِيعُ لَهُ، وَلَكِنْ يُشِيرُ عَلَيْهِ، وَلَيْسَتْ الْإِشَارَةُ بَيْعًا إلَّا أَنَّ الشَّافِعِيَّ قَالَ: إنْ وَقَعَ الْبَيْعُ لَمْ يُفْسَخْ.

وَقَالَ اللَّيْثُ، وَمَالِكٌ: لَا يُشِيرُ عَلَيْهِ. وَقَالَ مَالِكٌ: لَا يَبِيعُ الْحَاضِرُ أَيْضًا لِأَهْلِ الْقُرَى، وَلَا بَأْسَ بِأَنْ يَشْتَرِيَ الْحَاضِرُ لِلْبَادِي إنَّمَا مَنَعَ مِنْ الْبَيْعِ لَهُ فَقَطْ، ثُمَّ قَالَ: لَا يَبِعْ مَدَنِيٌّ لِمِصْرِيٍّ، وَلَا مِصْرِيٌّ لِمَدَنِيٍّ، وَلَكِنْ يُشِيرُ كُلُّ وَاحِدٍ مِنْهُمَا عَلَى الْآخَرِ وَيُخْبِرُهُ بِالسِّعْرِ. وَقَالَ أَبُو حَنِيفَةَ: يَبِيعُ الْحَاضِرُ لِلْبَادِي، لَا بَأْسَ بِذَلِكَ. قَالَ أَبُو مُحَمَّد: أَمَّا فَسْخُنَا لِلْبَيْعِ فَإِنَّهُ بَيْعٌ مُحَرَّمٌ مِنْ إنْسَانٍ مَنْهِيٍّ عَنْ ذَلِكَ الْبَيْعِ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» . وَنَاقَضَ الشَّافِعِيُّ هَهُنَا، إذْ لَمْ يُبْطِلْ هَذَا الْبَيْعَ، وَأَبْطَلَ سَائِرَ الْبُيُوعِ الْمَنْهِيِّ عَنْهَا بِلَا دَلِيلٍ مُفَرِّقٍ. وَأَمَّا مَنْ قَالَ: إنَّ النَّهْيَ عَنْ ذَلِكَ لِيُصَابَ غُرَّةٌ مِنْ الْبَدْرِيِّ، وَأَنَّهُ نَظَرٌ لِلْحَاضِرَةِ، فَبَاطِلٌ - وَحَاشَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ هَذَا، وَهُوَ الَّذِي قَالَ فِيهِ رَبُّهُ تَعَالَى: {بِالْمُؤْمِنِينَ رَءُوفٌ رَحِيمٌ} [التوبة: ١٢٨] وَأَهْلُ الْبَدْوِ مُؤْمِنُونَ كَأَهْلِ الْحَضَرِ، فَنَظَرُهُ وَحِيَاطَتُهُ - عَلَيْهِ السَّلَامُ - لِلْجَمِيعِ سَوَاءٌ، وَيَبْطُلُ هَذَا التَّأْوِيلُ الْفَاسِدُ مِنْ النَّظَرِ الصَّحِيحِ: أَنَّ ذَلِكَ لَوْ كَانَ نَظَرًا لِأَهْلِ الْحَضَرِ لَجَازَ لِلْحَاضِرِ أَنْ يَبِيعَ لِلْبَادِي مِنْ الْبَادِي، وَأَنْ يَشْتَرِيَ مِنْهُ لِنَفْسِهِ، وَكِلَا الْأَمْرَيْنِ لَا يَجُوزُ -: فَصَحَّ أَنَّ هَذِهِ عِلَّةٌ فَاسِدَةٌ، وَأَنَّهُ لَا عِلَّةَ لِذَلِكَ أَصْلًا إلَّا الِانْقِيَادُ لِأَمْرِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

tive cause, and that no legal rationale exists for this ruling except submission to Allah's command as conveyed by His Messenger (SAW).[26][27]

وَأَمَّا قَوْلُ مَالِكٍ فَخَطَأٌ مِنْ جِهَاتٍ -: أَمَّا تَفْرِيقُهُ بَيْنَ الْبَيْعِ لِلْبَادِي فَمَنَعَ مِنْهُ، وَبَيْنَ الشِّرَاءِ لَهُ فَأَبَاحَهُ -: فَخَطَأٌ ظَاهِرٌ، لِأَنَّ لَفْظَهُ " لَا يَبِعْ " يَقْتَضِي أَنْ لَا يَشْتَرِيَ لَهُ أَيْضًا، كَمَا قَالَ أَنَسُ بْنُ مَالِكٍ - وَهُوَ حُجَّةٌ فِي اللُّغَةِ وَفِي الدِّينِ - وَالْعَرَبُ تَقُولُ: بِعْت بِمَعْنَى اشْتَرَيْت، قَوْلًا مُطْلَقًا، وَإِذَا اشْتَرَى لَهُ مِنْ غَيْرِهِ فَقَدْ بَاعَ مِنْ ذَلِكَ الْغَيْرِ لَهُ يَقِينًا بِلَا تَكَلُّفٍ ضَرُورَةً، وَقَدْ قَالَ تَعَالَى: {فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ} [الجمعة: ٩] . فَحَرَّمُوا الشِّرَاءَ كَمَا حَرَّمُوا الْبَيْعَ وَأَحَلُّوا هَهُنَا الشِّرَاءَ لَهُ وَحَرَّمُوا الْبَيْعَ لَهُ. وَأَمَّا قَوْلُ مَالِكٍ " لَا يَبِعْ لِأَهْلِ الْقُرَى " فَخَطَأٌ، لِأَنَّ اسْمَ " الْبَادِي " لَا يَقَعُ عِنْدَ الْعَرَبِ عَلَى سَاكِنٍ فِي الْمُدُنِ أَلْبَتَّةَ، وَإِنَّمَا يَقَعُ عَلَى أَهْلِ الْأَخْبِيَةِ، وَالْخُصُوصِ، الْمُنْتَجِعِينَ مَوَاقِعَ الْقَطْرِ لِلرَّعْيِ فَقَطْ.

L23266 As for Mālik's statement, it is erroneous in several respects. Regarding his distinction between selling to the Bedouin—which he prohibited—and purchasing on their behalf—which he permitted—this is a manifest error. The wording "he should not sell" inherently requires that he should not purchase for them either, as stated by Anas ibn Mālik—who is an authority in both language and religion. The Arabs use "I sold" in the absolute sense of "I bought." If someone purchases for them from a third party, they have certainly sold from that third party to them without compulsion or necessity. The Exalted said: "Hasten to the remembrance of Allah and abandon trade" [62:9]. Thus, purchasing was prohibited just as selling was prohibited, yet here purchasing for them is permitted while selling to them is forbidden. As for Mālik's statement "he should not sell to settled dwellers," it is erroneous because the term "Bedouin" is never applied by the Arabs to urban inhabitants whatsoever. It specifically denotes tent-dwellers and distinct nomadic groups who migrate to rainfall-dependent areas solely for grazing.[28]

وَأَمَّا تَفْرِيقُهُ بَيْنَ مَنْ كَانَ مِنْ أَهْلِ الدِّينِ بِمَنْزِلَةِ أَهْلِ الْمُدُنِ وَبَيْنَ سَائِرِ أَهْلِ الْقُرَى، فَخَطَأٌ ثَالِثٌ بِلَا دَلِيلٍ أَصْلًا. وَأَمَّا قَوْلُهُ " لَا يَبِعْ مَدَنِيٌّ لِمِصْرِيٍّ وَلَا مِصْرِيٌّ لِمَدَنِيٍّ " فَخَطَأٌ رَابِعٌ لَا دَلِيلَ عَلَيْهِ أَلْبَتَّةَ، وَلَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ.

L23267 As for his differentiation between those among the people of religion equivalent to city dwellers and the rest of the villagers, this constitutes a third error without any evidence whatsoever. As for his statement "A city dweller must not sell to an urban resident, nor an urban resident to a city dweller," this is a fourth error with absolutely no evidence to support it, nor do we know of anyone who has asserted this before him.

وَإِنَّمَا تَفْرِيقُهُ بَيْنَ الْمَدَنِيِّ، وَالْمِصْرِيِّ، فَرَأَى أَنْ يُشِيرَ كُلُّ وَاحِدٍ مِنْهُمَا عَلَى الْآخَرِ وَلَا يَبِيعَ لَهُ، وَلَمْ يَرَ أَنْ يُشِيرَ حَاضِرٌ عَلَى أَعْرَابِيٍّ وَلَا يَبِيعَ لَهُ -: فَخَطَأٌ خَامِسٌ بِلَا دَلِيلٍ؟ فَهَذِهِ وُجُوهٌ خَمْسَةٌ مُخَالِفَةٌ لِلْخَبَرِ الْمَذْكُورِ، لَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ، وَلَا

L23268–23270 His differentiation between the urban dweller and the metropolitan resident—where he held that each should advise the other while not selling to him, yet deemed it impermissible for a settled resident to advise a Bedouin or sell to him—does this not constitute a fifth error without proof? These

[26] **Hadith references (L23263):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[27] **Qur'an references (L23263):** Qur'an 9:128 (At-Tawbah).

[28] **Qur'an references (L23266):** Qur'an 62:9 (Al-Jumu'ah).

are five positions contradicting the mentioned narration, with no evidence supporting any of them—neither from the Quran, nor the Sunnah, nor an unsound narration, nor analogy, nor a substantiated opinion, nor any precedent from predecessors whether among the Companions or the Followers. As for his statement "A settled resident does not advise a Bedouin," those who adopt this position cite what is narrated in... Some of these narrations are from the saying of Allah's Messenger—peace and blessings be upon him and his family—: "Let the people be: Allah provides sustenance to some of them through others." Abu Muhammad said: This contains no evidence for their position whatsoever, nor does this wording imply the bias toward rural dwellers they imagined—neither explicit text, nor transmitted precedent, nor any semblance of argument in any respect. For he—peace be upon him—did not say: "Let the urban dwellers be; Allah will provide them sustenance through rural people." Rather, he said: "Let the people be: Allah provides sustenance to some of them through others." Rural people are part of "the people" just as urban people are—fully equal, without distinction. Thus, this wording encompasses Allah the Exalted's provision to the rural from the urban, to the rural from the rural, to the urban from the rural, and to the urban from the urban—with equal inclusion, granting no superiority to any of these over another. Therefore, that false presumption is invalidated, and only what is permissible in urban-to-urban transactions is permitted in transactions between rural and urban dwellers—with no difference. If they argue: "He merely prohibited selling on their behalf, so we analogize this prohibition to not advising them," we respond: All analogical reasoning is invalid. Even if it were valid, this would be the very essence of falsehood—for you refrained from prohibiting purchasing on their behalf by analogy to selling on their behalf, even though purchasing is akin to selling. Moreover, you analogized offering recommendations regarding a sale to the sale itself, though they share no connection in origin or outcome.

مِنْ قَوْلِ أَحَدٍ قَبْلَهُ لَا صَاحِبٍ، وَلَا تَابِعٍ. وَأَمَّا قَوْلُهُ " لَا يُشِيرُ الْحَاضِرُ عَلَى الْبَادِي " فَإِنَّ مَنْ قَالَ بِهَذَا احْتَجَّ بِمَا رُوِيَ فِي بَعْضِ هَذِهِ الْأَخْبَارِ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «دَعُوا النَّاسَ يَرْزُقُ اللَّهُ بَعْضَهُمْ مِنْ بَعْضٍ» ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا، وَلَا فِي هَذَا اللَّفْظِ مَا تَوَهَّمُوهُ مِنْ الْمَيْلِ عَلَى أَهْلِ الْبَادِيَةِ، لَا نَصَّ، وَلَا أَثَرَ، وَلَا شُبْهَةَ بِوَجْهٍ مِنْ الْوُجُوهِ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَقُلْ: دَعُوا الْحَاضِرِينَ يَرْزُقُهُمْ اللَّهُ مِنْ أَهْلِ الْبَادِيَةِ، إنَّمَا قَالَ: «دَعُوا النَّاسَ يَرْزُقُ اللَّهُ بَعْضَهُمْ مِنْ بَعْضٍ» وَأَهْلُ الْبَدْوِ مِنْ النَّاسِ كَمَا أَهْلُ الْحَضَرِ سَوَاءٌ سَوَاءٌ وَلَا فَرْقَ، فَيَدْخُلُ فِي هَذَا اللَّفْظِ رِزْقُ اللَّهِ تَعَالَى لِلْبَادِي مِنْ الْحَاضِرِ، وَلِلْبَادِي مِنْ الْبَادِي، وَلِلْحَاضِرِ مِنْ الْبَادِي، وَلِلْحَاضِرِ مِنْ الْحَاضِرِ: دُخُولًا مُسْتَوِيًا، لَا مَزِيَّةَ لِشَيْءٍ مِنْ ذَلِكَ عَلَى شَيْءٍ آخَرَ مِنْهُ -: فَبَطَلَ ذَلِكَ الظَّنُّ الْكَاذِبُ، وَلَا يَحِلُّ مِنْ بَيْعِ الْبَادِي وَالْحَاضِرِ إلَّا مَا يَحِلُّ مِنْ بَيْعِ الْحَاضِرِ لِلْحَاضِرِ، وَلَا فَرْقَ. فَإِنْ قَالُوا: إنَّمَا نَهَى عَنْ أَنْ يَبِيعَ لَهُ، قِسْنَا عَلَى ذَلِكَ أَنْ لَا يُشِيرَ عَلَيْهِ؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، وَلَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّكُمْ تَرَكْتُمْ أَنْ تَمْنَعُوا مِنْ الشِّرَاءِ لَهُ قِيَاسًا عَلَى الْبَيْعِ لَهُ، وَهُوَ بَيْعٌ مِثْلُهُ، وَقِسْتُمْ الْإِشَارَةَ عَلَى الْبَيْعِ وَلَيْسَتْ مِنْهُ فِي وِرْدٍ وَلَا صَدَرٍ.

L23271–23273 They do not differ regarding the fact that if a man consults another after the call to Friday concerning a sale and the latter advises him, he does not commit a restriction nor does he perform a disliked act. But if he were to sell or buy, he would be disobeying Allah the Exalted. Similarly, if someone

وَلَا يَخْتَلِفُونَ فِي أَنَّ امْرَأً لَوْ شَاوَرَ آخَرَ بَعْدَ النِّدَاءِ لِلْجُمُعَةِ فِي بَيْعٍ فَأَشَارَ عَلَيْهِ لَمْ يُحْرَجْ وَلَا أَتَى مَكْرُوهًا، وَلَوْ بَاعَ أَوْ اشْتَرَى لَعَصَى اللَّهَ تَعَالَى، وَأَنَّ مَنْ حَلَفَ أَنْ لَا يَبِيعَ

swears not to sell and then advises in a matter of sale, he does not break his oath. The Messenger of Allah—peace and blessings of Allah be upon him and his progeny—said: "Religion is sincere advice to Allah, His Messenger, His Book, the leaders, and the general body of Muslims." As for the initiator among Muslims, sincere advice to him is an obligation. Had Allah the Exalted willed to prohibit advising him, He would have explicitly stated that, just as He explicitly stated the ruling on selling through the tongue of His Messenger—peace and blessings of Allah be upon him and his progeny. We previously mentioned the obligation of sincere advice to the initiator through the reports of Umar ibn al-Khattab and Talhah ibn Ubaydullah, with no dissenting opinion from among the Companions regarding this. There is also a narration concerning this matter: As we have reported through the chain of Sa'īd ibn Manṣūr: Ḥammād ibn Zayd narrated to us from 'Aṭā' ibn al-Sā'ib from Ḥakīm ibn Abī Yazīd from his father, who said: The Messenger of Allah (peace and blessings of Allah be upon him) said, "Leave the people alone; Allah provides sustenance to some through others. When a man seeks sincere counsel from his brother, let him advise him sincerely." As for Abū Ḥanīfah, he did not require prolonged elaboration but opposed the Messenger of Allah (peace and blessings of Allah be upon him) regarding his prohibition against a city dweller selling on behalf of a desert dweller, based on the transmission of mutawatir reports.

فَأَشَارَ فِي أَمْرِ بَيْعٍ لَمْ يَحْنَثْ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «الدِّينُ النَّصِيحَةُ لِلَّهِ وَلِرَسُولِهِ وَلِكِتَابِهِ وَلِلْأَئِمَّةِ وَجَمَاعَةِ الْمُسْلِمِينَ» وَالْبَادِي مِنْ الْمُسْلِمِينَ فَالنُّصْحِيَّةُ لَهُ فَرْضٌ - وَلَوْ أَرَادَ اللَّهُ تَعَالَى أَنْ لَا يُشَارَ عَلَيْهِ لَنَصَّ عَلَى ذَلِكَ كَمَا نَصَّ عَلَى الْبَيْعِ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -. وَقَدْ ذَكَرْنَا النَّصِيحَةَ لِلْبَادِي آنِفًا مِنْ طَرِيقِ عُمَرَ بْنِ الْخَطَّابِ، وَطَلْحَةَ بْنِ عُبَيْدِ اللَّهِ وَلَا مُخَالِفَ لَهُمَا فِي ذَلِكَ مِنْ الصَّحَابَةِ، وَقَدْ جَاءَ فِي ذَلِكَ أَثَرٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ حَكِيمِ بْنِ أَبِي يَزِيدَ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «دَعُوا النَّاسَ يَرْزُقُ اللَّهُ بَعْضَهُمْ مِنْ بَعْضٍ فَإِذَا اسْتَنْصَحَ الرَّجُلُ أَخَاهُ فَلْيَنْصَحْ لَهُ» . وَأَمَّا أَبُو حَنِيفَةَ فَلَمْ يَحْتَجْ إلَى تَطْوِيلٍ لَكِنْ خَالَفَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي نَهْيِهِ عَنْ أَنْ يَبِيعَ حَاضِرٌ لِبَادٍ بِنَقْلِ التَّوَاتُرِ.

L23274 And he contradicted what came from the Companions - may Allah be pleased with them - without any known dissenter among them, though they would reproach even lesser than this. Who is more astonishing than one who rejects these abundantly transmitted, manifest, and authentic reports from the Sunnah and the Companions, then blindly follows feeble, fabricated reports in deeming the runaway slave [as such] - neither justifying them nor interpreting this [matter] within them? Yet they assert in their principles that a report, even if weak, is stronger than rational analysis - and sufficient for us is Allah, what an excellent Trustee He is!

وَخَالَفَ مَا جَاءَ فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - دُونَ أَنْ يُعْرَفَ لَهُمْ مِنْهُمْ مُخَالِفٌ وَهُمْ يُشَنِّعُونَ بِأَقَلَّ مِنْ هَذَا. فَمَنْ أَعْجَبُ مِمَّنْ يَرُدُّ هَذِهِ الْآثَارَ الْمُتَوَاتِرَةَ الْمُتَظَاهِرَةَ الصِّحَاحَ مِنْ السُّنَنِ، وَعَنْ الصَّحَابَةِ ثُمَّ يُقَلِّدُ آثَارًا وَاهِيَةً مَكْذُوبَةً فِي جُعْلِ الْآبِقِ فَلَا يُعَلِّلُهَا، وَلَا يَتَأَوَّلُ فِيهَا هَذَا؟ وَهُمْ يُطْلِقُونَ فِي أُصُولِهِمْ أَنَّ الْأَثَرَ وَإِنْ كَانَ ضَعِيفًا فَهُوَ أَقْوَى مِنْ النَّظَرِ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

[مَسْأَلَة بَيْعُ كُلِّ مَا ظَهَرَ مِنْ أَصْنَافِ ثِمَارِ الْحَائِطِ]

L23275 The ruling on the sale of all types of fruits that have appeared from the walled orchard.

L23276 Issue 1471: If a walled garden contains various types of fruits such as pears,

apples, peaches, and others, and the ripeness of some fruits from one variety becomes apparent while other varieties remain unripe, it is permissible to sell all varieties of fruits from that walled garden that have shown ripeness, even if they have not yet ripened, provided they are sold in a single transaction. If one intends to sell them in two transactions, it is forbidden to sell any fruit that has not shown signs of ripeness, even if that variety later begins to ripen—except for dates and grapes. It is forbidden to sell any of them, whether separately or combined with other fruits, until the dates reach the stage of *zahw* and the grapes begin to darken or show signs of ripeness.

١٤٧١ - مَسْأَلَةٌ: فَإِنْ كَانَ فِي حَائِطٍ أَنْوَاعٌ مِنَ الثِّمَارِ مِنَ الْكُمَّثْرَى، وَالتُّفَّاحِ، وَالْخَوْخِ، وَسَائِرِ الثِّمَارِ، فَظَهَرَ صَلَاحُ شَيْءٍ مِنْهَا مِنْ صِنْفٍ دُونَ سَائِرِ أَصْنَافِهِ -: جَازَ بَيْعُ كُلِّ مَا ظَهَرَ مِنْ أَصْنَافِ ثِمَارِ ذَلِكَ الْحَائِطِ، وَإِنْ كَانَ لَمْ يَطِبْ بَعْدُ إِذَا بِيعَ كُلُّ ذَلِكَ صَفْقَةً وَاحِدَةً، فَإِنْ أَرَادَ بَيْعَهُ صَفْقَتَيْنِ لَمْ يَجُزْ بَيْعُ مَا لَمْ يَبْدُ فِيهِ شَيْءٌ مِنَ الصَّلَاحِ، وَإِنْ كَانَ قَدْ بَدَا صَلَاحُ ذَلِكَ الصِّنْفِ بَعْدُ حَاشَا ثَمَرِ النَّخْلِ وَالْعِنَبِ فَقَطْ: فَإِنَّهُ لَا يَجُوزُ بَيْعُ شَيْءٍ مِنْهُ لَا وَحْدَهُ وَلَا مَعَ غَيْرِهِ إِلَّا حَتَّى يَزْهَى ثَمَرُ النَّخْلِ، وَيَبْدَأَ سَوَادُ الْعِنَبِ أَوْ طِيبُهُ.

L23277 The proof for this is that the Messenger of Allah—peace be upon him—prohibited the sale of fruits until their ripeness becomes evident. This ripeness—which permits selling fruits after the initial prohibition—must necessarily refer to one of the following: either the Prophet—peace be upon him—intended by it the first appearance of ripeness in any part of the fruit, the attainment of full ripeness throughout its entirety from beginning to end, the presence of ripeness in most of it, in a minimal portion of it, or in a specified fraction such as half, a third, a quarter, a tenth, or similar measures. It is absolutely imperative that this ripeness correspond to one of these descriptions.

بُرْهَانُ ذَلِكَ -: نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ بَيْعِ الثَّمَرَةِ حَتَّى يَبْدُوَ صَلَاحُهَا، وَلَا يَخْلُو هَذَا الصَّلَاحُ الَّذِي بِهِ يَحِلُّ بَيْعُ الثِّمَارِ بَعْدَ تَحْرِيمِهِ مِنْ أَنْ يَكُونَ - عَلَيْهِ السَّلَامُ - أَرَادَ بِهِ ابْتِدَاءَ ظُهُورِ الطِّيبِ فِي شَيْءٍ مِنْهُ، أَوْ تَنَاهِي الطِّيبِ فِي جَمِيعِهِ أَوَّلِهِ عَنْ آخِرِهِ، أَوْ فِي أَكْثَرِهِ، أَوْ فِي أَقَلِّهِ، أَوْ فِي جُزْءٍ مُسَمًّى مِنْهُ: كَنِصْفٍ، أَوْ ثُلُثٍ، أَوْ رُبُعٍ، أَوْ عُشْرٍ، أَوْ نَحْوِ ذَلِكَ لَا بُدَّ ضَرُورَةً مِنْ أَحَدِ هَذِهِ الْوُجُوهِ.

L23278–23279 It is impossible and inconceivable - indeed, wholly impossible - that he (peace be upon him) would intend most of it, the least of it, or a specifically named portion thereof and then fail to explicitly state or clarify it, when Allah the Exalted has mandated him to elucidate. There is no basis for him to impose upon us a divine law that we do not know what it is, for this would mean he (peace be upon him) is contradicting his Lord's command to clarify - a claim no Muslim would utter.

فَمِنَ الْمُحَالِ الْمُمْتَنِعِ الَّذِي لَا يُمْكِنُ أَصْلًا أَنْ يُرِيدَ - عَلَيْهِ السَّلَامُ - أَكْثَرَهُ، أَوْ أَقَلَّهُ، أَوْ جُزْءًا مُسَمًّى مِنْهُ ثُمَّ لَا يَنُصُّ عَلَى ذَلِكَ وَلَا يُبَيِّنُهُ، وَقَدْ افْتَرَضَ اللَّهُ عَزَّ وَجَلَّ عَلَيْهِ الْبَيَانَ، فَلَا سَبِيلَ إِلَى أَنْ يُكَلِّفَنَا شَرْعًا لَا نَدْرِي مَا هُوَ؛ لِأَنَّهُ كَانَ يَكُونُ - عَلَيْهِ السَّلَامُ - مُخَالِفًا لِأَمْرِ رَبِّهِ تَعَالَى لَهُ بِالْبَيَانِ، وَهَذَا مَا لَا يَقُولُهُ مُسْلِمٌ.

L23280 Moreover, this would impose upon us a divine obligation beyond our capacity—to know what we have not been informed of. Yet Allah, the Exalted, has spared us from this through His statement: "Allah does not burden any soul beyond its capacity" [Al-Baqarah: 286].[29]

وَأَيْضًا - فَإِنَّ ذَلِكَ كَانَ يَكُونُ تَكْلِيفًا لَنَا مَا لَا نُطِيقُهُ مِنْ مَعْرِفَةِ مَا لَمْ نُعَرَّفْ بِهِ وَقَدْ أَمَّنَنَا اللَّهُ تَعَالَى مِنْ ذَلِكَ بِقَوْلِهِ تَعَالَى {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦].

[29] **Qur'an references (L23280):** Qur'an 2:286 (Al-Baqarah).

فَبَطَلَتْ هَذِهِ الْوُجُوهُ بِيَقِينٍ لَا مِرْيَةَ فِيهِ، وَلَمْ يَبْقَ إِلَّا وَجْهَانِ فَقَطْ: إِمَّا ظُهُورُ الصَّلَاحِ فِي شَيْءٍ مِنْهُ وَإِنْ قَلَّ، وَإِمَّا عُمُومُ الصَّلَاحِ لِجَمِيعِهِ -: فَنَظَرْنَا فِي لَفْظِهِ - عَلَيْهِ السَّلَامُ - فَوَجَدْنَاهُ حَتَّى يَبْدُوَ صَلَاحُهُ، فَصَحَّ أَنَّهُ ظُهُورُ الصَّلَاحِ: وَبِصَلَاحِ حَبَّةٍ وَاحِدَةٍ يُطْلَقُ عَلَيْهِ فِي اللُّغَةِ أَنَّهُ قَدْ بَدَا صَلَاحُ هَذَا الثَّمَرِ، فَهَذَا مُقْتَضَى لَفْظِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L23281 These opinions are invalidated with certainty beyond doubt, leaving only two possibilities: either the emergence of ripeness in any part of it—even if minimal—or the universality of ripeness encompassing all of it. We examined the wording of the Prophet (peace be upon him) and found that it states: "until its ripeness becomes apparent," thus confirming that it is the emergence of ripeness. For even the ripeness of a single seed is linguistically applied to the whole by saying, "the ripeness of this fruit has emerged." This is the requirement dictated by the wording of the Messenger of Allah (peace be upon him).

وَلَوْ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَرَادَ صَلَاحَ جَمِيعِهِ لَقَالَ: حَتَّى يَصْلُحَ جَمِيعُهُ.

L23282 And if he (peace be upon him) had intended the reform of all of it, he would have said: "until all of it is reformed."

وَأَيْضًا - فَإِنَّ جَمِيعَ الثِّمَارِ يَبْدُو صَلَاحُ بَعْضِهِ ثُمَّ يَتَتَابَعُ صَلَاحُ شَيْءٍ شَيْءٍ مِنْهُ، فَلَا يَصِحُّ آخِرُهُ إِلَّا وَلَوْ تَرَكَ أَوَّلَهُ لَفَسَدَ وَضَاعَ بِلَا شَكٍّ، وَقَدْ نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إِضَاعَةِ الْمَالِ.

L23283 Furthermore, for all fruits, the ripeness of some initially becomes evident, then continues to develop gradually. Thus, the latter [stage] cannot properly ripen unless the former [stage] is preserved—for if the first were neglected, it would undoubtedly spoil and be wasted. The Messenger of Allah (peace be upon him) prohibited the squandering of property.

وَأَيْضًا - فَلَا نَعْرِفُ أَحَدًا قَالَ هَذَا قَدِيمًا وَلَا حَدِيثًا، وَلَا زَالَ النَّاسُ يَتَبَايَعُونَ الثِّمَارَ كُلَّ عَامٍ عَمَلًا عَامًّا فَاشِيًا ظَاهِرًا بِعِلْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ كَذَلِكَ كُلَّ عَامٍ فِي جَمِيعِ أَقْطَارِ أَهْلِ الْإِسْلَامِ مَا قَالَ قَطُّ أَحَدٌ: إِنَّهُ لَا يَحِلُّ بَيْعُ الثَّمَرِ إِلَّا حَتَّى يَتِمَّ صَلَاحُ جَمِيعِهِ حَتَّى لَا يَبْقَى مِنْهُ وَلَا حَبَّةٌ وَاحِدَةٌ.

L23284 Moreover, we do not know of anyone who has ever stated this, neither in ancient nor modern times. People have continuously engaged in mutual trade of fruits annually—a general, widespread, and evident practice carried out with the knowledge of the Messenger of Allah (peace be upon him). Then, in this manner, it has continued every year across all regions of the Muslim lands. No one has ever asserted that selling fruit is impermissible until all of it is fully ripe such that not even a single seed remains unripe.

قَالَ أَبُو مُحَمَّدٍ: فَإِذْ الْأَمْرُ كَمَا ذَكَرْنَا فَبَيْعُ ثِمَارِ الْحَائِطِ الْجَامِعِ لِأَصْنَافِ الشَّجَرِ صَفْقَةً وَاحِدَةً بَعْدَ ظُهُورِ الطِّيبِ فِي شَيْءٍ مِنْهُ: جَائِزٌ - وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ، لِأَنَّهُ بَيْعُ ثِمَارٍ قَدْ بَدَا صَلَاحُهَا، وَلَمْ يَقُلْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: إِنَّ ذَلِكَ لَا يَجُوزُ إِلَّا فِي صِنْفٍ وَاحِدٍ، وَلَوْ كَانَ ذَلِكَ هُوَ اللَّازِمُ لَمَا أَغْفَلَ - عَلَيْهِ السَّلَامُ - بَيَانَهُ.

L23285 Abu Muhammad said: Since the matter is as we have described, the sale of fruits from a unified walled orchard encompassing diverse tree types in a single transaction after any part of them shows ripeness is permissible—this being the opinion of al-Layth ibn Saʿd—because it is the sale of fruits whose ripeness has become apparent. The Messenger of Allah—peace and blessings be upon him and his family—did not state that such permissibility applies only to a single type. Had this been the necessary consequence, he—peace be upon him—would not have omitted its clarification.

L23286–23288 When produce is sold in two transactions, it is impermissible to sell any fruit

that has not yet shown any signs of suitability [for consumption]—whether it is from a type where suitability has appeared in others (of the same type) or from another type—because this constitutes selling fruit whose suitability has not yet manifested. This is forbidden. The Messenger of Allah—peace and blessings be upon him and his family—undoubtedly referred the pronoun (the "hā" in "its ripeness") back to the sold fruit mentioned in the report. Thus, what we have stated is confirmed with certainty. As for date palms and grapes, another explicit text specifically addressed them: his prohibition—peace be upon him—against selling dates until they ripen or redden, and against selling grapes until they blacken or their ripeness becomes evident by their inclusion among other fruits—even if they are of a type that does not blacken. Therefore, it is impermissible to sell any dates or grapes until the sold portion of them reaches a state of blooming/color change or demonstrates inherent ripeness through blackening or another indicator—and success is only by Allah's facilitation, the Exalted.

وَأَمَّا إِذَا بِيعَ الثَّمَرُ صَفْقَتَيْنِ فَلَا يَجُوزُ بَيْعُ مَا لَمْ يَبْدُ فِيهِ شَيْءٌ مِنْ الصَّلَاحِ بَعْدُ، سَوَاءٌ كَانَ مِنْ صِنْفٍ قَدْ بَدَا الصَّلَاحُ فِي غَيْرِهِ أَوْ مِنْ صِنْفٍ آخَرَ؛ لِأَنَّهُ بَيْعُ ثَمَرَةٍ لَمْ يَبْدُ صَلَاحُهَا وَهَذَا حَرَامٌ، وَإِنَّمَا رَدَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الضَّمِيرَ - وَهُوَ الْهَاءُ الَّذِي فِي " صَلَاحِهِ " - إلَى الثَّمَرِ الْمَبِيعِ الْمَذْكُورِ فِي الْخَبَرِ بِلَا شَكٍّ - فَصَحَّ مَا قُلْنَاهُ يَقِينًا. وَأَمَّا النَّخْلُ، وَالْعِنَبُ، فَقَدْ خَصَّهُمَا نَصٌّ آخَرُ، وَهُوَ نَهْيُهُ - عَلَيْهِ السَّلَامُ - عَنْ بَيْعِ ثَمَرِ النَّخْلِ حَتَّى تَزْهَى أَوْ تَحْمَرَّ، وَعَنْ بَيْعِ الْعِنَبِ حَتَّى يَسْوَدَّ أَوْ يَبْدُوَ صَلَاحُهُ بِدُخُولِهِ فِي سَائِرِ الثِّمَارِ - وَإِنْ كَانَ مِمَّا لَا يَسْوَدُّ، فَلَا يَجُوزُ بَيْعُ شَيْءٍ مِنْ ثِمَارِ النَّخْلِ، وَالْعِنَبِ؛ إلَّا حَتَّى يَصِيرَ الْمَبِيعُ مِنْهُمَا فِي حَالِ الْإِزْهَاءِ أَوْ ظُهُورِ الطِّيبِ فِيهِ نَفْسِهِ بِالسَّوَادِ، أَوْ بِغَيْرِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: The sale of young pigeons within the dovecote for a specified term, such as one year.

[مَسْأَلَةُ بَيْعُ فِرَاخِ الْحَمَامِ فِي الْبُرْجِ مُدَّةً مُسَمَّاةً كَسَنَةٍ]

1472 - Issue:

١٤٧٢ - مَسْأَلَةٌ:

It is impermissible to sell pigeon chicks in the dovecote for a specified duration—such as a year, six months, or the like—because this constitutes selling what has not yet been created and a *gharar* sale where neither the quantity nor attributes are known, amounting to wrongful consumption of wealth. The lawful obligation in this matter is to sell only those chicks that have become visible after the seller (or his *wakīl*) and the buyer (or his *wakīl*) have inspected them, even if they—or one of them—do not know their exact number, or if none of the aforementioned parties have seen them. The sale is then concluded based on the description provided by whichever party has seen them.

وَلَا يَحِلُّ بَيْعُ فِرَاخِ الْحَمَامِ فِي الْبُرْجِ مُدَّةً مُسَمَّاةً كَسَنَةٍ، أَوْ سِتَّةِ أَشْهُرٍ، أَوْ نَحْوِ ذَلِكَ؛ لِأَنَّهُ بَيْعُ مَا لَمْ يُخْلَقْ، وَبَيْعُ غَرَرٍ لَا يُدْرَى كَمْ يَكُونُ، وَلَا أَيُّ صِفَةٍ يَكُونُ فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ، وَإِنَّمَا الْوَاجِبُ فِي الْحَلَالِ فِي ذَلِكَ بَيْعُ مَا ظَهَرَ مِنْهَا بَعْدَ أَنْ يَقِفَ الْبَائِعُ أَوْ وَكِيلُهُ، وَالْمُشْتَرِي أَوْ وَكِيلُهُ عَلَيْهَا، وَإِنْ لَمْ يَعْرِفَا أَوْ أَحَدُهُمَا عَدَدَهَا أَوْ يَرَهَا أَحَدُ مَنْ ذَكَرْنَا فَيَقَعُ الْبَيْعُ بَيْنَهُمَا عَلَى صِفَةِ الَّذِي رَآهَا مِنْهُمَا.

If the two parties dispute thereafter regarding chicks, with the buyer asserting, "They existed at the time of sale and were included in it," and the other party claiming, "They did not exist at that time," and there is no evidence:

فَإِنْ تَدَاعَيَا بَعْدَ ذَلِكَ فِي فِرَاخٍ فَقَالَ الْمُشْتَرِي: كَانَتْ مَوْجُودَةً حِينَ الْبَيْعِ فَدَخَلَتْ فِيهِ، وَقَالَ الْآخَرُ: لَمْ تَكُنْ مَوْجُودَةً حِينَئِذٍ، وَلَا بَيِّنَةَ: حَلَفَا مَعًا، وَقُضِيَ بِهَا بَيْنَهُمَا، لِأَنَّهَا فِي

both shall swear together, and the matter is decided between them. This is because they share possession—the buyer by right of purchase for the chicks in the brooding enclosure, and the original owner by right of ownership over the hens and the location. And success comes from Allah, the Exalted. However, if the buyer took possession of all the chicks and acknowledged this, then later claimed something remained there, it belongs solely to the seller upon the seller's oath alone, as he is the one against whom the claim is made regarding what is in his possession.

The ruling on selling the young of all animals at the time of their birth.

Issue 1473: It is permissible to sell the young of all animals at birth. Both the buyer and seller are compelled to let them remain with their mothers until they can survive independently in a manner that causes no harm to the mothers. Similarly, it is permissible to sell incubated eggs, and both are compelled to let them remain until they hatch and no longer require the mothers.

The proof of that is Allah's statement, the Mighty and Majestic: "And Allah has permitted trade" [Al-Baqarah 2:275].[30]

As for abandoning all of that until [the offspring] no longer need the mothers, this is derived from the words of God Almighty: _"Cooperate in righteousness and piety, and do not cooperate in sin and aggression"_ [Al-Mā'idah: 2], the prohibition against wasting wealth, the stern divine warning against those who torture animals or make them endure suffering, and the removal of the offspring from the mothers before... Neglecting to slaughter it when required is a punishment for its owner and slaughter, except for one who slaughters it solely for consumption as we mentioned in "The Book of What is Permissible to Eat and What is Prohibited." Removing the eggs after they have changed from their state through incubation is wasteful destruction of wealth.[31]

[30] **Qur'an references (L23295):** Qur'an 2:275 (Al-Baqarah).
[31] **Qur'an references (L23296):** Qur'an 5:2 (Al-Ma'idah).

أَيْدِيهِمَا مَعًا، هِيَ بِيَدِ الْمُشْتَرِي بِحَقِّ الشِّرَاءِ لِلْفِرَاخِ الَّتِي فِي الْبُرْجِ، وَهِيَ بِيَدِ صَاحِبِ الْأَصْلِ بِحَقِّ مِلْكِهِ لِلْأَصْلِ مِنْ الْأُمَّهَاتِ وَالْمَكَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ، إلَّا إنْ كَانَ الْمُشْتَرِي قَبَضَ كُلَّ الْفِرَاخِ وَعَرَّفَ ذَلِكَ ثُمَّ ادَّعَى أَنَّهُ بَقِيَ لَهُ شَيْءٌ هُنَالِكَ فَهُوَ لِلْبَائِعِ وَحْدَهُ مَعَ يَمِينِهِ؛ لِأَنَّهُ مُدَّعًى عَلَيْهِ فِيمَا بِيَدِهِ.

[مَسْأَلَةُ بَيْعُ الصِّغَارِ مِنْ جَمِيعِ الْحَيَوَانِ حِينَ تُولَدُ]

١٤٧٣ - مَسْأَلَةٌ: وَجَائِزٌ بَيْعُ الصِّغَارِ مِنْ جَمِيعِ الْحَيَوَانِ حِينَ تُولَدُ، وَيُجْبَرُ كِلَاهُمَا عَلَى تَرْكِهَا مَعَ الْأُمَّهَاتِ إلَى أَنْ يَعِيشَ دُونَهَا عَيْشًا لَا ضَرَرَ فِيهِ عَلَيْهَا، وَكَذَلِكَ يَجُوزُ بَيْعُ الْبَيْضِ الْمَحْضُونَةِ، وَيُجْبَرُ كِلَاهُمَا عَلَى تَرْكِهَا إلَى أَنْ تَخْرُجَ وَتَسْتَغْنِيَ عَنْ الْأُمَّهَاتِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

وَأَمَّا تَرْكُ كُلِّ ذَلِكَ إلَى أَنْ يَسْتَغْنِيَ عَنْ الْأُمَّهَاتِ فَلِقَوْلِ اللَّهِ تَعَالَى: {وتعاونوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَالنَّهْيُ عَنْ إضَاعَةِ الْمَالِ وَالْوَعِيدِ الشَّدِيدِ عَلَى مَنْ عَذَّبَ الْحَيَوَانَ وَأَصْبَرَهَا، وَإِزَالَةُ الصِّغَارِ عَنْ الْأُمَّهَاتِ قَبْلَ اسْتِغْنَائِهَا عَنْهَا عَذَابٌ لَهَا وَقَتْلٌ إلَّا مَنْ ذَبَحَهَا لِلْأَكْلِ فَقَطْ عَلَى مَا ذَكَرْنَا فِي " كِتَابِ مَا يَحِلُّ أَكْلُهُ وَمَا يَحْرُمُ " وَإِزَالَةُ الْبَيْضِ بَعْدَ أَنْ تَغَيَّرَتْ بِالْحَضْنِ عَنْ حَالِهَا إضَاعَةً لِلْمَالِ.

[مَسْأَلَةُ بَيْعُ شَيْءٍ مِنْ ثَمَرِ النَّخْلِ مِنْ البلح وَغَيْره بَعْضه بِبَعْضٍ]

The ruling regarding the sale of any part of the fruit of the palm tree, such as fresh dates or others, by exchanging part of it for another part of the same type.

١٤٧٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ شَيْءٍ مِنْ ثَمَرِ النَّخْلِ، مِنْ: الْبَلَحِ، وَالْبُسْرِ، وَالزَّهْوِ، وَالْمُكْثِ، وَالْحُلْقَانِ، وَالْمَعْوِ، وَالْمَعْدِ، والثغد، وَالرُّطَبِ بَعْضُهُ بِبَعْضٍ مِنْ صِنْفِهِ، أَوْ مِنْ صِنْفٍ آخَرَ مِنْهُ وَلَا بِالتَّمْرِ، وَلَا مُتَمَاثِلًا وَلَا مُتَفَاضِلًا، وَلَا نَقْدًا وَلَا نَسِيئَةً، وَلَا فِي رُءُوسِ النَّخْلِ وَلَا مَوْضُوعًا فِي الْأَرْضِ.

L23299 L23300 Issue 1474: It is not permissible to sell any part of date palm fruits - such as unripe dates (balaḥ), partially ripe dates (busr), yellowish dates (zahū), hardened dates (mukth), reddening dates (ḥulqān), softening dates (maʿw), dates ready for drying (maʿḍ), thaghd dates, or fresh soft dates (rutab) - exchanging some for others of the same variety or a different variety, nor in exchange for dates, whether identical in type or differing in quality, whether for immediate payment or deferred payment, whether while still on the palms or after being placed on the ground.

وَيَجُوزُ بَيْعُ الزَّهْوِ، وَالرُّطَبِ بِكُلِّ شَيْءٍ يَحِلُّ بَيْعُهُ، حَاشَا مَا ذَكَرْنَا نَقْدًا وَبِالدَّرَاهِمِ وَالدَّنَانِيرِ نَقْدًا وَنَسِيئَةً، حَاشَا الْعَرَايَا فِي الرُّطَبِ وَحْدَهُ.

L23301 The sale of unripe dates and ripe dates is permissible in exchange for anything lawful to sell, except for the cash transaction as specified, dirhams and dinars whether paid immediately or deferred, and the ʻaraya exception applicable solely to ripe dates.

وَمَعْنَاهَا أَنْ يَأْتِيَ الرُّطَبُ وَيَكُونُ قَوْمٌ يُرِيدُونَ ابْتِيَاعَ الرُّطَبِ لِلْأَكْلِ فَأُبِيحَ لَهُمْ أَنْ يَبْتَاعُوا رُطَبًا فِي رُءُوسِ النَّخْلِ بِخَرْصِهَا تَمْرًا فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ، يَدْفَعُ التَّمْرَ إِلَى صَاحِبِ الرُّطَبِ وَلَا بُدَّ - وَلَا يَحِلُّ بِتَأْخِيرٍ، وَلَا فِي خَمْسَةِ أَوْسُقٍ فَصَاعِدًا، وَلَا بِأَقَلَّ مِنْ خَرْصِهَا تَمْرًا وَلَا بِأَكْثَرَ، فَإِنْ وَقَعَ مَا قُلْنَا: أَنَّهُ لَا يَجُوزُ فَسْخٌ أَبَدًا، وَضَمِنَ ضَمَانَ الْغَصْبِ.

L23302 Its meaning is that when fresh dates arrive and people wish to purchase them for consumption, they are permitted to buy fresh dates still on palm trees by assessing their equivalent in dried dates for quantities under five wasqs. The dried dates must be delivered to the owner of the fresh dates without fail - it is impermissible with delay, nor for five wasqs or more, nor for assessing less or more than their dried date value. If the impermissible conditions we mentioned occur, the transaction is permanently invalidated, and the liable party incurs liability as in unlawful seizure.

بُرْهَانُ ذَلِكَ - مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا ابْنُ نُمَيْرٍ: وَزُهَيْرُ بْنُ حَرْبٍ، قَالَا جَمِيعًا: أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ أَنَا الزُّهْرِيُّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ التَّمْرِ بِالتَّمْرِ» .

L23303 The evidence for this is what was narrated to us through the path of Muslim: I [am] Ibn Numayr and Zuhayr ibn Harb—they both said: We [narrate] from Sufyan ibn ʻUyaynah, who said: We [narrate] from Az-Zuhri, from Salim ibn ʻAbdullah, from his father, that the Messenger of Allah - peace and blessings of Allah be upon him - prohibited the sale of dates for dates.[32]

L23304 Through the chain of Muslim: I, Abdullah ibn Maslamah al-Qaʻnabi, nar-

[32] **Hadith references (L23303):** Mishkat al-Masabih 2837.

rated from Sulayman ibn Bilal, who narrated from Yahya ibn Sa'id al-Ansari, who narrated from Bashir ibn Yasar, who narrated from certain Companions of the Messenger of Allah (peace be upon him) from among the members of their household—including Sahl ibn Abi Hathma—that the Messenger of Allah (peace be upon him) forbade exchanging dates for dates, stating: "That is usury."

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ الْقَعْنَبِيُّ أَنَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ بُشَيْرِ بْنِ يَسَارٍ عَنْ بَعْضِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَهْلِ دَارِهِمْ مِنْهُمْ سَهْلُ بْنُ أَبِي حَثْمَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ بَيْعِ التَّمْرِ بِالتَّمْرِ وَقَالَ: ذَلِكَ الرِّبَا» .

L23305 It has also been authentically established through the narration of Rāfiʿ ibn Khadīj and Abū Hurayrah from the Messenger of Allah—peace and blessings be upon him—that there is a prohibition against selling dates for dates, and the term "agricultural goods" implies the categories we mentioned.

وَصَحَّ أَيْضًا مِنْ طَرِيقِ رَافِعِ بْنِ خَدِيجٍ، وَأَبِي هُرَيْرَةَ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: النَّهْيُ عَنْ بَيْعِ التَّمْرِ بِالتَّمْرِ» وَالثَّمْرُ يَقْتَضِي الْأَصْنَافَ الَّتِي ذَكَرْنَا -.

L23306–23307 The prohibition against that has been authenticated as transmitted by Saʿd ibn Abī Waqqāṣ.

وَصَحَّ النَّهْيُ عَنْ ذَلِكَ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ.

L23308 Sa'id ibn al-Musayyib did not permit exchanging a qafiz of fresh dates for a qafiz of dry dates - and this is the opinion of Malik, al-Shafi'i, al-Layth, Abu Yusuf, Muhammad ibn al-Hasan, Abu Thawr, and Abu Sulayman - and this is contrary to the opinions of Sufyan, Ahmad, and Ishaq.

وَلَمْ يُجِزْ سَعِيدُ بْنُ الْمُسَيِّبِ قَفِيزَ رُطَبٍ بِقَفِيزٍ مِنْ جَافٍ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَاللَّيْثِ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ - وَهُوَ الْخَارِجُ مِنْ أَقْوَالِ سُفْيَانَ، وَأَحْمَدَ، وَإِسْحَاقَ.

L23309 Abu Hanifah permitted the sale of fresh dates for dried dates in equivalent volume with immediate payment, but he did not permit it with an excess or deferred payment. He said: "The sale of fruit still on palm trees is specifically forbidden in exchange for dried dates," and he did not permit this, neither in the case of *'arāyā* nor in other contexts.

وَأَجَازَ أَبُو حَنِيفَةَ بَيْعَ الرُّطَبِ بِالتَّمْرِ كَيْلًا بِمِثْلِهِ نَقْدًا وَلَمْ يُجِزْ مُتَفَاضِلًا وَلَا نَسِيئَةً - وَقَالَ: إنَّمَا يَحْرُمُ بَيْعُ التَّمْرِ الَّذِي فِي رُءُوسِ النَّخْلِ خَاصَّةً بِالتَّمْرِ، وَلَمْ يُجِزْ ذَلِكَ لَا فِي الْعَرَايَا وَلَا فِي غَيْرِهَا.

L23310 His emulators argued for it based on the authentic narration from Ibn Umar: "The Messenger of Allah (peace be upon him) prohibited Muzabana," and Muzabana is selling unharvested dates in the fruit-bearing clusters of palm trees for a specified measure of dried dates: 'If there is excess, it is mine; if there is a deficit, I bear it.' A similar narration is reported through a connected chain from Abu Sa'id Al-Khudri. Through the chain of 'Ata' from

وَاحْتَجَّ لَهُ مُقَلِّدُوهُ بِمَا صَحَّ مِنْ طَرِيقِ ابْنِ عُمَرَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْمُزَابَنَةِ» ، وَالْمُزَابَنَةُ أَنْ يُبَاعَ مَا فِي رُءُوسِ النَّخْلِ مِنْ ثَمَرٍ بِتَمْرٍ مُسَمًّى بِكَيْلٍ، إنْ زَادَ فَلِي وَإِنْ نَقَصَ فَعَلَيَّ ". وَمِثْلُهُ مُسْنَدًا أَيْضًا مِنْ طَرِيقِ أَبِي سَعِيدٍ الْخُدْرِيِّ. وَمِنْ طَرِيقِ عَطَاءٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّهُ فَسَّرَ لَهُمْ الْمُزَابَنَةَ: أَنَّهَا بَيْعُ الرُّطَبِ فِي النَّخْلِ بِالتَّمْرِ كَيْلًا.

Jabir ibn ʻAbdullah, it is explained that Muzabana refers to selling ripe dates on the palm tree for dried dates by measure.[33]

L23311 Abū Muḥammad said: They have no valid proof in any of these narrations, for we do not dispute with them concerning the prohibition of selling fresh dates on the palm trees in exchange for dried dates by measure—indeed, even without measure. Nor do we contest their assertion that this constitutes *muzābanah*. Their reliance on it as evidence is weak obfuscation and a baseless implication. None of these narrations—or others—state that the prohibition of selling fresh dates for dried dates applies solely to this specific description, nor does any of them indicate that what falls outside this is permissible. Rather, all that is in these narrations forms part of what is found in the *ḥadīth* of Ibn ʻUmar, with which we commenced, and part of what is in the *ḥadīths* of Sahl ibn Abī Ḥathmah, Rāfiʻ, and Abū Hurayrah.

L23312 And those reports have gathered what is in these and added to them. Therefore, it is impermissible to abandon the additional legal ruling contained within them because it was not mentioned in these hadiths.

L23313 Just as the statement of Allah, the Most High, *"Among them are four sacred months—that is the upright religion—so do not wrong yourselves therein"* [At-Tawbah: 36] is not proof for the permissibility of wrongdoing in other months. Likewise, all divine laws—from the first to the last—are such that not every divine law is mentioned in every hadith.[34]

L23314–23316 Moreover—we say to them: From where did you derive your assertion that the intended meaning in those narrations containing the prohibition... Regarding the sale of unripe fruit for dried dates, it is precisely what we have mentioned in these other reports containing the prohibition against selling fruit on the heads of palm trees in exchange for dates. What constitutes your proof for this? Have you presented us with anything beyond these bare false assertions? From where does it become obligatory to abandon

قَالَ أَبُو مُحَمَّد: لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ، لِأَنَّا لَمْ نُنَازِعْهُمْ فِي تَحْرِيمِ الرُّطَبِ فِي رُءُوسِ النَّخْلِ بِالتَّمْرِ كَيْلًا، نَعَمْ، وَغَيْرَ كَيْلٍ، وَلَا نَازَعْنَاهُمْ فِي أَنَّ هَذَا مُزَابَنَةٌ فَاحْتِجَاجُهُمْ بِهَا تَمْوِيهٌ وَإِيهَامٌ ضَعِيفٌ، وَلَيْسَ فِي شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ وَلَا غَيْرِهَا: أَنَّهُ لَا يَحْرُمُ مِنْ بَيْعِ الثَّمَرِ بِالتَّمْرِ إلَّا هَذِهِ الصِّفَةُ فَقَطْ وَلَا فِي شَيْءٍ مِنْ هَذَا: أَنَّ مَا عَدَا هَذَا فَحَلَالٌ - لَكِنْ كُلُّ مَا فِي هَذِهِ الْأَخْبَارِ فَهُوَ بَعْضُ مَا فِي حَدِيثِ ابْنِ عُمَرَ الَّذِي صَدَّرْنَا بِهِ وَبَعْضُ مَا فِي حَدِيثِ سَهْلِ بْنِ أَبِي حَثْمَةَ، وَرَافِعٍ، وَأَبِي هُرَيْرَةَ.

وَتِلْكَ الْأَخْبَارُ جَمَعَتْ مَا فِي هَذِهِ وَزَادَتْ عَلَيْهَا، فَلَا يَحِلُّ تَرْكُ مَا فِيهَا مِنْ زِيَادَةِ الْحُكْمِ مِنْ أَجْلِ أَنَّهَا لَمْ تُذْكَرْ فِي هَذِهِ الْأَحَادِيثِ.

كَمَا أَنَّ قَوْلَ اللَّهِ تَعَالَى {مِنْهَا أَرْبَعَةٌ حُرُمٌ ذَلِكَ الدِّينُ الْقَيِّمُ فَلا تَظْلِمُوا فِيهِنَّ أَنْفُسَكُمْ} [التوبة: ٣٦] لَيْسَ حُجَّةً فِي إبَاحَةِ الظُّلْمِ فِي غَيْرِهَا - وَهَكَذَا جَمِيعُ الشَّرَائِعِ أَوَّلِهَا عَنْ آخِرٍ، لَيْسَتْ كُلُّ شَرِيعَةٍ مَذْكُورَةً فِي كُلِّ حَدِيثٍ.

وَأَيْضًا - فَإِنَّا نَقُولُ لَهُمْ: مِنْ أَيْنَ قُلْتُمْ: إنَّ الْمُرَادَ فِي تِلْكَ الْأَخْبَارِ الَّتِي فِيهَا النَّهْيُ عَنْ بَيْعِ الثَّمَرِ بِالتَّمْرِ إنَّمَا هُوَ مَا ذَكَرْنَا فِي هَذِهِ الْأَخْبَارِ الْأُخَرِ مِنْ النَّهْيِ عَنْ بَيْعِ الثَّمَرِ فِي رُءُوسِ النَّخْلِ بِالتَّمْرِ، وَمَا بُرْهَانُكُمْ عَلَى ذَلِكَ؟ وَهَلْ زِدْتُمُونَا عَلَى الدَّعْوَى الْمُجَرَّدَةِ الْكَاذِبَةِ شَيْئًا؟ وَمِنْ أَيْنَ وَجَبَ تَرْكُ عُمُومِ تِلْكَ الْأَخْبَارِ الثَّابِتَةِ مِنْ أَجْلِ أَنَّهُ ذُكِرَ فِي هَذِهِ بَعْضُ مَا فِي تِلْكَ؟ فَإِنَّهُمْ لَا سَبِيلَ إلَى دَلِيلٍ أَصْلًا - لَا قَوِيٍّ وَلَا ضَعِيفٍ - فَخَصَلُوا عَلَى الدَّعْوَى فَقَطْ، فَإِنْ ادَّعَوْا إجْمَاعًا عَلَى مَا فِي هَذِهِ كَذَبُوا.

[33] **Hadith references (L23310):** Sunan Abi Dawud 3405; Sahih Muslim 1536g; Sahih Muslim 1542d.

[34] **Qur'an references (L23313):** Qur'an 9:36 (At-Tawbah).

the general applicability of those established reports merely because some of their content is mentioned here? They possess no evidence whatsoever—neither strong nor weak—having obtained nothing but mere claims. Should they allege consensus regarding what these reports contain, they would be lying.

L23317 We have been narrated through the chain of Ibn Abi Shaybah, who said: "I [heard] from Ibn al-Mubarak, from Uthman ibn Hakim, from Ata', from Ibn Abbas, who said: 'Exchanging unripe dates for dates by volume measurement while they are still on the palm trees is permissible if there is a dinar or ten dirhams [settled] between them, and there is no harm in it.'" This is an authentic report. Uthman ibn Hakim is trustworthy, and all the other narrators in the chain are eminent scholars.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ الْمُبَارَكِ عَنْ عُثْمَانَ بْنِ حَكِيمٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: الثَّمَرُ بِالتَّمْرِ عَلَى رُءُوسِ النَّخْلِ مُكَايَلَةً إِنْ كَانَ بَيْنَهُمَا دِينَارٌ أَوْ عَشَرَةُ دَرَاهِمَ فَلَا بَأْسَ بِهِ، وَهَذَا خَبَرٌ صَحِيحٌ، وَعُثْمَانُ بْنُ حَكِيمٍ ثِقَةٌ وَسَائِرُ مَنْ فِيهِ أَئِمَّةٌ أَعْلَامٌ.

L23318 And Ibn Umar explained al-Muzabana, as was narrated to us through the chain of Malik from Nafi' from Ibn Umar: "The Messenger of Allah—peace be upon him—prohibited," and mentioned al-Muzabana, which is: selling fresh dates for dried dates by measure, and selling grapes on the vine for raisins by measure.

وَقَدْ فَسَّرَ ابْنُ عُمَرَ الْمُزَابَنَةَ كَمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ الْمُزَابَنَةَ، وَالْمُزَابَنَةُ: بَيْعُ الثَّمَرِ بِالتَّمْرِ كَيْلًا، وَبَيْعُ الْكَرْمِ بِالزَّبِيبِ كَيْلًا» .

L23319 Humam narrated to us: Abbas ibn Asbagh → Muhammad ibn Abd al-Malik ibn Ayman → Bakr (Ibn Hammad) → Musaddad → Yahya (Ibn Sa'id al-Qattan) → Ubayd Allah ibn Umar → Nafi' → Ibn Umar, who said: "The Messenger of Allah (peace and blessings be upon him) prohibited muzabana, and muzabana is purchasing fresh dates for dried dates and fresh grapes for raisins by measure."

وَحَدَّثَنَا حُمَامٌ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا بَكْرٌ - هُوَ ابْنُ حَمَّادٍ - أَنَا مُسَدَّدٌ أَنَا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ أَخْبَرَنِي نَافِعٌ عَنْ ابْنِ عُمَرَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْمُزَابَنَةِ، وَالْمُزَابَنَةُ: اشْتِرَاءُ الثَّمَرِ بِالتَّمْرِ وَاشْتِرَاءُ الْعِنَبِ بِالزَّبِيبِ كَيْلًا» .

L23320 Whoever deems the interpretation of Ibn Umar invalid while considering the interpretations of Jābir and Abū Saʿīd valid—rather, both are true, and all such practices constitute prohibited *muzābana*. Anything beyond this is misguidance and arbitrary imposition in the religion of Allah, the Exalted, based on falsehood.

فَمَنْ جَعَلَ تَفْسِيرَ ابْنِ عُمَرَ بَاطِلًا وَتَفْسِيرَ جَابِرٍ، وَأَبِي سَعِيدٍ صَحِيحًا. بَلْ كِلَاهُمَا حَقٌّ وَكُلُّ ذَلِكَ مُزَابَنَةٌ مَنْهِيٌّ عَنْهَا، وَمَا عَدَا هَذَا فَضَلَالٌ وَتَحَكُّمٌ فِي دِينِ اللَّهِ تَعَالَى بِالْبَاطِلِ.

L23321 The true amazement lies in Abu Hanifa's permissibility—and that of those who blindly follow his rulings in religious matters—regarding matters which the Messenger of Allah (peace and blessings be upon him) explicitly prohib-

وَالْعَجَبُ كُلُّهُ مِنْ إبَاحَةِ أَبِي حَنِيفَةَ وَمَنْ قَلَّدَهُ دِينَهُ مَا قَدْ نَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى النَّهْيِ عَنْهُ مِنْ بَيْعِ الرُّطَبِ بِالتَّمْرِ، وَبَيْعِ التَّمْرِ بِالتَّمْرِ، وَتَحْرِيمِهِ مَا لَمْ

ited: the sale of fresh dates for dried dates, the sale of dates for dates, and Abu Hanifa's prohibition of what Allah the Exalted never forbade at all, nor His Messenger (peace and blessings be upon him), nor was there any prohibition transmitted from the Prophet regarding selling walnuts still on their trees for harvested walnuts. This is utterly astonishing, for we have never seen an abandoned Sunnah except that alongside it lies a prevalent innovation. We seek refuge in Allah from being forsaken.

يُحَرِّمْهُ اللَّهُ تَعَالَى قَطُّ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا جَاءَ قَطُّ عَنْهُ نَهْيٌ مِنْ بَيْعِ الْجَوْزِ عَلَى رُءُوسِ أَشْجَارِهِ بِالْجَوْزِ الْمَجْمُوعِ، وَهَذَا عَجَبٌ جِدًّا وَمَا رَأَيْنَا قَطُّ سُنَّةً مُضَاعَةً إِلَّا وَإِلَى جَنْبِهَا بِدْعَةٌ مُذَاعَةٌ، وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L23322–23323 They also argued by stating: Fresh dates and dried dates cannot be free from being either a single genus or two distinct genera. If they are a single genus, equivalence within the same genus is permissible, because the Messenger of Allah—peace and blessings be upon him—permitted exchanging dried dates for dried dates in equal measure. If they are two distinct genera, then it is all the more permissible for them, based on the statement of the Messenger of Allah—peace and blessings be upon him: "When the genera differ, sell them as you wish provided it is hand to hand."

وَاحْتَجُّوا أَيْضًا - بِأَنْ قَالُوا: لَا يَخْلُو الرُّطَبُ، وَالتَّمْرُ مِنْ أَنْ يَكُونَا جِنْسًا وَاحِدًا أَوْ جِنْسَيْنِ، فَإِنْ كَانَا جِنْسًا وَاحِدًا فَالتَّمَاثُلُ فِي الْجِنْسِ الْوَاحِدِ جَائِزٌ، لِإِبَاحَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - التَّمْرَ بِالتَّمْرِ مِثْلًا بِمِثْلٍ، وَإِنْ كَانَا جِنْسَيْنِ فَذَلِكَ فِيهِمَا أَجْوَزُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا اخْتَلَفَتْ الْأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ إذَا كَانَ يَدًا بِيَدٍ» .

L23324 Abu Muhammad said: We say to them: The One who permitted exchanging dates for dates of equal measure hand to hand, and commanded us that when the types differ we may sell however we wish if it is hand to hand—He is the same One who prohibited us from selling fresh dates for dried dates in general, and from selling dates for dates, and informed us that this constitutes usury. That His obedience being obligatory in some of what He commanded and non-obligatory in others is disbelief on the part of whoever says it. Rather, obedience to Him in everything He commanded is obligatory.

قَالَ أَبُو مُحَمَّدٍ: فَنَقُولُ لَهُمْ: الَّذِي أَبَاحَ التَّمْرَ بِالتَّمْرِ مُتَمَاثِلًا يَدًا بِيَدٍ، وَأَمَرَنَا إذَا اخْتَلَفَتْ الْأَصْنَافُ أَنْ نَبِيعَ كَيْفَ شِئْنَا إذَا كَانَ يَدًا بِيَدٍ، هُوَ الَّذِي نَهَانَا عَنْ بَيْعِ الرُّطَبِ بِالتَّمْرِ جُمْلَةً، وَعَنْ بَيْعِ التَّمْرِ بِالتَّمْرِ، وَأَخْبَرَنَا: أَنَّهُ الرِّبَا، وَلَيْسَتْ طَاعَتُهُ فِي بَعْضِ مَا أَمَرَ بِهِ وَاجِبَةً وَفِي بَعْضِهِ غَيْرَ وَاجِبَةٍ، هَذَا كُفْرٌ مِمَّنْ قَالَهُ، بَلْ طَاعَتُهُ فِي كُلِّ مَا أَمَرَ بِهِ وَاجِبَةٌ.

L23325 But O you people, where were you concerning this corrupt reasoning which you deemed valid and thereby opposed the Sunnah of Allah the Exalted and His Messenger—peace be upon him? For you prohibited by your corrupt opinion the sale of flour for wheat or for parched barley flour (sawīq) in totality. Why then do you permit it neither with disparity, nor equivalence, nor as cash, nor credit, nor by measure, nor by weight? Why did you not say to yourselves: Flour, wheat, and parched barley flour must either constitute one category, two categories, or three categories. If they are one category, equivalence within the same category is permissible, as the Messenger of

لَكِنْ يَا هَؤُلَاءِ أَيْنَ كُنْتُمْ عَنْ هَذَا الِاسْتِدْلَالِ الْفَاسِدِ الَّذِي صَحَّحْتُمُوهُ وَعَارَضْتُمْ بِهِ سُنَّةَ اللَّهِ تَعَالَى وَرَسُولِهِ - عَلَيْهِ السَّلَامُ -؟ إذْ حَرَّمْتُمْ بِرَأْيِكُمْ الْفَاسِدِ بَيْعَ الدَّقِيقِ بِالْحِنْطَةِ أَوْ بِالسَّوِيقِ جُمْلَةً، فَلِمَ تُجِيزُوهُ لَا مُتَفَاضِلًا، وَلَا مُتَمَاثِلًا، وَلَا نَقْدًا، وَلَا نَسِيئَةً، وَلَا كَيْلًا، وَلَا وَزْنًا - وَهَلَّا قُلْتُمْ لِأَنْفُسِكُمْ: لَا يَخْلُو الدَّقِيقُ وَالْحِنْطَةُ، وَالسَّوِيقُ، مِنْ أَنْ تَكُونَ جِنْسًا وَاحِدًا أَوْ جِنْسَيْنِ أَوْ ثَلَاثَةَ أَجْنَاسٍ، فَإِنْ كَانَتْ جِنْسًا وَاحِدًا فَالتَّمَاثُلُ فِي

الْجِنْسِ الْوَاحِدِ جَائِزٌ، لِإِبَاحَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْحِنْطَةَ بِالْحِنْطَةِ مِثْلًا بِمِثْلٍ، وَإِنْ كَانَتْ جِنْسَيْنِ أَوْ ثَلَاثَةً فَذَلِكَ فِيهَا أَجْوَزُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا اخْتَلَفَتْ الْأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ إذَا كَانَ يَدًا بِيَدٍ» فَهَذَا الْمَكَانُ أَوْلَى بِالِاعْتِرَاضِ، وَبِالرَّدِّ، وَبِالْإِطْرَاحِ، لَا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحُكْمُهُ.

Allah—peace and blessings be upon him—permitted exchanging wheat for wheat like for like. If they are two or three categories, this is even more permissible, according to the saying of the Messenger of Allah—peace and blessings be upon him: "When the types differ, sell as you wish, provided it is hand to hand." This flawed position is what merits objection, rejection, and dismissal—not the saying and ruling of the Messenger of Allah—peace and blessings be upon him.

فَقَالَ قَائِلٌ مِنْهُمْ: التَّفَاضُلُ فِي الدَّقِيقِ بِالْحِنْطَةِ مَوْجُودٌ فِي الْوَقْتِ، وَأَمَّا فِي الرُّطَبِ بِالتَّمْرِ، فَلَا يُوجَدُ إلَّا بَعْدَ الْوَقْتِ؟ فَقُلْنَا: فَكَانَ مَاذَا لَوْ كَانَ مَا قُلْتُمْ حَقًّا؟ وَمِنْ أَيْنَ وَجَبَ مُرَاعَاةُ التَّفَاضُلِ فِي الْوَقْتِ أَوْ بَعْدَهُ؟ فَكَيْفَ وَالَّذِي قُلْتُمْ بَاطِلٌ؟ لِأَنَّ الْمُمَاثَلَةَ بِالْكَيْلِ مَوْجُودَةٌ فِي الرُّطَبِ بِالتَّمْرِ، كَمَا هِيَ مَوْجُودَةٌ فِي الدَّقِيقِ بِالسَّوِيقِ، وَفِي الدَّقِيقِ بِالْحِنْطَةِ فِي الْوَقْتِ، فَلَا تَفَاضُلَ فِيهِمَا أَصْلًا، وَإِنَّمَا كَانَ التَّفَاضُلُ مَوْجُودًا فِي الدَّقِيقِ بِالسَّوِيقِ فِيمَا خَلَا وَبَطَلَ الْآنَ، وَلَا يُقْطَعُ أَيْضًا بِهَذَا، فَبَطَلَ فَرْقُكُمْ الْفَاسِدُ.

L23326–23327 Then one of them said: "The disparity in exchanging flour for wheat applies during the transaction period, while in fresh dates for dried dates, it only occurs afterward?" We countered: "What consequence would follow if your claim were valid? How could the obligation to observe disparity during or after the transaction period even arise? Particularly when your claim is invalid? Equivalence by measure exists in exchanging fresh dates for dried dates, just as it exists in flour for sawiq (roasted barley flour) and in flour for wheat during the transaction period. Thus, no disparity exists in these cases whatsoever. Any disparity previously claimed in flour-for-sawiq exchanges is now rendered invalid, and even this cannot be conclusively proven. Therefore, your invalid distinction collapses."

وَأَيْضًا - فَإِنَّمَا أَبَاحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - التَّمْرَ بِالتَّمْرِ مِثْلًا بِمِثْلٍ، وَبِالْمُشَاهَدَةِ نَدْرِي أَنَّ الرُّطَبَ لَيْسَ مِثْلًا لِلتَّمْرِ فِي صِفَاتِهِ.

L23328 Moreover, the Messenger of Allah—peace and blessings be upon him—only permitted the exchange of dates for dates, like for like, and through direct observation we know that fresh dates are not equivalent to dried dates in their qualities.

وَاحْتَجُّوا أَيْضًا بِأَنْ قَالُوا: بَيْعُ التَّمْرِ الْحَدِيثِ بِالتَّمْرِ الْقَدِيمِ جَائِزٌ، وَهُوَ يَنْقُصُ، عَنْهُ فِيمَا بَعْدُ؟ فَقُلْنَا: نَعَمْ فَكَانَ مَاذَا؟ وَمَتَى جَعَلْنَا لَكُمْ عِلَّةَ الْمَنْعِ مِنْ بَيْعِ الرُّطَبِ بِالتَّمْرِ، إنَّمَا هِيَ نُقْصَانُهُ إذَا يَبِسَ؟ حَاشَا لِلَّهِ أَنْ يَقُولَ هَذَا، لِأَنَّ الْأَثَرَ الَّذِي مِنْ طَرِيقِ سَعْدٍ، الَّذِي فِيهِ: أَيَنْقُصُ الرُّطَبُ إذَا جَفَّ لَا يَصِحُّ، لِأَنَّهُ مِنْ رِوَايَةِ زَيْدِ بْنِ أَبِي عَيَّاشٍ - وَهُوَ مَجْهُولٌ - وَلَوْ صَحَّ لَأَذْعَنَّا لَهُ وَلَقُلْنَا بِهِ، وَهَذَا التَّعْلِيلُ مِنْكُمْ بَاطِلٌ وَتَخَرُّصٌ فِي دِينِ اللَّهِ

L23329 They also argued by stating: "The sale of recently harvested dried dates (al-tamr al-ḥadīth) for old dried dates (al-tamr al-qadīm) is permissible, even though they diminish afterward?" We responded: "Yes—what does that imply? When did we ever claim that the reason for prohibiting the sale of fresh dates (al-ruṭab) for dried dates is their reduction upon drying? Allah is far above saying such a thing! The narration transmitted through Sa'd—which states, 'Do fresh dates diminish when they dry?'—is unsound, as it is reported by Zayd ibn Abī 'Ayyāsh—a narrator of unverified status. Had it been authentic, we would have submitted to it and acted upon it. This rationale of yours is invalid—a reckless fabrication in the religion of Allah

Almighty, unsupported by the Quran or Sunnah. Obedience is owed solely to Allah Almighty and His Messenger—peace be upon him."

L23330 "So let those who deviate from his command beware, lest strife or a painful punishment befall them." (Quran 24:63)[35]

L23331 And we say to those who assert the assignment of effective causes, claiming this constitutes divine wisdom while considering anything else futile: Inform us of the effective cause behind the prohibition of carrion, blood, pork, taking a fifth wife in marriage, and the rest of the divine rulings?

L23332 There is no way for them to establish the existence of anything whatsoever. From what basis does it become obligatory that some religious ordinances should be justified by false claims while others remain unjustified?

L23333 We do not know of any predecessor before Abū Ḥanīfah among those who prohibit usury in non-deferred transactions who permitted exchanging fresh dates for dried dates. Mālik said: "The sale of fresh dates in exchange for dried dates is permissible," but this is erroneous due to the Messenger of Allāh—peace be upon him—prohibiting the sale of fresh fruit for dried dates.

L23334 And Ash-Shāfiʿī held the same opinion as us - and with Allah, the Exalted, lies all divine enablement.

L23335–23336 As for the 'Araya—it has been reported to us through the chain of Nāfiʿ from Ibn 'Umar, who said: "The 'Araya was when a man would sell the produce of one or two specified palm trees from his property?" 'Alī said: "This does not clarify the ruling of the 'Araya"—and it has been reported to us from Mūsā ibn 'Uqbah that he said: "The 'Araya refers to specific palm trees that one approaches and buys directly."

L23337 We have been narrated from Zayd ibn Thābit, Yaḥyā ibn Saʿīd al-Anṣārī, and Muḥammad ibn Isḥāq that a single palm tree, two palm trees, or multiple palm trees are governed by the juristic opinion, and they sell their fruit by estimating its yield while on the tree in terms of dried dates.

تَعَالَى لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَإِنَّمَا هُوَ الطَّاعَةُ لِلَّهِ تَعَالَى وَلِرَسُولِهِ - عَلَيْهِ السَّلَامُ - فَقَطْ.

{فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ} [النور: ٦٣].

وَنَقُولُ لِمَنْ ادَّعَى التَّعْلِيلَ، وَأَنَّهُ هُوَ الْحِكْمَةُ، وَمَا عَدَاهُ عَبَثٌ: أَخْبِرُونَا مَا عِلَّةُ تَحْرِيمِ الْمَيْتَةِ، وَالدَّمِ، وَلَحْمِ الْخِنْزِيرِ، وَالْخَامِسَةِ فِي النِّكَاحِ، وَسَائِرِ الشَّرَائِعِ؟

فَلَا سَبِيلَ لَهُمْ إلَى وُجُودِ شَيْءٍ أَصْلًا، فَمِنْ أَيْنَ وَجَبَ أَنْ تُعَلَّلَ بَعْضُ الشَّرَائِعِ بِالدَّعَاوَى الْكَاذِبَةِ، وَلَا تُعَلَّلَ سَائِرُهَا؟

وَمَا نَعْلَمُ لِأَبِي حَنِيفَةَ سَلَفًا قَبْلَهُ فِي إبَاحَةِ الرُّطَبِ بِالتَّمْرِ مِمَّنْ يَحْرُمُ الرِّبَا فِي غَيْرِ النَّسِيئَةِ - وَقَالَ مَالِكٌ: بَيْعُ الرُّطَبِ جَائِزٌ، وَهَذَا خَطَأٌ لِنَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الثَّمَرِ بِالتَّمْرِ.

وَقَالَ الشَّافِعِيُّ كَقَوْلِنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا الْعَرَايَا - رُوِّينَا مِنْ طَرِيقِ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: كَانَتْ الْعَرَايَا أَنْ يُعْرِيَ الرَّجُلُ فِي مَالِهِ النَّخْلَةَ وَالنَّخْلَتَيْنِ؟ قَالَ عَلِيٌّ: لَيْسَ فِي هَذَا بَيَانُ حُكْمِ الْعَرَايَا - وَرُوِّينَا عَنْ مُوسَى بْنِ عُقْبَةَ أَنَّهُ قَالَ: الْعَرَايَا نَخَلَاتٌ مَعْلُومَاتٌ يَأْتِيهَا فَيَشْتَرِيهَا.

وَرُوِّينَا عَنْ زَيْدِ بْنِ ثَابِتٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَمُحَمَّدِ بْنِ إِسْحَاقَ أَنَّهَا النَّخْلَةُ وَالنَّخْلَتَانِ وَالنَّخَلَاتُ تُجْعَلُ لِلْقَوْلِ فَيَبِيعُونَ ثَمَرَهَا بِخَرْصِهَا تَمْرًا.

[35] **Qur'an references (L23330):** Qur'an 24:63 (An-Nur).

وَقَالَ سُفْيَانُ بْنُ حُسَيْنٍ، وَسُفْيَانُ بْنُ عُيَيْنَةَ، وَالْأَوْزَاعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ مِثْلَ هَذَا، إِلَّا أَنَّهُمْ خَصُّوا بِذَلِكَ الْمَسَاكِينَ يُجْعَلُ لَهُمْ ثَمَرُ النَّخْلِ فَيَصْعُبُ عَلَيْهِمْ الْقِيَامُ عَلَيْهَا، فَأُبِيحَ لَهُمْ أَنْ يَبِيعُوهَا بِمَا شَاءُوا مِنْ التَّمْرِ.

L23338 Sufyan ibn Husayn, Sufyan ibn Uyaynah, Al-Awzaʿī, and Ahmad ibn Hanbal held a similar view, except they restricted this ruling to the poor **to whom palm fruit is allocated** but who find it difficult to **maintain** the palm trees. Thus, it **was** permitted for them to sell the fruit for **any quantity of dates they wished**.

وَرُوِّينَا عَنْ عَبْدِ رَبِّهِ بْنِ سَعِيدٍ الْأَنْصَارِيِّ: أَنَّ الْعَرِيَّةَ الرَّجُلُ يُعْرِي النَّخْلَةَ، أَوْ يَسْتَثْنِي مِنْ مَالِهِ النَّخْلَةَ أَوْ النَّخْلَتَيْنِ يَأْكُلُهَا فَيَبِيعُهُمَا بِمِثْلِ خَرْصِهِمَا تَمْرًا.

L23339 It has been reported to us from ʿAbd Rabbihi ibn Saʿīd al-Anṣārī that *al-ʿariyya* refers to when a man exempts a palm tree or reserves one or two from his property to eat their dates, then sells the dates on the tree for an amount equivalent to their estimated yield as fresh dates.

وَقَالَ أَبُو حَنِيفَةَ: الْعَرِيَّةُ أَنْ يَهَبَ الرَّجُلُ رَجُلًا آخَرَ ثَمَرَةَ نَخْلَةٍ أَوْ نَخْلَتَيْنِ ثُمَّ يَبْدُوَ لَهُ فَيُعْطِيَهُ مَكَانَ ثَمَرِ مَا أَعْطَاهُ تَمْرًا يَابِسًا فَيَخْرُجَ بِذَلِكَ عَنْ إخْلَافِ الْوَعْدِ.

L23340 Abu Hanifa said: The *ʿariyya* is when a man grants another the produce of one or two palm trees, then later decides to give him dried dates in place of the produce he had given, thereby avoiding breaking the promise.

وَقَالَ مَالِكٌ: الْعَرِيَّةُ أَنْ يَهَبَ الرَّجُلُ لِآخَرَ ثَمَرَ نَخْلَةٍ أَوْ نَخْلَتَيْنِ أَوْ نَخَلَاتٍ مِنْ مَالِهِ وَيَكُونُ الْوَاهِبُ سَاكِنًا بِأَهْلِهِ فِي ذَلِكَ الْحَائِطِ فَيَشُقُّ عَلَيْهِ دُخُولُ الْمُعْرِي فِي ذَلِكَ الْحَائِطِ، فَلَهُ أَنْ يَبْتَاعَ مِنْهُ ذَلِكَ الثَّمَرِ بِخَرْصِهِ تَمْرًا إلَى الْجِدَادِ وَلَا يَجُوزُ عِنْدَهُ إلَّا نَسِيئَةً وَلَا بُدَّ، وَأَمَّا يَدًا بِيَدٍ فَلَا.

L23341 Mālik said: The ʿariyya is when a man grants another the fruit of one palm tree, two palm trees, or several palm trees from his property, while the grantor resides with his family in that orchard, making it difficult for the recipient to enter it. In such a case, the recipient may purchase that fruit by estimating its yield in dried dates to be delivered at the time of drying. This is only permissible in Mālik's view if done through deferred payment, which is required. As for an immediate exchange, it is not permitted.

وَأَمَّا قَوْلُ الشَّافِعِيِّ فَإِنَّهُ قَالَ: الْعَرِيَّةُ أَنْ يَأْتِيَ أَوَانُ الرُّطَبِ، وَهُنَاكَ قَوْمٌ فُقَرَاءُ لَا مَالَ لَهُمْ، وَيُرِيدُونَ ابْتِيَاعَ رُطَبٍ يَأْكُلُونَهُ مَعَ النَّاسِ، وَلَهُمْ فُضُولُ تَمْرٍ مِنْ أَقْوَاتِهِمْ، فَأُبِيحَ لَهُمْ أَنْ يَشْتَرُوا الرُّطَبَ بِخَرْصِهَا مِنْ التَّمْرِ فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ نَقْدًا وَلَا بُدَّ.

L23342 As for the statement of Al-Shafiʿi, he said: The ʿariyya (a permitted exception to the prohibition of ribā) occurs when fresh dates ripen, and there are poor people with no wealth who wish to purchase fresh dates to eat with others. They have surplus dried dates from their provisions, so it is permitted for them to buy fresh dates by estimating the fresh dates' quantity in terms of dried dates for less than five awsuq as an immediate transaction, and this is necessarily required.

وَأَمَّا قَوْلُنَا الَّذِي ذَكَرْنَا فَهُوَ قَوْلُ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَأَبِي سُلَيْمَانَ.

L23343 As for the opinion that we mentioned, it is the position of Yaḥyā ibn Saʿīd al-Anṣārī, and Abī Sulaymān.

L23344–23346 It has been narrated to us through the chain of Muslim: I am Muḥammad ibn Rumḥ ibn al-Muhājir; I am al-Layth ibn Saʿd, from... Yahya ibn Saʿīd al-Anṣārī said: The ʿariyya is when a man buys the fruit of palm trees as

fresh dates for his family's consumption by estimating their dried equivalent through khars.

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ رُمْحِ بْنِ الْمُهَاجِرِ أَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ قَالَ: الْعَرِيَّةُ أَنْ يَشْتَرِيَ الرَّجُلُ ثَمَرَ النَّخَلَاتِ لِطَعَامِ أَهْلِهِ رُطَبًا بِخَرْصِهَا تَمْرًا.

L23347 Abu Muhammad said: As for the statements of Ibn ʻUmar and Musa ibn ʻUqbah, there is no elucidation in both of them.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ ابْنِ عُمَرَ، وَمُوسَى بْنِ عُقْبَةَ فَلَا بَيَانَ فِيهِمَا.

L23348 As for the opinion of Zayd ibn Thabit, and one of the two opinions of Yahya ibn Sa'id—alongside the opinions of Ibn Ishaq, Sufyan ibn Husayn, al-Awza'i, and Ahmad—the evidence cited for it is what has been narrated to us through the chain of Malik from Nafiʿ from Ibn ʿUmar from Zayd ibn Thabit: that the Messenger of Allah (may Allah's peace and blessings be upon him) permitted the owner of an ʿariyya to sell it by estimating its yield of dates [while still on the palm].[36]

وَأَمَّا قَوْلُ زَيْدِ بْنِ ثَابِتٍ، وَأَحَدُ قَوْلَيْ يَحْيَى بْنِ سَعِيدٍ، وَابْنِ إِسْحَاقَ، وَسُفْيَانَ بْنِ حُسَيْنٍ، وَالْأَوْزَاعِيِّ، وَأَحْمَدَ، فَإِنَّهُ يَحْتَجُّ لَهُ بِمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ زَيْدِ بْنِ ثَابِتٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَخَّصَ، لِصَاحِبِ الْعَرِيَّةِ أَنْ يَبِيعَهَا بِخَرْصِهَا مِنْ التَّمْرِ» .

L23349 Ali said: "They have no proof whatsoever in this report. It only states that the owner of fresh dates is he who sells them as dried dates through estimation while still on the palm - and this is exactly our position. It is permissible in our view to sell fresh dates through such estimation pertaining to both the dates and the palm trees under his ownership. It is also permissible to sell them through this estimation by the owner of fresh dates alone, whether acquired through gift, purchase, inheritance, authorization, or declared gift (as dowry). This report aligns with our position (praise be to Allah), as it merely describes the seller's qualification without mentioning the buyer's identity."

قَالَ عَلِيٌّ: لَيْسَ لَهُمْ فِي هَذَا الْحَدِيثِ حُجَّةٌ أَصْلًا، وَإِنَّمَا فِيهِ أَنَّ صَاحِبَ الرُّطَبِ هُوَ الَّذِي يَبِيعُهُ بِخَرْصِهِ تَمْرًا - وَنَحْنُ هَكَذَا نَقُولُ، وَجَائِزٌ عِنْدَنَا أَنْ نَبِيعَ الرُّطَبَ كَذَلِكَ الَّذِي هُوَ لَهُ وَالنَّخْلُ مَعًا، وَجَائِزٌ أَنْ نَبِيعَهُ أَيْضًا كَذَلِكَ مِنْ مَالِكِ الرُّطَبِ وَحْدَهُ بِهِبَةٍ أَوْ بِشِرَاءٍ أَوْ بِمِيرَاثٍ أَوْ بِإِجَازَةٍ أَوْ بِإِصْدَاقٍ فَهَذَا الْخَبَرُ مُوَافِقٌ لِقَوْلِنَا وَلِلَّهِ الْحَمْدُ، وَلَيْسَ فِيهِ إلَّا صِفَةُ الْبَائِعِ فَقَطْ، وَلَيْسَ فِيهِ مَنْ هُوَ الْمُشْتَرِي.

L23350 As for those who follow the position of ʿAbd Rabbihi ibn Saʿīd, he argues for it based on what we transmitted from the narration in Ṣaḥīḥ Muslim: Abū Bakr ibn Abī Shaybah narrated from Abū Usāmah, from al-Walīd ibn Kathīr, who narrated from Bashīr ibn Yasār—client of Banū Ḥārithah—that Rafiʿ ibn Khadīj and Sahl ibn Abī Ḥathmah reported to him: "The Messenger of Allah—peace and blessings be upon him—prohibited muzābanah (the sale

وَأَمَّا مَنْ ذَهَبَ مَذْهَبَ عَبْدِ رَبِّهِ بْنِ سَعِيدٍ فَإِنَّهُ يَحْتَجُّ لَهُ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ - أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا أَبُو أُسَامَةَ عَنْ الْوَلِيدِ بْنِ كَثِيرٍ حَدَّثَنِي بَشِيرُ بْنُ يَسَارٍ مَوْلَى بَنِي حَارِثَةَ: أَنَّ رَافِعَ بْنَ خَدِيجٍ، وَسَهْلَ بْنَ أَبِي حَثْمَةَ حَدَّثَاهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ الْمُزَابَنَةِ الثَّمَرِ بِالتَّمْرِ إلَّا أَصْحَابَ الْعَرَايَا فَإِنَّهُ أَذِنَ لَهُمْ» .

[36] **Hadith references (L23348):** Sahih Muslim 1539c.

of fresh dates still on the palm for dried dates by estimation), but permitted it for those granted the ʿarāyā concession."

L23351 Abu Muhammad said: This provides no valid proof for them, as it contains no clarification of their claim—neither by explicit text, nor by implication, nor by evidence. Rather, it merely states that the people of ʻarāyā were permitted to exchange dates for dates exclusively—and this is what we assert—thus, it becomes invalid to claim that either of these two opinions holds any valid proof in either of these two narrations.

L23352–23354 Then we examined al-Shāfiʿī's statement and found it to be an unsubstantiated claim. He only cited a ḥadīth whose origin, source, or transmission method no one recognizes. He mentioned it without any chain of narrators—thus it is rendered invalid as containing any authoritative evidence. His statement constitutes a claim without proof - we refer to his specification that those permitted to purchase fresh dates by estimating their quantity using the standard of dried dates are only those who lack the means to acquire fresh dates except for consumption solely.

L23355 Then we examined Mālik's statements and found his assertion that "the ʿarīya consists of palm fruit assigned to others," his claim that "those who designated it reside with their families in the orchard containing those palms," and his declaration that "the palm owners announce the entry of those for whom the palms were designated"—these three assertions: there exists no evidence for any of them, neither in the Quran, nor in the Sunnah, nor in a weak narration, nor in a Companion's opinion, nor a Successor's, nor analogy, nor linguistic evidence, nor any opinion grounded in valid reasoning. We know of no one before him who asserted this.

L23356 Then the outrageous and profoundly astonishing matter is his statement: "This is not permissible except as deferred payment until harvest time, nor is immediate payment permissible at all" - for this constitutes manifestly prohibited usury - "nor for an unspecified term." We know no predecessor who held this view, as it is plainly unlawful and fundamentally impermissible. The permissibility here applies solely to exchanging fresh dates for dried dates by virtue of the explicit textual ruling. We have determined that deferred payment in transactions involving usury is forbidden in every respect.

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّهُ لَيْسَ فِيهِ بَيَانُ قَوْلِهِمْ لَا بِنَصٍّ وَلَا بِإِشَارَةٍ وَلَا بِدَلِيلٍ، وَإِنَّمَا فِيهِ: أَنَّ أَصْحَابَ الْعَرَايَا أُذِنَ لَهُمْ فِي التَّمْرِ بِالتَّمْرِ فَقَطْ، وَهَكَذَا نَقُولُ - فَبَطَلَ أَنْ يَكُونَ لِشَيْءٍ مِنْ هَذَيْنِ الْقَوْلَيْنِ فِي شَيْءٍ مِنْ هَذَيْنِ الْخَبَرَيْنِ حُجَّةٌ.

ثُمَّ نَظَرْنَا فِي قَوْلِ الشَّافِعِيِّ فَوَجَدْنَاهُ دَعْوَى بِلَا بُرْهَانٍ، وَإِنَّمَا ذَكَرَ فِيهِ حَدِيثًا لَا يَدْرِي أَحَدٌ مُنْشَأَهُ وَلَا مَبْدَأَهُ وَلَا طَرِيقَهُ، ذَكَرَهُ أَيْضًا بِغَيْرِ إِسْنَادٍ - فَبَطَلَ أَنْ يَكُونَ فِيهِ حُجَّةٌ، وَحَصَلَ قَوْلُهُ دَعْوَى بِلَا بُرْهَانٍ - نَعْنِي تَخْصِيصَهُ أَنَّ الَّذِينَ أُبِيحَ لَهُمْ ابْتِيَاعُ الرُّطَبِ بِخَرْصِهِ تَمْرًا إِنَّمَا هُمْ مَنْ لَا شَيْءَ لَهُمْ يَبْتَاعُونَ بِهِ الرُّطَبَ لِيَأْكُلُوهُ فَقَطْ.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَالِكٍ فَوَجَدْنَا قَوْلَهُ: إِنَّ الْعَرِيَّةَ هِيَ ثَمَرُ نَخْلٍ تُجْعَلُ لِآخَرِينَ - وَقَوْلَهُ: إِنَّ الَّذِينَ جَعَلُوهُ يَسْكُنُونَ بِأَهْلِيهِمْ فِي الْحَائِطِ الَّذِي فِيهِ تِلْكَ النَّخْلُ - وَقَوْلَهُ: إِنَّ أَصْحَابَ النَّخْلِ يُنَادُونَ بِدُخُولِ الَّذِينَ جَعَلَ لَهُمْ تِلْكَ النَّخْلَ أَقْوَالًا ثَلَاثَةً؟ لَا دَلِيلَ عَلَى شَيْءٍ مِنْهَا، لَا فِي قُرْآنٍ، وَلَا فِي سُنَّةٍ، وَلَا فِي رِوَايَةٍ سَقِيمَةٍ، وَلَا فِي قَوْلِ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا قِيَاسٍ، وَلَا لُغَةٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ، وَمَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ.

ثُمَّ الشُّنْعَةُ وَالْأُعْجُوبَةُ الْعَظِيمَةُ قَوْلُهُ: إِنَّ ذَلِكَ لَا يَجُوزُ إِلَّا نَسِيئَةً إِلَى الْجِدَادِ، وَلَا يَجُوزُ نَقْدًا أَصْلًا - وَهَذَا هُوَ الرِّبَا الْمُحَرَّمُ جِهَارًا، ثُمَّ إِلَى أَجَلٍ مَجْهُولٍ - وَلَا نَعْلَمُ هَذَا عَنْ أَحَدٍ قَبْلَهُ، وَهُوَ حَرَامٌ مَكْشُوفٌ لَا يَحِلُّ أَصْلًا، وَإِنَّمَا حَلَّ هَهُنَا الرُّطَبُ بِالتَّمْرِ بِالنَّصِّ الْوَارِدِ فِيهِ فَقَطْ، وَوَجَدْنَا النَّسِيئَةَ فِيمَا فِيهِ الرِّبَا حَرَامًا بِكُلِّ وَجْهٍ، فَلَمَّا حَلَّ بَيْعُ التَّمْرِ

بِالتَّمْرِ هَهُنَا لَمْ يَجُزْ إِلَّا يَدًا بِيَدٍ وَلَا بُدَّ، لِأَنَّهُ لَا بَيْعَ إِلَّا إِمَّا نَقْدًا وَإِمَّا نَسِيئَةً، فَالنَّسِيئَةُ حَرَامٌ: لِأَنَّهُ رِبًا فِي كُلِّ مَا يَقَعُ فِيهِ الرِّبَا بِلَا خِلَافٍ - وَلِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى - يَعْنِي اشْتِرَاطَ تَأْخِيرِهِ فَهُوَ بَاطِلٌ فَلَمْ يَبْقَ إِلَّا النَّقْدُ فَلَمْ يَجُزْ غَيْرُهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

When the exchange of dates for dates became permissible here, it could only be conducted hand-to-hand without exception, for there is no valid sale except either immediate payment or deferred payment. Deferred payment is forbidden because it constitutes usury in all transactions where usury occurs without dispute, and because it imposes a condition absent from Allah's Book - meaning the stipulation of deferment is void. Thus, only immediate payment remains valid, and no other form is permissible. And success comes only from Allah, the Exalted.

L23357 ثُمَّ نَظَرْنَا فِي قَوْلِ أَبِي حَنِيفَةَ فَوَجَدْنَاهُ أَبْعَدَ الْأَقْوَالِ، لِأَنَّهُ خَالَفَ جَمِيعَ الْآثَارِ كُلِّهَا جِهَارًا، وَأَتَى بِدَعْوَى لَا دَلِيلَ عَلَيْهَا، وَلَا نَعْلَمُ أَحَدًا قَالَ بِهَا قَبْلَهُ.

L23357 Then we examined the opinion of Abu Hanifah and found it to be the most distant of all opinions, for he openly contradicted all transmitted traditions without exception, advanced a claim lacking any evidence, and we know of no one who asserted it before him.

L23358 وَالْخَبَرُ فِي اسْتِثْنَاءِ جَوَازِ بَيْعِ الرُّطَبِ بِالتَّمْرِ لِأَهْلِ الْعَرَايَا خَاصَّةً مَنْقُولٌ نَقْلَ التَّوَاتُرِ: رَوَاهُ رَافِعٌ، وَسَهْلٌ، وَجَابِرٌ، وَأَبُو هُرَيْرَةَ، وَزَيْدٌ، وَابْنُ عُمَرَ فِي آخَرِينَ سِوَاهُمْ كُلُّ مَنْ سَمَّيْنَا هُوَ عَنْهُمْ فِي غَايَةِ الصِّحَّةِ - فَخَالَفُوا ذَلِكَ بِآرَائِهِمْ الْفَاسِدَةِ.

L23358 The report concerning the exception permitting the sale of fresh dates for dried dates specifically for the people of ʿarāyā is transmitted through mutawātir narration: it was narrated by Rāfiʿ, Sahl, Jābir, Abū Hurayrah, Zayd, and Ibn ʿUmar among others besides them. Every one we named is among those whose narrations are of the highest reliability. Yet they opposed this with their corrupt opinions.

L23359 وَالْبُرْهَانُ لِصِحَّةِ قَوْلِنَا -: هُوَ مَا رُوِّينَاهُ مِنْ طُرُقٍ جَمَّةٍ كُلُّهَا تَرْجِعُ إِلَى مَالِكٍ: أَنَّ دَاوُد بْنَ الْحُصَيْنِ حَدَّثَهُ عَنْ أَبِي أَحْمَدَ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَخَّصَ فِي بَيْعِ الْعَرَايَا بِخَرْصِهَا فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ أَوْ فِي خَمْسَةِ أَوْسُقٍ» يَشُكُّ دَاوُد.

L23359 The proof for the validity of our statement is what we have transmitted through numerous chains - all tracing back to Mālik: that Dāwūd ibn al-Ḥuṣayn narrated to him from Abū Aḥmad, from Abū Hurayrah, that "Allah's Messenger (may Allah bless him and his family and grant peace) granted a concession for the sale of al-ʿarāyā [unharvested dates on the palm tree] by estimating their yield [while still on the tree], in less than five awsuq or up to five awsuq" — Dāwūd expressed uncertainty.

L23360–23362 قَالَ أَبُو مُحَمَّد: فَالْيَقِينُ وَاقِعٌ فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ بِلَا شَكٍّ، فَهُوَ مَخْصُوصٌ فِيمَا حَرُمَ مِنْ بَيْعِ التَّمْرِ بِالتَّمْرِ، وَلَا يَجُوزُ أَنْ يُبَاحَ مُتَيَقَّنُ الْحَرَامِ بِشَكٍّ، وَلَوْ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبَاحَ ذَلِكَ فِي خَمْسَةِ أَوْسُقٍ لَحَفِظَهُ اللَّهُ تَعَالَى حَتَّى يُبَلِّغَ إِلَيْنَا مُبَيَّنًا،

L23360–23362 Abu Muhammad said: Certainty is established without doubt for what is less than five wasqs, as it is specifically restricted to the prohibition of selling dates for dates. It is not permissible to permit what is definitively prohibited based on doubt, even if the Messenger of Allah (peace be upon him)... He permitted that in five awsuq, so Allah, the Exalted, thereby preserved it until it was conveyed to us clearly, and the proof was established through it. Yet Allah, the Exalted, did not do that, so we became certain that His Prophet

(peace be upon him) never permitted it in five awsuq, but with certainty in less than that—and with Allah, the Exalted, is the attainment of guidance.

وَتَقُومَ بِهِ الْحُجَّةُ، فَلَمْ يَفْعَلْ اللَّهُ تَعَالَى ذَلِكَ، فَأَيْقَنَّا أَنَّهُ لَمْ يُبِحْهُ نَبِيُّهُ - عَلَيْهِ السَّلَامُ - قَطُّ فِي خَمْسَةِ أَوْسُقٍ، لَكِنْ فِيمَا دُونَهَا بِيَقِينٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L23363 It is not permissible for anyone to reach that measure in a single year—whether through one transaction or through transactions amounting to five wasqs in total—fundamentally, neither for the seller nor the buyer, as it contravenes the injunction of the Messenger of Allah, peace and blessings be upon him.

فَلَا يَجُوزُ لِأَحَدٍ أَنْ يَبْلُغَ ذَلِكَ فِي عَامٍ وَاحِدٍ فِي صَفْقَةٍ وَاحِدَةٍ، وَلَا فِي صَفَقَاتٍ خَمْسَةِ أَوْسُقٍ أَصْلًا، لَا الْبَائِعُ وَلَا الْمُشْتَرِي؛ لِأَنَّهُ يُخَالِفُ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L23364 From the chain of Muslim ibn al-Ḥajjāj: I, Yaḥyā ibn Yaḥyā al-Naysābūrī, narrate from Sulaymān ibn Bilāl, from Yaḥyā ibn Saʿīd al-Anṣārī, who informed me that Nāfiʿ reported that he heard ʿAbdullāh ibn ʿUmar narrate that Zayd ibn Thābit related to him: "The Messenger of Allah—may Allah's peace and blessings be upon him—permitted regarding the ʿariyya (fresh dates still on the palm) for the people of the household to take them by estimating them as dried dates in quantity, and they eat them as fresh dates."[37]

وَمِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ أَنَا يَحْيَى بْنُ يَحْيَى - هُوَ النَّيْسَابُورِيُّ - أَنَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَخْبَرَنِي نَافِعٌ أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ عُمَرَ يُحَدِّثُ أَنَّ زَيْدَ بْنَ ثَابِتٍ حَدَّثَهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَخَّصَ فِي الْعَرِيَّةِ يَأْخُذُهَا أَهْلُ الْبَيْتِ بِخَرْصِهَا تَمْرًا يَأْكُلُونَهَا رُطَبًا» .

L23365 And through the chain of Muslim: Abdullah ibn Maslamah al-Qa'nabi reported from Sulayman ibn Bilal, who reported from Yahya ibn Sa'id al-Ansari, from Bashir ibn Yasar, from some of the Companions of the Messenger of Allah (peace and blessings be upon him) from the people of their household—among them Sahl ibn Abi Hathmah—from the Prophet (peace and blessings be upon him and his family), that he forbade selling dates for dates and said: "That is usury, that is muzābanah," except that he permitted the sale of the 'ariyya and a palm tree or two palm trees, which the household members take by estimating their fresh dates on the tree as dried dates, so they may eat them as fresh dates.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ الْقَعْنَبِيُّ أَنَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ بُشَيْرِ بْنِ يَسَارٍ عَنْ بَعْضِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَهْلِ دَارِهِمْ مِنْهُمْ سَهْلُ بْنُ أَبِي حَثْمَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنَّهُ نَهَى عَنْ بَيْعِ التَّمْرِ بِالتَّمْرِ وَقَالَ: ذَلِكَ الرِّبَا تِلْكَ الْمُزَابَنَةُ، إلَّا أَنَّهُ رَخَّصَ فِي بَيْعِ الْعَرِيَّةِ وَالنَّخْلَةِ وَالنَّخْلَتَيْنِ يَأْخُذُهَا أَهْلُ الْبَيْتِ بِخَرْصِهَا تَمْرًا يَأْكُلُونَهَا رُطَبًا» .

L23366 Abū Muḥammad said: The Prophet's stipulation—peace and blessings be upon him—in the ḥadīth of Abū Hurayrah, "less than five awsāq," takes precedence over these ḥadīths. For if the produce from the two palm trees amounts to five awsāq, it is impermissible, and if the produce from the palm trees is less than five awsāq, it is permissible regarding them. This is because

قَالَ أَبُو مُحَمَّدٍ: تَحْدِيدُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثِ أَبِي هُرَيْرَةَ «مَا دُونَ خَمْسَةِ أَوْسُقٍ» يَقْضِي عَلَى هَذِهِ الْأَحَادِيثِ؛ لِأَنَّهُ إنْ كَانَ فِي النَّخْلَتَيْنِ خَمْسَةُ أَوْسُقٍ لَمْ يَجُزْ، وَإِنْ كَانَ فِي النَّخَلَاتِ أَقَلُّ مِنْ خَمْسَةِ أَوْسُقٍ جَازَ ذَلِكَ فِيهَا؛ لِأَنَّ تَحْدِيدَ الْخَمْسَةِ الْأَوْسُقِ زِيَادَةُ حُكْمٍ، وَزِيَادَةُ حَدٍّ، وَزِيَادَةُ بَيَانٍ، وَلَا يَجُوزُ تَرْكُهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[37] **Hadith references (L23364):** Sahih Muslim 1539d.

stipulating five awsāq introduces an additional ruling, a restriction, and a clarification, and it is not permissible to abandon it. And success is by Allāh, the Exalted.

A legal case in which a person bought fresh dates for consumption, then died, while his intention at the time of purchase was unrestricted.

1475. Issue: If someone purchases fresh dates for consumption under these circumstances and then dies—so they are passed down as part of his inheritance—or falls ill, or no longer needs to consume them, except that at the time of purchase his intention was unquestionably to consume them, then he validly owns the dates and may sell or dispose of them as he wishes.

And by Allah, the Exalted, is the success.

Question: The Ruling on *ʿarāyā* Regarding Certain Fruits

1476 – Issue:

The aforementioned ruling of ʿaraya does not apply to any fruits other than dates, as we have stated. It is impermissible at all to sell any fruits besides dates by kharṣ-estimation, neither while they remain on the palm trees nor after being gathered on the ground at all.

It is impermissible to sell grapes for raisins by measure, whether in total quantity or while still on the stem, nor to sell standing crops for wheat. This is based on what was transmitted to us through Muslim's narration: Yaḥyā ibn Maʿīn and Hārūn ibn ʿAbdullāh both said: "Abū Usāmah reported to us, stating: I heard from ʿUbaydullāh—the son of ʿUmar—from Nāfiʿ, from Ibn ʿUmar, who said: 'The Messenger of Allah—peace and blessings be upon him—forbade muzābaṇa. Muzābaṇa is the sale of fresh dates on the palm

[مَسْأَلَة ابْتَاعَ رطبا للأكل ثُمَّ مَاتَ وَكَانَتْ نيته عِنْد الشِّرَاء للكل]

١٤٧٥ - مَسْأَلَةٌ: فَمَنْ ابْتَاعَ كَذَلِكَ رُطَبًا لِلْأَكْلِ ثُمَّ مَاتَ فَوُرِثَتْ عَنْهُ، أَوْ مَرِضَ، أَوْ اسْتَغْنَى عَنْ أَكْلِهَا إِلَّا أَنَّهُ حِينَ اشْتَرَاهَا كَانَتْ نِيَّتُهُ أَكْلَهَا بِلَا شَكٍّ، فَقَدْ مَلَكَ الرُّطَبَ مِلْكًا صَحِيحًا، وَيَفْعَلُ فِيهِ مَا شَاءَ مِنْ بَيْعٍ أَوْ غَيْرِهِ.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حُكْمُ الْعَرَايَا فِي شَيْءٍ مِنْ الثِّمَارِ]

١٤٧٦ - مَسْأَلَةٌ:

وَلَا يَجُوزُ حُكْمُ الْعَرَايَا الْمَذْكُورُ فِي شَيْءٍ مِنْ الثِّمَارِ غَيْرَ ثِمَارِ النَّخْلِ كَمَا ذَكَرْنَا - وَلَا يَجُوزُ بَيْعُ شَيْءٍ مِنْ الثِّمَارِ سِوَى ثَمَرِ النَّخْلِ بِخَرْصِهَا أَصْلًا، لَا فِي رُءُوسِ النَّخْلِ وَلَا مَجْمُوعَةٍ فِي الْأَرْضِ أَصْلًا.

وَلَا يَحِلُّ أَنْ يُبَاعَ الْعِنَبُ بِالزَّبِيبِ كَيْلًا، لَا مَجْمُوعًا وَلَا فِي عُودِهِ، وَلَا بَيْعُ الزَّرْعِ بِالْحِنْطَةِ، لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنَا يَحْيَى بْنُ مَعِينٍ، وَهَارُونُ بْنُ عَبْدِ اللَّهِ قَالَا: أَنَا أَبُو أُسَامَةَ أَنَا عُبَيْدُ اللَّهِ - هُوَ ابْنُ عُمَرَ - عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْمُزَابَنَةِ، وَالْمُزَابَنَةُ بَيْعُ ثَمَرِ النَّخْلِ بِالتَّمْرِ كَيْلًا وَبَيْعُ الزَّبِيبِ بِالْعِنَبِ كَيْلًا، وَعَنْ كُلِّ ثَمَرٍ بِخَرْصِهِ» .

for dried dates by measure, the sale of raisins for grapes by measure, and the sale of any fruit for its estimated yield.'"[38]

L23375 Through the chain of Muslim: Abu Bakr ibn Abi Shaybah reported from Muhammad ibn Bishr, from Ubaydullah—son of Umar—from Nafi', from Ibn Umar, who informed him that the Messenger of Allah—peace and blessings of Allah be upon him—prohibited selling grain in exchange for wheat by measured quantity.

L23376 As reported by Muslim: Qutaybah narrated from Al-Layth ibn Sa'd, from Nafi', from Ibn 'Umar, that the Messenger of Allah (peace and blessings be upon him) prohibited muzabanah: selling the produce of one's orchard - if it is palm trees - for dried dates by measure; if it is a vineyard, selling its grapes for raisins by measure; and if it is crops, selling them for food by measure.[39]

L23377 **Issue: Dried fruits other than date fruits may not be sold in combination with their fresh counterparts.**

L23378 1477 - Question:

L23379 If the fruit in question is other than dates, it is permissible to sell it for dried or fresh fruit of its own type or another type—whether for more than it, less, or the same—and to deliver the goods in its own type or another type, provided the transaction does not involve assessing unharvested yield as we mentioned, nor exchanging raisins measured by volume for grapes, because Allah, the Exalted and Most High, said: "And Allah has permitted trade" [Al-Baqarah: 275].[40]

L23380 And He, the Exalted, has said: "He has detailed for you what He has forbidden for you" [Al-An'am 6:119].[41]

L23381 So if it had been forbidden, He would have elaborated on its prohibition to

[38]**Hadith references (L23374):** Sahih Muslim 1542d.
[39]**Hadith references (L23376):** Sahih Muslim 1542g.
[40]**Qur'an references (L23379):** Qur'an 2:275 (Al-Baqarah).
[41]**Qur'an references (L23380):** Qur'an 6:119 (Al-An'am).

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا مُحَمَّدُ بْنُ بِشْرٍ أَنَا عُبَيْدُ اللَّهِ - هُوَ ابْنُ عُمَرَ - عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ أَخْبَرَهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ بَيْعِ الزَّرْعِ بِالْحِنْطَةِ كَيْلًا» .

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا قُتَيْبَةُ أَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْمُزَابَنَةِ أَنْ يَبِيعَ ثَمَرَ حَائِطِهِ إنْ كَانَتْ نَخْلًا بِتَمْرٍ كَيْلًا، وَإِنْ كَانَ كَرْمًا أَنْ يَبِيعَهُ بِزَبِيبٍ كَيْلًا، وَإِنْ كَانَ زَرْعًا أَنْ يَبِيعَهُ بِكَيْلِ طَعَامٍ» .

[مَسْأَلَة مَسْأَلَةٌ ثَمَرُ مَا عَدَا ثَمَرَ النَّخْلِ يُبَاع يابسه برطبه]

١٤٧٧ - مَسْأَلَةٌ:

فَإِنْ كَانَ ثَمَرُ مَا عَدَا ثَمَرَ النَّخْلِ جَازَ أَنْ يُبَاعَ بِيَابِسٍ وَرُطَبٍ مِنْ صِنْفِهِ، وَمِنْ غَيْرِ صِنْفِهِ بِأَكْثَرَ مِنْهُ، وَبِأَقَلَّ وَمِثْلِهِ، وَأَنْ يُسَلَّمَ فِي جِنْسِهِ وَغَيْرِ جِنْسِهِ مَا لَمْ يَكُنْ بِخَرْصِهِ كَمَا ذَكَرْنَا، وَمَا لَمْ يَكُنْ زَبِيبًا كَيْلًا بِعِنَبٍ؛ لِأَنَّ اللَّهَ تَعَالَى قَالَ: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

فَلَوْ كَانَ حَرَامًا لَفَصَّلَ لَنَا تَحْرِيمَهُ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

us, “And your Lord is not forgetful.” [Maryam: 64].[42]

L23382–23383 If it is said: “He—peace be upon him—prohibited selling fresh dates for dried dates,” and it is reported that “he—peace be upon him—asked, ’Do fresh dates diminish when they dry?’ They said, ’Yes,’ so he forbade selling them for dried dates,” we respond: As for the report “Do fresh dates diminish when they dry,” Mālik and Ismāʿīl ibn Umayyah both narrated it from ʿUbayd Allāh ibn Yazīd from Zayd Abī ʿAyyāsh from Saʿd. Mālik once said, “Ziyādah, Abū ʿAyyāsh—the freed slave of Banū Zuhrah”—a man who is unknown and unidentified. Even if the report were authentic, it would not necessitate that this be a legal cause for anything beyond what was explicitly stated regarding fresh dates for dried dates alone, for that would constitute transgressing the boundaries set by Allah, the Almighty.

L23384 Among the most wondrous of wonders is that it has been soundly narrated from the Messenger of Allah (peace be upon him) that he said: “What causes blood to flow with Allah’s name invoked over it, eat—except what is slaughtered with a tooth or claw. As for the tooth, it is a bone; and as for the claw, it is the blades used by the Abyssinians.”

L23385 The Hanafis and Malikis opposed this position, maintaining that the bony nature [of an instrument] does not constitute a valid legal cause to prohibit its use for slaughter. The Shafi’is do not regard the use of Ethiopian blades for slaughtering as a legal cause invalidating the act except in the case of the claw alone. Yet they then adopt the unsubstantiated report attributed to the Prophet (ﷺ)—“Does fresh fruit diminish when dried?”—as a legal cause applicable to all fruits. What absurdity could surpass this? As for trading fresh dates for dried ones, the foundational report lacks authenticity entirely. Its chain includes Abu Salih Abdullah ibn Salih—scribe of Al-Layth, a weak narrator—via Al-Layth ibn Sa’d, Usamah ibn Zayd—another weak narrator—and an unknown transmitter, from Abdullah ibn Yazid, freedman of Al-Aswad ibn Sufyan, from Abu Salamah ibn Abd al-Rahman ibn Awf, from some Companions of the Prophet (ﷺ): “The Messenger of Allah (ﷺ) was asked about exchanging fresh dates for dried dates. He inquired: ’Do

فَإِنْ قِيلَ: قَدْ نَهَى عَنْ الرُّطَبِ بِالْيَابِسِ وَرُوِيَ «أَنَّهُ - عَلَيْهِ السَّلَامُ - سَأَلَ: أَيَنْقُصُ الرُّطَبُ إذَا يَبِسَ؟ فَقِيلَ: نَعَمْ، فَنَهَى عَنْ بَيْعِهِ بِالتَّمْرِ» قُلْنَا: أَمَّا أَيَنْقُصُ الرُّطَبُ إذَا يَبِسَ، فَإِنَّ مَالِكًا، وَإِسْمَاعِيلَ بْنَ أُمَيَّةَ رَوَيَاهُ عَنْ عُبَيْدِ اللَّهِ بْنِ يَزِيدَ عَنْ زَيْدٍ أَبِي عَيَّاشٍ عَنْ سَعْدٍ، وَقَالَ مَالِكٌ مَرَّةً: زِيَادَةُ أَبِي عَيَّاشٍ مَوْلَى بَنِي زُهْرَةَ - وَهُوَ رَجُلٌ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ - ثُمَّ لَوْ صَحَّ لَمَا وَجَبَ أَنْ يَكُونَ ذَلِكَ عِلَّةً لِغَيْرِ مَا نَصَّ عَلَيْهِ فِيهِ مِنْ الرُّطَبِ بِالتَّمْرِ وَحْدَهُ؛ لِأَنَّهُ كَانَ يَكُونُ تَعَدِّيًا لِحُدُودِ اللَّهِ عَزَّ وَجَلَّ.

وَمِنْ الْعَجَبِ الْعَجِيبِ أَنْ يَكُونَ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «مَا أَنْهَرَ الدَّمَ وَذُكِرَ اسْمُ اللَّهِ عَلَيْهِ فَكُلُوا إلَّا السِّنَّ وَالظُّفُرَ، أَمَّا السِّنُّ فَإِنَّهُ عَظْمٌ، وَأَمَّا الظُّفُرُ فَإِنَّهُ مُدَى الْحَبَشَةِ» .

فَخَالَفَهُ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَلَا يَرَوْنَ الْعَظْمِيَّةَ عِلَّةً لِمَا يَمْنَعُ مِنْ أَنْ يُذَكَّى بِهِ، وَلَا يَرَى الشَّافِعِيُّونَ كَوْنَ الَّذِي يُذَكَّى بِهِ مِنْ مُدَى الْحَبَشَةِ عِلَّةً فِي مَنْعِ الذَّكَاةِ بِهِ إلَّا فِي الظُّفُرِ وَحْدَهُ، ثُمَّ يَجْعَلُونَ مَا لَمْ يَصِحَّ عَنْهُ مِنْ «أَيَنْقُصُ الرُّطَبُ إذَا يَبِسَ» عِلَّةً فِي جَمِيعِ الثِّمَارِ، فَأَيُّ عَجَبٍ أَعْجَبُ مِنْ هَذَا؟ وَأَمَّا الرُّطَبُ بِالْيَابِسِ فَلَا يَصِحُّ أَصْلًا؛ لِأَنَّهُ أَثَرٌ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي صَالِحٍ عَبْدِ اللَّهِ بْنِ صَالِحٍ كَاتِبِ اللَّيْثِ - وَهُوَ ضَعِيفٌ - عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ أُسَامَةَ بْنِ زَيْدٍ - وَهُوَ ضَعِيفٌ - وَغَيْرُهُ - وَهُوَ مَجْهُولٌ - عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ مَوْلَى الْأَسْوَدِ بْنِ سُفْيَانَ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ بَعْضِ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ

[42] **Qur’an references (L23381):** Qur’an 19:64 (Maryam).

fresh dates decrease [in quantity]?' They replied: 'Yes.' He ruled: 'Fresh dates must not be traded for dried ones.'" Such a report is inadmissible as evidence. Had it been authentic, we would not hesitate to uphold it.

L23386 It is astonishing that the Ḥanafī jurists adopt every weak narration and disconnected report—such as ablution for audible laughter during prayer, ablution using nabīdh, and other similar matters—yet contradict these very disconnected reports and weak narrations.

L23387–23389 Moreover, the Shafi'is and Malikis, who claim to follow this report, have contradicted it. Because they permit selling fresh dates in exchange for dried dates, figs, and grapes of a different kind, and this contradicts the general ruling of the hadith.

L23390 If they say, "Does that [statement] only refer to what is of its kind?"

L23391 We said: And what is your proof for that? And what difference is there between you and Abu Hanifa, who stated: "This only refers to what was on the treetops of his trees"? Is this not merely a claim with a claim without any proof? Allah suffices us, and He is the excellent Trustee.

L23392 It was narrated to us through the chain of Ibn Abī Shaybah: "I, Yaḥyā ibn Abī Zā'idah, narrated from Muḥammad ibn 'Amr, from Abū Salamah ibn 'Abd al-Raḥmān ibn 'Awf, from Abū Sa'īd al-Khudrī, who said: 'The Messenger of Allāh—peace be upon him and his family—prohibited muḥāqalah and muzābanah. Thus, muḥāqalah pertains to crops, and muzābanah pertains to date palms.'"

L23393 This is the exact wording of Abū Sa'īd—may Allah be pleased with him—and this is the precise statement of our position, because he only permitted *muzabana* in palm trees alone, excluding other fruits—all praise is due to Allah, Lord of the worlds—and we know of no one among the Companions—may Allah be pleased with them—who disagreed with him.

L23394 And through the chain recorded in Muslim's collection: I am 'Abdullāh

رُطَبٍ بِتَمْرٍ؟ فَقَالَ: أَيَنْقُصُ الرُّطَبُ؟ قَالُوا: نَعَمْ، قَالَ: لَا يُبَاعُ الرُّطَبُ بِالْيَابِسِ» وَمِثْلُ هَذَا لَا يَحِلُّ الِاحْتِجَاجُ بِهِ، وَلَوْ صَحَّ لَمَا تَرَدَّدْنَا فِي الْأَخْذِ بِهِ.

وَالْعَجَبُ مِنْ الْحَنَفِيِّينَ الْآخِذِينَ بِكُلِّ ضَعِيفٍ، وَمُرْسَلٍ، كَالْوُضُوءِ مِنْ الْقَهْقَهَةِ فِي الصَّلَاةِ، وَالْوُضُوءِ بِالنَّبِيذِ، وَغَيْرِ ذَلِكَ ثُمَّ يُخَالِفُونَ هَذَا الْمُرْسَلَ وَهَذَا الضَّعِيفَ.

وَأَيْضًا: فَإِنَّ الشَّافِعِيِّينَ، وَالْمَالِكِيِّينَ، الْمُدَّعِينَ الْأَخْذَ بِهَذَا الْخَبَرِ قَدْ خَالَفُوهُ، لِأَنَّهُمْ يُبِيحُونَ بَيْعَ الرُّطَبِ مِنْ التَّمْرِ، وَالتِّينِ، وَالْعِنَبِ، بِالْيَابِسِ مِنْ غَيْرِ جِنْسِهِ، وَهَذَا خِلَافُ لِعُمُومِ الْخَبَرِ.

فَإِنْ قَالُوا: إنَّمَا أُرِيدَ بِذَلِكَ مَا كَانَ مِنْ جِنْسِهِ؟

قُلْنَا: وَمَا دَلِيلُكُمْ عَلَى ذَلِكَ؟ وَمَا الْفَرْقُ بَيْنَكُمْ وَبَيْنَ أَبِي حَنِيفَةَ الْقَائِلِ: إنَّمَا أُرِيدَ بِذَلِكَ مَا كَانَ فِي رُءُوسِ أَشْجَارِهِ فَقَطْ؟ وَهَلْ هِيَ إلَّا دَعْوَى بِدَعْوَى بِلَا بُرْهَانٍ وَحَسْبُنَا اللَّهِ وَنِعْمَ الْوَكِيلُ.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا يَحْيَى بْنُ أَبِي زَائِدَةَ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ الْمُحَاقَلَةِ، وَالْمُزَابَنَةِ، فَالْمُحَاقَلَةُ فِي الزَّرْعِ وَالْمُزَابَنَةُ فِي النَّخْلِ» .

هَذَا نَصُّ لَفْظِ أَبِي سَعِيدٍ - رَضِيَ اللَّهُ عَنْهُ - وَهَذَا نَصُّ قَوْلِنَا، لِأَنَّهُ لَمْ يَرَ الْمُزَابَنَةَ إلَّا فِي النَّخْلِ وَحْدَهُ، لَا فِي سَائِرِ الثِّمَارِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - وَمَا نَعْلَمُ لَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفًا.

ibn Maslamah al-Qa'nabī; I [heard] from Sulaymān ibn Bilāl from Yaḥyā—who is Ibn Sa'īd al-Anṣārī—from Bashīr ibn Yasār from some Companions of Allah's Messenger (peace and blessings be upon him), among them Sahl ibn Abī Ḥathmah, that Allah's Messenger prohibited selling fresh dates for dried dates, saying: "That is usury—that is muzābanah (a usurious practice)," except that he permitted the 'arīyya sale (the sale of fresh dates on the palm). He then proceeded to mention the full ḥadīth.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ الْقَعْنَبِيُّ أَنَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْأَنْصَارِيُّ - عَنْ بُشَيْرِ بْنِ يَسَارٍ عَنْ بَعْضِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْهُمْ سَهْلُ بْنُ أَبِي حَثْمَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ بَيْعِ الثَّمَرِ بِالتَّمْرِ، وَقَالَ: ذَلِكَ الرِّبَا تِلْكَ الْمُزَابَنَةُ، إلَّا أَنَّهُ رَخَّصَ بَيْعَ الْعَرِيَّةِ» وَذَكَرَ الْحَدِيثَ.

L23395 From the chain transmitted by Imam Muslim: I, Muhammad ibn Rumh, report from Al-Layth ibn Sa'd, from Nafi', from Ibn 'Umar, who said: "The Messenger of Allah—peace and blessings be upon him—prohibited *muzabana*—the sale of unpicked fruit for measured produce. This includes selling the fruit of one's orchard: if it were palm trees, to sell its fruit for dried dates by measure; if it were grapevines, to sell its fruit for raisins by measure; and if it were crops, to sell its fruit for food by measure."

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ رُمْحٍ أَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ الْمُزَابَنَةِ أَنْ يَبِيعَ ثَمَرَ حَائِطِهِ إنْ كَانَتْ نَخْلًا بِتَمْرٍ كَيْلًا، وَإِنْ كَانَ كَرْمًا أَنْ يَبِيعَهُ بِزَبِيبٍ كَيْلًا، وَإِنْ كَانَ زَرْعًا أَنْ يَبِيعَهُ بِكَيْلِ طَعَامٍ» .

L23396–23398 Abu Muhammad said: There is no muzabana (sale of unpicked fruit for dried fruit by measure) except what the Prophet—may Allah bless him, his family, and grant him peace—clarified, then the Companions elaborated. Allah is pleased with them—after him [the scholar]—that this constitutes muẓābanah (a prohibited sale involving uncertainty), and anything beyond this is invalid and a certain error without doubt. And success is with Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ: لَا مُزَابَنَةَ إلَّا مَا بَيَّنَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، ثُمَّ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - بَعْدَهُ أَنَّهُ مُزَابَنَةٌ، وَمَا عَدَا ذَلِكَ فَبَاطِلٌ وَخَطَأٌ مُتَيَقَّنٌ بِلَا شَكٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23399 The issue of selling dates for anything other than Dirhams and Dinars.

[مَسْأَلَةَ بَيْعِ التَّمْرِ بِغَيْرِ الدَّرَاهِمِ وَالدَّنَانِيرِ]

L23400 1478 - Question:

١٤٧٨ - مَسْأَلَةٌ:

L23401 If someone were to say: "You are the claimants to adhering to authentic narrations—yet you yourselves narrated through Ibn Wahb's transmission: Ibn Jurayj narrated to me on the authority of 'Aṭā', and (separately) on the authority of Abū al-Zubayr, who narrated from Jābir that the Messenger of Allah (peace be upon him) prohibited selling fruits until they ripen, and nothing of it should be sold except using dinars and dirhams."

فَإِنْ قَالَ قَائِلٌ: فَأَنْتُمْ الْمُنْتَمُونَ إلَى الْأَخْذِ بِمَا صَحَّ مِنْ الْآثَارِ - وَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ ابْنِ وَهْبٍ: أَخْبَرَنِي ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ، وَأَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الثَّمَرِ حَتَّى يَطِيبَ، وَلَا يُبَاعُ شَيْءٌ مِنْهُ إلَّا بِالدَّنَانِيرِ، وَالدَّرَاهِمِ» .

وَرَوَيْتُمُوهُ أَيْضًا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ جَابِرٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا خَبَرٌ فِي غَايَةِ الصِّحَّةِ؟

L23402 And have you also narrated it through the chain of Sufyān ibn ʾUyaynah from Ibn Jurayj from ʾAṭāʾ from Jābir from the Messenger of Allāh (peace be upon him), and is this report of the utmost authenticity?

قُلْنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: نَعَمْ؛ لِأَنَّ الثِّمَارَ كُلَّهَا إذَا يَبِسَتْ حُدَّتْ أَوْ لَمْ تُجَدَّ فَهِيَ ثِمَارٌ قَدْ طَابَتْ بِلَا خِلَافٍ مِنْ أَحَدٍ، وَلَا خِلَافَ فِي اللُّغَةِ.

L23403 We said—and with Allah alone lies all success—yes, [this is the case]. For all fruits, when dried and harvested or not gathered, are deemed permissible without disagreement from anyone or in the language.

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَمَرَ بِبَيْعِ التَّمْرِ يَدًا بِيَدٍ، كَيْلًا بِكَيْلٍ، مِثْلًا بِمِثْلٍ، وَأَمَرَ بِبَيْعِهِ بِغَيْرِ صِنْفِهِ كَيْفَ شِئْنَا.

L23404 It has been authentically reported from the Messenger of Allah—peace and blessings be upon him—that he commanded the sale of dates to be conducted hand-to-hand, measure for measure, kind for kind, and ordered its exchange for other types as we wish.

فَصَحَّ النَّصُّ عَلَى جَوَازِ بَيْعِ التَّمْرِ بِمَا شِئْنَا مِمَّا يَحِلُّ بَيْعُهُ، فَكَانَ مَا فِي هَذَا مُضَافًا إلَى مَا فِي خَبَرِ جَابِرٍ الْمَذْكُورِ وَزَائِدًا عَلَيْهِ، فَكَانَ ذَلِكَ: لَا تَبِيعُوا الثَّمَرَ إذَا طَابَ إلَّا بِالدَّنَانِيرِ وَالدَّرَاهِمِ، وَبِمَا شِئْتُمْ، حَاشَا مَا نُهِيتُمْ عَنْهُ، وَهَذَا هُوَ الَّذِي لَا يَجُوزُ غَيْرُهُ.

L23405 The text affirms the permissibility of selling dates in exchange for whatever we wish from permissible commodities. This content is added to and expands upon the report of Jabir mentioned earlier. Thus, it states: “Do not sell fruit once it ripens except for dinars, dirhams, or whatever you wish—excluding what you are prohibited from.” This is the sole permissible ruling, and no alternative is valid.

وَقَدْ صَحَّ الْإِجْمَاعُ الْمُتَيَقَّنُ الْمَقْطُوعُ بِهِ عَلَى أَنَّ جَمِيعَ الثِّمَارِ بَعْدَ طِيبِهَا حُكْمُهَا فِيمَا يُبَاعُ مِمَّا يَجُوزُ حُكْمُ التَّمْرِ، وَهَذَا بُرْهَانٌ صَحِيحٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ وَمَا نَعْلَمُ أَحَدًا مَنَعَ مِنْ بَيْعِ التَّمْرِ بِغَيْرِ الدَّنَانِيرِ وَالدَّرَاهِمِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23406 A conclusive and indisputable consensus has been firmly established that all fruits, once fit for consumption, are subject to the same sales rulings as dates. This constitutes sound proof—and success lies solely with Allah the Exalted. We are unaware of any scholar who prohibited selling dates except in exchange for gold dinars and silver dirhams, and with Allah the Exalted alone resides all success.

[مَسْأَلَة الربا لَا يكُون إلَّا فِي بَيْع أَوْ قَرْض أَوْ سلم]

The issue of *riba* does not occur except in a sale, a loan, or a *salam* contract.

١٤٧٩ - مَسْأَلَةٌ: الرِّبَا: وَالرِّبَا لَا يَكُونُ إلَّا فِي بَيْعٍ، أَوْ قَرْضٍ، أَوْ سَلَمٍ، وَهَذَا مَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ، لِأَنَّهُ لَمْ تَأْتِ النُّصُوصُ إلَّا بِذَلِكَ، وَلَا حَرَامَ إلَّا مَا فُصِّلَ تَحْرِيمُهُ، قَالَ اللَّهُ تَعَالَى {خَلَقَ لَكُمْ مَا فِي الأَرْضِ جَمِيعًا} [البقرة: ٢٩] .

L23407 Riba (usury), riba only occurs in sale, loan, or salam. No one disagrees about this, as the texts have only specified these, and nothing is prohibited except what has had its prohibition detailed. Allah, the Exalted, said: “He has created for you all that is on the earth.” [Al-Baqarah: 29].[43]

[43] **Qur’an references (L23408):** Qur’an 2:29 (Al-Baqarah).

L23409 And He, the Exalted, said: “Allah has permitted trade and forbidden usury” [Al-Baqarah: 275].[44]

L23410 And He, the Exalted, said: “He has detailed to you what He has forbidden upon you” [al-Anʿām 6:119].[45]

L23411 The Issue of What is Permissible Concerning Riba Among Sale and Salam

L23412–23414 1480 - Issue: *Riba* is not permissible in sales and *salam* except in the case of six things only: dates, wheat, barley, salt, gold, and silver—and it applies to all things in the context of loans. It is impermissible to lend anything so that less or more is returned to you, nor anything of another type whatsoever. Rather, only the same as what you lent in kind and quantity—as we detailed in the “Book of Loans” within this compilation of ours, rendering its repetition unnecessary—and this is a definitive consensus held with certainty.

L23415 The distinction between sale and salam on one hand, and a loan on the other, is that sale and salam can be conducted by exchanging one commodity type for another type or within the same commodity type, whereas a loan must necessarily only occur within the same commodity type without exception. And with Allah, the Exalted, lies success.

L23416 And similarly, what we have mentioned concerning the occurrence of riba in the six mentioned types within the context of sale and salam is a definitive consensus.

L23417 Regarding types beyond those mentioned, there is disagreement as to whether ribā occurs in them.

L23418 Usury (ribā) is among the greatest of major sins. Allah, the Exalted, said: “Those who consume usury will not rise except as one rises whom the Devil has driven to madness through his touch. That is because they say, ’Indeed,

[44] **Qur’an references (L23409):** Qur’an 2:275 (Al-Baqarah).
[45] **Qur’an references (L23410):** Qur’an 6:119 (Al-An’am).

وَقَالَ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥] .

وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

[مَسْأَلَة مَا يَجُوز فِيهِ الربا مِنْ الْبَيْع والسلم]

١٤٨٠ - مَسْأَلَةٌ: وَالرِّبَا لَا يَجُوزُ فِي الْبَيْعِ، وَالسَّلَمِ إلَّا فِي سِتَّةِ أَشْيَاءَ فَقَطْ: فِي التَّمْرِ، وَالْقَمْحِ، وَالشَّعِيرِ، وَالْمِلْحِ، وَالذَّهَبِ، وَالْفِضَّةِ - وَهُوَ فِي الْقَرْضِ فِي كُلِّ شَيْءٍ، فَلَا يَحِلُّ إقْرَاضُ شَيْءٍ لِيُرَدَّ إلَيْك أَقَلَّ وَلَا أَكْثَرَ، وَلَا مِنْ نَوْعٍ آخَرَ أَصْلًا، لَكِنْ مِثْلُ مَا أَقْرَضْت فِي نَوْعِهِ وَمِقْدَارِهِ عَلَى مَا ذَكَرْنَا فِي " كِتَابِ الْقَرْضِ " مِنْ دِيوَانِنَا هَذَا فَأَغْنَى عَنْ إعَادَتِهِ وَهَذَا إجْمَاعٌ مَقْطُوعٌ بِهِ.

وَالْفَرْقُ بَيْنَ الْبَيْعِ وَالسَّلَمِ، وَبَيْنَ الْقَرْضِ، هُوَ أَنَّ الْبَيْعَ وَالسَّلَمَ: يَكُونَانِ فِي نَوْعٍ بِنَوْعٍ آخَرَ، وَفِي نَوْعٍ بِنَوْعِهِ، وَلَا يَكُونُ الْقَرْضُ إلَّا فِي نَوْعٍ بِنَوْعِهِ وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَكَذَلِكَ الَّذِي ذَكَرْنَا مِنْ وُقُوعِ الرِّبَا فِي الْأَنْوَاعِ السِّتَّةِ الْمَذْكُورَةِ فِي الْبَيْعِ وَالسَّلَمِ، فَهُوَ إجْمَاعٌ مَقْطُوعٌ بِهِ.

وَمَا عَدَا الْأَنْوَاعَ الْمَذْكُورَةَ فَمُخْتَلَفٌ فِيهِ، أَيَقَعُ فِيهِ الرِّبَا أَمْ لَا؟

وَالرِّبَا مِنْ أَكْبَرِ الْكَبَائِرِ قَالَ تَعَالَى {الَّذِينَ يَأْكُلُونَ الرِّبَا لا يَقُومُونَ إِلا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥] .

trade is just like usury,' but Allah has permitted trade and forbidden usury." [Surah Al-Baqarah 2:275][46]

L23419 And He, the Exalted, said: "O you who have believed, fear Allah and abandon what remains of usury, if you are true believers" [Al-Baqarah: 278]. "But if you do not, then be informed of a declaration of war from Allah and His Messenger" [Al-Baqarah: 279].[47]

L23420 And through the chain of Muslim: I am Harun ibn Sa'id al-Ayli, I am Ibn Wahb. Sulayman ibn Bilal informed me from Thawr ibn Zayd from Abu al-Ghayth from Abu Hurayrah that the Messenger of Allah—peace and blessings of Allah be upon him—said: "Avoid the seven heinous sins." They asked: "O Messenger of Allah, what are they?" He replied: "Associating partners with Allah, practicing sorcery, killing a soul Allah has forbidden except by just cause, devouring the wealth of the orphan, consuming usury, fleeing the battlefield, and slandering chaste, innocent, believing women."[48][49]

L23421 As narrated by Muslim: 'Uthman ibn Abi Shaybah narrated from Jarir (Ibn 'Abdul Hamid), from Al-Mughirah ibn Miqsam, from Ibrahim (Al-Nakha'i), from 'Alqamah ibn Qays, from Ibn Mas'ud, who said: "The Messenger of Allah—may the peace and blessings of Allah be upon him—cursed the consumer of usury and the one who authorizes it."'[50]

L23422–23423 Abu Muhammad said: Since Allah the Exalted has permitted trade and forbidden usury, it is obligatory to seek knowledge of it so that it may be avoided. He the Exalted said: "He has detailed for you what He has forbidden to you, except that to which you are driven by necessity" [Surah al-An'ām 6:119].[51]

وَقَالَ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِنْ كُنْتُمْ مُؤْمِنِينَ} [البقرة: ٢٧٨] {فَإِنْ لَمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِنَ اللَّهِ وَرَسُولِهِ} [البقرة: ٢٧٩] .

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا هَارُونُ بْنُ سَعِيدٍ الْأَيْلِيُّ أَنَا ابْنُ وَهْبٍ أَخْبَرَنِي سُلَيْمَانُ بْنُ بِلَالٍ عَنْ ثَوْرِ بْنِ زَيْدٍ عَنْ أَبِي الْغَيْثِ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «اجْتَنِبُوا السَّبْعَ الْمُوبِقَاتِ قِيلَ: يَا رَسُولَ اللَّهِ، وَمَا هُنَّ؟ قَالَ: الشِّرْكُ بِاللَّهِ، وَالسِّحْرُ، وَقَتْلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ، وَأَكْلُ مَالِ الْيَتِيمِ، وَأَكْلُ الرِّبَا، وَالتَّوَلِّي يَوْمَ الزَّحْفِ، وَقَذْفُ الْمُحْصَنَاتِ الْغَافِلَاتِ الْمُؤْمِنَاتِ» .

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ أَنَا جَرِيرٌ - هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ أَنَا إبْرَاهِيمُ - هُوَ النَّخَعِيُّ - عَنْ عَلْقَمَةَ بْنِ قَيْسٍ عَنْ ابْنِ مَسْعُودٍ قَالَ «لَعَنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - آكِلَ الرِّبَا وَمُوَكِّلَهُ» .

قَالَ أَبُو مُحَمَّدٍ: فَإِذَا أَحَلَّ اللَّهُ تَعَالَى الْبَيْعَ وَحَرَّمَ الرِّبَا فَوَاجِبٌ طَلَبُ مَعْرِفَتِهِ لِيُجْتَنَبَ، وَقَالَ تَعَالَى {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] .

[46] **Qur'an references (L23418):** Qur'an 2:275 (Al-Baqarah).
[47] **Qur'an references (L23419):** Qur'an 2:278 (Al-Baqarah); Qur'an 2:279 (Al-Baqarah).
[48] **Hadith references (L23420):** Sahih Muslim 89.
[49] **Qur'an references (L23420):** Qur'an 6:151 (Al-An'am); Qur'an 17:33 (Al-Isra); Qur'an 25:68 (Al-Furqan).
[50] **Hadith references (L23421):** Sunan Abi Dawud 3333; Sahih Muslim 1598; Sunan an-Nasai 5105.
[51] **Qur'an references (L23423):** Qur'an 6:119 (Al-An'am).

فَصَحَّ أَنَّ مَا فَصَّلَ لَنَا بَيَانَهُ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - مِنْ الرِّبَا، أَوْ مِنْ الْحَرَامِ، فَهُوَ رِبًا وَحَرَامٌ، وَمَا لَمْ يُفَصِّلْ لَنَا تَحْرِيمَهُ فَهُوَ حَلَالٌ، لِأَنَّهُ لَوْ جَازَ أَنْ يَكُونَ فِي الشَّرِيعَةِ شَيْءٌ حَرَّمَهُ اللَّهُ تَعَالَى ثُمَّ لَمْ يُفَصِّلْهُ لَنَا، وَلَا بَيَّنَهُ رَسُولُهُ - عَلَيْهِ السَّلَامُ - لَكَانَ تَعَالَى كَاذِبًا فِي قَوْلِهِ تَعَالَى {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] وَهَذَا كُفْرٌ صَرِيحٌ مِمَّنْ قَالَ بِهِ، وَلَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَاصِيًا لِرَبِّهِ تَعَالَى إذْ أَمَرَهُ بِالْبَيَانِ فَلَمْ يُبَيِّنْ فَهَذَا كُفْرٌ مُتَيَقَّنٌ مِمَّنْ أَجَازَهُ.

L23424 Thus, it is established that whatever He has detailed for us through the exposition of His Messenger—peace and blessings of Allah be upon him—regarding usury or prohibited matters is indeed usury and forbidden. Whatever He has not detailed for us concerning its prohibition is permissible, for if it were permissible that there existed in the Sharia something forbidden by Allah the Exalted without Him detailing it to us, nor His Messenger—peace and blessings of Allah be upon him—clarifying it, then He would be false in His statement, the Exalted: "And He has detailed for you what He has forbidden to you" (6:119). This constitutes explicit disbelief from anyone who asserts it, and the Messenger of Allah—peace and blessings of Allah be upon him—would be disobedient to his Lord the Exalted when He commanded him to clarify, but he failed to do so. This is undeniable disbelief from anyone who permits it.[52]

وَمِمَّنْ قَالَ: لَا رِبَا إلَّا فِي الْأَصْنَافِ الْمَذْكُورَةِ: طَاوُسٌ، وَقَتَادَةُ، وَعُثْمَانُ الْبَتِّيُّ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا.

L23425 Among those who held that riba applies only to the specified categories are Tāwus, Qatādah, ʿUthmān al-Battī, Abū Sulaymān, and all the adherents of our school.

وَاخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَتْ طَائِفَةٌ: إنَّ هَذِهِ الْأَصْنَافَ السِّتَّةَ إنَّمَا ذُكِرَتْ لِتَكُونَ دَلَالَةً عَلَى مَا فِيهِ الرِّبَا مِمَّا سِوَاهَا مِمَّا يُشْبِهُهَا فِي الْعِلَّةِ الَّتِي حَيْثُمَا وُجِدَتْ كَانَ مَا وُجِدَتْ فِيهِ رِبًا.

L23426 People have differed regarding this. A group holds that these six categories were mentioned solely to indicate what constitutes usury from analogous cases sharing the same effective cause, such that wherever the cause exists, that in which it is found is usury.

ثُمَّ اخْتَلَفُوا فِي تِلْكَ الْعِلَّةِ، وَكُلُّ طَائِفَةٍ مِنْهَا تُبْطِلُ عِلَّةَ الْآخَرِينَ أَوْ تَنْفِيهَا فَقَالَتْ طَائِفَةٌ: هِيَ الطَّعْمُ، وَاللَّوْنُ -: رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ قَالَ: سُئِلَ ابْنُ شِهَابٍ عَنْ الْحِمَّصِ بِالْعَدَسِ اثْنَانِ بِوَاحِدٍ يَدًا بِيَدٍ؟ فَقَالَ ابْنُ شِهَابٍ: كُلُّ شَيْءٍ خَالَفَ صَاحِبَهُ بِاللَّوْنِ، وَالطَّعْمِ، فَلَا أَرَاهُ إلَّا شَبَهَ الطَّعَامِ - وَقَالَ ابْنُ وَهْبٍ: وَبَلَغَنِي عَنْ ابْنِ مَسْعُودٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَرَبِيعَةَ، مِثْلُهُ.

L23427 Then they differed regarding that legal cause, with each faction among them invalidating or negating the cause upheld by the others. A group said: It is taste and color—as narrated to us through the chain of Ibn Wahb from Yunus ibn Yazīd, who said: Ibn Shihāb was asked about exchanging chickpeas for lentils, two units for one unit, hand to hand. Ibn Shihāb replied: "Anything that differs from its counterpart in color and taste—I consider it part of the same category of food." Ibn Wahb added: "I have received reports from Ibn Masʿūd, Yaḥyā ibn Saʿīd al-Anṣārī, and Rabīʿah stating the same."

[52] **Qur'an references (L23424):** Qur'an 6:119 (Al-An'am).

قَالَ أَبُو مُحَمَّدٍ: فَنَظَرْنَا فِي هَذَا فَوَجَدْنَاهُ قَوْلًا بِلَا دَلِيلٍ فَسَقَطَ - وَقَدْ بَيَّنَ ابْنُ شِهَابٍ أَنَّهُ رَأْيٌ مِنْهُ وَالرَّأْيُ إذَا لَمْ يُسْنَدْ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ خَطَأٌ بِلَا شَكٍّ.

L23428 Abu Muhammad said: We examined this and found it to be a claim devoid of textual proof, thus it is invalid. Ibn Shihab indeed clarified that it was his personal opinion, and any opinion not grounded in the Prophet—peace be upon him—is undeniably erroneous.

وَقَالَتْ طَائِفَةٌ: هِيَ وُجُوبُ الزَّكَاةِ، كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِالتُّفَّاحَتَيْنِ بِالتُّفَّاحَةِ، وَالْخَوْخُ مِثْلُ ذَلِكَ.

L23429 A group held that the ruling entails the obligation of Zakāh, as narrated via Ibn Wahb from ʿAbd al-Jabbār ibn ʿUmar from Rabīʿah ibn Abī ʿAbd al-Raḥmān: he saw no issue in exchanging two apples for one apple, and peaches are treated the same way.

وَكُلُّ مَا لَمْ تَجُزْ فِيهِ الزَّكَاةُ، فَنَظَرْنَا فِي هَذَا فَوَجَدْنَاهُ أَيْضًا قَوْلًا بِلَا دَلِيلٍ، وَوَجَدْنَا الْمِلْحَ لَا زَكَاةَ فِيهِ، وَالرِّبَا يَقَعُ فِيهِ بِالنَّصِّ، فَبَطَلَ.

L23430–23431 As for all items on which zakah is impermissible, we examined this matter and found it to be an assertion lacking textual proof. We further established that salt bears no zakah obligation, yet riba applies to it by explicit textual ruling, thereby nullifying that exemption.

قَالَ عَلِيٌّ: وَمَا يَعْجَزُ مَنْ قَلَّدَ رَبِيعَةَ فِي هَذَا عَمَّا قَدَرَ عَلَيْهِ مَالِكٌ، وَالشَّافِعِيُّ، بِزِيَادَتِهِمْ فِي عِلَّتِهِمْ، كَمَا قَالَ الشَّافِعِيُّ: عِلَّةُ الرِّبَا الطَّعْمُ، وَالتَّثْمِينُ.

L23432 Ali said: How could someone who imitates Rabīʿah in this matter fail to attain what Mālik and al-Shāfiʿī achieved, given their extension of the legal cause—just as al-Shāfiʿī stated: “The legal cause of usury is edibility and measurability by weight”?

وَقَوْلُ مَالِكٍ: عِلَّةُ الرِّبَا الِادِّخَارُ فِيمَا يُؤْكَلُ، وَالتَّثْمِينُ.

L23433 The statement of Mālik: The effective cause of ribā is hoarding foodstuffs and valuation.

فَهَلْ هَذَا إلَّا كَقَوْلِ مَنْ قَلَّدَ رَبِيعَةَ: عِلَّةُ الرِّبَا بِمَا فِيهِ الزَّكَاةُ وَالْمِلْحِيَّةُ؟ وَهَلْ هِيَ إلَّا دَعْوَى كَدَعْوَى كِلَاهُمَا بِلَا بُرْهَانٍ؟

L23434 Is this not akin to the statement of one who imitates Rabīʿah: “The rationale for usury lies in its containing zakāt and milḥiyyah?” Is this not merely a claim like the claims of both—devoid of any proof?

وَقَالَتْ طَائِفَةٌ بِغَيْرِ ذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا عَبْدُ اللَّهِ بْنُ كَثِيرٍ عَنْ شُعْبَةَ سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ عَمَّنْ اشْتَرَى خَمْسَةَ عَشَرَ جَرِيبًا مِنْ أَرْضٍ بِعَشَرَةِ أَجْرِبَةٍ؟ فَقَالَ: لَا بَأْسَ بِهِ - وَكَرِهَهُ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ وَلَا نَدْرِي مَا عِلَّتُهُ فِي ذَلِكَ، وَلَعَلَّهَا الْجِنْسُ، فَلَمْ يَجُزْ التَّفَاضُلُ فِي جِنْسٍ وَاحِدٍ، كَائِنًا مَا كَانَ وَاَللَّهُ أَعْلَمُ، إلَّا أَنَّهَا دَعْوَى لَيْسَتْ غَيْرُهَا أَصَحَّ مِنْهَا، وَلَا هِيَ بِأَضْعَفَ مِنْ غَيْرِهَا.

L23435 A group held a differing opinion—as transmitted to us through ʿAbd al-Razzāq’s chain: I am ʿAbd Allāh ibn Kathīr, reporting from Shuʿbah, who said: “I asked al-Ḥakam ibn ʿUtaybah about one who purchases fifteen *jarībs* of land for ten *jarībs*.” He replied, “There is no harm in it.” Yet Ḥammād ibn Abī Sulaymān disapproved of it, though we do not know his rationale. It may have been due to the category, making inequality impermissible within a single category, whatever it may be—and Allāh knows best—except that this assertion is neither more sound nor weaker than others.

وَقَدْ رُوِيَ مِثْلُهُ عَنْ سَعِيدِ بْنِ جُبَيْرٍ، وَهُوَ أَنَّهُ جَعَلَ عِلَّةَ الرِّبَا تَقَارُبَ الْمَنْفَعَةِ فِي الْجِنْسِ الْوَاحِدِ، أَوْ الْجِنْسَيْنِ.

L23436 A similar narration is reported from Sa'īd ibn Jubayr, stating that he considered the effective cause of riba to be the similarity in benefit within the same type or two types.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا الرَّبِيعُ بْنُ صُبَيْحٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: إذَا اخْتَلَفَ النَّوْعَانِ فَلَا بَأْسَ إذَا كَانَ يَدًا بِيَدٍ، وَاحِدًا بِاثْنَيْنِ.

L23437 It has been narrated to us through the chain of Al-Ḥajjāj ibn al-Minhāl that I, Ar-Rabīʿ ibn Ṣubayḥ, narrate from Muḥammad ibn Sīrīn, who said: "If the two categories differ, there is no harm in a hand-to-hand exchange of one for two."

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ أَعَمُّ الْعِلَلِ فَيَلْزَمُ مَنْ قَالَ مِنْهُمْ: بِالْعِلَّةِ الْعَامَّةِ أَنْ يَقُولَ بِهَا - وَقَالَ الْمَالِكِيُّونَ: عِلَّةُ الرِّبَا هِيَ الاقْتِيَاتُ، وَالادِّخَارُ فِي الْجِنْسِ، فَمَا كَانَ يُدَّخَرُ مِمَّا يَكُونُ قُوتًا فِي الْأَكْلِ، فَالرِّبَا فِيهِ نَقْدًا وَنَسِيئَةً، وَمَا كَانَ لَا يُقْتَاتُ وَلَا يُدَّخَرُ، فَلَا يَدْخُلُ الرِّبَا فِيهِ يَدًا بِيَدٍ - وَإِنْ كَانَ جِنْسًا وَاحِدًا - لَكِنْ يَدْخُلُ فِيهِ الرِّبَا فِي النَّسِيئَةِ إذَا كَانَ جِنْسًا وَاحِدًا، وَهَذِهِ هِيَ عِلَّةُ الْمُتَقَدِّمِينَ مِنْهُمْ، ثُمَّ رَغِبَ عَنْهَا الْمُتَأَخِّرُونَ مِنْهُمْ؛ لِأَنَّهُمْ وَجَدُوهَا تُفْسِدُ عَلَيْهِمْ، لِأَنَّ الثُّومَ، أَوْ الْبَصَلَ، وَالْكُرَّاثَ، وَالْكَرَوْيَا، وَالْكُزْبَرَةَ، وَالْخَلَّ، وَالْفُلْفُلَ - نَعَمْ، وَالْمِلْحُ الَّذِي جَاءَ فِيهِ النَّصُّ لَيْسَ مِنْهُ شَيْءٌ يَكُونُ قُوتًا أَصْلًا، بَلْ بَعْضُهُ يَقْتُلُ إذَا أُكِلَ مِنْهُ نِصْفُ وَزْنِ مَا يُؤْكَلُ مِمَّا يَتَقَوَّتُ بِهِ، كَالْمِلْحِ، وَالْفُلْفُلِ، فَلَوْ أَنَّ إنْسَانًا أَكَلَ رِطْلَ فُلْفُلٍ فِي جِلْسَةٍ لَقَتَلَهُ بِلَا شَكٍّ، وَكَذَلِكَ الْمِلْحُ، وَالْخَلُّ الْحَاذِقُ، وَكَذَلِكَ الثُّومُ - وَوَجَدُوهَا تُفْسِدُ عَلَيْهِمْ أَيْضًا فِي اللَّبَنِ، وَالْبَيْضِ، فَإِنَّهُمَا لَا يُمْكِنُ ادِّخَارُهُمَا، وَالرِّبَا عِنْدَهُمْ يَدْخُلُ فِيهِمَا، وَوَجَدُوهَا أَيْضًا تُفْسِدُ عَلَيْهِمْ فِي الْكَمُّونِ، وَالشُّونِيزِ، وَالْحُلْبَةِ الرَّطْبَةِ، وَالْكُزْبَرَةِ، وَالْكَرَوْيَا، لَيْسَ شَيْءٌ مِنْ ذَلِكَ قُوتًا، وَالرِّبَا عِنْدَهُمْ فِي كُلِّ ذَلِكَ، فَلَمَّا رَأَوْا هَذِهِ الْعِلَّةَ كَذَلِكَ، وَهِيَ عِلَّةُ مَنْ قَلَّدُوهُ دِينَهُمْ اطَّرَحُوهَا، وَلَمْ تَكُنْ عَلَيْهِمْ مُؤْنَةٌ فِي اسْتِخْرَاجِ غَيْرِهَا بِآرَائِهِمْ لِتَسْتَقِيمَ لَهُمْ آرَاؤُهُمْ فِي الْفُتْيَا عَلَيْهَا؟ فَقَالَ بَعْضُهُمْ: إنَّمَا

L23438–23440 Abū Muḥammad said: This is the broadest legal rationale, thus whoever among them asserts a general legal rationale is obliged to apply it. The Mālikīs stated: The rationale for ribā is being a staple food and stored within the same genus. Therefore, whatever is stored as a staple food for consumption is subject to ribā in both immediate and deferred exchange. What is neither a staple nor stored does not entail ribā in hand-to-hand exchange—even if it is the same genus—but ribā applies in deferred exchange if the items are of the same genus. This was the rationale upheld by their early scholars, which their later scholars abandoned, for they found it invalidating their framework. Items such as garlic, onion, leek, caraway, coriander, vinegar, pepper (indeed, even salt, which is explicitly mentioned in textual rulings)—none of these are staple foods whatsoever. Some of these items, like salt and pepper, would be lethal if consumed in half the weight of what is consumed as staple food. If one were to eat a riṭl of pepper in a single sitting, it would undoubtedly kill them without doubt, as would be the case with salt, potent vinegar, and likewise. Garlic—they found that it caused spoilage in their milk and eggs, as these could not be stored, and riba according to their jurisprudence applied to both. They also observed spoilage in cumin, black seed, fresh fenugreek, coriander, and caraway—none being staple foods—with riba rulings encompassing all such items. When they recognized this effective cause, which was the legal rationale of those they emulated in matters of faith, they rejected it, facing no difficulty in deriving alternative rulings through their reasoning so that their legal opinions in issuing rulings on it would be consistent. Some argued: The Messenger of Allah—peace and blessings be upon him—specified the most superior sustenance (wheat) and the most inferior

sustenance (salt) to indicate that rulings for intermediate foodstuffs follow the same principle.

ذَكَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْلَى الْقُوتِ، وَهُوَ الْبُرُّ، وَأَدْوَنَ الْقُوتِ، وَهُوَ الْمِلْحُ، لِيَدُلَّ عَلَى أَنَّ حُكْمَ مَا بَيْنَهُمَا كَحُكْمِهِمَا.

L23441 Abū Muḥammad said: This is a sheer lie upon the Prophet—peace and blessings of Allah be upon him—fabricated without effort. How could a Muslim's heart be at ease with uttering such claims upon Allah, the Exalted, and His Messenger—peace and blessings of Allah be upon him?

قَالَ أَبُو مُحَمَّدٍ: هَذَا كَذِبٌ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُجَرَّدٌ بِلَا كُلْفَةٍ، وَمَا نَدْرِي كَيْفَ يَنْشَرِحُ صَدْرُ مُسْلِمٍ لِإِطْلَاقِ مِثْلِ هَذَا عَلَى اللَّهِ تَعَالَى، وَعَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟

L23442 If this person had made a similar declaration regarding the keeper of his donkey without informing him personally, he would have been deemed a liar and discredited—how much more severe then is it concerning Allah Almighty and His Prophet, peace be upon him? O Allah, to You belongs all praise for Your tremendous blessing in deterring us from such things and their like.

وَلَوْ أَطْلَقَ هَذَا الْمُطْلِقُ مِثْلَهُ عَلَى سَائِسِ حِمَارِهِ بِغَيْرِ أَنْ يُخْبِرَهُ بِهِ عَنْ نَفْسِهِ لَكَانَ كَاذِبًا مُجَرَّحًا بِذَلِكَ، فَكَيْفَ عَلَى اللَّهِ تَعَالَى وَعَلَى نَبِيِّهِ - عَلَيْهِ السَّلَامُ -؟ اللَّهُمَّ لَك الْحَمْدُ عَلَى عَظِيمِ نِعْمَتِك فِي تَنْفِيرِنَا عَنْ مِثْلِ هَذَا وَشَبَهِهِ.

L23443 Then the rest of them were not satisfied with this legal cause and said: "Salt is not inferior to staple foods; rather, the need for it is more urgent than for garlic, fresh fenugreek, and black cumin." Thus, they sought another cause, akin to one who arbitrarily controls the threshing floor of his dates, taking what is deemed preferable and discarding what is not.

ثُمَّ لَمْ يَرْضَ سَائِرُهُمْ هَذِهِ الْعِلَّةَ وَقَالُوا: لَيْسَ الْمِلْحُ دُونَ الْأَقْوَاتِ، بَلْ الْحَاجَةُ إلَيْهِ أَمَسُّ مِنْهَا إلَى الثُّومِ، وَالْحُلْبَةِ الرَّطْبَةِ، وَالشُّونِيزِ، فَارْتَادُوا غَيْرَهَا، كَمَنْ يَتَحَكَّمُ فِي بَيْدَرِ تَمْرِهِ، وَيَأْخُذُ مَا اُسْتُحْسِنَ وَيَتْرُكُ مَا لَمْ يُسْتَحْسَنْ.

L23444 They said: The reason in usury varies. Among them are being staple foods and storability, as their earlier scholars stated by analogy to wheat and barley. Among them are sweet foods and storability, such as raisins, figs, and honey, by analogy to dates. Among them are being used as condiments and storability by analogy to salt. This reasoning was contrived for them by Muḥammad ibn ʿAbd Allāh ibn Ṣāliḥ al-Abharī. This reasoning invalidates their position, for turnips, eggplants, squash, cabbage, purslane, amaranth, chard, carrots, cauliflower, and horseradish are predominantly used by people as condiments.

فَقَالُوا: الْعِلَّةُ فِي الرِّبَا مُخْتَلِفَةٌ، فَمِنْهَا الِاقْتِيَاتُ، وَالِادِّخَارُ، كَمَا قَالَ أَسْلَافُهُمْ قِيَاسًا عَلَى الْبُرِّ وَالشَّعِيرِ - وَمِنْهَا الْحَلَاوَةُ، وَالِادِّخَارُ، كَالزَّبِيبِ وَالتِّينِ، وَالْعَسَلِ قِيَاسًا عَلَى التَّمْرِ - وَمِنْهَا التَّأَدُّمُ، وَالِادِّخَارُ قِيَاسًا عَلَى الْمِلْحِ، وَهَذَا تَعْلِيلٌ اسْتَصْنَعَهُ لَهُمْ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ صَالِحٍ الْأَبْهَرِيُّ، وَهَذَا تَعْلِيلٌ يُفْسِدُ عَلَيْهِمْ؛ لِأَنَّ السَّلْجَمَ وَالْبَاذِنْجَانَ، وَالْقَرْعَ، وَالْكُرُنْبَ، وَالرِّجْلَةَ، وَالْقِطْفَ، وَالسَّلْقَ، وَالْجَزَرَ، وَالْقُنَّبِيطَ، والبربز إدَامُ النَّاسِ فِي الْأَغْلَبِ.

L23445–23447 Much of that is stored and Riba does not occur in it according to them: such as turnips, carrots, and eggplants. Rather, all such items permit exchanging two units for one of the same kind in immediate hand-to-hand exchange. Some scholars discarded this legal cause as unsatisfactory for the reasons we

وَكَثِيرٌ مِنْ ذَلِكَ يُدَّخَرُ وَلَا يَقَعُ الرِّبَا فِيهِ عِنْدَهُمْ: كَاللُّفْتِ، وَالْجَزَرِ، وَالْبَاذِنْجَانِ، بَلْ كُلُّ ذَلِكَ يَجُوزُ مِنْهُ اثْنَانِ بِوَاحِدٍ يَدًا بِيَدٍ مِنْ جِنْسٍ وَاحِدٍ، فَاطَّرَحَ بَعْضُهُمْ هَذِهِ الْعِلَّةَ

mentioned. One of them then expanded upon it by stating: “This category includes sweetness and storing [of items] from that which is consumed as delicacies and serves as viable sustenance.” Others disapproved of this legal cause and said: “It holds no validity, for pepper and garlic...” As for caraway and cumin, none of them is consumed for enjoyment, nor is it suitable for sustenance, nor used as a condiment, nor is it sweet.

وَلَمْ تُعْجِبْهُ لِمَا ذَكَرْنَا فَزَادَ فِيهَا بِأَنْ قَالَ: وَمِنْهَا الْحَلَاوَةُ، وَالِادِّخَارُ مِمَّا يُتَفَكَّهُ بِهِ وَيَصْلُحُ لِلْقُوتِ - فَلَمْ يَرْضَ غَيْرُهُ مِنْهُم هَذِهِ الْعِلَّةَ وَقَالَ: لَيْسَتْ بِشَيْءٍ؛ لِأَنَّ الْفُلْفُلَ، وَالثُّومَ، وَالْكَرَوْيَا، وَالْكَمُّونَ، لَيْسَ شَيْءٌ مِنْهَا يُتَفَكَّهُ بِهِ وَلَا يَصْلُحُ لِلْقُوتِ، وَلَا يُتَأَدَّمُ بِهِ، وَلَا هُوَ حُلْوٌ.

L23448 Additionally, jujubes, dried plums, dried pears, and podded legumes are all consumed for enjoyment and are suitable for sustenance. According to their view, none of these are subject to *ribā*. This necessitated employing another legal rationale, so he stated: “The determining factors are being a staple food, being stored, and what enhances the suitability of nourishing food.” To validate his conjectured inclusion of cumin, caraway, onions, garlic, leeks, chili peppers, and vinegar among items subject to *ribā* through analogy with salt, he argued that food is made suitable by all these substances.

وَأَيْضًا: فَإِنَّ الْعُنَّابَ وَالْإِجَّاصَ الْمُزَبَّبَ، وَالْكُمَّثْرَى الْمُزَبَّبَ والمخيطاء كُلُّهَا يُتَفَكَّهُ بِهِ وَيَصْلُحُ لِلْقُوتِ، وَلَا يَدْخُلُ الرِّبَا فِي شَيْءٍ مِنْهُ عِنْدَهُمْ - فَاحْتَاجَ إِلَى اسْتِعْمَالِ عِلَّةٍ أُخْرَى، فَقَالَ: الْعِلَّةُ هِيَ الِاقْتِيَاتُ، وَالِادِّخَارُ، وَمَا يَصْلُحُ بِهِ الطَّعَامُ الْمُتَقَوَّتُ بِهِ لِيَصِحَّ لَهُ فِيمَا ظَنَّ إِدْخَالُ: الْكَمُّونِ، وَالْكَرَوْيَا، وَالْبَصَلِ، وَالثُّومِ، وَالْكُرَّاثِ، وَالْفُلْفُلِ، وَالْخَلِّ، فِيمَا يَقَعُ فِيهِ الرِّبَا قِيَاسًا عَلَى الْمِلْحِ؛ لِأَنَّ الطَّعَامَ يَصْلُحُ بِكُلِّ ذَلِكَ.

L23449 Abū Muḥammad said: These are the most corrupt reasons they mentioned—though all of them are invalid, with clear proof. The evidence for this is that improving food through the spices, vegetables, and vinegar we described bears no resemblance whatsoever to improving it with salt. This is because cooked food, if left entirely uneaten, cannot be consumed by anyone except one who is near death from hunger or fears it. As for enhancing food with the mentioned spices and vegetables, the food requires none of these except due to extravagance and indulgence.

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ أَفْسَدُ الْعِلَلِ الَّتِي ذَكَرُوا، وَإِنْ كَانَتْ كُلُّهَا فَاسِدَةً، وَاضِحَةَ الْبُرْهَانِ، بُرْهَانُ ذَلِكَ -: أَنَّ إِصْلَاحَ الطَّعَامِ بِمَا ذَكَرْنَا مِنْ التَّوَابِلِ، وَالْخَضْرَاوَاتِ، وَالْخَلِّ، لَا يُشْبِهُ إِصْلَاحُهُ بِالْمِلْحِ أَصْلًا؛ لِأَنَّ الطَّعَامَ الْمَطْبُوخَ إِنْ لَمْ يُؤْكَلْ أَصْلًا، وَلَا يَقْدِرُ عَلَيْهِ أَحَدٌ، إِلَّا مَنْ قَارَبَ الْمَوْتَ مِنْ الْجُوعِ أَوْ خَافَهُ، وَإِمَّا إِصْلَاحُهُ بِالتَّابِلِ، وَالْخَضْرَاوَاتِ الْمَذْكُورَةِ فَمَا بِالطَّعَامِ إِلَى شَيْءٍ مِنْهُ حَاجَةٌ إِلَّا عَنْ بَذَخٍ وَأَشِرٍ.

L23450 Moreover, every being with sound sensory perception in the world inherently knows through immediate perception that improving food with caraway, cumin, pepper, coriander, and nigella seeds is equivalent to improving it with Chinese cinnamon, galangal, Ceylon cinnamon, spikenard, and saffron. There is no distinction—indeed, improving it with these [spices] renders it more flavorful, fragrant, and suitable than with those. Yet, in their view, riba does not apply to these [transactions]. Undoubtedly, the necessity (ḍarūrah) of improving food with water is more pressing and critical, yet

وَأَيْضًا: فَإِنَّ كُلَّ ذِي حِسٍّ سَلِيمٍ فِي الْعَالَمِ يَدْرِي بِضَرُورَةِ الْحِسِّ أَنَّ إِصْلَاحَ الطَّعَامِ بِالْكَرَوْيَا، وَالْكَمُّونِ، وَالْفُلْفُلِ، وَالْكُزْبَرِ، وَالشُّونِيزِ، كَإِصْلَاحِهِ بِالدَّارَصِينِيِّ، وَالْخُولَنْجَانِ، وَالْقِرْفَةِ، وَالسُّنْبُلِ، وَالزَّعْفَرَانِ، وَلَا فَرْقَ، بَلْ إِصْلَاحُهُ بِهَذِهِ أَطْيَبُ لَهُ وَأَعْبَقُ، وَأَصْلَحُ مِنْهُ بِتِلْكَ، وَالرِّبَا عِنْدَهُمْ لَا يَدْخُلُ فِي هَذِهِ، وَبِلَا شَكٍّ أَنَّ الضَّرُورَةَ فِي إِصْلَاحِ الطَّعَامِ

riba, according to them, is not incurred in water exchanged for water. We know of no legal cause they uphold beyond what we have elaborated.

بِالْمَاءِ أَشَدُّ وَأَمَسُّ، وَالرِّبَا عِنْدَهُمْ لَا يَدْخُلُ فِي الْمَاءِ بِالْمَاءِ - وَمَا نَعْلَمُ لَهُمْ عِلَّةً غَيْرَ مَا ذَكَرْنَا.

L23451 All these reasons were mentioned—some by ʿAbdullāh ibn Abī Zayd al-Qayrawānī, and the rest by Ibn al-Qaṣṣār and by ʿAbd al-Wahhāb ibn ʿAlī ibn Naṣr—in their respective works, both in scattered and compiled forms.

وَهَذِهِ الْعِلَلُ كُلُّهَا ذَكَرَ بَعْضَهَا عَبْدُ اللَّهِ بْنُ أَبِي زَيْدٍ الْقَيْرَوَانِيُّ، وَذَكَرَ سَائِرَهَا ابْنُ الْقَصَّارِ، وَعَبْدُ الْوَهَّابِ بْنُ عَلِيِّ بْنِ نَصْرٍ فِي كُتُبِهِمْ مُفَرَّقَةً وَمَجْمُوعَةً.

L23452 Abū Muḥammad said: All of these are invalid due to the negligence we mentioned and because they are fabricated and in use. It is said to them: What difference exists between your effective cause here and that of one who argues, “Rather, the effective cause of ribā (usury) is that which has an ear of grain by analogy to wheat and barley; that which has pits by analogy to dates; that which has a salty taste by analogy to salt; and that which is metallic by analogy to gold and silver”?

قَالَ أَبُو مُحَمَّد: وَكُلُّهَا فَاسِدٌ بِمَا ذَكَرْنَا مِنْ التَّخَاذُلِ، وَبِأَنَّهَا مَوْضُوعَةٌ مُسْتَعْمَلَةٌ - وَيُقَالُ لَهُمْ: مَا الْفَرْقُ بَيْنَ عِلَّتِكُمْ هَذِهِ وَبَيْنَ مَنْ قَالَ: بَلْ عِلَّةُ الرِّبَا مَا كَانَ ذَا سُنْبُلٍ قِيَاسًا عَلَى الْبُرِّ، وَالشَّعِيرِ، وَمَا كَانَ ذَا نَوًى قِيَاسًا عَلَى التَّمْرِ، وَمَا كَانَ طَعْمُهُ مِلْحِيًّا قِيَاسًا عَلَى الْمِلْحِ، وَمَا كَانَ مَعْدِنِيًّا قِيَاسًا عَلَى الذَّهَبِ، وَالْفِضَّةِ.

L23453–23454 If they say, “No one has ever said this,” we respond, “Nor did anyone before you ever endorse your legal justifications.”

فَإِنْ قَالُوا: لَمْ يَقُلْ بِهَذَا أَحَدٌ؟ قُلْنَا: وَلَا قَالَ بِعِلَلِكُمْ أَحَدٌ قَبْلَكُمْ.

L23455 If someone were to say: “This stance would also parallel your own. Moreover, how did you come to assign an effective cause to wheat, barley, dates, and salt, yet refrain from doing so for gold and silver—when all these are equally addressed by explicit texts? What justifies this arbitrary judgment, O these people? Is this not akin to mere trifling? This is no place to claim consensus, for the Ḥanafīs assigned weight as the effective cause for gold and silver, and measurement by volume for the four categories.”

فَإِنْ قَالَ قَائِلٌ: هَذِهِ أَيْضًا يَكُونُ مِثْلَكُمْ، وَأَيْضًا: فَمِنْ أَيْنَ خَرَجَ لَكُمْ أَنْ تُعَلِّلُوا الْبُرَّ، وَالشَّعِيرَ، وَالتَّمْرَ، وَالْمِلْحَ؟ وَلَا تُعَلِّلُونَ الذَّهَبَ، وَالْفِضَّةَ، وَكُلُّهَا جَاءَ النَّصُّ بِهِ سَوَاءً، فَمِنْ أَيْنَ هَذَا التَّحَكُّمُ يَا هَؤُلَاءِ؟ وَهَلْ هَذَا إلَّا شَبَهُ اللَّعِبِ؟ وَلَيْسَ هَذَا مَكَانَ دَعْوَى إجْمَاعٍ، فَقَدْ عَلَّلَ الْحَنَفِيُّونَ الذَّهَبَ وَالْفِضَّةَ بِالْوَزْنِ، وَعَلَّلُوا الْأَصْنَافَ الْأَرْبَعَةَ بِالْكَيْلِ.

L23456 Ali said: Others among them did not provide a rationale for any of that, and it is necessary to either provide a rationale for all of it and apply *qiyas* thereon, or to abandon providing a rationale for all of it and abandon *qiyas* thereon, limiting oneself solely to what the Text has stated. This is something from which they have no way out whatsoever.

قَالَ عَلِيٌّ: وَغَيْرُهُمْ لَمْ يُعَلِّلْ شَيْئًا مِنْ ذَلِكَ، وَلَا بُدَّ مِنْ تَعْلِيلِ الْجَمِيعِ وَالْقِيَاسِ عَلَيْهِ، أَوْ تَرْكِ تَعْلِيلِ الْجَمِيعِ وَتَرْكِ الْقِيَاسِ عَلَيْهِ، وَالِاقْتِصَارِ عَلَى مَا جَاءَ بِهِ النَّصُّ فَقَطْ، وَهَذَا مَا لَا مُخَلِّصَ لَهُمْ مِنْهُ أَصْلًا.

L23457 We have strived hard to find for their proponents any argument they could present to counteract some of these flaws—even if it were measured as mere clamor—but we found nothing to that effect in any of their writings.

وَقَدْ أَجْهَدْنَا أَنْفُسَنَا فِي أَنْ نَجِدَ لِنُظَّارِهِمْ شَيْئًا يُقَوُّونَ بِهِ شَيْئًا مِنْ هَذِهِ الْعِلَلِ يُمْكِنُ إيرَادُهُ - وَإِنْ كَالَ شَغَبًا - فَمَا قَدَرْنَا عَلَيْهِ فِي شَيْءٍ مِنْ كُتُبِهِمْ.

وَجَهَدْنَا أَنْ نَجِدَ لَهُمْ شَيْئًا نُورِدُهُ - وَإِنْ لَمْ يُورِدُوهُ - كَمَا نَفْعَلُ بِهِمْ وَبِكُلِّ مَنْ خَالَفَنَا، فَإِنَّهُمْ وَإِنْ كَانُوا لَمْ يَنْتَبِهُوا لَهُ فَلَا يَبْعُدُ أَنْ يَنْتَبِهَ لَهُ مُنْتَبِهٌ فَيَشْغَبَ بِهِ، فَمَا قَدَرْنَا عَلَى ذَلِكَ.

L23458 We strove to find something to cite against them—even if they did not cite it themselves—as we do with them and all who oppose us. For though they might not have noticed it, it remains possible that an observer might notice it and raise an objection with it. Therefore, we could not accomplish this.

وَأَيْضًا: فَإِنَّا لَمْ نَجِدْ لِمَالِكٍ فِي تَعْلِيلِهِ الْمَذْكُورِ الَّذِي عَلَيْهِ بَنَى أَقْوَالَهُ فِي الرِّبَا سَلَفًا أَلْبَتَّةَ، لَا مِنْ صَاحِبٍ، وَلَا مِنْ تَابِعٍ، وَلَا مِنْ أَحَدٍ قَبْلَهُ، وَلَهُمْ تَخَالِيطُ عَظِيمَةٌ فِي أَقْوَالِهِمْ فِي الرِّبَا، فَقَدْ تَقَصَّيْنَاهَا فِي غَيْرِ هَذَا الْمَكَانِ، وَلَمْ نَذْكُرْهَا هَهُنَا، لِأَنَّهُ كِتَابٌ مُخْتَصَرٌ، لَكِنْ يَكْفِي مِنْ إِيرَادِهَا: أَنْ يَنْظُرَ كُلُّ ذِي فَهْمٍ كَيْفَ تَكُونُ أَقْوَالٌ بُنِيَتْ عَلَى هَذِهِ الْقَوَاعِدِ وَفُرُوعٌ أُنْشِئَتْ مِنْ هَذِهِ الْأُصُولِ؟ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L23459 Moreover, we have found no precedent whatsoever for Mālik's aforementioned reasoning—upon which he based his pronouncements concerning usury—from any companion, follower, or anyone before him. Their statements on usury contain grave inconsistencies, which we have exhaustively detailed elsewhere but omitted here due to the concise nature of this book. However, it suffices from citing them that every discerning person should consider: how can statements built upon such principles and branches established from these foundations exist? And success is from Allah, the Most High.

وَقَالَتْ طَائِفَةٌ مِنْهُمْ: أَبُو ثَوْرٍ، وَمُحَمَّدُ بْنُ الْمُنْذِرِ، وَالنَّيْسَابُورِيِّ، وَهُوَ قَوْلُ الشَّافِعِيِّ فِي أَوَّلِ قَوْلَيْهِ -: عِلَّةُ الرِّبَا هِيَ الْأَكْلُ، وَالشُّرْبُ، وَالْكَيْلُ، وَالْوَزْنُ، وَالتَّثْمِينُ - فَمَا كَانَ مِمَّا يُؤْكَلُ أَوْ يُشْرَبُ، أَوْ يُكَالُ أَوْ يُوزَنُ، لَمْ يَجُزْ مِنْهُ مِنْ جِنْسٍ وَاحِدٍ وَاحِدٌ بِاثْنَيْنِ، لَا يَدًا بِيَدٍ وَلَا نَسِيئَةً، وَكَذَلِكَ الذَّهَبُ وَالْفِضَّةُ، وَمَا كَانَ يُكَالُ أَوْ يُوزَنُ مِمَّا لَا يُؤْكَلُ وَلَا يُشْرَبُ، أَوْ كَانَ يُؤْكَلُ وَلَا يُشْرَبُ، أَوْ كَانَ يُؤْكَلُ أَوْ يُشْرَبُ مِمَّا لَا يُكَالُ وَلَا يُوزَنُ، فَلَا رِبَا فِيهِ يَدًا بِيَدٍ، وَالتَّفَاضُلُ فِيهِ جَائِزٌ، فَأَجَازُوا الْأُتْرُجَّ فِي الْأُتْرُجِّ مُتَفَاضِلًا نَسِيئَةً.

L23460 A group among them—Abu Thawr, Muhammad ibn al-Mundhir, and al-Naysaburi, which is al-Shafi'i's first opinion—held that the effective cause of riba is edibles, potables, measurement by volume, weight, or counting. Thus, anything that is edible, potable, measured by volume, or weighed cannot be exchanged as one [unit] for two [units] of the same kind, whether hand-to-hand or deferred. This applies similarly to gold and silver. As for items measured by volume or weighed that are neither edible nor potable, or edible but not potable, or edible or potable but not measured by volume or weighed, there is no riba in their hand-to-hand exchange, and disparity in quantity is permissible. Hence, they permitted deferred exchange of citrons for citrons with a disparity in quantity.

وَكَذَلِكَ كُلُّ مَا لَا يُوزَنُ وَلَا يُكَالُ مِمَّا يُؤْكَلُ أَوْ يُشْرَبُ، وَكُلُّ مَا يُكَالُ أَوْ يُوزَنُ مِمَّا لَا يُؤْكَلُ وَلَا يُشْرَبُ، وَلَا هُوَ ذَهَبٌ وَلَا فِضَّةٌ - وَهَذَا الْقَوْلُ صَحَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، ذَكَرَهُ مَالِكٌ عَنْ أَبِي الزِّنَادِ عَنْهُ فِي مُوَطَّئِهِ، وَلَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَ سَعِيدٍ، وَلَا عَنْ غَيْرِهِ مِنْ أَهْلِ عَصْرِهِ.

L23461–23462 Similarly, everything that is neither weighed nor measured by volume among what is eaten or drunk, and everything that is measured by volume or weighed among what is neither eaten nor drunk, nor is it gold or silver—this opinion is authentically reported from Sa'īd ibn al-Musayyab, as narrated by Mālik from Abū al-Zinād from him in his *Muwaṭṭa'*. We do not know of this opinion being reported from anyone before Sa'īd or from anyone else among the people of his time.

L23463 Proponents of this opinion claim that there is scholarly consensus on it.

وَحُجَّةُ أَهْلِ هَذَا الْقَوْلِ أَنَّهُمْ ادَّعَوْا الْإِجْمَاعَ عَلَيْهِ، قَالُوا: وَمَا عَدَاهُ فَمُخْتَلَفٌ فِيهِ - وَلَا دَلِيلَ عَلَى وُجُوبِ الرِّبَا فِيمَا عَدَا مَا ذَكَرْنَا.

They stated: "Anything beyond this is disputed, and there is no evidence for the obligation of *ribā* in matters beyond what we have mentioned."

قَالَ أَبُو مُحَمَّدٍ: وَدَعْوَاهُمْ هَهُنَا بَاطِلٌ؛ لِأَنَّ مَنْ ادَّعَى الْإِجْمَاعَ عَلَى أَهْلِ الْإِسْلَامِ - وَفِيهِمْ الْجِنُّ، وَالْإِنْسُ - فِي مَسْأَلَةٍ لَمْ يُرْوَ فِيهَا قَوْلٌ عَنْ ثَمَانِيَةٍ مِنْ الصَّحَابَةِ أَصْلًا أَكْثَرُهَا بَاطِلٌ لَا يَصِحُّ، وَلَا عَنْ ثَلَاثَةَ عَشَرَ مِنْ التَّابِعِينَ أَصْلًا، عَلَى اخْتِلَافٍ شَدِيدٍ بَيْنَهُمْ، فَقَدْ ادَّعَى الْبَاطِلَ، فَكَيْفَ وَالْخِلَافُ فِي هَذَا أَشْهَرُ مِنْ الشَّمْسِ؟ لِأَنَّ مَالِكًا وَمَنْ وَافَقَهُ لَا يَرَوْنَ الرِّبَا فِي الْمَاءِ، وَلَا فِي كُلِّ مَا يُكَالُ أَوْ يُوزَنُ مِمَّا يُؤْكَلُ وَيُشْرَبُ، إذَا لَمْ يَكُنْ مُقْتَاتًا مُدَّخَرًا.

L23464 Abu Muhammad said: Their claim here is invalid, for whoever asserts consensus among all Muslims—including jinn and humankind—regarding an issue for which no opinion has been transmitted from even eight Companions at all—since most such claims are invalid and unsound—nor from thirteen Successors at all, amidst intense disagreement among them, has indeed made a false assertion. How could this be, when disagreement on this matter is more evident than the sun? For Mālik and those who concur with him do not recognize ribā in water, nor in anything measured by volume or weight from what is eaten or drunk, provided it is not a staple food stored for preservation.

فَلَا يَرَوْنَ الرِّبَا فِي: التُّفَّاحِ، وَلَا فِي الْعُنَّابِ، وَلَا فِي حَبِّ الْقَنْبِ، وَلَا فِي زَرِيعَةِ الْكَتَّانِ، وَلَا فِي الْكُرُنْبِ، وَلَا فِي غَيْرِ ذَلِكَ، وَكُلُّهُ يُوزَنُ أَوْ يُكَالُ وَيُؤْكَلُ - فَبَطَلَ هَذَا الْإِجْمَاعُ الْمَكْذُوبُ.

L23465 They do not consider usury to apply to apples, jujubes, hemp seeds, flax plants, cabbage, or anything else—all of which are weighed or measured and eaten—thus invalidating this false consensus.

وَمَا وَجَدْنَا لَهُمْ حُجَّةً غَيْرَ هَذَا أَصْلًا، وَلَا قَدَرْنَا عَلَى أَنْ نَأْتِيَ لَهُمْ بِغَيْرِهَا، فَبَطَلَ هَذَا الْقَوْلُ لِتَعَرِّيهِ مِنْ الْبُرْهَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23466 We did not find for them any proof whatsoever besides this at all, nor were we able to bring forth anything else for them. Thus, this statement is invalid due to its lack of demonstrative proof—and with Allah the Exalted lies all success.

وَقَالَتْ طَائِفَةٌ: عِلَّةُ الرِّبَا إنَّمَا هِيَ الطَّعْمُ فِي الْجِنْسِ أَوْ الْجِنْسَيْنِ، وَالتَّثْمِينُ فِي الْجِنْسِ أَوْ الْجِنْسَيْنِ، فَمَا كَانَ يُؤْكَلُ، وَيُشْرَبُ، فَلَا يَجُوزُ مُتَفَاضِلًا أَصْلًا وَلَا بِنَسِيئَةٍ أَصْلًا، وَإِنَّمَا يَجُوزُ فِيهِ التَّمَاثُلُ نَقْدًا فَقَطْ إذَا كَانَ فِي جِنْسٍ وَاحِدٍ، فَإِنْ كَانَ مِنْ جِنْسَيْنِ: جَازَ فِيهِ التَّمَاثُلُ وَالتَّفَاضُلُ نَقْدًا، وَلَمْ يَجُزْ فِيهِمَا النَّسِيئَةُ.

L23467 A group has stated: The rationale for ribā is edibility in the same kind or two kinds, and measurement by weight/volume in the same kind or two kinds. Therefore, anything that is eaten or drunk may not be exchanged with an excess at all—whether in immediate or deferred terms at all. Only equal exchange is permitted in it, restricted to immediate payment only when within a single kind. If it involves two kinds: equal and unequal immediate exchange is permissible in them, but deferred exchange is not permitted in both kinds.

L23468 And what is neither consumed as food nor drink, nor is it gold or silver -

equivalence and disparity, spot payment and deferred payment are permissible for such items, whether of one kind or two kinds. Thus it is permissible to exchange one ritl of iron for two ritls of iron on a deferred basis, and likewise for all things that are neither consumed as food nor drink, nor are they gold or silver.

وَمَا كَانَ لَا يُؤْكَلُ وَلَا يُشْرَبُ، وَلَا هُوَ ذَهَبٌ وَلَا فِضَّةٌ، فَالتَّمَاثُلُ وَالتَّفَاضُلُ، وَالنَّقْدُ وَالنَّسِيئَةُ: جَائِزٌ فِيهِ جِنْسًا كَانَ أَوْ جِنْسَيْنِ - فَأَجَازَ رِطْلُ حَدِيدٍ بِرِطْلَيْ حَدِيدٍ إِلَى أَجَلٍ، وَكَذَلِكَ فِي كُلِّ مَا لَا يُؤْكَلُ وَلَا يُشْرَبُ، وَلَا هُوَ ذَهَبٌ وَلَا فِضَّةٌ.

L23469–23470 It was prohibited to sell one *riṭl* of saqamūniyyā in exchange for two *riṭls* of saqamūniyyā, and likewise anything used as a remedy, because it is consumed in some manner. This is al-Shāfiʿī's other opinion, and upon this his followers rely, and it is this opinion they uphold.

وَمُنِعَ مِنْ بَيْعِ رِطْلٍ سَقَمُونْيَا بِرِطْلَيْ سَقَمُونْيَا، وَكَذَلِكَ كُلُّ مَا يُتَدَاوَى بِهِ؛ لِأَنَّهُ يُطْعَمُ عَلَى وَجْهٍ مَا - وَهُوَ قَوْلُ الشَّافِعِيِّ الْآخَرُ، وَعَلَيْهِ يَعْتَمِدُ أَصْحَابُهُ، وَإِيَّاهُ يَنْصُرُونَ.

L23471 The proponents of this view cited the authentic report from the Messenger of Allah—may the peace and blessings of Allah be upon him—: "Food for food, like for like," through the narration of Umar ibn Abdullah al-Adawi from the Messenger of Allah—may the peace and blessings of Allah be upon him.

وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الطَّعَامُ بِالطَّعَامِ مِثْلًا بِمِثْلٍ» مِنْ طَرِيقِ عُمَرَ بْنِ عَبْدِ اللَّهِ الْعَدَوِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L23472 Abu Muhammad said: Thus we have narrated it through the chain of Muslim: I am Harun ibn Ma'ruf, from Abdullah ibn Wahb, who informed me that Amr—meaning Ibn al-Harith—narrated that Abu al-Nadr reported to him that Busr ibn Sa'id narrated to him from Ma'mar ibn Abdullah al-Adawi, who said: "I heard the Messenger of Allah—peace be upon him—say: 'Food for food, equal for equal.'"

قَالَ أَبُو مُحَمَّدٍ: هَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا هَارُونُ بْنُ مَعْرُوفٍ أَنَا عَبْدُ اللَّهِ بْنُ وَهْبٍ أَخْبَرَنِي عَمْرٌو - هُوَ ابْنُ الْحَارِثِ - أَنَّ أَبَا النَّضْرِ حَدَّثَهُ أَنَّ بُسْرَ بْنَ سَعِيدٍ حَدَّثَهُ عَنْ مَعْمَرِ بْنِ عَبْدِ اللَّهِ الْعَدَوِيِّ قَالَ " كُنْت أَسْمَعُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «الطَّعَامُ بِالطَّعَامِ مِثْلًا بِمِثْلٍ» .

L23473 Ali said: Some of their later scholars—who had no knowledge of Hadith nor any piety in him to restrain him from attributing to the Messenger of Allah (peace and blessings be upon him) what he did not say, nor what was transmitted from him, nor about what he had no knowledge—stated it without restraint through an unsupported chain, claiming: "The Messenger of Allah (peace and blessings be upon him) said: 'Food must not be sold for food except equal measure for equal measure.'" Abu Muhammad said: This is pure falsehood and intentional fabrication of Hadith—unless it be an error by an ignorant person. It has never been transmitted in this form, nor is it ever found through any authentic chain of narration.

قَالَ عَلِيٌّ: وَحَرَّفَهُ بَعْضُ مُتَأَخِّرِيهِمْ مِمَّنْ لَا عِلْمَ لَهُ بِالْحَدِيثِ وَلَا وَرَعَ لَهُ يَحْجِزُهُ عَنْ أَنْ يَتَكَلَّمَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَا لَمْ يَقُلْهُ، وَلَا جَاءَ عَنْهُ وَبِمَا لَا عِلْمَ لَهُ بِهِ، فَأَطْلَقَهُ إطْلَاقًا بِلَا إسْنَادٍ فَقَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يُبَاعُ الطَّعَامُ بِالطَّعَامِ إلَّا مِثْلًا بِمِثْلٍ» . قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كَذِبٌ بَحْتٌ، وَتَعَمُّدٌ لِوَضْعِ الْحَدِيثِ، إنْ لَمْ يَكُنْ خَطَأً مِنْ جَاهِلٍ، وَمَا جَاءَ هَكَذَا قَطُّ، وَلَا يُوجَدُ أَبَدًا مِنْ طَرِيقٍ غَيْرِ مَوْضُوعَةٍ.

L23474 Abu Muhammad said: There is no proof for them in the mentioned narration, for it merely states “food for food, like for like,” and it does not contain within it the prohibition of it, a like for more, nor does it permit it—it is silent on the matter. Thus, it must be sought from other than this narration.

قَالَ أَبُو مُحَمَّد: وَلَا حُجَّةَ لَهُمْ فِي الْخَبَرِ الْمَذْكُورِ، لِأَنَّهُ إِنَّمَا فِيهِ " الطَّعَامُ بِالطَّعَامِ مِثْلًا بِمِثْلٍ، وَلَيْسَ فِيهِ الْمَنْعُ عَنْهُ مِثْلًا بِأَكْثَرَ، وَلَا إِبَاحَتُهُ، إِنَّمَا هُوَ مَسْكُوتٌ عَنْهُ، فَوَجَبَ طَلَبُهُ مِنْ غَيْرِ هَذَا الْخَبَرِ ".

L23475 Moreover, the word “food” (al-ṭaʿām) in the Arabic language applies exclusively to wheat alone, as has been narrated to us through the chain of Abū Saʿīd al-Khudrī—who is an authority in language—who said: “During the time of the Messenger of Allah—peace and blessings be upon him—we would give the Fitr charity as a ṣāʿ of food, or a ṣāʿ of barley, or a ṣāʿ of dates, or a ṣāʿ of dried curd. Thus, the name ’food’ did not apply except to wheat alone.”

وَأَيْضًا - فَإِنَّ لَفْظَةَ " الطَّعَامِ " لَا تُطْلَقُ فِي لُغَةِ الْعَرَبِ إِلَّا عَلَى الْبُرِّ وَحْدَهُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي سَعِيدٍ الْخُدْرِيِّ وَهُوَ حُجَّةٌ فِي اللُّغَةِ «كُنَّا نُخْرِجُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَدَقَةَ الْفِطْرِ صَاعًا مِنْ طَعَامٍ، أَوْ صَاعًا مِنْ شَعِيرٍ، أَوْ صَاعًا مِنْ تَمْرٍ، أَوْ صَاعًا مِنْ أَقِطٍ - فَلَمْ يَقَعْ اسْمُ الطَّعَامِ إِلَّا عَلَى الْبُرِّ وَحْدَهُ» .

L23476–23478 Furthermore, if the statement of the Messenger of Allah—peace be upon him—“Food in exchange for food, like for like” entails... According to your stance that prohibits selling food for food in excess of like for like, you must necessarily regard his restriction—peace be upon him—to the six categories as preventing *riba* in what lies beyond them; otherwise, you have contradicted yourselves.

وَأَيْضًا - فَإِذَا كَانَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الطَّعَامُ بِالطَّعَامِ مِثْلًا بِمِثْلٍ» مُوجِبًا عِنْدَكُمْ لِلْمَنْعِ مِنْ بَيْعِ الطَّعَامِ بِالطَّعَامِ أَكْثَرَ مِنْ مِثْلٍ بِمِثْلٍ، فَاجْعَلُوا - وَلَا بُدَّ - اقْتِصَارَهُ - عَلَيْهِ السَّلَامُ - عَلَى ذِكْرِ الْأَصْنَافِ السِّتَّةِ مَانِعًا مِنْ وُقُوعِ الرِّبَا فِيمَا عَدَاهَا، وَإِلَّا فَقَدْ تَنَاقَضْتُمْ.

L23479 If they say: What is the benefit in the Messenger of Allah’s statement—peace and blessings be upon him—“Food for food, like for like”? We reply: The supreme benefit lies in extending the term ’food’ to all edibles, for this refutes the position of the Mālikīs who prohibit exchanging one apple for another unless it is conclusively known which is larger, nor leafy greens for leafy greens unless it is definitively ascertained which is greater in quantity. If the term ’food’ is confined to wheat alone, this permits selling superior wheat for inferior wheat, or superior and inferior wheat for average wheat—provided they are equal in measure.

فَإِنْ قَالُوا: فَمَا الْفَائِدَةُ فِي قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الطَّعَامُ بِالطَّعَامِ مِثْلًا بِمِثْلٍ» ؟ قُلْنَا: أَعْظَمُ الْفَائِدَةِ إِنْ كُنْتُمْ تَتَعَدُّونَ بِاسْمِ الطَّعَامِ إِلَى كُلِّ مَا يُؤْكَلُ، فَإِنَّ فِيهِ إِبْطَالَ قَوْلِ الْمَالِكِيِّينَ: لَا يَجُوزُ تُفَّاحَةٌ بِتُفَّاحَةٍ إِلَّا حِينَ يُوقَنُ أَيُّهُمَا أَكْبَرُ، وَلَا الْخُضَرُ بِالْخُضَرِ إِلَّا حِينَ يُوقَنُ أَيُّهَا أَكْثَرُ، وَإِنْ كَانَ لَا يَتَعَدَّى بِلَفْظَةِ الطَّعَامِ الْبُرُّ، فَفِيهِ إِبَاحَةُ بَيْعِ بُرٍّ فَاضِلٍ بِأَدْنَى، وَفَاضِلٍ وَأَدْنَى بِمُتَوَسِّطٍ إِذَا تَمَاثَلَتْ فِي الْكَيْلِ -.

L23480 Moreover, neither an Arab nor an Arabized non-Arab applies the term “food” to saqamūniyā, neither with absolute usage nor with a construct state.

وَأَيْضًا: فَلَا يُطْلِقُ عَرَبِيٌّ وَلَا مُسْتَعْرِبٌ عَلَى السَّقَمُونْيَا اسْمَ طَعَامٍ لَا بِإِطْلَاقٍ وَلَا بِإِضَافَةٍ.

L23481 If they say: “But these are consumed in medicines,” we respond: Sandalwood

is consumed in medicines, as are Armenian bole, red clay, ṭifl clay (a type of clay), palm fiber, pearls, and the stone of the Jews. By this logic, they would impose usury on all such things—though they do not actually do this. Indeed, some people consume their fingernails, beard hair, or parchment as a pretextual means, thereby applying usury to them in food transactions, for these two are likewise consumed.

فَإِنْ قَالُوا: قَدْ تُؤْكَلُ فِي الْأَدْوِيَةِ؟ قُلْنَا: وَالصَّنْدَلُ قَدْ يُؤْكَلُ فِي الْأَدْوِيَةِ، وَالطِّينُ الْأَرْمِينِيُّ، وَالْأَحْمَرُ، وَالطَّفْلُ كَذَلِكَ، وَالسَّبَدُ، وَاللُّؤْلُؤُ، وَحَجَرُ الْيَهُودِ كَذَلِكَ، فَأَوْقَعُوا الرِّبَا فِي كُلِّ ذَلِكَ - وَهُمْ لَا يَفْعَلُونَ هَذَا، نَعَمْ، وَفِي النَّاسِ مَنْ يَأْكُلُ أَظْفَارَهُ، وَشَعْرَ لِحْيَتِهِ، وَالرَّقَّ، أَكْلًا ذَرِيعًا، فَأَوْقَعُوهَا فِي الطَّعَامِ، وَأَدْخَلُوا الرِّبَا فِيهَا، لِأَنَّهُمَا قَدْ يُؤْكَلَانِ أَيْضًا.

L23482 They also invoked as proof the report related by Aḥmad ibn Muḥammad al-Ṭalamankī, from Ibn Mufarrij, from Muḥammad ibn Ayyūb al-Raqqī, from Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār, from Yūsuf ibn Mūsā, from Muḥammad ibn Fuḍayl, from Muḥammad ibn Isḥāq, from Yazīd ibn ʿAbd Allāh ibn Qusayṭ, from ʿAṭāʾ ibn Yasār and Abū Salama ibn ʿAbd al-Raḥmān—both of whom reported from Abū Saʿīd al-Khudrī, who said: "The Messenger of Allah—peace and blessings be upon him—distributed varying portions of food. We resold them among ourselves at a profit, but the Messenger of Allah—peace and blessings be upon him—forbade us from taking them except as equal measure for equal measure."

وَاحْتَجُّوا أَيْضًا بِمَا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ أَنَا ابْنُ مُفَرِّجٍ أَنَا مُحَمَّدُ بْنُ أَيُّوبَ الرَّقِّيُّ أَنَا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ أَنَا يُوسُفُ بْنُ مُوسَى أَنَا مُحَمَّدُ بْنُ فُضَيْلٍ أَنَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ عَنْ عَطَاءِ بْنِ يَسَارٍ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، كِلَاهُمَا عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «قَسَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَعَامًا مُخْتَلِفًا فَتَبَايَعْنَاهُ بَيْنَنَا بِزِيَادَةٍ، فَنَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَأْخُذَهُ إِلَّا كَيْلًا بِكَيْلٍ» .

L23483 And according to what we have narrated via the chain of Ahmad ibn Shu'ayb: Ibrāhīm ibn al-Ḥasan informed me from Ḥajjāj—who is Ibn Muḥammad—who said: Ibn Jurayj said: Abū al-Zubayr informed me that he heard Jābir ibn 'Abdillāh say: The Messenger of Allah—peace and blessings be upon him—said, "Do not sell an unspecified heap of food for another unspecified heap of food, nor an unspecified heap of food for a measured quantity of food that is specified [in advance]."

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي إِبْرَاهِيمُ بْنُ الْحَسَنِ أَنَا حَجَّاجٌ - هُوَ ابْنُ مُحَمَّدٍ - قَالَ: قَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تُبَاعُ الصُّبْرَةُ مِنْ الطَّعَامِ بِالصُّبْرَةِ مِنْ الطَّعَامِ، وَلَا الصُّبْرَةُ مِنْ الطَّعَامِ بِالْكَيْلِ مِنْ الطَّعَامِ الْمُسَمَّى» .

L23484–23485 These are two authentic hadiths; however, they offer no proof for them in these two cases, because the term "food" - as we explained - does not apply in absolute usage among the Arabs except to wheat specifically, as we mentioned earlier from Abu Sa'id al-Khudri.

فَهَذَانِ حَدِيثَانِ صَحِيحَانِ إِلَّا أَنَّهُمَا لَا حُجَّةَ لَهُمْ فِيهِمَا، لِأَنَّ اسْمَ " الطَّعَامِ " لَا يَقَعُ كَمَا قُلْنَا عِنْدَ الْعَرَبِ مُطْلَقًا إِلَّا عَلَى الْبُرِّ فَقَطْ، كَمَا ذَكَرْنَا عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ آنِفًا.

L23486 If it is said: Indeed, Allah Almighty has stated, *"The food of those who were given the Scripture is lawful for you, and your food is lawful for them"* [Al-

فَإِنْ قِيلَ: فَقَدْ قَالَ اللَّهُ عَزَّ وَجَلَّ {وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ وَطَعَامُكُمْ حِلٌّ لَهُمْ} [المائدة: ٥] فَأَرَادَ تَعَالَى ذَبَائِحَنَا وَذَبَائِحَهُمْ.

Ma'idah: 5], thus the Exalted means our ritually slaughtered animals and theirs.[53]

L23487 The Messenger of Allah (peace be upon him) said: "There is no prayer in the presence of food."

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا صَلَاةَ بِحَضْرَةِ طَعَامٍ» ؟

L23488 We said: We do not deny that the term "food" may apply to other than wheat through annexation or textual evidence, for this argument opposes the Shāfiʿīs rather than supports them. This is because, in one of their two positions, they unanimously agree that the slaughtered animals of the People of the Book and our slaughtered animals are permissible to exchange some of one for some of the other with differing values. In their second position, they hold that it is impermissible to sell any part of them for another at all until it has fully dried.

قُلْنَا: لَا نَمْنَعُ مِنْ وُقُوعِ اسْمِ " الطَّعَامِ " عَلَى غَيْرِ الْبُرِّ بِإِضَافَةٍ أَوْ بِدَلِيلٍ مِنْ النَّصِّ عَلَى أَنَّ هَذَا الِاحْتِجَاجَ هُوَ عَلَى الشَّافِعِيِّينَ لَا لَهُمْ؛ لِأَنَّهُمْ لَا يَخْتَلِفُونَ فِي أَحَدِ قَوْلَيْهِمْ: إنَّ ذَبَائِحَ أَهْلِ الْكِتَابِ وَذَبَائِحَنَا جَائِزٌ بَعْضُهَا بِبَعْضٍ مُتَفَاضِلًا، وَفِي قَوْلِهِمْ الثَّانِي: أَنَّهُ لَا يَجُوزُ بَيْعُ شَيْءٍ مِنْهَا بِشَيْءٍ أَصْلًا حَتَّى يَيْبَسَ.

L23489 And these two opinions contradict their argument in their application of the term "food" to meats and other things.

وَهَذَانِ الْقَوْلَانِ مُخَالِفَانِ لِاحْتِجَاجِهِمْ بِإِطْلَاقِ اسْمِ الطَّعَامِ عَلَى اللُّحُومِ وَغَيْرِهَا.

L23490 Abu Muhammad said: These two reports contradict the statements of Malik and Abu Hanifah as a whole. If they interpret them to mean that "food" applies to everything edible, these reports nullify their opinions on usury.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَانِ الْخَبَرَانِ مُخَالِفَانِ لِقَوْلِ مَالِكٍ، وَأَبِي حَنِيفَةَ، جُمْلَةً إنْ حَمَلَاهُمَا عَلَى أَنَّ " الطَّعَامَ " وَاقِعٌ عَلَى كُلِّ مَا يُؤْكَلُ مُبْطِلَانِ لِقَوْلِهِمَا فِي الرِّبَا.

L23491 And all divine success comes from Allah, the Exalted.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23492 As for the ḥadīth of Abū Saʿīd, it is as we have stated. Their argument using it is also invalidated because it was narrated from Ibn Isḥāq by someone more precise and retentive than Ibn Fuḍayl—Qutaybah—as it was narrated to us through the chain of Ibn Abī Shaybah: "I am Ibn Numayr (he is ʿAbdullāh), I am Muḥammad ibn Isḥāq from Yazīd ibn ʿAbdullāh ibn Qusayṭ from ʿAṭāʾ ibn Yasār from Abū Saʿīd al-Khudrī, who said: 'The Messenger of Allāh—peace and blessings of Allāh be upon him—distributed among us food consisting of dates of varying quality, some being superior to others. We started vying to acquire more of it, so the Messenger of Allāh—peace and blessings of Allāh be upon him—forbade us except by equal measure for equal measure.'" Thus, their clinging to that argument is invalidated.

وَأَمَّا حَدِيثُ أَبِي سَعِيدٍ فَكَمَا قُلْنَا، وَيَبْطُلُ أَيْضًا احْتِجَاجُهُمْ بِهِ بِأَنَّهُ قَدْ رَوَاهُ عَنْ ابْنِ إِسْحَاقَ مَنْ هُوَ أَضْبَطُ وَأَحْفَظُ مِنْ ابْنِ فُضَيْلٍ: قُتَيْبَةُ، كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ نُمَيْرٍ - هُوَ عَبْدُ اللَّهِ - أَنَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ " قَالَ: «قَسَمَ فِينَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَعَامًا مِنْ التَّمْرِ مُخْتَلِفًا بَعْضُهُ أَفْضَلُ مِنْ بَعْضٍ، فَذَهَبْنَا نَتَزَايَدُ فِيهِ فَنَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا كَيْلًا بِكَيْلٍ» فَبَطَلَ تَعَلُّقُهُمْ بِذَلِكَ.

[53] **Qur'an references (L23486):** Qur'an 5:5 (Al-Ma'idah).

وَأَيْضًا: فَإِنَّهُ لَا خِلَافَ بَيْنَنَا وَبَيْنَهُمْ فِي أَنَّ ذَلِكَ الطَّعَامَ الَّذِي فَرَّقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمْ إنَّمَا كَانَ صِنْفًا وَاحِدًا: إمَّا تَمْرًا، أَوْ بُرًّا، أَوْ غَيْرَ ذَلِكَ؛ لِأَنَّ فِيهِ نَهْيَهُمْ عَنْ أَنْ يَبِيعُوهُ بَعْضَهُ بِبَعْضٍ بِزِيَادَةٍ، هَذَا مَا لَا شَكَّ فِيهِ.

L23493 Additionally, there is no disagreement between us and them that the food which the Messenger of Allah—peace and blessings of Allah be upon him—distributed among them was indeed a single category: either dates, wheat, or other than that, because in this context he prohibited them from selling portions of it for other portions with an increase. This is beyond doubt.

فَإِذْ هُوَ كَذَلِكَ فَتَسْمِيَتُهُ بِالطَّعَامِ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيُمْكِنُ لَهُمْ أَنْ يُنَازِعُونَا فِي مَعْنَاهُ، ثُمَّ يَحْمِلُوهُ عَلَى عُمُومِهِ، إنَّمَا هُوَ مِنْ كَلَامِ أَبِي سَعِيدٍ وَقَدْ أُخْبِرْنَا عَنْ أَبِي سَعِيدٍ أَنَّهُ لَا يُطْلِقُ اسْمَ " الطَّعَامِ " إلَّا عَلَى الْبُرِّ.

L23494–23496 Since this is the case, its designation as food—based on the statement of the Messenger of Allah (peace be upon him)—makes it possible for them to challenge us regarding. Its meaning is first established, then interpreted according to its general sense. This stems solely from Abu Sa'id's statement, as we have been informed that he applies the term "food" exclusively to wheat.

ثُمَّ لَا يُمَارُونَنَا فِي أَنَّ حُكْمَ ذَلِكَ الْخَبَرِ إنَّمَا هُوَ فِي ذَلِكَ الْمَقْسُومِ - هَذَا نَصُّ مُقْتَضَى لَفْظِ الْخَبَرِ يَقِينًا ضَرُورَةً وَلَا بُدَّ، فَلَا حُجَّةَ لَهُمْ فِيهِ فِي جَمِيعِ أَصْنَافِ مَا يُرِيدُونَ أَنْ يُسَمُّوهُ طَعَامًا، إلَّا بِقِيَاسٍ فَاسِدٍ يُنَازِعُونَ فِيهِ، وَهُمْ لَا يَدَّعُونَ مَعْرِفَةَ مَا كَانَ مِنْ صِنْفِ ذَلِكَ الطَّعَامِ، فَيُمْكِنُهُمْ عِنْدَنَا أَنْ يَحْتَجُّوا عَلَيْنَا بِهِ لَوْ صَحَّ لَهُمْ أَنَّهُ لَمْ يَكُنْ بُرًّا، وَلَا تَمْرًا، وَلَا شَعِيرًا، وَيَبْطُلُ تَعَلُّقُهُمْ بِهِ إنْ كَانَ بُرًّا، أَوْ تَمْرًا، أَوْ شَعِيرًا؛ لِأَنَّ هَذَا هُوَ قَوْلُنَا فِي هَذِهِ الْأَصْنَافِ الثَّلَاثَةِ، فَبَطَلَ تَعَلُّقُهُمْ بِخَبَرِ أَبِي سَعِيدٍ بِيَقِينٍ لَا إمْكَانَ فِي سِوَاهُ -.

L23497 Then they cannot contend with us that the ruling of that narration applies solely to that apportioned portion—this is the text necessitated by the wording of the narration with necessary and irrefutable certainty. Thus, they have no valid argument in this matter concerning all the categories they seek to label as food except through an invalid analogy they dispute. Moreover, they do not claim knowledge of what type of food that was. According to our position, they could only argue against us with it if it had been valid for them that it was neither wheat, dates, nor barley. Their reliance on it becomes void if it was wheat, dates, or barley, for this is our doctrine regarding these three categories. Therefore, their dependence on the narration of Abu Sa'id is invalidated with certainty allowing no possibility for anything else.

وَلِلَّهِ تَعَالَى الْحَمْدُ.

L23498 And to Allah, the Most High, belongs all praise.

وَاسْتَدْرَكْنَا فِي حَدِيثِ جَابِرٍ مَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ قَالَ: وَأَنَا بِهِ إبْرَاهِيمُ بْنُ الْحَسَنِ مَرَّةً أُخْرَى فَقَالَ: أَنَا حَجَّاجٌ قَالَ: قَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الصُّبْرَةِ مِنْ التَّمْرِ لَا يُعْلَمُ مَكِيلَتُهَا بِالْكَيْلِ الْمُسَمَّى مِنْ التَّمْرِ» .

L23499 We supplemented in the narration of Jabir what we transmitted through the chain of Ahmad ibn Shu'ayb, who said—and in another narration, I [Ahmad] am accompanied by Ibrahim ibn al-Hasan—Hajjaj said: Ibn Jurayj narrated: Abu al-Zubayr informed me that he heard Jabir ibn 'Abdullah say, "The Messenger of Allah (peace and blessings be upon him) prohibited the sale of a heap of dates whose measure is unknown for a specified measure of dates."[54]

[54] **Hadith references (L23499):** Sahih Muslim 1530a; Mishkat al-Masabih 2816.

L23500 Aḥmad ibn Shuʿayb narrated that Ibrāhīm ibn al-Ḥasan recounted that Ḥadīth to them on another occasion, and he reported from him that it was the very same Ḥadīth.

فَقَدْ أَخْبَرَ أَحْمَدُ بْنُ شُعَيْبٍ: أَنَّ إِبْرَاهِيمَ بْنَ الْحَسَنِ حَدَّثَهُمْ بِذَلِكَ الْحَدِيثِ مَرَّةً أُخْرَى فَأَخْبَرَ عَنْهُ: أَنَّه هُوَ ذَلِكَ الْحَدِيثُ نَفْسُهُ.

L23501 It has been established that Ibrāhīm ibn al-Ḥasan narrated it once according to its meaning as he held it and another time verbatim as he heard it. Moreover, Ḥajjāj ibn Muḥammad did not mention therein that he heard it from Ibn Jurayj.

وَصَحَّ أَنَّ إِبْرَاهِيمَ بْنَ الْحَسَنِ حَدَّثَ بِهِ مَرَّةً عَلَى مَا هُوَ مَعْنَاهُ عِنْدَهُ، وَمَرَّةً عَلَى مَا سَمِعَهُ - وَأَيْضًا: فَإِنَّ حَجَّاجَ بْنَ مُحَمَّدٍ لَمْ يَذْكُرْ فِيهِ أَنَّهُ سَمِعَهُ مِنْ ابْنِ جُرَيْجٍ.

L23502 We have transmitted it as a sound, connected chain through Muslim ibn al-Hajjaj who said: I am Ahmad ibn Amr ibn al-Sarh, I am Ibn Wahb. Ibn Jurayj informed me that Abu al-Zubayr reported to him, having heard Jabir ibn Abdullah say: “The Messenger of Allah (peace and blessings be upon him) forbade selling a heap of dates whose measured quantity is unknown in exchange for a known specified measure of dates.”[1]

وَقَدْ رُوِّينَاهُ مُسْنَدًا صَحِيحًا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ قَالَ: أَنَا أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ أَنَا ابْنُ وَهْبٍ أَخْبَرَنِي ابْنُ جُرَيْجٍ: أَنَّ أَبَا الزُّبَيْرِ أَخْبَرَه أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الصُّبْرَةِ مِنْ التَّمْرِ لَا يُعْلَمُ مَكِيلَتُهَا بِالْكَيْلِ الْمُسَمَّى مِنْ التَّمْرِ» .

L23503–23504 Muslim said: Ishaq ibn Ibrahim—that is, Ibn Rahawayh—also prohibited him: I, Rawh ibn Ubada, report from Ibn Jurayj, who reports from Abu al-Zubayr, that he heard Jabir ibn Abdullah say: “The Messenger of Allah—peace and blessings be upon him—prohibited...” then he mentioned a similar prohibition, except he omitted the phrase “by the specified measure” in the hadith’s conclusion. Thus, this is the continuously transmitted authentically transmitted (sahih) chain.

قَالَ مُسْلِمٌ: وَنَاهُ أَيْضًا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - أَنَا رَوْحُ بْنُ عُبَادَةَ أَنَا ابْنُ جُرَيْجٍ أَنَا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ مِثْلَهُ إِلَّا أَنَّهُ لَمْ يَقُلْ بِالْكَيْلِ الْمُسَمَّى» فِي آخِرِ الْحَدِيثِ، فَهَذَا هُوَ الْمُتَّصِلُ الصَّحِيحُ.

L23505 Through all this, it is confirmed that Ibrāhīm ibn al-Ḥasan either erred once and corrected another instance, or narrated it once according to his own interpretation and another time as he heard it - just as others transmitted it.

وَصَحَّ بِهَذَا كُلِّهِ أَنَّ إِبْرَاهِيمَ بْنَ الْحَسَنِ أَخْطَأَ فِيهِ مَرَّةً وَاسْتَدْرَكَ أُخْرَى، أَوْ حَدَّثَ بِهِ مَرَّةً عَلَى مَا مَعْنَاهُ عِنْدَهُ، وَمَرَّةً كَمَا سَمِعَهُ كَمَا رَوَاهُ غَيْرُهُ -

L23506 And with Allah, the Exalted, lies the granting of success. Thus, dependency on these two narrations is wholly invalid.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - فَبَطَلَ التَّعَلُّقُ بِهَذَيْنِ الْخَبَرَيْنِ جُمْلَةً.

L23507 If they deceive with what we have narrated through the chain of Ibn Wahb from Ibn Lahīʿah from Abū al-Zubayr from Jābir, who said: “During the time of the Messenger of Allah (peace be upon him), we would give a ṣāʿ of wheat

فَإِنْ مَوَّهُوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ «جَابِرٍ قَالَ: كُنَّا فِي زَمَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نُعْطِي الصَّاعَ مِنْ حِنْطَةٍ بِسِتَّةِ

[1] **Hadith references (L23502):** Sahih Muslim 1530a; Mishkat al-Masabih 2816.

in exchange for six ṣāʿs of dates. As for other types of food, that is disliked except like for like." This is baseless, for it comes through Ibn Lahīʿah's chain - he is rejected.

أَصْوُعٍ مِنْ تَمْرٍ فَأَمَّا سِوَى ذَلِكَ مِنْ الطَّعَامِ فَيُكْرَهُ ذَلِكَ إِلَّا مِثْلٌ بِمِثْلٍ» فَهَذَا لَا شَيْءَ؛ لِأَنَّهُ مِنْ طَرِيقِ ابْنِ لَهِيعَةَ هُوَ سَاقِطٌ.

L23508 Moreover, if it were authentic, it would be a *mawqoof* narration stopped at Jabir and not one attributed to the Messenger of Allah, peace and blessings be upon him.

ثُمَّ لَوْ صَحَّ لَكَانَ مَوْقُوفًا عَلَى جَابِرٍ وَلَيْسَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L23509 Moreover, it entirely contradicts the positions of the Mālikīs, Shāfiʿīs, and Ḥanafīs, for they do not prohibit differential exchange in dates when traded with items other than wheat, nor do they limit the permissibility of differential exchange to wheat traded specifically for dates, as indicated in this report.

ثُمَّ هُوَ مُخَالِفٌ لِقَوْلِ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، وَالْحَنَفِيِّينَ جُمْلَةً؛ لِأَنَّهُمْ لَا يَمْنَعُونَ مِنْ التَّفَاضُلِ فِي التَّمْرِ مَعَ غَيْرِ الْبُرِّ، وَلَا يَقْتَصِرُونَ فِي إبَاحَةِ التَّفَاضُلِ فِي الْبُرِّ بِالتَّمْرِ خَاصَّةً، كَمَا فِي هَذَا الْخَبَرِ.

L23510 This is all they could possibly cite as evidence, and we have thoroughly investigated it. They mentioned, regarding this matter, narrations from those below the rank of the Messenger of Allah—peace and blessings be upon him—that which has been narrated to us via the chain of Ibn Wahb from Yunus ibn Yazīd from Ibn Shihāb al-Zuhrī: It has reached us that Umar ibn al-Khaṭṭāb said: "There is no harm in engaging in immediate exchange when the types of food differ"—meaning dates for wheat and dates for raisins.

هَذَا كُلُّ مَا يُمْكِنُ أَنْ يَحْتَجُّوا بِهِ فَقَدْ تَقَصَّيْنَاهُ. وَذَكَرُوا فِي ذَلِكَ عَمَّنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ الزُّهْرِيِّ: بَلَغَنَا أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: لَا بَأْسَ أَنْ تَبَايَعُوا يَدًا بِيَدٍ مَا اخْتَلَفَتْ أَلْوَانُهُ مِنْ الطَّعَامِ - يُرِيدُ التَّمْرَ بِالْقَمْحِ وَالتَّمْرَ بِالزَّبِيبِ.

L23511 From the chain of Abd al-Razzaq: I, Ma'mar, narrate from al-Zuhri, from Salim ibn Abdullah, from his father, that he said: When their types of food differ, there is no harm in exchanging them hand-to-hand: wheat for dates, raisins for barley. But he disapproved of it on credit, and he disapproved of selling one type of food for another with delayed payment.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِ أَنَّهُ قَالَ: مَا اخْتَلَفَتْ أَلْوَانُهُ مِنْ الطَّعَامِ، فَلَا بَأْسَ بِهِ يَدًا بِيَدٍ، الْبُرُّ بِالتَّمْرِ، وَالزَّبِيبُ بِالشَّعِيرِ، وَكَرِهَهُ نَسِيئَةً، وَكَانَ يَكْرَهُ الطَّعَامَ أَنْ يُبَاعَ شَيْءٌ مِنْهُ بِشَيْءٍ نَظْرَةً.

L23512 And through the chain of Al-Ḥajjāj ibn Al-Minhāl, from Ar-Rabīʿ ibn Ṣubayḥ, from ʿAṭāʾ ibn Abī Rabāḥ: He disliked purchasing fruit measured in exchange for a quantity of food on deferred payment.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا الرَّبِيعُ بْنُ صُبَيْحٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ أَنَّهُ كَانَ يَكْرَهُ أَنْ يَشْتَرِيَ شَيْئًا مِنْ الْفَاكِهَةِ مَا يُكَالُ بِشَيْءٍ مِنْ الطَّعَامِ نَسِيئَةً.

L23513 Abu Muhammad said: As for the statement of Umar, its chain is disconnected. Then, even if it were authentic, a conflicting opinion from Umar has been narrated, as we will mention when discussing Abu Hanifah's view - God, the Exalted, willing.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ عُمَرَ فَمُنْقَطِعٌ، ثُمَّ لَوْ صَحَّ فَقَدْ رُوِيَ عَنْ عُمَرَ خِلَافُهُ كَمَا نَذْكُرُ فِي ذِكْرِنَا قَوْلَ أَبِي حَنِيفَةَ - إنْ شَاءَ اللَّهُ تَعَالَى.

ثُمَّ لَيْسَ فِيهِ بَيَانٌ بِمَنْعِهِ مِنْ النَّظْرَةِ فِيمَا عَدَا السِّتَّةَ الْأَصْنَافِ فَبَطَلَ تَعَلُّقُهُمْ بِهِ.

L23514–23515 Furthermore, there is no explicit statement in it prohibiting one from looking at anything other than the six categories, thus rendering their reliance on it invalid.

وَأَمَّا حَدِيثُ ابْنِ عُمَرَ فَلَا حُجَّةَ فِيهِ، وَهُوَ صَحِيحٌ؛ لِأَنَّهُ كَرَاهِيَةٌ لَا تَحْرِيمٌ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، وَقَدْ رُوِيَ عَنْهُ خِلَافُهُ عَلَى مَا نَذْكُرُ - إنْ شَاءَ اللَّهُ تَعَالَى - فِي ذِكْرِنَا أَقْوَالَ أَبِي حَنِيفَةَ، فَعَادَ حُجَّةً عَلَيْهِمْ؛ لِأَنَّهُ خِلَافُ قَوْلِهِمْ.

L23516 As for the ḥadīth of Ibn ʿUmar, there is no proof in it, though it is authentic, for it indicates dislike (karāhīyah) rather than prohibition (taḥrīm). There is no proof in anyone other than the Messenger of Allah—peace and blessings be upon him. Contrary reports have been transmitted from him, as we shall mention—if Allah the Exalted wills—in our discussion of the opinions of Abū Ḥanīfah. Thus, it reverts to being a proof against them, for it contradicts their stance.

ثُمَّ كَمْ قِصَّةٍ خَالَفُوا فِيهَا عُمَرَ وَابْنَ عُمَرَ، كَتَوْرِيثِ عُمَرَ الْمُطَلَّقَةَ ثَلَاثًا فِي الْمَرَضِ - وَقَوْلِ عُمَرَ وَابْنِ عُمَرَ فِيمَنْ أَكَلَ يَظُنُّ أَنَّهُ لَيْلٌ فَإِذَا بِهِ قَدْ طَلَعَ الْفَجْرُ أَنَّ صَوْمَهُ تَامٌّ وَلَا قَضَاءَ عَلَيْهِ - وَفِي تَوْرِيثِ ذَوِي الْأَرْحَامِ - وَفِي أَنْ لَا يُقْتَلُ أَحَدٌ قَوَدًا بِمَكَّةَ - وَفِي أَنْ لَا يَحُجَّ أَحَدٌ عَلَى بَعِيرٍ جِلَالٍ - وَفِي غَيْرِ مَا قِصَّةٍ، فَكَيْفَ وَلَمْ يَأْتِ عَنْ عُمَرَ وَابْنِهِ - رَضِيَ اللَّهُ عَنْهُمَا - وَعَنْ عَطَاءٍ هَهُنَا إلَّا الْكَرَاهَةُ فَقَطْ، لَا التَّحْرِيمُ الَّذِي يَقْدُمُونَ عَلَيْهِ بِلَا بُرْهَانٍ أَصْلًا؟ وَقَدْ حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا عَبْدُ اللَّهِ بْنُ نَصْرٍ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا ابْنُ وَضَّاحٍ أَنَا مُوسَى بْنُ مُعَاوِيَةَ أَنَا وَكِيعٌ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ بَعْضِ أَصْحَابِهِ عَنْ ابْنِ عُمَرَ قَالَ: إنَّهُ لَيُعْجِبُنِي أَنْ يَكُونَ بَيْنَ الْحَلَالِ وَالْحَرَامِ سِتْرٌ مِنْ الْحَرَامِ.

L23517 Then, how many instances are there where they opposed ʿUmar and Ibn ʿUmar, such as ʿUmar's granting inheritance to a woman thrice-divorced during illness; the opinion of ʿUmar and Ibn ʿUmar regarding one who ate thinking it was still night but dawn had broken, that their fast remains valid with no making up required; their stance on granting inheritance to distant kindred; their view that no one should be executed in retaliation within Mecca; their prohibition of performing Hajj on a camel used for carrying loads; and numerous other instances. How can this be, when nothing is reported from ʿUmar, his son—may Allah be pleased with them—or ʿAṭāʾ here except mere dislike, not the prohibition they impose without any evidence whatsoever? Muḥammad ibn Saʿīd ibn Nabāt narrated to us: ʿAbdullāh ibn Naṣr narrated to us: Qāsim ibn Aṣbagh narrated to us: Ibn Waḍḍāḥ narrated to us: Mūsā ibn Muʿāwiyah narrated to us: Wakīʿ narrated to us: from Sufyān al-Thawrī from one of his companions from Ibn ʿUmar, who said: "It pleases me that there be a barrier between the lawful and the unlawful from the unlawful."

وَقَدْ جَاءَ عَنْ عُمَرَ: أَنَّهُ خَافَ أَنْ يَزِيدَ فِيمَا نَهَى عَنْهُ مِنْ الرِّبَا أَضْعَافَ الرِّبَا الْمُحَرَّمِ خَوْفًا مِنْ الْوُقُوعِ فِيهِ عَلَى مَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا يَزِيدُ بْنُ زُرَيْعٍ عَنْ دَاوُد بْنِ أَبِي هِنْدٍ عَنْ عَامِرٍ الشَّعْبِيِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَامَ خَطِيبًا فَقَالَ: إنَّا وَاَللَّهِ مَا نَدْرِي لَعَلَّنَا نَأْمُرُكُمْ بِأُمُورٍ لَا تَصْلُحُ لَكُمْ، وَلَعَلَّنَا نَنْهَاكُمْ عَنْ أُمُورٍ تَصْلُحُ لَكُمْ، وَإِنَّهُ

L23518 It has been reported from Umar that he feared increasing the multiples of the prohibited usury he had forbidden might lead to falling into it, according to what was narrated to us through the chain of Al-Hajjaj ibn Al-Minhal: Yazid ibn Zurai' reported from Dawud ibn Abi Hind from Amir Al-Sha'bi that Umar ibn Al-Khattab stood to deliver a sermon and said: "By Allah, we do not know - perhaps we command you with matters unsuited to you, and perhaps we forbid you from matters suited to you. Indeed, the verses

on usury were among the last revelations of the Quran, and the Messenger of Allah—peace and blessings be upon him—passed away before he could clarify it for us. Therefore, abandon what raises doubt for what leaves no doubt."

كَانَ مِنْ آخِرِ الْقُرْآنِ نُزُولًا لِآيَاتِ الرِّبَا، فَتُوُفِّيَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَبْلَ أَنْ يُبَيِّنَهُ لَنَا، فَدَعُوا مَا يَرِيبُكُمْ إِلَى مَا لَا يَرِيبُكُمْ.

L23519 Ali said: Far removed is Allah that His Messenger—may Allah's blessings and peace be upon him—would fail to clarify the riba for which Allah threatened the severest punishment and against which Allah the Exalted has sanctioned war. Even if he did not clarify it to Umar, he undoubtedly clarified it to others. He is not required to do more than that, nor is he duty-bound to explain everything to everyone. However, if he clarified it to those who would convey it, he has conveyed what he was obligated to convey.

قَالَ عَلِيٌّ: حَاشَ لِلَّهِ مِنْ أَنْ يَكُونَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُبَيِّنْ الرِّبَا الَّذِي تَوَعَّدَ فِيهِ أَشَدَّ الْوَعِيدِ، وَالَّذِي أَذِنَ اللَّهُ تَعَالَى فِيهِ بِالْحَرْبِ، وَلَئِنْ كَانَ لَمْ يُبَيِّنْهُ لِعُمَرَ فَقَدْ بَيَّنَهُ لِغَيْرِهِ، وَلَيْسَ عَلَيْهِ أَكْثَرُ مِنْ ذَلِكَ، وَلَا عَلَيْهِ أَنْ يُبَيِّنَ كُلَّ شَيْءٍ لِكُلِّ أَحَدٍ، لَكِنْ إِذَا بَيَّنَهُ لِمَنْ يُبَلِّغُهُ فَقَدْ بَلَّغَ مَا لَزِمَهُ تَبْلِيغُهُ.

L23520 From the narration of Abd al-Razzaq, via Sufyan al-Thawri, via Isa ibn al-Mughirah, via al-Sha'bi, who reported: Umar ibn al-Khattab said, "We abandoned nine-tenths of the permissible for fear of *ribā*."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عِيسَى بْنِ الْمُغِيرَةِ عَنْ الشَّعْبِيِّ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: تَرَكْنَا تِسْعَةَ أَعْشَارِ الْحَلَالِ مَخَافَةَ الرِّبَا.

L23521–23522 Thus, any connection they might have to what we have mentioned is invalidated. It is established that their claim of having no precedent in this matter whatsoever stands, nor do we know of it from anyone before them.

فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ فِي شَيْءٍ مِمَّا ذَكَرْنَا، وَحَصَلَ قَوْلُهُمْ لَا سَلَفَ لَهُمْ فِيهِ أَصْلًا، وَلَا نَعْرِفُهُ عَنْ أَحَدٍ قَبْلَهُمْ.

L23523 They said: The Prophet—may Allah bless him and grant him peace—mentioned six types: four edible ones and two that serve as prices for commodities. So we analogized all edible matters to the edible category, yet refrained from applying analogy to monetary values at all?

وَقَالُوا: إِنَّمَا ذَكَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سِتَّةَ أَصْنَافٍ: أَرْبَعَةً مَأْكُولَةً، وَاثْنَتَيْنِ هُمَا ثَمَنُ الْأَشْيَاءِ، فَقِسْنَا عَلَى الْمَأْكُولَةِ كُلَّ مَأْكُولٍ، وَلَمْ نَقِسْ عَلَى الْأَثْمَانِ شَيْئًا؟

L23524 We said: This is the first error. If analogy is invalid, it is impermissible for you to apply it to the four mentioned edible items while excluding others. If analogy is valid, it is impermissible for you to abandon gold and silver without applying analogy to them, as you did with the four edible items—with no distinction. Then apply analogy to gold and silver for every weighed substance, as Abū Ḥanīfa did, or for everything metallic. If you refuse and justify gold and silver by valuation through weight, we say: This is against you, not for you. For everything permissible to sell is a valid price for anything permissible to sell, by your consensus along with the people on this matter. We do not know from where you derived restricting valuation

فَقُلْنَا: هَذَا أَوَّلُ الْخَطَأِ، إِنْ كَانَ الْقِيَاسُ بَاطِلًا فَمَا يَحِلُّ لَكُمْ أَنْ تَقِيسُوا عَلَى الْأَرْبَعَةِ الْمَأْكُولَةِ الْمَذْكُورَةِ غَيْرَهَا، وَإِنْ كَانَ الْقِيَاسُ حَقًّا فَمَا يَحِلُّ لَكُمْ أَنْ تَدَعُوا الذَّهَبَ، وَالْفِضَّةَ: دُونَ أَنْ تَقِيسُوا عَلَيْهِمَا، كَمَا فَعَلْتُمْ فِي الْأَرْبَعَةِ الْمَأْكُولَةِ وَلَا فَرْقَ، فَقِيسُوا عَلَى الذَّهَبِ وَالْفِضَّةِ كُلَّ مَوْزُونٍ كَمَا فَعَلَ أَبُو حَنِيفَةَ، أَوْ كُلَّ مَعْدِنِيٍّ، فَإِنْ أَبَيْتُمْ وَعَلَّلْتُمْ الذَّهَبَ وَالْفِضَّةَ بِالتَّثْمِينِ؟ قُلْنَا: هَذَا عَلَيْكُمْ لَا لَكُمْ؛ لِأَنَّ كُلَّ شَيْءٍ يَجُوزُ بَيْعُهُ فَهُوَ ثَمَنٌ صَحِيحٌ لِكُلِّ شَيْءٍ يَجُوزُ بَيْعُهُ، بِإِجْمَاعِكُمْ مَعَ النَّاسِ عَلَى ذَلِكَ، وَلَا نَدْرِي مِنْ أَيْنَ وَقَعَ

by weight to gold and silver, as there is no textual evidence for this, nor any statement from any of the people of Islam? This is an error of utmost outrageousness, and it binds the Shāfiʿīs and Mālikīs with a binding necessity from which there is no escape.

لَكُمْ الِاقْتِصَارُ بِالتَّثْمِينِ عَلَى الذَّهَبِ، وَالْفِضَّةِ، وَلَا نَصَّ فِي ذَلِكَ، وَلَا قَوْلَ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ؟ وَهَذَا خَطَأٌ فِي غَايَةِ الْفُحْشِ، وَلَازِمٌ لِلشَّافِعِيِّينَ، وَالْمَالِكِيِّينَ، لُزُومًا لَا انْفِكَاكَ مِنْهُ.

L23525 Moreover, what makes your legal cause more valid than that of the Hanafis, who ascribed the four categories to volumetric measurement and gold and silver to weight—claiming that he (peace be upon him) mentioned only what is volumetrically measured or weighed? This is a matter they cannot evade. Exalted is Allah above such a thing! That there could be here a legal cause He did not clarify in His Book or on the tongue of His Messenger (peace be upon him), thereby leaving us in misguidance and an incomplete religion, relegating us to the conjectures of Abu Hanifa, Malik, and al-Shafiʿi—conjectures which are devoid of meaning. This is a matter no rational person would doubt. Praise be to Allah, Lord of the worlds.

وَأَيْضًا: فَمَا الَّذِي جَعَلَ عِلَّتَكُمْ بِأَوْلَى مِنْ عِلَّةِ الْحَنَفِيِّينَ الَّذِينَ عَلَّلُوا الْأَرْبَعَةَ الْأَصْنَافَ بِالْكَيْلِ، وَالذَّهَبَ وَالْفِضَّةَ بِالْوَزْنِ - وَقَالُوا: لَمْ يَذْكُرْ - عَلَيْهِ السَّلَامُ - إلَّا مَكِيلًا أَوْ مَوْزُونًا، وَهَذَا مَا لَا مُخَلِّصَ لَهُمْ مِنْهُ، وَحَاشَ لِلَّهِ أَنْ يَكُونَ هَهُنَا عِلَّةٌ لَمْ يُبَيِّنْهَا اللَّهُ فِي كِتَابِهِ، وَلَا عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ -، بَلْ تَرَكَنَا فِي ضَلَالٍ وَدِينٍ غَيْرِ تَامٍّ، وَوَكَّلَنَا إلَى ظُنُونِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، الَّتِي لَا مَعْنَى لَهَا، هَذَا أَمْرٌ لَا يَشُكُّ فِيهِ ذُو عَقْلٍ. وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L23526 A group has stated that the cause of usury lies solely in measurement by volume or weight within a single category or two categories. If a commodity is measured by volume, it must be sold for its own kind in equal measure with immediate payment, where neither inequality in quantity nor deferred payment is permitted. However, it is permissible to sell it for another type of volume-measured commodity with unequal quantity, provided payment is immediate. Deferred payment remains impermissible in such cases.

If a commodity is weighed, it is permissible to sell it for its own kind in equal weight with immediate payment, where neither inequality in quantity nor deferred payment is allowed. It is also permissible to sell it for another type of weighed commodity with unequal weight, provided payment is immediate. Deferred payment remains impermissible except specifically in the case of gold and silver, for it is permissible to sell all other weighed commodities for gold or silver on deferred payment terms.

وَقَالَتْ طَائِفَةٌ: عِلَّةُ الرِّبَا هِيَ الْكَيْلُ وَالْوَزْنُ فِي جِنْسٍ وَاحِدٍ أَوْ جِنْسَيْنِ فَقَطْ، فَإِذَا كَانَ الصِّنْفُ مَكِيلًا بِيعَ بِنَوْعِهِ كَيْلًا بِمِثْلِهِ يَدًا بِيَدٍ، وَلَمْ يَحِلَّ فِيهِ التَّفَاضُلُ وَلَا النَّسِيئَةُ - وَجَازَ بَيْعُهُ بِنَوْعٍ آخَرَ مِنْ الْمَكِيلَاتِ مُتَفَاضِلًا يَدًا بِيَدٍ، وَلَا يَجُوزُ فِيهِ النَّسِيئَةُ - وَإِذَا كَانَ مَوْزُونًا جَازَ بَيْعُهُ بِنَوْعِهِ وَزْنًا بِوَزْنٍ نَقْدًا، وَلَا يَجُوزُ فِيهِ التَّفَاضُلُ وَلَا النَّسِيئَةُ، وَجَازَ بَيْعُهُ بِنَوْعٍ آخَرَ مِنْ الْمَوْزُونَاتِ مُتَفَاضِلًا يَدًا بِيَدٍ، وَلَا يَجُوزُ فِيهِ النَّسِيئَةُ إلَّا فِي الذَّهَبِ، وَالْفِضَّةِ، خَاصَّةً فَإِنَّهُ يَجُوزُ أَنْ يُبَاعَ بِهِمَا سَائِرُ الْمَوْزُونَاتِ نَسِيئَةً.

L23527–23528 Permissible is the sale of a volume-measured commodity for a weight-measured one, whether in unequal or equal quantities, as immediate or deferred payment—such as meat for wheat, honey for dates, raisins for barley,

and likewise for all other things. This is the opinion of Abū Ḥanīfa and his companions.

وَجَائِزٌ بَيْعُ الْمَكِيلِ بِالْمَوْزُونِ مُتَفَاضِلًا وَمُتَمَاثِلًا نَقْدًا وَنَسِيئَةً، كَاللَّحْمِ بِالْبُرِّ، أَوْ كَالْعَسَلِ بِالتَّمْرِ، أَوْ الزَّبِيبِ بِالشَّعِيرِ، وَهَكَذَا فِي كُلِّ شَيْءٍ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَأَصْحَابِهِ.

L23529 Some of the later scholars among them abandoned this rationale due to its invalidation against them concerning gold and silver within all weighed substances. They retreated to claiming: "The cause of usury is the existence of measured quantity or weight in what is inherently specified." Yet through this, they have added nothing but madness and falsehood by their assertion that dinars and dirhams are not specified - a stubborn denial of evident reality.

وَقَدْ رَغِبَ بَعْضُ الْمُتَأَخِّرِينَ مِنْهُمْ عَنْ هَذِهِ الْعِلَّةِ بِسَبَبِ انْتِقَاضِهَا عَلَيْهِمْ فِي الذَّهَبِ وَالْفِضَّةِ بِسَائِرِ الْمَوْزُونَاتِ، فَلَجَأَ إلَى أَنْ قَالَ: عِلَّةُ الرِّبَا هِيَ وُجُودُ الْكَيْلِ، أَوْ الْوَزْنِ فِيمَا يَتَعَيَّنُ، فَمَا زَادُونَا بِهَذَا إلَّا جُنُونًا وَكَذِبًا بِدَعْوَاهُمْ أَنَّ الدَّنَانِيرَ، وَالدَّرَاهِمَ: لَا تَتَعَيَّنُ، وَهَذِهِ مُكَابَرَةُ الْعِيَانِ.

L23530 Moreover, the effective cause for gold and silver in their view is precisely defined, and they permit its transfer in weighed transactions. Thus, they derived no benefit from this absurd addition in removing their contradiction.

وَأَيْضًا: فَإِنَّ عِلَّةَ الذَّهَبِ وَالْفِضَّةِ عِنْدَهُمْ تَتَعَيَّنُ، وَهُمْ يُجِيزُونَ تَسْلِيمَهُ فِيمَا يُوزَنُ، فَلَمْ يَنْتَفِعُوا بِهَذِهِ الزِّيَادَةِ السَّخِيفَةِ فِي إزَالَةِ تَنَاقُضِهِمْ.

L23531 Then they came forth with absurdities akin to what is brought by wrong-doers whose intellects are corrupt—matters we have exhaustively detailed in this work. However, among these is their contravention of the unanimously established Sunnah upheld by all who maintain that usury applies to non-delayed transactions. They permitted exchanging one date for two dates in an immediate transaction, which would logically compel them to allow handing over three grains of wheat for two grains of dates. This constitutes a departure from the certain consensus.

ثُمَّ أَتَوْا بِتَخَالِيطَ تُشْبِهُ مَا يَأْتِي بِهِ مَنْ بَغَى لِفَسَادِ عَقْلِهِ، قَدْ تَقَصَّيْنَاهَا فِي هَذَا الْمَكَانِ، إلَّا أَنَّ مِنْهَا مُخَالَفَتَهُمْ السُّنَّةَ الْمُتَّفَقَ عَلَيْهَا مِنْ كُلِّ مَنْ يَرَى الرِّبَا فِي غَيْرِ النَّسِيئَةِ، فَأَجَازُوا التَّمْرَةَ بِالتَّمْرَتَيْنِ يَدًا بِيَدٍ، وَيَلْزَمُهُمْ أَنْ يُجِيزُوا تَسْلِيمَ ثَلَاثِ حَبَّاتٍ مِنْ قَمْحٍ فِي حَبَّتَيْنِ مِنْ تَمْرٍ، وَهَذَا خُرُوجٌ عَنْ الْإِجْمَاعِ الْمُتَيَقَّنِ.

L23532 Abu Muhammad said: They argued for their position by citing what we have reported through the chain of Muslim: I am Ibn Qa'nab from Sulayman - meaning Ibn Bilal - from Abd al-Majid ibn Suhayl ibn Abd al-Rahman ibn Awf, that he heard Sa'id ibn al-Musayyab relate that Abu Hurayrah and Abu Sa'id informed him: "The Messenger of Allah - peace and blessings of Allah be upon him - sent a man from Banu Adi al-Ansari and appointed him over Khaybar. He came with premium dates, so the Messenger of Allah - peace and blessings of Allah be upon him - asked him: 'Are all dates of Khaybar like these?' He replied: 'No, by Allah, O Messenger of Allah! We trade two sa's of al-Jam' dates for one sa' of these.' The Messenger of Allah - peace and blessings of Allah be upon him - said: 'Do not do this. Rather, exchange

قَالَ أَبُو مُحَمَّد: وَاحْتَجُّوا لِقَوْلِهِمْ هَذَا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا ابْنُ قَعْنَبٍ عَنْ سُلَيْمَانَ - يَعْنِي ابْنَ بِلَالٍ - عَنْ عَبْدِ الْمَجِيدِ بْنِ سُهَيْلِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَّهُ سَمِعَ سَعِيدَ بْنَ الْمُسَيَّبِ يُحَدِّثُ أَنَّ أَبَا هُرَيْرَةَ، وَأَبَا سَعِيدٍ حَدَّثَاهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ أَخَا بَنِي عَدِيٍّ الْأَنْصَارِيَّ فَاسْتَعْمَلَهُ عَلَى خَيْبَرَ فَقَدِمَ بِتَمْرٍ جَنِيبٍ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَكُلُّ تَمْرِ خَيْبَرَ هَكَذَا؟ قَالَ: لَا، وَاَللَّهِ يَا رَسُولَ اللَّهِ إنَّا لَنَشْتَرِي الصَّاعَ بِالصَّاعَيْنِ مِنْ الْجَمْعِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى

like for like, or sell these and buy others with its price. And similarly the measure.”’ They used this wording as evidence, specifically the phrase “and similarly the measure.”[2]

L23533–23534 From the narration of ʿAbd al-Razzāq: Maʿmar reported from Yaḥyā ibn Abī Kathīr, from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf, from Abū Saʿīd, who said: “The Messenger of Allah—peace and blessings be upon him—entered upon some members of his household and found with them dates of superior quality to their own. He said: ’From where are these?’ They replied: ’We exchanged two *ṣāʿ*s of our dates for one *ṣāʿ* of theirs.’ The Messenger of Allah—peace and blessings be upon him—said: ’It is not valid to exchange two *ṣāʿ*s for one *ṣāʿ*, nor two dirhams for one dirham.”’

L23535 From the path of Ibn Abi Shaybah: He said: I [narrate] from Ibn Abi Za’idah, from Muhammad ibn ’Amr ibn ’Alqamah al-Laythi, from Abu Salamah ibn ’Abd al-Rahman, from Abu Sa’id, that the Messenger of Allah—peace be upon him—said: “It is not permissible to exchange one dirham for two dirhams, nor one sa’ for two sa’s.” These are two authentic narrations, but they contain no valid evidence for their position in these two matters, as we shall elucidate, Allah willing.

L23536 And what we have narrated via Wakīʿ: Abū Jannāb reported from his father, from Ibn ʿUmar, who said: “The Messenger of Allah—peace and blessings of Allah be upon him—said near this pillar (which was at that time a date palm trunk, now a pillar): ’Do not sell a dinar for two dinars, nor a dirham for two dirhams, nor a ṣāʿ for two ṣāʿs. I fear for you the ramā’—and ramā’ is ribā (usury).”’ Some narrators added: A man approached him and said: “O Messenger of Allah, what if a man sells a horse for horses or a high-bred camel for camels?” He replied: “There is no harm if it is done hand to hand.”

L23537 And according to what was narrated to us by Aḥmad ibn Muḥammad al-Ṭalamankī: Ibn Mufarrij narrated to us: Ibrāhīm ibn Aḥmad ibn Farrās narrated to us: Aḥmad ibn Muḥammad ibn Sālim al-Naysābūrī narrated

اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَا تَفْعَلُوا، وَلَكِنْ مِثْلًا بِمِثْلٍ، أَوْ بِيعُوا هَذَا وَاشْتَرُوا بِثَمَنِهِ مِنْ هَذَا، وَكَذَلِكَ الْمِيزَانُ» فَاحْتَجُّوا بِهَذِهِ اللَّفْظَةِ، وَهِيَ قَوْلُ " وَكَذَلِكَ الْمِيزَانُ ".

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي سَعِيدٍ قَالَ: «دَخَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى بَعْضِ أَهْلِهِ فَوَجَدَ عِنْدَهُمْ تَمْرًا أَجْوَدَ مِنْ تَمْرِهِمْ فَقَالَ: مِنْ أَيْنَ هَذَا؟ فَقَالُوا: أَبْدَلْنَا صَاعَيْنِ بِصَاعٍ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَصْلُحُ صَاعَيْنِ بِصَاعٍ وَلَا دِرْهَمَيْنِ بِدِرْهَمٍ» .

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ أَبِي زَائِدَةَ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَلْقَمَةَ اللَّيْثِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي سَعِيدٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «لَا يَصْلُحُ دِرْهَمٌ بِدِرْهَمَيْنِ وَلَا صَاعٌ بِصَاعَيْنِ» وَهَذَانِ خَبَرَانِ صَحِيحَانِ إلَّا أَنَّهُ لَا حُجَّةَ لَهُمْ فِيهِمَا، عَلَى مَا نُبَيِّنُ، إنْ شَاءَ اللَّهُ تَعَالَى.

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ أَنَا أَبُو جَنَّابٍ عَنْ أَبِيهِ عَنْ ابْنِ عُمَرَ قَالَ «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِنْدَ هَذِهِ السَّارِيَةِ وَهِيَ يَوْمَئِذٍ جِذْعُ نَخْلَةٍ -: لَا تَبِيعُوا الدِّينَارَ بِالدِّينَارَيْنِ، وَلَا الدِّرْهَمَ بِالدِّرْهَمَيْنِ، وَلَا الصَّاعَ بِالصَّاعَيْنِ، إنِّي أَخَافُ عَلَيْكُمْ الرَّمَاءَ - وَالرَّمَاءُ الرِّبَا - زَادَ بَعْضُهُمْ: فَقَامَ إلَيْهِ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ الرَّجُلُ يَبِيعُ الْفَرَسَ بِالْأَفْرَاسِ وَالنَّجِيبَ بِالْإِبِلِ، قَالَ: لَا بَأْسَ إذَا كَانَ يَدًا بِيَدٍ» .

وَبِمَا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ أَنَا ابْنُ مُفَرِّجٍ أَنَا إبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ فَرَّاسٍ أَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ سَالِمٍ النَّيْسَابُورِيُّ أَنَا إسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - أَنَا رَوْحٌ أَنَا

[2] **Hadith references (L23532):** Sahih Muslim 1593a.

to us: Isḥāq ibn Ibrāhīm (Ibn Rāhwayh) narrated to us: Rawḥ narrated to us: Ḥayyān ibn ʾUbayd Allāh - a man of verified integrity - said: "I asked Abū Mijlaz about the exchange of currency or specified commodities. He replied: ʾHand to hand. Ibn ʾAbbās did not consider it impermissible as long as the exchange was conducted immediately.ʾ Then Abū Saʿīd came to him and said: ʾDo you not fear Allah? How long will people engage in usury? Has it not reached you that Allah's Messenger - peace and blessings be upon him - said: "Dates for dates, wheat for wheat, barley for barley, gold for gold, and silver for silver - hand to hand, same substance for same substance, equal measure for equal measure. Whatever exceeds this is usury. This ruling also applies to items sold by volume-measurement or weight-measurement"?ʾ Ibn ʾAbbās told Abū Saʿīd: ʾMay Allah reward you with Paradise! You have reminded me of a matter I had forgotten. I seek Allah's forgiveness and repent.ʾ Thereafter, he prohibited such transactions."

«حَيَّانُ بْنُ عُبَيْدِ اللَّهِ - وَكَانَ رَجُلُ صِدْقٍ - قَالَ سَأَلْتُ أَبَا مِجْلَزٍ عَنْ الصَّرْفِ؟ فَقَالَ: يَدًا بِيَدٍ، كَانَ ابْنُ عَبَّاسٍ لَا يَرَى بِهِ بَأْسًا مَا كَانَ مِنْهُ يَدًا بِيَدٍ، فَأَتَاهُ أَبُو سَعِيدٍ فَقَالَ لَهُ: أَلَا نَتَّقِي اللَّهَ، حَتَّى مَتَى يَأْكُلُ النَّاسُ الرِّبَا؟ أَوَمَا بَلَغَكَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: التَّمْرُ بِالتَّمْرِ، وَالْحِنْطَةُ بِالْحِنْطَةِ، وَالشَّعِيرُ بِالشَّعِيرِ، وَالذَّهَبُ بِالذَّهَبِ، وَالْفِضَّةُ بِالْفِضَّةِ يَدًا بِيَدٍ، عَيْنًا بِعَيْنٍ، مِثْلًا بِمِثْلٍ، فَمَا زَادَ فَهُوَ رِبًا؟ ثُمَّ قَالَ: وَكَذَلِكَ مَا يُكَالُ وَيُوزَنُ أَيْضًا» ؟ فَقَالَ ابْنُ عَبَّاسٍ لِأَبِي سَعِيدٍ: جَزَاكَ اللَّهُ الْجَنَّةَ، ذَكَّرْتَنِي أَمْرًا قَدْ كُنْتُ أُنْسِيتُهُ، فَأَنَا أَسْتَغْفِرُ اللَّهَ وَأَتُوبُ إِلَيْهِ - فَكَانَ يَنْهَى عَنْهُ بَعْدَ ذَلِكَ -.

L23538–23539 And this is all that they have cited as evidence, and there is no authoritative evidence for them in any part of it.

وَهَذَا كُلُّ مَا احْتَجُّوا بِهِ، وَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ.

L23540 As for the ḥadīth of Ibn Abī Zāʾidah from Muḥammad ibn ʿAmr from Abū Salamah from Abī Saʿīd, it has been transmitted from Muḥammad ibn ʿAmr by narrators more precise in memorization and more reliable than Ibn Abī Zāʾidah, and they added clarification to it—as narrated to us by Aḥmad ibn Muḥammad al-Ṭalamankī: From Ibn Mufarrij, from Ibrāhīm ibn Aḥmad ibn Farrās, from Aḥmad ibn Muḥammad ibn Sālim al-Naysābūrī, from Isḥāq ibn Rāhwayh, from al-Fuḍayl ibn Mūsā and al-Naḍr ibn Shumayl, both of whom narrated: From Muḥammad ibn ʿAmr, from Abū Salamah ibn ʿAbd al-Raḥmān, from Abī Saʿīd al-Khudrī, who said: "Allah's Messenger—peace and blessings of Allah be upon him—would provide us with dates from the collected dates. We would exchange them for superior dates while increasing the price. Thereupon Allah's Messenger—peace and blessings of Allah be upon him—said: ʾThis is impermissible. It is impermissible to exchange two ṣāʿs for one ṣāʿ, two dirhams for one dirham, a dinar for two dinars, or a dirham for a dirham. No excess may exist between them, as any excess constitutes usury.ʾ"

أَمَّا حَدِيثُ ابْنِ أَبِي زَائِدَةَ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي سَلَمَةَ عَنْ أَبِي سَعِيدٍ فَإِنَّهُ رَوَاهُ عَنْ مُحَمَّدِ بْنِ عَمْرٍو مَنْ هُوَ أَحْفَظُ مِنْ ابْنِ أَبِي زَائِدَةَ وَأَوْثَقُ، فَزَادَ فِيهِ بَيَانًا -: كَمَا حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ أَنَا ابْنُ مُفَرِّجٍ أَنَا إِبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ فَرَّاسٍ أَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ سَالِمٍ النَّيْسَابُورِيُّ أَنَا إِسْحَاقُ بْنُ رَاهْوَيْهِ أَنَا الْفُضَيْلُ بْنُ مُوسَى، وَالنَّضْرُ بْنُ شُمَيْلٍ، قَالَا جَمِيعًا: أَنَا مُحَمَّدُ بْنُ عَمْرٍو عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَرْزُقُنَا تَمْرًا مِنْ تَمْرِ الْجَمْعِ، فَنَسْتَبْدِلُ تَمْرًا أَطْيَبَ مِنْهُ وَنَزِيدُ فِي السِّعْرِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَا يَصْلُحُ هَذَا لَا يَصْلُحُ صَاعَيْنِ بِصَاعٍ، وَلَا دِرْهَمَانِ بِدِرْهَمٍ، وَلَا الدِّينَارُ بِدِينَارَيْنِ، وَلَا الدِّرْهَمُ بِالدِّرْهَمِ لَا فَضْلَ بَيْنَهُمَا إِلَّا رِبًا» .

L23541 Abu Muhammad said: The statement of the Prophet - peace be upon him -

"This is not valid, this is not valid: two ṣāʿs for a ṣāʿ" refers specifically to the dates mentioned in the hadith, as no other interpretation is fundamentally possible. He - peace be upon him - initially declared "This is not valid" while indicating their action, then commenced a new grammatical construction by stating "This is not valid - two ṣāʿs for a ṣāʿ." Here, "this" serves as the subject (mubtada), while "two ṣāʿs for a ṣāʿ is not valid" constitutes the predicate (khabar). The phrase "two ṣāʿs for a ṣāʿ" functions as an accusative specifier (tamyīz). No alternative grammatical analysis is permissible, for had the Prophet - peace be upon him - said "This is not valid" then independently stated "Two ṣāʿs for a ṣāʿ is not valid" without the second verb containing a referential pronoun, it would constitute an impermissible solecism (laḥn) – a grammatical error entirely invalid in construction.

L23542 Among the categorically false assertions is that he—peace be upon him—commits grammatical errors. It is impermissible to reject the wording of a report as long as a valid interpretation exists for it. Thus, their clinging to this report is nullified. All praise is due to God, the Exalted.

L23543 As for the ḥadīth of Saʿīd ibn al-Musayyib from Abū Saʿīd and Abū Hurayrah containing "and likewise the scale," they have boldly ascribed sheer falsehood to the Messenger of Allah (peace and blessings be upon him) by decisively claiming he (peace be upon him) intended to declare: "Unequal exchange is impermissible in every category of weighed commodities, nor is deferred payment permissible," whereas he limited himself to stating "and likewise the scale."

L23544–23546 Abu Muhammad said: The Messenger of Allah—may Allah bless him and grant him peace—was sent solely with clarity. As for ambiguity in religion and obfuscation in the Sharīʿah, Allah forbid such a thing! And there is nothing more abundant in obfuscation and ambiguity than... The Messenger of Allah—peace and blessings be upon him—intended to prohibit every category of items measured by volume when exchanged for something of the same kind with excess or deferred payment terms, and every category of items measured by weight when exchanged for something of the same kind with excess or deferred payment terms. He confined his explanation

قَالَ أَبُو مُحَمَّد: فَقَوْلُه - عَلَيْهِ السَّلَامُ -: «لَا يَصْلُحُ، هَذَا لَا يَصْلُحُ صَاعَيْنِ بِصَاعٍ» إشَارَةٌ إلَى التَّمْرِ الْمَذْكُورِ فِي الْخَبَرِ، لَا يُمْكِنُ غَيْرُ ذَلِكَ أَصْلًا، بَدَأَ - عَلَيْهِ السَّلَامُ - فَقَالَ: " لَا يَصْلُح " مُشِيرًا إلَى فِعْلِهِمْ، ثُمَّ ابْتَدَأَ الْكَلَامَ فَقَالَ: " هَذَا لَا يَصْلُحُ صَاعَيْنِ بِصَاعٍ " فَ " هَذَا، ابْتِدَاءٌ، وَ " لَا يَصْلُحُ صَاعَيْنِ بِصَاعٍ " جُمْلَةٌ فِي مَوْضِعِ خَبَرِ الِابْتِدَاءِ وَانْتَصَبَ " صَاعَيْنِ بِصَاعٍ " عَلَى التَّمْيِيزِ، وَلَا يَجُوزُ غَيْرُ ذَلِكَ أَصْلًا، لِأَنَّهُ لَوْ قَالَ - عَلَيْهِ السَّلَامُ -: لَا يَصْلُحُ هَذَا، ثُمَّ ابْتَدَأَ الْكَلَامَ بِقَوْلِهِ: لَا يَصْلُحُ صَاعَيْنِ بِصَاعٍ، دُونَ أَنْ يَكُونَ فِي يَصْلُحُ الثَّانِيَةِ ضَمِيرٌ رَاجِعٌ إلَى مَذْكُورٍ، أَوْ مُشَارٍ إلَيْهِ لَكَانَ لَحْنًا لَا يَجُوزُ أَلْبَتَّةَ.

وَمِنْ الْبَاطِلِ الْمَقْطُوعِ بِهِ أَنْ يَكُونَ - عَلَيْهِ السَّلَامُ - يَلْحَنُ، وَلَا يَحِلُّ إحَالَةُ لَفْظِ الْخَبَرِ مَا دَامَ يُوجَدُ لَهُ وَجْهٌ صَحِيحٌ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ. وَلِلَّهِ تَعَالَى الْحَمْدُ.

وَأَمَّا حَدِيثُ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي سَعِيدٍ، وَأَبِي هُرَيْرَةَ، الَّذِي فِيهِ «وَكَذَلِكَ الْمِيزَانُ» فَإِنَّهُمْ جَسَرُوا هَهُنَا عَلَى الْكَذِبِ الْبَحْتِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ قَطَعُوا بِأَنَّهُ - عَلَيْهِ السَّلَامُ - أَرَادَ أَنْ يَقُولَ: لَا يَحِلُّ التَّفَاضُلُ فِي كُلِّ جِنْسٍ مِنْ الْمَوْزُونَاتِ بِجِنْسِهِ، وَلَا النَّسِيئَةُ، فَاقْتَصَرَ مِنْ هَذَا كُلِّهِ عَلَى أَنْ قَالَ " وَكَذَلِكَ الْمِيزَانُ ".

قَالَ أَبُو مُحَمَّد: إنَّمَا بُعِثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْبَيَانِ، وَأَمَّا بِالْإِشْكَالِ فِي الدِّينِ، وَالتَّلَبُّسِ فِي الشَّرِيعَةِ: فَمَعَاذَ اللَّهِ مِنْ هَذَا، وَلَيْسَ فِي التَّلْبِيسِ، وَالْإِشْكَالِ: أَكْثَرُ مِنْ أَنْ يُرِيدَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُحَرِّمَ كُلَّ جِنْسٍ مِمَّا يُكَالُ بِشَيْءٍ مِنْ جِنْسِهِ مُتَفَاضِلًا أَوْ نَسِيئَةً، وَكُلَّ جِنْسٍ مِمَّا يُوزَنُ بِشَيْءٍ مِنْ جِنْسِهِ مُتَفَاضِلًا أَوْ نَسِيئَةً، فَيَقْتَصِرُ مِنْ بَيَانِ ذَلِكَ عَلَيْنَا، وَتَفْصِيلِهِ لَنَا، عَلَى أَنْ يَقُولَ فِي التَّمْرِ الَّذِي اُشْتُرِيَ بِتَمْرٍ

and detailed clarification to us by stating regarding dates purchased with a greater quantity of dates: “Do not do so; rather, exchange equal for equal, or sell this and buy with its price from that.” The same applies to weighing [transactions].[3]

L23547 Allah has never created anyone who comprehends these two categories of Divine Speech, nor has He, the Exalted, ever composed this Divine Speech upon those two superstitions.

L23548 If a person from among the people sought to argue for these two laws using this speech and expressed them in this manner, they would be mocked. Anyone who heard him would consider him nothing more than a stammerer, a libertine among the profligate, or a fool among the simpletons.

L23549 Do they not feel ashamed of these destructive scandals before Allah the Exalted—disgraceful in this worldly life? Yet we utter words by which we seek closeness to Allah the Exalted, words validated by every person of understanding, whether opponent or supporter. That is: The statement of Allah’s Messenger (peace and blessings be upon him), “And likewise the scale,” is a general pronouncement like Allah’s decree: {Establish prayer and give zakah} [Quran 2:43]. We believe in all such texts and seek their clarification through other texts. We do not advance false assumptions or deceitful claims to assert, “Allah the Exalted intended such-and-such,” or “His Messenger (peace be upon him) meant such-and-such”—when the wording does not warrant such interpretations according to linguistic norms. Therefore, we examined this matter and found the narrations of Ubada ibn al-Samit, Abu Bakrah, and Abu Hurayrah, wherein the Prophet (peace be upon him) explicitly clarified within them his intended meaning of “And likewise the scale.” His explanation (peace be upon him) in that context was: “It is impermissible to exchange gold for gold except by equal weight, nor silver for silver except by equal weight.” Thus we decisively conclude: This is indeed the intended meaning

[3] **Hadith references (L23544):** Sahih Muslim 1593a.

أَكْثَرَ مِنْهُ: لَا تَفْعَلُوا، وَلَكِنْ مِثْلًا بِمِثْلٍ، أَوْ بِيعُوا هَذَا وَاشْتَرُوا بِثَمَنِهِ مِنْ هَذَا، وَكَذَلِكَ الْمِيزَانُ.

وَمَا خَلَقَ اللَّهُ قَطُّ أَحَدًا يَفْهَمُ تِلْكَ الصِّنْفَيْنِ مِنْ هَذَا الْكَلَامِ، وَلَا رَكَّبَ اللَّهُ تَعَالَى قَطُّ هَذَا الْكَلَامَ عَلَى تِلْكَ الْخُرَافَتَيْنِ.

وَلَوْ أَنَّ إِنْسَانًا مِنْ النَّاسِ أَرَادَ تِلْكَ الشَّرِيعَتَيْنِ اللَّتَيْنِ احْتَجُّوا لَهُمَا بِهَذَا الْكَلَامِ، فَعَبَّرَ عَنْهُمَا بِهَذَا الْكَلَامِ، لَسُخِرَ مِنْهُ، وَلَمَا عَدَّهُ مَنْ يَسْمَعُهُ إِلَّا أَلْكَنَ اللِّسَانِ، أَوْ مَاجِنًا مِنْ الْمُجَّانِ، أَوْ سَخِيفًا مِنْ النَّوْكَى.

أَفَلَا يَسْتَحْيُونَ مِنْ هَذِهِ الْفَضَائِحِ الْمُوبِقَةِ عِنْدَ اللَّهِ تَعَالَى، الْمُخْزِيَةِ فِي الْعَاجِلِ، وَلَكِنَّا نَقُولُ قَوْلًا نَتَقَرَّبُ بِهِ إِلَى اللَّهِ تَعَالَى، وَيَشْهَدُ لِصِحَّتِهِ كُلُّ ذِي فَهْمٍ مِنْ مُخَالِفٍ وَمُؤَالِفٍ - وَهُوَ أَنَّ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَكَذَلِكَ الْمِيزَانُ» قَوْلٌ مُجْمَلٌ، مِثْلُ قَوْلِ اللَّهِ تَعَالَى: {وَأَقِيمُوا الصَّلاةَ وَآتُوا الزَّكَاةَ} [البقرة: ٤٣] نُؤْمِنُ بِكُلِّ ذَلِكَ، وَنَطْلُبُ بَيَانَهُ مِنْ نُصُوصٍ أُخَرَ، وَلَا نَقْدَمُ بِالظَّنِّ الْكَاذِبِ، وَالدَّعْوَى الْآفِكَةِ عَلَى أَنْ نَقُولَ: أَرَادَ اللَّهُ تَعَالَى كَذَا وَكَذَا، وَأَرَادَ رَسُولُهُ - عَلَيْهِ السَّلَامُ - مَعْنَى كَذَا -: لَا يَقْتَضِيهِ ذَلِكَ اللَّفْظُ بِمَوْضُوعِهِ فِي اللُّغَةِ، فَطَلَبْنَا ذَلِكَ -: فَوَجَدْنَا حَدِيثَ عُبَادَةَ بْنِ الصَّامِتِ، وَأَبِي بَكْرَةَ، وَأَبِي هُرَيْرَةَ، قَدْ بَيَّنَ فِيهَا مُرَادَهُ - عَلَيْهِ السَّلَامُ - بِقَوْلِهِ هَهُنَا: " وَكَذَلِكَ الْمِيزَانُ " وَهُوَ تَفْسِيرُهُ - عَلَيْهِ السَّلَامُ - هُنَالِكَ: أَنَّهُ لَا يَحِلُّ الذَّهَبُ بِالذَّهَبِ إِلَّا وَزْنًا بِوَزْنٍ، وَلَا الْفِضَّةُ بِالْفِضَّةِ إِلَّا وَزْنًا بِوَزْنٍ - فَقَطَعْنَا: أَنَّ هَذَا هُوَ مُرَادُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَوْلِهِ: " وَكَذَلِكَ الْمِيزَانُ ".

of Allah's Messenger (peace and blessings be upon him) in his statement "And likewise the scale."[4]

L23550 We testify by the testimony of Allah, the Most High, that he—peace be upon him—if he had intended anything other than this, he would have clarified and explained it clearly so that the people of Islam might comprehend it. He did not leave us to depend on Abu Hanifah's conjecture and his opinion—no opinion being more invalid than his—nor to the worthless divinations of his companions, whose sweet talk about it results only in disgrace. The Most High said: "To clarify for mankind what was sent down to them" [16:44], "He has already detailed for you what He forbade to you" [6:119]. Thus their obfuscation through this narration collapses—and all praise belongs to Allah, the Most High.[5]

وَشَهِدْنَا بِشَهَادَةِ اللَّهِ تَعَالَى: أَنَّهُ - عَلَيْهِ السَّلَامُ - لَوْ أَرَادَ غَيْرَ هَذَا لَبَيَّنَهُ وَوَضَّحَهُ حَتَّى يَفْهَمَهُ أَهْلُ الْإِسْلَامِ وَلَمْ يَكِلْنَا إلَى ظَنِّ أَبِي حَنِيفَةَ وَرَأْيِهِ، الَّذِي لَا رَأْيَ أَسْقَطُ مِنْهُ، وَلَا إلَى كَهَانَةِ أَصْحَابِهِ الْغَثَّةِ الَّتِي حُلْوَانُهُمْ عَلَيْهَا الْخِزْيَةُ فَقَطْ، قَالَ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] ، {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] فَسَقَطَ تَمْوِيهُهُمْ بِهَذَا الْخَبَرِ - وَلِلَّهِ تَعَالَى الْحَمْدُ.

L23551–23552 What is utterly astonishing is their statement concerning what is manifestly clear from the Messenger of Allah—peace and blessings of Allah be upon him—prohibiting exchanging fresh dates for dried dates: that he only meant those dates at the tops of palm trees. Yet this is not mentioned in any of the narrations, for that is one report and this is another.

وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ قَوْلِهِمْ فِي الْبَيِّنِ الْوَاضِحِ مِنْ نَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الرُّطَبِ بِالتَّمْرِ: أَنَّهُ إنَّمَا أَرَادَ الَّتِي فِي رُءُوسِ النَّخْلِ - وَلَيْسَ هَذَا فِي شَيْءٍ مِنْ الْأَخْبَارِ؛ لِأَنَّ ذَلِكَ خَبَرٌ وَهَذَا آخَرُ.

L23553 They approach an ambiguous statement from which no one can understand anything except what he (peace be upon him) explained elsewhere. Yet they add to it, interpret it falsely, and ascribe to his wording (peace be upon him) meanings that it does not entail in any way.

وَيَأْتُونَ إلَى مُجْمَلٍ لَا يَفْهَمُ أَحَدٌ مِنْهُ إلَّا مَا فَسَّرَهُ - عَلَيْهِ السَّلَامُ - فِي مَكَان آخَرَ، فَيَزِيدُونَ فِيهِ وَيُفَسِّرُونَهُ بِالْبَاطِلِ، وَبِمَا لَا يَقْتَضِيهِ لَفْظُهُ - عَلَيْهِ السَّلَامُ - أَصْلًا.

L23554 As for the ḥadīth of Yaḥyā ibn Abī Kathīr from Abū Salama: "It is not permissible to exchange two *ṣāʿ*s for one *ṣāʿ*," they said: This is a general ruling encompassing all that is measured by volume (*makīl*).

وَأَمَّا حَدِيثُ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ: لَا يَصْلُحُ صَاعَيْنِ بِصَاعٍ، فَإِنَّهُمْ قَالُوا: هَذَا عُمُومٌ لِكُلِّ مَكِيلٍ.

L23555 Abu Muhammad said: This is a report that Ma'mar either abbreviated from Yahya ibn Abi Kathir or erred in it with certainty, without ambiguity. Ibn Abi Za'ida narrated it from Muhammad ibn 'Amr, or erred in it as we previously mentioned, because this report was transmitted from Yahya ibn Abi Kathir via their own chains: Al-Awza'i, Hisham al-Dastuwa'i, and Shayban ibn Farrukh

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَبَرٌ اخْتَصَرَهُ مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، أَوْ وَهَمَ فِيهِ بِيَقِينٍ لَا إشْكَالَ فِيهِ، فَرَوَاهُ ابْنُ أَبِي زَائِدَةَ عَنْ مُحَمَّدِ بْنِ عَمْرٍو، أَوْ وَهَمَ فِيهِ عَلَى مَا ذَكَرْنَا قَبْلُ؛ لِأَنَّ هَذَا خَبَرٌ رَوَاهُ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ بِإِسْنَادِهِ: الْأَوْزَاعِيُّ، وَهِشَامٌ الدَّسْتُوَائِيُّ،

[4] **Qur'an references (L23549):** Qur'an 2:43 (Al-Baqarah).
[5] **Qur'an references (L23550):** Qur'an 16:44 (An-Nahl); Qur'an 6:119 (Al-An'am).

- and neither Hisham nor Al-Awza'i are inferior to Ma'mar, if Hisham is not more reliable in memorization than him.

وَشَيْبَانُ بْنُ فَرُّوخَ - وَلَيْسَ هِشَامٌ، وَالْأَوْزَاعِيُّ، دُونَ مَعْمَرٍ، إِنْ لَمْ يَكُنْ هِشَامٌ أَحْفَظَ مِنْهُ.

L23556 We have narrated it through the chain of Muslim: Isḥāq ibn Manṣūr reported to me, from ʿUbaydullāh ibn Mūsā, from Shaybān; and through the chain of Aḥmad ibn Shuʿayb: Hishām ibn Abī ʿAmmār reported to me, from Yaḥyā ibn Ḥamzah, from al-Awzāʿī; and Ḥammām reported to us, from ʿAbbās ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Malik ibn Ayman, from Bakr ibn Ḥammād, from Musaddad, from Bishr ibn al-Mufaḍḍal, from Hishām—that is, al-Dastuwāʾī—all of them transmitting from Yaḥyā ibn Abī Kathīr, from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, from Abū Saʿīd al-Khudrī, that the Messenger of Allāh—peace and blessings be upon him—said: "Do not exchange two ṣāʿ of dates for a single ṣāʿ, nor two ṣāʿ of wheat for a single ṣāʿ, nor two dirhams for one dirham."[6]

فَرُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا عُبَيْدُ اللَّهِ بْنُ مُوسَى عَنْ شَيْبَانَ - وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا هِشَامُ بْنُ أَبِي عَمَّارٍ عَنْ يَحْيَى بْنِ حَمْزَةَ أَنَا الْأَوْزَاعِيُّ - وَحَدَّثَنَا حُمَامٌ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا بَكْرُ بْنُ حَمَّادٍ أَنَا مُسَدَّدٌ أَنَا بِشْرُ بْنُ الْمُفَضَّلِ أَنَا هِشَامٌ - هُوَ الدَّسْتُوَائِيُّ - كُلُّهُمْ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا صَاعَيْ تَمْرٍ بِصَاعٍ، وَلَا صَاعَيْ حِنْطَةٍ بِصَاعٍ، وَلَا دِرْهَمَيْنِ بِدِرْهَمٍ» .

L23557 Al-Awzaʿī said in his narration from Yaḥyā ibn Abī Kathīr: Abū Salama ibn ʿAbd al-Raḥmān narrated to me; Abū Saʿīd al-Khudrī narrated to me. And this very is the narration of Muḥammad ibn ʿAmr himself.

قَالَ الْأَوْزَاعِيُّ فِي رِوَايَتِهِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ: حَدَّثَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ حَدَّثَنِي أَبُو سَعِيدٍ الْخُدْرِيُّ - وَهَذَا هُوَ خَبَرُ مُحَمَّدِ بْنِ عَمْرٍو نَفْسُهُ.

L23558 Abu Muhammad said: Maʿmar omitted mentioning dates and wheat.

قَالَ أَبُو مُحَمَّدٍ: فَأَسْقَطَ مَعْمَرٌ ذِكْرَ التَّمْرِ، وَالْحِنْطَةِ.

L23559–23561 Among the clear evidence of Ma'mar's undoubted error is his inclusion of a grammatical error in the Messenger of Allah's—peace be upon him—narration by attributing to him the statement: "Two ṣāʿs in exchange for one ṣāʿ is not valid." By Allah, the Messenger of Allah—peace be upon him—never uttered this at all. Unless he points to something, in which case the pronoun in "is not valid" would refer to that thing—especially since Al-Awzāʿī mentioned Yaḥyā ibn Abī Kathīr's hearing from Abū Salama, and Abū Salama's hearing from Abū Saʿīd, whereas Maʿmar did not mention this. This does not impair anything in our view, unless it is a single report wherein the

وَمِنْ الْبَيَانِ الْوَاضِحِ عَلَى خَطَأِ مَعْمَرٍ الَّذِي لَا شَكَّ فِيهِ: إيرَادُهُ اللَّحْنَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي هَذَا الْخَبَرِ بِقَوْلِهِ: لَا يَصْلُحُ صَاعَيْنِ بِصَاعٍ - وَوَاَللَّهِ مَا قَالَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ، إلَّا أَنْ يُشِيرَ إلَى شَيْءٍ، فَيَكُونُ ضَمِيرُهُ فِي " لَا يَصْلُحُ " لَا سِيَّمَا وَالْأَوْزَاعِيُّ يَذْكُرُ سَمَاعَ يَحْيَى بْنِ أَبِي كَثِيرٍ مِنْ أَبِي سَلَمَةَ، وَسَمَاعَ أَبِي سَلَمَةَ مِنْ أَبِي سَعِيدٍ، لَمْ يَذْكُرْ ذَلِكَ مَعْمَرٌ - وَهَذَا لَا يَكْدَحُ عِنْدَنَا شَيْئًا، إلَّا إذَا كَانَ

[6] **Hadith references (L23556):** Sunan an-Nasai 4556.

narrators differed. In such a case, the narration of the one who mentioned the hearing takes precedence, especially from one who cited it through *tadlīs*.

خَبَرًا وَاحِدًا اخْتَلَفَ فِيهِ الرُّوَاةُ، فَإِنَّ رِوَايَةَ الَّذِي ذَكَرَ السَّمَاعَ أَوْلَى، لَا سِيَّمَا مِمَّنْ ذَكَرَ بِتَدْلِيسٍ.

L23562 Furthermore, even if the wording of Ibn Abī Zā'ida and Ma'mar were valid for them—without additions from others besides these two or clarifications from anyone other than them both—they would have no proof in it, due to two reasons:

ثُمَّ لَوْ صَحَّ لَهُمْ لَفْظُ ابْنِ أَبِي زَائِدَةَ، وَمَعْمَرٍ، بِلَا زِيَادَةٍ مِنْ غَيْرِهِمَا، وَلَا بَيَانٍ مِنْ سِوَاهُمَا، لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ لِوَجْهَيْنِ -:

L23563 The first [argument] is that [the text] makes no mention at all of a single kind or two kinds. Yet they permit exchanging two sa's of wheat for one sa' of dates and any two commodities that are not of the same kind—and this contradicts the general implication of the report.

أَحَدُهُمَا - أَنَّهُ لَيْسَ فِيهِ ذِكْرُ جِنْسٍ وَاحِدٍ، وَلَا جِنْسَيْنِ أَصْلًا، وَهُمْ يُجِيزُونَ صَاعَيْ حِنْطَةٍ بِصَاعِ تَمْرٍ، وَبِكُلِّ مَا لَيْسَا مِنْ جِنْسٍ وَاحِدٍ - وَهَذَا خِلَافُ عُمُومِ الْخَبَرِ.

L23564 If they say: "Did other reports explain this?" We said: "Similarly, other reports explained what Ma'mar summarized."

فَإِنْ قَالُوا: فَسَّرَ هَذَا أَخْبَارٌ أُخَرُ؟ قُلْنَا: وَكَذَلِكَ فَسَّرَتْ أَخْبَارٌ أُخَرُ مَا أَجْمَلَهُ مَعْمَرٌ.

L23565 The second perspective is to assert that this ruling applies to loans, not sales. Indeed, it is impermissible in loans to exchange two ṣā's for one ṣā' in any of all things. As for sale, however, there is no prohibition, for Allah the Exalted says: "And Allah has permitted sale" [Al-Baqarah: 275].[7]

وَالْوَجْهُ الثَّانِي - أَنْ يَقُولَ هَذَا فِي الْقَرْضِ لَا فِي الْبَيْعِ، نَعَمْ، لَا يَجُوزُ فِي الْقَرْضِ صَاعَانِ بِصَاعٍ فِي شَيْءٍ مِنْ الْأَشْيَاءِ كُلِّهَا، وَأَمَّا الْبَيْعُ فَلَا، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

L23566 If they claim a consensus, they have lied, for they permit two *sa'*s of barley for one *sa'* of wheat, and people do not all permit this; rather, they differ over its permissibility.

فَإِنْ ادَّعَوْا إجْمَاعًا كَذَبُوا؛ لِأَنَّهُمْ يُجِيزُونَ صَاعَيْ شَعِيرٍ بِصَاعِ بُرٍّ، وَالنَّاسُ لَا يُجِيزُونَهُ كُلُّهُمْ، بَلْ يَخْتَلِفُونَ فِي إجَازَتِهِ.

L23567 Two ṣā' of chickpeas in exchange for one ṣā' of lupin beans, and there is no consensus here; thus, Mālik does not permit it.

وَصَاعَيْ حِمَّصٍ بِصَاعِ لُبْيَاءَ، وَلَا إجْمَاعَ هَهُنَا، فَمَالِكٌ لَا يُجِيزُهُ.

L23568 If they say: "The Messenger of Allah (peace be upon him) said: 'If the categories differ, then sell as you wish,'" we respond: It is authentically established that he (peace be upon him) stated: "If **these** categories differ, then sell as you wish **if [the exchange is] hand-to-hand**." The Messenger of Allah (peace be upon him) only spoke regarding **the categories he named in the hadith that mentions this wording in its conclusion**. It is unlawful to

فَإِنْ قَالُوا: قَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَإِذَا اخْتَلَفَتْ الْأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ» ؟ قُلْنَا: صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: «فَإِذَا اخْتَلَفَتْ هَذِهِ الْأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ إذَا كَانَ يَدًا بِيَدٍ» فَإِنَّمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي

[7] **Qur'an references (L23565):** Qur'an 2:275 (Al-Baqarah).

attribute to him (peace be upon him) any statement founded upon **a false assumption**.[8]

الْأَصْنَافِ الَّتِي سَمَّى فِي الْحَدِيثِ الَّذِي ذَكَرَ هَذَا اللَّفْظَ فِي آخِرِهِ - وَلَا يَحِلُّ أَنْ يُنْسَبَ إِلَيْهِ - عَلَيْهِ السَّلَامُ - قَوْلٌ بِظَنٍّ كَاذِبٍ.

L23569–23571 It suffices here that they are in unanimous agreement with us regarding the phrase "no two ṣāʿs for a ṣāʿ" being invalid. Regarding their generality, they asserted: "In every volume-measured item of a single kind," while we maintained: "It applies to the categories textually stipulated." Thus, their claim is but a claim.

وَيَكْفِي مِنْ هَذَا أَنَّهُمْ مُجْمِعُونَ مَعَنَا عَلَى لَفْظَةِ " لَا صَاعَيْنِ بِصَاعٍ " لَيْسَتْ عَلَى عُمُومِهَا، فَقَالُوا هُمْ: فِي كُلِّ مَكِيلٍ مِنْ جِنْسٍ وَاحِدٍ، وَقُلْنَا نَحْنُ: هُوَ فِي الْأَصْنَافِ الْمَنْصُوصِ عَلَيْهَا، فَدَعْوَى كَدَعْوَى.

L23572 Our proof is the following: the validity of the text supporting our position. Their claim stands without evidence, so their reliance on this narration is nullified—and to Allah, the Exalted, belongs all praise.

وَبُرْهَانُنَا نَحْنُ -: صِحَّةُ النَّصِّ عَلَى قَوْلِنَا، وَبَقِيَ قَوْلُهُمْ بِلَا بُرْهَانٍ فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ - وَلِلَّهِ تَعَالَى الْحَمْدُ.

L23573 As for the ḥadīth of Ibn ʿUmar, it is rejected because it is narrated from Abī Janāb—who is Yaḥyā ibn Abī Ḥayyah al-Kalbī—from whom Yaḥyā al-Qaṭṭān and ʿAbd al-Raḥmān ibn Mahdī abandoned narrating, and he was deemed weak and noted for tadlīs (concealment in transmission). Furthermore, it is narrated from his father, who is completely unknown—thus, relying on it is invalidated. Even if it were authentic, the ruling regarding it would align with those of the other narrations we previously mentioned that contradict its generality.

وَأَمَّا حَدِيثُ ابْنِ عُمَرَ فَسَاقِطٌ، لِأَنَّهُ عَنْ أَبِي جُنَابٍ - وَهُوَ يَحْيَى بْنُ أَبِي حَيَّةَ الْكَلْبِيُّ - تَرَكَ الرِّوَايَةَ عَنْهُ يَحْيَى الْقَطَّانُ، وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، وَضَعُفَ، وَذُكِرَ بِتَدْلِيسٍ، ثُمَّ هُوَ عَنْ أَبِيهِ وَهُوَ مَجْهُولٌ جُمْلَةً - فَبَطَلَ التَّعَلُّقُ بِهِ - ثُمَّ لَوْ صَحَّ لَكَانَ الْقَوْلُ فِيهِ كَالْقَوْلِ فِي غَيْرِهِ مِمَّا ذَكَرْنَا آنِفًا مِمَّا خَالَفُوا فِيهِ عُمُومَهُ.

L23574 As for the ḥadīth of Abū Saʿīd al-Khudrī, which we cited through the chain of Ḥayyān ibn ʿUbayd Allāh from Abī Mijlaz, there is no valid proof in it because its chain is disconnected, as we mentioned—Abū Mijlaz did not hear it neither from Abū Saʿīd nor from Ibn ʿAbbās. He mentioned in it that Ibn ʿAbbās repented and retracted from holding that opinion—and this is falsehood and the assertion of someone to whom a report was conveyed that they neither witnessed nor received from a trustworthy narrator.

وَأَمَّا حَدِيثُ أَبِي سَعِيدٍ الْخُدْرِيِّ الَّذِي أَوْرَدْنَا مِنْ طَرِيقِ حَيَّانَ بْنِ عُبَيْدِ اللَّهِ عَنْ أَبِي مِجْلَزٍ، فَلَا حُجَّةَ فِيهِ، لِأَنَّهُ مُنْقَطِعٌ كَمَا أَوْرَدْنَا، لَمْ يَسْمَعْهُ، لَا مِنْ أَبِي سَعِيدٍ، وَلَا مِنْ ابْنِ عَبَّاسٍ، وَذَكَرَ فِيهِ: أَنَّ ابْنَ عَبَّاسٍ تَابَ وَرَجَعَ عَنْ الْقَوْلِ بِذَلِكَ - وَهَذَا الْبَاطِلُ وَقَوْلُ مَنْ بَلَغَهُ خَبَرٌ لَمْ يَشْهَدْهُ وَلَا أَخَذَهُ عَنْ ثِقَةٍ.

L23575 Abu al-Jawza' narrated Ibn Abbas's retraction—as transmitted by Sulayman ibn Ali al-Rabaʿī from him, who is unidentified—and Abu al-Sahbāʾ narrated from Sulayman that Ibn Abbas disliked the retraction.

وَقَدْ رَوَى رُجُوعَ ابْنِ عَبَّاسٍ: أَبُو الْجَوْزَاءِ - رَوَاهُ عَنْهُ سُلَيْمَانُ بْنُ عَلِيٍّ الرَّبَعِيُّ - وَهُوَ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ - وَرَوَى عَنْهُ أَبُو الصَّهْبَاءِ أَنَّهُ كَرِهَهُ.

[8] **Hadith references (L23568):** Sunan Abi Dawud 3350; Sahih Muslim 1587c; Mishkat al-Masabih 2808.

وَرَوَى عَنْهُ طَاوُسٌ مَا يَدُلُّ عَلَى التَّوَقُّفِ.

L23576 Tāwus narrated from him something that indicates withholding judgment.

وَرَوَى الثِّقَةُ الْمُخْتَصُّ بِهِ خِلَافَ هَذَا -: كَمَا حَدَّثَنَا حُمَامٌ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ أَنَا أَبِي هَاشِمٍ أَنَا أَبُو بِشْرٍ - هُوَ جَعْفَرُ بْنُ أَبِي وَحْشِيَّةَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: مَا كَانَ الرِّبَا قَطُّ فِي هَاءٍ وَهَاتٍ.

L23577 A trustworthy narrator exclusively associated with him transmitted a contrary report: as narrated to us by Ḥumām, from ʿAbbās ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Malik ibn Ayman, from ʿAbdullāh ibn Aḥmad ibn Ḥanbal, from my father Hāshim, from Abū Bishr - who is Jaʿfar ibn Abī Waḥshiyyah - from Saʿīd ibn Jubayr, from Ibn ʿAbbās, that he said: "Usury was never present in immediate hand-to-hand transactions (referred to in Arabic as *hā'* and *hāt*)."

وَحَلَفَ سَعِيدُ بْنُ جُبَيْرٍ: بِاللَّهِ مَا رَجَعَ عَنْهُ حَتَّى مَاتَ.

L23578 Sa'id ibn Jubayr swore by Allah that he never recanted it until his death.

ثُمَّ هُوَ أَيْضًا مِنْ رِوَايَةِ حَيَّانَ بْنِ عُبَيْدِ اللَّهِ - وَهُوَ مَجْهُولٌ - ثُمَّ لَوْ انْسَنَدَ حَدِيثُ أَبِي مِجْلَزٍ الْمَذْكُورُ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّ اللَّفْظَ الَّذِي تَعَلَّقُوا بِهِ مِنْ " وَكَذَلِكَ مَا يُكَالُ وَيُوزَنُ " لَيْسَ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا هُوَ مِنْ كَلَامِ أَبِي سَعِيدٍ لَوْ صَحَّ.

L23579 Moreover, it is also from the narration of Ḥayyān ibn ʿUbayd Allāh—who is obscure—, and even if the mentioned narration of Abū Mijlaz were supported by a chain of narrators, they would have no argument in it, because the wording they clung to—"and likewise what is measured and weighed"—is not from the speech of the Messenger of Allāh (peace be upon him), but rather from the speech of Abū Saʿīd, if it were authentic.

وَهُوَ أَيْضًا عَنْهُ مُنْقَطِعٌ؛ لِأَنَّ هَذَا خَبَرٌ رَوَاهُ: نَافِعٌ، وَأَبُو صَالِحٍ السَّمَّانُ، وَأَبُو الْمُتَوَكِّلِ النَّاجِي، وَسَعِيدُ بْنُ الْمُسَيَّبِ، وَعُقْبَةُ بْنُ عَبْدِ الْغَافِرِ، وَأَبُو نَضْرَةَ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ، وَسَعِيدٌ الْجُرَيْرِيُّ، وَعَطَاءُ بْنُ أَبِي رَبَاحٍ، كُلُّهُمْ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ، وَكُلُّهُمْ ذَكَرُوا أَنَّهُمْ سَمِعُوهُ مِنْهُ، وَكُلُّهُمْ مُتَّصِلُ الْأَسَانِيدِ بِالثِّقَاتِ الْمَعْرُوفِينَ إِلَيْهِمْ، لَيْسَ مِنْهُمْ أَحَدٌ ذَكَرَ هَذَا اللَّفْظَ فِيهِ، وَهُوَ بَيِّنٌ فِي الْحَدِيثِ الْمَذْكُورِ نَفْسِهِ؛ لِأَنَّهُ لَمَّا تَمَّ كَلَامُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ أَبُو مِجْلَزٍ: ثُمَّ قَالَ فَابْتَدَأَ الْكَلَامَ الْمَذْكُورَ مِنْ ذِكْرِ " وَكَذَلِكَ كُلُّ مَا يُكَالُ وَيُوزَنُ " مَفْصُولًا عَنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

L23580–23582 The chain is also disconnected from him, as this report was narrated by Nāfiʿ, Abū Ṣāliḥ al-Sammān, Abū al-Mutawakkil al-Nājī, Saʿīd ibn al-Musayyab, ʿUqbah ibn ʿAbd al-Ghāfir, and Abū Naḍrah. Abu Salamah ibn Abd al-Rahman, Sa'id al-Jurayri, and 'Ata' ibn Abi Rabah—all narrated from Abu Sa'id al-Khudri, mentioning they heard him directly. Their chains of transmission are connected to them by trustworthy, well-known narrators, with none mentioning this specific wording. This is evident from the hadith itself, for when the Messenger of Allah—peace and blessings be upon him—concluded his speech, Abu Mijlaz said, then he himself began the aforementioned speech starting with the mention of "and likewise everything measured and weighed"—a distinct statement separate from the speech of the Messenger of Allah. It is plausible this originated from Abu Mijlaz's speech—indeed the most evident interpretation—thus rendering it void in all respects. It is impermissible to attribute speech to the Messenger of Allah—peace and blessings be upon him—through false conjecture.

- وَمَا يَبْعُدُ أَنْ يَكُونَ مِنْ كَلَامِ أَبِي مِجْلَزٍ - وَهُوَ الْأَظْهَرُ - فَبَطَلَ مِنْ كُلِّ جِهَةٍ، وَلَا يَحِلُّ أَنْ يُنْسَبَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَلَامٌ بِالظَّنِّ الْكَاذِبِ.

L23583 Abu Muhammad said: Then, the entire astonishment lies in their arguing about matters wherein there is no explicit text from him, nor evidence, nor narration, and their contradicting what is therein established with certainty - clearly attributed as the saying of the Messenger of Allah, may Allah's peace and blessings be upon him.

قَالَ أَبُو مُحَمَّدٍ ثُمَّ الْعَجَبُ كُلُّهُ مِنْ احْتِجَاجِهِمْ فِيمَا لَيْسَ فِيهِ مِنْهُ نَصٌّ وَلَا دَلِيلٌ وَلَا أَثَرٌ، وَخِلَافُهُمْ لِيَقِينِ مَا فِيهِ مَنْسُوبًا مُبَيَّنًا أَنَّهُ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L23584 It has been authentically established other than this report that the following is from the speech of the Messenger of Allah (peace and blessings be upon him): "Dates for dates, wheat for wheat, barley for barley, gold for gold, silver for silver - hand to hand; equal for equal."

وَقَدْ صَحَّ مِنْ غَيْرِ هَذَا الْخَبَرِ أَنَّهُ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «التَّمْرُ بِالتَّمْرِ، وَالْحِنْطَةُ بِالْحِنْطَةِ، وَالشَّعِيرُ بِالشَّعِيرِ، وَالذَّهَبُ بِالذَّهَبِ، وَالْفِضَّةُ بِالْفِضَّةِ، يَدًا بِيَدٍ، عَيْنًا بِعَيْنٍ» .

L23585 They declared openly: "Yes! It is permissible to exchange non-tangible property for non-tangible property, and tangible property for non-tangible property. Yes! They declare it permissible to exchange one date for two dates or more!" After these scandals, could greater scandals exist? Does any religion remain alongside this? Or shame in the face of disgrace—or fear of the Fire? We seek refuge in Allah from misguidance and ruin.

فَقَالُوا هُمْ جِهَارًا: نَعَمْ، وَيَجُوزُ غَيْرُ عَيْنٍ بِغَيْرِ عَيْنٍ، وَيَجُوزُ عَيْنٌ بِغَيْرِ عَيْنٍ، نَعَمْ، يَجُوزُ تَمْرَةٌ بِتَمْرَتَيْنِ وَبِأَكْثَرَ، فَهَلْ بَعْدَ هَذِهِ الْفَضَائِحِ فَضَائِحُ؟ أَوْ يَبْقَى مَعَ هَذَا دِينٌ أَوْ حَيَاءٌ مِنْ عَارٍ أَوْ خَوْفِ نَارٍ - نَعُوذُ بِاللَّهِ مِنْ الضَّلَالِ وَالدَّمَارِ.

L23586 Abu Muhammad said: Among what reveals the utmost clarity is that this wording—we intend "and likewise what is measured and weighed"—is definitively proven not to be from the speech of the Prophet, peace be upon him. It also nullifies their effective cause rooted in weight and measurement through sensory necessity, rational immediacy, and sound reasoning. For it constitutes sheer falsehood to assert that the Prophet, peace be upon him, established weight, measurement, and disparity in exchange as the effective cause for prohibiting usury, while the One who commissioned him, may He be exalted and glorified, knows—and the Prophet, peace be upon him, was aware, as every rational person recognizes—that rulings on traded goods differ most significantly across regions. What is weighed in one land is measured by volume in another: such as honey, oil, flour, and ghee. Oil and honey are sold

قَالَ أَبُو مُحَمَّدٍ: وَمِمَّا يَبِينُ غَايَةَ الْبَيَانِ: أَنَّ هَذَا اللَّفْظَ - نَعْنِي وَكَذَلِكَ مَا يُكَالُ وَيُوزَنُ - لَيْسَ مِنْ كَلَامِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطْعًا بِبُرْهَانٍ وَاضِحٍ - وَهُوَ أَيْضًا مُبْطِلٌ لِعِلَّتِهِمْ بِالْوَزْنِ، وَالْكَيْلِ، مِنْ طَرِيقِ ضَرُورَةِ الْحِسِّ، وَبَدِيهَةِ الْعَقْلِ، وَصَادِقِ النَّظَرِ، فَإِنَّ مِنْ الْبَاطِلِ الْبَحْتِ أَنْ يَكُونَ - عَلَيْهِ السَّلَامُ - يَجْعَلُ عِلَّةَ الْحَرَامِ فِي الرِّبَا: الْوَزْنَ، وَالْكَيْلَ، وَالتَّفَاضُلَ فِيهِ، وَبَاعِثُهُ عَزَّ وَجَلَّ يَعْلَمُ، وَهُوَ - عَلَيْهِ السَّلَامُ - يَدْرِي، وَكُلُّ ذِي عَقْلٍ يَعْرِفُ: أَنَّ حُكْمَ الْمَبِيعَاتِ يَخْتَلِفُ فِي الْبِلَادِ أَشَدَّ اخْتِلَافٍ، فَمَا يُوزَنُ

by weight in Baghdad and Kufa, whereas none of these are sold in Andalusia except by volume.

فِي بَلْدَةٍ يُكَالُ فِي أُخْرَى: كَالْعَسَلِ، وَالزَّيْتِ وَالدَّقِيقِ، وَالسَّمْنِ، يُبَاعُ الزَّيْتُ وَالْعَسَلُ بِبَغْدَادَ وَالْكُوفَةِ وَزْنًا، وَلَا يُبَاعُ شَيْءٌ مِنْهَا بِالْأَنْدَلُسِ إِلَّا كَيْلًا.

L23587 Butter and flour are sold by volume in some lands, but in our land they are sold only by weight. Wild figs are sold by volume in the wild, but in Seville and Cordoba they are sold only by weight. The same applies to all other goods.

وَيُبَاعُ السَّمْنُ وَالدَّقِيقُ فِي بَعْضِ الْبِلَادِ كَيْلًا، وَلَا يُبَاعُ عِنْدَنَا إِلَّا وَزْنًا، وَالتِّينُ يُبَاعُ بَرِّيَّةً كَيْلًا، وَلَا يُبَاعُ بِإِشْبِيلِيَّةَ وَقُرْطُبَةَ إِلَّا وَزْنًا، وَكَذَلِكَ سَائِرُ الْأَشْيَاءِ.

L23588–23590 There is no way to ascertain how that was originally sold during the time of the Messenger of Allah—peace be upon him. Thus, usury has become something whose nature is unknown—it cannot be avoided—nor do they recognize what is not usury to practice permissible dealings. Consequently, the forbidden and permissible in Allah's religion have become thoroughly intermingled, never to be distinguished from each other.

وَلَا سُبُلَ إِلَى أَنْ يُعْرَفَ كَيْفَ كَانَ يُبَاعُ ذَلِكَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَصْلًا، فَحَصَلَ الرِّبَا لَا يُدْرَى مَا هُوَ حَتَّى يُجْتَنَبَ؟ وَلَا مَا لَيْسَ هُوَ فَيُسْتَعْمَلَ وَصَارَ الْحَرَامُ وَالْحَلَالُ فِي دِينِ اللَّهِ تَعَالَى أَمْشَاجًا مُخْتَلِطَيْنِ لَا يُعْرَفُ هَذَا مِنْ هَذَا أَبَدًا.

L23591 All the types of sold commodities into which they introduce usury—they neither comprehend how usury enters them nor how to be safe from it! We absolve ourselves before Allah the Exalted from a religion characterized thus. Far removed! Where is this false claim in relation to the truthful words of Allah the Exalted: *"This day I have perfected for you your religion"* [Al-Mā'idah: 3], and the statement of Allah's Messenger—peace and blessings be upon him—when he said: *"O Allah, have I conveyed?"* They responded: *"O Allah, yes!"* He said: *"O Allah, bear witness!"*[9]

وَحَصَلَتْ الْأَنْوَاعُ الْمَبِيعَةُ كُلُّهَا الَّتِي يُدْخِلُونَ فِيهَا الرِّبَا لَا يَدْرُونَ كَيْفَ يَدْخُلُ الرِّبَا فِيهَا؟ وَلَا كَيْفَ يَسْلَمُ مِنْهُ؟ نَبْرَأُ إِلَى اللَّهِ تَعَالَى مِنْ دِينٍ هَذِهِ صِفَتُهُ، هَيْهَاتَ أَيْنَ هَذَا الْقَوْلُ الْكَاذِبُ؟ مِنْ قَوْلِ اللَّهِ تَعَالَى الصَّادِقِ {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] وَمِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «اللَّهُمَّ هَلْ بَلَّغْتُ؟ قَالُوا: اللَّهُمَّ نَعَمْ، قَالَ: اللَّهُمَّ اشْهَدْ» .

L23592 If they return to making the custom of each locality's people the basis, religion becomes a plaything. Should the inhabitants of a region wish to legalize the forbidden, they could convert all commodities they previously sold by measure to weighing, and what they sold by weighing to measure—thereby permitting what was forbidden through their own choice, an offense more harmful than disparity between two measures or two weights. What Allah wills occurs. This very matter also applies to the Malikis and Shafi'is, for when they extend usury rulings to all edibles or stored consumables, we ask them about the numerous traded types within these categories—not one or

فَإِنْ رَجَعُوا إِلَى أَنْ يَجْعَلُوا لِأَهْلِ كُلِّ بَلَدٍ عَادَتَهُ حَصَلَ الدِّينُ لَعِبًا إِذَا شَاءَ أَهْلُ بَلَدٍ أَنْ يَسْتَحِلُّوا الْحَرَامَ رَدُّوا كُلَّ مَا كَانُوا يَبِيعُونَهُ بِكَيْلٍ إِلَى الْوَزْنِ، وَمَا كَانُوا يَبِيعُونَهُ بِوَزْنٍ إِلَى كَيْلٍ فَحَلَّ لَهُمْ بِاخْتِيَارِهِمْ مَا كَانَ حَرَامًا أَمَسَّ مِنَ التَّفَاضُلِ بَيْنَ الْكَيْلَيْنِ، أَوْ بَيْنَ الْوَزْنَيْنِ مَا شَاءَ اللَّهُ كَانَ، وَهَذَا بِعَيْنِهِ أَيْضًا يَدْخُلُ عَلَى الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ؛ لِأَنَّهُمْ إِذَا أَدْخَلُوا الرِّبَا فِي الْمَأْكُولِ كُلِّهِ، أَوْ فِي الْمُدَّخَرِ الْمُقْتَاتِ: سَأَلْنَاهُمْ عَنْ الْأَصْنَافِ الْمَبِيعَةِ مِنْ ذَلِكَ، وَلَيْسَتْ صِنْفًا، وَلَا صِنْفَيْنِ، بَلْ هِيَ عَشَرَاتٌ كَثِيرَةٌ: بِأَيِّ شَيْءٍ

[9] **Qur'an references (L23591):** Qur'an 5:3 (Al-Ma'idah).

two kinds, but many dozens. By what standard do they mandate equivalence: measure or weight? Whichever they choose, they become imposers of falsehood, having no greater validity than one who advocates weighing for what they prescribe by measure, or measure for what they prescribe by weight. Where then is the deliverance? How can people engage in lawful trade? How can they avoid the usury forbidden to them? This constitutes an impermissible error for those whom Allah Almighty has facilitated for self-counsel.

يُوجِبُونَ فِيهَا التَّمَاثُلَ، أَبِالْكَيْلِ أَمْ بِالْوَزْنِ؟ فَأَيًّا مَا قَالُوا صَارُوا مُتَحَكِّمِينَ بِالْبَاطِلِ، وَلَمْ يَكُونُوا أَوْلَى مِنْ آخَرَ يَقُولُ بِالْوَزْنِ فِيمَا قَالُوا هُمْ فِيهِ بِالْكَيْلِ، أَوْ بِالْكَيْلِ فِيمَا قَالُوا هُمْ فِيهِ بِالْوَزْنِ، فَأَيْنَ الْمُخَلِّصُ؟ أَمْ كَيْفَ يَبِيعُ النَّاسُ مَا أُحِلَّ لَهُمْ مِنَ الْبَيْعِ؟ أَمْ كَيْفَ يَجْتَنِبُونَ مَا حَرُمَ عَلَيْهِمْ مِنَ الرِّبَا؟ وَهَذَا مِنَ الْخَطَأِ الَّذِي لَا يَحِلُّ عَلَى مَنْ يَسَّرَهُ اللَّهُ تَعَالَى لِنَصِيحَةِ نَفْسِهِ.

L23593 They mentioned in that context from predecessors what was narrated to us through the chain of transmission of Ibn Wahb from Makhramah ibn Bukayr from his father: I heard ʻAmr ibn Shuʻayb say: ʻUmar ibn al-Khaṭṭāb wrote to Abū Mūsā al-Ashʻarī: "A saʻ must not be sold for two saʻs if they are of the same kind, even when exchanged hand-to-hand. If they differ in kind, there is no harm. When disagreement arises regarding a debt transaction, it becomes invalid. Every item sold by weight follows this ruling in the same manner as items measured by volume."

وَذَكَرُوا فِي ذَلِكَ عَمَّنْ تَقَدَّمَ مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ سَمِعْتُ عَمْرَو بْنَ شُعَيْبٍ قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إِلَى أَبِي مُوسَى الْأَشْعَرِيِّ: أَنْ لَا يُبَاعَ الصَّاعُ بِالصَّاعَيْنِ إِذَا كَانَ مِثْلَهُ وَإِنْ كَانَ يَدًا بِيَدٍ، فَإِنْ اخْتَلَفَ فَلَا بَأْسَ، وَإِذَا اُخْتُلِفَ فِي الدَّيْنِ فَلَا يَصْلُحُ - وَكُلُّ شَيْءٍ يُوزَنُ مِثْلُ ذَلِكَ كَهَيْئَةِ الْمِكْيَالِ.

L23594 From the narration of Yahya ibn Sa'id al-Qattan: Sadaqah ibn al-Muthanna reported from his grandfather - Rabah ibn al-Harith - that 'Ammar ibn Yasir said in the Grand Mosque: "One slave is better than two slaves, one female slave better than two female slaves, one camel better than two camels, and one garment better than two garments. Whatever is exchanged hand to hand, there is no harm in it. Verily, usury lies in deferred transactions except what is measured or weighed."

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ أَنَا صَدَقَةُ بْنُ الْمُثَنَّى أَنَا جَدِّي - هُوَ رَبَاحُ بْنُ الْحَارِثِ أَنَّ عَمَّارَ بْنَ يَاسِرٍ قَالَ فِي الْمَسْجِدِ الْأَكْبَرِ: الْعَبْدُ خَيْرٌ مِنَ الْعَبْدَيْنِ وَالْأَمَةُ خَيْرٌ مِنَ الْأَمَتَيْنِ، وَالْبَعِيرُ خَيْرٌ مِنَ الْبَعِيرَيْنِ، وَالثَّوْبُ خَيْرٌ مِنَ الثَّوْبَيْنِ، فَمَا كَانَ يَدًا بِيَدٍ فَلَا بَأْسَ بِهِ، إِنَّمَا الرِّبَا فِي النَّسَاءِ إِلَّا مَا كِيلَ أَوْ وُزِنَ.

L23595–23597 Abu Muhammad said: Some of them added to this report: "Therefore, a category thereof must not be sold for another category." except like for like. According to the narration of Ibn Abī Shaybah: I [narrate] from ʻAbd al-Aʻlā from Maʻmar from al-Zuhrī from Sālim that Ibn ʻUmar saw no objection to exchanging measured goods hand-to-hand—one unit for two—when their types differ.

قَالَ أَبُو مُحَمَّدٍ: وَزَادَ بَعْضُهُمْ فِي هَذَا الْخَبَرِ: فَلَا يُبَاعُ صِنْفٌ مِنْهُ بِالصِّنْفِ الْآخَرِ إِلَّا مِثْلًا بِمِثْلٍ - وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الْأَعْلَى عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ سَالِمٍ أَنَّ ابْنَ عُمَرَ كَانَ لَا يَرَى بَأْسًا فِيمَا يُكَالُ يَدًا بِيَدٍ وَاحِدًا بِاثْنَيْنِ إِذَا اخْتَلَفَتْ أَلْوَانُهُ.

L23598 And through the chain of ʿAbd al-Razzāq from Maʿmar from Ḥammād ibn Abī Sulaymān from al-Nakhaʿī and a man from al-Ḥasan, they both collectively said: "Lend volume-based items in exchange for weight-based

items not measured by volume, and lend weight-based items in exchange for volume-based items not measured by weight.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ النَّخَعِيِّ وَعَنْ رَجُلٍ عَنْ الْحَسَنِ، قَالَا جَمِيعًا: سَلِّفْ مَا يُكَالُ فِيمَا يُوزَنُ وَلَا يُكَالُ، وَسَلِّفْ مَا يُوزَنُ وَلَا يُكَالُ فِيمَا يُكَالُ وَلَا يُوزَنُ.

L23599 From the narration of Abd al-Razzaq, from Sufyan al-Thawri, from Musa ibn Abi A’isha, from Ibrahim al-Nakha’i, who said: “In any sale involving goods measured by volume exchanged like for like, if they differ, then increase and add hand to hand. If it is a single commodity weighed by weight, then like for like; but if it differs, then increase and add hand to hand.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُوسَى بْنِ أَبِي عَائِشَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: مَا كَانَ مِنْ بَيْعٍ يُكَالُ مِثْلًا بِمِثْلٍ، فَإِذَا اخْتَلَفَتْ فَزِدْ وَازْدَدْ يَدًا بِيَدٍ، وَإِنْ كَانَ شَيْئًا وَاحِدًا يُوزَنُ فَمِثْلًا بِمِثْلٍ، فَإِذَا اخْتَلَفَ فَزِدْ وَازْدَدْ يَدًا بِيَدٍ.

L23600 Narrated via the chain of ʿAbd al-Razzāq → Maʿmar → al-Zuhrī, who said: “Anything that is weighed, then it follows the same ruling as gold and silver, and anything that is measured by capacity, then it follows the same ruling as wheat and barley.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: كُلُّ شَيْءٍ يُوزَنُ فَهُوَ يَجْرِي مَجْرَى الذَّهَبِ وَالْفِضَّةِ، وَكُلُّ شَيْءٍ يُكَالُ فَهُوَ يَجْرِي مَجْرَى الْبُرِّ وَالشَّعِيرِ.

L23601 As for the narration from Maʿmar, it is interrupted, and likewise from Al-Ḥasan.

فَأَمَّا الرِّوَايَةُ عَنْ مَعْمَرٍ فَمُنْقَطِعَةٌ، وَعَنْ الْحَسَنِ كَذَلِكَ.

L23602 As for the statement of ʿAmmār, it does not conform to their doctrine, but they obscured their position with it. This is because his statement—“except what is measured or weighed”—can only be interpreted in two ways: either he excluded it from deferred payment (nasi’ah) transactions that constitute usury (ribā), or he excluded it from his declaration: “There is no harm in it when it is hand-to-hand.” No third interpretation is possible. If he excluded it from deferred payment (nasi’ah) transactions that constitute usury, this explicitly contradicts their doctrine and necessitates that usury applies only to what is measured or weighed in deferred transactions. If he excluded it from his declaration about hand-to-hand transactions, this likewise contradicts their doctrine and necessitates that exchanging measured items for weighed items in immediate exchange is impermissible.

وَأَمَّا قَوْلُ عَمَّارٍ: فَغَيْرُ مُوَافِقٍ لِقَوْلِهِمْ، لَكِنَّهُمْ مَوَّهُوا بِهِ؛ لِأَنَّهُ لَا يَخْلُو قَوْلُهُ: إلَّا مَا كِيلَ أَوْ وُزِنَ مِنْ أَنْ يَكُونَ اسْتَثْنَاهُ مِنْ النَّسَاءِ الَّذِي هُوَ رِبًا، أَوْ يَكُونَ اسْتَثْنَاهُ مِمَّا قَالَ: إنَّهُ لَا بَأْسَ بِهِ مَا كَانَ يَدًا بِيَدٍ، وَلَا سَبِيلَ إلَى وَجْهٍ ثَالِثٍ، فَإِنْ كَانَ اسْتَثْنَاهُ مِنْ النَّسَاءِ الَّذِي هُوَ رِبًا، فَهُوَ ضِدُّ مَذْهَبِهِمْ عَيْنًا، وَمُوجِبٌ أَنَّهُ لَا رِبَا إلَّا فِيمَا يُكَالُ أَوْ يُوزَنُ فِي النَّسِيئَةِ، فَإِنْ كَانَ اسْتَثْنَاهُ مِمَّا لَا بَأْسَ بِهِ يَدًا بِيَدٍ، فَهُوَ أَيْضًا ضِدُّ مَذْهَبِهِمْ وَمُوجِبُ: أَنَّهُ لَا يَجُوزُ مَا كِيلَ بِمَا وُزِنَ يَدًا بِيَدٍ.

L23603 As for the increase they introduced, no kind of it may be exchanged for another kind except like for like—thus it is evidently contrary to their school in every case.

وَأَمَّا الزِّيَادَةُ الَّتِي زَادُوهَا فَلَا يُبَاعُ صِنْفٌ مِنْهُ بِالصِّنْفِ الْآخَرِ إلَّا مِثْلًا بِمِثْلٍ فَهُوَ ضِدُّ مَذْهَبِهِمْ عِيَانًا بِكُلِّ حَالٍ.

L23604 As for the statement of Ibn ʻUmar, it is authentically reported from him, and its contradiction is likewise authentically established, as we indicated in our discussion of Al-Shafiʻi's position. Thus, neither of his two opinions holds greater precedence over the other, despite the absence of any disapproval of disparity in exchange of measurable goods within it, nor does it align with their remaining positions. We have not found their view authentically transmitted from any predecessor except Al-Nakhaʻi and Al-Zuhri alone. Consequently, all the embellishments they contrived through the transmitted reports are rendered baseless.

وَأَمَّا قَوْلُ ابْنِ عُمَرَ فَصَحِيحٌ عَنْهُ، وَقَدْ صَحَّ عَنْهُ خِلَافُهُ كَمَا ذَكَرْنَا فِي ذِكْرِنَا قَوْلَ الشَّافِعِيِّ، فَلَيْسَ أَحَدُ قَوْلَيْهِ بِأَوْلَى مِنَ الْآخَرِ، مَعَ أَنَّهُ لَيْسَ فِيهِ كَرَاهِيَةُ التَّفَاضُلِ فِيمَا يُكَالُ، وَلَا يُوَافِقُهُ سَائِرُ أَقْوَالِهِمْ، وَمَا وَجَدْنَا قَوْلَهُمْ يَصِحُّ عَنْ أَحَدٍ قَبْلَهُمْ إِلَّا عَنِ النَّخَعِيِّ، وَالزُّهْرِيِّ فَقَطْ - فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ مِنَ الْآثَارِ.

L23605 If they say: He—peace be upon him—only specified items measured by capacity and weight?

فَإِنْ قَالُوا: لَمْ يَنُصَّ - عَلَيْهِ السَّلَامُ - إِلَّا عَلَى مَكِيلٍ، وَمَوْزُونٍ؟

L23606–23608 We said: What is the difference between this and one who said, "The Prophet (peace be upon him) did not explicitly stipulate except regarding an edible item or"? A price—or [what of] one who says: "The Prophet—peace be upon him—did not specify [rulings] except for stored staple provisions, minerals, and what makes food wholesome?"

قُلْنَا: مَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ مَنْ قَالَ: لَمْ يَنُصَّ - عَلَيْهِ السَّلَامُ - إِلَّا عَلَى مَأْكُولٍ أَوْ ثَمَنٍ - أَوْ مَنْ قَالَ: لَمْ يَنُصَّ - عَلَيْهِ السَّلَامُ - إِلَّا عَلَى مُقْتَاتٍ مُدَّخَرٍ، وَمَعْدِنِيٍّ؟ وَمَا يَصْلُحُ بِهِ الطَّعَامُ.

L23609 Or one who says: He (peace be upon him) only specified what is subject to zakah and savory edibles - or one who says: He (peace be upon him) only specified plants, metals, and non-perishable items - thus applying riba to all that grows like aloe and similar things, while exempting it from milk and its derivatives, honey, meat, and fish? In this case, none of these assertions holds greater validity than another.

أَوْ مَنْ قَالَ: لَمْ يَنُصَّ - عَلَيْهِ السَّلَامُ - إِلَّا عَلَى مَا يُزَكَّى وَعَلَى مَالِحِ الطَّعْمِ فَقَطْ - أَوْ مَنْ قَالَ: لَمْ يَنُصَّ - عَلَيْهِ السَّلَامُ - إِلَّا عَلَى نَبَاتٍ، وَمَعْدِنِيٍّ، وَجَامِدٍ؟ فَأَدْخَلَ الرِّبَا فِي كُلِّ مَا يَنْبُتُ كَالصَّبِرِ وَغَيْرِ ذَلِكَ، وَأَسْقَطَهُ عَنِ اللَّبَنِ وَمَا يَتَصَرَّفُ مِنْهُ، وَعَنِ الْعَسَلِ، وَاللَّحْمِ، وَالسَّمَكِ، فَلَيْسَ بَعْضُ هَذِهِ الدَّعَاوَى أَوْلَى مِنْ بَعْضٍ.

L23610 All of this, if one transgresses with it what is mentioned in the text, constitutes a violation of the boundaries set by Allah the Exalted. The Messenger of Allah—peace and blessings be upon him—never failed to clarify his intent to us. Far be it from him to abandon us regarding the gravest matters, such as usury—for which one is threatened with the Fire of Hell in the Hereafter and warfare in this world—by relegating us to these false soothsayers and baseless conjectures—darknesses, one above another. We praise Allah for granting us deliverance.

وَكُلُّ هَذَا إِذَا تَعَدَّى بِهِ مَا وَرَدَ فِيهِ النَّصُّ فَهُوَ تَعَدٍّ لِحُدُودِ اللَّهِ تَعَالَى، وَمَا عَجَزَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ عَنْ أَنْ يُبَيِّنَ لَنَا مُرَادَهُ، وَحَاشَ لَهُ أَنْ يَكِلَنَا فِي أَصْعَبِ الْأَشْيَاءِ مِنَ الرِّبَا الْمُتَوَعَّدِ فِيهِ بِنَارِ جَهَنَّمَ فِي الْآخِرَةِ وَالْحَرْبِ بِهِ فِي الدُّنْيَا إِلَى هَذِهِ الْكَهَانَاتِ الْكَاذِبَةِ، وَالظُّنُونِ الْآفِكَةِ، ظُلُمَاتٌ بَعْضُهَا فَوْقَ بَعْضٍ - وَنَحْمَدُ اللَّهَ عَلَى السَّلَامَةِ.

وَعَهِدْنَا بِهِمْ يَقُولُونَ: نَحْنُ عَلَى يَقِينٍ مِنْ وُجُوبِ قَطْعِ الْيَدِ فِي عَشَرَةِ دَرَاهِمَ، وَغَيْرُ مُوقِنِينَ بِوُجُوبِ قَطْعِهَا فِي أَقَلَّ، وَنَحْنُ مُوقِنُونَ بِتَحْرِيمِ عَصِيرِ الْعِنَبِ إِذَا أَسْكَرَ وَلَمْ نُوقِنْ بِتَحْرِيمِ مَا عَدَاهُ - وَنَحْنُ مُوقِنُونَ بِالْقَصْرِ فِي ثَلَاثٍ وَلَا نُوقِنُ بِهِ فِي أَقَلَّ، فَلَا نَقُولُ بِشَيْءٍ مِنْ ذَلِكَ حَيْثُ لَا نُوقِنُهُ.

L23611 We instructed them to say: We are certain of the obligation to amputate the hand for ten dirhams, but we are not certain of the obligation to amputate it for less. We are certain of the prohibition of grape juice if it intoxicates, but we are not certain of the prohibition of what is other than it. We are certain of shortening prayers in three, but we are not certain of it in less than that. Thus, we do not affirm anything of that wherein we lack certainty.

فَهَلَّا قَالُوا هَهُنَا: نَحْنُ مُوقِنُونَ بِالرِّبَا فِي الْأَصْنَافِ الْمَنْصُوصِ عَلَيْهَا، وَلَسْنَا عَلَى يَقِينٍ مِنْهُ فِي غَيْرِهَا، فَلَا نَقُولُ بِهِ حَيْثُ لَا يَقِينَ مَعَنَا فِيهِ؟

L23612 Why don't they say here, "We are fully convinced about riba in the textually specified categories, but we lack such conviction regarding others, so we refrain from ruling on it where no certainty exists"?

وَلَوْ فَعَلُوا هَذَا هَهُنَا وَتَرَكُوا هُنَالِكَ لَوُفِّقُوا لِأَنَّهُمْ كَانُوا يَتَّبِعُونَ السُّنَنَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ - ثُمَّ لَمْ يَلْبَثُوا أَنْ نَقَضُوا عِلَّتَهُمْ أَقْبَحَ نَقْضٍ، فَأَجَازُوا تَسْلِيفَ الذَّهَبِ، وَالْفِضَّةِ فِيمَا يُكَالُ، وَمَا يُوزَنُ.

L23613 If they had done this here and abandoned that there, they would have been granted success (and by Allah the Exalted is all success) for they were following the traditions. Yet it was not long before they invalidated their rationale in the most repugnant invalidation, permitting the advancing of gold and silver as payment in salam contracts for that which is measured by volume and that which is weighed.

وَأَجَازُوا بَيْعَ آنِيَةِ نُحَاسٍ بِآنِيَةِ نُحَاسٍ أَوْ وَزْنٍ مِنْهَا، وَلَمْ يُجِيزُوا ذَلِكَ فِي آنِيَةِ الذَّهَبِ، وَالْفِضَّةِ، وَكُلُّ ذَلِكَ سَوَاءٌ عِنْدَهُمْ فِي دُخُولِ الرِّبَا فِيهِ.

L23614 They permitted exchanging copper vessels for copper vessels or their weight [in kind], but they did not permit this for gold or silver vessels. All such cases are equal in their view concerning the presence of riba within them.

ثُمَّ أَجَازُوا بَيْعَ قَمْحٍ بِعَيْنِهِ بِقَمْحٍ بِغَيْرِ عَيْنِهِ، أَوْ تَمْرٍ بِعَيْنِهِ بِتَمْرٍ بِغَيْرِ عَيْنِهِ أَوْ شَعِيرٍ بِعَيْنِهِ بِشَعِيرٍ بِغَيْرِ عَيْنِهِ، فَيُقْبَضُ الَّذِي بِغَيْرِ عَيْنِهِ ثُمَّ يَفْتَرِقَانِ قَبْلَ قَبْضِ الَّذِي بِعَيْنِهِ - وَحَرَّمُوا ذَلِكَ فِي ذَهَبٍ بِعَيْنِهِ بِذَهَبٍ بِغَيْرِ عَيْنِهِ، وَفِي فِضَّةٍ بِعَيْنِهَا بِفِضَّةٍ بِغَيْرِ عَيْنِهَا، وَلَا فَرْقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ، لَا فِي نَصٍّ، وَلَا فِي مَعْقُولٍ، فَأَبَاحُوا الرِّبَا جِهَارًا - وَنَعُوذُ بِاللَّهِ مِنْ الْخِذْلَانِ - فَبَطَلَتْ عِلَّةُ هَؤُلَاءِ، وَبَطَلَ قَوْلُهُمْ يَقِينًا.

L23615–23617 They permitted the sale of physically present wheat for non-present wheat, or physically present dates for non-present dates, or physically present barley for non-present barley, stipulating that the non-present item must be received first, after which the parties must separate before the physically present item is taken. They prohibited this in the case of physically present gold for non-present gold and physically present silver for non-present silver, with no distinction between... Not a thing of that—neither in textual evidence nor rational basis—so they permitted riba openly—and we seek refuge in Allah from being forsaken—so the legal basis of these people is nullified, and their claim is invalidated with certainty.

1481 - Issue: Abu Muhammad said, "Here are certain matters mentioned by all the proponents (who explain the rationale of the hadith on usury), which include what was narrated to us through Waki''s chain: from Ismāʿīl

L23618

ibn Abī Khālid, from Ḥakīm ibn Jābir, from ʿUbādah ibn al-Ṣāmit: ʾI heard the Messenger of Allah—peace and blessings be upon him—say: ”Gold for gold, silver for silver, measure for measure, until it culminates even in salt.“”

١٤٨١ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: وَهَهُنَا أَشْيَاءُ ذَكَرَهَا الْقَائِلُونَ - بِتَعْلِيلِ حَدِيثِ الرِّبَا - كُلُّهُمْ، وَهِيَ أَنَّهُمْ ذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ أَنَا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ حَكِيمِ بْنِ جَابِرٍ «عَنْ عُبَادَةَ بْنِ الصَّامِتِ سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: الذَّهَبُ بِالذَّهَبِ، وَالْفِضَّةُ بِالْفِضَّةِ، وَالْكِفَّةُ بِالْكِفَّةِ، حَتَّى خَلَصَ إلَى الْمِلْحِ» .

L23619 They said: “Thus, this indicates that he—peace be upon him—mentioned something other than that.” Abu Muhammad said: “This is baseless for several reasons—the first being that this wording was solely reported by Hakim ibn Jabir, who is unknown.”

قَالُوا: فَهَذَا يَدُلُّ عَلَى أَنَّهُ - عَلَيْهِ السَّلَامُ - ذَكَرَ غَيْرَ ذَلِكَ. قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ لِوُجُوهٍ -: أَوَّلُهَا: أَنَّ هَذَا اللَّفْظَ لَمْ يَرْوِهِ إلَّا حَكِيمُ بْنُ جَابِرٍ - وَهُوَ مَجْهُولٌ.

L23620 The second is that he excluded from this report any mention of wheat, dates, and barley, thereby nullifying their presumption that he cited types not mentioned by other narrators.

وَالثَّانِي: أَنَّهُ قَدْ أَسْقَطَ مِنْ هَذَا الْخَبَرِ ذِكْرَ الْبُرِّ، وَالتَّمْرِ وَالشَّعِيرِ -، فَبَطَلَ تَقْدِيرُهُمْ أَنَّهُ ذَكَرَ أَصْنَافًا لَمْ يَذْكُرْهَا غَيْرُهُ مِنْ الرُّوَاةِ.

L23621 The third: We narrated this report via the chain: Bakr ibn Hammad → Musaddad → Yaḥyā ibn Saʿīd al-Qaṭṭān → Ismāʿīl ibn Abī Khālid → Ḥakīm ibn Jābir → ʿUbādah ibn al-Ṣāmit → the Prophet (peace be upon him), wherein he stated: “until he specifically mentioned salt.” Thus, it became clear that he did not mention any other types besides those types.

وَالثَّالِثُ: أَنَّ هَذَا الْخَبَرَ رُوِّينَاهُ مِنْ طَرِيقِ بَكْرِ بْنِ حَمَّادٍ عَنْ مُسَدَّدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ حَكِيمِ بْنِ جَابِرٍ عَنْ عُبَادَةَ بْنِ الصَّامِتِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ فِيهِ: «حَتَّى خَصَّ الْمِلْحَ» فَلَاحَ أَنَّهُ لَمْ يَذْكُرْ غَيْرَ تِلْكَ الْأَصْنَافِ.

L23622 The fourth is that among the certain falsehoods is [the claim] that he, peace be upon him, would mention religiously mandated laws, then their mention would cease from all people—from their first to their last—without abrogation. This contradicts Allah the Exalted’s statement: “He does not speak from whim. It is not but a revelation revealed” [An-Najm: 3-4].[10]

وَالرَّابِعُ: أَنَّ مِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يَذْكُرَ - عَلَيْهِ السَّلَامُ - شَرَائِعَ مُفْتَرَضَةً فَيَسْقُطُ ذِكْرُهَا عَنْ جَمِيعِ النَّاسِ - أَوَّلِهِمْ عَنْ آخِرِهِمْ - مِنْ غَيْرِ نَسْخٍ، هَذَا خِلَافُ قَوْلِ اللَّهِ تَعَالَى: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] .

L23623 And the words of the Most High: “Indeed, We have sent down the Reminder, and indeed, We are its Preservers” [Al-Hijr: 9].[11]

وَقَوْله تَعَالَى {إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ} [الحجر: ٩] .

L23624 If this were permissible, the religion would not have been perfected, the

[10] **Qur’an references (L23622):** Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm).
[11] **Qur’an references (L23623):** Qur’an 15:9 (Al-Hijr).

Sharia would be corrupt, for indeed things from it have been lost to us. We would be obligated to do what we are incapable of and commanded to do what we have no knowledge of whatsoever. And these are delusions grave enough in their severity, and an evident falsehood.

وَلَوْ جَازَ هَذَا لَكَانَ الدِّينُ لَمْ يَكْمُلْ، وَالشَّرِيعَةُ فَاسِدَةً، قَدْ ضَاعَتْ مِنْهَا عَنَّا أَشْيَاءُ، وَلَكُنَّا مُكَلَّفِينَ مَا لَا نَقْدِرُ عَلَيْهِ، وَمَأْمُورِينَ بِمَا لَا نَدْرِيهِ أَبَدًا، وَهَذِهِ ضَلَالَاتٌ نَاهِيك بِهَا، وَبَاطِلٌ لَا خَفَاءَ بِهِ.

L23625 They mentioned what was narrated to us through the chain of Ibn Wahb from Yazīd ibn Iyāḍ from Isḥāq ibn ʿAbd Allāh from Jubayr from Mālik ibn Aws ibn al-Ḥadathān: that the Prophet—peace and blessings of Allāh be upon him—said, "Dates for dates, raisins for raisins, wheat for wheat, butter for butter, oil for oil, dinar for dinar, dirham for dirham—there is no increase between them."

وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يَزِيدَ بْنِ عِيَاضٍ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ عَنْ جُبَيْرٍ عَنْ مَالِكِ بْنِ أَوْسِ بْنِ الْحَدَثَانِ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «التَّمْرُ بِالتَّمْرِ، وَالزَّبِيبُ بِالزَّبِيبِ، وَالْبُرُّ بِالْبُرِّ، وَالسَّمْنُ بِالسَّمْنِ، وَالزَّيْتُ بِالزَّيْتِ، وَالدِّينَارُ بِالدِّينَارِ، وَالدِّرْهَمُ بِالدِّرْهَمِ، لَا فَضْلَ بَيْنَهُمْ» .

L23626–23627 Abu Muhammad said: This is a fabricated and false ḥadīth; it is impermissible to narrate it except to expose its disgrace, for Mālik ibn Aws is not known to have heard anything from the Messenger of Allāh—peace and blessings of Allāh be upon him. Jubayr ibn Abī Ṣāliḥ is unknown—it is not known who he is; Isḥāq ibn ʿAbd Allāh (al-Farwī) is rejected; and Yazīd ibn ʿIyāḍ (Ibn Juʿdubah) is noted for lying and fabricating ḥadīths.

قَالَ أَبُو مُحَمَّد: وَهَذَا حَدِيثٌ مَوْضُوعٌ مَكْذُوبٌ لَا تَحِلُّ رِوَايَتُهُ إِلَّا عَلَى بَيَانِ فَضِيحَتِهِ؛ لِأَنَّ مَالِكَ بْنَ أَوْسٍ لَا يُعْرَفُ لَهُ سَمَاعٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَجُبَيْرَ بْنَ أَبِي صَالِحٍ - مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ، وَإِسْحَاقَ بْنَ عَبْدِ اللَّهِ - هُوَ الْفَرْوِيُّ - مَتْرُوكٌ - وَيَزِيدَ بْنَ عِيَاضٍ - هُوَ ابْنُ جعدبة مَذْكُورٌ بِالْكَذِبِ وَوَضْعِ الْأَحَادِيثِ.

L23628 Moreover, if it were valid, they would have no proof therein regarding the positing of an effective cause whatsoever; rather, it would only involve an additional mention of oil, ghee, and raisins.

ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ فِي إيجَابِ عِلَّةٍ أَصْلًا، وَإِنَّمَا كَانَ يَكُونُ فِيهِ زِيَادَةُ ذِكْرِ الزَّيْتِ، وَالسَّمْنِ، وَالزَّبِيبِ، فَقَطْ.

L23629 Moreover, if this were valid, then the Malikis would be in opposition to it because they permit exchanging a dirham for more than its weight as a recognized practice, and the Hanafis would also be in opposition to it because they permit exchanging three dates for six dates, ten grains of wheat for thirty grains of wheat, and likewise in barley, salt, raisins, and salt. It is not permissible to prohibit what is lawful out of fear of falling into the prohibited, thus hastening to commit that sin, nor to engage in falsehood out of fear that others may fall into it.

وَأَيْضًا: فَلَوْ صَحَّ لَكَانَ الْمَالِكِيُّونَ مُخَالِفِينَ لَهُ، لِأَنَّهُمْ يُجِيزُونَ الدِّرْهَمَ بِأَوْزَنَ مِنْهُ عَلَى سَبِيلِ الْمَعْرُوفِ وَلَكَانَ الْحَنَفِيُّونَ مُخَالِفِينَ لَهُ، لِأَنَّهُمْ يُجِيزُونَ ثَلَاثَ تَمَرَاتٍ بِسِتِّ تَمَرَاتٍ، وَعَشْرَ حَبَّاتِ بُرٍّ بِثَلَاثِينَ حَبَّةَ بُرٍّ - وَكَذَلِكَ فِي الشَّعِيرِ، وَالْمِلْحِ، وَالزَّبِيبِ، وَالْمِلْحِ، وَلَا يَحِلُّ تَحْرِيمُ حَلَالٍ خَوْفَ الْوُقُوعِ فِي الْحَرَامِ، فَيَسْتَعْجِلُ مِنْ فِعْلِ ذَلِكَ الْمَعْصِيَةَ، وَالْوُقُوعُ فِي الْبَاطِلِ خَوْفَ أَنْ يَقَعَ فِيهِ غَيْرُهُ.

L23630 From the chain of Wakīʿ: I, Ibrāhīm ibn Yazīd, report from Abū al-Zubayr, from Jābir, that he disapproved exchanging two *mudds* of barley for one *mudd* of wheat as deferred payment. Ibrāhīm is abandoned and accused. This indicates *karāhiyah* (dislike), not *taḥrīm* (prohibition), and it remains unknown whether he disliked the measure or the grain?

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا إِبْرَاهِيمُ بْنُ يَزِيدَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ أَنَّهُ كَرِهَ مُدَّيْ ذُرَةٍ بِمُدِّ حِنْطَةٍ نَسِيئَةً - إبْرَاهِيمُ - مَتْرُوكٌ مُتَّهَمٌ - وَهَذَا كَرَاهِيَةٌ لَا تَحْرِيمٌ، وَلَا يُدْرَى هَلْ كَرِهَ الْكَيْلَ أَوْ الطَّعَامَ؟

L23631 We have mentioned every opinion narrated in this chapter from the predecessors, clarified their disagreement regarding these opinions, and that they espoused positions on this matter which are not recorded from anyone before them.

وَقَدْ ذَكَرْنَا كُلَّ قَوْلٍ رُوِيَ فِي هَذَا الْبَابِ عَنْ الْمُتَقَدِّمِينَ وَبَيَّنَّا خِلَافَهُمْ لَهَا، وَأَنَّهُمْ قَالُوا فِي ذَلِكَ بِأَقْوَالٍ لَا تُحْفَظُ عَنْ أَحَدٍ قَبْلَهُمْ.

L23632 The most astonishing thing is the audacity of one devoid of religion in openly asserting consensus regarding the occurrence of usury in categories beyond those explicitly specified - a blatant lie glaringly evident. By Allah, consensus has not been authenticated concerning the explicitly specified categories, so how then regarding others?

وَأَعْجَبُ شَيْءٍ مُجَاهَرَةُ مَنْ لَا دِينَ لَهُ بِدَعْوَى الْإِجْمَاعِ عَلَى وُقُوعِ الرِّبَا فِيمَا عَدَا الْأَصْنَافِ الْمَنْصُوصِ عَلَيْهَا - وَهَذَا كَذِبٌ مَفْضُوحٌ مِنْ قَرِيبٍ، وَاَللَّهِ مَا صَحَّ الْإِجْمَاعُ فِي الْأَصْنَافِ الْمَنْصُوصِ عَلَيْهَا فَكَيْفَ فِي غَيْرِهَا.

L23633 Or do not Ibn Masʿūd and Ibn ʿAbbās say: "There is no usury in what is exchanged hand-to-hand?" This was the position of ʿAṭāʾ, the disciples of Ibn ʿAbbās, and the jurists of Mecca.

أَوْ لَيْسَ ابْنُ مَسْعُودٍ، وَابْنُ عَبَّاسٍ يَقُولَانِ: لَا رِبَا فِيمَا كَانَ يَدًا بِيَدٍ؟ وَعَلَيْهِ كَانَ عَطَاءٌ، وَأَصْحَابُ ابْنِ عَبَّاسٍ، وَفُقَهَاءُ أَهْلِ مَكَّةَ.

L23634 It was narrated to us via the chain of Saʿīd ibn Manṣūr, from Abū Muʿāwiyah, from al-Aʿmash, from Ibrāhīm al-Taymī, from al-Ḥārith ibn Suwayd, from ʿAbd Allāh ibn Masʿūd who said: "There is no Riba in what is exchanged hand to hand, and water for water."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو مُعَاوِيَةَ أَنَا الْأَعْمَشُ عَنْ إبْرَاهِيمَ التَّيْمِيِّ عَنْ الْحَارِثِ بْنِ سُوَيْدٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: لَا رِبَا فِيمَا كَانَ يَدًا بِيَدٍ وَالْمَاءُ مِنْ الْمَاءِ.

L23635–23636 And through the chain of Abū Bakr ibn Abī Shaybah: from Wakīʿ, from Sufyān—who is al-Thawrī—from Ibn Jurayj, from ʿAṭāʾ, who said: "There is no harm in engaging in a *salam* sale of what is measured in what is measured, and what is weighed in what is weighed. It is only food for food." This is the same as our position and contradicts all the statements of these [views].

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ أَنَا سُفْيَانُ - هُوَ الثَّوْرِيُّ - عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: لَا بَأْسَ بِأَنْ يُسَلِّمَ مَا يُكَالُ فِيمَا يُكَالُ، وَمَا يُوزَنُ فِيمَا يُوزَنُ، إنَّمَا هُوَ طَعَامٌ بِطَعَامٍ، وَهَذَا نَفْسُ قَوْلِنَا، وَمُخَالِفٌ لِجَمِيعِ قَوْلِ هَؤُلَاءِ.

L23637 It has been authentically reported from Talhah ibn Ubaydullah that he permitted selling gold for silver where one metal is taken immediately while the other's receipt is deferred to an unspecified term. They do not restrict

وَقَدْ صَحَّ عَنْ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ إبَاحَةُ بَيْعِ ذَهَبٍ بِفِضَّةٍ، يُقْبَضُ أَحَدُهُمَا وَيَتَأَخَّرُ قَبْضُ الْآخَرِ إلَى أَجَلٍ غَيْرِ مُسَمًّى، وَلَا يُقَدِّرُونَ فِيمَا عَدَا السِّتَّةَ الْأَصْنَافِ فِي الرِّبَا عَلَى كَلِمَةٍ،

rulings beyond the six specified categories in riba to a definitive ruling, except for seven Companions—may Allah be pleased with them—who held differing opinions, all contradicting the positions of Abu Hanifah, Malik, and Al-Shafi'i. No narration from any of these Companions—neither sound nor weak—aligns with the opinions of these latter scholars.

إِلَّا عَنْ سَبْعَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخْتَلِفِينَ، كُلُّهُمْ مُخَالِفٌ لِأَقْوَالِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، لَيْسَ عَنْ أَحَدٍ مِنْهُمْ رِوَايَةٌ تُوَافِقُ أَقْوَالَ هَؤُلَاءِ صَحِيحَةٌ وَلَا سَقِيمَةٌ.

L23638 And from approximately twelve of the Followers—who likewise differed among themselves and contradicted their own opinions—none [did so] except Ibrāhīm alone, for his position aligned with the foundational principle of Abū Ḥanīfah.

وَعَنْ نَحْوِ اثْنَيْ عَشَرَ مِنْ التَّابِعِينَ مُخْتَلِفِينَ أَيْضًا كَذَلِكَ مُخَالِفِينَ لِأَقْوَالِهِمْ إِلَّا إبْرَاهِيمُ وَحْدَهُ، فَإِنَّهُ وَافَقَ قَوْلُهُ أَصْلَ أَبِي حَنِيفَةَ.

L23639 Moreover, most of the narrations we mentioned from the Companions and the Successors are weak and invalid. So who would consider such a thing as consensus except someone devoid of both faith and intellect—and with Allah, the Exalted, is all success.

وَأَيْضًا: فَأَكْثَرُ الرِّوَايَاتِ الَّتِي ذَكَرْنَا عَنْ الصَّحَابَةِ وَالتَّابِعِينَ فَوَاهِيَةٌ لَا تَصِحُّ، فَمَنْ يَجْعَلُ مِثْلَ هَذَا إجْمَاعًا إلَّا مِنْ لَا دِينَ لَهُ وَلَا عَقْلَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23640 We found an unorthodox opinion attributed to Bishr ibn Ghiyāth al-Marīsī: that exchanging every genus of goods for a different genus is permissible—such as gold for silver, silver for gold, wheat for barley, dates for salt, and every type of these for another—and that usury does not occur except in transactions involving the same genus exclusively.

وَوَجَدْنَا لِبِشْرِ بْنِ غِيَاثٍ الْمَرِيسِيِّ قَوْلًا غَرِيبًا، وَهُوَ أَنَّ تَسْلِيمَ كُلِّ جِنْسٍ فِي غَيْرِ جِنْسِهِ جَائِزٌ كَالذَّهَبِ فِي الْفِضَّةِ وَالْفِضَّةِ فِي الذَّهَبِ، وَالْقَمْحِ فِي الشَّعِيرِ، وَالتَّمْرِ فِي الْمِلْحِ، وَكُلِّ صِنْفٍ مِنْهَا فِي غَيْرِهِ، وَأَنَّ الرِّبَا لَا يَقَعُ إلَّا فِيمَا بِيعَ بِجِنْسِهِ فَقَطْ.

L23641 Then we do not know: does it apply to every genus in the world by analogy to the textually specified matters—this being the more evident implication of his statement—or is it restricted solely to the textually specified matters? This latter opinion contradicts what has been authentically established from the Messenger of Allah—may Allah bless him and grant him peace—hence there is no basis for occupying oneself with it.

ثُمَّ لَا نَدْرِي أَعَمَّ كُلَّ جِنْسٍ فِي الْعَالَمِ قِيَاسًا عَلَى الْمَنْصُوصَاتِ، وَهُوَ الْأَظْهَرُ مِنْ قَوْلِهِ؟ أَوْ خَصَّ الْمَنْصُوصَاتِ فَقَطْ - وَهَذَا قَوْلٌ مُخَالِفٌ لِمَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا وَجْهَ لِلِاشْتِغَالِ بِهِ.

L23642 1482: Question:

١٤٨٢ - مَسْأَلَةٌ:

L23643 Ali said: Since all these statements have been invalidated, we must present the proof for the correctness of our opinion by the aid of Allah, the Most High. It has been narrated to us through Imam Muslim's chain: Qutaybah ibn Sa'id said: I heard from Al-Layth—that is, Ibn Sa'd—who narrated from Ibn Shihāb from Mālik ibn Aws ibn al-Ḥadathān that he said: I began asking, "Who exchanges dirhams?"

قَالَ عَلِيٌّ: فَإِذْ قَدْ بَطَلَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا فَالْوَاجِبُ أَنْ نَذْكُرَ الْبُرْهَانَ عَلَى صِحَّةِ قَوْلِنَا بِعَوْنِ اللَّهِ تَعَالَى -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ قَالَ: أَنَا اللَّيْثُ - هُوَ ابْنُ

سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ مَالِكِ بْنِ أَوْسِ بْنِ الْحَدَثَانِ أَنَّهُ قَالَ: أَقْبَلْتُ أَقُولُ: مَنْ يَصْطَرِفُ الدَّرَاهِمَ؟

L23644–23645 Talha ibn Ubaydullah—who was with Umar ibn al-Khattab—said: “Show us your gold, then we will come when our servant arrives to give you your silver.” Umar ibn al-Khattab said: “No, by Allah! You must either give him his silver or return his gold. For the Messenger of Allah—peace and blessings be upon him—said: ’Silver for gold is usury unless exchanged hand to hand; wheat for wheat is usury unless exchanged hand to hand; barley for barley is usury unless exchanged hand to hand; dates for dates are usury unless exchanged hand to hand.’”[12]

فَقَالَ طَلْحَةُ بْنُ عُبَيْدِ اللَّهِ - وَهُوَ عِنْدَ عُمَرَ بْنِ الْخَطَّابِ -: أَرِنَا ذَهَبَكَ؟ ثُمَّ جِئْنَا إِذَا جَاءَ خَادِمُنَا نُعْطِكَ وَرِقَكَ؟ فَقَالَ عُمَرُ بْنُ الْخَطَّابِ: كَلَّا، وَاللَّهِ لَتُعْطِيَنَّهُ وَرِقَهُ أَوْ لَتَرُدُّنَّ إِلَيْهِ ذَهَبَهُ، فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْوَرِقُ بِالذَّهَبِ رِبًا، إِلَّا هَاءَ وَهَاءَ وَالْبُرُّ بِالْبُرِّ رِبًا، إِلَّا هَاءَ وَهَاءَ، وَالشَّعِيرُ بِالشَّعِيرِ رِبًا، إِلَّا هَاءَ وَهَاءَ، وَالتَّمْرُ بِالتَّمْرِ رِبًا، إِلَّا هَاءَ وَهَاءَ» .

L23646 In the narration transmitted by Muslim: I am Ubaydullah ibn Umar al-Qawariri; Hammad ibn Zayd narrated from Ayyub al-Sikhtiyani, from Abu Qilabah, from Abu al-Ashʿath, from ʿUbadah ibn al-Samit, who said: I heard the Messenger of Allah (peace be upon him) prohibit selling gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt, except in equal measure, hand to hand. Whoever adds or receives more has engaged in usury.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ أَنَا أَبُو الْأَشْعَثِ عَنْ «عُبَادَةَ بْنِ الصَّامِتِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْهَى عَنْ بَيْعِ الذَّهَبِ بِالذَّهَبِ، وَالْفِضَّةِ بِالْفِضَّةِ، وَالْبُرِّ بِالْبُرِّ، وَالشَّعِيرِ بِالشَّعِيرِ، وَالتَّمْرِ بِالتَّمْرِ، وَالْمِلْحِ بِالْمِلْحِ، إِلَّا سَوَاءً بِسَوَاءٍ، عَيْنًا بِعَيْنٍ، فَمَنْ زَادَ أَوْ ازْدَادَ فَقَدْ أَرْبَى» .

L23647 And through the chain of Muslim: I, Isḥāq ibn Ibrāhīm—he is Ibn Rāhawayh—from ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī, from Ayyūb al-Sikhtiyānī with a similar wording.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - عَنْ عَبْدِ الْوَهَّابِ بْنِ عَبْدِ الْمَجِيدِ الثَّقَفِيِّ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ بِنَحْوِهِ.

L23648 From the chain of Aḥmad ibn Shuʿayb: From Muḥammad ibn al-Muthannā, from ʿAmr ibn ʿĀṣim, from Hammām—that is, Ibn Yaḥyā—from Qatādah, from Abū al-Khalīl, from Muslim al-Makkī, from Abū al-Ashʿath al-Ṣanʿānī, from ʿUbādah ibn al-Ṣāmit, who said: The Messenger of Allah—peace be upon him—said, “Gold for gold—its raw form and minted form—weight for weight. Silver for silver—its raw form and minted form—weight for weight. Salt for salt, dates for dates, wheat for wheat, barley for barley—measure for

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَمْرُو بْنُ عَاصِمٍ أَنَا هَمَّامٌ - هُوَ ابْنُ يَحْيَى - أَنَا قَتَادَةُ عَنْ أَبِي الْخَلِيلِ عَنْ مُسْلِمٍ الْمَكِّيِّ عَنْ أَبِي الْأَشْعَثِ الصَّنْعَانِيِّ عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الذَّهَبُ بِالذَّهَبِ تِبْرُهُ وَعَيْنُهُ وَزْنًا بِوَزْنٍ، وَالْفِضَّةُ بِالْفِضَّةِ تِبْرُهُ وَعَيْنُهُ وَزْنًا بِوَزْنٍ، وَالْمِلْحُ بِالْمِلْحِ، وَالتَّمْرُ

[12] **Hadith references (L23645):** Sahih Muslim 1586a; Jami at-Tirmidhi 1243.

measure. Whoever gives more or takes more has engaged in *ribā*. There is no harm in selling barley for wheat, barley being the larger quantity of the two, provided the exchange is hand to hand."

بِالتَّمْرِ، وَالْبُرُّ بِالْبُرِّ، وَالشَّعِيرُ بِالشَّعِيرِ، كَيْلًا بِكَيْلٍ فَمَنْ زَادَ أَوْ ازْدَادَ فَقَدْ أَرْبَى، وَلَا بَأْسَ بِبَيْعِ الشَّعِيرِ بِالْبُرِّ، وَالشَّعِيرُ أَكْثَرُهُمَا يَدًا بِيَدٍ» .

L23649 Abū Muḥammad said: ʻAmr ibn ʻĀṣim, an Anṣārī, is reliable and well-known. Abū al-Khalīl (Ṣāliḥ ibn Abī Maryam) is reliable. Muslim al-Makkī—he is Muslim ibn Yasār al-Khayyāṭ (the tailor), the client of ʻUthmān (may Allāh be pleased with him)—is reliable.

قَالَ أَبُو مُحَمَّد: عَمْرُو بْنُ عَاصِمٍ أَنْصَارِيٌّ ثِقَةٌ مَعْرُوفٌ، وَأَبُو الْخَلِيلِ - هُوَ صَالِحُ بْنُ أَبِي مَرْيَمَ - ثِقَةٌ، وَمُسْلِمٌ الْمَكِّيُّ - هُوَ مُسْلِمُ بْنُ يَسَارٍ الْخَيَّاطُ مَوْلَى عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - ثِقَةٌ.

L23650–23651 This has also been narrated to us through authentic chains, so there is no usury except in what the Messenger of Allah—peace and blessings be upon him—who was commanded to clarify, specified. What is other than that is permissible, {and your Lord is never forgetful} [Maryam: 64]. And success comes only from Allah, the Most High.[13]

وَقَدْ رُوِّينَا هَذَا أَيْضًا مِنْ طَرِيقٍ صِحَاحٍ فَلَا رِبَا إِلَّا فِيمَا نَصَّ عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَأْمُورُ بِالْبَيَانِ، وَمَا عَدَا ذَلِكَ فَحَلَالٌ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L23652 The issue of exchanging wheat for wheat and other types of the same category, trading some for others.

[مَسْأَلَة بَيْع الْقَمْح بالقمح وَغَيْره مِنْ الصناف بَعْضهَا بِبَعْضٍ]

L23653 1483 – Issue: It is not permissible to sell wheat for wheat except like for like, measure for measure, hand to hand, kind for kind. Nor is it permissible to sell barley for barley except in the same manner.

١٤٨٣ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَنْ يُبَاعَ قَمْحٌ بِقَمْحٍ إِلَّا مِثْلًا بِمِثْلٍ كَيْلًا بِكَيْلٍ يَدًا بِيَدٍ، عَيْنًا بِعَيْنٍ - وَلَا يَحِلُّ أَنْ يُبَاعَ شَعِيرٌ بِشَعِيرٍ إِلَّا كَذَلِكَ.

L23654 It is not permissible to sell dates for dates except equally and hand-to-hand.

وَلَا يَحِلُّ أَنْ يُبَاعَ تَمْرٌ بِتَمْرٍ إِلَّا كَذَلِكَ.

L23655 It is impermissible to sell salt for salt except in the same manner—whether mineral [salt] or what solidifies from water. All such [salt] may not be exchanged, some for some, except as we have mentioned.

وَلَا يَحِلُّ أَنْ يُبَاعَ مِلْحٌ بِمِلْحٍ إِلَّا كَذَلِكَ، وَسَوَاءٌ مَعْدِنِيَّةٌ أَوْ مَا يَنْعَقِدُ مِنْهُ مِنْ الْمَاءِ، كُلُّ ذَلِكَ لَا يُبَاعُ بَعْضُهُ بِبَعْضٍ إِلَّا كَمَا ذَكَرْنَا.

L23656 Similarly, all types of wheat—superior, inferior, and average—are the same in the ruling we have mentioned, and likewise the types of barley.

وَكَذَلِكَ أَصْنَافُ الْقَمْحِ فَهِيَ كُلُّهَا قَمْحٌ - الْأَعْلَى، وَالْأَدْنَى، وَالْوَسَطُ: سَوَاءٌ فِيمَا قُلْنَا، وَكَذَلِكَ أَقْسَامُ الشَّعِيرِ.

[13] **Qur'an references (L23651):** Qur'an 19:64 (Maryam).

L23657 Similarly, the types of dates: if the receipt of either commodity is delayed, it constitutes prohibited *Ribā*, perpetually invalidated, governed by the rulings of usurpation (ghaṣb), whether delayed by an instant or longer. The large and small quantities of all that we have mentioned are equal in the rulings we have described.

وَكَذَلِكَ أَقْسَامُ التَّمْرِ فَإِنْ تَأَخَّرَ قَبْضُ أَحَدِ الْعَيْنَيْنِ فَهُوَ رِبًا حَرَامٌ مَفْسُوخٌ أَبَدًا، مَحْكُومٌ فِيهِ بِحُكْمِ الْغَصْبِ، سَوَاءٌ تَأَخَّرَ طَرْفَةَ عَيْنٍ أَوْ أَكْثَرَ، وَالْكَثِيرُ وَالْقَلِيلُ مِنْ كُلِّ مَا ذَكَرْنَا سَوَاءٌ فِيمَا وَصَفْنَا.

L23658 It is not permissible for anything we have mentioned of the same type to be exchanged weight for weight, weight for measure, estimated amount for estimated amount, estimated amount for measure, or estimated amount for weight, because all of this is entailed by the words of the Messenger of Allah (peace and blessings be upon him) which we have mentioned, its understood meaning, and its established meaning in the language with which he addressed us, and with Allah, the Most High, is success.

وَلَا يَحِلُّ شَيْءٌ مِمَّا ذَكَرْنَا مِنْ نَوْعِهِ وَزْنًا بِوَزْنٍ، وَلَا وَزْنًا بِكَيْلٍ، وَلَا جُزَافًا بِجُزَافٍ، وَلَا جُزَافًا بِكَيْلٍ، وَلَا جُزَافًا بِوَزْنٍ، لِأَنَّ كُلَّ هَذَا مُقْتَضَى كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَا، وَمَفْهُومُهُ وَمَوْضُوعُهُ فِي اللُّغَةِ الَّتِي بِهَا خَاطَبَنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L23659 Abu Hanifah and Al-Shafi'i said: It is permissible to sell any portion of it without its own type - whether specified or unspecified. It is also permissible for mutual possession to be delayed from the time of contract so long as the two parties do not physically separate, even if prolonged - though this contradicts the statement of Allah's Messenger (peace be upon him). We were narrated through Al-Hajjaj ibn Al-Minhal, from Yazid ibn Ibrahim, from Muhammad ibn Sirin, who said: "I was informed that Umar ibn Al-Khattab stood to deliver a sermon and proclaimed: 'Behold! O people - a dirham for a dirham, a dinar for a dinar: same type for same type, exactly equal exactly equal, like for like.'"

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: جَائِزٌ أَنْ يُبَاعَ مِنْهَا شَيْءٌ بِغَيْرِ عَيْنِهِ بِمُعَيَّنٍ وَبِغَيْرِ مُعَيَّنٍ، وَجَائِزٌ أَنْ يَتَأَخَّرَ التَّقَابُضُ عَنْ وَقْتِ الْعَقْدِ مَا لَمْ يَفْتَرِقَا بِأَبْدَانِهِمَا وَإِنْ طَالَ ذَلِكَ - وَهَذَا خِلَافُ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا يَزِيدُ بْنُ إبْرَاهِيمَ أَنَا مُحَمَّدُ بْنُ سِيرِينَ قَالَ: نُبِّئْت أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَامَ يَخْطُبُ فَقَالَ: يَا أَيُّهَا النَّاسُ أَلَا إنَّ الدِّرْهَمَ بِالدِّرْهَمِ، وَالدِّينَارَ بِالدِّينَارِ، عَيْنٌ بِعَيْنٍ، سَوَاءً سَوَاءً، مِثْلًا بِمِثْلٍ

L23660 Thus, here is Umar (in the presence of the Companions) permitting no exchange of dirhams and dinars except like for like in kind, and he maintains that they must be exchanged in equal kind and quantity. None of the Companions were known to dissent from this ruling, yet they opposed him.

فَهَذَا عُمَرُ بِحَضْرَةِ الصَّحَابَةِ لَا يُجِيزُ فِي الدَّرَاهِمِ وَالدَّنَانِيرِ إلَّا عَيْنًا بِعَيْنٍ، وَيَرَى أَنَّهَا تَتَعَيَّنُ، وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ: فَخَالَفُوهُ.

[مَسْأَلَةٌ بَيْعُ كُلِّ صِنْفٍ مِمَّا بِالْأَصْنَافِ الْأُخَرِ مِنْهَا مُتَفَاضِلًا وَمُتَمَاثِلًا وَجُزَافًا]

L23661–23662 **An issue: the sale of every kind from among the other kinds, whether they differ in quality, are equivalent, or are sold in bulk without precise measurement.**

L23663 Issue: It is permissible to sell every type we have mentioned in exchange

for other types from them—whether with excess, equal, by estimation, by weight, or by measure—in any manner you choose, provided the exchange is hand-to-hand.

مَسْأَلَةٌ: وَجَازَ بَيْعُ كُلِّ صِنْفٍ مِمَّا ذَكَرْنَا بِالْأَصْنَافِ الْأُخَرِ مِنْهَا، مُتَفَاضِلًا وَمُتَمَاثِلًا وَجُزَافًا، وَزْنًا وَكَيْلًا كَيْفَمَا شِئْتَ إذَا كَانَ يَدًا بِيَدٍ.

L23664 It is impermissible to delay even for the blink of an eye or longer in that matter, neither in a sale nor in a *salam* contract. This is the implication of the statement of the Messenger of Allah—peace and blessings be upon him—which we mentioned, and it is agreed upon, except for Mālik. He did not permit the sale of barley for wheat unless their measures were equivalent, measure for measure. Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān permitted it, as we stated.

وَلَا يَجُوزُ فِي ذَلِكَ التَّأْخِيرُ طَرْفَةَ عَيْنٍ فَأَكْثَرَ، لَا فِي بَيْعٍ وَلَا فِي سَلَمٍ، وَهَذَا مُقْتَضَى قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَا وَهُوَ مُتَّفَقٌ عَلَيْهِ، إلَّا مَالِكًا فَإِنَّهُ لَمْ يُجِزْ بَيْعَ الشَّعِيرِ بِالْقَمْحِ إلَّا مُتَمَاثِلًا كَيْلًا بِكَيْلٍ - وَأَجَازَهُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، كَمَا قُلْنَا.

L23665 The proof for the validity of our statement is what has been narrated to us through the chain of Muslim: Abū Kurayb → Ibn Fuḍayl (he is Muḥammad) → his father → Abū Zurʿah ibn ʿAmr ibn Jarīr → Abū Hurayrah, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said, “Dates for dates, wheat for wheat, barley for barley, salt for salt, like for like, hand to hand. Whoever increases or seeks increase has engaged in usury, except when their kinds differ.”

بُرْهَانُ صِحَّةِ قَوْلِنَا -: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو كُرَيْبٍ أَنَا ابْنُ فُضَيْلٍ - هُوَ مُحَمَّدٌ - عَنْ أَبِيهِ عَنْ أَبِي زُرْعَةَ بْنِ عَمْرِو بْنِ جَرِيرٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «التَّمْرُ بِالتَّمْرِ، وَالْحِنْطَةُ بِالْحِنْطَةِ، وَالشَّعِيرُ بِالشَّعِيرِ، وَالْمِلْحُ بِالْمِلْحِ، مِثْلًا بِمِثْلٍ، يَدًا بِيَدٍ، فَمَنْ زَادَ وَاسْتَزَادَ فَقَدْ أَرْبَى، إلَّا مَا اخْتَلَفَتْ أَلْوَانُهُ» .

L23666 Through the chain of Muslim: Abu Bakr ibn Abi Shaybah narrated from Waki‘, from Sufyan al-Thawri, from Khalid al-Khazzaz, from Abu al-Ash‘ath, from ‘Ubadah ibn al-Samit, who said: The Messenger of Allah, peace and blessings be upon him, said, “Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt: like for like, hand to hand, equal for equal. If these commodities differ, then sell however you wish so long as it is hand to hand.”

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ وَكِيعٍ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي الْأَشْعَثِ عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الذَّهَبُ بِالذَّهَبِ، وَالْفِضَّةُ بِالْفِضَّةِ، وَالْبُرُّ بِالْبُرِّ، وَالشَّعِيرُ بِالشَّعِيرِ، وَالتَّمْرُ بِالتَّمْرِ، وَالْمِلْحُ بِالْمِلْحِ، مِثْلًا بِمِثْلٍ، يَدًا بِيَدٍ، سَوَاءً بِسَوَاءٍ فَإِذَا اخْتَلَفَتْ هَذِهِ الْأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ إذَا كَانَ يَدًا بِيَدٍ» .

L23667 We have previously discussed the matter of his explicit textual ruling—peace be upon him—on the permissibility of selling barley for wheat with a difference in quantity. No authority lies in anyone’s statement besides the Messenger of Allah—may Allah bless him and grant him peace.

وَقَدْ ذَكَرْنَا قَبْلَ هَذِهِ بِمَسْأَلَةِ نَصِّهِ - عَلَيْهِ السَّلَامُ - عَلَى جَوَازِ بَيْعِ الشَّعِيرِ بِالْبُرِّ مُتَفَاضِلًا، وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L23668 Through the chain of Ahmad ibn Shuʿayb: Muhammad ibn ʿAbdillāh ibn Baziʿ narrated to us, from Yazīd, from Salamah ibn ʿAlqamah, from Muham-

mad ibn Sīrīn, from Muslim ibn Yasār and ʿAbdillāh ibn ʿUbayd (who is Ibn Hurmuz)—both of whom collectively stated: "'Ubādah ibn al-Ṣāmit narrated to them, saying: 'Allah's Messenger—peace and blessings be upon him—prohibited selling gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, except equivalent for equivalent, hand to hand. He commanded us to sell gold for silver, silver for gold, wheat for barley, barley for wheat, hand to hand, as we desire.'" One of the two added in his narration: "salt for salt," while the other omitted it.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ بَزِيعٍ أَنَا يَزِيدُ أَنَا سَلَمَةُ بْنُ عَلْقَمَةَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ مُسْلِمِ بْنِ يَسَارٍ، وَعَبْدِ اللَّهِ بْنِ عُبَيْدٍ - هُوَ ابْنُ هُرْمُزَ - قَالَا جَمِيعًا: إِنَّ عُبَادَةَ بْنَ الصَّامِتِ حَدَّثَهُمْ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الذَّهَبِ بِالذَّهَبِ، وَالْوَرِقِ بِالْوَرِقِ، وَالْبُرِّ بِالْبُرِّ، وَالشَّعِيرُ بِالشَّعِيرِ، وَالتَّمْرِ بِالتَّمْرِ، إِلَّا مِثْلًا بِمِثْلٍ يَدًا بِيَدٍ، وَأَمَرَنَا أَنْ نَبِيعَ الذَّهَبَ بِالْوَرِقِ، وَالْوَرِقَ بِالذَّهَبِ، وَالْبُرَّ بِالشَّعِيرِ، وَالشَّعِيرَ بِالْبُرِّ، يَدًا بِيَدٍ كَيْفَ شِئْنَا زَادَ أَحَدُهُمَا فِي حَدِيثِهِ: الْمِلْحَ بِالْمِلْحِ، وَلَمْ يَقُلْهُ الْآخَرُ» .

L23669–23670 This is a mutawatir report narrated from the Messenger of Allah (may Allah bless him and grant him peace) by Abu Hurayrah and 'Ubadah ibn al-Samit: Abu Zur'ah ibn 'Amr ibn Jarir and Abu Hazim narrated it from Abu Hurayrah.

فَهَذَا أَثَرٌ مُتَوَاتِرٌ رَوَاهُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبُو هُرَيْرَةَ، وَعُبَادَةُ بْنُ الصَّامِتِ - وَرَوَاهُ عَنْ أَبِي هُرَيْرَةَ: أَبُو زُرْعَةَ بْنُ عَمْرِو بْنِ جَرِيرٍ، وَأَبُو حَازِمٍ.

L23671 And it was narrated from ʿUbādah ibn al-Ṣāmit by Abū al-Ashʿath al-Ṣanʿānī and ʿAbdullāh ibn ʿUbayd. And it was narrated from Abū al-Ashʿath by Abū Qilābah and Muslim ibn Yasār.

وَرَوَاهُ عَنْ عُبَادَةَ بْنِ الصَّامِتِ: أَبُو الْأَشْعَثِ الصَّنْعَانِيُّ، وَعَبْدُ اللَّهِ بْنُ عُبَيْدٍ. وَرَوَاهُ عَنْ أَبِي الْأَشْعَثِ: أَبُو قِلَابَةَ، وَمُسْلِمُ بْنُ يَسَارٍ.

L23672 Abu al-Khalil and Ibn Sirin narrated it from Muslim ibn Yasar – and it was narrated from these individuals by: subsequent narrators.

وَرَوَاهُ عَنْ مُسْلِمِ بْنِ يَسَارٍ أَبُو الْخَلِيلِ، وَابْنُ سِيرِينَ -. وَرَوَاهُ عَنْ هَؤُلَاءِ: النَّاسُ.

L23673 The Malikis cited as evidence what was narrated to us through Ibn Wahb's transmission from 'Amr ibn al-Hārith: that Abū al-Naḍr related to him that Busr ibn Sa'īd related to him from Ma'mar ibn 'Abd Allāh—that he sent his servant with a ṣā' of wheat and said, "Sell it, then buy barley with it." The servant went and took a ṣā' plus an extra portion of a ṣā'. When he returned, Ma'mar said to him, "Why did you do this? Go and return it. Take only like for like, for I heard the Prophet—peace and blessings of Allah be upon him—say, 'Food for food must be equal measure for equal measure.'" It was said, "But it is not equivalent to it." He replied, "I fear they might be equated."

وَاحْتَجَّ الْمَالِكِيُّونَ بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ: أَنَّ أَبَا النَّضْرِ حَدَّثَهُ أَنَّ بُسْرَ بْنَ سَعِيدٍ حَدَّثَهُ عَنْ «مَعْمَرِ بْنِ عَبْدِ اللَّهِ: أَنَّهُ أَرْسَلَ غُلَامَهُ بِصَاعِ قَمْحٍ وَقَالَ: بِعْهُ ثُمَّ اشْتَرِ بِهِ شَعِيرًا، فَذَهَبَ الْغُلَامُ فَأَخَذَ صَاعًا وَزِيَادَةَ بَعْضِ صَاعٍ، فَلَمَّا جَاءَ قَالَ لَهُ مَعْمَرٌ: لِمَ فَعَلْتَ ذَلِكَ؟ انْطَلِقْ فَرُدَّهُ، وَلَا تَأْخُذَنَّ إِلَّا مِثْلًا بِمِثْلٍ فَإِنِّي كُنْتُ أَسْمَعُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ الطَّعَامُ بِالطَّعَامِ مِثْلًا بِمِثْلٍ» قِيلَ: فَإِنَّهُ لَيْسَ مِثْلَهُ، قَالَ: إِنِّي أَخَافُ أَنْ يُضَارَعَ.

L23674 And according to what we have narrated through the chain of Mālik from Nāfi' from Sulaymān ibn Yasār, who said: 'Abd al-Raḥmān ibn al-Aswad ibn

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: قَالَ عَبْدُ الرَّحْمَنِ بْنُ الْأَسْوَدِ بْنِ عَبْدِ يَغُوثَ لِغُلَامِهِ: خُذْ مِنْ حِنْطَةِ أَهْلِكَ طَعَامًا فَابْتَعْ بِهَا شَعِيرًا، وَلَا تَأْخُذْ إِلَّا مِثْلَهُ.

'Abd Yaghūth said to his servant: "Take wheat from your family's supply as food, buy barley with it, and take only an equivalent measure."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا أَبُو دَاوُد الطَّيَالِسِيُّ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: أَرْسَلَ عُمَرُ بْنُ الْخَطَّابِ غُلَامًا لَهُ بِصَاعٍ مِنْ بُرٍّ يَشْتَرِي لَهُ بِهِ صَاعًا مِنْ شَعِيرٍ، وَزَجَرَهُ إِنْ زَادُوهُ أَنْ يَزْدَادَ.

L23675 From the narration of Ibn Abi Shaybah: Abu Dawud al-Tayalisi reported to us from Hisham al-Dastuwa'i, from Yahya ibn Abi Kathir, who said: "Umar ibn al-Khattab sent his servant with a _sa'_ of wheat to buy a _sa'_ of barley for him, and warned him not to accept any increase if they offered more."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا شَبَابَةُ عَنْ لَيْثٍ عَنْ نَافِعٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ مِثْلُ هَذَا.

L23676 And via the route of Ibn Abi Shaybah: I from Shababah, from Layth, from Nafi', from Sulayman ibn Yasar, from Sa'd ibn Abi Waqqas—a similar one.

وَمِنْ طَرِيقِ مَالِكٍ أَنَّهُ بَلَغَهُ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ مُعَيْقِيبٍ مِثْلُ هَذَا أَيْضًا - وَهُوَ قَوْلُ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ صَحَّ عَنْهُ ذَلِكَ، وَرُوِيَ - وَلَمْ يَصِحَّ - عَنْ الْقَاسِمِ، وَسَالِمٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ.

L23677–23679 And through the chain of Mālik, it was reported to him from al-Qāsim ibn Muḥammad from Muʿayqib the like of this also—and he... The statement of Abu Abd al-Rahman al-Sulami that has been authentically reported from him, and it has been narrated—but not authentically—from al-Qasim, Salim, and Sa'id ibn al-Musayyib.

وَصَحَّ عَنْ رَبِيعَةَ، وَأَبِي الزِّنَادِ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ وَاللَّيْثِ بْنِ سَعْدٍ، قَالُوا: فَهَؤُلَاءِ، عُمَرُ، وَسَعْدٌ، وَمُعَيْقِيبٌ، وَعَبْدُ الرَّحْمَنِ بْنُ الْأَسْوَدِ، وَمَعْمَرُ بْنُ عَبْدِ اللَّهِ: خَمْسَةٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L23680 It has been authentically reported from Rabīʿah, Abū al-Zinād, al-Ḥakam ibn ʿUtaybah, Ḥammād ibn Abī Sulaymān, and al-Layth ibn Saʿd, who said: So these—ʿUmar, Saʿd, Muʿayqīb, ʿAbd al-Raḥmān ibn al-Aswad, and Maʿmar ibn ʿAbd Allāh—are five of the Companions—may Allah be pleased with them—.

قَالَ عَلِيٌّ: وَجَسَرَ بَعْضُهُمْ فَقَالَ: لَا يُعْرَفُ لَهُمْ مُخَالِفٌ مِنْ الصَّحَابَةِ -.

L23681 Ali said: Some of them dared and said, "No dissent from the Companions is recorded against their position."

وَجَسَرَ آخَرُ مِنْهُمْ فَادَّعَى إجْمَاعَ السَّلَفِ فِي ذَلِكَ؟

L23682 Did another from among them dare to claim the consensus of the Salaf therein?

قَالَ عَلِيٌّ: مَا لَهُمْ حُجَّةٌ غَيْرُ هَذَا أَصْلًا.

L23683 Ali said: They have no argument whatsoever other than this.

L23684 As for the narration of Ma'mar, it constitutes a proof against them because

they designate dates as food and permit unequal exchange of dates for wheat, thereby contradicting the hadith through their interpretation by their own acknowledgment. They possess no valid argument whatsoever in this matter, for the hadith only specifies exchanging food for food in equal measure - which we neither disagree with them on this matter nor on its permissibility. It does not state that food cannot be exchanged for food except in equal measure. Rather, this matter is entirely unaddressed in Ma'mar's narration, while being explicitly affirmed as permissible in the narration of Abu Hurairah and Ubadah from the Messenger of Allah (peace and blessings be upon him). Thus their reliance on it is wholly invalidated, and it stands as a proof against them.

L23685 As for Maʿmar's statement from his personal opinion, they have no basis to rely on it, for he explicitly clarified that barley is not like wheat. However, he abandoned it as a precaution, fearing it might be treated as analogous to wheat, and not due to any obligation.

L23686 As for the chain from ʿUmar, it is disconnected, and likewise the chain from Muʿayqib is disconnected.

L23687 How many instances are there where they opposed ʿUmar, Saʿd, and a greater number of Companions—such as [the rulings on] wiping over turbans, wiping over socks, legal retaliation (qisas) for a blow or a slap, and other matters in many cases where no opponent from the Companions (may Allah be pleased with them) is known therein? Yes, and with them are the established Sunnah. Indeed, those we have mentioned opposed a group of the Companions (may Allah be pleased with them):

L23688 As we have been narrated through the path of Ibn Abi Shaybah: from Yazid ibn Harun, from Sa'id ibn Abi Arubah, from Qatadah, from Muslim ibn Yasar, from Abu al-Ash'ath al-San'ani: that Ubadah ibn al-Samit said: "There is no harm in selling wheat for barley - the barley being more than it - through immediate hand-to-hand exchange, but it is invalid if deferred." This is Ubadah; he transmitted it with a chain and issued a ruling thereon.

L23689–23690 And via the narration of Ibn Abī Shaybah: From ʿAbd al-Aʿlā, from ʿUmar,

فَأَمَّا حَدِيثُ مَعْمَرٍ فَهُوَ حُجَّةٌ عَلَيْهِمْ؛ لِأَنَّهُمْ يُسَمُّونَ التَّمْرَ طَعَامًا وَيُبِيحُونَ فِيهِ التَّفَاضُلَ بِالْبُرِّ، فَقَدْ خَالَفُوا الْحَدِيثَ عَلَى تَأْوِيلِهِمْ بِإِقْرَارِهِمْ، وَلَا حُجَّةَ لَهُمْ أَصْلًا فِيهِ؛ لِأَنَّهُ لَيْسَ فِيهِ إِلَّا الطَّعَامُ بِالطَّعَامِ مِثْلًا بِمِثْلٍ، وَهَذَا مِمَّا لَا نُخَالِفُهُمْ فِيهِ وَفِي جَوَازِهِ، وَلَيْسَ فِيهِ: أَنَّ الطَّعَامَ لَا يَجُوزُ بِالطَّعَامِ إِلَّا مِثْلًا بِمِثْلٍ، بَلْ هَذَا مَسْكُوتٌ عَنْهُ جُمْلَةً فِي خَبَرِ مَعْمَرٍ، وَمَنْصُوصٌ عَلَى جَوَازِهِ فِي خَبَرِ أَبِي هُرَيْرَةَ، وَعُبَادَةَ: عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَطَلَ تَعَلُّقُهُمْ بِهِ جُمْلَةً، وَعَادَ حُجَّةً عَلَيْهِمْ.

وَأَمَّا قَوْلُ مَعْمَرٍ مِنْ رَأْيِهِ فَلَا مُتَعَلَّقَ لَهُمْ فِيهِ؛ لِأَنَّهُ قَدْ صَرَّحَ بِأَنَّ الشَّعِيرَ لَيْسَ مِثْلَ الْقَمْحِ، لَكِنْ تَخَوَّفَ أَنْ يُضَارِعَهُ فَتَرَكَهُ احْتِيَاطًا لَا إِيجَابًا.

وَأَمَّا عَنْ عُمَرَ فَمُنْقَطِعٌ، وَكَذَلِكَ عَنْ مُعَيْقِيبٍ.

وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا عُمَرَ، وَسَعْدًا، وَأَكْثَرَ مِنْ هَذَا الْعَدَدِ مِنَ الصَّحَابَةِ كَالْمَسْحِ عَلَى الْعِمَامَةِ، وَعَلَى الْجَوْرَبَيْنِ، وَالْقَوَدِ مِنَ الضَّرْبَةِ، وَاللَّطْمَةِ - وَغَيْرِ ذَلِكَ فِي كَثِيرٍ لَا يُعْرَفُ لَهُمْ فِيهِ مُخَالِفٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، نَعَمْ، وَمَعَهُمُ السُّنَنُ الثَّابِتَةُ. وَقَدْ خَالَفَ مَنْ ذَكَرْنَا طَائِفَةً مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -:

كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا يَزِيدُ بْنُ هَارُونَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ مُسْلِمِ بْنِ يَسَارٍ عَنْ أَبِي الْأَشْعَثِ الصَّنْعَانِيِّ: أَنَّ عُبَادَةَ بْنَ الصَّامِتِ قَالَ: لَا بَأْسَ بِبَيْعِ الْحِنْطَةِ بِالشَّعِيرِ - وَالشَّعِيرُ أَكْثَرُ مِنْهُ - يَدًا بِيَدٍ، وَلَا يَصْلُحُ نَسِيئَةً - فَهَذَا عُبَادَةُ أَسْنَدَهُ وَأَفْتَى بِهِ.

from al-Zuhrī, from Sālim, from Ibn ʿUmar: He saw no harm in measuring one for two, hand to hand, provided their types differed.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الْأَعْلَى عَنْ عُمَرَ عَنْ الزُّهْرِيِّ عَنْ سَالِمٍ عَنْ ابْنِ عُمَرَ: كَانَ لَا يَرَى بَأْسًا فِيمَا يُكَالُ وَاحِدًا بِاثْنَيْنِ، يَدًا بِيَدٍ إذَا اخْتَلَفَتْ أَلْوَانُهُ.

L23691 Via the chain of Ibn Abi Shaybah: I [Ibn Abi Shaybah] narrate from Ibn Fudayl, from Ashʿath, from Abu al-Zubayr, from Jabir ibn ʻAbdullah, who said: "If the two kinds differ, there is no harm in an excess when exchanged hand to hand."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ فُضَيْلٍ عَنْ أَشْعَثَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: إذَا اخْتَلَفَ النَّوْعَانِ فَلَا بَأْسَ بِالْفَضْلِ يَدًا بِيَدٍ.

L23692 These chains of transmission are more authentic than theirs, contrary to their claim—and this is the view of Ibn Masʻud and Ibn Abbas, without doubt. It is authentically reported from both of them that there is absolutely no usury in unequal exchange of the same commodity whatsoever, rather usury applies exclusively to deferred transactions.

فَهَذِهِ أَسَانِيدُ أَصَحُّ مِنْ أَسَانِيدِهِمْ بِخِلَافِ قَوْلِهِمْ - وَهُوَ قَوْلُ ابْنِ مَسْعُودٍ، وَابْنِ عَبَّاسٍ بِلَا شَكٍّ: أَنَّهُ صَحَّ عَنْهُمَا أَنَّهُ لَا رِبَا فِي التَّفَاضُلِ أَصْلًا، وَإِنَّمَا الرِّبَا فِي النَّسِيئَةِ.

L23693 Through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from al-Mughīrah ibn Miqsam, from Ibrāhīm al-Nakhaʿī—that he saw no harm in two jarībs of barley in exchange for one jarīb of burr wheat.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّهُ لَمْ يَرَ بَأْسًا بِجَرِيبَيْنِ مِنْ شَعِيرٍ بِجَرِيبٍ مِنْ بُرٍّ.

L23694 Via the chain of Ibn Abi Shaybah: Jarir from al-Mughirah ibn Miqsam from al-Sha'bi, who said: "I asked him and Ibrahim about exchanging four jareeb of barley for two jareeb of wheat." They both responded: "There is no harm in it."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا جَرِيرٌ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ الشَّعْبِيِّ قَالَ الْمُغِيرَةُ: سَأَلْته وَإِبْرَاهِيمَ عَنْ أَرْبَعَةِ أَجْرِبَةٍ مِنْ شَعِيرٍ بِجَرِيبَيْنِ مِنْ حِنْطَةٍ؟ فَقَالَا جَمِيعًا: لَا بَأْسَ بِهِ.

L23695 Narrated through Ibn Abi Shaybah: I am 'Abd al-A'la, from Ma'mar, from al-Zuhri, that he deemed no harm in selling wheat for barley hand to hand, even if one quantity is greater than the other.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الْأَعْلَى عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِبَيْعِ الْبُرِّ بِالشَّعِيرِ يَدًا بِيَدٍ، أَحَدُهُمَا أَكْثَرُ مِنْ الْآخَرِ.

L23696 From the chain of Ibn Abi Shaybah: Al-Fadl ibn Dukayn reported from Unays ibn Khalid al-Tamimi that he said: "I asked 'Aṭā' about exchanging barley for wheat—two units for one in a spot exchange." He replied: "There is no harm in it." Thus, it is authentically reported from these five Companions—may Allah be pleased with them—that the permissibility of exchanging unequal amounts of wheat for barley is allowed in Islamic jurisprudence, along with a group of the Successors.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا الْفَضْلُ بْنُ دُكَيْنٍ عَنْ أُنَيْسِ بْنِ خَالِدٍ التَّمِيمِيُّ قَالَ: سَأَلْت عَطَاءً عَنْ الشَّعِيرِ بِالْحِنْطَةِ اثْنَيْنِ بِوَاحِدٍ يَدًا بِيَدٍ؟ فَقَالَ لَا بَأْسَ بِهِ - فَهَؤُلَاءِ خَمْسَةٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - صَحَّ عَنْهُمْ جَوَازُ التَّفَاضُلِ فِي الْبُرِّ بِالشَّعِيرِ، وَطَائِفَةٌ مِنْ التَّابِعِينَ.

L23697 This is the position of Sufyan, Abu Hanifah, al-Shafi'i, Abu Thawr, Ahmad

ibn Hanbal, Ishaq, and Abu Sulayman.

وَهُوَ قَوْلُ سُفْيَانَ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ.

L23698 When people differ, the reference is to the Quran and the Sunnah. It has been authentically reported from the Messenger of Allah (may Allah bless him and grant him peace) that the permissibility of exchanging unequal amounts in wheat and barley is confirmed, as we have mentioned. Thus, no one's opinion holds weight against his.

وَإِذَا اخْتَلَفَ النَّاسُ فَالْمَرْدُودُ إِلَيْهِ هُوَ الْقُرْآنُ، وَالسُّنَّةُ - وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَوَازُ التَّفَاضُلِ فِي الْبُرِّ، وَالشَّعِيرِ، كَمَا ذَكَرْنَا، فَلَا قَوْلَ لِأَحَدٍ مَعَهُ.

L23699–23701 What is astonishing about Malik is that he considers wheat, barley, and saltum (hulled barley) as a single category here and in zakat, yet he does not permit someone who subsists on wheat to give barley or saltum for zakat al-fitr—contrary to the maxim "each person should discharge from what they consume." This is a glaring contradiction. Another point of astonishment is his combining of gold and silver in zakat while requiring the discharge of... One of them concerning the other regarding obligatory zakah - while permitting the sale of gold for silver with a differential here - constitutes a self-evident contradiction.

وَالْعَجَبُ مِنْ مَالِكٍ إِذْ يَجْعَلُ هَهُنَا وَفِي الزَّكَاةِ: الْبُرَّ وَالشَّعِيرَ وَالسَّلْتَ صِنْفًا وَاحِدًا ثُمَّ لَا يُجِيزُ لِمَنْ يَتَقَوَّتُ الْبُرَّ إِخْرَاجَ الشَّعِيرِ أَوْ السَّلْتَ فِي زَكَاةِ الْفِطْرِ، وَقَوْلُ: أَنْ يُخْرِجَ كُلُّ أَحَدٍ مِمَّا يَأْكُلُ - وَهَذَا تَنَاقُضٌ فَاحِشٌ. وَعَجَبٌ آخَرُ: وَهُوَ أَنَّهُ يَجْمَعُ بَيْنَ الذَّهَبِ، وَالْفِضَّةِ فِي الزَّكَاةِ، وَيَرَى إِخْرَاجَ أَحَدِهِمَا عَنْ الْآخَرِ فِي الزَّكَاةِ الْمَفْرُوضَةِ - وَيُجِيزُ هَهُنَا أَنْ يُبَاعَ الذَّهَبُ بِالْفِضَّةِ مُتَفَاضِلَيْنِ - وَهَذَا تَنَاقُضٌ لَا خَفَاءَ بِهِ.

L23702 No one has ever recognized—whether in sharia, language, or nature—that barley is wheat or that wheat is barley. Rather, all of that testifies they are two distinct types, like the difference between dates, raisins, and figs.

وَمَا عَلِمَ قَطُّ أَحَدٌ، لَا فِي شَرِيعَةٍ، وَلَا فِي لُغَةٍ، وَلَا فِي طَبِيعَةٍ: أَنَّ الشَّعِيرَ بُرٌّ، وَلَا أَنَّ الْبُرَّ شَعِيرٌ، بَلْ كُلُّ ذَلِكَ يَشْهَدُ أَنَّهُمَا صِنْفَانِ مُخْتَلِفَانِ كَاخْتِلَافِ التَّمْرِ، وَالزَّبِيبِ، وَالتِّينِ.

L23703 There is no disagreement among the jurists that if one swears not to eat free-threshing wheat (burr) but eats barley, or swears not to eat barley but eats free-threshing wheat—or swears not to purchase free-threshing wheat but purchases barley, or swears not to purchase barley but purchases free-threshing wheat—they do not incur oath violation.

وَلَا يَخْتَلِفُونَ فِي أَنَّ مَنْ حَلَفَ لَا يَأْكُلُ بُرًّا فَأَكَلَ شَعِيرًا - أَوْ لَا يَأْكُلُ شَعِيرًا فَأَكَلَ بُرًّا - أَوْ أَنْ لَا يَشْتَرِيَ بُرًّا فَاشْتَرَى شَعِيرًا - أَوْ أَنْ لَا يَشْتَرِيَ شَعِيرًا فَاشْتَرَى بُرًّا: فَإِنَّهُ لَا يَحْنَثُ.

L23704 These are grave contradictions that have absolutely no justification whatsoever—neither from the Quran, nor the Sunnah, nor a weak narration, nor analogy. And success comes only from Allah, the Most High.

فَهَذِهِ تَنَاقُضَاتٌ فَاحِشَةٌ، لَا وَجْهَ لَهَا أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قِيَاسٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23705 A Question on the Sale of Gold for Silver

[مَسْأَلَةُ بَيْعُ الذَّهَبِ بِالْفِضَّةِ]

L23706 Issue 1485:

١٤٨٥ - مَسْأَلَةٌ:

L23707 It is permissible to sell gold for silver, whether this involves dinars for dirhams, gold jewelry for silver, or silver fragments. Similarly, it is permissible to exchange dirhams for gold jewelry, gold ingots, or raw gold, and silver jewelry may be sold for gold jewelry, ingots, or raw gold. Gold ingots and raw gold may be exchanged for silver fragments, provided the exchange must be immediate (hand-to-hand) and in-kind (same type for same type), whether the amounts are unequal or equal—by weight for weight, estimation for estimation, or weight for estimation—without omitting any form of exchange. Deferment is impermissible in such transactions, even for the blink of an eye, whether in a sale or a salam contract.

وَجَائِزٌ بَيْعُ الذَّهَبِ بِالْفِضَّةِ، سَوَاءٌ فِي ذَلِكَ الدَّنَانِيرُ بِالدَّرَاهِمِ، أَوْ بِالْحُلِيِّ، أَوْ بِالنِّقَارِ، وَبِالدَّرَاهِمِ بِحُلِيِّ الذَّهَبِ وَسَبَائِكِهِ، وَتِبْرِهِ، وَالْحُلِيُّ مِنْ الْفِضَّةِ بِحُلِيِّ الذَّهَبِ وَسَبَائِكِهِ، وَسَبَائِكُ الذَّهَبِ وَتِبْرُهُ بِنِقَارِ الْفِضَّةِ يَدًا بِيَدٍ وَلَا بُدَّ، عَيْنًا بِعَيْنٍ وَلَا بُدَّ، مُتَفَاضِلَيْنِ وَمُتَمَاثِلَيْنِ، وَزْنًا بِوَزْنٍ، وَجُزَافًا بِجُزَافٍ، وَوَزْنًا بِجُزَافٍ فِي كُلِّ ذَلِكَ لَا تَحَاشٍ شَيْئًا - وَلَا يَجُوزُ التَّأْخِيرُ فِي ذَلِكَ طَرْفَةَ عَيْنٍ، لَا فِي بَيْعٍ وَلَا فِي سَلَمٍ.

L23708 Gold is sold for gold, whether it be dinars, jewelry, ingots, or raw gold, weight for weight, like for like, hand to hand. Excess in this is impermissible at all, nor is delay permissible even for the blink of an eye, neither in a sale nor in a salam.

وَيُبَاعُ الذَّهَبُ بِالذَّهَبِ سَوَاءً كَانَ دَنَانِيرَ، أَوْ حُلِيًّا، أَوْ سَبَائِكَ، أَوْ تِبْرًا، وَزْنًا بِوَزْنٍ، عَيْنًا بِعَيْنٍ يَدًا بِيَدٍ، لَا يَحِلُّ التَّفَاضُلُ فِي ذَلِكَ أَصْلًا، وَلَا التَّأْخِيرُ طَرْفَةَ عَيْنٍ، لَا بَيْعًا وَلَا سَلَمًا.

L23709 Silver is sold for silver—whether in the form of dirhams, jewelry, or scrap—weight for weight, like for like, hand to hand. No disparity whatsoever is permitted in this regard, nor any delay, even the blink of an eye, neither in a spot sale nor a salam contract.

وَتُبَاعُ الْفِضَّةُ بِالْفِضَّةِ، دَرَاهِمَ أَوْ حُلِيًّا أَوْ نِقَارًا، وَزْنًا بِوَزْنٍ، عَيْنًا بِعَيْنٍ، يَدًا بِيَدٍ، وَلَا يَجُوزُ التَّفَاضُلُ فِي ذَلِكَ أَصْلًا، وَلَا التَّأْخِيرُ طَرْفَةَ عَيْنٍ، لَا بَيْعًا وَلَا سَلَمًا.

L23710 The exchange of filings from one of the two [items], even if similar in type, is categorically impermissible by volume measurement. It must necessarily be done by weight. It is irrelevant whether one of the two gold items is naturally superior in quality to the other or equal to it.

وَلَا تَجُوزُ بُرَادَةُ أَحَدِهِمَا مِثْلُهَا مِنْ نَوْعِهَا كَيْلًا أَصْلًا، لَكِنْ بِوَزْنٍ وَلَا بُدَّ، وَلَا نُبَالِي كَانَ أَحَدُ الذَّهَبَيْنِ أَجْوَدَ مِنْ الْآخَرِ بِطَبْعِهِ أَوْ مِثْلَهُ.

L23711–23713 Similarly, regarding the two silvers; this is unanimously agreed upon, except what we mentioned from Ṭalḥah ibn ʿUbayd Allāh, and except the sale of silver for silver or gold for gold. For Ibn ʿAbbās, Ibn Masʿūd, and those who agreed with them permitted disparity in quantity or quality in such transactions when exchanged hand to hand. However, Abū Ḥanīfah and Al-Shāfiʿī permitted all such transactions without... They permitted delaying receipt provided they do not physically separate, as we previously cited from Umar contrary to their opinion. However, Mālik does not permit sale by

وَكَذَلِكَ فِي الْفِضَّتَيْنِ، وَهَذَا مُجْمَعٌ عَلَيْهِ، إلَّا مَا ذَكَرْنَا عَنْ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ وَإِلَّا بَيْعَ الْفِضَّةِ بِالْفِضَّةِ، أَوْ الذَّهَبِ بِالذَّهَبِ، فَإِنَّ ابْنَ عَبَّاسٍ، وَابْنَ مَسْعُودٍ، وَمَنْ وَافَقَهُمَا: أَجَازُوا فِيهِمَا التَّفَاضُلَ يَدًا بِيَدٍ - وَإِلَّا أَنَّ أَبَا حَنِيفَةَ، وَالشَّافِعِيَّ: أَجَازَا بَيْعَ كُلِّ ذَلِكَ بِغَيْرِ عَيْنِهِ - وَأَجَازَا تَأْخِيرَ الْقَبْضِ مَا لَمْ يَتَفَرَّقَا بِأَبْدَانِهِمَا، وَقَدْ ذَكَرْنَاهُ عَنْ عُمَرَ قَبْلُ

approximation in exchanging dinars for dinars or dirhams for dirhams. He permits it for ornaments made from one for ornaments from the other, and allows giving a dirham for a dirham or a weight of it as an act of generosity.

هَذَا بِخِلَافِ قَوْلِهِمْ وَإِلَّا أَنَّ مَالِكًا لَا يُجِيزُ الْجُزَافَ فِي الدَّنَانِيرِ، وَلَا فِي الدَّرَاهِمِ، بَعْضُهَا بِبَعْضٍ، وَيُجِيزُهُ فِي الْمَصُوغِ مِنْ أَحَدِهِمَا بِالْمَصُوغِ مِنْ الْآخَرِ، وَيُجِيزُ إعْطَاءَ دِرْهَمٍ بِدِرْهَمٍ أَوْ وَزْنٍ مِنْهُ، عَلَى سَبِيلِ الْمُكَارَمَةِ.

L23714 As for this statement of Mālik, and the statements of Abū Ḥanīfah and al-Shāfiʿī, there is no evidence for any of them—neither from the Qur'ān, nor the Sunnah, nor a weak narration, nor analogy, nor the saying of a companion. Rather, it contradicts the command of the Messenger of Allah—peace and blessings be upon him—which we mentioned earlier from his instruction—peace and blessings be upon him—that we sell silver for gold however we wish, hand to hand.

فَأَمَّا قَوْلُ مَالِكٍ هَذَا، وَقَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، فَلَا حُجَّةَ لِشَيْءٍ مِنْهَا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، بَلْ هُوَ خِلَافُ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَا آنِفًا مِنْ أَمْرِهِ - عَلَيْهِ السَّلَامُ - أَنْ نَبِيعَ الْفِضَّةَ بِالذَّهَبِ كَيْفَ شِئْنَا يَدًا بِيَدٍ.

L23715 As for the statement of Ibn Abbas, he cited the narration transmitted through Ahmad ibn Shu'ayb: "I [Ahmad] heard from Muhammad ibn Mansur, from Sufyan al-Thawri, from Amr ibn Dinar, from Abu al-Minhal, who said: 'My partner sold silver currency (warq) on credit. He came and informed me, so I said: "This is improper." He responded: "By Allah, I sold it in the market and none objected." I went to al-Bara ibn Azib and inquired? He said: "When Allah's Messenger - peace be upon him - came to Medina, we engaged in this type of sale. He declared: 'What is exchanged hand-to-hand is permissible, but deferred payment constitutes usury.' Then he instructed me: 'Approach Zayd ibn Arqam.' I went to Zayd ibn Arqam and inquired? He affirmed the same ruling.'"[14]

وَأَمَّا قَوْلُ ابْنِ عَبَّاسٍ، فَإِنَّهُ احْتَجَّ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَنْصُورٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمْرِو بْنِ دِينَارٍ «عَنْ أَبِي الْمِنْهَالِ قَالَ: بَاعَ شَرِيكٌ لِي وَرِقًا بِنَسِيئَةٍ فَجَاءَنِي فَأَخْبَرَنِي فَقُلْتُ: هَذَا لَا يَصْلُحُ فَقَالَ: قَدْ وَاَللَّهِ بِعْتُهُ فِي السُّوقِ وَمَا عَابَهُ عَلَيَّ أَحَدٌ، فَأَتَيْتُ الْبَرَاءَ بْنَ عَازِبٍ فَسَأَلْتُ؟ فَقَالَ: قَدِمَ عَلَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَدِينَةَ وَنَحْنُ نَبِيعُ هَذَا الْبَيْعَ، فَقَالَ: مَا كَانَ يَدًا بِيَدٍ فَلَا بَأْسَ بِهِ، وَمَا كَانَ نَسِيئَةً فَهُوَ رِبًا ثُمَّ قَالَ لِي: ائْتِ زَيْدَ بْنَ أَرْقَمَ فَأَتَيْتُ زَيْدَ بْنَ أَرْقَمَ فَسَأَلْتُهُ؟ فَقَالَ: مِثْلَ ذَلِكَ» .

L23716 From the chain of Ahmad ibn Shu'ayb: Qutaybah narrated from Sufyan ibn 'Uyaynah, from 'Amr ibn Dinar, from Abu Salih al-Samman - that he heard Abu Sa'id al-Khudri report in a hadith: Ibn 'Abbas said to him, "Usamah ibn Zayd informed me that the Messenger of Allah (peace be upon him) said: 'Verily, usury exists only in deferred transactions.'"

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا قُتَيْبَةُ أَنَا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرٍو - هُوَ ابْنُ دِينَارٍ - عَنْ أَبِي صَالِحٍ السَّمَّانِ: أَنَّهُ سَمِعَ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ فِي حَدِيثٍ: إنَّ ابْنَ عَبَّاسٍ قَالَ لَهُ: أُسَامَةُ بْنُ زَيْدٍ أَخْبَرَنِي: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّمَا الرِّبَا فِي النَّسِيئَةِ» .

[14] **Hadith references (L23715):** Sahih Muslim 1589a.

L23717–23718 Via Saʿīd ibn Manṣūr: He narrated to me Abū Muʿāwiyah (i.e., Muḥammad ibn Khāzim al-Ḍarīr) from al-Aʿmash, from Ibrāhīm al-Taymī, from al-Ḥārith ibn Suwayd, who said: ʿAbdullāh ibn Masʿūd said, “There is no ribā in a hand-to-hand [transaction], and water [is purified] by water.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ حَدَّثَنِي أَبُو مُعَاوِيَةَ - هُوَ مُحَمَّدُ بْنُ خَازِمٍ الضَّرِيرُ - عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ التَّيْمِيِّ عَنْ الْحَارِثِ بْنِ سُوَيْدٍ قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ، لَا رِبَا فِي يَدٍ بِيَدٍ، وَالْمَاءِ مِنْ الْمَاءِ.

L23719 It is authentically established from Ibn Umar that he adopted the opinion of Ibn Abbas, then retracted from that opinion.

وَصَحَّ عَنْ ابْنِ عُمَرَ أَنَّهُ قَالَ بِقَوْلِ ابْنِ عَبَّاسٍ، ثُمَّ رَجَعَ عَنْهُ.

L23720 And it was narrated to us through the chain of Ḥajjāj ibn al-Minhāl that Jarīr ibn Ḥāzim said: I asked ʿAṭāʾ ibn Abī Rabāḥ regarding exchange (ṣarf). He replied: “O my son, if you find one hundred dirhams for a dirham on the spot, take it.”

وَرُوِّينَا مِنْ طَرِيقِ حَجَّاجِ بْنِ الْمِنْهَالِ أَنَا جَرِيرُ بْنُ حَازِمٍ قَالَ: سَأَلْت عَطَاءَ بْنَ أَبِي رَبَاحٍ عَنْ الصِّرْفِ؟ فَقَالَ: يَا بُنَيَّ إنْ وَجَدْتَ مِائَةَ دِرْهَمٍ بِدِرْهَمٍ نَقْدًا فَخُذْهُ.

L23721 Abu Muhammad said: The narrations of Ubadah, Abu Hurayrah, Umar, and Abu Saʿid concerning the six categories—that each is to be traded with its own kind, and if there is an excess in weight of one over the other, it constitutes ribā—are superior in legal ruling to the narrations of Usāmah, Al-Bara’, and Zayd. It is not permissible to omit the excess, and success is from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: حَدِيثُ عُبَادَةَ، وَأَبِي هُرَيْرَةَ، وَعُمَرَ، وَأَبِي سَعِيدٍ، فِي أَنَّ الْأَصْنَافَ السِّتَّةَ كُلُّ صِنْفٍ مِنْهَا بِصِنْفِهِ: رِبًا إنْ كَانَ فِي أَحَدِهِمَا زِيَادَةٌ عَلَى وَزْنِ الْآخَرِ: هُوَ زَائِدٌ حُكْمًا عَلَى حَدِيثِ أُسَامَةَ، وَالْبَرَاءِ، وَزَيْدٍ - وَالزِّيَادَةُ لَا يَحِلُّ تَرْكُهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23722 The Issue of Selling Wheat, Barley, and Similar Grains in Exchange for Gold and Silver

[مَسْأَلَة بَيْع الْقَمْح وَالشَّعِير وَغَيْرهمْ بِالذَّهَبِ وَالْفِضَّة]

L23723 1486 – Issue:

١٤٨٦ - مَسْأَلَةٌ:

L23724 It is permissible to sell wheat, barley, dates, and salt for gold or silver, whether hand to hand or on credit. It is also permissible to deliver gold or silver for the types we mentioned in exchange for these commodities, as the textual evidence has permitted all of that. And the success is from Allah, the Exalted.

وَجَائِزٌ بَيْعُ الْقَمْحِ، وَالشَّعِيرِ، وَالتَّمْرِ، وَالْمِلْحِ بِالذَّهَبِ، أَوْ بِالْفِضَّةِ يَدًا بِيَدٍ وَنَسِيئَةً - وَجَائِزٌ تَسْلِيمُ الذَّهَبِ أَوْ الْفِضَّةِ بِالْأَصْنَافِ الَّتِي ذَكَرْنَا؛ لِأَنَّ النَّصَّ جَاءَ بِإِبَاحَةِ كُلِّ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23725 The jurisprudential question regarding loans involving wheat, barley, and other such commodities.

[مَسْأَلَة القرض فِي الْقَمْح وَالشَّعِير وَغَيْرهمْ مِنْ الْأَصْنَاف]

L23726 1487 - Issue: As for loans, they are permissible in the categories we mentioned and others, and in all possessions that can be owned and lawfully transferred out of ownership. Usury does not enter into it except in one

case only: stipulating more than what was lent, less than what was lent, higher quality than what was lent, or inferior quality than what was lent. This is unanimously agreed upon, being textually specified for the six categories—as we stated that it constitutes usury. For other cases, any condition not mentioned in the Book of Allah—the Exalted—is invalid. It is permissible to set a specified term or defer repayment without stipulating a term, though it remains an immediate liability due whenever the lender demands it.

١٤٨٧ - مَسْأَلَةٌ: وَأَمَّا الْقَرْضُ فَجَائِزٌ فِي الْأَصْنَافِ الَّتِي ذَكَرْنَا وَغَيْرِهَا، وَفِي كُلِّ مَا يُتَمَلَّكُ، وَيَحِلُّ إخْرَاجُهُ عَنْ الْمِلْكِ، وَلَا يَدْخُلُ الرِّبَا فِيهِ، إلَّا فِي وَجْهٍ وَاحِدٍ فَقَطْ، وَهُوَ اشْتِرَاطُ أَكْثَرَ مِمَّا أَقْرَضَ، أَوْ أَقَلَّ مِمَّا أَقْرَضَ، أَوْ أَجْوَدَ مِمَّا أَقْرَضَ، أَوْ أَدْنَى مِمَّا أَقْرَضَ، وَهَذَا مُجْمَعٌ عَلَيْهِ، وَهُوَ فِي الْأَصْنَافِ السِّتَّةِ مَنْصُوصٌ عَلَيْهِ، كَمَا أَوْرَدْنَا بِأَنَّهُ رِبًا وَهُوَ فِيمَا عَدَاهَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ - وَيَجُوزُ إلَى أَجَلٍ مُسَمًّى وَمُؤَخَّرًا بِغَيْرِ ذِكْرِ أَجَلٍ، لَكِنْ حَالٌّ فِي الذِّمَّةِ مَتَى طَلَبَهُ صَاحِبُهُ أَخَذَهُ.

L23727 Mālik said: He may not reclaim it until after a period during which the borrower has benefited from the loan.

وَقَالَ مَالِكٌ: لَا يَأْخُذُهُ إلَّا بَعْدَ مُدَّةٍ يَنْتَفِعُ فِيهَا الْمُسْتَقْرِضُ بِمَا اسْتَقْرَضَ -.

L23728 And this is a mistake because it is not supported by the Quran, the Sunnah, a weak narration, analogy, nor the opinion of anyone we know before him.

وَهَذَا خَطَأٌ، لِأَنَّهُ لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قِيَاسٌ، وَلَا قَوْلُ أَحَدٍ نَعْلَمُهُ قَبْلَهُ.

L23729 Moreover, it is an invalid ḥadd punishment because the benefit can only occur in an hour or more.

وَأَيْضًا: فَإِنَّهُ حَدٌّ فَاسِدٌ، لِأَنَّ الِانْتِفَاعَ لَا يَكُونُ إلَّا فِي سَاعَةٍ فَمَا فَوْقَهَا.

L23730 Allah, the Most High, said: {Indeed, Allah commands you to render trusts to their rightful owners} [An-Nisa: 58]. A loan is a trust; thus, it is obligatory to repay it to its rightful owner whenever they demand it. And success is from Allah alone.[15]

وَقَالَ اللَّهُ تَعَالَى {إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الأَمَانَاتِ إِلَى أَهْلِهَا} [النساء: ٥٨] وَالْقَرْضُ أَمَانَةٌ فَفُرِضَ أَدَاؤُهَا إلَى صَاحِبِهَا مَتَى طَلَبَهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَيْع الذَّهَب مَعَ غَيْره أَوْ ممزوج بِغَيْرِهِ أَوْ مضاف فِيهِ أَوْ مَجْمُوع إلَيْهِ فِي دَنَانِير أَوْ غَيْرهَا]

The ruling on selling gold that is alongside another material, mixed with something else, added to it, or aggregated with it, whether in the form of dinars or other forms.

L23731–23732

L23733 Issue: If gold is accompanied by anything else—whether an item of silver or other material—whether blended with it, incorporated into it, or combined with it in the form of dinars or other forms, it is impermissible to sell it with that item or to sell it separately in exchange for gold under any circum-

مَسْأَلَةٌ: فَإِنْ كَانَ مَعَ الذَّهَبِ شَيْءٌ غَيْرُهُ - أَيَّ شَيْءٍ كَانَ مِنْ فِضَّةٍ أَوْ غَيْرِهَا -: مَمْزُوجٌ بِهِ، أَوْ مُضَافٌ فِيهِ، أَوْ مَجْمُوعٌ إلَيْهِ فِي دَنَانِيرَ، أَوْ فِي غَيْرِهَا: لَمْ يَحِلَّ بَيْعُهُ مَعَ ذَلِكَ

[15] **Qur'an references (L23730):** Qur'an 4:58 (An-Nisa).

stance—whether for more than its weight, less than it, or equal to it—until the gold becomes purely isolated, entirely alone in its purity.

الشَّيْءِ، وَلَا دُونَهُ بِذَهَبٍ أَصْلًا، لَا بِأَكْثَرَ مِنْ وَزْنِهِ وَلَا بِأَقَلَّ، وَلَا بِمِثْلِهِ، إِلَّا حَتَّى يَخْلُصَ الذَّهَبُ وَحْدَهُ خَالِصًا.

L23734 Similarly, if there is something other than silver combined with it - such as copper, gold, or other materials - whether mixed, attached, or collected with it, it is fundamentally impermissible to sell the silver with that substance using silver at all - whether they are dirhams or other than dirhams - neither more than its weight, nor less, nor equal to it, unless the silver is completely purified and isolated on its own. This ruling applies equally to all mentioned cases: the ornamented sword, the embellished Mus'haf, the ring containing a gemstone, jewelry with gemstones, gilded silver, gold coins (dinars) mixed with copper or silver, or dirhams mixed with any substance. There is fundamentally no riba in anything beyond what we have mentioned.

وَكَذَلِكَ إِنْ كَانَ مَعَ الْفِضَّةِ شَيْءٌ غَيْرُهَا: كَصُفْرٍ، أَوْ ذَهَبٍ، أَوْ غَيْرُهُمَا، مَمْزُوجٌ بِهَا، أَوْ مُلْصَقٌ مَعَهَا، أَوْ مَجْمُوعٌ إِلَيْهَا: لَمْ يَحِلَّ بَيْعُهَا مَعَ ذَلِكَ الشَّيْءِ، وَلَا دُونَهُ بِفِضَّةٍ أَصْلًا - دَرَاهِمَ كَانَتْ أَوْ غَيْرَ دَرَاهِمَ - لَا بِأَكْثَرَ مِنْ وَزْنِهَا، وَلَا بِأَقَلَّ، وَلَا بِمِثْلِ وَزْنِهَا، إِلَّا حَتَّى تَخْلُصَ الْفِضَّةُ وَحْدَهَا خَالِصَةً، سَوَاءٌ فِي كُلِّ مَا ذَكَرْنَا: السَّيْفُ الْمُحَلَّى، وَالْمُصْحَفُ الْمُحَلَّى، وَالْخَاتَمُ فِيهِ الْفَصُّ، وَالْحُلِيُّ فِيهِ الْفُصُوصُ، أَوْ الْفِضَّةُ الْمُذَهَّبَةُ، أَوْ الدَّنَانِيرُ فِيهَا خِلْطُ صُفْرٍ أَوْ فِضَّةٍ، أَوْ الدَّرَاهِمُ فِيهَا خِلْطُ مَا، وَلَا رِبَا فِي غَيْرِ مَا ذَكَرْنَا أَصْلًا.

L23735 Similarly, if wheat is mixed or combined with something else—such as foreign matter or anything else—it is impermissible to sell it with that substance included, nor to sell it for less [than its value] using originally pure wheat.

وَكَذَلِكَ إِنْ كَانَ فِي الْقَمْحِ شَيْءٌ مِنْ غَيْرِهِ مَخْلُوطٌ بِهِ، أَوْ مُضَافٌ إِلَيْهِ مِنْ دَغَلٍ أَوْ غَيْرِهِ: لَمْ يَجُزْ بَيْعُهُ بِذَلِكَ الشَّيْءِ، وَلَا دُونَهُ بِقَمْحٍ صَافٍ أَصْلًا.

L23736 Similarly, the ruling applies to barley—if there is something else in it or mixed with it—it is not permissible to sell it for pure barley. And in the case of dates, if there is something else in them or mixed with them, then it is not permissible to sell them for pure dates.

وَكَذَلِكَ الْقَوْلُ فِي الشَّعِيرِ - فِيهِ شَيْءٌ غَيْرُهُ أَوْ مَعَهُ شَيْءٌ غَيْرُهُ -: فَلَا يَحِلُّ بَيْعُهُ بِشَعِيرٍ مَحْضٍ - وَفِي التَّمْرِ يَكُونُ مَعَهُ أَوْ فِيهِ شَيْءٌ غَيْرُهُ أَوْ مَعَهُ فَلَا يَحِلُّ بَيْعُهُ بِتَمْرٍ مَحْضٍ.

L23737 Similarly, the ruling pertains to salt that contains impurities or is mixed with another substance: it is not permissible to sell it in exchange for pure salt.

وَكَذَلِكَ الْقَوْلُ فِي الْمِلْحِ يَكُونُ فِيهِ أَوْ مَعَهُ شَيْءٌ غَيْرُهُ -: فَلَا يَحِلُّ بَيْعُهُ بِمِلْحٍ صَافٍ.

L23738 All of this applies when the effect of mixing becomes apparent in any of the matters we mentioned. As for what neither produces an effect nor shows any observable trace nor even requires scrutiny, its ruling remains equivalent to the pure, because names are designated according to the attributes through which legal boundaries are defined.

وَإِنَّمَا هَذَا كُلُّهُ إِذَا ظَهَرَ أَثَرُ الْخِلْطِ فِي شَيْءٍ مِمَّا ذَكَرْنَا - وَأَمَّا مَا لَمْ يُؤَثِّرْ وَلَا ظَهَرَ لَهُ فِيهِ عَيْنٌ وَلَا نَظَرٌ أَيْضًا: فَحُكْمُهُ حُكْمُ الْمَحْضِ؛ لِأَنَّ الْأَسْمَاءَ إِنَّمَا هِيَ مَوْضُوعَةٌ عَلَى حَسَبِ الصِّفَاتِ الَّتِي بِهَا تَنْتَقِلُ الْحُدُودُ.

L23739 The proof of this is: "The Prophet (may God's blessings and peace be upon him) commanded that gold and silver must not be sold for anything of their

own kind except as like for like, weight for weight, and that nothing from the four categories should be sold for anything of its kind except as measure for measure, like for like." Therefore, if there is an adulterant or foreign substance in any of the mentioned types, it is impermissible to sell it for anything of its kind—whether like for like, measure for measure, or weight for weight—because it is fundamentally impossible to do so.

بُرْهَانُ ذَلِكَ: «أَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ لَا يُبَاعَ الذَّهَبُ وَالْفِضَّةُ بِشَيْءٍ مِنْ نَوْعِهِمَا، إلَّا عَيْنًا بِعَيْنٍ، وَزْنًا بِوَزْنٍ، وَأَنْ لَا يُبَاعَ شَيْءٌ مِنْ الْأَصْنَافِ الْأَرْبَعَةِ بِشَيْءٍ مِنْ نَوْعِهِ إلَّا كَيْلًا بِكَيْلٍ عَيْنًا بِعَيْنٍ» ، فَإِذَا كَانَ فِي أَحَدِ الْأَنْوَاعِ الْمَذْكُورَةِ خِلْطٌ أَوْ شَيْءٌ مُضَافٌ إلَيْهِ فَلَا سَبِيلَ إلَى بَيْعِهِ بِشَيْءٍ مِنْ نَوْعِهِ عَيْنًا بِعَيْنٍ، وَلَا كَيْلًا بِكَيْلٍ، وَلَا وَزْنًا بِوَزْنٍ، لِأَنَّهُ لَا يَقْدِرُ عَلَى ذَلِكَ أَصْلًا.

L23740–23741 Those who permitted this stated: If we determine its weight or measure, it becomes permissible to sell it for a greater quantity of its own kind in weight or measure, such that the weight or measure corresponds to it, with the excess exchanged for the silver grain. For example, a dinar containing a silver grain may be sold for a pure gold dinar. In this case, the pure dinar (excluding the silver grain) equates in gold quantity to the gold in the dinar containing the silver grain, while the excess gold in the pure dinar is exchanged for the silver grain.

فَقَالَ مَنْ أَجَازَ ذَلِكَ: إذَا عَلِمْنَا وَزْنَهُ أَوْ كَيْلَهُ: جَازَ بَيْعُهُ بِشَيْءٍ مِنْ نَوْعِهِ أَكْثَرَ وَزْنًا أَوْ كَيْلًا مِنْهُ، فَيَكُونُ مِقْدَارُ وَزْنِهِ بِهِ، أَوْ مِقْدَارُ كَيْلِهِ كَذَلِكَ، وَيَكُونُ الْفَضْلُ بِذَلِكَ الشَّيْءِ -: مِثَالُ ذَلِكَ: دِينَارٌ فِيهِ حَبَّةُ فِضَّةٍ فَيُبَاعُ بِدِينَارِ ذَهَبٍ صِرْفٍ، فَيَكُونُ مِنْ هَذَا الدِّينَارِ الصِّرْفِ دِينَارٌ غَيْرُ حَبَّةٍ بِإِزَاءِ الذَّهَبِ الَّذِي فِي ذَلِكَ الدِّينَارِ الَّذِي فِيهِ حَبَّةُ فِضَّةٍ، وَيَكُونُ مَا زَادَ عَلَى ذَلِكَ مِنْ ذَهَبِ هَذَا الدِّينَارِ بِالْحَبَّةِ الْفِضَّةُ.

L23742 Similarly, a dirham containing a quarter, third, or half copper is to be exchanged for a dirham of pure silver. The silver present in this dirham corresponds to an equivalent weight of silver in that other dirham, while the copper combined with this silver is equivalent to the remaining portion of silver in that other dirham. This principle applies in the same manner to the remaining four types.

وَكَذَلِكَ الدِّرْهَمُ يَكُونُ فِيهِ رُبُعُهُ أَوْ ثُلُثُهُ أَوْ نِصْفُهُ صُفْرًا فَيُبَاعُ بِدِرْهَمِ فِضَّةٍ مَحْضَةٍ، فَيَكُونُ مَا فِي هَذَا الدِّرْهَمِ مِنْ الْفِضَّةِ بِإِزَاءِ وَزْنِهِ مِنْ ذَلِكَ الدِّرْهَمِ الْآخَرِ مِنْ الْفِضَّةِ، وَيَكُونُ الصُّفْرُ الَّذِي مَعَ هَذِهِ الْفِضَّةِ بِإِزَاءِ مَا بَقِيَ مِنْ ذَلِكَ الْآخَرِ مِنْ الْفِضَّةِ - وَهَكَذَا فِي الْأَرْبَعَةِ الْأَصْنَافِ الْبَاقِيَةِ.

L23743 Abu Muhammad said: We said: If you have freed yourselves through this intention from weighing, you have not freed yourselves from specification; for it is unclear which specific silver this dirham you sold was exchanged for in relation to the silver of the other. The Messenger of Allah—peace and blessings be upon him—has mandated that this is unlawful unless exchanged as specific item for specific item. How can this be when there exists an explicit textual ruling on this matter? As transmitted to us through Muslim's chain: I am Abu al-Tahir Ahmad ibn Amr ibn Sarh from Ibn Wahb, informed

قَالَ أَبُو مُحَمَّد: فَقُلْنَا: إنْ كُنْتُمْ تَخَلَّصْتُمْ بِهَذِهِ النِّيَّةِ مِنْ الْوَزْنِ، فَلَمْ تَتَخَلَّصُوا مِنْ التَّعْيِينِ؛ لِأَنَّهُ لَا يُعْرَفُ أَيُّ فِضَّةٍ هَذَا الدِّرْهَمُ بِعْتُمْ بِفِضَّةِ ذَلِكَ الْآخَرِ؟ وَقَدْ افْتَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ لَا يَحِلُّ ذَلِكَ إلَّا عَيْنًا بِعَيْنٍ، فَكَيْفَ وَقَدْ وَرَدَ فِي هَذَا نَصٌّ؟ كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو الطَّاهِرِ أَحْمَدُ بْنُ عَمْرِو بْنِ سَرْحٍ أَنَا ابْنُ وَهْبٍ

by Abu Hani' al-Khawlani, who heard Ali ibn Rabah al-Lakhmi say: I heard Fadalah ibn Ubayd say: "A necklace containing gold and beads, which was among the spoils that were being sold, was brought to the Messenger of Allah—peace and blessings be upon him—while he was in Khaybar. The Messenger of Allah—peace and blessings be upon him—ordered the gold in the necklace to be separated out alone, then said to them—peace be upon him—: 'Gold is to be exchanged for gold, equal weight for equal weight.'"

أَخْبَرَنِي أَبُو هَانِئٍ الْخَوْلَانِيُّ أَنَّهُ سَمِعَ عَلِيَّ بْنَ رَبَاحٍ اللَّخْمِيَّ يَقُولُ: سَمِعْتُ فَضَالَةَ بْنَ عُبَيْدٍ يَقُولُ: «أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ بِخَيْبَرَ بِقِلَادَةٍ فِيهَا ذَهَبٌ وَخَرَزٌ وَهِيَ مِنْ الْمَغَانِمِ تُبَاعُ فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالذَّهَبِ الَّذِي فِي الْقِلَادَةِ فَنُزِعَ وَحْدَهُ، ثُمَّ قَالَ لَهُمْ - عَلَيْهِ السَّلَامُ -: الذَّهَبُ بِالذَّهَبِ وَزْنًا بِوَزْنٍ» .

L23744 Through the chain of Abu Dawud: Muhammad ibn al-Ala narrated to us: Ibn al-Mubarak narrated to us from Sa'id ibn Yazid—who is Abu Shuja'—from Khalid ibn Abi 'Imran from Hanash al-San'ani from Fadalah ibn 'Ubayd al-Ansari, who said: "A necklace containing gold and beads was brought to the Messenger of Allah (peace be upon him) during the year of Khaybar. A man bought it for nine dinars. The Messenger of Allah (peace be upon him) said: 'Until you distinguish between the two.' The man said: 'I only wanted the stones.' He (peace be upon him) replied: 'No, until you distinguish between the two.' The Prophet then made him return it until he distinguished between them."

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُحَمَّدُ بْنُ الْعَلَاءِ أَنَا ابْنُ الْمُبَارَكِ عَنْ سَعِيدِ بْنِ يَزِيدَ - هُوَ أَبُو شُجَاعٍ - عَنْ خَالِدِ بْنِ أَبِي عِمْرَانَ عَنْ حَنَشٍ الصَّنْعَانِيِّ عَنْ فَضَالَةَ بْنِ عُبَيْدٍ الْأَنْصَارِيِّ قَالَ: «أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَامَ خَيْبَرَ بِقِلَادَةٍ فِيهَا ذَهَبٌ وَخَرَزٌ ابْتَاعَهَا رَجُلٌ بِتِسْعَةِ دَنَانِيرَ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: حَتَّى تُمَيِّزَ بَيْنَهُ وَبَيْنَهُ فَقَالَ: إنَّمَا أَرَدْتُ الْحِجَارَةَ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -: لَا، حَتَّى تُمَيِّزَ بَيْنَهُمَا، فَرَدَّهُ حَتَّى مَيَّزَ بَيْنَهُمَا» .

L23745–23746 Thus, the Messenger of Allah—peace be upon him—did not consider his intention wherein his sole objective was the beads, with the gold being incidental. He did not account for whether the price was high or low due to abundance or scarcity, and he mandated distinction and balancing as essential—though there is disagreement on this matter, of which we will mention a portion, God willing. It has been narrated to us through Shu'bah: narrated by 'Umarah ibn Abi Hafsah, narrated by al-Mughirah ibn Hunayn, who heard 'Ali ibn Abi Talib—while delivering a sermon—when a man approached him and said, "O Commander of the Faithful, there are people in our land who consume usury." 'Ali asked, "How so?" The man replied, "They sell garments mixed with gold and silver in exchange for silver coins." 'Ali lowered his head and said, "No harm in it." From the narration of Sa'id ibn Mansur: narrated by Jarir ibn 'Abd al-Hamid, narrated by al-Sammak ibn Musa, narrated by Musa ibn Anas ibn Malik, narrated by his father: 'Umar gave him Khosrowani vessels combined with gold and said, "Go sell them, stipulating

فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَلْتَفِتْ إلَى نِيَّتِهِ فِي أَنَّهُ إنَّمَا كَانَ غَرَضُهُ الْخَرَزَ وَيَكُونُ الذَّهَبُ تَبَعًا، وَلَا رَاعَى كَثْرَةَ ثَمَنٍ مِنْ قِلَّتِهِ، وَأَوْجَبَ التَّمْيِيزَ وَالْمُوَازَنَةَ وَلَا بُدَّ - وَفِي هَذَا خِلَافٌ نَذْكُرُ مِنْهُ طَرَفًا - إنْ شَاءَ اللَّهُ تَعَالَى -: رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ أَنَا عُمَارَةُ بْنُ أَبِي حَفْصَةَ عَنْ الْمُغِيرَةِ بْنِ حُنَيْنٍ سَمِعْت عَلِيَّ بْنَ أَبِي طَالِبٍ - وَهُوَ يَخْطُبُ - إذْ أَتَاهُ رَجُلٌ فَقَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ إنَّ بِأَرْضِنَا قَوْمًا يَأْكُلُونَ الرِّبَا؟ قَالَ عَلِيٌّ: وَمَا ذَلِكَ؟ قَالَ: يَبِيعُونَ جَامَاتٍ مَخْلُوطَةً بِذَهَبٍ وَفِضَّةٍ بِوَرِقٍ، فَنَكَّسَ عَلِيٌّ رَأْسَهُ، وَقَالَ: لَا - أَيْ لَا بَأْسَ بِهِ - وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ السَّمَّاكِ بْنِ مُوسَى عَنْ مُوسَى بْنِ أَنَسِ بْنِ مَالِكٍ عَنْ أَبِيهِ: أَنَّ عُمَرَ أَعْطَاهُ آنِيَةً خُسْرُوَانِيَّةً مَجْمُوعَةً

our consent." He sold them to a Jew for twice their weight and informed ʻUmar, who then said, "Go reclaim them. Only by their weight."

بِالذَّهَبِ فَقَالَ عُمَرُ: اذْهَبْ فَبِعْهَا وَاشْتَرَطَ رِضَانَا، فَبَاعَهَا مِنْ يَهُودِيٍّ بِضِعْفِ وَزْنِهَا، ثُمَّ أَخْبَرَ عُمَرُ، فَقَالَ لَهُ عُمَرُ: اذْهَبْ فَارْدُدْهُ، لَا، إِلَّا بِزِنَتِهِ.

L23747 And through the chain of Sa'id ibn Mansur: I [Hushaym] report from Mujalid from al-Sha'bi that Abdullah ibn Mas'ud sold scrap from the treasury - debased dirhams (zuyūf) - for dirhams of lesser weight than theirs.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ عَنْ مُجَالِدٍ عَنِ الشَّعْبِيِّ: أَنَّ عَبْدَ اللَّهِ بْنَ مَسْعُودٍ بَاعَ نُفَايَةَ بَيْتِ الْمَالِ زُيُوفًا بِدَرَاهِمَ دُونَ وَزْنِهَا.

L23748 And via the transmission chain of Ibn Abī Shaybah: from Sharīk ibn ʿAbd Allāh, from Ibrāhīm ibn Muhājir, from Ibrāhīm al-Nakhaʿī, who said, "Khabbāb was a metalworker, and he would sometimes purchase a sword adorned with silver."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا شَرِيكُ بْنُ عَبْدِ اللَّهِ عَنْ إِبْرَاهِيمَ بْنِ مُهَاجِرٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ خَبَّابٌ قَيْنًا، وَكَانَ رُبَّمَا اشْتَرَى السَّيْفَ الْمُحَلَّى بِالْوَرِقِ.

L23749 Via the chain of Ibn Abi Shaybah: Abd al-Salam ibn Harb reported from Yazid al-Dālānī, from Qays ibn Muslim, from Tariq ibn Shihab, who said: "We would sell the sword adorned with silver and acquire it [in trade]."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ السَّلَامِ بْنُ حَرْبٍ عَنْ يَزِيدَ الدَّالَانِيِّ عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ قَالَ: كُنَّا نَبِيعُ السَّيْفَ الْمُحَلَّى بِالْفِضَّةِ وَنَشْتَرِيهِ.

L23750 And through the chain of Ibn Abi Shaybah: from Waki', from Isra'il, from ʻAbd al-Aʻla, from Saʻid ibn Jubayr, from Ibn ʻAbbas, who said: There is no harm in selling an adorned sword for dirhams.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ إِسْرَائِيلَ عَنْ عَبْدِ الْأَعْلَى عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: لَا بَأْسَ بِبَيْعِ السَّيْفِ الْمُحَلَّى بِالدَّرَاهِمِ.

L23751 These individuals are: Umar, Ali, Anas, Ibn Masʿud, Tariq, Ibn Abbas, and Khabbab. However, Ali, Khabbab, Ibn Masʿud, Tariq, and Ibn Abbas did not specify conditions beyond or below the silver content. Umar adhered to the weight standard of silver and abolished the use of gold, though he permitted currency exchange (ṣarf) with the option of mutual consent after the transacting parties had parted. Anas alone considered exceeding the weight standard and permitted the option in currency exchange.

فَهَؤُلَاءِ: عُمَرُ، وَعَلِيٌّ، وَأَنَسٌ، وَابْنُ مَسْعُودٍ، وَطَارِقٌ، وَابْنُ عَبَّاسٍ، وَخَبَّابٌ، إِلَّا أَنَّ عَلِيًّا، وَخَبَّابًا، وَابْنَ مَسْعُودٍ، وَطَارِقًا، وَابْنَ عَبَّاسٍ لَمْ يَخُصُّوا بِأَكْثَرَ مِمَّا فِيهَا مِنَ الْفِضَّةِ وَلَا أَقَلَّ - وَعُمَرُ رَاعَى وَزْنَ الْفِضَّةِ وَأَلْغَى الذَّهَبَ، إِلَّا أَنَّهُ أَجَازَ الصَّرْفَ بِخِيَارِ رِضَاهُ بَعْدَ افْتِرَاقِ الْمُتَصَارِفِينَ - وَأَنَسٌ وَحْدَهُ رَاعَى أَكْثَرَ مِنَ الْوَزْنِ، وَأَجَازَ الْخِيَارَ فِي الصَّرْفِ.

L23752–23753 Among those after them, it has been narrated to us through the chain of Ahmad ibn Hanbal from Yahya ibn Abi Za'idah: Ibn Abi Ghunyah informed me, "I asked Al-Hakam ibn 'Utaybah about exchanging one thousand and sixty dirhams for one thousand dirhams and five dinars." He replied, "There is no harm in it: one thousand for one thousand, with the surplus being in dinars."

وَمِمَّنْ بَعْدَهُمْ رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ عَنْ يَحْيَى بْنِ أَبِي زَائِدَةَ أَخْبَرَنِي ابْنُ أَبِي غُنْيَةَ سَأَلْتُ الْحَكَمَ بْنَ عُتَيْبَةَ أَلْفَ دِرْهَمٍ وَسِتِّينَ دِرْهَمًا بِأَلْفِ دِرْهَمٍ وَخَمْسَةِ دَنَانِيرَ؟ فَقَالَ: لَا بَأْسَ بِهِ أَلْفٌ بِأَلْفٍ وَالْفَضْلُ بِالدَّنَانِيرِ.

L23754 From the transmission of ʿAbd al-Razzāq: Maʿmar, Sufyān al-Thawrī, and

Ḥayy ibn ʿUmar. Maʿmar said: From Qatādah, from al-Ḥasan al-Baṣrī. Sufyān said: From al-Mughīrah, from Ibrāhīm al-Nakhaʿī. Ḥayy said: From ʿAbd al-Karīm Abū Umayyah, from al-Shaʿbī. Then al-Ḥasan, Ibrāhīm, and al-Shaʿbī agreed, all stating: There is no harm in selling a sword adorned with ornamentation, a sword belt, or a ring—whether for more than its value, less than its value, or on credit.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ، وَسُفْيَانُ الثَّوْرِيُّ، وَحَيُّ بْنُ عُمَرَ قَالَ مَعْمَرٌ: عَنْ قَتَادَةَ عَنْ الْحَسَنِ الْبَصْرِيِّ، وَقَالَ سُفْيَانُ: عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَقَالَ حَيٌّ: عَنْ عَبْدِ الْكَرِيمِ أَبِي أُمَيَّةَ عَنْ الشَّعْبِيِّ، ثُمَّ اتَّفَقَ الْحَسَنُ، وَإِبْرَاهِيمُ، وَالشَّعْبِيُّ، قَالُوا كُلُّهُمْ: لَا بَأْسَ بِالسَّيْفِ فِيهِ الْحِلْيَةُ، وَالْمِنْطَقَةُ، وَالْخَاتَمُ أَنْ يَبْتَاعَهُ بِأَكْثَرَ مِمَّا فِيهِ أَوْ بِأَقَلَّ وَنَسِيئَةً.

L23755 From the chain of Abd al-Razzaq: Hushaym said, "I [heard] from Mughirah—I asked Ibrahim al-Nakhaʿī about a ring: 'Should I sell it with deferred payment?' He responded: 'Does it have a gemstone?' I said: 'Yes.' Then it was as though he made light of it."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا هُشَيْمٌ عَنْ مُغِيرَةَ سَأَلْت إبْرَاهِيمَ النَّخَعِيَّ عَنْ الْخَاتَمِ أَبِيعُهُ نَسِيئَةً؟ فَقَالَ: أَفِيهِ فَصٌّ؟ فَقُلْتُ: نَعَمْ، فَكَأَنَّهُ هَوَّنَ فِيهِ.

L23756 From the chain of Ibn Abi Shaybah: He narrated from Uthman ibn Matar from Hisham—he is Ibn Hassān—and Sa'id ibn Abi Arubah. Hisham said: From Ibn Sirin, and Sa'id said: From Qatadah. Then Ibn Sirin and Qatadah concurred: There is no harm in purchasing a silver-plated sword, a silver-plated platter (khiwān), or a cup in exchange for dirhams.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عُثْمَانُ بْنُ مَطَرٍ عَنْ هِشَامٍ - هُوَ ابْنُ حَسَّانٍ - وَسَعِيدُ بْنُ أَبِي عَرُوبَةَ قَالَ هِشَامٌ: عَنْ ابْنِ سِيرِينَ، وَقَالَ سَعِيدٌ: عَنْ قَتَادَةَ ثُمَّ اتَّفَقَ ابْنُ سِيرِينَ، وَقَتَادَةُ: أَنَّهُ لَا بَأْسَ بِشِرَاءِ السَّيْفِ الْمُفَضَّضِ، وَالْخِوَانِ الْمُفَضَّضِ، وَالْقَدَحِ بِالدَّرَاهِمِ.

L23757 Via Shu'bah's chain, Shu'bah said: I asked Ḥammād ibn Abī Sulaymān about an adorned sword being sold for dirhams, and he said: "There is no harm in it." This was also narrated from Sulaymān ibn Mūsā and Makḥūl.

وَمِنْ طَرِيقِ شُعْبَةَ قَالَ: سَأَلْت حَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَنْ السَّيْفِ الْمُحَلَّى يُبَاعُ بِالدَّرَاهِمِ؟ فَقَالَ: لَا بَأْسَ بِهِ - وَرُوِيَ هَذَا عَنْ سُلَيْمَانَ بْنِ مُوسَى، وَمَكْحُولٍ أَيْضًا.

L23758 From the chain of Saʿīd ibn Manṣūr: Hushaym reported from Ḥuṣayn—who is Abū ʿAbd al-Raḥmān—from al-Shaʿbī that he deemed no objection to purchasing an ornamented sword through immediate payment or deferred credit, stating: "It contains iron and the hilt." We received narration via Shu'bah's chain that he questioned al-Ḥakam ibn ʿUtaybah about selling an ornamented sword for dirhams. He responded: "If the dirhams [used as currency] exceed the decorative material in quantity, there is no harm in it."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا حُصَيْنٌ - هُوَ أَبُو عَبْدِ الرَّحْمَنِ - عَنْ الشَّعْبِيِّ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِالسَّيْفِ الْمُحَلَّى يُشْتَرَى نَقْدًا وَنَسِيئَةً وَيَقُولُ: فِيهِ الْحَدِيدُ، وَالْحَمَائِلُ وَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ: أَنَّهُ سَأَلَ الْحَكَمَ بْنَ عُتَيْبَةَ عَنْ السَّيْفِ الْمُحَلَّى يُبَاعُ بِالدَّرَاهِمِ؟ فَقَالَ: إنْ كَانَتْ الدَّرَاهِمُ أَكْثَرَ مِنْ الْحِلْيَةِ فَلَا بَأْسَ بِهِ.

L23759 A similar report was also narrated to us from al-Ḥasan and Ibrāhīm—and this is the opinion of Sufyān.

وَرُوِّينَا مِثْلَهُ أَيْضًا عَنْ الْحَسَنِ، وَإِبْرَاهِيمَ - وَهُوَ قَوْلُ سُفْيَانَ.

L23760 And a third opinion has been transmitted to us from Ibrāhīm, as reported via the chain of Saʿīd ibn Manṣūr: "I [Saʿīd] heard from Jarīr, who reported from Mughīrah from Ibrāhīm regarding the case when gold and silver are

combined together?" He said: "They are not to be sold except by one and the same weight standard for both."

وَرُوِّينَا عَنْ إِبْرَاهِيمَ قَوْلًا ثَالِثًا، كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا جَرِيرٌ عَنْ مُغِيرَةَ عَنْ إِبْرَاهِيمَ فِي الذَّهَبِ وَالْفِضَّةِ يَكُونَانِ جَمِيعًا؟ قَالَ: لَا يُبَاعُ إِلَّا بِوَزْنٍ وَاحِدٍ مِنْهُمَا.

L23761–23762 Abu Muhammad said: It is as though he nullifies the one. Al-Awzāʿī said: If the ornament is subsidiary and the excess is in the blade, it is permissible to sell it in kind for immediate or deferred payment.

قَالَ أَبُو مُحَمَّدٍ: كَأَنَّهُ يُلْغِي الْوَاحِدَ، وَقَالَ الْأَوْزَاعِيُّ: إِذَا كَانَتْ الْحِلْيَةُ تَبَعًا، وَكَانَ الْفَضْلُ فِي النَّصْلِ: جَازَ بَيْعُهُ بِنَوْعِهِ نَقْدًا وَتَأْخِيرًا.

L23763 Malik said: If the silver of a sword ornamented with silver, or a Quran codex likewise, or a belt likewise, or a silver ring likewise, does not exceed a third of their total value when combined with the blade, sheath, carrying straps, the Quran as a whole, or the gemstone—and similarly, if women's jewelry of gold or silver combined with stones does not exceed a third of the total value or less—then selling all such items in exchange for their own kind (whether more, equal, or less in immediate currency) is permissible, but not through deferred payment. If the precious metal exceeds a third, the transaction is fundamentally impermissible.

وَقَالَ مَالِكٌ: إِنْ كَانَتْ فِضَّةُ السَّيْفِ الْمُحَلَّى بِالْفِضَّةِ، أَوْ الْمُصْحَفُ كَذَلِكَ، أَوْ الْمِنْطَقَةُ كَذَلِكَ، أَوْ خَاتَمُ الْفِضَّةِ كَذَلِكَ: يَقَعُ فِي الثُّلُثِ مِنْ قِيمَتِهَا مَعَ النَّصْلِ، وَالْغِمْدِ، وَالْحَمَائِلِ، وَمَعَ الْمُصْحَفِ، وَمَعَ الْفَصِّ، وَكَانَ حُلِيُّ النِّسَاءِ مِنْ الذَّهَبِ، أَوْ الْفِضَّةِ، يَقَعُ الْفِضَّةُ أَوْ الذَّهَبُ فِي ثُلُثِ قِيمَةِ الْجَمِيعِ مَعَ الْحِجَارَةِ فَأَقَلَّ: جَازَ بَيْعُ كُلِّ ذَلِكَ بِنَوْعِهِ أَكْثَرَ مِمَّا فِيهِ وَمِثْلِهِ، وَأَقَلَّ نَقْدًا وَلَا يَجُوزُ نَسِيئَةً، فَإِنْ كَانَتْ أَكْثَرَ مِنْ الثُّلُثِ لَمْ يَجُزْ أَصْلًا.

L23764 This is a grave contradiction, because exchanging unequal values is prohibited just as delay is prohibited, with no distinction between them. Therefore, if one prohibits either of them, let them prohibit the other. And if they permit one because it is dependent, let them also permit the other, since both are dependent.

وَهَذَا تَنَاقُضٌ عَظِيمٌ، لِأَنَّ التَّفَاضُلَ حَرَامٌ كَالتَّأْخِيرِ وَلَا فَرْقَ، فَإِنْ مَنَعَ مِنْ أَحَدِهِمَا فَلْيَمْنَعْ مِنْ الْآخَرِ - وَإِنْ أَجَازَ أَحَدَهُمَا - لِأَنَّهُ تَبَعٌ فَلْيُجِزْ الْآخَرَ أَيْضًا، لِأَنَّهُ تَبَعٌ.

L23765 Another astonishment is his specification of one-third as the limit? No rational person has ever accepted that ten ratls of silver - being a third of the value of what they comprise - could be considered insignificant, while a dirham of silver - being half the value of what it comprises - could be deemed excessive. This constitutes profoundly corrupt reasoning, unsupported by any evidence from the Qur'an, nor the Sunnah, nor any weak narration, nor any precedent from earlier scholars that we know of, nor analogy, nor opinion with valid basis, nor precautionary principle.

وَتَحْدِيدُهُ الثُّلُثَ عَجَبٌ آخَرُ؟ وَمَا عَقَلَ قَطُّ أَحَدٌ أَنَّ وَزْنَ عَشَرَةِ أَرْطَالٍ فِضَّةً تَكُونُ ثُلُثَ قِيمَةِ مَا هِيَ فِيهِ يَكُونُ قَلِيلًا، وَوَزْنَ دِرْهَمٍ فِضَّةً يَكُونُ نِصْفَ قِيمَةِ مَا هِيَ فِيهِ يَكُونُ كَثِيرًا - وَهَذَا فَاسِدٌ مِنْ الْقَوْلِ جِدًّا، وَلَا دَلِيلَ عَلَى صِحَّتِهِ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ قَبْلَهُ نَعْلَمُهُ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ، وَلَا احْتِيَاطٍ.

L23766 He also said: It is not permissible to sell anything other than what we have mentioned that contains silver or gold in any form present within it—

whether little or much—such as a knife adorned with silver or gold, a saddle similarly adorned, or anything comparable. However, if the silver or gold within it—when removed—does not amount to anything significant, then there is no harm in selling it using the same form present in it (as currency), whether through immediate payment, deferred payment, or in whatever manner he chooses.

وَقَالَ أَيْضًا: لَا يَجُوزُ بَيْعُ غَيْرِ مَا ذَكَرْنَا يَكُونُ فِيهِ فِضَّةٌ أَوْ ذَهَبٌ بِنَوْعِ مَا فِيهِ مِنْهُمَا - قَلَّ أَوْ كَثُرَ - كَالسِّكِّينِ الْمُحَلَّاةِ بِالْفِضَّةِ أَوْ الذَّهَبِ، وَالسَّرْجُ كَذَلِكَ، وَكُلُّ شَيْءٍ كَذَلِكَ، إلَّا أَنْ يَكُونَ مَا فِيهِ مِنْ الْفِضَّةِ أَوْ الذَّهَبِ إذَا نُزِعَ لَمْ يَجْتَمِعْ مِنْهُ شَيْءٌ لَهُ بَالٌ، فَلَا بَأْسَ حِينَئِذٍ بِبَيْعِهِ بِنَوْعِ مَا فِيهِ مِنْ ذَلِكَ نَقْدًا وَبِتَأْخِيرٍ، وَكَيْفَ شَاءَ.

L23767 Abu Muhammad said: A matter of no significance is speech that comes to nothing, while a grain of gold or silver holds significance among the poor—yes, and among merchants and most people. It is not permissible according to him or to us to increase it in weighted transactions involving usury. Then his differentiation between the sword, the Quranic codex (Mus'haf), the ring, the girdle, and women's jewelry in that context—and between the saddle, bridle, spurs, knife, and other such items—is this not utterly perplexing?

قَالَ أَبُو مُحَمَّد: شَيْءٌ لَهُ بَالٌ كَلَامٌ لَا يَحْصُلُ، وَحَبَّةُ ذَهَبٍ أَوْ فِضَّةٍ لَهَا بَالٌ عِنْدَ الْمَسَاكِينِ، نَعَمْ، وَعِنْدَ التُّجَّارِ، وَعِنْدَ أَكْثَرِ النَّاسِ، وَلَا يَحِلُّ عِنْدَهُ وَلَا عِنْدَنَا تَزِيدُهَا فِي الْمُوَازَنَةِ فِيمَا فِيهِ الرِّبَا، ثُمَّ تَفْرِيقُهُ بَيْنَ السَّيْفِ، وَالْمُصْحَفِ، وَالْخَاتَمِ، وَالْمِنْطَقَةِ، وَحُلِيِّ النِّسَاءِ فِي ذَلِكَ - وَبَيْنَ السَّرْجِ وَاللِّجَامِ وَالْمَهَامِيزِ، وَالسِّكِّينِ، وَغَيْرِ ذَلِكَ عَجَبٌ جِدًّا؟

L23768 If they were to say, "Is it because the taking of what we mentioned earlier is permissible?"

فَإِنْ قَالُوا: لِأَنَّ مَا ذَكَرْنَا قَبْلُ مُبَاحٌ اتِّخَاذُهُ؟

L23769–23771 We said: Dinars are permissible to possess; therefore, permit selling them along with other items for gold when they constitute a third of the value. If it is less—and Malik permitted exchanging unmixed dinars for dinars adulterated with copper or silver, whether the adulteration is much or little, a third, more, or less—they are to be exchanged equally.

قُلْنَا: وَالدَّنَانِيرُ مُبَاحٌ اتِّخَاذُهَا فَأَجِيزُوا بَيْعَهَا مَعَ غَيْرِهَا بِذَهَبٍ إذَا كَانَتْ ثُلُثَ الْقِيمَةِ فَأَقَلَّ - وَأَجَازَ مَالِكٌ بَدَلَ الدَّنَانِيرِ الْمَحْضَةِ بِالدَّنَانِيرِ الْمَغْشُوشَةِ بِالصُّفْرِ، أَوْ الْفِضَّةِ - كَثُرَ الْغِشُّ أَمْ قَلَّ - كَانَ الثُّلُثُ، أَوْ أَكْثَرَ أَوْ أَقَلَّ - مِثْلًا بِمِثْلٍ.

L23772 Similarly, he permitted substituting debased dirhams containing copper or other substances in exchange for unalloyed silver dirhams on a like-for-like basis, whether the debasement constituted a third, exceeded it, or was less.

وَكَذَلِكَ أَجَازَ بَدَلَ الدَّرَاهِمِ الْمَغْشُوشَةِ بِالصُّفْرِ وَغَيْرِهِ بِالدَّرَاهِمِ الْفِضَّةِ الْمَحْضَةِ، مِثْلًا بِمِثْلٍ - كَانَ الْغِشُّ الثُّلُثَ أَوْ أَكْثَرَ أَوْ أَقَلَّ.

L23773 He said: If this is done under the guise of sale, it is invalid. He maintains that zakah applies to adulterated coins when their total weight - including adulterants - reaches two hundred dirhams, or when the weight of dinars reaches twenty dinars, even if the actual silver or gold content within them is less than one-tenth.

قَالَ: فَإِنْ كَانَ ذَلِكَ بِاسْمِ الْبَيْعِ لَمْ يَجُزْ، وَهُوَ يَرَى فِي الْمَغْشُوشَةِ الزَّكَاةَ إذَا بَلَغَ وَزْنُهَا بِغِشِّهَا مِائَتَيْ دِرْهَمٍ، أَوْ بَلَغَ وَزْنُ الدَّنَانِيرِ عِشْرِينَ دِينَارًا، وَإِنْ كَانَتْ الْفِضَّةُ أَوْ الذَّهَبُ فِيهِمَا أَقَلَّ مِنْ الْعُشْرِ.

وَهَذَا تَنَاقُضٌ آخَرُ، وَلَئِنْ كَانَ حُكْمُهَا حُكْمَ الصَّافِيَةِ فِي وُجُوبِ الزَّكَاةِ فِيهَا، وَكَانَتْ وَرِقًا، فَإِنَّ بَيْعَ بَعْضِهَا بِبَعْضٍ جَائِزٌ، لِأَنَّهَا شَيْءٌ وَاحِدٌ، وَوَرِقٌ وَلَئِنْ كَانَ بَيْعُ بَعْضِهَا بِبَعْضٍ لَا يَجُوزُ، لِأَنَّهَا لَيْسَتْ شَيْئًا وَاحِدًا، وَلَا هِيَ وَرِقٌ، فَإِنَّ الزَّكَاةَ فِيهَا لَا تَجِبُ لِذَلِكَ سَوَاءً سَوَاءً.

L23774 This is another contradiction. And if indeed its ruling follows that of pure silver in the obligation of zakah, and it was silver, then exchanging portions of it for others is permissible, because it is a single entity and silver. But if exchanging portions of it for others is impermissible because it is neither a single entity nor silver, then zakah is not obligatory in it for that reason, altogether equal.

ثُمَّ الْفَرْقُ بَيْنَ الْبَدَلِ، وَبَيْنَ الْبَيْعِ: عَجَبٌ آخَرُ مَا سَمِعْنَاهُ عَنْ أَحَدٍ قَبْلَهُ وَلَا نَدْرِي مِنْ أَيْنَ قَالَهُ؟ وَلَئِنْ كَانَ لِلْبَدَلِ هُنَا غَيْرُ حُكْمِ الْبَيْعِ لَيَجُوزَنَّ الدِّينَارُ بِالدِّينَارَيْنِ عَلَى الْبَدَلِ، لَا عَلَى اسْمِ الْبَيْعِ، وَهَذِهِ عَجَائِبُ كَمَا تَسْمَعُ.

L23775 Then, the distinction between exchange and sale: another marvel—we have not heard it from anyone before him, nor do we know where he derived it. For if exchange here entails a ruling different from sale, it would indeed permit exchanging one dinar for two dinars under exchange, not under the designation of sale. These are marvels, as you can see.

وَقَالَ أَبُو حَنِيفَةَ: كُلُّ شَيْءٍ مُحَلًّى بِفِضَّةٍ أَوْ ذَهَبٍ فَجَائِزٌ بَيْعُهُ بِنَوْعِ مَا فِيهِ مِنْ ذَلِكَ إِذَا كَانَ الثَّمَنُ أَكْثَرَ مِمَّا فِي الْمَبِيعِ مِنَ الْفِضَّةِ أَوِ الذَّهَبِ، وَلَا يَجُوزُ بِمِثْلِ مَا فِيهِ مِنْ ذَلِكَ وَلَا بِأَقَلَّ.

L23776 Abu Hanifah said: Any item adorned with silver or gold may be sold based on the type of metal it contains, provided the price is greater than the value of the silver or gold in the item. It is not permissible to sell it for an equivalent value or less of that metal.

قَالَ: وَلَا بُدَّ مِنْ قَبْضِ مَا يَقَعُ لِلْفِضَّةِ أَوْ لِلذَّهَبِ مِنَ الثَّمَنِ قَبْلَ التَّفَرُّقِ، فَكَانَ هَذَا طَرِيفًا جِدًّا، وَمُخَالِفًا لِلسُّنَّةِ كَمَا ذَكَرْنَا مِنْ قَبْلُ.

L23777 He said: It is necessary to physically receive the portion of the price payable in silver or gold before the parties separate. This was an entirely unprecedented ruling and contrary to the Sunnah, as we have previously mentioned.

وَقَالَ أَبُو حَنِيفَةَ فِي الدَّرَاهِمِ الْمَغْشُوشَةِ: إِنْ كَانَ الثُّلُثَانِ هُوَ الصُّفْرُ، وَكَانَتِ الْفِضَّةُ الثُّلُثَ وَلَا يَقْدِرُ عَلَى تَخْلِيصِهَا، لِأَنَّهُ لَا يَدْرِي إِنْ خَلَصَتْ أَيَبْقَى الصُّفْرُ أَمْ يَحْتَرِقُ؟ فَلَا بَأْسَ بِبَيْعِهَا بِوَزْنِ جَمِيعِهَا فِضَّةً مَحْضَةً.

L23778 Abu Hanifah said regarding adulterated dirhams: If two-thirds is copper and the silver is one-third, and he is unable to purify them because he does not know whether the copper would remain or burn if purified, then there is no harm in him selling them by their total weight as pure silver.

وَبِأَكْثَرَ مِنْ وَزْنِ جَمِيعِهَا أَيْضًا، وَلَا يَجُوزُ بَيْعُهَا بِمِثْلِ الْفِضَّةِ الَّتِي فِيهَا وَلَا بِأَقَلَّ مِنْهَا.

L23779 And it is also not permissible to exchange it with more than the total weight of all of it, nor is it permissible to sell it for the equivalent amount of silver contained within it or for less than that amount.

قَالَ: فَإِنْ كَانَ نِصْفُهَا صُفْرًا أَوْ نِصْفُهَا فِضَّةً؟ فَإِنْ كَانَتِ الْفِضَّةُ هِيَ الْغَالِبَةُ: جَازَ بَيْعُهَا بِوَزْنِ جَمِيعِهَا مِنَ الْفِضَّةِ الْمَحْضَةِ، وَلَا تُبَاعُ بِأَكْثَرَ مِنْ ذَلِكَ مِنَ الْفِضَّةِ وَإِنْ لَمْ يَكُنْ

L23780–23782 He said: "If half of it is [made of] brass or half is [made of] silver? If silver is the predominant [element], then it is permissible." Selling it by the total weight of all its pure silver, and it must not be sold for more than that

amount of silver. If neither of the two is of greater value than the other, it becomes permissible at that point to sell it for an amount equivalent to the total weight of all its pure silver—whether greater or lesser—but only after the silver in the price exceeds the silver present in the dirhams. If the parties do not know which of the two silvers is greater—whether the silver serving as the price or the silver in the dirhams—the sale is invalid.

أَحَدُهُمَا غَالِيًا لِلْآخَرِ جَازَ بَيْعُهَا حِينَئِذٍ بِمِثْلِ وَزْنِ جَمِيعِهَا فِضَّةً مَحْضَةً، وَبِأَكْثَرَ وَبِأَقَلَّ بَعْدَ أَنْ يَكُونَ فِضَّةُ الثَّمَنِ أَكْثَرَ مِنْ الْفِضَّةِ الَّتِي فِي الدَّرَاهِمِ فَإِنْ لَمْ يَدْرِ أَيُّ الْفِضَّتَيْنِ أَكْثَرُ الَّتِي هِيَ ثَمَنٌ أَمْ الَّتِي فِي الدَّرَاهِمِ؟ فَالْبَيْعُ فَاسِدٌ.

L23783 He said: If the dirhams are two-thirds (silver) and one-third copper, it is impermissible to sell them for pure silver except like for like in equal measure - neither less nor more.

قَالَ: فَإِنْ كَانَ ثُلُثَا الدَّرَاهِمِ وَثُلُثُهَا صُفْرًا لَمْ يَجُزْ أَنْ تُبَاعَ بِالْفِضَّةِ الْمَحْضَةِ إلَّا مِثْلًا بِمِثْلٍ، لَا بِأَقَلَّ وَلَا بِأَكْثَرَ.

L23784 These are Satanic whispers; if a child were to utter them at the outset of his understanding, one would despair of his salvation, and it would be obligatory that a mule be procured for him. We seek refuge in Allah from such tribulation, for these rulings have no foundation whatsoever—neither from the Quran, nor the Sunnah, nor an unsound narration, nor analogy, nor sound opinion, nor precaution, nor have I heard of anyone before this. Allah is sufficient for us, and He is the best trustee.

وَهَذِهِ وَسَاوِسُ لَوْ قَالَهَا صَبِيٌّ فِي أَوَّلِ فَهْمِهِ لَيُئِسَ مِنْ فَلَاحِهِ، وَلَوَجَبَ أَنْ يُسْتَعَدَّ لَهُ بَغْلٌ وَنَعُوذُ بِاَللَّهِ مِنْ الْبَلَاءِ، وَمَا لِهَذِهِ الْأَحْكَامِ وَجْهٌ أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ، وَلَا احْتِيَاطٍ، وَلَا سَمِعْتُ عَنْ أَحَدٍ قَبْلَهُ وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

L23785 The wonder is that he once saw the third here as small.

وَالْعَجَبُ: أَنَّهُ مَرَّةً رَأَى الثُّلُثَ هَهُنَا قَلِيلًا.

L23786 And once he deemed a fourth (of the belly) excessive in what is uncovered from the free woman's stomach during prayer.

وَمَرَّةً رَأَى الرُّبُعَ كَثِيرًا، فِيمَا يَنْكَشِفُ مِنْ بَطْنِ الْحُرَّةِ فِي الصَّلَاةِ.

L23787 On one occasion, he deemed the measurement of the Baghli dirham [as a standard] excessive for what is exposed of a woman's thigh or posterior.

وَمَرَّةً رَأَى مِقْدَارَ الدِّرْهَمِ الْبَغْلِيِّ كَثِيرًا فِيمَا يَنْكَشِفُ مِنْ فَخِذِهَا أَوْ دُبُرِهَا.

L23788 Once he deemed the half insufficient.

وَمَرَّةً رَأَى النِّصْفَ قَلِيلًا.

L23789 And on one occasion, he ruled that three fingers' breadth from the entire head was excessive.

وَمَرَّةً رَأَى مِقْدَارَ ثَلَاثَةِ أَصَابِعَ مِنْ جَمِيعِ الرَّأْسِ كَثِيرًا.

L23790 These are irrational absurdities and arbitrary impositions in the religion of Allah Almighty, based on falsehood.

وَهَذِهِ تَخَالِيطُ لَا تُعْقَلُ، وَتَحَكُّمٌ فِي دِينِ اللَّهِ تَعَالَى بِالْبَاطِلِ.

L23791 Abu Muhammad said: It has been reported similar to our statement from groups of the Salaf, as transmitted to us through the path of Ibn Abi Shaybah: Waki', from Muhammad ibn 'Abd Allah al-Shu'aythi, from Abu Qilabah, from

Anas, who said: A letter from ʻUmar ibn al-Khattab reached us while we were in the land of Persia, stating: "Do not sell swords with silver rings in exchange for dirhams."

L23792–23794 From the chain of Saʿīd ibn Manṣūr: Mahdī ibn Maymūn narrated from Muḥammad ibn ʿAbd Allāh ibn Abī Yaʿqūb. Yaḥyā al-Ṭawīl related to me, on the authority of a man from Hamdān, who said: "I asked ʿAlī ibn Abī Ṭālib..." I said: "O Commander of the Faithful, the silver coins have become stagnant for me. May I exchange them at a premium or discount?" He replied: "That is instant usurious gain." Through the chain of Sa'īd ibn Manṣūr: I, Jarīr, report from Mughīrah ibn Miqsam from his father from a man among the oil merchants, who said: "Alī ibn Abī Ṭālib stated: 'If one of you has dirhams that remain unspent, let him buy gold with them, then use the gold to purchase whatever he wishes.'"

L23795 And through the chain of Saʻīd ibn Manṣūr: Hushaym narrated from Mujālid, from Al-Shaʻbī: that ʻAbdullāh ibn Masʻūd sold scrap from the treasury—debased coins and bows—for underweight dirhams. ʻUmar prohibited him from that, saying, "Burn them until the iron or copper within them is eliminated, leaving pure silver, then sell the silver by its weight."

L23796 And through the chain of Muslim ibn al-Hajjaj: Abu al-Tahir narrated to me—on the authority of Ibn Wahb—from Amr ibn al-Harith that Amir ibn Yahya al-Ma'afiri informed them from Hanash ibn Abdullah al-San'ani: "I was with Fadalah ibn Ubaid on a military expedition when a necklace containing gold, silver, and jewels came into my possession and that of my companions. I intended to purchase it, so I asked Fadalah ibn Ubaid. He replied: 'Separate its gold and place it on one scale, then place your gold on another scale. Take only like for like, for the Messenger of Allah—peace and blessings of Allah be upon him—commanded.'" Then he related the hadith.

قَالَ أَبُو مُحَمَّدٍ: وَرُوِيَ مِثْلُ قَوْلِنَا عَنْ طَوَائِفَ مِنَ السَّلَفِ: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الشُّعَيْثِيِّ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسٍ قَالَ: أَتَانَا كِتَابُ عُمَرَ بْنِ الْخَطَّابِ وَنَحْنُ بِأَرْضِ فَارِسٍ: لَا تَبِيعُوا سُيُوفًا فِيهَا حَلْقَةُ فِضَّةٍ بِالدَّرَاهِمِ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا مَهْدِيُّ بْنُ مَيْمُونٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي يَعْقُوبَ حَدَّثَنِي يَحْيَى الطَّوِيلُ عَنْ رَجُلٍ مِنْ هَمْدَانَ قَالَ: سَأَلْتُ عَلِيَّ بْنَ أَبِي طَالِبٍ، فَقُلْتُ: يَا أَمِيرَ الْمُؤْمِنِينَ إِنَّهُ يَكْسُدُ عَلَيَّ الْوَرِقُ أَفَأَصْرِفُهُ بِالزِّيَادَةِ وَالنُّقْصَانِ؟ قَالَ: ذَلِكَ الرِّبَا الْعَجْلَانُ؟ وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا جَرِيرٌ عَنْ مُغِيرَةَ بْنِ مِقْسَمٍ عَنْ أَبِيهِ عَنْ رَجُلٍ مِنَ السَّمَّانِينَ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: إِذَا كَانَ لِأَحَدِكُمْ دَرَاهِمُ لَا تُنْفَقُ فَلْيَبْتَعْ بِهَا ذَهَبًا، وَلْيَبْتَعْ بِالذَّهَبِ مَا شَاءَ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ عَنْ مُجَالِدٍ عَنِ الشَّعْبِيِّ: أَنَّ عَبْدَ اللَّهِ بْنَ مَسْعُودٍ بَاعَ نُفَايَةَ بَيْتِ الْمَالِ زُيُوفًا وَقِسْيَانَ بِدَرَاهِمَ دُونَ وَزْنِهَا؟ فَنَهَاهُ عُمَرُ عَنْ ذَلِكَ، وَقَالَ: أَوْقِدْ عَلَيْهَا حَتَّى يَذْهَبَ مَا فِيهَا مِنْ حَدِيدٍ أَوْ نُحَاسٍ وَتَخْلُصَ، ثُمَّ بِعْ الْفِضَّةَ بِوَزْنِهَا.

وَمِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ حَدَّثَنِي أَبُو الطَّاهِرِ أَنَا ابْنُ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ أَنَّ عَامِرَ بْنَ يَحْيَى الْمَعَافِرِيَّ أَخْبَرَهُمْ «عَنْ حَنَشِ بْنِ عَبْدِ اللَّهِ الصَّنْعَانِيِّ أَنَّهُ كَانَ مَعَ فَضَالَةَ بْنِ عُبَيْدٍ فِي غَزْوَةٍ فَطَارَتْ لِي وَلِأَصْحَابِي قِلَادَةٌ فِيهَا ذَهَبٌ وَوَرِقٌ وَجَوْهَرٌ، فَأَرَدْتُ أَنْ أَشْتَرِيَهَا، فَسَأَلْتُ فَضَالَةَ بْنَ عُبَيْدٍ؟ فَقَالَ: انْزِعْ ذَهَبَهَا فَاجْعَلْهُ فِي كِفَّةٍ وَاجْعَلْ ذَهَبَكَ فِي كِفَّةٍ، ثُمَّ لَا تَأْخُذَنَّ إِلَّا مِثْلًا بِمِثْلٍ، فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ.» . ثُمَّ ذَكَرَ الْحَدِيثَ.

L23797 From the narration of Waki‘: I am Fudayl ibn Ghazwan, from Nafi‘, who said: Ibn ‘Umar would not sell a saddle or a sword containing silver until he removed it, then sell it weight for weight. Thus, these are: ‘Umar, ‘Ali, Ibn ‘Umar, and Fadalah ibn ‘Ubayd. Among the Followers—as narrated to us through the chain of Ibn Abi Shaybah: From ‘Abd al-A‘la ibn ‘Abd al-A‘la, from Ma‘mar, from al-Zuhri—that he disliked purchasing a sword adorned with silver and would say: “Buy it with gold immediately.”

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا فُضَيْلُ بْنُ غَزْوَانَ عَنْ نَافِعٍ قَالَ: كَانَ ابْنُ عُمَرَ لَا يَبِيعُ سَرْجًا وَلَا سَيْفًا فِيهِ فِضَّةٌ حَتَّى يَنْزِعَهُ ثُمَّ يَبِيعَهُ وَزْنًا بِوَزْنٍ: فَهَؤُلَاءِ: عُمَرُ، وَعَلِيٌّ، وَابْنُ عُمَرَ، وَفَضَالَةُ بْنُ عُبَيْدٍ، وَمِنَ التَّابِعِينَ: كَمَا رُوِّينَا عَنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الْأَعْلَى بْنُ عَبْدِ الْأَعْلَى عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ: أَنَّهُ كَانَ يَكْرَهُ أَنْ يُشْتَرَى السَّيْفُ الْمُحَلَّى بِفِضَّةٍ، وَيَقُولُ: اشْتَرِهِ بِالذَّهَبِ يَدًا بِيَدٍ.

L23798 And via the chain of Ibn Abī Shaybah: I, Ismā‘īl ibn Ibrāhīm—known as Ibn ‘Ulayyah—narrate from Ayyūb al-Sikhtiyānī that Muḥammad ibn Sīrīn deemed the purchase of an adorned sword reprehensible unless exchanged for goods.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ أَنَّ مُحَمَّدَ بْنَ سِيرِينَ: كَانَ يَكْرَهُ شِرَاءَ السَّيْفِ الْمُحَلَّى إِلَّا بِعَرَضٍ.

L23799–23800 From the chain of Sa‘īd ibn Manṣūr: From Hushaym, from Yūnus, from Ibn Sīrīn, that he used to say: If the jewelry is silver, he buys it with gold; if the jewelry is gold, he buys it with silver; and if it is both gold and silver, he does not buy it with gold or silver, but buys it with merchandise.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يُونُسُ عَنِ ابْنِ سِيرِينَ أَنَّهُ كَانَ يَقُولُ: إِذَا كَانَتِ الْحِلْيَةُ فِضَّةً اشْتَرَاهَا بِالذَّهَبِ، وَإِنْ كَانَتِ الْحِلْيَةُ ذَهَبًا اشْتَرَاهَا بِالْفِضَّةِ، وَإِنْ كَانَتْ ذَهَبًا وَفِضَّةً فَلَا يَشْتَرِيهَا بِذَهَبٍ وَلَا فِضَّةٍ وَاشْتَرَاهَا بِعَرَضٍ.

L23801 From the chain of Sa‘īd ibn Manṣūr: Hushaym reported: I [heard] from al-Shaybānī, who is Abū Isḥāq, from al-Sha‘bī, from Shurayḥ that he was presented with a golden necklace containing gemstones. Shurayḥ said: “Separate the gold from the gemstones. Sell the gold in immediate exchange and the gemstones as you wish.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا الشَّيْبَانِيُّ هُوَ أَبُو إِسْحَاقَ عَنِ الشَّعْبِيِّ عَنْ شُرَيْحٍ أَنَّهُ أُتِيَ بِطَوْقِ ذَهَبٍ فِيهِ جَوْهَرٌ، فَقَالَ شُرَيْحٌ: أَزِيلُوا الذَّهَبَ مِنَ الْجَوْهَرِ فَبِيعُوا الذَّهَبَ يَدًا بِيَدٍ وَبِيعُوا الْجَوْهَرَ كَيْفَ شِئْتُمْ.

L23802 From the transmission of Waki‘: I [Waki‘] narrate via Zakariyyā ibn Abī Zā’idah from al-Sha‘bī, who said: Shuraiḥ was asked about a golden necklace containing gemstones: “Can it be sold for gold dinars?” He replied: “Remove the gemstones first, then sell the gold for gold—weight for weight.”

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا زَكَرِيَّا هُوَ ابْنُ أَبِي زَائِدَةَ عَنِ الشَّعْبِيِّ قَالَ: سُئِلَ شُرَيْحٌ عَنْ طَوْقِ ذَهَبٍ فِيهِ فُصُوصٌ، أَتُبَاعُ بِدَنَانِيرَ؟ قَالَ: تُنْزَعُ الْفُصُوصُ ثُمَّ يُبَاعُ الذَّهَبُ بِالذَّهَبِ وَزْنًا بِوَزْنٍ

L23803 And through the chain of ‘Abd al-Razzāq from Ma‘mar, who narrated from al-Zuhrī and Qatādah - Qatādah said: From Ibn Sīrīn. Then Ibn Sīrīn and

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ، وَقَتَادَةَ، قَالَ قَتَادَةُ: عَنِ ابْنِ سِيرِينَ، ثُمَّ اتَّفَقَ ابْنُ سِيرِينَ، وَالزُّهْرِيُّ، قَالَا جَمِيعًا: يُكْرَهُ أَنْ يُبَاعَ الْخَاتَمُ فِيهِ فِضَّةٌ بِالْوَرِقِ.

al-Zuhrī aligned in opinion, both stating: It is reprehensible to sell a ring containing silver in exchange for silver coins.

L23804 From the path of Hammad ibn Salama, from Hammad ibn Abi Sulayman, from Ibrahim al-Nakhaʿi: he disapproved of buying gold and silver with gold. Hammad said regarding one who intends to purchase one thousand dirhams for one hundred dinars and one dirham: he prohibited this and said, "No, but purchase one thousand dirhams excluding one dirham for one hundred dinars." All that we have stated constitutes the opinion of al-Shāfiʿī, Aḥmad, and the majority of our scholars. And success is by Allah, the Exalted.

L23805 **The issue of the deferred-payment sale of gold.**

L23806 1489 - Issue:

L23807 If there is gold with another item besides silver—whether attached to it or compounded in it—it is permissible to sell it as it is, along with what is with it and less than it, for dirhams hand to hand. It is not permissible to sell it on credit.

L23808 Similarly, if silver is mixed with, combined into, or present within a substance other than gold, it is permissible to sell it—either with what it is mixed with or independently of it—for immediate payment in dinars (hand-to-hand). Deferred payment is not permissible.

L23809 Similarly, wheat mixed with dates, salt, or another item: it is permissible to sell it with the other item or without it for barley in a spot transaction, but it is not permissible to sell it on credit.

L23810–23811 If barley is combined with dates, salt, or other items, it is permissible to sell either (1) the barley along with those items or (2) the items alone (without barley) in exchange for wheat, provided payment is immediate, not deferred. Similarly, if dates are combined with barley, salt, or other items, it is permissible to sell either (1) the dates along with those items or (2) the items alone (without dates) in exchange for wheat, with immediate payment, not deferred.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ كَانَ يَكْرَهُ أَنْ يُشْتَرَى ذَهَبٌ، وَفِضَّةٌ بِذَهَبٍ، وَقَالَ حَمَّادٌ: فِيمَنْ أَرَادَ أَنْ يَشْتَرِيَ أَلْفَ دِرْهَمٍ بِمِائَةِ دِينَارٍ وَدِرْهَمٍ؟ فَمَنَعَ مِنْ ذَلِكَ وَقَالَ: لَا، وَلَكِنْ اشْتَرِ أَلْفَ دِرْهَمٍ غَيْرَ دِرْهَمٍ بِمِائَةِ دِينَارٍ وَكُلُّ مَا قُلْنَا فَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ وَجُمْهُورِ أَصْحَابِنَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَيْع الذَّهَب نَسِيئَة]

١٤٨٩ - مَسْأَلَةٌ:

فَإِنْ كَانَ ذَهَبٌ وَشَيْءٌ آخَرُ غَيْرُ الْفِضَّةِ مَعَهُ أَوْ مُرَكَّبًا فِيهِ جَازَ بَيْعُهُ كَمَا هُوَ مَعَ مَا هُوَ مَعَهُ وَدُونَهُ بِالدَّرَاهِمِ يَدًا بِيَدٍ وَلَا يَجُوزُ نَسِيئَةً.

وَكَذَلِكَ الْفِضَّةُ مَعَهَا شَيْءٌ آخَرُ غَيْرُ الذَّهَبِ أَوْ مُرَكَّبًا فِيهَا، أَوْ هِيَ فِيهِ: جَازَ بَيْعُهَا مَعَ مَا هِيَ مَعَهُ أَوْ دُونَهُ بِالدَّنَانِيرِ يَدًا بِيَدٍ، وَلَا يَجُوزُ نَسِيئَةً.

وَكَذَلِكَ الْقَمْحُ مَعَهُ تَمْرٌ أَوْ مِلْحٌ أَوْ شَيْءٌ آخَرُ: فَجَائِزٌ بَيْعُهُ مَعَ الْآخَرِ أَوْ دُونَهُ بِشَعِيرٍ يَدًا بِيَدٍ، وَلَا يَجُوزُ نَسِيئَةً.

وَكَذَلِكَ الشَّعِيرُ مَعَهُ تَمْرٌ أَوْ مِلْحٌ أَوْ غَيْرُ ذَلِكَ: فَجَائِزٌ بَيْعُهُ وَمَا مَعَهُ أَوْ دُونَهُ بِقَمْحٍ نَقْدًا، لَا نَسِيئَةً وَكَذَلِكَ التَّمْرُ مَعَهُ شَعِيرٌ أَوْ مِلْحٌ أَوْ غَيْرُ ذَلِكَ: فَجَائِزٌ بَيْعُهُ مَعَهُ أَوْ دُونَهُ بِقَمْحٍ نَقْدًا، لَا نَسِيئَةً.

L23812 Similarly, if salt is alongside wheat, barley, or other such items, it is permissible to sell it for dates with immediate payment, but not for deferred payment.

وَكَذَلِكَ الْمِلْحُ مَعَهُ قَمْحٌ أَوْ شَعِيرٌ أَوْ غَيْرُ ذَلِكَ: فَجَائِزٌ بَيْعُهُ بِالتَّمْرِ نَقْدًا، لَا بِنَسِيئَةٍ

L23813 The proof of that is the statement of the Messenger of Allah—peace and blessings be upon him—: "When these categories differ, then sell as you wish, provided the exchange is hand to hand." Thus, weighing, measuring, and equivalence in type are abolished, and only cash remains. And success is from Allah, the Exalted.[16]

بُرْهَانُ ذَلِكَ: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَإِذَا اخْتَلَفَتْ هَذِهِ الْأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ إِذَا كَانَ يَدًا بِيَدٍ» فَسَقَطَتْ الْمُوَازَنَةُ، وَالْمُكَايَلَةُ، وَالْمُمَاثَلَةُ، وَبَقِيَ النَّقْدُ فَقَطْ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23814 It has been narrated to us through the chain of Ḥammād ibn Salamah, from al-Ḥajjāj ibn Arṭāh, from Jaʿfar ibn ʿAmr ibn Ḥurayth, that his father purchased from ʿAlī ibn Abī Ṭālib a brocade garment interwoven with gold for four thousand dirhams with women. He then burned it and extracted from it the value of twenty thousand dirhams.

رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا الْحَجَّاجُ بْنُ أَرْطَاةَ عَنْ جَعْفَرِ بْنِ عَمْرِو بْنِ حُرَيْثٍ: أَنَّ أَبَاهُ اشْتَرَى مِنْ عَلِيِّ بْنِ أَبِي طَالِبٍ دِيبَاجَةً مُلْحَمَةً بِذَهَبٍ بِأَرْبَعَةِ آلَافِ دِرْهَمٍ بِنِسَاءٍ فَأَحْرَقَهَا فَأَخْرَجَ مِنْهَا قِيمَةَ عِشْرِينَ أَلْفِ دِرْهَمٍ.

L23815 Rabi'ah permitted the sale of a sword embellished with silver in exchange for gold on credit.

وَأَجَازَ رَبِيعَةُ بَيْعَ سَيْفٍ مُحَلًّى بِفِضَّةٍ بِذَهَبٍ إلَى أَجَلٍ.

L23816 Ali said: "There is no binding proof in the words of anyone apart from the Messenger of Allah—may Allah bless him and grant him peace." This is among the matters in which the Malikis and Hanafis were inconsistent: they opposed the practice of Ali and ʿAmr ibn Ḥurayth while in the presence of the Companions—may Allah be pleased with them.

قَالَ عَلِيٌّ: لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا مِمَّا تَنَاقَضَ فِيهِ الْمَالِكِيُّونَ: وَالْحَنَفِيُّونَ فَخَالَفُوا عَمَلَ عَلِيٍّ وَعَمْرِو بْنِ حُرَيْثٍ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L23817 The issue of selling stamped and adulterated dirhams.

[مَسْأَلَةَ بَيْعِ الدَّرَاهِمِ المنقوشة والمغشوشة]

L23818 1490. Issue:

١٤٩٠ - مَسْأَلَةٌ:

L23819 As for stamped dirhams and adulterated dinars: indeed, if two parties exchange adulterated dirhams wherein the adulteration is evident for adulterated dirhams wherein the adulteration is evident, this is permissible when they conclude the sale contract - stipulating that the copper in one set is exchanged for the silver in the other, and the silver in the former for the copper

وَأَمَّا الدَّرَاهِمُ الْمَنْقُوشَةُ وَالدَّنَانِيرُ الْمَغْشُوشَةُ فَإِنَّهُ إنْ تَبَايَعَ اثْنَانِ دَرَاهِمَ مَغْشُوشَةً قَدْ ظَهَرَ الْغِشُّ فِيهَا بِدَرَاهِمَ مَغْشُوشَةٍ قَدْ ظَهَرَ الْغِشُّ فِيهَا: فَهُوَ جَائِزٌ إذَا تَعَاقَدَا الْبَيْعَ، عَلَى أَنَّ الصُّفْرَ الَّذِي فِي هَذِهِ بِالْفِضَّةِ الَّتِي فِي تِلْكَ، وَالْفِضَّةَ الَّتِي فِي هَذِهِ بِالصُّفْرِ الَّذِي فِي

[16] **Hadith references (L23813):** Sunan Abi Dawud 3350; Sahih Muslim 1587c; Mishkat al-Masabih 2808.

in the latter. This transaction is permissible and lawful (ḥalāl), whether they exchange them with disparity, equally, by uncertain quantity for a known amount, or by uncertain quantity for uncertain quantity, because exchanging copper for silver is lawful.

تِلْكَ: فَهَذَا جَائِزٌ حَلَالٌ، سَوَاءٌ تَبَايَعَا ذَلِكَ مُتَفَاضِلًا، أَوْ مُتَمَاثِلًا، أَوْ جُزَافًا بِمَعْلُومٍ، أَوْ جُزَافًا بِجُزَافٍ، لِأَنَّ الصُّفْرَ بِالْفِضَّةِ حَلَالٌ.

L23820 Similarly, if two parties exchange debased dinars for debased dinars where the adulteration in both is evident in this manner, and if they exchange the gold of this one for the silver of that one and the gold of that one for the silver of this one: this is also permissible whether exchanged equally, unequally, or without precise measurement, provided immediate cash payment is made. This is because it involves gold for silver, where unequal exchange is permissible, and immediate cash payment is obligatory. And success is from Allah, the Most High.

وَكَذَلِكَ إِنْ تَبَايَعَا دَنَانِيرَ مَغْشُوشَةً بِدَنَانِيرَ مَغْشُوشَةٍ قَدْ ظَهَرَ الْغِشُّ فِي كِلَيْهِمَا عَلَى هَذِهِ الصِّفَةِ، فَإِنْ تَبَايَعَا ذَهَبَ هَذِهِ بِفِضَّةِ تِلْكَ وَذَهَبَ تِلْكَ بِفِضَّةِ هَذِهِ: فَهَذَا أَيْضًا حَلَالٌ مُتَمَاثِلًا، وَمُتَفَاضِلًا، وَجُزَافًا نَقْدًا وَلَا بُدَّ لِأَنَّهُ ذَهَبٌ بِفِضَّةٍ، فَالتَّفَاضُلُ جَائِزٌ، وَالتَّنَاقُدُ فَرْضٌ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَيْع الْقَمْح بدقيقه وسويقه وخبزه وَغَيْر ذَلِكَ]

The legal issue of selling wheat as flour, roasted meal, bread, and other similar derivatives.

L23821–23822

مَسْأَلَةٌ:

L23823 Issue:

وَجَائِزٌ بَيْعُ الْقَمْحِ بِدَقِيقِ الْقَمْحِ وَسَوِيقِ الْقَمْحِ وَبِخُبْزِ الْقَمْحِ وَدَقِيقِ الْقَمْحِ بِدَقِيقِهِ وَبِسَوِيقِهِ وَخُبْزِهِ، وَسَوِيقِهِ بِسَوِيقِهِ وَبِخُبْزِهِ، وَخُبْزِ الْقَمْحِ بِخُبْزِ الْقَمْحِ، مُتَفَاضِلًا كُلُّ ذَلِكَ، وَمُتَمَاثِلًا، وَجُزَافًا وَالزَّيْتُونِ بِالزَّيْتِ وَالزَّيْتُونِ، وَالزَّيْتِ بِالزَّيْتِ، وَالْعِنَبِ بِالْعِنَبِ وَبِالْعَصِيرِ، وَبِخَلِّ الْعِنَبِ بِالْخَلِّ، يَدًا بِيَدٍ وَأَنْ يُسَلَّمَ كُلُّ مَا ذَكَرْنَا بَعْضُهُ فِي بَعْضٍ.

L23824 It is permissible to sell wheat for wheat flour, wheat *sawīq* (roasted flour), or wheat bread; wheat flour for its flour, its *sawīq*, or its bread; wheat *sawīq* for its *sawīq* or its bread; and wheat bread for wheat bread—whether with excess, equivalence, or by approximation without measurement. Likewise, olives may be sold for olive oil and olives; olive oil for olive oil; grapes for grapes, grape juice, or grape vinegar; and grape vinegar for vinegar—through immediate exchange, requiring reciprocal delivery of some of it in some of it at the time of transaction.

وَكَذَلِكَ دَقِيقُ الشَّعِيرِ بِالْقَمْحِ وَبِالشَّعِيرِ وَبِدَقِيقِ الشَّعِيرِ وَبِخُبْزِهِ، وَالتِّينِ بِالتِّينِ، وَالزَّبِيبِ بِالزَّبِيبِ، وَالْأُرْزِ بِالْأُرْزِ، كَيْفَ شِئْتَ مُتَفَاضِلًا، وَمُتَمَاثِلًا؛ وَيُسَلَّمُ بَعْضُهُ فِي بَعْضٍ.

L23825 Similarly, barley flour exchanged for wheat, barley, barley flour, or its bread; figs for figs, raisins for raisins, rice for rice—whether in unequal or equal amounts, as you wish—with part exchanged for part.

وَلَا رِبَا أَلْبَتَّةَ، وَلَا حَرَامَ، إِلَّا فِي الْأَصْنَافِ السِّتَّةِ الَّتِي قَدَّمْنَا وَفِي الْعِنَبِ بِالزَّبِيبِ كَيْلًا، وَيَجُوزُ وَزْنًا كَيْفَ شِئْتَ.

L23826 And there is no *ribā* whatsoever, nor anything *ḥarām*, except in the six categories we have previously mentioned and in exchanging grapes for raisins by volume. And it is permissible by weight however you wish.

L23827 Regarding an unharvested standing crop consisting of wheat measured by

volume: if the crop is neither wheat nor barley, nor has it reached the ear-forming stage, then it is permissible to sell it by measured volume for barley and by measured volume for anything else except wheat.

L23828 The Malikis permitted exchanging *sawiq* made from wheat for wheat with a disparity in quantity.

L23829 The Hanafis permitted exchanging wheat bread for wheat with an excess in quantity, as both originate from wheat, and there is no difference.

L23830 The proof of this is what we have previously mentioned: that there is no riba (usury) or anything forbidden except what the Messenger of Allah—peace and blessings of Allah be upon him—explicitly stated. The Exalted said: {Allah has permitted trade and forbidden riba (usury)} [Al-Baqarah: 275].[17]

L23831 "And the Exalted said: 'Do not consume your wealth among yourselves wrongfully, except that it be trade by mutual consent from you.' [An-Nisāʾ: 29]"[18]

L23832 The Messenger of Allah (peace be upon him) permitted salaf in a specified measure or a specified weight, to a specified term. Allah the Exalted said: {And He has elaborated in detail what He has forbidden upon you} [al-Anʿām 6:119].[19]

L23833 It has become as clear as the sun that every trade, every sale, and every salam sale in a known measure, a known weight, or to a known term is absolutely permissible, leaving no room for doubt in that, except what Allah the Exalted has explicitly prohibited to us through the verbal articulation of His Messenger (peace be upon him).

L23834–23836 We bear witness by the testimony of Allah, the Most High, and we affirm and decisively state that Allah, the Most High, has not forbidden anything to His servants. He withheld it from them, and His Messenger, peace be upon him, did not clarify it for them, and that He, the Exalted, did not leave us - concerning what He has prohibited us - to rely upon the conjectures of

وَفِي الزَّرْعِ الْقَائِمِ بِالْقَمْحِ كَيْلًا، فَإِنْ كَانَ الزَّرْعُ لَيْسَ قَمْحًا وَلَا شَعِيرًا وَلَا سَنْبَلَ بَعْدُ: فَقَدْ جَازَ بَيْعُهُ بِالشَّعِيرِ كَيْلًا وَبِكُلِّ شَيْءٍ مَا عَدَا الْقَمْحَ كَيْلًا.

وَأَجَازَ الْمَالِكِيُّونَ السَّوِيقَ مِنْ الْقَمْحِ بِالْقَمْحِ مُتَفَاضِلًا.

وَأَجَازَ الْحَنَفِيُّونَ خُبْزَ الْقَمْحِ بِالْقَمْحِ مُتَفَاضِلًا وَكُلُّ ذَلِكَ أَصْلُهُ الْقَمْحُ، وَلَا فَرْقَ.

بُرْهَانُ ذَلِكَ: مَا أَوْرَدْنَا قَبْلُ مِنْ أَنَّهُ لَا رِبَا وَلَا حَرَامَ إلَّا مَا نَصَّ عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥]

وَقَالَ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩]

«وَأَبَاحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - السَّلَفَ فِي كَيْلٍ مَعْلُومٍ، أَوْ وَزْنٍ مَعْلُومٍ إلَى أَجَلٍ مَعْلُومٍ» وَقَالَ اللَّهُ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩]

فَصَحَّ بِأَوْضَحِ مِنْ الشَّمْسِ أَنَّ كُلَّ تِجَارَةٍ، وَكُلَّ بَيْعٍ، وَكُلَّ سَلَفٍ فِي كَيْلٍ مَعْلُومٍ، أَوْ وَزْنٍ مَعْلُومٍ إلَى أَجَلٍ مَعْلُومٍ: فَحَلَالٌ مُطْلَقٌ لَا مِرْيَةَ فِي ذَلِكَ، إلَّا مَا فَصَّلَ اللَّهُ تَعَالَى لَنَا تَحْرِيمَهُ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ -.

وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى وَنَبُتُّ وَنَقْطَعُ بِأَنَّ اللَّهَ تَعَالَى لَمْ يُحَرِّمْ عَلَى عِبَادِهِ شَيْئًا كَتَمَهُ عَنْهُمْ وَلَمْ يُبَيِّنْهُ رَسُولُهُ - عَلَيْهِ السَّلَامُ - لَهُمْ، وَأَنَّهُ تَعَالَى لَمْ يَكِلْنَا فِيمَا حَرَّمَ عَلَيْنَا إلَى ظُنُونِ أَبِي حَنِيفَةَ، وَمَالِكٍ، الشَّافِعِيِّ، أَوْ غَيْرِهِمْ، وَلَا إلَى ظُنُونِنَا وَلَا إلَى ظَنِّ أَحَدٍ، وَلَا إلَى دَعَاوَى لَا بُرْهَانَ عَلَيْهَا.

[17] **Qur'an references (L23830):** Qur'an 2:275 (Al-Baqarah).
[18] **Qur'an references (L23831):** Qur'an 4:29 (An-Nisa).
[19] **Qur'an references (L23832):** Qur'an 6:119 (Al-An'am).

Abū Ḥanīfah, Mālik, al-Shāfiʿī, or others, nor upon our own conjectures, nor upon the conjecture of anyone, nor upon claims without proof.

وَمَا وَجَدْنَا عَنْ أَحَدٍ قَبْلَ مَالِكٍ الْمَنْعَ مِنْ بَيْعِ الزَّيْتُونِ بِالزَّيْتِ ثُمَّ اتَّبَعَهُ عَلَيْهِ الشَّافِعِيُّ، وَإِنْ كَانَ لَمْ يُصَرِّحْ بِهِ، وَأَجَازَهُ أَبُو حَنِيفَةَ وَأَصْحَابُهُ إِذَا كَانَ الزَّيْتُ أَكْثَرَ مِمَّا فِي الزَّيْتُونِ مِنْ الزَّيْتِ وَإِلَّا فَلَا.

L23837 We did not find anyone before Mālik who prohibited the sale of olives for oil. Then al-Shāfiʿī followed him on this prohibition, though he did not explicitly state it. And Abū Ḥanīfah and his disciples permitted it if the exchanged oil exceeded the oil producible from the olives; otherwise, not.

فَإِنْ قَالُوا: هِيَ مُزَابَنَةٌ؟ قُلْنَا: قُلْتُمْ الْبَاطِلَ، قَدْ فَسَّرَ الْمُزَابَنَةَ: أَبُو سَعِيدٍ الْخُدْرِيُّ، وَجَابِرُ بْنُ عَبْدِ اللَّهِ، وَابْنُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمْ - وَهُمْ أَعْلَمُ النَّاسِ بِاللُّغَةِ وَبِالدِّينِ فَلَمْ يَذْكُرُوا شَيْئًا مِنْ هَذِهِ الْوُجُوهِ فِيهِ أَصْلًا

L23838 If they say, “Is this Muzabana?” We reply: “You speak falsely. It is Abu Sa’id al-Khudri, Jabir ibn Abdullah, and Ibn Umar (may Allah be pleased with them all) who interpreted Muzabana - and they are the most knowledgeable of people in language and religion - yet they did not mention any of these interpretations concerning it whatsoever.”

فَإِنْ قَالُوا: قِسْنَا ذَلِكَ عَلَى الرُّطَبِ بِالتَّمْرِ، وَالزَّبِيبِ بِالْعِنَبِ كَيْلًا؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ هَذِهِ مِنْهُ عَيْنُ الْبَاطِلِ، لِأَنَّ الزَّبِيبَ هُوَ عَيْنُ الْعِنَبِ نَفْسِهِ، إلَّا أَنَّهُ يَبِسَ، وَالتَّمْرُ هُوَ عَيْنُ الرُّطَبِ إلَّا أَنَّهُ يَابِسٌ وَالزَّيْتُ هُوَ شَيْءٌ آخَرُ غَيْرُ الزَّيْتُونِ لَكِنَّهُ خَارِجٌ مِنْهُ كَخُرُوجِ اللَّبَنِ مِنْ الْغَنَمِ، وَالتَّمْرِ مِنْ النَّخْلِ، وَبَيْعُ كُلِّ ذَلِكَ بِمَا يَخْرُجُ مِنْهُ: جَائِزٌ بِلَا خِلَافٍ. فَهَذَا أَصَحُّ فِي الْقِيَاسِ لَوْ صَحَّ الْقِيَاسُ يَوْمًا مَا.

L23839 If they say: “We analogize that to fresh dates **to** dried dates and raisins **to** grapes by measured quantity?” We say: “All analogy is invalid. Moreover, this case is the **epitome of invalidity in analogy**, for raisins are the **very substance of grapes themselves**—except that they have dried—and dried dates are the **very substance of fresh dates** except that they are desiccated. Olive oil, however, is a distinct substance separate from olives, though extracted from them—**as** milk is extracted from sheep or dates from palm trees. Selling any of these **in exchange for** what produces them is permissible without disagreement. Thus, this would be the soundest analogy—**if analogy were ever valid one day**.”

وَقَدْ ذَكَرْنَا أَقْوَالَهُمْ الْمُخْتَلِفَةَ الْمُتَنَاقِضَةَ وَكُلُّ قَوْلٍ مِنْهَا يُكَذِّبُ قَوْلَ الْآخَرِ وَيُبْطِلُهُ، وَيَشْهَدُ عَلَيْهِ بِالْخَطَأِ، كُلُّ ذَلِكَ بِلَا بُرْهَانٍ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ عَلَى عَظِيمِ نِعَمِهِ عَلَيْنَا كَثِيرًا، وَهَذَا قَوْلُ أَبِي سُلَيْمَانَ وَأَصْحَابِنَا.

L23840 We have mentioned their differing and contradictory statements, each of which refutes and invalidates the other and bears witness against it to its error—all of this without any proof. And praise be to Allah, Lord of the worlds, for His immense blessings bestowed upon us abundantly. This is the view of Abū Sulaymān and our companions.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عُبَيْدَةُ بْنُ حُمَيْدٍ عَنْ مُطَرِّفٍ هُوَ ابْنُ طَرِيفٍ عَنْ الشَّعْبِيِّ: أَنَّهُ سُئِلَ عَنْ السَّوِيقِ بِالْحِنْطَةِ؟ فَقَالَ: إنْ لَمْ يَكُنْ رِبًا فَهُوَ رِيبَةٌ.

L23841 From the chain of Ibn Abi Shaybah: I [narrate] from Ubaydah ibn Humaid, from Mutarrif ibn Tarif, from Al-Sha‘bi. He was asked about sawiq (parched wheat meal) made from wheat, and he replied: “If it is not usury, then it is suspicious.”

L23842 And through the chain of Ibn Abi Shaybah: Jarir from Layth from Mujahid, who said: "There is no harm in exchanging wheat for parched grain flour, or wheat flour for wheat and parched grain flour." He did not stipulate equivalence. We have already mentioned the statements of the Companions and those after them regarding *muzābanah*, rendering repetition unnecessary.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا جَرِيرٌ عَنْ لَيْثٍ عَنْ مُجَاهِدٍ قَالَ: لَا بَأْسَ بِالْحِنْطَةِ بِالسَّوِيقِ، وَالدَّقِيقِ بِالْحِنْطَةِ وَالسَّوِيقِ، فَلَمْ يَشْتَرِطْ الْمُمَاثَلَةَ، وَقَدْ ذَكَرْنَا أَقْوَالَ الصَّحَابَةِ وَمَنْ بَعْدَهُمْ فِي الْمُزَابَنَةِ فَأَغْنَى عَنْ تَكْرَارِهِ

L23843 **The issue of exchanging dirhams for dinars or vice versa.**

[مَسْأَلَةُ أَخْذِ الدَّرَاهِمِ عَنْ الدَّنَانِيرِ أَوْ الدَّنَانِيرِ عَنْ الدَّرَاهِمِ]

L23844–23846 1492- Issue:

١٤٩٢ - مَسْأَلَةٌ:

L23847 If someone is owed dinars, dirhams, wheat, barley, salt, dates, or other items not subject to usury—whatever the item, without exception—whether through sale, interest-free loan, salam contract, or any other means, whether immediately due or deferred, it is impermissible for them to take from the debtor anything other than what is rightfully theirs held by the debtor, at all.

وَمَنْ كَانَ لَهُ عِنْدَ آخَرَ دَنَانِيرُ، أَوْ دَرَاهِمُ، أَوْ قَمْحٌ، أَوْ شَعِيرٌ، أَوْ مِلْحٌ، أَوْ تَمْرٌ، أَوْ غَيْرُ ذَلِكَ، مِمَّا لَا يَقَعُ فِيهِ الرِّبَا أَيُّ شَيْءٍ كَانَ لَا تَحَاشَ شَيْئًا إمَّا مِنْ بَيْعٍ، إمَّا مِنْ قَرْضٍ، أَوْ مِنْ سَلَمٍ، أَوْ مِنْ أَيِّ وَجْهٍ كَانَ ذَلِكَ لَهُ عِنْدَهُ حَالًّا كَانَ أَوْ غَيْرَ حَالٍّ فَلَا يَحِلُّ لَهُ أَنْ يَأْخُذَ مِنْهُ شَيْئًا مِنْ غَيْرِ مَالِهِ عِنْدَهُ أَصْلًا.

L23848 If one exchanges dinars for dirhams, dirhams for dinars, barley for wheat, dirhams for non-monetary commodities, or one category for another category without exception, then in transactions where usury applies, it constitutes explicit usury; and in transactions where usury does not apply, it is utterly impermissible and amounts to wrongful appropriation of wealth.

فَإِنْ أَخَذَ دَنَانِيرَ عَنْ دَرَاهِمَ، أَوْ دَرَاهِمَ عَنْ دَنَانِيرَ، أَوْ شَعِيرًا عَنْ بُرٍّ، أَوْ دَرَاهِمَ عَنْ عَرَضٍ، أَوْ نَوْعًا عَنْ نَوْعٍ لَا تَحَاشَ شَيْئًا: فَهُوَ فِيمَا يَقَعُ فِيهِ الرِّبَا رِبًا مَحْضٌ، وَفِيمَا لَا يَقَعُ فِي الرِّبَا حَرَامٌ بَحْتٌ وَأَكْلُ مَالٍ بِالْبَاطِلِ.

L23849 All of that is invalidated, perpetually rejected, and subject to the ruling of usurpation, except when one is entirely incapable of obtaining redress. In such a case, he may take what he can feasibly recover from what is lawfully owned by him, without omitting anything, equivalent to his rightful due with no excess; this is permissible for him.

وَكُلُّ ذَلِكَ مَفْسُوخٌ مَرْدُودٌ أَبَدًا مَحْكُومٌ فِيهِ بِحُكْمِ الْغَصْبِ، إلَّا أَنْ لَا يَقْدِرَ عَلَى الِانْتِصَافِ أَلْبَتَّةَ فَيَأْخُذُ مَا أَمْكَنَهُ، مِمَّا يَحِلُّ مِلْكُهُ، لَا تَحَاشَ شَيْئًا، بِمِقْدَارِ حَقِّهِ، وَلَا مَزِيدَ، فَهَذَا حَلَالٌ لَهُ.

L23850 The evidence for this is what we previously mentioned regarding the Prophet's prohibition (peace be upon him) of gold, silver, wheat, dates, barley, and salt except like for like, hand to hand. Then he (peace be upon him)

بُرْهَانُ ذَلِكَ: مَا ذَكَرْنَا قَبْلُ مِنْ تَحْرِيمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الذَّهَبَ، وَالْفِضَّةَ، وَالْبُرَّ، وَالتَّمْرَ، وَالشَّعِيرَ، وَالْمِلْحَ إلَّا مِثْلًا بِمِثْلٍ عَيْنًا بِعَيْنٍ، ثُمَّ قَالَ - عَلَيْهِ السَّلَامُ -: «فَإِذَا اخْتَلَفَتْ هَذِهِ الْأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ إذَا كَانَ يَدًا بِيَدٍ»

said: “If these categories differ, then sell as you wish, provided it is hand to hand.”[20]

L23851 The transaction we have described is not a hand-to-hand exchange; rather, one of the two [items] is absent, and perhaps it has not even been extracted from its mine yet. Thus, it is prohibited by the explicit wording of his statement—upon him be peace.

L23852 Moreover, we have narrated through Muslim’s transmission: Muhammad ibn Rumh reported from Al-Layth ibn Sa‘d, from Nāfi‘, that he heard Abū Sa‘īd al-Khudrī say: “My eyes saw and my ears heard the Messenger of Allah (peace be upon him) saying: ’Do not sell gold for gold, nor silver for silver, except in equal measure. Do not give an excess of one over the other, and do not sell anything deferred from it for something immediate, except through immediate exchange.’”[21]

L23853–23855 From the chain of al-Bukhārī: I am Ḥafṣ ibn ‘Umar al-Ḥawḍī. I am Shu‘bah, who was informed by Ḥabīb ibn Abī Thābit. He said: I heard Abū al-Minhāl say: I asked al-Barā’ ibn ‘Āzib and Zayd ibn Arqam about exchange. Both of them said: “The Messenger of Allāh (peace and blessings of Allāh be upon him) prohibited selling gold for silver as deferred payment.” Malik, Abu Hanifah, Al-Shafi’i in one of his two opinions, and our companions held the permissibility of taking gold in exchange for silver coins and silver coins in exchange for gold. They argued for this by citing what was narrated to us through the chain of Qasim ibn Asbagh: I am Ja‘far ibn Muhammad, I heard from Affan ibn Muslim, I heard from Hammad ibn Salamah, from Simak ibn Harb, from Sa‘id ibn Jubayr, from Ibn Umar, who said: “I asked, ’O Messenger of Allah, may I sell camels for dinars and take dirhams, or sell for dirhams and take dinars, taking one in exchange for the other?’ He replied, ’There is no objection to taking them at the day’s rate.’”

وَالْعَمَلُ الَّذِي وَصَفْنَا لَيْسَ يَدًا بِيَدٍ، بَلْ أَحَدُهُمَا غَائِبٌ وَلَعَلَّهُ لَمْ يَخْرُجْ مِنْ مَعْدِنِهِ بَعْدُ، فَهُوَ مُحَرَّمٌ بِنَصِّ كَلَامِهِ - عَلَيْهِ السَّلَامُ -.

وَأَيْضًا: فَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ رُمْحٍ أَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ نَافِعٍ أَنَّهُ سَمِعَ «أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ: أَبْصَرَتْ عَيْنَايَ وَسَمِعَتْ أُذُنَايَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: لَا تَبِيعُوا الذَّهَبَ بِالذَّهَبِ، وَلَا تَبِيعُوا الْوَرِقَ بِالْوَرِقِ، إِلَّا مِثْلًا بِمِثْلٍ، وَلَا تُشِفُّوا بَعْضَهُ عَلَى بَعْضٍ، وَلَا تَبِيعُوا شَيْئًا غَائِبًا مِنْهُ بِنَاجِزٍ، إِلَّا يَدًا بِيَدٍ»

وَمِنْ طَرِيقِ الْبُخَارِيِّ أَنَا حَفْصُ بْنُ عُمَرَ هُوَ الْحَوْضِيُّ أَنَا شُعْبَةُ أَخْبَرَنِي حَبِيبُ بْنُ أَبِي ثَابِتٍ قَالَ: سَمِعْتُ أَبَا الْمِنْهَالِ قَالَ: سَأَلْتُ الْبَرَاءَ بْنَ عَازِبٍ، وَزَيْدَ بْنَ أَرْقَمَ، عَنْ الصَّرْفِ؟ فَكِلَاهُمَا يَقُولُ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الذَّهَبِ بِالْوَرِقِ دَيْنًا» وَذَهَبَ مَالِكٌ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ فِي أَحَدِ قَوْلَيْهِ، وَأَصْحَابُنَا، إلَى جَوَازِ أَخْذِ الذَّهَبِ مِنْ الْوَرِقِ، وَالْوَرِقِ مِنْ الذَّهَبِ وَاحْتَجُّوا فِي ذَلِكَ: بِمَا رُوِّينَاهُ مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ أَنَا جَعْفَرُ بْنُ مُحَمَّدٍ أَنَا عَفَّانُ بْنُ مُسْلِمٍ أَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ «ابْنِ عُمَرَ قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ أَبِيعُ الْإِبِلَ بِالدَّنَانِيرِ وَآخُذُ الدَّرَاهِمَ وَأَبِيعُ بِالدَّرَاهِمِ وَآخُذُ الدَّنَانِيرَ، وَآخُذُ هَذِهِ مِنْ هَذِهِ؟ فَقَالَ: لَا بَأْسَ أَنْ تَأْخُذَهَا بِسِعْرِ يَوْمِهَا»

[20] **Hadith references (L23850):** Sunan Abi Dawud 3350; Sahih Muslim 1587c; Mishkat al-Masabih 2808.

[21] **Hadith references (L23852):** Sahih Muslim 1584b.

قَالَ أَبُو مُحَمَّد: وَهَذَا خَبَرٌ لَا حُجَّةٌ فِيهِ، لِوُجُوهٍ: أَحَدُهَا - أَنَّ سِمَاكَ بْنَ حَرْبٍ ضَعِيفٌ يَقْبَلُ التَّلْقِينَ شَهِدَ عَلَيْهِ بِذَلِكَ شُعْبَةُ وَأَنَّهُ كَانَ يَقُولُ لَهُ: حَدَّثَكَ فُلَانٌ عَنْ فُلَانٍ؟ فَيَقُولُ: نَعَمْ، فِيمَ سُئِلَ عَنْهُ.

L23856 Abū Muḥammad said: This is a report that constitutes no legal proof, for several reasons. The first is that Simāk ibn Ḥarb is weak and susceptible to coaching, as Shuʿbah observed regarding him – for he would ask him: "Did so-and-so narrate to you from so-and-so?" and he would respond "Yes" concerning whatever he was asked about.

وَثَانِيهَا - أَنَّهُ قَدْ جَاءَ هَذَا الْخَبَرُ بِهَذَا السَّنَدِ بِبَيَانٍ غَيْرِ مَا ذَكَرُوا كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا قُتَيْبَةُ أَنَا أَبُو الْأَحْوَصِ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ «ابْنِ عُمَرَ قَالَ: كُنْتُ أَبِيعُ الذَّهَبَ بِالْفِضَّةِ أَوْ الْفِضَّةَ بِالذَّهَبِ، فَأَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرْتُهُ بِذَلِكَ؟ فَقَالَ: إذَا بَايَعْت صَاحِبَك فَلَا تُفَارِقْهُ وَبَيْنَك وَبَيْنَهُ لَبْسٌ» وَهَذَا مَعْنًى صَحِيحٌ، وَهُوَ كُلُّهُ خَبَرٌ وَاحِدٌ.

L23857 The second point is that this report has come through this chain with an explanation differing from what they mentioned, as we were narrated through the chain of Aḥmad ibn Shuʿayb: Qutaybah from Abū al-Aḥwaṣ from Simāk ibn Ḥarb from Saʿīd ibn Jubayr from Ibn ʿUmar, who said: "I used to sell gold for silver or silver for gold. I came to the Messenger of Allah (peace be upon him) and informed him of this. He said: 'When you transact with your counterparty, do not part from him while ambiguity exists between you.'" This meaning is sound, and it is entirely a single report.[22]

وَثَالِثُهَا - أَنَّهُ لَوْ صَحَّ لَهُمْ كَمَا يُرِيدُونَ لَكَانُوا مُخَالِفِينَ لَهُ؛ لِأَنَّ فِيهِ اشْتِرَاطَ أَخْذِهَا بِسِعْرِ يَوْمِهَا، وَهُمْ يُجِيزُونَ أَخْذَهَا بِغَيْرِ سِعْرِ يَوْمِهَا، فَقَدْ اطَّرَحُوا مَا يَحْتَجُّونَ بِهِ.

L23858 The third point is that if the ruling were valid for them as they intend, they would contradict it, for their own reasoning stipulates taking it at the day's price, yet they permit taking it at a different price. Thus, they have discarded the very argument they cite.

وَمِمَّا يُبْطِلُ قَوْلَهُمْ هَهُنَا أَنَّهُ قَدْ صَحَّ النَّهْيُ عَنْ بَيْعِ الْغَرَرِ، وَهَذَا أَعْظَمُ مَا يَكُونُ مِنْ الْغَرَرِ؛ لِأَنَّهُ بَيْعُ شَيْءٍ لَا يَدْرِي أَخُلِقَ بَعْدُ أَمْ لَمْ يُخْلَقْ؟ وَلَا أَيُّ شَيْءٍ هُوَ؟ وَالْبَيْعُ لَا يَجُوزُ إلَّا فِي عَيْنٍ مُعَيَّنَةٍ بِمِثْلِهَا، وَإِلَّا فَهُوَ بَيْعُ غَرَرٍ، وَأَكْلُ مَالٍ بِالْبَاطِلِ، وَالسَّلَمُ لَا يَجُوزُ إلَّا إلَى أَجَلٍ: فَبَطَلَ أَنْ يَكُونَ هَذَا الْعَمَلُ بَيْعًا أَوْ سَلَمًا فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ.

L23859 Among what invalidates their statement here is that the prohibition against selling gharar has been authentically established. This represents the most extreme form of gharar, for it involves selling something whose creation is uncertain - whether it has been created yet or not - and whose nature is unknown. A sale is permissible only for a specified item of equivalent value; otherwise it constitutes a sale of gharar and unjust seizure of wealth. Salam is valid only with a specified term. Thus this transaction is invalidated as being a sale or salam - it is purely unjust appropriation of wealth.

وَأَيْضًا فَإِنَّ هَذَا الْخَبَرَ إنَّمَا جَاءَ فِي الْبَيْعِ، فَمِنْ أَيْنَ أَجَازُوهُ فِي الْقَرْضِ؟ وَقَدْ فَرَّقَ بَعْضُ الْقَائِلِينَ بِهِ بَيْنَ الْقَرْضِ فِي الْبَيْعِ فِي ذَلِكَ وَاحْتَجُّوا مِنْ فِعْلِ السَّلَفِ فِي ذَلِكَ: بِمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ أَنَا إسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ سَعِيدٍ مَوْلَى الْحَسَنِ، قَالَ: أَتَيْت ابْنَ عُمَرَ أَتَقَاضَاهُ؟ فَقَالَ لِي: إذَا خَرَجَ خَازِنُنَا أَعْطَيْنَاك، فَلَمَّا خَرَجَ بَعَثَهُ مَعِي

L23860–23862 Furthermore, this narration specifically pertains to sale, so how did they permit it in loan? Moreover, some proponents of this view have distinguished between a loan within the context of sale on that matter, citing as evidence the practice of the early predecessors in... That is due to what we have narrated through the chain of Waki': From Ismāʿīl ibn Abī Khālid, from al-

[22] **Hadith references (L23857):** Sunan an-Nasai 4583.

Sha‘bī, from Sa‘īd—the client of al-Hasan—who said: “I came to Ibn ‘Umar to demand payment from him. He told me: ’When our treasurer emerges, we will give you.’ When he emerged, he sent him with me to the market and said: ’If a price is established, then if he wishes to take them at their value, he takes them.’” And through the chain of al-Ḥajjāj ibn al-Minhāl: From Abū ‘Awānah, from Ismā‘īl al-Suddī, from ‘Abdullāh al-Bahī, from Yasār ibn Numayr, who said: “A man owed me silver dirhams and offered me gold dinars. I said: ’I will not take them until I ask ‘Umar.’ When I asked him, he replied: ’Take them to the money-changers and present them. If they are appraised at a set rate, you may take them if you wish, or take the equivalent in your silver dirhams.’” The permissibility of this has been established as valid from al-Ḥasan al-Baṣrī, al-Ḥakam, Ḥammād, Sa‘īd ibn Jubayr (with differing accounts from him), Ṭāwūs, al-Zuhrī, Qatādah, and al-Qāsim ibn Muḥammad. Differing opinions are recorded from Ibrāhīm and ‘Aṭā’ regarding this matter.

إِلَى السُّوقِ وَقَالَ: إِذَا قَامَتْ عَلَى ثَمَنٍ فَإِنْ شَاءَ أَخَذَهَا بِقِيمَتِهَا أَخَذَهَا: وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا أَبُو عَوَانَةَ أَنَا إِسْمَاعِيلُ السُّدِّيُّ عَنْ عَبْدِ اللَّهِ الْبَهِيِّ عَنْ يَسَارِ بْنِ نُمَيْرٍ قَالَ: كَانَ لِي عَلَى رَجُلٍ دَرَاهِمُ فَعَرَضَ عَلَيَّ دَنَانِيرَ فَقُلْت: لَا آخُذُهَا حَتَّى أَسْأَلَ عُمَرَ فَسَأَلْته؟ فَقَالَ: ائْتِ بِهَا الصَّيَارِفَةَ فَأَعْرِضْهَا، فَإِذَا قَامَتْ عَلَى سِعْرٍ، فَإِنْ شِئْت فَخُذْهَا، وَإِنْ شِئْت فَخُذْ مِثْلَ دَرَاهِمِك وَصَحَّتْ إبَاحَةُ ذَلِكَ عَنْ الْحَسَنِ الْبَصْرِيِّ وَالْحَكَمِ وَحَمَّادٍ، وَسَعِيدِ بْنِ جُبَيْرٍ بِاخْتِلَافٍ عَنْهُ، وَطَاوُسٍ وَالزُّهْرِيِّ، وَقَتَادَةَ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ وَاخْتُلِفَ فِيهِ عَنْ إبْرَاهِيمَ، وَعَطَاءٍ

L23863 Abu Muhammad said: It has been reported to us that a group of the Salaf prohibited this. It was narrated via Malik’s transmission from Nāfi‘, from Ibn ‘Umar, who said: ‘Umar ibn al-Khaṭṭāb said, “Do not sell gold for silver currency where one [item] is deferred and the other is immediate.” This is authentic.

قَالَ أَبُو مُحَمَّدٍ: وَرُوِّينَا الْمَنْعَ مِنْ ذَلِكَ عَنْ طَائِفَةٍ مِنْ السَّلَفِ: رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: إنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: لَا تَبِيعُوا الذَّهَبَ بِالْوَرِقِ أَحَدُهُمَا غَائِبٌ وَالْآخَرُ نَاجِزٌ هَذَا صَحِيحٌ.

L23864 Narrated through the chain of Waki‘ from ‘Abdullāh ibn ‘Awf from Ibn Sīrīn from ‘Abdullāh ibn Mas‘ūd that he deemed it reprehensible to demand repayment of gold with silver coins or silver coins with gold.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَبْدِ اللَّهِ بْنِ عَوْفٍ عَنْ ابْنِ سِيرِينَ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّهُ كَانَ يَكْرَهُ اقْتِضَاءَ الذَّهَبِ مِنْ الْوَرِقِ، وَالْوَرِقِ مِنْ الذَّهَبِ.

L23865 From the chain of Sa’id ibn Mansur: Hushaym al-Shaybani - he is Abu Ishaq - narrated from ’Ikrimah, from Ibn Abbas: that he disapproved of demanding gold [in exchange] for silver [for gold], and this is authentic.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا الشَّيْبَانِيُّ هُوَ أَبُو إِسْحَاقَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ كَرِهَ اقْتِضَاءَ الذَّهَبِ مِنْ الْوَرِقِ مِنْ الذَّهَبِ وَهَذَا صَحِيحٌ.

L23866 And via the chain of Sufyān ibn ‘Uyaynah from Sa‘d ibn Kidām, who said: Ma‘n ibn ‘Abd al-Raḥmān ibn ‘Abd Allāh ibn Mas‘ūd swore to me that he found in his father’s book, written in his own handwriting, that ‘Abd Allāh ibn Mas‘ūd said: “Allah forbid that we take dirhams in exchange for dinars or dinars in exchange for dirhams.”

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ سَعْدِ بْنِ كِدَامٍ قَالَ: حَلَفَ لِي مَعْنٌ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّهُ وَجَدَ فِي كِتَابِ أَبِيهِ بِخَطِّهِ قَالَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ: مَعَاذَ اللَّهِ أَنْ نَأْخُذَ دَرَاهِمَ مَكَانَ دَنَانِيرَ أَوْ دَنَانِيرَ مَكَانَ دَرَاهِمَ.

L23867 From the chain of Abd al-Razzaq: Sufyan ibn Uyaynah narrated from Amr ibn Dinar, who was informed by Abu al-Minhal Abd al-Rahman ibn Mut'im that Abdullah ibn Umar said to him: "The Commander of the Believers"—meaning his father—"forbade us from selling debt for cash," and this narration is of the highest authenticity.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ أَخْبَرَنِي أَبُو الْمِنْهَالِ عَبْدُ الرَّحْمَنِ بْنُ مُطْعِمٍ أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ قَالَ لَهُ: نَهَانَا أَمِيرُ الْمُؤْمِنِينَ يَعْنِي أَبَاهُ أَنْ نَبِيعَ الدَّيْنَ بِالْعَيْنِ وَهَذَا فِي غَايَةِ الصِّحَّةِ.

L23868–23869 From the narration of Ḥammād ibn Zayd: Ayyūb al-Sikhtiyānī narrated to me from Muḥammad ibn Sīrīn, that Zaynab—the wife of Ibn Masʿūd—sold her enslaved woman either for gold or silver. The other currency type was then offered to her. ʿUmar was asked about this, and he said: "She must take the type by which she conducted the sale."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ أَنَا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ زَيْنَبَ امْرَأَةَ ابْنِ مَسْعُودٍ بَاعَتْ جَارِيَةً لَهَا إِمَّا بِذَهَبٍ وَإِمَّا بِفِضَّةٍ فَعُرِضَ عَلَيْهَا النَّوْعُ الْآخَرُ فَسُئِلَ عُمَرُ؟ فَقَالَ: لِتَأْخُذْ النَّوْعَ الَّذِي بَاعَتْ بِهِ.

L23870 Through the chain of Sa'id ibn Mansur: I am Khalid ibn Abdullah—who is At-Tahhan—from Ash-Shaybani—who is Abu Ishaq—from Muhammad ibn Zayd—from Ibn Umar concerning one who sells food for dirhams: "May he take food in exchange for dirhams?" He said: "No, until one takes possession of their dirhams." Ibn Umar did not say anything regarding the permissibility of that in non-food matters.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا خَالِدُ بْنُ عَبْدِ اللَّهِ هُوَ الطَّحَّانُ عَنْ الشَّيْبَانِيِّ هُوَ أَبُو إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ زَيْدٍ عَنْ ابْنِ عُمَرَ فِيمَنْ بَاعَ طَعَامًا بِدَرَاهِمَ، أَيَأْخُذُ بِالدَّرَاهِمِ طَعَامًا؟ فَقَالَ: لَا، حَتَّى تَقْبِضَ دَرَاهِمَك وَلَمْ يَقُلْ ابْنُ عُمَرَ بِإِبَاحَةِ ذَلِكَ فِي غَيْرِ الطَّعَامِ.

L23871 From the path of Ibn Abi Shaybah: Ali ibn Mushir narrated from Abu Ishaq al-Shaybani, from Muhammad ibn Zayd, from Ibn Umar - regarding one who lent dirhams: "May he take food in exchange for their price?" He disapproved of it.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَلِيُّ بْنُ مُسْهِرٍ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ مُحَمَّدِ بْنِ زَيْدٍ عَنْ ابْنِ عُمَرَ فِيمَنْ أَقْرَضَ دَرَاهِمَ أَيَأْخُذُ بِثَمَنِهَا طَعَامًا؟ فَكَرِهَهُ

L23872 And from the chain of Muḥammad ibn al-Muthannā: I [narrate] from Mu'ammal ibn Ismāʿīl, I [narrate] from Sufyān al-Thawrī, from al-Zubayr ibn ʿAdiyy, from Ibrāhīm al-Nakhaʿī that he disapproved of claiming dinars for dirhams or dirhams for dinars. And from the chain of Aḥmad ibn Shuʿayb: I [narrate] from Muḥammad ibn Bashshār, I [narrate] from Wakīʿ, I [narrate] from Mūsā ibn Nāfiʿ, from Saʿīd ibn Jubayr that he disapproved of accepting dinars for dirhams or dirhams for dinars.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى أَنَا مُؤَمَّلُ بْنُ إِسْمَاعِيلَ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ الزُّبَيْرِ بْنِ عَدِيٍّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ كَرِهَ اقْتِضَاءَ الدَّنَانِيرِ مِنْ الدَّرَاهِمِ، وَالدَّرَاهِمِ مِنْ الدَّنَانِيرِ، وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ أَنَا وَكِيعٌ أَنَا مُوسَى بْنُ نَافِعٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ أَنَّهُ كَرِهَ أَنْ يَأْخُذَ الدَّنَانِيرَ مِنْ الدَّرَاهِمِ وَالدَّرَاهِمَ مِنْ الدَّنَانِيرِ

L23873 And through the chain of Ibn Abi Shaybah: I [narrate] from Ibn 'Ulayyah from Yunus—the son of 'Ubayd—from Anas Ibn Sirin, who said: Abu 'Ubaydah Ibn 'Abdullah Ibn Mas'ud said to me: "Do not take gold dinars in ex-

change for a debt owed to you in silver dirhams, nor take silver dirhams in exchange for a debt owed in gold dinars."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنِ عُلَيَّةَ عَنْ يُونُسَ وَهُوَ ابْنُ عُبَيْدٍ عَنْ أَنَسِ بْنِ سِيرِينَ، قَالَ: قَالَ لِي أَبُو عُبَيْدَةَ بْنُ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ: لَا تَأْخُذْ الذَّهَبَ مِنْ الْوَرِقِ يَكُونُ لَك عَلَى الرَّجُلِ وَلَا تَأْخُذَنَّ الْوَرِقَ مِنْ الذَّهَبِ

L23874 And through the report of Ibn Abī Shaybah: From Wakīʿ ibn ʿAlī ibn al-Mubārak, from Yaḥyā (Ibn Abī Kathīr), from Abū Salamah (Ibn ʿAbd al-Raḥmān ibn ʿAwf) that he disliked that there be for you a loan of dirhams to another, from which you take repayment in dinars.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا وَكِيعُ بْنُ عَلِيِّ بْنِ الْمُبَارَكِ عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ هُوَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَّهُ كَرِهَ أَنْ يَكُونَ لَك عِنْدَ آخَرَ قَرْضُ دَرَاهِمُ فَتَأْخُذَ مِنْهُ دَنَانِيرَ.

L23875–23877 Via Ibn Abī Shaybah's transmission: I [received from] ʿAbd al-Aʿlā ibn ʿAbd al-Aʿlā, who reported from Hishām ibn Ḥassān, from Muḥammad ibn Sīrīn, regarding one who was owed dirhams by another. If he took some of them and then sought to take dinars equal to their value, [Ibn Sīrīn] disapproved of it. From the transmission of Ibn Abi Shaybah: I am Marwan ibn Mu'awiyah al-Fazari reporting from Musa ibn Ubaydah. Ata, the freedman of Umar ibn Abd al-Aziz, informed me that he purchased a she-camel from Burd, the client of Said ibn al-Musayyib, for four dinars. Burd came to claim his due. I said: "I have dirhams with me, but no dinars." He responded: "I must seek Said ibn al-Musayyib's instruction," so he sought his counsel. Said told him: "Take tangible dinars from him in physical form. If he refuses, his appointment is with Allah - leave him."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الْأَعْلَى بْنُ عَبْدِ الْأَعْلَى عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ فِيمَنْ كَانَتْ لَهُ عَلَى آخَرَ دَرَاهِمُ فَأَخَذَ مِنْهَا ثُمَّ أَرَادَ أَنْ يَأْخُذَ بِقِيمَتِهَا دَنَانِيرَ فَكَرِهَهُ وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا مَرْوَانُ بْنُ مُعَاوِيَةَ هُوَ الْفَزَارِيّ عَنْ مُوسَى بْنِ عُبَيْدَةَ أَخْبَرَنِي عَطَاءٌ مَوْلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ ابْتَاعَ مِنْ بُرْدٍ مَوْلَى سَعِيدِ بْنِ الْمُسَيَّبِ نَاقَةً بِأَرْبَعَةِ دَنَانِيرَ فَجَاءَ يَلْتَمِسُ حَقَّهُ؟ فَقُلْت: عِنْدِي دَرَاهِمُ لَيْسَ عِنْدِي دَنَانِيرُ؟ فَقَالَ: حَتَّى أَسْتَأْمِرَ سَعِيدَ بْنَ الْمُسَيَّبِ فَاسْتَأْمَرَهُ؟ فَقَالَ لَهُ سَعِيدٌ: خُذْ مِنْهُ دَنَانِيرَ عَيْنًا، فَإِنْ أَبَى فَمَوْعِدُهُ اللَّهُ، دَعْهُ.

L23878 Via the chain of Ibn Abī Shaybah: Yaḥyā ibn Saʿīd al-Qaṭṭān narrated from Ibn Ḥarmalah, who said: "I sold camels for dirhams payable by harvest time. When the payment became due, they settled with wheat, barley, and hulled barley. I asked Saʿīd ibn al-Musayyib, and he replied: 'This is invalid. Do not take anything except the dirhams.'"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ ابْنِ حَرْمَلَةَ قَالَ: بِعْت جُزُورًا بِدَرَاهِمَ إلَى الْحَصَادِ، فَلَمَّا حَلَّ قَضَوْنِي حِنْطَةً، وَشَعِيرًا، وَسَلْتًا، فَسَأَلْت سَعِيدَ بْنَ الْمُسَيَّبِ؟ فَقَالَ: لَا يَصْلُحُ، لَا تَأْخُذْ إلَّا الدَّرَاهِمَ.

L23879 These are: Umar, Ibn Abbas, Ibn Mas'ud, Ibn Umar, and Al-Nakha'ī.

فَهَؤُلَاءِ: عُمَرُ، وَابْنُ عَبَّاسٍ، وَابْنُ مَسْعُودٍ، وَابْنُ عُمَرَ، وَالنَّخَعِيُّ

L23880 Sa'id ibn Jubayr, Abu 'Ubaydah ibn 'Abdullah ibn Mas'ud, Abu Salamah ibn 'Abd al-Rahman, Ibn Sirin, and Ibn al-Musayyib.

وَسَعِيدُ بْنُ جُبَيْرٍ، وَأَبُو عُبَيْدَةَ بْنُ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ وَابْنُ سِيرِينَ، وَابْنُ الْمُسَيِّبِ

وَهَذَا مِمَّا تَرَكُوا فِيهِ الْقُرْآنَ فِي تَحْرِيمِهِ أَكْلَ الْمَالِ بِالْبَاطِلِ لِخَبَرٍ سَاقِطٍ مُضْطَرِبٍ وَقَوْلُنَا هُوَ أَحَدُ قَوْلَيْ الشَّافِعِيِّ، وَقَوْلُ ابْنِ شُبْرُمَةَ

L23881 This is among the matters in which they abandoned the Quran in its prohibition of consuming wealth unjustly due to a weak and inconsistent hadith. Our opinion is one of the two opinions of Al-Shāfiʿī and is the opinion of Ibn Shubrumah.

وَأَمَّا إذَا لَمْ يَقْدِرْ عَلَى الِانْتِصَافِ فَقَدْ قَالَ تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠]

L23882 And as for when one is unable to seek redress, the Exalted has said: "And the recompense for an evil deed is an evil deed equivalent to it" [al-Shūrā 40].[23]

قَالَ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤]

L23883 Allah, the Most High, said: "So whoever transgresses against you, respond to him in the same measure as he has transgressed against you." [Al-Baqarah: 194][24]

فَهَذَا عُمُومٌ لِكُلِّ مَا أَمْكَنَ الْمَمْنُوعُ حَقُّهُ أَنْ يَنْتَصِفَ بِهِ، أَوْ بِأَنْ يُوَكِّلَ غَرِيمَهُ عَلَى بَيْعِ مَالِهِ عِنْدَهُ، وَبِأَنْ يَبْتَاعَ لَهُ مَا يُرِيدُ: فَهَذَا جَائِزٌ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23884 This is a general principle applicable to every situation where one denied his right can either obtain his due through it, appoint his creditor as an agent to sell the debtor's assets in their possession, or have the debtor purchase for the creditor what he requires. All this is permissible, and success comes solely from Allah, the Exalted.

[مَسْأَلَة بَيْع دقيق الْقَمْح]

The Jurisprudential Matter of the Sale of Wheat Flour

١٤٩٣ - مَسْأَلَةٌ:

L23885

1493 - Question:

وَاسْتَدْرَكْنَا مُنَاقَضَاتٍ لَهُمْ يُعَارِضُونَ بِهَا أَنْ شَنَّعُوا عَلَيْنَا بِبَيْعِ الْقَمْحِ بِدَقِيقِهِ وَدَقِيقِ غَيْرِهِ مُتَفَاضِلًا، وَتَسْلِيمِ أَحَدِهِمَا فِي الْآخَرِ، وَكَذَلِكَ دَقِيقِ الْقَمْحِ بِدَقِيقِ الْقَمْحِ، وَبِالْخُبْزِ وَالزَّيْتِ بِالزَّيْتُونِ وَبِالزَّيْتِ، وَاللَّبَنِ بِاللَّبَنِ، وَبِالْجُبْنِ وَالسَّمْنِ وَكُلِّ شَيْءٍ، مَا عَدَا مَا وَرَدَ بِهِ النَّصُّ مِنْ السُّنَّةِ.

L23886

L23887 We have identified contradictions in their arguments which they use to oppose us, such as their condemnation of our sale of wheat for its flour and the flour of another [grain] with an excess, and the delivery of one of them within the other, and similarly wheat flour for wheat flour, bread for olives, oil for oil, milk for milk, cheese for cheese, ghee for ghee, and everything else, except what has been explicitly stipulated by the explicit textual evidence from the Sunnah.

[23] **Qur'an references (L23882):** Qur'an 42:40 (Ash-Shuraa).
[24] **Qur'an references (L23883):** Qur'an 2:194 (Al-Baqarah).

وَلَا شُنْعَةَ فِي شَيْءٍ مِنْهُ، لِأَنَّنَا لَمْ نَتَعَدَّ حُدُودَ اللَّهِ تَعَالَى، وَلَا حَرَّمْنَا مَا لَمْ يُحَرِّمْهُ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -، وَإِنَّمَا الشَّنِيعُ فِيمَا نَذْكُرُهُ إِنْ شَاءَ اللَّهُ تَعَالَى: قَالَ مَالِكٌ: يَجُوزُ بَيْعُ الدَّقِيقِ مِنْ الْقَمْحِ بِالْقَمْحِ كَيْلًا بِكَيْلٍ، مِثْلًا بِمِثْلٍ يَدًا بِيَدٍ، قَالَ: وَلَا يَجُوزُ دَقِيقِ الْقَمْحِ بِدَقِيقِ الْقَمْحِ كَيْلًا بِكَيْلٍ، لَكِنْ وَزْنًا بِوَزْنٍ، مِثْلًا بِمِثْلٍ.

L23888–23890 There is no reprehensibility in any of it, for we have not transgressed the bounds of Allah the Exalted, nor have we prohibited what Allah the Exalted has not prohibited nor His Messenger—peace be upon him—has prohibited. Rather, the reprehensible lies in what we will mention, if Allah the Exalted wills. Malik said: It is permissible to sell wheat-derived flour for wheat as measure for measure, like for like, hand to hand. He said: However, wheat-derived flour may not be exchanged for wheat-derived flour as measure for measure, but rather as weight for weight, like for like.

قَالَ عَلِيٌّ فَإِنْ كَانَ دَقِيقُ الْقَمْحِ نَوْعًا وَاحِدًا مَعَ الْقَمْحِ؟ فَمَا يَحِلُّ أَنْ يَبِيعَ دَقِيقَ قَمْحٍ بِدَقِيقِ قَمْحٍ إِلَّا كَيْلًا بِكَيْلٍ كَمَا يَبِيعُ الدَّقِيقَ بِالْقَمْحِ، لِأَنَّهُمَا قَمْحٌ مَعًا وَإِنْ كَانَ دَقِيقُ الْقَمْحِ صِنْفًا غَيْرَ الْقَمْحِ، فَوَاجِبٌ أَنْ يُجِيزَهُ بِالْقَمْحِ مُتَفَاضِلًا، وَأَجَازَ الْقَمْحَ بِسَوِيقِ الْقَمْحِ مُتَفَاضِلًا؟ فَأَيُّ فَرْقٍ بَيْنَ دَقِيقِ قَمْحٍ وَبَيْنَ سَوِيقِ قَمْحٍ بِقَمْحٍ؟ وَأَعْجَبُ مِنْ هَذَا احْتِجَاجُهُمْ فِي ذَلِكَ: بِأَنَّ السَّوِيقَ دَخَلَتْهُ صَنْعَةٌ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ وَقَعَ لَكُمْ الْفَرْقُ بِأَنَّهُ دَخَلَتْهُ صَنْعَةٌ؟ نَعَمْ، وَالدَّقِيقُ أَيْضًا دَخَلَتْهُ، صَنْعَةٌ وَلَا فَرْقَ.

L23891 Ali said: If wheat flour is considered the same type as wheat itself, it becomes impermissible to sell wheat flour for wheat flour except through equal measure for equal measure - just as selling flour for wheat, since both are fundamentally wheat. But if wheat flour is deemed a distinct category from wheat, it would logically require permitting its exchange for wheat with quantity disparity. Yet they permit wheat to be exchanged for parched wheat flour with disparity? What difference exists between wheat flour and parched wheat flour when traded for wheat? More astonishing still is their argument in this matter: that parched flour involves processing. We countered: What consequence does this have? From what basis have you established this distinction by claiming it underwent processing? Indeed, flour too has undergone processing, with no difference whatsoever.

وَقَالُوا أَيْضًا: إنَّمَا يُرَاعَى تَقَارُبُ الْمَنَافِعِ؟ فَقُلْنَا: وَهَذَا أَيْضًا مِنْ أَيْنَ وَقَعَ لَكُمْ؟ وَمِنْ أَيْنَ وَجَبَ لَكُمْ أَنْ تُرَاعُوا تَقَارُبَ الْمَنَافِعِ؟ وَهَلْ هِيَ إلَّا دَعْوَى بِلَا بُرْهَانٍ؟ وَقَوْلٌ لَمْ تُسْبَقُوا إلَيْهِ، وَتَعْلِيلٌ فَاسِدٌ.

L23892 They also said: “Is only the proximity of benefits to be considered?” We replied: “And this too—from where did this arise for you? From where were you obligated to consider the proximity of benefits? Is it anything but a claim without evidence—a statement none preceded you in, a flawed rationale?”

وَأَيْضًا: فَإِنَّ الْمَنَافِعَ فِي جَمِيعِ الْمَأْكُولَاتِ وَاحِدَةٌ لَسْنَا نَقُولُ: مُتَقَارِبَةً، بَلْ شَيْءٌ وَاحِدٌ، وَهُوَ طَرْدُ الْجُوعِ، أَوْ التَّأَدُّمِ، أَوْ التَّفَكُّهُ، أَوْ التَّدَاوِي، وَلَا مَزِيدَ.

L23893 Moreover, the benefits in all foods are one—we do not say *similar*, but one and the same: to repel hunger, season food, delight the palate, or treat illness, and nothing more.

وَمَنَعُوا مِنْ الْحِنْطَةِ الْمَبْلُولَةِ بِالْيَابِسَةِ، وَأَجَازُوا الْحِنْطَةَ الْمَقْلِيَّةَ بِالْيَابِسَةِ وَكِلْتَاهُمَا مُخْتَلِفَةٌ مَعَ الْأُخْرَى.

L23894 They prohibited wheat moistened with the dry substance but permitted wheat fried with dry ingredients, and these two methods are distinct from one another.

L23895 They prohibited [using] flour in the dough once it had undergone processing.

وَمَنَعُوا مِنْ الدَّقِيقِ بِالْعَجِينِ وَقَدْ دَخَلَتْ الْعَجِينَ صَنْعَةٌ.

L23896 They permitted exchanging wheat for bread made from wheat with a disparity in quality.

وَأَبَاحُوا الْقَمْحَ بِالْخُبْزِ مِنْ الْقَمْحِ مُتَفَاضِلًا.

L23897 They prohibited the exchange of milk for butter entirely. Yes, and they prohibited the exchange of milk for cheese. Is cheese from milk not akin to bread from wheat? They also prohibited exchanging the milk of a sheep for a lactating sheep, except when there is no milk presently in its udder, as it has been depleted by milking.

وَمَنَعُوا مِنْ اللَّبَنِ بِالسَّمْنِ جُمْلَةً؟ نَعَمْ، وَمَنَعُوا مِنْ اللَّبَنِ بِالْجُبْنِ وَهَلْ الْجُبْنُ مِنْ اللَّبَنِ إلَّا كَالْخُبْزِ مِنْ الْقَمْحِ؟ وَمَنَعُوا مِنْ بَيْعِ لَبَنِ شَاةٍ بِشَاةٍ لَبُونٍ، إلَّا أَنَّهُ لَا لَبَنَ الْآنَ فِي ضَرْعِهَا؛ لِأَنَّهُ قَدْ اُسْتُنْفِذَ بِالْحَلْبِ.

L23898 The jurists permitted selling date palms in exchange for dates on the condition that there are no dates within them.

وَأَجَازُوا بَيْعَ النَّخْلِ بِالتَّمْرِ إذَا كَانَتْ لَا تَمْرَ فِيهَا.

L23899 They argued that milk comes from the sheep's udder and that clarified butter is made from milk? So we said: Dates come from the date palm and bread is made from wheat.

وَاحْتَجُّوا بِأَنَّ اللَّبَنَ يَخْرُجُ مِنْ ضَرْعِ الشَّاةِ، وَأَنَّ السَّمْنَ يُعْمَلُ مِنْ اللَّبَنِ؟ فَقُلْنَا: وَالتَّمْرُ يَخْرُجُ مِنْ النَّخْلِ، وَالْخُبْزُ يُعْمَلُ مِنْ الْقَمْحِ.

L23900–23901 They prohibited exchanging grapes for juice but permitted it for vinegar. These are astonishing matters without parallel. If we were to examine them exhaustively, the matter would exceed manageable scope. What we have mentioned suffices, and all of it—as we mentioned—is not known from anyone before Mālik. Likewise, the prohibition against exchanging oil for olives in an immediate exchange, whether unequal or equal, is not recorded from anyone before Mālik.

وَمَنَعُوا مِنْ بَيْعِ الْعِنَبِ بِالْعَصِيرِ، وَأَجَازُوهُ بِالْخَلِّ وَهَذِهِ عَجَائِبُ لَا نَظِيرَ لَهَا، لَوْ تَقَصَّيْنَاهَا لَا تَسَعُ الْأَمْرَ فِي ذَلِكَ، وَفِيمَا ذَكَرْنَاهُ كِفَايَةٌ، وَهُوَ كُلُّهُ كَمَا ذَكَرْنَا لَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَ مَالِكٍ، وَكَذَلِكَ لَا يُحْفَظُ عَنْ أَحَدٍ قَبْلَ مَالِكٍ الْمَنْعَ مِنْ بَيْعِ الزَّيْتِ بِالزَّيْتُونِ يَدًا بِيَدٍ مُتَفَاضِلًا وَمُتَمَاثِلًا.

L23902 As for the Ḥanafīs, they explicitly permitted the usury stipulated in revealed texts without reservation, legitimizing the sale of one date for two dates, while forbidding the sale of a *ratl* of rough black linen suitable only for caulking ships in return for a *ratl* of Egyptian white linen smooth as silk.

وَأَمَّا الْحَنَفِيُّونَ: فَإِنَّهُمْ أَبَاحُوا الرِّبَا الْمَنْصُوصَ عَلَيْهِ جِهَارًا فَأَحَلُّوا بَيْعَ تَمْرَةٍ بِتَمْرَتَيْنِ، وَحَرَّمُوا بَيْعَ رِطْلِ كَتَّانٍ أَسْوَدَ أَخْرَشَ لَا يَصْلُحُ إلَّا لِقُلْفَةِ الْمَرَاكِبِ بِرِطْلِ كَتَّانٍ أَبْيَضَ مِصْرِيٍّ أَمْلَسَ كَالْحَرِيرِ

L23903 Similarly, they prohibited the sale of a ratl of fine spinnable cotton for a ratl of coarse cotton not suitable except for stuffing, and they said: All cotton is a single category, and all linen is a single category.

وَكَذَلِكَ حَرَّمُوا بَيْعَ رِطْلِ قُطْنٍ طَيِّبٍ غَزْلِيٍّ بِرِطْلِ قُطْنٍ خَشِنٍ لَا يَصْلُحُ إلَّا لِلْحَشْوِ، وَقَالُوا: الْقُطْنُ كُلُّهُ صِنْفٌ وَاحِدٌ، وَالْكَتَّانُ كُلُّهُ صِنْفٌ وَاحِدٌ.

L23904 They said: As for garments made from cotton, they are of different types;

unequal exchange and credit sales are permissible when exchanging some types for others. They permitted the sale of one Mervi cotton garment from Khurasan for two Mervi cotton garments from Baghdad, whether in immediate payment or credit. They said: As for cotton yarn, in all such cases it constitutes a single type, in which neither unequal exchange nor credit sales are permissible.

قَالُوا: وَأَمَّا الثِّيَابُ الْمَعْمُولَةُ مِنْ الْقُطْنِ فَأَصْنَافٌ مُخْتَلِفَةٌ يَجُوزُ فِي بَعْضِهَا بِبَعْضٍ التَّفَاضُلُ وَالنَّسِيئَةُ فَأَجَازُوا بَيْعَ ثَوْبِ قُطْنٍ مَرْوِيٍّ خُرَاسَانِيٍّ بِثَوْبَيْ قُطْنٍ مَرْوِيٍّ بَغْدَادِيٍّ نَقْدًا وَنَسِيئَةً قَالُوا: وَأَمَّا غَزْلُ الْقُطْنِ فِي كُلِّ ذَلِكَ فَصِنْفٌ وَاحِدٌ لَا يَجُوزُ فِيهِ التَّفَاضُلُ وَلَا النَّسِيئَةُ.

L23905 They said: The fat of the ram's belly is one category, while the fat of its back and the fat of the rest of its body is another category. Thus, they permitted the sale of two *ritls* of fat from its belly for one *ritl* of fat from its back in a cash payment.

قَالُوا: شَحْمُ بَطْنِ الْكَبْشِ صِنْفٌ، وَشَحْمُ ظَهْرِهِ وَشَحْمُ سَائِرِ جَسَدِهِ صِنْفٌ آخَرُ، فَأَجَازُوا بَيْعَ رِطْلَيْنِ مِنْ شَحْمِ بَطْنِهِ بِرِطْلٍ مِنْ شَحْمِ ظَهْرِهِ نَقْدًا.

L23906 They said: The tail fat of the sheep is one category, and the rest of its meat is another category. Thus, it is permissible to exchange one ratl (a traditional unit of measurement) of its tail fat for two ratls of the rest of its meat.

قَالُوا: وَأَلْيَةُ الشَّاةِ صِنْفٌ، وَسَائِرُ لَحْمِهَا صِنْفٌ آخَرُ، فَجَائِزٌ بَيْعُ رِطْلٍ مِنْ أَلْيَتِهَا بِرِطْلَيْنِ مِنْ سَائِرِ لَحْمِهَا.

L23907 They said: It is not permissible to sell a *ritl* of ram's meat except for a *ritl* of the same meat with no excess, weight for weight in immediate payment, necessarily. And they permitted [this transaction] for two *ritls* of ox meat in immediate payment, necessarily.

قَالُوا: وَلَا يَجُوزُ بَيْعُ رِطْلٍ مِنْ لَحْمِ كَبْشٍ إِلَّا بِرِطْلٍ مِنْ لَحْمِهِ وَلَا مَزِيدَ، وَزْنًا بِوَزْنٍ نَقْدًا، وَلَا بُدَّ وَأَجَازُوهُ بِرِطْلَيْنِ مِنْ لَحْمِ الثَّوْرِ نَقْدًا وَلَا بُدَّ.

L23908 As for the meat of geese and chickens, it is permissible to trade one ritl of each type for two ritls of the same kind. Thus, it is permitted to trade one ritl of chicken meat for two ritls of chicken meat only as an immediate payment, or for two ritls of goose meat either as an immediate payment or on deferred terms.

وَأَمَّا لَحْمُ الْإِوَزِّ، وَلَحْمُ الدَّجَاجِ، فَيَجُوزُ مِنْ كُلِّ وَاحِدٍ مِنْهُمَا رِطْلٌ بِرِطْلَيْنِ مِنْ نَوْعِهِ فَأَجَازُوا رِطْلَ لَحْمِ دَجَاجٍ بِرِطْلَيْنِ مِنْ لَحْمِ دَجَاجٍ نَقْدًا أَوْ بِرِطْلَيْنِ مِنْ لَحْمِ الْإِوَزِّ نَقْدًا وَنَسِيئَةً.

L23909–23911 They stated: The credit sale (nasi'ah) regarding all items subject to usury - such as dates, wheat, barley, and others - applies only when the term is stipulated at the time of contract. As for what involves delayed receipt until the parties separate without stipulation... If there is a delay in it, the sale is not invalidated in any way, except in gold and silver only. If the delivery is delayed in them, it constitutes ribā—whether stipulated or not.

وَقَالُوا: النَّسِيئَةُ فِي كُلِّ مَا يَقَعُ فِيهِ الرِّبَا مِنْ التَّمْرِ وَالْبُرِّ وَالشَّعِيرِ، وَغَيْرِ ذَلِكَ، إِنَّمَا هِيَ مَا اُشْتُرِطَ فِيهِ الْأَجَلُ فِي حِينِ الْعَقْدِ، وَأَمَّا مَا تَأَخَّرَ قَبْضُهُ إلَى أَنْ تَفَرَّقَا وَلَمْ يَكُنْ اُشْتُرِطَ فِيهِ التَّأْخِيرُ، فَلَا يَضُرُّ الْبَيْعُ فِي ذَلِكَ شَيْئًا، إِلَّا فِي الذَّهَبِ، وَالْفِضَّةِ فَقَطْ، فَإِنْ تَأَخَّرَ الْقَبْضُ فِيهِمَا رَبَا اُشْتُرِطَ أَوْ لَمْ يُشْتَرَطْ.

L23912 Among the remarkable aspects of worldly matters is his permitting fresh dates in exchange for dried dates, while entirely prohibiting the exchange of

flour or roasted barley meal with wheat as a whole—he did not permit such exchanges at all. Had he reversed his statement, he would have been correct.

وَمِنْ عَجَائِبِ الدُّنْيَا إِجَازَتُهُ الرُّطَبَ بِالتَّمْرِ، وَمَنْعُهُ مِنَ الدَّقِيقِ أَوِ السَّوِيقِ بِالْقَمْحِ جُمْلَةً، فَلَمْ يُجِزْهُ أَصْلًا، فَلَوْ عَكَسَ قَوْلَهُ لَأَصَابَ.

L23913 And all of these are whispers, absurdities, and contradictions—there is no evidence for them, nor are they statements preserved from anyone before him. We ask Allah for deliverance.

وَهَذِهِ كُلُّهَا وَسَاوِسُ، وَسَخَافَاتٌ، وَمُنَاقَضَاتٌ، لَا دَلِيلَ عَلَيْهَا، وَأَقْوَالٌ لَا تُحْفَظُ مِنْ أَحَدٍ قَبْلَهُ وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

L23914 As for the Shāfiʿīs: they prohibited the exchange of one ratl of squill for two ratls of it, since they consider it among edible items. They permitted exchanging a dirham's weight of saffron for two dirhams' weight of it in both immediate payment and deferred payment, because it is not consumed as food according to them.

وَأَمَّا الشَّافِعِيُّونَ: فَإِنَّهُمْ مَنَعُوا مِنْ رِطْلِ سَقَمُونْيَا بِرِطْلَيْنِ مِنْ سَقَمُونْيَا؛ لِأَنَّهَا عِنْدَهُمْ مِنَ الْمَأْكُولَاتِ، وَأَبَاحُوا وَزْنَ دِرْهَمِ زَعْفَرَانٍ بِوَزْنِ دِرْهَمَيْنِ مِنْهُ نَقْدًا وَنَسِيئَةً؛ لِأَنَّهُ لَا يُؤْكَلُ عِنْدَهُمْ.

L23915 They did not permit the sale of honey purchased with its wax in its original state unless both are purified, but they permitted the sale of walnuts with their shells as they are.

وَلَمْ يُجِيزُوا بَيْعَ عَسَلٍ مُشْتَارٍ بِشَمْعِهِ كَمَا هُوَ بِعَسَلٍ مُشْتَارٍ بِشَمْعِهِ كَمَا هُوَ أَصْلًا، إِلَّا حَتَّى يُصَفَّى كِلَاهُمَا وَأَجَازُوا بَيْعَ الْجَوْزِ بِقِشْرِهِ بِالْجَوْزِ بِقِشْرِهِ.

L23916 They argued that extracting honey from its comb improves it, whereas removing walnuts and almonds from their shells and extracting seeds from dates spoils them.

وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّ إِخْرَاجَ الْعَسَلِ مِنْ شَمْعِهِ صَلَاحٌ لَهُ، وَإِخْرَاجَ الْجَوْزِ وَاللَّوْزِ مِنْ قِشْرِهِ، وَنَزْعَ النَّوَى مِنَ التَّمْرِ فَسَادٌ لَهُ.

L23917 Nay! There is no good in what you mentioned except like the corruption you described. There is no good in that, nor corruption in this. Were it corruption, it would not have been permissible at all, for Allah the Exalted says: {And Allah does not love corruption} [Al-Baqarah: 205].[25]

فَقُلْنَا: كَلَّا، مَا الصَّلَاحُ فِيمَا ذَكَرْتُمْ إِلَّا كَالْفَسَادِ فِيمَا وَصَفْتُمْ، وَمَا فِي ذَلِكَ صَلَاحٌ، وَلَا فِي هَذَا فَسَادٌ، وَلَوْ كَانَ فَسَادًا لَمَا حَلَّ أَصْلًا؛ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَاللَّهُ لا يُحِبُّ الْفَسَادَ} [البقرة: ٢٠٥]

L23918 These are also evident contradictions, and statements we do not know anyone to have preceded them in. Success is through Allah, the Exalted. We do not know anyone before Abū Ḥanīfah who prohibited the sale of oil for olives in a spot transaction, whether the oil content in the olives was greater, equal, or lesser.

وَهَذِهِ أَيْضًا مُنَاقَضَاتٌ ظَاهِرَةٌ، وَأَقْوَالٌ لَا نَعْلَمُ أَحَدًا سَبَقَهُمْ إِلَيْهَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ وَلَا نَعْلَمُ أَحَدًا قَبْلَ أَبِي حَنِيفَةَ مَنَعَ مِنْ بَيْعِ الزَّيْتِ بِالزَّيْتُونِ يَدًا بِيَدٍ، سَوَاءٌ كَانَ أَكْثَرَ مَا فِي الزَّيْتُونِ مِنَ الزَّيْتِ، أَوْ مِثْلَهُ أَوْ أَقَلَّ.

L23919 Abū Muḥammad said: The reality, which is attested to by language, the

[25] **Qur'an references (L23917):** Qur'an 2:205 (Al-Baqarah).

Sharīʿah, and sensory perception, is that flour is neither wheat nor barley—neither in name, nor attribute, nor natural properties.

قَالَ أَبُو مُحَمَّد: وَالْحَقِيقَةُ الَّتِي تَشْهَدُ لَهَا اللُّغَةُ، وَالشَّرِيعَةُ، وَالْحِسُّ، فَهُوَ أَنَّ الدَّقِيقَ لَيْسَ قَمْحًا وَلَا شَعِيرًا، لَا فِي اسْمِهِ، وَلَا فِي صِفَتِهِ، وَلَا فِي طَبِيعَتِهِ.

L23920 These animals are fed flour and bread, which do not harm them; rather, they benefit them. But when fed wheat, it destroys them. Date syrup is not dates—neither linguistically, legally, nor empirically.

فَهَذِهِ الدَّوَابُّ تُطْعَمُ الدَّقِيقَ وَالْخُبْزَ فَلَا يَضُرُّهَا بَلْ يَنْفَعُهَا، وَتُطْعَمُ الْقَمْحَ فَيُهْلِكُهَا، وَالدِّبْسُ لَيْسَ تَمْرًا، لَا فِي لُغَةٍ، وَلَا فِي شَرِيعَةٍ، وَلَا فِي مُشَاهَدَةٍ.

L23921 nor in His name, nor in His attributes.

وَلَا فِي اسْمِهِ، وَلَا فِي صِفَاتِهِ.

L23922–23923 Water is not salt, for ablution is permissible with water but impermissible with salt.

وَالْمَاءُ لَيْسَ مِلْحًا، لِأَنَّهُ يَجُوزُ الْوُضُوءُ بِالْمَاءِ، وَلَا يَجُوزُ بِالْمِلْحِ.

L23924 And the begetting of Allah, the Exalted, is not a thing derived from another thing, for this would necessitate that the begotten entity be equivalent to the source from which it was begotten. By contrast, we were created from dust, a nutfah, and water, yet we are neither nutfah, nor dust, nor water.

وَلَيْسَ تَوْلِيدُ اللَّهِ تَعَالَى شَيْئًا مِنْ شَيْءٍ بِمُوجِبِ أَنَّ الْمُتَوَلِّدَ هُوَ الَّذِي عَنْهُ تُوُلِّدَ، فَنَحْنُ خُلِقْنَا مِنْ تُرَابٍ، وَنُطْفَةٍ، وَمَاءٍ، وَلَسْنَا نُطْفَةً، وَلَا تُرَابًا، وَلَا مَاءً.

L23925 Wine is produced from juice; it is forbidden, whereas the juice itself is permissible.

وَالْخَمْرُ مُتَوَلِّدَةٌ مِنَ الْعَصِيرِ وَهِيَ حَرَامٌ وَالْعَصِيرُ حَلَالٌ.

L23926 Milk is generated from blood; milk is halal, and blood is haram.

وَاللَّبَنُ مُتَوَلِّدٌ عَنِ الدَّمِ وَاللَّبَنُ حَلَالٌ وَالدَّمُ حَرَامٌ.

L23927 The excrement is transformed into dust—a permissible and pure substance.

وَالْعَذِرَةُ تَسْتَحِيلُ تُرَابًا حَلَالًا طَيِّبًا.

L23928 The hen consumes carrion and blood, which are then transformed into lawful and wholesome meat as part of its flesh.

وَالدَّجَاجَةُ تَأْكُلُ الْمَيْتَةَ وَالدَّمَ فَيَصِيرَانِ فِيهَا لَحْمًا حَلَالًا طَيِّبًا.

L23929 Vinegar is generated from wine; it is ḥalāl, and wine is ḥarām.

وَالْخَلُّ مُتَوَلِّدٌ مِنَ الْخَمْرِ وَهُوَ حَلَالٌ وَهِيَ حَرَامٌ.

L23930 As for ornaments of gold and silver, they are gold and silver by their two names, their two attributes, and their inherent nature in the language and in the Sharia. “And whoever transgresses the limits set by Allah has certainly wronged himself.” [At-Talaq: 1][26]

وَأَمَّا حُلِيُّ الذَّهَبِ وَالْفِضَّةِ فَهُمَا ذَهَبٌ وَفِضَّةٌ بِاسْمَيْهِمَا وَصِفَاتِهِمَا وَطَبِيعَتِهِمَا فِي اللُّغَةِ وَفِي الشَّرِيعَةِ {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١]

L23931 **A legal issue in which one sold gold or other than it for**

[مَسْأَلَة بَاعَ ذهب أَوْ غَيْره بمثلة ثُمَّ وجد أَحَدهمَا بِمَا اشْتَرَى عَيْبًا]

[26] **Qur’an references (L23930):** Qur’an 65:1 (At-Talaq).

its equivalent, then either of them found a defect in what was purchased.

L23932 Issue 1494:

١٤٩٤ - مَسْأَلَةٌ:

L23933 Whoever sells gold for gold in a permissible sale, or silver for silver likewise, or silver for gold similarly—whether minted for minted, two ornamented items, ornamented for minted, raw metal, or unminted metal—and either party discovers a defect in what was purchased of that [item] before they physically separate and before either offers the other the choice to annul the sale.

وَمَنْ بَاعَ ذَهَبًا بِذَهَبٍ بَيْعًا حَلَالًا، أَوْ فِضَّةً بِفِضَّةٍ كَذَلِكَ، أَوْ فِضَّةً بِذَهَبٍ كَذَلِكَ، مَسْكُوكًا بِمِثْلِهِ أَوْ مَصُوغَيْنِ، أَوْ مَصُوغًا بِمَسْكُوكٍ، أَوْ تِبْرًا أَوْ نَقَارًا، فَوَجَدَ أَحَدُهُمَا بِمَا اشْتَرَى مِنْ ذَلِكَ عَيْبًا قَبْلَ أَنْ يَتَفَرَّقَا بِأَبْدَانِهِمَا، وَقَبْلَ أَنْ يُخَيِّرَ أَحَدُهُمَا الْآخَرَ

L23934 He has the choice: if he wishes, he may annul the sale, or if he wishes, substitute, because the sale between them has not yet been finalized. Rather, he is initiating a new sale by mutual consent or abandoning it, as outlined earlier. And success is from Allah, the Exalted.

فَهُوَ بِالْخِيَارِ إِنْ شَاءَ فَسَخَ الْبَيْعَ، وَإِنْ شَاءَ اسْتَبْدَلَ؛ لِأَنَّهُ لَمْ يَتِمَّ بَيْنَهُمَا بَيْعٌ بَعْدُ، فَإِنَّمَا هُوَ مُسْتَأْنِفٌ لِبَيْعٍ عَنْ تَرَاضٍ أَوْ تَارِكٌ عَلَى مَا ذَكَرْنَا قَبْلُ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L23935 1495 – Issue:

١٤٩٥ - مَسْأَلَةٌ:

L23936 If the defect is found after physical separation or after the choice when the entitled party selects to complete the sale, and the defect arises from adulteration with something other than what was purchased—such as silver or copper mixed with gold, or copper or other metals mixed with silver—the entire transaction is invalidated and revoked, regardless of whether the defect is significant or minor, or the adulteration is small or substantial. This is because the adulterated item is neither what was purchased nor what the contract was based upon, as mutual agreement on it was never reached through the contract, and the parties separated before the sale attained legal validity. In transactions involving usury, only sales validated by physical separation are permissible, with no option to uphold them, because no explicit text exists regarding this matter. Success comes solely from Allah, the Exalted.

فَإِنْ وَجَدَ الْعَيْبَ بَعْدَ التَّفَرُّقِ بِالْأَبْدَانِ، أَوْ بَعْدَ التَّخْيِيرِ وَاخْتَارَ الْمُخَيَّرُ إِتْمَامَ الْبَيْعِ فَإِنْ كَانَ الْعَيْبُ مِنْ خَلْطٍ وَجَدَهُ مِنْ غَيْرِ مَا اشْتَرَى، لَكِنْ كَفِضَّةٍ أَوْ صُفْرٍ فِي ذَهَبٍ، أَوْ صُفْرٍ أَوْ غَيْرِهِ فِي فِضَّةٍ، فَالصَّفْقَةُ كُلُّهَا مَفْسُوخَةٌ، مَرْدُودَةٌ، كَثُرَتْ أَمْ قَلَّتْ، قَلَّ ذَلِكَ الْخَلْطُ أَمْ كَثُرَ؛ لِأَنَّهُ لَيْسَ هُوَ الَّذِي اشْتَرَى، وَلَا الَّذِي عَقَدَ عَلَيْهِ الصَّفْقَةَ، فَلَيْسَ هُوَ الَّذِي تَرَاضَى بِالْعَقْدِ عَلَيْهِ وَقَدْ تَفَرَّقَا قَبْلَ صِحَّةِ الْبَيْعِ. وَلَا يَجُوزُ فِيمَا يَقَعُ فِيهِ الرِّبَا إِلَّا صِحَّةُ الْبَيْعِ بِالتَّفَرُّقِ، وَلَا خِيَارَ فِي إِمْضَائِهَا؛ لِأَنَّهُ لَمْ يَأْتِ بِذَلِكَ نَصٌّ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L23937 1496 – Issue

١٤٩٦ - مَسْأَلَةٌ:

L23938–23940 Similarly, if part of what was purchased—whether lesser or greater—becomes rightfully due, or if the receipt of any portion of their mutually

contracted exchange—whether lesser or greater—is delayed, the contract is void because it was not validly concluded. Whatever is not valid is void. Every contract in which the unlawful is commingled with the lawful is a void contract, because the lawful portion of it cannot be validly established except... If the forbidden is deemed valid, then anything deriving validity solely from what is invalid cannot itself be valid. Nor is it permissible to obligate someone to what they have not consented to individually, without others.

وَكَذَلِكَ لَوْ اسْتَحَقَّ بَعْضَ مَا اشْتَرَى أَقَلُّهُ أَوْ أَكْثَرُهُ، أَوْ لَوْ تَأَخَّرَ قَبْضُ شَيْءٍ مِمَّا تَبَايَعَا قَلَّ أَوْ كَثُرَ لِأَنَّ الْعَقْدَ لَمْ يَتِمَّ صَحِيحًا وَمَا لَمْ يَصِحَّ فَهُوَ فَاسِدٌ، وَكُلُّ عَقْدٍ اخْتَلَطَ الْحَرَامُ فِيهِ بِالْحَلَالِ فَهُوَ عَقْدٌ فَاسِدٌ، لِأَنَّهُ لَمْ يُعْقَدْ صِحَّةُ الْحَلَالِ مِنْهُ إِلَّا بِصِحَّةِ الْحَرَامِ، وَكُلُّ مَا لَا صِحَّةَ لَهُ إِلَّا بِصِحَّةِ مَا لَا يَصِحُّ، فَلَا صِحَّةَ لَهُ، وَلَا يَحِلُّ أَنْ يُلْزَمَ مَا لَمْ يَرْضَ بِهِ وَحْدَهُ. دُونَ غَيْرِهِ.

L23941 1497. Chapter.

١٤٩٧ - مَسْأَلَةٌ:

L23942 If the defect is inherent in the purchased item itself, such as a break, or if the gold is naturally deficient in value, like reddish or greenish gold by its nature, and silver is likewise deficient in value by its nature.

فَإِنْ كَانَ الْعَيْبُ فِي نَفْسِ مَا اشْتَرَى كَكَسْرٍ، أَوْ كَانَ الذَّهَبُ نَاقِصَ الْقِيمَةِ بِطَبْعِهِ، وَالْفِضَّةُ كَذَلِكَ، كَالذَّهَبِ الْأَشْقَرِ وَالْأَخْضَرِ بِطَبْعِهِ.

L23943 If he stipulated a warranty against defects, the entire transaction is rescinded because he discovered the item differed from what he purchased, and thus it is impermissible for him to retain another's property for which no sale contract was concluded.

فَإِنْ كَانَ اشْتَرَطَ السَّلَامَةَ فَالصَّفْقَةُ كُلُّهَا مَفْسُوخَةٌ، لِأَنَّهُ وَجَدَ غَيْرَ مَا اشْتَرَى، فَلَا يَحِلُّ لَهُ مَالُ غَيْرِهِ مِمَّا لَمْ يَعْقِدْ عَلَيْهِ بَيْعًا.

L23944 If he did not stipulate soundness, he may choose either to keep the transaction as it is with no recourse for any claim, or he must annul it entirely. This is because he purchased the tangible asset through a valid contract but later found unfair pricing. When the seller consents to this unfair pricing and acknowledges its extent, it becomes permissible without any disapproval - as we previously explained.

وَإِنْ كَانَ لَمْ يَشْتَرِطْ السَّلَامَةَ فَهُوَ مُخَيَّرٌ بَيْنَ إِمْسَاكِ الصَّفْقَةِ كَمَا هِيَ وَلَا رُجُوعَ لَهُ بِشَيْءٍ، وَإِمَّا فَسْخُهَا كُلِّهَا وَلَا بُدَّ، لِأَنَّهُ اشْتَرَى الْعَيْنَ، فَهُوَ عَقْدٌ صَحِيحٌ ثُمَّ وَجَدَ غَبْنًا، وَالْغَبْنُ إِذَا رَضِيَهُ الْبَائِعُ وَعَرَفَ قَدْرَهُ جَائِزٌ لَا كَرَاهِيَةَ فِيهِ عَلَى مَا قَدَّمْنَا قَبْلُ.

L23945 It is not permissible for him to divide the transaction, because the sale was not mutually consented to by his counterpart except in its entirety. Thus, he has no right to anything beyond what they mutually consented to together, due to the decree of Allah the Exalted: "Do not consume your wealth among yourselves unjustly except through trade stemming from mutual consent among you" [An-Nisa: 29].[27]

وَلَا يَحِلُّ لَهُ تَبْعِيضُ الصَّفْقَةِ، لِأَنَّهُ لَمْ يَتَرَاضَ الْبَيْعَ مِنْ صَاحِبِهِ إِلَّا عَلَى جَمِيعِهَا، فَلَيْسَ لَهُ غَيْرُ مَا تَرَاضِيَا بِهِ مَعًا، لِقَوْلِ اللَّهِ تَعَالَى {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩]

L23946 The Messenger of Allah—peace and blessings be upon him—said: "Indeed,

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ»

[27] **Qur'an references (L23945):** Qur'an 4:29 (An-Nisa).

your blood and your wealth are inviolable for you."

L23947 Therefore, nothing from another's wealth is permissible for him except what is mutually consented to.

فَلَا يَحِلُّ لَهُ مِنْ مَالِ غَيْرِهِ إِلَّا مَا تَرَاضِيَا بِهِ مَعًا.

L23948 Abu Muhammad said: This is a matter over which predecessors and successors have differed. It has been narrated to us through the chain of Al-Hajjaj ibn Minhal: I am Hafs ibn Ghiyath ibn Al-Ash'ath Al-Harrani, from Ikrimah, from Ibn Abbas, concerning one who purchases dirhams while stipulating that if any counterfeit coins are found among them, he is entitled to return them. Ibn Abbas disliked the stipulation, saying: This right belongs to him even if he does not stipulate it.

قَالَ أَبُو مُحَمَّد: وَهَذَا مَكَانٌ اخْتَلَفَ فِيهِ الْخَلْفُ وَالسَّلَفُ: فَرُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا حَفْصُ بْنُ غِيَاثِ بْنِ الْأَشْعَثِ الْحَرَّانِيُّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ فِيمَنْ يَشْتَرِي الدَّرَاهِمَ وَيَشْتَرِطُ إِنْ كَانَ فِيهَا زَائِفٌ أَنْ يَرُدَّهُ: أَنَّهُ كَرِهَ الشَّرْطَ، وَقَالَ: ذَلِكَ لَهُ إِنْ لَمْ يَشْتَرِطْ.

L23949 Ali said: The apparent meaning of this is the annulment of the sale, for had he intended to reject only the counterfeit item alone, he would have mentioned the invalidity of its counterpart in the contract and the validity of the contract regarding the remainder of the transaction, or he would have mentioned juridical inference. Yet he did not mention anything from all of this. Thus, it is impermissible to attribute to him what he did not say, and Ibn Abbas's statement is our statement.

قَالَ عَلِيٌّ: ظَاهِرُ هَذَا رَدُّ الْبَيْعِ، لِأَنَّهُ لَوْ أَرَادَ رَدَّ الزَّائِفِ وَحْدَهُ لَذَكَرَ بُطْلَانَ مَا قَابَلَهُ، وَصِحَّةَ الْعَقْدِ فِي سَائِرِ الصَّفْقَةِ، أَوْ لَذَكَرَ الِاسْتِدْلَالَ، وَلَمْ يَذْكُرْ مِنْ ذَلِكَ كُلِّهِ شَيْئًا، فَلَا يَجُوزُ أَنْ يَقُولَ مَا لَمْ يَقُلْ فَقَوْلُ ابْنِ عَبَّاسٍ هُوَ قَوْلُنَا.

L23950 And through the chain of Al-Ḥajjāj ibn Al-Minhāl: Hammām, who is Ibn Yaḥyā, said: Ibn Jurayj reported that Ibn ʿUmar exchanged dinars for dirhams, but they erred in the transaction by a suttūq [sixth] of a dirham, so he disliked retaining the erroneous amount. This chain is interrupted, and we do not know of any contemporary scholar who upheld this view, nor do we know now of any other opinion from the Companions—may Allah be pleased with them—apart from what we have mentioned.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا هَمَّامٌ هُوَ ابْنُ يَحْيَى قَالَ: زَعَمَ ابْنُ جُرَيْجٍ: أَنَّ ابْنَ عُمَرَ اشْتَرَى دَرَاهِمَ بِدَنَانِيرَ فَأَخْطَئُوا فِيهَا بِدِرْهَمٍ سَتُّوقٍ فَكَرِهَ أَنْ يَسْتَبْدِلَهُ وَهَذَا مُنْقَطِعٌ، وَلَا نَعْلَمُ أَحَدًا مِنْ الْحَاضِرِينَ قَالَ بِهِ، وَلَا نَعْلَمُ الْآنَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - غَيْرَ مَا ذَكَرْنَا.

L23951–23952 Sufyan al-Thawri said: He may choose between replacing it and annulling the ṣarf transaction, but only for the amount he found defective. Al-Awzaʿī, al-Layth, and al-Ḥasan ibn Ḥayy said: He must replace everything he found to be counterfeit, whether little or much. Ibn Ḥayy and al-Suttūq said likewise.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: هُوَ مُخَيَّرٌ بَيْنَ أَنْ يَسْتَبْدِلَهُ وَبَيْنَ أَنْ يَنْقُضَ الصَّرْفَ فِي مِقْدَارِ مَا وَجَدَ رَدِيئًا فَقَطْ قَالَ الْأَوْزَاعِيُّ، وَاللَّيْثُ، وَالْحَسَنُ بْنُ حَيٍّ: يَسْتَبْدِلُ كُلَّ مَا وَجَدَ زَائِفًا قَلَّ أَوْ كَثُرَ قَالَ ابْنُ حَيٍّ وَالسَّتُّوقُ كَذَلِكَ.

L23953 Ali said: As-sattūq (debased currency) is that which is adulterated with

قَالَ عَلِيٌّ: السَّتُّوقُ هُوَ الْمَغْشُوشُ بِشَيْءٍ غَيْرِهِ، مِثْلُ أَنْ يَكُونَ الدِّرْهَمُ كُلُّهُ رَصَاصًا، أَوْ يَكُونَ الدِّينَارُ كُلُّهُ فِضَّةً أَوْ نُحَاسًا.

foreign substances, such as a dirham (silver coin) being entirely made of lead, or a dinar (gold coin) being entirely composed of silver or copper.

وَالزَّائِفُ الرَّدِيءُ مِنْ طَبْعِهِ الَّذِي فِيهِ غِشٌّ

L23954 The counterfeit and inferior item, by its very nature, involves fraud.

وَقَالَ أَبُو حَنِيفَةَ: إنْ وُجِدَ بَعْدَ التَّفَرُّقِ نِصْفُ الْجَمِيعِ فَأَكْثَرَ زُيُوفًا فَلَيْسَ لَهُ أَنْ يَسْتَبْدِلَ أَلْبَتَّةَ، لَكِنْ إنْ رَدَّ الزُّيُوفَ بَطَلَ الصَّرْفُ فِي مِقْدَارِهَا مِنْ الصَّفْقَةِ وَصَحَّ فِيمَا سِوَاهَا.

L23955 Abu Hanifa said: If half of the total or more is found to be defective coins after the parties have separated, he has no right whatsoever to replace them. However, if he returns the defective coins, the ṣarf [exchange of monetary commodities] becomes nullified to the extent of their amount in the transaction while remaining valid for the remainder.

وَظَاهِرُ قَوْلِهِ أَنَّ لَهُ أَنْ لَا يَرُدَّ، فَإِنْ وَجَدَهَا أَقَلَّ مِنْ النِّصْفِ فَلَهُ أَنْ يُمْسِكَ وَلَهُ أَنْ يَسْتَبْدِلَ مَا وَجَدَ زَائِفًا فَقَطْ، وَلَا يُفَارِقُهُ حَتَّى يَقْبِضَ الْبَدَلَ، فَإِنْ فَارَقَهُ قَبْلَ الْقَبْضِ انْتَقَضَ الصَّرْفُ فِيمَا لَمْ يَقْبِضْ وَلَوْ أَنَّهُ دِرْهَمٌ أَوْ أَكْثَرُ وَصَحَّ فِيمَا قَبَضَ وَلَوْ أَنَّهُ دِرْهَمٌ أَوْ أَقَلُّ.

L23956 The apparent meaning of his statement is that he has the right not to return it. If he found it to be less than half, he may retain it, and he may replace only what he found to be counterfeit. He must not part with the counterparty until he takes possession of the substituted item. If he parted with him before taking possession, the exchange becomes nullified for what he has not acquired—even if it is a dirham or more—but remains valid for what he has acquired, even if it is a dirham or less.

فَإِنْ كَانَ الَّذِي وَجَدَ سُتُّوقًا انْتَقَضَ الصَّرْفُ فَقَطْ لَوْ لَمْ يَكُنْ إلَّا دِرْهَمًا وَاحِدًا فَأَكْثَرَ وَصَحَّ فِي بَاقِي الصَّفْقَةِ وَيَكُونُ هُوَ وَالْبَائِعُ شَرِيكَيْنِ فِي الدِّينَارِ الَّذِي انْتَقَضَ الصَّرْفُ فِي بَعْضِهِ.

L23957 If the exchange conducted at the suq is invalidated only—even if involving a single dirham or more—while the remainder of the transaction remains valid, then the buyer and seller become partners in the dinar in which copper was partially invalidated.

قَالَ أَبُو مُحَمَّدٍ: لَيْتَ شِعْرِي، أَيُّ بَعْضٍ مِنْهُ انْتَقَضَ فِيهِ الصَّرْفُ، وَأَيُّ بَعْضٍ، مِنْهُ صَحَّ فِيهِ الصَّرْفُ هَذَا الْمَجْهُولُ وَالْغَرَرُ بِعَيْنِهِ، وَرُوِيَ عَنْهُ: أَنَّهُ حَدَّ مَا يَسْتَبْدِلُهُ مِمَّا لَا يَجُوزُ فِيهِ الِاسْتِبْدَالُ بِالثُّلُثِ وَهَذَا قَوْلٌ لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ، وَتَقْسِيمٌ فِي غَايَةِ الْفَسَادِ بِلَا بُرْهَانٍ، وَحُكْمُ الْحَرَامِ وَالْحَلَالِ فِي الْكَثِيرِ وَالْقَلِيلِ مِنْهُمَا سَوَاءٌ، إلَّا أَنْ يَأْتِيَ قُرْآنٌ أَوْ

L23958 Abū Muḥammad said: Would that I knew: Which portion of it invalidates the currency exchange (ṣarf), and which portion validates it? This unknown matter and gharar (prohibited uncertainty) are precisely one and the same. It is reported from him that he limited substitution in matters where substitution is impermissible to a third. This is an opinion we have not known from anyone before him—a division at the height of corruption without proof. The rulings of prohibition and permissibility apply equally to their abundance and scarcity unless a Quranic verse or Sunnah establishes a distinction or specification, in which case hearing and obedience are required.

سُنَّةٌ بِفَرْقٍ وَتَحْدِيدٍ فَالسَّمْعُ وَالطَّاعَةُ وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: يَسْتَبْدِلُ مَا وَجَدَ زَائِدًا أَوْ سُتُّوقًا، قَلَّ أَوْ كَثُرَ.

Abū Yūsuf and Muḥammad ibn al-Ḥasan said: One may substitute whatever excess or defective items are found, whether little or much.

L23959 قَالَ عَلِيٌّ: هَذَا بَاطِلٌ؛ لِأَنَّهُ يَصِيرُ ذَهَبًا بِفِضَّةٍ، أَوْ بِذَهَبٍ، أَوْ فِضَّةٍ بِفِضَّةٍ غَيْرَ يَدٍ بِيَدٍ، وَهَذَا الرِّبَا الْمَحْضُ وَقَالَ زُفَرُ: يُنْتَقَضُ الصَّرْفُ وَلَا بُدَّ فِيمَا وَجَدَ قَلَّ أَوْ كَثُرَ وَيَصِحُّ فِي السَّالِمِ قَلَّ أَوْ كَثُرَ.

Ali said: This is invalid because it involves exchanging gold for silver, gold for gold, or silver for silver without a hand-to-hand transaction - and this constitutes pure usury. Zufar said: The currency exchange is rendered void, and this applies unavoidably to any quantity present, whether small or large, while it remains valid in the salam transaction regardless of quantity, whether small or large.

L23960–23962 قَالَ عَلِيٌّ: هَذَا تَبْعِيضُ صَفْقَةٍ لَمْ يَقَعْ الْعَقْدُ قَطُّ عَلَى بَعْضِهَا دُونَ بَعْضٍ، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ وَقَالَ مَالِكٌ: إنْ وَجَدَ سُتُّوقًا أَوْ زَائِفًا فَإِنْ كَانَ دِرْهَمًا أَوْ أَكْثَرَ مَا لَمْ يَتَجَاوَزْ صَرْفَ دِينَارٍ انْتَقَضَ الصَّرْفُ فِي دِينَارٍ وَاحِدٍ، وَصَحَّ سَائِرُ الصَّفْقَةِ، فَإِنْ وَجَدَ مِنْ ذَلِكَ مَا يَكُونُ صَرْفُهُ أَكْثَرَ مِنْ دِينَارٍ أَوْ دِينَارَيْنِ أَوْ دَنَانِيرَ: انْتَقَضَ الصَّرْفُ فِيمَا قَابَلَ مَا وَجَدَهُ فَإِنْ شَرَعَ الِانْتِقَاضُ فِي دِينَارٍ انْتَقَضَ ذَلِكَ الدِّينَارُ.

Ali said: This pertains to the partialization of a transaction where the contract was never concluded on any part without the others; therefore, it constitutes unjust consumption of wealth. Wealth acquired unlawfully, and Mālik said: If one found debased or counterfeit currency, and if it amounted to a dirham or more without exceeding the exchange value of one dinar, the exchange is invalidated for one dinar while the remainder of the transaction remains valid. If he found among them coins whose exchange value exceeds a dinar, two dinars, or more, the exchange is invalidated in the portion corresponding to what he discovered. If the invalidation begins with a dinar, that specific dinar is invalidated.

L23963 قَالَ عَلِيٌّ: لَيْتَ شِعْرِي أَيُّ دِينَارٍ هُوَ الَّذِي يُنْتَقَضُ، أَيُّهَا هُوَ الَّذِي لَا يُنْتَقَضُ؟ هَذَا بَيْعُ الْغَرَرِ، وَالْمَجْهُولِ وَأَكْلُ الْمَالِ بِالْبَاطِلِ.

Ali said: Would that I knew which dinar is invalidated and which is not? This is the sale of gharar (excessive uncertainty), the sale of the unknown, and the unlawful consumption of wealth.

L23964 ثُمَّ عَجَبٌ آخَرُ وَهُوَ إجَازَتُهُ بَعْضَ الصَّفْقَةِ دُونَ بَعْضِهَا وَإِبْطَالُهُ صَرْفَ جَمِيعِ الدِّينَارِ الَّذِي شَرَعَ الِانْتِقَاضُ فِي بَعْضِهِ وَهَذَا تَنَاقُضٌ ظَاهِرٌ، وَكِلَاهُمَا تَبْعِيضٌ لِمَا لَمْ يَتَرَاضَيَا بِتَبْعِيضِهِ فِي الْعَقْدِ، وَقَوْلٌ لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ.

Then another point of astonishment is his approval of part of the transaction while excluding another part, and his nullification of the currency exchange (ṣarf) of the entire dinar for which he commenced the annulment concerning a portion of it. This constitutes an evident contradiction, as both scenarios involve dividing something the parties did not mutually agree to divide in the contract - a statement not known to have been attributed to anyone before him.

L23965 Al-Shāfiʿī holds two opinions: one is that the entire monetary exchange (ṣarf) is nullified, and the second is that it is replaced, as maintained by

Al-Layth, Al-Awzāʿī, and Al-Ḥasan ibn Ḥayy. This is among the matters in which they opposed the opinion of two Companions, with no dissent from the other Companions—may Allah be pleased with them—recorded against their position.

وَلِلشَّافِعِيِّ قَوْلَانِ أَحَدُهُمَا: أَنَّ الصَّرْفَ كُلَّهُ يُنْتَقَضُ، وَالثَّانِي: أَنَّهُ يُسْتَبْدَلُ، كَقَوْلِ اللَّيْثِ وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ وَهَذَا مِمَّا خَالَفُوا فِيهِ قَوْلَ صَاحِبَيْنِ، لَا يُعْرَفُ لَهُمَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

[مَسْأَلَة بَيْع تمر بتمر أجود مِنْهُ أَوْ أردأ مِنْهُ]

L23966 **The ruling on exchanging dates for dates of superior or inferior quality compared to them.**

L23967 1498 – Issue:

١٤٩٨ - مَسْأَلَةٌ:

L23968 Among the purely lawful transactions is the sale of two _mudds_ of dates—one being of the highest quality and the other of the lowest quality—in exchange for two _mudds_ of dates that are either better than both, worse than both, below the good of the two and above the lowest quality of the two, equal to one of them, or some being good and others lowest quality. All these cases are treated the same, and all are permissible.

وَمِنْ الْحَلَالِ الْمَحْضِ بَيْعُ مُدَّيْنِ مِنْ تَمْرٍ أَحَدُهُمَا جَيِّدٌ غَايَةً، وَالْآخَرُ رَدِيءٌ غَايَةً: بِمُدَّيْنِ مِنْ تَمْرٍ أَجْوَدَ مِنْهُمَا، أَوْ أَدْنَى مِنْهُمَا، أَوْ دُونَ الْجَيِّدِ مِنْهُمَا، وَفَوْقَ الرَّدِيءِ مِنْهُمَا، أَوْ مِثْلَ أَحَدِهِمَا، أَوْ بَعْضُهُمَا جَيِّدٌ وَالْبَعْضُ رَدِيءٌ كُلُّ ذَلِكَ سَوَاءٌ وَكُلُّ ذَلِكَ جَائِزٌ.

L23969 The same ruling applies to dinars exchanged for dinars, dirhams for dirhams, wheat for wheat, barley for barley, and salt for salt, with no distinction. This is based on the Prophet's permission (peace and blessings be upon him) for exchanging each category we have mentioned with its own kind, equal for equal, measured by capacity for wheat, barley, dates, and salt, and weighed for gold and silver.

وَكَذَلِكَ الْقَوْلُ فِي دَنَانِيرَ بِدَنَانِيرَ، وَفِي دَرَاهِمَ بِدَرَاهِمَ، وَقَمْحٍ بِقَمْحٍ، وَفِي شَعِيرٍ بِشَعِيرٍ، وَفِي مِلْحٍ بِمِلْحٍ وَلَا فَرْقَ، لِإِبَاحَةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلَّ صِنْفٍ مِمَّا ذَكَرْنَا بِصِنْفِهِ، مِثْلًا بِمِثْلٍ، فِي الْمُكَايَلَةِ، فِي الْقَمْحِ، وَالشَّعِيرِ، وَالتَّمْرِ وَالْمِلْحِ وَالْمُوَازَنَةِ فِي الذَّهَبِ وَالْفِضَّةِ.

L23970–23972 It has been narrated to us through the chain of Muslim: I am Al-Qa'nabi, I am Sulayman ibn Bilal, from Abd al-Majid ibn Suhayl ibn Abd al-Rahman ibn Awf, that he heard Sa'id ibn al-Musayyab relate: Abu Huraira and Abu Sa'id al-Khudri narrated to him that the Messenger of Allah (peace and blessings of Allah be upon him) dispatched a man from Banu Adi al-Ansari and appointed him as governor of Khaybar. He arrived with Janiyb dates, so the Messenger of Allah (peace and blessings of Allah be upon him) asked him: "Are all the dates of Khaybar like these?" He replied: "No, by Allah, O..." "O Messenger of Allah, indeed we buy one ṣāʿ [of grain] for two ṣāʿs of common grain." The Messenger of Allah—peace and blessings be upon him—said to me: "Do not

وَقَدْ رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا الْقَعْنَبِيُّ أَنَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ عَبْدِ الْمَجِيدِ بْنِ سُهَيْلِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: أَنَّهُ سَمِعَ سَعِيدَ بْنَ الْمُسَيَّبِ يُحَدِّثُ: أَنَّ أَبَا هُرَيْرَةَ، وَأَبَا سَعِيدٍ الْخُدْرِيَّ حَدَّثَاهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ أَخَا بَنِي عَدِيٍّ الْأَنْصَارِيِّ فَاسْتَعْمَلَهُ عَلَى خَيْبَرَ فَقَدِمَ بِتَمْرٍ جَنِيبٍ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَكُلُّ تَمْرِ خَيْبَرَ هَكَذَا؟ قَالَ: لَا، وَاَللَّهِ يَا رَسُولَ اللَّهِ إنَّا لَنَشْتَرِي الصَّاعَ بِالصَّاعَيْنِ

do that. Instead, exchange like for like, or sell this [grain] and use its price to buy the other. The same applies to weighing."[28]

مِنْ الْجَمْعِ، فَقَالَ لِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَا تَفْعَلُوا، وَلَكِنْ مِثْلًا بِمِثْلٍ، أَوْ بِيعُوا هَذَا وَاشْتَرُوا بِثَمَنِهِ مِنْ هَذَا وَكَذَلِكَ الْمِيزَانُ»

L23973 He (peace be upon him) explicitly permitted the sale of the selected portion of dates (al-Janīb) - being entirely choice dates - for the mixed aggregate (al-Jamʿ) of dates, which combines good, poor, and average qualities.

فَأَبَاحَ - عَلَيْهِ السَّلَامُ - نَصًّا: بَيْعَ الْجَنِيبِ مِنْ التَّمْرِ وَهُوَ الْمُتَخَيَّرُ كُلُّهُ بِالْجَمْعِ مِنْ التَّمْرِ وَهُوَ الَّذِي جَمَعَ جَيِّدًا وَرَدِيئًا وَوَسَطًا.

L23974 Some people prohibited others from exchanging two mudds of dates (one of good quality and the other inferior) for two mudds of medium-quality dates that are lower in quality than the good ones and superior to the inferior ones.

مَنَعَ بَعْضُ النَّاسِ مِنْ مُدَّيْنِ مِنْ تَمْرٍ أَحَدُهُمَا جَيِّدٌ وَالْآخَرُ رَدِيءٌ بِمُدَّيْنِ مِنْ تَمْرٍ مُتَوَسِّطَيْنِ أَدْنَى مِنْ الْجَيِّدِ وَأَجْوَدَ مِنْ الرَّدِيءِ.

L23975 They argued as evidence that the Messenger of Allah (peace be upon him) prescribed equivalence in kind and quantity when exchanging dates for dates.

وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْجَبَ الْمُمَاثَلَةَ فِي التَّمْرِ بِالتَّمْرِ.

L23976 Abu Muhammad said: There is no proof for them in this matter, because they agree with us regarding the permissibility of exchanging a saʿ of inferior-quality dates with a saʿ of good-quality dates, and it is not equivalent. Thus, it is established that the Prophet—may Allah's peace and blessings be upon him—intended equivalence in measure or weight only, and this is something unanimously agreed upon.

قَالَ أَبُو مُحَمَّدٍ لَا حُجَّةَ لَهُمْ فِي هَذَا؛ لِأَنَّهُمْ مُوَافِقُونَ لَنَا فِي جَوَازِ صَاعٍ بِصَاعِ تَمْرٍ رَدِيءٍ بِصَاعِ تَمْرٍ جَيِّدٍ وَلَيْسَ مِثْلَهُ فَصَحَّ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا أَرَادَ الْمُمَاثَلَةَ فِي الْكَيْلِ أَوْ فِي الْوَزْنِ فَقَطْ وَهَذَا مَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ.

L23977 They argued using authentic hadiths concerning janiyb (premium dates) and jamʿ (dates on the cluster), such as: "Sell the jamʿ (dates on the cluster) and use its price to purchase janiyb (premium dates)." This provides no valid evidence for their position, for the authentic report we mentioned adds a legal ruling beyond those reports, and it is impermissible to disregard this supplement of justice.

وَاحْتَجُّوا بِأَحَادِيثَ صِحَاحٍ فِي الْجَنِيبِ بِالْجَمْعِ فِيهَا: «بِيعُوا الْجَمْعَ وَاشْتَرُوا بِثَمَنِهِ مِنْ الْجَنِيبِ» وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ الْخَبَرَ الَّذِي ذَكَرْنَا زَائِدٌ عَلَى تِلْكَ الْأَخْبَارِ حُكْمًا، وَلَا يَحِلُّ تَرْكُ زِيَادَةِ الْعَدْلِ.

L23978 The crux of their argument is that they stated: The seller's acceptance here pertains to the two items—one being good and the other inferior—by giving more than a mudd from the standard measure for the good one and less than a mudd from the standard measure for the inferior one, thereby resulting in an unequal exchange.

وَعُمْدَةُ حُجَّتِهِمْ أَنَّهُمْ قَالُوا: إنَّمَا رَضِيَ الْبَائِعُ هَهُنَا لِلْمُدَّيْنِ: اللَّذَيْنِ أَحَدُهُمَا جَيِّدٌ وَالْآخَرُ رَدِيءٌ، بِأَنْ يُعْطِيَ الْجَيِّدَ أَكْثَرَ مِنْ مُدٍّ مِنْ الْمُتَوَسِّطِ، وَأَنْ يُعْطِيَ الْأَرْدَأَ بِأَقَلَّ مِنْ مُدٍّ مِنْ الْمُتَوَسِّطِ: فَحَصَلَ التَّفَاضُلُ.

[28] **Hadith references (L23970):** Sahih Muslim 1593a.

قَالَ أَبُو مُحَمَّد: وَهَذَا فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ لَيْسَ كَمَا قَالُوا، وَحَتَّى لَوْ أَنَّهُ أَرَادَ ذَلِكَ لَكَانَ عَمَلُهُ مُخَالِفًا لِإِرَادَتِهِ، فَحَصَلُوا عَلَى التَّكَهُّنِ، وَالظَّنِّ الْكَاذِبِ وَإِنَّمَا يُرَاعَى فِي الدِّينِ الْكَلَامُ وَالْعَمَلُ، فَإِذَا جَاءَ كَمَا أَمَرَ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ السَّلَامُ - فَمَا نُبَالِي بِمَا فِي قُلُوبِهِمَا، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَمْ أُبْعَثْ لِأَشُقَّ عَنْ قُلُوبِ النَّاسِ»

L23979 Abu Muhammad said: This is utterly invalid, for it is not as they claimed. Even if he intended that, his actions would contradict his intention, so they resorted to conjecture and false supposition. In religion, only speech and action are considered. If it conforms to what Allah the Exalted and His Messenger—peace be upon him—have commanded, we do not judge what lies in the hearts of both. The Messenger of Allah—peace be upon him—said: "I was not sent to scrutinize the hearts of people."

فَإِنْ قَالُوا: فَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «الْأَعْمَالُ بِالنِّيَّاتِ» .

L23980 If they say: Indeed, he (peace be upon him) said, "Actions are judged by intentions."

قُلْنَا: نَعَمْ، وَلَكِنَّ مَنْ لَكُمْ بِأَنَّ هَذَيْنِ نَوَيَا مَا ذَكَرْتُمْ، وَهَذَا مِنْكُمْ ظَنُّ سُوءٍ بِمُسْلِمٍ لَمْ يُخْبِرْكُمْ بِذَلِكَ عَنْ نَفْسِهِ، وَلَيْسَ فِي الظُّلْمِ أَكْثَرُ مِنْ أَنْ تُفْسِدُوا صَفْقَةَ مُسْلِمٍ بِتَوَهُّمِكُمْ: أَنَّهُ أَرَادَ الْبَاطِلَ، وَهُوَ لَمْ يُخْبِرْكُمْ ذَلِكَ فَقَطْ عَنْ نَفْسِهِ، وَلَا ظَهَرَ مِنْ فِعْلِهِ إِلَّا الْحَلَالُ الْمُطْلَقُ.

L23981–23983 We said: Yes, but how can you be certain these two intended what you mentioned? This is an evil assumption you harbor toward a Muslim. He did not inform you of that about himself, and there is no greater wrongdoing than you invalidating a Muslim's transaction through your presumption: that he intended invalid intent—while he did not inform you of that specific point about himself, and nothing appeared from his action except absolute permissibility.

وَيَلْزَمُكُمْ عَلَى هَذَا إِذَا رَأَيْتُمْ مَنْ يَشْتَرِي تَمْرًا أَوْ تِينًا أَوْ عِنَبًا أَنْ تَفْسَخُوا صَفْقَتَهُ وَتَقُولُوا لَهُ: إِنَّمَا تَنْوِي فِيهِ عَمَلَ الْخَمْرِ مِنْهُ، وَمَنْ اشْتَرَى ثَوْبًا أَنْ تَفْسَخُوهُ وَتَقُولُوا: إِنَّمَا تُرِيدُ تَلْبَسُهُ فِي الْمَعَاصِي.

L23984 Based on this, it becomes incumbent upon you that if you see someone purchasing dates, figs, or grapes, you must rescind his transaction and say to him: "You only intend through this purchase to make wine from it." And if someone buys a garment, you must rescind his transaction and say: "You only intend to wear it in sinful acts."

وَمَنْ اشْتَرَى سَيْفًا أَنْ تَفْسَخُوا وَتَقُولُوا: إِنَّمَا تُرِيدُ بِهِ قَتْلَ الْمُسْلِمِينَ، وَهَذَا هَوَسٌ لَا نَظِيرَ لَهُ، وَلَا فَرْقَ بَيْنَ شَيْءٍ مِنْ هَذَا وَبَيْنَ مَا أَفْسَدْتُمْ بِهِ الْمَسْأَلَةَ الْمُتَقَدِّمَةَ.

L23985 And whoever buys a sword so that you may invalidate [the transaction] and say, "You only intend to kill Muslims with it," this is an obsession without equal. There is no difference between any aspect of this and what you corrupted through the previous matter.

رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا حَمَّادُ بْنُ زَيْدٍ أَنَا أَيُّوبُ السِّخْتِيَانِيُّ قَالَ: كَانَ مُحَمَّدُ بْنُ سِيرِينَ يَأْتِي بِالدَّرَاهِمِ السُّودِ الْجِيَادِ، وَبِالنُّفَايَةِ: يَأْخُذُ بِوَزْنِهَا غَلَّةً.

L23986 It was narrated to us via Al-Ḥajjāj ibn Al-Minhāl → Ḥammād ibn Zayd → Ayyūb al-Sikhtiyānī, who said: "Muḥammad ibn Sīrīn would bring excellent black dirhams along with scrap coins, taking a gain based on their weight."

قَالَ عَلِيٌّ: السُّودُ أَجْوَدُ مِنْ الْغَلَّةِ، وَالنُّفَايَةُ أَدْنَى مِنْ الْغَلَّةِ وَهَذَا نَفْسُ مَسْأَلَتِنَا.

L23987 Ali said: Black dates are of greater value than the yield, while waste is of lesser value than the yield. This is the same as our issue.

L23988 **A legal issue involving a person who exchanged his final**

dinars for dirhams and was unable to fulfill his intention.

1499 - Issue:

Whoever exchanges another's dinars for dirhams and cannot fulfill his intention, then borrows from his lenders or others what he needs to complete his exchange—this is permissible, provided it is not due to a condition stipulated in the transaction, for neither the Quran nor the Sunnah prohibits this.

An issue where one sold some of the last dinars for dirhams, then bought dinars from him with those dirhams.

1500. Issue:

And whoever sells dinars acquired from another in exchange for dirhams, then once the sale is concluded between them by physical separation or exercising the option [to annul], buys from him or from another with those dirhams—whether the same dinars, others, fewer or more—all of that is permissible as long as it is not based on a condition. This is because such transactions are valid contracts, and there exists an explicit textual ruling affirming their validity. As for the condition, it is forbidden, for it is a condition not found in the Book of Allah Almighty, and thus invalid.

Some people prohibited this and said, "He sold dinars for dinars with a disparity." We responded: This is false, and he never did anything of the sort. Rather, these are two separate transactions. But tell us: Is it permissible for him to exchange the dinars after a month or a year for those dirhams and dinars without any stipulation? They answered: Yes. We said to them: Then you have permitted both disparity and deferred payment while prohibiting spot exchange. This is an unparalleled contradiction. It is authentically reported from the Prophet—peace and blessings be upon him—as we mentioned earlier, that he commanded the sale of collected dates for goods, then to use the proceeds to purchase superior dates. Yet this is precisely the very practice they prohibited.

[مَسْأَلَة صارف آخر دَنَانِير بِدَرَاهِم فعجز عَنْ تَمَام مُرَاده]

١٤٩٩ - مَسْأَلَةٌ:

وَمَنْ صَارَفَ آخَرَ دَنَانِيرَ بِدَرَاهِم فَعَجَزَ عَنْ تَمَامِ مُرَادِهِ فَاسْتَقْرَضَ مِنْ مَصَارِفِه، أَوْ مِنْ غَيْرِهِ مَا أَتَمَّ بِهِ صَرْفَهُ فَحَسَنٌ، مَا لَمْ يَكُنْ عَنْ شَرْطٍ فِي الصَّفْقَةِ؛ لِأَنَّهُ لَمْ يَمْنَعْ مِنْ هَذَا قُرْآنٌ، وَلَا سُنَّةٌ.

[مَسْأَلَة بَاعَ مِنْ آخر دَنَانِير بِدَرَاهِم ثُمَّ اشْتَرَى مِنْهُ بتلك الدَّرَاهِم دَنَانِير]

١٥٠٠ - مَسْأَلَةٌ:

وَمَنْ بَاعَ مِنْ آخَرَ دَنَانِيرَ بِدَرَاهِمَ فَلَمَّا تَمَّ الْبَيْعُ بَيْنَهُمَا بِالتَّفَرُّقِ أَوْ التَّخَيُّرِ اشْتَرَى مِنْهُ، أَوْ مِنْ غَيْرِهِ بِتِلْكَ الدَّرَاهِمِ دَنَانِيرَ تِلْكَ، أَوْ غَيْرَهَا أَقَلَّ أَوْ أَكْثَرَ فَكُلُّ ذَلِكَ حَلَالٌ مَا لَمْ يَكُنْ عَنْ شَرْطٍ، لِأَنَّ كُلَّ ذَلِكَ عَقْدٌ صَحِيحٌ، وَعَمَلٌ مَنْصُوصٌ عَلَى جَوَازِهِ، وَأَمَّا الشَّرْطُ فَحَرَامٌ، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ.

وَمَنَعَ مِنْ هَذَا قَوْمٌ وَقَالُوا: إنَّهُ بَاعَ مِنْهُ دَنَانِيرَ بِدَنَانِيرَ مُتَفَاضِلَةً؟ فَقُلْنَا: هَذَا كَذِبٌ، وَمَا فَعَلَ قَطُّ شَيْئًا مِنْ ذَلِكَ، بَلْ هُمَا صَفْقَتَانِ، وَلَكِنْ أَخْبِرُونَا: هَلْ لَهُ أَنْ يُصَارِفَهُ بَعْدَ شَهْرٍ أَوْ سَنَةٍ بِتِلْكَ الدَّرَاهِمِ وَتِلْكَ الدَّنَانِيرِ عَنْ غَيْرِ شَرْطٍ؟ فَمِنْ قَوْلِهِمْ: نَعَمْ؟ فَقُلْنَا لَهُمْ: فَأَجَزْتُمْ التَّفَاضُلَ وَالنَّسِيئَةَ مَعًا وَمَنَعْتُمْ مِنْ النَّقْدِ، هَذَا عَجَبٌ لَا نَظِيرَ لَهُ وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا ذَكَرْنَا آنِفًا الْأَمْرُ بِبَيْعِ التَّمْرِ الْجَمْعِ بِسِلْعَةٍ ثُمَّ يُبْتَاعُ بِالسِّلْعَةِ جَنِيبًا مِنْ التَّمْرِ وَهَذَا هُوَ الَّذِي مَنَعُوا نَفْسَهُ.

L23995–23996 Through the chain of al-Ḥajjāj ibn al-Minhāl: I, Yazīd ibn Ibrāhīm al-Tustarī, narrated from Muḥammad ibn Sīrīn, who said: ʿUmar ibn al-Khaṭṭāb delivered a sermon and said: “Listen! A dirham for a dirham and a dinar for a dinar—kind for kind, equal for equal, like for like.” ʿAbd al-Raḥmān ibn ʿAwf said to him: “Are you debasing our coins so that we give the inferior [currency] and take the superior?” ʿUmar replied: “No. Rather, purchase merchandise with them. When you take possession of it as your own, sell it and discount whatever you wish, then take any cash you desire.”

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا يَزِيدُ بْنُ إِبْرَاهِيمَ هُوَ التُّسْتَرِيُّ أَنَا مُحَمَّدُ بْنُ سِيرِينَ قَالَ: خَطَبَ عُمَرُ بْنُ الْخَطَّابِ فَقَالَ: أَلَا إِنَّ الدِّرْهَمَ بِالدِّرْهَمِ وَالدِّينَارَ بِالدِّينَارِ، عَيْنًا بِعَيْنٍ، سَوَاءً بِسَوَاءٍ، مِثْلًا بِمِثْلٍ، فَقَالَ لَهُ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ: تُزَيِّفُ عَلَيْنَا أَوْرَاقَنَا فَنُعْطِي الْخَبِيثَ وَنَأْخُذُ الطَّيِّبَ؟ قَالَ عُمَرُ: لَا، وَلَكِنْ ابْتَعْ بِهَا عَرَضًا، فَإِذَا قَبَضْتَهُ وَكَانَ لَكَ فَبِعْهُ وَاهْضِمْ مَا شِئْتَ، وَخُذْ أَيَّ نَقْدٍ شِئْتَ.

L23997 So here is Umar, in the presence of the Companions—may Allah be pleased with them—with none among them opposing him, commanding that dirhams or dinars be sold in exchange for a commodity, then selling the commodity for whatever he wishes after purchasing it, without stipulating “from someone other than the one from whom the commodity was purchased.”

فَهَذَا عُمَرُ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا مُخَالِفَ لَهُ مِنْهُمْ يَأْمُرُ بِبَيْعِ الدَّرَاهِمِ أَوْ الدَّنَانِيرِ بِسِلْعَةٍ، ثُمَّ يَبِيعُهَا بِمَا شَاءَ مِنْ ذَلِكَ إثْرَ ابْتِيَاعِهِ لِلْعَرَضِ وَلَمْ يَقُلْ مِنْ غَيْرِ مَنْ تُبْتَاعُ مِنْهُ الْعَرَضُ.

L23998 It has been narrated to us through the chain of Saʿīd ibn Manṣūr: I, Hushaym, narrate from Sulaymān ibn Bashīr, who said: Al-Aswad ibn Yazīd gave me dirhams and told me, “Buy dinars for me with these, then buy dirhams for me with the dinars at such-and-such rate.” I sold them to a man and took possession of the dinars. I inquired in the market until I ascertained the current rate, then returned to my buyer and sold the dinars to him for the dirhams I intended. When I mentioned this to Al-Aswad ibn Yazīd, he saw no harm in it.

رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ عَنْ سُلَيْمَانَ بْنِ بَشِيرٍ قَالَ: أَعْطَانِي الْأَسْوَدُ بْنُ يَزِيدَ دَرَاهِمَ وَقَالَ لِي: اشْتَرِ لِي بِهَا دَنَانِيرَ، ثُمَّ اشْتَرِ لِي بِالدَّنَانِيرِ دَرَاهِمَ كَذَا وَكَذَا، قَالَ: فَبِعْتُهَا مِنْ رَجُلٍ فَقَبَضْت الدَّنَانِيرَ، وَطَلَبْت فِي السُّوقِ حَتَّى عَرَفْت السِّعْرَ، فَرَجَعْت إلَى بَيْعَتِي فَبِعْتُهَا مِنْهُ بِالدَّرَاهِمِ الَّتِي أَرَدْت؟ فَذَكَرْت ذَلِكَ لِلْأَسْوَدِ بْنِ يَزِيدَ، فَلَمْ يَرَ بِهِ بَأْسًا.

L23999 Abu Muhammad said: Ibn Sirin disliked it, and it has been narrated to us from Umar ibn al-Khattab that he said: “Riba applies only to one who intends to increase and defer payment.” It was narrated to us via Abd al-Razzaq from Sufyan al-Thawri from Yunus ibn Ubayd from Ibn Sirin from Umar.

قَالَ أَبُو مُحَمَّدٍ: وَكَرِهَهُ ابْنُ سِيرِينَ وَرُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ: إنَّمَا الرِّبَا عَلَى مَنْ أَرَادَ أَنْ يُرْبِيَ وَيُنْسِئَ وَرُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ ابْنِ سِيرِينَ عَنْ عُمَرَ.

L24000 Ali said: Among the marvels of their arguments here is their claim: "He only intended riba as dirhams exchanged for more than them," so he contrived exchanging them for dinars, then exchanging the dinars back for dirhams? I said: May Allah bless him - what a scrupulous man, fearful of standing before his Lord! {For those who fear standing before their Lord are two gardens} (55:46). He intended riba but abandoned it and turned to lawful means. This man is most virtuous, and his action is excellent - may we not be deprived of him! Yet you have transformed recognized good into evil? Is this not like one who intended to commit adultery with a woman but refrained, instead marrying her if she were free or purchasing her if she were a slave to have relations? As for this, it is good and obedience to Allah Almighty.[1]

L24001 ## The ruling on mutually agreed deferral in the sale of gold for gold and the remaining three categories [silver, dates, and wheat].

L24002 Question 1501: A mutual contractual promise in exchanging gold for gold or silver, silver for silver, and all other transactions involving the four ribawi categories (gold, silver, wheat, barley, etc.) - exchanging portions of one category for another - is permissible, whether the parties subsequently formalize the sale or not, because a contractual promise does not constitute a sale.

L24003–24004 Similarly, negotiated sale (musāwama) is also permissible whether the two parties have transacted or not, because no prohibition has been issued regarding any of that. Every single thing forbidden to us has been explicitly detailed by name. Allah, the Most High, said: "And He has detailed for you what He has forbidden to you" [Al-An'am: 119].[2]

L24005 Everything that has not been explicitly prohibited for us is permissible by the explicit text of the Quran, for in religion there is nothing except the obligatory, the forbidden, or the permissible. As for the obligatory, it is commanded to be performed in the Quran and the Sunnah; as for the forbidden, it is specified by name in the Quran and the Sunnah; and what lies

قَالَ عَلِيٌّ: وَمِنْ عَجَائِبِ حُجَجِهِمْ هُنَا أَنَّهُمْ قَالُوا: إِنَّمَا أَرَادَ بِالرِّبَا دَرَاهِمَ بِأَكْثَرَ مِنْهَا، فَتَخَيَّلَ بِأَنْ صَرْفَهَا بِدَنَانِيرَ، ثُمَّ صَرْفَ الدَّنَانِيرِ بِدَرَاهِمَ؟ فَقُلْت بَارَكَ اللَّهُ فِيهِ مِنْ وَرِعٍ، خَائِفٍ لِمَقَامِ رَبِّهِ {وَلِمَنْ خَافَ مَقَامَ رَبِّهِ جَنَّتَانِ} [الرحمن: ٤٦] أَرَادَ الرِّبَا فَتَرَكَهُ وَهَرَبَ عَنْهُ إلَى الْحَلَالِ، هَذَا فَاضِلٌ جِدًّا وَعَمَلٌ جَيِّدٌ لَا عَدِمْنَاهُ، فَنَرَاكُمْ جَعَلْتُمْ الْمَعْرُوفَ مُنْكَرًا؟ وَهَلْ هَذَا إلَّا كَمَنْ أَرَادَ الزِّنَى بِامْرَأَةٍ فَلَمْ يَفْعَلْ، لَكِنْ تَزَوَّجَهَا، أَوْ اشْتَرَاهَا إنْ كَانَتْ أَمَةً فَوَطِئَهَا، أَمَّا هَذَا فَحَسَنٌ مُطِيعٌ لِلَّهِ تَعَالَى

[مَسْأَلَة التواعد فِي بَيْع الذَّهَب بِالذَّهَبِ وَفِي سَائِر الْأَصْنَاف الأربعة]

١٥٠١ - مَسْأَلَةٌ: وَالتَّوَاعُدُ فِي بَيْعِ الذَّهَبِ بِالذَّهَبِ أَوْ بِالْفِضَّةِ، وَفِي بَيْعِ الْفِضَّةِ بِالْفِضَّةِ، وَفِي سَائِرِ الْأَصْنَافِ الْأَرْبَعَةِ بَعْضِهَا بِبَعْضٍ جَائِزٌ تَبَايَعَا بَعْدَ ذَلِكَ، أَوْ لَمْ يَتَبَايَعَا؛ لِأَنَّ التَّوَاعُدَ لَيْسَ بَيْعًا.

وَكَذَلِكَ الْمُسَاوَمَةُ أَيْضًا جَائِزَةٌ تَبَايَعَا أَوْ لَمْ يَتَبَايَعَا لِأَنَّهُ لَمْ يَأْتِ نَهْيٌ عَنْ شَيْءٍ مِنْ ذَلِكَ، وَكُلُّ مَا حُرِّمَ عَلَيْنَا فَقَدْ فُصِّلَ بِاسْمِهِ، قَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩]

فَكُلُّ مَا لَمْ يُفَصَّلْ لَنَا تَحْرِيمُهُ فَهُوَ حَلَالٌ بِنَصِّ الْقُرْآنِ، إذْ لَيْسَ فِي الدِّينِ إلَّا فَرْضٌ أَوْ حَرَامٌ أَوْ حَلَالٌ، فَالْفَرْضُ مَأْمُورٌ بِهِ فِي الْقُرْآنِ وَالسُّنَّةِ، وَالْحَرَامُ مُفَصَّلٌ بِاسْمِهِ فِي الْقُرْآنِ وَالسُّنَّةِ، وَمَا عَدَا هَذَيْنِ فَلَيْسَ فَرْضًا وَلَا حَرَامًا فَهُوَ بِالضَّرُورَةِ: حَلَالٌ إذْ لَيْسَ هُنَالِكَ قِسْمٌ رَابِعٌ وَبِاَللَّهِ تَعَالَى التَّوْفِيقِ.

[1] **Qur'an references (L24000):** Qur'an 55:46 (Ar-Rahman).
[2] **Qur'an references (L24004):** Qur'an 6:119 (Al-An'am).

beyond these two categories is neither obligatory nor forbidden—thus by necessity, it is permissible, since no fourth category exists. And success [in understanding this] is from Allah, the Exalted.

The issue of exchanging dirhams by their weights.

1502. Question:

It is not permissible to exchange dirhams for dirhams of greater weight, neither through approved practice nor otherwise—and this is the reprehensible, not the approved—because it contradicts what has been transmitted from the Prophet (peace be upon him), Abū Bakr, ʿUmar, and Ibn ʿUmar. We previously mentioned this regarding ʿUmar in the presence of the Companions (may Allāh be pleased with them), and it represents the consensus of the people. Mālik permitted this practice, but we know of no one before him who agreed with him among those who maintained that usury applies to minted coins.

The legal question regarding selling gold or silver utensils prior to their dismantling.

1503 - Issue:

It is not permissible to sell gold or silver vessels except after breaking them, due to the authenticity of the Prophet's prohibition—peace and blessings be upon him—against them, as we mentioned in *Kitāb al-Ṭahārah*. Since owning them is forbidden, selling them is likewise prohibited, for this constitutes consuming wealth unlawfully.

Divine facilitation lies with Allah, the Exalted.

The Question of Selling Half a Dirham as a Specific Object

Issue 1504:

[مَسْأَلَة بَيْع بدل دَرَاهِم بأوزن مِنْهَا]

١٥٠٢ - مَسْأَلَةٌ:
وَلَا يَحِلُّ بَدَلُ دَرَاهِمَ بِأَوْزَنَ مِنْهَا لَا بِالْمَعْرُوفِ وَلَا بِغَيْرِهِ وَهَذَا هُوَ الْمُنْكَرُ لَا الْمَعْرُوفُ، لِأَنَّهُ خِلَافُ مَا جَاءَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَنْ أَبِي بَكْرٍ، وَعُمَرَ وَابْنِ عُمَرَ، وَقَدْ ذَكَرْنَا هَذَا آنِفًا عَنْ عُمَرَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهُوَ قَوْلُ النَّاسِ، وَأَجَازَ ذَلِكَ مَالِكٌ وَمَا نَعْلَمُ لَهُ مُوَافِقًا قَبْلَهُ مِمَّنْ رَأَى الرِّبَا فِي النَّقْدِ.

[مَسْأَلَة بَيْع آنِيَة ذهب أَوْ فِضَّة قَبْل كسرها]

١٥٠٣ - مَسْأَلَةٌ:
وَلَا يَحِلُّ بَيْعُ آنِيَةِ ذَهَبٍ وَلَا فِضَّةٍ إلَّا بَعْدَ كَسْرِهَا لِصِحَّةِ نَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهَا وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الطَّهَارَةِ " فَلَا يَحِلُّ تَمَلُّكُهَا فَإِذْ لَا يَحِلُّ تَمَلُّكُهَا فَلَا يَحِلُّ بَيْعُهَا؛ لِأَنَّهَا أَكْلُ مَالٍ بِالْبَاطِلِ.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَيْع نصف درهم بِعَيْنِهِ]

١٥٠٤ - مَسْأَلَةٌ:

L24015 It is permissible for a person to purchase half of a specific dirham, half of specific dirhams, half of a dinar similarly, or half of specific dinars as jointly owned. This involves exchanging silver for gold or gold for silver, provided both parties agree to keep the items with one of them or a third party.

وَجَائِزٌ أَنْ يَبْتَاعَ الْمَرْءُ نِصْفَ دِرْهَمٍ بِعَيْنِهِ، أَوْ نِصْفَ دَرَاهِمَ بِأَعْيَانِهَا، أَوْ نِصْفَ دِينَارٍ كَذَلِكَ، أَوْ نِصْفَ دَنَانِيرَ بِأَعْيَانِهَا مُشَاعًا: يَبْتَاعُ الْفِضَّةَ بِالذَّهَبِ، وَالذَّهَبَ بِالْفِضَّةِ، وَيَتَّفِقَانِ عَلَى إِقْرَارِهَا عِنْدَ أَحَدِهِمَا أَوْ عِنْدَ أَجْنَبِيٍّ.

L24016 It is not permissible at all to exchange gold for gold fundamentally, nor silver for silver fundamentally, because it becomes a specific item for a non-specific item, and this is only lawful as a specific item for a specific item according to what we have presented. As for exchanging gold for silver in shared form, no textual prohibition has been established regarding it, {Nor is your Lord forgetful} [Maryam: 64].[3]

وَلَا يَجُوزُ فِي ذَلِكَ ذَهَبٍ بِذَهَبٍ أَصْلًا، وَلَا فِضَّةٍ بِفِضَّةٍ أَصْلًا، لِأَنَّهُ يَصِيرُ عَيْنًا بِغَيْرِ عَيْنٍ، وَهَذَا لَا يَحِلُّ إِلَّا عَيْنًا بِعَيْنٍ عَلَى مَا قَدَّمْنَا وَأَمَّا الذَّهَبُ بِالْفِضَّةِ مُشَاعًا، فَلَمْ يَأْتِ بِالنَّهْيِ عَنْهُ نَصٌّ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

The issue of selling for a dinar except a dirham.

L24017

[مَسْأَلَة الْبَيْع بِدِينَارٍ إِلَّا درهما]

L24018 1505. Issue: It is not permissible to sell [an item] for a dinar except [in exchange] for a dirham. If such a sale occurs, it is invalid and annulled, because it constitutes the removal of the dirham's value from the dinar, rendering the exception uncertain, since the sale is for a dinar except the value of a dirham from it.

١٥٠٥ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعٌ بِدِينَارٍ إِلَّا دِرْهَمًا، فَإِنْ وَقَعَ فَهُوَ بَاطِلٌ مَفْسُوخٌ، لِأَنَّهُ إِخْرَاجُ لَقِيمَةِ الدِّرْهَمِ مِنْ الدِّينَارِ، فَصَارَ اسْتِثْنَاءً مَجْهُولًا، إِذْ بَاعَ بِدِينَارٍ إِلَّا قِيمَةَ دِرْهَمٍ مِنْهُ.

L24019–24020 If the value of the dirham is known to both parties, the transaction remains invalid, for they stipulated the removal of the specific dirham itself from the dinar. This is absurd, as the dirham is not a constituent part of the dinar that could be separated from it. Thus, the transaction is invalid in every case. Our position aligns with the views of ʻAṭā', al-Nakhaʻī, and Muḥammad ibn Sīrīn, whereas Abū Salamah ibn ʻAbd al-Raḥmān deemed it permissible. Success comes solely from Allah, the Exalted.

فَإِنْ كَانَتْ قِيمَةُ الدِّرْهَمِ مَعْلُومَةً عِنْدَهُمَا فَهُوَ بَاطِلٌ أَيْضًا، لِأَنَّهُمَا شَرَطَا إِخْرَاجَ الدِّرْهَمِ بِعَيْنِهِ مِنْ الدِّينَارِ، وَهَذَا مُحَالٌ، لِأَنَّهُ لَيْسَ هُوَ بَعْضٌ لِلدِّينَارِ فَيَخْرُجُ مِنْهُ، فَهُوَ بَاطِلٌ بِكُلِّ حَالٍ وَقَوْلُنَا هُوَ قَوْلُ عَطَاءٍ، وَالنَّخَعِيِّ وَمُحَمَّدِ بْنِ سِيرِينَ وَأَجَازَهُ أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

Issue regarding the sale of categories governed by riba rules between an enslaved person and their master, and between a Muslim and a non-Muslim.

L24021

[مَسْأَلَة بَيْع الْأَصْنَاف الربوية بَيْن الْعَبْد وسيده وَبَيْن الْمُسْلِم والكافر]

L24022 1506 - Issue:

١٥٠٦ - مَسْأَلَةٌ:

[3] **Qur'an references (L24016):** Qur'an 19:64 (Maryam).

وَالرِّبَا فِي كُلِّ مَا ذَكَرْنَا بَيْنَ الْعَبْدِ وَسَيِّدِهِ كَمَا هُوَ بَيْنَ الْأَجْنَبِيَّيْنِ، وَبَيْنَ الْمُسْلِمِ وَالذِّمِّيِّ، وَبَيْنَ الْمُسْلِمِ وَالْحَرْبِيِّ، وَبَيْنَ الذِّمِّيَّيْنِ كَمَا هُوَ بَيْنَ الْمُسْلِمَيْنِ، وَلَا فَرْقَ.

L24023 Usury applies in all the aforementioned cases between a slave and his master, just as it applies between two strangers, between a Muslim and a *dhimmi*, between a Muslim and a *harbi*, and between two *dhimmis* just as it applies between two Muslims, there being no distinction.

رُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ أَنَا بَكْرُ بْنُ حَمَّادٍ أَنَا مُسَدَّدٌ أَنَا حَفْصُ بْنُ غِيَاثٍ عَنْ أَبِي الْعَوَّامِ الْبَصْرِيِّ عَنْ عَطَاءٍ كَانَ ابْنُ عَبَّاسٍ يَبِيعُ مِنْ غِلْمَانِهِ النَّخْلَ السَّنَتَيْنِ وَالثَّلَاثَ، فَبَعَثَ إِلَيْهِ جَابِرُ بْنُ عَبْدِ اللَّهِ: أَمَا عَلِمْت نَهْيَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ هَذَا؟ فَقَالَ ابْنُ عَبَّاسٍ: بَلَى، وَلَكِنْ لَيْسَ بَيْنَ الْعَبْدِ وَبَيْنَ سَيِّدِهِ رِبًا

L24024 It was narrated to us through the chain of Qasim ibn Asbagh → Bakr ibn Hammad → Musaddad → Hafs ibn Ghiyath, from Abu al-Awwam al-Basri, from Ata: Ibn Abbas would sell palm trees [for delivery] in two or three years to his male slaves. Jabir ibn Abdullah sent him a message: "Do you not know the Messenger of Allah's prohibition (peace be upon him) against this?" Ibn Abbas replied: "Indeed [I know], but there is no ribā between the slave and his master."

وَهُوَ قَوْلُ الْحَسَنِ وَجَابِرِ بْنِ زَيْدٍ وَالنَّخَعِيِّ وَالشَّعْبِيِّ وَسُفْيَانَ الثَّوْرِيِّ وَعُثْمَانَ الْبَتِّيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَاللَّيْثِ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ.

L24025 This is the position of al-Ḥasan, Jābir ibn Zayd, al-Nakhaʿī, al-Shaʿbī, Sufyān al-Thawrī, ʿUthmān al-Battī, al-Ḥasan ibn Ḥayy, al-Layth, Abū Ḥanīfah, and al-Shāfiʿī.

وَإِنَّمَا قَالَهُ هَؤُلَاءِ عَلَى أَصْلِهِمْ الَّذِي قَدْ تَقَدَّمَ إفْسَادُنَا لَهُ مِنْ أَنَّ الْعَبْدَ لَا يَمْلِكُ، وَذَكَرْنَا أَنَّ ابْنَ عُمَرَ يَرَى الْعَبْدَ يَمْلِكُ، وَهَذَا جَابِرٌ قَدْ أَنْكَرَ ذَلِكَ عَلَى ابْنِ عَبَّاسٍ.

L24026 They only said this based on their principle—which we have refuted—that a slave does not own. We mentioned that Ibn Umar holds the view that a slave does own, and Jabir, however, denied that against Ibn Abbas.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا إبْرَاهِيمُ عَنْ أَبِي إِسْحَاقَ عَنْ عَبْدِ اللَّهِ بْنِ شَدَّادٍ، قَالَ: مَرَّ الْحُسَيْنُ بْنُ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمَا - بِرَاعٍ فَأَهْدَى الرَّاعِي إلَيْهِ شَاةً؟ فَقَالَ لَهُ الْحُسَيْنُ: حُرٌّ أَنْتَ أَمْ مَمْلُوكٌ؟ فَقَالَ: مَمْلُوكٌ، فَرَدَّهَا الْحُسَيْنُ عَلَيْهِ؟ فَقَالَ لَهُ الْمَمْلُوكُ: إنَّهَا لِي، فَقَبِلَهَا مِنْهُ، ثُمَّ اشْتَرَاهُ وَاشْتَرَى الْغَنَمَ، فَأَعْتَقَهُ، وَجَعَلَ الْغَنَمَ لَهُ.

L24027 It has been narrated to us through the chain of Ibn Abi Shaybah: Ishaq ibn Mansur narrated to us, Ibrahim narrated from Abu Ishaq from Abdullah ibn Shaddad, who said: Al-Husayn ibn Ali—may Allah be pleased with them both—passed by a shepherd, and the shepherd offered him a sheep. Al-Husayn asked him: "Are you free or a slave?" He replied: "A slave." Al-Husayn then returned the sheep to him. The slave said: "It is mine," so Al-Husayn accepted it from him. He then purchased the slave and purchased the sheep, freed him, and gave him the sheep.

فَهَذَا الْحُسَيْنُ تَقَبَّلَ هَدِيَّةَ الْمَمْلُوكِ إذَا أَخْبَرَهُ أَنَّهَا لَهُ وَقَدْ ذَكَرْنَا مِثْلَ ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَا سَلَفَ مِنْ كِتَابِنَا هَذَا وَهُوَ الْحُجَّةُ الْبَالِغَةُ لَا مَنْ سِوَاهُ

L24028 Thus, al-Husayn accepted the slave's gift when he informed him that it belonged to him. We have mentioned a similar account from the Messenger of Allah—peace and blessings be upon him—in the preceding sections of this book. He is the conclusive proof, not anyone besides him. When Allah the Exalted prohibited usury and threatened punishment for it, He did not single

out a slave from a free person. {And your Lord is not forgetful} [Maryam: 64].[4]

وَإِذَا حَرَّمَ اللَّهُ تَعَالَى الرِّبَا وَتَوَعَّدَ فِيهِ فَمَا خَصَّ عَبْدًا مِنْ حُرٍّ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

L24029 What is perplexing is that Al-Shafi'i and Abu Hanifa do not permit a person to sell his own property to himself. Yet if the slave's property [is deemed to] belong to his master, they have contradicted their own foundational principle and permitted him [the slave] to sell his own property to himself.

وَالْعَجَبُ: أَنَّ الشَّافِعِيَّ، وَأَبَا حَنِيفَةَ: لَا يُجِيزَانِ أَنْ يَبِيعَ الْمَرْءُ مَالَ نَفْسِهِ مِنْ نَفْسِهِ، فَإِنْ كَانَ مَالُ الْعَبْدِ لِسَيِّدِهِ فَقَدْ نَقَضُوا أَصْلَهُمْ، وَأَجَازُوا لَهُ بَيْعَ مَالِ نَفْسِهِ مِنْ نَفْسِهِ.

L24030–24031 If the slave's property does not belong to the master unless he sells or seizes it, they have openly sanctioned usury.

وَإِنْ كَانَ مَالُ الْعَبْدِ لَيْسَ لِلسَّيِّدِ مَا لَمْ يَبِعْهُ أَوْ يَنْتَزِعْهُ: فَقَدْ أَجَازُوا الرِّبَا صُرَاحًا.

L24032 As for the disbelievers, Allah the Exalted says: "Whoever seeks a religion other than Islam, it will never be accepted from him" [Āl 'Imrān 3:85].[5]

وَأَمَّا الْكُفَّارُ: فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَمَنْ يَبْتَغِ غَيْرَ الإِسْلامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ} [آل عمران: ٨٥]

L24033 Allah says: "Until there is no persecution, and all sovereignty is entirely for Allah." [8:39][6]

وَقَالَ تَعَالَى: {حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩]

L24034 And He, the Most High, said: "And that you judge between them by what Allah has revealed" [Al-Ma'idah: 49].[7]

وَقَالَ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩]

L24035 Thus, it is established that whatever is forbidden to us is forbidden to them. We ask those who oppose us: Does Islam impose its religion upon them and forbid them from the opposition they adhere to? Are they upon falsehood or not? If they say Islam does not impose its religion upon them, nor forbid them from the opposition they adhere to, and that they are not upon falsehood—then they have disbelieved without doubt.

فَصَحَّ أَنَّ كُلَّ مَا حُرِّمَ عَلَيْنَا فَهُوَ حَرَامٌ عَلَيْهِمْ، وَنَسْأَلُ مَنْ خَالَفَنَا: أَيُلْزِمُهُمْ دِينَ الْإِسْلَامِ وَيُحَرِّمُ عَلَيْهِمْ مَا هُمْ عَلَيْهِ مِنْ خِلَافِهِ؟ وَهَلْ هُمْ عَلَى بَاطِلٍ أَمْ لَا؟ فَإِنْ قَالُوا: لَا يُلْزِمُهُمْ دِينَ الْإِسْلَامِ، وَلَا يُحَرِّمُ عَلَيْهِمْ مَا هُمْ عَلَيْهِ مِنْ خِلَافِهِ، وَأَنَّهُمْ لَيْسُوا عَلَى بَاطِلٍ: كَفَرُوا بِلَا مِرْيَةٍ.

L24036 And if they say: "The religion of Islam is binding upon them, and what they practice contrary to it is forbidden for them, while they are upon falsehood?" They have spoken the truth and returned to our position. Consequently, it becomes obligatory upon him to invalidate falsehood and nullify the forbidden, so he is guided by God's guidance Almighty; or he must confess

وَإِنْ قَالُوا: يَلْزَمُهُمْ دِينُ الْإِسْلَامِ وَحَرَامٌ عَلَيْهِمْ مَا هُمْ عَلَيْهِ مِنْ خِلَافِهِ، وَهُمْ عَلَى بَاطِلٍ؟ قَالُوا الْحَقَّ وَرَجَعُوا إِلَى قَوْلِنَا، وَلَزِمَهُ إِبْطَالُ الْبَاطِلِ، وَفَسْخُ الْحَرَامِ، فَيَهْتَدِي بِهَدْيِ اللَّهِ تَعَالَى، أَوْ الْإِقْرَارُ عَلَى نَفْسِهِ بِأَنَّهُ يُنَفِّذُ الْحُكْمَ بِالْبَاطِلِ، وَيُجِيزُ الْحَرَامَ، وَمَا أَوْرَدْنَا مِنْهُ كُلَّ هَذَا.

[4] **Qur'an references (L24028):** Qur'an 19:64 (Maryam).
[5] **Qur'an references (L24032):** Qur'an 3:85 (Ali 'Imran).
[6] **Qur'an references (L24033):** Qur'an 8:39 (Al-Anfal).
[7] **Qur'an references (L24034):** Qur'an 5:49 (Al-Ma'idah).

upon himself that he implements rulings through falsehood and permits the forbidden. All this we have cited from him.

L24037 If they say: "How severe is the disbelief they adhere to!" We respond: "The disbelief they follow cannot be openly proclaimed, as the scriptural ruling forbids compelling them to prayer, zakah, fasting, or Hajj."

L24038 Similarly, He has commanded that we judge between them by what Allah has revealed, so it is impermissible to abandon either of the two texts for the other, and with Allah, the Most High, is the success.

L24039 Abu Hanifah said: There is no harm in usury between a Muslim and a non-Muslim from a hostile territory, and this is an extremely grave matter.

L24040 ## The Issue of Selling Meat of the Live Animal

L24041 1507 – Issue.

L24042 It is permissible to sell meat for an animal, whether they are of the same kind or different kinds. Similarly, it is permissible to sell meat for meat, whether of the same kind or different kinds, whether differing or equal.

L24043 Similarly, it is permissible to deliver meat in exchange for meat.

L24044–24046 The exchange of animals as meat—such as exchanging the meat of one ram for that of another, whether of differing quality or identical—must be exchanged hand to hand. And to a term, likewise with meat from another species – such as transferring a ram in exchange for *ratls* of its meat or another type deferred to a term – all of that is permissible and lawful.

L24047 Allah, the Exalted, said: "He has permitted trade and forbidden usury." [Al-Baqarah: 275][8]

L24048 And He, the Exalted, said: "He has explained in detail what He has forbidden

[8] **Qur'an references (L24047):** Qur'an 2:275 (Al-Baqarah).

فَإِنْ قَالُوا: مَا هُمْ عَلَيْهِ مِنْ الْكُفْرِ أَشَدُّ؟ قُلْنَا: إنَّ الَّذِي هُمْ عَلَيْهِ مِنْ الْكُفْرِ لَا يُفْسَحُ لَهُمْ فِي إعْلَانِهِ، وَقَدْ جَاءَ النَّصُّ بِأَنْ لَا نَجْبُرَهُمْ عَلَى الصَّلَاةِ، وَالزَّكَاةِ، وَالصِّيَامِ، وَالْحَجِّ.

وَكَذَلِكَ جَاءَ بِأَنْ نَحْكُمَ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ، فَلَا يَحِلُّ تَرْكُ أَحَدِ النَّصَّيْنِ لِلْآخَرِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَالَ أَبُو حَنِيفَةَ: لَا بَأْسَ بِالرِّبَا بَيْنَ الْمُسْلِمِ، وَالْحَرْبِيِّ وَهَذَا عَظِيمٌ جِدًّا.

[مَسْأَلَة بَيْع اللَّحْم بِالْحَيَوَانِ]

١٥٠٧ - مَسْأَلَةٌ:

وَجَائِزٌ بَيْعُ اللَّحْمِ بِالْحَيَوَانِ مِنْ نَوْعٍ وَاحِدٍ كَانَا أَوْ مِنْ نَوْعَيْنِ وَكَذَلِكَ يَجُوزُ بَيْعُ اللَّحْمِ بِاللَّحْمِ مِنْ نَوْعٍ وَاحِدٍ أَوْ مِنْ نَوْعَيْنِ مُتَفَاضِلًا، وَمُتَمَاثِلًا.

وَجَائِزٌ تَسْلِيمُ اللَّحْمِ فِي اللَّحْمِ كَذَلِكَ.

وَتَسْلِيمُ الْحَيَوَانِ فِي اللَّحْمِ، كَلَحْمِ كَبْشٍ بِلَحْمِ كَبْشٍ مُتَفَاضِلًا وَمُتَمَاثِلًا، يَدًا بِيَدٍ، وَإِلَى أَجَلٍ وَكَذَلِكَ بِاللَّحْمِ مِنْ غَيْرِ نَوْعِهِ أَيْضًا وَكَتَسْلِيمِ كَبْشٍ فِي أَرْطَالِ لَحْمِ كَبْشٍ أَوْ غَيْرِهِ إلَى أَجَلٍ كُلُّ ذَلِكَ جَائِزٌ حَلَالٌ.

قَالَ اللَّهُ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥]

وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩]

to you" [Al-An'am: 119].[9]

فَهَذَا كُلُّهُ بَيْعٌ لَمْ يُفَصَّلْ تَحْرِيمُهُ.

L24049 Thus, all of this is a sale whose prohibition has not been detailed.

وَأَمَّا اللَّحْمُ بِاللَّحْمِ فَلَمْ يَأْتِ نَهْيٌ عَنْهُ أَصْلًا، لَا صَحِيحٌ وَلَا سَقِيمٌ مِنْ أَثَرٍ.

L24050 As for meat exchanged for meat, no prohibition against it has come at all—neither a sound nor a weak narration from any report.

وَأَمَّا اللَّحْمُ بِالْحَيَوَانِ فَجَاءَ فِيهِ أَثَرٌ لَا يَصِحُّ.

L24051 As for the meat of the animal, there is a report concerning it that is not authentic.

وَهَذَا كُلُّهُ قَوْلُ أَبِي سُلَيْمَانَ وَأَصْحَابِنَا. وَرُوِيَ عَنِ ابْنِ عَبَّاسٍ وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ

L24052 All of this is the opinion of Abū Sulaymān and our companions. It has been narrated from Ibn ʿAbbās, and it is the opinion of Sufyān al-Thawrī.

وَاخْتَلَفَ الْحَاضِرُونَ عَلَى فِرَقٍ: فَطَائِفَةٌ مَنَعَتْ مِنْ بَيْعِ اللَّحْمِ بِالْحَيَوَانِ جُمْلَةً، أَيَّ لَحْمٍ كَانَ لَا تَحَاشَ شَيْئًا، بِأَيِّ حَيَوَانٍ كَانَ لَا تَحَاشَ شَيْئًا، حَتَّى مَنَعُوا مِنْ بَيْعِ الْعَبْدِ بِاللَّحْمِ.

L24053 The attendees were divided into factions: one faction categorically prohibited the sale of meat for animals—regardless of the type of meat or animal, without distinction—to the extent that they even prohibited the sale of a slave for meat.

وَهَذَا قَوْلُ الشَّافِعِيِّ، وَاخْتَلَفَ قَوْلُهُ فِي اللَّحْمِ بِاللَّحْمِ فَرُوِيَ عَنْهُ: أَنْ يُجْمَعَ لُحُومُ الْحَيَوَانِ كُلِّهَا طَائِرَةً وَوَحْشِيَّةً، وَالْأَنْعَامِ، كُلِّهَا صِنْفٌ وَاحِدٌ.

L24054 This is the opinion of Al-Shafi'i, and he held differing views regarding meat exchanged for meat. It is reported from him that all meats of animals—including birds, wild animals, and domesticated grazing animals—all of them constitute a single category.

وَرُوِيَ عَنْهُ: أَنَّ لَحْمَ كُلِّ نَوْعٍ صِنْفٌ عَلَى حِيَالِهِ، وَلَمْ يَخْتَلِفْ عَنْهُ فِي أَنَّهُ لَا يُبَاعُ لَحْمٌ بِلَحْمٍ أَصْلًا حَتَّى يَتَنَاهَى جَفَافُهُ وَيَبَسُهُ؟ فَعَلَى أَحَدِ قَوْلَيْهِ: لَا يُبَاعُ قَدِيدُ غَنَمٍ بِقَدِيدِ إِبِلٍ، أَوْ بِقَدِيدِ دَجَاجٍ، أَوْ إِوَزٍّ أَوْ مِثْلًا بِمِثْلٍ، وَعَلَى الْقَوْلِ الثَّانِي: أَنَّهُ لَا يُبَاعُ قَدِيدُ غَنَمٍ بِقَدِيدِ غَنَمٍ، إِلَّا يَدًا بِيَدٍ، مِثْلًا بِمِثْلٍ، وَجَائِزٌ أَنْ يُبَاعَ بِقَدِيدِ الْبَقَرِ مُتَفَاضِلًا يَدًا بِيَدٍ.

L24055 It has been narrated from him that the meat of each type constitutes a distinct category, with no disagreement reported from him that meat should not be sold for meat at all until it is completely dry. According to one of his two positions: cured sheep meat must not be traded for cured camel meat, cured chicken, goose, or like for like. According to the second position: cured sheep meat must not be exchanged for cured sheep meat except hand-to-hand and like for like, though it is permissible to trade it for cured cow meat with a difference in quantity, provided the exchange is immediate.

وَقَالَ أَبُو حَنِيفَةَ: جَائِزٌ بَيْعُ اللَّحْمِ بِالْحَيَوَانِ عَلَى كُلِّ حَالٍ، جَائِزٌ كُلُّ ذَلِكَ، كَقَوْلِنَا سَوَاءً بِسَوَاءٍ.

L24056 Abu Hanifah said: It is permissible to sell meat in exchange for an animal under all circumstances; all of that is permissible, as we say, like for like.

[9] **Qur'an references (L24048):** Qur'an 6:119 (Al-An'am).

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: جَائِزٌ بَيْعُ لَحْمِ شَاةٍ بِشَاةٍ حَيَّةً، إِذَا كَانَ اللَّحْمُ أَكْثَرَ مِنْ لَحْمِ الشَّاةِ الْحَيَّةِ، فَإِنْ كَانَ مِثْلَهُ أَوْ أَقَلَّ لَمْ يَجُزْ، وَأَجَازَ بَيْعَ شَاةٍ بِبَقَرَةٍ حَيَّةً كَيْفَ شَاءُوا.

L24057 Muhammad ibn al-Hasan said: It is permissible to sell the meat of a slaughtered sheep for a live sheep, provided the slaughtered meat is greater in quantity than the meat of the live sheep [if it were slaughtered]. If it is equal to or less than it, it is not valid. He also permitted selling a sheep for a live cow, according to whatever terms they mutually agree upon.

وَأَجَازَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ بَيْعَ لَحْمِ شَاةٍ بِلَحْمِ شَاةٍ مُتَمَاثِلًا نَقْدًا وَلَا بُدَّ، وَكَذَلِكَ لَحْمُ كُلِّ صِنْفٍ بِلَحْمٍ مِنْ صِنْفِهِ وَأَبَاحُوا التَّفَاضُلَ يَدًا بِيَدٍ فِي كُلِّ لَحْمٍ بِلَحْمٍ مِنْ غَيْرِ صِنْفِهِ، وَالْبَقَرُ عِنْدَهُمْ صِنْفٌ، وَالْغَنَمُ صِنْفٌ آخَرُ، وَالْإِبِلُ صِنْفٌ ثَالِثٌ وَكَذَلِكَ كُلُّ حَيَوَانٍ فِي صِنْفِهِ، إِلَّا الْحِيتَانُ فَإِنَّهَا كُلَّهَا عِنْدَهُ صِنْفٌ وَاحِدٌ، وَإِلَّا لُحُومُ الطَّيْرِ، فَرَأَوْا بَيْعَ بَعْضِهَا بِبَعْضٍ مُتَفَاضِلًا يَدًا بِيَدٍ، لَا نَسِيئَةً، كَلَحْمِ دَجَاجٍ بِلَحْمِ دَجَاجٍ، أَوْ بِلَحْمِ صَيْدٍ، أَوْ غَيْرِ ذَلِكَ.

L24058–24060 Abu Hanifah and his companions permitted the sale of sheep meat for sheep meat provided they are identical, paid immediately without exception, and similarly. The meat of each category is exchanged with meat of its own kind. They permitted unequal exchange hand-to-hand when exchanging any meat for meat from a different category. According to their classification, cows constitute one category, sheep another category, camels a third category, and similarly every animal belongs to its own category - except fish, which he considers all varieties to form a single category, and except poultry meat. They ruled that exchanging some poultry meat for other poultry meat with disparity is permissible hand-to-hand (not on credit), such as chicken meat for chicken meat, or exchanging poultry meat for game meat, or other types.

وَرَأَى شَحْمَ الْبَطْنِ مِنْ كُلِّ حَيَوَانٍ صِنْفًا غَيْرَ لَحْمِهِ، وَغَيْرَ شَحْمِ ظَهْرِهِ.

L24061 He considered the abdominal fat of every animal to be a distinct category separate from its meat and the fat of its back.

وَرَأَى الْأَلْيَةَ صِنْفًا آخَرَ غَيْرَ اللَّحْمِ وَالشَّحْمِ.

L24062 The Ḥanafī school regarded the alyah as a separate category excluded from meat and fat.

وَهَذِهِ وَسَاوِسُ لَا نَظِيرَ لَهَا، وَأَقْوَالٌ لَا تُعْقَلُ، وَلَا تُعْلَمُ عَنْ أَحَدٍ قَبْلَهُ.

L24063 These are unparalleled whispers, and statements that cannot be comprehended, nor have they been known from anyone before him.

وَقَالَ مَالِكٌ: ذَوَاتُ الْأَرْبَعِ كُلُّهَا صِنْفٌ وَاحِدٌ: الْبَقَرُ، وَالْغَنَمُ، وَالْإِبِلُ، وَالْأَرَانِبُ، وَالْأَيَايِلُ، وَحُمُرُ الْوَحْشِ، وَكُلُّ ذِي أَرْبَعٍ، فَلَا يَحِلُّ لَحْمُ شَيْءٍ مِنْهَا بِحَيٍّ مِنْهَا فَلَمْ يَجُزْ بَيْعُ لَحْمِ أَرْنَبٍ حَيٍّ بِلَحْمِ جَمَلٍ أَصْلًا، وَلَا لَحْمِ جَمَلٍ بِلَحْمِ كَبْشٍ، إِلَّا مِثْلًا بِمِثْلٍ، يَدًا بِيَدٍ، وَكَذَلِكَ سَائِرُ ذَوَاتِ الْأَرْبَعِ.

L24064 Mālik said: All four-legged animals constitute a single category: cattle, sheep, camels, rabbits, deer, wild donkeys, and every quadruped. It is impermissible to exchange the meat of any of them for a live animal of the same category. Therefore, selling slaughtered rabbit meat for a live camel is fundamentally invalid, nor camel meat for ram meat—unless [the exchange is] like for like, hand to hand. This ruling applies uniformly to all four-legged animals.

L24065 He considered all birds as a single category: chickens, pigeons, ostriches, geese, partridges, sandgrouse, and others. Thus, the meat of any bird remains impermissible in exchange for a live bird of the same category, even if it is of

a different type. He permitted exchanging the meat of one bird for another of equal value through immediate exchange, but prohibited disparity in value. Consequently, he disallowed unequal exchange between chicken meat and bustard meat (different species), applying this ruling uniformly to all birds in the category.

وَرَأَى الطَّيْرَ كُلَّهُ صِنْفًا وَاحِدًا: الدَّجَاجُ، وَالْحَمَامُ، وَالنَّعَامُ، وَالْإِوَزُّ، وَالْحَجَلُ، وَالْقَطَا، وَغَيْرُ ذَلِكَ فَلَمْ يَجُزْ أَيْضًا لَحْمُ شَيْءٍ مِنْهَا بِحَيٍّ مِنْهَا وَإِنْ كَانَ مِنْ غَيْرِ نَوْعِهِ وَأَجَازَ فِي لَحْمِ بَعْضِهَا بِبَعْضٍ: التَّمَاثُلَ يَدًا بِيَدٍ، وَمَنَعَ مِنْ التَّفَاضُلِ، فَلَمْ يُجِزْ التَّفَاضُلَ فِي لَحْمِ دَجَاجٍ بِلَحْمِ حُبَارَى وَهَكَذَا فِي كُلِّ شَيْءٍ مِنْهَا.

L24066 He observed all sea creatures as a single kind, similarly.

وَرَأَى الْحِيتَانَ كُلَّهَا صِنْفًا وَاحِدًا كَذَلِكَ أَيْضًا.

L24067 He considered the locust an independent fourth category, despite having hunted birds sufficient to fulfill his obligation during the sacred state of Iḥrām.

وَرَأَى الْجَرَادَ صِنْفًا رَابِعًا عَلَى حِيَالِهِ، هَذَا وَهُوَ عِنْدَهُ صَيْدٌ مِنْ الطَّيْرِ يُجْزِيهِ الْمُحَرَّمَ.

L24068 He prohibited uncooked dried meat exchanged for roasted meat and prohibited both when exchanged for fresh raw meat. He permitted all items from these three types in exchange for cooked meat of their own kind—whether differing in quantity or equal—through immediate spot exchange. He permitted meat cooked using honey to be exchanged for meat cooked using milk when equal in measure, but prohibited disparity in quantity between them.

وَحَرَّمَ الْقَدِيدَ النِّيءَ بِاللَّحْمِ الْمَشْوِيِّ، وَحَرَّمَهُمَا جَمِيعًا بِاللَّحْمِ النِّيءِ الطَّرِيِّ، وَأَجَازَ كُلَّ شَيْءٍ مِنْ هَذِهِ الثَّلَاثَةِ الْأَصْنَافِ بِاللَّحْمِ الْمَطْبُوخِ مِنْ صِنْفِهَا مُتَفَاضِلَةً وَمُتَمَاثِلَةً يَدًا بِيَدٍ، وَأَجَازَ اللَّحْمَ الْمَطْبُوخَ بِعَسَلٍ بِاللَّحْمِ الْمَطْبُوخِ بِلَبَنٍ مُتَمَاثِلًا وَمَنَعَ فِيهِ مِنْ التَّفَاضُلِ.

L24069 He permitted exchanging a slaughtered sheep for a slaughtered sheep after careful scrutiny, and this contradicts its foundational principle.

وَأَجَازَ شَاةً مَذْبُوحَةً بِشَاةٍ مَذْبُوحَةٍ عَلَى التَّحَرِّي وَهَذَا ضِدُّ أَصْلِهِ.

L24070 These are statements of utmost corruption, and we know of no one who uttered them before him. Were we to scrutinize their verbosity here and his contradictions, it would become exceedingly lengthy, and this suffices for whoever seeks self-improvement.

وَهَذِهِ أَقْوَالٌ فِي غَايَةِ الْفَسَادِ، وَلَا نَعْلَمُ أَحَدًا قَالَهَا قَبْلَهُ وَلَوْ تَقَصَّيْنَا تَطْوِيلَهُمْ هَهُنَا وَتَنَاقُضَهُ، لَطَالَ جِدًّا وَفِي هَذَا كِفَايَةٌ لِمَنْ نَصَحَ نَفْسَهُ.

L24071–24072 Abū Muḥammad said: The Shāfiʿīs cited as evidence what we have narrated via the chain of Mālik, from Zayd ibn Aslam, from Saʿīd ibn al-Musayyib—"The Messenger of Allāh (peace be upon him) prohibited the sale/exchange of live animals for meat."

قَالَ أَبُو مُحَمَّد: وَاحْتَجَّ الشَّافِعِيُّونَ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِك عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْحَيَوَانِ بِاللَّحْمِ» .

L24073 And through the chain of Al-Ḥajjāj ibn Al-Minhāl: ʿAbdullāh ibn ʿUmar An-Numayrī narrated to us from Yūnus ibn Yazīd Al-Aylī from Az-Zuhrī, who said: I heard Saʿīd ibn Al-Musayyab say, "The Messenger of Allah (peace

and blessings be upon him) forbade buying a living animal for a dead one." Az-Zuhrī said: "Thus, it is not valid to do so with a live ewe."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا عَبْدُ اللَّهِ بْنُ عُمَرَ النُّمَيْرِيُّ عَنْ يُونُسَ بْنِ يَزِيدَ الْأَيْلِيِّ عَنْ الزُّهْرِيِّ قَالَ: سَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُبْتَاعَ الْحَيُّ بِالْمَيِّتِ» قَالَ الزُّهْرِيُّ: فَلَا يَصْلُحُ بِشَاةٍ حَيَّةٍ.

L24074 From the narration of Abd al-Razzaq, from Ibrahim ibn Abi Yahya, from Salih, the client of al-Taw'ama, from Ibn Abbas: A man intended to sell a part of camel meat for a sheep? Abu Bakr al-Siddiq said: "This is not permissible."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إبْرَاهِيمَ بْنِ أَبِي يَحْيَى عَنْ صَالِحٍ مَوْلَى التَّوْأَمَةِ عَنْ ابْنِ عَبَّاسٍ: أَنَّ رَجُلًا أَرَادَ أَنْ يَبِيعَ جُزْءًا مِنْ لَحْمِ بَعِيرٍ بِشَاةٍ؟ فَقَالَ أَبُو بَكْرٍ الصِّدِّيقُ: لَا يَصْلُحُ هَذَا.

L24075 It has been authentically reported from Sa'id ibn al-Musayyab that it is impermissible to sell a live animal for a ritually slaughtered one, and that it is impermissible to exchange a camel for a specified number of sheep if he intends to slaughter the camel.

وَصَحَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنْ لَا يُبَاعَ حَيٌّ بِمَذْبُوحٍ، وَأَنَّهُ لَا يَجُوزُ بَعِيرٍ بِغَنَمٍ مَعْدُودَةٍ إنْ كَانَ يُرِيدُ الْبَعِيرَ لِيَنْحَرَهُ.

L24076 And he said: Among the forms of maysir (gambling) in the pre-Islamic era was exchanging meat for a sheep.

وَقَالَ: كَانَ مِنْ مَيْسِرِ أَهْلِ الْجَاهِلِيَّةِ بَيْعُ اللَّحْمِ بِالشَّاةِ.

L24077 Abu al-Zinad said: I witnessed people prohibiting the exchange of meat for live animals and writing this prohibition in the contractual agreements of workers during the time of Aban ibn Uthman and Hisham ibn Isma'il. Ibn Abi al-Zinad mentioned this practice from the Seven Jurists, stating that they regarded it with utmost gravity and permitted no leniency in its observance.

وَقَالَ أَبُو الزِّنَادِ: أَدْرَكْت النَّاسَ يَنْهَوْنَ عَنْ بَيْعِ اللَّحْمِ بِالْحَيَوَانِ وَيَكْتُبُونَهُ فِي عُهُودِ الْعُمَّالِ فِي زَمَنِ أَبَانَ بْنِ عُثْمَانَ، وَهِشَامِ بْنِ إسْمَاعِيلَ وَذَكَرَهُ ابْنُ أَبِي الزِّنَادِ عَنْ الْفُقَهَاءِ السَّبْعَةِ، وَأَنَّهُمْ كَانُوا يُعَظِّمُونَ ذَلِكَ وَلَا يَتَرَخَّصُونَ فِيهِ.

L24078 Abu Muhammad said: As for the report concerning this matter, it is a _mursal_ and was never supported by any chain of transmission. It is astonishing that al-Shāfiʿī - who affirmed the impermissibility of relying on the _mursal_ - should then rely on it here.

قَالَ أَبُو مُحَمَّد: أَمَّا الْخَبَرُ فِي ذَلِكَ فَمُرْسَلٌ لَمْ يُسْنَدْ قَطُّ، وَالْعَجَبُ مِنْ قَوْلِ الشَّافِعِيِّ: إنَّ الْمُرْسَلَ لَا يَجُوزُ الْأَخْذُ بِهِ، ثُمَّ أَخَذَ هَهُنَا بِالْمُرْسَلِ.

L24079 Then another point of amazement concerning the Hanafis—who assert that the *mursal* is equivalent to the *musnad*—is that they contradicted this very *mursal*, even though there is no stronger *mursal* among the *marasil* than this one. And this is among the matters in which the Hanafis opposed the majority of scholars.

ثُمَّ عَجَبٌ آخَرُ مِنْ الْحَنَفِيِّينَ الْقَائِلِينَ: الْمُرْسَلُ كَالْمُسْنَدِ، ثُمَّ خَالَفُوا هَذَا الْمُرْسَلَ الَّذِي لَيْسَ فِي الْمَرَاسِيلِ أَقْوَى مِنْهُ وَهَذَا مِمَّا خَالَفَ فِيهِ الْحَنَفِيُّونَ جُمْهُورَ الْعُلَمَاءِ.

L24080 Then the Malikis: a third astonishment, for they cited this report as evidence

while giving the false impression of adhering to it, though they opposed it by permitting bird meat with sheep. This contradicts the report and instead aligns with al-Shāfiʿī's position.

ثُمَّ الْمَالِكِيُّونَ: فَعَجَبٌ ثَالِثٌ، لِأَنَّهُمْ احْتَجُّوا بِهَذَا الْخَبَرِ، وَأَوْهَمُوا أَنَّهُمْ أَخَذُوا بِهِ، وَهُمْ قَدْ خَالَفُوهُ، لِأَنَّهُمْ أَبَاحُوا لَحْمَ الطَّيْرِ بِالْغَنَمِ، وَهَذَا خِلَافُ الْخَبَرِ وَإِنَّمَا هُوَ مُوَافِقٌ لِقَوْلِ الشَّافِعِيِّ.

L24081–24083 Mālik also differed here from what was transmitted from the Seven Fuqaha of Medina and the practice of the governors in Medina. This difference greatly magnifies the weight of their opinion when it aligns with theirs, and they argued using the narration of Abū Bakr—which is transmitted through Ibrāhīm ibn Abī Yaḥyā. The first to decree that his narrations not be accepted was Mālik, and then those from Ṣāliḥ—the freed slave of al-Tawʾamah. The first to weaken his narrations was Mālik. By Allah! By the Muslims! When trustworthy narrators relate a report contradicting their opinions, they devise false pretexts to reject it. Yet when one whom they testify is a liar narrates what aligns with their views, they cite it as proof. What religion could endure this? If the Shāfiʿīs argue: "The interrupted narrations of Saʿīd ibn al-Musayyab are authoritative, unlike others," we respond: "Is this now considered authoritative?" Behold what we have transmitted through Saʿīd ibn Manṣūr: Ḥafṣ ibn Maysarah reported from Ibn Ḥarmalah from Saʿīd ibn al-Musayyab, who said: "The Messenger of Allah (peace and blessings be upon him) prohibited selling livestock for the colostrum of sheep. Adhere to this, or you have indeed made a mockery. Fear Allah!"

وَقَدْ خَالَفَ مَالِكٌ أَيْضًا هَهُنَا مَا رُوِيَ عَنْ الْفُقَهَاءِ السَّبْعَةِ، وَعَمَلِ الْوُلَاةِ بِالْمَدِينَةِ، وَهَذَا يُعَظِّمُهُ جِدًّا إذَا وَافَقَ رَأْيَهُمْ وَاحْتَجُّوا بِخَبَرِ أَبِي بَكْرٍ وَهُوَ مِنْ رِوَايَةِ ابْنِ أَبِي يَحْيَى إبْرَاهِيمَ، وَأَوَّلُ مَنْ أَمَرَ أَنْ لَا تُؤْخَذَ رِوَايَتُهُ فَمَالِكٌ، ثُمَّ عَنْ صَالِحٍ مَوْلَى التَّوْأَمَةِ، وَأَوَّلُ مَنْ ضَعَّفَهُ فَمَالِكٌ فَيَا لِلَّهِ وَيَا لِلْمُسْلِمِينَ إذَا رَوَى الثِّقَاتُ خَبَرًا يُخَالِفُ رَأْيَهُمْ تَحَيَّلُوا بِالْأَبَاطِيلِ فِي رَدِّهِ، وَإِذَا رَوَى مَنْ يَشْهَدُونَ عَلَيْهِ بِالْكَذِبِ مَا يُوَافِقُهُمْ احْتَجُّوا بِهِ، فَأَيُّ دِينٍ يَبْقَى مَعَ هَذَا؟ فَإِنْ قَالَ الشَّافِعِيُّونَ: مَرَاسِيلُ سَعِيدِ بْنِ الْمُسَيِّبِ حُجَّةٌ بِخِلَافِ غَيْرِهِ؟ قُلْنَا لَهُمْ: السَّاعَةُ صَارَتْ حُجَّةً؟ فَدُونَكُمْ مَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حَفْصُ بْنُ مَيْسَرَةَ عَنْ ابْنِ حَرْمَلَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُبَاعَ الْحَيَوَانُ بِالْمَفَاطِيمِ مِنْ الْغَنَمِ فَقُولُوا بِهِ، وَإِلَّا فَقَدْ تَلَاعَبْتُمْ، وَاتَّقُوا اللَّهَ» .

L24084 Narrations with additional details have also been reported regarding this. It has been reported to us through the chain of Ḥammād ibn Salamah, who narrated to us from ʿAbd al-Karīm ibn Yazīd ibn Ṭalq: A man slaughtered a male camel and began selling limbs in exchange for sheep, pregnant she-camels, or on credit. Ibn ʿUmar disapproved of this practice.

وَقَدْ رُوِيَتْ فِي هَذِهِ آثَارٌ أَيْضًا بِزِيَادَةٍ، فَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ حَدَّثَنَا عَبْدُ الْكَرِيمِ بْنُ يَزِيدَ بْنِ طَلْقٍ: أَنَّ رَجُلًا نَحَرَ جَزُورًا فَجَعَلَ يَبِيعُ الْعُضْوَ بِالشَّاةِ، وَبِالْقَلُوصِ، إلَى أَجَلٍ فَكَرِهَ ذَلِكَ ابْنُ عُمَرَ.

L24085 From the narration of Wakīʿ: I [Isrāʾīl] report from ʿAbdullāh ibn ʿIṣmah, who said: I heard Ibn ʿAbbās being asked about someone who purchased a limb from a camel that had been ritually slaughtered in exchange for the leg of a young she-goat, with the condition imposed on the she-goat's owner to suckle it until it is weaned. Ibn ʿAbbās replied: "It is not permissible."

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا إسْرَائِيلُ عَنْ عَبْدِ اللَّهِ بْنِ عِصْمَةَ سَمِعْت ابْنَ عَبَّاسٍ وَسُئِلَ عَمَّنْ اشْتَرَى عُضْوًا مِنْ جَزُورٍ قَدْ نُحِرَتْ بِرِجْلِ عِنَاقٍ وَشُرِطَ عَلَى صَاحِبِهَا أَنْ يُرْضِعَهَا حَتَّى تُفْطَمَ؟ فَقَالَ ابْنُ عَبَّاسٍ: لَا يَصْلُحُ.

L24086 Abū Muḥammad said: This is a condition not found in the Book of God, the Exalted, so it is invalid.

قَالَ أَبُو مُحَمَّدٍ: هَذَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ.

L24087 It was narrated to us through the chain of Abd al-Razzaq: I, Ma'mar, [narrate] from Yahya ibn Abi Kathir, from a man, from Ibn Abbas, who said: "There is no harm in selling meat in exchange for a sheep."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ رَجُلٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا بَأْسَ أَنْ يُبَاعَ اللَّحْمُ بِالشَّاةِ.

L24088 If it is said: "Is this from a man?" We respond: The narration of Abu Bakr from Ibn Abi Yahya is not more reliable than someone about whom silence was maintained, whoever he may be.

فَإِنْ قِيلَ: هَذَا عَنْ رَجُلٍ؟ قُلْنَا: وَخَبَرُ أَبِي بَكْرٍ عَنْ ابْنِ أَبِي يَحْيَى وَلَيْسَ بِأَوْثَقَ مِمَّنْ سَكَتَ عَنْهُ كَائِنًا مَنْ كَانَ.

L24089 And via the chain of Abd al-Razzaq from Sufyan al-Thawri: There is no harm in a sheep standing with the slaughtered [animal].

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ: لَا بَأْسَ بِالشَّاةِ الْقَائِمَةِ بِالْمَذْبُوحَةِ.

L24090 The issue of selling an item prior to taking possession of it.

[مَسْأَلَة بَيْع الشَّيْء قَبْل قبضه]

L24091 1508. Question:

١٥٠٨ - مَسْأَلَةٌ:

L24092 Whoever purchases any item—whatever it may be among permissible commodities to sell, except wheat—it is unlawful for him to sell it until he takes possession. Possession occurs when he freely accesses it without any barrier between himself and the item. If no barrier exists for any period, however brief or prolonged, and later a barrier arises through usurpation or other means, it becomes lawful for him to sell it, for he has already taken possession. He may gift it, lease it, assign it as a dower, lend it, transfer it, or give it as charity before taking possession by freely accessing it.

وَمَنْ ابْتَاعَ شَيْئًا أَيَّ شَيْءٍ كَانَ مِمَّا يَحِلُّ بَيْعُهُ، حَاشَ الْقَمْحَ، فَلَا يَحِلُّ لَهُ أَنْ يَبِيعَهُ حَتَّى يَقْبِضَهُ، وَقَبْضُهُ لَهُ: هُوَ أَنْ يُطْلِقَ يَدَهُ عَلَيْهِ بِأَنْ لَا يُحَالَ بَيْنَهُ وَبَيْنَهُ، فَإِنْ لَمْ يَحُلْ بَيْنَهُ وَبَيْنَهُ مُدَّةٌ مَا قَلَّتْ أَمْ كَثُرَتْ ثُمَّ حِيلَ بَيْنَهُ وَبَيْنَهُ بِغَصْبٍ أَوْ غَيْرِهِ: حَلَّ لَهُ بَيْعُهُ؛ لِأَنَّهُ قَدْ قَبَضَهُ، وَلَهُ أَنْ يَهَبَهُ، وَأَنْ يُؤَاجِرَ بِهِ، وَأَنْ يُصْدِقَهُ، وَأَنْ يُقْرِضَهُ، وَأَنْ يُسَلِّمَهُ، وَأَنْ يَتَصَدَّقَ بِهِ قَبْلَ أَنْ يَقْبِضَهُ، وَقَبْلَ أَنْ تُطْلَقَ يَدُهُ عَلَيْهِ.

L24093–24094 If he owns anything—whatever it may be—that is permissible to sell through means other than a sale contract, such as inheritance, a gift, a loan, a dower, charity, a salam contract, compensation, or other such means, it is permissible for him to sell it before taking possession of it and to dispose of it by assigning it as a dower, gifting it, or giving it in charity, except for wheat.

فَإِنْ مَلَكَ شَيْئًا مَا أَيَّ شَيْءٍ كَانَ مِمَّا يَحِلُّ بَيْعُهُ بِغَيْرِ الْبَيْعِ، لَكِنْ بِمِيرَاثٍ أَوْ هِبَةٍ، أَوْ قَرْضٍ، أَوْ صَدَاقٍ، أَوْ صَدَقَةٍ، أَوْ سَلَمٍ، أَوْ أَرْشٍ، أَوْ غَيْرِ ذَلِكَ: جَازَ لَهُ بَيْعُهُ قَبْلَ أَنْ يَقْبِضَهُ، وَأَنْ يَتَصَرَّفَ فِيهِ بِالْإِصْدَاقِ، وَالْهِبَةِ، وَالصَّدَقَةِ، حَاشَ الْقَمْحَ.

L24095 As for wheat: regardless of how he acquired it—whether via purchase, gift, charity, dower, lease, blood money, salam contract, interest-free loan, or

other means—it is not lawful for him to sell it until he takes possession of it, as previously stated, so that no intermediary is placed between him and it.

وَأَمَّا الْقَمْحُ: فَإِنَّهُ بِأَيِّ وَجْهٍ مَلَكَهُ مِنْ: بَيْعٍ، أَوْ هِبَةٍ، أَوْ صَدَقَةٍ، أَوْ صَدَاقٍ، أَوْ إِجَارَةٍ، أَوْ أَرْشٍ، أَوْ سَلَمٍ أَوْ قَرْضٍ، أَوْ غَيْرِ ذَلِكَ: فَلَا يَحِلُّ لَهُ بَيْعُهُ حَتَّى يَقْبِضَهُ، كَمَا ذَكَرْنَا بِأَنْ لَا يُحَالَ بَيْنَهُ وَبَيْنَهُ.

L24096 If he purchased wheat exclusively in a juzaf sale (bulk sale without measurement), it is not permissible for him to sell it until he takes possession as we mentioned, and until he relocates it away from its original location to another place, whether adjacent or distant.

فَإِنْ كَانَ اشْتَرَى الْقَمْحَ خَاصَّةً جُزَافًا، فَلَا يَحِلُّ لَهُ بَيْعُهُ حَتَّى يَقْبِضَهُ كَمَا ذَكَرْنَا، وَحَتَّى يَنْقُلَهُ وَلَا بُدَّ عَنْ مَوْضِعِهِ الَّذِي هُوَ فِيهِ إِلَى مَكَانٍ آخَرَ قَرِيبٍ مُلَاصِقٍ أَوْ بَعِيدٍ.

L24097 If he purchased wheat specifically by measure, it is not permissible for him to sell it until he has measured it. Once measured, it becomes permissible for him to sell it even if he did not move it from its place.

فَإِنْ كَانَ اشْتَرَى الْقَمْحَ خَاصَّةً بِكَيْلٍ لَمْ يَحِلَّ لَهُ أَنْ يَبِيعَهُ حَتَّى يَكْتَالَهُ، فَإِذَا اكْتَالَهُ حَلَّ لَهُ بَيْعُهُ وَإِنْ لَمْ يَنْقُلْهُ عَنْ مَوْضِعِهِ.

L24098 It is not permissible for him to trust the seller's measurement of the wheat, even if the seller measures it for himself in his presence while he observes and witnesses it. The buyer must measure it himself. It is permissible for him, in all that we have mentioned, to gift, give as ṣadaqah, lease, settle, give as ṣadaqah, or lend it before measuring it and before transferring it in bulk, whether it was purchased in bulk or by measure. These rulings do not apply at all to anything other than wheat.

وَلَا يَحِلُّ لَهُ تَصْدِيقُ الْبَائِعِ فِي كَيْلِهِ وَحَتَّى لَوْ اكْتَالَهُ الْبَائِعُ لِنَفْسِهِ بِحَضْرَتِهِ وَهُوَ يَرَاهُ وَيُشَاهِدُهُ وَلَا بُدَّ مِنْ أَنْ يَكْتَالَ الْمُشْتَرِي لِنَفْسِهِ، وَجَائِزٌ لَهُ فِي كُلِّ مَا ذَكَرْنَا أَنْ يَهَبَهُ، وَأَنْ يَصْدُقَهُ، وَأَنْ يُؤَاجِرَ بِهِ، وَأَنْ يُصَالِحَ، وَأَنْ يَتَصَدَّقَ بِهِ، وَأَنْ يُقْرِضَهُ قَبْلَ، أَنْ يَكْتَالَهُ، وَقَبْلَ أَنْ يَنْقُلَهُ جُزَافًا اشْتَرَاهُ أَوْ بِكَيْلٍ وَلَيْسَتْ هَذِهِ الْأَحْكَامُ فِي غَيْرِ الْقَمْحِ أَصْلًا.

L24099 The evidence for this is what was narrated to us through the chain of Qāsim ibn Aṣbagh: Aḥmad ibn Zuhayr ibn Ḥarb narrated to us on the authority of Ubayy, who narrated to us on the authority of Ḥayyān ibn Hilāl, who narrated to us on the authority of Hammām ibn Yaḥyā ibn Abī Kathīr, reporting from Yaʿlā ibn Ḥakīm, who narrated to him from Yūsuf ibn Māhak, who narrated to him from Ḥakīm ibn Ḥizām, that he said: "O Messenger of Allah, I am a man who engages in these transactions. What is permissible for me from them, and what is forbidden among them?" He replied: "O my nephew, when you purchase a commodity, do not sell it until you have taken possession of it."

بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ أَنَا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ نا أُبَيٌّ أَنَا حَيَّانُ بْنُ هِلَالٍ أَنَا هَمَّامُ بْنُ يَحْيَى بْنِ أَبِي كَثِيرٍ: أَنَّ يَعْلَى بْنَ حَكِيمٍ حَدَّثَهُ: أَنَّ يُوسُفَ بْنَ مَاهَكَ حَدَّثَهُ: أَنَّ «حَكِيمَ بْنَ حِزَامٍ حَدَّثَهُ: أَنَّهُ قَالَ يَا رَسُولَ اللَّهِ، إِنِّي رَجُلٌ أَشْتَرِي هَذِهِ الْبُيُوعَ، فَمَا يَحِلُّ لِي مِنْهَا مِمَّا يَحْرُمُ عَلَيَّ؟ قَالَ: يَا ابْنَ أَخِي إِذَا ابْتَعْتَ بَيْعًا فَلَا تَبِعْهُ حَتَّى تَقْبِضَهُ»

L24100 This is a generality encompassing every sale and purchase, a specification for both from matters that are neither sales nor purchases, and an answer

فَهَذَا عُمُومٌ لِكُلِّ بَيْعٍ، وَلِكُلِّ ابْتِيَاعٍ، وَتَخْصِيصٌ لَهُمَا مِمَّا لَيْسَا بَيْعًا وَلَا ابْتِيَاعًا، وَجَوَابٌ مِنْهُ - عَلَيْهِ السَّلَامُ - إِذْ سُئِلَ عَمَّا يَحِلُّ مِمَّا يَحْرُمُ.

from him (peace be upon him) when he was asked about what is permissible from what is forbidden.

فَإِنْ قِيلَ: فَإِنَّ هَذَا الْخَبَرَ مُضْطَرِبٌ.

L24101 If it is said, "But indeed this narration is conflicting..."

لِأَنَّكُمْ رَوَيْتُمُوهُ مِنْ طَرِيقِ خَالِدِ بْنِ الْحَارِثِ الْهُجَيْمِيِّ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، قَالَ: حَدَّثَنِي رَجُلٌ مِنْ إِخْوَانِنَا حَدَّثَنِي يُوسُفُ بْنُ مَاهَكَ: أَنَّ عَبْدَ اللَّهِ بْنَ عِصْمَةَ الْجُشَمِيَّ حَدَّثَهُ: أَنَّ حَكِيمَ بْنَ حِزَامٍ حَدَّثَهُ نَذْكُرُ هَذَا الْخَبَرَ وَعَبْدُ اللَّهِ بْنُ عِصْمَةَ مَتْرُوكٌ؟

L24102 Because you have narrated it through the chain of Khālid ibn al-Ḥārith al-Hujaymī from Hishām al-Dastawā'ī from Yaḥyā ibn Abī Kathīr, who said: A man from our brethren narrated to me: Yūsuf ibn Māhak narrated to me that ʿAbdullāh ibn ʿIṣmah al-Jushamī narrated to him that Ḥakīm ibn Ḥizām narrated to him. Do we cite this report while ʿAbdullāh ibn ʿIṣmah is abandoned?

قُلْنَا: نَعَمْ، إِلَّا أَنَّ هَمَّامَ بْنَ يَحْيَى رَوَاهُ كَمَا أَوْرَدْنَا قَبْلُ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ فَسَمَّى ذَلِكَ الرَّجُلَ مِنْ الَّذِي لَمْ يُسَمِّهِ هِشَامٌ، وَذَكَرَ أَنَّهُ يَعْلَى بْنُ حَكِيمٍ وَيَعْلَى ثِقَةٌ وَذَكَرَ فِيهِ: أَنَّ يُوسُفَ سَمِعَهُ مِنْ حَكِيمِ بْنِ حِزَامٍ وَهَذَا صَحِيحٌ فَإِذَا سَمِعَهُ مِنْ حَكِيمٍ فَلَا يَضُرُّهُ أَنْ يَسْمَعَهُ أَيْضًا مِنْ غَيْرِ حَكِيمٍ عَنْ حَكِيمٍ، فَصَارَ حَدِيثُ خَالِدِ بْنِ الْحَارِثِ لَغْوًا كَانَ أَوْ لَمْ يَكُنْ بِمَنْزِلَةٍ وَاحِدَةٍ.

L24103–24104 We said: Yes, except that Hammām ibn Yaḥyā narrated it as we previously mentioned from Yaḥyā ibn Abī Kathīr, identifying the man whom Hishām left unnamed. He stated that he was Yaʿlā ibn Ḥakīm—and Yaʿlā is trustworthy—and mentioned in it that Yūsuf heard it from Ḥakīm ibn Ḥizām, and this is authentic. Thus, if he heard it from Ḥakīm, it does not detract from its authenticity to also hear it from someone other than Ḥakīm narrating from Ḥakīm. Consequently, the ḥadīth of Khālid ibn al-Ḥārith becomes invalid, whether it existed or not, as they are of one status.

فَإِنْ قِيلَ: فَقَدْ رُوِيَتْ مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ ابْنِ عُمَرَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ ابْتَاعَ طَعَامًا فَلَا يَبِعْهُ حَتَّى يَقْبِضَهُ»

L24105 If it is said: It has been narrated through Mālik from ʿAbd Allāh ibn Dīnār from Ibn ʿUmar that the Messenger of Allah—peace and blessings of Allah be upon him—said: "Whoever purchases food must not sell it until he takes possession of it."

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ أَنَا عَمْرُو بْنُ دِينَارٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ أَمَّا الَّذِي نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُبَاعَ حَتَّى يُقْبَضَ فَهُوَ الطَّعَامُ، قَالَ ابْنُ عَبَّاسٍ بِرَأْيِهِ: وَلَا أَحْسَبُ كُلَّ شَيْءٍ إِلَّا مِثْلَهُ؟ قُلْنَا: نَعَمْ، هَذَانِ صَحِيحَانِ: إِلَّا أَنَّهُمَا بَعْضُ مَا فِي حَدِيثِ حَكِيمِ بْنِ حِزَامٍ فَحَدِيثُ حَكِيمِ بْنِ حِزَامٍ دَخَلَ فِيهِ: الطَّعَامُ وَغَيْرُ الطَّعَامِ، فَهُوَ أَعَمُّ، فَلَا يَجُوزُ تَرْكُهُ؛ لِأَنَّهُ فِيهِ حُكْمًا لَيْسَ فِي خَبَرِ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ.

L24106 From the path of Sufyān ibn ʿUyaynah: I am ʿAmr ibn Dīnār from Ṭāwūs from Ibn ʿAbbās: "As for what the Messenger of Allah—peace and blessings of Allah be upon him—prohibited from being sold until it is taken possession of, it is food." Ibn ʿAbbās said according to his opinion: "I do not deem anything except to be like it." We said: "Yes." Both of these are authentic, though they form part of the ḥadīth of Ḥakīm ibn Ḥizām. The ḥadīth of Ḥakīm ibn Ḥizām includes food and non-food, making it more comprehensive. Thus, it is not permissible to disregard it, because it includes a ruling absent from the narrations of Ibn ʿAbbās and Ibn ʿUmar.

فَإِنْ قِيلَ: قَدْ صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا رَوَيْتُمْ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي زِيَادُ بْنُ أَيُّوبَ أَنَا هُشَيْمٌ أَنَا أَبُو بِشْرٍ هُوَ ابْنُ أَبِي وَحْشِيَّةَ عَنْ يُوسُفَ بْنِ مَاهَكَ «عَنْ حَكِيمِ بْنِ حِزَامٍ قُلْتُ: يَا رَسُولَ اللَّهِ يَسْأَلُنِي الْمَرْءُ الْبَيْعَ لَيْسَ عِنْدِي مَا أَبِيعُهُ مِنْهُ ثُمَّ أَبْتَاعُ لَهُ مِنَ السُّوقِ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -: لَا تَبْتَعْ مَا لَيْسَ عِنْدَكَ» قُلْنَا: نَعَمْ، وَبِهِ نَقُولُ هُوَ بَيِّنٌ كَمَا تَسْمَعُ، إِنَّمَا نَهْيٌ عَنْ بَيْعِ مَا لَيْسَ فِي مِلْكٍ كَمَا فِي الْخَبَرِ نَصًّا، وَإِلَّا فَكُلُّ مَا يَمْلِكُهُ الْمَرْءُ فَهُوَ عِنْدَهُ وَلَوْ أَنَّهُ بِالْهِنْدِ يَقُولُ: عِنْدِي ضَيْعَةٌ سَرِيَّةٌ، وَعِنْدِي فَرَسٌ فَارَّةٌ وَسَوَاءٌ عِنْدَنَا كَانَ مَغْصُوبًا أَوْ لَمْ يَكُنْ، وَهُوَ عِنْدَ صَاحِبِهِ، أَيْ فِي مِلْكِهِ وَلَهُ.

L24107–24109 If it is said, “You have narrated through the chain of Aḥmad ibn Shuʿayb—Ziyād ibn Ayyūb informed me: Hushaym narrated to us, from Abū Bishr, Ibn Abī Waḥshiyyah, from Yūsuf ibn Māhak, from Ḥakīm ibn Ḥizām, who said: ‘I asked, “O Messenger of Allah, a man asks me to sell him something I do not possess. Should I then purchase it for him from the market?”’ He—peace be upon him—responded, ‘Do not sell what you do not possess.’”—this has been authentically reported from the Prophet, may Allah bless him and grant him peace. We said: Yes, and by this we affirm its evident clarity. The prohibition pertains solely to selling what is not owned, as explicitly stated in the hadith. Otherwise, everything a person owns remains in his possession even if he were in India. He may say: “I possess a hidden estate,” or “I possess a runaway horse,” and it makes no difference to us whether the item is usurped or not, for it remains with its owner—that is, within his ownership and rightfully his.

فَإِنْ قِيلَ: فَإِنَّكُمْ رَوَيْتُمْ مِنْ طَرِيقِ أَبِي دَاوُد أَنَا زُهَيْرُ بْنُ حَرْبٍ أَنَا إِسْمَاعِيلُ هُوَ ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ حَدَّثَنِي عَمْرُو بْنُ شُعَيْبٍ حَدَّثَنِي أَبِي عَنْ أَبِيهِ عَنْ أَبِيهِ حَتَّى ذَكَرَ عَبْدَ اللَّهِ بْنَ عَمْرِو بْنِ الْعَاصِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَحِلُّ سَلَفٌ وَبَيْعٌ وَلَا شَرْطَانِ فِي بَيْعٍ وَلَا رِبْحُ مَا لَمْ يَضْمَنْ وَلَا بَيْعُ مَا لَيْسَ عِنْدَكَ»

L24110 If it is said: You have narrated through the chain of Abū Dāwūd—Zuhayr ibn Ḥarb → Ismāʿīl ibn ʿUlayyah → Ayyūb al-Sakhtiyānī, who narrated: “‘Amr ibn Shuʿayb reported to me, my father reported to me, from his father, from his grandfather”—until reaching ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ, who said: The Messenger of Allah (peace be upon him) said: “It is not permissible to combine a loan and a sale, nor stipulate two conditions in one sale, nor profit for what one has not guaranteed, nor to sell what you do not possess.”[10]

قُلْنَا: نَعَمْ، هَذَا صَحِيحٌ، وَبِهِ نَأْخُذُ، وَلَا نَعْلَمُ لِعَمْرِو بْنِ شُعَيْبٍ حَدِيثًا مُسْنَدًا إِلَّا هَذَا وَحْدَهُ، وَآخَرُ فِي الْهِبَاتِ رَوَاهُ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمَنْعِ مِنَ الرُّجُوعِ فِي الْهِبَاتِ إِلَّا الْوَالِدَ فِيمَا أَعْطَى وَلَدَهُ وَلَيْسَ فِي هَذَا الْخَبَرِ إِلَّا الَّذِي فِي حَدِيثِ حَكِيمِ بْنِ حِزَامٍ مِنَ النَّهْيِ عَنْ بَيْعِ مَا لَيْسَ لَكَ فَقَطْ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L24111 We said: Yes, this is sound, and we adopt it. We know of no hadith with a complete chain transmitted by ‘Amr ibn Shu‘ayb except this one alone, and another regarding gifts which he narrated from Tāwūs from Ibn ‘Abbās and Ibn ‘Umar from the Prophet (peace be upon him) concerning the prohibition of retracting gifts except for a parent regarding what they have given their child. There is nothing in this report except what is in the hadith of Ḥakīm ibn Ḥizām regarding the prohibition of selling what you do not own – only this. Success comes from Allah, the Most High.

وَمِمَّنْ قَالَ بِقَوْلِنَا فِي هَذَا: ابْنُ عَبَّاسٍ كَمَا أَوْرَدْنَاهُ.

L24112 Among those who have adopted our position on this matter is Ibn Abbas,

[10] **Hadith references (L24110):** Jami at-Tirmidhi 1234; Mishkat al-Masabih 2870.

as we have mentioned.

L24113 Just as it has been narrated to us through the chain of transmission from ʿAbd al-Razzāq, from Ibn Jurayj, who reported: Abū al-Zubayr informed me that he heard Jābir ibn ʿAbd Allāh saying: Do not conclude a sale until you take possession of it.

وَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: لَا تَبِعْ بَيْعًا حَتَّى تَقْبِضَهُ.

L24114–24116 Abd al-Razzaq reported from Maʿmar, from Ayyub al-Sikhtiyani, who said: Abd al-Rahman ibn Awf and al-Zubayr asked Umar, "Debased coins are being presented to us. Should we give the inferior ones and take the pure ones?" He replied, "Do not do that." But proceed to al-Baqīʿ and sell your silver coins for a garment or goods. Once you have received it and it is yours, then sell it, and he mentioned the hadith.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ قَالَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ وَالزُّبَيْرُ لِعُمَرَ: إِنَّهُ تُزَيَّفُ عَلَيْنَا أَوْرَاقٌ فَنُعْطِي الْخَبِيثَ وَنَأْخُذُ الطَّيِّبَ؟ قَالَ: فَلَا تَفْعَلُوا، وَلَكِنْ انْطَلِقْ إِلَى الْبَقِيعِ فَبِعْ وَرِقَكَ بِثَوْبٍ أَوْ عَرَضٍ، فَإِذَا قَبَضْتَ وَكَانَ لَك فَبِعْهُ وَذَكَرَ الْخَبَرَ.

L24117 Thus, Umar states this and clarifies that possession is that which makes the thing belong to a person, and our view in this matter aligns with the position of Al-Ḥasan and Ibn Shubrumah.

فَهَذَا عُمَرُ يَقُولُ بِذَلِكَ، وَيُبَيِّنُ أَنَّ الْقَبْضَ هُوَ الَّذِي يَكُونُ الشَّيْءُ لِلْمَرْءِ وَقَوْلُنَا فِي هَذَا كَقَوْلِ الْحَسَنِ، وَابْنِ شُبْرُمَةَ

L24118 Some scholars held the view that this ruling applies specifically to food, meaning that it cannot be sold before taking possession. Others maintained that it pertains exclusively to what requires measuring by volume or weighing, as narrated through Yahya ibn Saʿid al-Qattān: Saʿid ibn Abi ʿArūbah narrated from Qatādah, from ʿAbd Rabbihi, from Abī ʿIyāḍ, from ʿUthmān ibn ʿAffān: "There is no objection if a man enters into a sale and resells it before taking possession, except for what requires measuring by volume or weighing."

وَذَهَبَ قَوْمٌ إِلَى أَنَّ هَذَا الْحُكْمَ إِنَّمَا هُوَ فِي الطَّعَامِ فَقَطْ يَعْنِي أَنْ لَا يُبَاعَ قَبْلَ أَنْ يُقْبَضَ وَذَهَبَ آخَرُونَ إِلَى أَنَّهُ فِيمَا يُكَالُ أَوْ يُوزَنُ فَقَطْ: كَمَا رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ أَنَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ عَبْدِ رَبِّهِ عَنْ أَبِي عِيَاضٍ عَنْ عُثْمَانَ بْنِ عَفَّانَ: لَا بَأْسَ إِذَا اشْتَرَى الرَّجُلُ الْبَيْعَ أَنْ يَبِيعَهُ قَبْلَ أَنْ يَقْبِضَهُ مَا خَلَا الْكَيْلَ وَالْوَزْنَ.

L24119 And through the narration of Ḥammād ibn Salamah from Qatādah from Saʿīd ibn al-Musayyab: that he saw no objection to a man purchasing an item not quantified by measuring or weighing, then selling it before taking possession of it.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يَبْتَاعَ الرَّجُلُ بَيْعًا لَا يُكَالُ وَلَا يُوزَنُ أَنْ يَبِيعَهُ قَبْلَ أَنْ يَقْبِضَهُ.

L24120 From the narration of Abd al-Razzaq, from Ma'mar, from Ayyub, from Ibn Sirin, who said: There is no harm in purchasing something not measured by volume or weight with cash payment, then selling it before taking possession

of it. This is the view of al-Hakam, Ibrahim, and Hammad ibn Abi Sulayman; al-Nakha'i mentioned it from those he met.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ ابْنِ سِيرِينَ قَالَ: لَا بَأْسَ بِأَنْ يَشْتَرِيَ شَيْئًا لَا يُكَالُ وَلَا يُوزَنُ بِنَقْدٍ ثُمَّ يَبِيعَهُ قَبْلَ أَنْ يَقْبِضَهُ وَهُوَ قَوْلُ الْحَكَمِ وَإِبْرَاهِيمَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ وَذَكَرَهُ النَّخَعِيُّ عَمَّنْ لَقِيَ.

L24121 And 'Aṭā' said: It is permissible to sell anything before taking possession.

وَقَالَ عَطَاءٌ: جَائِزٌ بَيْعُ كُلِّ شَيْءٍ قَبْلَ أَنْ يَقْبِضَ.

L24122 Abu Hanifah said: Anything owned through a contract—which is nullified upon the item's destruction—is not permissible to sell before taking possession, such as sale and lease contracts, except for real estate, which may be sold before taking possession.

وَقَالَ أَبُو حَنِيفَةَ: كُلُّ مَا مُلِكَ بِعَقْدٍ يُنْتَقَضُ الْعَقْدُ بِهَلَاكِهِ، فَلَا يَجُوزُ بَيْعُهُ قَبْلَ قَبْضِهِ: كَالْبَيْعِ، وَالْإِجَارَةِ، إِلَّا الْعَقَارَ: فَجَائِزٌ بَيْعُهُ قَبْلَ قَبْضِهِ.

L24123 He said: Any property owned by virtue of a contract that is not invalidated by its perishing may be sold before taking possession, such as the dower, stipulated reward, khulʿ divorce, and similar cases. This is an opinion that, to our knowledge, no one before him has held.

قَالَ: وَكُلُّ مَا مُلِكَ بِعَقْدٍ لَا يُنْتَقَضُ الْعَقْدُ بِهَلَاكِهِ: فَجَائِزٌ بَيْعُهُ قَبْلَ قَبْضِهِ كَالصَّدَاقِ، وَالْجُعْلِ، وَالْخُلْعِ، وَنَحْوِهِ وَهَذَا قَوْلٌ لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ.

L24124–24126 Malik said: Anything edible and water—it is impermissible to sell them before taking possession. Except for these two, selling before possession is permissible. On another occasion, he said: Only edible items. As for water, its sale is permissible before possession. In both statements, he included crops like white radish, carrots, and chard, [asking]: "Should none of these be sold before taking possession?" We replied: "No one consumes this [produce] at all, yet you objected to this [ruling]!" Regarding al-Shāfiʿī's inclusion of saqamūniyā among edible substances, they said: "Does it yield from itself what is eaten?" We responded: "If a tree yields what is eaten from it, then prohibit the sale of saqamūniyā before taking possession!" They ceased, and we do not know that this entire opinion of theirs is attributed to anyone before them.

وَقَالَ مَالِكٌ: كُلُّ مَا يُؤْكَلُ وَالْمَاءُ: فَلَا يَحِلُّ بَيْعُهُ قَبْلَ أَنْ يُقْبَضَ وَمَا عَدَا هَذَيْنِ فَجَائِزٌ بَيْعُهُ قَبْلَ أَنْ يُقْبَضَ وَقَالَ مَرَّةً أُخْرَى: كُلُّ مَا يُؤْكَلُ فَقَطْ، وَأَمَّا الْمَاءُ: فَبَيْعُهُ جَائِزٌ قَبْلَ قَبْضِهِ وَجَعَلَ فِي كِلَا قَوْلَيْهِ: زَرِيعَةَ الْفُجْلِ الْأَبْيَضِ، وَزَرِيعَةَ الْجَزَرِ، وَزَرِيعَةَ السَّلْقِ: لَا يُبَاعُ شَيْءٌ مِنْهَا قَبْلَ الْقَبْضِ؟ فَقُلْنَا: هَذَا لَا يَأْكُلُهُ أَحَدٌ أَصْلًا، وَهَذَا الَّذِي أَنْكَرْتُمْ عَلَى الشَّافِعِيِّ فِي إِدْخَالِهِ السَّقَمُونْيَا فِيمَا يُؤْكَلُ؟ فَقَالُوا: إِنَّهُ يُخْرِجُ مِنْهَا مَا يُؤْكَلُ؟ فَقُلْنَا: وَالشَّجَرُ يَخْرُجُ مِنْهَا مَا يُؤْكَلُ فَامْنَعُوا مِنْ بَيْعِهَا قَبْلَ الْقَبْضِ، فَانْقَطَعُوا وَمَا نَعْلَمُ قَوْلَهُمْ هَذَا كُلَّهُ كَمَا هُوَ عَنْ أَحَدٍ قَبْلَهُمْ.

L24127 Here, the Ḥanafīs and Mālikīs opposed every opinion narrated from the Companions—may Allah be pleased with them—on this matter. As for al-Shāfiʿī, he prohibited the sale of property acquired through sale, marriage, or khulʿ before taking possession at all. This is an unsound opinion without any evidence.

وَخَالَفَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ هَهُنَا كُلَّ قَوْلٍ رُوِيَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَأَمَّا الشَّافِعِيُّ: فَلَمْ يُجِزْ بَيْعَ مَا مُلِكَ بِبَيْعٍ، أَوْ نِكَاحٍ أَوْ خُلْعٍ، قَبْلَ الْقَبْضِ أَصْلًا وَهَذَا قَوْلٌ فَاسِدٌ بِلَا دَلِيلٍ.

L24128 If they say: "We have analogized marriage and khulʿ to sale," we respond: "All analogy is invalid. Moreover, even were analogy valid, this analogy itself would embody invalidity, for marriage is permissible without any mention of a bridal gift whatsoever, whereas sale is impermissible without a specified price. Marriage does not confer ownership of anything through a bridal gift at all, and khulʿ is likewise, in contrast to sale. Thus, the invalidity of this argument becomes evident. Success is from Allah, the Exalted."

فَإِنْ قَالُوا: قِسْنَا النِّكَاحَ وَالْخُلْعَ عَلَى الْبَيْعِ؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ النِّكَاحَ يَجُوزُ بِلَا مَهْرٍ يُذْكَرُ أَصْلًا، وَلَا يَجُوزُ الْبَيْعُ بِلَا ثَمَنٍ يُذْكَرُ، وَالنِّكَاحُ لَمْ يُمْلَكْ بِصَدَاقٍ رَقَبَةَ شَيْءٍ أَصْلًا، وَالْخُلْعُ كَذَلِكَ، بِخِلَافِ الْبَيْعِ فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L24129 As for the ruling on wheat: [it is] what we previously mentioned in the connected discourse from Ibn Abbas' narration about the Prophet—peace and blessings of Allah be upon him—that the Messenger of Allah—peace and blessings of Allah be upon him—prohibited selling until taking possession applies specifically to food. This specifies a ruling for food in sale exclusively while establishing its general applicability through any means of ownership.

أَمَّا حُكْمُ الْقَمْحِ: فَالَّذِي ذَكَرْنَا قَبْلَ هَذَا فِي الْكَلَامِ الْمُتَّصِلِ بِهَذَا مِنْ حَدِيثِ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَّا الَّذِي نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُبَاعَ حَتَّى يُقْبَضَ فَهُوَ الطَّعَامُ، فَهَذَا تَخْصِيصٌ لِلطَّعَامِ فِي الْبَيْعِ خَاصَّةً وَعُمُومٌ لَهُ بِأَيِّ وَجْهٍ مُلِكَ.

L24130 If it is asked: "On what basis have you specified wheat with that ruling to the exclusion of other foods?" We say: Because the term "food" in the language in which the Messenger of Allah—peace and blessings be upon him—addressed us is applied exclusively to wheat, and it is only applied to other things through annexation.

فَإِنْ قِيلَ: مِنْ أَيْنَ خَصَّصْتُمْ الْقَمْحَ بِذَلِكَ دُونَ سَائِرِ الطَّعَامِ؟ قُلْنَا: لِأَنَّ اسْمَ الطَّعَامِ فِي اللُّغَةِ الَّتِي بِهَا خَاطَبَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُطْلَقُ هَذَا إلَّا عَلَى الْقَمْحِ وَحْدَهُ، وَإِنَّمَا يُطْلَقُ عَلَى غَيْرِهِ بِإِضَافَةٍ.

L24131 The Almighty has said: **{The food of those who were given the Scripture is lawful for you, and your food is lawful for them}** [Al-Mā'idah: 5]. Thus, He, Exalted and Majestic, meant slaughtered animals—not what they eat—for they eat carrion, blood, and pork, and none of that has ever been permissible for us.[11]

وَقَدْ قَالَ تَعَالَى: {وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ وَطَعَامُكُمْ حِلٌّ لَهُمْ} [المائدة: ٥] فَأَرَادَ عَزَّ وَجَلَّ الذَّبَائِحَ لَا مَا يَأْكُلُونَ فَإِنَّهُمْ يَأْكُلُونَ الْمَيْتَةَ، وَالدَّمَ، وَالْخِنْزِيرَ، وَلَمْ يَحِلَّ لَنَا شَيْءٌ مِنْ ذَلِكَ قَطُّ.

[11] **Qur'an references (L24131):** Qur'an 5:5 (Al-Ma'idah).

وَقَالَ اللَّهُ عَزَّ وَجَلَّ: {إِنَّ اللَّهَ مُبْتَلِيكُمْ بِنَهَرٍ فَمَنْ شَرِبَ مِنْهُ فَلَيْسَ مِنِّي وَمَنْ لَمْ يَطْعَمْهُ فَإِنَّهُ مِنِّي} [البقرة: ٢٤٩] فَذَكَرَ تَعَالَى الطُّعْمَ فِي الْمَاءِ بِإِضَافَةٍ، وَلَا يُسَمَّى الْمَاءُ طَعَامًا.

L24132 Allah, the Mighty and Majestic, said: “Indeed, Allah will test you with a river. Whoever drinks from it is not of me, and whoever does not taste it, he is with me” [Al-Baqarah 2:249]. He, the Exalted, mentioned the tasting in water through metaphorical attribution, yet water is not called food.[12]

وَقَالَ لَقِيطُ بْنُ مَعْمَرٍ الْإِيَادِيُّ جَاهِلِيٌّ فَصِيحٌ فِي شِعْرٍ لَهُ مَشْهُورٌ:

L24133–24134 Laqīṭ ibn Maʿmar al-Iyādī—an eloquent pre-Islamic poet with renowned poetry—

لَا يَطْعَمُ النَّوْمَ إِلَّا رَيْثَ يَبْعَثُهُ ... هَمٌّ يَكَادُ جَوَاهُ يَحْطِمُ الضِّلَعَا

L24135 He does not taste sleep except until a worry—whose core nearly shatters his ribs—awakens him...

فَأَضَافَ الطُّعْمَ إِلَى النَّوْمِ وَالنَّوْمُ لَيْسَ طَعَامًا بِلَا شَكٍّ.

L24136 He attributed taste to sleep, and sleep is undoubtedly not taste.

وَقَدْ ذَكَرْنَا قَوْلَ عَبْدِ اللَّهِ بْنِ مَعْمَرٍ وَكَانَ طَعَامُنَا يَوْمَئِذٍ الشَّعِيرَ، فَذَكَرَ الطَّعَامَ فِي الشَّعِيرِ فِي إِضَافَةٍ لَا بِإِطْلَاقٍ.

L24137 We mentioned the statement of Abdullah ibn Ma’mar, and our food at that time was barley. Ibn Ma’mar mentioned the food concerning barley in a genitive construct (iḍāfa), not in an absolute form.

وَقَدْ ذَكَرْنَا مِنْ طَرِيقِ أَبِي سَعِيدٍ الْخُدْرِيِّ قَوْلَهُ: كُنَّا نُخْرِجُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَدَقَةَ الْفِطْرِ: صَاعًا مِنْ طَعَامٍ، صَاعًا مِنْ شَعِيرٍ، صَاعًا مِنْ تَمْرٍ، صَاعًا مِنْ أَقِطٍ فَلَمْ يُطْلِقِ الطَّعَامَ إِلَّا عَلَى الْقَمْحِ وَحْدَهُ.

L24138 We have mentioned through the narration of Abū Saʿīd al-Khudrī his statement: “During the time of the Messenger of Allah (peace be upon him), we used to give Sadaqat al-Fitr as one saʿa of food—specifically wheat—one saʿa of barley, one saʿa of dates, one saʿa of dried curd.” Yet the term “food” here referred solely to wheat.

لَا عَلَى الشَّعِيرِ وَلَا غَيْرِهِ.

L24139 It does not apply to barley or to anything else.

وَرُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا يَزِيدُ بْنُ إِبْرَاهِيمَ أَنَا مُحَمَّدُ بْنُ سِيرِينَ قَالَ: عَرَضَ عَلَيَّ عَبْدُ اللَّهِ بْنُ عُتْبَةَ بْنِ مَسْعُودٍ زَيْتًا لَهُ؟ فَقُلْت لَهُ: إنَّ أَصْحَابَ الزَّيْتِ قَلَّمَا يَسْتَوْفُونَ حَتَّى يَبِيعُونَ، فَقَالَ: إنَّمَا سُمِّيَ الطَّعَامُ أَيْ إنَّمَا أَمَرَ بِالْبَيْعِ بَعْدَ الِاسْتِيفَاءِ فِي الطَّعَامِ فَلَمْ يَرَ الزَّيْتَ طَعَامًا.

L24140 It was narrated to us via Al-Ḥajjāj ibn al-Minhāl: Yazīd ibn Ibrāhīm narrated to us: Muḥammad ibn Sīrīn said: ʿAbdullāh ibn ʿUtbah ibn Masʿūd presented his oil to me. I said to him: “Oil owners seldom complete their transactions until they sell.” He replied: “The term ’food’ was explicitly designated—meaning the command to sell applies only after full acquisition regarding food—so he did not consider oil to be food.”

وَأَبُو سَعِيدٍ الْخُدْرِيُّ وَعَبْدُ اللَّهِ بْنُ عُتْبَةَ بْنِ مَسْعُودٍ: حُجَّتَانِ فِي اللُّغَةِ قَاطِعَتَانِ، لَا سِيَّمَا وَعَبْدُ اللَّهِ هُذَلِيٌّ قَبِيلَةٌ مُجَاوِرَةٌ لِلْحَرَمِ فَلُغَتُهُمْ لُغَةُ قُرَيْشٍ.

L24141 Abu Sa’id al-Khudri and Abdullah ibn Utbah ibn Mas’ud: two decisive linguistic proofs; especially since Abdullah is a Hudhali - a member of a tribe neighboring the Haram - and thus their dialect is the dialect of Quraysh.

[12] **Qur’an references (L24132):** Qur’an 2:249 (Al-Baqarah).

L24142 And among those who upheld our view—that “food” in its general meaning refers solely to wheat—was Abū Thawr.

وَمِمَّنْ قَالَ بِقَوْلِنَا: إِنَّ الطَّعَامَ بِإِطْلَاقٍ إِنَّمَا هُوَ الْقَمْحُ وَحْدَهُ: أَبُو ثَوْرٍ

L24143 As for wheat purchased without precise measurement, it is not permissible to sell it until it is taken possession of and removed from its location. This is based on what we have narrated through the transmission of al-Bukhārī: From Isḥāq ibn Rāhawayh, from al-Walīd ibn Muslim, from al-Awzāʿī, from al-Zuhrī, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father—may Allah be pleased with him—who said: “I saw those who bought food without precise measurement being struck during the era of Allah’s Messenger—peace and blessings be upon him—if they sold it before taking it to their dwellings.”

وَأَمَّا الْقَمْحُ يُشْتَرَى جُزَافًا فَلَا يَحِلُّ بَيْعُهُ حَتَّى يُقْبَضَ وَيُنْقَلَ عَنْ مَوْضِعِهِ: فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا إِسْحَاقُ هُوَ ابْنُ رَاهْوَيْهِ أَنَا الْوَلِيدُ بْنُ مُسْلِمٍ عَنِ الْأَوْزَاعِيِّ عَنِ الزُّهْرِيِّ «عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: رَأَيْتُ الَّذِينَ يَشْتَرُونَ الطَّعَامَ مُجَازَفَةً يُضْرَبُونَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَبِيعُوهُ حَتَّى يُؤْوُوهُ إِلَى رِحَالِهِمْ» .

L24144–24146 And we have narrated it through the chain of Muslim: Muhammad ibn Abdullah ibn Numayr reported: My father reported to me, from Abdullah ibn Umar, from Nafiʾ, from Ibn Umar, who said: The Messenger of Allah—peace and blessings be upon him—said: “Whoever purchases food must not sell it until he has taken full possession of it.” He said, “We used to buy food from caravan travelers without weighing it, but the Messenger of Allah (peace be upon him) forbade us from selling it until we took possession of it.”

وَرُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ أَنَا أَبِي أَنَا عَبْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنِ اشْتَرَى طَعَامًا فَلَا يَبِعْهُ حَتَّى يَسْتَوْفِيَهُ قَالَ وَكُنَّا نَشْتَرِي الطَّعَامَ مِنَ الرُّكْبَانِ جُزَافًا فَنَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَبِيعَهُ حَتَّى نَنْقُلَهُ مِنْ مَكَانِهِ»

L24147 And through the chain of Muslim: I am Abū Bakr ibn Abī Shaybah, from ʿAbd al-Aʿlā, from Maʿmar, from al-Zuhrī, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from Ibn ʿUmar: That during the time of the Messenger of Allāh (may Allah’s peace and blessings be upon him), they were punished if they purchased food in bulk and then sold it in the same place before moving it.[13]

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا عَبْدُ الْأَعْلَى عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ «عَنِ ابْنِ عُمَرَ: أَنَّهُمْ كَانُوا يُضْرَبُونَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا اشْتَرَوْا طَعَامًا جُزَافًا أَنْ يَبِيعُوهُ فِي مَكَانِهِ حَتَّى يُحَوِّلُوهُ» .

L24148 Abu Muhammad said: It is inconceivable for anyone other than him—peace be upon him—to enforce upon the Muslims in Medina a law they are commanded to follow in the markets without his knowledge whatsoever. Thus, it is established that this constitutes a grave transgression for which no concession is permitted.

قَالَ أَبُو مُحَمَّدٍ: وَلَا يُمْكِنُ أَنْ يَكُونَ غَيْرُهُ - عَلَيْهِ السَّلَامُ - يَضْرِبُ الْمُسْلِمِينَ بِالْمَدِينَةِ عَلَى شَرِيعَةٍ يُؤْمَرُونَ بِهَا فِي الْأَسْوَاقِ بِغَيْرِ عِلْمِهِ أَصْلًا فَصَحَّ أَنَّهُ جُرْمٌ كَبِيرٌ لَا يُرَخَّصُ فِيهِ.

L24149 If it is said: “In some of what you have narrated, [the wording] is ’until they shelter him in their encampments’?” We respond: Yes, and any place he is

فَإِنْ قِيلَ: إِنَّ فِي بَعْضِ مَا رَوَيْتُمْ “ حَتَّى يُؤْوُوهُ إِلَى رِحَالِهِمْ ”؟ قُلْنَا: نَعَمْ، وَكُلُّ مَكَانٍ رَحَّلَهُ إِلَيْهِ فَهُوَ رَحْلٌ لَهُ إِذَا كَانَ مُبَاحًا لَهُ أَنْ يُرَحِّلَهُ إِلَيْهِ.

[13] **Hadith references (L24147):** Sahih Muslim 1527c.

relocated to becomes his encampment, provided it is permissible to relocate him there.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ هَذَا الْحَدِيثَ عَنْ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ فَلَمْ يَذْكُرْ فِيهِ الْجُزَافَ؟ قُلْنَا: عُبَيْدُ اللَّهِ بْنُ عُمَرَ إِنْ لَمْ يَكُنْ فَوْقَ مَالِكٍ، وَإِلَّا فَلَيْسَ هُوَ دُونَهُ أَصْلًا وَقَدْ رَوَاهُ عَنْ نَافِعٍ فَذَكَرَ فِيهِ الْجُزَافَ.

L24150 If it is said: You have narrated this ḥadīth from Mālik, from Nāfiʿ, from Ibn ʿUmar—yet Mālik did not mention the approximation sale (al-juzāf) in his transmission? We respond: Even if ʿUbayd Allāh ibn ʿUmar is not ranked above Mālik in reliability, he is certainly not beneath him in status. For ʿUbayd Allāh narrated it from Nāfiʿ and explicitly mentioned the approximation sale in his transmission.

وَرَوَاهُ الزُّهْرِيُّ عَنْ سَالِمٍ كَمَا أَوْرَدْنَا فَذَكَرَ فِيهِ الْجُزَافَ وَهُوَ خَبَرٌ وَاحِدٌ بِلَا شَكٍّ.

L24151 Az-Zuhri also narrated it from Salim as we have cited, and he mentioned the juzāf (approximation-based sale) within it, and this is unquestionably a solitary report (khabar wāḥid).

وَجُمْهُورُ الرُّوَاةِ عَنْ مَالِكٍ لِهَذَا الْحَدِيثِ فِي الْمُوَطَّأِ وَغَيْرِهِ ذَكَرُوا فِيهِ عَنْهُ الْجُزَافَ، كَمَا ذَكَرَهُ عُبَيْدُ اللَّهِ عَنْ نَافِعٍ، وَالزُّهْرِيُّ عَنْ سَالِمٍ، وَإِنَّمَا أَسْقَطَ ذِكْرَ الْجُزَافِ: الْقَعْنَبِيُّ، وَيَحْيَى، فَقَطْ فَصَحَّ أَنَّهُمَا وَهُمَا فِيهِ بِلَا شَكٍّ، لِأَنَّهُ يَتَعَيَّنُ خَبَرُ وَاحِدٍ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L24152 The majority of narrators from Mālik regarding this ḥadīth in the *Muwaṭṭaʾ* and other works mentioned *juzāf* in it, just as ʿUbayd Allāh narrated from Nāfiʿ and al-Zuhrī from Sālim. Only al-Qaʿnabī and Yaḥyā omitted the mention of *juzāf*. Thus, it was established that their omission in this matter is undoubtedly sound, as it is restricted to a solitary report. With Allāh, the Exalted, lies success.

وَإِنَّمَا كَانَ يَصِحُّ الْأَخْذُ بِرِوَايَةِ الْقَعْنَبِيِّ، وَيَحْيَى، لَوْ أَمْكَنَ أَنْ يَكُونَا خَبَرَيْنِ اثْنَيْنِ عَنْ مُوَطَّئَيْنِ مُخْتَلِفَيْنِ وَقَوْلُنَا هَهُنَا هُوَ قَوْلُ الشَّافِعِيِّ وَأَبِي سُلَيْمَانَ، وَلَمْ يَقُلْ بِهِ مَالِكٌ، وَلَا نَعْلَمُ لِمُقَلِّدِهِ وَلَا لَهُ حُجَّةً أَصْلًا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L24153–24155 The validity of adopting the narrations of Al-Qaʿnabī and Yaḥyā would only apply if they could be two reports from two different transmitters of the Muwatta. Our view here is the position of Al-Shāfiʿī and Abū Sulaymān. Mālik did not hold this view, and we are unaware of any evidence for it from him or his emulator at all. And all divine enablement is from Allah, the Exalted.

وَأَمَّا الْقَمْحُ يَبْتَاعُهُ الْمَرْءُ بِكَيْلٍ فَلَا يَحِلُّ لَهُ بَيْعُهُ حَتَّى يَكْتَالَهُ لِنَفْسِهِ، ثُمَّ يَكْتَالُهُ الَّذِي يَبِيعُ مِنْهُ وَلَا بُدَّ سَوَاءٌ حَضَرَا كِلَاهُمَا كَيْلَهُ قَبْلَ ذَلِكَ أَوْ لَمْ يَحْضُرَا، فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارِ أَنَا مُحَمَّدُ بْنُ عَبْدِ الرَّحِيمِ أَنَا مُسْلِمٌ هُوَ ابْنُ إِبْرَاهِيمَ أَنَا مَخْلَدُ بْنُ الْحُسَيْنِ الْأَزْدِيُّ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ قَالَ

L24156 As for wheat that a person purchases by measure, it is not lawful for him to sell it until he measures it for himself. Then the seller must measure it again, regardless of whether both parties were present during the initial measurement or not. This is based on what we have transmitted through the chain of Ahmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār: I heard from Muḥammad ibn ʿAbd al-Raḥīm, who heard from Muslim ibn Ibrāhīm, who heard from Makhlad ibn al-Ḥusayn al-Azdī, from Hishām ibn Ḥassān, from Muḥammad ibn Sīrīn, from Abū Hurayrah, who said: “The Messenger of Allah (peace and blessings be upon him) prohibited the sale of food until two

sa‘ measures have been duly measured, whereby the surplus belongs to the owner and the deficit rests upon the seller.”

«نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الطَّعَامِ حَتَّى يَجْرِيَ فِيهِ الصَّاعَانِ، فَيَكُونُ لِصَاحِبِهِ الزِّيَادَةُ وَعَلَيْهِ النُّقْصَانُ» .

L24157 We have narrated it through the chain of Abū Bakr ibn Abī Shaybah who said: I [heard from] Sharīq, from Ibn Abī Laylā, from Muḥammad ibn Bayān, from Ibn ‘Umar, that he was asked about one who purchased food while having witnessed its measurement. He said: “No, until the two *sa‘*s have been applied to it.”

وَرُوِّينَاهُ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا شَرِيكٌ عَنْ ابْنِ أَبِي لَيْلَى عَنْ مُحَمَّدِ بْنِ بَيَانٍ عَنْ ابْنِ عُمَرَ أَنَّهُ سُئِلَ عَمَّنْ اشْتَرَى الطَّعَامَ وَقَدْ شَهِدَ كَيْلَهُ؟ قَالَ: لَا، حَتَّى يَجْرِيَ فِيهِ الصَّاعَانِ.

L24158 Narrated via Ibn Abi Shaybah: Muhammad ibn Fudayl reported from Mutarrif (who is the son of Tarif): I said to Al-Sha’bi: “If I witness food being measured as it is portioned and then purchase it, do I take it by its measured quantity?” He replied: “With every transaction comes a measuring.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ مُطَرِّفٍ هُوَ ابْنُ طَرِيفٍ قُلْت لِلشَّعْبِيِّ: أَكُونُ شَاهِدَ الطَّعَامِ وَهُوَ يُكَالُ فَأَشْتَرِيهِ، آخُذُهُ بِكَيْلِهِ؟ فَقَالَ: مَعَ كُلِّ صَفْقَةٍ كَيْلَةٌ

L24159 From the narration of Ibn Abi Shaybah: Marwan narrates from Ziyad, the freed slave of the family of Sa‘d, who said: I asked Sa‘id ibn al-Musayyib, “A man purchased food and then measured it. Is it permissible for me to buy it based on his measurement?” He replied: “No, until it is measured in your presence.” It is authentically reported from him that he said regarding this matter: “This is riba.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا مَرْوَانُ عَنْ زِيَادٍ مَوْلَى آلِ سَعْدٍ قُلْت لِسَعِيدِ بْنِ الْمُسَيِّبِ: رَجُلٌ ابْتَاعَ طَعَامًا فَاكْتَالَهُ، أَيَصْلُحُ لِي أَنْ اشْتَرِيهِ بِكَيْلِ الرَّجُلِ؟ قَالَ: لَا، حَتَّى يُكَالَ بَيْنَ يَدَيْك وَصَحَّ عَنْهُ أَنَّهُ قَالَ فِيهِ: هَذَا رِبًا.

L24160 And from the narration of Ibn Abi Shaybah: Zayd ibn al-Hubab reported from Sawadah ibn Hayyan, who said: I heard Muhammad ibn Sirin being asked about two men, one of whom purchased food while the other was with him. He said: “Did you witness the sale and the taking possession?” The man said: “Take profit from me and give it to me.” He replied: “No, until the two sa‘ measures have been applied to it, so that the surplus would belong to you and the shortfall would be your liability.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا زَيْدُ بْنُ الْحُبَابِ عَنْ سَوَادَةَ بْنِ حَيَّانَ سَمِعْت مُحَمَّدَ بْنَ سِيرِينَ سُئِلَ عَنْ رَجُلَيْنِ اشْتَرَى أَحَدُهُمَا طَعَامًا وَالْآخَرُ مَعَهُ؟ فَقَالَ: قَدْ شَهِدْت الْبَيْعَ وَالْقَبْضَ؟ فَقَالَ: خُذْ مِنِّي رِبْحًا وَأَعْطِنِيهِ فَقَالَ: لَا، حَتَّى يَجْرِيَ فِيهِ الصَّاعَانِ، فَتَكُونُ لَك زِيَادَتُهُ وَعَلَيْك نُقْصَانُهُ.

L24161 Narrated via Ibn Abī Shaybah: From Waki‘, via ‘Umar Abī Ḥafṣ, who said: I heard Al-Ḥasan Al-Baṣrī being asked about someone who buys food while watching it be measured. What is the ruling? He replied: No, until he measures it.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ عُمَرَ أَبِي حَفْصٍ قَالَ: سَمِعْت الْحَسَنَ الْبَصْرِيَّ وَسُئِلَ عَمَّنْ اشْتَرَى طَعَامًا مَا وَهُوَ يَنْظُرُ إلَى كَيْلِهِ؟ قَالَ: لَا، حَتَّى يَكِيلَهُ.

L24162–24164 Through the chain of Abd al-Razzaq, from Ma’mar, from al-Zuhri, from Sa’id ibn al-Musayyib, who said: In the year that passed, whoever purchases

food or fat by measure must measure it before selling it. When he sells it... It is also measured by volume when sold by measure, and this is the opinion of Ata ibn Abi Rabah, Abu Hanifah, al-Shafi'i, Ahmad ibn Hanbal, Ishaq, and Abu Sulayman.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: فِي السَّنَةِ الَّتِي مَضَتْ: إنَّ مَنْ ابْتَاعَ طَعَامًا أَوْ وَدَكًا كَيْلًا أَنْ يَكْتَالَهُ قَبْلَ أَنْ يَبِيعَهُ، فَإِذَا بَاعَهُ اُكْتِيلَ مِنْهُ أَيْضًا إذَا بَاعَهُ كَيْلًا وَهُوَ قَوْلُ عَطَاءِ بْنِ أَبِي رَبَاحٍ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ.

L24165 Malik said: When a sale is made with immediate payment, there is no harm in trusting the seller's stated measurement without measuring it, but this is disliked in deferred payment. This is an opinion not known from anyone before him. He opposed in this matter a scholar (from earlier authorities) who had no known opposition from them, and contradicted the majority of scholars. We know of no valid proof for his opinion at all - neither from Quranic text, nor Sunnah, nor weak narration, nor analogy, nor any rationally plausible juristic reasoning.

وَقَالَ مَالِكٌ: إذَا بِيعَ بِالنَّقْدِ فَلَا بَأْسَ بِأَنْ يُصَدِّقَ الْبَائِعَ فِي كَيْلِهِ وَلَا يَكْتَالُهُ وَيُكْرَهُ ذَلِكَ فِي الدَّيْنِ وَهَذَا قَوْلٌ لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ، وَخَالَفَ فِيهِ صَاحِبًا لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْهُمْ، وَخَالَفَ فِيهِ جُمْهُورَ الْعُلَمَاءِ، وَمَا نَعْلَمُ لِقَوْلِهِ حُجَّةً أَصْلًا، لَا مِنْ نَصِّ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ.

L24166 If it is said: You have narrated through the chain of Abū Dāwūd from Muḥammad ibn ʿAwf al-Ṭāʾī—from Aḥmad ibn Khālid al-Wahbī—Muḥammad ibn Isḥāq narrated to us from Abī al-Zinād from ʿUbayd ibn Ḥunayn from Ibn ʿUmar, who said: "I purchased oil in the market, and when the sale became binding, a man met me offering a good profit for it. I intended to confirm the transaction, but a man behind me seized my arm. I turned and found Zayd ibn Thābit, who said: 'Do not sell it where you bought it until you take possession of it at your premises, for the Messenger of Allah—peace and blessings be upon him—forbade selling goods where they are purchased until merchants transfer them to their own premises.'"? We respond: This was narrated by Aḥmad ibn Khālid al-Wahbī, who is unknown. By Allah, even if it were authenticated by our criteria, we would hasten to act upon it. We praise Allah for the abundance He has enabled us to achieve in this regard.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ أَبِي دَاوُد عَنْ مُحَمَّدِ بْنِ عَوْفٍ الطَّائِيِّ أَنَا أَحْمَدُ بْنُ خَالِدٍ الْوَهْبِيُّ أَنَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ أَبِي الزِّنَادِ عَنْ عُبَيْدِ بْنِ حُنَيْنٍ عَنْ ابْنِ عُمَرَ قَالَ: «ابْتَعْتُ زَيْتًا فِي السُّوقِ فَلَمَّا اسْتَوْجَبْتُهُ لَقِيَنِي رَجُلٌ أَعْطَانِي بِهِ رِبْحًا حَسَنًا فَأَرَدْتُ أَنْ أَضْرِبَ عَلَى يَدِي، فَأَخَذَ رَجُلٌ مِنْ خَلْفِي بِذِرَاعِي فَالْتَفَتُّ فَإِذَا زَيْدُ بْنُ ثَابِتٍ فَقَالَ: لَا تَبِعْهُ حَيْثُ ابْتَعْتَهُ حَتَّى تَحُوزَهُ إلَى رَحْلِكَ؟ فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى أَنْ تُبَاعَ السِّلَعُ حَيْثُ تُبْتَاعَ حَتَّى تَحُوزَهَا التُّجَّارُ إلَى رِحَالِهِمْ» ؟ قُلْنَا: هَذَا رَوَاهُ أَحْمَدُ بْنُ خَالِدٍ الْوَهْبِيُّ وَهُوَ مَجْهُولٌ وَبِاَللَّهِ لَوْ صَحَّ عِنْدَنَا لَسَارَعْنَا إلَى الْأَخْذِ بِهِ نَحْمَدُ اللَّهَ عَلَى مَا يَسَّرَنَا لَهُ مِنْ ذَلِكَ كَثِيرًا.

L24167 In all these matters we have mentioned, whoever acts contrary to them has irrevocably invalidated. If the report had reached him, he would be flogged as the Messenger of Allah (peace be upon him) commanded.

وَكُلُّ مَا ذَكَرْنَا فِي هَذِهِ الْمَسَائِلِ فَمَنْ فَعَلَ خِلَافَ ذَلِكَ فُسِخَ أَبَدًا، فَإِنْ كَانَ قَدْ بَلَغَهُ الْخَبَرَ ضُرِبَ كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L24168 And Ibn Umar narrated that the Prophet, peace be upon him, said: "Whoever performs a deed not in accordance with our command, it is rejected."

L24169 **The issue of partnership (sharikah), mutual dissolution (iqalah), and cost-price sale (tawliyah); all are newly initiated sale transactions.**

L24170 1509 - Issue:

L24171 Partnership, rescission by mutual consent, and resale at cost are all commenced transactions; none of them are permissible except what is permissible in all other sales, without exception. This is the position of Al-Shāfiʿī and our school's scholars regarding partnership and resale at cost.

L24172–24174 They said: Mutual rescission is the revocation of a sale and is not itself a sale. Rabiʿah and Malik said: Every case where it is not permissible [...] The sale before taking possession or before measuring by volume is permissible in cases of partnership, resale at cost, and cancellation by mutual consent before taking possession or measuring. This has been narrated from al-Ḥasan specifically regarding resale at cost.

L24175 They cited as evidence what we have narrated through the chain of ʿAbd al-Razzāq, who said: Ibn Jurayj reported to me that Rabīʿah ibn Abī ʿAbd al-Raḥmān informed him that the Messenger of Allah—peace be upon him—narrated a well-known ḥadīth in Medina: "Whoever purchases food must not sell it until he takes possession of it and completes its full receipt, unless he enters into a partnership over it, resells it at cost price, or accepts it."

L24176 Malik said: The scholars unanimously held that there is no objection to partnership, mutual rescission (iqālah), and resale at cost (tawliyah) in food and other matters - meaning before taking possession. Abu Muhammad said: We know of no narrations about this except those reported solely through Rabi'ah and Tawus. As for Abu Muhammad's attribution to Al-Hasan regarding tawliyah, a contradictory position from Al-Hasan himself has been transmitted.

L24177 Ali said: As for the narration of Rabiʿah, it is *mursal*, and there is no proof

وَرَوَاهُ ابْنُ عُمَرَ قَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ»

[مَسْأَلَة الشَّرِكَة وَالْإِقَالَة والتولية كُلّهَا بُيُوع مُبْتَدَأَة]

١٥٠٩ - مَسْأَلَةٌ:

وَالشَّرِكَةُ، وَالْإِقَالَةُ، وَالتَّوْلِيَةُ: كُلُّهَا بُيُوعٌ مُبْتَدَأَةٌ لَا يَجُوزُ فِي شَيْءٍ مِنْهَا إلَّا مَا يَجُوزُ فِي سَائِرِ الْبُيُوعِ لَا تَحَاشَ، شَيْئًا وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَصْحَابِنَا فِي الشَّرِكَةِ، وَالتَّوْلِيَةِ.

وَقَالُوا: الْإِقَالَةُ فَسْخُ بَيْعٍ، وَلَيْسَتْ بَيْعًا، وَقَالَ رَبِيعَةُ، وَمَالِكٌ: كُلُّ مَا لَا يَجُوزُ فِيهِ الْبَيْعُ قَبْلَ الْقَبْضِ أَوْ قَبْلَ الِاكْتِيَالِ فَإِنَّهُ لَا بَأْسَ فِيهِ بِالشَّرِكَةِ، وَالتَّوْلِيَةِ، وَالْإِقَالَةِ قَبْلَ الْقَبْضِ، وَقَبْلَ الِاكْتِيَالِ وَرُوِيَ هَذَا عَنْ الْحَسَنِ فِي التَّوْلِيَةِ فَقَطْ.

وَاحْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ، قَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي رَبِيعَةُ بْنُ أَبِي عَبْدِ الرَّحْمَنِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ حَدِيثًا مُسْتَفَاضًا فِي الْمَدِينَةِ «مَنْ ابْتَاعَ طَعَامًا فَلَا يَبِعْهُ حَتَّى يَقْبِضَهُ وَيَسْتَوْفِيَهُ، إلَّا أَنْ يُشْرِكَ فِيهِ أَوْ يُوَلِّيَهُ أَوْ يَقْبَلَهُ» .

وَقَالَ مَالِكٌ: إنَّ أَهْلَ الْعِلْمِ اجْتَمَعَ رَأْيُهُمْ عَلَى أَنَّهُ لَا بَأْسَ بِالشَّرِكَةِ، وَالْإِقَالَةِ، وَالتَّوْلِيَةِ فِي الطَّعَامِ وَغَيْرِهِ يَعْنِي قَبْلَ الْقَبْضِ قَالَ أَبُو مُحَمَّدٍ: وَمَا نَعْلَمُ رُوِيَ هَذَا إلَّا عَنْ رَبِيعَةَ، وَعَنْ طَاوُسٍ فَقَطْ - وَقَوْلُهُ عَنْ الْحَسَنِ فِي التَّوْلِيَةِ قَدْ جَاءَ عَنْهُ خِلَافُهَا.

in a *mursal* narration. Had it been supported by an *isnād*, we would have quickly accepted it. If its widespread transmission had originated from an authentic source, al-Zuhrī would have been more likely to know that than Rabiʿah, for there is a vast difference between them in this matter. Moreover, al-Zuhrī contradicts him in that.

قَالَ عَلِيٌّ: أَمَّا خَبَرُ رَبِيعَةَ فَمُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ، وَلَوْ اسْتَنَدَ لَسَارَعْنَا إِلَى الْأَخْذِ بِهِ، وَلَوْ كَانَتْ اسْتِفَاضَتُهُ عَنْ أَصْلٍ صَحِيحٍ لَكَانَ الزُّهْرِيُّ أَوْلَى بِأَنْ يَعْرِفَ ذَلِكَ مِنْ رَبِيعَةَ، فَبَيْنَهُمَا فِي هَذَا الْبَابِ بَوْنٌ بَعِيدٌ، وَالزُّهْرِيُّ مُخَالِفٌ لَهُ فِي ذَلِكَ.

L24178 It was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī, who said: "Tawliya is a sale in food and other items." And through him (ʿAbd al-Razzāq) to Maʿmar from Ayyūb al-Sikhtiyānī, who said: Ibn Sīrīn said: "There is no tawliya until it is taken possession of and measured."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: التَّوْلِيَةُ بَيْعٌ فِي الطَّعَامِ وَغَيْرِهِ وَبِهِ إِلَى مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ قَالَ: قَالَ ابْنُ سِيرِينَ: لَا تَوْلِيَةَ حَتَّى يُقْبَضَ وَيُكَالَ.

L24179 From the narration chain of Al-Ḥajjāj ibn al-Minhāl: Ar-Rabīʿ ibn Ṣubayḥ reported: I asked Al-Ḥasan about a man who purchases food then transfers it to the man (before taking possession). He said: "He may not transfer it until he takes possession of it." ʿAbd al-Malik ibn ash-Shaʿshaʿ said to him: "O Abā Saʿīd, do you state this by your opinion?" He replied: "I do not state it by my opinion, but rather we received it from our predecessors and our companions."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا الرَّبِيعُ بْنُ صُبَيْحٍ قَالَ: سَأَلْت الْحَسَنَ عَنْ الرَّجُلِ يَشْتَرِي الطَّعَامَ فَيُوَلِّيهِ الرَّجُلَ؟ قَالَ: لَيْسَ لَهُ أَنْ يُوَلِّيَهُ حَتَّى يَقْبِضَهُ؟ فَقَالَ لَهُ عَبْدُ الْمَلِكِ بْنُ الشَّعْشَاعِ: يَا أَبَا سَعِيدٍ أَبِرَأْيِك تَقُولُهُ؟ قَالَ: لَا أَقُولُهُ بِرَأْيِي، وَلَكِنَّا أَخَذْنَاهُ عَنْ سَلَفِنَا، وَأَصْحَابِنَا

L24180–24182 Ali said: Al-Hasan's predecessors were the Companions - may Allah be pleased with them. He encountered over five hundred Companions, fought in expeditions alongside hundreds of them, and his companions were the senior Followers. If someone were to advance a claim of consensus here, it would be more valid than the consensus mentioned by Malik without doubt, through the chain of... From ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Zakariyyā ibn Abī Zāʾidah and Fiṭr ibn Khalīfah. Zakariyyā reported from al-Shaʿbī, while Fiṭr reported from al-Ḥakam. Then al-Shaʿbī and al-Ḥakam concurred that *tawlīyah* (sale at cost price) constitutes a valid sale. Sufyān said: We hold that partnership is governed by the rules of sale, and one does not form a partnership until taking possession. Such were the rulings of the Companions and the Successors, as evident here.

قَالَ عَلِيٌّ: سَلَفُ الْحَسَنِ هُمْ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ -، أَدْرَكَ مِنْهُمْ خَمْسَمِائَةِ صَاحِبٍ وَأَكْثَرَ، وَغَزَا مَعَ مِئِينَ مِنْهُمْ وَأَصْحَابُهُ هُمْ أَكَابِرُ التَّابِعِينَ، فَلَوْ أَقْدَمَ امْرُؤٌ عَلَى دَعْوَى الْإِجْمَاعِ هَهُنَا لَكَانَ أَصَحَّ مِنْ الْإِجْمَاعِ الَّذِي ذَكَرَهُ مَالِكٌ بِلَا شَكٍّ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ وَفِطْرِ بْنِ خَلِيفَةَ، قَالَ زَكَرِيَّا عَنْ الشَّعْبِيِّ، وَقَالَ فِطْرٌ: عَنْ الْحَكَمِ، ثُمَّ اتَّفَقَ الشَّعْبِيُّ، وَالْحَكَمُ: عَلَى أَنَّ التَّوْلِيَةَ بَيْعٌ، قَالَ سُفْيَانُ: وَنَحْنُ نَقُولُ: وَالشَّرِكَةُ بَيْعٌ، وَلَا يُشْرِكُ حَتَّى يَقْبِضَ فَهَؤُلَاءِ الصَّحَابَةُ، وَالتَّابِعُونَ كَمَا تَرَى.

L24183 Abu Muhammad said: Partnership and tawliyah are nothing but the transfer of a person's ownership of a specific item for which his ownership is valid, or a portion of a specific item for which his ownership is valid, to another's ownership for a stipulated price. This is the sale itself. This description

قَالَ أَبُو مُحَمَّد: الشَّرِكَةُ، وَالتَّوْلِيَةُ، إنَّمَا هُوَ نَقْلُ مِلْكِ الْمَرْءِ عَيْنًا مَا صَحَّ مِلْكُهُ لَهَا، أَوْ بَعْضَ عَيْنٍ مَا صَحَّ مِلْكُهُ لَهَا إلَى مِلْكِ غَيْرِهِ بِثَمَنٍ مُسَمًّى وَهَذَا هُوَ الْبَيْعُ نَفْسُهُ، لَيْسَتْ هَذِهِ

belongs solely to sale, and no sale can fundamentally exist except with this description. Thus, it is established that both are valid sales, and they do not disagree with us that only what is permissible in a sale applies to these two - except in what we have mentioned here alone. This amounts to a specification without proof.

L24184 As for the Ḥanafīs: they uphold the mursal report, yet they violated their principle here by disregarding the mursal report of Rabīʿah that we mentioned. We do not know that the Mālikīs used any proof beyond what we have mentioned, except that some of them argued: "Are partnership, resale at cost, and mutual rescission not customary norms?" We responded: "What of it? Sale too is a customary norm, and we have never observed customary norms that permit unlawful matters. Were this the case, they would be reprehensible rather than customary."

L24185 And we will discuss, if Allah, the Exalted, wills, the matter of mutual cancellation subsequent to this issue in a separate issue. There is no might nor power except with Allah, the Most High, the Almighty.

L24186 The issue of whether mutual rescission (iqālah) in a sale constitutes annulment (fasakh).

L24187 1510. Issue:

L24188–24190 As for rescission (iqālah, mutual dissolution of a contract), it has been authentically established from the Messenger of Allah—peace and blessings be upon him—that he encouraged its practice. It has been narrated to us through Abū Dāwūd's chain: Yaḥyā ibn Maʿīn from Ḥafṣ ibn Ghīyāth, from al-Aʿmash, from Abū Ṣāliḥ, from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—stated, "Whoever grants rescission to a regretful person, Allah will forgive his misstep." Abu Hanifah, Al-Shafi'i, and Abu Sulayman said: It is not a sale, but rather the annulment of a sale.

L24191 Abu Yusuf said: After taking possession, it is a sale; before taking possession, it is the rescission of a sale.

L24192 It was narrated from Mālik that it is a sale.

الصِّفَةُ أَلْبَتَّةَ إِلَّا لِلْبَيْعِ، وَلَا يَكُونُ بَيْعٌ أَصْلًا إِلَّا بِهَذِهِ الصِّفَةِ فَصَحَّ أَنَّهُمَا بَيْعٌ صَحِيحٌ، وَهُمْ لَا يُخَالِفُونَنَا فِي أَنَّهُ لَا يَجُوزُ فِيهِمَا إِلَّا مَا يَجُوزُ فِي الْبَيْعِ، إِلَّا فِيمَا ذَكَرْنَا هَهُنَا فَقَطْ وَهَذَا تَخْصِيصٌ بِلَا بُرْهَانٍ.

وَأَمَّا الْحَنَفِيُّونَ: فَإِنَّهُمْ يَقُولُونَ بِالْمُرْسَلِ وَنَقَضُوا هَهُنَا أَصْلَهُمْ، فَتَرَكُوا مُرْسَلَ رَبِيعَةَ الَّذِي ذَكَرْنَاهُ وَمَا نَعْلَمُ الْمَالِكِيِّينَ احْتَجُّوا بِغَيْرِ مَا ذَكَرْنَا إِلَّا أَنَّ بَعْضَهُمْ قَالَ: الشَّرِكَةُ، وَالتَّوْلِيَةُ، وَالْإِقَالَةُ مَعْرُوفٌ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ وَالْبَيْعُ أَيْضًا مَعْرُوفٌ، وَمَا عَهِدْنَا الْمَعْرُوفَ تُبَاحُ فِيهِ مُحَرَّمَاتٌ، وَلَوْ كَانَ ذَلِكَ لَكَانَ مُنْكَرًا لَا مَعْرُوفًا.

وَسَنَتَكَلَّمُ إِنْ شَاءَ اللَّهُ تَعَالَى فِي الْإِقَالَةِ إِثْرَ هَذِهِ الْمَسْأَلَةِ فِي مَسْأَلَةٍ مُفْرَدَةٍ وَلَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ الْعَلِيِّ الْعَظِيمِ.

[مَسْأَلَةُ الْإِقَالَةِ بَيْعٌ أَمْ فَسْخٌ]

١٥١٠ - مَسْأَلَةٌ:

وَأَمَّا الْإِقَالَةُ فَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْحَضُّ عَلَيْهَا: رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا يَحْيَى بْنُ مَعِينٍ أَنَا حَفْصٌ هُوَ ابْنُ غِيَاثٍ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَقَالَ نَادِمًا أَقَالَهُ اللَّهُ عَثْرَتَهُ» وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: لَيْسَتْ بَيْعًا، إِنَّمَا هِيَ فَسْخُ بَيْعٍ.

وَقَالَ أَبُو يُوسُفَ: هِيَ بَعْدَ الْقَبْضِ بَيْعٌ، وَقَبْلَ الْقَبْضِ فَسْخُ بَيْعٍ.

وَرُوِيَ عَنْ مَالِكٍ: أَنَّهَا بَيْعٌ.

L24193 It has been narrated from him that which indicates this is an annulment of the sale. As for Abū Yūsuf's categorization, it is an unsubstantiated claim and a classification devoid of evidence; anything of this nature is invalid.

وَرُوِيَ عَنْهُ مَا يَدُلُّ عَلَى أَنَّهَا فَسْخُ بَيْعٍ: فَأَمَّا تَقْسِيمُ أَبِي يُوسُفَ فَدَعْوَى بِلَا بُرْهَانٍ، وَتَقْسِيمٌ بِلَا دَلِيلٍ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ.

L24194 As for those who said it is not a sale, they cited as evidence that the Messenger of Allah (peace be upon him) named it "iqālah," and Muslims followed him in this matter. He (peace be upon him) did not designate it as a sale, and the act of naming in matters of religion must be taken exclusively from him (peace be upon him). Thus, it is not permissible to call it a sale, since he (peace be upon him) did not assign it this name.

وَأَمَّا مَنْ قَالَ: لَيْسَتْ بَيْعًا، فَإِنَّهُمْ احْتَجُّوا: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَمَّاهَا بِاسْمِ الْإِقَالَةِ، وَاتَّبَعَهُ الْمُسْلِمُونَ عَلَى ذَلِكَ، وَلَمْ يُسَمِّهَا - عَلَيْهِ السَّلَامُ - بَيْعًا، وَالتَّسْمِيَةُ فِي الدِّينِ لَا تُؤْخَذُ إِلَّا عَنْهُ - عَلَيْهِ السَّلَامُ -، فَلَا يَجُوزُ أَنْ تُسَمَّى بَيْعًا؛ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُسَمِّهَا هَذَا الِاسْمَ.

L24195 They said: A consensus has indeed been established on the permissibility of mutual revocation in the *salam* contract, and a sale before taking possession is not permissible. Thus, it is confirmed that it does not constitute a sale. We know of no argument they have other than these two.

وَقَالُوا: قَدْ صَحَّ الْإِجْمَاعُ عَلَى جَوَازِ الْإِقَالَةِ فِي السَّلَمِ، وَالْبَيْعُ قَبْلَ الْقَبْضِ لَا يَجُوزُ، فَصَحَّ أَنَّهَا لَيْسَتْ بَيْعًا، مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَاتَيْنِ.

L24196 Abu Muhammad said: Their argument invoking the Prophet's naming—peace be upon him—is valid. However, we do not concede that he—peace be upon him—termed as iqalah the act of one who sells to another, then annuls the transaction by having the purchased item returned while the seller takes back the price. Nor did he—peace be upon him—designate this as a sale. They will never find this in any narration, sound or unsound. As for this mursal report transmitted via Rabi'ah's chain: if we wished to cite it as proof that iqalah is a sale, we would do so, for it contains the prohibition against selling before taking possession—except in partnership transactions, transfer of rights, or rescission. This clearly indicates that these are sales excluded from the general category of sales.

قَالَ أَبُو مُحَمَّد: احْتِجَاجُهُمْ بِالتَّسْمِيَةِ مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَوْلُهُمْ حَقٌّ، إِلَّا أَنَّنَا لَا نُسَلِّمُ لَهُمْ أَنَّهُ - عَلَيْهِ السَّلَامُ - سَمَّى إقَالَةً: فِعْلَ مَنْ بَاعَ مِنْ آخَرَ بَيْعًا ثُمَّ اسْتَقَالَهُ فِيهِ، فَرَدَّ إلَيْهِ مَا ابْتَاعَ مِنْهُ وَأَخَذَ ثَمَنَهُ مِنْهُ، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُسَمِّ ذَلِكَ بَيْعًا، وَلَا يَجِدُونَ هَذَا أَبَدًا، لَا فِي رِوَايَةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ وَهَذَا الْخَبَرُ الْمُرْسَلُ مِنْ طَرِيقِ رَبِيعَةَ لَوْ شِئْنَا أَنْ نَسْتَدِلَّ مِنْهُ بِأَنَّ الْإِقَالَةَ بَيْعٌ لَفَعَلْنَا؛ لِأَنَّهُ فِيهِ النَّهْيُ عَنْ الْبَيْعِ قَبْلَ الْقَبْضِ إلَّا مَنْ أَشْرَكَ، أَوْ وَلَّى، أَوْ أَقَالَ فَهَذَا ظَاهِرٌ أَنَّهَا بُيُوعٌ مُسْتَثْنَاةٌ مِنْ جُمْلَةِ الْبُيُوعِ.

L24197 As for the authentic report we mentioned, it only encourages rescission. Rescission applies not to sales but rather to gifts and similar matters.

وَأَمَّا الْخَبَرُ الصَّحِيحُ الَّذِي ذَكَرْنَا فَإِنَّمَا فِيهِ الْحَضُّ عَلَى الْإِقَالَةِ فَقَطْ، وَالْإِقَالَةُ تَكُونُ فِي غَيْرِ الْبَيْعِ، لَكِنْ فِي الْهِبَةِ، وَنَحْوِ ذَلِكَ.

وَلَا فِيهِ أَيْضًا أَنَّ الْإِقَالَةَ لَا تُسَمَّى بَيْعًا، وَلَا لَهَا حُكْمُ الْبَيْعِ فَبَطَلَ مَا صَدَّرُوا بِهِ مِنْ هَذَا الِاحْتِجَاجِ الصَّحِيحِ أَصْلُهُ الْمَوْضُوعَ فِي غَيْرِ مَوْضِعِهِ.

L24198 Nor does the text therein state that rescission is termed a sale or carries the legal ruling of a sale. Thus, their use of this valid argument—whose valid basis is applied out of context—is rendered void.

وَأَمَّا دَعْوَاهُمْ الْإِجْمَاعَ عَلَى جَوَازِ الْإِقَالَةِ فِي السَّلَمِ قَبْلَ الْقَبْضِ فَبَاطِلٌ، وَإِقْدَامٌ عَلَى الدَّعْوَى عَلَى الْأُمَّةِ، وَمَا وَقَعَ الْإِجْمَاعُ قَطُّ عَلَى جَوَازِ السَّلَمِ، فَكَيْفَ عَلَى الْإِقَالَةِ فِيهِ.

L24199 As for their claim of consensus on the permissibility of rescission in a salam contract prior to taking possession, it is baseless and constitutes a presumptuous assertion against the Ummah. Consensus has never occurred regarding the permissibility of salam itself—how then could it exist concerning rescission within it?

وَقَدْ رُوِّينَا عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو، وَعَبْدِ اللَّهِ بْنِ عُمَرَ، وَالْحَسَنِ، وَجَابِرِ بْنِ زَيْدٍ، وَشُرَيْحٍ، وَالشَّعْبِيِّ، وَالنَّخَعِيِّ وَابْنِ الْمُسَيَّبِ، وَعَبْدِ اللَّهِ بْنِ مَعْقِلٍ وَطَاوُسٍ، وَمُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحَسَنِ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، وَمُجَاهِدٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ، وَعَمْرِو بْنِ الْحَارِثِ أَخِي أُمِّ الْمُؤْمِنِينَ جُوَيْرِيَةَ: أَنَّهُمْ مَنَعُوا مِنْ أَخْذِ بَعْضِ السَّلَمِ، وَالْإِقَالَةِ فِي بَعْضِهِ، فَأَيْنَ الْإِجْمَاعُ؟ فَلَيْتَ شِعْرِي هَلْ تَقَرَّوْا جَمِيعَ الصَّحَابَةِ أَوَّلَهُمْ عَنْ آخِرِهِمْ حَتَّى أَيْقَنُوا بِأَنَّهُمْ أَجْمَعُوا عَلَى ذَلِكَ؟ أَمْ تَقَرَّوْا جَمِيعَ عُلَمَاءِ التَّابِعِينَ مِنْ أَقْصَى خُرَاسَانَ إلَى الْأَنْدَلُسِ فَمَا بَيْنَ ذَلِكَ كَذَلِكَ.

L24200–24202 It has been narrated to us from Abdullah ibn Amr, Abdullah ibn ʿUmar, al-Hasan, and Jabir ibn Zayd. And Shuraih, Al-Sha'bi, Al-Nakhai, Ibn al-Musayyib, Abdullah ibn Ma'qil, Tawus, Muhammad ibn Ali ibn al-Hasan, Abu Salama ibn Abd al-Rahman, Mujahid, Sa'id ibn Jubayr, Salim ibn Abdullah, Al-Qasim ibn Muhammad, and Amr ibn al-Harith—the brother of Umm al-Mu'minin Juwayriyah—all prohibited taking part of a salam contract and mutual cancellation in part of it. So where is the consensus? Would that I knew—do you affirm that all the Companions, from the first to the last, [agreed] until they became certain of their unanimous agreement on this? Or do you affirm that all the scholars among the Tabi'in from the outermost regions of Khurasan to Andalusia and all lands between them did likewise?

ثُمَّ لَوْ صَحَّ لَهُمْ هَذَا وَهُوَ لَا يَصِحُّ أَبَدًا فَمَا يَخْتَلِفُ مُسْلِمَانِ فِي أَنَّ مِنْ الْجِنِّ قَوْمًا صَحِبُوا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَآمَنُوا بِهِ، وَمَنْ أَنْكَرَ هَذَا فَهُوَ كَافِرٌ، لِتَكْذِيبِهِ الْقُرْآنَ، فَلِأُولَئِكَ الْجِنِّ مِنْ الْحَقِّ وَوُجُوبِ التَّعْظِيمِ مِنَّا، وَمِنْ مَنْزِلَةِ الْعِلْمِ، وَالدِّينِ، مَا لِسَائِرِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، هَذَا مَا لَا شَكَّ فِيهِ عِنْدَ مُسْلِمٍ، فَمَنْ لَهُ بِإِجْمَاعِهِمْ عَلَى ذَلِكَ؟ وَرَحِمَ اللَّهُ أَحْمَدَ بْنَ حَنْبَلٍ فَلَقَدْ صَدَقَ إذْ يَقُولُ: مَنْ يَدَّعِي الْإِجْمَاعَ فَقَدْ كَذَبَ، مَا يُدْرِيهِ لَعَلَّ النَّاسَ اخْتَلَفُوا؟ لَكِنْ لِيَقُلْ: لَا أَعْلَمُ خِلَافًا، هَذِهِ أَخْبَارُ الْمَرِيسِيِّ، وَالْأَصَمِّ.

L24203 Then, even if this were valid for them—though it is eternally invalid—no two Muslims dispute that among the jinn are those who kept company with Allah's Messenger (peace be upon him) and believed in him. Whoever denies this is a denier, for rejecting the Quran. Thus, those jinn have a share of the right to reverence, the obligation of honor, and the status of knowledge and religion that belongs to all other Companions (may Allah be pleased with them). This is beyond doubt for any Muslim. So who among them has consensus on this? May Allah have mercy on Ahmad ibn Hanbal, for he spoke truthfully when he said: "Whoever claims consensus has lied. What informs him? Perhaps people differed." Let him instead say: "I know of no disagreement." These are the reports of al-Marisi and al-Asamm.

L24204 Abū Muḥammad said: The claim of consensus is not permissible except in two cases. The first: that which is established with certainty—through their authentic transmission—that all the Companions (may Allah be pleased with them) recognized it, acknowledged it, and affirmed it. The second: matters where opposition renders one a disbeliever (kāfir), such as the testimony that there is no deity but Allah and that Muḥammad is the Messenger of Allah; fasting in Ramadan; Hajj to the House (Kaaba); belief in the Quran; the five prayers; the general obligation of zakah; ritual purification for prayer and from major impurity; the prohibition of carrion, pork, and blood; and whatever belongs exclusively to this category.

قَالَ أَبُو مُحَمَّد: لَا تَحِلُّ دَعْوَى الْإِجْمَاعِ إِلَّا فِي مَوْضِعَيْنِ: أَحَدُهُمَا: مَا تُيُقِّنَ أَنَّ جَمِيعَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - عَرَفُوهُ بِنَقْلٍ صَحِيحٍ عَنْهُمْ وَأَقَرُّوا بِهِ وَالثَّانِي: مَا يَكُونُ مَنْ خَالَفَهُ كَافِرًا خَارِجًا عَنْ الْإِسْلَامِ، كَشَهَادَةِ أَنْ لَا إلَهَ إلَّا اللَّهُ، وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، وَصِيَامِ رَمَضَانَ، وَحَجِّ الْبَيْتِ، وَالْإِيمَانِ بِالْقُرْآنِ، وَالصَّلَوَاتِ الْخَمْسِ، وَجُمْلَةِ الزَّكَاةِ، وَالطَّهَارَةِ لِلصَّلَاةِ، وَمِنْ الْجَنَابَةِ، وَتَحْرِيمِ الْمَيْتَةِ، وَالْخِنْزِيرِ، وَالدَّمِ، وَمَا كَانَ مِنْ هَذَا الصِّنْفِ فَقَطْ.

L24205 Furthermore, if their claimed consensus regarding the permissibility of rescission in *salam* contracts were valid, it would constitute a sale transaction excluded by consensus from the general category of sales. How then [can this hold], when there exists an authentic report from Ibn ʿAbbās indicating the prohibition of rescission in *salam*?

ثُمَّ لَوْ صَحَّ لَهُمْ مَا ادَّعَوْهُ مِنْ الْإِجْمَاعِ عَلَى جَوَازِ الْإِقَالَةِ فِي السَّلَمِ لَكَانَ بَيْعًا مُسْتَثْنًى بِالْإِجْمَاعِ مِنْ جُمْلَةِ الْبُيُوعِ، فَكَيْفَ وَقَدْ صَحَّ عَنْ ابْنِ عَبَّاسٍ مَا يَدُلُّ عَلَى الْمَنْعِ مِنْ الْإِقَالَةِ فِي السَّلَمِ.

L24206 It has been narrated to us through the chain of Saʿīd ibn Manṣūr, Sufyān ibn ʿUyaynah, from ʿAmr ibn Dīnār, from Ṭāwūs, from Ibn ʿAbbās, who said: If you lend something for a term, specify the term. When that term arrives and you do not find what you lent, take goods of lower value and do not profit twice. He did not issue a fatwa regarding cancellation.

رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: إذَا أَسْلَفْت فِي شَيْءٍ إلَى أَجَلٍ فَسَمِّي فَجَاءَ ذَلِكَ الْأَجَلُ وَلَمْ تَجِدْ الَّذِي أَسْلَفْت فِيهِ: فَخُذْ عَرَضًا بِأَنْقَصَ وَلَا تَرْبَحْ مَرَّتَيْنِ وَلَمْ يُفْتِ بِالْإِقَالَةِ.

L24207–24208 Ali said: Rescission is not permissible in a salam contract because it constitutes selling what you do not possess, a sale involving gharar (undue uncertainty), selling what has not been received, and an unidentified sale where the specific item is unknown globally. This amounts to unlawful consumption of wealth, as no textual evidence exists to validate it and thereby exempt it from these prohibited categories. The ruling for one who cannot obtain what was advanced in the contract is to wait until it is found or to accept retribution and an agreed-upon penalty corresponding to the value owed to him, in accordance with Allah's decree: "For sacred violations, there is lawful retribution" [2:194]. The inviolability of wealth is a sacred inviolability that must not be violated, and retribution must be exacted for its infringement. If the creditor wishes to act benevolently, he may absolve the debtor entirely,

قَالَ عَلِيٌّ: وَلَا تَجُوزُ الْإِقَالَةُ فِي السَّلَمِ؛ لِأَنَّهُ بَيْعُ مَا لَيْسَ عِنْدَكَ، وَبَيْعُ غَرَرٍ، وَبَيْعُ مَا لَمْ يُقْبَضْ، وَبَيْعٌ مَجْهُولٌ لَا يَدْرِي أَيَّمَا فِي الْعَالَمِ هُوَ؟ وَهَذَا هُوَ أَكْلُ الْمَالِ بِالْبَاطِلِ، إذْ لَمْ يَأْتِ بِجَوَازِهِ نَصٌّ فَيَسْتَثْنِيهِ مِنْ جُمْلَةِ هَذِهِ الْمُحَرَّمَاتِ، فَإِنَّمَا الْحُكْمُ فِيمَنْ لَمْ يَجِدْ مَا أَسْلَفَ فِيهِ أَنْ يَصْبِرَ حَتَّى يُوجَدَ، أَوْ يَأْخُذَ مِنْهُ قِصَاصًا وَمُعَاقَبَةً مَا اتَّفَقَا عَلَيْهِ وَتَرَاضَيَا بِهِ: قِيمَةَ مَا وَجَبَ لَهُ عِنْدَهُ، لِقَوْلِ اللَّهِ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] وَحَرِيمَةُ الْمَالِ حُرْمَةٌ مُحَرَّمَةٌ يَجِبُ أَنْ يُقْتَصَّ مِنْهَا، فَإِنْ أَرَادَ الْإِحْسَانَ إلَيْهِ فَلَهُ أَنْ يُبْرِئَهُ مِنْ كُلِّ مَا لَهُ عِنْدَهُ، أَوْ يَأْخُذَ بَعْضَ مَا لَهُ عِنْدَهُ، أَوْ يُبْرِئَهُ مِمَّا شَاءَ مِنْهُ وَيَتَصَدَّقَ بِهِ

accept partial repayment, forgive any portion he chooses and donate it to him as charity - just as the Messenger of Allah instructed regarding the insolvent debtor when he said: “Give him charity.” He then added: “Take what you find, for you have no right beyond that.”[14]

L24209 We have mentioned it with its Isnād in *Judicial Insolvency* and *Natural Calamities* in this book of ours.

L24210 Abu Muhammad said: Since all the evidence they presented has been invalidated, let us affirm our corrected position with the help of God Almighty. We declare—and through His exalted support we are strengthened—that if iqālah constituted annulment of a sale, it would only be permissible by returning the actual price itself, not with something else, and this is necessary as Ibn Sīrīn said. As we have narrated through the chain of Al-Ḥajjāj ibn Minhal: Ar-Rabīʿ ibn Ḥabīb reported: “We used to frequent the Sawad region where harvested grain lay in heaps. We would purchase a kurr measure for such and such an amount, paying our money in advance. When the workers permitted threshing, some sellers fulfilled our stipulated quantity while others claimed their grain had diminished, requesting us to reclaim a portion of our principal corresponding to the shortfall. I asked Al-Ḥasan about this, and he disapproved unless either the full stipulated quantity was delivered or we reclaimed all our money entirely. I asked Ibn Sīrīn, who responded: ’If your dirhams are in their original form, there is no harm.’ I asked ʿAṭāʾ, who said: ’I perceive you have shown leniency and done good to him.’”

L24211–24213 Abu Muhammad said: This is the description of annulment. Then we return and say: Indeed, sale constitutes a valid contract established by the Quran, the Sunnah, and the certain and conclusive consensus from all... A Muslim existing on the earth’s surface - whether already present or yet to come - when he is established as such with certainty, not through false claims, it becomes impermissible to invalidate a contract validated by Allah the Exalted in His Book and through His Messenger’s pronouncements (peace be upon him) except by another textual ruling. No textual permission exists for annulling contracts through instant mutual consent except in cases where

[14] **Qur’an references (L24208):** Qur’an 2:194 (Al-Baqarah).

عَلَيْه، كَمَا «أَمَرَ رَسُولُ اللَّهِ فِي الْمُفْلِسِ إِذْ قَالَ: تَصَدَّقُوا عَلَيْهِ» ثُمَّ قَالَ - عَلَيْهِ السَّلَامُ -: «خُذُوا مَا وَجَدْتُمْ وَلَيْسَ لَكُمْ إِلَّا ذَلِكَ»

وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ " فِي التَّفْلِيسِ " وَفِي " الْجَوَائِحِ " مِنْ كِتَابِنَا هَذَا.

قَالَ أَبُو مُحَمَّد: فَإِذَا بَطَلَ كُلُّ مَا احْتَجُّوا بِهِ فَلْنَقُلْ عَلَى تَصْحِيحِ قَوْلِنَا بِعَوْنِ اللَّهِ تَعَالَى، فَنَقُولُ، وَبِهِ تَعَالَى نَتَأَيَّدُ: إِنَّ الْإِقَالَةَ لَوْ كَانَتْ فَسْخَ بَيْعٍ لَمَا جَازَتْ إِلَّا بِرَدِّ عَيْنِ الثَّمَنِ نَفْسِهِ لَا بِغَيْرِهِ وَلَا بُدَّ لَهُ كَمَا قَالَ ابْنُ سِيرِينَ، كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا الرَّبِيعُ بْنُ حَبِيبٍ: كُنَّا نَخْتَلِفُ إِلَى السَّوَادِ فِي الطَّعَامِ وَهُوَ أَكْدَاسٌ قَدْ حُصِدَ فَنَشْتَرِيهِ مِنْهُمْ الْكُرَّ بِكَذَا وَكَذَا، وَنَنْقُدُ أَمْوَالَنَا، فَإِذَا أَذِنَ لَهُمْ الْعُمَّالُ فِي الدِّرَاسِ، فَمِنْهُمْ مَنْ يَفِي لَنَا بِمَا سُمِّيَ لَنَا، وَمِنْهُمْ مَنْ يَزْعُمُ أَنَّهُ نَقَصَ طَعَامُهُ فَيَطْلُبُ إِلَيْنَا أَنْ نَرْتَجِعَ بِقَدْرِ مَا نَقَصَ رُءُوسُ أَمْوَالِنَا، فَسَأَلْت الْحَسَنَ عَنْ ذَلِكَ؟ فَكَرِهَهُ إِلَّا أَنْ يُسْتَوْفَى مَا سُمِّيَ لَنَا، أَوْ نَرْتَجِعَ أَمْوَالَنَا كُلَّهَا، وَسَأَلْت ابْنَ سِيرِينَ؟ فَقَالَ: إِنْ كَانَتْ دَرَاهِمُك بِأَعْيَانِهَا فَلَا بَأْسَ، وَسَأَلْت عَطَاءً؟ فَقَالَ: مَا أَرَاك إِلَّا قَدْ رَفَقْت وَأَحْسَنْت إِلَيْهِ.

قَالَ أَبُو مُحَمَّد: هَذِهِ صِفَةُ الْفَسْخِ، ثُمَّ نَرْجِعُ فَنَقُولُ: إِنَّ الْبَيْعَ عَقْدٌ صَحِيحٌ بِالْقُرْآنِ، وَالسُّنَنِ، وَالْإِجْمَاعِ الْمُتَيَقَّنِ الْمَقْطُوعِ بِهِ مِنْ كُلِّ مُسْلِمٍ عَلَى أَدِيمِ الْأَرْضِ كَانَ أَوْ هُوَ كَائِنٌ فَإِذْ هُوَ كَذَلِكَ بِالْيَقِينِ لَا بِالدَّعَاوَى الْكَاذِبَةِ، فَلَا يَحِلُّ فَسْخُ عَقْدٍ صَحَّحَهُ اللَّهُ تَعَالَى فِي كِتَابِهِ، وَعَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا بِنَصٍّ آخَرَ، وَلَا نَصَّ فِي جَوَازِ فَسْخِهِ مُطَارَفَةً بِتَرَاضِيهِمَا، إِلَّا فِيمَا جَاءَ نَصٌّ بِفَسْخِهِ، كَالشُّفْعَةِ، وَمَا فِيهِ الْخِيَارُ بِالنَّصِّ، فَإِذْ ذَلِكَ كَذَلِك، وَلَمْ يَكُنْ بَيْنَ مَنْ أَجَازَ الْفَسْخَ نَصٌّ أَصْلًا فَقَدْ صَحَّ: أَنَّ

specific texts authorize dissolution, such as pre-emption rights or contractual options established by textual evidence. When this reality is confirmed, and no textual basis exists whatsoever among those permitting annulment, it becomes established that mutual rescission (iqālah) constitutes a sale among sales through mutual consent. What is permissible in sales transactions remains permissible in it, and what is prohibited in sales remains prohibited in it.

الْإِقَالَةَ بَيْعٌ مِنْ الْبُيُوعِ بِتَرَاضِيهِمَا، يَجُوزُ فِيهَا مَا يَجُوزُ فِي الْبُيُوعِ، وَيَحْرُمُ فِيهَا مَا يَحْرُمُ فِي الْبُيُوعِ.

L24214 And whoever holds that iqālah (mutual rescission) constitutes the dissolution of a sale is obligated not to permit it beyond what the sale was concluded upon, because the increase—since it was not a sale—constitutes usurpation of wealth wrongfully.

وَمَنْ رَأَى أَنَّ الْإِقَالَةَ فَسْخُ بَيْعٍ لَزِمَهُ أَنْ لَا يُجِيزَهَا بِأَكْثَرَ مِمَّا وَقَعَ بِهِ الْبَيْعُ، لِأَنَّ الزِّيَادَةَ إذْ لَمْ تَكُنْ بَيْعًا فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ.

L24215 As for those who deem it a sale, they permit amending it by increasing, decreasing, or substituting the original terms—whether through immediate payment, deferred liability, or term-based deferment in cases where such periods are permissible. This is the position we uphold, and success is from Allah, the Exalted.

وَأَمَّا مَنْ رَآهَا بَيْعًا فَإِنَّهُ يُجِيزُهَا بِأَكْثَرَ مِمَّا وَقَعَ بِهِ الْبَيْعُ أَوَّلًا، وَبِأَقَلَّ، وَبِغَيْرِ مَا وَقَعَ بِهِ الْبَيْعُ، وَحَالًّا، وَفِي الذِّمَّةِ، وَإِلَى أَجَلٍ فِيمَا يَجُوزُ فِيهِ الْأَجَلُ، وَبِهَذَا نَأْخُذُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَيْع دِين يَكُون لِإِنْسَانٍ عَلَى غَيْره]

L24216 **The issue of selling a debt (deen) owed to an individual by another.**

L24217 1511 - Issue:

١٥١١ - مَسْأَلَةٌ:

L24218 It is not permissible to sell a debt owed to a person by another—whether the sale is for cash, another debt, in kind, or goods—regardless of whether the debt is evidenced by proof, acknowledged by admission, or not. All such transactions are invalid.

وَلَا يَحِلُّ بَيْعُ دَيْنٍ يَكُونُ لِإِنْسَانٍ عَلَى غَيْرِهِ، لَا بِنَقْدٍ، وَلَا بِدَيْنٍ، لَا بِعَيْنٍ، وَلَا بِعَرَضٍ، كَانَ بِبَيِّنَةٍ أَوْ مُقِرًّا بِهِ أَوْ لَمْ يَكُنْ: كُلُّ ذَلِكَ بَاطِلٌ.

L24219 The method for one seeking what is lawful is to purchase on credit from whomever he wishes whatever he wishes—from items whose sale is permissible. When the sale is concluded by the parties' separation or the expiry of the right to retract, he then transfers the debt for the price to the one indebted to him. This is valid.

وَوَجْهُ الْعَمَلِ فِي ذَلِكَ لِمَنْ أَرَادَ الْحَلَالَ: أَنْ يَبْتَاعَ فِي ذِمَّتِهِ مِمَّنْ شَاءَ مَا شَاءَ، مِمَّا يَجُوزُ بَيْعُهُ، ثُمَّ إذَا تَمَّ الْبَيْعُ بِالتَّفَرُّقِ أَوْ التَّخَيُّرِ، ثُمَّ يُحِيلُهُ بِالثَّمَنِ عَلَى الَّذِي لَهُ عِنْدَهُ الدَّيْنُ، فَهَذَا حَسَنٌ.

L24220 The proof of this is that it is an unspecified sale where the specific item is unknown, and this is wrongful consumption of wealth - and it is the statement of Al-Shafi'i.

بُرْهَانُ ذَلِكَ: أَنَّهُ بَيْعٌ مَجْهُولٌ، وَمَا لَا يَدْرِي عَيْنَهُ، وَهَذَا هُوَ أَكْلُ مَالٍ بِالْبَاطِلِ وَهُوَ قَوْلُ الشَّافِعِيِّ.

L24221 It was narrated to us via Waki‘, who narrated from Zakariyyā ibn Abī Zā’idah, who said: Al-Sha‘bī was asked about one who purchased a promissory note acknowledging three dinars in exchange for a garment. He replied: “It is invalid.” Waki‘ added: Sufyān narrated to us from ‘Abdullāh ibn Abī al-Safar, from al-Sha‘bī, who said: “It constitutes gharar.”

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا زَكَرِيَّا بْنُ أَبِي زَائِدَةَ قَالَ: سُئِلَ الشَّعْبِيُّ عَمَّنْ اشْتَرَى صَكًّا فِيهِ ثَلَاثَةُ دَنَانِيرَ بِثَوْبٍ؟ قَالَ: لَا يَصْلُحُ، قَالَ وَكِيعٌ: وَحَدَّثَنَا سُفْيَانُ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ عَنْ الشَّعْبِيِّ قَالَ: هُوَ غَرَرٌ.

L24222 Mālik said: If he acknowledges the debt owed, it is permissible to sell it for a commodity in cash. If he does not acknowledge it, selling it is impermissible—whether there is evidence against him or not—because it constitutes a contentious sale.

وَقَالَ مَالِكٌ: إنْ كَانَ مُقِرًّا بِمَا عَلَيْهِ جَازَ بَيْعُهُ بِعَرَضٍ نَقْدًا، فَإِنْ لَمْ يَكُنْ مُقِرًّا لَمْ يَجُزْ بَيْعُهُ كَانَتْ عَلَيْهِ بَيِّنَةٌ أَوْ لَمْ تَكُنْ لِأَنَّهُ شِرَاءُ خُصُومَةٍ.

L24223 Ali said: This is of no consequence, for even if he acknowledges it today, he may deny it tomorrow. Thus, the matter reverts to requiring proof despite his acknowledgment, enabling him to acquire a pretext for litigation unjustly without valid basis.

قَالَ عَلِيٌّ: وَهَذَا لَا شَيْءَ؛ لِأَنَّهُ وَإِنْ أَقَرَّ الْيَوْمَ فَيُمْكِنُ أَنْ يُنْكِرَ غَدًا، فَيَرْجِعُ الْأَمْرُ إلَى الْبَيِّنَةِ بِإِقْرَارِهِ، فَيَحْصُلُ عَلَى شِرَاءِ خُصُومَةٍ وَلَا فَرْقَ.

L24224–24225 Those who permitted it cited as evidence what we reported through ʿAbd al-Razzāq’s chain: Al-Aslamī informed me that ʿAbd Allāh ibn Abī Bakr reported from ʿUmar ibn ʿAbd al-ʿAzīz that “the Messenger of God—peace and blessings be upon him—established the right of preemption concerning debt. This pertains to a man owed a debt by another man: if the debtor sells [the item], the creditor has the prior right to it.”

وَاحْتَجَّ الْمُجِيزُونَ لَهُ بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا الْأَسْلَمِيُّ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ أَبِي بَكْرٍ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالشُّفْعَةِ فِي الدَّيْنِ وَهُوَ الرَّجُلُ يَكُونُ لَهُ الدَّيْنُ عَلَى رَجُلٍ فَيَبِيعُهُ فَيَكُونُ صَاحِبُ الدَّيْنِ أَحَقَّ بِهِ»

L24226 Abd al-Razzaq said: Ma’mar narrated to us from a man of Quraysh that Umar ibn Abd al-Aziz ruled regarding a mukatab who purchased what was owed from him with a commodity. He decreed that the mukatab had the foremost right to himself, then said: “The Messenger of Allah (peace be upon him) stated: ’Whoever purchases a debt owed by a man, the original creditor has a greater right if he repays the same amount paid by his companion.’”

قَالَ عَبْدُ الرَّزَّاقِ: وَحَدَّثَنَا مَعْمَرٌ عَنْ رَجُلٍ مِنْ قُرَيْشٍ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ قَضَى فِي مُكَاتَبٍ اشْتَرَى مَا عَلَيْهِ بِعَرَضٍ فَجَعَلَ الْمُكَاتَبَ أَوْلَى بِنَفْسِهِ، ثُمَّ قَالَ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ ابْتَاعَ دَيْنًا عَلَى رَجُلٍ فَصَاحِبُ الدَّيْنِ أَوْلَى إذَا أَدَّى مِثْلَ الَّذِي أَدَّى صَاحِبُهُ»

L24227 Through the chain of ʿAbd al-Razzāq: Ibn Jurayj reported to us, Abū al-Zubayr reported to us that he heard Jābir ibn ʿAbd Allāh ask about one who has a debt and uses it to purchase a male slave. Jābir said: “There is no harm in it.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَسْأَلُ عَمَّنْ لَهُ دَيْنٌ فَابْتَاعَ بِهِ غُلَامًا؟ قَالَ: لَا بَأْسَ بِهِ.

L24228 Abu Muhammad said: The two narrations of Umar ibn Abd al-Aziz are mursal. One of them is from al-Aslami - who is Ibrahim ibn Abi Yahya, an

abandoned transmitter accused of unreliability. The other is likewise from an unnamed narrator, and there is no valid proof in anyone other than the Messenger of Allah (peace and blessings of Allah be upon him).

قَالَ أَبُو مُحَمَّد: حَدِيثَا عُمَرَ بْنِ عَبْدِ الْعَزِيزِ مُرْسَلَانِ: أَحَدُهُمَا: عَنْ الْأَسْلَمِيِّ وَهُوَ إبْرَاهِيمُ بْنُ أَبِي يَحْيَى وَهُوَ مَتْرُوكٌ مُتَّهَمٌ. وَالْآخَرُ أَيْضًا: عَمَّنْ لَمْ يُسَمَّ وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L24229 And this is among the matters in which the Shāfiʿīs upheld the position of a scholar (ṣāḥib) for whom no dissenting opponent from among them is known.

وَهَذَا مِمَّا تَرَكَ فِيهِ الشَّافِعِيُّونَ صَاحِبًا لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْهُمْ.

L24230 There is no valid proof for the Mālikīs in these two reports nor in the report of Jābir, for none of them specify that it was established through mere confession without evidence. Thus, they contravene the general purport of the report, and with Allah, the Exalted, is success.

وَلَا حُجَّةَ لِلْمَالِكِيِّينَ فِي هَذَيْنِ الْخَبَرَيْنِ، وَلَا فِي خَبَرِ جَابِرٍ؛ لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْهَا: أَنَّهُ كَانَ بِإِقْرَارٍ دُونَ بَيِّنَةٍ فَهُمْ مُخَالِفُونَ لِعُمُومِ الْخَبَرِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L24231 The Issue of the Sale of Water

[مَسْأَلَة بَيْع الْمَاء]

L24232 1512 – Question:

١٥١٢ - مَسْأَلَةٌ:

L24233 It is not permissible to sell water in any manner—neither from an irrigation channel, river, spring, or well; nor water in a well, nor in a reservoir, nor water collected in a water-skin, nor in a vessel. However, whoever sells their share of the element of water, or a specified portion thereof, or sells the entire well or a specified part of it, or sells the entire irrigation channel or a specified portion thereof: this is permissible, and the water becomes his lawful sale.

وَلَا يَحِلُّ بَيْعُ الْمَاءِ بِوَجْهٍ مِنْ الْوُجُوهِ لَا فِي سَاقِيَةٍ وَلَا مِنْ نَهْرٍ أَوْ مِنْ عَيْنٍ وَلَا مِنْ بِئْرٍ، وَلَا فِي بِئْرٍ، وَلَا فِي صِهْرِيجٍ، وَلَا مَجْمُوعًا فِي قِرْبَةٍ، وَلَا فِي إنَاءٍ، لَكِنْ مَنْ بَاعَ حِصَّتَهُ مِنْ عُنْصُرِ الْمَاءِ، وَمِنْ جُزْءٍ مُسَمًّى مِنْهَا، أَوْ بَاعَ الْبِئْرَ كُلَّهَا أَوْ جُزْءًا مُسَمًّى مِنْهَا، أَوْ بَاعَ السَّاقِيَةَ كُلَّهَا أَوْ الْجُزْءَ الْمُسَمَّى مِنْهَا: جَازَ ذَلِكَ، وَكَانَ الْمَاءُ بَيْعًا لَهُ.

L24234 No one owns flowing water except for as long as it remains within his irrigation channel and river. Once it leaves both, his ownership over it ceases from him, and it becomes the property of whoever's land it enters, and this rule applies perpetually.

وَلَا يَمْلِكُ أَحَدٌ الْمَاءَ الْجَارِيَ إلَّا مَا دَامَ فِي سَاقِيَتِهِ وَنَهْرِهِ، فَإِذَا فَارَقَهُمَا بَطَلَ مِلْكُهُ عَنْهُ، وَصَارَ لِمَنْ صَارَ فِي أَرْضِهِ وَهَكَذَا أَبَدًا.

L24235–24237 Whoever is compelled to use water for irrigation or their need, it is obligatory that conveyance to them be ensured, or [...] If the water is poured into his vessel at his disposal under a rental contract exclusively, the same applies to one whose livelihood depends on water. It is obligatory that he also be

فَمَنْ اُضْطُرَّ إلَى مَاءٍ لِسَقْيِهِ، أَوْ لِحَاجَتِهِ، فَالْوَاجِبُ أَنْ يُعَامَلَ عَلَى سَوْقِهِ إلَيْهِ، أَوْ عَلَى صَبِّهِ عِنْدَهُ فِي إنَائِهِ عَلَى سَبِيلِ الْإِجَارَةِ فَقَطْ وَكَذَلِكَ مَنْ كَانَ مَعَاشُهُ مِنْ الْمَاءِ فَالْوَاجِبُ عَلَيْهِ أَنْ يُعَامَلَ أَيْضًا عَلَى صَبِّهِ أَوْ جَلْبِهِ كَذَلِكَ فَقَطْ.

treated strictly on the basis of pouring or fetching it under these same terms alone.

وَمَنْ مَلَكَ بِئْرًا بِحَفْرٍ فَهُوَ أَحَقُّ بِمَائِهَا مَا دَامَ مُحْتَاجًا إِلَيْهِ، فَإِنْ فَضَلَ عَنْهُ مَا لَا يَحْتَاجُ إِلَيْهِ لَمْ يَحِلَّ لَهُ مَنْعُهُ عَمَّنْ يَحْتَاجُ إِلَيْهِ، وَكَذَلِكَ فَضْلُ النَّهْرِ، وَالسَّاقِيَةِ وَلَا فَرْقَ.

L24238 Whoever owns a well by digging it has the greater right to its water as long as he is in need of it. If there is surplus beyond his needs, it is not permissible for him to prevent others in need from using it. The same applies to surplus from rivers and irrigation channels, with no distinction.

بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَحْمَدُ بْنُ عُثْمَانَ النَّوْفَلِيُّ نا أَبُو عَاصِمٍ الضَّحَّاكُ بْنُ مَخْلَدٍ نا ابْنُ جُرَيْجٍ: أَخْبَرَنِي زِيَادُ بْنُ سَعْدٍ: أَخْبَرَنِي هِلَالُ بْنُ أُسَامَةَ أَنَّ أَبَا سَلَمَةَ بْنَ عَبْدِ الرَّحْمَنِ أَخْبَرَهُ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يُبَاعُ فَضْلُ الْمَاءِ لِيُبَاعَ بِهِ الْكَلَأُ»

L24239 The evidence for this is what we have narrated through the chain of Muslim: Ahmad ibn Uthman al-Nawfali narrated to us, Abu Asim al-Dahhak ibn Makhlad narrated to us, Ibn Jurayj narrated to us: Ziyad ibn Sa'd informed me: Hilal ibn Usamah informed me that Abu Salamah ibn Abd al-Rahman informed him that he heard Abu Hurayrah say: "Allah's Messenger (peace be upon him) said: 'Do not sell excess water so that pasture may be sold through it.'"

وَحَدَّثَنَا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ نَا أَبِي عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ أَخْبَرَهُ أَبُو الْمِنْهَالِ أَنَّ إِيَاسَ بْنَ عَبْدٍ الْمُزَنِيَّ قَالَ لِرَجُلٍ: لَا تَبِعْ الْمَاءَ فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «نَهَى عَنْ بَيْعِ الْمَاءِ»

L24240 Hummam narrated to us: Abbas ibn Asbagh narrated to us: Muhammad ibn Abd al-Malik ibn Ayman narrated to us: Ahmad ibn Zuhayr ibn Harb narrated to us: My father reported from Sufyan ibn Uyaynah, from Amr ibn Dinar: Abu al-Minhal informed him that Iyas ibn Abd, al-Muzani, said to a man: "Do not sell water, for the Messenger of Allah (may Allah bless him and grant him peace) prohibited the sale of water."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي الْمِنْهَالِ قَالَ: سَمِعَ «إِيَاسَ بْنَ عَبْدٍ الْمُزَنِيَّ وَرَأَى أُنَاسًا يَبِيعُونَ الْمَاءَ فَقَالَ: لَا تَبِيعُوا الْمَاءَ، فَإِنِّي سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْهَى أَنْ يُبَاعَ الْمَاءُ» .

L24241 Through the chain of Ibn Abī Shaybah: Sufyān ibn ʿUyaynah reported to us from ʿAmr ibn Dīnār from Abū al-Minhāl, who said: "Iyas ibn ʿAbd al-Muzanī heard [the Prophet] and saw people selling water. He said: 'Do not sell water, for I heard the Messenger of Allah—peace and blessings be upon him—forbid the sale of water.'"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ نا ابْنُ إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أُمِّهِ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُمْنَعَ نَقْعُ الْبِئْرِ» يَعْنِي الْمَاءَ هَكَذَا فِي الْحَدِيثِ تَفْسِيرُهُ.

L24242 From the transmission of Ibn Abi Shaybah: Yazeed ibn Harun narrated to us, Ibn Ishaq narrated to us, from Muhammad ibn Abd al-Rahman, from his mother Amrah bint Abd al-Rahman, from Aisha, the Mother of the Believers, who said: "The Messenger of Allah—may Allah's peace and blessings be upon him—forbade that the stirred-up water of the well be withheld," meaning the water—this is how the explanation is given in the hadith.

L24243 And we have also transmitted it as a musnad (with a connected chain) through the route of Jābir.

وَرُوِّينَاهُ أَيْضًا مُسْنَدًا مِنْ طَرِيقِ جَابِرٍ.

L24244 These are four of the Companions—may Allah be pleased with them—and this is a mutawātir transmission; opposing it is impermissible.

فَهَؤُلَاءِ أَرْبَعَةٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَهُوَ نَقْلٌ تَوَاتَرَ، وَلَا تَحِلُّ مُخَالَفَتُهُ.

L24245–24246 As for the one who held that opinion, we have previously mentioned him as derived from the legal opinions of Iyas ibn ʿAbd.

وَأَمَّا مَنْ قَالَ بِذَلِكَ فَقَدْ ذَكَرْنَاهُ آنِفًا عَنْ إيَاسِ بْنِ عَبْدٍ مِنْ فُتْيَاهُ.

L24247 And through the chain of Ibn Abī Shaybah: Wakiʿ narrated to us, al-Masʿūdī—who is Abū ʿUmays—narrated to us from ʿImrān ibn ʿUmayr, who said: "My neighbor withheld the excess of his water from me, so I asked ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah ibn Masʿūd. He replied: 'I heard Abū Hurayrah say: It is not lawful to sell the excess water.'"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا الْمَسْعُودِيُّ هُوَ أَبُو عُمَيْسٍ عَنْ عِمْرَانَ بْنِ عُمَيْرٍ قَالَ: مَنَعَنِي جَارِي فَضْلَ مَائِهِ فَسَأَلْت عُبَيْدَ اللَّهِ بْنَ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ؟ فَقَالَ: سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: لَا يَحِلُّ بَيْعُ فَضْلِ الْمَاءِ.

L24248 From the transmission of Ibn Abi Shaybah: Yahyā ibn Ādam reported to us from Zuhayr, from Abū al-Zubayr, from ʿAmr ibn Shuʿayb, from his father, from his grandfather: A young servant of theirs sold excess water they had from a spring for twenty thousand. ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ said to him: "Do not sell it, for its sale is not lawful."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ آدَمَ نا زُهَيْرٌ عَنْ أَبِي الزُّبَيْرِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ: أَنَّ غُلَامًا لَهُمْ بَاعَ فَضْلَ مَاءٍ لَهُمْ مِنْ عَيْنٍ بِعِشْرِينَ أَلْفًا، فَقَالَ لَهُ عَبْدُ اللَّهِ بْنُ عَمْرِو بْنِ الْعَاصِ: لَا تَبِعْهُ فَإِنَّهُ لَا يَحِلُّ بَيْعُهُ.

L24249 From the chain of Ibn Abi Shaybah, who narrated to us from Yahyā ibn Zakariyyā ibn Abī Zā'idah, from Yahyā ibn Saʿīd al-Anṣārī, from al-Qāsim ibn Muḥammad ibn Abī Bakr that he said: The sale of surplus water is deemed reprehensible. Thus, Iyās ibn ʿAbd, Abū Hurayrah, and ʿAbdullāh ibn ʿAmr prohibit the sale of water entirely, with no dissenting opinion from the Companions—may Allah be pleased with them—and two of the Successors: al-Qāsim and ʿUbaydullāh ibn ʿAbdullāh ibn ʿUtbah.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ أَنَّهُ قَالَ: يُكْرَهُ بَيْعُ فَضْلِ الْمَاءِ: فَهَذَا إيَاسُ بْنُ عَبْدٍ، وَأَبُو هُرَيْرَةَ وَعَبْدُ اللَّهِ بْنُ عَمْرٍو: يُحَرِّمُونَ بَيْعَ الْمَاءِ جُمْلَةً، وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَاثْنَانِ مِنْ التَّابِعِينَ: الْقَاسِمُ، وَعُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ

L24250 It has been reported to us that the permissibility of selling water in vessels and selling water for drinking purposes is narrated from ʿAṭā', Abū Ḥanīfah, and al-Shāfiʿī. Similarly, the permissibility of such sales is established, while from Mālik [it is narrated] regarding selling water for drinking. From Masrūq [comes the report] permitting the setting of a price for water in bulk. No one's argument holds proof against the Messenger of Allah (peace and blessings be upon him).

وَرُوِّينَا إبَاحَةَ بَيْعِ الْمَاءِ فِي الْآنِيَةِ، وَبَيْعَهُ فِي الشُّرْبِ: عَنْ عَطَاءٍ وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَإبَاحَةَ بَيْعِهِ كَذَلِكَ، وَفِي الشُّرْبِ عَنْ مَالِكٍ، وَعَنْ مَسْرُوقٍ إبَاحَةَ ثَمَنِ الْمَاءِ جُمْلَةً وَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L24251 An additional proof for the prohibition of selling drinking water is that Allah the Exalted says: “He sends down from the sky water and causes it to flow through the earth as springs” [Az-Zumar 39:21]. The prohibition of selling ambiguous items (gharar) has been established because it involves excessive uncertainty and risk. Therefore, selling drinking water is impermissible because one does not know whether it is in the sky or not. This constitutes unjust consumption of wealth. Furthermore, water reaches springs, rivers, and wells through channels and passages in the earth that are distant and lie outside the ownership of the one who excavated them. Thus, one is selling what they do not yet own, and this is invalid and prohibited. And success comes only from Allah, the Exalted.[15]

وَبُرْهَانٌ زَائِدٌ عَلَى تَحْرِيمِ بَيْعِ مَاءِ الشُّرْبِ: وَهُوَ أَنَّ اللَّهَ تَعَالَى يَقُولُ: {أَنْزَلَ مِنَ السَّمَاءِ مَاءً فَسَلَكَهُ يَنَابِيعَ فِي الأَرْضِ} [الزمر: ٢١] وَقَدْ صَحَّ النَّهْيُ عَنْ بَيْعِ الْمَجْهُولِ، لِأَنَّهُ غَرَرٌ، فَلَا يَحِلُّ بَيْعُ الشُّرْبِ، لِأَنَّهُ لَا يَدْرِي أَفِي السَّمَاءِ هُوَ أَمْ لَا؟ فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ وَأَيْضًا: فَإِنَّهُ إِنَّمَا يَأْتِي إِلَى الْعَيْنِ، وَالنَّهْرِ، وَالْبِئْرِ: مِنْ خُرُوقٍ، وَمَنَافِسَ فِي الْأَرْضِ بَعِيدَةٍ هِيَ فِي غَيْرِ مِلْكِ صَاحِبِ الْمُفَجِّرِ، فَإِنَّمَا يَبِيعُ مَا لَمْ يَمْلِكْ بَعْدُ، وَهَذَا بَاطِلٌ مُحَرَّمٌ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of the Sale of Khamr

[مَسْأَلَةُ بَيْعِ الْخَمْرِ]

L24253 Issue 1513:

١٥١٣ - مَسْأَلَةٌ:

L24254 The sale of wine is not permissible, neither to a believer nor to a disbeliever, nor the sale of pigs, nor their hair, nor anything from them, nor the sale of a cross, nor an idol, nor carrion, nor blood except musk alone, for its sale and ownership are permissible. Whoever sells any of the prohibited items we have mentioned, the sale is perpetually annulled.

وَلَا يَحِلُّ بَيْعُ الْخَمْرِ، لَا لِمُؤْمِنٍ، وَلَا لِكَافِرٍ، وَلَا بَيْعُ الْخَنَازِيرِ كَذَلِكَ، وَلَا شُعُورِهَا، وَلَا شَيْءٍ مِنْهَا، وَلَا بَيْعُ صَلِيبٍ، وَلَا صَنَمٍ، وَلَا مَيْتَةٍ، وَلَا دَمٍ إِلَّا الْمِسْكَ وَحْدَهُ، فَهُوَ حَلَالٌ بَيْعُهُ وَمِلْكُهُ، فَمَنْ بَاعَ مِنَ الْمُحَرَّمِ الَّذِي ذَكَرْنَا شَيْئًا فُسِخَ أَبَدًا.

L24255–24257 And it has been narrated to us via Muslim: Abu Kurayb narrated to us, Abu Mu‘awiyah narrated to us, from Muslim, who is Abu al-Duha. Narrated by Masruq from Aisha, the Mother of the Believers: “The Messenger of Allah—peace and blessings be upon him—went to the Prophet’s Mosque and prohibited trading in wine.”[16]

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو كُرَيْبٍ نا أَبُو مُعَاوِيَةَ عَنْ مُسْلِمٍ هُوَ أَبُو الضُّحَى عَنْ مَسْرُوقٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «خَرَجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى الْمَسْجِدِ فَحَرَّمَ التِّجَارَةَ فِي الْخَمْرِ» .

L24258 Narrated by Jabir ibn ’Abdullah and conveyed through Qutaybah ibn Sa’id to Muslim: From Layth ibn Sa’d, from Yazid ibn Habib, from ’Ata’ ibn Abi Rabah: “I heard Allah’s Messenger - peace and blessings be upon him - during the Year of Conquest in Mecca proclaiming: ’Allah, the Almighty and Majestic, and His Messenger have prohibited the sale of intoxicants, carrion,

وَبِهِ إِلَى مُسْلِمٍ: أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ أَنَا لَيْثٌ هُوَ ابْنُ سَعْدٍ عَنْ يَزِيدَ بْنِ حَبِيبٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، " أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَامَ الْفَتْحِ وَهُوَ بِمَكَّةَ يَقُولُ: «إِنَّ اللَّهَ عَزَّ وَجَلَّ وَرَسُولَهُ حَرَّمَ بَيْعَ الْخَمْرِ وَالْمَيْتَةِ، وَالْخِنْزِيرِ، وَالْأَصْنَامِ، فَقِيلَ: يَا رَسُولَ اللَّهِ أَرَأَيْتَ شُحُومَ الْمَيْتَةِ فَإِنَّهُ يُطْلَى بِهَا السُّفُنُ، وَيُدْهَنُ بِهَا

[15] **Qur’an references (L24251):** Qur’an 39:21 (Az-Zumar).
[16] **Hadith references (L24255):** Sahih Muslim 1580b.

swine, and idols.' It was said: 'O Messenger of Allah, what do you say about the fat of carrion? For ships are caulked with it, hides are greased with it, and people use it for lamps.' He responded: 'No, it is forbidden. May Allah fight the Jews! When Allah prohibited them from consuming its fats, they processed it then sold it and consumed its price.'"[17]

الْجُلُودُ وَيَسْتَصْبِحُ بِهَا النَّاسُ قَالَ: لَا، هُوَ حَرَامٌ، قَاتَلَ اللَّهُ الْيَهُودَ إِنَّ اللَّهَ لَمَّا حَرَّمَ عَلَيْهِمْ شُحُومَهَا أَجْمَلُوهُ ثُمَّ بَاعُوهُ فَأَكَلُوا ثَمَنَهُ» .

L24259 Abū Muḥammad said: Certain people have misrepresented this report to corroborate qiyas, yet it contains no basis for qiyas whatsoever. Rather, it demonstrates that divine commands are general in scope, for the Prophet (peace be upon him) informed that Allah the Exalted had forbidden animal fats to the Jews, yet they deemed their sale permissible. He vehemently condemned them for restricting the prohibition and failing to apply it generally.

قَالَ أَبُو مُحَمَّدٍ: مَوَّهَ قَوْمٌ بِهَذَا الْخَبَرِ فِي تَصْحِيحِ الْقِيَاسِ، وَلَيْسَ فِيهِ لِلْقِيَاسِ أَثَرٌ، لَكِنْ فِيهِ: أَنَّ الْأَوَامِرَ عَلَى الْعُمُومِ؛ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - أَخْبَرَ: أَنَّ اللَّهَ تَعَالَى حَرَّمَ الشُّحُومَ عَلَى الْيَهُودِ فَاسْتَحَلُّوا بَيْعَهَا، فَأَنْكَرَ ذَلِكَ عَلَيْهِمْ أَشَدَّ الْإِنْكَارِ، إِذْ خَصُّوا التَّحْرِيمَ وَلَمْ يَحْمِلُوهُ عَلَى عُمُومِهِ.

L24260 Thus, it is validated that when something is prohibited, its ownership, sale, transactions involving it, and consumption are forbidden under the generality of its prohibition, unless there appears a text specifying any aspect thereof, in which case it is to be strictly adhered to.

فَصَحَّ بِهَذَا أَنَّهُ مَتَى حُرِّمَ شَيْءٌ فَحَرَامٌ مِلْكُهُ، وَبَيْعُهُ، وَالتَّصَرُّفُ فِيهِ، وَأَكْلُهُ عَلَى عُمُومِ تَحْرِيمِهِ، إِلَّا أَنْ يَأْتِيَ نَصٌّ بِتَخْصِيصِ شَيْءٍ مِنْ ذَلِكَ فَيُوقَفُ عِنْدَهُ.

L24261 And Allah the Exalted has forbidden swine, intoxicants, carrion, and blood. Thus, He has forbidden ownership of any of that, drinking it, benefiting from it, and selling it.

وَقَدْ حَرَّمَ اللَّهُ تَعَالَى: الْخِنْزِيرَ، وَالْخَمْرَ، وَالْمَيْتَةَ، وَالدَّمَ، فَحَرَّمَ مِلْكَ كُلِّ ذَلِكَ، وَشُرْبَهُ، وَالِانْتِفَاعَ بِهِ، وَبَيْعَهُ.

L24262 And indeed, Allah, the Exalted, has decreed the religion of Islam as obligatory upon every human and jinn.

وَقَدْ أَوْجَبَ اللَّهُ تَعَالَى دِينَ الْإِسْلَامِ عَلَى كُلِّ إِنْسٍ وَجِنٍّ.

L24263 Allah, the Exalted, said: {And judge between them by what Allah has revealed} [Al-Ma'idah 5:49].[18]

وَقَالَ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩]

L24264 Allah, the Most High, said: "And whoever seeks a religion other than Islam—it will never be accepted from him" [Āl ʿImrān: 85].[19]

وَقَالَ تَعَالَى: {وَمَنْ يَبْتَغِ غَيْرَ الْإِسْلَامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ} [آل عمران: ٨٥]

L24265 And He, the Exalted, said: "Fight them until there is no persecution and religion is wholly for Allah" [Al-Anfal: 39].[20]

وَقَالَ تَعَالَى: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩]

[17] **Hadith references (L24258):** Sunan Abi Dawud 3486.
[18] **Qur'an references (L24263):** Qur'an 5:49 (Al-Ma'idah).
[19] **Qur'an references (L24264):** Qur'an 3:85 (Ali 'Imran).
[20] **Qur'an references (L24265):** Qur'an 8:39 (Al-Anfal).

فَوَجَبَ الْحُكْمُ عَلَى الْيَهُودِ، وَالنَّصَارَى، وَالْمَجُوس: بِحُكْمِ الْإِسْلَامِ، أَحَبُّوا أَمْ كَرِهُوا.

L24266 Thus, the ruling of Islam is obligatory upon the Jews, Christians, and Zoroastrians, in accordance with its judgment, whether they love or hate.

وَمَنْ أَجَازَ لَهُمْ بَيْعَ الْخَمْرِ ظَاهِرًا وَشِرَاءَهَا كَذَلِكَ، وَتَمَلُّكَهَا عَلَانِيَةً، وَتَمَلُّكَ الْخَنَازِيرِ كَذَلِكَ، لِأَنَّهُمْ مِنْ دِينِهِمْ بِزَعْمِهِ، وَصَدَّقَهُمْ فِي ذَلِكَ: لَزِمَهُ أَنْ يَتْرُكَهُمْ أَنْ يُقِيمُوا شَرَائِعَهُمْ فِي بَيْعِ مَنْ زَنَى مِنْ النَّصَارَى الْأَحْرَارِ، وَخِصَاءِ الْقِسِّيسِ إذَا زَنَى، وَقَتْلِ مَنْ يَرَوْنَ قَتْلَهُ وَهُمْ لَا يَفْعَلُونَ ذَلِكَ فَظَهَرَ تَنَاقُضُهُمْ.

L24267–24268 Whoever permits them to openly sell and purchase wine, to publicly own it, and to similarly own pigs—claiming these acts originate from their religion and accepting their assertion—would thereby be obliged to let them enforce their legal rulings, such as selling free Christians who commit adultery, castrating priests who commit adultery, and executing those they deem deserving of death even though they themselves do not carry out such killings. Thus their contradiction becomes evident.

وَقَالَ أَبُو حَنِيفَةَ: إذَا أَمَرَ الْمُسْلِمُ نَصْرَانِيًّا بِأَنْ يَشْتَرِيَ لَهُ خَمْرًا: جَازَ ذَلِكَ وَهَذِهِ مِنْ شُنَعِهِ الَّتِي نَعُوذُ بِاَللَّهِ مِنْ مِثْلِهَا.

L24269 And Abu Hanifah said: If a Muslim commands a Christian to buy wine for him, that is permissible. Yet this is among his detestable rulings - from such things we seek refuge in Allah.

وَأَمَّا الْمِسْكُ: فَقَدْ صَحَّ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - التَّطَيُّبُ بِالْمِسْكِ وَتَفْضِيلُهُ عَلَى الطِّيبِ» وَأَيْضًا: فَقَدْ سَقَطَ عَنْهُ اسْمُ الدَّمِ وَصِفَاتِهِ وَحْدَهُ، فَلَيْسَ دَمًا، وَالْأَحْكَامُ إنَّمَا هِيَ عَلَى الْأَسْمَاءِ، وَالْأَسْمَاءُ إنَّمَا هِيَ عَلَى الصِّفَاتِ، وَالْحُدُودِ.

L24270 As for musk: it is authentically established from the Messenger of Allah—peace and blessings be upon him—that he used musk as perfume and preferred it over other perfumes. Moreover, musk alone has been divested of the name and attributes of blood; thus, it is not blood. Legal rulings are based on names, names derive from attributes, and attributes derive from defined legal parameters.

رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ أَنَا مَرْوَانُ بْنُ مُعَاوِيَةَ أَنَا عُمَرُ الْمُكْتِبُ أَنَا حِزَامٌ عَنْ رَبِيعَةَ بْنِ زَكَا أَوْ زَكَّارٍ قَالَ: نَظَرَ عَلِيُّ بْنُ أَبِي طَالِبٍ إلَى زُرَارَةَ فَقَالَ: مَا هَذِهِ الْقَرْيَةُ؟ قَالُوا: قَرْيَةٌ تُدْعَى زُرَارَةَ يُلْحَمُ فِيهَا، وَيُبَاعُ فِيهَا الْخَمْرُ؟ قَالَ: أَيْنَ الطَّرِيقُ إلَيْهَا؟ قَالُوا: بَابُ الْجِسْرِ، قَالُوا: يَا أَمِيرَ الْمُؤْمِنِينَ نَأْخُذُ لَك سَفِينَةً؟ قَالَ: لَا، تِلْكَ شَجَرَةٌ، وَلَا حَاجَةَ لَنَا فِي الشَّجَرَةِ، انْطَلِقُوا بِنَا إلَى بَابِ الْجِسْرِ، فَقَامَ يَمْشِي حَتَّى أَتَاهَا، فَقَالَ عَلِيٌّ بِالنِّيرَانِ أَضْرِمُوهَا فِيهَا، فَاحْتَرَقَتْ.

L24271 It has been narrated to us through the chain of Abū ʾUbayd, from Marwān ibn Muʾāwiyah, from ʾUmar the Scribe, from Ḥizām, from Rabīʾah ibn Zakā or Zakār, who said: ʾAlī ibn Abī Ṭālib gazed toward Zurārah and asked, “What is this village?” They replied, “It is a village called Zurārah where meat is preserved and wine is sold.” He inquired, “Where is the path to it?” They said, “The Bridge Gate.” They asked, “O Commander of the Faithful, shall we procure a boat for you?” He responded, “No. That is merely wood, and we have no need for wood. Take us to the Bridge Gate.” He then rose and walked until he reached it. He commanded, “Bring me firebrands to kindle within it!” They set the fires ablaze, and it burned down.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا هِشَامٌ وَمَرْوَانُ بْنُ مُعَاوِيَةَ الْفَزَارِيّ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الْحَارِثِ بْنِ شُبَيْلٍ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ، قَالَ: بَلَغَ عُمَرَ بْنَ الْخَطَّابِ أَنَّ رَجُلًا

L24272 From the chain of Abu ʻUbayd, from Hishām and Marwān ibn Muʻāwiyah al-Fazārī, from Ismāʻīl ibn Abī Khālid, from al-Ḥārith ibn Shubayl, from Abu ʻAmr al-Shaybānī, who said: It reached ʻUmar ibn al-Khaṭṭāb that a man

from the people of al-Sawād had amassed wealth through intoxicant trade. He wrote: “Destroy every possession of his that you are able to seize, expel all his livestock, and let no one whatsoever shelter anything belonging to him.”

L24273 This is the ruling of Ali and Umar in the presence of the Companions—may Allah be pleased with them—regarding one who sells wine to the polytheists. No dissenter against this ruling is known among the Companions, yet others opposed them both.

L24274 **The issue of selling and keeping a dog.**

L24275 Issue 1514:

L24276 The sale of dogs is fundamentally unlawful in any form—neither a hunting dog, nor a herding dog, nor any other type. If compelled by necessity to acquire one and unable to find someone who will give it to him, he may purchase it. This becomes permissible for the buyer but remains prohibited for the seller. The buyer may reclaim the payment from the seller whenever able, like paying bribes to repel oppression, ransoming captives, or appeasing a tyrant. No distinction applies.

L24277–24278 It is fundamentally impermissible to keep a dog except for livestock, hunting, crops, or a wall—and the term “wall” applies only to an orchard or the wall of a house.

L24279 It is also impermissible to kill dogs. Whoever kills one must compensate with its equivalent or with mutually agreed compensation, except for the pitch-black dog or the black dog with two spots—regardless of where these two spots are located. If the spots grow so large that Arabic linguistic convention no longer describes them as “two spots” but rather as “two patches,” killing it becomes impermissible. Therefore, owning such a dog is fundamentally impermissible for any of the cases we have mentioned, and killing it is obligatory wherever found.

L24280 The evidence for this is what we have reported through the chain of Muslim: Isḥāq ibn Ibrāhīm—that is, Ibn Rāhwayh—reported to us; al-Walīd ibn

مِنْ أَهْلِ السَّوَادِ أَثْرَى فِي تِجَارَةِ الْخَمْرِ، فَكَتَبَ: أَنْ اكْسِرُوا كُلَّ شَيْءٍ قَدَرْتُمْ لَهُ عَلَيْهِ، وَسَيِّرُوا كُلَّ مَاشِيَةٍ لَهُ، وَلَا يُؤْوِيَنَّ أَحَدٌ لَهُ شَيْئًا.

فَهَذَا حُكْمُ عَلِيٍّ، وَعُمَرَ، بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِيمَنْ بَاعَ الْخَمْرَ مِنْ الْمُشْرِكِينَ وَلَا مُخَالِفَ لَهُ يُعْرَفُ مِنْ الصَّحَابَةِ نخَالَفُوهُمَا.

[مَسْأَلَة بَيْع الْكَلْب واقتنائه]

١٥١٤ - مَسْأَلَةٌ:

وَلَا يَحِلُّ بَيْعُ كَلْبٍ أَصْلًا، لَا كَلْبَ صَيْدٍ وَلَا كَلْبَ مَاشِيَةٍ، وَلَا غَيْرَهُمَا، فَإِنْ اُضْطُرَّ إلَيْهِ وَلَمْ يَجِدْ مَنْ يُعْطِيه إيَّاهُ فَلَهُ ابْتِيَاعُهُ، وَهُوَ حَلَالٌ لِلْمُشْتَرِي حَرَامٌ عَلَى الْبَائِعِ يَنْتَزِعُ مِنْهُ الثَّمَنَ مَتَى قَدَرَ عَلَيْهِ، كَالرِّشْوَةِ فِي دَفْعِ الظُّلْمِ، وَفِدَاءِ الْأَسِيرِ، وَمُصَانَعَةِ الظَّالِمِ وَلَا فَرْقَ.

وَلَا يَحِلُّ اتِّخَاذُ كَلْبٍ أَصْلًا، إلَّا لِمَاشِيَةٍ، أَوْ لِصَيْدٍ، أَوْ لِزَرْعٍ، أَوْ لِحَائِطٍ وَاسْمُ الْحَائِطِ يَقَعُ عَلَى الْبُسْتَانِ وَجِدَارِ الدَّارِ فَقَطْ.

وَلَا يَحِلُّ أَيْضًا: قَتْلُ الْكِلَابِ، فَمَنْ قَتَلَهَا ضَمِنَهَا بِمِثْلِهَا، أَوْ بِمَا يَتَرَاضَيَانِ عَلَيْهِ عِوَضًا مِنْهُ، إلَّا الْأَسْوَدَ الْبَهِيمَ، أَوْ الْأَسْوَدَ ذَا النُّقْطَتَيْنِ أَيَّتَمَا كَانَتْ النُّقْطَتَانِ مِنْهُ فَإِنْ عَظُمَتَا حَتَّى لَا تُسَمَّيَا فِي اللُّغَةِ الْعَرَبِيَّةِ نُقْطَتَيْنِ، لَكِنْ تُسَمَّى لَمْعَتَيْنِ: لَمْ يَجُزْ قَتْلُهُ، فَلَا يَحِلُّ مِلْكُهُ أَصْلًا لِشَيْءٍ مِمَّا ذَكَرْنَا، وَقَتْلُهُ وَاجِبٌ حَيْثُ وُجِدَ.

Muslim reported to us from al-Awzāʿī from Yaḥyā ibn Abī Kathīr. Ibrāhīm ibn Qāriẓ narrated to me from al-Sā’ib ibn Yazīd. Rāfiʿ ibn Khadīj narrated to me from the Messenger of Allah—peace and blessings be upon him—who said: “The price of a dog is impure, the fee of a prostitute is impure, and the earnings of a cupper are impure.” These two narrators are consecutive in the chain.[21]

L24281 From the narration of Mālik from Ibn Shihāb from Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām from Abū Masʿūd al-Anṣārī that the Messenger of Allāh (peace be upon him) prohibited the price of a dog, the fee of a prostitute, and the payment of a fortune-teller.[22]

L24282 And it has also been authenticated through the chains of Abū Hurayrah, Jābir, and Abū Juḥayfah.

L24283 This is a transmission of such incontrovertible authority that it is impermissible to disregard it or oppose it.

L24284 It has been narrated to us via the transmission of Ahmad ibn Shuʿayb: Al-Ḥasan ibn Aḥmad ibn Shabīb reported to us: Muḥammad ibn ʿAbd al-Raḥmān ibn Numayr reported to us: Asbāṭ reported to us: Al-Aʿmash reported from ʿAṭā’ ibn Abī Rabāḥ, who said: Abū Hurayrah said: “Four are among illicit earnings: the stud’s fee, the price of a dog, the earnings of a prostitute, and the cupper’s earnings.”

L24285 We transmitted it from Jābir as well.

L24286–24287 From the path of Ibn Abi Shaybah, who narrated to us Waki‘ from Isra’il from ‘Abd al-Karim from Qays ibn Habtar from Ibn ‘Abbas, who attributed it to the Prophet: “The price of a dog, the earnings of a prostitute, and the price of wine are forbidden.” The least that can be said about it is that it is Ibn ‘Abbas’s own statement.

بُرْهَانُ ذَلِكَ مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ نا الْوَلِيدُ بْنُ مُسْلِمٍ عَنْ الْأَوْزَاعِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ حَدَّثَنِي إِبْرَاهِيمُ بْنُ قَارِظٍ عَنْ السَّائِبِ بْنِ يَزِيدَ حَدَّثَنِي رَافِعُ بْنُ خَدِيجٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «ثَمَنُ الْكَلْبِ خَبِيثٌ، وَمَهْرُ الْبَغِيِّ خَبِيثٌ، وَكَسْبُ الْحَجَّامِ خَبِيثٌ» فَهَذَانِ صَاحِبَانِ فِي نَسَقٍ.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ عَنْ أَبِي مَسْعُودٍ الْأَنْصَارِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ ثَمَنِ الْكَلْبِ، وَمَهْرِ الْبَغِيِّ، وَحُلْوَانِ الْكَاهِنِ»

وَصَحَّ أَيْضًا مِنْ طَرِيقِ أَبِي هُرَيْرَةَ وَجَابِرٍ وَأَبِي جُحَيْفَةَ

فَهَذَا نَقْلٌ تَوَاتَرَ لَا يَسَعُ تَرْكُهُ وَلَا يَحِلُّ خِلَافُهُ.

وَرُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا الْحَسَنُ بْنُ أَحْمَدَ بْنِ شَبِيبٍ نا مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ نُمَيْرٍ نا أَسْبَاطُ نا الْأَعْمَشُ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: قَالَ أَبُو هُرَيْرَةَ: «أَرْبَعٌ مِنْ السُّحْتِ، ضِرَابُ الْفَحْلِ، وَثَمَنُ الْكَلْبِ، وَمَهْرُ الْبَغِيِّ، وَكَسْبُ الْحَجَّامِ» .

وَرُوِّينَاهُ عَنْ جَابِرٍ أَيْضًا.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ إِسْرَائِيلَ عَنْ عَبْدِ الْكَرِيمِ عَنْ قَيْسِ بْنِ حَبْتَرٍ عَنْ ابْنِ عَبَّاسٍ رَفَعَهُ «ثَمَنُ الْكَلْبِ وَمَهْرُ الْبَغِيِّ وَثَمَنُ الْخَمْرِ حَرَامٌ» وَأَقَلُّ مَا فِيهِ أَنْ يَكُونَ قَوْلَ ابْنِ عَبَّاسٍ.

[21] **Hadith references (L24280):** Sahih Muslim 1568b; Mishkat al-Masabih 2763.

[22] **Hadith references (L24281):** Sahih Muslim 1567a; Mishkat al-Masabih 2764; Riyad as-Salihin 1673.

From the chain of Ibn Abi Shaybah: Ibn Idris reported to us from Ash'ath, from Ibn Sirin, who said: The most impure earnings are the earnings of the flute player and the price of a dog.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ إِدْرِيسَ عَنْ أَشْعَثَ عَنِ ابْنِ سِيرِينَ قَالَ: أَخْبَثُ الْكَسْبِ كَسْبُ الزَّمَّارَةِ، وَثَمَنُ الْكَلْبِ.

Az-zammārah refers to the female fornicator; I heard Abū ʿUbaydah state this.

الزَّمَّارَةُ: الزَّانِيَةُ، سَمِعْت أَبَا عُبَيْدَةَ يَقُولُ ذَلِكَ.

Via the chain of Ibn Abi Shaybah: Yunus ibn Muhammad narrated to us, Shariq narrated from Abu Farwah, who said: I heard ʿAbd al-Raḥmān ibn Abī Laylā say, "I do not care whether I acquire the proceeds from selling a dog or a pig."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يُونُسُ بْنُ مُحَمَّدٍ نا شَرِيكٌ عَنْ أَبِي فَرْوَةَ سَمِعْت عَبْدَ الرَّحْمَنِ بْنَ أَبِي لَيْلَى يَقُولُ: مَا أُبَالِي ثَمَنَ كَلْبٍ أَكَلْتُ، أَوْ ثَمَنَ خِنْزِيرٍ.

Through the chain of Ibn Abī Shaybah, Ibn Idrīs reported to us from Shuʿbah: I heard al-Ḥakam and Ḥammād ibn Abī Sulaymān both disapproving of the price of a dog. No sound disagreement with their view is established from any of the Companions. This is the position of Mālik, al-Shāfiʿī, Aḥmad, Abu Sulaymān, Abu Thawr, and others.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ إِدْرِيسَ عَنْ شُعْبَةَ سَمِعْت الْحَكَمَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ يَكْرَهَانِ ثَمَنَ الْكَلْبِ وَلَا يَصِحُّ خِلَافُهُمَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ، وَأَبِي ثَوْرٍ، وَغَيْرِهِمْ.

The Ḥanafīs opposed the Sunnah in this matter, permitting the sale of dogs and the retention of money earned from their sale.

وَخَالَفَ الْحَنَفِيُّونَ السُّنَنَ فِي ذَلِكَ، وَأَبَاحُوا بَيْعَ الْكِلَابِ، وَأَكْلَ أَثْمَانِهَا.

They argued for this by citing what was transmitted to us through the chain of Aḥmad ibn Shuʿayb, who said: Ibrāhīm ibn al-Ḥasan ibn Aḥmad al-Miṣīṣī informed me; Ḥajjāj ibn Muḥammad reported to us from Ḥammād ibn Salamah, from Abū al-Zubayr, from Jābir ibn ʿAbd Allāh: "The Messenger of Allah—peace and blessings be upon him—prohibited the price of a cat and a dog, except for a dog used for hunting."[23]

وَاحْتَجُّوا فِي ذَلِكَ بِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ، قَالَ: أَخْبَرَنِي إِبْرَاهِيمُ بْنُ الْحَسَنِ بْنِ أَحْمَدَ الْمِصِّيصِيُّ نا حَجَّاجُ بْنُ مُحَمَّدٍ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ ثَمَنِ السِّنَّوْرِ وَالْكَلْبِ إِلَّا كَلْبَ صَيْدٍ»

And according to what was transmitted to us through the chain of Qāsim ibn Aṣbagh: Muḥammad ibn Ismāʿīl narrated to us, Ibn Abī Maryam narrated to us, Yaḥyā ibn Ayyūb narrated to us, Al-Muthannā ibn Al-Ṣabbāḥ narrated to me from ʿAṭāʾ ibn Abī Rabāḥ from Abū Hurayrah from the Messenger of Allah (peace and blessings be upon him), who said: "The price of a dog is unlawful gain except for a hunting dog."

وَبِمَا رُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ نا ابْنُ أَبِي مَرْيَمَ نا يَحْيَى بْنُ أَيُّوبَ حَدَّثَنِي الْمُثَنَّى بْنُ الصَّبَّاحِ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «ثَمَنُ الْكَلْبِ سُحْتٌ إِلَّا كَلْبَ صَيْدٍ»

And what we have narrated through the chain of Ibn Wahb from someone

[23] **Hadith references (L24293):** Sunan an-Nasai 4295.

who informed him from Ibn Shihāb from Abū Bakr from the Prophet—may the peace and blessings of Allah be upon him—who said: "Three things constitute unlawful wealth: the payment to the fortune-teller, the dowry of the adulteress, and the price of the vicious dog."

وَمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَمَّنْ أَخْبَرَهُ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي بَكْرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «ثَلَاثٌ هُنَّ سُحْتٌ: حُلْوَانُ الْكَاهِنِ، وَمَهْرُ الزَّانِيَةِ، وَثَمَنُ الْكَلْبِ الْعَقُورِ»

L24296–24297 Through the chain of Ibn Wahb, from Ash-Shimr ibn Numayr, from Husayn ibn Abdullah ibn Ḍumayrah, from his father, from his grandfather, from Ali ibn Abi Talib, that the Prophet (peace and blessings of Allah be upon him) forbade the price of a biting dog.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ الشِّمْرِ بْنِ نُمَيْرٍ عَنْ حُسَيْنِ بْنِ عَبْدِ اللَّهِ بْنِ ضُمَيْرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ ثَمَنِ الْكَلْبِ الْعَقُورِ» .

L24298 Abu Muhammad said: As for these two ahadith of Ibn Wahb, they are too weak to be considered except by one ignorant of hadith or an arrogant denier who knows the truth but defiantly rejects it. For Ḥusayn ibn ʿAbdullāh is at the peak of unreliability and rejection by unanimous agreement of the scholars of narration, while the other hadith has a broken chain at two points.

قَالَ أَبُو مُحَمَّد: أَمَّا حَدِيثَا ابْنِ وَهْبٍ هَذَانِ فَأَسْقَطُ مِنْ أَنْ يُشْتَغَلَ بِهِمَا إلَّا جَاهِلٌ بِالْحَدِيثِ، أَوْ مُكَابِرٌ يَعْلَمُ الْحَقَّ فَيُولِيهِ ظَهْرَهُ، لِأَنَّ حُسَيْنَ بْنَ عَبْدِ اللَّهِ فِي غَايَةِ السُّقُوطِ وَالِاطِّرَاحِ بِاتِّفَاقِ أَهْلِ النَّقْلِ، وَالْآخَرَ مُنْقَطِعٌ فِي مَوْضِعَيْنِ.

L24299 Then, if these two [hadiths] were authentic, they would not serve as a valid argument for them regarding the two, for they contain nothing but the prohibition against the price of the vicious dog alone—and this is correct—and they do not permit the price of other dogs. Moreover, the mass-transmitted narrations we previously cited, which include additional rulings beyond these two, render it impermissible to discard them.

ثُمَّ لَوْ صَحَّا لَمَا كَانَ لَهُمْ فِيهِمَا حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِمَا إلَّا النَّهْيُ عَنْ ثَمَنِ الْكَلْبِ الْعَقُورِ فَقَطْ وَهَذَا حَقٌّ، وَلَيْسَ فِيهِ إبَاحَةُ ثَمَنِ مَا سِوَاهُ مِنْ الْكِلَابِ وَجَاءَتْ الْآثَارُ الْمُتَوَاتِرَةُ الَّتِي قَدَّمْنَا بِزِيَادَةٍ عَلَى هَذَيْنِ لَا يَحِلُّ تَرْكُهَا.

L24300 As for the ḥadīth of Abū Hurayrah, it is utterly unreliable because it contains Yaḥyā ibn Ayyūb and al-Muthannā ibn al-Ṣabbāḥ - both being extremely weak narrators. Mālik formally testified that Yaḥyā ibn Ayyūb was a liar, and Aḥmad discredited his reliability.

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ: فَفِي غَايَةِ السُّقُوطِ لِأَنَّ فِيهِ يَحْيَى بْنَ أَيُّوبَ، وَالْمُثَنَّى بْنَ الصَّبَّاحِ، وَهُمَا ضَعِيفَانِ جِدًّا قَدْ شَهِدَ مَالِكٌ عَلَى يَحْيَى بْنِ أَيُّوبَ بِالْكَذِبِ، وَجَرَحَهُ أَحْمَدُ

L24301 As for the Muthannā: so Aḥmad discredited it because the ḥadīth was weak, Yaḥyā rejected it, and ʿAbd al-Raḥmān rejected it.

وَأَمَّا الْمُثَنَّى: فَجَرَّحَهُ بِضَعْفِ الْحَدِيثِ أَحْمَدُ، وَتَرَكَهُ يَحْيَى، وَعَبْدُ الرَّحْمَنِ

L24302 Moreover, if it were valid, it would constitute evidence against them, for it only exempts the hunting dog. Yet they permit what is prohibited therein: the price of the agricultural dog, the livestock dog, and all other dogs - thereby violating its stipulations.

ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ؛ لِأَنَّهُ لَيْسَ فِيهِ إلَّا اسْتِثْنَاءَ كَلْبِ الصَّيْدِ فَقَطْ، وَهُمْ يُبِيحُونَ مَا حُرِّمَ فِيهِ مِنْ ثَمَنِ كَلْبِ الزَّرْعِ، وَكَلْبِ الْمَاشِيَةِ، وَسَائِرِ الْكِلَابِ فَهُمْ مُخَالِفُونَ لِمَا فِيهِ.

وَأَمَّا حَدِيثُ جَابِرٍ: فَإِنَّهُ مِنْ رِوَايَةِ أَبِي الزُّبَيْرِ عَنْهُ، وَلَمْ يَسْمَعْهُ مِنْهُ بِإِقْرَارِ أَبِي الزُّبَيْرِ عَلَى نَفْسِهِ، حَدَّثَنِي يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نا عَبْدُ اللَّهِ بْنُ عُمَرَ وَمُحَمَّدُ بْنُ يُوسُفَ الْأَزْدِيُّ نا إِسْحَاقُ بْنُ أَحْمَدَ الْعُقَيْلِيُّ نا زَكَرِيَّا بْنُ يَحْيَى الْحَلْوَانِيُّ نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ أَبِي مَرْيَمَ نا أَبِي نا اللَّيْثُ بْنُ سَعْدٍ، قَالَ: إِنَّ أَبَا الزُّبَيْرِ دَفَعَ إِلَيَّ كِتَابَيْنِ، فَقُلْت فِي نَفْسِي: لَوْ سَأَلْته أَسَمِعَ هَذَا كُلَّهُ مِنْ جَابِرٍ؟ فَرَجَعْت إِلَيْهِ فَقُلْت: هَذَا كُلُّهُ سَمِعْته مِنْ جَابِرٍ؟ فَقَالَ: مِنْهُ مَا سَمِعْته، وَمِنْهُ مَا حَدَّثْت عَنْهُ، فَقُلْت لَهُ: أَعْلِمْ لِي عَلَى مَا سَمِعْتَ؟ فَأَعْلَمَ لِي عَلَى هَذَا الَّذِي عِنْدِي.

L24303 As for the ḥadīth of Jābir: It is transmitted through the narration of Abū al-Zubayr from him, and he did not hear it directly from him by Abū al-Zubayr's own admission. Yūsuf ibn ʿAbd Allāh al-Namarī narrated to me: ʿAbd Allāh ibn ʿUmar and Muḥammad ibn Yūsuf al-Azdī narrated to us: Isḥāq ibn Aḥmad al-ʿUqaylī narrated to us: Zakariyyā ibn Yaḥyā al-Ḥalwānī narrated to us: Muḥammad ibn Saʿīd ibn Abī Maryam narrated to us: My father narrated to us: al-Layth ibn Saʿd narrated to us, saying: Abū al-Zubayr handed me two books. I thought to myself: "If I ask him, 'Did you hear all of this from Jābir?'" So I returned to him and asked: "Did you hear all of this from Jābir?" He replied: "Some of it I heard from him, and some of it I transmitted on his authority." I said to him: "Mark for me what you heard directly." He then marked the one that is in my possession.

قَالَ أَبُو مُحَمَّدٍ: فَكُلُّ حَدِيثٍ لَمْ يَقُلْ فِيهِ أَبُو الزُّبَيْرِ: أَنَّهُ سَمِعَهُ مِنْ جَابِرٍ، أَوْ حَدَّثَهُ بِهِ جَابِرٌ أَوْ لَمْ يَرْوِهِ اللَّيْثُ عَنْهُ عَنْ جَابِرٍ فَلَمْ يَسْمَعْهُ مِنْ جَابِرٍ بِإِقْرَارِهِ.

L24304 Abu Muhammad said: Every hadith in which Abu al-Zubayr did not explicitly state that he heard it from Jabir, or that Jabir narrated it to him, or which al-Layth did not transmit through him, from Jabir – then by Abu al-Zubayr's own admission, he did not hear it from Jabir.

وَهَذَا الْحَدِيثُ لَمْ يَذْكُرْ فِيهِ أَبُو الزُّبَيْرِ سَمَاعًا مِنْ جَابِرٍ، وَلَا هُوَ مِمَّا عِنْدَ اللَّيْثِ فَصَحَّ أَنَّهُ لَمْ يَسْمَعْهُ مِنْ جَابِرٍ، فَخَصَلَ مُنْقَطِعًا.

L24305 In this ḥadīth, Abū al-Zubayr did not mention having heard it from Jābir, nor is it among what is documented with al-Layth. Thus, it is established that he did not hear it from Jābir, resulting in a disconnected chain.

ثُمَّ لَوْ صَحَّ لَكَانُوا مُخَالِفِينَ لَهُ، لِأَنَّهُ لَيْسَ فِيهِ إبَاحَةُ ثَمَنِ شَيْءٍ مِنْ الْكِلَابِ غَيْرَ كَلْبِ الصَّيْدِ، وَالنَّهْيِ عَنْ ثَمَنِ سَائِرِهَا وَهُمْ يُبِيحُونَ أَثْمَانَ سَائِرِ الْكِلَابِ الْمُتَّخَذَةِ لِغَيْرِ الصَّيْدِ: فَبَطَلَ كُلُّ مَا تَعَلَّقُوا بِهِ مِنْ الْآثَارِ.

L24306–24307 Then, if it were authentic, they would be opposing it, because it does not permit the price of any dogs except hunting dogs and prohibits the price of all others, while they permit the prices of other dogs kept for non-hunting purposes. Thus, all the textual evidences they relied on are nullified.

وَأَمَّا النَّظَرُ فَإِنَّهُمْ قَالُوا: كَانَ النَّهْيُ عَنْ ثَمَنِهَا حِينَ الْأَمْرِ بِقَتْلِهَا، فَلَمَّا حُرِّمَ قَتْلُهَا وَأُبِيحَ اتِّخَاذُ بَعْضِهَا انْتَسَخَ النَّهْيُ عَنْ ثَمَنِ مَا أُبِيحَ اتِّخَاذُهُ مِنْهَا.

L24308 As for the legal consideration, they stated: The prohibition against its sale price existed when killing them was commanded. When killing them was prohibited and keeping some of them became permissible, the prohibition on the sale price of those permitted to be kept was abrogated.

L24309 Abu Muhammad said: This is a pure falsehood against Allah, the Exalted, and against His Messenger (peace be upon him), for it is a report of falsehood and what no textual evidence has ever established—a claim without proof.

The abrogation of one matter does not necessitate the abrogation of another, nor does permitting the acquisition of something permit its sale. These are the people who allow raising silkworms and honeybees yet prohibit their sale due to misguidance and opposition to the truth. Acquiring mothers of the children (ummahāt al-awlād, enslaved women who bore their masters' children) is permissible, but selling them is not. Thus, the invalidity of this argument is evident.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كَذِبٌ بَحْتٌ عَلَى اللهِ تَعَالَى، وَعَلَى رَسُولِهِ - عَلَيْهِ السَّلَامُ -، لِأَنَّهُ إِخْبَارٌ بِالْبَاطِلِ، وَبِمَا لَمْ يَأْتِ بِهِ قَطُّ نَصٌّ، وَدَعْوَى بِلَا بُرْهَانٍ، وَلَيْسَ نَسْخُ شَيْءٍ بِمُوجِبِ نَسْخِ شَيْءٍ آخَرَ، وَلَيْسَ إِبَاحَةُ اتِّخَاذِ شَيْءٍ بِمُبِيحٍ لِبَيْعِهِ، فَهَؤُلَاءِ هُمْ الْقَوْمُ الْمُبِيحُونَ اتِّخَاذَ دُودِ الْقَزِّ، وَنَحْلِ الْعَسَلِ، وَلَا يُحِلُّونَ ثَمَنَهُمَا إضْلَالًا وَخِلَافًا لِلْحَقِّ، وَاتِّخَاذُ أُمَّهَاتِ الْأَوْلَادِ حِلٌّ، وَلَا يَحِلُّ بَيْعُهُنَّ: فَظَهَرَ فَسَادُ هَذَا الِاحْتِجَاجِ.

L24310 They said: The price of the dog and the earnings of the cupper were prohibited. When the prohibition on the cupper's earnings was abrogated, was the prohibition on the dog's price also abrogated? Abu Muhammad said: This is a lie like the previous one, corrupt speech, and a baseless claim.

وَقَالُوا: حُرِّمَ ثَمَنُ الْكَلْبِ، وَكَسْبُ الْحَجَّامِ، فَلَمَّا نُسِخَ تَحْرِيمُ كَسْبِ الْحَجَّامِ نُسِخَ تَحْرِيمُ ثَمَنِ الْكَلْبِ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كَذِبٌ كَالَّذِي قَبْلَهُ، وَكَلَامٌ فَاسِدٌ، وَدَعْوَى بِلَا بُرْهَانٍ.

L24311 They are also required that the prohibition on the illicit payment of the fornicatress be abrogated as well, since it was mentioned alongside those two. Then, who bears responsibility for abrogating the prohibition on the cupper's earnings when they occur in the prohibited manner.

وَيَلْزَمُهُمْ أَيْضًا: أَنْ يُنْسَخَ أَيْضًا تَحْرِيمُ مَهْرِ الزَّانِيَةِ، لِأَنَّهُ ذُكِرَ مَعَهُمَا، ثُمَّ مَنْ لَهُمْ بِنَسْخِ تَحْرِيمِ كَسْبِ الْحَجَّامِ إذَا وَقَعَ عَلَى الْوَجْهِ الْمَنْهِيِّ عَنْهُ.

L24312 Thus, the invalidity of their statement became entirely clear, and this is one of the issues they opposed regarding the mass-transmitted traditions and the two Companions, whom none of the Companions may validly contradict.

فَوَضَحَ فَسَادُ قَوْلِهِمْ جُمْلَةً، وَهَذَا مِمَّا خَالَفُوا فِيهِ الْآثَارَ الْمُتَوَاتِرَةَ، وَصَاحِبَيْنِ لَا يَصِحُّ خِلَافُهُمَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ.

L24313 If they mention the ruling of ʿUthmān and ʿAbdullāh ibn ʿAmr regarding the valuation of a vicious dog, we say: This is not a disagreement, for it is neither a sale nor a price. It is merely compensation of property for property destruction alone, and there is no price for a deceased person at all.

فَإِنْ ذَكَرُوا قَضَاءَ عُثْمَانَ وَعَبْدِ اللَّهِ بْنِ عَمْرٍو بِقِيمَةِ الْكَلْبِ الْعَقُورِ؟ قُلْنَا: لَيْسَ هَذَا خِلَافًا، لِأَنَّهُ لَيْسَ بَيْعًا، وَلَا ثَمَنًا، إنَّمَا هُوَ قِصَاصُ مَالٍ عَنْ فَسَادِ مَالٍ فَقَطْ، وَلَا ثَمَنَ لِمَيِّتٍ أَصْلًا.

L24314 It has been narrated to us via Ibn Abi Shaybah's chain: Waki' reported from Hammad ibn Salamah, from Abū al-Zubayr - from Jābir and Abū al-Muhazzim from Abū Hurayrah - that both of them disapproved of selling dogs except a hunting dog, and they disapproved of selling cats. Abū al-Muhazzim is a very weak narrator, and others have disagreed with them regarding the permissibility of selling cats, as you can see.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ، وَأَبِي الْمُهَزِّمِ عَنْ أَبِي هُرَيْرَةَ: أَنَّهُمَا كَرِهَا ثَمَنَ الْكَلْبِ إلَّا كَلْبَ صَيْدٍ، وَكَرِهَا ثَمَنَ الْهِرِّ وَأَبُو الْمُهَزِّمِ ضَعِيفٌ جِدًّا، وَقَدْ خَالَفُوهُمَا فِي ثَمَنِ الْهِرِّ كَمَا تَرَى.

وَقَدْ رُوِّينَا إِبَاحَةَ ثَمَنِ الْكَلْبِ عَنْ عَطَاءٍ، وَيَحْيَى بْنِ سَعِيدٍ، وَرَبِيعَةَ، وَعَنْ إِبْرَاهِيمَ إِبَاحَةَ ثَمَنِ كَلْبِ الصَّيْدِ، وَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L24315–24316 It has been narrated to us that the permissibility of the price of dogs is affirmed by ʿAṭāʾ, Yaḥyā ibn Saʿīd, and Rabīʿah, and from Ibrāhīm the permissibility of the price of hunting dogs. No one's argument holds validity against the Messenger of Allah (peace and blessings be upon him).

وَأَمَّا مَنْ احْتَاجَ إِلَيْهِ، فَقَدْ قَالَ اللَّهُ تَعَالَى: {وَلا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ} [البقرة: ٢٣٧] فَمَا لَا يَحِلُّ بَيْعُهُ، وَتَحِلُّ هِبَتُهُ، فَإِمْسَاكُ مَنْ عِنْدَهُ مِنْهُ فَضْلٌ عَنْ حَاجَتِهِ ذَلِكَ: الْفَضْلُ عَمَّنْ هُوَ مُضْطَرٌّ إِلَيْهِ ظُلْمٌ لَهُ.

L24317 As for one in need of it, Allah the Exalted has said: "Do not neglect graciousness between yourselves" [Al-Baqarah: 237]. Therefore, withholding surplus - of what is impermissible to sell but permissible to gift - by one who possesses it beyond his need constitutes a denial of that graciousness to one compelled by necessity to require it, and this constitutes injustice against him.[24]

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ» وَالظُّلْمُ وَاجِبٌ أَنْ يُمْنَعَ مِنْهُ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ

L24318 The Messenger of Allah (peace and blessings be upon him) said, "A Muslim is the brother of a Muslim: he does not wrong him nor forsake him." It is obligatory to prevent him from oppression, and with Allah, the Exalted, is success.

وَأَمَّا اتِّخَاذُهَا: فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا رَوْحُ بْنُ عُبَادَةَ نا ابْنُ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَتْلِ الْكِلَابِ ثُمَّ نَهَى رَسُولُ اللَّهِ عَنْ قَتْلِهَا، وَقَالَ: عَلَيْكُمْ بِالْأَسْوَدِ الْبَهِيمِ ذِي النُّقْطَتَيْنِ فَإِنَّهُ شَيْطَانٌ» .

L24319 It has been narrated to us through the chain of Muslim: Isḥāq ibn Manṣūr narrated to me, Rawḥ ibn ʿUbādah narrated to us from Ibn Jurayj, who narrated to me that Abū al-Zubayr reported hearing Jābir ibn ʿAbdullāh say: "The Messenger of Allah (peace be upon him) commanded us to kill dogs, then the Messenger of Allah prohibited their killing, and said: 'You must target the completely jet-black dog with two spots, for it is a devil.'"

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عِمْرَانُ بْنُ مُوسَى نا يَزِيدُ بْنُ زُرَيْعٍ أَنَا يُونُسُ بْنُ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مُغَفَّلٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَوْلَا أَنَّ الْكِلَابَ أُمَّةٌ مِنْ الْأُمَمِ لَأَمَرْتُ بِقَتْلِهَا، فَاقْتُلُوا مِنْهَا الْأَسْوَدَ الْبَهِيمَ، وَأَيُّمَا قَوْمٍ اتَّخَذُوا كَلْبًا لَيْسَ بِكَلْبِ حَرْثٍ، أَوْ صَيْدٍ، أَوْ مَاشِيَةٍ، فَإِنَّهُ يُنْقَصُ مِنْ أَجْرِهِ كُلَّ يَوْمٍ قِيرَاطٌ» .

L24320 Through the chain of Aḥmad ibn Shuʿayb: From ʿImrān ibn Mūsā, from Yazīd ibn Zurayʿ, from Yūnus ibn ʿUbayd, from al-Ḥasan al-Baṣrī, from ʿAbdullāh ibn Mughaffal, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said, "If dogs were not a nation among the nations, I would have ordered their killing. So kill every jet-black one among them. And any people who keep a dog that is not a dog for farming, hunting, or livestock—then a qīrāṭ will be subtracted from their reward daily."[25]

[24] **Qur'an references (L24317):** Qur'an 2:237 (Al-Baqarah).
[25] **Hadith references (L24320):** Sunan an-Nasai 4280.

L24321–24323 And via the transmission of Muslim: Harmalah narrated to us, Ibn Wahb narrated to us, Yunus informed me from Ibn Shihāb from Saʿīd ibn al-Musayyab from Abū Hurayrah from the Messenger of Allah (peace be upon him), who said: “Whoever keeps a dog that is not [a dog for...] [text incomplete].” “No game, nor grazing animals, nor land, because two qirāṭān will be deducted from his reward daily.» And the dwelling is included in the category of land because it is land.”[26]

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنَا حَرْمَلَةُ حَدَّثَنَا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ اقْتَنَى كَلْبًا لَيْسَ بِكَلْبِ صَيْدٍ، وَلَا مَاشِيَةٍ، وَلَا أَرْضٍ، فَإِنَّهُ يُنْقَصُ مِنْ أَجْرِهِ قِيرَاطَانِ كُلَّ يَوْمٍ» وَتَدْخُلُ الدَّارُ فِي جُمْلَةِ الْأَرْضِ؛ لِأَنَّهَا أَرْضٌ.

L24324 So these hadiths contain the text of what we have said.

فَهَذِهِ الْأَحَادِيثُ فِيهَا نَصُّ مَا قُلْنَا.

L24325 And it has been transmitted to us from Ibrāhīm al-Nakhaʿī: “We were commanded to kill the black dog,” and we have mentioned this with its chain of transmission in the “Book of Hunting” of this compilation of ours. And success is from Allāh, the Exalted.

وَقَدْ رُوِّينَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ أُمِرْنَا بِقَتْلِ الْكَلْبِ الْأَسْوَدِ، وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِي " كِتَابِ الصَّيْدِ " مِنْ دِيوَانِنَا هَذَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L24326 The Juridical Question of Selling Cats and Bequeathing Them

[مَسْأَلَة بَيْع الْهِرّ والوصية بِهِ]

L24327 1515 – Legal Question:

١٥١٥ - مَسْأَلَةٌ:

L24328 It is not permissible to sell cats. If someone is compelled to acquire one due to harm from mice, it becomes obligatory. Whoever possesses surplus cats beyond their need must give from them what suffices to repel harm, through which Allah the Exalted wards it off from him - just as we stated regarding one compelled to use a dog, with no distinction between the two.

وَلَا يَحِلُّ بَيْعُ الْهِرِّ فَمَنْ اُضْطُرَّ إلَيْهِ لِأَذَى الْفَأْرِ فَوَاجِبٌ وَعَلَى مَنْ عِنْدَهُ مِنْهَا فَضْلٌ عَنْ حَاجَتِهِ أَنْ يُعْطِيَهُ مِنْهَا مَا يَدْفَعُ بِهِ اللَّهُ تَعَالَى عَنْهُ الضَّرَرَ: كَمَا قُلْنَا فِيمَنْ اُضْطُرَّ إلَى الْكَلْبِ وَلَا فَرْقَ.

L24329 The proof of that is what has been narrated to us through the chain of Muslim: Salamah ibn Shabīb reported to me; he said: Al-Ḥasan ibn Aʿyan narrated to us; Maʿqil narrated to us from Abū al-Zubayr, who said: I asked Jābir ibn ʿAbd Allāh about the sale of a dog and a cat. He said: “The Messenger of Allah (peace be upon him) prohibited that.”

بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي سَلَمَةُ بْنُ شَبِيبٍ قَالَ: نا الْحَسَنُ بْنُ أَعْيَنَ نا مَعْقِلٌ عَنْ «أَبِي الزُّبَيْرِ قَالَ: سَأَلْتُ جَابِرَ بْنَ عَبْدِ اللَّهِ عَنْ ثَمَنِ الْكَلْبِ وَالسِّنَّوْرِ؟ فَقَالَ: زَجَرَ عَنْ ذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

L24330 Abu Muhammad said: Rebuke is the strongest form of prohibition.

قَالَ أَبُو مُحَمَّدٍ: الزَّجْرُ أَشَدُّ النَّهْيِ.

L24331 It was narrated to us through the chain of Qāsim ibn Aṣbagh, from Muḥam-

[26] **Hadith references (L24321):** Sunan an-Nasai 4290; Sahih Muslim 1575a; Riyad as-Salihin 1689.

mad ibn Waḍḍāḥ, from Muḥammad ibn Ādam, from ʿAbdullāh ibn al-Mubārak, from Ḥammād ibn Salamah, from Abī al-Zubayr, from Jābir ibn ʿAbdillāh that he considered the price of dogs and cats disliked.

وَرُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا مُحَمَّدُ بْنُ آدَمَ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّهُ كَرِهَ ثَمَنَ الْكَلْبِ وَالسِّنَّوْرِ.

L24332 Therefore, this is the legal opinion of Jabir concerning what was narrated, and we do not know of any opposer to him among the Companions.

فَهَذِهِ فُتْيَا جَابِرٍ لِمَا رُوِيَ وَلَا نَعْرِفُ لَهُ مُخَالِفًا مِنْ الصَّحَابَةِ.

L24333 And through the chain of Saʿīd ibn Manṣūr, Abū al-Aḥwaṣ reported to us from Layth, from Ṭāwus and Mujāhid, that they both deemed it reprehensible to benefit from the skins of wildcats or profit from their sale.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو الْأَحْوَصِ عَنْ لَيْثٍ عَنْ طَاوُسٍ، وَمُجَاهِدٍ أَنَّهُمَا كَرِهَا أَنْ يُسْتَمْتَعَ بِمُسُوكِ السَّنَانِيرِ، وَأَثْمَانِهَا.

L24334 From the chain of Ibn Abī Shaybah, he narrated to us: Ḥafs—Ibn Ghiyāth—from Layth, from Ṭāwūs and Mujāhid, that they both disliked selling cats, receiving payment for them, and eating their meat. This is the position of Abū Sulaymān and all our fellow scholars.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ هُوَ ابْنُ غِيَاثٍ عَنْ لَيْثٍ عَنْ طَاوُسٍ، وَمُجَاهِدٍ أَنَّهُمَا كَرِهَا بَيْعَ الْهِرِّ، وَثَمَنَهُ، وَأَكْلَهُ وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا.

L24335–24337 Some of those who possess no knowledge nor piety to restrain him from lying have claimed that Ibn Abbas and Abu Hurairah both reported from the Prophet—peace and blessings be upon him—the permissibility of selling cats. Abū Muḥammad said: We do not know this to have any basis from a weak chain recognized by transmission scholars. As for an authentic one, we affirm that anyone who claims such a thing is entirely lying.

وَزَعَمَ بَعْضُ مَنْ لَا عِلْمَ لَهُ، وَلَا وَرَعَ يَزْجُرُهُ عَنْ الْكَذِبِ: أَنَّ ابْنَ عَبَّاسٍ، وَأَبَا هُرَيْرَةَ: رَوَيَا «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إبَاحَةَ ثَمَنِ الْهِرِّ» قَالَ أَبُو مُحَمَّد: وَهَذَا لَا نَعْلَمُهُ أَصْلًا مِنْ طَرِيقٍ وَاهِيَةٍ تُعْرَفُ عِنْدَ أَهْلِ النَّقْلِ، وَأَمَّا صَحِيحَةٍ فَنَقْطَعُ بِكَذِبِ مَنْ ادَّعَى ذَلِكَ جُمْلَةً.

L24338 As for the ruling in the ḥadīth, it remains as long as Iblīs and his followers are present on earth.

وَأَمَّا الْوَضْعُ فِي الْحَدِيثِ فَبَاقٍ مَا دَامَ إبْلِيسُ وَأَتْبَاعُهُ فِي الْأَرْضِ.

L24339 Then, even if it had been valid for them, they would have no argument in it, for it would have conformed to the established principle without doubt. There is no uncertainty that when he—peace be upon him—prohibited its price, the prior permissibility was invalidated and abrogated with definitive certainty, leaving no room for doubt. Whoever claims the abrogated ruling has returned has lied, fabricated, spoken falsely, and followed what he has no knowledge of. Far be it from Allah that what He abrogated should return, without any subsequent clarification establishing Allah's conclusive proof re-

ثُمَّ لَوْ صَحَّ لَهُمْ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ كَانَ يَكُونُ مُوَافِقًا لِمَعْهُودِ الْأَصْلِ بِلَا شَكٍّ، وَلَا مِرْيَةَ فِي أَنَّ حِينَ زَجْرِهِ - عَلَيْهِ السَّلَامُ - عَنْ ثَمَنِهِ بَطَلَتْ الْإِبَاحَةُ السَّالِفَةُ، وَنُسِخَتْ بِيَقِينٍ لَا مَجَالَ لِلشَّكِّ فِيهِ، فَمَنْ ادَّعَى أَنَّ الْمَنْسُوخَ قَدْ عَادَ فَقَدْ كَذَبَ وَافْتَرَى وَأَفَكَ وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَحَاشَ لِلَّهِ أَنْ يَعُودَ مَا نَسَخَ، ثُمَّ لَا يَأْتِي بَيَانٌ بِذَلِكَ تَقُومُ بِهِ حُجَّةُ اللَّهِ تَعَالَى فِيمَا نَسَخَ وَفِيمَا بَقِيَ عَلَى الْمَأْمُورِينَ بِذَلِكَ مِنْ عِبَادِهِ.

garding what He abrogated and what remained binding upon those of His servants commanded thereby.

L24340 Far be it! The religion of Allah, the Exalted and Majestic, is more exalted and more secure than that.

L24341 Those who permit it said: Since consensus has been established on the obligation to include cats and dogs—whose ownership is permissible—in inheritance, bequest, and ownership, their sale is permissible.

L24342 Abu Muhammad said: This is among the matters wherein they have openly proclaimed falsehood and contradicted their own foundational principles. The first of these is that it constitutes a claim without evidence. Moreover, they permit the inclusion of bees, silkworms, and dogs in inheritance and wills according to their view, yet they do not permit the sale of any such thing.

L24343 They permit bequeathing what has not yet been produced from the fruit of palm trees and others, and incorporate it into the inheritance shares.

L24344 They do not permit the sale of any of that, so their negligence became evident, and with Allah, the Most High, is success.

L24345 The issue of selling on the condition that you make a profit for me of one dirham per dinar, nor on the condition that I share a profit with you of such-and-such in the transaction.

L24346 1516 - Issue:

L24347 It is impermissible to sell on the condition that you give me a profit of one dirham per dinar, nor on the condition that I profit with you in it by such and such dirhams. If such a sale occurs, it is perpetually invalid.

L24348 If they contracted the sale without this condition, but the seller informed him that he acquired the commodity for such-and-such amount and that he does not profit with the buyer in it beyond such-and-such amount, then the sale has occurred as valid. If the buyer finds that he lied in what he stated, this does not harm the sale in any way, nor does it grant any right of recourse

هَيْهَاتَ دِينُ اللَّهِ عَزَّ وَجَلَّ أَعَزُّ مِنْ ذَلِكَ وَأَحْرَزُ.

وَقَالَ الْمُبِيحُونَ لَهُ: لَمَّا صَحَّ الْإِجْمَاعُ عَلَى وُجُوبِ دُخُولِ الْهِرِّ، وَالْكَلْبِ الْمُبَاحِ اتِّخَاذُهُ فِي الْمِيرَاثِ، وَالْوَصِيَّةِ، وَالْمِلْكِ: جَازَ بَيْعُهُمَا.

قَالَ أَبُو مُحَمَّد: وَهَذَا مِمَّا جَاهَرُوا فِيهِ بِالْبَاطِلِ، وَبِخِلَافِ أُصُولِهِمْ: أَوَّلُ ذَلِكَ: أَنَّهُ دَعْوَى بِلَا بُرْهَانٍ ثُمَّ إنَّهُمْ يُجِيزُونَ دُخُولَ النَّحْلِ، وَدُودِ الْحَرِيرِ فِي الْمِيرَاثِ، وَالْوَصِيَّةِ، وَكَذَلِكَ الْكَلْبِ عِنْدَهُمْ، وَلَا يُجِيزُونَ بَيْعَ شَيْءٍ مِنْ ذَلِكَ.

وَيُجِيزُونَ الْوَصِيَّةَ بِمَا لَمْ يُخْلَقْ بَعْدُ مِنْ ثَمَرِ النَّخْلِ وَغَيْرِهَا، وَيُدْخِلُونَهُ فِي الْمِيرَاثِ.

وَلَا يُجِيزُونَ بَيْعَ شَيْءٍ مِنْ ذَلِكَ، فَظَهَرَ تَخَاذُلُهُمْ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْبَيْعِ عَلَى أَنْ تربحني للدينار درهما وَلَا عَلَى أني أربح معك فِيهِ كَذَا]

١٥١٦ - مَسْأَلَةٌ:

وَلَا يَحِلُّ الْبَيْعُ عَلَى أَنْ تُرْبِحَنِي لِلدِّينَارِ دِرْهَمًا، وَلَا عَلَى أَنِّي أَرْبَحُ مَعَك فِيهِ كَذَا وَكَذَا دِرْهَمًا، فَإِنْ وَقَعَ فَهُوَ مَفْسُوخٌ أَبَدًا.

فَلَوْ تَعَاقَدَا الْبَيْعَ دُونَ هَذَا الشَّرْطِ، لَكِنْ أَخْبَرَهُ الْبَائِعُ بِأَنَّهُ اشْتَرَى السِّلْعَةَ بِكَذَا وَكَذَا، وَأَنَّهُ لَا يَرْبَحُ مَعَهُ فِيهَا إلَّا كَذَا وَكَذَا فَقَدْ وَقَعَ الْبَيْعُ صَحِيحًا، فَإِنْ وَجَدَهُ قَدْ كَذَبَ فِيمَا

whatsoever, except in cases of a defect in it or manifest unfair pricing as is the case with all sales. The liar is sinful solely for his lie.

قَالَ لَمْ يَضُرَّ ذَلِكَ الْبَيْعَ شَيْئًا، وَلَا رُجُوعَ لَهُ بِشَيْءٍ أَصْلًا، إِلَّا مِنْ عَيْبٍ فِيهِ، أَوْ غَبْنٍ ظَاهِرٍ كَسَائِرِ الْبُيُوعِ، وَالْكَاذِبُ آثِمٌ فِي كَذِبِهِ فَقَطْ.

L24349–24351 The proof of this is that a sale contingent on you making me a profit of such-and-such is a condition not found in the Book of Allah Almighty, thus it is invalid, and the contract containing it is invalid. Moreover, it is a sale with an unknown price, because the two parties contracted the sale on the basis that it [...] He profits with it a dirham per dinar. If the purchase was a dinar excluding a quarter, the purchase is based on that, and the profit is a dirham excluding a quarter of a dirham. This is the prohibited sale of gharar (uncertainty) which the Messenger of Allah (peace and blessings be upon him) forbade – a sale for a price whose amount is not known.

بُرْهَانُ ذَلِكَ: أَنَّ الْبَيْعَ عَلَى أَنْ تُرْبِحَنِي كَذَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ وَالْعَقْدُ بِهِ بَاطِلٌ وَأَيْضًا: فَإِنَّهُ بَيْعٌ بِثَمَنٍ مَجْهُولٍ، لِأَنَّهُمَا إِنَّمَا تَعَاقَدَا الْبَيْعَ عَلَى أَنَّهُ يُرْبَحُ مَعَهُ لِلدِّينَارِ دِرْهَمًا، فَإِنْ كَانَ شِرَاؤُهُ دِينَارًا غَيْرَ رُبُعٍ كَانَ الشِّرَاءُ بِذَلِكَ، وَالرِّبْحُ دِرْهَمًا غَيْرَ رُبُعِ دِرْهَمٍ فَهَذَا بَيْعُ الْغَرَرِ الَّذِي نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْبَيْعُ بِثَمَنٍ لَا يَدْرِي مِقْدَارَهُ.

L24352 If the sale is free of this condition, it has validly occurred as Allah the Exalted has commanded. The seller's lie constitutes disobedience to Allah the Exalted, but the sale is not contingent upon it. Rather, it is like his fornication if he were to fornicate, or his drinking if he were to consume wine—there being no difference.

فَإِذَا سَلِمَ الْبَيْعُ مِنْ هَذَا الشَّرْطِ فَقَدْ وَقَعَ صَحِيحًا كَمَا أَمَرَ اللَّهُ تَعَالَى، وَكِذْبَةُ الْبَائِعِ مَعْصِيَةٌ لِلَّهِ تَعَالَى لَيْسَتْ مَعْقُودًا عَلَيْهَا الْبَيْعُ، لَكِنْ كَزِنَاهُ لَوْ زَنَى، أَوْ شُرْبِهِ لَوْ شَرِبَ الْخَمْرَ وَلَا فَرْقَ.

L24353 It was narrated to us through the chain of Waki', who narrated on the authority of Sufyān al-Thawrī, from 'Abd al-A'lā, from Sa'īd ibn Jubayr, from Ibn 'Abbās that he disliked the sale called "dah davāzdah"—a Persian phrase meaning "I will give you twelve for ten"—which is the sale of murābaḥah.

رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ الْأَعْلَى عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ أَنَّهُ كَرِهَ بَيْعَ " دَه دوازده " مَعْنَاهُ أُرْبِحُك لِلْعَشَرَةِ اثْنَيْ عَشَرَ وَهُوَ بَيْعُ الْمُرَابَحَةِ

L24354 It has been reported to us from Ibn Abbas that he explicitly stated: "This constitutes usury."

وَرُوِّينَا عَنِ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: هُوَ رِبًا.

L24355 And via the chain of Waki' and 'Abd al-Razzaq, both narrated jointly: From Sufyan al-Thawri, from 'Ammar al-Duhni, from Ibn Abi Nu'm, from Ibn 'Umar, who said: The sale of "dah duwazdah" (ten for twelve) is riba.

وَمِنْ طَرِيقِ وَكِيعٍ، وَعَبْدِ الرَّزَّاقِ، قَالَا جَمِيعًا: أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ عَمَّارٍ الدُّهْنِيِّ عَنِ ابْنِ أَبِي نُعْمٍ عَنِ ابْنِ عُمَرَ أَنَّهُ قَالَ: بَيْعُ " دَه دوازده " رِبًا.

L24356 Ikrimah said: It is unlawful (ḥarām). Al-Ḥasan disliked it (karhiha), and Masrūq disliked it (karhiha), with Masrūq adding: "No, I would rather buy it for such-and-such or sell it for such-and-such."

وَقَالَ عِكْرِمَةُ: هُوَ حَرَامٌ وَكَرِهَهُ الْحَسَنُ وَكَرِهَهُ مَسْرُوقٌ وَقَالَ: بَلْ أَشْتَرِيهِ بِكَذَا أَوْ أَبِيعُهُ بِكَذَا.

L24357 It has been narrated to us from Ibn Mas'ud that he permitted it provided

وَرُوِّينَا عَنِ ابْنِ مَسْعُودٍ أَنَّهُ أَجَازَهُ إِذَا لَمْ يَأْخُذْ لِلنَّفَقَةِ رِبْحًا.

no profit was charged beyond covering the sustenance costs.

L24358 Ibn al-Musayyib and Shurayh permitted it. Ibn Sīrīn said: “There is no harm in ten to twelve (dah davāzdah),” and the expense for clothing should be calculated.

L24359 For those who permit it, there exists excessive prolongation regarding one who buys on deferred terms and sells for cash, one who purchases amidst currency fluctuation and sells during market stagnation; what is not legally accounted for as valid rent for stretching and folding services; the dyer’s fee, the cloth-bleacher’s wage; what is provided as sustenance to crafts; the broker’s fee; when an error is alleged or falsehood exposed—all of this being corrupt legal reasoning.

L24360 However, we say: Whoever is tested in trade in a land where purchasing occurs only in this manner should state, “I incurred such and such [cost],” according to his expenditure on it, or say, “I bought it for such and such,” without calculating any expenses in that amount. Then he should say, “However, I do not sell it at my purchasing price; you seek to acquire it from me through a sale for such and such. If not, then abandon it.” This constitutes a valid sale with no defect involved.

L24361–24363 It has been narrated to us through the chain of Ibn Abi Shaybah: Jarīr—who is Ibn ʿAbd al-Ḥamīd—from Abi Sinān, from ʿAbdullāh ibn al-Ḥārith, who said: “A man passed by a group among whom was the Messenger of Allah—peace and blessings be upon him—carrying a garment, so the man said to him...” Some of them asked, “For how much did you purchase it?” He answered him, then said, “You have lied,” while the Messenger of Allah—peace and blessings of Allah be upon him—was among them. The man retracted and said, “O Messenger of Allah, I bought it for such-and-such amount—less than what I had claimed.” The Messenger of Allah—peace and blessings of Allah be upon him—told him, “Give the excess as charity.” They hold that the Mursal (narrative with interrupted chain) is treated like the Musnad (authenticated narrative with complete chain), yet they contradicted this Mursal because the Prophet neither invalidated the sale nor reduced any portion of the profit.

وَأَجَازَهُ ابْنُ الْمُسَيِّبِ، وَشُرَيْحٌ، وَقَالَ ابْنُ سِيرِينَ: لَا بَأْسَ “ ده دوازده ” وَتُحْسَبُ النَّفَقَةُ عَلَى الثِّيَابِ.

وَلِمَنْ أَجَازَهُ تَطْوِيلٌ كَثِيرٌ فِيمَنْ ابْتَاعَ نَسِيئَةً، وَبَاعَ نَقْدًا، وَفِيمَنْ اشْتَرَى فِي نَفَاقٍ، وَبَاعَ فِي كَسَادٍ، وَمَا يُحْسَبُ كِرَاءِ الشَّدِّ وَالطَّيِّ، وَالصَّبَّاغِ، وَالْقَصَّارَةِ، وَمَا أُطْعِمَ الْحُرَفَا، وَأُجْرَةِ السِّمْسَارِ، وَإِذَا ادَّعَى غَلَطًا، وَإِذَا انْكَشَفَ أَنَّهُ كَذِبٌ وَكُلُّهُ رَأْيٌ فَاسِدٌ.

لَكِنْ نَقُولُ: مَنْ امْتُحِنَ بِالتِّجَارَةِ فِي بَلَدٍ لَا ابْتِيَاعَ فِيهِ إِلَّا هَكَذَا فَلْيَقُلْ: قَامَ عَلَيَّ بِكَذَا، وَبِحَسَبِ نَفَقَتِهِ عَلَيْهِ أَوْ يَقُولُ: ابْتَعْته بِكَذَا، وَلَا يَحْسِبُ فِي ذَلِكَ نَفَقَةً، ثُمَّ يَقُولُ: لَكِنِّي لَا أَبِيعُهُ عَلَى شِرَائِي، تُرِيدُ أَخْذَهُ مِنِّي بَيْعًا بِكَذَا وَكَذَا، وَإِلَّا فَدَعْ فَهَذَا بَيْعٌ صَحِيحٌ لَا دَاخِلَةَ فِيهِ.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرٌ هُوَ ابْنُ عَبْدِ الْحَمِيدِ عَنْ أَبِي سِنَانٍ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ قَالَ «مَرَّ رَجُلٌ بِقَوْمٍ فِيهِمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَعَهُ ثَوْبٌ، فَقَالَ لَهُ بَعْضُهُمْ بِكَمْ ابْتَعْتَهُ؟ فَأَجَابَهُ، ثُمَّ قَالَ: كَذَبْتَ وَفِيهِمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَجَعَ فَقَالَ: يَا رَسُولَ اللَّهِ ابْتَعْتُهُ بِكَذَا وَكَذَا بِدُونِ مَا كَانَ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: تَصَدَّقْ بِالْفَضْلِ» وَهُمْ يَقُولُونَ: الْمُرْسَلُ كَالْمُسْنَدِ، وَهَذَا مُرْسَلٌ قَدْ خَالَفُوهُ؛ لِأَنَّهُ لَمْ يَرُدَّ بَيْعَهُ، وَلَا حَطَّ عَنْهُ شَيْئًا مِنْ الرِّبْحِ.

[مَسْأَلَة الْبَيْع عَلَى الرقم أَوْ أَنْ يغري أحدا بِمَا يرقم عَلَى سلعته]

١٥١٧ - مَسْأَلَةٌ:

وَلَا يَجُوزُ الْبَيْعُ عَلَى الرَّقْمِ وَلَا أَنْ يُغْرِ أَحَدًا بِمَا يُرَقِّمُ عَلَى سِلْعَتِهِ، لَكِنْ يُسَوِّمُ وَيُبَيِّنُ الزِّيَادَةَ الَّتِي يَطْلُبُ عَلَى قِيمَةِ مَا يَبِيعُ، وَيَقُولُ: إِنْ طَابَتْ نَفْسُك بِهَذَا، وَإِلَّا فَدَعْ.

The issue of selling based on a numbering system, or enticing someone by what is numbered on his commodity.

1517: Question:

It is impermissible to sell based on a marked price, nor to entice anyone through the markings on their merchandise. Rather, one must negotiate the price, clearly state the markup above the value of what is being sold, and say: "If you are content with this, proceed; otherwise, leave it."

[مَسْأَلَة البيعتان فِي بيعة]

١٥١٨ - مَسْأَلَةٌ:

وَلَا يَحِلُّ بَيْعَتَانِ فِي بَيْعَةٍ، مِثْلُ: أَبِيعُك سِلْعَتِي بِدِينَارَيْنِ عَلَى أَنْ تُعْطِيَنِي بِالدِّينَارَيْنِ كَذَا وَكَذَا دِرْهَمًا.

أَوْ كَمَنْ ابْتَاعَ سِلْعَةً بِمِائَةِ دِرْهَمٍ عَلَى أَنْ يُعْطِيَهُ دَنَانِيرَ كُلَّ دِينَارٍ بِعَدَدٍ مِنْ الدَّرَاهِمِ وَمِثْلُ: أَبِيعُك سِلْعَتِي هَذِهِ بِدِينَارَيْنِ نَقْدًا أَوْ بِثَلَاثَةٍ نَسِيئَةً.

وَمِثْلِ أَبِيعُك سِلْعَتِي هَذِهِ بِكَذَا وَكَذَا عَلَى أَنْ تَبِيعَنِي سِلْعَتَك هَذِهِ بِكَذَا وَكَذَا.

فَهَذَا كُلُّهُ حَرَامٌ مَفْسُوخٌ أَبَدًا مَحْكُومٌ فِيهِ بِحُكْمِ الْغَصْبِ.

بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا أَحْمَدُ بْنُ زُهَيْرٍ نا يَحْيَى بْنُ مَعِينٍ نا هُشَيْمٌ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعَتَيْنِ فِي بَيْعَةٍ» .

The issue of two sales in one sale.

1518 – Issue:

It is unlawful to conclude two sales in one sale, such as: "I sell you my goods for two dinars, provided you give me such-and-such dirhams for them."

Or like one who purchases a commodity priced at a hundred dirhams on the condition that he pays in dinars - each dinar being exchanged for a number of dirhams. Similar to: "I sell you this commodity of mine for two dinars in cash or three dinars on credit."

I am selling you this commodity of mine for [specific terms], on the binding condition that you sell me this commodity of yours for [specific terms].

Therefore, all of this is forbidden, perpetually nullified, and subject to the ruling of usurpation.

The proof of that is what has been narrated to us via Qāsim ibn Aṣbagh, from Aḥmad ibn Zuhayr, from Yaḥyā ibn Maʿīn, from Hushaym, from Yūnus ibn ʿUbayd, from Nāfiʿ, from Ibn ʿUmar, who said: The Messenger of Allah (peace and blessings of Allah be upon him) prohibited two sales in one sale.[27]

[27] **Hadith references (L24373):** Sunan an-Nasai 4632; Jami at-Tirmidhi 1231; Mishkat al-Masabih 2868.

وَرُوِّينَا عَنْ الشَّعْبِيِّ، وَمُحَمَّدِ بْنِ عَلِيٍّ: أَنَّهُمَا كَرِهَا ذَلِكَ وَمَا نَعْلَمُ لِلْمَالِكِيِّينَ حُجَّةً إلَّا أَنَّهُمْ قَالُوا: الْبَيْعَةُ الْأُولَى لَغْوٌ فَهَذَا الِاحْتِجَاجُ أَفْسَدُ مِنْ الْقَوْلِ الَّذِي احْتَجُّوا لَهُ بِهِ، وَأَفْقَرُ إلَى حُجَّةٍ؛ لِأَنَّهُ دَعْوَى مُجَرَّدَةٌ، عَلَى أَنَّهُمْ أَتَوْا بِعَظَائِمَ طَرْدًا مِنْهُمْ لِهَذَا الْأَصْلِ الْفَاسِدِ: فَأَجَازُوا بَيْعَ هَذِهِ السِّلْعَةِ بِخِنْزِيرٍ، أَوْ بِقِسْطِ خَمْرٍ، عَلَى أَنْ يَأْخُذُوا بِالْخِنْزِيرِ، أَوْ الْخَمْرِ: دِينَارَيْنِ وَهَذِهِ عَظِيمَةٌ تَمْلَأُ الْفَمَ، وَيَكْفِي ذِكْرُهَا عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهِمْ، وَمَا الدِّيَانَةُ كُلُّهَا إلَّا بِأَسْمَائِهَا وَأَعْمَالِهَا، لَا بِأَحَدِ الْأَمْرَيْنِ دُونَ الْآخَرِ.

L24374 And it has been related to us from al-Sha'bī and Muḥammad ibn 'Alī that they both disapproved of that. We know of no evidence for the Mālikīs except their statement: "The initial pledge is invalid." This argument is more corrupt than the position they sought to justify with it, and more lacking in evidence, as it constitutes an unsubstantiated claim. Indeed, they committed grave sins in their repudiation of this corrupt principle by permitting the sale of this commodity for a pig or a portion of wine, on the condition that they then take two dinars in exchange for the pig or wine. This is a monstrous act that leaves one aghast—its mere mention suffices without laborious refutation. For religion in its entirety is nothing but its declarations and its deeds, not one of these aspects without the other.

وَنَحْنُ نَجِدُ الْمُسْتَقْرِضَ يَقُولُ: أَقْرِضْنِي دِينَارَيْنِ عَلَى أَنْ أَرُدَّ لَك دِينَارَيْنِ إلَى شَهْرٍ لَكَانَ قَوْلًا حَسَنًا، وَعَمَلًا صَحِيحًا، فَلَوْ قَالَ لَهُ يَعْنِي دِينَارَيْنِ بِدِينَارَيْنِ إلَى شَهْرٍ لَكَانَ قَوْلًا خَبِيثًا، وَعَمَلًا فَاسِدًا، حَرَامًا، وَالْعَمَلُ وَاحِدٌ وَالصِّفَةُ وَاحِدَةٌ وَمَا فَرَّقَ بَيْنَهُمَا إلَّا اللَّفْظُ.

L24375–24376 We find the borrower saying: "Lend me two dinars on the condition that I repay you two dinars after a month," and this would be a commendable statement and a valid action. But if he were to say: "meaning: two dinars for two dinars after a month," it would be a sinful statement, an invalid and prohibited action. The action and its description are the same, and nothing distinguishes between them except the wording.

وَلَوْ قَالَ امْرُؤٌ لِآخَرَ: أَبِحْنِي وَطْءَ ابْنَتِك بِدِينَارٍ مَا شِئْت؟ فَقَالَ لَهُ: نَعَمْ لَكَانَ قَوْلًا حَرَامًا: وَزِنًا مُجَرَّدًا، فَلَوْ قَالَ لَهُ: زَوِّجْنِيهَا بِدِينَارٍ، لَكَانَ قَوْلًا صَحِيحًا، وَعَمَلًا صَحِيحًا، وَالصِّفَةُ وَاحِدَةٌ، وَالْعَمَلُ وَاحِدٌ، وَإِنَّمَا فَرَّقَ بَيْنَهُمَا الِاسْمُ.

L24377 If a man were to say to another, "Permit me to have intercourse with your daughter for a dinar whenever you wish," and the latter responds, "Yes," this would constitute a forbidden statement—sheer fornication. But if he were to say to him, "Marry her to me for a dinar," it would be a valid statement and a valid act. The essence is the same, the act is the same, and only the name distinguishes between them.

وَقَوْلُهُمْ هَذَا جَمَعَ وُجُوهًا مِنْ الْبَلَاءِ، وَأَنْوَاعًا مِنْ الْحَرَامِ: مِنْهَا: تَعَدِّي حُدُودِ اللَّهِ تَعَالَى، وَشَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، وَبَيْعَتَيْنِ فِي بَيْعَةٍ، وَبَيْعُ مَا لَا يَحِلُّ وَابْتِيَاعُهُ مَعًا، وَبَيْعُ غَائِبٍ بِنَاجِزٍ فِيمَا يَقَعُ فِيهِ الرِّبَا وَبَيْعُ الْغَرَرِ وَنَعُوذُ بِاَللَّهِ مِنْ مِثْلِ هَذَا.

L24378 And their statement combines aspects of calamity and types of prohibition: among them are transgressing the limits ordained by Allah the Exalted, stipulating a condition not found in the Book of Allah the Exalted, two sales in one transaction, selling what is unlawful and buying it in the same transaction, selling deferred goods for immediate payment in contexts where usury applies, the sale involving *gharar* (uncertainty), and we seek refuge with Allah from the likes of this.

L24379 If it is said: You state regarding what we have reported through the chain of Abu Bakr ibn Abi Shaybah—reported to us by Yahya ibn Abi Za'ida, re-

ported from Muhammad ibn ʻAmr ibn ʻAlqamah, reported from Abu Salama, reported from Abu Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said, "Whoever combines two transactions in one sale, he must take the lesser of the two prices—otherwise it is usury." Shuraih upheld this ruling, as reported to us by Hammam—reported from ʻAyyash ibn Asbagh, reported from Muhammad ibn ʻAbd al-Malik ibn Ayman, reported from ʻAbdullah ibn Ahmad ibn Hanbal, reported from al-Aʻla, reported from Hammad, reported from Qatadah, Ayyub al-Sikhtiyani, Yunus ibn ʻUbayd, and Hisham ibn Hassan—all of whom reported from Muhammad ibn Sirin. He said: Two conditions in a sale: "I will sell to you [something] with a term of one month for ten; if you retain it for a month, then you take ten." Shuraih said: "The lesser of the two prices and the more distant of the two terms—otherwise it is usury." ʻAbdullah said: So I asked my father, "What about this?" He replied: "This is a voidable sale."[28]

L24380 Abu Muhammad said: He means that if you detain him for another month, you will take another ten.

L24381–24383 Abu Muhammad said: We say: This is an authentic report, except that it aligns with the established original principle. Indeed, usury, two transactions in one contract, and stipulations in sales—all of those were not unlawful in the absolute sense until they were entirely prohibited. When all that we mentioned was forbidden, the initial permissibility was undoubtedly abrogated. Therefore, this report is unquestionably abrogated. Since it is undoubtedly prohibited to engage in two sales within a single transaction, both must be invalidated together, as they constitute a prohibited act. And success comes only from Allah, the Exalted.

L24384 **An issue of a transaction that combines lawful and unlawful elements.**

L24385 1519: Legal Question

L24386 Any transaction combining unlawful and lawful elements is entirely void; none of it is valid. Examples include cases where part of the sold item is

[28]**Hadith references (L24379):** Sunan Abi Dawud 3461.

فَإِنْ قِيلَ: تَقُولُونَ فِيمَا رَوَيْتُمْ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ أَبِي زَائِدَةَ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَلْقَمَةَ عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ بَاعَ بَيْعَتَيْنِ فِي بَيْعَةٍ فَلَهُ أَوْكَسُهُمَا أَوْ الرِّبَا» وَقَدْ أَخَذَ بِهَذَا شُرَيْحٌ: كَمَا حَدَّثَنَا حُمَامٌ نا عَيَّاشُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا عَبْدُ الْأَعْلَى نا حَمَّادٌ عَنْ قَتَادَةَ، وَأَيُّوبَ السِّخْتِيَانِيِّ، وَيُونُسَ بْنِ عُبَيْدٍ، وَهِشَامِ بْنِ حَسَّانَ، كُلُّهُمْ عَنْ مُحَمَّدِ بْنِ سِيرِينَ، قَالَ: شَرْطَيْنِ فِي بَيْعٍ أَبِيعُك إلَى شَهْرٍ بِعَشَرَةٍ، فَإِنْ حَبَسْته شَهْرًا فَتَأْخُذُ عَشَرَةً، قَالَ شُرَيْحٌ: أَقَلُّ الثَّمَنَيْنِ، وَأَبْعَدُ الْأَجَلَيْنِ أَوْ الرِّبَا قَالَ عَبْدُ اللَّهِ: فَسَأَلْت أَبِي؟ فَقَالَ: هَذَا بَيْعٌ فَاسِدٌ.

قَالَ أَبُو مُحَمَّدٍ: يُرِيدُ فَإِنْ حَبَسْته شَهْرًا آخَرَ فَتَأْخُذُ عَشَرَةً أُخْرَى.

قَالَ أَبُو مُحَمَّدٍ: فَنَقُولُ: هَذَا خَبَرٌ صَحِيحٌ إلَّا أَنَّهُ مُوَافِقٌ لِمَعْهُودِ الْأَصْلِ، وَقَدْ كَانَ الرِّبَا، وَبَيْعَتَانِ فِي بَيْعَةٍ، وَالشُّرُوطُ فِي الْبَيْعِ: كُلُّ ذَلِكَ مُطْلَقًا غَيْرُ حَرَامٍ إلَى أَنْ حُرِّمَ كُلُّ ذَلِكَ، فَإِذْ حُرِّمَ كُلُّ مَا ذَكَرْنَا فَقَدْ نُسِخَتْ الْإِبَاحَةُ بِلَا شَكٍّ، فَهَذَا خَبَرٌ مَنْسُوخٌ بِلَا شَكٍّ بِالنَّهْيِ عَنْ بَيْعَتَيْنِ فِي بَيْعَةٍ بِلَا شَكٍّ، فَوَجَبَ إبْطَالُهُمَا مَعًا، لِأَنَّهُمَا عَمَلٌ مَنْهِيٌّ عَنْهُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة صَفْقَة جمعت حلالا وحراما]

١٥١٩ - مَسْأَلَةٌ:

وَكُلُّ صَفْقَةٍ جَمَعَتْ حَرَامًا وَحَلَالًا فَهِيَ بَاطِلٌ كُلُّهَا، لَا يَصِحُّ مِنْهَا شَيْءٌ مِثْلُ: أَنْ يَكُونَ بَعْضُ الْمَبِيعِ مَغْصُوبًا، أَوْ لَا يَحِلُّ مِلْكُهُ، أَوْ عَقْدًا فَاسِدًا وَسَوَاءٌ كَانَ أَقَلَّ الصَّفْقَةِ، أَوْ

stolen, ownership of it is impermissible, or the contract is invalid—regardless of whether the unlawful element constitutes the least, most, lowest, highest, or middle portion. Mālik said: If the unlawful element is central to the transaction's purpose, the entire transaction is void. If it is a minor element, only the unlawful portion is void, while the lawful portion remains valid.

أَكْثَرَهَا، أَوْ أَدْنَاهَا، أَوْ أَعْلَاهَا، أَوْ أَوْسَطَهَا وَقَالَ مَالِكٌ: إِنْ كَانَ ذَلِكَ وَجْهَ الصَّفْقَةِ بَطَلَتْ كُلُّهَا، وَإِنْ كَانَ شَيْئًا يَسِيرًا بَطَلَ الْحَرَامُ، وَصَحَّ الْحَلَالُ.

L24387 Ali said: This is a corrupt opinion; there is no evidence for its validity—neither from the Quran, nor the Sunnah, nor a weak narration, nor the statement of a Companion, nor analogy.

قَالَ عَلِيٌّ: وَهَذَا قَوْلٌ فَاسِدٌ لَا دَلِيلَ عَلَى صِحَّتِهِ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ.

L24388 "Among the astonishing claims is their argument for this position by stating: 'The basis of the transaction is its intended purpose and aim?' We countered them: 'What then? On what basis does this establish what you have mentioned as obligatory? This is nothing but your own assertion, which you then invoke as evidence for itself.' Thus, this argument is thereby invalidated."

وَمِنْ الْعَجَائِبِ احْتِجَاجُهُمْ لِذَلِكَ بِأَنْ قَالُوا: إنَّ وَجْهَ الصَّفْقَةِ هُوَ الْمُرَادُ وَالْمَقْصُودُ؟ فَقُلْنَا لَهُمْ: فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ وَجَبَ بِذَلِكَ مَا ذَكَرْتُمْ؟ وَمَا هُوَ إلَّا قَوْلُكُمْ احْتَجَجْتُمْ لَهُ بِقَوْلِكُمْ، فَسَقَطَ هَذَا الْقَوْلُ.

L24389 Others said: The lawful remains valid whether it be small or large in quantity, and the unlawful remains invalid whether it be small or large in quantity.

وَقَالَ آخَرُونَ: يَصِحُّ الْحَلَالُ قَلَّ أَوْ كَثُرَ وَيَبْطُلُ الْحَرَامُ قَلَّ أَوْ كَثُرَ.

L24390 Abu Muhammad said: We found this opinion invalidated by the words of Allah Almighty: "Do not consume your properties among yourselves unjustly except through mutual consent in a transaction" [Surah An-Nisa' 4:29]. These two parties did not mutually consent to portions of the transaction while excluding others, but rather consented to its entirety. Whoever obliges them to part of the transaction without the other part has imposed what they did not mutually accept at the contract's formation, thereby opposing Allah's command and ruling in favor of unjust wealth consumption - which is forbidden by the Quran. If they now agree to this, we do not prohibit them, but only through a new contract with their joint consent, for the original agreement was never established as such.[29]

قَالَ أَبُو مُحَمَّد: فَوَجَدْنَا هَذَا الْقَوْلَ يُبْطِلُهُ قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] فَهَذَانِ لَمْ يَتَرَاضَيَا بِبَعْضِ الصَّفْقَةِ دُونَ بَعْضٍ، وَإِنَّمَا تَرَاضَيَا بِجَمِيعِهَا، فَمَنْ أَلْزَمَهُمَا بَعْضَهَا دُونَ بَعْضٍ فَقَدْ أَلْزَمَهُمَا مَا لَمْ يَتَرَاضَيَا بِهِ حِينَ الْعَقْدِ، فَخَالَفَ أَمْرَ اللَّهِ تَعَالَى، وَحَكَمَ بِأَكْلِ الْمَالِ بِالْبَاطِلِ وَهُوَ حَرَامٌ بِالْقُرْآنِ، فَإِنْ تَرَاضَيَا الْآنَ بِذَلِكَ لَمْ نَمْنَعْهُمَا، وَلَكِنْ بِعَقْدٍ مُجَرَّدٍ بِرِضَاهُمَا مَعًا، لِأَنَّ الْعَقْدَ الْأَوَّلَ لَمْ يَقَعْ هَكَذَا.

L24391 Moreover, the valid aspect of that transaction was not established by the two parties as valid except through the validity of the void—which inherently lacks validity. Whatever derives its validity solely from what can never be

وَأَيْضًا: فَإِنَّ الصَّحِيحَ مِنْ تِلْكَ الصَّفْقَةِ لَمْ يَتَعَاقَدَا صِحَّتَهُ إلَّا بِصِحَّةِ الْبَاطِلِ الَّذِي لَا صِحَّةَ لَهُ، وَكُلُّ مَا لَا صِحَّةَ لَهُ إلَّا بِصِحَّةِ مَا لَا يَصِحُّ أَبَدًا فَلَا صِحَّةَ لَهُ أَبَدًا وَهُوَ قَوْلُ أَصْحَابِنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[29] **Qur'an references (L24390):** Qur'an 4:29 (An-Nisa).

valid will itself never be valid. This is the position of our companions, and with Allah, the Exalted, lies success.

Issue: It is unlawful to sell a free individual.

L24392

L24393–24395 1520 - Issue: It is not permissible to sell a free person. The evidence for this is what was transmitted to us via the chain of transmission cited by Al-Bukhari: Bishr ibn Marḥūm narrated to us, Yaḥyā ibn Sulaym narrated to us, from Ismāʿīl ibn Umayyah, from Saʿīd ibn Abī Saʿīd al-Maqburī, from Abū Hurayrah, from the Prophet—peace and blessings of Allah be upon him—who said: Allah, the Almighty, said: "Three types of people I will oppose on the Day of Resurrection: a man who swears a pledge by My name then betrays it; a man who sells a free person into slavery and consumes its price; and a man who hires a worker, takes full advantage of his labor, yet does not give him his wage."[30]

L24396 Ali said: "There is ancient and ongoing disagreement on this matter. We will present—God Almighty willing—what He has facilitated for presentation, so claimants of consensus in matters more obscure than this may know they are false: It was narrated to us through Muhammad ibn al-Muthannā, who reported from 'Abd al-Raḥmān ibn Mahdī and Mu'ādh ibn Hishām al-Dastuwā'ī. 'Abd al-Raḥmān stated: 'Hammām ibn Yaḥyā reported to us,' while Mu'ādh said: 'My father reported to us.' Then Hishām and Hammām concurred. Both transmitted from Qatādah, from 'Abd Allāh ibn Buraydah: 'A man sold himself, and 'Umar ibn al-Khaṭṭāb ruled him a slave as he had declared himself, designating his price for God Almighty's cause.' This is Hammām's wording. As for Hishām's version: 'He acknowledged himself to a man until he sold him.' Both narrations align in other respects, and the meaning is necessarily unified in both wordings."

L24397 Via the chain of Ibn Abi Shaybah: Shariq narrated from Jabir, from ʿĀmir al-Shaʿbī, from ʿAlī ibn Abī Ṭālib, who said: "If someone confesses to his own enslavement, he is an enslaved person."

[30] **Hadith references (L24393):** Sahih al-Bukhari 2270.

[مَسْأَلَةٌ لَا يَحِلُّ بَيْعُ الْحُرِّ]

١٥٢٠ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ الْحُرِّ. بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا بِشْرُ بْنُ مَرْحُومٍ نا يَحْيَى بْنُ سُلَيْمٍ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ «عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: قَالَ اللَّهُ عَزَّ وَجَلَّ: ثَلَاثَةٌ أَنَا خَصْمُهُمْ يَوْمَ الْقِيَامَةِ: رَجُلٌ أَعْطَى بِي ثُمَّ غَدَرَ، وَرَجُلٌ بَاعَ حُرًّا فَأَكَلَ ثَمَنَهُ، وَرَجُلٌ اسْتَأْجَرَ أَجِيرًا فَاسْتَوْفَى مِنْهُ وَلَمْ يُعْطِهِ أَجْرَهُ»

قَالَ عَلِيٌّ: وَفِي هَذَا خِلَافٌ قَدِيمٌ وَحَدِيثٌ، نُورِدُ إِنْ شَاءَ اللَّهُ تَعَالَى مِنْهُ مَا يَسَّرَ لِإِيرَادِهِ، لِيَعْلَمَ مُدَّعِي الْإِجْمَاعِ فِيمَا هُوَ أَخْفَى مِنْ هَذَا أَنَّهُ كَاذِبٌ: رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ وَمُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ، قَالَ عَبْدُ الرَّحْمَنِ: نا هَمَّامُ بْنُ يَحْيَى، وَقَالَ مُعَاذٌ: نَا أَبِي ثُمَّ اتَّفَقَ هِشَامٌ، وَهَمَّامٌ، كِلَاهُمَا: عَنْ قَتَادَةَ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ: أَنَّ رَجُلًا بَاعَ نَفْسَهُ، فَقَضَى عُمَرُ بْنُ الْخَطَّابِ بِأَنَّهُ عَبْدٌ كَمَا أَقَرَّ نَفْسَهُ، وَجَعَلَ ثَمَنَهُ فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ هَذَا لَفْظُ هَمَّامٍ وَأَمَّا لَفْظُ هِشَامٍ فَإِنَّهُ أَقَرَّ لِرَجُلٍ حَتَّى بَاعَهُ، وَاتَّفَقَا فِيمَا عَدَا ذَلِكَ، وَالْمَعْنَى وَاحِدٌ فِي كِلَا اللَّفْظَيْنِ وَلَا بُدَّ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا شَرِيكٌ عَنْ جَابِرٍ عَنْ عَامِرٍ الشَّعْبِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إِذَا أَقَرَّ عَلَى نَفْسِهِ بِالْعُبُودِيَّةِ فَهُوَ عَبْدٌ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الْمُغِيرَةُ بْنُ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِيمَنْ سَاقَ إِلَى امْرَأَتِهِ رَجُلًا حُرًّا؟ فَقَالَ إِبْرَاهِيمُ: هُوَ رَهْنٌ بِمَا جَعَلَ فِيهِ حَتَّى يَفْتَكَّ نَفْسَهُ.

From the chain of Saʿīd ibn Manṣūr, who narrated to us through Hushaym, who narrated from al-Mughīrah ibn Miqsam, reporting Ibrāhīm al-Nakhaʿī's ruling regarding a man who provided a free man to his wife [as part of the dowry]. Ibrāhīm responded: "He remains collateral for the obligation stipulated against him until he redeems himself."

وَعَنْ زُرَارَةَ بْنِ أَوْفَى قَاضِي الْبَصْرَةِ مِنْ التَّابِعِينَ: أَنَّهُ بَاعَ حُرًّا فِي دَيْنٍ.

And from Zurārah ibn Awfā, the judge of Basra and a Tābiʿī (Successor), that he sold a free man due to debt.

وَقَدْ رُوِّينَا هَذَا الْقَوْلَ عَنْ الشَّافِعِيِّ وَهِيَ قَوْلَةٌ غَرِيبَةٌ لَا يَعْرِفُهَا مِنْ أَصْحَابِهِ إلَّا مَنْ تَبَحَّرَ فِي الْحَدِيثِ وَالْآثَارِ.

We have been narrated this statement from Al-Shāfiʿī - a rare statement unknown to his followers except those profoundly versed in Hadith and Athar.

قَالَ عَلِيٌّ: هَذَا قَضَاءُ عُمَرَ وَعَلِيٍّ، بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا يَعْتَرِضُهُمْ فِي ذَلِكَ مِنْهُمْ مُعْتَرِضٌ، فَإِنْ شَنَّعُوا هَذَا؟ قُلْنَا: يَا هَؤُلَاءِ لَا عَلَيْكُمْ، وَاَللَّهِ لَقَدْ قُلْتُمْ بِأَشْنَعَ مِنْ هَذَا وَأَشَدَّ، وَفِي هَذِهِ الْمَسْأَلَةِ نَفْسِهَا.

Ali said: This is the judgment of Umar and Ali in the presence of the Companions—may Allah be pleased with them—with none among them objecting to them in that matter. If they denounce this, we say: O these people, there is no blame on you, for by Allah, you have asserted things more denounceable and severe than this, in this very matter itself.

أَلَيْسَ الْحَنَفِيُّونَ يَقُولُونَ: إنْ ارْتَدَّ الْحَسَنِيُّ، أَوْ الْحُسَيْنِيُّ، أَوْ الْعَبَّاسِيُّ، أَوْ الْمَنَافِيُّ، أَوْ الْقُرَشِيُّ، فَلَحِقَ بِأَرْضِ الْحَرْبِ فَإِنْ وُلِدَ وَلَدُهُ يُسْتَرَقُّونَ، وَإِنْ أَسْلَمُوا كَانُوا عَبِيدًا، وَأَنَّ الْقُرَشِيَّةَ إنْ ارْتَدَّتْ وَلَحِقَتْ بِدَارِ الْحَرْبِ سُبِيَتْ وَأُرِقَّتْ، فَإِنْ أَسْلَمَتْ كَانَتْ مَمْلُوكَةً تُبَاحُ وَيُسْتَحَلُّ فَرْجُهَا بِمِلْكِ الْيَمِينِ، وَإِنْ لَمْ تُسْلِمْ تُرِكَتْ عَلَى كُفْرِهَا، وَجَازَ أَنْ يَسْتَرِقَّهَا الْيَهُودِيُّ وَالنَّصْرَانِيُّ؟ أَوَ لَيْسَ ابْنُ الْقَاسِمِ صَاحِبَ مَالِكٍ يَقُولُ: إنْ تَذَمَّمَ أَهْلُ الْحَرْبِ وَفِي أَيْدِيهِمْ أَسْرَى مُسْلِمُونَ، وَمُسْلِمَاتٌ أَحْرَارٌ، وَحَرَائِرُ، فَإِنَّهُمْ يُقَرُّونَ عَبِيدًا لَهُمْ وَإِمَّا يَتَمَلَّكُونَهُمْ وَيَتَبَايَعُونَهُمْ، فَأُفٍّ لِهَذَيْنِ الْقَوْلَيْنِ وَتُفٍّ، فَأَيُّهُمَا أَشْنَعُ مِمَّا لَمْ يُقَلِّدُوا فِيهِ عُمَرَ، وَعَلِيًّا - رَضِيَ اللَّهُ عَنْهُمَا -؟ قَالَ أَبُو مُحَمَّدٍ: كُلُّ مَنْ صَارَ حُرًّا بِعِتْقٍ، أَوْ بِأَنْ كَانَ ابْنَ حُرٍّ مِنْ أَمَةٍ لَهُ، أَوْ بِأَنْ حَمَلَتْ بِهِ حُرَّةٌ، أَوْ بِأَنْ أُعْتِقَتْ أَمَةٌ وَهِيَ حَامِلٌ بِهِ، وَلَمْ يَسْتَثْنِهِ

Do the Ḥanafīs not assert: If a Ḥasanī, a Ḥusaynī, an ʿAbbāsī, a Manāfī, or a Qurayshite apostatizes and flees to the land of war, then if his child is born, they are enslaved, and if they embrace Islam, they would be Slaves, and that if a Qurayshi woman apostatizes and joins the abode of war, she is captured and reduced to slavery. If she embraces Islam, she becomes a lawful slave whose intimacy becomes permissible through rightful possession. If she does not embrace Islam, she is left in her disbelief. Is it permissible for a Jew or Christian to enslave her? Is it not Ibn al-Qasim, Malik's companion, who states: If the people of war demand a truce while holding Muslim captives—free Muslim men and freeborn women—they are left as their slaves, or they take ownership of them and trade them? Fie on these two opinions—how vile! Which is more abhorrent: that they did not follow the rulings of Umar and Ali—may Allah be pleased with them? Abu Muhammad said: Anyone who gains freedom through manumission, by being born to a free father from his enslaved woman, by a free woman's pregnancy with him, or by an enslaved woman's manumission while pregnant with him—provided the manumitter did not exclude him—has attained freedom. This freedom cannot be nullified

for him nor for any descendant of his, male or female, through the lineage we described, forever. Not through his apostasy or hers, nor through capture, nor through the apostasy of his father, grandfather (however distant), grandmother (however distant), nor through any ancestor's joining the abode of war—male or female—nor through his own joining, nor through acknowledgment of enslavement, debt, self-sale, nor under any circumstance. For neither the Quran nor the Sunnah mandates this. There is a report that free persons were sold for debt in early Islam until Allah the Exalted revealed: {If someone is in hardship, grant them respite until ease} [Al-Baqarah: 280]. Success comes from Allah the Exalted.[31]

Legal case regarding the sale of a female slave who became pregnant by her master.

1521 – Issue:

It is not permissible to sell a female slave who has become pregnant by her master, according to what Yūsuf ibn ʿAbd Allāh narrated to us from ʿAbd al-Wārith ibn Sufyān from Qāsim ibn Aṣbagh from Muṣʿab ibn Saʿīd from ʿAbd Allāh ibn ʿAmr al-Raqqī from ʿAbd al-Karīm al-Jazarī from ʿIkrimah from Ibn ʿAbbās, who said: "When Māriyah gave birth to Ibrāhīm, the Messenger of Allāh (peace be upon him) said: 'Her child emancipated her.'" This is a report with a ṣaḥīḥ chain, and the legal proof based on it is established.

If it is said: What is established from Ibn Abbas is the opinion permitting the sale of *ummahāt al-awlād* (mothers of offspring), and this report derives from his narration—would he have abandoned a transmitted ruling except due to its weakness in his assessment and in favor of what he deemed stronger in evidence? We respond: We—O assembly of Zahiris—are not opposed by such chaff of speech, nor is this objection raised against us except by those deficient in intellect. For proof in our school rests upon transmitted narrations, not opinion-based reasoning. Only those clinging to [opinion-

[31] **Qur'an references (L24402):** Qur'an 2:280 (Al-Baqarah).

الْمُعْتِقُ، فَإِنَّ الْحُرِّيَّةَ قَدْ حَصَلَتْ لَهُ، فَلَا تَبْطُلُ عَلَيْهِ، وَلَا عَمَّنْ تَنَاسَلَ مِنْهُ مِنْ ذَكَرٍ أَوْ أُنْثَى عَلَى هَذِهِ السَّبِيلِ مِنَ الْوِلَادَةِ الَّتِي ذَكَرْنَا أَبَدًا، لَا بِأَنْ يَرْتَدَّ، وَلَا بِأَنْ تَرْتَدَّ، وَلَا بِأَنْ يُسْبَى، وَلَا بِأَنْ يَرْتَدَّ أَبُوهُ أَوْ جَدُّهُ وَإِنْ بَعُدَ، أَوْ جَدَّتُهُ وَإِنْ بَعُدَتْ وَلَا بِلَحَاقٍ بِأَرْضِ الْحَرْبِ مِنْ أَحَدِ أَجْدَادِهِ، أَوْ جَدَّاتِهِ أَوْ مِنْهُ أَوْ مِنْهَا: وَلَا بِإِقْرَارِهِ بِالرِّقِّ، وَلَا بِدَيْنٍ، وَلَا بِبَيْعِهِ نَفْسِهِ، وَلَا بِوَجْهٍ مِنَ الْوُجُوهِ أَبَدًا لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَقَدْ جَاءَ أَثَرٌ بِأَنَّ الْحُرَّ كَانَ يُبَاعُ فِي الدَّيْنِ فِي صَدْرِ الْإِسْلَامِ إِلَى أَنْ أَنْزَلَ اللَّهُ تَعَالَى: {وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَى مَيْسَرَةٍ} [البقرة: ٢٨٠] وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَيْع أمة حملت مِنْ سيدها]

١٥٢١ - مَسْأَلَةٌ:

وَلَا يَحِلُّ بَيْعُ أَمَةٍ حَمَلَتْ مِنْ سَيِّدِهَا، لِمَا حَدَّثَنَا يُوسُفُ بْنُ عَبْدِ اللَّهِ نا عَبْدُ الْوَارِثِ بْنُ سُفْيَانَ نا قَاسِمُ بْنُ أَصْبَغَ نا مُصْعَبُ بْنُ سَعِيدٍ نا عَبْدُ اللَّهِ بْنُ عَمْرٍو الرَّقِّيُّ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: «لَمَّا وَلَدَتْ مَارِيَةُ إِبْرَاهِيمَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَعْتَقَهَا وَلَدُهَا» وَهَذَا خَبَرٌ صَحِيحُ السَّنَدِ وَالْحُجَّةُ بِهِ قَائِمَةٌ.

فَإِنْ قِيلَ: الثَّابِتُ عَنِ ابْنِ عَبَّاسٍ الْقَوْلُ بِجَوَازِ بَيْعِ أُمَّهَاتِ الْأَوْلَادِ، وَهَذَا الْخَبَرُ مِنْ رِوَايَتِهِ، فَمَا كَانَ لِيَتْرُكَ مَا رُوِيَ إِلَّا لِضَعْفِهِ عِنْدَهُ، وَلِمَا هُوَ أَقْوَى عِنْدَهُ؟ قُلْنَا: لَسْنَا نُعَارَضُ - مَعْشَرَ الظَّاهِرِيِّينَ - بِهَذَا الْغُثَاءِ مِنَ الْقَوْلِ، وَلَا يُعْتَرَضُ بِهَذَا عَلَيْنَا إِلَّا ضِعَافُ الْعَقْلِ، لِأَنَّ الْحُجَّةَ عِنْدَنَا فِي الرِّوَايَةِ، لَا فِي الرَّأْيِ، يُعَارِضُ بِهَذَا مَنْ يَتَعَلَّقُ بِهِ إِذَا عُورِضَ بِالسُّنَنِ الثَّابِتَةِ.

based reasoning] employ this [argument] when confronted with established prophetic traditions.

L24409–24410 And he contradicts it among the Hanafis and Malikis—those who show no concern for contradiction in that matter, acting one way at this time and another way at that time—who feel no hesitation in claiming consensus here, then proceed to designate Ibn Mas'ud, Zayd ibn Thabit, Ali ibn Abi Talib, and Ibn Abbas as opponents of the consensus. This characterizes their knowledge of the Sunnah, and this demonstrates their understanding of consensus. Allah suffices us, and He is the finest Trustee.

L24411 1521 – Issue:

L24412 Abu Muhammad said: If the master's semen is deposited in the vagina of his female slave, her status is pending observation. If it remains until it becomes a formed entity discernible as a child, selling her is prohibited from the moment the semen was deposited in her vagina, and her sale is invalidated if she was sold. But if it exits her before becoming a formed entity discernible as a child, selling her is never prohibited.

L24413 The proof for the validity of this opinion is that if prohibiting the sale of the female slave in the aforementioned circumstance were not incumbent, then selling her would be permissible. If selling her were permissible, it would be lawful for her purchaser to have sexual relations with her before the semen could result in a child, and this contradicts the aforementioned explicit text.

L24414 Similarly, the ruling concerning the deceased following the presence of his semen in his wife's vagina is that his status remains contingent. If the child is born alive, we ascertain that his inheritance right is established due to his father's death. If the child is stillborn, we ascertain that no inheritance right ever accrues to him. For were it otherwise, a right to inheritance would have arisen for him that others had already lawfully claimed. And success comes only from Allah, the Exalted.

The Issue of the Sale of Air

L24415

L24416 Question 1522:

وَهُوَ مُخَالِفٌ لَهَا مِنْ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، الَّذِينَ لَا يُبَالُونَ بِالتَّنَاقُضِ فِي ذَلِكَ، مَرَّةً هَكَذَا وَمَرَّةً هَكَذَا، وَالَّذِينَ لَا يُبَالُونَ بِأَنْ يَدَّعُوا هَهُنَا الْإِجْمَاعَ ثُمَّ لَا يُبَالُونَ بِأَنْ يَجْعَلُوا: ابْنَ مَسْعُودٍ، وَزَيْدَ بْنَ ثَابِتٍ وَعَلِيَّ بْنَ أَبِي طَالِبٍ، وَابْنَ عَبَّاسٍ، مُخَالِفِينَ لِلْإِجْمَاعِ فَهَذِهِ صِفَةُ عِلْمِهِمْ بِالسُّنَنِ، وَهَذَا مِقْدَارُ عِلْمِهِمْ بِالْإِجْمَاعِ وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

١٥٢١ - مَسْأَلَةٌ:

قَالَ أَبُو مُحَمَّد: إذَا وَقَعَ مَنِيُّ السَّيِّدِ فِي فَرْجِ أَمَتِهِ فَأَمْرُهَا مُتَرَقَّبٌ، فَإِنْ بَقِيَ حَتَّى يَصِيرَ خَلْقًا يَتَبَيَّنُ أَنَّهُ وَلَدٌ فَهِيَ حَرَامٌ بَيْعُهَا مِنْ حِينِ سُقُوطِ الْمَنِيِّ فِي فَرْجِهَا وَيُفْسَخُ بَيْعُهَا إنْ بِيعَتْ، وَإِنْ خَرَجَ عَنْهَا قَبْلَ أَنْ يَصِيرَ خَلْقًا يَتَبَيَّنُ أَنَّهُ وَلَدٌ، فَلَمْ يَحْرُمْ بَيْعُهَا قَطُّ.

وَبُرْهَانُ صِحَّةِ هَذَا الْقَوْلِ: أَنَّهُ لَوْ لَمْ يُسْتَحَقَّ الْمَنْعُ مِنْ الْبَيْعِ فِي الْحَالِ الَّتِي ذَكَرْنَا لَكَانَ بَيْعُهَا حَلَالًا، لَوْ كَانَ بَيْعُهَا حَلَالًا لَحَلَّ فَرْجُهَا لِمُشْتَرِيهَا قَبْلَ أَنْ يَصِيرَ الْمَنِيُّ وَلَدًا وَهَذَا خِلَافُ النَّصِّ الْمَذْكُورِ.

وَهَكَذَا الْقَوْلُ فِي الْمَيِّتِ إثْرَ كَوْنِ مَنِيِّهِ فِي فَرْجِ امْرَأَتِهِ أَنَّهُ مُتَرَقَّبٌ أَيْضًا، فَإِنْ وُلِدَ حَيًّا عَلِمْنَا أَنَّهُ قَدْ وَجَبَ مِيرَاثُهُ بِمَوْتِ أَبِيهِ، وَإِنْ وُلِدَ مَيِّتًا عَلِمْنَا أَنَّهُ لَمْ يَجِبْ لَهُ قَطُّ مِيرَاثٌ، إذْ لَوْ كَانَ غَيْرَ هَذَا لَمَا حَدَثَ لَهُ حَقٌّ فِي مِيرَاثٍ قَدْ اسْتَحَقَّهُ غَيْرُهُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ بَيْعُ الْهَوَاءِ]

١٥٢٢ - مَسْأَلَةٌ:

وَلَا يَحِلُّ بَيْعُ الْهَوَاءِ أَصْلًا، كَمَنْ بَاعَ مَا عَلَى سَقْفِهِ وَجُدْرَانِهِ لِلْبِنَاءِ عَلَى ذَلِكَ، فَهَذَا بَاطِلٌ مَرْدُودٌ أَبَدًا؛ لِأَنَّ الْهَوَاءَ لَا يَسْتَقِرُّ فَيُضْبَطُ بِمِلْكٍ أَبَدًا، وَإِنَّمَا هُوَ مُتَمَوِّجٌ يَمْضِي مِنْهُ شَيْءٌ وَيَأْتِي آخَرُ أَبَدًا، فَكَانَ يَكُونُ بَيْعُهُ أَكْلَ مَالٍ بِالْبَاطِلِ؛ لِأَنَّهُ بَاعَ مَا لَا يَمْلِكُ، وَلَا يَقْدِرُ عَلَى إمْسَاكِهِ، فَهُوَ بَيْعُ غَرَرٍ، وَبَيْعُ مَا لَا يَمْلِكُ، وَبَيْعُ مَجْهُولٍ.

L24417 The sale of air is fundamentally impermissible, such as one selling what is above their roof and walls for construction upon it. This transaction is permanently void and rejected because air does not settle and cannot be permanently controlled as property. Rather, it is in constant motion, with something ceaselessly departing and others arriving endlessly. Selling it would thus constitute wrongful consumption of wealth, as one sells what they neither own nor have the ability to retain. It is a sale involving *gharar*, a sale of what is not owned, and a sale of an unknown entity.

فَإِنْ قِيلَ: إنَّمَا بِيعَ الْمَكَانُ لَا الْهَوَاءُ؟ قُلْنَا: لَيْسَ هُنَاكَ مَكَانٌ أَصْلًا غَيْرَ الْهَوَاءِ، فَلَوْ كَانَ مَا قُلْتُمْ لَكَانَ لَمْ يَبِعْ شَيْئًا أَصْلًا؛ لِأَنَّهُ عَدَمٌ، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ حَقًّا.

L24418 If it is said: "Only the place was sold, not the space?" We reply: "There is no place at all except space. If your claim were valid, nothing would have been sold whatsoever, for it is non-existent. Thus, it is unequivocally an illegitimate usurpation of property."

فَإِنَّ قِيلَ: إنَّمَا بَاعَ سَطْحَ سَقْفِهِ وَجُدْرَانِهِ؟

L24419 If it is said: "Did he sell only the flat roof and walls?"

قُلْنَا: هَذَا بَاطِلٌ وَهُوَ أَيْضًا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ - تَعَالَى - فَهُوَ بَاطِلٌ؛ لِأَنَّهُ شَرَطَ لَهُ أَنْ يَهْدِمَ شَيْئًا مِنْ سَقْفِهِ، وَلَا مِنْ رُءُوسِ جُدْرَانِهِ، وَهَذَا شَرْطٌ لَمْ يَأْتِ النَّصُّ بِإِبَاحَتِهِ فَهُوَ بَاطِلٌ حَرَامٌ مَفْسُوخٌ أَبَدًا - وَقَدْ رُوِّينَا هَذَا الْقَوْلَ عَنْ الشَّافِعِيِّ، وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الْقِسْمَةِ " وَأَنَّهُ لَا يَحِلُّ أَلْبَتَّةَ أَنْ يَمْلِكَ أَحَدٌ شَيْئًا وَيَمْلِكُ غَيْرُهُ الْعُلُوَّ الَّذِي عَلَيْهِ - وَمَنْ بَاعَ سَقْفَهُ فَقَطْ فَحَلَالٌ، وَيُؤْخَذُ الْمُشْتَرِي بِإِزَالَةِ مَا اشْتَرَى عَنْ مَكَانِ مِلْكِهِ لِغَيْرِهِ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24420–24421 We said: This is invalid, and it is also a condition not found in the Book of Allah—Exalted be He—thus it is invalid. For he stipulated that one must demolish part of his ceiling but not the tops of his walls, and this is a condition not sanctioned by textual evidence as permissible. Therefore, it is invalid, prohibited, and perpetually nullified. This opinion has been transmitted to us from Al-Shāfiʿī, and we have mentioned it in *The Book of Division*, affirming that it is entirely impermissible for one to own something while another owns the upper structure above it. If someone sells only his ceiling, it is permissible, but the buyer is required to remove what he purchased from the place owned by another. And success is from Allah—Exalted be He.

[مَسْأَلَةُ بَيْعِ مَنْ لَا يَعْقِلُ لِسُكْرٍ أَوْ جُنُونٍ]

The Issue of the Sale by One Who Lacks Reason Due to Intoxication or Insanity

١٥٢٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ بَيْعُ مَنْ لَا يَعْقِلُ لِسُكْرٍ، أَوْ جُنُونٍ، وَلَا يَلْزَمُهُمَا؛ لِقَوْلِ اللَّهِ - تَعَالَى -: {لا تَقْرَبُوا الصَّلاةَ وَأَنْتُمْ سُكَارَى حَتَّى تَعْلَمُوا مَا تَقُولُونَ} [النساء: ٤٣] .

L24422 Issue 1523: A sale conducted by a person lacking mental capacity due to intoxication or insanity is invalid, and such transactions are not legally binding. This is based on Allah's statement, the Exalted: "Do not approach

prayer while you are intoxicated until you know what you are saying" [Quran 4:43].[32]

L24424 The Exalted and Majestic has borne witness that the intoxicated person does not comprehend what he utters, and a sale is a verbal declaration or its equivalent for those incapable of speech due to a defect such as muteness or an oral impairment. Thus, one who does not understand what he says—has he not engaged in any sale or purchase? Some deemed it permissible, but we know of no evidence whatsoever for their position beyond their assertion that such a person disobeyed God—Exalted and Majestic—and brought this state upon himself. We responded: "Indeed, he is liable to the hadd punishment in this world and the Fire in the Hereafter unless God—Exalted—forgives him. Yet this does not necessitate imposing an additional legal obligation beyond what God—Exalted—has decreed." They do not dispute that if an intoxicated person were to act recklessly, fall, and break his leg, he would be granted the concession to pray seated, like the one who sustained that injury in the cause of God—Exalted—with no distinction.

L24425 Similarly, tayammum is permitted when one has wounds that prevent wudu and ghusl – and this is a crude contradiction – and success comes from Allah, the Most High.

L24426 They assert that someone who intentionally consumes marking nuts and consequently loses his mental capacity is subject to the same legal ruling as an insane person who did not induce that state upon himself in matters of sale, divorce, and other such legal acts. What distinction then exists between the two cases? As for the insane person, there is no disagreement with us on this matter.

L24427 If they say: And who knows that he is intoxicated? We say: And who knows that he is insane? Perhaps he has feigned foolishness. The ruling applies only to one in whom both states are confirmed through direct observation. It has been authentically reported from the Prophet—peace be upon him—that he said: "The pen is lifted from three: the insane until he regains his senses, the child until he reaches puberty..."

فَشَهِدَ - عَزَّ وَجَلَّ - بِأَنَّ السَّكْرَانَ لَا يَدْرِي مَا يَقُولُ، وَالْبَيْعُ قَوْلٌ، أَوْ مَا يَقُومُ مَقَامَ الْقَوْلِ: مِمَّنْ لَا يَقْدِرُ عَلَى الْقَوْلِ مِمَّنْ بِهِ آفَةٌ مِنَ الْخَرَسِ، أَوْ بِفَمِهِ آفَةٌ، فَمَنْ لَا يَدْرِي مَا يَقُولُ فَلَمْ يَبِعْ شَيْئًا وَلَا ابْتَاعَ شَيْئًا؟ وَأَجَازَهُ قَوْمٌ وَلَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا أَكْثَرَ مِنْ أَنْ قَالُوا: هُوَ عَصَى اللَّهَ - تَعَالَى وَعَزَّ وَجَلَّ - وَأَدْخَلَ ذَلِكَ عَلَى نَفْسِهِ؟ فَقُلْنَا نَعَمْ، وَحَقُّهُ عَلَى ذَلِكَ الْحَدُّ فِي الدُّنْيَا، وَالنَّارُ فِي الْآخِرَةِ إِلَّا أَنْ يَغْفِرَ اللَّهُ - تَعَالَى - لَهُ، وَلَيْسَ ذَلِكَ بِمُوجِبٍ إِلْزَامِهِ حُكْمًا زَائِدًا لَمْ يُلْزِمْهُ اللَّهُ - تَعَالَى - إِيَّاهُ، وَهُمْ لَا يَخْتَلِفُونَ فِي سَكْرَانَ عَرْبَدَ فَوَقَعَ فَانْكَسَرَتْ سَاقُهُ، فَإِنَّ لَهُ مِنَ الرُّخْصَةِ فِي الصَّلَاةِ قَاعِدًا كَالَّذِي أَصَابَهُ ذَلِكَ فِي سَبِيلِ اللَّهِ - تَعَالَى -، وَلَا فَرْقَ.

وَكَذَلِكَ التَّيَمُّمُ إِذَا جُرِحَ جِرَاحَاتٍ تَمْنَعُهُ مِنَ الْوُضُوءِ وَالْغُسْلِ - وَهَذَا تَنَاقُضٌ سَمِجٌ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

وَيَقُولُونَ فِيمَنْ تَنَاوَلَ الْبَلَاذِرَ عَمْدًا فَذَهَبَ عَقْلُهُ: أَنَّ حُكْمَهُ حُكْمُ الْمَجْنُونِ الَّذِي لَمْ يُدْخِلْ ذَلِكَ عَلَى نَفْسِهِ فِي الْبَيْعِ، وَالطَّلَاقِ وَغَيْرِ ذَلِكَ، فَأَيُّ فَرْقٍ بَيْنَ الْأَمْرَيْنِ، وَأَمَّا الْمَجْنُونُ فَلَا يَخْتَلِفُونَ مَعَنَا فِي ذَلِكَ.

فَإِنْ قَالُوا: وَمَنْ يَدْرِي أَنَّهُ سَكْرَانُ؟ قُلْنَا: وَمَنْ يَدْرِي أَنَّهُ مَجْنُونٌ؟ وَلَعَلَّهُ قَدْ تَحَامَقَ، وَإِنَّمَا الْقَوْلُ فِيمَنْ عُلِمَ كِلَا الْأَمْرَيْنِ مِنْهُ بِالْمُشَاهَدَةِ - وَقَدْ صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ فَذَكَرَ الْمُبْتَلَى حَتَّى يُفِيقَ وَالصَّبِيَّ حَتَّى يَبْلُغَ» .

[32] **Qur'an references (L24423):** Qur'an 4:43 (An-Nisa).

The Issue of the Sale by One Who Has Not Reached It.

[مَسْأَلَة بَيْعُ مَنْ لَمْ يَبْلُغْ]

Issue: The sale by one who has not reached puberty is invalid, except for what is indispensable for him out of necessity—such as food for his consumption, clothing to shield himself from cold and heat, and what falls under this category—provided the people of his community neglect him and fail to provide for him.

مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ مَنْ لَمْ يَبْلُغْ، إلَّا فِيمَا لَا بُدَّ لَهُ مِنْهُ ضَرُورَةً، كَطَعَامٍ لِأَكْلِهِ، وَثَوْبٍ يَطْرُدُ بِهِ عَنْ نَفْسِهِ الْبَرْدَ وَالْحَرَّ، وَمَا جَرَى هَذَا الْمَجْرَى إذَا أَغْفَلَهُ أَهْلُ مَحَلَّتِهِ وَضَيَّعُوهُ.

The proof of that is the statement of the Messenger of Allah—may Allah bless him and grant him peace—which we mentioned. If the people of his locality neglect it and he purchases what we mentioned through his due right, he has conformed to the obligation. It is incumbent upon the people of his locality to enforce it, and it is impermissible for anyone to reject the due right. His contract at that point—if the one who concluded it is authorized in the matter—becomes a valid contract. If he is unauthorized in the matter, then as we mentioned, it is an action conforming to the due right, and thus it is impermissible to reject it. Success comes from Allah, the Most High.

بُرْهَانُ ذَلِكَ -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَا، فَإِذَا ضَيَّعَهُ أَهْلُ مَحَلَّتِهِ فَاشْتَرَى مَا ذَكَرْنَا بِحَقِّهِ، فَقَدْ وَافَقَ الْوَاجِبَ، وَعَلَى أَهْلِ مَحَلَّتِهِ إمْضَاؤُهُ، فَلَا يَحِلُّ لِأَحَدٍ رَدُّ الْحَقِّ وَتَكُونُ مُبَايَعَتُهُ حِينَئِذٍ إنْ كَانَ جَائِزَ الْأَمْرِ هُوَ الَّذِي عَقَدَ ذَلِكَ الْعَقْدَ عَلَيْهِ، فَهُوَ عَقْدٌ صَحِيحٌ، فَإِنْ كَانَ أَيْضًا غَيْرَ جَائِزِ الْأَمْرِ فَهُوَ كَمَا ذَكَرْنَا عَمَلٌ وَافَقَ الْحَقَّ الْوَاجِبَ فَلَا يَجُوزُ رَدُّهُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

As for the sale by one who has not reached legal maturity on behalf of another by the latter's command, and his purchasing for him by his command, it is valid and permissible. This is because his hand (agency) and contract are none other than the hand and contract of the commander, thus it is permissible. And success comes only from Allah, the Most High.

وَأَمَّا بَيْعُ مَنْ لَمْ يَبْلُغْ لِغَيْرِهِ بِأَمْرِ ذَلِكَ الْآخَرِ، وَابْتِيَاعُهُ لَهُ بِأَمْرِهِ فَهُوَ نَافِذٌ جَائِزٌ، لِأَنَّ يَدَهُ وَعَقْدَهُ إنَّمَا هُمَا يَدُ الْآمِرِ وَعَقْدُهُ فَهُوَ جَائِزٌ، وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

Legal issue concerning the transaction of half of this house from this side.

[مَسْأَلَة بَيْع نصف هَذِهِ الدَّار مِنْ هَذِهِ الجهة]

1525. Issue: It is not permissible to sell half of this house, nor this garment, this land, or this piece of wood from this side. Similarly, selling a third of it, a quarter of it, or any such portion is impermissible. However, if the exact limits of each of those is known, it becomes permissible, because if not known, it would constitute the sale of an undefined object. The sale of an undefined object is impermissible, as mutual consent cannot occur over something undefined. And with Allah, the Most High, is success.

١٥٢٥ - مَسْأَلَةٌ: وَلَا يَجُوزُ بَيْعُ نِصْفِ هَذِهِ الدَّارِ، وَلَا هَذَا الثَّوْبِ أَوْ هَذِهِ الْأَرْضِ، أَوْ هَذِهِ الْخَشَبَةِ مِنْ هَذِهِ الْجِهَةِ، وَكَذَلِكَ ثُلُثُهَا أَوْ رُبُعُهَا أَوْ نَحْوُ ذَلِكَ، فَلَوْ عُلِمَ مُنْتَهَى كُلِّ ذَلِكَ جَازَ، لِأَنَّهُ مَا لَمْ يُعْلَمْ بَيْعُ مَجْهُولٍ، وَبَيْعُ الْمَجْهُولِ لَا يَجُوزُ، لِأَنَّ التَّرَاضِيَ لَا يَقَعُ عَلَى مَجْهُولٍ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

The issue of selling a property, house, or land that has no

right of way to it.

L24436 1526 - Issue: It is not permissible to sell a residence, house, or land that has no legal access to it, as this constitutes squandering of property. Nor is it permissible to compel [the seller] to grant access that was not sold. However, if the property is connected to the buyer's own property, such a sale is permissible, since he can reach what he purchased, thus preventing squandering. If the buyer's property is later rightfully claimed [by another], this purchase becomes invalid, as the sale was invalid due to having absolutely no access to it.

[مَسْأَلَة بَيْعُ دَارٍ أَوْ بَيْتٍ أَوْ أَرْضٍ لَا طَرِيقَ إِلَيْهَا]

١٥٢٦ - مَسْأَلَةٌ: لَا يَجُوزُ بَيْعُ دَارٍ أَوْ بَيْتٍ أَوْ أَرْضٍ لَا طَرِيقَ إِلَيْهَا لِأَنَّهُ إِضَاعَةٌ لِلْمَالِ، وَلَا يَجُوزُ أَنْ يُلْزَمَ طَرِيقًا لَمْ يَبِعْهُ، فَلَوْ كَانَ ذَلِكَ مُتَّصِلًا بِمَالِ الْمُشْتَرِي جَازَ ذَلِكَ الْبَيْعُ؛ لِأَنَّهُ يَصِلُ إِلَى مَا اشْتَرَى فَلَا تَضْيِيعَ، فَلَوْ اُسْتُحِقَّ مَالُ الْمُشْتَرِي بَطَلَ هَذَا الشِّرَاءُ؛ لِأَنَّهُ وَقَعَ فَاسِدًا إِذَا كَانَ لَا طَرِيقَ لَهُ إِلَيْهِ أَلْبَتَّةَ.

L24437 **Issue concerning the sale of an unspecified bulk quantity on the basis that each ṣāʿ thereof is [priced] at one dirham.**

[مَسْأَلَة بَيْع جُمْلَة مَجْهُولَة الْقَدْر عَلَى أَنْ كُلّ صَاعٌ مِنْهَا بدرهم]

L24438 1527 - Issue: It is not permissible to sell an indeterminate aggregate whose total measure is unspecified at a rate of one dirham per ṣāʿ, one dirham per raṭl, one dirham per dhirāʿ, one dirham per base unit, or a specified rate per item thereof – and likewise for all measures and numerical quantities. However, if both parties mutually know the aggregate's total quantity in terms of number, volume, weight, or dhirāʿ measurement, and they know the due price stipulated for that quantity, then it becomes permissible. If the entire aggregate is sold as-is without any increment, this is permissible.

١٥٢٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ جُمْلَةٍ مَجْهُولَةِ الْقَدْرِ عَلَى أَنَّ كُلَّ صَاعٍ مِنْهَا بِدِرْهَمٍ، أَوْ كُلَّ رَطْلٍ مِنْهَا بِدِرْهَمٍ، أَوْ كُلَّ ذِرَاعٍ مِنْهَا بِدِرْهَمٍ، أَوْ كُلَّ أَصْلٍ مِنْهَا، أَوْ كُلَّ وَاحِدٍ مِنْهَا بِكَذَا وَكَذَا - وَهَكَذَا فِي جَمِيعِ الْمَقَادِيرِ وَالْأَعْدَادِ، فَإِنْ عَلِمَا جَمِيعًا مِقْدَارَ مَا فِيهَا مِنَ الْعَدَدِ، أَوِ الْكَيْلِ، أَوِ الْوَزْنِ أَوِ الذَّرْعِ، وَعَلِمَا قَدْرَ الثَّمَنِ الْوَاجِبِ فِي ذَلِكَ: جَازَ ذَلِكَ، فَإِنْ بِيعَتِ الْجُمْلَةُ كَمَا هِيَ وَلَا مَزِيدَ، فَهُوَ جَائِزٌ.

L24439–24440 Similarly, if a bulk sale is made on the condition that it contains a specified volume, weight, cubits, or number, the transaction is permissible. If the item conforms to the stipulated terms, the sale is valid; otherwise, it is invalid.

وَكَذَلِكَ لَوْ بِيعَتْ جُمْلَةٌ عَلَى أَنَّ فِيهَا كَذَا وَكَذَا مِنَ الْكَيْلِ، أَوْ مِنَ الْوَزْنِ، أَوْ مِنَ الذَّرْعِ، أَوْ مِنَ الْعَدَدِ، فَهُوَ جَائِزٌ - فَإِنْ وُجِدَتْ كَذَلِكَ صَحَّ الْبَيْعُ، وَإِلَّا فَهُوَ مَرْدُودٌ.

L24441 The proof of that is: selling them by stipulating that every specified measure of volume among them is for such-and-such, every weight for such-and-such, every cubit for such-and-such, or every single unit for such-and-such constitutes a sale with an unknown price. The seller does not know what is due to him, nor does the buyer know what is incumbent upon him at the time the contract is concluded.

بُرْهَانُ ذَلِكَ -: أَنَّ بَيْعَهَا عَلَى أَنَّ كُلَّ كَيْلٍ مَذْكُورٍ مِنْهَا بِكَذَا، أَوْ كُلَّ وَزْنٍ بِكَذَا، أَوْ كُلَّ ذَرْعٍ بِكَذَا، أَوْ كُلَّ وَاحِدٍ بِكَذَا، بَيْعٌ بِثَمَنٍ مَجْهُولٍ لَا يَدْرِي الْبَائِعُ مَا يَجِبُ لَهُ، وَلَا الْمُشْتَرِي مَا يَجِبُ عَلَيْهِ حَالَ الْعَقْدِ.

L24442 Allah the Exalted has said: "Do not consume your wealth among yourselves

unjustly except through trade by mutual consent." [An-Nisa: 29] Mutual consent is only possible in a transaction with clear terms; otherwise, it is consuming wealth invalidly and a sale of gharar (speculative risk).[33]

وَقَدْ قَالَ اللَّهُ - تَعَالَى -: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] وَالتَّرَاضِي لَا يُمْكِنُ إِلَّا فِي مَعْلُومٍ فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ، وَبَيْعُ غَرَرٍ.

L24443 The prohibition of gharar (uncertainty) in sales is firmly established. If all such uncertainty is resolved to the extent that both parties jointly possess full knowledge of it, and this occurs after the contract, it is illogical for the contract to be void at its inception yet valid afterward when they had neither mutually agreed to it nor committed to its terms. If both parties jointly knew the extent of that at the time of the contract, it constitutes a valid consensual agreement free from gharar.

وَقَدْ صَحَّ النَّهْيُ عَنْ بَيْعِ الْغَرَرِ، فَإِذَا خَرَجَ كُلُّ ذَلِكَ إِلَى حَدِّ الْعِلْمِ مِنْهُمَا مَعًا، وَكَانَ ذَلِكَ بَعْدَ الْعَقْدِ، فَمِنَ الْبَاطِلِ أَنْ يَبْطُلَ الْعَقْدُ حِينَ عَقْدِهِ، وَيَصِحَّ بَعْدَ ذَلِكَ حِينَ لَمْ يَتَعَاقَدَاهُ، وَلَا الْتَزَمَاهُ، فَإِذَا عَلِمَا جَمِيعًا قَدْرَ ذَلِكَ عِنْدَ الْعَقْدِ فَهُوَ تَرَاضٍ صَحِيحٌ لَا غَرَرَ فِيهِ.

L24444 If the lot is sold in this manner, it is the sale of a visible item encompassed by a known price, constituting a valid mutual agreement free from uncertainty. If the lot is sold for a specified price on the condition that it contains specific attributes, this is a sale based on description, which is valid if the item is found as stipulated in the contract. Otherwise, if what is found differs from what was contracted upon, then no contract was ever concluded for the actual item obtained, and this constitutes unjust consumption of wealth through false means.

فَإِنْ بِيعَتْ الْجُمْلَةُ هَكَذَا فَهُوَ بَيْعُ شَيْءٍ مَرْئِيٍّ مُحَاطٍ بِثَمَنٍ مَعْرُوفٍ، فَهُوَ تَرَاضٍ صَحِيحٌ لَا غَرَرَ فِيهِ، فَإِنْ بِيعَتْ الْجُمْلَةُ بِثَمَنٍ مَعْلُومٍ عَلَى أَنَّ فِيهَا كَذَا وَكَذَا، فَهَذَا بَيْعٌ بِصِفَةٍ، وَهُوَ صَحِيحٌ إِنْ وُجِدَ كَمَا عُقِدَ عَلَيْهِ، وَإِلَّا فَإِنَّمَا وُجِدَ غَيْرُ مَا عُقِدَ عَلَيْهِ، فَلَمْ يُعْقَدْ قَطُّ عَلَى الَّذِي وُجِدَ، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ.

L24445 We have been narrated through the chain of Abd al-Razzaq from Sufyan al-Thawri, who said: If you say, "I will buy from you whatever is in this house, whatever the amount, with each unit [priced] at so much for so much," then it is a disliked sale.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ قَالَ: إذَا قُلْت: أَبْتَاعُ مِنْك مَا فِي هَذَا الْبَيْتِ مَا بَلَغَ، كُلُّ جُزْءٍ كَذَا بِكَذَا، فَهُوَ بَيْعٌ مَكْرُوهٌ.

L24446 Abu Hanifah said: If he sells this heap at one qafīz for a *dirham*, he is bound to provide only one qafīz for one *dirham*. Muhammad ibn al-Hasan said: He must provide all of it—every qafīz for a *dirham*. These are two unsound opinions for the reasons we have stated. And success comes only from Allah—the Exalted.

وَقَالَ أَبُو حَنِيفَةَ: إذَا بَاعَ هَذِهِ الصُّبْرَةَ قَفِيزًا بِدِرْهَمٍ لَمْ يَلْزَمْهُ مِنْهَا إلَّا قَفِيزٌ وَاحِدٌ بِدِرْهَمٍ فَقَطْ - وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: يَلْزَمُهُ كُلُّهَا كُلُّ قَفِيزٍ بِدِرْهَمٍ - وَهَذَانِ رَأْيَانِ فَاسِدَانِ، لِمَا ذَكَرْنَا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24447 **An issue regarding the sale of patronage and its gifting.**

[مَسْأَلَةٌ بَيْعُ الْوَلَاءِ وَهِبَتُهُ]

[33] **Qur'an references (L24442):** Qur'an 4:29 (An-Nisa).

L24448 1528 - Issue: It is not permissible to sell al-walā’ or gift it. This is based on what has been reported to us through the narrations of Shu‘bah, ‘Ubayd Allāh ibn ‘Umar, Mālik, and Sufyān ibn ‘Uyaynah—all of them narrating from ‘Abd Allāh ibn Dīnār, from Ibn ‘Umar, who said: “The Messenger of Allāh, peace and blessings be upon him, prohibited the sale of al-walā’ and gifting it.”

L24449–24450 The Ummah has differed on this matter, and we will mention it, Allah willing—the Exalted—in the section on “Manumission” within this volume of ours. There is no might nor power except with Allah, the Most High, the Almighty, and no argument holds against the Messenger of Allah, peace and blessings be upon him.

L24451 ## The Legal Question Regarding the Sale of One Who Was Coerced into the Sale.

L24452 Issue 1529: It is impermissible to sell the property of someone coerced into selling, and such a sale is invalid according to the statement of Allah’s Messenger (peace be upon him): “Allah has pardoned my Ummah for errors, forgetfulness, and what they are compelled to do,” and the Almighty’s words: “Do not consume your wealth among yourselves unjustly, unless it be through trade by mutual consent” (4:29). Thus, it is established that every sale not based on mutual consent is invalid, except a sale mandated by textual ruling—such as selling on behalf of one obligated to fulfill a right who is either absent or refuses to ensure fairness. This is because the obligated party is commanded to fulfill the right due to the claimant, and we are commanded to enforce this obligation.[34]

L24453 And by preventing him from delay (in payment), which is injustice, and since there is no way to prevent injustice except by selling some of his property, we are commanded to sell it.

L24454 If the judge were to rule for the creditor by permitting the rightful claimant to recover their due from the property of the defaulting or absent debtor, and the creditor subsequently sells it by judicial order to secure the amount owed,

[34] **Qur’an references (L24452):** Qur’an 4:29 (An-Nisa).

١٥٢٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ الْوَلَاءِ وَلَا هِبَتُهُ -: لِمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ، وَعُبَيْدِ اللَّهِ بْنِ عُمَرَ، وَمَالِكٍ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، كُلِّهِمْ: عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ ابْنِ عُمَرَ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْوَلَاءِ وَهِبَتِهِ» .

وَقَدْ اخْتَلَفَتْ الْأُمَّةُ فِي هَذَا، وَسَنَذْكُرُهُ إنْ شَاءَ اللَّهُ - تَعَالَى - " فِي الْعِتْقِ " مِنْ دِيوَانِنَا هَذَا - وَلَا حَوْلَ وَلَا قُوَّةَ إلَّا بِاَللَّهِ الْعَلِيِّ الْعَظِيمِ، وَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَةُ بَيْعُ مَنْ أُكْرِهَ عَلَى الْبَيْعِ]

١٥٢٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ مَنْ أُكْرِهَ عَلَى الْبَيْعِ، وَهُوَ مَرْدُودٌ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ اللَّهَ عَفَا لِأُمَّتِي عَنْ الْخَطَأِ وَالنِّسْيَانِ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» ؛ وَلِقَوْلِهِ - تَعَالَى -: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] فَصَحَّ أَنَّ كُلَّ بَيْعٍ لَمْ يَكُنْ عَنْ تَرَاضٍ فَهُوَ بَاطِلٌ، إلَّا بَيْعًا أَوْجَبَهُ النَّصُّ، كَالْبَيْعِ عَلَى مَنْ وَجَبَ عَلَيْهِ حَقٌّ وَهُوَ غَائِبٌ، أَوْ مُمْتَنِعٌ مِنْ الْإِنْصَافِ؛ لِأَنَّهُ مَأْمُورٌ بِإِنْصَافِ ذِي الْحَقِّ قِبَلَهُ، وَنَحْنُ مَأْمُورُونَ بِذَلِكَ.

وَبِمَنْعِهِ مِنْ الْمَطْلِ الَّذِي هُوَ الظُّلْمُ، وَإِذْ لَا سَبِيلَ إلَى مَنْعِهِ مِنْ الظُّلْمِ إلَّا بِبَيْعِ بَعْضِ مَالِهِ، فَنَحْنُ مَأْمُورُونَ بِبَيْعِهِ.

وَلَوْ أَنَّ الْقَاضِيَ قَضَى لِلْغَرِيمِ بِمَا يُمْكِنُ انْتِصَافُ ذِي الْحَقِّ مِنْهُ مِنْ عَيْنِ مَالِ الْمُمْتَنِعِ، أَوْ الْغَائِبِ، ثُمَّ بَاعَهَا الْمَقْضِيُّ لَهُ بِأَمْرِ الْحَاكِمِ لِتَوْصِيلِهِ إلَى مِقْدَارِ حَقِّهِ، فَإِنْ فَضَلَ

then any surplus must be returned to the defendant. This procedure would be more appropriate, sounder, and farther removed from all objections. The Hanafis, Malikis, and Shafi'is have aligned with our position in nullifying coerced sales. Success is attained through Allah, the Most High.

فَضْلٌ رُدَّ إِلَى الْمَقْضِيِّ عَلَيْهِ لَكَانَ أَوْلَى، وَأَصَحُّ وَأَبْعَدُ مِنْ كُلِّ اعْتِرَاضٍ - وَقَدْ وَافَقَنَا الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، عَلَى إِبْطَالِ بَيْعِ الْمُكْرَهِ عَلَى الْبَيْعِ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

The Issue of the One Compelled to Sell

L24455

[مَسْأَلَةُ الْمُضْطَرِّ إِلَى الْبَيْعِ]

L24456 1530 - Issue: As for the one compelled to sell—such as one who starves and fears death, thus selling to sustain himself and his family; or one obligated to ransom himself or a close relative from the abode of war; or one coerced by a tyrant into surrendering wealth through pressure (without direct compulsion to sell, but merely forced to pay an unjust liability), thereby selling to fulfill this obligation—people have differed regarding this. We narrate through the chain of Sa'īd ibn Manṣūr: Hushaym informed us from Ṣāliḥ ibn Rustum from a Tamīmī shaykh who said: 'Alī addressed us—or said: 'Alī said: "There will come upon people a time of biting hardship when the affluent cling greedily to their wealth without divine command. Allah says: {And do not neglect [your] favor among yourselves} [2:237]. The wicked will rise, the virtuous will be humiliated, and the compelled will engage in sales—and indeed Allah's Messenger (peace be upon him) forbade the sale by the compelled, the sale involving uncertainty (gharar), and the sale of fruit before it becomes edible."[35]

١٥٣٠ - مَسْأَلَةٌ: وَأَمَّا الْمُضْطَرُّ إِلَى الْبَيْعِ، كَمَنْ جَاعَ وَخَشِيَ الْمَوْتَ فَبَاعَ فِيمَا يُحْيِي بِهِ نَفْسَهُ وَأَهْلَهُ، وَكَمَنْ لَزِمَهُ فِدَاءُ نَفْسِهِ أَوْ حَمِيمِهِ مِنْ دَارِ الْحَرْبِ أَوْ كَمَنْ أَكْرَهَهُ ظَالِمٌ عَلَى غُرْمِ مَالِهِ بِالضَّغْطِ وَلَمْ يُكْرِهْهُ عَلَى الْبَيْعِ، لَكِنْ أَلْزَمَهُ الْمَالَ فَقَطْ، فَبَاعَ فِي أَدَاءِ مَا أُكْرِهَ عَلَيْهِ بِغَيْرِ حَقٍّ؟ فَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا صَالِحُ بْنُ رُسْتُمَ نا شَيْخٌ مِنْ بَنِي تَمِيمٍ قَالَ: خَطَبَنَا عَلِيٌّ، أَوْ قَالَ: قَالَ عَلِيٌّ: " سَيَأْتِي عَلَى النَّاسِ زَمَانٌ عَضُوضٌ يَعَضُّ الْمُوسِرُ عَلَى مَا فِي يَدَيْهِ، وَلَمْ يُؤْمَرْ بِذَلِكَ، قَالَ {وَلا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ} [البقرة: ٢٣٧] وَيَنْهَدُ الْأَشْرَارُ، وَيُسْتَذَلُّ الْأَخْيَارُ، وَيُبَايِعُ الْمُضْطَرُّونَ وَقَدْ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْمُضْطَرِّ، وَعَنْ بَيْعِ الْغَرَرِ، وَعَنْ بَيْعِ الثَّمَرِ قَبْلَ أَنْ يُطْعَمَ» .

L24457–24458 And from him to Hushaym from Kawthar ibn Hakim from Makhul, he said: It reached me from Hudhayfah that he narrated from the Messenger of Allah—peace and blessings be upon him—that he said: "After your time will come a voracious era where the wealthy will bite greedily upon what is in their hands without being commanded to withhold it. Allah the Exalted said: *'Whatever you spend of anything, He will replace it, and He is the Best of Providers.'* [Saba': 39] The worst of Allah's creation will rise to exploit every person in distress. Know that the sale of those in distress is forbidden. A

وَبِهِ إِلَى هُشَيْمٍ عَنْ كَوْثَرِ بْنِ حَكِيمٍ عَنْ مَكْحُولٍ، قَالَ: بَلَغَنِي عَنْ حُذَيْفَةَ أَنَّهُ حَدَّثَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إِنَّ بَعْدَ زَمَانِكُمْ هَذَا زَمَانًا عَضُوضًا يَعَضُّ الْمُوسِرُ عَلَى مَا فِي يَدَيْهِ، وَلَمْ يُؤْمَرْ بِذَلِكَ، قَالَ اللَّهُ - تَعَالَى - {وَمَا أَنْفَقْتُمْ مِنْ شَيْءٍ فَهُوَ يُخْلِفُهُ وَهُوَ خَيْرُ الرَّازِقِينَ} [سبأ: ٣٩] وَيَنْهَدُ شِرَارُ خَلْقِ اللَّهِ - تَعَالَى - يُبَايِعُونَ

[35] **Qur'an references (L24456):** Qur'an 2:237 (Al-Baqarah).

Muslim is a brother to another Muslim; he does not wrong him nor betray him. If you possess goodness, support your brother with it, and do not add destruction to his destruction."[36]

كُلُّ مُضْطَرٍّ، أَلَا إِنَّ بَيْعَ الْمُضْطَرِّينَ حَرَامٌ، الْمُسْلِمُ أَخُو الْمُسْلِمِ، لَا يَظْلِمُهُ، وَلَا يَخُونُهُ، وَإِنْ كَانَ عِنْدَكَ خَيْرٌ فَعُدْ بِهِ عَلَى أَخِيكَ وَلَا تَزِدْهُ هَلَاكًا إِلَى هَلَاكِهِ» .

L24459 Abu Muhammad said: If these two reports had been authenticated, we would have hastened to act upon them. However, they are both mursal (reports with incomplete chains), and it is not permissible to issue rulings in matters of religion based on mursal reports.

قَالَ أَبُو مُحَمَّد: لَوْ اسْتَنَدَ هَذَانِ الْخَبَرَانِ لَقُلْنَا بِهِمَا مُسَارِعِينَ، لَكِنَّهُمَا مُرْسَلَانِ، وَلَا يَجُوزُ الْقَوْلُ فِي الدِّينِ بِالْمُرْسَلِ.

L24460 The rejection of the established Sunnah via a narration from a shaykh of Banu Kinānah necessitated—given his claim that "the *mursal* is equivalent to the *musnad* in the view of the Ḥanafīs and Mālikīs"—that a shaykh from Banu Tamīm and a shaykh from Banu Kinānah narrate these two reports. This narration is more plausible and explicit, being traced through ʿAlī back to the Messenger of Allah—peace and blessings of Allah be upon him—and also through Ḥudhayfah. Yet they are a people of inconsistency.

وَلَقَدْ كَانَ يَلْزَمُ مِنْ رَدِّ السُّنَنِ الثَّابِتَةِ بِرِوَايَةِ شَيْخٍ مِنْ بَنِي كِنَانَةَ، وَيَقُولُ: الْمُرْسَلُ كَالْمُسْنَدِ مِنْ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ أَنْ يَقُولَ بِهَذَيْنِ الْخَبَرَيْنِ شَيْخٌ مِنْ بَنِي تَمِيمٍ، وَشَيْخٌ مِنْ بَنِي كِنَانَةَ، وَهَذِهِ الرِّوَايَةُ أَمْكَنُ وَأَوْضَحُ، ثُمَّ هِيَ عَنْ عَلِيٍّ، وَعَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ عَنْ حُذَيْفَةَ، وَلَكِنَّهُمْ قَوْمٌ مُضْطَرِبُونَ.

L24461 Abu Muhammad said: Since these two reports are not valid, let us seek this ruling from other sources. We found that anyone who buys sustenance for himself and his family for food and clothing is undoubtedly compelled by necessity to purchase it. If the transaction of this compelled person were invalid, then the sale by everyone who does not obtain sustenance from his own property would also be invalid—and this is undeniably false, as established through necessary transmission from the masses. The Prophet—peace and blessings be upon him—purchased sa's of barley for his family's sustenance and died—peace be upon him—while his armor was pledged as collateral for its price. Thus, it is confirmed that the sale by one compelled to obtain sustenance for himself and his family, and the sale of what he buys to procure sustenance, is a valid and binding transaction. It is also a sale by mutual consent, as no one compelled him to it, and thus it is valid by the explicit injunction of the Quran.

قَالَ أَبُو مُحَمَّد: فَإِذَا لَمْ يَصِحَّ هَذَانِ الْخَبَرَانِ فَلْنَطْلُبْ هَذَا الْحُكْمَ مِنْ غَيْرِهِمَا -: فَوَجَدْنَا كُلَّ مَنْ يَبْتَاعُ قُوتَ نَفْسِهِ وَأَهْلِهِ لِلْأَكْلِ وَاللِّبَاسِ فَإِنَّهُ مُضْطَرٌّ إلَى ابْتِيَاعِهِ بِلَا شَكٍّ، فَلَوْ بَطَلَ ابْتِيَاعُ هَذَا الْمُضْطَرِّ لَبَطَلَ بَيْعُ كُلِّ مَنْ لَا يُصِيبُ الْقُوتَ مِنْ ضَيْعَتِهِ - وَهَذَا بَاطِلٌ بِلَا خِلَافٍ، وَبِضَرُورَةِ النَّقْلِ مِنْ الْكَوَافِّ وَقَدْ ابْتَاعَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَصْوُعًا مِنْ شَعِيرٍ لِقُوتِ أَهْلِهِ، وَمَاتَ - عَلَيْهِ السَّلَامُ - وَدِرْعُهُ مَرْهُونَةٌ فِي ثَمَنِهَا فَصَحَّ أَنَّ بَيْعَ الْمُضْطَرِّ إلَى قُوتِهِ وَقُوتِ أَهْلِهِ، وَبَيْعَهُ مَا يَبْتَاعُ بِهِ الْقُوتَ بَيْعٌ صَحِيحٌ لَازِمٌ، فَهُوَ أَيْضًا بَيْعُ تَرَاضٍ لَمْ يُجْبِرْهُ أَحَدٌ عَلَيْهِ، فَهُوَ صَحِيحٌ بِنَصِّ الْقُرْآنِ.

L24462 Then we examined the case of those who sell property to ransom themselves or their close relatives from the grasp of a disbeliever or the oppression of an oppressor. We found that neither the disbeliever nor the oppressor compelled

ثُمَّ نَظَرْنَا فِيمَنْ بَاعَ فِي إنْقَاذِ نَفْسِهِ، أَوْ حَمِيمِهِ، مِنْ يَدِ كَافِرٍ أَوْ ظُلْمِ ظَالِمٍ -: فَوَجَدْنَا الْكَافِرَ وَالظَّالِمَ لَمْ يُكْرِهَا فَادِيَ الْأَسِيرِ، وَلَا الْأَسِيرَ، وَلَا الْمَضْغُوطَ عَلَى بَيْعِ مَا بَاعُوا فِي

[36] **Qur'an references (L24458):** Qur'an 34:39 (Saba).

the ransom payer (fādi) of the captive, nor the captive themselves, nor those pressured to sell their property to rescue themselves or those they sought to rescue. Rather, they solely compelled them to hand over wealth. Even if the two parties had brought both of them money through a loan or means other than sale, the disbeliever and oppressor would not have compelled the two to sell. Thus, it is validly established that this constitutes a consensual sale.

L24463–24465 It is obligatory for one who is wrongfully pursued to defend himself and to rectify the evil that has befallen him. That he should not surrender his property unjustly. Thus, it is established that his sale remains valid and binding upon him, while the coerced surrender of property in such a case constitutes an invalid transaction that does not obligate him. The property therefore remains within his ownership, as would be ruled in his favor whenever feasible. He may reclaim it from the oppressor or the disbelieving ḥarbī (enemy combatant) whenever possible—whether by retrieving it from spoils before distribution or after distribution, from the possession of any holder: a Muslim, a Dhimmi, or even from the possession of that disbeliever himself should he become a Dhimmi or embrace Islam permanently. This applies if he identifies the specific property, for it remains his as before. The disbeliever is not held liable for compensation, as the ḥarbī who becomes a Dhimmi or embraces Islam bears no accountability for prior acts of oppression or killing.

L24466 As for the unjust Muslim, he remains perpetually accountable for it—whether through equivalent restitution, its like, or its value—regardless of being a Kharijite, combatant, rebel, ruler, or usurper, for he seized it unlawfully. Allah the Exalted says: “So whoever transgresses against you, retaliate against him in the same measure as his transgression” [Al-Baqarah: 194].[37]

L24467 ## Jurisprudential Ruling on the Sale of Animals

L24468 1531. Issue: The sale of animals is not permissible except for a legally valid benefit, whether for consumption, riding, use in hunting, or medicinal purposes.

[37] **Qur’an references (L24466):** Qur’an 2:194 (Al-Baqarah).

اسْتِنْقَاذَ أَنْفُسِهِمْ، أَوْ مَنْ يَسْعَوْنَ لِاسْتِنْقَاذِهِ وَإِنَّمَا أَكْرَهُوهُمْ عَلَى إِعْطَاءِ الْمَالِ فَقَطْ، وَلَوْ أَنَّهُمْ أَتَوْهُمَا بِمَالٍ مِنْ قَرْضٍ، أَوْ مِنْ غَيْرِ الْبَيْعِ مَا أَلْزَمُوهُمَا الْبَيْعَ - فَصَحَّ أَنَّهُ بَيْعُ تَرَاضٍ.

وَالْوَاجِبُ عَلَى مَنْ طُلِبَ بِبَاطِلٍ أَنْ يَدْفَعَ عَنْ نَفْسِهِ، وَأَنْ يُغَيِّرَ الْمُنْكَرَ الَّذِي نَزَلَ بِهِ لَا أَنْ يُعْطِيَ مَالَهُ بِالْبَاطِلِ: فَصَحَّ أَنَّ بَيْعَهُ صَحِيحٌ لَازِمٌ لَهُ، وَأَنَّ الَّذِي أُكْرِهَ عَلَيْهِ مِنْ دَفْعِ الْمَالِ فِي ذَلِكَ هُوَ الْبَاطِلُ الَّذِي لَا يَلْزَمُهُ، فَهُوَ بَاقٍ فِي مِلْكِهِ، كَمَا كَانَ يَقْضِي لَهُ بِهِ مَتَى قَدَرَ عَلَى ذَلِكَ، وَيَأْخُذُهُ مِنَ الظَّالِمِ، وَمِنَ الْحَرْبِيِّ الْكَافِرِ، مَتَى أَمْكَنَهُ، أَوْ مَتَى وَجَدَهُ فِي مَغْنَمٍ قَبْلَ الْقِسْمَةِ، وَبَعْدَ الْقِسْمَةِ، مِنْ يَدِ مَنْ وَجَدَهُ فِي يَدِهِ، مِنْ مُسْلِمٍ، أَوْ ذِمِّيٍّ، أَوْ مِنْ يَدِ ذَلِكَ الْكَافِرِ، لَوْ تَذَمَّمَ، أَوْ أَسْلَمَ أَبَدًا - هَذَا إِذَا وَجَدَ ذَلِكَ الْمَالَ بِعَيْنِهِ؛ لِأَنَّهُ مَالُهُ كَمَا كَانَ، وَلَا يُطْلَبُ الْكَافِرُ بِغَيْرِهِ بَدَلًا مِنْهُ؛ لِأَنَّ الْحَرْبِيَّ إِذَا أَسْلَمَ أَوْ تَذَمَّمَ غَيْرُ مُؤَاخَذٍ بِمَا سَلَفَ مِنْ ظُلْمٍ أَوْ قَتْلٍ.

وَأَمَّا الْمُسْلِمُ الظَّالِمُ فَيَتْبَعُهُ بِهِ أَبَدًا، أَوْ بِمِثْلِهِ، أَوْ قِيمَتِهِ، سَوَاءٌ كَانَ خَارِجِيًّا أَوْ مُحَارِبًا، أَوْ بَاغِيًا، أَوْ سُلْطَانًا، أَوْ مُتَغَلِّبًا؛ لِأَنَّهُ أَخَذَ مِنْهُ بِغَيْرِ حَقٍّ، وَاللَّهُ - تَعَالَى - يَقُولُ: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

[مَسْأَلَة بَيْع الْحَيَوَان]

١٥٣١ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ الْحَيَوَانِ إِلَّا لِمَنْفَعَةٍ، إِمَّا لِأَكْلٍ، وَإِمَّا لِرُكُوبٍ، وَإِمَّا لِصَيْدٍ، وَإِمَّا لِدَوَاءٍ.

L24469 If it has no benefit for any of those things, then its sale is not permissible, nor is ownership permissible, because it constitutes a squandering of wealth by the buyer and wrongful consumption of wealth by the seller.

L24470 If there is benefit in it for any of the matters we have mentioned, or other than those, its sale is permissible because it is a sale based on mutual consent. "And Allah has permitted sale" [al-Baqarah 2:275], and it does not constitute squandering wealth or consuming wealth unlawfully. And with Allah, the Exalted, is success alone.[38]

L24471 ## The issue of sale without specifying the price.

L24472 1532 - Issue: A sale is not valid without a specified price, such as selling based on what the price reaches in the market, what someone else purchased it for, or the market valuation. All such transactions are void because they involve uncertainty (gharar) and unlawful consumption of wealth, as mutual consent is not validly established in such cases. Mutual consent is only valid when the amount is known. One party might agree assuming it will reach some price, but if it exceeds [the price], the buyer would not consent, and if it is less, the seller would not consent.

L24473 Among the marvels of this world is Abū Ḥanīfa's ruling: Whoever sells with stipulated profit, sells by swearing upon the Kaaba, or sells without any price does not gain ownership through physical possession. Similarly, if one sells in exchange for a dead animal or blood, the same ruling applies.

L24474 It is not permissible for the buyer to emancipate the slave—even if he takes possession of him with the seller's permission. But if he sells the slave for an unspecified price, or sells him for wine or a pig, and takes possession of him with the seller's permission, then emancipates him, the emancipation is permissible for him.

L24475–24476 Ali said: "There is nothing in madness more than this speech—and we seek refuge in Allah from misguidance."

[38] **Qur'an references (L24470):** Qur'an 2:275 (Al-Baqarah).

فَإِنْ كَانَ لَا مَنْفَعَةَ فِيهِ لِشَيْءٍ مِنْ ذَلِكَ لَمْ يَحِلَّ بَيْعُهُ، وَلَا مِلْكُهُ؛ لِأَنَّهُ إضَاعَةُ مَالٍ مِنْ الْمُبْتَاعِ، وَأَكْلُ مَالٍ بِالْبَاطِلِ مِنْ الْبَائِعِ.

فَإِنْ كَانَ فِيهِ مَنْفَعَةٌ لِشَيْءٍ مِمَّا ذَكَرْنَا، أَوْ لِغَيْرِهِ جَازَ بَيْعُهُ؛ لِأَنَّهُ بَيْعٌ عَنْ تَرَاضٍ، {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَلَيْسَ إضَاعَةَ مَالٍ، وَلَا أَكْلَ مَالٍ بِالْبَاطِلِ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة الْبَيْع مِنْ غَيْر تَسْمِيَة الثَّمَن]

١٥٣٢ - مَسْأَلَةٌ: وَلَا يَصِحُّ الْبَيْعُ بِغَيْرِ ثَمَنٍ مُسَمًّى، كَمَنْ بَاعَ بِمَا يَبْلُغُ فِي السُّوقِ، أَوْ بِمَا اشْتَرَى فُلَانٌ، أَوْ بِالْقِيمَةِ، فَهَذَا كُلُّهُ بَاطِلٌ؛ لِأَنَّهُ بَيْعُ غَرَرٍ، وَأَكْلُ مَالٍ بِالْبَاطِلِ؛ لِأَنَّهُ لَمْ يَصِحَّ فِيهِ التَّرَاضِي، وَلَا يَكُونُ التَّرَاضِي إلَّا بِمَعْلُومِ الْمِقْدَارِ، وَقَدْ يَرْضَى؛ لِأَنَّهُ يَظُنُّ أَنَّهُ يَبْلُغُ ثَمَنًا مَا فَإِنْ بَلَغَ أَكْثَرَ لَمْ يَرْضَ الْمُشْتَرِي، وَإِنْ بَلَغَ أَقَلَّ لَمْ يَرْضَ الْبَائِعُ.

وَمِنْ عَجَائِبِ الدُّنْيَا قَوْلُ أَبِي حَنِيفَةَ: مَنْ بَاعَ بِالرِّبْحِ، أَوْ بِالْكَعْبَةِ، أَوْ بِلَا ثَمَنٍ، فَإِنَّهُ لَا يَمْلِكُهُ بِالْقَبْضِ، فَإِنْ بَاعَ بِالْمَيْتَةِ، أَوْ بِالدَّمِ فَكَذَلِكَ أَيْضًا.

وَلَا يَجُوزُ عِتْقُهُ لَهُ - وَإِنْ قَبَضَهُ بِإِذْنِ بَائِعِهِ - فَإِنْ بَاعَهُ بِثَمَنٍ لَمْ يُسَمِّيَاهُ، أَوْ بَاعَهُ بِخَمْرٍ، أَوْ خِنْزِيرٍ فَقَبَضَهُ بِإِذْنِ بَائِعِهِ فَأَعْتَقَهُ: جَازَ عِتْقُهُ لَهُ.

قَالَ عَلِيٌّ: مَا فِي الْجُنُونِ أَكْثَرُ مِنْ هَذَا الْكَلَامِ - وَنَعُوذُ بِاَللَّهِ مِنْ الضَّلَالِ.

If he were to say: “Indeed, among the people are those who possess wine and swine”—they being the disbelievers, namely the Christians—we would respond: “They indeed also possess carrion and blood likewise, and the Magians likewise do the same, with no distinction—and success is from Allah, the Most High.”

فَإِنْ قَالَ: إنَّ فِي النَّاسِ مَنْ يَتَمَلَّكُ الْخَمْرَ، وَالْخِنْزِيرَ - وَهُمْ الْكُفَّارُ مِنْ النَّصَارَى - قُلْنَا: إنَّهُمْ يَتَمَلَّكُونَ أَيْضًا الْمَيْتَةَ، وَالدَّمَ كَذَلِكَ، وَالْمَجُوسُ أَيْضًا كَذَلِكَ وَلَا فَرْقَ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

The Legal Ruling on the Sale of the Dice

[مَسْأَلَةُ بَيْعُ النَّرْدِ]

1533 - Issue: It is not permissible to sell backgammon due to what we have transmitted via the chain of Mālik from Mūsā ibn Maysarah from Saʿīd ibn Abī Hind from Abū Mūsā al-Ashʿarī: “The Messenger of Allah—peace and blessings be upon him—said: ’Whoever plays with backgammon has disobeyed Allah and His Messenger. It is prohibited; its ownership is forbidden, and its sale is forbidden.’”

١٥٣٣ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ النَّرْدِ، لِمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ مُوسَى بْنِ مَيْسَرَةَ عَنْ سَعِيدِ بْنِ أَبِي هِنْدٍ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ لَعِبَ بِالنَّرْدِ فَقَدْ عَصَى اللَّهَ وَرَسُولَهُ فَهِيَ مُحَرَّمَةٌ فَمُلْكُهَا حَرَامٌ، وَبَيْعُهَا حَرَامٌ» .

It has been narrated to us from Mālik from Nāfiʿ from Ibn ʿUmar that whenever he found any member of his household playing backgammon, he would strike him and destroy it.

وَقَدْ رُوِّينَا عَنْ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ إذَا أَخَذَ أَحَدًا مِنْ أَهْلِهِ يَلْعَبُ بِالنَّرْدِ ضَرَبَهُ وَكَسَرَهَا.

On the authority of Malik from Alqamah from his mother from Aisha, the Mother of the Believers: She learned that a family residing in her house possessed a backgammon board. She sent them a message: “If you do not remove it, I will most assuredly expel you from my house,” and she rebuked them for it.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ عَلْقَمَةَ عَنْ أُمِّهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّهَا بَلَغَهَا أَنَّ أَهْلَ بَيْتٍ فِي دَارِهَا كَانُوا سُكَّانًا فِيهَا أَنَّ عِنْدَهُمْ نَرْدًا فَأَرْسَلَتْ إلَيْهِمْ لَئِنْ لَمْ تُخْرِجُوهَا لَأُخْرِجَنَّكُمْ مِنْ دَارِي، وَأَنْكَرَتْ عَلَيْهِمْ.

The issue of selling two commodities by a single person for one price.

[مَسْأَلَةُ بَيْعِ اثْنَانِ سِلْعَتَيْنِ لَهُمَا مِنْ إنْسَان وَاحِد بِثَمَنٍ وَاحِد]

1534 – Issue: It is impermissible for two individuals to sell two distinct commodities—neither of which has co-owners from a single person—for a single price. This is because such a sale is based on conflated valuation, and neither seller knows what will happen to their commodity at the time of concluding the contract. Thus, it constitutes a sale involving *gharar* and wrongful consumption of wealth.

١٥٣٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَنْ يَبِيعَ اثْنَانِ سِلْعَتَيْنِ مُتَمَيِّزَتَيْنِ لَهُمَا لَيْسَا فِيهِمَا شَرِيكَيْنِ مِنْ إنْسَانٍ وَاحِدٍ بِثَمَنٍ وَاحِدٍ؛ لِأَنَّ هَذَا بَيْعٌ بِالْقِيمَةِ، وَلَا يَدْرِي كُلُّ وَاحِدٍ مِنْهُمَا مَا يَقَعُ لِسِلْعَتِهِ حِينَ الْعَقْدِ، فَهُوَ بَيْعُ غَرَرٍ، وَأَكْلُ مَالٍ بِالْبَاطِلِ.

L24484 As for the sale between two partners or multiple partners—whether from a single party or multiple parties—or the purchase by two or more buyers from a single seller or two partners: this is permissible, for each share has a known price and a specified limit. And success is granted by Allah, the Most High.

وَأَمَّا بَيْعُ الشَّرِيكَيْنِ، أَوْ الشُّرَكَاءِ مِنْ وَاحِدٍ، أَوْ مِنْ أَكْثَرَ، أَوْ ابْتِيَاعُ اثْنَيْنِ فَصَاعِدًا، مِنْ وَاحِدٍ، أَوْ مِنْ شَرِيكَيْنِ: فَحَلَالٌ، لِأَنَّ حِصَّةَ كُلِّ وَاحِدٍ مِنْهَا مَعْلُومَةُ الثَّمَنِ، مَحْدُودَتُهُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

Legal Issue on Ascertaining the Price

[مَسْأَلَة تبين الثَّمَن]

L24485

L24486 1535 – Issue: If someone is in a region where various types of currency circulate, it is impermissible to sell without specifying which currency type the price is in. If the two parties do not clarify that, the sale is annulled and rejected—as it occurs without mutual agreement on the price. Moreover, it constitutes a sale involving gharar. And success is from Allah, the Most High.

١٥٣٥ - مَسْأَلَةٌ: وَمَنْ كَانَ فِي بَلَدٍ تَجْرِي فِيهِ سِكَكٌ كَثِيرَةٌ شَتَّى، فَلَا يَحِلُّ الْبَيْعُ إلَّا بِبَيَانٍ مِنْ أَيِّ سِكَّةٍ يَكُونُ الثَّمَنُ، وَإِنْ لَمْ يُبَيِّنَا ذَلِكَ -: فَهُوَ بَيْعٌ مَفْسُوخٌ، مَرْدُودٌ؛ لِأَنَّهُ وَقَعَ عَنْ غَيْرِ تَرَاضٍ بِالثَّمَنِ، وَهُوَ أَيْضًا بَيْعُ غَرَرٍ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

The issue of selling the mukātab's kitābah (written manumission contract), where the mukātab is a bondsperson under a contractual freedom agreement.

[مَسْأَلَةٌ بَيْعُ كِتَابَةِ الْمُكَاتَبِ]

L24487

L24488 1536 - Issue: It is not permissible to sell the *kitābah* of the *mukātab*, nor the service of the *mudabbar*. This is the view held by al-Shāfiʿī, Abū Sulaymān, and Abū Ḥanīfah.

١٥٣٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ كِتَابَةِ الْمُكَاتَبِ، وَلَا خِدْمَةُ الْمُدَبَّرِ، وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَبِي حَنِيفَةَ.

L24489–24490 Mālik permitted both cases: as for the mudabbar, [freedom is granted] only by the master himself, and as for the mukatab, [it is granted] by the master himself and others. Al-Zuhrī and Ibn al-Musayyib permitted the sale of both collectively.

وَأَجَازَ مَالِكٌ كِلَا الْأَمْرَيْنِ: أَمَّا الْمُدَبَّرُ فَمِنْ نَفْسِهِ فَقَطْ، وَأَمَّا الْمُكَاتَبُ فَمِنْ نَفْسِهِ وَمِنْ غَيْرِهِ، وَأَجَازَ بَيْعَهُمَا جُمْلَةً: الزُّهْرِيُّ، وَابْنُ الْمُسَيِّبِ.

L24491 We have been narrated a statement similar to that of Mālik, from ʿAṭāʾ and Ibn Sīrīn, because the *mukātab*'s obligation is established solely through the fulfillment of installments and is not binding prior to that. Thus, whoever sells the obligation has sold what he does not yet possess, and does not know whether it will become binding [for the buyer] or not. Furthermore, it is not a specified entity: the seller cannot identify which specific item he sells from the category of goods transacted, nor does the buyer know what he acquires.

وَرُوِّينَا مِثْلَ قَوْلِ مَالِكٍ عَنْ عَطَاءٍ، وَابْنِ سِيرِينَ؛ لِأَنَّ كِتَابَةَ الْمُكَاتَبِ إنَّمَا تَجِبُ بِالنُّجُومِ، وَلَا تَجِبُ قَبْلَ ذَلِكَ، فَمَنْ بَاعَهَا فَقَدْ بَاعَ مَا لَا يَمْلِكُ بَعْدُ، وَلَا يَدْرِي أَيَجِبُ لَهُ أَمْ لَا؟ وَأَيْضًا: فَلَيْسَتْ عَيْنًا مُعَيَّنَةً، فَلَا يَدْرِي الْبَائِعُ أَيَّ شَيْءٍ بَاعَ مِنْ نَوْعِ مَا بَاعَ، وَلَا يَدْرِي الْمُشْتَرِي مَا اشْتَرَى، فَهُوَ بَيْعُ غَرَرٍ، وَمَجْهُولُ الْعَيْنِ، وَأَكْلُ مَالٍ بِالْبَاطِلِ.

This constitutes a sale involving *gharar* (speculative risk), an indeterminate asset, and illegitimate consumption of wealth.

L24492 If it is said: "It has been reported from Jābir that he permitted its sale?" We reply: How many narratives reported from Jābir have you contradicted? Among them are his statement – which we have cited – that nothing purchased, whatever it may be, should be sold until it is received; his statement: "The ʿUmrah is obligatory"; his statement: "No one should enter the state of consecration (ihram) for Hajj before the months of Hajj"; and his statement: "The price of a cat is not permissible."

L24493 And there are many other matters where no opposing view is known from the Companions, may Allah be pleased with them, regarding such issues. Now it is considered a proof, but not in those cases? Truly, this is astonishing! There is no proof in the statement of anyone apart from the Messenger of Allah, peace and blessings be upon him. Our position is the position of Al-Shāfiʿī.

L24494 As for the service of a *mudabbar* (a slave promised freedom upon the master's death), selling it is manifestly corrupt and invalid, for one cannot know how long he will serve—he might serve fifty years, die tomorrow, within an hour, or be freed in the same manner. This is pure prohibition, wrongful appropriation of wealth, a sale involving *gharar* (uncertainty), a sale of what is not a concrete asset, and a sale of what does not yet exist. It combines every form of detriment.

L24495 If it is asked: "You have narrated through the chain of Muḥammad ibn ʿAlī ibn al-Ḥusayn that the Messenger of Allah (peace and blessings be upon him) sold the labor of the *mudabbar*"—has this [same report] been narrated to us through the chain of Shuʿbah from al-Ḥakam from Abū Jaʿfar Muḥammad ibn ʿAlī ibn al-Ḥusayn?

L24496–24497 We said: This is a mursal narration, and a mursal narration does not constitute a valid proof. Likewise, the sale of the servitude of an enslaved servant is impermissible in principle, due to what we mentioned regarding the servitude of a *mudabbar* (a slave designated for eventual freedom), as there is no difference between them. And success is by Allah, the Exalted.

فَإِنْ قِيلَ: فَقَدْ رُوِيَ عَنْ جَابِرٍ أَنَّهُ أَجَازَ بَيْعَهَا؟ قُلْنَا: وَكَمْ قِصَّةٍ رُوِيَتْ عَنْ جَابِرٍ خَالَفْتُمُوهَا -: مِنْهَا: قَوْلُهُ الَّذِي قَدْ أَوْرَدْنَا أَنْ لَا يُبَاعَ شَيْءٌ اُشْتُرِيَ كَائِنًا مَا كَانَ إِلَّا حَتَّى يُقْبَضَ وَقَوْلُهُ: الْعُمْرَةُ فَرِيضَةٌ، وَقَوْلُهُ: لَا يُحْرِمُ أَحَدٌ قَبْلَ أَشْهُرِ الْحَجِّ بِالْحَجِّ وَقَوْلُهُ: لَا يَجُوزُ ثَمَنُ الْهِرِّ.

وَغَيْرُ ذَلِكَ كَثِيرٌ مِمَّا لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ، فَالْآنَ صَارَ حُجَّةً وَهُنَالِكَ لَا؟ إنَّ هَذَا لَعَجَبٌ وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَوْلُنَا هُوَ قَوْلُ الشَّافِعِيِّ.

وَأَمَّا خِدْمَةُ الْمُدَبَّرِ فَبَيْعُهَا ظَاهِرُ الْفَسَادِ وَالْبُطْلَانِ، لِأَنَّهُ لَا يَدْرِي كَمْ يَخْدِمُ وَلَعَلَّهُ سَيَخْدِمُ خَمْسِينَ سَنَةً، أَوْ لَعَلَّهُ يَمُوتُ غَدًا، أَوْ بَعْدَ سَاعَةٍ، أَوْ يَخْرُجُ حُرًّا كَذَلِكَ - فَهَذَا هُوَ الْحَرَامُ الْبَحْتُ، وَأَكْلُ الْمَالِ بِالْبَاطِلِ، وَبَيْعُ الْغَرَرِ، وَبَيْعُ مَا لَيْسَ عَيْنًا، وَبَيْعُ مَا لَمْ يُخْلَقْ بَعْدُ، فَقَدْ جَمَعَ كُلَّ بَلَاءٍ.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَاعَ خِدْمَةَ الْمُدَبَّرِ» رُوِّينَا ذَلِكَ مِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ عَنْ أَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ؟

قُلْنَا: هَذَا مُرْسَلٌ، وَالْمُرْسَلُ لَا تَقُومُ بِهِ حُجَّةٌ - وَكَذَلِكَ لَا يَجُوزُ بَيْعُ خِدْمَةِ الْمُخْدِمِ أَصْلًا، لِمَا ذَكَرْنَا فِي خِدْمَةِ الْمُدَبَّرِ وَلَا فَرْقَ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24498 **A jurisprudential issue concerning the sale of liquid ghee into which a mouse falls.**

L24499 Issue 1537: It is impermissible to sell liquid clarified butter into which a mouse, alive or dead, has fallen, due to the instruction of Allah's Messenger (peace be upon him) to discard it. We have mentioned this in the "Book of Purification" within this book of ours and in the "Book of Lawful and Unlawful Foods," rendering its repetition unnecessary.

[مَسْأَلَةُ بَيْعُ السَّمْنِ الْمَائِعِ يَقَعُ فِيهِ الْفَأْرُ]

١٥٣٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ بَيْعُ السَّمْنِ الْمَائِعِ يَقَعُ فِيهِ الْفَأْرُ حَيًّا أَوْ مَيِّتًا لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهَرْقِهِ وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الطَّهَارَةِ " مِنْ دِيوَانِنَا هَذَا وَفِي " كِتَابِ مَا يَحِلُّ أَكْلُهُ وَمَا يَحْرُمُ " فَأَغْنَى عَنْ إعَادَتِهِ.

فَإِنْ كَانَ جَامِدًا أَوْ وَقَعَ فِيهِ مَيْتَةٌ غَيْرُ الْفَأْرِ أَوْ نَجَاسَةٌ فَلَمْ تُغَيِّرْ لَوْنَهُ، وَلَا طَعْمَهُ وَلَا رِيحَهُ، أَوْ وَقَعَ الْفَأْرُ الْمَيِّتُ أَوْ الْحَيُّ، أَوْ أَيُّ نَجَاسَةٍ، أَوْ أَيُّ مَيْتَةٍ كَانَتْ فِي مَائِعٍ غَيْرِ السَّمْنِ، فَلَمْ تُغَيِّرْ طَعْمًا وَلَا لَوْنًا وَلَا رِيحًا: فَبَيْعُهُ حَلَالٌ، وَأَكْلُهُ حَلَالٌ؛ لِأَنَّهُ لَمْ يَمْنَعْ مِنْ ذَلِكَ نَصٌّ.

L24500 If it is solid or a dead animal other than a mouse or an impurity falls into it without altering its color, taste, and smell; or if the dead mouse or the live mouse, any impurity, or any dead animal falls into a liquid other than ghee without altering its taste, color, and smell, then its sale and consumption are permissible, because there is no explicit scriptural prohibition against it.

وَقَدْ قَالَ اللَّهُ - تَعَالَى -: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

L24501 Allah—Exalted is He—has said: “He has explained in detail what He has forbidden for you” (Surah Al-An’am 6:119).[1]

وَقَالَ - تَعَالَى -: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَهَذَا قَوْلُ أَصْحَابِنَا، وَقَدْ ذَكَرْنَاهُ عَنْ بَعْضِ السَّلَفِ فِي الْكُتُبِ الْمَذْكُورَةِ، فَإِنْ تَغَيَّرَ طَعْمُهُ أَوْ لَوْنُهُ أَوْ رِيحُهُ: جَازَ بَيْعُهُ أَيْضًا، كَمَا يُبَاعُ الثَّوْبُ النَّجِسُ.

L24502 And He - the Most High - said: {And your Lord is not forgetful} [Maryam: 64]. This is the position of our scholars, and we have cited it on the authority of some of the Salaf in the aforementioned books. If its taste, color, or odor changes, its sale becomes permissible as well, just as an impure garment may be sold.[2]

وَقَدْ قُلْنَا: إنَّ الطَّاهِرَ لَا يُنَجَّسُ بِمُلَاقَاتِهِ النَّجِسَ وَلَوْ أَمْكَنَنَا أَنْ نَفْصِلَهُ مِنْ الْحَرَامِ لَحَلَّ أَكْلُهُ، وَلَمْ يَمْنَعْ مِنْ الِانْتِفَاعِ بِهِ فِي غَيْرِ الْأَكْلِ نَصٌّ فَهُوَ مُبَاحٌ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24503 We have stated: Indeed, what is pure does not become impure through contact with an impure substance. Even if we could separate it from what is unlawful, its consumption would become permissible. Since there is no textual evidence prohibiting benefiting from it in non-consumptive uses, it is permissible. And with Allah, the Most High, is success.

وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، يَعْنِي مَا تَغَيَّرَ لَوْنُهُ أَوْ طَعْمُهُ أَوْ رِيحُهُ مِنْ الْمَائِعَاتِ الَّتِي حَلَّتْهَا النَّجَاسَاتُ، لِأَنَّهُ إنَّمَا يُبَاعُ الشَّيْءُ الَّذِي حَلَّتْهُ النَّجَاسَةُ لَا النَّجَاسَةُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24504 This is the opinion of Abū Ḥanīfah, meaning: [the ruling applies to] liquids whose color, taste, or smell has changed due to ritually impure substances that have dissolved into them. This is because only the liquid into which the impure substance has dissolved is sold, not the impure substance itself. And success is attained only through Allah, the Most High.

[مَسْأَلَةُ بَيْعُ الصُّوَرِ]

The Issue of the Sale of Images

١٥٣٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ الصُّوَرِ إلَّا لِلَعِبِ الصِّبَايَا فَقَطْ، فَإِنَّ اتِّخَاذَهَا لَهُنَّ حَلَالٌ حَسَنٌ، وَمَا جَازَ مِلْكُهُ جَازَ بَيْعُهُ إلَّا أَنْ يَخُصَّ شَيْئًا مِنْ ذَلِكَ نَصٌّ فَيُوقَفُ عِنْدَهُ.

L24505

1538 - Issue: It is not permissible to sell images except solely for the play of young girls, for creating them for their use is permissible and commendable. Whatever it is permissible to own, it is permissible to sell unless there is an

L24506

[1] **Qur’an references (L24501):** Qur’an 6:119 (Al-An’am).
[2] **Qur’an references (L24502):** Qur’an 19:64 (Maryam).

explicit text regarding something from that, in which case one must adhere to it.

L24507 Allah, the Most High, said: “And Allah has permitted trade.” [Al-Baqarah: 275][3]

قَالَ اللَّهُ - تَعَالَى -: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

L24508 And He, Exalted is He, said: “He has explained in detail to you what He has forbidden” [Al-Anʿām 6:119].[4]

وَقَالَ - تَعَالَى -: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

L24509–24511 Similarly, it is not permissible to create images except for what constitutes a flat design on a garment—due to what we have narrated through the chain of Muslim: Isḥāq ibn Ibrāhīm (Ibn Rāhawayh) narrated to us from Sufyān ibn ʿUyaynah, from al-Zuhrī, from... The angels do not enter a house in which there is a dog or an image.[5]

وَكَذَلِكَ لَا يَحِلُّ اتِّخَاذُ الصُّوَرِ إلَّا مَا كَانَ رَقْمًا فِي ثَوْبٍ -: لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ أَبِي طَلْحَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَدْخُلُ الْمَلَائِكَةُ بَيْتًا فِيهِ كَلْبٌ وَلَا صُورَةٌ» .

L24512 And via Malik’s chain from Abu al-Nadr from Ubayd Allah ibn Abd Allah ibn Utbah, who visited Abu Talha. He found Sahl ibn Hunayf present with him. Abu Talha ordered a rug beneath him to be removed. Sahl asked: “Why did you remove it?” He replied: “Because it contained images, and the Messenger of Allah stated the ruling you know.” Sahl said: “Did he not exclude mere patterns?” He said: “Yes, but it is purer for my soul.”

وَمِنْ طَرِيقِ مَالِكٍ عَنْ أَبِي النَّضْرِ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ أَنَّهُ دَخَلَ عَلَى أَبِي طَلْحَةَ يَعُودُهُ قَالَ: فَوَجَدَ عِنْدَهُ سَهْلَ بْنَ حُنَيْفٍ فَأَمَرَ أَبُو طَلْحَةَ بِنَزْعِ نَمَطٍ كَانَ تَحْتَهُ؟ فَقَالَ لَهُ سَهْلٌ: لِمَ نَزَعْتَهُ؟ قَالَ: لِأَنَّ فِيهِ تَصَاوِيرَ، وَقَدْ قَالَ رَسُولُ اللَّهِ: مَا قَدْ عَلِمْت؟ قَالَ سَهْلٌ: أَلَمْ يَقُلْ إلَّا مَا كَانَ رَقْمًا؟ قَالَ: بَلَى، وَلَكِنَّهُ أَطْيَبُ لِنَفْسِي.

L24513 Abu Muhammad said: It is forbidden for us to repel the angels from our homes, for they are the messengers of Allah—the Exalted and Majestic—and one is brought near to Him—the Exalted and Majestic—through closeness to them.

قَالَ أَبُو مُحَمَّد: حَرَامٌ عَلَيْنَا تَنْفِيرُ الْمَلَائِكَةِ عَنْ بُيُوتِنَا، وَهُمْ رُسُلُ اللَّهِ - عَزَّ وَجَلَّ - وَالْمُتَقَرَّبُ إلَيْهِ - عَزَّ وَجَلَّ - بِقُرْبِهِمْ.

L24514 And through the chain of Muslim: I am Yahya ibn Yahya, who said: I heard from Abdul Aziz ibn Muhammad al-Darawardi, who narrated from Hisham ibn Urwah, from his father, from Aisha, the Mother of the Believers, who said: “I used to play with dolls in the presence of the Messenger of Allah

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا يَحْيَى بْنُ يَحْيَى قَالَ: أَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «كُنْتُ أَلْعَبُ بِالْبَنَاتِ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَانَ يَأْتِينِي صَوَاحِبِي فَكُنَّ يَتَقَمَّعْنَ مِنْ رَسُولِ اللَّهِ - صَلَّى

[3] **Qur’an references (L24507):** Qur’an 2:275 (Al-Baqarah).
[4] **Qur’an references (L24508):** Qur’an 6:119 (Al-An’am).
[5] **Hadith references (L24509):** Sahih al-Bukhari 3322; Sahih al-Bukhari 4002; Sahih al-Bukhari 3225.

(peace be upon him). My female companions would come to me, and they would shy away from the Messenger of Allah (peace be upon him), so he would discreetly allow them to approach me." Thus, it became obligatory to exclude dolls for young girls from the entirety of what was prohibited regarding images.

L24515 As for crosses, the ruling differs, and it is impermissible to leave them in garments or other items - based on what was reported to us through the chain of Qāsim ibn Aṣbagh, from Bakr ibn Ḥammād, from Musaddad, from Yaḥyā—Ibn Saʿīd al-Qaṭṭān—from Hishām al-Dastuwāʾī, from Yaḥyā ibn Abī Kathīr, from ʿImrān ibn Ḥiṭṭān, from ʿĀʾishah, Mother of the Believers: "The Messenger of Allah—may Allah's peace and blessings be upon him—did not leave any garment in his house containing cross-shaped patterns without unravelling it."

L24516–24518 It has been authentically established from the Messenger of Allah—may Allah bless him and grant him peace—that he disliked the curtain on which images were hung, so a part of it was fashioned for him instead. a cushion, and he did not disapprove of it. Thus, it is established that images in curtains are disliked but not prohibited, and as for images in cushions and items other than curtains, they are not disliked in their use.

The Issue of Sale on the Day of Friday

L24519

L24520 Issue 1539: It is impermissible to sell from when the sun passes the meridian on Friday until the completion of the two sermons and the prayer. This prohibition applies equally to believers, disbelievers, women, and the sick. As for those who attend the Friday prayer, the prohibition lasts until their prayer is fully concluded. Every sale occurring during the specified time is nullified. This is Mālik's view. Al-Shāfiʿī and Abū Ḥanīfa, however, permit selling during that time.

L24521 As for marriage, the Salam contract, Ijarah (leasing), and all other contracts—they are permissible at that time for everyone. This is the opinion of al-Shāfiʿī and Abū Ḥanīfah, while Mālik did not permit them.

اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيُسَرِّبُهُنَّ إِلَيَّ» فَوَجَبَ اسْتِثْنَاءُ الْبَنَاتِ لِلصَّبَايَا مِنْ جُمْلَةِ مَا نُهِيَ عَنْهُ مِنْ الصُّوَرِ.

وَأَمَّا الصُّلُبُ فَبِخِلَافِ ذَلِكَ، وَلَا يَحِلُّ تَرْكُهَا فِي ثَوْبٍ، وَلَا فِي غَيْرِهِ -: لِمَا رُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا بَكْرُ بْنُ حَمَّادٍ أَنَا مُسَدَّدٌ نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عِمْرَانَ بْنَ حِطَّانَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَكُنْ يَدَعُ فِي بَيْتِهِ ثَوْبًا فِيهِ تَصْلِيبٌ إِلَّا نَقَضَهُ» .

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ كَرِهَ السِّتْرَ الْمُعَلَّقَ فِيهِ التَّصَاوِيرُ فَجُعِلَتْ لَهُ مِنْهُ وِسَادَةً فَلَمْ يُنْكِرْهَا - فَصَحَّ أَنَّ الصُّوَرَ فِي السُّتُورِ مَكْرُوهَةٌ غَيْرُ مُحَرَّمَةٍ، وَفِي الْوَسَائِدِ، وَغَيْرِ السُّتُورِ لَيْسَتْ مَكْرُوهَةَ الِاسْتِخْدَامِ بِهَا.

[مَسْأَلَةَ الْبَيْعِ يَوْمَ الْجُمُعَةِ]

١٥٣٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْبَيْعُ مُذْ تَزُولُ الشَّمْسُ مِنْ يَوْمِ الْجُمُعَةِ إلَى مِقْدَارِ تَمَامِ الْخُطْبَتَيْنِ وَالصَّلَاةِ، لَا لِمُؤْمِنٍ، وَلَا لِكَافِرٍ، وَلَا لِامْرَأَةٍ، وَلَا لِمَرِيضٍ، وَأَمَّا مَنْ شَهِدَ الْجُمُعَةَ فَإِلَى أَنْ تَتِمَّ صَلَاتُهُمْ لِلْجُمُعَةِ، وَكُلُّ بَيْعٍ وَقَعَ فِي الْوَقْتِ الْمَذْكُورِ فَهُوَ مَفْسُوخٌ - وَهَذَا قَوْلُ مَالِكٍ - وَأَجَازَ الْبَيْعَ فِي الْوَقْتِ الْمَذْكُورِ: الشَّافِعِيُّ، وَأَبُو حَنِيفَةَ.

وَأَمَّا النِّكَاحُ، وَالسَّلَمُ وَالْإِجَارَةُ، وَسَائِرُ الْعُقُودِ - فَجَائِزَةٌ كُلُّهَا فِي ذَلِكَ الْوَقْتِ لِكُلِّ أَحَدٍ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي حَنِيفَةَ - وَلَمْ يُجِزْهَا مَالِكٌ.

L24522 بُرْهَانُ صِحَّةِ قَوْلِنَا: قَوْلُ اللَّهِ - تَعَالَى -: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ ذَلِكُمْ خَيْرٌ لَكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ} [الجمعة: ٩] {فَإِذَا قُضِيَتِ الصَّلاةُ فَانْتَشِرُوا فِي الأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ} [الجمعة: ١٠] فَهُمَا أَمْرَانِ مُفْتَرَضَانِ: السَّعْيُ إِلَى ذِكْرِ اللَّهِ - تَعَالَى -، وَتَرْكُ الْبَيْعِ، فَإِذَا سَقَطَ أَحَدُهُمَا بِنَصٍّ وَرَدَ فِيهِ كَالْمَرِيضِ، وَالْخَائِفِ وَالْمَرْأَةِ، وَالْمَعْذُورِ، لَمْ يَسْقُطِ الْآخَرُ، إِذْ لَمْ يُوجِبْ سُقُوطَهُ قُرْآنٌ، وَلَا سُنَّةٌ - وَجَبَ إِلْزَامُ الْكُفَّارِ كَذَلِكَ، لِقَوْلِ اللَّهِ - تَعَالَى -: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩].

L24523 وَلِقَوْلِهِ - تَعَالَى -: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] وَأَمَّا إِدْخَالُ مَالِكٍ النِّكَاحَ، وَالْإِجَارَةَ فِي ذَلِكَ، فَخَطَأٌ ظَاهِرٌ، لِأَنَّ اللَّهَ - تَعَالَى - إِنَّمَا نَهَى عَنِ الْبَيْعِ، وَلَوْ أَرَادَ النَّهْيَ عَنِ النِّكَاحِ، وَالْإِجَارَةِ لَمَا عَجَزَ عَنْ ذَلِكَ، وَلَا كَتَمَنَا مَا أَلْزَمَنَا {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَتَعَدِّي حُدُودِ اللَّهِ - تَعَالَى - لَا يَحِلُّ.

L24524 وَلَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّ الْقِيَاسَ عِنْدَ الْقَائِلِينَ بِهِ إِنَّمَا هُوَ أَنْ يُقَاسَ الشَّيْءُ عَلَى نَظِيرِهِ، وَلَيْسَ الْبَيْعُ نَظِيرَ النِّكَاحِ، لِأَنَّهُ يَجُوزُ بِلَا ذِكْرِ مَهْرٍ.

L24525 وَلَا يَجُوزُ الْبَيْعُ بِغَيْرِ ذِكْرِ ثَمَنٍ، وَالْمُتَنَاكِحَانِ لَا يَمْلِكُ أَحَدُهُمَا الْآخَرَ، وَلَا فِي النِّكَاحِ نَقْلُ مِلْكٍ، وَالْبَيْعُ نَقْلُ مِلْكٍ.

L24522 Proof for the validity of our position: the words of Allah—Exalted is He—: {O you who believe, when the call is proclaimed for the prayer on the Day of Congregation, hasten to the remembrance of Allah and leave off trade. That is better for you, if you but knew} [Al-Jumu'ah: 9] {Then when the prayer is concluded, disperse freely in the land and seek Allah's bounty} [Al-Jumu'ah: 10]. These are two prescribed obligations: hastening to the remembrance of Allah—Exalted is He—and abandoning trade. If one of them is waived due to a scriptural text pertaining to it—such as for the sick, those in fear, a woman, or the excused—the other remains obligatory, as neither the Quran nor the Sunnah necessitates its waiver. It is obligatory to compel disbelievers to adhere to these rulings likewise, due to the words of Allah—Exalted is He—: {And judge between them by what Allah has revealed} [Al-Ma'idah: 49].[6]

L24523 And due to His - the Most High's - statement: {And fight them until there is no discord and the religion, all of it, is for Allah} [Al-Anfal: 39]. As for Malik's inclusion of marriage and leasing in that, it is a clear error; because Allah - the Most High - only prohibited selling, and if He had intended to prohibit marriage and leasing, He would not have failed to do so, nor would we hide what He has enjoined upon us. {And your Lord is not forgetful} [Maryam: 64]. Transgressing the limits set by Allah - the Most High - is not permissible.[7]

L24524 If analogy were valid, this case would be invalid under it, because analogy—according to its proponents—is the comparison of a thing to its counterpart. Sale is not the counterpart of marriage, since the latter is permissible without mentioning a mahr.

L24525 It is not permissible to conduct a sale without mentioning the price. The two parties to the marriage do not own one another—neither of them owns

[6] **Qur'an references (L24522):** Qur'an 62:9 (Al-Jumu'ah); Qur'an 62:10 (Al-Jumu'ah); Qur'an 5:49 (Al-Ma'idah).

[7] **Qur'an references (L24523):** Qur'an 8:39 (Al-Anfal); Qur'an 19:64 (Maryam).

the other—nor is there a transfer of ownership in marriage, whereas a sale is a transfer of ownership.

L24526–24527 As for leasing, it is exclusively a compensatory contract for usufructs not yet created by God, the Exalted. Selling what has not yet been created is invalid. A free person may lease himself, but it is unlawful for him to sell himself. Thus, there is no resemblance between leasing and marriage, or between leasing and sale.

L24528 If the prohibition of sale is rationalized by what distracts from prayer, this leads to adopting the opinion of Abū Ḥanīfah and al-Shāfiʿī, obliging him to permit sales that involve no distraction from prayer. According to those who uphold this view, no analogy is valid except when based on an effective legal cause; if no cause is established, the analogy becomes invalid. We know of no precedent from the Salaf for this opinion.

L24529 As for the permissibility according to Abū Ḥanīfah and Al-Shāfiʿī of conducting sales during the mentioned time, this contravenes the command of Allah (Exalted is He). We know of no argument whatsoever for their position beyond their claim that the prohibition merely relates to being preoccupied [with worldly matters] instead of hastening to the prayer. Indeed, were a person to sell during the prayer itself, the sale would still be valid.

L24530 Abu Muhammad said: These two statements are utterly invalid. As for their claim that Allah only intended by this the preoccupation away from striving, it is an assertion of utmost gravity. I wish I knew who informed them of this while they hear Allah—exalted is He—say: “And that you ascribe to Allah what you do not know” [Al-Baqarah 2:169].[8]

L24531 If Allah—Exalted is He—had intended what they claimed, He would not have prohibited us from selling absolutely, nor would He have been unable to clarify His intent in that matter. There is neither here a necessity compelling this understanding nor any definitive text. Thus, it is sheer falsehood—a false claim devoid of any proof.

L24532 As for their statement: “If one were to sell during prayer, the sale would

وَأَمَّا الْإِجَارَةُ فَإِنَّمَا هِيَ مُعَاوَضَةٌ فِي مَنَافِعَ لَمْ يَخْلُقْهَا اللَّهُ - تَعَالَى - بَعْدُ، وَلَا يَجُوزُ بَيْعُ مَا لَمْ يُخْلَقْ بَعْدُ، وَيَجُوزُ أَنْ يُؤَاجِرَ الْحُرُّ نَفْسَهُ، وَلَا يَحِلُّ لَهُ أَنْ يَبِيعَ نَفْسَهُ، فَلَا شَبَهَ بَيْنَ الْإِجَارَةِ وَالنِّكَاحِ وَبَيْنَ الْبَيْعِ.

فَإِنْ عَلَّلَ النَّهْيَ عَنْ الْبَيْعِ بِمَا يُشَاغِلُ عَنْ السَّعْيِ: صَارَ إلَى قَوْلِ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَلَزِمَهُ أَنْ يُجِيزَ مِنْ الْبَيْعِ مَا لَا تَشَاغَلَ مِنْهُ عَنْ السَّعْيِ، وَلَا قِيَاسَ عِنْدَ الْقَائِلِينَ بِهِ إلَّا عَلَى عِلَّةٍ، فَإِنْ لَمْ يُعَلِّلْ بَطَلَ الْقِيَاسُ - وَمَا نَعْلَمُ لَهُ سَلَفًا فِي هَذَا الْقَوْلِ.

وَأَمَّا إجَازَةُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ: الْبَيْعَ فِي الْوَقْتِ الْمَذْكُورِ فَخِلَافٌ لِأَمْرِ اللَّهِ - تَعَالَى -، وَلَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا أَكْثَرَ مِنْ أَنْ قَالُوا: إنَّمَا نَهَى عَنْ التَّشَاغُلِ عَنْ السَّعْيِ إلَى الصَّلَاةِ فَقَطْ، وَلَوْ أَنَّ امْرَأً بَاعَ فِي الصَّلَاةِ لَصَحَّ الْبَيْعُ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَانِ فَاسِدَانِ مِنْ الْقَوْلِ جِدًّا -: أَمَّا قَوْلُهُمْ: إنَّمَا أَرَادَ اللَّهُ بِذَلِكَ التَّشَاغُلَ عَنْ السَّعْيِ فَقَطْ، فَعَظِيمٌ مِنْ الْقَوْلِ جِدًّا، لَيْتَ شِعْرِي مَنْ أَخْبَرَهُمْ بِذَلِكَ وَهُمْ يَسْمَعُونَ اللَّهَ - تَعَالَى - يَقُولُ: {وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لا تَعْلَمُونَ} [البقرة: ١٦٩] .

وَلَوْ أَنَّ اللَّهَ - تَعَالَى - أَرَادَ مَا قَالُوا لَمَا نَهَانَا عَنْ الْبَيْعِ مُطْلَقًا، وَلَا عَجَزَ عَنْ بَيَانِ مُرَادِهِ مِنْ ذَلِكَ، وَمَا هَهُنَا ضَرُورَةٌ تُوجِبُ فَهْمَ هَذَا وَلَا نَصٌّ، فَهُوَ بَاطِلٌ مَحْضٌ، وَدَعْوَى كَاذِبَةٌ بِلَا بُرْهَانٍ.

[8] **Qur’an references (L24530):** Qur’an 2:169 (Al-Baqarah); Qur’an 7:33 (Al-A’raf).

be permissible”—this is a feeble deception, for when the worshipper begins speaking during bargaining, their prayer becomes invalid, rendering them no longer engaged in prayer. Thus, the invalidity of their argument becomes wholly evident.

وَأَمَّا قَوْلُهُمْ: لَوْ بَاعَ فِي الصَّلَاةِ لَجَازَ الْبَيْعُ: فَتَمْوِيهٌ بَارِدٌ، لِأَنَّ الْمُصَلِّيَ بِأَوَّلِ أَخْذِهِ فِي الْكَلَامِ فِي الْمُسَاوَمَةِ بَطَلَتْ صَلَاتُهُ فَصَارَ غَيْرَ مُصَلٍّ - فَظَهَرَ فَسَادُ احْتِجَاجِهِمْ جُمْلَةً.

L24533 If they say: “Is this merely a recommended act?” We reply: “What is your proof for that? How can God—Exalted is He—command: ’Do,’ yet they claim: ’Its meaning is: Do not do if you wish’? Or how can God—Exalted is He—prohibit: ’Do not do,’ yet they assert: ’Its meaning is: Do if you wish’? This is nullification of fundamental truths, the essence of disobedience, and distortion of the words from their rightful contexts.”

فَإِنْ قَالُوا: هَذَا نَدْبٌ؟ قُلْنَا: مَا دَلِيلُكُمْ عَلَى ذَلِكَ، وَكَيْفَ يَقُولُ اللَّهُ - تَعَالَى -: افْعَلْ، فَيَقُولُونَ: مَعْنَاهُ - لَا تَفْعَلْ إنْ شِئْت؟ أَمْ كَيْفَ يَقُولُ اللَّهُ - تَعَالَى -: لَا تَفْعَلْ، فَيَقُولُونَ: مَعْنَاهُ: افْعَلْ إنْ شِئْت؟ وَهَذَا إبْطَالُ الْحَقَائِقِ، وَنَفْسُ الْمَعْصِيَةِ، وَتَحْرِيفٌ لِلْكَلِمِ عَنْ مَوَاضِعِهِ.

L24534–24536 If they say, “We have found commands and prohibitions whose meaning is recommendation?” We say, “Yes, by another explicit text that clarified that.” Likewise, we have found verses [with rulings] abrogated by another explicit text, and [those rulings] were no longer obligatory. To claim that a verse is abrogated based on this, or that it indicates a commendable act—whoever does so has nullified whatever he desires without proof. It was narrated to us through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: from Muḥammad ibn Abī Bakr—al-Muqaddamī—from Sulaymān ibn Dāwūd, from Sulaymān ibn Muʿādh, from Simāk, from ʿIkrimah, from Ibn ʿAbbās, who said: “Engaging in trade becomes invalid on Friday when the prayer call is proclaimed. Once the prayer concludes, then buy and sell.” We know of no opposition to this ruling among the Companions.

فَإِنْ قَالُوا: قَدْ وَجَدْنَا أَوَامِرَ وَنَوَاهِيَ مَعْنَاهَا: النَّدْبُ؟ قُلْنَا: نَعَمْ بِنَصٍّ آخَرَ بَيَّنَ ذَلِكَ وَكَذَلِكَ وَجَدْنَا آيَاتٍ مَنْسُوخَاتٍ بِنَصٍّ آخَرَ وَلَمْ يَجِبْ بِذَلِكَ حَمْلُ آيَةٍ عَلَى أَنَّهَا مَنْسُوخَةٌ، وَلَا عَلَى أَنَّهَا نَدْبٌ، وَمَنْ فَعَلَ ذَلِكَ فَقَدْ أَبْطَلَ مَا شَاءَ بِلَا دَلِيلٍ -: رُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي - نَا مُحَمَّدُ بْنُ أَبِي بَكْرٍ - هُوَ الْمُقَدَّمِيُّ - نا سُلَيْمَانُ بْنُ دَاوُد نا سُلَيْمَانُ بْنُ مُعَاذٍ نا سِمَاكٌ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا يَصْلُحُ الْبَيْعُ يَوْمَ الْجُمُعَةِ حِينَ يُنَادَى لِلصَّلَاةِ، فَإِذَا قُضِيَتْ فَاشْتَرِ وَبِعْ وَلَا نَعْلَمُ لَهُ مُخَالِفًا مِنْ الصَّحَابَةِ.

L24537 From Hammad ibn Zayd from al-Walid ibn Abi Hisham from Abd al-Rahman ibn al-Qasim ibn Muhammad from his father that he invalidated a sale that occurred between some women and a perfumer after the Jumuʿah adhan.

وَعَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ الْوَلِيدِ بْنِ أَبِي هِشَامٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّهُ فَسَخَ بَيْعًا وَقَعَ بَيْنَ نِسَاءٍ وَبَيْنَ عَطَّارٍ بَعْدَ النِّدَاءِ لِلْجُمُعَةِ.

L24538 1540. Issue: If a person has only enough time remaining to enter into the prayer with the *takbīr* (saying “Allāhu Akbar”), has not yet prayed, is mindful of the prayer, and aware of the remaining time, then anything they engage in at that moment—such as a sale or other transactions—is invalid and annulled permanently. This is based on the statement of the Messenger of Allāh (peace and blessings of Allāh be upon him): “Whoever performs an action not in accordance with our command, it is invalid.” During that

١٥٤٠ - مَسْأَلَةٌ: وَمَنْ لَمْ يَبْقَ عَلَيْهِ مِنْ وَقْتِ الصَّلَاةِ إلَّا مِقْدَارَ الدُّخُولِ فِي الصَّلَاةِ بِالتَّكْبِيرِ، وَهُوَ لَمْ يُصَلِّ بَعْدُ، وَهُوَ ذَاكِرٌ لِلصَّلَاةِ، عَارِفٌ بِمَا بَقِيَ عَلَيْهِ مِنْ الْوَقْتِ، فَكُلُّ شَيْءٍ فَعَلَهُ حِينَئِذٍ مِنْ بَيْعٍ أَوْ غَيْرِهِ: بَاطِلٌ مَفْسُوخٌ أَبَدًا، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ

time, selling and other acts are prohibited for them, as they are commanded to enter into the prayer. If they were unaware of that, all their actions during that time would be permissible, because the time for prayer remains perpetually extended for the forgetful person.[9]

L24539 As for one who was heedless and concluded the prayer before its completion, any sales or other dealings he executed are entirely invalid, for he was aware of the prohibition against such acts while remaining in prayer. However, he is pardoned for forgetfulness. He merely presumed he had sold when no sale occurred, having altered the transaction which Allah—the Exalted—had made lawful for him. Thus, it remains impermissible—and with Allah, the Most High, lies all success.

L24540 A legal inquiry into whether a co-owner can be compelled to sell their share jointly with another co-owner.

L24541 Issue 1541: It is not permissible to compel anyone to sell jointly with his partner—neither that which is divisible nor that which is indivisible—nor to force him to resist his partner so that one of them sells to the other. However, whichever of the two partners or partners wishes to sell his share may do so. Whoever refuses cannot be compelled. If a judge or anyone else compels him to do so, his ruling is perpetually annulled, and the matter is judged according to the legal ruling on usurpation.

L24542 The proof of this is the words of Allah, the Exalted: "Do not consume your wealth among yourselves wrongfully, unless it be trade by mutual consent" [An-Nisa: 29].[10]

L24543–24544 And whoever is compelled to sell their right without consenting to it, it is not permissible for them, for it contradicts the command of Allah—the Exalted—as it constitutes wrongful consumption of wealth, except where Allah—the Exalted—has commanded the sale even without consent, such as

[9] **Hadith references (L24538):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[10] **Qur'an references (L24542):** Qur'an 4:29 (An-Nisa).

عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَهُوَ فِي ذَلِكَ الْوَقْتِ مُحَرَّمٌ عَلَيْهِ الْبَيْعُ وَغَيْرُهُ، مَأْمُورٌ بِالدُّخُولِ فِي الصَّلَاةِ، فَلَوْ لَمْ يَكُنْ عَارِفًا بِذَلِكَ: جَازَ كُلُّ مَا عَمِلَ فِيهِ؛ لِأَنَّ وَقْتَ الصَّلَاةِ لِلنَّاسِي مُمْتَدٌّ أَبَدًا.

وَأَمَّا مَنْ سَهَا فَسَلَّمَ قَبْلَ تَمَامِ صَلَاتِهِ فَمَا أَنْفَذَ مِنْ بَيْعٍ أَوْ غَيْرِهِ: فَمَرْدُودٌ كُلُّهُ؛ لِأَنَّهُ قَدْ عَرَفَ النَّهْيَ عَنْ ذَلِكَ مَا دَامَ فِي صَلَاتِهِ، وَهُوَ فِي صَلَاتِهِ، لَكِنْ عُفِيَ لَهُ عَنْ النِّسْيَانِ، فَهُوَ إنَّمَا ظَنَّ أَنَّهُ بَاعَ وَلَمْ يَبِعْ؛ لِأَنَّهُ غَيَّرَ الْبَيْعَ الَّذِي أَحَلَّهُ اللَّهُ - تَعَالَى - لَهُ، فَإِذَا هُوَ غَيْرُ جَائِزٍ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة يُجْبَرَ أَحَدٌ عَلَى أَنْ يَبِيعَ مَعَ شَرِيكِهِ]

١٥٤١ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَنْ يُجْبَرَ أَحَدٌ عَلَى أَنْ يَبِيعَ مَعَ شَرِيكِهِ لَا مَا يَنْقَسِمُ وَلَا مَا لَا يَنْقَسِمُ، وَلَا عَلَى أَنْ يُقَاوِمَهُ فَيَبِيعَ أَحَدُهُمَا مِنْ الْآخَرِ، لَكِنْ مَا شَاءَ مِنْ الشَّرِيكَيْنِ أَوْ الشُّرَكَاءِ أَنْ يَبِيعَ حِصَّتَهُ: فَلَهُ ذَلِكَ، وَمَنْ أَبَى لَمْ يُجْبَرْ، فَإِنْ أَجْبَرَهُ عَلَى ذَلِكَ حَاكِمٌ أَوْ غَيْرُهُ: فُسِخَ حُكْمُهُ أَبَدًا، وَحُكِمَ فِيهِ بِحُكْمِ الْغَصْبِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ - تَعَالَى -: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

وَمَنْ أُجْبِرَ عَلَى بَيْعِ حَقِّهِ فَلَمْ يَرْضَ فَلَا يَجُوزُ عَلَيْهِ؛ لِأَنَّهُ خِلَافُ أَمْرِ اللَّهِ - تَعَالَى -، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ إلَّا حَيْثُ أَمَرَ اللَّهُ - تَعَالَى - بِالْبَيْعِ، وَإِنْ لَمْ يَرْضَ كَالشُّفْعَةِ، وَعَلَى الْغَائِبِ، وَعَلَى الصَّغِيرِ، وَعَلَى الظَّالِمِ.

in pre-emption, or rulings applicable to the absent person, the minor, and the wrongdoer.

L24545 Those who argue for compelling a co-owner to sell alongside their partner have relied on a narration citing: "No harm and no reciprocation of harm." However, this narration has never been authenticated; it is only transmitted as a mursal report or through a chain containing Isḥāq ibn Yaḥyā—who is unknown. Even if it were authentic, it would stand as evidence against their position, for the greatest harm and injury is what they perpetrate by forcing a person to sell his property without his consent and without God, Exalted is He, having imposed such an obligation. God, Exalted is He, has never permitted favoring one co-owner's satisfaction by provoking his partner's displeasure regarding his very own property. This is blatant tyranny and manifest injustice.

وَاحْتَجَّ الْقَائِلُونَ بِإِجْبَارِ الشَّرِيكِ عَلَى الْبَيْعِ مَعَ شَرِيكِهِ بِخَبَرٍ رُوِيَ فِيهِ «لَا ضَرَرَ وَلَا ضِرَارَ» وَهَذَا خَبَرٌ لَمْ يَصِحَّ قَطُّ، إِنَّمَا جَاءَ مُرْسَلًا، أَوْ مِنْ طَرِيقٍ فِيهَا إِسْحَاقُ بْنُ يَحْيَى - وَهُوَ مَجْهُولٌ - ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ؛ لِأَنَّ أَعْظَمَ الضِّرَارِ وَالضَّرَرِ: هُوَ الَّذِي فَعَلُوهُ مِنْ إِجْبَارِهِمْ إِنْسَانًا عَلَى بَيْعِ مَالِهِ بِغَيْرِ رِضَاهُ، وَبِغَيْرِ أَنْ يُوجِبَ اللَّهُ - تَعَالَى - عَلَيْهِ ذَلِكَ، وَمَا أَبَاحَ اللَّهُ - تَعَالَى - قَطُّ أَنْ يُرَاعَى رِضَا أَحَدِ الشَّرِيكَيْنِ بِإِسْخَاطِ شَرِيكِهِ فِي مَالِهِ نَفْسِهِ، وَهَذَا هُوَ الْجَوْرُ وَالظُّلْمُ الصُّرَاحُ.

L24546 There is no difference between one partner being permitted to demand: "My partner must sell with me so I may ensure a fair price within my share," and the other partner being permitted to demand: "My partner must be prevented from selling his share, for this harms my own share." Both scenarios constitute aggression and injustice. However, the truth is that each retains autonomy over their share: whoever wishes may sell their portion, and whoever chooses may keep theirs.

وَلَا فَرْقَ بَيْنَ أَنْ يُجَابَ أَحَدُ الشَّرِيكَيْنِ إِلَى قَوْلِهِ: لَا بُدَّ أَنْ يَبِيعَ شَرِيكِي مَعِي لِأَسْتَجْزِلَ الثَّمَنَ فِي حِصَّتِي، وَبَيْنَ أَنْ يُجَابَ الْآخَرُ إِلَى قَوْلِهِ: لَا بُدَّ أَنْ يُمْنَعَ شَرِيكِي مَعَ بَيْعِ حِصَّتِهِ؛ لِأَنَّ فِي ذَلِكَ ضَرَرًا عَلَيَّ فِي حِصَّتِي، وَكِلَا الْأَمْرَيْنِ عُدْوَانٌ وَظُلْمٌ، لَكِنَّ الْحَقَّ أَنَّ كِلَيْهِمَا مُمَكَّنٌ مِنْ حِصَّتِهِ، مَنْ شَاءَ بَاعَ حِصَّتَهُ وَمَنْ شَاءَ أَمْسَكَ حِصَّتَهُ.

L24547 They embellished that with what has been narrated to us through the chain of Waki': Abu Bishr narrated to us from Ibn Abi Najih from Mujahid: "A palm tree belonging to a man was located in another's garden. The garden owner asked him to let him buy it from him, but he refused. The Messenger of Allah (peace and blessings be upon him) said: 'No harm [is allowed] in Islam.'" This is a mursal narration.

وَقَدْ مَوَّهُوا فِي ذَلِكَ بِمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا أَبُو بِشْرٍ عَنِ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ: «أَنَّ نَخْلَةً كَانَتْ لِإِنْسَانٍ فِي حَائِطِ آخَرَ، فَسَأَلَهُ أَنْ يَشْتَرِيَهَا مِنْهُ، فَأَبَى، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَا ضَرَرَ فِي الْإِسْلَامِ» وَهَذَا مُرْسَلٌ.

L24548 Furthermore, were it valid, it would be an argument against them, for we say to them: "Yes, this prevents compelling the other partner to purchase from their partner when they do not wish to do so, or to sell to him or others when they do not wish to do so—these two constitute manifest harm."

ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ، لِأَنَّا نَقُولُ لَهُمْ نَعَمْ، وَهَذَا مَنْعٌ مِنْ أَنْ يُجْبَرَ الْآخَرُ عَلَى الشِّرَاءِ مِنْ شَرِيكِهِ، وَهُوَ لَا يُرِيدُ ذَلِكَ، أَوْ عَلَى الْبَيْعِ مِنْهُ أَوْ مِنْ غَيْرِهِ، وَهُوَ لَا يُرِيدُ ذَلِكَ -: فَهَذَانِ ضَرَرٌ ظَاهِرٌ.

L24549–24551 They also mentioned what we have reported through the chain of trans-

mission of Abū Dāwūd, from Sulaymān ibn Dāwūd al-ʿAtakī, from Ḥammād, who informed us. Wasil, the freed slave of Abu Uyaynah, said: I heard Muhammad ibn Ali narrating from Samurah ibn Jundub that he owned a cluster of palm trees within the walled garden of a man from the Ansar. The Ansari man said: "He lived there with his family. Samurah would enter his palm trees, causing harm to him. He pleaded with him to sell it or transfer its ownership, but he refused." When this matter was mentioned to the Prophet, peace and blessings of Allah be upon him, he urged Samurah: "Sell it to him," but he refused. He then said: "Transfer its ownership," but he still refused. The Prophet, peace and blessings of Allah be upon him, said: "Then gift it to him, and you will have such-and-such reward," enticing him with a promise. When he refused again, the Prophet declared: "You are causing harm." Thereupon the Messenger of Allah, peace and blessings of Allah be upon him, instructed the Ansari man: "Go and uproot his palm trees."

وَذَكَرُوا أَيْضًا: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا سُلَيْمَانُ بْنُ دَاوُد الْعَتَكِيُّ نا حَمَّادٌ نا وَاصِلٌ مَوْلَى أَبِي عُيَيْنَةَ قَالَ: سَمِعْت مُحَمَّدَ بْنَ عَلِيٍّ يُحَدِّثُ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ: «أَنَّهُ كَانَتْ لَهُ عَضُدٌ مِنْ نَخْلٍ فِي حَائِطِ رَجُلٍ مِنْ الْأَنْصَارِ قَالَ: وَمَعَ الرَّجُلِ أَهْلُهُ فَكَانَ سَمُرَةُ يَدْخُلُ إلَى نَخْلِهِ فَيَتَأَذَّى بِهِ، فَطَلَبَ إلَيْهِ أَنْ يَبِيعَهُ أَوْ يُنَاقِلَهُ فَأَبَى فَذَكَرَ ذَلِكَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَطَلَبَ إلَيْهِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَبِيعَهُ، فَأَبَى، فَطَلَبَ إلَيْهِ يُنَاقِلُهُ، فَأَبَى قَالَ: فَهَبْهُ لَهُ وَلَك كَذَا وَكَذَا أَمْرًا رَغَّبَهُ فِيهِ، فَأَبَى، فَقَالَ: أَنْتَ مُضَارٌّ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْأَنْصَارِيِّ: اذْهَبْ فَاقْلَعْ نَخْلَهُ» .

L24552 Abu Muhammad said: This is disconnected because Muhammad ibn Ali did not hear from Samurah. Even if it were authentic, they would contradict him in two matters: One - they do not compel anyone other than a co-owner to sell from his neighbor or to sell alongside him, while this hadith opposes that.

قَالَ أَبُو مُحَمَّدٍ: هَذَا مُنْقَطِعٌ، لِأَنَّ مُحَمَّدَ بْنَ عَلِيٍّ لَا سَمَاعَ لَهُ مِنْ سَمُرَةَ، ثُمَّ لَوْ صَحَّ لَكَانُوا مُخَالِفِينَ لَهُ فِي مَوْضِعَيْنِ -: أَحَدُهُمَا - أَنَّهُمْ لَا يُجْبِرُونَ غَيْرَ الشَّرِيكِ عَلَى الْبَيْعِ مِنْ جَارِهِ، وَلَا عَلَى الْبَيْعِ مَعَهُ، وَفِي هَذَا الْحَدِيثِ خِلَافُ ذَلِكَ.

L24553 The second is the uprooting of his date palms—a ruling they do not endorse—and all success comes from Allah, the Exalted.

وَالثَّانِي - قَلْعُ نَخْلِهِ - وَهُمْ لَا يَقُولُونَ بِهَذَا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24554 The issue of selling war spoils taken by Muslims from the abode of war to people of the dhimma.

[مَسْأَلَة بَيْع مَا غَنِمَهُ الْمُسْلِمُونَ مِنْ دَارِ الْحَرْبِ لِأَهْلِ الذِّمَّةِ]

L24555 1542. Issue: It is not permissible to sell what the Muslims have seized as spoils of war from the abode of war to the People of the Dhimma—whether slaves or other spoils—and this is the position of Umar ibn al-Khattab, as stated in "the Book of Jihad."

١٥٤٢ - مَسْأَلَةٌ: وَلَا يَجُوزُ بَيْعُ مَا غَنِمَهُ الْمُسْلِمُونَ مِنْ دَارِ الْحَرْبِ لِأَهْلِ الذِّمَّةِ لَا مِنْ رَقِيقٍ وَلَا مِنْ غَيْرِهِ - وَهُوَ قَوْلُ عُمَرَ بْنِ الْخَطَّابِ عَلَى مَا ذَكَرْنَا فِي " كِتَابِ الْجِهَادِ ".

L24556 From the narration chain of Sa'īd ibn Manṣūr: Jarīr reported to us from al-Mughīrah ibn Miqsam from Umm Mūsā, who said: 'Alī ibn Abī Ṭālib came across vessels interlaced with gold from the Persians' utensils. He intended to break them and distribute the pieces among the Muslims. Some village chiefs said: "If you break these, you'll destroy their value. Shall we offer

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرٌ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ أُمِّ مُوسَى قَالَتْ: أَتَى عَلِيُّ بْنُ أَبِي طَالِبٍ بِآنِيَةٍ مُخَوَّصَةٍ بِالذَّهَبِ مِنْ آنِيَةِ الْعَجَمِ فَأَرَادَ أَنْ يَكْسِرَهَا وَيُقَسِّمَهَا

you a higher price for them?" 'Alī responded: "It is not for me to return a possession Allah has stripped from you." He then broke the vessels and distributed the fragments among the people.

L24557 Abu Muhammad said: This is a form of humiliation, and every humiliation must be imposed upon them.

L24558 As for slaves, there is another consideration: that the invitation to Islam is obligatory under all circumstances. Among the supportive factors for embracing Islam is the male and female disbelievers being under the ownership of a Muslim, while among the factors that distance them from Islam is their being under a disbeliever who fortifies their insight into disbelief. And with Allah, the Most High, lies all success.

L24559–24560 Issue: Selling an item to one whom it is certain will disobey God by means of it or in its use.

L24561 Issue: It is not permissible to sell anything to one whom it is certain will use it to disobey Allah—whether by means of it or in it—and such a sale is perpetually invalid.

L24562 Like the sale of anything made into _nabidh_ or pressed by one about whom it is certain that he will make it into _khamr_.

L24563 And like the sale of defective dirhams by one about whom it is certain that he conceals [fraud] with them.

L24564 And like selling slave boys to someone conclusively known to make them commit sinful acts or castrate them, and like selling a slave to someone conclusively known to misuse his ownership rights.

L24565 Or like the sale of weapons or horses to someone who is certain to attack with them against the Muslims.

L24566 Or like selling silk to someone from whom it is certain that he will wear it, and similarly in every matter, due to the saying of Allah (Exalted is He): {And cooperate in righteousness and piety, and do not cooperate in sin and transgression} [Al-Mā'idah: 2]. The transactions we have mentioned clearly

بَيْنَ الْمُسْلِمِينَ فَقَالَ نَاسٌ مِنْ الدَّهَاقِينَ: إنْ كَسَرْت هَذِهِ كَسَرْت ثَمَنَهَا، وَنَحْنُ نُغْلِي لَك بِهَا؟ فَقَالَ عَلِيٌّ: لَمْ أَكُنْ لِأَرُدَّ لَكُمْ مِلْكًا نَزَعَهُ اللَّهُ مِنْكُمْ، فَكَسَرَهَا وَقَسَّمَهَا بَيْنَ النَّاسِ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا مِنْ الصَّغَارِ، وَكُلُّ صَغَارٍ فَوَاجِبٌ حَمْلُهُ عَلَيْهِمْ.

وَأَمَّا الرَّقِيقُ: فَفِيهِ وَجْهٌ آخَرُ، وَهُوَ أَنَّ الدُّعَاءَ إلَى الْإِسْلَامِ وَاجِبٌ بِكُلِّ حَالٍ، وَمِنْ الْأَسْبَابِ الْمُعِينَةِ عَلَى الْإِسْلَامِ كَوْنُ الْكَافِرِ وَالْكَافِرَةِ فِي مِلْكِ الْمُسْلِمِ، وَمِنْ الْأَسْبَابِ الْمُبْعِدَةِ عَنْ الْإِسْلَامِ كَوْنُهُمَا عِنْدَ كَافِرٍ يُقَوِّي بَصَائِرَهُمَا فِي الْكُفْرِ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة بَيْعُ شَيْءٍ مِمَّنْ يُوقَنُ أَنَّهُ يَعْصِي اللَّهَ بِهِ أَوْ فِيهِ]

مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ شَيْءٍ مِمَّنْ يُوقَنُ أَنَّهُ يَعْصِي اللَّهَ بِهِ أَوْ فِيهِ، وَهُوَ مَفْسُوخٌ أَبَدًا.

كَبَيْعِ كُلِّ شَيْءٍ يُنْبَذُ أَوْ يُعْصَرُ مِمَّنْ يُوقَنُ بِهَا أَنَّهُ يَعْمَلُهُ خَمْرًا.

وَكَبَيْعِ الدَّرَاهِمِ الرَّدِيئَةِ مِمَّنْ يُوقَنُ أَنَّهُ يُدَلِّسُ بِهَا.

وَكَبَيْعِ الْغِلْمَانِ مِمَّنْ يُوقَنُ أَنَّهُ يَفْسُقُ بِهِمْ أَوْ يُخْصِيهِمْ، وَكَبَيْعِ الْمَمْلُوكِ مِمَّنْ يُوقَنُ أَنَّهُ يُسِيءُ مَلَكَتَهُ.

أَوْ كَبَيْعِ السِّلَاحِ أَوْ الْخَيْلِ: مِمَّنْ يُوقَنُ أَنَّهُ يَعْدُو بِهَا عَلَى الْمُسْلِمِينَ.

involve cooperation in sin and transgression without prolongation, and annulling them constitutes cooperation in righteousness and piety.[11]

أَوْ كَبَيْعِ الْحَرِيرِ مِمَّنْ يُوقَنُ أَنَّهُ يَلْبَسُهُ، وَهَكَذَا فِي كُلِّ شَيْءٍ؛ لِقَوْلِ اللَّهِ - تَعَالَى -: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] ، وَالْبُيُوعُ الَّتِي ذَكَرْنَا تَعَاوُنٌ ظَاهِرٌ عَلَى الْإِثْمِ وَالْعُدْوَانِ بِلَا تَطْوِيلٍ، وَفَسْخُهَا تَعَاوُنٌ عَلَى الْبِرِّ وَالتَّقْوَى.

L24567 If he is not certain of any of that, the sale is valid because he did not aid in sin. If the buyer thereafter disobeys Allah, the Exalted, it is upon him. We have been narrated via the chain of Wakīʿ, from Sufyān al-Thawrī, from Ibn Jarīr, from ʿAṭāʾ, who said: "Do not sell it to one who would make it into wine."

فَإِنْ لَمْ يُوقَنْ بِشَيْءٍ مِنْ ذَلِكَ فَالْبَيْعُ صَحِيحٌ؛ لِأَنَّهُ لَمْ يُعِنْ عَلَى إِثْمٍ، فَإِنْ عَصَى الْمُشْتَرِي اللَّهَ - تَعَالَى - بَعْدَ ذَلِكَ فَعَلَيْهِ -: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ ابْنِ جَرِيرٍ عَنْ عَطَاءٍ قَالَ: لَا تَبِعْهُ مِمَّنْ يَجْعَلُهُ خَمْرًا.

The Issue of Bulk Sale (Bayʿ al-Juzāf).

[مَسْأَلَة بَيْع الجزاف]

L24568

L24569 1544 - Issue: If someone sells something without precise measurement—whether by volume, weight, crop, or count—and the buyer does not know this, the sale is permissible and not disliked. This is because there is no textual prohibition against such a sale whatsoever, nor does it involve deceit or fraud. Tāwus and Mālik prohibited it, while Abū Ḥanīfah, Al-Shāfiʿī, and Abū Sulaymān permitted it.

١٥٤٤ - مَسْأَلَةٌ: وَمَنْ بَاعَ شَيْئًا جُزَافًا كَيْلُهُ أَوْ وَزْنُهُ أَوْ زَرْعُهُ أَوْ عَدَدُهُ، وَلَمْ يَعْرِفْ الْمُشْتَرِي بِذَلِكَ فَهُوَ جَائِزٌ لَا كَرَاهِيَةَ فِيهِ، لِأَنَّهُ لَمْ يَأْتِ عَنْ هَذَا الْبَيْعِ نَهْيٌ فِي نَصٍّ أَصْلًا، وَلَا فِيهِ غِشٌّ وَلَا خَدِيعَةٌ - وَمَنَعَ مِنْهُ: طَاوُسٌ، وَمَالِكٌ - وَأَجَازَهُ: أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ.

L24570 Ali said: There is no distinction between knowing the measure, weight, cultivation, or quantity—while the buyer is unaware of these details—and knowing who wove the garment, for whom it was made, when it was woven, or where this wheat and these dates were sourced—while the buyer knows nothing of those details. Whoever differentiates between them is mistaken and asserts a claim without proof.

قَالَ عَلِيٌّ: وَلَا فَرْقَ بَيْنَ أَنْ يَعْلَمَ كَيْلَهُ أَوْ وَزْنَهُ، أَوْ زَرْعَهُ أَوْ عَدَدَهُ، وَلَا يَعْلَمُهُ الْمُشْتَرِي، وَبَيْنَ أَنْ يَعْلَمَ مَنْ نَسَجَ الثَّوْبَ، وَلِمَنْ كَانَ، وَمَتَى نُسِجَ، وَأَيْنَ أُصِيبَ هَذَا الْبُرُّ، وَهَذَا التَّمْرُ؟ وَلَا يَعْلَمُ الْمُشْتَرِي شَيْئًا مِنْ ذَلِكَ، وَالْمُفَرِّقُ بَيْنَهُمَا مُخْطِئٌ وَقَائِلٌ بِلَا دَلِيلٍ.

L24571 They cited as evidence what we have narrated through the chain of ʿAbd al-Razzāq, who said: Ibn al-Mubārak reported from al-Awzāʿī: The Messenger of God—peace and blessings be upon him—said: "It is not lawful for a man to sell food without precise measurement whose quantity he knows until

وَاحْتَجُّوا فِي ذَلِكَ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ، قَالَ: قَالَ ابْنُ الْمُبَارَكِ عَنْ الْأَوْزَاعِيِّ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَحِلُّ لِرَجُلٍ أَنْ يَبِيعَ طَعَامًا جُزَافًا قَدْ عَلِمَ كَيْلَهُ حَتَّى يَعْلَمَ صَاحِبُهُ» وَهَذَا مُنْقَطِعٌ فَاحِشُ الِانْقِطَاعِ.

[11] **Qur'an references (L24566):** Qur'an 5:2 (Al-Ma'idah).

the other party knows it." This chain is severely interrupted, with a gross interruption.

ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَى الْمَالِكِيِّينَ؛ لِأَنَّهُمْ لَا يَخُصُّونَ بِهَذَا الْحُكْمِ الطَّعَامَ دُونَ غَيْرِهِ، وَلَيْسَ فِي هَذَا الْمُرْسَلِ إلَّا الطَّعَامُ فَقَطْ.

L24572–24573 Then, if it were authentic, it would serve as evidence against the Mālikīs because they do not limit this ruling to food to the exclusion of other matters, and this *mursal* report mentions nothing but food alone.

فَإِنْ قَالُوا: قِسْنَا عَلَى الطَّعَامِ غَيْرَ الطَّعَامِ؟ قُلْنَا: فَهَلَّا قِسْتُمْ عَلَى الطَّعَامِ غَيْرَ الطَّعَامِ فِي الْمَنْعِ مِنْ بَيْعِهِ حَتَّى يُقْبَضَ؟ فَإِنْ قَالُوا: لَمْ يَأْتِ النَّصُّ إلَّا فِي الطَّعَامِ.

L24574 If they say: "We analogized from food to non-food," we reply: "Why, then, did you not analogize from food to non-food in prohibiting its sale until it is received?" If they respond: "The explicit text was only revealed concerning food."

قُلْنَا: وَلَيْسَ فِي هَذَا الْخَبَرِ إلَّا الطَّعَامُ، فَإِمَّا اتَّبَعُوا النَّصَّيْنِ مَعًا دُونَ الْقِيَاسِ، وَإِمَّا قِيسُوا عَلَيْهِمَا جَمِيعًا، وَمَا عَدَا هَذَا فَبَاطِلٌ مُتَيَقَّنٌ، فَكَيْفَ وَالنَّصُّ قَدْ جَاءَ بِالنَّهْيِ عَنْ الْبَيْعِ فِي كُلِّ مَا ابْتِيعَ قَبْلَ أَنْ يُقْبَضَ فَخَالَفُوهُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24575 We said: This report pertains only to food. Therefore, either follow the two texts together without analogy or apply analogy to both texts. Anything beyond this is certainly invalid. So how is it, when the text explicitly prohibits selling anything purchased before taking possession, yet they contradicted it? And with Allah, the Exalted, is success.

١٥٤٥ - مَسْأَلَةٌ: وَبَيْعُ الْحِيتَانِ - الْكِبَارِ أَوْ الصِّغَارِ - أَوْ الْأُتْرُجِّ - الْكِبَارِ أَوْ الصِّغَارِ - أَوْ الدُّلَّاعِ، أَوْ الثِّيَابِ، أَوْ الْخَشَبِ، أَوْ الْحَيَوَانِ، أَوْ غَيْرِ ذَلِكَ جُزَافًا: حَلَالٌ لَا كَرَاهِيَةَ فِيهِ، وَمَنَعَ مَالِكٌ مِنْ ذَلِكَ فِي الْكِبَارِ مِنْ الْحِيتَانِ، وَالْخَشَبِ، وَأَجَازَهُ فِي الصِّغَارِ - وَهَذَا بَاطِلٌ لِوُجُوهٍ -: أَوَّلُهَا: أَنَّهُ خِلَافُ الْقُرْآنِ فِي قَوْلِ اللَّهِ - تَعَالَى -: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

L24576 1545. Issue: The sale of fish—whether large or small—citrons—whether large or small—colocynth, garments, wood, animals, or other such items in bulk is permissible, with no disapproval in it. Mālik prohibited this practice regarding large fish and wood but permitted it for small ones—this position is invalid for several reasons. First: It contradicts the Qur'an in Allah's statement—Exalted is He—: {Allah has permitted trade} [Al-Baqarah 2:275].[12]

وَقَالَ - تَعَالَى -: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] فَهَذَا بَيْعٌ حَلَالٌ وَلَمْ يَأْتِ تَفْصِيلٌ بِتَحْرِيمِهِ.

L24577 And He, the Exalted, said: "He has detailed for you what He has forbidden to you" (Al-Anʿām 6:119). Thus, this sale is lawful, and no detailed explanation has been given concerning its prohibition.[13]

وَالثَّانِي: أَنَّهُ فَاسِدٌ، إذْ لَمْ يَجِدْ الْكَبِيرَ الَّذِي مُنِعَ بِهِ مِنْ بَيْعِ الْجُزَافِ مِنْ الصَّغِيرِ الَّذِي أَبَاحَهُ بِهِ - وَهَذَا رَدِيءٌ جِدًّا؛ لِأَنَّهُ حَرَّمَ وَحَلَّلَ، ثُمَّ لَمْ يُبَيِّنْ مَا الْحَرَامُ فَيَجْتَنِبُهُ مَنْ يَبِيعُهُ، وَمَا الْحَلَالُ فَيَأْتِيهِ.

L24578 The second [issue] is that it is invalid, as the major consideration necessitating the prohibition of the juzaf sale was not established alongside the minor consideration permitting it - and this is extremely flawed, because it

[12] **Qur'an references (L24576):** Qur'an 2:275 (Al-Baqarah).
[13] **Qur'an references (L24577):** Qur'an 6:119 (Al-An'am).

prohibited and permitted [matters] yet failed to clarify what is forbidden so that those who engage in it may avoid it, and what is permissible so that they may follow it.

L24579 The third is that nothing is considered large except in relation to something smaller than it, and nothing is considered small except in relation to something larger than it. Thus, the *shabil* (a type of fish) is very small compared to the *shawli* (another fish) but very large compared to the sardine. Javelins are very large compared to arrows but very small compared to masts, and so it goes for everything.

L24580–24582 Fourthly: The practice of Muslims during the time of the Messenger of Allah (may Allah bless him and grant him peace) and after him, across the east and west of the earth, has always been the sale of agricultural estates containing abundant date palms, trees, and other such assets, without enumeration. But arbitrarily—and he is among those who permit that there but prohibit it here—we know of no foundational basis attached to it, nor anyone who stated it before him.

L24583 The issue of the sale of women's milk and hair, and the sale of excrement, manure, and urine.

L24584 Issue 1546: The sale of women's milk is permissible, as is hair; the sale of excrement and manure for use as fertilizer, and the sale of urine to the dyer: permissible—though a group have prohibited the sale of all these.

L24585 Abu Muhammad said: There is no disagreement that a woman may milk her milk into a vessel and give it to someone to feed a child. This constitutes a conferral of ownership from her to him. Everything that can be legitimately owned and for which valid transfer of ownership applies is permissible to sell, based on Allah's statement—Exalted is He—: "And Allah has permitted sale" [Al-Baqarah: 275], except where there exists explicit textual evidence stating otherwise.[14]

L24586 As for hair, excrement, and urine: all such matters are discarded, and no

[14] **Qur'an references (L24585):** Qur'an 2:275 (Al-Baqarah).

وَالثَّالِثُ: أَنَّهُ لَا كَبِيرَ إِلَّا بِإِضَافَتِهِ إِلَى مَا هُوَ أَصْغَرُ مِنْهُ، وَلَا صَغِيرَ إِلَّا بِإِضَافَتِهِ إِلَى مَا هُوَ أَكْبَرُ مِنْهُ، فَالشَّابِلُ صَغِيرٌ جِدًّا بِالْإِضَافَةِ إِلَى الشَّوْلِيِّ وَكَبِيرٌ جِدًّا بِالْإِضَافَةِ إِلَى السَّرْدِينِ، وَالْمَدَارِي كِبَارٌ جِدًّا بِالْإِضَافَةِ إِلَى السِّهَامِ وَصِغَارٌ جِدًّا بِالْإِضَافَةِ إِلَى الصَّوَارِي، وَهَكَذَا فِي كُلِّ شَيْءٍ.

وَالرَّابِعُ: أَنَّهُ لَمْ يَزَلْ عَمَلُ الْمُسْلِمِينَ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبَعْدَهُ فِي شَرْقِ الْأَرْضِ وَغَرْبِهَا: بَيْعُ الضِّيَاعِ، وَفِيهَا النَّخْلُ الْكَثِيرُ، وَالشَّجَرُ، وَغَيْرُ ذَلِكَ، بِغَيْرِ عَدَدٍ، لَكِنْ جُزَافًا - وَهُوَ أَحَدُ مَنْ يُجِيزُ ذَلِكَ هُنَالِكَ، وَيَمْنَعُهُ هَهُنَا - وَمَا نَعْلَمُ لَهُ مُتَعَلَّقًا أَصْلًا، وَلَا أَحَدًا قَالَهُ قَبْلَهُ.

[مَسْأَلَةُ بَيْعِ أَلْبَانِ النِّسَاءِ والشعور وَبَيْعِ العذرة والزبل والبول]

١٥٤٦ - مَسْأَلَةٌ: وَبَيْعُ أَلْبَانِ النِّسَاءِ جَائِزٌ، وَكَذَلِكَ الشُّعُورُ، وَبَيْعُ الْعَذِرَةِ وَالزِّبْلِ لِلتَّزْبِيلِ، وَبَيْعُ الْبَوْلِ لِلصَّبَّاغِ: جَائِزٌ - وَقَدْ مَنَعَ قَوْمٌ مِنْ بَيْعِ كُلِّ هَذَا.

قَالَ أَبُو مُحَمَّدٍ: لَا خِلَافَ فِي أَنَّ لِلْمَرْأَةِ أَنْ تَحْلُبَ لَبَنَهَا فِي إِنَاءٍ وَتُعْطِيَهُ لِمَنْ يَسْقِيهِ صَبِيًّا، وَهَذَا تَمْلِيكٌ مِنْهَا لَهُ، وَكُلُّ مَا صَحَّ مِلْكُهُ وَانْتِقَالُ الْإِمْلَاكِ فِيهِ: حَلَّ بَيْعُهُ؛ لِقَوْلِ اللَّهِ - تَعَالَى -: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] إِلَّا مَا جَاءَ فِيهِ نَصٌّ بِخِلَافِ هَذَا.

one is barred from it. This is the practice of all people on earth. If any of these substances become owned by someone, their sale becomes permissible as we previously mentioned.

L24587 It has been narrated to us through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān, from ʿAbd al-Malik al-ʿArzamī, from ʿAṭāʾ ibn Abī Rabāḥ: "There is no harm in benefiting from people's hair; the people used to do so."

L24588 ## The Ruling on Selling Bees, Silkworms, Dhab Lizards, and Hyenas.

L24589 Issue 1547: The sale of bees, silkworms, spiny-tailed lizards, and hyenas is permissible and sound. As for the spiny-tailed lizard and the hyena, their consumption is lawful as we mentioned before - being game animals among lawful prey. What may legitimately be owned may legitimately be sold, as we stated earlier.

L24590 As for bees and silkworms, they both have a clear benefit and are legally owned, and thus their sale is permissible.

L24591 Abu Hanifa prohibited all of that—and we know of no proof whatsoever for his stance, nor did anyone before him prohibit the sale of bees and silkworm cocoons. As for the honey that bees produce in combs not owned by their keeper, it belongs to whoever first claims it, because it is neither a part of them nor generated from them like eggs, offspring, milk, or wool. Rather, it is their earnings, akin to the prey of a trained hunting animal. However, the honey and prey are distinct from the bees and the hunting animal themselves; thus, they belong to whoever first seizes them. As for what the bees deposit in their keeper's combs, it belongs to him because he placed the combs for that purpose. Therefore, whatever enters them is his.

L24592 Similarly, whoever sets a snare for hunting, a vessel for water, or an enclosure for fish: whatever falls into it belongs to him, as he has acquired ownership by establishing the aforementioned means for himself. And with God (Exalted is He) alone is success.

L24593 ## The Issue of Purchasing Silk in Islamic Jurisprudence

وَأَمَّا الشُّعُور، وَالْعَذِرَة، وَالْبَوْل: فَكُلُّ ذَلِكَ يُطْرَح، وَلَا يُمْنَع مِنْهُ أَحَدٌ: هَذَا عَمَل جَمِيع أَهْلِ الْأَرْضِ، فَإِذَا تُمُلِّكَ لِأَحَدٍ جَازَ بَيْعُهُ كَمَا ذَكَرْنَا.

رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ عَبْدِ الْمَلِكِ الْعَرْزَمِيِّ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ: لَا بَأْسَ بِأَنْ يَسْتَمْتِعَ بِشُعُورِ النَّاسِ، كَانَ النَّاسُ يَفْعَلُونَهُ.

[مَسْأَلَة بَيْعُ النَّحْلِ وَدُودِ الْحَرِيرِ وَالضَّبِّ وَالضَّبُعِ]

١٥٤٧ - مَسْأَلَةٌ: وَبَيْعُ النَّحْلِ، وَدُودِ الْحَرِيرِ، وَالضَّبِّ، وَالضَّبُعِ: جَائِزٌ حَسَنٌ -: أَمَّا الضَّبُّ وَالضَّبُعُ: فَحَلَالٌ أَكْلُهُمَا كَمَا ذَكَرْنَا قَبْلُ وَصَيْدٌ مِنْ الصُّيُودِ، وَمَا جَازَ تَمَلُّكُهُ جَازَ بَيْعُهُ كَمَا قَدَّمْنَا.

وَأَمَّا النَّحْلُ، وَدُودُ الْحَرِيرِ: فَلَهُمَا مَنْفَعَةٌ ظَاهِرَةٌ، وَهُمَا مَمْلُوكَانِ: فَبَيْعُهُمَا جَائِزٌ.

وَمَنَعَ أَبُو حَنِيفَةَ مِنْ كُلِّ ذَلِكَ - وَمَا نَعْلَمُ لَهُ حُجَّةً أَصْلًا، وَلَا أَحَدًا سَبَقَهُ إلَى الْمَنْعِ مِنْ بَيْعِ النَّحْلِ، وَدُودِ الْقَزِّ - وَأَمَّا مَا عَسَّلَتْ النَّحْلُ فِي غَيْرِ خَلَايَا مَالِكِهَا: فَهُوَ لِمَنْ سَبَقَ إلَيْهِ؛ لِأَنَّهُ لَيْسَ بَعْضَهَا، وَلَا مُتَوَلِّدًا مِنْهَا كَالْبَيْضِ، وَالْوَلَدِ، وَاللَّبَنِ، وَالصُّوفِ، لَكِنَّهُ كَسْبٌ لَهَا، كَصَيْدِ الْجَارِحِ، وَهُمَا غَيْرُ النَّحْلِ وَالْجَارِحِ: فَهُوَ لِمَنْ سَبَقَ إلَيْهِ - وَأَمَّا مَا وَضَعَتْ فِي خَلَايَا صَاحِبِهَا: فَلَهُ؛ لِأَنَّهُ لِذَلِكَ وَضَعَ الْخَلَايَا، فَمَا صَارَ فِيهَا فَهُوَ لَهُ.

وَكَذَلِكَ مَنْ وَضَعَ حِبَالَةً لِلصَّيْدِ، أَوْ قُلَّةً لِلْمَاءِ، أَوْ حَظِيرًا لِلسَّمَكِ: فَكُلُّ مَا وَقَعَ فِي ذَلِكَ فَهُوَ لَهُ؛ لِأَنَّهُ قَدْ تَمَلَّكَهُ بِوَضْعِ مَا ذَكَرْنَا لَهُ -، وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة ابتياع الْحَرِير]

L24594–24596 Issue 1584: Purchasing silk is permissible, though some of the Salaf prohibited it, as we have narrated. Through the chain of Muhammad ibn al-Muthanna: I, Hafs ibn Ghiyath, narrate from Layth, from Tawus - that he disliked trading in thin Shabiri fabric and silk, and wearing them.

١٥٤٨ - مَسْأَلَةٌ: وَابْتِيَاعُ الْحَرِيرِ جَائِزٌ، وَقَالَ بِالْمَنْعِ مِنْهُ بَعْضُ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى أَنَا حَفْصُ بْنُ غِيَاثٍ عَنْ لَيْثٍ عَنْ طَاوُسٍ: أَنَّهُ كَرِهَ التِّجَارَةَ فِي الشَّابِرِيِّ الرَّقِيقِ، وَالْحَرِيرِ وَلُبْسَهُ.

L24597 It was narrated to us through the chain of Ibn Wahb: from Muawiyah ibn Salih, from Abdul Wahhab ibn Bukht, from Abu al-Zinad, from al-A'raj, from Abu Hurairah that the Messenger of Allah—peace and blessings be upon him—said: "Indeed Allah, Blessed and Most High, has forbidden intoxicants and their price, forbidden carrion and its price, and forbidden silk and its price."

جَاءَ فِي ذَلِكَ -: مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ أَنَا مُعَاوِيَةُ بْنُ صَالِحٍ عَنْ عَبْدِ الْوَهَّابِ بْنِ بُخْتٍ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إنَّ اللَّهَ تَبَارَكَ وَتَعَالَى حَرَّمَ الْخَمْرَ وَثَمَنَهَا، وَحَرَّمَ الْمَيْتَةَ وَثَمَنَهَا وَحَرَّمَ الْحَرِيرَ وَثَمَنَهُ» .

L24598 In this chain is Muawiyah ibn Salih, who is weak—and even if it were authentic, we would adhere to it—and it is authentically reported from the Prophet (peace be upon him) that he said regarding the two-piece silk garment he gave to Umar: "I did not give it to you to wear, but so that you may sell it," or words to this effect.

وَهَذَا فِيهِ مُعَاوِيَةُ بْنُ صَالِحٍ وَهُوَ ضَعِيفٌ - وَلَوْ صَحَّ لَقُلْنَا بِهِ - وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ فِي حُلَّةِ الْحَرِيرِ الَّتِي كَسَاهَا عُمَرَ «لَمْ أَكْسُكَهَا لِتَلْبَسَهَا، وَلَكِنْ لِتَبِيعَهَا» أَوْ كَلَامًا هَذَا مَعْنَاهُ.

L24599 **The issue of purchasing a child born of fornication and the fornicatress.**

[مَسْأَلَة ابتياع وَلَد الزِّنَا والزانية]

L24600 Issue 1549: [Is it permissible to] purchase the child of fornication or the fornicatress? Narrated to us through the chain of Muḥammad ibn al-Muthannā, from Muʿtamir ibn Sulaymān, from Layth, from Mujāhid, who said: "The child of fornication—do not sell him, do not buy him, and do not consume his price."

١٥٤٩ - مَسْأَلَةٌ: وَابْتِيَاعُ وَلَدِ الزِّنَى، وَالزَّانِيَةِ حَلَالٌ -: رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا مُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ لَيْثٍ عَنْ مُجَاهِدٍ قَالَ: وَلَدُ الزِّنَى لَا تَبِعْهُ وَلَا تَشْتَرِهِ، وَلَا تَأْكُلْ ثَمَنَهُ.

L24601 Ali said: No one holds religious authority except the Messenger of Allah (peace be upon him) - "Allah has permitted trade" [al-Baqarah 2:275] - and he (peace be upon him) commanded the sale of the female slave who has received the hadd punishment for adultery three times, if she commits adultery a fourth time.[15]

قَالَ عَلِيٌّ: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَقَدْ أَمَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِبَيْعِ الْأَمَةِ الْمَحْدُودَةِ فِي الزِّنَى ثَلَاثَ مَرَّاتٍ إذَا زَنَتْ الرَّابِعَةَ.

L24602 **The Issue of Selling Skins from Dead Animals (Carrion).**

[مَسْأَلَة بَيْع جُلُود الميتات]

[15] **Qur'an references (L24601):** Qur'an 2:275 (Al-Baqarah).

L24603 Issue 1550: The sale of the skins of all dead animals is permissible if they are tanned, and likewise the skin of a pig; however, its hair and bones are not permissible.

١٥٥٠ - مَسْأَلَةٌ: وَبَيْعُ جُلُودِ الْمَيْتَاتِ كُلِّهَا حَلَالٌ إذَا دُبِغَتْ، وَكَذَلِكَ جِلْدُ الْخِنْزِيرِ - وَأَمَّا شَعْرُهُ وَعَظْمُهُ فَلَا.

L24604 The bones of a dead animal are fundamentally impermissible. Mālik prohibited the sale of their skins even if tanned, whereas al-Shāfiʿī and Abū Ḥanīfah permitted it.

وَلَا يَحِلُّ عِظَامُ الْمَيْتَةِ أَصْلًا - وَمَنَعَ مَالِكٌ مِنْ بَيْعِ جُلُودِهَا وَإِنْ دُبِغَتْ - وَأَبَاحَهُ الشَّافِعِيُّ، وَأَبُو حَنِيفَةَ.

L24605 Mālik permitted the sale of carrion's wool – Al-Shāfiʿī prohibited the sale thereof.

وَأَبَاحَ مَالِكٌ بَيْعَ صُوفِ الْمَيْتَةِ - وَمَنَعَ مِنْهُ الشَّافِعِيُّ.

L24606 The proof for the correctness of our view is the statement of the Messenger of Allah (peace be upon him): "Why did they not take its hide, tan it, and benefit from it?"

بُرْهَانُ صِحَّةِ قَوْلِنَا: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «هَلَّا أَخَذُوا إهَابَهَا فَدَبَغُوهُ فَانْتَفَعُوا بِهِ؟

L24607–24608 They said: "O Messenger of Allah, it is carrion." He said: "Its consumption is forbidden." We have mentioned this with its chain of transmission in "the book of purification" within this collection of ours, rendering its repetition superfluous.

قَالُوا: يَا رَسُولَ اللَّهِ إنَّهَا مَيْتَةٌ، قَالَ إنَّهَا حَرُمَ أَكْلُهَا» وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِي " كِتَابِ الطَّهَارَةِ " مِنْ دِيوَانِنَا هَذَا فَأَغْنَى عَنْ إعَادَتِهِ.

L24609 He (peace be upon him) commanded that benefit be derived from the hides of dead animals after tanning, and clarified that consuming them is forbidden. Selling is undoubtedly a benefit, thus it falls within what is permissible and excluded from prohibition since its prohibition was not explicitly detailed. The Almighty said: "He has elaborated for you what He prohibited for you" [Al-An'am 6:119]. As for the pig, all of it is prohibited except for the purification of its hide through tanning alone.[16]

فَأَمَرَ - عَلَيْهِ السَّلَامُ - بِأَنْ يُنْتَفَعَ بِجُلُودِ الْمَيْتَةِ بَعْدَ الدِّبَاغِ، وَأَخْبَرَ أَنَّ أَكْلَهَا حَرَامٌ، وَالْبَيْعُ مَنْفَعَةٌ بِلَا شَكٍّ، فَهُوَ دَاخِلٌ فِي التَّحْلِيلِ، وَخَارِجٌ عَنْ التَّحْرِيمِ إذْ لَمْ يُفَصَّلْ تَحْرِيمُهُ، قَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] أَمَّا الْخِنْزِيرُ: فَحَرَامٌ كُلُّهُ، حَاشَا طَهَارَةَ جِلْدِهِ بِالدِّبَاغِ فَقَطْ.

L24610 Among the strange arguments of the Mālikīs here is their assertion: "The hide becomes impure, and likewise feathers are rendered impure by the dead animal, whereas wool and hair do not become impure." If their position were reversed and they were told: "Rather, hides do not become impure, and likewise feathers, while wool and hair are rendered impure by the dead animal?" By what means could they counter this? Is this not merely a claim like their claim? We have been narrated through 'Abd al-Razzāq's chain from Maʿmar from Ḥammād ibn Abī Sulaymān that there is no harm in

وَمِنْ عَجَائِبِ احْتِجَاجِ الْمَالِكِيِّينَ هَهُنَا قَوْلُهُمْ: إنَّ الْجِلْدَ يَمُوتُ، وَكَذَلِكَ الرِّيشُ تُسْقِيهِ الْمَيْتَةُ، وَأَمَّا الصُّوفُ وَالشَّعْرُ فَلَا يَمُوتُ - فَلَوْ عُكِسَ قَوْلُهُمْ، فَقِيلَ لَهُمْ: بَلْ الْجُلُودُ لَا تَمُوتُ وَكَذَلِكَ الرِّيشُ، وَأَمَّا الصُّوفُ وَالشَّعْرُ فَتُسْقِيهِ الْمَيْتَةُ؟ بِأَيِّ شَيْءٍ كَانُوا يَنْفَصِلُونَ، وَهَلْ هِيَ إلَّا دَعْوَى كَدَعْوَى؟ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ حَمَّادِ بْنِ

[16] **Qur'an references (L24609):** Qur'an 6:119 (Al-An'am).

أَبِي سُلَيْمَانَ لَا بَأْسَ بِرِيشِ الْمَيْتَةِ، وَأَبَاحَ الِانْتِفَاعَ بِعَظْمِ الْفِيلِ وَبَيْعَهُ: طَاوُسٌ، وَابْنُ سِيرِينَ، وَعُرْوَةُ بْنُ الزُّبَيْرِ - وَمَنَعَ مِنْهُ الشَّافِعِيُّ، وَغَيْرُهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

feathers from dead animals. Permitting the use and sale of elephant bones was endorsed by Ṭāwūs, Ibn Sīrīn, and ʻUrwah ibn al-Zubayr. Al-Shāfiʻī and others prohibited it—and success is from Allah, the Exalted.

[مَسْأَلَةُ بَيْعُ الْمُكَاتَبِ قَبْلَ أَنْ يُؤَدِّيَ شَيْئًا مِنْ كِتَابَتِهِ]

The issue of selling a mukatab before he has paid any part of his kitābah.

١٥٥١ - مَسْأَلَةٌ: وَبَيْعُ الْمُكَاتَبِ قَبْلَ أَنْ يُؤَدِّيَ شَيْئًا مِنْ كِتَابَتِهِ جَائِزٌ، وَتَبْطُلُ الْكِتَابَةُ بِذَلِكَ، فَإِنْ أَدَّى مِنْهَا شَيْئًا حَرُمَ بَيْعُ مَا قَابَلَ مِنْهُ مَا أَدَّى، وَجَازَ بَيْعُ مَا قَابَلَ مِنْهُ مَا لَمْ يُؤَدِّ، وَبَطَلَتْ الْكِتَابَةُ فِيمَا بِيعَ مِنْهُ، وَبَقِيَ مَا قَابَلَ مِنْهُ مَا أَدَّى حُرًّا - مِثْلُ أَنْ يَكُونَ أَدَّى عُشْرَ كِتَابَتِهِ، فَإِنَّ عُشْرَهُ حُرٌّ - وَيَجُوزُ بَيْعُ تِسْعَةِ أَعْشَارِهِ، وَهَكَذَا فِي كُلِّ جُزْءٍ - كَثُرَ أَوْ قَلَّ - وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ، فَقَالَتْ طَائِفَةٌ: الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ وَلَوْ دِرْهَمٌ مِنْ كِتَابَتِهِ أَوْ أَقَلُّ، وَبَيْعُهُ جَائِزٌ مَا دَامَ عَبْدًا وَتُنْتَقَضُ الْكِتَابَةُ بِذَلِكَ، وَالْمُكَاتَبُ عِنْدَهُمْ مُعْتَقٌ بِصِفَةٍ - وَهَذَا قَوْلُ أَبِي سُلَيْمَانَ وَأَصْحَابِنَا.

١٥٥١ - Issue 1551: The sale of a mukatab is permissible before he pays anything of his kitabah, thereby nullifying the contract. If he pays any portion, the sale of the corresponding value to his payment becomes prohibited, while the sale of the remaining unpaid portion remains permissible. The kitabah becomes void in the sold portion, while the value equivalent to his payment becomes free. For example, if he pays one-tenth of his contractual sum, one-tenth of his value is emancipated. Nine-tenths may then be sold, and this ruling applies to every portion regardless of size. This matter has been disputed among scholars. One group holds that the mukatab remains a slave while any debt remains - even a dirham or less - and his sale remains valid as long as enslavement persists, annulling the kitabah. In their view, the mukatab is conditionally freed. This is the position of Abū Sulaymān and the scholars of our school.

وَقَالَتْ طَائِفَةٌ: الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ مِنْ كِتَابَتِهِ دِرْهَمٌ أَوْ أَقَلُّ، إلَّا أَنَّهُ لَا يَحِلُّ بَيْعُهُ إلَّا أَنْ يَعْجِزَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ - وَهَذَا قَوْلٌ ظَاهِرُ التَّنَاقُضِ؛ لِأَنَّهُ كَانَ عَبْدًا فَبَيْعُهُ جَائِزٌ مَا لَمْ يَأْتِ بِنَصٍّ بِالْمَنْعِ مِنْ بَيْعِهِ، وَلَا نَصَّ فِي ذَلِكَ.

A group of scholars held: The mukatab remains a slave as long as even a single dirham or less of his kitābah payment remains outstanding. However, it is impermissible to sell him unless he defaults—this is the opinion of Abū Ḥanīfah, Mālik, and al-Shāfiʻī. This view is clearly contradictory, for, since he is a slave, selling him is permissible unless there exists a textual prohibition against it, and there is no such text in this matter.

وَذَهَبَ قَوْمٌ إلَى أَنَّهُ إنْ أَدَّى رُبُعَ كِتَابَتِهِ فَهُوَ حُرٌّ - وَهُوَ غَرِيمٌ يُتْبَعُ بِمَا بَقِيَ عَلَيْهِ مِنْهَا -: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الْمُغِيرَةُ، قَالَ: سَمِعْت إبْرَاهِيمَ، وَالشَّعْبِيَّ يَقُولَانِ: كَانَ ابْنُ مَسْعُودٍ يَقُولُ فِي الْمُكَاتَبِ إذَا أَدَّى رُبُعَ قِيمَتِهِ فَهُوَ غَرِيمٌ لَا يُسْتَرَقُّ.

A group held that if a slave pays a quarter of his contractual obligation, he becomes free—while remaining liable for the debt to be pursued for what remains of it. It was narrated to us via the chain of Saʻīd ibn Manṣūr, from Hushaym, from al-Mughīrah, who said: I heard Ibrāhīm and al-Shaʻbī both state: Ibn Masʻūd ruled regarding a contracted slave that if he pays a quarter of his contractual valuation, he becomes liable for the debt who cannot be re-enslaved.

وَكَانَ زَيْدُ بْنُ ثَابِتٍ يَقُولُ: هُوَ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ.

Zayd ibn Thabit used to say: He remains a slave as long as a dirham is still

owed by him.

L24617 Ali ibn Abi Talib said: A mukatab is emancipated in proportion to what he has paid, remains in servitude in proportion to what remains unpaid, inherits in proportion to that, and is barred from inheritance in proportion to that.

وَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: الْمُكَاتَبُ يُعْتَقُ مِنْهُ بِقَدْرِ مَا أَدَّى، وَيُرَقُّ مِنْهُ بِقَدْرِ مَا بَقِيَ، وَيَرِثُ بِقَدْرِ ذَلِكَ، وَيُحْجَبُ بِقَدْرِ ذَلِكَ.

L24618 Through Sufyān ibn ʿUyaynah, from ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Masʿūd, from his uncle al-Qāsim ibn ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Masʿūd, from Jābir ibn Samurah, who said: ʿUmar ibn al-Khaṭṭāb said: "You are to grant *mukātaba* contracts to enslaved persons. Whichever of them pays half [of the agreed sum], he is no longer enslaved."

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ عَمِّهِ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ جَابِرِ بْنِ سَمُرَةَ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: تُكَاتِبُونَ مُكَاتَبِينَ فَأَيُّهُمْ - مَا - أَدَّى الشَّطْرَ فَلَا رِقَّ عَلَيْهِ.

L24619 It has also been narrated from Ibn Masʿud that when one allocates the third of the estate, they are considered a debtor.

وَرُوِيَ عَنْ ابْنِ مَسْعُودٍ أَيْضًا: إذْ أَدَّى الثُّلُثَ فَهُوَ غَرِيمٌ.

L24620 From the chain of Waki': Sufyān al-Thawrī reported from Manṣūr ibn al-Muʿtamir from Ibrāhīm, who said: It was said, "When the mukatab pays one-fourth, he becomes a debtor."

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ كَانَ يُقَالُ: إذَا أَدَّى الْمُكَاتَبُ الرُّبُعَ فَهُوَ غَرِيمٌ.

L24621 From the narration of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ: If the *mukatab* still owes a quarter of the amount stipulated in his *mukataba* contract and pays the remaining three-quarters, he becomes a debtor and does not return to enslavement.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ إذَا بَقِيَ عَلَى الْمُكَاتَبِ رُبُعُ كِتَابَتِهِ وَأَدَّى سَائِرَهَا فَهُوَ غَرِيمٌ، وَلَا يَعُودُ عَبْدًا.

L24622 From the narration of ʿAbd al-Razzaq through ʿIkrimah ibn ʿAmmar through Yahya ibn Abi Kathir, who said: Ibn ʿAbbas stated: If a mukatab (a slave contracted for emancipation) has five awāq remaining, or five dhawd, or five wasqs, he becomes a liable debtor. It is also narrated from him that if he executes the emancipation document, he becomes a liable debtor.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عِكْرِمَةَ بْنِ عَمَّارٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: قَالَ ابْنُ عَبَّاسٍ: إذَا بَقِيَ عَلَى الْمُكَاتَبِ خَمْسُ أَوَاقٍ: أَوْ خَمْسُ ذَوْدٍ، أَوْ خَمْسَةُ أَوْسُقٍ: فَهُوَ غَرِيمٌ - وَرُوِيَ عَنْهُ أَيْضًا إذَا أَخَذَ الصَّكَّ فَهُوَ غَرِيمٌ.

L24623 A group of scholars has endorsed all these positions.

وَبِكُلِّ هَذِهِ الْأَقْوَالِ قَالَتْ طَائِفَةٌ مِنْ الْعُلَمَاءِ.

L24624 Ali said: The proof in case of dispute is that to which Allah, the Exalted, has commanded us to refer back—if we are believers—from His Book and the Sunnah of His Messenger, peace and blessings be upon him.

قَالَ عَلِيٌّ: الْحُجَّةُ عِنْدَ التَّنَازُعِ هُوَ مَا أَمَرَ اللَّهُ - تَعَالَى - بِالرُّجُوعِ إلَيْهِ - إنْ كُنَّا مُؤْمِنِينَ - مِنْ كِتَابِهِ وَسُنَّةِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L24625–24627 It has been narrated to us through Al-Bukhari's chain: from Qutaybah, from Al-Layth ibn Sa'd, from Ibn Shihāb, from 'Urwah ibn al-Zubayr, from 'Ā'ishah the Mother of the Believers, who informed him: "Barirah came seeking her help regarding her manumission contract while she had not yet paid any portion of it. 'Ā'ishah said to her: 'Return to your owners. If they agree that I pay your manumission fee on your behalf while your allegiance (walā') becomes mine, I will do so.' Barirah mentioned this to her owners. But they refused and said: 'If she wishes to...'" "Seek reward [by doing it], then do it! And will the clientage belong to us?" She mentioned this to the Messenger of Allah (peace be upon him), and the Messenger of Allah (peace be upon him) said: "Purchase [the slave] and free them, for indeed the clientage belongs to the one who frees [them]."

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا قُتَيْبَةُ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنِ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَخْبَرَتْهُ «أَنَّ بَرِيرَةَ جَاءَتْ تَسْتَعِينُهَا فِي كِتَابَتِهَا وَلَمْ تَكُنْ قَضَتْ مِنْهَا شَيْئًا، فَقَالَتْ لَهَا عَائِشَةُ: ارْجِعِي إِلَى أَهْلِكِ فَإِنْ أَحَبُّوا أَنْ أَقْضِيَ عَنْكِ كِتَابَتَكِ وَيَكُونَ وَلَاؤُكِ لِي فَعَلْتُ؟ فَذَكَرَتْ ذَلِكَ بَرِيرَةُ لِأَهْلِهَا؟ فَأَبَوْا وَقَالُوا: إِنْ شَاءَتْ أَنْ تَحْتَسِبَ عَلَيْكِ فَلْتَفْعَلْ، وَيَكُونُ لَنَا وَلَاؤُكِ؟ فَذَكَرَتْ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ابْتَاعِي وَأَعْتِقِي فَإِنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ» .

L24628 From the path of Al-Bukhārī: Khallād ibn Yaḥyā narrated to us: ʿAbd al-Wāḥid ibn Ayman al-Makkī narrated to us, from his father, who said: I entered upon ʿĀ'ishah, and she said: "Barirah came to me while she was a mukatabah and said: 'O Mother of the Believers, buy me, for my owners are selling me, so emancipate me?' I said: 'Yes.' She then said: 'But my owners will not sell me unless they stipulate [retaining] my patronage.' I replied: 'I have no need for you.' When the Prophet (peace be upon him) heard of this or it was conveyed to him, he said: 'What is the matter with Barirah? Buy her and emancipate her, and let them stipulate whatever they wish.' She [ʿĀ'ishah] said: 'So I bought her and emancipated her,' and she mentioned the remainder of the report."

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا خَلَّادُ بْنُ يَحْيَى نا عَبْدُ الْوَاحِدِ بْنُ أَيْمَنَ الْمَكِّيُّ عَنْ أَبِيهِ قَالَ: دَخَلْتُ عَلَى عَائِشَةَ فَقَالَتْ: «دَخَلَتْ عَلَيَّ بَرِيرَةُ وَهِيَ مُكَاتَبَةٌ فَقَالَتْ: يَا أُمَّ الْمُؤْمِنِينَ اشْتَرِينِي فَإِنَّ أَهْلِي يَبِيعُونِي فَأَعْتِقِينِي؟ فَقَالَتْ: نَعَمْ، فَقَالَتْ: إِنَّ أَهْلِي لَا يَبِيعُونِي حَتَّى يَشْتَرِطُوا وَلَائِي؟ فَقَالَتْ: لَا حَاجَةَ لِي فِيكِ، فَسَمِعَ ذَلِكَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ بَلَغَهُ فَقَالَ: مَا شَأْنُ بَرِيرَةَ اشْتَرِيهَا فَأَعْتِقِيهَا وَلْيَشْتَرِطُوا مَا شَاءُوا؟ قَالَتْ فَاشْتَرَيْتُهَا فَأَعْتَقْتُهَا وَذَكَرَتْ بَاقِيَ الْخَبَرِ» .

L24629 The case of Barirah's sale while she was in a state of mukataba—for nine awqiyyah over nine years, one awqiyyah per year—is more well-known than the sun. She had not yet paid anything from her mukataba, and she was sold under those terms. Her owners offered her for sale while she was in mukataba, with the Prophet's knowledge (peace and blessings of Allah be upon him), and he did not censure them. Rather, he ordered her purchase, emancipation, and that the wala' (patronage right) belonged to the one who freed her. This is an inescapable fact. When they obstinately argued regarding it, a faction falsely claimed she had defaulted—a pure and sheer fabrication. No narrator ever reported her defaulting, nor does the tradition

فَأَمْرُ بَيْعِ بَرِيرَةَ وَهِيَ مُكَاتَبَةٌ - عَلَى تِسْعِ أَوَاقٍّ فِي تِسْعِ سِنِينَ، كُلَّ سَنَةٍ أُوقِيَّةٌ، أَشْهَرُ مِنَ الشَّمْسِ، وَأَنَّهَا لَمْ تَكُنْ أَدَّتْ بَعْدُ مِنْ كِتَابَتِهَا شَيْئًا، وَأَنَّهَا بِيعَتْ كَذَلِكَ، وَأَنَّ أَهْلَهَا عَرَضُوهَا لِلْبَيْعِ - وَهِيَ مُكَاتَبَةٌ - بِعِلْمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُنْكِرُ ذَلِكَ عَلَيْهِمْ، بَلْ أَمَرَ بِشِرَائِهَا وَعِتْقِهَا وَالْوَلَاءِ لِمَنْ أَعْتَقَهَا، وَهَذَا مَا لَا مُخَلَّصَ مِنْهُ، فَبَلَّحُوا عِنْدَهَا -: فَقَالَتْ طَائِفَةٌ: إِنَّهَا كَانَتْ عَجَزَتْ - وَهَذَا كَذِبٌ بَحْتٌ مُجَرَّدٌ، مَا رَوَى قَطُّ أَحَدٌ أَنَّهَا كَانَتْ عَجَزَتْ، وَلَا جَاءَ ذَلِكَ عَنْهَا فِي الْخَبَرِ، وَأَيْنَ الْعَجْزُ مِنْهَا وَهِيَ فِي اسْتِقْبَالِ تِسْعَةِ

mention it. How could she default when she was at the outset of nine years? Moreover, ʿAisha was with the Messenger of Allah (peace and blessings of Allah be upon him) at the time, competent in her affairs—purchasing and emancipating—while she had only resided with the Messenger of Allah for nine years.

أَعْوَامٍ، وَعَائِشَةُ بَعْدُ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَائِزَةُ الْأَمْرِ تَبْتَاعُ وَتُعْتِقُ، وَلَمْ تُقِمْ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا تِسْعَةَ أَعْوَامٍ فَقَطْ.

L24630 Some of them cited as evidence the words of Allah, the Most High: {Fulfill the contracts} [Al-Mā'idah: 1]. We replied: Yes, one is commanded to fulfill the contract and does not have the right to annul it. However, when it leaves his ownership, his contract regarding others becomes invalid, according to the words of Allah, the Most High: {No soul bears the burden of another} [Al-Anʿām: 164].[17]

وَاحْتَجَّ بَعْضُهُمْ بِقَوْلِ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] فَقُلْنَا: نَعَمْ وَهُوَ مَأْمُورٌ بِالْوَفَاءِ بِالْعَقْدِ وَلَيْسَ لَهُ نَقْضُهُ لَكِنْ إِذَا خَرَجَ عَنْ مِلْكِهِ بَطَلَ عَقْدُهُ عَنْ غَيْرِهِ لِقَوْلِ اللَّهِ - تَعَالَى -: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

L24631–24633 What is astonishing is that those who cite this as evidence permit retracting emancipation in wills, yet they do not invoke "Fulfill the contracts" [Al-Mā'idah: 1] against their own position. This is not a consensus because Sufyān al-Thawrī does not permit retracting emancipation or wills. Yet all of them permit selling a slave when his master says to him, "If my father comes, then you..." He is free, yet they nullify his sale through this very contract, and they do not sanction his participation in it unless he relinquishes ownership. Thus, the immense nature of their contradiction and the invalidity of their statement became manifest.[18]

وَالْعَجَبُ أَنَّ الْمُحْتَجِّينَ بِهَذَا يَرَوْنَ الرُّجُوعَ فِي الْعِتْقِ فِي الْوَصِيَّةِ، وَلَا يَحْتَجُّونَ عَلَى أَنْفُسِهِمْ بِ {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] وَلَيْسَ إِجْمَاعًا فَإِنَّ سُفْيَانَ الثَّوْرِيَّ لَا يَرَى الرُّجُوعَ فِي الْعِتْقِ وَالْوَصِيَّةِ، وَكُلُّهُمْ يُجِيزُ بَيْعَ الْعَبْدِ يَقُولُ لَهُ سَيِّدُهُ: إِنْ جَاءَ أَبِي فَأَنْتَ حُرٌّ، وَيُبْطِلُونَ بَيْعَهُ بِهَذَا الْعَقْدِ، وَلَا يُجِيزُونَ لَهُ فِي الْعَقْدِ بِغَيْرِ إِخْرَاجِهِ عَنْ مِلْكِهِ فَظَهَرَ عَظِيمُ تَنَاقُضِهِمْ، وَفَسَادُ قَوْلِهِمْ.

L24634 If someone cites the narrations which state, "A mukātab remains a slave as long as a single dirham is owed," they are all discarded: one of them is transmitted through ʿAmr ibn Shuʿayb, from his father, from his grandfather—and it is a written record. How often they contradicted this chain of transmission whenever it opposed their school's doctrine!

فَإِنْ ذَكَرَ ذَاكِرُ الْآثَارِ الَّتِي جَاءَتْ «الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ» فَإِنَّهَا كُلُّهَا سَاقِطَةٌ -: أَحَدُهَا - مِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ، وَهِيَ صَحِيفَةٌ، وَكَمْ خَالَفُوا هَذِهِ الطَّرِيقَ إِذَا خَالَفَتْ مَذْهَبَهُمْ.

L24635 And the other [narration]—through the path of ʿAṭāʾ ibn al-Sāʾib from Ibn ʿAmr ibn al-ʿĀṣ, with no record of direct hearing—and the ḥadīth is munqatiʿ (broken).

وَالْآخَرُ - مِنْ طَرِيقِ عَطَاءِ بْنِ السَّائِبِ عَنْ ابْنِ عَمْرِو بْنِ الْعَاصِ وَلَا سَمَاعَ لَهُ مِنْهُ - وَالْحَدِيثُ مُنْقَطِعٌ.

L24636 Then, if it were valid, there would only be a stipulation in both cases specify-

ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِمَا إِلَّا تَحْدِيدٌ: أَنَّهُ عَبْدٌ مَا بَقِيَ عَلَيْهِ عُشْرُ مُكَاتَبَتِهِ أَوْ عُشْرُ عُشْرِهَا.

[17] **Qur'an references (L24630):** Qur'an 6:164 (Al-An'am); Qur'an 5:1 (Al-Ma'idah).
[18] **Qur'an references (L24631):** Qur'an 5:1 (Al-Ma'idah).

ing that he remains a slave for as long as a tenth of his *mukatabah* remains owed or a tenth of a tenth of it.

L24637 A fabricated and false report via the chain of Ibn ʿUmar; thus all of them were invalidated.

L24638 As for when he pays a portion of his kitabah, according to what we have reported through the chain of Aḥmad ibn Shuʿayb: Aḥmad ibn ʿĪsā al-Dimashqī narrated to us, Yazīd ibn Hārūn narrated to us, Ḥammād ibn Salama narrated to us from Qatādah and Ayyūb al-Sikhtiyānī. Qatādah said: from Khilāṣ from ʿAlī ibn Abī Ṭālib, and Ayyūb said: from ʿIkrimah from Ibn ʿAbbās. Then both ʿAlī and Ibn ʿAbbās agreed, reporting from the Prophet—peace and blessings of Allāh be upon him—that he said: "The mukatab is freed in proportion to what he has paid, the hadd punishment is applied to him in proportion to the portion by which he has been freed, and he is inherited from in proportion to the portion by which he has been freed."

L24639 Ali said: "This is a chain of narration of utmost authenticity, and we do not know anyone who criticized it except that some people transmitted it as mursal. This is astonishing because those who raise this objection claim: 'The mursal is stronger than the musnad, or equivalent to it.' Now the mursal transmission by those who narrated it is invalidated, and the chain from those who transmitted it as musnad is invalidated because of it. No one follows this path in religion except those devoid of faith and shame - and we seek refuge in Allah from abandonment."

L24640 The Issue of the Sale of the Mudabbar (Male Slave Granted Deferred Freedom) and the Mudabbara (Female Slave Granted Deferred Freedom)

L24641 Issue 1552: The sale of a male slave granted deferred manumission (mudabbar) and a female slave granted deferred manumission (mudabbara) is permissible without necessity or debt; no reprehensibility applies to any of this.

L24642 tadbīr is invalidated by sale, just as a bequest is invalidated by the sale of the slave whose emancipation was stipulated in the bequest, and there is no difference—this is the opinion of al-Shāfiʿī and Abū Sulaymān.

وَخَبَرٌ مَوْضُوعٌ مِنْ طَرِيقِ ابْنِ عُمَرَ مَكْذُوبٌ - فَسَقَطَتْ كُلُّهَا.

وَأَمَّا إِذَا أَدَّى شَيْئًا مِنْ كِتَابَتِهِ فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ عِيسَى الدِّمَشْقِيُّ نا يَزِيدُ بْنُ هَارُونَ أَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ، وَأَيُّوبَ السِّخْتِيَانِيِّ، قَالَ قَتَادَةُ: عَنْ خِلَاسٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَقَالَ أَيُّوبُ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ، ثُمَّ اتَّفَقَ عَلِيٌّ، وَابْنُ عَبَّاسٍ، كِلَاهُمَا عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «الْمُكَاتَبُ يُعْتَقُ مِنْهُ بِقَدْرِ مَا أَدَّى وَيُقَامُ عَلَيْهِ الْحَدُّ بِقَدْرِ مَا عَتَقَ مِنْهُ وَيُورَثُ بِقَدْرِ مَا عَتَقَ مِنْهُ».

قَالَ عَلِيٌّ: وَهَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ، وَمَا نَعْلَمُ أَحَدًا عَابَهُ إِلَّا بِأَنَّهُ قَدْ أَرْسَلَهُ بَعْضُ النَّاسِ فَكَانَ هَذَا عَجَبًا لِأَنَّ الْمُعْتَرِضِينَ بِهَذَا يَقُولُونَ: إِنَّ الْمُرْسَلَ أَقْوَى مِنَ الْمُسْنَدِ، أَوْ مِثْلُهُ، فَالْآنَ صَارَ إِرْسَالُ مَنْ أَرْسَلَ يُبْطِلُ، وَيُبْطِلُ بِهِ الْإِسْنَادُ مِمَّنْ أَسْنَدَهُ، وَمَا يَسْلُكُ فِي دِينِهِ هَذِهِ الطَّرِيقَ إِلَّا مَنْ لَا دِينَ لَهُ، وَلَا حَيَاءَ - وَنَعُوذُ بِاللَّهِ مِنَ الْخِذْلَانِ.

[مَسْأَلَةُ بَيْعُ الْمُدَبَّرِ وَالْمُدَبَّرَةِ]

١٥٥٢ - مَسْأَلَةٌ: وَبَيْعُ الْمُدَبَّرِ، وَالْمُدَبَّرَةِ، حَلَالٌ لِغَيْرِ ضَرُورَةٍ، وَلِغَيْرِ دَيْنٍ لَا كَرَاهَةَ فِي شَيْءٍ مِنْ ذَلِكَ.

وَيَبْطُلُ التَّدْبِيرُ بِالْبَيْعِ، كَمَا تَبْطُلُ الْوَصِيَّةُ بِبَيْعِ الْمُوصَى بِعِتْقِهِ وَلَا فَرْقَ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

وَقَالَ أَحْمَدُ: يُبَاعُ الْمُدَبَّرُ - كَمَا قُلْنَا - وَلَا تُبَاعُ الْمُدَبَّرَةُ -.

L24643–24644 Aḥmad said: The male slave designated for posthumous manumission is sold—as we have said—but the female slave designated for posthumous manumission is not sold—.

وَهَذَا تَفْرِيقٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ، وَقَالَ مَالِكٌ: لَا يُبَاعُ الْمُدَبَّرُ وَلَا الْمُدَبَّرَةُ إِلَّا فِي الدَّيْنِ فَقَطْ، فَإِنْ كَانَ الدَّيْنُ قَبْلَ التَّدْبِيرِ بِيعَا فِيهِ فِي حَيَاةِ سَيِّدِهِمَا، وَإِنْ كَانَ الدَّيْنُ بَعْدَ التَّدْبِيرِ لَمْ يُبَاعَا فِيهِ فِي حَيَاةِ الْمُدَبِّرِ، وَبِيعَا فِيهِ بَعْدَ مَوْتِهِ، فَإِنْ لَمْ يَحْمِلْ الثُّلُثَ الْمُدَبَّرُ، وَلَا دَيْنَ هُنَالِكَ: أُعْتِقَ مِنْهُ مَا يَحْمِلُ الثُّلُثَ وَرَقَّ سَائِرُهُ.

L24645 This is a distinction without any proof of its validity. Mālik said: The male slave designated for posthumous emancipation and the female slave designated for posthumous emancipation may not be sold except to settle a debt exclusively. If the debt existed prior to the designation, they may be sold for it during their master's lifetime. If the debt arose after the designation, they may not be sold for it during the lifetime of the one who designated them, but they may be sold for it after his death. If the third of the estate is insufficient to cover the emancipation of the designated slave, and there is no debt present, the portion of the slave that the third can cover is emancipated, and the remainder remains enslaved.

قَالَ: فَإِنْ بِيعَ فِي الْحَيَاةِ بِغَيْرِ دَيْنٍ فَأَعْتَقَهُ الَّذِي اشْتَرَاهُ نَفَذَ الْبَيْعُ وَجَازَ.

L24646 He said: If he is sold during the lifetime without being due to a debt, and the purchaser emancipates him, the sale is executed and valid.

وَهَذِهِ أَقْوَالٌ فِي غَايَةِ التَّنَاقُضِ، وَلَئِنْ كَانَ بَيْعُهُ حَرَامًا فَمَا يَحِلُّ بَيْعُهُ لَا فِي دَيْنٍ وَلَا فِي غَيْرِهِ - أَعْتَقَ أَوْ لَمْ يُعْتِقْ - كَمَا لَا تُبَاعُ أُمُّ الْوَلَدِ وَلَا يَنْفُذُ بَيْعُهَا - وَإِنْ أُعْتِقَتْ - وَلَئِنْ كَانَ بَيْعُهُ حَلَالًا فَمَا يَحْرُمُ مَتَى شَاءَ سَيِّدُهُ بَيْعَهُ.

L24647 These assertions are utterly contradictory. If selling him is forbidden, then it is impermissible to sell him—whether in debt or otherwise, whether emancipated or not—just as the *umm al-walad* cannot be sold, nor is her sale valid even if emancipated. Conversely, if selling him is permissible, it cannot be prohibited whenever his master wishes to sell him.

وَمَا نَعْلَمُ لَهُمْ فِي هَذَا التَّقْسِيمِ حُجَّةً لَا مِنْ نَصٍّ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ.

L24648 We are unaware of any argument they have in this categorization—neither from a textual source, nor a weak narration, nor a statement of a Companion, nor analogy, nor an opinion with a sound basis.

وَقَالَ أَبُو حَنِيفَةَ: لَا يُبَاعُ الْمُدَبَّرُ - لَا فِي دَيْنٍ وَلَا فِي غَيْرِ دَيْنٍ لَا فِي الْحَيَاةِ وَلَا بَعْدَ الْمَوْتِ -: وَهُوَ مِنْ الثُّلُثِ، فَإِنْ لَمْ يَحْمِلْهُ الثُّلُثُ اسْتَسْعَى فِي ثُلُثَيْ قِيمَتِهِ وَقَالَ زُفَرُ: هُوَ

L24649 Abu Hanifah said: A *mudabbar* (slave granted deferred emancipation) cannot be sold—neither in debt nor outside debt, neither during the lifetime nor after death. He is to be accounted for from the third. If the third cannot cover his value, he is compelled to work off two-thirds of his value. Zufar said: He is to be taken from the principal of the estate, like the *umm al-

walad* (a slave who bears her master's child). We know of no valid evidence for their opinion whatsoever, nor any basis in the statement of Allah, the Exalted: *"Fulfill the contracts"* [Quran 5:1].[19]

L24650 As for the Malikis, they permitted its sale in the instances we have mentioned, yet they did not fulfill the contracts.

L24651 As for the Ḥanafīs, they required compensation within two-thirds of the slave's value but failed to honor the contractual obligations.

L24652 Abu Muhammad said: They advanced certain proofs—which we shall mention, Allah the Exalted willing—including a report narrated by Abd al-Baqi ibn Qani' from Musa ibn Zakariyya from Ali ibn Harb from Amr ibn Abdul-Jabbar, a trustworthy narrator, from his uncle Ubaydah ibn Hassan from Ayyub from Nafi' from Ibn Umar from the Prophet (peace be upon him): "A slave designated for deferred emancipation (mudabbar) is not to be sold or purchased, and his freedom is to be granted from [the proceeds of] one-third [of the estate]."

L24653–24654 This is a fabricated report because Abd al-Baqi is a transmitter mired in every defect, and his narrations have been discarded once the defect within them became manifest.

L24655 Then the rest of those who transmitted it up to Ayyūb are layers of darkness, one over another - all of them being unknown narrators. As for ʿAmr ibn ʿAbd al-Jabbār, if he is al-Sinjārī, he is weak (as a narrator); but if he is another, he is unknown. Even if the narration were authentic, the Mālikī school would have opposed it.

L24656 The Hanafis permitted the sale of a mudabbar (a slave designated for posthumous freedom) under certain circumstances. They held that if a slave was jointly owned by two individuals—where one designated his share for posthumous freedom (tadbeer), while the other manumitted his own share—the one who applied tadbeer must be liable for the value of his partner's share, which the latter manumitted. This effectively amounts to a sale of

مِنْ رَأْسِ الْمَالِ كَأُمِّ الْوَلَدِ، وَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا، وَلَا مُتَعَلَّقَ لَهُمْ فِي قَوْلِ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] .

أَمَّا الْمَالِكِيُّونَ فَأَجَازُوا بَيْعَهُ فِي مَوَاضِعَ قَدْ ذَكَرْنَاهَا فَلَمْ يَفُوا بِالْعُقُودِ.

وَأَمَّا الْحَنَفِيُّونَ فَاسْتَسْعَوْهُ فِي ثُلُثَيْ قِيمَتِهِ فَلَمْ يَفُوا بِالْعُقُودِ.

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجُّوا بِأَشْيَاءَ نَذْكُرُهَا إِنْ شَاءَ اللَّهُ - تَعَالَى -: مِنْهَا: خَبَرٌ رَوَاهُ عَبْدُ الْبَاقِي بْنُ قَانِعٍ عَنْ مُوسَى بْنِ زَكَرِيَّا عَنْ عَلِيِّ بْنِ حَرْبٍ عَنْ عَمْرِو بْنِ عَبْدِ الْجَبَّارِ ثِقَةٌ عَنْ عَمِّهِ عُبَيْدَةَ بْنِ حَسَّانَ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْمُدَبَّرُ لَا يُبَاعُ وَلَا يُشْتَرَى وَهُوَ حُرٌّ مِنْ الثُّلُثِ» .

وَهَذَا خَبَرٌ مَوْضُوعٌ؛ لِأَنَّ عَبْدَ الْبَاقِي رَاوِي كُلِّ بَلِيَّةٍ، وَقَدْ تُرِكَ حَدِيثُهُ، إذْ ظَهَرَ فِيهِ الْبَلَاءُ.

ثُمَّ سَائِرُ مَنْ رَوَاهُ إلَى أَيُّوبَ ظُلُمَاتٌ بَعْضُهَا فَوْقَ بَعْضٍ، كُلُّهُمْ مَجْهُولُونَ، وَعَمْرُو بْنُ عَبْدِ الْجَبَّارِ إنْ كَانَ هُوَ السِّنْجَارِيَّ فَهُوَ ضَعِيفٌ وَإِنْ كَانَ غَيْرَهُ فَهُوَ مَجْهُولٌ - ثُمَّ لَوْ صَحَّ لَكَانَ الْمَالِكِيُّونَ قَدْ خَالَفُوهُ.

وَقَدْ أَجَازَ الْحَنَفِيُّونَ بَيْعَ الْمُدَبَّرِ فِي بَعْضِ الْأَحْوَالِ، وَهُوَ أَنَّهُمْ قَالُوا فِي عَبْدٍ بَيْنَ اثْنَيْنِ دَبَّرَهُ أَحَدُهُمَا ثُمَّ أَعْتَقَ الْآخَرُ نَصِيبَهُ: فَإِنَّ عَلَى الَّذِي دَبَّرَ نَصِيبَهُ أَنْ يَضْمَنَ قِيمَةَ نَصِيبِ صَاحِبِهِ الَّذِي أَعْتَقَ حِصَّتَهُ - وَهَذَا بَيْعٌ لِلْمُدَبَّرِ - فَقَدْ خَالَفُوا هَذَا الْخَبَرَ الْمَوْضُوعَ مَعَ احْتِجَاجِهِمْ بِهِ.

[19] **Qur'an references (L24649):** Qur'an 5:1 (Al-Ma'idah).

the mudabbar. Thus, they contradicted this forged hadith despite their own reliance on it as evidence.

L24657 Indeed, it is truly astonishing how some reject the hadiths on the sale of a mukātab, the fraudulent withholding of milk from livestock to deceive buyers, and the prohibition of selling a dog—despite their sound chains of transmission and widespread circulation—and then rely on this fabrication as evidence.

L24658 They cited what was narrated to us through the chain of Abū Jaʿfar Muḥammad ibn ʿAlī ibn al-Ḥusayn: "The Messenger of Allāh—peace be upon him—sold the service of a *mudabbar*." This is a *mursal* narration, and no authoritative evidence can be derived from a *mursal*. Even if it were authentic, it would serve as evidence against the Ḥanafīs and Mālikīs, for they do not recognize the validity of selling a *mudabbar*'s service. They have no transmitted evidence whatsoever apart from what we have mentioned.

L24659 They cited a narration reported by Nuʿaym ibn Ḥammād from Ibn al-Mubārak from Ibn Jurayj from Abū al-Zubayr that he heard Jābir ibn ʿAbd Allāh say concerning the offspring of a *mudabbara* slave woman designated for emancipation upon her master's death: "When her master dies, we deem them free, and her child is likewise emancipated through her, as if he were a limb of hers."

L24660–24661 From the narration of Ibn Wahb via ʿAbd al-Jabbar ibn ʿUmar, who narrated from Ibn Shihab and Rabiʿah—both of them said: Indeed, ʿAishah, the Mother of the Believers, sold a slave girl she had designated for eventual emancipation among the Bedouins. When ʿUmar was informed of this, he sent to search for the slave girl but could not find her. He then sent to ʿAishah, took the payment, purchased another slave girl with it, and placed her in her position under the same *tadbeer* stipulation.

L24662 And via the chain of Wakiʿ: I am Ḥammād ibn Zayd, from Ayyūb, from Nāfiʿ, from Ibn ʿUmar, that he held it reprehensible (*makrūh*) to sell a *mudabbar* (a slave designated for eventual freedom). This is all they have cited as justification from the Companions—may Allah be pleased with them—and none of it constitutes valid evidence in their favor.

وَإِنَّ الْعَجَبَ لَيَكْثُرُ مِمَّنْ يَرُدُّ حَدِيثَ بَيْعِ الْمُكَاتَبِ، وَحَدِيثَ الْمُصَرَّاةِ، وَحَدِيثَ النَّهْيِ عَنْ بَيْعِ الْكَلْبِ، مَعَ صِحَّةِ أَسَانِيدِهَا وَانْتِشَارِهَا ثُمَّ يَحْتَجُّ بِهَذِهِ الْكَذِبَةِ.

وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ أَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَاعَ خِدْمَةَ الْمُدَبَّرِ» وَهَذَا مُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ - ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَى الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ، أَنَّهُمْ لَا يَرَوْنَ بَيْعَ خِدْمَةِ الْمُدَبَّرِ: مَا لَهُمْ أَثَرٌ غَيْرُ مَا ذَكَرْنَا.

وَاحْتَجُّوا بِرِوَايَةِ عَنْ نُعَيْمِ بْنِ حَمَّادٍ عَنْ ابْنِ الْمُبَارَكِ عَنْ ابْنِ جُرَيْجٍ عَنْ أَبِي الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ فِي أَوْلَادِ الْمُدَبَّرَةِ: إِذَا مَاتَ سَيِّدُهَا مَا نَرَاهُمْ إِلَّا أَحْرَارًا، وَوَلَدُهَا كَذَلِكَ مِنْهَا فَكَأَنَّهُ عُضْوٌ مِنْهَا.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ عَنْ ابْنِ شِهَابٍ، وَرَبِيعَةَ، قَالَا جَمِيعًا: إِنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ بَاعَتْ مُدَبَّرَةً لَهَا فِي الْأَعْرَابِ، فَأُخْبِرَ بِذَلِكَ عُمَرُ فَبَعَثَ فِي طَلَبِ الْجَارِيَةِ فَلَمْ يَجِدْهَا، فَأَرْسَلَ إِلَى عَائِشَةَ فَأَخَذَ الثَّمَنَ فَاشْتَرَى بِهِ جَارِيَةً فَجَعَلَهَا مَكَانَهَا عَلَى تَدْبِيرِهَا.

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ كَرِهَ بَيْعَ الْمُدَبَّرِ - هَذَا كُلُّ مَا مَوَّهُوا بِهِ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ.

L24663 As for the report of ‘Umar, it is rejected because al-Zuhri and Rabi’ah were born over thirty-five years and more after ‘Umar’s death; thus, it has an interrupted chain of transmission—

أَمَّا خَبَرُ عُمَرَ: فَسَاقِطٌ؛ لِأَنَّ الزُّهْرِيَّ، وَرَبِيعَةَ، لَمْ يُولَدَا إِلَّا بَعْدَ مَوْتِ عُمَرَ بِخَمْسٍ وَثَلَاثِينَ سَنَةً وَزِيَادَةً، فَهُوَ مُنْقَطِعٌ -.

L24664 And also: In it is ‘Abd al-Jabbar ibn ‘Umar, and he is weak.

وَأَيْضًا: فَفِيهِ عَبْدُ الْجَبَّارِ بْنُ عُمَرَ وَهُوَ ضَعِيفٌ.

L24665 Then, if it were valid, this would count against them rather than support them, for several reasons. First: the Mother of the Believers opposed his position in this matter. Therefore, his statement cannot serve as conclusive evidence against her, nor does it hold greater authority than her statement. This being a dispute, the obligation in such cases is to refer back to the Quran and the Sunnah—and both permit the sale of a *mudabbar*—a slave designated for posthumous freedom.

ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا عَلَيْهِمْ لَا لَهُمْ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّ أُمَّ الْمُؤْمِنِينَ قَدْ خَالَفَتْهُ فِي ذَلِكَ، فَلَيْسَ قَوْلُهُ حُجَّةً عَلَيْهَا، وَلَا أَوْلَى مِنْ قَوْلِهَا، وَهَذَا تَنَازُعٌ، فَالْوَاجِبُ عِنْدَ التَّنَازُعِ الرَّدُّ إِلَى الْقُرْآنِ، وَالسُّنَّةِ، وَهُمَا يُبِيحَانِ بَيْعَ الْمُدَبَّرِ.

L24666 And the second:

وَالثَّانِي -

L24667 They have opposed him because he took the price to purchase with it a female slave and subsequently appointed her as a *mudabbara* in her place. May God protect the Commander of the Faithful from this corrupt, evidently defective ruling, as it is forbidden to sell one female slave due to another (female slave) whose sale is unlawful.

أَنَّهُمْ قَدْ خَالَفُوهُ، لِأَنَّ فِيهِ أَنَّهُ قَدْ أَخَذَ الثَّمَنَ فَابْتَاعَ بِهِ جَارِيَةً فَجَعَلَهَا مُدَبَّرَةً مَكَانَهَا، وَيُعِيذُ اللَّهُ أَمِيرَ الْمُؤْمِنِينَ مِنْ هَذَا الْحُكْمِ الْفَاسِدِ، الظَّاهِرِ الْعَوَارِ، إِذْ يَحْرُمُ بَيْعُ مَمْلُوكَةٍ مِنْ أَجْلِ مَمْلُوكَةٍ أُخْرَى بِيعَتْ لَا يَحِلُّ بَيْعُهَا.

L24668 According to this, it becomes incumbent upon one who sells a free person to purchase a slave with the proceeds and emancipate them in their place. This contradicts the words of Allah, Exalted is He: “No soul earns a burden except against itself, nor does any bearer of burdens bear the burden of sin of another” [Al-An‘ām 6:164].[20]

وَيَلْزَمُ عَلَى هَذَا مَنْ بَاعَ حُرًّا أَنْ يَبْتَاعَ بِالثَّمَنِ عَبْدًا فَيُعْتِقَهُ مَكَانَهُ، وَهَذَا خِلَافُ قَوْلِ اللَّهِ - تَعَالَى -: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

L24669 And how if the price is lost, or no slave is found for it, or slaves are found for it, or the sold female slave is found after this other female has been designated for eventual freedom in her place? Perhaps this one dies while still owned - what is the ruling? Or perhaps she lives, and the sold female slave dies while owned - what is the ruling in this confusion? Allah is far

وَكَيْفَ إِنْ ذَهَبَ الثَّمَنُ أَوْ لَمْ تُوجَدْ بِهِ رَقَبَةٌ أَوْ وُجِدَتْ بِهِ رِقَابٌ أَوْ وُجِدَتْ الْمَبِيعَةُ بَعْدَ أَنْ جُعِلَتْ هَذِهِ الْأُخْرَى مُدَبَّرَةً مَكَانَهَا، وَلَعَلَّ هَذِهِ تَمُوتُ مَمْلُوكَةً، فَكَيْفَ الْعَمَلُ؟ أَوْ لَعَلَّهَا تَعِيشُ وَتَمُوتُ الْمَبِيعَةُ مَمْلُوكَةً فَكَيْفَ الْعَمَلُ فِي هَذَا التَّخْلِيطِ؟ حَاشَا لِلَّهِ مِنْ هَذَا - فَبَطَلَ تَعَلُّقُهُمْ بِقَوْلِ عُمَرَ.

[20] **Qur’an references (L24668):** Qur’an 6:164 (Al-An’am).

above such a thing - thus their reliance on the statement of Umar becomes invalid.

L24670 As for the ḥadīth of Jābir, they have no basis in it whatsoever—it is mere obfuscation on their part. For it contains no prohibition against selling a mudabbara at all, but rather pertains solely to the ruling regarding her child if she herself is emancipated.

وَأَمَّا خَبَرُ جَابِرٍ: فَلَا مُتَعَلَّقَ لَهُمْ فِيهِ أَصْلًا، وَإِنَّمَا هُوَ تَمْوِيهٌ مِنْهُمْ مُجَرَّدٌ؛ لِأَنَّهُ لَيْسَ فِيهِ الْمَنْعُ مِنْ بَيْعِ الْمُدَبَّرَةِ أَصْلًا، وَإِنَّمَا فِيهِ حُكْمُ وَلَدِهَا إِنْ عَتَقَتْ هِيَ فَقَطْ.

L24671 If they had any modesty, they would not have distorted the religion with such things as this. How could they do so, especially when what is narrated from Jābir contradicts their claims?

وَلَوْ كَانَ لَهُمْ حَيَاءٌ مَا مَوَّهُوا فِي الدِّينِ بِمِثْلِ هَذَا، فَكَيْفَ وَقَدْ جَاءَ عَنْ جَابِرٍ خِلَافُ قَوْلِهِمْ؟

L24672–24673 As reported through the chain of Ibn Wahb from ʾUbayd Allāh ibn ʾUmar, from Nāfiʿ, from Ibn ʾUmar, who said: The child of a *mudabbarah* (a slave woman designated for posthumous emancipation) shares her legal status—their enslavement is tied to hers, and their emancipation to her emancipation.

كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ يَقُولُ: وَلَدُ الْمُدَبَّرَةِ بِمَنْزِلَتِهَا يُرَقُّونَ بِرِقِّهَا، وَيُعْتَقُونَ بِعِتْقِهَا.

L24674 Ibn Wahb narrated from men of knowledge—Uthman ibn Affan, Ali ibn Abi Talib, Zayd ibn Thabit, Jabir ibn Abdullah, and others—a view like Ibn Umar's statement. This Jabir held that the *mudabbara* (a slave granted deferred manumission) must be legally retained in enslavement. If it is said: "This is a *mursal* report?" We reply: "You have argued against us using the *mursal*—so either accept it or refrain from invoking it as proof."

وَذَكَرَ ابْنُ وَهْبٍ عَنْ رِجَالٍ مِنْ أَهْلِ الْعِلْمِ عَنْ عُثْمَانَ بْنِ عَفَّانَ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَزَيْدِ بْنِ ثَابِتٍ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ، وَغَيْرِهِمْ، مِثْلَ قَوْلِ ابْنِ عُمَرَ - فَهَذَا جَابِرٌ يَرَى إِرْقَاقَ الْمُدَبَّرَةِ، فَإِنْ قِيلَ: هَذَا مُرْسَلٌ؟ قُلْنَا: بِالْمُرْسَلِ احْتَجَجْتُمْ عَلَيْنَا فَخُذُوهُ أَوْ فَلَا تَحْتَجُّوا بِهِ.

L24675 As for the narration of Ibn ʿUmar, it contains only reprehensibility. And it has been authentically established from Ibn ʿUmar that he explained the permissibility of selling a slave woman under deferred manumission *mudabbara*, as has been transmitted to us through the strongest chain via Mālik from Nāfiʿ from Ibn ʿUmar that he used to say: "A man should not have intercourse with a slave woman except a slave woman whom, if he wishes, he may sell her, gift her, or do with her as he pleases."

وَأَمَّا حَدِيثُ ابْنِ عُمَرَ فَإِنَّمَا فِيهِ الْكَرَاهَةُ فَقَطْ - وَقَدْ صَحَّ عَنْ ابْنِ عُمَرَ بَيَانُ جَوَازِ بَيْعِ الْمُدَبَّرَةِ، كَمَا رُوِّينَا بِأَصَحِّ سَنَدٍ مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ يَقُولُ: لَا يَطَأُ الرَّجُلُ وَلِيدَةً إِلَّا وَلِيدَةً: إِنْ شَاءَ بَاعَهَا، وَإِنْ شَاءَ وَهَبَهَا، وَإِنْ شَاءَ صَنَعَ بِهَا مَا شَاءَ.

L24676 And through the chain of Abd al-Razzaq from Ma'mar from Ayyub al-Sikhtiyani from Nafi' from Ibn Umar: that he designated two of his female slaves for *tadbeer* (freedom upon his death), and he had intercourse with them, resulting in one of them giving birth. This is an explicit text from Ibn

Umar affirming the permissibility of selling the *mudabbara* (slaves designated for freedom upon the owner's death).

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ دَبَّرَ جَارِيَتَيْنِ لَهُ، فَكَانَ يَطَؤُهُمَا حَتَّى وَلَدَتْ إحْدَاهُمَا فَهَذَا نَصٌّ جَلِيٌّ مِنْ ابْنِ عُمَرَ عَلَى جَوَازِ بَيْعِ الْمُدَبَّرَةِ.

L24677 If they claim there is a consensus permitting intercourse with her, they lie - because of what we have narrated through ʿAbd al-Razzāq from Maʿmar, from al-Zuhrī: that he disapproved of a man having intercourse with his *mudabbara* (a slave woman whose manumission is deferred until her owner's death). Maʿmar said: "I asked him, 'Why do you disapprove of it?' He replied, 'Due to ʿUmar's statement: "Do not approach her if there is any stipulation pertaining to her for another person."'"

فَإِنْ ادَّعَوْا إجْمَاعًا عَلَى جَوَازِ وَطْئِهَا؟ كَذَبُوا، لِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ: أَنَّهُ كَانَ يَكْرَهُ أَنْ يَطَأَ الرَّجُلُ مُدَبَّرَتَهُ، قَالَ مَعْمَرٌ: فَقُلْت لَهُ: لِمَ تَكْرَهُهُ؟ فَقَالَ: لِقَوْلِ عُمَرَ: لَا تَقْرَبْهَا وَفِيهَا شَرْطٌ لِأَحَدٍ.

L24678 Thus, the invalidity of what they clung to from the Companions (may Allah be pleased with them) became evident, and that they have no valid argument in anything reported from them. They obscured [the issue] through rational analysis by asserting: "Since they differentiated between the term *al-mudabbar* (one scheduled for posthumous manumission) and the term *al-mawṣā bi ʿitqihi* (one designated for manumission by will), it was necessary to distinguish between their legal rulings."

فَظَهَرَ فَسَادُ مَا تَعَلَّقُوا بِهِ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَأَنَّهُ لَيْسَ لَهُمْ حُجَّةٌ فِي شَيْءٍ جَاءَ عَنْهُمْ، وَمَوَّهُوا مِنْ طَرِيقِ النَّظَرِ بِأَنْ قَالُوا: لَمَّا فَرَّقَ بَيْنَ اسْمِ الْمُدَبَّرِ، وَاسْمِ الْمُوصَى بِعِتْقِهِ، وَجَبَ أَنْ يُفَرِّقَ بَيْنَ حُكْمَيْهِمَا.

L24679 Abū Muḥammad said: This is invalid because it is an unsupported claim. Not every two differing names must differ in their meanings and legal rulings if they exist in the language with the same meaning. For instance, al-muḥarrar (emancipated) and al-muʿtaq (freed slave) are two distinct names with identical meanings. Similarly, zakāh and ṣadaqah are likewise, and al-zawāj (marriage) and al-nikāḥ (marriage) are likewise. Such instances are exceedingly numerous.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ؛ لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ، وَلَيْسَ كُلُّ اسْمَيْنِ اخْتَلَفَا وَجَبَ أَنْ يَخْتَلِفَ مَعْنَاهُمَا وَحُكْمُهُمَا إذَا وُجِدَا فِي اللُّغَةِ مُتَّفِقِي الْمَعْنَى: فَإِنَّ " الْمُحَرَّرَ، وَالْمُعْتَقَ " اسْمَانِ مُخْتَلِفَانِ وَمَعْنَاهُمَا وَاحِدٌ، " وَالزَّكَاةُ، وَالصَّدَقَةُ " كَذَلِكَ، " وَالزَّوَاجُ، وَالنِّكَاحُ " كَذَلِكَ، وَهَذَا كَثِيرٌ جِدًّا.

L24680 Even if this invalid ruling were deemed valid for them, the obligation—when a scriptural text pertaining to both arises—would be to adhere to it. Moreover, the difference between the two names does not necessitate selling one and not the other, for the names "horse" and "slave" differ, yet both are sold.

وَحَتَّى لَوْ صَحَّ لَهُمْ هَذَا الْحُكْمُ الْفَاسِدُ لَكَانَ الْوَاجِبُ إذَا جَاءَ فِيهِمَا نَصٌّ أَنْ يُوقَفَ عِنْدَهُ - وَأَيْضًا فَلَيْسَ فِي اخْتِلَافِ الِاسْمَيْنِ مَا يُوجِبُ أَنْ يُبَاعَ أَحَدُهُمَا وَلَا يُبَاعَ الْآخَرُ، وَقَدْ اخْتَلَفَ اسْمُ: الْفَرَسِ، وَالْعَبْدِ، وَكِلَاهُمَا يُبَاعُ.

L24681–24682 Ali said: Thus, there remained no basis left for them to cling to at all. Among the proofs for the permissibility of selling a male or female *mudabbar* slave designated for eventual freedom is Allah's statement—the Most High: "Allah has permitted selling" [Al-Baqarah: 275].[21]

قَالَ عَلِيٌّ: فَلَمْ يَبْقَ لَهُمْ مُتَعَلَّقٌ أَصْلًا - وَمِنْ الْبُرْهَانِ عَلَى جَوَازِ بَيْعِ الْمُدَبَّرِ وَالْمُدَبَّرَةِ: قَوْلُ اللَّهِ - تَعَالَى -: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

L24683 Allah, the Exalted, says: "And He has already detailed for you what He has forbidden to you" [Quran 6:119].[22]

وَقَوْله تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

L24684 It is thereby validated that the sale of every owned entity is lawful except what has been explicitly prohibited for us. Since no explicit prohibition has been outlined to us regarding the sale of the mudabbar (male slave designated for posthumous manumission) and the mudabbara (female slave similarly designated), their sale is lawful.

فَصَحَّ أَنَّ بَيْعَ كُلِّ مُتَمَلَّكٍ جَائِزٌ إلَّا مَا فَصَّلَ لَنَا تَحْرِيمَ بَيْعِهِ، وَلَمْ يُفَصِّلْ لَنَا تَحْرِيمَ بَيْعِ الْمُدَبَّرِ، وَالْمُدَبَّرَةِ، فَبَيْعُهُمَا حَلَالٌ.

L24685 From the Sunnah is what was transmitted to us through Waki': Sufyan al-Thawri and Isma'il ibn Abi Khalid—both of whom narrated from Salamah ibn Kuhayl, from 'Ata' ibn Abi Rabah, from Jabir ibn 'Abdullah—that the Messenger of Allah, may Allah bless him and grant him peace, sold the *mudabbar* [a slave whose manumission is deferred until the owner's death].

وَمِنْ السُّنَّةِ: مَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ أَنَا سُفْيَانُ الثَّوْرِيُّ، وَإِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ، كِلَاهُمَا عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَاعَ الْمُدَبَّرَ» .

L24686 And through the chain of ʿAbd al-Razzāq from Sufyān ibn ʿUyaynah from ʿAmr ibn Dīnār that he heard Jābir ibn ʿAbd Allāh say: "A man from the Anṣār declared his slave to be mudabbar (when) he owned no property besides him? The Messenger of Allāh (peace and blessings be upon him) said: 'Who will buy him from me?' A man from Banū ʿAdī ibn Kaʿb purchased him. Jābir said: 'A Coptic slave died last year during Ibn al-Zubayr's governorship.'"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «دَبَّرَ رَجُلٌ مِنْ الْأَنْصَارِ غُلَامًا لَهُ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: مَنْ يَبْتَاعُهُ مِنِّي؟ فَاشْتَرَاهُ رَجُلٌ مِنْ بَنِي عَدِيِّ بْنِ كَعْبٍ، قَالَ جَابِرٌ: غُلَامٌ قِبْطِيًّا مَاتَ عَامَ أَوَّلَ فِي إمَارَةِ ابْنِ الزُّبَيْرِ» .

L24687 We have also narrated it through the chain of Al-Layth and Ayyub from Abu Az-Zubayr that he heard it from Jabir. This is a well-known narration decisively authenticated by mass transmission, concerning an event that occurred in the presence of the Companions—may Allah be pleased with them—all of whom acquiesced and approved. Thus, if a Muslim were to claim consensus here, it would not be unreasonable, unlike their false claims. Then some of the liars said: "A sale involving debt; otherwise, for what reason was it

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ اللَّيْثِ، وَأَيُّوبَ عَنْ أَبِي الزُّبَيْرِ أَنَّهُ سَمِعَهُ مِنْ جَابِرٍ -: فَهَذَا أَثَرٌ مَشْهُورٌ مَقْطُوعٌ بِصِحَّتِهِ بِنَقْلِ التَّوَاتُرِ، وَأَمْرٌ كَانَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - كُلُّهُمْ مُسَلِّمٌ رَاضٍ، فَلَوْ ادَّعَى الْمُسْلِمُ هَهُنَا الْإِجْمَاعَ لَمَا أَبْعَدَ، لَا كَدَعَاوِيهِمْ الْكَاذِبَةِ؟ فَقَالَ بَعْضُ أَهْلِ الْكَذِبِ: بَيْعٌ فِي دَيْنٍ، وَإِلَّا فَلِأَيِّ وَجْهٍ بِيعَ؟ فَقُلْنَا: كَذَبْتُمْ وَأَفَكْتُمْ، وَإِنَّمَا بِيعَ؛ لِأَنَّهُ لَمْ يَكُنْ لِمُدَبِّرِهِ مَالٌ غَيْرُهُ، فَلِهَذَا بَاعَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[21] **Qur'an references (L24682):** Qur'an 2:275 (Al-Baqarah).
[22] **Qur'an references (L24683):** Qur'an 6:119 (Al-An'am).

sold?" We replied: "You have lied and slandered! It was sold only because its caretaker had no other property, and for this reason, the Prophet—peace and blessings be upon him—sold it."

وَأَمَّا لَوْ كَانَ لَهُ مَالٌ غَيْرُهُ فَبَيْعُهُ مُبَاحٌ لَا وَاجِبٌ كَسَائِرِ مَنْ تَمَلَّكَ.

L24688 If he has other property, selling it is permissible, not obligatory, like all others who have acquired ownership.

وَمِنْ طَرِيقِ النَّظَرِ أَنَّهُ صَحَّ الْإِجْمَاعُ عَلَى جَوَازِ بَيْعِ الْمُدَبَّرِ قَبْلَ أَنْ يُدَبَّرَ، فَمَنْ مَنَعَ مِنْهُ بَعْدَ أَنْ يُدَبَّرَ فَقَدْ أَبْطَلَ وَادَّعَى مَا لَا بُرْهَانَ لَهُ بِهِ.

L24689 And through rational deduction, the consensus holds that selling a *mudabbar* slave (one promised freedom via *tadbeer* after the owner's death) is permissible prior to enacting *tadbeer*. Thus, whoever prohibits selling him after *tadbeer* has been enacted invalidates [the consensus] and advances a claim unsupported by evidence.

وَمِنْ طَرِيقِ الْقِيَاسِ الَّذِي لَوْ صَحَّ الْقِيَاسُ لَمْ يَكُنْ شَيْءٌ أَصَحَّ مِنْ هَذَا، وَهُوَ أَنَّ الْمُعْتَقَ بِصِفَةٍ لَا يَدْرِي أَيُدْرِكُهَا الْمُعْتَقُ بِهَا أَمْ لَا؟ وَالْمُوصَى بِعِتْقِهِ: لَا يَخْتَلِفُونَ فِي جَوَازِ بَيْعِهِ قَبْلَ مَجِيءِ تِلْكَ الصِّفَةِ، وَالْمُدَبَّرُ مُوصًى بِعِتْقِهِ، كِلَاهُمَا مِنَ الثُّلُثِ فَوَاجِبٌ إِنْ صَحَّ الْقِيَاسُ أَنْ يُبَاعَ الْمُدَبَّرُ كَمَا يُبَاعُ الْآخَرَانِ، وَلَكِنْ لَا النُّصُوصَ يَتَّبِعُونَ، وَلَا الْقِيَاسَ يُحْسِنُونَ.

L24690–24692 And by way of analogy (which, if analogy were valid, nothing would be more correct than this): it concerns the slave manumitted based on a trait that one does not know whether the slave will attain it or not. As for the slave bequeathed for manumission, scholars do not disagree about the permissibility of selling them before the occurrence of that trait. The *mudabbar* is bequeathed for manumission. Both derive from the third portion, thus it is obligatory if valid. The analogy is that the *mudabbar* is to be sold just as the other two are sold, but they neither follow the texts nor apply analogy correctly.

وَمِمَّنْ صَحَّ عَنْهُ بَيْعُ الْمُدَبَّرِ مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ جَدَّتِهِ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ، بَاعَتْ مُدَبَّرَةً لَهَا.

L24693 Among those from whom the sale of a *mudabbar* is authentically reported is what was transmitted to us through the chain of ʿAbd al-Razzāq from Sufyān ibn ʿUyaynah from Yaḥyā ibn Saʿīd al-Anṣārī from his grandmother ʿAmrah bint ʿAbd al-Raḥmān: that ʿĀ'ishah, the Mother of the Believers, sold a female *mudabbara* belonging to her.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَمُحَمَّدِ بْنِ سِيرِينَ، قَالَا جَمِيعًا: الْمُدَبَّرُ وَصِيَّةٌ.

L24694 Narrated via Abd al-Razzaq, from Ma'mar, from Ayyub al-Sakhtiyani, from Umar ibn Abd al-Aziz and Muhammad ibn Sirin, who both stated: The mudabbar [testamentary manumission] is a bequest (wasiyyah).

L24695 From him [in the chain] to Ma'mar, from Abdullah ibn Tawus, who said: Muhammad ibn al-Munkadir asked me concerning the mudabbar (designated for deferred manumission): "What was my father's position regarding it?

May its owner sell it?" I responded: "My father would say: He may sell it if he needed." Ibn al-Munkadir then said: "Even if he did not need."

وَبِهِ إِلَى مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ، قَالَ: سَأَلَنِي مُحَمَّدُ بْنُ الْمُنْكَدِرِ عَنْ الْمُدَبَّرِ كَيْفَ كَانَ قَوْلُ أَبِي فِيهِ، أَيَبِيعُهُ صَاحِبُهُ؟ فَقُلْت: كَانَ أَبِي يَقُولُ: يَبِيعُهُ إنْ احْتَاجَ فَقَالَ ابْنُ الْمُنْكَدِرِ: وَإِنْ لَمْ يَحْتَجْ.

L24696 Through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who reported: ʿAmr ibn Dīnār informed me, saying: "Ṭāwus deemed it permissible for a man to revoke his act of manumission." ʿAmr said: "This means the *tadbīr*."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ قَالَ: كَانَ طَاوُسٌ لَا يَرَى بَأْسًا أَنْ يَعُودَ الرَّجُلُ فِي عَتَاقَتِهِ - قَالَ عَمْرٌو: يَعْنِي التَّدْبِيرَ.

L24697 From the transmission of Sufyān ibn ʿUyaynah, via Ibn Abī Najīḥ, via Mujāhid, who said: The mudabbar [a slave designated for posthumous freedom] is a testamentary act, and the owner may retract it if they wish.

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: الْمُدَبَّرُ وَصِيَّةٌ يَرْجِعُ فِيهِ إذَا شَاءَ.

L24698 Via Abd al-Razzaq, from Ibn Jurayj: I heard Ata' say, "The ruling applies to the *mudabbar* (a slave designated for eventual freedom) and in all matters of bequests." We have received narrations from Ibn Sirin and Ata' stating the disapproval of selling the *mudabbar*. From al-Sha'bi: "The bold may sell it, but the pious refrain from doing so."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ سَمِعْت عَطَاءً يَقُولُ: يُعَادُ فِي الْمُدَبَّرِ، وَفِي كُلِّ وَصِيَّةٍ - وَقَدْ رُوِّينَا عَنْ ابْنِ سِيرِينَ، وَعَطَاءٍ: كَرَاهِيَةَ بَيْعِ الْمُدَبَّرِ، وَعَنْ الشَّعْبِيِّ يَبِيعُهُ الْجَرِيءُ، وَيَرَعُ عَنْهُ الْوَرِعُ.

L24699 Abu Muhammad said: Rather, the pious sell it in emulation of the Messenger of Allah (peace and blessings be upon him), while those ignorant of the law refrain from it. By Allah! There is no fear of accountability from Allah (Exalted and Majestic) concerning any matter whose prohibition He has not specified for us in His Book nor in the Sunnah of His Messenger (peace and blessings be upon him). Rather, we fear accountability from Him (Exalted and Majestic) for our prohibition of what He has not specified the prohibition of, or for our abstention from it fearing it might be unlawful - and we seek refuge with Allah (Exalted is He) from this.

قَالَ أَبُو مُحَمَّد: بَلْ يَبِيعُهُ الْوَرِعُ اقْتِدَاءً بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَيَقِفُ عَنْهُ الْجَاهِلُ، وَتَاَللَّهِ مَا تُخَافُ تَبِعَةٌ مِنْ اللَّهِ - تَعَالَى - فِي أَمْرٍ لَمْ يُفَصِّلْ لَنَا تَحْرِيمَهُ فِي كِتَابِهِ وَلَا فِي سُنَّةِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَلْ نَخَافُ التَّبِعَةَ مِنْهُ - عَزَّ وَجَلَّ - فِي تَحْرِيمِنَا مَا لَمْ يُفَصِّلْ لَنَا تَحْرِيمَهُ، أَوْ فِي تَوَقُّفِنَا فِيهِ خَوْفَ أَنْ يَكُونَ حَرَامًا - وَنَعُوذُ بِاَللَّهِ - تَعَالَى - مِنْ هَذَا.

L24700 He, the Exalted, said: "Nay, by your Lord! They will not believe until they make you the judge concerning disputes that have arisen between them, then feel no resentment within themselves regarding what you have decreed and submit with full submission." (An-Nisa 4:65)[23]

قَالَ - تَعَالَى -: {فَلا وَرَبِّكَ لا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا} [النساء: ٦٥] .

[23] **Qur'an references (L24700):** Qur'an 4:65 (An-Nisa).

L24701 The sale of the *mudabbar* (a slave designated for deferred manumission) is among what was decreed by the Messenger of Allah (peace and blessings be upon him). Therefore, whoever is a believer should feel no unease within himself concerning that which has been decreed. And by Allah, the Exalted, is all success.

وَبَيْعُ الْمُدَبَّرِ مِمَّا قَضَى بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَنْ كَانَ مُؤْمِنًا فَلَا يَجِدُ فِي نَفْسِهِ حَرَجًا مِمَّا قَضَى فِيهِ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24702–24703 The issue of selling the child of a female mudabbara from someone other than her master.

[مَسْأَلَةُ بَيْعُ وَلَدِ الْمُدَبَّرَةِ مِنْ غَيْرِ سَيِّدِهَا]

L24704 Issue: The sale of the child of a deferred-freedom female slave (mudabbara) by someone other than her master—whether she conceived the child before or after the deferment—is permissible. Likewise, the sale of offspring born to a female slave under a manumission contract (mukataba)—whether before the contract was concluded or after, provided she has not fulfilled any part of her contractual obligations—is permissible.

مَسْأَلَةٌ: وَبَيْعُ وَلَدِ الْمُدَبَّرَةِ مِنْ غَيْرِ سَيِّدِهَا - حَمَلَتْ بِهِ قَبْلَ التَّدْبِيرِ أَوْ بَعْدَهُ - حَلَالٌ - وَبَيْعُ مَا وَلَدَتْ الْمُكَاتَبَةُ قَبْلَ أَنْ تُكَاتَبَ وَبَعْدَ أَنْ كُوتِبَتْ مَا لَمْ تُؤَدِّ شَيْئًا مِنْ كِتَابَتِهَا: حَلَالٌ -.

L24705 The sale of a child (whose birth would render his mother an *umm al-walad*) by someone other than her master, before she attains the status of an *umm al-walad*, is lawful.

وَبَيْعُ وَلَدِ أُمِّ الْوَلَدِ مِنْ غَيْرِ سَيِّدِهِ قَبْلَ أَنْ تَكُونَ أُمَّ وَلَدٍ: حَلَالٌ.

L24706 There is no disagreement regarding any part of this, except for the child borne by the enslaved woman granted tadbīr [deferred emancipation] after the tadbīr.

هَذَا كُلُّهُ لَا خِلَافَ فِي شَيْءٍ مِنْهُ، إلَّا مَا حَمَلَتْ بِهِ الْمُدَبَّرَةُ بَعْدَ التَّدْبِيرِ.

L24707 As for the child born to the Umm al-Walad by someone other than her master after she became an Umm al-Walad, it is forbidden to sell them, and their legal status mirrors that of their mother.

وَأَمَّا مَا وَلَدَتْ أُمُّ الْوَلَدِ مِنْ غَيْرِ سَيِّدِهَا بَعْدَ أَنْ صَارَتْ أُمَّ وَلَدٍ: فَحَرَامٌ بَيْعُهُ، وَحُكْمُهُ حُكْمُ أُمِّهِ.

L24708 And we will mention—if Allah, the Exalted, wills—the rulings pertaining to what the *mukatabah* (contract of manumission) involves, after the *mukatab* (enslaved person under contract) has paid a portion of their stipulated payments (*kitabah*), in the “Book of the Mukatab” within this volume of ours. There is no power nor strength except with Allah—the Mighty and Majestic.

وَسَنَذْكُرُ إنْ شَاءَ اللَّهُ - تَعَالَى - حُكْمَ مَا حَمَلَتْ بِهِ الْمُكَاتَبَةُ بَعْدَ أَنْ تُؤَدِّيَ شَيْئًا مِنْ كِتَابَتِهَا فِي " كِتَابِ الْمُكَاتَبِ " مِنْ دِيوَانِنَا هَذَا - إنْ شَاءَ اللَّهُ - تَعَالَى، وَلَا حَوْلَ وَلَا قُوَّةَ إلَّا بِاَللَّهِ - عَزَّ وَجَلَّ -.

L24709 The proof of the validity of our statement regarding the child of the woman under deferred manumission who becomes pregnant with him after the de-

ferment declaration is that he is the child of a slave woman whose sale is permissible; hence he is a slave, for the child of a slave woman is a slave.

بُرْهَانُ صِحَّةِ قَوْلِنَا فِي وَلَدِ الْمُدَبَّرَةِ الَّتِي تَحْمِلُ بِهِ بَعْدَ التَّدْبِيرِ: هُوَ أَنَّهُ وَلَدُ أَمَةٍ جَائِزٌ بَيْعُهَا، فَهُوَ عَبْدٌ، لِأَنَّ وَلَدَ الْأَمَةِ عَبْدٌ -.

L24710 It has been narrated to us a statement similar to ours from ʿAbd al-Razzāq, from Maʿmar: Maʿmar reported to me that someone who heard ʿIkrimah say informed me: "The children of a *mudabbara* are not emancipated."

وَرُوِّينَا مِثْلَ قَوْلِنَا هَذَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ: أَخْبَرَنِي مَنْ سَمِعَ عِكْرِمَةَ يَقُولُ: أَوْلَادُ الْمُدَبَّرَةِ لَا عِتْقَ لَهُمْ.

L24711 From the narration of Abd al-Razzaq via Ibn Jurayj and Ibn Uyaynah: Ibn Jurayj reported from Amr ibn Dinar and Ata, both of them narrating from Abu al-Sha'tha. Ibn Uyaynah said: From Amr ibn Dinar, from Abu al-Sha'tha, who said: "The children of the *mudabbara* (a slave woman designated for posthumous emancipation) remain slaves. As for the child she carries, if she is emancipated before giving birth, it is free alongside her—unless the master explicitly excludes it—due to what we previously mentioned: that even if distinct from her, it follows her legal status."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ: وَابْنِ عُيَيْنَةَ، قَالَ ابْنُ جُرَيْجٍ: عَنْ عَمْرِو بْنِ دِينَارٍ، وَعَطَاءٍ، كِلَاهُمَا عَنْ أَبِي الشَّعْثَاءِ، وَقَالَ ابْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي الشَّعْثَاءِ، قَالَ: أَوْلَادُ الْمُدَبَّرَةِ عَبِيدٌ، وَأَمَّا مَا حَمَلَتْ بِهِ ثُمَّ أَدْرَكَهَا الْعِتْقُ قَبْلَ أَنْ تَضَعَهُ فَهُوَ حُرٌّ مَعَهَا مَا لَمْ يَسْتَثْنِهِ السَّيِّدُ لِمَا ذَكَرْنَا قَبْلُ: مِنْ أَنَّهُ وَإِنْ كَانَ غَيْرَهَا فَهُوَ تَبَعٌ لَهَا.

L24712 The opponents argued against the opinion that the child of a mudabbara (a female enslaved person granted deferred manumission) shares the same legal status as their mother by citing authentic reports from ʿUthmān, Jābir, and Ibn ʿUmar; reports are also narrated from ʿAlī, Ibn ʿAbbās, and Zayd, with no known opposition from any of the Companions to their position.

وَاحْتَجَّ الْمُخَالِفُونَ عَلَى الْقَوْلِ بِأَنَّ وَلَدَ الْمُدَبَّرَةِ بِمَنْزِلَةِ أُمِّهِمْ بِأَنَّهُ قَدْ صَحَّ عَنْ عُثْمَانَ، وَجَابِرٍ، وَابْنِ عُمَرَ - وَرُوِيَ عَنْ عَلِيٍّ، وَابْنِ عَبَّاسٍ، وَزَيْدٍ، وَلَا يُعْرَفُ لَهُمْ مِنَ الصَّحَابَةِ مُخَالِفٌ.

L24713 Abu Muhammad said: There is no valid proof in anyone other than the Messenger of Allah—peace and blessings be upon him. We have mentioned their differing positions concerning certain groups of the Companions for whom no opposing view from the Companions is known. This includes what is authentically reported from Uthman, Suhayb, and Tamim al-Dari regarding the sale of a house while stipulating the seller's right to reside in it for the duration of his lifetime—a transaction which took place in the presence of the Companions with no dissent among them recorded. Similar cases are very many.

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ ذَكَرْنَا خِلَافَهُمْ لِطَوَائِفَ مِنَ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، كَالَّذِي صَحَّ عَنْ عُثْمَانَ، وَصُهَيْبٍ، وَتَمِيمٍ الدَّارِيِّ مِنْ أَنَّ الْبَيْعَ لِدَارٍ وَاشْتِرَاطَ سُكْنَاهَا مُدَّةَ عُمُرِ الْبَائِعِ، وَذَلِكَ بِحَضْرَةِ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، وَغَيْرُ ذَلِكَ كَثِيرٌ جِدًّا.

L24714–24715 As for the child born to an umm al-walad before she attained the status of umm al-walad, there is no disagreement on this matter.

وَأَمَّا وَلَدُ أُمِّ الْوَلَدِ قَبْلَ أَنْ تَكُونَ أُمَّ وَلَدٍ فَلَا خِلَافَ فِيهِ.

L24716 As for what she conceives after becoming an *umm walad*, it is imper-

missible to sell them, because her sale is forbidden. If she conceives him after becoming an *umm walad*, then selling him is forbidden. Whatever is definitively prohibited from being sold cannot become permissible thereafter except by explicit textual evidence, and there is no text permitting his sale after his separation from her.

L24717 If they cite the statement, "Every uterine relative's child shares her status," this is not from the Messenger of Allah—may Allah bless him and grant him peace—and thus holds no legal validity. Furthermore, they are the first to contradict this principle concerning the children of conditionally emancipated women and those emancipated for a fixed term. And with Allah alone is success—the Most High.

L24718 **The Issue of Selling a Slave Granted Deferred Emancipation to a Term or with Stipulated Attributes.**

L24719 1554. Issue: Selling a slave designated for emancipation - whether by a fixed term or a condition - is permissible as long as emancipation has not become obligatory due to the occurrence of that condition. For example, if a man says to his slave: "You will be free tomorrow," he may sell him before tomorrow arrives. Or if he says: "You will be free when my sick [relative] recovers," he may sell him before the recovery occurs. This is because the slave remains enslaved until he becomes entitled to emancipation. This is the opinion of Al-Shāfiʿī, Abū Ḥanīfah, Abū Sulaymān, and their followers.

L24720 Malik said: Similarly regarding emancipation contingent on an attribute that may or may not exist, but he did not state this concerning emancipation for a specified period, arguing that "it must necessarily be?" We responded: Granted, what then is the consequence? Except that until now it has not yet come to pass, and they possess no evidence whatsoever for this distinction - it is merely a claim and a circular argument based on their own assertions.

L24721 **The issue of selling a commodity in the market for less than its price or for more than its price.**

L24722 Issue 1555: It is permissible for one who enters the market - whether from

وَأَمَّا مَا - حَمَلَتْ بِهِ بَعْدَ أَنْ تَكُونَ أُمَّ وَلَدٍ فَلَا يَحِلُّ بَيْعُهُمْ، لِأَنَّهَا حَرَامٌ بَيْعُهَا وَهُوَ إذَا - حَمَلَتْ بِهِ بَعْضُهَا: فَحَرَامٌ بَيْعُهُ، وَمَا حَرُمَ بَيْعُهُ بِيَقِينٍ فَلَا يَحِلُّ بَعْدَ ذَلِكَ إلَّا بِنَصٍّ، وَلَا نَصَّ فِي جَوَازِ بَيْعِهِ بَعْدَ مُفَارَقَتِهِ لَهَا.

فَإِنْ ذَكَرُوا " كُلُّ ذَاتِ رَحِمٍ فَوَلَدُهَا بِمَنْزِلَتِهَا " فَهُوَ لَيْسَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا حُجَّةَ فِيهِ - ثُمَّ هُمْ أَوَّلُ مُخَالِفٍ لِهَذَا فِي وَلَدِ الْمُعْتَقَةِ بِصِفَةٍ، وَوَلَدُ الْمُعْتَقَةِ إلَى أَجَلٍ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة بَيْعُ الْمُعْتَقِ إلَى أَجَلٍ أَوْ بِصِفَةٍ]

١٥٥٤ - مَسْأَلَةٌ: وَبَيْعُ الْمُعْتَقِ إلَى أَجَلٍ، أَوْ بِصِفَةٍ: حَلَالٌ مَا لَمْ يَجِبْ لَهُ الْعِتْقُ بِحُلُولِ تِلْكَ الصِّفَةِ، كَمَنْ قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ غَدًا، فَلَهُ بَيْعُهُ مَا لَمْ يُصْبِحْ الْغَدُ، أَوْ كَمَنْ قَالَ لَهُ: أَنْتَ حُرٌّ إذَا أَفَاقَ مَرِيضِي: فَلَهُ بَيْعُهُ مَا لَمْ يُفِقْ مَرِيضُهُ، لِأَنَّهُ عَبْدٌ مَا لَمْ يَسْتَحِقَّ الْعِتْقَ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ وَأَصْحَابِهِمْ.

وَقَالَ مَالِكٌ: كَذَلِكَ فِي الْمُعْتَقِ بِصِفَةٍ يُمْكِنُ أَنْ تَكُونَ، وَيُمْكِنُ أَنْ لَا تَكُونَ، وَلَمْ يَقُلْهُ فِي الْمُعْتَقِ إلَى أَجَلٍ، وَاحْتَجَّ بِأَنَّهُ لَا بُدَّ أَنْ يَكُونَ؟ فَقُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ إلَّا أَنَّهُ حَتَّى الْآنَ لَمْ يَكُنْ بَعْدُ، وَلَا دَلِيلَ لَهُمْ عَلَى هَذَا الْفَرْقِ أَصْلًا، وَإِنَّمَا هُوَ دَعْوَى وَاحْتِجَاجٌ لِقَوْلِهِمْ بِقَوْلِهِمْ

[مَسْأَلَة بَيْع السِّلْعَة فِي السوق بِأَقَلّ مِنْ سعرها أَوْ بِأَكْثَر]

their own household or outside it - to sell their merchandise for less than its market price or for more. Neither the market vendors nor the ruler may object to them in this matter.

١٥٥٥ - مَسْأَلَةٌ: وَجَائِزٌ لِمَنْ أَتَى السُّوقَ مِنْ أَهْلِهِ، أَوْ مِنْ غَيْرِ أَهْلِهِ، أَنْ يَبِيعَ سِلْعَتَهُ بِأَقَلَّ مِنْ سِعْرِهَا فِي السُّوقِ، وَبِأَكْثَرَ - وَلَا اعْتِرَاضَ لِأَهْلِ السُّوقِ عَلَيْهِ فِي ذَلِكَ، وَلَا لِلسُّلْطَانِ.

L24723 The Malikis said: He does not have the right to sell for less than its price and is restrained from doing so, but he may sell for more than its price.

وَقَالَ الْمَالِكِيُّونَ: لَيْسَ لَهُ أَنْ يَبِيعَ بِأَقَلَّ مِنْ سِعْرِهَا، وَيُمْنَعُ مِنْ ذَلِكَ وَلَهُ أَنْ يَبِيعَ بِأَكْثَرَ.

L24724 Ali said: "It is truly astonishing that they would forbid him from granting concessions to Muslims, yet permit him to inflate prices? This is astonishing indeed, and we know of no one from whom this opinion of theirs is reported before Malik."

قَالَ عَلِيٌّ: وَهَذَا عَجَبٌ جِدًّا أَنْ يَمْنَعُوهُ مِنْ التَّرْخِيصِ عَلَى الْمُسْلِمِينَ، وَيُبِيحُونَ لَهُ التَّغْلِيَةَ؟ إنَّ هَذَا لَعَجَبٌ وَمَا نَعْلَمُ قَوْلَهُمْ هَذَا عَنْ أَحَدٍ قَبْلَ مَالِكٍ.

L24725 Then they grew even more astonished and cited what was reported to us through Malik's narration from Yunus ibn Yusuf from Sa'id ibn al-Musayyab: that 'Umar passed by Hatib ibn Abi Balta'a while he was selling his raisins in the market. 'Umar said to him: "Either you increase the price, or leave our market."

ثُمَّ زَادُوا فِي الْعَجَبِ وَاحْتَجُّوا بِالَّذِي رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ يُونُسَ بْنِ يُوسُفَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُمَرَ مَرَّ بِحَاطِبِ بْنِ أَبِي بَلْتَعَةَ وَهُوَ يَبِيعُ زَبِيبًا لَهُ بِالسُّوقِ، فَقَالَ لَهُ عُمَرُ: إمَّا أَنْ تَزِيدَ فِي السِّعْرِ، وَإِمَّا أَنْ تَرْفَعَ عَنْ سُوقِنَا.

L24726–24727 Ali said: In this, there is no authoritative evidence for them due to several aspects—one of them being that there is no authoritative evidence regarding anyone other than the Messenger of Allah—may Allah bless him and grant him peace.

قَالَ عَلِيٌّ: هَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ -: أَحَدُهَا: أَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L24728 The second point is that they opposed 'Umar in many instances, such as his compelling paternal cousins to provide financial support for their paternal cousin, his freeing every relative within a prohibited degree of kinship when he owned one, and other such matters.

وَالثَّانِي: أَنَّهُمْ كَمْ قِصَّةٍ خَالَفُوا فِيهَا عُمَرَ كَإِجْبَارِهِ بَنِي عَمٍّ عَلَى النَّفَقَةِ عَلَى ابْنِ عَمِّهِمْ، وَكَعِتْقِهِ كُلَّ ذِي رَحِمٍ مَحْرَمَةٍ إذَا مَلَكَ، وَغَيْرِ ذَلِكَ.

L24729 The third is that it is not authentically reported from 'Umar because Sa'id ibn al-Musayyib did not hear from 'Umar except the announcement of the death of al-Nu'man ibn Muqarrin only.

وَالثَّالِثُ: أَنَّهُ لَا يَصِحُّ عَنْ عُمَرَ؛ لِأَنَّ سَعِيدَ بْنَ الْمُسَيِّبِ لَمْ يَسْمَعْ مِنْ عُمَرَ إلَّا نَعْيَهُ النُّعْمَانَ بْنَ مُقْرِنٍ فَقَطْ.

L24730 The fourth is that if this were valid, they would have erred regarding Umar by interpreting his ruling in an impermissible manner. Umar only intended

by this statement—if his saying "either to increase the price" were authentic—that you sell more measures for this price than you would sell [normally]. This contradicts their position. It is impermissible to presume any intent other than this for Umar—how could this be otherwise when an explicit clarification from Umar has been transmitted?

وَالرَّابِعُ: أَنَّهُ لَوْ صَحَّ لَكَانُوا قَدْ أَخْطَئُوا فِيهِ عَلَى عُمَرَ، فَتَأَوَّلُوهُ بِمَا لَا يَجُوزُ، وَإِنَّمَا أَرَادَ عُمَرُ بِذَلِكَ لَوْ صَحَّ عَنْهُ بِقَوْلِهِ إِمَّا أَنْ تَزِيدَ فِي السِّعْرِ، يُرِيدُ أَنْ تَبِيعَ مِنَ الْمَكَايِيلِ أَكْثَرَ مِمَّا تَبِيعُ بِهَذَا الثَّمَنِ، وَهَذَا خِلَافُ قَوْلِهِمْ - هَذَا الَّذِي لَا يَجُوزُ أَنْ يُظَنَّ بِعُمَرَ غَيْرُهُ، فَكَيْفَ وَقَدْ جَاءَ عَنْ عُمَرَ مُبَيَّنًا.

L24731 As we have transmitted this report from him through the chain of Abd al-Razzaq, from Ibn Jurayj, from Amr ibn Shu'ayb, who said: Umar encountered Hatib ibn Abi Balta'ah selling raisins in Medina and said: "How do you sell, O Hatib?" He answered: "Two mudd measures." Umar said: "You purchase at our doorways, in our courtyards, and in our markets, undermining our livelihoods. Then you sell as you wish. Sell by the sa' measure. Otherwise, do not sell in our markets. Otherwise, travel through the land, then bring your goods, then sell as you desire."

كَمَا رُوِّينَا هَذَا الْخَبَرَ عَنْهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: وَجَدَ عُمَرُ حَاطِبَ بْنَ أَبِي بَلْتَعَةَ يَبِيعُ الزَّبِيبَ بِالْمَدِينَةِ فَقَالَ: كَيْفَ تَبِيعُ يَا حَاطِبُ؟ فَقَالَ: مُدَّيْنِ، فَقَالَ عُمَرُ: تَبْتَاعُونَ بِأَبْوَابِنَا، وَأَفْنِيَتِنَا، وَأَسْوَاقِنَا، تَقْطَعُونَ فِي رِقَابِنَا. ثُمَّ تَبِيعُونَ كَيْفَ شِئْتُمْ، بِعْ صَاعًا، وَإِلَّا فَلَا تَبِعْ فِي أَسْوَاقِنَا، وَإِلَّا فَسِيبُوا فِي الْأَرْضِ ثُمَّ اجْلِبُوا ثُمَّ بِيعُوا كَيْفَ شِئْتُمْ.

L24732 This is the report of Umar with Ḥāṭib concerning raisins, as it is necessarily presumed about him.

فَهَذَا خَبَرُ عُمَرَ مَعَ حَاطِبٍ فِي الزَّبِيبِ كَمَا يَجِبُ أَنْ يُظَنَّ بِعُمَرَ.

L24733 If they say: "Is there harm in this upon the market vendors?" We respond: "This is baseless. Rather, the harm is in your statement upon all the townspeople, the poor, and this charitable person to the people. There is no harm in this upon the market vendors, for if they wish to lower prices as this person did, they may do so. Otherwise, they are more entitled to their wealth, just as this person is more entitled to his wealth."

فَإِنْ قَالُوا: فِي هَذَا ضَرَرٌ عَلَى أَهْلِ السُّوقِ؟ قُلْنَا: هَذَا بَاطِلٌ، بَلْ فِي قَوْلِكُمْ أَنْتُمُ الضَّرَرُ عَلَى أَهْلِ الْبَلَدِ كُلِّهِمْ، وَعَلَى الْمَسَاكِينِ، وَعَلَى هَذَا الْمُحْسِنِ إِلَى النَّاسِ، وَلَا ضَرَرَ فِي ذَلِكَ عَلَى أَهْلِ السُّوقِ، لِأَنَّهُمْ إِنْ شَاءُوا أَنْ يُرَخِّصُوا كَمَا فَعَلَ هَذَا فَلْيَفْعَلُوا، وَإِلَّا فَهُمْ أَمْلَكُ بِأَمْوَالِهِمْ كَمَا هَذَا أَمْلَكُ بِمَالِهِ.

L24734 The decisive proof in this matter is the saying of Allah, the Most High: "unless it is a trade by mutual consent among you" [An-Nisa: 29] and His saying, the Most High: "And Allah has permitted sale" [Al-Baqarah: 275].[24]

وَالْحُجَّةُ الْقَاطِعَةُ فِي هَذَا قَوْلُ اللَّهِ - تَعَالَى -: {إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] وقَوْله تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

L24735 A case in which a man purchased a commodity in the mar-

[مَسْأَلَة ابْتَاعَ سِلْعَة فِي السوق فَأَرَادَ أَهْلُ السُّوقِ أَنْ يشاركوه فِيهَا]

[24] **Qur'an references (L24734):** Qur'an 4:29 (An-Nisa); Qur'an 2:275 (Al-Baqarah).

ket, then the people of the market wished to partner with him in it.

L24736 Issue 1556: If a person purchases merchandise in the market, it is impermissible to rule that he must associate the people of that market as partners in it, as it is the exclusive property of its purchaser, and this is the scholars' view.

L24737–24739 The Malikis said: He is compelled to share in it, and we know of no one besides them who has stated this—and it is oppression. The ruling is manifest, and Allah's statement—the Exalted—nullifies it: {Except it be trade by mutual consent among you} [Quran 4:29]. For the seller did not mutually consent except with this buyer, not with others. Thus, applying this ruling to someone else constitutes unlawful consumption of wealth without any evidence whatsoever—and with Allah, the Exalted, lies all success.[25]

L24740 Rather, a ruling from 'Umar has been transmitted pertaining to others, not for their own advantage, regarding the market traders in this matter — as we have been narrated through the chain of 'Abd al-Razzāq from Sufyān al-Thawrī from Yaḥyā ibn Sa'īd al-Anṣārī from Muslim ibn Jundub, who said: Food arrived in Medina, and the market traders went out to purchase it. 'Umar said to them: "Do you trade in this market of ours? Either include the people, or leave, purchase [your goods], then return to sell."

L24741 Ali said: This ruling decreed by the Maliki jurists inflicts the gravest harm upon Muslims, for market artisans collude to kill the market for goods sold by the trader or the distressed seller. They conspire not to raise their offers and appoint one among them to undercut him until the distressed seller yields to their terms. Then they divide the goods among themselves. It is obligatory to prevent them from this practice, for it constitutes cheating. Allah's Messenger (peace be upon him) said: "He who cheats us is not of us."

L24742 **The jurisprudential matter of sale with a warranty against**

[25] **Qur'an references (L24737):** Qur'an 4:29 (An-Nisa).

١٥٥٦ - مَسْأَلَةٌ: وَمَنْ ابْتَاعَ سِلْعَةً فِي السُّوقِ فَلَا يَحِلُّ أَنْ يُحْكَمَ عَلَيْهِ بِأَنْ يُشْرِكَهُ فِيهَا أَهْلُ تِلْكَ السُّوقِ، وَهِيَ لِمُشْتَرِيهَا خَاصَّةً - وَهُوَ قَوْلُ النَّاسِ.

وَقَالَ الْمَالِكِيُّونَ: يُجْبَرُ عَلَى أَنْ يُشْرِكُوهُ فِيهَا، وَمَا نَعْلَمُ أَحَدًا قَالَهُ غَيْرَهُمْ وَهُوَ ظُلْمٌ ظَاهِرٌ، وَيُبْطِلُهُ قَوْلُ اللَّهِ - تَعَالَى -: {إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] فَلَمْ يَتَرَاضَ الْبَائِعُ إِلَّا مَعَ هَذَا الْمُبْتَاعِ لَا مَعَ غَيْرِهِ، فَالْحُكْمُ بِهِ لِغَيْرِهِ أَكْلُ مَالٍ بِالْبَاطِلِ بِلَا دَلِيلٍ أَصْلًا - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

بَلْ قَدْ جَاءَ عَنْ عُمَرَ الْحُكْمُ عَلَى أَهْلِ السُّوقِ بِهَذَا فِي غَيْرِهِمْ لَا لَهُمْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ مُسْلِمِ بْنِ جُنْدُبٍ قَالَ: قَدِمَ الْمَدِينَةَ طَعَامٌ فَخَرَجَ أَهْلُ السُّوقِ إِلَيْهِ فَابْتَاعُوهُ، فَقَالَ لَهُمْ عُمَرُ: أَفِي سُوقِنَا هَذَا تَتَّجِرُونَ؟ أَشْرِكُوا النَّاسَ، أَوْ اُخْرُجُوا فَاشْتَرُوا ثُمَّ ائْتُوا فَبِيعُوا.

قَالَ عَلِيٌّ: وَهَذَا الَّذِي حَكَمَ بِهِ الْمَالِكِيُّونَ أَعْظَمُ الضَّرَرِ عَلَى الْمُسْلِمِينَ؛ لِأَنَّ أَهْلَ الصِّنَاعَةِ مِنْ السُّوقِ يَتَوَاطَئُونَ عَلَى إمَاتَةِ السِّلْعَةِ الَّتِي يَبِيعُهَا الْجَالِبُ أَوْ الْمُضْطَرُّ، وَيَتَّفِقُونَ عَلَى أَنْ لَا يَزِيدُوا فِيهَا، وَيَتْرُكُوا وَاحِدًا مِنْهُمْ يَسُومُهُ حَتَّى يَتْرُكَ الْمُضْطَرُّ عَلَى حُكْمِهِ، ثُمَّ يَقْتَسِمُونَهَا بَيْنَهُمْ، وَهَذَا وَاجِبٌ مَنْعُهُمْ مِنْهُ؛ لِأَنَّهُ غِشٌّ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَيْسَ مِنَّا مَنْ غَشَّنَا» .

[مَسْأَلَة الْبَيْع بالبرائة مِنْ كُلّ عَيْب]

all defects.

L24743 Issue 1557: It is not permissible to conduct a sale with a waiver of all defects, nor on the condition that no defect may be asserted against me. A sale conducted in this manner is void and annulled forever. However, Abū Ḥanīfa maintained that sales with a waiver are permissible and did not recognize any right for the buyer to pursue a claim regarding defects at all—whether the seller knew of them or not.

L24744 Sufyan, al-Hasan ibn Hayy, and Abu Sulayman maintained that one is not absolved of liability for any of the defects—whether the seller knew them or not.

L24745 Al-Shafi'i held that by that [declaration], the seller is not relieved of liability for any defects except in the case of animals specifically, for he is relieved of liability for unknown defects in the sold animal, but he is not relieved of liability for defects he knew about and concealed.

L24746 For Mālik there are three opinions: one of them—which is the one we mentioned as agreed upon among them, and is identical to al-Shāfiʿī's opinion letter for letter—and it is his opinion in al-Muwaṭṭaʾ.

L24747 The second is that he is not exonerated thereby except specifically in the case of slaves. He is exonerated from what he did not know, but not from what he knew and concealed. However, regarding other animals and inanimate objects, he is not thereby exonerated from any defect whatsoever.

L24748–24749 The third [opinion]—to which he ultimately reverted—is that the principle of exemption (al-barā'ah) can only be invoked in three specific matters.

L24750 It refers to the governing authority's sale of spoils of war or the sale of an insolvent person's assets.

L24751 The second [ruling]: a minor defect - especially in slaves - is specifically applicable to everyone.

L24752 The third: specifically concerning what befalls enslaved individuals during the three-day liability period.

L24753 Some early scholars, including ʿAṭāʾ and Shurayḥ, held that no seller is ab-

١٥٥٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ الْبَيْعُ بِالْبَرَاءَةِ مِنْ كُلِّ عَيْبٍ، وَلَا عَلَى أَنْ لَا يُقَوَّمَ عَلَيَّ بِعَيْبٍ - وَالْبَيْعُ هَكَذَا فَاسِدٌ مَفْسُوخٌ أَبَدًا، وَذَهَبَ أَبُو حَنِيفَةَ إِلَى جَوَازِ الْبَيْعِ بِالْبَرَاءَةِ، وَلَمْ يَرَ لِلْمُشْتَرِي الْقِيَامَ بِعَيْبٍ أَصْلًا - عَلِمَهُ الْبَائِعُ أَوْ لَمْ يَعْلَمْهُ.

وَذَهَبَ سُفْيَانُ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو سُلَيْمَانَ: إِلَى أَنَّهُ لَا يَبْرَأُ بِشَيْءٍ مِنْ ذَلِكَ مِنْ الْعُيُوبِ - عَلِمَهُ الْبَائِعُ أَوْ لَمْ يَعْلَمْهُ.

وَذَهَبَ الشَّافِعِيُّ إِلَى أَنَّهُ لَا يَبْرَأُ بِذَلِكَ مِنْ شَيْءٍ مِنْ الْعُيُوبِ إِلَّا فِي الْحَيَوَانِ خَاصَّةً فَإِنَّهُ يَبْرَأُ بِهِ مِمَّا لَمْ يَعْلَمْ مِنْ عُيُوبِ الْحَيَوَانِ الْمَبِيعِ، وَلَا يَبْرَأُ مِمَّا عَلِمَهُ مِنْ عُيُوبِهِ فَكَتَمَهُ.

وَلِمَالِكٍ ثَلَاثَةُ أَقْوَالٍ -: أَحَدُهَا - وَهُوَ الَّذِي ذَكَرْنَا أَنَّهُ الْمُجْتَمَعُ عَلَيْهِ عِنْدَهُمْ، وَهُوَ مِثْلُ قَوْلِ الشَّافِعِيِّ حَرْفًا حَرْفًا، وَهُوَ قَوْلُهُ فِي الْمُوَطَّأِ.

وَالثَّانِي - أَنَّهُ لَا يَبْرَأُ بِذَلِكَ إِلَّا فِي الرَّقِيقِ خَاصَّةً، فَيَبْرَأُ مِمَّا لَمْ يَعْلَمْ، وَلَا يَبْرَأُ مِمَّا عَلِمَ فَكَتَمَ، وَإِنَّمَا فِي سَائِرِ الْحَيَوَانِ وَغَيْرِ الْحَيَوَانِ، فَلَا يَبْرَأُ بِهِ مِنْ عَيْبٍ أَصْلًا.

وَالثَّالِثُ - وَهُوَ الَّذِي رَجَعَ إِلَيْهِ، وَهُوَ أَنَّهُ لَا يَنْتَفِعُ بِالْبَرَاءَةِ إِلَّا فِي ثَلَاثَةِ أَشْيَاءَ فَقَطْ - وَهُوَ بَيْعُ السُّلْطَانِ لِلْمَغْنَمِ، أَوْ عَلَى مُفْلِسٍ.

وَالثَّانِي: الْعَيْبُ الْخَفِيفُ خَاصَّةً فِي الرَّقِيقِ خَاصَّةً لِكُلِّ أَحَدٍ.

وَالثَّالِثُ: فِيمَا يُصِيبُ الرَّقِيقَ فِي عُهْدَةِ الثَّلَاثِ خَاصَّةً.

solved—even if the sale included a waiver—unless they explicitly disclose a defect and physically acknowledge it.

وَذَهَبَ بَعْضُ الْمُتَقَدِّمِينَ، مِنْهُمْ: عَطَاءٌ، وَشُرَيْحٌ، إِلَى أَنَّهُ لَا يَبْرَأُ أَحَدٌ وَإِنْ بَاعَ بِالْبَرَاءَةِ، إِلَّا مِنْ عَيْبٍ بَيَّنَهُ وَوَضَعَ يَدَهُ عَلَيْهِ.

L24754 As for the statement concerning the placement of the hand, it has been narrated to us from Shurayh, and it has been authenticated from ʿAṭāʾ.

فَأَمَّا الْقَوْلُ بِوَضْعِ الْيَدِ فَرُوِّينَاهُ عَنْ شُرَيْحٍ، وَصَحَّ عَنْ عَطَاءٍ.

L24755 It has been narrated to us through the chain of ʿAbd al-Razzāq—Maʿmar—Ayyūb al-Sikhtiyānī—Abū ʿUthmān al-Nahdī, who said: I never observed them permitting anything regarding an ailment unless I had clarified it and placed [my] hand upon it.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ قَالَ: مَا رَأَيْتهمْ يُجِيزُونَ مِنْ الدَّاءِ إِلَّا مَا بَيَّنْت وَوَضَعْت يَدَك عَلَيْهِ.

L24756 Abū Muḥammad said: Had the Ḥanafīs and Mālikīs encountered such a report, they would have flown with it in every direction, for Abū ʿUthmān coexisted with all the Companions—from the first to the last—and even with the Messenger of Allah (peace and blessings be upon him), though he did not meet him.

قَالَ أَبُو مُحَمَّد: وَلَوْ وَجَدَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ مِثْلَ هَذَا لَطَارُوا بِهِ كُلَّ مَطَارٍ، لِأَنَّ أَبَا عُثْمَانَ أَدْرَكَ جَمِيعَ الصَّحَابَةِ - أَوَّلَهُمْ عَنْ آخِرِهِمْ - وَأَدْرَكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا أَنَّهُ لَمْ يَلْقَهُ.

L24757 If they had encountered anything similar to this within their beliefs, they would have asserted: “This was only reported from the Companions, and that constitutes consensus.”

فَلَوْ وَجَدُوا مِثْلَ هَذَا فِيمَا يَعْتَقِدُونَهُ لَقَالُوا: إنَّمَا ذُكِرَ ذَلِكَ عَنْ الصَّحَابَةِ وَهَذَا إجْمَاعٌ.

L24758 Ali said: As for us, we do not make definitive rulings based on speculative assumptions, nor do we know the jurisprudential basis for placing the hand. Matters such as these are only taken from the Messenger of Allah—may Allah bless him and grant him peace—not from anyone else. And success is from Allah, the Exalted.

قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَلَا نَقْطَعُ بِالظُّنُونِ، وَلَا نَدْرِي لِوَضْعِ الْيَدِ مَعْنًى، وَمِثْلُ هَذَا لَا يُؤْخَذُ إلَّا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا عَنْ غَيْرِهِ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24759 As for Al-Shafi’i’s statement: We know of no proof for him except that he merely followed what was narrated to us from Uthman through Malik, from Ibn Sa‘id al-Ansari, from Salim ibn Abdullah, who said: His father (Abdullah ibn Umar) sold a slave of his with exemption from liability. The buyer then took him to court before Uthman, saying: “He sold me a slave with a disease he did not specify to me?” Ibn Umar said: “I sold him with exemption from liability.” Uthman ruled against Ibn Umar, requiring him to swear that he had sold the slave and there was no disease he knew of. Ibn Umar refused to swear and reclaimed the slave.

وَأَمَّا قَوْلُ الشَّافِعِيِّ: فَمَا نَعْلَمُ لَهُ حُجَّةً إلَّا أَنَّهُ قَلَّدَ مَا رُوِّينَا عَنْ عُثْمَانَ مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ قَالَ: إنَّ أَبَاهُ بَاعَ غُلَامًا لَهُ بِالْبَرَاءَةِ فَخَاصَمَهُ الْمُشْتَرِي إلَى عُثْمَانَ وَقَالَ: بَاعَنِي عَبْدًا وَبِهِ دَاءٌ لَمْ يُسَمِّهِ لِي؟ فَقَالَ ابْنُ عُمَرَ: بِعْته بِالْبَرَاءَةِ، فَقَضَى عُثْمَانُ عَلَى ابْنِ عُمَرَ بِأَنْ يَحْلِفَ لَقَدْ بَاعَهُ الْغُلَامَ وَمَا بِهِ دَاءٌ يَعْلَمُهُ، فَأَبَى ابْنُ عُمَرَ مِنْ أَنْ يَحْلِفَ وَارْتَجَعَ الْعَبْدَ.

قَالَ أَبُو مُحَمَّد: وَهَذَا عَجَبٌ جِدًّا إذْ قَلَّدَ عُثْمَانَ وَلَمْ يُقَلِّدْ ابْنَ عُمَرَ جَوَازَ الْبَيْعِ بِالْبَرَاءَةِ فِي الرَّقِيقِ، وَالشَّافِعِيُّ أَشَدُّ النَّاسِ إنْكَارًا لِلتَّقْلِيدِ.

L24760 Abu Muhammad said: This is deeply perplexing, for he followed Uthman's opinion but did not adopt Ibn Umar's ruling permitting the sale of enslaved persons with exoneration of liability, and al-Shāfiʿī was the most emphatic of people in rejecting blind adherence.

ثُمَّ عَجَبٌ آخَرُ كَيْفَ قَلَّدَ عُثْمَانَ فِيمَا لَمْ يَقُلْهُ عُثْمَانُ قَطُّ، وَلَا صَحَّ عَنْهُ، وَلَمْ يُقَلِّدْهُ فِي هَذَا الْخَبَرِ نَفْسِهِ فِي قَضَائِهِ عَلَى ابْنِ عُمَرَ بِالنُّكُولِ وَهُوَ صَحِيحٌ عَنْهُ؟ إنَّ هَذَا هُوَ عَيْنُ الْعَجَبِ.

L24761 Then another wonder: how he imitated Uthman regarding matters Uthman never uttered, nor authentically transmitted from him, yet failed to imitate Uthman himself in this very report - wherein he ruled against Ibn Umar for refusing to swear an oath, though this ruling is authentically transmitted from him? Truly, this is the height of astonishment.

وَاحْتَجَّ لِتَرْجِيحِهِ رَأْيَ عُثْمَانَ بِأَنَّ الْحَيَوَانَ لَا يَكَادُ يَخْلُو مِنْ عَيْبٍ بَاطِنٍ، وَأَنَّهُ يَتَغَذَّى بِالصِّحَّةِ وَالسَّقَمِ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ وَجَبَ بِهَذَا أَنْ يَنْتَفِعَ بِالْبَرَاءَةِ فِيهِ مِمَّا لَمْ يَعْلَمْهُ مِنْ الْعُيُوبِ وَلَا يَنْفَعُهُ مِمَّا عَلِمَ فَكَتَمَ؟ إنَّ هَذَا لَعَجَبٌ؟ فَوَجَبَ رَفْضُ هَذَا الْقَوْلِ لِتَعَرِّيهِ مِنْ الدَّلَائِلِ.

L24762–24763 He argued for preferring Uthman's opinion by asserting that an animal is hardly ever free from internal defects and that it is nourished in both health and sickness. We responded: What then follows? How does this necessitate exoneration regarding defects one did not know, while granting no benefit for defects he knew yet concealed? This is truly astonishing! Thus, rejecting this view becomes obligatory due to its complete lack of evidence.

وَأَيْضًا: فَإِنَّ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - لَمْ يَقُلْ: إنَّ الْحُكْمَ بِمَا حَكَمَ بِهِ إنَّمَا هُوَ فِي الْحَيَوَانِ دُونَ مَا سِوَاهُ، فَمِنْ أَيْنَ خَرَجَ لَهُ تَخْصِيصُ الْحَيَوَانِ بِذَلِكَ؟ فَإِنْ قَالُوا: إنَّمَا حَكَمَ بِذَلِكَ فِي عَبْدٍ؟ قُلْنَا: فَلَا تَتَعَدَّوْا بِذَلِكَ الْعَبِيدَ، أَوْ الرَّقِيقَ.

L24764 Moreover, Uthman—may Allah be pleased with him—did not state that the ruling he issued applies exclusively to animals and not to other matters. From where did he derive specifying animals for that? If they argue: "He only issued that ruling concerning a slave," we respond: "Then do not go beyond slaves or those in bondage."

فَإِنْ قَالُوا: قِسْنَا الْحَيَوَانَ عَلَى الْعَبْدِ؟ قُلْنَا: وَلِمَ لَمْ تَقِيسُوا جَمِيعَ الْمَبِيعَاتِ عَلَى الْعَبْدِ؟ فَخَصَلُوا عَلَى خَبَالِ الْقِيَاسِ، وَعَلَى مُخَالَفَةِ عُثْمَانَ، وَابْنِ عُمَرَ، فَكَيْفَ وَقَدْ رُوِّينَا هَذَا الْخَبَرَ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ: أَنَّهُ بَاعَ سِلْعَةً كَانَتْ لَهُ بِالْبَرَاءَةِ، ثُمَّ ذَكَرَ الْخَبَرَ بِتَمَامِهِ، وَقَضَى عُثْمَانُ عَلَيْهِ بِالْيَمِينِ: أَنَّهُ مَا بَاعَهُ وَبِهِ دَاءٌ يَعْلَمُهُ فَكَرِهَ ابْنُ عُمَرَ الْيَمِينَ وَارْتَجَعَ السِّلْعَةَ.

L24765 If they were to say: "We have analogized animals to the slave?" We would reply: "Why did you not analogize all saleable goods to the slave?" Thus, they end up with the corruption of analogy and contravening ʿUthmān and Ibn ʿUmar. Moreover, we have received this report through the chain of Saʿīd ibn Manṣūr → Hushaym → Yaḥyā ibn Saʿīd al-Anṣārī → Sālim ibn ʿAbd Allāh ibn ʿUmar → his father: that he sold a commodity he owned with a warranty against defects, then the full report was recounted. ʿUthmān ruled that he must take an oath affirming he had not sold it while knowingly concealing any defect. Ibn ʿUmar disliked taking the oath and reclaimed the commodity.

L24766 This is a general ruling applicable to every item of sale, and its chain of transmission is continuous and sound, narrated through his father. We do

not know of any predecessor from the Companions who made this distinction at all.

فَهَذَا عُمُومٌ لِكُلِّ مَبِيعٍ وَإِسْنَادُهُ مُتَّصِلٌ سَالِمٌ عَنْ أَبِيهِ، وَمَا نَعْلَمُ لَهُمْ سَلَفًا فِي تَفْرِيقِهِمْ هَذَا مِنْ الصَّحَابَةِ أَصْلًا.

L24767 As for the statements of Mālik: they are severely contradictory. The first of these is that he narrated from one of them—which aligns with al-Shāfiʿī's opinion—that it is the matter unanimously agreed upon among them. This wording, according to his followers, is among the proofs that cannot be contradicted. In this, there are two astonishing aspects:

وَأَمَّا أَقْوَالُ مَالِك: فَشَدِيدَةُ الِاضْطِرَابِ -: أَوَّلُ ذَلِكَ أَنَّهُ حَكَى عَنْ أَحَدِهَا - وَهُوَ الْمُوَافِقُ لِقَوْلِ الشَّافِعِيِّ - أَنَّهُ الْأَمْرُ الْمُجْتَمَعُ عَلَيْهِ عِنْدَهُمْ، وَهَذَا اللَّفْظُ عِنْدَ مُقَلِّدِيهِ مِنْ الْحُجَجِ الَّتِي لَا يَجُوزُ خِلَافُهَا، وَفِي هَذَا عَجَبَانِ عَجِيبَانِ -:.

L24768 One of the two is that a divergent opinion regarding this agreed-upon matter is reported from Uthmān and Ibn Umar, and we do not know of any consensus from which Uthmān and Ibn Umar deviated.

أَحَدُهُمَا - أَنَّهُ رُوِيَ عَنْ عُثْمَانَ، وَابْنِ عُمَرَ خِلَافُ هَذَا الْأَمْرِ الْمُجْتَمَعِ عَلَيْهِ، وَمَا عَلِمْنَا إجْمَاعًا يَخْرُجُ مِنْهُ عُثْمَانُ، وَابْنُ عُمَرَ.

L24769–24771 The second is that Mālik himself retracted this opinion he mentioned as being the consensus among them. For if the matter of consensus in Medina constitutes an authoritative proof that may not be opposed, how did Mālik permit himself to oppose the Medinan consensus, which is the truth? Indeed, he contradicted the truth and abandoned it after... That he knew it—and even though the matter they collectively uphold in Medina is neither a proof nor binding to follow—why then do they entice the vulnerable with it and cite it in rejecting the Sunnah? Is this not astonishing? If they say: "Malik only retracted from it due to a disagreement he found there," we respond: "He was indeed susceptible to error in his claim of consensus and later encountered disagreement. Therefore, do not deny such a possibility in all matters alleged to be unanimously agreed upon, nor deny the existence of disagreement therein. This is inescapable for them, except that this argument—which we have invalidated in our refutation of Al-Shāfiʿī's position as baseless—and in Allah, the Exalted, we find strength."

وَالثَّانِي - أَنَّهُ رَجَعَ مَالِكٌ نَفْسُهُ عَنْ هَذَا الْقَوْلِ الَّذِي ذَكَرَهُ أَنَّهُ الْمُجْتَمَعُ عَلَيْهِ عِنْدَهُمْ، فَلَئِنْ كَانَ الْأَمْرُ الْمُجْتَمَعُ عَلَيْهِ عِنْدَهُمْ بِالْمَدِينَةِ حُجَّةً لَا يَجُوزُ خِلَافُهَا، فَكَيْفَ اسْتَجَازَ مَالِكٌ أَنْ يُخَالِفَ الْمُجْتَمَعَ عَلَيْهِ بِالْمَدِينَةِ، وَهُوَ الْحَقُّ؟ فَلَقَدْ خَالَفَ الْحَقَّ وَتَرَكَهُ بَعْدَ أَنْ عَلِمَهُ، وَإِنْ كَانَ الْأَمْرُ الْمُجْتَمَعُ عَلَيْهِ عِنْدَهُمْ بِالْمَدِينَةِ لَيْسَ حُجَّةً، وَلَا يَلْزَمُ اتِّبَاعُهُ، فَمَا بَالُهُمْ يَغُرُّونَ الضُّعَفَاءَ بِهِ، وَيَحْتَجُّونَ بِهِ فِي رَدِّ السُّنَنِ، أَمَا هَذَا عَجَبٌ؟ فَإِنْ قَالُوا: لَمْ يَرْجِعْ مَالِكٌ عَنْهُ إلَّا لِخِلَافٍ وَجَدَهُ هُنَالِكَ؟ فَقُلْنَا: فَقَدْ جَازَ الْوَهْمُ عَلَيْهِ فِي دَعْوَى الْإِجْمَاعِ، وَوَجَدَ الْخِلَافَ بَعْدَ ذَلِكَ، فَلَا تُنْكِرُوا مِثْلَ هَذَا فِي سَائِرِ مَا ذُكِرَ فِيهِ أَنَّهُ الْأَمْرُ الْمُجْتَمَعُ عَلَيْهِ، وَلَا تُنْكِرُوا وُجُودَ الْخِلَافِ فِيهِ، وَهَذَا مَا لَا مَخْلَصَ لَهُمْ مِنْهُ، إلَّا أَنَّ هَذَا الْقَوْلَ قَدْ بَيَّنَّا فِي إبْطَالِنَا قَوْلَ الشَّافِعِيِّ بُطْلَانَهُ - وَبِاَللَّهِ - تَعَالَى - نَتَأَيَّدُ.

L24772 As for his second statement regarding his specification of slaves specifically, we find no basis for it at all—neither from the Quran, nor the Sunnah, nor a weak narration, nor the statement of a Companion, nor analogy, nor personal opinion.

وَأَمَّا قَوْلُهُ الثَّانِي: فِي تَخْصِيصِهِ الرَّقِيقَ خَاصَّةً، فَمَا نَدْرِي لَهُ مُتَعَلَّقًا أَصْلًا لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ.

وَلَعَلَّ قَائِلًا يَقُولُ: إنَّهُ قَلَّدَ عُثْمَانَ؟ فَقُلْنَا: وَمَا بَالُ تَقْلِيدِ عُثْمَانَ دُونَ تَقْلِيدِ ابْنِ عُمَرَ وَكِلَاهُمَا صَاحِبٌ -.

L24773 Perhaps someone might say: "He followed ʿUthmān?" We would respond: "Why follow ʿUthmān instead of Ibn ʿUmar when both of them are Companions!"

وَأَيْضًا: فَمَا قَلَّدَ عُثْمَانَ، لِأَنَّ عُثْمَانَ لَمْ يَقُلْ إنَّ هَذَا الْحُكْمَ إنَّمَا هُوَ فِي الرَّقِيقِ خَاصَّةً، وَقَدْ خَالَفَهُ فِي قَضَائِهِ بِالنُّكُولِ، فَمَا حَصَلَ إلَّا عَلَى خِلَافِ عُثْمَانَ، وَابْنِ عُمَرَ - فَبَطَلَ هَذَا الْقَوْلُ أَيْضًا لِتَعَرِّيهِ عَنْ الْأَدِلَّةِ جُمْلَةً.

L24774 Moreover, he did not emulate Uthman's opinion because Uthman did not state that this ruling applies exclusively to slaves. Furthermore, he contradicted Uthman's judgment regarding the refusal to take an oath, thereby resulting in nothing but disagreement from Uthman and Ibn Umar. Consequently, this opinion is also invalidated, as it is entirely devoid of supporting evidence.

وَأَمَّا قَوْلُهُ الثَّالِثُ: الَّذِي رَجَعَ إلَيْهِ فَأَشَدُّهَا فَسَادًا لِأَنَّهُ لَا مُتَعَلَّقَ لَهُ بِقَوْلِ أَحَدٍ نَعْلَمُهُ: لَا صَاحِبٍ، وَلَا تَابِعٍ، وَلَا قِيَاسٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ.

L24775 As for his third statement—the one he reverted to—it is the most flawed of them because it has no basis in the statement of anyone we know of: neither a Companion, nor a follower, nor analogical reasoning, nor Prophetic tradition, nor a weak narration, nor an opinion with a valid basis.

ثُمَّ تَخْصِيصُهُ الْبَيْعَ عَلَى الْمُفْلِسِ عَجَبٌ، وَعُهْدَةُ الثَّلَاثِ كَذَلِكَ، ثُمَّ تَخْصِيصُهُ بِالْعَيْبِ الْخَفِيفِ - وَهُوَ لَمْ يُبَيِّنْ مَا الْخَفِيفُ مِنْ الثَّقِيلِ - فَحَصَلَ مُقَلِّدُوهُ فِي أَضَالِيلَ لَا يَحْكُمُونَ بِهَا فِي دِينِ اللَّهِ - تَعَالَى - إلَّا بِالظَّنِّ.

L24776 Then his specification of the sale regarding the bankrupt is perplexing, and the liability of the three [parties] is likewise. Then his restriction to minor defects—while he failed to distinguish between minor and major—has plunged his followers into delusions, for they do not judge by them [delusions] in the religion of Allah—Exalted is He—except through conjecture.

فَسَقَطَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24777 Thus, all these statements have been invalidated. And by Allah, the Exalted, is all divine success.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَإِنَّهُمْ قَالُوا: قَدْ صَحَّ الْإِجْمَاعُ الْمُتَيَقَّنُ عَلَى أَنَّهُ إذَا بَاعَ وَبَرِئَ مِنْ عَيْبٍ سَمَّاهُ فَإِنَّهُ يَبْرَأُ مِنْهُ، وَلَا فَرْقَ بَيْنَ تَفْصِيلِهِ عَيْبًا عَيْبًا وَبَيْنَ إجْمَالِهِ الْعُيُوبَ، وَقَالُوا: قَدْ رُوِيَ قَوْلُنَا عَنْ بَعْضِ الصَّحَابَةِ كَمَا ذَكَرْنَا عَنْ ابْنِ عُمَرَ، وَزَيْدِ بْنِ ثَابِتٍ، وَلَعَلَّهُمْ يَحْتَجُّونَ «بِالْمُسْلِمِينَ عِنْدَ شُرُوطِهِمْ» .

L24778 As for the statement of Abū Ḥanīfah, his followers said: A certain consensus has been established that if one sells an item and is absolved from a defect he specifies, he is indeed absolved from it. There is no distinction between enumerating each defect individually and generalizing them collectively. They added: Our position has been transmitted from some Companions, as we have mentioned concerning Ibn ʿUmar and Zayd ibn Thābit. They likely base their argument on the principle: "Muslims are bound by their stipulated conditions."

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ لَهُمْ شَغَبًا غَيْرَ هَذَا، فَأَمَّا «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» فَقَدْ قَدَّمْنَا: أَنَّهُ بَاطِلٌ لَا يَصِحُّ وَأَنَّهُ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّ شُرُوطَ الْمُسْلِمِينَ لَيْسَتْ

L24779–24780 Abū Muḥammad said: We do not know of any dispute from them except this. As for the statement "Muslims are bound by their conditions," we have previously established that it is invalid and impermissible, and even if it were valid, they would have no proof for it. This is because the condi-

tions applicable to Muslims are only those which Allah—the Exalted—and His Messenger—peace and blessings of Allah be upon him—have explicitly permitted, not conditions that Allah—the Exalted—or His Messenger—upon him be peace—have not sanctioned. The Messenger of Allah—peace and blessings of Allah be upon him—said: "Every condition not in the Book of Allah—the Exalted—is invalid."

إِلَّا الشُّرُوطَ الَّتِي نَصَّ اللَّهُ - تَعَالَى - عَلَى إبَاحَتِهَا وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا شُرُوطًا لَمْ يُبِحْهَا اللَّهُ - تَعَالَى - وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ - تَعَالَى - فَهُوَ بَاطِلٌ» .

L24781 As for narrations from some Companions, they differed, and there is no proof in the opinion of some of them over others. As for their statement: "There is no difference between specifying defects explicitly and mentioning them generally"—they lied. Rather, the greatest distinction exists between them. For if one names the defect and acknowledges it, they have spoken truthfully and are absolved from it. But if one mentions defects generally, they have lied with certainty, since defects are contradictory. Thus, the sale contract becomes established upon falsehood and is therefore invalidated. How can there be no difference between a truthful contract and a false one? As for the Companions, they differed, and there is no proof in the opinion of anyone apart from the Messenger of Allah—peace and blessings be upon him. Thus, this opinion is also invalidated due to its lack of evidence.

وَأَمَّا الرِّوَايَةُ عَنْ بَعْضِ الصَّحَابَةِ فَقَدْ اخْتَلَفُوا، وَلَا حُجَّةَ فِي قَوْلِ بَعْضِهِمْ دُونَ بَعْضٍ - وَأَمَّا قَوْلُهُمْ: لَا فَرْقَ بَيْنَ تَفْصِيلِ الْعُيُوبِ وَبَيْنَ إجْمَالِهَا، فَكَذَبُوا، بَلْ بَيْنَهُمَا أَعْظَمُ الْفَرْقِ، لِأَنَّهُ إذَا سَمَّى الْعَيْبَ وَوَقَفَ عَلَيْهِ فَقَدْ صَدَقَ وَبَرِئَ مِنْهُ، وَإِذَا أَجْمَلَ الْعُيُوبَ فَقَدْ كَذَبَ بِيَقِينٍ، لِأَنَّ الْعُيُوبَ تَتَضَادُّ، فَصَارَتْ صَفْقَةً انْعَقَدَتْ عَلَى الْكَذِبِ فَهِيَ مَفْسُوخَةٌ، وَكَيْفَ لَا يَكُونُ فَرْقٌ بَيْنَ صَفْقَةِ صِدْقٍ وَصَفْقَةِ كَذِبٍ - وَأَمَّا الصَّحَابَةُ: فَقَدْ اخْتَلَفُوا وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، فَبَطَلَ هَذَا الْقَوْلُ أَيْضًا لِتَعَرِّيهِ مِنْ الْأَدِلَّةِ.

L24782 Abū Muḥammad said: Let us now present the proof for the validity of our position by the power of Allah, Exalted is He, and His might. Whoever sells on the condition that no defect may be contested if discovered—such a sale is voidable and void, for it is contracted under a condition not stipulated in the Book of Allah, Exalted is He, therefore it is void, and because it constitutes fraud, and fraud is forbidden.

قَالَ أَبُو مُحَمَّدٍ: فَلْنَذْكُرْ الْآنَ الْبُرْهَانَ عَلَى صِحَّةِ قَوْلِنَا بِحَوْلِ اللَّهِ - تَعَالَى - وَقُوَّتِهِ -: وَهُوَ أَنَّ مَنْ بَاعَ بِشَرْطِ أَنْ لَا يُقَامَ عَلَيْهِ بِعَيْبٍ إنْ وُجِدَ، فَهُوَ بَيْعٌ فَاسِدٌ بَاطِلٌ، لِأَنَّهُ انْعَقَدَ عَلَى شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ - تَعَالَى -، فَهُوَ بَاطِلٌ، وَلِأَنَّهُ غِشٌّ، وَالْغِشُّ مُحَرَّمٌ.

L24783 He (peace be upon him) said: "Whoever deceives us is not one of us." And he (peace be upon him) said: "Religion is sincere devotion to Allah, His Messenger, His Book, the rulers of the Muslims, and their common people."

قَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ غَشَّنَا فَلَيْسَ مِنَّا» وَقَالَ - عَلَيْهِ السَّلَامُ -: «الدِّينُ النَّصِيحَةُ لِلَّهِ وَلِرَسُولِهِ وَلِكِتَابِهِ وَلِأَئِمَّةِ الْمُسْلِمِينَ وَعَامَّتِهِمْ» .

L24784 Whoever sells with a disclaimer of defects must necessarily have intended one of two scenarios: either that no claim may be brought against him if a defect is found, and that he is free from liability for it—as we have established that a sale formulated thus is void—or that he intended this disclaimer to encompass every defect. The latter is certainly void, for fever constitutes a

وَمَنْ بَاعَ بِالْبَرَاءَةِ مِنْ الْعُيُوبِ: فَلَا يَخْلُو مِنْ أَنْ يَكُونَ أَرَادَ بِذَلِكَ أَنْ لَا يُقَامَ عَلَيْهِ بِعَيْبٍ إنْ وُجِدَ، وَأَنَّهُ بَرِيءٌ مِنْهُ، فَقَدْ ذَكَرْنَا أَنَّ الْبَيْعَ هَكَذَا بَاطِلٌ أَوْ يَكُونَ أَرَادَ فِيهِ

defect from heat, while hemiplegia constitutes a defect from cold, and these two are mutually contradictory.

كُلَّ عَيْبٍ فَهَذَا بَاطِلٌ بِيَقِينٍ؛ لِأَنَّ الْحُمَّى عَيْبٌ، وَهِيَ مِنْ حَرٍّ، وَالْفَالِجُ عَيْبٌ وَهُوَ مِنْ بَرْدٍ، وَهُمَا مُتَضَادَّانِ.

L24785–24787 Every sale contracted upon falsehood and voidance is void, because it was contracted on the premise that it holds no validity unless... Regarding the validity of what inherently lacks validity, it holds no validity. There is no distinction in this regard between specifying all defects, some of them, or none at all, for he specified one defect and added more defects while lying about them. Thus, the transaction is invalid because it is founded on falsehood, on attributing to it what does not exist within it, and because he purchased it based on that false premise. Since the defect is not present, the purchase is invalid for him in this matter—and this is perfectly clear. Success comes solely from Allah, the Exalted.

وَكُلُّ بَيْعٍ انْعَقَدَ عَلَى الْكَذِبِ وَالْبَاطِلِ فَهُوَ بَاطِلٌ؛ لِأَنَّهُ انْعَقَدَ عَلَى أَنَّهُ لَا صِحَّةَ لَهُ إِلَّا بِصِحَّةِ مَا لَا صِحَّةَ لَهُ، فَلَا صِحَّةَ لَهُ - وَلَا فَرْقَ فِي هَذَا الْوَجْهِ بَيْنَ أَنْ يُسَمِّيَ الْعُيُوبَ كُلَّهَا، أَوْ بَعْضَهَا، أَوْ لَا يُسَمِّيَهَا؛ لِأَنَّهُ إِنَّمَا سَمَّى عَيْبًا وَاحِدًا فَأَكْثَرَ وَكَذَبَ فِيهِ، فَالصَّفْقَةُ بَاطِلَةٌ؛ لِانْعِقَادِهَا عَلَى الْبَاطِلِ، وَعَلَى أَنَّ بِهِ مَا لَيْسَ فِيهِ، وَأَنَّهُ عَلَى ذَلِكَ يَشْتَرِيهِ، فَإِذْ لَيْسَ بِهِ ذَلِكَ الْعَيْبُ، فَلَا شِرَاءَ لَهُ فِيهِ - وَهَذَا فِي غَايَةِ الْوُضُوحِ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24788 If he sells and remains silent, neither absolving himself from any defect nor stipulating soundness, then the sale is valid. If a defect is found, the one who finds it has the choice to return [the item] or retain it; otherwise, the sale is binding. And with Allah, the Exalted, lies success.

فَإِنْ بَاعَ وَسَكَتَ وَلَمْ يَبْرَأْ مِنْ عَيْبٍ أَصْلًا وَلَا شَرَطَ سَلَامَةً، فَهُوَ بَيْعٌ صَحِيحٌ إِنْ وُجِدَ الْعَيْبُ فَالْخِيَارُ لِوَاجِدِهِ فِي رَدٍّ أَوْ إِمْسَاكٍ، وَإِلَّا فَالْبَيْعُ لَازِمٌ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24789 The issue of selling copies of the Quran and books of sciences.

[مَسْأَلَة بَيْع الْمَصَاحِف وكتب الْعُلُوم]

L24790 1558. Issue: The sale of muṣḥafs is permissible, as is the sale of all books of knowledge—Arabic and non-Arabic ones—because what is sold is merely the parchment, paper, sheets and ink, the tanned leather (if the books are bound), and the ornamentation (if present solely on them).

١٥٥٨ - مَسْأَلَةٌ: وَبَيْعُ الْمَصَاحِفِ جَائِزٌ، وَكَذَلِكَ جَمِيعُ كُتُبِ الْعُلُومِ - عَرَبِيِّهَا وَعَجَمِيِّهَا - لِأَنَّ الَّذِي يُبَاعُ إِنَّمَا هُوَ الرَّقُّ أَوْ الْكَاغَدُ أَوْ الْقِرْطَاسُ وَالْمِدَادُ، وَالْأَدِيمُ - إِنْ كَانَتْ مُجَلَّدَةً - وَحِلْيَةً إِنْ كَانَتْ عَلَيْهَا فَقَطْ.

L24791 As for knowledge, it is not sold because it is not a corporeal body; this is the opinion of Abu Hanifah, Malik, al-Shafi'i, and Abu Sulayman.

وَأَمَّا الْعِلْمُ فَلَا يُبَاعُ؛ لِأَنَّهُ لَيْسَ جِسْمًا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L24792 And it has been narrated to us through the chain of Sa'īd ibn Manṣūr: from Khālid ibn 'Abdillāh, known as al-Ṭaḥḥān (the miller), from Sa'īd ibn Iyās al-Jurāyirī, from 'Abdillāh ibn Shaqīq, who said: The Companions of the

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا خَالِدُ بْنُ عَبْدِ اللَّهِ - هُوَ الطَّحَّانُ - عَنْ سَعِيدِ بْنِ إِيَاسٍ الْجُرَيْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ شَقِيقٍ قَالَ: كَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَكْرَهُونَ بَيْعَ الْمَصَاحِفِ، وَتَعْلِيمَ الصِّبْيَانِ بِالْأَرْشِ - يُعَظِّمُونَ ذَلِكَ.

Messenger of Allah (peace be upon him) used to disapprove of selling copies of the Qur'ān and teaching children in exchange for compensation. They regarded this matter with profound gravity.

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ سَالِمِ بْنِ عَجْلَانَ - هُوَ الْأَفْطَسُ - عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: قَالَ ابْنُ عُمَرَ: وَدِدْت أَنِّي قَدْ رَأَيْت أَنَّ الْأَيْدِيَ تُقْطَعُ فِي بَيْعِ الْمَصَاحِفِ.

L24793 From the narration of Waki': I, Sufyan al-Thawri, [narrate] from Salim ibn 'Ajlan - he is Al-Aftas - from Sa'id ibn Jubayr, who reported that Ibn 'Umar said: I wish I had witnessed hands being cut off for trafficking copies of the Qur'an.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا هَمَّامُ بْنُ يَحْيَى أَنَا قَتَادَةُ عَنْ زُرَارَةَ بْنِ أَوْفَى الْحَرَشِيِّ عَنْ مُطَرِّفِ بْنِ مَالِكٍ قَالَ: شَهِدْت فَتْحَ تُسْتَرَ مَعَ أَبِي مُوسَى الْأَشْعَرِيِّ فَأَصَبْنَا دَانْيَالَ بِالسُّوسِ وَمَعَهُ رَبْعَةٌ فِيهَا كِتَابٌ، وَمَعَنَا أَجِيرٌ نَصْرَانِيٌّ فَقَالَ: تَبِيعُونِي هَذِهِ الرَّبْعَةَ وَمَا فِيهَا؟ قَالُوا: إنْ كَانَ فِيهَا ذَهَبٌ أَوْ فِضَّةٌ أَوْ كِتَابُ اللَّهِ لَمْ نَبِعْك؟ قَالَ: فَإِنَّ الَّذِي فِيهَا كِتَابُ اللَّهِ - تَعَالَى -، فَكَرِهُوا بَيْعَهُ، قَالَ: فَبِعْنَاهُ الرَّبْعَةَ بِدِرْهَمَيْنِ، وَوَهَبْنَا لَهُ الْكِتَابَ، قَالَ قَتَادَةُ: فَمِنْ ثَمَّ كُرِهَ بَيْعُ الْمَصَاحِفِ؛ لِأَنَّ الْأَشْعَرِيَّ، وَالصَّحَابَةَ كَرِهُوا بَيْعَ ذَلِكَ الْكِتَابِ.

L24794 Through the chain of Al-Ḥajjāj ibn al-Minhāl: Hammām ibn Yaḥyā narrates from Qatādah, who narrates from Zurārah ibn Awfā al-Ḥarashī from Muṭarrif ibn Mālik, who said: I witnessed the conquest of Tustar with Abū Mūsā al-Ashʿarī. We found Daniel in Sus with a square case containing a book. A Christian hired worker with us said: "Will you sell me this case and its contents?" They replied: "If it contained gold, silver, or the Book of Allah, we would not sell it to you." He said: "What is inside is the Book of Allah - the Exalted." They disliked selling it. He said: So we sold him the case for two dirhams and gifted him the book. Qatādah said: This is why selling copies of the Quran is disliked, for al-Ashʿarī and the Companions disliked selling that book.

قَالَ أَبُو مُحَمَّد: إنَّمَا كَرِهُوا الْبَيْعَ نَفْسَهُ لَيْسَ مِنْ أَجْلِ أَنَّ الْمُشْتَرِيَ كَانَ نَصْرَانِيًّا، أَلَا تَرَى أَنَّهُمْ قَدْ وَهَبُوهُ لَهُ بِلَا ثَمَنٍ.

L24795 Abu Muhammad said: They disapproved the sale itself, not because the buyer was a Christian; do you not see that they had gifted it to him without payment?

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي حُصَيْنٍ عَنْ أَبِي الضُّحَى سَأَلْت عَبْدَ اللَّهِ بْنَ يَزِيدَ، وَمَسْرُوقًا، وَشُرَيْحًا، عَنْ بَيْعِ الْمَصَاحِفِ؟ فَقَالُوا: لَا نَأْخُذُ لِكِتَابِ اللَّهِ ثَمَنًا.

L24796–24797 And from the narration of Waki': I, Sufyan al-Thawri, report from Abu Husayn, from Abu al-Duha, who said: "I asked 'Abdullah ibn Yazid, Masruq, and Shurayh about selling copies of the Qur'an." They replied: "We do not take a price for the Book of Allah."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ أَنَّ ابْنَ جُرَيْجٍ ذَكَرَ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ فِي الْمَصَاحِفِ: اشْتَرِهَا وَلَا تَبِعْهَا.

L24798 On the authority of ʿAbd al-Razzāq, from Sufyān, who reported that Ibn Juraij narrated from ʿAṭāʾ, from Ibn ʿAbbās, who said regarding copies of the Quran: "Buy them and do not sell them."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ الْأَوْدِيُّ عَنِ ابْنِ جُرَيْجٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ فِي الْمَصَاحِفِ: اشْتَرِهَا وَلَا تَبِعْهَا.

L24799 And via the chain of Ibn Abi Shaybah: Abdullah ibn Idris al-Awdi reported from Ibn Jurayj, from Abu al-Zubayr, from Jabir ibn Abdullah, who said regarding copies of the Quran, “Buy them and do not sell them.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ عُلَيَّةَ - عَنْ لَيْثٍ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ عَنْ عَلْقَمَةَ عَنِ ابْنِ مَسْعُودٍ أَنَّهُ كَرِهَ شِرَاءَ الْمَصَاحِفِ وَبَيْعَهَا.

L24800 And through the chain of Ibn Abi Shaybah: I, Ismāʿīl ibn Ibrāhīm (he is Ibn ʿUlayyah), narrated from Layth, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm, from ʿAlqamah, from Ibn Masʿūd that he held the buying and selling of Masāhif (Qur’anic codices) to be disliked.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ فُضَيْلٍ عَنِ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قُلْتُ لِعَلْقَمَةَ: أَبِيعُ مُصْحَفًا؟ قَالَ: لَا.

L24801 And from the chain of Ibn Abi Shaybah: I, Ibn Fudayl, narrated from al-A’mash, from Ibrāhīm al-Nakhaʿī. I asked ʿAlqamah: “May I sell a *Muṣḥaf*?” He said: “No.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنِ عُلَيَّةَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ أَبِي مَعْشَرٍ عَنْ إِبْرَاهِيمَ قَالَ: لَحْسُ الدُّبُرِ أَحَبُّ إِلَيَّ مِنْ بَيْعِ الْمَصَاحِفِ.

L24802 Through the chain of Ibn Abi Shaybah: Ibn ʿUlayyah narrated from Saʿīd ibn Abī ʿArūbah, from Abū Maʿshar, from Ibrāhīm, who said: “Licking the anus is more preferable to me than selling Qur’anic codices.”

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا أَبُو عَوَانَةَ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ كَانَ يَقُولُ: لَا يُورَثُ الْمُصْحَفُ: هُوَ لِأَهْلِ الْبَيْتِ الْقُرَّاءِ مِنْهُمْ.

L24803 And through the chain of Al-Ḥajjāj ibn Al-Minhāl → Abū ʿAwānah → Al-Mughīrah ibn Miqsam → Ibrāhīm An-Nakhaʿī, who said: The Muṣḥaf is not inherited; it belongs to the readers among the members of the household.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا يَزِيدُ بْنُ زُرَيْعٍ أَنَا خَالِدٌ - هُوَ الْحَذَّاءُ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبِيدَةَ السَّلْمَانِيِّ، قَالَ: كَانَ يَكْرَهُ بَيْعَ الْمَصَاحِفِ وَابْتِيَاعَهَا.

L24804 From the chain of Al-Ḥajjāj ibn Al-Minhāl: Yazīd ibn Zuraiʿ reported from Khālid—known as Al-Ḥadhdhā’—who reported from Muḥammad ibn Sīrīn, from ʿAbīdah Al-Salmānī, who said: He disapproved of selling copies of the Quran and purchasing them.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ عُلَيَّةَ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبِيدَةَ السَّلْمَانِيِّ أَنَّهُ كَرِهَ بَيْعَ الْمَصَاحِفِ وَابْتِيَاعَهَا، وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا مَهْدِ بْنُ مَيْمُونٍ سَأَلْتُ مُحَمَّدَ بْنَ سِيرِينَ عَنْ كُتَّابِ الْمَصَاحِفِ بِالْأَجْرِ؟ فَقَالَ: كَرِهَ كُتَّابَهَا وَاسْتِكْتَابَهَا وَبَيْعَهَا وَشِرَاءَهَا.

L24805 And via the chain of Ibn Abi Shaybah: from Ibn ʿUlayyah, from Khalid al-Hadhdha, from Muhammad ibn Sirin, from ʿUbaydah al-Salmani that he disliked selling Qurans and purchasing them. And via the chain of al-Hajjaj ibn al-Minhāl: from Mahdi ibn Maimun: “I asked Muhammad ibn Sirin about scribes writing Qurans for payment.” He said: “He disliked writing them, commissioning their writing, selling them, and buying them.”

L24806–24808 And through the chain of Ibn Abi Shaybah: He said, “Waki‘ narrated from ʿIkrimah ibn ʿAmmar, from Salim—the son of ʿAbdullah ibn ʿUmar—who said: Detestable is the trade of selling copies of the Qur’an.” Among the chains

of transmission is that of Wakiʿ, who narrated from Saʿid ibn Abi ʿArubah and Shuʿbah. Saʿid ibn Abi ʿArubah narrated from Qatādah from Saʿid ibn al-Musayyib, while Shuʿbah narrated from Abi Bishr from Saʿid ibn Jubayr. Ibn al-Musayyib and Ibn Jubayr then concurred, both stating: “Acquire the Muṣḥafs and do not sell them.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ عِكْرِمَةَ بْنِ عَمَّارٍ عَنْ سَالِمٍ هُوَ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ - قَالَ: بِئْسَ التِّجَارَةُ بَيْعُ الْمَصَاحِفِ وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، وَشُعْبَةَ، قَالَ سَعِيدٌ: عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَقَالَ شُعْبَةُ عَنْ أَبِي بِشْرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ، ثُمَّ اتَّفَقَ ابْنُ الْمُسَيِّبِ، وَابْنُ جُبَيْرٍ قَالَا جَمِيعًا: اشْتَرِ الْمَصَاحِفَ وَلَا تَبِعْهَا.

L24809 Through the chain of Ibn Abi Shaybah: I, Al-Mu’tamir ibn Sulayman, report from Ma’mar, from Qatadah, who said: “Purchase and do not sell”—referring to the Quranic codices.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: اشْتَرِ وَلَا تَبِعْ - يَعْنِي الْمَصَاحِفَ.

L24810 From the transmission path of Ibn Abi Shaybah: from Affan, from Hammam, from Yahya ibn Abi Kathir, who said: I asked Abu Salama ibn Abd al-Rahman ibn Awf about selling Qur’anic codices. He said: “Buy them and do not sell them” - and this is the view of al-Hakam ibn Utayba and Muhammad ibn Ali ibn al-Husayn.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَفَّانَ أَنَا هَمَّامٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: سَأَلْت أَبَا سَلَمَةَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ بَيْعِ الْمَصَاحِفِ؟ قَالَ: اشْتَرِهَا وَلَا تَبِعْهَا - وَهُوَ قَوْلُ الْحَكَمِ بْنِ عُتَيْبَةَ، وَمُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ.

L24811 And via the transmission of ʿAbd al-Razzāq, on the authority of Maʿmar, he said, “I asked al-Zuhrī, ’What about selling *Masāḥif*?’ He disapproved of it.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: سَأَلْت الزُّهْرِيَّ عَنْ بَيْعِ الْمَصَاحِفِ؟ فَكَرِهَهُ.

L24812 Through the chain of Wakiʿ: Isrāʾīl narrated from Jābir, from ʿĀmir al-Shaʿbī, who said: “Purchase copies of the Qur’an (muṣḥafs) and do not sell them.”

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا إِسْرَائِيلُ عَنْ جَابِرٍ عَنْ عَامِرٍ الشَّعْبِيِّ قَالَ: اشْتَرِ الْمَصَاحِفَ وَلَا تَبِعْهَا.

L24813 And from the narration of Ḥammād ibn Salamah through Ḥumayd from al-Ḥasan that he deemed reprehensible the sale of Qur’anic codices. Matar al-Warrāq [the manuscript trader] insisted relentlessly until he granted him permission. These authorities include Abū Mūsā al-Ashʿarī along with all those associated with him among the Companions or Followers during ʿUmar ibn al-Khaṭṭāb’s era, then six explicitly named Companions: Ibn Masʿūd, ʿAbdullāh ibn ʿAbbās, ʿAbdullāh ibn Zayd, Jābir ibn ʿAbdullāh, Ibn ʿUmar, followed by all the Companions collectively without dissent among them.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ أَنَّهُ كَرِهَ بَيْعَ الْمَصَاحِفِ فَلَمْ يَزَلْ بِهِ مَطَرٌ الْوَرَّاقُ حَتَّى أَرْخَصَ لَهُ، فَهَؤُلَاءِ أَبُو مُوسَى الْأَشْعَرِيُّ، وَكُلُّ مَنْ مَعَهُ مِنْ صَاحِبٍ أَوْ تَابِعٍ أَيَّامَ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ مَسْعُودٍ، وَعَبْدِ اللَّهِ بْنِ عَبَّاسٍ، وَعَبْدِ اللَّهِ بْنِ زَيْدٍ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ، وَابْنِ عُمَرَ: سِتَّةٌ مِنْ الصَّحَابَةِ بِأَسْمَائِهِمْ، ثُمَّ جَمِيعُ الصَّحَابَةِ بِإِطْلَاقٍ لَا مُخَالِفَ لَهُمْ مِنْهُمْ.

وَمِنْ التَّابِعِينَ الْمُسَمَّيْنَ: مَسْرُوقٌ، وَشُرَيْحٌ، وَمُطَرِّفُ بْنُ مَالِكٍ، وَعَلْقَمَةُ، وَإِبْرَاهِيمُ، وَعَبِيدَةُ السَّلْمَانِيُّ، وَابْنُ سِيرِينَ، وَسَالِمُ بْنُ عَبْدِ اللَّهِ، وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ، وَقَتَادَةُ، وَالزُّهْرِيُّ، وَالشَّعْبِيُّ، وَالْحَسَنُ، كُلُّهُمْ يَنْهَى عَنْ بَيْعِ الْمَصَاحِفِ - وَلَا يَرَاهُ سِوَى مَنْ ذَكَرَ ذَلِكَ عَنْهُ مِنْ الْجُمْهُورِ مِمَّنْ لَمْ يُسَمِّ وَمَا نَعْلَمُهُ رُوِّيَ إبَاحَةَ بَيْعِهَا إلَّا عَنْ الْحَسَنِ، وَالشَّعْبِيِّ بِاخْتِلَافٍ عَنْهُمَا، وَعَنْ أَبِي الْعَالِيَةِ، وَأَثَرَيْنِ مَوْضُوعَيْنِ -: أَحَدُهُمَا: مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ عَنْ طَلْقِ بْنِ السَّمْحِ عَنْ عَبْدِ الْجَبَّارِ بْنِ عَمْرٍو الْأَيْلِيِّ قَالَ: كَانَ ابْنُ مُصَبِّحٍ يَكْتُبُ الْمَصَاحِفَ فِي زَمَانِ عُثْمَانَ وَيَبِيعُهَا وَلَا يُنْكَرُ ذَلِكَ عَلَيْهِ.

L24814–24816 Among the explicitly named Followers are: Masrūq, Shuraiḥ, Muṭarrif ibn Mālik, ʿAlqamah, Ibrāhīm, ʿUbeydah al-Salmānī, Ibn Sīrīn, Sālim ibn ʿAbdillāh, Saʿīd ibn al-Musayyab, Saʿīd ibn Jubayr, Abū Salamah ibn ʿAbd al-Raḥmān, Qatādah, al-Zuhrī, al-Shaʿbī, and al-Ḥasan—all of them prohibited the sale of muṣḥafs. None deemed it permissible except those among the majority who were cited as holding this view (despite not being explicitly named). As far as we know, no one transmitted reports permitting its sale except al-Ḥasan and al-Shaʿbī—with conflicting accounts from them—along with Abū al-ʿĀliyah and two fabricated narrations: one via the transmission chain of ʿAbd al-Malik ibn Ḥabīb from Ṭalq ibn al-Samḥ from ʿAbd al-Jabbār ibn ʿAmr al-Aylī. He said: Ibn Muṣabbiḥ used to write copies of the Qur'an during the time of ʿUthmān and sell them, and this was not disapproved against him.

وَالْآخَرُ أَيْضًا: مِنْ طَرِيقِ ابْنِ حَبِيبٍ عَنْ الْحَارِثِ بْنِ أَبِي الزُّبَيْرِ الْمَدَنِيِّ عَنْ أَنَسِ بْنِ عِيَاضٍ عَنْ بُكَيْرِ بْنِ مِسْمَارٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ يَكْرَهُ لِلرَّجُلِ أَنْ يَبِيعَهَا - يَتَّخِذُهَا مَتْجَرًا - وَلَا يَرَى بَأْسًا بِمَا عَمِلَتْ يَدَاهُ مِنْهَا أَنْ يَبِيعَهُ.

L24817 Another narration is also reported via Ibn Habib from al-Harith ibn Abi al-Zubayr al-Madani from Anas ibn Iyad from Bukayr ibn Mismar from Ibn Abbas: He disapproved of a man selling the property if he established it as a shop, but he saw no harm in selling what his hands had produced from it through labor.

ابْنُ حَبِيبٍ سَاقِطٌ - وَابْنُ مُصَبِّحٍ، وَالْحَارِثُ بْنُ أَبِي الزُّبَيْرِ، وَطَلْقُ بْنُ السَّمْحِ: لَا يَدْرِي أَحَدٌ مَنْ هُمْ مِنْ خَلْقِ اللَّهِ - تَعَالَى -، وَعَبْدُ الْجَبَّارِ بْنُ عَمْرٍو سَاقِطٌ وَلَمْ يُدْرِكْ عُثْمَانَ، وَبُكَيْرُ بْنُ مِسْمَارٍ ضَعِيفٌ - ثُمَّ هُمَا مُخَالِفَانِ لِقَوْلِهِمْ؛ لِأَنَّهُ لَيْسَ فِي حَدِيثِ ابْنِ مُصَبِّحٍ: أَنَّ عُثْمَانَ عَرَفَ بِذَلِكَ، وَلَا أَنَّ أَحَدًا مِنْ الصَّحَابَةِ عَرَفَ بِذَلِكَ، وَفِي حَدِيثِ ابْنِ عَبَّاسٍ: أَنَّهُ كَرِهَ أَنْ يَتَّخِذَ بَيْعَهَا مَتْجَرًا.

L24818 Ibn Ḥabīb is rejected. As for Ibn Muṣabbiḥ, al-Ḥārith ibn Abī al-Zubayr, and Ṭalq ibn al-Samḥ: none among Allah's creation—Exalted is He—knows who they are. ʿAbd al-Jabbār ibn ʿAmr is rejected and did not meet ʿUthmān. Bukayr ibn Mismār is weak. Moreover, these two narrations conflict with their statement, for Ibn Muṣabbiḥ's narration does not mention that ʿUthmān was aware of this, nor that any of the Companions knew of it. In Ibn ʿAbbās's narration, it is mentioned that he disliked taking its sale as a trade.

فَأَيْنَ الْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ الْمُشَنِّعُونَ بِخِلَافِ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ، وَالْمُشَنِّعُونَ بِخِلَافِ جُمْهُورِ الْعُلَمَاءِ - وَقَدْ وَافَقُوا هَهُنَا كِلَا الْأَمْرَيْنِ.

L24819 Where are the Malikis, Hanafis, and Shafi'is—those who denounce disagreement with the Companion with whom no opponent is known, and those who denounce disagreement with the majority of scholars—when they have here concurred with both matters?

L24820 Then, the most astonishing thing of all is their claim regarding a statement attributed to ʿĀ'isha—which lacks sound transmission from her—that Zayd ibn Arqam informed me he had invalidated his jihad with the Messenger of Allah (peace and blessings of Allah be upon him) if he did not repent for purchasing a slave on deferred payment for eight hundred dirhams and selling him to the woman who had sold him the slave for six hundred dirhams in cash payment—while Zayd ibn Arqam himself contradicted her.

ثُمَّ الْعَجَبُ كُلُّ الْعَجَبِ، قَوْلُهُمْ فِي قَوْلِ عَائِشَةَ الَّذِي لَمْ يَصِحَّ عَنْهَا: أَبْلَغَنِي زَيْدُ بْنُ أَرْقَمَ أَنَّهُ قَدْ أَبْطَلَ جِهَادَهُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنْ لَمْ يَتُبْ فِي ابْتِيَاعِهِ عَبْدًا إِلَى الْعَطَاءِ بِثَمَانِمِائَةِ دِرْهَمٍ وَبَيْعِهِ إِيَّاهُ مِنَ الَّتِي بَاعَتْهُ مِنْهُ بِسِتِّمِائَةِ دِرْهَمٍ نَقْدًا، وَقَدْ خَالَفَهَا زَيْدُ بْنُ أَرْقَمَ.

L24821 They said: Such a ruling cannot be based on personal opinion, so it can only be rooted in textual stipulation. They did not cite here the authentic reports from Ibn ʿUmar – concerning which no authentic report from any Companion contradicts him – regarding the permissibility of cutting hands in the sale of Qur'anic codices, nor did they mention anything from the Companions collectively.

فَقَالُوا: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، فَلَمْ يَبْقَ إِلَّا أَنَّهُ تَوْقِيفٌ، وَلَمْ يَقُولُوا هَهُنَا فِيمَا صَحَّ عَنِ ابْنِ عُمَرَ مِمَّا لَمْ يَصِحَّ عَنْ أَحَدٍ مِنَ الصَّحَابَةِ خِلَافُهُ مِنْ إِبَاحَةِ قَطْعِ الْأَيْدِي فِي بَيْعِ الْمَصَاحِفِ، وَعَنِ الصَّحَابَةِ جُمْلَةً.

L24822 Why did they not say: Such a matter cannot be determined by opinion? Yet here their contradiction becomes evident in everything they decree concerning Allah's religion—the Exalted—and we praise Allah for granting us safety.

فَهَلَّا قَالُوا: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، وَلَكِنْ هَهُنَا يَلُوحُ تَنَاقُضُهُمْ فِي كُلِّ مَا تَحْكُمُوا بِهِ فِي دِينِ اللَّهِ - تَعَالَى - وَنَحْمَدُ اللَّهَ عَلَى السَّلَامَةِ.

L24823 As for us, we do not consider the statement of anyone as authoritative proof besides the Messenger of Allah—peace and blessings be upon him—whether those who say it are many or few, and regardless of who the speaker may be. We do not speculate and claim: "Such a statement is not based on personal reasoning," thereby attributing to the Messenger of Allah—peace and blessings be upon him—what he did not say. For this is the open lie against him.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَثُرَ الْقَائِلُونَ بِهِ أَمْ قَلُّوا - كَائِنًا مَنْ كَانَ الْقَائِلُ، لَا نَتَكَهَّنُ فَنَقُولُ: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، فَنَنْسُبُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْهُ، وَهَذَا هُوَ الْكَذِبُ عَلَيْهِ جِهَارًا.

L24824–24825 The entire proof is as follows: Allah's statement, the Most High: "And Allah has permitted trade" [Al-Baqarah 2:275], and His statement, the Exalted in Might and Majesty: "And He has indeed detailed for you what He has forbidden upon you" [Al-Anʿām 6:119].[26]

وَالْحُجَّةُ كُلُّهَا -: قَوْلُ اللَّهِ - تَعَالَى -: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَقَوْلُهُ - عَزَّ وَجَلَّ -: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

L24826 The sale of all muṣḥafs is permissible, for He has not explicitly detailed its prohibition to us: {And your Lord is never forgetful} [Maryam: 64]. Had He explicitly detailed its prohibition, Allāh, exalted is He, would have preserved

[26] **Qur'an references (L24825):** Qur'an 2:275 (Al-Baqarah); Qur'an 6:119 (Al-An'am).

it until the proof is established by it against His servants—and by Allāh, the Exalted, is success.[27]

[The Legal Case of Selling Goods for a Specified Price]

Issue 1559: If someone sells a commodity for a specified price payable immediately or to a specified near or distant term, they may repurchase that same commodity from the buyer to whom they sold it at the same price, a higher price, a lower price with immediate payment, or for a deferred term that is closer, farther, or equal to the original term. All of this is permissible with no reprehensibility in any aspect, provided this is not based on a condition stipulated in the contract itself. If it is based on such a condition, the transaction becomes forbidden, perpetually annulled, and governed by the rulings applicable to unlawfully seized property. This is the opinion of al-Shāfiʿī, Abū Sulaymān, and their companions.

The proof for this is the statement of Allah—the Most High: "And Allah has permitted trade" [Al-Baqarah: 275].[28]

And His saying, the Exalted: "He has detailed for you what He has forbidden upon you" Quran 6:119 (Al-Anʿām).[29]

These are two sales, and they are permissible by the explicit text of the Quran. No detailed prohibition of them is found in the Book or the Sunnah, as Allah states in the Quran: *"And your Lord is not forgetful"* [Maryam: 64]. Therefore, they are not forbidden.[30]

As for stipulating that, it is based on the statement of the Messenger of

فَبَيْعُ الْمَصَاحِفِ كُلِّهَا حَلَالٌ، إِذْ لَمْ يُفَصِّلْ لَنَا تَحْرِيمَهُ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَلَوْ فَصَّلَ تَحْرِيمَهُ لَحَفِظَهُ اللَّهُ - تَعَالَى - حَتَّى تَقُومَ بِهِ الْحُجَّةُ عَلَى عِبَادِهِ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَةُ مَنْ بَاعَ سِلْعَةً بِثَمَنٍ مُسَمًّى]

١٥٥٩ - مَسْأَلَةٌ: وَمَنْ بَاعَ سِلْعَةً بِثَمَنٍ مُسَمًّى حَالَّةً، أَوْ إِلَى أَجَلٍ مُسَمًّى قَرِيبًا أَوْ بَعِيدًا فَلَهُ أَنْ يَبْتَاعَ تِلْكَ السِّلْعَةَ مِنْ الَّذِي بَاعَهَا مِنْهُ بِثَمَنٍ مِثْلِ الَّذِي بَاعَهَا بِهِ مِنْهُ، وَبِأَكْثَرَ مِنْهُ، وَبِأَقَلَّ حَالًّا، وَإِلَى أَجَلٍ مُسَمًّى أَقْرَبَ مِنْ الَّذِي بَاعَهَا مِنْهُ إلَيْهِ، أَوْ أَبْعَدَ وَمِثْلَهُ، كُلُّ ذَلِكَ حَلَالٌ لَا كَرَاهِيَةَ فِي شَيْءٍ مِنْهُ، مَا لَمْ يَكُنْ ذَلِكَ عَنْ شَرْطٍ مَذْكُورٍ فِي نَفْسِ الْعَقْدِ، فَإِنْ كَانَ عَنْ شَرْطٍ فَهُوَ حَرَامٌ مَفْسُوخٌ أَبَدًا مَحْكُومٌ فِيهِ بِحُكْمِ الْغَصْبِ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ - تَعَالَى -: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

وَقَوْله تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

فَهَذَانِ بَيْعَانِ فَهُمَا حَلَالَانِ بِنَصِّ الْقُرْآنِ وَلَمْ يَأْتِ تَفْصِيلُ تَحْرِيمِهِمَا فِي كِتَابٍ وَلَا سُنَّةٍ، عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] فَلَيْسَا بِحَرَامٍ.

وَأَمَّا اشْتِرَاطُ ذَلِكَ فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ وَإِنْ كَانَ مِائَةَ شَرْطٍ» .

[27] **Qur'an references (L24826):** Qur'an 19:64 (Maryam).
[28] **Qur'an references (L24829):** Qur'an 2:275 (Al-Baqarah).
[29] **Qur'an references (L24830):** Qur'an 6:119 (Al-An'am).

Allah (peace be upon him): “Every condition not found in the Book of Allah is invalid, even if there are a hundred such conditions.”[31]

وَذَهَبَ أَبُو حَنِيفَةَ إِلَى أَنَّ مَنْ اشْتَرَى سِلْعَةً بِثَمَنٍ مَا وَقَبَضَ السِّلْعَةَ ثُمَّ بَاعَهَا مِنْ الْبَائِعِ لَهَا مِنْهُ بِأَقَلَّ مِنْ الثَّمَنِ الَّذِي اشْتَرَاهَا بِهِ قَبْلَ أَنْ يَنْقُدَ هُوَ الثَّمَنَ الَّذِي كَانَ اشْتَرَاهَا هُوَ بِهِ: فَالْبَيْعُ الثَّانِي بَاطِلٌ.

L24833 Abu Hanifah maintained that if a person buys a commodity for a certain price, takes possession of it, and then sells it back to the seller for less than the original price before paying the amount he owed for the purchase, the second sale is invalid.

فَإِنْ بَاعَهَا مِنْ الَّذِي كَانَ ابْتَاعَهَا مِنْهُ بِدَنَانِيرَ، وَكَانَ هُوَ قَدْ اشْتَرَاهَا بِدَرَاهِمَ أَوْ ابْتَاعَهَا بِدَنَانِيرَ ثُمَّ بَاعَهَا مِنْ بَائِعِهَا بِدَرَاهِمَ فَإِنْ كَانَ قِيمَةُ الثَّمَنِ الثَّانِي أَقَلَّ مِنْ قِيمَةِ الثَّمَنِ الْأَوَّلِ فَإِنَّهُ لَا يَجُوزُ.

L24834 If he sells it to the one from whom he had purchased it in dinars, having purchased it in dirhams or purchased it in dinars, then sells it to the original seller in dirhams - if the value of the second price is less than the value of the first price, it is impermissible.

فَإِنْ كَانَ اشْتَرَاهَا بِدَنَانِيرَ أَوْ بِدَرَاهِمَ ثُمَّ بَاعَهَا مِنْ الَّذِي ابْتَاعَهَا هُوَ مِنْهُ بِسِلْعَةٍ: جَازَ ذَلِكَ - كَانَ ثَمَنُهَا أَقَلَّ مِنْ الثَّمَنِ الَّذِي اشْتَرَاهَا بِهِ أَوْ أَكْثَرَ.

L24835 If he purchased it with dinars or dirhams then sold it to the seller from whom he had acquired it for a commodity, that is permissible - whether its price was less than the price he bought it for or more.

فَإِنْ ابْتَاعَهَا فِي كُلِّ مَا ذَكَرْنَا بِثَمَنٍ ثُمَّ بَاعَهَا مِنْ بَائِعِهَا مِنْهُ بِثَمَنٍ أَكْثَرَ مِنْ الثَّمَنِ الَّذِي ابْتَاعَهَا بِهِ مِنْهُ فَهُوَ جَائِزٌ.

L24836–24837 If he purchases it in all that we have mentioned for a price, then sells it back to the same seller for a price higher than the price he had purchased it from him, it is permissible.

قَالَ: وَكُلُّ مَا يَحْرُمُ فِي هَذِهِ الْمَسْأَلَةِ عَلَى الْبَائِعِ الْأَوَّلِ فَهُوَ يَحْرُمُ عَلَى شَرِيكِهِ فِي التِّجَارَةِ الَّتِي تِلْكَ السِّلْعَةُ مِنْهَا، وَعَلَى وَكِيلِهِ، وَعَلَى مُدَبَّرِهِ، وَعَلَى مُكَاتَبِهِ، وَعَلَى عَبْدِهِ الْمَأْذُونِ لَهُ فِي التِّجَارَةِ.

L24838 He said: Every prohibition incumbent upon the first seller in this matter is likewise prohibited upon his partner in the trade to which that commodity belongs, and upon his agent, and upon his mudabbar (a slave designated for posthumous freedom), and upon his mukatab (a slave contracting for freedom), and upon his slave authorized to engage in trade.

وَقَالَ مَالِكٌ: مَنْ اشْتَرَى سِلْعَةً بِثَمَنٍ مُسَمًّى إلَى أَجَلٍ مُسَمًّى، ثُمَّ ابْتَاعَهَا هُوَ مِنْ الَّذِي ابْتَاعَهَا مِنْهُ بِأَكْثَرَ مِنْ ذَلِكَ الثَّمَنِ إلَى مِثْلِ ذَلِكَ الْأَجَلِ لَمْ يَجُزْ.

L24839 Malik said: If someone purchases a commodity for a specified price to a specified term, then he himself buys it back from the one who sold it to him for a higher price than that original price to the same specified term, it is not permissible.

L24840 If a person purchases a commodity—neither food nor drink—for a specified

[30] **Qur’an references (L24831):** Qur’an 19:64 (Maryam).
[31] **Hadith references (L24832):** Sunan Ibn Majah 2521.

price, and the seller who had sold it repurchases it from them before taking possession for a price lower or higher than the original amount, there is no harm in it. However, if this is done by someone involved in ʿeenah transactions who has already paid the price in cash, there is no good in it.

فَإِنْ ابْتَاعَ سِلْعَةً لَيْسَتْ طَعَامًا وَلَا شَرَابًا بِثَمَنٍ مُسَمًّى ثُمَّ اشْتَرَاهَا مِنْهُ الَّذِي كَانَ بَاعَهَا مِنْهُ قَبْلَ أَنْ يَقْبِضَهَا مِنْهُ بِأَقَلَّ مِنْ ذَلِكَ الثَّمَنِ أَوْ بِأَكْثَرَ فَلَا بَأْسَ بِهِ، إِلَّا أَنْ يَكُونَ مِنْ أَهْلِ الْعِينَةِ وَقَدْ نَقَدَهُ الثَّمَنَ فَلَا خَيْرَ فِيهِ.

L24841 If one purchases a commodity for a specified price deferred to a specified term, it is impermissible for them to sell it back to the original seller for a price lower than that price, for a commodity worth less than that price in cash, or for a term shorter than or equal to the original term. None of this is permissible. However, they may sell it back to the original seller for a price higher than that price in cash, or for a term shorter than or equal to the original term. It is impermissible for them to sell it back to their original seller for a price higher than that price for a term longer than the original term, nor for a commodity worth more than that price for a term longer than the original term.

فَإِنْ ابْتَاعَ سِلْعَةً بِثَمَنٍ مُسَمًّى إِلَى أَجَلٍ مُسَمًّى فَإِنَّهُ لَا يَجُوزُ لَهُ أَنْ يَبِيعَهَا مِنَ الَّذِي بَاعَهَا مِنْهُ بِثَمَنٍ أَقَلَّ مِنْ ذَلِكَ الثَّمَنِ، أَوْ بِسِلْعَةٍ تُسَاوِي أَقَلَّ مِنْ ذَلِكَ الثَّمَنِ نَقْدًا، أَوْ إِلَى أَجَلٍ أَقَلَّ مِنْ ذَلِكَ الْأَجَلِ أَوْ مِثْلِهِ: لَمْ يَجُزْ شَيْءٌ مِنْ ذَلِكَ وَلَهُ أَنْ يَبِيعَهَا مِنَ الَّذِي بَاعَهَا مِنْهُ بِثَمَنٍ أَكْثَرَ مِنْ ذَلِكَ الثَّمَنِ نَقْدًا، أَوْ إِلَى أَجَلٍ أَقَلَّ مِنْ ذَلِكَ الْأَجَلِ، أَوْ مِثْلِهِ، وَلَيْسَ لَهُ أَنْ يَبِيعَهَا مِنْ بَائِعِهَا مِنْهُ بِثَمَنٍ أَكْثَرَ مِنْ ذَلِكَ الثَّمَنِ إِلَى أَبْعَدَ مِنْ ذَلِكَ الْأَجَلِ، وَلَا بِسِلْعَةٍ تُسَاوِي أَكْثَرَ مِنْ ذَلِكَ الثَّمَنِ إِلَى أَبْعَدَ مِنْ ذَلِكَ الْأَجَلِ.

L24842 Abu Muhammad said: The proponents of these two opinions cited as evidence what we have reported—through the chain of Shuʿbah from Abū Isḥāq from his wife, and through the chain of Yūnus ibn Abī Isḥāq from his mother al-ʿĀliyah bint Ayyaf ibn Shuraḥbīl—then both agreed from her. She said: We entered the presence of ʿĀ'ishah, the Mother of the Believers, and the umm walad of Zayd ibn Arqam. The umm walad of Zayd ibn Arqam said: "I sold a slave belonging to Zayd ibn Arqam for eight hundred dirhams deferred until the stipend, then bought him for six hundred?" ʿĀ'ishah responded: "Inform Zayd that you have nullified your jihad with the Messenger of Allah—peace and blessings be upon him—unless you repent. How evil is what you bought and how evil is what you sold!" She said: "What if I take only my principal?" ʿĀ'ishah replied: {"Whoever desists after receiving an admonition from his Lord may retain what has preceded"} [Quran 2:275]. They argued: "Such a warning cannot be based on personal opinion nor in matters where the path is independent reasoning." Thus, it was confirmed that this ruling is textually stipulated.[32]

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ أَهْلُ هَذَيْنِ الْقَوْلَيْنِ بِمَا رُوِّينَاهُ -: مِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي إِسْحَاقَ عَنْ امْرَأَتِهِ، وَمِنْ طَرِيقِ يُونُسَ بْنِ أَبِي إِسْحَاقَ عَنْ أُمِّهِ الْعَالِيَةَ بِنْتِ أَيْفَعَ بْنِ شُرَحْبِيلَ، ثُمَّ اتَّفَقَا عَنْهَا قَالَتْ: دَخَلْنَا عَلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَأُمِّ وَلَدِ لِزَيْدِ بْنِ أَرْقَمَ فَقَالَتْ أُمُّ وَلَدِ زَيْدِ بْنِ أَرْقَمَ: إِنِّي بِعْت غُلَامًا مِنْ زَيْدِ بْنِ أَرْقَمَ بِثَمَانِمِائَةِ دِرْهَمٍ نَسِيئَةً إِلَى الْعَطَاءِ وَاشْتَرَيْتُهُ بِسِتِّمِائَةٍ؟ فَقَالَتْ عَائِشَةُ: أَبْلِغِي زَيْدًا أَنَّك قَدْ أَبْطَلْت جِهَادَك مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا أَنْ يَتُوبَ، بِئْسَمَا اشْتَرَيْت وَبِئْسَمَا شَرَيْت؟ قَالَتْ: أَرَأَيْت إِنْ لَمْ آخُذْ إِلَّا رَأْسَ مَالِي؟ قَالَتْ {فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ} [البقرة: ٢٧٥] فَقَالُوا: مِثْلُ هَذَا الْوَعِيدِ لَا يُقَالُ بِالرَّأْيِ وَلَا فِيمَا سَبِيلُهُ الِاجْتِهَادُ - فَصَحَّ أَنَّهُ تَوْقِيفٌ.

[32] **Qur'an references (L24842):** Qur'an 2:275 (Al-Baqarah).

وَبِمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ سُلَيْمَانَ التَّيْمِيِّ عَنْ حَيَّانَ بْنِ عُمَيْرٍ الْقَيْسِيِّ عَنْ ابْنِ عَبَّاسٍ فِي الرَّجُلِ يَبِيعُ الْجَرِيرَةَ إِلَى رَجُلٍ فَكَرِهَ أَنْ يَشْتَرِيَهَا - يَعْنِي بِدُونِ مَا بَاعَهَا.

L24843–24844 And according to what was narrated to us through the chain of Waki‘, from Sufyan al-Thawri, from Sulayman al-Taymi, from Hayyan ibn Umayr al-Qaysi, from Ibn Abbas regarding a man who sells a jarīrah (a she-camel that has miscarried) to another man, and the buyer considered it religiously reprehensible (makruh) to purchase it (i.e., without including the miscarried offspring that was part of the sale).

وَقَالُوا: هِيَ دَرَاهِمُ بِأَكْثَرَ مِنْهَا، وَقَالُوا: هَذَانِ أَرَادَا الرِّبَا فَتَحَيَّلَا لَهُ بِهَذَا الْبَيْعِ - مَا لَهُمْ شَيْءٌ شَغَبُوا بِهِ غَيْرَ مَا ذَكَرْنَاهُ.

L24845 They said: They are dirhams exceeding them in quantity. They also said: These two intended ribā (usury), so they devised this sale as a ruse to circumvent it. They have no valid grounds for their clamorous objections other than what we have already mentioned.

فَأَمَّا خَبَرُ امْرَأَةِ أَبِي إِسْحَاقَ: فَفَاسِدٌ جِدًّا، لِوُجُوهٍ -: أَوَّلُهَا - أَنَّ امْرَأَةَ أَبِي إِسْحَاقَ مَجْهُولَةُ الْحَالِ، لَمْ يَرْوِ عَنْهَا أَحَدٌ غَيْرُ زَوْجِهَا، وَوَلَدُهَا يُونُسُ، عَلَى أَنَّ يُونُسَ قَدْ ضَعَّفَهُ شُعْبَةُ بِأَقْبَحِ التَّضْعِيفِ، وَضَعَّفَهُ يَحْيَى الْقَطَّانُ، وَأَحْمَدُ بْنُ حَنْبَلٍ جِدًّا، وَقَالَ فِيهِ شُعْبَةُ: أَمَا قَالَ لَكُمْ: حَدَّثَنَا ابْنُ مَسْعُودٍ.

L24846 As for the narration of Abū Isḥāq’s wife: it is utterly invalid due to multiple reasons—the first being that Abū Isḥāq’s wife is of unknown status, as none narrated from her except her husband and her son Yūnus. Yet despite this, Yūnus himself was severely weakened by Shu‘bah in the most severe form of weakening, and Yaḥyā al-Qaṭṭān and Aḥmad ibn Ḥanbal rigorously weakened him. Shu‘bah remarked about him: “Did he not tell you: ‘Ibn Mas‘ūd narrated to us...’?”

وَالثَّانِي أَنَّهُ قَدْ صَحَّ أَنَّهُ مُدَلِّسٌ، وَأَنَّ امْرَأَةَ أَبِي إِسْحَاقَ لَمْ تَسْمَعْهُ مِنْ أُمِّ الْمُؤْمِنِينَ، وَذَلِكَ أَنَّهُ لَمْ يَذْكُرْ عَنْهَا زَوْجُهَا، وَلَا وَلَدُهَا: أَنَّهَا سَمِعَتْ سُؤَالَ الْمَرْأَةِ لِأُمِّ الْمُؤْمِنِينَ، وَلَا جَوَابَ أُمِّ الْمُؤْمِنِينَ لَهَا، إِنَّمَا فِي حَدِيثِهَا: دَخَلْت عَلَى أُمِّ الْمُؤْمِنِينَ، أَنَا، وَأُمُّ وَلَدٍ لِزَيْدِ بْنِ أَرْقَمَ، فَسَأَلَتْهَا أُمُّ وَلَدِ زَيْدِ بْنِ أَرْقَمَ - وَهَذَا يُمْكِنُ أَنْ يَكُونَ ذَلِكَ السُّؤَالُ فِي ذَلِكَ الْمَجْلِسِ، وَيُمْكِنُ أَنْ يَكُونَ فِي غَيْرِهِ، فَوَجَدْنَا: مَا حَدَّثَنَاهُ عَلِيُّ بْنُ مُحَمَّدِ بْنِ عَبَّادٍ الْأَنْصَارِيُّ أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ يَزِيدَ اللَّخْمِيُّ أَنَا ابْنُ مُفَرِّجٍ الْقَاضِي أَنَا الْحَسَنُ بْنُ مَرْوَانَ الْقَيْسَرَانِيُّ أَنَا إِبْرَاهِيمُ بْنُ مُعَاوِيَةَ أَنَا مُحَمَّدُ بْنُ يُوسُفَ الْفِرْيَابِيُّ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ امْرَأَةِ أَبِي السَّفَرِ: أَنَّهَا بَاعَتْ مِنْ زَيْدِ بْنِ أَرْقَمَ خَادِمًا لَهَا بِثَمَانِمِائَةٍ

L24847 The second is that it has been established he was a *mudallis* (practitioner of *tadlīs*), and that the wife of Abū Isḥāq did not hear it from Umm al-Mu’minīn. This is because neither her husband nor her child attributed to her that she heard the woman’s question to Umm al-Mu’minīn or Umm al-Mu’minīn’s response to her. In her narration, it states: “I entered upon Umm al-Mu’minīn, along with an *umm walad* (concubine) of Zayd ibn Arqam. The *umm walad* of Zayd ibn Arqam asked her...” This could mean the question was posed during that gathering or another. We found what ʿAlī ibn Muḥammad ibn ʿAbbād al-Anṣārī narrated to us: from Muḥammad ibn ʿAbd Allāh ibn Muḥammad ibn Yazīd al-Lakhmī, from Ibn Mufarrij the Judge, from al-Ḥasan ibn Marwān al-Qaysarānī, from Ibrāhīm ibn Muʿāwiyah, from Muḥammad ibn Yūsuf al-Firyābī, from Sufyān al-Thawrī, from Abū Isḥāq al-Sabīʿī, from the wife of Abū al-Safar: She sold a servant of hers to Zayd ibn Arqam for eight hundred dirhams payable at a later date. When he faced hardship, she repurchased him for six hundred dirhams. She asked ʿĀ’ishah, Umm al-Mu’minīn, who replied repeatedly: “Evil is your selling and evil is

your buying. Inform Zayd ibn Arqam that his jihad is invalidated unless he repents." She said: "What if I only take back my principal?" ʿĀ'ishah said: *"Whoever refrains after receiving an admonition from his Lord may retain what is past"* [Al-Baqarah 2:275].[33]

دِرْهَمٍ إِلَى الْعَطَاءِ، فَاحْتَاجَ فَابْتَاعَتْهَا مِنْهُ بِسَبْعِمِائَةِ دِرْهَمٍ فَسَأَلَتْ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ؟ فَقَالَتْ: بِئْسَ مَا شَرَيْتِ وَبِئْسَ مَا اشْتَرَيْتِ مِرَارًا، أَبْلِغِي زَيْدَ بْنَ أَرْقَمَ أَنَّهُ قَدْ بَطَلَ جِهَادُهُ إِنْ لَمْ يَتُبْ؟ قَالَتْ: فَإِنْ لَمْ آخُذْ إِلَّا رَأْسَ مَالِي قَالَتْ عَائِشَةُ: {فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ} [البقرة: ٢٧٥] .

L24848–24850 And what we have narrated through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from Abī Isḥāq al-Sabīʿī from his wife, who said: I heard the wife of Abī al-Safar say: I asked ʿĀ'ishah, the Mother of the Believers, saying: "I sold Zayd ibn Arqam, a servant, to the stipend office for eight hundred dirhams and repurchased him from it for six hundred dirhams?" She replied to her: A person said to ʿĀ'ishah: "What a wretched purchase you have made, or what a vile transaction! Inform Zayd ibn Arqam that he has nullified his jihad alongside the Messenger of Allah—peace and blessings be upon him—unless he repents." She [ʿĀ'ishah] responded: "What do you say if I reclaim my original capital?" The person replied: "There is no blame." [She then cited]: *"But whoever refrains after receiving a warning from their Lord may keep what they have previously acquired"* [Al-Baqarah 2:275].[34]

وَمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ امْرَأَتِهِ قَالَتْ: سَمِعْتُ امْرَأَةَ أَبِي السَّفَرِ تَقُولُ: سَأَلَتْ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ فَقُلْتُ: بِعْتُ زَيْدَ بْنَ أَرْقَمَ خَادِمًا إِلَى الْعَطَاءِ بِثَمَانِمِائَةِ دِرْهَمٍ وَابْتَعْتُهَا مِنْهُ بِسَبْعِمِائَةِ دِرْهَمٍ؟ فَقَالَتْ لَهَا عَائِشَةُ بِئْسَ مَا شَرَيْتِ أَوْ بِئْسَ مَا اشْتَرَيْتِ أَبْلِغِي زَيْدَ بْنَ أَرْقَمَ أَنَّهُ قَدْ أَبْطَلَ جِهَادَهُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا أَنْ يَتُوبَ؟ قَالَتْ: أَفَرَأَيْتِ إِنْ أَخَذْتُ رَأْسَ مَالِي؟ قَالَتْ: لَا بَأْسَ {فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ} [البقرة: ٢٧٥] .

L24851 Sufyan clarified the obscure element in this hadith, establishing that Abu Ishaq's wife did not hear it from the Mother of the Believers. Rather, she narrated it from the wife of Abu al-Safar—the one who sold [herself] to Zaid and was an umm walad (an enslaved woman who bore her master's child) of Zaid. She was of greater obscurity and more profoundly unknown than Abu Ishaq's wife. Thus, the narration became unknown [as transmitted] by someone even more obscure and rejected than her—rendering it entirely invalidated. All praise belongs to Allah, the Exalted.

فَبَيَّنَ سُفْيَانُ الدَّفِينَةَ الَّتِي فِي هَذَا الْحَدِيثِ وَأَنَّهَا لَمْ تَسْمَعْهُ امْرَأَةُ أَبِي إِسْحَاقَ مِنْ أُمِّ الْمُؤْمِنِينَ، وَإِنَّمَا رَوَتْهُ عَنْ امْرَأَةِ أَبِي السَّفَرِ، وَهِيَ الَّتِي بَاعَتْ مِنْ زَيْدٍ، وَهِيَ أُمُّ وَلَدٍ لِزَيْدٍ، وَهِيَ فِي الْجَهَالَةِ أَشَدُّ وَأَقْوَى مِنْ امْرَأَةِ أَبِي إِسْحَاقَ، فَصَارَتْ مَجْهُولَةً عَنْ أَشَدَّ مِنْهَا جَهَالَةً وَنَكِرَةً - فَبَطَلَ جُمْلَةً وَلِلَّهِ - تَعَالَى - الْحَمْدُ.

L24852 There is no distinction between Yunus and Sufyan in trustworthiness and memorization, so the narration is what Sufyan narrated.

وَلَيْسَ بَيْنَ يُونُسَ، وَبَيْنَ سُفْيَانَ نِسْبَةٌ فِي الثِّقَةِ وَالْحِفْظِ، فَالرِّوَايَةُ مَا رَوَى سُفْيَانُ.

L24853 The third proof—among the clear evidences exposing this report's falsehood

وَالثَّالِثُ - أَنَّ مِنَ الْبُرْهَانِ الْوَاضِحِ عَلَى كَذِبِ هَذَا الْخَبَرِ وَوَضْعِهِ، وَأَنَّهُ لَا يُمْكِنُ أَنْ يَكُونَ حَقًّا أَصْلًا: مَا فِيهِ مِمَّا نُسِبَ إِلَى أُمِّ الْمُؤْمِنِينَ مِنْ أَنَّهَا قَالَتْ: أَبْلِغِي زَيْدَ بْنَ أَرْقَمَ

[33] **Qur'an references (L24847):** Qur'an 2:275 (Al-Baqarah).
[34] **Qur'an references (L24848):** Qur'an 2:275 (Al-Baqarah).

and fabrication, demonstrating its inherent impossibility—lies in its attribution to the Mother of the Believers that she allegedly said: “Inform Zayd ibn Arqam that he has nullified his military efforts with Allah’s Messenger—peace be upon him—unless he repents.” Yet Zayd missed only two campaigns with Allah’s Messenger—peace be upon him: Badr and Uhud. He participated in all other campaigns alongside him—peace be upon him—spent in charity before the Conquest, fought valiantly, witnessed the Pledge of Ridwān under the tree at Ḥudaybiyyah—concerning which Quranic verses were revealed—and Allah the Exalted affirmed his truthfulness and guaranteed him Paradise through His Messenger’s declaration—peace be upon him—that none who pledged allegiance beneath that tree would enter the Fire.

أَنَّهُ قَدْ أَبْطَلَ جِهَادَهُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنْ لَمْ يَتُبْ وَزَيْدٌ لَمْ يَفُتْهُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا غَزْوَتَانِ فَقَطْ: بَدْرٌ، وَأُحُدٌ، فَقَطْ، وَشَهِدَ مَعَهُ - عَلَيْهِ السَّلَامُ - سَائِرَ غَزَوَاتِهِ، وَأَنْفَقَ قَبْلَ الْفَتْحِ وَقَاتَلَ، وَشَهِدَ بَيْعَةَ الرِّضْوَانِ تَحْتَ الشَّجَرَةِ بِالْحُدَيْبِيَةِ، وَنَزَلَ فِيهِ الْقُرْآنُ، وَشَهِدَ اللَّهُ - تَعَالَى - لَهُ بِالصِّدْقِ وَبِالْجَنَّةِ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ -: أَنَّهُ لَا يَدْخُلُ النَّارَ أَحَدٌ بَايَعَ تَحْتَ الشَّجَرَةِ.

L24854 The Quran explicitly affirmed that Allah—Exalted is He—was pleased with him and his companions who pledged allegiance beneath the Tree. By Allah, no sin from the sins nullifies all this except apostasy from Islam alone. Allah—Exalted is He—protected him from it through His pleasure with him, and protected the Mother of the Believers from uttering this falsehood.

وَنَصَّ الْقُرْآنُ بِأَنَّ اللَّهَ - تَعَالَى - قَدْ رَضِيَ عَنْهُ وَعَنْ أَصْحَابِهِ الَّذِينَ بَايَعُوا تَحْتَ الشَّجَرَةِ، فَوَاَللَّهِ مَا يُبْطِلُ هَذَا كُلَّهُ ذَنْبٌ مِنْ الذُّنُوبِ غَيْرُ الرِّدَّةِ عَنْ الْإِسْلَامِ فَقَطْ، وَقَدْ أَعَاذَهُ اللَّهُ - تَعَالَى - مِنْهَا بِرِضَاهُ عَنْهُ، وَأَعَاذَ أُمَّ الْمُؤْمِنِينَ مِنْ أَنْ تَقُولَ هَذَا الْبَاطِلَ.

L24855 The fourth [point] is that it also clarifies the falsehood of this report: if it were valid that Zayd committed the gravest of sins of explicit usury—while being ignorant of its prohibition—he would be rewarded with a single reward and not be deemed sinful. The same ruling would apply to him as to Ibn Abbas—may Allah be pleased with him—regarding his permissibility of exchanging one dirham for two dirhams openly as a spot transaction (hand-to-hand exchange), and as to Talha—may Allah be pleased with him—when he took Malik ibn Aws’s dinars but postponed converting them into dirhams until his treasurer arrived from the forest in the presence of Umar—may Allah be pleased with him. Umar did not go beyond prohibiting him from teaching [others], nor did Abu Sa‘id go beyond meeting Ibn Abbas and instructing him.

وَالرَّابِعُ - أَنَّهُ يُوَضِّحُ كَذِبَ هَذَا الْخَبَرِ أَيْضًا -: أَنَّهُ لَوْ صَحَّ أَنَّ زَيْدًا أَتَى أَعْظَمَ الذُّنُوبِ مِنْ الرِّبَا الْمُصَرَّحِ - وَهُوَ لَا يَدْرِي أَنَّهُ حَرَامٌ - لَكَانَ مَأْجُورًا فِي ذَلِكَ أَجْرًا وَاحِدًا غَيْرَ آثِمٍ، وَلَكَانَ لَهُ مِنْ ذَلِكَ مَا لِابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُ - فِي إبَاحَةِ الدِّرْهَمِ بِالدِّرْهَمَيْنِ جِهَارًا يَدًا بِيَدٍ، وَمَا لِطَلْحَةَ - رَضِيَ اللَّهُ عَنْهُ - إذْ أَخَذَ دَنَانِيرَ مَالِكِ بْنِ أَوْسٍ ثُمَّ أَخَّرَهُ بِالدَّرَاهِمِ فِي صَرْفِهَا إلَى مَجِيءِ خَازِنِهِ مِنْ الْغَابَةِ بِحَضْرَةِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ -: فَمَا زَادَ عُمَرُ عَلَى مَنْعِهِ مِنْ تَعْلِيمِهِ، وَلَا زَادَ أَبُو سَعِيدٍ عَلَى لِقَاءِ ابْنِ عَبَّاسٍ وَتَعْلِيمِهِ.

L24856 Neither ʿUmar nor Abū Saʿīd thereby invalidated even a single *takbīrah* in the practice of Ṭalḥah and Ibn ʿAbbās. Both opinions, according to the established text, are pure usury, and there is nothing in usury that surpasses it.

وَمَا أَبْطَلَ عُمَرُ، وَلَا أَبُو سَعِيدٍ بِذَلِكَ تَكْبِيرَةً وَاحِدَةً مِنْ عَمَلِ طَلْحَةَ، وَابْنِ عَبَّاسٍ، وَكِلَا الْوَجْهَيْنِ بِالنَّصِّ الثَّابِتِ رِبًا صُرَاحٌ، وَلَا شَيْءَ فِي الرِّبَا فَوْقَهُ.

فَكَيْفَ يُظَنُّ بِأُمِّ الْمُؤْمِنِينَ إبْطَالُ جِهَادِ زَيْدِ بْنِ أَرْقَمَ فِي شَيْءٍ عَمِلَهُ مُجْتَهِدًا، لَا نَصَّ فِي الْعَالَمِ يُوجَدُ خِلَافُهُ، لَا صَحِيحٌ وَلَا مِنْ طَرِيقٍ وَاهِيَةٍ، هَذَا وَاَللَّهِ الْكَذِبُ الْمَحْضُ الْمَقْطُوعُ بِهِ، فَلْيَتُبْ إلَى اللَّهِ - تَعَالَى - مَنْ يَنْسُبُهُ إلَى أُمِّ الْمُؤْمِنِينَ، وَمَنْ يُحَرِّمُ بِهِ فِي دِينِ اللَّهِ - تَعَالَى - مَا لَمْ يُحَرِّمْهُ اللَّهُ - تَعَالَى - وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَذِهِ بَرَاهِينُ أَرْبَعَةٌ فِي بُطْلَانِ هَذَا الْخَبَرِ، وَأَنَّهُ خُرَافَةٌ مَكْذُوبَةٌ.

L24857–24858 How can it be presumed that the Mother of the Believers would invalidate the jihad of Zayd ibn Arqam in a matter he undertook as one exercising ijtihad, when there exists no text in the world—neither authentic nor via a weak chain—that contradicts it? By Allah, this is pure, certain falsehood. Let whoever attributes this to the Mother of the Believers repent to Allah—Exalted is He—and whoever declares unlawful through it in the religion of Allah—Exalted is He—what Allah—Exalted is He—and His Messenger—peace and blessings of Allah be upon him—did not declare unlawful. These are four proofs of the invalidity of this report and that it is a fabricated myth.

ثُمَّ نَقُولُ: إنَّهُ لَوْ صَحَّ صِحَّةَ الشَّمْسِ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّهُ قَوْلٌ مِنْ أُمِّ الْمُؤْمِنِينَ، وَمَا قَوْلُهَا بِأَوْلَى مِنْ قَوْلِ زَيْدٍ - وَإِنْ كَانَتْ أَفْضَلَ مِنْهُ - إذَا تَنَازَعَا، لِأَنَّ اللَّهَ - تَعَالَى - يَقُولُ: {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ إنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [النساء: ٥٩] وَلَمْ يَأْمُرْنَا بِالرَّدِّ إلَى أَحَدٍ دُونَ الْقُرْآنِ وَالسُّنَّةِ.

L24859 Then we say: If it were as sound as the sun itself, they would have no valid argument regarding it for several aspects. The first is that this is a statement from the Mother of the Believers, and her statement is no more entitled to precedence than Zaid's – even if she is superior to him – when they disagree, because Allah the Exalted says: "If you differ concerning any matter, refer it to Allah and His Messenger, if you believe in Allah and the Last Day" (4:59). He did not command us to refer it to anyone besides the Qur'an and the Sunnah.[35]

وَالثَّانِي - أَنْ نَقُولَ لَهُمْ: كَمْ قَوْلَةٍ رَدَدْتُمُوهَا لِأُمِّ الْمُؤْمِنِينَ بِالدَّعَاوَى الْفَاسِدَةِ كَبَيْعِهَا الْمُدَبَّرَةَ وَإِبَاحَتِهَا الِاشْتِرَاطَ فِي الْحَجِّ، فَاطَّرَحْتُمْ حُكْمَهَا وَتَعَلَّقْتُمْ بِمُخَالَفَةِ عُمَرَ لَهَا فِي الْمُدَبَّرَةِ.

L24860 The second is that we should say to them: How many legal opinions of the Mother of the Believers have you rejected with invalid claims - such as her sale of the *mudabbara* and her permitting stipulated conditions during Hajj - thereby discarding her ruling while clinging to Umar's disagreement with her regarding the *mudabbara*?

وَصَحَّ عَنْ عُمَرَ: مَنْ قَدَّمَ ثِقْلَهُ مِنْ مِنًى قَبْلَ أَنْ يَنْفِرَ فَلَا حَجَّ لَهُ، وَالِاشْتِرَاطُ فِي الْحَجِّ، فَأَطْرَحْتُمْ قَوْلَ عُمَرَ، وَلَمْ تَقُولُوا: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، فَلَمْ يَبْقَ إلَّا أَنَّهُ تَوْقِيفٌ.

L24861 It is authentically reported from Umar: "Whoever sends his luggage ahead from Mina before departing has no valid Hajj." As for stipulating conditions in Hajj, since you have discarded Umar's opinion and did not say, "Such a ruling is not based on personal judgment," nothing remains except that it is divinely prescribed.

وَخَالَفْتُمُوهُ لِقَوْلِ ابْنِهِ: لَا أَعْرِفُ الِاشْتِرَاطَ فِي الْحَجِّ، فَمَرَّةً يَكُونُ قَوْلُ أُمِّ الْمُؤْمِنِينَ حُجَّةً، وَمَرَّةً لَا يُشْتَغَلُ بِهِ، وَمَرَّةً تَكُونُ عَائِشَةُ حُجَّةً عَلَى زَيْدِ بْنِ أَرْقَمَ، وَعُمَرُ حُجَّةً عَلَى

L24862 You opposed him based on his son's statement: "I do not know of preconditions in Hajj." At times, the Mother of the Believers' statement is taken as authoritative evidence; at times, it is disregarded. At times, 'Ā'ishah is authoritative evidence against Zayd ibn Arqam, 'Umar is authoritative evi-

[35] **Qur'an references (L24859):** Qur'an 4:59 (An-Nisa).

dence against ʻĀ'ishah, Ibn ʻUmar is authoritative evidence against ʻUmar, and someone other than Ibn ʻUmar is authoritative evidence against Ibn ʻUmar—this constitutes playing fast and loose with religion and its truths.

L24863 The third point is that it has been authentically established from Ibn Umar—regarding what we cited in the previous chapter from his statement: "I wish I saw hands being cut off in the sale of Masahif"—so why did you not say, "Such a ruling cannot be based on personal opinion," as you asserted here?

L24864 The fourth point is that it is among the gravest misguidance to suppose she—may Allah be pleased with her—possessed a report from the Messenger of Allah (peace and blessings be upon him) regarding this matter, then concealed it by not narrating it to any of Allah's creation—Exalted is He. Far be it from her from such a thing to conceal what she held of clear proofs and guidance?

L24865–24866 They gained nothing except lying against the Messenger of Allah (peace and blessings be upon him) by attributing to him statements he never uttered. For had he said such a thing, it would have been preserved through Allah's preservation (Exalted is He) until it reached his Ummah, and lying against the Mother of the Believers.

L24867 The fifth point is that she denied the sale in relation to the gift through her statement: "Evil is what you have purchased." The Malikis permit it based on such a statement, and this is extremely astonishing? Half of her speech constitutes valid proof while the other half does not.

L24868 The sixth point is that it has been narrated to us through the chain of Saʻīd ibn Manṣūr from Khudayj ibn Muʻāwiyah from Abū Isḥāq al-Sabīʻī from Umm Maḥabbah, the daughter-in-law of Abū al-Safar, that she vowed to walk to Mecca but became unable to do so. Ibn ʻAbbās said to her, "Do you have a daughter who can walk on your behalf?" She replied, "Yes, but she considers herself too dignified for that."

L24869 If this chain of transmission holds no validity, then it is identical to it or similar to it. Rather, it is also narrated in the hadith transmitted by Zayd

عَائِشَةَ، وَابْنُ عُمَرَ حُجَّةً عَلَى عُمَرَ، وَغَيْرُ ابْنِ عُمَرَ حُجَّةً عَلَى ابْنِ عُمَرَ - وَهَذَا هُوَ التَّلَاعُبُ بِالدِّينِ وَبِالْحَقَائِقِ.

وَالثَّالِثُ - أَنَّ ابْنَ عُمَرَ قَدْ صَحَّ عَنْهُ مَا أَوْرَدْنَاهُ فِي الْبَابِ الَّذِي قَبْلَ هَذَا مِنْ قَوْلِهِ وَدِدْت أَنِّي رَأَيْت الْأَيْدِيَ تُقْطَعُ فِي بَيْعِ الْمَصَاحِفِ فَهَلَّا قُلْتُمْ: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ كَمَا قُلْتُمْ هَهُنَا؟

وَالرَّابِعُ - أَنَّ مِنْ الضَّلَالِ الْعَظِيمِ أَنْ يُظَنَّ أَنَّ عِنْدَهَا - رَضِيَ اللَّهُ عَنْهَا - فِي هَذَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَثَرًا ثُمَّ تَكْتُمُهُ فَلَا تَرْوِيهِ لِأَحَدٍ مِنْ خَلْقِ اللَّهِ - تَعَالَى - حَاشَا لَهَا مِنْ ذَلِكَ مِنْ أَنْ تَكْتُمَ مَا عِنْدَهَا مِنْ الْبَيِّنَاتِ وَالْهُدَى؟

فَمَا حَصَلُوا إلَّا عَلَى الْكَذِبِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي تَقْوِيلِهِ مَا لَمْ يَقُلْهُ قَطُّ، إذْ لَوْ قَالَهُ لَكَانَ مَحْفُوظًا بِحِفْظِ اللَّهِ - تَعَالَى - حَتَّى بَلَغَ إلَى أُمَّتِهِ، وَالْكَذِبِ عَلَى أُمِّ الْمُؤْمِنِينَ.

وَالْخَامِسُ - أَنَّهَا أَنْكَرَتْ الْبَيْعَ إلَى الْعَطَاءِ بِقَوْلِهَا بِئْسَ مَا شَرَيْت - وَالْمَالِكِيُّونَ يُبِيحُونَهُ بِمِثْلِ هَذَا، وَهَذَا عَجَبٌ جِدًّا؟ نِصْفُ كَلَامِهَا حُجَّةٌ وَنِصْفُهُ لَيْسَ بِحُجَّةٍ.

؟ وَالسَّادِسُ - أَنَّنَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ خَدِيجِ بْنِ مُعَاوِيَةَ عَنْ أَبِي إسْحَاقَ السَّبِيعِيِّ عَنْ أُمِّ مَحَبَّةَ خَتَنَةِ أَبِي السَّفَرِ أَنَّهَا نَذَرَتْ مَشْيًا إلَى مَكَّةَ فَعَجَزَتْ؟ فَقَالَ لَهَا ابْنُ عَبَّاسٍ: هَلْ لَكِ ابْنَةٌ تَمْشِي عَنْكِ؟ قَالَتْ: نَعَمْ، وَلَكِنَّهَا أَعْظَمُ فِي نَفْسِهَا مِنْ ذَلِكَ.

ibn Arqam on the authority of Umm Maḥabba. If that report constitutes valid proof, then this one is also valid proof; otherwise, a contradiction has occurred—thereby rendering the invalidity of this argument wholly evident. All praise belongs to Allah, the Exalted.

فَإِنْ كَانَتْ هَذِهِ الطَّرِيقُ لَا حُجَّةَ فِيهَا فَهِيَ تِلْكَ نَفْسُهَا أَوْ مِثْلُهَا، بَلْ قَدْ جَاءَ فِي حَدِيثِ زَيْدِ بْنِ أَرْقَمَ عَنْ أُمِّ مَحَبَّةَ أَيْضًا، وَإِنْ كَانَ ذَلِكَ الْخَبَرُ حُجَّةً، فَهَذَا حُجَّةٌ، وَإِلَّا فَقَدْ حَصَلَ التَّنَاقُضُ - فَظَهَرَ فَسَادُ هَذَا الِاحْتِجَاجِ جُمْلَةً - وَلِلَّهِ - تَعَالَى - الْحَمْدُ.

L24870 As for the narration of Ibn Abbas: it represents his personal opinion, which Ibn Umar contradicted—as we have been narrated via Abd al-Razzaq from Sufyan from Layth from Mujahid, who said: A man was mentioned to Ibn Umar who sold a saddle for cash, then wanted to buy it for less than his selling price before receiving payment. Ibn Umar said: "Perhaps if he sold it to someone else, he would sell it for less than that amount," and he saw no harm in it.

وَأَمَّا خَبَرُ ابْنِ عَبَّاسٍ: فَهُوَ رَأْيٌ مِنْهُ، وَقَدْ خَالَفَهُ ابْنُ عُمَرَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ عَنْ لَيْثٍ عَنْ مُجَاهِدٍ قَالَ: ذُكِرَ لِابْنِ عُمَرَ رَجُلٌ بَاعَ سَرْجًا بِنَقْدٍ، ثُمَّ أَرَادَ أَنْ يَبْتَاعَهُ بِدُونِ مَا بَاعَهُ قَبْلَ أَنْ يَنْتَقِدَ، فَقَالَ ابْنُ عُمَرَ: لَعَلَّهُ لَوْ بَاعَهُ مِنْ غَيْرِهِ بَاعَهُ بِدُونِ ذَلِكَ، وَلَمْ يَرَ بِهِ بَأْسًا.

L24871 And how many cases involving Ibn Abbas are there in which they opposed him, as we have just mentioned earlier—thus their reliance on Ibn Abbas has been nullified.

وَكَمْ قِصَّةٍ لِابْنِ عَبَّاسٍ خَالَفُوهُ فِيهَا كَمَا ذَكَرْنَا قَبْلَ هَذَا آنِفًا - فَسَقَطَ تَعَلُّقُهُمْ بِابْنِ عَبَّاسٍ.

L24872 It has been narrated to us through the chain of Abd al-Razzaq, who said: Ma'mar narrated to us from Ayyub al-Sikhtiyani from Muhammad ibn Sirin, who said: There is no harm in buying an item on credit then selling it back to the one from whom he purchased it for less than the price, provided he settles through mutual offset (muqāṣaṣah) with him.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: لَا بَأْسَ بِأَنْ يَشْتَرِيَ الشَّيْءَ إلَى أَجَلٍ ثُمَّ يَبِيعَهُ مِنْ الَّذِي اشْتَرَاهُ مِنْهُ بِأَقَلَّ مِنْ الثَّمَنِ إذَا قَاصَصَهُ.

L24873–24875 Abū Muḥammad said: As for their claim, "They are dirhams traded for more dirhams"—this is truly an unparalleled delusion. I said to one of them: "What is your ruling regarding someone who sells a commodity on credit for one dinar, then repurchases it for two dinars in cash?" He replied: "It is permissible." I said: "On what basis is it obligatory that selling it for two dinars and buying the commodity for one dinar constitutes ribā—a dinar for two—yet selling it for one dinar on credit and buying it for two dinars does not constitute ribā—a dinar for two? Could any delusion be greater than Zayd selling a dinar to ʿAmr for two dinars, thereby [text incomplete]?" ribā, and he sells two dinars thereof for a dinar, then it is not ribā. Would that I knew: in which religion have you found this? Or by what reasoning? For he has not presented any distinction, nor will they ever present it.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا قَوْلُهُمْ: إنَّهَا دَرَاهِمُ بِأَكْثَرَ مِنْهَا؟ فَعَجَبٌ لَا نَظِيرَ لَهُ جِدًّا، وَقَدْ قُلْت لِبَعْضِهِمْ: مَا تَقُولُونَ فِيمَنْ بَاعَ سِلْعَةً إلَى أَجَلٍ بِدِينَارٍ ثُمَّ اشْتَرَاهَا بِنَقْدٍ بِدِينَارَيْنِ؟ فَقَالَ: حَلَالٌ: فَقُلْت لَهُ: وَمِنْ أَيْنَ وَجَبَ أَنْ يَكُونَ إذَا بَاعَهُ بِدِينَارَيْنِ وَاشْتَرَاهُ بِدِينَارٍ رِبًا وَدِينَارًا بِدِينَارَيْنِ، وَلَمْ يَجِبْ إذَا بَاعَهُ بِدِينَارٍ إلَى أَجَلٍ وَاشْتَرَاهُ بِدِينَارَيْنِ: أَنْ يَكُونَ رِبًا وَدِينَارًا بِدِينَارَيْنِ، وَهَلْ فِي الْهَوَسِ أَعْظَمُ مِنْ أَنْ يَبِيعَ زَيْدٌ مِنْ عَمْرٍو دِينَارًا بِدِينَارَيْنِ

فَيَكُونَ رِبًا، وَيَبِيعَ مِنْهُ دِينَارَيْنِ بِدِينَارٍ فَلَا يَكُونُ رِبًا، لَيْتَ شِعْرِي فِي أَيِّ دِينٍ وَجَدْتُمْ هَذَا؟ أَمْ فِي أَيِّ عَقْلٍ؟ فَمَا أَتَى بِفَرْقٍ، وَلَا يَأْتُونَ بِهِ أَبَدًا.

L24876 As for their statement that the two intended usury as we mentioned and thus employed this legal act, the response is: If they indeed intended usury as you claimed and resorted to this procedure, then may Allah bless them, for they have excelled in what they desired by fleeing from forbidden usury to lawful sale. They escaped from disobedience to Allah—Exalted is He—to what He has lawfully permitted. Truly, whoever condemns them for this has acted wrongly in what he willed and sinned twice: first, for rejecting their good deed, then for suspecting them of what may never have occurred to them. The Messenger of Allah—peace and blessings be upon him—said: "Suspicion is the falsest of speech." As for the opinions of Abū Ḥanīfa and Mālik on this matter, we have mentioned a small part of their categorizations. Anyone who examines them will see that these classifications are profoundly unsound and contradictory—such as Abū Ḥanīfa's distinction between purchasing with a commodity and purchasing with dinars, though in both cases the sale is made with dirhams—and his prohibition of this for his agent and partner.

وَأَمَّا قَوْلُهُمْ: إنَّهُمَا أَرَادَا الرِّبَا كَمَا ذَكَرْنَا فَتَحَيَّلَا بِهَذَا الْعَمَلِ؟ فَجَوَابُهُمْ أَنَّهُمَا إنْ كَانَا أَرَادَا الرِّبَا كَمَا ذَكَرْتُمْ فَتَحَيَّلَا بِهَذَا الْعَمَلِ، فَبَارَكَ اللَّهُ فِيهِمَا، فَقَدْ أَحْسَنَا مَا شَاءَا إذْ هَرَبَا مِنْ الرِّبَا الْحَرَامِ إلَى الْبَيْعِ الْحَلَالِ، وَفَرَّا مِنْ مَعْصِيَةِ اللَّهِ - تَعَالَى - إلَى مَا أَحَلَّ، وَلَقَدْ أَسَاءَ مَا شَاءَ مَنْ أَنْكَرَ هَذَا عَلَيْهِمَا، وَأَثِمَ مَرَّتَيْنِ لِإِنْكَارِهِ إحْسَانَهُمَا، ثُمَّ لِظَنِّهِ بِهِمَا مَا لَعَلَّهُمَا لَمْ يَخْطِرْ بِبَالِهِمَا، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الظَّنُّ أَكْذَبُ الْحَدِيثِ» .

L24877 And like Malik's distinction between purchasing it for more than the price he sold it for—which he deems permissible—and purchasing it for less—which he deems forbidden. These are astonishing views without any evidence, as you can see? Then Abū Ḥanīfah gave the impression of adhering to ʿĀ'isha's narration—may Allah be pleased with her—though he did not actually do so, for he applies this ruling to one who sells for an immediate price as long as the entire price is not received in full. Yet this has no basis in ʿĀ'isha's narration whatsoever—and with Allah, the Most High, is success.

وَأَمَّا أَقْوَالُ أَبِي حَنِيفَةَ، وَمَالِكٍ، فِي هَذِهِ الْمَسْأَلَةِ فَقَدْ ذَكَرْنَا طَرَفًا يَسِيرًا مِنْ تَقْسِيمِهِمَا، وَكُلُّ مَنْ تَأَمَّلَهُ يَرَى أَنَّهَا تَقَاسِيمُ فِي غَايَةِ الْفَسَادِ، وَالتَّنَاقُضِ، كَتَفْرِيقِ أَبِي حَنِيفَةَ بَيْنَ ابْتِيَاعِهِ بِسِلْعَةٍ وَبَيْنَ ابْتِيَاعِهِ بِدَنَانِيرَ، وَفِي كِلَا الْوَجْهَيْنِ إنَّمَا بَاعَ بِدَرَاهِمَ - وَكَتَحْرِيمِهِ ذَلِكَ عَلَى وَكِيلِهِ وَشَرِيكِهِ.

وَكَتَفْرِيقِ مَالِكٍ بَيْنَ ابْتِيَاعِهِ بِأَكْثَرَ مِمَّا كَانَ بَاعَهَا بِهِ فَيَرَاهُ حَلَالًا، وَبَيْنَ ابْتِيَاعِهِ بِأَقَلَّ فَيَرَاهُ حَرَامًا، وَهَذِهِ عَجَائِبُ بِلَا دَلِيلٍ كَمَا تَرَى؟ ثُمَّ إنَّ أَبَا حَنِيفَةَ أَوْهَمَ أَنَّهُ أَخَذَ بِخَبَرِ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - وَلَمْ يَأْخُذْ بِهِ؛ لِأَنَّهُ يَرَى ذَلِكَ فِيمَنْ بَاعَ بِثَمَنٍ حَالٍّ مَا لَمْ يَنْتَقِدْ جَمِيعَ الثَّمَنِ، وَلَيْسَ هَذَا فِي خَبَرِ عَائِشَةَ أَصْلًا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

Issue of the Sale of Dwellings in Makkah

[مَسْأَلَة بَيْع دُور مَكَّة]

L24878

L24879 1560. Issue: The sale and purchase of dwellings in Mecca—may Allah the Exalted honor it—are permissible. We have mentioned this in the Book of Hajj, which suffices without repeating it.

١٥٦٠ - مَسْأَلَةٌ: وَبَيْعُ دُورِ مَكَّةَ - أَعَزَّهَا اللَّهُ تَعَالَى - وَابْتِيَاعُهَا حَلَالٌ، وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الْحَجِّ " فَأَغْنَى عَنْ إعَادَتِهِ.

L24880 1561 – Issue: The sale by a blind person or his purchase based on description is permissible, like valid transactions, with no difference. This is because there is no Quranic verse or Sunnah that establishes a distinction between any aspect of such transactions. *"And Allah has permitted trade"* [Al-Baqarah: 275], and thus, the blind and the sighted fall under this ruling. Success comes from Allah, Exalted is He.[36]

L24881–24882 The legal ruling on selling a slave and buying him without his master's permission.

L24883 Issue: A slave's act of selling and purchasing without his master's permission is permissible, as long as the master does not seize his property. If the master seizes it, the property then becomes the master's, and the slave is not permitted to dispose of it. The proof for this is Allah's statement—Exalted is He—: {Allah has permitted trade} [Al-Baqarah: 275], which does not distinguish between a free person and a slave.[37]

L24884 And He, the Exalted, said: "He has already detailed for you what He has forbidden you" (Quran 6:119). If the slave's sale of his property without his master's permission were forbidden, the Almighty and Majestic would have detailed it for us, and He would not have compelled us in this matter to resort to false conjectures and contrived opinions.[38]

L24885 Since the prohibition was not specified to us, it is correct that it is lawful and not forbidden. We have mentioned in the "Book of Zakat" within this compilation of ours and others the validity of a slave's ownership of his property. As for a master seizing a slave's wealth, it is authentically reported from the Messenger of Allah—peace and blessings be upon him—that he gave the cupping practitioner his fee and asked, "What about his tax?" Then he instructed his guardians to reduce it for him.

L24886 It has been narrated to us via the chain of Muslim: I [heard] from ʿAbd ibn Ḥumayd, from ʿAbd al-Razzāq, from Maʿmar, from ʿĀṣim, from al-Shaʿbī, from Ibn ʿAbbās: "A slave belonging to Banū Bayāḍah performed cupping on

[36] **Qur'an references (L24880):** Qur'an 2:275 (Al-Baqarah).
[37] **Qur'an references (L24883):** Qur'an 2:275 (Al-Baqarah).
[38] **Qur'an references (L24884):** Qur'an 6:119 (Al-An'am).

١٥٦١ - مَسْأَلَةٌ: وَبَيْعُ الْأَعْمَى، أَوْ ابْتِيَاعُهُ بِالصِّفَةِ جَائِزٌ كَالصَّحِيحِ، وَلَا فَرْقَ؛ لِأَنَّهُ لَمْ يَأْتِ قُرْآنٌ، وَلَا سُنَّةٌ بِالْفَرْقِ بَيْنَ شَيْءٍ فِي شَيْءٍ مِنْ ذَلِكَ {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] فَدَخَلَ فِي ذَلِكَ الْأَعْمَى، وَالْبَصِيرُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة بَيْع الْعَبْد وابتياعه مِنْ غَيْر أذن سيدَهْ]

مَسْأَلَةٌ: وَبَيْعُ الْعَبْدِ، وَابْتِيَاعُهُ بِغَيْرِ إذْنِ سَيِّدِهِ جَائِزٌ، مَا لَمْ يَنْتَزِعْ سَيِّدُهُ مَالَهُ فَإِنْ انْتَزَعَهُ فَهُوَ حِينَئِذٍ مَالُ السَّيِّدِ، لَا يَحِلُّ لِلْعَبْدِ التَّصَرُّفُ فِيهِ، بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ - تَعَالَى -: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] فَلَمْ يَخُصَّ حُرًّا مِنْ عَبْدٍ.

وَقَالَ - تَعَالَى -: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] فَلَوْ كَانَ بَيْعُ الْعَبْدِ مَالَهُ بِغَيْرِ إذْنِ سَيِّدِهِ حَرَامًا لَفَصَّلَهُ - عَزَّ وَجَلَّ - لَنَا، وَلَمَا أَلْجَأَنَا فِيهِ إلَى الظُّنُونِ الْكَاذِبَةِ، وَالْآرَاءِ الْمُدَبَّرَةِ.

فَإِذْ لَمْ يُفَصِّلْ لَنَا تَحْرِيمَهُ، فَصَحَّ أَنَّهُ حَلَالٌ غَيْرُ حَرَامٍ، وَقَدْ ذَكَرْنَا فِي " كِتَابِ الزَّكَاةِ " مِنْ دِيوَانِنَا هَذَا وَغَيْرِهِ صِحَّةَ مِلْكِ الْعَبْدِ لِمَالِهِ، وَأَمَّا انْتِزَاعُ السَّيِّدِ مَالَ الْعَبْدِ فَقَدْ صَحَّ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَعْطَى الْحَجَّامَ أَجْرَهُ وَسَأَلَ عَنْ ضَرِيبَتِهِ؟ فَأَمَرَ مَوَالِيَهِ أَنْ يُخَفِّفُوا عَنْهُ مِنْهَا» .

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا عَبْدُ بْنُ حُمَيْدٍ أَنَا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ عَاصِمٍ عَنْ الشَّعْبِيِّ عَنْ ابْنِ عَبَّاسٍ «حَجَمَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَبْدٌ لِبَنِي بَيَاضَةَ فَأَعْطَاهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَجْرَهُ وَكَلَّمَ سَيِّدَهُ فَخَفَّفَ عَنْهُ مِنْ ضَرِيبَتِهِ» .

the Prophet (peace and blessings of Allah be upon him). The Prophet (peace and blessings of Allah be upon him) gave him his wages and spoke to his master, who then reduced a portion of his tax obligation."[39]

فَصَحَّ أَنَّ الْعَبْدَ يَمْلِكُ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - أَعْطَاهُ أَجْرَهُ فَلَوْ لَمْ يَكُنْ لَهُ مَا أَعْطَاهُ مَا لَيْسَ لَهُ - وَصَحَّ أَنَّ لِلسَّيِّدِ أَخْذَهُ بِأَمْرِهِ - عَلَيْهِ السَّلَامُ - بِأَنْ يُخَفِّفَ عَنْهُ مِنْ خَرَاجِهِ، فَصَحَّ أَنَّ مَالَ الْعَبْدِ لَهُ مَا لَمْ يَنْتَزِعْهُ سَيِّدُهُ، وَصَحَّ أَنَّ لِلسَّيِّدِ أَخْذَ كَسْبِ عَبْدِهِ لِنَفْسِهِ.

L24887 It is valid that a slave owns property, for the Prophet (peace be upon him) gave him his wage. If he did not have the authority to give him what was not his, this would not be valid. It is also valid that the master may take that wealth by the Prophet's (peace be upon him) command to reduce part of his kharaj. Thus, it is valid that the slave's property belongs to him as long as his master does not take it away, and it is valid that the master may take his slave's earnings for himself.

وَاخْتَلَفَ النَّاسُ فِي هَذَا فَقَالَ أَبُو حَنِيفَةَ: إذَا ادَّانَ الْعَبْدُ بِبَيْعٍ أَوْ ابْتِيَاعٍ بِغَيْرِ إذْنِ سَيِّدِهِ فَهِيَ جِنَايَةٌ فِي رَقَبَتِهِ، وَيَلْزَمُ السَّيِّدَ فَكُّهُ بِهَا أَوْ إسْلَامُهُ إلَى صَاحِبِ دِينِهِ.

L24888 People have differed regarding this. Abū Ḥanīfah said: If a slave incurs debt by selling or purchasing without his master's permission, this constitutes a transgression burdening him personally. The master is then obligated to either free him by settling the debt or surrender him as property to the creditor.

قَالَ أَبُو مُحَمَّد: أَوَّلُ مَا يُقَالُ لَهُمْ: مِنْ أَيْنَ قُلْتُمْ هَذَا؟ وَلَيْسَ هَذَا الْحُكْمُ مَوْجُودًا فِي قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ يُعْقَلُ لَهُ وَجْهٌ، بَلْ هُوَ ضِدُّ ذَلِكَ كُلِّهِ، قَالَ اللَّهُ - تَعَالَى -: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

L24889 Abū Muḥammad said: The first thing to be said to them is: From where did you derive this? This ruling is not found in the Qur'an, nor in the Sunnah, nor in weak narrations, nor in the statement of a Companion, nor in analogy, nor in an opinion that can be logically substantiated. Rather, it contradicts all of that. Allah—Exalted is He—said: "No soul earns except against itself, and no bearer of burdens will bear the burden of another" [al-Anʿām 6:164].[40]

فَبَطَلَ أَنْ يَكْسِبَ الْحُرُّ أَوْ الْعَبْدُ عَلَى سَيِّدِهِ، أَوْ عَلَى غَيْرِ نَفْسِهِ إلَّا حَيْثُ أَوْجَبَهُ النَّصُّ كَالْعَاقِلَةِ.

L24890 Thus, it is invalid for a free person or a slave to acquire a claim against their master or anyone other than themselves, except where explicitly prescribed by the legal text, such as in the case of the _ʿāqilah_.

ثُمَّ وَجْهٌ آخَرُ - وَهُوَ قَوْلُهُ: إنَّ الْبَيْعَ وَالِابْتِيَاعَ جِنَايَةٌ - وَهَذَا تَخْلِيطٌ آخَرُ، وَقَالَ مَالِكٌ: إذَا تَدَايَنَ الْعَبْدُ بِغَيْرِ إذْنِ سَيِّدِهِ فَلِسَيِّدِهِ فَسْخُ الدَّيْنِ عَنْهُ - وَهَذَا بَاطِلٌ شَنِيعٌ، لِأَنَّهُ إبَاحَةٌ لِأَكْلِ أَمْوَالِ النَّاسِ بِالْبَاطِلِ، وَقَدْ حَرَّمَهُ اللَّهُ - تَعَالَى -، وَرَسُولُهُ - عَلَيْهِ السَّلَامُ - قَالَ

L24891–24892 Then another viewpoint—his statement: "Selling and purchasing constitute a transgression"—which is another confusion. Mālik said: "If a slave incurs debt without his master's permission, the master may annul the debt incurred by him." This is a heinous falsehood, for it permits the unlawful

[39] **Hadith references (L24886):** Sahih Muslim 1202c.
[40] **Qur'an references (L24889):** Qur'an 6:164 (Al-An'am).

consumption of people's wealth—a practice prohibited by Allah, Exalted, and His Messenger, peace be upon him. The Almighty said: "Do not consume your wealth among yourselves unlawfully unless it be through trade with mutual consent" [An-Nisāʾ 4:29].[41]

L24893 The Messenger of Allah (peace and blessings be upon him) said: "Your blood and your wealth are inviolable for you [to violate]."

L24894 Among the wonders of the world is that they impose punishment for what he has committed upon those who have not reached the age of legal responsibility, and likewise the insane, then nullify the obligatory sale concerning a sane slave. Then they have brought forth from that a ruling that has never been mentioned in the Quran, nor the Sunnah, nor a weak narration, nor any statement from anyone before Malik that we know of, nor in analogical reasoning, nor any opinion with validity.

L24895 Another perplexity is their assertion: If the commodity acquired by the slave himself is found, it must be returned to its owner. I wonder: On what basis is the removal of the commodity from the slave's possession obligatory, yet he is not liable to compensate for its price if it is not found?

L24896 If the commodity is indeed the property of the seller, then the payment is his property.

L24897 If indeed the price is not the property of the seller, then the commodity is not his property either. Rather, the matter here is reversed in the vilest manner and most evidently corrupt, for it restores to the seller a commodity from which his ownership has been nullified, while the purchasing slave's valid ownership over it has been established. Thus, it grants him what he no longer rightfully possesses while withholding the price that is unquestionably his due - and these are catastrophic injustices without parallel.

L24898 Al-Shāfiʿī said: Rather, is the price a debt incumbent upon him in his liability if he is manumitted on any day? This is an utterly flawed opinion, because if

[41] **Qur'an references (L24892):** Qur'an 4:29 (An-Nisa).

- تَعَالَى -: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

وَمِنْ عَجَائِبِ الدُّنْيَا أَنَّهُمْ يُوجِبُونَ عَلَى مَنْ لَمْ يَبْلُغْ جَزَاءَ مَا جَنَى، وَكَذَلِكَ الْمَجْنُونُ، ثُمَّ يُسْقِطُونَ الْبَيْعَ الْوَاجِبَ عَنْ الْعَبْدِ الْعَاقِلِ، ثُمَّ أَتَوْا مِنْ ذَلِكَ بِقَوْلٍ لَمْ يَأْتِ قَطُّ فِي قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ قَبْلَ مَالِكٍ نَعْلَمُهُ، وَلَا فِي قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ.

وَعَجَبٌ آخَرُ - وَهُوَ أَنَّهُمْ يَقُولُونَ: إنْ وُجِدَتْ السِّلْعَةُ الَّتِي اشْتَرَى الْعَبْدُ بِيَدِهِ وَجَبَ رَدُّهَا إلَى صَاحِبِهَا، فَلَيْتَ شِعْرِي مِنْ أَيْنَ وَجَبَ إزَالَةُ السِّلْعَةِ عَنْ يَدِ الْعَبْدِ، وَلَمْ يَجِبْ إغْرَامُهُ الثَّمَنَ عَنْهَا إنْ لَمْ تُوجَدْ.

وَلَئِنْ كَانَتْ السِّلْعَةُ مَالَ الْبَائِعِ: فَإِنَّ الثَّمَنَ مَالُهُ.

وَلَئِنْ كَانَ الثَّمَنُ لَيْسَ هُوَ مَالَ الْبَائِعِ، فَإِنَّ السِّلْعَةَ لَيْسَتْ مَالَهُ، بَلْ قَدْ عُكِسَ الْأَمْرُ هَهُنَا أَقْبَحَ الْعَكْسِ وَأَوْضَحَهُ فَسَادًا؛ لِأَنَّهُ رَدَّ إلَى الْبَائِعِ سِلْعَةً قَدْ بَطَلَ مِلْكُهُ عَنْهَا، وَصَحَّ مِلْكُ الْعَبْدِ الْمُشْتَرِي عَلَيْهَا، فَأَعْطَاهُ مَا لَيْسَ لَهُ وَلَمْ يُعْطِهِ الثَّمَنَ الَّذِي هُوَ لَهُ بِلَا شَكٍّ - وَهَذِهِ طَوَامُّ لَا نَظِيرَ لَهَا.

وَقَالَ الشَّافِعِيُّ: بَلْ الثَّمَنُ دَيْنٌ عَلَيْهِ فِي ذِمَّتِهِ إذَا أُعْتِقَ يَوْمًا مَا؟ وَهَذَا قَوْلٌ فِي غَايَةِ الْفَسَادِ؛ لِأَنَّهُ إنْ كَانَ الثَّمَنُ لَازِمًا لِلْعَبْدِ فَلِأَيِّ مَعْنًى يُؤَخَّرُ بِهِ إلَى أَنْ يُعْتَقَ.

the price is binding upon the slave, then for what reason is it thereby delayed until his manumission?

L24899 If the price is not currently binding, it is impermissible to penalize him for default when he is manumitted.

L24900 If it is established that his purchase was valid, the price becomes obligatory for him to pay immediately.

L24901 If his purchase is invalid, he is not liable for the price; rather, he is liable only for the value of what he destroyed.

L24902–24903 These are corrupt, mutually weakening, and contradictory opinions, with no evidence supporting the validity of any of them. Their disagreement about them proves they do not come from Allah, the Almighty and Majestic. Thus, every discerning person becomes certain of the collapse of all of them.

L24904 Our statement is the statement of Abī Sulaymān and our companions. We have also mentioned it from Al-Ḥasan ibn ʿAlī, may Allāh be pleased with them both, and from others. And by Allāh, the Exalted, is success.

L24905 **The Issue of the Sale of Virgin and Previously Married Women.**

L24906 1563 - Issue: The sale by a woman is permissible from the time she reaches puberty—whether she is an unmarried woman with a father, an unmarried woman without a father, a previously married woman with a husband, or a previously married woman without a husband—and her purchase is likewise permissible, based on what we previously mentioned in "The Book of Legal Interdiction" within this compilation of ours, rendering its repetition unnecessary. And success is by Allah, the Exalted.

L24907 1564 - Issue: Whoever owns a mine may sell it, as it constitutes property from his wealth. If it is a gold mine, it is impermissible to sell it for gold, as this would entail exchanging gold for an unequal amount, since gold exists in its mine in its natural state. It is permissible to exchange it for silver through immediate hand-to-hand cash payment, deferred terms, or as an immediate debt obligation. If it is a silver mine, it is permissible to sell it for silver or gold via cash payment—hand-to-hand, as a debt obligation, or on deferred

وَلَئِنْ كَانَ الثَّمَنُ لَيْسَ لَازِمًا الْآنَ فَلَا يَجُوزُ إِغْرَامُهُ إِيَّاهُ إِذَا أُعْتِقَ.

وَلَئِنْ كَانَ ابْتِيَاعُهُ صَحِيحًا فَإِنَّ الثَّمَنَ عَلَيْهِ الْآنَ وَاجِبٌ.

وَلَئِنْ كَانَ ابْتِيَاعُهُ فَاسِدًا فَمَا يَلْزَمُهُ ثَمَنٌ إِنَّمَا يَلْزَمُهُ قِيمَةُ مَا أَتْلَفَ فَقَطْ.

فَهَذِهِ آرَاءٌ فَاسِدَةٌ مُتَخَاذِلَةٌ مُتَنَاقِضَةٌ، لَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا، وَاخْتِلَافُهُمْ فِيهَا دَلِيلٌ عَلَى أَنَّهَا لَيْسَتْ مِنْ عِنْدِ اللَّهِ عَزَّ وَجَلَّ، فَتَيَقَّنَ كُلُّ مُوقِنٍ سُقُوطَهَا كُلَّهَا.

وَقَوْلُنَا هُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا، وَقَدْ ذَكَرْنَاهُ أَيْضًا عَنْ الْحَسَنِ بْنِ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمَا - وَعَنْ غَيْرِهِ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَةَ بَيْعُ الْمَرْأَةِ الْبِكْرِ وَالثَّيِّبَ]

١٥٦٣ - مَسْأَلَةٌ: وَبَيْعُ الْمَرْأَةِ مُذْ تَبْلُغُ الْبِكْرِ ذَاتِ الْأَبِ، وَغَيْرِ ذَاتِ الْأَبِ وَالثَّيِّبِ ذَاتِ الزَّوْجِ وَالَّتِي لَا زَوْجَ لَهَا جَائِزٌ، وَابْتِيَاعُهَا كَذَلِكَ، لِمَا ذَكَرْنَاهُ قَبْلُ فِي " كِتَابِ الْحَجْرِ " مِنْ دِيوَانِنَا هَذَا فَأَغْنَى عَنْ إعَادَتِهِ وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

١٥٦٤ - مَسْأَلَةٌ: وَمَنْ مَلَكَ مَعْدِنًا لَهُ جَازَ بَيْعُهُ؛ لِأَنَّهُ مَالٌ مِنْ مَالِهِ، فَإِنْ كَانَ مَعْدِنَ ذَهَبٍ لَمْ يَحِلَّ بَيْعُهُ بِذَهَبٍ؛ لِأَنَّهُ ذَهَبٌ بِأَكْثَرَ مِنْهُ، إذْ الذَّهَبُ مَخْلُوقٌ فِي مَعْدِنِهِ كَمَا هُوَ هُوَ، جَائِزٌ بِالْفِضَّةِ يَدًا بِيَدٍ نَقْدًا وَإِلَى أَجَلٍ وَحَالًّا فِي الذِّمَّةِ، فَإِنْ كَانَ مَعْدِنَ فِضَّةٍ

terms—for no actual silver exists there; rather, its ore is processed into silver through smelting.

L24908 Whoever opposes us in this matter has permitted the sale of palm trees without fruit in exchange for dates—whether paid in cash, as an immediate liability, or deferred—while dates are produced from them. Similarly, he has allowed the sale of land for wheat, and all of this is the same. Success is from Allah, the Most High.

The Issue of Selling Fodder

L24909

L24910 1565 - Issue: The sale of fodder is permissible while still rooted in the land and after its uprooting, as it is property from the landowner's wealth. Whatever originates from a person's property becomes part of their wealth, such as offspring from animals, fruits, plants, milk, wool, and other such things: {Allah has permitted sale} [Al-Baqarah: 275]. No textual prohibition has been revealed regarding the sale of anything from all of these: {Your Lord is never forgetful} [Maryam: 64], {He has already detailed what He forbade you} [Al-An'ām: 119].[42]

L24911 Abu Hanifah said: The sale of fodder is only permissible after it has been uprooted.

L24912–24914 Ali said: "We do not know of any valid argument for this statement whatsoever. It is merely a flawed categorization and a baseless claim. Should anyone raise this—" What has been narrated to us through Ḥurayz ibn 'Uthmān—I, Abū Khidāsh—that I heard a man from the Companions of the Messenger of Allah, peace and blessings be upon him, say: "He fought in three campaigns with the Messenger of Allah, peace and blessings be upon him, and he heard him say: 'Muslims are partners in three things: water, pasture, and fire.'"

جَازَ بَيْعُهُ بِفِضَّةٍ أَوْ بِذَهَبٍ نَقْدًا، أَوْ فِي الذِّمَّةِ، وَإِلَى أَجَلٍ؛ لِأَنَّهُ لَا فِضَّةَ هُنَالِكَ، وَإِنَّمَا يَسْتَحِيلُ تُرَابُهُ بِالطَّبْخِ فِضَّةً.

وَمَنْ خَالَفَنَا فِي هَذَا فَقَدْ أَجَازَ بَيْعَ النَّخْلِ لَا ثَمَرَ فِيهَا بِالتَّمْرِ نَقْدًا وَحَالًّا فِي الذِّمَّةِ وَنَسِيئَةً، وَالتَّمْرُ يَخْرُجُ مِنْهَا - وَكَذَلِكَ أَبَاحَ بَيْعَ الْأَرْضِ بِالْبُرِّ، وَكُلُّ هَذَا سَوَاءٌ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَةُ بَيْعُ الْكَلَأِ]

١٥٦٥ - مَسْأَلَةٌ: وَبَيْعُ الْكَلَأِ جَائِزٌ فِي أَرْضٍ وَبَعْدَ قَلْعِهِ؛ لِأَنَّهُ مَالٌ مِنْ مَالِ صَاحِبِ الْأَرْضِ، وَكُلُّ مَا تَوَلَّدَ مِنْ مَالِ الْمَرْءِ فَهُوَ مِنْ مَالِهِ، كَالْوَلَدِ مِنْ الْحَيَوَانِ، وَالثَّمَرِ، وَالنَّبَاتِ وَاللَّبَنِ، وَالصُّوفِ، وَغَيْرِ ذَلِكَ: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَلَمْ يَأْتِ نَصٌّ بِتَحْرِيمِ بَيْعِ شَيْءٍ مِنْ ذَلِكَ كُلِّهِ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] ، {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

وَقَالَ أَبُو حَنِيفَةَ: لَا يَحِلُّ بَيْعُ الْكَلَأِ إلَّا بَعْدَ قَلْعِهِ.

قَالَ عَلِيٌّ: وَمَا نَعْلَمُ لِهَذَا الْقَوْلِ حُجَّةً أَصْلًا وَإِنَّمَا هُوَ تَقْسِيمٌ فَاسِدٌ، وَدَعْوَى سَاقِطَةٌ - فَإِنْ ذَكَرَ ذَاكِرٌ -: مَا رُوِّينَا مِنْ طَرِيقِ حُرَيْزِ بْنِ عُثْمَانَ أَنَا أَبُو خِدَاشٍ " أَنَّهُ سَمِعَ «رَجُلًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: إنَّهُ غَزَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَلَاثَ غَزَوَاتٍ فَسَمِعَهُ يَقُولُ: الْمُسْلِمُونَ شُرَكَاءُ فِي ثَلَاثٍ الْمَاءُ وَالْكَلَأُ وَالنَّارُ» .

[42] **Qur'an references (L24910):** Qur'an 2:275 (Al-Baqarah); Qur'an 19:64 (Maryam); Qur'an 6:119 (Al-An'am).

وَرَوَاهُ أَيْضًا حُرَيْزُ بْنُ عُثْمَانَ عَنْ حِبَّانَ بْنِ زَيْدٍ الشَّرْعَبِيِّ - وَهُوَ أَبُو خِدَاشٍ نَفْسُهُ - عَنْ رَجُلٍ مِنْ قَرْنٍ.

L24915 It was also narrated by Ḥurayz ibn ʿUthmān from Ḥibbān ibn Zayd al-Sharʿabī—and he is Abū Khidāsh himself—from a man from Qarn.

وَمِنْ طَرِيقِ الْحُذَافِيِّ أَخْبَرَنِي يَزِيدُ بْنُ مُسْلِمٍ الْجُرَيْرِيُّ قَالَ لِي وَهْبُ بْنُ مُنَبِّهٍ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «اتَّقُوا السُّحْتَ بَيْعَ الشَّجَرِ وَإِجَارَةَ الْأَمَةِ الْمُسَاحِقَةِ وَثَمَنَ الْخَمْرِ».

L24916 Via the transmission of al-Ḥudhāfī, Yazīd ibn Muslim al-Jurayrī reported to me, [narrating] that Wahb ibn Munabbih said to me: The Prophet—peace and blessings of Allah be upon him—said: “Guard against unlawful earnings—selling trees, renting out a slave woman for fornication, and the price of wine.”

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا عُبَيْدُ اللَّهِ بْنُ مُعَاذٍ الْعَنْبَرِيُّ أَنَا أَبِي كَهْمَسٍ عَنْ سَيَّارِ بْنِ مَنْظُورٍ الْفَزَارِيِّ عَنْ أَبِيهِ عَنْ بُهَيْسَةَ عَنْ أَبِيهَا «سَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا الَّذِي لَا يَحِلُّ بَيْعُهُ؟ فَأَجَابَهُ: الْمَاءُ، وَالْمِلْحُ».

L24917 And via the chain of Abu Dawud: I am ʿUbaydullah ibn Muʿadh al-ʿAnbari, from my father Kahmas, from Sayyar ibn Manzur al-Fazari, from his father, from Buhaysah, from her father that he asked the Prophet (peace be upon him), “What is it that is not permissible to sell?” He replied, “Water and salt.”

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّهُ لَا شَيْءَ - أَبُو خِدَاشٍ هُوَ حِبَّانُ بْنُ زَيْدٍ الشَّرْعَبِيُّ نَفْسُهُ - وَهُوَ مَجْهُولٌ -.

L24918 Abu Muhammad said: All of this is baseless — Abu Khidāsh is Hibban ibn Zayd al-Sharʿabī himself — and he is unknown.

وَأَيْضًا: فَإِنَّهُ مُخَالِفٌ لِقَوْلِ الْحَنَفِيِّينَ؛ لِأَنَّهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ صَاحِبَ الْمَاءِ أَوْلَى بِهِ لَا يُشَارِكُهُ فِيهِ غَيْرُهُ، وَكَذَلِكَ صَاحِبُ النَّارِ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ.

L24919 Moreover, it contradicts the opinion of the Hanafis, as they unanimously hold that the owner of water has a prior claim to it, and no one else shares it with him. The same applies to the owner of fire. Thus, their reliance on this narration is nullified.

وَأَيْضًا: فَإِنَّهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ مَنْ أَخَذَ مَاءً فِي إنَاءٍ أَوْ كَلَأً فَجَمَعَهُ، فَإِنَّهُ يَبِيعُهُمَا وَلَا يُشَارِكُهُ فِيهِمَا أَحَدٌ - وَهَذَا خِلَافُ عُمُومِ الْخَبَرِ فَعَادَ حُجَّةً عَلَيْهِمْ.

L24920 Additionally, they do not disagree that whoever takes water in a vessel or takes fodder and collects it may sell both without anyone sharing with him in them—and this contradicts the general purport of the report, thus it becomes a proof against them.

فَإِنْ قَالُوا: إنَّمَا عَنَى بِهِ الْكَلَأَ قَبْلَ أَنْ يُجْمَعَ؟ قُلْنَا: بَلْ الْكَلَأُ الثَّابِتُ فِي الْأَرْضِ غَيْرِ الْمَمْلُوكَةِ - وَهَذَا التَّأْوِيلُ مُتَّفَقٌ عَلَيْهِ وَتَأْوِيلُكُمْ دَعْوَى مُخْتَلَفٌ فِيهَا لَا بُرْهَانَ عَلَى صِحَّتِهِ.

L24921 If they say, “He only meant the pasture before it is gathered,” we respond: Rather, it is the pasture established in non-owned land—this interpretation is agreed upon by consensus, whereas yours is a claim subject to disagreement, lacking any proof for its validity.

L24922–24924 As for the ḥadīth of Wahb ibn Munabbih, it is disconnected. The ruling concerning it and the contradictory evaluations regarding him aligns with

the ruling concerning the ḥadīth of Ḥurayz ibn ʿUthmān, with no distinction. The ḥadīth of Buhaysah is transmitted through an unknown narrator from an unknown narrator from an unknown female narrator. Then... There is no mention of pasture in it whatsoever—it was incumbent upon the Mālikīs, those who uphold the mursal ḥadīth, to adopt these mursal reports, but they contradicted their own position and consequently abandoned them.

وَأَمَّا حَدِيثُ وَهْبِ بْنِ مُنَبِّهٍ فَمُنْقَطِعٌ، ثُمَّ الْقَوْلُ فِيهِ وَفِي خِلَافِهِمْ لَهُ كَالْقَوْلِ فِي حَدِيثِ حُرَيْزِ بْنِ عُثْمَانَ وَلَا فَرْقَ - وَحَدِيثُ بُهَيْسَةَ مَجْهُولٌ عَنْ مَجْهُولٍ عَنْ مَجْهُولَةٍ - ثُمَّ لَيْسَ فِيهِ ذِكْرُ الْكَلَأِ أَصْلًا - وَكَانَ يَلْزَمُ الْمَالِكِيِّينَ الْقَائِلِينَ بِالْمُرْسَلِ الْأَخْذُ بِهَذِهِ الْمَرَاسِيلِ، لَكِنَّهُمْ تَنَاقَضُوا فَتَرَكُوهَا.

L24925 It has been reported to us from ʿAbd al-Razzāq, from Maʿmar, from ʿAbd Allāh ibn Ṭāwus, from his father, that he did not permit a landowner to sell the fodder of his land but allowed him to restrict it for the use of his livestock.

وَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ لَمْ يُجِزْ لِصَاحِبِ الْأَرْضِ بَيْعَ كَلَأِ أَرْضِهِ وَأَبَاحَ لَهُ أَنْ يَحْمِيَهُ لِدَوَابِّهِ.

L24926 It is reported through the transmission of ʿAbd al-Razzāq from Wahb ibn Nāfiʿ that he heard ʿIkrimah say: Do not consume the price of the tree, for it is unlawful gain. And from al-Ḥasan that he disapproved of selling all of the pasture.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ وَهْبِ بْنِ نَافِعٍ أَنَّهُ سَمِعَ عِكْرِمَةَ يَقُولُ: لَا تَأْكُلُوا ثَمَنَ الشَّجَرِ فَإِنَّهُ سُحْتٌ - وَعَنْ الْحَسَنِ أَنَّهُ كَرِهَ بَيْعَ الْكَلَأِ كُلِّهِ

L24927 Muhammad ibn Sa’id ibn Nabat narrated to us from Isma’il ibn Ishaq al-Nasri from Isa ibn Habib from Abd al-Rahman ibn Abdullah ibn Muhammad from my grandfather Muhammad ibn Abdullah ibn Yazid al-Muqri, who said: Sufyan ibn Uyaynah said to us: Three things are not to be withheld: water, pasture, and fuel.

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا إِسْمَاعِيلُ بْنُ إِسْحَاقَ النَّصْرِيُّ أَنَا عِيسَى بْنُ حَبِيبٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ مُحَمَّدٍ أَنَا جَدِّي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي قَالَ: قَالَ لَنَا سُفْيَانُ بْنُ عُيَيْنَةَ: ثَلَاثٌ لَا يُمْنَعْنَ: الْمَاءُ وَالْكَلَأُ، وَالنَّارُ.

L24928 So these [jurists] have relied on the general applicability of these mursal reports. Thus, whoever claims the opponents from the followers of Abū Ḥanīfah has lied. This is why we have cited them.

فَهَؤُلَاءِ أَخَذُوا بِعُمُومِ هَذِهِ الْمَرَاسِيلِ فَمَنْ ادَّعَى مِنْ أَصْحَابِ أَبِي حَنِيفَةَ الْخُصُومَ فَقَدْ كَذَبَ، وَلِهَذَا أَوْرَدْنَاهَا.

[مَسْأَلَة بَيْع آلات اللَّهْو]

The Issue of Selling Instruments of Frivolous Entertainment

L24929

L24930 1566. Issue: The sale of chess, flutes, drumsticks, musical instruments, and tambourines is entirely permissible. Whoever breaks any of these items is liable for it, unless it is a depicted image – in which case there is no liability upon its breaker (as we mentioned previously) because it constitutes property owned by its possessor. Similarly, the sale and purchasing of female singers are permissible.

١٥٦٦ - مَسْأَلَةٌ: وَبَيْعُ الشِّطْرَنْجِ، وَالْمَزَامِيرِ، وَالْعِيدَانِ، وَالْمَعَازِفِ، وَالطَّنَابِيرِ: حَلَالٌ كُلُّهُ، وَمَنْ كَسَرَ شَيْئًا مِنْ ذَلِكَ ضَمِنَهُ، إلَّا أَنْ يَكُونَ صُورَةً مُصَوَّرَةً فَلَا ضَمَانَ عَلَى كَاسِرِهَا، لِمَا ذَكَرْنَا قَبْلُ، لِأَنَّهَا مَالٌ مِنْ مَالِ مَالِكِهَا - وَكَذَلِكَ بَيْعُ الْمُغَنِّيَاتِ وَابْتِيَاعُهُنَّ.

L24931 He, the Exalted, said: “He created for you all that is on the earth” [Al-Baqarah: 29]; and He, the Exalted, said: “And Allah has made selling lawful” [Al-Baqarah: 275]; and He, the Exalted, said: “And He has detailed for you what He has forbidden to you” [Al-Anʿām: 119]. No textual evidence exists prohibiting the sale of any of such matters, and Abū Ḥanīfah held that financial liability lies upon whoever damages anything of these [lawful] things.[43]

قَالَ - تَعَالَى -: {خَلَقَ لَكُمْ مَا فِي الأَرْضِ جَمِيعًا} [البقرة: ٢٩] ، وَقَالَ - تَعَالَى -: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] ، وَقَالَ - تَعَالَى -: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] ، وَلَمْ يَأْتِ نَصٌّ بِتَحْرِيمِ بَيْعِ شَيْءٍ مِنْ ذَلِكَ، وَرَأَى أَبُو حَنِيفَةَ الضَّمَانَ عَلَى مَنْ كَسَرَ شَيْئًا مِنْ ذَلِكَ.

L24932–24934 Those who prohibit have cited narrations that are unsound or partially authentic, yet these provide no valid evidence for their position. These include reports transmitted to us via the chain of Abu Dawud al-Tayalisi: Hisham narrates from Yahya ibn Abi Kathir, from Abu Salam, from Abdullah ibn Zayd ibn al-Azraq, from Uqbah ibn Amir al-Juhani, who said: “Allah’s Messenger (PBUH) said: ’Every...” Any diversion a man engages in is futile except his shooting with his bow, disciplining his horse, or affectionate play with his wife—for these indeed are among righteous acts.

وَاحْتَجَّ الْمَانِعُونَ بِآثَارٍ لَا تَصِحُّ، أَوْ يَصِحُّ بَعْضُهَا، وَلَا حُجَّةَ لَهُمْ فِيهَا، وَهِيَ -: مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد الطَّيَالِسِيِّ أَنَا هِشَامٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَامٍ عَنْ عَبْدِ اللَّهِ بْنِ زَيْدِ بْنِ الْأَزْرَقِ عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ قَالَ " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَيْءٍ يَلْهُو بِهِ الرَّجُلُ فَبَاطِلٌ، إِلَّا رَمْيَ الرَّجُلِ بِقَوْسِهِ، أَوْ تَأْدِيبَهُ فَرَسَهُ، أَوْ مُلَاعَبَتَهُ امْرَأَتَهُ، فَإِنَّهُنَّ مِنْ الْحَقِّ» .

L24935 Abdullah ibn Zayd ibn al-Azraq is deemed majhool (of unknown reliability status).

عَبْدُ اللَّهِ بْنُ زَيْدِ بْنِ الْأَزْرَقِ مَجْهُولٌ.

L24936 And from the narration of Ibn Abī Shaybah from ʿĪsā ibn Yūnus from ʿAbd al-Raḥmān ibn Yazīd from Jābir: I am Abū Salām al-Dimashqī, narrating from Khālid ibn Zayd al-Juhanī. ʿUqbah ibn ʿĀmir said to me: The Messenger of Allah (peace be upon him) said, “There is no diversion for a believer except three things,” then he mentioned it [the ḥadīth]. Khālid ibn Zayd is unknown [as a narrator].

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ عِيسَى بْنِ يُونُسَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ عَنْ جَابِرٍ أَنَا أَبُو سَلَامٍ الدِّمَشْقِيُّ عَنْ خَالِدِ بْنِ زَيْدٍ الْجُهَنِيِّ قَالَ لِي عُقْبَةُ بْنُ عَامِرٍ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَيْسَ لَهْوُ الْمُؤْمِنِ إِلَّا ثَلَاثٌ» ثُمَّ ذَكَرَهُ - خَالِدُ بْنُ زَيْدٍ مَجْهُولٌ.

L24937 From the chain of Ahmad ibn Shuʿayb: I am Saʿīd, I am Ibn Ḥafṣ, I am Mūsā ibn Aʿyan, from Khālid ibn Abī Yazīd, who narrated to me: ʿAbd al-Raḥīm narrated from al-Zuhrī, from ʿAṭāʾ ibn Abī Rabāḥ: “I saw Jābir ibn ʿAbdullāh and Jābir ibn ʿUbayd, the two Anṣārīs, practicing archery. One said to the other: ʿDid you not hear Allah’s Messenger (peace be upon him) say: ”Every matter devoid of Allah’s remembrance is play, except four: a man’s play with

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا سَعِيدٌ أَنَا ابْنُ حَفْصٍ أَنَا مُوسَى بْنُ أَعْيَنَ عَنْ خَالِدِ بْنِ أَبِي يَزِيدَ حَدَّثَنِي عَبْدُ الرَّحِيمِ عَنْ الزُّهْرِيِّ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ رَأَيْت جَابِرَ بْنَ عَبْدِ اللَّهِ، وَجَابِرَ بْنَ عُبَيْدٍ الْأَنْصَارِيَّيْنِ يَرْمِيَانِ فَقَالَ أَحَدُهُمَا لِلْآخَرِ " أَمَا سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «كُلُّ شَيْءٍ لَيْسَ مِنْ ذِكْرِ اللَّهِ فَهُوَ لَعِبٌ، لَا يَكُونُ

[43] **Qur’an references (L24931):** Qur’an 2:29 (Al-Baqarah); Qur’an 2:275 (Al-Baqarah); Qur’an 6:119 (Al-An’am).

his wife, a man's training of his horse, a man's walking between two targets, and a man's teaching swimming.'"

أَرْبَعَةً: مُلَاعَبَةُ الرَّجُلِ امْرَأَتَهُ، وَتَأْدِيبُ الرَّجُلِ فَرَسَهُ، وَمَشْيُ الرَّجُلِ بَيْنَ الْغَرَضَيْنِ، وَتَعْلِيمُ الرَّجُلِ السِّبَاحَةَ» .

L24938 This is a corrupted, deceptively transmitted ḥadīth with a severe form of concealment, because the al-Zuhrī mentioned in it is not Ibn Shihāb, but rather an unknown man bearing the nisba al-Zuhrī named ʿAbd al-Raḥīm. We have reported it through the chain of Aḥmad ibn Shuʿayb: I am Muḥammad ibn Wahb al-Ḥarrānī, from Muḥammad ibn Salamah al-Ḥarrānī, from Abū ʿAbd al-Raḥīm—who is Khālid ibn Abī Yazīd, the maternal uncle of Muḥammad ibn Salamah—from ʿAbd al-Raḥīm al-Zuhrī, from ʿAṭāʾ: "I saw Jābir ibn ʿAbd Allāh and Jābir ibn ʿUbayd, the two Anṣārīs, shooting arrows. One of them said to the other: I heard the Messenger of Allāh (peace and blessings be upon him) say: 'Every matter lacking remembrance of Allāh—Exalted is He—is idle diversion and play except four: a man's play with his wife, his training of his horse, his walking between two targets, and his teaching of swimming.'" Thus, this report is invalid.

هَذَا حَدِيثٌ مَغْشُوشٌ مُدَلَّسٌ دُلْسَةَ سُوءٍ، لِأَنَّ الزُّهْرِيَّ الْمَذْكُورَ فِيهِ لَيْسَ هُوَ ابْنَ شِهَابٍ، لَكِنَّهُ رَجُلٌ زُهْرِيٌّ مَجْهُولٌ اسْمُهُ عَبْدُ الرَّحِيمِ -: رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ وَهْبٍ الْحَرَّانِيُّ عَنْ مُحَمَّدِ بْنِ سَلَمَةَ الْحَرَّانِيِّ عَنْ أَبِي عَبْدِ الرَّحِيمِ - هُوَ خَالِدُ بْنُ أَبِي يَزِيدَ - وَهُوَ خَالُ مُحَمَّدِ بْنِ سَلَمَةَ - عَنْ عَبْدِ الرَّحِيمِ الزُّهْرِيِّ عَنْ عَطَاءٍ: رَأَيْت جَابِرَ بْنَ عَبْدِ اللَّهِ، وَجَابِرَ بْنَ عُبَيْدٍ الْأَنْصَارِيَّيْنِ يَرْمِيَانِ، فَقَالَ أَحَدُهُمَا لِلْآخَرِ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «كُلُّ شَيْءٍ لَيْسَ فِيهِ ذِكْرُ اللَّهِ - تَعَالَى - فَهُوَ لَهْوٌ وَلَعِبٌ، إلَّا أَرْبَعَةً: مُلَاعَبَةُ الرَّجُلِ امْرَأَتَهُ، وَتَأْدِيبُ الرَّجُلِ فَرَسَهُ، وَمَشْيُهُ بَيْنَ الْغَرَضَيْنِ، وَتَعْلِيمُ الرَّجُلِ السِّبَاحَةَ» فَسَقَطَ هَذَا الْخَبَرُ.

L24939–24941 We have also narrated it through the chain of Aḥmad ibn Shuʿayb: I, Isḥāq ibn Ibrāhīm, from I, Muḥammad ibn Salamah. I am Abū ʿAbd al-Raḥīm, reporting from ʿAbd al-Wahhāb ibn Bukht, who reported from ʿAṭāʾ ibn Abī Rabāḥ: "I saw Jābir ibn ʿAbdullāh and Jābir ibn ʿUbayd, and he mentioned him. In the report appears: 'Everything unrelated to the remembrance of Allah constitutes idle talk and heedlessness.'" ʿAbd al-Wahhāb ibn Bukht is not renowned for uprightness. Furthermore, the report only describes it as idle talk and heedlessness, and there is no prohibition in it.

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إبْرَاهِيمَ أَنَا مُحَمَّدُ بْنُ سَلَمَةَ أَنَا أَبُو عَبْدِ الرَّحِيمِ عَنْ عَبْدِ الْوَهَّابِ بْنِ بُخْتٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ رَأَيْت جَابِرَ بْنَ عَبْدِ اللَّهِ، وَجَابِرَ بْنَ عُبَيْدٍ، فَذَكَرَهُ، وَفِيهِ «كُلُّ شَيْءٍ لَيْسَ مِنْ ذِكْرِ اللَّهِ فَهُوَ لَغْوٌ وَسَهْوٌ» عَبْدُ الْوَهَّابِ بْنُ بُخْتٍ غَيْرُ مَشْهُورٍ بِالْعَدَالَةِ، ثُمَّ لَيْسَ فِيهِ إلَّا أَنَّهُ سَهْوٌ وَلَغْوٌ وَلَيْسَ فِيهِ تَحْرِيمٌ.

L24942 It has been narrated through the chain of Al-'Abbās ibn Muḥammad al-Dūrī from Muḥammad ibn Kathīr al-'Abdī, from Ja'far ibn Sulaymān al-Ḍuba'ī, from Sa'īd ibn Abī Razīn from his brother, from Layth ibn Abī Sulaym, from 'Abd al-Raḥmān ibn Sābiṭ, from 'Ā'ishah the Mother of the Believers—may Allah be pleased with her—from the Prophet—peace and blessings of Allah be upon him—who said: "Verily Allah has forbidden the female singer, selling her, her price, teaching her, and listening to her."

وَرُوِيَ مِنْ طَرِيقِ الْعَبَّاسِ بْنِ مُحَمَّدٍ الدُّورِيِّ عَنْ مُحَمَّدِ بْنِ كَثِيرٍ الْعَبْدِيِّ أَنَا جَعْفَرُ بْنُ سُلَيْمَانَ الضُّبَعِيُّ عَنْ سَعِيدِ بْنِ أَبِي رَزِينٍ عَنْ أَخِيهِ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ سَابِطٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّ اللَّهَ حَرَّمَ الْمُغَنِّيَةَ وَبَيْعَهَا وَثَمَنَهَا وَتَعْلِيمَهَا وَالِاسْتِمَاعَ إلَيْهَا» .

فِيهِ: لَيْثٌ، وَهُوَ ضَعِيفٌ، وَسَعِيدُ بْنُ أَبِي رَزِينٍ وَهُوَ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ عَنْ أَخِيهِ، وَمَا أَدْرَاكَ مَا عَنْ أَخِيهِ هُوَ مَا يُعْرَفُ وَقَدْ سُمِّيَ، فَكَيْفَ أَخُوهُ الَّذِي لَمْ يُسَمَّ.

L24943 In it: Laith—who is weak—and Sa'id ibn Abi Razin—who is unknown, as the brother from whom he narrates is unidentified. And what could make you comprehend what "from his brother" signifies? He is unknown despite having been named—so what of his brother, who has not been named?

وَحَدَّثَنَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ أَنَا أَبُو أَحْمَدَ سَهْلُ بْنُ مُحَمَّدِ بْنِ أَحْمَدَ بْنِ سَهْلٍ الْمَرْوَزِيُّ أَنَا لَاحِقُ بْنُ الْحُسَيْنِ الْمَقْدِسِيُّ - قَدِمَ مَرْوَ - أَنَا أَبُو الْمُرَجَّى ضِرَارُ بْنُ عَلِيِّ بْنِ عُمَيْرٍ الْقَاضِي الْجِيلَانِيُّ أَنَا أَحْمَدُ بْنُ سَعِيدِ بْنِ عَبْدِ اللَّهِ بْنِ كَثِيرٍ الْحِمْصِيُّ أَنَا فَرَجُ بْنُ فَضَالَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ مُحَمَّدِ بْنِ عَلِيِّ ابْنِ الْحَنَفِيَّةِ عَنْ أَبِيهِ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا عَمِلَتْ أُمَّتِي خَمْسَ عَشْرَةَ خَصْلَةً حَلَّ بِهَا الْبَلَاءُ - فَذَكَرَ مِنْهُنَّ وَاتِّخَذُوا الْقَيْنَاتِ، وَالْمَعْزَفَ فَلْيَتَوَقَّعُوا عِنْدَ ذَلِكَ رِيحًا حَمْرَاءَ، وَمَسْخًا وَخَسْفًا» .

L24944 Aḥmad ibn ʿUmar ibn Anas narrated to us: Abū Aḥmad Sahl ibn Muḥammad ibn Aḥmad ibn Sahl al-Marwazī narrated to us: Lāḥiq ibn al-Ḥusayn al-Maqdisī—who came to Marw—narrated to us: Abū al-Murajjā Ḍirār ibn ʿAlī ibn ʿUmayr al-Qāḍī al-Jīlānī narrated to us: Aḥmad ibn Saʿīd ibn ʿAbd Allāh ibn Kathīr al-Ḥimṣī narrated to us: Faraj ibn Faḍālah narrated to us from Yaḥyā ibn Saʿīd from Muḥammad ibn ʿAlī ibn al-Ḥanafiyyah from his father ʿAlī ibn Abī Ṭālib, who said: The Messenger of Allah (peace and blessings be upon him) said: "When my nation engages in fifteen traits, calamity will befall them." He mentioned among these: "Adopting female singers and the stringed instrument - let them then anticipate at that time a red wind, transformation [into beasts], and the earth swallowing them."

لَاحِقُ بْنُ الْحُسَيْنِ، وَضِرَارُ بْنُ عَلِيٍّ، وَالْحِمْصِيُّ - مَجْهُولُونَ -.

L24945 Laḥiq ibn al-Ḥusayn, Ḍirār ibn ʿAlī, and al-Ḥimṣī—unknown.

وَفَرَجُ بْنُ فَضَالَةَ حِمْصِيٌّ مَتْرُوكٌ، تَرَكَهُ يَحْيَى، وَعَبْدُ الرَّحْمَنِ.

L24946 Faraj ibn Fadalah al-Himsi is discarded; Yahya rejected him, and ʿAbd al-Rahman.

وَمِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ أَنَا إِبْرَاهِيمُ بْنُ إِسْحَاقَ النَّيْسَابُورِيُّ أَنَا أَبُو عُبَيْدَةَ بْنُ الْفُضَيْلِ بْنِ عِيَاضٍ أَنَا أَبُو سَعِيدٍ مَوْلَى بَنِي هَاشِمٍ - هُوَ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ - أَنَا عَبْدُ الرَّحْمَنِ بْنُ الْعَلَاءِ عَنْ مُحَمَّدِ بْنِ الْمُهَاجِرِ عَنْ كَيْسَانَ مَوْلَى مُعَاوِيَةَ أَنَا مُعَاوِيَةُ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ تِسْعٍ وَأَنَا أَنْهَاكُمْ عَنْهُنَّ الْآنَ - فَذَكَرَ فِيهِنَّ -: الْغِنَاءَ، وَالنَّوْحَ» .

L24947 From the narration of Qasim ibn Asbagh: From Ibrahim ibn Ishaq al-Naysaburi, from Abu Ubaydah ibn al-Fudayl ibn Iyad, from Abu Sa'id—the client of Banu Hashim, who is 'Abd al-Rahman ibn 'Abd Allah—from 'Abd al-Rahman ibn al-'Ala', from Muhammad ibn al-Muhajir, from Kaysan—the client of Mu'awiyah—from Mu'awiyah, who said: "The Messenger of Allah—peace be upon him—prohibited nine things, and I now forbid you from them." He mentioned among these: singing and wailing.

مُحَمَّدُ بْنُ الْمُهَاجِرِ ضَعِيفٌ، وَكَيْسَانُ مَجْهُولٌ.

L24948–24949 Muhammad ibn al-Muhājir is weak, and Kaysān is unknown.

وَبِإِسْنَادِ أَبِي دَاوُدَ: مُسْلِمُ بْنُ إِبْرَاهِيمَ نَا سَلَّامُ بْنُ مِسْكِينٍ عَنْ شَيْخٍ أَنَّهُ سَمِعَ أَبَا وَائِلٍ قَالَ: سَمِعْتُ ابْنَ مَسْعُودٍ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: ’إِنَّ

L24950 And through the chain of Abū Dāwūd: Muslim ibn Ibrāhīm narrated from Salām ibn Miskīn, from a shaykh, that he heard Abū Wā'il say: "I heard Ibn Mas'ūd say: I heard the Messenger of Allāh (peace be upon him) say: 'Indeed,

singing cultivates hypocrisy in the heart,'" reported from a shaykh—a matter of great astonishment.

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُسْلِمُ بْنُ إِبْرَاهِيمَ أَنَا سَلَامُ بْنُ مِسْكِينٍ عَنْ شَيْخٍ أَنَّهُ سَمِعَ أَبَا وَائِلٍ يَقُولُ: سَمِعْت ابْنَ مَسْعُودٍ يَقُولُ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إنَّ الْغِنَاءَ يُنْبِتُ النِّفَاقَ فِي الْقَلْبِ» عَنْ شَيْخٍ عَجَبٌ جِدًّا.

L24951 From the chain of Muḥammad ibn Aḥmad ibn al-Jahm: Muḥammad ibn ʿAbdūs narrated to me, Ibn Abī Shaybah narrated to me, Zayd ibn al-Ḥubāb narrated to me, from Muʿāwiyah ibn Ṣāliḥ, from Ḥātim ibn Ḥurayth, from Mālik ibn Abī Maryam, who reported: ʿAbd al-Raḥmān ibn Ghanm narrated to me, Abū Mālik al-Ashʿarī narrated to me that he heard the Prophet (peace be upon him) say: "People among my nation will drink intoxicants, calling them by names other than their own. Musical instruments and female singers will be played over their heads, and Allah will cause the earth to engulf them."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ أَحْمَدَ بْنِ الْجَهْمِ أَنَا مُحَمَّدُ بْنُ عَبْدُوسٍ أَنَا ابْنُ أَبِي شَيْبَةَ أَنَا زَيْدُ بْنُ الْحُبَابِ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ أَنَا حَاتِمُ بْنُ حُرَيْثٍ عَنْ مَالِكِ بْنِ أَبِي مَرْيَمَ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ غَنْمٍ حَدَّثَنِي أَبُو مَالِكٍ الْأَشْعَرِيُّ أَنَّهُ سَمِعَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «يَشْرَبُ نَاسٌ مِنْ أُمَّتِي الْخَمْرَ يُسَمُّونَهَا بِغَيْرِ اسْمِهَا يُضْرَبُ عَلَى رُءُوسِهِمْ بِالْمَعَازِفِ وَالْقَيْنَاتِ يَخْسِفُ اللَّهُ بِهِمْ الْأَرْضَ» .

L24952 Mu'awiyah ibn Salih is a weak narrator, and his narration contains no indication that the mentioned threat applies specifically to musical instruments, just as it does not apply to keeping enslaved singing women. The apparent meaning is that the threat concerns their legalization of wine under a different name, and religious rulings cannot be established through conjecture.

مُعَاوِيَةُ بْنُ صَالِحٍ ضَعِيفٌ، وَلَيْسَ فِيهِ: أَنَّ الْوَعِيدَ الْمَذْكُورَ إنَّمَا هُوَ عَلَى الْمَعَازِفِ، كَمَا أَنَّهُ لَيْسَ عَلَى اتِّخَاذِ الْقَيْنَاتِ - وَالظَّاهِرُ أَنَّهُ عَلَى اسْتِحْلَالِهِمْ الْخَمْرَ بِغَيْرِ اسْمِهَا، وَالدِّيَانَةُ لَا تُؤْخَذُ بِالظَّنِّ.

L24953 Ahmad ibn Isma'il al-Hadrami the judge narrated to us from Muhammad ibn Ahmad ibn al-Khallas, from Muhammad ibn al-Qasim ibn Sha'ban al-Misri, from Ibrahim ibn Uthman ibn Sa'id, from Ahmad ibn al-Ghimr ibn Abi Hammad in Homs, and from Yazid ibn Abd al-Samad, from Ubaid ibn Hisham al-Halabi (he is Ibn Nu'aym), from Abdullah ibn al-Mubarak, from Malik ibn Anas, from Muhammad ibn al-Munkadir, from Anas ibn Malik, who said: The Messenger of Allah (peace and blessings be upon him) said: "Whoever sits with a female singer and listens to her singing, Allah will pour molten lead into his ears on the Day of Resurrection."

حَدَّثَنَا أَحْمَدُ بْنُ إسْمَاعِيلَ الْحَضْرَمِيُّ الْقَاضِي أَنَا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْخَلَّاصِ أَنَا مُحَمَّدُ بْنُ الْقَاسِمِ بْنِ شَعْبَانَ الْمِصْرِيُّ حَدَّثَنِي إبْرَاهِيمُ بْنُ عُثْمَانَ بْنِ سَعِيدٍ أَنَا أَحْمَدُ بْنُ الْغِمْرِ بْنِ أَبِي حَمَّادٍ بِحِمْصَ، وَيَزِيدُ بْنُ عَبْدِ الصَّمَدِ أَنَا عُبَيْدُ بْنُ هِشَامٍ الْحَلَبِيُّ - هُوَ ابْنُ نُعَيْمٍ - أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ مَالِكِ بْنِ أَنَسٍ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ جَلَسَ إلَى قَيْنَةٍ فَسَمِعَ مِنْهَا صَبَّ اللَّهُ فِي أُذُنَيْهِ الْآنُكَ يَوْمَ الْقِيَامَةِ» .

L24954 This is a fabricated, composite Hadith—a scandal never known at all through the chain of Anas, the narration of Ibn al-Munkadir, the Hadith of Mālik, or

through Ibn al-Mubārak. All those below Ibn al-Mubārak up to Ibn Shaʿbān are unknown (مجهول) narrators.

هَذَا حَدِيثٌ مَوْضُوعٌ مُرَكَّبٌ، فَضِيحَةٌ مَا عُرِفَ قَطُّ مِنْ طَرِيقِ أَنَسٍ، وَلَا مِنْ رِوَايَةِ ابْنِ الْمُنْكَدِرِ، وَلَا مِنْ حَدِيثِ مَالِكٍ، وَلَا مِنْ جِهَةِ ابْنِ الْمُبَارَكِ وَكُلُّ مَنْ دُونَ ابْنِ الْمُبَارَكِ إِلَى ابْنِ شَعْبَانَ مَجْهُولُونَ.

L24955–24956 Ibn Shaʿbān among the Mālikīs is equivalent to ʿAbd al-Bāqī ibn Qāniʿ among the Ḥanafīs. We have examined their ḥadīth transmissions and found in them evident corruption, utter falsehood, manifest fabrication, and immense scandals. Either their transmissions were altered, their books became mixed up, or they intentionally narrated from every worthless individual—liars and gullible persons who accept prompting.

وَابْنُ شَعْبَانَ فِي الْمَالِكِيِّينَ نَظِيرُ عَبْدِ الْبَاقِي بْنِ قَانِعٍ فِي الْحَنَفِيِّينَ، قَدْ تَأَمَّلْنَا حَدِيثَهُمَا فَوَجَدْنَا فِيهِ الْبَلَاءَ الْبَيِّنَ، وَالْكَذِبَ الْبَحْتَ، وَالْوَضْعَ اللَّائِحَ، وَعَظِيمَ الْفَضَائِحِ، فَإِمَّا تَغَيَّرَ ذِكْرُهُمَا، أَوْ اخْتَلَطَتْ كُتُبُهُمَا، وَإِمَّا تَعَمَّدَا الرِّوَايَةَ عَنْ كُلِّ مَنْ لَا خَيْرَ فِيهِ مِنْ كَذَّابٍ، وَمُغَفَّلٍ يَقْبَلُ التَّلْقِينَ.

L24957 As for the third—which is the third foundational stone: that the affliction stems from them—we ask Allah for protection from harm, sincerity, and correctness in judgment.

وَأَمَّا الثَّالِثَةُ - وَهُوَ ثَالِثَةُ الْأَثَافِي: أَنْ يَكُونَ الْبَلَاءُ مِنْ قِبَلِهِمَا - وَنَسْأَلُ اللَّهَ الْعَافِيَةَ، وَالصِّدْقَ، وَصَوَابَ الِاخْتِيَارِ.

L24958 Through the path of Ibn Sha’ban: Hashim ibn Nasih narrated from Umar ibn Musa from Makhul from Aisha, who said: The Messenger of Allah (peace be upon him) said: “Whoever dies while possessing a singing slave girl, do not perform the funeral prayer over him.”

وَمِنْ طَرِيقِ ابْنِ شَعْبَانَ قَالَ: رَوَى هَاشِمُ بْنُ نَاصِحٍ عَنْ عُمَرَ بْنِ مُوسَى عَنْ مَكْحُولٍ عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ مَاتَ وَعِنْدَهُ جَارِيَةٌ مُغَنِّيَةٌ فَلَا تُصَلُّوا عَلَيْهِ» .

L24959 Hashim and Umar: both are unknown, and Makhul did not meet ʿĀ’ishah. We do not know a path (i.e., chain) for this narration; they merely cited it without qualification: “Allah, the Exalted, forbade two accursed sounds: the sound of a wailing woman and the sound of a singing woman.” This is baseless.

هَاشِمٌ، وَعُمَرُ: مَجْهُولَانِ، وَمَكْحُولٌ لَمْ يَلْقَ عَائِشَةَ، وَحَدِيثٌ لَا نَدْرِي لَهُ طَرِيقًا، إِنَّمَا ذَكَرُوهُ هَكَذَا مُطْلَقًا، «أَنَّ اللَّهَ - تَعَالَى - نَهَى عَنْ صَوْتَيْنِ مَلْعُونَيْنِ: صَوْتِ نَائِحَةٍ، وَصَوْتِ مُغَنِّيَةٍ» وَهَذَا لَا شَيْءَ.

L24960 From the chain of Sa’id ibn Mansur: Isma’il ibn ’Ayyash narrated to us via Muṭarrif ibn Yazid, from ’Ubaydullah ibn Zahr, from ’Ali ibn Yazid, from al-Qasim, from Abu Umamah: I heard Allah’s Messenger—peace and blessings be upon him—say: “It is unlawful to sell female singers, to purchase them, or to take their price. The confirmation of this is found in Allah’s Book: _And among people are those who buy idle talk to divert others from Allah’s path

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ عَنْ مُطَرِّحِ بْنِ يَزِيدَ أَنَا عُبَيْدُ اللَّهِ بْنُ زَحْرٍ عَنْ عَلِيِّ بْنِ يَزِيدَ عَنْ الْقَاسِمِ عَنْ أَبِي أُمَامَةَ سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا يَحِلُّ بَيْعُ الْمُغَنِّيَاتِ وَلَا شِرَاؤُهُنَّ وَثَمَنُهُنَّ حَرَامٌ وَقَدْ نَزَلَ تَصْدِيقُ

without knowledge_ [Luqman:6]. By Him in whose hand my soul rests, no man has ever raised his voice in loud song without two devils accompanying him closely, striking his chest and back until he becomes silent."[44]

ذَلِكَ فِي كِتَابِ اللَّهِ: {وَمِنَ النَّاسِ مَنْ يَشْتَرِي لَهْوَ الْحَدِيثِ لِيُضِلَّ عَنْ سَبِيلِ اللَّهِ بِغَيْرِ عِلْمٍ} [لقمان: ٦] الْآيَةَ، وَالَّذِي نَفْسِي بِيَدِهِ مَا رَفَعَ رَجُلٌ قَطُّ عَقِيرَةَ صَوْتِهِ بِغِنَاءٍ إِلَّا ارْتَدَفَهُ شَيْطَانَانِ يَضْرِبَانِهِ عَلَى صَدْرِهِ وَظَهْرِهِ حَتَّى يَسْكُتَ» .

L24961 Ismaʿīl is weak; discarded and unknown; ʿUbayd Allāh ibn Zuḥar is weak; al-Qāsim is weak; and ʿAlī ibn Yazīd is a Damascene who is rejected and abandoned in ḥadīth.

إِسْمَاعِيلُ ضَعِيفٌ، وَمُطَرِّحٌ مَجْهُولٌ، وَعُبَيْدُ اللَّهِ بْنُ زُحَرَ ضَعِيفٌ، وَالْقَاسِمُ ضَعِيفٌ، وَعَلِيُّ بْنُ يَزِيدَ دِمَشْقِيٌّ مُطَّرَحٌ مَتْرُوكُ الْحَدِيثِ.

L24962–24964 Via the chain of ʿAbd al-Malik ibn Ḥabīb al-Andalusī, transmitted through ʿAbd al-ʿAzīz al-Uwaysī, from Ismāʿīl ibn ʿAyyāsh. On the authority of Ali ibn Yazid, from Al-Qasim ibn Abdur-Rahman, from Abu Umamah Al-Bahili: I heard the Messenger of Allah—peace and blessings be upon him—say: "It is not lawful to teach singing women, nor to purchase them, nor to sell them, nor to employ them, and their price is forbidden. Allah has revealed this in His Book: {And among the people is he who buys idle talk to mislead from the path of Allah without knowledge} [Luqman: 6]. By the One in Whose Hand is my soul, no man raises his voice in song without two devils clinging to him, striking his chest and back with their feet until he becomes silent."[45]

وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ عَنْ عَبْدِ الْعَزِيزِ الْأُوَيْسِيِّ عَنْ إِسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ عَلِيِّ بْنِ يَزِيدَ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي أُمَامَةَ الْبَاهِلِيِّ سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا يَحِلُّ تَعْلِيمُ الْمُغَنِّيَاتِ، وَلَا شِرَاؤُهُنَّ، وَلَا بَيْعُهُنَّ، وَلَا اتِّخَاذُهُنَّ، وَثَمَنُهُنَّ حَرَامٌ وَقَدْ أَنْزَلَ اللَّهُ ذَلِكَ فِي كِتَابِهِ: {وَمِنَ النَّاسِ مَنْ يَشْتَرِي لَهْوَ الْحَدِيثِ لِيُضِلَّ عَنْ سَبِيلِ اللَّهِ بِغَيْرِ عِلْمٍ} [لقمان: ٦] وَالَّذِي نَفْسِي بِيَدِهِ مَا رَفَعَ رَجُلٌ عَقِيرَتَهُ بِالْغِنَاءِ إِلَّا ارْتَدَفَهُ شَيْطَانَانِ يَضْرِبَانِ بِأَرْجُلِهِمَا صَدْرَهُ وَظَهْرَهُ حَتَّى يَسْكُتَ» .

L24965 And from the path of Ibn Ḥabīb as well: I am Ibn Maʿbad, from Mūsā ibn Aʿyan, from al-Qāsim, from ʿAbd al-Raḥmān, from Abū Umāmah, that the Prophet—may Allah's peace and blessings be upon him—said: "Indeed, Allah has forbidden teaching female singers, buying them, selling them, and consuming the proceeds from their sale."

وَمِنْ طَرِيقِ ابْنِ حَبِيبٍ أَيْضًا: أَنَا ابْنُ مَعْبَدٍ عَنْ مُوسَى بْنِ أَعْيَنَ عَنْ الْقَاسِمِ عَنْ عَبْدِ الرَّحْمَنِ عَنْ أَبِي أُمَامَةَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّ اللَّهَ حَرَّمَ تَعْلِيمَ الْمُغَنِّيَاتِ وَشِرَاءَهُنَّ، وَبَيْعَهُنَّ، وَأَكْلَ أَثْمَانِهِنَّ» .

L24966 As for the first chain: ʿAbd al-Malik is perished; Ismāʿīl ibn ʿAyyāsh is ḍaʿīf; ʿAlī ibn Yazīd is ḍaʿīf and his ḥadīth are abandoned (matrūk); and al-Qāsim ibn ʿAbd al-Raḥmān is ḍaʿīf.

أَمَّا الْأَوَّلُ: فَعَبْدُ الْمَلِكِ هَالِكٌ، وَإِسْمَاعِيلُ بْنُ عَيَّاشٍ ضَعِيفٌ، وَعَلِيُّ بْنُ يَزِيدَ ضَعِيفٌ مَتْرُوكُ الْحَدِيثِ، وَالْقَاسِمُ بْنُ عَبْدِ الرَّحْمَنِ ضَعِيفٌ.

[44] **Qur'an references (L24960):** Qur'an 31:6 (Luqman).
[45] **Qur'an references (L24962):** Qur'an 31:6 (Luqman).

L24967 And the second: from ʿAbd al-Malik, al-Qasim, and Musa ibn Aʿyan—weak.

وَالثَّانِي: عَنْ عَبْدِ الْمَلِكِ، وَالْقَاسِمِ أَيْضًا، وَمُوسَى بْنُ أَعْيَنَ ضَعِيفٌ.

L24968 And through the chain of Abd al-Malik ibn Habib from Abd al-Aziz al-Awza'i from Abdullah ibn Umar, who said: A man said, "O Messenger of Allah, I have camels—should I urge them with chanting?" He said, "Yes." The man asked, "Should I sing to them?" He said, "Know that the singer's ears are in the grasp of a devil, who compels him until he becomes silent."

وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ عَنْ عَبْدِ الْعَزِيزِ الْأُوَيْسِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: «قَالَ رَجُلٌ يَا رَسُولَ اللَّهِ لِي إِبِلٌ، أَفَأَحْدُو فِيهَا؟ قَالَ: نَعَمْ، قَالَ: أَفَأُغَنِّي فِيهَا؟ قَالَ: اعْلَمْ أَنَّ الْمُغَنِّيَ أُذُنَاهُ بِيَدِ شَيْطَانٍ يُرْغِمُهُ حَتَّى يَسْكُتَ» .

L24969 This is Abd al-Malik, and Al-Umari the Younger, who is weak.

هَذَا عَبْدُ الْمَلِكِ، وَالْعُمَرِيُّ الصَّغِيرُ - وَهُوَ ضَعِيفٌ.

L24970 From the chain of Sa'id ibn Mansur: I am Abu Dawud—he is Sulaym ibn Salim, a Basran—from Hassan ibn Abi Sinan, from a man, from Abu Hurairah, who said: The Messenger of Allah—peace and blessings be upon him—said: "A group from my nation will be transformed into monkeys and pigs at the end of time." They asked: "O Messenger of Allah, even though they testify that there is no god but Allah and that you are the Messenger of Allah?" He replied: "Yes, and they pray, fast, and perform Hajj." They said: "Then what is their condition, O Messenger of Allah?" He said: "They took to using stringed instruments, professional female entertainers, and tambourines, and they drank these intoxicating drinks. They spent the night absorbed in revelry and drink, and by morning they became monkeys and pigs."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو دَاوُد - هُوَ سُلَيْمُ بْنُ سَالِمٍ بَصْرِيٌّ - أَنَا حَسَّانُ بْنُ أَبِي سِنَانٍ عَنْ رَجُلٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يُمْسَخُ قَوْمٌ مِنْ أُمَّتِي فِي آخِرِ الزَّمَانِ قِرَدَةً وَخَنَازِيرَ قَالُوا: يَا رَسُولَ اللَّهِ يَشْهَدُونَ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّكَ رَسُولُ اللَّهِ؟ قَالَ: نَعَمْ، وَيُصَلُّونَ، وَيَصُومُونَ، وَيَحُجُّونَ قَالُوا: فَمَا بَالُهُمْ يَا رَسُولَ اللَّهِ؟ قَالَ: اتَّخَذُوا الْمَعَازِفَ وَالْقَيْنَاتِ، وَالدُّفُوفَ، وَيَشْرَبُونَ هَذِهِ الْأَشْرِبَةَ، فَبَاتُوا عَلَى لَهْوِهِمْ، وَشَرَابِهِمْ، فَأَصْبَحُوا قِرَدَةً وَخَنَازِيرَ» .

L24971 This is about a man who was not named, and it was not known who he was?

هَذَا عَنْ رَجُلٍ لَمْ يُسَمَّ، وَلَمْ يُدْرَ مَنْ هُوَ؟

L24972–24973 From the path of Sa'id ibn Mansur as well: I am Al-Harith ibn Nabhan, I am Farqad as-Sabkhi, from 'Asim ibn 'Amr, from Abu Umamah, who said: The Messenger of Allah - peace and blessings be upon him - said: "A group from my Ummah will spend the night engrossed in amusement and play, eating and drinking, then awaken transformed into monkeys and swine. Among them will occur sinkings, stone-pelting, and a wind will be sent upon a tribe from their tribes, sweeping them away as it swept away those before them - all due to their deeming the forbidden permissible, their wearing of silk, their beating of tambourines, and their keeping of singing girls."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَيْضًا: أَنَا الْحَارِثُ بْنُ نَبْهَانَ أَنَا فَرْقَدٌ السَّبَخِيُّ عَنْ عَاصِمِ بْنِ عَمْرٍو عَنْ أَبِي أُمَامَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «تَبِيتُ طَائِفَةٌ مِنْ أُمَّتِي عَلَى لَهْوٍ وَلَعِبٍ، وَأَكْلٍ وَشُرْبٍ، فَيُصْبِحُوا قِرَدَةً وَخَنَازِيرَ، يَكُونُ فِيهَا خَسْفٌ، وَقَذْفٌ، وَيُبْعَثُ عَلَى حَيٍّ مِنْ أَحْيَائِهِمْ رِيحٌ فَتَنْسِفُهُمْ، كَمَا نَسَفَتْ مَنْ كَانَ قَبْلَهُمْ بِاسْتِحْلَالِهِمْ الْحَرَامَ، وَلُبْسِهِمْ الْحَرِيرَ، وَضَرْبِهِمْ الدُّفُوفَ، وَاتِّخَاذِهِمْ الْقِيَانَ» .

وَالْحَارِثُ بْنُ نَبْهَانَ لَا يُكْتَبُ حَدِيثُهُ، وَفَرْقَدٌ السَّبَخِيُّ ضَعِيفٌ، نَعَمْ: وَسُلَيْمُ بْنُ سَالِمٍ، وَحَسَّانُ بْنُ أَبِي سِنَانٍ، وَعَاصِمُ بْنُ عَمْرٍو: لَا أَعْرِفُهُمْ - فَسَقَطَ هَذَانِ الْخَبَرَانِ بِيَقِينٍ.

L24974 The hadith of al-Ḥārith ibn Nabhān is rejected, and Farqad al-Sabakhī is weak. Yes: Sulaym ibn Sālim, Ḥassān ibn Abī Sinān, and ʿĀṣim ibn ʿAmr—I do not know them. Thus, these two reports are conclusively dismissed.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا فَرَجُ بْنُ فَضَالَةَ عَنْ عَلِيِّ بْنِ يَزِيدَ عَنْ الْقَاسِمِ عَنْ أَبِي أُمَامَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ اللَّهَ بَعَثَنِي رَحْمَةً لِلْعَالَمِينَ، وَأَمَرَنِي بِمَحْوِ الْمَعَازِفِ، وَالْمَزَامِيرِ، وَالْأَوْثَانِ، وَالصُّلُبِ: لَا يَحِلُّ بَيْعُهُنَّ، وَلَا شِرَاؤُهُنَّ، وَلَا تَعْلِيمُهُنَّ، وَلَا التِّجَارَةُ بِهِنَّ، وَثَمَنُهُنَّ حَرَامٌ» نَعْنِي الضَّوَارِبَ - الْقَاسِمُ ضَعِيفٌ.

L24975 From the transmission path (ṭarīq) of Sa’īd ibn Manṣūr: We [received it] from Faraj ibn Faḍālah, from ’Alī ibn Yazīd, from al-Qāsim, from Abī Umāmah, who said: The Messenger of Allāh - peace and blessings of Allāh be upon him - said: “Allāh sent me as a mercy to the worlds, and commanded me to obliterate musical instruments, flutes, idols, and crosses. Their sale is unlawful, their purchase is unlawful, teaching them is unlawful, trading in them is unlawful, and their price is forbidden” - referring to the percussive ones. Al-Qāsim is weak.

وَمِنْ طَرِيقِ الْبُخَارِيِّ قَالَ هِشَامُ بْنُ عَمَّارٍ: أَنَا صَدَقَةُ بْنُ خَالِدٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ يَزِيدَ بْنِ جَابِرٍ أَنَا عَطِيَّةُ بْنُ قَيْسٍ الْكِلَابِيُّ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ غُنْمٍ الْأَشْعَرِيُّ حَدَّثَنِي أَبُو عَامِرٍ - أَوْ أَبُو مَالِكٍ الْأَشْعَرِيُّ - وَاَللَّهِ مَا كَذَبَنِي: أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَيَكُونَنَّ مِنْ أُمَّتِي قَوْمٌ يَسْتَحِلُّونَ الْحِرَ وَالْحَرِيرَ، وَالْخَمْرَ، وَالْمَعَازِفَ».

L24976 And through the chain of al-Bukhārī, Hishām ibn ʿAmmār said: I am Ṣadaqah ibn Khālid - I am ʿAbd al-Raḥmān ibn Yazīd ibn Jābir - I am ʿAṭiyyah ibn Qays al-Kilābī who reported to me: I am ʿAbd al-Raḥmān ibn Ghanm al-Ashʿarī who reported to me: I am Abū ʿĀmir (or Abū Mālik al-Ashʿarī) - by Allah, he did not lie to me - that he heard the Messenger of Allah - peace **and blessings** of Allah be upon him - say: “There will assuredly be among my nation a people who deem lawful fornication, silk, wine, and musical instruments.”

وَهَذَا مُنْقَطِعٌ لَمْ يَتَّصِلْ مَا بَيْنَ الْبُخَارِيِّ وَصَدَقَةَ بْنِ خَالِدٍ - وَلَا يَصِحُّ فِي هَذَا الْبَابِ شَيْءٌ أَبَدًا، وَكُلُّ مَا فِيهِ فَمَوْضُوعٌ، وَوَاَللَّهِ لَوْ أُسْنِدَ جَمِيعُهُ أَوْ وَاحِدٌ مِنْهُ فَأَكْثَرَ مِنْ طَرِيقِ الثِّقَاتِ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَا تَرَدَّدْنَا فِي الْأَخْذِ بِهِ.

L24977 This chain is disconnected; the connection between al-Bukhārī and Ṣadaqah ibn Khālid is interrupted. Nothing in this chapter is ever authentic—all its contents are fabricated. By Allah, were all of it—or even a single element within it, let alone more—supported through chains of trustworthy narrators leading to the Messenger of Allah (peace and blessings be upon him), we would not hesitate to act upon it.

وَلَوْ كَانَ مَا فِي هَذِهِ الْأَخْبَارِ حَقًّا مِنْ أَنَّهُ لَا يَحِلُّ بَيْعُهُنَّ لَوَجَبَ أَنْ يُحَدَّ مَنْ وَطِئَهُنَّ بِالشِّرَاءِ، وَأَنْ لَا يَلْحَقَ بِهِ وَلَدُهُ مِنْهَا.

L24978–24979 If what is mentioned in these reports were true—that it is impermissible to sell them—then it would be obligatory to impose the ḥadd punishment on anyone who has intercourse with them through purchase, and his child from her would not be ascribed to him.

ثُمَّ لَيْسَ فِيهَا تَحْرِيمُ مِلْكِهِنَّ، وَقَدْ تَكُونُ أَشْيَاءُ يَحْرُمُ بَيْعُهَا وَيَحِلُّ مِلْكُهَا وَتَمْلِيكُهَا كَالْمَاءِ، وَالْهِرِّ، وَالْكَلْبِ -.

L24980 Furthermore, there is no prohibition against owning them. There may also be things whose sale is prohibited while their ownership and granting of ownership remain permissible, such as water, cats, and dogs.

L24981 This is all that has been compiled for mention from what is attributed to the Messenger of Allah (peace and blessings of Allah be upon him).

هَذَا كُلُّ مَا حَضَرَنَا ذِكْرُهُ مِمَّا أُضِيفَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L24982 As for those other than him—may Allah be pleased with them—we have been narrated via Ibn Abi Shaybah's chain: I, Hatim ibn Isma'il, from Humayd ibn Sakhr, from 'Ammar al-Duhni, from Sa'id ibn Jubayr, from Abu al-Sahba, from Ibn Mas'ud regarding Allah's statement—Exalted is He—"And among the people is he who buys vain talk to lead others astray from the path of Allah" [Luqman:6]. He said: "It is singing—and by the One besides whom there is no god!"[46]

وَأَمَّا عَمَّنْ دُونَهُ - عَلَيْهِ السَّلَامُ -: فَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا حَاتِمُ بْنُ إِسْمَاعِيلَ عَنْ حُمَيْدِ بْنِ صَخْرٍ عَنْ عَمَّارٍ الدُّهْنِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ أَبِي الصَّهْبَاءِ عَنْ ابْنِ مَسْعُودٍ فِي قَوْلِ اللَّهِ - تَعَالَى -: {وَمِنَ النَّاسِ مَنْ يَشْتَرِي لَهْوَ الْحَدِيثِ لِيُضِلَّ عَنْ سَبِيلِ اللَّهِ} [لقمان: ٦] الْآيَةَ، فَقَالَ: الْغِنَاءُ، وَالَّذِي لَا إِلَهَ غَيْرُهُ.

L24983 From the chain of Waki' via Ibn Abī Laylā via al-Ḥakam via Miqsam via Ibn ʿAbbās regarding this verse, he said: "Singing and purchasing a female singer."

وَمِنْ طَرِيقِ وَكِيعٍ عَنِ ابْنِ أَبِي لَيْلَى عَنِ الْحَكَمِ عَنْ مِقْسَمٍ عَنِ ابْنِ عَبَّاسٍ فِي هَذِهِ الْآيَةِ، قَالَ: الْغِنَاءُ، وَشِرَاءُ الْمُغَنِّيَةِ.

L24984 And from the chain of Ibn Abī Shayba: I am Ibn Fuḍayl, from ʿAṭāʾ, from Saʿīd ibn Jubayr, from Ibn ʿAbbās regarding this verse: "Singing, and the like."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ فُضَيْلٍ عَنْ عَطَاءٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ فِي هَذِهِ الْآيَةِ، قَالَ: الْغِنَاءُ، وَنَحْوُهُ.

L24985 And through the chain of Sa'id ibn Mansur: Abu 'Awanah narrated from 'Abd al-Karim al-Jazari from Abu Hashim al-Kufi from Ibn 'Abbas, who said: The tambourine is forbidden, musical instruments are forbidden, the flute is forbidden, and the small drum is forbidden.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو عَوَانَةَ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ أَبِي هَاشِمٍ الْكُوفِيِّ عَنِ ابْنِ عَبَّاسٍ قَالَ: الدُّفُّ حَرَامٌ، وَالْمَعَازِفُ حَرَامٌ: وَالْمِزْمَارُ حَرَامٌ، وَالْكُوبَةُ حَرَامٌ.

L24986 From the path of Saʿīd ibn Manṣūr: I narrate from Abū ʿAwanah, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm, who said: Singing cultivates hypocrisy in the heart.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو عَوَانَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ قَالَ: الْغِنَاءُ يُنْبِتُ النِّفَاقَ فِي الْقَلْبِ.

L24987 Through the chain of Saʿīd ibn Manṣūr—I, Abū Wakīʿ, narrate from Manṣūr from Ibrāhīm—who said: Our companions would control the entrances of the streets and tear apart the tambourines.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو وَكِيعٍ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ قَالَ: كَانَ أَصْحَابُنَا يَأْخُذُونَ بِأَفْوَاهِ السِّكَكِ يَخْرِقُونَ الدُّفُوفَ.

L24988–24990 From the transmission of Ibn Abi Shaybah: from Waki', from Sufyan, from Habib ibn Abi Thabit, from Mujahid concerning Allah's statement—Exalted is

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ سُفْيَانَ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ مُجَاهِدٍ فِي قَوْلِ اللَّهِ - تَعَالَى -: {وَمِنَ النَّاسِ مَنْ يَشْتَرِي لَهْوَ الْحَدِيثِ} [لقمان: ٦] قَالَ: الْغِنَاءُ

[46] **Qur'an references (L24982):** Qur'an 31:6 (Luqman).

He—: {And among the people are those who purchase idle talk} [Luqman: 6]. Mujahid said: Singing. This is also the statement of Habib ibn Abi Thabit. Via Ibn Abi Shaybah's chain: I am 'Abdah ibn Sulayman, from Isma'il ibn Abi Khalid, from Shu'ayb, from 'Ikrimah regarding this verse. He said: "It is singing."[47]

- وَهُوَ أَيْضًا قَوْلُ حَبِيبِ بْنِ أَبِي ثَابِتٍ وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدَةُ بْنُ سُلَيْمَانُ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ شُعَيْبٍ عَنْ عِكْرِمَةَ فِي هَذِهِ الْآيَةِ، قَالَ: هُوَ الْغِنَاءُ.

L24991 Abu Muhammad said: None of this constitutes proof for several reasons—one of them: that no one besides the Messenger of Allah (may Allah bless him and grant him peace) possesses authoritative evidence.

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ فِي هَذَا كُلِّهِ لِوُجُوهٍ -: أَحَدُهَا: أَنَّهُ لَا حُجَّةَ لِأَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L24992 The second is that he differed from others other than them among the Companions and the Successors.

وَالثَّانِي: أَنَّهُ قَدْ خَالَفَ غَيْرَهُمْ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ.

L24993 The third is that the text of the verse invalidates their argument based on it, for it states: *"And among people are those who purchase idle talk to mislead others from Allah's path without knowledge and take His path as mockery—those will have a humiliating punishment"* [Luqmān:6]. This is an attribute of one who, when he takes the path of Allah—Exalted is He—as mockery, becomes a disbeliever, without any disagreement.[48]

وَالثَّالِثُ: أَنَّ نَصَّ الْآيَةِ يُبْطِلُ احْتِجَاجَهُمْ بِهَا؛ لِأَنَّ فِيهَا {وَمِنَ النَّاسِ مَنْ يَشْتَرِي لَهْوَ الْحَدِيثِ لِيُضِلَّ عَنْ سَبِيلِ اللَّهِ بِغَيْرِ عِلْمٍ وَيَتَّخِذَهَا هُزُوًا أُولَئِكَ لَهُمْ عَذَابٌ مُهِينٌ} [لقمان: ٦] وَهَذِهِ صِفَةُ مَنْ فَعَلَهَا كَانَ كَافِرًا، بِلَا خِلَافٍ، إذَا اتَّخَذَ سَبِيلَ اللَّهِ - تَعَالَى - هُزُوًا.

L24994 If a man were to purchase a Quran to mislead others from Allah's path by it and to mock it, he would be a disbeliever. This is the one whom Allah—Exalted and Majestic—has condemned. Yet He—Exalted and Majestic—has never condemned one who purchases idle tales to divert himself with them and refresh his soul, not to mislead others from Allah's path—Exalted and Majestic. Thus, their reliance on the arguments of all those we have mentioned is invalidated.

وَلَوْ أَنَّ امْرَأً اشْتَرَى مُصْحَفًا لِيُضِلَّ بِهِ عَنْ سَبِيلِ اللَّهِ وَيَتَّخِذُهَا هُزُوًا لَكَانَ كَافِرًا، فَهَذَا هُوَ الَّذِي ذَمَّ اللَّهُ - تَعَالَى -، وَمَا ذَمَّ قَطُّ - عَزَّ وَجَلَّ - مَنْ اشْتَرَى لَهْوَ الْحَدِيثِ لِيَلْتَهِيَ بِهِ وَيُرَوِّحَ نَفْسَهُ، لَا لِيُضِلَّ عَنْ سَبِيلِ اللَّهِ - تَعَالَى -، فَبَطَلَ تَعَلُّقُهُمْ بِقَوْلِ كُلِّ مَنْ ذَكَرْنَا.

L24995 Similarly, whoever intentionally neglects prayer by reciting the Quran, reading the Sunnah, engaging in conversation, attending to his wealth, singing, or similar acts, he is a sinner—disobedient to Allah, the Exalted. And whoever does not neglect any obligatory prayers due to preoccupation with the aforementioned acts, he is virtuous.

وَكَذَلِكَ مَنْ اشْتَغَلَ عَامِدًا عَنْ الصَّلَاةِ بِقِرَاءَةِ الْقُرْآنِ، أَوْ بِقِرَاءَةِ السُّنَنِ، أَوْ بِحَدِيثٍ يَتَحَدَّثُ بِهِ، أَوْ يَنْظُرُ فِي مَالِهِ، أَوْ بِغِنَاءٍ، أَوْ بِغَيْرِ ذَلِكَ، فَهُوَ فَاسِقٌ، عَاصٍ لِلَّهِ - تَعَالَى -، وَمَنْ لَمْ يُضَيِّعْ شَيْئًا مِنْ الْفَرَائِضِ اشْتِغَالًا بِمَا ذَكَرْنَا فَهُوَ مُحْسِنٌ.

[47] **Qur'an references (L24988):** Qur'an 31:6 (Luqman).
[48] **Qur'an references (L24993):** Qur'an 31:6 (Luqman).

L24996 They argued and said: “Is singing from the truth or from other than the truth? There is no way to a third category.” Then they said: “Allah—the Exalted and Majestic—has said: ’What is there after the truth except error?’ [Yunus 10:32].”[49]

L24997 Our answer—and from Allah, the Exalted, comes success—is that the Messenger of Allah, peace and blessings be upon him, said: “Verily deeds are judged by intentions, and every person will have what they intended.” Thus, whoever intends through listening to singing to enable disobedience to Allah, the Exalted, is sinful—and likewise everything besides singing. Whoever intends through it to refresh his soul to strengthen himself for obeying Allah, the Almighty and Majestic, and to invigorate himself for righteous deeds, is an obedient doer of good, and his action belongs to righteousness. Whoever intends neither obedience nor disobedience, it is a frivolity forgiven by Allah, like a person going to his garden for leisure, sitting at his doorstep for relaxation, dyeing his garment lapis lazuli blue or green or other colors, stretching or bending his leg, and all his other actions. Thus, every contentious argument they raise is utterly invalidated with certainty—and all praise belongs to Allah, the Exalted. We know of no specious argument they have except what we have mentioned.

L24998–25000 As for chess: It was narrated to us through the chain of ʿAbd al-Malik ibn Ḥabīb, who said: “‘Abd al-Malik ibn al-Mājishūn narrated to me.” Narrated by al-Mughīrah from Muḥammad ibn Kaʿb al-Qurazī: The Messenger of Allah – peace be upon him – said: “Whoever engages in gambling – meaning dice and chess – then stands to pray is like one who performs ablution with the filth of pus and swine’s blood, then prays. Would we say: Does Allah accept his prayer?”

[49] **Qur’an references (L24996):** Qur’an 10:32 (Yunus).

وَاحْتَجُّوا فَقَالُوا: مِنْ الْحَقِّ الْغِنَاءُ أَمْ مِنْ غَيْرِ الْحَقِّ، وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ؟ فَقَالُوا: وَقَدْ قَالَ اللَّهُ - عَزَّ وَجَلَّ -: {فَمَاذَا بَعْدَ الْحَقِّ إلا الضَّلالُ} [يونس: ٣٢]

فَجَوَابُنَا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ -: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» فَمَنْ نَوَى بِاسْتِمَاعِ الْغِنَاءِ عَوْنًا عَلَى مَعْصِيَةِ اللَّهِ - تَعَالَى - فَهُوَ فَاسِقٌ، وَكَذَلِكَ كُلُّ شَيْءٍ غَيْرُ الْغِنَاءِ، وَمَنْ نَوَى بِهِ تَرْوِيحَ نَفْسِهِ لِيَقْوَى بِذَلِكَ عَلَى طَاعَةِ اللَّهِ - عَزَّ وَجَلَّ - وَيُنَشِّطَ نَفْسَهُ بِذَلِكَ عَلَى الْبِرِّ فَهُوَ مُطِيعٌ مُحْسِنٌ، وَفِعْلُهُ هَذَا مِنْ الْحَقِّ، وَمَنْ لَمْ يَنْوِ طَاعَةً وَلَا مَعْصِيَةً، فَهُوَ لَغْوٌ مَعْفُوٌّ عَنْهُ كَخُرُوجِ الْإِنْسَانِ إلَى بُسْتَانِهِ مُتَنَزِّهًا، وَقُعُودِهِ عَلَى بَابِ دَارِهِ مُتَفَرِّجًا وَصِبَاغِهِ ثَوْبَهُ لَازَوَرْدِيًّا أَوْ أَخْضَرَ أَوْ غَيْرَ ذَلِكَ، وَمَدِّ سَاقِهِ وَقَبْضِهَا وَسَائِرِ أَفْعَالِهِ - فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ بُطْلَانًا مُتَيَقَّنًا - وَلِلَّهِ - تَعَالَى - الْحَمْدُ، وَمَا نَعْلَمُ لَهُمْ شُبْهَةً غَيْرَ مَا ذَكَرْنَا.

وَأَمَّا الشِّطْرَنْجُ: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ حَدَّثَنِي عَبْدُ الْمَلِكِ بْنُ الْمَاجِشُونِ عَنْ الْمُغِيرَةِ عَنْ مُحَمَّدِ بْنِ كَعْبٍ الْقُرَظِيِّ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ لَعِبَ بِالْمَيْسِرِ - يَعْنِي النَّرْدَ وَالشِّطْرَنْجَ - ثُمَّ قَامَ يُصَلِّي مِثْلَ الَّذِي يَتَوَضَّأُ بِالْقَيْحِ وَدَمِ الْخِنْزِيرِ ثُمَّ يُصَلِّي، أَفَنَقُولُ: يَقْبَلُ اللَّهُ صَلَاتَهُ» ؟ .

L25001 This is a mursal narration; ʻAbd al-Malik is disregarded, and ʻAbd al-Malik ibn al-Mājishūn is weak.

هَذَا مُرْسَلٌ، وَعَبْدُ الْمَلِكِ سَاقِطٌ، وَعَبْدُ الْمَلِكِ بْنُ الْمَاجِشُونِ ضَعِيفٌ.

L25002 This report is a proof against the Malikis and Hanafis who uphold the mursal, for they would be obligated to act upon it - which would necessitate invalidating wuḍūʾ by playing chess. If they abandon it, they contradict themselves and engage in playfulness.

وَهَذَا الْخَبَرُ حُجَّةٌ عَلَى الْمَالِكِيِّينَ، وَالْحَنَفِيِّينَ، الْقَائِلِينَ بِالْمُرْسَلِ؛ لِأَنَّهُمْ يَلْزَمُهُمْ الْأَخْذُ بِهِ فَيَنْقُضُونَ الْوُضُوءَ بِلَعِبِ الشِّطْرَنْجِ، فَإِنْ تَرَكُوهُ تَنَاقَضُوا وَتَلَاعَبُوا.

L25003 From the narration of Abdul Malik ibn Habib: Asad ibn Musa and Ali ibn Ma’bad narrated from Ibn Jurayj from Habba ibn Salim that the Messenger of Allah, peace and blessings be upon him, said: “Chess is cursed - cursed is whoever plays it, and the observer of it is like one consuming swine flesh.”

وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ أَنَا أَسَدُ بْنُ مُوسَى، وَعَلِيُّ بْنُ مَعْبَدٍ عَنْ ابْنِ جُرَيْجٍ عَنْ حَبَّةَ بْنِ سَلِمٍ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الشِّطْرَنْجُ مَلْعُونَةٌ مَلْعُونٌ مَنْ لَعِبَ بِهَا، وَالنَّاظِرُ إلَيْهَا كَآكِلِ لَحْمِ الْخِنْزِيرِ» .

L25004 Ibn Habib: rejected; Asad: weak; Habba ibn Salam: unknown; and the chain is interrupted.

ابْنُ حَبِيبٍ لَا شَيْءَ، وَأَسَدٌ ضَعِيفٌ، وَحَبَّةُ بْنُ سَلِمٍ مَجْهُولٌ، وَهُوَ مُنْقَطِعٌ.

L25005 From the chain of Ibn Ḥabīb: Al-Juḍhamī narrated to us from Ibn Abī Rawwād from his father that the Messenger of Allah—peace and blessings of Allah be upon him—said: “The most severely punished people on the Day of Resurrection will be the owner of a sheep who declares: ’I slaughtered it, by Allah! I destroyed it completely, by Allah! I uprooted it, by Allah!’—[this being] falsehood, fabrication, and lies against Allah.”

وَمِنْ طَرِيقِ ابْنِ حَبِيبٍ حَدَّثَنَا الْجُذَامِيُّ عَنْ ابْنِ أَبِي رَوَّادٍ عَنْ أَبِيهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّ أَشَدَّ النَّاسِ عَذَابًا يَوْمَ الْقِيَامَةِ صَاحِبُ الشَّاهِ الَّذِي يَقُولُ: قَتَلْتُهُ، وَاَللَّهِ أَهْلَكْتُهُ، وَاَللَّهِ اسْتَأْصَلْتُهُ، وَاَللَّهِ إفْكًا وَزُورًا وَكَذِبًا عَلَى اللَّهِ» .

L25006 ʿAbd al-Malik has no validity, and his claim is void.

عَبْدُ الْمَلِكِ لَا شَيْءَ، وَهُوَ مُنْقَطِعٌ.

L25007 They transmitted that statement from someone other than the Messenger of God—may God bless him and grant him peace—through the chain of Ibn Ḥabīb from Aṣbagh ibn al-Faraj from Ibn Wahb from Yaḥyā ibn Ayyūb from Abū Qabīl from ʿUqbah ibn ʿĀmir al-Juhanī, who reportedly said: “I would consider worshiping an idol **instead of** God—Exalted is He—dearer to me than playing chess.” This is sheer falsehood, and God forbid that a Companion would say any sin could equal **worshiping idols instead of** God—Exalted is He—so how could disbelief be less grave than it? Yaḥyā ibn Ayyūb is **weak**, and Abū Qabīl lacks mention of **trustworthiness**.

وَرَوَوْا فِي ذَلِكَ عَمَّنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ حَبِيبٍ عَنْ أَصْبَغَ بْنِ الْفَرَجِ عَنْ ابْنِ وَهْبٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنْ أَبِي قَبِيلٍ عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ، أَنَّهُ قَالَ: لَأَنْ أَعْبُدَ وَثَنًا مِنْ دُونِ اللَّهِ - تَعَالَى - أَحَبُّ إلَيَّ مِنْ أَنْ أَلْعَبَ بِالشِّطْرَنْجِ - هَذَا كَذِبٌ بَحْتٌ وَمَعَاذَ اللَّهِ أَنْ يَقُولَ صَاحِبٌ إنَّ عِبَادَةَ الْأَوْثَانِ مِنْ دُونِ اللَّهِ - تَعَالَى - يَعْدِلُهَا شَيْءٌ مِنْ الذُّنُوبِ، فَكَيْفَ أَنْ يَكُونَ الْكُفْرُ أَخَفَّ مِنْهَا؟ وَيَحْيَى بْنُ أَيُّوبَ لَا شَيْءَ - وَأَبُو قَبِيلٍ غَيْرُ مَذْكُورٍ بِالْعَدَالَةِ.

L25008–25010 And via the chain of Ibn Habib from Ali ibn Ma'bad, and of Asad ibn Musa from their two narrators: that Ali ibn Abi Talib passed by men playing shatranj (chess) and said, "What are these images to which you are devoted?" [Al-Anbiya: 52] It is better for one of you to hold a burning ember until it dies out than to even touch it. Were it not for this being part of the Sunnah, I would strike your faces with this ember. Then he commanded regarding them, and they were confined.[1]

وَمِنْ طَرِيقِ ابْنِ حَبِيبٍ عَنْ عَلِيِّ بْنِ مَعْبَدٍ، وَأَسَدِ بْنِ مُوسَى عَنْ رِجَالِهِمَا: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ مَرَّ بِرِجَالٍ يَلْعَبُونَ بِشِطْرَنْجٍ فَقَالَ {مَا هَذِهِ التَّمَاثِيلُ الَّتِي أَنْتُمْ لَهَا عَاكِفُونَ} [الأنبياء: ٥٢] لَأَنْ يُمْسِكَ أَحَدُكُمْ جَمْرَةً حَتَّى تُطْفَى خَيْرٌ لَهُ مِنْ أَنْ يَمَسَّهَا، لَوْلَا أَنْ تَكُونَ سُنَّةً لَضَرَبْت بِهَا وُجُوهَكُمْ - ثُمَّ أَمَرَ بِهِمْ فَحُبِسُوا.

L25011 This chain is interrupted, and in it is Ibn Ḥabīb—we know nothing about them other than what we have mentioned.

هَذَا مُنْقَطِعٌ، وَفِيهِ ابْنُ حَبِيبٍ - مَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ مَا ذَكَرْنَا.

L25012 The response to their statement—"Is it from the truth or falsehood?"—is akin to our response regarding musical singing, and there is no difference. Success comes solely from Allah, the Most High.

وَالْجَوَابُ عَنْ قَوْلِهِمْ أَهُوَ مِنْ الْحَقِّ أَمْ مِنْ الْبَاطِلِ؟ كَجَوَابِنَا فِي الْغِنَاءِ وَلَا فَرْقَ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L25013 Abu Muhammad said: Since neither Allah (Exalted is He) nor His Messenger (peace and blessings of Allah be upon him) has provided explicit details prohibiting any of the matters we have mentioned, it is confirmed that all of it is absolutely permissible. How could this be otherwise when we have been narrated through the chain of transmission via Muslim: Hārūn ibn Saʿīd al-Aylī narrated to me, from Ibn Wahb, from ʿAmr ibn al-Ḥārith, from Ibn Shihāb, from ʿUrwah ibn al-Zubayr, from ʿĀ'ishah, the Mother of the Believers, that Abū Bakr entered upon her while two young girls were singing and striking [an instrument] beside her - while the Messenger of Allah (peace and blessings of Allah be upon him) lay covered with his garment. Abū Bakr rebuked them, but the Messenger of Allah (peace and blessings of Allah be upon him) uncovered his face and said: "Leave them, O Abū Bakr, for these are the days of Eid."

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا لَمْ يَأْتِ عَنْ اللَّهِ - تَعَالَى -، وَلَا عَنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَفْصِيلٌ بِتَحْرِيمِ شَيْءٍ مِمَّا ذَكَرْنَا صَحَّ أَنَّهُ كُلُّهُ حَلَالٌ مُطْلَقٌ، فَكَيْفَ وَقَدْ رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي هَارُونُ بْنُ سَعِيدٍ الْأَيْلِيُّ حَدَّثَنِي ابْنُ وَهْبٍ أَنَا عَمْرٌو - هُوَ ابْنُ الْحَارِثِ - أَنَا ابْنُ شِهَابٍ حَدَّثَهُ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ أَبَا بَكْرٍ دَخَلَ عَلَيْهَا وَعِنْدَهَا جَارِيَتَانِ تُغَنِّيَانِ وَتَضْرِبَانِ - وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُسَجًّى بِثَوْبِهِ - فَانْتَهَرَهُمَا أَبُو بَكْرٍ، فَكَشَفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَجْهَهُ وَقَالَ: دَعْهُمَا يَا أَبَا بَكْرٍ فَإِنَّهَا أَيَّامُ عِيدٍ» .

L25014 And through him also to ʿAmr ibn al-Ḥārith that Muḥammad ibn ʿAbd al-Raḥmān (he is Abū al-Aswad) narrated to him from ʿUrwah ibn al-Zubayr from ʿĀ'ishah, the Mother of the Believers, who said: "The Messenger of Allah (peace be upon him) came to me while two young girls were singing the songs of Buʿāth. He lay down on the bed and turned his face away. Then Abū Bakr entered and rebuked me, saying: 'Satanic music in the presence of

وَبِهِ أَيْضًا إلَى عَمْرِو بْنِ الْحَارِثِ أَنَّ مُحَمَّدَ بْنَ عَبْدِ الرَّحْمَنِ - هُوَ أَبُو الْأَسْوَدِ - حَدَّثَهُ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ " قَالَتْ: «دَخَلَ عَلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعِنْدِي جَارِيَتَانِ تُغَنِّيَانِ بِغِنَاءِ بُعَاثٍ فَاضْطَجَعَ عَلَى الْفِرَاشِ وَحَوَّلَ

[1] **Qur'an references (L25008):** Qur'an 21:52 (Al-Anbya).

وَجْهَهُ فَدَخَلَ أَبُو بَكْرٍ فَانْتَهَرَنِي وَقَالَ لِي: أَمِزْمَارُ الشَّيْطَانِ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: دَعْهُمَا» .

the Messenger of Allah (peace be upon him)?' The Messenger of Allah (peace be upon him) said to him: 'Leave them.'"

فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ هَذَا الْخَبَرَ مِنْ طَرِيقِ أَبِي أُسَامَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ وَقَالَ فِيهِ: وَلَيْسَتَا بِمُغَنِّيَتَيْنِ؟ قُلْنَا: نَعَمْ، وَلَكِنَّهَا قَدْ قَالَتْ: إِنَّهُمَا كَانَتَا تُغَنِّيَانِ، فَالْغِنَاءُ مِنْهُمَا قَدْ صَحَّ، وَقَوْلُهَا " لَيْسَتَا بِمُغَنِّيَتَيْنِ " أَيْ لَيْسَتَا بِمُحْسِنَتَيْنِ.

L25015 If it is said: "You have narrated this report through the chain of Abū Usāmah from Hishām ibn ʿUrwah from his father from ʿĀ'ishah, and he said in it: 'And they were not professional singers?'" We reply: Yes, however she has said that the two of them used to sing. Therefore, their singing has been confirmed, and her statement "they were not professional singers" means they were not proficient singers.

وَهَذَا كُلُّهُ لَا حُجَّةَ فِيهِ، إِنَّمَا الْحُجَّةُ فِي إِنْكَارِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَبِي بَكْرٍ قَوْلَهُ: أَمِزْمَارُ الشَّيْطَانِ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَصَحَّ أَنَّهُ مُبَاحٌ مُطْلَقٌ، لَا كَرَاهِيَةَ فِيهِ، وَأَنَّ مَنْ أَنْكَرَهُ فَقَدْ أَخْطَأَ بِلَا شَكٍّ.

L25016 All of this holds no valid argument. The valid argument lies in the Prophet's—peace and blessings of Allah be upon him—rejection of Abu Bakr's statement: "Is this the flute of Satan in the presence of the Messenger of Allah?" Thus, it is confirmed that it is absolutely permissible, with no dislike (karāhiyyah) in it, and whoever denies its permissibility has unquestionably erred.

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا أَحْمَدُ بْنُ عُبَيْدٍ الْغُدَانِيُّ أَنَا الْوَلِيدُ بْنُ مُسْلِمٍ أَنَا سَعِيدُ بْنُ عَبْدِ الْعَزِيزِ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ قَالَ: «سَمِعَ ابْنُ عُمَرَ مِزْمَارًا فَوَضَعَ أُصْبُعَيْهِ فِي أُذُنَيْهِ، وَنَأَى عَنْ الطَّرِيقِ وَقَالَ لِي: يَا نَافِعُ هَلْ تَسْمَعُ شَيْئًا؟ قُلْتُ: لَا، فَرَفَعَ أُصْبُعَيْهِ مِنْ أُذُنَيْهِ وَقَالَ: كُنْتُ مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَسَمِعَ مِثْلَ هَذَا وَصَنَعَ مِثْلَ هَذَا» .

L25017–25018 From the chain of Abu Dawud: I am Ahmad ibn 'Ubayd al-Ghudani, I am al-Walid ibn Muslim, I am Sa'id ibn 'Abd al-'Aziz, from Sulayman ibn Musa, from Nafi', the freed slave of Ibn 'Umar, who said: Ibn 'Umar heard a flute, so he placed his fingers in his ears and withdrew from the path. He said to me: "O Nafi', do you hear anything?" I said: "No." He then lifted his fingers from his ears and said: "I was with the Prophet, peace and blessings be upon him, when he heard the like of this, and he did the same thing."

قَالَ أَبُو مُحَمَّد: هَذِهِ هِيَ الْحُجَّةُ الْقَاطِعَةُ بِصِحَّةِ هَذِهِ الْأَسَانِيدِ، وَلَوْ كَانَ الْمِزْمَارُ حَرَامًا سَمَاعُهُ لَمَا أَبَاحَ - عَلَيْهِ السَّلَامُ - لِابْنِ عُمَرَ سَمَاعَهُ، وَلَوْ كَانَ عِنْدَ ابْنِ عُمَرَ حَرَامًا سَمَاعُهُ لَمَا أَبَاحَ لِنَافِعٍ سَمَاعَهُ، وَلَأَمَرَ - عَلَيْهِ السَّلَامُ - بِكَسْرِهِ وَبِالسُّكُوتِ عَنْهُ، فَمَا فَعَلَ - عَلَيْهِ السَّلَامُ - شَيْئًا مِنْ ذَلِكَ.

L25019 Abu Muhammad said: This is the decisive proof for the validity of these chains of transmission. If listening to the musical instrument had been forbidden, he (peace be upon him) would not have permitted Ibn Umar to listen to it. If listening to it had been forbidden in Ibn Umar's view, he would not have permitted Nafi' to listen to it. He (peace be upon him) would have commanded its destruction and enjoined silence regarding it, yet he (peace be upon him) did not perform any of these actions.

L25020 He (peace be upon him) only refrained from listening to it as he avoided

most permissible matters among the majority of worldly affairs, such as his avoidance of eating while reclining, allowing a dinar or dirham to remain with him overnight, and hanging curtains on a niche in the house—except for the embroidered curtains, which were only in Fatimah's house. And by Allah, the Most High, is success.

وَإِنَّمَا تَجَنَّبَ - عَلَيْهِ السَّلَامُ - سَمَاعَهُ كَتَجَنُّبِهِ أَكْثَرَ الْمُبَاحِ مِنْ أَكْثَرِ أُمُورِ الدُّنْيَا، كَتَجَنُّبِهِ الْأَكْلَ مُتَّكِئًا، وَأَنْ يَبِيتَ عِنْدَهُ دِينَارٌ أَوْ دِرْهَمٌ، وَأَنْ يُعَلِّقَ السُّتُرَ عَلَى سَهْوَةٍ فِي الْبَيْتِ وَالسُّتُرُ الْمُوَشَّى فِي بَيْتِ فَاطِمَةَ فَقَطْ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

L25021 Through the narration of Muslim ibn al-Hajjaj: I am Zuhayr ibn Harb, [narrating] from Jarir, from Hisham ibn Urwah, from his father, from Aisha, the Mother of the Believers, who said: "Abyssinians came performing a dance on the day of Eid in the mosque. The Prophet (peace be upon him) called me, so that I placed my head on his shoulder, and I kept watching their performance until I was the one who stopped watching." It was narrated to us through Sufyan al-Thawri, from Abu Ishaq al-Sabi'i, from Amir ibn Sa'd al-Bajali, that he saw Abu Mas'ud al-Badri, Qarazah ibn Ka'b, and Thabit ibn Yazid at a wedding where there was singing. He said to them: "You, the companions of Muhammad (peace be upon him), [participate in] this?" They replied: "He permitted us to have singing at weddings and weeping over the deceased without wailing." No prohibition is mentioned here against singing outside of weddings.

وَمِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ أَنَا زُهَيْرُ بْنُ حَرْبٍ أَنَا جَرِيرٌ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «جَاءَ حَبَشٌ يَزْفِنُونَ فِي يَوْمِ عِيدٍ فِي الْمَسْجِدِ فَدَعَانِي النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى وَضَعْتُ رَأْسِي عَلَى مَنْكِبِهِ فَجَعَلْتُ أَنْظُرُ إِلَى لَعِبِهِمْ حَتَّى كُنْتُ أَنَا الَّتِي انْصَرَفْتُ عَنْ النَّظَرِ» وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَامِرِ بْنِ سَعْدٍ الْبَجَلِيِّ أَنَّهُ رَأَى أَبَا مَسْعُودٍ الْبَدْرِيَّ، وَقَرَظَةَ بْنَ كَعْبٍ، وَثَابِتَ بْنَ يَزِيدَ - وَهُمْ فِي عُرْسٍ وَعِنْدَهُمْ غِنَاءٌ - فَقُلْتُ لَهُمْ: هَذَا وَأَنْتُمْ أَصْحَابُ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: «إنَّهُ رَخَّصَ لَنَا فِي الْغِنَاءِ فِي الْعُرْسِ، وَالْبُكَاءِ عَلَى الْمَيِّتِ مِنْ غَيْرِ نَوْحٍ» - لَيْسَ فِيهِ النَّهْيُ عَنْ الْغِنَاءِ فِي غَيْرِ الْعُرْسِ.

L25022–25024 And through the chain of Ḥammād ibn Zayd: from Ayyūb al-Sikhtiyānī, Hishām ibn Ḥassan, and Salamah—meaning ibn Kuhayl—their narrations became interwoven with one another, all transmitting from Muḥammad ibn Sīrīn: A man arrived in Medina with female slaves and approached ʿAbdullāh ibn Jaʿfar, presenting them to him. He instructed one girl among them to play an instrument. Ayyūb specified: "with a tambourine," while Hishām stated: "with a lute"—until Ibn ʿUmar believed he himself had witnessed this. Ibn ʿUmar then said: Enough of Satan's psalm for the rest of the day! He bargained with him, then the man came to Ibn Umar and said, "O Abu Abd al-Rahman, I was defrauded of seven hundred dirhams." Ibn Umar went to Abdullah ibn Ja'far and said, "He was defrauded of seven hundred dirhams. Either give him the amount or revoke his sale." He replied, "Rather, we will give it to him."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ أَنَا أَيُّوبُ السِّخْتِيَانِيُّ، وَهِشَامُ بْنُ حَسَّانَ، وَسَلَمَةُ - هُوَ ابْنُ كُهَيْلٍ - دَخَلَ حَدِيثُ بَعْضِهِمْ فِي حَدِيثِ بَعْضٍ، كُلُّهُمْ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ رَجُلًا قَدِمَ الْمَدِينَةَ بِجَوَارٍ فَأَتَى إلَى عَبْدِ اللَّهِ بْنِ جَعْفَرٍ فَعَرَضَهُنَّ عَلَيْهِ، فَأَمَرَ جَارِيَةً مِنْهُنَّ فَأَحْدَثَتْ، قَالَ أَيُّوبُ: بِالدُّفِّ، وَقَالَ هِشَامٌ: بِالْعُودِ، حَتَّى ظَنَّ ابْنُ عُمَرَ أَنَّهُ قَدْ نَظَرَ إلَى ذَلِكَ، فَقَالَ ابْنُ عُمَرَ: حَسْبُك - سَائِرَ الْيَوْمِ - مِنْ مَزْمُورِ الشَّيْطَانِ، فَسَاوَمَهُ، ثُمَّ جَاءَ الرَّجُلُ إلَى ابْنِ عُمَرَ فَقَالَ: يَا أَبَا عَبْدِ الرَّحْمَنِ إنِّي غُبِنْتُ بِسَبْعِمِائَةِ دِرْهَمٍ، فَأَتَى ابْنُ عُمَرَ إلَى عَبْدِ اللَّهِ بْنِ جَعْفَرٍ فَقَالَ لَهُ: إنَّهُ غُبِنَ بِسَبْعِمِائَةِ دِرْهَمٍ، فَأَمَّا أَنْ تُعْطِيَهَا إيَّاهُ، وَإِمَّا أَنْ تَرُدَّ عَلَيْهِ بَيْعَهُ، فَقَالَ: بَلْ نُعْطِيهَا إيَّاهُ.

فَهَذَا ابْنُ عُمَرَ قَدْ سَمِعَ الْغِنَاءَ وَسَعَى فِي بَيْعِ الْمُغَنِّيَةِ، وَهَذِهِ أَسَانِيدُ صَحِيحَةٌ لَا تِلْكَ الْمُلَفَّقَاتُ الْمَوْضُوعَةُ.

L25025 So this Ibn ʿUmar indeed heard the singing and strived to sell the female singer, and these are sound chains of transmission—not those concocted and forged ones.

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا فُضَيْلُ بْنُ مَرْزُوقٍ عَنْ مَيْسَرَةَ النَّهْدِيِّ قَالَ: مَرَّ عَلِيُّ بْنُ أَبِي طَالِبٍ بِقَوْمٍ يَلْعَبُونَ بِالشِّطْرَنْجِ فَقَالَ: {مَا هَذِهِ التَّمَاثِيلُ الَّتِي أَنْتُمْ لَهَا عَاكِفُونَ} [الأنبياء: ٥٢] فَلَمْ يُنْكِرْ إِلَّا التَّمَاثِيلَ فَقَطْ - وَهَذَا هُوَ الصَّحِيحُ عَنْهُ لَا تِلْكَ الزِّيَادَةُ الْمَكْذُوبَةُ الَّتِي رَوَاهَا مَنْ لَا خَيْرَ فِيهِ.

L25026 From the narration via Waki‘: I, Fudayl ibn Marzuq, report from Maysarah al-Nahdi, who said: Ali ibn Abi Talib passed by a group of people playing chess and remarked, “What are these idols to which you are devoted?” [Quran 21:52]. He objected only to the idols. This is the authentic narration from him, not the fabricated addition transmitted by unreliable individuals.[2]

فَإِنْ قِيلَ: قَدْ رَوَى: «أَعْلِنُوا النِّكَاحَ وَاضْرِبُوا عَلَيْهِ بِالْغِرْبَالِ» ؟ قُلْنَا: هَذَا سَاقِطٌ، لِأَنَّهُ مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ عَنْ أَصْبَغَ عَنْ السَّبِيعِيِّ عَنْ رَبِيعَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَهُ - وَعَبْدُ الْمَلِكِ سَاقِطٌ، وَالسَّبِيعِيُّ مَجْهُولٌ، ثُمَّ هُوَ مُنْقَطِعٌ.

L25027 If it is said: “It has been narrated: ’Publicize marriage and strike upon it with sieves,’” we say: This narration is rejected; as it is transmitted through the chain of ʿAbd al-Malik ibn Ḥabīb from Aṣbagh from al-Sabīʿī from Rabīʿah that the Messenger of Allah—peace be upon him—said it. However, ʿAbd al-Malik is rejected, al-Sabīʿī is unknown, and furthermore, the chain is disconnected.

فَإِنْ قِيلَ: الدُّفُّ مُجْمَعٌ عَلَيْهِ؟ قُلْنَا: هَذَا الْبَاطِلُ -: وَرُوِّينَا مِنْ أَصَحِّ طَرِيقٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ أَنَا سُفْيَانُ الثَّوْرِيُّ حَدَّثَنِي مَنْصُورُ بْنُ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّ أَصْحَابَ ابْنِ مَسْعُودٍ كَانُوا يَسْتَقْبِلُونَ الْجَوَارِي فِي الْمَدِينَةِ مَعَهُنَّ الدُّفُوفُ فَيُشَقِّقُونَهَا.

L25028 If it is said: “Is there consensus regarding the daff?” We reply: This is invalid. We have narrated through the most authentic chain from Yaḥyā ibn Saʿīd al-Qaṭṭān - Sufyān al-Thawrī reported to me from Manṣūr ibn al-Muʿtamir from Ibrāhīm al-Nakhaʿī that the companions of Ibn Masʿūd would confront female singers in Medina who carried daffs, and they would split the drums open.

وَقَدْ جَاءَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ، وَمُحَمَّدِ بْنِ سِيرِينَ: أَنَّهُمَا كَانَا يُحْسِنَانِ اللَّعِبَ بِالشِّطْرَنْجِ - وَعَنْ سَعِيدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَّهُ كَانَ يُغَنِّي بِالْعُودِ -، وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L25029 It has been reported from Sa’id ibn Jubayr and Muhammad ibn Sirin that they were skilled at playing chess—and from Sa’id ibn Abd al-Rahman ibn Awf that he sang accompanied by the lute—and with Allah, the Exalted, is success.

[مَسْأَلَةُ الْبَيْعُ فِي الْمَسْجِدِ]

The Issue of Selling in the Mosque

١٥٦٧ - مَسْأَلَةٌ: وَالْبَيْعُ فِي الْمَسْجِدِ مَكْرُوهٌ، وَهُوَ جَائِزٌ لَا يُرَدُّ، وَالْبَيْعُ قَبْلَ طُلُوعِ الشَّمْسِ جَائِزٌ.

L25030

L25031 Issue 1567: Selling in the mosque is disliked (makrūḥ), though permissible and not invalidated. Selling before sunrise is permissible.

[2] **Qur’an references (L25026):** Qur’an 21:52 (Al-Anbya).

L25032–25034 A person's purchase of an item for which he does not possess the payment is permissible, based on Allah's statement—(glorified and exalted is He)—"Allah has made trade lawful" [Al-Baqarah: 275]. Reports have been transmitted concerning this matter, but they lack sound authentication. Ar-Rabee ibn Habib reported from Nawfal ibn Abdullah from his father - and all of them are unknown - from Ali: "The Messenger of Allah - may Allah bless him and grant him peace - forbade outbidding before sunrise."[3][4]

وَابْتِيَاعُ الْمَرْءِ مَا لَيْسَ عِنْدَهُ ثَمَنُهُ جَائِزٌ، لِقَوْلِ اللَّهِ - تَعَالَى -: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَقَدْ رُوِيَتْ فِي ذَلِكَ آثَارٌ لَا تَصِحُّ -: رَوَى الرَّبِيعُ بْنُ حَبِيبٍ عَنْ نَوْفَلِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِ - وَكُلُّهُمْ مَجْهُولُونَ - عَنْ عَلِيٍّ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ السَّوْمِ قَبْلَ طُلُوعِ الشَّمْسِ» .

L25035 Through the chain of Ibn Wahb: Usāmah—Ibn Zayd—reported to me from ʿAmr ibn Shuʿayb, from his father, from his grandfather: "The Messenger of Allah—peace and blessings be upon him—forbade buying and selling in the mosque."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي أُسَامَةُ - هُوَ ابْنُ زَيْدٍ - عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْبَيْعِ وَالشِّرَاءِ فِي الْمَسْجِدِ» .

L25036 From the narration of Yaḥyā ibn Saʿīd al-Qaṭṭān, from Muḥammad ibn ʿAjlān, from ʿAmr ibn Shuʿayb, from his father, from his grandfather: "The Messenger of Allah—may Allah grant him peace and blessings—prohibited sitting in circles in the mosque before prayer, and selling and buying in the mosque." This is a written record.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ مُحَمَّدِ بْنِ عَجْلَانَ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ التَّحَلُّقِ فِي الْمَسْجِدِ قَبْلَ الصَّلَاةِ، وَعَنْ الْبَيْعِ، وَالشِّرَاءِ فِي الْمَسْجِدِ» - هَذِهِ صَحِيفَةٌ.

L25037 From the path of Abū Dāwūd, from ʿUthmān ibn Abī Shaybah, from Wakīʿ, from Shurayk, from Simāk, from ʿIkrimah, from Ibn ʿAbbās: "The Prophet (peace be upon him) purchased from another person a sale while he did not possess its price, then profited in it. He sold it and gave the price in charity to the needy widows of Banū ʿAbd al-Muṭṭalib, then said: 'I will not purchase anything after it unless I possess its price.'" Simāk and Shurayk are weak narrators.

وَمِنْ طَرِيقِ أَبِي دَاوُد عَنْ عُثْمَانَ بْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ شَرِيكٍ عَنْ سِمَاكٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ابْتَاعَ مِنْ غَيْرِهِ بَيْعًا وَلَيْسَ عِنْدَهُ ثَمَنُهُ فَأَرْبَحَ فِيهِ، فَبَاعَهُ وَتَصَدَّقَ بِالثَّمَنِ عَلَى أَرَامِلِ بَنِي عَبْدِ الْمُطَّلِبِ، ثُمَّ قَالَ: لَا أَشْتَرِي بَعْدَهَا شَيْئًا إلَّا وَعِنْدِي ثَمَنُهُ» - سِمَاكٌ، وَشَرِيكٌ ضَعِيفَانِ.

L25038 It was narrated through the chain of al-Darawardī from Yazīd ibn Khuṣayfah from Muḥammad ibn ʿAbd al-Raḥmān ibn Thawbān from Abū Hurayrah that the Messenger of Allah—peace and blessings of Allah be upon him—said: "If you see a man making public requests in the mosque, say to him: 'May Allah not grant your request,' and if you see him selling, say to him: 'May Allah not make your trade profitable.'" This [statement] does not imply a prohibition against selling; rather, it indicates that the act is discouraged.

وَرُوِيَ مِنْ طَرِيقِ الدَّرَاوَرْدِيِّ عَنْ يَزِيدَ بْنِ خُصَيْفَةَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ عَنْ أَبِي هُرَيْرَةَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا رَأَيْتُمْ الرَّجُلَ يَنْشُدُ فِي الْمَسْجِدِ فَقُولُوا لَهُ لَا رَدَّ اللَّهُ عَلَيْكَ، وَإِذَا رَأَيْتُمُوهُ يَبِيعُ فَقُولُوا لَهُ: لَا أَرْبَحَ اللَّهُ تِجَارَتَكَ» لَيْسَ فِيهِ مَنْعٌ مِنْ الْبَيْعِ، وَلَكِنَّهَا كَرَاهِيَةٌ.

[3] **Hadith references (L25032):** Sunan Ibn Majah 2206.
[4] **Qur'an references (L25032):** Qur'an 2:275 (Al-Baqarah).

A Juristic Issue Regarding Hoarding

[مَسْأَلَة فِي الِاحْتِكَار]

L25039

L25040 1568 – Issue: Hoarding that harms people is prohibited—whether in buying or retaining what has been bought—and such action is forbidden.

١٥٦٨ - مَسْأَلَة: وَالْحُكْرَةُ الْمُضِرَّةُ بِالنَّاسِ حَرَامٌ - سَوَاءٌ فِي الِابْتِيَاعِ أَوْ فِي إمْسَاكِ مَا ابْتَاعَ - وَيُمْنَعُ مِنْ ذَلِكَ.

L25041 The hoarder during a time of abundance is not sinful; rather, he is acting righteously, for when traders hasten to sell, they increase the supply of goods. When their merchandise stagnates and finds no buyers, they stop bringing goods - which harms the Muslims. Allah the Exalted said: _"Cooperate in righteousness and piety, and do not cooperate in sin and aggression"_ [Surah Al-Mā'idah 5:2].[5]

وَالْمُحْتَكِرُ فِي وَقْتِ رَخَاءٍ لَيْسَ آثِمًا، بَلْ هُوَ مُحْسِنٌ؛ لِأَنَّ الْجُلَّابَ إذَا أَسْرَعُوا الْبَيْعَ أَكْثَرُوا الْجَلَبَ، وَإِذَا بَارَتْ سِلْعَتُهُمْ وَلَمْ يَجِدُوا لَهَا مُبْتَاعًا تَرَكُوا الْجَلَبَ، فَأَضَرَّ ذَلِكَ بِالْمُسْلِمِينَ، قَالَ اللَّهُ - تَعَالَى -: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L25042–25044 If it is said: "Indeed, you authenticate the ḥadīth through the chain of Muḥammad ibn ʿAjlān, from Muḥammad ibn ʿAmr ibn ʿAṭā'." From Saʿīd ibn al-Musayyib, from Maʿmar ibn ʿAbd Allāh al-ʿAdawī: The Messenger of Allah, peace be upon him, said, "No one hoards except a sinner."

فَإِنْ قِيلَ: فَإِنَّكُمْ تُصَحِّحُونَ الْحَدِيثَ مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَجْلَانَ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَطَاءٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ مَعْمَرِ بْنِ عَبْدِ اللَّهِ الْعَدَوِيِّ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَحْتَكِرُ إلَّا خَاطِئٌ» ؟ .

L25045 We said: Yes. However, it was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from Mālik ibn Aws ibn al-Ḥadathān that he heard ʿUmar ibn al-Khaṭṭāb say: "The Messenger of Allah - peace and blessings be upon him - would reserve a year's provision for his family, then place whatever remained of his produce in the status of Allah's wealth."

قُلْنَا: نَعَمْ، وَلَكِنَّنَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ مَالِكِ بْنِ أَوْسِ بْنِ الْحَدَثَانِ أَنَّهُ سَمِعَ عُمَرَ بْنَ الْخَطَّابِ يَقُولُ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَحْبِسُ، نَفَقَةَ أَهْلِهِ سَنَةً، ثُمَّ يَجْعَلُ مَا بَقِيَ مِنْ ثَمَرِهِ مَجْعَلَ مَالِ اللَّهِ» .

L25046 So this Prophet—peace be upon him—withheld the sustenance of his household for a year and did not extend it beyond that period.

فَهَذَا النَّبِيُّ - عَلَيْهِ السَّلَامُ - قَدْ احْتَبَسَ قُوتَ أَهْلِهِ سَنَةً، وَلَمْ يَمْنَعْ مِنْ أَكْثَرَ.

L25047 It is thus established that retaining what is indispensable is permissible, and purchasing is permissible. What is reproached is undoubtedly the impermissible. This is the hoarding we have mentioned, for all hoarding constitutes retention. Hoarding is blameworthy, but not every instance of retention is blameworthy; rather, it remains permissible unless evidence arises to prohibit it - at which point it becomes blameworthy. And success is from Allah, the Most High.

فَصَحَّ أَنَّ إمْسَاكَ مَا لَا بُدَّ مِنْهُ مُبَاحٌ، وَالشِّرَاءُ مُبَاحٌ، وَالْمَذْكُورُ بِالذَّمِّ هُوَ غَيْرُ الْمُبَاحِ بِلَا شَكٍّ، فَهَذَا الِاحْتِكَارُ الَّذِي ذَكَرْنَاهُ، وَكُلُّ احْتِكَارٍ فَإِنَّهُ إمْسَاكٌ، وَالِاحْتِكَارُ مَذْمُومٌ، وَلَيْسَ كُلُّ إمْسَاكٍ مَذْمُومًا، بَلْ هُوَ مُبَاحٌ حَتَّى يَقُومَ دَلِيلٌ بِالْمَنْعِ مِنْ شَيْءٍ مِنْهُ فَهُوَ الْمَذْمُومُ حِينَئِذٍ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[5] **Qur'an references (L25041):** Qur'an 5:2 (Al-Ma'idah).

L25048 It has been narrated to us through the chain of Yazīd ibn Hārūn from Aṣbagh ibn Zayd al-Juhanī from Abū Bishr from Abū al-Zāhiriyyah from Kathīr ibn Murrah al-Ḥaḍramī from Ibn ʿUmar from the Prophet (peace and blessings be upon him), who said: "Whoever hoards food for forty days has disassociated himself from Allah, and Allah has disassociated Himself from him."

وَقَدْ رُوِّينَا حَدِيثًا مِنْ طَرِيقِ يَزِيدَ بْنِ هَارُونَ عَنْ أَصْبَغَ بْنِ زَيْدٍ الْجُهَنِيِّ عَنْ أَبِي بِشْرٍ عَنْ أَبِي الزَّاهِرِيَّةِ عَنْ كَثِيرِ بْنِ مُرَّةَ الْحَضْرَمِيِّ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ احْتَكَرَ طَعَامًا أَرْبَعِينَ يَوْمًا فَقَدْ بَرِئَ مِنْ اللَّهِ وَبَرِئَ اللَّهُ مِنْهُ» .

L25049 This ruling is invalid because Asbagh ibn Zayd and Kathir ibn Murrah are both unverified narrators.

وَهَذَا لَا يَصِحُّ؛ لِأَنَّ أَصْبَغَ بْنَ زَيْدٍ، وَكَثِيرَ بْنَ مُرَّةَ مَجْهُولَانِ.

L25050 It has been narrated to us through the chain of Abd al-Razzaq from al-Mu'tamir ibn Sulayman al-Taymi from Layth ibn Abi Sulaym, who narrated that Abu al-Hakam informed me: "Ali ibn Abi Talib burned food hoarded with a hundred thousand."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ أَخْبَرَنِي أَبُو الْحَكَمِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أَحْرَقَ طَعَامًا اُحْتُكِرَ بِمِائَةِ أَلْفٍ.

L25051 From the transmission of Ibn Abi Shaybah: [It is narrated by] Humaid ibn Abd al-Rahman al-Ru'asi, from al-Hasan ibn Ḥayy, from al-Hakam ibn Utaybah, from Abd al-Rahman ibn Qays, who said: Hubaysh said, "Ali ibn Abi Talib burned my threshing floors in al-Sawad that I had hoarded. Had he left them, I would have gained profits equal to the stipend of Kufa." Al-Bayadir are storage areas for scarce food.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ الرُّؤَاسِيُّ عَنْ الْحَسَنِ بْنِ حَيٍّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ قَيْسٍ قَالَ: قَالَ حُبَيْشٌ أَحْرَقَ لِي عَلِيُّ بْنُ أَبِي طَالِبٍ بَيَادِرَ بِالسَّوَادِ كُنْت احْتَكَرْتهَا، لَوْ تَرَكَهَا لَرَبِحْت فِيهَا مِثْلَ عَطَاءِ الْكُوفَةِ - الْبَيَادِرُ أَنَادِرُ الطَّعَامِ.

L25052 Abu Muhammad said: "This occurred in the presence of the Companions, and it is obligatory for whoever condemns such an act to adhere to it."

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بِحَضْرَةِ الصَّحَابَةِ، وَيَلْزَمُ مَنْ شَنَّعَ بِمِثْلِ هَذَا أَنْ يَأْخُذَ بِهِ.

L25053 ## The Issue of Trading with Dār al-Ḥarb

[مَسْأَلَةُ التِّجَارَةِ إلَى أَرْضِ الْحَرْبِ]

L25054–25056 1569 – Issue: If Muslim merchants enter the abode of war, they are subjected to humiliation there. The rulings applicable to disbelievers apply to them. Trading to the land of war is forbidden, and they must be prevented from it; otherwise, it is merely disliked. Selling to them is permissible except for anything they might use to strengthen themselves against Muslims—such as pack animals, weapons, iron, or similar items. Selling any of these to them is fundamentally prohibited. Allah the Exalted said: "So do not weaken and call for peace while you are dominant" [47:35]. Entering their lands in a manner that subjects one to their rulings constitutes weakness, humiliation, and an invitation to peace—all of which is forbidden. Allah the Exalted also

١٥٦٩ - مَسْأَلَةٌ: وَإِنْ كَانَ التُّجَّارُ الْمُسْلِمُونَ إذَا دَخَلُوا أَرْضَ الْحَرْبِ أُذِلُّوا بِهَا وَجَرَتْ عَلَيْهِمْ أَحْكَامُ الْكُفَّارِ، فَالتِّجَارَةُ إلَى أَرْضِ الْحَرْبِ حَرَامٌ، وَيُمْنَعُونَ مِنْ ذَلِكَ، وَإِلَّا فَنَكْرَهُهَا فَقَطْ، وَالْبَيْعُ مِنْهُمْ جَائِزٌ إلَّا مَا يَتَقَوَّوْنَ بِهِ عَلَى الْمُسْلِمِينَ مِنْ دَوَابَّ أَوْ سِلَاحٍ أَوْ حَدِيدٍ أَوْ غَيْرِ ذَلِكَ، فَلَا يَحِلُّ بَيْعُ شَيْءٍ مِنْ ذَلِكَ مِنْهُمْ أَصْلًا، قَالَ - تَعَالَى -: {فَلَا تَهِنُوا وَتَدْعُوا إِلَى السَّلْمِ وَأَنْتُمُ الأَعْلَوْنَ} [محمد: ٣٥] فَالدُّخُولُ إلَيْهِمْ بِحَيْثُ تَجْرِي عَلَى

said: “And do not cooperate in sin and aggression” [5:2]. Strengthening them through selling or other means that empower them against Muslims is forbidden. Those who do this must be punished severely as a deterrent, and their imprisonment shall be excessively prolonged.[6]

الدَّاخِلِ أَحْكَامُهُمْ وَهَنٌ وَانْسِفَالٌ وَدُعَاءٌ إِلَى السِّلْمِ - وَهَذَا كُلُّهُ مُحَرَّمٌ، وَقَالَ - تَعَالَى -: {وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] فَتَقْوِيَتُهُمْ بِالْبَيْعِ وَغَيْرِهِ مِمَّا يَقْوَوْنَ بِهِ عَلَى الْمُسْلِمِينَ حَرَامٌ، وَيُنَكَّلُ مَنْ فَعَلَ ذَلِكَ، وَيُبَالَغُ فِي طُولِ حَبْسِهِ.

L25057 **A case where someone purchased a commodity under a *salam* contract on the condition of it being free from defects but later found it defective.**

[مَسْأَلَة اشْتَرَى سِلْعَةً عَلَى السَّلَامَةِ مِنْ الْعُيُوبِ فَوَجَدَهَا مَعِيبَةً]

L25058 1570 - Issue: If someone purchases a commodity on the basis of soundness from defects and then finds it defective, the entire transaction is wholly annulled. He has no option to keep it unless both parties renew another sale through mutual consent. This is because the defective item is undeniably not the sound one, for he purchased a sound item but was given a defective one. What he received differs from what he purchased, thus it is impermissible for him to retain what he did not purchase, as this constitutes unlawful consumption of wealth through falsehood.

١٥٧٠ - مَسْأَلَةٌ: وَمَنْ اشْتَرَى سِلْعَةً عَلَى السَّلَامَةِ مِنْ الْعُيُوبِ فَوَجَدَهَا مَعِيبَةً فَهِيَ صَفْقَةٌ مَفْسُوخَةٌ كُلُّهَا، لَا خِيَارَ لَهُ فِي إمْسَاكِهَا إلَّا بِأَنْ يُجَدِّدَا فِيهَا بَيْعًا آخَرَ بِتَرَاضٍ مِنْهُمَا؛ لِأَنَّ الْمَعِيبَ بِلَا شَكٍّ غَيْرُ السَّالِمِ، وَهُوَ إنَّمَا اشْتَرَى سَالِمًا فَأُعْطِيَ مَعِيبًا، فَالَّذِي أُعْطِيَ غَيْرُ الَّذِي اشْتَرَى فَلَا يَحِلُّ لَهُ مَا لَمْ يَشْتَرِ؛ لِأَنَّهُ أَكْلُ مَالٍ بِالْبَاطِلِ.

L25059 The Messenger of Allah—peace and blessings of Allah be upon him—said: “Your blood and your wealth are inviolable to you,” and the Most High said: “Do not devour your wealth among yourselves wrongfully unless it is a trade by mutual consent among you” [An-Nisa: 29]. We have mentioned much discussion regarding this matter in the preceding sections of our book, and this suffices. Success is from Allah, the Most High.[7]

قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» ، وَقَالَ - تَعَالَى -: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] وَقَدْ ذَكَرْنَا كَلَامًا كَثِيرًا فِي هَذِهِ الْمَسْأَلَةِ فِيمَا سَلَفَ مِنْ كِتَابِنَا هَذَا، وَفِي هَذَا كِفَايَةٌ وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L25060 **[Case: A person purchased goods without stipulating their soundness from defects and later discovered they were defective]**

[مَسْأَلَة أشترى سِلْعَة وَلَمْ يَشْتَرِط السلامة مِنْ الْعُيُوب فوجدها مُعَيَّبَة]

L25061 1571 – Issue: If he did not stipulate freedom from defects, nor was a defect disclosed to him, and he then found a defect, he may choose to retain or return [the item]. If he retains it, he is entitled to nothing, because he

١٥٧١ - مَسْأَلَةٌ: فَإِنْ لَمْ يَشْتَرِطْ السَّلَامَةَ، وَلَا بُيِّنَ لَهُ مَعِيبٌ فَوَجَدَ عَيْبًا فَهُوَ مُخَيَّرٌ بَيْنَ إمْسَاكٍ أَوْ رَدٍّ، فَإِنْ أَمْسَكَ فَلَا شَيْءَ لَهُ؛ لِأَنَّهُ قَدْ رَضِيَ بِعَيْنِ مَا اشْتَرَى فَلَهُ أَنْ

[6] **Qur’an references (L25054):** Qur’an 47:35 (Muhammad); Qur’an 5:2 (Al-Ma’idah).
[7] **Qur’an references (L25059):** Qur’an 4:29 (An-Nisa).

has consented to the exact item purchased, so he may uphold his consent. Alternatively, he may rescind the entire deal, as he has encountered deception, fraud, and exploitation—for fraud and deception are prohibited.

L25062 He is not permitted to retain what he purchased and claim compensation for the defect's value, for he is only entitled to rescind consent due to the loss incurred through fraudulent disadvantage. Neither a Quranic verse nor Sunnah establishes his right to the seller's property; rather, the seller's property remains religiously forbidden to him as we stated. He may not return part of the purchased item, because he did not validly consent to a portion of the sold item to the exclusion of another. No one's property becomes lawful for another except through mutual consent or a definitive textual proof necessitating its permissibility. This ruling applies whether the defect pertains to the primary aspect of the transaction, most of it, or a lesser part, for neither the Quran nor Sunnah distinguishes between such cases. And success is from Allah, the Exalted, alone.

A juristic issue concerning someone who purchased a *musarrāh* (an animal whose milk was withheld to deceive buyers), believing it to be in milk, but later discovered otherwise.

L25063–25064

L25065 Issue: This ruling applies to all defective animals except the muṣarrāh. The muṣarrāh refers to a female animal whose udder was tied to accumulate milk. If someone purchases such an animal believing it to be lactating, but later discovers its udder had been restrained to retain milk—and the truth is revealed when he milks it—the buyer has the option for three days. If he chooses to keep it, he retains it without compensation. If he chooses to return it, he must necessarily return it along with a ṣāʿ (a defined volume measure) of dates.

L25066 The ruling applies equally whether the tied-udder animal is one, two, a thousand, or more—only one ṣāʿ of dates must be given as compensation in all such cases. This holds true whether it was purchased for a high price or a low price, even if bought for a tenth of a ṣāʿ of dates.

يَسْتَصْحِبَ رِضَاهُ، وَلَهُ أَنْ يَرُدَّ جَمِيعَ الصَّفْقَةِ؛ لِأَنَّهُ وَجَدَ خَدِيعَةً وَغِشًّا وَغَبْنًا - وَالْغِشُّ، وَالْخَدِيعَةُ: حَرَامَانِ.

وَلَيْسَ لَهُ أَنْ يُمْسِكَ مَا اشْتَرَى، وَيَرْجِعَ بِقِيمَةِ الْعَيْبِ؛ لِأَنَّهُ إنَّمَا لَهُ تَرْكُ الرِّضَا بِمَا غُبِنَ فِيهِ فَقَطْ؛ وَلِأَنَّهُ لَمْ يُوجِبْ لَهُ حَقًّا فِي مَالِ الْبَائِعِ: قُرْآنٌ، وَلَا سُنَّةٌ، بَلْ مَالُهُ عَلَيْهِ حَرَامٌ كَمَا ذَكَرْنَا، وَلَيْسَ لَهُ رَدُّ الْبَعْضِ؛ لِأَنَّ نَفْسَ الْمُعَامِلِ لَهُ لَمْ تَطِبْ لَهُ بِبَعْضِ مَا بَاعَ مِنْهُ دُونَ بَعْضٍ، وَلَا يَحِلُّ مَالُ أَحَدٍ إلَّا بِتَرَاضٍ، أَوْ بِنَصٍّ يُوجِبُ إحْلَالَهُ لِغَيْرِهِ - وَسَوَاءٌ كَانَ الْمَعِيبُ وَجْهَ الصَّفْقَةِ أَوْ أَكْثَرَهَا أَوْ أَقَلَّهَا؛ لِأَنَّهُ لَمْ يَأْتِ بِالْفَرْقِ بَيْنَ شَيْءٍ مِنْ ذَلِكَ: قُرْآنٌ، وَلَا سُنَّةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة أشترى مصراة يَظُنّهَا لبونا فتبين غَيْر ذَلِكَ]

مَسْأَلَةٌ: هَذَا حُكْمُ كُلِّ مَعِيبٍ حَاشَا الْمُصَرَّاةَ فَقَطْ، فَإِنَّ حُكْمَهَا أَنَّ مَنْ اشْتَرَى مُصَرَّاةً وَهِيَ مَا كَانَ يُحْلَبُ مِنْ إنَاثِ الْحَيَوَانِ، وَهُوَ يَظُنُّهَا لَبُونًا فَوَجَدَهَا قَدْ رُبِطَ ضَرْعُهَا حَتَّى اجْتَمَعَ اللَّبَنُ، فَلَمَّا حَلَبَهَا افْتَضَحَ لَهُ الْأَمْرُ: فَلَهُ الْخِيَارُ ثَلَاثَةَ أَيَّامٍ، فَإِنْ شَاءَ أَمْسَكَ وَلَا شَيْءَ لَهُ، وَإِنْ شَاءَ رَدَّهَا وَرَدَّ مَعَهَا صَاعًا مِنْ تَمْرٍ وَلَا بُدَّ.

وَسَوَاءٌ كَانَتْ الْمُصَرَّاةُ وَاحِدَةً أَوْ اثْنَتَيْنِ أَوْ أَلْفًا أَوْ أَكْثَرَ لَا يَرُدُّ فِي كُلِّ ذَلِكَ إلَّا صَاعًا وَاحِدًا مِنْ تَمْرٍ، وَسَوَاءٌ كَانَ اشْتَرَاهَا بِكَثِيرٍ أَوْ بِقَلِيلٍ، وَلَوْ بِعُشْرِ صَاعِ تَمْرٍ.

فَإِنْ كَانَ اللَّبَنُ الَّذِي فِي ضَرْعِهَا يَوْمَ اشْتَرَاهَا حَاضِرًا رَدَّهُ كَمَا هُوَ حَلِيبًا أَوْ حَامِضًا - فَإِنْ كَانَ قَدْ اسْتَهْلَكَهُ رَدَّ مَعَهَا لَبَنًا مِثْلَهُ، وَإِنْ كَانَ قَدْ مَخَضَهُ أَوْ عَقَدَهُ رَدَّهُ، فَإِنْ نَقَصَ عَنْ قِيمَتِهِ لَبَنًا رَدَّ مَا بَيْنَ النَّقْصِ وَالتَّمَامِ، لِأَنَّهُ لَبَنُ الْبَائِعِ -، وَلَيْسَ عَلَيْهِ رَدُّ مَا حَدَثَ مِنْ اللَّبَنِ فِي كَوْنِهَا عِنْدَهُ، لِأَنَّهُ حَدَثَ فِي مَالِهِ فَهُوَ لَهُ.

L25067 If the milk in the udder on the day of purchase remains present, he must return it as is—whether fresh or soured. If he consumed it, he must replace it with equivalent milk alongside the animal. If he churned it into butter or coagulated it into cheese, he must return the processed product. Should the milk's value decrease, he must compensate the difference between the diminished value and the original value, for this milk rightfully belongs to the seller. He bears no obligation to return milk generated during his ownership of the animal, as it arose within his property and thus belongs to him.

فَإِنْ رَدَّهَا بِعَيْبٍ آخَرَ غَيْرِ التَّصْرِيَةِ لَمْ يَلْزَمْهُ رَدُّ التَّمْرِ وَلَا شَيْءٍ غَيْرِ اللَّبَنِ الَّذِي كَانَ فِي ضَرْعِهَا إذَا اشْتَرَاهَا، فَإِنْ انْقَضَتْ الثَّلَاثَةُ الْأَيَّامُ، وَلَمْ يَرُدَّهَا بَعْدُ لَزِمَتْهُ، وَبَطَلَ خِيَارُهُ إلَّا مِنْ عَيْبٍ آخَرَ غَيْرِ التَّصْرِيَةِ.

L25068 If he returns her due to a defect other than milk-withholding fraud, he is not obligated to return the dates or anything beyond the milk that was in her udder at the time of purchase. If the three days pass and he has not returned her, the sale becomes binding upon him, and his option to annul is invalidated except for another defect unrelated to it.

وَإِنَّمَا سُمِّيَتْ مُصَرَّاةً، لِأَنَّ التَّصْرِيَةَ هِيَ الْجَمْعُ وَهَذِهِ جُمِعَ لَبَنُهَا - وَهِيَ أَيْضًا الْمُحَفَّلَةُ، لِأَنَّهُ قَدْ حُفِّلَ لَبَنُهَا فِي ضَرْعِهَا.

L25069 It is specifically named muṣarrah because taṣriyah is the gathering, and here its milk was gathered; it is also termed muḥaffalah due to the intensive accumulation of milk in its udder.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ مَنْصُورٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: قَالَ أَبُو الْقَاسِمِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ ابْتَاعَ مُحَفَّلَةً أَوْ مُصَرَّاةً فَهُوَ بِالْخِيَارِ ثَلَاثَةَ أَيَّامٍ إنْ شَاءَ أَنْ يُمْسِكَهَا أَمْسَكَهَا، وَإِنْ شَاءَ أَنْ يَرُدَّهَا رَدَّهَا وَصَاعًا مِنْ تَمْرٍ لَا سَمْرَاءَ» السَّمْرَاءُ: الْبُرُّ فَهَذَا خَبَرٌ صَحِيحٌ يَقْتَضِي كُلَّ مَا قُلْنَاهُ وَهُوَ الزَّائِدُ عَلَى سَائِرِ الْأَخْبَارِ.

L25070 The evidence for this—: what we have narrated through the chain of Ahmad ibn Shuʿayb, narrated by Muḥammad ibn Manṣūr, narrated by Sufyān ibn ʿUyaynah, from Ayyūb al-Sikhtiyānī, from Muḥammad ibn Sīrīn, who said: I heard Abū Hurayrah say: Abū al-Qāsim—may Allah bless him and grant him peace—said: "Whoever purchases a milch camel or an animal with its udder tied (to appear milk-filled) has the choice for three days. If he wishes to retain it, he may retain it; and if he wishes to return it, he may return it along with a ṣāʿ of dates—not samrāʾ" (samrāʾ: wheat). This is an authentic report that entails all we have stated, and it constitutes an addition beyond other narrations.[8]

وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدُ بْنُ عَمْرِو بْنِ جَبَلَةَ نا مَكِّيُّ بْنُ إبْرَاهِيمَ أَخْبَرَنِي زِيَادٌ قَالَ: إنَّ ثَابِتًا مَوْلَى عَبْدِ الرَّحْمَنِ بْنِ زَيْدٍ أَخْبَرَهُ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: قَالَ

L25071–25073 It has been transmitted to us through Al-Bukhārī's chain of transmission: Muḥammad ibn ʿAmr ibn Jabalah reported to us from Makkī ibn Ibrāhīm; Ziyād informed me, saying: Thābit, the freed slave of ʿAbd al-Raḥmān ibn Zayd, reported to Ziyād that he heard Abū Hurayrah say: The Prophet said...

[8] **Hadith references (L25070):** Sunan an-Nasai 4489.

The Messenger of Allah (peace be upon him) said: “Whoever buys a sheep whose milk was withheld by tying its udders and then milks it—if he is satisfied with it, he may keep it; but if he is dissatisfied, then for its milking is a ṣāʿ of dates.”[9]

L25074 Abu Muhammad said: The report of al-Muṣarrāh has been narrated to us through the chain of transmission of Ibn Sīrīn and Thābit, the client of ʿAbd al-Raḥmān ibn Zayd, as we have mentioned.

L25075 And from the chains of Muḥammad ibn Ziyād, Mūsā ibn Yasār, Abū Ṣāliḥ al-Sammān, Hammām ibn Munabbih, al-Aʿraj, Mujāhid, Abū Isḥāq, Yazīd ibn ʿAbd al-Raḥmān ibn Udhaynah, and others. It was narrated from these individuals: Ḥammād ibn Salamah, Dāwūd ibn Qays, Suhayl ibn Abī Ṣāliḥ, Maʿmar, Ayyūb, Ḥabīb ibn al-Shahīd, Hishām ibn Ḥassān, Mālik, Ibn ʿUyaynah, ʿUbayd Allāh ibn ʿUmar—all of them from Abū al-Zinād from al-Aʿraj; and Ibn Jurayj from Ziyād from Thābit; and al-Layth ibn Saʿd from Jaʿfar ibn Rabīʿah from al-Aʿraj. These imams are the firmly established, trustworthy ones.

L25076 And it has been narrated by these individuals—whom none can enumerate except Allah, the Almighty and Majestic—to the extent that it became a transmission of universal consensus and mass-transmitted corroboration, rejected only by one deprived [of divine favor] and not granted success. This is what the Salaf, both past and present, have adhered to.

L25077 It has been narrated to us through the chain of Al-Bukhārī: Musaddad narrated to us, Al-Muʿtamir ibn Sulaymān At-Taymī narrated to us—I heard my father say: Abū ʿUthmān—he is An-Nahdī—narrated to us from ʿAbdullāh ibn Masʿūd, who said: “Whoever purchases a calibrated vessel should return with it a saʿ of dates.” This isnād is like pearls, and it is also authentically established from Abū Hurayrah in his legal verdicts—and there is no dissenter from the Companions against them both regarding this matter.

[9] **Hadith references (L25071):** Sahih al-Bukhari 2151.

رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ اشْتَرَى غَنَمًا مُصَرَّاةً فَاحْتَلَبَهَا فَإِنْ رَضِيَهَا أَمْسَكَهَا، وَإِنْ سَخِطَهَا فَفِي حَلْبَتِهَا صَاعٌ مِنْ تَمْرٍ» .

قَالَ أَبُو مُحَمَّد: رُوِّينَا خَبَرَ الْمُصَرَّاةِ مِنْ طَرِيقِ ابْنِ سِيرِينَ، وَثَابِتٍ مَوْلَى عَبْدِ الرَّحْمَنِ بْنِ زَيْدٍ، كَمَا أَوْرَدْنَا.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ زِيَادٍ، وَمُوسَى بْنُ يَسَارٍ وَأَبِي صَالِحٍ السَّمَّانِ وَهَمَّامِ بْنِ مُنَبِّهٍ، وَالْأَعْرَجِ، وَمُجَاهِدٍ، وَأَبِي إِسْحَاقَ، وَيَزِيدَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أُذَيْنَةَ، وَغَيْرِهِمْ. وَرَوَاهُ عَنْ هَؤُلَاءِ: حَمَّادُ بْنُ سَلَمَةَ، وَدَاوُد بْنُ قَيْسٍ، وَسُهَيْلُ بْنُ أَبِي صَالِحٍ، وَمَعْمَرٌ، وَأَيُّوبُ، وَحَبِيبُ بْنُ الشَّهِيدِ، وَهِشَامُ بْنُ حَسَّانَ، وَمَالِكٌ، وَابْنُ عُيَيْنَةَ، وَعُبَيْدُ اللَّهِ بْنُ عُمَرَ، كُلُّهُمْ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ، وَابْنِ جُرَيْجٍ عَنْ زِيَادٍ عَنْ ثَابِتٍ، وَاللَّيْثِ بْنِ سَعْدٍ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ عَنْ الْأَعْرَجِ - وَهَؤُلَاءِ الْأَئِمَّةِ الْأَثْبَاتِ الثِّقَاتِ.

وَرَوَاهُ عَنْ هَؤُلَاءِ مَنْ لَا يُحْصِيهِمْ إلَّا اللَّهُ - عَزَّ وَجَلَّ -، فَصَارَ نَقْلَ كَافَّةٍ وَتَوَاتُرٍ لَا يَرُدُّهُ إلَّا مَحْرُومٌ غَيْرُ مُوَفَّقٍ - وَبِهَذَا يَأْخُذُ السَّلَفُ قَدِيمًا وَحَدِيثًا.

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسَدَّدٌ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ سَمِعْت أَبِي يَقُولُ: نا أَبُو عُثْمَانَ - هُوَ النَّهْدِيُّ - عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ " مَنْ اشْتَرَى مُحَفَّلَةً فَلْيَرُدَّ مَعَهَا صَاعًا مِنْ تَمْرٍ " وَهَذَا إسْنَادٌ كَاللُّؤْلُؤِ وَصَحَّ أَيْضًا عَنْ أَبِي هُرَيْرَةَ مِنْ فُتْيَاهُ - وَلَا مُخَالِفَ لَهُمَا مِنْ الصَّحَابَةِ فِي ذَلِكَ

- وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ، وَمَالِكٍ فِي أَحَدِ قَوْلَيْهِ، وَأَصْحَابِهِ، إلَّا أَشْهَبَ.

L25078 It is the opinion of al-Layth ibn Saʿd, Mālik in one of his two opinions, and his disciples except Ashhab.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَصْحَابِهِمَا، وَأَبِي ثَوْرٍ، وَأَبِي عُبَيْدٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا، وَأَحَدُ قَوْلَيْ أَبِي لَيْلَى - وَقَالَ زُفَرُ بْنُ الْهُذَيْلِ: يَرُدُّهَا وَصَاعًا مِنْ تَمْرٍ أَوْ صَاعًا مِنْ شَعِيرٍ أَوْ نِصْفَ صَاعٍ مِنْ بُرٍّ.

L25079 This is the opinion of al-Shafi'i, Ahmad ibn Hanbal, their companions, Abu Thawr, Abu Ubayd, Ishaq ibn Rāhawayh, Abu Sulayman, all the scholars of our school, and one of the two opinions of Abu Layla. Zufar ibn al-Hudhayl said: "He must return it along with either a *sa'* of dates, a *sa'* of barley, or half a *sa'* of husked wheat."

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ زِيَادَةٌ عَلَى أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَعَدٍّ لِحُدُودِهِ، وَالزَّائِدُ فِي الشَّيْءِ كَالنَّاقِصِ مِنْهُ.

L25080 Abu Muhammad said: This is an addition to the command of the Messenger of Allah—peace and blessings be upon him—and a transgression of his boundaries. The one who adds to something is like the one who detracts from it.

وَقَالَ ابْنُ أَبِي لَيْلَى فِي أَحَدِ قَوْلَيْهِ، وَأَبُو يُوسُفَ فِي أَحَدِ قَوْلَيْهِ يَرُدُّهَا وَقِيمَةَ صَاعٍ مِنْ تَمْرٍ - وَهُوَ أَيْضًا خِلَافُ أَمْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L25081–25082 Ibn Abi Layla in one of his two opinions, and Abu Yusuf in one of his two opinions, ruled that he must return it along with the value of a saʿ of dates - and this is also contrary to his command - upon him be peace and blessings.

وَقَالَ مَالِكٌ فِي أَحَدِ قَوْلَيْهِ: يُؤَدِّي أَهْلُ كُلِّ بَلَدٍ صَاعًا مِنْ أَغْلَبِ عَيْشِهِمْ - وَهَذَا خِلَافٌ لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L25083 Mālik said in one of his two opinions that the people of every region must give a ṣāʿ of their predominant staple food, and this contradicts the command of the Messenger of Allah, peace be upon him.

وَقَالَ أَبُو حَنِيفَةَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: إنْ كَانَ اللَّبَنُ حَاضِرًا لَمْ يَتَغَيَّرْ رَدَّهَا وَرَدَّ اللَّبَنَ، وَلَا يَرُدُّ مَعَهَا صَاعَ تَمْرٍ وَلَا شَيْئًا، وَإِنْ كَانَ قَدْ أَكَلَ اللَّبَنَ لَمْ يَكُنْ لَهُ رَدُّهَا، لَكِنْ يَرْجِعُ بِقِيمَةِ الْعَيْبِ فَقَطْ - وَهَذَا خِلَافٌ ظَاهِرٌ لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَعُوذُ بِاَللَّهِ مِنْ ذَلِكَ.

L25084 Abu Hanifa and Muhammad ibn al-Hasan said: If the milk of the female slave is present and unchanged, he must rescind the sale of her and return the milk, and he does not return a ṣāʿ of dates or anything else alongside her. If he has consumed the milk, he forfeits the right to rescind the sale of her, but may only claim compensation for the defect. This is a clear contradiction of the command of the Messenger of Allah—may Allah bless him and grant him peace—we seek refuge in Allah from that.

وَقَالَ أَبُو يُوسُفَ: إنْ كَانَ قَدْ أَكَلَ اللَّبَنَ رَدَّهَا وَقِيمَةَ مَا أَكَلَ مِنْ اللَّبَنِ. وَيَكْفِي مِنْ فَسَادِ هَذَيْنِ الْقَوْلَيْنِ: أَنَّهُمَا خِلَافُ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّهُ لَا سَلَفَ لَهُمْ فِيهِ، وَمَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُمْ، وَأَنَّهُ خِلَافُ قَوْلِ ابْنِ مَسْعُودٍ، وَأَبِي هُرَيْرَةَ، وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ - وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا خَالَفَ تَقْلِيدَهُمْ.

L25085 Abū Yūsuf said: If he consumed the milk, he must return the sheep along with the value of the milk consumed. The invalidity of these two opinions suffices as refutation: they contradict the command of Allah's Messenger—peace and blessings be upon him—and they have no precedent from the predecessors in this matter. We know of none who held this view before them, and it opposes the position of Ibn Masʿūd and Abū Hurayrah with no

dissenting opinion from the Companions—though they would consider such contradiction of their adherence a grave matter.

L25086 Abu Muhammad said: They raised objections in that matter by citing flaws in the report. At one point they asked: "Does it contradict the foundational principles?" We responded: "You have lied. Rather, it is itself a major foundational principle. The actual contradiction of foundational principles is your claim that ablution is required due to loud laughter occurring specifically during prayer."

L25087 Your claim that regurgitation does not invalidate ablution at all unless it amounts to a mouthful.

L25088 And your opinion on setting the compensation for the runaway slave at forty dirhams if he is at a distance of a three-day journey.

L25089 Your statement regarding the eye of a beast being a quarter of its value, ablution with wine, and all such calamitous absurdities—which are laughable—along with what is introduced by fabricated matters: these are more akin to the laws of Islam.

L25090 And on another occasion they said: Since those who uphold it did not apply analogy to it, we knew that it is abandoned. We replied: The analogy is invalid. Why do you not confront yourselves with this objection, since you did not apply analogy from the prohibition of selling the *mudabbar* to the prohibition of selling one bequeathed for emancipation and the conditionally emancipated, and since you did not apply analogy from bread in eating forgetfully by one who is fasting, and since you did not apply analogy from the expelled fetus for which a *ghurrah* is due?

L25091–25093 Once, they said: "It is abrogated by the prohibition in ribā because it constitutes food of dates exchanged for food of milk?" We responded: "You lied. It is neither milk for food nor dates for food. Rather, it refers to dates which God—Exalted is He—made obligatory for the seller upon the buyer if he returns the deceitfully milked animal, just as He obligated the bridal gift of ṣadāq upon the husband, not the wife, though she remains lawfully entitled to it." Marriage makes lawful his private parts, which were previ-

قَالَ أَبُو مُحَمَّد: وَاعْتَرَضُوا فِي ذَلِكَ بِأَنْ تَعَلَّلُوا فِي الْخَبَرِ بِعِلَلٍ، فَمَرَّةً قَالُوا: هُوَ مُخَالِفٌ لِلْأُصُولِ؟ فَقُلْنَا: كَذَبْتُمْ، بَلْ هُوَ أَصْلٌ مِنْ كِبَارِ الْأُصُولِ، وَإِنَّمَا الْمُخَالِفُ لِلْأُصُولِ قَوْلُكُمْ فِي الْوُضُوءِ مِنْ الْقَهْقَهَةِ فِي الصَّلَاةِ خَاصَّةً.

وَقَوْلُكُمْ بِأَنَّ الْقَلْسَ لَا يَنْقُضُ الْوُضُوءَ أَصْلًا إلَّا إذَا كَانَ مِلْءَ الْفَمِ.

وَقَوْلُكُمْ فِي جُعْلِ الْآبِقِ أَرْبَعُونَ دِرْهَمًا إذَا كَانَ عَلَى مَسِيرَةِ ثَلَاثٍ.

وَقَوْلُكُمْ فِي عَيْنِ الدَّابَّةِ رُبُعُ ثَمَنِهَا، وَالْوُضُوءِ بِالْخَمْرِ، وَسَائِرِ تِلْكَ الطَّوَامِّ الَّتِي هِيَ بِالْمَضَاحِكِ، وَبِمَا يَأْتِي بِهِ الْمُبَرْسَمُ: أَشْبَهُ مِنْهَا بِشَرَائِعِ الْإِسْلَامِ.

وَمَرَّةً قَالُوا: لَمَّا لَمْ يَقِسْ عَلَيْهِ الْقَائِلُونَ بِهِ عَلِمْنَا أَنَّهُ مَتْرُوكٌ؟ فَقُلْنَا: الْقِيَاسُ بَاطِلٌ، وَهَلَّا عَارَضْتُمْ أَنْفُسَكُمْ بِهَذَا الِاعْتِرَاضِ، إذْ لَمْ تَقِيسُوا عَلَى الْمَنْعِ مِنْ بَيْعِ الْمُدَبَّرِ الْمَنْعَ مِنْ بَيْعِ الْمُوصَى بِعِتْقِهِ وَالْمُعْتَقِ بِصِفَةٍ، وَإِذْ لَمْ تَقِيسُوا عَلَى الْخُبْزِ فِي الْأَكْلِ نَاسِيًا وَهُوَ صَائِمٌ، وَإِذْ لَمْ تَقِيسُوا عَلَى الْجَنِينِ يُلْقَى فَيَكُونُ فِيهِ غُرَّةٌ.

وَمَرَّةً قَالُوا: هُوَ مَنْسُوخٌ بِالتَّحْرِيمِ فِي الرِّبَا، لِأَنَّهُ طَعَامٌ مِنْ التَّمْرِ بِطَعَامٍ مِنْ اللَّبَنِ؟ فَقُلْنَا: كَذَبْتُمْ مَا هُوَ لَبَنٌ بِطَعَامٍ وَلَا بِتَمْرٍ، إنَّمَا هُوَ تَمْرٌ أَوْجَبَهُ اللَّهُ - تَعَالَى - لِلْبَائِعِ عَلَى الْمُبْتَاعِ - إنْ رَدَّ عَلَيْهِ الْمُصَرَّاةَ - كَمَا أَوْجَبَ الصَّدَاقَ عَلَى الزَّوْجِ لَا عَلَى الْمَرْأَةِ وَهِيَ مُسْتَحِلَّةٌ

ously forbidden to her, just as it makes lawful her private parts, which were forbidden to him, with no distinction.

بِذَلِكَ النِّكَاحِ فَرْجَهُ الَّذِي كَانَ حَرَامًا عَلَيْهَا، كَمَا هُوَ مُسْتَحِلٌّ بِهِ فَرْجَهَا الَّذِي كَانَ عَلَيْهِ حَرَامًا وَلَا فَرْقَ.

L25094 He obligated the blood money upon the liable agnatic kin and did not recommend it as a voluntary act for them.

وَكَمَا أَوْجَبَ الدِّيَةَ عَلَى الْعَاقِلَةِ وَلَا نَدَبَ لَهَا.

L25095 And once they said: "Have you considered if he sold her for a *mudd* of dates—does a *sa'* of dates not become due from him? Or have you considered if her milk were exceedingly abundant or scarce—is a *sa'* of dates not once compensation for half a *sa'* of milk, and another time for many *sa'* measures of milk?" We replied: "No, it is not compensation for the milk. As for purchasing her for a *mudd* of dates, we say: yes. What would the ruling be then? {'It is not for a believing man or a believing woman, when Allah and His Messenger have decided a matter, to have any choice in their affair'} [Al-Ahzab 36]. Why do you not confront yourselves with this contradiction, given your ruling that the owner of a fleeing slave must pay forty dirhams to whoever retrieves him—even if the slave is worth merely one dirham—and that one who kills a slave woman unintentionally pays only five thousand dirhams excluding five dirhams, even if she were equivalent to a hundred thousand dinars? Herein lies the objection to these absurdities—not against what is definitively established from the Messenger of Allah (peace be upon him)."[10]

وَمَرَّةً قَالُوا: أَرَأَيْتُمْ إِنْ كَانَ إِنَّمَا بَاعَهَا مِنْهُ بِمُدِّ تَمْرٍ أَلَيْسَ تَرْجِعُ عَلَيْهِ وَصَاعُ تَمْرٍ، أَوْ أَرَأَيْتُمْ إِنْ كَانَ لَبَنُهَا كَثِيرًا جِدًّا أَوْ قَلِيلًا جِدًّا، أَلَيْسَ صَاعُ التَّمْرِ عِوَضًا مَرَّةً عَنْ نِصْفِ صَاعِ اللَّبَنِ، وَمَرَّةً عَنْ صِيعَانٍ كَثِيرَةٍ مِنْ اللَّبَنِ؟ قُلْنَا: لَا، مَا هُوَ عِوَضًا عَنْ اللَّبَنِ، وَأَمَّا فِي ابْتِيَاعِهِ إيَّاهَا بِمُدِّ تَمْرٍ فَنَقُولُ: نَعَمْ، فَكَانَ مَاذَا؟ {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] وَهَلَّا عَارَضْتُمْ أَنْفُسَكُمْ بِهَذِهِ الْمُعَارَضَةِ إذْ قُلْتُمْ: يَغْرَمُ سَيِّدُ الْآبِقِ لِمَنْ رَدَّهُ عَلَيْهِ أَرْبَعِينَ دِرْهَمًا - وَإِنْ كَانَ الْآبِقُ لَا يُسَاوِي إلَّا دِرْهَمًا وَاحِدًا - وَلَا يُؤَدِّي قَاتِلُ الْأَمَةِ خَطَأً إلَّا خَمْسَةَ آلَافِ دِرْهَمٍ غَيْرَ خَمْسَةِ دَرَاهِمَ - وَلَوْ أَنَّهَا كَانَتْ تُسَاوِي مِائَةَ أَلْفِ دِينَارٍ؟ فَهَهُنَا فِي هَذِهِ الْحَمَاقَاتِ هُوَ الِاعْتِرَاضُ، لَا عَلَى الْمُتَيَقَّنِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L25096 Once, they said: "Was this ruling [applicable] when punishments involved property, such as burning the saddle of the embezzler of war spoils and similar matters?" We responded: "You have lied as Satan lied, and you have asserted what never appeared in any of the narrations. Those reports you mentioned are divided into three categories: the first being invalid reports—such as the ḥadīth about seizing half the wealth of those who withhold zakāt, the ḥadīth about burning the saddle of the embezzler of war spoils, and the ḥadīth regarding one who has intercourse with his wife's female slave."

وَمَرَّةً قَالُوا: كَانَ هَذَا الْحُكْمُ إذْ كَانَتْ الْعُقُوبَاتُ فِي الْأَمْوَالِ كَحَرْقِ رَحْلِ الْغَالِّ، وَنَحْوِ ذَلِكَ؟ فَقُلْنَا: كَذَبْتُمْ كَمَا كَذَبَ الشَّيْطَانُ، وَقُلْتُمْ مَا لَمْ يَأْتِ قَطُّ فِي شَيْءٍ مِنْ الرِّوَايَاتِ، وَتِلْكَ الْأَخْبَارُ الَّتِي ذَكَرْتُمْ مُنْقَسِمَةٌ إلَى ثَلَاثِ أَقْسَامٍ -: إمَّا خَبَرٌ بَاطِلٌ، كَحَدِيثِ أَخْذِ نِصْفِ مَالِ مَانِعِ الزَّكَاةِ، وَحَدِيثِ حَرْقِ رَحْلِ الْغَالِّ، وَحَدِيثِ وَاطِئِ أَمَةِ امْرَأَتِهِ.

L25097 If it is an established report, its ruling remains valid, such as the expiation required of one who intentionally has intercourse during the daytime of

وَإِمَّا خَبَرٌ ثَابِتٌ، - فَحُكْمُهُ بَاقٍ كَالْكَفَّارَةِ عَلَى الْوَاطِئِ عَامِدًا فِي نَهَارِ رَمَضَانَ، وَالدِّيَةِ عَلَى قَاتِلِ الْعَمْدِ إذَا رَضِيَهَا أَوْلِيَاءُ الْقَتِيلِ، وَجَزَاءِ الصَّيْدِ.

[10] **Qur'an references (L25095):** Qur'an 33:36 (Al-Ahzab).

Ramadan, the blood money required of an intentional killer if the heirs of the slain accept it, and the compensation for hunting.

L25098 As for the category whose abrogation is established by another text, the obligatory ruling is that it is abrogated. In our time, we only mention that if such a text existed, it would be true. As for anyone who claims abrogation regarding an authentic report, he is a liar, fabricator, sinner: one who states about Allah—Exalted is He—what He did not say without basis, misreports about the Messenger of Allah—peace be upon him—what he did not state about himself, and declares what he has no knowledge of.

وَإِمَّا قِسْمٌ ثَبَتَ بِنَصٍّ آخَرَ نَسْخُهُ فَوَجَبَ الْقَوْلُ بِأَنَّهُ مَنْسُوخٌ وَمَا نَذْكُرُهُ فِي وَقْتِنَا هَذَا إلَّا أَنَّهُ لَوْ وُجِدَ لَصَدَقَ - وَأَمَّا كُلُّ مَنْ ادَّعَى فِي خَبَرٍ ثَابِتٍ نَسْخًا فَهُوَ كَاذِبٌ آفِكٌ آثِمٌ قَائِلٌ عَلَى اللَّهِ - تَعَالَى - مَا لَمْ يَقُلْهُ، وَمُخْبِرٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَا لَمْ يُخْبِرْ بِهِ عَنْ نَفْسِهِ، قَائِلٌ مَا لَا عِلْمَ لَهُ بِهِ.

L25099–25100 And likewise, whoever interprets the Hadith contrary to its apparent meaning in any way—how can he justify this? The response to him is: You lied, you lied, you lied! You have spoken falsehood against the Messenger of Allah (peace and blessings of Allah be upon him), fabricated words he never uttered, judged by conjecture which is the most deceitful of speech, and rejected certainty for baseless assumptions.

وَهَكَذَا كُلُّ مَنْ حَمَلَ الْحَدِيثَ عَلَى غَيْرِ ظَاهِرِهِ بِأَيِّ وَجْهٍ أَحَالَهُ؟ فَجَوَابُهُ: كَذَبْتَ كَذَبْتَ كَذَبْتَ، وَقُلْتَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْبَاطِلَ، وَقَوَّلْتَهُ مَا لَمْ يَقُلْهُ وَحَكَمْت بِالظَّنِّ الَّذِي هُوَ أَكْذَبُ الْحَدِيثِ، وَرَدَدْت الْيَقِينَ بِالظُّنُونِ.

L25101 Some of them said: “This is a disputed hadith. Saʿīd ibn Manṣūr narrated it from Fulayḥ ibn Sulaymān, from Ayyūb ibn ʿAbd al-Raḥmān, from Yaʿqūb ibn Abī Yaʿqūb, from Abū Hurayrah, from the Prophet (peace be upon him), who said: ’Whoever purchases a sheep whose udders were tied to inflate milk production, the buyer has the option: if he wishes, to return it along with a ṣāʿ of milk.’”

وَقَالَ بَعْضُهُمْ هَذَا حَدِيثٌ مُضْطَرَبٌ فِيهِ، رَوَاهُ سَعِيدُ بْنُ مَنْصُورٍ عَنْ فُلَيْحِ بْنِ سُلَيْمَانَ عَنْ أَيُّوبَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ يَعْقُوبَ بْنِ أَبِي يَعْقُوبَ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ اشْتَرَى شَاةً مُصَرَّاةً فَالْمُشْتَرِي بِالْخِيَارِ إنْ شَاءَ رَدَّهَا وَصَاعًا مِنْ لَبَنٍ» .

L25102 And Abu Dawud narrated it: Abu Kamil narrated to us, Abd al-Wahid narrated to us, Sadaqah ibn Sa’id narrated to us from Jumayy ibn Umayr al-Taymi: I heard Abdullah ibn Umar say, and he mentioned it, with the narration stating: “If he returns it, he returns along with it wheat equivalent to one or two times its milk.”

وَرَوَاهُ أَبُو دَاوُد نا أَبُو كَامِلٍ نا عَبْدُ الْوَاحِدِ نا صَدَقَةُ بْنُ سَعِيدٍ عَنْ جُمَيْعِ بْنِ عُمَيْرٍ التَّيْمِيِّ: سَمِعْت عَبْدَ اللَّهِ بْنَ عُمَرَ يَقُولُ فَذَكَرَهُ وَفِيهِ: «فَإِنْ رَدَّهَا رَدَّ مَعَهَا مِثْلَ أَوْ مِثْلَيْ لَبَنِهَا قَمْحًا» .

L25103 Hammad ibn Abi al-Ja‘d narrated from Qatadah from Ibn Sirin from Abu Hurayrah from the Prophet—peace and blessings be upon him—: “A *sa‘* of dates, not the dark variety.”

وَرَوَاهُ حَمَّادُ بْنُ أَبِي الْجَعْدِ عَنْ قَتَادَةَ عَنْ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «صَاعًا مِنْ تَمْرٍ، لَا سَمْرَاءَ» .

L25104 Similarly, Ashʿath ibn ʿAbd al-Malik al-Ḥumrānī narrated it as a musnad from Ibn Sīrīn from Abū Hurayrah. Similarly, ʿAbd al-Aʿlā narrated it as a

musnad from Hishām ibn Ḥassān from Ibn Sīrīn from Abū Hurayrah. Qurrah ibn Khālid narrated it from Ibn Sīrīn from Abū Hurayrah from the Prophet: «A ṣāʿ of food - not barley.»

وَهَكَذَا رَوَاهُ أَشْعَثُ بْنُ عَبْدِ الْمَلِكِ الْحُمْرَانِيُّ عَنِ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ مُسْنَدًا - وَهَكَذَا رَوَاهُ عَبْدُ الْأَعْلَى عَنْ هِشَامِ بْنِ حَسَّانَ عَنِ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ مُسْنَدًا - وَرَوَاهُ قُرَّةُ بْنُ خَالِدٍ عَنِ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ: «صَاعًا مِنْ طَعَامٍ لَا سَمْرَاءَ» .

L25105 We have narrated it through the chain of al-Bazzār: ʿAmr ibn ʿAlī narrated to us, Abū ʿĀṣim narrated to us from al-Ashʿath—who is Ibn ʿAbd al-Malik al-Ḥumrānī—from Muḥammad ibn Sīrīn, from Abū Hurayrah, who said: The Messenger of Allāh—peace and blessings be upon him—said: "Whoever purchases a lactating sheep retains the option for three days. If he returns it, he must do so along with a ṣāʿ of dates - not samrāʾ."

رُوِّينَاهُ مِنْ طَرِيقِ الْبَزَّارِ نا عَمْرُو بْنُ عَلِيٍّ نا أَبُو عَاصِمٍ عَنِ الْأَشْعَثِ - هُوَ ابْنُ عَبْدِ الْمَلِكِ الْحُمْرَانِيُّ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنِ اشْتَرَى شَاةً مُحَفَّلَةً فَهُوَ بِالْخِيَارِ ثَلَاثَةَ أَيَّامٍ إِنْ رَدَّهَا رَدَّهَا وَرَدَّ مَعَهَا صَاعًا مِنْ تَمْرٍ لَا سَمْرَاءَ» .

L25106 Via Muslim's transmission: Muḥammad ibn ʿAmr ibn Jabalah → Abū ʿĀmir (al-ʿAqdī) → Qurrah (ibn Khālid) → Muḥammad ibn Sīrīn → Abū Hurayrah → the Prophet (peace and blessings be upon him), who said: "Whoever purchases a sheep fraudulently confined to retain its milk retains the option for three days. If he returns it, he must return it with a ṣāʿ of dates - not white dates."[11]

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عَمْرِو بْنِ جَبَلَةَ نا أَبُو عَامِرٍ - هُوَ الْعَقَدِيُّ - نا قُرَّةُ - هُوَ ابْنُ خَالِدٍ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنِ اشْتَرَى شَاةً مُصَرَّاةً فَهُوَ بِالْخِيَارِ ثَلَاثَةَ أَيَّامٍ فَإِنْ رَدَّهَا رَدَّ مَعَهَا صَاعًا مِنْ طَعَامٍ لَا سَمْرَاءَ» .

L25107 Similarly, Al-Ḥajjāj ibn Al-Minhāl narrated it from Ḥammād ibn Salamah, from Ayyūb and Ḥabīb ibn Al-Shahīd, from Ibn Sīrīn, from Abū Hurayrah, from the Prophet - peace and blessings of Allah be upon him: "A ṣāʿ of food, not samrāʾ."

وَهَكَذَا رَوَاهُ الْحَجَّاجُ بْنُ الْمِنْهَالِ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ وَحَبِيبِ بْنِ الشَّهِيدِ عَنِ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «صَاعًا مِنْ طَعَامٍ لَا سَمْرَاءَ» .

L25108–25109 And via the chain of Shu'bah, al-Hakam ibn 'Utaybah informed me that he heard 'Abd al-Rahman ibn Abi Layla from a man among the Companions of the Messenger of Allah—peace and blessings be upon him—"he rejected her [case] while she had a ṣāʿ of food."

وَمِنْ طَرِيقِ شُعْبَةَ أَخْبَرَنِي الْحَكَمُ بْنُ عُتَيْبَةَ أَنَّهُ سَمِعَ عَبْدَ الرَّحْمَنِ بْنَ أَبِي لَيْلَى عَنْ رَجُلٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «رَدَّهَا وَمَعَهَا صَاعٌ مِنْ طَعَامٍ» .

L25110 And through the chain of Rawḥ ibn ʿUbādah from ʿAwf ibn Abī Jamīlah from

[11] **Hadith references (L25106):** Sahih Muslim 1524c; Mishkat al-Masabih 2847.

Khilās ibn ʿAmr, and Ibn Sīrīn, both narrating from Abū Hurayrah from the Prophet (peace be upon him), “Return it along with a vessel of food.”

وَمِنْ طَرِيقِ رَوْحِ بْنِ عُبَادَةَ عَنْ عَوْفِ بْنِ أَبِي جَمِيلَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو، وَابْنِ سِيرِينَ، كِلَاهُمَا عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «رَدَّهَا وَإِنَاءً مِنْ طَعَامٍ» .

L25111 They said: “So is this severe inconsistency?” We replied: “By no means! As for the hadith of Saʿīd ibn Manṣūr, its chain includes Fulayḥ—and he is a narrator of debated reliability.”

قَالُوا: فَهَذَا اضْطِرَابٌ شَدِيدٌ؟ قُلْنَا: كَلَّا، أَمَّا حَدِيثُ سَعِيدِ بْنِ مَنْصُورٍ، فَفِيهِ: فُلَيْح - وَهُوَ مُتَكَلَّمٌ فِيهِ.

L25112 Ayyub ibn Abd al-Rahman—al-ʻAdawi—is weak and unknown.

وَأَيُّوبُ بْنُ عَبْدِ الرَّحْمَنِ - هُوَ الْعَدَوِيُّ - ضَعِيفٌ مَجْهُولٌ.

L25113 Yaʻqub ibn Abī Yaʻqub — an unknown narrator — was therefore excluded.

وَيَعْقُوبُ بْنُ أَبِي يَعْقُوبَ - مَجْهُولٌ - فَسَقَطَ.

L25114 As for the narration of Ibn ʾUmar, in its chain are Ṣadaqah ibn Saʿīd and Jumayʿ ibn ʿUmayr - both being weak narrators - thus it is discarded.

وَأَمَّا حَدِيثُ ابْنِ عُمَرَ فَفِيهِ صَدَقَةُ بْنُ سَعِيدٍ، وَجُمَيْعُ بْنُ عُمَيْرٍ، وَهُمَا ضَعِيفَانِ - فَسَقَطَ.

L25115 As for the narration of Awf regarding “a vessel of food,” it is general in wording, so all other ahadith clarify that this vessel refers to a ṣāʿ.

وَأَمَّا رِوَايَةُ عَوْفٍ «إنَاءً مِنْ طَعَامٍ» فَمُجْمَلٌ، فَسَّرَتْهُ سَائِرُ الْأَحَادِيثِ بِأَنَّ ذَلِكَ الْإِنَاءَ صَاعٌ.

L25116 As for the narration transmitted by al-Ḥajjāj from Ḥammād ibn Salamah, we transmitted it through Muḥammad ibn al-Muthannā from al-Ḥajjāj with his chain of transmission. Al-Ḥajjāj expressed doubt regarding it, questioning whether it was *burr* or not.

وَأَمَّا رِوَايَةُ الْحَجَّاجِ عَنْ حَمَّادِ بْنِ سَلَمَةَ فَإِنَّا رُوِّينَاهَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى عَنْ الْحَجَّاجِ بِإِسْنَادِهِ، فَشَكَّ فِيهِ الْحَجَّاجُ، أَهُوَ بُرٌّ أَمْ لَا.

L25117 We narrated it from Hammad ibn Salamah, from Ayyub, Hisham ibn Hassan, and Habib ibn al-Shahid, via the chain of Musa ibn Ismail, who said: “A saʿ of dates,” and he does not doubt.

وَرُوِّينَاهَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ، وَهِشَامِ بْنِ حَسَّانَ، وَحَبِيبِ بْنِ الشَّهِيدِ مِنْ طَرِيقِ مُوسَى بْنِ إسْمَاعِيلَ فَقَالَ: صَاعُ تَمْرٍ، وَلَا يَشُكُّ.

L25118 Hammad ibn al-Jaʻd from Qatadah is weak.

وَحَمَّادُ بْنُ الْجَعْدِ عَنْ قَتَادَةَ ضَعِيفٌ.

L25119 Only the hadiths narrated by Ashʻath and Qurrah from Ibn Sīrīn from Abū Hurayrah remain, and both are authentic with no hidden defect in them. One states “a saʻ of dates, excluding the samrā’ variety,” and the other “a saʻ of food [wheat], excluding the samrā’ variety.” We have previously clarified

that “food” [i.e., wheat], when mentioned in this unrestricted manner, refers specifically to wheat itself alone.

فَلَمْ يَبْقَ إِلَّا حَدِيثُ أَشْعَثَ وَقُرَّةَ عَنْ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ، وَهُمَا صَحِيحَانِ لَا عِلَّةَ فِيهِمَا، أَحَدُهُمَا «صَاعَ تَمْرٍ، لَا سَمْرَاءَ» وَالْآخَرُ «صَاعَ طَعَامٍ، لَا سَمْرَاءَ» وَالطَّعَامُ قَدْ بَيَّنَّا قَبْلُ أَنَّهُ الْبُرُّ نَفْسُهُ فَقَطْ إِذَا أُطْلِقَ هَكَذَا.

L25120 A group of people said: “Ibn Sirīn is the one who showed inconsistency in narrating this matter. It is therefore obligatory to disregard the narrations on this matter in which he was inconsistent and to turn instead to the reports of others besides him who transmitted it from Abū Hurayrah—those whose narrations remained consistent, and they are a group of reliable transmitters.”

فَقَالَ قَوْمٌ: إِنَّ ابْنَ سِيرِينَ هُوَ الَّذِي اضْطَرَبَ عَلَيْهِ فَالْوَاجِبُ تَرْكُ مَا اضْطَرَبَ عَلَيْهِ فِيهِ، وَالرُّجُوعُ إِلَى رِوَايَةِ مَنْ رَوَاهُ عَنْ أَبِي هُرَيْرَةَ سِوَاهُ فَلَمْ يَضْطَرِبْ عَلَيْهِ فِيهِ، وَهُمْ جَمَاعَةٌ.

L25121–25123 Abu Muḥammad said: We do not adopt this position because neither Qur’ān nor Sunnah established this ruling, nor... Reasonable, but we say—and by Allah, Exalted is He, success is attained—that both expressions are sound in terms of the chain of transmission. There is no way to conclusively attribute delusion or error to the narration of a trustworthy narrator except with absolute certainty that admits no other possibility.

قَالَ أَبُو مُحَمَّدٍ: وَلَسْنَا نَقُولُ بِهَذَا، لِأَنَّهُ لَمْ يُوجِدْ هَذَا الْحُكْمَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا مَعْقُولٌ، لَكِنَّا نَقُولُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ: إِنَّ كِلَا اللَّفْظَيْنِ صَحِيحٌ مِنْ طَرِيقِ الْإِسْنَادِ، وَلَا سَبِيلَ إِلَى الْقَطْعِ بِالْوَهْمِ وَالْخَطَأِ عَلَى رِوَايَةِ ثِقَةٍ إِلَّا بِيَقِينٍ لَا يُحْتَمَلُ غَيْرُهُ.

L25124 The term *as-samrā’* must either denote specific types of wheat or refer to all wheat. If it refers to all wheat, then their narration is undeniably a delusion and an inevitable error, for it is impermissible for the Messenger of Allah—peace and blessings be upon him—to say, “a saa‘ of wheat, but not of wheat.”

وَلَا تَخْلُو “ السَّمْرَاءُ ” مِنْ أَنْ تَكُونَ لَفْظَةً وَاقِعَةً عَلَى بَعْضِ أَصْنَافِ الْبُرِّ، أَوْ تَكُونَ اسْمًا وَاقِعًا عَلَى جَمِيعِ الْبُرِّ، فَإِنْ كَانَتْ وَاقِعَةً عَلَى جَمِيعِ الْبُرِّ، فَحَدِيثُ هَؤُلَاءِ وَهْمٌ بِلَا شَكٍّ، وَخَطَأٌ بِلَا مُحَالَةٍ، لِأَنَّهُ لَا يَجُوزُ أَنْ يَقُولَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَاعًا مِنْ بُرٍّ وَلَا مِنْ بُرٍّ.

L25125 If the term “as-samrā’” (white wheat) applies to certain varieties of wheat, the obligation requires that no compensation suffices for a muṣarrāh animal (one with a withheld udder) among all livestock types except a saʿ of dates exclusively—except for sheep alone. In the case of sheep, one must return with it a saʿ of dates as we mentioned, or a saʿ from any type of wheat given—excluding “as-samrā’”—for only dates suffice, not white wheat. Non-wheat compensations for sheep are invalid if the conditions are as we stated. And success comes from Allah alone, the Exalted.

وَإِنْ كَانَتْ لَفْظَةُ “ السَّمْرَاءِ ” وَاقِعَةً عَلَى بَعْضِ أَصْنَافِ الْبُرِّ فَالْوَاجِبُ أَنْ لَا يُجْزِيَ فِي الْمُصَرَّاةِ مِنْ جَمِيعِ أَنْوَاعِ الْحَيَوَانِ كُلِّهَا إِلَّا صَاعُ تَمْرٍ فَقَطْ، إِلَّا الشَّاةَ وَحْدَهَا، فَإِنَّهُ يُرَدُّ مَعَهَا صَاعًا مِنْ تَمْرٍ، كَمَا ذَكَرْنَا، أَوْ صَاعًا مِنْ أَيِّ أَصْنَافِ الْبُرِّ أَعْطَى، حَاشَا “ السَّمْرَاءَ ” لَا يُجْزِي غَيْرُ التَّمْرِ، وَغَيْرُ “ الْبُرِّ ” فِي الشَّاةِ إِنْ كَانَ كَمَا ذَكَرْنَا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

If dates are unavailable, their monetary value—assuming they were present in that location—is assessed, or the obligation to procure dates becomes necessary.

فَإِنْ لَمْ يُوجَدْ التَّمْرُ فَقِيمَتُهُ لَوْ وُجِدَ فِي ذَلِكَ الْمَكَانِ، أَوْ تَكْلِيفُ الْمَجِيءِ بِالتَّمْرِ وَلَا بُدَّ.

If it is asked: From where do you derive the ruling to return the milk or compensate for it, when this is not stated in the textual evidence? We respond: Nor does the textual evidence state that it should not be returned. However, the milk is purchased with the ewe as a single transaction, and the obligation is to either retain the transaction or return it, as we previously established through the texts we cited. Its components cannot be separated.

فَإِنْ قِيلَ: فَمِنْ أَيْنَ قُلْتُمْ بِرَدِّ اللَّبَنِ أَوْ تَضْمِينِهِ، وَلَيْسَ هُوَ فِي الْخَبَرِ؟ قُلْنَا: وَلَا فِي الْخَبَرِ أَنْ لَا يَرُدَّهُ، إِلَّا أَنَّ اللَّبَنَ مُشْتَرًى مَعَ الشَّاةِ صَفْقَةً وَاحِدَةً، وَالْوَاجِبُ إِمْسَاكُ الصَّفْقَةِ أَوْ رَدُّهَا كَمَا قَدَّمْنَا بِالنُّصُوصِ الَّتِي ذَكَرْنَا، لَا يَتْرُكُ بَعْضُهَا الْبَعْضَ.

If it is said: Indeed, it is mentioned in the hadith, "Thus, in its al-ḥalba (act of milking) is a ṣāʿ of dates," we respond: Yes, and al-ḥalba refers to the act (of milking), though it can also denote the extracted milk. However, this term was designated metaphorically, and it is impermissible to transfer a word from its literal meaning to a metaphorical sense except by textual evidence – for wealth is prohibited except by textual evidence. Success is from Allah, the Exalted.

فَإِنْ قِيلَ: قَدْ جَاءَ فِي الْخَبَرِ فَفِي حَلْبَتِهَا صَاعٌ مِنْ تَمْرٍ؟ قُلْنَا: نَعَمْ، وَالْحَلْبَةُ هِيَ الْفِعْلُ، وَقَدْ تَكُونُ أَيْضًا اللَّبَنَ الْمُحْتَلَبَ، إِلَّا أَنَّهُ إِنَّمَا سُمِّيَ بِذَلِكَ مَجَازًا، وَلَا يَجُوزُ نَقْلُ اللَّفْظَةِ عَنْ مَوْضُوعِهَا إِلَى الْمَجَازِ إِلَّا بِنَصٍّ، وَالْأَمْوَالُ مُحَرَّمَةٌ إِلَّا بِنَصٍّ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: The defective item lapses due to death, sale, manumission, childbirth, or destruction.

[مَسْأَلَة فَاتَ الْمَعِيبُ بِمَوْتٍ أَوْ بَيْعٍ أَوْ عِتْقٍ أَوْ إِيلَادٍ أَوْ تَلَفٍ]

Issue 1573: If the defective item is lost due to death, sale, emancipation, breeding, or destruction, the buyer or seller may claim compensation for the defect's value. This is because if the item was not pledged as collateral and the defect was acquired along with the fraudulent loss imposed on the owner, it becomes unlawful (ḥarām) for the taker to possess his property without consent. Since there is no means to rescind the transaction, the obligated recourse is to claim compensation for the defect's value from his property, for which no mutual agreement on compensation existed.

١٥٧٣ - مَسْأَلَةٌ: فَإِنْ فَاتَ الْمَعِيبُ بِمَوْتٍ، أَوْ بَيْعٍ، أَوْ عِتْقٍ، أَوْ إِيلَادٍ أَوْ تَلَفٍ، فَلِلْمُشْتَرِي، أَوْ الْبَائِعِ: الرُّجُوعُ بِقِيمَةِ الْعَيْبِ؛ لِأَنَّهُ إِذَا لَمْ يَرْهَنْ وَأَخَذَ الْعَيْبَ بِمَا عَلَيْهِ مِنْ الْغَبْنِ فَمَالُهُ حَرَامٌ عَلَى آخِذِهِ بِغَيْرِ رِضَاهُ، وَلَا سَبِيلَ إلَى رَدِّ الصَّفْقَةِ، فَالْوَاجِبُ الرُّجُوعُ بِمَا لَمْ يَرْضَ بِبَدَلِهِ مِنْ مَالِهِ.

Similarly, whoever is disadvantaged in their sale due to unfair pricing may reclaim the value of the disparity, and this is obligatory.

وَكَذَلِكَ مَنْ غُبِنَ فِي بَيْعِهِ فَإِنَّهُ يَرْجِعُ بِقِيمَةِ الْغَبْنِ وَلَا بُدَّ.

Similarly, whoever purchases seeds, plants them, and they do not sprout may reclaim the difference in its value as it is. It is defective, and there exists a disparity between its [current] value and its value when cultivated, for its

وَكَذَلِكَ مَنْ اشْتَرَى زَرِيعَةً فَزَرَعَهَا فَلَمْ تَنْبُتْ فَإِنَّهُ يَرْجِعُ بِمَا بَيْنَ قِيمَتِهَا كَمَا هِيَ رَدِيئَةٌ وَبَيْنَ قِيمَتِهَا نَابِتَةً؛ لِأَنَّهَا قَدْ تَلِفَتْ عَيْنُهَا، فَإِنَّمَا لَهُ الرُّجُوعُ بِقِيمَةِ الْغَبْنِ، فَإِنْ كَانَ اشْتَرَاهَا

original form has perished. Thus, the buyer may only recover the amount of the fraudulent disparity. If he purchased it under the stipulation that it was cultivated, the transaction becomes voidable. He must return an equivalent item or its monetary value—if unavailable—and may recover the entire price. And success is from Allah alone.

The Issue of Rescission Due to the Emergence of a Defect

Issue 1574: If he sells it and it is returned to him, he no longer retains the right to return it. Rather, he may only reclaim the value of the defect. This is because his right of return has been nullified by the defective item's departure from his ownership, in accordance with Allah's statement - Exalted is He: {No soul bears the burden of another} [Al-An'ām 6:164].[12]

He is entitled only to the value of the fraudulent overreach, and whatever ruling has been nullified by evidence cannot be reinstated except by a definitive scriptural text necessitating it. And success is from Allah—the Most High—.

Issue: If the person entitled to return a defective item dies before verbally declaring the return.

1575. Issue: If the one entitled to rescission dies before verbally declaring rescission and [affirming] that he does not consent, the transaction becomes binding on his heirs. This is because the rescission option is not inherited - as it is not property - and because he had consented to the contract. The contract remains valid unless it becomes established that he was not consenting. If this is not established, then Allah the Exalted has said: "No soul earns except against itself" (6:164).[13]

Issue: The death of the one upon whom it is obligatory to restore the defective item.

1576. Issue: If the party obligated to accept the return dies, the discoverer

[12] **Qur'an references (L25136):** Qur'an 6:164 (Al-An'am).
[13] **Qur'an references (L25139):** Qur'an 6:164 (Al-An'am).

عَلَى أَنَّهَا نَابِتَةٌ فَالصَّفْقَةُ فَاسِدَةٌ، وَيَرُدُّ مِثْلَهَا أَوْ قِيمَتَهَا - إِنْ لَمْ تُوجَدْ - وَيَرْجِعُ بِالثَّمَنِ كُلِّهِ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةَ الرَّدِّ بِخُرُوجِ الْمَعِيبِ]

١٥٧٤ - مَسْأَلَةٌ: فَإِنْ بَاعَهُ فَرُدَّ عَلَيْهِ لَمْ يَكُنْ لَهُ أَنْ يَرُدَّهُ، لَكِنْ يَرْجِعُ بِقِيمَةِ الْعَيْبِ فَقَطْ، لِأَنَّهُ قَدْ بَطَلَ مَا كَانَ لَهُ مِنْ الرَّدِّ بِخُرُوجِ الْمَعِيبِ عَنْ مِلْكِهِ، لِقَوْلِ اللَّهِ - تَعَالَى -: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

وَلَمْ يَجِبْ لَهُ إِلَّا قِيمَةُ الْغَبْنِ فَقَطْ، وَمَا سَقَطَ حُكْمُهُ بِبُرْهَانٍ فَلَا يَرْجِعُ إِلَّا بِنَصٍّ يُوجِبُ رُجُوعَهُ -، وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَةَ مَاتَ الَّذِي لَهُ رَدُّ المعيب قَبْلَ أَنْ يَلْفِظَ بِالرَّدِّ]

١٥٧٥ - مَسْأَلَةٌ: فَإِنْ مَاتَ الَّذِي لَهُ الرَّدُّ قَبْلَ أَنْ يَلْفِظَ بِالرَّدِّ، وَبِأَنَّهُ لَا يَرْضَى: فَقَدْ لَزِمَتْ الصَّفْقَةُ وَرَثَتَهُ، لِأَنَّ الْخِيَارَ لَا يُورَثُ، إذْ لَيْسَ مَالًا، وَلِأَنَّهُ قَدْ رَضِيَ بِالْعَقْدِ، فَهُوَ عَلَى الرِّضَا مَا لَمْ يَتَبَيَّنْ أَنَّهُ غَيْرُ رَاضٍ، فَإِنْ لَمْ يَتَبَيَّنْ ذَلِكَ، فَقَدْ قَالَ - تَعَالَى -: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤]

[مَسْأَلَةَ مَاتَ الَّذِي يَجِبُ عَلَيْهِ رَدُّ المعيب]

١٥٧٦ - مَسْأَلَةٌ: فَإِنْ مَاتَ الَّذِي يَجِبُ عَلَيْهِ الرَّدُّ كَانَ لِوَاجِدِ الْعَيْبِ أَنْ يَرُدَّ الْمَعِيبَ عَلَى الْوَرَثَةِ، لِأَنَّ لَهُ الرِّضَا أَوْ الرَّدَّ، فَلَا يُبْطِلُهُ مَوْتُ الْغَابِنِ، وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

of the defect may return the defective item to the heirs, because he retains the option of acceptance or return. Therefore, the death of the unfair party does not nullify this right. And with God, the Exalted, is success.

The issue of the defect that necessitates rescission.

1577. Issue: The defect warranting rescission is one that reduces the price at which the buyer purchased or the seller sold an asset to an extent people would customarily overlook in equivalent transactions, for this constitutes *ghubn* (unjust loss), and no other form of *ghubn* qualifies.

If someone purchases an item at a price equivalent to its value as a defective item, or sells it at a price equivalent to its value as a defective item—while unaware of the defect—and later discovers the defect, they have no right to rescind the transaction, because the price already reflected the defective condition.

Some people have said he has the right to rescind—this is a blatant error, for it constitutes injustice toward the seller and consideration and favoritism toward the buyer without any evidence, neither from the Quran nor the Sunnah.

Issue: A person purchased [an item] for a price, then discovered a defect that would reduce the price, and afterward, the price increased.

1578 – Issue: If someone purchased an item for a price and later discovered a defect that would have justified a reduction in the price at the time of purchase—but the price has since risen to the point where no reduction from the original price is possible, or the defect ceased to exist before or after the buyer became aware of it—the buyer retains the right to rescind the transaction in all these cases, because at the time of the contract, he suffered an unfair detriment. He has the right to reject the fraud—when he becomes aware of it—and this does not necessitate forfeiting his right to the option, for there is no Quranic text or Sunnah [to contradict this], as we have previously stated. And success comes only from Allah, the Most High.

[مَسْأَلَة الْعَيْبُ الَّذِي يَجِبُ بِهِ الرَّدُّ]

١٥٧٧ - مَسْأَلَةٌ: وَالْعَيْبُ الَّذِي يَجِبُ بِهِ الرَّدُّ: هُوَ مَا حَطَّ مِنْ الثَّمَنِ الَّذِي اشْتَرَى بِهِ أَوْ بَاعَ بِهِ مَالًا يَتَغَابَنُ النَّاسُ بِمِثْلِهِ؛ لِأَنَّ هَذَا هُوَ الْغَبْنُ، لَا غَبْنَ غَيْرُهُ.

فَإِنْ كَانَ اشْتَرَى الشَّيْءَ بِثَمَنٍ هُوَ قِيمَتُهُ مَعِيبًا، أَوْ بَاعَهُ بِثَمَنٍ هُوَ قِيمَتُهُ مَعِيبًا - وَهُوَ لَا يَدْرِي الْعَيْبَ - ثُمَّ وَجَدَ الْعَيْبَ فَلَا رَدَّ لَهُ؛ لِأَنَّهُ لَمْ يَجِدْ عَيْبًا.

وَقَدْ قَالَ قَوْمٌ: لَهُ الرَّدُّ - وَهَذَا خَطَأٌ فَاحِشٌ؛ لِأَنَّهُ ظُلْمٌ لِلْبَائِعِ، وَعِنَايَةٌ وَمُحَابَاةٌ لِلْمُشْتَرِي بِلَا بُرْهَانٍ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ.

[مَسْأَلَة اشْتَرَى بِثَمَنٍ ثُمَّ اطَّلَعَ عَلَى عَيْبٍ كَانَ يَحُطُّ مِنْ الثَّمَنِ ثُمَّ غلى]

١٥٧٨ - مَسْأَلَةٌ: فَلَوْ كَانَ قَدْ اشْتَرَى بِثَمَنٍ ثُمَّ اطَّلَعَ عَلَى عَيْبٍ كَانَ يَحُطُّ مِنْ الثَّمَنِ حِينَ اشْتَرَاهُ، إلَّا أَنَّهُ قَدْ غَلَا حَتَّى صَارَ لَا يَحُطُّ مِنْ الثَّمَنِ الَّذِي اشْتَرَاهُ شَيْئًا، أَوْ زَالَ الْعَيْبُ قَبْلَ أَنْ يَعْلَمَ بِهِ، أَوْ بَعْدَ أَنْ عَلِمَ بِهِ، فَلَهُ الرَّدُّ فِي كُلِّ ذَلِكَ؛ لِأَنَّهُ حِينَ الْعَقْدِ وَقَعَ عَلَيْهِ غَبْنٌ فَلَهُ أَنْ لَا يَرْضَى بِالْغَبْنِ - إذَا عَلِمَهُ - وَلَا يُوجِبُ سُقُوطَ مَا لَهُ مِنْ الْخِيَارِ لِمَا ذَكَرْنَا قُرْآنٌ، وَلَا سُنَّةٌ، وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة بَاعَ بِدَرَاهِم إِلَى أَجَل فلما قبض الثَّمَن وجد عَيْبًا أَوْ اسْتَحَقَّ مَا أَخَذَ]

١٥٧٩ - مَسْأَلَةٌ: وَمَنْ بَاعَ بِدَرَاهِمَ أَوْ بِدَنَانِيرَ فِي الذِّمَّةِ أَوْ إلَى أَجَلٍ، أَوْ سَلَمٍ فِيمَا يَجُوزُ فِيهِ السَّلَمُ - فَلَمَّا قَبَضَ الثَّمَنَ، أَوْ مَا سَلَّمَ فِيهِ: وَجَدَ عَيْبًا أَوْ اسْتَحَقَّ مَا أَخَذَ أَوْ بَعْضَهُ: فَلَيْسَ لَهُ إلَّا الِاسْتِبْدَالُ فَقَطْ، لِأَنَّهُ لَيْسَ لَهُ - عَيْنٌ مُعَيَّنَةٌ، إنَّمَا لَهُ صِفَةٌ، فَالَّذِي أُعْطِيَ هُوَ غَيْرُ حَقِّهِ، فَعَلَيْهِ أَنْ يَرُدَّ مَا لَيْسَ لَهُ، وَأَنْ يَطْلُبَ مَا لَهُ -، وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة وَكَّلَ وَكِيلًا لِيَبْتَاعَ لَهُ شَيْئًا سَمَّاهُ فَابْتَاعَهُ لَهُ بِغَبْنٍ]

١٥٨٠ - مَسْأَلَةٌ: وَمَنْ وَكَّلَ وَكِيلًا لِيَبْتَاعَ لَهُ شَيْئًا سَمَّاهُ، فَابْتَاعَهُ لَهُ بِغَبْنٍ بِمَا لَا يَتَغَابَنُ النَّاسُ بِمِثْلِهِ، أَوْ وَجَدَهُ مَعِيبًا عَيْبًا يَحُطُّ بِهِ مِنْ الثَّمَنِ الَّذِي اشْتَرَاهُ بِهِ: فَلَهُ مِنْ الرَّدِّ، أَوْ الْإِمْسَاكِ، أَوْ الِاسْتِبْدَالِ، أَوْ مِنْ فَسْخِ الصَّفْقَةِ كَالَّذِي ذَكَرْنَا قَبْلُ سَوَاءً سَوَاءً؛ لِأَنَّ يَدَ وَكِيلِهِ هِيَ يَدُهُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة هَلْ الْعَيْب حدث قَبْل الْبَيْع أَمْ بَعْده]

١٥٨١ - مَسْأَلَةٌ: فَإِنْ لَمْ يَعْرِفْ هَلْ الْعَيْبُ حَادِثٌ أَمْ كَانَ قَبْلَ الْبَيْعِ؟ فَلَيْسَ عَلَى الْمَرْدُودِ عَلَيْهِ إلَّا الْيَمِينُ: بِاَللَّهِ مَا بِعْته إيَّاهُ وَأَنَا أَدْرِي فِيهِ هَذَا الْعَيْبَ - وَيَبْرَأُ، إلَّا أَنْ

Issue: If a person sells [goods] for silver dirhams payable at a deferred term, then upon receiving the price discovers a defect or the price becomes rightfully claimed [by another].

1579 - Issue: If someone sells for dirhams or dinars on credit, for a deferred term, or through a salam contract in commodities permitting salam - then upon receiving the price or the item subject to the salam contract, he discovers a defect in what he took, or that all or part of it is rightfully claimed - he may only seek substitution. This is because he possesses no specified tangible item, but rather a described attribute. What he was given does not constitute his rightful due. He must therefore return what does not belong to him and claim what is owed to him. Success comes solely from Allah, the Exalted.

A case where someone appointed an agent to purchase a specified item for him, and the agent bought it for him at a detrimentally unfair price.

1580 - Issue: If someone appoints an agent to purchase a specified item for them, and the agent acquires it through unconscionable overpricing that people would not typically tolerate in such transactions, or if the item is found defective with an imperfection reducing its value below the purchase price: the principal holds the right to return, keep, exchange, or rescind the transaction—exactly as we previously mentioned, without the slightest difference. This is because the hand of his agent is his hand. And success is from Allah—the Most High.

Legal Issue: Whether the defect occurred before or after the sale.

1581 - Issue: If it is not known whether the defect occurred after the sale or existed beforehand, the seller must only swear: "By Allah, I did not sell this to him knowing of this defect"—and he is exonerated. This stands unless upright witnesses provide testimony that this defect predates the time of the transaction, in which case it must be returned. For the transaction is a sale,

and Allah has permitted sales; thus, it cannot be invalidated through claims or suspicions. And success comes only from Allah, the Exalted.

A buyer purchased a single commodity in one transaction from two or more sellers and discovered a defect.

1582 - Issue: If someone purchases a single item from two or more sellers in one combined transaction and subsequently discovers a defect, he may return the share of whoever he wishes while retaining ownership of the share of whoever he chooses. He also holds the right to return the entire purchase if he desires, or retain the whole transaction in the same manner.

Similarly, if the share of one of them is claimed, the contract is not dissolved regarding the share of the other, because the sale of each party's share—whether from the two or among them—is a distinct contract from the others'. Allah, the Exalted, said: "No soul bears except its own burden, and no bearer of burdens shall bear another's" [Al-An'ām 6:164].[14]

Issue: Two or more buyers purchased an item from a single seller and discovered a defect.

1583: Issue: And similarly, if two or more individuals purchase a commodity from a single seller and subsequently discover a defect. Whichever contracting party wishes to rescind may rescind, and whichever wishes to retain may retain, since, as previously stated, the contract of each of them is separate from the other's.

Similarly, if the price paid by one of them is rightfully reclaimed and remains extant, the contract is annulled, but the other's contract pertaining to his portion is not annulled as a result. And success comes from Allah, the Exalted.

Issue: He purchased a commodity and found a defect in it that had arisen while in his possession.

[14] **Qur'an references (L25158):** Qur'an 6:164 (Al-An'am).

تَقُومَ بَيِّنَةُ عَدْلٍ بِأَنَّ هَذَا الْعَيْبَ أَقْدَمُ مِنْ أَمَدِ التَّبَايُعِ فَيُرَدُّ؛ لِأَنَّ الصَّفْقَةَ بَيْعٌ، وَقَدْ أَحَلَّ اللَّهُ الْبَيْعَ، فَلَا يَجُوزُ نَقْضُهُ بِالدَّعَاوَى وَلَا بِالظُّنُونِ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة اشْتَرَى مِنْ اثْنَيْنِ فَأَكْثَرَ سِلْعَةً وَاحِدَةً صَفْقَةً وَاحِدَةً فَوَجَدَ عَيْبًا]

١٥٨٢ - مَسْأَلَةٌ: وَمَنْ اشْتَرَى مِنْ اثْنَيْنِ فَأَكْثَرَ سِلْعَةً وَاحِدَةً صَفْقَةً وَاحِدَةً فَوَجَدَ عَيْبًا لَهُ أَنْ يَرُدَّ حِصَّةَ مَنْ شَاءَ وَيَتَمَسَّكَ بِحِصَّةِ مَنْ شَاءَ، وَلَهُ أَنْ يَرُدَّ الْجَمِيعَ إنْ شَاءَ، أَوْ يُمْسِكَ الْكُلَّ كَذَلِكَ.

وَكَذَلِكَ لَوْ اُسْتُحِقَّتْ حِصَّةُ أَحَدِهِمْ لَمْ يَنْفَسِخْ الْعَقْدُ فِي حِصَّةِ الْآخَرِ؛ لِأَنَّ بَيْعَ كُلِّ وَاحِدٍ مِنْهُمَا، أَوْ مِنْهُمْ حِصَّتَهُ عَقْدٌ غَيْرُ عَقْدِ الْآخَرِ، قَالَ اللَّهُ - تَعَالَى -: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤].

[مَسْأَلَة اشْتَرَى اثْنَانِ فَصَاعِدًا سِلْعَةً مِنْ وَاحِدٍ فَوَجَدَا عَيْبًا]

١٥٨٣ - مَسْأَلَةٌ: وَكَذَلِكَ لَوْ اشْتَرَى اثْنَانِ فَصَاعِدًا سِلْعَةً مِنْ وَاحِدٍ فَوَجَدَا عَيْبًا فَأَيُّهُمَا شَاءَ أَنْ يَرُدَّ رَدَّ، وَأَيُّهُمَا شَاءَ أَنْ يُمْسِكَ أَمْسَكَ؛ لِمَا ذَكَرْنَا مِنْ أَنَّ صَفْقَةَ كُلِّ وَاحِدٍ مِنْهُمَا غَيْرُ صَفْقَةِ الْآخَرِ.

فَكَذَلِكَ لَوْ اُسْتُحِقَّ الثَّمَنُ الَّذِي دَفَعَهُ أَحَدُهُمَا، وَكَانَ بِعَيْنِهِ فَإِنَّهُ يَنْفَسِخُ وَلَا يَنْفَسِخُ بِذَلِكَ عَقْدُ الْآخَرِ فِي حِصَّتِهِ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة اشْتَرَى سِلْعَةً فَوَجَدَ بِهَا عَيْبًا وَقَدْ كَانَ حَدَثَ عِنْدَهُ فِيهَا عَيْبٌ]

L25165 1584. Issue: If someone purchases a commodity and finds a defect in it, and a defect had previously occurred in it—whether by Allah's decree, the purchaser's own action, or another's action—he may return it, as we have stated, or retain it. However, he may not return it due to anything that occurred while it was in his possession, nor due to anything he himself caused in it, because it was within his ownership and right; he did not transgress or wrong anyone in this matter. As for the unjust loss (ghabn), it has been previously discussed, so he is entitled to reclaim the loss inflicted upon him through injustice. This is because neither the Quran nor the Sunnah imposes a financial penalty on him in such a case. And success is from Allah, the Most High.

١٥٨٤ - مَسْأَلَةٌ: وَمَنْ اشْتَرَى سِلْعَةً فَوَجَدَ بِهَا عَيْبًا وَقَدْ كَانَ حَدَثَ عِنْدَهُ فِيهَا عَيْبٌ مِنْ قِبَلِ اللَّهِ - تَعَالَى -، أَوْ مِنْ فِعْلِهِ، أَوْ مِنْ فِعْلِ غَيْرِهِ فَلَهُ الرَّدُّ، كَمَا قُلْنَا، أَوْ الْإِمْسَاكُ، وَلَا يَرُدُّ مِنْ أَجْلِ مَا حَدَثَ عِنْدَهُ شَيْئًا، وَلَا مِنْ أَجْلِ مَا أَحْدَثَ هُوَ فِيهِ شَيْئًا؛ لِأَنَّهُ فِي مِلْكِهِ وَحَقِّهِ لَمْ يَتَعَدَّ، وَلَا ظَلَمَ فِيهِ أَحَدًا، وَالْغَبْنُ قَدْ تَقَدَّمَ، فَلَهُ مَا قَدْ وَجَبَ لَهُ مِنْ رَدِّ الْغَبْنِ الَّذِي ظُلِمَ فِيهِ؛ وَلِأَنَّهُ لَمْ يُوجِبْ عَلَيْهِ فِي ذَلِكَ غَرَامَةً قُرْآنٌ، وَلَا سُنَّةٌ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

Issue: A person purchased something, used it, and subsequently found a defect in it.

[مَسْأَلَة اشْتَرَى شَيْئًا فاستعمله ثُمَّ وجد بِهِ عَيْبًا]

L25166

L25167 Issue 1585: If someone purchases a female slave, an animal, a garment, a house, or other items—then has intercourse with the female slave, deflowers her if she was a virgin, marries her off (whether she becomes pregnant or not), wears the garment, overworks the animal, inhabits the house, or utilizes and benefits from the purchased item (regardless of whether this usage is prolonged or brief)—and subsequently discovers a defect, he may either return it (as we have mentioned) or retain it.

١٥٨٥ - مَسْأَلَةٌ: وَمَنْ اشْتَرَى جَارِيَةً، أَوْ دَابَّةً، أَوْ ثَوْبًا، أَوْ دَارًا أَوْ غَيْرَ ذَلِكَ فَوَطِئَ الْجَارِيَةَ، أَوْ افْتَضَّهَا إنْ كَانَتْ بِكْرًا، أَوْ زَوَّجَهَا فَحَمَلَتْ أَوْ لَمْ تَحْمِلْ، أَوْ لَبِسَ الثَّوْبَ، وَأَنْضَى الدَّابَّةَ، وَسَكَنَ الدَّارَ، وَاسْتَعْمَلَ مَا اشْتَرَى وَاسْتَغَلَّهُ، وَطَالَ اسْتِعْمَالُهُ الْمَذْكُورُ أَوْ قَلَّ، ثُمَّ وَجَدَ عَيْبًا، فَلَهُ الرَّدُّ كَمَا ذَكَرْنَا أَوْ الْإِمْسَاكُ.

L25168 Nor is he obligated to compensate for his use for that purpose, for he has disposed of his own wealth and possessions as permitted by God—Exalted is He. God, Exalted is He, said: "And those who guard their private parts" [23:5] "except from their spouses or those whom their right hands possess—then surely they are not to be blamed" [23:6] "But whoever seeks beyond that, it is they who are the transgressors" [23:7]. Thus, whoever God—Exalted is He—does not censure and whose action He permits in that matter is deemed virtuous by logical necessity.[15]

وَلَا يَرُدُّ مَعَ ذَلِكَ شَيْئًا مِنْ أَجْلِ اسْتِعْمَالِهِ لِذَلِكَ؛ لِأَنَّهُ تَصَرَّفَ فِي مَالِ نَفْسِهِ، وَفِي مَتَاعِهِ بِمَا أَبَاحَ اللَّهُ - تَعَالَى - لَهُ، قَالَ اللَّهُ - تَعَالَى -: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إِلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] {فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧] فَمَنْ لَمْ يَلُمْهُ اللَّهُ - تَعَالَى - وَأَبَاحَ لَهُ فِعْلَهُ ذَلِكَ: فَهُوَ بِضَرُورَةِ الْعَقْلِ مُحْسِنٌ.

وَقَالَ - تَعَالَى -: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] .

[15] **Qur'an references (L25168):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun); Qur'an 70:31 (Al-Ma'arij).

L25169 And He, the Exalted, said: “There is no blame upon those who do good” (At-Tawbah 91).[16]

L25170 And the imposition of a monetary penalty is an established legal recourse for those obligated to it, though Allah, the Most High, has annulled it from him. It is analogous to cases of unjust detriment where one may either ratify [the transaction] or seek restitution. And with Allah alone lies all success.

L25171 [Issue of Discovering a Defect in What He Purchased That Necessitates Return]

L25172 1586. Ruling: If a buyer discovers a defect in their purchase that necessitates rescission, they may annul the sale immediately upon discovery. Alternatively, they may retain the item and rescind the sale at any time thereafter, regardless of whether the period is long or short.

L25173–25175 Nor do his actions after learning of the defect—such as by intercourse or use—nullify his right to restitution. and the right to ride, wear, or dwell, nor his responsibility to remove the defect, nor his obligation to present it to jurists specialized in such defects, nor his exposing that item for sale without disclosing the defect.

L25176 The obligation of restitution owed to him is not nullified except by one of five modes, with no sixth among them. These are: his explicit declaration of consent to retaining it; the property’s transfer out of his ownership entirely or partially; the enslaved woman bearing a child; his death; or the destruction of the property’s entirety or part of it (whether due to death or other causes). This is the view of Abū Thawr and others.

L25177 Whoever claims that his obligation to make restitution is waived by any of the aforementioned means has asserted a claim without evidence; and this is void.

L25178 The proof for the validity of our statement is that the refund is obligatory for him by the agreement between us and our opponents, and by the proofs we

[16] **Qur’an references (L25169):** Qur’an 9:91 (At-Tawbah).

وَإِغْرَامُ الْمَالِ سَبِيلٌ مُسَبَّلَةٌ عَلَى مَنْ كُلِّفَهَا، وَقَدْ أَسْقَطَ اللَّهُ - تَعَالَى - عَنْهُ ذَلِكَ - ثُمَّ هُوَ كَسَائِرِ وَاجِدِي الْغَبْنِ فِي أَنَّ لَهُ الرِّضَا، أَوْ الرَّدَّ، وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة اطَّلَعَ فِيمَا اشْتَرَى عَلَى عَيْبٍ يَجِبُ بِهِ الرَّدُّ]

١٥٨٦ - مَسْأَلَةٌ: وَمَنْ اطَّلَعَ فِيمَا اشْتَرَى عَلَى عَيْبٍ يَجِبُ بِهِ الرَّدُّ فَلَهُ أَنْ يَرُدَّ سَاعَةَ يَجِدُ الْعَيْبَ، وَلَهُ أَنْ يُمْسِكَ ثُمَّ يَرُدَّهُ مَتَى شَاءَ - طَالَ ذَلِكَ الْأَمَدُ أَمْ قَرُبَ.

وَلَا يُسْقِطُ مَا وَجَبَ لَهُ مِنْ الرَّدِّ تَصَرُّفُهُ بَعْدَ عِلْمِهِ بِالْعَيْبِ بِالْوَطْءِ، وَالِاسْتِخْدَامِ، وَالرُّكُوبِ، وَاللِّبَاسِ، وَالسُّكْنَى، وَلَا مُعَانَاتِهِ إزَالَةَ الْعَيْبِ، وَلَا عَرْضِهِ إيَّاهُ عَلَى أَهْلِ الْعِلْمِ بِذَلِكَ الْعَيْبِ، وَلَا تَعْرِيضِهِ ذَلِكَ الشَّيْءَ لِلْبَيْعِ.

وَلَا يُسْقِطُ مَا وَجَبَ لَهُ مِنْ الرَّدِّ إلَّا أَحَدُ خَمْسَةِ أَوْجُهٍ لَا سَادِسَ لَهَا، وَهِيَ نُطْقُهُ بِالرِّضَا بِإِمْسَاكِهِ، أَوْ خُرُوجُهُ كُلُّهُ، أَوْ بَعْضُهُ عَنْ مِلْكِهِ، أَوْ إيلَادُ الْأَمَةِ، أَوْ مَوْتُهُ، أَوْ ذَهَابُ عَيْنِ الشَّيْءِ أَوْ بَعْضِهَا بِمَوْتٍ أَوْ غَيْرِهِ - وَهُوَ قَوْلُ أَبِي ثَوْرٍ، وَغَيْرِهِ.

وَمَنْ ادَّعَى سُقُوطَ مَا وَجَبَ لَهُ مِنْ الرَّدِّ بِشَيْءٍ مِمَّا ذَكَرْنَا قَبْلُ فَقَدْ ادَّعَى مَا لَا بُرْهَانَ لَهُ بِهِ - وَهَذَا بَاطِلٌ -.

وَبُرْهَانُ صِحَّةِ قَوْلِنَا -: هُوَ أَنَّ الرَّدَّ قَدْ وَجَبَ لَهُ بِاتِّفَاقٍ مِنَّا وَمِنْ مُخَالِفِينَا، وَبِمَا أَوْرَدْنَا مِنْ بَرَاهِينِ الْقُرْآنِ، وَالسُّنَّةِ فِي تَحْرِيمِ الْغِشِّ وَإِيجَابِ النَّصِيحَةِ.

have cited from the Quran and Sunnah regarding the prohibition of deceit and the obligation of dutiful advice.

L25179 He is bound by what has been made obligatory for him; it is impermissible to waive it except by explicit textual proof or a definitive consensus, and there is no way for either to exist here—and none of what we have mentioned earlier qualifies as consent.

L25180 As for the lapse of the right to return due to consent, the removal of the item or part of it from ownership, the partial or complete destruction of the item itself, or its death—we have previously established the proof for this. Regarding the destruction of the item itself or part of it, the return of the purchased item is rendered impossible, for Allah, Exalted is He, says: "Allah does not burden any soul beyond its capacity" [Al-Baqarah: 286]. As for the bearing of offspring by a slave woman for her master, we have presented the evidence prohibiting the permissibility of granting ownership of one's umm walad to another—and success is by Allah, the Exalted.[17]

L25181 **A jurisprudential issue where a person purchased an item and discovered a hidden defect within it, such as in the case of eggs.**

L25182 Issue 1587: If someone purchases an item and discovers a defect in its interior—such as in eggs, cucumbers, squash, wood, or similar items—they may either return it or keep it, regardless of whether the defect could have been detected by ordinary means or could only be known by breaking or splitting it. This ruling applies because defrauding is impermissible and unlawful unless the defrauded party consents, knows the extent of the defraudation, and willingly accepts it. Otherwise, it constitutes unlawful consumption of wealth. Even if the seller did not intend deception, his brother's property has come into his possession without consent. Allah—Exalted is He—has forbidden this in His saying: _"Do not consume one another's wealth unlawfully except through trade by mutual consent"_ (Quran 4:29). Consent

[17] **Qur'an references (L25180):** Qur'an 2:286 (Al-Baqarah).

فَهُوَ عَلَى مَا وَجَبَ لَهُ، لَا يَجُوزُ أَنْ يُسْقِطَ عَنْهُ إِلَّا نَصٌّ، أَوْ إِجْمَاعٌ مُتَيَقَّنٌ، وَلَا سَبِيلَ إِلَى وُجُودِهِمَا هَهُنَا -، وَلَيْسَ شَيْءٌ مِمَّا ذَكَرْنَا قَبْلُ رِضًا.

وَأَمَّا سُقُوطُ الرَّدِّ بِالرِّضَا أَوْ بِخُرُوجِ الشَّيْءِ أَوْ بَعْضِهِ عَنْ الْمِلْكِ أَوْ بِذَهَابِ بَعْضِ عَيْنِهِ أَوْ كُلِّهِ أَوْ بِمَوْتِهِ فَقَدْ ذَكَرْنَا الْبُرْهَانَ عَلَى ذَلِكَ وَهُوَ فِي ذَهَابِ عَيْنِهِ أَوْ بَعْضِهَا مُمْتَنِعٌ مِنْهُ الرَّدُّ لِمَا اشْتَرَى، وَاَللَّهُ - تَعَالَى - يَقُولُ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَأَمَّا الْإِيلَادُ فَقَدْ ذَكَرْنَا الْبُرْهَانَ عَلَى الْمَنْعِ مِنْ جَوَازِ تَمْلِيكِ الْمَرْءِ أُمَّ وَلَدِهِ غَيْرَهُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة اشْتَرَى شَيْئًا فَوَجَدَ فِي عُمْقِهِ عَيْبًا كَبَيْضٍ]

١٥٨٧ - مَسْأَلَةٌ: وَمَنْ اشْتَرَى شَيْئًا فَوَجَدَ فِي عُمْقِهِ عَيْبًا، كَبَيْضٍ، أَوْ قِثَّاءٍ، أَوْ قَرْعٍ، أَوْ خَشَبٍ، أَوْ غَيْرِ ذَلِكَ: فَلَهُ الرَّدُّ، أَوْ الْإِمْسَاكُ، سَوَاءٌ كَانَ مِمَّا يُمْكِنُ التَّوَصُّلُ إلَى مَعْرِفَتِهِ أَوْ مِمَّا لَا يُمْكِنُ، إلَّا بِكَسْرِهِ أَوْ شَقِّهِ؛ لِأَنَّ الْغَبْنَ لَا يَجُوزُ، وَلَا يَحِلُّ، إلَّا بِرِضَا الْمَغْبُونِ وَمَعْرِفَتِهِ بِقَدْرِ الْغَبْنِ، وَطِيبِ نَفْسِهِ بِهِ، وَإِلَّا فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ، وَالْبَائِعُ وَإِنْ كَانَ لَمْ يَقْصِدْ الْغِشَّ فَقَدْ حَصَلَ بِيَدِهِ مَالُ أَخِيهِ بِغَيْرِ رِضًا مِنْهُ، وَاَللَّهُ - تَعَالَى - قَدْ حَرَّمَ ذَلِكَ بِقَوْلِهِ - تَعَالَى -: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] وَلَا يُمْكِنُ وُجُودُ الرِّضَا إلَّا بَعْدَ الْمَعْرِفَةِ بِمَا يَرْضَى بِهِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

cannot exist except after knowing what is being consented to. This is the opinion of Abu Hanifa, Al-Shafi'i, and Abu Sulayman.[18]

L25183 **A legal question concerning notification of a presumed defect.**

L25184–25186 1588. Question: If someone purchases a male or female slave, and it becomes evident that the slave has the defect of absconding or epilepsy, His consent has become binding upon him, and he retains no right to rescind any part of it—whether he was aware of the duration of absconding and the nature of the usurpation or these details were not clarified to him—for all forms of absconding constitute absconding, and all forms of usurpation constitute usurpation, and he has consented to the general application of these terms.

L25187 If the matter proved lesser than what was disclosed to him and he discovered it was contrary to what was clarified, the transaction becomes void because it differs from what he purchased. If he found a surplus over what was clarified to him, he has the option to return or retain it, as it constitutes a defect that was not disclosed. And success is by Allah, the Exalted.

L25188 **A legal issue where someone purchases an item provided that it contains such and such specified attributes within it.**

L25189 1589. Issue: If someone purchases a bundle on the condition that it contains a specified number of garments, such-and-such ratls [a unit of weight] of clarified butter, honey, or other weighed commodities, such-and-such apples or other counted items, such-and-such mudds [a unit of volume] of a commodity measured by volume - or buys a heap on the condition that it contains such-and-such qafīz [a dry measure] or similar measure, or an item on the condition that it has such-and-such cubits in length - and then found it to be less or more, the entire transaction is irrevocably nullified. This is

[18] **Qur'an references (L25182):** Qur'an 4:29 (An-Nisa).

[مَسْأَلَة أطلع عَلَى عَيْب فرضيه]

١٥٨٨ - مَسْأَلَةٌ: وَمَنْ اشْتَرَى عَبْدًا أَوْ أَمَةً، فَبُيِّنَ لَهُ بِعَيْبِ الْإِبَاقِ أَوْ الصَّرْعِ، فَرَضِيَهُ فَقَدْ لَزِمَهُ، وَلَا رُجُوعَ لَهُ بِشَيْءٍ - عَرَفَ مُدَّةَ الْإِبَاقِ، وَصِفَةَ الصَّرْعِ أَوْ لَمْ يُبَيَّنْ لَهُ ذَلِكَ -؛ لِأَنَّ جَمِيعَ أَنْوَاعِ الْإِبَاقِ إبَاقٌ، وَجَمِيعَ أَنْوَاعِ الصَّرْعِ صَرْعٌ، وَقَدْ رَضِيَ بِجُمْلَةِ إطْلَاقِ ذَلِكَ.

فَلَوْ قُلِّلَ لَهُ الْأَمْرُ فَوَجَدَ خِلَافَ مَا بُيِّنَ لَهُ بَطَلَتْ الصَّفْقَةُ؛ لِأَنَّهُ غَيْرُ مَا اشْتَرَى - وَلَوْ وَجَدَ زِيَادَةً عَلَى مَا بُيِّنَ لَهُ فَلَهُ الْخِيَارُ فِي رَدٍّ أَوْ إمْسَاكٍ؛ لِأَنَّهُ عَيْبٌ لَمْ يُبَيَّنْ لَهُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة اشْتَرَى شَيْئًا عَلَى أَنْ فِيهِ كَذَا وَكَذَا]

١٥٨٩ - مَسْأَلَةٌ: وَمَنْ اشْتَرَى عِدْلًا عَلَى أَنَّ فِيهِ عَدَدًا مُسَمًّى مِنْ الثِّيَابِ، أَوْ كَذَا وَكَذَا رَطْلًا مِنْ سَمْنٍ أَوْ عَسَلٍ، أَوْ غَيْرِ ذَلِكَ مِمَّا يُوزَنُ، أَوْ كَذَا وَكَذَا تُفَّاحَةً، أَوْ غَيْرَ ذَلِكَ مِمَّا يُعَدُّ، أَوْ كَذَا وَكَذَا مُدًّا مِمَّا يُكَالُ - أَوْ اشْتَرَى صُبْرَةً عَلَى أَنَّ فِيهَا كَذَا وَكَذَا قَفِيزًا أَوْ نَحْوَ ذَلِكَ، أَوْ شَيْئًا عَلَى أَنَّ فِيهِ كَذَا وَكَذَا ذِرَاعًا، فَوَجَدَ أَقَلَّ أَوْ أَكْثَرَ: فَالصَّفْقَةُ كُلُّهَا مَفْسُوخَةٌ أَبَدًا؛ لِأَنَّهُ أَخَذَ غَيْرَ مَا اشْتَرَى، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ لَا بِتِجَارَةٍ عَنْ تَرَاضٍ.

because he has taken something other than what he purchased, constituting unjust appropriation of wealth, not a consensual trade.

L25190 By necessity, every person of sound senses knows that the standard measure containing fifty garments is not the standard measure containing forty-nine garments, nor is it the standard measure containing fifty-one garments. Similarly, this applies to all numbers, weights, volume measures, and linear measures.

L25191 If the sale contract was not concluded on that basis, yet the customary and known practice is that those measures contain a known quantity, and likewise that pile, and likewise all items sold by volume, by weight, by cubit measurement, or by count—or if the seller described it with that attribute—though the sale itself was not concluded on those terms.

L25192 If the deficiency found reduces the purchase price by an amount people would not disregard in equivalent transactions, the buyer may choose between returning [the item] or retaining it, with no further recourse.

L25193 If the excess found exceeds the price at which the seller sold the item—an increase people would not mutually disregard as deceptive—the seller may choose between retracting the sale or consenting to the excess. This is because both scenarios entail unfair advantage to one of the two transacting parties, and such unfair advantage is impermissible except with the consent of the disadvantaged party and their awareness of its extent. Otherwise, it constitutes unlawful appropriation of wealth, not a consensual transaction by mutual agreement. Neither party holds greater entitlement to protection and consideration than the other. Whoever asserts otherwise nullifies [the ruling] and imposes without justification, lacking proof. In Allah—Exalted—we seek support.

L25194–25195 **Issue: He said to his counterpart, "These are your dirhams, and I discovered this debased dirham among them." The latter responded, "I do not know."**

L25196 A legal issue: If someone says to their transacting party, "These are your

وَبِالضَّرُورَةِ يَدْرِي كُلُّ سَلِيمِ الْحِسِّ أَنَّ الْعِدْلَ الَّذِي فِيهِ خَمْسُونَ ثَوْبًا لَيْسَ هُوَ الْعِدْلَ الَّذِي فِيهِ تِسْعَةٌ وَأَرْبَعُونَ ثَوْبًا، وَلَا هُوَ أَيْضًا الْعِدْلَ الَّذِي فِيهِ وَاحِدٌ وَخَمْسُونَ ثَوْبًا، وَهَكَذَا أَيْضًا فِي سَائِرِ الْأَعْدَادِ، وَالْأَوْزَانِ، وَالْأَكْيَالِ، وَالذَّرْعِ.

فَلَوْ لَمْ يَقَعْ عَقْدُ الْبَيْعِ عَلَى ذَلِكَ لَكِنَّ الْمَعْهُودَ وَالْمَعْرُوفَ أَنَّ فِي تِلْكَ الْأَعْدَالِ عَدَدًا مَعْرُوفًا، وَكَذَلِكَ تِلْكَ الصُّبْرَةُ، وَكَذَلِكَ سَائِرُ الْمَكِيلَاتِ، وَالْمَوْزُونَاتِ، وَالْمَذْرُوعَاتِ، وَالْمَعْدُودَاتِ، أَوْ وَصَفَهُ الْبَائِعُ بِتِلْكَ الصِّفَةِ، إِلَّا أَنَّ الْبَيْعَ لَمْ يَنْعَقِدْ عَلَى ذَلِكَ.

فَإِنْ كَانَ مَا وَجَدَ مِنْ النَّقْصِ يَحُطُّ مِنْ الثَّمَنِ الَّذِي اشْتَرَاهُ بِهِ مَا لَا يَتَغَابَنُ بِهِ النَّاسُ بِمِثْلِهِ فَهُوَ مُخَيَّرٌ بَيْنَ رَدٍّ أَوْ إمْسَاكٍ، وَلَا شَيْءَ لَهُ غَيْرُ ذَلِكَ.

وَإِنْ كَانَ مَا وَجَدَ مِنْ الزِّيَادَةِ يَزِيدُ عَلَى الثَّمَنِ الَّذِي بَاعَ بِهِ الْبَائِعُ زِيَادَةً لَا يَتَغَابَنُ النَّاسُ بِهَا، فَالْبَائِعُ مُخَيَّرٌ بَيْنَ رَدٍّ أَوْ رِضًا؛ لِأَنَّ كِلَا الْأَمْرَيْنِ غَبْنٌ لِأَحَدِ الْمُتَبَايِعَيْنِ، وَالْغَبْنُ لَا يَحِلُّ إلَّا بِرِضَا الْمَغْبُونِ وَمَعْرِفَتِهِ بِقَدْرِهِ، وَإِلَّا فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ، لَا تِجَارَةٌ عَنْ تَرَاضٍ،، وَلَيْسَ أَحَدُهُمَا أَوْلَى بِالْحِيَاطَةِ وَالنَّظَرِ لَهُ مِنْ الْآخَرِ، وَمَنْ قَالَ غَيْرَ هَذَا فَهُوَ مُبْطِلٌ مُتَحَكِّمٌ بِلَا بُرْهَانٍ، وَبِاَللَّهِ - تَعَالَى - نَتَأَيَّدُ.

[مَسْأَلَة قَالَ لمعامله هَذِهِ دراهمك وجدت فِيهَا هَذَا الرَّدِيء فَقَالَ لَا أدري]

dirhams or dinars, and I found this defective item among them," or the buyer says, "This is your commodity; I found a defect in it," and the other responds, "I cannot distinguish them, nor do I know whether they are my dirhams, dinars, or commodity or not," then if the one claiming a defect and the defective item has legally admissible proof that they are indeed those, the ruling is in his favor. Otherwise, the one who says, "I do not know," must take an oath, swearing by Allah—Exalted is He—"I do not know what you are claiming," and is absolved. This is because the Messenger of Allah—peace and blessings be upon him—ruled that the claimant must provide legally admissible proof and the defendant must take an oath. Here, the claimant is the one seeking to take something from the other, and the defendant is the one denying that this obligation applies to him. If the commodity and the price are in the buyer's possession, his statement, accompanied by an oath, is accepted, as he is the defendant regarding the removal of what is in his possession.

مَسْأَلَةٌ: وَمَنْ قَالَ لِمُعَامِلِهِ: هَذِهِ دَرَاهِمُك أَوْ دَنَانِيرُك وَجَدْت فِيهَا هَذَا الرَّدِيءَ، أَوْ قَالَ الْمُشْتَرِي: هَذِهِ سِلْعَتُك وَجَدْت فِيهَا عَيْبًا؟ فَقَالَ الْآخَرُ، مَا أُمَيِّزُهَا وَلَا أَدْرِي أَنَّهَا دَرَاهِمِي، أَوْ دَنَانِيرِي، أَوْ سِلْعَتِي أَمْ لَا فَإِنْ كَانَتْ لِلَّذِي يَذْكُرُ وُجُودَ الْعَيْبِ وَالرَّدِيءِ بَيِّنَةٌ بِأَنَّهَا تِلْكَ قُضِيَ لَهُ، وَإِلَّا فَعَلَى الَّذِي يَقُولُ: لَا أَدْرِي، الْيَمِينُ: بِاَللَّهِ - تَعَالَى - مَا أَدْرِي مَا تَقُولُ، وَيَبْرَأُ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالْبَيِّنَةِ عَلَى الْمُدَّعِي وَالْيَمِينِ عَلَى الْمُدَّعَى عَلَيْهِ - وَالْمُدَّعِي هَهُنَا هُوَ الَّذِي يُرِيدُ أَخْذَ شَيْءٍ مِنْ الْآخَرِ، وَالْمُدَّعَى عَلَيْهِ هُوَ الَّذِي يُنْكِرُ وُجُوبَ ذَلِكَ عَلَيْهِ فَإِنْ كَانَتْ السِّلْعَةُ وَالثَّمَنُ بِيَدِ الْمُشْتَرِي، فَالْقَوْلُ قَوْلُهُ مَعَ يَمِينِهِ؛ لِأَنَّهُ مُدَّعًى عَلَيْهِ خُرُوجَ مَا بِيَدِهِ عَنْ يَدِهِ.

A legal issue concerning the return due to a defect when the responsible party has usurped the slave child.

[مَسْأَلَةُ رَدِّ بِعَيْبٍ وَقَدْ اغْتَلَّ الْوَلَدَ]

Issue 1591: If someone returns [an item] due to a defect but had utilized the offspring, milk, fruit, kharāj (land tax), or similar benefits, he may still return [the item] and does not return anything from those benefits, as they occurred during his ownership and within his property, and were not part of what constituted the subject of the sale. The seller has no rightful claim to them.

١٥٩١ - مَسْأَلَةٌ: وَمَنْ رَدَّ بِعَيْبٍ وَقَدْ اغْتَلَّ الْوَلَدَ، وَاللَّبَنَ، وَالثَّمَرَةَ، وَالْخَرَاجَ، وَغَيْرَ ذَلِكَ، فَلَهُ الرَّدُّ، وَلَا يَرُدُّ شَيْئًا مِنْ كُلِّ ذَلِكَ؛ لِأَنَّهُ حَدَثَ فِي مَالِهِ وَفِي مِلْكِهِ، وَلَيْسَ مِمَّا وَقَعَ عَلَيْهِ الشِّرَاءُ، فَلَا حَقَّ لِلْمَرْدُودِ عَلَيْهِ فِيهِ.

And by Allah—Exalted is He—is success.

وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

It is the opinion of Abū Ḥanīfah and, in some of those matters, of Mālik.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ فِي بَعْضِ ذَلِكَ.

This is the opinion of Al-Shāfiʿī, Abū Sulaymān, and Aḥmad—and there is a longstanding disagreement on this matter.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَحْمَدَ - وَفِي هَذَا خِلَافٌ قَدِيمٌ.

It was narrated to us through the chain of Saʿīd ibn Manṣūr: Hushaym reported to us, al-Mughīrah reported to us from al-Ḥārith al-ʿUklī: A man purchased a slave woman who had milk, hired her as a wet nurse, and profited

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الْمُغِيرَةُ عَنْ الْحَارِثِ الْعُكْلِيِّ: أَنَّ رَجُلًا اشْتَرَى أَمَةً لَهَا لَبَنٌ فَاكْتَرَاهَا ظِئْرًا وَأَصَابَ مِنْ غَلَّتِهَا ثُمَّ وَجَدَ بِهَا دَاءً كَانَ عِنْدَ الْبَائِعِ

from her services. Then he discovered she had a pre-existing disease from the seller's possession, so he took him to Judge Shurayḥ for adjudication. Shurayḥ said to him: "Return her with her disease and repay what you gained from her earnings." The man said: "I refuse to return her since you require me to repay what I gained from her earnings. I accept her despite her disease." Shurayḥ replied: "This is not for me to decide. My ruling on this has been transferred to your opponent."

فَخَاصَمَهُ إِلَى شُرَيْحٍ؟ فَقَالَ لَهُ شُرَيْحٌ، رُدَّهَا بِدَائِهَا وَرُدَّ مَعَهَا مَا أَصَبْت مِنْ غَلَّتِهَا؟ قَالَ: فَإِنِّي لَا أَرُدُّهَا إذْ كَلَّفْتنِي أَنْ أَرُدَّ مَا أَصَبْت مِنْ غَلَّتِهَا، فَأَقْبَلُهَا بِدَائِهَا، فَقَالَ لَهُ شُرَيْحٌ: لَيْسَ ذَلِكَ إلَيَّ قَدْ مَضَى قَضَائِي ذَلِكَ إلَى خَصْمِك.

L25203 And it has been reported from Shurayḥ, al-Ḥasan, and al-Shaʿbī that the like of our opinion has been transmitted.

وَقَدْ رُوِيَ عَنْ شُرَيْحٍ، وَالْحَسَنِ، وَالشَّعْبِيِّ مِثْلُ قَوْلِنَا.

L25204 Abu Muhammad said: "And regarding what we have mentioned, there is disagreement. We mention from it what Allah, the Exalted, has facilitated for us to mention."

قَالَ أَبُو مُحَمَّدٍ وَفِيمَا ذَكَرْنَا خِلَافٌ نَذْكُرُ مِنْهُ مَا يَسَّرَ اللَّهُ - تَعَالَى - لَنَا ذِكْرَهُ.

L25205 Among these [cases] are the loss of the defective [slave] due to their death, manumission, childbirth, physical destruction, or the loss of part of them. Indeed, our jurists said: He has no right to retain [the slave], nor can he claim any compensation.

فَمِنْ ذَلِكَ -: فَوْتُ الْمَعِيبِ بِمَوْتٍ، أَوْ عِتْقٍ، أَوْ إيلَادٍ، أَوْ تَلَفٍ، أَوْ فَوْتُ بَعْضِهِ، فَإِنَّ أَصْحَابَنَا قَالُوا: لَيْسَ لَهُ الْإِمْسَاكُ، وَلَا يَرْجِعُ بِشَيْءٍ.

L25206–25208 This is the statement of Qatadah, which we have narrated through the chain of Abd al-Razzaq from Maʿmar from Qatadah. He said: There is no liability after death. If she dies, liability ceases. And it is the opinion of Shurayḥ, and al-Ḥasan al-Baṣrī.

وَهُوَ قَوْلُ قَتَادَةَ، رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: لَا عُهْدَةَ بَعْدَ الْمَوْتِ إذَا مَاتَتْ جَازَ عَلَيْهِ وَهُوَ قَوْلُ شُرَيْحٍ، وَالْحَسَنِ الْبَصْرِيِّ.

L25209 From the path of Abd al-Razzaq, from Sufyan al-Thawri, from Zakariyya ibn Abi Zaʿida, from al-Shaʿbi regarding one who purchases a slave and manumits him, then discovers a defect in him? He said: He must return the excess of the difference between their values to the seller, and what was returned to him must be allocated for emancipating slaves, because he had already directed him toward freedom.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ عَنْ الشَّعْبِيِّ فِيمَنْ ابْتَاعَ عَبْدًا فَأَعْتَقَهُ، ثُمَّ وَجَدَ بِهِ عَيْبًا؟ قَالَ: يَرُدُّ عَلَى صَاحِبِهِ فَضْلَ مَا بَيْنَهُمَا وَيُجْعَلُ مَا رُدَّ عَلَيْهِ فِي رِقَابٍ؛ لِأَنَّهُ قَدْ وَجَّهَهُ.

L25210 Ali said: The servant's intention is directed solely toward Allah—Exalted is He—not toward reclaiming what is owed to him, such as recovering part of his wealth from transactions in which he was disadvantaged. In such cases, he is not the servant [in this matter], and thus is not obligated to direct his intention [to reclaiming his rights] unless he chooses to do so, since neither the Quran nor the Sunnah imposes this obligation upon him.

قَالَ عَلِيٌّ: إنَّمَا وَجَّهَ لِلَّهِ - تَعَالَى - الْعَبْدَ لَا مَا وَجَبَ لَهُ مِنْ رَدِّ بَعْضِ مَالِهِ إلَيْهِ مِمَّا غُبِنَ فِيهِ فَهُوَ غَيْرُ الْعَبْدِ، فَلَا يَلْزَمُهُ أَنْ يُوَجِّهَهُ إلَّا أَنْ يَشَاءَ، إذْ لَمْ يُوجِبْ عَلَيْهِ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ.

L25211 It has been reported from Al-Sha'bi and Al-Zuhri as well that one may recover the value of the defect as per our view.

وَقَدْ رُوِيَ عَنْ الشَّعْبِيِّ، وَالزُّهْرِيِّ أَيْضًا أَنَّهُ - يَرْجِعُ بِقِيمَةِ الْعَيْبِ كَقَوْلِنَا.

L25212 Abu Hanifah said: If one sells him, sells a share of him, gifts a share of him, or manumits him in exchange for payment, then if a defect is found, there is no recourse for any claim. But if he manumits him without payment, declares him a *mudabbar* (to be freed after the owner's death), or impregnates the slave woman, then discovers a defect, he may reclaim compensation equivalent to the defect's reduction in value.

وَقَالَ أَبُو حَنِيفَةَ: إذَا بَاعَهُ أَوْ بَاعَ بَعْضَهُ، أَوْ وَهَبَ بَعْضَهُ أَوْ أَعْتَقَهُ، عَلَى مَالٍ، ثُمَّ وَجَدَ عَيْبًا فَلَا رُجُوعَ لَهُ بِشَيْءٍ، فَلَوْ أَعْتَقَهُ عَلَى غَيْرِ مَالٍ أَوْ دَبَّرَهُ، أَوْ أَوْلَدَ الْأَمَةَ ثُمَّ وَجَدَ عَيْبًا رَجَعَ بِقِيمَةِ الْعَيْبِ.

L25213 He said: If he sells it and then it is returned to him due to a defect, then if this return occurs after taking possession: if it was by a judicial decree, he must also return it to the immediate seller from whom he purchased it. If it occurred without a judicial decree, he may not return it to the first seller. If this return occurs before taking possession, he may return it to the immediate seller from whom he acquired it - whether the return was ordered by a judicial decree or not.

قَالَ: فَلَوْ بَاعَهُ ثُمَّ رُدَّ عَلَيْهِ بِعَيْبٍ، فَإِنْ كَانَ هَذَا الرَّدُّ بَعْدَ الْقَبْضِ، فَإِنْ كَانَ بِقَضَاءِ قَاضٍ رَدَّهُ هُوَ أَيْضًا عَلَى الَّذِي بَاعَهُ عَنْهُ، وَإِنْ كَانَ بِغَيْرِ قَضَاءِ قَاضٍ لَمْ يَكُنْ لَهُ أَنْ يَرُدَّهُ عَلَى الْأَوَّلِ، وَإِنْ كَانَ هَذَا الرَّدُّ قَبْلَ الْقَبْضِ فَلَهُ أَنْ يَرُدَّهُ أَيْضًا هُوَ عَلَى الْبَائِعِ لَهُ مِنْهُ - سَوَاءٌ رُدَّ عَلَيْهِ بِقَضَاءِ قَاضٍ أَوْ بِغَيْرِ قَضَاءِ قَاضٍ.

L25214 Mālik said: If the slave dies, or the master declares posthumous manumission (tadbīr) for him, enters into a manumission contract (mukātaba), emancipates him, gifts him without consideration, or donates him or the commodity as charity—and a defect is subsequently discovered—the owner has recourse only for the value of the defect.

وَقَالَ مَالِكٌ: إنْ مَاتَ الْعَبْدُ، أَوْ دَبَّرَهُ السَّيِّدُ، أَوْ كَاتَبَهُ، أَوْ أَعْتَقَهُ أَوْ وَهَبَهُ لِغَيْرِ ثَوَابٍ، أَوْ تَصَدَّقَ بِهِ أَوْ بِالْعَرْضِ، ثُمَّ أُطْلِعَ عَلَى عَيْبٍ، فَلَهُ الرُّجُوعُ بِقِيمَةِ الْعَيْبِ فَقَطْ.

L25215 If he sold it, mortgaged it, or leased it, then becomes aware of a defect, he has no recourse to retract nor to demand its return.

فَلَوْ بَاعَهُ أَوْ رَهَنَهُ أَوْ أَجَرَهُ، ثُمَّ اطَّلَعَ عَلَى عَيْبٍ فَلَا رُجُوعَ لَهُ وَلَا رَدَّ.

L25216 When the collateral is released, the lease is completed, or it is returned to him after the sale, he has the right to reclaim it.

فَإِذَا خَرَجَ عَنْ الرَّهْنِ، أَوْ تَمَّتْ الْإِجَارَةُ، أَوْ رَجَعَ إلَيْهِ بَعْدَ الْبَيْعِ فَلَهُ الرَّدُّ.

L25217 A gift given in exchange for a counter-value is treated like a sale. If a seller sells half of an item, the seller is instructed: "Return half the value of the defect, or take the remaining half for half the price."

وَالْهِبَةُ لِلثَّوَابِ كَالْبَيْعِ - فَإِنْ بَاعَ نِصْفَ السِّلْعَةِ قِيلَ لِلْبَائِعِ: رُدَّ نِصْفَ قِيمَةِ الْعَيْبِ، أَوْ خُذْ النِّصْفَ الْبَاقِيَ فِي نِصْفِ ثَمَنٍ.

L25218 Al-Shafi'i said: If he emancipates the slave or the slave dies, he may reclaim the value of the defect. But if he sells him or sells part of him, he cannot reclaim anything. Uthman al-Batti said: If he sells him or emancipates him,

he may reclaim the value of the defect - and this is our view. Uthman added: If he sells him for the price he paid, he cannot reclaim anything.

وَقَالَ الشَّافِعِيُّ: إِنْ أَعْتَقَهُ، أَوْ مَاتَ الْعَبْدُ، رَجَعَ بِقِيمَةِ الْعَيْبِ فَلَوْ بَاعَهُ أَوْ بَاعَ بَعْضَهُ لَمْ يَرْجِعْ بِشَيْءٍ - وَقَالَ عُثْمَانُ الْبَتِّيُّ: إِنْ بَاعَهُ، أَوْ أَعْتَقَهُ رَجَعَ بِقِيمَةِ الْعَيْبِ - وَهُوَ قَوْلُنَا قَالَ عُثْمَانُ: فَلَوْ بَاعَهُ بِمَا كَانَ اشْتَرَاهُ لَمْ يَرْجِعْ بِشَيْءٍ.

L25219–25220 Abu Muhammad said: We only take into account unfair exploitation at the time of concluding the sale contract, not before it nor after it. If the slave escapes and he then becomes aware of a defect, Malik ruled that he may rescind the contract and recover the full price.

قَالَ أَبُو مُحَمَّدٍ: إِنَّمَا نُرَاعِي الْغَبْنَ حِينَ عَقْدِ الْبَيْعِ لَا بَعْدَهُ وَلَا قَبْلَهُ، فَلَوْ أَبَقَ الْعَبْدُ ثُمَّ اطَّلَعَ عَلَى عَيْبٍ قَالَ مَالِكٌ: لَهُ الرَّدُّ، وَيَأْخُذُ جَمِيعَ الثَّمَنِ.

L25221 Ali said: “We hold this view because it remains in his ownership afterward, and his transfer of ownership to another is valid. He is not required to deliver it physically, but only to relinquish control over it to the transferee.” Sufyan al-Thawri said: “He has no entitlement until the runaway [slave] is present to be returned, or dies - at which point he may claim compensation for the defect’s reduced value.”

قَالَ عَلِيٌّ: وَبِهَذَا نَأْخُذُ، لِأَنَّهُ فِي مِلْكِهِ بَعْدُ، وَتَمْلِيكُهُ غَيْرَهُ جَائِزٌ، وَلَيْسَ عَلَيْهِ تَسْلِيمُهُ إِنَّمَا عَلَيْهِ إِطْلَاقُ يَدِ مَنْ مَلَّكَهُ إِيَّاهُ عَلَيْهِ فَقَطْ - وَقَالَ سُفْيَانُ الثَّوْرِيُّ: لَا شَيْءَ لَهُ حَتَّى يَحْضُرَ الْآبِقُ فَيَرُدَّهُ، أَوْ يَمُوتَ فَيَرْجِعَ بِقِيمَةِ الْعَيْبِ.

L25222 Ali said: The opinions of Abu Hanifah and Malik lack any substantiating proof, and we know of no one who held their view before them—meaning their aforementioned classification. As for a commodity partitioned into distinct parts where a defect is found in some portions, the position of Shuraih, al-Sha‘bi, al-Shāfiʿī, and Abu Thawr corresponds to our opinion: one must either rescind the entire transaction or retain the entirety.

قَالَ عَلِيٌّ: قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، لَا بُرْهَانَ عَلَيْهِمَا، وَلَا نَعْلَمُ لَهُمَا قَائِلًا قَبْلَهُمَا - نَعْنِي تَقْسِيمَهُمَا الْمَذْكُورَ - وَأَمَّا السِّلْعَةُ الَّتِي تَتَبَعَّضُ فَيُوجَدُ بِبَعْضِهَا عَيْبٌ فَقَوْلُ شُرَيْحٍ، وَالشَّعْبِيِّ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، كَقَوْلِنَا إِمَّا أَنْ يَرُدَّ الْجَمِيعَ وَإِمَّا أَنْ يُمْسِكَ الْجَمِيعَ.

L25223 Malik said: If the defect affects the essence of the transaction or the part that yields profit, the buyer may rescind the entire sale or keep all of it. But if the defect does not relate to these aspects, he may only rescind the defective portion in proportion to its share of the price. This is a view not known from any predecessor before him, and no proof validates its correctness.

وَقَالَ مَالِكٌ: إِنْ كَانَ الْمَعِيبُ هُوَ وَجْهَ الصَّفْقَةِ، أَوْ الَّذِي فِيهِ الرِّبْحُ رَدَّ الْجَمِيعَ، أَوْ أَمْسَكَ الْجَمِيعَ، وَإِنْ كَانَ الْمَعِيبُ لَيْسَ هُوَ كَذَلِكَ كَانَ لَهُ رَدُّهُ بِحِصَّتِهِ مِنْ الثَّمَنِ فَقَطْ - وَهَذَا قَوْلٌ لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ، وَلَا بُرْهَانَ عَلَى صِحَّتِهِ.

L25224 Abū Ḥanīfah said: If the item is a pair of shoes or two door panels, and a defect is found in one of them, the buyer has no right except to return both together or keep both together. If they are two slaves or two garments, he may return the defective one proportionate to its value and keep the other.

وَقَالَ أَبُو حَنِيفَةَ: إِنْ كَانَتْ السِّلْعَةُ خُفَّيْنِ، أَوْ مِصْرَاعَيْنِ، فَوَجَدَ بِأَحَدِهِمَا عَيْبًا لَمْ يَكُنْ لَهُ إِلَّا رَدُّهُمَا مَعًا، أَوْ إِمْسَاكُهُمَا مَعًا، فَإِنْ كَانَا عَبْدَيْنِ أَوْ ثَوْبَيْنِ كَانَ لَهُ رَدُّ الْمَعِيبِ بِحِصَّتِهِ مِنْ الثَّمَنِ وَإِمْسَاكُ الْآخَرِ.

قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ، لِأَنَّهُمْ مُجْمِعُونَ مَعَنَا عَلَى جَوَازِ بَيْعِ أَحَدِ الْخُفَّيْنِ وَأَحَدِ الْمِصْرَاعَيْنِ دُونَ الْآخَرِ، كَجَوَازِ بَيْعِ أَحَدِ الثَّوْبَيْنِ، وَأَحَدِ الْعَبْدَيْنِ، وَلَا فَرْقَ، فَالتَّفْرِيقُ بَيْنَ ذَلِكَ فِي الرَّدِّ بَاطِلٌ، وَهُوَ أَيْضًا قَوْلٌ لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ.

L25225 Abū Muḥammad said: This is void, for they are in consensus with us regarding the permissibility of selling one of the two khuffs or one of the two door panels without the other, just as it is permissible to sell one of two garments or one of two slaves—since there is no distinction. Thus, differentiating between these cases in nullification is void, and this is also a view not known from any predecessor before him.

وَمِمَّا يُبْطِلُ رَدَّ بَعْضِ السِّلْعَةِ: أَنَّ بَاقِيَهَا الَّذِي يَحْتَبِسُ بِهِ يَرْجِعُ إِلَى الْقِيمَةِ، لِأَنَّهُ إِنَّمَا يُمْسِكُهُ بِحِصَّتِهِ مِنَ الثَّمَنِ فَصَارَ بَيْعًا بِقِيمَةٍ، وَالْبَيْعُ بِالْقِيمَةِ لَا يَجُوزُ.

L25226 Among the things that invalidate the return of part of the commodity is that the remaining portion which the seller withholds based on their share of the price reverts to valuation. This makes it a sale by valuation, and sales by valuation are impermissible.

وَأَمَّا مَنْ وَطِئَ، أَوْ اسْتَغَلَّ، أَوْ اسْتَعْمَلَ ثُمَّ وَجَدَ الْعَيْبَ فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ شَرِيكٍ عَنْ جَابِرٍ عَنِ الشَّعْبِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِيمَنِ اشْتَرَى جَارِيَةً فَوَطِئَهَا ثُمَّ وَجَدَ بِهَا عَيْبًا: إِنْ كَانَتْ ثَيِّبًا رَدَّهَا وَنِصْفَ عُشْرِ قِيمَتِهَا، وَإِنْ كَانَتْ بِكْرًا رَدَّهَا وَرَدَّ مَعَهَا عُشْرَ قِيمَتِهَا وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا مُطَرِّفٌ - هُوَ ابْنُ طَرِيفٍ - الْمُغِيرَةُ - هُوَ ابْنُ مِقْسَمٍ - قَالَ مُطَرِّفٌ: عَنِ الشَّعْبِيِّ عَنْ شُرَيْحٍ، وَقَالَ الْمُغِيرَةُ: عَنْ إِبْرَاهِيمَ، ثُمَّ اتَّفَقَ شُرَيْحٌ، وَإِبْرَاهِيمُ، قَالَا جَمِيعًا: إِذَا وَطِئَهَا، ثُمَّ رَأَى بِهَا عَيْبًا رَدَّهَا بِالْعَيْبِ وَرَدَّ مَعَهَا عُقْرَهَا إِنْ كَانَتْ بِكْرًا فَالْعُشْرُ، وَإِنْ كَانَتْ ثَيِّبًا نِصْفُ الْعُشْرِ.

L25227–25229 As for one who had intercourse with her, exploited her, or put her to work and then discovered a defect, we narrate via Ibn Abī Shaybah from Sharīk from Jābir from al-Shaʿbī that ʿUmar ibn al-Khaṭṭāb ruled regarding a man who purchased a slave girl, had intercourse with her, then found her defective: If she was previously married (thayyib), he may return her and claim one-twentieth of her value. If she was a virgin, he may return her and claim one-tenth of her value. From the path of Saʿīd ibn Manṣūr: We received [the report] through Hushaym; we received [it] through Muṭarrif (son of Ṭarīf) and al-Mughīrah (son of Miqsam). Muṭarrif said: From al-Shaʿbī, from Shurayḥ; while al-Mughīrah said: From Ibrāhīm. Then Shurayḥ and Ibrāhīm concurred. Both said: If he consummates the marriage with her, then observes a defect in her, he may return her due to the defect and must restore with her the bridal gift. If she was a virgin, then [it is] a tenth; if she was previously married, half of a tenth.

وَصَحَّ أَيْضًا عَنْ قَتَادَةَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْهُ.

L25230 And it has also been authentically established from Qatādah via Abd al-Razzāq, from Ma’mar, from him.

وَقَدْ رُوِّينَا أَيْضًا مِنْ طَرِيقِ وَكِيعٍ عَنْ شَرِيكٍ عَنْ أَبِي هِنْدٍ الْمَرْهَبِيِّ عَنِ الضَّحَّاكِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: إِذَا وَطِئَهَا فَهِيَ مِنْ مَالِهِ وَيَرُدُّ عَلَيْهِ الْبَائِعُ قِيمَةَ الْعَيْبِ. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ عُلَيَّةَ - نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ

L25231 It has been narrated to us from the path of Wakīʿ from Sharīk from Abū Hind al-Marhabī from al-Ḍaḥḥāk from ʿUmar ibn al-Khaṭṭāb, who said: “If he has intercourse with her, she becomes part of his wealth, and the seller must reimburse him the value of the defect.” From the path of Saʿīd ibn Manṣūr: We narrate from Ismāʿīl ibn Ibrāhīm (known as Ibn ʿUlayyah) from Ayyūb al-Sikhtiyānī from Muḥammad ibn Sīrīn: A man bought a slave girl,

had intercourse with her, then found a defect in her. He took the dispute to Shurayḥ, who said: "Would it please you if I say to you: 'You have committed adultery'?" Ibn Sīrīn reported: "I was later informed that in Kūfah, the ruling required him to return her and return with her the deflowering indemnity of one hundred units." Ibn Sīrīn added: "It is more preferable to me that he accept her despite the defect and have the amount equivalent to the defect's value deducted—this being the position of Sufyān al-Thawrī and al-Zuhrī."

مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ رَجُلًا اشْتَرَى جَارِيَةً فَوَطِئَهَا ثُمَّ وَجَدَ بِهَا عَيْبًا، فَخَاصَمَ إِلَى شُرَيْحٍ؛ فَقَالَ شُرَيْحٌ: أَيَسُرُّك أَنْ أَقُولَ لَك: إِنَّك زَنَيْت؟ قَالَ ابْنُ سِيرِينَ: ثُمَّ أُخْبِرْت أَنَّهُ قَضَى بِالْكُوفَةِ أَنْ يَرُدَّهَا وَيَرُدَّ مَعَهَا عُقْرَهَا مِائَةً، قَالَ ابْنُ سِيرِينَ: وَأَحَبُّ إِلَيَّ أَنْ يَتَجَوَّزَهَا وَيُوضَعَ عَنْهُ قَدْرُ الدَّاءِ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالزُّهْرِيِّ.

L25232 Two opinions have been narrated to us from Ali—one of them through Ibn Abi Shaybah from Hafs ibn Ghiyath, from Ja'far ibn Muhammad ibn Ali ibn al-Husayn, from his father, from his grandfather Ali ibn al-Husayn: that Ali ibn Abi Talib said, "He must not return her, but the value of the defect is to be reimbursed to him"—referring to the case of one who has intercourse with a female slave and subsequently finds a defect in her.

وَقَدْ رُوِّينَا عَنْ عَلِيٍّ قَوْلَيْنِ -: أَحَدُهُمَا - مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ حَفْصِ بْنِ غِيَاثٍ عَنْ جَعْفَرِ بْنِ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ أَبِيهِ عَنْ جَدِّهِ عَلِيِّ بْنِ الْحُسَيْنِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لَا يَرُدُّهَا، لَكِنْ يُرَدُّ عَلَيْهِ قِيمَةُ الْعَيْبِ - يَعْنِي فِي الَّذِي يَطَأُ الْجَارِيَةَ ثُمَّ يَجِدُ بِهَا عَيْبًا.

L25233 And the other -

وَالْآخَرُ -

L25234 From the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us from Jubayr, from al-Ḍaḥḥāk: ʿAlī ibn Abī Ṭālib said: If he consummates the marriage, the dowry becomes obligatory upon him. If he detects a defect before consummating with her, he may choose to retain her or return her. This opinion is confirmed from al-Ḥasan. From ʿUmar ibn ʿAbd al-ʿAzīz, it is established that he cannot return her nor reclaim anything.

مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا جُبَيْرٌ عَنْ الضَّحَّاكِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: إذَا وَطِئَهَا وَجَبَتْ عَلَيْهِ، وَإِنْ رَأَى الْعَيْبَ قَبْلَ أَنْ يَطَأَهَا، فَإِنْ شَاءَ أَخَذَ وَإِنْ شَاءَ رَدَّ - وَصَحَّ هَذَا الْقَوْلُ عَنْ الْحَسَنِ، وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ لَا يَرُدُّهَا وَلَا يَرْجِعُ بِشَيْءٍ.

L25235 It has been narrated to us through the chain of Ibn Abī Shaybah—ʿAbd al-Aʿlá from Maʿmar from al-Zuhrī from Saʿīd ibn al-Musayyib, who said: He must return ten dinars with her—that is, if he has had intercourse with her and subsequently discovers a defect.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الْأَعْلَى عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: يَرُدُّ مَعَهَا عَشَرَةَ دَنَانِيرَ - يَعْنِي إذَا وَطِئَهَا ثُمَّ اطَّلَعَ عَلَى عَيْبٍ.

L25236–25238 From the transmission of Sa'id ibn Mansur: Narrated by Jarir from al-Mughirah, from al-Harith al-'Ukli regarding a man who bought a slave girl, had sexual intercourse with her, then she was lawfully reclaimed. Al-Harith al-'Ukli said: The rightful claimant takes his slave girl, and this buyer is not refunded. The buyer is obligated to provide *ʿuqr* (compensation for harm). As for dwellings, lands, and similar properties, their return follows the same principle if a defect is found in them, akin to a case where a rightful claim

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرٌ عَنْ الْمُغِيرَةِ عَنْ الْحَارِثِ الْعُكْلِيِّ فِي رَجُلٍ اشْتَرَى جَارِيَةً فَوَقَعَ عَلَيْهَا ثُمَّ اُسْتُحِقَّتْ قَالَ: يَأْخُذُ الْمُسْتَحِقُّ جَارِيَتَهُ وَلَا يَرُدُّ هَذَا الْمُشْتَرِي عَلَيْهِ عُقْرًا، وَالدُّورُ، وَالْأَرْضُونَ، وَأَشْبَاهُ ذَلِكَ عَلَى مِثْلِ هَذَا يَكُونُ رَدُّهُ إذَا وَجَدَ بِهَا عَيْبًا، كَالَّذِي اُسْتُحِقَّ فَاسْتُنْقِذَ مِنْ يَدَيْهِ.

is established and the property is subsequently reclaimed from the buyer's possession.

L25239 Abu Muhammad said: This is our view. As for the later scholars: Abu Hanifah stated: If he consummates the marriage with her, then discovers a defect, he is only entitled to the equivalent value of the defect itself, unless the seller agrees to accept her - then he may reject that [marriage] and reclaim the price.

قَالَ أَبُو مُحَمَّدٍ: هَذَا هُوَ قَوْلُنَا - وَأَمَّا الْمُتَأَخِّرُونَ: فَإِنَّ أَبَا حَنِيفَةَ قَالَ: إذَا وَطِئَهَا ثُمَّ اطَّلَعَ عَلَى عَيْبٍ فَلَيْسَ لَهُ إلَّا قَدْرُ قِيمَةِ الْعَيْبِ فَقَطْ، إلَّا أَنْ يَشَاءَ الْبَائِعُ قَبُولَهَا فَلَهُ رَدُّ ذَلِكَ، وَيَرُدُّ الثَّمَنَ.

L25240 Ibn Abi Laylā said: He must return it along with three-fortieths of its value - this being its uterine compensation. The rationale in his perspective is to calculate a tenth of its value and half of a tenth, sum them, then take half of that total - this being the amount he is obligated to return.

وَقَالَ ابْنُ أَبِي لَيْلَى: يَرُدُّهَا وَيَرُدُّ مَعَهَا ثَلَاثَةَ أَرْبَاعِ عُشْرِ قِيمَتِهَا - وَهَذَا هُوَ عُقْرُهَا، وَوَجْهُهُ عِنْدَهُ أَنْ يَأْخُذَ عُشْرَ قِيمَتِهَا وَنِصْفَ عُشْرِ قِيمَتِهَا فَيَجْمَعَهَا ثُمَّ يَأْخُذَ نِصْفَ مَا اجْتَمَعَ فَهُوَ الَّذِي يُقْضَى عَلَيْهِ بِرَدِّهِ.

L25241 Ibn Shubruma, Al-Ḥasan ibn Hayy, and Ubayd Allāh ibn Al-Ḥasan said: He must restore her [to her marital rights] and provide the standard mahr (mahr al-mithl) appropriate to her social standing, even if it is exceedingly high.

وَقَالَ ابْنُ شُبْرُمَةَ، وَالْحَسَنُ بْنُ حَيٍّ، وَعُبَيْدُ اللَّهِ بْنُ الْحَسَنِ: يَرُدُّهَا وَيَرُدُّ مَعَهَا مَهْرَ مِثْلِهَا بَالِغًا مَا بَلَغَ.

L25242 Uthman al-Batti said: If marital intercourse does not reduce it, he must return it without anything else. But if it does reduce it, he must return it along with the amount by which it was reduced.

وَقَالَ عُثْمَانُ الْبَتِّيُّ: إنْ لَمْ يُنْقِصْهَا الْوَطْءُ فَإِنَّهُ يَرُدُّهَا وَلَا يَرُدُّ مَعَهَا شَيْئًا، فَإِنْ نَقَصَهَا رَدَّهَا وَرَدَّ مَعَهَا مَا نَقَصَهَا.

L25243 Malik, al-Layth ibn Saʿd, and al-Shāfiʿī (in one of his two juristic positions) maintained: If she was a virgin, he must return her and restore the amount by which her dowry was reduced due to consummation. If she was a non-virgin, he must return her but is not required to restore anything with her.

وَقَالَ مَالِكٌ، وَاللَّيْثُ بْنُ سَعْدٍ، وَالشَّافِعِيُّ فِي أَحَدِ قَوْلَيْهِ: إنْ كَانَتْ بِكْرًا رَدَّهَا وَرَدَّ مَعَهَا مَا نَقَصَهَا وَطْؤُهُ، وَإِنْ كَانَتْ ثَيِّبًا رَدَّهَا وَلَمْ يَرُدَّ مَعَهَا شَيْئًا.

L25244 Al-Shāfiʿī stated in the more authoritative of his two opinions: If he deflowered her, he cannot repudiate her, but may only reclaim the value of the defect from the dowry. If she was a previously married woman, he may repudiate her without returning anything [of the dowry].

وَقَالَ الشَّافِعِيُّ فِي أَشْهَرِ قَوْلَيْهِ: إنْ كَانَ افْتَضَّهَا فَلَيْسَ لَهُ رَدُّهَا، لَكِنْ يَرْجِعُ بِقِيمَةِ الْعَيْبِ فَقَطْ، وَإِنْ كَانَتْ ثَيِّبًا رَدَّهَا وَلَمْ يَرُدَّ مَعَهَا شَيْئًا.

L25245 Ali said: Malik's opinion is not known to have been reported from anyone before him, and there is no basis for imposing compensation for injury or a financial penalty upon the buyer; because he had intercourse with his

قَالَ عَلِيٌّ: قَوْلُ مَالِكٍ لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ، وَلَا مَعْنَى لِإِيجَابِ - عُقْرٍ وَلَا غَرَامَةٍ عَلَى الْمُشْتَرِي؛ لِأَنَّهُ وَطِئَ أَمَتَهُ الَّتِي لَوْ حَمَلَتْ لَحِقَهُ وَلَدُهَا، وَالَّتِي لَا يُلَامُ عَلَى وَطْئِهَا.

slave woman—whose child, if she were to become pregnant, would be legally affiliated with him—and whom he is not blamed for having intercourse with.

وَلَوْ أَنَّ الْبَائِعَ وَطِئَهَا وَهِيَ فِي مِلْكِ الْمُشْتَرِي لَكَانَ زَانِيًا يُرْجَمُ إِنْ كَانَ مُحْصَنًا، وَيُجْلَدُ الْحَدَّ إِنْ كَانَ غَيْرَ مُحْصَنٍ، فَأَيُّ حَقٍّ لَهُ فِي بُضْعِهَا حَتَّى يُعْطِيَ لَهُ عُقْرًا أَوْ قِيمَةً، وَقَدْ يُوجَدُ فِي الْإِمَاءِ مَنْ لَا يَحُطُّ الِافْتِضَاضُ مِنْ قِيمَتِهَا شَيْئًا، كَخَدَمِ الْخِدْمَةِ وَيُوجَدُ مَنْ يَحُطُّهَا الْوَطْءُ وَإِنْ كَانَتْ ثَيِّبًا كَالرَّقِيقِ الْعَالِي يَطَؤُهَا النَّذْلُ الَّذِي يُعَيِّرُ بِهِ سَيِّدُهَا وَوَلَدُهَا وَهِيَ، أَيْضًا.

L25246 If the seller were to have intercourse with her while she is under the ownership of the buyer, he would be deemed an adulterer subject to stoning if he is a legally protected person, and flogged with the prescribed penalty if he is not legally protected. What right then does he hold over intercourse with her that he should be granted compensation for unlawful intercourse or financial compensation? Among enslaved women, some suffer no loss in value from defloration—such as those engaged in menial labor—while others incur reduced value from intercourse even if previously married, like highly valued enslaved women when a lowly man—whose act brings disgrace upon her master, child, and herself—has intercourse with her.

فَهَذِهِ كُلُّهَا أَقْوَالٌ لَا بُرْهَانَ عَلَى صِحَّتِهَا، وَلَقَدْ كَانَ يَلْزَمُ الْمَالِكِيِّينَ الْمُعَظِّمِينَ لِخِلَافِ الصَّاحِبِ الْقَائِلِينَ: إِنَّ الْمُرْسَلَ كَالْمُسْنَدِ، الْقَائِلِينَ فِيمَا وَافَقَهُمْ: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ أَنْ يَقُولُوا هَهُنَا بِقَوْلِ عُمَرَ بْنِ الْخَطَّابِ، كَمَا قَالُوا فِي تَقْوِيمِ الْغُرَّةِ بِخَمْسِينَ دِينَارًا، وَتَقْوِيمِ الدِّيَةِ، وَغَيْرِ ذَلِكَ، وَلَكِنْ لَا يُبَالُونَ بِالتَّنَاقُضِ.

L25247–25249 All of these are statements without proof of their soundness, and indeed, it was incumbent upon the Maliki jurists—those who venerate [X]—to... Due to the position of the Companion among those who say: "The mursal is equivalent to the musnad"—those who argue in matters aligning with their view, such as this ruling not being based on personal opinion—to say here by the ruling of Umar ibn al-Khattab, just as they stated in valuing the ghurrah at fifty dinars, the valuation of blood money, and other cases. Yet they do not care about the contradiction.

وَأَمَّا مَنْ أَحْدَثَ فِيهَا حَدَثًا فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ عَنْ أَيُّوبَ عَنِ ابْنِ سِيرِينَ عَنْ عُثْمَانَ بْنِ عَفَّانَ: أَنَّهُ قَضَى فِي الثَّوْبِ يَشْتَرِيهِ الرَّجُلُ وَبِهِ الْعُوَارُ: أَنَّهُ يَرُدُّهُ إِذَا كَانَ قَدْ لَبِسَهُ.

L25250 As for one who introduces an improper act in a garment, it has been narrated to us through the chain of Ibn Abī Shaybah—ʿAbd al-Wahhāb al-Thaqafī → Ayyūb → Ibn Sīrīn → ʿUthmān ibn ʿAffān—that he judged regarding a garment purchased by a man with a defect: the buyer may return it even after wearing it.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ: أَنَّ ابْنَ عُمَرَ اشْتَرَى عِمَامَةً فَقَبِلَهَا وَرَضِيَهَا وَكَوَّرَهَا عَلَى رَأْسِهِ، فَرَأَى خَيْطًا أَحْمَرَ فَرَدَّهَا. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ جَعْفَرٍ نا غُنْدَرٌ نا شُعْبَةُ عَنْ جَبَلَةَ بْنِ سُحَيْمٍ قَالَ: رَأَيْت

L25251 From the transmission of Saʿīd ibn Manṣūr: Sufyān ibn ʿUyaynah reported to us from Ibn Abī Najīḥ via Mujāhid: Ibn ʿUmar purchased a turban, accepted it, approved it, and coiled it around his head. Then he noticed a red stripe in it and returned it. From the transmission of Ibn Abī Shaybah: Muḥammad ibn Jaʿfar reported to us via Ghundar: Shuʿbah reported to us from Jabalah ibn Suḥaym, who said: I saw Ibn ʿUmar buy a shirt, wear it, then notice

yellow discoloration from his beard had stained it. He wished to return it but refrained because of the discoloration.

ابْنَ عُمَرَ اشْتَرَى قَمِيصًا فَلَبِسَهُ فَأَصَابَتْهُ صُفْرَةٌ مِنْ لِحْيَتِهِ، فَأَرَادَ أَنْ يَرُدَّهُ فَلَمْ يَرُدَّهُ مِنْ أَجْلِ الصُّفْرَةِ.

L25252 And through the chain of Ibn Shaybah: Hafs ibn Ghiyath reported to us from al-Hasan ibn 'Ubaydillah, from Ibrahim, from Shurayh that a man who bought a Herati item from another man came to dispute before him. He had cut it, then found a defect in it. Shurayh said to him: "What was newly done to it is more severe than what was originally in it."

وَمِنْ طَرِيقِ ابْنِ شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنِ الْحَسَنِ بْنِ عُبَيْدِ اللَّهِ عَنْ إِبْرَاهِيمَ عَنْ شُرَيْحٍ أَنَّهُ اخْتَصَمَ إِلَيْهِ رَجُلٌ اشْتَرَى مِنْ آخَرَ هَرَوِيَّةً فَقَطَعَهَا، ثُمَّ وَجَدَ بِهَا عَيْبًا، فَقَالَ لَهُ شُرَيْحٌ: الَّذِي أُحْدِثَ بِهَا أَشَدُّ مِنَ الَّذِي كَانَ بِهَا.

L25253 Ghundar said: From Shu'bah, who said: I asked al-Hakam about one who buys a garment, cuts it, and then finds a defect in it. He said: He must return it. Shu'bah said: And I asked Hammad ibn Abi Sulayman about this. He said: He must return it and pay compensation for the cutting.

قَالَ غُنْدَرٌ: نا شُعْبَةُ قَالَ: سَأَلْتُ الْحَكَمَ عَمَّنِ اشْتَرَى ثَوْبًا فَقَطَعَهُ فَوَجَدَ بِهِ عُوَارًا؟ قَالَ: يَرُدُّهُ، قَالَ شُعْبَةُ: وَسَأَلْتُ حَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَنْ هَذَا؟ فَقَالَ: يَرُدُّهُ وَيَرُدُّ مَعَهُ أَرْشَ التَّقْطِيعِ.

L25254 Shu'bah said: Al-Haytham reported to me on the authority of Ḥammād that he said: "The compensation for inherent defects is waived for him."

قَالَ شُعْبَةُ: وَأَخْبَرَنِي الْهَيْثَمُ عَنْ حَمَّادٍ: أَنَّهُ قَالَ: يُوضَعُ عَنْهُ أَرْشُ الْعُوَارِ.

L25255 From the path of Ibn Abī Shaybah, narrated to us Ismā'īl ibn 'Ulayyah from Ayyūb al-Sikhtiyānī from Ibn Sīrīn, who said: A man purchased an animal and traveled on it. When he returned, he found a defect in it and took the dispute to Shuraih. He said to him: You permitted the buyer concerning its back.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنِ ابْنِ سِيرِينَ قَالَ: اشْتَرَى رَجُلٌ دَابَّةً فَسَافَرَ عَلَيْهَا فَلَمَّا رَجَعَ وَجَدَ بِهَا عَيْبًا فَخَاصَمَهُ إِلَى شُرَيْحٍ؟ فَقَالَ لَهُ: أَنْتَ أَذِنْتَ لَهُ فِي ظَهْرِهَا.

L25256 Abu Muhammad said: This opinion of al-Hakam is the opinion of Uthman al-Batti, one of the opinions of al-Shafi'i, and an opinion transmitted from Shurayh as well. It is our opinion.

قَالَ أَبُو مُحَمَّدٍ: وَقَوْلُ الْحَكَمِ هَذَا هُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ، وَهُوَ أَحَدُ أَقْوَالِ الشَّافِعِيِّ، وَهُوَ قَوْلٌ قَدْ رُوِيَ عَنْ شُرَيْحٍ أَيْضًا، وَهُوَ قَوْلُنَا.

L25257–25259 As for the subsequent scholars, Abū Ḥanīfah said: Whoever cuts a garment he has purchased or introduces a change in what he has purchased. If a defect existed in the item when he acquired it and later discovers it, he has no right to return the item; however, he may recover the value of the defect—this being one of the two opinions of Ḥammād.

وَأَمَّا الْمُتَأَخِّرُونَ: فَإِنَّ أَبَا حَنِيفَةَ قَالَ: مَنْ قَطَعَ ثَوْبًا اشْتَرَاهُ أَوْ حَدَثَ بِمَا اشْتَرَى عَيْبٌ عِنْدَهُ ثُمَّ اطَّلَعَ عَلَى عَيْبٍ فَلَا رَدَّ لَهُ، لَكِنْ يَرْجِعُ بِقِيمَةِ الْعَيْبِ - وَهُوَ أَحَدُ قَوْلَيْ حَمَّادٍ.

L25260 Some of his companions, among them are Al-Ṭaḥāwī and Muḥammad ibn

Shujāʿ, held the view that they do not repudiate it, nor do they retract anything.

وَذَهَبَ بَعْضُ أَصْحَابِهِ مِنْهُمْ الطَّحَاوِيُّ، وَمُحَمَّدُ بْنُ شُجَاعٍ، إلَى أَنَّهُ لَا يَرُدُّهُ، وَلَا يَرْجِعُ بِشَيْءٍ.

L25261 And for Al-Shafiʿi there are two opinions - one of them being in accordance with the opinion of Abu Hanifah, which is also the opinion of Sufyan al-Thawri and Ibn Shubruma.

وَلِلشَّافِعِيِّ قَوْلَانِ -: أَحَدُهُمَا: كَقَوْلِ أَبِي حَنِيفَةَ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَابْنِ شُبْرُمَةَ.

L25262 The second is that he must return it and must return along with it the value of the defect that arose during his possession, which is the opinion of Abū Thawr and one of the two positions held by Ḥammād.

وَالثَّانِي: أَنَّهُ يَرُدُّهُ وَيَرُدُّ مَعَهُ قِيمَةَ مَا حَدَثَ عِنْدَهُ مِنْ الْعَيْبِ - وَهُوَ قَوْلُ أَبِي ثَوْرٍ، وَأَحَدُ قَوْلَيْ حَمَّادٍ.

L25263 Ahmad and Ishaq stated: The buyer may choose either to return the item and the value of what occurred during his possession, or to retain it and reclaim the value of the defect.

وَقَالَ أَحْمَدُ، وَإِسْحَاقُ: هُوَ بِالْخِيَارِ بَيْنَ أَنْ يَرُدَّهُ، وَيَرُدَّ مَعَهُ قَدْرَ مَا حَدَثَ عِنْدَهُ، وَبَيْنَ أَنْ يُمْسِكَهُ وَيَرْجِعَ بِقِيمَةِ الْعَيْبِ.

L25264 Mālik said: If the invalidating defect that arose during his custody is one that voids the transaction, he must return it and refund the market value of what developed under his possession. If the defect is minor, he returns it without refunding anything—and this is an opinion we know no one to have stated before him, meaning this categorization. The position of Abū Ḥanīfah and Mālik here contradicts the rulings transmitted from ʿUthmān and Ibn ʿUmar—may Allah be pleased with them—and we know of no other statement from the Companions on this matter besides theirs.

وَقَالَ مَالِكٌ: إنْ كَانَ الْعَيْبُ الَّذِي حَدَثَ عِنْدَهُ مُفْسِدًا فَإِنَّهُ يَرُدُّهُ وَيَرُدُّ قِيمَةَ مَا حَدَثَ عِنْدَهُ، وَإِنْ كَانَ الْعَيْبُ خَفِيفًا رَدَّهُ وَلَمْ يَرُدَّ مَعَهُ شَيْئًا - وَهَذَا قَوْلٌ لَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ - يَعْنِي هَذَا التَّقْسِيمَ - وَقَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ هَهُنَا خِلَافُ مَا رُوِيَ عَنْ عُثْمَانَ، وَابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا -، وَلَا نَعْلَمُ فِي هَذَا عَنْ الصَّحَابَةِ قَوْلًا غَيْرَهُ.

L25265 Uthman—may Allah be pleased with him—permitted returning garments due to defects after wearing, since wearing causes garments to deteriorate. Ibn Umar's refusal to allow cancellation of sale due to yellow discoloration does not indicate he generally prohibited returns. He may have voluntarily chosen to disallow this specific return, considering the yellowing isn't a true defect as it disappears quickly through wiping or by washing the shirt.

وَقَدْ أَبَاحَ عُثْمَانُ - رَضِيَ اللَّهُ عَنْهُ - الرَّدَّ بِالْعَيْبِ بَعْدَ اللِّبَاسِ، وَاللِّبَاسُ يُخْلِقُ الثَّوْبَ، وَلَيْسَ امْتِنَاعُ ابْنِ عُمَرَ مِنْ الرَّدِّ مِنْ أَجْلِ الصُّفْرَةِ دَلِيلًا عَلَى أَنَّهُ لَمْ يُجِزْ الرَّدَّ، وَقَدْ يَتْرُكُ ذَلِكَ اخْتِيَارًا مَعَ أَنَّ الصُّفْرَةَ لَيْسَتْ عَيْبًا؛ لِأَنَّهَا تَزُولُ سَرِيعًا بِالْمَسْحِ، وَبِالْغَسْلِ لِلْقَمِيصِ.

L25266 As for defects inherent in an item's interior, Mālik said: The buyer has no recourse for such defects, as these are upon the buyer. This applies to items like eggs, lumber, and similar goods.

وَأَمَّا مَا عَيْبُهُ فِي جَوْفِهِ فَإِنَّ مَالِكًا قَالَ: لَا رُجُوعَ لَهُ فِيهِ وَهُوَ مِنْ الْمُشْتَرِي، كَالْبَيْضِ، وَالْخَشَبِ وَغَيْرِ ذَلِكَ.

L25267 Abu Hanifah and al-Shafiʿi obligated the return to the legal judgment inher-

ent in that matter.

وَأَوْجَبَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: الرُّجُوعَ بِحُكْمِ مَا فِي ذَلِكَ.

L25268–25270 Abu Muhammad said: We know of no predecessor for Malik, nor any evidence supporting this statement of his. Among all astonishing and contrary rulings, none is more baffling than his opinion regarding one who sells eggs later found spoiled, or wood discovered to be internally termite-ridden: that the entire price remains with the seller, and the buyer has no legal recourse against him - though the seller transacted a defective item and unjustly devoured his brother's wealth. He further states: If someone sells a slave who dies, is killed on the third day, escapes within that period, or becomes one-eyed... If a defect exists in it, then it is the liability of the seller, even if it becomes insane, contracts glanders, or develops leprosy before the completion of one year after its sale to him, then it remains the seller's liability.

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ لِمَالِكٍ سَلَفًا، وَلَا حُجَّةً فِي هَذِهِ الْقَوْلَةِ، وَمَا فِي الْعَجَبِ وَالْعَكْسِ أَعْجَبُ مِنْ قَوْلِهِ فِيمَنْ بَاعَ بَيْضًا فَوَجَدَهُ فَاسِدًا أَوْ خَشَبًا فَوَجَدَهُ مُسَوَّسَ الدَّاخِلِ: أَنَّ الثَّمَنَ كُلَّهُ لِلْبَائِعِ، وَلَا شَيْءَ لِلْمُشْتَرِي عَلَيْهِ - وَهُوَ قَدْ بَاعَهُ شَيْئًا فَاسِدًا، وَأَكَلَ مَالَ أَخِيهِ بِالْبَاطِلِ ثُمَّ يَقُولُ: مَنْ بَاعَ عَبْدًا فَمَاتَ، أَوْ قُتِلَ فِي الْيَوْمِ الثَّالِثِ، أَوْ هَرَبَ فِيهِ، أَوْ اعْوَرَّتْ عَيْنُهُ فِيهِ: فَهُوَ مِنْ مُصِيبَةِ الْبَائِعِ - وَإِنْ جُنَّ، أَوْ تَجَذَّمَ، أَوْ بَرِصَ، إلَى قَبْلِ تَمَامِ سَنَةٍ مِنْ بَعْدِ بَيْعِهِ لَهُ، فَإِنَّهُ مِنْ مُصِيبَةِ الْبَائِعِ.

L25271 Whoever purchases dates while still on the palm trees, and they are struck by wind or consumed by locusts, this becomes the seller's misfortune. He must invalidate the wrongfully taken price and incur a penalty equivalent to the rightfully taken price. Defects arising while the goods are in the seller's possession are considered the buyer's misfortune, while defects arising while in the buyer's possession are considered the seller's misfortune. Allah is utterly free from such [unjust rulings].

وَمَنْ ابْتَاعَ تَمْرًا فِي رُءُوسِ الشَّجَرِ فَأَصَابَتْهُ رِيحٌ، أَوْ أَكَلَتْهُ جَرَادٌ فَمِنْ مُصِيبَةِ الْبَائِعِ، فَهُوَ يُهْنِيهِ الثَّمَنَ الَّذِي أَخَذَهُ بِالْبَاطِلِ، وَيُغَرِّمُهُ الثَّمَنَ الَّذِي أَخَذَهُ بِالْحَقِّ - وَيَجْعَلُ مِنْ مُصِيبَةِ الْمُشْتَرِي مَا حَدَثَ عِنْدَ الْبَائِعِ مِنْ الْعُيُوبِ، وَيَجْعَلُ مِنْ مُصِيبَةِ الْبَائِعِ مَا حَدَثَ عِنْدَ الْمُشْتَرِي مِنْ الْعُيُوبِ، حَاشَا لِلَّهِ مِنْ هَذَا.

L25272 Hummam ibn Ahmad reported to us: Abdullah ibn Muhammad ibn Ali al-Baji informed us: Muhammad ibn Abd al-Malik ibn Ayman reported to us: Al-Husayn ibn Zakariyya narrated to us: Abu Thawr informed us: Mu'alla narrated to us: Hushaym reported from al-Mughirah, from al-Harith—who is al-Ukli—from Shurayh: A client of Amr ibn Huraith bought for him four or five ostrich eggs for a dirham. When he placed them before Amr ibn Huraith, Amr broke one, and it was rotten. Then a second, then a third, until they kept turning out rotten one after another. He sought the Bedouin seller and disputed with him before Shurayh. Shurayh said: "As for what he broke, he is liable to compensate for it at the price he received. As for what remains, you, O Bedouin, have the choice. If you wish, the buyers may break them. Whatever they find rotten, they return them; whatever they find good, it is theirs at the price for which you sold them."

حَدَّثَنَا حُمَامُ بْنُ أَحْمَدَ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنُ أَيْمَنَ نا الْحُسَيْنُ بْنُ زَكَرِيَّا نا أَبُو ثَوْرٍ نا مُعَلَّى نا هُشَيْمٌ عَنْ الْمُغِيرَةِ عَنْ الْحَارِثِ هُوَ الْعُكْلِيُّ عَنْ شُرَيْحٍ: أَنَّ مَوْلًى لِعَمْرِو بْنِ حُرَيْثٍ اشْتَرَى لِعَمْرِو بْنِ حُرَيْثٍ بَيْضًا مِنْ بَيْضِ النَّعَامِ أَرْبَعًا أَوْ خَمْسًا بِدِرْهَمٍ، فَلَمَّا وَضَعَهُنَّ بَيْنَ يَدَيْ عَمْرِو بْنِ حُرَيْثٍ كَسَرَ وَاحِدَةً، فَإِذَا هِيَ فَاسِدَةٌ، ثُمَّ ثَانِيَةً ثُمَّ ثَالِثَةً حَتَّى تَتَابَعَ مِنْهُنَّ فَاسِدَاتٌ، فَطَلَبَ الْأَعْرَابِيَّ فَخَاصَمَهُ إلَى شُرَيْحٍ، فَقَالَ شُرَيْحٌ: أَمَّا مَا كَسَرَ فَهُوَ ضَامِنٌ لَهُ بِالثَّمَنِ الَّذِي أَخَذَهُ بِهِ، وَأَمَّا مَا بَقِيَ

فَأَنْتَ يَا أَعْرَابِيُّ بِالْخِيَارِ، إِنْ شِئْت كَسَرُوا فَمَا وَجَدُوا فَاسِدًا رَدُّوهُ وَمَا وَجَدُوا طَيِّبًا فَهُوَ لَهُمْ بِالسِّعْرِ الَّذِي بِعْتهمْ بِهِ.

L25273 Ali said: As for the ruling of Shurayh—so the Malikis and the Hanafis do not adopt it, nor do we. Therefore, there is no basis for the Malikis in it.

قَالَ عَلِيٌّ: أَمَّا حُكْمُ شُرَيْحٍ - فَالْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ لَا يَأْخُذُونَ بِهِ وَلَا نَحْنُ، فَلَا مُتَعَلَّقَ لِلْمَالِكِيِّينَ بِهِ.

L25274 As for ʿAmr ibn Ḥurayth, he upheld the rejection of that matter—which is our position—and he is a Companion for whom no opposing stance from the other Companions (may Allah be pleased with them all) is known. They would greatly respect such a rejection when it aligned with their views.

وَأَمَّا عَمْرُو بْنُ حُرَيْثٍ فَقَدْ رَأَى الرَّدَّ فِي ذَلِكَ - وَهُوَ قَوْلُنَا - وَهُوَ صَاحِبٌ لَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا وَافَقَ آرَاءَهُمْ.

L25275 As for use and consummation after becoming aware of the defect, it is authentically reported from Shurayh that he said: If one consummates after seeing the defect or offers her for sale, then it becomes obligatory upon him—and this is his ruling regarding all goods.

وَأَمَّا الِاسْتِعْمَالُ، وَالْوَطْءُ بَعْدَ الِاطِّلَاعِ عَلَى الْعَيْبِ، فَإِنَّهُ صَحَّ عَنْ شُرَيْحٍ أَنَّهُ قَالَ إذَا وَطِئَ بَعْدَ مَا رَأَى الْمَعِيبَ أَوْ عَرَضَهَا عَلَى الْبَيْعِ، فَقَدْ وَجَبَ عَلَيْهِ - وَهَذَا قَوْلُهُ فِي جَمِيعِ السِّلَعِ.

L25276 This is also the position of al-Ḥasan al-Baṣrī, Abū Ḥanīfah, Mālik, al-Shāfiʿī, Aḥmad, and Isḥāq, except that Abū Ḥanīfah stated: Residing in the dwelling after discovering the defect, kissing the bondmaid out of desire, or having intercourse with her—constitutes acceptance of the defect.

وَهُوَ أَيْضًا قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَأَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ، إلَّا أَنَّ أَبَا حَنِيفَةَ قَالَ: سُكْنَى الدَّارِ بَعْدَ الْمَعْرِفَةِ بِالْعَيْبِ، وَتَقْبِيلُ الْأَمَةِ لِشَهْوَةٍ، وَوَطْؤُهَا -: رِضًا بِالْعَيْبِ.

L25277–25278 He said: As for using the female slave, riding the animal, or wearing the shirt—to test all of that after becoming aware of the defect—none of these actions constitutes consent.

قَالَ وَأَمَّا اسْتِخْدَامُ الْأَمَةِ، أَوْ رُكُوبُ الدَّابَّةِ، أَوْ لِبَاسُ الْقَمِيصِ، لِيَخْتَبِرَ كُلَّ ذَلِكَ بَعْدَ اطِّلَاعِهِ عَلَى الْعَيْبِ، فَلَيْسَ شَيْءٌ مِنْ ذَلِكَ رِضًا.

L25279 Ubaydullah ibn al-Hasan said: Utilization is not consent.

وَقَالَ عُبَيْدُ اللَّهِ بْنُ الْحَسَنِ: لَيْسَ الِاسْتِخْدَامُ رِضًا.

L25280 Abū Muḥammad said: Muḥammad ibn Saʿīd ibn Nabāt narrated to us, from ʿAbd Allāh ibn Muḥammad ibn ʿAlī al-Bājī, who said: Aḥmad ibn Khālid narrated to us, who said: al-Ḥasan ibn Aḥmad al-Ṣanʿānī narrated to us, from Muḥammad ibn ʿUbayd ibn Ḥassāb, from Ḥammād ibn Zayd, from

قَالَ أَبُو مُحَمَّدٍ: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ قَالَ: نا أَحْمَدُ بْنُ خَالِدٍ، قَالَ: نا الْحَسَنُ بْنُ أَحْمَدَ الصَّنْعَانِيُّ نا مُحَمَّدُ بْنُ عُبَيْدِ بْنِ حَسَّابٍ نا حَمَّادُ

Ayyūb—that is, al-Sikhtiyānī—and Hishām ibn Ḥassān, both of them from Muḥammad ibn Sīrīn, who said: ʿAbd al-Raḥmān ibn ʿAwf purchased a slave girl. He was told: "She has a husband." He sent for her husband and said to him: "Divorce her." He refused. He offered him one hundred, but he refused. He offered him two hundred, but he refused. He offered him five hundred, but he refused. He sent word to his master: "He refuses to divorce her; take back your slave girl."

بْنُ زَيْدٍ عَنْ أَيُّوبَ - هُوَ السِّخْتِيَانِيُّ - وَهِشَامِ بْنِ حَسَّانَ كِلَاهُمَا عَنْ مُحَمَّدِ بْنِ سِيرِينَ، قَالَ: ابْتَاعَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ جَارِيَةً، فَقِيلَ لَهُ: إِنَّ لَهَا زَوْجًا فَأَرْسَلَ إِلَى زَوْجِهَا فَقَالَ لَهُ: طَلِّقْهَا، فَأَبَى، فَجَعَلَ لَهُ مِائَةً فَأَبَى، فَجَعَلَ لَهُ مِائَتَيْنِ فَأَبَى، فَجَعَلَ لَهُ خَمْسَمِائَةٍ فَأَبَى، فَأَرْسَلَ إِلَى مَوْلَاهُ: أَنَّهُ قَدْ أَبَى أَنْ يُطَلِّقَ فَاقْبَلُوا جَارِيَتَكُمْ.

L25281 This is ʿAbd al-Raḥmān ibn ʿAwf, who became aware of the flaw that she had a husband. He did not return her until he sent to the husband and bargained with him to divorce her, assigning him wealth for that. Then he increased him, then increased him again. When he despaired, he then returned her - with no opposition known from any of the Companions, and they held such a matter in great esteem.

فَهَذَا عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ قَدْ اطَّلَعَ عَلَى عَيْبٍ أَنَّ لَهَا زَوْجًا فَلَمْ يَرُدَّ حَتَّى أَرْسَلَ إِلَى الزَّوْجِ وَرَاوَضَهُ عَلَى طَلَاقِهَا، وَجَعَلَ لَهُ مَالًا عَلَى ذَلِكَ، ثُمَّ زَادَهُ، ثُمَّ زَادَهُ، فَلَمَّا يَئِسَ رَدَّ حِينَئِذٍ - وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا.

L25282 And via the chain of Abd al-Razzaq from Sufyan al-Thawri from Abdullah ibn Dinar, who said: I heard Ibn Umar state: "I used to purchase when I consented, until I heard Abdullah ibn Muṭīʿ say: 'A man may consent and then retract.'" Ibn Umar said: "It was as if he had awakened me." Thereafter, Ibn Umar would transact purchases while stipulating: "If you accept."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ قَالَ: سَمِعْت ابْنَ عُمَرَ يَقُولُ: كُنْت أَبْتَاعُ إنْ رَضِيتُ، حَتَّى سَمِعْتُ عَبْدَ اللَّهِ بْنَ مُطِيعٍ يَقُولُ: إنَّ الرَّجُلَ لَيَرْضَى ثُمَّ يَدَعَ، قَالَ ابْنُ عُمَرَ: فَكَأَنَّمَا أَيْقَظَنِي، فَكَانَ ابْنُ عُمَرَ يَبْتَاعُ وَيَقُولُ: إنْ أَخَذْت.

L25283 This Ibn Umar does not consider internal consent [to be] anything unless it is expressed verbally, and no dissent from the Companions against his view is known. They revered such a stance when it aligned with their adherence to precedent.

فَهَذَا ابْنُ عُمَرَ لَا يَرَى الرِّضَا بِالْقَلْبِ شَيْئًا حَتَّى يُظْهِرَهُ بِالْقَوْلِ، وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا وَافَقَ تَقْلِيدَهُمْ.

L25284 As for the restitution of revenue in cases where [something] is returned due to defects, we have mentioned the juristic disagreements thereon.

وَأَمَّا رَدُّ الْغَلَّةِ فِيمَا رُدَّ بِالْعَيْبِ فَقَدْ ذَكَرْنَا الْخِلَافَ فِي ذَلِكَ.

L25285 Zufar ibn al-Hudhayl, Uthman al-Batti, and Ubayd Allah ibn al-Hasan held opinions regarding this matter which we shall mention. As for Zufar ibn al-Hudhayl, he said: If a man purchases a slave girl, consummates the marriage with her, then discovers a defect in her and returns her by a judge's decree, he must return her along with a mahr equivalent to that of her peers. If another man has intercourse with her under doubtful circumstances and takes a mahr for her, or marries her in a valid marriage and takes her mahr, or harms her and takes compensatory payment (arsh) for the injury – then if a defect is

وَقَالَ زُفَرُ بْنُ الْهُذَيْلِ، وَعُثْمَانُ الْبَتِّيُّ، وَعُبَيْدُ اللَّهِ بْنُ الْحَسَنِ فِي ذَلِكَ مَا نَذْكُرُهُ -: فَأَمَّا زُفَرُ بْنُ الْهُذَيْلِ فَإِنَّهُ قَالَ: مَنْ اشْتَرَى جَارِيَةً فَوَطِئَهَا ثُمَّ اطَّلَعَ عَلَى عَيْبٍ بِهَا، فَإِنْ رَدَّهَا بِقَضَاءِ قَاضٍ رَدَّهَا وَرَدَّ مَعَهَا مَهْرَ مِثْلِهَا، فَإِنْ وَطِئَهَا غَيْرُهُ بِشُبْهَةٍ فَأَخَذَ لَهَا مَهْرًا، أَوْ زَوَّجَهَا فَأَخَذَ مَهْرَهَا، أَوْ جُنِيَ عَلَيْهَا فَأَخَذَ لِلْجِنَايَةِ أَرْشًا - ثُمَّ اطَّلَعَ عَلَى عَيْبٍ فَإِنَّهُ يَرُدُّهَا،

subsequently discovered, he must return her along with the mahr in the case of the valid marriage, the mahr in the case of doubtful intercourse, and the arsh that he had taken for her.

وَيَرُدُّ مَعَهَا الْمَهْرَ فِي الزَّوْجِيَّةِ الصَّحِيحَةِ، وَفِي الْوَطْءِ بِالشُّبْهَةِ، وَيَرُدُّ مَعَهَا الْأَرْشَ الَّذِي أَخَذَ لَهَا.

L25286–25287 Similarly, he must return the fruit of date palms and other trees if he returns the original trees due to a defect. If he consumed any of the fruit, he must return it and compensate with the value of what he consumed from it.

وَكَذَلِكَ يَرُدُّ ثَمَرَ النَّخْلِ، وَالشَّجَرِ، إِذَا رَدَّ الْأُصُولَ بِالْعَيْبِ، فَإِنْ أَكَلَ الثَّمَرَةَ رَدَّهَا وَرَدَّ مَعَهَا قِيمَةَ مَا أَكَلَ مِنْ الثَّمَرَةِ.

L25288 Uthman al-Batti and Ubayd Allah ibn al-Hasan said: If someone purchases a slave, utilizes his labor, and then discovers a defect, he may return him. If he returns him, he must return all proceeds generated by him along with him. Ubayd Allah said: Similarly, if he gifted the slave a gift, he must return the gift along with him as well.

وَقَالَ عُثْمَانُ الْبَتِّيُّ، وَعُبَيْدُ اللَّهِ بْنُ الْحَسَنِ: مَنْ اشْتَرَى عَبْدًا فَاسْتَغَلَّهُ ثُمَّ اطَّلَعَ عَلَى عَيْبٍ فَلَهُ رَدُّهُ، فَإِنْ رَدَّهُ لَزِمَهُ أَنْ يَرُدَّ الْغَلَّةَ كُلَّهَا مَعَهُ قَالَ عُبَيْدُ اللَّهِ: وَكَذَلِكَ لَوْ وَهَبَ لِلْعَبْدِ هِبَةً فَإِنَّهُ يَرُدُّ الْهِبَةَ مَعَهُ أَيْضًا.

L25289 Mālik said: All the produce—including milk, fruit, and other things—belongs to the buyer, except the offspring, for he must return them along with their mothers as part of the entire livestock and the female slaves.

وَقَالَ مَالِكٌ: الْغَلَّةُ كُلُّهَا لِلْمُشْتَرِي مِنْ اللَّبَنِ، وَالثَّمَرَةِ، وَغَيْرِ ذَلِكَ، حَاشَا الْأَوْلَادَ فَإِنَّهُ يَرُدُّهُمْ مَعَ الْأُمَّهَاتِ فِي الْحَيَوَانِ كُلِّهِ، وَالْإِمَاءِ.

L25290 Abū Ḥanīfah said: As for one who purchased a sheep and milked it, or it gave birth in his possession, or fruit-bearing assets that yielded fruit in his possession—whether he consumed its fruit or not—and then discovered a defect, he has no right to annul the sale. He may only recover the *arsh* for the defect.

وَقَالَ أَبُو حَنِيفَةَ: أَمَّا مَنْ ابْتَاعَ شَاةً فَحَلَبَهَا، أَوْ وَلَدَتْ عِنْدَهُ، أَوْ أُصُولًا فَأَثْمَرَتْ عِنْدَهُ فَأَكَلَ ثَمَرَتَهَا، أَوْ لَمْ يَأْكُلْ ثُمَّ اطَّلَعَ عَلَى عَيْبٍ، فَلَا رَدَّ لَهُ، لَكِنْ يَرْجِعُ بِأَرْشِ الْعَيْبِ فَقَطْ.

L25291 If it was a house he inhabited or rented out, an animal he rode or rented out, or a slave he employed or rented out, and he subsequently discovers a defect, he may return the slave or the animal. He is not obligated to return any earnings, nor anything from inhabiting, renting out, employing, or riding.

فَلَوْ كَانَتْ دَارًا فَسَكَنَهَا، أَوْ آجَرَهَا أَوْ دَابَّةً فَرَكِبَهَا أَوْ آجَرَهَا أَوْ عَبْدًا فَاسْتَخْدَمَهُ أَوْ آجَرَهُ ثُمَّ اطَّلَعَ عَلَى عَيْبٍ فَلَهُ رَدُّ الْعَبْدِ، وَالدَّابَّةِ، وَلَا يَلْزَمُهُ رَدُّ شَيْءٍ مِنْ الْغَلَّةِ، وَلَا رَدُّ شَيْءٍ عَمَّا سَكَنَ وَآجَرَ، وَاسْتَخْدَمَ وَرَكِبَ.

L25292 Among those who held that whatever occurs within the buyer's possession belongs to him and is not returned, but he must return the breeding females, parent plants, and defective goods, are: Shurayh, al-Nakhaʿī, Saʿīd ibn Jubayr, al-Ḥasan, Ibn Sīrīn, al-Shāfiʿī, Sufyān, Aḥmad, Isḥāq, Abū Thawr, Abū ʿUbayd, Abū Sulaymān, and others.

وَمِمَّنْ قَالَ بِأَنَّ كُلَّ مَا حَدَثَ فِي مِلْكِ الْمُشْتَرِي فَإِنَّهُ لَهُ وَلَا يَرُدُّهُ، وَيَرُدُّ الْأُمَّهَاتِ، - وَالْأُصُولَ، وَالشَّيْءَ الْمَعِيبَ: شُرَيْحٌ، وَالنَّخَعِيُّ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَالْحَسَنُ، وَابْنُ سِيرِينَ، وَالشَّافِعِيُّ، وَسُفْيَانُ، وَأَحْمَدُ، وَإِسْحَاقُ، وَأَبُو ثَوْرٍ وَأَبُو عُبَيْدٍ، وَأَبُو سُلَيْمَانَ، وَغَيْرُهُمْ.

L25293 Ali said: As for the opinion of Abu Hanifah and Malik, it is manifestly

contradictory and lacks evidence, and we know of no precedent for their view.

قَالَ عَلِيٌّ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ فَظَاهِرُ الْمُنَاقَضَةِ، وَعَدِيمٌ مِنْ الدَّلِيلِ، وَلَا نَعْلَمُ لَهُمَا أَحَدًا قَالَ بِهِ قَبْلَهُمَا.

L25294 As for the opinion of Uthman, Ubaydullah, and Zufar, their argument is that returning [an item] due to a defect constitutes rescission of the sale. Therefore, since this is a rescission of the sale, it is as though the defective merchandise had never ceased to be the seller's property.

وَأَمَّا قَوْلُ عُثْمَانَ، وَعُبَيْدِ اللَّهِ، وَزُفَرَ، فَيُشْبِهُ أَنْ تَكُونَ الْحُجَّةُ لَهُمْ أَنْ يَقُولُوا: إنَّ الرَّدَّ بِالْعَيْبِ إنَّمَا هُوَ فَسْخٌ لِلْبَيْعِ، فَإِذْ هُوَ فَسْخٌ لِلْبَيْعِ فَكَأَنَّهُ لَمْ يَزَلْ الْمَبِيعُ الْمَعِيبُ فِي مِلْكِ الْبَائِعِ.

L25295–25297 Abū Muḥammad said: This is invalid; it is not an annulment of the contract in the sale, but rather an invalidation of its remaining in the buyer's ownership and the return of it to the seller through evidence necessitating this. Had their assertion been valid, he would be deemed an adulterer due to his illicit act, but this is invalid. Rather, the initial contract remains valid, then an event occurred granting the buyer the right to rescind regarding... Retaining it with him in that state, or returning it henceforth—not by invalidating the prior ownership that originally necessitates restitution—and the success is by Allah—the Most High.

قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ، مَا هُوَ فَسْخٌ لِلْعَقْدِ فِي الْبَيْعِ، بَلْ هُوَ إبْطَالٌ لِبَقَائِهِ فِي مِلْكِ الْمُشْتَرِي وَرَدِّهِ إلَى الْبَائِعِ بِالْبَرَاهِينِ الْمُوجِبَةِ لِذَلِكَ، وَلَوْ كَانَ مَا قَالُوهُ لَكَانَ زَانِيًا بِوَطْئِهِ، وَهَذَا بَاطِلٌ، بَلْ الْعَقْدُ الْأَوَّلُ صَحِيحٌ، ثُمَّ حَدَثَ مَا جَعَلَ لِلْمُشْتَرِي فِي الْخِيَارِ فِي إبْقَائِهِ بِهِ كَذَلِكَ، أَوْ رَدِّهِ مِنْ الْآنَ، لَا بِإِبْطَالِ الْمِلْكِ الْمُتَقَدِّمِ لِلرَّدِّ أَصْلًا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L25298 By our covenant with them, they validate the corrupt statement—"The revenue is in return for the liability"—which they invoke as evidence in cases of usurpation and other matters. Then they have contradicted it here, as we mentioned. And success is from Allah, the Most High.

وَعَهْدُنَا بِهِمْ يُصَحِّحُونَ الْخَبَرَ الْفَاسِدَ «الْخَرَاجُ بِالضَّمَانِ» وَيَحْتَجُّونَ بِهِ فِي الْغُصُوبِ، وَفِي غَيْرِ ذَلِكَ، ثُمَّ قَدْ خَالَفُوهُ هَهُنَا كَمَا ذَكَرْنَا، وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L25299 An issue where another party holds a right against him, stemming from a sale, a *salam* contract, or other such matters.

[مَسْأَلَةٌ كَانَ لِآخَرَ عِنْدَهُ حَقٌّ مِنْ بَيْعٍ أَوْ سَلَمٍ أَوْ غَيْرِ ذَلِكَ]

L25300 1592. Issue: If someone owes a right to another arising from a sale, salam contract, or similar transactions in every respect—whether involving measurement by volume, weight, or length—then the obligation to measure by weight, volume, or length lies with the debtor.

١٥٩٢ - مَسْأَلَةٌ: وَمَنْ كَانَ لِآخَرَ عِنْدَهُ حَقٌّ مِنْ بَيْعٍ أَوْ سَلَمٍ أَوْ غَيْرِ ذَلِكَ مِنْ جَمِيعِ الْوُجُوهِ بِكَيْلٍ أَوْ وَزْنٍ أَوْ ذَرْعٍ، فَالْوَزْنُ وَالْكَيْلُ وَالذَّرْعُ عَلَى الَّذِي عَلَيْهِ الْحَقُّ.

L25301 Whoever owes dinars, dirhams, or anything specified through a forward sale, dowry, hire contract, kitābah (a contract for a slave's self-manumission), or other such obligations, the responsibility also falls upon the debtor. This is

because Allah—Exalted is He—has obligated every indebted person to fulfill what they owe to its rightful claimant, and the Messenger of Allah—peace be upon him—ruled that every right-holder must be granted their due. Thus, whoever owes a right measured by volume, weight, length, number, or described with pure quality or any defining attribute must deliver what is owed in its stipulated form. Nothing is required of the claimant, for the entitlement belongs solely to them without any obligation imposed upon them.

وَمَنْ كَانَ عَلَيْهِ دَنَانِيرُ أَوْ دَرَاهِمُ أَوْ شَيْءٌ بِصِفَةٍ مِنْ سَلَمٍ، أَوْ صَدَاقٍ، أَوْ إجَارَةٍ، أَوْ كِتَابَةٍ أَوْ غَيْرِ ذَلِكَ، فَالتَّقْلِيبُ عَلَى الَّذِي عَلَيْهِ الْحَقُّ أَيْضًا؛ لِأَنَّ اللَّهَ - تَعَالَى - أَوْجَبَ عَلَى كُلِّ مَنْ عَلَيْهِ حَقٌّ أَنْ يُوفِيَ مَا عَلَيْهِ مِنْ ذَلِكَ مَنْ هُوَ لَهُ عَلَيْهِ وَحَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ يُعْطَى كُلُّ ذِي حَقٍّ حَقَّهُ، فَمَنْ كَانَ حَقُّهُ كَيْلًا أَوْ وَزْنًا أَوْ ذَرْعًا أَوْ عَدَدًا مَوْصُوفًا بِطِيبٍ، أَوْ بِصِفَةٍ مَا فَعَلَيْهِ إحْضَارُ مَا عَلَيْهِ كَمَا هُوَ عَلَيْهِ - وَلَا شَيْءَ عَلَى الَّذِي لَهُ الْحَقُّ، إنَّمَا الْحَقُّ لَهُ وَلَا حَقَّ عَلَيْهِ.

L25302 And He, the Most High, said: "Give full measure and balance with fairness." [Hud: 85][19]

وَقَالَ - تَعَالَى -: {أَوْفُوا الْمِكْيَالَ وَالْمِيزَانَ بِالْقِسْطِ} [هود: ٨٥] .

L25303 And He, the Exalted, said: {And weigh with the straight balance} [Al-Isra: 35]. And He, the Exalted, said: {Establish weighing with justice, and do not diminish the balance} [Ar-Rahman: 9]. If they cite the words of Allah, the Exalted: {Woe to the defrauders} [Al-Mutaffifin: 1] {Who, when they take measure from people, demand full measure} [Al-Mutaffifin: 2] {But when they measure or weigh for them, they cause loss} [Al-Mutaffifin: 3], we say: Yes, this is our view; for Allah, the Exalted, has established in this verse that measuring and weighing are obligations upon those obligated to fulfill others' rights, and He threatened them with punishment for causing loss to the rightful claimant and for fraud. There is no evidence in His statement that when they take measure from people, they demand full measure, to indicate that they measure for themselves, or that the one entitled to a right does not measure for them. For the Exalted only mentioned their claiming in full what is due to them in measure, and claiming in full is achieved through any measurer's act of measuring. Thus, they have no basis in this wording. His statement confirms: {But when they measure or weigh for them, they

وَقَالَ - تَعَالَى -: {وَزِنُوا بِالْقِسْطَاسِ الْمُسْتَقِيمِ} [الإسراء: ٣٥] وَقَالَ - تَعَالَى -: {وَأَقِيمُوا الْوَزْنَ بِالْقِسْطِ وَلا تُخْسِرُوا الْمِيزَانَ} [الرحمن: ٩] فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ - تَعَالَى -: {وَيْلٌ لِلْمُطَفِّفِينَ} [المطففين: ١] {الَّذِينَ إِذَا اكْتَالُوا عَلَى النَّاسِ يَسْتَوْفُونَ} [المطففين: ٢] {وَإِذَا كَالُوهُمْ أَوْ وَزَنُوهُمْ يُخْسِرُونَ} [المطففين: ٣] قُلْنَا: نَعَمْ، هَذَا هُوَ قَوْلُنَا؛ لِأَنَّ اللَّهَ - تَعَالَى - جَعَلَ فِي هَذِهِ الْآيَةِ الْكَيْلَ وَالْوَزْنَ عَلَى الَّذِينَ عَلَيْهِمْ الْحَقُّ، وَتَوَعَّدَهُمْ عَلَى إخْسَارِ ذِي الْحَقِّ، وَعَلَى التَّطْفِيفِ، وَلَيْسَ فِي إخْبَارِهِ - تَعَالَى - بِأَنَّهُمْ إذَا اكْتَالُوا عَلَى النَّاسِ يَسْتَوْفُونَ دَلِيلٌ عَلَى أَنَّهُمْ يَكْتَالُونَ لِأَنْفُسِهِمْ، وَأَنَّ الَّذِي لَهُمْ عَلَيْهِ الْحَقُّ لَا يَكِيلُ لَهُمْ؛ لِأَنَّهُ - تَعَالَى - إنَّمَا ذَكَرَ اسْتِيفَاءَهُمْ مَا لَهُمْ مِنْ الْكَيْلِ فَقَطْ، وَالِاسْتِيفَاءُ يَكُونُ بِكَيْلِ كَائِلٍ مَا، فَلَا مُتَعَلَّقَ لَهُمْ فِي هَذِهِ اللَّفْظَةِ - وَصَحَّ بِقَوْلِهِ - تَعَالَى -: {وَإِذَا كَالُوهُمْ أَوْ وَزَنُوهُمْ يُخْسِرُونَ} [المطففين: ٣] أَنَّ الَّذِي عَلَيْهِ الْحَقُّ هُوَ يَكِيلُ وَيَزِنُ، وَأَنَّهُ مَنْهِيٌّ عَنْ الْإِخْسَارِ.

[19] **Qur'an references (L25302):** Qur'an 11:85 (Hud).

cause loss} [Al-Mutaffifin: 3] that the one obligated to fulfill the right is the one who measures and weighs, and he is prohibited from causing loss.[20]

The jurisprudential ruling on one who purchased land: it is his, with all that is within it.

Issue: Whoever purchases land owns it with all that is in it, such as existing buildings or growing trees.

Similarly, whoever purchases a house owns its entire structure and everything permanently fixed within it—such as doors, staircases or steps, and other such components. This constitutes a definite consensus, for people have traded houses and lands in this manner continuously since the time of Allah's Messenger (peace and blessings be upon him). Not a day passes without a house or land being sold accordingly. However, items placed within the property but not structurally fixed—such as doors, staircases, steps, bricks, marble, wood, or similar materials—do not belong to the purchaser. Likewise, crops that are uprooted or have not yet taken root remain the seller's property. Success comes solely from Allah, the Most High.

Whoever purchases debris or trees separate from the land, all such things must be uprooted without exception, and success is from Allah, the Most High.

The Issue of the Giving of Charity by Merchants in the Course of Their Selling and Buying

1594 - Issue: It is obligatory upon merchants to give charity during their buying and selling, offering what their souls are pleased to give. This is based on what we have reported through the transmission of Aḥmad ibn Shuʿayb: Muḥammad ibn Qudāmah al-Miṣṣīṣī informed me from Jarīr from Manṣūr from Abū Wā'il from Qays ibn Abī Gharzah, who said: "The Messenger of

[20] **Qur'an references (L25303):** Qur'an 17:35 (Al-Isra); Qur'an 26:182 (Ash-Shu'ara); Qur'an 55:9 (Ar-Rahman); Qur'an 83:1 (Al-Mutaffifin); Qur'an 83:2 (Al-Mutaffifin); Qur'an 83:3 (Al-Mutaffifin).

[مَسْأَلَة مَنْ اشْتَرَى أَرْضًا فَهِيَ لَهُ بِكُلِّ مَا فِيهَا]

مَسْأَلَةٌ: وَمَنْ اشْتَرَى أَرْضًا فَهِيَ لَهُ بِكُلِّ مَا فِيهَا مِنْ بِنَاءٍ قَائِمٍ، أَوْ شَجَرٍ نَابِتٍ.

وَكَذَلِكَ كُلُّ مَنْ اشْتَرَى دَارًا فَبِنَاؤُهَا كُلُّهُ لَهُ، وَكُلُّ مَا كَانَ مُرَكَّبًا فِيهَا مِنْ بَابٍ أَوْ دَرَجٍ أَوْ غَيْرِ ذَلِكَ - وَهَذَا إِجْمَاعٌ مُتَيَقَّنٌ، وَمَا زَالَ النَّاسُ يَتَبَايَعُونَ الدُّورَ وَالْأَرْضِينَ مِنْ عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَكَذَا لَا يَخْلُو يَوْمٌ مِنْ أَنْ يَقَعَ فِيهِ بَيْعُ دَارٍ أَوْ أَرْضٍ هَكَذَا، وَلَا يَكُونُ لَهُ مَا كَانَ مَوْضُوعًا فِيهَا غَيْرَ مَبْنِيٍّ، كَأَبْوَابٍ، وَسُلَّمٍ، وَدَرَجٍ، وَآجُرٍّ، وَرُخَامٍ، وَخَشَبٍ، وَغَيْرِ ذَلِكَ؛ وَلَا يَكُونُ لَهُ الزَّرْعُ الَّذِي يُقْلَعُ وَلَا يَنْبُتُ، بَلْ هُوَ لِبَائِعِهِ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ -.

وَمَنْ ابْتَاعَ أَنْقَاضًا، أَوْ شَجَرًا، دُونَ الْأَرْضِ، فَكُلُّ ذَلِكَ يُقْلَعُ وَلَا بُدَّ، وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة التَّصَدُّق مِنْ التجار فِي خلال بيعهم وشرائهم]

١٥٩٤ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى التُّجَّارِ أَنْ يَتَصَدَّقُوا فِي خِلَالِ بَيْعِهِمْ وَشِرَائِهِمْ بِمَا طَابَتْ بِهِ نُفُوسُهُمْ -: لِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ قُدَامَةَ الْمِصِّيصِيُّ عَنْ جَرِيرٍ عَنْ مَنْصُورٍ عَنْ أَبِي وَائِلٍ عَنْ قَيْسِ بْنِ أَبِي غَرْزَةَ قَالَ: " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «يَا مَعْشَرَ التُّجَّارِ إِنَّهُ يَشْهَدُ بَيْعَكُمْ الْحَلِفُ، وَاللَّغْوُ: شُوبُوهُ بِالصَّدَقَةِ» .

Allah (peace be upon him) said: 'O assembly of merchants! Your sales are attended by swearing and frivolous speech—mix them with charity.'"

L25311 His command—may the peace and blessings of Allah be upon him—is obligatory. Allah the Exalted has said: _"Let those who deviate from his command beware, lest a trial befall them or a painful punishment."_ [An-Nur: 63] His statement—peace be upon him—_"Mix it with charity"_ necessitates constancy and repetition in the linguistic context. And success comes only from Allah, the Exalted.[21]

وَأَمْرُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْفَرْضِ، قَالَ اللَّهُ - تَعَالَى -: {فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ} [النور: ٦٣] وَقَوْلُهُ - عَلَيْهِ السَّلَامُ -: «شُوبُوهُ بِالصَّدَقَةِ» يَقْتَضِي الْمُدَاوَمَةَ وَالتَّكْرَارَ فِي مَوْضُوعِ اللُّغَةِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[21] **Qur'an references (L25311):** Qur'an 24:63 (An-Nur).



AL-MUHALLA

كِتَابُ الشُّفْعَةِ

The Book of Pre-emption

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الشُّفْعَةِ] [مَسْأَلَةٌ الشُّفْعَةُ وَاجِبَةٌ فِي كُلِّ جُزْءٍ بِيعَ مُشَاعًا]

L25312–25313 **[Book of Pre-emption] [The ruling is that pre-emption is obligatory for every portion sold as joint property.]**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الشُّفْعَةِ ١٥٩٥ مَسْأَلَةٌ: الشُّفْعَةُ وَاجِبَةٌ فِي كُلِّ جُزْءٍ بِيعَ مُشَاعًا غَيْرَ مَقْسُومٍ بَيْنَ اثْنَيْنِ فَصَاعِدًا، مِنْ أَيِّ شَيْءٍ كَانَ مِمَّا يَنْقَسِمُ، وَمِمَّا لَا يَنْقَسِمُ: مِنْ أَرْضٍ، أَوْ شَجَرَةٍ وَاحِدَةٍ، فَأَكْثَرَ، أَوْ عَبْدٍ، أَوْ ثَوْبٍ، أَوْ أَمَةٍ، أَوْ مِنْ سَيْفٍ، أَوْ مِنْ طَعَامٍ، أَوْ مِنْ حَيَوَانٍ، أَوْ مِنْ أَيِّ شَيْءٍ بِيعَ: لَا يَحِلُّ لِمَنْ لَهُ ذَلِكَ الْجُزْءُ أَنْ يَبِيعَهُ حَتَّى يَعْرِضَهُ عَلَى شَرِيكِهِ أَوْ شُرَكَائِهِ فِيهِ، فَإِنْ أَرَادَ مَنْ يُشْرِكُهُ فِيهِ الْأَخْذَ لَهُ بِمَا أَعْطَى فِيهِ غَيْرُهُ فَالشَّرِيكُ أَحَقُّ بِهِ، وَإِنْ لَمْ يُرِدْ أَنْ يَأْخُذَ فَقَطْ سَقَطَ حَقُّهُ، وَلَا قِيَامَ لَهُ بَعْدَ ذَلِكَ إِذَا بَاعَهُ مِمَّنْ بَاعَهُ.

L25314 In the name of Allah, the Most Gracious, the Most Merciful. The Book of Pre-emption: Issue 1595. Pre-emption is obligatory for every undivided portion sold as joint ownership (mushāʿ) between two or more co-owners, whether the property is divisible or indivisible—including land, one tree or more, a male slave, a garment, a female slave, a sword, food, an animal, or any other sold item. It is unlawful for the owner of such a portion to sell it without first offering it to his co-owner or co-owners. If the co-owner wishes to acquire it for the price offered by others, the co-owner has the greater right to it. If the co-owner declines to acquire it, his right is forfeited, and he loses all entitlement to contest the sale thereafter if the owner proceeds to sell it to another party.

فَإِنْ لَمْ يَعْرِضْ عَلَيْهِ كَمَا ذَكَرْنَا حَتَّى بَاعَهُ مِنْ غَيْرِ مَنْ يُشْرِكُهُ فِيهِ؟ فَمَنْ يُشْرِكُهُ مُخَيَّرٌ بَيْنَ أَنْ يُمْضِيَ ذَلِكَ الْبَيْعَ وَبَيْنَ أَنْ يُبْطِلَهُ وَيَأْخُذَ ذَلِكَ الْجُزْءَ لِنَفْسِهِ بِمَا بِيعَ بِهِ.

L25315 If he did not present the offer to his co-owner as stipulated before selling the shared property to another party, the co-owner may choose either to ratify the sale or annul it. If annulled, the co-owner may claim the portion as his own at the price for which it was sold.

وَهَا هُنَا خِلَافٌ فِي أَرْبَعَةِ مَوَاضِعَ:

L25316 And here, there is a difference of opinion in four matters:

أَحَدُهَا هَلْ يَجُوزُ بَيْعُ الْمُشَاعِ أَمْ لَا؟

L25317 One of them is: Is the sale of undivided jointly owned property permissible or not?

وَالثَّانِي: هَلْ يَكُونُ فِي بَيْعِهِ شُفْعَةٌ أَمْ لَا؟

L25318 And the second: Does the sale involve a right of preemption or not?

وَالثَّالِثُ: الْأَشْيَاءُ الَّتِي تَكُونُ فِيهَا الشُّفْعَةُ.

L25319 Third: The things in which pre-emption exists.

وَالرَّابِعُ: إِنْ عَرَضَ الْبَائِعُ عَلَى مَنْ يُشْرِكُهُ قَبْلَ أَنْ يَبِيعَ فَأَبَى شَرِيكُهُ مِنَ الْأَخْذِ هَلْ يَسْقُطُ حَقُّهُ بِذَلِكَ أَمْ لَا؟ فَقَالَ عَبْدُ الْمَلِكِ بْنُ يَعْلَى وَهُوَ تَابِعِيٌّ قَاضِي الْبَصْرَةِ: لَا يَجُوزُ بَيْعُ الْمُشَاعِ، رُوِّينَا ذَلِكَ مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ أَنَا أَيُّوبُ السِّخْتِيَانِيُّ قَالَ: رُفِعَ إِلَى

L25320 The fourth: If the seller offers his share to his partner before selling, and his partner refuses from taking it, does this forfeit his right or not? Abd al-Malik ibn Yaʿla – a Tabi'i and judge of Basra – said: "The sale of undivided joint property is invalid. It has been narrated to us through Hammad ibn Zayd from Ayyub al-Sikhtiyani, who said: A case was presented to Abd al-Malik ibn Yaʿla, judge of Basra, concerning a man who sold his undivided joint

property share. He ruled it invalid. When this was mentioned to Muhammad ibn Sirin, he also deemed it impermissible."

عَبْدِ الْمَلِكِ بْنِ يَعْلَى قَاضِي الْبَصْرَةِ رَجُلٌ بَاعَ نَصِيبًا لَهُ غَيْرَ مَقْسُومٍ فَلَمْ يُجِزْهُ، فَذَكَرَ لِمُحَمَّدِ بْنِ سِيرِينَ فَرَآهُ غَيْرَ جَائِزٍ.

L25321–25322 Muhammad ibn Sirin said: There is no harm if two partners, who have between them an item or a thing that is neither measured by volume nor weighed, sell it before dividing it.

وَقَالَ مُحَمَّدُ بْنُ سِيرِينَ: لَا بَأْسَ بِالشَّرِيكَيْنِ يَكُونُ بَيْنَهُمَا الْمَتَاعُ أَوْ الشَّيْءُ الَّذِي لَا يُكَالُ وَلَا يُوزَنُ أَنْ يَبِيعَهُ قَبْلَ أَنْ يُقَاسِمَهُ.

L25323 Al-Ḥasan said: He should not sell from it or from other than it until he divides it with his partner, unless it is a pearl or something he is unable to divide it.

وَقَالَ الْحَسَنُ: لَا يَبِعْ مِنْهُ وَلَا مِنْ غَيْرِهِ حَتَّى يُقَاسِمَهُ إِلَّا أَنْ يَكُونَ لُؤْلُؤَةً أَوْ مَا لَا يَقْدِرُ عَلَى قِسْمَتِهِ.

L25324 Uthman al-Batti permitted the sale of co-owned undivided property and did not recognize the right of pre-emption for the partner.

وَأَجَازَ عُثْمَانُ الْبَتِّيُّ بَيْعَ الْمُشَاعِ وَلَمْ يَرَ الشُّفْعَةَ لِلشَّرِيكِ.

L25325 Abu Hanifa and al-Shafi'i said: There is no pre-emption right except in land alone, or in land with what is on it—buildings or naturally growing trees—alone.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: لَا شُفْعَةَ إِلَّا فِي الْأَرْضِ فَقَطْ أَوْ فِي أَرْضٍ بِمَا فِيهَا مِنْ بِنَاءٍ أَوْ شَجَرٍ نَابِتٍ فَقَطْ.

L25326 Malik said: The right of pre-emption is mandatory in land alone, in land combined with what is on it - whether buildings or naturally growing trees - or in fruits located at the tops of trees, even when sold without the roots or trunks.

قَالَ مَالِكٌ: الشُّفْعَةُ وَاجِبَةٌ فِي الْأَرْضِ وَحْدَهَا، وَفِي الْأَرْضِ بِمَا فِيهَا مِنْ بِنَاءٍ أَوْ شَجَرٍ نَابِتٍ، أَوْ فِي الثِّمَارِ الَّتِي فِي رُءُوسِ الشَّجَرِ وَإِنْ بِيعَتْ دُونَ الْأُصُولِ.

L25327 We have been narrated from Uthman ibn Affan - may Allah be pleased with him - that there is no pre-emption right for a well or a stallion. We received this narration through the chain of Ibn Abi Shaybah who reported to us from Abdullah ibn Idris, from Muhammad ibn Umarah, from Abu Bakr ibn Muhammad ibn Amr ibn Hazm, from Aban ibn Uthman ibn Affan, from his father, who said: "There is no pre-emption right for a well or a stallion, and al-ʿurf (customary practice) nullifies every pre-emption right."

وَرُوِّينَا عَنْ عُثْمَانَ بْنِ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُ - لَا شُفْعَةَ فِي بِئْرٍ وَلَا فَحْلٍ: رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ إدْرِيسَ عَنْ مُحَمَّدِ بْنِ عُمَارَةَ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبَانَ بْنِ عُثْمَانَ بْنِ عَفَّانَ عَنْ أَبِيهِ قَالَ: لَا شُفْعَةَ فِي بِئْرٍ وَلَا فَحْلٍ وَالْأُرْفُ يَقْطَعُ كُلَّ شُفْعَةٍ.

L25328 The customary practices (ʿurf), the prescribed legal penalties (ḥudūd), and the guiding markers (maʿālim).

الْأُرْفُ الْحُدُودُ وَالْمَعَالِمُ.

L25329 Abū Muḥammad said: The proof for the validity of our view is what we have transmitted through the chain of al-Bukhārī: I, Musaddad, I, ʿAbd al-Wāḥid

- he is Ibn Ziyād - I, Maʿmar, from al-Zuhrī, from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, from Jābir ibn ʿAbd Allāh, who said: "The Messenger of Allāh - may Allāh bless him and grant him peace - decreed the right of pre-emption in all undivided properties. Once boundaries are established and pathways are marked out, there is no pre-emption."

قَالَ أَبُو مُحَمَّد: وَبُرْهَانُ صِحَّةِ قَوْلِنَا: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا مُسَدَّدٌ أَنَا عَبْدُ الْوَاحِدِ هُوَ ابْنُ زِيَادٍ أَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالشُّفْعَةِ فِي كُلِّ مَا لَمْ يُقْسَمْ فَإِذَا وَقَعَتْ الْحُدُودُ وَصُرِّفَتْ الطُّرُقُ فَلَا شُفْعَةَ» .

L25330 And also through the chain of Al-Bukhari: I, Mahmud ibn Ghaylan, said: I heard from ʻAbd al-Razzāq, who said: I heard from Maʻmar, from al-Zuhrī, from Abū Salama ibn ʻAbd al-Raḥmān ibn ʻAwf, from Jābir ibn ʻAbd Allāh, who said: "The Messenger of Allah (peace be upon him) established the right of pre-emption in every undivided property. When boundaries are fixed and accessways are delineated, there is no pre-emption."[1]

وَمِنْ طَرِيقِ الْبُخَارِيِّ أَيْضًا أَنَا مَحْمُودٌ هُوَ ابْنُ غَيْلَانَ أَنَا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «جَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الشُّفْعَةَ فِي كُلِّ مَالٍ لَمْ يُقْسَمْ فَإِذَا وَقَعَتْ الْحُدُودُ وَصُرِّفَتْ الطُّرُقُ فَلَا شُفْعَةَ» .

L25331–25332 I found in the book of Yaḥyā ibn Mālik ibn ʿĀʾidh, in his own handwriting: The judge Abū ʿAbd Allāh al-Ḥusayn ibn Aḥmad ibn Muḥammad ibn Salamah, known as Ibn Abī Ḥanīfah, informed me. He said: Abū Jaʿfar al-Ṭaḥāwī narrated to us: Muḥammad ibn Khuzaymah; I, Yūsuf ibn ʿAdī al-Qarāṭīsī; I, Ibn Idrīs – who is ʿAbd Allāh al-Awdī – from Ibn Jurayj, from ʿAṭāʾ, from Jābir, who said: "The Messenger of Allah, peace and blessings be upon him, decreed the right of pre-emption in all matters."

وَوَجَدْت فِي كِتَابِ يَحْيَى بْنِ مَالِكِ بْنِ عَائِذٍ بِخَطِّهِ: أَخْبَرَنِي الْقَاضِي أَبُو عَبْدِ اللَّهِ الْحُسَيْنُ بْنُ أَحْمَدَ بْنِ مُحَمَّدِ بْنِ سَلَمَةَ الْمَعْرُوفُ بِابْنِ أَبِي حَنِيفَةَ قَالَ: نا أَبُو جَعْفَرٍ الطَّحَاوِيَّ قَالَ نا مُحَمَّدُ بْنُ خُزَيْمَةَ أَنَا يُوسُفُ بْنُ عَدِيٍّ هُوَ الْقَرَاطِيسِيُّ أَنَا ابْنُ إِدْرِيسَ هُوَ عَبْدُ اللَّهِ الْأَوْدِيُّ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ جَابِرٍ قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالشُّفْعَةِ فِي كُلِّ شَيْءٍ» .

L25333 Al-Ṭaḥāwī said: Ibrāhīm ibn Abī Dāwūd narrated to us from Nuʿaym, from al-Faḍl ibn Mūsā, from Abū Ḥamzah al-Sukkārī, from ʿAbd al-ʿAzīz ibn Rufayʿ, from Ibn Abī Mulaykah, from Ibn ʿAbbās, who said: The Messenger of Allāh (peace and blessings be upon him) said: "A partner holds the right of shufʿah (pre-emption), and pre-emption applies to all things."

قَالَ الطَّحَاوِيَّ: وَحَدَّثَنَا إِبْرَاهِيمُ بْنُ أَبِي دَاوُد نا نُعَيْمٌ أَنَا الْفَضْلُ بْنُ مُوسَى عَنْ أَبِي حَمْزَةَ السُّكَّرِيِّ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنِ ابْنِ أَبِي مُلَيْكَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الشَّرِيكُ شَفِيعٌ وَالشُّفْعَةُ فِي كُلِّ شَيْءٍ» .

L25334 Through the chain of Muslim: I am Abu Tahir, I am Ibn Wahb, from Ibn Jurayj, that Abu al-Zubayr informed him he heard Jabir ibn Abdullah say: The

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو الطَّاهِرِ أَنَا ابْنُ وَهْبٍ عَنِ ابْنِ جُرَيْجٍ أَنَّ أَبَا الزُّبَيْرِ أَخْبَرَهُ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الشُّفْعَةُ فِي

[1] **Hadith references (L25330):** Sunan Abi Dawud 3514.

Messenger of Allah (peace and blessings be upon him) said: “Pre-emptive right applies to every jointly owned property - whether land, residential quarter, or walled garden. It is not permissible for one to sell until they inform their partner, so the partner may take it or abandon it. If he refuses, the partner has more right to it until the seller informs him.”

كُلِّ شِرْكٍ فِي أَرْضٍ أَوْ رَبْعٍ أَوْ حَائِطٍ، لَا يَصْلُحُ أَنْ يَبِيعَ حَتَّى يُؤْذِنَ شَرِيكَهُ فَيَأْخُذُ أَوْ يَدَعُ، فَإِنْ أَبَى فَشَرِيكُهُ أَحَقُّ بِهِ حَتَّى يُؤْذِنَهُ» .

L25335–25336 Abu Muhammad said: These are mass-transmitted, corroborating narrations encompassing all that we have stated - Jābir and Ibn ʿAbbās from the Prophet, peace and blessings of Allah be upon him - that “the right of pre-emption applies to all property, to everything, and to all that has not been divided.”

قَالَ أَبُو مُحَمَّدٍ: فَهَذِهِ آثَارٌ مُتَوَاتِرَةٌ مُتَظَاهِرَةٌ بِكُلِّ مَا قُلْنَا، جَابِرٌ، وَابْنُ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ «الشُّفْعَةَ فِي كُلِّ مَالٍ، وَفِي كُلِّ شَيْءٍ، وَفِي كُلِّ مَا لَمْ يُقْسَمْ» .

L25337 It was narrated as such from Jābir: Abū al-Zubayr heard it from him, ʻAṭāʼ, and Abū Salamah. Ibn Abī Mulaykah narrated it from Ibn ʻAbbās. Thus, the ambiguity was entirely resolved, and all praise is due to God, the Exalted.

وَرَوَاهَا كَذَا عَنْ جَابِرٍ: أَبُو الزُّبَيْرِ سَمَاعًا مِنْهُ وَعَطَاءٌ، وَأَبُو سَلَمَةَ، وَرَوَاهُ عَنْ ابْنِ عَبَّاسٍ: ابْنُ أَبِي مُلَيْكَةَ، فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً وَلِلَّهِ تَعَالَى الْحَمْدُ.

L25338 Among those who held our opinion in this matter, as reported to us by Ibn Abi Shaybah: From Yazeed ibn Harun, from Yahya ibn Sa’eed, from ’Awn ibn ’Ubaydullah ibn Abi Rafi’, from ’Ubaydullah ibn ’Abdullah ibn ’Umar ibn al-Khattab, that ’Umar ibn al-Khattab said: “When property boundaries have been established and people recognize their rights, no right of pre-emption exists among them.”

وَمِمَّنْ قَالَ بِقَوْلِنَا فِي هَذَا كَمَا رُوِّينَا عَنْ ابْنِ أَبِي شَيْبَةَ أَنَا يَزِيدُ بْنُ هَارُونَ أَنَا يَحْيَى بْنُ سَعِيدٍ عَنْ عَوْنِ بْنِ عُبَيْدِ اللَّهِ بْنِ أَبِي رَافِعٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إذَا وَقَعَتْ الْحُدُودُ وَعَرَفَ النَّاسُ حُقُوقَهُمْ فَلَا شُفْعَةَ بَيْنَهُمْ.

L25339 From the path of Saʻīd ibn Manṣūr: From Hushaym, from Muḥammad ibn Isḥāq, from Manẓūr ibn Abī Thaʻlabah, from Abān ibn ʻUthmān ibn ʻAffān, that his father ʻUthmān said: There is no *mukāyalah* when the *ḥudūd* penalties have been applied, so there is no right of pre-emption.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ مَنْظُورِ بْنِ أَبِي ثَعْلَبَةَ عَنْ أَبَانَ بْنِ عُثْمَانَ بْنِ عَفَّانَ أَنَّ أَبَاهُ عُثْمَانَ قَالَ: لَا مُكَايَلَةَ إذَا وَقَعَتْ الْحُدُودُ فَلَا شُفْعَةَ.

L25340 These two, ʻUmar ibn al-Khaṭṭāb and ʻUthmān ibn ʻAffān—may Allah be pleased with them—support the termination of the pre-emptive right after its obligation arises through the occurrence of legal rulings and people’s knowledge of their rights. They did not limit this ruling to land to the exclusion of other properties; rather, they stated it concisely and comprehensively. Legal rulings apply to every physical item sold, and likewise, every individual’s knowledge of their right.

فَهَذَانِ عُمَرُ بْنُ الْخَطَّابِ، وَعُثْمَانُ بْنُ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُمَا - يَحْمِلَانِ قَطْعَ الشُّفْعَةِ بَعْدَ وُجُوبِهَا بِوُقُوعِ الْحُدُودِ، وَمَعْرِفَةِ النَّاسِ حُقُوقَهُمْ وَلَمْ يَخُصَّا أَرْضًا دُونَ سَائِرِ الْأَمْوَالِ، بَلْ أَجْمَلَا ذَلِكَ، وَالْحُدُودُ تَقَعُ فِي كُلِّ جِسْمٍ مَبِيعٍ، وَكَذَلِكَ مَعْرِفَةُ كُلِّ أَحَدٍ حَقَّهُ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا أَبُو الْأَحْوَصِ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنْ ابْنِ مُلَيْكَةَ قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالشُّفْعَةِ فِي كُلِّ شَيْءٍ: الْأَرْضِ وَالدَّارِ، وَالْجَارِيَةِ، وَالْخَادِمِ» .

L25341 Through the chain of Ibn Abi Shaybah: I, Abu al-Ahwas, reported from Abd al-Aziz ibn Rufay' from Ibn Mulaykah, who said: "The Messenger of Allah—may the peace and blessings of Allah be upon him—decreed the right of pre-emption in all things: land, dwellings, female slaves, and male slaves."

فَقَالَ عَطَاءٌ: إنَّمَا الشُّفْعَةُ فِي الْأَرْضِ وَالدَّارِ.

L25342 Then Ata said: The right of preemption applies only to the land and the dwelling.

فَقَالَ لَهُ ابْنُ أَبِي مُلَيْكَةَ: تَسْمَعُنِي لَا أُمَّ لَكَ، أَقُولُ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ تَقُولُ مِثْلَ هَذَا وَإِلَى هَذَا رَجَعَ عَطَاءٌ

L25343 Ibn Abi Mulaikah said to him: "Do you hear me? Shame on you! I cite the Messenger of Allah (peace be upon him), and then you say such a thing?" At this, Ata relented.

كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ قَالَ أَنَا أَبَانُ عَنْ عَبْدِ اللَّهِ الْبَجَلِيِّ قَالَ: سَأَلْت عَطَاءً عَنْ الشُّفْعَةِ فِي الثَّوْبِ؟ فَقَالَ: لَهُ شُفْعَةٌ وَسَأَلْته عَنْ الْحَيَوَانِ؟ فَقَالَ: لَهُ شُفْعَةٌ وَسَأَلْته عَنْ الْعَبْدِ؟ فَقَالَ: لَهُ شُفْعَةٌ.

L25344 As we have been narrated through the chain of Waki', who said: "I, Abān, report from 'Abdullāh al-Bajalī, who said: 'I asked 'Aṭā' about preemption rights regarding a garment.' He replied: 'It has the right of preemption.' Then I asked him about livestock, and he answered: 'It has the right of preemption.' Then I asked him about a slave, and he responded: 'It has the right of preemption.'"

فَهَذَانِ: عَطَاءٌ، وَابْنُ أَبِي مُلَيْكَةَ بِأَصَحِّ إسْنَادٍ عَنْهُمَا.

L25345–25346 So these two—'Aṭā' and Ibn Abī Mulaykah—have the soundest chain of transmission narrated from them.

قَالَ أَبُو مُحَمَّدٍ: فَلَا تَخْلُو الشُّفْعَةُ مِنْ أَنْ تَكُونَ مِنْ طَرِيقِ النَّصِّ كَمَا نَقُولُ نَحْنُ أَوْ مِنْ طَرِيقِ النَّظَرِ كَمَا يَقُولُ الْمُخَالِفُونَ.

L25347 Abu Muhammad said: Preemption cannot exist except through textual injunction, as we maintain, or through analogical reasoning, as opposing scholars hold.

فَإِنْ كَانَتْ مِنْ طَرِيقِ النَّصِّ فَهَذِهِ النُّصُوصُ الَّتِي أَوْرَدْنَا لَا يَحِلُّ الْخُرُوجُ عَنْهَا وَإِنْ كَانَتْ مِنْ طَرِيقِ النَّظَرِ كَمَا يَزْعُمُونَ أَنَّهَا إنَّمَا جُعِلَتْ لِدَفْعِ ضَرَرٍ عَنْ الشَّرِيكِ فَالْعِلَّةُ بِذَلِكَ مَوْجُودَةٌ فِي غَيْرِ الْعَقَارِ كَمَا هِيَ مَوْجُودَةٌ فِي الْعَقَارِ، بَلْ أَكْثَرُ، وَفِيمَا لَا يَنْقَسِمُ، كَوُجُودِهَا فِيمَا يَنْقَسِمُ، بَلْ هِيَ فِيمَا لَا يَنْقَسِمُ أَشَدُّ ضَرَرًا.

L25348 If it is established through textual injunction, then it is impermissible to deviate from these texts we have cited. If it is derived through analogical reasoning, as they claim—asserting that it was only instituted to repel harm from a co-owner—then this legal cause exists in non-real estate just as it exists in real estate, indeed even more so. It exists in indivisible property like its existence in divisible property, but rather, the harm is indeed more severe in indivisible property.

L25349 As for those who prohibit the sale of undivided co-ownership, we do not know of any argument for them whatsoever. Rather, this contradicts the

Quran and the Sunnah. Allah the Exalted said: And Allah has permitted sale [Al-Baqarah: 275].[2]

فَأَمَّا مَنْ مَنَعَ بَيْعَ الْمُشَاعِ فَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا، بَلْ هُوَ خِلَافُ الْقُرْآنِ، وَالسُّنَّةِ، قَالَ اللَّهُ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

L25350 And He, the Exalted, said: "And He has indeed detailed for you what He has forbidden to you" [Al-An'am 6:119].[3]

وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

L25351 Therefore, this sale, the prohibition of which has not been explicitly outlined to us, is permissible.

فَهَذَا بَيْعٌ لَمْ يُفَصَّلْ لَنَا تَحْرِيمُهُ فَهُوَ حَلَالٌ.

L25352 Indeed, it was incumbent upon the Hanafis—who prohibit pledging an undivided share of jointly owned property, gifting an undivided share of jointly owned property, donating an undivided share as charitable alms, and leasing an undivided share of jointly owned property—to prohibit the sale of such shares as well. This is because the effective cause underlying all these transactions is identical, and taking possession is required in sale just as it is in gifting, pledging, charitable donation, and leasing. Yet their mutual negligence in their religious doctrinal statements is the lightest matter to them.

وَلَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ الْمُحَرِّمِينَ رَهْنَ الْجُزْءِ مِنْ الْمُشَاعِ، وَهِبَةَ الْجُزْءِ مِنْ الْمُشَاعِ، وَالصَّدَقَةَ بِالْجُزْءِ مِنْ الْمُشَاعِ، وَالْإِجَارَةَ لِلْجُزْءِ الْمُشَاعِ: أَنْ يَمْنَعُوا مِنْ بَيْعِ الْجُزْءِ مِنْ الْمُشَاعِ؛ لِأَنَّ الْعِلَّةَ فِي كُلِّ ذَلِكَ وَاحِدَةٌ، وَالْقَبْضُ وَاجِبٌ فِي الْبَيْعِ كَمَا هُوَ فِي الْهِبَةِ، وَالرَّهْنِ، وَالصَّدَقَةِ وَالْإِجَارَةِ وَلَكِنَّ التَّخَاذُلَ فِي أَقْوَالِهِمْ فِي الدِّينِ أَخَفُّ شَيْءٍ عَلَيْهِمْ.

L25353 If they say, "We followed the aforementioned precedents in permitting the sale of jointly owned property?" We reply: You have not done so; rather, you contradicted them, as we will clarify after this, God the Exalted and Majestic willing. The most direct instance of this is your contradiction of them regarding the lapse of the partner's right when he was offered the option to take his share before the sale but did not take it. Then you said: "Rather, his right remains and does not lapse."

فَإِنْ قَالُوا: اتَّبَعْنَا فِي إجَازَةِ بَيْعِ الْمُشَاعِ الْآثَارَ الْمَذْكُورَةَ؟ قُلْنَا: مَا فَعَلْتُمْ، بَلْ خَالَفْتُمُوهَا كَمَا نُبَيِّنُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ، وَأَقْرَبُ ذَلِكَ مُخَالَفَتُكُمْ إيَّاهَا فِي سُقُوطِ حَقِّ الشَّرِيكِ إذَا عَرَضَ عَلَيْهِ الْأَخْذَ قَبْلَ الْبَيْعِ فَلَمْ يَأْخُذْ، فَقُلْتُمْ: بَلْ حَقُّهُ بَاقٍ وَلَا يَسْقُطُ.

L25354 Moreover, there is an explicit text regarding the gift of undivided jointly owned property, as the Messenger of Allah—may Allah bless him and grant him peace—bestowed upon the Ash'aris a small herd of three camels to be distributed among them, yet you did not validate it.

وَأَيْضًا فَقَدْ جَاءَ نَصٌّ بِهِبَةِ الْمُشَاعِ إذْ «وَهَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْأَشْعَرِيِّينَ ثَلَاثَ ذَوْدٍ مِنْ الْإِبِلِ بَيْنَهُمْ» فَلَمْ تُجِيزُوهُ.

L25355 As for those who do not affirm the right of pre-emption, their argument is to say: The report concerning pre-emption contradicts fundamental legal principles, for when someone owns a thing through purchase, it is not per-

وَأَمَّا مَنْ لَمْ يَقُلْ بِالشُّفْعَةِ فَإِنَّ حُجَّتَهُ أَنْ يَقُولَ: خَبَرُ الشُّفْعَةِ مُخَالِفٌ لِلْأُصُولِ، وَمَنْ مَلَكَ شَيْئًا بِالشِّرَاءِ فَلَا يَجُوزُ لِغَيْرِهِ أَخْذُهُ وَهَذَا خِلَافٌ لِمَا ثَبَتَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[2] **Qur'an references (L25349):** Qur'an 2:275 (Al-Baqarah).
[3] **Qur'an references (L25350):** Qur'an 6:119 (Al-An'am).

missible for others to take it away from him—and this is contrary to what has been authentically established from the Messenger of Allah (peace be upon him).

وَلَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ الْمُخَالِفِينَ لِلثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ حُكْمِ الْمُصَرَّاةِ، وَمِنْ حُكْمِ مَنْ وَجَدَ سِلْعَتَهُ عِنْدَ مُفْلِسٍ فَهُوَ أَوْلَى بِهَا، وَالْقُرْعَةُ بَيْنَ الْأَعْبُدِ السِّتَّةِ فِي الْعِتْقِ، وَقَالُوا: هَذِهِ الْأَخْبَارُ مُخَالِفَةٌ لِلْأُصُولِ أَنْ يَقُولُوا مِثْلَ هَذَا فِي خَبَرِ الشُّفْعَةِ، وَلَكِنَّ التَّنَاقُضَ أَسْهَلُ شَيْءٍ عَلَيْهِمْ، وَلَا حُجَّةَ فِي نَظَرٍ مَعَ حُكْمٍ ثَابِتٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L25356–25358 Indeed, it was incumbent upon the dissenting Hanafis—who contradicted the established teachings from the Messenger of Allah (peace and blessings be upon him)—concerning the legal ruling on tied-udder animals (al-muṣarrah). Among the rulings is that whoever finds a commodity with a bankrupt person has the strongest claim to it. The drawing of lots is used among six slaves regarding emancipation. They said: "These narrations contradict the legal principles by their making such a statement in the narration on pre-emption, but contradiction is the easiest thing for them. There is no validity in speculative reasoning alongside a ruling firmly established from the Messenger of Allah (peace be upon him)."

وَأَمَّا الْخِلَافُ فِيمَا تَكُونُ فِيهِ الشُّفْعَةُ فَإِنَّهُمْ قَالُوا: إِنَّمَا ذَكَرَ فِي حَدِيثِ جَابِرٍ مِنْ رِوَايَةِ أَبِي الزُّبَيْرِ «فِي كُلِّ شِرْكٍ فِي أَرْضٍ أَوْ رَبْعٍ أَوْ حَائِطٍ» .

L25359 As for the disagreement regarding the cases in which pre-emption applies, they said: It was only mentioned in the ḥadīth of Jābir from the narration of Abū al-Zubayr: "In every shared portion of land, a dwelling, or a wall."

وَفِي رِوَايَةِ أَبِي سَلَمَةَ عَنْهُ «فَإِذَا وَقَعَتْ الْحُدُودُ وَصُرِّفَتْ الطُّرُقُ فَلَا شُفْعَةَ» وَمَا نَعْلَمُ لَهُمْ شَيْئًا شَغَبُوا بِهِ إِلَّا هَذَا.

L25360 In the narration of Abu Salama from him: "When boundaries are established and pathways are formally designated, there is no right of pre-emption." We know of no matter regarding which they caused contention except this.

فَجَوَابُنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: أَنَّهُ لَا حُجَّةَ لَهُمْ فِي هَذَيْنِ اللَّفْظَيْنِ، أَمَّا «قَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: فِي كُلِّ شِرْكٍ فِي أَرْضٍ أَوْ رَبْعٍ أَوْ حَائِطٍ» فَلَيْسَ فِيهِ أَنَّهُ لَا شُفْعَةَ إلَّا فِي هَذَا فَقَطْ، وَإِنَّمَا فِيهِ إيجَابُ الشُّفْعَةِ فِي الْأَرْضِ وَالرَّبْعِ وَالْحَائِطِ، وَلَيْسَ فِيهِ ذِكْرُ هَلْ الشُّفْعَةُ فِيمَا عَدَاهَا أَمْ لَا؟ فَوَجَبَ طَلَبُ حُكْمِ مَا عَدَا هَذِهِ فِي غَيْرِ هَذَا اللَّفْظِ، وَقَدْ وَجَدْنَا خَبَرَ جَابِرٍ هَذَا نَفْسِهِ مِنْ طَرِيقِ عَطَاءٍ بِأَنَّ الشُّفْعَةَ فِي كُلِّ شَيْءٍ، وَمَا يَجْهَلُ أَنَّ عَطَاءً فَوْقَ أَبِي الزُّبَيْرِ إلَّا جَاهِلٌ.

L25361 Our answer—and success comes only from Allah, the Exalted—is that they have no valid evidence in these two expressions. As for his statement—peace and blessings be upon him—"In every shared portion of land, a dwelling, or an orchard," it does not indicate that pre-emption applies solely to these. Rather, it establishes the obligation of pre-emption in land, dwellings, and orchards. It does not address whether pre-emption applies to other cases. Therefore, the ruling for what lies beyond these must be sought outside this wording. We have found this very report of Jābir through the narration of 'Aṭā', affirming that pre-emption applies to all things. None is ignorant that 'Aṭā' is superior to Abū al-Zubayr except an ignorant person.

L25362–25364 This report was transmitted through the chain of Abū Khaythama Zuhayr

ibn Muʿāwiya from Abū al-Zubayr from Jābir from the Prophet—peace and blessings be upon him: "Whoever has a partner in a dwelling or date palms may not sell until he informs his partner. If the partner approves, he takes his share; if he objects, he leaves it." Do you consider this proof that pre-emption applies only to dwellings or date palms, excluding other fruits? If they say: "Another report with an addition exists," we reply: "Another report has also reached us with an addition: 'Every undivided property.'" There is no distinction. How then—when the Ḥanafīs, Mālikīs, and Shāfiʿīs, who oppose us in this matter while claiming to be advocates of analogy—do they not analogize the ruling for land, walls, buildings, and other properties based on the effective cause of preventing harm, just as they analogized gold, silver, wheat, barley, salt, dates, and other categories? I wonder what necessitates analogy in those cases and in all they have analogized, yet prohibits it here. No... Especially, the Malikis and Shafi'is establish pre-emption in mahr by analogy to sale. Why did they not analogize sale to sale, as that would be more appropriate than analogizing mahr to sale? The Malikis hold that pre-emption applies to fruits but not to the principal properties. Why did they not analogize assets other than fruits to real estate, just as they analogized fruits to real estate—particularly given their acknowledgment that they know of no one who held this view before them?[4]

وَقَدْ جَاءَ هَذَا الْخَبَرُ مِنْ طَرِيقِ أَبِي خَيْثَمَةَ زُهَيْرِ بْنِ مُعَاوِيَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ كَانَ لَهُ شَرِيكٌ فِي رَبْعَةٍ أَوْ نَخْلٍ فَلَيْسَ لَهُ أَنْ يَبِيعَ حَتَّى يُؤْذِنَ شَرِيكَهُ، فَإِنْ رَضِيَ أَخَذَ، وَإِنْ كَرِهَ تَرَكَ» أَفَتَرَوْنَ هَذَا حُجَّةً فِي أَنْ لَا شُفْعَةَ إِلَّا فِي رَبْعٍ أَوْ نَخْلٍ فَقَطْ دُونَ سَائِرِ الثِّمَارِ؟ فَإِنْ قَالُوا: قَدْ جَاءَ خَبَرٌ آخَرُ بِزِيَادَةٍ؟ قُلْنَا: وَقَدْ جَاءَ خَبَرٌ آخَرُ لَنَا أَيْضًا بِزِيَادَةٍ «كُلُّ مَالٍ لَمْ يُقْسَمْ» وَلَا فَرْقَ فَكَيْفَ وَالْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، الْمُخَالِفُونَ لَنَا فِي هَذَا أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، فَهَلَّا قَاسُوا عَلَى حُكْمِ الْأَرْضِ، وَالْحَائِطِ، وَالْبِنَاءِ: سَائِرَ الْأَمْلَاكِ بِعِلَّةِ الضَّرَرِ وَدَفْعِهِ، كَمَا قَاسُوا عَلَى الذَّهَبِ، وَالْفِضَّةِ، وَالْبُرِّ، وَالشَّعِيرِ، وَالْمِلْحِ، وَالتَّمْرِ: سَائِرَ الْأَنْوَاعِ؟ فَلَيْتَ شِعْرِي مَا الْمُوجِبُ لِلْقِيَاسِ هُنَالِكَ وَفِي سَائِرِ مَا قَاسُوا فِيهِ وَمُنِعَ مِنْهُ هَاهُنَا، لَا سِيَّمَا وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ يَجْعَلُونَ الشُّفْعَةَ فِي الصَّدَاقِ قِيَاسًا عَلَى الْبَيْعِ، فَهَلَّا قَاسُوا الْبَيْعَ عَلَى الْبَيْعِ، فَهُوَ أَوْلَى مِنْ قِيَاسِ الصَّدَاقِ عَلَى الْبَيْعِ؟ وَالْمَالِكِيُّونَ يَرَوْنَ الشُّفْعَةَ فِي الثَّمَرَةِ دُونَ الْأُصُولِ، فَهَلَّا قَاسُوا غَيْرَ الثَّمَرَةِ عَلَى الْعَقَارِ كَمَا قَاسُوا الثَّمَرَةَ عَلَى الْعَقَارِ، لَا سِيَّمَا مَعَ إقْرَارِهِ بِأَنَّهُ لَا يَعْرِفُ أَحَدًا قَالَ بِذَلِكَ قَبْلَهُ.

L25365 Then all of them contravene this very report itself, in that they do not nullify the partner's right in preemption when his partner presents him with taking the share for the price given, and he does not take it. So how can it be permissible for a Muslim to invoke part of a report as proof—particularly in matters wherein there is nothing from it—while not invoking it as proof in what is explicitly stated within it? We seek refuge in Allah from the likes of this.

ثُمَّ كُلُّهُمْ مُخَالِفُونَ لِهَذَا الْخَبَرِ نَفْسِهِ، فِي أَنَّهُمْ لَا يُسْقِطُونَ حَقَّ لِلشَّرِيكِ فِي الشُّفْعَةِ إذَا عَرَضَ عَلَيْهِ شَرِيكُهُ أَخْذَ الشِّقْصِ بِمَا يُعْطَى فِيهِ فَلَمْ يَأْخُذْهُ، فَكَيْفَ يَحِلُّ لِمُسْلِمٍ أَنْ يَجْعَلَ بَعْضَ خَبَرٍ حُجَّةً، لَا سِيَّمَا فِيمَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ، وَلَا يَجْعَلُهُ حُجَّةً فِيمَا هُوَ فِيهِ مَنْصُوصٌ وَنَعُوذُ بِاَللَّهِ مِنْ مِثْلِ هَذَا.

L25366 As for the wording in the narration of Abū Salama from Jābir: "When bound-

[4] **Hadith references (L25362):** Sahih Muslim 1608a.

aries are fixed and paths are arranged, there is no preemption," they have no valid argument in it, for this wording contains neither explicit text nor evidence indicating that this applies exclusively to land, immovable property, or buildings.

وَأَمَّا اللَّفْظُ الَّذِي فِي رِوَايَةِ أَبِي سَلَمَةَ عَنْ جَابِرٍ «فَإِذَا وَقَعَتْ الْحُدُودُ وَصُرِّفَتْ الطُّرُقُ فَلَا شُفْعَةَ» فَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَيْسَ فِي هَذَا اللَّفْظِ نَصٌّ وَلَا دَلِيلٌ عَلَى أَنَّ ذَلِكَ لَا يَكُونُ إلَّا فِي الْأَرْضِ، وَالْعَقَارِ، وَالْبِنَاءِ.

L25367 Boundaries indeed apply to everything divisible - including food, animals, plants, and goods - and the way of necessity applies to all these matters, just as it applies to buildings and walls without distinction. His mention - peace be upon him - of boundaries and paths constitutes an instruction about the ruling concerning divisible properties, while the ruling remains applicable to indivisible properties in their original state. How much more so when the beginning of the ḥadīth provides sufficient clarification that pre-emption is obligatory for every divisible asset and every undivided asset? This constitutes a universal principle encompassing all properties - those that admit division and those that do not.

بَلْ الْحُدُودُ وَاقِعَةٌ فِي كُلِّ مَا يَنْقَسِمُ مِنْ طَعَامٍ، وَحَيَوَانٍ، وَنَبَاتٍ، وَعُرُوضٍ، وَإِلَى كُلِّ ذَلِكَ طَرِيقُ ضَرُورَةٍ، كَمَا هُوَ إلَى الْبِنَاءِ وَإِلَى الْحَائِطِ وَلَا فَرْقَ، وَكَانَ ذِكْرُهُ - عَلَيْهِ السَّلَامُ - لِلْحُدُودِ وَالطُّرُقِ إعْلَامًا بِحُكْمِ مَا يُمْكِنُ قِسْمَتُهُ، وَبَقِيَ الْحُكْمُ فِيمَا لَا يُقْسَمُ عَلَى حَسْبِهِ، فَكَيْفَ وَأَوَّلُ الْحَدِيثِ بَيَانٌ كَافٍ فِي أَنَّ الشُّفْعَةَ وَاجِبَةٌ فِي كُلِّ مَالٍ يُقْسَمُ، وَفِي كُلِّ مَا لَمْ يُقْسَمْ، وَهَذَا عُمُومٌ لِجَمِيعِ الْأَمْوَالِ مَا احْتَمَلَ مِنْهَا الْقِسْمَةَ وَمَا لَمْ يَحْتَمِلْهَا.

L25368 Among the untenable falsehoods is the claim that the Messenger of Allah—may Allah bless him and grant him peace—intended by this ruling merely "the land," then summarizes it in this brief manner. Far removed is Allah from this, for he was commanded to clarify, not to obscure or deceive. This notion cannot take form in the mind of any rational being except his [the claimant's]. And with Allah, the Exalted, lies all success.

وَمِنْ الْبَاطِلِ الْمُمْتَنِعِ أَنْ يَكُونَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُرِيدُ بِهَذَا الْحُكْمِ " الْأَرْضَ " فَقَطْ، ثُمَّ يُجْمِلُ هَذَا الْإِجْمَالَ، حَاشَا لِلَّهِ مِنْ هَذَا، وَهُوَ مَأْمُورٌ بِالْبَيَانِ لَا بِالْإِبْهَامِ وَالتَّلْبِيسِ هَذَا أَمْرٌ لَا يَتَشَكَّلُ فِي عَقْلِ ذِي عَقْلٍ سِوَاهُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25369–25370 Abu Muhammad said: Thus, any basis they might have had was invalidated. Some of them dared - following their customary practice of falsehood - to claim consensus regarding the obligation of pre-emption rights in land, structures, and trees alone, and they claimed consensus regarding the nullification of pre-emption rights in all other categories.

قَالَ أَبُو مُحَمَّد: فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ، وَقَدْ جَسَرَ بَعْضُهُمْ عَلَى جَارِي عَادَتِهِ فِي الْكَذِبِ فَادَّعَى الْإِجْمَاعَ عَلَى وُجُوبِ الشُّفْعَةِ فِي الْأَرْضِ، وَالْبِنَاءِ، وَالْأَشْجَارِ فَقَطْ، وَادَّعَى الْإِجْمَاعَ عَلَى سُقُوطِ الشُّفْعَةِ فِيمَا سِوَاهَا.

L25371 Abu Muhammad said: As for the consensus on the obligation of pre-emption in land and what it contains of structures and trees, we have cited disagreement from al-Hasan, Ibn Sirin, ʿAbd al-Malik ibn Yaʿlā, and ʿUthman al-Batti regarding this matter, and these were jurists among the Tābiʿūn.

قَالَ أَبُو مُحَمَّد: أَمَّا الْإِجْمَاعُ عَلَى وُجُوبِ الشُّفْعَةِ فِي الْأَرْضِ وَمَا فِيهَا مِنْ بِنَاءٍ وَشَجَرٍ: فَقَدْ أَوْرَدْنَا عَنْ الْحَسَنِ وَابْنِ سِيرِينَ، وَعَبْدِ الْمَلِكِ بْنِ يَعْلَى وَعُثْمَانَ الْبَتِّيِّ خِلَافَ ذَلِكَ، وَهَؤُلَاءِ فُقَهَاءُ تَابِعُونَ.

L25372 As for the consensus that there is no pre-emption right in matters apart from that, we have mentioned the generality of the narrations from Umar and Uthman, the narration from Ibn Abi Mulaykah and Aṭāʾ, and it being the opinion of Meccan jurists. This Malik holds the view that pre-emption applies to sold fruit but not to the original asset.

وَأَمَّا الْإِجْمَاعُ عَلَى أَنْ لَا شُفْعَةَ فِيمَا عَدَا ذَلِكَ، فَقَدْ ذَكَرْنَا عُمُومَ الرِّوَايَةِ عَنْ عُمَرَ وَعُثْمَانَ، وَالرِّوَايَةَ عَنْ ابْنِ أَبِي مُلَيْكَةَ، وَعَطَاءٍ، وَهُوَ قَوْلُ فُقَهَاءِ أَهْلِ مَكَّةَ، وَهَذَا مَالِكٌ يَرَى الشُّفْعَةَ فِي الثَّمَرَةِ الْمَبِيعَةِ دُونَ الْأَصْلِ.

L25373 We do not know of any reliably transmitted report advocating the abolition of pre-emption in cases other than land except those attributed to Ibn ʿAbbās, Shurayḥ, and Ibn al-Musayyab—none of which are authentic. It is also reported from ʿAṭāʾ (who retracted this view), Ibrāhīm, al-Shaʿbī, al-Ḥasan, Qatādah, Ḥammād ibn Abī Sulaymān, and Rabīʿah. The report from these latter scholars is authentic.

وَمَا نَعْلَمُ رُوِيَ إِسْقَاطُ الشُّفْعَةِ فِيمَا عَدَا الْأَرْضِ إِلَّا عَنِ ابْنِ عَبَّاسٍ، وَشُرَيْحٍ، وَابْنِ الْمُسَيِّبِ، وَلَا يَصِحُّ عَنْهُمْ، وَعَنْ عَطَاءٍ وَقَدْ رَجَعَ عَنْ ذَلِكَ وَعَنْ إِبْرَاهِيمَ، وَالشَّعْبِيِّ، وَالْحَسَنِ وَقَتَادَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَرَبِيعَةَ، وَهُوَ عَنْ هَؤُلَاءِ صَحِيحٌ.

L25374 As for Ibn Abbas, the narration attributed to him regarding this matter – through the chain of Muḥammad ibn ʿAbd al-Raḥmān from ʿAṭāʾ from Ibn Abbas – states: “There is no preemption for animals.” However, Muḥammad ibn ʿAbd al-Raḥmān is an unverified narrator. Moreover, this narration does not explicitly negate preemption for non-animals, just as the ḥadīth of ʿUthmān only abolishes preemption in the cases of barley and stallions. Consequently, their entire argument based on this is invalid.

أَمَّا ابْنُ عَبَّاسٍ: فَإِنَّ الرِّوَايَةَ عَنْهُ فِي ذَلِكَ مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ عَطَاءٍ عَنِ ابْنِ عَبَّاسٍ: لَا شُفْعَةَ فِي الْحَيَوَانِ مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ مَجْهُولٌ وَلَيْسَ فِيهِ أَيْضًا: أَنَّهُ لَا شُفْعَةَ فِي غَيْرِ الْحَيَوَانِ، كَمَا لَيْسَ فِي حَدِيثِ عُثْمَانَ إِسْقَاطُ الشُّفْعَةِ عَنْ غَيْرِ الْبُرِّ وَالْفَحْلِ فَبَطَلَ تَعَلُّقُهُمْ بِهَا جُمْلَةً.

L25375 As for Ibn al-Musayyib, his narration comes through Ibn Samʿān—who is accused of lying—and from Shurayḥ via the chain of Jābir al-Juʿfī. This suffices.

وَأَمَّا ابْنُ الْمُسَيِّبِ: فَهُوَ مِنْ طَرِيقِ ابْنِ سَمْعَانَ وَهُوَ مَذْكُورٌ بِالْكَذِبِ وَهُوَ عَنْ شُرَيْحٍ مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ، وَيَكْفِي.

L25376 We have transmitted it through the chain of Saʿīd ibn Manṣūr: I, Hushaym, narrate from ʿUbaydah, Jarīr, and Yūnus. ʿUbaydah reported from Ibrāhīm, Jarīr from al-Shaʿbī, and they both said together: “There is no pre-emption right except in a dwelling or immovable property.” Yūnus reported from al-Ḥasan: “There is no pre-emption right except in land.”

وَرُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ عَنْ عُبَيْدَةَ، وَجَرِيرٌ، وَيُونُسُ، قَالَ عُبَيْدَةُ عَنْ إِبْرَاهِيمَ، وَقَالَ جَرِيرٌ عَنِ الشَّعْبِيِّ قَالَا جَمِيعًا: لَا شُفْعَةَ إِلَّا فِي دَارٍ، أَوْ عَقَارٍ، وَقَالَ يُونُسُ عَنِ الْحَسَنِ: لَا شُفْعَةَ إِلَّا فِي تُرْبَةٍ.

L25377 Abū Muḥammad said: None would deem a group of this size to constitute consensus [ijmāʿ] except a liar lacking in modesty. We have cited the disagreement regarding this matter from those we mentioned, and success comes only from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: وَمِثْلُ عَدَدِ هَؤُلَاءِ لَا يَعُدُّهُمْ إِجْمَاعًا إِلَّا كَذَّابٌ، قَلِيلُ الْحَيَاءِ وَقَدْ أَوْرَدْنَا الْخِلَافَ فِي ذَلِكَ عَمَّنْ ذَكَرْنَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L25378–25379 Indeed, Malik differed with all of them, holding the opinion that pre-emption

applies to figs, grapes, olives, and fruits on the treetops, and it is not a house, nor real estate, nor soil. Ibn Shubruma held the opinion that pre-emption applies to water.

وَقَدْ خَالَفَ هَؤُلَاءِ كُلَّهُمْ مَالِكٌ، فَرَأَى الشُّفْعَةَ فِي التِّينِ، وَالْعِنَبِ، وَالزَّيْتُونِ، وَالْفَوَاكِهِ فِي رُءُوسِ الشَّجَرِ، وَلَيْسَتْ دَارًا، وَلَا عَقَارًا، وَلَا تُرْبَةً وَرَأَى ابْنُ شُبْرُمَةَ الشُّفْعَةَ فِي الْمَاءِ.

L25380 It is astonishing that the Malikis compel a partner to sell jointly with his co-partner, though no textual ruling (naṣṣ), transmitted precedent (athar), analogical deduction (qiyās), or juristic reasoning (nazar) has ever required this. Moreover, they do not grant him the right of preemption (shufʿah), despite its establishment through an explicit textual ruling.

وَالْعَجَبُ مِنْ الْمَالِكِيِّينَ فِي إجْبَارِهِمْ الشَّرِيكَ عَلَى أَنْ يَبِيعَ مَعَ شَرِيكِهِ، وَلَمْ يُوجِبْ قَطُّ ذَلِكَ نَصٌّ، وَلَا أَثَرٌ، وَلَا قِيَاسٌ، وَلَا نَظَرٌ، ثُمَّ لَا يُوجِبُ لَهُ الشُّفْعَةَ، وَقَدْ جَاءَ بِهَا النَّصُّ.

L25381 Another astonishment arises from them and the Ḥanafīs regarding their claim that the *musnad* is equivalent to the *mursal*—to the point that some of them said: “Rather, the *mursal* is stronger.” We have just mentioned that the finest *mursal* reports mandate the obligation of pre-emption (*shufʿah*) for the female slave (*jāriyah*) and the servant (*khādim*).

وَعَجَبٌ آخَرُ مِنْهُمْ، وَمِنْ الْحَنَفِيِّينَ فِي قَوْلِهِمْ: الْمُسْنَدُ كَالْمُرْسَلِ سَوَاءً، حَتَّى أَنَّ بَعْضَهُمْ قَالَ: بَلْ الْمُرْسَلُ أَقْوَى، وَقَدْ ذَكَرْنَا آنِفًا: أَحْسَنَ الْمَرَاسِيلِ بِإِيجَابِ الشُّفْعَةِ فِي الْجَارِيَةِ وَفِي الْخَادِمِ.

L25382 It has been narrated to us through the chain of Muḥammad ibn Jaʿfar, who reported from Shuʿbah, from ʿAbd al-ʿAzīz ibn Rufayʿ, from Ibn Abī Mulaykah, that the Prophet—peace and blessings of Allah be upon him—said: “The right of preemption applies to a slave and to all things.” We do not know of a stronger report among the mursal narrations than this, yet they opposed it, objecting to it only due to its mursal status. What religion, or what revival of faith, could endure with this? We seek refuge in Allah from being forsaken.

وَرُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ أَنَا شُعْبَةُ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ، قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فِي الْعَبْدِ شُفْعَةٌ وَفِي كُلِّ شَيْءٍ» وَمَا نَعْلَمُ فِي الْمُرْسَلَاتِ أَقْوَى مِنْ هَذَا فَخَالَفُوهُ، وَمَا عَابُوهُ إلَّا بِإِرْسَالٍ؟ فَأَيُّ دِينٍ، أَوْ أَيُّ إحْيَاءٍ، يَبْقَى مَعَ هَذَا؟ وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L25383 As for the lapse of the co-owner’s right when his partner offers him the option to take the property and he declines, the Ḥanafīs—except al-Ṭaḥāwī—the Mālikīs, and the Shāfiʿīs maintain that his right is not invalidated by this. Rather, he may exercise pre-emption after the sale. They argued that pre-emption had not yet become incumbent upon him, as it only becomes incumbent after the sale. Therefore, his abstention before it became incumbent has no legal significance, and his right does not lapse once the obligation is established. They have no other foundational argument at all.

وَأَمَّا سُقُوطُ حَقِّ الشَّرِيكِ إذَا عَرَضَ عَلَيْهِ شَرِيكُهُ الْأَخْذَ فَلَمْ يَأْخُذْهُ، فَإِنَّ الْحَنَفِيِّينَ حَاشَا الطَّحَاوِيَّ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، قَالُوا: لَا يَسْقُطُ حَقُّهُ بِذَلِكَ، بَلْ لَهُ أَنْ يَأْخُذَ بَعْدَ الْبَيْعِ، وَاحْتَجُّوا بِأَنْ قَالُوا: بِأَنَّ الشُّفْعَةَ لَمْ تَجِبْ لَهُ بَعْدُ، وَإِنَّمَا يَجِبُ لَهُ بَعْدَ الْبَيْعِ؟ فَتَرْكُهُ مَا لَمْ يَجِبْ لَهُ بَعْدُ لَا مَعْنَى لَهُ، وَلَا يَسْقُطُ حَقُّهُ إذَا وَجَبَ، مَا لَهُمْ حُجَّةٌ غَيْرُ هَذَا أَصْلًا.

L25384 This is baseless. First, their assertion that the pre-emptive right has not

وَهَذَا لَيْسَ بِشَيْءٍ: أَوَّلُ ذَلِكَ قَوْلُهُمْ: إنَّ الشُّفْعَةَ لَمْ تَجِبْ لَهُ بَعْدُ، فَهَذَا بَاطِلٌ؛ لِأَنَّ الشُّفْعَةَ وَغَيْرَ الشُّفْعَةِ مِنْ أَحْكَامِ الدِّيَانَةِ كُلِّهَا لَا تَجِبُ إلَّا إذَا أَوْجَبَهَا اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِلَّا فَمَا لَمْ يَجِئْ هَذَا الْمَجِيءَ فَلَيْسَ هُوَ مِنْ الدِّينِ، وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ الَّذِي أَوْجَبَ حَقَّ الشَّفِيعِ بِعَرْضِ الشُّفْعَةِ عَلَيْهِ قَبْلَ الْبَيْعِ، وَأَسْقَطَ حَقَّهُ بِتَرْكِهِ الْأَخْذَ حِينَئِذٍ، وَلَمْ يَجْعَلْ لَهُ بَعْدَ الْبَيْعِ حَقًّا أَصْلًا، إلَّا بِأَنْ لَا يَعْرِضَ عَلَيْهِ قَبْلَ الْبَيْعِ فَحِينَئِذٍ يَبْقَى لَهُ الْحَقُّ بَعْدَ الْبَيْعِ، وَإِلَّا فَلَا هَذَا هُوَ حُكْمُ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَلْيَأْتُونَا عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنَّ الْأَخْذَ لَا يَجِبُ لِلشَّفِيعِ إلَّا بَعْدَ الْبَيْعِ فَقَطْ، وَهَذَا مَا لَا يَجِدُونَهُ أَبَدًا فَظَهَرَ فَسَادُ قَوْلِهِمْ مِنْ كَثَبٍ.

yet become obligatory for him is invalid, for all rulings of the religion—pre-emption and others—only become obligatory when God Almighty ordains them through the tongue of His Messenger, peace and blessings be upon him. Whatever does not arrive through this channel is not part of the religion. The Messenger of God, peace and blessings be upon him, is the one who obligated the joint owner's pre-emptive right by presenting the pre-emption to him before the sale, nullified his right if he declined to exercise it at that time, and did not grant him any right after the sale whatsoever—unless the seller does not present it to him before the sale, in which case his right persists after the sale. Otherwise, no right exists. This is the ruling of God Almighty as conveyed by His Messenger, peace and blessings be upon him. Let them bring forth from him, peace and blessings be upon him, proof that the pre-emptor's right to claim does not become obligatory except solely after the sale. They will never find such evidence, thus their claim's invalidity is unequivocally evident.

وَلَيْتَ شِعْرِي أَيْنَ كَانَ الْحَنَفِيُّونَ عَنْ هَذَا النَّظَرِ حَيْثُ أَجَازُوا الزَّكَاةَ قَبْلَ الْحَوْلِ، نَعَمْ، وَقَبْلَ دُخُولِهِ، وَالْمَالِكِيُّونَ كَذَلِكَ قَبْلَ تَمَامِ الْحَوْلِ بِشَهْرَيْنِ، وَالشَّافِعِيُّونَ كَذَلِكَ قَبْلَ تَمَامِ الْحَوْلِ؟ وَأَيْنَ كَانَ الْمَالِكِيُّونَ عَنْ هَذَا النَّظَرِ حَيْثُ أَجَازُوا إذْنَ الْوَارِثِ لِلْمُوصِي فِي أَكْثَرَ مِنْ الثُّلُثِ وَالْمَالُ لَمْ يَجِبْ لَهُمْ بَعْدُ، وَلَا لَهُمْ فِيهِ حَقٌّ وَلَعَلَّهُ هُوَ يَرِثُهُمْ أَوْ لَعَلَّهُ سَيَحْدُثُ لَهُ وَلَدٌ يَحْجُبُهُمْ؟ وَأَيْنَ كَانُوا عَنْ هَذَا النَّظَرِ فِي إجَازَتِهِمْ الطَّلَاقَ قَبْلَ النِّكَاحِ، وَالْعِتْقَ قَبْلَ الْمِلْكِ، فَأُعْجِبُوا لِهَذِهِ التَّخَالِيطِ وَبِهِ يَقُولُ جَمَاعَةٌ مِنْ أَهْلِ الْعِلْمِ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَشْعَثَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ فِي الرَّجُلَيْنِ بَيْنَهُمَا دَارٌ أَوْ أَرْضٌ فَقَالَ أَحَدُهُمَا لِلْآخَرِ: أُرِيدُ أَنْ أَبِيعَ وَلَك الشُّفْعَةُ فَاشْتَرِ مِنِّي، فَقَالَ

I wish I knew where the Hanafis stood in this consideration when they permitted Zakāh before the ḥawl—indeed, even before its commencement—and the Malikis similarly allowed it two months before the ḥawl's completion, and the Shāfiʿīs likewise before its full completion? Where were the Malikis in this consideration when they permitted an heir to authorize the testator to bequeath beyond a third, though the wealth was not yet due to them nor did they hold any right to it—perhaps he might inherit them, or a child might be born to him who would exclude them? Where were they in this consideration when they validated divorce prior to marriage and emancipation before ownership? They marveled at these inconsistencies, and a group of scholars upholds this view, as narrated to us via ʿAbd al-Razzāq's chain: Sufyān al-Thawrī narrated to us from Ashʿath from al-Ḥakam ibn ʿUtaybah regarding two men co-owning a house or land. One said to the other, "I wish to sell, and you have the right of preemption—so buy from me." The other replied, "I have no need. I grant you permission to sell," so he sold it. Later, the claimant of preemption came and said, "The price has been set, and I hold the prior right." Al-Ḥakam ruled, "He has no claim once he permitted."

L25385–25386

لَهُ الْآخَرُ: لَا حَاجَةَ لِي بِهِ، قَدْ أَذِنْت لَك أَنْ تَبِيعَ، فَبَاعَ، ثُمَّ يَأْتِي طَالِبُ الشُّفْعَةِ فَيَقُولُ قَدْ قَامَ الثَّمَنُ وَأَنَا أَحَقُّ، قَالَ الْحَكَمُ: لَا شَيْءَ لَهُ إذَا أَذِنَ.

L25387 Sufyan said: "We adhere to this, and it is the view of Abī ʿUbayd, Isḥāq, and al-Ḥasan ibn Ḥayy."

قَالَ سُفْيَانُ: وَبِهِ نَأْخُذُ وَهُوَ قَوْلُ أَبِي عُبَيْدٍ، وَإِسْحَاقَ وَالْحَسَنِ بْنِ حَيٍّ.

L25388 One of the two opinions of Ahmad: also held by a group of Hadith scholars.

وَأَحَدُ قَوْلَيْ أَحْمَدَ: وَطَائِفَةٍ مِنْ أَصْحَابِ الْحَدِيثِ.

L25389 If someone argues: "This report has come via the chain of Abū al-Zubayr from Jābir, and it states: 'It is not permissible for him to sell?'" We reply: Abū al-Zubayr did not mention direct hearing [of this] from Jābir in the chain, and he confessed against himself that whatever he did not attribute to direct hearing was conveyed to him by an unnamed transmitter from Jābir.

فَإِنْ قَالَ قَائِلٌ: قَدْ جَاءَ هَذَا الْخَبَرُ مِنْ طَرِيقِ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ وَفِيهِ: لَا يَحِلُّ لَهُ أَنْ يَبِيعَ؟ قُلْنَا: لَمْ يَذْكُرْ فِيهِ أَبُو الزُّبَيْرِ سَمَاعًا مِنْ جَابِرٍ، وَهُوَ قَدْ اعْتَرَفَ عَلَى نَفْسِهِ بِأَنَّ مَا لَمْ يُذْكَرْ فِيهِ سَمَاعًا فَإِنَّهُ حَدَّثَهُ بِهِ مَنْ لَمْ يُسَمِّهِ عَنْ جَابِرٍ

L25390 Then, if it were authentic, the latter part of the narration would take precedence over the former, and it is impermissible to disregard any authentic ruling from the Messenger of Allah (peace and blessings be upon him).

ثُمَّ لَوْ صَحَّ لَكَانَ آخِرُ الْخَبَرِ حَاكِمًا عَلَى أَوَّلِهِ، وَلَا يَحِلُّ تَرْكُ شَيْءٍ، صَحَّ مِنْ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L25391–25393 And this is a report we have narrated through the chain of Isḥāq ibn Rāhawayh via ʿAbdullāh ibn Idrīs, Ibn Jurayj, Abū al-Zubayr, from Jābir: "The Messenger of Allah, may Allah bless him and grant him peace, ruled regarding the right of pre-emption in every undivided partnership—whether a residence or a garden. It is not lawful for one to sell until he informs his partner. If the partner wishes, he may take it, and if he wishes, he may leave it. If one sells without informing him, the partner has the greatest right to it." Abū Muḥammad said: He (peace be upon him) established that after an invalid sale, the exclusive right belongs solely to the pre-emption right holder. Thus, it becomes clear that the right to claim or forgo [the property] after the sale rests with the pre-emption right holder if consent was not obtained before the sale. If he voids it, the sale is nullified; if he ratifies it, it is then upheld. And success is from Allah alone, the Most High.[5]

وَهَذَا خَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ إِسْحَاقَ بْنِ رَاهْوَيْهِ نا عَبْدُ اللَّهِ بْنُ إدْرِيسَ أَنَا ابْنُ جُرَيْجٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالشُّفْعَةِ فِي كُلِّ شَرِكَةٍ لَمْ تُقْسَمْ: رَبْعَةٍ، أَوْ حَائِطٍ، لَا يَحِلُّ لَهُ أَنْ يَبِيعَ حَتَّى يُؤْذِنَ شَرِيكَهُ، فَإِنْ شَاءَ أَخَذَ وَإِنْ شَاءَ تَرَكَ فَإِذَا بَاعَ وَلَمْ يُؤْذِنْهُ فَهُوَ أَحَقُّ بِهِ» قَالَ أَبُو مُحَمَّدٍ: فَإِنَّمَا جَعَلَهُ - عَلَيْهِ السَّلَامُ - بَعْدَ الْبَيْعِ الَّذِي لَا يَحِلُّ أَحَقَّ فَقَطْ، فَلَاحَ أَنَّ الْحَقَّ فِي الْأَخْذِ أَوْ التَّرْكِ بَعْدَ الْبَيْعِ إلَى الشَّفِيعِ إذَا لَمْ يُؤْذَنْ قَبْلَ الْبَيْعِ فَإِنْ أَبْطَلَهُ بَطَلَ وَإِنْ أَجَازَهُ فَحِينَئِذٍ جَازَ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الشُّفْعَة فِي غَيْر الْبَيْع]

L25394 ## The Issue of Pre-emption in Cases Other than Sale

[5] **Hadith references (L25391):** Sahih Muslim 1608b; Mishkat al-Masabih 2962.

L25395 1596 - Issue: There is no pre-emption except in sale alone—not in dower, rent, gift, or anything else. This is the opinion of a group of the *Salaf*.

١٥٩٦ - مَسْأَلَةٌ: وَلَا شُفْعَةَ إِلَّا فِي الْبَيْعِ وَحْدَهُ، وَلَا شُفْعَةَ فِي صَدَاقٍ وَلَا فِي إِجَارَةٍ، وَلَا فِي هِبَةٍ، وَلَا غَيْرِ ذَلِكَ، وَهُوَ قَوْلُ جَمَاعَةٍ مِنْ السَّلَفِ.

L25396 It was narrated to us via the chain of Saʿīd ibn Manṣūr: Hushaym narrated from Manṣūr ibn al-Muʿtamir, from al-Ḥasan, that he did not recognize the right of preemption in the dowry.

كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ الْحَسَنِ أَنَّهُ كَانَ لَا يَرَى الشُّفْعَةَ فِي الصَّدَاقِ

L25397 From the chain of Muḥammad ibn al-Muthannā: ʿAbd al-Raḥmān ibn Mahdī reported from Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, who said: "It reached me from al-Shaʿbī that he said: There is no right of preemption in a dower." This is the opinion of Abū Ḥanīfa, his companions, Abū Sulaymān, our companions, and al-Layth ibn Saʿd.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ قَالَ: بَلَغَنِي عَنْ الشَّعْبِيِّ أَنَّهُ قَالَ: لَا شُفْعَةَ فِي صَدَاقٍ وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا، وَاللَّيْثِ بْنِ سَعْدٍ.

L25398 Al-Ḥārith al-ʻUklī, Ibn Abī Laylā, Ibn Shubrumah, al-Ḥasan ibn Ḥayy, Mālik, and al-Shāfiʿī expressed opinions regarding the dower (ṣadāq) and pre-emption (shufʿah).

وَقَالَ الْحَارِثُ الْعُكْلِيُّ، وَابْنُ أَبِي لَيْلَى، وَابْنُ شُبْرُمَةَ، وَالْحَسَنِ بْنِ حَيٍّ، وَمَالِكٌ، وَالشَّافِعِيُّ فِي الصَّدَاقِ وَالشُّفْعَةِ.

L25399 Then they differed. Al-ʻUklī and Al-Shāfiʿī stated: The preemptor takes possession of the share at its equivalent dower value. Ibn Abī Laylā, Ibn Shubruma, Al-Ḥasan ibn Ḥayyin, and Mālik maintained: The preemptor claims the share at its market value. Mālik and Al-Shāfiʻī ruled that the preemptive right applies to leasing agreements.

ثُمَّ اخْتَلَفُوا فَقَالَ الْعُكْلِيُّ وَالشَّافِعِيُّ: يَأْخُذُ الشَّفِيعُ بِصَدَاقِ مِثْلِهَا، وَقَالَ ابْنُ أَبِي لَيْلَى، وَابْنُ شُبْرُمَةَ، وَالْحَسَنِ بْنِ حَيٍّ وَمَالِكٌ: يَأْخُذُهُ بِقِيمَةِ الشِّقْصِ وَأَوْجَبَ مَالِكٌ، وَالشَّافِعِيُّ: الشُّفْعَةَ فِي الْإِجَارَةِ.

L25400–25402 Abu Muhammad said: If it is asked: Why do you not enforce the obligation of pre-emption in all such cases by the general principle of the Messenger of Allah's statement - peace and blessings be upon him - and his ruling that pre-emption applies to all undivided properties? We answer: Your assertion is invalid, for "pre-emption" is not an ancient term but rather a legal term unknown to the Arabs in meaning before the Messenger of Allah - peace and blessings be upon him - just as they did not know the term "prayer," the term "obligatory charity," the term "fasting," the term "atonement," the term "sacrificial rites," or the term "prescribed penalty" - all of which are mentioned in... Matters of the religion, until the Messenger of Allah (peace

قَالَ أَبُو مُحَمَّدٍ: إنْ قِيلَ: فَهَلَّا أَخَذْتُمْ بِإِيجَابِ الشُّفْعَةِ فِي كُلِّ ذَلِكَ بِعُمُومِ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَضَائِهِ بِالشُّفْعَةِ فِي كُلِّ مَا لَمْ يُقْسَمْ؟ قُلْنَا: لَمْ يَجُزْ مَا تَقُولُونَ، لِأَنَّ " الشُّفْعَةَ " لَيْسَتْ لَفْظَةً قَدِيمَةً إنَّمَا هِيَ لَفْظَةٌ شَرِيعِيَّةٌ لَمْ تَعْرِفْ الْعَرَبُ مَعْنَاهَا قَبْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا لَمْ تَعْرِفْ لَفْظَةَ " الصَّلَاةِ " وَلَفْظَةَ " الزَّكَاةِ " وَلَفْظَةَ " الصِّيَامِ " وَلَفْظَةَ " الْكَفَّارَةِ " وَلَفْظَةَ " النُّسُكِ " وَلَفْظَةَ " الْحَدِّ " الْوَارِدَ كُلُّ ذَلِكَ فِي الدِّينِ، حَتَّى بَيَّنَهَا لَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَا لَمْ

تَعْرِفْهُ الْعَرَبُ قَطُّ: مِنْ صِفَةِ الرُّكُوعِ، وَالسُّجُودِ، وَالْقِرَاءَةِ، وَمَا يُعْطَى مِنْ الْأَمْوَالِ، وَمَا يُمْتَنَعُ مِنْهُ فِي رَمَضَانَ، وَغَيْرِ ذَلِكَ، وَكَذَلِكَ " الشُّفْعَةُ " مِنْ هَذَا الْبَابِ لَا يَدْرِي أَحَدٌ مَا الْمُرَادُ بِهَا حَتَّى بَيَّنَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ بَيَّنَ أَنَّ ذَلِكَ فِي الْبَيْعِ، وَلَمْ يَذْكُرْهَا غَيْرَ ذَلِكَ، فَلَمْ يَجُزْ أَنْ يُتَعَدَّى بِهَا بَيَانُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى الظُّنُونِ الْكَاذِبَةِ.

and blessings of Allah be upon him) clarified them for us through that which the Arabs had never known: the manner of bowing, prostration, recitation, what is to be given from assets, what is prohibited regarding it during Ramadan, and other matters. Similarly, "pre-emption" (shufʿah) belongs to this category – no one knew its intended meaning until the Messenger of Allah (peace and blessings of Allah be upon him) clarified it. He explicitly stated that this applies to sales and did not mention it in any other context. Thus, it is impermissible for the clarification of the Messenger of Allah (peace and blessings of Allah be upon him) to be overstepped through it into baseless assumptions.

فَإِنْ قَالُوا: قِسْنَا الصَّدَاقَ، وَالْإِجَارَةَ عَلَى الْبَيْعِ؟ قُلْنَا: هَذَا بَاطِلٌ؛ لِأَنَّ الْقِيَاسَ كُلَّهُ بَاطِلٌ.

If they say: "We have analogized the dowry and lease to the sale?" We say: "This is invalid; because all analogical reasoning (qiyas) is invalid."

ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْفَسَادِ؛ لِأَنَّ الصَّدَاقَ، وَالْإِجَارَةَ لَا يُشْبِهَانِ الْبَيْعَ فِي شَيْءٍ مِنْ الْأَشْيَاءِ، وَإِنَّمَا الْقِيَاسُ عِنْدَ الْقَائِلِينَ بِهِ أَنْ يُحْكَمَ لِلشَّيْءِ بِحُكْمِ نَظِيرِهِ، وَالْبَيْعُ تَمْلِيكٌ لِلْمَبِيعِ، وَلَيْسَتْ الْإِجَارَةُ تَمْلِيكًا لِلْمُؤَاجِرِ، إنَّمَا هِيَ إبَاحَةٌ لِلْمَنَافِعِ الْحَادِثَةِ الظَّاهِرَةِ، وَلَا الصَّدَاقُ تَمْلِيكًا لِلرَّقَبَةِ، وَلَا يَحِلُّ بَيْعُ مَا لَمْ يُخْلَقْ، وَالْإِجَارَةُ إنَّمَا هِيَ فِيمَا لَمْ يُخْلَقْ مِنْ الْمَنَافِعِ، وَالنِّكَاحُ يَجُوزُ بِلَا ذِكْرِ صَدَاقٍ، وَلَا يَجُوزُ الْبَيْعُ بِغَيْرِ ذِكْرِ ثَمَنٍ.

Then, if it were deemed valid, this would amount to clear corruption in his reasoning, for neither dower nor lease resemble sale in any respect. The analogy posited by its proponents requires assigning a ruling to something based on its equivalent. While sale entails full ownership transfer of the sold item, lease does not grant ownership rights to the lessor—it merely permits the use of newly occurring and manifest benefits. Similarly, dower does not confer ownership of the person, nor is it permissible to sell uncreated entities. Lease applies specifically to benefits not yet created, marriage remains valid without stipulating a dower, and sale cannot be valid without specifying a price.

ثُمَّ اخْتِلَافُهُمْ فِي ذَلِكَ أَبِصَدَاقِ مِثْلِهَا أَمْ بِقِيمَةِ الشِّقْصِ؟ بَيَانٌ أَنَّهُ رَأْيٌ فَاسِدٌ مُتَعَارِضٌ لَيْسَ أَحَدُ الْقَوْلَيْنِ أَوْلَى مِنْ الْآخَرِ.

Furthermore, their disagreement concerning this matter—whether it is based on the dowry of her equivalent or the value of the share—is a clarification that it is an invalid and contradictory opinion, where neither of the two opinions is more preferable than the other.

وَلَيْتَ شِعْرِي أَيْنَ كَانُوا عَنْ هَذَا الْقِيَاسِ فِي أَنْ يَقِيسُوا عَلَى الْأَرْضِينَ فِي " الشُّفْعَةِ " سَائِرَ الْأَمْوَالِ؟ وَهَذَا أَصَحُّ فِي الْقِيَاسِ لَوْ صَحَّ الْقِيَاسُ يَوْمًا.

I wish I knew: Where were they concerning this analogy—why did they not extend analogy in preemption to all properties? This would be more correct in analogy—if analogy could ever be valid.

If they cite the narration attributed to the Prophet—peace and blessings

be upon him—"Whoever purchases a debt owed by a man, the creditor has priority," this is invalid because it is transmitted via an unnamed narrator from 'Umar ibn 'Abd al-'Azīz, from the Prophet—peace and blessings be upon him. Furthermore, even if it were authentic, they could not benefit from it, as it also applies to sale transactions. Thus, it serves as proof against them regarding their rejection of the right of pre-emption in matters other than real estate.

فَإِنْ ذَكَرُوا الْخَبَرَ الَّذِي فِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ ابْتَاعَ دَيْنًا عَلَى رَجُلٍ فَصَاحِبُ الدَّيْنِ أَوْلَى» فَهَذَا بَاطِلٌ؛ لِأَنَّهُ عَمَّنْ لَمْ يُسَمَّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ لَوْ صَحَّ لَمْ يَنْتَفِعُوا بِهِ؛ لِأَنَّهُ فِي الْبَيْعِ أَيْضًا، فَهُوَ حُجَّةٌ عَلَيْهِمْ فِي مَنْعِهِمْ مِنْ الشُّفْعَةِ فِيمَا عَدَا الْعَقَارِ.

L25408

A legal issue where he sold the property without having offered his partner the right of pre-emption until he sold it.

[مَسْأَلَة لَمْ يعرض عَلَى شَرِيكه الْأَخذ قَبْل الْبَيْع حَتَّى بَاعَ]

L25409

1597 - Issue: If someone does not offer their co-owner the opportunity to purchase before selling, thereby establishing the right of pre-emption for the co-owner through that sale, the co-owner retains their pre-emptive right whether they knew of the sale or not, whether they were present or absent, and whether witnesses were appointed for it or not. This right persists until they exercise it whenever they wish—even if it is after eighty years or more—or until they verbally relinquish it, at which point it is nullified. Their right cannot be invalidated by an offer made to them by anyone other than their co-owner or the latter's messenger.

١٥٩٧ - مَسْأَلَةٌ: وَمَنْ لَمْ يَعْرِضْ عَلَى شَرِيكِهِ الْأَخْذَ قَبْلَ الْبَيْعِ حَتَّى بَاعَ فَوَجَبَتْ الشُّفْعَةُ بِذَلِكَ لِلشَّرِيكِ، فَالشَّرِيكُ عَلَى شُفْعَتِهِ عَلِمَ بِالْبَيْعِ أَوْ لَمْ يَعْلَمْ، حَضَرَهُ أَوْ لَمْ يَحْضُرْهُ، أَشْهَدَ عَلَيْهِ أَوْ لَمْ يُشْهِدْ حَتَّى يَأْخُذَ مَتَى شَاءَ، وَلَوْ بَعْدَ ثَمَانِينَ سَنَةً أَوْ أَكْثَرَ، أَوْ يَلْفِظُ بِالتَّرْكِ فَيَسْقُطُ حِينَئِذٍ، وَلَا يَسْقُطُ حَقُّهُ بِعَرْضِ غَيْرِ شَرِيكِهِ أَوْ رَسُولِهِ عَلَيْهِ.

L25410–25412

The attendees differed regarding this. Abū Ḥanīfah said: Whenever he became aware of the sale and recognized that he possessed the right. Regarding pre-emption: If one asserts the right within the time or formally attests through witnesses that he is taking his pre-emption, he retains the right perpetually. If he remains silent thereafter for years without attesting nor claiming it, his right becomes invalidated.

وَاخْتَلَفَ الْحَاضِرُونَ فِي هَذَا فَقَالَ أَبُو حَنِيفَةَ: مَتَى عَلِمَ بِالْبَيْعِ، وَعَلِمَ أَنَّ لَهُ الشُّفْعَةَ، فَإِنْ طَلَبَ فِي الْوَقْتِ أَوْ أَشْهَدَ عَلَى أَنَّهُ آخِذٌ بِشُفْعَتِهِ فَلَهُ الشُّفْعَةُ أَبَدًا، وَإِنْ سَكَتَ بَعْدَ ذَلِكَ سِنِينَ فَإِنْ لَمْ يُشْهِدْ، وَلَا طَلَبَ فَقَدْ بَطَلَ حَقُّهُ.

L25413

It is reported from Abū Ḥanīfah regarding the co-owner: that he is granted a period of three days. If he claims pre-emption within them, it is ruled in his favor. But if the three days pass without him claiming pre-emption, his right becomes void and no pre-emption remains for him.

وَرُوِيَ عَنْ أَبِي حَنِيفَةَ فِي الْحَاضِرِ: أَنَّ لَهُ أَجَلَ ثَلَاثَةِ أَيَّامٍ، فَإِنْ طَلَبَ الشُّفْعَةَ فِيهَا قُضِيَ لَهُ، وَإِنْ مَرَّتْ الثَّلَاثُ وَلَمْ يَطْلُبْ الشُّفْعَةَ بَطَلَ حَقُّهُ وَلَا شُفْعَةَ لَهُ.

L25414

His companion Muhammad ibn al-Hasan similarly held this view, except he stated: No benefit is derived from attesting that one is demanding the right of pre-emption unless this testimony occurs in the presence of the party sub-

وَقَالَ صَاحِبُهُ مُحَمَّدُ بْنُ الْحَسَنِ كَذَلِكَ، إِلَّا أَنَّهُ قَالَ: لَا يَنْتَفِعُ بِالْإِشْهَادِ عَلَى أَنَّهُ طَالِبٌ بِالشُّفْعَةِ إِلَّا بِأَنْ يَكُونَ إِشْهَادُهُ بِذَلِكَ بِحَضْرَةِ الْمَطْلُوبِ بِالشُّفْعَةِ، أَوْ بِحَضْرَةِ الشِّقْصِ الْمَطْلُوبِ وَقَالَ أَيْضًا: فَإِنْ سَكَتَ بَعْدَ الْإِشْهَادِ الْمَذْكُورِ شَهْرًا وَاحِدًا لَا يَطْلُبُ بَطَلَتْ شُفْعَتُهُ.

ject to the pre-emption claim or in the presence of the share being claimed. He also said: If he remains silent for one month after the aforementioned testimony without demanding it, his right of pre-emption becomes invalidated.

وَقَالَ بَعْضُ كِبَارِ نُظَّارِ مُقَلِّدِي أَبِي حَنِيفَةَ: لِلشَّفِيعِ مِنْ أَمَدِ الْخِيَارِ إِنْ سَكَتَ وَلَمْ يُشْهِدْ وَلَا طَلَبَ مَا لِلْمَرْأَةِ الْمُخَيَّرَةِ.

L25415 Some senior theoreticians among the adherents of Abū Ḥanīfah stated: The preemptor derives a period from the option term if he remains silent, neither having it attested nor asserting his right, akin to what applies to the woman granted the option.

وَبِقَوْلِ أَبِي حَنِيفَةَ يَقُولُ الْبَتِّيُّ، وَابْنُ شُبْرُمَةَ، وَعُبَيْدُ اللَّهِ بْنُ الْحَسَنِ، وَالْأَوْزَاعِيُّ، إِلَّا أَنَّ عُبَيْدَ اللَّهِ قَالَ: لَا يُمْهَلُ إِلَّا سَاعَةً وَاحِدَةً.

L25416 Al-Battī, Ibn Shubrumah, Ubayd Allāh ibn al-Ḥasan, and al-Awzāʿī cite the opinion of Abū Ḥanīfah. However, Ubayd Allāh added: “No delay is permitted except for one hour.”

وَقَالَ مَالِكٌ ثَلَاثَةَ أَقْوَالٍ: مَرَّةً قَالَ: إِنْ بَلَغَهُ الْبَيْعُ أَنَّ لَهُ الْقِيَامَ بِالشُّفْعَةِ فَسَكَتَ، وَلَمْ يَطْلُبْ وَلَا أَشْهَدَ، فَهُوَ عَلَى حَقِّهِ، وَلَهُ أَنْ يَطْلُبَ مَا لَمْ يَطُلْ الْأَمَدُ جِدًّا دُونَ تَحْدِيدٍ فِي ذَلِكَ.

L25417 Mālik held three opinions. On one occasion, he said: If the sale is brought to his knowledge that he has the right to preemption, and he remains silent—neither claiming nor having it witnessed—he remains entitled to his right. He may still demand it as long as the period has not become excessively long, though no specific duration is defined.

وَمَرَّةً قَالَ: إِنْ قَامَ مَا بَيْنَهُ وَبَيْنَ خَمْسَةِ أَعْوَامٍ فَلَهُ ذَلِكَ وَإِنْ لَمْ يَقُمْ حَتَّى مَضَتْ خَمْسَةُ أَعْوَامٍ فَقَدْ بَطَلَ حَقُّهُ.

L25418 And on one occasion, he said: If he establishes [his claim] within five years, he is entitled to that; but if he does not do so until five years have passed, his right lapses.

وَقَالَ الشَّافِعِيُّ: إِنْ تَرَكَ الطَّلَبَ ثَلَاثَةَ أَيَّامٍ فَأَقَلَّ كَانَ لَهُ أَنْ يَطْلُبَ، فَإِنْ لَمْ يَطْلُبْ حَتَّى مَضَتْ لَهُ ثَلَاثَةُ أَيَّامٍ فَقَدْ بَطَلَ حَقُّهُ وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ

L25419 Al-Shafi’i said: If he ceases to pursue the claim for three days or less, he has the right to pursue it. However, if he does not pursue it until three days have passed in his case, his right is nullified, and this is also the view of Sufyan al-Thawri.

ثُمَّ رَجَعَ الشَّافِعِيُّ فَقَالَ: إِنْ تَرَكَ الطَّلَبَ دُونَ عُذْرٍ مَانِعٍ مَا قَلَّ أَوْ كَثُرَ فَقَدْ بَطَلَ حَقُّهُ، وَإِنْ تَرَكَهُ لِعُذْرٍ فَهُوَ عَلَى حَقِّهِ طَالَ الْأَمَدُ أَوْ قَصُرَ وَهُوَ قَوْلُ مَعْمَرٍ

L25420 Then Al-Shafi’i reverted and said: If one abandons pursuit [of the claim] without a preventing excuse - whether the period is short or long - his right becomes invalidated. If he abandons it due to an excuse, he retains his right whether the period is long or short. This is the opinion of Ma’mar.

L25421 And it was narrated from Shuraih, and its authenticity is established through

Al-Shaʿbi.

وَرُوِيَ عَنْ شُرَيْحٍ وَصَحَّ عَنْ الشَّعْبِيِّ

L25422 It was narrated from al-Shaʿbī that his term is one day.

وَرُوِيَ عَنْ الشَّعْبِيِّ أَنَّ لَهُ أَجَلَ يَوْمٍ وَاحِدٍ.

L25423–25425 Among those who said the same as our statement is what was transmitted to us through the narration route of Muḥammad ibn al-Muthannā—I, ʿAbd al-Raḥmān ibn Mahdī. From Sufyan al-Thawri, from Abu Ishaq al-Shaybani, from Humayd al-Azraq: that Umar ibn Abd al-Aziz ruled in favor of the right of preemption after thirteen to nineteen years.

وَمِمَّنْ قَالَ مِثْلَ قَوْلِنَا مَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ حُمَيْدٍ الْأَزْرَقِ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ قَضَى بِالشُّفْعَةِ بَعْدَ بِضْعَ عَشْرَةَ سَنَةً.

L25426 Abu Muhammad said: As for Malik's statements as they stand, they are utterly invalid because they either specify without proof or generalize without specification. Thus, no one knows when one's right lapses or when it does not lapse. In time, nothing is inherently long except in relation to what is shorter. A day is long for one being tormented within it, yet brief when compared to an hour; and a hundred years is short relative to the world's lifespan. Moreover, these statements were never reported from anyone before him, nor are they supported by the Qur'an, nor the Sunnah, nor even a weak narration, nor the sayings of the predecessors, nor analogical reasoning, nor any opinion with a valid basis.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا أَقْوَالُ مَالِكٍ كَمَا هِيَ، فَهِيَ فِي غَايَةِ الْفَسَادِ لِأَنَّهَا إمَّا تَحْدِيدٌ بِلَا بُرْهَانٍ، وَإِمَّا إجْمَالٌ بِلَا تَحْدِيدٍ، فَلَا يَدْرِي أَحَدٌ مَتَى يَسْقُطُ حَقُّهُ وَلَا مَتَى لَا يَسْقُطُ حَقُّهُ، وَلَيْسَ فِي الزَّمَانِ طَوِيلٌ إلَّا بِإِضَافَةٍ إلَى مَا هُوَ أَقْصَرُ مِنْهُ، فَالْيَوْمُ طَوِيلٌ لِمَنْ عُذِّبَ فِيهِ، وَبِالْإِضَافَةِ إلَى سَاعَةٍ وَمِائَةِ عَامٍ قَلِيلٌ بِالْإِضَافَةِ إلَى عُمْرِ الدُّنْيَا مَعَ أَنَّهَا أَقْوَالٌ لَمْ تُعْهَدْ عَنْ أَحَدٍ قَبْلَهُ وَلَا يَعْضُدُهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ سَلَفٍ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ.

L25427 Similarly, the opinion of Sufyān, the first of the two opinions of al-Shāfiʿī, and the opinion of al-Shaʿbī concerning the specification of a day—these amount to two utterly invalid opinions, for these two constitute a specification without evidence. Reverting this matter to the transmitted reports granting a choice of three days is more appropriate than reverting it to the choice of the waiting period—wherein one may revoke the divorce if desired or finalize it, the waiting period being three months. All of these are confused notions.

وَكَذَلِكَ قَوْلُ سُفْيَانَ، وَالْأَوَّلُ مِنْ قَوْلَيْ الشَّافِعِيِّ، وَقَوْلُ الشَّعْبِيِّ فِي تَحْدِيدِ يَوْمٍ، فَهُمَا قَوْلَانِ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُمَا تَحْدِيدٌ بِلَا بُرْهَانٍ، وَلَيْسَ رَدُّ ذَلِكَ إلَى مَا جَاءَ مِنْ الْأَخْبَارِ بِخِيَارِ ثَلَاثَةِ أَيَّامٍ أَوْلَى مِنْ أَنْ يُرَدَّ إلَى خِيَارِ الْعِدَّةِ إنْ شَاءَ ارْتَجَعَ وَإِنْ شَاءَ أَمْضَى الطَّلَاقَ وَهُوَ ثَلَاثَةُ أَشْهُرٍ، وَهَذِهِ كُلُّهَا تَخَالِيطُ.

L25428 Likewise, the statement of Muḥammad ibn al-Ḥasan and his restriction to a month, and that witnessing is only valid in the presence of the pre-emptor or the sold portion—this is consummate confusion and an arbitrary imposition in religious matters through illegitimate means.

وَكَذَلِكَ قَوْلُ مُحَمَّدِ بْنِ الْحَسَنِ وَتَحْدِيدُهُ بِشَهْرٍ، وَبِأَنْ لَا يَكُونَ الْإِشْهَادُ إلَّا بِحَضْرَةِ الْمَطْلُوبِ بِالشُّفْعَةِ، أَوْ الشِّقْصِ الْمَبِيعِ فَهَذَا تَخْلِيطٌ نَاهِيك بِهِ، وَتَحَكُّمٌ فِي الدِّينِ بِالْبَاطِلِ.

L25429 As for the statement of those who claim, “He has a duration akin to that of the optionee,” it is the most absurd utterance ever heard, for it constitutes arguing falsehood with falsehood and folly with folly. Never has a more foolish statement than theirs concerning the ruling on the optionee been heard.

وَأَمَّا قَوْلُ مَنْ قَالَ: " لَهُ مِنْ الْأَمَدِ مَا لِلْمُخَيَّرَةِ " فَأَسْخَفُ قَوْلٍ سُمِعَ بِهِ، لِأَنَّهُ احْتِجَاجٌ لِلْبَاطِلِ بِالْبَاطِلِ، وَلِلْهَوَسِ بِالْهَوَسِ، وَمَا سُمِعَ بِأَحْمَقَ مِنْ أَقْوَالِهِمْ فِي حُكْمِ الْمُخَيَّرَةِ.

L25430 As for the position of Abū Ḥanīfah, Al-Awzāʿī, Al-Battī, and those who agreed with them, their stipulation in this matter through attestation followed by silence—if he so wills—is an assertion without evidence. Whatever corresponds to this is invalid.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَالْأَوْزَاعِيُّ، وَالْبَتِّيِّ، وَمَنْ وَافَقَهُمْ فَإِنَّ تَحْدِيدَهُمْ فِي ذَلِكَ بِالْإِشْهَادِ، ثُمَّ السُّكُوتِ إنْ شَاءَ قَوْلٌ بِلَا بُرْهَانٍ لَهُ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ.

L25431 We know that the partner’s right becomes obligatory after the sale if the seller did not inform him before the sale. What need does he have for formal testimony, or how can they compel him to it? Invalidating his right due to this omission is a grave error and a nullification of a right that God Almighty has obligated for him. Formal testimony neither strengthens it nor does its omission weaken it. Thus, Abu Hanifah’s opinion is invalid, and only one of the two opinions—either Al-Shafiʿi’s or Al-Shaʿbi’s—remains. We examined their argument and found no proof at all, except that some deceivers cited a fabricated, false statement attributed to the Messenger of God—peace and blessings be upon him: “Pre-emption is like untying a hobble, and pre-emption belongs to the one who seizes it promptly.”

وَقَدْ عَلِمْنَا أَنَّ حَقَّ الشَّرِيكِ وَاجِبٌ بَعْدَ الْبَيْعِ إذَا لَمْ يُؤْذِنْهُ الْبَائِعُ قَبْلَ الْبَيْعِ، فَأَيُّ حَاجَةٍ بِهِ إلَى الْإِشْهَادِ، أَوْ مِنْ أَيْنَ أَلْزَمُوهُ إيَّاهُ وَأَسْقَطُوا حَقَّهُ بِتَرْكِهِ هَذَا خَطَأٌ فَاحِشٌ، وَإِسْقَاطٌ لِحَقٍّ قَدْ وَجَبَ بِإِيجَابِ اللَّهِ تَعَالَى لَهُ، فَمَا يُقَوِّيهِ الْإِشْهَادُ وَلَا يُضَعِّفُهُ تَرْكُهُ فَبَطَلَ قَوْلُ أَبِي حَنِيفَةَ، وَلَمْ يَبْقَ إلَّا أَحَدُ قَوْلَيْ الشَّافِعِيِّ، وَالشَّعْبِيِّ فَنَظَرْنَا فِيهِ فَلَمْ نَجِدْ لَهُمْ حُجَّةً أَصْلًا إلَّا أَنَّ بَعْضَ الْمُمَوِّهِينَ نَزَعَ بِقَوْلٍ مَكْذُوبٍ مَوْضُوعٍ مُضَافٍ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الشُّفْعَةُ كَنَشْطَةِ عِقَالٍ وَالشُّفْعَةُ لِمَنْ وَاثَبَهَا» .

L25432–25433 This is a report we have narrated through the chain of Al-Bazzār, who said: Muḥammad ibn al-Muthannā narrated from Muḥammad ibn al-Ḥārith, from Muḥammad ibn ʿAbd al-Raḥmān ibn al-Baylamānī, from his father, from ʿAbd Allāh ibn ʿUmar, from the Prophet—peace and blessings of Allah be upon him—who said: “There is no preemption right for an absentee or a minor. Preemption is as immediate as untying a restraint. Whoever mutilates his slave, that slave is emancipated and he becomes a freedman of Allah and His Messenger. People are bound by their contractual stipulations, provided they conform to divine law.”

وَهَذَا خَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ الْبَزَّارِ قَالَ: أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا مُحَمَّدُ بْنُ الْحَارِثِ أَنَا مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ الْبَيْلَمَانِيِّ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا شُفْعَةَ لِغَائِبٍ وَلَا لِصَغِيرٍ وَالشُّفْعَةُ كَحَلِّ الْعِقَالِ مَنْ مَثَّلَ بِمَمْلُوكِهِ فَهُوَ حُرٌّ وَهُوَ مَوْلَى اللَّهِ وَرَسُولِهِ وَالنَّاسُ عَلَى شُرُوطِهِمْ مَا وَافَقُوا الْحَقَّ.»

L25434–25435 Abu Muhammad said: Could there be anything more astonishing than their contradiction of all that is in this report while citing parts of it as evidence—so that some of it is true and some false? Ugh! Such disgraceful religions!

قَالَ أَبُو مُحَمَّدٍ: أَفَيَكُونُ أَعْجَبُ مِنْ مُخَالَفَتِهِمْ كُلَّ مَا فِي هَذَا الْخَبَرِ وَاحْتِجَاجِهِمْ بِبَعْضِهِ، فَبَعْضُهُ حَقٌّ وَبَعْضُهُ بَاطِلٌ؟ أُفٍّ لِهَذِهِ الْأَدْيَانِ.

L25436 As for “preemption belongs to the one who vigorously claims it,” we cannot presently cite its chain of transmission, except that it is a baseless report. Ibn al-Baylamānī is weak and rejected, and there is consensus to abandon his narrations.

وَأَمَّا «الشُّفْعَةُ لِمَنْ وَاثَبَهَا» ، فَمَا يَحْضُرُنَا الْآنَ ذِكْرُ إِسْنَادِهَا، إِلَّا أَنَّهُ جُمْلَةً لَا خَيْرَ فِيهِ، وَابْنُ الْبَيْلَمَانِيِّ ضَعِيفٌ مُطْرَحٌ، وَمُتَّفَقٌ عَلَى تَرْكِهِ.

L25437 As for the expression “for the one who acts promptly upon it,” this is an invalid phrase. It is unlawful to attribute such wording to the Messenger of Allah—may Allah bless him and grant him peace—because the statement “preemption belongs to the one who acts promptly upon it” necessitates that the claim must coincide with the sale, not follow it. For prompt mutual action is an act involving two actors, thus the claim must align with the sale, not occur afterward, since delay in promptly exercising [the right] is not termed mutual prompt action.

وَأَمَّا لَفْظُ «لِمَنْ وَاثَبَهَا» فَهُوَ لَفْظٌ فَاسِدٌ، لَا يَحِلُّ أَنْ يُضَافَ مِثْلُهُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّ قَوْلَ الْقَائِلِ: الشُّفْعَةُ لِمَنْ وَاثَبَهَا: مُوجِبٌ أَنْ يَلْزَمَهُ الطَّلَبُ مَعَ الْبَيْعِ لَا بَعْدَهُ؛ لِأَنَّ الْمُوَاثَبَةَ فِعْلٌ مِنْ فَاعِلَيْنِ، فَوَجَبَ أَنْ يَكُونَ طَلَبُهُ مَعَ الْبَيْعِ لَا بَعْدَهُ؛ لِأَنَّ التَّأَنِّي فِي الْوَثْبِ لَا يُسَمَّى مُوَاثَبَةً.

L25438 As for his statement, “Pre-emption is like untying a knot,” its meaning is evident, and they have no argument in this matter. For untying the knot means releasing the knot, and similarly pre-emption involves releasing ownership from the sold property and obligating it exclusively to another.

وَأَمَّا قَوْلُهُ «الشُّفْعَةُ كَنَشْطَةِ عِقَالٍ» فَمَعْنَاهُ ظَاهِرٌ، وَلَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ نَشْطَ الْعِقَالِ: هُوَ حَلُّ الْعِقَالِ، وَكَذَلِكَ الشُّفْعَةُ؛ لِأَنَّهَا حَلُّ مِلْكٍ عَنْ الْمَبِيعِ وَإِيجَابُهُ لِغَيْرِهِ فَقَطْ.

L25439 Ali said: Allah the Exalted has established the right of pre-emption as obligatory and decreed through the declaration of His Messenger—the truthful one, peace be upon him—that the pre-emptor has a greater right, provided no prior permission was granted before the sale. Every right established by the judgment of Allah the Exalted and His Messenger—peace be upon him—never ceases except through an explicit scriptural text stipulating its revocation. If the buyer conditions the transaction upon the pre-emptor’s choice to take or leave, the buyer is bound to one of the two options. The judge must compel the buyer to fulfill one choice, for the pre-emptor has been granted his rightful claim and must not neglect it, as this constitutes waste of property. The pre-emptor must either claim the property or relinquish it to another; otherwise, he acts deceitfully and fails to advise his brother who acts equitably toward him. Success is from Allah the Exalted.

قَالَ عَلِيٌّ: وَقَدْ جَعَلَ اللَّهُ تَعَالَى حَقَّ الشَّفِيعِ وَاجِبًا وَجَعَلَهُ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - الْمُصَدَّقِ أَحَقَّ، إِذَا لَمْ يُؤْذَنْ قَبْلَ الْبَيْعِ، فَكُلُّ حَقٍّ ثَبَتَ بِحُكْمِ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا يَسْقُطُ أَبَدًا إِلَّا بِنَصٍّ وَارِدٍ بِسُقُوطِهِ، فَإِنْ وَقَفَهُ الْمُشْتَرِي عَلَى أَنْ يَأْخُذَ أَوْ يَتْرُكَ لَزِمَهُ أَحَدُ الْأَمْرَيْنِ، وَوَجَبَ عَلَى الْحَاكِمِ إِجْبَارُهُ عَلَى أَحَدِ الْأَمْرَيْنِ لِأَنَّهُ قَدْ أُعْطِيَ حَقَّهُ فَلَا يَنْبَغِي لَهُ تَضْيِيعُهُ، فَهُوَ إِضَاعَةٌ لِلْمَالِ، وَلَا بُدَّ لَهُ مِنْ أَخْذِهِ، أَوْ أَنْ يُبِيحَهُ لِغَيْرِهِ، وَإِلَّا فَهُوَ غَاشٌّ غَيْرُ نَاصِحٍ لِأَخِيهِ الْمُنْصِفِ لَهُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25440 As for one whose right is denied and not granted, waiving his claim does not invalidate his right even if he remains silent his entire life. There is no disagreement regarding one whose property is wrongfully seized, or who

وَأَمَّا مَنْ مُنِعَ حَقُّهُ وَلَمْ يُعْطَهُ، فَلَيْسَ سُقُوطُهُ عَنْ طَلَبِهِ قَطْعًا لِحَقِّهِ وَلَوْ سَكَتَ عُمْرَهُ كُلَّهُ وَلَا يَخْتَلِفُونَ فِيمَنْ غُصِبَ مَالًا، أَوْ كَانَ لَهُ دَيْنٌ أَوْ مِيرَاثٌ، أَوْ حَقٌّ مَا، فَإِنَّ

holds a debt, inheritance right, or any rightful claim: relinquishing the claim does not nullify the right, which endures perpetually. Why then have they singled out the right of preemption from the rest of the rights with these illogical exceptions?

L25441 **Issue: When the Preemptor Claims His Right**

L25442–25444 1598. Issue: If the pre-emptor takes his right, the buyer is obligated to return what was utilized, and every action executed therein—whether a gift, charity, manumission, endowment, construction, manumission agreement, or division—is entirely invalid. The sale is revoked and annulled permanently, and its debris must be demolished—there is no alternative. This applies especially to the disputing obstructive party, for he is an unjust usurper, an encroacher who denies another's right without doubt. If the co-owner relinquishes preemption, the entire transaction becomes valid and binding irrevocably, and the usufruct belongs to the purchaser. This applies if notifying the co-owner was feasible for him or for the seller at the time of purchase. If notifying the co-owner was impossible for the seller due to some excuse or lack of means, preemption remains available to the co-owner whenever he claims it. In that case, the purchaser is not obligated to return the usufruct. However, any alterations made to the property as described are annulled, and their construction must be demolished without exception.

L25445 The proof of this lies in his statement—peace and blessings be upon him—which we cited earlier: "It is not permissible for one to sell until he notifies his partner." Thus, a partner's sale before notifying his partner must conform to one of three scenarios, with no fourth possibility: either the sale is invalid even if the preemptor validates it by relinquishing his right of preemption—and this is invalid, for if that were the case, he would be obligated to return the proceeds unconditionally, whether the preemptor exercises the right or relinquishes it. However, the report necessitates otherwise, affirming that the partner holds the preemptive right and that relinquishing it is permissible. If the sale were invalid, it would necessitate renewing another contract, which is erroneous. Alternatively, the sale could be valid until the preemptor nullifies it by exercising preemption—but this is invalidated by his statement—

سُقُوطَهُ عَنْ طَلَبِهِ لَا يُبْطِلُهُ، وَأَنَّهُ عَلَى حَقِّهِ أَبَدًا فَمِنْ أَيْنَ خَصُّوا حَقَّ الشُّفْعَةِ مِنْ سَائِرِ الْحُقُوقِ بِهَذِهِ التَّخَالِيطِ؟

[مَسْأَلَة إِذَا أَخَذَ الشَّفِيع حَقّه]

١٥٩٨ - مَسْأَلَةٌ: فَإِنْ أَخَذَ الشَّفِيعُ حَقَّهُ لَزِمَ الْمُشْتَرِي رَدُّ مَا اسْتَغَلَّ وَكَانَ كُلُّ مَا أَنْفَذَ فِيهِ مِنْ هِبَةٍ، أَوْ صَدَقَةٍ أَوْ عِتْقٍ، أَوْ حَبْسٍ، أَوْ بُنْيَانٍ، أَوْ مُكَاتَبَةٍ، أَوْ مُقَاسَمَةٍ، فَهُوَ كُلُّهُ بَاطِلٌ مَرْدُودٌ مَفْسُوخٌ أَبَدًا، وَتُقْلَعُ أَنْقَاضُهُ لَيْسَ لَهُ غَيْرُ ذَلِكَ، لَا سِيَّمَا الْمُخَاصِمُ الْمَانِعُ، فَإِنَّ هَذَا غَاصِبٌ ظَالِمٌ مُتَعَدٍّ، مَانِعٌ حَقَّ غَيْرِهِ بِلَا مِرْيَةٍ، فَإِنْ تَرَكَ الشَّرِيكُ الْأَخْذَ بِالشُّفْعَةِ نَفَذَ كُلُّ ذَلِكَ وَصَحَّ، وَلَمْ يَرُدَّ شَيْئًا مِنْهُ، وَكَانَتْ الْغَلَّةُ لَهُ، هَذَا إِذَا كَانَ إِيذَانُهُ الشَّرِيكَ مُمْكِنًا لَهُ، أَوْ لِلْبَائِعِ حِينَ اشْتَرَى، فَإِنْ لَمْ يَكُنْ إِيذَانُ الشَّرِيكِ مُمْكِنًا لِلْبَائِعِ لِعُذْرٍ مَا، أَوْ لِتَعَذُّرِ طَرِيقٍ، فَإِنَّ الشُّفْعَةَ لِلشَّرِيكِ مَتَى طَلَبَهَا، وَلَيْسَ عَلَى الْمُشْتَرِي رَدُّ الْغَلَّةِ حِينَئِذٍ، لَكِنَّ كُلَّ مَا أَحْدَثَ فِيهِ مِمَّا ذَكَرْنَا فَمَفْسُوخٌ وَيُقْلَعُ بُنْيَانُهُ وَلَا بُدَّ.

بُرْهَانُ ذَلِكَ: قَوْلُهُ - عَلَيْهِ السَّلَامُ - الَّذِي أَوْرَدْنَا قَبْلُ «لَا يَصْلُحُ أَنْ يَبِيعَ حَتَّى يُؤْذِنَ شَرِيكَهُ» فَلَا يَخْلُو بَيْعُ الشَّرِيكِ قَبْلَ أَنْ يُؤْذِنَ شَرِيكَهُ مِنْ أَحَدِ أَوْجُهٍ ثَلَاثَةٍ، لَا رَابِعَ لَهَا: إِمَّا أَنْ يَكُونَ بَاطِلًا وَإِنْ صَحَّحَهُ الشَّفِيعُ بِتَرْكِهِ الشُّفْعَةَ وَهَذَا بَاطِلٌ؛ لِأَنَّهُ لَوْ كَانَ ذَلِكَ لَوَجَبَ عَلَيْهِ رَدُّ الْغَلَّةِ عَلَى كُلِّ حَالٍ أَخَذَ الشَّفِيعُ أَوْ تَرَكَ، وَالْخَبَرُ يُوجِبُ غَيْرَ هَذَا، بَلْ يُوجِبُ أَنَّ الشَّرِيكَ أَحَقُّ، وَأَنَّهُ إِنْ تَرَكَ فَلَهُ ذَلِكَ، فَلَوْ كَانَ الْبَيْعُ بَاطِلًا لَاحْتَاجَ إِلَى تَجْدِيدِ عَقْدٍ آخَرَ وَهَذَا خَطَأٌ، أَوْ يَكُونُ صَحِيحًا حَتَّى يُبْطِلَهُ الشَّفِيعُ بِالْأَخْذِ

peace and blessings be upon him—"It is not permissible," for it is contradictory to deem valid what he—peace and blessings be upon him—declared impermissible. Or the sale could be contingent: if the preemptor exercises preemption, the sale is rendered invalid, and if he relinquishes his right, the sale is validated. This third scenario is correct, as the first two are invalidated by his statement—peace and blessings be upon him—"The partner holds the preemptive right."

L25446 Therefore, it is confirmed that the buyer retains a right after the shufʿah holder's right.

L25447 Thus, what we said is correct.

L25448 And success is from Allah, the Most High.

L25449 We ask those who differ in this matter: When does the preemptor acquire the prior right—at the moment he takes possession or when the sale is retracted? If they respond, "From the time he took possession," we assert: This is invalid, for it contradicts the ruling of the Messenger of Allah—peace be upon him—who established his prior right from the time of the sale. Since his prior right exists from the time of the sale, his taking possession constitutes claiming a right that was established at the time of the sale.

L25450 If the seller has not notified the partner, then Allah, the Exalted, says: "Allah does not charge a soul except [according to] its capacity" [Al-Baqarah: 286].[6]

L25451 The Messenger of Allah—peace and blessings be upon him—said: "When I command you with a matter, do from it as much as you are able."

L25452–25453 Thus, it is undoubtedly established that whoever is unable to notify his partner and incapable of doing so, his right lapses and selling becomes permissible for him. This is because the statement of the Prophet (peace be upon him) — "It is not valid to sell until one notifies his partner" — necessarily applies only to those capable of notification. Therefore, the ruling regarding one who cannot notify his partner is exempted from this textual ruling. Such

[6] **Qur'an references (L25450):** Qur'an 2:286 (Al-Baqarah).

وَهَذَا بَاطِلٌ بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «لَا يَصْلُحُ» فَمِنْ الْبَاطِلِ أَنْ يَكُونَ صَحِيحًا مَا أَخْبَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ لَا يَصْلُحُ، أَوْ يَكُونَ مَوْقُوفًا، فَإِنْ أَخَذَ الشَّفِيعُ بِالشُّفْعَةِ عُلِمَ أَنَّ الْبَيْعَ وَقَعَ بَاطِلًا، وَإِنْ تَرَكَ حَقَّهُ عُلِمَ أَنَّ الْبَيْعَ وَقَعَ صَحِيحًا وَهَذَا هُوَ الصَّحِيحُ لِبُطْلَانِ الْوَجْهَيْنِ الْأَوَّلَيْنِ لِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «الشَّرِيكُ أَحَقُّ»

فَصَحَّ أَنَّ لِلْمُشْتَرِي حَقًّا بَعْدَ حَقِّ الشَّفِيعِ.

فَصَحَّ مَا قُلْنَاهُ.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَنَسْأَلُ مَنْ خَالَفَ فِي هَذَا: مَتَى كَانَ الشَّفِيعُ أَحَقَّ، أَحِينَ أَخَذَ أَمْ حِينَ رَدَّ الْبَيْعَ؟ فَإِنْ قَالُوا: مِنْ حِينِ أَخَذَ؟ قُلْنَا: هَذَا بَاطِلٌ؛ لِأَنَّهُ خِلَافُ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ جَعَلَهُ أَحَقَّ حِينَ الْبَيْعِ، فَإِذْ هُوَ أَحَقُّ حِينَ الْبَيْعِ فَإِذَا أَخَذَ فَقَدْ أَخَذَ حَقَّهُ مِنْ حِينِ الْبَيْعِ.

وَأَمَّا إذَا لَمْ يَكُنْ لِلْبَائِعِ إعْلَامُ الشَّرِيكِ، فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» .

فَصَحَّ بِلَا شَكٍّ أَنَّ مَنْ لَمْ يَقْدِرْ عَلَى إيذَانِ الشَّرِيكِ، وَلَمْ يَسْتَطِعْهُ فَقَدْ سَقَطَ حَقُّهُ وَحَلَّ لَهُ الْبَيْعُ؛ لِأَنَّ قَوْلَهُ - عَلَيْهِ السَّلَامُ -: «لَا يَصْلُحُ أَنْ يَبِيعَ حَتَّى يُؤْذِنَ شَرِيكَهُ» يَقْتَضِي ضَرُورَةً مَنْ يَقْدِرُ عَلَى إيذَانِهِ، فَخَرَجَ عَنْ هَذَا النَّصِّ حُكْمُ مَنْ لَمْ يَقْدِرْ عَلَى إيذَانِهِ فَهُوَ قَادِرٌ عَلَى الْبَيْعِ، وَعَاجِزٌ عَنْ الْإِيذَانِ فَمُبَاحٌ لَهُ مَا قَدَرَ عَلَيْهِ، وَسَاقِطٌ عَنْهُ مَا

لَيْسَ فِي وُسْعِهِ فَهَذَا إذَا طَلَبَ الشَّفِيعُ وَأَخَذَ شُفْعَتَهُ، فَحِينَئِذٍ بَطَلَ الْعَقْدُ، وَكَانَ قَبْلَ ذَلِكَ صَحِيحًا، فَإِذَا هُوَ كَذَلِكَ فَالْغَلَّةُ لَهُ، لِأَنَّهَا غَلَّةُ مَالِهِ.

a person may proceed with the sale despite being unable to notify, as he is only obligated within his capacity, and what is beyond his capacity is waived. In such a case, if the preemptor claims and exercises his right of preemption, the contract is thereby invalidated, though it was valid prior to that. Thus, the profits [accrued during the contract's validity] belong to him, as they are the yield of his property.

وَأَمَّا الْبِنَاءُ وَسَائِرُ مَا أَحْدَثَ فَقَدْ أَبْطَلَهُ حُكْمُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ الشَّفِيعَ أَحَقُّ مِنْهُ فَإِنَّمَا أَنْفَذَ حُكْمَهُ فِيمَا غَيْرُهُ أَحَقُّ بِهِ مِنْهُ فَبَطَلَ أَنْ يَنْفُذَ حُكْمُهُ فِيمَا جَعَلَهُ تَعَالَى حَقًّا لِغَيْرِهِ لِقَوْلِهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤]

L25454 As for the improvements and all that was introduced, the judgment of the Messenger of Allah—peace be upon him—invalidated them by affirming that the pre-emptor holds a greater right to them than the one who made the additions. He enforced his judgment only in matters where others had a greater right than the claimant. Thus, it became invalid for his judgment to be implemented regarding what Allah the Exalted has designated as a right for others, as He states: {No soul bears the burden of another} [Al-An'ām 6:164].[7]

وَاخْتَلَفَ النَّاسُ فِي هَذَا: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ الشَّعْبِيِّ، وَابْنِ أَبِي لَيْلَى، قَالَا جَمِيعًا: إذَا بَنَى ثُمَّ جَاءَ الشَّفِيعُ بَعْدَهُ فَالْقِيمَةُ.

L25455 People have differed regarding this matter: It has been narrated to us through 'Abd al-Razzāq — Sufyān al-Thawrī — Abū Isḥāq al-Shaybānī — al-Sha'bī and Ibn Abī Laylā, both of whom reported together: If someone builds [on the property] and the pre-emptor comes afterward, then the assessed value is owed.

وَقَالَ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ: يَقْلَعُ بِنَاءَهُ وَبِهِ يَأْخُذُ سُفْيَانُ الثَّوْرِيُّ وَأَبُو حَنِيفَةَ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ وَبِقَوْلِ الشَّعْبِيِّ يَأْخُذُ مَالِكٌ، وَالْبَتِّيُّ، وَالْأَوْزَاعِيُّ، وَالشَّافِعِيُّ، وَأَحْمَدَ

L25456 Hammad ibn Abi Sulayman said: He must demolish his construction. This position is adopted by Sufyan al-Thawri, Abu Hanifah, Abu Sulayman, and their followers, and in accordance with al-Sha'bi's opinion, it is adopted by Malik, al-Batti, al-Awza'i, al-Shafi'i, and Ahmad.

قَالَ أَبُو مُحَمَّدٍ: إلْزَامُهُ قَلْعَ بِنَائِهِ وَاجِبٌ بِمَا ذَكَرْنَا، وَبِأَنَّهُ لَا يَجُوزُ لَهُ إبْقَاءُ أَنْقَاضِهِ فِي سَاحَةِ غَيْرِهِ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ».

L25457 Abu Muhammad said: Compelling him to demolish his structure is obligatory due to what we have mentioned, and because it is impermissible for him to leave his debris in another's courtyard, in accordance with the saying of the Messenger of Allah - may Allah's peace and blessings be upon him -: "Your blood and your wealth are inviolable to you."

وَلَا يَجُوزُ إلْزَامُهُ غَرَامَةً فِي ابْتِيَاعِ مَا لَا يُرِيدُ ابْتِيَاعَهُ مِنْ أَنْقَاضِ بِنَاءِ الْمَخْرَجِ مِنْ الِابْتِيَاعِ لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ نَصٌّ، فَهُوَ ظُلْمٌ مُجَرَّدٌ.

L25458 It is impermissible to impose a fine on someone for purchasing what they do not wish to purchase through the debris of constructing an exit from the purchase, as no textual evidence obligates this, for it is pure injustice.

[7] **Qur'an references (L25454):** Qur'an 6:164 (Al-An'am).

وَلَا فَرْقَ بَيْنَ إِلْزَامِهِ غَرَامَةً لِلْمَخْرَجِ عَنْ الْمِلْكِ وَبَيْنَ إبَاحَةِ أَنْقَاضِ الْمَخْرَجِ لِلشَّفِيعِ وَكُلُّ ذَلِكَ أَكْلُ مَالٍ مُحَرَّمٍ بِالْبَاطِلِ، بَلْ كُلُّ ذِي حَقٍّ أَوْلَى بِحَقِّهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25459 There is no distinction between obliging someone to pay a penalty for property removed from ownership and permitting the residual rights of the relinquished property to the preemptor. All such cases constitute unlawful consumption of wealth through wrongful means. Rather, every right-holder is more entitled to their due right, and success is granted by Allah, the Exalted.

قَالَ عَلِيٌّ أَوْجَبَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْخِيَارَ فِي الْبَيْعِ فِي خَمْسَةِ مَوَاضِعَ: الْمُصَرَّاةُ، وَمَنْ بَايَعَ وَقَالَ: لَا خِلَابَةَ فَهَذَانِ خِيَارُهُمَا ثَلَاثَةُ أَيَّامٍ بِلَيَالِيهَا فَقَطْ.

L25460 Ali said: Allah the Exalted, through His Messenger—peace and blessings be upon him—has ordained the option of choice in sales for five situations, two of which are: the tied-udder practice (al-muṣarrāh), and one who sells while stating, "There is no deception." For these two, the option lasts exactly three days and nights.

وَمَنْ تُلُقِّيَتْ سِلْعَتُهُ فَهَذَا لَهُ الْخِيَارُ إذَا دَخَلَ السُّوقَ، لَا قَبْلَ ذَلِكَ.

L25461–25462 The one who has taken delivery of their goods holds the right of option upon entering the marketplace, but not prior to that.

وَمَنْ وَجَدَ عَيْبًا لَمْ يُبَيَّنْ لَهُ بِهِ، وَلَا شَرَطَ السَّلَامَةَ مِنْهُ.

L25463 Whoever finds a defect that was not disclosed to him, nor stipulated warranty of soundness from it.

وَالشَّرِيكُ يَبِيعُ مَعَ غَيْرِ شَرِيكِهِ وَلَا يُؤْذِنُهُ.

L25464 A partner may sell jointly with someone other than their partner without seeking their permission.

فَهَؤُلَاءِ لَهُمْ الْخِيَارُ بِلَا تَحْدِيدِ مُدَّةٍ إلَّا حَتَّى يُقِرُّوا بِتَرْكِ حَقِّهِمْ: فَوَجَدْنَا مُشْتَرِي الْمُصَرَّاةِ، وَمَنْ بَايَعَ عَلَى أَنْ لَا خِلَابَةَ: يَنْقَضِي خِيَارُهُمَا بِتَمَامِ الثَّلَاثَةِ الْأَيَّامِ وَلَا يَكُونُ لَهُمَا خِيَارٌ بَعْدَهَا، وَيَلْزَمُهُمَا الشِّرَاءُ، فَصَحَّ يَقِينًا أَنَّ الْعَقْدَ وَقَعَ صَحِيحًا، إذْ لَوْ وَقَعَ فَاسِدًا لَمْ يَلْزَمْ أَصْلًا إلَّا بِتَجْدِيدِ عَقْدٍ، فَإِذْ قَدْ صَحَّ هَذَا بِمَا ذَكَرْنَا، وَأَنَّهُ لَوْ وَقَعَ فَاسِدًا لَمْ يُخَيَّرْ فِي إمْضَائِهِ أَوْ فِي رَدِّهِ، بَلْ كَانَ يَكُونُ بَاطِلًا لَا خِيَارَ لِأَحَدٍ فِي تَصْحِيحِهِ، فَقَدْ صَحَّ أَنَّهُ وَقَعَ صَحِيحًا، ثُمَّ جَعَلَ تَعَالَى لِلْمُشْتَرِي رَدَّهُ إنْ شَاءَ.

L25465 So these individuals retain the option without time restriction until they affirm relinquishing their right. Thus, we observe that the buyer of an animal with tied udders (muṣarrāh) and one who contracts under the stipulation of no fraudulent misrepresentation (khilābah): the option period for both parties concludes after three full days, after which neither party retains the option and the purchase becomes binding. This definitively confirms the contract's validity, for had it been invalid, it would not be binding without renewal. Since our reasoning establishes this – and since an invalid contract would permit neither ratification nor rejection, being void without recourse to validation – it is thereby proven valid. The Exalted then ordained the buyer's right to annul it at their discretion.

فَصَحَّ أَنَّ الْغَلَّةَ لَهُ رَدَّ أَوْ أَخَذَ لِأَنَّهَا حَدَثَتْ فِي مَالِهِ.

L25466 Thus, it is valid that the usufruct belongs to him - he must either return it or retain it, since it originated from his property.

L25467 We found those who intercepted the goods and purchased them, even if they

were prohibited from that act. Verily, Allah the Exalted did not grant the seller an option except after his entry into the market, nor did He grant him any option prior to that. Thus, it is confirmed that the sale remains valid, even though intercepting is prohibited, for He did not prohibit purchasing itself—because interception differs from purchasing: they are two distinct acts. He prohibited one of them and did not prohibit the other. However, the seller is granted the option to revoke or confirm the sale. Had it been inherently invalid, it would have been wholly nullified.

وَوَجَدْنَا مَنْ تَلَقَّى السِّلَعَ فَابْتَاعَ، وَإِنْ كَانَ مَنْهِيًّا عَنْ ذَلِكَ فَإِنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ لِلْبَائِعِ خِيَارًا إِلَّا بَعْدَ دُخُولِهِ إِلَى السُّوقِ، وَلَمْ يَجْعَلْ لَهُ قَبْلَ ذَلِكَ خِيَارًا، فَصَحَّ أَنَّ الْبَيْعَ صَحِيحٌ، وَإِنْ كَانَ مَنْهِيًّا عَنْ التَّلَقِّي، وَلَمْ يَنْهَ عَنْ الِابْتِيَاعِ؛ لِأَنَّ التَّلَقِّيَ غَيْرُ الِابْتِيَاعِ فَهُمَا فِعْلَانِ، أَحَدُهُمَا غَيْرُ الْآخَرِ نَهَى عَنْ أَحَدِهِمَا وَلَمْ يَنْهَ عَنْ الْآخَرِ، لَكِنْ جُعِلَ لِلْبَائِعِ خِيَارٌ فِي رَدِّهِ أَوْ إمْضَائِهِ وَلَوْ وَقَعَ فَاسِدًا لَبَطَلَ جُمْلَةً.

L25468 Therefore, this establishes that the effective cause pertains to the buyer regarding the seller's rescission or ratification of the sale.

فَوَجَبَ بِذَلِكَ أَنَّ الْعِلَّةَ لِلْمُشْتَرِي فِي رَدِّ الْبَائِعِ الْبَيْعَ، أَوْ إجَازَتِهِ.

L25469 We have determined that whoever discovers a defect not disclosed to them nor stipulated freedom from it also has the option to proceed with the sale or rescind it. Thus we concluded that the sale was valid, for had it been invalid, ratification would not have been permissible. It was also established that the usufruct belongs to them, whether they return [the item] or take it.

وَوَجَدْنَا مَنْ وَجَدَ عَيْبًا لَمْ يُبَيَّنْ لَهُ بِهِ، وَلَا شَرَطَ السَّلَامَةَ مِنْهُ، لَهُ الْخِيَارُ أَيْضًا فِي إمْضَاءِ الْبَيْعِ أَوْ رَدِّهِ، فَعَلِمْنَا أَنَّ الْبَيْعَ وَقَعَ صَحِيحًا، إذْ لَوْ وَقَعَ فَاسِدًا لَمْ يَجُزْ إمْضَاؤُهُ، فَوَجَبَ أَيْضًا أَنَّ الْغَلَّةَ لَهُ، رَدَّ أَوْ أَخَذَ.

L25470 The matter of pre-emption (shuf'ah) remains, and we found it differing from all the sales we have mentioned, because no textual prohibition has come regarding the aforementioned sales. Rather, the text has come permitting them as we have previously presented, and the evidence became clear that they occurred as valid transactions.

وَبَقِيَ أَمْرُ الشَّفِيعِ فَوَجَدْنَاهُ بِخِلَافِ كُلِّ مَا ذَكَرْنَاهُ مِنْ الْبُيُوعِ؛ لِأَنَّهُ لَمْ يَأْتِ نَصٌّ بِالْمَنْعِ مِنْ الْبُيُوعِ الْمَذْكُورَةِ، بَلْ جَاءَ النَّصُّ بِإِجَازَتِهَا كَمَا قَدَّمْنَا، وَبَانَ الدَّلِيلُ بِأَنَّهَا وَقَعَتْ صَحِيحَةً.

L25471–25473 We maintain that one who can notify his partner must do so, as the text states that it is impermissible for him to sell until he informs him. Were this wording alone to stand, it would necessitate the invalidity of the contract in all cases. However, since the Prophet — peace and blessings be upon him — decreed the partner to have the prior right and permitted him to take or leave, it is necessary that this condition is observed as we mentioned. If he takes it... We have ascertained that he did not ratify that contract, but rather invalidated it. Thus, it is established that it was concluded defectively, obligating him to return the usufruct. If he refrained from taking it, he has ratified it, thereby establishing that it was concluded validly.

وَوَجَدْنَا مَنْ يُمْكِنُهُ إيذَانُ شَرِيكِهِ فَقَدْ جَاءَ النَّصُّ بِأَنَّهُ لَا يَصْلُحُ لَهُ أَنْ يَبِيعَ حَتَّى يُؤْذِنَهُ، فَلَوْ لَمْ يَكُنْ إلَّا هَذَا اللَّفْظُ وَحْدَهُ لَوَجَبَ بُطْلَانُ الْعَقْدِ بِكُلِّ حَالٍ، لَكِنْ لَمَّا جَعَلَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الشَّرِيكَ أَحَقَّ، وَأَبَاحَ لَهُ الْأَخْذَ أَوْ التَّرْكَ: وَجَبَ أَنَّهُ مُرَاعًى كَمَا ذَكَرْنَا، فَإِنْ أَخَذَ فَقَدْ عَلِمْنَا أَنَّهُ لَمْ يُمْضِ ذَلِكَ الْعَقْدَ، بَلْ أَبْطَلَهُ، فَصَحَّ أَنَّهُ انْعَقَدَ فَاسِدًا فَلَزِمَهُ رَدُّ الْغَلَّةِ، وَإِنْ تَرَكَ الْأَخْذَ فَقَدْ أَجَازَهُ، فَصَحَّ أَنَّهُ انْعَقَدَ جَائِزًا.

L25474 As for one who is unable to notify [the partner], the text does not state that

the sale is invalid, since Allah has permitted trade, but the partner has the choice to take or leave. If he takes, the contract is nullified at that point—not before. Thus, the usufruct belongs to the purchaser in all circumstances, and with Allah, the Exalted, is success.

A Question Regarding Those Who Have the Right to Pre-emption

1599 - Issue: The right of pre-emption is mandatory for the Bedouin, the resident outside the town, the absentee, the minor upon reaching adulthood, the insane person upon regaining sanity, and the dhimmi, based on the generality of his statement—peace be upon him—"His partner is more entitled to it." Some of the early scholars have said: There is no right of pre-emption.

Al-Sha'bi said: There is no right of pre-emption for one who does not reside in the town, nor does it apply to the *dhimmi*.

Ahmad ibn Hanbal said: There is no right of pre-emption for a dhimmi.

Al-Nakha'ī said: "There is no shuf'ah (preemption right) for an absent person." Al-Ḥārith al-'Uklī and 'Uthmān al-Battī also affirmed this, stating: "Except for the absent close relative."

Ibn Abi Layla said: There is no pre-emption for a minor, and we do not know of any valid evidence at all for those who prohibit this. And with Allah, the Exalted, is success. If the guardian of a minor or mentally incapacitated person abandons exercising pre-emption, then if this abandonment was in their best interest, the decision becomes binding upon them, because he acted with the sincere counsel required of them. But if the abandonment was not in their best interest, it does not bind them, and they retain the right to pre-emption indefinitely, for he engaged in what he was prohibited from - deceit toward them.

The issue regarding selling an undivided share in exchange for movable property or real estate.

وَأَمَّا مَنْ لَمْ يُمْكِنْهُ الْإِيذَانُ فَلَمْ يَأْتِ النَّصُّ فِيهِ بِأَنَّهُ لَا يَصْلُحُ، وَقَدْ أَحَلَّ اللَّهُ الْبَيْعَ، إلَّا أَنَّ لِلشَّرِيكِ الْأَخْذَ أَوْ التَّرْكَ، فَإِنْ أَخَذَ فَحِينَئِذٍ بَطَلَ الْعَقْدُ، لَا قَبْلَ ذَلِكَ، فَالْغَلَّةُ لِلْمُشْتَرِي هَاهُنَا عَلَى كُلِّ حَالٍ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةَ مِنْ تجب لَهُ الشُّفْعَةَ]

١٥٩٩ - مَسْأَلَةٌ: وَالشُّفْعَةُ وَاجِبَةٌ لِلْبَدْوِيِّ، وَلِلسَّاكِنِ فِي غَيْرِ الْمِصْرِ، وَلِلْغَائِبِ، وَلِلصَّغِيرِ إذَا كَبُرَ، وَلِلْمَجْنُونِ إذَا أَفَاقَ، وَلِلذِّمِّيِّ بِعُمُومِ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «فَشَرِيكُهُ أَحَقُّ بِهِ» وَقَدْ قَالَ قَوْمٌ مِنْ السَّلَفِ: لَا شُفْعَةَ.

قَالَ الشَّعْبِيُّ: لَا شُفْعَةَ لِمَنْ لَا يَسْكُنُ الْمِصْرَ، وَلَا لِلذِّمِّيِّ.

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: لَا شُفْعَةَ لِذِمِّيٍّ.

وَقَالَ النَّخَعِيُّ: لَا شُفْعَةَ لِغَائِبٍ، وَقَالَهُ أَيْضًا الْحَارِثُ الْعُكْلِيُّ، وَعُثْمَانُ الْبَتِّيُّ، قَالَا: إلَّا الْقَرِيبَ الْغَيْبَةِ.

وَقَالَ ابْنُ أَبِي لَيْلَى: لَا شُفْعَةَ لِصَغِيرٍ وَمَا نَعْلَمُ لِمَنْ مَنَعَ مِنْ ذَلِكَ حُجَّةً أَصْلًا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ، فَإِنْ تَرَكَ وَلِيُّ الصَّغِيرِ، أَوْ الْمَجْنُونِ الْأَخْذَ بِالشُّفْعَةِ فَإِنْ كَانَ ذَلِكَ نَظَرًا لَهُمَا لَزِمَهُمَا، لِأَنَّهُ فَعَلَ مَا أُمِرَ بِهِ مِنْ النَّصِيحَةِ لَهُمَا، وَإِنْ كَانَ التَّرْكُ لَيْسَ نَظَرًا لَهُمَا لَمْ يَلْزَمْهُمَا، وَلَهُمَا الْأَخْذُ أَبَدًا، لِأَنَّهُ فَعَلَ مَا نُهِيَ عَنْهُ مِنْ غِشِّهِمَا

[مَسْأَلَةَ بَيْعِ الشِّقْصِ بِعَرْضٍ أَوْ بعقار]

L25482 1600. Issue: If a share is sold in exchange for chattel or real estate, the preemptor may only claim it by offering equivalent real estate or equivalent chattel. If the obligated party is entirely incapable of this, they may choose either to be liable for the value of the chattel or real estate, or to surrender the share while remaining obligated to provide equivalent real estate or chattel whenever they are able to provide it. This is because the sale was concluded exclusively for that specific chattel or real estate, and the co-owner may not claim the share except by what the seller agreed to - whether it was presented to him before the sale or he took it after the sale. There is no disagreement among scholars on this matter, for it is impermissible to compel the seller to accept anything other than what he willingly approved. And success is attained through Allah, the Exalted.

L25483–25485 If he is unable to do so, it becomes obligatory for him to provide chattels or immovable property as a substitute due to his inability to fulfill it. Allah says: And the sacred months are [a time for] equitable retaliation. He may retaliate with compensation equivalent to the sanctity of the property owed to him. And with Allah, the Exalted, is all success.[8]

The issue of selling a share for a deferred payment.

L25486

L25487 Issue: If someone sells their share for a price with a deferred term, the preemptor has the superior right to claim it for that price with the same deferred term.

L25488 Malik said: If he is solvent, he is to take the share at the agreed price for the specified term. Likewise, if he is insolvent, then a solvent person is to guarantee it; otherwise, there is no obligation.

L25489 Ash-Shāfiʿī and Abū Ḥanīfah said: [The creditor] may only take it as immediate payment. If [the debtor] refuses, he is told: Wait. When the term arrives, he may collect it at that time.

L25490 Ali said: They argued by asserting that the seller did not accept the guarantee

١٦٠٠ - مَسْأَلَةٌ: فَإِنْ بَاعَ الشِّقْصَ بِعَرَضٍ، أَوْ بِعَقَارٍ لَمْ يَجُزْ لِلشَّفِيعِ أَخْذُهُ إِلَّا بِمِثْلِ ذَلِكَ الْعَقَارِ، أَوْ مِثْلِ ذَلِكَ الْعَرَضِ، فَإِنْ لَمْ يَقْدِرْ عَلَى ذَلِكَ أَصْلًا فَالْمَطْلُوبُ مُخَيَّرٌ بَيْنَ أَنْ يَلْزَمَهُ قِيمَةُ الْعَرَضِ أَوْ الْعَقَارِ، وَبَيْنَ أَنْ يُسَلِّمَ إلَيْهِ الشِّقْصَ وَيَلْزَمَهُ مِثْلُ ذَلِكَ الْعَقَارِ، أَوْ مِثْلُ ذَلِكَ الْعَرَضِ مَتَى قَدَرَ عَلَيْهِ؛ لِأَنَّ الْبَيْعَ لَمْ يَقَعْ إلَّا بِذَلِكَ الْعَرَضِ أَوْ ذَلِكَ الْعَقَارِ، وَلَيْسَ لِلشَّرِيكِ أَخْذُ الشِّقْصِ إلَّا بِمَا رَضِيَ بِهِ الْبَائِعُ سَوَاءٌ عَرَضَهُ عَلَيْهِ قَبْلَ الْبَيْعِ أَوْ أَخَذَهُ بَعْدَ الْبَيْعِ، هَذَا مَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ؛ فَلَا يَجُوزُ إجْبَارُ الْبَائِعِ عَلَى أَخْذِ غَيْرِ مَا طَابَتْ بِهِ نَفْسُهُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَإِنْ لَمْ يَقْدِرْ عَلَيْهِ فَقَدْ تَعَيَّنَ لَهُ قِبَلَهُ عَرَضٌ أَوْ عَقَارٌ عَجَزَ عَنْهُ، وَقَالَ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] فَلَهُ الِاقْتِصَاصُ بِالْقِيمَةِ الَّتِي هِيَ مِثْلُ حُرْمَةِ الْمَالِ الَّذِي لَهُ عِنْدَهُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَيْع الشِّقْص بِثَمَنٍ إلَى أَجَل]

١٦٠١ - مَسْأَلَةٌ: وَمَنْ بَاعَ شِقْصَهُ بِثَمَنٍ إلَى أَجَلٍ فَالشَّفِيعُ أَحَقُّ بِهِ بِذَلِكَ الثَّمَنِ إلَى ذَلِكَ الْأَجَلِ.

وَقَالَ مَالِكٌ: إنْ كَانَ مَلِيًّا أَخَذَ الشِّقْصَ بِذَلِكَ الثَّمَنِ إلَى ذَلِكَ الْأَجَلِ، وَكَذَلِكَ إنْ كَانَ مُعْسِرًا فَضَمِنَهُ مَلِيءٌ وَإِلَّا فَلَا.

وَقَالَ الشَّافِعِيُّ: وَأَبُو حَنِيفَةَ: لَا يَأْخُذُهُ إلَّا بِالنَّقْدِ، فَإِنْ أَبَى قِيلَ لَهُ: اصْبِرْ، فَإِذَا جَاءَ الْأَجَلُ فَخُذْهَا حِينَئِذٍ.

قَالَ عَلِيٌّ: احْتَجُّوا بِأَنْ قَالُوا: إنَّ الْبَائِعَ لَمْ يَرْضَ ذِمَّةَ الشَّرِيكِ وَقَدْ يُعْسِرُ قَبْلَ الْأَجَلِ.

[8] **Qur'an references (L25483):** Qur'an 2:194 (Al-Baqarah).

of the partner, and he might become insolvent before the due date.

L25491 Abū Muḥammad said: This is baseless, and we say to them: If he did not accept the partner's contractual obligation, then what? From what basis does the obligation arise to take into account his approval and disapproval? Similarly, he did not accept dealings with him, and the seller from whom he purchased may become insolvent – for provisions are apportioned. The statement of Allah's Messenger – peace and blessings be upon him – "The partner has the greater right" obligates him to take what he sells in its entirety and prioritizes him over the buyer regarding what he has purchased. Success is from Allah, the Exalted.

قَالَ أَبُو مُحَمَّد: هَذَا لَا شَيْءَ، وَنَقُولُ لَهُمْ: إنْ كَانَ لَمْ يَرْضَ ذِمَّةَ الشَّرِيكِ فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ وَجَبَ مُرَاعَاةُ رِضَاهُ وَسَخَطِه؟ وَكَذَلِكَ أَيْضًا لَمْ يَرْضَ مُعَامَلَتَهُ، وَقَدْ يُعْسِرُ الَّذِي بَاعَ مِنْهُ أَيْضًا، فَالْأَرْزَاقُ مَقْسُومَةٌ، وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَالشَّرِيكُ أَحَقُّ» مُوجِبٌ لَهُ الْأَخْذُ بِمَا يَبِيعُ بِهِ جُمْلَةً وَتَفْضِيلُهُ عَلَى الْمُشْتَرِي فِيمَا اشْتَرَى فَقَطْ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: A partner sold his share after his female partner sold her share, before he notified her.

[مَسْأَلَة بَاعَ الشَّرِيك حِصَّته بَعْد بَيْع شريكة قَبْل أَنْ يُؤْذِنهُ]

L25492

L25493 1602. Issue: If a partner, after his co-partner's sale and before being notified of it, sells his share from that selling partner, to the buyer who purchased from him, or to a third party – whether the third party knew of the preemption right or was unaware, and whether the preemptor knew of the sale or not – the preemption right remains valid for him as it was. This is because it is a right Allah the Exalted has decreed for him; thus, neither the sale of his property nor anything else at all can invalidate it. And with Allah, the Exalted, is success.

١٦٠٢ - مَسْأَلَةٌ: وَلَوْ أَنَّ الشَّرِيكَ بَعْدَ بَيْعِ شَرِيكِهِ قَبْلَ أَنْ يُؤْذِنَهُ بَاعَ أَيْضًا حِصَّتَهُ مِنْ ذَلِكَ الشَّرِيكِ الْبَائِعِ، أَوْ مِنْ الْمُشْتَرِي مِنْهُ، أَوْ مِنْ أَجْنَبِيٍّ عَلِمَ بِأَنَّ لَهُ الشُّفْعَةَ أَوْ لَمْ يَعْلَمْ عَلِمَ بِالْبَيْعِ، أَوْ لَمْ يَعْلَمْ فَالشُّفْعَةُ لَهُ كَمَا كَانَتْ؛ لِأَنَّهُ حَقٌّ قَدْ أَوْجَبَهُ اللَّهُ تَعَالَى لَهُ فَلَا يُسْقِطُهُ عَنْهُ بَيْعُ مَالِهِ، وَلَا غَيْرُ ذَلِكَ أَصْلًا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A legal case in which the right of pre-emption has been established for him, though he possesses no property.

[مَسْأَلَة وَجَبَتْ لَهُ الشُّفْعَة وَلَا مَال لَهُ]

L25494

L25495 1603 - Issue: If someone is entitled to the right of first refusal but has absolutely no wealth, he must not be overlooked. Rather, that share is sold to his liability. If he fulfills the payment, the matter is settled. If a surplus remains, it is delivered to him. If he fails to pay, he is held liable for the remaining amount and given time to become solvent. This is because he has a vested interest in that obligatory share.

١٦٠٣ - مَسْأَلَةٌ: وَمَنْ وَجَبَتْ لَهُ الشُّفْعَةُ وَلَا مَالَ لَهُ لَمْ يَجِبْ أَنْ يُهْمَلَ، لَكِنْ يُبَاعُ ذَلِكَ الشِّقْصُ عَلَيْهِ، فَإِنْ وَفَّى بِالثَّمَنِ فَذَلِكَ، وَإِنْ فَضَلَتْ فَضْلَةٌ دُفِعَتْ إلَيْهِ، وَإِنْ لَمْ يَفِ اُتُّبِعَ بِالْبَاقِي، وَأُنْظِرَ فِيهِ أَنْ يُوسِرَ، وَذَلِكَ لِأَنَّهُ ذُو مَالٍ بِذَلِكَ الشِّقْصِ الْوَاجِبِ لَهُ.

L25496 Whoever possesses wealth is not deemed insolvent. Rather, his wealth must be sold for the debt he owes. If it does not suffice, then, for the remaining

debt, he is then considered insolvent, and then a reprieve until his circumstances improve, as Allah the Exalted has commanded.

وَمَنْ كَانَ لَهُ مَالٌ فَلَيْسَ ذَا عُسْرَةٍ، لَكِنْ يُبَاعُ مَالُهُ فِي الدَّيْنِ الَّذِي عَلَيْهِ، فَإِنْ لَمْ يَفِ فَهُوَ حِينَئِذٍ ذُو عُسْرَةٍ بِالْبَاقِي فَنَظِرَةٌ إِلَى مَيْسَرَةٍ حِينَئِذٍ كَمَا أَمَرَ اللَّهُ تَعَالَى.

L25497–25498 A group held that his right to pre-emption is nullified, but this is invalid. For it removes from his possession a right to which Allah the Exalted has made him more entitled, without proof—and this is impermissible.

وَقَالَ قَوْمٌ: يَبْطُلُ حَقُّهُ فِي الشُّفْعَةِ، وَهَذَا بَاطِلٌ؛ لِأَنَّهُ إِخْرَاجُ حَقِّهِ الَّذِي جَعَلَهُ اللَّهُ تَعَالَى أَحَقَّ بِهِ عَنْ يَدِهِ بِلَا بُرْهَانٍ، وَهَذَا لَا يَجُوزُ.

L25499 And success is from Allah, the Exalted.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مَاتَ الشَّفِيعُ قَبْلَ أَنْ يَقُولَ أَنَا آخُذُ شُفْعَتِي]

١٦٠٤ - مَسْأَلَةٌ: وَإِنْ مَاتَ الشَّفِيعُ قَبْلَ أَنْ يَقُولَ: أَنَا آخُذُ شُفْعَتِي فَقَدْ بَطَلَ حَقُّهُ وَلَا حَقَّ لِوَرَثَتِهِ فِي الْأَخْذِ بِالشُّفْعَةِ أَصْلًا؛ لِأَنَّ اللَّهَ تَعَالَى إنَّمَا جَعَلَ الْحَقَّ لَهُ لَا لِغَيْرِهِ، وَالْخِيَارُ لَا يُورَّثُ، وَهَذَا قَوْلُ مُحَمَّدِ بْنِ سِيرِينَ.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ فُضَيْلٍ عَنْ مُحَمَّدِ بْنِ سَالِمٍ عَنْ الشَّعْبِيِّ قَالَ: سَمِعْنَا أَنَّ الشُّفْعَةَ لَا تُبَاعُ وَلَا تُوهَبُ وَلَا تُورَّثُ وَلَا تُعَارُ، هِيَ لِصَاحِبِهَا الَّذِي وَقَعَتْ لَهُ.

قَالَ عَبْدُ الرَّزَّاقِ: وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: الشُّفْعَةُ لِوَرَثَتِهِ.

وَاحْتَجُّوا بِأَنْ قَالُوا: تُورَّثُ الشُّفْعَةُ كَمَا يُورَّثُ الْعَفْوُ فِي الدَّمِ أَوْ الْقِصَاصِ مَا نَعْلَمُ لَهُمْ شَيْئًا أَوْهَمُوا بِهِ غَيْرَ هَذَا، وَهَذَا بَاطِلٌ؛ لِأَنَّهَا دَعْوَى بِلَا بُرْهَانٍ ثُمَّ هُوَ احْتِجَاجٌ لِلْخَطَأِ بِالْخَطَأِ.

وَقَوْلُهُمْ: إنَّ الْعَفْوَ وَالْقِصَاصَ يُورَّثَانِ، خَطَأٌ، بَلْ هُمَا لِمَنْ جَعَلَهُمَا اللَّهُ تَعَالَى لَهُ مِنْ ذُكُورِ الْأَوْلِيَاءِ فَقَطْ، وَإِنَّمَا أَوْجَبَ اللَّهُ تَعَالَى الْمِيرَاثَ فِي الْأَمْوَالِ، لَا فِيمَا لَيْسَ مَالًا، وَلَوْ وُرِّثَ الْخِيَارُ لَوَجَبَ أَنْ يُورَّثَ عِنْدَهُمْ فِيمَنْ جَعَلَ أَمْرَ امْرَأَتِهِ بِيَدِ إنْسَانٍ بِعَيْنِهِ وَخَيَّرَهُ

Issue: The preemptor died before declaring "I claim my right of preemption."

Issue 1604: If the pre-emptor dies before declaring, "I claim my right of pre-emption," their right becomes invalid, and their heirs possess no entitlement whatsoever to exercise pre-emption. This is because Allah the Exalted granted this right exclusively to the pre-emptor and not to others, as the legal option cannot be inherited. This is the opinion of Muḥammad ibn Sīrīn.

It has been narrated to us through the chain of ʿAbd al-Razzāq from Fuḍayl from Muḥammad ibn Sālim from al-Shaʿbī, who said: We heard that the right of pre-emption cannot be sold, gifted, transferred through inheritance, or lent; it belongs exclusively to its rightful owner to whom it has been assigned.

ʿAbd al-Razzāq said, "It is the opinion of Sufyān al-Thawrī."

This is the opinion of Abū Ḥanīfah, Sufyān ibn ʿUyaynah, al-Ḥasan ibn Ḥayy, Aḥmad, Isḥāq, Abū Sulaymān, and their companions.

Mālik and al-Shāfiʿī held that the right of pre-emption belongs to his heirs.

They argued, saying: "The right of pre-emption is inherited, just as pardon regarding bloodshed or qisas (retributive justice) is inherited." We know of no other basis for their misconception besides this. This is invalid because it is an unsubstantiated claim, and further, it constitutes defending one error with another.

Their assertion that pardon and retaliation are inheritable is erroneous; rather, these rights belong exclusively to the male guardians for whom Allah has designated them. Allah has ordained inheritance solely in matters of wealth, not in matters unrelated to wealth. If the legal prerogative were inheritable, their doctrine would necessitate that when a man places the decision regarding his wife into the hands of a specific individual, granting him the option to divorce or retain her, and that individual dies, his heirs should

inherit the prerogative assigned to him according to their own principle. Yet they themselves do not uphold this [view].

فِي طَلَاقِهَا أَوْ إِبْقَائِهَا، فَمَاتَ ذَلِكَ الْإِنْسَانُ، فَكَانَ يَجِبُ عَلَى قَوْلِهِمْ أَنْ يَرِثَ وَرَثَتُهُ مَا جُعِلَ لَهُ مِنَ الْخِيَارِ، وَهُمْ لَا يَقُولُونَ هَذَا.

L25508 We also ask them: For whom do the heirs exercise the right of preemption - for the deceased or for themselves? If they say: "For the deceased," we reply: This is invalid, because the deceased cannot own anything.

وَنَسْأَلُهُمْ أَيْضًا: لِمَنْ يَأْخُذُونَ الْوَرَثَةُ بِالشُّفْعَةِ، أَلِلْمَيِّتِ أَمْ لِأَنْفُسِهِمْ؟ فَإِنْ قَالُوا: لِلْمَيِّتِ؟ قُلْنَا: هَذَا بَاطِلٌ؛ لِأَنَّ الْمَيِّتَ لَا يَمْلِكُ شَيْئًا.

L25509 And if they say, "For themselves?" We say: This is void; because their partnership occurred only after the sale, thus no right of pre-emption exists, and since they were not partners at the time of the sale, no right of pre-emption becomes incumbent upon them.

وَإِنْ قَالُوا: لِأَنْفُسِهِمْ؟ قُلْنَا: هَذَا بَاطِلٌ؛ لِأَنَّ شَرِكَتَهُمْ إِنَّمَا حَدَثَتْ بَعْدَ الْبَيْعِ فَلَا تُوجَدُ شُفْعَةٌ، وَلَمْ يَكُونُوا حِينَ الْبَيْعِ شُرَكَاءَ، فَلَمْ تَجِبْ لَهُمْ شُفْعَةٌ.

L25510–25512 This is one of the matters in which the Mālikīs contradicted themselves and opposed the majority of scholars: for they say that... If one of the guardians entitled to forgiveness or retribution dies, leaving a wife and daughters, they did not inherit the choice that belonged to him.

وَهَذَا مِمَّا تَنَاقَضَ فِيهِ الْمَالِكِيُّونَ، وَخَالَفُوا جُمْهُورَ الْعُلَمَاءِ؛ لِأَنَّهُمْ يَقُولُونَ: إِنَّ أَحَدَ الْأَوْلِيَاءِ الَّذِي لَهُمُ الْعَفْوُ أَوِ الْقِصَاصُ إِنْ مَاتَ وَتَرَكَ زَوْجَةً وَبَنَاتٍ لَمْ يَرِثْنَ الْخِيَارَ الَّذِي لَهُ.

L25513 This is among the contradictions in the Hanafi school, for they permit inheritance of the rights of waiver (ʿafw) and retaliation (qiṣāṣ) but do not permit inheritance of the contractual option (khiyār) in this case. However, if the co-owner learns of the sale and declares, "I will exercise the right of pre-emption (shufʿah)," then dies, the right has become valid for him and becomes inheritable from him at that point. His heirs may pursue the claim because it is now an asset that has been perfected for him.

وَهَذَا مِمَّا تَنَاقَضَ فِيهِ الْحَنَفِيُّونَ؛ لِأَنَّهُمْ يُوَرِّثُونَ الْعَفْوَ وَالْقِصَاصَ وَلَا يُوَرِّثُونَ الْخِيَارَ هَاهُنَا، فَأَمَّا إِذَا بَلَغَ الشَّرِيكَ أَمْرُ الْبَيْعِ فَقَالَ: أَنَا آخُذُ بِالشُّفْعَةِ ثُمَّ مَاتَ فَقَدْ صَحَّتْ لَهُ، وَهِيَ مَوْرُوثَةٌ عَنْهُ حِينَئِذٍ، وَلِوَرَثَتِهِ الطَّلَبُ؛ لِأَنَّهَا حِينَئِذٍ مَالٌ قَدْ تَمَّ لَهُ.

L25514 There is no validity to the claim before the judge, nor to the judge's ruling, for Allah the Exalted has never obligated this, nor has His Messenger—may Allah bless him and grant him peace. The judge is only appointed to compel the one withholding [what is due] from the right—nothing more. If people were to administer the rights among themselves, there would be no need for a judge. And with Allah is success.

وَلَا مَعْنَى لِلطَّلَبِ عِنْدَ الْقَاضِي، وَلَا لِحُكْمِ الْقَاضِي؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ ذَلِكَ قَطُّ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا جُعِلَ الْقَاضِي لِيُجْبِرَ الْمُمْتَنِعَ مِنَ الْحَقِّ فَقَطْ وَلَا مَزِيدَ، وَلَوْ تَعَاطَى النَّاسُ الْحُقُوقَ بَيْنَهُمْ مَا احْتِيجَ إِلَى قَاضٍ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L25515 **An issue where one sold a share or a commodity in a single transaction, and the partner with preemption rights seeks to exercise preemption.**

[مَسْأَلَة بَاعَ شِقْصًا أَوْ سِلْعَةً مَعَهُ صَفْقَةً وَاحِدَةً فَجَاءَ الشَّفِيعُ يَطْلُبُ]

L25516 1605 - Issue: If someone sells a share or goods combined in a single transaction and the preemptor comes to claim, he must either take the entirety or relinquish the entirety. This is the view of Uthman al-Batti and the two judges Sawwar ibn Abdullah and Ubayd Allah ibn al-Hasan.

١٦٠٥ - مَسْأَلَةٌ: وَمَنْ بَاعَ شِقْصًا أَوْ سِلْعَةً مَعَهُ صَفْقَةٌ وَاحِدَةٌ فَجَاءَ الشَّفِيعُ يَطْلُبُ فَلَيْسَ لَهُ إِلَّا أَنْ يَأْخُذَ الْكُلَّ أَوْ يَتْرُكَ الْكُلَّ وَهَذَا قَوْلُ عُثْمَانَ الْبَتِّيِّ وَسَوَّارِ بْنِ عَبْدِ اللَّهِ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ الْقَاضِيَيْنِ.

L25517 It has also been narrated from Abū Ḥanīfah through an obscure chain of transmission.

وَرُوِيَ أَيْضًا عَنْ أَبِي حَنِيفَةَ مِنْ طَرِيقٍ خَامِلَةٍ.

L25518 Abu Hanifah, in the well-known opinion attributed to him, along with Sufyan, Malik, Ibn Shubrumah, and al-Shafi'i, held that the co-owner takes his proportionate share of the price. They argued that preemption does not apply to matters where it is inherently inapplicable, nor can it be invalidated in cases where it is textually mandated.

وَقَالَ أَبُو حَنِيفَةَ فِي الْمَشْهُورِ عَنْهُ، وَسُفْيَانُ، وَمَالِكٌ، وَابْنُ شُبْرُمَةَ، وَالشَّافِعِيُّ: يَأْخُذُ الشِّقْصَ بِحِصَّتِهِ مِنْ الثَّمَنِ، وَاحْتَجُّوا بِأَنَّهُ لَا يَدْخُلُ فِي الشُّفْعَةِ مَا لَا شُفْعَةَ فِيهِ، وَلَا يُقْطَعُ بِالشُّفْعَةِ فِيمَا فِيهِ شُفْعَةٌ بِالنَّصِّ.

L25519 Ali said: The preemptor has no right after the sale except what he had as a right when the seller permitted him before the sale. The explicit text and the certain consensus - we have clarified - demonstrate that nothing exits the seller's ownership except that which he consents to remove from it. Allah the Exalted said: "Do not consume your wealth among yourselves unjustly, except through trade by mutual consent" [4:29]. The seller did not consent to sell the share alone without the rest of the commodity, thus it is impermissible to compel him to sell what he withholds consent to sell absent textual evidence.[1]

قَالَ عَلِيٌّ: لَيْسَ لِلشَّفِيعِ بَعْدَ الْبَيْعِ إلَّا مَا كَانَ لَهُ إذَا أَذِنَهُ الْبَائِعُ قَبْلَ الْبَيْعِ، وَالنَّصُّ وَالْإِجْمَاعُ الْمُتَيَقَّنُ قَدْ بَيَّنَّا بِأَنَّهُ لَا يَخْرُجُ عَنْ مِلْكِ الْبَائِعِ إلَّا مَا رَضِيَ بِإِخْرَاجِهِ عَنْ مِلْكِهِ، قَالَ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] وَالْبَائِعُ لَمْ يَرْضَ بِبَيْعِ الشِّقْصِ وَحْدَهُ دُونَ تِلْكَ السِّلْعَةِ فَلَا يَجُوزُ إجْبَارُهُ عَلَى بَيْعِ مَا لَا يَرْضَى بَيْعَهُ بِغَيْرِ نَصٍّ.

L25520–25522 If the offer was presented to him before the sale, the partner has no option except to take the entirety or leave it by their consensus in agreement with us. Similarly, if he was present during the sale, the Messenger of Allah—peace be upon him—did not assign him after the sale from other than the sale except what would have been his right if he had taken it when the offer was presented to him before the sale only. The partner has no right in the pre-sale offer to divide what the seller does not wish to divide. His entitlement now is solely what his entitlement was at that time, with no increase. And with Allah, the Exalted, lies success. Furthermore, it is impermissible to obligate the buyer to accept part of a transaction he never consented to divide, nor

وَلَوْ عَرَضَ عَلَيْهِ قَبْلَ الْبَيْعِ لَمْ يَكُنْ لِلشَّرِيكِ إلَّا أَخْذُ الْكُلِّ أَوْ التَّرْكُ بِإِجْمَاعِهِمْ مَعَنَا، وَكَذَلِكَ لَوْ حَضَرَ عِنْدَ الْبَيْعِ، وَلَمْ يَجْعَلْ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْدَ الْبَيْعِ مِنْ غَيْرِهِ إلَّا مَا كَانَ حَقُّهُ لَوْ أَخَذَهُ إذَا عَرَضَ عَلَيْهِ قَبْلَ الْبَيْعِ فَقَطْ وَلَيْسَ لَهُ فِي الْعَرْضِ قَبْلَ الْبَيْعِ تَبْعِيضُ مَا لَا يُرِيدُ الْبَائِعُ تَبْعِيضَهُ، فَإِنَّمَا لَهُ الْآنَ مَا كَانَ لَهُ حِينَئِذٍ وَلَا مَزِيدَ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟ وَأَيْضًا فَلَا يَجُوزُ أَنْ يَلْزَمَ الْمُشْتَرِي بَعْضَ صَفْقَةٍ لَمْ

[1] **Qur'an references (L25519):** Qur'an 4:29 (An-Nisa).

to... The seller cannot annul a valid sale that has occurred unless there is an explicit textual evidence. Since no such text exists for any of those cases, the entire sale is null and void.

L25523 If the buyer consents to delivering the share alone, it has been said that nothing else remains for the preemptor, as this resembles the seller's consent at the time of notification.

L25524 The preferred opinion in our view is that the partner holds the rightful claim to the entire transaction if he so desires, as it constitutes a single transaction and an indivisible contract. Either the entire contract stands valid or is rendered wholly void. It is impermissible to fragment a unified contract by validating one portion and invalidating another, except through an explicit scriptural proof specifically addressing such a case.

L25525 **Issue: A case where a person had partners and sold from one of them.**

L25526 1606 - Issue: If someone has partners and sells from one of them, the partners retain their shared right over it. He remains entitled to his share of the purchased property as one of them, because he is a partner and they are partners. Thus he is included in the ruling of Allah's Messenger - peace and blessings be upon him - who said: "His partner has the greatest right." Some have argued: "The buyer has no share." This contradicts the textual evidence, as we mentioned.

L25527 And it has been reported to us through Layth ibn Abī Sulaym from al-Sha'bī that he said: When one sells to any of his partners, there is no preemption right for the others from among them.

L25528 Likewise, also from al-Hasan and Uthman al-Battī.

L25529 Ali said: "And this is also contrary to the text."

L25530 **A juridical question concerning a scenario where some**

يَرْضَ قَطُّ تَبْعِيضَهَا، وَلَا أَنْ يَفْسَخَ عَنْ الْبَائِعِ بَيْعًا وَقَعَ صَحِيحًا إلَّا بِنَصٍّ وَارِدٍ، وَلَا نَصَّ فِي شَيْءٍ مِنْ ذَلِكَ، فَهُوَ كُلُّهُ بَاطِلٌ.

فَإِنْ رَضِيَ الْمُشْتَرِي بِتَسْلِيمِ الشِّقْصِ وَحْدَهُ فَقَدْ قِيلَ لَيْسَ لِلشَّفِيعِ غَيْرُهُ، لِأَنَّهُ كَرِضَا الْبَائِعِ بِذَلِكَ حِينَ الْإِيذَانِ.

وَالْأَوْلَى عِنْدَنَا: أَنَّ الشَّرِيكَ أَحَقُّ بِجَمِيعِ الصَّفْقَةِ إنْ أَرَادَ ذَلِكَ، لِأَنَّهَا صَفْقَةٌ وَاحِدَةٌ، وَعَقْدٌ وَاحِدٌ، إمَّا تَصِحُّ فَتَصِحُّ كُلُّهَا، وَإِمَّا تَفْسُدُ فَتَفْسُدُ كُلُّهَا، وَلَا يُمْكِنُ تَبْعِيضُ عَقْدٍ وَاحِدٍ بِتَصْحِيحِ بَعْضِهِ وَإِفْسَادِ بَعْضِهِ إلَّا بِنَصٍّ وَارِدٍ فِي ذَلِكَ.

[مَسْأَلَة كَانَ لَهُ شُرَكَاءُ فَبَاعَ مِنْ أَحَدِهِمْ]

١٦٠٦ - مَسْأَلَةٌ: وَمَنْ كَانَ لَهُ شُرَكَاءُ فَبَاعَ مِنْ أَحَدِهِمْ كَانَ لِلشُّرَكَاءِ مُشَارَكَتُهُ فِيهِ وَهُوَ بَاقٍ عَلَى حِصَّتِهِ مِمَّا اشْتَرَى كَأَحَدِهِمْ، لِأَنَّهُ شَرِيكٌ وَهُمْ شُرَكَاءُ، فَهُوَ دَاخِلٌ مَعَهُمْ فِي قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَشَرِيكُهُ أَحَقُّ» وَقَدْ قَالَ قَائِلٌ: لَا حِصَّةَ لِلْمُشْتَرِي وَهَذَا خِلَافُ النَّصِّ كَمَا ذَكَرْنَا.

وَرُوِّينَا مِنْ طَرِيقِ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ الشَّعْبِيِّ أَنَّهُ قَالَ: إذَا بَاعَ مِنْ أَحَدِ شُرَكَائِهِ فَلَا شُفْعَةَ لِلْآخَرِينَ مِنْهُمْ.

وَكَذَلِكَ أَيْضًا عَنْ الْحَسَنِ، وَعُثْمَانَ الْبَتِّيِّ

قَالَ عَلِيٌّ: وَهَذَا خِلَافُ النَّصِّ أَيْضًا.

[مَسْأَلَة كَانَ بَعْض الشُّرَكَاء غَائِبًا فَاشْتَرَى أَحَدهمْ]

partners were absent, and one of the partners acquired.

L25531 1607. Issue: If some of the partners are absent and one of them makes a purchase, the same applies. The present partner cannot say, "I will only take my share," because the seller does not consent to selling part of it without the remainder, as we mentioned earlier regarding someone who sells a share and a commodity.

L25532 If he sold to a third party while a partner was present, according to some jurists, the partner may only claim his share. As for our position: he must either accept the entire sale or reject it entirely, for at the time of the offer, he possessed no right beyond this. His entitlement is strictly limited to what was his due at the time of the offer. Success is granted by Allah, the Exalted.

L25533 **Issue: If two or more partners sold, from whom does the co-partner take his share?**

L25534–25536 1608 - Issue: If two or more [sellers] sell to one [buyer], or to more than one [buyer], or if one [seller] sells to two or more [buyers], the partner may take whichever share he wishes and leave whichever share he wishes, and he may take... for all, because they are different contracts even if they are together, based on the statement of Allah the Exalted: {No soul earns except against itself} [al-Anʿām 164]. Thus Zayd's contract is different from ʿAmr's.[2]

L25537 If one of the two parties becomes entitled to the price he paid, resulting in the annulment of his contract, this does not impair the share of the other party for the reason previously stated. This is the opinion of Abū Ḥanīfah and al-Shāfiʿī. And success comes only from Allah, the Most High.

L25538 **An issue: partners in a shared thing, some acquiring their share through inheritance and others through sale.**

L25539 1609. Issue: If partners in something include some who acquired their shares through inheritance, others through purchase, and others through

[2]**Qur'an references (L25534):** Qur'an 6:164 (Al-An'am).

١٦٠٧ - مَسْأَلَةٌ: فَلَوْ كَانَ بَعْضُ الشُّرَكَاءِ غُيَّبًا فَاشْتَرَى أَحَدُهُمْ فَكَذَلِكَ أَيْضًا، وَلَيْسَ لِلْحَاضِرِ أَنْ يَقُولَ: لَا آخُذُ إِلَّا حِصَّتِي لِأَنَّ الْبَائِعَ لَا يَرْضَى بِبَيْعِ بَعْضِ ذَلِكَ دُونَ بَعْضٍ كَمَا ذَكَرْنَا آنِفًا فِيمَنْ بَاعَ شِقْصًا وَسِلْعَةً.

فَلَوْ بَاعَ مِنْ أَجْنَبِيٍّ فَحَضَرَ أَحَدُ الشُّرَكَاءِ فَلَيْسَ لَهُ أَنْ يَأْخُذَ إِلَّا حِصَّتَهُ فَقَطْ فِي قَوْلِ قَوْمٍ وَالَّذِي نَقُولُ بِهِ: إِنَّهُ لَيْسَ لَهُ إِلَّا أَخْذُ الْكُلِّ أَوْ تَرْكُ الْكُلِّ، لِأَنَّهُ لَمْ يَكُنْ لَهُ حِينَ الْإِيذَانِ إِلَّا ذَلِكَ، فَإِنَّمَا هُوَ أَحَقُّ بِمَا كَانَ حَقَّهُ حِينَ الْإِيذَانِ فَقَطْ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَاعَ اثْنَانِ فَأَكْثَرُ مِنْ وَاحِدٍ فممن يَأْخُذ الشَّرِيك حِصَّته]

١٦٠٨ - مَسْأَلَةٌ: فَإِنْ بَاعَ اثْنَانِ فَأَكْثَرُ مِنْ وَاحِدٍ، أَوْ مِنْ أَكْثَرَ مِنْ وَاحِدٍ، أَوْ بَاعَ وَاحِدٌ مِنْ اثْنَيْنِ فَصَاعِدًا، فَلِلشَّرِيكِ أَنْ يَأْخُذَ أَيَّ حِصَّةٍ شَاءَ وَيَدَعَ أَيَّهَا شَاءَ، وَلَهُ أَنْ يَأْخُذَ الْجَمِيعَ، لِأَنَّهَا عُقُودٌ مُخْتَلِفَةٌ وَإِنْ كَانَتْ مَعًا لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَعَقْدُ زَيْدٍ غَيْرُ عَقْدِ عَمْرٍو.

وَلَوْ اسْتَحَقَّ الثَّمَنَ الَّذِي أَعْطَى أَحَدُهُمَا فَانْفَسَخَ عَقْدُهُ لَمْ يَكْدَحْ ذَلِكَ فِي حِصَّةِ غَيْرِهِ لِمَا ذَكَرْنَا وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ شُرَكَاءُ فِي شَيْءٍ بَعْضُهُمْ بِمِيرَاثٍ وَبَعْضُهُمْ بِبَيْعٍ]

١٦٠٩ - مَسْأَلَةٌ: وَإِنْ كَانَ شُرَكَاءُ فِي شَيْءٍ بَعْضُهُمْ بِمِيرَاثٍ، وَبَعْضُهُمْ بِبَيْعٍ، وَبَعْضُهُمْ بِهِبَةٍ، وَفِيهِمْ إِخْوَةٌ وَرِثُوا أَبَاهُمْ مَا كَانَ أَبُوهُمْ وَرِثَهُ مَعَ أَعْمَامِهِمْ، فَبَاعَ أَحَدُهُمْ فَالْجَمِيعُ

شُفَعَاءُ عَلَى عَدَدِهِمْ، لَيْسَ الْأَخُ أَوْلَى بِحِصَّةِ أَخِيهِ مِنْ عَمِّهِ، وَلَا مِنْ امْرَأَةِ أَبِيهِ، وَلَا مِنْ امْرَأَةِ جَدِّهِ، وَلَا مِنْ الْأَجْنَبِيِّ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «فَشَرِيكُهُ أَحَقُّ» وَكُلُّهُمْ شَرِيكُهُ وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ.

gift—and among them are brothers who inherited what their father had inherited alongside their uncles—and one of them sells his share, then all are pre-emptors based on their number. A brother is not more entitled to his brother's share than an uncle, his father's wife, his grandfather's wife, or a stranger. This is because the Messenger of Allah (peace and blessings be upon him) said: "His partner has the greatest right," and all of them are his partners. This is the opinion of Abū Ḥanīfa and al-Shāfiʿī.

وَقَالَ مَالِكٌ: إنْ كَانَ إخْوَةُ الْأُمِّ وَزَوْجَاتٌ وَبَنَاتٌ وَأَخَوَاتٌ وَعَصَبَةٌ فَبَاعَ أَحَدُ الْإِخْوَةِ لِلْأُمِّ فَسَائِرُ الْإِخْوَةِ لِلْأُمِّ أَحَقُّ بِالشُّفْعَةِ مِنْ سَائِرِ الْوَرَثَةِ.

L25540 And Mālik said: If there are maternal brothers, wives, daughters, sisters, and residuaries, and if one of the maternal brothers sells his share, then the remaining maternal brothers have a stronger claim to the right of pre-emption than the other heirs.

وَكَذَلِكَ لَوْ بَاعَ إحْدَى الزَّوْجَاتِ فَسَائِرُهُنَّ أَحَقُّ بِالشُّفْعَةِ مِنْ سَائِرِ الْوَرَثَةِ، وَكَذَلِكَ لَوْ بَاعَ أَحَدُ الْبَنَاتِ فَسَائِرُهُنَّ أَحَقُّ بِالشُّفْعَةِ مِنْ سَائِرِ الْوَرَثَةِ.

L25541 Similarly, if one of the wives sells, the remaining wives are more entitled to pre-emption than the rest of the heirs. Likewise, if one of the daughters sells, the remaining daughters are more entitled to pre-emption than the rest of the heirs.

وَكَذَلِكَ لَوْ بَاعَ إحْدَى الْأَخَوَاتِ فَسَائِرُهُنَّ أَحَقُّ بِالشُّفْعَةِ مِنْ سَائِرِ الْوَرَثَةِ، ثُمَّ نَاقَضَ فَقَالَ: لَوْ بَاعَ أَحَدُ الْعُصْبَةِ لَمْ يَكُنْ سَائِرُ الْعُصْبَةِ أَحَقَّ بِالشُّفْعَةِ، بَلْ يَأْخُذُهَا مَعَهُمْ الْبَنَاتُ، وَالزَّوْجَاتُ، وَالْأَخَوَاتُ، وَالْإِخْوَةُ لِأُمٍّ.

L25542 Similarly, if one of the sisters sells, the remaining sisters have a greater right to pre-emption over the other heirs. He then contradicted this ruling, stating: If one of the agnates sells, the remaining agnates would not have a greater right to pre-emption. Rather, the daughters, wives, sisters, and uterine brothers share this right with the agnates.

قَالَ: فَلَوْ اشْتَرَى بَنَاتُ إنْسَانٍ شِقْصًا وَاشْتَرَى أَخَوَاتُهُ شِقْصًا آخَرَ مِنْ ذَلِكَ الشَّيْءِ، وَاشْتَرَى أَجْنَبِيُّونَ شِقْصًا ثَالِثًا مِنْهُ فَبَاعَ إحْدَى الْبَنَاتِ أَوْ إحْدَى الْأَخَوَاتِ لَمْ يَكُنْ أَخَوَاتُهَا أَحَقَّ بِالشُّفْعَةِ مِنْ عَمَّتِهَا، وَلَا مِنْ الْأَجْنَبِيِّينَ.

L25543 He said: If a man's daughters acquire a portion, his sisters acquire another portion of that jointly held asset, and strangers acquire a third portion thereof, then should one of the daughters or sisters sell her share, her sisters have no greater right to pre-emption (shufʿah) than her paternal aunt or the strangers.

قَالَ: وَلَوْ كَانَ وَرَثَةٌ وَمُشْتَرُونَ فِي شَيْءٍ فَبَاعَ أَحَدُ الْوَرَثَةِ فَلِلْأَجْنَبِيِّ الشُّفْعَةُ فِي ذَلِكَ مَعَ سَائِرِ الْوَرَثَةِ، وَهَذَا كَلَامٌ يُغْنِي إيرَادُهُ عَنْ تَكَلُّفِ إفْسَادِهِ لِفُحْشِ تَنَاقُضِهِ، وَظُهُورِ فَسَادِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25544 He said: If there are heirs and purchasers in a jointly owned asset, and one of the heirs sells, the right of pre-emption in that matter belongs to the non-heir third party alongside the other heirs. This statement suffices in its presentation, rendering any effort to corrupt it unnecessary due to its gross self-contradiction and evident invalidity. With Allah the Exalted lies all success.

[مَسْأَلَة بَاعَ شِقْصًا وَلَهُ شُرَكَاء مختلفة أنصبائهم]

١٦١٠ - مَسْأَلَةٌ: وَمَنْ بَاعَ شِقْصًا وَلَهُ شُرَكَاءُ لِأَحَدِهِمْ مِائَةُ سَهْمٍ، وَلِآخَرَ عِشْرُونَ، وَلِآخَرَ عُشْرُ الْعُشْرِ أَوْ أَقَلُّ أَوْ أَكْثَرُ: فَكُلُّهُمْ سَوَاءٌ فِي الْأَخْذِ بِالشُّفْعَةِ، وَيَقْتَسِمُونَ مَا أَخَذُوا بِالسَّوَاءِ، وَلَا مَعْنَى لِتَفَاضُلِ حِصَصِهِمْ.

وَهُوَ قَوْلُ إِبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَالْحَسَنِ الْبَصْرِيِّ، وَابْنُ أَبِي لَيْلَى، وَابْنُ شُبْرُمَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَشَرِيكٍ، وَالْحَسَنِ بْنِ حَيٍّ، وَعُثْمَانَ الْبَتِّيِّ، وَعَبْدِ اللَّهِ بْنِ الْحَسَنِ، وَأَبِي سُلَيْمَانَ، وَأَشْهَرُ قَوْلَيْ الشَّافِعِيِّ.

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ عَنْ عُبَيْدَةَ: وَأَشْعَثَ قَالَ عُبَيْدَةُ عَنْ إِبْرَاهِيمَ، وَأَشْعَثَ عَنْ الشَّعْبِيِّ، قَالَا جَمِيعًا: الشُّفْعَةُ عَلَى رُءُوسِ الرِّجَالِ، قَالَ هُشَيْمٌ: وَبِهِ كَانَ يَقْضِي ابْنُ أَبِي لَيْلَى، وَابْنُ شُبْرُمَةَ

وَقَالَ آخَرُونَ: هِيَ عَلَى قَدْرِ الْأَنْصِبَاءِ وَهُوَ قَوْلُ عَطَاءٍ: وَابْنِ سِيرِينَ وَرُوِيَ عَنْ الْحَسَنِ أَيْضًا.

وَبِهِ يَقُولُ مَالِكٌ، وَسَوَّارُ بْنُ عَبْدِ اللَّهِ، وَإِسْحَاقُ، وَأَبُو عُبَيْدٍ

قَالَ عَلِيٌّ: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فَشَرِيكُهُ» تَسْوِيَةٌ بَيْنَ جَمِيعِ الشُّرَكَاءِ وَلَوْ كَانَ هُنَالِكَ مُفَاضَلَةً لَبَيَّنَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يُجْمِلْ الْأَمْرَ: فَبَطَلَتْ الْمُفَاضَلَةُ.

وَلَا يَخْتَلِفُونَ فِي أَنَّ مَنْ أَوْصَى لِوَرَثَةِ فُلَانٍ، فَإِنَّهُمْ فِي الْوَصِيَّةِ سَوَاءٌ وَلَا يَقْتَسِمُونَهَا عَلَى حِصَصِ الْمِيرَاثِ، وَإِنَّمَا اسْتَحَقُّوهَا بِكَوْنِهِمْ مِنْ الْوَرَثَةِ.

Issue: He sold a share and has partners with differing shares.

Issue 1610: If someone sells a share and has partners—one of whom holds one hundred shares and another twenty shares. As for another claimant with a fractional share—be it a tenth of a tenth, less, or more—all are equal in exercising the right of pre-emption. They divide what they obtain equally, and no consideration is given to the disparity in their shares.

This is the opinion of Ibrahim al-Nakha'i, al-Sha'bi, al-Hasan al-Basri, Ibn Abi Layla, Ibn Shubrumah, Sufyan al-Thawri, Abu Hanifah and his companions, Shareek, al-Hasan ibn Hayy, Uthman al-Batti, Abdullah ibn al-Hasan, Abu Sulayman, and the more famous of the two opinions of al-Shafi'i.

We were narrated through the chain of Saʿīd ibn Manṣūr: "I am Hushaym from ʿUbaydah and Ashʿath." ʿUbaydah narrated from Ibrāhīm, while Ashʿath narrated from Al-Shaʿbī. They both said together: "The right of pre-emption is upon the heads of the men." Hushaym said: "In accordance with this, Ibn Abī Laylā and Ibn Shubrumah used to issue rulings."

Others said, it is in proportion to the shares. This is the opinion of ʿAṭāʾ and Ibn Sīrīn, and it is also reported from al-Ḥasan.

In accordance with this view say Mālik, Sawwār ibn ʿAbd Allāh, Isḥāq, and Abū ʿUbayd.

Ali said: The statement of the Messenger of Allah—peace and blessings be upon him—"so his partner" ensures equalization among all partners. Had there been any preferential distinction, the Messenger of Allah—peace and blessings be upon him—would have clarified it and would not have left the matter general. Thus, preferential distinction is nullified.

There is consensus that if one makes a bequest to the heirs of a specific person, they share the bequest equally without dividing it according to the

inheritance shares prescribed by law; rather, they become entitled to it solely by virtue of their status as heirs.

L25555 **A legal issue: There is no preemptive right unless the sale is fully concluded through partitioning or choice.**

L25556 1611. Issue: There is no right of pre-emption except upon the completion of the sale through partition of the property or option, because pre-emption itself is not considered a sale prior to that. This is the position of all who uphold the principle of separation of the bodies (of the contracting parties).

L25557 **The Issue of What Terminates the Right of Pre-emption**

L25558 Issue 1612: Pre-emption remains obligatory even when shares are divided, provided the easement serving them constitutes a single owned passage - whether effective for the claimants or ineffective for them. But if the easement becomes divided, or exists as an effective passage not owned by them, then no right of pre-emption applies at that stage, regardless of whether the property adjoins theirs or not.

L25559 The proof of this is the statement of the Messenger of Allah (peace and blessings be upon him): "When boundaries are established and paths are assigned, there is no preemption." He (peace and blessings be upon him) nullified it only upon the concurrence of both conditions: the enforcement of boundaries and the assignment of paths—not by one without the other.

L25560 A void division preceding a sale does not invalidate the right of pre-emption (shufʿah), as such a division is not legally recognized.

L25561–25562 A valid partition after the sale does not invalidate the right, because the right had been established prior to it.

L25563 Abu Hanifah and Sufyan said: The right of shufʿah belongs to the partner. If the partner relinquishes it or there is no partner, then it passes to his partner in the pathway. If the land or house has been divided, and the partner relinquishes it or there is none, the right of shufʿah belongs to the adjacent neighbor. If the division has taken place and the pathway is altered, there is no right of shufʿah for a non-adjacent neighbor.

[مَسْأَلَة لَا شُفْعَةَ إِلَّا بِتَمَامِ الْبَيْعِ بِالتَّفْرِيقِ أَوْ التَّخْيِيرِ]

١٦١١ - مَسْأَلَةٌ: وَلَا شُفْعَةَ إِلَّا بِتَمَامِ الْبَيْعِ بِالتَّفْرِيقِ أَوْ التَّخْيِيرِ لِأَنَّهَا لَيْسَ بَيْعًا قَبْلَ ذَلِكَ وَهُوَ قَوْلُ كُلِّ مَنْ يَقُولُ بِتَفَرُّقِ الْأَبْدَانِ.

[مَسْأَلَة مَا يَقْطَعُ الشُّفْعَةَ]

١٦١٢ - مَسْأَلَةٌ: وَالشُّفْعَةُ وَاجِبَةٌ وَإِنْ كَانَتْ الْأَجْزَاءُ مَقْسُومَةً إذَا كَانَ الطَّرِيقُ إلَيْهَا وَاحِدًا مُتَمَلَّكًا نَافِذًا أَوْ غَيْرَ نَافِذٍ لَهُمْ، فَإِنْ قُسِّمَ الطَّرِيقُ أَوْ كَانَ نَافِذًا غَيْرَ مُتَمَلَّكٍ لَهُمْ فَلَا شُفْعَةَ حِينَئِذٍ كَانَ مُلَاصِقًا أَوْ لَمْ يَكُنْ.

بُرْهَانُ ذَلِكَ: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَإِذَا وَقَعَتْ الْحُدُودُ وَصُرِّفَتْ الطُّرُقُ فَلَا شُفْعَةَ» فَلَمْ يَقْطَعْهَا - عَلَيْهِ السَّلَامُ - إلَّا بِاجْتِمَاعِ الْأَمْرَيْنِ مَعًا، وُقُوعُ الْحُدُودِ، وَصَرْفُ الطُّرُقِ، لَا بِأَحَدِهِمَا دُونَ الْآخَرِ.

وَلَا يَقْطَعُ الشُّفْعَةَ قِسْمَةٌ فَاسِدَةٌ قَبْلَ الْبَيْعِ؛ لِأَنَّهَا لَيْسَتْ قِسْمَةً.

وَلَا يَقْطَعُهَا قِسْمَةٌ صَحِيحَةٌ بَعْدَ الْبَيْعِ؛ لِأَنَّ الْحَقَّ قَدْ وَجَبَ قَبْلَهَا.

وَقَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ: الشُّفْعَةُ لِلشَّرِيكِ، فَإِنْ تَرَكَ، أَوْ لَمْ يَكُنْ لَهُ شَرِيكٌ، فَلِشَرِيكِهِ فِي الطَّرِيقِ، وَإِنْ كَانَتْ الْأَرْضُ أَوْ الدَّارُ قَدْ قُسِّمَتْ، فَإِنْ تَرَكَ أَوْ لَمْ يَكُنْ فَالشُّفْعَةُ

لِلْجَارِ الْمُلَاصِقِ، وَإِنْ كَانَتْ الْقِسْمَةُ قَدْ وَقَعَتْ وَالطَّرِيقُ غَيْرُ الطَّرِيقِ، وَلَا شُفْعَةَ لِجَارٍ غَيْرِ مُلَاصِقٍ.

L25564 Malik, al-Shafi'i, Ahmad, Ishaq, Abu Thawr, al-Awza'i, and al-Layth ibn Sa'd said: There is no right of pre-emption except solely for a co-owner who has not partitioned the property.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَإِسْحَاقُ وَأَبُو ثَوْرٍ، وَالْأَوْزَاعِيُّ، وَاللَّيْثُ بْنُ سَعْدٍ: لَا شُفْعَةَ إلَّا لِشَرِيكٍ لَمْ يُقَاسِمْ فَقَطْ.

L25565 Others stated: The right of pre-emption is granted to every neighbor.

وَقَالَ آخَرُونَ: الشُّفْعَةُ لِكُلِّ جَارٍ.

L25566 Then they disagreed, and narrations were transmitted concerning all of that. It was transmitted to us via Abd al-Razzaq from Ibn Jurayj from Yahya ibn Sa'id al-Ansari that Umar ibn al-Khattab said, "When the land is divided and demarcated, the right of preemption does not apply."

ثُمَّ اخْتَلَفُوا، وَرُوِيَ فِي كُلِّ ذَلِكَ آثَارٌ: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إذَا قُسِّمَتْ الْأَرْضُ وَحُدِّدَتْ فَلَا شُفْعَةَ.

L25567 And through the chain of transmission of Ibn Wahb from Mālik from ʿAbdullāh ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm from his father from Abān ibn ʿUthmān from his father that "When the prescribed punishments have been applied, the right of pre-emption is nullified." And from Maʿmar from Ibrāhīm ibn Maysarah that ʿUmar ibn ʿAbd al-ʿAzīz said: "When the prescribed punishments are carried out, the right of pre-emption is nullified."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ أَبَانَ بْنِ عُثْمَانَ عَنْ أَبِيهِ إذَا وَقَعَتْ الْحُدُودُ فَلَا شُفْعَةَ، وَعَنْ مَعْمَرٍ عَنْ إبْرَاهِيمَ بْنِ مَيْسَرَةَ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ قَالَ: إذَا ضُرِبَتْ الْحُدُودُ فَلَا شُفْعَةَ.

L25568 It is narrated from Ibn al-Musayyib and Sulaymān ibn Yasār that the right of shufʿah applies solely to lands and dwellings, and exists exclusively among co-owners.

وَرُوِيَ عَنْ ابْنِ الْمُسَيِّبِ، وَسُلَيْمَانَ بْنِ يَسَارٍ إنَّمَا الشُّفْعَةُ فِي الْأَرْضِينَ، وَالدُّورِ، وَلَا تَكُونُ إلَّا بَيْنَ الشُّرَكَاءِ.

L25569 Abu Muhammad said: All of this is based on the obligation of pre-emption in conjunction with division if the pathway remains owned and undivided; because the boundaries have not yet been demarcated and the division has not been completed.

قَالَ أَبُو مُحَمَّدٍ: يَخْرُجُ كُلُّ هَذَا عَلَى وُجُوبِ الشُّفْعَةِ مَعَ الْقِسْمَةِ إذَا بَقِيَ الطَّرِيقُ مُتَمَلَّكًا غَيْرَ مَقْسُومٍ، لِأَنَّ الْحُدُودَ لَمْ تُضْرَبْ بَعْدُ وَالْقِسْمَةَ لَمْ تَتِمَّ.

L25570–25572 It has been authentically reported from Yaḥyā ibn Saʿīd al-Anṣārī, Abū al-Zināḍ, and Rabīʿah that they held the same opinion as Mālik and al-Shāfiʿī, as we have clarified. It was narrated to us through the chain of Sufyān ibn ʿUyaynah, from Ibrāhīm ibn Maysarah, from ʿAmr ibn al-Sharīd, that he

وَصَحَّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ وَأَبِي الزِّنَادِ وَرَبِيعَةَ مِثْلُ قَوْلِ مَالِكٍ وَالشَّافِعِيِّ بَيِّنًا، وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ أَنَا إبْرَاهِيمُ بْنُ مَيْسَرَةَ أَنَا «عَمْرُو بْنُ الشَّرِيدِ أَنَّهُ حَضَرَ

was present with al-Miswar ibn Makhramah, Saʿd ibn Abī Waqqāṣ, and Abū Rāfiʿ. Abū Rāfiʿ said to al-Miswar: “Will you not instruct this man”—meaning Saʿd—“to purchase my two houses located on his land?” Saʿd replied: “By Allah, I will not increase your price beyond four hundred dinars, whether in divided payments or, as he said, ’installments.’” Abū Rāfiʿ responded: “If I were...” I would prevent them from taking five hundred dinars in cash, and had I not heard the Messenger of Allah—may Allah bless him and grant him peace—say: “The neighbor has a greater right to his pre-emption right; I would not have sold it to you.”

مَعَ الْمِسْوَرِ بْنِ مَخْرَمَةَ وَسَعْدِ بْنِ أَبِي وَقَّاصٍ، وَأَبِي رَافِعٍ فَقَالَ أَبُو رَافِعٍ لِلْمِسْوَرِ: أَلَا تَأْمُرُ هَذَا يَعْنِي سَعْدًا فَيَشْتَرِيَ مِنِّي بَيْتَيَّ اللَّذَيْنِ فِي دَارِهِ فَقَالَ لَهُ سَعْدٌ: وَاللَّهِ لَا أَزِيدُكَ عَلَى أَرْبَعِمِائَةِ دِينَارٍ مُقَطَّعَةً أَوْ قَالَ مُنَجَّمَةً، فَقَالَ أَبُو رَافِعٍ: إِنْ كُنْتُ لَأَمْنَعُهُمَا مِنْ خَمْسِمِائَةِ دِينَارٍ نَقْدًا، وَلَوْلَا أَنِّي سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: الْجَارُ أَحَقُّ بِسَقَبِهِ مَا بِعْتُكَ» .

L25573 From the transmission of Ibn Abī Shaybah, narrated by ʿAbd al-Wahhāb al-Thaqafī from Khālid al-Ḥadhāʾ from Iyās ibn Muʿāwiyah: he would adjudicate based on neighborly rights until a letter from ʿUmar ibn ʿAbd al-ʿAzīz reached him, instructing him not to apply this ruling except in cases involving two intermingled neighbors or a house secured by a single door.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ إِيَاسِ بْنِ مُعَاوِيَةَ أَنَّهُ يَقْضِي بِالْجِوَارِ حَتَّى أَتَاهُ كِتَابُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنْ لَا يَقْضِيَ بِهِ إِلَّا مَا كَانَ بَيْنَ جَارَيْنِ مُخْتَلِطَيْنِ أَوْ دَارٍ يُغْلَقُ عَلَيْهَا بَابٌ وَاحِدٌ.

L25574 Via the chain of Ibn Abi Shaybah: Ibn Ulayyah narrated to us from Ibn Jurayj, who reported that Al-Zubayr ibn Musa informed him from Umar ibn Abd al-Aziz, who said: “If the land is partitioned, its boundaries are established, and its pathways are allocated, then there is no right of pre-emption.” All of this constitutes an opinion consistent with our position, for none of them opposed Abu Rafi’s view affirming pre-emption in partitioned land when there exists a single pathway under exclusive ownership.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ عُلَيَّةَ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي الزُّبَيْرُ بْنُ مُوسَى عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: إِذَا قُسِّمَتْ الْأَرْضُ وَحُدَّتْ وَصُرِّفَتْ طُرُقُهَا فَلَا شُفْعَةَ فَهَذَا كُلُّهُ قَوْلٌ مُوَافِقٌ لِقَوْلِنَا، لِأَنَّهُمْ كُلَّهُمْ لَمْ يُخَالِفُوا أَبَا رَافِعٍ فِي رُؤْيَتِهِ الشُّفْعَةَ فِي الْمَقْسُومِ إِذَا كَانَ الطَّرِيقُ وَاحِدًا مُتَمَلَّكًا.

L25575 Through the chain of Saʿīd ibn Manṣūr: Narrated to us Sufyān ibn ʿUyaynah from ʿAmr ibn Dīnār from Abū Bakr ibn Ḥafṣ, who said: Shurayḥ said: ʿUmar ibn al-Khaṭṭāb wrote to me, “Rule in favor of the neighbor’s preemptive right.” Some narrators added: “The adjacent neighbor.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي بَكْرِ بْنِ حَفْصٍ قَالَ شُرَيْحٌ: كَتَبَ إِلَيَّ عُمَرُ بْنُ الْخَطَّابِ اقْضِ بِالشُّفْعَةِ لِلْجَارِ زَادَ بَعْضُهُمْ: الْمُلَازِقِ.

L25576 From the narration of Ibn Abi Shaybah: I, Muʿawiyah ibn Hisham, narrate: I, Sufyan, narrate from Abu Hayyan, from his father, that ʻAmr ibn Ḥurayth used to issue legal rulings based on al-jiwār—the principles of neighborly rights.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا مُعَاوِيَةُ بْنُ هِشَامٍ أَنَا سُفْيَانُ عَنْ أَبِي حَيَّانَ عَنْ أَبِيهِ أَنَّ عَمْرَو بْنَ حُرَيْثٍ كَانَ يَقْضِي بِالْجِوَارِ.

L25577–25578 Via the chain of Waki‘, via Sufyān, via al-Ḥasan, via ʿAmr ibn Fuḍayl ibn

ʿAmr, via Ibrāhīm al-Nakhaʿī, who said: The co-sharer takes precedence over the neighbor, and the neighbor takes precedence over others. This aligns with the view of Abū Ḥanīfah.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ الْحَسَنِ عَنْ عَمْرِو بْنِ فُضَيْلِ بْنِ عَمْرٍو عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: الْخَلِيطُ أَحَقُّ مِنْ الْجَارِ وَالْجَارُ أَحَقُّ مِنْ غَيْرِهِ فَهَذَا مُوَافِقٌ لِقَوْلِ أَبِي حَنِيفَةَ.

L25579 It has been similarly narrated to us from Qatadah, al-Hasan, and Hammad, and they all stated: There is no preemption right for a non-adjoining neighbor if there is an unowned road between them.

وَرُوِّينَا مِثْلَهُ عَنْ قَتَادَةَ، وَالْحَسَنِ، وَحَمَّادٍ، وَقَالُوا كُلُّهُمْ: لَا شُفْعَةَ لِجَارٍ غَيْرِ مُلَاصِقٍ بَيْنَهُمَا طَرِيقٌ غَيْرُ مُتَمَلَّكَةٍ.

L25580 And it has been narrated to us from Ṭāwūs that when the statement of ʿUmar ibn ʿAbd al-ʿAzīz was mentioned to him—"If land is divided, there is no pre-emption"—he responded: "No, the neighbor is more entitled to it through pre-emption."

وَرُوِّينَا عَنْ طَاوُسٍ أَنَّهُ ذُكِرَ لَهُ قَوْلَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ إذَا قُسِّمَتْ الْأَرْضُ فَلَا شُفْعَةَ فَقَالَ: لَا، الْجَارُ أَحَقُّ بِهِ.

L25581 Through the chain of Ibn al-Jahm: Yaḥyā ibn Muḥammad narrated from Ibn ʿAskar, from ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Jābir, from al-Shaʿbī, from Shurayḥ, who ruled concerning the co-owner: "Priority is given to the first [in line]," referring to the right of pre-emption (shufʿah).

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا يَحْيَى بْنُ مُحَمَّدٍ نا ابْنُ عَسْكَرٍ عَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ قَالَ فِي الْجَارِ: الْأَوَّلُ فَالْأَوَّلُ يَعْنِي فِي الشُّفْعَةِ.

L25582 Al-Ḥasan ibn Ḥayy said: The right of pre-emption belongs unconditionally to the neighbor after the co-owner.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: الشُّفْعَةُ لِلْجَارِ مُطْلَقًا بَعْدَ الشَّرِيكِ.

L25583 Others said: The neighbor entitled to pre-emption is the one within forty houses surrounding the house.

وَقَالَ آخَرُونَ: الْجَارُ الَّذِي تَجِبُ لَهُ الشُّفْعَةُ أَرْبَعُونَ دَارًا حَوْلَ الدَّارِ.

L25584 And others said: From every side among the sides of the residential complex, there are forty dwellings.

وَقَالَ آخَرُونَ: مِنْ كُلِّ جَانِبٍ مِنْ جَوَانِبِ الدَّارِ أَرْبَعُونَ دَارًا.

L25585 Others said: It is anyone who prayed the Fajr prayer with him in the mosque.

وَقَالَ آخَرُونَ: هُوَ كُلُّ مَنْ صَلَّى مَعَهُ صَلَاةَ الصُّبْحِ فِي الْمَسْجِدِ.

L25586 Some of them said, "All the people of the city are neighbors."

وَقَالَ بَعْضُهُمْ: أَهْلُ الْمَدِينَةِ كُلُّهُمْ جِيرَانٌ.

L25587 It has been narrated to us via Ibn al-Jahm: Ahmad ibn al-Haytham → Sulayman ibn Harb → Abu al-Ayzar → I heard Abu Qilabah reporting: "The neighborhood is forty houses."

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ الْجَهْمِ نا أَحْمَدُ بْنُ الْهَيْثَمِ نا سُلَيْمَانُ بْنُ حَرْبٍ نا أَبُو الْعَيْزَارِ سَمِعْت أَبَا قِلَابَةَ يَقُولُ: الْجِوَارُ أَرْبَعُونَ دَارًا.

L25588 From the path of Ibn al-Jahm: Ahmad ibn Faraj narrated to us, Nasr ibn

Ali al-Jahdhami narrated to us: My father said: Al-Walid narrated to us—I heard al-Hasan say: “Forty houses here, and forty houses—they are from its four sides: forty, forty, forty.”

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا أَحْمَدُ بْنُ فَرَجٍ نا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ أَنَا أَبِي قَالَ: نا الْوَلِيدُ سَمِعْت الْحَسَنَ يَقُولُ: أَرْبَعُونَ دَارًا هَاهُنَا وَأَرْبَعُونَ دَارًا هِيَ مِنْ جَوَانِبِهَا الْأَرْبَعِ أَرْبَعُونَ أَرْبَعُونَ أَرْبَعُونَ.

L25589 Through the chain of Ibn al-Jahm, Aḥmad ibn Muḥammad ibn al-Mu’ammal, my maternal uncle, narrated to us, ʿAlī ibn al-Madīnī narrated to us, Ibn Abī Zā’ida narrated to us from Isḥāq ibn Fā’id: Muḥammad ibn ʿAlī ibn al-Ḥusayn ibn ʿAlī was asked, “Who is a man’s neighbor?” He replied, “The one who prays the morning with him.”

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْمُؤَمَّلِ خَالِي نا عَلِيَّ بْنَ الْمَدِينِيِّ نا ابْنُ أَبِي زَائِدَةَ عَنْ إِسْحَاق بْن فائد سُئِلَ مُحَمَّدُ بْنُ عَلِيِّ بْنِ الْحُسَيْنِ بْنِ عَلِيٍّ: مَنْ جَارُ الرَّجُلِ؟ قَالَ: مَنْ يُصَلِّي مَعَهُ الْغَدَاةَ.

L25590 Abu Muhammad said: We cannot currently recall the name of the one who stated, “They are all the people of Madinah,” except that it is an opinion which has indeed been expressed.

قَالَ أَبُو مُحَمَّدٍ: وَلَا يَحْضُرُنَا الْآنَ ذِكْرُ اسْمِ مَنْ قَالَ: هُمْ جَمِيعُ أَهْلِ الْمَدِينَةِ إِلَّا أَنَّهُ قَوْلٌ قَدْ قِيلَ.

L25591–25592 Ali said: As for those who restrict [the neighbor’s right] to forty dwellings, or to the Fajr prayer, or to the residents of Medina, they have relied on the narration “The neighbor has greater right to his preemption.” However, the limitation to forty dwellings or the Fajr prayer lacks any basis. We therefore scrutinized the narration cited by these individuals and found what we previously mentioned through the transmission chain of ʿAmr ibn al-Sharīd from Abū Rāfiʿ.

قَالَ عَلِيٌّ: أَمَّا مَنْ حَدَّ بِأَرْبَعِينَ دَارًا، أَوْ بِصَلَاةِ الْغَدَاةِ، أَوْ بِأَهْلِ الْمَدِينَةِ، فَإِنَّهُمْ تَعَلَّقُوا بِالْخَبَرِ «الْجَارُ أَحَقُّ بِسَقَبِهِ» إِلَّا أَنَّ تَحْدِيدَ الْأَرْبَعِينَ، وَصَلَاةَ الْغَدَاةِ، لَا وَجْهَ لَهُ، فَنَظَرْنَا فِي الْخَبَرِ الَّذِي احْتَجَّ بِهِ هَؤُلَاءِ فَوَجَدْنَا مَا ذَكَرْنَاهُ آنِفًا مِنْ طَرِيقِ عَمْرِو بْنِ الشَّرِيدِ عَنْ أَبِي رَافِعٍ.

L25593 We have not transmitted it through the chain of Aḥmad ibn Shuʿayb: I, Muḥammad ibn ʿAbd al-ʿAzīz al-Marwazī, narrated: Al-Faḍl ibn Mūsā narrated to us from Ḥusayn from Abū al-Zubayr from Jābir: “The Messenger of Allah (peace be upon him) ruled regarding preemption and neighboring rights.”[3]

وَمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْعَزِيزِ الْمَرْوَزِيِّ نا الْفَضْلُ بْنُ مُوسَى عَنْ حُسَيْنٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالشُّفْعَةِ وَالْجِوَارِ»

L25594 From the narration of Ibn Abi Shaybah: Abdah ibn Sulayman narrated to us from Abdul-Malik ibn Abi Sulayman al-Azrami, from Ata’, from Jabir, who said: The Messenger of Allah (peace and blessings be upon him) said: “The neighbor has the strongest right to the pre-emption of his neighbor if

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدَةُ بْنُ سُلَيْمَانَ عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي سُلَيْمَانَ الْعَرْزَمِيِّ عَنْ عَطَاءٍ عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْجَارُ أَحَقُّ بِشُفْعَةِ جَارِهِ إِذَا كَانَ طَرِيقُهُمَا وَاحِدًا يَنْتَظِرُ بِهَا وَإِنْ كَانَ غَائِبًا» .

[3] **Hadith references (L25593):** Sunan an-Nasai 4705.

they share a common pathway. He retains the right to pre-emption even if absent."

L25595 Similarly, it was narrated to us via the chain transmitted by Abū Dāwūd: from Aḥmad ibn Ḥanbal, from Hushaym, from ʿAbd al-Malik, from ʿAṭāʾ, from Jābir.

وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد عَنْ أَحْمَدَ بْنِ حَنْبَلٍ عَنْ هُشَيْمٍ عَنْ عَبْدِ الْمَلِكِ عَنْ عَطَاءٍ عَنْ جَابِرٍ

L25596 From the chain of Ibn Ayman: Muḥammad ibn Sulaymān narrated to us, Sulaymān ibn Dāwūd narrated to us, Hushaym said: I am ʻAbd al-Malik ibn Abī Sulaymān al-ʻArzamī, from ʻAṭāʾ, from Jābir, who said: "I purchased land adjoining a man's property. He said: 'I have a prior claim to it.' We brought our dispute to the Messenger of Allah—peace be upon him. I said: 'O Messenger of Allah, he has neither a pathway nor any right in my land?' He—peace be upon him—responded: 'He has the stronger right to it,' and ruled in his favor regarding the neighborhood right."

وَمِنْ طَرِيقِ ابْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ سُلَيْمَانَ نا سُلَيْمَانُ بْنُ دَاوُد نا هُشَيْمٌ أَنَا عَبْدُ الْمَلِكِ بْنُ أَبِي سُلَيْمَانَ الْعَرْزَمِيُّ عَنْ عَطَاءٍ عَنْ «جَابِرٍ قَالَ: اشْتَرَيْتُ أَرْضًا إِلَى جَنْبِ أَرْضِ رَجُلٍ فَقَالَ: أَنَا أَحَقُّ بِهَا؟ فَاخْتَصَمْنَا إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْتُ: يَا رَسُولَ اللَّهِ لَيْسَ لَهُ فِي أَرْضِي طَرِيقٌ وَلَا حَقٌّ؟ فَقَالَ - عَلَيْهِ السَّلَامُ - هُوَ أَحَقُّ بِهَا فَقَضَى لَهُ بِالْجِوَارِ»

L25597 From the chain of Ibn Ayman as well: Aḥmad ibn Muḥammad al-Birtī the judge narrated to us, Muḥammad ibn Kathīr narrated to us, Sufyān al-Thawrī narrated to us, from Manṣūr—who is Ibn al-Muʿtamir—from al-Ḥakam, from one who heard ʿAlī and Ibn Masʿūd: they both said collectively, "The Messenger of Allāh—may Allāh bless him and grant him peace—ruled in favor of the rights of neighbors (al-jiwār)."[4]

وَمِنْ طَرِيقِ ابْنِ أَيْمَنَ أَيْضًا نا أَحْمَدُ بْنُ مُحَمَّدٍ الْبِرْتِيُّ الْقَاضِي نا مُحَمَّدُ بْنُ كَثِيرٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورٍ هُوَ ابْنُ الْمُعْتَمِرِ عَنْ الْحَكَمِ عَمَّنْ سَمِعَ عَلِيًّا، وَابْنَ مَسْعُودٍ قَالَا جَمِيعًا: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْجِوَارِ» .

L25598 Via the narration of Shuʿbah from Qatādah from al-Ḥasan from Samurah ibn Jundub, the Messenger of Allah (peace be upon him) said: "The neighbor of the house has the pre-emptive right to the house and land," meaning [this applies] in the context of _shufʿah_ (pre-emptive right).

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «جَارُ الدَّارِ أَحَقُّ بِالدَّارِ وَبِالْأَرْضِ» يَعْنِي فِي الشُّفْعَةِ.

L25599–25601 From the path of Ibn Ayman: Aḥmad ibn Zuhayr ibn Ḥarb narrated to us, Aḥmad ibn Ḥubāb narrated to us, ʿĪsā ibn Yūnus narrated to us. From Saʿīd ibn Abī ʿArūbah from Qatādah from Anas, the Messenger of Allah—peace and blessings of Allah be upon him—said: "The neighbor of the house has the strongest claim to it." Aḥmad ibn Ḥubāb said: "'Īsā erred in this; it is mawqūf (attributed solely to Al-Ḥasan)."

وَمِنْ طَرِيقِ ابْنِ أَيْمَنَ نا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ نا أَحْمَدُ بْنُ حُبَابٍ نا عِيسَى بْنُ يُونُسَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ أَنَسٍ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «جَارُ الدَّارِ أَحَقُّ بِالدَّارِ» قَالَ أَحْمَدُ بْنُ حُبَابٍ، أَخْطَأَ فِيهِ عِيسَى إِنَّمَا هُوَ مَوْقُوفٌ عَلَى الْحَسَنِ.

[4] **Hadith references (L25597):** Musnad Ahmad 923.

L25602 From the chain of Qāsim ibn Aṣbagh: Muḥammad ibn Ismāʿīl narrated to us, al-Ḥasan ibn Sawwār narrated to us, Abū al-Muʿallā narrated to us, Ayyūb ibn ʿUtbah al-Yamāmī narrated to us, from al-Faḍl, from Qatādah, from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ that the Messenger of Allah—peace and blessings be upon him—said: "The neighbor is most entitled to the adjoining part of his land."

وَمِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ نا الْحَسَنُ بْنُ سَوَّارٍ نا أَبُو الْمُعَلَّى نا أَيُّوبُ بْنُ عُتْبَةَ الْيَمَامِيُّ عَنْ الْفَضْلِ عَنْ قَتَادَةَ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْجَارُ أَحَقُّ بِصَقَبِ أَرْضِهِ»

L25603 And through the chain of Ibn Abī Shaybah, from Abī Usāmah, from Al-Ḥusayn the Teacher, from ʿAmr ibn Shuʿayb, from ʿAmr ibn Al-Sharīd ibn Suwayd, from his father: I said, "O Messenger of God, what about land in which no one has a share or partnership except neighboring rights?" He said, "The neighbor has the greatest right to his adjoining area as long as it is."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ، عَنْ أَبِي أُسَامَةَ عَنْ الْحُسَيْنِ الْمُعَلِّمِ عَنْ عَمْرِو بْنِ شُعَيْبٍ «عَنْ عَمْرِو بْنِ الشَّرِيدِ بْنِ سُوَيْدٍ عَنْ أَبِيهِ قُلْتُ: يَا رَسُولَ اللَّهِ أَرْضٌ لَيْسَ فِيهَا لِأَحَدٍ قَسْمٌ وَلَا شِرْكٌ إِلَّا الْجِوَارُ؟ قَالَ: الْجَارُ أَحَقُّ بِصَقَبِهِ مَا كَانَ» .

L25604 And through the chain of Ibn al-Jahm: Yusuf ibn Yaqub narrated to us, Muhammad ibn Abi Bakr - who is al-Muqaddami - from Dalal bint Abi al-Adl from al-Ṣuhāfaq: "From Aisha, the Mother of the Believers: I said, 'O Messenger of Allah, what is the right of the neighbor?' He said, 'Forty houses.'"

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا يُوسُفُ بْنُ يَعْقُوبَ نا مُحَمَّدُ بْنُ أَبِي بَكْرٍ هُوَ الْمُقَدَّمِيُّ عَنْ دَلَالَ بِنْتِ أَبِي الْعَدْلِ عَنْ الصهفاق «عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قُلْتُ: يَا رَسُولَ اللَّهِ مَا حَقُّ الْجِوَارِ؟ قَالَ: أَرْبَعُونَ دَارًا» .

L25605 Through the chain of ʿAbd al-Razzāq from Sufyān from Hishām ibn al-Mughīrah al-Thaqafī, who said: I heard al-Shaʿbī say: The Prophet - peace and blessings of God be upon him - said: "The pre-emptor has priority over the neighbor, and the neighbor has priority over the third party."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ عَنْ هِشَامِ بْنِ الْمُغِيرَةِ الثَّقَفِيِّ قَالَ: سَمِعْت الشَّعْبِيَّ يَقُولُ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الشَّفِيعُ أَوْلَى مِنْ الْجَارِ وَالْجَارُ أَوْلَى مِنْ الْجَنْبِ»

L25606 From the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us: Yūnus from al-Ḥasan: "The Messenger of Allah (peace and blessings be upon him) ruled on the right of preemption."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا يُونُسُ عَنْ الْحَسَنِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالْجِوَارِ» .

L25607 Narrated through the chain of Saʿīd ibn Manṣūr: Abū'l-Aḥwaṣ narrated to us from ʿAbd al-ʿAzīz ibn Rafīʿ, from Ibn Abī Mulaykah, who reported that the Messenger of Allah (peace be upon him) said: "The partner has the prior right to his preemptive right."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو الْأَحْوَصِ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الشَّرِيكُ أَوْلَى بِشُفْعَتِهِ» .

L25608–25610 This is all that has come to them pertaining to their claims. We have exhaustively traced for them all that we know they have; they have nothing else besides this at all. Before all else, the entirety of this matter—from be-

ginning to end—contradicts Abū Ḥanīfah's position. For none of the reports we cited contain anything except either: "The neighbor is more entitled in general"—thus serving as evidence for those who uphold pre-emption for every neighbor—whereas they do not uphold it for every neighbor, but only for the immediately adjacent neighbor, or for one sharing a jointly owned pathway. Alternatively: "The neighbor with whom they share only a pathway." We do not deny this, but apart from these. The reports thus rendered the obfuscation employed by the Ḥanafīs entirely invalid, resulting in their position being devoid of agreement with any of the reports.

هَذَا كُلُّ مَا جَاءَ لَهُمْ مِمَّا يَتَعَلَّقُونَ بِهِ قَدْ تَقَصَّيْنَاهُ لَهُمْ مَا نَعْلَمُ لَهُمْ غَيْرَ هَذَا أَصْلًا، وَقَبْلَ كُلِّ شَيْءٍ فَهُوَ كُلُّهُ أَوَّلُهُ عَنْ آخِرِهِ مُخَالِفٌ لِقَوْلِ أَبِي حَنِيفَةَ؛ لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْ الْأَخْبَارِ الَّتِي أَوْرَدْنَا إلَّا إمَّا الْجَارُ أَحَقُّ عَلَى الْعُمُومِ، فَهِيَ حُجَّةٌ لِمَنْ رَأَى الشُّفْعَةَ لِكُلِّ جَارٍ، وَهُمْ لَا يَرَوْنَهَا لِكُلِّ جَارٍ، لَكِنْ لِلْمُلَاصِقِ وَحْدَهُ، أَوْ لِلَّذِي طَرِيقُهُمَا وَاحِدٌ مُتَمَلَّكٌ فَقَطْ وَإِمَّا الْجَارُ الَّذِي طَرِيقُهُمَا وَاحِدٌ فَقَطْ: وَهَذَا لَا نُنْكِرُهُ، وَلَكِنْ مِنْ غَيْرِ هَذِهِ الْأَخْبَارِ فَبَطَلَ تَمْوِيهُ الْحَنَفِيِّينَ بِهَا جُمْلَةً، وَحَصَلَ قَوْلُهُمْ عَارِيًّا مِنْ مُوَافَقَةِ شَيْءٍ مِنْ الْأَخْبَارِ.

L25611 Then we examined whether there exists any evidence therein supporting those who assert preemption rights for every neighbor. We began with the narration transmitted by Abū al-Zubayr from Jābir and found it devoid of valid proof for their stance due to two reasons. The first is that any narration where Abū al-Zubayr is not explicitly cited as having directly heard from Jābir, and which al-Layth did not transmit from him, was not directly heard from Jābir. However, it remains unknown from whom he obtained it, as he affirmed it upon himself, thus invalidating this narration.

ثُمَّ نَظَرْنَا هَلْ فِيهَا حُجَّةٌ لِمَنْ يَرَى الشُّفْعَةَ لِكُلِّ جَارٍ: فَبَدَأْنَا بِالْخَبَرِ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ فَوَجَدْنَاهُ لَا حُجَّةَ لَهُمْ فِيهِ لِوَجْهَيْنِ: أَحَدُهُمَا أَنَّ كُلَّ مَا لَمْ يُذْكَرْ فِيهِ أَبُو الزُّبَيْرِ سَمَاعًا مِنْ جَابِرٍ، وَلَا رَوَاهُ اللَّيْثُ عَنْهُ، فَلَمْ يَسْمَعْهُ مِنْ جَابِرٍ، لَكِنْ لَا يُدْرَى مِمَّنْ هُوَ أَقَرَّ بِذَلِكَ عَلَى نَفْسِهِ فَسَقَطَ هَذَا الْخَبَرُ.

L25612 The second point is that if we had witnessed Jābir—may Allah the Exalted be pleased with him—narrating it, they would have no argument against it, because the explicit wording states that the Prophet—may the peace and blessings of Allah be upon him—ruled on preemption and the right of adjacency.

وَالْوَجْهُ الثَّانِي أَنَّا لَوْ شَهِدْنَا جَابِرًا - رَضِيَ اللَّهُ تَعَالَى عَنْهُ - يُحَدِّثُ بِهِ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّ نَصَّهُ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالشُّفْعَةِ وَالْجِوَارِ»

L25613 As for preemption, we have indeed come to know what it is from other narrations.

فَأَمَّا الشُّفْعَةُ فَقَدْ عَرَفْنَا مَا هِيَ مِنْ أَخْبَارٍ أُخَرَ.

L25614 As for al-jiwār (protection pact), we do not know what it signifies in this narration at all.

وَأَمَّا الْجِوَارُ فَمَا نَدْرِي مَا هُوَ مِنْ هَذَا الْخَبَرِ أَصْلًا.

L25615 Whoever interprets the speech of Allah's Messenger (peace be upon him) according to his own reasoning in a manner contrary to what its wording necessitates has lied against Allah's Messenger (peace be upon him), ascribing

وَمَنْ فَسَّرَ كَلَامَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ عَقْلِهِ بِمَا لَا يَقْتَضِيهِ لَفْظُهُ فَهُوَ كَاذِبٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُقَوِّلٌ لَهُ مَا لَمْ يَقُلْ وَقَوْلُ الْقَائِلِ:

to him what he did not say. The statement of one who claims, "He ruled based on neighborly bonds," provides no evidence for any rulings pertaining to preemption. It may instead denote kindness toward a neighbor due to proximity. This further clarifies the obligation's validity through the Quran and the authentic Prophetic traditions, thereby invalidating their reliance upon it.

قَضَى بِالْجِوَارِ، لَا دَلِيلَ فِيهِ عَلَى شَيْءٍ مِنْ أَحْكَامِ الشُّفْعَةِ وَلَعَلَّهُ الْبِرُّ لِلْجَارِ مِنْ أَجْلِ الْجِوَارِ، فَهَذَا أَبْيَنُ بِصِحَّةِ وُجُوبِهِ بِالْقُرْآنِ، وَبِالسُّنَنِ الصِّحَاحِ فَسَقَطَ تَعَلُّقُهُمْ بِهِ.

L25616 Then we examined the narration of 'Aṭā' from Jābir and found it transmitted through the chain of 'Abd al-Malik ibn Abī Sulaymān (a narrator of disputed reliability), whom Shu'bah—a renowned hadith critic—and others weakened. Even if it were authentic, it would constitute evidence in our favor, as it aligns with our position. However, we do not adduce as evidence what we do not authenticate, even if it concurs with us—unlike those who do not revere Allah, the Mighty and Majestic, for they ceaselessly cite whatever aligns with their view, whether it is weak or authentic, while rejecting the weak and the authentic if they contradict his adherence.

ثُمَّ نَظَرْنَا فِي حَدِيثِ عَطَاءٍ عَنْ جَابِرٍ فَوَجَدْنَاهُ مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ أَبِي سُلَيْمَانَ وَهُوَ مُتَكَلَّمٌ فِيهِ، ضَعَّفَهُ شُعْبَةُ وَغَيْرُهُ، ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا، لِأَنَّهُ مُوَافِقٌ لَنَا، وَلَكِنَّا لَا نَحْتَجُّ بِمَا لَا نُصَحِّحُهُ وَإِنْ وَافَقَنَا، لَا كَمَا يَصْنَعُ مَنْ لَا يَتَّقِي اللَّهَ عَزَّ وَجَلَّ فَلَا يَزَالُ يَحْتَجُّ بِمَا وَافَقَهُ، وَإِنْ كَانَ ضَعِيفًا أَوْ صَحِيحًا، وَيَرُدُّ الضَّعِيفَ، وَالصَّحِيحَ إِذَا لَمْ يُوَافِقْ تَقْلِيدَهُ

L25617 Then we examined the third hadith and found it also to be from the narration of Abd al-Malik ibn Abi Sulayman, who is weak.

ثُمَّ نَظَرْنَا فِي الْحَدِيثِ الثَّالِثِ فَوَجَدْنَاهُ أَيْضًا مِنْ رِوَايَةِ عَبْدِ الْمَلِكِ بْنِ أَبِي سُلَيْمَانَ وَهُوَ ضَعِيفٌ.

L25618 Then the narration of ʿAbdah and Aḥmad from Hushaym from al-ʿArzamī contains an addition not mentioned by Sulaymān ibn Dāwūd: namely, that the path is singular. If al-ʿArzamī's narration were authentic, it would be preferable to accept the addition of the two reliable ones. As for his statement, "He has no path in my land," we do not contradict this opinion if their path is one, because the grazing path pertains to access to the land, not its presence within the land.

ثُمَّ رِوَايَةُ عَبْدَةَ وَأَحْمَدَ عَنْ هُشَيْمٍ عَنِ الْعَرْزَمِيِّ جَاءَتْ بِزِيَادَةٍ لَمْ يَذْكُرْهَا سُلَيْمَانُ بْنُ دَاوُد وَهِيَ كَوْنُ الطَّرِيقِ وَاحِدًا فَلَوْ صَحَّتْ رِوَايَةُ الْعَرْزَمِيِّ لَكَانَ الْأَخْذُ بِزِيَادَةِ الْعَدْلَيْنِ أَوْلَى، وَقَوْلُهُ لَيْسَ لَهُ فِي أَرْضِي طَرِيقٌ، لَا نُخَالِفُ الْقَوْلَ إِذَا كَانَ طَرِيقُهُمَا وَاحِدًا، لِأَنَّ الطَّرِيقَ الْمُرْعَاةَ إِنَّمَا هِيَ إِلَى الْأَرْضِ، لَا كَوْنُهَا فِي الْأَرْضِ.

L25619–25621 Then we examined the report of ʿAlī and Ibn Masʿūd and found it disconnected, as al-Ḥakam did not meet either of them nor did he name those from whom he heard it regarding them. Thus, it is nullified. Moreover, even if it were authentic, they would have no valid basis for relying on it whatsoever, because it merely... In it, [it is stated] that he (peace be upon him) ruled on neighborly relations, and there is absolutely no evidence in this for pre-emption whatsoever.

ثُمَّ نَظَرْنَا فِي خَبَرِ عَلِيٍّ، وَابْنِ مَسْعُودٍ فَوَجَدْنَاهُ مُنْقَطِعًا، لِأَنَّ الْحَكَمَ لَمْ يُدْرِكْهُمَا وَلَا سَمَّى مَنْ سَمِعَهُ مِنْهُ عَنْهُمَا: فَبَطَلَ، ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ مُتَعَلَّقٌ أَصْلًا، لِأَنَّهُ إِنَّمَا فِيهِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - قَضَى بِالْجِوَارِ وَلَيْسَ فِي هَذَا دَلِيلٌ عَلَى الشُّفْعَةِ أَصْلًا.

L25622 Then we examined the narration of Samura and found no proof for them in it, because Al-Hasan heard nothing from Samura except the hadith of the ʾAqeeqah itself, thus their reliance on it is nullified.

ثُمَّ نَظَرْنَا فِي خَبَرِ سَمُرَةَ فَوَجَدْنَاهُ لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ الْحَسَنَ لَمْ يَسْمَعْ مِنْ سَمُرَةَ إِلَّا حَدِيثَ الْعَقِيقَةِ وَحْدَهُ فَبَطَلَ تَعَلُّقُهُمْ بِهِ.

L25623 Then we examined the ḥadīth of Anās and found its explicit text: "The neighbor of the property is most entitled to the property." This might perhaps serve as evidence for those who grant preemption rights to every neighbor, were it not for what we shall mention when we complete our discussion of these narrations, God the Exalted willing.

ثُمَّ نَظَرْنَا فِي حَدِيثِ أَنَسٍ فَوَجَدْنَا نَصَّهُ «جَارُ الدَّارِ أَحَقُّ بِالدَّارِ» فَكَانَ هَذَا رُبَّمَا أَمْكَنَ أَنْ يَكُونَ حُجَّةً لِمَنْ جَعَلَ الشُّفْعَةَ لِكُلِّ جَارٍ لَوْلَا مَا نَذْكُرُهُ إِذَا أَتْمَمْنَا الْكَلَامَ فِي هَذِهِ الْأَخْبَارِ إِنْ شَاءَ اللَّهُ تَعَالَى.

L25624 Furthermore, we do not consider ʿĪsā ibn Yūnus's hearing from Ibn Abī ʿArūbah to have occurred except after the latter's mental impairment. Let it suffice you that the one who narrated from him stated that Ibn Abī ʿArūbah erred in this matter.

هَذَا وَمَا نَرَى سَمَاعَ عِيسَى بْنِ يُونُسَ كَانَ مِنْ ابْنِ أَبِي عَرُوبَةَ إِلَّا بَعْدَ اخْتِلَاطِهِ، وَحَسْبُكَ أَنَّ الَّذِي رَوَاهُ عَنْهُ ذَكَرَ أَنَّهُ أَخْطَأَ فِيهِ.

L25625 Moreover, there is no mention of preemption in it at all, and divination is not permissible. Perhaps the intended meaning is that he is more entitled to the righteous treatment and support of the household members. This is better and more appropriate due to the soundness of the Qur'an's mention of that. Allah the Exalted said: "And the neighbor who is near and the neighbor who is a stranger" [An-Nisa': 36].[5]

وَأَيْضًا فَلَيْسَ فِيهِ ذِكْرٌ لِشُفْعَةٍ أَصْلًا، وَالتَّكَهُّنُ لَا يَحِلُّ، وَلَعَلَّ الْمُرَادَ أَنَّهُ أَحَقُّ بِبِرِّ أَهْلِ الدَّارِ وَرِفْدِهِمْ، فَهَذَا أَحْسَنُ وَأَوْلَى لِصِحَّةِ وُرُودِ الْقُرْآنِ بِذَلِكَ، قَالَ اللَّهُ تَعَالَى: {وَالْجَارِ ذِي الْقُرْبَى وَالْجَارِ الْجُنُبِ} [النساء: ٣٦]

L25626 The Messenger of Allah (may Allah bless him and grant him peace) had enjoined kindness to neighbors, thus invalidated their insistence on the claim that he only intended preemption. Their statement was equivalent to soothsaying and conjecture, and conjecture is the most untruthful of speech.

وَقَدْ أَوْصَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْجَارِ فَبَطَلَ تَعَلُّقُهُمْ بِأَنَّهُ إِنَّمَا أَرَادَ الشُّفْعَةَ، وَكَانَ قَوْلُهُمْ هَذَا كَهَانَةً وَظَنًّا، وَالظَّنُّ أَكْذَبُ الْحَدِيثِ.

L25627 Then we examined the ḥadīth of ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ and found it at the lowest level of reliability, for it is narrated through Ayyūb ibn ʿUtbah al-Yamāmī—who is weak—then via al-Faḍl: if this refers to Ibn Dalham, he is discarded; if another narrator, he is unidentified. Moreover, Qatādah never heard a single word from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ nor met him, thus it is invalidated in every aspect. Even if authenticated, it would only state "the neighbor has the strongest claim to his adjoining land," making its ruling exactly the same in every way as the ruling regarding the ḥadīth of Anas.

ثُمَّ نَظَرْنَا فِي حَدِيثِ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ فَوَجَدْنَاهُ فِي نِهَايَةِ السُّقُوطِ، لِأَنَّهُ عَنْ أَيُّوبَ بْنِ عُتْبَةَ الْيَمَامِيِّ وَهُوَ ضَعِيفٌ، ثُمَّ عَنْ الْفَضْلِ، فَإِنْ كَانَ ابْنُ دَلْهَمٍ فَهُوَ سَاقِطٌ، وَإِنْ كَانَ غَيْرَهُ فَهُوَ مَجْهُولٌ، ثُمَّ لَمْ يَسْمَعْ قَتَادَةُ مِنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ قَطُّ كَلِمَةً، وَلَا اجْتَمَعَ مَعَهُ فَبَطَلَ مِنْ كُلِّ وَجْهٍ ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ إِلَّا الْجَارُ أَحَقُّ بِصَقَبِ أَرْضِهِ، فَالْقَوْلُ فِيهِ كَالْقَوْلِ فِي حَدِيثِ أَنَسٍ سَوَاءً سَوَاءً.

[5] **Qur'an references (L25625):** Qur'an 4:36 (An-Nisa).

ثُمَّ نَظَرْنَا فِي حَدِيثِ عَائِشَةَ فَوَجَدْنَاهُ أَسْقَطَهَا كُلَّهَا؛ لِأَنَّهُ عَنْ دَلَالَ بِنْتِ أَبِي المدل وَلَا يُدْرَى مَنْ هِيَ عَمَّنْ: لَا يُدْرَى مَنْ هُوَ، ثُمَّ لَيْسَ فِيهِ أَيْضًا بَيَانُ أَنَّهُ فِي الشُّفْعَةِ.

L25628 Then we examined the narration attributed to ʾĀʾishah and found its chain entirely broken, for it is narrated from Dalāl bint Abī al-Mudallal - whose reliability is indeterminate, as it is unknown whom she reported from nor who transmitted her narration. Moreover, the text contains no explicit indication that it pertains to the right of pre-emption.

لَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ الْمُتَكَهِّنِينَ فِي الْأَخْبَارِ الَّتِي ذَكَرْنَا أَنْ يَأْخُذُوهُ؛ لِأَنَّهُ مِثْلُهَا وَلَا فَرْقَ، كَهَانَةٌ بِكَهَانَةٍ.

L25629 Indeed, it was obligatory for the Hanafis—who engaged in evaluating the reports we mentioned—to adopt it, as it is equivalent to those [reports] with no distinction: soothsaying is no different from soothsaying.

ثُمَّ نَظَرْنَا فِي حَدِيثِ الشَّعْبِيِّ فَوَجَدْنَاهُ لَا شَيْءَ؛ لِأَنَّهُ مُنْقَطِعٌ، ثُمَّ هُوَ عَنْ هِشَامِ بْنِ الْمُغِيرَةِ الثَّقَفِيِّ وَهُوَ ضَعِيفٌ ثُمَّ نَظَرْنَا فِي خَبَرِ الْحَسَنِ فَوَجَدْنَاهُ مُرْسَلًا، ثُمَّ لَيْسَ فِيهِ إِلَّا أَنَّهُ - عَلَيْهِ السَّلَامُ - قَضَى بِالْجِوَارِ وَلَيْسَ فِي هَذَا مِنَ الشُّفْعَةِ أَثَرٌ وَلَا عِثْيَرٌ وَلَا إِشَارَةٌ وَكَمَا ذَكَرْنَا قَبْلُ.

L25630–25632 Then we examined the ḥadīth of al-Shaʿbī and found it baseless because its chain is interrupted; then it is narrated from Hishām ibn al-Mughīrah al-Thaqafī—and he is a weak narrator. Then we examined the report of al-Ḥasan and found it to be mursal. Furthermore, it contains nothing except that he—may Allah have mercy on him—ruled in favor of neighboring rights. In this, there is no trace, allusion, or indication of preemption, just as we mentioned before.

ثُمَّ نَظَرْنَا فِي حَدِيثِ ابْنِ أَبِي مُلَيْكَةَ فَوَجَدْنَاهُ أَيْضًا مُرْسَلًا، ثُمَّ لَيْسَ فِيهِ إِلَّا الشَّرِيكُ أَوْلَى بِصَقَبِهِ، وَهَذَا لَا نُنْكِرُهُ، بَلْ نَقُولُ بِهِ.

L25633 Then we examined the ḥadīth of Ibn Abī Mulaykah and also found it to be mursal. Moreover, it contains nothing except the statement that “the partner is more entitled to his right of pre-emption (shufʿah).” We do not deny this; rather, we affirm it.

ثُمَّ نَظَرْنَا فِي حَدِيثِ عَمْرِو بْنِ الشَّرِيدِ عَنْ أَبِي رَافِعٍ عَنْ أَبِيهِ فَوَجَدْنَاهُ لَا مُتَعَلَّقَ لَهُمْ بِهِ؛ لِأَنَّهُ لَيْسَ فِيهِ إِلَّا الْجَارُ أَحَقُّ بِصَقَبِهِ، وَلَيْسَ فِيهِ لِلشُّفْعَةِ ذِكْرٌ وَلَا أَثَرٌ.

L25634 Then we examined the narration of ʿAmr ibn al-Sharīd from Abū Rāfiʿ from his father and found no basis for their position in it, for it contains nothing except “the neighbor has the prior right to what adjoins him,” with no mention or trace of preemption therein.

وَقَدْ حَدَّثَنَا حُمَامُ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَحْمَدُ بْنُ زُهَيْرٍ نا أَبُو نُعَيْمٍ الْفَضْلُ بْنُ دُكَيْنٍ نا عَبْدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ يَعْلَى بْنِ كَعْبٍ الثَّقَفِيُّ قَالَ: سَمِعْتُ عَمْرَو بْنَ الشَّرِيدِ يُحَدِّثُ عَنْ الشَّرِيدِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْمَرْءُ أَحَقُّ وَأَوْلَى بِصَقَبِهِ قُلْتُ لِعَمْرٍو: مَا صَقَبُهُ؟ قَالَ: الشُّفْعَةُ، قُلْتُ: زَعَمَ النَّاسُ

L25635 Humam narrated to us: Abbas ibn Asbagh narrated to us: Muhammad ibn Abd al-Malik ibn Ayman narrated to us: Ahmad ibn Zuhayr narrated to us: Abu Nuʿaym al-Fadl ibn Dukayn narrated to us: Abdullah ibn Abd al-Rahman ibn Yaʿla ibn Kaʿb al-Thaqafi said: I heard Amr ibn al-Sharid narrating from al-Sharid, from the Prophet—peace and blessings be upon him—who said: “A person is most entitled and deserving of his ṣaqab.” I asked Amr: “What is his ṣaqab?” He replied: “The pre-emption (shufʿah).” I said: “People assert it refers to jiwār (neighborhood).” He said: “People say that.” Thus, the narrator of this hadith, Amr ibn al-Sharid, does not hold that pre-emption

applies to neighborhood nor considers the narration's wording to necessitate it. Therefore, all the deceptive arguments they contrived are invalidated.

أَنَّهَا الْجِوَارُ؟ قَالَ: النَّاسُ يَقُولُونَ ذَلِكَ» فَهَذَا رَاوِي الْحَدِيثِ عَمْرُو بْنُ الشَّرِيدِ لَا يَرَى الشُّفْعَةَ بِالْجِوَارِ، وَلَا يَرَى لَفْظَ مَا رُوِيَ يَقْتَضِي ذَلِكَ فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ.

L25636 Then, if these hadiths were established with a clear statement that the right of pre-emption belongs to the neighbor, his ruling—peace and blessings be upon him—his saying, and his judgment, "When boundaries are fixed and paths are designated, there is no pre-emption," would decisively settle all of that and resolve the ambiguity. How then when there is no clarification in any of them, as we have mentioned? Most are inauthentic, and it is not appropriate to occupy oneself with them due to the weakness of their chains of transmission. Success is from Allah, the Exalted.

ثُمَّ لَوْ صَحَّتْ هَذِهِ الْأَحَادِيثُ بِبَيَانٍ وَاضِحٍ أَنَّ الشُّفْعَةَ لِلْجَارِ لَكَانَ حُكْمُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَقَوْلُهُ، وَقَضَاؤُهُ «فَإِذَا وَقَعَتْ الْحُدُودُ وَصُرِّفَتْ الطُّرُقُ فَلَا شُفْعَةَ» يَقْضِي عَلَى ذَلِكَ كُلِّهِ وَيَرْفَعُ الْإِشْكَالَ، فَكَيْفَ وَلَا بَيَانَ فِي شَيْءٍ مِنْهَا كَمَا ذَكَرْنَا، وَأَكْثَرُهَا لَا يَصِحُّ، وَلَا يَنْبَغِي أَنْ يَشْتَغِلَ بِهَا لِسُقُوطِ طُرُقِهَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25637 Among the grave audacities of later generations—in their era, their faiths, and in the sight of Allah the Exalted—is the claim by some regarding what is authentically established from the Messenger of Allah (ﷺ): his statement, "When legal punishments are enacted and paths are established, there is no pre-emption"—that these words are not from the Prophet's speech. If only I knew where they obtained this! Who informed them of it! These people have been granted by Allah the Exalted an ample share of trivializing falsehood in matters of religion, and we seek refuge in Allah from the likes of this.

وَمِنْ عَظِيمِ إقْدَامِ الْمُتَأَخِّرِينَ فِي زَمَانِهِمْ وَأَدْيَانِهِمْ وَعِنْدَ اللَّهِ تَعَالَى قَوْلُ بَعْضِهِمْ فِي الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ «فَإِذَا وَقَعَتْ الْحُدُودُ وَصُرِّفَتْ الطُّرُقُ فَلَا شُفْعَةَ» أَنَّ هَذَا اللَّفْظَ لَيْسَ مِنْ كَلَامِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَيْتَ شِعْرِي أَيْنَ وَجَدُوا هَذَا؟ وَمَنْ أَخْبَرَهُمْ بِهِ؟ وَالْقَوْمُ قَدْ رَزَقَهُمْ اللَّهُ تَعَالَى مِنْ اسْتِسْهَالِ الْكَذِبِ فِي الدِّينِ حَظًّا وَافِرًا وَنَعُوذُ بِاَللَّهِ مِنْ مِثْلِهِ.

L25638 And they said regarding what was narrated to us through the chain of Abu Dawud: Muhammad ibn Yahya ibn Faris narrated to us, al-Hasan ibn al-Rabīʿ narrated to us, Ibn Idris—who is ʿAbdullah—narrated to us from Ibn Jurayj from Ibn Shihab from Abu Salamah ibn ʿAbd al-Rahman or from Saʿid ibn al-Musayyab or from all of them collectively from Abu Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him) said: "When land is divided and delimited, there is no right of preemption [shufʿah] in it."

وَقَالُوا فِيمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ يَحْيَى بْنِ فَارِسٍ نا الْحَسَنُ بْنُ الرَّبِيعِ نا ابْنُ إدْرِيسَ هُوَ عَبْدُ اللَّهِ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ أَوْ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَوْ عَنْهُمْ جَمِيعًا عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا قُسِّمَتْ الْأَرْضُ وَحُدَّتْ فَلَا شُفْعَةَ فِيهَا.»

L25639–25641 They said: Yes, neither division nor specification necessitates pre-emption in it; rather, pre-emption is obligatory. Regarding the sale, this stands as compelling proof that the absence of modesty lies solely with the speaker himself. And Allah has protected His Messenger—peace be upon him—from uttering foolishness and speech devoid of meaning.

قَالُوا: نَعَمْ لَيْسَتْ الْقِسْمَةُ وَلَا التَّحْدِيدُ مُوجِبَيْنِ فِيهَا شُفْعَةً، إنَّمَا تَجِبُ الشُّفْعَةُ بِالْبَيْعِ، فَكَانَ هَذَا بُرْهَانًا قَوِيًّا عَلَى عَدَمِ الْحَيَاءِ مِنْ وَجْهِ قَائِلِهِ فَقَطْ وَقَدْ أَعَاذَ اللَّهُ رَسُولَهُ - عَلَيْهِ السَّلَامُ - مِنْ أَنْ يَتَكَلَّمَ بِالسُّخْفِ وَبِمَا لَا مَعْنَى لَهُ.

L25642 Every person of sound judgment knows that pre-emption has no place in partition. How then could pre-emption apply to land that has already been partitioned? Would one of them seize his partner's property through confrontation? This is impossible.

وَقَدْ عَلِمَ كُلُّ ذِي حِسٍّ سَلِيمٍ أَنَّ الشُّفْعَةَ لَا مَدْخَلَ لَهَا فِي الْقِسْمَةِ فَكَيْفَ تَكُونُ الشُّفْعَةُ فِي أَرْضٍ قُسِّمَتْ؟ أَتَرَى أَحَدَهُمَا يَأْخُذُ مَالَ صَاحِبِهِ مُصَادَمَةً؟ هَذَا مُحَالٌ.

L25643 How then, when it is an authenticated report? At times, trustworthy narrators cited this wording alone from the Messenger of Allah (peace and blessings be upon him), and at other times, they appended it to another of his phrases (peace be upon him).

فَكَيْفَ وَهُوَ خَبَرٌ مُسْنَدٌ، مَرَّةً ذَكَرَ الثِّقَاتُ هَذَا اللَّفْظَ وَحْدَهُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَرَّةً أَضَافُوهُ إِلَى لَفْظٍ آخَرَ لَهُ - عَلَيْهِ السَّلَامُ -

L25644 As we have been narrated through the chain of Qāsim ibn Aṣbagh, who narrated to us ʿUbayd Allāh ibn Muḥammad al-ʿUmarī, who narrated to us Yaḥyā ibn Abī Qatīlah, Abū Ibrāhīm al-Madanī, who narrated to us Mālik from al-Zuhrī from Saʿīd ibn al-Musayyib and Abū Salamah ibn ʿAbd al-Raḥmān from Abū Hurayrah, who said: The Messenger of Allah (peace be upon him) said: "The right of shufʿah applies to what has not been divided. When boundaries are demarcated, there is no shufʿah."

كَمَا رُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا عُبَيْدُ اللَّهِ بْنُ مُحَمَّدٍ الْعُمَرِيُّ نا أَبُو إِبْرَاهِيمَ يَحْيَى بْنُ أَبِي قَتِيلَةَ الْمَدَنِيُّ نا مَالِكٌ عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الشُّفْعَةُ فِيمَا لَمْ يُقْسَمْ فَإِذَا وَقَعَتْ الْحُدُودُ فَلَا شُفْعَةَ» .

L25645 Thus, the invalidity of the aforementioned opinions has become evident, with the most invalid of them being the opinions of Abū Ḥanīfah, because he contradicted all the transmitted rulings. He did not rely on a sound report, nor even a weak narration, nor a Companion's statement. Rather, he opposed every juridical precedent transmitted from a Companion regarding that matter, because the rulings transmitted from them (may Allah be pleased with them)—as we have earlier cited from ʿUmar and ʿUthmān—establish that "legal penalties abrogate the right of pre-emption."

فَظَهَرَ فَسَادُ الْأَقْوَالِ الْمَذْكُورَةِ، فَأَشَدُّهَا فَسَادًا أَقْوَالُ أَبِي حَنِيفَةَ، لِأَنَّهُ خَالَفَ جَمِيعَ الْأَخْبَارِ، وَلَمْ يَتَعَلَّقْ لَا بِخَبَرٍ صَحِيحٍ، وَلَا بِرِوَايَةٍ سَقِيمَةٍ، وَلَا بِقَوْلِ صَاحِبٍ، بَلْ خَالَفَ كُلَّ رِوَايَةٍ جَاءَتْ فِي ذَلِكَ عَنْ صَاحِبٍ، لِأَنَّ الرِّوَايَةَ عَنْهُمْ - رَضِيَ اللَّهُ عَنْهُمْ - كَمَا قَدَّمْنَا عَنْ عُمَرَ، وَعُثْمَانَ أَنَّ الْحُدُودَ تَقْطَعُ الشُّفْعَةَ.

L25646 And a narration from ʿUmar concerning preemption rights for neighbors, with some adding "the adjoining neighbors" - though this wording is not recognized. Even if it were authentic, the statement attributed to him applies to "the neighbor" as a general principle, making it an extension beyond "the adjoining neighbors."

وَرِوَايَةً عَنْ عُمَرَ بِالشُّفْعَةِ لِلْجَارِ وَزَادَ بَعْضُهُمْ الْمُلَازِقِ، وَلَا تُعْرَفُ هَذِهِ اللَّفْظَةُ، وَحَتَّى لَوْ صَحَّتْ فَقَدْ جَاءَ عَنْهُ لِلْجَارِ جُمْلَةً، فَهِيَ زِيَادَةٌ عَلَى الْمُلَازِقِ.

L25647 From Saʿīd and Abū Rāfiʿ—they both did not mention the absence of a preemption right for neighbors separated by an unowned road—neither from ʿAmr ibn Ḥurayth nor from any of the Companions.

وَعَنْ سَعِيدٍ، وَأَبِي رَافِعٍ وَلَمْ يَذْكُرَا أَنْ لَا شُفْعَةَ لِجَارٍ بَيْنَهُمَا طَرِيقٌ غَيْرُ مُتَمَلَّكٍ، لَا عَنْ عَمْرِو بْنِ حُرَيْثٍ، وَلَا عَنْ أَحَدٍ مِنَ الصَّحَابَةِ.

وَأَمَّا قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ: فَإِنَّهُمْ تَعَلَّقُوا بِهَذَا الْخَبَرِ وَبِمِثْلِهِ مِمَّا فِيهِ «فَإِذَا وَقَعَتْ الْحُدُودُ وَصُرِّفَتْ الطُّرُقُ فَلَا شُفْعَةَ» ؟ فَقُلْنَا: إنَّ حَدِيثَ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ عَنْ جَابِرٍ فِيهِ «إذَا وَقَعَتْ الْحُدُودُ وَصُرِّفَتْ الطُّرُقُ فَلَا شُفْعَةَ» فَكَانَ هَذَا بَيَانًا زَائِدًا لَا يَحِلُّ تَرْكُهُ وَزِيَادَةَ عَدْلٍ أَخْذُهَا وَاجِبٌ.

L25648–25650 As for the statements of Mālik and al-Shāfiʿī, they based their argument on this narration and others like it containing the wording: "When property boundaries have been established and pathways have been designated, there is no preemption right." We responded: The ḥadīth transmitted by Maʿmar from al-Zuhrī from Abū Salama from Jābir states: "When boundaries have been established..." The prescribed penalties have been established, the juristic paths have been expounded, and thus there is no right of preemption. This constitutes an additional clarification that it is impermissible to abandon, and the adoption of further justice is obligatory.

وَأَيْضًا: فَإِنَّ قَوْلَهُ - عَلَيْهِ السَّلَامُ - «إذَا قُسِّمَتْ الْأَرْضُ فَلَا شُفْعَةَ» يُوجِبُ قَوْلَنَا لَا قَوْلَهُمْ، حَتَّى لَوْ لَمْ يَأْتِ زِيَادَةُ مَعْمَرٍ، لِأَنَّهُ وَإِنْ قُسِّمَتْ الْأَرْضُ وَالدَّارُ، وَكَانَ الطَّرِيقُ إلَيْهَا مُتَمَلَّكًا لِأَهْلِهَا فَلَمْ يُقَسِّمُوهُ فَلَمْ تُقَسَّمْ تِلْكَ الْأَرْضُ بَعْدُ، لَكِنْ قُسِّمَ بَعْضُهَا وَحُدَّ بَعْضُهَا، وَلَمْ يُبْطِلْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ الشُّفْعَةَ بِقِسْمَةِ الْبَعْضِ، لَكِنْ بِقِسْمَةِ الْكُلِّ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25651 Moreover, the statement of the Prophet—peace and blessings of Allah be upon him—"When land is divided, there is no pre-emption right," necessitates our position, not theirs. This would hold even without Maʿmar's supplementary report, for if the land and property were divided while the path leading to them remained owned by their owners and undivided, that land would still not be divided. Rather, part of it was divided and part was demarcated. The Prophet—peace and blessings of Allah be upon him—never invalidated the pre-emption right due to partial division, but only due to complete division. And success comes from Allah, the Most High.



AL-MUHALLA

كِتَابُ السَّلَمِ

The Book of Advance Payment Sales (Salam)

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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Book of Salam | Ruling: Salam is Not Considered Bayʿ (Sale)

[كِتَابُ السَّلَمِ] [مَسْأَلَةٌ السَّلَمُ لَيْسَ بَيْعًا]

In the name of Allah, the Most Gracious, the Most Merciful, and may Allah bless Muhammad and his household and grant them peace. The Book of Salam, Issue 1613: Abu Muhammad Ali ibn Ahmad ibn Sa'id ibn Hazm—may Allah be pleased with him—said: Salam is not a sale; because naming in religions belongs solely to Allah, the Almighty, on the tongue of His Messenger (peace be upon him). The Messenger of Allah (peace be upon him) indeed designated it as Salaf, Taslif, or Salam.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ وَسَلَّمَ كِتَابُ السَّلَمِ ١٦١٣ مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ عَلِيُّ بْنُ أَحْمَدَ بْنِ سَعِيدِ بْنِ حَزْمٍ - رَضِيَ اللَّهُ عَنْهُ -: السَّلَمُ لَيْسَ بَيْعًا؛ لِأَنَّ التَّسْمِيَةَ فِي الدِّيَانَاتِ لَيْسَتْ إلَّا لِلَّهِ عَزَّ وَجَلَّ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا سَمَّاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - السَّلَفَ، أَوْ التَّسْلِيفَ، أَوْ السَّلَمَ.

Sale is permissible with dinars and dirhams as immediate payment, on credit without a specified term, and deferred until capability of payment.

وَالْبَيْعُ يَجُوزُ بِالدَّنَانِيرِ وَبِالدَّرَاهِمِ حَالًّا وَفِي الذِّمَّةِ إلَى غَيْرِ أَجَلٍ مُسَمًّى وَإِلَى الْمَيْسَرَةِ.

Salam is permissible only with a specified term, and this is necessary, while sale is permissible for any owned item where there is no textual prohibition against its sale.

وَالسَّلَمُ لَا يَجُوزُ إلَّا إلَى أَجَلٍ مُسَمًّى وَلَا بُدَّ وَالْبَيْعُ يَجُوزُ فِي كُلِّ مُتَمَلَّكٍ لَمْ يَأْتِ النَّصُّ بِالنَّهْيِ عَنْ بَيْعِهِ.

A salam contract is permissible only for commodities measured by volume or by weight.

وَلَا يَجُوزُ السَّلَمُ إلَّا فِي مَكِيلٍ أَوْ مَوْزُونٍ فَقَطْ.

It is not permissible for animals, nor for measured [goods], nor for counted [items], nor for anything other than what we have mentioned.

وَلَا يَجُوزُ فِي حَيَوَانٍ وَلَا مَذْرُوعٍ وَلَا مَعْدُودٍ وَلَا فِي شَيْءٍ غَيْرِ مَا ذَكَرْنَا.

The sale is not permissible for what is not in your possession.

وَالْبَيْعُ لَا يَجُوزُ فِيمَا لَيْسَ عِنْدَك.

Salam is permissible in that which is not in your possession.

وَالسَّلَمُ يَجُوزُ فِيمَا لَيْسَ عِنْدَك.

A sale is not valid in any circumstance unless it pertains to a specific thing.

وَالْبَيْعُ لَا يَجُوزُ أَلْبَتَّةَ إلَّا فِي شَيْءٍ بِعَيْنِهِ.

Fundamentally, Salam is not permissible in any specifically identified item.

وَلَا يَجُوزُ السَّلَمُ فِي شَيْءٍ بِعَيْنِهِ أَصْلًا.

The evidence for that is what has been transmitted to us through the chain of Muslim: he informed us via Shaybān ibn Farrūkh, Yaḥyā ibn Yaḥyā, and Abū Bakr ibn Abī Shaybah; Yaḥyā said, and Abū Bakr, from Ibn ʿUlayyah.

بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا شَيْبَانُ بْنُ فَرُّوخَ، وَيَحْيَى بْنُ يَحْيَى، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، قَالَ يَحْيَى، وَأَبُو بَكْرٍ عَنْ ابْنِ عُلَيَّةَ.

Abū Muḥammad said: This is in my book from Ibn Nāmī, and in another's

book from Ibn ʿUyaynah. Shaybān narrated to us from ʿAbd al-Wārith ibn Saʿīd al-Tannūrī, then the chains of ʿAbd al-Wārith and the other transmitter converged—both of them from Ibn Abī Najīḥ. ʿAbdullāh ibn Kathīr narrated to me from Abū al-Minhāl from Ibn ʿAbbās, who said: The Messenger of Allah (peace be upon him) said: "Whoever advances a loan must only do so with a known measure and a known weight."[1]

قَالَ أَبُو مُحَمَّدٍ: هَذَا فِي كِتَابِي عَنْ ابْنِ نَامِي، وَفِي كِتَابِ غَيْرِي عَنِ ابْنِ عُيَيْنَةَ وَقَالَ شَيْبَانُ نا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ التَّنُّورِيُّ، ثُمَّ اتَّفَقَ عَبْدُ الْوَارِثِ وَالْآخَرُ، كِلَاهُمَا عَنِ ابْنِ أَبِي نَجِيحٍ حَدَّثَنِي عَبْدُ اللَّهِ بْنُ كَثِيرٍ عَنْ أَبِي الْمِنْهَالِ عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَسْلَفَ فَلَا يُسْلِفْ إِلَّا فِي كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ» .

L25666 Thus, this is the prohibition by the Salaf and its absolute forbiddance, except for items measured by volume or weight.

فَهَذَا مَنْعُ السَّلَفِ وَتَحْرِيمُهُ أَلْبَتَّةَ إِلَّا فِي مَكِيلٍ أَوْ مَوْزُونٍ.

L25667 From the chain of Ahmad ibn Shuʿayb: I am Qutaybah ibn Saʿid; Sufyan ibn ʿUyaynah reported to us from Ibn Abī Najīḥ from ʿAbdullāh ibn Kathīr from Abū al-Minhāl from Ibn ʿAbbās, who said: The Messenger of Allah—peace be upon him—said, "Whoever advances a Salam contract must do so in a known measure, a known weight, and until a known term."[2]

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ ابْنِ أَبِي نَجِيحٍ عَنْ عَبْدِ اللَّهِ بْنِ كَثِيرٍ عَنْ أَبِي الْمِنْهَالِ عَنِ ابْنِ عَبَّاسٍ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَسْلَفَ سَلَفًا فَلْيُسْلِفْ فِي كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ إِلَى أَجَلٍ مَعْلُومٍ»

L25668 From the narration of Waki', who reported from Sufyān al-Thawrī, from ʿAbdullāh ibn Abī Najīḥ, from ʿAbdullāh ibn Kathīr, from Abu al-Minhal, from Ibn ʿAbbās, who said: The Messenger of Allah (peace be upon him) said, "Whoever enters a _salam_ contract must do so with a specified measure, a specified weight, to a specified term." This establishes the obligation of a clearly defined term.

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي نَجِيحٍ عَنْ عَبْدِ اللَّهِ بْنِ كَثِيرٍ عَنْ أَبِي الْمِنْهَالِ عَنِ ابْنِ عَبَّاسٍ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَسْلَمَ فَلْيُسْلِمْ فِي كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ إِلَى أَجَلٍ مَعْلُومٍ» فَفِي هَذَا إِيجَابُ الْأَجَلِ الْمَعْلُومِ.

L25669 The Prophet's prohibition—peace be upon him—against sales involving gharārāt and the sale of what is not in your possession has been authentically established. Thus, what we have stated is explicitly confirmed by the textual evidence, and all praise is due to Allah, the Most High.

وَقَدْ صَحَّ «نَهْيُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ وَعَنْ بَيْعِ مَا لَيْسَ عِنْدَكَ» فَصَحَّ مَا قُلْنَا نَصًّا وَلِلَّهِ تَعَالَى الْحَمْدُ.

L25670 Indeed, Al-Awzaʿi, along with the majority of Hanafis, Malikis, and our Zahiri scholars, distinguished between _bayʿ_ (sale) and _salam_ (advance payment contract).

وَقَدْ فَرَّقَ الْأَوْزَاعِيُّ، وَجُمْهُورُ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَأَصْحَابُنَا الظَّاهِرِيِّينَ بَيْنَ الْبَيْعِ وَالسَّلَمِ.

L25671 Ibn al-Qassar said: A transaction formulated with the wording of a bayʿ

قَالَ ابْنُ الْقَصَّارِ: مَا كَانَ بِلَفْظِ الْبَيْعِ جَازَ حَالًّا، وَمَا كَانَ بِلَفْظِ السَّلَمِ لَمْ يَجُزْ إِلَّا بِأَجَلٍ.

[1] **Hadith references (L25665):** Sahih Muslim 1604b.
[2] **Hadith references (L25667):** Sunan an-Nasai 4616.

(sale) is valid immediately, whereas one expressed in the terms of a salam contract is invalid unless deferred to a specified term.

L25672 Al-Awzāʿī said: If its term is three days or fewer, it is a sale (bayʿ), and if its term is more, it is a salam contract (salam).

وَقَالَ الْأَوْزَاعِيّ: مَا كَانَ أَجَلُهُ ثَلَاثَةَ أَيَّامٍ فَأَقَلَّ فَهُوَ بَيْعٌ، وَمَا كَانَ أَجَلُهُ أَكْثَرَ فَهُوَ سَلَمٌ.

L25673–25675 Al-Quduri—one of the senior Hanafi jurists—said: "Salam (an advance-payment sale) is not a sale. Concerning what we have mentioned, there is a difference of opinion. We will present from it what Allah, the Exalted, has facilitated to be mentioned." So, a group disapproved of the al-salam contract in its entirety, as reported to us by Muhammad ibn al-Muthannā from ʿAmr ibn ʿĀṣim al-Kilābī, from Hammām ibn Yaḥyā, from Qatādah, from Abū Kathīr, from Abū ʿUbaydah ibn ʿAbd Allāh ibn Masʿūd that he completely rejected al-salam in all forms.

قَالَ الْقُمِّيُّ وَهُوَ مِنْ كِبَارِ الْحَنَفِيِّينَ: السَّلَمُ لَيْسَ بَيْعًا، وَفِيمَا ذَكَرْنَا خِلَافٌ نَذْكُرُ مِنْهُ مَا يَسَّرَ اللَّهُ تَعَالَى لِذِكْرِهِ: فَطَائِفَةٌ كَرِهَتْ السَّلَمَ جُمْلَةً: كَمَا رُوِّينَا عَنْ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَمْرُو بْنُ عَاصِمٍ الْكِلَابِيُّ نا هَمَّامُ بْنُ يَحْيَى نا قَتَادَةُ عَنْ أَبِي كَثِيرٍ عَنْ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّهُ كَانَ يَكْرَهُ السَّلَمَ كُلَّهُ.

L25676 And from the chain of Ibn Abī Shaybah: Ibn Abī Shaybah narrated to us from Ḥafṣ ibn Ghīyāth, from Layth, from ʿAṭāʾ, from Ibn ʿUmar, who said: "It was forbidden to engage in ʿĪnah [a usurious transaction involving immediate repurchase at a lower price]."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ لَيْثٍ عَنْ عَطَاءٍ عَنْ ابْنِ عُمَرَ قَالَ: نُهِيَ عَنْ الْعِينَةِ.

L25677 And via the chain of Ibn Abī Shaybah: Muʿādh ibn Muʿādh narrated to us from ʿAbd Allāh ibn ʿAwn, who said: They mentioned the ʿīnah sale (a deferred resale transaction) in the presence of Muḥammad ibn Sīrīn, so he said: I was informed that Ibn ʿAbbās used to say: "Exchanging dirhams for dirhams [with disparity], and between them is a sin."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُعَاذُ بْنُ مُعَاذٍ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ قَالَ: ذَكَرُوا عِنْدَ مُحَمَّدِ بْنِ سِيرِينَ الْعِينَةَ فَقَالَ: نُبِّئْت أَنَّ ابْنَ عَبَّاسٍ كَانَ يَقُولُ: دَرَاهِمُ بِدَرَاهِمَ وَبَيْنَهُمَا جَرِيرَةٌ.

L25678 And via the chain of Ibn Abī Shaybah: Ḥafṣ narrated to us from Ashʿath, from al-Ḥakam, from Masrūq, who said: "The ʿīnah transaction is ḥarām."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ عَنْ أَشْعَثَ عَنْ الْحَكَمِ عَنْ مَسْرُوقٍ قَالَ: الْعِينَةُ حَرَامٌ.

L25679 Through the chain of Ibn Abī Shaybah from Rabīʿ ibn Ṣubayḥ from al-Ḥasan and Ibn Sīrīn: that they both considered the ʿīnah and what people have engaged in thereof to be reprehensible.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ الرَّبِيعِ بْنِ صُبَيْحٍ عَنْ الْحَسَنِ، وَابْنِ سِيرِينَ أَنَّهُمَا كَرِهَا الْعِينَةَ، وَمَا دَخَلَ النَّاسُ فِيهِ مِنْهَا.

L25680 Ibn Abi Shaybah reported from Al-Fadl ibn Dukayn, who narrated from Abu Janab and Zayd ibn Mardanubah, both of whom said: Umar ibn Abd al-Aziz

wrote to Abd al-Hamid instructing him to forbid those under his authority from practicing ʿeenah transactions, for it is the sister of usury.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا الْفَضْلُ بْنُ دُكَيْنٍ عَنْ أَبِي جَنَابٍ، وَزَيْدِ بْنِ مَرْدَانُبَةَ قَالَا: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ إِلَى عَبْدِ الْحَمِيدِ: انْهَ مَنْ قِبَلَك عَنْ الْعِينَةِ، فَإِنَّهَا أُخْتُ الرِّبَا.

L25681 Abu Muhammad said: Al-'Aynah is the same as Salam, or the sale of a commodity to a specified term. There is no disagreement on this, and thus, Salam remains.

قَالَ أَبُو مُحَمَّدٍ: الْعِينَةُ هِيَ السَّلَمُ نَفْسُهُ، أَوْ بَيْعُ سِلْعَةٍ إلَى أَجَلٍ مُسَمًّى، وَلَا خِلَافَ فِي هَذَا، فَبَقِيَ السَّلَمُ.

L25682–25684 Ali said: "No argument holds for anyone alongside the Messenger of Allah—peace and blessings be upon him." Malik and Abu Hanifa permitted salam contracts for counted items and cloth measured by volume without mentioning its weight, while prohibiting immediate loans (salaf). This aspect of their opinion was perplexing, for if the Messenger of Allah's stipulation—peace and blessings be upon him—"to a known term" prohibits salam contracts from being immediate or settled through prompt payment, then his prohibition—peace and blessings be upon him—against advancing loans except in known volume or known weight constitutes a stricter injunction and more emphatic restriction against salam contracts without volumetric or weight measurements. If analogical reasoning applied to items measured by volume, weighed, measured by length, or counted is permissible, then analogizing the permissibility of immediate settlement to the permissibility of deferred terms would be more logically consistent. Thus the invalidity of their opinion becomes indisputably clear. Indeed, the prohibition of loans in non-measured... Items sold by volumetric measure or weight are unequivocally clear, because the ruling is derived from explicit prohibitory language. Qiyās (legal analogy) is impermissible according to its proponents if it contradicts the scriptural text.

قَالَ عَلِيٌّ: لَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبَاحَ مَالِكٌ وَأَبُو حَنِيفَةَ السَّلَمَ فِي الْمَعْدُودِ، وَالْمَذْرُوعِ مِنْ الثِّيَابِ بِغَيْرِ ذِكْرِ وَزْنِهِ وَمَنَعَا مِنْ السَّلَفِ حَالًّا، فَكَانَ هَذَا عَجَبًا مِنْ قَوْلِهِمَا، لِأَنَّهُ إنْ كَانَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إلَى أَجَلٍ مَعْلُومٍ» مَانِعًا مِنْ أَنْ يَكُونَ السَّلَمُ حَالًّا، أَوْ نَقْدًا، فَإِنَّ نَهْيَهُ - عَلَيْهِ السَّلَامُ - عَنْ أَنْ يُسَلَّفَ إلَّا فِي كَيْلٍ مَعْلُومٍ، أَوْ وَزْنٍ مَعْلُومٍ أَشَدُّ فِي التَّحْرِيمِ وَأَوْكَدُ فِي الْمَنْعِ مِنْ السَّلَمِ فِي غَيْرِ كَيْلٍ أَوْ وَزْنٍ، وَلَئِنْ كَانَ الْقِيَاسُ عَلَى الْمَكِيلِ، وَالْمَوْزُونِ، وَالْمَذْرُوعِ، وَالْمَعْدُودِ جَائِزًا فَإِنَّ قِيَاسَ جَوَازِ الْحُلُولِ وَالنَّقْدِ عَلَى جَوَازِ الْأَجَلِ أَوْلَى، فَظَهَرَ فَسَادُ قَوْلِهِمَا بِيَقِينٍ لَا شَكَّ فِيهِ، بَلْ الْمَنْعُ مِنْ السَّلَفِ فِي غَيْرِ الْمَكِيلِ وَالْمَوْزُونِ أَوْضَحُ، لِأَنَّهُ جَاءَ بِلَفْظِ النَّهْيِ، وَلَا يَجُوزُ الْقِيَاسُ عِنْدَ الْقَائِلِينَ بِهِ إذَا خَالَفَ النَّصَّ.

L25685 As for al-Shāfiʿī, he permitted immediate-delivery _salam_ contracts by analogy to their permissibility for deferred terms, and he allowed _salam_ in all things by analogy to items measured by volume or weight. Thus, divergence from the transmitted texts became entrenched in every case it applied to, and he was the most rigorous in applying analogy yet the most egregious in error.

وَأَمَّا الشَّافِعِيُّ فَأَجَازَ السَّلَمَ حَالًّا قِيَاسًا عَلَى جَوَازِهِ إلَى أَجَلٍ، وَأَجَازَ السَّلَمَ فِي كُلِّ شَيْءٍ قِيَاسًا عَلَى الْمَكِيلِ وَالْمَوْزُونِ، فَانْتَظَمَ خِلَافُ الْخَبَرِ فِي كُلِّ مَا جَاءَ فِيهِ، وَكَانَ أَطْرَدَهُمْ لِلْقِيَاسِ وَأَفْحَشَهُمْ خَطَأً.

فَإِنْ قِيلَ: إِنَّ السَّلَمَ بَيْعٌ اُسْتُثْنِيَ مِنْ جُمْلَةِ بَيْعِ مَا لَيْسَ عِنْدَكَ؟ قُلْنَا: هَذَا بَاطِلٌ، لِأَنَّهُ دَعْوَى بِلَا دَلِيلٍ وَلَيْسَ كُلُّ مَا عُوِّضَ فِيهِ بِآخَرَ بَيْعًا، فَهَذَا الْقَرْضُ مَالٌ بِمَالٍ، وَلَيْسَ بَيْعًا بِلَا خِلَافٍ.

L25686 If it is said: "Indeed, the *salam* contract is a sale excepted from the category of selling what is not in your possession?" We reply: This is null and void, for it is a claim without evidence. Not every exchange of one thing for another constitutes a sale. For instance, a loan entails property for property, yet it is indisputably not a sale.

وَلَمْ يُجِزْ أَبُو حَنِيفَةَ السَّلَمَ فِي الْحَيَوَانِ، وَأَجَازَهُ مَالِكٌ، وَالشَّافِعِيُّ وَمَا نَعْلَمُ لِتَخْصِيصِهِمْ الْحَيَوَانَ بِالْمَنْعِ مِنْ - السَّلَمِ فِيهِ دُونَ سَائِرِ مَا أَبَاحُوا السَّلَمَ فِيهِ مِنْ غَيْرِ الْمَكِيلِ وَالْمَوْزُونِ: حُجَّةً أَصْلًا، إِلَّا أَنَّ بَعْضَهُمْ مَوَّهَ بِأَنَّهُ قَدْ رُوِيَ عَنْ عُمَرَ أَنَّهُ قَالَ: مِنْ الرِّبَا مَا لَا يَكَادُ يَخْفَى كَالسَّلَمِ فِي سِنٍّ.

L25687 Abu Hanifah did not permit *salam* in animals, while Malik and Al-Shafi'i permitted it. We are unaware of any valid proof whatsoever for their specific restriction of animals from *salam* transactions, unlike other items not measured by volume or weight in which they permitted *salam*. However, some of them put forward a specious argument by citing a narration attributed to 'Umar, who said: "Among forms of usury is what is scarcely concealed, such as *salam* in age."

قَالُوا: وَعُمَرُ حُجَّةٌ فِي اللُّغَةِ، وَلَا يَقُولُ مِثْلَ هَذَا إِلَّا بِتَوْقِيفٍ.

L25688 They said: "Umar is a decisive authority in linguistic matters, and he would not say such a thing except through divine authorization."

فَقُلْنَا لَهُ: هَذَا لَا يُسْنَدُ عَنْ عُمَرَ ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْكُمْ، لِأَنَّ فِي هَذَا الْخَبَرِ نَفْسِهِ أَنَّهُ نَهَى عَنْ بَيْعِ الثَّمَرَةِ، وَهِيَ مُغَضَّفَةٌ لَمَّا تَطِبْ بَعْدُ، وَأَنْتُمْ تُجِيزُونَهُ عَلَى الْقَطْعِ فَمَرَّةً عُمَرُ حُجَّةٌ، وَمَرَّةً لَيْسَ هُوَ بِحُجَّةٍ.

L25689 We said to him: This is not transmitted with a chain from 'Umar. Even if it were authentic, it would constitute authoritative evidence against you, for this very report contains his prohibition against selling fruit while still immature and not yet fit [for sale]—yet you permit it once harvested. Thus, you sometimes uphold 'Umar as a binding precedent and other times disregard him as such.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ أَبِي زَائِدَةَ عَنْ وَكِيعٍ عَنْ مَعْمَرٍ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: قَالَ عُمَرُ: مِنْ الرِّبَا أَنْ تُبَاعَ الثَّمَرَةُ وَهِيَ مُغَضَّفَةٌ لَمَّا تَطِبْ.

L25690 It was narrated to us through the chain of Ibn Abi Shaybah, who narrated to us from Ibn Abi Za'idah, from Waki', from Ma'mar, from Al-Qasim ibn 'Abd al-Rahman, who said: 'Umar said: "Among the forms of riba is selling the fruit while it is still unripe and not yet ripened."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو عَوَانَةَ عَنْ ابْنِ بِشْرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: سَأَلْت ابْنَ عُمَرَ عَنْ الرَّهْنِ فِي السَّلَفِ؟ فَقَالَ: ذَلِكَ الرِّبَا الْمَضْمُونُ، وَهُمْ يُجِيزُونَ الرَّهْنَ فِي السَّلَفِ، وَلَمْ يَكُنْ قَوْلُ ابْنِ عُمَرَ فِي ذَلِكَ إنَّهُ الرِّبَا بِأَصَحِّ طَرِيقٍ حُجَّةً فِي أَنَّهُ رِبًا مَا شَاءَ اللَّهُ كَانَ.

L25691 From the chain of Sa'id ibn Mansur: Abu 'Awanah narrated to us from Ibn Bishr from Sa'id ibn Jubayr, who said: I asked Ibn 'Umar about collateral in a prepayment contract. He replied: That is collateralized usury. Other scholars permit collateral in prepayment contracts, but Ibn 'Umar's assertion that this constitutes usury – even if transmitted through the most authentic chain – does not serve as valid evidence for its classification as usury. What Allah wills occurs.

L25692–25694 As for the Mālikīs and Shāfiʿīs, they cited evidence from the narration of ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ that he used to purchase a male camel in exchange for two or three young she-camels up to the number required for Zakat camels, with the knowledge and command of the Messenger of Allah (peace be upon him). This is a hadith with an extremely defective chain of transmission: We have transmitted it through the chain of Muhammad ibn Ishaq. Once, he narrated it from Abu Sufyan, and he is unknown; once from Muslim ibn Kathir, and he is unknown; once from Amr ibn Dinar al-Dinawari, and he is unknown; and once from Amr ibn Ḥuraish al-Zubaidi, and he is unknown.

وَأَمَّا الْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: فَإِنَّهُمْ احْتَجُّوا بِمَا رُوِيَ مِنْ طَرِيقِ «عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّهُ كَانَ يَبْتَاعُ الْبَعِيرَ بِالْقَلُوصَيْنِ وَالثَّلَاثَةِ إلَى إبِلِ الصَّدَقَةِ بِعِلْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِأَمْرِهِ» وَهَذَا حَدِيثٌ فِي غَايَةِ فَسَادِ الْإِسْنَادِ: رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ إسْحَاقَ، فَمَرَّةً رَوَاهُ عَنْ أَبِي سُفْيَانَ وَلَا يُدْرَى مَنْ هُوَ عَنْ مُسْلِمِ بْنِ كَثِيرٍ وَلَا يُدْرَى مَنْ هُوَ وَعَنْ عَمْرِو بْنِ دِينَارٍ الدِّينَوَرِيِّ وَلَا يُدْرَى مَنْ هُوَ عَنْ عَمْرِو بْنِ حَرِيشٍ الزُّبَيْدِيِّ وَلَا يُدْرَى مَنْ هُوَ.

L25695 And once the chain of transmission was reversed, so its beginning was made its end and its end its beginning: he narrated it from Yazīd ibn Abī Ḥabīb from Muslim from Jubayr—from one who is unknown—from Abū Sufyān—from one who is unknown—from ʿAmr ibn Ḥuraysh.

وَمَرَّةً قُلِبَ الْإِسْنَادُ، فَجُعِلَ أَوَّلُهُ آخِرَهُ وَآخِرُهُ أَوَّلَهُ: فَرَوَاهُ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ مُسْلِمٍ عَنْ جُبَيْرٍ وَلَا يُدْرَى مَنْ هُوَ عَنْ أَبِي سُفْيَانَ وَلَا يُدْرَى مَنْ هُوَ عَنْ عَمْرِو بْنِ حُرَيْثٍ.

L25696 And no one pays attention to such a thing except one who openly flaunts falsehood or a blind and ignorant person.

وَمِثْلُ هَذَا لَا يَلْتَفِتُ إلَيْهِ إلَّا مُجَاهِرٌ بِالْبَاطِلِ أَوْ جَاهِلٌ أَعْمَى.

L25697 Then, if it were valid, it would serve as evidence against the Malikis and the Shafi'is, because stipulating a term for zakat is impermissible according to them. Thus, they contradicted him. The arrival of zakat camels during his time—peace be upon him—varied significantly: some of these arrivals took less than a day like Baliyy and Juhaynah, while others took up to twenty days like Tamim and Tayy.

ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَى الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ: لِأَنَّ الْأَجَلَ عِنْدَهُمْ إلَى الصَّدَقَةِ لَا يَجُوزُ، فَقَدْ خَالَفُوهُ، وَمَجِيءُ إبِلِ الصَّدَقَةِ كَانَ عَلَى عَهْدِهِ - عَلَيْهِ السَّلَامُ - يَخْتَلِفُ اخْتِلَافًا عَظِيمًا مِنْهُ عَلَى أَقَلَّ مِنْ يَوْمٍ كَبَلِيٍّ وَجُهَيْنَةَ، وَمِنْهُ عَلَى عِشْرِينَ يَوْمًا كَتَمِيمٍ، وطيئ.

L25698 Additionally, the Mālikīs do not permit a *salam* contract for camels in exchange for camels except on the condition that they differ in their suitability for travel purposes and distinctive capabilities, and this condition is not mentioned in this ḥadīth.

وَأَيْضًا: فَإِنَّ الْمَالِكِيِّينَ لَا يُجِيزُونَ سَلَمَ الْإِبِلِ فِي الْإِبِلِ إلَّا بِشَرْطِ اخْتِلَافِهَا فِي الرِّحْلَةِ وَالنَّجَابَةِ، وَلَيْسَ هَذَا مَذْكُورًا فِي هَذَا الْحَدِيثِ.

L25699 If they say, "Should we interpret it thus?" We reply: If you do so, you would have lied and added to the narration what is not in it, and what has never been narrated in any of the reports.

فَإِنْ قَالُوا: نَحْمِلُهُ عَلَى هَذَا؟ قُلْنَا: إنْ فَعَلْتُمْ كُنْتُمْ قَدْ كَذَبْتُمْ وَزِدْتُمْ فِي الْخَبَرِ مَا لَيْسَ فِيهِ، وَمَا لَمْ يُرْوَ قَطُّ فِي شَيْءٍ مِنْ الْأَخْبَارِ.

L25700 Indeed, it is incumbent upon the Hanafis—who cite every stringent ruling as proof, such as invalidating ablution due to laughter during prayer and performing ablution with wine—to adopt this narration, for it is analogous to such cases.

وَلَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ الْمُحْتَجِّينَ بِكُلِّ بَلِيَّةٍ، كَالْوُضُوءِ مِنْ الْقَهْقَهَةِ فِي الصَّلَاةِ، وَالْوُضُوءِ بِالْخَمْرِ: أَنْ يَأْخُذُوا بِهَذَا الْخَبَرِ، لِأَنَّهُ مِثْلُهَا.

L25701 Some of them said, “That did not occur through the Prophet’s awareness (peace and blessings be upon him).”

وَقَدْ قَالَ بَعْضُهُمْ: لَمْ يَكُنْ ذَلِكَ بِعِلْمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L25702–25704 So we said: This is astonishing—that the statement of Umar, “Salam (a forward contract) involving specified age [of livestock] constitutes usury,” is falsely attributed to the Prophet (peace be upon him) through false conjecture, and that this report exists without the Prophet’s (peace be upon him) knowledge. Yet the text states: “The Messenger of Allah (peace be upon him) commanded me to collect the camels of charity. I would purchase a camel using two and three young she-camels from the charity camels, to be added to the charity herd. When the charity arrived, the Messenger of Allah (peace be upon him) fulfilled the obligation. Uff! Uff! For the lack of shame!” Do not be misled by reports stating that a first-year camel was owed to the Messenger of Allah (peace be upon him) which he settled, for it is authentically established that this was a loan, as we have mentioned in “The Book of Loans” within this diwan of ours.

فَقُلْنَا: هَذَا عَجَبٌ يَكُونُ قَوْلُ عُمَرَ " مِنْ الرِّبَا السَّلَمُ فِي سِنٍّ " مُضَافًا إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالظَّنِّ الْكَاذِبِ، وَيَكُونُ هَذَا الْخَبَرُ بِغَيْرِ عِلْمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي نَصِّهِ: «فَأَمَرَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ آخُذَ فِي إبِلِ الصَّدَقَةِ، فَكُنْتُ أَبْتَاعُ الْبَعِيرَ بِالْقَلُوصَيْنِ وَالثَّلَاثَةِ إلَى إبِلِ الصَّدَقَةِ، فَلَمَّا قَدِمَتْ الصَّدَقَةُ قَضَاهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأُفٍّ أُفٍّ لِعَدَمِ الْحَيَاءِ» وَلَا تُمَوِّهُوا بِمَا رُوِيَ مِنْ أَنَّهُ كَانَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِكْرٌ فَقَضَاهُ، فَإِنَّهُ صَحَّ أَنَّهُ كَانَ قَرْضًا كَمَا ذَكَرْنَاهُ فِي " كِتَابِ الْقَرْضِ " مِنْ دِيوَانِنَا هَذَا.

L25705 “Similarly, the Prophet (peace be upon him) purchased the slave who migrated to him in exchange for two slaves, and he purchased Safiyyah—the Mother of the Believers—in exchange for seven captives. All these transactions were paid in cash.”

وَكَذَلِكَ «ابْتِيَاعُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْعَبْدَ الَّذِي هَاجَرَ إلَيْهِ بِعَبْدَيْنِ وَصَفِيَّةَ أُمَّ الْمُؤْمِنِينَ بِسَبْعَةِ أَرْؤُسٍ» : فَكُلُّ ذَلِكَ كَانَ نَقْدًا.

L25706 Indeed, it was incumbent upon the Mālikīs who cited as evidence the report of al-Ḥajjāj ibn Arṭāh that ʿUmrah is voluntary, and who relied on those mursal reports and prevalent adversities, to affirm what we have transmitted through the chain of Aḥmad ibn Shuʿayb—narrated by ʿAmr ibn ʿAlī, from Yaḥyā ibn Saʿīd al-Qaṭṭān, Yazīd ibn Zuraiʿ, and Khālid ibn al-Ḥārith—all of whom said: From Saʿīd ibn Abī ʿArūbah, from Qatādah, from al-Ḥasan, from Samurah ibn Jundub: “The Messenger of Allāh—peace and blessings of Allāh be upon him—prohibited the sale of an animal for an animal on credit.”

وَلَقَدْ كَانَ يَلْزَمُ الْمَالِكِيِّينَ الْمُحْتَجِّينَ بِخَبَرِ الْحَجَّاجِ بْنِ أَرْطَاةَ فِي أَنَّ الْعُمْرَةَ تَطَوُّعٌ، وَبِتِلْكَ الْمَرَاسِيلِ وَالْبَلَايَا أَنْ يَقُولُوا: بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ عَلِيٍّ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ، وَيَزِيدُ بْنُ زُرَيْعٍ، وَخَالِدُ بْنُ الْحَارِثِ كُلُّهُمْ قَالَ: نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْحَيَوَانِ بِالْحَيَوَانِ نَسِيئَةً» .

L25707 From the narration of Ibn Abi Shaybah: Ibn Abi Za'idah reported from Al-Hajjaj ibn Artah, from Al-Zubayr, from Jabir, who said: The Messenger of Allah—peace and blessings be upon him—said, "Exchanging two animals for one—there is no harm in it hand to hand, but there is no good in it involving women."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ أَبِي زَائِدَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ الزُّبَيْرِ عَنْ جَابِرٍ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْحَيَوَانُ اثْنَانِ بِوَاحِدٍ لَا بَأْسَ بِهِ يَدًا بِيَدٍ وَلَا خَيْرَ فِيهِ نَسَاءً» .

L25708 Through the chain of ʿAbd al-Razzāq, from Maʿmar, from Yaḥyā ibn Abī Kathīr, from ʿIkrimah, the freed slave of Ibn ʿAbbās, who said: "The Messenger of Allah (peace and blessings of Allah be upon him) prohibited selling an animal for an animal with deferred payment." This is among the finest mursal reports, but the Mālikīs differed with it completely.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْحَيَوَانِ بِالْحَيَوَانِ نَسِيئَةً» ، وَهَذَا مِنْ أَحْسَنِ الْمَرَاسِيلِ فَخَالَفَهُ الْمَالِكِيُّونَ جُمْلَةً.

L25709 They permitted exchanging all animals with animals of a different species on deferred payment.

وَأَجَازُوا الْحَيَوَانَ كُلَّهُ بِالْحَيَوَانِ مِنْ غَيْرِ جِنْسِهِ نَسِيئَةً.

L25710 They permitted it from a single genus when its attributes differed due to unintelligible mixtures.

وَأَجَازُوهُ مِنْ جِنْسٍ وَاحِدٍ إذَا اخْتَلَفَتْ أَوْصَافُهُ بِتَخَالِيطَ لَا تُعْقَلُ.

L25711 The Hanafis neglected their own position that the Prophet's statement—peace and blessings be upon him—"Zakat applies to grazing livestock" indicates the absence of zakat on non-grazing livestock. Why then do they not argue here that his prohibition—upon him be peace—against exchanging animals for animals on credit serves as evidence for permitting the exchange of goods for animals on credit? But they are people who lack discernment.

وَنَسِيَ الْحَنَفِيُّونَ قَوْلَهُمْ: إنَّ قَوْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الزَّكَاةُ فِي السَّائِمَةِ» دَلِيلٌ عَلَى أَنَّ غَيْرَ السَّائِمَةِ لَا زَكَاةَ فِيهَا، فَهَلَّا قَالُوا هَاهُنَا: نَهْيُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَنْ الْحَيَوَانِ بِالْحَيَوَانِ نَسِيئَةً دَلِيلٌ عَلَى جَوَازِ الْعُرُوضِ بِالْحَيَوَانِ نَسِيئَةً، وَلَكِنَّهُمْ قَوْمٌ لَا يَفْقَهُونَ.

L25712 The Hanafis permitted contractual manumission agreements for specified slaves, the establishment of dowries for specified slaves within the scope of financial liability, and prohibited forward sales involving specified slaves. They argued: "Does marriage permit what commercial transactions prohibit?" We responded: "The legal ruling on theft differs from that on marriage. Yet you analogized what constitutes a dowry to matters requiring hand amputation—though this applies exclusively to a distinct ruling that contradicts all other legal principles. This did not deter you from applying analogy between certain rulings whenever it aligned with your desires."

وَأَجَازَ الْحَنَفِيُّونَ الْمُكَاتَبَةَ عَلَى الْوُصَفَاءِ، وَإِصْدَاقَ الْوُصَفَاءِ فِي الذِّمَّةِ وَمَنَعُوا مِنْ السَّلَمِ فِي الْوُصَفَاءِ فَقَالُوا: النِّكَاحُ يَجُوزُ فِيهِ مَا لَا يَجُوزُ فِي الْبُيُوعِ؟ قُلْنَا: وَالسَّرِقَةُ حُكْمُهَا غَيْرُ حُكْمِ النِّكَاحِ، وَقَدْ قِسْتُمْ مَا يَكُونُ صَدَاقًا عَلَى مَا تُقْطَعُ فِيهِ الْيَدُ، وَمَا فِي حُكْمٍ إلَّا، وَهُوَ يُخَالِفُ سَائِرَ الْأَحْكَامِ ثُمَّ لَمْ يَمْنَعْكُمْ ذَلِكَ مِنْ قِيَاسِ بَعْضِهَا عَلَى بَعْضٍ حَيْثُ اشْتَهَيْتُمْ.

L25713–25714 Abu Muhammad said: Among those from whom a similar opinion to ours has been reported, as it has been narrated to us through Shu'bah's chain

from al-Aswad ibn Qays, who heard Nubayḥ al-ʻAnazī, who narrated from Abū Saʻīd al-Khudrī, who said: "Salam is at the price, but stipulate your dirhams or dinars for a specified term and a known measure."

قَالَ أَبُو مُحَمَّد: وَمِمَّنْ رُوِيَ عَنْهُ مِثْلُ قَوْلِنَا: كَمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ الْأَسْوَدِ بْنِ قَيْسٍ أَنَّهُ سَمِعَ نُبَيْحًا الْعَنَزِيَّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: السَّلَمُ بِالسِّعْرِ، وَلَكِنْ اسْتَكْثِرْ بِدَرَاهِمِك أَوْ بِدَنَانِيرِك إلَى أَجَلٍ مُسَمًّى وَكَيْلٍ مَعْلُومٍ

L25715 And through the transmission of Sufyān, al-Aswad ibn Qays, Nubayḥ, and Abu Saʻīd, a similar report is related.

وَمِنْ طَرِيقِ سُفْيَانَ عَنْ الْأَسْوَدِ بْنِ قَيْسٍ عَنْ نُبَيْحٍ عَنْ أَبِي سَعِيدٍ مِثْلَهُ.

L25716 From the transmission of Muhammad ibn al-Muthanna: From Muhammad ibn Muḥabib, from Sufyan al-Thawri, from Abu Hayyan al-Taymi, from a man, from Ibn Abbas: This verse, {When you contract a debt for a specified term} [Al-Baqarah: 282], was revealed regarding the Salam contract with a specified measure to a specified term.[3]

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا مُحَمَّدُ بْنُ مُحَبَّبٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي حَيَّانَ التَّيْمِيِّ عَنْ رَجُلٍ عَنْ ابْنِ عَبَّاسٍ نَزَلَتْ هَذِهِ الْآيَةُ {إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى} [البقرة: ٢٨٢] فِي السَّلَفِ فِي كَيْلٍ مَعْلُومٍ إلَى أَجَلٍ مَعْلُومٍ.

L25717 And through the chain of Wakīʻ, ʻĪsā al-Ḥannāṭ narrated to us from his father, I heard Ibn ʻUmar say, "A specified measure for a specified term."

وَمِنْ طَرِيقِ وَكِيعٍ نا عِيسَى الْحَنَّاطُ عَنْ أَبِيهِ سَمِعْت ابْنَ عُمَرَ يَقُولُ: كَيْلٌ مَعْلُومٌ إلَى أَجَلٍ مَعْلُومٍ.

L25718 From Ibn ʻUmar: The permissibility of the salam contract for karābīs (linen garments) and in silk.

عَنْ ابْنِ عُمَرَ إبَاحَةُ السَّلَمِ فِي الْكَرَابِيسِ وَهِيَ ثِيَابٌ وَفِي الْحَرِيرِ.

L25719 From Ibn Abbas concerning the sabā'ib – which is flax, and all of that can be weighed. We know of no Companion permitting a salam contract with immediate [delivery], nor in items not measured by volume nor those not weighed, except what they disagreed about regarding salam in animals. Differing [opinions] were reported from Ali, Ibn Masʻud, and Ibn Umar concerning this.

وَعَنْ ابْنِ عَبَّاسٍ فِي السَّبَائِبِ وَهُوَ الْكَتَّانُ وَكُلُّ ذَلِكَ يُمْكِنُ وَزْنُهُ، وَمَا نَعْلَمُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ إجَازَةَ سَلَمٍ حَالٍّ، وَلَا فِي غَيْرِ مَكِيلٍ، وَلَا مَوْزُونٍ إلَّا مَا اخْتَلَفُوا فِيهِ مِنْ السَّلَمِ فِي الْحَيَوَانِ: فَاخْتُلِفَ فِيهِ عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ وَابْنِ عُمَرَ.

L25720 We have also received reports that its permissibility is ascribed to Ibn ʻAbbās based on inferential evidence, not explicit textual authority.

وَرُوِّينَا أَيْضًا: إبَاحَتَهُ عَنْ ابْنِ عَبَّاسٍ بِاسْتِدْلَالٍ لَا بِنَصٍّ.

L25721 The prohibition concerning that matter has been authentically transmitted to us from Umar, Hudhayfah, and Abd al-Rahman ibn Samurah, along with other Companions—may Allah be pleased with them—and success is from Allah, the Exalted.

وَرُوِّينَا النَّهْيَ عَنْ ذَلِكَ عَنْ عُمَرَ، وَحُذَيْفَةَ، وَعَبْدِ الرَّحْمَنِ بْنِ سَمُرَةَ صَحِيحًا، وَغَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[3] **Qur'an references (L25716):** Qur'an 2:282 (Al-Baqarah).

The Issue of the Term in Salam

1614 - Issue: The period in salam is what is termed a period, as the Messenger of Allah - peace and blessings be upon him - commanded, and He did not fix a specific period from among periods: “And your Lord is not forgetful” [Maryam 19:64].[4]

“He does not speak out of desire. (53:3) It is nothing but a revelation that is revealed. (53:4)”[5]

To clarify for the people what has been revealed to them [An-Nahl 16:44]. Thus, the term is a period and beyond.[6]

Some Hanafis stated that the stipulated period in that matter cannot be less than half a day.

And some of them said: It must not be less than three days.

Abu Muhammad said: This is an invalid determination, because it lacks proof.

The Maliki jurists said: It is disliked for it to be two days or fewer.

Sa‘īd ibn al-Musayyib said: “The markets do not adapt to it, and this is the pinnacle of disorder because it...” Specification without evidence. Then, the markets may change from that day onward or remain unchanged for months. In both scenarios, we know of no one before them who specified such a specification in the religion of Allah the Exalted. Al-Layth said: “Fifteen days.”

The Matter of the Price in *Salam*

Issue 1615: The price in a salam contract must be received in full. If the two parties separate before full receipt of the entire amount, the whole

[4]**Qur’an references (L25723):** Qur’an 19:64 (Maryam).
[5]**Qur’an references (L25724):** Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm).
[6]**Qur’an references (L25725):** Qur’an 16:44 (An-Nahl).

[مَسْأَلَة الْأَجَلُ فِي السَّلَمِ]

١٦١٤ - مَسْأَلَةٌ: وَالْأَجَلُ فِي السَّلَمِ مَا وَقَعَ عَلَيْهِ اسْمُ أَجَلٍ كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَحُدَّ أَجَلًا مِنْ أَجَلٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] : {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] .

{لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] فَالْأَجَلُ سَاعَةٌ فَمَا فَوْقَهَا.

وَقَالَ بَعْضُ الْحَنَفِيِّينَ: لَا يَكُونُ الْأَجَلُ فِي ذَلِكَ أَقَلَّ مِنْ نِصْفِ يَوْمٍ.

وَقَالَ بَعْضُهُمْ: لَا يَكُونُ أَقَلَّ مِنْ ثَلَاثَةِ أَيَّامٍ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا تَحْدِيدٌ فَاسِدٌ، لِأَنَّهُ بِلَا بُرْهَانٍ.

وَقَالَ الْمَالِكِيُّونَ: يُكْرَهُ أَنْ يَكُونَ يَوْمَيْنِ فَأَقَلَّ.

وَقَالَ سَعِيدُ بْنُ الْمُسَيِّبِ: مَا تَتَغَيَّرُ إِلَيْهِ الْأَسْوَاقُ وَهَذَا فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ تَحْدِيدٌ بِلَا بُرْهَانٍ ثُمَّ إِنَّ الْأَسْوَاقَ قَدْ تَتَغَيَّرُ مِنْ يَوْمِهَا، وَقَدْ لَا تَتَغَيَّرُ شُهُورًا وَكِلَاهُمَا لَا نَعْلَمُ أَحَدًا سَبَقَهُمْ إِلَى التَّحْدِيدِ فِي دِينِ اللَّهِ تَعَالَى بِهِ، وَقَالَ اللَّيْثُ: خَمْسَةَ عَشَرَ يَوْمًا.

[مَسْأَلَة الثَّمَن فِي السَّلَمِ]

١٦١٥ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يَكُونَ الثَّمَنُ فِي السَّلَمِ إِلَّا مَقْبُوضًا فَإِنْ تَفَرَّقَا قَبْلَ تَمَامِ قَبْضِ جَمِيعِهِ بَطَلَتْ الصَّفْقَةُ كُلُّهَا، لِأَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِأَنْ يُسَلَّفَ فِي كَيْلٍ مَعْلُومٍ أَوْ وَزْنٍ مَعْلُومٍ إِلَى أَجَلٍ مَعْلُومٍ» .

transaction becomes void. This is because the Messenger of Allah (peace be upon him) commanded that one must enter into a salam contract for a known measure or a known weight, for a known term.

L25735 “The advance loan (at-taslīf)” in the terminology with which He addressed us—peace be upon him—is that one gives something in exchange for something. Thus, whoever does not deliver what was advanced has not granted any advance, but has promised to advance.

L25736 If he pays part without the rest – whether it is the greater portion or the lesser – it constitutes a single transaction and a single contract. Every contract that mixes invalid and valid terms is entirely invalid, for a contract cannot be split into parts. Their mutual consent at the time of contracting applied only to the whole agreement, not to partial elements. It is therefore unlawful to impose obligations on them for what they have not mutually consented to in full, as this constitutes wrongful appropriation of wealth without mutual agreement.

L25737 As for *salam*, though not considered a sale, it constitutes a mutually agreed debt for a specified term and a form of trade. Thus, it is only permissible through mutual consent. This view of ours aligns with the positions of Sufyan al-Thawri, Ibn Shubruma, Ahmad, al-Shafi’i, Abu Sulayman, and their companions.

L25738 Abū Ḥanīfah said: The salam contract is valid in what is received and invalid in what is not received.

L25739 Malik said: If the receipt of the price is delayed by a day or two, it is permissible. And if it is delayed beyond that or delayed with a term, the entire transaction is void.

L25740 These are two corrupt opinions—especially that of Mālik, for it is inherently contradictory and invalid. And success is from Allah, the Exalted.

L25741 **If a defect is found in the goods of the salam (advance payment) contract.**

“ وَالتَّسْلِيفُ ” فِي اللُّغَةِ الَّتِي بِهَا خَاطَبَنَا - عَلَيْهِ السَّلَامُ -: هُوَ أَنْ يُعْطِيَ شَيْئًا فِي شَيْءٍ، فَمَنْ لَمْ يَدْفَعْ مَا أُسْلِفَ فَلَمْ يُسَلِّفْ شَيْئًا، لَكِنْ وَعَدَ بِأَنْ يُسَلِّفَ.

فَلَوْ دَفَعَ الْبَعْضَ دُونَ الْبَعْضِ سَوَاءٌ أَكْثَرُهُ أَوْ أَقَلُّهُ فَهِيَ صَفْقَةٌ وَاحِدَةٌ، وَعَقْدٌ وَاحِدٌ، وَكُلُّ عَقْدٍ وَاحِدٍ جَمَعَ فَاسِدًا وَجَائِزًا فَهُوَ كُلُّهُ فَاسِدٌ، لِأَنَّ الْعَقْدَ لَا يَتَبَعَّضُ، وَالتَّرَاضِي مِنْهُمَا لَمْ يَقَعْ حِينَ الْعَقْدِ إِلَّا عَلَى الْجَمِيعِ، لَا عَلَى الْبَعْضِ دُونَ الْبَعْضِ، فَلَا يَحِلُّ إِلْزَامُهُمَا مَا لَمْ يَتَرَاضَيَا جَمِيعًا عَلَيْهِ فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ، لَا عَنْ تَرَاضٍ.

وَالسَّلَمُ وَإِنْ لَمْ يَكُنْ بَيْعًا فَهُوَ دَيْنٌ تَدَايَنَاهُ إِلَى أَجَلٍ مُسَمًّى، وَتِجَارَةٌ، فَلَا يَجُوزُ أَنْ يَكُونَ إِلَّا عَنْ تَرَاضٍ وَقَوْلُنَا هَذَا هُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَابْنِ شُبْرُمَةَ، وَأَحْمَدَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

وَقَالَ أَبُو حَنِيفَةَ: يَصِحُّ السَّلَمُ فِيمَا قُبِضَ وَيَبْطُلُ فِيمَا لَمْ يُقْبَضْ.

وَقَالَ مَالِكٌ: إِنْ تَأَخَّرَ قَبْضُ الثَّمَنِ يَوْمًا أَوْ يَوْمَيْنِ جَازَ، وَإِنْ تَأَخَّرَ أَكْثَرَ أَوْ بِأَجَلٍ بَطَلَ الْكُلُّ.

وَهَذَانِ قَوْلَانِ فَاسِدَانِ كَمَا ذَكَرْنَا، لَا سِيَّمَا قَوْلَ مَالِكٍ، فَإِنَّهُ مُتَنَاقِضٌ مَعَ فَسَادِهِ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة إِذَا وجد بِثَمَنِ السَّلَم عَيْبًا]

L25742 1616 - Issue: If the buyer discovers a defect in the received price, then if he had stipulated a guarantee of validity, the entire transaction is nullified. This is because what was given differs from what was contracted upon, thereby rendering it a *salam* contract where the valid price was not received. If he had not stipulated such a guarantee, he may choose either to retain what he received with no further claim or to return it, thereby invalidating the entire transaction. This is because if he returns the defective price, it becomes a *salam* contract for which the price was not fully paid, rendering it void. This is the opinion of al-Shāfiʿī.

١٦١٦ - مَسْأَلَةٌ: فَإِنْ وَجَدَ بِالثَّمَنِ الْمَقْبُوضِ عَيْبًا، فَإِنْ كَانَ اشْتَرَطَ السَّلَامَةَ بَطَلَتْ الصَّفْقَةُ كُلُّهَا؛ لِأَنَّ الَّذِي أُعْطِيَ غَيْرَ الَّذِي عَقَدَ عَلَيْهِ، فَصَارَ عَقْدَ سَلَمٍ لَمْ يَقْبِضْ ثَمَنَهُ، فَإِنْ كَانَ لَمْ يَشْتَرِطْ السَّلَامَةَ فَهُوَ مُخَيَّرٌ بَيْنَ أَنْ يَحْبِسَ مَا أَخَذَ وَلَا شَيْءَ لَهُ غَيْرُهُ، أَوْ يَرُدَّ وَتَنْقَضُ الصَّفْقَةُ كُلُّهَا؛ لِأَنَّهُ إنْ رَدَّ الْمَعِيبَ صَارَ سَلَمًا لَمْ يَسْتَوْفِ ثَمَنَهُ فَهُوَ بَاطِلٌ، وَهُوَ قَوْلُ الشَّافِعِيِّ.

L25743–25744 Abu Hanifah said: He substitutes the counterfeit item and invalidates from the transaction the portion corresponding to the defective amount found; the remainder of the transaction remains valid.

وَقَالَ أَبُو حَنِيفَةَ: يَسْتَبْدِلُ الزَّائِفَ، وَيُبْطِلُ مِنْ الصَّفْقَةِ بِقَدْرِ مَا وَجَدَ مِنْ السَّتُّوقِ، وَيَصِحُّ فِي الْبَاقِي.

L25745 Malik said: He substitutes all of that, and the evidence in this matter is the same as the one before it, with no difference.

وَقَالَ مَالِكٌ: يَسْتَبْدِلُ كُلَّ ذَلِكَ وَالْحُجَّةُ فِي هَذِهِ كَالَّتِي قَبْلَهَا وَلَا فَرْقَ.

[مَسْأَلَة مَا يَشْتَرِط فِي السَّلَم]

L25746 **Issue Regarding the Stipulated Conditions in the Salam Contract**

L25747 1617. Issue: It is not permissible for them to stipulate in a Salam contract its payment in a specific place. If they do so, the entire transaction is invalid. And whenever we have said or say that it is invalid, it is perpetually annulled and subject to the rulings of usurpation.

١٦١٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يَشْتَرِطَا فِي السَّلَمِ دَفْعَهُ فِي مَكَانٍ بِعَيْنِهِ، فَإِنْ فَعَلَا فَالصَّفْقَةُ كُلُّهَا فَاسِدَةٌ وَكُلَّمَا قُلْنَا أَوْ نَقُولُ: إنَّهُ فَاسِدٌ، فَهُوَ مَفْسُوخٌ أَبَدًا، مَحْكُومٌ فِيهِ بِحُكْمِ الْغَصْبِ.

L25748 The proof of that is that it is a condition not found in the Book of Allah, the Exalted, and the Messenger of Allah - may Allah bless him and grant him peace - said: "Every condition that is not in the Book of Allah is void, even if it were a hundred conditions."[7]

وَبُرْهَانُ ذَلِكَ: أَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ وَإِنْ كَانَ مِائَةَ شَرْطٍ»

L25749 However, the right in the Salam sale is owed to the seller. Wherever the buyer encounters him at the appointed time and place, the buyer may take possession, and the seller must deliver his due. If the seller is absent, the judge shall compel him to fulfill his obligation from his property if it is found, based on Allah's statement: *{Indeed, Allah commands you to render

لَكِنَّ حَقَّ السَّلَمِ قِبَلَ الْمُسَلَّمِ إلَيْهِ فَحَيْثُ مَا لَقِيَهُ عِنْدَ مَحَلِّ الْأَجَلِ فَلَهُ أَخْذُهُ، يَدْفَعُ حَقَّهُ إلَيْهِ، فَإِنْ غَابَ أَنْصَفَهُ الْحَاكِمُ مِنْ مَالِهِ إنْ وُجِدَ لَهُ بِقَوْلِ اللَّهِ تَعَالَى: {إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الأَمَانَاتِ إِلَى أَهْلِهَا} [النساء: ٥٨] فَهُوَ مَأْمُورٌ بِأَدَاءِ أَمَانَتِهِ حَيْثُ وَجَبَتْ عَلَيْهِ وَيُسْأَلُهَا.

[7] **Hadith references (L25748):** Sunan Ibn Majah 2521.

trusts to their rightful owners}* [An-Nisa': 58]. Thus, he is commanded to fulfill his trust when it becomes due, and he will be questioned about it.[8]

L25750 The predominant opinion attributed to Ibn al-Qāsim is that the salam contract becomes invalid if the place of fulfillment is not specified.

L25751 Abu Hanifah and Al-Shafi'i stated: If the commodity entails expense and transportation costs, the salam contract is invalid unless the place of delivery is stipulated. If the commodity involves neither transportation costs nor expense, the salam contract remains valid even if the place of delivery is not stipulated.

L25752 These are unsubstantiated statements, so they are vitiated.

L25753 ## The Question of the Condition Pertaining to Salam

L25754 Issue 1618: Stipulating a guarantor in a salaf contract renders the contract invalid, as this is a condition not stipulated in the Book of Allah, the Exalted, and thus the condition itself is invalid.

L25755 As for stipulating a pledge within the contract, it is permissible due to what we have mentioned in the Book of Pledges, making its repetition superfluous. Among those who invalidated the contract due to this pledge stipulation are Ibn ʻUmar, Saʻīd ibn Jubayr, and others besides them.

L25756 ## The Issue of Prepaid Forward Sale (*Salam*) in Dirhams and Dinars

L25757 1619 - Issue: The salam is permissible in dinars and dirhams when they are delivered as the commodity, for they are of a known weight. Thus, it is lawful by the explicit text of his speech (peace be upon him). Mālik prohibited this, and we know of no valid proof for his position at all.

L25758–25760 Among the permissible salam contracts (forward sales) is the delivery of an animal that is lawful to own and transfer ownership of, even if its use is

[8] **Qur'an references (L25749):** Qur'an 4:58 (An-Nisa).

وَالْمَشْهُورُ عَنْ ابْنِ الْقَاسِمِ أَنَّ السَّلَمَ يَبْطُلُ إِنْ لَمْ يُذْكَرْ مَكَانُ الْإِيفَاءِ.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: مَالُهُ مُؤْنَةٌ وَحِمْلٌ فَالسَّلَمُ فَاسِدٌ، إِنْ لَمْ يَشْتَرِطْ مَوْضِعَ الدَّفْعِ، وَمَا لَيْسَ لَهُ حِمْلٌ وَلَا مُؤْنَةٌ فَالسَّلَمُ جَائِزٌ، وَإِنْ لَمْ يَشْتَرِطْ مَوْضِعَ الدَّفْعِ.

وَهَذِهِ أَقْوَالٌ لَا بُرْهَانَ عَلَى صِحَّتِهَا، فَهِيَ فَاسِدَةٌ.

[مَسْأَلَة الشَّرْط فِي السَّلَم]

١٦١٨ - مَسْأَلَةٌ: وَاشْتِرَاطُ الْكَفِيلِ فِي السَّلَمِ يَفْسُدُ بِهِ السَّلَمُ؛ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ.

وَأَمَّا اشْتِرَاطُ الرَّهْنِ فِيهِ فَجَائِزٌ، لِمَا ذَكَرْنَا فِي " كِتَابِ الرَّهْنِ " فَأَغْنَى عَنْ إِعَادَتِهِ وَمِمَّنْ أَبْطَلَ بِهِ الْعَقْدَ ابْنُ عُمَرَ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَغَيْرُهُمَا.

[مَسْأَلَة السَّلَم فِي الدَّرَاهِم وَالدَّنَانِير]

١٦١٩ - مَسْأَلَةٌ: وَالسَّلَمُ جَائِزٌ فِي الدَّنَانِيرِ، وَالدَّرَاهِمِ إِذَا سُلِّمَ فِيهِمَا عَرَضًا؛ لِأَنَّهُمَا وَزْنٌ مَعْلُومٌ، فَهُوَ حَلَالٌ بِنَصِّ كَلَامِهِ - عَلَيْهِ السَّلَامُ -، وَمَنَعَ مِنْ ذَلِكَ مَالِكٌ وَمَا نَعْلَمُ لَهُ حُجَّةً أَصْلًا.

وَمِنْ السَّلَمِ الْجَائِزِ: أَنْ يُسَلَّمَ الْحَيَوَانُ الَّذِي يَجُوزُ تَمَلُّكُهُ وَتَمْلِيكُهُ وَإِنْ لَمْ يَجُزْ بَيْعُهُ، أَوْ جَازَ بَيْعُهُ فِي لَحْمٍ مِنْ صِنْفِهِ إِنْ كَانَ يَحِلُّ أَكْلُ لَحْمِهِ، أَوْ فِي لَحْمٍ مِنْ غَيْرِ صِنْفِهِ كَتَسْلِيمِ

otherwise impermissible. The sale, or if the sale is permissible in meat from its own species when its meat is lawful to consume, or in meat from another species—such as delivering a male or female slave, dog, cat, ram, male goat, camel, cow, stag, chicken, or all other such cases—in ram meat, bull meat, male goat meat, or other meats, for all of this constitutes a salam contract of known weight for a predetermined term.

L25761 It is absolutely impermissible to engage in prepayment (salaf) for animals, as they are not measured by volume nor weighed.

L25762 It is permissible to sell wheat as salam in exchange for wheat flour, and wheat flour as salam in exchange for wheat, with disparity in quantity as they wish. Similarly, olive oil may be sold as salam in exchange for olives, olives for oil, and milk for milk. All such transactions are permissible except what we have detailed in the "Book of Riba"—specifically gold sold for silver or silver for gold, which is impermissible in principle. Likewise, dates, barley, wheat, and salt cannot be sold as salam whether within their own category or across other categories among these specified items. However, all of them may be sold as salam in exchange for items outside their category among measured by volume or weighed commodities. Excluded from this are unharvested crops of any kind, which may not be sold as salam as wheat under any circumstance, and grapes and raisins—neither may be sold as salam for the other by volume measurement. However, advancing grapes for raisins (or vice versa) by weight is permissible, as we have elaborated in the "Book of Riba," making its repetition unnecessary.

L25763 Among the rulings included in this is the saying of the Messenger of Allah—peace and blessings be upon him—"Let him advance payment in a specified measure or a specified weight for a specified term." He—upon him be peace—excluded nothing from this save for the aforementioned types of goods. {Nor does he speak from [his own] whim} (53:3) {It is nothing but a revelation revealed} (53:4).[9]

L25764 "And He has explained in detail what He has forbidden upon you (Quran

عَبْدٍ، أَوْ أَمَةٍ، أَوْ كَلْبٍ، أَوْ سِنَّوْرٍ، أَوْ كَبْشٍ، أَوْ تَيْسٍ، أَوْ بَعِيرٍ، أَوْ بَقَرَةٍ، أَوْ أَيِّلٍ، أَوْ دَجَاجٍ، أَوْ غَيْرِ ذَلِكَ كُلِّهِ فِي لَحْمِ كَبْشٍ، أَوْ لَحْمِ ثَوْرٍ، أَوْ لَحْمِ تَيْسٍ، أَوْ غَيْرِ ذَلِكَ؛ لِأَنَّهُ كُلَّهُ سَلَفٌ فِي وَزْنٍ مَعْلُومٍ إِلَى أَجَلٍ مَعْلُومٍ.

وَلَا يَجُوزُ السَّلَفُ فِي الْحَيَوَانِ أَصْلًا؛ لِأَنَّهُ لَيْسَ يُكَالُ وَلَا يُوزَنُ.

وَجَائِزٌ أَنْ يُسَلَّمَ الْبُرُّ فِي دَقِيقِ الْبُرِّ، وَدَقِيقُ الْبُرِّ فِي الْبُرِّ، مُتَفَاضِلًا وَكَيْفَ أَحَبَّا وَكَذَلِكَ الزَّيْتُ فِي الزَّيْتُونِ وَالزَّيْتُونُ فِي الزَّيْتِ وَاللَّبَنُ فِي اللَّبَنِ، وَكُلُّ شَيْءٍ حَاشَا مَا بَيَّنَّا فِي " كِتَابِ الرِّبَا " وَهُوَ الذَّهَبُ فِي الْفِضَّةِ أَوْ الْفِضَّةُ فِي الذَّهَبِ فَلَا يَحِلُّ أَصْلًا أَوْ التَّمْرُ، وَالشَّعِيرُ، وَالْبُرُّ، وَالْمِلْحُ فَلَا يَحِلُّ أَنْ يُسَلَّفَ صِنْفٌ مِنْهَا، لَا فِي صِنْفِهِ وَلَا فِي غَيْرِ صِنْفِهِ مِنْهَا خَاصَّةً، وَكُلُّهَا يُسَلَّفُ فِيمَا لَيْسَ مِنْهَا مِنْ الْمَكِيلَاتِ وَالْمَوْزُونَاتِ، وَحَاشَ الزَّرْعَ أَيُّ زَرْعٍ كَانَ، فَلَا يَجُوزُ تَسْلِيفُهُ فِي الْقَمْحِ أَصْلًا، وَحَاشَا الْعِنَبِ وَالزَّبِيبِ فَلَا يَجُوزُ تَسْلِيفُ أَحَدِهِمَا وَالْآخَرُ كَيْلًا، وَيَجُوزُ تَسْلِيفُ كُلِّ وَاحِدٍ مِنْهُمَا فِي الْآخَرِ وَزْنًا لِمَا قَدْ بَيَّنَّاهُ فِي " كِتَابِ الرِّبَا " فَأَغْنَى عَنْ إعَادَتِهِ.

وَمِمَّا يَجْمَعُهُ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فَلْيُسْلِفْ فِي كَيْلٍ مَعْلُومٍ أَوْ وَزْنٍ مَعْلُومٍ إلَى أَجَلٍ مَعْلُومٍ» فَلَمْ يَسْتَثْنِ - عَلَيْهِ السَّلَامُ - مِنْ ذَلِكَ شَيْئًا، حَاشَا الْأَصْنَافِ الْمَذْكُورَةِ فَقَطْ {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤]

{وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

[9] **Qur'an references (L25763):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).

6:119)."[10]

L25765 "And your Lord is not forgetful" [Maryam 19:64].[11]

L25766 And {to make clear to the people what has been revealed to them} [An-Nahl 16:44].[12]

L25767 "This day I have perfected for you your religion" (Surah Al-Mā'idah 5:3).[13]

L25768 Whoever prohibits what the Messenger of Allah—peace and blessings be upon him—did not explicitly forbid for us has introduced into the religion what Allah has not permitted. And whoever attributes to the Messenger of Allah—peace and blessings be upon him—a statement he did not make or adds to it what he did not explain has lied against him.

L25769 And he - peace be upon him - said, "Whoever intentionally lies about me, let him prepare his abode in the Fire."

L25770 Those who oppose us have differed among themselves: Abū Ḥanīfah permits exchanging anything measured by volume for anything measured by weight. Thus, he and Sufyān allow trading wheat for meat and meat for wheat.

L25771–25772 Malik permits selling iron in exchange for copper, whereas Abū Ḥanīfah prohibits it and classifies the transaction as *ribā* (usury): *"Had it been from anyone other than Allah, they would have found much discrepancy within it"* (Quran 4:82).[14]

L25773 Al-Shāfiʿī permits exchanging *fulūs* for *fulūs*.

L25774 And Sufyan permits bread made from flour of the same type.

L25775 **Chapter: The Salam as an Immediate Liability Without a Specified Time**

{وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَ {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] .

وَ {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣]

فَمَنْ حَرَّمَ مَا لَمْ يُفَصِّلْ لَنَا تَحْرِيمَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ شَرَعَ فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ، وَمَنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْهُ أَوْ أَضَافَ إِلَيْهِ مَا لَمْ يُبِينْهُ فَقَدْ كَذَبَ عَلَيْهِ.

وَقَالَ - عَلَيْهِ السَّلَامُ - «مَنْ كَذَبَ عَلَيَّ مُتَعَمِّدًا فَلْيَتَبَوَّأْ مَقْعَدَهُ مِنْ النَّارِ»

وَقَدْ اخْتَلَفَ الْمُخَالِفُونَ لَنَا: فَأَبُو حَنِيفَةَ يُجِيزُ أَنْ يُسَلَّمَ كُلُّ مَا يُكَالُ فِي كُلِّ مَا يُوزَنُ، فَيُجِيزُ هُوَ وَسُفْيَانُ تَسْلِيمَ الْقَمْحِ فِي اللَّحْمِ، وَاللَّحْمِ فِي الْقَمْحِ.

وَيُجِيزُ مَالِكٌ تَسْلِيمَ الْحَدِيدِ فِي النُّحَاسِ وَأَبُو حَنِيفَةَ يُحَرِّمُ ذَلِكَ وَيَجْعَلُهُ رِبًا {وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ اخْتِلافًا كَثِيرًا} [النساء: ٨٢]

وَالشَّافِعِيُّ يُجِيزُ تَسْلِيمَ الْفُلُوسِ فِي الْفُلُوسِ.

وَسُفْيَانُ يُجِيزُ الْخُبْزَ فِي الدَّقِيقِ مِنْ جِنْسِهِ.

[فَصْلُ السَّلَمَ حَالًّا فِي الذِّمَّةِ إلَى غَيْرِ أَجَلٍ]

[10] **Qur'an references (L25764):** Qur'an 6:119 (Al-An'am).
[11] **Qur'an references (L25765):** Qur'an 19:64 (Maryam).
[12] **Qur'an references (L25766):** Qur'an 16:44 (An-Nahl).
[13] **Qur'an references (L25767):** Qur'an 5:3 (Al-Ma'idah).

L25776 Chapter: We have noted something cited by the Shāfiʿīs to validate their position permitting immediate salam as debt obligations without a specified term, supported by two narrations. The first: We narrated it via al-Bazzār's chain, who said: Al-Ḥasan ibn Aḥmad ibn Abī Shuʿayb al-Ḥarrānī reported to us from Muḥammad ibn Isḥāq from Muḥammad ibn Jaʿfar ibn al-Zubayr from ʿUrwah ibn al-Zubayr from ʿĀ'ishah, the Mother of the Believers, who said: "Allah's Messenger (peace be upon him) purchased a camel from a Bedouin in exchange for a wasq of provisioned stored dates, which are the ajwa dates. When the Messenger of Allah (peace be upon him) brought it to his home, he searched for the dates but could not find them. He said to the Bedouin: 'O servant of Allah, we bought a camel from you for a wasq of provisioned stored dates, believing we had them here. We searched but found none.' The Bedouin exclaimed: 'O treachery!' The people rebuked him, saying: 'Do you speak thus to Allah's Messenger (peace be upon him)?' The Messenger of Allah (peace be upon him) said: 'Leave him, for the claimant has the right to speak.' He then repeated his words a second time as previously recounted, and the Bedouin again cried: 'O treachery!' When the Bedouin did not understand him, the Messenger of Allah (peace be upon him) sent to Umm Ḥakīm, saying: 'Lend us a wasq of provisioned stored dates until we acquire some, and we shall repay you.' She replied: 'Send a messenger; he will come and take it.' The Messenger of Allah (peace be upon him) told the Bedouin: 'Accompany him so he may settle your due.'" The remainder of the narration has been mentioned.

L25777 Therefore, there is no valid argument in this for them against both their school and ours, because the sale had not yet been completed between the Prophet—peace be upon him—and the Bedouin; as they had not parted.

L25778–25780 The text of the hadith states thus, and this is clarified by the Prophet's statement (peace be upon him) to him: "We had purchased a camel from you for a wasq [approximately 60 kg measure] of reserve dates, and we believed it was in our possession. We sought it but did not find it." The statement of the Mother of the Believers in the narration itself: When the Bedouin did

فَصْلٌ اسْتَدْرَكْنَا شَيْئًا يَحْتَجُّ بِهِ الشَّافِعِيُّونَ فِي إِجَازَتِهِمْ السَّلَمَ حَالًّا فِي الذِّمَّةِ إِلَى غَيْرِ أَجَلٍ، وَهُمَا خَبَرَانِ: أَحَدُهُمَا: رُوِّينَاهُ مِنْ طَرِيقِ الْبَزَّارِ قَالَ: نا الْحَسَنُ بْنُ أَحْمَدَ بْنِ أَبِي شُعَيْبٍ الْحَرَّانِيُّ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ جَعْفَرِ بْنِ الزُّبَيْرِ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «ابْتَاعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَزُورًا مِنْ أَعْرَابِيٍّ بِوَسْقٍ مِنْ تَمْرِ الذَّخِيرَةِ وَهِيَ الْعَجْوَةُ فَجَاءَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى مَنْزِلِهِ، فَالْتَمَسَ التَّمْرَ فَلَمْ يَجِدْهُ، فَقَالَ لِلْأَعْرَابِيِّ: يَا عَبْدَ اللَّهِ إِنَّا ابْتَعْنَا مِنْكَ جَزُورًا بِوَسْقٍ مِنْ تَمْرِ الذَّخِيرَةِ، وَنَحْنُ نَرَى أَنَّهُ عِنْدَنَا، فَالْتَمَسْنَاهُ فَلَمْ نَجِدْهُ؟ فَقَالَ الْأَعْرَابِيُّ: وَاغَدْرَاهُ، فَزَجَرَهُ النَّاسُ وَقَالُوا: أَتَقُولُ هَذَا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَعُوهُ فَإِنَّ لِصَاحِبِ الْحَقِّ مَقَالًا، ثُمَّ أَعَادَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْكَلَامَ ثَانِيَةً كَمَا أَوْرَدْنَا، فَقَالَ الْأَعْرَابِيُّ: وَاغَدْرَاهُ، قَالَ: فَلَمَّا لَمْ يَفْهَمْ عَنْهُ الْأَعْرَابِيُّ أَرْسَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى أُمِّ حَكِيمٍ: أَقْرِضِينَا وَسْقًا مِنْ تَمْرِ الذَّخِيرَةِ حَتَّى يَكُونَ عِنْدَنَا فَنَقْضِيكَ؟ فَقَالَتْ: أَرْسِلْ رَسُولًا يَأْتِي يَأْخُذُهُ، فَقَالَ لِلْأَعْرَابِيِّ: انْطَلِقْ مَعَهُ حَتَّى يُوفِيَكَ» وَذُكِرَ بَاقِي الْخَبَرِ.

فَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ عَلَى مَذْهَبِهِمْ وَمَذْهَبِنَا؛ لِأَنَّ الْبَيْعَ لَمْ يَكُنْ تَمَّ بَعْدُ بَيْنَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبَيْنَ الْأَعْرَابِيِّ؛ لِأَنَّهُمَا لَمْ يَتَفَرَّقَا.

هَكَذَا نَصَّ الْحَدِيثُ، وَيُبَيِّنُ ذَلِكَ «قَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهُ إِنَّا كُنَّا ابْتَعْنَا مِنْكَ بَعِيرًا بِوَسْقٍ مِنْ تَمْرِ الذَّخِيرَةِ، وَنَحْنُ نَرَى أَنَّهُ عِنْدَنَا، فَالْتَمَسْنَاهُ فَلَمْ نَجِدْهُ» وَقَوْلُ أُمِّ الْمُؤْمِنِينَ فِي الْخَبَرِ نَفْسِهِ، فَلَمَّا لَمْ يَفْهَمْ عَنْهُ الْأَعْرَابِيُّ اسْتَقْرَضَ مِنْ أُمِّ حَكِيمٍ فَصَحَّ

[14] **Qur'an references (L25772):** Qur'an 4:82 (An-Nisa).

not grasp his meaning, the Prophet—peace be upon him—borrowed from Umm Ḥakīm. Thus it became evident that he—peace be upon him—at that time concluded the stipulated contract with him, and the sale was perfected with the price present, while the Bedouin took possession.

أَنَّهُ - عَلَيْهِ السَّلَامُ - حِينَئِذٍ أَمْضَى مَعَهُ الْعَقْدَ الْمَحْدُودَ وَتَمَّ الْبَيْعُ بِحُضُورِ الثَّمَنِ وَقَبَضَ الْأَعْرَابِيُّ.

L25781 This report is a proof against the Ḥanafīs and Mālikīs, for they hold that a sale is concluded before the parties separate, and they cannot claim this ruling is abrogated by the stipulation of a term in *salam* contracts. The stipulation of terms in *salam* occurred during the early Hijrī period, as narrated via al-Bukhārī's transmission chain: Ṣadaqah ibn Khālid narrated to us, Sufyān ibn ʿUyaynah narrated to us, Ibn Abī Najīḥ informed me from ʿAbdullāh ibn Kathīr from Abū al-Minhāl from Ibn ʿAbbās, who said: "When the Messenger of Allah (peace and blessings be upon him) arrived in Medina, they were advancing payments for dates with deferred terms of two or three years. He said: 'Whoever advances payment for something must do so from a known measure and weight to a known term.'" The report of ʿĀ'ishah postdates this.

هَذَا الْخَبَرُ حُجَّةٌ عَلَى الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ؛ لِأَنَّهُمْ يَرَوْنَ الْبَيْعَ يَتِمُّ قَبْلَ التَّفَرُّقِ وَلَيْسَ لَهُمْ أَنْ يَقُولُوا: إنَّ هَذَا مَنْسُوخٌ بِذِكْرِ الْأَجَلِ فِي السَّلَمِ؛ لِأَنَّ ذِكْرَ الْأَجَلِ فِي السَّلَمِ كَانَ فِي أَوَّلِ الْهِجْرَةِ: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا صَدَقَةُ هُوَ ابْنُ خَالِدٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ أَخْبَرَنِي ابْنُ أَبِي نَجِيحٍ عَنْ عَبْدِ اللَّهِ بْنِ كَثِيرٍ عَنْ أَبِي الْمِنْهَالِ عَنْ ابْنِ عَبَّاسٍ قَالَ: «قَدِمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَدِينَةَ وَهُمْ يُسَلِّفُونَ بِالتَّمْرِ السَّنَتَيْنِ، وَالثَّلَاثَ فَقَالَ: مَنْ أَسْلَفَ فِي شَيْءٍ فَلْيُسْلِفْ مِنْ كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ إلَى أَجَلٍ مَعْلُومٍ» وَكَانَ خَبَرُ عَائِشَةَ بَعْدَ ذَلِكَ.

L25782 If it is said: The statement of the Prophet (peace be upon him), "Leave him, for the one entitled to a right has a right to speak," serves as proof that the sale had been completed between them.

فَإِنْ قِيلَ: إنَّ قَوْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «دَعُوهُ فَإِنَّ لِصَاحِبِ الْحَقِّ مَقَالًا» دَلِيلٌ عَلَى أَنَّ الْبَيْعَ قَدْ كَانَ تَمَّ بَيْنَهُمَا.

L25783 We said: Because he—peace be upon him—did not state that this Bedouin was a rightful claimant; rather, he merely clarified that the rightful claimant has only a claim, and that is indeed the case. Far be it from Allah that the Bedouin should be a rightful claimant while he accuses the Prophet—peace and blessings of Allah be upon him—of treachery?

قُلْنَا: لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَقُلْ: إنَّ هَذَا الْأَعْرَابِيَّ صَاحِبُ حَقٍّ، إنَّمَا أَخْبَرَ أَنَّ لِصَاحِبِ الْحَقِّ مَقَالًا فَقَطْ، وَهُوَ كَذَلِكَ، وَحَاشَا اللَّهِ أَنْ يَكُونَ الْأَعْرَابِيُّ صَاحِبَ حَقٍّ وَهُوَ يَصِفُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْغَدْرِ؟

L25784–25786 The second report: We narrated it through the chain of Ibn Abi Shaybah—Abdullah ibn Numayr narrated to us, Yazid ibn Ziyad ibn Abi al-Ja'd narrated to us, Abu Sakharah Jami' ibn Shaddad narrated to us from Tariq ibn Abdullah al-Muharibi, who said: "I saw the Messenger of Allah—peace and blessings be upon him—twice. Once at the market of Dhu al-Majaz, proclaiming in the loudest voice, 'O people! Say: There is no god but Allah, and you will prosper!'—while Abu Lahab pursued him, pelting stones that wounded his

وَالْخَبَرُ الثَّانِي: رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ نا يَزِيدُ بْنُ زِيَادِ بْنِ أَبِي الْجَعْدِ نا أَبُو صَخْرَةَ جَامِعُ بْنُ شَدَّادٍ عَنْ طَارِقِ بْنِ عَبْدِ اللَّهِ الْمُحَارِبِيِّ: قَالَ «رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَرَّتَيْنِ مَرَّةً بِسُوقِ ذِي الْمَجَازِ وَهُوَ يُنَادِي بِأَعْلَى صَوْتِهِ يَا أَيُّهَا النَّاسُ قُولُوا: لَا إلَهَ إلَّا اللَّهُ تُفْلِحُوا، وَأَبُو لَهَبٍ يَتْبَعُهُ بِالْحِجَارَةِ قَدْ أَدْمَى

heels and ankle sinews. When Islam triumphed, he [Tariq] came to Medina. We departed from al-Rabadhah until we camped near Medina, accompanied by a woman traveling with us in a howdah. A man approached us, greeted us with peace, and we returned his greeting. We had a camel with us, and he asked: 'Will you sell the camel?' We said: 'Yes.' He asked: 'For how much?' We replied: 'For a saʿ of dates.' He said: 'I accept it.' Then he took the camel's reins and led it into Medina. We began to blame one another, saying: 'You handed your camel to a stranger!' The woman said: 'Do not blame one another, for I saw a countenance incapable of betraying you. Never have I seen a face more akin to the full moon than his face.' At dusk, a man came to us and said: 'Peace be upon you. I am a messenger sent by the Messenger of Allah to you.'" And indeed, He commands you to eat until you are full and to measure until you have given full measure. So we did, and when the next day came, we entered the city. There, the Messenger of Allah (peace and blessings of Allah be upon him) was standing on the pulpit addressing the people. The remainder of the report was mentioned.

كَعْبَيْهِ وَعُرْقُوبَيْهِ، فَلَمَّا ظَهَرَ الْإِسْلَامُ قَدِمَ الْمَدِينَةَ أَقْبَلْنَا مِنْ الرَّبَذَةِ حَتَّى نَزَلْنَا قَرِيبًا مِنْ الْمَدِينَةِ، وَمَعَنَا ظَعِينَةٌ لَنَا، فَأَتَانَا رَجُلٌ فَسَلَّمَ عَلَيْنَا، فَرَدَدْنَا عَلَيْهِ السَّلَامَ، وَمَعَنَا جَمَلٌ لَنَا، فَقَالَ: أَتَبِيعُونَ الْجَمَلَ؟ فَقُلْنَا نَعَمْ، قَالَ: بِكَمْ؟ قُلْنَا: بِكَذَا وَكَذَا صَاعًا مِنْ تَمْرٍ، قَالَ: قَدْ أَخَذْتُهُ ثُمَّ أَخَذَ بِرَأْسِ الْجَمَلِ حَيْثُ دَخَلَ الْمَدِينَةَ، فَتَلَاوَمْنَا وَقُلْنَا: أَعْطَيْتُمْ جَمَلَكُمْ رَجُلًا لَا تَعْرِفُونَهُ؟ فَقَالَتْ الظَّعِينَةُ: لَا تَلَاوَمُوا فَلَقَدْ رَأَيْتُ وَجْهًا مَا كَانَ لِيَخْفِرَكُمْ مَا رَأَيْتُ وَجْهًا أَشْبَهَ بِالْقَمَرِ لَيْلَةَ الْبَدْرِ مِنْ وَجْهِهِ، فَلَمَّا كَانَ الْعَشِيُّ أَتَانَا رَجُلٌ فَقَالَ: السَّلَامُ عَلَيْكُمْ إنِّي رَسُولُ رَسُولِ اللَّهِ إلَيْكُمْ وَإِنَّهُ يَأْمُرُكُمْ أَنْ تَأْكُلُوا حَتَّى تَشْبَعُوا وَتَكْتَالُوا حَتَّى تَسْتَوْفُوا، فَفَعَلْنَا، فَلَمَّا كَانَ مِنْ الْغَدِ دَخَلْنَا الْمَدِينَةَ، فَإِذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَائِمٌ عَلَى الْمِنْبَرِ يَخْطُبُ النَّاسَ» وَذُكِرَ بَاقِي الْخَبَرِ.

L25787 Ali said: This contains no proof for them herein for two reasons. The first is that there is no evidence in it indicating that the one who purchased the camel was the Messenger of Allah (peace be upon him), nor that he knew about the details of its purchase. The more apparent view is that someone else was the buyer, as evidenced by Tariq's statement that he saw the Messenger of Allah (peace be upon him) twice: once at Dhū al-Majāz and once on the pulpit while delivering a sermon. For if he (peace be upon him) had been the one who purchased the camel, Tariq would have seen him three times, and this contradicts the report.

قَالَ عَلِيٌّ: هَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِوَجْهَيْنِ: أَحَدُهُمَا: أَنَّهُ لَيْسَ فِيهِ دَلِيلٌ عَلَى أَنَّ الَّذِي اشْتَرَى الْجَمَلَ كَانَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا أَنَّهُ عَلِمَ بِصِفَةِ ابْتِيَاعِهِ، وَالْأَظْهَرُ أَنَّ غَيْرَهُ كَانَ الْمُبْتَاعَ بِدَلِيلِ قَوْلِ طَارِقٍ بِأَنَّهُ رَأَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَرَّتَيْنِ مَرَّةً بِذِي الْمَجَازِ وَمَرَّةً عَلَى الْمِنْبَرِ يَخْطُبُ، فَلَوْ كَانَ - عَلَيْهِ السَّلَامُ - هُوَ الَّذِي ابْتَاعَ الْجَمَلَ لَكَانَ قَدْ رَآهُ ثَلَاثَ مَرَّاتٍ وَهَذَا خِلَافُ الْخَبَرِ.

L25788 Thus, it was established that he was other than him, and there is no valid argument based on the actions of another. Indeed, among the Companions of the Prophet (peace and blessings of Allah be upon him) there was outstanding beauty, handsomeness, and gracious treatment.

فَصَحَّ أَنَّهُ كَانَ غَيْرَهُ، وَلَا حُجَّةَ فِي عَمَلِ غَيْرِهِ، وَقَدْ كَانَ فِي أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْجَمَالُ الْبَارِعُ، وَالْوَسَامَةُ، وَالْمُعَامَلَةُ الْجَمِيلَةُ.

L25789 While none can conclusively affirm the superiority of any Companion over Bilāl except Abū Bakr and ʿUmar, he purchased a ṣāʿ of dates for two ṣāʿs of dates. It may well be that the purchaser of the camel requested Allah's

Messenger—peace and blessings be upon him—to pay the camel's price to the people on his behalf, and he did so.

وَقَدْ اشْتَرَى بِلَالٌ وَمَا يُقْطَعُ بِفَضْلِ أَحَدٍ مِنْ الصَّحَابَةِ عَلَيْهِ غَيْرِ أَبِي بَكْرٍ، وَعُمَرَ: صَاعًا مِنْ تَمْرٍ بِصَاعَيْ تَمْرٍ، وَقَدْ يَكُونُ مُشْتَرِي الْجَمَلِ سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُؤَدِّيَ عَنْهُ إلَى الْقَوْمِ ثَمَنَ الْجَمَلِ فَفَعَلَ.

L25790 The second view: If it were valid that he—peace be upon him—were the buyer or that he knew the matter and did not disapprove of it, then Ibn Abbas's hadith stipulating the designated period would constitute an addition to it—one that must be incorporated—and it is impermissible to neglect it.

الْوَجْهُ الثَّانِي: أَنَّهُ لَوْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ الْمُشْتَرِي، أَوْ أَنَّهُ عَلِمَ الْأَمْرَ فَلَمْ يُنْكِرْهُ لَكَانَ حَدِيثُ ابْنِ عَبَّاسٍ بِإِيجَابِ الْأَجَلِ زَائِدًا عَلَيْهِ زِيَادَةً يَلْزَمُ إضَافَتُهَا إلَيْهِ، وَلَا يَحِلُّ تَرْكُهَا.

L25791 Their reliance on these two reports is invalid. Let anyone who reads this book of ours know that they are authentic and free of defects, except that the ruling regarding them is as we have mentioned. Success comes from Allah, the Exalted.

فَبَطَلَ تَعَلُّقُهُمْ بِهَذَيْنِ الْخَبَرَيْنِ، وَلْيَعْلَمْ مَنْ قَرَأَ كِتَابَنَا هَذَا أَنَّهُمَا صَحِيحَانِ لَا دَاخِلَةَ فِيهِمَا إلَّا أَنَّ الْقَوْلَ فِيهِمَا كَمَا ذَكَرْنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25792 **Issue: If one enters into a *salam* contract for two types without specifying the quantity of each kind.**

[مَسْأَلَة إذَا أَسْلَمَ فِي صِنْفَيْنِ وَلَمْ يُبَيِّنْ مِقْدَار كُلّ صنف]

L25793 1620 - Issue: If someone enters into a salam contract involving two categories without specifying the quantity of each category, the contract is invalid and annulled. For example, if they enter into a salam contract for two qafīz of wheat and barley, because it is unknown how much of them is wheat and how much is barley. It is not permissible to conclusively assert that they are halves, as there is no evidence for that. And with Allah, the Most High, is success.

١٦٢٠ - مَسْأَلَةٌ: وَمَنْ أَسْلَمَ فِي صِنْفَيْنِ وَلَمْ يُبَيِّنْ مِقْدَارَ كُلِّ صِنْفٍ مِنْهُمَا فَهُوَ بَاطِلٌ مَفْسُوخٌ، مِثْلُ أَنْ يُسَلِّمَ فِي قَفِيزَيْنِ مِنْ قَمْحٍ وَشَعِيرٍ؛ لِأَنَّهُ لَا يَدْرِي كَمْ يَكُونُ مِنْهُمَا قَمْحًا، وَكَمْ يَكُونُ شَعِيرًا، وَلَا يَجُوزُ الْقَطْعُ بِأَنَّهُمَا نِصْفَانِ لِأَنَّهُ لَا دَلِيلَ عَلَى ذَلِكَ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25794 If two individuals enter into a salam contract with a single party, it is permissible. The salam obligation between the two sellers and the single buyer is proportionate to their respective shares in the upfront price they pay, since the commodity they have sold through salam corresponds precisely to the price—a matter of consensus.

فَلَوْ أَسْلَمَ اثْنَانِ إلَى وَاحِدٍ فَهُوَ جَائِزٌ، وَالسَّلَمُ بَيْنَهُمَا عَلَى قَدْرِ حِصَصِهِمَا فِي الثَّمَنِ الَّذِي يَدْفَعَانِ؛ لِأَنَّ الَّذِي أَسْلَمَا فِيهِ إنَّمَا هُوَ بِإِزَاءِ الثَّمَنِ بِلَا خِلَافٍ.

L25795–25797 If one were to enter into a Salam contract with two others as a single agreement, the two are equal in what they have received, for they are partners. If they both took it jointly, it is impermissible for them to have disparity in

their shares unless it is established during the contract that one is allocated a third of it and the other two-thirds of it, or as they mutually stipulate. And success comes only from Allah, the Exalted.

The issue of describing what remains valid.

1621. Issue: It is necessary to describe the item being delivered with its defining attributes, for if this is not done, it becomes a transaction without mutual consent. This is because the transferor does not know what they are giving to the transferee, and the transferee does not know what they are receiving from the transferor. Thus, this constitutes wrongful consumption of wealth through false means.

Mutual consent is neither permissible nor possible except in a known matter, and in Allah, the Exalted, we seek support.

The Issue of What is Permissible in the Salam Contract

1622 - Issue: Salam is permissible for items—whether absent or present at the time of contracting—and [may be concluded] with one who possesses none of the item or one who does possess it.

It is not permissible to engage in a salam contract for something that does not exist at the time of its due date.

The proof of this is that the Messenger of Allah—peace and blessings be upon him—commanded the salam contract as we mentioned, specifying regulations for measurement by volume, measurement by weight, and a stipulated term. If salam were impermissible in a commodity except when it exists or when directed to one who already possesses the item to be delivered, he—peace and blessings be upon him—would not have neglected to clarify this, thereby leaving us dependent on others' [standards]. Far removed is Allah

فَلَوْ أَسْلَمَ وَاحِدٌ إلَى اثْنَيْنِ صَفْقَةً وَاحِدَةً، فَهُمَا فِيمَا قَبَضَا سَوَاءٌ؛ لِأَنَّهُمَا شَرِيكَانِ فِيهِ، وَأَخَذَاهُ مَعًا، فَلَا يَجُوزُ أَنْ يَتَفَاضَلَا فِيهِ إلَّا بِأَنْ يَتَبَيَّنَ عِنْدَ الْعَقْدِ أَنَّ لِهَذَا ثُلُثَهُ وَلِهَذَا ثُلُثَيْهِ، أَوْ كَمَا يَتَّفِقُونَ عَلَيْهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة وصف مَا يسلم]

١٦٢١ - مَسْأَلَةٌ: وَلَا بُدَّ مِنْ وَصْفِ مَا يُسْلِمُ فِيهِ بِصِفَاتِهِ الضَّابِطَةِ لَهُ؛ لِأَنَّهُ إنْ لَمْ يَفْعَلْ ذَلِكَ كَانَ تِجَارَةً عَنْ غَيْرِ تَرَاضٍ، إذْ لَا يَدْرِي الْمُسَلِّمُ مَا يُعْطِيهِ الْمُسَلَّمَ إلَيْهِ وَلَا يَدْرِي الْمُسَلَّمُ إلَيْهِ مَا يَأْخُذُ مِنْهُ الْمُسَلِّمُ فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ.

وَالتَّرَاضِي لَا يَجُوزُ وَلَا يُمْكِنُ إلَّا فِي مَعْلُومٍ وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

[مَسْأَلَة مَا يَجُوز فِيهِ السَّلَم]

١٦٢٢ - مَسْأَلَةٌ: وَالسَّلَمُ جَائِزٌ فِيمَا لَا يُوجَدُ حِينَ عَقْدِ السَّلَمِ، وَفِيمَا يُوجَدُ، وَإِلَى مَنْ لَيْسَ عِنْدَهُ مِنْهُ شَيْءٌ، وَإِلَى مَنْ عِنْدَهُ.

وَلَا يَجُوزُ السَّلَمُ فِيمَا لَا يُوجَدُ حِينَ حُلُولِ أَجَلِهِ.

بُرْهَانُ ذَلِكَ -: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِالسَّلَمِ كَمَا ذَكَرْنَا " وَبَيَّنَ فِي الْكَيْلِ " وَفِي الْوَزْنِ، وَإِلَى أَجَلٍ، فَلَوْ كَانَ كَوْنُ السَّلَمِ فِي الشَّيْءِ لَا يَجُوزُ إلَّا فِي حَالِ وُجُودِهِ، أَوْ إلَى مَنْ عِنْدَهُ مَا سُلِّمَ إلَيْهِ فِيهِ لَمَا أَغْفَلَ - عَلَيْهِ السَّلَامُ - بَيَانَ ذَلِكَ حَتَّى يَكِلَنَا إلَى غَيْرِهِ، حَاشَا لِلَّهِ مِنْ ذَلِكَ {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] ، {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

from such [negligence]! “He does not speak from whim—it is but revelation revealed” (53:3-4), “And your Lord is never forgetful” (19:64).[15]

وَأَمَّا السَّلَمُ فِيمَا لَا يُوجَدُ حِينَ حُلُولِ أَجَلِهِ فَهُوَ تَكْلِيفُ مَا لَا يُطَاقُ، وَهَذَا بَاطِلٌ، قَالَ اللَّهُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] فَهُوَ عَقْدٌ عَلَى بَاطِلٍ فَهُوَ بَاطِلٌ.

L25805 As for the salam contract (a forward sale) pertaining to what is nonexistent at the time of its delivery term, this constitutes imposing what exceeds one’s capacity and is invalid. Allah the Exalted said: “Allah does not burden any soul beyond its capacity.” [Al-Baqarah: 286] Thus, a contract founded upon falsehood is void.[16]

وَقَوْلُنَا فِي هَذَا كُلِّهِ هُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي ثَوْرٍ وَأَبِي سُلَيْمَانَ - وَلَمْ يُجِزْ السَّلَمَ فِي شَيْءٍ لَا يُوجَدُ حِينَ السَّلَمِ فِيهِ: سُفْيَانُ، وَالْأَوْزَاعِيُّ، وَأَبُو حَنِيفَةَ.

L25806 Our opinion in all of this is the opinion of Mālik, al-Shāfiʿī, Aḥmad, Abū Thawr, and Abū Sulaymān. Those who did not permit *salam* in anything not extant at the time of the *salam* contract are Sufyān, al-Awzāʿī, and Abū Ḥanīfah.

وَزَادَ أَبُو حَنِيفَةَ فَقَالَ: لَا يَجُوزُ السَّلَمُ إلَّا فِيمَا هُوَ مَوْجُودٌ مِنْ حِينِ السَّلَمِ إلَى حِينِ أَجَلِهِ لَا يَنْقَطِعُ فِي شَيْءٍ مِنْ تِلْكَ الْمُدَّةِ - وَمَا نَعْلَمُ هَذَا الْقَوْلَ عَنْ أَحَدٍ قَبْلَهُ.

L25807 Abu Hanifah added: “*Salam* is permissible only for what exists from the time of the contract until its appointed term and remains available without interruption throughout that period.” We do not know of this opinion being reported from anyone before him.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: لَا يَجُوزُ السَّلَمُ فِي شَيْءٍ يَنْقَطِعُ، وَلَوْ فِي شَيْءٍ مِنْ السَّنَةِ - وَلَا يُعْلَمُ أَيْضًا هَذَا عَنْ أَحَدٍ قَبْلَهُ.

L25808 Al-Ḥasan ibn Ḥayyin said: It is not permissible to engage in a *salam* contract for goods that cease to exist, even for something within the year. This ruling is also not known from anyone before him.

وَاحْتَجَّ الْمَانِعُونَ مِنْ هَذَا «بِنَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ السُّنْبُلِ حَتَّى يَشْتَدَّ وَعَنْ بَيْعِ الثَّمَرِ حَتَّى يَبْدُوَ صَلَاحُهُ.»

L25809 Those who prohibit this cite the Messenger of Allah—peace and blessings be upon him—forbidding the sale of grain ears until they mature fully and agricultural produce until its ripeness becomes apparent.

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ -: أَوَّلُ ذَلِكَ أَنَّهُمْ مُخَالِفُونَ لَهُ؛ لِأَنَّهُمْ يُجِيزُونَ السَّلَمَ فِي الْبُرِّ وَالشَّعِيرِ وَهُمَا بَعْدُ سُنْبُلٌ لَمْ يَشْتَدَّ وَأَمَّا بَيْعُ الثَّمَرِ قَبْلَ بُدُوِّ صَلَاحِهِ، فَلَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ السَّلَمَ عِنْدَ الْحَنَفِيِّينَ وَعِنْدَنَا لَيْسَ بَيْعًا - فَبَطَلَ تَعَلُّقُهُمْ بِهِ جُمْلَةً.

L25810–25811 Abū Muḥammad said: In this, there is no proof for them — the first point being that they contradict it, for they permit salam contracts in wheat and barley while they are still in the ear and have not yet hardened. As for selling fruits before the appearance of its ripeness, there is no proof for them in it, because the salam contract according to the Ḥanafīs and according to us is not a sale. Thus, their entire reliance upon it is nullified.

[15] **Qur’an references (L25804):** Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm); Qur’an 19:64 (Maryam).

[16] **Qur’an references (L25805):** Qur’an 2:286 (Al-Baqarah).

L25812 If it were a sale, it would not be lawful, “due to the Prophet’s prohibition—may Allah’s peace and blessings be upon him—against selling what is not in your possession,” not [forbidding] what one possesses at the time of salam. If they were to except salam from that? We say: Then make an exception for it from the category of selling fruits before the appearance of ripeness in them. Otherwise, you have ruled baselessly in falsehood.

وَلَوْ كَانَ بَيْعًا لَمَا حَلَّ، «لِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ مَا لَيْسَ عِنْدَكَ» لَا لِمَنْ هُوَ عِنْدَهُ حِينَ السَّلَمِ - فَإِنْ خَصُّوا السَّلَمَ مِنْ ذَلِكَ؟ قُلْنَا: فَخُصُّوهُ مِنْ جُمْلَةِ بَيْعِ الثَّمَرِ قَبْلَ بُدُوِّ الصَّلَاحِ فِيهِ وَإِلَّا فَقَدْ تَحَكَّمْتُمْ فِي الْبَاطِلِ.

L25813 They obscured by citing what was narrated to us through the chain in Abū Dāwūd’s collection: Muḥammad ibn Kathīr narrated to us from Sufyān al-Thawrī from Abū Isḥāq from a man of Najrān from Ibn ʿUmar, who said: The Messenger of Allah—peace and blessings be upon him and his family—said, “Do not engage in advance sales for dates until their ripeness becomes evident.”

وَمَوَّهُوا بِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ كَثِيرٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ عَنْ رَجُلٍ نَجْرَانِيٍّ عَنْ ابْنِ عُمَرَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لَا تُسْلِفُوا فِي النَّخْلِ حَتَّى يَبْدُوَ صَلَاحُهُ» .

L25814 And Hammam narrated to us: Abbas ibn Asbagh narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, Ahmad ibn Muhammad al-Birtī the judge narrated to us, Abu Hudhayfa narrated to us, Sufyan al-Thawri narrated from Abu Ishaq from al-Najrani from Ibn Umar, from the Prophet—peace and blessings of Allah be upon him—that he prohibited advance sale (salam) in the fruit of a palm tree until its ripeness becomes evident. Al-Najrani expressed astonishment, saying: “How could their narration transgress this ruling? Yet it refers solely to the fruit of the palm tree specifically.”

وَحَدَّثَنَا حُمَامُ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَحْمَدُ بْنُ مُحَمَّدٍ الْبِرْتِيُّ الْقَاضِي نا أَبُو حُذَيْفَةَ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ عَنِ النَّجْرَانِيِّ عَنِ ابْنِ عُمَرَ «عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ نَهَى أَنْ يُسْلَفَ فِي ثَمَرَةِ نَخْلٍ حَتَّى يَبْدُوَ صَلَاحُهُ» النَّجْرَانِيُّ عَجَبٌ مَا كَانَ لِيَعْدُوَهُمْ حَدِيثُ النَّجْرَانِيِّ، ثُمَّ لَيْسَ فِيهِ إِلَّا ثَمَرُ النَّخْلِ خَاصَّةً.

L25815 If they say, “We applied qiyās based on dates?” We respond: “Why did you not instead apply qiyās to grazing livestock as opposed to stall-fed livestock? Furthermore, there is nothing in it of what they said regarding the prolonging of its existence until its designated period.”

فَإِنْ قَالُوا: قِسْنَا عَلَى ثَمَرَةِ النَّخْلِ؟ قُلْنَا: وَهَلَّا قِسْتُمْ عَلَى السَّائِمَةِ غَيْرَ السَّائِمَةِ، ثُمَّ لَيْسَ فِيهِ مَا قَالُوهُ مِنْ تَمَادِي وُجُودِهِ إِلَى حِينِ أَجَلِهِ.

L25816 As for the salam contract to one who possesses none of the commodity—it has been narrated to us via the chain of Ibn Abi Shaybah: Ibn Abi Za’idah reported from Yahya ibn Sa‘id al-Ansari from Nafi‘, who said: When Ibn ‘Umar was asked about a man buying something on a term when he does not have the commodity in his possession, he would see no objection to it. But Ibn al-Musayyib, Ikrimah, Tawus, and Ibn Sirin disapproved of it. Thus, all the narrations they depended upon was nullified.

وَأَمَّا السَّلَمُ إِلَى مَنْ لَيْسَ عِنْدَهُ مِنْهُ شَيْءٌ -: فَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ أَبِي زَائِدَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ نَافِعٍ قَالَ: كَانَ ابْنُ عُمَرَ إِذَا سُئِلَ عَنْ الرَّجُلِ يَبْتَاعُ شَيْئًا إِلَى أَجَلٍ وَلَيْسَ عِنْدَهُ أَصْلُهُ لَا يَرَى بِهِ بَأْسًا، وَكَرِهَهُ ابْنُ الْمُسَيِّبِ، وَعِكْرِمَةُ، وَطَاوُسٌ، وَابْنُ سِيرِينَ - فَبَطَلَ كُلُّ مَا تَعَلَّقُوا بِهِ مِنْ الْآثَارِ.

وَذَكَرُوا فِي ذَلِكَ عَمَّنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ: نا أَبُو الْوَلِيدِ هُوَ الطَّيَالِسِيُّ - نا شُعْبَةُ عَنْ عَمْرٍو هُوَ ابْنُ مُرَّةَ - عَنْ أَبِي الْبَخْتَرِيِّ قَالَ: سَأَلْتُ ابْنَ عُمَرَ عَنْ السَّلَمِ فِي النَّخْلِ؟ فَقَالَ: " نَهَى عَنْ بَيْعِ النَّخْلِ حَتَّى يَصْلُحَ وَسَأَلْت ابْنَ عَبَّاسٍ عَنْ السَّلَمِ فِي النَّخْلِ؟ فَقَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ النَّخْلِ حَتَّى يُؤْكَلَ مِنْهُ» وَمِنْ الْبُخَارِيِّ: نا مُحَمَّدُ بْنُ بَشَّارٍ نا غُنْدَرٌ نا شُعْبَةُ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ أَبِي الْبَخْتَرِيِّ سَأَلْت ابْنَ عُمَرَ عَنْ السَّلَمِ فِي النَّخْلِ؟ فَقَالَ: نَهَى عُمَرُ عَنْ بَيْعِ التَّمْرِ حَتَّى يَصْلُحَ.

L25817–25819 They mentioned in this regard—via narrators other than the Messenger of Allah (peace and blessings be upon him)—what was relayed to us through Al-Bukhari's chain: Abu al-Walid (Al-Tayalisi) narrated to us; Shu'bah narrated from 'Amr ibn Murrah, from Abu al-Bakhtari, who said: "I asked Ibn 'Umar about a *salam* contract for palm trees." He replied: "He prohibited selling palm trees until they mature." I then asked Ibn 'Abbas about the *salam* contract for palm trees, and he said: "The Messenger of Allah (peace and blessings be upon him) prohibited selling palm trees until some of their fruit can be eaten." From Al-Bukhari: Narrated by Muḥammad ibn Bishār from Ghundar from Shu'bah, from 'Amr ibn Murrah, from Abī al-Bakhtari: I asked Ibn 'Umar about the salam contract for palm dates. He said: "'Umar prohibited the sale of dates until they are fit for sale."

وَمِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: لَا بَأْسَ أَنْ يُسْلِمَ الرَّجُلُ فِي الطَّعَامِ الْمَوْصُوفِ إلَى أَجَلٍ مُسَمًّى مَا لَمْ يَكُنْ ذَلِكَ فِي زَرْعٍ لَمْ يَبْدُ صَلَاحُهُ أَوْ ثَمَرٍ لَمْ يَبْدُ صَلَاحُهُ.

L25820 There is no objection to a person conducting a forward sale (salam) for specified food with a named term, provided it does not involve crops whose fitness has not become apparent or produce whose fitness has not become apparent.

وَمِنْ طَرِيقِ أَبِي ثَوْرٍ نا مُعَلَّى نا أَبُو الْأَحْوَصِ نا طَارِقٌ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: قَالَ عُمَرُ: لَا تُسْلِمُوا فِي فِرَاخٍ حَتَّى تَبْلُغَ - وَذَكَرُوا كَرَاهِيَةَ ذَلِكَ عَنْ الْأَسْوَدِ، وَإِبْرَاهِيمَ.

L25821 And from the chain of transmission of Abī Thawr: Muʿallā reported to us, from Abū al-Aḥwaṣ, from Ṭāriq, from Saʿīd ibn al-Musayyib, who said: ʿUmar said: "Do not hand over chicks until they reach maturity." They also mentioned that disapproval of this practice was transmitted from al-Aswad and Ibrāhīm.

قَالَ عَلِيٌّ: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَيْفَ وَالظَّاهِرُ مِنْ قَوْلِ عُمَرَ، وَابْنِهِ، وَابْنِ عَبَّاسٍ: أَنَّهُمْ إنَّمَا نَهَوْا عَنْ ذَلِكَ مَنْ أَسْلَمَ فِي زَرْعٍ بِعَيْنِهِ أَوْ فِي ثَمَرِ نَخْلٍ بِعَيْنِهِ - وَنَصُّ هَذِهِ الْأَخْبَارِ عَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ: أَنَّهُمَا رَأَيَا السَّلَمَ بَيْعًا، وَالْحَنَفِيُّونَ لَا يَرَوْنَهُ بَيْعًا - وَمِنْ الْبَاطِلِ أَنْ يَكُونَ قَوْلُهُمَا حُجَّةً فِي شَيْءٍ غَيْرَ حُجَّةٍ فِي شَيْءٍ آخَرَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25822 Ali said: There is no valid proof in anyone apart from the Messenger of Allah—peace and blessings be upon him. How then can this hold, when the apparent meaning of the statements of Umar, his son, and Ibn Abbas shows that they prohibited *to* one who concluded a *salam* contract for a specific crop or the dates of a specific palm tree? The explicit texts of these reports from Ibn Abbas and Ibn Umar state that they regarded *salam* as a valid sale, whereas the Hanafis do not deem it permissible under sale contracts. It is invalid to accept their opinion as binding authority in one matter but not in another. And success is from Allah, the Exalted.

[مَسْأَلَة سلم فِي شَيْءٍ فَضَيَّعَ قَبْضَهُ أَوْ اشْتَغَلَ حَتَّى فَاتَ وَقْتُهُ وَعَدِمَ]

L25823 **A case where a party enters into a *salam* contract (advance payment sale) for an item but neglects to take posses-**

sion of it or becomes preoccupied until the delivery time elapses, resulting in the item's loss or nonexistence.

L25824 Issue 1623: If someone enters into a salam contract for an item but negligently loses possession of it or becomes occupied until the time lapses and the item becomes unavailable, the entitled party may choose between waiting until it becomes available or claiming its value if it existed at that time, from whatever they mutually agreed upon. This derives from Allah's decree: "For violations of sacred matters, there is lawful retribution" (Quran 2:194). Thus, the sanctity of the salam claimant's right - when unable to obtain the specific item owed - equates to the sanctity of its equivalent. We have discussed this in the Book of Sales.[17]

L25825 **[Issue: Rescission in the Salam Contract]**

L25826 1624 - Issue: Rescission is not permissible in a salam contract because rescission is a valid sale as we clarified earlier, and the Prophet's prohibition - peace and blessings of Allah be upon him - against selling what has not been taken possession of and against selling the unknown has been authentically established, as it is gharar (prohibited uncertainty). However, if one releases the other party from whatever he wishes of it, it is an act of goodness - and success comes only from Allah, the Most High.

L25827 **The case of one who purchases a property: the entire structure thereby belongs to him.**

L25828 1625 – A supplementary ruling from the section on sales: Whoever purchases land, it becomes theirs with everything therein—be it standing structures or firmly rooted trees.

L25829–25831 Similarly, whoever purchases a house, its entire construction belongs to him, including everything fixed within it—such as a door, drawer, or other such things. This is a certain and indisputable consensus. People have continually engaged in buying and selling houses and lands since the time of the

[17] **Qur'an references (L25824):** Qur'an 2:194 (Al-Baqarah).

١٦٢٣ - مَسْأَلَةٌ: وَمَنْ سَلَمَ فِي شَيْءٍ فَضَيَّعَ قَبْضَهُ أَوْ اشْتَغَلَ حَتَّى فَاتَ وَقْتُهُ وَعَدِمَ فَصَاحِبُ الْحَقِّ مُخَيَّرٌ بَيْنَ أَنْ يَصْبِرَ حَتَّى يُوجَدَ، وَبَيْنَ أَنْ يَأْخُذَ قِيمَتَهُ لَوْ وُجِدَ فِي ذَلِكَ الْوَقْتِ مِنْ أَيِّ شَيْءٍ تَرَاضَيَا عَلَيْهِ لِقَوْلِ اللَّهِ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] فَحُرْمَةُ حَقِّ صَاحِبِ السَّلَمِ إذَا لَمْ يَقْدِرْ عَلَى عَيْنِ حَقِّهِ كَحُرْمَةِ مِثْلِهَا - وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الْبُيُوعِ ".

[مَسْأَلَةٌ الْإِقَالَةُ فِي السَّلَمِ]

١٦٢٤ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْإِقَالَةُ فِي السَّلَمِ، لِأَنَّ الْإِقَالَةَ بَيْعٌ صَحِيحٌ عَلَى مَا بَيَّنَّا قَبْلُ وَقَدْ صَحَّ «نَهْيُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ مَا لَمْ يَقْبِضْ وَعَنْ بَيْعِ الْمَجْهُولِ» ؛ لِأَنَّهُ غَرَرٌ لَكِنْ يَبَرُّئُهُ مِمَّا شَاءَ مِنْهُ فَهُوَ فِعْلُ خَيْرٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةَ مَنْ اشْتَرَى دَارًا فَبِنَاؤُهَا كُلُّهُ لَهُ]

١٦٢٥ - مَسْأَلَةٌ: مُسْتَدْرَكَةٌ مِنْ الْبُيُوعِ -: مَنْ اشْتَرَى أَرْضًا فَهِيَ لَهُ بِكُلِّ مَا فِيهَا مِنْ بِنَاءٍ قَائِمٍ أَوْ شَجَرٍ ثَابِتٍ.

وَكَذَلِكَ مَنْ اشْتَرَى دَارًا فَبِنَاؤُهَا كُلُّهُ لَهُ وَكُلُّ مَا يَكُونُ مُرَكَّبًا فِيهَا مِنْ بَابٍ أَوْ دُرْجٍ أَوْ غَيْرِ ذَلِكَ - وَهَذَا إجْمَاعٌ مُتَيَقَّنٌ وَمَا زَالَ النَّاسُ يَتَبَايَعُونَ الدُّورَ وَالْأَرْضِينَ مِنْ عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَكَذَا لَا يَخْلُو يَوْمٌ مِنْ أَنْ يَقَعَ فِيهِ بَيْعُ دَارٍ أَوْ

أَرْضٍ هَكَذَا وَلَا يَكُونُ لَهُ مَا كَانَ مَوْضُوعًا فِيهَا غَيْرَ مَبْنِيٍّ كَأَبْوَابٍ، وَسُلَّمٍ، وَدُرْجٍ، وَآجُرٍّ، وَرُخَامٍ: وَخَشَبٍ، وَغَيْرِ ذَلِكَ.

Messenger of Allah—peace and blessings be upon him—in this manner, such that not a day passes without a house or land being sold. The sale does not include items placed therein that are not built into the structure, such as doors, staircases, drawers, bricks, marble: wood, and other such things.

وَلَا يَكُونُ لَهُ الزَّرْعُ الَّذِي يُقْلَعُ وَلَا يَنْبُتُ، بَلْ هُوَ لِبَائِعِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L25832 The crop that is uprooted and does not grow is not his; rather, it belongs to its seller. And with Allah, the Exalted, is success.

وَمَنْ ابْتَاعَ أَنْقَاضًا أَوْ شَجَرًا دُونَ الْأَرْضِ فَكُلُّ ذَلِكَ يُقْلَعُ وَلَا بُدَّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L25833 Whoever purchases rubble or trees without the land, all of that must be uprooted without exception—and success is by Allah, the Exalted. The Book of Salam is concluded.

تَمَّ كِتَابُ السَّلَمِ



AL-MUHALLA

كِتَابُ الْهِبَاتِ

The Book of Gifts

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْهِبَاتِ] [مَسْأَلَةٌ لَا تَجُوزُ الْهِبَةُ إِلَّا فِي مَوْجُودٍ مَعْلُومٍ مَعْرُوفِ الْقَدْرِ وَالصِّفَاتِ وَالْقِيمَةِ]

L25834–25835 **The Book of Gifts. Issue: A gift is not valid unless it pertains to an existing, known item clearly defined in its quantity, attributes, and value.**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ كِتَابُ الْهِبَاتِ ١٦٢٦ - مَسْأَلَةٌ: لَا تَجُوزُ هِبَةٌ إِلَّا فِي مَوْجُودٍ، مَعْلُومٍ، مَعْرُوفِ الْقَدْرِ، وَالصِّفَاتِ، وَالْقِيمَةِ، وَإِلَّا فَهِيَ بَاطِلٌ مَرْدُودَةٌ.

L25836 In the name of Allah, the Most Gracious, the Most Merciful, and may Allah send blessings upon Muhammad and his family. The Book of Gifts 1626 – Issue: A gift is not valid unless it pertains to something existing, known, and determined in quantity, attributes, and value; otherwise, it is void and invalidated.

وَكَذَلِكَ مَا لَمْ يُخْلَقْ بَعْدُ كَمَنْ وَهَبَ مَا تَلِدُ أَمَتُهُ، أَوْ شَاتُهُ، أَوْ سَائِرُ حَيَوَانِهِ، أَوْ مَا يَحْمِلُ شَجَرُهُ الْعَامَ - وَهَكَذَا كُلُّ شَيْءٍ؛ لِأَنَّ الْمَعْدُومَ لَيْسَ شَيْئًا، وَلَوْ كَانَ شَيْئًا لَكَانَ اللَّهُ عَزَّ وَجَلَّ لَمْ يَزَلْ وَالْأَشْيَاءَ مَعَهُ - وَهَذَا كُفْرٌ مِمَّنْ قَالَهُ.

L25837 Similarly, that which has not yet been created—such as one who assigns as an endowment what his female slave will bear, his sheep, the rest of his animals, or what his tree will yield for the year—and likewise everything [non-existent], because the non-existent is not a thing. Were it a thing, Allah the Almighty would have eternally existed with things existing alongside Him. This is disbelief on the part of whoever asserts it.

وَالْهِبَةُ وَالصَّدَقَةُ وَالْعَطِيَّةُ يَقْتَضِي كُلُّ ذَلِكَ مَوْهُوبًا وَمُتَصَدَّقًا، فَمَنْ أَعْطَى مَعْدُومًا أَوْ تَصَدَّقَ بِمَعْدُومٍ فَلَمْ يُعْطِ شَيْئًا، وَلَا وَهَبَ شَيْئًا، وَلَا تَصَدَّقَ بِشَيْءٍ.

L25838 A gift, charity, or grant each necessitates the existence of an item to be gifted and given as charity. Whoever gives a nonexistent thing or donates a nonexistent thing has neither given anything, gifted anything, nor donated anything as charity.

وَإِذَا لَمْ يَفْعَلْ كُلَّ مَا ذَكَرْنَا فَلَا يَلْزَمُهُ حُكْمٌ - وَقَدْ حَرَّمَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمْوَالَ النَّاسِ إِلَّا بِطِيبِ أَنْفُسِهِمْ، وَلَا يَجُوزُ أَنْ تَطِيبَ النَّفْسُ عَلَى مَا لَا تَعْرِفُ صِفَاتِهِ وَلَا مَا هُوَ، وَلَا مَا قَدْرُهُ، وَلَا مَا يُسَاوِي، وَقَدْ تَطِيبُ نَفْسُ الْمَرْءِ غَايَةَ الطِّيبِ عَلَى بَذْلِ الشَّيْءِ وَبَيْعِهِ، وَلَوْ عَلِمَ صِفَاتِهِ وَقَدْرِهِ وَمَا يُسَاوِي لَمْ تَطِبْ نَفْسُهُ بِهِ - فَهَذَا أَكْلُ مَالٍ بِالْبَاطِلِ فَهُوَ حَرَامٌ لَا يَحِلُّ.

L25839 If he does not fulfill all that we have mentioned, no ruling is binding upon him—and indeed, God Almighty has forbidden through the words of His Messenger (peace be upon him) the taking of people's wealth except with their willing consent. It is impermissible for one to consent to something whose attributes, nature, quantity, or what it is equivalent to they do not know. A person may consent with utmost willingness to relinquish or sell something, but had they known its attributes, quantity, and what it is equivalent to, they would not have agreed to it—thus, this constitutes wrongful consumption of wealth, which is forbidden and unlawful.

L25840 Similarly, whoever gives or donates a *dirham* from these *dirhams*, a *ratl* from this flour, or a *ṣāʿ* of this wheat—all of it is null and void due to what we have mentioned; because he did not direct his charity or his gift

to a specifically measured-by-volume, weighed, or counted item. Thus, he has neither given nor donated anything at all.

وَكَذَلِكَ مَنْ أَعْطَى أَوْ تَصَدَّقَ بِدِرْهَمٍ مِنْ هَذِهِ الدَّرَاهِمِ أَوْ بِرِطْلٍ مِنْ هَذَا الدَّقِيقِ، أَوْ بِصَاعٍ مِنْ هَذَا الْبُرِّ، فَهُوَ كُلُّهُ بَاطِلٌ لِمَا ذَكَرْنَا؛ لِأَنَّهُ لَمْ يُوقِعْ صَدَقَتَهُ، وَلَا هِبَتَهُ، عَلَى مَكِيلٍ بِعَيْنِهِ، وَلَا مَوْزُونٍ بِعَيْنِهِ، وَلَا مَعْدُودٍ بِعَيْنِهِ، فَلَمْ يَهَبْ وَلَا تَصَدَّقَ أَصْلًا.

L25841 Similarly, none of that is permissible for one who does not know, nor for one who has not been created, due to what we have mentioned. As for the endowment, it differs entirely from this ruling based on the textual evidence transmitted regarding this matter – and with Allah, the Exalted, is success.

وَكَذَلِكَ لَا يَجُوزُ شَيْءٌ مِنْ ذَلِكَ لِمَنْ لَا يَدْرِي، وَلَا لِمَنْ لَمْ يُخْلَقْ، لِمَا ذَكَرْنَا، وَأَمَّا الْحَبْسُ فَبِخِلَافِ هَذَا كُلِّهِ لِلنَّصِّ الْوَارِدِ فِي ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L25842–25843 Analogy is invalid, and everything has its ruling as stated therein by the text.

وَالْقِيَاسُ بَاطِلٌ، وَلِكُلِّ شَيْءٍ حُكْمُهُ الْوَارِدُ فِيهِ بِالنَّصِّ.

L25844 If they mention the ḥadīth narrated to us through Muslim's chain: Zuhayr ibn Ḥarb narrated to us, Ibn ʿUlayyah narrated to us from ʿAbd al-ʿAzīz ibn Ṣuhayb from Anas ibn Mālik: "The Messenger of Allah—peace and blessings be upon him—was approached by Diḥyah on the day of Khaybar, who said: 'O Messenger of Allah, grant me a female captive from the spoils.' He replied: 'Go and take a female captive.' So he took Ṣafiyyah bint Ḥuyayy. A man then came and said: 'O Messenger of Allah, you have granted Diḥyah the daughter of Ḥuyayy, chief of Qurayẓah and al-Naḍīr—she is only suitable for you.' He said: 'Summon him with her.' When he brought her, the Prophet—peace and blessings be upon him—looked at her and told Diḥyah: 'Take a female captive from the spoils other than her.' He then emancipated her and married her."

فَإِنْ ذَكَرُوا الْحَدِيثَ الَّذِي رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ نا ابْنُ عُلَيَّةَ عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ دِحْيَةُ يَوْمَ خَيْبَرَ: يَا رَسُولَ اللَّهِ أَعْطِنِي جَارِيَةً مِنْ السَّبْيِ؟ قَالَ: اذْهَبْ فَخُذْ جَارِيَةً فَأَخَذَ صَفِيَّةَ بِنْتَ حُيَيٍّ، فَجَاءَ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ أَعْطَيْتَ دِحْيَةَ بِنْتَ حُيَيِّ سَيِّدِ قُرَيْظَةَ وَالنَّضِيرِ وَمَا تَصْلُحُ إلَّا لَكَ، قَالَ: ادْعُهُ بِهَا، قَالَ: فَجَاءَ بِهَا، فَلَمَّا نَظَرَ إلَيْهَا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: خُذْ جَارِيَةً مِنْ السَّبْيِ غَيْرَهَا - وَأَعْتَقَهَا وَتَزَوَّجَهَا.»

L25845 We said: This is the strongest argument for us, for if the gift had been completed, the Messenger of Allah - may Allah's blessings and peace be upon him and his family - would not have revoked it, and he is exalted above such behavior. The evil example does not apply to him, while he - upon him be peace and blessings - said: "We do not have the evil example of one who retracts his gift, like the one who returns to his vomit, as a dog returns to its vomit."

قُلْنَا: هَذَا أَعْظَمُ حُجَّةً لَنَا، لِأَنَّ الْعَطِيَّةَ لَوْ تَمَّتْ لَمْ يَرْتَجِعْهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَحَاشَا لَهُ مِنْ ذَلِكَ لَيْسَ لَهُ الْمَثَلُ السَّوْءُ، وَهُوَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - يَقُولُ: «لَيْسَ لَنَا مَثَلُ السَّوْءِ الْعَائِدُ فِي هِبَتِهِ كَالْعَائِدِ فِي قَيْئِهِ، كَالْكَلْبِ يَعُودُ فِي قَيْئِهِ»

L25846 However, his taking her, his complete ownership of her, and the perfection of his gift to her (peace be upon him) occurred because he (peace and blessings be upon him) knew her essence, her attributes, her worth, and her identity.

لَكِنَّ أَخْذَهَا وَتَمَامَ مِلْكِهِ لَهَا، وَكَمَالَ عَطِيَّتِهِ - عَلَيْهِ السَّلَامُ - لَهُ، إذْ عَرَفَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَيْنَهَا، أَوْ صِفَتَهَا، أَوْ قَدْرَهَا، وَمَنْ هِيَ؟ ؟ فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ

مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ عَنْ أَنَسٍ «أَنَّهُ - عَلَيْهِ السَّلَامُ - اشْتَرَى صَفِيَّةَ مِنْ دِحْيَةَ وَقَدْ وَقَعَتْ فِي سَهْمِهِ بِسَبْعَةِ أَرْؤُسٍ» .

If it is asked: "You have narrated through the chain of Ḥammād ibn Salamah from Thābit from Anas that he (peace and blessings be upon him) purchased Ṣafiyyah from Diḥyah when she was allotted to his share in exchange for seven captives"?

قُلْنَا: كِلَا الْخَبَرَيْنِ عَنْ أَنَسٍ صَحِيحٌ، وَتَأْلِيفُهُمَا ظَاهِرٌ.

L25847 We said: Both reports from Anas are authentic, and their reconciliation is evident.

وَقَوْلُهُ " إنَّهَا وَقَعَتْ فِي سَهْمِهِ، إنَّمَا مَعْنَاهُ بِأَخْذِهِ إيَّاهَا إذْ سَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - جَارِيَةً مِنْ السَّبْيِ؟ فَقَالَ لَهُ: اذْهَبْ فَخُذْ جَارِيَةً - وَبِلَا شَكٍّ أَنَّ مَنْ أَخَذَ شَيْئًا لِنَفْسِهِ بِوَجْهٍ صَحِيحٍ فَقَدْ وَقَعَ فِي سَهْمِهِ.

L25848 And his statement, "Indeed, she was allocated to his share," only means that he took her when he asked the Prophet—may God bless him and his family and grant him peace—for a female captive from the captives. So he said to him, "Go and take a female captive." Undoubtedly, whoever takes something for himself by a legitimate manner, it has indeed been allocated to his share.

وَقَوْلُهُ «اشْتَرَاهَا - عَلَيْهِ السَّلَامُ - بِسَبْعَةِ أَرْؤُسٍ» يُخَرَّجُ عَلَى أَحَدِ وَجْهَيْنِ -: أَحَدُهُمَا - أَنَّهُ - عَلَيْهِ السَّلَامُ - عَوَّضَهُ مِنْهَا فَسَمَّى أَنَسٌ ذَلِكَ الْفِعْلَ شِرَاءً. وَالثَّانِي - «أَنَّ دِحْيَةَ إذْ أَتَى بِهَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ لَهُ: خُذْ غَيْرَهَا، قَدْ سَأَلَهُ إيَّاهَا» وَكَانَ - عَلَيْهِ السَّلَامُ - لَا يُسْأَلُ شَيْئًا إلَّا أَعْطَاهُ، فَأَعْطَاهُ إيَّاهَا، فَصَحَّتْ لَهُ، وَصَحَّ وُقُوعُهَا فِي سَهْمِهِ، ثُمَّ اشْتَرَاهَا مِنْهُ بِسَبْعَةِ أَرْؤُسٍ.

L25849 The statement "he purchased her—may God bless him and grant him peace—with seven captives" is interpreted according to one of two perspectives. The first is that he—may God bless him and grant him peace—compensated him with her, and Anas explicitly termed that action a purchase. The second is that when Dihyah brought her to the Prophet—may God bless him and grant him peace—he said to him: "Take another instead, for Dihyah had indeed requested her from him." He—may God bless him and grant him peace—never declined a request, so he granted her to him, thereby validating her status for him and confirming her inclusion in his allotted share. He then purchased her from him with seven captives.

وَلَا شَكَّ فِي صِحَّةِ الْخَبَرَيْنِ، وَلَا يُمْكِنُ الْجَمْعُ بَيْنَهُمَا لِصِحَّتِهِمَا، إلَّا كَمَا ذَكَرْنَا، وَمَا لَا شَكَّ فِيهِ فَلَا شَكَّ فِيمَا لَا يَصِحُّ إلَّا بِهِ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

L25850 There is no doubt regarding the validity of the two reports, and reconciling them is impossible despite their authenticity, except as we have stated. What is certain cannot be questioned in matters that depend on it for validity - and in Allah, the Exalted, we seek aid.

فَإِنْ ذَكَرُوا «قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِجَابِرٍ: لَوْ قَدْ جَاءَ مَالُ الْبَحْرَيْنِ أَعْطَيْتُكَ هَكَذَا وَهَكَذَا وَهَكَذَا» .

L25851–25852 If they cite the Messenger of Allah's words—peace be upon him and his family and grant him salvation—to Jabir, "When the wealth of Bahrain arrives, I would give you so much, so much, and so much."

L25853 We said: This is a promise, not a gift, and Abū Bakr, may Allah be pleased with him, fulfilled this promise after the death of the Prophet, peace be upon him. They unanimously agree that whoever makes such a statement and then dies, their words are not to be carried out after their death—this being

the position of Abū Sulaymān and our scholarly companions. Success comes solely from Allah, the Exalted.

قُلْنَا: هَذِهِ عِدَّةٌ لَا عَطِيَّةٌ، وَقَدْ أَنْفَذَ أَبُو بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - هَذِهِ الْعِدَّةَ بَعْد مَوْتِهِ - عَلَيْهِ السَّلَامُ - وَهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ مَنْ قَالَ ذَلِكَ ثُمَّ مَاتَ لَمْ يَنْفُذْ قَوْلُهُ بَعْدَ مَوْتِهِ - وَهَذَا قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ كَانَ لَهُ عِنْدَ آخَرَ حَقٌّ فِي الذِّمَّةِ فَقَالَ لَهُ قَدْ وَهَبْتُ لَك مَا لِي عِنْدَك]

L25854 **If someone had a right in another's liability and said to them, "I have gifted you what I am owed by you."**

١٦٢٧ - مَسْأَلَةٌ: وَمَنْ كَانَ لَهُ عِنْدَ آخَرَ حَقٌّ فِي الذِّمَّةِ دَرَاهِمَ أَوْ دَنَانِيرَ، أَوْ غَيْرَ ذَلِكَ، أَوْ أَيِّ شَيْءٍ كَانَ، فَقَالَ لَهُ: قَدْ وَهَبْتُ لَك مَا لِي عِنْدَك، أَوْ قَالَ: قَدْ أَعْطَيْتُكَ مَا لِي عِنْدَك، أَوْ قَالَ لِآخَرَ: قَدْ وَهَبْتُ لَك مَا لِي عِنْدَ فُلَانٍ، أَوْ قَالَ: أَعْطَيْتُك مَا لِي عِنْدَ فُلَانٍ -: فَلَا يَلْزَمُ شَيْءٌ مِنْ ذَلِكَ لِمَا ذَكَرْنَا؛ لِأَنَّهُ لَا يَدْرِي ذَلِكَ الْحَقَّ الَّذِي لَهُ عِنْدَ فُلَانٍ فِي أَيِّ جَوَانِبِ الدُّنْيَا هُوَ، وَلَعَلَّهُ فِي مِلْكِ غَيْرِهِ الْآنَ - وَإِنَّمَا يَجُوزُ هَذَا بِلَفْظِ: الْإِبْرَاءِ، أَوْ الْعَفْوِ، أَوْ الْإِسْقَاطِ، أَوْ الْوَضْعِ.

L25855 Issue 1627: If a person holds a right against another's liability - whether dirhams, dinars, or any other item - and states to the debtor: "I have gifted you what you owe me," or "I have transferred to you what you owe me," or declares to a third party: "I have gifted you what so-and-so owes me," or "I have transferred to you what so-and-so owes me" - none of these statements are binding for the reason we previously mentioned. This is because the creditor remains unaware of the specific nature or existence of that right, which may currently belong to another owner. Such release is only permissible when expressed through explicit terms like "discharge," "waiver," "cancellation," or "relinquishment."

وَيَجُوزُ أَيْضًا بِلَفْظِ " الصَّدَقَةِ " لِلْحَدِيثِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ نا لَيْثٌ هُوَ ابْنُ سَعْدٍ - عَنْ بُكَيْرٍ هُوَ ابْنُ الْأَشَجِّ - عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «أُصِيبَ رَجُلٌ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي ثِمَارٍ ابْتَاعَهَا فَكَثُرَ دَيْنُهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - تَصَدَّقُوا عَلَيْهِ» - فَهَذَا عُمُومٌ لِلْغُرَمَاءِ وَغَيْرِهِمْ.

L25856 It is also permissible to use the wording "ṣadaqah" based on the hadith we narrated through Muslim's chain of transmission: Qutaybah narrated to us, Layth ibn Sa'd narrated to us, from Bukayr ibn al-Ashajj, from 'Iyāḍ ibn 'Abd Allāh, from Abū Sa'īd al-Khudrī, who said: "A man was afflicted with a loss during the time of the Messenger of Allah—peace and blessings be upon him and his family—in fruits he had purchased, and his debt became excessive. The Messenger of Allah—peace and blessings be upon him and his family—said: 'Give ṣadaqah to him.'" This constitutes a general ruling applicable to ghuramā' (debtors) and others.

فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {لِأَهَبَ لَكِ غُلَامًا زَكِيًّا} [مريم: ١٩] .

L25857 If they mention the words of Allah, the Almighty and Majestic: "I will bestow upon you a pure son" [Mary: 19].[1]

[1] **Qur'an references (L25857):** Qur'an 19:19 (Maryam).

L25858 We said: The acts of Allah, the Exalted, and His gifts cannot be measured against the acts of His creation or their gifts, for there is none above Him to command Him, nor any legislation that binds Him. Rather, He does what He wills, with none to reverse His decree. How then is that gifted boy—a created being composed of an existing soul whose creation had preceded, of clay, and of what his mother nourished herself with, all of which was created beforehand?

قُلْنَا: أَفْعَالُ اللَّهِ تَعَالَى وَهِبَاتُهُ لَا يُقَاسُ عَلَيْهَا أَفْعَالُ خَلْقِهِ وَلَا هِبَاتُهُمْ؛ لِأَنَّهُ تَعَالَى لَا آمِرَ فَوْقَهُ، وَلَا شَرْعَ يَلْزَمُهُ، بَلْ يَفْعَلُ مَا يَشَاءُ، لَا مُعَقِّبَ لِحُكْمِهِ فَكَيْفَ وَذَلِكَ الْغُلَامُ الْمَوْهُوبُ مَخْلُوقٌ مُرَكَّبٌ مِنْ نَفْسٍ مَوْجُودَةٍ قَدْ تَقَدَّمَ خَلْقُهَا، وَمِنْ تُرَابٍ، وَمَا تَتَغَذَّى بِهِ أُمُّهُ، قَدْ تَقَدَّمَ خَلْقُ كُلِّ ذَلِكَ.

L25859 And similarly the air, for Allah the Exalted has encompassed in knowledge the intrinsic realities of all such matters—unlike His creation—while all existence is His dominion, distinct from His creation. And success is from Allah, the Exalted.

وَكَذَلِكَ الْهَوَاءُ، وَقَدْ أَحَاطَ اللَّهُ تَعَالَى عِلْمًا بِأَعْيَانِ كُلِّ ذَلِكَ، بِخِلَافِ خَلْقِهِ، وَالْكُلُّ مِلْكُهُ بِخِلَافِ خَلْقِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L25860 Our opponents have differentiated between hiba (gift) and sadaqah (charity): some of them permitted charity without taking possession, but did not permit the gift unless possession was taken.

وَقَدْ فَرَّقَ مُخَالِفُونَا بَيْنَ الْهِبَةِ وَالصَّدَقَةِ -: فَبَعْضُهُمْ أَجَازَ الصَّدَقَةَ غَيْرَ مَقْبُوضَةٍ، وَلَمْ يُجِزْ الْهِبَةَ إِلَّا مَقْبُوضَةً.

L25861–25862 Some scholars permitted revoking a gift (hibah) but did not permit it in charity (ṣadaqah).

وَبَعْضُهُمْ أَجَازَ الرُّجُوعَ فِي الْهِبَةِ وَلَمْ يُجِزْهُ فِي الصَّدَقَةِ.

L25863 It suffices from all of this that the Prophet (peace be upon him and his family) would accept gifts and grants, eat gifts, but did not eat charity—for charity was forbidden to him and his family, while grants and gifts were not forbidden to both him and his family. And with Allah, the Exalted, is success.

وَيَكْفِي مِنْ هَذَا كُلِّهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ يَقْبَلُ الْهِبَةَ وَالْعَطِيَّةَ، وَيَأْكُلُ الْهَدِيَّةَ، وَلَا يَأْكُلُ الصَّدَقَةَ» ، وَحُرِّمَتْ عَلَيْهِ الصَّدَقَةُ، وَعَلَى آلِهِ، وَلَمْ يُحَرَّمْ عَلَيْهِمَا الْعَطَايَا وَلَا الْهِبَاتُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

A Legal Question of the Gift with a Condition

[مَسْأَلَة الْهِبَة بِشَرْطٍ]

L25864

L25865 1628 - Issue: A gift stipulated with a condition is fundamentally invalid—such as one who gives a gift on the condition that the gifted item not be sold, or that usufruct be derived from it, or other similar conditions. Such a gift is entirely invalid and nullified, in accordance with the statement of Allah's Messenger (peace and blessings be upon him and his family): "Every condition not ordained in Allah's Book is void." Moreover, any contract contingent upon validating what is invalid remains unestablished thereby.[2]

١٦٢٨ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْهِبَةُ بِشَرْطٍ أَصْلًا، كَمَنْ وَهَبَ عَلَى أَنْ لَا يَبِيعَهَا الْمَوْهُوبُ، أَوْ عَلَى أَنْ يُوَلِّدَهَا، أَوْ غَيْرَ ذَلِكَ مِنْ الشُّرُوطِ -: فَالْهِبَةُ بِكُلِّ ذَلِكَ بَاطِلٌ مَرْدُودَةٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» وَكُلُّ مَا لَا يُعْقَدُ إِلَّا بِصِحَّةِ مَا لَا يَصِحُّ فَلَمْ يَقَعْ فِيهِ عَقْدٌ بِهِ.

[2] **Hadith references (L25865):** Sunan Ibn Majah 2521.

The Issue of the Gift Conditional on Consideration.

[مَسْأَلَة الْهِبَة بِشَرْطِ الثَّوَاب]

1629 - Issue: A gift stipulating reward is fundamentally impermissible; it is invalid and invalidated. This is because such a condition is not found in the Book of Allah Almighty, rendering it invalid. Rather, the Quran explicitly prohibits this very practice, as Allah says: “And do not give favors expecting to receive more” [Al-Muddaththir: 6]. This is the opinion of the majority of the early scholars.[3]

١٦٢٩ - مَسْأَلَةٌ: وَلَا تَجُوزُ هِبَةٌ يُشْتَرَطُ فِيهَا الثَّوَابُ أَصْلًا، وَهِيَ فَاسِدَةٌ مَرْدُودَةٌ؛ لِأَنَّ هَذَا الشَّرْطَ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ، فَهُوَ بَاطِلٌ، بَلْ فِي الْقُرْآنِ الْمَنْعُ مِنْهُ بِعَيْنِهِ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَلَا تَمْنُنْ تَسْتَكْثِرُ} [المدثر: ٦] وَهُوَ قَوْلُ جُمْهُورٍ مِنْ السَّلَفِ.

It has been narrated to us through the chain of Muḥammad ibn al-Jahm → from Yaḥyā al-Jabbānī → from Muḥammad ibn ʿUbayd → from Muḥammad ibn Thawr → from Maʿmar → from Qatādah → from Ibn ʿAbbās concerning Allah’s verse: {And whatever you give as ribā} [30:39]. He said: It refers to a man’s gift or a man’s grant, given with the intention of receiving a greater reward in return. Such a deed neither increases in value with Allah, nor does its giver receive any reward for it—yet no sin is held against him.[4]

رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْجَهْمِ نا يَحْيَى الْجَبَّانِيُّ نا مُحَمَّدُ بْنُ عُبَيْدٍ نا مُحَمَّدُ بْنُ ثَوْرٍ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ ابْنِ عَبَّاسٍ فِي قَوْلِ اللَّهِ تَعَالَى: {وَمَا آتَيْتُمْ مِنْ رِبًا} [الروم: ٣٩] قَالَ: هُوَ هَدِيَّةُ الرَّجُلِ، أَوْ هِبَةُ الرَّجُلِ يُرِيدُ أَنْ يُثَابَ أَفْضَلَ مِنْهُ، فَذَلِكَ الَّذِي لَا يَرْبُو عِنْدَ اللَّهِ، وَلَا يُؤْجَرُ عَلَيْهِ صَاحِبُهُ، وَلَا إثْمَ عَلَيْهِ.

Ali said, “This applies if he intends it in his heart, but if he stipulates it, then it is the epitome of falsehood and sin.”

قَالَ عَلِيٌّ: هَذَا إذَا أَرَادَهُ بِقَلْبِهِ وَأَمَّا إذَا اشْتَرَطَهُ فَعَيْنُ الْبَاطِلِ وَالْإِثْمِ.

And from the path of Ibn al-Jahm: Muḥammad ibn Saʿīd al-ʿAwfī narrated to us; my father Saʿīd ibn Muḥammad ibn al-Ḥasan narrated to us. My uncle al-Ḥusayn ibn al-Ḥasan ibn ʿAṭiyyah narrated to me: My father narrated to me from his father, from Ibn ʿAbbās in a similar manner.

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا مُحَمَّدُ بْنُ سَعِيدٍ الْعَوْفِيُّ نا أَبِي سَعِيدِ بْنِ مُحَمَّدِ بْنِ الْحَسَنِ حَدَّثَنِي عَمِّي الْحُسَيْنُ بْنُ الْحَسَنِ بْنِ عَطِيَّةَ حَدَّثَنِي أَبِي عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ نَحْوَهُ.

From the path of Ismāʿīl ibn Isḥāq al-Qāḍī: From Muḥammad ibn ʿUbayd, from Muḥammad ibn Thawr, from Maʿmar, from Qatādah in explanation of Allah’s statement, the Exalted: **{And do not give while seeking to gain more}** [Al-Muddaththir: 6]. He said: “Do not give something expecting to be rewarded with something better.” Maʿmar said: Ṭāwūs also held this interpretation. Al-Ḥasan said: “Do not remind of your gift, nor your deed, nor seek to gain more.”[5]

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنَ إسْحَاقَ الْقَاضِي نا مُحَمَّدُ بْنُ عُبَيْدٍ نا مُحَمَّدُ بْنُ ثَوْرٍ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي قَوْلِ اللَّهِ تَعَالَى: {وَلَا تَمْنُنْ تَسْتَكْثِرُ} [المدثر: ٦] قَالَ: لَا تُعْطِ شَيْئًا لِتُثَابَ أَفْضَلَ مِنْهُ، قَالَ مَعْمَرٌ: وَقَالَهُ طَاوُسٍ أَيْضًا - وَقَالَ الْحَسَنُ: لَا تَمْنُنْ عَطِيَّتَك، وَلَا عَمَلَك، وَلَا تَسْتَكْثِرْ.

And through him to Ismāʿīl: Naṣr ibn ʿAlī al-Jahḍamī narrated to us—my

[3] **Qur’an references (L25867):** Qur’an 74:6 (Al-Muddaththir).
[4] **Qur’an references (L25868):** Qur’an 30:39 (Ar-Rum).
[5] **Qur’an references (L25871):** Qur’an 74:6 (Al-Muddaththir).

father informed me from Hārūn from Abū Rajāʾ from ʿIkrimah regarding the verse *"And do not confer favor seeking to increase"* [Al-Muddaththir 74:6]. He said: Do not give wealth hypocritically, hoping for a greater reward than that from worldly gains.[6]

وَبِهِ إِلَى إِسْمَاعِيلَ نا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ أَخْبَرَنِي أَبِي عَنْ هَارُونَ عَنْ أَبِي رَجَاءٍ عَنْ عِكْرِمَةَ {وَلا تَمْنُنْ تَسْتَكْثِرُ} [المدثر: ٦] قَالَ: لَا تُعْطِ مَالًا مُصَانَعَةً رَجَاءَ أَفْضَلَ مِنْهُ مِنَ الثَّوَابِ مِنَ الدُّنْيَا.

L25873–25874 And from the chain of ʿAbd ibn Ḥumayd: Muḥammad ibn al-Faḍl—he is ʿĀrim—narrated to us from Yazīd ibn Zuraiʿ, from Abū Rajāʾ: I heard ʿIkrimah concerning the statement of Allah the Exalted: *And do not confer favor seeking increase* [Al-Muddaththir 74:6]. He said: Do not give something so that you may be given more than it.[7]

وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ نا مُحَمَّدُ بْنُ الْفَضْلِ هُوَ عَارِمٌ - عَنْ يَزِيدَ بْنِ زُرَيْعٍ عَنْ أَبِي رَجَاءٍ سَمِعْتُ عِكْرِمَةَ فِي قَوْلِ اللَّهِ تَعَالَى: {وَلا تَمْنُنْ تَسْتَكْثِرُ} [المدثر: ٦] قَالَ: لَا تُعْطِ شَيْئًا لِتُعْطَى أَكْثَرَ مِنْهُ.

L25875 Through the chain of ʿAbd ibn Ḥumayd: From Hāshim ibn al-Qāsim, who narrated to us from Abū Muʿāwiyah from Manṣūr ibn al-Muʿtamir from Mujāhid and Ibrāhīm al-Nakhaʿī, both of whom said together: "Do not give something to obtain something better than it."

وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ نا هَاشِمُ بْنُ الْقَاسِمِ عَنْ أَبِي مُعَاوِيَةَ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ مُجَاهِدٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ، قَالَا جَمِيعًا: لَا تُعْطِ شَيْئًا لِتُصِيبَ أَفْضَلَ مِنْهُ.

L25876 From the transmission chain of Ibn al-Jahm: Ahmad ibn Faraj narrated to us; Al-Harawi narrated to us from Ali ibn Hashim; Al-Zibriqan narrated to us from Abu Razin, regarding the verse: _"Whatever you give in usury so that it may increase in people's wealth does not increase with Allah"_ [Ar-Rum 30:39]. He said: "Whatever you give with the intention of gaining worldly benefits or seeking to be rewarded for it does not ascend to Allah, the Almighty and Majestic." And regarding the verse: _"But whatever you give in zakah, seeking the Face of Allah"_ [Ar-Rum 30:39], he said: "Whatever you give as zakah for the sake of Allah, the Exalted, it is that which ascends."[8]

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا أَحْمَدُ بْنُ فَرَجٍ نا الْهَرَوِيُّ عَنْ عَلِيِّ بْنِ هَاشِمٍ نا الزِّبْرِقَانُ عَنْ أَبِي رَزِينٍ {وَمَا آتَيْتُمْ مِنْ رِبًا لِيَرْبُوَ فِي أَمْوَالِ النَّاسِ فَلا يَرْبُو عِنْدَ اللَّهِ} [الروم: ٣٩] قَالَ: مَا أَعْطَيْتَ مِنْ شَيْءٍ تُرِيدُ بِهِ عَرَضَ الدُّنْيَا، أَوْ تُثَابُ عَلَيْهِ لَمْ يَصْعَدْ إِلَى اللَّهِ عَزَّ وَجَلَّ: {وَمَا آتَيْتُمْ مِنْ زَكَاةٍ تُرِيدُونَ وَجْهَ اللَّهِ} [الروم: ٣٩] قَالَ: مَا أَعْطَيْتَ مِنْ هَدِيَّةٍ لِوَجْهِ اللَّهِ تَعَالَى فَهُوَ الَّذِي يَصْعَدُ.

L25877 And from the chain of Ibn al-Jahm → ʿAbdullāh ibn Aḥmad ibn Ḥanbal → my father → ʿAbd al-Raḥmān ibn Mahdī → Sufyān al-Thawrī → Manṣūr ibn Ṣafiyyah → Saʿīd ibn Jubayr, regarding the verse **{And whatever you give in usury to increase}** [Ar-Rūm 30:39]: he said: "One gives a gift so that He may reward him for it."[9]

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ صَفِيَّةَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ: {وَمَا آتَيْتُمْ مِنْ رِبًا لِيَرْبُوَ} [الروم: ٣٩] قَالَ: يُعْطِي الْعَطِيَّةَ لِيُثِيبَهُ عَلَيْهَا.

[6] **Qur'an references (L25872):** Qur'an 74:6 (Al-Muddaththir).
[7] **Qur'an references (L25874):** Qur'an 74:6 (Al-Muddaththir).
[8] **Qur'an references (L25876):** Qur'an 30:39 (Ar-Rum).
[9] **Qur'an references (L25877):** Qur'an 30:39 (Ar-Rum).

وَبِهِ إِلَى ابْنِ الْجَهْمِ نا أَبُو بَكْرٍ النَّرْسِيُّ نا عُبَيْدُ اللَّهِ بْنُ مُوسَى نا إِسْرَائِيلُ عَنِ السُّدِّيِّ عَنْ أَبِي مَالِكٍ قَالَ: لَا تُعْطِ الْأَغْنِيَاءَ لِتُصِيبَ أَفْضَلَ مِنْهُ.

L25878 And through his chain to Ibn al-Jahm: Abū Bakr al-Narsī narrated, ʿUbayd Allāh ibn Mūsā narrated, Isrāʾīl narrated from al-Suddī, from Abū Mālik, who said: Do not give to the wealthy with the intention of gaining something better in return.

وَبِهِ إِلَى ابْنِ الْجَهْمِ نا أَحْمَدُ بْنُ فَرَجٍ نا الْهَرَوِيُّ نا الْعَلَاءُ بْنُ عَبْدِ الْجَبَّارِ نا نَافِعٌ عَنِ الْقَاسِمِ بْنِ أَبِي بَزَّةَ قَالَ: لَا تُعْطِ شَيْئًا تَطْلُبُ أَكْثَرَ مِنْهُ.

L25879 And through him to Ibn al-Jahm: Ahmad ibn Faraj reported to us, al-Harawi reported to us, al-Ala ibn Abd al-Jabbar reported to us, and Nafi' narrated from al-Qasim ibn Abi Bazzah, who said: "Do not give something while seeking more than it."

وَبِإِبْطَالِ هِبَةِ الثَّوَابِ يَقُولُ الشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L25880 Al-Shāfiʿī, Abū Thawr, Abū Sulaymān, and their companions hold the view that the gift of reward is invalid.

وَأَجَازَهَا أَبُو حَنِيفَةَ، وَمَالِكٌ، وَمَا نَعْلَمُ لَهُمَا حُجَّةً إِلَّا أَنَّهُمَا رَوَيَا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَأَبِي الدَّرْدَاءِ، وَفَضَالَةَ بْنِ عُبَيْدٍ - رَضِيَ اللَّهُ عَنْهُ - إِجَازَتَهَا

L25881 Abu Hanifah and Malik permitted it, and we know of no argument for their position except that they transmitted narrations from Umar ibn al-Khattab, Ali ibn Abi Talib, Abu al-Darda, and Fadalah ibn Ubayd—may Allah be pleased with them—regarding its permissibility.

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَعَطَاءٍ، وَرَبِيعَةَ، وَشُرَيْحٍ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ وَأَبِي الزِّنَادِ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَجَمَاعَةٍ مِنَ التَّابِعِينَ - وَاحْتَجُّوا بِمَا رُوِيَ «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» .

L25882 From Umar ibn Abd al-Aziz, Ata, Rabi'ah, Shurayh, al-Qasim ibn Muhammad, Abu al-Zinad, Yahya ibn Sa'id al-Ansari, and a group of the Successors: they cited as evidence what was narrated, "Muslims are held to their stipulations."

قَالَ أَبُو مُحَمَّد: أَمَّا مَالِكٌ: فَإِنَّهُ مُخَالِفٌ لِمَا ذَكَرْنَا؛ لِأَنَّهُمْ لَا يُجِيزُونَ الرُّجُوعَ فِي الْهِبَةِ، وَهَؤُلَاءِ يُجِيزُونَ ذَلِكَ.

L25883–25884 Abu Muhammad said: As for Malik, he differs from what we have mentioned because they do not permit revoking a gift, whereas this group permits that.

وَأَمَّا أَبُو حَنِيفَةَ فَمُخَالِفٌ لَهُمْ عَلَى مَا نَذْكُرُ فِي الرُّجُوعِ فِي الْهِبَةِ إِنْ شَاءَ اللَّهُ تَعَالَى.

L25885 As for Abū Ḥanīfa, he opposes them, as we will discuss concerning the revocation of a gift, God willing.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا إِلَّا فِي قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، وَقَدْ خَالَفَ هَؤُلَاءِ ابْنُ عَبَّاسٍ كَمَا ذَكَرْنَا.

L25886 We have no proof except solely in the saying of the Messenger of Allah—peace and blessings of Allah be upon him—and indeed Ibn Abbas opposed these people as we have mentioned.

L25887 As for "Muslims are bound by their stipulations," we have previously invalidated this corrupt argument through three aspects—each being independently sufficient: First, that this statement was never validly established as

originating from the Messenger of Allah—peace and blessings of Allah be upon him—nor narrated by any trustworthy transmitter, for it is only transmitted through Kathīr ibn Zayd—who is discarded and rejected—or constitutes a *mursal* report. Second—

وَأَمَّا «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» فَقَدْ تَقَدَّمَ إبْطَالُنَا لِهَذَا الِاحْتِجَاجِ الْفَاسِدِ بِوُجُوهٍ ثَلَاثَةٍ كُلُّ وَاحِدٍ مِنْهَا كَافٍ -: أَوَّلُهَا - أَنَّهُ كَلَامٌ لَمْ يَصِحَّ قَطُّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا رَوَاهُ مَنْ فِيهِ خَيْرٌ؛ لِأَنَّهَا إنَّمَا هِيَ مِنْ رِوَايَةِ كَثِيرِ بْنِ زَيْدٍ - وَهُوَ سَاقِطٌ مُطْرَحٌ - أَوْ مُرْسَلٌ. وَالثَّانِي -

L25888 They do not differ with us in that if someone stipulates for another person to sing for him, to perform a dance for him, to go out with him to the garden, or to dye his own shirt red, none of that is binding upon him.

أَنَّهُمْ لَا يُخَالِفُونَنَا فِي أَنَّ مَنْ شَرَطَ لِآخَرَ أَنْ يُغَنِّيَ لَهُ، أَوْ أَنْ يَزْفِنَ لَهُ، أَوْ أَنْ يَخْرُجَ مَعَهُ إلَى الْبُسْتَانِ، أَوْ أَنْ يَصْبُغَ قَمِيصَ نَفْسِهِ أَحْمَرَ: أَنَّ كُلَّ ذَلِكَ لَا يَلْزَمُهُ.

L25889 They invalidated many contracts due to many stipulations, thereby nullifying their argument for the principle “Muslims are bound by their stipulations,” and it became clear that Muslims are not bound by their stipulations in general.

وَقَدْ أَبْطَلُوا كَثِيرًا مِنْ الْعُقُودِ بِكَثِيرٍ مِنْ الشُّرُوطِ، فَأَبْطَلُوا احْتِجَاجَهُمْ «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» فَصَحَّ أَنَّ الْمُسْلِمِينَ لَيْسُوا عِنْدَ شُرُوطِهِمْ عَلَى الْجُمْلَةِ.

L25890 Since there is no doubt or disagreement regarding this matter, the Messenger of Allah (peace and blessings be upon him and his family) has explicitly stated: “Every condition not stipulated in the Qur’an is void.” Thus, it is established that Muslims are not permitted to stipulate any condition not present in the Qur’an of Allah, the Almighty, the Exalted. The third point—[10]

فَإِذْ لَا شَكَّ فِي ذَلِكَ وَلَا خِلَافَ، فَقَدْ أَفْصَحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِأَنَّ «كُلَّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» ، فَصَحَّ أَنَّ الْمُسْلِمِينَ لَيْسَ لَهُمْ أَنْ يَشْتَرِطُوا شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ. وَالثَّالِثُ -

L25891 If this wording were valid, it would not be permissible to ascribe to Muslims any conditions such that phrases like “the conditions of the Muslims” or “Muslims are bound by their conditions” could apply—except to permissible conditions, not those that are prohibited.

أَنَّ هَذَا اللَّفْظَ لَوْ صَحَّ لَكَانَ لَا يَجُوزُ أَنْ يُضَافَ إلَى الْمُسْلِمِينَ مِنْ الشُّرُوطِ فَيُقَالُ: شُرُوطُ الْمُسْلِمِينَ وَالْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ إلَّا فِي الشُّرُوطِ الْجَائِزَةِ، لَا فِي الشُّرُوطِ الْمَنْهِيِّ عَنْهَا.

L25892 And the prohibition of the Messenger of Allah—peace and blessings be upon him and his family—against every condition not in the Book of Allah, the Exalted, and his invalidation thereof when it occurs has been authentically established. Thus, it is confirmed that the conditions of the Muslims are only those stipulated in the Book of Allah, the Exalted, and the Sunnah of the Messenger of Allah—peace and blessings be upon him and his family—whose following is obligatory in the Book of Allah, the Exalted.

وَقَدْ صَحَّ نَهْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ كُلِّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ وَإِبْطَالِهِ إيَّاهُ إذَا وَقَعَ - فَصَحَّ أَنَّ شُرُوطَ الْمُسْلِمِينَ إنَّمَا هِيَ الشُّرُوطُ الْمَنْصُوصَةُ فِي كِتَابِ اللَّهِ تَعَالَى، وَسُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الْمُفْتَرَضِ اتِّبَاعُهَا فِي كِتَابِ اللَّهِ تَعَالَى.

[10] **Hadith references (L25890):** Sunan Ibn Majah 2521.

L25893–25895 It is not permissible for anyone to know the permissibility of a stipulation unless a text permitting it exists, for otherwise the text has already been conveyed. By invalidating every condition not in the Book of Allah the Exalted—thus clarifying the invalidity of gifts given to seek divine reward—and success is solely from Allah, the Exalted.

وَلَا يَجُوزُ أَنْ يَعْلَمَ أَحَدٌ جَوَازَ شَرْطٍ إِلَّا بِوُرُودِ النَّصِّ بِجَوَازِهِ، وَإِلَّا فَالنَّصُّ قَدْ وَرَدَ بِإِبْطَالِ كُلِّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى - فَوَضَحَ الْأَمْرُ فِي بُطْلَانِ هِبَةِ الثَّوَابِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L25896 And the one who permits it said: It is a sale among valid sales.

وَقَالَ مَنْ أَجَازَهَا: هِيَ بَيْعٌ مِنْ الْبُيُوعِ.

L25897 Abu Muhammad said: This is invalid because a sale is not permissible without a specified price or with an unknown price. The gift [given for] rewards [thawab] had its rewards neither mentioned nor known. Therefore, if it constitutes a sale, it is a void, forbidden, and corrupt sale. If it is not a sale, then their legal ruling for it—by applying the ruling of a sale—has been nullified. And in Allah, the Exalted, we seek strength.

قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ؛ لِأَنَّ الْبَيْعَ لَا يَجُوزُ بِغَيْرِ ثَمَنٍ مَذْكُورٍ، وَلَا بِثَمَنٍ مَجْهُولٍ، وَهِبَةُ الثَّوَابِ لَمْ يُذْكَرْ ثَوَابُهَا، وَلَا عُرِفَ، فَهِيَ إنْ كَانَتْ بَيْعًا فَهِيَ بَيْعٌ فَاسِدٌ حَرَامٌ خَبِيثٌ، وَإِنْ لَمْ تَكُنْ بَيْعًا فَقَدْ بَطَلَ حُكْمُهُمْ لَهَا بِحُكْمِ الْبَيْعِ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

L25898 And they have here some egregious inconsistencies—among them: that Abū Ḥanīfah said, "Every gift conditioned upon a known countervalue is—along with that countervalue—legally treated as a gift provided neither the gift nor its countervalue has been reciprocally transferred."

وَلَهُمْ هَاهُنَا تَخَالِيطُ شَنِيعَةٌ -: مِنْهَا: أَنَّ أَبَا حَنِيفَةَ قَالَ: كُلُّ هِبَةٍ وَقَعَتْ عَلَى اشْتِرَاطِ عِوَضٍ مَعْلُومٍ فَهِيَ وَعِوَضُهَا فِي حُكْمِ الْهِبَةِ مَا لَمْ يَتَقَابَضَا الْهِبَةَ وَعِوَضَهَا.

L25899 It is not permissible in undivided jointly owned property. If they mutually receive possession, they assume the status of the buyer and seller. Each of them has the right to annul [the transaction] due to a defect, with no recourse for either after mutual possession. Has there ever been a statement more invalid than this—that a gift would transform into a sale through mutual exchange according to the juristic doctrine of Abū Ḥanīfa, which Allah the Exalted did not permit? Yet they permitted this gift and this condition.

وَلَا تَجُوزُ فِي مُشَاعٍ فَإِذَا تَقَابَضَا ذَلِكَ حَلَّا مَحَلَّ الْمُتَبَايِعَيْنِ وَلِكُلِّ وَاحِدٍ مِنْهُمَا الرَّدُّ بِالْعَيْبِ، وَلَا رُجُوعَ لَهُمَا بَعْدَ التَّقَابُضِ - فَهَلَّا سُمِعَ بِأَفْسَدَ مِنْ هَذَا الْقَوْلِ أَنْ تَكُونَ هِبَةٌ تَنْقَلِبُ بَيْعًا هَكَذَا مُطَارَفَةً بِشَرْعِ أَبِي حَنِيفَةَ الَّذِي لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى؟ وَأَجَازُوا هَذِهِ الْهِبَةَ وَهَذَا الشَّرْطَ.

L25900 Then they said: Whoever gives a gift to another on the condition that he returns a third, a quarter, or a portion of it, or on the condition that he compensates him with a third, a quarter, or a portion of it - or gives him a female slave on the condition that he returns her to him, or on the condition that he makes her an *umm walad*, or on the condition that he frees them both - and he takes possession of her, then the gift is valid in all such cases, and the condition is void.

ثُمَّ قَالُوا: مَنْ وَهَبَ لِآخَرَ هِبَةً عَلَى أَنْ يَرُدَّ عَلَيْهِ ثُلُثَهَا أَوْ رُبُعَهَا أَوْ بَعْضَهَا أَوْ عَلَى أَنْ يُعَوِّضَهُ ثُلُثَهَا أَوْ رُبُعَهَا أَوْ بَعْضَهَا - أَوْ وَهَبَ لَهُ جَارِيَةً عَلَى أَنْ يَرُدَّهَا عَلَيْهِ، أَوْ عَلَى أَنْ يَتَّخِذَهَا أُمَّ وَلَدٍ، أَوْ عَلَى أَنْ يُعْتِقَهُمَا، فَقَبَضَهَا فَالْهِبَةُ فِي كُلِّ ذَلِكَ جَائِزَةٌ وَالشَّرْطُ بَاطِلٌ.

L25901 At times, both the condition and the gift are valid, and at times the gift

is valid while the condition is nullified—could there be greater arbitrariness than this? Mālik said: Gifts are of three types. The first is a gift given for maintaining kinship ties to relatives, the second is parents' gift to their child, and the third is a gift given for divine reward.

فَمَرَّةً جَازَ الشَّرْطُ وَالْهِبَةُ، وَمَرَّةً جَازَتْ الْهِبَةُ وَبَطَلَ الشَّرْطُ - فَهَلْ فِي التَّحَكُّمِ أَكْثَرُ مِنْ هَذَا؟ وَقَالَ مَالِكٌ: الْهِبَةُ عَلَى ثَلَاثَةِ أَوْجُهٍ -: أَحَدُهُمَا - هِبَةٌ لِذِي رَحِمٍ عَلَى الصِّلَةِ، وَهِبَةُ الْوَالِدَيْنِ لِلْوَلَدِ، وَهِبَةٌ لِلثَّوَابِ.

L25902 The granting of reward depends on what we will mention later—if Allah, the Exalted, wills—and this classification lacks evidence for its validity. Success comes only from Allah, the Exalted.

فَهِبَةُ الثَّوَابِ يَرْجِعُ فِيهَا عَلَى مَا نَذْكُرُ بَعْدَ هَذَا - إنْ شَاءَ اللَّهُ تَعَالَى - وَهَذَا تَقْسِيمٌ لَا دَلِيلَ بِصِحَّتِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25903 1630 – Issue: Whoever gives a gift free from any stipulation of reward or other conditions, grants a grant in the same manner, or gives charity likewise, it is deemed complete by the verbal declaration alone—there is no significance to taking possession of it or laying claim to it—and it is not invalidated by the donor's reacquisition of it or the charitable donor's repossession of it.

١٦٣٠ - مَسْأَلَةٌ: وَمَنْ وَهَبَ هِبَةً سَالِمَةً مِنْ شَرْطِ الثَّوَابِ، أَوْ غَيْرِهِ، أَوْ أَعْطَى عَطِيَّةً كَذَلِكَ، أَوْ تَصَدَّقَ بِصَدَقَةٍ كَذَلِكَ، فَقَدْ تَمَّتْ بِاللَّفْظِ - وَلَا مَعْنَى لِحِيَازَتِهَا، وَلَا لِقَبْضِهَا - وَلَا يُبْطِلُهَا تَمَلُّكُ الْوَاهِبِ لَهَا، أَوْ الْمُتَصَدِّقِ بِهَا.

L25904–25905 The ruling is the same whether with or without the permission of the gift recipient or charity beneficiary. It applies equally whether he retained possession until his death, for a short duration or a long one—whether the recipient is a minor child, an adult, or a stranger—except that he must return what he utilized from it, as in cases of usurpation. This applies equally during his lifetime and from the principal of his wealth after his death. This is the position of Abū Sulaymān and our companions.

وَسَوَاءٌ بِإِذْنِ الْمَوْهُوبِ لَهُ، أَوْ الْمُتَصَدَّقِ عَلَيْهِ كَانَ ذَلِكَ أَمْ بِغَيْرِ إذْنِهِ، سَوَاءٌ تَمَلَّكَهَا إلَى أَنْ مَاتَ، أَوْ مُدَّةً يَسِيرَةً أَوْ كَثِيرَةً - عَلَى وَلَدٍ صَغِيرٍ كَانَتْ أَوْ عَلَى كَبِيرٍ، أَوْ عَلَى أَجْنَبِيٍّ - إلَّا أَنَّهُ يَلْزَمُهُ رَدُّ مَا اسْتَغَلَّ مِنْهَا كَالْغَصْبِ سَوَاءٌ سَوَاءٌ فِي حَيَاتِهِ، وَمِنْ رَأْسِ مَالِهِ بَعْدَ وَفَاتِهِ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L25906 Abū Ḥanīfah said: Whoever donates or gives charity to a stranger, a minor relative—whether a child or another—or an adult relative (child or otherwise), this is not valid. The legal ruling of a gift or charity does not take effect, nor can he be compelled by judicial ruling to deliver it to the recipient of the charity or the donee. If he voluntarily delivers it, then the gift or charity is completed, and ownership of the gifted item or charity recipient becomes valid. If the donee or charity recipient takes possession without the donor's or charity-giver's permission, no ownership is thereby established, and he is legally required to return it to the donor or charity-giver—except in the case of a minor, for his father or guardian shall take possession on his behalf.

وَقَالَ أَبُو حَنِيفَةَ: مَنْ وَهَبَ أَوْ تَصَدَّقَ عَلَى أَجْنَبِيٍّ، أَوْ قَرِيبٍ صَغِيرٍ، أَوْ كَبِيرٍ - وَلَدٍ أَوْ غَيْرِهِ - فَلَيْسَ ذَلِكَ بِشَيْءٍ، وَلَا يَلْزَمُهُ حُكْمُ هِبَةٍ، وَلَا صَدَقَةٍ، وَلَا يُحْكَمُ عَلَيْهِ بِأَنْ يَدْفَعَهَا إلَى الَّذِي تَصَدَّقَ بِهَا عَلَيْهِ، وَلَا إلَى الَّذِي وَهَبَهَا لَهُ، فَإِنْ دَفَعَ ذَلِكَ مُخْتَارًا، فَحِينَئِذٍ تَمَّتْ الْهِبَةُ وَالصَّدَقَةُ، وَصَحَّ مِلْكُ الْمَوْهُوبِ أَوْ الْمُتَصَدَّقِ عَلَيْهِ، فَلَوْ قَبَضَهَا الْمَوْهُوبُ لَهُ أَوْ الْمُتَصَدَّقُ عَلَيْهِ بِغَيْرِ إذْنِ الْوَاهِبِ وَالْمُتَصَدِّقِ لَمْ يَصِحَّ لَهُ بِذَلِكَ مِلْكٌ، وَقُضِيَ عَلَيْهِ بِرَدِّهَا إلَى الْوَاهِبِ أَوْ الْمُتَصَدِّقِ إلَّا الصَّغِيرَ، فَإِنَّ أَبَاهُ أَوْ وَصِيَّهُ يَقْبِضَانِ لَهُ.

قَالَ: فَإِنْ مَاتَ الْوَاهِبُ، أَوْ الْمُتَصَدِّقُ، أَوْ الْمَوْهُوبُ لَهُ، أَوْ الْمُتَصَدَّقُ عَلَيْهِ -: بَطَلَتْ الصَّدَقَةُ وَالْهِبَةُ.

L25907 He said: If the giver, the donor of sadaqah, the recipient of the gift, or the beneficiary of sadaqah dies, the charity and the gift are rendered invalid.

وَقَالَ مَالِكٌ: مَنْ وَهَبَ أَوْ تَصَدَّقَ عَلَى ابْنٍ لَهُ صَغِيرٍ فَذَلِكَ جَائِزٌ - وَهُوَ الْحَائِزُ لِلصَّغِيرِ الذَّكَرِ حَتَّى يَبْلُغَ، وَلِلْأُنْثَى تُنْكَحُ وَتَرْشُدُ.

L25908 Mālik said: Whoever gifts or gives in charity to a minor son of his, that is permissible—and he is the custodian for the male minor until he reaches puberty, and for the female minor until she is married and attains maturity.

فَإِنْ وَهَبَ أَوْ تَصَدَّقَ عَلَى وَلَدٍ كَبِيرٍ، أَوْ عَلَى أَجْنَبِيٍّ -: أُجْبِرَ عَلَى دَفْعِ ذَلِكَ إلَيْهِمَا فَإِنْ قَبَضَاهُ بِغَيْرِ إذْنِهِ فَهُوَ قَبْضٌ صَحِيحٌ، فَإِنْ غَفَلَ عَنْ ذَلِكَ حَتَّى مَاتَ، وَالْهِبَةُ أَوْ الصَّدَقَةُ فِي يَدِهِ وَاعْتِمَارِهِ -: بَطَلَتْ الصَّدَقَةُ وَالْهِبَةُ وَعَادَتْ مِيرَاثًا - فَإِنْ دَفَعَ الْبَعْضَ وَاعْتَمَرَ الْبَعْضَ - فَإِنْ كَانَ الَّذِي اعْتَمَرَ لِنَفْسِهِ أَكْثَرَ مِنْ الثُّلُثِ -: بَطَلَ الْجَمِيعُ - وَإِنْ كَانَ الثُّلُثُ فَأَقَلُّ -: صَحَّتْ الْهِبَةُ وَالصَّدَقَةُ فِي الْجَمِيعِ فِيمَا اعْتَمَرَ وَفِيمَا لَمْ يَعْتَمِرْ.

L25909 If he gives a gift or charity to an adult child or to a stranger, he is compelled to deliver it to the recipient. If they take possession of it without his permission, this constitutes valid possession. If he neglects this until his death while the gift or charity remains in his possession and under his control, both the charity and gift become invalid and revert to inheritance. If he delivers part [of the gift] and retains part [of it] - if what he retains for himself exceeds one-third of the total, the entire gift and charity are invalidated. If the retained portion amounts to one-third or less, the gift and charity remain valid in full, including both what he retained and what he did not retain.

وَقَالَ الشَّافِعِيُّ فِي الْهِبَاتِ وَالْعَطَايَا وَالصَّدَقَاتِ الْمُطْلَقَةِ بِقَوْلِ أَبِي حَنِيفَةَ، وَفِي الْأَحْبَاسِ - فَقَطْ - بِالْقَوْلِ الَّذِي ذَكَرْنَا عَنْ أَصْحَابِنَا.

L25910 Al-Shafi'i aligned with Abu Hanifah's opinion regarding gifts, bestowals, and absolute charities, while concerning endowments exclusively, he upheld the view we mentioned from our companions.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ لَمْ يُجِزْ الْهِبَةَ، وَالصَّدَقَةَ إلَّا بِالْقَبْضِ -: بِمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ قَتَادَةَ عَنْ مُطَرِّفِ بْنِ عَبْدِ اللَّهِ بْنِ الشِّخِّيرِ عَنْ أَبِيهِ قَالَ: لَمَّا نَزَلَتْ {أَلْهَاكُمُ التَّكَاثُرُ} [التكاثر: ١] قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «يَقُولُ ابْنُ آدَمَ: مَالِي مَالِي، وَهَلْ لَكَ مِنْ مَالِكَ إلَّا مَا أَكَلْتَ فَأَفْنَيْتَ، أَوْ لَبِسْتَ فَأَبْلَيْتَ أَوْ أَعْطَيْتَ فَأَمْضَيْتَ.»

L25911 Abu Muhammad said: Those who did not consider gifts and charity valid except upon physical transfer cited as evidence what we have narrated through the chain of Shu'bah from Qatādah from Muṭarrif ibn 'Abdullāh ibn al-Shikhkhīr from his father, who said: When the verse {Competition in [worldly] increase diverts you} [102:1] was revealed, the Messenger of Allah (peace be upon him) said: "The son of Adam says: My wealth, my wealth! But do you possess anything of your wealth except what you consumed through eating, wore out through clothing, or gave away and thereby disbursed?"[11]

وَمِنْ طَرِيقِ أَبِي دَاوُد الطَّيَالِسِيِّ نا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ - عَنْ قَتَادَةَ «عَنْ مُطَرِّفِ بْنِ عَبْدِ اللَّهِ بْنِ الشِّخِّيرِ عَنْ أَبِيهِ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقْرَأُ {أَلْهَاكُمُ

L25912–25913 From the path of Abū Dāwūd al-Ṭayālisī, narrated to us Hishām—he is al-Dastuwā'ī—from Qatādah, from Muṭarrif ibn 'Abdullāh ibn al-Shikhkhīr, from his father, that he heard the Messenger of Allāh (peace be upon him)

[11] **Qur'an references (L25911):** Qur'an 102:1 (At-Takathur).

reciting {The rivalry in amassing [wealth] diverts you} [Al-Takāthur: 1] and saying: “The son of Ādam says: ’My wealth, my wealth!’ But do you possess anything of your wealth except what you ate and finished, or wore and wore out, or gave in charity and sent ahead?”[12]

التَّكَاثُرُ} [التكاثر: ١] وَيَقُولُ: يَقُولُ ابْنُ آدَمَ: مَالِي مَالِي، وَهَلْ لَكَ مِنْ مَالِكَ إِلَّا مَا أَكَلْتَ فَأَفْنَيْتَ، أَوْ لَبِسْتَ فَأَبْلَيْتَ، أَوْ تَصَدَّقْتَ فَأَمْضَيْتَ.»

L25914 They said: The Prophet (peace and blessings be upon him) stipulated that gifts and charitable acts require completion - meaning physical transfer - as a condition for their validity. They added: We analogized this ruling to loans and loans for use, which only become valid when physically transferred, because all such acts are forms of piety and recognized goodness. As for a bequest, it is not validated by mere verbal declaration alone, but requires another element linked to it: death.

قَالُوا: فَشَرَطَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي الْعَطِيَّةِ وَالصَّدَقَةِ الْإِمْضَاءَ، وَهُوَ الْإِقْبَاضُ - وَقَالُوا: قِسْنَا ذَلِكَ عَلَى الْقَرْضِ، وَالْعَارِيَّةِ، فَلَا يَصِحَّانِ إِلَّا مَقْبُوضَيْنِ، بِعِلَّةِ أَنَّ كُلَّ ذَلِكَ بِرٌّ وَمَعْرُوفٌ، وَعَلَى الْوَصِيَّةِ، فَلَا تَصِحُّ بِاللَّفْظِ وَحْدَهُ، لَكِنْ بِمَعْنًى آخَرَ مُقْتَرِنٍ إِلَيْهِ وَهُوَ الْمَوْتُ.

L25915 They also mentioned—what we have narrated through Malik’s chain that Ibn Shihab informed him from Urwah ibn al-Zubayr from Aisha, the Mother of the Believers—that when Abu Bakr’s death approached, he said to her: “I had granted you twenty wasqs of new palm trees. If you had harvested them and secured them, they would have been yours. But since you did not, they now belong to the heir.” He mentioned the report, which states: “She said, ’By Allah, O my father, had it been such and such, I would have returned it.’”

وَذَكَرُوا أَيْضًا - مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ أَنَّ ابْنَ شِهَابٍ أَخْبَرَهُ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ " أَنَّ أَبَا بَكْرٍ لَمَّا حَضَرَتْهُ الْوَفَاةُ قَالَ لَهَا: إِنِّي كُنْتُ نَحَلْتُكِ جِدَادَ عِشْرِينَ وَسْقًا، فَلَوْ كُنْتِ جَدَدْتِيهِ وَاحْتَزْتِيهِ لَكَانَ لَكِ فَإِذْ لَمْ تَفْعَلِي فَإِنَّمَا هُوَ مَالُ الْوَارِثِ، وَذَكَرَ الْخَبَرَ، وَفِيهِ: أَنَّهَا قَالَتْ " وَاَللَّهِ يَا أَبَتِ لَوْ كَانَ كَذَا وَكَذَا لَرَدَدْتُه ".

L25916 From the narration of Abd al-Razzaq, from Ma’mar, from al-Zuhri, from Urwah, from Aisha, the Mother of the Believers, who said: When Abu Bakr’s death approached, he said to her: “I had bequeathed to you twenty wasq of new harvest from my land in al-Ghabah. If you had taken possession of it, it would have been yours. But if you did not do so, then it is the heir’s property.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: لَمَّا حَضَرَتْ أَبَا بَكْرٍ الْوَفَاةُ، قَالَ لَهَا: إِنِّي كُنْتُ نَحَلْتُكِ جِدَادَ عِشْرِينَ وَسْقًا مِنْ أَرْضِي الَّتِي بِالْغَابَةِ، وَإِنَّكِ لَوْ كُنْتِ احْتَزْتِيهِ لَكَانَ لَكِ، فَإِذَا لَمْ تَفْعَلِي، فَإِنَّمَا هُوَ مَالُ الْوَارِثِ.

L25917 And through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from ʿUrwah: al-Miswar ibn Makhramah and ʿAbd al-Raḥmān ibn ʿAbd al-Qārī reported to me that they heard ʿUmar ibn al-Khaṭṭāb saying: “What is the matter with people who assign gifts to their children? When the son dies, the father says, ’My wealth is in my hand,’ and when the father dies, he says,

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ أَخْبَرَنِي الْمِسْوَرُ بْنُ مَخْرَمَةَ، وَعَبْدُ الرَّحْمَنِ بْنُ عَبْدٍ الْقَارِيِّ: أَنَّهُمَا سَمِعَا عُمَرَ بْنَ الْخَطَّابِ يَقُولُ: مَا بَالُ أَقْوَامٍ يَنْحَلُونَ أَوْلَادَهُمْ فَإِذَا مَاتَ الِابْنُ قَالَ الْأَبُ: مَالِي وَفِي يَدِي، وَإِذَا مَاتَ الْأَبُ قَالَ: قَدْ كُنْتُ نَحَلْتُ ابْنِي كَذَا وَكَذَا، لَا نَحْلَ إِلَّا لِمَنْ حَازَهُ وَقَبَضَهُ عَنْ أَبِيهِ.

[12] **Qur’an references (L25913):** Qur’an 102:1 (At-Takathur).

'I had granted my son such-and-such.' There is no gift except for one who takes possession of it and receives it from his father."

L25918 Al-Zuhri said: Sa'id ibn al-Musayyab informed me, saying: When this matter was complained of to Uthman, Uthman said: "We examined these guardianship cases and concluded that the most entitled to assume guardianship over the child is his father." This is the most authentic narration regarding this issue, and it has been established that the two narrations are conflicting, as we have cited.

قَالَ الزُّهْرِيُّ: فَأَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيِّبِ قَالَ: فَلَمَّا كَانَ عُثْمَانُ شُكِيَ ذَلِكَ إِلَيْهِ، فَقَالَ عُثْمَانُ: نَظَرْنَا فِي هَذِهِ النُّحُولِ فَرَأَيْنَا أَحَقَّ مَنْ يَحُوزُ عَلَى الصَّبِيِّ أَبُوهُ - فَهَذِهِ أَصَحُّ رِوَايَةٍ فِي هَذَا، وَصَحَّ أَنَّهُمَا مُخْتَلِفَانِ كَمَا أَوْرَدْنَا.

L25919–25921 From the chain of Mālik, from al-Zuhrī, from ʿUrwah, from ʿAbd al-Raḥmān ibn ʿAbd al-Qārī, from ʿUmar ibn al-Khaṭṭāb, that he said: "Why do men grant their sons a gift, then withhold it? If the son dies..." The son of one of them said: "My property is in my possession; I have not given it to anyone." Yet if he dies, he declares: "It is for my son—I had indeed given it to him." Whoever grants a gift (nahlah) that the recipient does not take possession of before the giver's death—thereby causing it to revert to the giver's heir—such a gift is invalid.

وَمِنْ طَرِيقِ مَالِكٍ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدٍ الْقَارِي عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ: مَا بَالُ رِجَالٍ يَنْحَلُونَ أَبْنَاءَهُمْ نُحْلًا ثُمَّ يُمْسِكُونَهَا، فَإِنْ مَاتَ ابْنُ أَحَدِهِمْ قَالَ: مَالِي بِيَدِي لَمْ أُعْطِهِ أَحَدًا، وَإِنْ مَاتَ قَالَ: لِابْنِي قَدْ كُنْتُ أَعْطَيْتُهُ إِيَّاهُ، مَنْ نَحَلَ نِحْلَةً لَمْ يَحُزْهَا الَّذِي نُحِلَهَا حَتَّى تَكُونَ لِوَارِثِهِ إِنْ مَاتَ فَهِيَ بَاطِلٌ.

L25922 Via the chain of Ibn Wahb, from Mālik, from al-Zuhrī, from Saʿīd ibn al-Musayyib, from ʿUthmān ibn ʿAffān, that he said: Whoever bestows an irrevocable gift upon his minor child who has not reached the age to take possession of a gift—then publicly announces it and has it formally attested—it is valid, even if the father administers it as his guardian.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَالِكٍ عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُثْمَانَ بْنِ عَفَّانَ أَنَّهُ قَالَ: مَنْ نَحَلَ وَلَدًا صَغِيرًا لَهُ لَمْ يَبْلُغْ أَنْ يَحُوزَ نِحْلَةً فَأَعْلَنَ بِهَا، وَأَشْهَدَ عَلَيْهَا فَهِيَ جَائِزَةٌ وَإِنْ وَلِيَهَا أَبُوهُ.

L25923 Ibn Wahb said: Men from the people of knowledge informed me from Umar ibn al-Khattab, Umar ibn Abd al-Aziz, Shurayh, al-Zuhri, Rabi'ah, and Bukayr ibn al-Ashajj: from this.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي رِجَالٌ مِنْ أَهْلِ الْعِلْمِ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَشُرَيْحٍ، وَالزُّهْرِيِّ وَرَبِيعَةَ، وَبُكَيْرِ بْنِ الْأَشَجِّ: مِنْ هَذَا.

L25924 And through the chain of Ibn Wahb from al-Ḥārith ibn Nabhān from Muḥammad ibn ʿUbayd Allāh (al-ʿArzamī) from ʿAmr ibn Shuʿayb, Ibn Abī Mulaykah, and ʿAṭāʾ ibn Abī Rabāḥ. ʿAmr reported from Saʿīd ibn al-Musayyib. Then Saʿīd, ʿAṭāʾ, and Ibn Abī Mulaykah concurred that Abū Bakr, ʿUmar, ʿUthmān, Ibn ʿAbbās, and Ibn ʿUmar stated: Charity is not valid until it is taken possession of.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنِ الْحَارِثِ بْنِ نَبْهَانَ عَنْ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ هُوَ الْعَرْزَمِيُّ - عَنْ عَمْرِو بْنِ شُعَيْبٍ، وَابْنِ أَبِي مُلَيْكَةَ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ عَمْرٌو عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، ثُمَّ اتَّفَقَ سَعِيدٌ وَعَطَاءٌ، وَابْنُ أَبِي مُلَيْكَةَ أَنَّ أَبَا بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَابْنَ عَبَّاسٍ، وَابْنَ عُمَرَ، قَالُوا: لَا تَجُوزُ صَدَقَةٌ حَتَّى تُقْبَضَ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ: كَانَ مُعَاذُ بْنُ جَبَلٍ لَا يُجِيزُ الصَّدَقَةَ حَتَّى تُقْبَضَ.

L25925 Reported via the chain: Abd al-Razzaq → Sufyan al-Thawri → Jabir al-Ju'fi → al-Qasim ibn Abd al-Rahman: Mu'adh ibn Jabal would not accept charity as valid until it had been taken possession of.

وَرُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ بِإِسْنَادِهِ، وَزَادَ فِيهِ: إلَّا الصَّبِيَّ بَيْنَ أَبَوَيْهِ.

L25926 We have narrated it via Wakī''s transmission from Sufyān with his (Sufyān's) chain of transmission, and he added therein: "except for a male child in the custody of his parents."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا مُجَالِدٌ عَنْ الشَّعْبِيِّ: أَنَّ شُرَيْحًا وَمَسْرُوقًا، كَانَا لَا يُجِيزَانِ صَدَقَةً إلَّا مَقْبُوضَةً - وَكَانَ الشَّعْبِيُّ يَقْضِي بِذَلِكَ.

L25927 And from the transmission of Sa'id ibn Mansur: Hushaym narrated to us, I am Mujalid from Al-Sha'bi that Shurayh and Masruq would not validate any charity unless it was physically received, and Al-Sha'bi used to rule accordingly.

قَالَ هُشَيْمٌ: وَأَخْبَرَنِي مُطَرِّفٌ هُوَ ابْنُ طَرِيفٍ - عَنْ الشَّعْبِيِّ قَالَ: الْوَاهِبُ أَحَقُّ بِهِبَتِهِ مَا كَانَتْ فِي يَدِهِ فَإِذَا أَمْضَاهَا فَقُبِضَتْ، فَهِيَ لِلْمَوْهُوبِ لَهُ.

L25928 Hushaym said: Mutarrif—who is Ibn Tarif—narrated to me from Al-Sha'bi, who said: The donor has the greater right to his gift as long as it remains in his possession. Once he finalizes it and it is delivered, it then belongs to the donee.

قَالَ عَلِيٌّ: هَذَا كُلُّ مَا احْتَجُّوا بِهِ، مَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ هَذَا، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ، فَأَمَّا قَوْلُ رَسُولِ اللَّهِ: «إلَّا مَا تَصَدَّقْتَ، أَوْ أَعْطَيْتَ فَأَمْضَيْتَ» فَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ -: إنَّ الْإِمْضَاءَ هُوَ شَيْءٌ آخَرُ غَيْرُ التَّصَدُّقِ، وَالْإِعْطَاءِ، وَلَا جَاءَ ذَلِكَ قَطُّ فِي لُغَةٍ، بَلْ كُلُّ تَصَدُّقٍ وَإِعْطَاءٍ إعْطَاءٌ، فَاللَّفْظُ بِهِمَا إمْضَاءٌ لَهُمَا، وَإِخْرَاجٌ لَهُمَا عَنْ مِلْكِهِ، كَمَا أَنَّ الْأَكْلَ نَفْسَهُ هُوَ الْإِفْنَاءُ، وَاللِّبَاسُ هُوَ الْإِبْلَاءُ؛ لِأَنَّ لِكُلِّ لُبْسَةٍ حَظَّهَا مِنْ الْإِبْلَاءِ، فَإِذَا تَرَدَّدَ اللِّبَاسُ ظَهَرَ الْإِبْلَاءُ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ.

L25929 Ali said: This is all they have relied on as evidence; we know of nothing else beyond this for them, and none of it contains any valid argument for them in any part of it. As for the statement of God's Messenger—peace be upon him—"except what you gave in charity, or gave and then executed," he did not say—peace be upon him—that "execution" is something distinct from charity and giving, nor has this ever existed in any language. Rather, every act of charity and giving is itself an act of giving, and the use of these terms signifies their execution and removal from his ownership, just as eating itself is consumption, and wearing is deterioration—for every garment has its share of deterioration. Thus, when clothing is used repeatedly, the deterioration becomes evident. Therefore, their reliance on this report is invalid.

وَأَيْضًا - فَإِنَّ مَنْ قَالَ: مَا لِي هَذَا صَدَقَةٌ عَلَى فُلَانٍ، أَوْ قَالَ: قَدْ تَصَدَّقْت عَلَيْك بِهَذَا الشَّيْءِ، أَوْ قَالَ: مَالِي هَذَا هِبَةٌ لِفُلَانٍ، أَوْ قَالَ: قَدْ وَهَبْتُهُ لِفُلَانٍ -: فَلَا يَخْتَلِفُ اثْنَانِ مِمَّنْ يُحْسِنُ اللُّغَةَ الْعَرَبِيَّةَ فِي أَنَّهُ يُقَالُ: قَدْ تَصَدَّقَ فُلَانٌ بِكَذَا عَلَى فُلَانٍ، وَقَدْ وَهَبَ لَهُ كَذَا فَلَوْ لَمْ تَكُنْ الصَّدَقَةُ كَامِلَةً تَامَّةً بِاللَّفْظِ، لَكَانَ الْمُخْبِرُ عَنْهُ بِأَنَّهُ تَصَدَّقَ، أَوْ وَهَبَ

L25930–25931 Moreover, if someone says, "This property of mine is charity for so-and-so," or says, "I have given you this thing as charity," or says, "This property of mine is a gift for so-and-so," or says, "I have given this as a gift to so-and-so"—no two people proficient in the Arabic language disagree that it is said: "So-and-so has given such-and-such as charity to so-and-so," and "He has granted such-and-such to him as a gift." For if the charity were not complete and perfected by the utterance, the one reporting that he gave charity or a

gift would be lying. Therefore, it is obligatory to base the ruling on what the language necessitates, unless a text introduces an additional ruling beyond the language's requirements—in which case it is restricted to it and implemented.

كَاذِبًا - فَوَجَبَ حَمْلُ الْحُكْمِ عَلَى مَا تُوجِبُهُ اللُّغَةُ، مَا لَمْ يَأْتِ نَصٌّ بِحُكْمٍ زَائِدٍ لَا تَقْتَضِيهِ اللُّغَةُ فَيُوقَفُ عِنْدَهُ وَيُعْمَلُ بِهِ.

L25932 The Malikis in particular are asked about one who says: "I have given this thing to you as a gift," or says: "This thing is a gift for you," or says: "I have given this to you as charity," or says: "This is charity to you" - does this [statement] constitute charity (sadaqa) and thereby a gift (hiba), or does it neither constitute charity nor a gift? There is no third option in this classification.

وَيُسْأَلُ الْمَالِكِيُّونَ خَاصَّةً عَمَّنْ قَالَ: قَدْ وَهَبْتُ هَذَا الشَّيْءَ لَك، أَوْ قَالَ: هَذَا الشَّيْءُ هِبَةٌ لَك، أَوْ قَالَ: قَدْ تَصَدَّقْت عَلَيْك بِهَذَا، أَوْ قَالَ: هَذَا صَدَقَةٌ عَلَيْك - أَتَصَدَّقُ، وَوَهَبَ بِذَلِكَ الشَّيْءِ أَمْ لَمْ يَتَصَدَّقْ بِهِ وَلَا وَهَبَهُ؟ وَلَا ثَالِثَ لِهَذَا التَّقْسِيمِ.

L25933 If they say: Yes, he has given it as charity and gifted it? We respond: Since he has given it as charity and gifted it, the charitable act and gift are fully concluded and valid. What invalidates them due to the lack of taking possession or actual taking, when no textual evidence mandates this? If they say: He neither gifted nor gave it as charity? We counter: How can you justify compelling him and ruling that he must hand over wealth from his property – wealth he neither gave as charity to the recipient, nor gifted it to someone he had not given it to, nor given as charity to him? This is the very essence of injustice and falsehood, leaving them no escape from either charge.

فَإِنْ قَالُوا: نَعَمْ، قَدْ تَصَدَّقَ بِهِ وَوَهَبَهُ؟ قُلْنَا: فَإِذْ قَدْ تَصَدَّقَ بِهِ وَوَهَبَهُ فَقَدْ تَمَّتْ الصَّدَقَةُ وَالْهِبَةُ وَصَحَّتْ، فَمَا يَضُرُّهُمَا تَرْكُ الْحِيَازَةِ وَالْقَبْضِ، إذَا لَمْ يُوجِبْ ذَلِكَ نَصٌّ؟ فَإِنْ قَالُوا: لَمْ يَهَبْ وَلَا تَصَدَّقَ؟ قُلْنَا: فَمِنْ أَيْنَ اسْتَحْلَلْتُمْ إجْبَارَهُ وَالْحُكْمَ عَلَيْهِ بِدَفْعِ مَالٍ مِنْ مَالِهِ لَمْ يُتَصَدَّقْ بِهِ عَلَيْهِ، وَلَا وَهَبَهُ إلَى مَنْ لَمْ يَهَبْهُ لَهُ وَلَا تَصَدَّقَ بِهِ عَلَيْهِ؟ هَذَا عَيْنُ الظُّلْمِ وَالْبَاطِلِ، وَلَا مُخَلِّصَ لَهُمْ مِنْ أَحَدِهِمَا.

L25934 As for those below the rank of the Companions, there is no authoritative evidence in anyone apart from the Messenger of Allah—peace and blessings be upon him and his family—especially since disagreement concerning this matter existed among the Companions (may Allah be pleased with them).

وَأَمَّا مَنْ دُونَ الصَّحَابَةِ فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، لَا سِيَّمَا وَالْخِلَافُ قَدْ وَرَدَ فِي ذَلِكَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L25935 Moreover, most of these reports are either unauthentic, contradict the wording they relied upon, or oppose the teachings transmitted from those Companions—either in the manner these narrations are transmitted or by what is more authentic—as we will clarify in accordance with what follows, if Allah the Exalted wills.

وَأَيْضًا - فَأَكْثَرُ تِلْكَ الْأَخْبَارِ إمَّا لَا تَصِحُّ، وَإِمَّا قَدْ جَاءَتْ بِخِلَافِ مَا تَعَلَّقُوا بِهِ مِنْ أَلْفَاظِهَا، وَإِمَّا قَدْ خَالَفُوا أُولَئِكَ الصَّحَابَةَ فِيمَا جَاءَ عَنْهُمْ، كَمَجِيءِ هَذِهِ الرِّوَايَاتِ، أَوْ بِأَصَحَّ عَلَى مَا نُبَيِّنُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

L25936–25938 As for their analogy equating gifts, charity, loans, bequests, and the commodatum—the entire analogy is invalid. Even if it were valid, this aspect would constitute the very essence of invalidity. Regarding the loan: they have inval-

وَأَمَّا قِيَاسُهُمْ الْهِبَةَ، وَالصَّدَقَةَ عَلَى الْقَرْضِ، وَالْوَصِيَّةِ، وَالْعَارِيَّةِ -: فَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنُ الْبَاطِلِ -: أَمَّا الْقَرْضُ: فَقَدْ أَبْطَلُوا - وَهُوَ لَازِمٌ بِاللَّفْظِ

idated it—though it remains binding by its explicit wording, legally binding, and inevitable to uphold in the absence of any contradicting textual evidence—for the invalidity arising from the loan stems solely from the lack of physical transfer, just as occurs with the invalidity of gifts and charity. It is the same in both cases. This only applies to what is non-specified. For example, if one says: "I have lent you ten dinars from my wealth," or "I have given you ten dinars from my wealth as charity," or "I have gifted you ten dinars from my wealth": none of these are binding, for the reason we stated earlier: that all such actions are invalid except with specified items. Otherwise, he is not gifting anything, nor giving anything as charity, nor lending anything.

وَمَحْكُومٌ بِهِ وَلَا بُدَّ - إِذْ لَمْ يَأْتِ نَصٌّ بِخِلَافِ هَذَا، وَإِنَّمَا يَبْطُلُ مِنْ الْقَرْضِ بِعَدَمِ الْإِقْبَاضِ مِثْلُ مَا يَبْطُلُ مِنْ الْهِبَةِ، وَالصَّدَقَةِ، سَوَاءٌ سَوَاءٌ، وَلَيْسَ ذَلِكَ إِلَّا مَا كَانَ فِي غَيْرِ مُعَيَّنٍ، مِثْلُ أَنْ يَقُولَ: قَدْ أَقْرَضْتُكَ عَشَرَةَ دَنَانِيرَ مِنْ مَالِي، أَوْ تَصَدَّقْتُ عَلَيْكَ بِعَشَرَةِ دَنَانِيرَ مِنْ مَالِي، أَوْ وَهَبْتُكَ عَشَرَةَ دَنَانِيرَ مِنْ مَالِي -: فَهَذَا كُلُّهُ لَا يَلْزَمُ لِمَا ذَكَرْنَا قَبْلُ: مِنْ أَنَّ كُلَّ ذَلِكَ لَا يَجُوزُ، إِلَّا فِي مُعَيَّنٍ، وَإِلَّا فَلَيْسَ وَاهِبًا لِشَيْءٍ، وَلَا مُتَصَدِّقًا بِشَيْءٍ، وَلَا مُقْرِضًا لِشَيْءٍ.

L25939 The ruling concerning the gratuitous loan (ʿāriyyah) is exactly the same as the ruling we have previously mentioned—identical in every respect. Were this analogy valid, it would indeed be conclusive proof against them.

وَالْقَوْلُ فِي الْعَارِيَّةِ كَالْقَوْلِ فِيمَا ذَكَرْنَا سَوَاءً سَوَاءً، وَلَوْ صَحَّ هَذَا الْقِيَاسُ لَكَانَ حُجَّةً عَلَيْهِمْ.

L25940 Moreover, the loan (qard) can be reclaimed whenever the lender wishes, and the loan (ʿāriyyah) similarly can be reclaimed. However, in our school, a gift (hibah) or charity (sadaqah) cannot be reclaimed. Additionally, charity and a gift entail transfer of ownership without compensation, while the loan (qard) entails transfer of ownership in exchange for repayment, and the loan (ʿāriyyah) does not involve transfer of ownership at all. Thus, analogical reasoning (qiyās) of some of these upon others is invalid due to the differences in their legal rulings.

وَأَيْضًا - فَإِنَّ الْقَرْضَ يَرْجِعُ فِيهِ مَتَى أَحَبَّ، وَالْعَارِيَّةَ كَذَلِكَ، وَلَا يَرْجِعُ عِنْدَنَا فِي الْهِبَةِ وَلَا فِي الصَّدَقَةِ، وَأَيْضًا - فَإِنَّ الصَّدَقَةَ وَالْهِبَةَ تَمْلِيكٌ لِلرَّقَبَةِ بِغَيْرِ عِوَضٍ، وَالْقَرْضَ تَمْلِيكٌ لِلرَّقَبَةِ بِعِوَضٍ، وَالْعَارِيَّةَ لَيْسَتْ تَمْلِيكًا لِلرَّقَبَةِ أَصْلًا -: فَبَطَلَ قِيَاسُ بَعْضِ ذَلِكَ عَلَى بَعْضٍ لِاخْتِلَافِ أَحْكَامِهَا.

L25941 The opinion of those who assert that all such acts agree in being righteous and recognized good, thereby justifying analogizing some to others, is no more valid than the opinion of those who assert that their divergent rulings preclude such analogy. For if agreement in rulings necessitates qiyās, then divergence invalidates it. Otherwise, they would merely assert claims without proof.

وَلَيْسَ قَوْلُ مَنْ قَالَ: اتِّفَاقُ جَمِيعِهَا فِي أَنَّهَا بِرٌّ وَمَعْرُوفٌ فَأَنَا أَقِيسُ بَعْضَهَا عَلَى بَعْضٍ بِأَوْلَى مِمَّنْ قَالَ افْتِرَاقُهَا فِي أَحْكَامِهَا يُوجِبُ أَنْ لَا يُقَاسَ بَعْضُهَا عَلَى بَعْضٍ، وَإِذَا كَانَ الِاتِّفَاقُ يُوجِبُ الْقِيَاسَ، فَالِافْتِرَاقُ يُبْطِلُ الْقِيَاسَ، وَإِلَّا فَقَدْ تَحَكَّمُوا بِالدَّعْوَى بِلَا بُرْهَانٍ.

L25942 And it is said to them: Why did you not compare all of that to the obligatory vow according to you, which is binding by mere utterance even if possession of it is not taken? For it is more analogous to charity and a gift than to a

commodatum (loan for temporary use) or a loan (qard). As for the bequest, we have relieved them of the need to analogize it, for they do not require validity in it through taking possession at all; rather, it becomes obligatory only upon death.

وَيُقَالُ لَهُمْ: هَلَّا قِسْتُمْ كُلَّ ذَلِكَ عَلَى النَّذْرِ الْوَاجِبِ عِنْدَكُمْ بِاللَّفْظِ وَإِنْ لَمْ يُقْبَضْ، فَهُوَ أَشْبَهُ بِالصَّدَقَةِ وَالْهِبَةِ مِنْ الْعَارِيَّةِ وَالْقَرْضِ؟ وَأَمَّا الْوَصِيَّةُ: فَقَدْ كَفَوْنَا مُؤْنَةَ قِيَاسِهِمْ عَلَيْهَا، لِأَنَّهُمْ لَا يُوجِبُونَ فِيهَا الصِّحَّةَ بِالْقَبْضِ أَصْلًا، بَلْ هِيَ وَاجِبَةٌ بِالْمَوْتِ فَقَطْ.

L25943 Their statement that "the obligation is not established by the wording alone without another meaning—death"—is a feeble, invalid obfuscation. For the testator never established the will's obligation through his wording at all; rather, he only established it after death. Thus, it became obligatory solely through what he stipulated for its obligation, without any additional meaning. Consequently, the invalidity, weakness, and insipidity of their analogy—along with its contradiction of the truth—have become evident. All praise is to Allah, Lord of the worlds.

وَقَوْلُهُمْ: لَا تَجِبُ بِاللَّفْظِ دُونَ مَعْنًى آخَرَ - وَهُوَ الْمَوْتُ - فَتَمْوِيهٌ بَارِدٌ فَاسِدٌ، لِأَنَّ الْمُوصِيَ لَمْ يُوجِبْ الْوَصِيَّةَ قَطُّ بِلَفْظِهِ، بَلْ إنَّمَا أَوْجَبَهَا بَعْدَ الْمَوْتِ فَحِينَئِذٍ وَجَبَتْ بِمَا أَوْجَبَهَا بِهِ فَقَطْ دُونَ مَعْنًى آخَرَ -: فَظَهَرَ فَسَادُ قِيَاسِهِمْ وَبَرْدُهُ وَغَثَاثَتُهُ، وَمُخَالَفَتُهُ لِلْحَقِّ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L25944–25946 As for the narration from the Companions—may Allah be pleased with them—we begin with the account of Abu Bakr and Aisha—may Allah be pleased with them both—and we say—and with Allah, the Most High, is success—: When the hadith explicitly stated that he gifted her twenty wasqs of fresh dates from his property in Al-Ghabah, it must necessarily be one of two possibilities—there is no third option: either that he intended date palms that yield twenty wasqs.

وَأَمَّا الرِّوَايَةُ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَنَبْدَأُ بِخَبَرِ أَبِي بَكْرٍ، وَعَائِشَةَ - رَضِيَ اللَّهُ عَنْهُمَا - فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: لَمَّا نَصَّ الْحَدِيثُ أَنَّهُ نَحَلَهَا جِدَادَ عِشْرِينَ وَسْقًا مِنْ مَالِهِ بِالْغَابَةِ، فَلَا يَخْلُو ضَرُورَةً مِنْ أَحَدِ أَمْرَيْنِ لَا ثَالِثَ لَهُمَا -: إمَّا أَنْ يَكُونَ أَرَادَ نَخْلًا تَجِدُّ مِنْهَا عِشْرِينَ وَسْقًا.

L25947 Alternatively, he may have intended dates amounting to twenty wasqs of produced yield, which must necessarily be one of the two. Whichever case applies, it is merely a stipulated period. This ruling does not bind according to their school nor ours, because it does not pertain to specified palm trees nor specified dates. One might produce twenty wasqs from forty palm trees, or from two hundred palm trees, or fail to produce twenty wasqs from palm trees in the grove due to blight affecting the fruit. This arrangement is only valid when he specifies either the palm trees or the wasq quantity pertaining to a particular tree, whereby the arrangement is then completed through harvesting and possession. This case neither falls under the legally recognized gift contracts with defined parameters, nor under the distinct category of charity applicable to neither incoming nor outgoing [transactions]. Rather,

وَإِمَّا أَنْ يَكُونَ أَرَادَ تَمْرًا يَكُونُ عِشْرِينَ وَسْقًا مَجْدُودَةً، لَا بُدَّ مِنْ أَحَدِهِمَا وَأَيُّ الْأَمْرَيْنِ كَانَ فَإِنَّمَا هِيَ عِدَةٌ؟ وَلَا يَلْزَمُ هَذِهِ الْقَضِيَّةُ عِنْدَهُمْ وَلَا عِنْدَنَا، لِأَنَّهَا لَيْسَتْ فِي مُعَيَّنٍ مِنْ النَّخْلِ، وَلَا مُعَيَّنٍ مِنْ التَّمْرِ، وَقَدْ تَجِدُّ عِشْرِينَ وَسْقًا مِنْ أَرْبَعِينَ نَخْلَةً، وَقَدْ تَجِدُّ مِنْ مِائَتَيْ نَخْلَةٍ، وَقَدْ لَا تَجِدُّ مِنْ نَخْلَةٍ بِالْغَابَةِ عِشْرِينَ وَسْقًا لِعَاهَةٍ تُصِيبُ الثَّمَرَةَ، فَهَذَا لَا يَتِمُّ إلَّا حَتَّى يُعَيِّنَ النَّخْلَ أَوْ الْأَوْسَاقَ فِي نَخْلَةٍ، فَيَتِمُّ حِينَئِذٍ بِالْجِدَادِ وَالْحِيَازَةِ، فَلَيْسَتْ هَذِهِ الْقِصَّةُ مِنْ الْهِبَةِ الْمَعْرُوفَةِ الْمَحْدُودَةِ، وَلَا مِنْ الصَّدَقَةِ الْمَعْلُومَةِ الْمُتَمَيِّزَةِ فِي وِرْدٍ وَلَا صَدْرٍ، وَلَكِنَّهُمْ قَوْمٌ يُوهِمُونَ فِي الْأَخْبَارِ مَا لَيْسَ فِيهَا.

they are people who insinuate falsely in textual reports what is not contained within them.

وَأَيْضًا - فَقَدْ رَوَى هَذَا الْخَبَرَ مَنْ هُوَ أَجَلُّ مِنْ عُرْوَةَ، وَآخَرُ هُوَ مِثْلُ عُرْوَةَ بِخِلَافِ مَا رَوَاهُ عُرْوَةُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي ابْنُ أَبِي مُلَيْكَةَ: أَنَّ الْقَاسِمَ بْنَ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ أَخْبَرَهُ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ قَالَ لِعَائِشَةَ أُمِّ الْمُؤْمِنِينَ: يَا بُنَيَّةُ، إِنِّي نَحَلْتُكِ نَخْلًا مِنْ خَيْبَرَ، وَإِنِّي أَخَافُ أَنْ أَكُونَ آثَرْتُكِ عَلَى وَلَدِي، وَأَنَّكِ لَمْ تَكُونِي احْتَزْتِيهِ فَرُدِّيهِ عَلَى وَلَدِي؟ فَقَالَتْ: يَا أَبَتَاهُ، لَوْ كَانَتْ لِي خَيْبَرُ بِجِدَادِهَا لَرَدَدْتُهَا.

L25948 Moreover, this report has been narrated by one more eminent than ʿUrwah and another comparable to ʿUrwah, contradicting ʿUrwah's narration—as conveyed to us through the chain of ʿAbd al-Razzāq on the authority of Ibn Jurayj: Ibn Abī Mulaykah informed me that al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq reported to him that Abū Bakr al-Ṣiddīq said to ʿĀ'ishah, the Mother of the Believers: "O my daughter, I gifted you palm trees from Khaybar, but I fear I may have favored you over my children and that you have not taken possession of it. Should you return it to my children?" She replied: "O my father, if I possessed Khaybar with all its fresh dates, I would still return it!"

فَالْقَاسِمُ لَيْسَ دُونَ عُرْوَةَ، وَابْنُ أَبِي مُلَيْكَةَ لَيْسَ دُونَ ابْنِ شِهَابٍ؛ لِأَنَّهُ أَدْرَكَ مِنْ الصَّحَابَةِ مِنْ لَمْ يَأْخُذْ الزُّهْرِيُّ عَنْهُمْ، كَأَسْمَاءَ وَابْنِ عُمَرَ وَغَيْرِهِمَا - وَابْنُ جُرَيْجٍ لَيْسَ دُونَ مَالِكٍ.

L25949 Al-Qāsim is not inferior to ʿUrwah, and Ibn Abī Mulaykah is not inferior to al-Zuhrī, for he was contemporaneous with Companions from whom al-Zuhrī did not learn, such as Asmā' and Ibn ʿUmar and others – and Ibn Jurayj is not inferior to Mālik.

وَهَذِهِ السِّيَاقَةُ مُوَافِقَةٌ لِقَوْلِنَا لَا لِقَوْلِهِمْ.

L25950 And this guidance is in agreement with our view, not theirs.

فَمِنْ الْبَاطِلِ أَنْ يَكُونَ مَا رَوَوْهُ مِمَّا لَا يُوَافِقُ قَوْلَهُمْ، بَلْ يُخَالِفُهُ: حُجَّةً لِمَا لَا يُوَافِقُهُ، وَلَا يَكُونُ مَا رُوِّينَاهُ مُوَافِقًا لِقَوْلِنَا: حُجَّةً لِمَا يُوَافِقُهُ هَذِهِ سَوَاءٌ سَوَاءٌ مِمَّنْ أَطْلَقَهَا.

L25951 It is invalid that what they narrated—which does not conform to their position but rather contradicts it—should constitute valid proof for what opposes their stance, while what we narrated—which conforms to our position—does not constitute valid proof for what aligns with it. This equivalence is absolute, irrespective of who asserted it.

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا إبْرَاهِيمُ الْحَرْبِيُّ نا ابْنُ نُمَيْرٍ هُوَ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ - نا أَبِي عَنْ الْأَعْمَشِ عَنْ شَقِيقٍ أَبِي وَائِلٍ عَنْ مَسْرُوقٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، قَالَتْ: قَالَ لِي أَبُو بَكْرٍ حِينَ أُحْضِرَ: إنِّي قَدْ كُنْتُ أَبَنْتُكِ بِنَخْلٍ فَإِنْ شِئْتِ أَنْ تَأْخُذِي مِنْهُ قِطَاعًا أَوْ قِطَاعَيْنِ ثُمَّ تَرُدِّينَهُ إلَى الْمِيرَاثِ؟ قَالَتْ: قَدْ فَعَلْتُ.

L25952 From the chain of Ibn al-Jahm, from Ibrāhīm al-Ḥarbī, from Ibn Numayr—Muḥammad ibn ʿAbd Allāh ibn Numayr—from his father, from al-Aʿmash, from Shaqīq Abū Wā'il, from Masrūq, from ʿĀ'ishah, Mother of the Believers, who said: Abū Bakr said to me when he was on his deathbed: "I had assigned you a bridal gift. If you wish, take one portion or two portions from it, then return it to the inheritance." She said: "I did so."

وَلَا خِلَافَ مِنْ أَنَّ مَسْرُوقًا أَجَلُّ مِنْ عُرْوَةَ؛ لِأَنَّهُ أَفْتَى فِي خِلَافَةِ عُمَرَ وَكَانَ أَخَصَّ النَّاسِ بِأُمِّ الْمُؤْمِنِينَ - وَشَقِيقٌ أَجَلُّ مِنَ الزُّهْرِيِّ؛ لِأَنَّهُ أَدْرَكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَإِنْ كَانَ لَمْ يَرَهُ، وَصَحِبَ الصَّحَابَةَ مِنْ بَعْدِ مَوْتِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْأَكَابِرَ الْأَكَابِرَ.

There is no disagreement that Masruq is more eminent than Urwah, for he issued legal rulings during the caliphate of Umar and was the most closely associated of people with the Mother of the Believers. Shaqiq is more eminent than al-Zuhri because he lived during the time of the Messenger of Allah (peace and blessings be upon him) even though he did not see him, and after his death (peace and blessings be upon him), he accompanied the greatest of the great Companions.

وَالْأَعْمَشُ إِنَّمَا يُعَارَضُ بِهِ شُيُوخُ مَالِكٍ؛ لِأَنَّهُ قَدْ أَدْرَكَ أَنَسًا وَرَآهُ، فَهُوَ مِنَ التَّابِعِينَ مِنَ الْقَرْنِ الثَّانِي، وَإِنَّمَا فِيهِ كَمَا تَرَى بِأَنَّهُ إِنَّمَا اسْتَرَدَّهُ بِإِذْنِهَا، لَا بِأَنَّهُ لَمْ يَتِمَّ بِاللَّفْظِ.

Al-A'mash is only contradicted by Malik's teachers because he met Anas and saw him, placing him among the Followers of the second century AH. The matter regarding him, as is evident, is solely that he reclaimed the ruling with her permission, not that it was not completed by explicit wording.

وَرُوِّينَاهُ أَيْضًا مُرْسَلًا كَذَلِكَ، مِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنِ الشَّعْبِيِّ - فَبَطَلَ تَعَلُّقُهُمْ بِخَبَرِ أَبِي بَكْرٍ جُمْلَةً وَعَادَ حُجَّةً عَلَيْهِمْ - وَلِلَّهِ تَعَالَى الْحَمْدُ، وَصَحَّ أَنَّهُمَا رَأَيَا الْهِبَةَ جَائِزَةً بِغَيْرِ قَبْضٍ.

We have also narrated it as *mursal* in the same manner, through the chain of Waki' from Ismā'īl ibn Abī Khālid from al-Sha'bī—thus their reliance on the report of Abū Bakr is entirely invalidated, and it became evidence against them—and all praise is due to Allah, the Exalted—and it has been established that both of them deemed the gift permissible without physical possession.

وَأَمَّا الرِّوَايَةُ عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ: لَا تَجُوزُ صَدَقَةٌ حَتَّى تُقْبَضَ فَبَاطِلٌ؛ لِأَنَّ رَاوِيَهَا مُحَمَّدُ بْنُ عُبَيْدِ اللَّهِ الْعَرْزَمِيُّ - وَهُوَ هَالِكٌ مُطْرَحٌ. وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ الْمُوَافِقَةُ لِلرِّوَايَةِ عَنْ عُثْمَانَ فَلَا شَيْءَ؛ لِأَنَّ ابْنَ وَهْبٍ لَمْ يُسَمِّ مَنْ أَخْبَرَهُ بِهَا - وَالرِّوَايَةُ عَنْ مُعَاذٍ فِيهَا جَابِرٌ الْجُعْفِيُّ، وَبَقِيَّةُ الرِّوَايَةِ عَنْ عُمَرَ، وَعُثْمَانَ، فَهِيَ حُجَّةٌ إِلَّا أَنَّهُمَا اخْتَلَفَا -: فَعُمَرُ عَمَّ كُلَّ مَوْهُوبٍ، وَعُثْمَانُ خَصَّ مِنْ ذَلِكَ صِغَارَ الْوَلَدِ، وَإِنَّمَا هِيَ رَأْيٌ مِنْ رَأْيِهِمَا اخْتَلَفَا فِيهِ، لَا تَقُومُ بِهِ حُجَّةٌ عَلَى أَحَدٍ - وَقَدْ صَحَّ عَنْ أَبِي بَكْرٍ، وَعَائِشَةَ خِلَافُ ذَلِكَ، كَمَا أَوْرَدْنَا.

As for the narration attributed to Abu Bakr, Umar, Uthman, Ibn Abbas, and Ibn Umar stating that charity is not valid until it is physically received, this is invalid because its narrator, Muhammad ibn Ubaydullah al-Arzami, is rejected and abandoned. As for the narration from Umar that corresponds to the narration from Uthman, it holds no weight because Ibn Wahb did not name the one who reported it to him. The narration from Mu'adh includes Jabir al-Ju'fi, while the remaining narrations from Umar and Uthman constitute probative evidence, except that they disagreed: Umar applied the ruling universally to all gifts, whereas Uthman restricted it to young children. This is merely an opinion they differed on, which does not establish binding proof for anyone. Authentic reports from Abu Bakr and 'Aishah contradict this, as we have presented.

وَأَيْضًا - فَإِنَّمَا هُوَ عَنْ عُمَرَ، وَعُثْمَانَ فِي النُّحْلِ خَاصَّةً، لَا فِي الصَّدَقَةِ.

Moreover, this applies specifically to the positions of ʿUmar and ʿUthmān concerning voluntary gifts (al-nuḥl), not to obligatory alms (al-ṣadaqah).

It has been narrated to us via the chain of Al-Ḥajjāj ibn Al-Minhāl: Al-

Muʿtamir ibn Sulaymān At-Taymī narrated to us, saying: "I heard ʿĪsā ibn Al-Musayyib relate that he heard Al-Qāsim ibn ʿAbd ar-Raḥmān ibn ʿAbdillāh ibn Masʿūd narrating from his father, from his grandfather ʿAbdullāh ibn Masʿūd, who said: 'Charity is permissible, whether it has been collected or not.'"

وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ قَالَ: سَمِعْتُ عِيسَى بْنَ الْمُسَيِّبِ يُحَدِّثُ: أَنَّهُ سَمِعَ الْقَاسِمَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ يُحَدِّثُ عَنْ أَبِيهِ عَنْ جَدِّهِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: الصَّدَقَةُ جَائِزَةٌ، قُبِضَتْ أَوْ لَمْ تُقْبَضْ.

L25960 From the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Jabir al-Ju'fi, from al-Qasim ibn Abd al-Rahman, who said: Ali ibn Abi Talib and Ibn Mas'ud would permit charity—even if it was not received—and this is a chain like that of Mu'adh's hadith. Those are interrupted chains.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ، وَابْنُ مَسْعُودٍ: يُجِيزَانِ الصَّدَقَةَ - وَإِنْ لَمْ تُقْبَضْ - فَهَذَا إسْنَادٌ كَإِسْنَادِ حَدِيثِ مُعَاذٍ، وَتِلْكَ الْمُنْقَطِعَاتُ.

L25961–25963 Via the narration route of Ibn Abī Shaybah: Wakīʿ reported to us from Hammām from Qatādah from Al-Nadr ibn Anas ibn Malik said: My father granted me half of his house as a voluntary gift. Abu Burda then said: If you wish to secure it, take possession of it, for Umar ruled regarding grants: Whatever is taken possession of becomes valid, and whatever is not taken possession of becomes part of the inheritance. Thus, Anas—as reported through the most authentic chain of transmission—did not consider safekeeping to be of any significance.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ هَمَّامٍ عَنْ قَتَادَةَ عَنْ النَّضْرِ بْنِ أَنَسِ بْنِ مَالِكٍ قَالَ: نَحَلَنِي أَبِي نِصْفَ دَارِهِ، فَقَالَ أَبُو بُرْدَةَ: إنْ سَرَّك أَنْ تَحُوزَ ذَلِكَ فَاقْبِضْهُ، فَإِنَّ عُمَرَ قَضَى فِي الْأَنْحَالِ: مَا قُبِضَ مِنْهُ فَهُوَ جَائِزٌ، وَمَا لَمْ يُقْبَضْ مِنْهُ فَهُوَ مِيرَاثٌ - فَهَذَا أَنَسٌ بِأَصَحِّ سَنَدٍ لَا يَرَى الْحِرْزَ شَيْئًا.

L25964 And through the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us: "I [heard] from Yūnus, from al-Ḥasan, from a man who gifted to his wife." Al-Ḥasan said: "It is permissible for her, even if she does not take possession of it."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا يُونُسُ عَنْ الْحَسَنِ عَنْ رَجُلٍ وَهَبَ لِامْرَأَتِهِ قَالَ: هِيَ جَائِزَةٌ لَهَا، وَإِنْ لَمْ تَقْبِضْهَا.

L25965 There are numerous cases where they opposed the rulings of ʿUmar and ʿUthmān, such as their ruling that the child of a woman legally recognized as a slave is enslaved to the master of the child's mother, their ruling imposing a liability of five camels for the child of an Arab man by an enslaved woman, and their permitting conditional stipulations during Hajj.

وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا عُمَرَ، وَعُثْمَانَ، كَقَضَائِهِمَا بِوَلَدِ الْمُسْتَحَقَّةِ رَقِيقًا لِسَيِّدِ أُمِّهِمْ، وَقَضَائِهِمَا فِي وَلَدِ الْعَرَبِيِّ مِنْ الْأَمَةِ بِخَمْسٍ مِنْ الْإِبِلِ، وَكَإِبَاحَتِهِمَا الِاشْتِرَاطَ فِي الْحَجِّ.

L25966 What has been reported from Abū Bakr and ʿUmar concerning the annulment of unspecified gifts.

وَمَا رُوِيَ عَنْ أَبِي بَكْرٍ، وَعُمَرَ، مِنْ إبْطَالِ هِبَةِ الْمَجْهُولِ.

L25967 And like the speech of 'Umar and 'Uthman during the Friday sermon in the presence of the Muhajirun and Ansar, when 'Umar mentioned to the people

the Friday bath, and their obligating retaliation for a poke or slap, and their prostration during the sermon after they both recited the prostration verse before the Companions without opposition, and their statement: "Whoever declares [hostility] incurs the prescribed penalties (Hudud)" – with no dissent from the Companions – and their granting the missing man's wife the choice between remaining [as his wife] or receiving the dowry upon his return – among a great many such examples. Sometimes they are authoritative, and other times not.

وَكَكَلَامِ عُمَرَ، وَعُثْمَانَ، يَوْمَ الْجُمُعَةِ فِي الْخُطْبَةِ بِحَضْرَةِ الْمُهَاجِرِينَ وَالْأَنْصَارِ، إِذْ ذَكَرَ لَهُ عُمَرُ غُسْلَ الْجُمُعَةِ، وَكَإِيجَابِهِمَا الْقِصَاصَ مِنْ الْوَكْزَةِ وَاللَّطْمَةِ، وَسُجُودِهِمَا فِي الْخُطْبَةِ، إِذْ قَرَآ السَّجْدَةَ بِحَضْرَةِ الصَّحَابَةِ دُونَ مُخَالِفٍ وَقَوْلُهُمَا: مَنْ أَشْعَرَ لَزِمَتْهُ الْحُدُودُ - وَلَا مُخَالِفَ لَهُمَا مِنْ الصَّحَابَةِ، وَكَتَخْيِيرِهِمَا الْمَفْقُودَ إِذَا قَدِمَ امْرَأَتُهُ بَيْنَهَا وَبَيْنَ الصَّدَاقِ - وَغَيْرُ ذَلِكَ كَثِيرٌ جِدًّا، فَمَرَّةً هُمَا حُجَّةٌ وَمَرَّةً لَيْسَا حُجَّةً.

L25968 As for Mālik's categorization regarding one who endowed from what he donated or gifted—whether a third or more, or less than a third—this is an opinion unattributed to any predecessor, despite its inherent contradictions. He classified a third as "substantial" in this context, yet deemed it "minor" in matters where a woman disposes of her wealth—a truly perplexing stance, particularly as it diverges entirely from the narration transmitted from ʿUmar, ʿUthmān, and every Companion cited on this matter. For all of them either entirely invalidate gifts in impermissible cases, similarly invalidate them in charity, or permit them unconditionally.

وَأَمَّا تَقْسِيمُ مَالِكٍ فِيمَنْ اعْتَمَرَ مِمَّا تَصَدَّقَ بِهِ أَوْ وَهَبَ الثُّلُثَ فَمَا فَوْقَهُ، أَوْ مَا دُونَ الثُّلُثِ، فَقَوْلٌ لَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُ مَعَ تَنَاقُضِهِ هَاهُنَا، فَجَعَلَ الثُّلُثَ فِي حَيِّزِ الْكَثِيرِ، وَجَعَلَهُ فِيمَا تَحْكُمُ فِيهِ الْمَرْأَةُ مِنْ مَالِهَا فِي حَيِّزِ الْقَلِيلِ - وَهَذَا عَجَبٌ جِدًّا مَعَ أَنَّهُ خِلَافٌ مُجَرَّدٌ لِلرِّوَايَةِ عَنْ عُمَرَ، وَعُثْمَانَ وَكُلِّ مَنْ رُوِيَ عَنْهُ فِي ذَلِكَ مِنْ الصَّحَابَةِ لَفْظَةٌ، لِأَنَّ جَمِيعَهُمْ إِمَّا مُبْطِلٌ لِلْهِبَةِ فِيمَا لَمْ يَجُزْ جُمْلَةً، أَوْ فِي الصَّدَقَةِ كَذَلِكَ، أَوْ مُجِيزٌ لَهُ جُمْلَةً.

L25969 As for the statement of Abū Ḥanīfah: "If the recipient of the gift or the beneficiary of charity takes possession of it without the permission of the donor or the charity giver, it does not qualify as valid possession"—this is not attested from anyone before him, and it contradicts the narration transmitted from ʿUmar.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ: إِنْ قَبَضَهَا الْمَوْهُوبُ لَهُ أَوْ الْمُتَصَدَّقُ عَلَيْهِ بِغَيْرِ إِذْنِ الْوَاهِبِ أَوْ الْمُتَصَدِّقِ فَلَيْسَ قَبْضًا - فَلَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُ، وَهُوَ مُخَالِفٌ لِلرِّوَايَةِ عَنْ عُمَرَ.

L25970 And ʿUmar and ʿUthmān in that matter—may Allah be pleased with them both—for they did not say "until he takes possession with his permission," but rather said: "until he takes possession." If their statement constitutes authoritative evidence (ḥujjah) and consensus (ijmāʿ), then the Ḥanafīs and Mālikīs have contradicted the authoritative evidence and consensus by their own admission against themselves. If their statement is not considered authoritative evidence nor consensus, then there is no basis for their citing it as evidence—thus, their reliance on all such arguments they have attached to this matter is invalidated.

وَعُثْمَانَ فِي ذَلِكَ، لِأَنَّهُمَا - رَضِيَ اللَّهُ عَنْهُمَا - لَمْ يَقُولَا حَتَّى يَقْبِضَ بِإِذْنِهِ، لَكِنْ قَالَا: حَتَّى يَقْبِضَ، فَإِنْ كَانَ قَوْلُهُمَا حُجَّةً وَإِجْمَاعًا فَقَدْ خَالَفَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ الْحُجَّةَ وَالْإِجْمَاعَ بِإِقْرَارِهِمْ عَلَى أَنْفُسِهِمْ وَإِنْ لَمْ يَكُنْ قَوْلُهُمَا حُجَّةً وَلَا إِجْمَاعًا فَلَا مَعْنَى لِاحْتِجَاجِهِمْ بِهِ - فَبَطَلَ تَعَلُّقُهُمْ بِكُلِّ مَا تَعَلَّقُوا بِهِ مِنْ ذَلِكَ.

L25971–25972 As for the statement of al-Shāfiʿī: We have been narrated from Ibrāhīm al-

Nakhaʿī that charity is a whole perfected without physical acquisition. They argued: Charity can only be for Allah, the Exalted.

وَأَمَّا قَوْلُ الشَّافِعِيِّ: فَإِنَّنَا رُوِّينَا عَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّ الصَّدَقَةَ جُمْلَةٌ تَتِمُّ بِلَا حِيَازَةٍ - وَاحْتَجُّوا: بِأَنَّ الصَّدَقَةَ لَا تَكُونُ إِلَّا لِلَّهِ تَعَالَى.

L25973 Abu Muhammad said, "This is baseless, for if a gift is not for the sake of Allah the Exalted, it is void. Were we to act upon this, we would not consider it valid, since every act performed for other than Allah the Exalted is invalid. We refute his statement regarding gifts with the same argument by which we invalidated the opinions of Abu Hanifah and Malik—and success is attained through Allah the Exalted."

قَالَ أَبُو مُحَمَّدٍ، وَهَذَا لَيْسَ بِشَيْءٍ؛ لِأَنَّ الْهِبَةَ إِذَا لَمْ تَكُنْ لِلَّهِ تَعَالَى، فَهِيَ بَاطِلٌ، فَلَوْ عَمِلْنَا ذَلِكَ لَمَا أَجَزْنَاهَا، إِذْ كُلُّ عَمَلٍ عُمِلَ لِغَيْرِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، وَنُبْطِلُ قَوْلَهُ فِي الْهِبَةِ بِمَا أَبْطَلْنَا بِهِ قَوْلَ أَبِي حَنِيفَةَ، وَمَالِكٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L25974 The adherents of al-Shafi'i argued: Unrestricted gifts and voluntary alms are owned by their donors, thus requiring the recipients to take physical acceptance. As for endowments, there is no owner for them except Allah, the Exalted, and everything is within His grasp, the Almighty and Majestic. Thus, there is no one to take physical acceptance of them besides Him.

وَاحْتَجَّ أَصْحَابُ الشَّافِعِيِّ: بِأَنَّ الْهِبَاتِ وَالصَّدَقَاتِ الْمُطْلَقَةَ يَمْلِكُهَا أَرْبَابُهَا، فَاحْتَاجُوا إِلَى الْقَبْضِ - وَأَمَّا الْحُبُسُ فَلَا مَالِكَ لَهَا إِلَّا اللَّهُ تَعَالَى، وَكُلُّ شَيْءٍ فِي قَبْضَتِهِ عَزَّ وَجَلَّ، فَلَا قَابِضَ لَهَا دُونَهُ.

L25975 Ali said: "The entire earth and all things belong to Allah the Exalted; nothing has departed from His ownership so that it must be returned to Him. His opinion concerning gifts and charity has been invalidated by what invalidates the opinions of Mālik and Abū Ḥanīfah - and with Allah the Exalted is success."

قَالَ عَلِيٌّ: الْأَرْضُ كُلُّهَا وَكُلُّ شَيْءٍ لِلَّهِ تَعَالَى، لَمْ يَخْرُجْ شَيْءٌ عَنْ مِلْكِهِ فَيُرَدُّ إِلَيْهِ، وَقَدْ بَطَلَ قَوْلُهُ فِي الْهِبَةِ وَالصَّدَقَةِ بِمَا يُبْطِلُ بِهِ قَوْلُ مَالِكٍ، وَأَبِي حَنِيفَةَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L25976 When all the evidence they presented is nullified, the proof for our position is Allah's statement, the Most High: "Fulfill the covenants" [al-Māʾidah: 1]. This is the correct context to cite this verse—not where they cited it, in matters the Sunnah has shown to have no bearing on it.[13]

فَإِذَا بَطَلَ كُلُّ مَا احْتَجُّوا بِهِ، فَالْحُجَّةُ لِقَوْلِنَا: قَوْلُ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] ، وَهَذَا مَكَانُ الِاحْتِجَاجِ بِهَذِهِ الْآيَةِ، لَا حَيْثُ احْتَجُّوا بِهَا مِمَّا بَيَّنَتْ السُّنَنُ أَنَّهُ لَا مَدْخَلَ لَهُ فِيهَا.

L25977 And likewise, the saying of the Most High, "Do not nullify your deeds" (Muhammad 47:33).[14]

وَكَذَلِكَ قَوْله تَعَالَى: {وَلا تُبْطِلُوا أَعْمَالَكُمْ} [محمد: ٣٣] .

L25978 Whoever utters [a statement of] gift or charity has performed an act and concluded a contract that obligates him to fulfill it. It is impermissible for

وَمَنْ تَلَفَّظَ بِالْهِبَةِ أَوْ الصَّدَقَةِ فَقَدْ عَمِلَ عَمَلًا، وَعَقَدَ عَقْدًا لَزِمَهُ الْوَفَاءُ بِهِ، وَلَا يَحِلُّ لِأَحَدٍ إبْطَالُهُ إلَّا بِنَصٍّ، وَلَا نَصَّ فِي إبْطَالِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[13] **Qur'an references (L25976):** Qur'an 5:1 (Al-Ma'idah).
[14] **Qur'an references (L25977):** Qur'an 47:33 (Muhammad).

anyone to invalidate it except through textual evidence, and no such evidence exists for its invalidation—and with Allah, the Exalted, is success.

The Legal Question of Retracting a Gift

[مَسْأَلَة الرُّجُوع فِي الْهِبَة]

Issue 1631: Whoever gives a valid gift is not permitted to revoke it at all from the moment of its utterance, except the father and the mother—or one of them—in what they have given to their child. They may revoke it forever - the minor and the adult being the same.

١٦٣١ - مَسْأَلَةٌ: وَمَنْ وَهَبَ هِبَةً صَحِيحَةً لَمْ يَجُزْ لَهُ الرُّجُوعُ فِيهَا أَصْلًا مُذْ يَلْفِظُ بِهَا إِلَّا الْوَالِدَ، وَالْأُمَّ فِيمَا أَعْطَيَا، أَوْ أَحَدُهُمَا لِوَلَدِهِمَا فَلَهُمَا الرُّجُوعُ فِيهِ أَبَدًا - الصَّغِيرُ وَالْكَبِيرُ سَوَاءٌ.

It is the same whether the child, whether son or daughter, marries based on that gift or does not marry, takes a loan against it or does not borrow. If the asset itself is lost, there is no recourse for them to reclaim anything, nor to the usufruct, nor to any child born after the donation. If part of it is lost while part remains, they may reclaim only what remains. This is the view of Al-Shāfiʿī, Abū Sulaymān, and their companions.

وَسَوَاءٌ تَزَوَّجَ الْوَلَدُ أَوْ الِابْنَةُ عَلَى تِلْكَ الْعَطِيَّةِ أَوْ لَمْ يَتَزَوَّجَا، دَايَنَا عَلَيْهَا أَوْ لَمْ يُدَايِنَا، فَإِنْ فَاتَ عَيْنُهَا فَلَا رُجُوعَ لَهُمَا بِشَيْءٍ، وَلَا رُجُوعَ لَهُمَا بِالْغَلَّةِ وَلَا بِالْوَلَدِ الْحَادِثِ بَعْدَ الْهِبَةِ، فَإِنْ فَاتَ الْبَعْضُ وَبَقِيَ الْبَعْضُ كَانَ لَهُمَا الرُّجُوعُ فِيمَا بَقِيَ فَقَطْ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

Abu Hanifah said: If someone gives a gift to a mahram relative by blood or to a child and transfers possession of it to them, or if one spouse gives a gift to the other and transfers possession of it, there is no revocation for any of the aforementioned givers regarding what they have gifted.

وَقَالَ أَبُو حَنِيفَةَ: مَنْ وَهَبَ لِذِي رَحِمٍ مَحْرَمَةٍ أَوْ لِوَلَدٍ هِبَةً وَأَقْبَضَهُ إِيَّاهَا أَوْ وَهَبَ أَحَدُ الزَّوْجَيْنِ لِصَاحِبِهِ هِبَةً وَأَقْبَضَهُ إِيَّاهَا فَلَا رُجُوعَ لِأَحَدٍ مِمَّنْ ذَكَرْنَا فِيمَا وَهَبَ.

Whoever gifts to a stranger, a freed slave, or a non-mahram relative and delivers the gift to them, the giver may revoke it whenever they wish—even after a prolonged period—provided the gift has not increased in its physical substance, the recipient has not transferred it out of their ownership, neither the giver nor recipient has died, nor the recipient or another party on the recipient's behalf has provided the giver with compensation acceptable to them. Whichever of these causes occurs, the giver may no longer revoke what they have gifted.

وَمَنْ وَهَبَ لِأَجْنَبِيٍّ، أَوْ لِمَوْلًى، أَوْ لِذِي رَحِمٍ غَيْرِ مَحْرَمَةٍ: هِبَةً وَأَقْبَضَهُ إِيَّاهَا، فَلِلْوَاهِبِ أَنْ يَرْجِعَ فِيمَا وَهَبَ مِنْ ذَلِكَ مَتَى شَاءَ - وَإِنْ طَالَتْ الْمُدَّةُ - مَا لَمْ تَزِدْ الْهِبَةُ فِي بَدَنِهَا، أَوْ مَا لَمْ يُخْرِجْهَا الْمَوْهُوبُ لَهُ عَنْ مِلْكِهِ، أَوْ مَا لَمْ يَمُتْ الْوَاهِبُ، أَوْ الْمَوْهُوبُ لَهُ، أَوْ مَا لَمْ يُعَوِّضْ الْمَوْهُوبُ لَهُ، أَوْ غَيْرُهُ عَنْهُ الْوَاهِبَ عِوَضًا يَقْبَلُهُ الْوَاهِبُ، فَأَيُّ هَذِهِ الْأَسْبَابِ كَانَ فَلَا رُجُوعَ لِلْوَاهِبِ فِيمَا وَهَبَ.

It is not permissible to revoke a gift if none of the aforementioned conditions exist, except by the recipient surrendering the gifted item, or in the presence of a judge—regardless of whether the recipient is willing or reluctant. He said: If another person gifted a female slave, and the recipient taught her

وَلَا يَجُوزُ الرُّجُوعُ فِي الْهِبَةِ إِذَا لَمْ يَكُنْ شَيْءٌ مِمَّا ذَكَرْنَا إِلَّا بِتَسْلِيمِ الْمَوْهُوبِ لَهُ ذَلِكَ، أَوْ بِحَضْرَةِ الْحَاكِمِ أَحَبَّ الْمَوْهُوبُ لَهُ أَمْ كَرِهَ - قَالَ: فَلَوْ وَهَبَ آخَرُ جَارِيَةً فَعَلَّمَهَا

the Quran, writing, and righteousness, this does not prevent the giver from revoking the gift. However, if the recipient paid off a debt on her behalf, or if she was a non-Muslim and embraced Islam, the giver cannot revoke it.

الْمَوْهُوبُ لَهُ الْقُرْآنَ وَالْكِتَابَةَ وَالْخَيْرَ، فَلَيْسَ ذَلِكَ بِمَانِعٍ مِنْ رُجُوعِ الْوَاهِبِ فِيهَا، فَإِنْ كَانَ عَلَيْهَا دَيْنٌ فَأَدَّاهُ الْمَوْهُوبُ لَهُ عَنْهَا، أَوْ كَانَتْ كَافِرَةً فَأَسْلَمَتْ فَلَا رُجُوعَ لِلْوَاهِبِ فِيهَا.

L25986 As for charity, there is no revocation for the donor regarding it—whether given to a stranger or a non-stranger—unlike a gift. Mālik said: Neither a giver (of gifts) nor a charity donor may revoke their giving at all, whether to a stranger or a mahram relative, except in the case of a reward-based gift alone, and in what a man gifts to his son or daughter whether they are adults or minors, provided he did not state: "He gifted it to his child for the sake of Allah the Exalted." If he makes this declaration, he cannot revoke what he gifted. If he did not state it, he may revoke his gift unless the child incurs debt using the gift, or the son or daughter marries by virtue of it, or the son or daughter confirms their father's action regarding it. Whichever of these scenarios occurs, the father's revocation of the gift becomes invalid.

وَأَمَّا الصَّدَقَةُ فَلَا رُجُوعَ لِلْمُتَصَدِّقِ فِيهَا - لِأَجْنَبِيٍّ كَانَتْ أَوْ لِغَيْرِ أَجْنَبِيٍّ - بِخِلَافِ الْهِبَةِ - وَقَالَ مَالِكٌ: لَا رُجُوعَ لِوَاهِبٍ وَلَا لِمُتَصَدِّقٍ فِي هِبَتِهِ أَصْلًا، لَا لِأَجْنَبِيٍّ وَلَا لِذِي رَحِمٍ مَحْرَمَةٍ، إلَّا فِي هِبَةِ الثَّوَابِ فَقَطْ، وَفِيمَا وَهَبَ الرَّجُلُ لِوَلَدِهِ أَوْ ابْنَتِهِ الْكَبِيرَيْنِ أَوْ الصَّغِيرَيْنِ، مَا لَمْ يَقُلْ: إنَّهُ وَهَبَهَا لِوَلَدِهِ لِوَجْهِ اللَّهِ تَعَالَى - فَإِنْ قَالَ هَذَا فَلَا رُجُوعَ لَهُ فِيمَا وَهَبَ، فَإِنْ لَمْ يَقُلْهُ فَلَهُ الرُّجُوعُ فِيمَا وَهَبَ، مَا لَمْ يُدَايِنْ الْوَلَدَ عَلَى تِلْكَ الْهِبَةِ، أَوْ مَا لَمْ يَتَزَوَّجْ الِابْنُ أَوْ الِابْنَةُ عَلَيْهَا، أَوْ مَا لَمْ يَثْبْ الْوَلَدُ أَوْ الِابْنَةُ أَبَاهُمَا عَلَى ذَلِكَ، فَأَيُّ هَذِهِ الْوُجُوهِ كَانَ فَقَدْ بَطَلَ رُجُوعُ الْأَبِ فِي الْهِبَةِ.

L25987 The mother similarly may reclaim what she gifted specifically to her minor children while their father is alive. If their father dies, she has no right to revoke it. Likewise, she cannot reclaim what she gifted to her adult children, whether their father is alive or not.

وَتَرْجِعُ الْأُمُّ كَذَلِكَ فِيمَا وَهَبَتْ الْأُمُّ لِوَلَدِهَا الصِّغَارِ خَاصَّةً مَا دَامَ أَبُوهُمْ حَيًّا، فَلَهَا الرُّجُوعُ فِيهِ، فَإِنْ مَاتَ أَبُوهُمْ فَلَا رُجُوعَ لَهَا، وَكَذَلِكَ لَا رُجُوعَ لَهَا فِيمَا وَهَبَتْ لِوَلَدِهَا الْكِبَارِ، كَانَ أَبُوهُمْ حَيًّا أَوْ لَمْ يَكُنْ.

L25988 He said: Regarding a reward-based grant, the grantor retains the right to revoke it as long as no reward has been established in return for it. If he is rewarded with less than its value, he retains the right to revoke it.

قَالَ: وَهِبَةُ الثَّوَابِ صَاحِبُهَا الْوَاهِبُ لَهَا لَهُ الرُّجُوعُ فِيهَا مَا لَمْ يُثَبْ مِنْهَا، فَإِنْ أُثِيبَ مِنْهَا أَقَلَّ مِنْ قِيمَتِهَا فَلَهُ الرُّجُوعُ.

L25989–25991 If he is compensated its value, he may retract. If he is compensated its value, they hold two positions: one is that he cannot retract, and the other is that he may retract unless he has accepted that compensation. They maintain there is no compensation for what one spouse gifts to the other, nor for what a poor person presents to a wealthy individual. Regarding transported goods—such as bananas and the like—he stated: "There is no revocation of

فَإِنْ أُثِيبَ قِيمَتَهَا فَلَهُ الرُّجُوعُ، فَإِنْ أُثِيبَ قِيمَتَهَا فَلَهُمْ قَوْلَانِ: أَحَدُهُمَا -: أَنَّهُ لَا رُجُوعَ لَهُ، وَالْآخَرُ - أَنَّ لَهُ الرُّجُوعَ مَا لَمْ يَرْضَ بِذَلِكَ الثَّوَابِ، وَلَا ثَوَابَ عِنْدَهُمْ فِيمَا وَهَبَ

charitable gifts whatsoever, neither for a parent in what they voluntarily gave to their child nor for anyone else."

أَحَدُ الزَّوْجَيْنِ لِصَاحِبِهِ، وَلَا لِلْفَقِيرِ فِيمَا أَهْدَى إِلَى الْغَنِيِّ يَقْدُمُ مِنْ سَفَرٍ، كَالْمَوْزِ وَنَحْوِ ذَلِكَ - قَالَ: وَلَا رُجُوعَ فِي صَدَقَةٍ أَصْلًا، لَا لِوَالِدٍ فِيمَا تَصَدَّقَ بِهِ عَلَى وَلَدِهِ وَلَا لِغَيْرِهِ.

L25992 Abu Muhammad said: These are irrational statements, riddled with contradictions and baseless claims—merely hearing them suffices without requiring detailed rebuttal. Examples include preventing the poor person from presenting bananas or similar items to the wealthy to seek reward, when no one is more in need of seeking reward than him; permitting the wealthy to seek reward while denying the mother the right to revoke her gift if the child's father dies, yet allowing her revocation if the child's father is alive; permitting the revocation of gifts to an orphan, whether a close or distant relative, while distinguishing between her case and the father's ruling in such matters; and their specification that if the son or daughter marries contingent upon that gift, revocation is prohibited.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ أَقَاوِيلُ لَا تُعْقَلُ، وَفِيهَا مِنْ التَّضَادِّ، وَالدَّعَاوَى بِلَا دَلِيلٍ مَا يَكْفِي سَمَاعُهُ عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهِ، فَمِنْ ذَلِكَ مَنْعُ الْفَقِيرِ يُهْدِي إِلَى الْغَنِيِّ يُقَدِّمُ الْمَوْزَ وَنَحْوَهُ مِنْ طَلَبِ الثَّوَابِ، وَمَا أَحَدٌ أَحْوَجُ إلَيْهِ مِنْهُ، وَإِطْلَاقُهُمْ الْغَنِيَّ عَلَى طَلَبِ الثَّوَابِ، وَمَنْعُهُمْ الْأُمَّ مِنْ الرُّجُوعِ إذَا مَاتَ أَبُو وَلَدِهَا، وَإِبَاحَتُهُمْ لَهَا الرُّجُوعَ إذَا كَانَ أَبُوهُمْ حَيًّا، وَإِبَاحَتُهُمْ الرُّجُوعَ فِيمَا وَهَبَ لِيَتِيمٍ قَرِيبٍ أَوْ بَعِيدٍ، وَتَفْرِيقِهِمْ بَيْنَهَا وَبَيْنَ حُكْمِ الْوَالِدِ فِي ذَلِكَ، ثُمَّ تَخْصِيصُهُمْ إذَا تَزَوَّجَ الْوَلَدُ أَوْ الِابْنَةُ عَلَى تِلْكَ الْهِبَةِ بِالْمَنْعِ مِنْ الرُّجُوعِ.

L25993 Similarly, the statements of Abū Ḥanīfa also hold, as he considered Islam after disbelief a good that prevents reversion, but did not regard learning the Quran a good that prevents reversion.

وَكَذَلِكَ أَقْوَالُ أَبِي حَنِيفَةَ أَيْضًا، إذْ رَأَى الْإِسْلَامَ بَعْدَ الْكُفْرِ خَيْرًا يَمْنَعُ الرُّجُوعَ، وَلَمْ يَرَ تَعَلُّمَ الْقُرْآنِ خَيْرًا يَمْنَعُ الرُّجُوعَ.

L25994 If he deems the repayment of the slave's debt to prevent retraction, yet does not consider maintenance expenses upon him to prevent retraction, and if he does not deem retraction permissible except in the presence of a judge, this is utterly astonishing. For if retraction is a rightful claim, why is it not permissible without the judge's presence? If it is not a rightful claim, how does it become permissible in the judge's presence? Among the wonders of the world is their argument to invalidate the established Sunnah regarding a seller's retraction of a commodity found in its original state with a bankrupt buyer. This must be one of two scenarios: either the buyer acquired ownership of it or he did not. If he did not own it, how did it come into his possession and become part of his assets? If he did own it, the seller has no claim over the buyer's property—thus this objection is valid in this case but not in that one. Similarly, the recipient of a gift must either have owned the gifted item or not. If he did not own it, how could intimate relations, consumption, sale, and disposal be lawful for him? By what right

وَإِذَا رَأَى أَدَاءَ دَيْنِ الْعَبْدِ يَمْنَعُ الرُّجُوعَ، وَلَمْ يَرَ النَّفَقَةَ عَلَيْهِ تَمْنَعُ الرُّجُوعَ وَإِذَا لَمْ يَرَ الرُّجُوعَ إلَّا بِحَضْرَةِ الْحَاكِمِ هَذَا عَجَبٌ جِدًّا، وَلَئِنْ كَانَ الرُّجُوعُ حَقًّا فَمَا بَالُهُ لَا يَجُوزُ بِغَيْرِ حَضْرَةِ الْحَاكِمِ، وَلَئِنْ كَانَ غَيْرَ حَقٍّ فَمِنْ أَيْنَ جَازَ بِحَضْرَةِ الْحَاكِمِ؟ وَمِنْ عَجَائِبِ الدُّنْيَا احْتِجَاجُهُمْ فِي إبْطَالِ السُّنَّةِ الثَّابِتَةِ مِنْ رُجُوعِ بَائِعِ السِّلْعَةِ فِيهَا إذَا وَجَدَهَا بِعَيْنِهَا عِنْدَ مُفْلِسٍ، فَإِنَّهُ لَا يَخْلُو أَنْ يَكُونَ الْمُشْتَرِي لَهَا مَلَكَهَا أَوْ لَمْ يَمْلِكْهَا، فَإِنْ كَانَ لَمْ يَمْلِكْهَا فَبِأَيِّ شَيْءٍ صَارَتْ عِنْدَهُ، وَفِي جُمْلَةِ مَالِهِ، وَإِنْ كَانَ مَلَكَهَا فَلَا سَبِيلَ لِلْبَائِعِ عَلَى مَالِهِ - فَهَاهُنَا كَانَ هَذَا الِاعْتِرَاضُ صَحِيحًا لَا هُنَاكَ - وَهَا هُنَا لَا يَخْلُو الْمَوْهُوبُ لَهُ مِنْ أَنْ يَكُونَ مَلَكَ مَا وَهَبَ لَهُ أَمْ لَمْ يَمْلِكْهُ، فَإِنْ كَانَ لَمْ يَمْلِكْهُ فَبِأَيِّ شَيْءٍ حَلَّ لَهُ

الْوَطْءُ وَالْأَكْلُ، وَالْبَيْعُ، وَالتَّصَرُّفُ، وَبِأَيِّ شَيْءٍ وَرِثْت عَنْهُ إنْ مَاتَ، وَإِنْ كَانَ قَدْ مَلَكَهُ، فَلَا سَبِيلَ لِلْوَاهِبِ عَلَى مَالِهِ.

could he inherit from him if he died? If he did own it, the giver has no claim over his property.

L25995 قَالَ أَبُو مُحَمَّد: احْتَجَّ مَنْ رَأَى الرُّجُوعَ فِي هِبَةِ الثَّوَابِ مَا لَمْ يَثِبْ مِنْهَا أَوْ لَمْ يَرْضَ مِنْهَا -: بِمَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ عَنْ عُمَرَ قَالَ: مَنْ وَهَبَ هِبَةً فَلَمْ يُثْبَ مِنْهَا فَهُوَ أَحَقُّ بِهَا إلَّا لِذِي رَحِمٍ.

Abū Muḥammad said: Those who hold that retraction is permissible in a reward-seeking gift, provided the divine recompense has not been realized or the donor remains dissatisfied with it, cited as proof the narration we transmitted via Saʿīd ibn Manṣūr's chain—Sufyān narrated to us from ʿAmr ibn Dīnār, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father, from ʿUmar, who said: "Whoever gives a gift while its intended reward remains unattained may rightfully reclaim it, except when given to a close relative."

L25996–25998 وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ نا الْأَعْمَشُ عَنْ إبْرَاهِيمَ عَنْ الْأَسْوَدِ قَالَ عُمَرُ بْنُ الْخَطَّابِ: مَنْ وَهَبَ هِبَةً لِذِي رَحِمٍ فَهُوَ جَائِزٌ، وَمَنْ وَهَبَ هِبَةً لِغَيْرِ ذِي رَحِمٍ فَهُوَ أَحَقُّ بِهَا مَا لَمْ يُثَبْ عَلَيْهَا.

And through the chain of Saʿīd ibn Manṣūr, Abū Muʿāwiyah narrated to us, al-Aʿmash narrated to us, on the authority of Ibrāhīm, on the authority of al-Aswad, who said: Umar ibn al-Khattab said: Whoever gives a gift to a relative, it is permissible. But whoever gives a gift to a non-relative, the giver has a stronger claim to it unless it is confirmed.

L25999 وَمِنْ طَرِيقِ وَكِيعٍ نا حَنْظَلَةُ هُوَ ابْنُ أَبِي سُفْيَانَ الْجُمَحِيِّ - عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: قَالَ عُمَرُ: الرَّجُلُ أَحَقُّ بِهِبَتِهِ مَا لَمْ يُرْضَ مِنْهَا.

From the chain of Waki', who narrated to us from Hanzalah—the son of Abu Sufyan al-Jumahi—from Salim ibn Abdullah ibn Umar, from his father, who said: 'Umar said: A man has the greatest right to his gift as long as he has not taken anything from it.

From the narration of Hammad ibn Salama through Humaid from Al-Hasan, who said: The first to return a gift was Uthman ibn Affan, and the first to request evidence that his creditor had died while the debt was still owed to him was Uthman.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ قَالَ: أَوَّلُ مَنْ رَدَّ الْهِبَةَ عُثْمَانُ بْنُ عَفَّانَ، وَأَوَّلُ مَنْ سَأَلَ الْبَيِّنَةَ عَلَى أَنَّ غَرِيمَهُ مَاتَ وَدَيْنُهُ عَلَيْهِ عُثْمَانُ.

And through the chain of Ibn Abī Shaybah: Wakiʿ narrated from Sufyān from Jābir al-Juʿfī from al-Qāsim from Ibn Abzā from ʿAlī ibn Abī Ṭālib, who said: “A man is more entitled to his gift as long as no condition is established therefrom.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ سُفْيَانَ عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الْقَاسِمِ عَنْ ابْنُ أَبْزَى عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: الرَّجُلُ أَحَقُّ بِهِبَتِهِ مَا لَمْ يُثَبْ مِنْهَا.

Via the chain of Ibn Wahb from Ibn Lahiʿah from Yazid ibn Abi Habib from ʿAli, that he said: Gifts are of three types: a gift given to seek the Countenance of Allah the Exalted, a gift given to seek the favor of people, and a gift given to attain reward. As for the gift given for reward, its giver may reclaim it if the reward is not realized.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عَلِيٍّ أَنَّهُ قَالَ: الْمَوَاهِبُ ثَلَاثَةٌ: مَوْهِبَةٌ يُرَادُ بِهَا وَجْهُ اللَّهِ تَعَالَى، وَمَوْهِبَةٌ يُرَادُ بِهَا وَجْهُ النَّاسِ، وَمَوْهِبَةٌ يُرَادُ بِهَا الثَّوَابُ - فَمَوْهِبَةُ الثَّوَابِ يَرْجِعُ فِيهَا صَاحِبُهَا إذَا لَمْ يُثَبْ.

From the chain of Ibn Abi Shaybah: He narrated from Yahya ibn Zakariyya ibn Abi Za’ida, from ‘Ubayd Allah ibn ‘Umar, from Nafi‘, from Ibn ‘Umar, who said: “He has the strongest claim to it as long as he has not approved it”—meaning the gift.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ زَكَرِيَّا بْنُ أَبِي زَائِدَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: هُوَ أَحَقُّ بِهَا مَا لَمْ يُرْضَ مِنْهَا - يَعْنِي الْهِبَةَ.

From the chain of Ibn Abi Shaybah: Abdurrahman ibn Mahdi narrated to us from Mu’awiyah ibn Salih from Rabi’ah ibn Yazid from Abdullah ibn Amir, who said: I was seated with Fadalah ibn ’Ubayd when two men came to him disputing over a hawk. One of them said: “I gifted him my hawk expecting him to reciprocate, but he took my hawk and did not reciprocate.” The other said: “He gifted me his hawk without my request, and I did not approach him for it.” Fadalah then ruled: “Return his hawk to him or compensate him for it, for only women and the vilest of people take back their gifts.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ عَنْ رَبِيعَةَ بْنِ يَزِيدَ عَنْ عَبْدِ اللَّهِ بْنِ عَامِرٍ قَالَ: كُنْتُ جَالِسًا عِنْدَ فَضَالَةَ بْنِ عُبَيْدٍ فَأَتَاهُ رَجُلَانِ يَخْتَصِمَانِ إلَيْهِ فِي بَازٍ، فَقَالَ أَحَدُهُمَا: وَهَبْتُ لَهُ بَازِي رَجَاءَ أَنْ يُثِيبَنِي فَأَخَذَ بَازِي وَلَمْ يُثِبْنِي فَقَالَ الْآخَرُ: وَهَبَ لِي بَازِيَهُ مَا سَأَلْتُهُ وَلَا تَعَرَّضْت لَهُ، فَقَالَ فَضَالَةُ: رُدَّ عَلَيْهِ بَازِيَهُ أَوْ أَثِبْهُ مِنْهُ، فَإِنَّمَا يَرْجِعُ فِي الْمَوَاهِبِ النِّسَاءُ وَشِرَارُ الْأَقْوَامِ.

It has been reported from Muʿāwiyah ibn Ṣāliḥ from Rāshid ibn Saʿd from Abū al-Dardā’ that he said: Gifts are of three types. A man who gives a gift without being petitioned for it—this resembles the path of charity, so he has no right to retract his gift. A man who is petitioned for a gift and gives it—he is entitled to the reward. If he accepts a reward in relation to his gift, he is entitled solely to that reward, and may retract his gift provided it has

وَرُوِيَ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ عَنْ رَاشِدِ بْنِ سَعْدٍ عَنْ أَبِي الدَّرْدَاءِ قَالَ: الْمَوَاهِبُ ثَلَاثَةٌ: رَجُلٌ وَهَبَ مِنْ غَيْرِ أَنْ يُسْتَوْهَبَ، فَهِيَ كَسَبِيلِ الصَّدَقَةِ، فَلَيْسَ لَهُ أَنْ يَرْجِعَ فِي صَدَقَتِهِ، وَرَجُلٌ اُسْتُوْهِبَ فَوَهَبَ فَلَهُ الثَّوَابُ، فَإِنْ قَبِلَ عَلَى مَوْهِبَتِهِ ثَوَابًا فَلَيْسَ لَهُ إلَّا

not been ratified. A man who gives a gift while stipulating a reward—this becomes a debt upon its recipient during his lifetime and after his death.

ذَلِكَ، وَلَهُ أَنْ يَرْجِعَ فِي هِبَتِهِ مَا لَمْ يُثَبْ، وَرَجُلٌ وَهَبَ وَاشْتَرَطَ الثَّوَابَ فَهُوَ دَيْنٌ عَلَى صَاحِبِهَا فِي حَيَاتِهِ وَبَعْدَ مَمَاتِهِ.

L26006 These are Umar, Uthman, Ali, Ibn Umar, Fudayl ibn ʿUbayd, and Abu al-Darda from the Companions—may Allah be pleased with them all—with no dissenter among them.

فَهَؤُلَاءِ: عُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ، وَابْنُ عُمَرَ، وَفَضَالَةُ بْنُ عُبَيْدٍ، وَأَبُو الدَّرْدَاءِ، مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا مُخَالِفَ لَهُمْ مِنْهُمْ.

L26007–26008 And from the narration of Ibn Wahb from ʾAmr ibn Qays from ʾAdi ibn ʾAdi al-Kindi: He wrote to ʾUmar ibn ʾAbd al-ʾAziz, “Whoever grants a gift retains the right to revoke it until he is compensated from it with what satisfies him. If the gift yields profit while in the recipient’s possession, the giver is entitled only to the original gift itself and has no claim to any of its profits.”

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَمْرِو بْنِ قَيْسٍ عَنْ عَدِيِّ بْنِ عَدِيٍّ الْكِنْدِيِّ كَتَبَ إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ مَنْ وَهَبَ هِبَةً فَهُوَ بِالْخِيَارِ حَتَّى يُثَابَ مِنْهَا مَا يَرْضَى، فَإِنْ نَمَتْ عِنْدَ مَنْ وُهِبَتْ لَهُ فَلَيْسَ لِمَنْ وَهَبَهَا إِلَّا هِيَ بِعَيْنِهَا لَيْسَ لَهُ مِنْ النَّمَاءِ شَيْءٌ.

L26009 And through the chain of Ibn Wahb, I heard Abd al-Rahman ibn Ziyad ibn An’um narrate from Umar ibn Abd al-Aziz that he wrote: Any man who gives an unspecified gift and wishes to revoke it—if he finds it in its original state with the recipient, whether preserved or having perished while in his possession—may reclaim it publicly, not secretly, and it shall be returned to him. However, if he gifted a specified item that the recipient improved, the giver must compensate him with its equivalent value as of the day it was gifted. This does not apply to one who gifts to a blood relative, for he cannot revoke such a gift, nor to spouses: whichever of them gives something to the other freely with a willing heart, no revocation is permitted in any of it.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ سَمِعْتُ عَبْدَ الرَّحْمَنِ بْنَ زِيَادِ بْنِ أَنْعُمٍ يُحَدِّثُ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ كَتَبَ أَيُّمَا رَجُلٍ وَهَبَ هِبَةً لَمْ يُثَبْ عَلَيْهَا فَأَرَادَ أَنْ يَرْجِعَ فِي هِبَتِهِ، فَإِنْ أَدْرَكَهَا بِعَيْنِهَا عِنْدَ مَنْ وَهَبَهَا لَهُ لَمْ يُتْلِفْهَا أَوْ تَلِفَتْ عِنْدَهُ فَلْيَرْجِعْ فِيهَا عَلَانِيَةً غَيْرَ سِرٍّ، ثُمَّ تُرَدُّ عَلَيْهِ، إِلَّا أَنْ يَكُونَ وَهَبَ شَيْئًا مُثْبَتًا فَحَسُنَ عِنْدَ الْمَوْهُوبِ لَهُ، فَلْيَقْضِ لَهُ بِشَرْوَاهُ يَوْمَ وَهَبَهَا لَهُ، إِلَّا مَنْ وَهَبَ لِذِي رَحِمٍ، فَإِنَّهُ لَا يَرْجِعُ فِيهَا، أَوْ الزَّوْجَيْنِ، أَيُّهُمَا أَعْطَى صَاحِبَهُ شَيْئًا طَيِّبَةً بِهِ نَفْسُهُ، فَلَا رَجْعَةَ لَهُ فِي شَيْءٍ مِنْهَا.

L26010 From the chain of Saʿīd ibn Manṣūr: Hushaym reported to us: Manṣūr, Yūnus, and Ibn ʿAwn—all of whom reported from Ibn Sīrīn from Shurayḥ, who said: “Whoever gives for maintaining ties, kinship, or acts of kindness, we accept his gift. The affluent one is rewarded for his gift, or it is returned to him.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا مَنْصُورٌ وَيُونُسُ، وَابْنُ عَوْنٍ، كُلُّهُمْ عَنْ ابْنِ سِيرِينَ عَنْ شُرَيْحٍ قَالَ: مَنْ أَعْطَى فِي صِلَةٍ أَوْ قَرَابَةٍ أَوْ مَعْرُوفٍ أَجَزْنَا عَطِيَّتَهُ، وَالْجَانِبُ الْمُسْتَغْزِرُ يُثَابُ عَلَى هِبَتِهِ أَوْ تُرَدُّ عَلَيْهِ.

L26011 Through Ibn Abi Shaybah’s transmission: Yahya ibn Yaman reported to us from Maʿmar from al-Zuhri from Saʿid ibn al-Musayyib, who said: Whoever gives a gift to someone not among his relatives may retract it so long as the recipient has not reciprocated for it.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ يَمَانٍ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ قَالَ: مَنْ وَهَبَ هِبَةً لِغَيْرِ ذِي رَحِمٍ فَلَهُ أَنْ يَرْجِعَ مَا لَمْ يُثَبْ.

L26012 From the chain of Sa’īd ibn Manṣūr: I am Hushaym; al-Mughīrah narrated to us from Ibrāhīm, who said: “Whoever donates a gift to a relative has no right to revoke it. Whoever donates to a non-relative has a stronger right to reclaim his gift. If he is rewarded in return for it – whether a small or large amount – he may not reclaim his donation.” We have narrated this from him with an addition: “If he is satisfied with it, he may not revoke it.” This is the view of ʿAṭāʾ, Rabīʿah, and others.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ نا الْمُغِيرَةُ عَنْ إِبْرَاهِيمَ قَالَ: مَنْ وَهَبَ هِبَةً لِذِي رَحِمٍ فَلَيْسَ لَهُ أَنْ يَرْجِعَ، وَمَنْ وَهَبَ لِغَيْرِ ذِي رَحِمٍ فَهُوَ أَحَقُّ بِهِبَتِهِ، فَإِنْ أُثِيبَ مِنْهَا قَلِيلٌ أَوْ كَثِيرٌ فَلَيْسَ لَهُ أَنْ يَرْجِعَ فِي هِبَتِهِ - وَقَدْ رُوِّينَاهُ عَنْهُ بِزِيَادَةٍ: فَرَضِيَ بِهِ فَلَيْسَ لَهُ أَنْ يَرْجِعَ فِيهِ - وَهُوَ قَوْلُ عَطَاءٍ، وَرَبِيعَةَ، وَغَيْرِهِمْ.

L26013 From the narration of Saʿīd ibn Manṣūr: Hushaym reported to us; al-Mughīrah reported from al-Ḥārith al-ʿUklī: A man donated a servant to his mother as charity, then married, and delivered the servant to his wife. His wife took possession of her. The mother sued her before Shurayḥ. Shurayḥ said to her: “Your son did not validly give you his charity, and he ratified it for his wife, because the mother had not taken possession of her.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا الْمُغِيرَةُ عَنْ الْحَارِثِ الْعُكْلِيِّ: أَنَّ رَجُلًا تَصَدَّقَ عَلَى أُمِّهِ بِخَادِمٍ لَهُ وَتَزَوَّجَ فَسَاقَ الْخَادِمَ إِلَى امْرَأَتِهِ فَقَبَضَتْهَا امْرَأَتُهُ فَخَاصَمَتْهَا الْأُمُّ إِلَى شُرَيْحٍ فَقَالَ لَهَا شُرَيْحٌ: إِنَّ ابْنَك لَمْ يَهَبْك صَدَقَتَهُ وَأَجَازَهَا لِلْمَرْأَةِ، لِأَنَّ الْأُمَّ لَمْ تَكُنْ قَبَضَتْهَا.

L26014 They said: Thus, these are a group of the Companions for whom no dissenting opinion is known, and the majority of the Successors.

قَالُوا: فَهَؤُلَاءِ طَائِفَةٌ مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مُخَالِفٌ، وَجُمْهُورُ التَّابِعِينَ.

L26015–26017 And they mentioned what we have narrated through the chain of Abū Dāwūd, who narrated to us: Sulaymān ibn Dāwūd al-Mahri, on the authority of Usāmah ibn Zayd. “Amr ibn Shuʿayb narrated from his father, from ʿAbdullāh ibn ʿAmr, that the Messenger of Allah—peace and blessings be upon him—said: ‘The likeness of one who reclaims his gift is that of a dog that vomits and then eats its vomit.’”

وَذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا سُلَيْمَانُ بْنُ دَاوُد الْمَهْرِيُّ أَنَا أُسَامَةُ بْنُ زَيْدٍ أَنَّ عَمْرَو بْنَ شُعَيْبٍ حَدَّثَهُ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَثَلُ الَّذِي اسْتَرَدَّ مَا وَهَبَ كَمَثَلِ الْكَلْبِ يَقِيءُ فَيَأْكُلُ قَيْئَهُ» .

L26018 If the donor seeks to reclaim his gift, his request should be suspended and he should be formally informed of what he seeks to reclaim. Then what he had gifted should be returned to him. We have narrated through the chain of Waki‘, from Ibrāhīm ibn Ismā‘īl ibn Mujamma‘, from ‘Amr ibn Dīnār, from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said, “A man has more right to his gift as long as he has not been compensated for it.”

فَإِذَا اسْتَرَدَّ الْوَاهِبُ فَلْيُوقَفْ فَلْيُعَرَّفْ مَا اسْتَرَدَّ ثُمَّ لِيُدْفَعْ إِلَيْهِ مَا وَهَبَ، وَمَا رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ نا إِبْرَاهِيمُ بْنُ إِسْمَاعِيلَ بْنِ مُجَمِّعٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الرَّجُلُ أَحَقُّ بِهِبَتِهِ مَا لَمْ يُثَبْ مِنْهَا» .

L26019 From the chain of Al-‘Uqayli: From ‘Ali ibn ‘Abd al-‘Aziz, from Abu ‘Ubayd, from Abu Bakr ibn ‘Ayyash, from Yahya ibn Hani’, from Abu Hudhayfah, from ‘Abd al-Malik ibn Muhammad ibn Bashir, from ‘Abd al-Rahman ibn

وَمِنْ طَرِيقِ الْعُقَيْلِيِّ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا أَبُو عُبَيْدٍ نا أَبُو بَكْرِ بْنُ عَيَّاشٍ عَنْ يَحْيَى بْنِ هَانِئٍ أَخْبَرَنِي أَبُو حُذَيْفَةَ عَنْ عَبْدِ الْمَلِكِ بْنِ مُحَمَّدِ بْنِ بَشِيرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَلْقَمَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ الصَّدَقَةَ يُبْتَغَى بِهَا وَجْهُ اللَّهِ عَزَّ وَجَلَّ، وَإِنَّ الْهَدِيَّةَ يُبْتَغَى بِهَا وَجْهُ الرَّسُولِ وَقَضَاءُ الْحَاجَةِ.»

'Alqamah, who said: The Messenger of Allah—peace and blessings be upon him—said: "Charity is given to seek the Face of Allah, the Mighty and Majestic, whereas a gift is given to seek the Face of the Messenger and the fulfillment of a need."

قَالُوا: فَعَلَى هَذَا لَهُ مَا ابْتَغَى إِذْ لِكُلِّ امْرِئٍ مَا نَوَى.

L26020 They said, "Therefore, upon this, he attains what he sought, for every individual has what he intended."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ ابْنِ عَجْلَانَ عَنْ سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ قَالَ «وَهَبَ رَجُلٌ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هِبَةً فَأَثَابَهُ فَلَمْ يَرْضَ فَزَادَهُ فَلَمْ يَرْضَ، فَقَالَ - عَلَيْهِ السَّلَامُ -: لَقَدْ هَمَمْتُ أَنْ لَا أَقْبَلَ هِبَةً» .

L26021 From the chain of ʿAbd al-Razzāq, from Maʿmar, from Ibn ʿAjlān, from Saʿīd al-Maqburī, from Abū Hurayrah, who said: "A man gifted something to the Prophet (peace and blessings of Allah be upon him), so he reciprocated with a reward, but the man remained dissatisfied. The Prophet (peace be upon him) then increased it, yet he still was not satisfied. Thereupon the Prophet (peace be upon him) said: 'I resolved not to accept any gift.'"

وَرُبَّمَا قَالَ مَعْمَرٌ «أَنْ لَا أَتَّهِبَ إِلَّا مِنْ قُرَشِيٍّ أَوْ أَنْصَارِيٍّ أَوْ ثَقَفِيٍّ أَوْ دَوْسِيٍّ» وَمَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ مَا ذَكَرْنَا.

L26022 And sometimes Ma'mar said, "I should only accept from a Qurayshi, an Ansari, a Thaqafi, or a Dawsi," and we know nothing about them other than what we have mentioned.

فَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ هَذَا الْأَدْنَى وَهُوَ أَحْسَنُهَا إِسْنَادًا فَلَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّا لَمْ نُنْكِرْ إِثَابَةَ الْمَوْهُوبِ، بَلْ هُوَ فِعْلٌ حَسَنٌ، وَإِنَّمَا أَنْكَرْنَا وُجُوبَهُ إِذْ لَمْ يُوجِبْهُ نَصُّ قُرْآنٍ وَلَا سُنَّةٍ وَلَا أَنْكَرْنَا أَنْ يُوجِبَ فِي النَّاسِ الطَّمَعَ الَّذِي لَا يُقْنِعُهُ تَطَوُّعُ مَنْ لَا شَيْءَ لَهُ عِنْدَهُ.

L26023 As for this hadith of Abū Hurayrah—this weakest one, and it has the soundest chain of transmission—there is no proof for them in it. For we do not deny the reward for the recipient of the gift; indeed, it is a virtuous act. Rather, we deny its obligation, since neither a Quranic text nor a Sunnah has mandated it, nor do we deny that making it obligatory would incite in people a greed that the voluntary giving of one who has nothing of his own cannot satisfy it.

وَلَيْسَ فِي هَذَا الْخَبَرِ مِمَّا أَنْكَرْنَا مَعْنًى وَلَا إِشَارَةً، وَإِنَّمَا فِيهِ مَا لَا نُنْكِرُهُ مِمَّا ذَكَرْنَا، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - هَمَّ أَنْ لَا يَقْبَلَ هِبَةً إِلَّا مِمَّنْ ذَكَرَ - وَلَوْ أَنْفَذَ ذَلِكَ لَكَانَ مُبَاحًا فِعْلُهُ وَتَرْكُهُ وَلَيْسَ مِنَ الْمَحْذُورِ عَلَيْهِ خِلَافُهُ، فَيَلْزَمُ الْقَوْلُ بِمَا هَمَّ بِهِ مِنْ ذَلِكَ - فَبَطَلَ

L26024–26025 There is nothing in this report that we have rejected in meaning or allusion. Rather, it contains only what we do not reject from what we have mentioned—that he, peace be upon him, intended not to accept a gift except from the one specified. Had he implemented that, both acting upon it and abandoning it would have been permissible, and opposing it would not have been among the reprehensible acts for him. Thus, it is necessary to adhere to the opinion of what he intended regarding that matter. Therefore,

their attachment to this report is nullified, for it contains no sanction for a reward-based gift, nor does it stipulate a reward in that gift, nor does it permit retracting the gift in any respect.

تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ إِذْ لَيْسَ فِيهِ إِجَازَةُ هِبَةِ الثَّوَابِ، وَلَا أَنَّ تِلْكَ الْهِبَةَ اُشْتُرِطَ فِيهَا الثَّوَابُ وَلَا فِيهِ إِجَازَةُ الرُّجُوعِ فِي الْهِبَةِ أَصْلًا.

L26026 And with Allah, the Exalted, lies all success.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L26027 Then we examined the narration of Abd al-Rahman ibn ʾAlqamah and found no merit in it. In it are Abu Bakr ibn ʾAyyash and Abd al-Malik ibn Muhammad ibn Bashir, both of whom are weak narrators. It is not known that Abd al-Malik had any hearing from Abd al-Rahman ibn ʾAlqamah.

ثُمَّ نَظَرْنَا فِي خَبَرِ عَبْدِ الرَّحْمَنِ بْنِ عَلْقَمَةَ: فَوَجَدْنَاهُ لَا خَيْرَ فِيهِ، فِيهِ: أَبُو بَكْرِ بْنُ عَيَّاشٍ، وَعَبْدُ الْمَلِكِ بْنُ مُحَمَّدِ بْنِ بَشِيرٍ، وَكِلَاهُمَا ضَعِيفٌ، وَلَا يُعْرَفُ لِعَبْدِ الْمَلِكِ سَمَاعٌ مِنْ عَبْدِ الرَّحْمَنِ بْنِ عَلْقَمَةَ.

L26028 And in the chain: Abū Ḥudhayfah. If [the narrator] is Isḥāq ibn Bashīr al-Najjārī, he is deemed unreliable; if not, he is unknown. Thus, the narration is wholly invalidated, and it is impermissible to cite it as evidence.

وَفِيهِ أَيْضًا: أَبُو حُذَيْفَةَ، فَإِنْ كَانَ إِسْحَاقُ بْنُ بَشِيرٍ النَّجَّارِيُّ فَهُوَ هَالِكٌ، وَإِنْ لَمْ يَكُنْهُ فَهُوَ مَجْهُولٌ - فَسَقَطَ جُمْلَةً، وَلَمْ يَحِلَّ الِاحْتِجَاجُ بِهِ.

L26029 Moreover, even if it were valid, they would have no argument in it whatsoever, because it contains no mention of the bestowal of rewards at all - nor any reference to retracting the gift in any way. Rather, it merely states that the gift is given to seek the pleasure of the Messenger and to fulfill a need.

ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ أَصْلًا؛ لِأَنَّهُ لَيْسَ فِيهِ ذِكْرٌ لِهِبَةِ الثَّوَابِ أَصْلًا - وَلَا لِلرُّجُوعِ فِي الْهِبَةِ بِوَجْهٍ مِنْ الْوُجُوهِ، وَإِنَّمَا فِيهِ: أَنَّ الْهَدِيَّةَ يُبْتَغَى بِهَا وَجْهُ الرَّسُولِ وَقَضَاءُ الْحَاجَةِ.

L26030 As for their statement, “He attains what he seeks”—this is madness (needless to say), for this report indicates that he sought to relieve himself. Yet who can claim such a thing? They may be fulfilled or not, for a person has no assurance of attaining what he intends in worldly matters. Indeed, this pertains solely to the rulings of the Hereafter regarding recompense.

وَأَمَّا قَوْلُهُمْ " لَهُ مَا ابْتَغَى " فَجُنُونٌ، نَاهِيكَ بِهِ؛ لِأَنَّ فِي هَذَا الْخَبَرِ: أَنَّهُ ابْتَغَى قَضَاءَ حَاجَتِهِ، وَمَنْ لَهُ بِذَلِكَ؟ وَقَدْ تُقْضَى وَلَا تُقْضَى، لَيْسَ لِلْمَرْءِ مَا نَوَى فِي الدُّنْيَا: إنَّمَا هَذَا مِنْ أَحْكَامِ الْآخِرَةِ فِي الْجَزَاءِ فَقَطْ.

L26031 Then we say: Indeed, Allah the Exalted has protected His Prophet—peace be upon him—from validating the permissibility of consuming a gift whose giver did not intend by it the pleasure of Allah the Exalted, but rather aimed solely to fulfill his own need and seek the Messenger’s approval. This is the very bribe—cursed are the one who accepts it and the one who gives it in falsehood. Thus, it becomes evident (given this report’s deficiency in

ثُمَّ نَقُولُ: إنَّ اللَّهَ تَعَالَى قَدْ صَانَ نَبِيَّهُ - عَلَيْهِ السَّلَامُ - عَنْ أَنْ يُصَوِّبَ أَنْ يُجِيزَ أَكْلَ هَدِيَّةٍ لَمْ يَبْتَغِ بِهَا مُهْدِيهَا وَجْهَ اللَّهِ تَعَالَى، وَإِنَّمَا قَصَدَ قَضَاءَ حَاجَتِهِ فَقَطْ وَوَجْهَ الرَّسُولِ، وَهَذِهِ هِيَ الرِّشْوَةُ الْمَلْعُونُ قَابِلُهَا وَمُعْطِيهَا فِي الْبَاطِلِ، فَلَاحَ - مَعَ تَعَرِّي هَذَا الْخَبَرِ - عَنْ أَنْ يَكُونَ لَهُمْ فِيهِ مُتَعَلَّقٌ، مَعَ أَنَّهُ خَبَرُ سُوءٍ مَوْضُوعٌ بِلَا شَكٍّ.

authenticity) that they have no grounds to rely on it, particularly since it is a spurious narration undoubtedly fabricated.

L26032 Then we examined the narration of Abū Hurayrah with which we began our discussion and found it contains no valid proof for their position on two grounds: The first is that it comes through the chain of Ibrāhīm ibn Ismāʿīl ibn Mujammiʿ - who is weak. The second -

L26033–26035 That ʿAmr ibn Dīnār had no direct hearing (samāʿ) whatsoever from Abū Hurayrah, nor did he comprehend him through intellectual means. Fundamentally, the most prominent among his contemporaries who lived beyond seventy - such as Ibn ʿAbbās, Ibn ʿUmar, Ibn al-Zubayr, and Jābir - while Abū Hurayrah died before sixty, thereby nullifying the entirety.

L26036 Moreover, it is a proof against them and contradicts their opinion, for its text explicitly states: "A man has the strongest right to his gift unless it has been confirmed from it." It does not specify a relative over a non-relative, nor a gift in which a reward is stipulated over one without, nor a small reward over a large one—and all of this contradicts the opinion of Abū Ḥanīfa and Mālik.

L26037 If this hadith is true, then they have opposed the truth by their acknowledgment, and this is exceedingly grave. If it is false, then there is no valid argument in falsehood, and they are rejecting the established traditions with their false claim that they contradict the Quran and the principles of jurisprudence. Everything they have cited as evidence here is contrary to the Quran and the principles of jurisprudence.

L26038 As for the narration of ʿAmr ibn Shuʿayb from his father from ʿAbdullāh ibn ʿAmr — it is a disconnected document, holding no authoritative evidence. Moreover, it is transmitted through Usāma ibn Zayd — who is weak — so even if authenticated, it would stand as evidence against them and contradict their position, for it does not restrict [the ruling] to relatives over non-relatives, nor a husband to a wife, nor whether debts were settled on her behalf or not, nor any of the specifications asserted by Abū Ḥanīfah and Mālik. It neither addresses gifts for divine reward distinct from other types, but rather generalizes the ruling to all gifts. Thus, whoever restricts it has lied

ثُمَّ نَظَرْنَا فِي خَبَرِ أَبِي هُرَيْرَةَ الَّذِي بَدَأْنَا فِيهِ: فَوَجَدْنَاهُ لَا حُجَّةَ لَهُمْ فِيهِ لِوَجْهَيْنِ -: أَحَدُهُمَا - أَنَّهُ مِنْ طَرِيقِ إِبْرَاهِيمَ بْنِ إِسْمَاعِيلَ بْنِ مُجَمِّعٍ وَهُوَ ضَعِيفٌ. الثَّانِي -

أَنَّ عَمْرَو بْنَ دِينَارٍ لَيْسَ لَهُ سَمَاعٌ أَصْلًا مِنْ أَبِي هُرَيْرَةَ، وَلَا أَدْرَكَهُ بِعَقْلِهِ أَصْلًا، وَأَعْلَا مَنْ عِنْدَهُ مَنْ كَانَ بَعْدَ السَّبْعِينَ، كَابْنِ عَبَّاسٍ وَابْنِ عُمَرَ وَابْنِ الزُّبَيْرِ، وَجَابِرٍ، وَمَاتَ أَبُو هُرَيْرَةَ قَبْلَ السِّتِّينَ، فَسَقَطَ جُمْلَةً.

ثُمَّ إِنَّهُ حُجَّةٌ عَلَيْهِمْ وَمُخَالِفٌ لِقَوْلِهِمْ؛ لِأَنَّ نَصَّهُ «الرَّجُلُ أَحَقُّ بِهِبَتِهِ مَا لَمْ يُثَبْ مِنْهَا» فَلَمْ يَخُصَّ ذَا رَحِمٍ مِنْ غَيْرِهِ، وَلَا هِبَةً اُشْتُرِطَ فِيهَا الثَّوَابُ مِنْ غَيْرِهَا، وَلَا ثَوَابًا قَلِيلًا مِنْ كَثِيرٍ - وَهَذَا كُلُّهُ خِلَافُ قَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ.

فَإِنْ كَانَ هَذَا الْحَدِيثُ حَقًّا فَقَدْ خَالَفُوا الْحَقَّ بِإِقْرَارِهِمْ، وَهَذَا عَظِيمٌ جِدًّا، وَإِنْ كَانَ بَاطِلًا فَلَا حُجَّةَ فِي الْبَاطِلِ، وَهُمْ يَرُدُّونَ السُّنَنَ الثَّابِتَةَ بِدَعْوَاهُمْ الْكَاذِبَةَ أَنَّهَا خِلَافُ الْقُرْآنِ وَالْأُصُولِ، وَكُلُّ مَا احْتَجُّوا بِهِ هَاهُنَا فَخِلَافُ الْقُرْآنِ، وَالْأُصُولِ.

وَأَمَّا خَبَرُ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو -: فَصَحِيفَةٌ مُنْقَطِعَةٌ، وَلَا حُجَّةَ فِيهَا، ثُمَّ هُوَ عَنْ أُسَامَةَ بْنِ زَيْدٍ - وَهُوَ ضَعِيفٌ - ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ، وَمُخَالِفًا لِقَوْلِهِمْ؛ لِأَنَّهُ لَيْسَ فِيهِ تَخْصِيصُ ذِي رَحِمٍ مِنْ غَيْرِهِ، وَلَا زَوْجٍ لِزَوْجَةٍ وَلَا أَدَايَنَ عَلَيْهَا أَوْ لَمْ يُدَايِنْ، وَلَا شَيْءٍ مِمَّا خَصَّهُ أَبُو حَنِيفَةَ وَمَالِكٌ، وَلَا هِبَةَ ثَوَابٍ مِنْ غَيْرِهَا، بَلْ أَطْلَقَ ذَلِكَ عَلَى كُلِّ هِبَةٍ، فَمَنْ خَصَّهَا فَقَدْ كَذَبَ بِإِقْرَارِهِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ

by affirming upon the Messenger of Allah — peace and blessings of Allah be upon him — what he did not state, attributing to him words he never uttered. There is no distinction between one who contradicts an entire ḥadīth and one who contradicts part of it while affirming another part — particularly between those like them and those like us — for they contradict what they themselves acknowledge as truth and as impermissible evidence to oppose, thereby confessing against themselves to destruction and ruin. As for us, we only contradict what is unauthenticated, as is obligatory for every rational Muslim. We seek refuge in Allah from opposing any narration we authenticate except through abrogation by another scriptural text or specification by another scriptural text.

عَلَيْهِ وَسَلَّمَ - وَقَوْلَهُ مَا لَمْ يَقُلْهُ وَلَا فَرْقَ بَيْنَ مَنْ خَالَفَ حَدِيثًا بِأَسْرِهِ وَمَنْ خَالَفَ بَعْضَهُ وَأَقَرَّ بِبَعْضِهِ، لَا سِيَّمَا مِثْلُهُمْ وَمِثْلُنَا، فَإِنَّهُمْ يُخَالِفُونَ مَا يُقِرُّونَ بِأَنَّهُ حَقٌّ، وَأَنَّهُ حُجَّةٌ لَا يَجُوزُ خِلَافُهَا، فَاعْتَرَفُوا عَلَى أَنْفُسِهِمْ بِالدَّمَارِ وَالْبَوَارِ، وَأَمَّا نَحْنُ فَلَا نُخَالِفُ إِلَّا مَا لَا يَصِحُّ، كَالَّذِي يَجِبُ عَلَى كُلِّ مُسْلِمٍ ذِي عَقْلٍ، وَمَعَاذَ اللَّهِ مِنْ أَنْ نُخَالِفَ خَبَرًا نُصَحِّحُهُ إِلَّا بِنَسْخٍ بِنَصٍّ آخَرَ، أَوْ بِتَخْصِيصٍ بِنَصٍّ آخَرَ.

L26039–26041 And the utmost astonishment is at their assertion—uttered without shame—that the explicitly stated ruling in the report on pre-emption: “When boundaries are demarcated and paths are diverted, there is no pre-emption” is not from the words of the Prophet (peace be upon him), since it could possibly be from the narrator’s own words. Why, then, do they not apply the same reasoning here to this invalid contradiction in this undoubtedly fabricated narration—which states that “the reclaimed gift is invalidated and then returned to him”—by asserting that this is not from the speech of the Prophet (peace be upon him), as it could be from the narrator’s words? This would be their inevitable position without doubt in this matter, were the chain of this narration authentic. For it is patently false to claim that he (peace be upon him) likened one who revokes a gift to a dog in its most repulsive state—that of eating its vomit—the very analogy Allah the Exalted used for the disbeliever when He said: “His example is like that of a dog: if you chase it, it pants; if you leave it, it pants” [Al-A‘rāf: 176]. Then he (peace be upon him) executes the ruling as described. Allah is far above such a thing.[1]

وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ قَوْلِهِمْ بِلَا حَيَاءٍ: إِنَّ الْمَنْصُوصَ فِي خَبَرِ الشُّفْعَةِ مِنْ أَنَّ «إِذَا وَقَعَتْ الْحُدُودُ وَصُرِفَتْ الطُّرُقُ فَلَا شُفْعَةَ» لَيْسَ مِنْ قَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ قَدْ يُمْكِنُ أَنْ يَكُونَ مِنْ قَوْلِ الرَّاوِي، فَهَلَّا قَالُوا هَاهُنَا فِي هَذِهِ الْمُنَاقَضَةِ الْفَاسِدَةِ الَّتِي فِي هَذَا الْحَدِيثِ الْمَكْذُوبِ بِلَا شَكٍّ: مِنْ أَنَّهُ يُوقَفُ ثُمَّ يُرَدُّ عَلَيْهِ مَا اسْتَرَدَّ، لَيْسَ مِنْ كَلَامِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ مُمْكِنٌ أَنْ يَكُونَ مِنْ كَلَامِ الرَّاوِي، بِلَا شَكٍّ فِي هَذَا لَوْ صَحَّ إسْنَادُ هَذَا الْحَدِيثِ، إِذْ مِنْ الْبَاطِلِ أَنْ يُخْبِرَ - عَلَيْهِ السَّلَامُ - أَنَّ مُسْتَرِدَّ الْهِبَةِ كَالْكَلْبِ فِي أَقْبَحِ أَحْوَالِهِ مِنْ أَكْلِ قَيْئِهِ، وَالَّذِي ضَرَبَ اللَّهُ تَعَالَى بِهِ الْمَثَلَ لِلْكَافِرِ فَقَالَ تَعَالَى: {فَمَثَلُهُ كَمَثَلِ الْكَلْبِ إِنْ تَحْمِلْ عَلَيْهِ يَلْهَثْ أَوْ تَتْرُكْهُ يَلْهَثْ} [الأعراف: ١٧٦] ثُمَّ يُنْفِذُ - عَلَيْهِ السَّلَامُ - الْحُكْمَ بِمَا هَذِهِ صِفَتُهُ، حَاشَا لِلَّهِ مِنْ ذَلِكَ.

L26042 Rather, if someone were to argue against them using this report, it would constitute a stronger substantive challenge; because its apparent meaning indicates that when the donor reclaims what he donated, the matter is suspended until the reclaimed item is verified, then the donated item is to be

بَلْ لَوْ احْتَجَّ عَلَيْهِمْ مُحْتَجٌّ بِهَذَا الْخَبَرِ لَكَانَ أَقْوَى تَشْغِيبًا، لِأَنَّ ظَاهِرَهُ: أَنَّ الْوَاهِبَ إِذَا اسْتَرَدَّ مَا وَهَبَ وُقِفَ وَعُرِفَ مَا اسْتَرَدَّ، ثُمَّ لِيُدْفَعْ إِلَيْهِ مَا وَهَبَ، فَهَذَا يُوجِبُ أَنْ

[1] **Qur’an references (L26039):** Qur’an 7:176 (Al-A’raf).

delivered. This necessitates that the reclaimed item be withheld until resolved, then delivered to the donee, and not left with the reclaimant—one uncertainty after another, one claim countering another.

يُوقَفَ عَلَى مَا اسْتَرَدَّ ثُمَّ يَدْفَعُ إِلَى الْمَوْهُوبِ لَهُ، وَلَا يُتْرَكُ عِنْدَ الْمُسْتَرِدِّ، وَاحْتِمَالٌ بِاحْتِمَالٍ، وَدَعْوَى بِدَعْوَى.

L26043 It is astonishing how they lack shame in citing this report as evidence—though it is against them, not for them—as we have clarified. The narration of ʿAmr ibn Shuʿayb here through his father from his grandfather is treated as proof, while they reject narrations not transmitted via ʿAmr ibn Shuʿayb's chain from his father and grandfather—even though they are better than it: such as our narration from Ḥammād ibn Salamah through Dāwūd ibn Abī Hind and Ḥabīb al-Muʿallim, both narrating from ʿAmr ibn Shuʿayb through his father from his grandfather, that the Messenger of Allah—peace and blessings of Allah be upon him—said: "A woman may not dispose of her property once her husband assumes marital authority over her."[2]

وَالْعَجَبُ مِنْ قِلَّةِ الْحَيَاءِ فِي احْتِجَاجِهِمْ بِهَذَا الْخَبَرِ - وَهُوَ عَلَيْهِمْ لَا لَهُمْ - كَمَا بَيَّنَّا، وَصَارَتْ رِوَايَةُ عَمْرِو بْنِ شُعَيْبٍ هَاهُنَا عَنْ أَبِيهِ عَنْ جَدِّهِ حُجَّةً، وَهُمْ يَرُدُّونَ الرِّوَايَةَ الَّتِي لَيْسَتْ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ أَحْسَنَ مِنْهَا -: كَرِوَايَتِنَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد بْنِ أَبِي هِنْدٍ، وَحَبِيبٍ الْمُعَلِّمِ، كِلَاهُمَا عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَجُوزُ لِامْرَأَةٍ أَمْرٌ فِي مَالِهَا إِذَا مَلَكَ زَوْجُهَا عِصْمَتَهَا» .

L26044 The narration of Abu Dawood: Mahmud ibn Khalid → Marwan ibn Muhammad → Al-Haytham ibn Humaid → Al-Ala' ibn Al-Harith → Amr ibn Shu'ayb → his father → his grandfather, who said: "The Messenger of Allah, peace and blessings be upon him, ruled that one-third of the blood money is due for the sixth eye due to its position."

وَرِوَايَةُ أَبِي دَاوُد نَا مَحْمُودُ بْنُ خَالِدٍ نَا مَرْوَانُ هُوَ ابْنُ مُحَمَّدٍ - نَا الْهَيْثَمُ بْنُ حُمَيْدٍ نَا الْعَلَاءُ بْنُ الْحَارِثِ نَا عَمْرُو بْنُ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ، قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْعَيْنِ السَّادَّةِ لِمَكَانِهَا بِثُلُثِ الدِّيَةِ.»

L26045 And other than this is a great multitude they only refuted by asserting it was a scroll. So what religion could endure with this, or what deed could be elevated thereby? This constitutes blatant deception in the religion of Allah the Exalted - we seek refuge in Allah from being deprived of His aid. Thus it is invalidated for them to have any basis in any of the narrations.

وَغَيْرُ هَذَا كَثِيرٌ جِدًّا لَمْ يَرُدُّوهُ إِلَّا بِأَنَّهُ صَحِيفَةٌ، فَأَيُّ دِينٍ يَبْقَى مَعَ هَذَا، أَوْ أَيُّ عَمَلٍ يَرْتَفِعُ مَعَهُ، وَهَذَا هُوَ التَّلْبِيسُ فِي دِينِ اللَّهِ تَعَالَى جِهَارًا - نَعُوذُ بِاللَّهِ مِنْ الْخِذْلَانِ، فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ فِي شَيْءٍ مِنْ الْأَخْبَارِ.

L26046 As for what they have cited from the Companions—may Allah be pleased with them—none of it serves as proof for them, for there is no proof from anyone except the Messenger of Allah.

وَأَمَّا مَا تَعَلَّقُوا بِهِ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: فَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ إِذْ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ.

L26047–26048 Then, if this were a proof, it would entirely be against them, not in their favor. The first of these is the authentic report from 'Umar—may Allah be pleased with him—who stated: "Whoever gifts something to someone

ثُمَّ لَوْ كَانَ حُجَّةً فَهُوَ كُلُّهُ عَلَيْهِمْ لَا لَهُمْ -: أَوَّلُ ذَلِكَ: حَدِيثُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - هُوَ صَحِيحٌ عَنْهُ مَنْ وَهَبَ هِبَةً لِغَيْرِ ذِي رَحِمٍ فَهُوَ أَحَقُّ بِهَا مَا لَمْ يُثْبَ مِنْهَا أَوْ لَمْ يَرْضَ

[2] **Hadith references (L26043):** Sunan Abi Dawud 3546.

unrelated by kinship retains the greater right to it unless it is confirmed or he approves of it." He made no distinction between a mahram (prohibited-degree relative) and a non-mahram—contrary to the Ḥanafī position—nor did he specify gifts exchanged between spouses as they specified. Rather, it is authentically established from him that a wife may retract what she gifted her husband, as we will mention hereafter, Allah, the Exalted and Majestic, willing. Thus, they opposed 'Umar even as they cited him as proof that contradicting him is impermissible. "Indeed, the curse of Allah is upon the wrongdoers [Hud 18]—those who hinder others from Allah's path and seek to make it crooked [Hud 19]."[3]

مِنْهَا فَلَمْ يَخُصَّ رَحِمًا مَحْرَمَةً مِنْ غَيْرِ مَحْرَمَةٍ - وَهَذَا خِلَافُ قَوْلِ الْحَنَفِيِّينَ - وَلَا خَصَّ مَا وَهَبَهُ أَحَدُ الزَّوْجَيْنِ لِلْآخَرِ كَمَا خَصُّوا، بَلْ قَدْ صَحَّ عَنْهُ: أَنَّ لَهَا الرُّجُوعَ فِيمَا وَهَبَتْ لِزَوْجِهَا، كَمَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ - فَقَدْ خَالَفُوا عُمَرَ، وَهُمْ يَحْتَجُّونَ بِهِ فِي أَنَّهُ لَا يَحِلُّ خِلَافُهُ، {أَلا لَعْنَةُ اللَّهِ عَلَى الظَّالِمِينَ} [هود: ١٨] {الَّذِينَ يَصُدُّونَ عَنْ سَبِيلِ اللَّهِ وَيَبْغُونَهَا عِوَجًا} [هود: ١٩] .

L26049 O Muslims! If the statement of Umar—may Allah be pleased with him—is impermissible to oppose, how did they deem it permissible to oppose his statement? And if it is not a valid proof, then why do they obscure matters in the religion of Allah the Exalted and hinder the way of truth—: It has been narrated to us through the chain of Waki': he [Waki'] narrated to us from Abu Jinab (who is Yahya ibn Abi Hayyah) from Abu 'Awn (who is Muhammad ibn 'Ubaydullah al-Thaqafi) from Shurayh the judge, that Umar ibn al-Khattab said regarding a woman and her husband: "She may reclaim what she gave him, but he may not reclaim what he gave her."

يَا لِلْمُسْلِمِينَ إِنْ كَانَ قَوْلُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - لَا يَحِلُّ خِلَافُهُ، فَكَيْفَ اسْتَحَلُّوا خِلَافَهُ، وَإِنْ كَانَ لَيْسَ بِحُجَّةٍ فَلِمَا يُمَوِّهُونَ بِهِ فِي دِينِ اللَّهِ تَعَالَى، وَيَصُدُّونَ عَنْ سَبِيلِ الْحَقِّ -: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا أَبُو جَنَابٍ هُوَ يَحْيَى بْنِ أَبِي حَيَّةَ - عَنْ أَبِي عَوْنٍ هُوَ مُحَمَّدُ بْنُ عُبَيْدِ اللَّهِ الثَّقَفِيُّ - عَنْ شُرَيْحٍ الْقَاضِي أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي الْمَرْأَةِ وَزَوْجِهَا: تَرْجِعُ فِيمَا أَعْطَتْهُ وَلَا يَرْجِعُ فِيمَا أَعْطَاهَا.

L26050 And through the chain of Ibn Abi Shaybah: 'Ali ibn Mushir narrated to us from Abu Ishaq al-Shaybani from Muhammad ibn 'Ubayd Allah al-Thaqafi, who said: 'Umar ibn al-Khattab wrote that women may give to their husbands out of desire or fear. Whichever woman gave her husband something then wished to retract it, she is more entitled to it. The ruling was established as valid by Shurayh, al-Sha'bi, and Mansur ibn al-Mu'tamir—so much so that Shurayh ruled in her favor to recover what she had gifted him after the husband's death.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَلِيُّ بْنُ مُسْهِرٍ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ الثَّقَفِيِّ قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ: أَنَّ النِّسَاءَ يُعْطِينَ أَزْوَاجَهُنَّ رَغْبَةً وَرَهْبَةً فَأَيُّمَا امْرَأَةٍ أَعْطَتْ زَوْجَهَا شَيْئًا فَأَرَادَتْ أَنْ تَعْتَصِرَهُ فَهِيَ أَحَقُّ بِهِ، وَصَحَّ الْقَضَاءُ بِهَا عَنْ شُرَيْحٍ، وَالشَّعْبِيِّ، وَمَنْصُورِ بْنِ الْمُعْتَمِرِ، حَتَّى أَنَّ شُرَيْحًا قَضَى لَهَا بِالرُّجُوعِ فِيمَا وَهَبَتْ لَهُ بَعْدَ مَوْتِهِ.

L26051 It was narrated to us through the route of Shaybah, from Ghaylan, from Abu Ishaq al-Sabi'i, from Shurayh.

رُوِّينَا ذَلِكَ مِنْ طَرِيقِ شَيْبَةَ عَنْ غَيْلَانَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ شُرَيْحٍ.

[3] **Qur'an references (L26048):** Qur'an 11:18 (Hud); Qur'an 7:45 (Al-A'raf); Qur'an 11:19 (Hud).

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: مَا أَدْرَكْتُ الْقُضَاةُ إلَّا يُقِيلُونَ الْمَرْأَةَ فِيمَا وَهَبَتْ لِزَوْجِهَا، وَلَا يُقِيلُونَ الزَّوْجَ فِيمَا وَهَبَ لِامْرَأَتِهِ - فَبَطَلَ تَعَلُّقُهُمْ بِعُمَرَ وَصَارَ حُجَّةً عَلَيْهِمْ، وَلَاحَ أَنَّ قَوْلَهُمْ خِلَافُ قَوْلِهِ.

L26052 From the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: “I have not encountered judges except those who permit a woman the annulment of what she gifted to her husband, but do not permit the husband the annulment of what he gifted to his wife.” Thus, their adherence to ʿUmar was invalidated, it became a proof against them, and it became evident that their opinion contradicts his.

وَأَمَّا خَبَرُ عُثْمَانَ - فَبَيِّنٌ فِيهِ أَنَّهُ رَأْيٌ مُحْدَثٌ، لِأَنَّ فِي نَصِّهِ " أَنَّ أَوَّلَ مَنْ رَدَّ الْهِبَةَ عُثْمَانُ " وَمَا كَانَ هَذَا سَبِيلُهُ فَلَا حُجَّةَ فِيهِ.

L26053 As for the narration regarding ʾUthmān - it demonstrates that this is an innovated opinion, for its text states “the first to refuse the gift was ʾUthmān,” and since this was not the established practice, it holds no legal authority.

ثُمَّ هُوَ أَيْضًا مُخَالِفٌ لِقَوْلِهِمْ، لِأَنَّ فِيهِ رَدَّ الْهِبَةِ جُمْلَةً بِلَا تَخْصِيصِ ذِي رَحِمٍ وَلَا أَحَدِ الزَّوْجَيْنِ لِلْآخَرِ - فَصَارُوا مُخَالِفِينَ لَهُ - وَبَطَلَ تَعَلُّقُهُمْ بِهِ.

L26054–26055 Moreover, this [ruling] also contradicts their statement, as it entails revoking the gift in its entirety without specifying an exception for blood relatives or either spouse toward the other. They have thereby become contradictors of their own position, and their reliance on it is invalidated.

وَأَمَّا خَبَرُ عَلِيٍّ - فَبَاطِلٌ، لِأَنَّ أَحَدَ طَرِيقَيْهِ فِيهَا جَابِرٌ الْجُعْفِيُّ، وَفِي الْآخَرِ ابْنُ لَهِيعَةَ - ثُمَّ لَوْ صَحَّ لَكَانُوا مُخَالِفِينَ لَهُ، لِأَنَّ فِي أَحَدِهِمَا «الرَّجُلُ أَحَقُّ بِهِبَتِهِ مَا لَمْ يُثَبْ مِنْهَا» دُونَ تَخْصِيصِ ذِي رَحِمٍ مِنْ غَيْرِهِ، وَلَا أَحَدِ الزَّوْجَيْنِ لِلْآخَرِ - وَهُمْ مُخَالِفُونَ لِهَذَا، وَفِي الْأُخْرَى أَيْضًا كَذَلِكَ فِي هِبَةِ الثَّوَابِ جُمْلَةً - فَبَطَلَ تَعَلُّقُهُمْ بِكُلِّ ذَلِكَ.

L26056 As for the report attributed to ʿAlī, it is invalid because one of its two chains includes Jābir al-Juʿfī, while the other contains Ibn Lahīʿah. Even if it were authentic, they would still contradict it, for one version states: “A man has the prior right to his gift unless it has been legally confirmed, without singling out blood relatives over others or one spouse over the other”—but they oppose this ruling. The same applies to the other version regarding the gifting of compensation in its entirety. Thus, their legal basis for all of this is invalidated.

وَأَمَّا حَدِيثُ ابْنِ عُمَرَ - فَصَحِيحٌ عَنْهُ، وَالْقَوْلُ فِيهِ كَالْقَوْلِ فِي الرِّوَايَةِ عَنْ عُثْمَانَ مِنْ أَنَّهُمْ قَدْ خَالَفُوهُ، لِأَنَّ فِيهِ «أَنَّهُ أَحَقُّ بِهَا مَا لَمْ يُثَبْ» وَلَيْسَ فِيهِ تَخْصِيصُ ذِي رَحِمٍ مَحْرَمَةٍ مِنْ غَيْرِهَا، وَلَا تَخْصِيصُ مَا وَهَبَهُ أَحَدُ الزَّوْجَيْنِ لِلْآخَرِ - فَعَادَ حُجَّةً عَلَيْهِمْ.

L26057 As for the ḥadīth of Ibn ʿUmar, it is authentically reported from him. The ruling concerning it is like the ruling regarding the narration from ʿUthmān—that they opposed him because it states, “He has the greatest right to it as long as it is not confirmed.” The narration does not distinguish a mahram relative from others, nor does it specify what one spouse gifted to the other. Thus, it becomes a proof against them.

وَأَمَّا خَبَرُ فَضَالَةَ - فَكَذَلِكَ أَيْضًا وَهُوَ ضَعِيفٌ، لِأَنَّهُ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ - وَلَيْسَ بِالْقَوِيِّ - وَهُوَ حُجَّةٌ عَلَيْهِمْ، لِأَنَّهُ لَمْ يَشْتَرِطْ ذَا رَحِمٍ مِنْ غَيْرِهِ، وَلَا تَخْصِيصُ مَا وَهَبَهُ

L26058 As for the report of Faḍālah, similarly it too is weak because it is narrated from Muʿāwiyah ibn Ṣāliḥ—who is not strong [in reliability]—and it constitutes a proof against them, as he did not stipulate a relative from others nor restrict [the ruling] to what one spouse gifted to the other. The apparent invalidation of remunerative gifts [is established]. In any case, this report

serves as a proof against him (Muʿāwiyah), not in their favor, for they have contradicted it.

أَحَدُ الزَّوْجَيْنِ لِلْآخَرِ، وَظَاهِرُ إِبْطَالِ هِبَةِ الثَّوَابِ، فَعَلَى كُلِّ حَالٍ هُوَ حُجَّةٌ عَلَيْهِ لَا لَهُمْ؛ لِأَنَّهُمْ قَدْ خَالَفُوهُ.

L26059 As for the report of Abū al-Dardā'—it entirely contradicts their position.

وَأَمَّا خَبَرُ أَبِي الدَّرْدَاءِ - فَكُلُّهُ مُخَالِفٌ لِقَوْلِهِمْ.

L26060–26062 All the reports proved to be against their position. If they constituted an ijmāʿ, they have contradicted it, and if they were— They have contradicted the rightful proof which it is impermissible to contradict. If it is neither a proof nor a consensus, then misleading through its presentation is impermissible.

فَعَادَتْ الْأَخْبَارُ كُلُّهَا خِلَافًا لَهُمْ، فَإِنْ كَانَتْ إِجْمَاعًا فَقَدْ خَالَفُوا الْإِجْمَاعَ وَإِنْ كَانَتْ حُجَّةَ حَقٍّ لَا يَجُوزُ خِلَافُهَا فَقَدْ خَالَفُوا حُجَّةَ الْحَقِّ الَّتِي لَا يَجُوزُ خِلَافُهَا، وَإِنْ لَمْ تَكُنْ حُجَّةً وَلَا إِجْمَاعًا فَالْإِيهَامُ بِإِيرَادِهَا لَا يَجُوزُ.

L26063 It has been narrated to us that the Companions differed regarding this matter—as transmitted through the chain of Abd al-Razzāq from Ibn Jurayj, who reported from Ibn Ṭāwūs from his father, who said concerning Muʿādh ibn Jabal's judicial rulings in Yemen among its people: He ruled that whichever man grants a land on the condition "Do you listen and obey?" and he listens to him and obeys, then it belongs to the donee. Whichever man grants such-and-such items for a fixed term then reclaims it, it reverts to the donor when the term arrives. Whichever man grants a land without stipulating conditions, it belongs to the donee.

وَقَدْ رُوِّينَا خِلَافَ ذَلِكَ عَنْ الصَّحَابَةِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ قَالَ فِي قَضَاءِ مُعَاذِ بْنِ جَبَلٍ بِالْيَمَنِ بَيْنَ أَهْلِهَا قَضَى: أَنَّهُ أَيُّمَا رَجُلٍ وَهَبَ أَرْضًا عَلَى أَنَّكَ تَسْمَعُ وَتُطِيعُ؟ فَسَمِعَ لَهُ وَأَطَاعَ، فَهِيَ لِلْمَوْهُوبَةِ لَهُ، وَأَيُّمَا رَجُلٍ وَهَبَ كَذَا وَكَذَا إلَى أَجَلٍ ثُمَّ رَجَعَ إلَيْهِ، فَهُوَ لِلْوَاهِبِ إذَا جَاءَ الْأَجَلُ، وَأَيُّمَا رَجُلٍ وَهَبَ أَرْضًا وَلَمْ يَشْتَرِطْ فَهِيَ لِلْمَوْهُوبَةِ لَهُ.

L26064 And through him in the chain to Abd al-Razzaq from Ma'mar, who said: Al-Hasan al-Basri used to declare, "A gift is irrevocable."

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: كَانَ الْحَسَنُ الْبَصْرِيُّ يَقُولُ: لَا يُعَادُ فِي الْهِبَةِ.

L26065 And through him [the previous narrator] to Maʿmar, from Ibn Ṭāwus, from his father, who said: A man may not revoke a gift.

وَبِهِ إلَى مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: لَا يَعُودُ الرَّجُلُ فِي الْهِبَةِ.

L26066 So here are Muʿadh, al-Ḥasan, and Ṭāwūs, stating our view in exactly the same terms, alike in every way.

فَهَذَا مُعَاذٌ، وَالْحَسَنُ، وَطَاوُسٌ يَقُولُونَ بِقَوْلِنَا سَوَاءً سَوَاءً.

L26067 They said: We have specified mahram relatives because a gift to them is treated as charity, and between spouses due to the statement of the Prophet (peace and blessings be upon him): "When a Muslim spends on his family with the intention of seeking reward, it is a charity for him." They said: There is no disagreement that one cannot reclaim charity.

وَقَالُوا: إنَّمَا خَصَصْنَا ذَوِي الرَّحِمِ الْمَحْرَمَةِ لِأَنَّ الْهِبَةَ لَهُمْ مَجْرَى الصَّدَقَةِ وَبَيْنَ الزَّوْجَيْنِ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ الْمُسْلِمَ إذَا أَنْفَقَ عَلَى أَهْلِهِ نَفَقَةً يَحْتَسِبُهَا فَهِيَ لَهُ صَدَقَةٌ» قَالُوا: وَلَا خِلَافَ فِي أَنَّهُ لَا يَرْجِعُ فِي الصَّدَقَةِ.

L26068 Ali said: So we said to them, “A gift to someone who is neither a relative nor one’s wife is also charity, for Allah the Exalted says: *‘And do not forget generosity between you’* (Quran 2:237).”[4]

قَالَ عَلِيٌّ: فَقُلْنَا لَهُمْ: وَالْهِبَةُ لِغَيْرِ ذِي الرَّحِمِ وَلِغَيْرِ الزَّوْجَةِ أَيْضًا صَدَقَةٌ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَلا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ} [البقرة: ٢٣٧] .

L26069 It was narrated to us through Ibn Abi Shaybah’s chain: Abbad ibn al-‘Awwam narrated to us from Abu Malik al-Ashja’i, from Rib‘i ibn Ḥirāsh, from Hudhayfah that the Messenger of Allah (peace and blessings be upon him) said: “Every good deed is charity.” This narration is rigorously authentic.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ أَبِي مَالِكٍ الْأَشْجَعِيِّ عَنْ رِبْعِيِّ بْنِ حِرَاشٍ عَنْ حُذَيْفَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كُلُّ مَعْرُوفٍ صَدَقَةٌ» فَهَذَا فِي غَايَةِ الصِّحَّةِ.

L26070 It has been established that every gift to a Muslim constitutes charity. Since there is a valid consensus among them that charity cannot be revoked, and they claim to be proponents of analogy, why do they not analogize gifts to charity, as gifts are the most similar thing to it? But they neither practice analogy competently nor follow scriptural texts.

فَصَحَّ أَنَّ كُلَّ هِبَةٍ لِمُسْلِمٍ فَهِيَ صَدَقَةٌ، فَإِذْ قَدْ صَحَّ إجْمَاعٌ عِنْدَهُمْ عَلَى أَنْ لَا رُجُوعَ فِي الصَّدَقَةِ، فَهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، فَهَلَّا قَاسُوا الْهِبَةَ عَلَى الصَّدَقَةِ فَهِيَ أَشْبَهُ شَيْءٍ بِهَا؟ وَلَكِنَّهُمْ لَا يُحْسِنُونَ قِيَاسًا وَلَا يَتَّبِعُونَ نَصًّا.

L26071–26073 Abu Muhammad said: Since all that they have embellished has been invalidated, the proof for our claim is the statement of Allah, the Most High: “Fulfill the covenants” [Al-Mā’idah: 1] and His saying, exalted is He: “Do not nullify your deeds” [Muḥammad: 33]. This is the place for citing these two verses as evidence, not the context in which they cited them, since the Sunnah clarified that these verses have no place in their argument. They forgot their own argumentation using the Muslims concerning their conditions.[5]

قَالَ أَبُو مُحَمَّدٍ: فَإِذْ قَدْ بَطَلَ كُلُّ مَا مَوَّهُوا بِهِ فَالْحُجَّةُ لِقَوْلِنَا هُوَ قَوْلُ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] وَبِقَوْلِهِ تَعَالَى: {وَلا تُبْطِلُوا أَعْمَالَكُمْ} [محمد: ٣٣] ، فَهَذَا مَوْضِعُ الِاحْتِجَاجِ بِهَاتَيْنِ الْآيَتَيْنِ لَا حَيْثُ احْتَجُّوا بِهِمَا حَيْثُ بَيَّنَتْ السُّنَّةُ أَنَّهُ لَا مَدْخَلَ لَهُ فِيهِمَا وَنَسُوا احْتِجَاجَهُمْ بِالْمُسْلِمِينَ عِنْدَ شُرُوطِهِمْ.

L26074 Also: what has been transmitted to us through Al-Bukhari’s chain—Muslim ibn Ibrāhīm narrated to us: Hishām, who is Al-Dastuwā’ī, and Shu‘bah. Both narrated together: from Qatādah from Sa‘īd ibn Al-Musayyib from Ibn ‘Abbās, who said: The Messenger of Allah—peace and blessings be upon him—said: “The one who revokes his gift is like the one who goes back to his vomit.”

وَأَيْضًا - مَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسْلِمُ بْنُ إبْرَاهِيمَ نا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ - وَشُعْبَةُ، قَالَا جَمِيعًا نا قَتَادَةُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ ابْنِ عَبَّاسٍ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْعَائِدُ فِي هِبَتِهِ كَالْعَائِدِ فِي قَيْئِهِ» .

L26075 Through the chain of al-Bukhārī: ʿAbd al-Raḥmān ibn al-Mubārak narrated to us from ʿAbd al-Wārith—he is Ibn Saʿīd al-Tannūrī—from Ayyūb al-Sakhtiyānī, from ʿIkrimah, from Ibn ʿAbbās, who said: “The Messenger of

وَمِنْ طَرِيقِ الْبُخَارِيِّ أَنَا عَبْدُ الرَّحْمَنِ بْنُ الْمُبَارَكِ نا عَبْدُ الْوَارِثِ هُوَ ابْنُ سَعِيدٍ التَّنُّورِيُّ - نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَيْسَ لَنَا مَثَلُ السَّوْءِ الَّذِي يَعُودُ فِي هِبَتِهِ كَالْكَلْبِ يَرْجِعُ فِي قَيْئِهِ» .

[4] **Qur’an references (L26068):** Qur’an 2:237 (Al-Baqarah).
[5] **Qur’an references (L26071):** Qur’an 47:33 (Muhammad); Qur’an 5:1 (Al-Ma’idah).

Allāh—peace and blessings be upon him—said: ’There is no evil example for us like one who returns to his gift, as the dog returns into its vomit.”’[6]

L26076 From the chain of transmission of Aḥmad ibn Shuʿayb: ʿAbd al-Raḥmān ibn Muḥammad ibn Sallām narrated to us: Isḥāq al-Azraq narrated to us: al-Ḥusayn al-Muʿallim narrated to us from ʿAmr ibn Shuʿayb from Ṭāwūs from Ibn ʿAbbās and Ibn ʿUmar, who both said: The Messenger of Allah (peace be upon him) said: «It is not permissible for anyone who gives an al-ʿaṭiyyah (a gift) to revoke it, except a parent who gives to his child. The likeness of one who gives a gift then revokes it is that of a dog: it eats until satiated, vomits, then returns and goes back to its vomit.»

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ سَلَّامٍ نا إِسْحَاقُ الْأَزْرَقُ نَا الْحُسَيْنُ الْمُعَلِّمُ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ، قَالَا: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَحِلُّ لِأَحَدٍ يُعْطِي الْعَطِيَّةَ فَيَرْجِعُ فِيهَا إِلَّا الْوَالِدُ يُعْطِي وَلَدَهُ، وَمَثَلُ الَّذِي يُعْطِي الْعَطِيَّةَ فَيَرْجِعُ فِيهَا كَالْكَلْبِ، أَكَلَ حَتَّى إِذَا شَبِعَ قَاءَ ثُمَّ عَادَ فَرَجَعَ فِي قَيْئِهِ» .

L26077–26078 So these are the established narrations which it is not permissible to contradict or depart from. Narrated via the chain of Zayd ibn Aslam, from his father, from ʿUmar ibn al-Khaṭṭāb (may Allah be pleased with him), who reported that the Messenger of Allah said: “The parable of one who takes back his sadaqah is like that of a dog returning to its vomit.”

فَهَذِهِ الْآثَارُ الثَّابِتَةُ الَّتِي لَا يَحِلُّ خِلَافُهَا، وَلَا الْخُرُوجُ عَنْهَا وَمِنْ طَرِيقِ زَيْدِ بْنِ أَسْلَمَ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ رَسُولُ اللَّهِ: «مَثَلُ الَّذِي يَعُودُ فِي صَدَقَتِهِ مَثَلُهُ كَمَثَلِ الْكَلْبِ يَعُودُ فِي قَيْئِهِ» .

L26079 Abū Muḥammad said: The ruling concerning one who retracts his gift and one who retracts his charity is identical according to the words of the Messenger of Allah—peace and blessings be upon him. Whoever distinguishes between them is in error. The most astonishing thing is their statement: “He only likened it to a dog returning to its vomit, and for the dog this is not forbidden—thus this is like it.” May they enjoy this analogy by which they have sanctioned their own inclusion within it, while the Prophet—peace and blessings be upon him—declares it to be a vile analogy. How can this be, when the authentic report states that it is like returning to one’s vomit—and vomit is forbidden in their view, though we know not by what? As for others, it is forbidden by this text.

قَالَ أَبُو مُحَمَّدٍ: الْحُكْمُ فِي الْعَائِدِ فِي هِبَتِهِ، وَفِي الْعَائِدِ فِي صَدَقَتِهِ سَوَاءٌ عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْمُفَرِّقُ بَيْنَهُمَا مُخْطِئٌ، وَالْعَجَبُ كُلُّهُ قَوْلُهُمْ " إِنَّمَا شَبَّهَهُ بِالْكَلْبِ يَعُودُ فِي قَيْئِهِ، وَالْكَلْبُ لَيْسَ ذَلِكَ عَلَيْهِ حَرَامًا فَهَذَا مِثْلُهُ " فَهَنِيئًا لَهُمْ هَذَا الْمَثَلُ الَّذِي أَبَاحُوا لِأَنْفُسِهِمْ الدُّخُولَ فِيهِ وَالنَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُخْبِرُ أَنَّهُ مَثَلُ السَّوْءِ، فَكَيْفَ وَقَدْ جَاءَ الْخَبَرُ الصَّحِيحُ أَنَّهُ كَالْعَائِدِ فِي قَيْئِهِ، وَالْقَيْءُ عِنْدَهُمْ حَرَامٌ لَا نَدْرِي بِمَاذَا؟ وَأَمَّا عِنْدَ غَيْرِهِمْ فَبِهَذَا النَّصِّ.

L26080 The most outrageous claim is their statement: “The fact that it is ḥarām does not negate its permissibility.” This is an open desecration of Islam.

وَأَطَمُّ شَيْءٍ قَوْلُ بَعْضِهِمْ " لَا يَمْنَعُ كَوْنُهُ حَرَامًا مِنْ جَوَازِهِ " وَهَذَا هَتْكُ الْإِسْلَامِ جِهَارًا.

[6] **Hadith references (L26075):** Sahih al-Bukhari 2622.

L26081 Among the astonishing things is their assertion that the Prophet's statement (peace be upon him) - "It is not permissible for anyone who gives a gift to revoke it, except a parent giving to their child" - means he (peace be upon him) intended by this that if the parent is in need, he may take his provision.

وَمِنْ الْعَجَائِبِ أَيْضًا قَوْلُهُمْ إنَّ قَوْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَحِلُّ لِأَحَدٍ يُعْطِي الْعَطِيَّةَ فَيَرْجِعُ فِيهَا إلَّا الْوَالِدُ يُعْطِي وَلَدَهُ» أَنَّهُ - عَلَيْهِ السَّلَامُ - أَرَادَ بِذَلِكَ إذَا احْتَاجَ الْوَالِدُ فَيَأْخُذُ نَفَقَتَهُ.

L26082 Abu Muhammad said: Lying against the Messenger of Allah—peace and blessings be upon him—is easy and trivial for them. Has anyone ever understood this meaning from such a statement? All people know that when a father is in need, his rightful claim extends not merely to what he gave his child but to all his property—even that which he did not grant to him.

قَالَ أَبُو مُحَمَّد: الْكَذِبُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِنْدَهُمْ سَهْلٌ خَفِيفٌ، وَهَلْ فَهِمَ أَحَدٌ قَطُّ مِنْ هَذَا الْكَلَامِ هَذَا الْمَعْنَى، وَقَدْ عَلِمَ الْجَمِيعُ أَنَّ الْأَبَ إذَا احْتَاجَ لَمْ يَكُنْ حَقُّهُ فِيمَا أَعْطَى وَلَدَهُ دُونَ سَائِرِ مَالِهِ الَّذِي لَمْ يُعْطِهِ إيَّاهُ.

L26083 We seek refuge with Allah from being forsaken (by His support).

وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L26084 As for our position granting the grandfather and the mother the right to retract what they have given to the grandson and to the son generally, it is based on the statement of Allah: "O children of Adam" [Al-A'rāf: 26].[7]

وَأَمَّا جَعْلُنَا لِلْجَدِّ وَلِلْأُمِّ الرُّجُوعَ فِيمَا أَعْطَيَا لِابْنِ الِابْنِ وَلِلِابْنِ عُمُومًا لِقَوْلِ اللَّهِ تَعَالَى: {يَا بَنِي آدَمَ} [الأعراف: ٢٦] .

L26085 The Almighty said: {As He brought your parents out of Paradise} [Al-A'rāf 7:27]. Thus, the Exalted established the grandfather and grandmother as parents, while the mother is referred to by the feminine term _al-wālidah_ (the mother), which applies to the general category of parenthood. In this context, the term _al-wālid_ (the parent) is used as a masculine noun encompassing her.[8]

وَقَالَ تَعَالَى: {كَمَا أَخْرَجَ أَبَوَيْكُمْ مِنَ الْجَنَّةِ} [الأعراف: ٢٧] فَجَعَلَ تَعَالَى الْجَدَّ وَالْجَدَّةَ أَبَوَيْنِ، وَالْأُمَّ وَالِدَةً تَقَعُ عَلَى الْجِنْسِ، وَهِيَ فِيهِ اسْمُ الْوَالِدِ.

L26086–26087 All success is from Allah, the Exalted.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26088 As for the Mālikīs—they argued based on what was transmitted to us through Ibn al-Jahm's chain: Ibrāhīm al-Ḥarbī narrated to us; Muḥammad ibn 'Abd al-Malik [Ibn Abī al-Shawārib] narrated to us; 'Abd al-Razzāq narrated to us; Ma'mar narrated from Ayyūb from Abū Qilābah, who said: 'Umar ibn al-Khaṭṭāb decreed, "A man may revoke what he gave to his child, provided the child has not died, squandered it, or incurred a debt against it."

وَأَمَّا الْمَالِكِيُّونَ - فَإِنَّهُمْ احْتَجُّوا بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ الْجَهْمِ نا إبْرَاهِيمُ الْحَرْبِيُّ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ هُوَ ابْنُ أَبِي الشَّوَارِبِ - نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ عَنْ أَبِي قِلَابَةَ قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ يَعْتَصِرُ الرَّجُلُ مِنْ وَلَدِهِ مَا أَعْطَاهُ، مَا لَمْ يَمُتْ، أَوْ يَسْتَهْلِكْ، أَوْ يَقَعْ فِيهِ دَيْنٌ.

[7] **Qur'an references (L26084):** Qur'an 7:26 (Al-A'raf).
[8] **Qur'an references (L26085):** Qur'an 7:27 (Al-A'raf).

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ الْقَاضِي نا أَبُو ثَابِتٍ الْمَدِينِيُّ ني ابْنُ وَهْبٍ عَنِ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ أَنَّ مُوسَى بْنَ سَعْدٍ حَدَّثَهُ أَنَّ سَعْدًا مَوْلَى الزُّبَيْرِ نَحَلَ ابْنَتَهُ جَارِيَةً فَلَمَّا تَزَوَّجَتْ أَرَادَ ارْتِجَاعَهَا فَقَضَى عُمَرُ بْنُ الْخَطَّابِ أَنَّ الْوَالِدَ يَعْتَصِرُ مَا دَامَ يَرَى مَالَهُ، مَا لَمْ يَمُتْ صَاحِبُهَا فَتَقَعُ فِي مِيرَاثٍ أَوْ تَكُونُ امْرَأَةً تُنْكَحُ، ثُمَّ تَلَاهُ عُثْمَانُ عَلَى ذَلِكَ.

L26089 And through the chain of Ibn al-Jahm, Ismāʿīl ibn Isḥāq al-Qāḍī narrated from Abū Thābit al-Madīnī to Ibn Wahb, from Ibn Lahīʿah, from Yazīd ibn Abī Ḥabīb that Mūsā ibn Saʿd reported to him that Saʿd - the client of al-Zubayr - gifted his daughter a slave girl. When she married, he sought to reclaim her. ʿUmar ibn al-Khaṭṭāb ruled that a parent may reclaim [the gift] as long as he retains his property, provided the recipient does not die (causing the gift to enter inheritance) or the slave girl becomes a woman who is married. Later, ʿUthmān upheld this ruling.

وَرُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ أَنَّ رَجُلًا وَهَبَ لِابْنِهِ نَاقَةً فَرَجَعَ فِيهَا، فَرُفِعَ ذَلِكَ إِلَى عُمَرَ بْنِ الْخَطَّابِ فَرَدَّهَا عَلَيْهِ بِعَيْنِهَا، وَجَعَلَ نَمَاهَا لِابْنِهِ.

L26090 We have narrated it through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī that a man gifted a she-camel to his son then revoked it. The matter was brought to ʿUmar ibn al-Khaṭṭāb, who restored the very same she-camel to the man and assigned its growth to the son.

قَالُوا: فَهَذَا عَمَلُ عُمَرَ، وَعُثْمَانَ، بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L26091 They said: Thus, this was the conduct of ʿUmar and ʿUthman in the presence of the Companions (may Allah be pleased with them).

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ ذَكَرْنَا عَنْ عُمَرَ، وَابْنِهِ، بِأَصَحَّ مِنْ هَذَا السَّنَدِ رُجُوعُ الْمَرْءِ فِيمَا وَهَبَ مَا لَمْ يُثَبْ إِلَّا لِذِي رَحِمٍ.

L26092 Abu Muhammad said: We have cited from Umar and his son—via a chain of narration more authentic than this one—that retraction of a gift is not valid unless it was given to a blood relative.

وَعَنْ عُثْمَانَ مِثْلُهُ فَمَا الَّذِي جَعَلَ هَذِهِ الرِّوَايَةَ أَوْلَى مِنْ تِلْكَ؟ فَكَيْفَ وَقَدْ خَالَفُوا هَذِهِ أَيْضًا، لِأَنَّهُمْ يَقُولُونَ: إِنَّمَا لِلْأَبِ الِارْتِجَاعُ فِي ذَلِكَ فِي صِحَّتِهِ فَقَطْ، وَلَيْسَ هَذَا فِيمَا رُوِيَ عَنْ عُمَرَ، وَعُثْمَانَ، وَيَقُولُونَ: لَيْسَ لِلْأَبِ الِارْتِجَاعُ فِيمَا وَهَبَ ابْنُهُ لِلَّهِ تَعَالَى، وَلَيْسَ هَذَا فِيمَا رُوِيَ عَنْ عُمَرَ، وَعُثْمَانَ، وَحَاشَا لَهُمَا: أَنْ يُجِيزَا هِبَةً لِغَيْرِ اللَّهِ تَعَالَى، وَإِذَا لَمْ تَكُنْ لِلَّهِ فَهِيَ لِلشَّيْطَانِ.

L26093 The same is reported from Uthman. What then makes this narration more preferable than that? How could this be, when they contradict this also? For they assert that the father's right to revoke applies only to the validity of the dedication itself—yet this is absent in the narrations from Umar and Uthman. They further claim the father cannot revoke what he has dedicated his son to Allah the Exalted—but this too is absent in the reports from Umar and Uthman. It is inconceivable that these two would sanction a dedication to anyone other than Allah the Exalted, for what is not for Allah belongs to Satan.

فَصَحَّ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، لَا حُجَّةَ لَهُمَا أَصْلًا، وَمُخَالِفًا لِكُلِّ مَا أَظْهَرُوا أَنَّهُمْ تَعَلَّقُوا بِهِ عَنِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L26094 The opinion of Abu Hanifah and Malik is established, yet they possess no valid legal argument whatsoever, and it contradicts all that they openly asserted to have derived through transmission from the Companions (may Allah be pleased with them).

1632 - Issue: If the gift undergoes a change in the child's possession such

L26095–26097

that its original legal designation (as a revocable gift) is voided, or it leaves his ownership, or he dies, or it becomes religiously impermissible to possess, then the father has no right to revoke it. This is because if it has changed, it is no longer the same entity for which the Prophet (peace be upon him) granted the right of revocation. If it leaves his ownership or he dies, the father has no right of revocation against [the new possessor]. The Prophet—peace and blessings be upon him—did not grant him the right of retraction over him. And if her ownership is invalidated, then the father has no ownership in her whatsoever—and success is from Allah, the Most High.

١٦٣٢ - مَسْأَلَةٌ: فَإِنْ تَغَيَّرَتْ الْهِبَةُ عِنْدَ الْوَلَدِ حَتَّى يَسْقُطَ عَنْهَا الِاسْمُ، أَوْ خَرَجَتْ عَنْ مِلْكِهِ، أَوْ مَاتَ، أَوْ صَارَتْ لَا يَحِلُّ تَمَلُّكُهَا فَلَا رُجُوعَ لِلْأَبِ فِيهِ؛ لِأَنَّهَا إذَا تَغَيَّرَتْ فَهِيَ غَيْرُ مَا جَعَلَ لَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الرُّجُوعَ فِيهِ، وَإِذَا خَرَجَتْ عَنْ مِلْكِهِ، أَوْ مَاتَ، فَلَا رُجُوعَ لَهُ عَلَى مَنْ لَمْ يَجْعَلْ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الرُّجُوعَ عَلَيْهِ - وَإِذَا بَطَلَ تَمَلُّكُهَا، فَلَا تَمَلُّكَ لِلْأَبِ فِيهَا أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا تَنْفُذُ هِبَةٌ وَلَا صَدَقَةٌ لِأَحَدٍ إلَّا فِيمَا أَبْقَى لَهُ وَلِعِيَالِهِ غِنًى]

A legal ruling: Neither a gift nor charity is valid from a person unless they retain sufficient provision for themselves and their dependents.

١٦٣٣ - مَسْأَلَةٌ: وَلَا تَنْفُذُ هِبَةٌ وَلَا صَدَقَةٌ لِأَحَدٍ إلَّا فِيمَا أَبْقَى لَهُ وَلِعِيَالِهِ غِنًى، فَإِنْ أَعْطَى مَا لَا يَبْقَى لِنَفْسِهِ وَعِيَالِهِ بَعْدَهُ غِنًى فُسِخَ كُلُّهُ.

Issue 1633: No gift or charity takes effect from a person unless it leaves them and their dependents in sufficiency. If they give that which does not leave themselves and their dependents in sufficiency thereafter, the entire act is annulled.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا أَبُو عَوَانَةَ عَنْ أَبِي مَالِكٍ الْأَشْجَعِيِّ عَنْ حُذَيْفَةَ قَالَ: قَالَ نَبِيُّكُمْ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ مَعْرُوفٍ صَدَقَةٌ».

The proof of that is what we have narrated via Muslim's narration: Qutaybah ibn Saʿīd narrated to us, Abū ʿAwānah narrated to us, from Abū Mālik al-Ashjaʿī, from Ḥudhayfah, who said: "Your Prophet—may Allah's peace and blessings be upon him—said: 'Every act of kindness is charity.'"

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ سَوَادٍ عَنْ ابْنِ وَهْبٍ أَنَا يُونُسُ عَنْ ابْنِ شِهَابٍ نا سَعِيدُ بْنُ الْمُسَيِّبِ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «خَيْرُ الصَّدَقَةِ مَا كَانَ عَنْ ظَهْرِ غِنًى وَابْدَأْ بِمَنْ تَعُولُ».

Through the chain of Ahmad ibn Shuʿayb: I [received from] ʿAmr ibn Sawād, who [received] from Ibn Wahb, who [received] from Yūnus, from Ibn Shihāb, from Saʿīd ibn al-Musayyib, who heard Abū Hurayrah say: The Messenger of Allah—peace and blessings be upon him—said, "The best charity is that given from surplus wealth. Begin with those you are responsible for."[9]

وَرُوِّينَا مَعْنَاهُ أَيْضًا مِنْ طَرِيقِ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

Its meaning has also been narrated to us via the chain of Abu Salih from Abu Hurairah from the Prophet, peace be upon him.

And from the chain of Ahmad ibn Shu'ayb: I, Amr ibn Ali, inform [you] from Yahya ibn Sa'id al-Qattan, from Amr ibn Uthman, who said: I heard Musa

[9] **Hadith references (L26101):** Sahih al-Bukhari 1426; Sahih al-Bukhari 5356; Sunan an-Nasai 2544.

ibn Talha ibn Ubaydullah narrate from Hakim ibn Hizam that the Messenger of Allah—peace and blessings be upon him and his family—said: “The best charity is that which is given from surplus wealth.”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا عَمْرُو بْنُ عُثْمَانَ سَمِعْتُ مُوسَى بْنَ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ أَنَّ حَكِيمَ بْنَ حِزَامٍ حَدَّثَهُ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «أَفْضَلُ الصَّدَقَةِ مَا كَانَ عَنْ ظَهْرِ غِنًى» .

L26104–26106 Thus, every good deed is charity, and the finest and best thereof is that given from surplus wealth. Undoubtedly and necessarily, whatever increases in charity but diminishes goodness – as for the superior [act], there is no reward in it nor any good. And there is no excess in it, and it is invalid. Since it is invalid, it constitutes unlawfully consuming wealth—thus, this is prohibited by the definitive text of the Quran.

فَإِذًا كُلُّ مَعْرُوفٍ صَدَقَةٌ، وَأَفْضَلُ الصَّدَقَةِ وَخَيْرُهَا مَا كَانَ عَنْ ظَهْرِ غِنًى، فَبِلَا شَكٍّ وَبِالضَّرُورَةِ: أَنَّ مَا زَادَ فِي الصَّدَقَةِ وَنَقَصَ مِنْ الْخَيْرِ، وَالْأَفْضَلِ فَلَا أَجْرَ فِيهِ، وَلَا خَيْرَ فِيهِ، وَلَا فَضْلَ فِيهِ، وَأَنَّهُ بَاطِلٌ، وَإِذَا كَانَ بَاطِلًا، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ - فَهَذَا مُحَرَّمٌ بِنَصِّ الْقُرْآنِ.

L26107 From the chain of Yahya ibn Sa’id al-Qattan, from Muhammad ibn ’Ajlan: Sa’id al-Maqburi narrated to me from Abu Hurairah that the Messenger of Allah (peace and blessings be upon him) said: “Give charity.” A man asked: “O Messenger of Allah, I have a dinar.” He replied: “Spend it on yourself.” The man said: “I have another.” He said: “Spend it on your wife.” The man said: “I have another.” He said: “Spend it on your child.” The man said: “I have another.” He said: “Spend it on your servant.” The man said: “I have another.” He responded: “You are more discerning in its use.”

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ مُحَمَّدِ بْنِ عَجْلَانَ حَدَّثَنِي سَعِيدٌ الْمَقْبُرِيُّ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: تَصَدَّقُوا فَقَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ عِنْدِي دِينَارٌ قَالَ: تَصَدَّقْ بِهِ عَلَى نَفْسِكَ قَالَ: عِنْدِي آخَرُ، قَالَ: تَصَدَّقْ بِهِ عَلَى زَوْجَتِكَ، قَالَ: عِنْدِي آخَرُ، قَالَ: تَصَدَّقْ بِهِ عَلَى وَلَدِكَ، قَالَ: عِنْدِي آخَرُ، قَالَ: تَصَدَّقْ بِهِ عَلَى خَادِمِكَ، قَالَ: عِنْدِي آخَرُ، قَالَ: أَنْتَ أَبْصَرُ بِهِ» وَمِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: «أَعْتَقَ رَجُلٌ مِنْ بَنِي عُذْرَةَ عَبْدًا لَهُ عَنْ دُبُرٍ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَلَكَ مَالٌ غَيْرُهُ؟ قَالَ: لَا، قَالَ: مَنْ يَشْتَرِيهِ مِنِّي؟ فَاشْتَرَاهُ نُعَيْمُ بْنُ عَبْدِ اللَّهِ بْنِ النَّحَّامِ بِثَمَانِمِائَةِ دِرْهَمٍ، فَدَفَعَهَا إِلَيْهِ، ثُمَّ قَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: ابْدَأْ بِنَفْسِكَ فَتَصَدَّقْ عَلَيْهَا فَإِنْ فَضَلَ شَيْءٌ فَلِأَهْلِكَ، فَإِنْ فَضَلَ عَنْ أَهْلِكَ شَيْءٌ فَلِذِي قَرَابَتِكَ، فَإِنْ فَضَلَ عَنْ ذِي قَرَابَتِكَ شَيْءٌ فَكَهَذَا وَهَكَذَا» .

From the narration in Sahih Muslim: Qutaybah ibn Sa’id reported to us: al-Layth ibn Sa’d narrated from Abu al-Zubayr, from Jabir, who said: “A man from Banu ’Udhrah emancipated a slave posthumously. The Messenger of Allah (peace and blessings be upon him) asked him: ’Do you possess any other wealth?’ He answered: ’No.’ The Prophet said: ’Who will purchase him from me?’ Nu’aym ibn ’Abdullah ibn al-Nahham bought him for eight hundred dirhams and delivered the sum to the man. The Messenger of Allah (peace and blessings be upon him) then instructed him: ’Begin by providing for yourself. If surplus remains, allocate it to your household. If surplus remains after your household, distribute it among your relatives. If surplus remains after your relatives, then continue in this manner and so on.”’

L26108 And through the chain of Muslim: Abu Tahir—Ahmad ibn Amr ibn al-

Sarh—informed us: Ibn Wahb informed me, Yunus informed me from Ibn Shihab, who informed me: "Abd al-Rahman ibn Kaʿb ibn Malik said: I heard my father say"—then he [Kaʿb] mentioned the hadith concerning his staying behind from Tabuk. He said: I said, "O Messenger of Allah, part of my repentance is that I divest myself of my wealth as charity to Allah and His Messenger—peace and blessings be upon him." The Messenger of Allah—peace and blessings be upon him—said, "Retain some of your wealth for yourself, is that not better for you?" I said, "I hereby keep my share which is in Khaybar."

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو الطَّاهِرِ هُوَ أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ - أَخْبَرَنِي ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنِ ابْنِ شِهَابٍ أَخْبَرَنِي «عَبْدُ الرَّحْمَنِ بْنُ كَعْبِ بْنِ مَالِكٍ سَمِعْتُ أَبِي يَقُولُ: فَذَكَرَ الْحَدِيثَ فِي تَخَلُّفِهِ عَنْ تَبُوكَ قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ إِنَّ مِنْ تَوْبَتِي أَنْ أَنْخَلِعَ مِنْ مَالِي صَدَقَةً إِلَى اللَّهِ وَإِلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمْسِكْ عَلَيْكَ بَعْضَ مَالِكَ فَهُوَ خَيْرٌ لَكَ؟ فَقُلْتُ: إِنِّي أُمْسِكُ سَهْمِي الَّذِي بِخَيْبَرَ» .

L26109–26110 Through the chain of Aḥmad ibn Shuʿayb: I am ʿUbaydullāh ibn Saʿd ibn Ibrāhīm ibn ʿAbd al-Raḥmān ibn ʿAwf. Narrated to us my father and my paternal uncle Saʿd, and Yaʿqūb—the two sons of Ibrāhīm ibn Saʿd ibn Ibrāhīm ibn ʿAbd al-Raḥmān ibn ʿAwf. Both of them said collectively: Narrated to us Ibn Abī Dhi'b, from Muḥammad ibn al-Munkadir, from Jābir ibn ʿAbdullāh: "A man manumitted a slave he owned who had no other property besides him. The Messenger of Allāh (peace be upon him) returned the slave to him, and Nuʿaym ibn al-Naḥḥām purchased him."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عُبَيْدُ اللَّهِ بْنُ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ نا أَبِي وَعَمِّي سَعْدٌ، وَيَعْقُوبُ ابْنَا إِبْرَاهِيمَ بْنِ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، قَالَا جَمِيعًا: نا ابْنُ أَبِي ذِئْبٍ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَجُلًا أَعْتَقَ عَبْدًا لَهُ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ، فَرَدَّهُ عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَابْتَاعَهُ نُعَيْمُ بْنُ النَّحَّامِ» .

L26111 Narrated to us by Humam, narrated to us by Abbas ibn Asbagh, narrated to us by Muhammad ibn Abd al-Malik ibn Ayman, narrated to us by Bakr ibn Hammad, narrated to us by Musaddad, narrated to us by Hammad (i.e., Ibn Zayd), from Muhammad ibn Ishaq, from Asim ibn Umar ibn Qatadah, from Mahmud ibn Labid, from Jabir ibn Abdullah: "A man came to the Prophet—peace and blessings be upon him—with a piece of gold resembling an egg and said: 'O Messenger of Allah, this is charity. I have left no wealth for myself besides it.' The Prophet—peace and blessings be upon him—threw it toward him, and had it struck him, it would have pained him. He then said: 'One of you goes forth and divests himself of his wealth, and then becomes a dependent on others.'"

حَدَّثَنَا حُمَامُ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا بَكْرُ بْنُ حَمَّادٍ نا مُسَدَّدٌ نا حَمَّادٌ هُوَ ابْنُ زَيْدٍ - عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَاصِمِ بْنِ عُمَرَ بْنِ قَتَادَةَ عَنْ مَحْمُودِ بْنِ لَبِيدٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَجُلًا أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِ الْبَيْضَةِ مِنْ الذَّهَبِ فَقَالَ: يَا رَسُولَ اللَّهِ هَذِهِ صَدَقَةٌ مَا تَرَكْتُ لِي مَالًا غَيْرَهَا، فَحَذَفَهُ بِهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَوْ أَصَابَهُ لَأَوْجَعَهُ، ثُمَّ قَالَ: يَنْطَلِقُ أَحَدُكُمْ فَيَنْخَلِعُ مِنْ مَالِهِ ثُمَّ يَصِيرُ عِيَالًا عَلَى النَّاسِ» .

L26112 Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Isḥāq narrated to us: Ibn al-Aʿrābī narrated to us: Isḥāq ibn Ismāʿīl narrated to us: Sufyān narrated from Ibn ʿAjlān from ʿIyāḍ ibn ʿAbdullāh ibn Saʿd ibn Abī Sarḥ that he heard

Abū Saʿīd al-Khudrī say: “A man entered the mosque, so the Prophet—peace and blessings of Allah be upon him—ordered the people to donate garments. They donated, and he ordered that two garments be given to him. Then he—peace and blessings of Allah be upon him—urged toward charity. The man came and donated one of the two garments. The Messenger of Allāh—peace and blessings of Allah be upon him—exclaimed to him: ’Take your garment!’”

وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا إِسْحَاقُ بْنُ إِسْمَاعِيلَ نا سُفْيَانُ عَنِ ابْنِ عَجْلَانَ عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ بْنِ سَعْدِ بْنِ أَبِي سَرْحٍ أَنَّهُ سَمِعَ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ «دَخَلَ رَجُلٌ الْمَسْجِدَ فَأَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النَّاسَ أَنْ يَطْرَحُوا ثِيَابًا، فَطَرَحُوا، فَأَمَرَ لَهُ بِثَوْبَيْنِ، ثُمَّ حَثَّ - عَلَيْهِ السَّلَامُ - عَلَى الصَّدَقَةِ، فَجَاءَ فَطَرَحَ أَحَدَ الثَّوْبَيْنِ، فَصَاحَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خُذْ ثَوْبَكَ» .

L26113 Thus, the Messenger of Allah—may Allah bless him and grant him peace—invalidated manumission, tadbeer (testamentary freeing after death), charity equivalent to an egg’s weight in gold, and Kaʿb ibn Mālik’s donation of his entire wealth, and he did not permit any of that.

فَهَذَا «رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ رَدَّ الْعِتْقَ، وَالتَّدْبِيرَ، وَالصَّدَقَةَ بِمِثْلِ الْبَيْضَةِ مِنَ الذَّهَبِ، وَصَدَقَةَ كَعْبِ بْنِ مَالِكٍ بِمَالِهِ كُلِّهِ، وَلَمْ يُجِزْ مِنْ ذَلِكَ شَيْئًا» .

L26114 And this is also clarified by his statement (peace and blessings be upon him): “Whoever performs a deed not based on our command, it is invalid.”

وَيُبَيِّنُ ذَلِكَ أَيْضًا: قَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L26115–26116 From the method of reasoning: any contract combining forbidden and permissible elements is entirely annulled, for it was not formed in compliance with Allah the Exalted’s command, nor were its permissible elements distinguished from its forbidden ones. Thus, it is a contract whose execution was never valid.

وَمِنْ طَرِيقِ النَّظَرِ: أَنَّ كُلَّ عَقْدٍ جَمَعَ حَرَامًا وَحَلَالًا فَهُوَ عَقْدٌ مَفْسُوخٌ كُلُّهُ؛ لِأَنَّهُ لَمْ يَنْعَقِدْ كَمَا أَمَرَ اللَّهُ تَعَالَى، وَلَا تَمَيَّزَ حَلَالُهُ مِنْ حَرَامِهِ، فَهُوَ عَقْدٌ لَمْ يَكُنْ قَطُّ صَحِيحًا عَمَلُهُ.

L26117 These are mass-transmitted, conspicuously clear traditions of utmost authenticity and clarity. It is unlawful for anyone to contradict them through the routes of Abū Hurayrah, Jābir, Ḥakīm ibn Ḥizām, Kaʿb ibn Mālik, and Abū Saʿīd.

وَهَذِهِ آثَارٌ مُتَوَاتِرَةٌ مُتَظَاهِرَةٌ فِي غَايَةِ الصِّحَّةِ وَالْبَيَانِ لَا يَحِلُّ لِأَحَدٍ خِلَافُهَا مِنْ طَرِيقِ أَبِي هُرَيْرَةَ، وَجَابِرٍ، وَحَكِيمِ بْنِ حِزَامٍ، وَكَعْبِ بْنِ مَالِكٍ، وَأَبِي سَعِيدٍ.

L26118 And it has also been narrated to us its meaning from Ṭāriq al-Muḥāribī from the Messenger of Allah—peace and blessings of Allah be upon him—as authentic.

وَرُوِّينَا أَيْضًا مَعْنَاهَا عَنْ طَارِقٍ الْمُحَارِبِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَحِيحًا.

L26119 Among the proofs for the validity of this from the Quran are the words of Allah the Most High: “And do not keep your hand chained to your neck, nor

وَمِنَ الْبُرْهَانِ عَلَى صِحَّةِ ذَلِكَ -: مِنَ الْقُرْآنِ قَوْلُ اللَّهِ تَعَالَى: {وَلا تَجْعَلْ يَدَكَ مَغْلُولَةً إِلَى عُنُقِكَ وَلا تَبْسُطْهَا كُلَّ الْبَسْطِ فَتَقْعُدَ مَلُومًا مَحْسُورًا} [الإسراء: ٢٩] .

stretch it out completely, lest you find yourself blameworthy and regretful" [Al-Isra: 29].[10]

L26120 The words of the Most High: "And give its due on the day of its harvest, and do not be extravagant. Indeed, He does not love the extravagant" [Al-An'am: 141].[11]

L26121 And give the kinsman his due, the needy, and the wayfarer, and do not squander wastefully. Indeed, the squanderers were brethren of the devils. [Al-Isrāʾ: 26–27][12]

L26122 Among those who held this view from the early generations is what we were narrated through the chain of Ibn Wahb from Yahya ibn Ayyub from Ibn al-Hād, who reported to us on the authority of ʿAbdullāh ibn Dīnār from Ibn Umar, that he said to his father Umar ibn al-Khattab: "Should I give all my wealth in charity?" Umar replied: "Do not part with all your wealth, but give some in charity and keep the rest."

L26123 From the chain of Ibn al-Jahm: Ibrāhīm al-Ḥarbī narrated to us, Muḥammad ibn Sahl narrated to us, ʿAbd al-Razzāq narrated to us from Maʿmar from al-Zuhrī from ʿUrwah ibn al-Zubayr, who said: "Unfairness in a donor's gift is to be rejected just as unfairness in a deceased's will is rejected."

L26124 From the chain of Ibn Wahb via Yunus ibn Yazīd, from Ibn Shihāb, who said: I do not deem it permissible for a person to donate all their wealth, but rather a third of it. What is rejected due to the disposer's injustice during their lifetime is treated as what is rejected due to the deceased's injustice in their will at death.

L26125–26127 And via the chain of Ibn Wahb from Ibn Abī al-Zināد from his father: that ʿUmar ibn ʿAbd al-ʿAzīz was present while... A man from the family of al-Zubayr donated all his wealth to some of his children except for a small

وقَوْله تَعَالَى: {وآتُوا حَقَّهُ يَوْمَ حَصَادِهِ وَلا تُسْرِفُوا إِنَّهُ لا يُحِبُّ الْمُسْرِفِينَ} [الأنعام: ١٤١] ٠

وقَوْله تَعَالَى: {وآتِ ذَا الْقُرْبَى حَقَّهُ وَالْمِسْكِينَ وَابْنَ السَّبِيلِ وَلا تُبَذِّرْ تَبْذِيرًا} [الإسراء: ٢٦] {إِنَّ الْمُبَذِّرِينَ كَانُوا إِخْوَانَ الشَّيَاطِينِ} [الإسراء: ٢٧]

وَمِمَّنْ قَالَ بِهَذَا السَّلَفُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنْ ابْنِ الْهَادِ نا عَبْدُ اللَّهِ بْنُ دِينَارٍ عَنْ ابْنِ عُمَرَ أَنَّهُ قَالَ لأَبِيهِ عُمَرَ بْنِ الْخَطَّابِ: إِنِّي رَأَيْت أَنْ أَتَصَدَّقَ بِمَالِي كُلِّهِ؟ فَقَالَ لَهُ عُمَرُ: لَا تَخْرُجْ مِنْ مَالِك كُلِّهِ، وَلَكِنْ تَصَدَّقْ وَأَمْسِكْ.

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا إِبْرَاهِيمُ الْحَرْبِيُّ نا مُحَمَّدُ بْنُ سَهْلٍ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: يُرَدُّ مِنْ حَيْفِ النَّاحِلِ مَا يُرَدُّ مِنْ حَيْفِ الْمَيِّتِ فِي وَصِيَّتِهِ.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ قَالَ: لَا أَرَى أَنْ يَتَصَدَّقَ الْمَرْءُ بِمَالِهِ كُلِّهِ، وَلَكِنْ يَتَصَدَّقُ بِثُلُثِ مَالِهِ يُرَدُّ مِنْ حَيْفِ النَّاحِلِ فِي حَيَاتِهِ مَا يُرَدُّ مِنْ حَيْفِ الْمَيِّتِ فِي وَصِيَّتِهِ عِنْدَ مَوْتِهِ.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ أَبِي الزِّنَادِ عَنْ أَبِيهِ أَنَّهُ حَضَرَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ وَقَدْ تَصَدَّقَ رَجُلٌ مِنْ آلِ الزُّبَيْرِ عَلَى بَعْضِ وَلَدِهِ بِجَمِيعِ مَالِهِ إِلَّا شَيْئًا يَسِيرًا فَأَمْضَى لِلْمُتَصَدَّقِ عَلَيْهِ الثُّلُثَ، أَوْ نَحْوَهُ.

[10] **Qur'an references (L26119):** Qur'an 17:29 (Al-Isra).
[11] **Qur'an references (L26120):** Qur'an 6:141 (Al-An'am).
[12] **Qur'an references (L26121):** Qur'an 17:26 (Al-Isra); Qur'an 17:27 (Al-Isra).

portion, but only a third (or approximately that amount) of his wealth was approved for the recipient.

قَالَ أَبُو مُحَمَّدٍ: لَا نَحُدُّ الثُّلُثَ وَلَا أَكْثَرَ وَلَا أَقَلَّ إِنَّمَا هُوَ مَا أَبْقَى غِنًى.

L26128 Abu Muhammad said: We do not fix a limit at one-third, nor more nor less. It is only what maintains sufficiency.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ أَبِي الزِّنَادِ قَالَ: كُلُّ صَدَقَةٍ تَصَدَّقَ بِهَا رَجُلٌ أَوْ امْرَأَةٌ قَدْ بَلَغَ لَا بَأْسَ بِعَقْلِهِ وَلَيْسَ عَلَيْهِ دَيْنٌ لَا وَفَاءَ لَهُ بِهِ جَائِزَةٌ إِلَّا أَنْ يَكُونَ رَجُلٌ أَوْ امْرَأَةٌ لَهُ غِنًى فَيَتَصَدَّقُ عَلَى بَعْضِ وَرَثَتِهِ بِمَالِهِ كُلِّهِ دُونَ بَعْضٍ، فَإِنَّ ذَلِكَ يُعَدُّ سَرَفًا، فَتَرُدُّ الْوُلَاةُ مِنْ ذَلِكَ الشَّيْءَ بِقَدْرِ رَأْيِهِمْ فِيهِ، وَيُجِيزُونَ السَّدَادَ، عَلَى هَذَا جَرَى أَمْرُ الْقُضَاةِ.

L26129 From the narration of Ibn Wahb, from Yunus ibn Yazid, from Abu al-Zinad, who said: Every charity given by a man or woman who has reached puberty, is of sound mind, and is not indebted with a debt they cannot repay is permissible—except when a wealthy man or woman donates their entire wealth to some of their heirs to the exclusion of others, for this is deemed wasteful. In such cases, the authorities may reduce the amount according to their discretion, approving the settlement. The judges have consistently ruled according to this principle.

فَهَؤُلَاءِ عُمَرُ بْنُ الْخَطَّابِ، وَعُرْوَةُ، وَابْنُ شِهَابٍ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ، وَأَبُو الزِّنَادِ، وَالْقُضَاةُ جُمْلَةً لَا يُجِيزُونَ الصَّدَقَةَ بِجَمِيعِ الْمَالِ.

L26130 These are ʿUmar ibn al-Khaṭṭāb, Urwah, Ibn Shihāb, ʿUmar ibn ʿAbd al-ʿAzīz, Abū al-Zinād, and the judges collectively, as they do not permit giving away the entirety of one's wealth as charity.

قَالَ عَلِيٌّ: وَالْغِنَى هُوَ مَا يَقُومُ بِقُوتِ الْمَرْءِ وَأَهْلِهِ عَلَى الشِّبَعِ مِنْ قُوتِ مِثْلِهِ، وَبِكِسْوَتِهِمْ كَذَلِكَ وَسُكْنَاهُمْ، وَبِمِثْلِ حَالٍ مِنْ مَرْكَبٍ وَزِيٍّ فَقَطْ.

L26131 Ali said: Wealth is that which suffices for a person's sustenance and his dependents' needs to satiety, derived from the sustenance typical of his peers, as well as their clothing and dwelling, and only for a similar condition concerning a mount and attire.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L26132 And with Allah, the Exalted, is all divine success.

فَهَذَا يَقَعُ عَلَيْهِ فِي اللُّغَةِ اسْمُ غِنًى، لِاسْتِغْنَائِهِ عَنْ النَّاسِ، فَمَا زَادَ فَهُوَ وَفْرٌ وَدَثْرٌ وَيَسَارٌ، وَفَضْلٌ إِلَى الْإِكْثَارِ، وَمَا نَقَصَ فَلَيْسَ غِنًى، وَلَكِنَّهُ حَاجَةٌ وَعُسْرَةٌ وَضِيقَةٌ، إِلَّا أَنْ يَنْزِلَ إِلَى الْمَسْكَنَةِ، وَالْفَاقَةِ، وَالْفَقْرِ، وَالْإِدْقَاعِ، وَالضَّرُورَةِ - وَنَعُوذُ بِاللَّهِ مِنْ ذَلِكَ، وَمِنْ فِتْنَةِ الْغِنَى وَالْمَالِ.

L26133 This is what is linguistically termed wealth (ghinā), due to independence from people. Whatever exceeds that constitutes abundance (wafr), affluence (dathr), prosperity (yasar), and excess leading to abundance. Whatever falls short is not wealth, but rather constitutes need (ḥājah), hardship (ʿusrah), and straitened circumstance (ḍīqah), unless it descends to destitution (maskanah), indigence (fāqah), poverty (faqr), extreme poverty (idqāʿ), and necessity (ḍarūrah) – and we seek refuge in Allah from these states, and from the trials of affluence and wealth.

فَإِنْ ذَكَرَ الْمُخَالِفُ قَوْلَ اللَّهِ تَعَالَى: {الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ} [البقرة: ٢٦١]

L26134 If the opponent mentions the statement of Allah, the Most High: "Those

who spend their wealth in the way of Allah" [al-Baqarah 2:261][13]

L26135 And His saying, the Exalted: "They prioritize others over themselves, even if they themselves are in need. And whoever is safeguarded [by Allah] from his soul's greed—it is they who are the successful" [Al-Hashr: 9].[14]

وقَوْله تَعَالَى: {وَيُؤْثِرُونَ عَلَى أَنْفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ وَمَنْ يُوقَ شُحَّ نَفْسِهِ فَأُولَئِكَ هُمُ الْمُفْلِحُونَ} [الحشر: ٩] :

L26136 And His saying, Exalted is He: "And those who can find nothing except their utmost effort." [Surah At-Tawbah 9:79][15]

وقَوْله تَعَالَى {وَالَّذِينَ لا يَجِدُونَ إِلا جُهْدَهُمْ} [التوبة: ٧٩]

L26137 The Messenger of Allah—may Allah bless him and grant him peace—would urge people to give charity, so one of us would go out, carry a load, and bring back a *mudd*.

وَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي أُسَامَةَ عَنْ زَائِدَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي وَائِلٍ عَنْ ابْنِ مَسْعُودٍ كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُ بِالصَّدَقَةِ فَيَنْطَلِقُ أَحَدُنَا فَيُحَامِلُ فَيَجِيءُ بِالْمُدِّ.

L26138–26139 From the narration of Ahmad ibn Shu'ayb: Qutaybah ibn Sa'id narrated to us, al-Layth—that is, ibn Sa'd—narrated to us from Ibn 'Ajlan ibn Sa'id al-Maqburi from Abu Hurayrah, who said: The Messenger of Allah (peace be upon him) said: "A single dirham surpassed a hundred thousand dirhams. A man had two dirhams and gave the more excellent of the two in charity, while another man went to his merchandise, took a hundred thousand dirhams from it, and gave them away in charity."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ عَجْلَانَ بْنِ سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «سَبَقَ دِرْهَمٌ مِائَةَ أَلْفٍ، كَانَ لِرَجُلٍ دِرْهَمَانِ فَتَصَدَّقَ أَجْوَدَهُمَا، وَانْطَلَقَ رَجُلٌ إِلَى عُرْضِ مَالِهِ فَأَخَذَ مِنْهَا مِائَةَ أَلْفٍ فَتَصَدَّقَ بِهَا» .

L26140 From the chain of Ahmad ibn Shuʿayb: From ʿAbd al-Wahhab ibn al-Hakam al-Raqqi, from Hajjaj. Ibn Jurayj said: ʿUthman ibn Abi Sulayman informed me, from ʿAli—who is Ibn ʿAbdullah al-Bariqi—from ʿUbayd ibn ʿUmayr, from ʿAbdullah ibn Habashi al-Sanʿani al-Khathʿami: "The Messenger of Allah—peace and blessings be upon him—was asked: 'Which charity is most virtuous?' He said: 'The effort of the one with little.'"

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَبْدُ الْوَهَّابِ بْنُ الْحَكَمِ الرَّقِّيِّ عَنْ حَجَّاجٍ قَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي عُثْمَانُ بْنُ أَبِي سُلَيْمَانَ عَنْ عَلِيٍّ هُوَ ابْنُ عَبْدِ اللَّهِ الْبَارِقِيُّ - عَنْ عُبَيْدِ بْنِ عُمَيْرٍ عَنْ عَبْدِ اللَّهِ بْنِ حَبَشِيٍّ الصَّنْعَانِيِّ الْخَثْعَمِيِّ " «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ أَيُّ الصَّدَقَةِ أَفْضَلُ؟ قَالَ: جُهْدُ الْمُقِلِّ» .

L26141 From the chain of Shuʿbah, Ibn Abī Burdah (who is Saʿīd) narrated to me, saying: I heard my father report from Abū Mūsā from the Prophet - peace be upon him - who said: "Every Muslim must perform an act of charity."

وَمِنْ طَرِيقِ شُعْبَةَ أَخْبَرَنِي ابْنُ أَبِي بُرْدَةَ هُوَ سَعِيدٌ - قَالَ: سَمِعْتُ أَبِي يُحَدِّثُ عَنْ أَبِي مُوسَى عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «عَلَى كُلِّ مُسْلِمٍ صَدَقَةٌ قَالَ: أَرَأَيْتَ إِنْ لَمْ يَجِدْهَا؟ قَالَ: يَعْمَلُ بِيَدِهِ فَيَنْفَعُ نَفْسَهُ وَيَتَصَدَّقُ» وَذَكَرَ الْحَدِيثَ.

[13] **Qur'an references (L26134):** Qur'an 2:261 (Al-Baqarah); Qur'an 2:262 (Al-Baqarah).
[14] **Qur'an references (L26135):** Qur'an 59:9 (Al-Hashr).
[15] **Qur'an references (L26136):** Qur'an 9:79 (At-Tawbah).

He was asked: “What if he cannot find the means?” He replied: “Let him work with his hands, so he may benefit himself and then give charity.” And he mentioned the ḥadīth.

L26142 Through Muslim’s transmission: From Abu Kuraib, who narrated to us from Waki‘, from Fudayl ibn Ghazwan, from Abu Hazim, from Abu Hurairah: “A man from the Ansar had a guest stay overnight while possessing nothing but his own sustenance and his children’s provisions. He told his wife: ’Put the children to sleep, extinguish the lamp, and bring forth for the guest what you have.’ Thereupon this verse was revealed: {They give preference to others over themselves even when they themselves are in need} [Al-Hashr: 9].”[16]

وَمِنْ طَرِيقِ مُسْلِمٍ عَنْ أَبِي كُرَيْبٍ نا وَكِيعٌ عَنْ فُضَيْلِ بْنِ غَزْوَانَ عَنْ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَجُلًا مِنْ الْأَنْصَارِ بَاتَ بِهِ ضَيْفٌ فَلَمْ يَكُنْ عِنْدَهُ إِلَّا قُوتَهُ وَقُوتَ صِبْيَانِهِ، فَقَالَ لِامْرَأَتِهِ: نَوِّمِي الصِّبْيَةَ، وَأَطْفِئِي السِّرَاجَ، وَقَرِّبِي لِلضَّيْفِ مَا عِنْدَكِ - فَنَزَلَتْ هَذِهِ الْآيَةُ: {وَيُؤْثِرُونَ عَلَى أَنْفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ} [الحشر: ٩] » .

L26143 From the chain of Ibn Wahb via Yunus ibn Yazid from Ibn Shihab, it has been conveyed to us that a man gave his parents a charity (which was all his wealth), then inherited their estate. The Messenger of Allah (peace and blessings be upon him) said to him: “All of it is lawful for you.”

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ بَلَغَنَا: «أَنَّ رَجُلًا تَصَدَّقَ عَلَى أَبَوَيْهِ صَدَقَةً - وَهُوَ مَالُهُ كُلُّهُ - ثُمَّ وَرِثَهُمَا، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: هُوَ كُلُّهُ لَكَ حَلَالٌ» .

L26144–26145 From the chain of Ibn al-Jahm: Muhammad ibn Yunus al-Kudaymi narrated to us, al-‘Ala’ ibn ‘Amr al-Hanafi narrated to us, Abu Ishaq al-Fazari narrated to us from Sufyan al-Thawri from Adam ibn ‘Ali, from Ibn ‘Umar, who said: I was with the Prophet—peace and blessings of Allah be upon him—and Abu Bakr was with him, wearing a cloak fastened at his chest with clasps. Suddenly, Gabriel—peace be upon him—descended upon him and said: “O Messenger of Allah, why do I see Abu Bakr wearing a cloak fastened with clasps?” He replied: “O Gabriel, he spent his wealth on me before the Conquest.” Gabriel said: “O Muhammad, Allah the Exalted says to you: Convey peace to Abu Bakr al-Siddiq, and Allah says to him: ’Are you content with Me in this state of poverty, or are you displeased?’” The Prophet conveyed this to him? Abu Bakr wept, saying: “O Messenger of Allah, would I be displeased with my Lord? I am content with my Lord!” He repeated this phrase three times: “I am content with my Lord!”

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا مُحَمَّدُ بْنُ يُونُسَ الْكُدَيْمِيُّ نا الْعَلَاءُ بْنُ عَمْرٍو الْحَنَفِيُّ نا أَبُو إِسْحَاقَ الْفَزَارِيّ عَنْ سُفْيَانَ الثَّوْرِيّ عَنْ آدَمَ بْنِ عَلِيٍّ «عَنْ ابْنِ عُمَرَ قَالَ كُنْتُ عِنْدَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعِنْدَهُ أَبُو بَكْرٍ وَعَلَيْهِ عَبَاءَةٌ قَدْ خَلَّهَا فِي صَدْرِهِ بِخِلَالٍ إِذْ هَبَطَ عَلَيْهِ جِبْرِيلُ - عَلَيْهِ السَّلَامُ - فَقَالَ: يَا رَسُولَ اللَّهِ مَالِي أَرَى أَبَا بَكْرٍ وَعَلَيْهِ عَبَاءَةٌ قَدْ خَلَّهَا بِخِلَالٍ؟ قَالَ: يَا جِبْرِيلُ أَنْفَقَ عَلَيَّ مَالَهُ قَبْلَ الْفَتْحِ؟ فَقَالَ: يَا مُحَمَّدُ إِنَّ اللَّهَ تَعَالَى يَقُولُ لَكَ: اقْرَأْ عَلَى أَبِي بَكْرٍ الصِّدِّيقِ السَّلَامَ، وَقَالَ لَهُ: أَرَاضٍ أَنْتَ عَنِّي يَا أَبَا بَكْرٍ فِي فَقْرِكَ هَذَا أَمْ سَاخِطٌ؟ فَقَالَ لَهُ النَّبِيُّ ذَلِكَ؟ فَبَكَى أَبُو بَكْرٍ، وَقَالَ: يَا رَسُولَ اللَّهِ أَأَسْخَطُ عَلَى رَبِّي، أَنَا عَنْ رَبِّي رَاضٍ وَكَرَّرَهَا ثَلَاثًا» .

L26146 And from the chain of Abu Dawud: Uthman ibn Abi Shaybah narrated to us,

[16] **Qur’an references (L26142):** Qur’an 59:9 (Al-Hashr).

al-Fadl ibn Dukayn narrated to us, Hisham ibn Sa'd narrated to us, from Zayd ibn Aslam from his father that Umar ibn al-Khattab said: "The Messenger of Allah (peace be upon him) commanded us to give alms. Abu Bakr brought all his wealth, so the Messenger of Allah (peace be upon him) said to him: 'What have you left for your family?' He replied: 'I have left for them Allah and His Messengers.'"

وَمِنْ طَرِيقِ أَبِي دَاوُد نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا الْفَضْلُ بْنُ دُكَيْنٍ نا هِشَامُ بْنُ سَعْدٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ أَبِيهِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالصَّدَقَةِ فَأَتَى أَبُو بَكْرٍ بِمَالِهِ كُلِّهِ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: مَا أَبْقَيْتَ لِأَهْلِكَ؟ فَقَالَ: أَبْقَيْتُ لَهُمْ اللَّهَ وَرُسُلَهُ» .

L26147 Through the transmission chain of Al-Bazzār: Muḥammad ibn ʿĪsā narrated to us, from Isḥāq ibn Muḥammad al-Farawī, from ʿUbayd Allāh ibn ʿUmar, from Nāfiʿ, from Ibn ʿUmar, from ʿUmar who said: "Allah's Messenger (peace be upon him) commanded us to give alms. I brought half my wealth, whereupon Allah's Messenger (peace be upon him) asked: 'What have you left for your family?' I answered: 'An equal amount.' He then said: '...' Then Abū Bakr came with all his possessions, and Allah's Messenger (peace be upon him) inquired: 'O Abū Bakr, what have you left for your family?' He responded: 'I have left them Allah and His Messenger.'"

وَمِنْ طَرِيقِ الْبَزَّارِ نا مُحَمَّدُ بْنُ عِيسَى نا إِسْحَاقُ بْنُ مُحَمَّدٍ الْفَرْوِيُّ نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «عَنْ عُمَرَ، قَالَ أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالصَّدَقَةِ، فَجِئْتُ بِنِصْفِ مَالِي، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا أَبْقَيْتَ لِأَهْلِكَ؟ فَقُلْتُ: مِثْلَهُ، قَالَ: وَجَاءَ أَبُو بَكْرٍ بِكُلِّ مَا عِنْدَهُ فَقَالَ: يَا أَبَا بَكْرٍ مَا أَبْقَيْتَ لِأَهْلِكَ؟ قَالَ: اللَّهَ وَرَسُولَهُ» .

L26148 This is all they can mention; we [feminine] have investigated it, but there is no argument for them in any of it.

هَذَا كُلُّ مَا يُمْكِنُ أَنْ يَذْكُرُوهُ قَدْ تَقَصَّيْنَاهُ وَلَكِنَّهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ.

L26149 As for the statement of Allah, the Exalted: "Those who spend their possessions in the way of Allah" [Al-Baqarah: 261], He, the Exalted, did not say "all of their possessions."[17]

أَمَّا قَوْلُ اللَّهِ تَعَالَى: {الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ} [البقرة: ٢٦١] فَلَمْ يَقُلْ تَعَالَى أَمْوَالَهُمْ كُلَّهَا.

L26150 Whoever spends three times in the cause of Allah, or spends three instances in number likewise, has spent his wealth in the cause of Allah the Exalted. Just as whoever spends a dirham, or even less, in the cause of Allah the Mighty and Majestic has spent his wealth in the cause of Allah, since any portion of one's wealth - however small - is termed his wealth.

وَمَنْ أَنْفَقَ ثَلَاثَ مَرَّاتٍ فِي سَبِيلِ اللَّهِ، أَوْ أَنْفَقَ ثَلَاثَةً بِالْعَدَدِ كَذَلِكَ: فَقَدْ أَنْفَقَ أَمْوَالَهُ فِي سَبِيلِ اللَّهِ تَعَالَى، كَمَا أَنَّ مَنْ أَنْفَقَ دِرْهَمًا فِي سَبِيلِ اللَّهِ تَعَالَى أَوْ أَقَلَّ، فَقَدْ أَنْفَقَ مَالَهُ فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ؛ لِأَنَّ بَعْضَ مَالِهِ وَإِنْ قَلَّ يُسَمَّى مَالَهُ.

L26151–26153 Then, the clarification of what is permissible to spend and what is not permissible in the verses and hadiths we have presented. And it is not permissible [to do so]. That it is said: "This verse abrogates that one, permits the fullest extent of open-handedness, permits squandering, and permits extravagance"—whoever makes such a claim is lying against Allah, the Exalted.

ثُمَّ بَيَانُ مَا يَجُوزُ إِنْفَاقُهُ وَمَا لَا يَجُوزُ فِي الْآيَاتِ وَالْأَحَادِيثِ الَّتِي قَدَّمْنَا، وَلَا يَجُوزُ أَنْ يُقَالَ: إِنَّ هَذِهِ الْآيَةَ نَاسِخَةٌ لِتِلْكَ وَمُبِيحَةٌ لِبَسْطِ يَدِهِ كُلَّ الْبَسْطِ، وَلِلتَّبْذِيرِ وَالسَّرَفِ، فَيَكُونُ مَنْ قَالَ ذَلِكَ كَاذِبًا عَلَى اللَّهِ تَعَالَى.

[17] **Qur'an references (L26149):** Qur'an 2:261 (Al-Baqarah); Qur'an 2:262 (Al-Baqarah).

L26154 As for the statement of Allah the Exalted: {And [also] those who can give nothing except their utmost effort} [At-Tawbah: 79], alongside the Prophet's declaration (peace and blessings be upon him) when asked about "the best charity is the utmost effort of the destitute," these two texts are elucidated by the narration we transmitted through Abū Dāwūd's chain: Qutaybah narrated to us, Al-Layth ibn Saʿd narrated to us, from Abū al-Zubayr, from Yaḥyā ibn Jaʿdah, from Abū Hurayrah, who said: "O Messenger of Allah, which charity is best?" He replied: "The utmost effort of the destitute; and begin with those you are responsible to provide for."[18][19]

وَأَمَّا قَوْله تَعَالَى: {وَالَّذِينَ لا يَجِدُونَ إِلا جُهْدَهُمْ} [التوبة: ٧٩] مَعَ قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إِذْ سُئِلَ عَنْ «أَفْضَلِ الصَّدَقَةِ جُهْدُ الْمُقِلِّ» فَإِنَّ هَذَيْنِ النَّصَّيْنِ بَيَّنَهُمَا مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا قُتَيْبَةُ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ أَبِي الزُّبَيْرِ عَنْ يَحْيَى بْنِ جَعْدَةَ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ «يَا رَسُولَ اللَّهِ، أَيُّ الصَّدَقَةِ أَفْضَلُ؟ قَالَ: جُهْدُ الْمُقِلِّ، وَأَبْدَأْ بِمَنْ تَعُولُ» .

L26155 Thus, it is established that this verse and the narration of ʿAbd Allāh ibn Ḥabashī pertain solely to one's utmost capacity, even if one's wealth is meager, not plentiful, provided they ensure adequate provision for their dependents as a necessity.

فَصَحَّ أَنَّ هَذِهِ الْآيَةَ، وَخَبَرَ عَبْدِ اللَّهِ بْنِ حَبَشِيٍّ إِنَّمَا هُمَا فِي جُهْدِهِ، وَإِنْ كَانَ مُقِلًّا مِنْ الْمَالِ غَيْرَ مُكْثِرٍ إذَا أَبْقَى لِمَنْ يَعُولُ غِنًى وَلَا بُدَّ.

L26156 As for Allah's statement, the Exalted: {They prefer others over themselves even if they are in destitution} [Al-Hashr: 9], this is true, and there is no valid argument for them in it. For whoever is in destitution yet prefers others over himself, this is only possible through exertion, and this is what we say. It does not indicate that it is permissible to squander oneself and one's family or to give charity to someone wealthier than him.[20]

وَأَمَّا قَوْلُ اللَّهِ تَعَالَى {وَيُؤْثِرُونَ عَلَى أَنْفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ} [الحشر: ٩] فَحَقٌّ، وَلَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ مَنْ بِهِ خَصَاصَةٌ وَآثَرَ عَلَى نَفْسِهِ فَلَا يَكُونُ ذَلِكَ إلَّا فِي مَجْهُودٍ، وَهَكَذَا نَقُولُ، وَلَيْسَ فِيهَا أَنَّهُ مُبَاحٌ لَهُ تَضْيِيعُ نَفْسِهِ، وَأَهْلِهِ، وَالصَّدَقَةُ عَلَى مَنْ هُوَ أَغْنَى مِنْهُ.

L26157 As for the ḥadīth of Ibn Masʿūd: "One of them would carry loads on his back, obtain a *mudd*, and give it in charity," this is Ḥasan. It refers to one who has sufficient means for himself and his family, with no surplus. He carries loads on his back, acquires a *mudd* he does not need, and gives it in charity.

وَأَمَّا «حَدِيثُ ابْنِ مَسْعُودٍ: أَنَّ أَحَدَهُمْ كَانَ يُحَامِلُ فَيَأْتِي بِالْمُدِّ فَيَتَصَدَّقُ بِهِ» فَهَذَا حَسَنٌ، وَهُوَ أَنْ يَكُونَ لَهُ غِنًى وَلِأَهْلِهِ، وَلَا فَضْلَ عِنْدَهُ فَيَحْمِلُ عَلَى ظَهْرِهِ فَيُصِيبُ مُدًّا هُوَ عَنْهُ فِي غِنًى فَيَتَصَدَّقُ بِهِ.

L26158 All of this is built upon "Begin with those you are responsible for," "The best charity is that which is given from one's surplus," and his returning—peace and blessings be upon him—of what exceeds the surplus.

وَهَذَا كُلُّهُ مَبْنِيٌّ عَلَى «ابْدَأْ بِمَنْ تَعُولُ» - «وَأَفْضَلُ الصَّدَقَةِ مَا كَانَ عَنْ ظَهْرِ غِنًى» «، وَرَدُّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَا زَادَ عَلَى ذَلِكَ» .

[18] **Hadith references (L26154):** Sunan Abi Dawud 1677; Mishkat al-Masabih 1938.
[19] **Qur'an references (L26154):** Qur'an 9:79 (At-Tawbah).
[20] **Qur'an references (L26156):** Qur'an 59:9 (Al-Hashr).

L26159 As for the ḥadīth of Abū Hurayrah, "A dirham surpassed a hundred thousand," this is clarified. It is based on him being self-sufficient while having only two dirhams remaining, so he donated the better of the two in charity. The proportion of that single dirham relative to his total wealth exceeded only the proportion of the hundred thousand relative to the other person's wealth. It does not indicate that he lacked self-sufficiency beyond those two dirhams.

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ «سَبَقَ دِرْهَمٌ مِائَةَ أَلْفٍ» تَصْحِيحٌ وَهُوَ مَبْنِيٌّ عَلَى أَنَّهُ كَانَ لَهُ غِنًى، وَفَضَلَ لَهُ دِرْهَمَانِ فَقَطْ فَتَصَدَّقَ بِأَجْوَدِهِمَا، وَكَانَتْ نِسْبَةُ الدِّرْهَمِ مِنْ مَالِهِ أَكْثَرَ مِنْ نِسْبَةِ الْمِائَةِ الْأَلْفِ مِنْ مَالِ الْآخَرِ فَقَطْ، وَلَيْسَ فِيهِ أَنَّهُ لَمْ يَكُنْ لَهُ غِنًى سِوَاهُمَا.

L26160–26161 As for the ḥadīth of Abū Mūsā, "He works with his hands, benefits himself, and gives charity," it is clear as we say, because the Prophet (peace be upon him) did not isolate charity to the exclusion of his own benefit. Rather, he began with his own benefit for himself, and this is what we say.

وَأَمَّا حَدِيثُ أَبِي مُوسَى يَعْتَمِلُ بِيَدِهِ فَيَنْفَعُ نَفْسَهُ وَيَتَصَدَّقُ فَبَيِّنٌ كَقَوْلِنَا؛ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُفْرِدْ الصَّدَقَةَ دُونَ مَنْفَعَةِ نَفْسِهِ، بَلْ بَدَأَ بِنَفْسِهِ لِنَفْسِهِ، وَهَكَذَا نَقُولُ.

L26162 As for the Ḥadīth of the Anṣārī man who hosted the guest overnight, we have transmitted it with a clear clarification, just as we transmitted it via the chain reported in Muslim's collection: Abū Kurayb narrated to us, Ibn Fuḍayl narrated to us from his father - who is Fuḍayl ibn Ghazwān - from Abū Ḥāzim al-Ashjaʿī from Abū Hurayrah, who said: "A man came to the Messenger of Allāh - peace be upon him - seeking hospitality, but he had nothing to offer his guest. He said: 'Is there no man who will host this guest, may Allāh have mercy on him?' Thereupon a man from the Anṣār named Abū Ṭalḥah stood up and took him to his home." He then related the Ḥadīth as narrated by Jarīr and Wakīʿ from Fuḍayl ibn Ghazwān. Thus, it was confirmed that the man was Abū Ṭalḥah, who was among the affluent notables of the Anṣār.

وَأَمَّا حَدِيثُ الْأَنْصَارِيِّ الَّذِي بَاتَ بِهِ الضَّيْفُ فَقَدْ رُوِّينَاهُ بِبَيَانٍ لَائِحٍ، كَمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو كُرَيْبٍ نا ابْنُ فُضَيْلٍ عَنْ أَبِيهِ - هُوَ فُضَيْلُ بْنُ غَزْوَانَ - عَنْ أَبِي حَازِمٍ الْأَشْجَعِيِّ عَنْ أَبِي هُرَيْرَةَ قَالَ: «جَاءَ رَجُلٌ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُضِيفَهُ فَلَمْ يَكُنْ عِنْدَهُ مَا لِضَيْفِهِ فَقَالَ: أَلَا رَجُلٌ يُضِيفُ هَذَا رَحِمَهُ اللَّهُ؟ فَقَامَ رَجُلٌ مِنْ الْأَنْصَارِ يُقَالُ لَهُ: أَبُو طَلْحَةَ، فَانْطَلَقَ بِهِ إلَى رَحْلِهِ» ، ثُمَّ سَاقَ الْحَدِيثَ، كَمَا رَوَاهُ جَرِيرٌ، وَوَكِيعٌ عَنْ فُضَيْلِ بْنِ غَزْوَانَ - فَصَحَّ أَنَّ ذَلِكَ الرَّجُلَ كَانَ أَبَا طَلْحَةَ وَهُوَ مُوسِرٌ مِنْ مَيَاسِيرِ الْأَنْصَارِ.

L26163 It has been reported to us from Anas that he said: Abu Talhah was the wealthiest of the Ansar in Medina in terms of palm trees. Yet at times, even the wealthy might lack prepared food—thus their reliance on this report became invalid.

وَرُوِّينَا عَنْ أَنَسٍ أَنَّهُ قَالَ: كَانَ أَبُو طَلْحَةَ أَكْثَرَ الْأَنْصَارِ بِالْمَدِينَةِ مَالًا مِنْ نَخْلٍ، وَقَدْ لَا يَحْضُرُ الْمُوسِرَ أَكْلٌ حَاضِرٌ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ.

L26164 As for the narration of Ibn Shihab, its chain is interrupted. We have transmitted it with a more clearly documented chain than this, as we transmitted it through the chain of Muhammad ibn al-Jahm: Abu al-Walid al-Antaki narrated to us, al-Haytham ibn Jamil narrated to us, Sufyan narrated from 'Amr ibn Dinar and Humayd al-A'raj, both of whom narrated from Abu Bakr ibn

وَأَمَّا حَدِيثُ ابْنِ شِهَابٍ فَمُنْقَطِعٌ، وَقَدْ رُوِّينَاهُ بِأَحْسَنَ مِنْ هَذَا السَّنَدِ بَيَانًا، كَمَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْجَهْمِ نا أَبُو الْوَلِيدِ الْأَنْطَاكِيُّ نا الْهَيْثَمُ بْنُ جَمِيلٍ نا سُفْيَانُ عَنْ عَمْرِو بْنِ دِينَارٍ وَحُمَيْدٍ الْأَعْرَجِ كِلَاهُمَا عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَبْدِ اللَّهِ

بْنِ زَيْدٍ الْأَنْصَارِيِّ قَالَ «جَاءَ رَجُلٌ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إِنَّ حَائِطِي صَدَقَةٌ إِلَى اللَّهِ عَزَّ وَجَلَّ وَرَسُولِهِ، فَأَتَى أَبُوهُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: مَا كَانَ لَنَا عَيْشٌ غَيْرُهَا، فَرَدَّهَا عَلَيْهِ - يَعْنِي عَلَى الْأَبِ - فَمَاتَ فَوَرِثَهَا - يَعْنِي الِابْنُ عَنْ أَبِيهِ -» فَهَذَا أَحْسَنُ مِنْ ذَلِكَ السَّنَدِ - وَفِيهِ رَدُّهُ - عَلَيْهِ السَّلَامُ - لِتِلْكَ الصَّدَقَةِ الَّتِي كَانَ لَا عَيْشَ لِأَبِيهِ إِلَّا مِنْهَا، فَرَدَّهَا عَلَيْهِ، وَلَيْسَ فِيهِ أَنَّ الِابْنَ لَمْ يَكُنْ لَهُ غِنًى غَيْرُهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

Muhammad ibn ’Amr ibn Hazm, from ’Abdullah ibn Zayd al-Ansari, who said: “A man came to the Prophet (peace be upon him) and said: ’O Messenger of Allah, my walled garden is a charity dedicated to Allah, the Almighty and His Messenger.’ Then his father came to the Prophet (peace be upon him) and said: ’We have no livelihood other than it.’ So he returned it to him—meaning to the father. When he died, the son inherited it from his father.” This chain is superior to the previous one, and it includes his (peace be upon him) returning of that charity from which the father had no livelihood except through it, thus restoring it to him. It does not mention that the son lacked other means of sufficiency besides it. Success comes solely from Allah, the Exalted.

وَأَمَّا حَدِيثُ أَبِي بَكْرٍ - رَضِيَ اللَّهُ تَعَالَى عَنْهُ - فَغَيْرُ صَحِيحٍ أَصْلًا؛ لِأَنَّ إِحْدَى طَرِيقَيْهِ مِنْ رِوَايَةِ هِشَامِ بْنِ سَعْدٍ - وَهُوَ ضَعِيفٌ - وَالثَّانِيَةُ مِنْ رِوَايَةِ إِسْحَاقَ الْفَرْوِيِّ - وَهُوَ ضَعِيفٌ - عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ الْعُمَرِيِّ الصَّغِيرِ - وَهُوَ ضَعِيفٌ - ثُمَّ لَوْ صَحَّ لَهُمْ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّ الْأَصْلَ إبَاحَةُ الصَّدَقَةِ مَا لَمْ يَأْتِ نَهْيٌ عَنْ تَحْرِيمِهَا فَكَانَ يَكُونُ مُوَافِقًا لِمَعْهُودِ الْأَصْلِ، وَكَانَ النَّصُّ الَّذِي قَدَّمْنَا مِنْ الْقُرْآنِ وَالسُّنَّةِ وَارِدًا بِالْمَنْعِ مِنْ بَعْضِ الصَّدَقَةِ، فَهُوَ بِيَقِينٍ لَا شَكَّ فِيهِ نَاسِخٌ لِمَا يَقْدُمُهُ، وَمَنْ ادَّعَى فِيمَا تَيَقَّنَ أَنَّهُ نَاسِخٌ أَنَّهُ قَدْ نُسِخَ، فَقَدْ كَذَبَ، وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ وَرَامَ إبْطَالَ الْيَقِينِ بِالظَّنِّ الْإِفْكِ.

L26165 As for the ḥadīth of Abū Bakr—may Allah the Exalted be pleased with him—it is not authentic at all, because one of its two chains is transmitted through Hishām ibn Sa‘d—and he is weak—and the second is transmitted through Isḥāq al-Farwī—and he is weak—from ‘Abdullāh ibn ‘Umar al-‘Umarī al-Ṣaghīr—and he is weak. Moreover, even if it were deemed authentic according to them, it would not constitute proof for them, because the foundational principle is the permissibility of charity unless there arises a prohibition against its prohibition. Thus, it would align with the established principle. The textual evidence we presented earlier from the Quran and the Sunnah, which prohibits certain forms of charity, abrogates what precedes it with absolute certainty, beyond any doubt. Whoever claims that what is confirmed as abrogating has itself been abrogated has lied, pursued matters of which he has no knowledge, and sought to invalidate certainty through false conjecture.

وَأَمَّا الْحَدِيثُ الْآخَرُ الَّذِي فِيهِ «أَنْفَقَ عَلَيَّ مَالَهُ قَبْلَ الْفَتْحِ» فَلَا يَحِلُّ الِاحْتِجَاجُ بِهِ؛ لِأَنَّهُ مِنْ طَرِيقِ الْعَلَاءِ بْنِ عَمْرٍو الْحَنَفِيِّ - وَهُوَ هَالِكٌ مُطْرَحٌ - ثُمَّ التَّوْلِيدُ فِيهِ لَائِحٌ؛ لِأَنَّ فِيهِ نَصًّا: أَنَّ ذَلِكَ كَانَ بَعْدَ الْفَتْحِ، وَكَانَ فَتْحُ خَيْبَرَ قَبْلَ الْفَتْحِ بِعَامَيْنِ، وَكَانَ لِأَبِي بَكْرٍ فِيهَا مِنْ سَهْمِهِ مَالٌ وَاسِعٌ مَشْهُورٌ.

L26166–26167 As for the other hadith containing the statement “He spent his wealth on me before the conquest,” it is impermissible to use it as evidence because its chain includes al-‘Alā’ ibn ‘Amr al-Ḥanafī—an abandoned and discarded transmitter. Moreover, the interpolation within it is apparent, as it explicitly states this occurred after the conquest, while the conquest of Khaybar preceded the Conquest of Mecca by two years. Furthermore, Abū Bakr possessed vast and well-known wealth from his share in Khaybar.

L26168 Whoever adopts these hadiths has contradicted those, and this is not per-

missible. And whoever adopts those has adopted these. It is imperative to reconcile what is authentic from those reports, combining some with others. It is impermissible to leave aside some for others except due to an addition, abrogation, or specification by another text.

وَمَنْ أَخَذَ بِهَذِهِ الْأَحَادِيثِ كَانَ قَدْ خَالَفَ تِلْكَ، وَهَذَا لَا يَحِلُّ، وَكَانَ مَنْ أَخَذَ بِتِلْكَ قَدْ أَخَذَ بِهَذِهِ، وَلَا بُدَّ مِنْ تَأْلِيفِ مَا صَحَّ مِنْ تِلْكَ الْأَخْبَارِ، وَضَمِّ بَعْضِهَا إِلَى بَعْضٍ، وَلَا يَحِلُّ تَرْكُ بَعْضِهَا لِبَعْضٍ إِلَّا بِزِيَادَةٍ أَوْ نَسْخٍ أَوْ تَخْصِيصِ بِنَصٍّ آخَرَ.

L26169 And among the astonishing things is their argument using the hadith we mentioned from Ibn Umar: "I resolved to give all my wealth in charity." How astonishing it is to use the dreams of a sleeper as proof in matters of religion! This is truly astonishing, and indeed Umar, his father—may Allah be pleased with him—heard that dream yet paid no heed to it.

وَمِنْ الْعَجَبِ احْتِجَاجُهُمْ بِالْحَدِيثِ الَّذِي ذَكَرْنَا عَنْ ابْنِ عُمَرَ: رَأَيْت أَنْ أَتَصَدَّقَ بِمَالِي كُلِّهِ، فَمِنْ الْعَجَبِ الِاحْتِجَاجُ فِي الدِّينِ بِأَحْلَامِ نَائِمٍ، هَذَا عَجَبٌ جِدًّا وَقَدْ سَمِعَ عُمَرُ أَبُوهُ - رَضِيَ اللَّهُ عَنْهُ - تِلْكَ الرُّؤْيَا فَلَمْ يَعْبَأْ بِهَا.

L26170 Thus, all that they contested is nullified, and all that we have presented remains valid in its rightful measure. And success is from Allah, the Exalted.

فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ وَبَقِيَ كُلُّ مَا أَوْرَدْنَا بِحَسْبِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26171 Among the wonders of the world which have no equal: the prohibition by Malikis and Shafi'is preventing a person deceived in transactions from donating a single dirham for Allah's sake, or emancipating his slave for Allah's sake—though he possesses a million dinars and a hundred slaves, while Allah the Exalted has urged him to perform good deeds. Yet they permit him—if he testifies before the judge that he is not defrauded in sales, and the judge grants him unrestricted authority over his wealth (do you realize what the judge is capable of?)—to give all his wealth to a prodigal poet or his boon companion for purposes contrary to Allah's will. Consequently, he, his children, and his household remain begging at doors, perishing from hunger and cold. By Allah, this has never been part of Allah the Exalted's judgment—it is nothing but Satan's ruling. We seek refuge in Allah from such disgrace.

وَمِنْ عَجَائِبِ الدُّنْيَا الَّتِي لَا نَظِيرَ لَهَا: مَنْعُ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، مَنْ يُخْدَعُ فِي الْبُيُوعِ مِنْ أَنْ يَتَصَدَّقَ بِدِرْهَمٍ لِلَّهِ تَعَالَى، أَوْ بِعِتْقِ عَبْدِهِ لِلَّهِ تَعَالَى، وَهُوَ صَاحِبُ أَلْفِ أَلْفِ دِينَارٍ وَمِائَةِ عَبْدٍ - وَقَدْ حَضَّهُ اللَّهُ تَعَالَى عَلَى فِعْلِ الْخَيْرِ - ثُمَّ يُجِيزُونَ لَهُ إذَا شَهِدَ عِنْدَ الْقَاضِي أَنْ لَا يُغْبَنَ فِي الْبَيْعِ فَأَطْلَقَهُ الْقَاضِي عَلَى مَالِهِ، وَمَا أَدْرَاك مَا الْقَاضِي أَنْ يُعْطِيَ جَمِيعَ مَالِهِ لِشَاعِرٍ سَفِيهٍ، أَوْ لِنَدِيمِهِ فِي غَيْرِ وَجْهِ اللَّهِ عَزَّ وَجَلَّ، وَيَبْقَى هُوَ وَأَطْفَالُهُ وَعِيَالُهُ يَسْأَلُونَ عَلَى الْأَبْوَابِ وَيَمُوتُونَ جُوعًا وَبَرْدًا، وَاَللَّهِ مَا كَانَ قَطُّ هَذَا مِنْ حُكْمِ اللَّهِ تَعَالَى، مَا هُوَ إلَّا مِنْ حُكْمِ الشَّيْطَانِ - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

The juristic issue of giving a gift or charity to one of the children.

[مَسْأَلَةُ الْهِبَةِ أَوْ الصَّدَقَةِ لِأَحَدِ الْأَوْلَادِ]

L26173 1634. Issue: It is not permissible for anyone to give a gift or charity to one of his children unless he gives or gives as charity an equivalent amount to each of them.

١٦٣٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَهَبَ، وَلَا أَنْ يَتَصَدَّقَ عَلَى أَحَدٍ مِنْ وَلَدِهِ إلَّا حَتَّى يُعْطِيَ أَوْ يَتَصَدَّقَ عَلَى كُلِّ وَاحِدٍ مِنْهُمْ بِمِثْلِ ذَلِكَ.

L26174 It is impermissible to favor a male over a female or a female over a male. If

one does so, the act is perpetually annulled and invalidated without exception. This ruling applies only to voluntary acts; as for obligatory expenses, it does not apply. The same applies to obligatory clothing.

وَلَا يَحِلُّ أَنْ يُفَضِّلَ ذَكَرًا عَلَى أُنْثَى، وَلَا أُنْثَى عَلَى ذَكَرٍ، فَإِنْ فَعَلَ فَهُوَ مَفْسُوخٌ مَرْدُودٌ أَبَدًا وَلَا بُدَّ، وَإِنَّمَا هَذَا فِي التَّطَوُّعِ - وَأَمَّا فِي النَّفَقَاتِ الْوَاجِبَاتِ فَلَا، وَكَذَلِكَ الْكِسْوَةُ الْوَاجِبَةُ.

L26175–26177 However, he provides for each individual among them according to his need, and for the poor among them to the exclusion of the wealthy. He is not obligated in what we mentioned concerning grandchildren, nor in their mothers, nor in their wives, nor in... The father is not restricted to distributing his wealth solely among their slaves or to those other than his children; rather, he may favor with his wealth whomever he wishes. If he has children and gives to them, then a child is born to him afterward, he must give to the new child as he gave to the others, or include the new child in the gifts given to them. If the specific gifted item changes—provided that none of them has died—such that his wealth becomes owned by another, then the father must give to this child as he gave to the others. If he does not do so, the child is to be given from the father's estate an equivalent amount to what was given to the others, drawn from the principal of his wealth.

لَكِنْ يُنْفِقُ عَلَى كُلِّ امْرِئٍ مِنْهُمْ بِحَسْبِ حَاجَتِهِ، وَيُنْفِقُ عَلَى الْفَقِيرِ مِنْهُمْ دُونَ الْغَنِيِّ، وَلَا يَلْزَمُهُ مَا ذَكَرْنَا فِي وَلَدِ الْوَلَدِ، وَلَا فِي أُمَّهَاتِهِمْ، وَلَا فِي نِسَائِهِمْ، وَلَا فِي رَقِيقِهِمْ، وَلَا فِي غَيْرِ وَلَدٍ، بَلْ لَهُ أَنْ يُفَضِّلَ بِمَالِهِ كُلَّ مَنْ أَحَبَّ، فَإِنْ كَانَ لَهُ وَلَدٌ فَأَعْطَاهُمْ، ثُمَّ وُلِدَ لَهُ وَلَدٌ فَعَلَيْهِ أَنْ يُعْطِيَهُ كَمَا أَعْطَاهُمْ، أَوْ يُشْرِكَهُمْ فِيمَا أَعْطَاهُمْ، وَإِنْ تَغَيَّرَتْ عَيْنُ الْعَطِيَّةِ - مَا لَمْ يَمُتْ أَحَدُهُمْ - فَيَصِيرُ مَالُهُ لِغَيْرِهِ، فَعَلَى الْأَبِ حِينَئِذٍ أَنْ يُعْطِيَ هَذَا الْوَلَدَ، كَمَا أَعْطَى غَيْرَهُ، فَإِنْ لَمْ يَفْعَلْ أُعْطِيَ مِمَّا تَرَكَ أَبُوهُ مِنْ رَأْسِ مَالِهِ مِثْلَ ذَلِكَ.

L26178 This was narrated from the majority of the Salaf: as transmitted to us through Abd al-Razzaq's chain from Ma'mar, from Ayyub al-Sakhtiyānī, from Ibn Sirīn—Sa'd ibn Ubadah distributed his wealth among his sons during his lifetime. A child was subsequently born to him after his death. Umar met Abu Bakr and said: "I could not sleep tonight because of this son of Sa'd—the newborn was left nothing." Abu Bakr responded: "By Allah, neither did I. Come with me to Qays ibn Sa'd that we may speak to him about his brother." When they approached him and conveyed their concern, Qays declared: "As for what Sa'd executed during his lifetime, I shall never revoke it. However, I call you both to witness that my share is his."

وَرُوِيَ ذَلِكَ عَنْ جُمْهُورِ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنِ ابْنِ سِيرِينَ أَنَّ سَعْدَ بْنَ عُبَادَةَ قَسَمَ مَالَهُ بَيْنَ بَنِيهِ فِي حَيَاتِهِ فَوُلِدَ لَهُ بَعْدَ مَا مَاتَ فَلَقِيَ عُمَرُ أَبَا بَكْرٍ فَقَالَ لَهُ: مَا نِمْتُ اللَّيْلَةَ مِنْ أَجْلِ ابْنِ سَعْدٍ هَذَا الْمَوْلُودُ لَمْ يُتْرَكْ لَهُ شَيْءٌ؟ فَقَالَ أَبُو بَكْرٍ: وَأَنَا وَاللَّهِ، فَانْطَلِقْ بِنَا إِلَى قَيْسِ بْنِ سَعْدٍ نُكَلِّمْهُ فِي أَخِيهِ، فَأَتَيْنَاهُ فَكَلَّمْنَاهُ فَقَالَ قَيْسٌ: أَمَّا شَيْءٌ أَمْضَاهُ سَعْدٌ فَلَا أَرُدُّهُ أَبَدًا، وَلَكِنْ أُشْهِدُكُمَا أَنَّ نَصِيبِي لَهُ.

L26179 Abu Muhammad said: Qays has overstepped his right, and Abu Bakr's ratification of that division is proof of the validity of its fairness.

قَالَ أَبُو مُحَمَّدٍ: قَدْ زَادَ قَيْسٌ عَلَى حَقِّهِ، وَإِقْرَارُ أَبِي بَكْرٍ لِتِلْكَ الْقِسْمَةِ دَلِيلٌ عَلَى صِحَّةِ اعْتِدَالِهَا.

L26180 From the path of Abd al-Razzaq, from Ibn Jurayj: Ibn Abi Mulaykah informed me that al-Qasim ibn Muhammad informed him that Abu Bakr al-Siddiq said to Aisha, the Mother of the Believers: “O my dear daughter, I have gifted you palm trees from Khaybar, but I fear I favored you over my children, and you did not take possession of them for yourself. So return them to my children.” She replied: “O my father, if Khaybar, with its annual yield, were gold, I would return it [Khaybar].”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ أَبِي مُلَيْكَةَ أَنَّ الْقَاسِمَ بْنَ مُحَمَّدٍ أَخْبَرَهُ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ قَالَ لِعَائِشَةَ أُمِّ الْمُؤْمِنِينَ: يَا بُنَيَّةُ، إِنِّي نَحَلْتُكِ نَخْلًا مِنْ خَيْبَرَ، وَإِنِّي أَخَافُ أَنْ أَكُونَ آثَرْتُكِ عَلَى وَلَدِي، وَإِنَّكِ لَمْ تَكُونِي احْتَزْتِيهِ، فَرُدِّيهِ عَلَى وَلَدِي؟ فَقَالَتْ: يَا أَبَتَاهُ، لَوْ كَانَتْ لِي خَيْبَرُ بِجِدَادِهَا ذَهَبًا لَرَدَدْتُهَا.

L26181 From the chain of Muḥammad ibn Aḥmad ibn al-Jahm, we narrate from Ibrāhīm al-Ḥarbī, from Mu’ammal ibn Hishām, from Ismāʿīl ibn Ibrāhīm—who is Ibn ʿUlayyah—from Bahz ibn Ḥakīm, from his father Ḥakīm ibn Muʿāwiyah, from his father Muʿāwiyah ibn Ḥaydaht: That his father Ḥaydaht had sons from different mothers—minor children among his offspring—and he possessed abundant wealth which he allocated solely to sons from one mother. His son Muʿāwiyah then traveled until he met ʿUthmān ibn ʿAffān and informed him of this. ʿUthmān presented the elderly man with a choice: either to take back his wealth or to distribute it among all the sons. He took back his wealth. When he died, the elder sons left it for their brothers.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ أَحْمَدَ بْنِ الْجَهْمِ نا إِبْرَاهِيمُ الْحَرْبِيُّ نا مُؤَمَّلُ بْنُ هِشَامٍ نا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ - عَنْ بَهْزِ بْنِ حَكِيمٍ عَنْ أَبِيهِ حَكِيمِ بْنِ مُعَاوِيَةَ عَنْ أَبِيهِ مُعَاوِيَةَ بْنِ حَيْدَةَ أَنَّ أَبَاهُ حَيْدَةَ كَانَ لَهُ بَنُونَ لِعَلَّاتٍ أَصَاغِرُ وَلَدِهِ، وَكَانَ لَهُ مَالٌ كَثِيرٌ فَجَعَلَهُ لِبَنِي عَلَّةٍ وَاحِدَةٍ، فَخَرَجَ ابْنُهُ مُعَاوِيَةُ حَتَّى قَدِمَ عَلَى عُثْمَانَ بْنِ عَفَّانَ فَأَخْبَرَهُ بِذَلِكَ، فَخَيَّرَ عُثْمَانُ الشَّيْخَ بَيْنَ أَنْ يَرُدَّ إِلَيْهِ مَالَهُ وَبَيْنَ أَنْ يُوَزِّعَهُ بَيْنَهُمْ؟ فَارْتَدَّ مَالُهُ، فَلَمَّا مَاتَ تَرَكَهُ الْأَكَابِرُ لِإِخْوَتِهِمْ.

L26182–26184 And through him to Ibrāhīm al-Ḥarbī: Mūsā ibn Ismāʿīl narrated to us, Ḥammād—he is Ibn Salamah—narrated to us, from... Humaid narrated from Al-Hasan ibn Muslim from Mujahid, who said: “Whoever grants a nuḥla to one of his children to the exclusion of his other children and then dies, that gift becomes part of the inheritance.”

وَبِهِ إِلَى إِبْرَاهِيمَ الْحَرْبِيِّ نا مُوسَى بْنُ إِسْمَاعِيلَ نا حَمَّادٌ هُوَ ابْنُ سَلَمَةَ - عَنْ حُمَيْدٍ عَنِ الْحَسَنِ بْنِ مُسْلِمٍ عَنْ مُجَاهِدٍ قَالَ: مَنْ نَحَلَ وَلَدًا لَهُ نُحْلًا دُونَ بَنِيهِ فَمَاتَ فَهُوَ مِيرَاثٌ.

L26185 The unjust portion from the living testator’s injustice is rejected, just as the unjust portion from the deceased’s will is rejected.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: يُرَدُّ مِنْ حَيْفِ النَّاحِلِ الْحَيِّ مَا يُرَدُّ مِنْ حَيْفِ الْمَيِّتِ مِنْ وَصِيَّتِهِ.

L26186 From the chain of ʿAbd al-Razzāq: Ibn Jurayj narrated to us from Ibn Ṭāwūs, who narrated from his father, who said regarding children: “No one is to be favored over another by even a hair. Preferential gifts are invalid; this is a satanic practice. Be equitable between them when they reach adulthood and explain this justice to them.” Ibn Jurayj said: I asked him, “What if some of their preferential gifts are destroyed, then their father dies?” He replied,

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نا ابْنُ طَاوُسٍ عَنْ أَبِيهِ قَالَ فِي الْوَلَدِ: لَا يُفَضَّلُ أَحَدٌ عَلَى أَحَدٍ بِشَعْرَةٍ، النُّحْلُ بَاطِلٌ، هُوَ مِنْ عَمَلِ الشَّيْطَانِ، اعْدِلْ بَيْنَهُمْ كِبَارًا وَأَبْنَهُمْ

"The recipient of the gift is entitled to its equivalent from their father's estate itself."

بِهِ، قَالَ ابْنُ جُرَيْجٍ: قُلْت لَهُ: هَلَكَ بَعْضُ نُحْلِهِمْ ثُمَّ مَاتَ أَبُوهُمْ؟ قَالَ: لِلَّذِي نَحَلَهُ مِثْلُهُ مِنْ مَالِ أَبِيهِ.

L26187 From the chain of Abd al-Razzaq via Zuhayr ibn Nafi', who said: I asked Ata ibn Abi Rabah, then said, "I intended to favor some of my children by giving them a gift." He replied, "No," refusing vehemently, and said, "Treat them equally."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ زُهَيْرِ بْنِ نَافِعٍ قَالَ: سَأَلْتُ عَطَاءَ بْنَ أَبِي رَبَاحٍ فَقُلْت: أَرَدْت أَنْ أُفَضِّلَ بَعْضَ وَلَدِي فِي نُحْلٍ أَنْحَلُهُ؟ فَقَالَ: لَا، وَأَبَى إبَاءً شَدِيدًا وَقَالَ: سَوِّ بَيْنَهُمْ.

L26188 And through him to Abd al-Razzaq from Ibn Jurayj: I said to Ata, "If he bestows a gift upon his child, should equality be maintained between them [the children] and between their father and his wife?" He said, "Only the child was mentioned; I have not heard anything beyond that from the Prophet, peace and blessings of Allah be upon him."

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: يَنْحَلُ وَلَدَهُ أَيُسَوَّى بَيْنَهُمْ وَبَيْنَ أَبٍ وَزَوْجَةٍ؟ قَالَ: لَمْ يُذْكَرْ إلَّا الْوَلَدَ، لَمْ أَسْمَعْ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَيْرَ ذَلِكَ.

L26189 Abū Muḥammad said: These individuals—Abū Bakr, ʿUmar, ʿUthmān, Qays ibn Saʿd, and ʿĀ'ishah the Mother of the Believers—were among the Companions (may Allah be pleased with them), with no dissenter known among them to oppose them. Then Mujāhid, Ṭāwūs, ʿAṭā', ʿUrwah, and Ibn Jurayj—and this is the opinion of al-Nakhaʿī, al-Shaʿbī, Shurayḥ, ʿAbdullāh ibn Shaddād ibn al-Hād, Ibn Shubrumah, Sufyān al-Thawrī, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhwayh, Abū Sulaymān, and all our companions.

قَالَ أَبُو مُحَمَّدٍ: فَهَؤُلَاءِ أَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ، وَقَيْسُ بْنُ سَعْدٍ، وَعَائِشَةُ أُمُّ الْمُؤْمِنِينَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، ثُمَّ مُجَاهِدٌ، وَطَاوُسٌ، وَعَطَاءٌ، وَعُرْوَةُ، وَابْنُ جُرَيْجٍ - وَهُوَ قَوْلُ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَشُرَيْحٍ، وَعَبْدِ اللَّهِ بْنِ شَدَّادِ بْنِ الْهَادِ، وَابْنِ شُبْرُمَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا.

L26190 Then they differed. Shuraih, Ahmad, and Ishaq held that the equitable approach is for the male to receive two shares and the female one share. Others said equality should apply in that matter.

ثُمَّ اخْتَلَفُوا، فَقَالَ شُرَيْحٌ، وَأَحْمَدُ، وَإِسْحَاقُ، الْعَدْلُ أَنْ يُعْطِيَ الذَّكَرَ حَظَّيْنِ، وَالْأُنْثَى حَظًّا - وَقَالَ غَيْرُهُمْ: بِالسَّوِيَّةِ فِي ذَلِكَ.

L26191 It has also been narrated to us [an opinion] differing from that, along with the permissibility of favoring some children over others—transmitted from al-Qāsim ibn Muḥammad, Rabīʿah, and others. This is the position upheld by Abū Ḥanīfah, Mālik, and al-Shāfiʿī.

وَرُوِّينَا خِلَافَ ذَلِكَ، وَإِجَازَةُ تَفْضِيلِ بَعْضِ الْوَلَدِ عَلَى بَعْضٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَرَبِيعَةَ وَغَيْرِهِمَا - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ.

L26192–26193 Abu Hanifah disliked it and permitted it if it happens.

وَكَرِهَهُ أَبُو حَنِيفَةَ، وَأَجَازَهُ إنْ وَقَعَ.

L26194 Malik disapproved of a parent giving all his wealth to some of his children. They mentioned from the Companions—may Allah be pleased with them—the story of Abu Bakr and Aisha, and the statement of Umar: "Whoever gives a gift to his child..."

وَكَرِهَ مَالِكٌ: أَنْ يَنْحَلَ بَعْضَ وَلَدِهِ مَالَهُ كُلَّهُ - وَذَكَرُوا عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - قِصَّةَ أَبِي بَكْرٍ وَعَائِشَةَ، وَقَوْلَ عُمَرَ مَنْ نَحَلَ وَلَدًا لَهُ.

L26195 From the transmission of Ibn Wahb from Ibn Lahīʿah from Bukayr ibn al-Ashajj from Nāfiʿ that Ibn ʿUmar excluded three portions or four for some of his children to the exclusion of others. Bukayr said: Al-Qāsim ibn ʿAbd al-Raḥmān al-Anṣārī narrated to me that he was with Ibn ʿUmar when he purchased land from a man of the Anṣār. Then Ibn ʿUmar said to him: "This land is for my son Wāqid, as he is poor. He granted it to him as a gift, excluding his children."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ قَطَعَ ثَلَاثَةَ أَرْؤُسٍ أَوْ أَرْبَعَةً لِبَعْضِ وَلَدِهِ دُونَ بَعْضٍ، قَالَ بُكَيْرٌ: وَحَدَّثَنِي الْقَاسِمُ بْنُ عَبْدِ الرَّحْمَنِ الْأَنْصَارِيُّ أَنَّهُ كَانَ مَعَ ابْنِ عُمَرَ إِذْ اشْتَرَى أَرْضًا مِنْ رَجُلٍ مِنْ الْأَنْصَارِ، ثُمَّ قَالَ لَهُ ابْنُ عُمَرَ: هَذِهِ الْأَرْضُ لِابْنِي وَاقِدٍ، فَإِنَّهُ مِسْكِينٌ، نَحَلَهُ إيَّاهَا دُونَ وَلَدِهِ.

L26196 Ibn Wahb said: It was reported to me from Amr ibn Dinar that Abd al-Rahman ibn Awf gifted four thousand dirhams to his daughter (born to Umm Kulthum bint Uqbah ibn Abi Mu'ayt), and he had children by other women.

قَالَ ابْنُ وَهْبٍ: وَبَلَغَنِي عَنْ عَمْرِو بْنِ دِينَارٍ: أَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ نَحَلَ ابْنَتَهُ مِنْ أُمِّ كُلْثُومٍ بِنْتِ عُقْبَةَ بْنِ أَبِي مُعَيْطٍ أَرْبَعَةَ آلَافِ دِرْهَمٍ وَلَهُ وَلَدٌ مِنْ غَيْرِهَا.

L26197 They mentioned what was transmitted by us through the chain of Ibn Wahb from Sa'īd ibn Abī Ayyūb from Bashīr ibn Abī Sa'īd from Muḥammad ibn al-Munkadir that the Messenger of Allah—peace be upon him—said: "Every possessor of wealth has the most right to his wealth." And we know of no proof for them other than this.

وَذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ سَعِيدِ بْنِ أَبِي أَيُّوبَ عَنْ بَشِيرِ بْنِ أَبِي سَعِيدٍ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كُلُّ ذِي مَالٍ أَحَقُّ بِمَالِهِ» وَمَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا.

L26198 We found those who adhere to our opinion citing as evidence the narration transmitted through Muslim's chain: Yahya ibn Yahya, Abu Bakr ibn Abi Shaybah, Ishaq ibn Ibrahim (known as Ibn Rahawayh), Ibn Abi Umar, Qutaybah, Muhammad ibn Rumḥ, Harmalah ibn Yahya, and Abdullah ibn Humayd. Yahya narrated to us from Ibrahim ibn Sa'd. Ibn Abi Shaybah, Ishaq, and Ibn Abi Umar—all transmitted from Sufyan ibn Uyaynah. Qutaybah and Ibn Rumḥ both transmitted from Layth ibn Sa'd. Harmalah said: Ibn Wahb narrated to us; he was informed by Yunus. Abdullah said: Abd al-Razzaq narrated to us, stating: "I am Ma'mar." Thereafter, the chains of Ibrahim, Sufyan, Layth, Yunus, and Ma'mar converged, all transmitting from al-Zuhri, from Muhammad ibn al-Nu'man ibn Bashir and Humayd ibn Abd

وَوَجَدْنَا مَنْ قَالَ بِقَوْلِنَا يَحْتَجُّ بِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا يَحْيَى بْنُ يَحْيَى، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَإِسْحَاقَ بْنِ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - وَابْنِ أَبِي عُمَرَ، وَقُتَيْبَةُ، وَمُحَمَّدُ بْنُ رُمْحٍ، وَحَرْمَلَةُ بْنُ يَحْيَى، وَعَبْدُ بْنُ حُمَيْدٍ، قَالَ يَحْيَى: نا إِبْرَاهِيمُ بْنُ سَعْدٍ، وَقَالَ ابْنُ أَبِي شَيْبَةَ، وَإِسْحَاقُ، وَابْنُ أَبِي عُمَرَ، كُلُّهُمْ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ، وَقَالَ قُتَيْبَةُ، وَابْنُ رُمْحٍ، كِلَاهُمَا عَنْ اللَّيْثِ بْنِ سَعْدٍ، وَقَالَ حَرْمَلَةُ: نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ، وَقَالَ عَبْد نا عَبْدُ الرَّزَّاقِ: أَنَا مَعْمَرٌ، ثُمَّ اتَّفَقَ إِبْرَاهِيمُ، وَسُفْيَانُ، وَاللَّيْثُ وَيُونُسُ، وَمَعْمَرٌ، كُلُّهُمْ

عَنْ الزُّهْرِيِّ عَنْ مُحَمَّدِ بْنِ النُّعْمَانِ بْنِ بَشِيرٍ، وَحُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ كِلَاهُمَا «عَنْ النُّعْمَانِ بْنِ بَشِيرٍ قَالَ: أَتَى بِي أَبِي إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إِنِّي نَحَلْتُ ابْنِي هَذَا غُلَامًا، فَقَالَ: أَكُلَّ بَنِيكَ نَحَلْتَ؟ قَالَ: لَا، فَارْدُدْهُ -» هَذَا لَفْظُ إِبْرَاهِيمَ، وَيُونُسَ، وَمَعْمَرٍ، وَقَالَ سُفْيَانُ، وَاللَّيْثُ: «أَكُلَّ وَلَدِك نَحَلْتَ» ؟ وَاتَّفَقُوا فِيمَا سِوَى ذَلِكَ.

This is the exact wording transmitted by Ibrahim, Yunus, and Ma‘mar. Sufyan and Layth phrased it: “Have you gifted all your children?” They agreed on the remainder of the narration.

مِنْ طَرِيقِ مَالِكٍ عَنْ الزُّهْرِيِّ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَمُحَمَّدِ بْنِ النُّعْمَانِ بْنِ بَشِيرٍ أَنَّهُمَا حَدَّثَاهُ «عَنْ النُّعْمَانِ بْنِ بَشِيرٍ: أَنَّ أَبَاهُ أَتَى بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي نَحَلْتُ ابْنِي هَذَا غُلَامًا؟ فَقَالَ: أَكُلَّ وَلَدِكَ نَحَلْتَ مِثْلَهُ؟ قَالَ: لَا، قَالَ: فَارْجِعْهُ» .

From the path of Malik, from Az-Zuhri, from Humaid ibn Abdur-Rahman ibn Awf and Muhammad ibn An-Nu’man ibn Bashir, that they both narrated **to him** from An-Nu’man ibn Bashir: “His father brought him to the Prophet - peace and blessings be upon him - and said: ’O Messenger of Allah, I have granted this son of mine a male servant as a gift.’ He asked: ’Have you granted all your children the same gift?’ He replied: ’No.’ He said: ’Then take **him** back.’”

L26199–26200

وَهَكَذَا رُوِّينَاهُ أَيْضًا نَصًّا مِنْ طَرِيقِ الْأَوْزَاعِيِّ عَنْ الزُّهْرِيِّ.

And likewise, we have transmitted this as a text via Al-Awzaʿī’s chain from Al-Zuhrī.

L26201

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ جَرِيرٍ، وَعَبْدِ اللَّهِ بْنِ الْمُبَارَكِ، كِلَاهُمَا عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ النُّعْمَانِ بْنِ بَشِيرٍ “.

We have also had it narrated to us via the chain of Jarīr and ʿAbdullāh ibn al-Mubārak, both of them from Hishām ibn ʿUrwah, from his father, from al-Nuʿmān ibn Bashīr.

L26202

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ سَعْدِ بْنِ إبْرَاهِيمَ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ النُّعْمَانِ بْنِ بَشِيرٍ، كُلُّهُمْ يَقُولُ فِيهِ “ إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لَهُ: «رُدَّهُ، أَوْ اُرْدُدْهُ» .

And via the chain of Shuʿbah from Saʿd ibn Ibrāhīm, from ʿUrwah ibn al-Zubayr, from al-Nuʿmān ibn Bashīr—all of them narrate in it: “The Messenger of Allah—may Allah bless him and his family and grant him peace—said to him: ’Return it, and insist on returning it.’”

L26203

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا حَامِدُ بْنُ عُمَرَ نا أَبُو عَوَانَةَ عَنْ حُصَيْنٍ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ - عَنْ الشَّعْبِيِّ سَمِعْتُ «النُّعْمَانَ بْنَ بَشِيرٍ وَهُوَ عَلَى الْمِنْبَرِ يَقُولُ: أَعْطَانِي أَبِي عَطِيَّةً فَأَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي أَعْطَيْت ابْنِي مِنْ عَمْرَةَ بِنْتِ

And through the chain of al-Bukhārī: Ḥāmid ibn ʿUmar narrated to us, Abū ʿAwānah narrated to us from Ḥuṣayn—who is Ibn ʿAbd al-Raḥmān—from al-Shaʿbī: I heard al-Nuʿmān ibn Bashīr, while he was on the pulpit, saying: “My father gave me a gift, then my father came to the Messenger of Allah (peace and blessings be upon him) and said: ’O Messenger of Allah, I gave a gift to my son, whose mother is ʿAmrah bint Rawāḥah, and she instructed

L26204

me to ask you to witness it, O Messenger of Allah.' He (peace and blessings be upon him) said: 'Have you given all your children the like of this?' He replied: 'No.' He said: 'Fear Allah and be just between your children! Go back and take back your gift.'"

رَوَاحَةَ عَطِيَّةً، فَأَمَرَتْنِي أَنْ أُشْهِدَكَ يَا رَسُولَ اللَّهِ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -: أَعْطَيْتَ سَائِرَ وَلَدِكَ مِثْلَ هَذَا؟ قَالَ: لَا، قَالَ: فَاتَّقُوا اللَّهَ وَاعْدِلُوا بَيْنَ أَوْلَادِكُمْ؟ ارْجِعْ فَرُدَّ عَطِيَّتَهُ» .

L26205 Through Muslim's chain: Yahya ibn Yahya → Abu al-Ahwas → Husayn ibn Abd al-Rahman → al-Shaʿbi → al-Nuʿman ibn Bashir, who said: "My father donated some of his wealth to me as charity. He then went to the Messenger of Allah (peace be upon him) to have him witness my charity. The Messenger of Allah (peace be upon him) asked: 'Have you done this to all your children?'"

وَمِنْ طَرِيقِ مُسْلِمٍ نا يَحْيَى بْنُ يَحْيَى نا أَبُو الْأَحْوَصِ عَنْ حُصَيْنِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الشَّعْبِيِّ «عَنْ النُّعْمَانِ بْنِ بَشِيرٍ قَالَ: تَصَدَّقَ عَلَيَّ أَبِي بِبَعْضِ مَالِهِ، فَانْطَلَقَ أَبِي إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُشْهِدَهُ عَلَى صَدَقَتِي، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَفَعَلْتَ هَذَا بِوَلَدِكَ كُلِّهِمْ؟

L26206–26207 The Prophet said, "No." He added, "Fear Allah and be just toward your children—" so my father returned and revoked that charity.

قَالَ: لَا، قَالَ: اتَّقُوا اللَّهَ وَاعْدِلُوا فِي أَوْلَادِكُمْ - فَرَجَعَ أَبِي فَرَدَّ تِلْكَ الصَّدَقَةَ» .

L26208 And from the chain of Muslim: Muḥammad ibn ʿAbd Allāh ibn Numayr narrated to us, Muḥammad ibn Bishr narrated to us, Abū Ḥayyān—who is Yaḥyā ibn Saʿīd al-Taymiyy—narrated to us, from al-Shaʿbī: Nuʿmān ibn Bashīr narrated to me. He then mentioned this report, and in it is: "The Messenger of Allāh—peace and blessings be upon him—said: «Therefore, I do not bear witness to injustice.»"

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ نا مُحَمَّدُ بْنُ بِشْرٍ نا أَبُو حَيَّانَ هُوَ يَحْيَى بْنُ سَعِيدٍ التَّيْمِيُّ - عَنْ الشَّعْبِيِّ حَدَّثَنِي النُّعْمَانُ بْنُ بَشِيرٍ، فَذَكَرَ هَذَا الْخَبَرَ، وَفِيهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «فَلَا أَشْهَدُ عَلَى جَوْرٍ» .

L26209 Thus, these transmissions were successive and manifest: Al-Shaʿbi, Urwah ibn al-Zubayr, Muhammad ibn Nuʿman, and Humayd ibn ʿAbd al-Rahman; all of them heard it from Nuʿman.

فَكَانَتْ هَذِهِ الْآثَارُ مُتَوَاتِرَةً مُتَظَاهِرَةً: الشَّعْبِيُّ، وَعُرْوَةُ بْنُ الزُّبَيْرِ، وَمُحَمَّدُ بْنُ النُّعْمَانِ، وَحُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ، كُلُّهُمْ سَمِعَهُ مِنْ النُّعْمَانِ.

L26210 All these narrators from among the Imams transmitted it, and there is unanimous agreement among them all concerning the command of Allah's Messenger—peace and blessings be upon him—to annul that charity and gift and their return. Some of them clarified that it was indeed returned, and that he—peace and blessings be upon him—declared it to be injustice. Injustice cannot lawfully be upheld in the religion of Allah the Exalted. If this were permissible, it would permit the upholding of every injustice and every oppression—and this is openly dismantling Islam.

وَرَوَاهُ عَنْ هَؤُلَاءِ الْحُفَّاظُ مِنْ الْأَئِمَّةِ كُلِّهِمْ مُتَّفِقٌ عَلَى أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِفَسْخِ تِلْكَ الصَّدَقَةِ وَالْعَطِيَّةِ وَرَدِّهَا، وَبَيَّنَ بَعْضُهُمْ أَنَّهَا رُدَّتْ، وَأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَخْبَرَ أَنَّهَا جَوْرٌ، وَالْجَوْرُ لَا يَحِلُّ إمْضَاؤُهُ فِي دِينِ اللَّهِ تَعَالَى، وَلَوْ جَازَ ذَلِكَ لَجَازَ إمْضَاءُ كُلِّ جَوْرٍ وَكُلِّ ظُلْمٍ، وَهَذَا هَدْمُ الْإِسْلَامِ جِهَارًا.

فَوَجَدْنَا الْمُخَالِفِينَ قَدْ تَعَلَّلُوا بِهَذَا فِي هَذَا بِأَنْ قَالَ بَعْضُهُمْ: إِنَّهُ وَهَبَهُ جَمِيعَ مَالِهِ.

L26211 We found that the dissenters had used this as a pretext in this matter on the grounds that some of them said: "He gifted him the entirety of his wealth."

فَقُلْنَا: سُبْحَانَ اللَّهِ فِي نَصِّ الْحَدِيثِ " بَعْضَ مَالِهِ " وَفِي بَعْضِ الرِّوَايَاتِ الثَّابِتَةِ " بَعْضَ الْمَوْهِبَةِ مِنْ مَالِهِ ".

L26212 We said, "Glory be to Allah. The text of the hadith states 'some of his wealth,' and in some authentic narrations 'some of the bestowed gift from his wealth.'"

وَقَالَ آخَرُونَ: رَوَى هَذَا الْخَبَرَ دَاوُد بْنُ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ عَنْ النُّعْمَانِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِبَشِيرٍ: فَأَشْهِدْ عَلَى هَذَا غَيْرِي، أَيَسُرُّكَ أَنْ يَكُونُوا أُولَئِكَ فِي الْبِرِّ سَوَاءً؟ قَالَ: بَلَى، قَالَ: فَلَا إذًا» .

L26213 Others said: Dāwūd ibn Abī Hind narrated this report from al-Shaʿbī, from al-Nuʿmān, that the Messenger of Allāh—peace and blessings be upon him—said to Bashīr: "So have someone else bear witness to this. Would it please you if those [people] were equal in righteousness?" He replied: "Yes." He said: "Therefore, no."

وَرَوَاهُ الْمُغِيرَةُ عَنْ الشَّعْبِيِّ عَنْ النُّعْمَانِ، وَقَالَ فِيهِ «فَأَشْهِدْ عَلَى هَذَا غَيْرِي» ؟ فَقُلْنَا: هَذَا حُجَّةٌ عَلَيْكُمْ، لِأَنَّ قَوْلَهُ - عَلَيْهِ السَّلَامُ - " فَلَا إذًا " نَهْيٌ صَحِيحٌ كَافٍ لِمَنْ عَقَلَ.

L26214 Al-Mughirah narrated it from Ash-Shaʿbi through An-Nuʿman. In the narration, he stated: "Then have someone other than me witness this?" We responded: This constitutes evidence against you, for the Prophet's statement - peace be upon him - "If that is the case, then do not" represents a sound and sufficient prohibition for anyone endowed with understanding.

وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «أَشْهِدْ عَلَى هَذَا غَيْرِي» لَوْ لَمْ يَأْتِ إلَّا هَذَا اللَّفْظُ لَمَا كَانَ لَكُمْ فِيهِ مُتَعَلَّقٌ.

L26215 And his statement—peace and blessings be upon him—"Summon another witness besides me for this"—if only this wording had come, you would have had no basis therein.

وَأَمَّا وَقَدْ رَوَى مَنْ هُوَ أَجَلُّ مِنْ الْمُغِيرَةِ وَدَاوُد بْنِ أَبِي هِنْدٍ الزِّيَادَةَ الثَّابِتَةَ الَّتِي لَا يَحِلُّ لِأَحَدٍ الْخُرُوجُ عَنْهَا مِنْ أَمْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِرَدِّ تِلْكَ الصَّدَقَةِ وَالْعَطِيَّةِ وَارْتِجَاعِهَا - فَصَحَّ بِهَذِهِ الزِّيَادَةِ، وَبِإِخْبَارِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ جَوْرٌ أَنَّ مَعْنَى قَوْلِهِ «أَشْهِدْ عَلَى هَذَا غَيْرِي» إنَّمَا هُوَ الْوَعِيدُ كَقَوْلِ اللَّهِ تَعَالَى: {فَإِنْ شَهِدُوا فَلَا تَشْهَدْ مَعَهُمْ} [الأنعام: ١٥٠] لَيْسَ عَلَى إبَاحَةِ الشَّهَادَةِ عَلَى الْجَوْرِ وَالْبَاطِلِ، لَكِنْ كَمَا قَالَ تَعَالَى: {فَمَنْ شَاءَ فَلْيُؤْمِنْ وَمَنْ شَاءَ فَلْيَكْفُرْ} [الكهف: ٢٩] .

L26216–26218 Moreover, since one more esteemed than Al-Mughīrah and Dāwūd ibn Abī Hind has narrated this established additional ruling concerning the Prophet's command (peace and blessings be upon him) to return that charity and gift and retrieve them—a ruling from which no one may lawfully depart— The ruling is affirmed by this addition and by the report of the Prophet (peace and blessings be upon him) that the meaning of his statement "Have someone else witness this instead of me" is indeed a threat, like Allah the Exalted's saying: *"But if they testify, then do not testify with them"* [Al-Anʿām: 150]. This is not a permission to testify for tyranny and falsehood, but rather as Allah the Exalted states: *"So whoever wills, let him believe, and whoever wills, let him disbelieve"* [Al-Kahf: 29].[21]

وَكَقَوْلِهِ تَعَالَى: {اعْمَلُوا مَا شِئْتُمْ} [فصلت: ٤٠]

[21] **Qur'an references (L26216):** Qur'an 6:150 (Al-An'am); Qur'an 18:29 (Al-Kahf).

L26219 And like His saying, the Most High: *“Do whatever you will”* [Fussilat 41:40].[22]

وَ {كُلُوا وَتَمَتَّعُوا قَلِيلا إِنَّكُمْ مُجْرِمُونَ} [المرسلات: ٤٦]

L26220 And, “Eat and enjoy for a little while. Indeed, you are wrongdoers.” (77:46)[23]

L26221 Far be it from him—peace be upon him—to permit anyone to testify regarding what he himself has declared an injustice, or to validate it without rejecting it. This is something no Muslim would deem permissible. It suffices here to say: Is that gift and charity more rightful and permissible, or invalid and impermissible?

وَحَاشَ لَهُ - عَلَيْهِ السَّلَامُ - أَنْ يُبِيحَ لِأَحَدٍ الشَّهَادَةَ عَلَى مَا أَخْبَرَ بِهِ هُوَ أَنَّهُ جَوْرٌ، وَأَنْ يُمْضِيَهُ وَلَا يَرُدَّهُ، هَذَا مَا لَا يُجِيزُهُ مُسْلِمٌ، وَيَكْفِي مِنْ هَذَا أَنْ نَقُولَ: تِلْكَ الْعَطِيَّةُ وَالصَّدَقَةُ أَحَقُّ جَائِزٌ هِيَ أَمْ بَاطِلٌ غَيْرُ جَائِزٍ.

L26222 And there is no way to posit a third category? If they say, “A permissible truth?”—they have magnified their slander, for they claim that he (peace and blessings be upon him) refused to testify to the truth—he, who conveyed to us from our Lord (Exalted is He), His words: “And let not the witnesses refuse when they are called” [Al-Baqarah: 282].[24]

وَلَا سَبِيلَ إِلَى قِسْمٍ ثَالِثٍ؟ فَإِنْ قَالُوا: حَقٌّ جَائِزٌ؟ أَعْظَمُوا الْفِرْيَةَ، إِذْ أَخْبَرُوا أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَبَى أَنْ يَشْهَدَ عَلَى الْحَقِّ - وَهُوَ الَّذِي أَتَانَا عَنْ رَبِّنَا تَعَالَى بِقَوْلِهِ تَعَالَى: {وَلا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا} [البقرة: ٢٨٢]

L26223 And by the statement of the Most High: “No harm should be caused to the scribe nor to the witness.” [Al-Baqarah: 282][25]

وَبِقَوْلِهِ تَعَالَى: {وَلا يُضَارَّ كَاتِبٌ وَلا شَهِيدٌ} [البقرة: ٢٨٢]

L26224 And if they say, “It is invalid and impermissible,” they have magnified the slander, for they have claimed that the Prophet—peace be upon him—judged with falsehood, enforced injustice, and commanded having witnesses attest to his contract. Both claims undeniably lead to disbelief, and one of the two is necessarily true.

وَإِنْ قَالُوا: إِنَّهَا بَاطِلٌ غَيْرُ جَائِزٍ؟ أَعْظَمُوا الْفِرْيَةَ، إِذْ أَخْبَرُوا أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ بِالْبَاطِلِ، وَأَنْفَذَ الْجَوْرَ، وَأَمَرَ بِالْإِشْهَادِ عَلَى عَقْدِهِ، وَكِلَا الْقَوْلَيْنِ مُخْرِجٌ إِلَى الْكُفْرِ بِلَا مِرْيَةٍ، وَلَا بُدَّ مِنْ أَحَدِهِمَا.

L26225 Some of them added further misguidance and fabrication by claiming: “The meaning of the Prophet’s statement—peace and blessings be upon him—’Let someone other than me witness this’ is that I am an Imam, and the Imam does not testify.” Thus they combined two fabrications. The first: lying against Allah’s Messenger—peace and blessings of Allah be upon him—by attributing to him words he never uttered. Let whoever asserted this take his seat in the

وَزَادَ بَعْضُهُمْ ضَلَالًا وَفِرْيَةً فَقَالَ: مَعْنَى قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «أَشْهِدْ عَلَى هَذَا غَيْرِي» أَيْ إِنِّي إِمَامٌ وَالْإِمَامُ لَا يَشْهَدُ، فَجَمَعُوا فِرْيَتَيْنِ، إِحْدَاهُمَا: الْكَذِبُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي تَقْوِيلِهِ مَا لَمْ يَقُلْ فَلْيَتَبَوَّأْ مَنْ أَطْلَقَ هَذَا مَقْعَدَهُ مِنَ النَّارِ، وَالثَّانِيَةُ قَوْلُهُمْ: إِنَّ الْإِمَامَ لَا يَشْهَدُ، فَقَدْ كَذَبُوا وَأَفِكُوا فِي ذَلِكَ، بَلْ الْإِمَامُ يَشْهَدُ، لِأَنَّهُ أَحَدُ الْمُسْلِمِينَ الْمُخَاطَبِينَ بِأَنْ لَا يَأْبَوْا إِذَا دُعُوا، وَبِقَوْلِهِ عَزَّ وَجَلَّ {كُونُوا

[22] **Qur’an references (L26219):** Qur’an 41:40 (Fussilat).
[23] **Qur’an references (L26220):** Qur’an 77:46 (Al-Mursalat).
[24] **Qur’an references (L26222):** Qur’an 2:282 (Al-Baqarah).
[25] **Qur’an references (L26223):** Qur’an 2:282 (Al-Baqarah).

Fire. The second: their statement that "The Imam does not testify." They have lied and forged falsehood in this matter, for the Imam does indeed testify, being among the Muslims who are commanded not to refuse when they are summoned, and by Allah's words—Exalted and Glorious is He—: *"Be upholders of justice, bearing witness for Allah even against yourselves, your parents, or close relatives"* (4:135). This constitutes a clear command to the Imams without any doubt or suspicion.[26]

قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَى أَنْفُسِكُمْ أَوِ الْوَالِدَيْنِ وَالأَقْرَبِينَ} [النساء: ١٣٥] فَهَذَا أَمْرٌ لِلأَئِمَّةِ بِلَا شَكٍّ وَلَا مِرْيَةٍ.

L26226 It is astonishing how lacking in moral scrupulousness this speaker is, and that his statement and doctrine assert that an Imam's testimony becomes valid if he testifies before a ruler from among his own authorities. For had testifying not been within his inherent responsibilities, his testimony would not have been valid.

وَالْعَجَبُ مِنْ قِلَّةِ حَيَاءِ هَذَا الْقَائِلِ، وَمِنْ قَوْلِهِ وَمَذْهَبِهِ أَنَّ الْإِمَامَ إِذَا شَهِدَ عِنْدَ حَاكِمٍ مِنْ حُكَّامِهِ جَازَتْ شَهَادَتُهُ، فَلَوْ لَمْ يَكُنْ مِنْ شَأْنِهِ أَنْ يَشْهَدَ لَمَا جَازَتْ شَهَادَتُهُ.

L26227–26229 Then one of them made an argument so weak that even a speech-impaired person would disown it, saying, "Perhaps An-Nu'mān was elderly and had not received the dowry"—and whoever utters this is either ignorant of the zakah threshold for male goats or stripped of decency and religious integrity, because... The young age of An-Nu'mān is more renowned than the sun, and that he was born after the Hijrah without disagreement from any of the scholars. This has been clarified in the ḥadīth of Abū Ḥayyān from Ash-Sha'bī from An-Nu'mān: "And I was a boy at that time." This term is not applied to an adult man at all.

ثُمَّ أَتَى بَعْضُهُمْ بِمَا كَانَ الْخَرَسُ أَوْلَى بِهِ فَقَالَ: لَعَلَّ النُّعْمَانَ كَانَ كَبِيرًا وَلَمْ يَكُنْ قَبَضَ النُّحْلَ - وَقَائِلُ هَذَا إِمَّا فِي نِصَابِ التَّيُوسِ جَهْلًا، وَإِمَّا مَنْزُوعُ الْحَيَاءِ وَالدِّينِ، لِأَنَّ صِغَرَ النُّعْمَانِ أَشْهَرُ مِنَ الشَّمْسِ، وَأَنَّهُ وُلِدَ بَعْدَ الْهِجْرَةِ بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ، وَقَدْ بَيَّنَ ذَلِكَ فِي حَدِيثِ أَبِي حَيَّانَ عَنِ الشَّعْبِيِّ عَنِ النُّعْمَانِ، " وَأَنَا يَوْمَئِذٍ غُلَامٌ " وَلَا تُطْلَقُ هَذِهِ اللَّفْظَةُ عَلَى رَجُلٍ بَالِغٍ أَصْلًا.

L26230 Some of them claimed the paternal gift was not completed, asserting it was merely a consultation. They obfuscated by citing Shu'ayb ibn Abi Hamzah's narration of this report from al-Zuhri, wherein he stated: "From al-Nu'man: 'My father granted me a servant as a paternal gift, then brought me to the Prophet (peace and blessings of Allah be upon him) and said: "I have granted my son this servant as a paternal gift. If you permit me to validate it, I will validate it."'" Abu Muhammad remarked: Were it not for the blindness and misguidance of these people, their desires would not have dominated them to this degree. They hear in the report's opening "My father granted me

وَقَالَ بَعْضُهُمْ لَمْ يَكُنِ النُّحْلُ تَمَّ إِنَّمَا كَانَ اسْتِشَارَةً وَمَوَّهُوا بِرِوَايَةِ شُعَيْبِ بْنِ أَبِي حَمْزَةَ بِهَذَا الْخَبَرِ عَنِ الزُّهْرِيِّ فَقَالَ فِيهِ «عَنِ النُّعْمَانِ، نَحَلَنِي أَبِي غُلَامًا ثُمَّ جَاءَ بِي إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إِنِّي نَحَلْتُ ابْنِي هَذَا غُلَامًا فَإِنْ أَذِنْتَ لِي أَنْ أُجِيزَهُ أَجَزْتُهُ» ؟ قَالَ أَبُو مُحَمَّدٍ: لَوْلَا عَمَى هَؤُلَاءِ الْقَوْمِ وَضَلَالِهِمْ مَا تَمَكَّنَ الْهَوَى مِنْهُمْ هَذَا التَّمَكُّنَ، هُمْ يَسْمَعُونَ فِي أَوَّلِ الْخَبَرِ " نَحَلَنِي أَبِي غُلَامًا " وَفِي وَسَطِهِ " يَا رَسُولَ اللَّهِ نَحَلْتُ ابْنِي هَذَا غُلَامًا " وَيَقُولُونَ: لَمْ يَتِمَّ النُّحْلُ.

[26] **Qur'an references (L26225):** Qur'an 4:135 (An-Nisa).

a servant," and in its midst "O Messenger of Allah, I granted my son this servant," yet they insist: The paternal gift was not completed.

L26231 The statement of Bashir, "If you permit me to approve it, I will do so," is a sound statement. The statement of a believer, "He acts only according to what the Messenger of Allah (peace be upon him) has made lawful for him, adhering to its apparent meaning without interpretation." If the Prophet (peace be upon him) approved it, Bashir would approve it. If he (peace and blessings be upon him) did not approve it, Bashir would reject it and refrain from approving it, just as he himself acted.

L26232 They also mentioned the narration of ʻAbdullāh ibn ʻAwn from Al-Shaʻbī regarding this report: from Al-Nuʻmān ibn Bashīr, who said: "My father granted me a gift, then brought me to the Messenger of Allah—peace and blessings be upon him—to have him witness it. He asked: 'Have you given each of your children such a gift?' He replied: 'No.' He said: 'Do you not desire righteousness from them as you desire from this one?' He answered: 'Yes.' He said: 'Then indeed, I will not bear witness.'" Ibn ʻAwn said: "I related this to Ibn Sīrīn, and he said: 'He only narrated to us that the Prophet said: "Treat your children fairly."'"[27]

L26233 Ali said: The opinion regarding this is that it constitutes the greatest proof against them due to what we have mentioned, because the Prophet—peace and blessings of Allah be upon him—does not bear witness to falsehood, and this is falsehood, since he—peace be upon him—did not consider it permissible to testify to it. Such is the narration of Abd al-Samad ibn Abd al-Warith from Shuʻbah from Saʻid regarding this report, which contains the wording "I do not testify." As for Ibn Sirin's statement: "Bring your children closer together," it has an interrupted chain. Even if it were authentic, it would serve as proof for us against them, for he commanded bringing children closer and prohibited opposing it, while they permit opposing closeness and do not obligate it. Who is more astray than these deprived ones?

L26234–26235 Striving closely (al-muqārabah) refers to diligent exertion in pursuing equity, as the Exalted states: {You will never be able to do justice between women,

وَقَوْلُ بَشِيرٍ " فَإِنْ أَذِنْت لِي أَنْ أُجِيزَهُ أَجَزْته " قَوْلٌ صَحِيحٌ، وَقَوْلُ مُؤْمِنٍ لَا يَعْمَلُ إلَّا مَا أَبَاحَهُ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى ظَاهِرِهِ بِلَا تَأْوِيلٍ، نَعَمْ، إنْ أَجَازَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَجَازَهُ بَشِيرٌ، وَإِنْ لَمْ يُجِزْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - رَدَّهُ بَشِيرٌ وَلَمْ يُجِزْهُ كَمَا فَعَلَ.

وَذَكَرُوا أَيْضًا - رِوَايَةَ عَبْدِ اللَّهِ بْنِ عَوْنٍ لِهَذَا الْخَبَرِ عَنْ الشَّعْبِيِّ «عَنْ النُّعْمَانِ بْنِ بَشِيرٍ قَالَ: نَحَلَنِي أَبِي نُحْلًا ثُمَّ أَتَى بِي إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُشْهِدَهُ فَقَالَ: أَكُلَّ وَلَدِك أَعْطَيْتَهُ هَذَا؟ قَالَ: لَا، قَالَ: أَلَيْسَ تُرِيدُ مِنْهُمْ الْبِرَّ مِثْلَ مَا تُرِيدُ مِنْ ذَا؟ قَالَ: بَلَى، قَالَ: فَإِنِّي لَا أَشْهَدُ» قَالَ ابْنُ عَوْنٍ: فَحَدَّثْتُ بِهِ ابْنَ سِيرِينَ، فَقَالَ: إنَّمَا حَدَّثَنَا أَنَّهُ قَالَ: «قَارِبُوا بَيْنَ أَبْنَائِكُمْ» .

قَالَ عَلِيٌّ: وَالْقَوْلُ فِي هَذَا أَنَّهُ أَعْظَمُ حُجَّةٍ عَلَيْهِمْ لِمَا ذَكَرْنَا لِمَا أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَشْهَدُ عَلَى بَاطِلٍ، وَهَذَا بَاطِلٌ، إذْ لَمْ يَسْتَجِزْ - عَلَيْهِ السَّلَامُ - أَنْ يَشْهَدَ عَلَيْهِ - وَهَكَذَا رِوَايَةُ عَبْدِ الصَّمَدِ بْنِ عَبْدِ الْوَارِثِ عَنْ شُعْبَةَ عَنْ سَعِيدٍ لِهَذَا الْخَبَرِ، وَفِيهِ «لَا أَشْهَدُ» . وَأَمَّا قَوْلُ ابْنِ سِيرِينَ: قَارِبُوا بَيْنَ أَبْنَائِكُمْ، فَمُنْقَطِعٌ - ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا عَلَيْهِمْ؛ لِأَنَّهُ أَمَرَ بِالْمُقَارَبَةِ وَنَهَى عَنْ خِلَافِهَا، وَهُمْ يُجِيزُونَ خِلَافَ الْمُقَارَبَةِ، وَلَا يُوجِبُونَ الْمُقَارَبَةَ، فَمَنْ أَضَلُّ مِنْ هَؤُلَاءِ الْمَحْرُومِينَ.

وَالْمُقَارَبَةُ: هُوَ الِاجْتِهَادُ فِي التَّعْدِيلِ، كَمَا قَالَ تَعَالَى: {وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلَا تَمِيلُوا كُلَّ الْمَيْلِ فَتَذَرُوهَا كَالْمُعَلَّقَةِ} [النساء: ١٢٩] فَصَحَّ أَنَّ الْمُجْتَهِدَ

[27] **Hadith references (L26232):** Sahih Muslim 1623j.

no matter how keen you are. So do not incline completely [to one], leaving her [another] as if suspended.} [An-Nisā': 129] Thus, it is established that one who exerts diligent effort to establish equity among his children - if his striving fails to achieve true equity - is deemed to have striven closely, provided he cannot do more than that.[28]

فِي التَّعْدِيلِ بَيْنَ أَوْلَادِهِ إِنْ لَمْ يُصَادِفْ حَقِيقَةَ التَّعْدِيلِ كَانَ مُقَارِبًا، إِذَا لَمْ يَقْدِرْ عَلَى أَكْثَرَ مِنْ ذَلِكَ.

L26236 Among the wonders of the world is their citation of the narration transmitted by Zuhayr ibn Mu'āwiyah from Abū al-Zubayr from Jābir concerning this report: "Jābir said: The wife of Bashīr said: 'Grant my son this servant of yours, and let the Messenger of Allah (peace be upon him) bear witness for me.' He then went to the Messenger of Allah (peace be upon him) and mentioned this to him. The Messenger of Allah (peace be upon him) asked him: 'Does he have brothers?' He replied: 'Yes.' He said: 'Have you given all of them the same as you gave him?' He answered: 'No.' The Messenger of Allah (peace be upon him) said: 'This is not proper. Know that I only bear witness to what is right.'"

وَمِنْ عَجَائِبِ الدُّنْيَا احْتِجَاجُهُمْ بِرِوَايَةِ زُهَيْرِ بْنِ مُعَاوِيَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ لِهَذَا الْخَبَرِ «قَالَ جَابِرٌ: قَالَتْ امْرَأَةُ بَشِيرٍ: انْحَلْ ابْنِي غُلَامَكَ هَذَا، أَشْهِدْ لِي رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَذَكَرَ ذَلِكَ لَهُ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَلَهُ إِخْوَةٌ؟ قَالَ: نَعَمْ، قَالَ: فَكُلُّهُمْ أَعْطَيْتَهُ مِثْلَ مَا أَعْطَيْتَهُ؟ قَالَ: لَا، قَالَ: فَلَيْسَ يَصْلُحُ هَذَا، أَلَا وَإِنِّي لَا أَشْهَدُ إِلَّا عَلَى حَقٍّ» .

L26237 Abū Muḥammad said: Can there be anything more astonishing than their argumentation with this report, when it constitutes the greatest proof against them? For its opening states, "It is not valid," and its conclusion states, "I only testify to what is true." Thus, it is confirmed that it is not the truth, and since it is not the truth, it is falsehood and misguidance. The Most High said: "So what is there after the truth except misguidance?" [Yūnus 10:32][29]

قَالَ أَبُو مُحَمَّدٍ: أَفَيَكُونُ أَعْجَبُ مِنْ احْتِجَاجِهِمْ بِهَذَا الْخَبَرِ وَهُوَ أَعْظَمُ حُجَّةٍ عَلَيْهِمْ؛ لِأَنَّ فِي أَوَّلِهِ «لَيْسَ يَصْلُحُ» وَفِي آخِرِهِ «إِنِّي لَا أَشْهَدُ إِلَّا عَلَى حَقٍّ» فَصَحَّ أَنَّهُ لَيْسَ حَقًّا، وَإِذْ لَيْسَ حَقًّا فَهُوَ بَاطِلٌ وَضَلَالٌ قَالَ تَعَالَى: {فَمَاذَا بَعْدَ الْحَقِّ إِلا الضَّلالُ} [يونس: ٣٢]

L26238 If they say: He (peace be upon him) stated, "It is not proper to sell" in the hadith regarding pre-emption, yet you permit it if the pre-emptor approves; and he (peace be upon him) forbade vows, yet you obligate them once they are made.

فَإِنْ قَالُوا: فَقَدْ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «لَا يَصْلُحُ أَنْ يَبِيعَ» فِي حَدِيثِ الشُّفْعَةِ، ثُمَّ أَجَزْتُمُوهُ إِذَا أَجَازَهُ الشَّفِيعُ وَنَهَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَنِ النَّذْرِ، ثُمَّ أَوْجَبْتُمُوهُ إِذَا وَقَعَ.

L26239 We said: Yes, because the Messenger of Allah—peace and blessings be upon him—granted the option of pre-emption to the partner with pre-emptive right: if he wishes, he may take it, and if he wishes, he may leave it. Through

قُلْنَا: نَعَمْ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ الْخِيَارَ لِلشَّفِيعِ إِنْ شَاءَ أَخَذَ وَإِنْ شَاءَ تَرَكَ، وَفِي تَرْكِهِ إِقْرَارُ ذَلِكَ الْبَيْعِ، فَوَقَفْنَا عِنْدَ أَمْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي ذَلِكَ.

[28] **Qur'an references (L26235):** Qur'an 4:129 (An-Nisa).
[29] **Qur'an references (L26237):** Qur'an 10:32 (Yunus).

his leaving it, that sale is confirmed. Thus, we adhere to his command—upon him be peace and blessings—in this matter.

L26240 He (peace be upon him) prohibited vows, then commanded their fulfillment, and stated that "it is extracted from the miser through them." We reflected deeply upon his command, and thus it became clear to us in this chapter that he (peace and blessings be upon him) enforced it after commanding him to retract it. We are the first in hearing and obeying - that which they shall never attain forever.

L26241 Some of them cited a unique narration, which is that he mentioned what we have transmitted through the chain of transmission of Yaḥyā ibn Saʿīd al-Qaṭṭān from Fiṭr ibn Khalīfah from Muslim ibn Ṣubayḥ—known as Abū al-Ḍuḥā—who said: I heard al-Nuʿmān ibn Bashīr state: "My father brought me to the Messenger of Allah—peace and blessings be upon him—concerning something he had granted me. He inquired: 'Do you have children other than him?' My father responded: 'Yes,' and gestured with his hand to encompass all of them in this manner. The Prophet said: 'Have you not equalized between them?'"

L26242–26243 Abū Muḥammad said: Indeed, whoever opposes the narration of all those we have mentioned with the narration of Fiṭr is forsaken, and Fiṭr's narration is weak. Were it not that Sufyān narrated it from Abū al-Ḍuḥā from al-Nuʿmān, they would have no argument in this matter, for all other narrations exceed this one—both in legal ruling and wording. How could it be, when we have this narration in Fiṭr's ḥadīth via a chain including one who—if not superior to Yaḥyā ibn Saʿīd al-Qaṭṭān—is certainly not below him, namely ʿAbdullāh ibn al-Mubārak, from Fiṭr, from Muslim ibn Ṣubayḥ: "I heard al-Nuʿmān ibn Bashīr deliver a sermon, saying: 'My father brought me to the Messenger of Allah (peace be upon him) to witness a gift he had given me. He asked: "Do you have other sons besides him¿' He replied: "Yes." He said: "Equalize between them."'" This establishes a binding mandate for equal treatment among them.

L26244 The Malikis interpreted his command—peace and blessings be upon him—to proclaim "Allahu Akbar" (takbīr) during the obligatory prayer as an obli-

وَنَهَى - عَلَيْهِ السَّلَامُ - عَنْ النَّذْرِ ثُمَّ أَمَرَ بِالْوَفَاءِ بِهِ، وَأَخْبَرَ أَنَّهُ «يُسْتَخْرَجُ بِهِ مِنْ الْبَخِيلِ» فَوَقَفْنَا عِنْدَ أَمْرِهِ، فَبَانُونَ فِي هَذَا الْبَابِ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَمْضَاهُ بَعْدَ أَنْ أَمَرَهُ بِرَدِّهِ، وَنَحْنُ أَوَّلُ سَامِعٍ وَمُطِيعٍ، وَذَلِكَ مَا لَا يَجِدُونَهُ أَبَدًا.

وَأَتَى بَعْضُهُمْ بِآبِدَةٍ، وَهِيَ أَنَّهُ ذَكَرَ مَا رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ فِطْرِ بْنِ خَلِيفَةَ عَنْ مُسْلِمِ بْنِ صُبَيْحٍ هُوَ أَبُو الضُّحَى - سَمِعْتُ «النُّعْمَانَ بْنَ بَشِيرٍ يَقُول: ذَهَبَ بِي أَبِي إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي شَيْءٍ أَعْطَانِيهِ فَقَالَ: أَلَكَ وَلَدٌ غَيْرُهُ؟ قَالَ: نَعَمْ، وَصَفَّ بِيَدِهِ أَجْمَعَ كُلِّهِ كَذَا، أَلَا سَوَّيْتَ بَيْنَهُمْ.»

قَالَ أَبُو مُحَمَّد: إنَّ مَنْ عَارَضَ رِوَايَةَ كُلِّ مَنْ ذَكَرْنَا بِرِوَايَةِ فِطْرٍ لَمَخْذُولٌ، وَفِطْرٌ ضَعِيفٌ، وَلَوْلَا أَنَّ سُفْيَانَ رَوَاهُ عَنْ أَبِي الضُّحَى عَنْ النُّعْمَانِ مَا كَانَ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّ سَائِرَ الرِّوَايَاتِ زَائِدَةٌ - حُكْمًا وَلَفْظًا - عَلَى هَذِهِ الرِّوَايَةِ، فَكَيْفَ وَقَدْ رُوِّينَا فِي حَدِيثِ فِطْرٍ هَذَا مِنْ طَرِيقِ مَنْ إنْ لَمْ يَكُنْ فَوْقَ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ لَمْ يَكُنْ دُونَهُ - وَهُوَ عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ - عَنْ فِطْرٍ عَنْ مُسْلِمِ بْنِ صُبَيْحٍ سَمِعْتُ «النُّعْمَانَ بْنَ بَشِيرٍ يَخْطُبُ يَقُولُ: جَاءَ بِي أَبِي إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُشْهِدَهُ عَلَى عَطِيَّةٍ أَعْطَانِيهَا؟ فَقَالَ: هَلْ لَكَ بَنُونَ سِوَاهُ؟ قَالَ: نَعَمْ قَالَ: سَوِّ بَيْنَهُمْ» فَهَذَا إيجَابٌ لِلتَّسْوِيَةِ بَيْنَهُمْ.

gation based solely on the imperative form, while the Hanafis interpreted his command—peace and blessings be upon him—requiring those who performed the Eid al-Adha prayer before the Imam to repeat it as an obligation based solely on the imperative form.

وَقَدْ حَمَلَ الْمَالِكِيُّونَ أَمْرَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالتَّكْبِيرِ عَلَى الْفَرْضِ بِمُجَرَّدِ الْأَمْرِ، وَحَمَلَ الْحَنَفِيُّونَ أَمْرَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالْإِعَادَةِ مَنْ ضَحَّى قَبْلَ الْإِمَامِ عَلَى الْفَرْضِ بِمُجَرَّدِ الْأَمْرِ.

L26245 They persisted in recklessly opposing the truth through various forms of absurdity until some of them declared: "This [conduct] resembles what was narrated - peace and blessings be upon him - that he brought beads and distributed them to a free woman and an enslaved woman."

وَمَا زَالُوا يَهْجُمُونَ عَلَى وُجُوهِ السُّخْفِ مُعَارَضَةً لِلْحَقِّ حَتَّى قَالَ بَعْضُهُمْ: هَذَا كَمَا رُوِيَ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَتَى بِخَرَزٍ فَقَسَمَهُ لِلْحُرَّةِ وَالْأَمَةِ.

L26246 Abu Muhammad said: What resemblance is there between this and his command (peace and blessings be upon him) to return that charity and gift, and his declaration that it is injustice if they understood? Thus, all that they have fabricated is nullified, and praise be to Allah, the Lord of the worlds.

قَالَ أَبُو مُحَمَّدٍ: أَيُّ شَبَهٍ بَيْنَ هَذَا وَبَيْنَ أَمْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنْ يَرُدَّ تِلْكَ الصَّدَقَةَ وَالْعَطِيَّةَ، وَإِخْبَارُهُ بِأَنَّهَا جَوْرٌ لَوْ عَقَلُوا: فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L26247 As for the report "Every property owner is most entitled to their property," this is authentic, for Allah, the Most High, has said: {It is not for a believing man or a believing woman, when Allah and His Messenger have decreed a matter, that they should have any choice in their affair} [Al-Aḥzāb 33:36].[30]

وَأَمَّا الْخَبَرُ «كُلُّ ذِي مَالٍ أَحَقُّ بِمَالِهِ» فَصَحِيحٌ، فَقَدْ قَالَ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦]

L26248 And He, the Exalted, said: {The Prophet has more right over the believers than their own selves} [Al-Aḥzāb: 6].[31]

وَقَالَ تَعَالَى: {النَّبِيُّ أَوْلَى بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ} [الأحزاب: ٦]

L26249 The One who decreed the obligation of Zakāh, invalidated the earnings of the prostitute, the remuneration of the diviner, the sale of wine, the sale of an umm al-walad, and transactions involving ribā, is the same One who invalidated the ṣadaqah and the gift that preferentially favors some children over others. If they had subjected their own position to this critique in invalidating the nuḥl and the ṣadaqah that had not been taken possession of, it would have been more correct and firmly established. But they are like drunkards, stumbling blindly. Some of them argued that it is people's customary practice, so we responded: People's customary practice is predominantly invalid.

فَالَّذِي حَكَمَ بِإِيجَابِ الزَّكَاةِ، وَفَسَخَ أَجْرَ الْبَغِيِّ، وَحُلْوَانَ الْكَاهِنِ، وَبَيْعَ الْخَمْرِ، وَبَيْعَ أُمِّ الْوَلَدِ، وَبَيْعَ الرِّبَا، هُوَ الَّذِي فَسَخَ الصَّدَقَةَ وَالْعَطِيَّةَ الْمُفَضَّلَ فِيهَا بَعْضُ الْوَلَدِ عَلَى بَعْضٍ، وَلَوْ أَنَّهُمْ اعْتَرَضُوا أَنْفُسَهُمْ بِهَذَا الِاعْتِرَاضِ فِي إِبْطَالِهِمْ النُّحْلَ وَالصَّدَقَةَ الَّتِي لَمْ تُقْبَضْ لَكَانَ أَصَحَّ وَأَثْبَتَ، وَلَكِنَّهُمْ كَالسُّكَارَى يَخْبِطُونَ وَاحْتَجَّ بَعْضُهُمْ بِأَنَّهُ عَمَلُ النَّاسِ فَقُلْنَا: عَمَلُ النَّاسِ الْغَالِبُ عَلَيْهِ الْبَاطِلُ.

L26250 Anas said, "I do not know of anything from what I have witnessed the people

وَقَالَ أَنَسٌ: مَا أَعْرِفُ مِمَّا أَدْرَكْت النَّاسَ عَلَيْهِ إلَّا الصَّلَاةَ.

[30] **Qur'an references (L26247):** Qur'an 33:36 (Al-Ahzab).
[31] **Qur'an references (L26248):** Qur'an 33:6 (Al-Ahzab).

adhering to except the *ṣalāh*."

L26251 Some scholars said: Since favoritism among brothers is permissible, is favoritism among children also permissible?

L26252–26253 We said: Is this the ruling of Iblis? Why did you not say: Since qisas is permissible between a person and his brother, it is permissible between a person and his child? That would have been more correct.

L26254 Abu Muhammad said: As for what they have glossed over concerning the Companions—may Allah be pleased with them—none of it is a proof for them, for there is no proof in anyone except the Messenger of Allah—may Allah bless him and grant him peace.

L26255 Then, the ḥadīth of Abū Bakr we have indeed cited contrary to what they cited.

L26256 As for the statement of 'Umar and 'Uthmān, "Whoever grants his child a parental gift," we did not prohibit parental gifts to children; rather, we prohibited preferential treatment. Their statements do not entail the permissibility of preferential treatment, just as they do not entail the permissibility of selling intoxicants and swine, and there is no distinction.

L26257 A prohibition thereof has been authentically established from both of them, as we have cited.

L26258 As for the narration from Ibn 'Umar, it does not indicate that he did not grant the others similar gifts either before or after this. Rather, it contains his statement: "Wāqid is my poor son." This establishes that he had not yet granted him as he had granted his brothers, so he joined him with them and brought him out of destitution—though this is reported via the chain of Ibn Lahī'ah, who is discredited.

L26259 Similarly, the ruling regarding the report from ʿAbd al-Raḥmān is also disconnected. Even if it were authentic, there is no mention that he ever equalized [the matter] between them, neither before nor after. Thus, all they have relied upon is invalidated. And success is from Allah, the Exalted.

L26260 Abu Muhammad said: As for the obligatory expenditures, the Prophet's

وَقَالَ بَعْضُهُمْ: لَمَّا جَازَتْ مُفَاضَلَةُ الْإِخْوَةِ جَازَتْ مُفَاضَلَةُ الْأَوْلَادِ؟

قُلْنَا: هَذَا حُكْمُ إبْلِيسَ؟ وَهَلَّا قُلْتُمْ: لَمَّا جَازَ الْقَوَدُ بَيْنَ الْمَرْءِ وَأَخِيهِ جَازَ بَيْنَ الْمَرْءِ وَوَلَدِهِ؟ فَكَانَ أَصَحَّ.

قَالَ أَبُو مُحَمَّد: وَأَمَّا مَا مَوَّهُوا بِهِ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

ثُمَّ حَدِيثُ أَبِي بَكْرٍ قَدْ أَوْرَدْنَاهُ بِخِلَافِ مَا أَوْرَدُوهُ.

وَأَمَّا قَوْلُ عُمَرَ، وَعُثْمَانَ، مَنْ نَحَلَ وَلَدَهُ نُحْلًا، فَنَحْنُ لَمْ نَمْنَعْ نُحْلَ الْوَلَدِ وَإِنَّمَا مَنَعْنَا الْمُفَاضَلَةَ، وَلَيْسَ فِي كَلَامِهِمَا إبَاحَةُ الْمُفَاضَلَةِ، كَمَا لَيْسَ فِيهِ إبَاحَةُ بَيْعِ الْخَمْرِ وَالْخَنَازِيرِ وَلَا فَرْقَ.

وَقَدْ صَحَّ عَنْهُمَا الْمَنْعُ مِنْهَا، كَمَا أَوْرَدْنَا.

وَأَمَّا الرِّوَايَةُ عَنْ ابْنِ عُمَرَ فَلَيْسَ فِيهَا أَنَّهُ لَمْ يَنْحَلْ الْآخَرِينَ قَبْلُ وَلَا بَعْدُ بِمِثْلِ ذَلِكَ، بَلْ فِيهَا أَنَّهُ قَالَ: وَاقِدٌ ابْنِي مِسْكِينٌ، فَصَحَّ أَنَّهُ لَمْ يَكُنْ نَحَلَهُ بَعْدُ كَمَا نَحَلَ إخْوَتَهُ، فَأَلْحَقَهُ بِهِمْ، وَأَخْرَجَهُ عَنْ الْمَسْكَنَةِ، عَلَى أَنَّهَا مِنْ طَرِيقِ ابْنِ لَهِيعَةَ وَهُوَ سَاقِطٌ.

وَكَذَلِكَ الْقَوْلُ فِي الرِّوَايَةِ عَنْ عَبْدِ الرَّحْمَنِ هِيَ أَيْضًا مُنْقَطِعَةٌ، ثُمَّ لَوْ صَحَّتْ فَلَيْسَ فِيهَا أَنَّهُ لَمْ يُسَوِّ قَبْلُ وَلَا بَعْدُ بَيْنَهُمْ، فَبَطَلَ كُلُّ مَا تَعَلَّقُوا بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

injunction (peace and blessings be upon him), "Be just between your children," obligates providing each child with what is necessary for their subsistence. Whoever transgresses this rule has not been just between them.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا النَّفَقَاتُ الْوَاجِبَاتُ: فَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «اعْدِلُوا بَيْنَ أَوْلَادِكُمْ» إيجَابٌ لَأَنْ يُنْفِقَ عَلَى كُلِّ وَاحِدٍ مَا لَا قَوَامَ لَهُ إلَّا بِهِ، وَمَنْ تَعَدَّى هَذَا فَلَمْ يَعْدِلْ بَيْنَهُمْ.

L26261 Similarly, this statement from him—peace and blessings be upon him—obligates equitable treatment between male and female, and this has no connection to inheritance whatsoever. Each text has its ruling, and this ruling does not apply beyond children, if the text does not come except regarding them.

وَكَذَلِكَ هَذَا الْقَوْلُ مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إيجَابٌ لِلتَّسْوِيَةِ بَيْنَ الذَّكَرِ وَالْأُنْثَى، وَلَيْسَ هَذَا مِنْ الْمَوَارِيثِ فِي شَيْءٍ، وَلِكُلِّ نَصٍّ حُكْمُهُ، وَلَيْسَ هَذَا الْحُكْمُ فِي غَيْرِ الْأَوْلَادِ، إذَا لَمْ يَأْتِ النَّصُّ إلَّا فِيهِمْ.

L26262 As for grandchildren, there is no disagreement concerning them. The Companions of the Prophet (peace be upon him) had grandchildren through sons and grandchildren through daughters, yet he (peace be upon him) did not obligate giving to them or equitable treatment between them.

وَأَمَّا وَلَدُ الْوَلَدِ: فَلَا خِلَافَ فِيهِمْ، وَقَدْ كَانَ لِأَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَنُو بَنِينَ وَبَنُو بَنَاتٍ فَلَمْ يُوجِبْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إعْطَاءَهُمْ وَلَا الْعَدْلَ فِيهِمْ.

L26263–26265 If a child dies after being given a gift in which there is no partiality, the gift passes to his heirs, and the father's right to it is nullified. If the father dies, equitable adjustment among them is a debt upon him, from the principal of his wealth. And with Allah alone is success.

وَإِذَا مَاتَ الْوَلَدُ بَعْدَ أَنْ وُهِبَ هِبَةً لَا مُحَابَاةَ فِيهَا فَقَدْ صَارَتْ لِوَرَثَتِهِ وَبَطَلَ أَمْرُ الْأَبِ فِيهَا، وَأَمَّا إنْ مَاتَ الْوَالِدُ فَالتَّعْدِيلُ بَيْنَهُمْ دَيْنٌ عَلَيْهِ، فَهُوَ مِنْ رَأْسِ مَالِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الْهِبَةُ وَالصَّدَقَةُ بِمُشَاعٍ لَا يَنْقَسِمُ]

The Issue of Gifts and Charity Given as Joint Ownership That Cannot Be Divided

L26266

L26267 1635 - Issue: The gift of a specified allocated portion (such as a third, a quarter, or similar) from undivided jointly owned property, and donating it as charity, is permissible and commendable—whether for co-owners, non-co-owners, the wealthy, or the poor—in divisible and indivisible assets (e.g., animals or other items), with no distinction made.

١٦٣٥ - مَسْأَلَةٌ: وَهِبَةُ جُزْءٍ مُسَمًّى مَنْسُوبٍ مِنْ الْجَمِيعِ كَثُلُثٍ أَوْ رُبُعٍ أَوْ نَحْوِ ذَلِكَ مِنْ الْمُشَاعِ وَالصَّدَقَةُ بِهِ جَائِزَةٌ حَسَنَةٌ لِلشَّرِيكِ وَلِغَيْرِ الشَّرِيكِ، وَلِلْغَنِيِّ وَالْفَقِيرِ فِيمَا يَنْقَسِمُ وَفِيمَا لَا يَنْقَسِمُ، كَالْحَيَوَانِ وَغَيْرِهِ وَلَا فَرْقَ.

L26268 This is the opinion of Uthman al-Battī, Maʿmar, Mālik, al-Shāfiʿī, Aḥmad, Isḥāq, Abū Thawr, Abū Sulaymān, and all their disciples—this is also the opinion of Ibrāhīm al-Nakhaʿī.

وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ، وَمَعْمَرٍ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِهِمْ - وَهُوَ قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ.

L26269 Abū Ḥanīfa said: It is not permissible to gift divisible jointly owned property

وَقَالَ أَبُو حَنِيفَةَ: لَا تَجُوزُ هِبَةُ الْمُشَاعِ فِيمَا يَنْقَسِمُ، وَلَا الصَّدَقَةُ بِهِ - لَا لِلشَّرِيكِ وَلَا لِغَيْرِهِ، لَا عَلَى فَقِيرٍ وَلَا عَلَى غَنِيٍّ - وَتَجُوزُ الْهِبَةُ وَالصَّدَقَةُ بِمُشَاعٍ لَا يَنْقَسِمُ عَلَى الْفَقِيرِ وَالْغَنِيِّ وَلِلشَّرِيكِ وَلِغَيْرِهِ.

nor give it as charity—neither to a partner nor to others, neither to a poor person nor to a rich one. However, it is permissible to gift and give as charity indivisible jointly owned property to a poor person and a rich one, to a partner and to others.

وَالَّذِي يَنْقَسِمُ عِنْدَهُ: الدُّورُ، وَالْأَرَضُونَ، وَالْمَكِيلَاتُ، وَالْمَوْزُونَاتُ وَالْمَعْدُودَاتُ، وَالْمَذْرُوعَاتُ - وَالَّذِي لَا يَنْقَسِمُ عِنْدَهُ الرَّأْسُ الْوَاحِدُ مِنْ الْحَيَوَانِ، وَالْحَمَامُ، وَالسَّيْفُ، وَاللُّؤْلُؤَةُ، وَالثَّوْبُ، وَالطَّرِيقُ، وَنَحْوُ ذَلِكَ.

L26270 That which can be divided in his view includes houses, lands, volumetric measures, weighed items, countable items, and things measured by cubits. And that which cannot be divided in his view includes a single animal, pigeons, a sword, a pearl, a garment, a road, and similar things.

قَالَ: وَالْإِجَارَةُ بِمُشَاعٍ مِمَّا يَنْقَسِمُ وَمِمَّا لَا يَنْقَسِمُ لَا تَجُوزُ أَلْبَتَّةَ، إلَّا مِنْ الشَّرِيكِ وَحْدَهُ - قَالَ: وَرَهْنُ الْمُشَاعِ الَّذِي يَنْقَسِمُ وَالَّذِي لَا يَنْقَسِمُ لَا يَجُوزُ أَلْبَتَّةَ، لَا مِنْ الشَّرِيكِ وَلَا مِنْ غَيْرِهِ.

L26271 He said: Leasing co-owned property—whether of a divisible or indivisible type—is strictly prohibited, except when done by the co-owner alone. He further stated: Pledging co-owned property, whether divisible or indivisible, is strictly prohibited, neither by the co-owner nor by anyone else.

قَالَ: وَبَيْعُ الْمُشَاعِ وَإِصْدَاقِهِ وَالْوَصِيَّةُ بِهِ - مِمَّا يَنْقَسِمُ وَمَا لَا يَنْقَسِمُ

L26272 He said: The sale of undivided joint property, its dower, and the bequest pertaining to it—whether divisible or indivisible.

-: جَائِزٌ مِنْ الشَّرِيكِ وَغَيْرِ الشَّرِيكِ، وَكَذَلِكَ عِتْقُ الْمُشَاعِ فَاعْجَبُوا لِهَذِهِ التَّقَاسِيمِ الَّتِي لَا تَعْقِلُ، وَلَا لَهَا فِي الدِّيَانَةِ أَصْلٌ بِالْمَنْعِ خَاصَّةً فِي شَيْءٍ مِنْ ذَلِكَ وَلَمْ يَخْتَلِفْ عَنْهُ فِي أَنَّ الْهِبَةَ وَالصَّدَقَةَ بِشَيْءٍ وَاحِدٍ مِمَّا يَنْقَسِمُ: كَمِائَةِ دِينَارٍ، أَوْ كَدَارٍ وَاحِدَةٍ، أَوْ ضَيْعَةٍ وَاحِدَةٍ، أَوْ كُرِّ طَعَامٍ، أَوْ قِنْطَارِ حَدِيدٍ، أَوْ غَيْرِ ذَلِكَ، لِغَنِيَّيْنِ لَا يَجُوزُ - وَاخْتَلَفَ عَنْهُ فِي الصَّدَقَةِ بِذَلِكَ عَلَى فَقِيرَيْنِ، أَوْ هِبَةِ ذَلِكَ لِفَقِيرَيْنِ، فَرُوِيَ عَنْهُ فِي الْهِبَةِ فِي الْجَامِعِ الصَّغِيرِ: أَنَّهَا تَجُوزُ لِلْفَقِيرَيْنِ - وَفِي الْأَصْلِ: أَنَّهَا لَا تَجُوزُ، وَالْأَشْهَرُ عَنْهُ فِي الصَّدَقَةِ عَلَى الْفَقِيرَيْنِ كَذَلِكَ، أَنَّهَا تَجُوزُ، إلَّا فِي رِوَايَةٍ مُبْهَمَةٍ غَيْرِ مُبَيِّنَةٍ أَجْمَلَ فِيهَا الْمَنْعَ فَقَطْ.

L26273 It is permissible from a partner or non-partner, and likewise the manumission of a co-owned slave. Marvel at these classifications that lack reason and have no basis in religion regarding prohibition specifically in any of these matters. There is no disagreement from him that gifting or donating a single divisible item - such as a hundred dinars, a single house, a single estate, a kurr of food, a quintal of iron, or similar - to two wealthy individuals is impermissible. However, differing opinions are narrated from him concerning donating such items to two needy persons or gifting them to two needy persons. In Al-Jāmiʿ al-Ṣaghīr, it is related from him that gifting to two needy persons is permissible, while in the foundational text it states this is impermissible. The most prevalent opinion attributed to him regarding charitable donation to two needy persons similarly permits it, except in an ambiguous narration where he summarized the prohibition concisely without clarification.

وَقَالَ: مُحَمَّدُ بْنُ الْحَسَنِ: إنْ وَهَبَ دَارًا لِاثْنَيْنِ بَيْنَهُمَا بِنِصْفَيْنِ جَازَ ذَلِكَ، فَإِنْ وَهَبَ لِأَحَدِهِمَا الثُّلُثَ، وَلِلْآخَرِ الثُّلُثَيْنِ فَدَفَعَهَا إلَيْهِمَا مَعًا -: جَازَ ذَلِكَ، فَإِنْ دَفَعَ إلَى الْوَاحِدِ ثُمَّ إلَى الْآخَرِ -: لَمْ يَجُزْ ذَلِكَ.

L26274–26275 Muhammad ibn al-Ḥasan said: If one gifts a house to two individuals, divided between them into halves, this is permissible. If he gifts one-third to one and two-thirds to the other, and delivers it to both at the same time, the gift is valid. But if he delivers it to one first and then to the other, it is invalid.

وَمَنَعَ سُفْيَانُ مِنْ هِبَةِ الْمُشَاعِ، إلَّا أَنَّهُ أَجَازَ هِبَةَ وَاحِدٍ دَارًا لِاثْنَيْنِ، وَهِبَةَ الِاثْنَيْنِ دَارًا لِوَاحِدٍ - وَمَنَعَ ابْنُ شُبْرُمَةَ مِنْ هِبَةِ الْمُشَاعِ، وَمِنْ هِبَةِ وَاحِدٍ دَارًا لِاثْنَيْنِ فَصَاعِدًا، وَأَجَازَ هِبَةَ اثْنَيْنِ دَارًا لِوَاحِدٍ.

L26276 Sufyan prohibited the gifting of undivided shared property; however, he permitted a single person to gift a property to two individuals and two individuals to gift a property to a single person. Ibn Shubruma prohibited the gifting of undivided shared property and a single person gifting a property to two or more individuals, but he permitted two individuals to gift a property to a single person.

قَالَ أَبُو مُحَمَّدٍ: وَمَا نَعْلَمُ لَهُمْ شَغَبًا مَوَّهُوا بِهِ إلَّا إنْ قَالُوا: قَبْضُ الْمُشَاعِ لَا يُمْكِنُ. فَقُلْنَا لَهُمْ: كَذَبْتُمْ، بَلْ هُوَ مُمْكِنٌ، وَهَبْكَ أَنَّهُ غَيْرُ مُمْكِنٍ فَلِمَ أَجَزْتُمْ بَيْعَهُ، وَالْبَيْعُ عِنْدَكُمْ يَحْتَاجُ فِيهِ إلَى الْقَبْضِ، وَلِمَ أَجَزْتُمْ إصْدَاقَهُ، وَالصَّدَاقُ وَاجِبٌ فِيهِ الْإِقْبَاضُ قَالَ اللَّهُ تَعَالَى: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] : وَقَالَ تَعَالَى: {وَلا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا} [البقرة: ٢٢٩] وَلِمَ أَجَزْتُمْ الْوَصِيَّةَ بِهِ؟ وَلِمَ أَجَزْتُمْ إجَارَةَ الْمُشَاعِ مِنْ الشَّرِيكِ، وَمَنَعْتُمْ الرَّهْنَ فِيهِ مِنْ الشَّرِيكِ، وَمَنَعْتُمْ الْهِبَةَ مِنْ الشَّرِيكِ - وَأَقْرَبُ ذَلِكَ لِمَ أَجَزْتُمْ هِبَةَ الْمُشَاعِ فِيمَا لَا يَنْقَسِمُ وَالْعِلَّةُ وَاحِدَةٌ. فَهَلْ فِي التَّلَاعُبِ وَالسَّخَافَةِ أَكْثَرُ مِنْ هَذَا؟ وَمَوَّهُوا أَيْضًا بِالرِّوَايَةِ الَّتِي ذَكَرْنَا قَبْلُ مِنْ قَوْلِ أَبِي بَكْرٍ لِعَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهُمَا -: إنِّي كُنْتُ نَحَلْتُك جَادَّ عِشْرِينَ وَسْقًا مِنْ مَالِ الْغَابَةِ فَلَوْ كُنْتِ جَدَدْتِيهِ وَاحْتَزْتِيهِ لَكَانَ لَك، هَذَا دَلِيلٌ عَلَى الْمَنْعِ مِنْ هِبَةِ الْمُشَاعِ. قَالَ أَبُو مُحَمَّدٍ: هَذَا عَظِيمٌ جِدًّا، وَفَاحِشُ الْقُبْحِ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L26277 Abu Muhammad said: We know of no specious argument they have fabricated except their claim that taking possession of undivided jointly-owned property is impossible. We countered them: You lie! Rather, it is possible. Even if we suppose it were impossible, why do you permit its sale when your doctrine requires delivery in sales? Why do you permit its use as dower when dowers mandate delivery, as Allah the Exalted said: {Give women their dowers as a free gift} [4:4], and He said: {It is unlawful for you to reclaim anything you have given them} [2:229]? Why do you permit bequeathing it? Why do you allow leasing undivided jointly-owned property by a co-owner, yet prohibit mortgaging it by a co-owner and forbid gifting it by a co-owner—while the closest analogy is: Why do you permit gifting undivided jointly-owned property that cannot be partitioned when the legal rationale is identical? Is there any greater frivolity and inanity than this?

They also disguised their argument with the previously mentioned narration of Abu Bakr's statement to Aisha, Mother of the Believers (may Allah be pleased with both of them): "I had granted you twenty wasqs from the Ghābah estate. Had you renewed and demarcated it, it would have been yours," claiming this as evidence against gifting undivided jointly-owned property.

Abu Muhammad said: This is profoundly grave and excessively vile for several reasons: First—No one's statement constitutes proof except the Messenger of Allah (peace and blessings of Allah be upon him).[32]

L26278 The second is that how many statements there are from Abu Bakr and Aisha—may Allah be pleased with them both—which you have contradicted, such as Abu Bakr's view along with other Companions—may Allah be pleased with them—regarding zakat: "If there is no bint makhad, then an ibn labun male," his abstention from performing Udhiyah while being wealthy, Aisha's fasting during the days of Tashreeq, and her statement: "There is no valid fast for one who does not resolve it before dawn," along with many other such instances that are exceedingly numerous.

L26279 And the third is that this very report we have cited runs contrary to this narrative.

L26280–26282 Fourthly, the textual proof they relied on openly contradicts their own position; rather, the wording itself permits the gifting of a portion. From the jointly owned land allocated for a female slave, as he gifted her twenty wasqs of newly harvested produce from his property in the woodland.

L26283 This matter must necessarily fall into one of two scenarios: either he gifted her from those palm trees an amount that would yield twenty wasqs, or he gifted her twenty wasqs of freshly yielded produce. Thus, it is either a promise that he would gift her that amount – and this is the preponderant opinion – or that he gifted her and ratified that quantity, which was indeterminate in measure, number, and specific item within undivided jointly-owned property. They both jointly deemed this permissible in the presence of the Companions, with none opposing them, and Abū Bakr did not invalidate it on these grounds.

L26284 So they lied in their statement outright. Rather, Abu Bakr invalidated it solely by the explicit text of his statement: "because she did not take possession of it." Had she renewed it and taken possession of it, it would have been effective. Thus, it reverted to being decisive evidence against them. And

[32]**Qur'an references (L26277):** Qur'an 4:4 (An-Nisa); Qur'an 2:229 (Al-Baqarah).

وَثَانِيهَا - أَنَّهُ كَمْ قَوْلَةٌ لِأَبِي بَكْرٍ، وَعَائِشَةَ - رَضِيَ اللَّهُ عَنْهُمَا - قَدْ خَالَفْتُمُوهُمَا فِيهَا كَقَوْلِ أَبِي بَكْرٍ، وَغَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي الزَّكَاةِ إنْ لَمْ تَكُنْ بِنْتَ مَخَاضٍ فَابْنَ لَبُونٍ ذَكَرٍ، وَكَتَرْكِهِ التَّضْحِيَةَ وَهُوَ غَنِيٌّ، وَكَصِيَامِ عَائِشَةَ أَيَّامَ التَّشْرِيقِ، وَقَوْلِهَا: لَا صِيَامَ لِمَنْ لَمْ يُبَيِّتْهُ مِنْ اللَّيْلِ وَغَيْرُ ذَلِكَ كَثِيرٌ جِدًّا.

وَثَالِثُهَا - أَنَّ هَذَا الْخَبَرَ نَفْسَهُ قَدْ أَوْرَدْنَاهُ بِخِلَافِ هَذِهِ الْقِصَّةِ.

وَرَابِعُهَا - أَنَّ اللَّفْظَ الَّذِي احْتَجُّوا بِهِ مُخَالِفٌ لِقَوْلِهِمْ جِهَارًا بَلْ فِيهِ إجَازَةُ هِبَةِ جُزْءٍ مِنْ الْمُشَاعِ لِغَنِيَّةٍ، لِأَنَّهُ نَحَلَهَا جِدَادَ عِشْرِينَ وَسْقًا مِنْ مَالِهِ بِالْغَابَةِ.

وَلَا يَخْلُو ذَلِكَ ضَرُورَةً مِنْ أَحَدِ وَجْهَيْنِ -: إمَّا أَنْ يَكُونَ نَحَلَهَا مِنْ تِلْكَ النَّخْلِ مَا تَجِدُّ مِنْهَا عِشْرِينَ وَسْقًا، أَوْ نَحَلَهَا عِشْرِينَ وَسْقًا مَجْدُودَةً، فَهِيَ إمَّا عِدَةٌ بِأَنْ يَنْحَلَهَا ذَلِكَ - وَهَذَا هُوَ الْأَظْهَرُ، وَإِمَّا أَنَّهُ نَحَلَهَا وَأَمْضَى لَهَا ذَلِكَ الْمِقْدَارَ، وَهُوَ مَجْهُولُ الْقَدْرِ وَالْعَدَدِ وَالْعَيْنِ فِي مُشَاعٍ، فَرَأَيَاهُ مَعًا بِحَضْرَةِ الصَّحَابَةِ جَائِزًا وَلَا مُخَالِفَ لَهُمَا مِنْهُمْ، وَلَمْ يُبْطِلْهُ أَبُو بَكْرٍ لِذَلِكَ.

فَكَذَبُوا فِي قَوْلِهِمْ صُرَاحًا، وَإِنَّمَا أَبْطَلَهُ أَبُو بَكْرٍ بِنَصِّ قَوْلِهِ " لِأَنَّهَا لَمْ تَحُزْهُ " فَقَطْ، وَلَوْ جَدَدْته وَحَازَتْهُ لَكَانَ نَافِذًا، فَعَادَ حُجَّةً عَلَيْهِمْ، وَصَدَقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْحَيَاءُ مِنْ الْإِيمَانِ» .

the Messenger of Allah—peace and blessings be upon him—spoke the truth: "Modesty is a branch of faith."

L26285 Thus, all that they disguised with it fell away—and all praise belongs to Allah, the Exalted.

L26286 Abū Muḥammad said: We returned to our statement and found that Allah, the Exalted, has urged charity, virtuous acts, and benevolence. Giving gifts is a virtuous act, and the Almighty knew that within the wealth of those urged regarding gifts and charity lies both shared and non-shared property. Had the Exalted not permitted them to give charity and gifts from shared assets, He would have clarified it to them and would not have concealed it from them. Whoever ascribes a prohibition to Allah the Exalted, or imposes an obligation that Allah the Almighty has not decreed its prohibition or obligation through His Messenger—peace and blessings be upon him—who was commanded to convey and clarify, has indeed lied against Allah the Exalted and fabricated falsehood against Him. This is an immensely grave matter.

L26287 It is definitively established that gifting undivided jointly owned property, giving it as charity, leasing it, or mortgaging it—all such acts are permissible, whether the property is divisible or indivisible, for co-owners and others, and for the wealthy and the poor. {And your Lord is not forgetful} (19:64).[33]

L26288–26290 From the chain of Ibn Abī Shaybah: From Wakīʿ, from Sharīk, from Ibrāhīm ibn al-Muhājir, from Qays ibn Abī Ḥāzim, who said: A man came to the Messenger of Allah—peace and blessings be upon him—with a ball of hair from the spoils and said, "O Messenger of Allah, grant this to me, for we are a household that works with hair." The Prophet—peace and blessings be upon him—replied, "My portion of it is yours," and they... They argue using the mursal report and the narrations of Sharik and Ibrāhīm ibn al-Muhājir. What diverted them from this report? It is authentically established that Asmā' bint Abī Bakr al-Ṣiddīq said to al-Qāsim ibn Muḥammad ibn Abī Bakr and ʿAbdullāh ibn Muḥammad ibn ʿAbd al-Raḥmān ibn Abī Bakr: "I inherited property from my sister ʿĀ'ishah in al-Ghābah. Muʿāwiyah gave me one

فَسَقَطَ كُلُّ مَا مَوَّهُوا بِهِ - وَلِلَّهِ تَعَالَى الْحَمْدُ.

قَالَ أَبُو مُحَمَّد: فَعُدْنَا إلَى قَوْلِنَا فَوَجَدْنَا اللَّهَ تَعَالَى قَدْ حَضَّ عَلَى الصَّدَقَةِ وَفِعْلِ الْخَيْرِ، وَالْفَضْلِ، وَكَانَتْ الْهِبَةُ فِعْلَ خَيْرٍ، وَقَدْ عَلِمَ عَزَّ وَجَلَّ أَنَّ فِي أَمْوَالِ الْمَحْضُوضِينَ عَلَى الْهِبَةِ وَالصَّدَقَةِ مُشَاعًا وَغَيْرَ مُشَاعٍ، فَلَوْ كَانَ تَعَالَى لَمْ يُبِحْ لَهُمْ الصَّدَقَةَ وَالْهِبَةَ فِي الْمُشَاعِ لَبَيَّنَهُ لَهُمْ، وَلَمَا كَتَمَهُ عَنْهُمْ، وَمَنْ حَرَّمَ عَنْ اللَّهِ تَعَالَى، أَوْ أَوْجَبَ مَا لَمْ يُنَصَّ اللَّهُ عَزَّ وَجَلَّ عَلَى تَحْرِيمِهِ وَإِيجَابِهِ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَأْمُورِ بِالتَّبْلِيغِ، وَالْبَيَانِ -: فَقَدْ كَذَبَ عَلَى اللَّهِ تَعَالَى، وَافْتَرَى عَلَيْهِ، وَهَذَا عَظِيمٌ جِدًّا.

فَصَحَّ يَقِينًا: أَنَّ هِبَةَ الْمُشَاعِ وَالصَّدَقَةَ بِهِ، وَإِجَارَتَهُ وَرَهْنَهُ -: جَائِزٌ كُلُّ ذَلِكَ - فِيمَا يَنْقَسِمُ وَمَا لَا يَنْقَسِمُ - لِلشَّرِيكِ وَلِغَيْرِهِ، وَلِلْغَنِيِّ وَلِلْفَقِيرِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا وَكِيعٌ نا شَرِيكٌ عَنْ إبْرَاهِيمَ بْنِ الْمُهَاجِرِ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ " قَالَ: «أَتَى رَجُلٌ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِكُبَّةِ شَعْرٍ مِنْ الْغَنِيمَةِ، فَقَالَ: يَا رَسُولَ اللَّهِ هَبْهَا لِي، فَإِنَّا أَهْلُ بَيْتٍ نُعَالِجُ الشَّعْرَ. فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: نَصِيبِي مِنْهَا لَكَ» وَهُمْ يَحْتَجُّونَ بِالْمُرْسَلِ، وَبِرِوَايَةِ شَرِيكٍ، وَإِبْرَاهِيمَ بْنِ الْمُهَاجِرِ فَمَا صَرَفَهُمْ عَنْ هَذَا الْخَبَرِ؟ وَقَدْ صَحَّ عَنْ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ أَنَّهَا قَالَتْ لِلْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ، وَلِعَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ: إنِّي وَرِثْت عَنْ أُخْتِي عَائِشَةَ مَالًا بِالْغَابَةِ، وَقَدْ أَعْطَانِي مُعَاوِيَةُ بِهَا مِائَةَ أَلْفٍ، فَهُوَ لَكُمَا، لِأَنَّهُمَا لَمْ يَرِثَا مِنْ أُمِّ

[33] **Qur'an references (L26287):** Qur'an 19:64 (Maryam).

hundred thousand for it, so this is yours—since they inherited nothing from the Mother of the Believers. They only inherited from Asmā' and ʿAbdullāh ibn ʿAbd al-Raḥmān ibn Abī Bakr." This constitutes a gift to two affluent, resource-rich individuals under joint ownership. Asmā's action, may Allah be pleased with her, performed in the presence of the Companions (may Allah be pleased with them), stands unchallenged, with no known opposition from them. The Companions' charitable acts for their children and grandchildren through the yields of their endowments—whether as charity or gifts to wealthy recipients under joint ownership—are more renowned than the sun.

الْمُؤْمِنِينَ شَيْئًا إِنَّمَا وَرِثَا أَسْمَاءَ، وَعَبْدَ اللَّهِ بْنَ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ - فَهَذِهِ هِبَةٌ لِغَنِيَّيْنِ مُكْثِرَيْنِ مُشَاعَةً، وَفِعْلُ أَسْمَاءَ - رَضِيَ اللَّهُ تَعَالَى عَنْهَا - بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا يُعْرَفُ لَهَا مِنْهُمْ مُخَالِفٌ، وَصَدَقَاتُ الصَّحَابَةِ عَلَى بَنِيهِمْ وَبَنِي بَنِيهِمْ بِغَلَّةِ أَوْقَافِهِمْ أَشْهَرُ مِنْ الشَّمْسِ صَدَقَةً أَوْ هِبَةً لِأَغْنِيَاءَ بِمُشَاعٍ.

L26291 And it has been narrated to us through the chain of Muḥammad ibn Isḥāq from ʿAmr ibn Shuʿayb from his father from his grandfather, where he mentioned the story of Ḥunayn and Hawāzin's request for their dependents and children. The Messenger of Allāh (peace and blessings be upon him) said: "Whatever was for me and for Banu ʿAbd al-Muṭṭalib is yours." The Muhājirūn and the Anṣār said: "And whatever was for us is for the Messenger of Allāh." And he mentioned the ḥadīth.

وَرُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ فَذَكَرَ قِصَّةَ حُنَيْنٍ وَطَلَبَ هَوَازِنَ عِيَالَهُمْ وَأَبْنَاءَهُمْ «فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا كَانَ لِي وَلِبَنِي عَبْدِ الْمُطَّلِبِ فَهُوَ لَكُمْ فَقَالَ الْمُهَاجِرُونَ وَالْأَنْصَارُ: وَمَا كَانَ لَنَا فَهُوَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» وَذَكَرَ الْحَدِيثَ.

L26292 Therefore, this constitutes a gift of jointly held undivided property (mushāʿ), and they invoke this method as evidence when it aligns with their legal school emulation (taqlīd).

فَهَذِهِ هِبَةُ مُشَاعٍ وَهُمْ يَحْتَجُّونَ بِهَذِهِ الطَّرِيقِ إذَا وَافَقَتْ تَقْلِيدَهُمْ.

L26293 The report that we have narrated through the chain of Muslim: Yahya ibn Yahya reported to us, who said: "I [heard] Abu Khaythama narrate from Abu al-Zubayr from Jabir, who said: 'The Messenger of Allah—peace and blessings be upon him—dispatched us, appointing Abu 'Ubaydah as our commander. He intercepted a Quraysh caravan and provisioned us with a sack of dates, having found nothing else for us. Abu 'Ubaydah would give us one date at a time.'" This is the shared gift of dates.

وَالْخَبَرُ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا يَحْيَى بْنُ يَحْيَى قَالَ: أَنَا أَبُو خَيْثَمَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: «بَعَثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَمَّرَ عَلَيْنَا أَبَا عُبَيْدَةَ فَتَلَقَّى عِيرًا لِقُرَيْشٍ وَزَوَّدَنَا جِرَابًا مِنْ تَمْرٍ، لَمْ يَجِدْ لَنَا غَيْرَهُ، فَكَانَ أَبُو عُبَيْدَةَ يُعْطِينَا تَمْرَةً تَمْرَةً» فَهَذِهِ عَطِيَّةُ تَمْرٍ مُشَاعَةٍ.

L26294 The proof is established by what we have transmitted via the chain in Ṣaḥīḥ Muslim: Khalaf ibn Hishām narrated to us, Ḥammād ibn Zayd narrated to us from Ghaylān ibn Jarīr from Abū Burdah ibn Abī Mūsā al-Ashʿarī from his father: "I came to the Prophet (peace and blessings of Allah be upon him) with a group of Ashʿarīs to request mounts, and he granted us three

وَالْحُجَّةُ تَقُومُ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا خَلَفُ بْنُ هِشَامٍ نَا حَمَّادُ بْنُ زَيْدٍ عَنْ غَيْلَانَ بْنِ جَرِيرٍ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ «أَتَيْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ

camels white-marked on their faces, legs, and forearms," and he mentioned the report. This constitutes an undivided jointly owned gift.

وَسَلَّمَ - فِي نَفَرٍ مِنْ الْأَشْعَرِيِّينَ نَسْتَحْمِلُهُ فَأَمَرَ لَنَا بِثَلَاثِ ذَوْدٍ غُرِّ الذُّرَى» وَذَكَرَ الْخَبَرَ - فَهَذِهِ هِبَةُ مُشَاعٍ لَمْ يَنْقَسِمْ.

L26295–26296 From the perspective of legal reasoning, there is only valid ownership followed by a transaction within what is legitimately owned, nothing more. Thus, the recipient of the gift and the beneficiary of charity acquire ownership of the undivided share exactly as the donor and the charitable giver owned it, with no difference at all. The recipient of the gift, the beneficiary of charity, and the lessee may exercise rights over it just as the donor, the charitable giver, the lessee, and their agents would, without any distinction. The mortgagee's legal possession over it is equivalent to the mortgagor's possession and that of his agent, with no distinction whatsoever. There is absolutely no escape from this ruling for them—and success comes only from Allah, the Most High.

وَأَمَّا مِنْ النَّظَرِ: فَلَيْسَ إلَّا مِلْكٌ صَحِيحٌ، ثُمَّ تَصَرَّفَ فِيمَا صَحَّ الْمِلْكُ فِيهِ وَلَا مَزِيدَ، فَتَمَلُّكُ الْمَوْهُوبِ لَهُ وَالْمُتَصَدَّقِ عَلَيْهِ بِالْجُزْءِ الْمُشَاعِ كَمَا مَلَكَهُ الْوَاهِبُ وَالْمُتَصَدِّقُ، وَلَا فَرْقَ أَلْبَتَّةَ - وَيَتَصَرَّفُ الْمَوْهُوبُ لَهُ، وَالْمُتَصَدَّقُ، وَالْمُكْتَرِي، كَمَا يَتَصَرَّفُ فِيهِ الْوَاهِبُ، وَالْمُتَصَدِّقُ، وَالْمُكْتَرِي، وَوُكَلَاؤُهُمْ وَلَا فَرْقَ، وَتَكُونُ يَدُ الْمُرْتَهِنِ عَلَيْهِ كَمَا هِيَ عَلَيْهِ يَدُ الرَّاهِنِ وَوَكِيلُهُ وَلَا فَرْقَ - وَهَذَا لَا مُخَلِّصَ لَهُمْ مِنْهُ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A jurisprudential issue concerning the giving of an unspecified item from a group.

[مَسْأَلَةٌ أَعْطَى شَيْئًا غَيْرَ مُعَيَّنٍ مِنْ جُمْلَةٍ]

L26297

L26298 1636. Issue: If someone gives something unspecified from a group—whether an unspecified number, linear measure, weight, or dry measure—it is invalid and impermissible. Examples include giving a dirham from these dirhams, an animal from these animals, five dinars from these dinars, a ritl from this flour, a ṣāʿ from these dates, or a cubit from this garment. This ruling applies universally to charity, gifts, bridal gifts (mahr), sales, pledges, and leases—all such transactions are void, whether their parts differ or not, neither to a partner nor to others, neither to the wealthy nor to the poor. This is because the gift, charity, bridal gift, pledge, or lease is not applied to any specific item distinguished from his ownership, nor does the legal ruling of a pledge or lease attach to it. Consequently, nothing from that group leaves his ownership, nor does any legal ruling take effect upon it. Therefore, the transaction is void, constituting unlawful appropriation of wealth. This contradicts the earlier ruling, as the specified portion would inherently include a share for the buyer, charity-giver, gift recipient, pledgee, or lessee. It has been narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar:

١٦٣٦ - مَسْأَلَةٌ: وَأَمَّا إذَا أَعْطَى شَيْئًا غَيْرَ مُعَيَّنٍ مِنْ جُمْلَةٍ، أَوْ عَدَدًا كَذَلِكَ، أَوْ ذَرْعًا كَذَلِكَ، أَوْ وَزْنًا كَذَلِكَ، أَوْ كَيْلًا كَذَلِكَ، فَهُوَ بَاطِلٌ لَا يَجُوزُ، مِثْلُ: أَنْ يُعْطِيَ دِرْهَمًا مِنْ هَذِهِ الدَّرَاهِمِ، أَوْ دَابَّةً مِنْ هَذِهِ الدَّوَابِّ أَوْ خَمْسَةَ دَنَانِيرَ مِنْ هَذِهِ الدَّنَانِيرِ، أَوْ رِطْلًا مِنْ هَذَا الدَّقِيقِ، أَوْ صَاعًا مِنْ هَذَا التَّمْرِ، أَوْ ذِرَاعًا مِنْ هَذَا الثَّوْبِ، وَهَكَذَا فِي كُلِّ شَيْءٍ، وَالصَّدَقَةُ بِكُلِّ هَذَا، وَالْهِبَةُ وَالْإِصْدَاقُ، وَالْبَيْعُ، وَالرَّهْنُ، وَالْإِجَارَةُ، بَاطِلٌ كُلُّ ذَلِكَ سَوَاءٌ فِيمَا اخْتَلَفَتْ أَبْعَاضُهُ أَوْ لَمْ تَخْتَلِفْ - لَا لِشَرِيكٍ وَلَا لِغَيْرِهِ، وَلَا لِغَنِيٍّ وَلَا لِفَقِيرٍ - لِأَنَّهُ لَمْ يُوقِعْ الْهِبَةَ وَلَا الصَّدَقَةَ، وَلَا الْإِصْدَاقَ، وَلَا الرَّهْنَ، وَلَا الْإِجَارَةَ عَلَى شَيْءٍ أَبَانَهُ عَنْ مِلْكِهِ، أَوْ أَوْقَعَ فِيهِ حُكْمَ الرَّهْنِ، أَوْ الْإِجَارَةِ، فَإِذْ ذَلِكَ كَذَلِكَ، فَلَمْ يَخْرُجْ شَيْءٌ مِنْ تِلْكَ الْجُمْلَةِ عَنْ مِلْكِهِ، وَلَا أَوْقَعَ فِيهِ حُكْمًا -: فَلَا شَيْءَ فِي ذَلِكَ،

"I asked al-Zuhrī about a man partnered with his father, where the father says, 'You have one hundred dinars from the property jointly held between us.'" Al-Zuhrī replied, "Abū Bakr and ʿUmar ruled this impermissible until he physically takes possession of the amount and segregates it."

وَهَذَا هُوَ أَكْلُ الْمَالِ بِالْبَاطِلِ، وَهَذَا خِلَافُ مَا تَقَدَّمَ؛ لِأَنَّ الْجُزْءَ الْمُسَمَّى مُتَيَقَّنٌ أَنَّهُ لَا جُزْءَ إِلَّا وَفِيهِ حَظٌّ لِلْمُشْتَرِي، أَوْ الْمُصَدِّقِ، أَوْ الْمَوْهُوبِ لَهُ، أَوْ الْمُتَصَدَّقِ عَلَيْهِ، أَوْ الْمُرْتَهِنِ، أَوْ الْمُسْتَأْجِرِ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ سَأَلْت الزُّهْرِيَّ عَنْ الرَّجُلِ يَكُونُ شَرِيكًا لِأَبِيهِ فَيَقُولُ لَهُ أَبُوهُ: لَك مِائَةُ دِينَارٍ مِنْ الْمَالِ الَّذِي بَيْنِي وَبَيْنَك؟ فَقَالَ الزُّهْرِيُّ: قَضَى أَبُو بَكْرٍ، وَعُمَرُ: أَنَّهُ لَا يَجُوزُ، حَتَّى يَحُوزَهُ مِنْ الْمَالِ وَيَعْزِلَهُ.

L26299 And from him [via the chain] from Maʿmar, on the authority of Simāk ibn al-Faḍl: ʿUmar ibn ʿAbd al-ʿAzīz decreed that no grant is valid unless it is singled out, set apart, and publicly declared.

وَبِهِ إلَى مَعْمَرٍ عَنْ سِمَاكِ بْنِ الْفَضْلِ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَنَّهُ لَا يَجُوزُ مِنْ النَّحْلِ، إلَّا مَا أُفْرِدَ، وَعُزِلَ، وَأُعْلِمَ.

The Ruling Regarding One Who Is Given Something Without Asking

L26300

[مَسْأَلَة مَنْ أُعْطِي شَيْئًا مِنْ غَيْرِ مَسْأَلَةٍ]

L26301 1637. Issue: Whoever is given something without requesting it is obliged to accept it. He may subsequently gift it—if he wishes—to the one who gave it to him. This ruling applies to charity, gifts, and all other forms of benefit.

١٦٣٧ - مَسْأَلَةٌ: وَمَنْ أُعْطِي شَيْئًا مِنْ غَيْرِ مَسْأَلَةٍ، فَفَرَضَ عَلَيْهِ قَبُولَهُ، وَلَهُ أَنْ يَهَبَهُ بَعْدَ ذَلِكَ - إنْ شَاءَ - لِلَّذِي وَهَبَهُ لَهُ، وَهَكَذَا الْقَوْلُ فِي الصَّدَقَةِ، وَالْهَدِيَّةِ، وَسَائِرِ وُجُوهِ النَّفْعِ.

L26302–26303 The evidence for this is what we have narrated through the transmission chain of Al-Bazzār: Narrated to us Ibrāhīm ibn Saʿīd al-Jawharī, narrated to us Sufyān ibn ʿUyaynah, from al-Zuhrī, from al-Sā'ib ibn Yazīd, from Ḥuwayṭib ibn ʿAbd al-ʿUzzā, from Ibn al-Sāʿidī, from ʿUmar ibn al-Khaṭṭāb, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said: "Whatever comes to you of this wealth without requesting it or eagerness of the soul, then accept it." We know of no ḥadīth narrated by four Companions in a consecutive chain where each transmits from the other except this one.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبَزَّارِ نَا إبْرَاهِيمُ بْنُ سَعِيدٍ الْجَوْهَرِيُّ نَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ السَّائِبِ بْنِ يَزِيدَ عَنْ حُوَيْطِبِ بْنِ عَبْدِ الْعُزَّى عَنْ ابْنِ السَّاعِدِيِّ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا أَتَاكَ مِنْ هَذَا الْمَالِ مِنْ غَيْرِ مَسْأَلَةٍ، وَلَا إشْرَافِ نَفْسٍ، فَاقْبَلْهُ» لَا نَعْلَمُ حَدِيثًا رَوَاهُ أَرْبَعَةٌ مِنْ الصَّحَابَةِ فِي نَسَقٍ بَعْضِهِمْ عَنْ بَعْضٍ إلَّا هَذَا.

L26304 And from the chain recorded in Ṣaḥīḥ Muslim: Abu al-Ṭāhir narrated to us, Ibn Wahb narrated to us, ʿAmr ibn al-Ḥārith narrated from Ibn Shihāb from Sālim ibn ʿAbd Allāh ibn ʿUmar from his father: "The Messenger of

Allah—peace and blessings be upon him—would grant ʿUmar a portion, and ʿUmar would say: ’O Messenger of Allah, give it to one more in need than me.’ The Messenger of Allah—peace and blessings be upon him—responded: ’Take it. Keep it for yourself or give it in charity. Whatever comes to you of this wealth without you coveting it or asking for it—accept it. But what does not come to you, do not pursue it.”’[34]

وَمِنْ طَرِيقِ مُسْلِمٍ نَا أَبُو الطَّاهِرِ نَا ابْنُ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ ابْنِ شِهَابٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُعْطِي عُمَرَ الْعَطَاءَ فَيَقُولُ لَهُ عُمَرُ: يَا رَسُولَ اللَّهِ أَعْطِهِ أَفْقَرَ إِلَيْهِ مِنِّي فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خُذْهُ فَتَمَوَّلْهُ، أَوْ تَصَدَّقْ بِهِ، وَمَا جَاءَكَ مِنْ هَذَا الْمَالِ - وَأَنْتَ غَيْرُ مُشْرِفٍ وَلَا سَائِلٍ -: فَخُذْهُ، وَمَا لَا فَلَا تُتْبِعْهُ نَفْسَكَ» .

L26305 Salim said: “For that reason, Ibn Umar would not ask anyone for anything, nor would he refuse anything that was given to him.”

قَالَ سَالِمٌ: فَمِنْ أَجْلِ ذَلِكَ كَانَ ابْنُ عُمَرَ لَا يَسْأَلُ أَحَدًا شَيْئًا، وَلَا يَرُدُّ شَيْئًا أُعْطِيهِ “.

L26306 Narrated by Aḥmad b. Muḥammad b. al-Jasūr from Aḥmad b. al-Faḍl b. Bahrām al-Dīnawarī from Muḥammad b. Jarīr al-Ṭabarī from al-Faḍl b. al-Ṣabbāḥ from ʿAbd Allāh b. Yazīd from Saʿīd b. Abī Ayyūb from Abū al-Aswad from Bukayr b. ʿAbd Allāh b. al-Ashajj from Busr b. Saʿīd from Khālid b. ʿAdī al-Juhanī: “The Messenger of Allah—peace and blessings of Allah be upon him and his family—said: ’Whoever receives an act of goodness from his brother should accept it and not refuse it, for it is a provision that Allah has sent to him.’”

نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا أَحْمَدُ بْنُ الْفَضْلِ بْنِ بَهْرَامُ الدِّينَوَرِيُّ نَا مُحَمَّدُ بْنُ جَرِيرٍ الطَّبَرِيُّ نَا الْفَضْلُ بْنُ الصَّبَّاحِ نَا عَبْدُ اللَّهِ بْنُ يَزِيدَ نَا سَعِيدُ بْنُ أَبِي أَيُّوبَ عَنْ أَبِي الْأَسْوَدِ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ بُسْرِ بْنِ سَعِيدٍ عَنْ خَالِدِ بْنِ عَدِيٍّ الْجُهَنِيِّ “ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «مَنْ جَاءَهُ مِنْ أَخِيهِ مَعْرُوفٌ فَلْيَقْبَلْهُ وَلَا يَرُدَّهُ فَإِنَّمَا هُوَ رِزْقٌ سَاقَهُ اللَّهُ إِلَيْهِ» .

L26307–26308 These are consecutively transmitted reports that it is not permissible for anyone to disregard. Among the Companions who upheld this were Ibn ʿUmar, as we mentioned earlier, and his father ʿUmar ibn al-Khaṭṭāb—as has been narrated to us through the chain of Aḥmad ibn Shuʿayb, who reported to us from ʿAmr ibn Manṣūr and Isḥāq ibn Manṣūr, both of whom narrated from al-Ḥakam ibn Nāfiʿ (Abū al-Yamān), who reported to us from Shuʿayb ibn Abī Ḥamzah, from al-Zuhrī, who narrated: al-Sā’ib ibn Yazīd informed me that Ḥuwayṭib ibn ʿAbd al-ʿUzzā informed him that ʿAbdullāh ibn al-Saʿdī informed him that ʿUmar ibn al-Khaṭṭāb said to me during his caliphate: “Have I not been informed that you handle people’s affairs, yet when granted administrative compensation, you dislike it?” I replied: “I have horses and servants, and I am well-off. I wish for my compensation to be a charity upon

فَهَذِهِ آثَارٌ مُتَوَاتِرَةٌ لَا يَسَعُ أَحَدًا الْخُرُوجُ عَنْهَا، وَأَخَذَ بِذَلِكَ مِنَ الصَّحَابَةِ ابْنُ عُمَرَ كَمَا ذَكَرْنَا آنِفًا وَأَبُوهُ عُمَرُ بْنُ الْخَطَّابِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نَا عَمْرُو بْنُ مَنْصُورٍ، وَإِسْحَاقُ بْنُ مَنْصُورٍ، كِلَاهُمَا عَنِ الْحَكَمِ بْنِ نَافِعٍ - هُوَ أَبُو الْيَمَانِ - نَا شُعَيْبٌ - هُوَ ابْنُ أَبِي حَمْزَةَ - عَنِ الزُّهْرِيِّ أَخْبَرَنِي السَّائِبُ بْنُ يَزِيدَ أَنَّ حُوَيْطِبَ بْنَ عَبْدِ الْعُزَّى أَخْبَرَهُ أَنَّ عَبْدَ اللَّهِ بْنَ السَّعْدِيِّ أَخْبَرَهُ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ لِي فِي خِلَافَتِهِ: أَلَمْ أُحَدَّثْ أَنَّكَ تَلِي مِنْ أَعْمَالِ النَّاسِ أَعْمَالًا فَإِذَا أُعْطِيتَ الْعِمَالَةَ كَرِهْتَهَا. قُلْتُ: إِنَّ لِي

[34] **Hadith references (L26304):** Sahih Muslim 1045b.

the Muslims." ʻUmar said to him: "Do not do that"—then he recounted to him his report with the Prophet (peace and blessings be upon him and his family) similar to what we previously mentioned.

L26309 So this Umar forbids returning what was granted to a person.

L26310 And from the narration of Ḥammād ibn Salamah: Thābit al-Bunānī narrated to us from Abū Rāfiʻ from Abū Hurayrah, who said: "There is none who gives me a gift except that I accept it. But as for me to ask - I have never been one to ask."

L26311 From al-Ḥajjāj ibn al-Minhāl, from Mahdī ibn Maymūn, from Wāṣil, the freed slave of Abū ʻUyaynah, from a companion of his: That Abū al-Dardāʼ said: "Whoever Allah, the Mighty and Majestic, grants something from this wealth without asking or coveting, let him consume it and let him retain it as his property."

L26312 And through the chain of al-Ḥajjāj ibn al-Minhāl, from ʻAbdullāh ibn Dāwūd—he is al-Khuraibī—from al-Aʻmash from Ḥabīb ibn Abī Thābit, who said: I saw the gifts of al-Mukhtār come to Ibn ʻAbbās and Ibn ʻUmar, so they would accept them.

L26313 And through the chain of Muḥammad ibn al-Muthannā: Abū ʻĀṣim al-Ḍaḥḥāk ibn Makhlad narrated to us from Sufyān al-Thawrī from Manṣūr ibn al-Muʻtamir from Ibrāhīm al-Nakhaʻī, who said: "Accept from the ruler what he has granted you."

L26314 Abu Muhammad said: This is from the perspective of transmitted tradition. As for rational deduction, the one who gives—whether a ruler or non-ruler, whoever they may be, whether righteous or oppressive—cannot avoid being in one of three aspects with no fourth possibility: either the giver is certain that what he gave is unlawful, certain it is lawful, or he doubts and does not know whether it is lawful or unlawful.

L26315–26316 This category is further divided into three cases: either his preponderant

أَفْرَاسًا وَأَعْبُدًا وَأَنَا بِخَيْرٍ، فَأُرِيدُ أَنْ تَكُونَ عِمَالَتِي صَدَقَةً عَلَى الْمُسْلِمِينَ قَالَ لَهُ عُمَرُ: فَلَا تَفْعَلْ - ثُمَّ ذَكَرَ لَهُ خَبَرَهُ مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَحْوَ مَا ذَكَرْنَاهُ - فَهَذَا عُمَرُ يَنْهَى عَنْ رَدِّ مَا أُعْطِيَ الْمَرْءُ.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ، نَا ثَابِتٌ الْبُنَانِيُّ عَنْ أَبِي رَافِعٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: مَا أَحَدٌ يُهْدِي إِلَيَّ هَدِيَّةً إِلَّا قَبِلْتُهَا، فَأَمَّا أَنْ أَسْأَلَ، فَلَمْ أَكُنْ لِأَسْأَلَ.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا مَهْدِيُّ بْنُ مَيْمُونٍ نَا وَاصِلٌ مَوْلَى أَبِي عُيَيْنَةَ عَنْ صَاحِبٍ لَهُ: أَنَّ أَبَا الدَّرْدَاءِ قَالَ: مَنْ آتَاهُ اللَّهُ عَزَّ وَجَلَّ مِنْ هَذَا الْمَالِ شَيْئًا مِنْ غَيْرِ مَسْأَلَةٍ وَلَا إِشْرَافٍ، فَلْيَأْكُلْهُ، وَلْيَتَمَوَّلْهُ

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا عَبْدُ اللَّهِ بْنُ دَاوُد - هُوَ الْخُرَيْبِيُّ - عَنْ الْأَعْمَشِ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ قَالَ: رَأَيْت هَدَايَا الْمُخْتَارِ تَأْتِي ابْنَ عَبَّاسٍ وَابْنَ عُمَرَ فَيَقْبَلَانِهَا.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا أَبُو عَاصِمٍ الضَّحَّاكُ بْنُ مَخْلَدٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: خُذْ مِنْ السُّلْطَانِ مَا أَعْطَاك.

قَالَ أَبُو مُحَمَّد: هَذَا مِنْ طَرِيقِ الْأَثَرِ، وَأَمَّا مِنْ طَرِيقِ النَّظَرِ فَإِنَّهُ لَا يَخْلُو مَنْ أَعْطَاهُ: سُلْطَانٌ أَوْ غَيْرُ سُلْطَانٍ، كَائِنًا مَنْ كَانَ، مِنْ بَرٍّ أَوْ ظَالِمٍ، مِنْ أَحَدِ ثَلَاثَةِ أَوْجُهٍ لَا رَابِعَ لَهَا -: إمَّا أَنْ يُوقِنَ الْمُعْطَى أَنَّ الَّذِي أُعْطِي حَرَامٌ، وَإِمَّا أَنْ يُوقِنَ أَنَّهُ حَلَالٌ، وَإِمَّا أَنْ يَشُكَّ فَلَا يَدْرِي أَحَلَالٌ هُوَ أَمْ حَرَامٌ؟

assumption is that it is forbidden, his preponderant assumption is that it is permissible, or both possibilities are equally probable.

ثُمَّ يَنْقَسِمُ هَذَا الْقِسْمُ ثَلَاثَةُ أَقْسَامٍ: إِمَّا أَنْ يَكُونَ أَغْلَبُ ظَنِّهِ أَنَّهُ حَرَامٌ، أَوْ يَكُونَ أَغْلَبُ ظَنِّهِ أَنَّهُ حَلَالٌ، وَإِمَّا أَنْ يَكُونَ كِلَا الْأَمْرَيْنِ مُمْكِنًا عَلَى السَّوَاءِ.

L26317 If he is certain that it is forbidden, an injustice, and usurped property, yet retains it, he is a transgressor, disobedient to Allah the Exalted, and an oppressor, for by keeping it with him, he aids a wrongdoer in sin and aggression, and fails to cooperate in righteousness and piety by seizing it from him. Allah the Exalted has prohibited this and commanded him to do the opposite of what he did, as stated in His words: "Cooperate in righteousness and piety, and do not cooperate in sin and aggression" [Al-Ma'idah: 2].[35]

فَإِنْ كَانَ مُوقِنًا أَنَّهُ حَرَامٌ وَظُلْمٌ وَغَصْبٌ، فَإِنْ رَدَّهُ فَهُوَ فَاسِقٌ عَاصٍ لِلَّهِ تَعَالَى ظَالِمٌ؛ لِأَنَّهُ يُعِينُ بِهِ ظَالِمًا عَلَى الْإِثْمِ وَالْعُدْوَانِ بِإِبْقَائِهِ عِنْدَهُ، وَلَا يُعِينُ عَلَى الْبِرِّ وَالتَّقْوَى فِي انْتِزَاعِهِ مِنْهُ، وَقَدْ نَهَى اللَّهُ تَعَالَى عَنْ ذَلِكَ وَأَمَرَهُ بِخِلَافِ مَا فَعَلَ بِقَوْلِهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L26318 It necessarily follows that he either knows the one who unlawfully took from him or does not. If he knows him, [then...]

ثُمَّ لَا يَخْلُو مِنْ أَنْ يَكُونَ يَعْرِفُ صَاحِبَهُ الَّذِي أَخَذَ مِنْهُ بِغَيْرِ حَقٍّ أَوْ لَا يَعْرِفُهُ، فَإِنْ كَانَ يَعْرِفُهُ.

L26319 Here, his transgression increased, his oppression multiplied, and he committed a major sin among the gravest sins. He became more unjust than that oppressor because he was capable of redressing the injustice for its victim and removing it from the oppressor, yet he did not act. Rather, he aided the oppressor, supported him, strengthened him, and assisted in the oppression against the wronged person. If he does not know the rightful owner, then any property with an unknown owner belongs to the welfare of the Muslims. Thus, the ruling regarding this category is exactly the same in every respect as the previous one, since he deprived the needy, the poor, and the weak of their rights, contributed to their destruction, and empowered the oppressor through impermissible means. This is exceedingly grave—we seek refuge with Allah from it.

فَهُنَا زَادَ فِسْقُهُ، وَتَضَاعَفَ ظُلْمُهُ، وَأَتَى كَبِيرَةً مِنْ الْكَبَائِرِ، وَصَارَ أَظْلَمَ مِنْ ذَلِكَ الظَّالِمِ؛ لِأَنَّهُ قَدَرَ عَلَى رَدِّ الْمَظْلِمَةِ إلَى صَاحِبِهَا وَعَلَى إزَالَتِهَا عَنْ الظَّالِمِ فَلَمْ يَفْعَلْ، بَلْ أَعَانَ الظَّالِمَ، وَأَيَّدَهُ وَقَوَّاهُ، وَأَعَانَ عَلَى الْمَظْلُومِ. وَإِنْ كَانَ لَا يَعْرِفُ صَاحِبَهُ فَكُلُّ مَالٍ لَا يُعْرَفُ صَاحِبُهُ فَهُوَ فِي مَصَالِحِ الْمُسْلِمِينَ، فَالْقَوْلُ فِي هَذَا الْقِسْمِ كَالْقَوْلِ فِي الَّذِي قَبْلَهُ سَوَاءً سَوَاءً، إذْ مَنَعَ الْمَسَاكِينَ وَالْفُقَرَاءَ وَالضُّعَفَاءَ حَقَّهُمْ، وَأَعَانَ عَلَى هَلَاكِهِمْ، وَقَوَّى الظَّالِمَ بِمَا لَا يَحِلُّ لَهُ، وَهَذَا عَظِيمٌ جِدًّا - نَعُوذُ بِاَللَّهِ مِنْهُ.

L26320 If he is certain it is permissible, then the one who gave it is undoubtedly acquiring abundant good deeds through that. Thus, in returning what he gave him, he is not advising him, since he prevents him from abundant good deeds. The Messenger of Allah (peace be upon him) said: "Religion is sincere counsel, religion is sincere counsel to Allah, His Messenger, His Book, the

فَإِنْ كَانَ يُوقِنُ أَنَّهُ حَلَالٌ فَإِنَّ الَّذِي أَعْطَاهُ مُكْتَسِبٌ بِذَلِكَ حَسَنَاتٍ جَمَّةً بِلَا شَكٍّ، فَهُوَ فِي رَدِّهِ عَلَيْهِ مَا أَعْطَاهُ غَيْرُ نَاصِحٍ، لَهُ، إذْ مَنْعُهُ الْحَسَنَاتِ الْكَثِيرَةَ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الدِّينُ النَّصِيحَةُ الدِّينُ النَّصِيحَةُ لِلَّهِ وَلِرَسُولِهِ وَلِكِتَابِهِ وَلِأَئِمَّةِ الْمُسْلِمِينَ وَعَامَّتِهِمْ» فَمَنْ لَمْ يَنْصَحْ لِأَخِيهِ الْمُسْلِمِ فِي دِينِهِ فَقَدْ عَصَى اللَّهَ عَزَّ وَجَلَّ فِي

[35] **Qur'an references (L26317):** Qur'an 5:2 (Al-Ma'idah).

leaders of the Muslims, and their common people." Therefore, whoever does not advise his Muslim brother in his religion has disobeyed Allah Almighty in that. Perhaps if he returns it, the recipient may not return to him with another intention to offer it, thus depriving him of reward and blocking one of the paths of goodness. If he does not know whether it is permissible or forbidden, this is the characteristic of all transactions people engage in, except in the limited cases where one is certain it is permissible or forbidden. If taking this were forbidden, all transactions would be forbidden except in the extremely rare cases.

ذَلِكَ، وَلَعَلَّهُ إِنْ رَدَّهُ لَا يَحْضُرُ الْمَرْدُودَ عَلَيْهِ بِنِيَّةٍ أُخْرَى فِي بَذْلِهِ، فَيَكُونُ قَدْ حَرَمَهُ الْأَجْرَ وَصَدَّ عَنْ سَبِيلٍ مِنْ سُبُلِ الْخَيْرِ. وَإِنْ كَانَ لَا يَدْرِي أَحَلَالٌ هُوَ أَمْ حَرَامٌ؟ فَهَذِهِ صِفَةُ كُلِّ مَا يَتَعَامَلُ بِهِ النَّاسُ إِلَّا فِي الْيَسِيرِ الَّذِي يُوقِنُ فِيهِ أَنَّهُ حَلَالٌ، أَوْ أَنَّهُ حَرَامٌ، فَلَوْ حُرِمَ أَخْذُ هَذَا لَحَرُمَتْ الْمُعَامَلَاتُ كُلُّهَا إِلَّا فِي النَّادِرِ الْقَلِيلِ جِدًّا.

L26321–26322 During the time of Allah's Messenger—peace and blessings be upon him—there occurred thefts and corrupt transactions that were not well-known. Yet he—peace and blessings be upon him—never prohibited acquiring wealth people conventionally used in dealings because of such circumstances. However, some scrupulously cautious individuals avoided what they predominantly considered unlawful. Such cases fall under the obligation to advise about accepting such wealth. If one's soul is at ease with it, that is permissible, but if one avoids it, let them donate it as charity—they will be rewarded regardless. This constitutes clear and evident evidence.

وَقَدْ كَانَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَرِقَاتٌ وَمُعَامَلَاتٌ فَاسِدَةٌ غَيْرُ مَشْهُورَةٍ، فَمَا حَرَّمَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَطُّ مِنْ أَجْلِ ذَلِكَ أَخْذَ مَالٍ يَتَعَامَلُ بِهِ النَّاسُ، إِلَّا أَنَّ قَوْمًا مِنْ أَهْلِ الْوَرَعِ اتَّقُوا مَا الْأَغْلَبُ عِنْدَهُمْ أَنَّهُ حَرَامٌ، فَمَا كَانَ مِنْ هَذَا الْقِسْمِ فَهُوَ دَاخِلٌ فِي بَابِ وُجُوبِ النَّصِيحَةِ بِأَخْذِهِ، فَإِنْ طَابَتْ نَفْسُهُ عَلَيْهِ فَحَسَنٌ، وَإِنْ اتَّقَاهُ فَلْيَتَصَدَّقْ بِهِ فَيُؤْجَرُ عَلَى كُلِّ حَالٍ، فَهَذَا بُرْهَانٌ ظَاهِرٌ لَائِحٌ.

L26323 Another proof is that among the manifestations of excessive ignorance and acting in religion without knowledge is when a person recklessly trivializes taking Zayd's wealth without any effort—whether through a sale transaction between them or by leasing his labor for work done for him—yet avoids accepting that very same wealth when Zayd willingly offers it. This is profoundly astonishing and has no place in God-consciousness whatsoever. For if he truly feared that wealth being impure, he would have already deemed it so through the sale or *Ijarah*. This almost amounts to hypocrisy tainted by ignorance.

وَبُرْهَانٌ آخَرُ -: وَهُوَ أَنَّ مِنْ الْجَهْلِ الْمُفْرِطِ، وَالْعَمَلِ فِي الدِّينِ بِغَيْرِ عِلْمٍ أَنْ يَكُونَ الْمَرْءُ يَسْتَسْهِلُ بِلَا مُؤْنَةٍ أَخْذَ مَالِ زَيْدٍ فِي بَيْعٍ يَبِيعُهُ مِنْهُ، أَوْ فِي إجَارَةٍ يُؤَجِّرُ نَفْسَهُ فِي عَمَلٍ يَعْمَلُهُ، لَهُ، ثُمَّ يَتَجَنَّبُ أَخْذَ مَالِ ذَلِكَ الزَّيْدِ نَفْسِهِ إذَا أَعْطَاهُ إيَّاهُ طَيِّبَ النَّفْسِ بِهِ، فَهَذَا عَجَبٌ عَجِيبٌ، لَا مَدْخَلَ لَهُ فِي الْوَرَعِ أَصْلًا؛ لِأَنَّهُ إنْ كَانَ يَتَّقِي كَوْنَ ذَلِكَ الْمَالِ خَبِيثًا فَقَدْ أَخَذَهُ فِي الْبَيْعِ وَالْإِجَارَةِ فَهَذَا يَكَادُ يَكُونُ رِيَاءً مَشُوبًا بِجَهْلٍ.

L26324 If it is said: "Is it disliked for a person to accept it?" The response is: This contradicts the practice of Allah's Messenger—peace and blessings be upon him—and reluctance toward his Sunnah. We seek refuge in Allah from this. As we have been transmitted through the chain of Al-Bukhārī: Muḥammad ibn Bashār → Muḥammad ibn Abī ʿAdiyy → Shuʿbah → Sulaymān (al-Aʿmash) → Abī Ḥāzim → Abī Hurayrah → the Prophet—peace and blessings be upon

فَإِنَّ قِيلَ: يَكْرَهُ الْمَرْءُ أَخْذَهُ؟ قِيلَ: هَذَا خِلَافُ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالرَّغْبَةُ عَنْ سُنَّتِهِ نَعُوذُ بِاَللَّهِ مِنْ هَذَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا مُحَمَّدُ بْنُ بَشَّارٍ نَا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنْ شُعْبَةَ عَنْ سُلَيْمَانَ - هُوَ الْأَعْمَشُ - عَنْ أَبِي حَازِمٍ

him—who said: “If I were invited to a forearm or a shank, I would respond, and if a forearm or a shank were gifted to me, I would accept it.” Whoever shows reluctance toward his Sunnah has not been guided to goodness. It is authentically established that he—peace and blessings be upon him—said: “Whoever shows reluctance toward my Sunnah is not of me.” Abū Muḥammad said: Mālik and al-Shāfiʿī would not reject what was given to them, nor would they ask anyone for anything. If the one who disagrees argues with the ḥadīth of al-Ṣaʿb ibn Jaththāmah: “When he gifted a wild donkey to the Prophet—peace and blessings be upon him—he returned it to him, saying: ‘We only returned it to you except that we are in iḥrām.’”[36]

عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَوْ دُعِيتُ إلَى ذِرَاعٍ أَوْ كُرَاعٍ لَأَجَبْتُ، وَلَوْ أُهْدِيَ إلَيَّ ذِرَاعٌ أَوْ كُرَاعٌ لَقَبِلْتُ» وَمَنْ رَغِبَ عَنْ سُنَّتِهِ فَمَا وُفِّقَ لِخَيْرٍ صَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ: «مَنْ رَغِبَ عَنْ سُنَّتِي فَلَيْسَ مِنِّي» . قَالَ أَبُو مُحَمَّد: وَكَانَ مَالِكٌ، وَالشَّافِعِيُّ لَا يَرُدَّانِ مَا أُعْطِيَا، وَلَا يَسْأَلَانِ أَحَدًا شَيْئًا، فَإِنْ احْتَجَّ الْمُخَالِفُ بِحَدِيثِ الصَّعْبِ بْنِ جَثَّامَةَ «إذْ أَهْدَى إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِمَارَ وَحْشٍ فَرَدَّهُ عَلَيْهِ وَقَالَ: إنَّا لَمْ نَرُدَّهُ عَلَيْكَ إلَّا أَنَّا حُرُمٌ» .

L26325 And according to what has been narrated to us through the chain of ʿAbd al-Razzāq, who narrated to us Maʿmar, from Ibn ʿAjlān, from Saʿīd al-Maqburī, from Abū Hurayrah, that the Prophet—peace and blessings of Allāh be upon him and his family—said: “I have indeed resolved not to accept any gift except from a Qurayshī, an Ansārī, a Thaqafī, or a Dawsī.”

وَبِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا مَعْمَرٌ عَنْ ابْنِ عَجْلَانَ عَنْ سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «لَقَدْ هَمَمْتُ أَنْ لَا أَقْبَلَ هِبَةً إلَّا مِنْ قُرَشِيٍّ أَوْ أَنْصَارِيٍّ أَوْ ثَقَفِيٍّ أَوْ دَوْسِيٍّ» .

L26326–26327 And from the path of Abū Dāwūd: narrated to us Muḥammad ibn ʿAmr, narrated to us al-Rāzī, narrated to us Salamah ibn al-Faḍl, narrated to us Muḥammad ibn Isḥāq from Saʿīd ibn Abī Saʿīd al-Maqburī from his father from Abū Hurayrah, who said: The Messenger of Allāh—peace and blessings of Allāh be upon him and his family—said: “By Allāh, I will not accept any gift from anyone after this day unless they are from among the Qurashī Muhājirīn, or an Anṣārī, or one from Thaqīf (Thaqafī), or one from Daws (Dawsī).”

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا مُحَمَّدُ بْنُ عَمْرٍو وَالرَّازِيُّ نَا سَلَمَةُ بْنُ الْفَضْلِ نَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «وَايْمُ اللَّهِ لَا أَقْبَلُ بَعْدَ يَوْمِي هَذَا مِنْ أَحَدٍ هَدِيَّةً إلَّا أَنْ يَكُونَ مِنْ مُهَاجِرِيٍّ قُرَشِيٍّ أَوْ أَنْصَارِيٍّ أَوْ ثَقَفِيٍّ أَوْ دَوْسِيٍّ» .

L26328 And through what we have narrated by way of Al-Bukhari: Muhammad ibn Yusuf narrated to us, Al-Awza’i narrated to us from Az-Zuhri from Sa’id ibn Al-Musayyib and Urwah ibn Az-Zubair that Hakim ibn Hizam said: “I asked the Messenger of Allah—peace and blessings be upon him and his family—and he gave me. Then I asked him again, and he gave me. Then he said: ’O Hakim, this wealth is alluring and sweet. Whoever takes it with a generous heart will be blessed in it, and whoever takes it with a greedy soul will not be

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نَا مُحَمَّدُ بْنُ يُوسُفَ نَا الْأَوْزَاعِيِّ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ أَنَّ حَكِيمَ بْنَ حِزَامٍ قَالَ «سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَعْطَانِي ثُمَّ سَأَلْتُهُ فَأَعْطَانِي، ثُمَّ قَالَ: يَا حَكِيمُ إنَّ هَذَا الْمَالَ خَضِرَةٌ حُلْوَةٌ فَمَنْ أَخَذَهُ بِسَخَاوَةِ نَفْسٍ بُورِكَ لَهُ فِيهِ، وَمَنْ أَخَذَهُ بِإِشْرَافِ نَفْسٍ لَمْ يُبَارَكْ فِيهِ، وَكَانَ كَالَّذِي يَأْكُلُ وَلَا يَشْبَعُ، وَالْيَدُ الْعُلْيَا خَيْرٌ مِنْ الْيَدِ السُّفْلَى قَالَ حَكِيمٌ فَقُلْتُ: يَا

[36] **Hadith references (L26324):** Sahih al-Bukhari 2568.

blessed in it, and he will be like one who eats but is not satisfied. The upper hand is better than the lower hand.'" Hakim said: "I said: 'O Messenger of Allah, by the One who sent you with the truth, I will never take anything from anyone after you until I depart this world.'" Then Abu Bakr would summon Hakim to grant him his stipend, but he refused to accept it. Later, Umar called him to give him his share, but he refused to accept it. Umar said: "O assembly of Muslims, I present to him his rightful share that Allah has apportioned for him from this fay' wealth, yet he refuses to take it." Thus, Hakim never took anything from anyone after the Messenger of Allah—peace and blessings be upon him and his family—until Hakim passed away.

رَسُولَ اللَّهِ وَالَّذِي بَعَثَكَ بِالْحَقِّ لَا أَرْزَأُ بَعْدَكَ أَحَدًا شَيْئًا حَتَّى أُفَارِقَ الدُّنْيَا» ، فَكَانَ أَبُو بَكْرٍ يَدْعُو حَكِيمًا لِيُعْطِيَهُ الْعَطَاءَ فَيَأْبَى أَنْ يَقْبَلَ مِنْهُ شَيْئًا، ثُمَّ إِنَّ عُمَرَ دَعَاهُ لِيُعْطِيَهُ فَأَبَى أَنْ يَقْبَلَ مِنْهُ شَيْئًا، فَقَالَ عُمَرُ: يَا مَعْشَرَ الْمُسْلِمِينَ إِنِّي أَعْرِضُ عَلَيْهِ حَقَّهُ الَّذِي قَسَمَهُ اللَّهُ لَهُ مِنْ هَذَا الْفَيْءِ فَيَأْبَى أَنْ يَأْخُذَهُ - فَلَمْ يَرْزَأْ حَكِيمٌ أَحَدًا مِنَ النَّاسِ شَيْئًا بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَتَّى تُوُفِّيَ ".

L26329 And according to what we have narrated through the chain of Abū Dharr, that he said to Al-Aḥnaf ibn Qays when Al-Aḥnaf asked him, "What about the public stipend?" Abū Dharr replied: "Take it, for today it is assistance. But if it becomes a price for your religion, do not take it."

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي ذَرٍّ أَنَّهُ قَالَ لِلْأَحْنَفِ بْنِ قَيْسٍ وَقَدْ سَأَلَهُ الْأَحْنَفُ عَنِ الْعَطَاءِ؟ فَقَالَ لَهُ أَبُو ذَرٍّ: خُذْهُ، فَإِنَّ فِيهِ الْيَوْمَ مَعُونَةً، فَإِذَا كَانَ ثَمَنًا لِدِينِكَ فَلَا تَأْخُذْهُ.

L26330–26332 All of this is no proof for them in this matter. As for the ḥadīth "I had indeed intended not to accept any gift," Sa'īd ibn Abī Sa'īd can only be in one of two states: either he heard it from Abū Hurayrah or he did not. If he did not hear it, then the chain is disconnected; if he did hear it... He heard it, and indeed it indicates that he—peace be upon him—intended that action but did not carry it out, which aligns with the established principle. For the principle holds that the recipient has the unrestricted choice: if he wishes, he may accept, and if he wishes, he may reject.

فَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ -: أَمَّا حَدِيثُ «لَقَدْ هَمَمْتُ أَنْ لَا أَقْبَلَ هِبَةً» فَإِنَّ سَعِيدَ بْنَ أَبِي سَعِيدٍ لَا يَخْلُو: إِمَّا أَنْ يَكُونَ سَمِعَهُ مِنْ أَبِي هُرَيْرَةَ أَوْ لَمْ يَسْمَعْهُ. فَإِنْ كَانَ لَمْ يَسْمَعْهُ فَهُوَ مُنْقَطِعٌ، وَإِنْ كَانَ سَمِعَهُ فَإِنَّمَا فِيهِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - هَمَّ بِذَلِكَ، لَا أَنَّهُ أَنْفَذَهُ وَهُوَ مُوَافِقٌ لِمَعْهُودِ الْأَصْلِ، لِأَنَّ الْأَصْلَ كَانَ أَنَّ الْمُعْطَى مُخَيَّرٌ إِنْ شَاءَ قَبِلَ وَإِنْ شَاءَ رَدَّ.

L26333 The narration of Umar—may Allah be pleased with him—is cited to invalidate the first scenario. There is no doubt about this, as the Prophet—peace and blessings be upon him—commanded him to accept wealth received without request or covetousness of the soul.

وَحَدِيثُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَارِدٌ بِإِبْطَالِ الْحَالِ الْأَوَّلِ، وَلَا شَكَّ فِي ذَلِكَ حِينَ أَمَرَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِقَبُولِ مَا جَاءَ مِنَ الْمَالِ مِنْ غَيْرِ مَسْأَلَةٍ وَلَا إِشْرَافِ نَفْسٍ.

L26334 It has thus been established that this matter has been abrogated with certain knowledge, leaving no room for doubt. Whoever claims that the abrogator has invoked and abrogated what is conclusively known to be abrogated has claimed falsehood and what he has no knowledge of. Allah forbid that such a thing could be permissible in religion! For if this were allowed, we would

فَصَحَّ أَنَّ هَذَا الْهَمَّ قَدْ صَحَّ نَسْخُهُ بِيَقِينٍ لَا مِرْيَةَ فِيهِ، فَمَنِ ادَّعَى أَنَّ الْمُوقَنَ نَسْخُهُ قَدْ دَعَا وَنَسَخَ النَّاسِخُ، فَقَدِ ادَّعَى الْبَاطِلَ، وَمَا لَا عِلْمَ لَهُ بِهِ، وَحَاشَ اللَّهِ مِنْ جَوَازِ ذَلِكَ

not know the sound aspects of religion from its unsound elements within it, nor distinguish between what is binding upon us and what is not - Allah protect us from this! Therefore, clinging to this report is entirely invalid.

L26335 As for the other narration, "I will not accept any gift from anyone after this day"—this is the narration of Salamah ibn al-Faḍl al-Abrash, who is deemed weak and rejected. Thus, any reliance on it is wholly invalidated.

L26336 As for the ḥadīth of Ṣaʿb ibn Jaththāmah, the Prophet (peace and blessings be upon him) clarified the reason for rejecting the gift, which was their being in a state of *iḥrām*. This is some of the situations covered by ʿUmar's ḥadīth, so it is an exception from it. Similarly, we say that if game is gifted to a person in *iḥrām*, they are given the choice to accept or refuse it. Likewise, it has been narrated to us from ʿĀ'ishah, the Mother of the Believers, and Ibn ʿUmar that they both would accept gifts but refuse game if it was gifted to them while they were in *iḥrām*.

L26337 As for the narration of Ḥakīm, it is exceedingly clear. When the Messenger of Allah—peace and blessings be upon him and his family—stated regarding one who takes wealth with covetousness of the soul, "No blessing is granted to him in it," and Ḥakīm recognized within himself covetousness toward wealth, he did not deem it permissible to take it. Thus, we say: Taking it is only obligatory for one whose soul lacks covetousness toward it.

L26338–26340 The proof of this is his own report about himself that he petitioned the Prophet (peace be upon him and his family) and was granted his request, then petitioned again and was granted, then petitioned once more and was granted—as recorded in certain narrations—until the Prophet addressed him in the manner he had previously done. It has been transmitted to us through ʿAbd al-Razzāq's chain from Maʿmar, from al-Zuhrī, from Saʿīd ibn al-Musayyib: "The Prophet (peace be upon him and his family) bestowed upon Ḥakīm ibn Ḥizām a gift during Ḥunayn, which he deemed insufficient, so the Prophet increased it." The narrator then cited the aforementioned ḥadīth, and this exemplifies the pinnacle of spiritual refinement. It has been

فِي الدِّينِ، إِذْ لَوْ كَانَ ذَلِكَ لَمَا عَلِمْنَا صَحِيحَ الدِّينِ مِنْ سَقِيمِهِ فِيهِ وَلَا مَا يَلْزَمُنَا مِمَّا لَا يَلْزَمُنَا، وَمَعَاذَ اللَّهِ مِنْ هَذَا - فَبَطَلَ التَّعَلُّقُ بِهَذَا الْخَبَرِ جُمْلَةً.

وَأَمَّا الْآخَرُ «لَا أَقْبَلُ بَعْدَ يَوْمِي هَذَا مِنْ أَحَدٍ هَدِيَّةً» فَرِوَايَةُ سَلَمَةَ بْنِ الْفَضْلِ الْأَبْرَشِ - وَهُوَ سَاقِطٌ مُطْرَحٌ - فَبَطَلَ التَّعَلُّقُ بِهِ جُمْلَةً.

وَأَمَّا حَدِيثُ الصَّعْبِ بْنِ جَثَّامَةَ فَقَدْ بَيَّنَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - السَّبَبَ الَّذِي مِنْ أَجْلِهِ رَدَّهُ وَهُوَ كَوْنُهُمْ مُحْرِمِينَ، وَهَذَا بَعْضُ الْأَحْوَالِ الَّتِي عَمَّهَا حَدِيثُ عُمَرَ، فَهُوَ مُسْتَثْنًى مِنْهُ، وَكَذَلِكَ نَقُولُ: إِنَّ الْمُحْرِمَ إِذَا أُهْدِيَ لَهُ صَيْدٌ فَهُوَ مُخَيَّرٌ فِي قَبُولِهِ وَرَدِّهِ، وَهَكَذَا رُوِّينَا عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَابْنِ عُمَرَ أَنَّهُمَا كَانَا يَقْبَلَانِ الْهَدَايَا وَيَرُدَّانِ الصَّيْدَ إِنْ أُهْدِيَ لَهُمَا وَهُمَا مُحْرِمَانِ.

وَأَمَّا حَدِيثُ حَكِيمٍ - فَبَيِّنٌ جِدًّا؛ لِأَنَّهُ لَمَّا سَمِعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ فِيمَنْ أَخَذَ الْمَالَ بِإِشْرَافِ نَفْسٍ مَا قَالَ مِنْ أَنَّهُ «لَا يُبَارَكُ لَهُ فِيهِ» وَعَلِمَ مِنْ نَفْسِهِ الْإِشْرَافَ إِلَى الْمَالِ لَمْ يَسْتَجِزْ أَخْذَهُ وَهَكَذَا نَقُولُ: إِنَّهُ إِنَّمَا يَلْزَمُ أَخْذُهُ مَنْ كَانَ غَيْرَ مُشْرِفِ النَّفْسِ إِلَيْهِ.

وَبُرْهَانُ ذَلِكَ -: إِخْبَارُهُ عَنْ نَفْسِهِ أَنَّهُ سَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَعْطَاهُ، ثُمَّ سَأَلَهُ فَأَعْطَاهُ، ثُمَّ سَأَلَهُ فَأَعْطَاهُ - كَذَا جَاءَ فِي بَعْضِ الرِّوَايَاتِ حَتَّى خَاطَبَهُ بِمَا خَاطَبَهُ بِهِ. وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ «أَعْطَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَكِيمَ بْنَ حِزَامٍ يَوْمَ حُنَيْنٍ عَطَاءً فَاسْتَقَلَّهُ، فَزَادَهُ» ، ثُمَّ ذَكَرَ الْحَدِيثَ الْمَذْكُورَ، وَهَذَا غَايَةُ إِشْرَافِ النَّفْسِ؛ وَرُوِّينَا مِنْ طَرِيقِ

narrated to us through the chain of Abū Dāwūd al-Ṭayālisī, **who narrated to us** from Ibn Abī Dhīʾb, from Muslim ibn Jundub, from Ḥakīm ibn Ḥizām, who said: “I asked the Messenger of Allah—peace and blessings be upon him and his family—**and I pressed him earnestly in my request**. He said: **’I find no objection to your asking, O Ḥakīm. Truly, this wealth is sweet and fresh.”’**

أَبِي دَاوُد الطَّيَالِسِيّ نَا ابْنُ أَبِي ذِئْبٍ عَنْ مُسْلِمِ بْنِ جُنْدُبٍ عَنْ حَكِيمِ بْنِ حِزَامٍ قَالَ: «سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَلْحَفْتُ فِي الْمَسْأَلَةِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا أَنْكَرَ مَسْأَلَتَكَ يَا حَكِيمُ إنَّ هَذَا الْمَالَ حُلْوٌ خَضِرٌ» .

L26341 He mentioned Hadith.

وَذَكَرَ الْحَدِيثَ.

L26342 This is a clear clarification, and it is not permissible to attribute anything other than this to Ḥakim—may Allah be pleased with him.

فَهَذَا بَيَانٌ لَائِحٌ، وَلَا يَجُوزُ أَنْ يُظَنَّ بِحَكِيمٍ - رَضِيَ اللَّهُ عَنْهُ - غَيْرُ هَذَا.

L26343 The statement of Abī Dharr is correct because whatever a person gives while seeking compensation in return is forbidden for him to take. One is only obligated to take what is given without any invalid condition. It has been narrated to us through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Salamah ibn Kuhayl, from Dharr ibn ʿAbd Allāh al-Marhabī, from ʿAbd Allāh ibn Masʿūd that a man asked him, saying: “I have a neighbor who consumes usury, and he persistently invites me.” Ibn Masʿūd replied: “Its disgrace is upon you, and its sin is on you.” Sufyān said: “If you identify it by its essence, then do not consume it.” Abū Muḥammad said: Sufyān spoke the truth: consuming is not the same as taking. This is because it is known that the specific item is forbidden, as one has the ability, when taking it, to fulfill what Allāh has obligated upon him by delivering it to its rightful people and removing it from wrongful gains. However, one cannot do that in the case of consumption. Therefore, he is obligated to avoid consuming it.

وَأَمَّا قَوْلُ أَبِي ذَرٍّ فَصَحِيحٌ؛ لِأَنَّ مَا أَعْطَى الْمَرْءُ وَطَلَبَ عِوَضًا مِنْهُ فَحَرَامٌ عَلَيْهِ أَخْذُهُ، وَإِنَّمَا يَلْزَمُ أَخْذُ مَا أُعْطِيَ دُونَ شَرْطٍ فَاسِدٍ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ ذَرِّ بْنِ عَبْدِ اللَّهِ الْمَرْهَبِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّ رَجُلًا سَأَلَهُ فَقَالَ: لِي جَارٌ يَأْكُلُ الرِّبَا، وَأَنَّهُ لَا يَزَالُ يَدْعُونِي. فَقَالَ لَهُ ابْنُ مَسْعُودٍ: مُهَنَّاهُ لَك، وَإِثْمُهُ عَلَيْك، قَالَ سُفْيَانُ: إنْ عَرَفْتَهُ بِعَيْنِهِ فَلَا تَأْكُلْهُ. قَالَ أَبُو مُحَمَّدٍ: صَدَقَ سُفْيَانُ الْأَكْلُ غَيْرُ الْأَخْذِ، لِمَا عُرِفَ أَنَّ عَيْنَهُ حَرَامٌ؛ لِأَنَّهُ يَقْدِرُ فِي أَخْذِهِ عَلَى أَنْ يُؤَدِّيَ فِيهِ مَا افْتَرَضَهُ اللَّهُ تَعَالَى عَلَيْهِ مِنْ إيصَالِهِ إلَى أَهْلِهِ وَإِزَالَتِهِ عَنْ الْمَظَالِمِ، وَلَا يَقْدِرُ عَلَى ذَلِكَ فِي الْأَكْلِ، فَفَرَضَ عَلَيْهِ اجْتِنَابَ أَكْلِهِ.

L26344 And through the chain of ʿAbd al-Razzāq from Maʿmar from Abū Isḥāq al-Sabīʿī from al-Zubayr—the son of al-Khirrīt—from Salmān al-Fārisī, who said: If you have a friend who is a tax collector, or a neighbor who is a tax collector, or a relative who is a tax collector, then if he invites you to a meal, accept it, for it is his hospitality toward you, and he alone bears the sin.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ الزُّبَيْرِ - هُوَ ابْنُ الْخِرِّيتِ - عَنْ سَلْمَانَ الْفَارِسِيِّ قَالَ: إذَا كَانَ لَك صَدِيقٌ عَامِلٌ، أَوْ جَارٌ عَامِلٌ، أَوْ ذُو قَرَابَةٍ عَامِلٌ، فَدَعَاك إلَى طَعَامٍ فَاقْبَلْهُ، فَإِنَّهُ مُهَنَّاهُ لَك وَإِثْمُهُ عَلَيْهِ.

L26345 ʿAbd al-Razzāq reported from Maʿmar, who said: Adī ibn Arṭāʾa—the governor of Basra—would send trays of *tharīd* to al-Ḥasan daily. Al-Ḥasan would eat from them and feed his companions. Maʿmar said: Adī sent

tharīd to al-Ḥasan, al-Shaʿbī, and Ibn Sīrīn. Al-Ḥasan and al-Shaʿbī accepted it, while Ibn Sīrīn refused it.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: كَانَ عَدِيُّ بْنُ أَرْطَاةَ - هُوَ عَامِلُ الْبَصْرَةِ - يَبْعَثُ إِلَى الْحَسَنِ كُلَّ يَوْمٍ بِجِفَانِ ثَرِيدٍ فَيَأْكُلُ الْحَسَنُ مِنْهَا وَيُطْعِمُ أَصْحَابَهُ قَالَ: وَبَعَثَ عَدِيٌّ إِلَى الْحَسَنِ، وَالشَّعْبِيِّ، وَابْنِ سِيرِينَ، فَقَبِلَ الْحَسَنُ، وَالشَّعْبِيُّ، وَرَدَّ ابْنُ سِيرِينَ.

L26346 Al-Hasan was asked about the food of the money-changers, so he replied: Allah, the Exalted, has already informed you that the Jews and the Christians eat usury, and He has made their food permissible for you.

قَالَ: وَسُئِلَ الْحَسَنُ عَنْ طَعَامِ الصَّيَارِفَةِ؟ فَقَالَ: قَدْ أَخْبَرَكُمْ اللَّهُ تَعَالَى عَنْ الْيَهُودِ، وَالنَّصَارَى أَنَّهُمْ يَأْكُلُونَ الرِّبَا وَأَحَلَّ لَكُمْ طَعَامَهُمْ.

L26347–26349 And with him [the chain goes] to Ma'mar, from Mansur ibn al-Mu'tamir: I said to Ibrahim al-Nakha'i, "Our chief acts tyrannically and commits injustices, then he calls me, but I do not respond to him." Ibrahim said, "The devil has presented this matter to sow enmity." The officials would oppress and take, then supplicate and be answered. I said to him: "I stayed with an official who accommodated me and gave me a gift." He said: "Accept it." I asked: "But he deals in usury?" He replied: "Accept it as long as you do not see it with your own eyes."

وَبِهِ إِلَى مَعْمَرٍ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ قُلْت لِإِبْرَاهِيمَ النَّخَعِيِّ: عَرِيفٌ لَنَا يَهْمِطُ وَيُصِيبُ مِنْ الظُّلْمِ فَيَدْعُونِي فَلَا أُجِيبُهُ فَقَالَ إبْرَاهِيمُ: الشَّيْطَانُ عَرَضَ بِهَذَا لِيُوقِعَ عَدَاوَةً، وَقَدْ كَانَ الْعُمَّالُ يَهْمِطُونَ وَيُصِيبُونَ ثُمَّ يَدْعُونَ فَيُجَابُونَ، قُلْت لَهُ: نَزَلْتُ بِعَامِلٍ فَنَزَلَنِي وَأَجَازَنِي، قَالَ: اقْبَلْ، قُلْت: فَصَاحِبُ رِبًا؟ فَقَالَ: اقْبَلْ مَا لَمْ تَرَهُ بِعَيْنِهِ.

L26350 Ali said: "And thus, we have attained those who are relied upon for their knowledge—and success is by Allah, the Exalted."

قَالَ عَلِيٌّ: وَهَكَذَا أَدْرَكْنَا مَنْ يُوثَقُ بِعِلْمِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26351 The Issue of Bribery and Its Ruling

[مَسْأَلَة الرشوة وَحُكْمهَا]

L26352 Issue 1638: Bribery is impermissible. It refers to what a person gives to have a judgment passed in his favor based on falsehood, to secure a governorship, or to have someone wronged for his benefit. In these actions, both the giver and the taker commit sin.

١٦٣٨ - مَسْأَلَةٌ: وَلَا تَحِلُّ الرِّشْوَةُ: وَهِيَ مَا أَعْطَاهُ الْمَرْءُ لِيُحْكَمَ لَهُ بِبَاطِلٍ، أَوْ لِيُوَلِّيَ وِلَايَةً، أَوْ لِيُظْلَمَ لَهُ إنْسَانٌ - فَهَذَا يَأْثَمُ الْمُعْطِي وَالْآخِذُ.

L26353 As for one who is denied their right and gives to ward off injustice from himself, this is permissible for the giver while the taker is sinful. In both aspects, the wealth given remains the property of its original owner as it was, like usurped property with no distinction. Among these instances is that which is given to the people of the abode of disbelief for ransoming captives and in every necessity. All this is unanimously agreed upon except regarding the ownership of the people of the abode of disbelief over what

فَأَمَّا مَنْ مُنِعَ مِنْ حَقِّهِ فَأَعْطَى لِيَدْفَعَ عَنْ نَفْسِهِ الظُّلْمَ فَذَلِكَ مُبَاحٌ لِلْمُعْطِي، وَأَمَّا الْآخِذُ فَآثِمٌ، وَفِي كِلَا الْوَجْهَيْنِ فَالْمَالُ الْمُعْطَى بَاقٍ عَلَى مِلْكِ صَاحِبِهِ الَّذِي أَعْطَاهُ كَمَا كَانَ، كَالْغَصْبِ وَلَا فَرْقَ - وَمِنْ جُمْلَةِ هَذَا مَا أُعْطِيهِ أَهْلَ دَارِ الْكُفْرِ فِي فِدَاءِ الْأَسْرَى، وَفِي كُلِّ ضَرُورَةٍ، وَكُلُّ هَذَا مُتَّفَقٌ عَلَيْهِ، إلَّا مِلْكَ أَهْلِ دَارِ الْكُفْرِ مَا أَخَذُوهُ

they take as ransom for captives and similar matters. Some have asserted they own it, but this is invalid as it is a view unsupported by Quran, Sunnah, analogical reasoning, or deductive analysis. Our position here aligns with that of Al-Shāfiʿī, Abū Sulaymān, and others.

L26354 The proof for the validity of our stance: Allah's statement, the Exalted: "Do not consume your wealth among yourselves wrongfully, except through trade by mutual consent" [An-Nisāʾ: 29]. Thus we ask those who oppose us: Did the disbelievers take what they seized from us in ransom and other matters rightfully or wrongfully? If they say "wrongfully," but if they say otherwise, they disbelieve. This suffices as proof, for it is an address to all jinn and mankind, binding the religion as an obligation upon them.[37]

L26355 The Messenger of Allah (peace be upon him) said: "Indeed, your lives and your property are sacred to you."

L26356 If it is said: Why did you permit giving wealth to repel oppression, when you yourselves have reported via Abu Hurairah's narration that a man came to the Messenger of Allah (peace be upon him) and said: "O Messenger of Allah, if a man comes seeking to take my wealth?" He replied: "Do not give him your wealth." The man asked: "What if he fights me?" He said: "Fight him." The man asked: "What if he kills me?" He answered: "Then you are a shahīd." The man asked: "What if I kill him?" He responded: "Then he is in the Fire."

L26357 And by the transmitted report: "May Allah curse the bribe-giver and the bribe-taker."

L26358–26359 Abū Muḥammad said: The report of cursing the briber was narrated by al-Ḥārith ibn ʿAbd al-Raḥmān—and he is not strong—and moreover, the giver compelled by necessity to repel oppression is not a briber. As for the report concerning combat, this is our position: Whoever is capable of repelling oppression from himself is not permitted to give even a penny or anything beyond that for that purpose. As for the incapable, Allāh the Exalted says: {Allah does not burden a soul beyond its capacity} [al-Baqarah:286]. The

[37] **Qur'an references (L26354):** Qur'an 4:29 (An-Nisa).

فِي فِدَاءِ الْأَسِيرِ وَغَيْرِ ذَلِكَ، فَإِنَّ قَوْمًا قَالُوا: قَدْ مَلَكُوهُ - وَهَذَا بَاطِلٌ، لِأَنَّهُ قَوْلٌ لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قِيَاسٌ، وَلَا نَظَرٌ، وَقَوْلُنَا فِي هَذَا هُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمَا.

بُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] فَنَسْأَلُ مَنْ خَالَفَنَا: أَبِحَقٍّ أَخَذَ الْكُفَّارُ مَا أَخَذُوا مِنَّا فِي الْفِدَاءِ وَغَيْرِهِ أَمْ بِبَاطِلٍ؟ فَمِنْ قَوْلِهِمْ: بِالْبَاطِلِ، وَلَوْ قَالُوا غَيْرَ ذَلِكَ كَفَرُوا، وَفِي هَذَا كِفَايَةٌ، لِأَنَّهُ خِطَابٌ لِجَمِيعِ الْجِنِّ وَالْإِنْسِ، وَلِلُزُومِ الدِّينِ لَهُمْ.

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَإِنْ قِيلَ: لِمَ أَبَحْتُمْ إِعْطَاءَ الْمَالِ فِي دَفْعِ الظُّلْمِ، وَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ أَبِي هُرَيْرَةَ، قَالَ: «جَاءَ رَجُلٌ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إِنْ جَاءَ رَجُلٌ يُرِيدُ أَخْذَ مَالِي؟ قَالَ: فَلَا تُعْطِهِ مَالَكَ، قَالَ: أَرَأَيْتَ إِنْ قَاتَلَنِي؟ قَالَ: قَاتِلْهُ، قَالَ: أَرَأَيْتَ إِنْ قَتَلَنِي؟ قَالَ: فَأَنْتَ شَهِيدٌ، قَالَ: أَرَأَيْتَ إِنْ قَتَلْتُهُ؟ قَالَ: فَهُوَ فِي النَّارِ» .

وَبِالْخَبَرِ الْمَأْثُورِ «لَعَنَ اللَّهُ الرَّاشِيَ وَالْمُرْتَشِيَ» .

قَالَ أَبُو مُحَمَّد: خَبَرُ لَعْنِهِ الرَّاشِي إِنَّمَا رَوَاهُ الْحَارِثُ بْنُ عَبْدِ الرَّحْمَنِ وَلَيْسَ بِالْقَوِيِّ - وَأَيْضًا - فَإِنَّ الْمُعْطِيَ فِي ضَرُورَةِ دَفْعِ الظُّلْمِ لَيْسَ رَاشِيًا. وَأَمَّا الْخَبَرُ فِي الْمُقَاتَلَةِ فَهَكَذَا نَقُولُ: مَنْ قَدَرَ عَلَى دَفْعِ الظُّلْمِ عَنْ نَفْسِهِ لَمْ يَحِلَّ لَهُ إِعْطَاءُ فَلْسٍ فَمَا فَوْقَهُ فِي ذَلِكَ، وَأَمَّا مَنْ عَجَزَ فَاللَّهُ تَعَالَى يَقُولُ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

Prophet (peace be upon him) said: “When I command you with a matter, do of it what you are able.” Thus, the obligation of combat and defense is lifted from him, and his giving in that situation enters the category of compulsion. The Messenger of Allāh (peace and blessings be upon him and his family) said: “My nation is pardoned for mistakes, forgetfulness, and what they are compelled to do.” We have previously mentioned this with its chain of transmission in earlier parts of this *diwan* of ours. And all praise is due to Allāh, Lord of the worlds.[38]

L26360 It has been authentically reported from the Messenger of Allah—peace and blessings be upon him and his family—through the narration of Abu Musa al-Ash‘ari: “Feed the hungry and free the captive.” This is a general principle applicable to every captive without right, whether in the custody of any disbeliever or believer.

L26361 It has been narrated to us through the chain of Abd al-Razzaq, from Sufyan al-Thawri and Ma’mar. Ma’mar reported from al-Hasan al-Basri, while Sufyan reported from Ibrahim al-Nakha’i. Then al-Hasan and Ibrahim concurred, both stating: “Whatever you give as expedient compliance to safeguard your wealth and blood, you shall surely be rewarded for it.” And with Allah the Exalted is success.

L26362 Issue 1639: As for one who assists another in a just cause or defends him against oppression without stipulating any payment for that, and the recipient then presents him with a reward - this is commendable, and we do not disapprove of it. For it constitutes gratitude toward the benefactor and represents a gift given willingly. We know of no Quranic verse or Sunnah prohibiting this. It has been reported to us that ʿAlī and Ibn Masʿūd forbade such acts, but we are unaware of any definitive proof that prohibits it. And with Allah, the Most High, is success.

The issue of excessive questioning.

L26363–26364

L26365 Issue: It is impermissible to ask repeatedly except in cases of necessity due to poverty or for one who has undertaken a financial liability. The

[38] **Qur’an references (L26359):** Qur’an 2:286 (Al-Baqarah); Qur’an 37:182 (As-Saffat).

وَقَالَ - عَلَيْهِ السَّلَامُ -: «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» فَسَقَطَ عَنْهُ فَرْضُ الْمُقَاتَلَةِ وَالدِّفَاعِ، وَصَارَ فِي حَدِّ الْإِكْرَاهِ عَلَى مَا أَعْطَى فِي ذَلِكَ. وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «رُفِعَ عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِيمَا سَلَفَ مِنْ دِيوَانِنَا هَذَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ طَرِيقِ أَبِي مُوسَى الْأَشْعَرِيِّ: «أَطْعِمُوا الْجَائِعَ وَفُكُّوا الْعَانِيَ» وَهَذَا عُمُومٌ لِكُلِّ عَانٍ عِنْدَ كُلِّ كَافِرٍ أَوْ مُؤْمِنٍ بِغَيْرِ حَقٍّ.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ قَالَ: مَعْمَرٌ عَنْ الْحَسَنِ الْبَصْرِيِّ، وَقَالَ سُفْيَانُ: عَنْ إبْرَاهِيمَ النَّخَعِيِّ، ثُمَّ اتَّفَقَ الْحَسَنُ، وَإِبْرَاهِيمُ، قَالَا جَمِيعًا: مَا أَعْطَيْت مُصَانَعَةً عَلَى مَالِك وَدَمِك، فَإِنَّك فِيهِ مَأْجُورٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

١٦٣٩ - مَسْأَلَةٌ: وَأَمَّا مَنْ نَصَرَ آخَرَ فِي حَقٍّ، أَوْ دَفَعَ عَنْهُ ظُلْمًا، وَلَمْ يَشْتَرِطْ عَلَيْهِ فِي ذَلِكَ عَطَاءً، فَأَهْدَى إلَيْهِ مُكَافَأَةً، فَهَذَا حَسَنٌ لَا نَكْرَهُهُ، لِأَنَّهُ مِنْ جُمْلَةِ شُكْرِ الْمُنْعِمِ، وَهَدِيَّةٌ بِطِيبِ نَفْسٍ، وَمَا نَعْلَمُ قُرْآنًا وَلَا سُنَّةً فِي الْمَنْعِ مِنْ ذَلِكَ - وَقَدْ رُوِّينَا عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ الْمَنْعَ مِنْ هَذَا، وَلَا نَعْلَمُ بُرْهَانًا يَمْنَعُ مِنْهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة السُّؤَال تكثرا]

one compelled by necessity is divinely obligated to ask for what suffices to sustain himself and his dependents from essentials they cannot do without, including food, shelter, clothing, and basic necessities. If he fails to do so, he is committing an injustice against himself. If he dies in that state, he has committed suicide.

مَسْأَلَةٌ: وَلَا يَحِلُّ السُّؤَالُ تَكَثُّرًا إِلَّا لِضَرُورَةٍ فَاقَةٍ، أَوْ لِمَنْ تَحَمَّلَ حَمَالَةً، فَالْمُضْطَرُّ فُرِضَ عَلَيْهِ أَنْ يَسْأَلَ مَا يَقُوتُهُ هُوَ وَأَهْلُهُ مِمَّا لَا بُدَّ لَهُمْ مِنْهُ، مِنْ: أَكْلٍ، وَسُكْنَى، وَكِسْوَةٍ، وَمَعُونَةٍ، فَإِنْ لَمْ يَفْعَلْ فَهُوَ ظَالِمٌ، فَإِنْ مَاتَ فِي تِلْكَ الْحَالِ فَهُوَ قَاتِلُ نَفْسِهِ.

L26366 As for one who seeks without excess, then it is not disliked.

وَأَمَّا مَنْ طَلَبَ غَيْرَ مُتَكَثِّرٍ فَلَيْسَ مَكْرُوهًا.

L26367 Similarly, there is no blame upon one who seeks authority. It was narrated to us through the chain of Muslim: Abu al-Tahir narrated to me, Abdullah ibn Wahb narrated to me, al-Layth—that is, ibn Sa'd—narrated to me, from 'Ubaydullah ibn Abi Ja'far, from Hamzah ibn 'Abdullah ibn 'Umar, from his father, that the Prophet—peace and blessings be upon him and his family—said: "A man will persist in begging from people until he comes on the Day of Resurrection with no piece of flesh on his face."[39]

وَكَذَلِكَ مَنْ سَأَلَ سُلْطَانًا فَلَا حَرَجَ فِي ذَلِكَ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي أَبُو الطَّاهِرِ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ وَهْبٍ أَخْبَرَنِي اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ عَنْ حَمْزَةَ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «مَا يَزَالُ الرَّجُلُ يَسْأَلُ النَّاسَ حَتَّى يَأْتِيَ يَوْمَ الْقِيَامَةِ لَيْسَ فِي وَجْهِهِ مُزْعَةُ لَحْمٍ» .

L26368 From the narration in Muslim's *Ṣaḥīḥ*: Abu Kurayb reported to us, from Ibn Fudayl, from 'Imarah ibn al-Qa'qa', from Abu Zur'ah, from Abu Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him) said, "Whoever asks people for their wealth to increase his possessions is merely grasping embers [of Hellfire]. Let him take little or let him take much."[40]

وَمِنْ طَرِيقِ مُسْلِمٍ نَا أَبُو كُرَيْبٍ نَا ابْنُ فُضَيْلٍ عَنْ عُمَارَةَ بْنِ الْقَعْقَاعِ عَنْ أَبِي زُرْعَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ سَأَلَ النَّاسَ أَمْوَالَهُمْ تَكَثُّرًا فَإِنَّمَا يَسْأَلُ جَمْرًا فَلْيَسْتَقِلَّ أَوْ لِيَسْتَكْثِرْ» .

L26369 From the path of Muslim: Yahya ibn Yahya narrated to us, Hammad ibn Zayd from Harun ibn Ri'ab, who narrated to me from Kinana ibn Nu'aym al-Adawi, from Qabisa ibn al-Mukhariq al-Hilali, that the Messenger of Allah—may Allah bless him and his family and grant him peace—said to him: "O Qabisa, begging is unlawful except for one of three: a man who assumes a financial liability, for whom begging becomes permissible until he obtains it, then he desists; a man struck by a calamity that devours his wealth, for whom begging becomes permissible until he attains a sufficient means of livelihood—or he said: a stability of livelihood; and a man afflicted by poverty until he provides sustenance for three discerning people from his tribe. Then they say, 'So-

وَمِنْ طَرِيقِ مُسْلِمٍ نَا يَحْيَى بْنُ يَحْيَى نَا حَمَّادُ بْنُ زَيْدٍ عَنْ هَارُونَ بْنِ رِئَابٍ حَدَّثَنِي كِنَانَةُ بْنُ نُعَيْمٍ الْعَدَوِيُّ عَنْ قَبِيصَةَ بْنِ الْمُخَارِقِ الْهِلَالِيِّ، «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لَهُ: يَا قَبِيصَةُ إنَّ الْمَسْأَلَةَ لَا تَحِلُّ إلَّا لِأَحَدِ ثَلَاثَةٍ: رَجُلٌ تَحَمَّلَ حَمَالَةً فَحَلَّتْ لَهُ الْمَسْأَلَةُ حَتَّى يُصِيبَهَا ثُمَّ يُمْسِكُ، وَرَجُلٌ أَصَابَتْهُ جَائِحَةٌ اجْتَاحَتْ مَالَهُ فَحَلَّتْ لَهُ الْمَسْأَلَةُ حَتَّى يُصِيبَ قَوَامًا مِنْ عَيْشٍ، أَوْ قَالَ سِدَادًا مِنْ عَيْشٍ، وَرَجُلٌ أَصَابَتْهُ فَاقَةٌ حَتَّى يَقُومَ ثَلَاثَةٌ مِنْ ذَوِي الْحِجَى مِنْ قَوْمِهِ فَيَقُولُونَ: لَقَدْ أَصَابَتْ فُلَانًا فَاقَةٌ، فَحَلَّتْ

[39] **Hadith references (L26367):** Mishkat al-Masabih 1839.

[40] **Hadith references (L26368):** Sahih Muslim 1041; Mishkat al-Masabih 1838.

and-so has indeed been afflicted by poverty,' making begging permissible for him until he attains a sufficient means of livelihood—or he said: a stability of livelihood. Whatever lies beyond these, O Qabisa, is forbidden wealth; one who eats it eats what is forbidden."

L26370–26372 Through the chain of Aḥmad ibn Shuʿayb: I am Maḥmūd ibn Ghaylān; he said: Wakiʿ narrated to us: Sufyān narrated to us from ʿAbd al-Malik ibn ʿUmayr. On the authority of Zayd ibn 'Uqbah from Samurah ibn Jundub, who said: The Messenger of Allah—may Allah's peace and blessings be upon him—said: "Begging is a toil by which a man wears down his face, except when a man asks someone in authority or seeks something indispensable in a matter."

L26373 So this is the exact wording of what we have said, letter by letter, and all praise is due to Allah.

L26374 Through the method of rational deduction: We have mentioned in the "Book of Zakāt" within this compilation of ours the obligation that those possessing surplus wealth must support those who have no wealth with them, sustaining themselves and their dependents from it. Since this is established, the needy individual is merely claiming his obligatory right and his binding debt—which the ruler must adjudicate and legally mandate for him. He may take it by whatever means he can if it is withheld from him, and there is no disgrace upon him in that.

L26375 As for the ruler, nothing may be requested from his personal wealth. Rather, the wealth of the Muslims is under his custodianship. Thus, there is no sin upon a Muslim in requesting from the wealth of the Muslims, of whom he is one.

L26376 As for moderate asking, we mentioned in the *Book of Ḥajj* the statement of the Messenger of Allah—peace and blessings be upon him—to Abū Qatādah and his companions concerning the donkey they slaughtered unlawfully: "Do you have any of it with you?" I said, "Yes," so I handed him the foreleg, and he devoured it voraciously while in the state of *iḥrām*. And his statement—peace and blessings be upon him—in the narration of Abū Saʿīd al-Khudrī,

لَهُ الْمَسْأَلَةُ حَتَّى يُصِيبَ قَوَامًا مِنْ عَيْشٍ، أَوْ قَالَ: سَدَادًا مِنْ عَيْشٍ - فَمَا سِوَاهُنَّ مِنْ الْمَسْأَلَةِ يَا قَبِيصَةُ سُحْتٌ يَأْكُلُهَا صَاحِبُهَا سُحْتًا» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مَحْمُودُ بْنُ غَيْلَانَ قَالَ: نا وَكِيعٌ نَا سُفْيَانُ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ عَنْ زَيْدِ بْنِ عُقْبَةَ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْمَسْأَلَةُ كَدٌّ يَكُدُّ الرَّجُلُ بِهَا وَجْهَهُ، إِلَّا أَنْ يَسْأَلَ الرَّجُلُ ذَا سُلْطَانٍ، أَوْ فِي الْأَمْرِ لَا بُدَّ لَهُ مِنْهُ» .

فَهَذَا نَصُّ مَا قُلْنَا حَرْفًا بِحَرْفٍ - وَلِلَّهِ الْحَمْدُ.

وَمِنْ طَرِيقِ النَّظَرِ: أَنَّنَا قَدْ ذَكَرْنَا فِي " كِتَابِ الزَّكَاةِ " مِنْ دِيوَانِنَا هَذَا وُجُوبَ قِيَامِ ذَوِي الْفَضْلِ مِنْ الْمَالِ بِمَنْ لَا مَالَ مَعَهُ، يَقُومُ مِنْهُ بِنَفْسِهِ وَعِيَالِهِ، فَإِذْ ذَلِكَ كَذَلِكَ فَالْمُحْتَاجُ إنَّمَا يَسْأَلُ حَقَّهُ الْوَاجِبَ، وَدَيْنَهُ اللَّازِمَ، الَّذِي عَلَى الْحَاكِمِ أَنْ يَحْكُمَ لَهُ بِهِ، وَلَهُ أَخْذُهُ كَيْفَ قَدَرَ إنْ مَنَعَهُ، فَلَا غَضَاضَةَ عَلَيْهِ فِي ذَلِكَ.

وَأَمَّا السُّلْطَانُ فَلَيْسَ يُسْأَلُ مِنْ مَالِهِ شَيْءٌ، إنَّمَا بِيَدِهِ أَمْوَالُ الْمُسْلِمِينَ، فَلَا حَرَجَ عَلَى الْمُسْلِمِ أَنْ يَسْأَلَ مِنْ أَمْوَالِ الْمُسْلِمِينَ الَّذِينَ هُوَ أَحَدُهُمْ.

وَأَمَّا سُؤَالُ غَيْرِ الْمُتَكَثِّرِ فَقَدْ ذَكَرْنَا فِي " كِتَابِ الْحَجِّ «قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَبِي قَتَادَةَ وَأَصْحَابِهِ فِي الْحِمَارِ الَّذِي عَقَرُوهُ: مَعَكُمْ مِنْهُ شَيْءٌ؟ فَقُلْتُ: نَعَمْ: فَنَاوَلْتُهُ الْعَضُدَ فَأَكَلَهَا حَتَّى نَفِدَهَا، وَهُوَ مُحْرِمٌ.» وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي

who was guarding a flock of sheep: “Divide them among yourselves and allocate a share for me with you.”

حَدِيثِ أَبِي سَعِيدٍ الْخُدْرِيِّ الَّذِي رَقِيَ عَلَى قَطِيعٍ مِنْ الْغَنَمِ: «اقْتَسِمُوا وَاضْرِبُوا لِي بِسَهْمٍ مَعَكُمْ»

The juridical issue of giving a gift to a non-Muslim.

[مَسْأَلَةٌ إعْطَاءُ الْكَافِرِ الْهِبَةَ]

L26377

L26378 1641 - Issue: Giving to a disbeliever is permissible, and accepting what he gave is like accepting what a Muslim gave. It was narrated to us via Al-Bukhari’s chain: Sahl ibn Bakkār reported to us, from Wuhaib (who is Ibn Khālid), from ʿAmr ibn Yaḥyā, from ʿAbbās al-Sāʿidī, from Abū Ḥumayd al-Sāʿidī, who said: “We campaigned with the Messenger of Allah—peace and blessings be upon him—at Tabūk, and the king of Ayla gifted him a white mule and clothed him in a burd.”

١٦٤١ - مَسْأَلَةٌ: وَإِعْطَاءُ الْكَافِرِ مُبَاحٌ، وَقَبُولُ مَا أَعْطَى هُوَ كَقَبُولِ مَا أَعْطَى الْمُسْلِمُ -: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا سَهْلُ بْنُ بَكَّارَ نَا وُهَيْبٌ - هُوَ ابْنُ خَالِدٍ - عَنْ عَمْرِو بْنِ يَحْيَى عَنْ عَبَّاسٍ السَّاعِدِيِّ عَنْ أَبِي حُمَيْدٍ السَّاعِدِيِّ قَالَ: «غَزَوْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَبُوكَ وَأَهْدَى مَلِكُ أَيْلَةَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَغْلَةً بَيْضَاءَ وَكَسَاهُ بُرْدًا» .

L26379–26381 And from the chain of Al-Bukhari: Ubayd ibn Ismāʿīl narrated to us, Abu Usāmah narrated to us, from Hishām ibn ʿUrwah, from his father. From Asma’ bint Abi Bakr, who narrated: My mother came to me while she was a polytheist. I sought the verdict of the Messenger of Allah (peace be upon him), and he said: Maintain ties with your mother.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا عُبَيْدُ بْنُ إسْمَاعِيلَ نَا أَبُو أُسَامَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ «أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ قَالَتْ: قَدِمَتْ أُمِّي عَلَيَّ - وَهِيَ مُشْرِكَةٌ - فَاسْتَفْتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: صِلِي أُمَّكَ» .

L26382 And through the chain of Muslim: Qutaybah narrated to us from Mālik from Samī, the freed slave of Abū Bakr, from Abū Ṣāliḥ al-Sammān (the oil seller) from Abū Hurayrah, who said: The Messenger of Allāh - peace and blessings of Allāh be upon him - said: “For every living creature there is a reward.”

وَمِنْ طَرِيقِ مُسْلِمٍ نَا قُتَيْبَةُ عَنْ مَالِكٍ عَنْ سُمَيٍّ مَوْلَى أَبِي بَكْرٍ عَنْ أَبِي صَالِحٍ السَّمَّانِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فِي كُلِّ كَبِدٍ رَطْبَةٍ أَجْرٌ» .

L26383 If it is said: Where do you stand regarding what you narrated through the chain of Ibn al-Shikhīr from ʿIyāḍ ibn Ḥimār, “that he offered a gift to the Messenger of Allah (peace be upon him), so he said, ’Have you embraced Islam?’ I replied, ’No.’ He said, ’I have been forbidden from the meat offerings of polytheists.’”

فَإِنْ قِيلَ: فَأَيْنَ أَنْتُمْ عَمَّا رَوَيْتُمْ مِنْ طَرِيقِ ابْنِ الشِّخِّيرِ عَنْ عِيَاضِ بْنِ حِمَارٍ «أَنَّهُ أَهْدَى إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَدِيَّةً، فَقَالَ: أَسْلَمْتَ؟ قُلْتُ لَا، قَالَ: إنِّي نُهِيتُ عَنْ زَبْدِ الْمُشْرِكِينَ» .

L26384 And through the narration of Al-Ḥasan from ‘Iyāḍ ibn Ḥimār, a similar account is reported, where he stated: “So he refused to accept it.” Al-Ḥasan

remarked, “Is the scum of the polytheists their contribution?” We said: This ruling is abrogated by the report of Abū Ḥumayd which we mentioned, as it occurred in Tabūk, while ‘Iyāḍ’s conversion to Islam preceded Tabūk. And with Allāh the Exalted is success.

The Issue of Charity from Illicit Wealth

L26385

L26386 1642 - Issue: Charity from unlawful wealth is not accepted; rather, one thereby incurs additional sin, due to the saying of the Messenger of Allah—peace be upon him: “Indeed, your blood and your wealth are sacred to you.”

L26387–26388 Whenever he acts upon what is forbidden, he has indeed added to his sins, and the more sins he commits, the greater his guilt becomes. Allah, the Most High, said: “Whoever does evil will be recompensed for it” (Quran 4:123).[41]

Is it permissible for anyone to reproachfully remind others of a good deed he has performed?

L26389

L26390 1643 – Issue: It is not permissible for anyone to remind others of favors for the good deeds they have done, except for one whose acts of benevolence are abundant and who is treated with harm; he may enumerate his good deeds. Allah the Exalted said: *“Do not invalidate your acts of charity by reminders of your generosity and causing harm”* [Al-Baqarah 2:264].[42]

L26391 It was narrated to us through the chain of Shu’bah—I heard Sulayman (he is al-A’mash)—from Sulayman ibn Mushir from Kharashah ibn al-Hurr from Abu Dharr, who said: The Messenger of Allah—peace and blessings be upon him—said, “Three are those whom Allah will neither address on the Day of Resurrection, nor regard them, nor purify them, and for them awaits agonizing punishment: the habitual boaster of favors, the one who lets his

[41] **Qur’an references (L26388):** Qur’an 4:123 (An-Nisa).
[42] **Qur’an references (L26390):** Qur’an 2:264 (Al-Baqarah).

وَمِنْ طَرِيقِ الْحَسَنِ عَنْ عِيَاضِ بْنِ حِمَارٍ مِثْلُهُ، وَقَالَ: فَأَبَى أَنْ يَقْبَلَهَا - قَالَ الْحَسَنُ: زَبْدُ الْمُشْرِكِينَ رِفْدُهُمْ؟ قُلْنَا: هَذَا مَنْسُوخٌ بِخَبَرِ أَبِي حُمَيْدٍ الَّذِي ذَكَرْنَا، لِأَنَّهُ كَانَ فِي تَبُوكَ، وَكَانَ إِسْلَامُ عِيَاضٍ قَبْلَ تَبُوكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الصَّدَقَة مِنْ مَال حرام]

١٦٤٢ - مَسْأَلَةٌ: لَا تُقْبَلُ صَدَقَةٌ مِنْ مَالٍ حَرَامٍ بَلْ يَكْتَسِبُ بِذَلِكَ إِثْمًا زَائِدًا لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَكُلَّمَا تَصَرَّفَ فِي الْحَرَامِ فَقَدْ زَادَ مَعْصِيَةً وَإِذَا زَادَ مَعْصِيَةً زَادَ إِثْمًا قَالَ اللَّهُ تَعَالَى: {مَنْ يَعْمَلْ سُوءًا يُجْزَ بِهِ} [النساء: ١٢٣] .

[مَسْأَلَة هَلْ يَحِلّ لِأَحَدٍ أَنْ يمن بِمَا فعل مِنْ خير]

١٦٤٣ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنَّ يَمُنَّ بِمَا فَعَلَ مِنْ خَيْرٍ إِلَّا مَنْ كَثُرَ إِحْسَانُهُ وَعُومِلَ بِالْمُسَاءَةِ، فَلَهُ أَنْ يُعَدِّدَ إِحْسَانَهُ قَالَ اللَّهُ عَزَّ وَجَلَّ: {لا تُبْطِلُوا صَدَقَاتِكُمْ بِالْمَنِّ وَالأَذَى} [البقرة: ٢٦٤] .

رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ سَمِعْت سُلَيْمَانَ - هُوَ الْأَعْمَشُ - عَنْ سُلَيْمَانَ بْنِ مُسْهِرٍ عَنْ خَرَشَةَ بْنِ الْحُرِّ عَنْ أَبِي ذَرٍّ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «ثَلَاثَةٌ لَا يُكَلِّمُهُمْ اللَّهُ يَوْمَ الْقِيَامَةِ، وَلَا يَنْظُرُ إلَيْهِمْ وَلَا يُزَكِّيهِمْ، وَلَهُمْ عَذَابٌ أَلِيمٌ: الْمَنَّانُ بِمَا أَعْطَى، وَالْمُسْبِلُ إزَارَهُ، وَالْمُنَفِّقُ سِلْعَتَهُ بِالْحَلِفِ الْكَاذِبَةِ» .

garment hang below the ankles, and the merchant who promotes his goods through false oaths.”[43][44]

L26392 And through the chain of Muslim: Shurayh ibn Yunus narrated to us, Ismail ibn Ja’far narrated to us from Amr ibn Yahya ibn Umara from Abbad ibn Tamim from Abdullah ibn Zayd: “When the Messenger of Allah (peace be upon him) conquered Hunayn, he distributed the spoils and gave to those whose hearts were to be reconciled. News reached him that the Ansar wished to receive what the people had received. The Messenger of Allah (peace be upon him) stood and addressed them, saying: ’O assembly of Ansar! Did I not find you astray, and Allah guided you through me? Destitute, and Allah enriched you through me? Divided, and Allah united you through me?’ They said: ’Allah and His Messenger have been most gracious in bestowing favor.’ He said: ’Will you not answer me? If you wished, you could say such-and-such and mention such-and-such matters’—referring to things which ’Amr mentioned he could not recall—’and speak of such circumstances.’ This is the basis for permitting the enumeration of favors. And with Allah the Exalted is success.”[45]

L26393 Legal rulings on hibah (gift) by women, orphans, slaves, those deceived in sales, the sick, and their charitable acts (ṣadaqāt).

L26394 Issue 1644: The gift of a married woman, a virgin under her father’s guardianship, a female orphan, a slave, a person defrauded in sales, a terminally ill person, or a person with a non-terminal illness - their gifts and charitable acts are treated like those of free individuals and women who have neither husbands nor fathers. All these are equivalent to the gifts of a healthy person.

L26395 We have indeed mentioned the proof for this in the preceding sections of our treatise.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا شُرَيْحُ بْنُ يُونُسَ نَا إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ عَمْرِو بْنِ يَحْيَى بْنِ عُمَارَةَ عَنْ عَبَّادِ بْنِ تَمِيمٍ عَنْ عَبْدِ اللَّهِ بْنِ زَيْدٍ «لَمَّا فَتَحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُنَيْنًا قَسَّمَ الْغَنَائِمَ فَأَعْطَى الْمُؤَلَّفَةَ قُلُوبُهُمْ فَبَلَغَهُ أَنَّ الْأَنْصَارَ يُحِبُّونَ أَنْ يُصِيبُوا مَا أَصَابَ النَّاسُ فَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَخَطَبَهُمْ فَقَالَ: يَا مَعْشَرَ الْأَنْصَارِ أَلَمْ أَجِدْكُمْ ضُلَّالًا فَهَدَاكُمْ اللَّهُ بِي، وَعَالَةً فَأَغْنَاكُمْ اللَّهُ بِي، وَمُتَفَرِّقِينَ فَجَمَعَكُمْ اللَّهُ بِي؟ وَيَقُولُونَ: اللَّهُ وَرَسُولُهُ أَمَنُّ؟ فَقَالَ: أَلَا تُجِيبُونَنِي، أَمَا إِنَّكُمْ لَوْ شِئْتُمْ أَنْ تَقُولُوا كَذَا، وَكَانَ مِنْ الْأَمْرِ كَذَا» - أَشْيَاءُ ذَكَرَ عَمْرٌو أَنَّهُ لَا يَحْفَظُهَا - فَهَذَا مَوْضِعُ إبَاحَةِ تَعْدِيدِ الْإِحْسَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة هِبَة الْمَرْأَة واليتيم وَالْعَبْد والمخدوع فِي الْبَيْع والمريض وصدقاتهم]

١٦٤٤ - مَسْأَلَةٌ: وَهِبَةُ الْمَرْأَةِ ذَاتِ الزَّوْجِ، وَالْبِكْرِ ذَاتِ الْأَبِ، وَالْيَتِيمَةِ، وَالْعَبْدِ، وَالْمَخْدُوعِ فِي الْبُيُوعِ، وَالْمَرِيضِ مَرَضَ مَوْتِهِ، أَوْ مَرَضَ غَيْرَ مَوْتِهِ، وَصَدَقَاتِهِمْ: كَهِبَاتِ الْأَحْرَارِ، وَاللَّوَاتِي لَا أَزْوَاجَ لَهُنَّ، وَلَا آبَاءَ كَهِبَاتِ الصَّحِيحِ وَلَا فَرْقَ.

وَقَدْ ذَكَرْنَا بُرْهَانَ ذَلِكَ فِيمَا سَلَفَ مِنْ كِتَابِنَا.

[43] **Hadith references (L26391):** Sunan Ibn Majah 2208; Sahih Muslim 106a; Sunan an-Nasai 4458.

[44] **Qur’an references (L26391):** Qur’an 2:174 (Al-Baqarah); Qur’an 3:77 (Ali ’Imran).

[45] **Hadith references (L26392):** Sahih Muslim 1061.

وَجُمْلَةُ ذَلِكَ: أَنَّ اللَّهَ تَعَالَى نَدَبَ جَمِيعَ الْبَالِغِينَ الْمُمَيِّزِينَ إلَى الصَّدَقَةِ، وَفِعْلِ الْخَيْرِ، وَإِنْقَاذِ نَفْسِهِ مِنْ النَّارِ، وَكُلُّ مَنْ ذَكَرْنَا مُتَوَعَّدٌ بِلَا خِلَافٍ مِنْ أَحَدٍ " فَلَا يَحِلُّ مَنْعُهُمْ مِنْ الْقُرْبِ إلَّا بِنَصٍّ، وَلَا نَصَّ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26396–26398 In summary, this means: Allah, the Exalted, has exhorted all discerning adults to give charity and to perform [...] Doing good, saving oneself from the Fire, and all those we have mentioned are unanimously threatened without exception. Thus, it is impermissible to prevent them from acts of devotion except through textual evidence, and no such evidence exists regarding this matter—and success comes from Allah, the Most High.

[مَسْأَلَة صَدَقَة التَّطَوُّع عَلَى الغني]

L26399

The Issue of Voluntary Alms Given to the Wealthy

١٦٤٥ - مَسْأَلَةٌ: وَالصَّدَقَةُ لِلتَّطَوُّعِ عَلَى الْغَنِيِّ جَائِزَةٌ وَعَلَى الْفَقِيرِ، وَلَا تَحِلُّ لِأَحَدٍ مِنْ بَنِي هَاشِمٍ، وَالْمُطَّلِبِ ابْنَيْ عَبْدِ مَنَافٍ، وَلَا لِمَوَالِيهِمْ، حَاشَ " الْحَبْسِ " فَهُوَ حَلَالٌ لَهُمْ، وَلَا تَحِلُّ صَدَقَةُ التَّطَوُّعِ عَلَى مَنْ أُمُّهُ مِنْهُمْ إذَا لَمْ يَكُنْ أَبُوهُ مِنْهُمْ.

L26400 Issue 1645: Voluntary charity is permissible to give to both the wealthy and the poor. However, it is not lawful for any of the descendants of Hāshim, nor for al-Muṭṭalib—one of the two sons of ʿAbd Manāf—or their clients to receive it, except for the ḥabs (endowment), which is permissible for them. It is also unlawful to give voluntary charity to someone whose mother is from them if his father is not from them.

وَأَمَّا الْهِبَةُ، وَالْهَدِيَّةُ، وَالْعَطِيَّةُ، وَالْإِبَاحَةُ، وَالْمَنْحَةُ، وَالْعُمْرَى، وَالرُّقْبَى: فَكُلُّ ذَلِكَ حَلَالٌ لِبَنِي هَاشِمٍ، وَالْمُطَّلِبِ وَمَوَالِيهِمْ - هَذَا كُلُّهُ لَا خِلَافَ فِيهِ حَاشَ دُخُولِ بَنِي الْمُطَّلِبِ فِيهِمْ، وَحَاشَ دُخُولِ الْمَوَالِي فِيهِمْ، وَحَاشَ جَوَازِ صَدَقَةِ التَّطَوُّعِ لَهُمْ، فَإِنَّ قَوْمًا أَجَازُوهَا لَهُمْ.

L26401 As for gifts, presents, bestowals, permissibility, usufructuary grants, ʿumrā (lifetime usufruct), and ruqbā (reversionary usufruct)—all of these are permissible for Banū Hāshim, al-Muṭṭalib, and their clients. There is no disagreement about any of this, except for the inclusion of Banū al-Muṭṭalib among them, the inclusion of clients among them, and the permissibility of voluntary alms for them, since a group of people have permitted it for them.

رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نَا شُعْبَةُ نَا الْحَكَمُ - هُوَ ابْنُ عُتَيْبَةَ - عَنْ ابْنِ أَبِي رَافِعٍ - هُوَ عُبَيْدُ اللَّهِ - عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَعْمَلَ رَجُلًا مِنْ بَنِي مَخْزُومٍ عَلَى الصَّدَقَةِ فَأَرَادَ أَبُو رَافِعٍ أَنْ يَتْبَعَهُ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إنَّ الصَّدَقَةَ لَا تَحِلُّ لَنَا، وَإِنَّ مَوْلَى الْقَوْمِ مِنْهُمْ» .

L26402 It has been narrated to us through the chain of Yahya ibn Sa'id al-Qattan who narrated from Shu'bah, who narrated from al-Hakam—who is Ibn 'Utaybah—who narrated from Ibn Abi Rafi'—who is 'Ubaydullah—who narrated from his father: "The Messenger of Allah—peace be upon him—appointed a man from Banu Makhzum in charge of charity. Abu Rafi' then sought to follow him, and the Messenger of Allah—peace be upon him—said to him: 'Charity is not lawful for us, and the freed slave of a people is from them.'"

فَهَذَا عُمُومٌ لِكُلِّ صَدَقَةٍ. وَمِنْ طَرِيقِ أَبِي دَاوُد نَا مُسَدَّدٌ نَا هُشَيْمٌ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَخْبَرَنِي جُبَيْرُ بْنُ مُطْعِمٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى

L26403 This is a generality for all charity. Through the chain of Abu Dawud: Musaddad narrated to us, Hushaym narrated to us from Muhammad ibn Ishaq from al-Zuhri from Sa'id ibn al-Musayyab, who informed me that Jubayr ibn Muṭ'im reported: "The Messenger of Allah (may Allah bless him and grant

him peace) said to him: 'We and the Banu al-Muṭṭalib do not separate during the Age of Ignorance nor during Islam, and indeed we and they are one and the same,' and he interlaced his fingers."[46]

L26404–26406 If it is said: The statement of the Messenger of Allah (peace be upon him)—"Every act of kindness is charity"—has been authentically established. If you adhere to the apparent meaning of this report, you would have to prevent them from every act of goodness—a position which no one advocates, not even you. Otherwise, do not prevent them except from what is agreed upon: that it is impermissible for them to receive, which applies solely to obligatory charity. We respond: His statement (peace be upon him)—"Every act of kindness is charity"—has been specified by his grant to Banu Hashim. Like the camel that the Prophet (peace and blessings be upon him) granted to Ali from the nafl (additional share) beyond the khums (fifth), from the maghanim (spoils of war), and all his other gifts—which belonged to them—thus this ruling is established by its evidence.

L26407 We found that every acknowledged act of kindness – even if termed ṣadaqah (charity) – has another specific designation: such as loans, gifts, presents, granting usufruct, assuming debt liability, hosting guests, temporary livestock grants, and all other terms denoting righteous acts. We found voluntary charity has no designation except "ṣadaqah," while it is authentically established that ṣadaqah is forbidden for the family of Muḥammad (may God bless him and his household and grant peace) and their freed slaves and affiliates. Thus it becomes imperative that voluntary charity is forbidden for them, as this constitutes the ṣadaqah bearing no name other than "charity." There is no disagreement regarding the prohibition of obligatory charity upon them, which is zakāh.

L26408 If it is said: Indeed, you have narrated through the chain of Abū Dāwūd: Muḥammad ibn ʿUbayd al-Muḥāribī narrated to us; Muḥammad ibn Fuḍayl from al-Aʿmash, from Ḥabīb ibn Abī Thābit, from Kurayb—client of Ibn ʿAbbās—from Ibn ʿAbbās, who said: "The Messenger of Allah—peace and

[46] **Hadith references (L26403):** Sunan Abi Dawud 2980; Mishkat al-Masabih 4027.

اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: إنَّا وَبَنُو الْمُطَّلِبِ لَا نَفْتَرِقُ فِي جَاهِلِيَّةٍ وَلَا إسْلَامٍ، وَإِنَّمَا نَحْنُ وَهُمْ شَيْءٌ وَاحِدٌ وَشَبَّكَ بَيْنَ أَصَابِعِهِ» .

فَإِنْ قِيلَ: قَدْ صَحَّ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ مَعْرُوفٍ صَدَقَةٌ» فَإِنْ أَخَذْتُمْ بِظَاهِرِ هَذَا الْخَبَرِ فَامْنَعُوهُمْ مِنْ كُلِّ بِرٍّ - وَهَذَا مَا لَا يَقُولُهُ أَحَدٌ وَلَا أَنْتُمْ، وَإِلَّا فَلَا تَمْنَعُوهُمْ إلَّا مَا اُتُّفِقَ عَلَيْهِ: أَنَّهُ لَا يَحِلُّ لَهُمْ وَهُوَ صَدَقَةُ الْفَرْضِ فَقَطْ. قُلْنَا: قَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «كُلُّ مَعْرُوفٍ صَدَقَةٌ» قَدْ خَصَّهُ عَطَاؤُهُ لِبَنِي هَاشِمٍ، كَالْبَعِيرِ الَّذِي أَعْطَى عَلِيًّا مِنْ النَّفْلِ مِنْ الْخُمُسِ، وَمِنْ الْمَغْنَمِ، وَسَائِرِ هِبَاتِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَهُمْ، فَوَجَبَ خُرُوجُ ذَلِكَ بِدَلِيلِهِ.

وَوَجَدْنَا كُلَّ مَعْرُوفٍ وَإِنْ كَانَ يَقَعُ عَلَيْهِ اسْمُ صَدَقَةٍ فَلَهُ اسْمٌ آخَرُ يَخُصُّهُ: كَالْقَرْضِ، وَالْهِبَةِ، وَالْهَدِيَّةِ، وَالْإِبَاحَةِ، وَالْحُمَالَةِ، وَالضِّيَافَةِ، وَالْمِنْحَةِ، وَسَائِرِ أَسْمَاءِ وُجُوهِ الْبِرِّ. وَوَجَدْنَا الصَّدَقَةَ التَّطَوُّعَ لَيْسَ لَهَا اسْمٌ غَيْرَ " الصَّدَقَةِ " وَقَدْ صَحَّ أَنَّ الصَّدَقَةَ مُحَرَّمَةٌ عَلَى آلِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَمَوَالِيهِمْ، فَوَجَبَ ضَرُورَةً أَنْ تَكُونَ الصَّدَقَةُ التَّطَوُّعُ حَرَامًا عَلَيْهِمْ؛ لِأَنَّهَا هِيَ الصَّدَقَةُ الَّتِي لَا اسْمَ لَهَا غَيْرَ " الصَّدَقَةِ " وَلَا خِلَافَ فِي تَحْرِيمِ الصَّدَقَةِ الْمَفْرُوضَةِ عَلَيْهِمْ وَهِيَ الزَّكَاةُ.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ أَبِي دَاوُد نَا مُحَمَّدُ بْنُ عُبَيْدٍ الْمُحَارِبِيُّ نَا مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ الْأَعْمَشِ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ كُرَيْبٍ مَوْلَى ابْنِ عَبَّاسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: «بَعَثَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي إبِلٍ أَعْطَاهُ إيَّاهَا مِنْ الصَّدَقَةِ» .

blessings be upon him and his family—sent me regarding camels he had given them to me from the _zakat_."

L26409 We said: This is correct, and it cannot be except one of two interpretations. The first—which is the apparent meaning of the narration—is that Ibn Abbas was the one giving those camels from an obligatory charity incumbent upon him. Thus, the Prophet—peace and blessings be upon him—sent him with them to the place where he collected the camels of charity.

قُلْنَا: هَذَا صَحِيحٌ، وَلَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ -: أَحَدُهُمَا - وَهُوَ ظَاهِرُ الْخَبَرِ أَنَّ ابْنَ عَبَّاسٍ هُوَ الْمُعْطِي لِتِلْكَ الْإِبِلِ مِنْ صَدَقَةٍ لَازِمَةٍ لَهُ، فَبَعَثَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِيهَا إلَى حَيْثُ يَجْمَعُ إبِلَ الصَّدَقَةِ.

L26410 The second point is that even if it were valid—though this is not mentioned in the narration—that the Prophet (peace and blessings be upon him) gave those camels to Ibn Abbas, this act would have been abrogated by the prohibition of charity to them. For the prohibition of charity to them constitutes the established abrogator that lifts the original and the original state without doubt—the state of permitting charity for them like all other people. Whoever claims that the abrogated can return as an abrogator has lied, unless clear textual evidence explicitly testifies to it.

وَالثَّانِي - أَنَّهُ حَتَّى لَوْ صَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - هُوَ أَعْطَى تِلْكَ الْإِبِلَ لِابْنِ عَبَّاسٍ - وَلَيْسَ ذَلِكَ فِي الْخَبَرِ - لَكَانَ ذَلِكَ مَنْسُوخًا بِتَحْرِيمِ الصَّدَقَةِ عَلَيْهِمْ؛ لِأَنَّ تَحْرِيمَ الصَّدَقَةِ عَلَيْهِمْ هُوَ الرَّافِعُ الْمَعْهُودُ الْأَصْلِ وَلِلْحَالِ الْأَوَّلِ بِلَا شَكٍّ مِنْ إبَاحَةِ الصَّدَقَةِ لَهُمْ كَسَائِرِ النَّاسِ، وَمَنْ ادَّعَى عَوْدَ الْمَنْسُوخِ نَاسِخًا فَقَدْ كَذَبَ إلَّا أَنْ يَشْهَدَ لَهُ نَصٌّ بَيِّنٌ بِذَلِكَ.

L26411 As for the wealthy person: It has been narrated to us via the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān, from Hishām ibn ʿUrwah, from his father, from ʿAdī ibn al-Khiyār, that two men narrated to him they asked the Prophet (ṣallā Allāhu ʿalayhi wa ālihi wa sallam) about charity. He said: "If you two wish, and there is no share in it for a wealthy person nor for an able-bodied person capable of earning."

وَأَمَّا الْغَنِيُّ: فَقَدْ رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَدِيِّ بْنِ الْخِيَارِ «أَنَّ رَجُلَيْنِ حَدَّثَاهُ أَنَّهُمَا سَأَلَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ الصَّدَقَةِ فَقَالَ: إنَّ شِئْتُمَا، وَلَا حَظَّ فِيهَا لِغَنِيٍّ وَلَا لِقَوِيٍّ مُكْتَسِبٍ» .

L26412 We said: This report and every text conveyed in such wording refers exclusively to "the obligatory alms" which are forbidden for the wealthy to receive, except those whom the Quranic text specifies as exceptions among them: {those employed to collect them, those whose hearts are to be reconciled, for freeing slaves, those in debt, in the cause of Allah, and the wayfarer} [Quran 9:60], these alone.[47]

قُلْنَا: هَذَا الْخَبَرُ وَكُلُّ مَا جَاءَ بِهَذَا اللَّفْظِ فَإِنَّمَا هُوَ عَلَى " الصَّدَقَةِ الْمَفْرُوضَةِ " الَّتِي حُرِّمَتْ عَلَى الْأَغْنِيَاءِ إلَّا مَنْ خَصَّهُ النَّصُّ مِنْهُمْ: مِنْ {وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ} [التوبة: ٦٠] فَقَطْ.

L26413–26414 The evidence for this is what we have been narrated through the chain of Ahmad ibn Shu'ayb, who informed me that Imran ibn Bakkar narrated to me, that Ali ibn Ayyash informed us, that Shu'ayb—who is Ibn Abi Hamzah—

بُرْهَانُ ذَلِكَ - مَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي عِمْرَانُ بْنُ بَكَّارَ حَدَّثَنِي عَلِيُّ بْنُ عَيَّاشٍ نَا شُعَيْبٌ - هُوَ ابْنُ أَبِي حَمْزَةَ - حَدَّثَنِي أَبُو الزِّنَادِ حَدَّثَنِي عَبْدُ الرَّحْمَنِ

[47] **Qur'an references (L26412):** Qur'an 9:60 (At-Tawbah).

narrated to me, that Abu al-Zinad narrated to me, that Abd al-Rahman al-A'raj narrated to me, that he heard Abu Hurayrah relating from the Messenger of Allah—peace be upon him and his household—mentioning a hadith containing: "A man declared, 'I shall certainly give charity,' so he placed it in a thief's hand. In the morning, people were saying, 'Charity was given to a thief!' He said, 'O Allah, praise be to You. I shall certainly give charity.' He then took his charity and placed it in a fornicator's hand. In the morning, people were saying, 'Charity was given to a fornicator last night!' He said, 'O Allah, praise be to You. I shall certainly give charity.' He then took his charity and placed it in a wealthy man's hand. In the morning, people were saying, 'Charity was given to a wealthy man last night!' He said, 'O Allah, praise be to You: concerning the thief, the fornicator, and the wealthy man.' He was later approached and told, 'As for your charity, it has been accepted.'" And he mentioned the report.

الْأَعْرَجِ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يُحَدِّثُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَذَكَرَ حَدِيثًا فِيهِ «قَالَ رَجُلٌ: لَأَتَصَدَّقَنَّ بِصَدَقَةٍ، فَوَضَعَهَا فِي يَدِ سَارِقٍ، فَأَصْبَحُوا يَتَحَدَّثُونَ تُصُدِّقَ عَلَى سَارِقٍ فَقَالَ: اللَّهُمَّ لَكَ الْحَمْدُ لَأَتَصَدَّقَنَّ بِصَدَقَةٍ، فَخَرَجَ بِصَدَقَتِهِ فَوَضَعَهَا فِي يَدِ زَانِيَةٍ، فَأَصْبَحُوا يَتَحَدَّثُونَ تُصُدِّقَ اللَّيْلَةَ عَلَى زَانِيَةٍ، فَقَالَ: اللَّهُمَّ لَكَ الْحَمْدُ لَأَتَصَدَّقَنَّ بِصَدَقَةٍ، فَخَرَجَ بِصَدَقَتِهِ فَوَضَعَهَا فِي يَدِ غَنِيٍّ، فَأَصْبَحُوا يَتَحَدَّثُونَ تُصُدِّقَ اللَّيْلَةَ عَلَى غَنِيٍّ، فَقَالَ: اللَّهُمَّ لَكَ الْحَمْدُ عَلَى سَارِقٍ، وَعَلَى زَانِيَةٍ، وَعَلَى غَنِيٍّ، فَأُتِيَ فَقِيلَ لَهُ: أَمَّا صَدَقَتُكَ فَقَدْ تُقُبِّلَتْ» - وَذَكَرَ الْخَبَرَ.

L26415 So this is a clarification regarding the permissibility of charity to the wealthy, the righteous, and the sinful.

فَهَذَا بَيَانٌ فِي جَوَازِ الصَّدَقَةِ عَلَى الْغَنِيِّ، وَالصَّالِحِ، وَالطَّالِحِ.

L26416 The issue of a slave donating from his master's wealth in a manner that does not cause corruption.

[مَسْأَلَة الْعَبْد يتصدق مِنْ مَال سيدَهْ بِمَا لَا يفسد]

L26417 1646 - Issue: A slave may give charity from his master's property without causing waste. We have appended the hadith concerning the slave's charity which we previously mentioned: "The Messenger of Allah (peace and blessings of Allah be upon him) would accept a slave's invitation."

١٦٤٦ - مَسْأَلَةٌ: وَلِلْعَبْدِ أَنْ يَتَصَدَّقَ مِنْ مَالِ سَيِّدِهِ بِمَا لَا يُفْسِدُ، وَاسْتَدْرَكْنَا فِي تَصَدُّقِ الْعَبْدِ الْخَبَرَ الَّذِي قَدْ ذَكَرْنَاهُ، «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُجِيبُ دَعْوَةَ الْمَمْلُوكِ» .

L26418 It has been narrated to us through the route of Ahmad ibn Shuʿayb: narrated to us Qutaybah, narrated to us Hatim—who is Ibn Ismaʿil—from Yazid ibn Abi ʿUbayd, who said: I heard ʿUmayr, the servant of Ābi al-Lahm, say: "My master ordered me to cut meat into strips for drying. A poor man came to me, so I fed him some. When my master learned of that, he beat me. I went to the Messenger of Allah (peace be upon him), and he summoned him. He asked: 'Why did you beat him?' He replied: 'He fed my food without my permission.' The Messenger of Allah (peace be upon him) said: 'The reward is shared between you two.'"

وَرُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نَا قُتَيْبَةُ نَا حَاتِمٌ - هُوَ ابْنُ إِسْمَاعِيلَ - عَنْ يَزِيدَ بْنِ أَبِي عُبَيْدٍ قَالَ: سَمِعْت عُمَيْرًا مَوْلَى آبِي اللَّحْمِ قَالَ: «أَمَرَنِي مَوْلَايَ أَنْ أُقَدِّدَ لَحْمًا فَجَاءَنِي مِسْكِينٌ فَأَطْعَمْتُهُ، فَعَلِمَ بِذَلِكَ مَوْلَايَ فَضَرَبَنِي، فَأَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَدَعَاهُ فَقَالَ: لِمَ ضَرَبْتَهُ؟ فَقَالَ: يُطْعِمُ طَعَامِي بِغَيْرِ أَنْ آمُرَهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: الْأَجْرُ بَيْنَكُمَا» .

وَمِنْ طَرِيقِ مُسْلِمٍ نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَابْنُ نُمَيْرٍ، وَزُهَيْرُ بْنُ حَرْبٍ كُلُّهُمْ عَنْ حَفْصِ بْنِ غِيَاثٍ عَنْ مُحَمَّدِ بْنِ زَيْدٍ عَنْ عُمَيْرٍ مَوْلَى آبِي اللَّحْمِ قَالَ «كُنْتُ مَمْلُوكًا فَسَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَأَتَصَدَّقُ مِنْ مَالِ مَوَالِيَّ شَيْئًا؟ قَالَ: نَعَمْ، وَالْأَجْرُ بَيْنَكُمَا نِصْفَانِ» قَالَ أَبُو مُحَمَّدٍ: لَا يَخْلُو مَالُ الْعَبْدِ مِنْ أَنْ يَكُونَ لَهُ كَمَا نَقُولُ نَحْنُ، أَوْ يَكُونَ لِسَيِّدِهِ كَمَا يَقُولُونَ، فَإِنْ كَانَ مَالُ فَصَدَقَةُ الْمَرْءِ مِنْ مَالِهِ فِعْلٌ حَسَنٌ مَنْدُوبٌ إلَيْهِ، وَإِنْ كَانَ لِسَيِّدِهِ فَهَذَا نَصٌّ جَلِيٌّ بِإِبَاحَةِ الصَّدَقَةِ لَهُ مِنْهُ - فَلْيُعْضَدُوا بِالْجَنْدَلِ.

L26419–26421 And via Muslim's chain of transmission: Abu Bakr ibn Abi Shaybah, Ibn Numayr, and Zuhayr ibn Harb—all of them reported to us from Hafs ibn Ghiyath, from Muhammad ibn Zayd, from Umayr, the freed slave of Abi al-Lahm, who said: "I was a slave, so I asked..." The Messenger of Allah—peace and blessings be upon him—was asked, "May I give charity from the wealth of my clients?" He replied, "Yes, and the reward is divided into two equal shares between you both." Abu Muhammad said: The slave's wealth is not free from either belonging to him as we hold or belonging to his master as others claim. If the wealth is his own, then a person's charity from his property is a virtuous and recommended act. If it belongs to his master, this constitutes an explicit text permitting charity from it—let them be reinforced with stones.

وَقَدْ بَيَّنَّا أَنَّ قَوْله تَعَالَى: {عَبْدًا مَمْلُوكًا لا يَقْدِرُ عَلَى شَيْءٍ} [النحل: ٧٥] لَيْسَ بِضَرُورَةِ الْعَقْلِ وَالْحِسِّ فِي كُلِّ مَمْلُوكٍ، لِأَنَّا نَرَاهُمْ لَا يَعْجِزُونَ عَنْ شَيْءٍ مِمَّا يَعْجِزُ عَنْهُ الْحُرُّ - فَصَحَّ أَنَّهُ تَعَالَى إنَّمَا عَنَى بَعْضَ الْعَبِيدِ مِمَّنْ هَذِهِ صِفَتُهُ، كَمَا قَالَ تَعَالَى: {وَضَرَبَ اللَّهُ مَثَلا رَجُلَيْنِ أَحَدُهُمَا أَبْكَمُ لا يَقْدِرُ عَلَى شَيْءٍ} [النحل: ٧٦] وَلَيْسَ كُلُّ أَبْكَمَ كَذَلِكَ، فَصَحَّ أَنَّهُ تَعَالَى أَرَادَ مِنْ الْبُكْمِ مَنْ هَذِهِ صِفَتُهُ - وَيَلْزَمُهُمْ عَلَى هَذَا أَنْ يُسْقِطُوا عَنْهُ الصَّلَاةَ، وَالْوُضُوءَ وَالْغُسْلَ، وَالصِّيَامَ، إذَا كَانَ عِنْدَهُمْ لَا يَقْدِرُ عَلَى شَيْءٍ.

L26422 We have clarified that the statement of Allah the Exalted: {an owned slave incapable of anything} [16:75] does not represent a necessity of reason and sensory perception regarding every owned slave, for we observe that they are not incapable of the same things that a free person is incapable of. Thus, it is valid that He the Exalted intended only certain slaves characterized by this description—as He said: {And Allah presents an example of two men: one of them is mute, incapable of anything} [16:76], though not every mute person is such. Therefore, it is valid that He intended among the mute those possessing this attribute. Consequently, it becomes incumbent upon them by this reasoning to exempt such a person from prayer, ablution, ritual purification (ghusl), and fasting if in their view he is incapable of anything.[48]

فَإِنْ قَالُوا: هَذِهِ أَعْمَالُ أَبْدَانٍ.

L26423 If they say: These are physical acts.

قُلْنَا: قَدْ تَرَكْتُمْ احْتِجَاجَكُمْ بِظَاهِرِ الْآيَةِ بَعْدُ وَأَتَيْتُمْ بِدَعْوَى فِي الْفَرْقِ بَيْنَ أَعْمَالِ الْأَبْدَانِ وَأَعْمَالِ الْأَمْوَالِ بِلَا بُرْهَانٍ وَالْحَجُّ عَمَلُ بَدَنٍ فَأَلْزِمُوهُ إيَّاهُ. فَإِنْ قَالُوا: قَدْ يُجْبَرُ بِالْمَالِ. قُلْنَا فَأَسْقِطُوا عَنْهُ الصَّوْمَ بِهَذَا الدَّلِيلِ السَّخِيفِ، لِأَنَّهُ يُجْبَرُ بِالْمَالِ مِنْ عِتْقِ الْمُكَفِّرِ وَإِطْعَامِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26424 We said: You have already abandoned your argument based on the apparent meaning of the verse and instead advanced a claim regarding the distinction between physical acts and financial obligations without proof—though Hajj is a physical act—so impose Hajj upon him. If they say: "He may be compelled via wealth," we reply: Then exempt him from fasting by this flimsy evidence, since he is compelled via wealth through freeing an expiatory slave or feeding him. And success comes only from Allah, the Exalted.

[48] **Qur'an references (L26422):** Qur'an 16:75 (An-Nahl); Qur'an 16:76 (An-Nahl).

Permissibility

The Issue of Permissibility in Uncertain Matters

Permissibility 1647 - An Issue: Permissibility applies to unspecified matters, unlike gifts, presents, charity, umra, ruqba, waqf, and other such matters. This is exemplified by food to which people are invited, where they are permitted to eat it, though how much each individual will consume is unknown.

This is explicitly established from the era of the Messenger of Allah—may Allah bless him and grant him peace—and his injunction to respond to invitations and partake in their meals, as per the command of the Messenger of Allah—may Allah bless him and grant him peace—that whoever wishes to cut a portion when sacrificing the ritual animal.

And like his command (peace and blessings be upon him) to the one entrusted with the sacrificial offering: if it becomes unfit, to slaughter it ritually and leave it for the people to take.

And similar to this — and success is with Allah, the Most High.

The jurisprudential issue of a person eating from the house of his father's, mother's, son's, and the like.

1648. Issue: It is permissible for a person to eat from the household of his father, mother, son, daughter, brother, sister (whether two full sisters, paternal half-siblings, or maternal half-siblings), his child's child, grandfather, grandmother (however they are related), paternal uncle, paternal aunt (however they are related), maternal uncle, maternal aunt (however they are related), his friend, or what he possesses the keys to – whether the aforementioned individuals are pleased or displeased, whether they grant permission or not. But he may not consume all of it. Proof of this is Allah's statement in the Quranic text: "From your households or the households of your fathers" [24:61] – this text is as we stated, for "from" denotes partiality. The Prophet

[الْإِبَاحَةُ]

[مَسْأَلَةٌ الْإِبَاحَةُ فِي الْمَجْهُولِ]

الْإِبَاحَةُ ١٦٤٧ - مَسْأَلَةٌ: وَالْإِبَاحَةُ جَائِزَةٌ فِي الْمَجْهُولِ، بِخِلَافِ الْعَطِيَّةِ، وَالْهَدِيَّةِ وَالصَّدَقَةِ، وَالْعُمْرَى، وَالرُّقْبَى، وَالْحَبْسِ، وَغَيْرِ ذَلِكَ، وَذَلِكَ كَطَعَامٍ يُدْعَى إلَيْهِ قَوْمٌ يُبَاحُ لَهُمْ أَكْلُهُ، وَلَا يُدْرَى كَمْ يَأْكُلُ كُلُّ وَاحِدٍ.

وَهَذَا مَنْصُوصٌ مِنْ عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَمْرُهُ بِإِجَابَةِ الدَّعْوَةِ وَالْأَكْلِ فِيهَا وَكَأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ شَاءَ أَنْ يَقْتَطِعَ إذْ نَحَرَ الْهَدْيَ.

وَكَأَمْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْمُرْسَلَ بِالْهَدْيِ إذَا عَطِبَ أَنْ يَنْحَرَهُ، وَيُخَلِّيَ بَيْنَهُ وَبَيْنَ النَّاسِ.

وَنَحْوُ هَذَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْمَرْءِ يَأْكُلُ مِنْ بَيْتِ والده ووالدته وأبنه وَغَيْرِ ذَلِكَ]

١٦٤٨ - مَسْأَلَةٌ: وَجَائِزٌ لِلْمَرْءِ أَنْ يَأْكُلَ مِنْ بَيْتِ وَالِدِهِ، وَوَالِدَتِهِ، وَابْنِهِ، وَابْنَتِهِ، وَأَخِيهِ، وَأُخْتِهِ، شَقِيقَتَيْنِ، أَوْ لِأَبٍ أَوْ لِأُمٍّ، وَوَلَدِ وَلَدِهِ، وَجَدِّهِ، وَجَدَّتِهِ، كَيْفَ كَانَا، وَعَمِّهِ، وَعَمَّتِهِ، كَيْفَ كَانَا، وَخَالِهِ، وَخَالَتِهِ، كَيْفَ كَانَا، وَصَدِيقِهِ، وَمَا مَلَكَ مَفَاتِحَهُ، سَوَاءٌ رَضِيَ مَنْ ذَكَرْنَا أَوْ سَخِطَ، أَذِنُوا، أَوْ لَمْ يَأْذَنُوا، وَلَيْسَ لَهُ أَنْ يَأْكُلَ الْكُلَّ. بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى فِي نَصِّ الْقُرْآنِ وقَوْله تَعَالَى: {مِنْ بُيُوتِكُمْ أَوْ بُيُوتِ

(peace be upon him) said: “A person’s child is from his earnings, and the finest thing one of you eats is from his earnings.”[49]

Usufruct.

Issue: A grant is permissible only for animals that are milked.

Grant 1649 – A legal ruling: The grant is permissible and applies exclusively to milking animals. A person may grant to whomever they choose the use of any female animals they own for milking.

And a house whose residency he permits, an animal he grants the right to ride, land he grants for cultivation, and a slave who serves him—whatever the grantee acquires from all of that belongs to him, with the grantor having no claim to it. The grantor retains the right to reclaim the specific asset he granted whenever he wishes—whether he specified a term or not, whether it was formalized by witnesses or not—for it is unlawful to appropriate anyone’s property without their free consent except by explicit textual evidence, and no such evidence exists regarding this matter. His specification of the term constitutes a designated period.

We have stated in the chapter on vows and oaths of this book that fulfilling a promise is not obligatory, which has made it unnecessary to repeat the discussion here.

The legal rulings for acts described by the terms “cultivation,” “providing residence,” “impoverishment,” “granting usufruct,” “sealing,” “employing servants,” “divestment of rights,” and “assigning ownership” are equivalent to the ruling of a temporary grant of usufruct in all the cases we have mentioned—entirely equivalent, without any distinction.

This entire position is the view of Abū Ḥanīfah, al-Shāfiʿī, Dāwūd, and all their adherents. Cultivation pertains to land, wherein a person permits

[49] **Qur’an references (L26433):** Qur’an 24:61 (An-Nur).

آبَائِكُمْ} [النور: ٦١] نَصُّ مَا قُلْنَا، لِأَنَّ " مِنْ " لِلتَّبْعِيضِ - وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «إِنَّ وَلَدَ أَحَدِكُمْ مِنْ كَسْبِهِ، وَإِنَّ أَطْيَبَ مَا أَكَلَ أَحَدُكُمْ مِنْ كَسْبِهِ» .

[الْمِنْحَةُ]

[مَسْأَلَةٌ الْمِنْحَةُ جَائِزَةٌ فِي الْمُحْتَلَبَاتِ فَقَطْ]

الْمِنْحَةُ ١٦٤٩ - مَسْأَلَةٌ: وَالْمِنْحَةُ جَائِزَةٌ، وَهِيَ فِي الْمُحْتَلَبَاتِ فَقَطْ، يَمْنَحُ الْمَرْءُ مَا يَشَاءُ مِنْ إِنَاثِ حَيَوَانِهِ مَنْ شَاءَ لِلْحَلْبِ.

وَكَدَارٍ يُبِيحُ سُكْنَاهَا، وَدَابَّةٍ يَمْنَحُ رُكُوبَهَا، وَأَرْضٍ يَمْنَحُ ازْدِرَاعَهَا، وَعَبْدٍ يَخْدُمُهُ، فَمَا حَازَهُ الْمَمْنُوحُ مِنْ كُلِّ ذَلِكَ فَهُوَ لَهُ، لَا طَلَبَ لِلْمَانِحِ فِيهَا، وَلِلْمَانِحِ أَنْ يَسْتَرِدَّ عَيْنَ مَا مَنَحَ مَتَى شَاءَ - سَوَاءٌ عَيَّنَ مُدَّةً أَوْ لَمْ يُعَيِّنْ، أَشْهَدَ أَوْ لَمْ يُشْهِدْ، لِأَنَّهُ لَا يَحِلُّ مَالُ أَحَدٍ بِغَيْرِ طِيبِ نَفْسِهِ إِلَّا بِنَصٍّ، وَلَا نَصَّ فِي هَذَا، وَتَعْيِينُهُ الْمُدَّةَ: عِدَّةٌ.

وَقَدْ ذَكَرْنَا أَنَّ " الْوَعْدَ " لَا يَلْزَمُ الْوَفَاءُ بِهِ فِي " بَابِ النُّذُورِ، وَالْأَيْمَانِ " مِنْ كِتَابِنَا هَذَا، فَأَغْنَى عَنْ إِعَادَتِهِ.

وَالْإِزْرَاعُ، وَالْإِسْكَانُ، وَالْإِفْقَارُ، وَالْإِمْتَاعُ، وَالْإِطْرَاقُ، وَالْإِخْدَامُ، وَالْإِعْرَاءُ، وَالتَّصْيِيرُ: حُكْمُ مَا وَقَعَ بِهَذِهِ الْأَلْفَاظِ كَحُكْمِ الْمِنْحَةِ فِي كُلِّ مَا ذَكَرْنَا، سَوَاءٌ بِسَوَاءٍ وَلَا فَرْقَ.

another to cultivate that land for a specified period they stipulate or for the duration of the grantor's life. Residency applies to houses, dwellings, and commercial premises, as we have mentioned.

وَهَذَا كُلُّهُ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَدَاوُد، وَجَمِيعِ أَصْحَابِهِمْ. فَالْإِزْرَاعُ يَكُونُ فِي الْأَرْضِ، يَجْعَلُ الْمَرْءُ لِآخَرَ أَنْ يَزْرَعَ هَذِهِ الْأَرْضَ مُدَّةً يُسَمِّيهَا، أَوْ طُولَ حَيَاتِهِ - وَالْإِسْكَانُ يَكُونُ فِي الْبُيُوتِ، وَفِي الدُّورِ، وَالدَّكَاكِينِ كَمَا ذَكَرْنَا.

L26441–26442 Deprivation (al-ifqār) pertains to riding animals. Coupling (al-iṭrāq) pertains to breeding males placed upon females. Servitude (al-ikhdām) pertains to male and female slaves. Usufruct (al-imtāʿ) pertains to trees bearing fruit, garments, all furnishings, and likewise transformation (al-taṣyīr). Similarly, the stipulated reward (al-juʿl) and date-stripping (al-iʿrāʾ) pertain to palm tree yields. In all these cases, once the assignee has taken possession, the owner of the principal property holds no right of reclaim. For whatever the assignee has not taken possession of, the owner retains the right to reclaim his property's principal and prevent the assignee from claiming what was designated for him.

وَالْإِفْقَارُ: يَكُونُ فِي الدَّوَابِّ الَّتِي تُرْكَبُ. وَالْإِطْرَاقُ: يَكُونُ فِي الْفُحُولِ تُحْمَلُ عَلَى الْإِنَاثِ. وَالْإِخْدَامُ: يَكُونُ فِي الرَّقِيقِ الذُّكُورِ وَالْإِنَاثِ. وَالْإِمْتَاعُ: يَكُونُ فِي الْأَشْجَارِ ذَوَاتِ الْحَمْلِ، وَفِي الثِّيَابِ، وَفِي جَمِيعِ الْأَثَاثِ، وَكَذَلِكَ التَّصْيِيرُ. وَكَذَلِكَ الْجُعْلُ - وَالْإِعْرَاءُ: يَكُونُ فِي حَمْلِ النَّخْلِ، فَكُلُّ هَذَا مَا قَبَضَهُ الْمَجْعُولُ لَهُ ذَلِكَ، فَلَا رُجُوعَ لِصَاحِبِ الرَّقَبَةِ فِيهِ، وَمَا لَمْ يَقْبِضْهُ الْمَجْعُولُ لَهُ كُلُّ ذَلِكَ، فَلِصَاحِبِ الرَّقَبَةِ اسْتِرْجَاعُ رَقَبَةِ مَالِهِ، وَمَنْعُ الْمَجْعُولِ لَهُ مِمَّا جَعَلَ لَهُ.

L26443 It was narrated to us through the chain of Mālik from Abū al-Zinād from al-Aʿraj from Abū Hurayrah that the Messenger of Allah—peace and blessings of Allah be upon him—said: "How excellent is the loaned gift of a prime lactating she-camel—a loan—and a prime ewe milked in the evening with a vessel and in the morning with a vessel."

رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: نِعْمَ الْمَنِيحَةُ اللِّقْحَةُ الصَّفِيُّ مِنْحَةً، وَالشَّاةُ الصَّفِيُّ تَرُوحُ بِإِنَاءٍ وَتَغْدُو بِإِنَاءٍ» .

L26444 And we have mentioned his saying—peace and blessings be upon him—"Whoever has land, let him cultivate it or allow his brother to use it."

وَقَدْ ذَكَرْنَا قَوْلَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا أَوْ لِيَمْنَحْهَا أَخَاهُ» .

L26445 Through the chain of al-Bukhārī: ʿAbdullāh ibn Yūsuf narrated to us, Ibn Wahb narrated to us, Yūnus ibn Yazīd narrated to us from Ibn Shihāb from Anas ibn Mālik, who said: The Emigrants came to Medina from Mecca with nothing in their possession, while the Helpers were the people of land and estates. The Helpers—may Allah be pleased with them—divided with them on the condition that they would give them the produce of their wealth every year and undertake their labor and expenses.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا عَبْدُ اللَّهِ بْنِ يُوسُفَ نَا ابْنُ وَهْبٍ نَا يُونُسُ بْنُ يَزِيدَ عَنْ ابْنِ شِهَابٍ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَدِمَ الْمُهَاجِرُونَ الْمَدِينَةَ مِنْ مَكَّةَ وَلَيْسَ بِأَيْدِيهِمْ شَيْءٌ، وَكَانَ الْأَنْصَارُ أَهْلَ الْأَرْضِ وَالْعَقَارِ، فَقَاسَمَهُمْ الْأَنْصَارُ - رَضِيَ اللَّهُ عَنْهُمْ - عَلَى أَنْ يُعْطُوهُمْ ثِمَارَ أَمْوَالِهِمْ كُلَّ عَامٍ، وَيَكْفُوهُمْ الْعَمَلَ وَالْمُؤْنَةَ.

L26446 Umm Sulaym, the mother of Anas ibn Mālik, gave the Messenger of Allah—

peace and blessings be upon him—date clusters. The Messenger of Allah—peace and blessings be upon him—then gave them to Umm Ayman, his freed bondwoman and mother of Usāmah ibn Zayd. When the Messenger of Allah—peace and blessings be upon him—completed the expedition to Khaybar, the Emigrants returned to the Helpers the temporary grants of fruits they had provided them. The Prophet—peace be upon him—restored Umm Sulaym's date clusters to her, and he—peace and blessings be upon him—gave Umm Ayman, in their place, a portion from his date-palm orchard.

«وَكَانَتْ أُمُّ سُلَيْمٍ أُمُّ أَنَسِ بْنِ مَالِكٍ أَعْطَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِذَاقًا فَأَعْطَاهُنَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُمَّ أَيْمَنَ مَوْلَاتَهُ أُمَّ أُسَامَةَ بْنَ زَيْدٍ، فَلَمَّا فَرَغَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ خَيْبَرَ رَدَّ الْمُهَاجِرُونَ إِلَى الْأَنْصَارِ مَنَائِحَهُمْ الَّتِي كَانُوا مَنَحُوهُمْ مِنْ ثِمَارِهِمْ، فَرَدَّ - عَلَيْهِ السَّلَامُ - إِلَى أُمِّ سُلَيْمٍ عِذَاقَهَا، وَأَعْطَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أُمَّ أَيْمَنَ مَكَانَهُنَّ مِنْ حَائِطِهِ» .

L26447–26449 As for revoking [the divorce] during the waiting period whenever he wishes, he has not relinquished ownership of the original asset nor the manumission. Therefore, it is not permissible to take anything from his wealth except... His soul is content with it. As long as he remains content with what Allah the Exalted causes to occur in his wealth, it is permissible for him. But if Allah the Exalted causes something to occur in his wealth with which his soul is not content, then it is his wealth, forbidden for others, according to his saying - peace and blessings be upon him: "Your blood and your wealth are sacred to you." The soul's contentment occurs when the thing comes into being, not before its creation. And with Allah the Exalted is success.

وَأَمَّا الِارْتِجَاعُ مَتَى شَاءَ، فَإِنَّهُ لَمْ يَهَبْ الْأَصْلَ، وَلَا الرَّقَبَةَ، فَلَا يَجُوزُ مِنْ مَالِهِ إِلَّا مَا طَابَتْ بِهِ نَفْسُهُ، فَمَا دَامَ طَيِّبَ النَّفْسِ فِيمَا يُحْدِثُ اللَّهُ تَعَالَى فِي مَالِهِ فَهُوَ جَائِزٌ عَلَيْهِ، فَإِذَا أَحْدَثَ اللَّهُ تَعَالَى شَيْئًا فِي مَالِهِ لَمْ تَطِبْ بِهِ نَفْسُهُ فَهُوَ مَالُهُ، حَرَامٌ عَلَى غَيْرِهِ، بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَإِنَّمَا طِيبُ النَّفْسِ حِينَ وُجُودِ الشَّيْءِ، لَا قَبْلَ خَلْقِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The life grant and the contingent reversionary grant.

[الْعُمْرَى وَالرُّقْبَى]

Issue: The *'umrā* and *ruqbā* are valid and absolute grants.

[مَسْأَلَةٌ الْعُمْرَى وَالرُّقْبَى هِبَةٌ صَحِيحَةٌ تَامَّةٌ]

L26452 The 'Umra and Ruqba (1650) - Issue: 'Umra and Ruqba are valid and complete donations. The donor in 'Umra and the grantor in Ruqba retain ownership of the donated property as part of their estate, just like the rest of their possessions. They may sell it if they wish, and it is inherited from them. The property does not return to the donor of 'Umra or his heirs—regardless of whether he stipulated its reversion or not—and any such stipulation holds no legal validity.

الْعُمْرَى وَالرُّقْبَى ١٦٥٠ - مَسْأَلَةٌ: الْعُمْرَى، وَالرُّقْبَى: هِبَةٌ صَحِيحَةٌ تَامَّةٌ، يَمْلِكُهَا الْمُعْمِرُ وَالْمُرْقِبُ، كَسَائِرِ مَالِهِ، يَبِيعُهَا إِنْ شَاءَ، وَتُورَثُ عَنْهُ، وَلَا تَرْجِعُ إِلَى الْمُعْمِرِ وَلَا إِلَى وَرَثَتِهِ - سَوَاءٌ اشْتَرَطَ أَنْ تَرْجِعَ إِلَيْهِ أَوْ لَمْ يَشْتَرِطْ - وَشَرْطُهُ لِذَلِكَ لَيْسَ بِشَيْءٍ.

L26453 The 'Umra is when one says: "This house, this land, or this item is 'Umra for you," or "I have granted you this as 'Umra," or "It is yours for your lifetime,"

or says: “for your life,” or says: “ruqba for you,” or “I have granted you this as ruqba”—all these formulations are equivalent.

وَالْعُمْرَى هِيَ أَنْ يَقُولَ: هَذِهِ الدَّارُ، وَهَذِهِ الْأَرْضُ، أَوْ هَذَا الشَّيْءُ عُمْرَى لَك، أَوْ قَدْ أَعْمَرْتُكَ إيَّاهَا، أَوْ هِيَ لَك عُمْرُك - أَوْ قَالَ: حَيَاتُك، أَوْ قَالَ: رُقْبَى لَك، أَوْ قَدْ أَرْقَبْتُكهَا - كُلُّ ذَلِكَ سَوَاءٌ.

L26454 This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, Aḥmad, their companions, and some of our companions; it is also the view of a group of the Salaf—as narrated to us via Wakīʿ, from Sharīk, from ʿAbd Allāh ibn Muḥammad ibn al-Ḥanafiyyah, from his father, who reported: ʿAlī ibn Abī Ṭālib said: “The *ʿumra* is irrevocable, and whoever was given a choice has thereby divorced.”

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَصْحَابِهِمْ وَبَعْضِ أَصْحَابِنَا، وَهُوَ قَوْلُ طَائِفَةٍ مِنْ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نَا شَرِيكٌ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ ابْنِ الْحَنَفِيَّةِ عَنْ أَبِيهِ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: الْعُمْرَى بَتَاتٌ، وَمَنْ خُيِّرَ فَقَدْ طَلَّقَ.

L26455 Narrated via the chain of ʿAbd al-Razzāq from Maʿmar, from ʿAmr ibn Dīnār, from Ṭāwus, from Ḥujr al-Madari, from Zayd ibn Thābit, who said, “The ʿumrā (usufruct grant for a lifetime) belongs to the heirs.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ حُجْرٌ الْمَدَرِيِّ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: الْعُمْرَى لِلْوَارِثِ.

L26456 And through the chain of Maʿmar from Ayyub al-Sakhtiyani from Nafi’: A man asked Ibn Umar about one who gave his son a camel during the father’s lifetime. Ibn Umar said: “It belongs to the son - both during the father’s life and upon his death.”

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ سَأَلَ رَجُلٌ ابْنَ عُمَرَ عَمَّنْ أَعْطَى ابْنًا لَهُ بَعِيرًا حَيَاتَهُ؟ فَقَالَ ابْنُ عُمَرَ: هُوَ لَهُ حَيَاتُهُ وَمَوْتُهُ.

L26457 From the narration of Abd al-Razzaq from Sufyan al-Thawri from Abu al-Zubayr from Tawus from Ibn Abbas, who said: Whoever is granted something as ʿumra (a lifetime grant), it belongs to him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي الزُّبَيْرِ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: مَنْ أُعْمِرَ شَيْئًا فَهُوَ لَهُ.

L26458 Via Ibn Abi Shaybah, who narrated to us from Yahya ibn Sa‘id, from Sufyan al-Thawri, from Abu al-Zubayr, from Tawus, from Ibn Abbas, who said: “The ʿumrā and ruqbā are the same.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا يَحْيَى بْنُ سَعِيدٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي الزُّبَيْرِ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: الْعُمْرَى، وَالرُّقْبَى سَوَاءٌ.

L26459–26461 From the chain of Wakiʿ, who narrated from Shuʿbah, from Ibn Najīḥ, from Mujāhid, who said that ʿAlī ibn Abī Ṭālib said: “Al-ʿUmrā and al-Ruqbā are equivalent.” It has also been authentically reported from Jābir ibn ʿAbd Allāh in one of his two opinions: “Whoever is granted something as ʿumra, it belongs to them perpetually”—and from Shurayḥ, Qatādah, ʿAṭāʾ ibn Abī Rabāḥ, Mujāhid, Ṭāwūs, and Ibrāhīm an-Nakhaʿī.

وَمِنْ طَرِيقِ وَكِيعٍ نَا شُعْبَةُ عَنْ ابْنِ نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: الْعُمْرَى، وَالرُّقْبَى سَوَاءٌ وَصَحَّ أَيْضًا عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ فِي أَحَدِ قَوْلَيْهِ: مَنْ أُعْمِرَ شَيْئًا

فَهُوَ لَهُ أَبَدًا - وَعَنْ شُرَيْحٍ، وَقَتَادَةَ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ، وَمُجَاهِدٍ، وَطَاوُسٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ.

L26462 رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا هُشَيْمٌ نَا الْمُغِيرَةُ بْنُ مِقْسَمٍ قَالَ: سَأَلْت إبْرَاهِيمَ النَّخَعِيَّ عَمَّنْ أَسْكَنَ آخَرَ دَارًا حَيَاتَهُ فَمَاتَ الْمُسْكِنُ وَالْمُسْكَنُ قَالَ: تَرْجِعُ إلَى وَرَثَةِ الْمُسْكِنِ فَقُلْت: أَلَيْسَ يُقَالُ: مَنْ مَلَكَ شَيْئًا حَيَاتَهُ فَهُوَ لِوَرَثَتِهِ مِنْ بَعْدِهِ فَقَالَ إبْرَاهِيمُ: إنَّمَا ذَلِكَ فِي الْعُمْرَى وَأَمَّا السُّكْنَى وَالْغَلَّةُ، وَالْخِدْمَةُ، فَإِنَّهَا تَرْجِعُ إلَى صَاحِبِهَا وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَالْأَوْزَاعِيِّ، وَوَكِيعٍ، وَأَحَدُ قَوْلَيْ الزُّهْرِيِّ، إلَّا أَنَّ عَطَاءً، وَالزُّهْرِيَّ قَالَا: إنْ جَعَلَ الْعُمْرَى بَعْدَ الْمُعَمَّرِ فِي وَجْهٍ مِنْ وُجُوهِ الْبِرِّ، أَوْ لِإِنْسَانٍ آخَرَ غَيْرَ نَفْسِهِ: نَفَذَ ذَلِكَ كَمَا جَعَلَهُ.

It was narrated to us through the chain of Al-Ḥajjāj ibn Al-Minhāl, who reported from Hushaym, who reported from Al-Mughīrah ibn Miqsam, who said: I asked Ibrāhīm Al-Nakhaʿī about one who granted another person residence in a house for his lifetime, then both the grantor and grantee died. He said: "The house reverts to the grantor's heirs." I said: "Is it not said: 'Whoever owns something during his lifetime, it belongs to his heirs after him'?" Ibrāhīm replied: "That applies specifically to the lifetime grant of residence (ʿumrā). As for the lifetime usufruct of residence (suknā), usufructuary benefits, and servitude rights, these revert to their original owner." This is the view of Sufyān Al-Thawrī, Al-Ḥasan ibn Ḥayyān, Al-Awzāʿī, Wakīʿ, and one of the two opinions of Al-Zuhrī. However, ʿAṭāʾ and Al-Zuhrī said: "If the lifetime grant of residence (ʿumrā) is stipulated to take effect after the designated beneficiary's death for a purpose among acts of benevolence or for another person besides oneself, it is executed as stipulated."

L26463–26465 وَقَالَتْ طَائِفَةٌ: الْعُمْرَى: هِبَةٌ صَحِيحَةٌ إذَا أَعْمَرَهَا لَهُ وَلِعَقِبِهِ، فَأَمَّا إنْ لَمْ يَقُلْ: لَهُ وَلِعَقِبِهِ، فَهِيَ رَاجِعَةٌ إلَى الْمُعَمِّرِ، أَوْ إلَى وَرَثَتِهِ إذَا مَاتَ الْمُعَمَّرُ - وَهُوَ قَوْلٌ صَحَّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَأَحَدُ قَوْلَيْ الزُّهْرِيِّ - وَبِهِ يَقُولُ أَبُو ثَوْرٍ، وَبَعْضُ أَصْحَابِنَا وَقَالَتْ طَائِفَةٌ: الْعُمْرَى رَاجِعَةٌ إلَى الْمُعَمِّرِ، أَوْ إلَى وَرَثَتِهِ عَلَى كُلِّ حَالٍ، فَإِنْ قَالَ: أَعْمَرْتُكَ هَذَا بِشَيْءٍ لَك وَلِعَقِبِك: كَانَتْ كَذَلِكَ، فَإِذَا انْقَرَضَ الْمُعَمَّرُ وَعَقِبُهُ: رَجَعَتْ إلَى الْمُعَمِّرِ، أَوْ إلَى وَرَثَتِهِ - وَهُوَ قَوْلٌ رُوِيَ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ - وَهُوَ قَوْلُ مَالِك، وَاللَّيْثِ قَالَ أَبُو مُحَمَّدٍ: فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ ذَهَبَ مَذْهَبَ مَالِكٍ، فَوَجَدْنَاهُمْ يَذْكُرُونَ قَوْلَ اللَّهِ تَعَالَى: {هُوَ أَنْشَأَكُمْ مِنَ الأَرْضِ وَاسْتَعْمَرَكُمْ فِيهَا} [هود: ٦١] وَقَالَ تَعَالَى: {إِنَّا نَحْنُ نَرِثُ الأَرْضَ وَمَنْ عَلَيْهَا} [مريم: ٤٠] قَالُوا: فَكَانَ كَذَلِكَ

A group said: The *ʿumra* is a valid gift if one grants it "for himself and his descendants." If he does not state "for himself and his descendants," it reverts to the grantor or to the grantor's heirs upon the grantor's death. This is an authentic opinion transmitted from Jābir ibn ʿAbd Allāh, ʿUrwah ibn al-Zubayr, and one of the two positions of al-Zuhrī. Abū Thawr and some of our associates uphold this. Another group said: The *ʿumra* invariably reverts to the grantor or his heirs. If the grantor states, "I grant you this as property for yourself and your descendants," it remains with them accordingly. When the grantor and his descendants cease to exist, it reverts to the grantor or his heirs. This is an opinion narrated from al-Qāsim ibn Muḥammad and Yaḥyā ibn Saʿīd al-Anṣārī, and it is the view of Mālik and al-Layth. Abū Muḥammad said: We examined the proofs advanced by adherents of Mālik's school and found them citing Allāh's verse: *{He originated you from the earth and entrusted you to develop it}* [Hūd 11:61], and His saying: *{Indeed, We alone will inherit the earth and all upon it}* [Maryam 19:40]. They argued that this principle applies universally to all recipients of an *ʿumra*. They

كُلُّ مَنْ أُعْمِرَ عُمْرَى وَذَكَرُوا الْخَبَرَ «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» وَادَّعُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ بَلَغَنِي عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ " أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ كَانَتْ تَعْمُرُ بَنِي أَخِيهَا حَيَاتَهُمْ، فَإِذَا انْقَرَضَ أَحَدُهُمْ قَبَضَتْ مَسْكَنَهُ، فَوَرِثْنَا نَحْنُ ذَلِكَ كُلَّهُ الْيَوْمَ عَنْهَا، مَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ هَذَا أَصْلًا، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ -: أَمَّا خَبَرُ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - فَبَاطِلٌ، وَهَذِهِ آفَةُ الْمُرْسَلِ، وَالَّذِي لَا شَكَّ فِيهِ أَنَّ عَبْدَ الرَّحْمَنِ بْنَ الْقَاسِمِ، وَأَبَاهُ الْقَاسِمَ، وَجَدَّهُ مُحَمَّدًا، لَمْ يَرِثُوا عَائِشَةَ، وَلَا صَارَ إلَيْهِمْ بِالْمِيرَاثِ عَنْهَا قِيمَةُ خَرْدَلَةٍ؛ لِأَنَّ مُحَمَّدًا قُتِلَ فِي حَيَاتِهَا قَبْلَ مَوْتِهَا بِنَحْوِ عِشْرِينَ سَنَةً، وَإِنَّمَا وَرِثَهَا عَبْدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ فَقَطْ، لِأَنَّهُ كَانَ ابْنَ شَقِيقِهَا، فَحَجَبَ الْقَاسِمَ بْنَ مُحَمَّدٍ، وَقَدْ ذَكَرْنَا ذَلِكَ فِي " بَابِ هِبَةِ الْمُشَاعِ " قَبْلَ هَذَا الْبَابِ بِأَوْرَاقٍ وَلَوْ صَحَّ ذَلِكَ عَنْهَا لَكَانَ قَدْ خَالَفَهَا ابْنُ عَبَّاسٍ، وَابْنُ عُمَرَ، وَجَابِرٌ، وَزَيْدُ بْنُ ثَابِتٍ، وَعَلِيُّ بْنُ أَبِي طَالِبٍ عَلَى مَا أَوْرَدْنَا آنِفًا. وَأَمَّا «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» فَخَبَرٌ فَاسِدٌ، لِأَنَّهُ إمَّا عَنْ كَثِيرِ بْنِ زَيْدٍ - وَهُوَ هَالِكٌ - وَإِمَّا مُرْسَلٌ، ثُمَّ لَوْ صَحَّ لَكَانُوا أَوَّلَ مُخَالِفِينَ لَهُ؛ لِأَنَّهُمْ يُبْطِلُونَ مِنْ شُرُوطِ النَّاسِ أَكْثَرَ مِنْ أَلْفِ شَرْطٍ: كَمَنْ بَاعَ بِشَرْطِ أَنْ يُقِيلَهُ إلَى يَوْمَيْنِ.

also referenced the prophetic report: *"Muslims honor their stipulations."* They claimed what we narrated through Ibn Wahb's chain: It reached me from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq that ʿĀ'ishah, the Mother of the Believers, would provide dwellings for her nephews during their lifetimes. When one of them died, she would seize his residence. We inherited all of this from her today, and we know of no right for them to any of it whatsoever—and all of it constitutes no valid evidence for them. As for the report about ʿĀ'ishah (may Allah be pleased with her), it is false. This is a flaw of the Mursal narration. What is certain is that ʿAbd al-Raḥmān ibn al-Qāsim, his father al-Qāsim, and his grandfather Muḥammad did not inherit from ʿĀ'ishah, nor did even the value of a mustard seed pass to them through inheritance from her, for Muḥammad was killed in her lifetime nearly twenty years before her death. Only ʿAbdullāh ibn ʿAbd al-Raḥmān ibn Abī Bakr inherited from her, as he was the son of her full brother, which precluded al-Qāsim ibn Muḥammad from inheritance. We mentioned this earlier in the "Chapter on the Gift of Undivided Shares" several pages before this chapter. Even if this report about her were authentic, it would contradict her according to Ibn ʿAbbās, Ibn ʿUmar, Jābir, Zayd ibn Thābit, and ʿAlī ibn Abī Ṭālib, as we cited previously. As for "Muslims are bound by their conditions," it is a corrupt narration—either from Kathīr ibn Zayd (a rejected narrator) or a Mursal report. Even if authentic, they would be the first to oppose it, for they invalidate over a thousand conditions set by people, such as one who sells on the condition that the buyer may cancel the sale within two days.[50]

وَكَمَنْ بَاعَ أَمَةً بِشَرْطِ أَنْ لَا يَبِيعَهَا.

L26466 Similarly, one who sells a female slave on the condition that he not sell her.

وَكَمَنْ بَاعَ بِخِيَارٍ إلَى عِشْرِينَ سَنَةً.

L26467 Similarly, one who sells with an option up to twenty years.

وَكَمَنْ نَكَحَ عَلَى أَنْ تُنْفِقَ هِيَ عَلَيْهِ - وَغَيْرُ ذَلِكَ.

L26468 Similarly, one who marries on the condition that she provides for him financially - and other such matters.

[50] **Qur'an references (L26463):** Qur'an 11:61 (Hud); Qur'an 19:40 (Maryam).

فَكَيْفَ وَهَذَا الشَّرْطُ - يَعْنِي رُجُوعَ الْعُمْرَى إلَى الْمُعَمِّرِ أَوْ إلَى وَرَثَتِهِ -: شَرْطٌ قَدْ جَاءَتْ السُّنَّةُ نَصًّا بِإِبْطَالِهِ، كَمَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى - وَاحْتِجَاجُهُمْ بِالْآيَةِ هَاهُنَا أَبْعَدُ شَيْءٍ مِنْ التَّوْفِيقِ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّهُمْ قَاسُوا حُكْمَ النَّاسِ عَلَى حُكْمِ اللَّهِ تَعَالَى فِيهِمْ وَهَذَا بَاطِلٌ؛ لِأَنَّ اللَّهَ تَعَالَى يَقْتُلُ النَّاسَ وَلَا مَلَامَةَ عَلَيْهِ، وَيُجِيعُهُمْ، وَيُعَذِّبُهُمْ بِالْمَرَضِ، وَلَا مَلَامَةَ عَلَيْهِ، وَلَا يَجُوزُ عِنْدَ أَحَدٍ قِيَاسُ الْمَخْلُوقِ عَلَى الْخَالِقِ.

L26469 How then, when this condition—meaning the reversion of the ’umra to the donor or his heirs—is a condition that the Sunnah has explicitly invalidated, as we will mention after this, Allah willing, and their reliance on the verse here is the furthest from being valid for the following reasons: First, they applied qiyās by equating human judgment to Allah the Exalted’s judgment concerning them. This is invalid, for Allah causes people to die with no blame upon Him, causes them to hunger, and afflicts them with illness with no blame upon Him. No one considers it permissible to draw an analogy between the created and the Creator.

وَثَانِيهَا - أَنَّهُمْ مَوَّهُوا وَقَلَبُوا لَنَا الْآيَةَ، لِأَنَّنَا لَمْ نُنَازِعْهُمْ فِيمَنْ أَعْمَرَ آخَرَ مَالًا لَهُ وَلَمْ يَقُلْ اللَّهُ تَعَالَى قَدْ أَعْمَرْتُكُمْ الْأَرْضَ إنَّمَا قَالَ: إنَّهُ اسْتَعْمَرَنَا فِيهَا، بِمَعْنَى أَنَّهُ عَمَّرَنَا بِالْبَقَاءِ فِيهَا مُدَّةً، وَلَيْسَ هَذَا مِنْ الْعُمْرَى فِي وِرْدٍ وَلَا صَدْرٍ.

L26470–26472 And secondly, they obfuscated and distorted the verse to our detriment, for we never contested them regarding one who authorized another to manage his property, yet they... [text cut off]. Allah, the Exalted, says: “I have caused you to inhabit the earth.” Indeed, He only said: “He has enabled us to inhabit it,” meaning He has made us dwell therein for a duration. This bears no relation to the lifelong usufruct (al-ʿumrā) in Islamic law, whether in its commencement or conclusion.

وَثَالِثُهَا - أَنَّ هَذِهِ الْآيَةَ لَوْ جَعَلْنَاهَا حُجَّةً عَلَيْهِمْ، لَكَانَ ذَلِكَ أَوْضَحَ مِمَّا مَوَّهُوا بِهِ وَهُوَ أَنَّ اللَّهَ تَعَالَى - بِلَا شَكٍّ - أَبَاحَ لَنَا بَيْعَ مَا مَلَكْنَا مِنْ الْأَرْضِ، وَجَعَلَهَا لِوَرَثَتِنَا بَعْدَنَا، وَهَذَا هُوَ قَوْلُنَا فِي الْعُمْرَى لَا قَوْلُهُمْ، فَظَهَرَ فَسَادُ مَا يَأْتُونَ بِهِ عَلَانِيَةً، وَبَطَلَ هَذَا الْقَوْلُ يَقِينًا، وَهَذَا مِمَّا خَالَفُوا فِيهِ كُلَّ مَا صَحَّ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَجُمْهُورِ الْعُلَمَاءِ، وَمُرْسَلَاتٍ كَثِيرَةٍ.

L26473 The third point is that if we were to cite this verse as evidence against them, it would be clearer than the arguments they fraudulently embellish. For Allah the Exalted—undoubtedly—has permitted us to sell the land we own and decreed it for our heirs after us. This is our position on the *ʿumrā* [grant], not theirs. Thus, the invalidity of what they openly present becomes evident, and this claim is definitively nullified. This is among the matters in which they have opposed all that is authentically established from the Companions—may Allah be pleased with them—the majority of scholars, and many *mursal* [disconnected] reports.

ثُمَّ نَظَرْنَا فِي الْقَوْلِ الثَّانِي الَّذِي هُوَ قَوْلُ عُرْوَةَ، وَأَبِي ثَوْرٍ، فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ جَابِرٍ قَالَ: إنَّمَا الْعُمْرَى الَّتِي أَجَازَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَقُولَ: هِيَ لَك وَلِعَقِبِك، فَأَمَّا إذَا قَالَ: هِيَ لَك مَا عِشْتَ، فَإِنَّهَا تَرْجِعُ إلَى صَاحِبِهَا.

L26474 Then we examined the second opinion, that of Urwah and Abi Thawr, and found them citing as evidence what was narrated to us through the transmission of Abd al-Razzaq from Ma’mar from al-Zuhri from Abu Salamah ibn Abd al-Rahman ibn Awf from Jabir, who said: “The ʿUmra permitted by the Messenger of Allah (may Allah bless him and grant him peace) refers to when one states: ’This is for you and your offspring.’ But if he says: ’It is for you as long as you live,’ then it reverts to its owner.”

L26475 Abu Muhammad said: We have found no valid argument for them other

than this, nor do they possess any proof within it. For what is authentically transmitted from the Messenger of Allah - peace be upon him - is solely the statement: "The *ʿumrā* which the Messenger of Allah - peace be upon him - validated is when one declares: 'It is for you and your descendants.'" As for the remaining wording in the narration, it constitutes the speech of Jabir. No authority lies with anyone apart from the Messenger of Allah - peace be upon him. In this matter, Ibn Abbas, Ibn Umar, and others opposed Jabir, as we previously mentioned. This narration therefore only specifies the ruling of *ʿumrā* when the grantor states: "It is for you and your descendants" - nothing beyond this. The ruling for cases where this declaration is absent remains unaddressed in this narration, necessitating its derivation from other sources. Success comes solely from Allah, the Exalted.

L26476–26478 Thus, this opinion also falls away, leaving only our position: We found the narration transmitted via Muslim—Muḥammad ibn Nāfiʿ from Ibn Abī Fudayk, from Ibn Abī Dhiʾb, from Ibn Shihāb, from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf, from Jābir ibn ʿAbd Allāh—that the Messenger of Allah, peace and blessings be upon him, said: "Whoever is granted an ʿumrā for himself and his progeny, it becomes a permanent grant for him. The giver may not impose any condition or reservation of rights therein." Abū Salama explained: "Because he gave a gift that became subject to inheritance laws, and thus the inheritance laws invalidated his stipulation." Additionally, via the chain of Abū Dāwūd—Aḥmad ibn Abī al-Ḥawārī from al-Walīd (Ibn Muslim), from... Al-Awzaʿī narrated from al-Zuhrī, from ʿUrwah ibn al-Zubayr, from Jābir ibn ʿAbd Allāh that the Prophet - peace and blessings of Allah be upon him - said: «Whoever is granted a life estate (ʿumrā), it belongs to him and his descendants. It shall be inherited by those who inherit him from among his descendants.»[51]

L26479 Through the chain of Ahmad ibn Shuʿayb: Ismāʿīl—he is Ibn ʿUlayyah—narrated to us from Muḥammad—he is Ibn ʿAmr ibn ʿAlqamah—from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, from Abū Hurayrah, that the Messenger of Allah (peace and blessings be upon him) said: "There is no ʿumrā; whoever is granted something as ʿumrā, it belongs to him."

قَالَ أَبُو مُحَمَّد: لَمْ نَجِدْ لَهُمْ حُجَّةً غَيْرَ هَذَا، وَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ الْمُسْنَدَ مِنْهُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا هُوَ «أَنَّ الْعُمْرَى الَّتِي أَجَازَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَقُولَ هِيَ لَكَ وَلِعَقِبِكَ» وَأَمَّا بَاقِي لَفْظِ الْخَبَرِ فَمِنْ كَلَامِ جَابِرٍ - وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ خَالَفَ جَابِرًا هَاهُنَا ابْنُ عَبَّاسٍ وَابْنُ عُمَرَ، وَغَيْرُهُمَا كَمَا ذَكَرْنَا قَبْلُ فَإِنَّمَا فِي هَذَا الْخَبَرِ حُكْمُ الْعُمْرَى إِذَا قَالَ الْمُعَمِّرُ: " هِيَ لَك وَلِعَقِبِك " فَقَطْ وَبَقِيَ حُكْمُهُ إِذَا لَمْ يَقُلْ هَذَا الْكَلَامُ لَا ذِكْرَ لَهُ فِي هَذَا الْخَبَرِ، فَوَجَبَ طَلَبُهُ مِنْ غَيْرِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَسَقَطَ هَذَا الْقَوْلُ أَيْضًا، فَلَمْ يَبْقَ إلَّا قَوْلُنَا -: فَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ نَافِعٍ نَا ابْنُ أَبِي فُدَيْكٍ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أُعْمِرَ عُمْرَى لَهُ وَلِعَقِبِهِ فَهِيَ لَهُ بَتْلَةً وَلَا يَجُوزُ لِلْمُعْطِي فِيهَا شَرْطٌ وَلَا ثُنْيَا» قَالَ أَبُو سَلَمَةَ: لِأَنَّهُ أَعْطَى عَطَاءً وَقَعَتْ فِيهِ الْمَوَارِيثُ، فَقَطَعَتْ الْمَوَارِيثُ شَرْطَهُ. وَمِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ أَبِي الْحَوَارِيِّ نا الْوَلِيدُ - هُوَ ابْنُ مُسْلِمٍ - عَنْ الْأَوْزَاعِيِّ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أُعْمِرَ عُمْرَى فَهِيَ لَهُ وَلِعَقِبِهِ يَرِثُهَا مَنْ يَرِثُهُ مِنْ عَقِبِهِ» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا إسْمَاعِيلُ - هُوَ ابْنُ عُلَيَّةَ - عَنْ مُحَمَّدٍ - هُوَ ابْنُ عَمْرِو بْنِ عَلْقَمَةَ - عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا عُمْرَى فَمَنْ أُعْمِرَ شَيْئًا فَهُوَ لَهُ» .

[51] **Hadith references (L26476):** Sunan Abi Dawud 3551; Sunan an-Nasai 3740.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَلْقَمَةَ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ مِثْلَهُ مُرْسَلًا. وَمِنْ طَرِيقِ أَبِي دَاوُد نا النُّفَيْلِيّ - هُوَ عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ - قَالَ: قَرَأْت عَلَى مَعْقِلٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ حُجْرٌ الْمَدَرِيّ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أُعْمِرَ شَيْئًا فَهُوَ لِمُعْمَرِهِ حَيَاتَهُ وَمَمَاتَهُ وَلَا تُرْقِبُوا فَمَنْ أُرْقِبَ شَيْئًا فَهُوَ سَبِيلُهُ» .

L26480 From the transmission of Saʿīd ibn Manṣūr: Abū Muʿāwiyah narrated from Muḥammad ibn ʿAmr ibn ʿAlqamah, from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf - a similar narration transmitted as mursal. From the transmission of Abū Dāwūd: al-Nufaylī - he being ʿAbdullāh ibn Muḥammad - narrated, stating: I recited to Maʿqil, from ʿAmr ibn Dīnār, from Ṭāwūs, from Ḥujrun al-Madārī, from Zayd ibn Thābit, who said: The Messenger of Allah - peace and blessings be upon him - declared: "Whoever grants a lifelong usufruct (ʿumrā), the property belongs to the grantor for the recipient's lifetime and after their death. Do not establish reversionary grants (ruqba), for whoever institutes such a grant, the property follows its due course."

قَالَ عَلِيٌّ: هَكَذَا رُوِّينَاهُ بِضَمِّ الْمِيمِ الْأُولَى مِنْ " مُعْمَرٍ " وَفَتْحِ الْمِيمِ الثَّانِيَةِ.

L26481 Ali said: Thus we have narrated it with a ḍammah on the first mīm of "Muʿmar" and a fatḥah on the second mīm.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تُرْقِبُوا وَلَا تَعْمُرُوا فَمَنْ أُرْقِبَ شَيْئًا فَهُوَ لِوَرَثَتِهِ» .

L26482 Via the narration of Aḥmad ibn Shuʿayb, Muḥammad ibn ʿAbdillāh ibn Yazīd al-Muqrī reported to us from Sufyān ibn ʿUyaynah from Ibn Jurayj from ʿAṭāʾ ibn Abī Rabāḥ from Jābir ibn ʿAbdillāh that the Messenger of Allāh—peace and blessings be upon him—said: "Do not make irqab or ʿumra. Whoever is given something as irqab, it belongs to his legal heirs."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا أَحْمَدُ بْنُ حَرْبٍ نا أَبُو مُعَاوِيَةَ عَنْ حَجَّاجٍ - هُوَ ابْنُ مُحَمَّدٍ - عَنْ أَبِي الزُّبَيْرِ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ " رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْعُمْرَى لِمَنْ أُعْمِرَهَا وَالرُّقْبَى لِمَنْ أُرْقِبَهَا وَالْعَائِدُ فِي هِبَتِهِ كَالْعَائِدِ فِي قَيْئِهِ» .

L26483 Through the chain of Aḥmad ibn Shuʿayb: Aḥmad ibn Ḥarb narrated to us from Abū Muʿāwiyah from Ḥajjāj [Ibn Muḥammad] from Abū al-Zubayr from Ṭāwūs from Ibn ʿAbbās, who said: The Messenger of Allah (peace be upon him) stated, "Usufruct (al-ʿUmrā) belongs to its recipient, revocable grant (al-Ruqbā) belongs to its recipient, and the retractor of his gift is like the retractor of his vomit."

فَهَذِهِ آثَارٌ مُتَوَاتِرَةٌ، زَائِدَةٌ عَلَى مَا فِي رِوَايَةِ مَعْمَرٍ فَلَمْ يَسَعْ أَحَدًا الْخُرُوجُ عَنْهَا، وَلَيْسَ هَذَا الْحُكْمُ إلَّا فِي الْإِعْمَارِ وَالْإِرْقَابِ كَمَا جَاءَ النَّصُّ.

L26484–26485 These are mass-transmitted narrations surpassing even what is in Maʿmar's narration, leaving no room for anyone to deviate from them. This ruling applies exclusively to lifelong usufruct contracts (ʿimārah) and long-term leaseholds (irqāb), as stated in the explicit text.

وَأَمَّا الْإِسْكَانُ فَيُخْرِجُهُ مَتَى شَاءَ؛ لِأَنَّهَا عِدَّةٌ فِيمَا لَمْ يُجْزِهِ مِنْ السُّكْنَى بَعْدُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26486 As for the provision of housing, he may revoke it at his discretion, for it constitutes the prescribed period regarding housing that has not yet sufficed him afterward. And with Allah alone is success, the Exalted.

L26487–26488 **ʿĀriyyah (Gratuitous Loan): Issue: The ʿāriyyah is permis-**

sible.

[الْعَارِيَّةُ] [مَسْأَلَةٌ الْعَارِيَّةُ جَائِزَةٌ]

L26489 ١٦٥١ - مَسْأَلَةٌ: وَالْعَارِيَّةُ جَائِزَةٌ، وَفِعْلٌ حَسَنٌ، وَهِيَ فَرْضٌ فِي بَعْضِ الْمَوَاضِعِ، وَهِيَ إبَاحَةُ مَنَافِعِ بَعْضِ الشَّيْءِ، كَالدَّابَّةِ لِلرُّكُوبِ، وَالثَّوْبِ لِلِّبَاسِ، وَالْفَأْسِ لِلْقَطْعِ، وَالْقِدْرِ لِلطَّبْخِ، وَالْمِقْلَى لِلْقَلْوِ، وَالدَّلْوِ، وَالْحَبْلِ، وَالرَّحَى لِلطَّحْنِ، وَالْإِبْرَةِ لِلْخِيَاطَةِ، وَسَائِرِ مَا يُنْتَفَعُ بِهِ - وَلَا يَحِلُّ شَيْءٌ مِنْ ذَلِكَ إلَى أَجَلٍ مُسَمًّى، لَكِنْ يَأْخُذُ مَا أَعَارَ مَتَى شَاءَ، وَمَنْ سَأَلَهَا إيَّاهُ مُحْتَاجًا: فَفَرَضَ عَلَيْهِ إعَارَتَهُ إيَّاهُ إذَا وَثِقَ بِوَفَائِهِ، فَإِنْ لَمْ يَأْمَنْهُ عَلَى إضَاعَةِ مَا يَسْتَعِيرُ أَوْ عَلَى جَحْدِهِ فَلَا يُعِرْهُ شَيْئًا. أَمَّا كَوْنُهَا فَرْضًا كَمَا ذَكَرْنَا، فَلِقَوْلِ اللَّهِ تَعَالَى: {فَوَيْلٌ لِلْمُصَلِّينَ} [الماعون: ٤] {الَّذِينَ هُمْ عَنْ صَلاتِهِمْ سَاهُونَ} [الماعون: ٥] {الَّذِينَ هُمْ يُرَاءُونَ} [الماعون: ٦] {وَيَمْنَعُونَ الْمَاعُونَ} [الماعون: ٧] فَتَوَعَّدَ عَزَّ وَجَلَّ مَنْ مَنَعَ الْمَاعُونَ بِالْوَيْلِ -: رُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي نا حَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَاصِمِ بْنِ بَهْدَلَةَ عَنْ زِرِّ بْنِ حُبَيْشٍ عَنْ ابْنِ مَسْعُودٍ فِي قَوْلِهِ تَعَالَى: {وَيَمْنَعُونَ الْمَاعُونَ} [الماعون: ٧] قَالَ: هُوَ الْعَوَارِيُّ: الْقِدْرُ، وَالدَّلْوُ، وَالْمِيزَانُ

Issue 1651: The loan-for-use (ʿāriyya) is permissible and a virtuous act, and it is obligatory (fard) in certain situations. It entails permitting the use of an item's benefits, such as lending an animal for riding, a garment for wearing, an axe for cutting, a pot for cooking, a frying pan for frying, a bucket, a rope, a millstone for grinding, a needle for sewing, and all other items that yield benefit. It is impermissible to lend any of these for a fixed term, but the lender may reclaim the loaned item whenever they wish. If someone in need requests such a loan, it becomes obligatory to lend it to them provided one is confident they will return it. If there is concern they may squander the borrowed item or deny the loan, nothing should be lent.

As for its being obligatory as mentioned, this is based on Allah's words: "So woe to those who pray" (107:4), "Who are heedless of their prayer" (107:5), "Those who show off" (107:6), "And withhold loaned essentials" (107:7). Thus the Almighty has threatened with woe those who withhold maʿūn (loaned essentials).

We have reported through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: Ḥajjāj ibn al-Minhāl narrated to us, Ḥammād ibn Salamah narrated to us from ʿĀṣim ibn Bahdalah from Zirr ibn Ḥubaysh from Ibn Masʿūd regarding the verse "And withhold loaned essentials" (107:7). He said: "It refers to loaned items: the cooking pot, the bucket, and the measuring scale."[52]

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ التَّيْمِيِّ عَنْ الْحَارِثِ بْنِ سُوَيْدٍ عَنْ ابْنِ مَسْعُودٍ قَالَ: الْمَاعُونُ مَا تَعَاوَرَهُ النَّاسُ بَيْنَهُمْ: الْفَأْسُ، وَالْقِدْرُ، وَأَشْبَاهُهُ.

L26490 Narrated through Ibn Abi Shaybah: Abu Mu'awiyah narrated to us from al-A'mash, from Ibrahim al-Taymi, from al-Harith ibn Suwayd, from Ibn Mas'ud, who said: "Al-Ma'un refers to what people pass around among themselves: the axe, the cooking pot, and the like."

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ جَابِرِ بْنِ صُبْحٍ حَدَّثَتْنِي أُمُّ شَرَاحِيلَ قَالَتْ: قَالَتْ أُمُّ عَطِيَّةَ: اذْهَبِي إلَى فُلَانَةَ فَأَقْرِئِيهَا السَّلَامَ وَقُولِي لَهَا: إنَّ أُمَّ عَطِيَّةَ تُوصِيكِ بِتَقْوَى اللَّهِ

L26491–26493 And via the transmission of Yaḥyā ibn Saʿīd al-Qaṭṭān, from Jābir ibn Ṣubḥ, Umm Sharāḥīl reported to me... Umm ʿAtiyyah said: "Go to so-and-so, convey greetings of peace to her, and tell her: Umm ʿAtiyyah enjoins you to

[52] **Qur'an references (L26489):** Qur'an 107:4 (Al-Ma'un); Qur'an 107:5 (Al-Ma'un); Qur'an 107:6 (Al-Ma'un); Qur'an 107:7 (Al-Ma'un).

fear Allah, the Mighty and Majestic, and not to withhold the utensils." She said: I asked: "What are the utensils?" She replied: "Are you unaware? They are the implements people borrow and lend among themselves."

عَزَّ وَجَلَّ وَلَا تَمْنَعِي الْمَاعُونَ قَالَتْ: فَقُلْت: مَا الْمَاعُونُ؟ فَقَالَتْ لِي: هَبِلْتِ، هِيَ الْمِهْنَةُ يَتَعَاطَاهَا النَّاسُ بَيْنَهُمْ

L26494 And from the transmission of Yaḥyā ibn Saʿīd as well, and ʿAbd al-Raḥmān ibn Mahdī – Ibn Mahdī said: via Sufyān al-Thawrī, while Yaḥyā said: via Shuʿbah – then they both agreed via Abū Isḥāq al-Sabīʿī via Saʿīd ibn ʿIyāḍ from the companions of the Messenger of Allah (peace be upon him), they said: *Al-maʿūn* is refusing to lend the cooking pot, the axe, and the bucket.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ أَيْضًا، وَعَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ، قَالَ ابْنُ مَهْدِيٍّ: عَنْ سُفْيَانَ الثَّوْرِيِّ، وَقَالَ يَحْيَى: عَنْ شُعْبَةَ، ثُمَّ اتَّفَقَا عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ سَعِيدِ بْنِ عِيَاضٍ عَنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالُوا: الْمَاعُونُ مَنْعُ الْقِدْرِ وَالْفَأْسِ، وَالدَّلْوِ.

L26495 From the transmissions of Ibn ʻUlayyah and Sufyan al-Thawri—both transmitting from Ibn Abi Najih from Mujahid from Ibn Abbas regarding the interpretation of {الْمَاعُونَ} [الماعون: ٧] mentioned in the verse. Ibn ʻAtiyyah stated in his narration: "Household goods," while Sufyan stated in his narration: "It is borrowed items"—but the essence is one.[53]

وَمِنْ طَرِيقِ ابْنِ عُلَيَّةَ، وَسُفْيَانَ الثَّوْرِيِّ، كِلَاهُمَا عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ فِي تَفْسِيرِ {الْمَاعُونَ} [الماعون: ٧] الْمَذْكُورِ فِي الْآيَةِ قَالَ ابْنُ عَطِيَّةَ فِي رِوَايَتِهِ: مَتَاعُ الْبَيْتِ، وَقَالَ سُفْيَانُ فِي رِوَايَتِهِ: هِيَ الْعَارِيَّةُ - وَالْمَعْنَى وَاحِدٌ.

L26496 We have also narrated it from ʿAlī ibn Abī Ṭālib via the chain of Ibn Abī Shaybah from Ibn ʿUlayyah from Layth from Abī Isḥāq, and all of these individuals are authoritative in the Arabic language.

وَرُوِّينَاهُ أَيْضًا: عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ ابْنِ عُلَيَّةَ عَنْ لَيْثٍ عَنْ أَبِي إِسْحَاقَ، وَهَؤُلَاءِ كُلُّهُمْ حُجَّةٌ فِي اللُّغَةِ.

L26497 We have been narrated from Ibn Umar: "It is the wealth whose right is withheld" - and this aligns with what we have mentioned - and this is the opinion of Ikrimah, Ibrahim, and others besides them. We do not know of any contrary opinion to this among the Companions - may Allah be pleased with them.

وَرُوِّينَا عَنْ ابْنِ عُمَرَ: هُوَ الْمَالُ يُمْنَعُ حَقُّهُ - وَهُوَ مُوَافِقٌ لِمَا ذَكَرْنَا - وَهُوَ قَوْلُ عِكْرِمَةَ، وَإِبْرَاهِيمَ وَغَيْرِهِمَا، وَمَا نَعْلَمُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافًا لِهَذَا

L26498 If it is said: "It has been reported from Ali—may Allah be pleased with him—that the ruling pertains to Zakat," we respond: Yes, but he did not state that it is not the ʿāriyah (loan). Furthermore, it has also been reported from him that it is the ʿāriyah.

فَإِنْ قِيلَ: قَدْ رُوِيَ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهَا الزَّكَاةُ قُلْنَا: نَعَمْ، وَلَمْ يَقُلْ لَيْسَتْ الْعَارِيَّةُ - ثُمَّ قَدْ جَاءَ عَنْهُ، أَنَّهَا الْعَارِيَّةُ.

L26499 Therefore, it is obligatory to combine his two statements.

فَوَجَبَ جَمْعُ قَوْلَيْهِ.

[53] **Qur'an references (L26495):** Qur'an 107:7 (Al-Ma'un).

L26500 If it is said: It is narrated from Ibn Abbas, “Its people have not yet come,” via the chain of Layth from Mujahid.

فَإِنْ قِيلَ: قَدْ رُوِيَ عَنْ ابْنِ عَبَّاسٍ " لَمْ يَأْتِ أَهْلُهَا بَعْدُ " مِنْ طَرِيقِ لَيْثٍ عَنْ مُجَاهِدٍ.

L26501 We said: Yes, and this does not contradict what is authentically reported from him through Mujahid, for the meaning of his statement “the people [of that time] have not yet come” is that people today exchange gifts and do not withhold, and a time will come when they will withhold giving. Ibn Abbas’s statement cannot be interpreted in any way whatsoever other than this interpretation—and success is from Allah, the Exalted. As for prohibiting that for a specified period, it is because it is a condition not found in the Book of Allah, the Exalted, and thus it is invalid.

قُلْنَا: نَعَمْ، وَهَذَا غَيْرُ مُخَالِفٍ لِمَا صَحَّ عَنْهُ مِنْ طَرِيقِ مُجَاهِدٍ؛ لِأَنَّ مَعْنَى قَوْلِهِ " لَمْ يَأْتِ أَهْلُهَا بَعْدُ " أَيْ إِنَّ النَّاسَ الْيَوْمَ يَتَبَاذَلُونَ وَلَا يَمْنَعُونَ وَسَيَأْتِي زَمَانٌ يَمْنَعُونَهُ، وَلَا يَحْتَمِلُ أَلْبَتَّةَ قَوْلُ ابْنِ عَبَّاسٍ إِلَّا هَذَا الْوَجْهَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. وَأَمَّا مَنْعُ ذَلِكَ لِمُدَّةٍ مُسَمَّاةٍ؛ فَلِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ.

L26502 Similarly, whoever lends land for building upon it or a wall for construction may take it back by demolishing the structure whenever he wishes, without being obligated to compensate. This is based on the statement of Allah’s Messenger—peace and blessings of Allah be upon him: “Your blood and your wealth are sacred and protected for you.” If someone wastes borrowed property, denies it, or is not deemed trustworthy in that regard, it has been authentically established from the Prophet—peace and blessings of Allah be upon him—that he prohibited the waste of wealth, and Allah the Exalted forbade cooperation in sin and aggression. Therefore, it is impermissible to assist such a person in that—and success comes from Allah the Exalted.

وَكَذَلِكَ مَنْ أَعَارَ أَرْضًا لِلْبِنَاءِ فِيهَا، أَوْ حَائِطًا لِلْبِنَاءِ عَلَيْهِ، فَلَهُ أَخْذُهُ بِهَدْمِ بِنَائِهِ مَتَى أَحَبَّ بِلَا تَكْلِيفِ عِوَضٍ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَأَنَّ مَنْ أَضَاعَ مَا يَسْتَعِيرُ أَوْ جَحَدَهُ وَلَمْ يُؤْمَنْ ذَلِكَ مِنْهُ فَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النَّهْيُ عَنْ إضَاعَةِ الْمَالِ وَنَهَى اللَّهُ تَعَالَى عَنْ التَّعَاوُنِ عَلَى الْإِثْمِ وَالْعُدْوَانِ، فَلَا يَجُوزُ عَوْنُهُ عَلَى ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْعَارِيَّةُ غَيْرُ مَضْمُونَةٍ إنْ تَلِفَتْ مِنْ غَيْرِ تَعَدِّي الْمُسْتَعِيرِ]

L26503–26504 **In the case of a commodate loan (ʿāriyyah), the lender bears no liability for the item if it is lost or destroyed without transgression or negligence by the borrower.**

مَسْأَلَةٌ: وَالْعَارِيَّةُ غَيْرُ مَضْمُونَةٍ إنْ تَلِفَتْ مِنْ غَيْرِ تَعَدِّي الْمُسْتَعِيرِ، وَسَوَاءٌ مَا غُيِّبَ عَلَيْهِ مِنْ الْعَوَارِيِّ وَمَا لَمْ يَغِبْ عَلَيْهِ مِنْهَا.

L26505 Issue: A loaned item is not subject to compensation if it perishes without the borrower’s misconduct, and it makes no difference whether it was out of his possession or remained in his possession.

فَإِنْ ادَّعَى عَلَيْهِ أَنَّهُ تَعَدَّى، أَوْ أَضَاعَهَا حَتَّى تَلِفَتْ، أَوْ عَرَضَ فِيهَا عَارِضٌ، فَإِنْ قَامَتْ بِذَلِكَ بَيِّنَةٌ أَوْ أَقَرَّ: ضَمِنَ بِلَا خِلَافٍ، وَإِنْ لَمْ تَقُمْ بَيِّنَةٌ وَلَا أَقَرَّ -: لَزِمَتْهُ الْعَيْنُ وَبَرِئَ؛ لِأَنَّهُ مُدَّعًى عَلَيْهِ وَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْيَمِينِ عَلَى الْمُدَّعَى عَلَيْهِ.

L26506 If a claim is made against him that he exceeded his rights, caused its loss through negligence leading to destruction, or an impediment arose concerning it, then if conclusive evidence is established for that or he confesses, he is held liable without disagreement. If no conclusive evidence is established and he does not confess, the specific item remains incumbent upon him and

he is absolved, for he is the defendant, and the Messenger of Allah—may Allah bless him and grant him peace—ruled that the oath is required from the defendant.

وَأَمَّا تَضْمِينُهَا: فَإِنَّ النَّاسَ اخْتَلَفُوا -: فَقَالَتْ طَائِفَةٌ كَمَا قُلْنَا.

L26507 As for its indemnification, the scholars disagreed: a group upheld the opinion we have mentioned.

وَقَالَتْ طَائِفَةٌ: هِيَ مَضْمُونَةٌ عَلَى كُلِّ حَالٍ بِأَيِّ وَجْهٍ تَلِفَتْ.

L26508 A group has stated: It is subject to compensation in all cases, regardless of the manner in which it perished.

وَقَالَتْ طَائِفَةٌ: لَا يَضْمَنُ إِلَّا أَنْ يَشْتَرِطَ الْمُعِيرُ ضَمَانَهَا فَيَضْمَنُ حِينَئِذٍ.

L26509 A group said: One is not liable unless the gratuitous lender stipulates liability for it, in which case he is liable.

وَقَالَتْ طَائِفَةٌ: لَا ضَمَانَ عَلَى الْمُسْتَعِيرِ غَيْرِ الْمُغِلِّ - يَعْنِي الْمُتَّهَمَ -.

L26510 A group held that there is no liability upon a borrower except for an embezzler—that is, one accused of misappropriation.

وَقَالَ قَائِلٌ: أَمَّا مَا غَيَّبَ عَلَيْهِ كَالْحُلِيِّ وَالثِّيَابِ وَنَحْوِ ذَلِكَ، فَيَضْمَنُ جُمْلَةً - وَقَدْ رُوِيَ عَنْهُ أَنَّهُ قَالَ: إِنْ قَامَتْ لَهُ بَيِّنَةٌ بِأَنَّهَا تَلِفَتْ مِنْ غَيْرِ فِعْلِهِ فَلَا ضَمَانَ عَلَيْهِ، وَإِنْ لَمْ تَقُمْ بَيِّنَةٌ فَهُوَ ضَامِنٌ.

L26511 A jurist said: As for what is concealed from him such as jewelry, garments, and the like, he is liable for their entirety. It has been reported from him that he said: If evidence establishes that they perished without his action, there is no liability upon him; but if no evidence is established, he is liable.

وَأَمَّا مَا ظَهَرَ كَالْحَيَوَانِ وَنَحْوِهِ: فَلَا ضَمَانَ فِيهِ مَا لَمْ يَتَعَدَّ. قَالَ أَبُو مُحَمَّد: وَهَذَا قَوْلُ مَالِكٍ، وَمَا نَعْلَمُ لَهُ فِيهِ سَلَفًا إِلَّا عُثْمَانَ الْبَتِّيَّ وَحْدَهُ، وَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا إِلَّا أَنَّهُمْ قَالُوا: نَتَّهِمُ الْمُسْتَعِيرَ فِيمَا غَابَ.

L26512 As for apparent items such as animals and similar property, there is no liability unless the borrower acts negligently. Abū Muḥammad said: This is Mālik's opinion, and we know of no predecessor who held this view before him except ʿUthmān al-Battī alone. We find no valid basis for their argument whatsoever except their statement: "We suspect the borrower concerning hidden defects."

فَقُلْنَا: لَيْسَ بِالتُّهَمَةِ تُسْتَحَلُّ أَمْوَالُ النَّاسِ، لِأَنَّهَا ظَنٌّ، وَاَللَّهُ تَعَالَى قَدْ أَنْكَرَ اتِّبَاعَ الظَّنِّ، فَقَالَ تَعَالَى: {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨] .

L26513 We said: People's wealth is not deemed lawful through baseless accusation, for it is mere assumption. Allah the Exalted has rejected following assumptions, as He said: "They follow nothing but assumption, and indeed, assumption avails nothing against the truth." [An-Najm: 28][1]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» .

L26514 The Messenger of Allah—peace be upon him—said: "Beware of suspicion, for indeed suspicion is the most false of tales."

L26515 And it is incumbent upon you, when you act upon suspicion, to hold the

[1] **Qur'an references (L26513):** Qur'an 53:28 (An-Najm).

accused financially liable and not to hold liable one who is not accused, as Shurayh says. And it is incumbent upon you to hold the trustee liable for the deposited item also due to this suspicion—for the invalidity of this argument is too evident to necessitate expending more effort refuting it than we have already provided. And success comes only from God, the Exalted. Some of them said: "We have analogized it to collateral."

وَيَلْزَمُكُمْ إِذَا أَعْمَلْتُمُ الظَّنَّ أَنْ تُضَمِّنُوا الْمُتَّهَمَ، وَلَا تُضَمِّنُوا مِنْ لَا يُتَّهَمُ، كَمَا يَقُولُ شُرَيْحٌ. وَيَلْزَمُكُمْ أَنْ تُضَمِّنُوا الْوَدِيعَةَ أَيْضًا بِهَذِهِ التُّهْمَةِ - وَفَسَادُ هَذَا الْقَوْلِ أَظْهَرُ مِنْ أَنْ يُتَكَلَّفَ الرَّدُّ عَلَيْهِ بِأَكْثَرَ مِمَّا أَوْرَدْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. وَقَالَ بَعْضُهُمْ: قِسْنَاهُ عَلَى الرَّهْنِ.

L26516 So we said: This is an analogy of error upon error, and an argument for your statement by your own statement—and both are errors.

فَقُلْنَا: هَذَا قِيَاسٌ لِلْخَطَأِ عَلَى الْخَطَأِ، وَحُجَّةٌ لِقَوْلِكُمْ بِقَوْلِكُمْ، وَكِلَاهُمَا خَطَأٌ.

L26517–26518 Some of them said: When the Salaf differed regarding liability for the loan for use, we reconciled their opinions by adopting a middle position. We said to them: From this very dispute, we asked you - on what basis did you act thus? You inclined toward this invalid categorization, despite there being no possible avenue for evidence whatsoever - neither from the Quran, nor from the Sunnah, nor from a weak narration, nor analogy, nor a Companion's opinion, nor any view supported by valid reasoning - thus this opinion falls.

وَقَالَ بَعْضُهُمْ: لَمَّا اخْتَلَفَ السَّلَفُ فِي تَضْمِينِ الْعَارِيَّةِ تَوَسَّطْنَا قَوْلَهُمْ قُلْنَا لَهُمْ: وَمِنْ هَذَا سَأَلْنَاكُمْ مِنْ أَيْنَ فَعَلْتُمْ هَذَا؟ وَمِلْتُمْ إِلَى هَذَا التَّقْسِيمِ الْفَاسِدِ - وَلَا سَبِيلَ إِلَى دَلِيلٍ أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قِيَاسٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ - فَسَقَطَ هَذَا الْقَوْلُ.

L26519 As for those who say: There is no liability on a borrower except in the case of al-mughilli, nor on a trustee except in the case of al-mughilli, this is the opinion of Shurayh. We have transmitted it via the transmission of Abd al-Razzaq: I heard Hisham ibn Hassan narrate this opinion from Muhammad ibn Sirin, who narrated it from Shurayh. He said: "Al-mughilli refers to the accused (the one under suspicion)." This position is invalidated by what invalidates Malik's view, because Malik founded it upon suspicion, which is a corrupt assumption.

وَأَمَّا مَنْ قَالَ: لَا ضَمَانَ عَلَى الْمُسْتَعِيرِ غَيْرَ الْمُغِلِّ، وَلَا عَلَى الْمُسْتَوْدَعِ غَيْرَ الْمُغِلِّ، فَهُوَ قَوْلُ شُرَيْحٍ، رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ: سَمِعْتُ هِشَامَ بْنَ حَسَّانَ يَذْكُرُ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ شُرَيْحٍ هَذَا الْقَوْلَ، وَقَالَ: الْمُغِلُّ: الْمُتَّهَمُ - وَهُوَ يَبْطُلُ بِمَا بَطَلَ بِهِ قَوْلُ مَالِكٍ؛ لِأَنَّهُ بَنَاهُ عَلَى التُّهَمَةِ، وَهُوَ ظَنٌّ فَاسِدٌ.

L26520 As for those who said, "There is no liability upon the borrower in a loan for use unless [the lender] stipulates liability upon him"—this is the opinion of Qatādah and ʿUthmān al-Battī. It was narrated through our chain from ʿAbd al-Razzāq, from Maʿmar, from Qatādah.

وَأَمَّا مَنْ قَالَ: لَا ضَمَانَ عَلَى الْمُسْتَعِيرِ إِلَّا أَنْ يَشْتَرِطَ عَلَيْهِ الضَّمَانَ فَهُوَ قَوْلُ قَتَادَةَ، وَعُثْمَانَ الْبَتِّيِّ، رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ.

L26521 Abū Muḥammad said: This is invalid, as it is a condition not found in the Book of Allah Almighty, thus invalid. It was incumbent upon the Ḥanafīs and Mālikīs—who permit invalid conditions based on the fabricated report "Muslims are bound by their stipulations"—to adopt Qatādah's position here. Yet there is no burden on them of contradiction. Therefore, this opinion too

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ؛ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ، فَهُوَ بَاطِلٌ، وَلَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ الْمُجِيزِينَ لِلشُّرُوطِ الْفَاسِدَةِ بِالْخَبَرِ الْمَكْذُوبِ «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» أَنْ يَقُولُوا بِقَوْلِ قَتَادَةَ هَاهُنَا، وَلَكِنْ لَا مُؤْنَةَ عَلَيْهِمْ مِنَ التَّنَاقُضِ -

is invalidated, and there remains only the view of those who guarantee it in totality or our own position. We therefore examined the stance of those who guarantee it in totality.

فَبَطَلَ هَذَا الْقَوْلُ أَيْضًا، وَلَمْ يَبْقَ إِلَّا قَوْلُ مَنْ ضَمِنَهَا جُمْلَةً، أَوْ قَوْلُنَا -: فَنَظَّرْنَا فِي قَوْلِ مَنْ ضَمِنَهَا جُمْلَةً.

L26522 We found the narration transmitted through Abd al-Razzaq, who narrated to us from Ibn Uyaynah (i.e., Sufyan) from Amr ibn Dinar, from Ibn Abi Mulaikah and from Abd al-Rahman ibn al-Sa'ib. Ibn Abi Mulaikah narrated from Ibn Abbas, and Ibn al-Sa'ib narrated from Abu Hurairah. Both said collectively: "A loaned item incurs liability [for compensation]."

فَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ عُيَيْنَةَ - هُوَ سُفْيَانُ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ، وَعَبْدِ الرَّحْمَنِ بْنِ السَّائِبِ، قَالَ ابْنُ أَبِي مُلَيْكَةَ: عَنِ ابْنِ عَبَّاسٍ، وَقَالَ ابْنُ السَّائِبِ: عَنْ أَبِي هُرَيْرَةَ، قَالَا جَمِيعًا: الْعَارِيَّةُ تُغْرَمُ.

L26523 And via the transmission of Ibn Wahb from men among the people of knowledge, that Ibn 'Umar held liable for the 'ariyah (gratuitously loaned item).

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ رِجَالٍ مِنْ أَهْلِ الْعِلْمِ عَنِ ابْنِ عُمَرَ أَنَّهُ كَانَ يَضْمَنُ الْعَارِيَّةَ.

L26524 Reported by Abd al-Razzaq, from Ma'mar, from Ibn Tawus, from his father, who said regarding the legal ruling of Mu'adh ibn Jabal: A gratuitously loaned item must be returned.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ ابْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ فِي قَضِيَّةِ مُعَاذِ بْنِ جَبَلٍ: الْعَارِيَّةُ مُؤَدَّاةٌ.

L26525 Shuraih used to hold the borrower liable for the commodate loan. Al-Hasan also imposed liability for it, but later retracted this ruling. It is reliably established that Masruq held the same position, as did Ata ibn Abi Rabah.

وَكَانَ شُرَيْحٌ يُضَمِّنُ الْعَارِيَّةَ، وَضَمَّنَهَا الْحَسَنُ، ثُمَّ رَجَعَ عَنْ ذَلِكَ، وَصَحَّ عَنْ مَسْرُوقٍ أَيْضًا، وَعَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ.

L26526–26527 Ibn Wahb mentioned it from Yaḥyā ibn Saʿīd al-Anṣārī and Rabīʿah, and they both mentioned that it was the opinion of their scholars who attained it through study and used to issue rulings. He also mentioned it from Sulaymān ibn Sayyār, ʿUmar ibn ʿAbd al-ʿAzīz, and Makhūl.

وَذَكَرَهُ ابْنُ وَهْبٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَرَبِيعَةَ، وَذَكَرَا: أَنَّهُ قَوْلُ عُلَمَائِهِمْ الَّذِينَ أَدْرَكُوا بِهِ وَكَانُوا يَقْضُونَ. وَذَكَرَهُ أَيْضًا عَنْ سُلَيْمَانَ بْنِ سَيَّارٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَمَكْحُولٍ.

L26528 Al-Zuhri said: The judges' opinions were unanimous on that, since they observed the evils of the people. Al-Shāfiʿī, Aḥmad ibn Ḥanbal, and their companions hold this view. They cited as evidence the statement of Allah, the Exalted: {Indeed, Allah commands you to render trusts to their rightful owners} [An-Nisāʾ: 58].[2]

وَقَالَ الزُّهْرِيُّ: أَجْمَعَ رَأْيُ الْقُضَاةِ عَلَى ذَلِكَ، إِذْ رَأَوْا شُرُورَ النَّاسِ - وَبِهَذَا يَقُولُ الشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَصْحَابُهُمَا، وَاحْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الأَمَانَاتِ إِلَى أَهْلِهَا} [النساء: ٥٨] .

L26529 We said to them: Apply this verse to impose liability on the deposit, for 'Umar and others indeed held it liable. Yes, he is commanded to restore it

فَقُلْنَا لَهُمْ: فَضَمَّنُوا بِهَذِهِ الْآيَةِ الْوَدِيعَةَ فَقَدْ ضَمَّنَهَا عُمَرُ، وَغَيْرُهُ، وَنَعَمْ، هُوَ مَأْمُورٌ بِأَدَائِهَا مَا دَامَ قَادِرًا عَلَى أَدَائِهَا، فَإِنْ عَجَزَ عَنْ ذَلِكَ، فَاللَّهُ تَعَالَى يَقُولُ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا

[2] **Qur'an references (L26528):** Qur'an 4:58 (An-Nisa).

وُسْعَهَا} [البقرة: ٢٨٦] فَإِذْ لَيْسَ فِي وُسْعِهِ أَدَاؤُهَا فَهُوَ غَيْرُ مُكَلَّفٍ ذَلِكَ، وَلَيْسَ فِي هَذِهِ الْآيَةِ تَضْمِينٌ، لِأَنَّ أَدَاءَ الْغَرَامَةِ هُوَ غَيْرُ أَدَاءِ الْأَمَانَةِ، فَلَا مُتَعَلَّقَ لَكُمْ بِهَذِهِ الْآيَةِ أَصْلًا، لِأَنَّهُ لَيْسَ فِيهَا أَدَاءُ غَيْرِهَا، وَلَا ضَمَانُهَا، وَاحْتَجُّوا بِمَا جَاءَ فِي أَدْرَاعِ صَفْوَانَ بْنِ أُمَيَّةَ، وَبِمَا رُوِيَ «الْعَارِيَّةُ مُؤَدَّاةٌ وَالزَّعِيمُ غَارِمٌ» وَكِلَاهُمَا: لَا يَصِحُّ -: أَمَّا خَبَرُ دُرُوعِ صَفْوَانَ، فَإِنَّا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ سَلَّامٍ نا يَزِيدُ بْنُ هَارُونَ نا شَرِيكٌ - هُوَ ابْنُ عَبْدِ اللَّهِ الْقَاضِي - عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنْ أُمَيَّةَ بْنِ صَفْوَانَ بْنِ أُمَيَّةَ عَنْ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَعَارَ مِنْهُ يَوْمَ حُنَيْنٍ أَدْرَاعًا، فَقَالَ: غَصْبٌ يَا مُحَمَّدُ فَقَالَ: بَلْ عَارِيَّةٌ مَضْمُونَةٌ» شَرِيكٌ مُدَلِّسٌ لِلْمُنْكَرَاتِ إِلَى الثِّقَاتِ، وَقَدْ رَوَى الْبَلَايَا وَالْكَذِبَ الَّذِي لَا شَكَّ فِيهِ عَنِ الثِّقَاتِ.

as long as he is capable. If he becomes incapable, Allah the Exalted says: "Allah does not burden a soul beyond its capacity" [Al-Baqarah: 286]. Since restoring it is beyond his capacity, he is not obligated, and this verse contains no liability, because fulfilling the penalty differs from restoring the deposit. Thus, you have no grounds to cite this verse at all, as it neither addresses restoring anything else nor liability for it. They cited the incident of Ṣafwān ibn Umayyah's armor and the report: "The gratuitously loaned item must be restored, and the guarantor is liable." Both are invalid. As for the report about Ṣafwān's armor, we narrated it through Ahmad ibn Shu'ayb's chain: from 'Abd al-Raḥmān ibn Muḥammad ibn Sallām, from Yazīd ibn Hārūn, from Sharik ibn 'Abdullāh the judge, from 'Abd al-'Azīz ibn Rufay', from Umayyah ibn Ṣafwān ibn Umayyah: "The Messenger of Allah—peace and blessings be upon him—borrowed armor from him during Ḥunayn. Ṣafwān said: 'Is this seizure, O Muḥammad?' He replied: 'No, it is a guaranteed loan.'" Sharik was a mudallis—one who concealed flaws in transmission—attributing rejected reports to reliable narrators. He transmitted fabrications and undeniable falsehoods from trustworthy sources.[3]

وَمِنْ طَرِيقِ الْحَارِثِ بْنِ أَبِي أُسَامَةَ نا يَحْيَى بْنُ أَبِي بُكَيْرٍ نا نَافِعٌ عَنْ «صَفْوَانَ بْنِ أُمَيَّةَ أَنَّهُ اسْتَعَارَ مِنْهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سِلَاحًا فَقَالَ: مَضْمُونَةٌ؟ قَالَ: مَضْمُونَةٌ» .

L26530 And from the chain of Al-Harith ibn Abi Usamah: Yahya ibn Abi Bukayr narrated to us, via Nafi', from Safwan ibn Umayyah that the Prophet (peace and blessings be upon him) borrowed weapons from him. He asked, "Is it guaranteed?" He replied, "It is guaranteed."

الْحَارِثُ مَتْرُوكٌ، وَيَحْيَى بْنُ أَبِي بُكَيْرٍ لَمْ يُدْرِكْ نَافِعًا، وَأَعْلَى مَنْ عِنْدَهُ شُعْبَةُ، وَلَا نَعْلَمُ لِنَافِعٍ سَمَاعًا مِنْ صَفْوَانَ أَصْلًا، وَالَّذِي لَا شَكَّ فِيهِ: فَإِنَّ صَفْوَانَ مَاتَ أَيَّامَ عُثْمَانَ قَبْلَ الْفِتْنَةِ. وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ أَنَسِ بْنِ عِيَاضٍ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ: «أَنَّ صَفْوَانَ بْنَ أُمَيَّةَ أَعَارَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سِلَاحًا فَقَالَ: أَعَارِيَّةٌ مَضْمُونَةٌ أَمْ غَصْبٌ؟ فَقَالَ: بَلْ عَارِيَّةٌ مَضْمُونَةٌ» - هَذَا مُنْقَطِعٌ، لِأَنَّ مُحَمَّدَ بْنَ عَلِيٍّ لَمْ يُدْرِكْ صَفْوَانَ وَلَا وُلِدَ إِلَّا بَعْدَ مَوْتِهِ بِدَهْرٍ.

L26531–26533 Al-Harith is disregarded (as a narrator), and Yahya ibn Abi Bukayr did not meet Nafi'. The highest chain from him is via Shu'bah. We know of no instance where Nafi' heard from Safwan whatsoever. As for that which is beyond doubt: Safwan died during 'Uthman's era before the civil strife. Through the chain of Ibn Wahb from Anas ibn 'Iyad from Ja'far ibn Muhammad from his father: "Safwan ibn Umayyah lent weapons to Allah's Messenger (peace be upon him), asking: 'Is this a loan with liability or unlawful seizure?' He replied: 'Rather...' [narration ends here]." The ruling regarding a secured commodity loan has an interrupted chain of narration, for

[3] **Qur'an references (L26529):** Qur'an 2:286 (Al-Baqarah).

Muḥammad ibn ʿAlī neither met Ṣafwān nor was he born except long after his death.

L26534 And through the chain of Musaddad, Abu al-Ahwas narrated from Abd al-Aziz ibn Rufayʿ from Ata ibn Abi Rabah from some members of the family of Safwan ibn Umayyah: "The Messenger of Allah—peace and blessings be upon him—borrowed weapons from Safwan. Safwan asked: 'Is this a loan or a seizure?' He replied: 'Rather, a loan.' Then they lost a shield from them. The Messenger of Allah—peace and blessings be upon him—said: 'If you wish, we will compensate you for it.' Safwan said: 'O Messenger of Allah, there is in my heart faith that was not present on that day.'"

وَمِنْ طَرِيقِ مُسَدَّدٍ نا أَبُو الْأَحْوَصِ نا عَبْدُ الْعَزِيزِ بْنُ رُفَيْعٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ نَاسٍ مِنْ آلِ صَفْوَانَ بْنِ أُمَيَّةَ «اسْتَعَارَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ صَفْوَانَ سِلَاحًا، فَقَالَ صَفْوَانُ: أَعَارِيَةٌ أَمْ غَصْبٌ؟ قَالَ: بَلْ عَارِيَةٌ، فَفَقَدُوا مِنْهَا دِرْعًا، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنْ شِئْتَ غَرِمْنَاهَا لَكَ فَقَالَ: يَا رَسُولَ اللَّهِ إِنَّهُ فِي قَلْبِي مِنَ الْإِيمَانِ مَا لَمْ يَكُنْ يَوْمَئِذٍ»

L26535 This is from people who were not named.

هَذَا عَنْ نَاسٍ لَمْ يُسَمُّوا.

L26536 Through the chain of Aḥmad ibn Shuʿayb: Aḥmad ibn Sulaymān narrated to us, ʿUbaydullāh ibn Mūsā narrated to us, Isrāʾīl narrated from ʿAbd al-ʿAzīz ibn Rufayʿ from Ibn Abī Mulaykah from ʿAbd al-Raḥmān ibn Ṣafwān ibn Umayyah: "The Messenger of Allah (peace and blessings of Allah be upon him) borrowed shields from Ṣafwān ibn Umayyah, and some of them were lost. The Messenger of Allah (peace and blessings of Allah be upon him) said: 'If you wish, we shall compensate you for them.' He replied: 'No, O Messenger of Allah.'"

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا أَحْمَدُ بْنُ سُلَيْمَانَ نا عُبَيْدُ اللَّهِ بْنُ مُوسَى نا إِسْرَائِيلُ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنِ ابْنِ أَبِي مُلَيْكَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ صَفْوَانَ بْنِ أُمَيَّةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَعَارَ مِنْ صَفْوَانَ بْنِ أُمَيَّةَ دُرُوعًا فَهَلَكَ بَعْضُهَا، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنْ شِئْتَ غَرِمْنَاهَا لَكَ قَالَ: لَا يَا رَسُولَ اللَّهِ»

L26537 Israel is a weak narrator. Furthermore, in the Prophet's statement—peace and blessings be upon him—"If you wish, we will compensate you for it," even if it were authentic, there is no explicit clarification obligating compensation unless this wording alone existed here. As for prohibited wealth, it is impermissible for a judge to permit it without clear, unequivocal evidence.

إِسْرَائِيلُ ضَعِيفٌ ثُمَّ لَيْسَ فِي قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «إِنْ شِئْتَ غَرِمْنَاهَا لَكَ» لَوْ صَحَّ بَيَانٌ بِوُجُوبِ غَرِمِهَا إِذَا لَمْ يَكُنْ هَاهُنَا غَيْرَ هَذَا اللَّفْظِ، وَالْأَمْوَالِ الْمُحَرَّمَةِ لَا يَجُوزُ الْقَضَاءُ بِإِبَاحَتِهَا بِغَيْرِ بَيَانٍ جَلِيٍّ.

L26538 From the chain of Ibn Wahb on the authority of Ibn Jurayj, Yunus, and Ubayd Allah ibn Umar: Ibn Jurayj reported from Ata; Yunus reported from Rabi'ah; and Ibn Umar reported from al-Zuhri. Al-Zuhri mentioned Safwan's coats of mail, "and that the Prophet—peace be upon him—said: 'Rather willingly, and they remain under our guarantee.'" This is *mursal*.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنِ ابْنِ جُرَيْجٍ، وَيُونُسَ، وَعُبَيْدِ اللَّهِ بْنِ عُمَرَ، قَالَ ابْنُ جُرَيْجٍ: عَنْ عَطَاءٍ، وَقَالَ يُونُسُ: عَنْ رَبِيعَةَ، وَقَالَ ابْنُ عُمَرَ عَنِ الزُّهْرِيِّ فَذَكَرَ دُرُوعَ صَفْوَانَ، «وَأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: بَلْ طَوْعًا، وَهِيَ عَلَيْنَا ضَامِنَةٌ» - هَذَا مُرْسَلٌ.

L26539–26540 From the path of Ibn Wahb, from Maslamah ibn Ali, from some schol-

ars that it reached him: “Among the conditions stipulated by the Prophet—peace and blessings of Allah be upon him—upon the people of Yemen was that if a calamity or event occurred in their land, they were to provide the Yemeni messengers with thirty camels, thirty horses, and thirty suits of armor—and they were liable for these items until they returned them.” This narration’s weakness is disputed, being interrupted and transmitted from unnamed sources, while Maslamah ibn Ali is deemed unreliable.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَسْلَمَةَ بْنِ عَلِيٍّ عَنْ بَعْضِ أَهْلِ الْعِلْمِ أَنَّهُ بَلَغَهُ «أَنَّ فِي شَرْطِ أَهْلِ الْيَمَنِ مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنْ كَانَ بِأَرْضِ الْيَمَنِ كَوْنٌ أَوْ حَدَثٌ أَنْ يُعْطُوا رُسُلَ الْيَمَنِ: ثَلَاثِينَ بَعِيرًا وَثَلَاثِينَ فَرَسًا، وَثَلَاثِينَ دِرْعًا؛ وَهُمْ ضَامِنُونَ لَهَا حَتَّى يَرُدُّوهَا» هَذَا مُرَدَّدٌ فِي الضَّعْفِ مُنْقَطِعٌ، وَعَمَّنْ لَمْ يُسَمَّ، وَمَسْلَمَةُ بْنُ عَلِيٍّ سَاقِطٌ. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ عَنْ عَمْرِو بْنِ دِينَارٍ: «شَرَطَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَهْلِ نَجْرَانَ عَارِيَّةً: ثَلَاثِينَ فَرَسًا، وَثَلَاثِينَ دِرْعًا، وَثَلَاثِينَ رُمْحًا، فَإِنْ ضَاعَ مِنْهَا شَيْءٌ فَهُوَ ضَامِنٌ عَلَى رُسُلِهِ» ، شَهِدَ الْمُغِيرَةُ بْنُ شُعْبَةَ، وَأَبُو سُفْيَانَ بْنُ حَرْبٍ، وَالْأَقْرَعُ بْنُ حَابِسٍ - هَذَا مُنْقَطِعٌ، لَمْ يُدْرِكْ عَمْرٌو مِنْ هَؤُلَاءِ أَحَدًا وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ هُشَيْمٍ عَنْ حُصَيْنٍ مُرْسَلٌ.

From the path of Sa’id ibn Mansur: Sufyan narrated to us from Amr ibn Dinar: “Allah’s Messenger—peace and blessings of Allah be upon him—imposed as a loan (of items) upon the people of Najran: thirty horses, thirty suits of armor, and thirty spears. If any item were lost, the messengers would bear liability for it.” Al-Mughirah ibn Shu’bah, Abu Sufyan ibn Harb, and al-Aqra’ ibn Habis attested to this. This chain is interrupted, as Amr never met any of these witnesses. We also transmitted it through Hushaym’s path from Husayn as a mursal narration.

L26541 It has been narrated to us through the chain of Ibn Abi Shaybah: Jarīr ibn ʻAbd al-Ḥamīd → ʻAbd al-ʻAzīz ibn Rufayʻ → Iyās ibn ʻAbd Allāh ibn Ṣafwān: “When the Messenger of Allah—peace and blessings be upon him—prepared for Ḥunayn, he asked Ṣafwān: ‘Do you have any weapons?’ He replied: ‘As a loan (ʻāriyyah) or seized property (ghaṣb)?’ The Prophet said: ‘No, as a loan.’ He then lent him thirty to forty sets of armor. When the polytheists were defeated, Ṣafwān’s armor was gathered, but some were missing. The Messenger of Allah—peace and blessings be upon him—said to him: ‘We have lost some of your armor. Should we compensate you?’ He replied: ‘No, O Messenger of Allah—today my heart holds [faith] it did not before.’” This is a mursal narration (with an incomplete chain) like the previous one, and it clarifies that loans are not subject to liability in legal rulings.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنْ إيَاسِ بْنِ عَبْدِ اللَّهِ بْنِ صَفْوَانَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا أَرَادَ حُنَيْنًا قَالَ لِصَفْوَانَ: هَلْ عِنْدَكَ مِنْ سِلَاحٍ؟ قَالَ: عَارِيَّةً أَمْ غَصْبًا؟ قَالَ: لَا، بَلْ عَارِيَّةً، فَأَعَارَهُ مَا بَيْنَ الثَّلَاثِينَ إلَى الْأَرْبَعِينَ دِرْعًا، فَلَمَّا هُزِمَ الْمُشْرِكُونَ جُمِعَتْ دُرُوعُ صَفْوَانَ، فَفُقِدَ مِنْهَا، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّا قَدْ فَقَدْنَا مِنْ أَدْرَاعِكَ أَدْرَاعًا، فَهَلْ نَغْرَمُ لَكَ؟ فَقَالَ: لَا يَا رَسُولَ اللَّهِ إنَّ فِي قَلْبِي الْيَوْمَ مَا لَمْ يَكُنْ» فَهَذَا مُرْسَلٌ كَتِلْكَ، وَهُوَ يُبَيِّنُ أَنَّهَا غَيْرُ مَضْمُونَةٍ فِي الْحُكْمِ.

L26542–26544 They adduced as proof what we have narrated through the chain of Ibn Abi Shaybah, who narrated to us from Isma’il ibn ’Ayyash, from Shurahbil ibn Muslim. I heard Abū Umāmah al-Bāhilī say: “I heard the Prophet (peace be upon him) say during the Farewell Pilgrimage: The loaned item must be

returned, the debt is to be repaid, and the guarantor is liable for the debt." Ismāʿīl ibn ʿAyyāsh is a weak narrator.

وَاحْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا إِسْمَاعِيلُ بْنُ عَيَّاشٍ عَنْ شُرَحْبِيلَ بْنِ مُسْلِمٍ سَمِعْت أَبَا أُمَامَةَ الْبَاهِلِيَّ قَالَ «سَمِعْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَجَّةِ الْوَدَاعِ يَقُولُ: الْعَارِيَّةُ مُؤَدَّاةٌ، وَالدَّيْنُ مَقْضِيٌّ، وَالزَّعِيمُ غَارِمٌ» إسْمَاعِيلُ بْنُ عَيَّاشٍ ضَعِيفٌ.

L26545 And it has also been narrated to us: "A loaned item must be returned," through the chain of Aḥmad ibn Shuʿayb from ʿAbdullāh ibn al-Ṣabbāḥ, from al-Muʿtamir ibn Sulaymān, who reported to us: I heard al-Ḥajjāj ibn al-Furāfiṣah—Muḥammad ibn al-Walīd narrated to me from Abū ʿĀmir al-Hawzanī, from Abū Umāmah, from the Prophet, peace and blessings of Allah be upon him. Al-Ḥajjāj ibn al-Furāfiṣah is unknown.

وَرُوِّينَا أَيْضًا «الْعَارِيَّةُ مُؤَدَّاةٌ» مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ عَنْ عَبْدِ اللَّهِ بْنِ الصَّبَّاحِ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ سَمِعْت الْحَجَّاجَ بْنَ الْفُرَافِصَةِ حَدَّثَنِي مُحَمَّدُ بْنُ الْوَلِيدِ عَنْ أَبِي عَامِرٍ الْهَوْزَنِيِّ عَنْ أَبِي أُمَامَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْحَجَّاجُ بْنُ الْفُرَافِصَةِ مَجْهُولٌ.

L26546 From the chain of Aḥmad ibn Shuʿayb: ʿAmr ibn Manṣūr narrated to us, al-Haytham ibn Khārijah narrated to us, al-Jarrāḥ ibn Malīḥ narrated to us. Ḥātim ibn Ḥurayth al-Ṭāʾī reported to me: "I heard Abū Umāmah narrate from the Prophet (may God's peace and blessings be upon him)." Ḥātim ibn Ḥurayth is unverified.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ مَنْصُورٍ نا الْهَيْثَمُ بْنُ خَارِجَةَ نا الْجَرَّاحُ بْنُ مَلِيحٍ حَدَّثَنِي حَاتِمُ بْنُ حُرَيْثٍ الطَّائِيُّ سَمِعْتُ أَبَا أُمَامَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَاتِمُ بْنُ حُرَيْثٍ مَجْهُولٌ.

L26547 Narrated via Ibn Wahb, from Ibn Lahi'ah, from 'Abdullah ibn Hayyan al-Laythi, from a man among them who said: I heard the Messenger of Allah - peace be upon him - say: "The loaned item must be duly fulfilled, and the temporarily loaned asset must be returned." Ibn Lahi'ah is weak.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ عَبْدِ اللَّهِ بْنِ حَيَّانَ اللَّيْثِيِّ عَنْ رَجُلٍ مِنْهُمْ قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «الْعَارِيَّةُ مُؤَدَّاةٌ، وَالْمِنْحَةُ مَرْدُودَةٌ» ابْنُ لَهِيعَةَ لَا شَيْءَ.

L26548 Through the chain of Al-Bazzar: Abdullah ibn Shabib narrated to us, Ishaq ibn Muhammad Al-Farawi narrated to us, Abdullah ibn Umar narrated to us, Zayd ibn Aslam narrated to us, from Ibn Umar, from the Prophet (peace be upon him): "A loaned item is to be returned." Al-Farawi is weak, and Abdullah ibn Umar (he is Al-Umari the Junior) is weak.

وَمِنْ طَرِيقِ الْبَزَّارِ نا عَبْدُ اللَّهِ بْنُ شَبِيبٍ نا إِسْحَاقُ بْنُ مُحَمَّدٍ الْفَرْوِيُّ نا عَبْدُ اللَّهِ بْنُ عُمَرَ نا زَيْدُ بْنُ أَسْلَمَ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْعَارِيَّةُ مُؤَدَّاةٌ» الْفَرْوِيُّ ضَعِيفٌ، وَعَبْدُ اللَّهِ بْنُ عُمَرَ - هُوَ الْعُمَرِيُّ الصَّغِيرُ - ضَعِيفٌ.

L26549–26550 Furthermore, if these terms were valid, the only implication would be that they are to be performed. Thus, we say: Their performance is obligatory, whereas guarantee is distinct from performance. There is nothing in them

ثُمَّ لَوْ صَحَّتْ هَذِهِ الْأَلْفَاظُ لَمَا كَانَ فِيهَا إلَّا أَنَّهَا مُؤَدَّاةٌ، وَهَكَذَا نَقُولُ: إنَّ أَدَاءَهَا فَرْضٌ، وَالتَّضْمِينُ غَيْرُ الْأَدَاءِ، وَلَيْسَ فِيهِ أَنَّهَا مَضْمُونَةٌ أَصْلًا - فَبَطَلَ تَعَلُّقُهُمْ بِشَيْءٍ مِنْهَا.

to suggest they are guaranteed at all—hence, their reliance on any part of them is invalidated.

L26551 They mentioned what was narrated to us through the chain of Shuʿbah from Qatādah from Samurah ibn Jundub from the Prophet—peace and blessings be upon him—"Upon the hand is what it has taken until it delivers it." This chain is disconnected, for Qatādah did not meet Samurah.

وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ قَتَادَةَ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «عَلَى الْيَدِ مَا أَخَذَتْ حَتَّى تُؤَدِّيَهُ» - وَهَذَا مُنْقَطِعٌ، لِأَنَّ قَتَادَةَ لَمْ يُدْرِكْ سَمُرَةَ.

L26552 We have transmitted it through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān, from Saʿīd ibn Abī ʿArūbah, from Qatādah, from al-Ḥasan, from Samurah ibn Jundub, who said: The Messenger of Allah—peace and blessings be upon him—stated: "Upon the hand is what it has taken until it restores it." Al-Ḥasan did not hear directly from Samurah. Even if the narration were authentic, it specifies nothing beyond fulfillment, and this is our doctrine. Fulfillment differs from compensation in both linguistic usage and legal judgment. Were they to construe this wording as implying compensation, they would thereby be obligated to enforce compensation for pawned items and deposits, since these involve what the hand has physically custody of. Yet certain groups among the Companions and subsequent scholars have asserted compensation in such cases, thus exposing their inconsistency.

وَرُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «عَلَى الْيَدِ مَا أَخَذَتْ حَتَّى تُؤَدِّيَهُ» الْحَسَنُ لَمْ يَسْمَعْ مِنْ سَمُرَةَ ثُمَّ لَوْ صَحَّ فَلَيْسَ فِيهِ إلَّا الْأَدَاءُ، وَهَكَذَا نَقُولُ، وَالْأَدَاءُ غَيْرُ الضَّمَانِ فِي اللُّغَةِ وَالْحُكْمِ، وَيَلْزَمُهُمْ إذَا حَمَلُوا هَذَا اللَّفْظَ عَلَى الضَّمَانِ أَنْ يُضَمِّنُوا بِذَلِكَ الْمَرْهُونَ وَالْوَدَائِعَ، لِأَنَّهَا مِمَّا قَبَضَتْ الْيَدُ، وَكُلُّ هَذَا قَدْ قَالَ بِتَضْمِينِهِ طَوَائِفُ مِنْ الصَّحَابَةِ فَمَنْ بَعْدَهُمْ فَظَهَرَ تَنَاقُضُهُمْ.

L26553 We have been narrated through the chain of Aḥmad ibn Shuʿayb, who narrated from Ibrāhīm ibn al-Mustamir, who narrated from Ḥibbān ibn Hilāl, who narrated from Hammām ibn Yaḥyā, who narrated from Qatādah, from ʿAṭāʾ ibn Abī Rabāḥ, from Ṣafwān ibn Yaʿlā ibn Umayyah, from his father, who said: The Messenger of Allah (peace and blessings be upon him and his family) said to me: "When my envoys come to you, give them thirty armors and thirty camels." I said: "O Messenger of Allah, is this a loan with liability or a loan to be returned?" He said: "Rather, it is a loan to be returned." This is a ḥasan hadith, and there is no authentic report among all that has been narrated concerning loans for use other than this. As for what is besides it, it does not merit attention. The hadith distinguished between liability and return, obligating in the loan for use only the return without liability - thus invalidating all the textual proofs they relied upon.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا إبْرَاهِيمُ بْنُ الْمُسْتَمِرِّ نا حِبَّانُ بْنُ هِلَالٍ نا هَمَّامُ بْنُ يَحْيَى نا قَتَادَةُ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ صَفْوَانَ بْنِ يَعْلَى بْنِ أُمَيَّةَ عَنْ أَبِيهِ قَالَ: قَالَ لِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «إذَا أَتَتْك رُسُلِي فَأَعْطِهِمْ ثَلَاثِينَ دِرْعًا وَثَلَاثِينَ بَعِيرًا فَقُلْتُ: يَا رَسُولَ اللَّهِ أَعَارِيَةٌ مَضْمُونَةٌ أَمْ عَارِيَةٌ مُؤَدَّاةٌ؟ قَالَ: بَلْ عَارِيَةٌ مُؤَدَّاةٌ» فَهَذَا حَدِيثٌ حَسَنٌ لَيْسَ فِي شَيْءٍ مِمَّا رُوِيَ فِي الْعَارِيَةِ خَبَرٌ يَصِحُّ غَيْرُهُ، وَأَمَّا مَا سِوَاهُ فَلَا يُسَاوِي الِاشْتِغَالَ بِهِ وَقَدْ فَرَّقَ فِيهِ بَيْنَ الضَّمَانِ، وَالْأَدَاءِ، وَأَوْجَبَ فِي الْعَارِيَةِ الْأَدَاءَ فَقَطْ دُونَ الضَّمَانِ - فَبَطَلَ كُلُّ مَا تَعَلَّقُوا بِهِ مِنْ النُّصُوصِ.

L26554 They said: We found that every instance of wealth transferred between

وَقَالُوا: وَجَدْنَا كُلَّ مَا يَقْبِضُهُ بَعْضُ النَّاسِ مِنْ بَعْضٍ مِنْ الْأَمْوَالِ يَنْقَسِمُ ثَلَاثَةَ أَقْسَامٍ -: أَحَدُهَا - قِسْمٌ مَنْفَعَةٌ لِلدَّافِعِ دُونَ الْمَدْفُوعِ إلَيْهِ، كَالْوَدِيعَةِ، وَالْوَكَالَةِ - فَهَذَا غَيْرُ مَضْمُونٍ، فَوَاجِبٌ أَنْ يَكُونَ كُلُّ مَا فِي هَذَا الْبَابِ كَذَلِكَ وَثَانِيهَا - قِسْمٌ مَنْفَعَتُهُ لِلدَّافِعِ وَالْمَدْفُوعِ إلَيْهِ مَعًا، كَالْقِرَاضِ، وَقَدْ اتَّفَقْنَا عَلَى أَنَّهُ غَيْرُ مَضْمُونٍ، فَوَجَبَ أَنْ يَكُونَ الرَّهْنُ وَكُلُّ مَا فِي هَذَا الْبَابِ كَذَلِكَ.

L26555 وَثَالِثُهَا - مَا مَنْفَعَتُهُ الْمَدْفُوعُ إلَيْهِ دُونَ الدَّافِعِ كَالْقَرْضِ، وَقَدْ صَحَّ الْإِجْمَاعُ عَلَى أَنَّهُ مَضْمُونٌ فَوَجَبَ أَنْ تَكُونَ الْعَارِيَّةُ وَكُلُّ مَا فِي هَذَا الْبَابِ كَذَلِكَ.

L26556–26557 قَالَ أَبُو مُحَمَّد: وَهَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، إلَّا أَنَّهُ مِنْ الْمَلِيحِ الْمُمَوَّهِ مِنْ مَقَايِيسِهِمْ وَأَنَّهُمْ لَيَسْفِكُونَ الدِّمَاءَ، وَيُبِيحُونَ الْفُرُوجَ، وَالْأَمْوَالَ وَالْأَبْشَارَ بِأَقَلَّ مِنْ هَذَا، كَقِيَاسِهِمْ فِي الصَّدَاقِ، وَفِي جَلْدِ الشَّارِبِ قِيَاسًا عَلَى الْقَاذِفِ، وَالْقَوَدِ لِلْكَافِرِ مِنْ الْمُؤْمِنِ، وَفَاعِلُ فِعْلِ قَوْمِ لُوطٍ، وَسَائِرِ قِيَاسِهِمْ، إلَّا أَنَّنَا نُعَارِضُ هَذَا الْقِيَاسَ بِمِثْلِهِ، وَهُوَ أَنَّ الْعَارِيَّةَ دَفْعُ مَالٍ بِغَيْرِ عِوَضٍ، كَالْوَدِيعَةِ.

L26558 وَأَيْضًا - فَإِنَّ مَا بَلِيَ فِي اللِّبَاسِ وَفِيمَا اُسْتُعِيرَتْ لَهُ فَنَقَصَ مِنْهَا بِلَا تَعَدٍّ فَلَا ضَمَانَ فِيهِ، فَكَذَلِكَ سَائِرُ النَّقْصِ - وَهَذَا كُلُّهُ وَسَاوِسُ، نَعُوذُ بِاَللَّهِ مِنْ الْحُكْمِ بِهَا فِي دِينِهِ.

L26559 قَالَ عَلِيٌّ: فَبَقِيَ قَوْلُنَا، فَوَجَدْنَاهُ قَدْ رُوِيَ عَنْ عُمَرَ، وَعَلِيٍّ، كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ ابْنِ صَالِحِ بْنِ حَيٍّ عَنْ عَبْدِ الْأَعْلَى عَنْ مُحَمَّدِ بْنِ الْحَنَفِيَّةِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: الْعَارِيَّةُ لَيْسَتْ بَيْعًا وَلَا مَضْمُونَةً إنَّمَا هُوَ مَعْرُوفٌ إلَّا أَنْ يُخَالِفَ فَيَضْمَنَ، وَهَذَا صَحِيحٌ عَنْ عَلِيٍّ.

people divides into three categories: 1. A category where the benefit belongs solely to the transferor, not the recipient—such as custodianship (wadīʿah) or agency (wakālah). This category entails no liability, making it obligatory that all analogous cases follow the same ruling. 2. A category where both transferor and recipient share the benefit—such as profit-sharing partnership (qirāḍ). We have consensus that this entails no liability, thus pledges (rahn) and all analogous cases under this category must likewise be deemed non-liable.

The third category is that whose benefit is directed to the recipient rather than the provider, such as a loan. Sound consensus has been established that it is subject to liability, and thus it necessarily follows that the commodatum and all matters in this category must likewise be treated.

Abu Muhammad said: This is analogy, and all analogy is invalid, except that it is among their specious and deceptive analogies, and indeed they shed blood, permit private parts, wealth, and scourging for less than this, such as their analogy regarding the dowry, in flogging the drinker by analogy to the slanderer, retaliation for a disbeliever from a believer, the one who commits the act of the people of Lot, and the rest of their analogies. However, we counter this analogy with its like: the gratuitous loan is the transfer of wealth without compensation, like a deposit.

Furthermore, if something directly related to clothing or borrowed for that purpose is reduced in it without transgression, there is no liability for it, just as with all other losses. And all of this is evil whisperings; we seek refuge with Allah from applying such [whisperings] in matters of His religion.

Ali said: Our statement remained, and we found that our position had been narrated from Umar and Ali, as it was transmitted to us through the chain of Ibn Abi Shaybah—Wakīʿ narrating from Ibn Ṣāliḥ ibn Ḥayy, from ʿAbd al-Aʿlā, from Muḥammad ibn al-Ḥanafiyyah, from ʿAlī ibn Abī Ṭālib—who said: A loaned item is neither a sale nor subject to liability. It is merely an act of benevolence unless the borrower violates [the terms], in which case liability applies. This is an authentic report from Ali.

L26560 And from the narration of Abd al-Razzaq: Qays ibn al-Rabiʿ narrated to us from al-Ḥajjāj ibn Arṭāh, from Hilāl al-Wazzān, from ʿAbdullāh ibn ʿUqaym, who reported that ʿUmar ibn al-Khaṭṭāb said: "A gratuitous loan (ʿāriyyah) is equivalent to a trust (wadiʿah), and no liability is incurred for it unless [the borrower] transgresses [the terms]." This is the opinion of Ibrāhīm al-Nakhaʿī, ʿUmar ibn ʿAbd al-ʿAzīz, al-Zuhrī, and others – and this is the opinion of Abū Sulaymān. Abū Muḥammad said: Allāh the Exalted states: "Do not consume one another's wealth unjustly, except through trade by mutual consent" (Quran al-Nisā' 4:29).[4]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا قَيْسُ بْنُ الرَّبِيعِ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ هِلَالٍ الْوَزَّانِ عَنْ عَبْدِ اللَّهِ بْنِ عُكَيْمٍ قَالَ عُمَرُ بْنُ الْخَطَّابِ: الْعَارِيَّةُ بِمَنْزِلَةِ الْوَدِيعَةِ، وَلَا ضَمَانَ فِيهَا، إلَّا أَنْ يَتَعَدَّى - وَهُوَ قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَالزُّهْرِيِّ، وَغَيْرِهِمْ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ قَالَ أَبُو مُحَمَّدٍ: قَوْلُ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ} [النساء: ٢٩] .

L26561 The Messenger of Allah (peace and blessings be upon him) said: "Indeed, your blood and wealth are inviolable for you."

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L26562 It has been established that the borrower's property is prohibited unless obligated by a text of the Qur'an or Sunnah, and no text from either has ever obligated such. Allah the Exalted said: "There is no blame upon those who do good" [Qur'an 9:91], and He said: "Blame lies only upon those who wrong people and act unjustly in the land without right" [Qur'an 42:42].[5]

فَصَحَّ أَنَّ مَالَ الْمُسْتَعِيرِ مُحَرَّمٌ إلَّا أَنْ يُوجِبَهُ نَصُّ قُرْآنٍ أَوْ سُنَّةٍ، وَلَمْ يُوجِبْهُ قَطُّ نَصٌّ مِنْهُمَا - وَقَالَ اللَّهُ تَعَالَى: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] : وَقَالَ تَعَالَى: {إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الأَرْضِ بِغَيْرِ الْحَقِّ} [الشورى: ٤٢] .

L26563 The borrower, as long as he does not transgress nor neglect [his responsibility], is a doer of good. Thus, there is no recourse against him according to the text of the Quran. Since liability is established through certainty, no financial obligation falls upon him—and success is from Allah, the Exalted.

وَالْمُسْتَعِيرُ مَا لَمْ يَتَعَدَّ وَلَا ضَيَّعَ: مُحْسِنٌ فَلَا سَبِيلَ عَلَيْهِ بِنَصِّ الْقُرْآنِ، وَالْغُرْمُ سَبِيلٌ بِيَقِينٍ فَلَا غُرْمَ عَلَيْهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26564–26565 Hospitality is a religious obligation incumbent upon the Bedouin and the urban dweller, the jurist and the ignorant.

[الضِّيَافَةُ] [مَسْأَلَةُ الضِّيَافَةِ فَرْضٌ عَلَى الْبَدْوِيِّ وَالْحَضَرِيِّ وَالْفَقِيهِ وَالْجَاهِلِ]

L26566 Issue 1653: Hospitality is obligatory upon the Bedouin, the city dweller, the scholar, and the unlearned alike: a day and a night as benevolence and a gift, then three days as hospitality with no extension. If the host exceeds this, his hospitality is not binding, but if he continues to host, it is commendable. If he withholds the obligatory hospitality, the guest may take it by force, by

١٦٥٣ - مَسْأَلَةُ: الضِّيَافَةِ فَرْضٌ عَلَى الْبَدْوِيِّ، وَالْحَضَرِيِّ، وَالْفَقِيهِ، وَالْجَاهِلِ: يَوْمٌ وَلَيْلَةٌ: مَبَرَّةٌ وَاتْحَافٌ، ثُمَّ ثَلَاثَةُ أَيَّامٍ: ضِيَافَةٌ وَلَا مَزِيدَ، فَإِنْ زَادَ فَلَيْسَ قِرَاهُ لَازِمًا، وَإِنْ تَمَادَى عَلَى قِرَاهُ: فَحَسَنٌ - فَإِنْ مَنَعَ الضِّيَافَةَ الْوَاجِبَةَ فَلَهُ أَخْذُهَا مُغَالَبَةً، وَكَيْفَ أَمْكَنَهُ، وَيُقْضَى لَهُ بِذَلِكَ -: رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا الْقَعْنَبِيُّ عَنْ مَالِكٍ عَنْ سَعِيدِ بْنِ أَبِي

[4] **Qur'an references (L26560):** Qur'an 4:29 (An-Nisa).
[5] **Qur'an references (L26562):** Qur'an 9:91 (At-Tawbah); Qur'an 42:42 (Ash-Shuraa).

whatever means possible, and the judge shall rule in his favor. We narrate through Abū Dāwūd's chain: Al-Qaʿnabī reported from Mālik, from Saʿīd ibn Abī Saʿīd al-Maqburī, from Abū Shurayḥ al-Kaʿbī that Allah's Messenger—peace and blessings be upon him—said: "Whoever believes in Allah and the Last Day, let him honor his guest. His due is a day and a night, and hospitality lasts three days. What exceeds that is charity. It is not lawful for him to linger with his host until he causes him hardship."[6]

سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي شُرَيْحٍ الْكَعْبِيِّ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ فَلْيُكْرِمْ ضَيْفَهُ، جَائِزَتُهُ يَوْمُهُ وَلَيْلَتُهُ، وَالضِّيَافَةُ ثَلَاثَةُ أَيَّامٍ، وَمَا بَعْدَ ذَلِكَ فَهُوَ صَدَقَةٌ، وَلَا يَحِلُّ لَهُ أَنْ يَثْوِيَ عِنْدَهُ حَتَّى يُحْرِجَهُ» .

L26567 Abu Dawud reported from al-Harith ibn Miskin, from Ashhab, from Malik concerning the Prophet's statement (peace be upon him), "The hospitality period is a day and a night." Malik said: [The host] gifts him, honors him, and grants him exclusive hospitality for a day and a night, extending to three days.

قَالَ أَبُو دَاوُد عَنْ الْحَارِثِ بْنِ مِسْكِينٍ عَنْ أَشْهَبَ عَنْ مَالِكٍ فِي قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «جَائِزَتُهُ يَوْمٌ وَلَيْلَةٌ» -: قَالَ مَالِكٌ: يُتْحِفُهُ وَيُكْرِمُهُ وَيَخُصُّهُ يَوْمًا وَلَيْلَةً وَثَلَاثَةَ أَيَّامٍ ضِيَافَةً.

L26568 Through the chain of Muḥammad ibn Jaʿfar Ghundar, who narrated from Manṣūr ibn al-Muʿtamir, from al-Shaʿbī, from al-Muqaddam Abū Karīmah: "He heard the Prophet—peace and blessings of Allah be upon him—say: 'Hosting a guest for one night is an incumbent duty upon every Muslim. If the guest remains in the host's courtyard until morning, it becomes a debt upon the guest. If the host wishes, he may demand repayment, and if he wishes, he may forgo it.'"

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ غُنْدَرٍ نا مَنْصُورُ بْنُ الْمُعْتَمِرِ عَنْ الشَّعْبِيِّ عَنْ الْمُقَدَّمِ أَبِي كَرِيمَةَ " أَنَّهُ سَمِعَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَيْلَةُ الضَّيْفِ حَقٌّ وَاجِبٌ عَلَى مَنْ كَانَ مُسْلِمًا، فَإِنْ أَصْبَحَ بِفِنَائِهِ فَهُوَ دَيْنٌ عَلَيْهِ، إِنْ شَاءَ اقْتَضَى وَإِنْ شَاءَ تَرَكَ» .

L26569–26570 And from the path of Shuʿbah from Abu Ishaq al-Sabiʿi—from Abu al-Ahwas, who is Awf ibn Malik ibn Awf al-Jushami—from his father, who said: I said, "O Messenger of Allah, a man I stayed with as a guest, but he did not honor me, nor host me, nor provide for me. Then he stayed with me as a guest—should I repay him?" He said, "Rather, host him."

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ «عَنْ أَبِي الْأَحْوَصِ - هُوَ عَوْفُ بْنُ مَالِكِ بْنِ عَوْفٍ الْجُشَمِيُّ - عَنْ أَبِيهِ قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ رَجُلٌ نَزَلْتُ بِهِ فَلَمْ يُكْرِمْنِي وَلَمْ يُضِفْنِي وَلَمْ يَقْرِنِي ثُمَّ نَزَلَ بِي أَجْزِيهِ؟ قَالَ: بَلْ أَقْرِهِ» .

L26571 And through the chain of Imam Muslim: Muḥammad ibn Rumḥ reported to us, al-Layth—that is, ibn Saʿd—reported to us, from Yazīd ibn Abī Ḥabīb, from Abū al-Khayr, from ʿUqbah ibn ʿĀmir, who said: We said, "O Messenger of Allah, you send us and we stay with people who do not host us. What do you advise?" The Messenger of Allah—peace and blessings be upon him—said: "If you stay with people and they provide what is fitting for guests,

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رُمْحٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ أَبِي الْخَيْرِ «عَنْ عُقْبَةَ بْنِ عَامِرٍ، قُلْنَا: يَا رَسُولَ اللَّهِ إِنَّكَ تَبْعَثُنَا فَنَنْزِلُ بِقَوْمٍ فَلَا يَقْرُونَنَا فَمَا تَرَى؟ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِنْ نَزَلْتُمْ بِقَوْمٍ فَأَمَرُوا بِمَا يَنْبَغِي لِلضَّيْفِ فَاقْبَلُوا، فَإِنْ لَمْ يَفْعَلُوا فَخُذُوا مِنْهُمْ حَقَّ الضَّيْفِ الَّذِي يَنْبَغِي لَهُمْ» .

[6] **Qur'an references (L26566):** Qur'an 65:2 (At-Talaq).

accept it. If they do not, take from them the guest's right that is required of them."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَطَعَامُ الْوَاحِدِ يَكْفِي الِاثْنَيْنِ، وَطَعَامُ الِاثْنَيْنِ يَكْفِي الْأَرْبَعَةَ، وَطَعَامُ الْأَرْبَعَةِ يَكْفِي الثَّمَانِيَةَ» . وَمِنْ طَرِيقِ الْبُخَارِيِّ نا مُوسَى بْنُ إِسْمَاعِيلَ نا الْمُعْتَمِرُ - هُوَ ابْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ أَبِيهِ نا أَبُو عُثْمَانَ - هُوَ النَّهْدِيُّ - عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ «أَنَّ أَصْحَابَ الصُّفَّةِ كَانُوا نَاسًا فُقَرَاءَ، وَأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ مَنْ كَانَ عِنْدَهُ طَعَامُ اثْنَيْنِ فَلْيَذْهَبْ بِثَالِثٍ، وَمَنْ كَانَ عِنْدَهُ طَعَامُ أَرْبَعَةٍ فَلْيَذْهَبْ بِخَامِسٍ، وَمَنْ كَانَ عِنْدَهُ طَعَامُ خَمْسَةٍ، فَلْيَذْهَبْ بِسَادِسٍ، أَوْ كَمَا قَالَ وَأَنَّ أَبَا بَكْرٍ جَاءَ بِثَلَاثَةٍ وَانْطَلَقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِعَشْرَةٍ» .

L26572 From the chain of ʿAbd al-Razzāq: Maʿmar narrated to us from Ayyūb al-Sikhtiyānī from Nāfiʿ from Ibn ʿUmar, who said: The Messenger of Allāh—peace and blessings of Allāh be upon him—said: "The food of one suffices two, the food of two suffices four, and the food of four suffices eight." From the chain of al-Bukhārī: Mūsā ibn Ismāʿīl narrated to us: al-Muʿtamir—who is Ibn Sulaymān al-Taymī—narrated to us from his father from Abū ʿUthmān—who is al-Nahdī—from ʿAbd al-Raḥmān ibn Abī Bakr al-Ṣiddīq: "The Companions of the Ṣuffah were destitute people. The Prophet—peace and blessings of Allāh be upon him—said: 'Whoever has food for two, let him take a third person; whoever has food for four, let him take a fifth person; whoever has food for five, let him take a sixth person'—or as he said—and that Abū Bakr came with three, while the Messenger of Allāh—peace and blessings of Allāh be upon him—departed with ten."

فَهَذَا نَصُّ إِيجَابِ الضِّيَافَةِ عَلَى أَهْلِ الْعِلْمِ وَالْحَاضِرَةِ، وَهَذِهِ أَخْبَارٌ مُتَوَاتِرَةٌ عَنْ جَمَاعَةٍ مِنْ الصَّحَابَةِ لَا يَحِلُّ لِأَحَدٍ مُخَالَفَتُهَا.

L26573 Thus, this is the explicit text regarding the obligation of hospitality upon the people of knowledge and urban dwellers, and these are mutawātir (widely transmitted) narrations from a group of the Companions [of the Prophet]; it is not permissible for anyone to oppose them.

رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ شُعْبَةَ عَنْ أَبِي عَوْفٍ عَنْ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ الثَّقَفِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى " أَنَّ نَاسًا مِنْ الْأَنْصَارِ سَافَرُوا فَأَرْمَلُوا فَمَرُّوا بِحَيٍّ مِنْ الْعَرَبِ فَسَأَلُوهُمْ الْقِرَى فَأَبَوْا عَلَيْهِمْ، فَسَأَلُوهُمْ الشِّرَاءَ فَأَبَوْا فَضَبَطُوهُمْ فَأَصَابُوا مِنْهُمْ فَأَتَتْ الْأَعْرَابُ عُمَرَ بْنَ الْخَطَّابِ فَأَشْفَقَتْ الْأَنْصَارُ، فَقَالَ عُمَرُ تَمْنَعُونَ ابْنَ السَّبِيلِ؟ مَا يَخْلُفُ اللَّهُ تَعَالَى فِي ضُرُوعِ الْإِبِلِ بِاللَّيْلِ وَالنَّهَارِ، ابْنُ السَّبِيلِ أَحَقُّ بِالْمَاءِ مِنْ الثَّاوِي عَلَيْهِ " فَهَذَا فِعْلُ الصَّحَابَةِ وَحُكْمُ عُمَرَ بِحَضْرَتِهِمْ، لَا مُخَالِفَ لَهُ مِنْهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26574–26576 It was narrated to us through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān from Shuʿbah from Abī ʿAwf from Muḥammad ibn ʿUbaydillāh al-Thaqqafī. From Abd al-Rahman ibn Abi Layla: Some people from the Ansar traveled and were left destitute. They passed by a tribe of Arabs and requested hospitality, but they refused. They then asked to purchase provisions, but they again refused. The tribe confined them and took from them by force. When the Bedouins came to Umar ibn al-Khattab to complain, the Ansar became fearful. Umar said, "Do you withhold aid from a wayfarer? Allah does not withhold the sustenance He provides through camels' udders, day and night. The wayfarer has a greater right to water than the resident." This exemplifies the conduct of the Companions and Umar's ruling in their presence, with none among them contesting his judgment—and by Allah, the Exalted, comes all success.

وَرُوِّينَا عَنْ مَالِكٍ: لَا ضِيَافَةَ عَلَى أَهْلِ الْحَاضِرَةِ، وَلَا عَلَى الْفُقَهَاءِ - وَهَذَا قَوْلٌ فِي غَايَةِ الْفَسَادِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ

L26577 It has been narrated to us from Mālik: Hospitality is not incumbent upon urban dwellers or jurists—and this opinion is utterly corrupt—and with Allah, the Exalted, lies all success.

[الْأَحْبَاسُ] [مَسْأَلَةٌ أَحْكَام الْوَقْفُ]

L26578–26579

Endowments (Ahbas): A Question on the Rulings of Waqf

١٦٥٤ - مَسْأَلَةٌ: وَالتَّحْبِيسُ - وَهُوَ الْوَقْفُ - جَائِزٌ فِي الْأُصُولِ مِنْ الدُّورِ وَالْأَرَضِينَ بِمَا فِيهَا مِنْ الْغِرَاسِ وَالْبِنَاءِ إنْ كَانَتْ فِيهَا، وَفِي الْأَرْحَاءِ، وَفِي الْمَصَاحِفِ، وَالدَّفَاتِرِ.

L26580 Issue 1654: Endowment (ḥabs) - which constitutes waqf - is permissible for principal assets among dwellings and lands, including any vegetation and buildings within them if present, and in mills, in copies of the Qur'an, and in registers.

وَيَجُوزُ أَيْضًا فِي الْعَبِيدِ، وَالسِّلَاحِ، وَالْخَيْلِ، فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ فِي الْجِهَادِ فَقَطْ، لَا فِي غَيْرِ ذَلِكَ - وَلَا يَجُوزُ فِي شَيْءٍ غَيْرِ مَا ذَكَرْنَا أَصْلًا، وَلَا فِي بِنَاءٍ دُونَ الْقَاعَةِ.

L26581 It is also permissible to use slaves, weapons, and horses in the path of Allah, may He be exalted and glorified, specifically for jihad and nothing else. It is not permissible at all for anything other than what we have mentioned, nor in any building other than a mosque.

وَجَائِزٌ لِلْمَرْءِ أَنْ يَحْبِسَ عَلَى مَنْ أَحَبَّ، أَوْ عَلَى نَفْسِهِ، ثُمَّ عَلَى مَنْ شَاءَ - وَخَالَفَنَا فِي هَذَا قَوْمٌ -: فَطَائِفَةٌ أَبْطَلَتْ الْحَبْسَ مُطْلَقًا وَهُوَ قَوْلُ شُرَيْحٍ، وَرُوِيَ عَنْ أَبِي حَنِيفَةَ، وَطَائِفَةٌ قَالَتْ: لَا حَبْسَ إلَّا فِي سِلَاحٍ، أَوْ كُرَاعٍ، رُوِيَ ذَلِكَ عَنْ ابْنِ مَسْعُودٍ، وَعَلِيٍّ، وَابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمْ -

L26582 It is permissible for a person to endow property for those he loves, or for himself, and thereafter for whomever he wishes - though some have opposed our position in this matter. One group invalidated endowments absolutely, which is the opinion of Shurayh, reported also from Abu Hanifah. Another group maintained: "No endowment is valid except for weapons or livestock" - this being transmitted from Ibn Mas'ud, Ali, and Ibn Abbas (may Allah be pleased with them).

وَطَائِفَةٌ أَجَازَتْ الْحَبْسَ فِي كُلِّ شَيْءٍ، وَفِي الثِّيَابِ، وَالْعَبِيدِ، وَالْحَيَوَانِ، وَالدَّرَاهِمِ، وَالدَّنَانِيرِ - وَهُوَ قَوْلُ مَالِكٍ.

L26583 A school permitted ḥabs in all things, including clothing, slaves, animals, *dirhams*, and *dinars*—this is the position of Mālik.

وَأَتَى أَبُو حَنِيفَةَ بِقَوْلٍ خَالَفَ فِيهِ كُلَّ مَنْ تَقَدَّمَ وَالسُّنَّةَ وَالْمَعْقُولَ فَقَالَ: الْحَبْسُ جَائِزٌ فِي الصِّحَّةِ، وَفِي الْمَرَضِ، إلَّا أَنَّ لِلْمُحْبِسِ إبْطَالَهُ مَتَى شَاءَ، وَبَيْعَهُ وَارْتِجَاعَهُ بِنَقْضِ الْحَبْسِ الَّذِي عَقَدَ فِيهِ، وَلَا يَجُوزُ بَعْدَ الْمَوْتِ أَيْضًا، وَهَذَا أَشْهَرُ أَقْوَالِهِ - وَرُوِيَ عَنْهُ: أَنَّهُ لَا يَجُوزُ إلَّا بَعْدَ الْمَوْتِ، ثُمَّ اخْتَلَفُوا عَنْهُ أَيَجُوزُ لِلْوَرَثَةِ إبْطَالُهُ - وَهَذَا هُوَ الْأَشْهَرُ عَنْهُ

L26584 Abu Hanifah advanced an opinion contradicting all predecessors, the Sunnah, and rational principles, stating: Endowment is permissible during health and illness, except that the endower may nullify it at will, sell it, or reclaim it by revoking the endowment he established. It is also not permissible after death. This is his most renowned position. A narration attributes to him that endowment is only permissible after death. There is disagreement reported from him regarding whether heirs may annul it—this being the most well-known opinion from him—or whether it is not permissible for them to

annul it. The mere mention of this opinion suffices to demonstrate its invalidity, for no Sunnah supports it, no analogy substantiates it, no predecessor is known to have held it, and its differentiation is flawed—thus, it collapses entirely.

L26585–26587 As for the statement narrated from Ali, Ibn Masʿud, and Ibn Abbas, it has not been authenticated as originating from any of them. Among them: As for Ibn Masʿud, we have transmitted from him through the chain of Sufyān ibn ʿUyaynah from Muṭarrif ibn Ṭarīf from an unnamed man from al-Qāsim—who is the son of ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Masʿūd—from Ibn Masʿūd that he said: "There is no detention except for weapons or livestock." This narration is rejected because it comes from an unnamed man, and because al-Qāsim's father did not memorize a single word from his own father—as he was six years old when his father died. How then could his son [have transmitted anything]? We find no basis for this narration from Ibn ʿAbbās whatsoever, nor from ʿAlī. Rather, we categorically assert that this is a lie falsely ascribed to ʿAlī, for his detention in Yanbuʿ and other locations is more renowned than the sun, while falsehoods are abundant. Perhaps those who adopt this position rely on the authenticated report that the Prophet—may God bless him and his family—would allocate his surplus provisions beyond basic sustenance to weapons and livestock.

L26588 Abu Muhammad said: It is said: Yes. If it is soundly established from the Prophet (peace be upon him and his family) that the endowment applies to assets other than warhorses and weapons, then upholding this opinion becomes obligatory—as that has been confirmed as sound. Thus, this opinion is likewise invalidated.

L26589 As for those who invalidated endowments entirely: Abd al-Malik ibn Habib reported from al-Waqidi, who said: "There is no Companion of the Messenger of Allah—peace and blessings be upon him and his family—except that he dedicated land as an endowment, except Abd al-Rahman ibn Awf, for he disliked endowments." This is a narration by unreliable individuals, as the additions within it exacerbated its weakness, and perhaps before it, the position was stronger.

- أَمْ لَا يَجُوزُ؟ وَهَذَا قَوْلٌ يَكْفِي إِيرَادُهُ مِنْ فَسَادِهِ، لِأَنَّهُ لَمْ تَأْتِ بِهِ سُنَّةٌ، وَلَا أَيَّدَهُ قِيَاسٌ، وَلَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُ، وَتَفْرِيقٌ فَاسِدٌ - فَسَقَطَ جُمْلَةً.

وَأَمَّا الْقَوْلُ الْمَرْوِيُّ عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ، وَابْنِ عَبَّاسٍ: فَإِنَّهُ لَمْ يَصِحَّ عَنْ أَحَدٍ مِنْهُمْ -: أَمَّا ابْنُ مَسْعُودٍ فَرُوِّيناهُ مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ عَنْ رَجُلٍ عَنْ الْقَاسِمِ - هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ - عَنْ ابْنِ مَسْعُودٍ أَنَّهُ قَالَ: لَا حَبْسَ إِلَّا فِي سِلَاحٍ أَوْ كُرَاعٍ - وَهَذِهِ رِوَايَةٌ سَاقِطَةٌ، لِأَنَّهَا عَنْ رَجُلٍ لَمْ يُسَمَّ؛ وَلِأَنَّ وَالِدَ الْقَاسِمِ لَا يَحْفَظُ عَنْ أَبِيهِ كَلِمَةً، وَكَانَ لَهُ إِذْ مَاتَ أَبُوهُ سِتُّ سِنِينَ فَكَيْفَ وَلَدَهُ؟ وَلَا نَعْرِفُهَا عَنْ ابْنِ عَبَّاسٍ أَصْلًا، وَلَا عَنْ عَلِيٍّ، بَلْ نَقْطَعُ عَلَى أَنَّهَا كَذِبٌ عَلَى عَلِيٍّ، لِأَنَّ إِيقَافَهُ يَنْبُعَ، وَغَيْرَهَا: أَشْهَرُ مِنْ الشَّمْسِ، وَالْكَذِبُ كَثِيرٌ، وَلَعَلَّ مَنْ ذَهَبَ إِلَى هَذَا يَتَعَلَّقُ بِأَنَّهُ قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ كَانَ يَجْعَلُ مَا فَضَلَ عَنْ قُوتِهِ فِي السِّلَاحِ وَالْكُرَاعِ.

قَالَ أَبُو مُحَمَّد: فَيُقَالُ: نَعَمْ، وَإِنْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِيقَافُ غَيْرِ الْكُرَاعِ، وَالسِّلَاحِ -: وَجَبَ الْقَوْلُ بِهِ أَيْضًا، وَقَدْ صَحَّ ذَلِكَ، فَبَطَلَ أَيْضًا هَذَا الْقَوْلُ.

وَأَمَّا مَنْ أَبْطَلَ الْحَبْسَ جُمْلَةً: فَإِنَّ عَبْدَ الْمَلِكِ بْنَ حَبِيبٍ رَوَى عَنْ الْوَاقِدِيِّ قَالَ: مَا مِنْ أَحَدٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِلَّا وَقَدْ أَوْقَفَ وَحَبَسَ أَرْضًا، إِلَّا عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ فَإِنَّهُ كَانَ يَكْرَهُ الْحَبْسَ - وَهَذِهِ رِوَايَةُ أَخْبَاثٍ فَإِنَّهَا زَادَتْ مَا جَاءَتْ فِيهِ ضَعْفًا وَلَعَلَّهُ قَبْلَهُ كَانَ أَقْوَى.

L26590 As for Mālik and those who adopted his school, they argued that they analogized matters without textual evidence to those with textual evidence.

وَأَمَّا مَالِكٌ وَمَنْ قَلَّدَهُ: فَإِنَّهُمْ احْتَجُّوا بِأَنَّهُمْ قَاسُوا عَلَى مَا جَاءَ فِيهِ النَّصُّ مَا لَا نَصَّ فِيهِ.

L26591 Abu Muhammad said: All analogy is entirely invalid, so how then, when the text itself nullifies it? For endowing a thing for someone other than its owner and stipulating that it cannot be inherited, sold, or gifted are conditions not found in the Book of Allah, the Exalted and Glorious.

قَالَ أَبُو مُحَمَّد: وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، فَكَيْفَ وَالنَّصُّ يُبْطِلُهُ؛ لِأَنَّ إِيقَافَ الشَّيْءِ لِغَيْرِ مَالِكٍ مِنْ النَّاسِ، وَاشْتِرَاطُ الْمَنْعِ مِنْ أَنْ يُورَثَ، أَوْ يُبَاعَ، أَوْ يُوهَبَ: شُرُوطٌ لَيْسَتْ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ.

L26592 The Messenger of Allah (may Allah bless him and his family and grant him peace) said: "Whoever stipulates a condition not found in the Book of Allah, it is not binding upon him even if he stipulates it a hundred times. Every condition not in the Book of Allah is void." Thus, it is established that none of these conditions are permissible except only that which the Messenger of Allah (peace be upon him) explicitly declared permissible - and that [which he permitted] exists in the Book of Allah the Exalted.

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ اشْتَرَطَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ فَلَيْسَ لَهُ وَإِنْ شَرَطَ مِائَةَ مَرَّةٍ كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» ، فَصَحَّ أَنَّهُ لَا يَجُوزُ مِنْ هَذِهِ الشُّرُوطِ إِلَّا مَا نَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَلَى جَوَازِهِ فَقَطْ، فَكَانَ ذَلِكَ فِي كِتَابِ اللَّهِ تَعَالَى.

L26593 Due to the statement of Allāh, the Almighty and Majestic: "He does not speak out of [his own] inclination; it is only a revelation inspired" [53:3-4].[7]

لِقَوْلِهِ عَزَّ وَجَلَّ: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤]

L26594–26596 And [due to] His saying, the Exalted: "that you may judge between the people by what Allah has revealed to you" [an-Nisā' 4:105]. Especially dinars and dirhams, and anything that has no benefit except through the destruction of its substance or transferring it from one ownership to another – this revokes and invalidates the *waqf*.[8]

وَلِقَوْلِهِ تَعَالَى: {لِتَحْكُمَ بَيْنَ النَّاسِ بِمَا أَرَاكَ اللَّهُ} [النساء: ١٠٥] لَا سِيَّمَا الدَّنَانِيرُ، وَالدَّرَاهِمُ، وَكُلُّ مَا لَا مَنْفَعَةَ فِيهِ، إِلَّا بِإِتْلَافِ عَيْنِهِ، أَوْ إِخْرَاجِهَا عَنْ مِلْكٍ إِلَى مِلْكٍ، فَهَذَا هُوَ نَقْضُ الْوَقْفِ وَإِبْطَالُهُ.

L26597 They may cite as evidence what has been authentically reported from the Messenger of Allah (peace and blessings of Allah be upon him and his family): "When a person dies, his deeds cease except for three things: a perpetual charity, beneficial knowledge, or a righteous child who supplicates for him."

وَيُمْكِنُ أَنْ يَحْتَجُّوا بِمَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَمَلُهُ إِلَّا مِنْ ثَلَاثِ أَشْيَاءَ: مِنْ صَدَقَةٍ جَارِيَةٍ، أَوْ عِلْمٍ يُنْتَفَعُ بِهِ، أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ» .

L26598 Thus, there is no valid argument for them in this matter, for there is no

[7] **Qur'an references (L26593):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).
[8] **Qur'an references (L26594):** Qur'an 4:105 (An-Nisa).

فَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ الصَّدَقَةَ الْجَارِيَةَ لَا شَكَّ فِي أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَعْنِ بِهَا إِلَّا مَا أَجَازَهُ مِنْ الصَّدَقَاتِ، لَا كُلَّ مَا يَظُنُّهُ الْمَرْءُ صَدَقَةً، كَمَنْ تَصَدَّقَ بِمُحَرَّمٍ، أَوْ شَرَطَ فِي صَدَقَتِهِ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ.

doubt that he—peace and blessings be upon him—only meant by "ongoing charity" what he permitted as valid charitable acts, not everything a person might assume to be charity, such as one who donates something forbidden by Islamic law or imposes a condition in his charity not stipulated in the Book of Allah, the Exalted and Glorious.

L26599 فَصَحَّ أَنَّ الصَّدَقَةَ الْجَارِيَةَ، الْبَاقِي أَجْرُهَا بَعْدَ الْمَوْتِ -: إمَّا صَدَقَةٌ مُطْلَقَةٌ فِيمَا تَجُوزُ الصَّدَقَةُ بِهِ مِمَّا صَحَّ مِلْكُ الْمُتَصَدَّقِ بِهِ عَلَيْهِ، وَلَمْ يَشْتَرِطْ فِيهَا شَرْطًا مُفْسِدًا.

It is established that perpetual charity—whose reward persists after death—is an absolute charity pertaining to what is permissible to donate, from that which the recipient has valid ownership of, and wherein no invalidating condition has been stipulated.

L26600 وَإِمَّا صَدَقَةٌ مَوْقُوفَةٌ فِيمَا يَجُوزُ الْوَقْفُ فِيهِ.

Alternatively, it may be a charitable donation (ṣadaqah) constituted as an endowment (waqf), pertaining to matters in which establishing an endowment is legally permissible.

L26601 فَصَحَّ أَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ حُجَّةٌ فِيمَا يُخْتَلَفُ فِيهِ مِنْ الصَّدَقَاتِ، أَيَجُوزُ أَمْ لَا؟ كَمَنْ تَصَدَّقَ بِصَدَقَةٍ لَمْ يُجْزِهَا الْمُتَصَدَّقُ عَلَيْهِ، وَكَمَنْ تَصَدَّقَ فِي وَصِيَّتِهِ عَلَى وَارِثٍ أَوْ بِأَكْثَرَ مِنْ الثُّلُثِ.

It has been established that this report contains no valid evidence regarding the disputed matters of alms - whether it is permissible or not - such as one who gives alms that the recipient does not accept, or one who designates in his will to give alms to an heir or more than one-third.

L26602 وَلَا بِمُحَرَّمٍ: كَمَنْ تَصَدَّقَ بِخَمْرٍ، أَوْ خِنْزِيرٍ.

Nor with something forbidden, such as one who gives wine or a pig in charity.

L26603 وَإِنَّمَا فِيهِ: أَنَّ الصَّدَقَةَ الْجَائِزَةَ الْمُتَقَبَّلَةَ يَبْقَى أَجْرُهَا بَعْدَ الْمَوْتِ فَقَطْ.

The ruling here is that the reward of the valid and accepted sadaqah persists exclusively after death.

L26604 فَبَطَلَ هَذَا الْقَوْلُ جُمْلَةً لِتَعَرِّيهِ مِنْ الْأَدِلَّةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

This statement has been rendered entirely invalid because it is completely stripped of evidences—and success is by Allah, the Exalted.

L26605 قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ لَمْ يَرَ الْحَبْسَ جُمْلَةً: بِمَا رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ أَبِي عَوْنٍ - هُوَ مُحَمَّدُ بْنُ عُبَيْدِ اللَّهِ الثَّقَفِيُّ - قَالَ: قَالَ لِي شُرَيْحٌ: جَاءَ مُحَمَّدٌ بِإِطْلَاقِ - الْحَبْسِ.

Abu Muhammad said: Those who did not consider imprisonment permissible at all cited as evidence what was narrated to us through the chain of Sufyan ibn Uyaynah from Mis'ar ibn Kidam from Abu Awn—who is Muhammad ibn Ubaydullah al-Thaqafi—who said: Shuraih told me, "Muhammad introduced the release from imprisonment."

L26606 And based on what we have narrated through the chain of Sufyān ibn ʿUyaynah from ʿAṭāʾ ibn al-Sāʾib, that he heard Shurayḥ when he was asked about

someone who died and designated his house as an endowment, and he said: "There is no endowment against the obligatory shares decreed by Allah."

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ أَنَّهُ سَمِعَ شُرَيْحًا وَسُئِلَ فِيمَنْ مَاتَ وَجَعَلَ دَارِهِ حَبْسًا فَقَالَ: لَا حَبْسَ عَنْ فَرَائِضِ اللَّهِ.

L26607–26609 Ali said: This is a disconnected chain; rather, the sound view is contrary to it, which is that Muhammad - peace be upon him and his family - explicitly established the waqf in the text - as we will mention after this, if Allah the Exalted wills. How then [can this be reconciled], given that... The wording indicates that imprisonment had existed, and Muḥammad—peace and blessings be upon him and his family—came to abolish it. This claim is baseless and known with certainty, for the Arabs during their pre-Islamic era of ignorance did not recognize the imprisonment over which two parties disputed. Rather, it is a Sharīʿa term and Islamic law brought by Muḥammad—peace and blessings be upon him and his family—just as he brought prayer, zakāh, and fasting. Were it not for him (peace and blessings be upon him), we would have known nothing of these religious ordinances or others. Thus, this claim is entirely invalid.

قَالَ عَلِيٌّ: هَذَا مُنْقَطِعٌ، بَلْ الصَّحِيحُ خِلَافُهُ، وَهُوَ أَنَّ مُحَمَّدًا - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - جَاءَ بِإِثْبَاتِ الْحَبْسِ نَصًّا - عَلَى مَا نَذْكُرُهُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى - فَكَيْفَ، وَهَذَا اللَّفْظُ يَقْتَضِي أَنَّهُ قَدْ كَانَ الْحَبْسُ، وَقَدْ جَاءَ مُحَمَّدٌ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِإِبْطَالِهِ - وَهَذَا بَاطِلٌ يُعْلَمُ بِيَقِينٍ، لِأَنَّ الْعَرَبَ لَمْ تَعْرِفْ فِي جَاهِلِيَّتِهَا الْحَبْسَ الَّذِي اخْتَلَفَا فِيهِ، إنَّمَا هُوَ اسْمٌ شَرِيعِيٌّ، وَشَرْعٌ إسْلَامِيٌّ: جَاءَ بِهِ مُحَمَّدٌ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَمَا جَاءَ بِالصَّلَاةِ، وَالزَّكَاةِ، وَالصِّيَامِ، وَلَوْلَاهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَا عَرَفْنَا شَيْئًا مِنْ هَذِهِ الشَّرَائِعِ، وَلَا غَيْرِهَا، فَبَطَلَ هَذَا الْكَلَامُ جُمْلَةً.

L26610 As for his statement, "There is no withholding from Allah's prescribed shares," this is a corrupt assertion, for they do not disagree about the permissibility of gifting, charity during one's lifetime, and bequests after death. All these acts negate the heirs' entitlement to what they would have inherited—had such acts not been present—according to Allah's prescribed shares. Thus, by this claim, it is necessary to invalidate every gift and every bequest, as they prevent Allah's ordained shares in inheritance.

وَأَمَّا قَوْلُهُ " لَا حَبْسَ عَنْ فَرَائِضِ اللَّهِ " فَقَوْلٌ فَاسِدٌ، لِأَنَّهُمْ لَا يَخْتَلِفُونَ فِي جَوَازِ الْهِبَةِ، وَالصَّدَقَةِ فِي الْحَيَاةِ، وَالْوَصِيَّةِ بَعْدَ الْمَوْتِ، وَكُلُّ هَذِهِ مُسْقِطَةٌ لِفَرَائِضِ الْوَرَثَةِ عَمَّا لَوْ لَمْ تَكُنْ فِيهِ لَوَرِثُوهُ عَلَى فَرَائِضِ اللَّهِ عَزَّ وَجَلَّ، فَيَجِبُ بِهَذَا الْقَوْلِ إبْطَالُ كُلِّ هِبَةٍ، وَكُلِّ وَصِيَّةٍ، لِأَنَّهَا مَانِعَةٌ مِنْ فَرَائِضِ اللَّهِ تَعَالَى بِالْمَوَارِيثِ.

L26611 If they say, "Are these divine legislations brought by the text?" we reply, "Imprisonment too is a divine legislation established by the text. Without such textual basis, it would not be permissible."

فَإِنْ قَالُوا: هَذِهِ شَرَائِعُ جَاءَ بِهَا النَّصُّ؟ قُلْنَا: وَالْحَبْسُ شَرِيعَةٌ جَاءَ بِهَا النَّصُّ، وَلَوْلَا ذَلِكَ لَمْ يَجُزْ.

L26612 They cited as evidence what we have narrated through the chain of Al-ʻUqaylī: narrated to us Rawḥ ibn al-Faraj, narrated to us Yaḥyā ibn Bukayr, narrated to us Ibn Lahīʻah, from his brother ʻĪsā, from ʻIkrimah, from Ibn ʻAbbās: "When Sūrah al-Nisā' was revealed, the Messenger of Allah—peace and blessings be upon him and his family—said: 'There is no imprisonment after Sūrah al-Nisā'."

وَاحْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْعُقَيْلِيِّ نا رَوْحُ بْنُ الْفَرَجِ نا يَحْيَى بْنُ بُكَيْرٍ نا ابْنُ لَهِيعَةَ عَنْ أَخِيهِ عِيسَى عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: «لَمَّا نَزَلَتْ سُورَةُ النِّسَاءِ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَا حَبْسَ بَعْدَ سُورَةِ النِّسَاءِ» .

L26613 Abū Muḥammad said: This is a spurious ḥadīth, and Ibn Lahīʿah is unreliable—there is no good in him—and his brother is likewise. The evidence for its fabrication is that Sūrah al-Nisā'—or part of it—was revealed after Uḥud, that is, the inheritance verse. Moreover, the Companions were restricted by the instruction of the Messenger of Allah—peace and blessings be upon him and his family—after Khaybar and after the revelation of the inheritance rulings in Sūrah al-Nisā'.

قَالَ أَبُو مُحَمَّدٍ: هَذَا حَدِيثٌ مَوْضُوعٌ، وَابْنُ لَهِيعَةَ لَا خَيْرَ فِيهِ، وَأَخُوهُ مِثْلُهُ - وَبَيَانُ وَضْعِهِ: أَنَّ " سُورَةَ النِّسَاءِ " أَوْ بَعْضَهَا نَزَلَتْ بَعْدَ أُحُدٍ - يَعْنِي آيَةَ الْمَوَارِيثِ - وَحَبَسَ الصَّحَابَةَ بِعِلْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بَعْدَ خَيْبَرَ وَبَعْدَ نُزُولِ الْمَوَارِيثِ فِي " سُورَةِ النِّسَاءِ ".

L26614 And this is a widely transmitted tradition through successive generations.

وَهَذَا أَمْرٌ مُتَوَاتِرٌ جِيلًا بَعْدَ جِيلٍ.

L26615 If this report were authentic, it would be abrogated by the uninterrupted detention—through his knowledge, peace and blessings be upon him—until his death.

وَلَوْ صَحَّ هَذَا الْخَبَرُ لَكَانَ مَنْسُوخًا بِاتِّصَالِ الْحَبْسِ بِعِلْمِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إلَى أَنْ مَاتَ.

L26616–26618 They also mentioned: What we have narrated via Ibn Wahb's chain—Sufyan ibn ʿUyaynah reported to us from ʿAmr ibn Dinar and from Muhammad and ʿAbdullah, the two sons of Abu Bakr ibn Muhammad ibn ʿAmr ibn Hazm—all of them from Abu Bakr ibn Muhammad, who said: "'Abdullah ibn Zayd ibn ʿAbd Rabbihi said to the Messenger of Allah—peace and blessings be upon him—'O Messenger of Allah, this walled garden of mine is charity, and it is dedicated to Allah and His Messenger.' Then his parents came and said, 'O Messenger of Allah, its maintenance was...'" The Messenger of Allah (peace and blessings be upon him) restored our livelihood. Then they both died, so their son inherited their estate.

وَذَكَرُوا أَيْضًا: مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ، وَمُحَمَّدٍ، وَعَبْدِ اللَّهِ ابْنَيْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ، كُلُّهُمْ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدٍ قَالَ «إنَّ عَبْدَ اللَّهِ بْنَ زَيْدِ بْنِ عَبْدِ رَبِّهِ قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَا رَسُولَ اللَّهِ إنَّ حَائِطِي هَذَا صَدَقَةٌ وَهُوَ إلَى اللَّهِ وَرَسُولِهِ، فَجَاءَ أَبَوَاهُ فَقَالَا: يَا رَسُولَ اللَّهِ، كَانَ قِوَامُ عَيْشِنَا فَرَدَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ مَاتَا فَوَرِثَهُمَا ابْنُهُمَا»

L26619 Some of them added "mawqūfah," and this is an incorrect addition, for there is no proof for them in it due to several aspects:

زَادَ بَعْضُهُمْ " مَوْقُوفَةٌ " وَهِيَ زِيَادَةٌ غَيْرُ صَحِيحَةٍ وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ -:

L26620 The first reason is that it is broken; because Abu Bakr never met Abdullah ibn Zayd.

أَوَّلُهَا - أَنَّهُ مُنْقَطِعٌ، لِأَنَّ أَبَا بَكْرٍ لَمْ يَلْقَ عَبْدَ اللَّهِ بْنَ زَيْدٍ قَطُّ.

L26621 The second is that it constitutes the essential provision for one's livelihood, and no one may give charity from the essential provision for their livelihood. Rather, it is invalid if done. Thus, this narration—if authentic—would serve as evidence for us against them, in agreement with our position and contrary to theirs, which permits charity with that which does not leave a person self-sufficient thereafter.

وَالثَّانِي - أَنَّ فِيهِ أَنَّهُ قِوَامُ عَيْشِهِمْ، وَلَيْسَ لِأَحَدٍ أَنْ يَتَصَدَّقَ بِقِوَامِ عَيْشِهِ، بَلْ هُوَ مَفْسُوخٌ إنْ فَعَلَهُ، فَهَذَا الْخَبَرُ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا عَلَيْهِمْ وَمُوَافِقًا لِقَوْلِنَا، وَمُخَالِفًا لِقَوْلِهِمْ فِي إجَازَتِهِمْ الصَّدَقَةَ بِمَا لَا يَبْقَى لِلْمَرْءِ بَعْدَهُ غِنًى.

L26622 The third is that the term “mawqūfah” (a narration attributed to a companion, not the Prophet) has been exclusively attributed to individuals devoid of virtue.

وَالثَّالِثُ - أَنَّ لَفْظَةَ " مَوْقُوفَةٌ " إِنَّمَا انْفَرَدَ بِهَا مَنْ لَا خَيْرَ فِيهِ.

L26623 They have embellished with reports similar to this. None of them mentions the endowment (waqf). Rather, in them is “charity,” and this we do not deny.

وَمَوَّهُوا بِأَخْبَارٍ نَحْوِ هَذَا، لَيْسَ فِي شَيْءٍ مِنْهَا ذِكْرَ الْوَقْفِ، وَإِنَّمَا فِيهَا " صَدَقَةٌ " وَهَذَا لَا نُنْكِرُهُ.

L26624 And some of them said: Shurayh did not know [the ruling on] imprisonment. If this were valid, it would not be permissible to appoint as a judge someone who does not know such a matter.

وَقَالَ بَعْضُهُمْ: قَدْ كَانَ شُرَيْحٌ لَا يَعْرِفُ الْحَبْسَ - وَلَوْ كَانَ صَحِيحًا لَمْ يَجُزْ أَنْ يَسْتَقْضِيَ مَنْ لَا يَعْرِفُ مِثْلَ هَذَا.

L26625 Abu Muhammad said: If the one who said this had felt shame, it would have been better for him. Why do they not say this about every matter wherein they opposed Shurayḥ? What objection is there to Shurayḥ’s ignorance of one Sunnah and a thousand Sunnahs? By Allah, the abrogation of placing the hands together in prayer escaped Ibn Mas‘ud’s knowledge, the grandmother’s inheritance escaped Abu Bakr’s knowledge, and the obligation to take jizyah from the Zoroastrians for years and expel disbelievers from the Arabian Peninsula until the final year of his caliphate escaped ‘Umar’s knowledge. Were such matters to be traced, they would amount to more than a thousand Sunnahs that escaped the knowledge of those far greater than Shurayḥ.

قَالَ أَبُو مُحَمَّد: لَوْ اسْتَحْيَا قَائِلُ هَذَا لَكَانَ خَيْرًا لَهُ، وَهَلَّا قَالُوا هَذَا فِي كُلِّ مَا خَالَفُوا فِيهِ شُرَيْحًا، وَأَيُّ نَكِرَةٍ فِي جَهْلِ شُرَيْحٍ سُنَّةً وَأَلْفَ سُنَّةً، وَاَللَّهِ لَقَدْ غَابَ عَنْ ابْنِ مَسْعُودٍ نَسْخُ التَّطْبِيقِ، وَلَقَدْ غَابَ عَنْ أَبِي بَكْرٍ مِيرَاثُ الْجَدَّةِ، وَلَقَدْ غَابَ عَنْ عُمَرَ أَخْذُ الْجِزْيَةِ مِنْ الْمَجُوسِ سِنِينَ، وَإِجْلَاءُ الْكُفَّارِ مِنْ جَزِيرَةِ الْعَرَبِ إلَى آخِرِ عَامٍ مِنْ خِلَافَتِهِ، وَبِمِثْلِ هَذَا لَوْ تُتُبِّعَ لَبَلَغَ أَزِيدَ مِنْ أَلْفِ سُنَّةٍ غَابَتْ عَمَّنْ هُوَ أَجَلُّ مِنْ شُرَيْحٍ.

L26626 If no one were appointed as a judge except those from whom no Sunnah is hidden and from whose awareness no Quranic ruling ever absents itself—even for an hour of their life—then none after the Messenger of Allah (peace be upon him) could have attained full competence, issued a judgment, or given a legal ruling. Yet those who are ignorant are excused, and those who are knowledgeable are envied.

وَلَوْ لَمْ يُسْتَقْضَ إلَّا مَنْ لَا تَخْفَى عَلَيْهِ سُنَّةٌ، وَلَا تَغِيبُ عَنْ ذِكْرِهِ سَاعَةً مِنْ دَهْرِهِ حُكْمٌ مِنْ أَحْكَامِ الْقُرْآنِ -: مَا اسْتَقْصَى أَحَدٌ، وَلَا قَضَى وَلَا أَفْتَى: أَحَدٌ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكِنْ مَنْ جَهِلَ عُذِرَ وَمِنْ عَلِمَ غُبِطَ.

L26627 They said: If charity involves proceeds that are the objective of the endowment, selling them is permissible; thus this ruling is more appropriate in principle.

وَقَالُوا: الصَّدَقَةُ بِالثَّمَرَةِ الَّتِي هِيَ الْغَرَضُ مِنْ الْحَبْسِ يَجُوزُ فِيهَا الْبَيْعُ، فَذَلِكَ فِي الْأَصْلِ أَوْلَى.

L26628 Ali said: This is analogy, and all analogy is invalid. Moreover, it is a corrupt analogy, for the textual ruling establishes a distinction between them, as we will clarify—God Almighty willing—regarding the endowment and retention

قَالَ عَلِيٌّ: هَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ هُوَ قِيَاسٌ فَاسِدٌ، لِأَنَّ النَّصَّ وَرَدَ بِالْفَرْقِ بَيْنَهُمَا كَمَا نَذْكُرُ إنْ شَاءَ اللَّهُ تَعَالَى مِنْ إيقَافِ الْأَصْلِ وَحَبْسِهِ وَتَسْبِيلِ الثَّمَرَةِ،

of the principal asset and the charitable dedication of its usufruct. Thus, this constitutes an objection from them against the Messenger of God—peace and blessings be upon him—not against others, and these people are contemptible.

فَهَذَا اعْتِرَاضٌ مِنْهُمْ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا عَلَى غَيْرِهِ، وَالْقَوْمُ مَخَاذِيلُ.

L26629–26630 They said: Since endowments are transferred out of ownership to someone other than the owner, this becomes invalid, analogous to one who states: "I have withdrawn my house from my ownership."

وَقَالُوا: لَمَّا كَانَتْ الْأَحْبَاسُ تُخْرَجُ إلَى غَيْرِ مَالِكٍ: بَطَلَ ذَلِكَ، كَمَنْ قَالَ: أَخْرَجْتُ دَارِي عَنْ مِلْكِي.

L26631 Abu Muhammad said: These are whispered temptations, for detention is not a transfer to a non-owner, but rather for the sake of the Owner—who is Allah, the Exalted—akin to the manumission of a slave, with no distinction.

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ وَسَاوِسُ، لِأَنَّ الْحَبْسَ لَيْسَ إخْرَاجًا إلَى غَيْرِ مَالِك، بَلْ إلَى أَجْلِ الْمَالِكِينَ - وَهُوَ اللَّهُ تَعَالَى - كَعِتْقِ الْعَبْدِ وَلَا فَرْقَ.

L26632 Then they contradicted themselves by permitting the endowment of mosques and cemeteries while transferring both to a non-owner. They allowed establishing endowments after death in their most well-known opinions. At this point, they clarified their position by stating: "The mosque constitutes a transfer to those who pray within it."

ثُمَّ قَدْ تَنَاقَضُوا فَأَجَازُوا تَحْبِيسَ الْمَسْجِدِ، وَالْمَقْبَرَةِ، وَإِخْرَاجَهُمَا إلَى غَيْرِ مَالِكٍ، وَأَجَازُوا الْحَبْسَ بَعْدَ الْمَوْتِ فِي أَشْهَرِ أَقْوَالِهِمْ، فَبَلَّحُوا عِنْدَ هَذِهِ فَقَالُوا: الْمَسْجِدُ إخْرَاجٌ إلَى الْمُصَلِّينَ فِيهِ.

L26633 So we said: You are mistaken, for they do not thereby own it, and their prayer therein is like their prayer on their path in an owned open space - there is no distinction.

فَقُلْنَا: كَذَبْتُمْ، لِأَنَّهُمْ لَا يَمْلِكُونَ بِذَلِكَ، وَصَلَاتُهُمْ فِيهِ كَصَلَاتِهِمْ فِي طَرِيقِهِمْ فِي فَضَاءٍ مُتَمَلَّكٍ وَلَا فَرْقَ.

L26634 They said: "It has indeed exited my ownership to a non-owner, with no distinction, because this statement is analogous to the endowment in your school's framework during life. Thus, its analogy must apply upon death, with no difference."

وَقَالُوا: إنَّمَا خَرَجَتْ عَنْ مِلْكِي إلَى غَيْرِ مَالِكٍ وَلَا فَرْقَ، لِأَنَّ هَذَا الْقَوْلُ نَظِيرُ الْحَبْسِ عِنْدَكُمْ فِي الْحَيَاةِ، فَوَجَبَ أَنْ يَكُونَ نَظِيرُهُ فِي الْمَوْتِ وَلَا فَرْقَ.

L26635 They said: Since alms are not valid unless they are taken into possession, and because the religious endowment (waqf) has no owner, it must be nullified.

وَقَالُوا: لَمَّا كَانَتْ الصَّدَقَاتُ لَا تَجُوزُ إلَّا حَتَّى تُحَازَ، وَكَانَ الْحَبْسُ لَا مَالِكَ لَهُ: وَجَبَ أَنْ يَبْطُلَ.

L26636 So we said: This is arguing for an error with another error, and we have invalidated your claim that charity is not valid until it is taken possession of. We clarified that this was an opinion from 'Umar and 'Uthmān—may Allah be pleased with them—which others such as Ibn Mas'ūd and 'Alī—may Allah be pleased with them—opposed them in it. How can this be, when the endowment is transferred to the possession of Allah, the Exalted and

فَقُلْنَا: هَذَا احْتِجَاجٌ لِلْخَطَأِ بِالْخَطَأِ، وَقَدْ أَبْطَلْنَا قَوْلَكُمْ: أَنَّ الصَّدَقَةَ لَا تَصِحُّ حَتَّى تُقْبَضَ، وَبَيَّنَّا أَنَّهُ رَأْيٌ مِنْ عُمَرَ، وَعُثْمَانَ - رَضِيَ اللَّهُ عَنْهُمَا - قَدْ خَالَفَهُمَا غَيْرُهُمَا فِيهِ، كَابْنِ

مَسْعُودٍ، وَعَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمَا -، فَكَيْفَ وَالْحَبْسُ خَارِجٌ إلَى قَبْضِ اللَّهِ عَزَّ وَجَلَّ لَهُ، الَّذِي هُوَ وَارِثُ الْأَرْضِ وَمَنْ عَلَيْهَا وَكُلُّ شَيْءٍ بِيَدِهِ وَفِي قَبْضَتِهِ.

Glorious, who is the Inheritor of the earth and all upon it, and everything is in His hand and under His grasp?

وَقَدْ أَجَازَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَدَقَةَ أَبِي طَلْحَةَ لِلَّهِ تَعَالَى دُونَ أَنْ يَذْكُرَ مُتَصَدَّقًا عَلَيْهِ، ثُمَّ أَمَرَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنْ يَجْعَلَهَا فِي أَقَارِبِهِ وَبَنِي عَمِّهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26637 The Messenger of Allah—peace and blessings be upon him—approved Abu Talhah's charity to Allah the Exalted without specifying a recipient. Then he—peace and blessings be upon him—commanded him to allocate it to his relatives and the sons of his paternal uncles. With Allah the Exalted lies all success.

وَمِنْ عَجَائِبِ الدُّنْيَا الْمُخْزِيَةِ لَهُمْ: احْتِجَاجُهُمْ فِي هَذَا بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَاقَ الْهَدْيَ فِي الْحُدَيْبِيَةِ وَقَلَّدَهَا، وَهَذَا يَقْتَضِي إيجَابَهُ لَهُ، ثُمَّ صَرَفَهَا عَمَّا أَوْجَبَهَا لَهُ وَجَعَلَهَا لِلْإِحْصَارِ، وَلِذَلِكَ أَبْدَلَهَا عَامًا ثَانِيًا.

L26638 Among the shameful marvels for them is their argument in this matter: that the Messenger of Allah—peace and blessings be upon him—led the sacrificial animal at Ḥudaybiyyah and garlanded it, which would necessitate making it obligatory upon him. Then he diverted it from what he had made obligatory upon himself and designated it for prevention from completing the pilgrimage. For that reason, he substituted it in the following year.

قَالَ أَبُو مُحَمَّد: أَوَّلُ ذَلِكَ كَذِبُهُمْ فِي قَوْلِهِمْ، وَهَذَا يَقْتَضِي إيجَابَهُ لَهُ وَمَا اقْتَضَى ذَلِكَ قَطُّ إيجَابَهُ، لِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَنُصَّ عَلَى أَنَّهُ صَارَ التَّطَوُّعُ بِذَلِكَ وَاجِبًا، بَلْ أَبَاحَ رُكُوبَ الْبَدَنَةِ الْمُقَلَّدَةِ.

L26639–26641 Abu Muhammad said: The first of that is their falsehood in their statements, and this necessitates imposing its obligation upon him and what it necessitates. That is by no means an obligation, because the Prophet (peace and blessings be upon him) did not explicitly state that voluntary worship thereby becomes obligatory; rather, he permitted riding the sacrificial camel marked with a garland.

وَمِنْ الْمُحَالِ أَنْ تَكُونَ وَاجِبَةً لِوَجْهٍ مَا خَارِجَةً بِذَلِكَ عَنْ مَالِهِ بَاقِيَةً فِي مَالِهِ.

L26642 It is impossible for the obligation to be obligatory in any respect, thereby separating it from his wealth while remaining within his wealth.

ثُمَّ كَذَبُوا فِي قَوْلِهِمْ: إنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَبْدَلَهُ مِنْ قَابِلٍ.

L26643 Then they lied by claiming that he—peace and blessings be upon him—had replaced it in the following year.

فَمَا صَحَّ هَذَا قَطُّ.

L26644 Thus, this was never authentic.

وَمِنْ الْمُحَالِ أَنْ يُبَدِّلَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - هَدْيًا وَضَعَهُ فِي حَقٍّ فِي وَاجِبٍ ثُمَّ أَيُّ شَبَهٍ بَيْنَ هَدْيٍ تَطَوُّعٍ يُنْحَرُ عَنْ وَاجِبٍ فِي الْإِحْصَارِ عَنْ أَصْحَابِهِ، وَعَنْ نَفْسِهِ الْمُقَدَّسَةِ فِي حَبْسٍ.

L26645 It is inconceivable that he—peace and blessings be upon him—would alter a sacrificial rite he established as an obligatory duty. Furthermore, what resemblance could exist between a voluntary sacrifice offered **for** his companions to fulfill an obligation **due to** their prevention, and a sacrifice offered **for** his sacred self in confinement?

L26646 Is he not ashamed, given the extent of his knowledge and intellect, to speak about the religion of Allah the Almighty and Majestic?

أَمَا يَسْتَحْيِي مِنْ هَذَا مِقْدَارَ عِلْمِهِ وَعَقْلِهِ أَنْ يَتَكَلَّمَ فِي دِينِ اللَّهِ عَزَّ وَجَلَّ.

L26647 Then we say to them: You assert that he may establish an endowment (ḥabs) and subsequently retract it, and you have analogized this to the aforementioned sacrificial offering. Inform us: Does he retain the right to retract the sacrificial offering after obligating it and sell it in this manner without any cause, or not? If they respond "No," we reply: This contradicts your position regarding the endowment, since you permit retracting it without cause, thereby exposing the fallacy of your invalid and baseless analogy. We further ask them: Why did you not classify it under deferred manumission (tadbīr), which you deem irrevocable? Or why did you not analogize your ruling on deferred manumission to your ruling on the endowment? But Allah the Exalted has decreed for you nothing but opposition to the truth in both matters.

ثُمَّ نَقُولُ لَهُمْ: أَنْتُمْ تَقُولُونَ: إِنَّ لَهُ أَنْ يَحْبِسَ ثُمَّ يَفْسَخَهُ، وَقِسْتُمُوهُ عَلَى الْهَدْيِ الْمَذْكُورِ، فَأَخْبِرُونَا: هَلْ لَهُ رُجُوعٌ فِي الْهَدْيِ بَعْدَ أَنْ يُوجِبَهُ فَيَبِيعَهُ هَكَذَا بِلَا سَبَبٍ أَمْ لَا؟ فَمِنْ قَوْلِهِمْ: لَا، فَنَقُولُ لَهُمْ: فَهَذَا خِلَافُ قَوْلِكُمْ فِي الْحَبْسِ إِذْ أَجَزْتُمُ الرُّجُوعَ فِيهِ بِلَا سَبَبٍ، وَظَهَرَ هَوَسُ قِيَاسِكُمُ الْفَاسِدِ الْبَارِدِ، وَيُقَالُ لَهُمْ: هَلَّا قَسَّمْتُمُوهُ عَلَى التَّدْبِيرِ الَّذِي لَا يَجُوزُ فِيهِ الرُّجُوعُ عِنْدَكُمْ، أَوْ هَلَّا قِسْتُمْ قَوْلَكُمْ فِي التَّدْبِيرِ عَلَى قَوْلِكُمْ فِي الْحَبْسِ، لَكِنْ أَبَى اللَّهُ تَعَالَى لَكُمْ إِلَّا خِلَافَ الْحَقِّ فِي كِلَا الْوَجْهَيْنِ.

L26648 Abu Muhammad said: All of this constitutes the argument of those who categorically reject endowments. As for Abu Hanifah's position, all of this contradicts his view, for he permits the endowment, then permits its revocation by the endower and his heirs after him, while also permitting its implementation. This is unreasonable. They neglected their own evidence from the principle "A Muslim is bound by his stipulations" and the Quranic injunction {Fulfill [your] contracts} [al-Mā'idah 5:1].[9]

قَالَ أَبُو مُحَمَّد: وَكُلُّ هَذَا فَإِنَّمَا مِنْ احْتِجَاجِ مَنْ لَا يَرَى الْحَبْسَ جُمْلَةً وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَكُلُّ هَذَا خِلَافٌ لَهُ، لِأَنَّهُ يُجِيزُ الْحَبْسَ، ثُمَّ يُجِيزُ نَقْضَهُ الْمُحْبَسَ، وَلِوَرَثَتِهِ بَعْدَهُ، وَيُجِيزُ إِمْضَاءَهُ وَهَذَا لَا يُعْقَلُ، وَنَسُوا احْتِجَاجَهُمْ بِ «الْمُسْلِمِ عِنْدَ شَرْطِهِ» وَ {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] .

L26649–26651 Abū Muḥammad said: Since all these statements have been invalidated, let us present the evidence for the correctness of our view—by the ability and power of Allah, the Exalted. It has been narrated to us through the chain of al-Bukhārī: from Musaddad, from Yazīd ibn Zurai', from Ibn 'Awn, from Nāfi', from 'Umar, who said: "'Umar acquired land in Khaybar and came to the Prophet—peace and blessings be upon him—and said: 'I have acquired land unlike any property I have ever owned in value. What do you command me to do with it?' He replied: 'If you wish, you may withhold its principal and donate it as a waqf.' So he endowed it as a waqf." Umar: "That its corpus cannot be sold."

قَالَ أَبُو مُحَمَّد: فَإِذْ قَدْ بَطَلَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا فَلْنَذْكُرْ الْبُرْهَانَ عَلَى صِحَّةِ قَوْلِنَا بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ -: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسَدَّدٌ نا يَزِيدُ بْنُ زُرَيْعٍ نا ابْنُ عَوْنٍ عَنْ نَافِعٍ عَنْ عُمَرَ قَالَ «أَصَابَ عُمَرُ أَرْضًا بِخَيْبَرَ فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ: أَصَبْتُ أَرْضًا لَمْ أُصِبْ قَطُّ مَالًا أَنْفَسَ مِنْهُ فَكَيْفَ تَأْمُرُ بِهِ؟ فَقَالَ: إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا فَتَصَدَّقَ بِهَا عُمَرُ: أَنَّهُ لَا يُبَاعُ أَصْلُهَا»

[9] **Qur'an references (L26648):** Qur'an 5:1 (Al-Ma'idah).

وَلَا تُورَثُ -: فِي الْفُقَرَاءِ وَالْقُرْبَى، وَالرِّقَابِ، وَفِي سَبِيلِ اللَّهِ، وَالضَّيْفِ، وَابْنِ السَّبِيلِ، لَا جُنَاحَ عَلَى مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ، أَوْ يُطْعِمَ صَدِيقًا غَيْرَ مُتَمَوِّلٍ فِيهِ ".

L26652 It is not inherited—for the poor, close relatives, slaves, in the cause of Allah, guests, and wayfarers. The administrator incurs no blame for consuming from it fairly or feeding a companion without hoarding it.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا سَعِيدُ بْنُ عَبْدِ الرَّحْمَنِ الْمَكِّيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ «قَالَ عُمَرُ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّ الْمِائَةَ سَهْمٍ الَّتِي بِخَيْبَرَ لَمْ أُصِبْ مَالًا قَطُّ هُوَ أَعْجَبُ إِلَيَّ مِنْهَا، وَقَدْ أَرَدْتُ أَنْ أَتَصَدَّقَ بِهَا فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - احْبِسْ أَصْلَهَا وَسَبِّلْ ثَمَرَتَهَا» .

L26653 From the path of Ahmad ibn Shu'ayb: Sa'id ibn 'Abd al-Rahman al-Makki narrated to us, from Sufyan ibn 'Uyaynah, from 'Ubayd Allah ibn 'Umar, from Nafi', from Ibn 'Umar, who said: "Umar said to the Prophet (peace and blessings of Allah be upon him), 'The one hundred shares in Khaybar—I have never acquired any wealth dearer to me than them, and I intended to give them as ṣadaqah.' The Prophet (peace and blessings of Allah be upon him) said to him: 'Retain its principal and endow its yield as charity.'"

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ حَامِدِ بْنِ يَحْيَى الْبَلْخِيِّ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ مِثْلُهُ وَفِيهِ «احْبِسِ الْأَصْلَ وَسَبِّلِ الثَّمَرَةَ» .

L26654 And we have also narrated it through the chain of Ḥāmid ibn Yaḥyā al-Balkhī, from Sufyān ibn ʿUyaynah, from ʿUbayd Allāh ibn ʿUmar, from Nāfiʿ, from Ibn ʿUmar: a similar narration, and in it is "Retain the principal and dedicate the proceeds as charity in perpetuity."

وَحَبَسَ عُثْمَانُ بِئْرَ رُومَةَ عَلَى الْمُسْلِمِينَ بِعِلْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَنْقُلُ ذَلِكَ الْخَلَفُ عَنِ السَّلَفِ، جِيلًا بَعْدَ جِيلٍ، وَهِيَ مَشْهُورَةٌ بِالْمَدِينَةِ.

L26655 Uthman restricted access to the Well of Ruma for the Muslims with the knowledge of the Messenger of Allah (peace and blessings be upon him and his family), as later generations transmit this from earlier ones, generation after generation—and it is famous in Medina.

وَكَذَلِكَ صَدَقَاتُهُ - عَلَيْهِ السَّلَامُ - بِالْمَدِينَةِ مَشْهُورَةٌ كَذَلِكَ.

L26656 Similarly, his charitable acts—peace be upon him—in Medina are similarly well-known.

وَقَدْ تَصَدَّقَ عُمَرُ فِي خِلَافَتِهِ بِثَمْغٍ، وَهِيَ عَلَى نَحْوِ مِيلٍ مِنَ الْمَدِينَةِ وَتَصَدَّقَ بِمَالِهِ وَكَانَ يَغُلُّ مِائَةَ وَسْقٍ بِوَادِي الْقُرَى كُلُّ ذَلِكَ حَبْسًا، وَقْفًا، لَا يُبَاعُ وَلَا يُشْتَرَى، أَسْنَدَهُ إِلَى حَفْصَةَ، ثُمَّ إِلَى ذَوِي الرَّأْيِ مِنْ أَهْلِهِ.

L26657 During his caliphate, 'Umar donated Thamgh - located approximately one mile from Medina - and his wealth in Wadi al-Qura, which produced a yield of one hundred wasqs. All of this was designated ḥabs (endowment) and waqf (perpetual trust), neither to be sold nor purchased. He entrusted its administration first to Ḥafṣa, then to those of sound judgment among his household.

وَحَبَسَ عُثْمَانُ، وَطَلْحَةُ، وَالزُّبَيْرُ، وَعَلِيُّ بْنُ أَبِي طَالِبٍ، وَعَمْرُو بْنُ الْعَاصِ: دُورَهُمْ عَلَى بَنِيهِمْ، وَضَيَاعًا مَوْقُوفَةً.

L26658 Uthman, Talhah, al-Zubayr, Ali ibn Abi Talib, and Amr ibn al-'Aṣ endowed their estates for their sons and designated their agricultural lands as waqf.

L26659–26660 Similarly, Ibn Umar, Fatimah the daughter of the Prophet—peace and bless-

ings be upon him and his family—and the rest of the Companions: the entirety of their charitable deeds in Medina are more renowned than the sun. No one is unaware of them.

وَكَذَلِكَ ابْنُ عُمَرَ، وَفَاطِمَةُ بِنْتُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَسَائِرِ الصَّحَابَةِ جُمْلَةُ صَدَقَاتِهِمْ بِالْمَدِينَةِ أَشْهَرُ مِنْ الشَّمْسِ، لَا يَجْهَلُهَا أَحَدٌ.

L26661 Abdullah ibn Amr ibn al-As established al-Waḥṭ as a waqf for his sons.

وَأَوْقَفَ عَبْدُ اللَّهِ بْنُ عَمْرِو بْنِ الْعَاصِ " الْوَهْطَ " عَلَى بَنِيهِ.

L26662 We have abbreviated the chains of narration due to the renown of the matter.

اخْتَصَرْنَا الْأَسَانِيدَ لِاشْتِهَارِ الْأَمْرِ.

L26663 And via the transmission of Muslim: Zuhayr ibn Harb narrated to us, Ali ibn Hafs narrated to us, Warqa' narrated from Abu al-Zinad from al-A'raj from Abu Hurayrah, as part of a ḥadīth, that the Messenger of Allah (may Allah bless him and his family and grant him peace) said: "As for Khalid, he has reserved his armor and military equipment in the way of Allah."

وَمِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ نا عَلِيُّ بْنُ حَفْصٍ نا وَرْقَاءُ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «وَأَمَّا خَالِدٌ فَقَدْ احْتَبَسَ أَدْرَاعَهُ وَأَعْتَادَهُ فِي سَبِيلِ اللَّهِ» فِي حَدِيثٍ.

L26664 From the chain of Muḥammad ibn Bakr al-Baṣrī: Abū Dāwūd narrated to us, al-Ḥasan ibn al-Ṣabbāḥ narrated to us, Shabābah (he is Ibn Sawwār) narrated to us, from Warqāʾ, from Abū al-Zinād, from al-Aʿraj, from Abū Hurayrah, who said: The Prophet—peace and blessings of Allah be upon him and his family—said, "As for Khālid, he has reserved his suits of armor and his slaves in the cause of Allah," in a hadith.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ بَكْرٍ الْبَصْرِيِّ نا أَبُو دَاوُد نا الْحَسَنُ بْنُ الصَّبَّاحِ نا شَبَابَةُ - هُوَ ابْنُ سَوَّارٍ - عَنْ وَرْقَاءَ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ " قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «وَأَمَّا خَالِدٌ فَقَدْ احْتَبَسَ أَدْرَاعَهُ وَأَعْبُدَهُ فِي سَبِيلِ اللَّهِ» فِي حَدِيثٍ.

L26665 Abu Muhammad said: Al-aʿtād is the plural of ʿatīdin – which means "horse" – the speaker said.

قَالَ أَبُو مُحَمَّدٍ: الْأَعْتَادُ جَمْعُ عَتِدٍ - وَهُوَ الْفَرَسُ - قَالَ الْقَائِلُ

L26666 Their insights lie upon their shoulders... while my insight races with preparedness and woe.

رَاحُوا بَصَائِرُهُمْ عَلَى أَكْتَافِهِمْ ... وَبَصِيرَتِي تَعْدُو بِهَا عَتِدٌ وَأَى

L26667 Al-Aʿbudu is the plural of ʿabd, and both terms are correct. It is therefore impermissible to restrict usage to one of them while excluding the other.

وَالْأَعْبُدُ جَمْعُ عَبْدٍ، وَكِلَا اللَّفْظَيْنِ صَحِيحٌ، فَلَا يَجُوزُ الِاقْتِصَارُ عَلَى أَحَدِهِمَا دُونَ الْآخَرِ

L26668 From the chain of Muslim: From Qutaybah ibn Saʿīd, from Sufyān ibn ʿUyaynah, from ʿAmr ibn Dīnār, from Mālik ibn Aws ibn al-Ḥadathān, from ʿUmar ibn al-Khaṭṭāb, who said: "The Messenger of Allah (may Allah bless him and grant him peace) used to spend on his family a year's provision, and whatever remained, he would place in horses and weaponry for the cause of Allah, the Almighty and Majestic."

وَمِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ مَالِكِ بْنِ أَوْسِ بْنِ الْحَدَثَانِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُنْفِقُ عَلَى أَهْلِهِ قُوتَ سَنَةٍ وَمَا بَقِيَ يَجْعَلُهُ فِي الْكُرَاعِ وَالسِّلَاحِ فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ» .

الْكُرَاعُ: الْخَيْلُ فَقَطْ.

L26669 Al-Kurāʿ: horses exclusively.

وَالسِّلَاحُ فِي لُغَةِ الْعَرَبِ: السُّيُوفُ، وَالرِّمَاحُ، وَالْقِسِيُّ، وَالنَّبْلُ، وَالدُّرُوعُ، وَالْجَوَاشِنُ، وَمَا يُدَافَعُ بِهِ: كَالطَّبَرْزِينِ، وَالدَّبُّوسِ، وَالْخِنْجَرِ، وَالسَّيْفِ بِحَدٍّ وَاحِدٍ، وَالدَّرَقِ، وَالتِّرَاسِ.

L26670 In the Arabic language, “weapons” (al-silāḥ) encompass swords, spears, bows, arrows, shields, chainmail, and tools used for defense: such as curved war axes, maces, daggers, single-edged swords, small round shields, and large shields.

وَلَا يَقَعُ اسْمُ السِّلَاحِ عَلَى سَرْجٍ، وَلَا لِجَامٍ، وَلَا مِهْمَازٍ.

L26671–26672 The name “weapon” does not apply to a saddle, a bridle, or a spur.

وَكَانَ - عَلَيْهِ السَّلَامُ - يَكْتُبُ إلَى الْوُلَاةِ وَالْأَشْرَافِ إذَا أَسْلَمُوا بِكُتُبٍ فِيهَا السُّنَنُ وَالْقُرْآنُ بِلَا شَكٍّ، فَتِلْكَ الصُّحُفُ لَا يَجُوزُ تَمَلُّكُهَا لِأَحَدٍ، لَكِنَّهَا لِلْمُسْلِمِينَ كَافَّةً يَتَدَارَسُونَهَا مَوْقُوفَةً لِذَلِكَ، فَهَذَا هُوَ الَّذِي يَجُوزُ فِيهِ الْحَبْسُ فَقَطْ، وَأَمَّا مَا لَمْ يَأْتِ فِيهِ نَصٌّ فَلَا يَجُوزُ تَحْبِيسُهُ لِمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26673 He (peace be upon him) would write to governors and nobles upon their acceptance of Islam, sending them writings containing the Sunnah and the Quran without doubt. These writings may not be owned by any individual; rather, they belong to all Muslims collectively as a *waqf* endowed for that purpose. Therefore, *ḥabs* is permissible only in this specific case. As for matters not explicitly addressed by a textual ruling, endowing them as *ḥabs* is impermissible due to the reasons we have mentioned—and with Allah, the Most High, lies all success.

وَمِنْ عَجَائِبِ الدُّنْيَا قَوْلُ مَنْ لَا يَتَّقِي اللَّهَ تَعَالَى: أَنَّ صَدَقَةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إنَّمَا جَازَتْ لِأَنَّهُ كَانَ لَا يُورَثُ وَأَنَّ صَدَقَاتِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إنَّمَا جَازَتْ لِأَنَّ الْوَرَثَةَ لَمْ يَرُدُّوهَا، وَأَنَّ يُونُسَ بْنَ عَبْدِ الْأَعْلَى رُوِيَ عَنْ ابْنِ وَهْبٍ عَنْ مَالِكٍ عَنْ زِيَادِ بْنِ سَعْدٍ عَنْ الزُّهْرِيِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: لَوْلَا أَنِّي ذَكَرْتُ صَدَقَتِي لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَرَدَدْتُهَا

L26674 Among the wonders of this world is the claim made by those who lack piety toward Allah Almighty—that the charity of Allah’s Messenger (peace be upon him and his family) was only permissible because he could not be inherited from, and that the charities of the Companions (may Allah be pleased with them) were only permissible because the heirs did not object to them. It was narrated by Yunus ibn ʿAbd al-Aʿlā from Ibn Wahb, from Mālik, from Ziyād ibn Saʿd, from al-Zuhrī, that ʿUmar ibn al-Khaṭṭāb said: “Had I not mentioned my charity to Allah’s Messenger (peace be upon him and his family), I would have reclaimed it.”

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُهُمْ إنَّ صَدَقَةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا جَازَتْ؛ لِأَنَّهُ لَا يُورَثُ - فَقَدْ كَذَبُوا؛ بَلْ لِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - جَعَلَهَا صَدَقَةً، فَلِذَلِكَ صَارَتْ صَدَقَةً هَكَذَا -: رُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا يُوسُفُ بْنُ عَدِيٍّ نا أَبُو الْأَحْوَصِ - هُوَ سَلَّامُ بْنُ سُلَيْمٍ - عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَمْرِو بْنِ

L26675 Abū Muḥammad said: As for their statement that the charity of the Messenger of Allāh—peace and blessings of Allāh be upon him—was permissible solely because he is not inherited from, they have lied. Rather, it is because he—peace and blessings of Allāh be upon him—designated it as a charitable endowment, and thus it became a charitable endowment in this manner. We have been narrated through the chain of Qāsim ibn Aṣbagh, from Ibn Waḍḍāḥ, from Yūsuf ibn ʿAdiyy, from Abū al-Aḥwaṣ—who is Sallām ibn Su-

laym—from Abū Isḥāq al-Sabīʿī, from ʿAmr ibn al-Ḥārith—the brother of Juwayriyah, the Mother of the Believers—who said: "The Messenger of Allāh—peace and blessings of Allāh be upon him—left no dinar, dirham, male slave, or female slave, except his white she-mule and a piece of land he designated as a charitable endowment."

الْحَارِثِ - هُوَ أَخُو جُوَيْرِيَةَ أُمِّ الْمُؤْمِنِينَ - قَالَ «مَا تَرَكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دِينَارًا، وَلَا دِرْهَمًا، وَلَا عَبْدًا، وَلَا أَمَةً، إِلَّا بَغْلَتَهُ الْبَيْضَاءَ، وَأَرْضًا جَعَلَهَا صَدَقَةً» .

L26676 As for his statement that he—peace and blessings be upon him—was not inherited: then yes, and this does not obligate giving his land as charity; rather, it should be sold and the proceeds given as charity. Thus, the invalidity of their statement has become evident.

وَأَمَّا قَوْلُه: إنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يُورَثْ - فَنَعَمْ، وَهَذَا لَا يُوجِبُ الصَّدَقَةَ بِأَرْضِهِ، بَلْ تُبَاعُ فَيُتَصَدَّقُ بِالثَّمَنِ -: فَظَهَرَ فَسَادُ قَوْلِهِمْ.

L26677 As for their claim that the endowments of the Companions—may Allah be pleased with them—were permissible solely because the legal inheritors approved them, they have lied. Indeed, ʿUmar left his two sons Zayd and his sister while the two sons were very young, as did ʿUthmān, ʿAlī, and others. If endowments were impermissible, it would not have been lawful to leave the minors' shares to persist as endowments.

وَأَمَّا قَوْلُهُمْ: إنَّمَا جَازَتْ صَدَقَاتُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؛ لِأَنَّ الْوَرَثَةَ أَجَازُوهَا - فَقَدْ كَذَبُوا، وَلَقَدْ تَرَكَ عُمَرُ ابْنَيْهِ زَيْدًا وَأُخْتَه صَغِيرَيْنِ جِدًّا، وَكَذَلِكَ عُثْمَانُ، وَعَلِيٌّ، وَغَيْرُهُمْ، فَلَوْ كَانَ الْحَبْسُ غَيْرَ جَائِزٍ لَمَا حَلَّ تَرْكُ أَنْصِبَاءِ الصِّغَارِ تَمْضِي حَبْسًا.

L26678–26680 As for the report they attributed to Mālik—it is rejected, a calamity of calamities, and undoubtedly a lie. We do not know who transmitted it from Yūnus, nor is it recognized among Mālik's narrations. Suppose, for argument's sake, we heard it from al-Zuhrī... Since it was necessary to be occupied with this matter, we conclusively state that he heard it from those in whom there is no good, such as Sulaymān ibn Arqam and his ilk.

وَأَمَّا الْخَبَرُ الَّذِي ذَكَرُوهُ عَنْ مَالِكٍ - فَمُنْكَرٌ وَبَلِيَّةٌ مِنْ الْبَلَايَا، وَكَذِبٌ بِلَا شَكٍّ، وَلَا نَدْرِي مَنْ رَوَاهُ عَنْ يُونُسَ وَلَا هُوَ مَعْرُوفٌ مِنْ حَدِيثِ مَالِكٍ وَهَبْكَ لَوْ سَمِعْنَاهُ مِنْ الزُّهْرِيِّ لَمَا وَجَبَ أَنْ يُتَشَاغَلَ بِهِ وَلَقَطَعْنَا بِأَنَّهُ سَمِعَهُ مِمَّنْ لَا خَيْرَ فِيهِ، كَسُلَيْمَانَ بْنِ أَرْقَمَ، وَضُرَبَائِهِ.

L26681 We declare and affirm with certainty that ʿUmar—may Allah be pleased with him—did not regret accepting the command of Allah's Messenger—peace be upon him—nor the choice the Prophet made for him regarding immobilizing his land as an endowment and allocating its yield for public benefit. Allah the Exalted says: "It is not for any believing man or woman—when Allah and His Messenger have decreed a matter—to have any choice in their affair." [al-Aḥzāb: 36].[10]

وَنَحْنُ نَبُتُّ وَنَقْطَعُ بِأَنَّ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - لَمْ يَنْدَمْ عَلَى قَبُولِهِ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَا اخْتَارَهُ لَهُ فِي تَحْبِيسِ أَرْضِهِ وَتَسْبِيلِ ثَمَرَتِهَا وَاَللَّهُ تَعَالَى يَقُولُ: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] .

L26682 I wish I knew to what purpose 'Umar would have directed that charity had he

وَلَيْتَ شِعْرِي إلَى أَيِّ شَيْءٍ كَانَ يَصْرِفُ عُمَرُ تِلْكَ الصَّدَقَةَ لَوْ تَرَكَ مَا أَمَرَهُ بِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِيهَا.

[10] **Qur'an references (L26681):** Qur'an 33:36 (Al-Ahzab).

abandoned what the Prophet (peace and blessings be upon him) commanded him regarding it.

L26683 Far be it from Umar for this.

L26684 They compounded a calamity by likening this to the regret of Abdullah ibn Amr ibn al-As when he failed to accept the command of the Messenger of Allah (peace and blessings be upon him) concerning fasting three days each month.

L26685 Abū Muḥammad said: I wish I knew—where have their intellects gone? Does ʻAbdullāh regret anything except what truly deserves regret: his abandonment of the matter which the Messenger of Allah—may Allah bless him and his family and grant him peace—first advised him, while he adhered to the final counsel? This contradicts their attribution to ʻUmar—through those whom Allah has not blessed in their lineage—of his outright aversion to the Messenger of Allah's command. We do not know to what end? Thus, the falsehood of these deprived ones' claims has become utterly clear—and all praise belongs to Allah.

L26686 As for our statement: It is permissible for a person to dedicate as a charitable endowment for himself and for whomever he wills, based on the Prophet's saying—may Allah bless him and his family and grant him peace—: "Begin with yourself and then give charity to her [yourself]."

L26687 He said to Umar, "Give the fruit as charity." Thus, this confirms the permissibility of giving charity for himself and for whomever he wishes (and this is the opinion of Abu Yusuf and others), and success is by Allah, the Most High.

L26688 An issue: Relinquishing possession does not invalidate the restricted holding [of property].

L26689 Issue 1655: Failure to take possession does not invalidate the waqf. If the endower utilizes it without having dedicated it as a public endowment (sabil) for himself, he remains liable for it - equivalent to usurpation. This is permitted only when it preserves the endower's sufficiency. The ruling applies

حَاشَ لِعُمَرَ مِنْ هَذَا.

وَزَادُوا طَامَّةً، وَهِيَ أَنْ شَبَّهُوا هَذَا بِتَنَدُّمِ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ إِذْ لَمْ يَقْبَلْ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي صَوْمِ ثَلَاثَةِ أَيَّامٍ مِنْ كُلِّ شَهْرٍ.

قَالَ أَبُو مُحَمَّدٍ: لَيْتَ شِعْرِي أَيْنَ ذَهَبَتْ عُقُولُهُمْ؟ وَهَلْ يَنْدَمُ عَبْدُ اللَّهِ إِلَّا عَلَى مَا يَحِقُّ التَّنَدُّمَ عَلَيْهِ مِنْ تَرْكِهِ الْأَمْرَ الَّذِي أَشَارَ بِهِ عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَوَّلَ مَرَّةٍ وَوَقَفَ عِنْدَ الْمَشُورَةِ الْأَخِيرَةِ - وَهَذَا ضِدُّ مَا نَسَبُوا إِلَى عُمَرَ مِمَّا وَضَعَهُ عَلَيْهِ مَنْ لَا يُسْعِدُ اللَّهَ جَدُّهُ مِنْ رَغْبَتِهِ عَنْ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - جُمْلَةً لَا نَدْرِي إِلَى مَاذَا؟ فَوَضَحَ فَسَادُ قَوْلِ هَؤُلَاءِ الْمَحْرُومِينَ جُمْلَةً - وَلِلَّهِ الْحَمْدُ.

وَأَمَّا قَوْلُنَا: جَائِزٌ أَنْ يُسَبِّلَ الْمَرْءُ عَلَى نَفْسِهِ وَعَلَى مَنْ شَاءَ، فَلِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «ابْدَأْ بِنَفْسِكَ فَتَصَدَّقَ عَلَيْهَا» .

وَقَالَ لِعُمَرَ «تَصَدَّقْ بِالثَّمَرَةِ» فَصَحَّ بِهَذَا جَوَازُ صَدَقَتِهِ عَلَى نَفْسِهِ، وَعَلَى مَنْ شَاءَ - وَهُوَ قَوْلُ أَبِي يُوسُفَ، وَغَيْرُهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَة لَا يُبْطِلُ الْحَبْسَ تَرْكُ الْحِيَازَةِ]

١٦٥٥ - مَسْأَلَةٌ: وَلَا يُبْطِلُ الْحَبْسَ تَرْكُ الْحِيَازَةِ، فَإِنْ اسْتَغَلَّهُ الْمُحْبِسُ وَلَمْ يَكُنْ سَبَّلَهُ عَلَى نَفْسِهِ فَهُوَ مَضْمُونٌ عَلَيْهِ، كَالْغَصْبِ، وَلَا يَحِلُّ إِلَّا فِيمَا أَبْقَى غِنًى وَهُوَ جَائِزٌ فِي

to both jointly-owned and exclusive properties, whether divisible or indivisible. The evidence for this has been previously detailed in our discussion on "Gifts and Charitable Donations." All abundant praise belongs to Allah.

The issue of equality between children is an obligation in matters of imprisonment.

1656: Issue: Equal treatment among children is obligatory in ḥabs endowment, based on the Messenger of Allah's (peace be upon him) statement: "Be just among your children." If a parent designates it exclusively for some of his children, the ḥabs is valid, and all the children share in the revenue and residence alongside the specifically designated child.

The proof of this is that they are two fundamentally distinct actions based on the explicit wording of the Messenger of Allah's (peace be upon him) speech.

One of them is the immobilization of the principal asset. Through the prescribed verbal formula, this dedication is valid as an act for Allah, the Exalted, because it derives from the endower's property.

The second is endowment (waqf) and almsgiving. If inequity occurs in their administration, it is rectified, and the original property remains an endowment (ḥabs) for Allah Almighty as long as the descendants are alive. When the person designated in the endowment dies, it reverts to his successors after him, and the remaining descendants are excluded from it, because the favoritism becomes void. And success is from Allah, the Exalted.

Issue: He endows his house or land but does not designate it as a public endowment for anyone's benefit.

1657 - Issue: If someone restricts his house or land and does not dedicate it to anyone, he may dedicate the revenue to whomever he wishes for as long as he lives, in accordance with the saying of the Messenger of Allah—may Allah bless him and his family and grant him peace—"Dedicate the produce." He retains this right for as long as he lives. If he dies without doing so, the

الْمُشَاعِ وَغَيْرِ الْمُشَاعِ - فِيمَا يَنْقَسِمُ وَفِيمَا لَا يَنْقَسِمُ - وَالْحُجَّةُ فِي ذَلِكَ قَدْ ذَكَرْنَاهَا فِي كَلَامِنَا فِي " الْهِبَاتِ وَالصَّدَقَاتِ " وَلِلَّهِ الْحَمْدُ كَثِيرًا.

[مَسْأَلَةُ التَّسْوِيَةُ بَيْنَ الْوَلَدِ فَرْضٌ فِي الْحَبْسِ]

١٦٥٦ - مَسْأَلَةٌ: وَالتَّسْوِيَةُ بَيْنَ الْوَلَدِ فَرْضٌ فِي الْحَبْسِ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «اعْدِلُوا بَيْنَ أَبْنَائِكُمْ» فَإِنْ خَصَّ بِهِ بَعْضَ بَنِيهِ، فَالْحَبْسُ صَحِيحٌ وَيَدْخُلُ سَائِرُ الْوَلَدِ فِي الْغَلَّةِ وَالسُّكْنَى مَعَ الَّذِي خَصَّهُ.

بُرْهَانُ ذَلِكَ: أَنَّهُمَا فِعْلَانِ مُتَغَايِرَانِ بِنَصِّ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

أَحَدُهُمَا - تَحْبِيسُ الْأَصْلِ، فَبِاللَّفْظِ تَحْبِيسُهُ يَصِحُّ لِلَّهِ تَعَالَى بِأَنَّنَا عَنْ مَالِ الْمُحْبِسِ.

وَالثَّانِي - التَّسْبِيلُ وَالصَّدَقَةُ، فَإِنْ وَقَعَ فِيهَا حِيفَ رُدَّ وَلَمْ يَبْطُلْ خُرُوجُ الْأَصْلِ مُحْبَسًا لِلَّهِ عَزَّ وَجَلَّ مَا دَامَ الْوَلَدُ أَحْيَاءَ، فَإِذَا مَاتَ الْمَخْصُوصُ بِالْحَبْسِ رَجَعَ إلَى مَنْ عَقِبَ عَلَيْهِ بَعْدَهُ، وَخَرَجَ سَائِرُ الْوَلَدِ عَنْهُ؛ لِأَنَّ الْمُحَابَاةَ قَدْ بَطَلَتْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ حَبَسَ دَارِهِ أَوْ أَرْضَهُ وَلَمْ يُسَبِّلْ عَلَى أَحَدٍ]

١٦٥٧ - مَسْأَلَةٌ: وَمَنْ حَبَسَ دَارِهِ أَوْ أَرْضَهُ، وَلَمْ يُسَبِّلْ عَلَى أَحَدٍ، فَلَهُ أَنْ يُسَبِّلَ الْغَلَّةَ مَا دَامَ حَيًّا عَلَى مَنْ شَاءَ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «وَسَبِّلْ الثَّمَرَةَ» فَلَهُ ذَلِكَ مَا بَقِيَ، فَإِنْ مَاتَ وَلَمْ يَفْعَلْ كَانَتْ الْغَلَّةُ لِأَقَارِبِهِ وَأَوْلَى النَّاسِ بِهِ حِينَ مَوْتِهِ.

revenue belongs to his relatives and those most entitled to him at the time of his death.

L26698 Similarly, if someone dedicates a sabil or establishes an endowment for a discontinued purpose, then when the sabil's beneficiary dies, the endowment reverts to the closest relatives of the founder at the time of reversion.

وَكَذَلِكَ مَنْ سَبَّلَ وَحَبَسَ عَلَى مُنْقَطِعٍ فَإِذَا مَاتَ الْمُسَبَّلُ عَلَيْهِ عَادَ الْحَبْسُ عَلَى أَقْرَبِ النَّاسِ بِالْمُحَبِّسِ يَوْمَ الْمَرْجِعِ.

L26699 The proof of that is what we have narrated through Mālik from Isḥāq ibn ʿAbdullāh ibn Abī Ṭalḥah, who heard Anas ibn Mālik say: "Abū Ṭalḥah was the wealthiest of the Anṣār in Medina in terms of date palms. He said: 'O Messenger of Allah, Allah the Almighty says: *'You will never attain righteousness until you spend from what you love'* [3:92]. The most beloved of my possessions to me is Bayruḥā, and it is a ṣadaqah for Allah. I hope for its virtue and splendor in the sight of Allah. Place it, O Messenger of Allah, where Allah has shown you.' The Messenger of Allah (may Allah bless him and his family and grant him peace) said in the course of his speech: 'Indeed, I deem it proper that you allocate it to your relatives.' So Abū Ṭalḥah distributed it among his kinsmen and paternal cousins."[11]

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِك عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ سَمِعَ أَنَسَ بْنَ مَالِك يَقُولُ «كَانَ أَبُو طَلْحَةَ أَكْبَرَ أَنْصَارِي الْمَدِينَةِ مَالًا مِنْ نَخْلٍ فَقَالَ: يَا رَسُولَ اللَّهِ، إنَّ اللَّهَ - عَزَّ وَجَلَّ - يَقُولُ: {لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ} [آل عمران: ٩٢] وَإِنَّ أَحَبَّ أَمْوَالِي إلَيَّ بَيْرُحَاءُ، وَإِنَّهَا صَدَقَةٌ لِلَّهِ عَزَّ وَجَلَّ أَرْجُو بِرَّهَا، وَزُخْرَهَا، عِنْدَ اللَّهِ، فَضَعْهَا يَا رَسُولَ اللَّهِ حَيْثُ أَرَاك اللَّهُ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي كَلَامٍ ثُمَّ إنِّي أَرَى أَنْ تَجْعَلَهَا فِي الْأَقْرَبِينَ - فَقَسَمَهَا أَبُو طَلْحَةَ فِي أَقَارِبِهِ وَبَنِي عَمِّهِ»

[Issue: He endowed as a waqf for his descendants and the descendants of his descendants, or for Zaid and his descendants.]

[مَسْأَلَة حَبَسَ عَلَى عَقِبِهِ وَعَلَى عَقِبِ عَقِبِهِ أَوْ عَلَى زَيْدٍ وَعَقِبِهِ]

L26701 Issue 1658: If someone establishes an endowment for their progeny and their progeny's progeny, or for Zayd and his progeny, this includes daughters and sons but excludes the sons of daughters if they do not trace their paternal lineage back to the donor. This is based on the statement of Allah's Messenger—peace and blessings be upon him and his family—: "The descendants of Hashim and the descendants of ʿAbd al-Muṭṭalib are indeed one entity." He allocated to them from the kin's share but did not grant it to ʿUthmān or others—though ʿUthmān's paternal grandmother was a daughter of ʿAbd al-Muṭṭalib—because ʿUthmān was not included among the descendants of Hashim, as his paternal lineage did not trace back to the donor,

١٦٥٨ - مَسْأَلَةٌ: وَمَنْ حَبَسَ عَلَى عَقِبِهِ وَعَلَى عَقِبِ عَقِبِهِ، أَوْ عَلَى زَيْدٍ وَعَقِبِهِ، فَإِنَّهُ يَدْخُلُ فِي ذَلِكَ الْبَنَاتُ وَالْبَنُونَ، وَلَا يَدْخُلُ فِي ذَلِكَ بَنُو الْبَنَاتِ إذَا كَانُوا مِمَّنْ لَا يَخْرُجُ بِنَسَبِ آبَائِهِ إلَى الْمُحَبِّسِ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «إنَّمَا بَنُو هَاشِمٍ وَبَنُو عَبْدِ الْمُطَّلِبِ شَيْءٌ وَاحِدٌ» وَأَعْطَاهُمْ مِنْ سَهْمِ ذِي الْقُرْبَى: وَلَمْ يُعْطِ عُثْمَانَ، وَلَا غَيْرَهُ - وَجَدَّةُ عُثْمَانَ بِنْتُ عَبْدِ الْمُطَّلِبِ - فَلَمْ يَدْخُلْ فِي بَنِي هَاشِمٍ، إذْ لَمْ يَخْرُجْ

[11] **Qur'an references (L26699):** Qur'an 3:92 (Ali 'Imran).

despite his maternal lineage through his mother Arwā bint al-Bayḍāʾ ibn ʿAbd al-Muṭṭalib tracing back to him. He granted al-ʿAbbās and his mother Numayriyyah [a share]. And success comes only from Allah, the Exalted.

A juridical question regarding the establishment of a waqf with the condition that it be sold in case of necessity.

L26702–26703

L26704 Issue: If someone establishes a waqf and stipulates that it be sold when needed, the waqf is valid due to the transfer to God Almighty by this wording as we explained. However, the stipulation is void because it constitutes a condition not stipulated in the Book of God, and they are two distinct legal acts - except if one declares: "I do not establish this waqf except on the condition that it be sold." In this case, he has not validly endowed anything, for any waqf that only becomes binding through a void condition is not established at all, as any waqf contingent on a void condition is fundamentally invalid. Success comes solely from God Almighty.

بِنَسَبِ أَبِيهِ إِلَيْهِ، وَإِنْ كَانَ خَارِجًا بِنَسَبِ أُمِّهِ إِلَيْهِ - وَهِيَ أَرْوَى بِنْتُ الْبَيْضَاءِ بْنِ عَبْدِ الْمُطَّلِبِ - أَعْطَى الْعَبَّاسَ وَأُمَّهُ نُمَرِيَّةُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة حَبَسَ وَشَرَطَ أَنْ يُبَاعَ إنْ اُحْتِيجَ]

مَسْأَلَةٌ: وَمَنْ حَبَسَ وَشَرَطَ أَنْ يُبَاعَ إنْ اُحْتِيجَ صَحَّ الْحَبْسُ، لِمَا ذَكَرْنَا مِنْ خُرُوجِهِ بِهَذَا اللَّفْظِ إلَى اللَّهِ تَعَالَى، وَبَطَلَ الشَّرْطُ، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، وَهُمَا فِعْلَانِ مُتَغَايِرَانِ، إلَّا أَنْ يَقُولَ: لَا أَحْبِسُ هَذَا الْحَبْسَ إلَّا بِشَرْطِ أَنْ يُبَاعَ -: فَهَذَا لَمْ يَحْبِسْ شَيْئًا، لِأَنَّ كُلَّ حَبْسٍ لَمْ يَنْعَقِدْ إلَّا عَلَى بَاطِلٍ فَلَمْ يَنْعَقِدْ أَصْلًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

AL-MUHALLA

كِتَابُ الْعِتْقِ وَأُمَّهَاتِ الْأَوْلَادِ

The Book of Manumission and Mothers of Children

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْعِتْقِ وَأُمَّهَاتِ الْأَوْلَادِ] [مَسْأَلَةٌ الْعِتْقُ فِعْلٌ حَسَنٌ فَلَا يَحِلُّ لِلْمَرْءِ أَنْ يَعْتِقَ عَبْدَهُ أَوْ أَمَتَهُ إِلَّا لِلَّهِ]

[The Book of Manumission and Mothers of Children (Ummahāt al-Awlād)] [Issue: Manumission is a virtuous act, so it is impermissible for one to manumit their enslaved man or woman except for the sake of Allah.]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الْعِتْقِ، وَأُمَّهَاتِ الْأَوْلَادِ ١٦٦٠ - مَسْأَلَةٌ: الْعِتْقُ فِعْلٌ حَسَنٌ، لَا خِلَافَ فِي ذَلِكَ.

In the name of Allah, the Most Gracious, the Most Merciful. The Book of Manumission and Mothers of Children. 1660 - Issue: Manumission is a virtuous act; there is no disagreement on this.

١٦٦١ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْمَرْءِ أَنْ يَعْتِقَ عَبْدَهُ أَوْ أَمَتَهُ إِلَّا لِلَّهِ عَزَّ وَجَلَّ لَا لِغَيْرِهِ، وَلَا يَجُوزُ أَخْذُ مَالٍ عَلَى الْعِتْقِ، إِلَّا فِي الْكِتَابَةِ خَاصَّةً، لِمَجِيءِ النَّصِّ بِهَا.

Issue 1661: It is not permissible for a person to emancipate his male or female slave except for Allah, the Mighty and Majestic, and not for other than Him. It is also impermissible to take property in exchange for emancipation, except specifically in the case of manumission by written contract (kitābah), because the scriptural text has stipulated it.

وَقَالَ بَعْضُ الْقَائِلِينَ: إِنْ قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ لِلشَّيْطَانِ -: نَفَذَ ذَلِكَ

And some of those who hold this opinion said: If he says to his slave, "You are free for the devil," that takes effect.

قَالَ أَبُو مُحَمَّد: وَهَذَا خِلَافُ قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {فَمَنْ كَانَ يَرْجُوا لِقَاءَ رَبِّهِ فَلْيَعْمَلْ عَمَلا صَالِحًا وَلا يُشْرِكْ بِعِبَادَةِ رَبِّهِ أَحَدًا} [الكهف: ١١٠]

Abu Muhammad said: And this contradicts the statement of Allah, the Mighty and Majestic: "So whoever hopes to meet his Lord, let him do a righteous deed and not associate anyone in the worship of his Lord" [Al-Kahf: 110].[1]

وَقَالَ عَزَّ وَجَلَّ: {وَمَا أُمِرُوا إِلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ} [البينة: ٥]

The Almighty, the Exalted, has said: {They were commanded only to worship Allah, devoting their faith sincerely to Him} [Al-Bayyinah: 5].[2]

وَالْعِتْقُ عِبَادَةٌ فَإِذَا كَانَتْ لِلَّهِ تَعَالَى خَالِصَةً جَازَتْ، وَإِذَا كَانَتْ لِشَرِيكٍ مَعَهُ تَعَالَى أَوْ لِغَيْرِهِ مَحْضًا: بَطَلَتْ، لِأَنَّهَا وَقَعَتْ بِخِلَافِ مَا أَمَرَ اللَّهُ تَعَالَى - ثُمَّ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» فَوَجَبَ رَدُّ هَذَا الْعِتْقِ وَإِبْطَالُهُ.

Manumission is an act of worship. If it is sincerely dedicated to Allah the Exalted alone, it is valid. But if it is performed for an associate with Him the Exalted or solely for the sake of another, it becomes invalid, for it contravenes what Allah the Exalted has commanded. Then [this ruling is affirmed] by the statement of the Messenger of Allah (peace and blessings be upon him): "Whoever performs a deed not in accordance with our command, it is rejected." Thus, this manumission must be deemed invalid and nullified.[3]

[1] **Qur'an references (L26710):** Qur'an 18:110 (Al-Kahf).

[2] **Qur'an references (L26711):** Qur'an 98:5 (Al-Bayyinah).

[3] **Hadith references (L26712):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

L26713 We have been narrated through the path of Shuʿbah from Al-ʻAlā' ibn ʻAbd al-Raḥmān from Abū Hurayrah, who said: "The Messenger of Allah (peace be upon him) narrated from Allah, the Exalted, that He said: 'I am the Most Sufficient of partners to be disassociated from shirk. Whoever performs a deed in which he associates another with Me, I am free from him. Let him seek his reward from whom he associated with Me.'"

L26714 ## The Legal Ruling on Manumission in Property He Currently Owns

L26715–26717 Issue 1662: Whoever says, "If you own so-and-so's slave, he is free," or says, "If you purchase him, he..." If free, or if he says: "If you sell my male slave, he is free," or says something similar regarding a female slave owned by another or a female slave he owns—then if he subsequently owned the male slave and the female slave, purchased the two, or sold the two, the two were not emancipated through any of that.

L26718 As for the invalidity of that concerning another's male slave and another's female slave: because of what we have transmitted via the chain of Muslim—Zuhayr ibn Harb reported to me: Ismāʿīl ibn Ibrāhīm (he is Ibn ʿUlayyah) narrated to us; Ayyūb (he is al-Sikhtiyānī) narrated from Abū Qilābah, from Abū al-Muhallab, from ʿImrān ibn al-Ḥuṣayn, who said: The Messenger of Allah—peace and blessings be upon him and his family—said: "There is no fulfillment for a vow in disobedience, nor for what the slave does not own."[4]

L26719 As for the invalidity of this ruling concerning his male slave and female slave, it is because when he sells them, his ownership over them becomes void, and there is no validity to his contractual stipulation regarding what he no longer possesses. It has been narrated to us via Ḥammād ibn Salamah: Ziyād al-Aʿlam narrated to us from al-Ḥasan al-Baṣrī regarding one who said to another, "If you sell this slave of mine to you, he is free," and then he sold him. Al-Ḥasan ruled: "He is not free." He further stated: "If the other party had said, 'If I purchase him from you, he is free,' and then bought him from him, he would still not be free."

[4] **Hadith references (L26718):** Sahih Muslim 1641a; Mishkat al-Masabih 3428.

وَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ قَالَ: «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ اللَّهِ تَعَالَى أَنَّهُ يَقُولُ: " أَنَا أَغْنَى الشُّرَكَاءِ عَنْ الشِّرْكِ فَمَنْ عَمِلَ عَمَلًا أَشْرَكَ فِيهِ غَيْرِي فَأَنَا مِنْهُ بَرِيءٌ، وَلْيَلْتَمِسْ ثَوَابَهُ مِنْهُ» .

[مَسْأَلَة الْعِتْق فِي مَالًا يَمْلِك]

١٦٦٢ - مَسْأَلَةٌ: وَمَنْ قَالَ: إنْ مَلَكْت عَبْدَ فُلَانٍ فَهُوَ حُرٌّ، أَوْ قَالَ: إنْ اشْتَرَيْته فَهُوَ حُرٌّ، أَوْ قَالَ: إنْ بِعْت عَبْدِي فَهُوَ حُرٌّ، أَوْ قَالَ: شَيْئًا مِنْ ذَلِكَ فِي أَمَةٍ لِسِوَاهُ أَوْ أَمَةٍ لَهُ ثُمَّ مَلَكَ الْعَبْدَ وَالْأَمَةَ، أَوْ اشْتَرَاهُمَا " أَوْ بَاعَهُمَا: لَمْ يُعْتَقَا بِشَيْءٍ مِنْ ذَلِكَ.

أَمَّا بُطْلَانُ ذَلِكَ فِي عَبْدِ غَيْرِهِ، وَأَمَةِ غَيْرِهِ: فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ نا إسْمَاعِيلُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ عُلَيَّةَ - نا أَيُّوبُ - هُوَ السِّخْتِيَانِيُّ - عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لَا وَفَاءَ لِنَذْرٍ فِي مَعْصِيَةٍ، وَلَا فِيمَا لَا يَمْلِكُ الْعَبْدُ» .

وَأَمَّا بُطْلَانُ ذَلِكَ فِي عَبْدِهِ وَأَمَتِهِ، فَلِأَنَّهُ إذْ بَاعَهُمَا فَقَدْ بَطَلَ مِلْكُهُ عَنْهُمَا، وَلَا وَفَاءَ لِعَقْدِهِ فِيمَا لَا يَمْلِكُهُ -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا زِيَادٌ الْأَعْلَمُ عَنْ الْحَسَنِ الْبَصْرِيِّ فِيمَنْ قَالَ لِآخَرَ: إنْ بِعْت غُلَامِي هَذَا مِنْك فَهُوَ حُرٌّ فَبَاعَهُ مِنْهُ قَالَ الْحَسَنُ: لَيْسَ بِحُرٍّ - ثُمَّ قَالَ: وَلَوْ قَالَ الْآخَرُ: إنْ اشْتَرَيْته مِنْك فَهُوَ حُرٌّ، ثُمَّ اشْتَرَاهُ مِنْهُ فَلَيْسَ بِحُرٍّ -

وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا - وَاخْتَلَفَ الْحَاضِرُونَ فِي ذَلِكَ -: فَقَالَ الشَّافِعِيُّ: إِنْ قَالَ إِنْ بِعْت غُلَامِي فَهُوَ حُرٌّ، فَبَاعَهُ فَهُوَ حُرٌّ.

This is the opinion of Abū Sulaymān and our companions—and those present differed regarding that—then Al-Shāfiʿī said: If someone says, “If I sell my slave, he is free,” and then sells him, the slave is free.

فَإِنْ قَالَ: إِنْ اشْتَرَيْت غُلَامَ فُلَانٍ فَهُوَ حُرٌّ فَاشْتَرَاهُ فَلَيْسَ بِحُرٍّ.

If someone declares, “If you purchase so-and-so’s male slave, then he is free,” and he subsequently buys him, the slave is not emancipated.

وَاحْتَجَّ بَعْضُ أَصْحَابِهِ لِقَوْلِهِ هَذَا بِأَنَّهُ إذَا بَاعَهُ فَهُوَ فِي مِلْكِهِ بَعْدُ، مَا لَمْ يَتَفَرَّقَا، فَلِذَلِكَ عَتَقَ.

Some of his companions argued in support of this statement of his that if he sells the slave, the slave is still in his ownership as long as they have not physically separated, and therefore he became manumitted.

قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «لَا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا» فَصَحَّ أَنَّهُ لَمْ يَبِعْهُ بَعْدُ، فَإِذَا تَفَرَّقَا فَحِينَئِذٍ بَاعَهُ، وَلَا عِتْقَ لَهُ فِي مِلْكِ غَيْرِهِ.

Abu Muhammad said: This is invalid because the Messenger of Allah—peace and blessings be upon him and his family—said: “There is no sale between them until they part ways.” Thus, it is established that he has not yet sold it. When they separate, then he has sold it. Nor is there emancipation for a slave while in another’s ownership.

وَقَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ بِعَكْسِ قَوْلِ الشَّافِعِيِّ، وَهُوَ أَنَّهُمَا قَالَا: إنْ قَالَ: إنْ بِعْت عَبْدِي فَهُوَ حُرٌّ.

Abu Hanifah and Sufyan held the opposite view to al-Shafi’i’s, asserting: If one declares, “If I sell my slave, then he is free.”

فَبَاعَهُ، لَمْ يَكُنْ حُرًّا بِذَلِكَ.

So he sold it, but by that, he was not made free.

فَإِنْ قَالَ: إنْ اشْتَرَيْت عَبْدَ فُلَانٍ فَهُوَ حُرٌّ.

If he says, “If you bought the slave of so-and-so, then he is free.”

فَاشْتَرَاهُ فَهُوَ حُرٌّ.

So he bought him, then the latter is free.

وَقَالَ مَالِكٌ: مَنْ قَالَ: إنْ بِعْت عَبْدِي فَهُوَ حُرٌّ.

And Mālik said: Whoever says, “If I sell my slave, then he becomes free.”

فَبَاعَهُ فَهُوَ حُرٌّ - وَإِنْ قَالَ: إنْ اشْتَرَيْت عَبْدَ فُلَانٍ فَهُوَ حُرٌّ.

So if he sold him, he is free; and if he says, “If you purchase so-and-so’s slave, the slave is free.”

فَاشْتَرَاهُ فَهُوَ حُرٌّ.

He purchased him, and he is free.

فَلَوْ قَالَ: إنْ بِعْت عَبْدِي فَهُوَ حُرٌّ، وَقَالَ آخَرُ: إنْ اشْتَرَيْت عَبْدَ فُلَانٍ فَهُوَ حُرٌّ.

If someone were to say, “If you sell my slave, then he is free,” and another were to say, “If you buy so-and-so’s slave, then he is free.”

L26733 Then he sold him to him, so the manumission is incumbent upon the seller, not the buyer.

ثُمَّ بَاعَهُ مِنْهُ فَإِنَّهُ يُعْتَقُ عَلَى الْبَائِعِ لَا عَلَى الْمُشْتَرِي.

L26734 It has been reported to us that this opinion was narrated from Ibrāhīm al-Nakhaʿī and al-Ḥasan as well—and this constitutes a contradiction from him. Both positions would necessitate emancipating the slave according to his own position by their statement. Some followers from his school said: He is pledged [as collateral] by the seller's oath.

وَقَدْ رُوِّينَا هَذَا الْقَوْلَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَالْحَسَنِ أَيْضًا - وَهَذَا تَنَاقُضٌ مِنْهُ، وَكِلَاهُمَا يَلْزَمُهُ عِتْقُهُ عِنْدَهُ بِقَوْلِهِمَا، فَقَالَ بَعْضُ مُقَلِّدِيهِ: هُوَ مُرْتَهَنٌ بِيَمِينِ الْبَائِعِ.

L26735 Abu Muhammad said: This is obfuscation, for the Hanafi scholar counters him, saying: "Rather, it is pledged against the buyer's oath" – and another counters him, saying: "Rather, it is pledged against the oaths of both of them together," thus the slave is manumitted upon both of them jointly.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَمْوِيهٌ، لِأَنَّهُ يُعَارِضُهُ الْحَنَفِيُّ فَيَقُولُ: بَلْ هُوَ مُرْتَهَنٌ بِيَمِينِ الْمُشْتَرِي - وَيُعَارِضُهُ آخَرُ فَيَقُولُ: بَلْ هُوَ مُرْتَهَنٌ بِيَمِينِهِمَا جَمِيعًا فَيُعْتَقُ عَلَيْهِمَا جَمِيعًا.

L26736 Hammad ibn Abi Sulaiman said: Emancipation becomes obligatory upon the purchaser, while the seller buys a slave with the price and emancipates him—this is an astonishing wonder! How can he possibly permit selling it to one who vowed its emancipation, then obligates him to emancipate in what was not vowed for emancipation? This is the nature of opinion in religion—and we praise Allah for His immense favor.

وَقَالَ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ: يُعْتَقُ عَلَى الْمُشْتَرِي، وَيَشْتَرِي الْبَائِعُ بِالثَّمَنِ عَبْدًا فَيَعْتِقُهُ - وَهَذَا عَجَبٌ عَجِيبٌ لَيْتَ شِعْرِي كَيْفَ يَجُوزُ عِنْدَهُ بَيْعُهُ لِمَنْ نَذَرَ عِتْقَهُ ثُمَّ يَلْزَمُهُ عِتْقًا فِيمَا لَمْ يُنْذَرْ عِتْقُهُ، وَهَذِهِ صِفَةُ الرَّأْيِ فِي الدِّينِ - وَنَحْمَدُ اللَّهَ عَلَى عَظِيمِ نِعْمَتِهِ.

[مَسْأَلَة الْعِتْق بِشَرْطٍ أَوْ بِمَالٍ]

The Ruling on Manumission with a Condition or with Property.

L26737

١٦٦٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ عِتْقٌ بِشَرْطٍ أَصْلًا، وَلَا بِإِعْطَاءِ مَالٍ إلَّا فِي " الْكِتَابَةِ " فَقَطْ، وَلَا بِشَرْطِ خِدْمَةٍ، وَلَا بِغَيْرِ ذَلِكَ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ» .

L26738 1663 - Issue: It is impermissible to manumit a slave under any condition whatsoever, nor through monetary payment except exclusively in contractual manumission (kitabah), nor by stipulating service, nor any other stipulation. This is based on the statement of Allah's Messenger - peace and blessings be upon him: "Every condition not stipulated in the Book of Allah, the Exalted, is invalid."

فَإِنْ ذَكَرَ ذَاكِرٌ مَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا سَعِيدُ بْنُ جُمْهَانَ نا سَفِينَةُ أَبُو عَبْدِ الرَّحْمَنِ مَوْلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: " قَالَتْ لِي أُمُّ سَلَمَةَ: أُرِيد أَنْ أُعْتِقَكَ وَأَشْتَرِطَ عَلَيْك أَنْ تَخْدِمَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا عِشْت

L26739 If someone mentions what has been narrated to us through the chain of Hammad ibn Salamah - who narrated from Sa'id ibn Jumhan, who narrated from Safinah Abu Abd al-Rahman, the freed servant of the Messenger of Allah (peace and blessings be upon him and his family) - who said: "Umm Salamah said to me: 'I wish to set you free on the condition that you serve the Messenger of Allah (peace and blessings be upon him and his family) for

as long as **he** lives.' I replied: 'Even if you do not stipulate this, I would never leave the Messenger of Allah (peace and blessings be upon him and his family) until I die.' He said: She then freed me and stipulated that I serve the Messenger of Allah (peace and blessings be upon him and his family) for as long as **he** lived."

قُلْت: إنْ لَمْ تَشْتَرِطِي عَلَيَّ لَمْ أُفَارِقْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى أَمُوتَ، قَالَ: فَأَعْتَقَتْنِي وَاشْتَرَطَتْ عَلَيَّ أَنْ أَخْدِمَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا عَاشَ ".

L26740–26742 It has also been narrated to us through the chain of ʿAbd al-Wārith ibn Saʿīd, from Saʿīd ibn Jumhān, from Safīnah. Now Saʿīd ibn Jumhān is not recognized for his reliability in transmission—indeed, it is stated that his narrations cannot be upheld as evidence—moreover, even if this report were authentic... There is nothing in it that the Messenger of God—may God bless him and his family and grant him peace—acknowledged that matter and sanctioned it. The Hanafis, the Malikis, and the Shafi'is do not permit emancipation on the condition that one serve so-and-so as long as he lives: thus they have contradicted this report.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ عَبْدِ الْوَارِثِ بْنِ سَعِيدٍ عَنْ سَعِيدِ بْنِ جُمْهَانَ عَنْ سَفِينَةَ، فَسَعِيدُ بْنُ جُمْهَانَ غَيْرُ مَشْهُورٍ بِالْعَدَالَةِ، بَلْ مَذْكُورٌ أَنَّهُ لَا يَقُومُ حَدِيثُهُ - ثُمَّ لَوْ صَحَّ فَلَيْسَ فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَرَفَ ذَلِكَ فَأَقَرَّهُ، وَالْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: لَا يُجِيزُونَ الْعِتْقَ بِشَرْطِ أَنْ يَخْدُمَ فُلَانًا مَا عَاشَ - فَقَدْ خَالَفُوا هَذَا الْخَبَرَ.

L26743 It has been narrated to us through the chain of Ibn Wahb from ʿAbdullāh ibn ʿUmar from Sālim ibn ʿAbdullāh ibn ʿUmar, who said: ʿUmar ibn al-Khaṭṭāb emancipated every slave owned by the caliphal authority who performed two units (rakʿahs) of prayer, and he stipulated upon some of them to serve his successors for two or three years, if they wished to extend [the service].

رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِي بَكْرٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: أَعْتَقَ عُمَرُ بْنُ الْخَطَّابِ كُلَّ مَنْ صَلَّى سَجْدَتَيْنِ مِنْ رَقِيقِ الْإِمَارَةِ، وَاشْتَرَطَ عَلَى بَعْضِهِمْ خِدْمَةَ مَنْ بَعْدَهُ إنْ أَحَبَّ سَنَتَيْنِ أَوْ ثَلَاثًا.

L26744 From the narration of Abd al-Razzaq through Ibn Jurayj: Ayyub ibn Musa informed me, from Nafi', from Abdullah ibn Umar, who said: "Umar ibn al-Khattab emancipated every captive taken by the Arabs who prayed. He conclusively decreed their emancipation, stipulating to them: 'You shall serve the Caliph after me for three years,' and stipulating for them: 'The Caliph after me will maintain you with provisions equivalent to what I provided you.' Then al-Khiyar purchased his service for those three years from Uthman in exchange for Abu Farwa, thereby freeing al-Khiyar from bondage, while Uthman took possession of Abu Farwa."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَيُّوبُ بْنُ مُوسَى أَخْبَرَنِي نَافِعٌ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: إنَّ عُمَرَ بْنَ الْخَطَّابِ أَعْتَقَ كُلَّ مَنْ صَلَّى مِنْ سَبْيِ الْعَرَبِ، فَبَتَّ عِتْقَهُمْ، وَشَرَطَ عَلَيْهِمْ: أَنَّكُمْ تَخْدُمُونَ الْخَلِيفَةَ بَعْدِي ثَلَاثَ سَنَوَاتٍ، وَشَرَطَ لَهُمْ: أَنَّهُ يَصْحَبُكُمْ بِمِثْلِ مَا كُنْتُ أَصْحَبُكُمْ بِهِ - فَابْتَاعَ الْخِيَارُ خَدَمَتَهُ تِلْكَ الثَّلَاثَ سَنَوَاتٍ مِنْ عُثْمَانَ بِأَبِي فَرْوَةَ وَخَلَّى سَبِيلَ الْخِيَارِ، وَقَبَضَ أَبَا فَرْوَةَ.

L26745 And through him to Ibn Jurayj from Musa ibn Uqbah from Nafi' from Ibn 'Umar that he emancipated a male slave of his while stipulating that the slave would work for him for two years. The slave worked for him for part of a year, then he said to him: "I have relinquished for you what I stipulated upon you - you are free, and there is no obligation of work upon you."

وَبِهِ إِلَى ابْنِ جُرَيْجٍ عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ أَعْتَقَ غُلَامًا لَهُ وَشَرَطَ عَلَيْهِ أَنَّ لَهُ عَمَلَهُ سَنَتَيْنِ، فَعَمِلَ لَهُ بَعْضَ سَنَةٍ، ثُمَّ قَالَ لَهُ: قَدْ تَرَكْت لَك الَّذِي اشْتَرَطْت عَلَيْك فَأَنْتَ حُرٌّ، وَلَيْسَ عَلَيْك عَمَلٌ.

L26746 And through the chain of Sufyān ibn ʻUyaynah from ʻAmr ibn Dīnār, who said: "After his death, ʻAlī ibn Abī Ṭālib had a piece of land donated as charity, freed some of his slaves, and stipulated that they work on the land for five years."

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ تَصَدَّقَ بَعْدَ مَوْتِهِ بِأَرْضٍ لَهُ، وَأَعْتَقَ بَعْضَ رَقِيقِهِ، وَشَرَطَ عَلَيْهِمْ أَنْ يَعْمَلُوا فِيهَا خَمْسَ سِنِينَ.

L26747 From the path of Ibn Abi Shaybah, from ʻAbbād from Ḥajjāj from al-Qāsim ibn ʻAbd al-Raḥmān from al-Mughīrah ibn Saʻd ibn al-Akhram from his father: A man came to Ibn Masʻūd and said, "I freed this female slave, but I stipulated that she must serve me as a slave serves her master, except for sexual intercourse. When she became defiant, she said, 'I am free.'" Ibn Masʻūd replied, "She has no right to that. Take hold of her neck and go with her, for the stipulation you imposed remains binding."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبَّادٌ عَنْ حَجَّاجٍ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الْمُغِيرَةِ بْنِ سَعْدِ بْنِ الْأَخْرَمِ عَنْ أَبِيهِ أَنَّ رَجُلًا أَتَى ابْنَ مَسْعُودٍ فَقَالَ: إنِّي أَعْتَقْت أَمَتِي هَذِهِ وَاشْتَرَطْت عَلَيْهَا أَنْ تَلِيَ مِنِّي مَا تَلِي الْأَمَةُ مِنْ سَيِّدِهَا إلَّا الْفَرْجَ، فَلَمَّا غَلُظَتْ رَقَبَتُهَا قَالَتْ: إنِّي حُرَّةٌ فَقَالَ ابْنُ مَسْعُودٍ: لَيْسَ ذَلِكَ لَهَا، خُذْ بِرَقَبَتِهَا فَانْطَلِقْ بِهَا فَلَكَ مَا اشْتَرَطْت عَلَيْهَا.

L26748–26750 Abū Muḥammad said: The Ḥanafīs, Mālikīs, and Shāfiʻīs differ from all these narrated precedents, for all of them stipulate manumission conditional upon service after emancipation and extending indefinitely—a practice they do not permit. They recognize no dissenting opinion from the Companions [on this matter], yet they honor such precedents when they conform to their principles. Their opinion, as for us, there is no authoritative evidence in the opinion of anyone other than the Messenger of Allah (peace and blessings be upon him and his family).

قَالَ أَبُو مُحَمَّد: الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: مُخَالِفُونَ لِجَمِيعِ هَذِهِ الْآثَارِ، لِأَنَّ فِي جَمِيعِهَا الْعِتْقَ بِشَرْطِ الْخِدْمَةِ بَعْدَ الْعِتْقِ، وَإِلَى غَيْرِ أَجَلٍ - وَهُمْ لَا يُجِيزُونَ هَذَا، وَلَا يُعْرَفُ لَهُمْ مِنْ الصَّحَابَةِ مُخَالِفٌ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا وَافَقَ رَأْيَهُمْ، وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L26751 It has been narrated to us from Saʻīd ibn al-Musayyib: "Whoever frees his slave and stipulated his service, the slave is emancipated and his stipulation becomes invalid." We have narrated this through Ibn Abī Shaybah's chain: from Abū Khālid al-Aḥmar, from Yaḥyā ibn Saʻīd, from Saʻīd ibn al-Musayyib.

وَرُوِّينَا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: مَنْ أَعْتَقَ عَبْدَهُ وَاشْتَرَطَ خِدْمَتَهُ عَتَقَ وَبَطَلَ شَرْطُهُ -: رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي خَالِدٍ الْأَحْمَرِ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ ابْنِ الْمُسَيِّبِ.

L26752 And from the route of Ibn Abī Shaybah from ʿAbbād ibn al-ʿAwwām, from

Yaḥyā ibn Saʿīd al-Taymī, from his father, from Shurayḥ - the same is narrated similarly.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ عَبَّادِ بْنِ الْعَوَّامِ عَنْ يَحْيَى بْنِ سَعِيدٍ التَّيْمِيِّ عَنْ أَبِيهِ عَنْ شُرَيْحٍ مِثْلَهُ.

L26753 They permitted manumission in exchange for the payment of wealth, but this is not recorded, to the best of our knowledge, from any of the Companions, may Allah be pleased with them, outside the context of kitābah.

وَأَجَازُوا الْعِتْقَ عَلَى إعْطَاءِ مَالٍ، وَلَا يُحْفَظُ هَذَا فِيمَا نَعْلَمُهُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي غَيْرِ الْكِتَابَةِ.

L26754 If they say: "We have applied analogy (qiyās) to that based on the writing (al-kitābah)."

فَإِنْ قَالُوا: قِسْنَا ذَلِكَ عَلَى الْكِتَابَةِ.

L26755 We said: You have contradicted yourselves, for you do not permit the surety nor the payment after manumission in the *kitābah*, yet you permit all of that in manumission in exchange for payment.

قُلْنَا: نَاقَضْتُمْ، لِأَنَّكُمْ لَا تُجِيزُونَ فِي الْكِتَابَةِ الضَّمَانَ وَلَا الْأَدَاءَ بَعْدَ الْعِتْقِ، وَتُجِيزُونَ كُلَّ ذَلِكَ فِي الْعِتْقِ عَلَى مَالٍ.

L26756 You do not permit in *kitābah* that the payment period being unspecified, yet you permit this in manumission conditional upon payment – thus you have nullified your analogy. How then, when all analogy is wholly invalid?

وَلَا تُجِيزُونَ فِي الْكِتَابَةِ أَنْ يَكُونَ أَمَدُ أَدَاءِ الْمَالِ مَجْهُولًا، وَتُجِيزُونَ ذَلِكَ فِي الْعِتْقِ عَلَى مَالٍ - فَقَدْ أَبْطَلْتُمْ قِيَاسَكُمْ، فَكَيْفَ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ؟ .

L26757 Furthermore, they have peculiar cases in this matter:- As for Abū Ḥanīfah, he said: "Whoever says to his slave: 'You are free on the condition that you serve me for four years,' and the slave accepted that, he became free, then died immediately."

ثُمَّ لَهُمْ فِي هَذَا غَرَائِبُ -: فَأَمَّا أَبُو حَنِيفَةَ فَإِنَّهُ قَالَ: مَنْ قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ عَلَى أَنْ تَخْدُمَنِي أَرْبَعَ سِنِينَ، فَقَبِلَ الْعَبْدُ ذَلِكَ فَعَتَقَ ثُمَّ مَاتَ مِنْ سَاعَتِهِ.

L26758 On one occasion, he said: "From his wealth [is owed] the value of his servitude for four years" (this being the opinion of Al-Shāfiʿī), then he retracted and said: "From his wealth [is owed] the value required to emancipate him."

فَمَرَّةً قَالَ: فِي مَالِهِ قِيمَةُ خِدْمَتِهِ أَرْبَعُ سِنِينَ - وَهُوَ قَوْلُ الشَّافِعِيِّ - ثُمَّ رَجَعَ فَقَالَ: فِي مَالِهِ قِيمَةُ رَقَبَتِهِ.

L26759 He said: Whoever says to his slave, "You are free upon a thousand dirhams," or "upon the condition that a debt of a thousand dirhams is incumbent upon you," the choice lies with the slave to accept or reject this. If he accepts it during the same meeting, he becomes free, and the amount becomes a debt he incurs. If he does not accept, no manumission occurs and no financial obligation is imposed upon him.

قَالَ: وَمَنْ قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ عَلَى أَلْفِ دِرْهَمٍ، أَوْ عَلَى أَنَّ عَلَيْك أَلْفَ دِرْهَمٍ، فَالْخِيَارُ لِلْعَبْدِ فِي قَبُولِ ذَلِكَ أَوْ رَدِّهِ، فَإِنْ قَبِلَ ذَلِكَ فِي الْمَجْلِسِ فَهُوَ حُرٌّ، وَالْمَالُ دَيْنٌ عَلَيْهِ، وَإِنْ لَمْ يَقْبَلْ فَلَا عِتْقَ لَهُ وَلَا مَالَ عَلَيْهِ.

L26760 If the master says to the slave, "When you have paid me one thousand

dirhams, you are free," the master retains the right to sell him as long as the slave has not paid the amount. Once the slave pays it, he is manumitted.

قَالَ: فَإِنْ قَالَ لَهُ: إِذَا أَدَّيْت إِلَيَّ أَلْفَ دِرْهَمٍ فَأَنْتَ حُرٌّ، فَلَهُ بَيْعُهُ مَا لَمْ يُؤَدِّهَا، فَإِذَا أَدَّاهَا فَهُوَ حُرٌّ.

L26761 Mālik said: If someone says to his slave, "You are free provided that one thousand dirhams are incumbent upon you," the slave is not legally bound to pay them, nor does he attain freedom except by paying them. If he pays them, he shall be free.

وَقَالَ مَالِكٌ: مَنْ قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ عَلَى أَنَّ عَلَيْك أَلْفَ دِرْهَمٍ: لَمْ يَلْزَمْ الْعَبْدَ أَدَاؤُهَا وَلَا حُرِّيَّةَ لَهُ إلَّا بِأَدَائِهَا، فَإِذَا أَدَّاهَا فَهُوَ حُرٌّ.

L26762–26764 He said: So if he said, "If you bring me a thousand dirhams, then you are free, and whenever you bring me a thousand dirhams, then you are..." A free person: the master may not sell him until the authority has formally held him liable on the master's behalf, nor demand payment in installments from him. If he becomes insolvent, the authority shall declare him so, and his master has the right to sell him.

قَالَ: فَلَوْ قَالَ: إنْ جِئْتَنِي بِأَلْفِ دِرْهَمٍ فَأَنْتَ حُرٌّ، وَمَتَى مَا جِئْتَنِي بِأَلْفِ دِرْهَمٍ فَأَنْتَ حُرٌّ -: فَلَيْسَ لَهُ أَنْ يَبِيعَهُ حَتَّى يَتَلَوَّمَ لَهُ السُّلْطَانُ وَلَا يُنَجِّمُ عَلَيْهِ، فَإِنْ عَجَزَ عَجَّزَهُ السُّلْطَانُ وَكَانَ لِسَيِّدِهِ بَيْعُهُ.

L26765 He said: If he were to say to his male slave: "You are free this very moment, and upon you are a thousand dirhams," he becomes free and owes the sum. Ibn al-Qāsim, his associate, said: He becomes free and owes nothing.

قَالَ: فَلَوْ قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ السَّاعَةَ وَعَلَيْك أَلْفُ دِرْهَمٍ: فَهُوَ حُرٌّ وَالْمَالُ عَلَيْهِ - قَالَ ابْنُ الْقَاسِمِ صَاحِبُهُ: هُوَ حُرٌّ وَلَا شَيْءَ عَلَيْهِ.

L26766 Abu Muhammad said: This is the correct view because he did not condition freedom upon liability; rather, he enacted it outright without any stipulation, then obligated him with what he is not liable for. Therefore, it is void.

قَالَ أَبُو مُحَمَّد: وَهَذَا هُوَ الصَّحِيحُ؛ لِأَنَّهُ لَمْ يُعَلِّقْ الْحُرِّيَّةَ بِالْغُرْمِ، بَلْ أَمْضَاهَا بَتْلَةً بِغَيْرِ شَرْطٍ، ثُمَّ أَلْزَمَهُ مَا لَا يَلْزَمُهُ، فَهُوَ بَاطِلٌ.

L26767 But if only I knew how long the Sultan would procrastinate in fulfilling it for him—an hour, two hours, a day, two days, a week, two weeks, a year, or two years? Any specified time limit in this matter is definitively invalid, for it is an unsubstantiated claim. The ruling here is: If he phrased his statement as a manumission contingent on a specified condition, it becomes binding since he owns him. Whenever the slave fulfills the stipulated condition, he is entitled to that freedom as long as he remains under his ownership. The master may sell him before the manumission becomes obligatory, for he remains his slave. These are opinions unattributed to their predecessors, and they ascribed to the slave a legal right of choice despite the absence of

وَلَكِنْ لَيْتَ شِعْرِي كَمْ يَتَلَوَّمُ لَهُ السُّلْطَانُ، أَسَاعَةً أَمْ سَاعَتَيْنِ أَمْ يَوْمًا أَمْ يَوْمَيْنِ أَمْ جُمُعَةً أَمْ جُمُعَتَيْنِ أَمْ حَوْلًا أَمْ حَوْلَيْنِ؟ وَكُلُّ حَدٍّ فِي هَذَا فَهُوَ بَاطِلٌ بِيَقِينٍ؛ لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ - وَالْقَوْلُ فِي هَذَا: أَنَّهُ إنْ أَخْرَجَ كَلَامَهُ مَخْرَجَ الْعِتْقِ بِالصِّفَةِ فَهُوَ لَازِمٌ؛ لِأَنَّهُ مَلَكَهُ فَمَتَى مَا جَاءَهُ بِمَا قَالَ فَهُوَ حُرٌّ لَهُ ذَلِكَ مَا بَقِيَ عِنْدَهُ، وَلِلسَّيِّدِ بَيْعُهُ قَبْلَ أَنْ يَسْتَحِقَّ الْعِتْقَ؛ لِأَنَّهُ عَبْدُهُ - وَهَذِهِ أَقْوَالٌ لَا تُحْفَظُ عَمَّنْ قَبْلَهُمْ، وَجَعَلَ خِيَارًا لِلْعَبْدِ حَيْثُ لَا دَلِيلَ عَلَى أَنَّ لَهُ الْخِيَارَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

evidence supporting such a right. And success comes only from Allah, the Most High.

The Issue of Manumission by Vow

Issue 1664: If someone declares, "I am obligated to Allah, the Exalted, to free a slave," the obligation becomes binding on him.

And whoever declares, "If such-and-such occurs (a matter which does not entail disobedience), then this slave of mine is free," and if that thing occurs, then he is free. We have mentioned this in "The Book of Vows."

As for one who vows a slave, it is a vow that does not entail freeing what one does not own, and it remains binding as we have detailed in the "Book of Vows." An explicit text exists regarding this matter: Mu'āwiyah ibn al-Ḥakam said to the Messenger of Allah—peace be upon him—"I am obligated to a slave for Allah's sake—should I free her?" The Prophet—peace be upon him—asked her, "Where is Allah?" She pointed toward the sky, whereupon he said, "She is a believer; free her." This constitutes a clear explicit text establishing the binding obligation to free the slave upon one who pledges it for Allah, the Exalted—and by Him, the Almighty and Majestic, we are strengthened.

The issue of manumitting a fetus independently of its mother.

Issue 1665: It is not permissible to free a fetus separately from its mother once the soul has been breathed into it (before birth), nor to gift it independently of her.

It is permissible to emancipate it [the fetus] before the soul is breathed into it, and by that emancipation its mother becomes free even if the emancipator did not intend to free her. It is fundamentally impermissible to transfer ownership of the fetus [as property] without emancipating her.

If he emancipates her—while she is pregnant—then: If the soul has not yet entered her fetus, the fetus is free unless he explicitly excludes it. If he

[مَسْأَلَة الْعِتْق بالنذر]

١٦٦٤ - مَسْأَلَةٌ: وَمَنْ قَالَ: لِلَّهِ تَعَالَى عَلَيَّ عِتْقُ رَقَبَةٍ: لَزِمَتْهُ

وَمَنْ قَالَ: إنْ كَانَ أَمْرُ كَذَا - مِمَّا لَا مَعْصِيَةَ فِيهِ - فَعَبْدِي هَذَا حُرٌّ، فَكَانَ ذَلِكَ الشَّيْءُ فَهُوَ حُرٌّ، وَقَدْ ذَكَرْنَا هَذَا فِي " كِتَابِ النُّذُورِ ".

وَأَمَّا مَنْ نَذَرَ رَقَبَةً فَهُوَ نَذْرٌ لَا عِتْقَ فِيمَا لَا يَمْلِكُ، فَهُوَ لَازِمٌ لِمَا ذَكَرْنَاهُ فِي " كِتَابِ النُّذُورِ " وَقَدْ جَاءَ فِي هَذَا نَصٌّ وَهُوَ «قَوْلُ مُعَاوِيَةَ بْنِ الْحَكَمِ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ عَلَيَّ لِلَّهِ رَقَبَةً أَفَأُعْتِقُهَا؟ فَسَأَلَهَا - عَلَيْهِ السَّلَامُ -: أَيْنَ اللَّهُ؟ فَأَشَارَتْ إلَى السَّمَاءِ فَقَالَ: هِيَ مُؤْمِنَةٌ، فَأَعْتِقْهَا» فَهَذَا نَصٌّ جَلِيٌّ عَلَى لُزُومِ الرَّقَبَةِ لِمَنْ الْتَزَمَهَا لِلَّهِ تَعَالَى - وَبِهِ عَزَّ وَجَلَّ نَتَأَيَّدُ.

[مَسْأَلَة عِتْق الْجَنِين دُون أُمِّهِ]

١٦٦٥ - مَسْأَلَةٌ: وَلَا يَجُوزُ عِتْقُ الْجَنِينِ دُونَ أُمِّهِ إذَا نُفِخَ فِيهِ الرُّوحُ قَبْلَ أَنْ تَضَعَهُ أُمُّهُ، وَلَا هِبَتُهُ دُونَهَا.

وَيَجُوزُ عِتْقُهُ قَبْلَ أَنْ يُنْفَخَ فِيهِ الرُّوحُ وَتَكُونُ أُمُّهُ بِذَلِكَ الْعِتْقِ حُرَّةً وَإِنْ لَمْ يُرِدْ عِتْقَهَا، وَلَا تَجُوزُ هِبَتُهُ أَصْلًا دُونَهَا.

excludes it, she becomes free while the fetus retains enslaved status. If the soul has already entered the fetus: If he includes the fetus in her emancipation when freeing her, then it becomes free. If he neither includes it in her emancipation nor excludes it, or if he explicitly excludes it, she becomes free while the fetus retains enslaved status.

فَإِنْ أَعْتَقَهَا - وَهِيَ حَامِلٌ - فَإِنْ كَانَ جَنِينُهَا لَمْ يُنْفَخْ فِيهِ الرُّوحُ، فَهُوَ حُرٌّ، إِلَّا أَنْ يَسْتَثْنِيَهُ فَإِنْ اسْتَثْنَاهُ فَهِيَ حُرَّةٌ، وَهُوَ غَيْرُ حُرٍّ وَإِنْ كَانَ قَدْ نُفِخَ فِيهِ الرُّوحُ فَإِنْ أَتْبَعَهَا إِيَّاهُ إِذْ أَعْتَقَهَا فَهُوَ حُرٌّ، وَإِنْ لَمْ يَتْبَعْهَا إِيَّاهُ، أَوْ اسْتَثْنَاهُ: فَهِيَ حُرَّةٌ، وَهُوَ غَيْرُ حُرٍّ.

L26777 Likewise, the ruling concerning a gift when one gives it is exactly the same, with no difference.

وَكَذَلِكَ الْقَوْلُ فِي الْهِبَةِ إِذَا وَهَبَهَا سَوَاءٌ سَوَاءٌ وَلَا فَرْقَ.

L26778 The period for ensoulment is the full completion of four months of pregnancy.

وَحَدُّ نَفْخِ الرُّوحِ فِيهِ: تَمَامُ أَرْبَعَةِ أَشْهُرٍ مِنْ حَمْلِهَا.

L26779 The proof of the validity of our statement—the words of Allah, the Almighty and Majestic: “We have certainly created man from an extract of clay” (23:12). “Then We made him a sperm-drop in a firm resting place” (23:13). “Then We created the sperm-drop into a clinging clot, then We created the clinging clot into a lump of flesh, then We created the lump of flesh into bones, then We covered the bones with flesh, then We developed him into another creation. So blessed is Allah, the Best of Creators” (23:14).[5]

بُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلَقَدْ خَلَقْنَا الإِنْسَانَ مِنْ سُلالَةٍ مِنْ طِينٍ} [المؤمنون: ١٢] {ثُمَّ جَعَلْنَاهُ نُطْفَةً فِي قَرَارٍ مَكِينٍ} [المؤمنون: ١٣] {ثُمَّ خَلَقْنَا النُّطْفَةَ عَلَقَةً فَخَلَقْنَا الْعَلَقَةَ مُضْغَةً فَخَلَقْنَا الْمُضْغَةَ عِظَامًا فَكَسَوْنَا الْعِظَامَ لَحْمًا ثُمَّ أَنْشَأْنَاهُ خَلْقًا آخَرَ فَتَبَارَكَ اللَّهُ أَحْسَنُ الْخَالِقِينَ} [المؤمنون: ١٤] .

L26780 Through the chain of Imam Muslim: al-Ḥasan ibn ʿAlī al-Ḥulwānī narrated to us; Abū Tawbah (who is al-Rabīʿ ibn Nāfiʿ) narrated to us; Muʿāwiyah – meaning ibn Sallām – narrated to us that he heard Abū Salām narrate to us from Abū Asmāʾ al-Raḥabī: Thawbān, the freed slave of the Messenger of Allah (peace and blessings of Allah be upon him), reported to him that he heard the Messenger of Allah (peace and blessings of Allah be upon him) say: “The man’s semen is white, and the woman’s fluid is yellow. When they combine and the man’s semen prevails over the woman’s fluid, they bear a male child by Allah’s permission. If the woman’s fluid prevails over the man’s semen, they bear a female child by Allah’s permission.” And he recounted the full ḥadīth.[6]

وَمِنْ طَرِيقِ مُسْلِمٍ نا الْحَسَنُ بْنُ عَلِيٍّ الْحُلْوَانِيُّ نا أَبُو تَوْبَةَ - هُوَ الرَّبِيعُ بْنُ نَافِعٍ - نا مُعَاوِيَةُ - يَعْنِي ابْنَ سَلَّامٍ - أَنَّهُ سَمِعَ أَبَا سَلَّامٍ نا أَبُو أَسْمَاءَ الرَّحَبِيُّ: أَنَّ ثَوْبَانَ مَوْلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَدَّثَهُ " أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَاءُ الرَّجُلِ أَبْيَضُ، وَمَاءُ الْمَرْأَةِ أَصْفَرُ، فَإِذَا اجْتَمَعَا فَعَلَا مَنِيُّ الرَّجُلِ مَنِيَّ الْمَرْأَةِ أَذْكَرَا بِإِذْنِ اللَّهِ وَإِذَا عَلَا مَنِيُّ الْمَرْأَةِ مَنِيَّ الرَّجُلِ آنَثَا بِإِذْنِ اللَّهِ» وَذَكَرَ الْحَدِيثَ.

L26781 Through the narrations of Shu‘bah and Sufyān—both narrating from al-A‘mash—Zayd ibn Wahb reported from ‘Abdullāh ibn Mas‘ūd, who said: The

وَمِنْ طَرِيقِ شُعْبَةَ، وَسُفْيَانَ، كِلَاهُمَا عَنْ الْأَعْمَشِ نا زَيْدُ بْنُ وَهْبٍ نا عَبْدُ اللَّهِ بْنُ مَسْعُودٍ قَالَ: حَدَّثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «أَنَّ خَلْقَ أَحَدِكُمْ يُجْمَعُ فِي بَطْنِ أُمِّهِ أَرْبَعِينَ يَوْمًا ثُمَّ يَكُونُ عَلَقَةً مِثْلَ ذَلِكَ ثُمَّ يَكُونُ مُضْغَةً مِثْلَ ذَلِكَ ثُمَّ يُبْعَثُ

[5] **Qur’an references (L26779):** Qur’an 23:12 (Al-Mu’minun); Qur’an 23:13 (Al-Mu’minun); Qur’an 23:14 (Al-Mu’minun).

[6] **Hadith references (L26780):** Sahih Muslim 315a.

Messenger of Allah (peace and blessings be upon him and his family) narrated to us: “Verily the creation of one of you is gathered in his mother’s womb for forty days, then he becomes a clinging clot for a like period, then a lump of flesh for a like period. Then Allah sends an angel to him who is commanded with four words: he writes his provision, his deeds, his lifespan, then he is written as wretched or blessed. Then Allah breathes the soul into him.” And he mentioned the ḥadīth [in brief].

اللَّهُ إِلَيْهِ مَلَكًا فَيُؤْمَرُ بِأَرْبَعِ كَلِمَاتٍ فَيَكْتُبُ رِزْقَهُ وَعَمَلَهُ وَأَجَلَهُ ثُمَّ يَكْتُبُ شَقِيٌّ أَوْ سَعِيدٌ ثُمَّ يَنْفُخُ فِيهِ الرُّوحَ» وَذَكَرَ الْحَدِيثَ.

L26782–26783 These texts necessitate all that we have stated—thus, it is confirmed that until the completion of 120 nights, the mother’s fluid, the clot, and the lump of flesh from her inner contents are like the rest of what is in her womb. Therefore, he is subsidiary to her, for he is part of her. His exception applies in all cases, as he separates from her, just as milk separates.

فَهَذِهِ النُّصُوصُ تُوجِبُ كُلَّ مَا قُلْنَا - فَصَحَّ أَنَّهُ إلَى تَمَامِ الْمِائَةِ وَالْعِشْرِينَ لَيْلَةً مَاءً مِنْ مَاءِ أُمِّهِ وَلَحْمَةً وَمُضْغَةً مِنْ حَشْوَتِهَا كَسَائِرِ مَا فِي جَوْفِهَا، فَهُوَ تَبَعٌ لَهَا، لِأَنَّهُ بَعْضُهَا وَلَهُ اسْتِثْنَاؤُهُ فِي كُلِّ حَالٍ، لِأَنَّهُ يُزَايِلُهَا كَمَا يُزَايِلُهَا اللَّبَنُ.

L26784 And since this is the case, if a part thereof is emancipated, then the emancipation of all of it becomes required, for the reason we will explain later, God willing.

وَإِذْ هُوَ كَذَلِكَ فَإِذَا أُعْتِقَ فَقَدْ أُعْتِقَ بَعْضُهَا، فَوَجَبَ بِذَلِكَ عِتْقُ جَمِيعِهَا، لِمَا نَذْكُرُهُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

L26785 It is impermissible to gift without specifying its details because it is unknown, and gifting an unspecified item is not allowed, as we have explained in *Kitāb al-Hibāt*.

وَلَا يَجُوزُ هِبَتُهُ دُونَهَا، لِأَنَّهُ مَجْهُولٌ، وَلَا تَجُوزُ هِبَةُ الْمَجْهُولِ عَلَى مَا ذَكَرْنَا فِي " كِتَابِ الْهِبَاتِ ".

L26786 As for when the soul is breathed into it, it becomes distinct from her, for Allah the Exalted designated it {another creation} [23:14]. At that stage, it may be male while she is female, two while she is one, or black or white while she differs from it in physical form and moral disposition, and in [divinely decreed] felicity and wretchedness. Given this reality, neither gifting nor emancipating it independently of her is permissible, as it remains undetermined. One may only draw near to Allah the Exalted through that which satisfies the soul, and the soul cannot possibly be content except with what is defined in characteristics and extent. If he emancipates her, this emancipation does not apply to it since it is distinct from her. The same ruling applies if he gifts her. However, if he subsumes her offspring under her in emancipation, gifting, or charity, this is valid. For people during the era of Allah’s Messenger—peace and blessings be upon him—under his knowledge and afterward, consistently emancipated pregnant enslaved women, enacted

وَأَمَّا إذَا نُفِخَ فِيهِ الرُّوحُ فَهُوَ غَيْرُهَا، لِأَنَّ اللَّهَ تَعَالَى سَمَّاهُ {خَلْقًا آخَرَ} [المؤمنون: ١٤] وَهُوَ حِينَئِذٍ قَدْ يَكُونُ ذَكَرًا وَهِيَ أُنْثَى، وَيَكُونُ اثْنَيْنِ وَهِيَ وَاحِدَةٌ، وَيَكُونُ أَسْوَدَ أَوْ أَبْيَضَ وَهِيَ بِخِلَافِهِ فِي خَلْقِهِ وَخُلُقِهِ، وَفِي السَّعَادَةِ وَالشَّقَاءِ، فَإِذْ هُوَ كَذَلِكَ فَلَا تَجُوزُ هِبَتُهُ وَلَا عِتْقُهُ دُونَهَا، لِأَنَّهُ مَجْهُولٌ، وَلَا يَجُوزُ التَّقَرُّبُ إلَى اللَّهِ تَعَالَى إلَّا بِمَا تَطِيبُ النَّفْسُ عَلَيْهِ، وَلَا يُمْكِنُ أَلْبَتَّةَ طِيبُ النَّفْسِ إلَّا فِي مَعْلُومِ الصِّفَةِ وَالْقَدْرِ، فَإِنْ أَعْتَقَهَا فَلَا عِتْقَ لَهُ، لِأَنَّهُ غَيْرُهَا فَإِنْ وَهَبَهَا فَكَذَلِكَ، فَإِنْ أَتْبَعَهَا حَمْلَهَا فِي الْعِتْقِ وَالْهِبَةِ وَالصَّدَقَةِ: جَازَ ذَلِكَ، لِأَنَّهُ لَمْ يَزَلْ النَّاسُ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِعِلْمِهِ وَبَعْدَهُ يَعْتِقُونَ الْحَوَامِلَ وَيَنْفُذُونَ عِتْقَ حَمْلِهَا وَيَهَبُونَ كَذَلِكَ وَيَبِيعُونَهَا كَذَلِكَ، وَيَمْتَلِكُونَهَا

the emancipation of their offspring, similarly gifted them, sold them similarly, acquired them through inheritance division likewise, gave charity, presented offerings, and sacrificed female livestock—thereby subsuming their offspring under their legal status. And success comes from Allah alone.[7]

بِالْقِسْمَةِ كَذَلِكَ، وَيَتَصَدَّقُونَ وَيُهْدُونَ وَيُضَحُّونَ بِإِنَاثِ الْحَيَوَانِ فَيَتْبَعُونَ أَحْمَالَهَا لَهَا فَتَكُونُ فِي حُكْمِهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L26787 It has been narrated to us through Ibn Abi Shaybah, who reported to us from Qurrah ibn Sulayman, from Muhammad ibn Fadalah, from his father, from Ibn Umar regarding one who emancipated his female slave while excluding what was in her womb. He said: "The child [in her womb] remains his property."

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا قُرَّةُ بْنُ سُلَيْمَانَ عَنْ مُحَمَّدِ بْنِ فَضَالَةَ عَنْ أَبِيهِ عَنْ ابْنِ عُمَرَ فِيمَنْ أَعْتَقَ أَمَتَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا قَالَ: لَهُ ثُنْيَاهُ.

L26788 And through the chain of Muḥammad ibn ʿAbd al-Malik ibn Ayman, ʿAbdullāh ibn Aḥmad ibn Ḥanbal narrated to us: My father narrated to us, ʿAbd al-Raḥmān ibn Mahdī narrated to us, ʿAbbād ibn ʿAbbād al-Muhallabī narrated to us from ʿUbaydullāh ibn ʿUmar from Nāfiʿ from Ibn ʿUmar that he freed a female slave of his and excepted what was in her womb.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا عَبَّادُ بْنُ عَبَّادٍ الْمُهَلَّبِيُّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ أَعْتَقَ أَمَةً لَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا.

L26789 And with this, ʿUbaydullāh ibn ʿUmar says — this *isnad* is like the sun from its beginning to its end.

وَبِهِ يَقُولُ عُبَيْدُ اللَّهِ بْنُ عُمَرَ - هَذَا إسْنَادٌ كَالشَّمْسِ مِنْ أَوَّلِهِ إلَى آخِرِهِ.

L26790 Via the transmission of Yaḥyā ibn Saʿīd al-Qaṭṭān, narrated to us from Hishām ibn Ḥassān, from Muḥammad ibn Sīrīn, who said regarding one who manumits his female slave while excepting what is in her womb: "That is for him."

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نا هِشَامُ بْنُ حَسَّانٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ قَالَ فِي الَّذِي يَعْتِقُ أَمَتَهُ وَيَسْتَثْنِي مَا فِي بَطْنِهَا قَالَ: ذَلِكَ لَهُ.

L26791–26792 And through the chain of Abd al-Razzaq from Ibn Jurayj from Ata ibn Abi Rabah concerning one who emancipates his female slave while excepting what is in her womb, he ruled: That is valid for him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ فِيمَنْ أَعْتَقَ أَمَتَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا قَالَ: لَهُ ذَلِكَ.

L26793 And through the chain of transmission of Abu Thawr: Asbat narrated to us from Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm al-Nakhaʿī, who said: "Whoever establishes a mukataba with his female slave and excludes what is in her womb, there is no objection to it."

وَمِنْ طَرِيقِ أَبِي ثَوْرٍ نا أَسْبَاطُ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: مَنْ كَاتَبَ أَمَتَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا فَلَا بَأْسَ بِذَلِكَ.

L26794 If he emancipates her while excepting what is in her womb, then the two exceptions belong to him.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ يَمَانٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إذَا أَعْتَقَهَا وَاسْتَثْنَى مَا فِي بَطْنِهَا فَلَهُ ثُنْيَاهُ.

[7] **Qur'an references (L26786):** Qur'an 23:14 (Al-Mu'minun).

L26795 From the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Jābir, from al-Shaʿbī, who said: Whoever emancipates his female slave and excepts what is in her womb, then the exception belongs to him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ قَالَ: مَنْ أَعْتَقَ أَمَتَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا فَذَلِكَ لَهُ.

L26796 From the transmission of Ibn Abī Shaybah via Ḥarammī ibn ʿUmārah ibn Abī Ḥafṣah, who narrated from Shuʿbah, saying: I asked al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān about that—meaning one who manumitted his female slave but excepted what was in her womb—and they both said: "That belongs to him."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَرَمِيُّ بْنُ عُمَارَةَ بْنُ أَبِي حَفْصَةَ نا شُعْبَةُ قَالَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَنْ ذَلِكَ؟ - يَعْنِي: عَمَّنْ أَعْتَقَ أَمَتَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا - فَقَالَا جَمِيعًا: ذَلِكَ لَهُ.

L26797 It has also been narrated from Abū Hurayrah—and this is the opinion of Abū Thawr, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhawayh, Al-Awzāʿī, Al-Ḥasan ibn Ṣāliḥ, Ibn al-Mundhir, Abū Sulaymān, and our companions.

وَقَدْ رُوِيَ أَيْضًا عَنْ أَبِي هُرَيْرَةَ - وَهُوَ قَوْلُ أَبِي ثَوْرٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَابْنِ الْمُنْذِرِ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L26798 Al-Ḥasan al-Baṣrī, al-Zuhrī, Qatādah, and Rabīʿah said: If he manumits her, then her child is free, and he is not permitted to exclude the child.

وَقَالَ الْحَسَنُ الْبَصْرِيُّ، وَالزُّهْرِيُّ، وَقَتَادَةُ، وَرَبِيعَةُ: إذَا أَعْتَقَهَا فَوَلَدُهَا حُرٌّ وَلَيْسَ لَهُ أَنْ يَسْتَثْنِيَهُ.

L26799 It has been reported from Saʿīd ibn al-Musayyab (though not reliably attributed to him) - and it is the opinion of Abū Ḥanīfah, Sufyān, Mālik, and al-Shāfiʿī.

وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ - وَلَمْ يَصِحَّ عَنْهُ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ، وَمَالِكٍ، وَالشَّافِعِيِّ.

L26800 Rabīʿah said: If he frees what is in his female slave's womb without freeing her, the child belongs to him. If she gives birth, it is possible that the child will be emancipated. He retains the right to sell her before delivery, causing both her and her offspring to become enslaved, thereby voiding the emancipation. Similarly, if he dies: she and what is in her womb remain slaves, and the child's emancipation is invalid.

وَقَالَ رَبِيعَةُ: إنْ أَعْتَقَ مَا فِي بَطْنِ أَمَتِهِ دُونَهَا فَهُوَ لَهُ، فَإِنْ وَلَدَتْهُ فَعَسَى أَنْ يُعْتَقَ، وَلَهُ بَيْعُهَا قَبْلَ أَنْ تَضَعَ، وَتُرَقَّ هِيَ وَمَا وَلَدَتْ، وَيَبْطُلُ عِتْقُهُ، وَكَذَلِكَ إنْ مَاتَ: فَهِيَ وَمَا فِي بَطْنِهَا رَقِيقٌ لَا عِتْقَ لَهُ.

L26801 Malik said: If a man manumits what is in the womb of his female slave, and if he dies while his creditors demand repayment, the female slave is sold and what is in her womb remains a slave with no manumission valid for it. But if she is not sold until she delivers, the child is free.

وَقَالَ مَالِكٌ: إنْ أَعْتَقَ مَا فِي بَطْنِ أَمَتِهِ فَإِنْ مَاتَ وَقَامَ غُرَمَاؤُهُ بِيعَتْ وَكَانَ مَا فِي بَطْنِهَا رَقِيقًا وَلَا عِتْقَ لَهُ، فَإِنْ لَمْ تُبَعْ حَتَّى وَضَعَتْ فَهُوَ حُرٌّ.

L26802 Abū Ḥanīfah and al-Shāfiʿī said: If a man emancipates what is in the womb of his female slave, it is free and will never be enslaved.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: إنْ أَعْتَقَ مَا فِي بَطْنِ أَمَتِهِ فَهُوَ حُرٌّ، وَلَا يُرَقُّ أَبَدًا.

قَالَ أَبُو مُحَمَّد: هَذَا مِمَّا خَالَفُوا فِيهِ ابْنَ عُمَرَ، وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، وَهُمْ يُعَظِّمُونَ هَذَا.

L26803–26804 Abu Muhammad said: This is among the matters in which they opposed Ibn Umar, and no opponent from the Companions is known to have disagreed with him, yet they revere this.

وَأَمَّا قَوْلُ رَبِيعَةَ، وَمَالِكٍ، فَفِي غَايَةِ التَّنَاقُضِ، وَلَا يَخْلُو عِتْقُهُ لِجَنِينِ أَمَتِهِ مِنْ أَنْ يَكُونَ عِتْقًا أَوْ لَا يَكُونَ عِتْقًا، فَإِنْ كَانَ عِتْقًا لَا يَحِلُّ اسْتِرْقَاقُهُ - بِيعَتْ أُمُّهُ أَوْ لَمْ تُبَعْ - وَإِنْ كَانَ لَيْسَ عِتْقًا فَلَا يَجُوزُ أَنْ يَصِحَّ لَهُ عِتْقٌ وَإِنْ وَضَعَتْهُ بِقَوْلٍ " لَيْسَ عِتْقًا " وَنَسُوا هَاهُنَا احْتِجَاجَهُمْ بِ «الْمُسْلِمِينَ عِنْدَ شُرُوطِهِمْ» وَبِ {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] .

L26805 As for the opinion of Rabīʿah and Mālik, it is utterly contradictory. The manumission for the fetus of his enslaved woman cannot escape being either manumission or not. If it constitutes manumission, it is impermissible to enslave him—whether his mother is sold or not. If it does not constitute manumission, then his manumission cannot be deemed valid even if she delivers him, by their assertion that "it is not manumission." They have neglected here their own argument based on "Muslims are bound by their conditions" and "Fulfill [your] covenants" [Al-Mā'idah 5:1].[8]

وَهَذَا قَوْلٌ لَا يُؤَيِّدُهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قَوْلُ أَحَدٍ قَبْلَ رَبِيعَةَ، وَمَالِكٍ، وَلَا غَيْرُهُمَا، وَلَا قِيَاسٌ، وَلَا رَأْيٌ سَدِيدٌ، بَلْ هُوَ مُخَالِفٌ لِكُلِّ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26806 This is an opinion not supported by the Quran, nor the Sunnah, nor a weak narration, nor the statement of a Companion, nor the statement of anyone before Rabīʿah and Mālik, nor other than them both, nor analogical reasoning, nor sound judgment. Rather, it contradicts all of that—and success is from Allah, the Exalted.

وَعَهِدْنَاهُمْ يَحْتَجُّونَ فِي بَعْضِ الْمَوَاضِعِ بِشَيْءٍ لَا يُعْرَفُ مَخْرَجُهُ " كُلُّ ذَاتِ رَحِمٍ فَوَلَدُهَا بِمَنْزِلَتِهَا " وَهُمْ أَوَّلُ مُخَالِفٍ لِهَذَا، فَيَقُولُونَ فِي وَلَدِ الْغَارَةِ، وَالْمُسْتَحَقَّةِ: هِيَ أَمَةٌ وَوَلَدُهَا حُرٌّ.

L26807 We have observed them invoking in some instances a principle of unknown origin: "Every possessor of a womb—her child shares her status," though they are the foremost in opposing this. They assert regarding the child of a captive taken in a raid and a concubine: "She is a slave, yet her child is free."

وَقَالَ بَعْضُهُمْ: لَمْ نَجِدْ قَطُّ امْرَأَةً حُرَّةً يَكُونُ جَنِينُهَا مَمْلُوكًا.

L26808 And some of them said, "We have never encountered a free woman whose fetus is held in ownership."

فَقُلْنَا: وَلَا وَجَدْتُمْ قَطُّ امْرَأَةً مَمْلُوكَةً وَوَلَدُهَا حُرٌّ، وَقَدْ قَضَيْتُمْ بِذَلِكَ فِي أُمِّ الْوَلَدِ، وَلَا وَجَدَ الْحَنَفِيُّونَ قَطُّ حُكْمَ الْآبِقِ، وَجَعْلَهُ فِي غَيْرِ الْآبِقِ، وَلَا وَجَدَ الْمَالِكِيُّونَ قَطُّ امْرَأَةً مُتَزَوِّجَةً بِزَيْدٍ تَرِثُ عُمَرَ بِالزَّوْجِيَّةِ وَهِيَ فِي عِصْمَةِ زَيْدٍ، وَلَا وَجَدَ الشَّافِعِيُّونَ قَطُّ حُكْمَ الْمُصَرَّاةِ فِي غَيْرِ الْمُصَرَّاةِ - وَهَذَا تَخْلِيطٌ لَا نَظِيرَ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26809 We said: Nor have you ever encountered a female slave whose child is free, though you have ruled such in the case of the umm al-walad. Nor have the Hanafis ever applied the ruling of the runaway slave to other than runaway slaves. Nor have the Malikis ever encountered a woman married to Zayd inheriting from 'Umar by marital right while still under Zayd's marriage bond. Nor have the Shafi'is ever applied the ruling on milk-withheld animals

[8] **Qur'an references (L26805):** Qur'an 5:1 (Al-Ma'idah).

beyond their designated case - this constitutes confusion without parallel. And success comes only from Allah, the Exalted.

L26810 **The issue of manumitting a limb, a tenth, or a part of the slave.**

L26811 1666 - Issue: If someone frees a part—any part—of his female slave or male slave, or frees a tenth of either, or a specifically designated portion in this manner: the entire male slave and the entire female slave shall be emancipated. Likewise, if he frees a nail, hair, or anything similar, as we have narrated through the chain of Ahmad ibn Shuʿayb: ʿAbdah ibn Sulaymān al-Ṣaffār al-Baṣrī reported to us from Suwayd, who reported from Zuhayr ibn Muʿāwiyah, who reported from ʿUbayd Allāh—the son of ʿUmar—from Nāfiʿ, from Ibn ʿUmar, who said: The Messenger of Allah—peace and blessings be upon him and his family—said: "Whoever frees any portion of their slave must emancipate the entirety of the slave if they possess wealth equivalent to the slave's value. If they lack such wealth, the slave shall be freed proportionally according to the owner's share."

L26812–26814 From the transmission of Aḥmad ibn Shuʿayb: I am Muḥammad ibn al-Muthannā; Abū al-Walīd (al-Ṭayālisī) narrated to us, [saying]: Hammām (Ibn Yaḥyā) narrated to us from Qatādah, from Abī al-Malīḥ al-Hudhalī, from his father: "That a man from Hudhayl..." He manumitted a partial share of a slave, and the Messenger of Allah (may Allah bless him and his family and grant him peace) approved his manumission, saying: "Allah has no partner." These are two authentic chains of narration. By this statement, what we mentioned in the preceding issue is established: that whoever manumits the fetus of his enslaved woman before the soul is breathed into it, she is thereby freed because it is a part of her and belongs to her.

L26815 We have been narrated through the chain of Muḥammad ibn al-Muthannā, who narrated to us: Ḥafṣ ibn Ghiyāth, who narrated to us: Layth ibn Abī Sulaym, from ʿĀṣim, from Ibn ʿAbbās, that he said regarding a man who told his female slave, "Your private part is free": She is free. Whether he freed a small portion or a large portion of it, she is free.

[مَسْأَلَة عِتْق عُضْو أَوْ عَشْر أَوْ جُزْء الْعَبْد]

١٦٦٦ - مَسْأَلَةٌ: وَمَنْ أَعْتَقَ عُضْوًا أَيَّ عُضْوٍ كَانَ مِنْ أَمَتِهِ أَوْ مِنْ عَبْدِهِ، أَوْ أَعْتَقَ عُشْرَهُمَا، أَوْ جُزْءًا مُسَمًّى كَذَلِكَ: عَتَقَ الْعَبْدُ كُلُّهُ وَالْأَمَةُ كُلُّهَا، وَكَذَلِكَ لَوْ أَعْتَقَ ظُفْرًا أَوْ شَعْرًا أَوْ غَيْرَ ذَلِكَ، لِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَبْدَةُ بْنُ سُلَيْمَانَ الصَّفَّارُ الْبَصْرِيُّ نا سُوَيْد نا زُهَيْرُ بْنُ مُعَاوِيَةَ نا عُبَيْدُ اللَّهِ - هُوَ ابْنُ عُمَرَ - عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «مَنْ أَعْتَقَ شَيْئًا مِنْ مَمْلُوكِهِ فَعَلَيْهِ عِتْقُهُ كُلُّهُ إنْ كَانَ لَهُ مَالٌ يَبْلُغُ ثَمَنَهُ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ عَتَقَ مِنْهُ نَصِيبُهُ» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى نا أَبُو الْوَلِيدِ - وَهُوَ الطَّيَالِسِيُّ - نا هَمَّامٌ - هُوَ ابْنُ يَحْيَى - عَنْ قَتَادَةَ عَنْ أَبِي الْمَلِيحِ الْهُذَلِيِّ عَنْ أَبِيهِ: «أَنَّ رَجُلًا مِنْ هُذَيْلٍ أَعْتَقَ شِقْصًا مِنْ مَمْلُوكٍ فَأَجَازَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عِتْقَهُ، وَقَالَ: لَيْسَ لِلَّهِ شَرِيكٌ» ، وَهَذَانِ إسْنَادَانِ صَحِيحَانِ وَوَجَبَ بِهَذَا الْقَوْلِ مَا ذَكَرْنَاهُ فِي الْمَسْأَلَةِ الَّتِي قَبْلَ هَذِهِ أَنَّ مَنْ أَعْتَقَ جَنِينَ أَمَتِهِ قَبْلَ أَنْ يُنْفَخَ فِيهِ الرُّوحُ عَتَقَتْ هِيَ بِذَلِكَ؛ لِأَنَّهُ بَعْضُهَا وَشَيْءٌ مِنْهَا.

رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا حَفْصُ بْنُ غِيَاثٍ نا لَيْثُ بْنُ أَبِي سُلَيْمٍ عَنْ عَاصِمٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ فِي رَجُلٍ قَالَ لِخَادِمِهِ: فَرْجُك حُرٌّ قَالَ: هِيَ حُرَّةٌ أَعْتَقَ مِنْهَا قَلِيلًا أَوْ كَثِيرًا فَهِيَ حُرَّةٌ.

L26816 Through the chain of Abu ʻUbayd: Abu Muʻawiyah narrated to us from Ismaʻil ibn Muslim from al-Hasan al-Basri, who said: If one manumits a single hair or a finger of his slave, then the slave has been emancipated.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا أَبُو مُعَاوِيَةَ عَنْ إِسْمَاعِيلَ بْنِ مُسْلِمٍ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: إذَا أَعْتَقَ مِنْ غُلَامِهِ شَعْرَةً، أَوْ أُصْبُعًا: فَقَدْ عَتَقَ.

L26817 Narrated by ʻAbd al-Razzāq from Maʻmar from Qatādah, who said: Whoever says to his slave, “Your finger is free,” “Your nail is free,” or “A limb of yours is free,” the entirety of the slave is freed.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: مَنْ قَالَ لِعَبْدِهِ: أُصْبُعُك حُرٌّ أَوْ ظُفْرُك أَوْ عُضْوٌ مِنْك حُرٌّ: عَتَقَ كُلُّهُ.

L26818 From the narration of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Jābir, from al-Shaʿbī, who said: Whoever frees a limb of their slave, the entire slave is freed. His inheritance is the inheritance of a free person, and his testimony is the testimony of a free person. This is the opinion of Mālik, al-Layth, Ibn Abī Laylā, al-Ḥasan ibn Ḥayy, al-Shāfiʿī, and Zufar. However, Mālik retracted this opinion, stating: If one bequeaths that nine-tenths of their slave be freed, the part he explicitly designates is freed, and the remainder is not freed.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ قَالَ: مَنْ أَعْتَقَ مِنْ عَبْدِهِ عُضْوًا: عَتَقَ كُلُّهُ، مِيرَاثُهُ مِيرَاثُ حُرٍّ، وَشَهَادَتُهُ شَهَادَةُ حُرٍّ - وَهُوَ قَوْلُ مَالِكٍ، وَاللَّيْثِ، وَابْنِ أَبِي لَيْلَى، وَالْحَسَنِ بْنِ حَيٍّ، وَالشَّافِعِيِّ وَزُفَرَ، إلَّا أَنَّ مَالِكًا - نَاقَضَ فَقَالَ: إنْ أَوْصَى بِأَنْ يُعْتَقَ مِنْ عَبْدِهِ تِسْعَةُ أَعْشَارِهِ: عَتَقَ مَا سَمَّى، وَلَا يُعْتَقُ بِذَلِكَ سَائِرُهُ.

L26819 Abu Hanifa and his companions—excluding Zufar—said: The obligation to manumit a slave does not arise by mentioning any body part except when mentioning the manumission of the neck, the face, the spirit, the soul, the body, or the physical body. Whichever of these is declared free, the entire slave is manumitted.

وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ حَاشَ زُفَرَ: لَا يَجِبُ الْعِتْقُ بِذِكْرِ شَيْءٍ مِنْ الْأَعْضَاءِ إلَّا فِي ذِكْرِهِ عِتْقَ الرَّقَبَةِ، أَوْ الْوَجْهِ، أَوْ الرُّوحِ، أَوْ النَّفْسِ، أَوْ الْجَسَدِ، أَوْ الْبَدَنِ، فَأَيُّ هَذِهِ أَعْتَقَ أُعْتِقَ جَمِيعُهُ

L26820 There is disagreement regarding his opinion on whether emancipating a slave by specifying the head or genitals results in emancipation. They argued that such terms are used figuratively to denote the entire body, as he said: “Because ’the face’ is used in linguistic convention to represent the whole.” This is among the matters in which Abū Ḥanīfah opposed the established Sunnah and a Companion whose opinion none of the other Companions are known to have opposed. They attach great importance to this principle when it aligns with their position, while we know of no predecessor to Abū Ḥanīfah in this division before his time.

وَاخْتَلَفَ عَنْهُ فِي عِتْقِهِ: الرَّأْسَ، أَوْ الْفَرْجَ، أَيُعْتَقُ بِذَلِكَ أَمْ لَا؟ وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّ هَذِهِ أَلْفَاظٌ يُعَبَّرُ بِهَا عَنْ الْجَمِيعِ، قَالَ: لِأَنَّهُ يُعَبَّرُ " بِالْوَجْهِ " عَنْ الْجَمِيعِ فِي اللُّغَةِ، وَهَذَا مِمَّا خَالَفَ فِيهِ أَبُو حَنِيفَةَ السُّنَّةَ الثَّابِتَةَ، وَصَاحِبًا لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، وَهُمْ يُعَظِّمُونَ هَذَا إذَا وَافَقَهُمْ، وَمَا نَعْلَمُ لِأَبِي حَنِيفَةَ فِي هَذَا التَّقْسِيمِ مُتَقَدِّمًا قَبْلَهُ.

L26821 Aḥmad and Isḥāq said: If one declares, “Your toenail is free,” such a statement does not necessitate manumission—not because it is legally distinct from its

وَقَالَ أَحْمَدُ، وَإِسْحَاقُ: إنْ قَالَ: ظُفْرُك حُرٌّ، لَمْ يَجِبْ الْعِتْقُ بِذَلِكَ، لَا لِأَنَّهُ يُبَايِنُ حَامِلَهُ - وَكُلُّ هَذَا لَا شَيْءَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

bearer (for all of this is invalid)—and success is solely from Allah, the Most High.

The Legal Issue of Freeing a Jointly Owned Slave

L26822

Issue 1667 - If a person owns an enslaved man or woman co-owned with another and emancipates his entire share, or, If he manumits part of a slave or manumits him entirely, the entire slave becomes emancipated upon his declaration. If he possesses wealth sufficient to cover the value of the co-owner's share at the time of declaring manumission for the portion he manumitted, he must pay it to the co-owner. If he lacks such wealth, the male or female slave becomes obligated to earn the value of the share belonging to the non-manumitting co-owner according to their capacity. The co-owner has no claim beyond this, nor does he retain the right to manumit. The right of patronage (walāʾ) belongs exclusively to the first emancipator. The total value is assessed, then the proportion of the non-manumitted share is determined. The emancipated slave cannot claim reimbursement from his emancipator for what he earned toward this purpose (whether he acquires wealth or not). Regarding this matter, people hold fourteen opinions. Rabīʿah said: "Whoever manumits his share of a slave jointly owned with another, his manumission does not take effect." Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us, stating: From Muḥammad ibn ʿAbd Allāh ibn Abī Dulaym, from Muḥammad ibn Waḍḍāḥ, from Saḥnūn, from Ibn Wahb, from Yūnus ibn Zayd, from Rabīʿah. Yūnus said: "I asked him about a slave jointly owned by two partners where one manumitted his share. Rabīʿah replied: 'His manumission is revoked.' He did not distinguish between cases where the emancipator acted with his co-owner's permission or without it."

L26823–26825

L26826

Al-Ṭaḥāwī narrated this from him, from Aḥmad ibn Abī ʿImrān, from Muḥammad ibn Simāʿata, from Abī Yūsuf: that Rabīʿah said this to him.

L26827

Bukayr ibn al-Ashajj said regarding two parties between whom there is a slave, and one of them wishes to emancipate him or enter into a contractual manumission (kitābah): "Indeed, the two of them must mutually assess his

[مَسْأَلَة عِتْق الْعَبْد الْمُشْتَرَك]

١٦٦٧ - مَسْأَلَة: وَمَنْ مَلَكَ عَبْدًا أَوْ أَمَةً بَيْنَهُ وَبَيْنَ غَيْرِهِ فَأَعْتَقَ نَصِيبَهُ كُلَّهُ، أَوْ بَعْضَهُ، أَوْ أَعْتَقَهُ كُلَّهُ: عَتَقَ جَمِيعُهُ حِينَ يَلْفِظُ بِذَلِكَ - فَإِنْ كَانَ لَهُ مَالٌ يَفِي بِقِيمَةِ حِصَّةِ مَنْ يُشْرِكُهُ حِينَ لَفَظَ بِعِتْقِ مَا أَعْتَقَ مِنْهُ أَدَّاهَا إِلَى مَنْ يُشْرِكُهُ - فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ يَفِي بِذَلِكَ كُلِّفَ الْعَبْدُ أَوْ الْأَمَةُ أَنْ يَسْعَى فِي قِيمَةِ حِصَّةِ مَنْ لَمْ يَعْتِقْ عَلَى حَسَبِ طَاقَتِهِ، لَا شَيْءَ لِلشَّرِيكِ غَيْرُ ذَلِكَ، وَلَا لَهُ، أَنْ يَعْتِقَ، وَالْوَلَاءُ لِلَّذِي أَعْتَقَ أَوَّلًا، وَإِنَّمَا يُقَوَّمُ كُلُّهُ ثُمَّ يُعْرَفُ مِقْدَارَ حِصَّةِ مَنْ لَمْ يَعْتِقْ وَلَا يَرْجِعُ الْعَبْدُ الْمُعْتَقُ عَلَى مَنْ أَعْتَقَهُ بِشَيْءٍ مِمَّا سَعَى فِيهِ - حَدَثَ لَهُ مَالٌ أَوْ لَمْ يَحْدُثْ - وَلِلنَّاسِ فِي هَذَا أَرْبَعَةَ عَشَرَ قَوْلًا -: قَالَ رَبِيعَةُ: مَنْ أَعْتَقَ حِصَّةً لَهُ مِنْ عَبْدٍ بَيْنَهُ وَبَيْنَ آخَرَ لَمْ يَنْفُذْ عِتْقُهُ -: حَدَّثَنَا بِذَلِكَ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ قَالَ: نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي دُلَيْمٍ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا سَحْنُونَ نا ابْنُ وَهْبٍ عَنْ يُونُسَ بْنِ زَيْدٍ عَنْ رَبِيعَةَ قَالَ يُونُسُ سَأَلْته عَنْ عَبْدٍ بَيْنَ اثْنَيْنِ فَأَعْتَقَ أَحَدُهُمَا نَصِيبَهُ مِنْ الْعَبْدِ فَقَالَ رَبِيعَةُ: عِتْقُهُ مَرْدُودٌ لَمْ يَخُصَّ بِذَلِكَ مَنْ أَعْتَقَ بِإِذْنِ شَرِيكِهِ أَوْ بِغَيْرِ إذْنِهِ.

وَرَوَى ذَلِكَ عَنْهُ الطَّحَاوِيَّ عَنْ أَحْمَدَ بْنِ أَبِي عِمْرَانَ عَنْ مُحَمَّدِ بْنِ سِمَاعَةَ عَنْ أَبِي يُوسُفَ: أَنَّ رَبِيعَةَ قَالَ لَهُ ذَلِكَ.

وَقَالَ بُكَيْرُ بْنُ الْأَشَجِّ فِي اثْنَيْنِ بَيْنَهُمَا عَبْدٌ فَأَرَادَ أَحَدُهُمَا أَنْ يَعْتِقَ أَوْ يُكَاتِبَ: فَإِنَّمَا يَتَقَاوَمَانِهِ -: رُوِّينَا ذَلِكَ عَنْ ابْنِ وَهْبٍ عَنْ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ.

value." This was narrated to us from Ibn Wahb, from Makhramah ibn Bukayr, from his father.

وَقَالَتْ طَائِفَةٌ: يَنْفُذُ عِتْقُ مَنْ أَعْتَقَ، وَيَبْقَى مَنْ لَمْ يَعْتِقْ عَلَى نَصِيبِهِ يَفْعَلُ فِيهِ مَا شَاءَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ، وَسَعِيدِ بْنِ مَنْصُورٍ، قَالَا جَمِيعًا: نا أَبُو مُعَاوِيَةَ - هُوَ مُحَمَّدُ بْنُ خَازِمٍ الضَّرِيرُ - عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ، قَالَ: كَانَ بَيْنِي وَبَيْنَ الْأَسْوَدِ وَأُمِّنَا غُلَامٌ شَهِدَ الْقَادِسِيَّةَ وَأَبْلَى فِيهَا فَأَرَادُوا عِتْقَهُ وَكُنْتُ صَغِيرًا فَذَكَرَ ذَلِكَ الْأَسْوَدُ لِعُمَرَ، فَقَالَ: أَعْتِقُوا أَنْتُمْ وَيَكُونُ عَبْدُ الرَّحْمَنِ عَلَى نَصِيبِهِ حَتَّى يَرْغَبَ فِي مِثْلِ مَا رَغِبْتُمْ فِيهِ أَوْ يَأْخُذَ نَصِيبَهُ؟ قَالَ سَعِيدُ بْنُ مَنْصُورٍ مَكَانَ " أَعْتِقُوا أَنْتُمْ ": " أَعْتِقُوا إنْ شِئْتُمْ " لَمْ يَخْتَلِفَا فِي غَيْرِ ذَلِكَ، وَهَذَا إسْنَادٌ كَالذَّهَبِ الْمَحْضِ.

L26828 A group held the view that the emancipation by those who emancipated takes effect, while the share of the one who did not emancipate remains in his possession, which he may dispose of as he wishes. This is as we have reported through the transmission of Ibn Abī Shaybah and Saʿīd ibn Manṣūr, both of whom narrated: Abū Muʿāwiyah—Muḥammad ibn Khāzim al-Ḍarīr—narrated to us from al-Aʿmash, from Ibrāhīm ibn ʿAbd al-Raḥmān ibn Yazīd, who said: "A slave jointly owned by me, al-Aswad, and our mother had fought at al-Qādisiyyah and distinguished himself there. They wished to emancipate him, while I was a minor. Al-Aswad mentioned this to ʿUmar, who said: 'Emancipate if you wish, and the share of ʿAbd al-Raḥmān shall remain until he chooses to act as you have acted or takes his portion.'" Saʿīd ibn Manṣūr's version states "emancipate if you wish" instead of "you emancipate," with no other differences between the two narrations. This chain of transmission is sound.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ النَّخَعِيِّ عَنْ الْأَسْوَدِ، قَالَ: كَانَ لِي وَلِإِخْوَتِي غُلَامٌ أَبْلَى يَوْمَ الْقَادِسِيَّةِ فَأَرَدْت عِتْقَهُ لِمَا صَنَعَ، فَذَكَرْت ذَلِكَ لِعُمَرَ فَقَالَ: أَتُفْسِدُ عَلَيْهِمْ نَصِيبَهُمْ؟ حَتَّى يَبْلُغُوا، فَإِنْ رَغِبُوا فِيمَا رَغِبْت فِيهِ وَإِلَّا لَمْ تُفْسِدْ عَلَيْهِمْ نَصِيبَهُمْ.

L26829–26831 From the chain of Saʿīd ibn Manṣūr: Jarīr narrated to us from Manṣūr from al-Nakhaʿī from al-Aswad, who said: "I and my brothers had a slave who distinguished himself on the day of al-Qādisiyyah. I intended to emancipate him for his deed, so I mentioned this to ʿUmar." He said: "Do you deprive them of their share until they reach puberty? If they desire what you have desired, then [act]; otherwise, do not deprive them of their share."

قَالَ أَبُو مُحَمَّد: لَوْ رَأَى التَّضْمِينَ لَمْ يَكُنْ ذَلِكَ إفْسَادًا لِنَصِيبِهِمْ -: وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ فِي عَبْدٍ بَيْنَ شَرِيكَيْنِ أَعْتَقَ أَحَدُهُمَا نَصِيبَهُ، فَأَرَادَ الْآخَرُ أَنْ يَجْلِسَ عَلَى حَقِّهِ مِنْ الْعَبْدِ، وَقَالَ الْعَبْدُ: نا أَقْضِي قِيمَتِي فَقَالَ عَطَاءٌ، وَعَمْرُو بْنُ دِينَارٍ: سَيِّدُهُ أَحَقُّ بِمَا بَقِيَ يَجْلِسُ عَلَيْهِ إنْ شَاءَ

L26832 Abu Muhammad said, "If he had ruled on compensation, that would not have invalidated their share of ownership." From the chain of Abd al-Razzaq via Ibn Jurayj: I asked Ata about a slave jointly owned by two partners, where one freed his share, and the other sought to assert his right over the remaining portion of the slave. The slave said, "I will pay my value." Ata and Amr ibn Dinar said, "His master has the strongest claim to what remains; he may assert it over him, if he wishes."

L26833 And from the transmission of ʿAbd al-Razzāq from Maʿmar: that he said regarding a slave co-owned by two men—when one manumits his share,

then the other manumits afterward—his clientage and inheritance rights are shared between them. This is also the opinion of al-Zuhrī, as Maʿmar said.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ: أَنَّهُ قَالَ فِي عَبْدٍ بَيْنَ رَجُلَيْنِ أَعْتَقَ أَحَدُهُمَا نَصِيبَهُ ثُمَّ أَعْتَقَ الْآخَرُ بَعْدُ: فَوَلَاؤُهُ وَمِيرَاثُهُ بَيْنَهُمَا - وَهُوَ قَوْلُ الزُّهْرِيِّ أَيْضًا، قَالَ مَعْمَرٌ.

L26834 From the narration of Ibn Wahb, via ʻUqbah ibn Nāfiʻ, from Rabīʻah regarding a slave jointly owned by three partners: one emancipated his share, another contracted manumission for his share, and the third retained his share in slavery. When the slave died, the one who contracted manumission must return what he had received from the slave, and all that the slave left behind is divided between him and the one who retained his share in slavery, and they divide it between themselves.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عُقْبَةَ بْنِ نَافِعٍ عَنْ رَبِيعَةَ فِي عَبْدٍ بَيْنَ ثَلَاثَةٍ: أَعْتَقَ أَحَدُهُمْ نَصِيبَهُ، وَكَاتَبَ الْآخَرُ نَصِيبَهُ، وَتَمَسَّكَ الْآخَرُ بِالرِّقِّ - ثُمَّ مَاتَ الْعَبْدُ، فَإِنَّ الَّذِي كَاتَبَ يَرُدُّ مَا أَخَذَ مِنْهُ، وَيَكُونُ جَمِيعُ مَا تَرَكَ بَيْنَهُ وَبَيْنَ الَّذِي تَمَسَّكَ بِالرِّقِّ يَقْتَسِمَانِهِ.

L26835 A group held that the manumission enacted by one who emancipates takes effect in his share, with no liability toward his co-owner unless the enslaved person is a strikingly beautiful female sought for intercourse—in which case he must compensate for the harm caused to his co-owner. This is the opinion of Uthman al-Batti. Another group maintained that the co-owner holds the choice: if he wishes, he may manumit; if he wishes, he may demand compensation from the emancipator—as narrated through Abd al-Razzaq's chain from Maʻmar, from Abu Hamza Maimun, from al-Nakhaʻi: "A man manumitted his share in a slave while his co-owners were orphans—what should be done?" Umar ibn al-Khattab ruled: "Wait until they reach maturity. If they choose to manumit, let them manumit; if they choose compensation, let it be granted." However, this attribution to Umar is invalid, for the authentic report from him is what we previously mentioned. This narration through Abu Hamza Maimun is baseless.

وَقَالَتْ طَائِفَةٌ: يَنْفُذُ عِتْقُ الَّذِي أَعْتَقَ فِي نَصِيبِهِ، وَلَا يَلْزَمُهُ شَيْءٌ لِشَرِيكِهِ إِلَّا أَنْ تَكُونَ جَارِيَةً رَائِعَةً إِنَّمَا تُلْتَمَسُ لِلْوَطْءِ، فَإِنَّهُ يَضْمَنُ لِلضَّرَرِ الَّذِي أَدْخَلَ عَلَى شَرِيكِهِ - وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ -: وَقَالَتْ طَائِفَةٌ: شَرِيكُهُ بِالْخِيَارِ إِنْ شَاءَ أَعْتَقَ وَإِنْ شَاءَ ضَمِنَ الْمُعْتِقُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي حَمْزَةَ عَنِ النَّخَعِيِّ: أَنَّ رَجُلًا أَعْتَقَ شِرْكًا لَهُ فِي عَبْدٍ وَلَهُ شُرَكَاءُ يَتَامَى؟ فَقَالَ عُمَرُ بْنُ الْخَطَّابِ: يَنْتَظِرُ بِهِمْ حَتَّى يَبْلُغُوا، فَإِنْ أَحَبُّوا أَنْ يَعْتِقُوا أَعْتَقُوا، وَإِنْ أَحَبُّوا أَنْ يُضْمَنَ لَهُمْ ضُمِنَ - وَهَذَا لَا يَصِحُّ عَنْ عُمَرَ، إِنَّمَا الصَّحِيحُ عَنْهُ مَا ذَكَرْنَا آنِفًا، لِأَنَّ هَذِهِ الرِّوَايَةَ عَنْ أَبِي حَمْزَةَ مَيْمُونٍ - وَلَيْسَ بِشَيْءٍ.

L26836 Then the chain is interrupted because Ibrahim was not born until many years after Umar's death, but this opinion has been reported from Sufyan al-Thawri and al-Layth.

ثُمَّ مُنْقَطِعَةٌ، لِأَنَّ إِبْرَاهِيمَ لَمْ يُولَدْ إِلَّا بَعْدَ مَوْتِ عُمَرَ بِسِنِينَ كَثِيرَةٍ، إِلَّا أَنَّ الْقَوْلَ بِهَذَا قَدْ رُوِيَ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَاللَّيْثِ.

L26837–26839 A group held that if someone manumits their share in a male or female slave, their co-owner has two options: either to manumit their share—with patronage shared between them—or to require the slave to work for the value of their share. Once the slave fulfills this payment, they are freed and patronage remains shared between them, regardless of whether the manumitter is in-

وَقَالَتْ طَائِفَةٌ: مَنْ أَعْتَقَ نَصِيبًا لَهُ فِي عَبْدٍ أَوْ أَمَةٍ، فَشَرِيكُهُ بَيْنَ خِيَارَيْنِ: إِنْ شَاءَ أَعْتَقَ نَصِيبَهُ وَيَكُونُ الْوَلَاءُ بَيْنَهُمَا، وَإِنْ شَاءَ اسْتَسْعَى الْعَبْدَ فِي قِيمَةِ حِصَّتِهِ، فَإِذَا أَدَّاهَا عَتَقَ وَالْوَلَاءُ بَيْنَهُمَا - سَوَاءٌ كَانَ فِي كِلَا الْأَمْرَيْنِ الْمُعْتِقُ مُعْسِرًا أَوْ مُوسِرًا، وَلَهُ إِنْ كَانَ

solvent or solvent in both cases. If solvent, the co-owner has a third option: to assume liability for the value of his share to the manumitter, whereupon the manumitter returns. The guarantor liable for the slave concerning what his co-owner (who did not emancipate) guaranteed. When the slave fulfills the guaranteed obligation, he is emancipated, and the right of patronage in this case is specifically and solely for the one who emancipated his share of the slave.

مُوسِرًا خِيَارٌ فِي وَجْهٍ ثَالِثٍ -: وَهُوَ إِنْ شَاءَ ضَمِنَ لِلْمُعْتِقِ قِيمَةَ حِصَّتِهِ وَيَرْجِعُ الْمُعْتِقُ الْمُضَمَّنُ عَلَى الْعَبْدِ بِمَا ضَمِنَهُ شَرِيكُهُ الَّذِي لَمْ يَعْتِقْ، فَإِذَا أَدَّاهَا الْعَبْدُ عَتَقَ، وَالْوَلَاءُ فِي هَذَا الْوَجْهِ خَاصَّةً لِلَّذِي أَعْتَقَ حِصَّتَهُ فَقَطْ.

L26840 He said: If someone emancipates an umm walad (a slave woman who bore her master a child) jointly owned by him and another, there is no liability upon him toward his co-owner—whether the emancipator is wealthy or indigent.

قَالَ: فَإِنْ أَعْتَقَ أُمَّ وَلَدٍ بَيْنَهُ وَبَيْنَ آخَرَ: فَلَا ضَمَانَ عَلَيْهِ لِشَرِيكِهِ، وَلَا عَلَيْهِ أَيْضًا مُوسِرًا كَانَ الْمُعْتِقُ أَوْ مُعْسِرًا.

L26841 He said: If one partner decrees posthumous manumission (tadbeer) for a jointly owned slave, the other partner may choose: either retain his share as an enslaved person in its original state while the first partner's share remains under tadbeer; decree tadbeer for his own share as well; or hold the slave liable to pay the value of the partner's share from him (the slave) as a mudabbar (a slave under tadbeer), whereby he gains freedom upon payment. The partner who initiated the tadbeer is likewise liable for the value of his share as a mudabbar, having no recourse to claim liability from his co-owner. Alternatively, he may directly free his share. If he does so, the partner who decreed tadbeer may hold the emancipating partner liable for the value of his share as a mudabbar—this being the opinion of Abu Hanifa (founder of the Hanafi school). We know of no scholar in Islam who preceded him in distinguishing between solvent and insolvent parties in this manner, nor in addressing such ambiguities. The most remarkable of these rulings concerns an umm walad (mother of her master's child) co-owned by two partners. None of his direct companions followed him in this, except later scholars in their respective times and religious contexts alone.

قَالَ: فَإِنْ دَبَّرَ عَبْدًا بَيْنَهُ وَبَيْنَ آخَرَ فَشَرِيكُهُ بِالْخِيَارِ، إِنْ شَاءَ احْتَبَسَ نَصِيبَهُ رَقِيقًا كَمَا هُوَ، وَيَكُونُ نَصِيبُ شَرِيكِهِ مُدَبَّرًا، وَإِنْ شَاءَ دَبَّرَ نَصِيبَهُ أَيْضًا وَإِنْ شَاءَ ضَمِنَ الْعَبْدُ قِيمَةَ حِصَّتِهِ مِنْهُ مُدَبَّرًا، وَإِذَا أَدَّاهَا عَتَقَ، وَضَمِنَ الشَّرِيكُ الَّذِي دَبَّرَ الْعَبْدَ أَيْضًا قِيمَةَ حِصَّتِهِ مُدَبَّرًا، وَلَا سَبِيلَ لَهُ إِلَى شَرِيكِهِ فِي تَضْمِينٍ وَإِنْ شَاءَ أَعْتَقَ نَصِيبَهُ، فَإِنْ فَعَلَ كَانَ لِشَرِيكِهِ الَّذِي دَبَّرَ أَنْ يُضَمِّنَ الشَّرِيكَ الْمُعْتِقَ قِيمَةَ نَصِيبِهِ مُدَبَّرًا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ - وَمَا نَعْلَمُ أَحَدًا مِنْ أَهْلِ الْإِسْلَامِ سَبَقَهُ إِلَى هَذَا التَّقْسِيمِ بَيْنَ الْمُوسِرِ وَالْمُعْسِرِ، وَلَا إِلَى هَذِهِ الْوَسَاوِسِ وَأَعْجَبُهَا: أُمُّ وَلَدٍ بَيْنَ اثْنَيْنِ، وَلَا نَعْلَمُ أَحَدًا مِنْ أَصْحَابِهِ اتَّبَعَهُ عَلَيْهِ، إِلَّا الْمُتَأَخِّرِينَ فِي أَزْمَانِهِمْ وَأَدْيَانِهِمْ فَقَطْ.

L26842 A group said: Whoever frees his share in a jointly owned slave must guarantee the value of his partner's share, whether the partner is wealthy or indigent - as we have reported through the chain of Ibn Abi Shaybah: Yazeed ibn Harun narrated to us, from Hajjaj (meaning Ibn Artah), from Abd al-Rahman ibn al-Aswad and Ibrahim al-Nakha'i, both of whom reported from

وَقَالَتْ طَائِفَةٌ: مَنْ أَعْتَقَ شِرْكًا لَهُ فِي مَمْلُوكٍ ضَمِنَ قِيمَةَ حِصَّةِ شَرِيكِهِ مُوسِرًا كَانَ أَوْ مُعْسِرًا -: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ عَنْ حَجَّاجٍ - هُوَ ابْنُ أَرْطَاةَ - عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ، وَإِبْرَاهِيمَ النَّخَعِيِّ، كِلَاهُمَا عَنِ الْأَسْوَدِ، قَالَ:

al-Aswad, who said: “There was a slave jointly owned between me and my brothers, and I intended to free him.” Abd al-Rahman stated in his narration: “I came to Ibn Mas‘ud and mentioned this to him. He said: ’Do not harm your partners’ share and thereby become liable to pay, but wait until the slave reaches maturity.’” Ibrahim stated in his narration, replacing “Ibn Mas‘ud” with “Umar” in his report, and both narrators agreed on all other points.

كَانَ بَيْنِي وَبَيْنَ إِخْوَتِي غُلَامٌ فَأَرَدْت أَنْ أَعْتِقَهُ، قَالَ عَبْدُ الرَّحْمَنِ فِي رِوَايَتِهِ: فَأَتَيْت ابْنَ مَسْعُودٍ فَذَكَرْت ذَلِكَ لَهُ؟ فَقَالَ: لَا تُفْسِدُ عَلَى شُرَكَائِك فَتَضْمَنُ، وَلَكِنْ تَرَبَّصْ حَتَّى يَشِبُّوا، وَقَالَ إِبْرَاهِيمُ فِي رِوَايَتِهِ مَكَانَ " ابْنِ مَسْعُودٍ ": " عُمَرَ " وَاتَّفَقَا فِيمَا عَدَا ذَلِكَ.

L26843 From the narration of Ibn Abi Shaybah: Azhar al-Samman narrated to us from Abdullah ibn Awn from Muhammad ibn Sirin: that a slave jointly owned by two men was emancipated by one of them. Umar ibn al-Khattab wrote: “He is responsible for the highest appraisal value.” This is invalid because al-Hajjaj ibn Artat is weak, and the other chain is mursal (with a missing link). However, we have narrated this through the narration of Ibn Abi Shaybah: Muhammad ibn Mubashshir narrated to us from Hisham ibn Urwah from his father regarding a slave jointly owned by two men, one of whom emancipated his share. He said: “He is financially responsible for his partner’s share.” This is also the opinion of Zufar ibn al-Hudhayl.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَزْهَرُ السَّمَّانُ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ عَبْدًا بَيْنَ رَجُلَيْنِ أَعْتَقَهُ أَحَدُهُمَا، فَكَتَبَ عُمَرُ بْنُ الْخَطَّابِ: أَنْ يَقُومَ عَلَيْهِ أَعْلَى الْقِيمَةِ - وَهَذَا لَا شَيْءَ، لِأَنَّ الْحَجَّاجَ بْنَ أَرْطَاةَ هَالِكٌ، وَالْآخَرَ مُرْسَلٌ، إلَّا أَنَّ هَذَا قَدْ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ مُبَشِّرٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ فِي عَبْدٍ بَيْنَ اثْنَيْنِ أَعْتَقَ أَحَدُهُمَا نَصِيبَهُ قَالَ: هُوَ ضَامِنٌ لِنَصِيبِ صَاحِبِهِ - وَهُوَ أَيْضًا قَوْلُ زُفَرَ بْنِ الْهُذَيْلِ.

L26844–26846 A group of scholars held that if one of the two partners emancipates his share, the slave must enter into a contractual obligation to work for their freedom, regardless of which partner emancipated them. Whether wealthy or insolvent: As we have narrated through the chain of Abd al-Razzaq from Ibn Jurayj from Ata: If a slave is jointly owned by two men and one of them emancipates his share without his partner’s consent, the remaining portion of the slave is assessed. The slave is then emancipated using the wealth of the one who emancipated his share. This slave is compelled to work to repay the debt incurred by the owner for emancipating his share of the slave. I asked him: “Is the slave compelled to work whether the emancipator was insolvent or wealthy?” He replied: “Yes, as they asserted.”

وَقَالَتْ طَائِفَةٌ: إنْ أَعْتَقَ أَحَدُ الشَّرِيكَيْنِ نَصِيبَهُ اسْتَسْعَى الْعَبْدُ سَوَاءٌ كَانَ الْمُعْتِقُ مُوسِرًا أَوْ مُعْسِرًا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: إنْ كَانَ عَبْدٌ بَيْنَ رَجُلَيْنِ فَأَعْتَقَ أَحَدُهُمَا نَصِيبَهُ بِغَيْرِ أَمْرِ شَرِيكِهِ أُقِيمَ مَا بَقِيَ مِنْهُ، ثُمَّ عَتَقَ فِي مَالِ الَّذِي أَعْتَقَهُ، ثُمَّ اسْتَسْعَى هَذَا الْعَبْدُ بِمَا غَرِمَ فِيمَا أَعْتَقَ عَلَيْهِ مِنْ الْعَبْدِ فَقُلْت لَهُ: يَسْتَسْعِي الْعَبْدُ كَانَ مُفْلِسًا أَوْ غَنِيًّا؟ قَالَ: نَعَمْ، زَعَمُوا.

L26847 Ibn Jurayj said: This is ʿAṭāʾ’s initial opinion. He later returned to the view I had mentioned from him before.

قَالَ ابْنُ جُرَيْجٍ: هَذَا أَوَّلُ قَوْلِ عَطَاءٍ، ثُمَّ رَجَعَ إلَى مَا ذَكَرْت عَنْهُ قَبْلُ.

L26848 A group said: If a master emancipates his share in a slave while bankrupt, and the slave seeks to redeem himself by paying his value, he is most entitled

to this if he fulfills it. This is narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿUbayd Allāh ibn Abī Yazīd in his statement.

وَقَالَتْ طَائِفَةٌ: إِنْ أَعْتَقَ شِرْكًا لَهُ فِي عَبْدٍ - وَهُوَ مُفْلِسٌ - فَأَرَادَ الْعَبْدُ أَخْذَ نَفْسِهِ بِقِيمَتِهِ، فَهُوَ أَوْلَى بِذَلِكَ إِنْ نَفَّذَ -: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي يَزِيدَ قَوْلَهُ.

L26849 A group of scholars opined that if a slave co-owned by two individuals is partially manumitted when one of them frees his share, the remaining portion must be emancipated through the public treasury (Bayt al-Mal) of the Muslims. This is reported from Ibn Sirīn.

وَقَالَتْ طَائِفَةٌ: فِي عَبْدٍ بَيْنَ اثْنَيْنِ أَعْتَقَ أَحَدُهُمَا نَصِيبَهُ: أَنَّ بَاقِيهِ يُعْتَقُ مِنْ بَيْتِ مَالِ الْمُسْلِمِينَ -: رُوِيَ ذَلِكَ عَنِ ابْنِ سِيرِينَ.

L26850 A group holds that whoever manumits their share in a male slave or female slave must compensate the remaining owners to complete the manumission.

وَقَالَتْ طَائِفَةٌ: مَنْ أَعْتَقَ شِرْكًا لَهُ فِي عَبْدٍ أَوْ أَمَةٍ.

L26851 If he is solvent, the shares of his co-owners are appraised against him, and he must pay their value. The entire slave is manumitted only after this appraisal, not before. If a co-owner wishes to free his share, he may do so, but he is forbidden to retain ownership of that portion, enter into a *mukataba* contract (gradual emancipation), sell it, or declare it for posthumous emancipation. If the responsible party neglects the appraisal until either the manumitter or the slave dies, the appraisal becomes invalid, and full ownership reverts to whoever asserts the right to keep the slave enslaved. If the one who manumitted his share is insolvent, the portion he freed remains emancipated, while the rest remains enslaved. The owner of the remaining share may sell that enslaved portion if he wishes, retain it as property, enter into a *mukataba* contract, gift it, or declare it for posthumous emancipation. The ruling applies equally whether the manumitter gains solvency after the manumission or remains insolvent.

فَإِنْ كَانَ مُوسِرًا قُوِّمَ عَلَيْهِ حِصَصُ شُرَكَائِهِ وَأَغْرَمَهَا لَهُمْ، وَأُعْتِقَ كُلُّهُ بَعْدَ التَّقْوِيمِ لَا قَبْلَهُ، وَإِنْ شَاءَ الشَّرِيكُ أَنْ يَعْتِقَ حِصَّتَهُ فَلَهُ ذَلِكَ، وَلَيْسَ لَهُ أَنْ يُمْسِكَهُ رَقِيقًا، وَلَا أَنْ يُكَاتِبَهُ، وَلَا أَنْ يَبِيعَهُ، وَلَا أَنْ يُدَبِّرَهُ، فَإِنْ غَفَلَ عَنِ التَّقْوِيمِ حَتَّى مَاتَ الْمُعْتِقُ أَوْ الْعَبْدُ بَطَلَ التَّقْوِيمُ، وَمَالُهُ كُلُّهُ لِمَنْ تَمَسَّكَ بِالرِّقِّ، فَإِنْ كَانَ الَّذِي أَعْتَقَ نَصِيبَهُ مُعْسِرًا فَقَدْ عَتَقَ مِنْهُ مَا أَعْتَقَ وَالْبَاقِي رَقِيقٌ يَبِيعُهُ الَّذِي هُوَ لَهُ إِنْ شَاءَ، أَوْ يُمْسِكُهُ رَقِيقًا، أَوْ يُكَاتِبُهُ، أَوْ يَهَبُهُ، أَوْ يُدَبِّرُهُ، وَسَوَاءٌ أَيْسَرَ الْمُعْتِقُ بَعْدَ عِتْقِهِ أَوْ لَمْ يُوسِرْ.

L26852 If a male or female slave is jointly owned by three individuals, and one of them manumits his share while insolvent, then another manumits his share while solvent, no valuation is imposed on the solvent [second] manumitter or the insolvent [first] manumitter, and the slave remains partially emancipated according to the unmanumitted shares. If both manumitters are solvent, valuation is assessed solely against the one who manumitted first. If both manumit simultaneously while solvent, the share of the remaining co-owners

فَإِنْ كَانَ عَبْدٌ أَوْ أَمَةٌ بَيْنَ ثَلَاثَةٍ فَأَعْتَقَ أَحَدُهُمْ نَصِيبَهُ وَهُوَ مُعْسِرٌ ثُمَّ أَعْتَقَ الْآخَرُ وَهُوَ مُوسِرٌ لَمْ يُقَوَّمْ عَلَيْهِ وَلَا عَلَى الْمُعْتِقِ وَبَقِيَ بِحَسَبِهِ، فَإِنْ كَانَ كِلَاهُمَا مُوسِرًا قُوِّمَ عَلَى الَّذِي أَعْتَقَ أَوَّلًا فَقَطْ، فَلَوْ أَعْتَقَ الِاثْنَانِ مَعًا وَكَانَا غَنِيَّيْنِ قُوِّمَتْ حِصَّةُ الْبَاقِينَ عَلَيْهِمَا،

فَمَرَّةً قَالَ: بِنِصْفَيْنِ، وَمَرَّةً قَالَ: عَلَى قَدْرِ حِصَصِهِمَا، فَإِنْ كَانَ أَحَدُهُمَا غَائِبًا لَمْ يُنْتَظَرْ، لَكِنْ يُقَوَّمُ عَلَى الْحَاضِرِ - وَهَذَا قَوْلُ مَالِكٍ، وَمَا نَعْلَمُ هَذَا الْقَوْلَ لِأَحَدٍ قَبْلَهُ.

is valued against them. In some cases, Mālik ruled it should be divided into two equal halves, and in others, according to their respective shares. If one of them is absent, there is no waiting; rather, valuation is assessed against the present owner. This is the opinion of Mālik, and we do not know of anyone holding this view before him.

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَ الَّذِي أَعْتَقَ مُوسِرًا قُوِّمَ عَلَيْهِ حِصَّةُ مِنْ شِرْكِهِ وَهُوَ حُرٌّ كُلُّهُ حِينَ عَتَقَ الَّذِي أَعْتَقَ نَصِيبَهُ، وَلَيْسَ لِمَنْ يُشْرِكُهُ أَنْ يَعْتِقُوا وَلَا أَنْ يُمْسِكُوا، فَإِنْ كَانَ الْمُعْتِقُ مُعْسِرًا فَقَدْ عَتَقَ مَا عَتَقَ وَبَقِيَ سَائِرُهُ مَمْلُوكًا يَتَصَرَّفُ فِيهِ مَالِكُهُ كَمَا يَشَاءُ - وَهُوَ أَحَدُ قَوْلَيْ الشَّافِعِيِّ وَقَالَ أَحْمَدُ، وَإِسْحَاقُ: إِنْ كَانَ الْمُعْتِقُ مُوسِرًا ضُمِنَ بَاقِي قِيمَتِهِ، لَا يُبَاعُ لَهُ فِي ذَلِكَ دَارُهُ، قَالَ إِسْحَاقُ: وَلَا خَادِمُهُ - وَسَكَتَا عَنْ الْمُعْسِرِ، فَمَا سَمِعْنَا عَنْهُمَا فِيهِ لَفْظَةً.

L26853–26855 A group held the opinion that if the emancipator was financially capable, the value of his co-ownership share would be determined and he must pay it, whereby the entire slave would become free upon emancipating his share. The co-owners may neither emancipate their shares nor retain them. If the emancipator was insolvent, only the share he emancipated becomes free, while the remainder stays enslaved, and the owner of the remaining portion may manage it as he wishes. This is one of his two opinions. Al-Shāfiʿī, and Aḥmad and Isḥāq said: If the manumitter is solvent, he is liable for the remaining portion of the slave's value. His house is not sold for that purpose. Isḥāq said: "Nor his servant." The two scholars did not address the insolvent manumitter, and we have not heard a single word from them on this matter.

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَ الْمُعْتِقُ لِنَصِيبِهِ مُوسِرًا قُوِّمَ عَلَيْهِ حِصَّةُ مِنْ شِرْكِهِ وَعَتَقَ كُلُّهُ، فَإِنْ كَانَ الْمُعْتِقُ لِنَصِيبِهِ مُعْسِرًا اسْتَسْعَى الْعَبْدَ فِي قِيمَةِ حِصَّةِ مَنْ لَمْ يَعْتِقْ وَعَتَقَ كُلُّهُ.

L26856 A group stated: If the one manumitting his share is solvent, a portion of his co-owner's share is assessed against him, and the slave is freed in full. If the one manumitting his share is insolvent, the slave is compelled to labor for the value of the share belonging to the one who did not manumit, and the slave is freed in full.

ثُمَّ اخْتَلَفَ هَؤُلَاءِ: أَيَكُونُ حُرًّا مُذْ يَعْتِقُ الْأَوَّلُ نَصِيبَهُ وَلَا يَكُونُ لِلْآخَرِ تَصَرُّفٌ بِعِتْقٍ وَلَا بِغَيْرِهِ؟ أَمْ لَا يُعْتَقُ إِلَّا بِالْأَدَاءِ؟ وَلِمَنْ يَكُونُ وَلَاؤُهُ إِنْ أُعْتِقَ بِاسْتِسْعَائِهِ؟ وَهَلْ يَرْجِعُ عَلَى الَّذِي أَعْتَقَ بَعْضَهُ أَوَّلًا بِمَا سَعَى فِيهِ أَمْ لَا؟ -: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا أَشْعَثُ بْنُ سَوَّارٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ يَقُولُ: إِذَا أَعْتَقَ نَصِيبًا لَهُ فِي عَبْدٍ فَعَلَى الَّذِي أَعْتَقَ أَنْصِبَاءُ شُرَكَائِهِ إِنْ كَانَ مُوسِرًا، وَإِنْ كَانَ مُعْسِرًا اسْتَسْعَى الْعَبْدَ.

L26857 Then they differed: Does he become free from when the first emancipates his share, with the other having no right to dispose of him through emancipation or otherwise? Or is emancipation only valid upon fulfillment? To whom does his patronage belong if he is emancipated through compelled labor? And may the one who initially emancipated part of him seek reimbursement for what he labored to earn, or not? — It has been narrated to us through the chain of Saʿīd ibn Manṣūr, from Hushaym, from Ashʿath ibn Sawwār, from Nāfiʿ, from Ibn ʿUmar, that he used to say: If someone emancipates his share in a slave, the emancipator is responsible for purchasing the shares of his partners if he is financially capable. If he is impoverished, the emancipator must compel the slave to work [for his freedom].

L26858 From the chain of Saʿīd ibn Manṣūr: Abū Muʿāwiyah narrated to us, Ḥajjāj narrated to us from ʿAmr ibn Shuʿayb from Saʿīd ibn al-Musayyab, who said: Thirty of the Companions of the Messenger of Allah—peace and blessings be upon him—would hold liable a man who emancipated a slave jointly owned between him and his co-owner, requiring him to pay compensation if he was solvent, and they would compel the slave to labor for the co-owner if he was impoverished.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ نا حَجَّاجٌ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: كَانَ ثَلَاثُونَ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُضَمِّنُونَ الرَّجُلَ إِذَا أَعْتَقَ الْعَبْدَ بَيْنَهُ وَبَيْنَ صَاحِبِهِ إِذَا كَانَ مُوسِرًا وَيَسْتَسْعُونَهُ إِذَا كَانَ مُعْسِرًا.

L26859 From the chain of al-Ṭaḥāwī through Rawḥ ibn al-Faraj from Yaḥyā ibn Bukayr from al-Layth ibn Saʿd: Abū al-Zinād and Ibn Abī Laylā were asked about a person who frees their share of a co-owned slave. They cited either compensating for the manumission if the manumitter was solvent, or obligating the slave to work to pay the value of the co-owner's share if the manumitter was insolvent. They said: "We heard that ʿUmar ibn al-Khaṭṭāb spoke regarding certain aspects of this."

وَمِنْ طَرِيقِ الطَّحَاوِيِّ عَنْ رَوْحِ بْنِ الْفَرَجِ عَنْ يَحْيَى بْنِ بُكَيْرٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ: سُئِلَ أَبُو الزِّنَادِ، وَابْنُ أَبِي لَيْلَى: عَمَّنْ أَعْتَقَ نَصِيبَهُ مِنْ عَبْدٍ بَيْنَهُ وَبَيْنَ آخَرَ؟ فَذَكَرَا تَضْمِينَ الْعِتْقِ إِنْ كَانَ مُوسِرًا، أَوْ اسْتِسْعَاءَ الْعَبْدِ إِنْ كَانَ الْمُعْتِقُ مُعْسِرًا، فَقَالَا: سَمِعْنَا أَنَّ عُمَرَ بْنَ الْخَطَّابِ تَكَلَّمَ بِبَعْضِ ذَلِكَ.

L26860 From the chain of ʿAbd al-Razzāq: Sufyān al-Thawrī narrated to us, on the authority of Usāmah ibn Zayd, who heard Sulaymān ibn Yasār say: "If someone manumits a share in a slave, he must pay its value if he possesses wealth. If he lacks wealth, he must require the slave to labor for the remainder of its value." I asked Sulaymān: "What if the slave is a minor?" He replied: "Thus the Sunnah has come."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ نا أُسَامَةُ بْنُ زَيْدٍ: أَنَّهُ سَمِعَ سُلَيْمَانَ بْنَ يَسَارٍ يَقُولُ: إِذَا أَعْتَقَ شِقْصًا فِي عَبْدٍ فَإِنَّهُ يَضْمَنُهُ بِقِيمَتِهِ إِنْ كَانَ لَهُ مَالٌ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ اسْتَسْعَى الْعَبْدَ فِي بَقِيَّتِهِ فَقُلْت لِسُلَيْمَانَ: أَرَأَيْت إِنْ كَانَ الْعَبْدُ صَغِيرًا؟ قَالَ: كَذَلِكَ جَاءَتْ السُّنَّةُ

L26861–26863 Through the chain of Muḥammad ibn al-Muthannā: Muʿammal ibn Ismāʿīl narrated to us, Sufyān al-Thawrī narrated to us from Usāmah ibn Zayd from Sulaymān ibn Yasār, who said: "Whoever frees a fractional share in a slave, the slave is fully emancipated as a binding obligation upon him from his wealth. If he does not..." If he has wealth sufficient to require the slave to labor for its remainder, Usāma said: I asked Sulaymān, "From whom [is this narrated]?" He replied, "The Sunnah has enacted this."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا مُؤَمَّلُ بْنُ إِسْمَاعِيلَ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أُسَامَةَ بْنِ زَيْدٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: مِنْ أَعْتَقَ شِقْصًا مِنْ عَبْدٍ فَإِنَّهُ يُعْتَقُ عَلَيْهِ مِنْ مَالِهِ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ اسْتَسْعَى الْعَبْدَ فِي بَقِيَّتِهِ، قَالَ أُسَامَةُ: فَقُلْت لِسُلَيْمَانَ: عَمَّنْ؟ قَالَ: جَرَتْ بِهِ السُّنَّةُ.

L26864 And through the chain of Ibn Abī Shaybah, who narrated to us from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm al-Nakhaʿī regarding a slave co-owned by two men: If one of them frees his portion, he said, "The emancipator is liable to pay compensa-

tion if he possesses wealth. If he lacks wealth, the slave is compelled to work for their emancipation."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي الْعَبْدِ يَكُونُ بَيْنَ الرَّجُلَيْنِ: يَعْتِقُ أَحَدُهُمَا نَصِيبَهُ قَالَ: يَضْمَنُ إِنْ كَانَ لَهُ مَالٌ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ اسْتَسْعَى الْعَبْدُ.

L26865 Narrated via the chain of Abd al-Razzaq from Sufyan al-Thawri from Hammad ibn Abi Sulayman that he would say: If he possessed from the wealth the full share of his partner, he guaranteed liability for him, and there was no compulsory labor imposed upon the slave. But if there was a deficiency of a dirham or more from it, the slave would labor, and no liability fell upon the manumitter.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ أَنَّهُ كَانَ يَقُولُ: إِنْ كَانَ لَهُ مِنْ الْمَالِ تَمَامُ نَصِيبِ صَاحِبِهِ ضَمِنَ لَهُ، وَلَيْسَ عَلَى الْعَبْدِ سِعَايَةٌ، فَإِنْ نَقَصَ مِنْهُ دِرْهَمٌ فَمَا فَوْقَهُ سَعَى الْعَبْدُ، وَلَيْسَ عَلَى الْمُعْتِقِ ضَمَانٌ.

L26866 From the chain of Saʿīd ibn Manṣūr: He narrated to us from Hushaym, who narrated to us from Yūnus and Ismāʿīl ibn Sālim. Yūnus said [narrating] from al-Ḥasan, and Ismāʿīl said [narrating] from al-Shaʿbī. They both stated: If the emancipator is wealthy, he must cover the shares owed to his co-owners, but if he is impoverished, the enslaved person is compelled to work toward self-manumission (istisʿā').

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يُونُسُ، وَإِسْمَاعِيلُ بْنُ سَالِمٍ، قَالَ يُونُسُ عَنْ الْحَسَنِ، وَقَالَ إِسْمَاعِيلُ: عَنْ الشَّعْبِيِّ، قَالَا جَمِيعًا: إِنْ كَانَ الْمُعْتِقُ مُوسِرًا ضَمِنَ أَنْصِبَاءَ أَصْحَابِهِ، وَإِنْ كَانَ مُعْسِرًا اسْتَسْعَى الْعَبْدَ.

L26867 From the narration of Abd al-Razzaq via Ma'mar via Qatadah: Whoever emancipates their share in a slave, the value of their portion is assessed against them on the day of emancipation. The owner cannot claim compensation for what he incurred because of it, and the slave remains unemancipated until he fulfills the service imposed on him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ مَنْ أَعْتَقَ شِرْكًا لَهُ فِي عَبْدٍ فَإِنَّهُ يُقَوَّمُ عَلَيْهِ يَوْمَ أَعْتَقَهُ وَلَا يَتْبَعُهُ السَّيِّدُ بِمَا غَرِمَ عَنْهُ وَالْعَبْدُ غَيْرُ مُعْتَقٍ حَتَّى يُتِمَّ أَدَاءَ مَا اسْتَسْعَى فِيهِ.

L26868 And through the narration of Abd al-Razzaq from Ibn Jurayj, he said: The manumitter must necessarily compel the slave to work for emancipation if he is insolvent regarding his share, but he need not compel him if he is solvent—and the slave is fully emancipated, meaning this applies to the one who manumitted his share in the slave.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: يَسْتَسْعِي الْعَبْدَ وَلَا بُدَّ، إِنْ كَانَ الْمُعْتِقُ لِنَصِيبِهِ مُعْسِرًا، وَلَا يَسْتَسْعِي إِنْ كَانَ مُوسِرًا وَيُعْتَقُ كُلُّهُ - يَعْنِي عَلَى الَّذِي أَعْتَقَ نَصِيبَهُ مِنْهُ.

L26869 From the chain of Ibn Wahb via Yunus ibn Yazid, from Al-Zuhri regarding one who emancipates their share of a co-owned slave: Al-Zuhri said, "The slave's value is assessed against the emancipator and taken from the emancipator's wealth if the emancipator possesses wealth. If the slave lacks wealth, the slave is compelled to work."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ الزُّهْرِيِّ فِيمَنْ أَعْتَقَ نَصِيبَهُ مِنْ عَبْدٍ بَيْنَهُ وَبَيْنَ غَيْرِهِ؟ قَالَ الزُّهْرِيُّ: يَقُومُ الْعَبْدُ بِمَالِهِ عَلَى الْمُعْتِقِ فِي مَالِ الْمُعْتِقِ إِنْ كَانَ لَهُ مَالٌ، فَإِنْ لَمْ يَكُنْ لِلْعَبْدِ مَالٌ اُسْتُسْعِيَ.

وَرُوِيَ عَنْ أَبِي الزِّنَادِ، وَابْنِ أَبِي لَيْلَى: أَنَّهُمَا قَالَا فِي عَبْدٍ بَيْنَ ثَلَاثَةٍ أَعْتَقَ اثْنَانِ نَصِيبَهُمَا مِنْهُ؟ فَقَالَا: نَرَى أَنْ يَضْمَنَا عَتَاقَهُ جَمِيعًا، فَإِنْ لَمْ يَكُنْ لَهُمَا مَالٌ قُوِّمَ الْعَبْدُ قِيمَةَ عَدْلٍ فَسَعَى الْعَبْدُ فِيهَا فَأَدَّاهَا.

L26870 It has been narrated from Abu al-Zinad and Ibn Abi Layla that they issued a ruling regarding a slave jointly owned by three individuals, two of whom emancipated their shares. They said: "We hold that the two must be liable for emancipating the entire slave. If they have no wealth, the slave shall be appraised at a fair valuation. He must then work to earn its value and pay it."

وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَابْنِ شُبْرُمَةَ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَقَدْ ذَكَرْنَاهُ عَنْ ثَلَاثِينَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L26871 This is the opinion of Sufyan al-Thawri, Ibn Shubrumah, al-Awzaʿi, al-Ḥasan ibn Ḥayyin, Abu Yusuf, and Muhammad ibn al-Hasan. We have mentioned it from thirty of the Companions (may Allah be pleased with them).

وَعَنْ ابْنِ عُمَرَ، وَبَعْضُهُ عَنْ عُمَرَ، وَقَالَ سُلَيْمَانُ بْنُ يَسَارٍ: وَهُوَ السُّنَّةُ، وَقَالَهُ سَعِيدُ بْنُ الْمُسَيِّبِ، وَسُلَيْمَانُ بْنُ يَسَارٍ، وَالزُّهْرِيُّ، وَأَبُو الزِّنَادِ، وَالنَّخَعِيُّ، وَالشَّعْبِيُّ، وَالْحَسَنُ، وَحَمَّادٌ، وَقَتَادَةُ، وَابْنُ جُرَيْجٍ.

L26872–26874 Narrated from Ibn ʿUmar, and part of it is from ʿUmar. Sulaymān ibn Yasār said, "This is the Sunnah," and he said it. Sa'id ibn al-Musayyib, Sulayman ibn Yasar, al-Zuhri, Abu al-Zinad, al-Nakha'i, al-Sha'bi, al-Hasan, Hammad, Qatada, and Ibn Jurayj.

وَأَمَّا هَلْ يَكُونُ حُرًّا حِينَ يَعْتِقُ الْأَوَّلُ بَعْضَهُ أَمْ لَا؟ فَإِنَّ أَبَا يُوسُفَ، وَمُحَمَّدَ بْنَ الْحَسَنِ، وَالْأَوْزَاعِيَّ، وَالْحَسَنَ بْنَ حَيٍّ قَالُوا: هُوَ حُرٌّ سَاعَةَ يَلْفِظُ بِعِتْقِهِ، وَقَالَ قَتَادَةُ، هُوَ عَبْدٌ حَتَّى يُؤَدِّيَ إلَى مَنْ لَمْ يَعْتِقْ حَقَّهُ.

L26875 As for whether the slave becomes free when the first owner emancipates a portion of him or not: Abū Yūsuf, Muḥammad ibn al-Ḥasan, al-Awzāʿī, and al-Ḥasan ibn Ḥayyin said: "He becomes free the moment the owner formally declares his manumission." Qatādah said: "He remains a slave until he fulfills the right of the owner(s) who did not emancipate [their share]."

وَأَمَّا مَنْ يَكُونُ وَلَاؤُهُ: فَإِنَّ حَمَّادَ بْنَ أَبِي سُلَيْمَانَ، وَالْحَسَنَ الْبَصْرِيَّ، كِلَاهُمَا قَالَ: إنْ كَانَ لِلْمُعْتِقِ مَالٌ فَضَمِنَهُ فَالْوَلَاءُ كُلُّهُ لَهُ وَإِنْ عَتَقَ بِالِاسْتِسْعَاءِ فَالْوَلَاءُ بَيْنَهُمَا - وَهُوَ قَوْلُ سُفْيَانَ.

L26876 As for whose patronage applies: both Ḥammād ibn Abī Sulaymān and al-Ḥasan al-Baṣrī stated: If the manumitter possesses wealth and covers the financial obligation, the patronage wholly reverts to him. But if emancipation occurs through manumission by written contract (istis'ā'), the patronage is divided between them—and this is the opinion of Sufyān.

وَقَالَ إبْرَاهِيمُ، وَالشَّعْبِيُّ، وَابْنُ شُبْرُمَةَ، وَالثَّوْرِيُّ، وَابْنُ أَبِي لَيْلَى، وَكُلُّ مَنْ قَالَ: هُوَ حُرٌّ حِينَ عَتَقَ بَعْضُهُ: أَنَّ وَلَاءَهُ كُلَّهُ لِلَّذِي أَعْتَقَ بَعْضَهُ: عَتَقَ عَلَيْهِ، أَوْ بِالِاسْتِسْعَاءِ.

L26877 Ibrahim, al-Sha'bi, Ibn Shubrumah, al-Thawri, Ibn Abi Layla, and all who maintained that a slave becomes free when part of him is manumitted held that his complete allegiance belongs to the one who manumitted a portion of him, whether through compulsory manumission or via istisʿāʾ.

L26878 As for his recourse or recourse against him: Ibn Layla and Ibn Shubruma both stated that the manumitter cannot seek recourse for what he paid on

behalf of the slave, but the slave - if he enters into a mukataba - may seek recourse against the one who initiated his manumission to recover what he paid.

وَأَمَّا رُجُوعُهُ، أَوْ الرُّجُوعُ عَلَيْهِ: فَإِنَّ ابْنَ لَيْلَى، وَابْنَ شُبْرُمَةَ، قَالَا جَمِيعًا: لَا يَرْجِعُ الْمُعْتِقُ بِمَا أَدَّى عَلَى الْعَبْدِ، وَيَرْجِعُ الْعَبْدُ إذَا اسْتَسْعَى بِمَا أَدَّى عَلَى الَّذِي ابْتَدَأَ عِتْقَهُ.

L26879 Abu Yusuf and others said: Neither party has the right to rescind against the other party.

وَقَالَ أَبُو يُوسُفَ، وَغَيْرُهُ: لَا رُجُوعَ لِأَحَدِهِمَا عَلَى الْآخَرِ.

L26880 Abu Muhammad said: When they differed as we have mentioned, it is obligatory to examine the evidence adduced by each school of thought.

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ يُنْظَرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ.

L26881 We found the opinion of Rabīʿah to resemble the opinion of Abū Ḥanīfah in his prohibition of the gifting of undivided shares, charity with undivided shares, the leasing of undivided shares, and the pledging of undivided shares.

فَوَجَدْنَا قَوْلَ رَبِيعَةَ يُشْبِهُ قَوْلَ أَبِي حَنِيفَةَ فِي مَنْعِهِ مِنْ هِبَةِ الْمُشَاعِ وَمِنْ الصَّدَقَةِ بِالْمُشَاعِ، وَمِنْ إجَارَةِ الْمُشَاعِ، وَرَهْنِ الْمُشَاعِ.

L26882 The statement of al-Ḥasan and Judge ʿAbd al-Malik ibn Yaʿlā concerning the prohibition of selling mushaʿ (undivided jointly owned property) and mortgaging mushaʿ; they argue for this prohibition with the same arguments and evidence cited by those mentioned earlier.

وَقَوْلُ الْحَسَنِ، وَعَبْدِ الْمَلِكِ بْنِ يَعْلَى الْقَاضِي فِي الْمَنْعِ مِنْ بَيْعِ الْمُشَاعِ، وَرَهْنِ الْمُشَاعِ، وَيَحْتَجُّ لَهُ بِمَا احْتَجَّ بِهِ مَنْ ذَكَرْنَا.

L26883 None of this holds any validity, for both scriptural evidence and legal reasoning contradict all such claims. As for the scriptural evidence: we have cited it and will, God the Most High willing, do so.

وَلَيْسَ كُلُّ ذَلِكَ بِشَيْءٍ؛ لِأَنَّ النَّصَّ وَالنَّظَرَ يُخَالِفُ كُلَّ ذَلِكَ -: أَمَّا النَّصُّ: فَقَدْ ذَكَرْنَاهُ وَنَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى.

L26884 As for consideration: every person has the strongest claim to their property unless prevented by textual evidence. Indeed, Allah the Exalted has encouraged emancipation, gifts, and charity, enjoined the pledge, permitted sale and leasing. All of that is permissible in all cases, provided there is no textual prohibition against any of it.

وَأَمَّا النَّظَرُ: فَكُلُّ أَحَدٍ أَحَقُّ بِمَالِهِ مَا لَمْ يَمْنَعْهُ مِنْهُ نَصٌّ، وَقَدْ حَضَّ اللَّهُ تَعَالَى عَلَى الْعِتْقِ، وَالْهِبَةِ، وَالصَّدَقَةِ، وَأَمَرَنَا بِالرَّهْنِ، وَأَبَاحَ الْبَيْعَ، وَالْإِجَارَةَ، فَكُلُّ ذَلِكَ جَائِزٌ عَلَى كُلِّ حَالٍ مَا لَمْ يَمْنَعْ النَّصُّ مِنْ شَيْءٍ مِنْ ذَلِكَ.

L26885 This could plausibly be argued: because it is inherently impossible for a human being to exist partly free and partly enslaved.

وَقَدْ يُمْكِنُ أَنْ يُحْتَجَّ بِذَلِكَ: بِأَنَّهُ لَا يُمْكِنُ أَنْ يَكُونَ إنْسَانٌ بَعْضُهُ حُرٌّ وَبَعْضُهُ عَبْدٌ.

L26886–26887 They replied, “Just as a woman cannot be partially divorced and partially a wife.”

فَقُلْنَا: وَمَا الْمَانِعُ مِنْ ذَلِكَ؟ فَقَالُوا: كَمَا لَا تَكُونُ امْرَأَةٌ بَعْضُهَا مُطَلَّقَةٌ، وَبَعْضُهَا زَوْجَةٌ.

L26888 So we said: This is an analogy, and all of it is invalid.

فَقُلْنَا: هَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

L26889 Then it necessarily follows from this that they must hold: If this occurs, the

entire slave is emancipated, just as they rule in the case of a woman when he divorced a part of her.

ثُمَّ يَلْزَمُ عَلَى هَذَا أَنْ يَقُولُوا: إذَا وَقَعَ هَذَا أُعْتِقَ كُلُّهُ، كَمَا يَقُولُونَ فِي الْمَرْأَةِ إذَا طَلَّقَ بَعْضَهَا.

L26890 They said: "This causes harm to the business partner," and the Prophet said: "No harm [may be inflicted] and no harmful retaliation [is permitted]."

وَقَالُوا: هَذَا ضَرَرٌ عَلَى الشَّرِيكِ، وَقَدْ جَاءَ " لَا ضَرَرَ وَلَا ضِرَارَ ".

L26891 So we said: The separation of ownership is also harmful—therefore, prohibit it. The greatest harm is preventing a Muslim from manumitting his share.

فَقُلْنَا: افْتِرَاقُ الْمِلْكِ أَيْضًا ضَرَرٌ فَامْنَعُوا مِنْهُ، وَأَعْظَمُ الضَّرَرِ مَنْعُ الْمُؤْمِنِ مِنْ عِتْقِ حِصَّتِهِ.

L26892 As for those who assert the doctrine of mutual equivalence, this is erroneous because no definitive textual proof establishes it, nor is it permissible to forcibly dispossess anyone of their property unless a scriptural evidence obligates them to do so—thereby dismissing this opinion as well.

وَأَمَّا مَنْ قَالَ بِالتَّقَاوُمِ فَخَطَأٌ، لِأَنَّهُ لَمْ يَأْتِ بِهِ نَصٌّ، وَلَا يَجُوزُ أَنْ يُجْبَرَ أَحَدٌ عَلَى إخْرَاجِ مِلْكِهِ عَنْ يَدِهِ إلَّا أَنْ يُوجِبَ ذَلِكَ عَلَيْهِ نَصٌّ - فَسَقَطَ هَذَا الْقَوْلُ أَيْضًا.

L26893 As for the well-known opinion transmitted from Umar ibn al-Khattab, Ata, al-Zuhri, Amr ibn Dinar, and Rabi'ah: We found among their proofs what was narrated to us through the chain of Sa'id ibn Mansur (who narrated from Sufyan - that is, Ibn Uyaynah - from Amr ibn Dinar from Muhammad ibn Amr ibn Sa'id ibn al-As): "The sons of Sa'id ibn al-As had a slave whom they all emancipated except one man. The slave went to the Messenger of Allah (may Allah's peace and blessings be upon him) to seek his intercession with the man. The man then gifted his share to the Messenger of Allah (may Allah's peace and blessings be upon him), who emancipated him. He would thereafter say: 'I am the freedman of the Messenger of Allah (may Allah's peace and blessings be upon him),' and his name was Rafi' Abū al-Bahā'."

وَأَمَّا الْقَوْلُ الْمَأْثُورُ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَطَاءٍ، وَالزُّهْرِيِّ، وَعَمْرِو بْنِ دِينَارٍ، وَرَبِيعَةَ -: فَوَجَدْنَا مِنْ حُجَجِهِمْ مَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ سَعِيدِ بْنِ الْعَاصِ: «أَنَّ بَنِي سَعِيدِ بْنِ الْعَاصِ كَانَ لَهُمْ غُلَامٌ فَأَعْتَقُوهُ كُلُّهُمْ إلَّا رَجُلٌ وَاحِدٌ، فَذَهَبَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَسْتَشْفِعُ بِهِ عَلَى الرَّجُلِ فَوَهَبَ الرَّجُلُ نَصِيبَهُ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَعْتَقَهُ، فَكَانَ يَقُولُ: أَنَا مَوْلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاسْمُهُ رَافِعٌ أَبُو الْبَهَاءِ» .

L26894 Abu Muhammad said: This is an interrupted chain because Muhammad ibn 'Amr ibn Sa'id did not mention his informant. Then, if it were authentic, it would align with the established principle—the principle that everyone has the fullest authority over their property. However, this was abrogated by the Prophet's command (peace be upon him) that emancipation is required of the affluent and that [the enslaved] be required to work for their freedom if the emancipator is insolvent. Thus, this ruling undoubtedly nullifies what preceded it.

قَالَ أَبُو مُحَمَّدٍ: هَذَا مُنْقَطِعٌ، لِأَنَّ مُحَمَّدَ بْنَ عَمْرِو بْنِ سَعِيدٍ لَمْ يَذْكُرْ مَنْ حَدَّثَهُ - ثُمَّ لَوْ صَحَّ لَكَانَ ذَلِكَ عَلَى مَعْهُودِ الْأَصْلِ، وَالْأَصْلُ أَنَّ كُلَّ أَحَدٍ أَمْلَكُ بِمَالِهِ، ثُمَّ نُسِخَ ذَلِكَ بِأَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ يُعْتَقَ عَلَى الْمُوسِرِ وَيُسْتَسْعَى إنْ كَانَ الْمُعْتِقُ مُعْسِرًا - فَبَطَلَ بِهَذَا الْحُكْمِ مَا كَانَ قَبْلَ ذَلِكَ بِلَا شَكٍّ.

L26895 They said: It is a statement authentically reported from 'Umar, and no

opposition to it from any of the Companions has been reliably established.

وَقَالُوا: هُوَ قَوْلٌ صَحَّ عَنْ عُمَرَ وَلَمْ يَصِحَّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ خِلَافُهُ.

L26896 So we said: They countered the Hanafis and Malikis with this - those who abandon Sunnah practices over matters less significant than this, as they did regarding "the two parties to a sale retaining the right to rescind as long as they have not parted ways," and regarding the emancipation of Safiyya and the Prophet's (peace be upon him) act of making her emancipation her dower, and entitling a woman irrevocably divorced three times to inheritance during a terminal illness (on the deathbed).

فَقُلْنَا: عَارَضُوا بِهَذَا الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ الَّذِينَ يَتْرُكُونَ السُّنَنَ لِأَقَلَّ مِنْ هَذَا، كَمَا فَعَلُوا فِي " الْبَيِّعَيْنِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا " وَفِي عِتْقِ صَفِيَّةَ وَجَعْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عِتْقَهَا صَدَاقَهَا، وَتَوْرِيثِ الْمُطَلَّقَةِ ثَلَاثًا فِي مَرَضِ الْمَوْتِ.

L26897 As for us, there is no authoritative evidence in our view for anyone's statement except that of the Messenger of Allah (peace be upon him).

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L26898–26900 And they mentioned what was transmitted to us via the transmission path of Aḥmad ibn Shuʿayb: Aḥmad ibn ʿAbd Allāh ibn ʿAbd al-Ḥakam reported to us... Muhammad ibn Jaʿfar Ghundar narrated to us: Shuʿbah narrated to us from Khalid al-Ḥadhāʾ from Abū Bishr—who is al-Walīd ibn Muslim al-ʿAnbarī—from Ibn al-Thalab from his father: "A man freed his partial share of a co-owned slave, and the Messenger of Allāh—peace and blessings be upon him—did not hold him liable." This is from Ibn al-Thalab—and he is undocumented.

وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي بِشْرٍ - هُوَ الْوَلِيدُ بْنُ مُسْلِمٍ الْعَنْبَرِيُّ - عَنْ ابْنِ الثَّلْبِ عَنْ أَبِيهِ " رَجُلًا أَعْتَقَ نَصِيبًا لَهُ مِنْ مَمْلُوكٍ فَلَمْ يَضْمَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " فَهَذَا عَنْ ابْنِ الثَّلْبِ - وَهُوَ مَجْهُولٌ.

L26901 He said: Allah, the Exalted, said, *"No soul bears the burden of another"* [Al-An'ām 6:164], and there is no difference between emancipating their share of a slave and selling their share.[9]

وَقَالَ: قَالَ اللَّهُ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَلَا فَرْقَ بَيْنَ عِتْقِ نَصِيبِهِ وَبَيْنَ بَيْعِ نَصِيبِهِ.

L26902 We said: Yes, but the Sunnah has more right to be followed. He—peace and blessings be upon him—explains the Quran. Allah, the Exalted, has said: "that you may make clear to the people what has been sent down to them" [al-Nahl: 44].[10]

قُلْنَا: نَعَمْ، وَلَكِنَّ السُّنَّةَ أَوْلَى أَنْ تُتَّبَعَ، وَهُوَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - يُفَسِّرُ الْقُرْآنَ، قَالَ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] .

L26903 You have judged by al-ʿāqilah and did not invalidate it through this verse.

وَقَدْ حَكَمْتُمْ بِالْعَاقِلَةِ وَلَمْ تُبْطِلُوهَا بِهَذِهِ الْآيَةِ.

L26904 You have judged by the right of shufʿah but did not state: "Every person is most entitled to his right."

وَحَكَمْتُمْ بِالشُّفْعَةِ وَلَمْ تَقُولُوا: كُلُّ أَحَدٍ أَمْلَكُ بِحَقِّهِ.

[9] **Qur'an references (L26901):** Qur'an 6:164 (Al-An'am).
[10] **Qur'an references (L26902):** Qur'an 16:44 (An-Nahl).

وَقَالُوا: لَوْ ابْتَدَأَ عِتْقَ نَصِيبِ شَرِيكِهِ لَمْ يَنْفُذْ، فَكَذَلِكَ، بَلْ أَحْرَى أَنْ لَا يَنْفُذَ إِذَا لَمْ يَعْتِقْهُ، لَكِنْ أَعْتَقَ نَصِيبَ نَفْسِهِ، وَقَدْ جَاءَ لَا عِتْقَ قَبْلَ مِلْكٍ.

L26905 They said: If the manumission of his partner's share were initiated, it would not take effect. Thus, similarly, it is even more likely that it would not take effect if he does not manumit him. However, he manumitted his own share, and it has been narrated that there is no manumission prior to ownership.

فَقُلْنَا: هَذَا كُلُّهُ كَمَا ذَكَرْتُمْ، وَكُلُّهُ لَا يُعَارَضُ بِهِ النَّصُّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا تُضْرَبُ السُّنَنُ بَعْضُهَا بِبَعْضٍ.

L26906 So we said: All of this is as you have mentioned, and none of it is used to oppose the text from the Messenger of Allah, may Allah bless him and grant him peace, nor should established practices be pitted against one another.

وَقَالُوا: لَوْ أَعْتَقَا مَعًا لَجَازَ، فَصَحَّ أَنَّ كُلَّ أَحَدٍ أَمْلَكُ بِحَقِّهِ؟

L26907 They said: If they both emancipated a slave together, it would be permissible. Does this validate that each individual has greater authority over their own right?

قُلْنَا: نَعَمْ، وَلَيْسَ هَذَا بِمُشْبِهٍ لِعِتْقِهِ بَعْدَ عِتْقِ شَرِيكِهِ؛ لِأَنَّ لَهُ أَنْ يَبِيعَ مَعَ عِتْقِ شَرِيكِهِ مَعًا، وَأَنْ يَهَبَ، وَلَيْسَ لَهُ عِنْدَ بَعْضِ مَنْ قَالَ بِهَذَا الْقَوْلِ أَنْ يَبِيعَ بَعْدَ عِتْقِ شَرِيكِهِ، وَلَا أَنْ يَهَبَ، وَلَهُ ذَلِكَ عِنْدَ بَعْضِهِمْ وَكُلُّ هَذَا فَيُمْكِنُ أَنْ يُشْغَبَ بِهِ لَوْ لَمْ تَأْتِ السُّنَّةُ بِخِلَافِ ذَلِكَ، وَأَمَّا وَقَدْ جَاءَ مَا يَخُصُّ هَذَا كُلَّهُ فَلَا يَحِلُّ خِلَافُ أَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L26908 We said: Yes, and this is not analogous to his emancipating [the slave] after his co-owner's emancipation, for he may sell the slave simultaneously alongside his co-owner's emancipation or gift him. According to some proponents of this view, he may not sell the slave after his co-owner's emancipation nor gift him, though others among them permit this. All of this could have provoked dispute had the Sunnah not provided a ruling contrary to this. However, since definitive guidance addressing all these matters has been established, it is impermissible to oppose the command of the Prophet (peace and blessings of Allah be upon him).

قَالَ أَبُو مُحَمَّدٍ: هَذَا مِمَّا تَنَاقَضَ فِيهِ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، فَخَالَفُوا صَاحِبًا لَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ خِلَافُهُ، وَخَالَفُوا أَثَرَيْنِ مُرْسَلَيْنِ، وَهُمْ يَقُولُونَ بِالْمُرْسَلِ، وَخَالَفُوا الْقِيَاسَ.

L26909 Abū Muḥammad said: This is among the matters wherein the Ḥanafīs and Mālikīs contradicted themselves. They contradicted a Companion whom none of the other Companions are authentically reported to have contradicted, contradicted two mursal narrations even though they themselves uphold the mursal, and contradicted analogical reasoning.

فَأَمَّا أَبُو حَنِيفَةَ: فَلَمْ يَتَعَلَّقْ بِشَيْءٍ أَصْلًا.

L26910 As for Abū Ḥanīfah, he did not base his rulings on any foundational source whatsoever.

وَأَمَّا مَالِكٌ: فَتَعَلَّقَ بِحَدِيثٍ نَاقِصٍ عَنْ غَيْرِهِ، وَقَدْ جَاءَ غَيْرُهُ بِالزِّيَادَةِ عَلَيْهِ

L26911 As for Mālik, he relied on an incomplete hadith from others, while others have supplemented it with additions.

L26912–26914 As for the statement of Uthman al-Batti regarding his specification [of the ruling] to the beautiful slave girl, it is an opinion entirely unsupported by evidence. His reasoning is invalid because the harm incurred upon them

through the co-ownership arrangement preventing intercourse remains entirely the same, with no additional harm arising from emancipating some of them and no distinction. Both of them (the women) may marry, and there is no difference, thus this argument is invalid.

وَأَمَّا قَوْلُ عُثْمَانَ الْبَتِّيِّ فِي تَخْصِيصِهِ الْجَارِيَةَ الرَّائِعَةَ، فَقَوْلٌ لَا دَلِيلَ عَلَيْهِ أَصْلًا وَاسْتِدْلَالُهُ فَاسِدٌ، لِأَنَّ الضَّرَرَ الدَّاخِلَ عَلَيْهِمْ بِالشَّرِكَةِ الْمَانِعَةِ مِنَ الْوَطْءِ هُوَ بِعَيْنِهِ وَلَا زِيَادَةَ دَاخِلَةٌ عَلَيْهِمْ فِي عِتْقِ بَعْضِهَا وَلَا فَرْقَ، وَكِلْتَاهُمَا يُمْكِنُ أَنْ تَتَزَوَّجَ وَلَا فَرْقَ، فَبَطَلَ هَذَا الْقَوْلُ.

L26915 As for the statement of Zufar: The evidence supporting him is what we have transmitted through the chain of Ahmad ibn Shu'ayb, who narrated to us from 'Amr ibn 'Uthman, who narrated to us from al-Walid ibn Muslim, from Hafs ibn Ghaylan, from Sulayman ibn Musa, from Nafi', from 'Ata'. Nafi' reported from 'Ata', who narrated from Ibn 'Umar, while 'Ata' also reported from Jabir. The narrations of Jabir and Ibn 'Umar then converge in their report from the Messenger of Allah—peace and blessings of Allah be upon him—who said: "Whoever frees a slave in whom he has partners, and possesses the means to compensate them, the slave is emancipated. He must pay his partners the value of their shares as recompense for his error in jointly owning the slave with them. The slave bears no obligation."

وَأَمَّا قَوْلُ زُفَرَ: فَإِنَّ الْحُجَّةَ لَهُ مَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ عُثْمَانَ نا الْوَلِيدُ بْنُ مُسْلِمٍ عَنْ حَفْصِ بْنِ غَيْلَانَ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنْ نَافِعٍ، عَنْ عَطَاءٍ، قَالَ نَافِعٌ: عَنِ ابْنِ عُمَرَ، وَقَالَ عَطَاءٌ: عَنْ جَابِرٍ، ثُمَّ اتَّفَقَ جَابِرٌ، وَابْنُ عُمَرَ: عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَعْتَقَ عَبْدًا وَلَهُ فِيهِ شُرَكَاءُ وَلَهُ وَفَاءٌ فَهُوَ حُرٌّ وَيَضْمَنُ نَصِيبَ شُرَكَائِهِ بِقِيمَةٍ لِمَا أَسَاءَ مِنْ مُشَارَكَتِهِمْ وَلَيْسَ عَلَى الْعَبْدِ شَيْءٌ» .

L26916 And according to what was narrated to us through the chain of Sa'īd ibn Manṣūr—Hushaym narrated to us, who narrated from Yaḥyā ibn al-Anṣārī, from Nāfi', from Ibn 'Umar, who said: The Messenger of Allah—peace and blessings be upon him—said: "Any man who has a share in a slave and emancipates his portion of the slave must complete his emancipation with a fair valuation."

وَبِمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يَحْيَى بْنُ الْأَنْصَارِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَيُّمَا رَجُلٍ كَانَ لَهُ نَصِيبٌ فِي عَبْدٍ فَأَعْتَقَ نَصِيبَهُ فَعَلَيْهِ أَنْ يُكْمِلَ عِتْقَهُ بِقِيمَةِ عَدْلٍ» .

L26917 Abu Muhammad said: The first [ruling] pertains specifically to one who has the capacity to fulfill obligations, and he did not address those lacking such capacity. Moreover, this is transmitted through Hafs ibn Ghaylān—whom we do not recognize—and he is more plausibly an unknown narrator whose reliability is disregarded.

قَالَ أَبُو مُحَمَّدٍ: الْأَوَّلُ - إِنَّمَا فِيهِ حُكْمُ مَنْ لَهُ وَفَاءٌ، وَلَمْ يَذْكُرْ فِيهِ مَنْ لَا وَفَاءَ عِنْدَهُ - وَأَيْضًا فَهُوَ مِنْ طَرِيقِ حَفْصِ بْنِ غَيْلَانَ - وَلَا نَعْرِفُهُ - وَأَخْلَقَ بِهِ أَنْ يَكُونَ مَجْهُولًا لَا يُعْتَدُّ بِهِ.

L26918 From the chain of Shu'bah from Qatādah from al-Naḍr ibn Anas from Bashīr ibn Nahīk from Abū Hurayrah—that the Messenger of Allah (peace and blessings of Allah be upon him) said regarding a slave jointly owned by two men, if one emancipates his share? He said: "He is liable to guarantee and must secure his full manumission."

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ قَتَادَةَ عَنِ النَّضْرِ بْنِ أَنَسٍ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ أَبِي هُرَيْرَةَ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ فِي الْمَمْلُوكِ بَيْنَ الرَّجُلَيْنِ فَيَعْتِقُ أَحَدُهُمَا؟ قَالَ: يَضْمَنُ وَعَلَيْهِ خَلَاصُهُ» .

وَأَمَّا الثَّانِي، وَالثَّالِثُ - فَصَحِيحَانِ، إِلَّا أَنَّهُ قَدْ جَاءَ خَبَرٌ آخَرُ بِزِيَادَةٍ عَلَيْهِمَا، فَأَخْذُ الزِّيَادَةِ أَوْلَى وَلَوْ لَمْ يَأْتِ إِلَّا هَذَانِ الْخَبَرَانِ لَمَا تَعَدَّيْنَاهُمَا.

L26919 As for the second and third, they are authentic. However, another narration has been transmitted with an addition to them, so accepting the addition takes precedence. Had only these two narrations come, we would not have gone beyond them.

وَقَالُوا: جَنَى عَلَى شُرَكَائِهِ فَوَجَبَ تَضْمِينُهُ.

L26920 They said: He caused harm to his partners, thereby obligating him to compensate them.

قَالَ أَبُو مُحَمَّد: مَا جَنَى شَيْئًا، بَلْ أَحْسَنَ وَتَقَرَّبَ إِلَى اللَّهِ عَزَّ وَجَلَّ، وَلَكِنْ عَهْدُنَا بِالْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ يَجْعَلُونَ خَبَرَ الْمُعْتِقِ نَصِيبَهُ حُجَّةً لِقَوْلِهِمْ الْفَاسِدِ فِي أَنَّ الْمُعْتَدِيَ لَا يَضْمَنُ إِلَّا قِيمَةَ مَا أَفْسَدَ، لَا مِثْلَ مَا أَفْسَدَ، فَإِذْ هُوَ عِنْدَهُمْ إِفْسَادٌ - وَهُمْ أَصْحَابُ تَعْلِيلٍ وَقِيَاسٍ، فَالْوَاجِبُ عَلَيْهِمْ أَنْ يَقُولُوا بِقَوْلِ زُفَرَ هَذَا، وَإِلَّا فَقَدْ أَبْطَلُوا تَعْلِيلَهُمْ، وَنَقَضُوا قِيَاسَهُمْ، وَأَفْسَدُوا احْتِجَاجَهُمْ وَتَرَكُوا مَا أَصَّلُوا، وَهَذِهِ صِفَاتٌ شَائِعَةٌ فِي أَكْثَرِ أَقْوَالِهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - فَسَقَطَ هَذَا الْقَوْلُ أَيْضًا.

L26921–26922 Abū Muḥammad said: He incurred no liability; rather, he acted righteously and drew nearer to God, the Mighty and Majestic. Yet our experience with the Ḥanafīs and Mālikīs shows they employ the report of the manumitter's share as evidence for their corrupt opinion that the perpetrator is only liable for the value of the unlawful damage he caused, not the equivalent of what he damaged. Since this constitutes unlawful damage in their view—and they are adherents of causal reasoning and analogy—they are obliged to adopt this opinion of Ẓufar. Otherwise, they invalidate their causal reasoning, nullify their analogy, undermine their arguments, and abandon their foundational principles. These traits are widespread in most of their opinions—and success is from God, the Exalted. Thus, this opinion too is invalidated.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ: فَفِي غَايَةِ الْفَسَادِ، لِأَنَّهُ قَوْلٌ لَمْ يَتَعَلَّقْ بِقُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا أَحَدٍ نَعْلَمُهُ قَبْلَهُ، وَلَا بِقِيَاسٍ، وَلَا بِرَأْيٍ سَدِيدٍ، وَلَا احْتِيَاطٍ، بَلْ هُوَ مُخَالِفٌ لِكُلِّ ذَلِكَ.

L26923 As for the statement of Abū Ḥanīfah, it is fundamentally unsound, for it is an opinion not anchored in the Qur'ān, nor an authentic Sunnah, nor a weak narration, nor the view of a Companion, nor a Follower, nor anyone we know of before him, nor analogical reasoning, nor sound opinion, nor precaution. Rather, it contravenes all of these.

وَمَا وَجَدْنَاهُمْ مَوَّهُوا إِلَّا بِكَذِبٍ فَاضِحٍ مِنْ دَعْوَاهُمْ: أَنَّ قَوْلَهُمْ مُوَافِقٌ لِقَوْلِ عُمَرَ، وَكَذَبُوا كَمَا يَرَى كُلُّ ذِي فَهْمٍ مِمَّا أَوْرَدْنَا.

L26924 We found them deceiving only through a blatant lie in their claim: that their statement agrees with Umar's. They lied, as anyone with understanding can see from what we have presented.

وَحَكَمُوا بِالِاسْتِسْعَاءِ، وَخَالَفُوا حَدِيثَ الِاسْتِسْعَاءِ فِي إِجَازَتِهِمْ الَّذِي لَمْ يَعْتِقْ أَنْ يَعْتِقَ، وَأَنْ يَضْمَنَ فِي حَالِ إِعْسَارِ الشَّرِيكِ، وَأَجَازُوا لَهُ أَنْ يَعْتِقَ، وَمَنَعُوهُ أَنْ يَحْتَبِسَ.

L26925 They ruled according to istis'a (manumission under shared ownership), contradicting the hadith on istis'a by permitting the emancipation of a slave whose manumission was incomplete and holding him liable in the event of the co-owner's financial incapacity. They allowed his emancipation but prohibited his withholding.

L26926 Then they imposed absurd conditions upon the mukatab—according to

them, the mukatab might default and be re-enslaved, while the mustaʿsā would not be re-enslaved in their view, along with other matters where they persisted in blatant falsehoods without deviation.

ثُمَّ أَتَوْا بِمَقَايِيسَ سَخِيفَةٍ عَلَى الْمُكَاتَبِ، وَالْمُكَاتَبُ عِنْدَهُمْ قَدْ يَعْجِزُ فَيُرَقُّ، وَلَا يُرَقُّ عِنْدَهُمْ الْمُسْتَسْعَى، وَغَيْرُ ذَلِكَ مِمَّا لَمْ يُفَارِقُوا فِيهِ الْكَذِبَ الْبَارِدَ

L26927 If they say: Indeed, every section of our statement is found in a hadith from the hadiths.

فَإِنْ قَالُوا: إنَّ كُلَّ فَصْلٍ مِنْ قَوْلِنَا مَوْجُودٌ فِي حَدِيثٍ مِنْ الْأَحَادِيثِ.

L26928 We said: There exists specifically in this very issue a contrary position as well. From where did you derive what you adopted and abandon what you discarded so arbitrarily? Moreover, no legal right is found in any of the transmitted precedents regarding imposing liability on the affluent person or abstaining from it, nor any recourse for the affluent person against the slave, nor any liability imposed on the slave at all during the wealth of the one who emancipated him (and with Allah alone is success)—while all remaining opinions lack any foundational basis whatsoever.

قُلْنَا: وَمَوْجُودٌ أَيْضًا خِلَافُهُ بِعَيْنِهِ فِي هَذِهِ الْقَضِيَّةِ، فَمِنْ أَيْنَ أَخَذْتُمْ مَا أَخَذْتُمْ وَتَرَكْتُمْ مَا تَرَكْتُمْ هَكَذَا مُطَارَفَةً؟ وَأَيْضًا - فَلَا يُوجَدُ فِي شَيْءٍ مِنْ الْآثَارِ خِيَارٌ فِي تَضْمِينِ الْمُوسِرِ أَوْ تَرْكِ تَضْمِينِهِ، وَلَا رُجُوعَ الْمُوسِرِ عَلَى الْعَبْدِ، وَلَا تَضْمِينَ الْعَبْدِ فِي حَالِ يَسَارِ الَّذِي أَعْتَقَهُ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - وَسَائِرُ الْأَقْوَالِ لَا مُتَعَلَّقَ لَهَا أَصْلًا

L26929 As for the statement of Mālik and al-Shāfiʿī: We found them citing the narration transmitted through the chain of Muslim: Muḥammad ibn ʿAbd Allāh ibn Numayr narrated to us, his father narrated to us, ʿUbayd Allāh ibn ʿUmar narrated from Nāfiʿ from Ibn ʿUmar, who said: The Messenger of Allāh (peace be upon him) said: "Whoever frees their share of a jointly owned slave must free the entire slave if they possess wealth sufficient to cover his full value. If they lack such wealth, from him what was freed is freed."[11]

وَأَمَّا قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ: فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ نا أَبِي نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَعْتَقَ شِرْكًا لَهُ مِنْ مَمْلُوكٍ فَعَلَيْهِ عِتْقُهُ كُلُّهُ إنْ كَانَ لَهُ مَالٌ يَبْلُغُ ثَمَنَهُ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ عَتَقَ مِنْهُ مَا عَتَقَ» .

L26930–26931 Abū Muḥammad said: We know no valid argument for them in this matter whatsoever, and it is an authentic report. However, another report exists containing an addition that must not be disregarded. Some of them ventured to insert into this report the phrase "and whatever peeled off from it peeled off"—a statement that is falsely attributed and fabricated. We know of no narrator for it, whether reliable or unreliable. It is impermissible to engage with such a report. There is no indication in the Prophet's statement—peace and blessings be upon him—"otherwise, whatever was freed from it was freed" that establishes any ruling regarding the insolvent debtor whatsoever. This matter is entirely unaddressed in the report. There is no doubt

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا أَصْلًا وَهُوَ خَبَرٌ صَحِيحٌ، إلَّا أَنَّهُ قَدْ جَاءَ خَبَرٌ آخَرُ بِزِيَادَةٍ عَلَيْهِ لَا يَحِلُّ تَرْكُهَا، وَقَدْ أَقْدَمَ بَعْضُهُمْ فَزَادَ فِي هَذَا الْخَبَرِ «وَرَقَّ مِنْهُ مَا رَقَّ» وَهِيَ مَوْضُوعَةٌ مَكْذُوبَةٌ، وَلَا نَعْلَمُ أَحَدًا رَوَاهَا، لَا ثِقَةٌ وَلَا ضَعِيفٌ، وَلَا يَجُوزُ الِاشْتِغَالُ بِمَا هَذِهِ صِفَتُهُ، وَلَيْسَ فِي قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - " وَإِلَّا فَقَدْ عَتَقَ مِنْهُ مَا عَتَقَ " دَلِيلٌ عَلَى حُكْمِ الْمُعْسِرِ أَصْلًا، وَإِنَّمَا هُوَ مَسْكُوتٌ عَنْهُ فِي هَذَا الْخَبَرِ، وَلَا شَكَّ فِي أَنَّهُ قَدْ " عَتَقَ مِنْهُ مَا عَتَقَ " وَبَقِيَ حُكْمُ الْمُعْسِرِ فَوَجَبَ طَلَبُهُ مِنْ غَيْرِ

[11] **Hadith references (L26929):** Sahih Muslim 1501d.

that “whatever was freed from it was freed,” but the legal status of the insolvent debtor remains, necessitating its derivation from sources other than this report. Some have claimed that the phrase “otherwise, whatever was freed from it was freed” originates from Nāfiʿ’s own words. We do not consider this, as it is an assertion without evidence. Nevertheless, it is appropriate to seek the additional text. If it is confirmed as authentic, it becomes obligatory to adopt it—and in Allah the Exalted we seek strength.

هَذَا الْخَبَرَ عَلَى أَنَّهُ قَدْ قِيلَ: إِنَّ لَفْظَةَ «وَإِلَّا فَقَدْ عَتَقَ مِنْهُ مَا عَتَقَ» إِنَّمَا هُوَ مِنْ كَلَامِ نَافِعٍ، وَلَسْنَا نَلْتَفِتُ إِلَى هَذَا، لِأَنَّهُ دَعْوَى بِلَا دَلِيلٍ، لَكِنْ يَنْبَغِي طَلَبُ الزِّيَادَةِ، فَإِذَا وُجِدَتْ صَحِيحَةً وَجَبَ الْأَخْذُ بِهَا - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

L26932 There remained nothing but our opinion—so we found the proof for it in what was transmitted to us through Muslim ibn al-Hajjaj, who reported from Amr an-Naqid and Isma‘il—that is, Ibn Ulayyah—both of whom reported from Sa‘id ibn Abi Arubah from Qatadah from al-Nadr ibn Anas from Bashir ibn Nahik from Abu Hurairah, who said: The Messenger of Allah (peace be upon him) said: “Whoever frees a share he owns in a slave, his redemption is to be from his wealth if he possesses wealth. If he has no wealth, the slave is compelled to work without being overburdened.”[12]

فَلَمْ يَبْقَ إِلَّا قَوْلُنَا - فَوَجَدْنَا الْحُجَّةَ لَهُ مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا عَمْرٌو النَّاقِدُ، وَإِسْمَاعِيلُ - هُوَ ابْنُ عُلَيَّةَ - كِلَاهُمَا عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنِ النَّضْرِ بْنِ أَنَسٍ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَعْتَقَ شِقْصًا لَهُ فِي عَبْدٍ فَخَلَاصُهُ فِي مَالِهِ إِنْ كَانَ لَهُ مَالٌ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ اُسْتُسْعِيَ الْعَبْدُ غَيْرَ مَشْقُوقٍ عَلَيْهِ» .

L26933 From the path of Abū Dāwūd: Muslim—he is Ibn Ibrāhīm al-Kashshī—narrated to us; Abān—he is Ibn Yazīd al-ʿAṭṭār—narrated to us; Qatādah narrated to us from al-Naḍr ibn Anas ibn Mālik, who narrated from Bashīr ibn Nahīk from Abū Hurayrah, who said: The Messenger of Allāh—peace and blessings be upon him—said: “Whoever frees a share in a slave must manumit him entirely if he has sufficient means. Otherwise, the slave must work to earn his freedom without undue hardship.”

وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُسْلِمٌ - هُوَ ابْنُ إِبْرَاهِيمَ الْكَشِّيُّ - نا أَبَانُ - هُوَ ابْنُ يَزِيدَ الْعَطَّارُ - نا قَتَادَةُ نا النَّضْرُ بْنُ أَنَسِ بْنِ مَالِكٍ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَعْتَقَ شِقْصًا فِي مَمْلُوكٍ فَعَلَيْهِ أَنْ يُعْتِقَهُ كُلَّهُ إِنْ كَانَ لَهُ مَالٌ وَإِلَّا اُسْتُسْعِيَ الْعَبْدُ غَيْرَ مَشْقُوقٍ عَلَيْهِ» .

L26934 And from the path of al-Bukhārī: Aḥmad ibn Abī Rajāʾ and Abū al-Nuʿmān—who is Muḥammad ibn al-Faḍl ʿĀrim—reported to us. Aḥmad said: Yaḥyā ibn Ādam reported to us, Jarīr ibn Ḥāzim reported to us that he heard Qaṭādah. Abū al-Nuʿmān said: Jarīr ibn Ḥāzim reported to us from Qaṭādah. Then they both concurred in reporting from al-Naḍr ibn Anas from Bashīr ibn Nahīk from Abū Hurayrah from the Prophet—peace and blessings of Allah be upon him—who said: “Whoever emancipates a share in a slave, the entire slave is freed if he has the means. Otherwise, the slave is to work to pay their value

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَحْمَدُ بْنُ أَبِي رَجَاءٍ، وَأَبُو النُّعْمَانِ - هُوَ مُحَمَّدُ بْنُ الْفَضْلِ عَارِمٌ - قَالَ أَحْمَدُ: نا يَحْيَى بْنُ آدَمَ نا جَرِيرُ بْنُ حَازِمٍ سَمِعْتُ قَتَادَةَ، وَقَالَ أَبُو النُّعْمَانِ: نا جَرِيرُ بْنُ حَازِمٍ عَنْ قَتَادَةَ ثُمَّ اتَّفَقَا عَنِ النَّضْرِ بْنِ أَنَسٍ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَعْتَقَ شِقْصًا فِي عَبْدٍ عَتَقَ كُلُّهُ إِنْ كَانَ لَهُ مَالٌ وَإِلَّا اُسْتُسْعِيَ غَيْرَ مَشْقُوقٍ عَلَيْهِ» وَقَدْ سَمِعَ قَتَادَةُ هَذَا الْخَبَرَ مِنَ النَّضْرِ بْنِ أَنَسٍ.

[12] **Hadith references (L26932):** Sahih Muslim 1503a.

without being overburdened." Qaṭādah directly heard this narration from al-Naḍr ibn Anas.

كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ نا أَبُو هِشَامٍ نا أَبَانُ بْنُ يَزِيدَ الْعَطَّارُ نا قَتَادَةُ نا النَّضْرُ بْنُ أَنَسٍ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَعْتَقَ شَقِيصًا لَهُ مِنْ عَبْدٍ فَإِنَّ عَلَيْهِ أَنْ يُعْتِقَ بَقِيَّتَهُ إِنْ كَانَ لَهُ مَالٌ وَإِلَّا اُسْتُسْعِيَ الْعَبْدُ غَيْرَ مَشْقُوقٍ عَلَيْهِ» وَهَذَا خَبَرٌ فِي غَايَةِ الصِّحَّةِ فَلَا يَجُوزُ الْخُرُوجُ عَنْ الزِّيَادَةِ الَّتِي فِيهِ؟ فَقَالَ قَوْمٌ: قَدْ رَوَى هَذَا الْخَبَرَ: شُعْبَةُ، وَهَمَّامٌ، وَهِشَامٌ الدَّسْتُوَائِيُّ فَلَمْ يَذْكُرُوا مَا ذَكَرَ ابْنُ أَبِي عَرُوبَةَ.

L26935–26936 As we have been narrated through the chain of Ahmad ibn Shu'ayb—Muhammad ibn 'Abdullāh ibn al-Mubārak—Abū Hishām—Abān ibn Yazīd al-'Aṭṭār—Qatādah—al-Naḍr ibn Anas—Bashīr ibn Nahīk—Abū Hurayrah, that the Messenger of Allah (peace and blessings of Allah be upon him) said: "Whoever frees their partial ownership of a slave must emancipate the remaining portion if they possess wealth. Otherwise, the slave should be required to work for the remainder of their freedom without hardship imposed on them." This is a report of utmost authenticity. Is it impermissible to ignore the additional details therein? A group said: This report has been narrated by Shu'bah, Hammām, and Hishām al-Dastuwā'ī, yet they omitted what Ibn Abī 'Arūbah mentioned.

قَالَ أَبُو مُحَمَّدٍ: فَكَانَ مَاذَا؟ وَابْنُ أَبِي عَرُوبَةَ ثِقَةٌ، فَكَيْفَ وَقَدْ وَافَقَهُ عَلَيْهِ جَرِيرٌ، وَأَبَانُ، وَهُمَا ثِقَتَانِ.

L26937 Abu Muhammad said: What then? Ibn Abi 'Arubah is a reliable narrator. How is that possible, given that Jarir and Aban, both reliable narrators, have indeed concurred with him on it?

فَإِنْ قِيلَ: فَإِنَّ هَمَّامًا قَالَ فِي هَذَا الْحَدِيثِ: فَكَانَ قَتَادَةُ يَقُولُ: إنْ لَمْ يَكُنْ لَهُ مَالٌ اُسْتُسْعِيَ الْعَبْدُ؟ قُلْنَا: صَدَقَ هَمَّامٌ، قَالَ قَتَادَةُ مُفْتِيًا بِمَا رَوَى، وَصَدَقَ ابْنُ أَبِي عَرُوبَةَ، وَجَرِيرٌ، وَأَبَانُ، وَمُوسَى بْنُ خَلَفٍ، وَغَيْرُهُمْ، فَأَسْنَدُوهُ عَنْ قَتَادَةَ، وَلَوْ لَمْ يَصِحَّ حَدِيثُ قَتَادَةَ هَذَا لَكَانَ حَدِيثُ ابْنِ عُمَرَ، وَأَبِي هُرَيْرَةَ بِالتَّضْمِينِ: جُمْلَةً زَائِدَةً عَلَى مَا تَعَلَّقَ بِهِ مَالِكٌ مِنْ رِوَايَةِ نَافِعٍ، فَكَانَ يَكُونُ الْقَوْلُ مَا ذَهَبَ إلَيْهِ زُفَرُ بْنُ الْهُذَيْلِ، وَهَذَا لَا مُخْلَصَ لَهُ عَنْهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26938 If it is said: "But Hammam stated in this hadith: Qatada would say, 'If he possesses no wealth, is the slave obligated to work to repay the debt?'" We respond: Hammam spoke truthfully. Qatada issued a juristic ruling based on his narration, and Ibn Abi 'Arubah, Jarir, Aban, Musa ibn Khalaf, and others were truthful, since they narrated it through an authentic chain from Qatada. Even if Qatada's hadith were not authenticated, the hadiths of Ibn 'Umar and Abu Hurairah concerning compensatory liability would constitute an addition beyond what Malik derived from Nafi''s narration. Thus, the valid opinion would align with Zufar ibn al-Hudhayl's position, and there is no way to avoid this conclusion—and success comes solely from Allah, the Exalted.

وَأَمَّا قَوْلُنَا: إنَّهُ حُرٌّ سَاعَةَ يُعْتَقُ بَعْضُهُ، فَإِنَّ بَعْضَ الرُّوَاةِ قَالَ " ثُمَّ يُعْتَقُ " وَكَانَ فِي رِوَايَةِ جَرِيرِ بْنِ حَازِمٍ الَّتِي ذَكَرْنَا " عَتَقَ كُلُّهُ " فَكَانَتْ هَذِهِ زِيَادَةً لَا يَجُوزُ تَرْكُهَا، فَإِذْ قَدْ عَتَقَ كُلُّهُ فَوَلَاؤُهُ لِلَّذِي عَتَقَ عَلَيْهِ.

L26939 As for our statement that he is free at the moment when a portion of him is manumitted, some narrators said "thereafter the remaining portion is manumitted." Yet in the narration of Jarīr ibn Ḥāzim which we cited, it states "all of him has been manumitted." This constitutes an addition that

must not be disregarded. Since all of him has indeed been manumitted, his allegiance belongs to the one upon whom his manumission was effected.

L26940 As for one of them seeking recourse against the other—it is invalid, because the Messenger of Allah—peace and blessings be upon him—imposed expiation on the manumitter during his financial capacity and imposed it on the manumitted slave in the event of the manumitter's financial insolvency, without mentioning any right of reimbursement. Thus, it is not permissible for anyone to rule based on recourse in this matter.

L26941 Ali said: If he has property that does not suffice for the full value of the enslaved person, no compensation is imposed on the emancipator. Rather, the enslaved person is obligated to work to compensate for their value, and this is in accordance with the explicit wording of the report.

L26942 Hammad holds this opinion—and with Allah alone is all success.

L26943 ## The issue of manumitting a part of a male slave.

L26944–26946 Issue 1668: If someone frees a portion of their slave, the entire slave is emancipated without requiring istis'a (labor to secure the remaining freedom), even if the owner stipulated [such a condition] in a will. If someone frees a portion of his slave, he must free the part he stipulated to free and the remaining part of the slave. The enslaver is compelled to seek payment for the surplus value beyond the stipulated portion through the slave's work, as we have earlier explained.

L26947 If a person bequeaths the emancipation of his slave but the third of his estate cannot bear it, the portion covered by the third is emancipated. The remainder is emancipated, and the slave must work to compensate the heirs for what exceeds the third. The remaining portion is not emancipated through his third, because whatever the deceased did not bequeath belongs to the heirs. Thus, the heirs are entitled to compensation for the portion exceeding the third—as the deceased has no remaining wealth—so the slave must work to compensate them. It has been narrated to us via Muḥammad ibn al-Muthannā, from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from

وَأَمَّا رُجُوعُ أَحَدِهِمَا عَلَى الْآخَرِ - فَبَاطِلٌ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَلْزَمَ الْغَرَامَةَ لِلْمُعْتِقِ فِي يَسَارِهِ وَأَلْزَمَهَا الْعَبْدَ الْمُعْتَقَ فِي إعْسَارِ الْمُعْتِقِ وَلَمْ يَذْكُرْ رُجُوعًا، فَلَا يَجُوزُ لِأَحَدٍ الْقَضَاءُ بِرُجُوعٍ فِي ذَلِكَ.

قَالَ عَلِيٌّ: فَإِنْ كَانَ لَهُ مَالٌ لَا يَفِي بِجَمِيعِ قِيمَةِ الْعَبْدُ فَلَا غَرَامَةَ عَلَى الْمُعْتِقِ لَكِنْ يُسْتَسْعَى الْعَبْدَ، وَهَذَا مُقْتَضَى لَفْظِ الْخَبَرِ.

وَبِهِ يَقُولُ حَمَّادٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة عِتْق بَعْض الْعَبْد]

١٦٦٨ - مَسْأَلَةٌ: وَمَنْ أَعْتَقَ بَعْضَ عَبْدِهِ فَقَدْ عَتَقَ كُلُّهُ بِلَا اسْتِسْعَاءٍ، وَلَوْ أَوْصَى بِعِتْقِ بَعْضِ عَبْدِهِ أَعْتَقَ مَا أَوْصَى بِهِ وَأَعْتَقَ بَاقِيهِ وَاسْتُسْعِيَ فِي قِيمَةِ مَا زَادَ عَلَى مَا أَوْصَى بِعِتْقِهِ لِمَا ذَكَرْنَا قَبْلُ.

فَلَوْ أَوْصَى بِعِتْقِ عَبْدِهِ فَلَمْ يَحْمِلْهُ ثُلُثُهُ أُعْتِقَ مِنْهُ مَا حَمَلَ الثُّلُثُ، وَأُعْتِقَ بَاقِيهِ وَاسْتُسْعِيَ لِوَرَثَتِهِ فِيمَا زَادَ عَلَى الثُّلُثِ، وَلَا يُعْتَقُ فِي ثُلُثِهِ؛ لِأَنَّ مَا لَمْ يُوصِ بِهِ الْمَيِّتُ فَهُوَ لِلْوَرَثَةِ، فَالْوَرَثَةُ شُرَكَاؤُهُ فِيمَا أَعْتَقَ - وَلَا مَالَ لِلْمَيِّتِ -: فَوَجَبَ أَنْ يُسْتَسْعَى لَهُمْ -: رُوِّينَا عَنْ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ خَالِدِ بْنِ سَلَمَةَ عَنْ عُمَرَ بْنِ الْخَطَّابِ: مَنْ أَعْتَقَ ثُلُثَ مَمْلُوكِهِ فَهُوَ حُرٌّ كُلُّهُ لَيْسَ لِلَّهِ شَرِيكٌ وَرُوِّينَاهُ مِنْ طَرِيقِ

Khālid ibn Salama, from ʿUmar ibn al-Khaṭṭāb: "Whoever emancipates a third of his slave, the entire slave is freed, for Allah has no partner." It has also been narrated via the chain of Yaḥyā ibn Saʿīd al-Anṣārī, ʿAṭāʾ ibn Abī Rabāḥ, and Nāfiʿ, the freedman of Ibn ʿUmar, through Ibn Wahb: "Whoever emancipates part of his slave during health or illness, it is emancipated against his estate."

يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ، وَنَافِعٍ مَوْلَى ابْنِ عُمَرَ مِنْ طَرِيقِ ابْنِ وَهْبٍ: مَنْ أَعْتَقَ بَعْضَ عَبْدِهِ فِي صِحَّةٍ أَوْ مَرَضٍ عَتَقَ عَلَيْهِ فِي مَالِهِ.

L26948 It has been narrated through the chains of Ibn Umar, al-Hakam, al-Sha'bi, and Ibrahim al-Nakha'i: Whoever frees his slave during his illness, the manumission is taken from his third of the estate. If it exceeds the third, the slave must work to pay the heirs for the excess, and full emancipation is granted.

وَرُوِيَ مِنْ طَرِيقِ ابْنِ عُمَرَ، وَالْحَكَمِ، وَالشَّعْبِيِّ، وَإِبْرَاهِيمَ النَّخَعِيِّ: مَنْ أَعْتَقَ عَبْدَهُ فِي مَرَضِهِ فَمِنْ ثُلُثِهِ، فَإِنْ زَادَ عَلَى الثُّلُثِ اُسْتُسْعِيَ لِلْوَرَثَةِ وَعَتَقَ كُلُّهُ.

L26949 Abu Hanifah said: If one manumits a share of their slave while in sound health, the share manumitted is freed, and the slave is required to work for the remainder. Upon fulfilling this, they are fully manumitted.

وَقَالَ أَبُو حَنِيفَةَ: إِنْ أَعْتَقَ بَعْضَ عَبْدِهِ فِي صِحَّتِهِ عَتَقَ مِنْهُ مَا أَعْتَقَ وَاسْتُسْعِيَ لَهُ فِي بَاقِيهِ فَإِذَا أَدَّى عَتَقَ.

L26950 Abu Hanifah said: If someone bequeaths the manumission of part of a slave, the portion specified in the bequest is freed, and the slave must work to pay off the remaining value to the heirs. When he fulfills this, he is manumitted. A similar ruling has been comprehensively reported from Ali.

وَقَالَ أَبُو حَنِيفَةَ: فَإِنْ أَوْصَى بِعِتْقِ بَعْضِهِ عَتَقَ مِنْهُ مَا أَوْصَى بِعِتْقِهِ وَسَعَى لِلْوَرَثَةِ فِي الْبَاقِي، فَإِذَا أَدَّى عَتَقَ - وَرُوِيَ نَحْوُ هَذَا عَنْ عَلِيٍّ جُمْلَةً.

L26951 Malik said: If a person frees a portion of a slave while in good health, the entire slave is emancipated. If he frees the slave during an illness, the remaining part is emancipated provided it does not exceed one-third of the estate, and the rest remains enslaved. If he bequeaths the emancipation of a portion of his slave, only what he specified in the bequest is emancipated. A similar ruling is narrated from Masʿūd.

وَقَالَ مَالِكٌ: إِنْ أَعْتَقَ بَعْضَ عَبْدٍ فِي صِحَّتِهِ أُعْتِقَ عَلَيْهِ كُلُّهُ، فَإِنْ أَعْتَقَهُ فِي مَرَضِهِ أُعْتِقَ عَلَيْهِ بَاقِيهِ مَا حُمِلَ مِنْهُ الثُّلُثُ وَيَبْقَى الْبَاقِي رَقِيقًا، فَإِنْ أَوْصَى بِعِتْقِ بَعْضِ عَبْدِهِ لَمْ يُعْتَقْ مِنْهُ إِلَّا مَا أَوْصَى بِهِ فَقَطْ - وَرُوِيَ نَحْوُهُ عَنْ مَسْعُودٍ.

L26952 From the chain of Ibn Abi Shaybah: Hafs narrated to us from Ash'ath from al-Hasan, who said: 'Ali ibn Abi Talib stated: A man may emancipate whichever male slave he wishes - and there is no authoritative argument regarding anyone below the Messenger of Allah (may Allah's peace and blessings be upon him) - and they have differed in opinion as we have mentioned.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ عَنْ أَشْعَثَ عَنْ الْحَسَنِ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: يُعْتِقُ الرَّجُلُ مَا شَاءَ مِنْ غُلَامِهِ - وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ اخْتَلَفُوا كَمَا ذَكَرْنَا.

[مَسْأَلَة مِنْ مُلْك ذَا رَحِم محرم مِنْهُ]

L26953 **A legal issue pertaining to ownership by a mahram relative through kinship.**

L26954–26956 Issue 1699: If someone acquires ownership of a relative within the prohib-

ited degree of marriage, that relative becomes free immediately upon being owned. If he acquires partial ownership of such a relative, He is not obligated to emancipate anyone except his parents and grandparents (paternal and maternal) exclusively. All of them are emancipated at his expense if he possesses wealth sufficient to cover their value. If he lacks such wealth, they must work toward their emancipation.

١٦٦٩ - مَسْأَلَةٌ: وَمَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ فَهُوَ حُرٌّ سَاعَةَ يَمْلِكُهُ، فَإِنْ مَلَكَ بَعْضَهُ لَمْ يُعْتَقْ عَلَيْهِ، إِلَّا الْوَالِدَيْنِ خَاصَّةً، وَالْأَجْدَادَ وَالْجَدَّاتِ فَقَطْ، فَإِنَّهُمْ يُعْتَقُونَ عَلَيْهِ كُلُّهُمْ - إِنْ كَانَ لَهُ مَالٌ يَحْمِلُ قِيمَتَهُمْ فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ يَحْمِلُ قِيمَتَهُمْ اسْتُسْعُوا.

L26957 They are all his descendants through a mother, grandmother, grandfather, or father.

وَهُمْ كُلُّ مَنْ: وَلَدَهُ مِنْ جِهَةِ أُمٍّ أَوْ جَدَّةٍ أَوْ جَدٍّ أَوْ أَبٍ.

L26958 And every person's heirs include: their own children, whether male or female; uncles and aunts—even if of a higher degree—whether through the mother's or father's lineage; and similarly, sisters and brothers.

وَكُلُّ مَنْ: وَلَدَهُ هُوَ مِنْ جِهَةِ وَلَدٍ أَوْ ابْنَةٍ، وَالْأَعْمَامُ، وَالْعَمَّاتُ - وَإِنْ عَلَوْا كَيْفَ كَانُوا لِأُمٍّ أَوْ لِأَبٍ، وَالْأَخَوَاتُ وَالْإِخْوَةُ كَذَلِكَ.

L26959 And whoever is reached by the birth of a brother or sister, in any manner it was.

وَمَنْ نَالَتْهُ وِلَادَةُ أَخٍ أَوْ أُخْتٍ بِأَيِّ جِهَةٍ كَانَتْ.

L26960 And whoever has wealth and has a father, mother, grandfather, or grandmother - if their master intends to sell them - is compelled to purchase them at their highest price and emancipate them. But if he refuses, the master is not compelled to sell.

وَمَنْ كَانَ لَهُ مَالٌ وَلَهُ أَبٌ أَوْ أُمٌّ أَوْ جَدٌّ أَوْ جَدَّةٌ أُجْبِرَ عَلَى ابْتِيَاعِهِمْ بِأَغْلَى قِيمَتِهِمْ وَعِتْقِهِمْ إِذَا أَرَادَ سَيِّدُهُمْ بَيْعَهُمْ، فَإِنْ أَبَى لَمْ يُجْبَرِ السَّيِّدُ عَلَى الْبَيْعِ

L26961 If he owned a blood relative who is not a mahram, or a mahram established without blood relation—such as through in-law ties or intercourse by a father or son—he is not obligated to manumit them and may sell them if he wishes.

وَإِنْ مَلَكَ ذَا رَحِمٍ غَيْرَ مَحْرَمَةٍ أَوْ مَلَكَ ذَا مَحْرَمٍ بِغَيْرِ رَحِمٍ - لَكِنْ بِصِهْرٍ أَوْ وَطْءِ أَبٍ أَوِ ابْنٍ - لَمْ يَلْزَمْهُ عِتْقُهُمْ وَلَهُ بَيْعُهُمْ إِنْ شَاءَ.

L26962 A group of scholars held: None is manumitted except one's own child—whether through the father's or mother's side (of the emancipator)—or one whom he has fathered through such lineage, or a brother or sister—but only these categories.

وَقَالَتْ طَائِفَةٌ: لَا يَعْتِقُ إِلَّا مَنْ وَلَدَهُ، مِنْ جِهَةِ أَبٍ أَوْ أُمٍّ، أَوْ مَنْ وَلَدَهُ هُوَ كَذَلِكَ، أَوْ أَخٌ أَوْ أُخْتٌ فَقَطْ.

L26963 Neither the paternal uncle nor paternal aunt manumits; neither the maternal uncle nor maternal aunt manumits; nor the child of a brother or sister - and this is the view of Mālik.

وَلَا يَعْتِقُ الْعَمُّ وَلَا الْعَمَّةُ، وَلَا الْخَالُ وَلَا الْخَالَةُ، وَلَا مَنْ وَلَدَ الْأَخُ أَوِ الْأُخْتُ - وَهُوَ قَوْلُ مَالِكٍ.

L26964 It is authentically established from Yaḥyā ibn Saʿīd al-Anṣārī, and narrated—though unauthentically—from Rabīʿah, Makhūl, and Mujāhid. However, the

statement “whoever is other than these [scholars] does not effect valid manumission” is neither authentically established nor narrated from them.

وَصَحَّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَرُوِيَ عَنْ رَبِيعَةَ، وَمَكْحُولٍ، وَمُجَاهِدٍ، وَلَمْ يَصِحَّ عَنْهُمْ، وَلَا رُوِيَ عَنْهُمْ: أَنَّ مَنْ عَدَا هَؤُلَاءِ لَا يَعْتِقُ.

L26965 A group of scholars maintained: No one is manumitted except those descended through paternal or maternal lineage, and one’s own offspring are similarly manumitted. No one beyond these is manumitted: neither a brother nor anyone else. This is the opinion of al-Shāfiʿī.

وَقَالَتْ طَائِفَةٌ: لَا يَعْتِقُ إِلَّا مَنْ وَلَدَهُ مِنْ جِهَةِ أَبٍ أَوْ أُمٍّ، وَمَنْ وَلَدُهُ هُوَ كَذَلِكَ، وَلَا يَعْتِقُ غَيْرُ هَؤُلَاءِ، لَا أَخٌ وَغَيْرُهُ - وَهُوَ قَوْلُ الشَّافِعِيِّ.

L26966 And Abu Sulayman said: No one may manumit a slave belonging to another.

وَقَالَ أَبُو سُلَيْمَانَ: لَا يَعْتِقُ أَحَدٌ عَلَى أَحَدٍ.

L26967 Al-Awzaʿī said: He must free every kin—whether a mahram or not—even paternal and maternal cousins, for he is obligated to free them, though he may compel them to work through a contractual obligation.

وَقَالَ الْأَوْزَاعِيُّ: يَعْتِقُ كُلُّ ذِي رَحِمٍ مَحْرَمَةٍ كَانَتْ أَوْ غَيْرَ مَحْرَمَةٍ حَتَّى ابْنُ الْعَمِّ وَابْنُ الْخَالِ فَإِنَّهُمَا يَعْتِقَانِ عَلَيْهِ وَيَسْتَسْعِيهِمَا.

L26968 Abū Muḥammad said: We do not know of Al-Shāfiʿī’s statement being reported from anyone before him. If they mention that it was narrated from Ibrāhīm that when the parent owns the child, the child is manumitted.

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ قَوْلَ الشَّافِعِيِّ عَنْ أَحَدٍ قَبْلَهُ، فَإِنْ ذَكَرُوا: أَنَّهُ رُوِيَ عَنْ إِبْرَاهِيمَ أَنَّهُ إِذَا مَلَكَ الْوَالِدُ وَالْوَلَدَ عَتَقَ.

L26969–26970 We said: Yes, and this has also been authentically established from him concerning every blood relative. There is no indication in his statement, “When a parent acquires ownership of a child, the child is emancipated,” that others besides these two cannot emancipate. We know of no argument for this except the claim of consensus regarding the emancipation of those we mentioned, and this is a false claim. For no opinion is recorded from even twenty of the Companions and Followers — though they number in the thousands — on this issue. Where then is the consensus? If they argue: Allah the Exalted said, “And show kindness to parents” [Al-Baqarah: 83].[13]

قُلْنَا: نَعَمْ، وَقَدْ صَحَّ عَنْهُ هَذَا أَيْضًا فِي كُلِّ ذِي رَحِمٍ وَلَيْسَ فِي قَوْلِهِ " إِذَا مَلَكَ الْوَالِدُ الْوَلَدَ عَتَقَ " أَنَّ غَيْرَهُمَا لَا يُعْتِقُ، وَلَا نَعْلَمُ لَهُ حُجَّةً إِلَّا دَعْوَى الْإِجْمَاعِ عَلَى عِتْقِ مَنْ ذَكَرْنَا، وَهَذِهِ دَعْوَى كَاذِبَةٌ فَمَا يُحْفَظُ فِي هَذِهِ الْمَسْأَلَةِ قَوْلٌ عَنْ عِشْرِينَ مِنْ صَاحِبٍ وَتَابِعٍ - وَهُمْ أُلُوفٌ - فَأَيْنَ الْإِجْمَاعُ؟ فَإِنْ قَالُوا: قَالَ اللَّهُ تَعَالَى: {وَبِالْوَالِدَيْنِ إِحْسَانًا} [البقرة: ٨٣]

L26971 We said: Complete the verse {and to the kindred} [An-Nisā: 36]. Thus, this opinion was invalidated.[14]

قُلْنَا: أَتِمُّوا الْآيَةَ {وَبِذِي الْقُرْبَى} [النساء: ٣٦] فَسَقَطَ هَذَا الْقَوْلُ

L26972 The Malikis invoked as proof the statement of Allah, the Exalted, concerning

وَاحْتَجَّ الْمَالِكِيُّونَ بِقَوْلِ اللَّهِ تَعَالَى فِي الْوَالِدَيْنِ: {وَاخْفِضْ لَهُمَا جَنَاحَ الذُّلِّ مِنَ الرَّحْمَةِ} [الإسراء: ٢٤] .

[13] **Qur’an references (L26970):** Qur’an 2:83 (Al-Baqarah).
[14] **Qur’an references (L26971):** Qur’an 4:36 (An-Nisa).

parents: “And lower to them the wing of humility out of mercy” [Al-Isrā’: 24].[15]

L26973 They said: It is not possible to lower the wing and show humility to both of them despite their enslaved status.

L26974 They said: As for the child, indeed Allah the Exalted says: “It is not befitting for the Most Merciful to take a child” [19:92] “Indeed, everyone in the heavens and the earth will come to the Most Merciful as a servant” [19:93].[16]

L26975 They said: It is therefore established that slavery and birth cannot coexist.

L26976 They said, “As for the brother [Aaron], the Most High says concerning Moses, peace and prayers be upon him, ‘I have no control except over myself and my brother’ [Al-Ma’idah 5:25].”[17]

L26977 They said: Just as he does not own himself, so too does he not own his brother.

L26978 And it is reported through the chain of Zakariyya ibn Yahya al-Saji: Ahmad ibn Muhammad reported to us, Sulayman ibn Dawud reported to us, from Hafs ibn Sulayman—the Quran reciter—from Muhammad ibn Abi Layla, from ‘Ata’, from Ibn Abbas: “Allah’s Messenger (peace be upon him) had a freed slave named Salih who purchased his enslaved brother. Allah’s Messenger (peace be upon him) said: ’He is emancipated the moment you owned him.”’

L26979 Abu Muhammad said: This is a defective narration, for Ḥafṣ ibn Sulaymān is rejected, and Ibn Abī Laylā has poor memory. Even if it were authentic, it would not entail the enslavement of anyone other than the brother.

L26980 As for their argument citing the statement of Allah, the Most High: “I have control only over myself and my brother” [5:25], it is a distortion of the words’ proper contexts and a vulgar confusion.[18]

قَالُوا: وَلَا يُمْكِنُ خَفْضُ الْجَنَاحِ وَالذُّلِّ لَهُمَا مَعَ اسْتِرْقَاقِهِمَا.

قَالُوا: وَأَمَّا الْوَلَدُ: فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَمَا يَنْبَغِي لِلرَّحْمَنِ أَنْ يَتَّخِذَ وَلَدًا} [مريم: ٩٢] {إِنْ كُلُّ مَنْ فِي السَّمَاوَاتِ وَالأَرْضِ إِلا آتِي الرَّحْمَنِ عَبْدًا} [مريم: ٩٣] .

قَالُوا: فَوَجَبَ أَنَّ الرِّقَّ، وَالْوِلَادَةَ لَا يَجْتَمِعَانِ.

قَالُوا: وَأَمَّا الْأَخُ: فَقَدْ قَالَ تَعَالَى عَنْ مُوسَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: {إِنِّي لا أَمْلِكُ إِلا نَفْسِي وَأَخِي} [المائدة: ٢٥] .

قَالُوا: فَكَمَا لَا يَمْلِكُ نَفْسَهُ كَذَلِكَ لَا يَمْلِكُ أَخَاهُ.

وَبِمَا رُوِّينَا مِنْ طَرِيقِ زَكَرِيَّا بْنِ يَحْيَى السَّاجِيِّ نا أَحْمَدُ بْنُ مُحَمَّد نا سُلَيْمَانُ بْنُ دَاوُد نا حَفْصُ بْنُ سُلَيْمَانَ - هُوَ الْقَارِئُ - عَنْ مُحَمَّدِ بْنِ أَبِي لَيْلَى عَنْ عَطَاءٍ عَنِ ابْنِ عَبَّاسٍ «كَانَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَوْلًى يُقَالُ لَهُ صَالِحٌ اشْتَرَى أَخًا لَهُ مَمْلُوكًا فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: قَدْ عَتَقَ حِينَ مَلَكْتَهُ» .

قَالَ أَبُو مُحَمَّد: وَهَذَا أَثَرٌ فَاسِدٌ، لِأَنَّ حَفْصَ بْنَ سُلَيْمَانَ سَاقِطٌ، وَابْنَ أَبِي لَيْلَى سِيءُ الْحِفْظِ، وَلَوْ صَحَّ لَمْ يَكُنْ فِيهِ إرْقَاقُ مَنْ عَدَا الْأَخِ.

وَأَمَّا احْتِجَاجُهُمْ بِقَوْلِ اللَّهِ تَعَالَى: {إِنِّي لا أَمْلِكُ إِلا نَفْسِي وَأَخِي} [المائدة: ٢٥] فَتَحْرِيفٌ لِلْكَلِمِ عَنْ مَوَاضِعِهِ وَتَخْلِيطٌ سَمِجٌ.

[15] **Qur’an references (L26972):** Qur’an 17:24 (Al-Isra).
[16] **Qur’an references (L26974):** Qur’an 19:92 (Maryam); Qur’an 19:93 (Maryam).
[17] **Qur’an references (L26976):** Qur’an 5:25 (Al-Ma’idah).
[18] **Qur’an references (L26980):** Qur’an 5:25 (Al-Ma’idah).

وَلَوْ كَانَ هَذَا يَحْتَجُّ بِهِ مَنْ يَرَى أَنَّ الْأَخَ يُمْلَكُ لَكَانَ أَدْخَلَ فِي الشُّبْهَةِ؛ لِأَنَّ فِيهِ إثْبَاتُ الْمِلْكِ عَلَى الْأَخِ وَالنَّفْسِ، وَمِنْ الْمُحَالِ أَنْ يَقَعَ لِأَحَدٍ مِلْكُ رِقٍّ عَلَى نَفْسِهِ، وَلَيْسَ مُحَالًا مِلْكُ أَخِيهِ وَأَبِيهِ، وَلَا يَجُوزُ قِيَاسُ الْأَخِ عَلَى النَّفْسِ؛ لِأَنَّ الْإِنْسَانَ يَصْرِفُ نَفْسَهُ فِي الطَّاعَةِ أَوْ الْمَعْصِيَةِ بِقَدَرِ اللَّهِ تَعَالَى وَيَمْلِكُ نَفْسَهُ فِي ذَلِكَ، كَمَا قَالَ مُوسَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّهُ يَمْلِكُ نَفْسَهُ فِي الْجِهَادِ، وَلَا يَصْرِفُ أَخَاهُ كَذَلِكَ وَلَا يُطِيعُهُ، فَفَسَدَ هَذَا الْقِيَاسُ الْبَارِدُ الَّذِي لَمْ يُسْمَعْ قَطُّ بِأَسْخَفَ مِنْهُ.

L26981–26983 If this were cited as evidence by those who hold that a brother can be owned, it would have introduced into doubt because it contains... Affirming ownership over a brother and oneself [is valid], but it is categorically impossible for anyone to claim ownership of enslavement over themselves. However, ownership over one's brother or father is not impossible. It is impermissible to analogize a brother to oneself, for a person directs himself in obedience or disobedience by the divine decree of Allah—Exalted is He—and exercises ownership over himself in such matters, as Moses—peace and blessings be upon him—declared regarding his ownership over himself in jihad. Yet he cannot direct his brother in this manner, nor can he obey him. Thus, this feeble analogy—whose absurdity is unparalleled—is rendered invalid.

وَأَمَّا قَوْلُ اللَّهِ تَعَالَى: {وَمَا يَنْبَغِي لِلرَّحْمَنِ أَنْ يَتَّخِذَ وَلَدًا} [مريم: ٩٢] {إِنْ كُلُّ مَنْ فِي السَّمَاوَاتِ وَالأَرْضِ إِلا آتِي الرَّحْمَنِ عَبْدًا} [مريم: ٩٣] فَلَا يَجُوزُ أَلْبَتَّةَ أَنْ يُسْتَدَلَّ مِنْ هَذَا عَلَى عِتْقِ الِابْنِ وَلَا عَلَى أَنَّهُ لَا يُمْلَكُ؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يَدُلَّ عَلَى ذَلِكَ بِهَذِهِ الْآيَةِ، وَلَيْسَ فِيهَا إلَّا الْخَبَرَ عَنْهُمْ بِمَا هُمْ عَلَيْهِ مِنْ أَنَّهُمْ عَبِيدٌ لَا أَوْلَادٌ، وَلَوْ كَانَ مَا قَالُوهُ لَوَجَبَ عِتْقُ الزَّوْجَةِ وَالشَّرِيكِ - إذَا مُلِكَا - لِأَنَّ اللَّهَ تَعَالَى انْتَفَى عَنْ الْوَلَدِ سَوَاءً سَوَاءً، وَأَخْبَرَ أَنَّ الْكُلَّ عَبِيدُهُ وَلَا فَرْقَ فَسَقَطَ احْتِجَاجُهُمْ جُمْلَةً، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26984 As for Allah the Most High's statement: {It is not befitting for the Most Merciful to take a son} [19:92] {There is absolutely none in the heavens and earth except that they come to the Most Merciful as servants} [19:93], it is entirely impermissible to derive from this any proof for the manumission of a son nor to claim he cannot be owned. For Allah the Most High did not indicate this through the verse, which contains nothing but the report about them being His servants—not sons. Had their argument been valid, it would necessitate the manumission of a wife and partner if owned, since Allah the Most High categorically denied taking a son and declared all are His servants without distinction. Thus their entire argument collapses, and success is through Allah the Most High.[19]

وَأَمَّا مَنْ قَالَ: لَا يَعْتِقُ أَحَدٌ عَلَى أَحَدٍ فَإِنَّهُمْ ذَكَرُوا مَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَجْزِي وَلَدٌ وَالِدًا إلَّا أَنْ يَجِدَهُ مَمْلُوكًا فَيَشْتَرِيَهُ فَيُعْتِقَهُ» .

L26985 As for those who said, "No one can manumit [a slave] on behalf of another," they referenced what is authentically reported from the Messenger of Allah—peace and blessings be upon him: "A child cannot compensate for his father unless he finds him enslaved, purchases him, and frees him."[20]

قَالَ أَبُو مُحَمَّدٍ: هَذَا حُجَّةٌ عَلَيْهِمْ؛ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {أَنِ اشْكُرْ لِي وَلِوَالِدَيْكَ} [لقمان: ١٤] فَافْتَرَضَ عَزَّ وَجَلَّ شُكْرَ الْأَبَوَيْنِ وَجَزَاؤُهُمَا هُوَ مِنْ شُكْرِهِمَا، فَجَزَاؤُهُمَا فَرْضٌ، فَإِذْ هُوَ فَرْضٌ، وَجَزَاؤُهُمَا لَا يَكُونُ إلَّا بِالْعِتْقِ فَعِتْقُهُمَا فَرْضٌ، وَمَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ مَا ذَكَرْنَا.

L26986 Abu Muhammad said: This is an argument against them, for Allah the Exalted says: "Be grateful to Me and to your parents" [Luqman: 14]. Thus, Allah, the Almighty and Majestic, has obligated gratitude to parents, and their repayment itself is an act of gratitude owed to them. Therefore, repaying

[19] **Qur'an references (L26984):** Qur'an 19:92 (Maryam); Qur'an 19:93 (Maryam).

[20] **Hadith references (L26985):** Sahih Muslim 1510a; Jami at-Tirmidhi 1906; Riyad as-Salihin 313.

them is obligatory. Since this is obligatory, and their repayment can only be fulfilled through manumission, their manumission becomes obligatory. We know of no argument for them other than what we have mentioned.[21]

ثُمَّ نَظَرْنَا: فِيمَا احْتَجَّ بِهِ الْأَوْزَاعِيُّ فَوَجَدْنَا مِنْ حُجَّتِهِ قَوْلَ اللَّهِ تَعَالَى {وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَى} [النساء: ٣٦] .

L26987 Then we considered the arguments of al-Awzāʿī and found in his argument the statement of Allah, the Exalted: "Worship Allah and associate nothing with Him, and show goodness to parents and to near relatives" [An-Nisāʾ 4:36].[22]

قَالَ عَلِيٌّ: وَهَذَا لَا يُوجِبُ الْعِتْقَ، لِأَنَّ الْإِحْسَانَ فُرِضَ إلَى الْعَبِيدِ، وَلَا يَقْتَضِي ذَلِكَ عِتْقَهُمْ فَرْضًا، وَلَوْ وَجَبَ ذَلِكَ فِي ابْنِ الْعَمِّ، وَابْنِ الْخَالِ لَوَجَبَ فِي كُلِّ مَمْلُوكٍ، لِأَنَّ النَّاسَ يَجْتَمِعُونَ فِي أَبٍ بَعْدَ أَبٍ إلَى آدَمَ - عَلَيْهِ السَّلَامُ -، وَلَا يَجُوزُ أَنْ يَخُصَّ بِهَذَا ابْنَ الْعَمِّ، وَابْنَ الْخَالِ: دُونَ ابْنِ ابْنِ الْعَمِّ وَابْنِ ابْنِ الْخَالِ، وَهَكَذَا صَعَدًا، فَبَطَلَ هَذَا الْقَوْلُ بِيَقِينٍ.

L26988 Ali said: This does not necessitate manumission, for benevolent treatment was prescribed toward slaves, yet this does not entail their manumission as a religious obligation. If this were required for paternal cousins or maternal cousins, it would necessarily extend to every slave, since people share lineage through successive fathers back to Adam—peace be upon him. It is impermissible to restrict this specifically to paternal cousins and maternal cousins: to the exclusion of a paternal cousin's son or maternal cousin's son, and so on continuously ascending the lineage. Thus, this claim is conclusively invalidated.

ثُمَّ نَظَرْنَا فِي قَوْلِنَا فَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عِيسَى بْنُ مُحَمَّدٍ - هُوَ أَبُو عُمَيْرٍ الرَّمْلِيُّ - وَعِيسَى بْنُ يُونُسَ الْفَاخُورِيُّ عَنْ ضَمْرَةَ بْنِ سَعِيدٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمٍ عَتَقَ» فَهَذَا خَبَرٌ صَحِيحٌ كُلُّ رُوَاتِهِ ثِقَاتٌ تَقُومُ بِهِ الْحُجَّةُ - وَقَدْ تَعَلَّلَ فِيهِ الطَّوَائِفُ الْمَذْكُورَةُ بِأَنَّ ضَمْرَةَ انْفَرَدَ بِهِ وَأَخْطَأَ فِيهِ.

L26989–26991 Then we examined our statement and found what was narrated to us through the chain of Ahmad ibn Shuʿayb, who narrated to us. Isa ibn Muhammad—he is Abu Umayr al-Ramli—and Isa ibn Yunus al-Fakhuri narrated from Damrah ibn Sa'id from Sufyan al-Thawri from Abdullah ibn Dinar from Ibn Umar, who said: The Messenger of Allah—peace and blessings be upon him—said: "Whoever possesses a mahram relative, he must free [them]." This is a sound report; all its narrators are trustworthy, and it constitutes valid evidence. However, the aforementioned groups criticized it by arguing that Damrah was the sole narrator of this hadith and made an error in its transmission.

فَقُلْنَا: فَكَانَ مَاذَا إذَا انْفَرَدَ بِهِ؟ وَمَتَى لَحِقْتُمْ بِالْمُعْتَزِلَةِ فِي أَنْ لَا تَقْبَلُوا مَا رَوَاهُ الْوَاحِدُ عَنْ الْوَاحِدِ، وَكَمْ خَبَرٌ انْفَرَدَ بِهِ رَاوِيهِ فَقَبِلْتُمُوهُ، وَلَيْتَكُمْ لَا تَقْبَلُونَ مَا انْفَرَدَ بِهِ مَنْ لَا خَيْرَ فِيهِ، كَابْنِ لَهِيعَةَ، وَجَابِرٍ الْجُعْفِيِّ، وَغَيْرِهِ.

L26992 So we said: What would be the case if he were the sole narrator of it? When did you align with the Mu'tazila in not accepting what a single narrator transmits from another single narrator? How many reports transmitted solely by its narrator have you accepted? If only you would not accept what

[21] **Qur'an references (L26986):** Qur'an 31:14 (Luqman).
[22] **Qur'an references (L26987):** Qur'an 4:36 (An-Nisa).

is narrated solely by those lacking merit, such as Ibn Lahīʿah, Jābir al-Juʿfī, and others.

L26993 As for the claim that he erred in it, it is invalid because it is a claim without evidence. This is a position the Ḥanafīs accepted and upheld, and they did not consider Ḍamrah's sole narration of it a defect. Then they cited the report we have narrated through the chain of Ibn Wahb from al-Layth ibn Saʿd from ʿUbayd Allāh ibn Abī Jaʿfar from Bukayr ibn al-Ashajj from Nāfiʿ from Ibn ʿUmar, who said: The Messenger of Allāh—peace and blessings of Allāh be upon him—said, "Whoever frees a slave who possesses wealth, his wealth belongs to him unless the master explicitly excepts it." They claimed that ʿUbayd Allāh ibn Abī Jaʿfar alone narrated it and erred in it. Woe to the Muslims when the Mālikīs and Shāfiʿīs deemed this report authentic, acted upon it, and did not regard ʿUbayd Allāh ibn Abī Jaʿfar's sole narration of it or the assertion of those who claimed he erred in it as grounds for rejection and abandonment. Yet the Ḥanafīs considered ʿUbayd Allāh ibn Abī Jaʿfar's sole narration of this report and the assertion of those who claimed he erred in it as grounds for abandoning and rejecting it, while they did not view Ḍamrah's sole narration of that report or the assertion of those who claimed he erred in it as grounds for similarly discarding it. Could there be any greater proof of trifling with the religion and lack of vigilance toward Allāh the Exalted than this? We seek refuge in Allāh from misguidance through following whims.

فَأَمَّا دَعْوَى أَنَّهُ أَخْطَأَ فِيهِ فَبَاطِلٌ؛ لِأَنَّهَا دَعْوَى بِلَا بُرْهَانٍ وَهَذَا مَوْضِعٌ قَبِلَهُ الْحَنَفِيُّونَ وَقَالُوا بِهِ، وَلَمْ يَرَوْا انْفِرَادَ ضَمْرَةَ بِهِ عِلَّةً، ثُمَّ أَتَوْا إِلَى مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنِ اللَّيْثِ بْنِ سَعْدٍ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَعْتَقَ عَبْدًا وَلَهُ مَالٌ فَمَالُهُ لَهُ، إِلَّا أَنْ يَسْتَثْنِيَهُ السَّيِّدُ» فَقَالُوا انْفَرَدَ بِهِ عُبَيْدُ اللَّهِ بْنُ أَبِي جَعْفَرٍ وَأَخْطَأَ فِيهِ، فَيَا لِلْمُسْلِمِينَ إِذَا رَأَى الْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ هَذَا الْخَبَرَ صَحِيحًا وَعَمِلُوا بِهِ، وَلَمْ يَرَوْا انْفِرَادَ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ بِهِ وَقَوْلُ مَنْ قَالَ: إِنَّهُ خَطَأٌ فِيهِ حُجَّةٌ فِي رَدِّهِ وَتَرْكِهِ، وَرَأَى الْحَنَفِيُّونَ انْفِرَادَ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ بِهَذَا الْخَبَرِ وَقَوْلُ مَنْ قَالَ: إِنَّهُ أَخْطَأَ فِيهِ حُجَّةٌ فِي تَرْكِهِ وَرَدِّهِ، وَلَمْ يَرَوْا انْفِرَادَ ضَمْرَةَ بِذَلِكَ الْخَبَرِ وَقَوْلُ مَنْ قَالَ: إِنَّهُ أَخْطَأَ فِيهِ حُجَّةٌ فِي تَرْكِهِ وَرَدِّهِ، فَهَلْ مِنَ الدَّلِيلِ عَلَى التَّلَاعُبِ بِالدِّينِ وَقِلَّةِ الْمُرَاقَبَةِ لِلَّهِ تَعَالَى أَكْثَرُ مِنْ هَذَا؟ وَنَعُوذُ بِاللَّهِ مِنَ الضَّلَالِ بِاتِّبَاعِ الْهَوَى.

L26994 This report has also been transmitted to us through the chain of Ḥammād ibn Salamah from ʻĀṣim al-Aḥwal and Qatādah from al-Ḥasan al-Baṣrī from Samurah ibn Jundub: "The Messenger of Allah—peace and blessings of Allah be upon him—said: 'Whoever owns a slave who is a mahram relative through kinship, he is free.'" The Ḥanafī scholars authenticated this report and deemed it a valid proof. They stated: "The assertion that al-Ḥasan did not hear directly from Samurah does not invalidate it, as an interrupted chain may still serve as proof." They then cited a mursal report transmitted to us through Ibn Abī Shaybah's chain: Muḥammad ibn Bishr narrated to us from Saʿīd ibn Abī ʻArūbah from Qatādah from al-Ḥasan from Samurah ibn Jundub: "The Messenger of Allah—peace and blessings of Allah be upon him—

وَقَدْ رُوِّينَا هَذَا الْخَبَرَ أَيْضًا: مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَاصِمٍ الْأَحْوَلِ وَقَتَادَةَ عَنِ الْحَسَنِ الْبَصْرِيِّ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ فَهُوَ حُرٌّ» فَصَحَّحَ الْحَنَفِيُّونَ هَذَا الْخَبَرَ وَرَأَوْهُ حُجَّةً وَقَالُوا: لَا يَضُرُّهُ مَا قِيلَ: أَنَّ الْحَسَنَ لَمْ يَسْمَعْ مِنْ سَمُرَةَ، وَالْمُنْقَطِعُ تَقُومُ بِهِ الْحُجَّةُ، ثُمَّ أَتَوْا إِلَى مُرْسَلٍ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ بِشْرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنِ الْحَسَنِ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ:

said: ’The liability period for slaves is three.’” They argued: “Al-Ḥasan’s direct hearing from Samurah is unverified, making it an interrupted chain that cannot serve as proof.”

«عُهْدَةُ الرَّقِيقِ ثَلَاثٌ» فَقَالُوا: لَمْ يَصِحَّ سَمَاعُ الْحَسَنِ مِنْ سَمُرَةَ، وَهُوَ مُنْقَطِعٌ لَا تَقُومُ بِهِ حُجَّةٌ.

L26995–26997 The Malikis overturned this practice, deeming Al-Ḥasan’s narration from Samurah regarding liability for slaves as valid evidence—unaffected by the objection that Al-Ḥasan did not hear directly from Samurah—since an interrupted chain suffices to establish legal proof. They did not consider… The report concerning the emancipation of a mahram relative constitutes proof, for Al-Ḥasan did not hear anything from Samurah, and a disconnected chain cannot establish proof. Is this not sufficient for one who uses reason and advises himself¿‘ Abū Muḥammad said: ”Thus all opinions are invalidated except our view—praise be to Allah—and this is the position held by the majority of the early scholars, as transmitted through Al-Khushanī’s chain: narrated by Muḥammad ibn Bashshār, narrated by Abū ʿĀṣim (Al-Ḍaḥḥāk ibn Makhlad), narrated by Abū ʿAwānah, from Al-Ḥakam ibn ʿUtaybah, from Ibrāhīm Al-Nakhaʿī, from Al-Aswad ibn Yazīd, from ʿUmar ibn Al-Khaṭṭāb, who said: ’Whoever owns a mahram relative as a slave, he is free.’“

وَقَلَبَ الْمَالِكِيُّونَ هَذَا الْعَمَلَ فَرَأَوْا رِوَايَةَ الْحَسَنِ عَنْ سَمُرَةَ فِي عُهْدَةِ الرَّقِيقِ حُجَّةً لَا يَضُرُّهُ مَا قِيلَ: مِنْ أَنَّ الْحَسَنَ لَمْ يَسْمَعْ مِنْ سَمُرَةَ، وَالْمُنْقَطِعُ تَقُومُ بِهِ الْحُجَّةُ، وَلَمْ يَرَوْا خَبَرَ عِتْقِ ذِي الرَّحِمِ الْمَحْرَمَةِ حُجَّةً؛ لِأَنَّ الْحَسَنَ لَمْ يَسْمَعْ مِنْ سَمُرَةَ شَيْئًا، وَالْمُنْقَطِعُ لَا تَقُومُ بِهِ الْحُجَّةُ وَفِي هَذَا كِفَايَةٌ لِمَنْ عَقَلَ وَنَصَحَ نَفْسَهُ؟ قَالَ أَبُو مُحَمَّدٍ: فَبَطَلَتْ الْأَقْوَالُ إلَّا قَوْلَنَا - وَلِلَّهِ الْحَمْدُ - وَبِهِ يَقُولُ جُمْهُورُ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ الْخُشَنِيِّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا أَبُو عَاصِمٍ - هُوَ الضَّحَّاكُ ابْنُ مَخْلَدٍ - نا أَبُو عَوَانَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ الْأَسْوَدِ بْنِ يَزِيدَ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمٍ فَهُوَ حُرٌّ.

L26998 From him to Bindār: from Ghundar, from Shuʿbah, and Sufyān al-Thawrī narrated. Shuʿbah reported from Ghaylān while Sufyān reported from Salamah ibn Kuhayl—both of them transmitting from al-Mustawrid—he is Ibn al-Aḥnaf—that a man came to ʿAbdullāh ibn Masʿūd and said: “My uncle gave me in marriage to his slave girl, yet he now seeks to claim my child as his slave.” Ibn Masʿūd responded: “He possesses no right to that.”

وَبِهِ إلَى بُنْدَارَ نا غُنْدَرٌ نا شُعْبَةُ، وَسُفْيَانُ الثَّوْرِيُّ، قَالَ شُعْبَةُ عَنْ غَيْلَانَ وَقَالَ سُفْيَانُ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ، كِلَاهُمَا عَنْ الْمُسْتَوْرِدِ - هُوَ ابْنُ الْأَحْنَفِ - أَنَّ رَجُلًا أَتَى عَبْدَ اللَّهِ بْنَ مَسْعُودٍ فَقَالَ لَهُ: إنَّ عَمِّي زَوَّجَنِي جَارِيَةً لَهُ، وَإِنَّهُ يُرِيدُ أَنْ يَسْتَرِقَّ وَلَدِي؟ فَقَالَ لَهُ ابْنُ مَسْعُودٍ: لَيْسَ لَهُ ذَلِكَ.

L26999 From the transmission of ʿAbd al-Raḥmān ibn Mahdī, from Ḥammād ibn Zayd, from Ibn Shubrumata, from al-Ḥārith al-‘Uklī, from Ibrāhīm al-Nakhaʿī, who said: Whoever owns a blood relative, that relative is free. This is the opinion of Ibn Shubrumata.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ ابْنِ شُبْرُمَةَ عَنْ الْحَارِثِ الْعُكْلِيِّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: مَنْ مَلَكَ ذَا رَحِمٍ فَهُوَ حُرٌّ - وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ.

L27000 Via the chain of ʿAbd al-Razzāq: Maʿmar narrated to us from Qaṭādah, from al-Ḥasan and Jābir ibn Zayd, who both said: “Whoever acquires a kinsman as a slave must manumit them.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ قَتَادَةَ عَنْ الْحَسَنِ، وَجَابِرِ بْنِ زَيْدٍ قَالَا جَمِيعًا: مَنْ مَلَكَ ذَا رَحِمٍ عَتَقَ.

L27001 Through the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Ismail ibn Umayyah, from Ata, who said: When a brother, sister, paternal aunt, and maternal aunt are owned, they are manumitted.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ عَطَاءٍ قَالَ: إذَا مُلِكَ الْأَخُ، وَالْأُخْتُ، وَالْعَمَّةُ، وَالْخَالَةُ عَتَقُوا.

L27002 And through the chain of Waki‘ from Shu‘bah from al-Ḥakam ibn ‘Utaybah and Ḥammād ibn Abī Sulaymān, they both said: Anyone who owns a slave possessing a prohibited degree of kinship emancipates them.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ قَالَا جَمِيعًا: كُلُّ مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ عَتَقَ.

L27003 It has also been soundly reported from Qatādah—and this is the opinion of al-Zuhrī, Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, al-Layth ibn Saʿd, Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, Abū Ḥanīfah, all of his companions, ʿAbdullāh ibn Wahb, and others.

وَصَحَّ أَيْضًا عَنْ قَتَادَةَ - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَاللَّيْثِ بْنِ سَعْدٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ وَأَبِي حَنِيفَةَ، وَجَمِيعِ أَصْحَابِهِ، وَعَبْدِ اللَّهِ بْنِ وَهْبٍ وَغَيْرِهِمْ.

L27004 This is among the matters in which the Mālikīs have opposed the majority of scholars and two Companions—for whom no opposing Companion is known among the Companions—while they censure others over lesser matters when it aligns with their doctrine.

وَهَذَا مِمَّا خَالَفَ فِيهِ الْمَالِكِيُّونَ جُمْهُورَ الْعُلَمَاءِ وَصَاحِبَيْنِ لَا يُعْرَفُ لَهُمَا مِنْ الصَّحَابَةِ مُخَالِفٌ، وَهُمْ يُشَنِّعُونَ بِأَقَلَّ مِنْ هَذَا إذَا وَافَقَ تَقْلِيدَهُمْ.

L27005–27006 It has been narrated to us through al-Ḥasan’s chain of transmission that ʿAbd al-Razzāq reported from Hishām ibn Ḥassān from al-Ḥasan: “If someone owns his brother through milk kinship, he is emancipated.”

وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْحَسَنِ مَا رَوَاهُ عَبْدُ الرَّزَّاقِ عَنْ هِشَامِ بْنِ حَسَّانٍ عَنْ الْحَسَنِ: مَنْ مَلَكَ أَخَاهُ مِنْ الرَّضَاعَةِ عَتَقَ.

L27007 And narrated through ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from al-Aʿmash, from Ibrāhīm al-Nakhaʿī, from ʿAlqamah: That Ibn Masʿūd deemed it reprehensible for a man to sell his slave girl who had breastfed the man’s child.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ: أَنَّ ابْنَ مَسْعُودٍ مَقَتَ رَجُلًا أَرَادَ أَنْ يَبِيعَ جَارِيَةً لَهُ أَرْضَعَتْ وَلَدَهُ.

L27008 Abū Muḥammad said: We know of no proof for this except that the Ḥanafīs, Mālikīs, and Shāfiʿīs—being proponents of analogy by their claim—must apply the analogy to the foster mother, foster father, foster child, and foster

قَالَ أَبُو مُحَمَّدٍ: وَمَا نَعْلَمُ لِهَذَا حُجَّةً إلَّا أَنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ وَالشَّافِعِيِّينَ: أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، فَكَانَ يَلْزَمُهُمْ أَنْ يَقِيسُوا الْأُمَّ مِنْ الرَّضَاعِ، وَالْأَبَ مِنْ الرَّضَاعِ، وَالْوَلَدِ

brother through breastfeeding, equating all of that with lineage. This is especially compelling given the statement of Allah's Messenger—peace and blessings be upon him: "What becomes unlawful through breastfeeding is what becomes unlawful through lineage." This principle is sounder than any analogy they have advanced.

مِنْ الرَّضَاعِ، وَالْأَخِ مِنْ الرَّضَاعِ: عَلَى كُلِّ ذَلِكَ مِنْ النَّسَبِ، لَا سِيَّمَا مَعَ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «يَحْرُمُ مِنْ الرَّضَاعِ مَا يَحْرُمُ مِنْ النَّسَبِ» فَهَذَا أَصَحُّ مِنْ كُلِّ قِيَاسٍ قَالُوا بِهِ.

L27009 Abu Muhammad said: Then we reconsidered and found in their arguments that they claimed: Verily, the Sunnah necessitates that those related through breastfeeding are also prohibited, and this is unavoidable due to what we have transmitted through Muslim's chain: Muhammad ibn Rumḥ reported from al-Layth, from Yazīd ibn Abī Ḥabīb, from ʿIrāk ibn Mālik, from ʿUrwah, from ʿĀ'ishah, the Mother of the Believers, that the Messenger of Allah (peace and blessings be upon him) said: "What is prohibited by kinship is prohibited by breastfeeding."

قَالَ أَبُو مُحَمَّد: ثُمَّ اسْتَدْرَكْنَا فَرَأَيْنَا مِنْ حُجَّتِهِمْ أَنْ قَالُوا: إنَّ السُّنَّةَ تُوجِبُ أَنْ يُعْتَقَ ذَوُو الْمَحَارِمِ مِنْ الرَّضَاعِ أَيْضًا وَلَا بُدَّ: لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رُمْحٍ نا اللَّيْثُ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عِرَاكِ بْنِ مَالِكٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يَحْرُمُ مِنْ الرَّضَاعَةِ مَا يَحْرُمُ مِنْ النَّسَبِ» .

L27010 Via Muslim's chain: Haddāb ibn Khālid → Hammām → Qatādah → Jābir ibn Yazīd → Ibn ʿAbbās, who reported that the Prophet (peace and blessings of Allah be upon him) said: 'What is forbidden due to breastfeeding is what is forbidden due to kinship.'

وَمِنْ طَرِيقِ مُسْلِمٍ نا هَدَّابُ بْنُ خَالِدٍ نا هَمَّامٌ نا قَتَادَةُ عَنْ جَابِرِ بْنِ يَزِيدَ عَنْ ابْنِ عَبَّاسٍ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يَحْرُمُ مِنْ الرَّضَاعَةِ مَا يَحْرُمُ مِنْ الرَّحِمِ» .

L27011 We established that "prohibition arises from uterine and lineal kinship" necessitates the perpetuity of marital prohibitions for every individual bound by forbidden ties of kinship. It is therefore imperative and inevitable that this perpetuity equally applies to kinship through nursing, without exception.

وَوَجَدْنَا " يَحْرُمُ مِنْ الرَّحِمِ، وَمِنْ النَّسَبِ " تَمَادِي مِلْكِ كُلِّ ذِي رَحِمٍ مَحْرَمَةٍ وَذِي نَسَبٍ مَحْرَمٍ، فَوَجَبَ وَلَا بُدَّ أَنْ يَحْرُمَ تَمَادِي الْمِلْكِ فِيمَنْ يَمُتُّ بِالرَّضَاعَةِ كَذَلِكَ وَلَا بُدَّ.

L27012 We examined this argument and found it to be baseless. The first point is that ownership of a mahram relative is not prohibited; rather, it is legally sound, based on the statement of Allah's Messenger (peace be upon him): "Whoever owns a mahram relative, he becomes free." The Prophet (peace be upon him) thereby validated ownership upon him and enjoined emancipation, for if the ownership were not valid, his emancipation would not be valid.

فَنَظَرْنَا فِي هَذَا الِاحْتِجَاجِ فَوَجَدْنَاهُ شَغَبِيًّا -: أَوَّلُ ذَلِكَ - أَنَّ مِلْكَ ذِي الرَّحِمِ الْمَحْرَمَةِ لَيْسَ حَرَامًا، بَلْ هُوَ صَحِيحٌ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ فَهُوَ حُرٌّ» فَأَوْقَعَ الْمِلْكَ عَلَيْهِ ثُمَّ أَلْزَمَ الْعِتْقَ، وَلَوْلَا صِحَّةَ مِلْكِهِ لَمْ يَصِحَّ عِتْقُهُ.

L27013–27014 Then we found their assertion: "The claim that prolonging ownership of mahram relatives is prohibited is erroneous, for if the sole consideration here were merely the prohibition of prolonged ownership, manumission

would neither be obligatory nor unavoidable. Rather, one could gift the slave, thereby relinquishing ownership, or donate him, thereby nullifying their claim that prolonged ownership is prohibited. The correct position is that they should state: 'Manumission becomes obligatory immediately upon ownership without interval or delay.'" The Prophet صلى الله عليه وسلم did not say: "What is obligatory in breastfeeding is what is obligatory in lineage and kinship." Had he said this, manumission would indeed be obligatory as they claimed. Rather, he said: "What is prohibited through breastfeeding is what is prohibited through lineage and kinship." This confirms that only marriage and sexual enjoyment are prohibited, thus rendering both forbidden. As for one who owns some of the mahram relatives but does not own such a mahram relative, manumission is not incumbent upon them, since the explicit textual proof does not mandate it.

ثُمَّ وَجَدْنَا قَوْلَهُمْ: إنَّ تَمَادِيَ مِلْكِ ذِي الرَّحِمِ الْمَحْرَمَةِ يَحْرُمُ خَطَأً، لِأَنَّهُ لَوْ لَمْ يَكُنْ هَاهُنَا إلَّا تَحْرِيمَ تَمَادِي الْمِلْكِ لَكَانَ الْعِتْقُ لَا يَجِبُ وَلَا بُدَّ، بَلْ كَانَ لَهُ أَنْ يَهَبَهُ فَيَسْقُطُ مِلْكُهُ عَنْهُ، أَوْ أَنْ يَتَصَدَّقَ بِهِ فَيَبْطُلُ بِهَذَا مَا قَالُوا مِنْ أَنَّ تَمَادِيَ الْمِلْكِ يَحْرُمُ، وَكَانَ الْحَقُّ أَنْ يَقُولُوا: إنَّ الْعِتْقَ يَجِبُ عَقِيبَ الْمِلْكِ بِلَا فَصْلٍ وَلَا مُهْلَةٍ، وَلَمْ يَقُلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: إنَّهُ يَجِبُ فِي الرَّضَاعِ مَا يَجِبُ فِي النَّسَبِ، وَمَا يَجِبُ فِي الرَّحِمِ، وَلَوْ قَالَ هَذَا لَوَجَبَ الْعِتْقُ كَمَا قَالُوا وَإِنَّمَا قَالَ: «يَحْرُمُ مِنْ الرَّضَاعِ مَا يَحْرُمُ مِنْ النَّسَبِ وَمِنْ الرَّحِمِ» فَصَحَّ أَنَّهُ إنَّمَا يَحْرُمُ النِّكَاحُ وَالتَّلَذُّذُ فَقَطْ، فَهُوَ حَرَامٌ فِيهِمَا مَعًا، وَأَمَّا مَنْ مَلَكَ بَعْضَ ذِي الرَّحِمِ الْمَحْرَمَةِ فَلَمْ يَمْلِكْ ذَا رَحِمٍ مَحْرَمَةٍ فَلَيْسَ عَلَيْهِ عِتْقُهُ، إذْ لَمْ يُوجِبْ النَّصُّ ذَلِكَ.

L27015 As for our statement regarding parents differing from that ruling, it is due to what has been narrated to us through Muslim's chain of transmission: Abū Bakr ibn Abī Shaybah and Zuhayr ibn Ḥarb both narrated to us from Jarīr ibn Ḥāzim—who is Ibn Ḥāzim—from Suhayl ibn Abī Ṣāliḥ from his father from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said, "No child can fully repay a parent unless he finds him enslaved, purchases him, and emancipates him." In his narration, Abū Bakr used "his parent," while they concurred on the remainder.[1]

وَأَمَّا قَوْلُنَا فِي الْوَالِدَيْنِ بِخِلَافِ ذَلِكَ، فَلِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَزُهَيْرُ بْنُ حَرْبٍ، قَالَا جَمِيعًا: نا جَرِيرٌ - هُوَ ابْنُ حَازِمٍ - عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَجْزِي وَلَدٌ وَالِدًا إلَّا أَنْ يَجِدَهُ مَمْلُوكًا فَيَشْتَرِيَهُ فَيَعْتِقَهُ» قَالَ أَبُو بَكْرٍ فِي رِوَايَتِهِ " وَالِدَهُ " وَاتَّفَقَا فِي غَيْرِ ذَلِكَ.

L27016 From Muḥammad ibn al-Muthannā, from Muʿammal ibn Ismāʿīl al-Ḥimyarī, from Sufyān al-Thawrī, from Suhayl ibn Abī Ṣāliḥ, from his father, from Abū Hurayrah, who said: The Messenger of Allah (peace be upon him) said, "A child cannot repay his parents unless he were to find them or one of them enslaved, buy them, and free them."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا مُؤَمَّلُ بْنُ إسْمَاعِيلَ الْحِمْيَرِيُّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَجْزِي وَلَدٌ وَالِدَيْهِ إلَّا أَنْ يَجِدَهُمَا أَوْ أَحَدَهُمَا مَمْلُوكًا فَيَشْتَرِيَهُ فَيَعْتِقَهُ» .

L27017 The term "parent" applies to the grandfather and grandmother unless a spe-

[1] **Hadith references (L27015):** Sahih Muslim 1510a; Jami at-Tirmidhi 1906; Riyad as-Salihin 313.

cific scriptural ruling excludes them. He is obliged to purchase him at the rate applicable to the enslaved person required for obligatory manumission. The free person and the enslaved person are equal in all the aforementioned rulings, due to the general scope of the Prophet's statement (peace and blessings be upon him): "Whoever owns a blood-related mahram, they are free." Thus, the child of an enslaved man by his enslaved woman is free, despite the father's enslavement.

وَاسْمُ " الْوَالِدِ " يَقَعُ عَلَى الْجَدِّ وَالْجَدَّةِ، مَا لَمْ يَخُصَّهُمَا نَصٌّ، وَيَلْزَمُهُ أَنْ يَشْتَرِيَهُ بِمَا يَشْتَرِي بِهِ الرَّقَبَةَ الْوَاجِبَةَ لِلْعِتْقِ، وَالْحُرُّ وَالْعَبْدُ سَوَاءٌ فِي كُلِّ مَا ذَكَرْنَا، لِعُمُومِ قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ فَهُوَ حُرٌّ» فَوَلَدُ الْعَبْدِ مِنْ أَمَتِهِ حُرٌّ عَلَى أَبِيهِ.

L27018 It has been narrated to us through ʿAbd al-Razzāq, from Ibn Jurayj: I asked ʿAṭāʾ, "Is an orphan required to spend on his mother from his wealth if she is in need?" He said, "Yes." I asked, "If his mother is an enslaved woman, can she be emancipated through his wealth?" He said, "Yes. He is strongly urged to emancipate her if they do not make use of her services and do not depend on him."

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْتُ لِعَطَاءٍ: الْيَتِيمُ أُمُّهُ مُحْتَاجَةٌ أَنْ يُنْفِقَ عَلَيْهَا مِنْ مَالِهِ؟ قَالَ: نَعَمْ، قُلْتُ: فَإِنْ كَانَتْ أُمُّهُ أَمَةً أَتُعْتَقُ فِيهِ؟ قَالَ: نَعَمْ، يُكْرَهُ عَلَى إعْتَاقِهَا إنْ لَمْ يَتَمَتَّعُوا بِهَا وَيَحْتَاجُوهُ.

L27019 [Issue regarding the manumission of one who is dependent on the price of his slave, its yield, or its labor.]

[مَسْأَلَةُ عِتْقُ مَنْ هُوَ مُحْتَاجٌ إلَى ثَمَنِ مَمْلُوكِهِ أَوْ غَلَّتِهِ أَوْ خِدْمَتِهِ]

L27020–27022 Issue 1670: The emancipation by one who is in need of the price of his slave, its produce, or service is invalid. If he emancipates him, it is rejected, except in one case: when he owns a mahram by blood relation as... We have mentioned that emancipation is effected upon him by the aforementioned ruling, whether he is minor or major, insane or rational, absent or present, and he becomes free at that moment through whichever means he chooses—whether through the ruler's judgment or without it—based on what we have transmitted through al-Bukhārī's chain: ʿĀṣim ibn ʿAlī narrated to us from Ibn Abī Dhiʾb, from Muḥammad ibn al-Munkadir, from Jābir ibn ʿAbd Allāh: "A man emancipated his slave when the owner had no property other than him, so the Messenger of God (peace be upon him) nullified it, and Nuʿaym ibn al-Naḥḥām purchased him from him."

١٦٧٠ - مَسْأَلَةٌ: وَلَا يَصِحُّ عِتْقُ مَنْ هُوَ مُحْتَاجٌ إلَى ثَمَنِ مَمْلُوكِهِ أَوْ غَلَّتِهِ أَوْ خِدْمَتِهِ، فَإِنْ أَعْتَقَهُ فَهُوَ مَرْدُودٌ، إلَّا فِي وَجْهٍ وَاحِدٍ، وَهُوَ مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ كَمَا ذَكَرْنَا، فَإِنَّهُ يُعْتَقُ عَلَيْهِ بِالْحُكْمِ الْمَذْكُورِ، صَغِيرًا كَانَ أَوْ كَبِيرًا، مَجْنُونًا أَوْ عَاقِلًا، غَائِبًا أَوْ حَاضِرًا، وَهُوَ حُرٌّ سَاعَةَ ذَلِكَ مِنْ حَيْثُ شَاءَ بِحُكْمِ السُّلْطَانِ وَبِغَيْرِ حُكْمِ السُّلْطَانِ -: لِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَاصِمُ بْنُ عَلِيٍّ نا ابْنُ أَبِي ذِئْبٍ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَجُلًا أَعْتَقَ عَبْدًا لَهُ لَيْسَ لَهُ مَالٌ غَيْرُهُ فَرَدَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَابْتَاعَهُ مِنْهُ نُعَيْمُ بْنُ النَّحَّامِ» .

L27023 If it is said: This is the ḥadīth of the mudabbir himself, narrated by ʿAṭāʾ, ʿAmr ibn Dīnār, and Abū al-Zubayr—all of whom narrated from Jābir—and they stated that he had designated him as a mudabbir.

فَإِنْ قِيلَ: هَذَا حَدِيثُ الْمُدَبَّرِ نَفْسِهِ، رَوَاهُ: عَطَاءٌ، وَعَمْرُو بْنُ دِينَارٍ، وَأَبُو الزُّبَيْرِ، كُلُّهُمْ عَنْ جَابِرٍ، فَذَكَرُوا أَنَّهُ كَانَ دَبَّرَهُ

قُلْنَا: لَوْ لَمْ يُمْكِنْ أَنْ يَكُونَا خَبَرَيْنِ فِي عَبْدَيْنِ لَكَانَ مَا قُلْتُمْ حَقًّا، وَأَمَّا إِذْ فِي الْمُمْكِنِ أَنْ يَكُونَا خَبَرَيْنِ فِي عَبْدَيْنِ يَبْتَاعُهُمَا مَعًا نُعَيْمُ بْنُ النَّحَّامِ، فَلَا يَحِلُّ الْقَطْعُ بِأَنَّهُمَا خَبَرٌ وَاحِدٌ، فَيَكُونُ مَنْ قَالَ ذَلِكَ كَاذِبًا، قَافِيًا مَا لَا عِلْمَ لَهُ بِهِ.

L27024 We said: If it were not possible for them to be two reports concerning two slaves, then what you have said would be valid. However, since it is possible for them to be two reports regarding two slaves that Nu'aym ibn al-Nahḥām buys together, it is not permissible to definitively assert that they are a single report. Thus, whoever claims that would be lying, fabricating what he has no knowledge of.

وَأَمَّا مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ، فَمَا يُبَالِي أَعْتَقَهُ أَوْ لَمْ يَعْتِقْهُ، وَلَيْسَ هُوَ الَّذِي أَعْتَقَهُ، بَلْ هُوَ حُرٌّ وَلَا بُدَّ.

L27025 As for one who owns a mahram relative within the prohibited degree of marriage, it matters not whether he emancipates him or not. It is not he who emancipates him; rather, he is necessarily free without exception.

وَمَنْ أَعْتَقَ شِقْصًا لَهُ فِي عَبْدٍ وَهُوَ مُحْتَاجٌ إِلَيْهِ، وَلَا غِنًى بِهِ عَنْهُ فَهُوَ بَاطِلٌ وَإِذْ هُوَ بَاطِلٌ فَلَمْ يَعْتِقْهُ، فَلَيْسَ لَهُ الْحُكْمُ الَّذِي ذَكَرْنَا قَبْلُ - وَقَدْ قَالَ مَالِكٌ: مَنْ أَعْتَقَ وَالِدَيْنِ مُحِيطٌ بِمَالِهِ رُدَّ عِتْقُهُ - وَلَا نَصَّ لَهُ فِي ذَلِكَ.

L27026 Whoever frees his share in a slave while he is in need of the slave and cannot do without him, this act is invalid. Since it is invalid, he has not freed him, and thus the ruling we previously mentioned [regarding valid manumission] does not apply. Imam Malik said: "If someone frees a slave while both parents depend on his wealth, his manumission must be revoked," but there is no explicit textual basis in Malik's works for this.

[مَسْأَلَة عِتْق مِنْ لَا يَبْلُغ والسكران وَالْمَجْنُون والمكره وَغَيْر ذَلِكَ]

The issue of manumission by those who have not reached puberty, the intoxicated, the insane, the coerced, and other such cases.

١٦٧١ - مَسْأَلَةٌ: وَلَا يَجُوزُ عِتْقُ مَنْ لَا يَبْلُغُ وَلَا عِتْقُ مَنْ لَا يَعْقِلُ مِنْ سَكْرَانَ أَوْ مَجْنُونٍ، وَلَا عِتْقَ مُكْرَهٍ، وَلَا مَنْ لَمْ يَنْوِ الْعِتْقَ، لَكِنْ أَخْطَأَ لِسَانُهُ، إِلَّا أَنَّ هَذَا وَحْدَهُ إِنْ قَامَتْ عَلَيْهِ بَيِّنَةٌ وَلَمْ يَكُنْ لَهُ إِلَّا الدَّعْوَى قُضِيَ عَلَيْهِ بِالْعِتْقِ، وَأَمَّا بَيْنَهُ وَبَيْنَ اللَّهِ تَعَالَى فَلَا يَلْزَمُهُ، لِقَوْلِ اللَّهِ تَعَالَى: {لا تَقْرَبُوا الصَّلاةَ وَأَنْتُمْ سُكَارَى حَتَّى تَعْلَمُوا مَا تَقُولُونَ} [النساء: ٤٣] فَصَحَّ أَنَّ السَّكْرَانَ لَا يَعْلَمُ مَا يَقُولُ، وَمَنْ لَا يَعْلَمُ مَا يَقُولُ لَمْ يَلْزَمْهُ مَا يَقُولُ، حَتَّى لَوْ كَفَرَ بِكَلَامٍ لَا يَدْرِي مَا هُوَ لَمْ يَلْزَمْهُ.

L27027 L27028 Issue 1671: It is impermissible to emancipate one who has not reached puberty, nor one who lacks mental capacity—including a drunk or insane person. Nor is the emancipation of a coerced person valid, nor that of one who did not intend emancipation but whose tongue erred unintentionally. However, in this specific case alone, if conclusive proof is established and he has no evidence except his claim, a judgment of emancipation may be issued. Yet between him and Allah, the Exalted, it is not binding on him, due to Allah's statement: "Do not approach prayer while you are intoxicated until you know what you are saying" (4:43). Thus, it is confirmed that a drunk person does not know what he says, and whoever does not know what he says is not bound by his words—even if he utters disbelief without understanding its meaning, it is not binding on him.[2]

[2] **Qur'an references (L27028):** Qur'an 4:43 (An-Nisa).

L27029 They were not commanded except to worship Allah, making their religion sincerely for Him as upright monotheists (ḥunafāʾ) [Al-Bayyinah: 5].[3]

وَلِقَوْلِهِ تَعَالَى: {وَمَا أُمِرُوا إِلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ حُنَفَاءَ} [البينة: ٥]

L27030 And due to the statement of Allah's Messenger (peace be upon him): "Actions are but by intentions, and every person will have what they intended." The insane, the intoxicated, the coerced, and one whose tongue errs have no intention. None of these individuals, in their utterance of manumission, has sincerely devoted their religion to Allah; therefore, it is invalid.

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» وَالْمَجْنُونُ وَالسَّكْرَانُ وَالْمُكْرَهُ لَا نِيَّةَ لَهُمْ، وَكَذَلِكَ مَنْ أَخْطَأَ لِسَانُهُ، وَلَيْسَ مِنْ هَؤُلَاءِ أَحَدٌ أَخْلَصَ لِلَّهِ الدِّينَ بِمَا نَطَقَ بِهِ مِنْ الْعِتْقِ، فَهُوَ بَاطِلٌ.

L27031–27032 It is authentically reported from the Messenger of Allah, peace be upon him: "The pen is lifted from three categories: from the child until he reaches puberty, from the insane until he regains sanity, and from the one who is asleep until he awakens."

وَصَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنْ الصَّبِيِّ حَتَّى يَبْلُغَ، وَالْمَجْنُونِ حَتَّى يُفِيقَ، وَالنَّائِمِ حَتَّى يَسْتَيْقِظَ» .

L27033 It is authentically reported from him (may the prayers and peace of Allah be upon him) that he said: "My Ummah has been pardoned from mistakes, forgetfulness, and what they are compelled to do."

وَصَحَّ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ قَالَ: «عُفِيَ لِأُمَّتِي عَنْ الْخَطَأِ وَالنِّسْيَانِ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» .

L27034 Abu Hanifah and Malik said: The emancipation by an intoxicated person is permissible. They have no valid proof at all, except their statement: "He brought this upon himself through disobedience?" We responded: "Yes - so what? How can it be obligatory that if one brought this upon himself through disobedience, he should be bound by what God Almighty has never imposed? What would you say about one who fought a highway robber and was struck on the head by a blow that impaired his intellect - would you deem his emancipation valid?" Yet they do not apply this ruling, though he similarly brought it upon himself.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: عِتْقُ السَّكْرَانِ جَائِزٌ - وَلَا حُجَّةَ لَهُمْ أَصْلًا، إلَّا أَنَّهُمْ قَالُوا: هُوَ أَدْخَلَ عَلَى نَفْسِهِ ذَلِكَ بِالْمَعْصِيَةِ؟ فَقُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ وَجَبَ إذَا أَدْخَلَ عَلَى نَفْسِهِ ذَلِكَ بِالْمَعْصِيَةِ أَنْ يَلْزَمَهُ مَا لَمْ يُلْزِمْهُ اللَّهُ تَعَالَى قَطُّ؟ وَمَا تَقُولُونَ فِيمَنْ حَارَبَ قَاطِعًا لِلطَّرِيقِ فَأَصَابَتْهُ ضَرْبَةٌ فِي رَأْسِهِ خَبَلَتْ عَقْلَهُ، أَتُجِيزُونَ عَتَاقَهُ؟ وَهُمْ لَا يَفْعَلُونَ هَذَا، وَهُوَ أَدْخَلَهُ عَلَى نَفْسِهِ.

L27035 And regarding one who committed adultery in disobedience to God the Exalted, then needlessly cut the flesh of his lower legs and cauterized his forearms—do you permit him to pray while sitting or not? For he brought that upon himself through disobedience.

وَعَمَّنْ تَزَنَّكَ عَاصِيًا لِلَّهِ تَعَالَى فَقَطَعَ لَحْمَ سَاقَيْهِ وَكَوَى ذِرَاعَيْهِ عَبَثًا أَتُجِيزُونَ لَهُ الصَّلَاةَ جَالِسًا أَمْ لَا؟ لِأَنَّهُ أَدْخَلَ عَلَى نَفْسِهِ ذَلِكَ بِالْمَعْصِيَةِ

L27036 As for someone traveling on a journey who cannot find water and fears the prayer time will lapse—should he perform tayammum or not? They use all of this to invalidate this unsound principle.

وَعَمَّنْ سَافَرَ فِي قَطْعِ الطَّرِيقِ فَلَمْ يَجِدْ مَاءً وَخَافَ ذَهَابَ الْوَقْتِ أَيَتَيَمَّمُ أَمْ لَا؟ وَكُلُّ هَذَا يَنْقُضُونَ فِيهِ هَذَا الْأَصْلَ الْفَاسِدَ.

[3] **Qur'an references (L27029):** Qur'an 98:5 (Al-Bayyinah).

L27037 Abu Hanifah said: The manumission performed under coercion is permissible.

وَقَالَ أَبُو حَنِيفَةَ: عِتْقُ الْمُكْرَهِ جَائِزٌ.

L27038 Malik and al-Shāfiʿī said: He is not obligated. Moreover, we know of no fundamental argument for the Ḥanafīs whatsoever, except certain unsound narrations specific to divorce. Emancipation is not analogous to divorce, and the juristic analogy is invalid.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: لَا يَلْزَمُهُ - وَمَا نَعْلَمُ لِلْحَنَفِيِّينَ حُجَّةً أَصْلًا، إِلَّا آثَارًا فَاسِدَةً فِي الطَّلَاقِ خَاصَّةً وَلَيْسَ الْعَتَاقُ مِنْ الطَّلَاقِ وَالْقِيَاسُ بَاطِلٌ.

L27039 Some of them argued using the maxim “Three: their seriousness is seriousness, and their jesting is seriousness,” and some of them cited manumission in this context - and this is a fabricated report.

وَاحْتَجَّ بَعْضُهُمْ «بِثَلَاثٍ جَدُّهُنَّ جَدٌّ وَهَزْلُهُنَّ جَدٌّ» فَذَكَرَ بَعْضُهُمْ فِي ذَلِكَ الْعَتَاقَ - وَهُوَ خَبَرٌ مَكْذُوبٌ.

L27040 Furthermore, even if it were valid, they would have no argument here whatsoever, for we do not agree with them concerning those who jest and emancipate; we only agree with them concerning those who are compelled and emancipate. Yet this report - despite its inauspiciousness and spuriousness - contains no mention of compulsion. Moreover, they do not permit the sale by a compelled person, nor their legal admission, nor their gift - this constitutes an evident contradiction, and its full treatment follows in the subsequent section.

ثُمَّ لَوْ صَحَّ لَمْ تَكُنْ لَهُمْ فِيهِ حُجَّةٌ أَصْلًا؛ لِأَنَّنَا لَسْنَا مَعَهُمْ فِيمَنْ هَزَلَ فَأَعْتَقَ، إِنَّمَا نَحْنُ مَعَهُمْ فِيمَنْ أُكْرِهَ فَأَعْتَقَ، وَلَيْسَ فِي هَذَا الْخَبَرِ - عَلَى نَحْسِهِ وَوَضْعِهِ - ذِكْرُ إِكْرَاهٍ - ثُمَّ لَا يُجِيزُونَ بَيْعَ الْمُكْرَهِ، وَلَا إِقْرَارَهُ، وَلَا هِبَتَهُ -: وَهَذَا تَنَاقُضٌ ظَاهِرٌ، وَتَمَامُهَا فِي الَّتِي بَعْدَهَا.

L27041 And with Allah, the Exalted, is success.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Ruling on Deferred Manumission

[مَسْأَلَة الْعِتْق إِلَى أَجَل]

L27042–27043

L27044 Issue: If a person manumits a slave contingent upon a specified term—whether near or distant—such as stating: “You are free tomorrow,” “until a year passes,” “after my death,” “when my father arrives,” “when so-and-so recovers consciousness,” “when rain falls,” or similar conditions, the manumission remains as stipulated. The owner retains the right to sell the slave before the term’s fulfillment. If he sells the slave and it subsequently returns to his ownership, the manumission contract becomes void. No manumission occurs upon the term’s arrival, and the owner has no recourse to revoke this contract whatsoever unless he removes the slave from his ownership. This conditional manumission constitutes either a testamentary bequest or a vow—both being valid contracts, as scriptural texts mandate their fulfill-

مَسْأَلَةٌ: وَمَنْ أَعْتَقَ إِلَى أَجَلٍ مُسَمًّى - قَرِيبٌ أَوْ بَعِيدٌ - مِثْلُ أَنْ يَقُولَ: أَنْتَ حُرٌّ غَدًا، أَوْ إِلَى سَنَةٍ، أَوْ إِلَى بَعْدَ مَوْتِي، أَوْ إِذَا جَاءَ أَبِي، أَوْ إِذَا أَفَاقَ فُلَانٌ، أَوْ إِذَا نَزَلَ الْمَطَرُ، أَوْ نَحْوُ هَذَا، فَهُوَ كَمَا قَالَ، وَلَهُ بَيْعُهُ مَا لَمْ يَأْتِ ذَلِكَ الْأَجَلُ، فَإِنْ بَاعَهُ ثُمَّ رَجَعَ إِلَى مِلْكِهِ فَقَدْ بَطَلَ ذَلِكَ الْعَقْدُ، وَلَا عِتْقَ لَهُ بِمَجِيءِ ذَلِكَ الْأَجَلِ، وَلَا رُجُوعَ لَهُ فِي عَقْدِهِ ذَلِكَ أَصْلًا، إِلَّا بِإِخْرَاجِهِ عَنْ مِلْكِهِ؛ لِأَنَّ هَذَا الْعِتْقَ إِمَّا وَصِيَّةٌ، وَإِمَّا نَذْرٌ، وَكِلَاهُمَا عَقْدٌ صَحِيحٌ قَدْ جَاءَ النَّصُّ بِالْوَفَاءِ بِهِمَا، فَلَوْ عَلَّقَ الْعِتْقَ بِمَعْصِيَةٍ، أَوْ بِغَيْرِ طَاعَةٍ وَلَا

ment. If the manumission is made contingent upon a sinful act or a matter neither pious nor sinful, it is invalid as it constitutes an invalid, prohibited, and forbidden contract. The Messenger of Allah—peace and blessings be upon him—said: "There is no fulfillment for a vow made in disobedience to Allah."

مَعْصِيَةَ: لَمْ يَجُزْ الْعِتْقُ، لِأَنَّهُ عَقْدٌ فَاسِدٌ مُحَرَّمٌ مَنْهِيٌّ عَنْهُ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا وَفَاءَ لِنَذْرٍ فِي مَعْصِيَةِ اللَّهِ»

L27045 It has been narrated to us from 'Ata' that if someone says to his slave, "You are free," the slave is not free until he says, "For the sake of Allah," and this is correct. This is because manumission is an act of worship to Allah the Exalted, a righteous deed, and an act of devotion to Him. Therefore, every act of worship or devotion that is not done sincerely for His sake is invalid and rejected, in accordance with the statement of the Prophet (peace and blessings of Allah be upon him): "Whoever performs a deed not in accordance with our teachings, it is rejected."[4]

وَقَدْ رُوِّينَا عَنْ عَطَاءٍ مَنْ قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ، لَمْ يَكُنْ حُرًّا حَتَّى يَقُولَ: لِلَّهِ، وَهَذَا حَقٌّ، لِأَنَّ الْعِتْقَ عِبَادَةٌ لِلَّهِ تَعَالَى، وَبِرٌّ وَقُرْبَةٌ إلَيْهِ تَعَالَى، فَكُلُّ عِبَادَةٍ وَقُرْبَةٍ لَمْ تَكُنْ لَهُ تَعَالَى مُخْلِصًا لَهُ بِهَا فَهِيَ بَاطِلٌ مَرْدُودَةٌ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L27046 And there have been reported unsound traditions—among them: "Whoever emancipates a playing slave, it is permissible." This is invalid, as it is a mursal narration from Al-Hasan, who claimed the Messenger of Allah (peace be upon him) said it without a chain.

وَقَدْ رُوِيَتْ آثَارٌ فَاسِدَةٌ -: مِنْهَا «مَنْ أَعْتَقَ لَاعِبًا فَقَدْ جَازَ» وَهُوَ بَاطِلٌ، لِأَنَّهُ مُرْسَلٌ عَنْ الْحَسَنِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L27047 From a chain containing Ibrāhīm ibn Abī Yaḥyā—noted for falsehood—it is narrated from Ibn ʿUmar: "There are four conclusively sealed matters in which jesting is not permissible: divorce, marriage, emancipation, and vows." This narration is inauthentic because it is transmitted from Saʿīd ibn al-Musayyib from ʿUmar, while Saʿīd heard nothing from ʿUmar except his announcement of Nuʿmān ibn Muqrin's death.

وَمِنْ طَرِيقٍ فِيهَا إبْرَاهِيمُ بْنُ أَبِي يَحْيَى - وَهُوَ مَذْكُورٌ بِالْكَذِبِ - وَرُوِيَ عَنْ ابْنِ عُمَرَ: أَرْبَعٌ مُقْفَلَاتٌ لَا يَجُوزُ فِيهِنَّ الْهَزْلُ: الطَّلَاقُ، وَالنِّكَاحُ، وَالْعَتَاقَةُ، وَالنَّذْرُ - وَهَذَا لَا يَصِحُّ، لِأَنَّهُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُمَرَ، وَلَمْ يَسْمَعْ سَعِيدٌ مِنْ عُمَرَ شَيْئًا إلَّا نَعْيَهُ النُّعْمَانُ بْنُ مُقْرِنٍ.

L27048 Then, even if it were valid, they would have no basis for it, because its apparent meaning contradicts their assertion; rather, it aligns with our position, since jest is not permissible in marriage, divorce, manumission, or vows. Therefore, since it is impermissible in these matters, they do not take effect through it. This is the implication conveyed by the wording of the narration.

ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ مُتَعَلَّقٌ، لِأَنَّ ظَاهِرَهُ خِلَافُ قَوْلِهِمْ، بَلْ مُوَافِقٌ لِقَوْلِنَا، لِأَنَّ الْهَزْلَ لَا يَجُوزُ فِي النِّكَاحِ، وَالطَّلَاقِ، وَالْعِتْقِ، وَالنَّذْرِ، فَإِذْ لَا يَجُوزُ فِيهَا فَهِيَ غَيْرُ وَاقِعَةٍ بِهِ، هَذَا مُقْتَضَى لَفْظِ الْخَبَرِ.

[4]**Hadith references (L27045):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

ثُمَّ لَوْ صَحَّ كَمَا يُرِيدُونَ فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L27049 Moreover, if it were valid as they intend, there would be no proof in anyone besides the Messenger of Allah (may the peace and blessings of Allah be upon him).

وَمِنْ طَرِيقٍ فِيهَا إبْرَاهِيمُ بْنُ عَمْرٍو - وَهُوَ ضَعِيفٌ - عَنْ عَبْدِ الْكَرِيمِ بْنِ أَبِي الْمُخَارِقِ وَهُوَ غَيْرُ ثِقَةٍ - عَنْ جَعْدَةَ بْنِ هُبَيْرَةَ عَنْ عُمَرَ: ثَلَاثٌ اللَّاعِبُ فِيهِنَّ وَالْجَادُّ سَوَاءٌ الطَّلَاقُ، وَالصَّدَقَةُ وَالْعِتْقُ.

L27050–27052 And from a path in which is Ibrāhīm ibn ʿAmr - and he is weak - from ʿAbd al-Karīm ibn Abī al-Mukhāriq. He is not credible – on the authority of Jaʿdah ibn Hubayrah, on the authority of ʿUmar: Three matters apply equally to the playful and the serious: divorce, charity, and manumission.

ثُمَّ هُمْ مُخَالِفُونَ لِهَذَا، لِأَنَّهُمْ لَا يُجِيزُونَ صَدَقَةَ الْمُكْرَهِ عَلَيْهَا - فَبَعْضُ كَلَامٍ رُوِيَ عَنْ عُمَرَ حُجَّةٌ، وَبَعْضُهُ لَيْسَ حُجَّةً، هَذَا اللَّعِبُ بِالدِّينِ.

L27053 Furthermore, they contradict this; because they do not permit coerced charity. Thus, some of the statements narrated from ʿUmar are authoritative evidence, while others are not—this is playing with religion.

وَمِنْ طَرِيقِ الْحَسَنِ عَنْ أَبِي الدَّرْدَاءِ -: ثَلَاثٌ اللَّاعِبُ فِيهِنَّ كَالْجَادِّ: النِّكَاحُ، وَالطَّلَاقُ، وَالْعَتَاقُ - هَذَا مُرْسَلٌ، وَلَمْ يُدْرِكْ الْحَسَنُ أَبَا الدَّرْدَاءِ

L27054 And through the chain of Al-Ḥasan from Abū al-Dardāʾ: “Three matters where a joker is treated as serious: marriage, divorce, and manumission.” This is a *mursal* report (with an interrupted chain), as Al-Ḥasan did not meet Abū al-Dardāʾ.

وَمِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ عَنْ عَبْدِ اللَّهِ بْنِ يَحْيَى عَنْ عَلِيٍّ: ثَلَاثٌ لَا لَعِبَ فِيهِنَّ -: النِّكَاحُ، وَالطَّلَاقُ، وَالْعَتَاقُ، - جَابِرٌ كَذَّابٌ، ثُمَّ لَوْ صَحَّ لَكَانَ ظَاهِرُهُ مُوَافِقًا لِقَوْلِنَا لَا لِقَوْلِهِمْ، وَهُوَ إبْطَالُ اللَّعِبِ فِيهِنَّ فَإِذَا بَطَلَ مَا وَقَعَ مِنْهَا بِاللَّعِبِ.

L27055 Through the chain of Jābir al-Juʿfī from ʿAbd Allāh ibn Yaḥyā from ʿAlī: “Three matters where jesting is invalid – marriage, divorce, and manumission” – Jābir is a compulsive liar –. Furthermore, even if the narration were authentic, its apparent meaning would align with our position rather than theirs, since it [the narration’s apparent meaning] invalidates jesting in these matters, thereby nullifying any such act done jokingly.

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ بَلَغَنِي أَنَّ مَرْوَانَ أَخَذَ مِنْ عَلِيٍّ: أَرْبَعٌ لَا رُجُوعَ فِيهِنَّ إلَّا بِالْوَفَاءِ -: النِّكَاحُ، وَالطَّلَاقُ، وَالْعَتَاقُ، وَالنَّذْرُ وَنَعَمْ، كُلُّ هَذِهِ إذَا وَقَعَتْ كَمَا أَمَرَ اللَّهُ تَعَالَى فِي دِينِ الْإِسْلَامِ فَالْوَفَاءُ بِهَا فَرْضٌ، وَأَمَّا إذَا وَقَعَتْ كَمَا أَمَرَ إبْلِيسُ، فَلَا وَلَا كَرَامَةَ لِلْآمِرِ وَالْمُطِيعِ - ثُمَّ لَيْسَ فِي شَيْءٍ مِنْهَا ذِكْرٌ لِلْإِكْرَاهِ عَلَى الْعِتْقِ وَجَوَازُهُ، فَوَضَحَ بُطْلَانُ قَوْلِهِمْ بِلَا شَكٍّ.

L27056 And through the narration of Sufyān ibn ʿUyaynah, it reached me that Marwān related from ʿAli: “Four matters permit no retraction except through fulfillment [of their conditions]: marriage, divorce, emancipation, and vows. Yes, all of these—if carried out as Allah the Exalted has ordained in the religion of Islam—then fulfilling them is obligatory. But if carried out as Iblīs has commanded, they are not [valid], and there is no honor for the one commanding or the obedient.” Furthermore, none of these rulings mention compulsion in emancipation **and** its permissibility. Thus, the falsity of their claim is indisputably clear.

L27057 As for our statement: he has the right to his sale as long as the term has not

arrived, this is because he is a slave as long as he has not attained freedom, {and Allah has permitted sale} [Al-Baqarah 2:275]. Distinguishing between the aforementioned specified periods is invalid, because that term may arrive while the slave is deceased, or the master is deceased.[5]

L27058 As for our statement that if he transfers ownership of the slave and the slave subsequently returns to his possession, emancipation is not required upon the arrival of that term: this is because the contract becomes nullified by the slave's exit from his ownership. Allah the Exalted said: "No bearer of burdens shall bear another's burden" [6:164]. Any contract rightfully nullified cannot be reinstated unless there exists explicit textual evidence authorizing its revival, and no textual evidence exists for restoring this contract after its nullification.[6]

L27059–27061 As for our statement: he cannot revoke any part of this through verbal declaration, except by removing it from his ownership alone - this is because all such contracts are sound, and Allah the Exalted has commanded their fulfillment. Since this is the case, no one may permissibly nullify them. Since there is no textual evidence at all specifying the manner of invalidating it in that regard, there exists no right whatsoever to annul a valid contract fundamentally, except where textual evidence has been established - and with Allah the Exalted lies all success.

The issue of manumitting the slave who is a Bookī.

L27062

L27063 1673 - Issue: It is permissible for a Muslim to manumit his Kitabi slave in the abode of Islam and the land of war—whether he acquired ownership there or in the abode of Islam—due to the saying of the Messenger of Allah, peace and blessings be upon him: "In every moist liver there is a reward."

L27064 And due to his general encouragement—peace and blessings be upon him—toward freeing slaves as a whole, though freeing a believing slave yields

[5]**Qur'an references (L27057):** Qur'an 2:275 (Al-Baqarah).
[6]**Qur'an references (L27058):** Qur'an 6:164 (Al-An'am).

وَأَمَّا قَوْلُنَا: لَهُ بَيْعُهُ مَا لَمْ يَأْتِ الْأَجَلُ، فَلِأَنَّهُ عَبْدٌ مَا لَمْ يَسْتَحِقَّ الْحُرِّيَّةَ {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَالتَّفْرِيقُ بَيْنَ الْآجَالِ الْمَذْكُورَةِ بَاطِلٌ، لِأَنَّهُ قَدْ يَجِيءُ ذَلِكَ الْأَجَلُ وَالْعَبْدُ مَيِّتٌ، أَوْ السَّيِّدُ مَيِّتٌ.

وَأَمَّا قَوْلُنَا: إنَّهُ إنْ أَخْرَجَهُ عَنْ مِلْكِهِ ثُمَّ عَادَ إلَى مِلْكِهِ لَمْ يَلْزَمْهُ الْعِتْقُ بِمَجِيءِ ذَلِكَ الْأَجَلِ، فَلِأَنَّهُ قَدْ بَطَلَ الْعَقْدُ بِخُرُوجِهِ عَنْ مِلْكِهِ، قَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤] وَكُلُّ شَيْءٍ بَطَلَ بِحَقٍّ فَلَا يَجُوزُ أَنْ يَعُودَ، إلَّا أَنْ يَأْتِيَ نَصٌّ بِعَوْدَتِهِ وَلَا نَصَّ فِي عَوْدَةِ هَذَا الْعَقْدِ بَعْدَ بُطْلَانِهِ.

وَأَمَّا قَوْلُنَا: لَا رُجُوعَ لَهُ فِي شَيْءٍ مِنْ ذَلِكَ بِالْقَوْلِ، إلَّا بِإِخْرَاجِهِ مِنْ مِلْكِهِ فَقَطْ، فَلِأَنَّهَا كُلَّهَا عُقُودٌ صِحَاحٌ أَمَرَ اللَّهُ تَعَالَى بِالْوَفَاءِ بِهَا، وَمَا كَانَ هَكَذَا فَلَا يَحِلُّ لِأَحَدٍ إبْطَالُهُ، إذْ لَمْ يَأْتِ نَصٌّ بِكَيْفِيَّةِ إبْطَالِهِ فِي ذَلِكَ أَصْلًا، فَلَيْسَ لَهُ نَقْضُ عَقْدٍ صَحِيحٍ أَصْلًا، إلَّا حَيْثُ جَاءَ نَصٌّ بِذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةُ عِتْقِ الْعَبْدِ الْكِتَابِيِّ]

١٦٧٣ - مَسْأَلَةٌ: وَجَائِزٌ لِلْمُسْلِمِ عِتْقُ عَبْدِهِ الْكِتَابِيِّ فِي أَرْضِ الْإِسْلَامِ وَأَرْضِ الْحَرْبِ - مَلَكَهُ هُنَالِكَ أَوْ فِي دَارِ الْإِسْلَامِ - لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فِي كُلِّ ذِي كَبِدٍ رَطْبَةٍ أَجْرٌ» .

وَلِحَضِّهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَى الْعِتْقِ جُمْلَةً، إلَّا أَنَّ عِتْقَ الْمُؤْمِنِ أَعْظَمُ أَجْرًا، وَكَذَلِكَ عِتْقُ الْكَافِرِ لِعَبْدِهِ الْكَافِرِ جَائِزٌ، وَقَدْ ذَكَرْنَا «قَوْلَ حَكِيمٍ لِرَسُولِ اللَّهِ - صَلَّى

greater reward. Similarly, it is permissible for a disbeliever to free his disbelieving slave. We have mentioned "the statement of Ḥakīm to the Messenger of Allah (peace and blessings be upon him): 'O Messenger of Allah, what is your view regarding deeds I used to engage in as devotional acts during the pre-Islamic era, such as freeing slaves and giving charity?' The Messenger of Allah (peace and blessings be upon him) replied: 'You have embraced Islam along with the merit of the good you previously performed,'" thus he deemed the freeing of a disbelieving slave as a virtuous act.

L27065 If the freed slave embraces Islam, his Muslim master inherits from him. Similarly, if the manumitter and the freed slave embrace Islam, the manumitter inherits from the freed slave, because allegiance belongs to the manumitter universally. The Prophet, peace and blessings be upon him, said: "Allegiance belongs to the one who manumits." If one of them is Muslim and the other is a non-Muslim, they do not inherit from each other due to the difference in religion.

L27066 ## The Question of the Slave's Conversion to Islam

L27067 1674. Issue: If a dhimmi (a non-Muslim subject) or a ḥarbī (a non-Muslim residing outside Islamic jurisdiction) has a disbelieving slave, and both embrace Islam simultaneously, the slave remains his property as before. However, if the slave converts to Islam even an instant before his master does, he becomes free the moment he accepts Islam, and no bond of patronage (walā') is owed to anyone. This is based on Allah's statement: "Allah will never give the disbelievers any means of dominance over the believers" (Quran 4:141), and slavery constitutes the most severe form of such subjugation.[7]

L27068 Our opponents have concurred with us that if one departs from the abode of war, he becomes free. Yet we are unaware of any ruling pertaining to such a departure—neither by explicit textual evidence nor by juristic reasoning.

L27069 If it is said: Did the Messenger of Allah (peace be upon him) free those who came to him from among the male slaves of the disbelievers?

اللَّهُ عَلَيْهِ وَسَلَّمَ -: يَا رَسُولَ اللَّهِ أَرَأَيْتَ أَشْيَاءَ كُنْتُ أَتَحَنَّثُ بِهَا فِي الْجَاهِلِيَّةِ مِنْ عَتَاقَةٍ وَصَدَقَةٍ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَسْلَمْتَ عَلَى مَا أَسْلَفْتَ مِنْ خَيْرٍ» فَجَعَلَ عِتْقَ الْعَبْدِ الْكَافِرِ خَيْرًا.

فَإِنْ أَسْلَمَ الْمُعْتَقُ وَرِثَهُ سَيِّدُهُ الْمُسْلِمُ، وَكَذَلِكَ لَوْ أَسْلَمَ الْمُعْتِقُ وَالْمُعْتَقُ؛ لِأَنَّ الْوَلَاءَ لِلْمُعْتِقِ عُمُومًا، قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «الْوَلَاءُ لِمَنْ أَعْتَقَ» فَإِنْ كَانَ أَحَدُهُمَا مُسْلِمًا وَالْآخَرُ كَافِرًا لَمْ يَتَوَارَثَا، لِاخْتِلَافِ الدِّينِ.

[مَسْأَلَة إسلام الْعَبْد]

١٦٧٤ - مَسْأَلَةٌ: فَإِنْ كَانَ لِلذِّمِّيِّ أَوْ الْحَرْبِيِّ عَبْدٌ كَافِرٌ فَأَسْلَمَا مَعًا فَهُوَ عَبْدُهُ، كَمَا كَانَ، فَلَوْ أَسْلَمَ الْعَبْدُ قَبْلَ سَيِّدِهِ بِطَرْفَةِ عَيْنٍ فَهُوَ حُرٌّ سَاعَةَ يُسْلِمُ، وَلَا وَلَاءَ عَلَيْهِ لِأَحَدٍ، لِقَوْلِ اللَّهِ تَعَالَى: {وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلا} [النساء: ١٤١] وَالرِّقُّ أَعْظَمُ السَّبِيلِ.

وَقَدْ وَافَقَنَا الْمُخَالِفُونَ لَنَا عَلَى أَنَّهُ إنْ خَرَجَ مِنْ دَارِ الْحَرْبِ فَهُوَ حُرٌّ، وَمَا نَدْرِي لِلْخُرُوجِ فِي ذَلِكَ حُكْمًا، لَا بِنَصٍّ وَلَا بِنَظَرٍ.

فَإِنْ قِيلَ: أَعْتَقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ خَرَجَ إلَيْهِ مِنْ عَبِيدِ الْكُفَّارِ.

[7] **Qur'an references (L27067):** Qur'an 4:141 (An-Nisa).

L27070–27071 We said: This is our argument. What evidence do you have that he emancipated him through departure, and he—peace and blessings be upon him—never said that at all.

قُلْنَا: هَذِهِ حُجَّتُنَا، وَمِنْ أَيْنَ لَكُمْ أَنَّهُ بِالْخُرُوجِ أَعْتَقَهُ - وَمَا قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَطُّ ذَلِكَ.

L27072 Then they say: If the slave of a disbeliever embraces Islam, is he to be sold? We responded: Why do you sell him? Is it because the disbeliever's ownership of him is impermissible? Or due to a text cited about his sale, even if the disbeliever's ownership of him is permissible? There is no way to find a text regarding that.

ثُمَّ يَقُولُونَ: إِنْ أَسْلَمَ عَبْدُ الْكَافِرِ بِيعَ عَلَيْهِ؟ فَقُلْنَا: لِمَاذَا تَبِيعُونَهُ؟ أَلِأَنَّهُ لَا يَجُوزُ مِلْكُهُ لَهُ؟ أَمْ لِنَصٍّ وَرَدَ فِي بَيْعِهِ - وَإِنْ كَانَ مِلْكُهُ لَهُ جَائِزًا؟ وَلَا سَبِيلَ إِلَى نَصٍّ فِي ذَلِكَ.

L27073 If they argue: Because the ownership rightfully belongs to him, it is invalid.

فَإِنْ قَالُوا: لِأَنَّ مِلْكَهُ لَهُ لَا يَجُوزُ.

L27074 We said: Since his ownership of it is not permissible, his ownership over him is undoubtedly nullified; otherwise, your statements are confused and contradictory. And since his ownership over him has been nullified, and no ownership by another has yet been established upon him, then he is undoubtedly a free person, for this is the attribute of a free person.

قُلْنَا: فَإِذْ لَا يَحِلُّ مِلْكُهُ لَهُ فَقَدْ بَطَلَ مِلْكُهُ عَنْهُ بِلَا شَكٍّ، وَإِلَّا فَكَلَامُكُمْ مُخْتَلِطٌ مُتَنَاقِضٌ، وَإِذْ قَدْ بَطَلَ مِلْكُهُ عَنْهُ، وَلَمْ يَقَعْ عَلَيْهِ بَعْدُ مِلْكٌ لِغَيْرِهِ، فَهُوَ بِلَا شَكٍّ حُرٌّ، إِذْ هَذِهِ صِفَةُ الْحُرِّ.

L27075 If his ownership of it is permissible, then your selling it to him is an act of oppression, nullity, and injustice.

وَإِنْ كَانَ مِلْكُهُ لَهُ جَائِزًا فَبَيْعُكُمْ إِيَّاهُ ظُلْمٌ وَبَاطِلٌ وَجَوْرٌ.

L27076 What is the distinction between your ruling to keep him under the disbeliever's ownership until he is sold - and perhaps he cannot have him sold except after a year - and your prohibition of his ownership persisting indefinitely? There is no way to establish such a distinction - and in Allah the Exalted we seek support. As for the lapse of patronage over him, this is because he was not emancipated, for there is no patronage except for the emancipator or for those mandated by the scriptural ruling.

وَمَا الْفَرْقُ بَيْنَ مَا قَضَيْتُمْ بِهِ مِنْ إِبْقَائِهِ فِي مِلْكِ الْكَافِرِ حَتَّى يُبَاعَ؟ وَلَعَلَّهُ لَا يَسْتَبِيعُ إِلَّا بَعْدَ سَنَةٍ - وَبَيْنَ مَنْعِكُمْ مِنْ مِلْكِهِ مُتَمَادِيًا؟ وَهَذَا مَا لَا سَبِيلَ لَهُ إِلَى وُجُودِ فَرْقٍ فِي ذَلِكَ - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ - وَأَمَّا سُقُوطُ الْوَلَاءِ عَنْهُ، فَلِأَنَّهُ لَمْ يُعْتَقْ، وَلَا وَلَاءَ إِلَّا لِلْمُعْتِقِ، أَوْ لِمَنْ أَوْجَبَهُ النَّصُّ.

L27077 And with Allah, the Most High, is the success.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L27078 The issue of the manumission of a child born from fornication.

[مَسْأَلَة عِتْق وَلَد الزِّنَا]

L27079 Issue 1675: The emancipation of a child born of fornication is permissible because he constitutes an owned slave. There exist reports to the contrary regarding this matter, but they are inadmissible as evidence due to their inau-

١٦٧٥ - مَسْأَلَةٌ: وَعِتْقُ وَلَدِ الزِّنَى جَائِزٌ، لِأَنَّهُ رَقَبَةٌ مَمْلُوكَةٌ، وَقَدْ جَاءَتْ أَخْبَارٌ بِخِلَافِ ذَلِكَ لَا حُجَّةَ فِيهَا، لِأَنَّهَا لَا تَصِحُّ -: مِنْهَا - عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

thenticity. Among these is a narration from the Messenger of Allah (peace be upon him) through the chain of Aḥmad ibn Shuʿayb: al-ʿAbbās ibn Muḥammad al-Dūrī narrated from al-Faḍl ibn Dukayn, who narrated from Isrāʾīl, from Zayd ibn Jubayr, from Abū Yazīd al-Ḍabbī, from Maymūnah, the freedwoman of the Messenger of Allah (peace be upon him), who reported: "The Prophet (peace be upon him) was asked about a child born of fornication. He replied: 'There is no good in him. Two deeds—striving through them, or he said, preparing through them—are more beloved to me than emancipating a child born of fornication.'" Isrāʾīl is a weak narrator, and I do not know Abū Yazīd al-Ḍabbī.

L27080–27081 Narrations from the Companions are considered disconnected, and scholars have disagreed about them. No one other than the Messenger of Allah—may Allah bless him and grant him peace—holds definitive authority, and the dissenting scholars have concurred with us in this matter.

L27082 **Issue: The master said, "One of these two slaves of mine is free."**

L27083 1676 - Issue: Whoever says: "One of these two slaves of mine is free."

L27084 Neither of them is free, and both remain slaves as they were. Neither is tasked with emancipating the other, for the master did not specifically emancipate this one, so he is not free since his master did not free him. Nor did the master specifically emancipate the other one either, so he likewise is not free since his master did not free him. Thus both remain slaves, as neither master emancipated them. This matter is of the utmost clarity, and it is impermissible to dispossess an owner of his property through baseless assumption.

L27085 **The legal issue concerning one who imposed a hadd punishment on his slave undeservedly or slapped him.**

L27086 1677 - Issue: If a legally responsible adult slaps the cheek of his male slave or female slave with the inner palm, both are immediately emancipated. Similarly, if he strikes them or imposes a punishment for an offense they did

مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا الْعَبَّاسُ بْنُ مُحَمَّدٍ الدُّورِيُّ نا الْفَضْلُ بْنُ دُكَيْنٍ نا إِسْرَائِيلُ عَنْ زَيْدِ بْنِ جُبَيْرٍ عَنْ أَبِي يَزِيدَ الضَّبِّيِّ عَنْ مَيْمُونَةَ مَوْلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ عَنْ وَلَدِ الزِّنَى؟ فَقَالَ: لَا خَيْرَ فِيهِ، فَعْلَانِ أُجَاهِدُ بِهِمَا - أَوْ قَالَ أُجَهِّزُ بِهِمَا - أَحَبُّ إِلَيَّ مِنْ أَنْ أُعْتِقَ وَلَدَ الزِّنَى» إِسْرَائِيلُ ضَعِيفٌ، وَأَبُو يَزِيدَ الضَّبِّيُّ لَا أَعْرِفُهُ.

وَعَنْ الصَّحَابَةِ مُرْسَلَةٌ، وَقَدْ اخْتَلَفُوا فِيهِ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ وَافَقَنَا الْمُخَالِفُونَ هَاهُنَا.

[مَسْأَلَة قَالَ السَّيِّد أَحَد عبدي هَذيْنِ حُرّ]

١٦٧٦ - مَسْأَلَةٌ: وَمَنْ قَالَ: أَحَدُ عَبْدَيَّ هَذَيْنِ حُرٌّ.

فَلَيْسَ مِنْهُمَا حُرٌّ وَكِلَاهُمَا عَبْدٌ كَمَا كَانَ، وَلَا يُكَلَّفُ عِتْقَ أَحَدِهِمَا، فَإِنَّهُ لَمْ يَعْتِقْ هَذَا بِعَيْنِهِ فَلَيْسَ حُرًّا، إذْ لَمْ يَعْتِقْهُ سَيِّدُهُ، وَلَا أَعْتَقَ هَذَا الْآخَرَ أَيْضًا بِعَيْنِهِ، فَلَيْسَ أَيْضًا حُرًّا، إذْ لَمْ يَعْتِقْهُ سَيِّدُهُ، فَكِلَاهُمَا لَمْ يَعْتِقْهُ سَيِّدُهُ، فَكِلَاهُمَا عَبْدٌ - وَهَذَا فِي غَايَةِ الْبَيَانِ، وَلَا يَجُوزُ إخْرَاجُ مِلْكِهِ عَنْ يَدِهِ بِالظَّنِّ الْكَاذِبِ

[مَسْأَلَة مَنْ ضَرَبَ غُلَامًا لَهُ حَدًّا لَمْ يَأْتِهِ أَوْ لَطَمَهُ]

not commit, both are freed by this act. No slave is emancipated against the owner's will - neither due to mutilation nor for any reason other than those specified.

١٦٧٧ - مَسْأَلَةٌ: وَمَنْ لَطَمَ خَدَّ عَبْدِهِ أَوْ خَدَّ أَمَتِهِ بِبَاطِنِ كَفِّهِ فَهُمَا حُرَّانِ سَاعَتَئِذٍ إِذَا كَانَ اللَّاطِمُ بَالِغًا مُمَيِّزًا. وَكَذَلِكَ إِنْ ضَرَبَهُمَا أَوْ حَدَّهُمَا حَدًّا لَمْ يَأْتِيَاهُ فَهُمَا حُرَّانِ بِذَلِكَ. وَلَا يُعْتَقُ عَلَيْهِ مَمْلُوكٌ لَا بِمُثْلَةٍ وَلَا بِغَيْرِ مَا ذَكَرْنَا.

L27087 If the one who slaps requires the service of the slapped male slave or female slave and cannot do without him or her, he may continue to employ them. When he no longer needs them, they become free at that moment. This is based on what was transmitted through the chain of Muḥammad ibn al-Muthannā, who reported from Muḥammad ibn Jaʿfar Ghundar and ʿAbd al-Raḥmān ibn Mahdī. Ghundar stated: Shuʿbah narrated to us, while ʿAbd al-Raḥmān reported from Sufyān al-Thawrī. Their chains then converged, both narrating from Firas ibn Yaḥyā, who said: I heard Dhakwān—Abū Ṣāliḥ al-Sammān—relate from Zādhān Abū ʿUmar, who said: Ibn ʿUmar summoned his male slave and noticed a mark on his back. He asked: "Did I cause you pain?" The slave replied: "No." Ibn ʿUmar declared: "You are free." He then added: "I heard the Messenger of Allah—peace and blessings be upon him—say: 'Whoever strikes a slave with a prescribed punishment (ḥadd) they did not incur, or slaps them, must expiate this by emancipating them.'"[8]

فَإِنْ كَانَ اللَّاطِمُ مُحْتَاجًا إِلَى خِدْمَةِ الْمَمْلُوكِ الْمَلْطُومِ أَوْ الْأَمَةِ كَذَلِكَ، وَلَا غِنَى لَهُ عَنْهُ أَوْ عَنْهَا - اسْتَخْدَمَهُ أَوْ اسْتَخْدَمَهَا - فَإِذَا اسْتَغْنَى عَنْهُ أَوْ عَنْهَا - فَهِيَ أَوْ هُوَ حُرَّانِ حِينَئِذٍ. لِمَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ، وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، قَالَ غُنْدَرٌ: نا شُعْبَةُ، وَقَالَ عَبْدُ الرَّحْمَنِ: عَنْ سُفْيَانَ الثَّوْرِيِّ - ثُمَّ اتَّفَقَ سُفْيَانُ، وَشُعْبَةُ، كِلَاهُمَا عَنْ فِرَاسِ بْنِ يَحْيَى قَالَ: سَمِعْتُ ذَكْوَانَ - هُوَ أَبُو صَالِحٍ السَّمَّانُ - يُحَدِّثُ عَنْ زَاذَانَ أَبِي عُمَرَ قَالَ: «دَعَا ابْنُ عُمَرَ غُلَامًا لَهُ فَرَأَى بِظَهْرِهِ أَثَرًا فَقَالَ لَهُ: أَوْجَعْتُكَ؟ قَالَ: لَا، قَالَ: فَأَنْتَ عَتِيقٌ، ثُمَّ قَالَ: إِنِّي سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: مَنْ ضَرَبَ غُلَامًا لَهُ حَدًّا لَمْ يَأْتِهِ، أَوْ لَطَمَهُ، فَإِنَّ كَفَّارَتَهُ أَنْ يُعْتِقَهُ» .

L27088–27089 The term "laṭm" in Arabic applies exclusively to striking the cheek with the inner palm, while striking the back of the head is termed "ṣafʿ." The narration transmitted by Shuʿbah and Sufyān constitutes an addition to what Abū ʿAwānah reported from Firās from Dhakwān from Ibn ʿUmar, yet it remains a single ḥadīth. Additions from reliable narrators cannot be rejected. Through Muslim's chain: Muḥammad ibn ʿAbdillāh ibn Numayr reported from his father from Sufyān al-Thawrī from Salamah ibn Kuhayl from Muʿāwiyah ibn Suwayd ibn Muqrin from his father, who said: "During the era of the Messenger of Allah (peace be upon him), we—Banū Muqrin—possessed only one servant. When one of us struck her with the inner palm, the Prophet (peace be upon him) was informed and said: 'Free her.' They replied: 'They have no servant other than her.' He said: 'Let them retain her in service, and

اللَّطْمُ لَا يَقَعُ فِي اللُّغَةِ إِلَّا بِبَاطِنِ الْكَفِّ عَلَى الْخَدِّ فَقَطْ، وَهُوَ فِي الْقَفَا الصَّفْعُ. وَحَدِيثُ شُعْبَةَ، وَسُفْيَانَ زَائِدٌ عَلَى مَا رَوَاهُ أَبُو عَوَانَةَ عَنْ فِرَاسٍ عَنْ ذَكْوَانَ عَنْ ابْنِ عُمَرَ، وَهُوَ حَدِيثٌ وَاحِدٌ، وَزِيَادَةُ الْعَدْلِ لَا يَجُوزُ رَدُّهَا. وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ نا أَبِي نا سُفْيَانُ الثَّوْرِيُّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ «عَنْ مُعَاوِيَةَ بْنِ سُوَيْدِ بْنِ مُقْرِنٍ عَنْ أَبِيهِ قَالَ: كُنَّا بَنِي مُقْرِنَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَيْسَ لَنَا إِلَّا خَادِمٌ وَاحِدٌ فَلَطَمَهَا أَحَدُنَا، فَبَلَغَ ذَلِكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: أَعْتِقُوهَا،

[8] **Hadith references (L27087):** Sahih Muslim 1657b; Mishkat al-Masabih 3352; Riyad as-Salihin 1605.

فَقَالَ: لَيْسَ لَهُمْ خَادِمٌ غَيْرُهَا، قَالَ: فَلْيَسْتَخْدِمُوهَا فَإِذَا اسْتَغْنَوْا فَلْيُخَلُّوا سَبِيلَهَا» فَهَذَا أَمْرٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَحِلُّ لِأَحَدٍ مُخَالَفَتُهُ.

فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ أَبِي مَسْعُودٍ الْبَدْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَآهُ يَضْرِبُ غُلَامًا لَهُ فَقَالَ لَهُ: اعْلَمْ أَبَا مَسْعُودٍ لَلَّهُ أَقْدَرُ عَلَيْكَ مِنْكَ عَلَيْهِ؟ فَقَالَ: يَا رَسُولَ اللَّهِ هُوَ حُرٌّ لِوَجْهِ اللَّهِ تَعَالَى ثُمَّ قَالَ أَمَا لَوْ لَمْ تَفْعَلْ لَلَفَحَتْكَ النَّارُ أَوْ لَمَسَّتْكَ النَّارُ» . قُلْنَا: لَيْسَ فِي هَذَا أَمْرٌ بِعِتْقِهِ وَإِنَّمَا فِيهِ أَنَّهُ أَتَى ذَنْبًا بِضَرْبِهِ اسْتَحَقَّ عَلَيْهِ النَّارَ، فَلَمَّا أَعْتَقَهُ كَانَتْ حَسَنَةً أَذْهَبَتْ تِلْكَ السَّيِّئَةَ، كَمَا لَوْ فَعَلَ حَسَنَةً أُخْرَى تُوَازِيهَا أَوْ تُرْبِي عَلَيْهَا، قَالَ اللَّهُ عَزَّ وَجَلَّ {إِنَّ الْحَسَنَاتِ يُذْهِبْنَ السَّيِّئَاتِ} [هود: ١١٤] .

وَأَمَّا أَمْرُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِعِتْقِهِ، فَقَدْ قَالَ تَعَالَى: {فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ} [النور: ٦٣] . فَمَنْ لَزِمَهُ أَمْرٌ فَلَمْ يُنَفِّذْهُ وَجَبَ إِنْفَاذُهُ عَلَيْهِ لِقَوْلِ اللَّهِ تَعَالَى {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥] .

وَقَالَ مَالِكٌ: يُعْتَقُ بِالْمُثْلَةِ، وَقَالَهُ اللَّيْثُ، وَالْأَوْزَاعِيُّ، إِلَّا أَنَّ مَالِكًا رَأَى وَلَاءَهُ لِسَيِّدِهِ الْمُمَثِّلِ بِهِ، وَقَالَ اللَّيْثُ: لَا وَلَاءَ لَهُ، لَكِنْ لِجَمَاعَةِ الْمُسْلِمِينَ - وَرُوِيَ هَذَا أَيْضًا عَنْ رَبِيعَةَ، وَالزُّهْرِيِّ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ - وَصَحَّ عَنْ قَتَادَةَ، وَعَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ أَعْتَقَ أَمَةً أُقْعِدَتْ عَلَى مَقْلَى فَأَحْرَقَتْ عَجُزَهَا - وَهُوَ غَيْرُ صَحِيحٍ عَنْ عُمَرَ - لِأَنَّهُ مِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ أَبِي قِلَابَةَ: أَنَّ عُمَرَ، وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الْمَلِكِ الْعَرْزَمِيِّ عَنْ رَجُلٍ مِنْهُمْ: أَنَّ عُمَرَ، وَمِنْ

when they no longer require her, they must release her.'" This constitutes a command from the Messenger of Allah (peace be upon him), which it is impermissible for anyone to oppose.

L27090 If it is said: You have narrated via the transmission chain of Abu Mas'ud al-Badri that the Messenger of Allah—peace and blessings be upon him—saw him striking his slave and said: "Know, O Abu Mas'ud, that Allah has greater power over you than you have over him?" He replied: "O Messenger of Allah, he is free for the sake of Allah's Countenance, the Exalted." Then the Prophet said: "Had you not done so, the Fire would have scorched you or seized you." We respond: This does not entail a command to emancipate him. Rather, it indicates that he committed a sin by striking him, thereby deserving the Fire. When he freed him, it became a righteous act that expiated that evil deed, just as if he had performed another virtuous deed equivalent to it or surpassing it. Allah the Exalted says: {Indeed, righteous deeds obliterate misdeeds} [Hud 11:114].[9]

L27091 As for his command—peace and blessings be upon him—regarding manumission, Allah the Exalted has said: "Let those who oppose his command beware, lest a trial strike them or a painful punishment befall them" [24:63]. Thus, whoever is obligated by a command and fails to fulfill it must carry it out upon him due to the statement of Allah, the Exalted: "Be upholders of justice, witnesses for Allah" [4:135].[10]

L27092–27096 Malik said: Emancipation is mandated in cases of mutilation, and Al-Layth and Al-Awzāʿī held the same view, except that Malik maintained the emancipated slave's clientage belongs to his master who mutilated him, while Al-Layth said: There is no clientage for him; rather, it belongs to the Muslim community - and this was also narrated. From Rabiʿah, al-Zuhrī, and Yaḥyā ibn Saʿīd al-Anṣārī – with authentic reports from Qatādah and the Companions (may Allah be pleased with them) – regarding ʿUmar ibn al-Khaṭṭāb's alleged emancipation of a female slave forced onto a heated pan that burned her buttocks. This attribution to ʿUmar is unsound, as it comes: 1. Via

[9] **Qur'an references (L27090):** Qur'an 11:114 (Hud).
[10] **Qur'an references (L27091):** Qur'an 24:63 (An-Nur); Qur'an 4:135 (An-Nisa).

طَرِيقِ مَالِكٍ: أَنَّ عُمَرَ، وَمِنْ طَرِيقِ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ: أَنَّ عُمَرَ، فَالْأَوَّلُ: مُرْسَلٌ، لِأَنَّ أَبَا قِلَابَةَ لَمْ يُدْرِكْ عُمَرَ. وَالثَّانِي: مُنْقَطِعٌ، وَعَنْ ضَعِيفٍ، وَعَنْ مَجْهُولٍ. وَالثَّالِثُ: مُنْقَطِعٌ، أَيْنَ مَالِكٌ مِنْ عُمَرَ؟ وَالرَّابِعُ: مُنْقَطِعٌ فِي مَوْضِعَيْنِ، لِأَنَّ مَخْرَمَةَ لَمْ يَسْمَعْ مِنْ أَبِيهِ شَيْئًا، وَسُلَيْمَانُ لَمْ يُدْرِكْ عُمَرَ. وَقَدْ صَحَّ خِلَافُ هَذَا عَنْ غَيْرِ عُمَرَ. كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: سَأَلَ حَيَّانُ الْعَبْدِيُّ عَطَاءَ بْنَ أَبِي رَبَاحٍ عَمَّنْ شَجَّ عَبْدَهُ أَوْ كَسَرَهُ؟ فَقَالَ عَطَاءٌ: لِيَكْسُهُ ثَوْبًا أَوْ لِيُعْطِهِ شَيْئًا، فَقَالَ حَيَّانُ: هَكَذَا أَخْبَرَنِي جَابِرُ بْنُ زَيْدٍ - وَهُوَ أَبُو الشَّعْثَاءِ - عَنِ ابْنِ عَبَّاسٍ فِيمَنْ فَقَأَ عَيْنَ عَبْدِهِ؟ قَالَ ابْنُ عَبَّاسٍ: أَحَبُّ إِلَيَّ أَنْ يُعْتِقَهُ، فَهَذَا ثَابِتٌ عَنِ ابْنِ عَبَّاسٍ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَقَوْلُنَا هَذَا هُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ. وَاحْتَجَّ مَنْ رَأَى الْعِتْقَ بِالْمُثْلَةِ بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنِ الْمُثَنَّى بْنِ الصَّبَّاحِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ: «أَنَّ زِنْبَاعًا خَصَى عَبْدًا لَهُ وَجَدَعَ أُذُنَيْهِ وَأَنْفَهُ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: مَنْ مُثِّلَ بِهِ أَوْ حُرِّقَ بِالنَّارِ فَهُوَ حُرٌّ، وَهُوَ مَوْلَى اللَّهِ وَرَسُولِهِ ثُمَّ أَعْتَقَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -» . وَقَالَ ابْنُ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ: كَانَ زِنْبَاعٌ يَوْمَئِذٍ كَافِرًا - وَهَذَا مَمْلُوءٌ مِمَّا لَا خَيْرَ فِيهِ: يَحْيَى بْنُ أَيُّوبَ، وَالْمُثَنَّى بْنُ الصَّبَّاحِ، وَابْنُ لَهِيعَةَ، ثُمَّ هُوَ صَحِيفَةٌ - وَالْعَجَبُ أَنَّ مَالِكًا يُخَالِفُهُ، لِأَنَّهُ يَرَى الْوَلَاءَ لِلْمُعْتِقِ. وَمِنْ طَرِيقٍ جَيِّدَةٍ إِلَى مَعْمَرٍ، وَابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ رَجُلًا جَبَّ عَبْدَهُ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اذْهَبْ فَأَنْتَ حُرٌّ» وَهَذِهِ صَحِيفَةٌ.

Maʿmar from Ayyūb from Abū Qilābah (mursal, as Abū Qilābah never met ʿUmar). 2. Via Sufyān al-Thawrī from ʿAbd al-Malik al-ʿArzamī from an unnamed source (munqaṭiʿ, weak, and involving an unknown narrator). 3. Via Mālik (munqaṭiʿ – how could Mālik link to ʿUmar?). 4. Via Makhramah ibn Bukayr from his father from Sulaymān ibn Yasār (munqaṭiʿ at two points: Makhramah never heard from his father, and Sulaymān never met ʿUmar).

Authentic contrary reports exist from others, such as via ʿAbd al-Razzāq from Ibn Jurayj: Ḥayyān al-ʿAbdī asked ʿAṭāʾ ibn Abī Rabāḥ about injuring a slave. ʿAṭāʾ ruled: "Provide clothing or compensation." Ḥayyān cited Jābir ibn Zayd's report from Ibn ʿAbbās regarding eye-gouging: "I would most prefer emancipation." While this is soundly attributed to Ibn ʿAbbās, no definitive proof exists except from the Prophet (peace and blessings upon him).

Our position aligns with Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān. Proponents of emancipation for mutilation cite the report via Ibn Wahb from Yaḥyā ibn Ayyūb from al-Muthannā ibn al-Ṣabbāḥ from ʿAmr ibn Shuʿayb from his father from his grandfather: Zinbāʿ, then a disbeliever, castrated and disfigured his slave. The Prophet (peace and blessings upon him) declared: "Whoever is mutilated or burned becomes free – a freed client of Allah and His Messenger." He then emancipated him.

Ibn Lahīʿah via Yazīd ibn Abī Ḥabīb added: "Zinbāʿ was a disbeliever then." This narration is replete with that which... There is no good in it: Yahya ibn Ayyub, Al-Muthanna ibn Al-Sabbah, and Ibn Lahi'ah—then this is a manuscript. It is surprising that Malik opposes it, for he holds that al-walā' (right of patronage) belongs to the emancipator. From a sound chain to Ma'mar and Ibn Jurayj, from 'Amr ibn Shu'ayb, from his father, from his grandfather: "A man cut off a limb of his slave, so the Messenger of Allah—peace be upon him—said to him [the man], 'Go, for you are free.'" And this is a manuscript.

L27097 From the path of Al-Bazzār: Muḥammad ibn Al-Muthannā narrated to us, Muḥammad ibn Al-Ḥārith narrated to us, Muḥammad ibn ʿAbd al-Raḥmān ibn Al-Baylamānī narrated to us from his father from Ibn ʿUmar from the Messenger of Allah—peace and blessings be upon him—who said: "There is no right of pre-emption for an absent person nor for a minor. The right of pre-emption is as immediate as untying a knot. Whoever mutilates his slave, the slave is emancipated and becomes a freedman of Allah and His Messenger. People are bound by their stipulations provided they conform to truth." Ibn Al-Baylamānī is weak and rejected; his narration is not authoritative. Among the marvels of this world is the Mālikīs' reliance on this document of ʿAmr ibn Shuʿayb concerning the emancipation of a mutilated slave, though the document itself contradicts this very narration by assigning patronage to the master—despite the slave being emancipated against the master's will. The explicit text states: "He is a freedman of Allah the Exalted and His Messenger." They granted the right of pre-emption to the absent, making it a proof for their desired rulings but rejecting it otherwise. They cited Ibn Al-Baylamānī's narration on emancipating one who mutilates his slave yet opposed it regarding pre-emption. The Ḥanafīs and Shāfiʿīs did not consider ʿAmr ibn Shuʿayb's narration here authoritative, as it contradicted Abū Ḥanīfah's and Al-Shāfiʿī's opinions. Yet when it aligned with their views, they deemed it sound and authoritative—like his narration regarding the mother of a minor: "You have greater right to him unless you remarry," or that "a mukatab remains a slave as long as a dirham remains upon him," or rejecting the testimony of a prejudiced witness for his brother and a dependent's testimony for the household while accepting it for others. The Mālikīs frequently rejected ʿAmr ibn Shuʿayb's narrations from his father and grandfather when they contradicted Mālik's opinions. We seek refuge in Allah from such tampering with the religion.

وَمِنْ طَرِيقِ الْبَزَّارِ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ الْحَارِثِ نا مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنُ الْبَيْلَمَانِيِّ عَنْ أَبِيهِ عَنِ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا شُفْعَةَ لِغَائِبٍ، وَلَا لِصَغِيرٍ، وَالشُّفْعَةُ كَحَلِّ الْعِقَالِ - مَنْ مَثَّلَ بِمَمْلُوكِهِ فَهُوَ حُرٌّ، وَهُوَ مَوْلَى اللَّهِ وَرَسُولِهِ - وَالنَّاسُ عَلَى شُرُوطِهِمْ مَا وَافَقُوا الْحَقَّ» وَابْنُ الْبَيْلَمَانِيِّ ضَعِيفٌ مَطْرَحٌ لَا يُحْتَجُّ بِرِوَايَتِهِ. وَمِنْ عَجَائِبِ الدُّنْيَا احْتِجَاجُ الْمَالِكِيِّينَ لِصَحِيفَةِ عَمْرِو بْنِ شُعَيْبٍ هَذِهِ فِي عِتْقِ الْمُمَثَّلِ بِهِ، وَهُوَ قَدْ خَالَفَ هَذَا الْخَبَرَ نَفْسَهُ إِذْ جَعَلَ الْوَلَاءَ لِسَيِّدِهِ وَلَيْسَ هُوَ الَّذِي أَعْتَقَهُ بَلْ أُعْتِقَ عَلَيْهِ عَلَى رَغْمِهِ، وَنَصُّ الْخَبَرِ «أَنَّهُ مَوْلَى اللَّهِ تَعَالَى وَرَسُولِهِ» . وَجَعَلُوا الشُّفْعَةَ لِلْغَائِبِ، فَصَارَ حُجَّةً فِيمَا اشْتَهَوْا وَلَمْ يَكُنْ حُجَّةً فِيمَا لَمْ يَشْتَهُوا، وَاحْتَجُّوا مِنْ خَبَرِ ابْنِ الْبَيْلَمَانِيِّ بِعِتْقِ مَنْ مَثَّلَ بِمَمْلُوكِهِ وَخَالَفُوهُ فِي الشُّفْعَةِ وَلَمْ يَرَ الْحَنَفِيُّونَ، وَلَا الشَّافِعِيُّونَ خَبَرَ عَمْرِو بْنِ شُعَيْبٍ هَاهُنَا حُجَّةً إِذْ خَالَفَهُ رَأْيُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، فَإِذَا وَافَقَهُمْ صَارَ حِينَئِذٍ صَحِيحًا وَحُجَّةً. كَرِوَايَتِهِ فِي أُمِّ الصَّغِيرِ أَنْتِ أَحَقُّ بِهِ مَا لَمْ تَنْكِحِي. وَالْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ. وَرَدُّ شَهَادَةِ ذِي الْغَمْرِ لِأَخِيهِ، وَشَهَادَةُ الْقَانِعِ لِأَهْلِ الْبَيْتِ، وَإِجَازَتُهَا لِغَيْرِهِمْ. وَقَدْ رَدَّ الْمَالِكِيُّونَ رِوَايَةَ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ كَثِيرًا إِذَا خَالَفَتْ رَأْيَ مَالِكٍ - وَنَعُوذُ بِاللَّهِ مِنْ مِثْلِ هَذَا اللَّعِبِ بِالدِّينِ.

L27098–27100 Among the wonders of the world is the claim of the Ḥanafīs that the Prophet—peace and blessings of Allah be upon him—only said this as a recommended act. Abū Muḥammad said: This is an absolute lie, for the report states: "You are free; whoever is mutilated [in kind] is free." And why did you not say the same regarding his statement - may Allah's peace and blessings

وَمِنْ عَجَائِبِ الدُّنْيَا قَوْلُ الْحَنَفِيِّينَ إِنَّمَا قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَذَا عَلَى النَّدْبِ. قَالَ أَبُو مُحَمَّدٍ: هَذَا كَذِبٌ بَحْتٌ، لِأَنَّ فِي الْخَبَرِ «أَنْتَ حُرٌّ، مَنْ مُثِّلَ بِهِ فَهُوَ حُرٌّ» وَهَلَّا

be upon him -: «Whoever owns a relative who is a mahram to him, he is freed,» and the wording is the same.

قُلْتُمْ مِثْلَ هَذَا فِي قَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ عَلَيْهِ فَهُوَ حُرٌّ» وَاللَّفْظُ وَاحِدٌ.

L27101 They said: "It has reached us that the Messenger of Allah (peace and blessings of Allah be upon him) gave him its value." We replied: "Even if we grant you that this is confirmed (though it is undeniably a lie), then manumit him and give him his value. Rather, this constitutes another fresh contradiction from you regarding what you yourselves authenticated, while you criticize Al-Shafi'i for mentioning what he reported: that the number of times the Prophet (peace and blessings of Allah be upon him) said 'Allahu Akbar' over Hamzah reached him, and his dispatch to kill Abu Sufyan. These are two renowned accounts narrated by the authors of the Maghazi, i.e., military campaigns. Yet you did not censure Muhammad ibn Al-Hasan for this lie in which no one else participated with you. Moreover, he fabricated it baselessly to his detriment, not for his benefit."

وَقَالُوا: بَلَغَنَا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَاهُ قِيمَتَهُ؟ قُلْنَا: هَبْكُمْ قَدْ صَحَّ لَكُمْ ذَلِكَ - وَهُوَ الْكَذِبُ بِلَا شَكٍّ - فَأَعْتِقُوهُ ثُمَّ أَعْطُوهُ قِيمَتَهُ، بَلْ هَذَا خِلَافٌ آخَرُ جَدِيدٌ مِنْكُمْ لِمَا صَحَّحْتُمْ وَأَنْتُمْ تُنْكِرُونَ عَلَى الشَّافِعِيِّ مَا ذَكَرَ: أَنَّهُ بَلَغَهُ مِنْ عَدَدِ تَكْبِيرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى حَمْزَةَ، وَبَعْثَتِهِ لِقَتْلِ أَبِي سُفْيَانَ، وَهُمَا حِكَايَتَانِ مَشْهُورَتَانِ قَدْ ذَكَرَهُمَا أَصْحَابُ الْمَغَازِي، وَلَمْ تَعِيبُوا عَلَى مُحَمَّدِ بْنِ الْحَسَنِ هَذِهِ الْكِذْبَةَ الَّتِي لَمْ يُشَارِكْهُ فِيهَا أَحَدٌ، ثُمَّ عَمِلَهَا أَيْضًا بَارِدَةً عَلَيْهِ لَا لَهُ.

L27102 They said: Perhaps Umar emancipated him for reasons other than mutilation. This is a brazenly disgraceful assertion, for the explicit report concerning Umar states: "She complained to him that he burned her, so he emancipated her and lashed him, saying: 'Woe to you! Could you find no punishment except torturing her with the punishment of Allah [in the Hereafter]?'" They also cited what was narrated to us through Ma'mar's chain via an unnamed man from Al-Hasan: "A man ignited fire on his slave's face. He came to Umar ibn al-Khattab who emancipated him. Later, captives were brought to Umar and he gave him a replacement slave." Al-Hasan said: "They would emancipate and impose penalties"—meaning he imposed a penalty on him in place of the emancipated slave? We responded: This chain is broken in two places: an unnamed transmitter from Al-Hasan, then Al-Hasan narrating from Umar—though he was born only two years before Umar's death. Even if we were to concede its authenticity, then act accordingly! Glory be to Allah! They consider what they cite as evidence from Umar that is not authentically established—such as his imposition of eighty lashes for wine consumption, his collection of zakat from horses, and his ruling to grant inheritance rights to a thrice-divorced woman during terminal illness—as

وَقَالُوا: لَعَلَّ عُمَرَ أَعْتَقَهُ لِغَيْرِ الْمُثْلَةِ. فَمُجَاهَرَةٌ قَبِيحَةٌ، لِأَنَّ نَصَّ الْخَبَرِ عَنْ عُمَرَ " أَنَّهَا شَكَتْ إِلَيْهِ أَنَّهُ أَحْرَقَهَا فَأَعْتَقَهَا وَجَلَدَهُ، وَقَالَ لَهُ: وَيْحَكَ أَمَا وَجَدْتَ عُقُوبَةً إِلَّا أَنْ تُعَذِّبَهَا بِعَذَابِ اللَّهِ ". وَذَكَرُوا أَيْضًا: مَا رُوِّينَا مِنْ طَرِيقِ مَعْمَرٍ عَنْ رَجُلٍ عَنْ الْحَسَنِ: أَشْعَلَ رَجُلٌ وَجْهَ عَبْدِهِ نَارًا فَأَتَى عُمَرَ بْنَ الْخَطَّابِ فَأَعْتَقَهُ، ثُمَّ أُتِيَ عُمَرُ بِسَبْيٍ فَأَعْطَاهُ عَبْدًا، قَالَ الْحَسَنُ: كَانُوا يُعْتِقُونَ وَيُعَاقِبُونَ - يَعْنِي يُعْطِيه لِمَا أَعْتَقَهُ عَقَبَةَ مَكَانِهِ؟ فَقُلْنَا: هَذَا مَكْسُورٌ فِي مَوْضِعَيْنِ. رَجُلٌ لَمْ يُسَمَّ عَنْ الْحَسَنِ، ثُمَّ الْحَسَنِ عَنْ عُمَرَ، وَلَمْ يُولَدْ إِلَّا قَبْلَ مَوْتِ عُمَرَ بِسَنَتَيْنِ، ثُمَّ هَبْك أَنَّهُ صَحَّ فَافْعَلُوا كَذَلِكَ، وَيَا سُبْحَانَ اللَّهِ يَكُونُ مَا احْتَجُّوا فِيهِ بِعُمَرَ مِمَّا لَمْ يَصِحَّ عَنْهُ مِنْ أَنَّهُ جَلَدَ فِي الْخَمْرِ ثَمَانِينَ حَدًّا، وَأَنَّهُ أَخَذَ الزَّكَاةَ مِنْ الْخَيْلِ، وَوَرَّثَ الْمُطَلَّقَةَ ثَلَاثًا فِي الْمَرَضِ: حُجَّةً، وَلَا يَكُونُ مَا جَاءَ عَنْ عُمَرَ مِنْ عِتْقِ الْمُمَثَّلِ بِهِ حُجَّةً هَذَا التَّحَكُّمُ بِالْبَاطِلِ فِي دِينِ اللَّهِ تَعَالَى. وَيَجْعَلُ الْمَالِكِيُّونَ مَا

valid proofs. Yet they do not consider what is reported from Umar regarding emancipation in cases of mutilation as proof. This is arbitrary falsehood in Allah's religion! The Malikis treat Umar's reported ruling here as proof, but do not treat his judgments in the report of Al-Dahhak, Abd al-Rahman ibn Awf, and all other matters wherein they opposed him as proof.

رُوِيَ عَنْ عُمَرَ فِي هَذَا حُجَّةً، وَلَا يَجْعَلُونَ حُكْمَهُ فِي حَدِيثِ الضَّحَّاكِ، وَعَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ وَسَائِرِ مَا خَالَفُوهُ فِيهِ حُجَّةً.

L27103–27105

We also mentioned what has been narrated to us through the chain of al-Bazzār from Ibrāhīm ibn ʿAbd Allāh from Saʿīd ibn Abī Maryam from Ibn Lahīʿah from Yazīd ibn Abī Ḥabīb that Rabīʿah ibn Laqīṭ narrated to them that ʿAbd Allāh ibn Sandar... He narrated from his father that he was a slave of Zinbāʿ ibn Salāmah, who castrated and mutilated him. He came to the Messenger of Allah (peace and blessings of Allah be upon him), and they informed him. The Prophet sternly rebuked Zinbāʿ and emancipated him.» Ibn Lahīʿah is unreliable. According to the Ḥanafīs, he is now considered weak, though he was deemed trustworthy in narrating ablution with nabīdh. Woe to the shameless! From the chain of al-ʿUqaylī: Muḥammad ibn Khuzaymah narrated to us: ʿAbdullāh ibn Ṣāliḥ, the scribe of al-Layth, narrated to us from al-Layth from ʿAmr ibn ʿĪsā al-Qurashī al-Asadī from Ibn Jurayj from ʿAṭāʾ from Ibn ʿAbbās: A slave girl came to ʿUmar after her master had burned her private part. She said, "My master accused me and forced me to sit on fire until he burned my private part." ʿUmar asked her, "Did he witness this act?" She replied, "No." He asked, "Did you confess to him?" She said, "No." ʿUmar ordered, "Bring him to me." When the man was brought, ʿUmar said, "Do you dare to administer Allah's punishment? By the One in whose hand is my soul, had I not heard the Messenger of Allah (peace and blessings of Allah be upon him) say, 'Retaliation is not taken from a master's wealth for a slave, nor from a parent for a child,' I would have exacted retribution from you on her behalf." He then exposed him publicly and flogged him with one hundred lashes. He declared to her, "Go. You are free for the sake of Allah Almighty, a freed person of Allah and His Messenger. I testify that I heard the Messenger of Allah (peace and blessings of Allah be upon him) say, 'Whoever is burned with fire or mutilated is emancipated, becoming a freed person of Allah and His Messenger.'" ʿAbdullāh ibn Ṣāliḥ is weak, and ʿAmr ibn ʿĪsā is unknown.

وَذَكَرْنَا أَيْضًا مَا رُوِّينَا مِنْ طَرِيقِ الْبَزَّارِ عَنْ إِبْرَاهِيمَ بْنِ عَبْدِ اللَّهِ عَنْ سَعِيدِ بْنِ أَبِي مَرْيَمَ عَنْ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ أَنَّ رَبِيعَةَ بْنَ لَقِيطٍ حَدَّثَهُمْ «أَنَّ عَبْدَ اللَّهِ بْنَ سَنْدَرٍ حَدَّثَهُ عَنْ أَبِيهِ أَنَّهُ كَانَ عَبْدًا لِزِنْبَاعِ بْنِ سَلَامَةَ وَأَنَّهُ خَصَاهُ وَجَدَعَهُ فَأَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرُوهُ فَأَغْلَظَ الْقَوْلَ لِزِنْبَاعٍ وَأَعْتَقَهُ» - فَابْنُ لَهِيعَةَ لَا شَيْءَ، وَالْآنَ صَارَ عِنْدَ الْحَنَفِيِّينَ ضَعِيفًا، وَكَانَ ثِقَةً فِي رِوَايَةِ الْوُضُوءِ بِالنَّبِيذِ، أَلَا تَبًّا لِمَنْ لَا يَسْتَحْيِ؟ وَمِنْ طَرِيقِ الْعُقَيْلِيُّ نا مُحَمَّدُ بْنُ خُزَيْمَةَ نا عَبْدُ اللَّهِ بْنُ صَالِحٍ كَاتِبُ اللَّيْثِ عَنْ اللَّيْثِ عَنْ عَمْرِو بْنِ عِيسَى الْقُرَشِيِّ الْأَسَدِيِّ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ جَاءَتْ جَارِيَةٌ إلَى عُمَرَ وَقَدْ أَحْرَقَ سَيِّدُهَا فَرْجَهَا فَقَالَتْ: إنَّ سَيِّدِي اتَّهَمَنِي فَأَقْعَدَنِي عَلَى النَّارِ حَتَّى أَحْرَقَ فَرْجِي فَقَالَ لَهَا عُمَرُ: هَلْ رَأَى ذَلِكَ عَلَيْك؟ قَالَتْ: لَا، قَالَ: فَاعْتَرَفْت لَهُ؟ قَالَتْ: لَا، قَالَ عُمَرُ: عَلَيَّ بِهِ، فَأُتِيَ بِهِ، فَقَالَ لَهُ: أَتُعَذِّبُ بِعَذَابِ اللَّهِ؟ وَالَّذِي نَفْسِي بِيَدِهِ لَوْ لَمْ أَسْمَعْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا يُقَادُ مَمْلُوكٌ مِنْ مَالِكٍ وَلَا وَلَدٌ مِنْ وَالِدٍ» لَأَقَدْتُهَا مِنْك، ثُمَّ بَرَزَهُ فَضَرَبَهُ مِائَةَ سَوْطٍ، ثُمَّ قَالَ: اذْهَبِي فَأَنْتِ حُرَّةٌ لِوَجْهِ اللَّهِ تَعَالَى، وَأَنْتِ مَوْلَاةُ اللَّهِ وَرَسُولِهِ، أَشْهَدُ لَسَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ حُرِّقَ بِالنَّارِ، أَوْ مُثِّلَ بِهِ فَهُوَ حُرٌّ، وَهُوَ مَوْلَى اللَّهِ وَرَسُولِهِ -» عَبْدُ اللَّهِ بْنُ صَالِحٍ ضَعِيفٌ، وَعَمْرُو بْنُ عِيسَى مَجْهُولٌ.

وَالْعَجَبُ كُلُّ الْعَجَبِ أَنَّ الْمَالِكِيِّينَ احْتَجُّوا بِهَذَا الْخَبَرِ فِي عِتْقِ الْمُمَثَّلِ بِهِ، وَفِي أَنْ لَا يُقَادَ مَمْلُوكٌ مِنْ مَالِكٍ، وَرَأَوْهُ حَقًّا فِي ذَلِكَ، وَخَالَفُوهُ فِي الْقَوَدِ مِنَ الْحَرْقِ بِالنَّارِ، وَقَدْ رَآهُ عُمَرُ حَقًّا إِلَّا فِي السَّيِّدِ لِعَبْدِهِ، وَالْوَالِدِ لِوَلَدِهِ، وَفِي أَنَّ الْوَلَاءَ لِغَيْرِ الْمُمَثَّلِ. وَالْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ رَأَوْهُ حُجَّةً فِي أَنَّ الْوَلَدَ لَا يُقَادُ لَهُ مِنْ وَالِدِهِ، وَالْعَبْدَ لَا يُقَادُ لَهُ مِنْ سَيِّدِهِ، وَلَمْ يُجِيزُوا خِلَافَهُ، ثُمَّ لَمْ يَرَوْهُ حُجَّةً فِي جَلْدِهِ فِي التَّعْزِيرِ مِائَةً، وَلَا فِي عِتْقِ الْمُمَثَّلِ بِهِ، فَيَا سُبْحَانَ اللَّهِ، أَيُّ دِينٍ يَبْقَى مَعَ هَذَا الْعَمَلِ.

L27106 The utmost wonder is that the Mālikīs cited this report as evidence for emancipating the one subjected to retaliatory mutilation and for prohibiting *qisas* against a master for his slave, considering this a valid ruling. Yet they contradicted it regarding *qisas* for burning with fire, though ʿUmar deemed it rightful—except when a master acts against his slave or a parent against their child—and concerning the right of patronage belonging to someone other than the mutilated party. The Ḥanafīs and Shāfiʿīs viewed it as proof that a child cannot claim *qisas* against a parent nor a slave against a master, and they prohibited opposing this ruling. Yet they did not consider it evidence for imposing one hundred lashes in *taʿzīr* or for emancipating the mutilated party. Glory be to God! What religion endures with such practices?

ثُمَّ عَجَبٌ آخَرُ: أَنَّهُمْ كُلَّهُمْ رَأَوْا مَا رُوِيَ فِي خَبَرِ أَبِي قَتَادَةَ إِذْ عَقَرَ الْحِمَارَ وَهُوَ مُحِلٌّ وَأَصْحَابُهُ مُحْرِمُونَ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَفِيكُمْ مَنْ أَشَارَ إِلَيْهِ، أَوْ أَعَانَهُ؟ قَالُوا: لَا، قَالَ: فَكُلُوا» حُجَّةً فِي مَنْعِ أَكْلِ مَنْ صِيدَ مِنْ أَجْلِهِ وَهُوَ مُحْرِمٌ، وَلَمْ يَرَوْا قَوْلَ عُمَرَ هَاهُنَا " هَلْ رَأَى ذَلِكَ عَلَيْكَ؟ أَوْ اعْتَرَفَتْ لَهُ؟ " حُجَّةً فِي أَنْ لَا يُعْتَقَ الْمُمَثَّلُ بِهِ إِذَا عُرِفَ زِنَاهُ بِإِقْرَارٍ أَوْ مُعَايَنَةٍ، وَلَوْ صَحَّ عَنْ عُمَرَ لَكَانَ قَدْ خَالَفَهُ ابْنُ عَبَّاسٍ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجُّوا كَمَا تَرَى بِهَذِهِ الْعُفُونَاتِ الْفَاسِدَةِ وَتَرَكُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ نا أَبِي عَنْ قَتَادَةَ عَنِ الْحَسَنِ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قَتَلَ عَبْدَهُ قَتَلْنَاهُ وَمَنْ جَدَعَ عَبْدَهُ جَدَعْنَاهُ وَمَنْ خَصَى عَبْدَهُ خَصَيْنَاهُ» فَالْآنَ صَارَ الْحَسَنُ عَنْ سَمُرَةَ صَحِيفَةً، وَلَمْ يَصِرْ حَدِيثُ عَمْرِو بْنِ شُعَيْبٍ كَوْنَهُ صَحِيفَةً إِذَا اشْتَهَوْا مَا فِيهَا.

L27107–27109 Then another astonishment: that they all considered what was narrated in the report of Abū Qatādah when he slaughtered the donkey while he was not in a state of ritual consecration and his companions were in iḥrām—from the statement of the Messenger of Allah, peace and blessings be upon him: “Is there anyone among you who directed him to it or assisted him?” They said: “No.” He said: “Then eat”—as evidence to prohibit consuming game hunted for the sake of someone in iḥrām. Yet they did not consider ʿUmar’s statement here, “Did he witness this act against you, or did you confess to him?” as evidence that the slave designated for exemplary manumission should not be freed if her adultery is known through a confession. Or direct observation. Even if it were authentically established from Umar, Ibn Abbas would have opposed him, for no one’s authority supersedes that of the Messenger of Allah—peace and blessings be upon him. Abu Muhammad said: They argued—as is evident—with these rotten, corrupt things, abandoning what we narrated through the chain of Abu Dawud: from Muhammad ibn al-Muthanna, from Muadh ibn Hisham al-Dastuwā’ī, from his father, from Qatadah, from al-Hasan, from Samurah ibn Jundub, from the Prophet—peace and blessings be upon him: “Whoever kills his slave, we killed him; whoever mutilates his slave, we mutilated him; and whoever castrates his slave, we castrated him.” Now al-Hasan’s narration from Samurah has become a

written document, whereas the hadith of Amr ibn Shu'ayb was not treated as a written document when they desired what was in it.

L27110 The Malikis considered the Ḥadīth of al-Ḥasan from Samurah as evidence regarding responsibility—and sufficient for us is Allah, and He is the best Trustee. Since nothing authentically established from the Prophet (peace and blessings of Allah be upon him) exists on this matter, one who mutilates his slave is not obligated to free him, for neither Allah the Exalted nor His Messenger (peace and blessings of Allah be upon him) has imposed that obligation. Only what Allah the Exalted has ordained is obligatory in this regard, as He says: "So whoever transgresses against you, transgress against him in like manner as he transgressed against you" [Al-Baqarah: 194]. And as He the Exalted says: "And violations of sanctity [call for] retaliation" [Al-Baqarah: 194]. And as He the Exalted says: "The recompense for an evil is an evil like it" [Ash-Shūrā: 40]. And with Allah alone is success.[11]

L27111 **Issue: He manumitted a slave who possesses property.**

L27112 1678 - Issue: If someone emancipates a slave who possesses property, the property belongs to him unless the master seizes it before emancipating him, in which case it then belongs to the master. As we have reported through the chain of Ibn Abī Shaybah: Ghundar narrated to us from Hishām al-Dastuwā'ī from Abū al-Zubayr from ʿAbdullāh ibn Abī Mulaykah: that ʿĀ'ishah, the Mother of the Believers, said to a woman who asked her after emancipating her slave: "If you emancipate him without stipulating his property, his property is his." A similar ruling is narrated from Ibn ʿUmar. It is authentically reported from al-Ḥasan and ʿAṭāʾ regarding a slave whose master contracted a kitābah with him while he owned property and had a child from his umm walad (concubine): that his property and umm walad remain his, his children are free persons, and the same applies if the slave is emancipated. We have reported through the chain of al-Ḥajjāj ibn al-Minhāl: Ziyād al-Aʿlam said: from al-Ḥasan; and Qays ibn Saʿd said: from ʿAṭāʾ. And through the chain

[11] **Qur'an references (L27110):** Qur'an 2:194 (Al-Baqarah); Qur'an 42:40 (Ash-Shuraa).

وَقَدْ رَأَى الْمَالِكِيُّونَ حَدِيثَ الْحَسَنِ عَنْ سَمُرَةَ حُجَّةً فِي الْعُهْدَةِ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ. فَلَمَّا لَمْ يَصِحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي هَذَا شَيْءٌ كَانَ مَنْ مَثَّلَ بِعَبْدِهِ لَا يَجِبُ عَلَيْهِ عِتْقُهُ، إِذْ لَمْ يُوجِبْ عَلَيْهِ ذَلِكَ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا يَجِبُ فِي ذَلِكَ مَا أَوْجَبَهُ اللَّهُ تَعَالَى إِذْ يَقُولُ: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] . وَإِذْ يَقُولُ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] . وَإِذْ يَقُولُ تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة أَعْتَقَ عَبْدًا وَلَهُ مَالٌ]

١٦٧٨ - مَسْأَلَةٌ: وَمَنْ أَعْتَقَ عَبْدًا وَلَهُ مَالٌ فَمَالُهُ لَهُ إِلَّا أَنْ يَنْتَزِعَهُ السَّيِّدُ قَبْلَ عِتْقِهِ إِيَّاهُ، فَيَكُونُ حِينَئِذٍ لِلسَّيِّدِ. كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا غُنْدَرٌ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ أَبِي الزُّبَيْرِ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي مُلَيْكَةَ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ قَالَتْ لِامْرَأَةٍ سَأَلَتْهَا وَقَدْ أَعْتَقَتْ عَبْدَهَا: إِذَا أَعْتَقْتِيهِ وَلَمْ تَشْتَرِطِي مَالَهُ فَمَالُهُ لَهُ. وَمِثْلُهُ: عَنِ ابْنِ عُمَرَ، وَصَحَّ عَنِ الْحَسَنِ، وَعَطَاءٍ: فِي عَبْدٍ كَاتَبَهُ مَوْلَاهُ وَلَهُ مَالٌ وَوَلَدٌ مِنْ سُرِّيَّةٍ لَهُ، أَنَّ مَالَهُ وَسُرِّيَّتَهُ لَهُ، وَوَلَدَهُ أَحْرَارٌ، وَالْعَبْدُ إِذَا أُعْتِقَ كَذَلِكَ. رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ زِيَادٍ الْأَعْلَمِ، وَقَيْسِ بْنِ سَعْدٍ، قَالَ زِيَادٌ: عَنِ الْحَسَنِ، وَقَالَ قَيْسٌ: عَنْ عَطَاءٍ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ إِذَا أُعْتِقَ الْعَبْدُ فَمَالُهُ لَهُ.

of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī: If a slave is emancipated, his property belongs to him.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ الزُّهْرِيِّ مَضَتْ السُّنَّةُ إذَا أُعْتِقَ الْعَبْدُ يَتْبَعُهُ مَالُهُ.

L27113 And via the transmission of Mālik from Al-Zuhrī: The Sunnah has established that when a slave is emancipated, his wealth follows him as his rightful property.

وَرُوِيَ أَيْضًا: عَنْ الْقَاسِمِ، وَسَالِمٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَرَبِيعَةَ، وَأَبِي الزِّنَادِ، وَمُحَمَّدِ بْنِ عَبْدِ الْقَارِي وَمَكْحُولٍ مِثْلُ قَوْلِ الزُّهْرِيِّ، قَالَ يَحْيَى: عَلَى هَذَا أَدْرَكْت النَّاسَ، وَقَالَ رَبِيعَةُ، وَأَبُو الزِّنَادِ، سَوَاءٌ عَلِمَ سَيِّدُهُ مَالَهُ أَوْ جَهِلَهُ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ. وَقَالَ مَالِكٌ: مَالُ الْعَبْدِ الْمُعْتَقِ لَهُ، وَأَمَّا أَوْلَادُهُ فَلِسَيِّدِهِ، وَكَذَلِكَ حَمْلُ أُمِّ وَلَدِهِ - وَلَوْ أَنَّهُ بَعْدَ عِتْقِهِ أَرَادَ عِتْقَ أُمِّ وَلَدِهِ لَمْ يَقْدِرْ لِأَنَّ حَمْلَهَا رَقِيقٌ. وَقَالَ: هِيَ السُّنَّةُ الَّتِي لَا اخْتِلَافَ فِيهَا، أَنَّ الْعَبْدَ إذَا أُعْتِقَ يَتْبَعُهُ مَالُهُ وَلَمْ يَتْبَعْهُ وَلَدُهُ، وَاحْتَجَّ بِأَنَّ الْعَبْدَ وَالْمُكَاتَبَ إذَا فَلَّسَا أَوْ جُرِحَا أُخِذَ مَالُهُمَا وَأُمَّهَاتُ أَوْلَادِهِمَا، وَلَمْ يُؤْخَذْ أَوْلَادُهُمَا، وَأَنَّ الْعَبْدَ إذَا بِيعَ وَاشْتَرَطَ الْمُبْتَاعُ مَالَهُ كَانَ لَهُ، وَلَمْ يَدْخُلْ وَلَدُهُ فِي الشَّرْطِ.

L27114–27115 It is also narrated from Al-Qāsim, Sālim, Yaḥyā ibn Saʿīd al-Anṣārī, Rabīʿah, Abū al-Zinād, Muḥammad ibn ʿAbd al-Qārī, and Makhūl—similar to the statement of al-Zuhrī. Yaḥyā said: "This is the prevailing custom I observed among the people." Rabīʿah and Abū al-Zinād said: "It makes no difference whether his master knew of his property or was unaware of it"—which is the opinion of Abū Sulaymān. Mālik said: "The property of an emancipated slave belongs to him, while his children belong to his master. Similarly, the fetus of the master's *umm walad* belongs to the master. Even if after his emancipation he wished to emancipate the master's *umm walad*, he could not do so because her fetus remains enslaved." He said: "This is the established practice about which there is no disagreement: when a slave is emancipated, his property follows him, but his children do not follow him." He argued that when a slave or *mukātab* becomes bankrupt or is injured, their property and their *ummahāt awlād* are seized, but their children are not seized. Similarly, if a slave is sold and the buyer stipulates possession of his property, it is granted, but his children are not encompassed by the stipulation.

قَالَ أَبُو مُحَمَّدٍ: مَا رَأَيْنَا حُجَّةً أَفْقَرَ إلَى حُجَّةٍ مِنْ هَذِهِ، وَإِنَّ الْعَجَبَ مِنْ هَذِهِ السُّنَّةُ الَّتِي لَا يُعْرَفُ لَهَا رَاوٍ مِنْ النَّاسِ، لَا مِنْ طَرِيقٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ. وَالْخِلَافُ فِيهَا أَشْهَرُ مِنْ ذَلِكَ. كَمَا ذَكَرْنَا عَنْ عَطَاءٍ، وَالْحَسَنِ، بَلْ إنَّمَا رُوِيَ مِثْلُ قَوْلِ مَالِكٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى، وَعَمْرِو بْنِ دِينَارٍ، وَالنَّخَعِيِّ. وَقَدْ أَجْمَعَتْ الْأُمَّةُ، وَمَالِكٌ مَعَهُمْ فِي جُمْلَتِهِمْ، وَهَؤُلَاءِ: عَلَى أَنَّ وَلَدَ الْأَمَةِ مَمْلُوكٌ لِسَيِّدِ أُمِّهِ إلَّا أَنْ يَكُونَ وَلَدَ الرَّجُلِ مِنْ أَمَتِهِ الصَّحِيحَةِ الْمِلْكِ، فَإِنَّهُ حُرٌّ، وَالْفَاسِدَةِ الْمِلْكِ، فَإِنَّهُ عِنْدَ بَعْضِهِمْ حُرٌّ، وَعَلَى أَبِيهِ قِيمَتُهُ أَوْ فِدَاؤُهُ. وَلَا

L27116 Abū Muḥammad said: We have never seen an argument more impoverished of proof than this. What astonishes is this Sunnah for which no human narrator is known—neither through a sound nor unsound chain. The disagreement concerning it is more evident than that, as we related from ʿAṭāʾ and al-Ḥasan. Rather, only statements resembling Mālik's view were narrated from Sulaymān ibn Mūsā, ʿAmr ibn Dīnār, and al-Nakhaʿī. The Ummah—with Mālik among their collective—alongside these scholars, has unanimously agreed that the child of a slave woman is owned by her master unless he is the child of a man from his lawfully owned slave woman, in which case he is free. If born from invalid ownership, he is considered free according to some scholars, with the father liable for his value or ransom. The

mother of the male slave's child cannot escape two scenarios: either she belongs to him—making her child his property (whether free or enslaved, with her emancipation contingent on ownership)—or she belongs to his master. No one may lawfully have intercourse with another's slave woman except through marriage; otherwise, it constitutes adultery, and the child is not attributed (to the father) if it is known she is another's slave. There is no third possibility. There is no validity in falsehood, and this contradictory discourse—whose parts nullify each other—extends beyond the scenario of a slave woman owned by a slave, whom the master may not lawfully approach unless he seizes her, rendering her child the property of his father's master. This is an astonishing absurdity without parallel or basis. Thus, this opinion is invalidated by its manifest corruption. More astonishing still is prohibiting a free man from emancipating his umm walad—his own slave—due to her fetus, while they permit emancipating the fetus without its mother when both belong to one owner. What then prevents emancipating the mother without the fetus when they belong to two owners?

تَخْلُو أُمُّ وَلَدِ الْعَبْدِ مِنْ أَنْ تَكُونَ لَهُ، فَوَلَدُهَا لَهُ إمَّا حُرٌّ، وَإِمَّا مَمْلُوكٌ فَتُعْتَقُ عَلَيْهِ بِالْمِلْكِ، أَوْ لَا تُعْتَقُ، وَإِمَّا أَنْ تَكُونَ لِسَيِّدِهِ فَلَا يَحِلُّ لِأَحَدٍ وَطْءُ أَمَةِ غَيْرِهِ إلَّا بِالزَّوَاجِ، وَإِلَّا فَهُوَ زِنًا، وَالْوَلَدُ غَيْرُ لَاحِقٍ إذَا عَلِمَ أَنَّهَا أَمَةُ غَيْرِهِ، وَلَا سَبِيلَ إلَى ثَالِثٍ، وَلَيْسَ فِي الْبَاطِلِ، وَالْكَلَامُ الْمُتَنَاقِضُ الَّذِي يُفْسِدُ بَعْضُهُ بَعْضًا أَكْثَرُ مِنْ أَنْ تَكُونَ أَمَةً لِلْعَبْدِ لَا يَحِلُّ لِلسَّيِّدِ وَطْؤُهَا إلَّا أَنْ يَنْتَزِعَهَا، وَيَكُونُ وَلَدُهَا لِسَيِّدِ أَبِيهِ مَمْلُوكًا، هَذَا عَجَبٌ لَا نَظِيرَ لَهُ - وَلَا أَصْلَ لَهُ. فَبَطَلَ هَذَا الْقَوْلُ لِظُهُورِ فَسَادِهِ. وَأَعْجَبُ مِنْهُ مَنْعُهُ عِتْقَ أُمِّ وَلَدِهِ وَهُوَ حُرٌّ وَهِيَ أَمَتُهُ مِنْ أَجْلِ جَنِينِهَا، وَهُمْ يُجِيزُونَ عِتْقَ الْجَنِينِ دُونَ أُمِّهِ وَهُمَا لِوَاحِدٍ، فَمَا الْمَانِعُ مِنْ عِتْقِ أُمِّهِ دُونَهُ وَهُمَا لِاثْنَيْنِ.

L27117–27118 Al-Awzaʿī said: Whatever a man gives to a slave woman who bore him a child during his lifetime becomes hers upon his death and is not counted as part of the estate's third portion. If one manumits his slave while the slave owns property, whatever is in the slave's possession that the master has ascertained belongs to the slave. But whatever remains in the slave's possession undisclosed to the master belongs to the master. This categorization lacks valid evidence to substantiate it and is therefore invalid.

وَقَالَ الْأَوْزَاعِيّ: كُلُّ مَا أَعْطَى الْمَرْءُ أُمَّ وَلَدِهِ فِي حَيَاتِهِ فَهُوَ لَهَا إذَا مَاتَ لَا يُعَدُّ مِنْ الثُّلُثِ، وَمَنْ أَعْتَقَ عَبْدَهُ وَلَهُ مَالٌ فَمَا كَانَ بِيَدِ الْعَبْدِ مِمَّا اطَّلَعَ عَلَيْهِ سَيِّدُهُ فَهُوَ لِلْعَبْدِ، وَمَا كَانَ بِيَدِ الْعَبْدِ وَلَمْ يَطَّلِعْ عَلَيْهِ السَّيِّدُ فَهُوَ لِلسَّيِّدِ - وَهَذَا تَقْسِيمٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ فَهُوَ بَاطِلٌ.

L27119 A group said: The property of the freed slave belongs to his manumitter (master) - this being the opinion of Abū Ḥanīfah, Sufyān, and al-Shāfiʿī. They all stated: The mukatab (slave under a contract of manumission), the slave promised freedom by will, the freed slave, the gifted slave, the slave given as charity, and the umm al-walad (mother of the master's child) after her master's death - all their property belongs to the manumitter or his heirs. Al-Ḥasan ibn Ḥayy said: The property of the freed slave and the mukatab belongs to their master. Ibn Shubrumah said: The property of the freed slave and that of the umm al-walad belongs to the master and his heirs.

وَقَالَتْ طَائِفَةٌ: مَالُ الْمُعْتَقِ لِسَيِّدِهِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ - وَسُفْيَانَ، وَالشَّافِعِيِّ، قَالُوا كُلُّهُمْ: الْمُكَاتَبُ، وَالْمُوصَى بِعِتْقِهِ، وَالْمُعْتَقُ، وَالْمَوْهُوبُ، وَالْمُتَصَدَّقُ بِهِ، وَأُمُّ الْوَلَدِ يَمُوتُ سَيِّدُهَا: فَمَالُهُمْ كُلُّهُمْ لِلْمُعْتَقِ، أَوْ لِوَرَثَتِهِ. وَقَالَ الْحَسَنُ بْنُ حَيٍّ: مَالُ الْمُعْتَقِ وَالْمُكَاتَبِ لِسَيِّدِهِمَا. وَقَالَ ابْنُ شُبْرُمَةَ: مَالُ الْمُعْتَقِ - وَأُمِّ الْوَلَدِ: لِلسَّيِّدِ وَلِوَرَثَتِهِ.

L27120 Ahmad and Ishaq said: The property of the freed slave reverts to his master.

وَقَالَ أَحْمَدُ، وَإِسْحَاقُ: مَالُ الْمُعْتَقِ لِسَيِّدِهِ - وَرُوِيَ هَذَا الْقَوْلُ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَصَحَّ عَنْ قَتَادَةَ. وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي خَالِدٍ الْأَحْمَرِ عَنْ عِمْرَانَ بْنِ عُمَيْرٍ عَنْ أَبِيهِ: أَنَّهُ كَانَ عَبْدًا لِابْنِ مَسْعُودٍ فَأَعْتَقَهُ، وَقَالَ: أَمَا إنَّ مَالَك لِي، ثُمَّ قَالَ: هُوَ لَك. وَصَحَّ نَحْوُهُ عَنْ أَنَسِ بْنِ سِيرِينَ عَنْ أَنَسِ بْنِ مَالِكٍ. فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ قَالَ: مَالُ الْمُعْتَقِ لِسَيِّدِهِ، فَوَجَدْنَاهُمْ يَذْكُرُونَ مَا رُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا جَعْفَرُ بْنُ مُحَمَّدٍ نا مُحَمَّدُ بْنُ سَابِقٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ الْأَعْلَى بْنِ أَبِي الْمُسَاوِرِ حَدَّثَنِي «عِمْرَانُ بْنُ عُمَيْرٍ عَنْ أَبِيهِ قَالَ لِي ابْنُ مَسْعُودٍ: أُرِيدُ أَنْ أُعْتِقَكَ وَأَدَعَ مَالَكَ فَأَخْبِرْنِي بِمَالِكَ فَإِنِّي سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: مَنْ أَعْتَقَ عَبْدًا فَمَالُهُ لِلَّذِي أَعْتَقَهُ» . وَمِنْ طَرِيقِ الْعُقَيْلِيِّ نا عَبْدُ الرَّحْمَنِ بْنُ الْفَضْلِ نا مُحَمَّدُ بْنُ إسْمَاعِيلَ نا إسْحَاقُ بْنُ إبْرَاهِيمَ بْنِ عِمْرَانَ الْمَسْعُودِيُّ مَوْلَاهُمْ سَمِعَ عَمَّهُ يُونُسَ بْنَ عِمْرَانَ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: قَالَ ابْنُ مَسْعُودٍ " سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ أَعْتَقَ مَمْلُوكًا فَلَيْسَ لِلْمَمْلُوكِ مِنْ مَالِهِ شَيْءٌ» .

This opinion was reported from Al-Hakam ibn Utaybah and authenticated from Qatadah. We received a narration via Abd al-Razzaq from Sufyan al-Thawri from Abu Khalid al-Ahmar from Imran ibn Umayr from his father: He had been a slave of Ibn Mas'ud who freed him, saying: "Know that your property is mine," then added: "It is yours." A similar account was authenticated from Anas ibn Sirin through Anas ibn Malik. We analyzed the evidence presented by those who argued that the freed slave's property belongs to his master, finding they cite the narration we received via Qasim ibn Asbagh: Ja'far ibn Muhammad narrated to us, Muhammad ibn Sabiq narrated to us, Sufyan al-Thawri narrated to us from Abd al-A'la ibn Abi al-Musawir: "Imran ibn Umayr reported to me from his father, who said: Ibn Mas'ud told me, 'I intend to free you while retaining your property. Disclose your possessions to me, for I heard Allah's Messenger (peace be upon him) state: "Whoever frees a slave, his property belongs to the emancipator."'" Another chain via Al-Uqayli: Abd al-Rahman ibn al-Fadl narrated to us, Muhammad ibn Isma'il narrated to us, Ishaq ibn Ibrahim ibn Imran al-Mas'udi - their freedman - heard his uncle Yunus ibn Imran from Al-Qasim ibn Abd al-Rahman, who said: Ibn Mas'ud declared, "I heard Allah's Messenger (peace be upon him) proclaim: 'Whoever frees a slave, the slave has no claim to his property.'"

هَذَانِ لَا شَيْءَ؛ لِأَنَّ عَبْدَ الْأَعْلَى بْنَ أَبِي الْمُسَاوِرِ ضَعِيفٌ جِدًّا - وَالْآخَرُ مُنْقَطِعٌ؛ لِأَنَّ الْقَاسِمَ لَا يَحْفَظُ أَبُوهُ عَنْ ابْنِ مَسْعُودٍ شَيْئًا فَكَيْفَ هُوَ. وَقَالُوا: قَدْ صَحَّ أَنَّ الْعَبْدَ إذَا بِيعَ فَمَالُهُ لِلسَّيِّدِ، إلَّا أَنْ يَشْتَرِطَهُ الْمُبْتَاعُ فَعِتْقُهُ كَذَلِكَ، وَهَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ. ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّ الْبَيْعَ نَقْلُ مِلْكٍ فَلَا يُشْبِهُ الْعِتْقَ الَّذِي هُوَ إسْقَاطُ الْمِلْكِ جُمْلَةً، وَالْقِيَاسُ عِنْدَ مَنْ قَالَ بِهِ إنَّمَا هُوَ عَلَى مَا يُشْبِهُ لَا عَلَى مَا لَا يُشْبِهُ. وَقَالُوا: مَالُ الْعَبْدِ لِلسَّيِّدِ قَبْلَ الْعِتْقِ فَكَذَلِكَ بَعْدَ الْعِتْقِ. فَقُلْنَا: هَذَا بَاطِلٌ مَا هُوَ لَهُ قَبْلَ الْعِتْقِ، إلَّا أَنْ يَنْتَزِعَهُ، وَقَدْ أَوْضَحْنَا الْحُجَّةَ فِي أَنَّ الْعَبْدَ يَمْلِكُ وَيَكْفِي مِنْ ذَلِكَ قَوْله تَعَالَى:

L27121–27122 These two are baseless because ʿAbd al-Aʿlā ibn Abī al-Musāwir is extremely weak, and the other is disconnected because al-Qāsim's father did not narrate anything from Ibn Masʿūd—how then could he [be so]? They said: It is established that when a slave is sold, his wealth belongs to the master unless the buyer stipulates [otherwise]; his emancipation follows the same rule. This is analogy, and all analogy is entirely invalid. Even if analogy were valid, this instance would be invalid, for sale is a transfer of ownership, unlike emancipation, which is a total relinquishment of ownership. Analogy, according to its proponents, applies only to similar cases, not dissimilar ones. They said: The slave's wealth belongs to the master before emancipation; thus, it remains so afterward. We replied: This is invalid. What the master owned before emancipation does not remain his afterward unless he seizes it by

force. We have clarified the evidence that a slave can own property. Sufficient evidence for this is Allah's statement regarding female slaves: "Marry them with their guardians' permission and give them their dowries" (4:25). This directive includes free men and slaves. And His statement: "Marry the unmarried among you and the righteous of your male and female slaves. If they are poor, Allah will enrich them from His bounty" (24:32). Thus, it is established that the female slave's dowry belongs to her by Allah's command, to be given to her. It is established that the slave is commanded to pay the dowry; if he did not own property, he would not be obligated to do so. There is no valid marriage without a dowry, whether stipulated in the contract or afterward. Allah has promised them sufficiency, so they are like all other people. Success is from Allah, the Exalted.[12]

فِي الْإِمَاءِ {فَانْكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ وَآتُوهُنَّ أُجُورَهُنَّ} [النساء: ٢٥] فَدَخَلَ فِي هَذَا الْخِطَابِ: الْحُرُّ، وَالْعَبْدُ. وَقَوْله تَعَالَى: {وَأَنْكِحُوا الْأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ} [النور: ٣٢] . فَصَحَّ أَنَّ صَدَاقَ الْأَمَةِ لَهَا بِأَمْرِ اللَّهِ تَعَالَى يَدْفَعُهُ إلَيْهَا. وَصَحَّ أَنَّ الْعَبْدَ مَأْمُورٌ بِإِيتَاءِ الصَّدَاقِ، فَلَوْلَا أَنَّهُ يَمْلِكُ مَا كُلِّفَ ذَلِكَ، وَلَا نِكَاحَ إلَّا بِصَدَاقٍ، إنْ لَمْ يُذْكَرْ فِي الْعَقْدِ فَبَعْدَ الْعَقْدِ، وَوَعَدَهُمْ اللَّهُ بِالْغِنَى فَهُمْ كَسَائِرِ النَّاسِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27123 If the slave's wealth belongs to the master, it remains after emancipation as it was before emancipation. Then we found what was transmitted to us through the chain of Abū Dāwūd: Aḥmad ibn Ṣāliḥ narrated to us, Ibn Wahb narrated to us, al-Layth ibn Saʿd narrated to us from ʿUbayd Allāh ibn Abī Jaʿfar from Bukayr ibn al-Ashajj from Nāfiʿ from Ibn ʿUmar, who said: The Messenger of Allah (peace and blessings of Allah be upon him) said: «Whoever emancipates a slave possessing wealth, the slave's wealth belongs to the master unless the master stipulates retaining it.» This is a chain of transmission of the highest soundness; it is impermissible to deviate from it. If it is objected: "It has been claimed that ʿUbayd Allāh erred in this narration?" We respond: Only those who allege error on ʿUbayd Allāh's part—without proof or evidence—have themselves erred.[13]

فَإِذْ مَالُهُ لَهُ فَهُوَ بَعْدَ الْعِتْقِ كَمَا كَانَ قَبْلَ الْعِتْقِ. ثُمَّ وَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ صَالِحٍ نا ابْنُ وَهْبٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَعْتَقَ عَبْدًا وَلَهُ مَالٌ فَمَالُ الْعَبْدِ لَهُ إلَّا أَنْ يَشْتَرِطَهُ السَّيِّدُ» . فَهَذَا إسْنَادٌ فِي غَايَةِ الصِّحَّةِ لَا يَجُوزُ الْخُرُوجُ عَنْهُ. فَإِنْ قِيلَ: قَدْ قِيلَ: إنَّ عُبَيْدَ اللَّهِ أَخْطَأَ فِيهِ؟ قُلْنَا: إنَّمَا أَخْطَأَ مَنْ ادَّعَى الْخَطَأَ عَلَى عُبَيْدِ اللَّهِ بِلَا بُرْهَانٍ وَلَا دَلِيلٍ.

L27124–27125 It is astonishing that the Ḥanafīs - who rejected the view of the Ahl al-Ḥadīth stating "Ḍamrah erred in his narration from Sufyān: 'Whoever acquires a mahram relative, he is free'" and declared "One may not allege error against a reliable narrator without proof" - then clung to the very statements of those same authorities here by asserting "'Ubayd Allāh erred." Meanwhile, the Mālikīs clung to their statement "Ḍamrah erred" while disregarding their

وَالْعَجَبُ مِنْ الْحَنَفِيِّينَ الَّذِينَ لَمْ يَرَوْا قَوْلَ أَصْحَابِ الْحَدِيثِ " أَخْطَأَ ضَمْرَةُ فِي حَدِيثِهِ عَنْ سُفْيَانَ: مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ فَهُوَ حُرٌّ ". وَقَالُوا: لَا يَجُوزُ أَنْ يَدَّعِيَ الْخَطَأَ عَلَى الثِّقَةِ بِلَا بُرْهَانٍ ثُمَّ تَعَلَّقُوا بِقَوْلِ أُولَئِكَ أَنْفُسِهِمْ هَاهُنَا أَخْطَأَ عُبَيْدُ اللَّهِ، وَتَعَلَّقَ الْمَالِكِيُّونَ بِقَوْلِهِمْ: أَخْطَأَ ضَمْرَةُ، وَلَمْ يَلْتَفِتُوا إلَى قَوْلِهِمْ: أَخْطَأَ عُبَيْدُ اللَّهِ، فَهَلْ فِي التَّلَاعُبِ بِالدِّينِ أَكْثَرُ مِنْ هَذَا الْعَمَلِ؟ وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

[12] **Qur'an references (L27122):** Qur'an 4:25 (An-Nisa); Qur'an 24:32 (An-Nur).

[13] **Hadith references (L27123):** Sunan Abi Dawud 3962.

declaration "'Ubayd Allāh erred." Could there be greater tampering with religion than this conduct? We seek protection from Allah.

L27126 As for the Shāfiʿīs: they rejected both reports and adopted, in several instances, the error that is beyond doubt—and success is from Allah, the Most High.

L27127 **The issue of emancipating the slave of the minor child and the orphan by the father or the guardian.**

L27128 Issue 1679: It is impermissible at all for a father to emancipate the slave of his minor child, nor for a guardian to emancipate the slave of his orphan ward. Such acts are invalid if performed, based on Allah the Most High's statement: *"No soul bears another's burden"* (6:164), and the Messenger of Allah's declaration—peace and blessings be upon him—: *"Your blood and your wealth are inviolable to you."* Allah the Most High has never permitted a father to take so much as a particle from the wealth of his minor child—let alone that of an adult. Success comes solely from Allah the Most High. This constitutes the position of al-Shāfiʿī and Abū Sulaymān. Mālik held: "He may emancipate the slave of a minor but not that of an adult." This view is utterly baseless, as no evidence supports it from either the Quran or the Sunnah. Success comes solely from Allah the Most High.[14]

L27129 **The issue of the emancipation of the male slave and the umm al-walad (mother of the child) by their master.**

L27130–27132 1680 - Issue: The manumission of a male slave and an umm walad by their own male slave is permissible. The allegiance (walā') belongs to them, accompanying them wherever they reside. The inheritance from manumission belongs to the closest kin among the free agnates of the slave or to the Muslim public treasury. If he is manumitted and then dies, the inheritance goes to his own heirs, to the manumitter, or to the agnates of both, since we have previously established the validity of a slave's legal capacity to own property. As an owner, he is recommended to perform virtuous acts such as charity,

[14] **Qur'an references (L27128):** Qur'an 6:164 (Al-An'am).

وَأَمَّا الشَّافِعِيُّونَ: فَرَدُّوا الْخَبَرَيْنِ مَعًا، وَأَخَذُوا فِي عِدَّةِ مَوَاضِعَ بِالْخَطَأِ الَّذِي لَا شَكَّ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةَ عِتْقِ عَبْدِ الْوَلَدِ الصَّغِيرِ واليتيم مِنْ قِبَلِ الْأَبِ أَوْ الْوَصِيِّ]

١٦٧٩ - مَسْأَلَةٌ: وَلَا يَجُوزُ لِلْأَبِ عِتْقُ عَبْدِ وَلَدِهِ الصَّغِيرِ وَلَا لِلْوَصِيِّ عِتْقُ عَبْدِ يَتِيمِهِ أَصْلًا - وَهُوَ مَرْدُودٌ إنْ فَعَلَا لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤] ، وَقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» ، وَمَا أَبَاحَ اللَّهُ تَعَالَى قَطُّ لِلْأَبِ مِنْ مَالِ وَلَدِهِ الصَّغِيرِ دُونَ الْكَبِيرِ قَدْرَ ذَرَّةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ. وَقَالَ مَالِكٌ: يُعْتِقُ عَبْدَ صَغِيرٍ وَلَا يُعْتِقُ عَبْدَ كَبِيرٍ - وَهَذَا فِي غَايَةِ الْفَسَادِ، إذْ لَا دَلِيلَ عَلَيْهِ مِنْ قُرْآنٍ وَلَا سُنَّةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةَ عِتْقُ الْعَبْدِ وَأُمِّ الْوَلَدِ لِعَبْدِهِمَا]

١٦٨٠ - مَسْأَلَةٌ: وَعِتْقُ الْعَبْدِ، وَأُمِّ الْوَلَدِ، لِعَبْدِهِمَا جَائِزٌ، وَالْوَلَاءُ لَهُمَا، يَدُورُ مَعَهُمَا حَيْثُ دَارَا، وَمِيرَاثُ الْعِتْقِ لِأَوْلَى النَّاسِ بِالْعَبْدِ مِنْ أَحْرَارِ عَصَبَتِهِ، أَوْ لِبَيْتِ مَالِ الْمُسْلِمِينَ. فَإِذَا أُعْتِقَ فَإِنْ مَاتَ فَالْمِيرَاثُ لَهُ، أَوْ لِمَنْ أَعْتَقَهُ، أَوْ لِعَصَبَتِهِمَا؛ لِأَنَّنَا قَدْ بَيَّنَّا صِحَّةَ الْمِلْكِ لِلْعَبْدِ وَإِذْ هُوَ مَالِكٌ فَهُوَ مَنْدُوبٌ إلَى فِعْلِ الْخَيْرِ مِنْ الصَّدَقَةِ، وَالْعِتْقِ، وَسَائِرِ أَعْمَالِ الْبِرِّ. وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «الْوَلَاءُ لِمَنْ أَعْتَقَ» . وَنَصَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَى أَنَّ الْعَبْدَ لَا يَرِثُ، عَلَى مَا نَذْكُرُهُ فِي " كِتَابِ

manumission, and all forms of righteous deeds. The Messenger of Allah—peace and blessings be upon him and his family—said: "Allegiance belongs to the manumitter." He—peace and blessings—also explicitly stated that a slave does not inherit, as we shall detail in the "Book of Inheritance," Allah the Exalted willing, and in the section on "the contracted slave (mukātab)" following this—by the power and strength of Allah the Exalted, thus it... The inheritance is allocated to the free person from their agnates, and not to the master of the slave, for the master holds no right of patronage over the slave nor over anyone through him. When the slave is emancipated, the inheritance becomes validly established for him or for those entitled through him - and success is from Allah, the Exalted.

الْمَوَارِيثِ " إِنْ شَاءَ اللَّهُ تَعَالَى، وَفِي " الْمُكَاتَبِ " بَعْدَ هَذَا - بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ، فَهُوَ لِلْحُرِّ مِنْ عَصَبَتِهِ، وَلَيْسَ لِسَيِّدِ الْعَبْدِ، لِأَنَّهُ لَا وَلَاءَ لَهُ عَلَى الْعَبْدِ، وَلَا عَلَى أَحَدٍ بِسَبَبِهِ، فَإِذَا عَتَقَ صَحَّ الْمِيرَاثُ لَهُ، أَوْ لِمَنْ يَجِبُ لَهُ مِنْ أَجْلِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة وَطِئَ أَمَةً لَهُ حَامِلًا مِنْ غَيْرِهِ]

[Issue: He had intercourse with his female slave while she was pregnant by another man]

١٦٨١ - مَسْأَلَةٌ: وَمَنْ وَطِئَ أَمَةً لَهُ حَامِلًا مِنْ غَيْرِهِ فَجَنِينُهَا حُرٌّ - أَمْنَى فِيهَا أَوْ لَمْ يُمْنِ - لِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد الطَّيَالِسِيِّ نا شُعْبَةُ عَنْ يَزِيدَ بْنِ حُمَيْرٍ: سَمِعْت عَبْدَ الرَّحْمَنِ بْنَ جُبَيْرِ بْنِ نُفَيْرٍ يُحَدِّثُ عَنْ أَبِيهِ عَنْ أَبِي الدَّرْدَاءِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَتَى عَلَى امْرَأَةٍ مُجِحٍّ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَعَلَّ صَاحِبَ هَذِهِ أَنْ يَكُونَ يُلِمُّ بِهَا، لَقَدْ هَمَمْتُ أَنْ أَلْعَنَهُ لَعْنَةً تَدْخُلُ مَعَهُ فِي قَبْرِهِ كَيْفَ يُوَرِّثُهُ، وَهُوَ لَا يَحِلُّ لَهُ، وَكَيْفَ يَسْتَرِقُّهُ وَهُوَ لَا يَحِلُّ لَهُ» . وَهَذَا خَبَرٌ صَحِيحٌ لَا يَحِلُّ لِأَحَدٍ خِلَافُهُ، فَإِذَا لَمْ يَحِلَّ لَهُ أَنْ يَسْتَرِقَّهُ فَهُوَ حُرٌّ بِلَا شَكٍّ، وَهُوَ غَيْرُ لَاحِقٍ بِهِ، وَبِهِ قَالَ طَائِفَةٌ مِنْ السَّلَفِ. كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي أَبُو الْأَسْوَدِ الْمَعَافِرِيُّ عَنْ يَحْيَى بْنِ جُبَيْرٍ الْمَعَافِرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ قَالَ: مَنْ كَانَ يُؤْمِنُ بِاَللَّهِ وَالْيَوْمِ الْآخِرِ فَلَا يَسْقِ مَاءَهُ وَلَدَ غَيْرِهِ فَإِنْ هُوَ فَعَلَ ذَلِكَ وَغَلَبَ الشَّقَاءُ عَلَيْهِ فَلْيُعْتِقْهُ، وَلْيُوصِ لَهُ مِنْ مَالِهِ. وَبِهِ إلَى ابْنِ وَهْبٍ عَنْ غَوْثِ بْنِ سُلَيْمَانَ الْحَضْرَمِيِّ عَنْ مُحَمَّدِ بْنِ

L27133

L27134

1681 - Issue: If a man has intercourse with his pregnant slave who is carrying another's child, her fetus is free—whether he ejaculates or not—based on what we have narrated through the chain of Abū Dāwūd al-Ṭayālisī: Shuʿbah reported from Yazīd ibn Ḥimyar, who said: I heard ʿAbd al-Raḥmān ibn Jubayr ibn Nufayr narrating from his father, from Abū al-Dardāʾ, that the Messenger of Allah—peace and blessings be upon him—encountered a heavily pregnant woman and said: "Perhaps the father of this child is having intercourse with her. I resolved to curse him with a condemnation that would enter the grave with him. How can the child inherit him when it is unlawful? How can he enslave the child when it is unlawful?" This is a sound report that none may contradict. If enslaving the child is impermissible, then the child is undoubtedly free and not legally affiliated with him as offspring. This is the view of a group of early scholars, as we have narrated through the chain of Ibn Wahb: Abū al-Aswad al-Maʿāfirī informed me from Yaḥyā ibn Jubayr al-Maʿāfirī, from ʿAbd Allāh ibn ʿAmr ibn al-ʿĀṣ, who said: "Whoever believes in Allah and the Last Day should not let his semen reach another's child. If he does so despite being overcome by sin, he must emancipate the child and bequeath to them from his wealth." Through Ibn Wahb, from Ghawth ibn Sulaymān al-Ḥaḍramī, from Muḥammad ibn Saʿīd al-Dimashqī: Sulaymān ibn Ḥabīb al-Muḥāribī informed me regarding a pregnant slave

whom her master has intercourse with. He said: “The authorities ruled that the fetus should be emancipated.” Ibn Wahb said: Al-Layth ibn Saʿd stated: “I hold this opinion”—which is also the view of Makhūl, al-Awzāʿī, Abū ʿUbayd, Abū Sulaymān, our companions, and some Shāfiʿī scholars. Abū Muḥammad said: Sulaymān ibn Ḥabīb served as judge for ʿUmar ibn ʿAbd al-ʿAzīz in Syria, and Ghawth ibn Sulaymān was judge of Egypt. This ruling is one that the Mālikīs, Ḥanafīs, and majority of Shāfiʿīs abandoned—a position with no known opposition from the Companions, may Allah be pleased with them.

L27135 **The issue of manumission by one whose debt has exceeded their wealth.**

L27136–27138 1682 - Issue: If someone’s debt encompasses all their wealth, then if they are not in need of their slave, emancipating the slave is permissible in that case; otherwise, it is not. Malik said: It is not permissible to emancipate someone whose debt encompasses their wealth. Abu Hanifah said: Al-Shafiʿi agrees with our opinion, except that they both permitted his manumission under all circumstances. The proof for the validity of our opinion is that one who owns nothing and borrows wealth may consume from it without dispute, use it for marriage expenses, or purchase a female slave to have relations with her. This confirms that he possesses what he borrowed and that it constitutes wealth from his possessions. Thus, he may give charity from it provided he retains enough to remain self-sufficient afterward, for manumission is a form of righteousness. Indeed, Allah provides for His servants if they are poor, enriching them from His bounty. This differs from bequeathing manumission by someone whose wealth is encumbered by debt, for the deceased has no means whereby Allah the Exalted might grant him wealth in this world that He did not provide him during his lifetime. The Messenger of Allah—peace and blessings be upon him and his family—used to borrow, and success comes from Allah, the Exalted.

L27139 **The issue of selling the male *mudabbar* and female *mudabbara*, and the gift to both of them.**

سَعِيدٍ الدِّمَشْقِيِّ أَخْبَرَنِي سُلَيْمَانُ بْنُ حَبِيبٍ الْمُحَارِبِيُّ عَنْ الْأَمَةِ الْحَامِلِ يَطَؤُهَا سَيِّدُهَا؟ قَالَ: رَأَتْ الْوُلَاةُ أَنْ يُعْتِقَ ذَلِكَ الْحَمْلُ. قَالَ ابْنُ وَهْبٍ: قَالَ اللَّيْثُ بْنُ سَعْدٍ: وَإِنِّي أَرَى ذَلِكَ - وَهُوَ قَوْلُ مَكْحُولٍ، وَالْأَوْزَاعِيِّ، وَأَبِي عُبَيْدٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا، وَبَعْضِ الشَّافِعِيِّينَ. قَالَ أَبُو مُحَمَّدٍ: سُلَيْمَانُ بْنُ حَبِيبٍ قَاضِي عُمَرَ بْنِ عَبْدِ الْعَزِيزِ بِالشَّامِ، وَغَوْثُ بْنُ سُلَيْمَانَ قَاضِي مِصْرَ - وَهَذَا مِمَّا تَرَكَ فِيهِ الْمَالِكِيُّونَ - وَالْحَنَفِيُّونَ، وَجُمْهُورُ الشَّافِعِيِّينَ: صَاحِبًا لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

[مَسْأَلَة عِتْق مِنْ أحاط الدّين بماله]

١٦٨٢ - مَسْأَلَةٌ: وَمَنْ أَحَاطَ الدَّيْنُ بِمَالِهِ كُلِّهِ، فَإِنْ كَانَ لَهُ غِنًى عَنْ مَمْلُوكِهِ جَازَ عِتْقُهُ فِيهِ، وَإِلَّا فَلَا. وَقَالَ مَالِكٌ: لَا يَجُوزُ عِتْقُ مَنْ أَحَاطَ الدَّيْنُ بِمَالِهِ وَقَالَ أَبُو حَنِيفَةَ: وَالشَّافِعِيُّ بِقَوْلِنَا، إلَّا أَنَّهُمَا أَجَازَا عِتْقَهُ بِكُلِّ حَالٍ، بُرْهَانُ صِحَّةِ قَوْلِنَا. أَنَّ مَنْ لَا شَيْءَ لَهُ فَاسْتَقْرَضَ مَالًا - فَإِنَّ لَهُ أَنْ يَأْكُلَ مِنْهُ بِلَا خِلَافٍ، وَأَنْ يَتَزَوَّجَ مِنْهُ، وَأَنْ يَبْتَاعَ جَارِيَةً يَطَؤُهَا، فَقَدْ صَحَّ أَنَّهُ قَدْ مَلَكَ مَا اسْتَقْرَضَ، وَأَنَّهُ مَالٌ مِنْ مَالِهِ، فَلَهُ أَنْ يَتَصَدَّقَ مِنْهُ بِمَا يَبْقَى لَهُ بَعْدَهُ غِنًى، وَالْعِتْقُ نَوْعٌ مِنْ أَنْوَاعِ الْبِرِّ، وَقَدْ يَرْزُقُ اللَّهُ عِبَادَهُ إنْ يَكُونُوا فُقَرَاء يُغْنِهِمْ اللَّهُ مِنْ فَضْلِهِ. وَهَذَا بِخِلَافِ الْوَصِيَّةِ بِالْعِتْقِ مِمَّنْ أَحَاطَ الدَّيْنُ بِمَالِهِ؛ لِأَنَّ الْمَيِّتَ لَا سَبِيلَ إلَى أَنْ يَرْزُقَ اللَّهُ تَعَالَى مَالًا فِي الدُّنْيَا لَمْ يَرْزُقْهُ إيَّاهُ فِي حَيَاتِهِ، وَقَدْ كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَسْتَقْرِضُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَيْع المدبر والمدبرة وَالْهِبَة لَهُمَا]

L27140 1683 - Issue: A mudabbar is a male slave whose manumission is bequeathed, and a mudabbara is a female slave under the same condition. Selling them is lawful, and gifting them is likewise lawful. We have already discussed this in the Book of Sales, obviating the need to repeat it. Those who prohibit this have no valid evidence except a fabricated ḥadīth, the defect of which we clarified in that context. And success is through Allah, the Exalted.

١٦٨٣ - مَسْأَلَةٌ: وَالْمُدَبَّرُ عَبْدٌ مُوصَى بِعِتْقِهِ، وَالْمُدَبَّرَةُ كَذَلِكَ، وَبَيْعُهُمَا حَلَالٌ، وَالْهِبَةُ لَهُمَا كَذَلِكَ، وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الْبُيُوعِ " فَأَغْنَى عَنْ إعَادَتِهِ وَلَا حُجَّةَ لِمَنْ مَنَعَ مِنْ ذَلِكَ إلَّا حَدِيثٌ مَوْضُوعٌ قَدْ بَيَّنَّا عِلَّتَهُ هُنَالِكَ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة حَمَلَتْ مِنْ سَيِّدِهَا فَأَسْقَطَتْ شَيْئًا يُدْرَى أَنَّهُ وَلَدٌ أَوْ وَلَدَتْهُ]

A jurisprudential matter wherein a female slave conceived by her master and either aborted something verified to be a child or gave birth to it.

L27141

L27142–27144 1684. Issue: Any female slave who conceives by her master and miscarries a discernible fetus or delivers it becomes prohibited from sale, gift, pledge, charitable donation, or loan. Her master retains the right to have intercourse with her and utilize her during his lifetime. Upon his death, she is emancipated from his principal estate. All her possessions remain hers if emancipated, though her master may reclaim them during his lifetime. If she bears a child through fornication, coercion, or an invalid marriage due to ignorance with someone other than her master, her child shares her legal status: if she is emancipated, they are emancipated. Abū Muḥammad said: People have differed regarding this. We have been narrated through Saʿd ibn Manṣūr, from Abū ʿAwānah, from al-Mughīrah, from al-Shaʿbī, from ʿUbaydah al-Salmānī, who said: ʿAlī addressed the people, stating: "'Umar ibn al-Khaṭṭāb consulted me concerning the mothers of the master's children. Both ʿUmar and I held the view to emancipate them." ʿUmar upheld this ruling during his lifetime, as did ʿUthmān throughout his lifetime. When I assumed leadership, I chose to return them to slavery. ʿUbaydah remarked: "The collective opinion of ʿUmar and ʿAlī is more preferable to me than ʿAlī's opinion alone." Abū Muḥammad said: If this was preferable to ʿUbaydah, it was not preferable to ʿAlī ibn Abī Ṭālib. Indeed, there exists a stark and irreconcilable difference between the two men. Where then are those who argue based on the widespread opinion of a prominent companion, claiming it constitutes consensus? Could any prevalence surpass the rulings of ʿUmar during his remaining lifetime and ʿUthmān throughout his lifetime regarding a univer-

١٦٨٤ - مَسْأَلَةٌ: وَكُلُّ مَمْلُوكَةٍ حَمَلَتْ مِنْ سَيِّدِهَا فَأَسْقَطَتْ شَيْئًا يُدْرَى أَنَّهُ وَلَدٌ، أَوْ وَلَدَتْهُ: فَقَدْ حَرُمَ بَيْعُهَا وَهِبَتُهَا وَرَهْنُهَا وَالصَّدَقَةُ بِهَا وَقَرْضُهَا، وَلِسَيِّدِهَا وَطْؤُهَا وَاسْتِخْدَامُهَا مُدَّةَ حَيَاتِهِ، فَإِذَا مَاتَ فَهِيَ حُرَّةٌ مِنْ رَأْسِ مَالِهِ، وَكُلُّ مَالِهَا فَلَهَا إذَا عَتَقَتْ، وَلِسَيِّدِهَا انْتِزَاعُهُ فِي حَيَاتِهِ، فَإِنْ وَلَدَتْ مِنْ غَيْرِ سَيِّدِهَا بِزِنًا، أَوْ إكْرَاهٍ، أَوْ نِكَاحٍ بِجَهْلٍ: فَوَلَدُهَا بِمَنْزِلَتِهَا إذَا أُعْتِقَتْ عَتَقُوا. قَالَ أَبُو مُحَمَّدٍ: اخْتَلَفَ النَّاسُ فِي هَذَا. فَرُوِّينَا مِنْ طَرِيقِ سَعْدِ بْنِ مَنْصُورٍ نا أَبُو عَوَانَةَ عَنْ الْمُغِيرَةِ عَنْ الشَّعْبِيِّ عَنْ عَبِيدَةَ السَّلْمَانِيِّ قَالَ: خَطَبَ عَلِيٌّ النَّاسَ، فَقَالَ: شَاوَرَنِي عُمَرُ بْنُ الْخَطَّابِ فِي أُمَّهَاتِ الْأَوْلَادِ، فَرَأَيْت أَنَا وَعُمَرُ أَنْ أُعْتِقَهُنَّ - فَقَضَى بِهِ عُمَرُ حَيَاتَهُ، وَعُثْمَانُ حَيَاتَهُ، فَلَمَّا وُلِّيت رَأَيْت أَنْ أَرِقَّهُنَّ، قَالَ عَبِيدَةُ: فَرَأْيُ عُمَرَ، وَعَلِيٍّ فِي الْجَمَاعَةِ أَحَبُّ إلَيَّ مِنْ رَأْيِ عَلِيٍّ وَحْدَهُ. قَالَ أَبُو مُحَمَّدٍ: إنْ كَانَ أَحَبَّ إلَى عَبِيدَةَ، فَلَمْ يَكُنْ أَحَبَّ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ، وَإِنَّ بَيْنَ الرَّجُلَيْنِ لَبَوْنًا بَائِنًا، فَأَيْنَ الْمُحْتَجُّونَ بِقَوْلِ الصَّاحِبِ الْمُشْتَهِرِ الْمُنْتَشِرِ وَأَنَّهُ إجْمَاعٌ، أَفَيَكُونُ اشْتِهَارًا أَعْظَمَ، وَانْتِشَارًا أَكْثَرَ مِنْ حُكْمِ عُمَرَ بَاقِي خِلَافَتِهِ، وَعُثْمَانَ جَمِيعَ خِلَافَتِهِ، فِي أَمْرٍ فَاشٍ عَامٍّ، ظَاهِرٍ مُطْبَقٍ، وَعَلِيٌّ مُوَافِقٌ لَهُمَا عَلَى ذَلِكَ وَقَدْ رُوِّينَا عَنْ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ

sally prevalent, openly applied matter—with ʿAlī concurring with them? We have been narrated from Waki‘, who narrated from Sufyan al-Thawri, from Salamah ibn Kuhayl, from Zayd ibn Wahb, who said: ‘Umar sold ummahāt al-awlād, then revoked their sales until he revoked them while pregnant due to concealment. There is no possibility for a ruling to spread more widely than this spread, given its public enforcement and these well-documented chains of transmission. Yet ‘Ali ibn Abi Talib did not consider this consensus; rather, he opposed it. If this were consensus, then according to the principles of these ignorant ones, ‘Ali would have opposed the consensus—far be it from him to do so! For whoever knowingly opposes consensus is a disbeliever. Moreover, they do not advocate claiming consensus regarding what was never authentically established from ‘Umar—that he imposed eighty lashes for wine. The disagreement on this matter from ‘Umar and those after him is clearer than the sun.

Through the chain of ‘Abd al-Razzaq, from Ibn Jurayj, who informed us that Abu al-Zubayr reported hearing Jabir ibn ‘Abdullah say: “We used to sell ummahāt al-awlād while the Messenger of Allah—peace and blessings be upon him and his family—was alive among us, and we saw no harm in it.” Ibn Jurayj said: ‘Abd al-Rahman ibn al-Walid informed me that Abu Ishaq al-Sabi‘i informed him that Abu Bakr al-Siddiq sold ummahāt al-awlād during his caliphate, and ‘Umar did so in the first half of his caliphate—and he mentioned the hadith.

Ibn Jurayj said: ‘Ata’ informed me that he learned ‘Ali ibn Abi Talib wrote in his covenant: “I left nineteen concubines. Whichever had a child was valued as part of her child’s share from me, and whichever had no child was freed.” I asked Muhammad ibn ‘Ali ibn al-Husayn ibn ‘Ali: “Was this during ‘Ali’s caliphate?” He replied: “Yes.”

Through the chain of al-Khushani Muhammad ibn ‘Abd al-Salam, from Muhammad ibn Bashshar Bundar, from Muhammad ibn Ja‘far Ghundar, from Shu‘bah, from al-Hakam ibn ‘Utaybah, from Zayd ibn Wahb, who said: I went to ‘Umar ibn al-Khattab to ask him about the umm al-walad. He said: “She is your property; sell her if you wish, or gift her if you wish.” Then I went to Ibn Mas‘ud, where two men were with him. They asked him, and

عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ زَيْدِ بْنِ وَهْبٍ قَالَ: بَاعَ عُمَرُ أُمَّهَاتِ الْأَوْلَادِ ثُمَّ رَدَّهُنَّ حَتَّى رَدَّهُنَّ حَبَالَى مِنْ تَسَتُّرٍ - فَلَا سَبِيلَ إِلَى أَنْ يَفْشُوَ حُكْمٌ أَكْثَرَ مِنْ هَذَا الْفَشْوِ بِمِثْلِ هَذَا الْحُكْمِ الْمُعْلَنِ وَالْأَسَانِيدِ الْمُثِيرَةِ، ثُمَّ لَمْ يَرَ عَلِيُّ بْنُ أَبِي طَالِبٍ ذَلِكَ إِجْمَاعًا، بَلْ خَالَفَهُ فَإِنْ كَانَ ذَلِكَ إِجْمَاعًا فَعَلَى أُصُولِ هَؤُلَاءِ الْجُهَّالِ قَدْ خَالَفَ عَلِيٌّ الْإِجْمَاعَ. وَحَاشَا لَهُ مِنْ ذَلِكَ، فَمُخَالِفُ الْإِجْمَاعِ عَالِمًا بِأَنَّهُ إِجْمَاعٌ كَافِرٌ، ثُمَّ لَا يَسْتَحِبُّونَ دَعْوَى الْإِجْمَاعِ عَلَى مَا لَمْ يَصِحَّ قَطُّ عَنْ عُمَرَ مِنْ أَنَّهُ فَرَضَ فِي الْخَمْرِ ثَمَانِينَ حَدًّا وَالْخِلَافُ فِيهِ مِنْ عُمَرَ وَمِمَّنْ بَعْدَ عُمَرَ أَشْهَرُ مِنَ الشَّمْسِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «كُنَّا نَبِيعُ أُمَّهَاتِ الْأَوْلَادِ - وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَيٌّ فِينَا - لَا نَرَى بِذَلِكَ بَأْسًا» . قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عَبْدُ الرَّحْمَنِ بْنُ الْوَلِيدِ أَنَّ أَبَا إِسْحَاقَ السَّبِيعِيَّ أَخْبَرَهُ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ كَانَ يَبِيعُ أُمَّهَاتِ الْأَوْلَادِ فِي إِمَارَتِهِ وَعُمَرُ فِي نِصْفِ إِمَارَتِهِ، وَذَكَرَ الْحَدِيثَ. قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عَطَاءٌ أَنَّهُ بَلَغَهُ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَتَبَ فِي عَهْدِهِ: إِنِّي تَرَكْتُ تِسْعَ عَشْرَةَ سُرِّيَّةً فَأَيَّتُهُنَّ مَا كَانَتْ ذَاتَ وَلَدٍ قُوِّمَتْ فِي حِصَّةِ وَلَدِهَا بِمِيرَاثِهِ مِنِّي وَأَيَّتُهُنَّ لَمْ تَكُنْ ذَاتَ وَلَدٍ فَهِيَ حُرَّةٌ؟ فَسَأَلْتُ مُحَمَّدَ بْنَ عَلِيِّ بْنِ الْحُسَيْنِ بْنِ عَلِيٍّ: أَذَلِكَ فِي عَهْدِ عَلِيٍّ؟ قَالَ: نَعَمْ. وَمِنْ طَرِيقِ الْخُشَنِيِّ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ نا مُحَمَّدُ بْنُ بَشَّارٍ بُنْدَارٌ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ زَيْدِ بْنِ وَهْبٍ قَالَ: انْطَلَقْتُ إِلَى عُمَرَ بْنِ الْخَطَّابِ أَسْأَلُهُ عَنْ أُمِّ الْوَلَدِ؟ قَالَ: مَالُكَ، إِنْ شِئْتَ بِعْتَ وَإِنْ شِئْتَ وَهَبْتَ. ثُمَّ انْطَلَقْتُ إِلَى ابْنِ مَسْعُودٍ فَإِذَا مَعَهُ رَجُلَانِ فَسَأَلَاهُ؟ فَقَالَ لِأَحَدِهِمَا مَنْ أَقْرَأَكَ؟ قَالَ: أَقْرَأَنِيهَا أَبُو عَمْرَةَ، وَأَبُو حَكِيمٍ

he said to one: “Who instructed you in this?” He replied: “Abu ʻAmrah and Abu Hakim al-Muzani instructed me.” The other said: “‘Umar ibn al-Khattab instructed me.” Ibn Masʻud wept and said: “He instructed you? ʻUmar instructed you? He was a fortress of Islam—people entered [the faith] through him and did not abandon it. When ʻUmar was struck down, the fortress was breached, and people strayed from the straight path of Islam.” Zayd said: I asked him about the umm al-walad, and he replied: “She is freed from her child’s share.”

L27145–27146 Abu Muhammad said: This is a chain of transmission of the utmost authenticity, and after the death of Umar, as you see. So where are those who claim consensus in matters less significant than this? Indeed, even in matters devoid of merit—those that are unfounded.

L27147–27149 From the path of Abd al-Razzaq from Ibn Jurayj, Ata ibn Abi Rabah narrated to us that Ibn al-Zubayr settled Umm Hayya—the umm walad of Muhammad ibn Suhayb, whose son was called Khalid—in her son’s property and assigned her a share from his inheritance. Ata said: Ibn Abbas stated, “The umm walad is not emancipated until her master explicitly pronounces her freedom”—which is the opinion of Zayd ibn Thabit. This is also the view of Abu Sulayman, Abu Bakr, and a group of our companions. There is another opinion attributed to Umar. We transmitted it through Ibn Sirin from Abu al-Ajfa Hirm ibn Nasib and Malik ibn Amir al-Hamdani, both narrating from Umar ibn al-Khattab regarding the umm walad? He said, “If she remains chaste and embraces Islam, she is freed. But if she apostatizes and commits immorality, she is kept enslaved.” This was also narrated from Umar ibn Abd al-Aziz, who sold an umm walad who had apostatized—though Abu al-Hasan ibn al-Mughallis and some of our companions hesitated on this matter. The invalidation of her sale was narrated from al-Shaʻbi, al-Nakhaʻi, Ata, Mujahid, al-Hasan, Salim ibn Abdullah, Yahya ibn Saʻid al-Ansari, al-Zuhri, Abu al-Zinad, and Rabiʻa. This is the opinion of Abu Hanifa, Malik, Sufyan, al-Awzaʻi, al-Hasan ibn Hayy, Ibn Shubruma, al-Shafiʻi, Abu Ubayd, Ahmad, Ishaq, Abu Abdullah ibn Salar, and a group of our companions. Abu Muhammad said: As for the hadith of Jabir, it holds no proof even if its chain is authentic, for it does not state that the Messenger of Allah (peace and bless-

الْمُزَنِيِّ، وَقَالَ الْآخَرُ: أَقْرَأَنِيهَا عُمَرُ بْنُ الْخَطَّابِ، فَبَكَى ابْنُ مَسْعُودٍ وَقَالَ: أَقْرَأَكُمَا؟ أَقْرَأَكَ عُمَرُ؟ فَإِنَّهُ كَانَ حِصْنًا حَصِينًا يَدْخُلُ النَّاسُ فِيهِ وَلَا يَخْرُجُونَ مِنْهُ؟ فَلَمَّا أُصِيبَ عُمَرُ انْثَلَمَ الْحِصْنُ، فَخَرَجَ النَّاسُ مِنْ الْإِسْلَامِ قَالَ زَيْدٌ: وَسَأَلْته عَنْ أُمِّ الْوَلَدِ؟ فَقَالَ: تُعْتَقُ مِنْ نَصِيبِ وَلَدِهَا.

قَالَ أَبُو مُحَمَّد: هَذَا إسْنَادٌ فِي غَايَةِ الصِّحَّةِ، وَبَعْدَ مَوْتِ عُمَرَ كَمَا تَرَى، فَأَيْنَ مُدَّعُو الْإِجْمَاعِ فِي أَقَلَّ مِنْ هَذَا؟ نَعَمْ، وَفِيمَا لَا خَيْرَ فِيهِ مِمَّا لَا يَصِحُّ

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ نا عَطَاءُ بْنُ أَبِي رَبَاحٍ أَنَّ ابْنَ الزُّبَيْرِ أَقَامَ أُمَّ حُيَيِّ أُمَّ وَلَدِ مُحَمَّدِ بْنِ صُهَيْبٍ يُقَالُ لِابْنِهَا: خَالِدٌ، فَأَقَامَهَا ابْنُ الزُّبَيْرِ فِي مَالِ وَلَدِهَا وَجَعَلَهَا فِي نَصِيبِهِ. قَالَ عَطَاءٌ: وَقَالَ ابْنُ عَبَّاسٍ: لَا تُعْتَقُ أُمُّ الْوَلَدِ حَتَّى يَلْفِظَ سَيِّدُهَا بِعِتْقِهَا - وَهُوَ قَوْلُ زَيْدِ بْنِ ثَابِتٍ. وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَبُو بَكْرٍ، وَجَمَاعَةٌ مِنْ أَصْحَابِنَا. وَعَنْ عُمَرَ قَوْلٌ آخَرُ. رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ سِيرِينَ عَنْ أَبِي الْعَجْفَاءِ هَرِمِ بْنِ نَسِيبٍ، وَمَالِكِ بْنِ عَامِرٍ الْهَمْدَانِيِّ، كِلَاهُمَا عَنْ عُمَرَ بْنِ الْخَطَّابِ فِي أُمِّ الْوَلَدِ؟ قَالَ: إذَا عَفَتْ وَأَسْلَمَتْ عَتَقَتْ، وَإِنْ كَفَرَتْ وَفَجَرَتْ أُرِقَّتْ. وَرُوِيَ هَذَا أَيْضًا: عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ بَاعَ أُمَّ وَلَدٍ ارْتَدَّتْ - وَتَوَقَّفَ فِيهَا أَبُو الْحَسَنِ بْنُ الْمُغَلِّسِ، وَبَعْضُ أَصْحَابِنَا. وَرُوِيَ إبْطَالُ بَيْعِهَا عَنْ الشَّعْبِيِّ، وَالنَّخَعِيِّ، وَعَطَاءٍ، وَمُجَاهِدٍ، وَالْحَسَنِ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَالزُّهْرِيِّ، وَأَبِي الزِّنَادِ، وَرَبِيعَةَ. وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَسُفْيَانَ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ وَابْنِ شُبْرُمَةَ، وَالشَّافِعِيِّ، وَأَبِي عُبَيْدٍ، وَأَحْمَدَ،

ings be upon him) knew of it. Indeed, those who accept musnad reports must adhere to the statement of Abu Saʿid al-Khudri: "We used to give Zakat al-Fitr as one saʿ of food—one saʿ of barley, one saʿ of dates, one saʿ of dried yogurt, or one saʿ of raisins—while the Messenger of Allah (peace and blessings be upon him) was alive," and the statement of Ibn Umar: "We, during the lifetime of the Messenger of Allah (peace and blessings be upon him)—..." Allah's Messenger—peace and blessings be upon him and his family—maintains an enduring status. We state: Abu Bakr, then Umar, then Uthman. Thereafter, we refrain from further comparison—and he considers this position evidentiary. To regard Jabir's statement as proof is valid; otherwise, one is being frivolous. Abu Muhammad said: As for those below the rank of Allah's Messenger—peace and blessings be upon him and his family—upon him be peace and blessings—no authority equates to his. We therefore examined: Has an authentic prohibition from him—peace and blessings be upon him—been transmitted regarding this matter, compelling us to adhere to it? If not, we proceed. We discovered the narration conveyed through Qasim ibn Asbagh's chain: Musʿab ibn Muhammad reported from Ubayd Allah ibn Umar—al-Raqqi—from Abd al-Karim al-Jazari, from Ikrimah, from Ibn Abbas, who said: When Mariyah bore Ibrahim, Allah's Messenger—peace and blessings be upon him and his family—declared: "Her child has emancipated her." This is a sound report with entirely reliable narrators.

وَإِسْحَاقَ، وَأَبِي عَبْدِ اللَّهِ بْنِ سَالَارٍ، وَطَائِفَةٍ مِنْ أَصْحَابِنَا. قَالَ أَبُو مُحَمَّد: أَمَّا حَدِيثُ جَابِرٍ فَلَا حُجَّةَ فِيهِ وَإِنْ كَانَ غَايَةً فِي صِحَّةِ السَّنَدِ، لِأَنَّهُ لَيْسَ فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلِمَ بِذَلِكَ - وَلَقَدْ كَانَ يَلْزَمُ مَنْ يَرَى مُسْنَدًا قَوْلُ أَبِي سَعِيدٍ الْخُدْرِيِّ: «كُنَّا نُخْرِجُ - وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَيٌّ - صَدَقَةَ الْفِطْرِ صَاعًا مِنْ طَعَامٍ، صَاعًا مِنْ شَعِيرٍ، صَاعًا مِنْ تَمْرٍ، صَاعًا مِنْ أَقِطٍ، صَاعًا مِنْ زَبِيبٍ» ، وَقَوْلُ ابْنِ عُمَرَ: كُنَّا وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَيٌّ نَقُولُ: أَبُو بَكْرٍ، ثُمَّ عُمَرُ، ثُمَّ عُثْمَانُ، ثُمَّ نَتْرُكُ فَلَا نُفَاضِلُ - وَيَرَى هَذَا حُجَّةً. أَنْ يَرَى قَوْلَ جَابِرٍ هَذَا حُجَّةً، وَإِلَّا فَهُوَ مُتَلَاعِبٌ.

قَالَ أَبُو مُحَمَّد: وَأَمَّا مَنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَلَا حُجَّةَ فِي أَحَدٍ دُونَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَنَظَرْنَا: هَلْ صَحَّ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي ذَلِكَ مَنْعٌ فَنَقِفُ عِنْدَهُ، وَإِلَّا فَلَا؟ فَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا مُصْعَبُ بْنُ مُحَمَّدٍ نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ - هُوَ الرَّقِّيُّ - عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: «لَمَّا وَلَدَتْ مَارِيَةُ إبْرَاهِيمَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَعْتَقَهَا وَلَدُهَا» فَهَذَا خَبَرٌ جَيِّدُ السَّنَدِ كُلُّ رُوَاتِهِ ثِقَةٌ.

L27150 We have heard Allah the Exalted say: {Indeed, We created the human being from a mingled sperm-drop to test him} [Al-Insān: 2]. And the Messenger of Allah—may Allah bless him and his family and grant him peace—informed us, as narrated in the sixth issue at the beginning of the "Book of Manumission" in this collection of ours, that Allah the Exalted creates the human being from the semen of his father and the ovum of his mother. Thus, it is confirmed that he is part of her and part of his father.[15]

وَسَمِعْنَا اللَّهَ تَعَالَى يَقُولُ: {إِنَّا خَلَقْنَا الْإِنْسَانَ مِنْ نُطْفَةٍ أَمْشَاجٍ نَبْتَلِيهِ} [الإنسان: ٢] وَأَخْبَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَمَا رُوِّينَا فِي الْمَسْأَلَةِ السَّادِسَةِ فِي صَدْرِ " كِتَابِ الْعِتْقِ " مِنْ دِيوَانِنَا هَذَا: أَنَّ الْإِنْسَانَ يَخْلُقُهُ اللَّهُ تَعَالَى مِنْ مَنِيِّ أَبِيهِ وَمَنِيِّ أُمِّهِ، فَصَحَّ أَنَّهُ بَعْضُهَا وَبَعْضُ أَبِيهِ.

L27151 We have been narrated through the chain of Ibn Ayman: Abdullah ibn Ah-

[15] **Qur'an references (L27150):** Qur'an 76:2 (Al-Insan).

mad ibn Hanbal narrated to us, Abu Sa'eed—the client of Banu Hashim (he is Abdurrahman ibn Abdullah ibn Ubaid)—narrated to us, Hammam ibn Yahya narrated from Qatadah from Abi Al-Malih from his father (his father is Abu Usamah ibn Umayr) who said: A man from Hudhayl manumitted his partial share in a slave. The Prophet—peace and blessings be upon him and his family—said: "He is wholly free, for Allah has no partner." Since a child constitutes part of the father and part of the mother, and the authentic narration from the Prophet—peace and blessings be upon him and his family—states: "Whoever acquires ownership of a mahram relative, they become free," it became incumbent upon the father to emancipate him, so that no one may own him. This obligation entails that a portion of the enslaved person is free, and if a portion is free, all becomes free. As the Prophet—peace and blessings be upon him and his family—did not divorce Ibrahim's mother (may Allah be pleased with her) and continued to lawfully have conjugal relations with her after childbirth, it is established that she remained permissible for intimacy and disposition. Allah the Exalted says: _"There has certainly been for you in the Messenger of Allah an excellent model"_ (33:21).[16]

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَيْمَنَ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبُو سَعِيدٍ مَوْلَى بَنِي هَاشِمٍ - هُوَ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ عُبَيْدٍ - نا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ أَبِي الْمَلِيحِ عَنْ أَبِيهِ - هُوَ أَبُو أُسَامَةَ بْنُ عُمَيْرٍ - قَالَ: أَعْتَقَ رَجُلٌ مِنْ هُذَيْلٍ شِقْصًا لَهُ مِنْ مَمْلُوكٍ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «هُوَ حُرٌّ كُلُّهُ لَيْسَ لِلَّهِ شَرِيكٌ» . وَلَمَّا كَانَ الْوَلَدُ بَعْضَ أَبِيهِ وَبَعْضَ أُمِّهِ، وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ فَهُوَ حُرٌّ» فَوَجَبَ أَنْ يُعْتَقَ عَلَى أَبِيهِ، وَأَنْ لَا يَمْلِكَهُ أَحَدٌ، فَلِمَا وَجَبَ ذَلِكَ وَجَبَ أَنَّ بَعْضَهَا حُرٌّ، وَإِذْ بَعْضُهَا حُرٌّ فَكُلُّهَا حُرٌّ. وَلَمَّا لَمْ يَبِنْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أُمَّ إبْرَاهِيمَ - رَضِيَ اللَّهُ عَنْهَا - عَنْ نَفْسِهِ وَلَمْ يَزَلْ يَسْتَبِيحُهَا بَعْدَ الْوِلَادَةِ صَحَّ أَنَّهَا بَاقِيَةٌ عَلَى إبَاحَةِ الْوَطْءِ وَالتَّصَرُّفِ، قَالَ اللَّهُ تَعَالَى {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] .

L27152–27153 It has been established that the emancipation mentioned concerning the umm al-walad (mother of the child) prevents only her removal from ownership. This is a self-evident and decisive proof—and to Allah, exalted be He, belongs all praise—though it does not justify the Hanafis' reliance on it, for among their corrupt principles is that if a narrator transmits a report and then contradicts it, this indicates the invalidity of that report. Ibn Abbas—the narrator of the report concerning Umm Ibrahim (peace be upon her)—held the permissibility of selling ummahat al-awlad (mothers of children). Thus, he contradicted what he narrated. According to their corrupt principles, this serves as evidence for prohibiting their sale, since Ali, Ibn al-Zubayr, Ibn Abbas, and Ibn Mas'ud after Umar permitted their sale. All their deceptive arguments here are newly invented fabrications.

وَصَحَّ أَنَّ الْعِتْقَ الْمَذْكُورَ فِي أُمِّ الْوَلَدِ لَا يَمْنَعُ إلَّا مِنْ إخْرَاجِهَا عَنْ الْمِلْكِ فَقَطْ، وَهَذَا بُرْهَانٌ ضَرُورِيٌّ قَاطِعٌ - وَلِلَّهِ تَعَالَى الْحَمْدُ - إلَّا أَنَّهُ لَا يُسَوِّغُ لِلْحَنَفِيِّينَ الِاحْتِجَاجَ بِهِ؛ لِأَنَّ مِنْ أُصُولِهِمْ الْفَاسِدَةِ: أَنَّ مَنْ رَوَى خَبَرًا ثُمَّ خَالَفَهُ فَهُوَ دَلِيلٌ عَلَى سُقُوطِ ذَلِكَ الْخَبَرِ - وَابْنُ عَبَّاسٍ هُوَ رَاوِي خَبَرِ أُمِّ إبْرَاهِيمَ - عَلَيْهَا السَّلَامُ - وَهُوَ يَرَى بَيْعَ أُمَّهَاتِ الْأَوْلَادِ. فَقَدْ تَرَكَ مَا رَوَى، وَمَا يَثْبُتُ عَلَى أُصُولِهِمْ الْفَاسِدَةِ دَلِيلٌ عَلَى الْمَنْعِ مِنْ بَيْعِهِنَّ؛ لِأَنَّ عَلِيًّا، وَابْنَ الزُّبَيْرِ، وَابْنَ عَبَّاسٍ، وَابْنَ مَسْعُودٍ بَعْدَ عُمَرَ: أَبَاحُوا بَيْعَهُنَّ، وَكُلُّ مَا مَوَّهُوا بِهِ هَاهُنَا فَكَذِبٌ ابْتَدَعُوهُ. وَأَمَّا قَوْلُنَا: إنَّهَا يَحْرُمُ إخْرَاجُهَا عَنْ مِلْكِهِ إلَى مِلْكِ غَيْرِهِ، مِمَّا يُدْرَى أَنَّهُ وَلَدٌ، فَإِنَّ النَّصَّ مِنْ الْقُرْآنِ وَالسُّنَّةِ وَرَدَ بِأَنَّهُ أَوَّلُ مَا يَكُونُ نُطْفَةً، ثُمَّ عَلَقَةً،

[16] **Qur'an references (L27151):** Qur'an 33:21 (Al-Ahzab).

As for our statement that it is prohibited to transfer her from his ownership to another's when a child is confirmed, the textual evidence from the Quran and Sunnah indicates that the child first exists as a nutfah (sperm-drop), then an ʻalaqah (clinging clot), then a mudghah (lump of flesh), then bones clothed with flesh, after which the soul is breathed into it. The term "nutfah" applies to semen; thus, the nutfah is not a child. There is no distinction between the nutfah entering the womb and exiting immediately afterward, or exiting similarly within forty days—as long as it remains a nutfah. Once it transitions from being a nutfah to an ʻalaqah, it becomes a formed child. Allah, exalted be He, said: "From a mudghah, formed and unformed" (*al-Ḥajj* 22:5). The "unformed" refers to what has not yet transitioned from being a nutfah, from which no child has yet been created. The "formed" refers to what has advanced beyond the term "nutfah" and its defining characteristics, having been fashioned by Allah, mighty and majestic, into an ʻalaqah as stated in the Quran. At that stage, it is a formed child. Thus, whether miscarried or retained, it constitutes a child—and this is a clear scriptural ruling. By Allah's help alone is success attained.[17]

ثُمَّ مُضْغَةً، ثُمَّ عِظَامًا مَكْسُوَّةً لَحْمًا، ثُمَّ يُنفَخُ فِيهِ الرُّوحُ. وَالنُّطْفَةُ: اسْمٌ يَقَعُ عَلَى الْمَاءِ، فَالنُّطْفَةُ لَيْسَتْ وَلَدًا، وَلَا فَرْقَ بَيْنَ وُقُوعِ النُّطْفَةِ فِي الرَّحِمِ وَخُرُوجِهَا إثْرَ ذَلِكَ، وَبَيْنَ خُرُوجِهَا كَذَلِكَ إلَى أَرْبَعِينَ يَوْمًا - مَا دَامَتْ نُطْفَةً - فَإِذَا خَرَجَتْ عَنْ أَنْ تَكُونَ نُطْفَةً إلَى أَنْ تَكُونَ عَلَقَةً، فَهِيَ حِينَئِذٍ وَلَدٌ مُخَلَّقٌ. وَقَالَ تَعَالَى {مِنْ مُضْغَةٍ مُخَلَّقَةٍ وَغَيْرِ مُخَلَّقَةٍ} [الحج: ٥] فَغَيْرُ " الْمُخَلَّقَةِ " هِيَ الَّتِي لَمْ تَنْتَقِلْ عَنْ أَنْ تَكُونَ نُطْفَةً، وَلَا خُلِقَ مِنْهَا وَلَدٌ بَعْدُ، " وَالْمُخَلَّقَةُ " هِيَ الْمُنْتَقِلَةُ عَنْ اسْمِ " النُّطْفَةِ " وَحَدِّهَا وَصِفَتِهَا إلَى أَنْ خَلَقَهَا عَزَّ وَجَلَّ " عَلَقَةً " كَمَا فِي الْقُرْآنِ، فَهِيَ حِينَئِذٍ وَلَدٌ مُخَلَّقٌ، فَهِيَ بِسُقُوطِهِ أَوْ بِبَقَائِهِ: أَوْ وَلَدٌ - وَهَذَا نَصٌّ بَيِّنٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27154–27156 As for the husband appropriating her property—whether the husband is healthy or ill—this is based on Allah's decree: "Those who guard their private parts" [23:5], "except from their spouses or those their right hands possess, for they are free from blame" [23:6], "But whoever seeks beyond that, they are the transgressors" [23:7]. The umm al-walad (a slave who bears her master's child) is indisputably not a wife. Thus, she necessarily falls under the category of those their right hands possess, so we may lawfully take what our right hands possess. If it is asked: How can a freed woman remain among those our right hands possess? We reply: As Allah the Exalted and His Messenger—peace and blessings be upon him—have explicitly legislated, not as debased minds and those who legislate through their false opinions desire. We have no knowledge except what our Lord, Mighty and Majestic, has taught us. You claim that a mukatab (a slave contracted for emancipation) is neither a slave who may be sold or employed, nor may the female mukatab be lawfully approached sexually, and that he remains a slave in... [text incomplete]. All its

وَأَمَّا انْتِزَاعُهُ مَالَهَا - صَحِيحًا كَانَ أَوْ مَرِيضًا - فَلِقَوْلِ اللَّهِ تَعَالَى {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] {فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧] وَأُمُّ الْوَلَدِ لَيْسَتْ زَوْجَةً بِلَا خِلَافٍ، فَهِيَ ضَرُورَةً مِمَّا مَلَكَتْ أَيْمَانُنَا، فَلَنَا أَخْذُ مَا مَلَكَتْ أَيْمَانُنَا. فَإِنْ قِيلَ: كَيْفَ تَكُونُ مُعْتَقَةٌ حُرَّةٌ مِمَّا مَلَكَتْ أَيْمَانُنَا؟ قُلْنَا: كَمَا نَصَّ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَى ذَلِكَ، لَا كَمَا اشْتَهَتْ الْعُقُولُ الْفَاسِدَةُ، وَالشَّارِعَةُ بِآرَائِهَا الزَّائِفَةِ، وَلَا عِلْمَ لَنَا إلَّا مَا عَلَّمَنَا رَبُّنَا عَزَّ وَجَلَّ، وَقَدْ قُلْتُمْ: إنَّ الْمُكَاتَبَ لَا عَبْدٌ فَيُبَاعُ وَيُسْتَخْدَمُ، وَلَا تُوطَأُ الْمُكَاتَبَةُ، وَعَبْدٌ فِي جَمِيعِ أَحْكَامِهِ، وَلَا حُرَّةٌ فَتُطْلَقُ، وَحُرَّةٌ فِي الْمَنْعِ مِنْ بَيْعِهَا وَوَطْئِهَا، فَأَيُّ فَرْقٍ بَيْنَ مَا قُلْتُمُوهُ بِآرَائِكُمْ فَجَوَّزْتُمُوهُ، فَلَمَّا وَجَدْتُمُوهُ

[17] **Qur'an references (L27153):** Qur'an 22:5 (Al-Hajj).

rulings: no free woman is to be divorced, nor is she to be prevented—for she is free to prevent her sale or coerced intercourse. What difference is there between what you have asserted by your own opinions—thus deeming it permissible—and when you found it [ordained] by Allah the Exalted and His Messenger (peace be upon him), only to reject it? Is this not the destructive obsession that brings ruin in this world and the Hereafter?[18]

L27157 As for her child by someone other than her master, it is as we stated regarding the initial stage of its existence - part of her. Thus, its ruling aligns with her ruling. It is established by our prior explanation that her sale becomes prohibited only if she was under the ownership of one legally barred from owning her child at the onset of her pregnancy. Similarly, if she conceived while his wife who is owned by another, then came under his ownership before the child became alive, she becomes an umm walad (mother of a child) by our earlier reasoning. However, if he only acquired her after the child became separate from her, with no part of her ever attaining freedom, she remains without entitlement to emancipation and may be sold. Should he sell her while the embryo in her womb remains at the nutfah (fertilized ovum) stage, the sale holds valid if it exits her womb still as nutfah, since this constitutes unformed matter. But if it develops into a mudghah (chewed clot) formed in Allah's knowledge, the sale becomes invalid and nullified, for he sold her while part of her was a formed mudghah - deemed a child from conception until birth, thus establishing her as umm walad. Success comes solely from Allah, the Exalted.

L27158 **The jurisprudential issue regarding the manumission of the fetus before the blowing of the soul into it.**

L27159 1685 - Issue: If a free man marries another's slave woman, then dies while she is pregnant, and she is subsequently emancipated - thereby freeing the fetus before ensoulment - the child does not inherit from his father. This is because the child only became entitled to freedom after the father's death,

[18] **Qur'an references (L27154):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun); Qur'an 70:31 (Al-Ma'arij).

لِلَّهِ تَعَالَى وَلِرَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنْكَرْتُمُوهُ، أَلَا هَذَا هُوَ الْهَوَسُ الْمُهْلِكُ فِي الْعَاجِلَةِ وَالْآجِلَةِ؟

وَأَمَّا وَلَدُهَا مِنْ غَيْرِ سَيِّدِهَا فَهُوَ كَمَا قُلْنَا فِي أَوَّلِ أَمْرِهِ بَعْضُهَا، فَحُكْمُهُ كَحُكْمِهَا، وَصَحَّ بِمَا ذَكَرْنَا أَنَّهَا لَا يَحْرُمُ بَيْعُهَا إِلَّا بِأَنْ تَكُونَ فِي حِينِ أَوَّلِ حَمْلِهَا فِي مِلْكِ مَنْ لَا يَحِلُّ لَهُ تَمَلُّكُ وَلَدِهِ، وَكَذَلِكَ لَوْ حَمَلَتْ مِنْهُ وَهِيَ زَوْجَةٌ لَهُ مِلْكٌ لِغَيْرِهِ، ثُمَّ مَلَكَهَا قَبْلَ أَنْ يَصِيرَ الْوَلَدُ حَيًّا، فَإِنَّهَا أُمُّ وَلَدٍ لِمَا ذَكَرْنَاهُ، فَأَمَّا لَوْ لَمْ يَمْلِكْهَا إِلَّا مَنْ نُفِخَ الرُّوحُ فِيهِ، فَصَارَ غَيْرَهَا، فَلَمْ يَكُنْ بَعْضَهَا حُرًّا قَطُّ، فَلَا حُرِّيَّةَ لَهَا، وَلَهُ بَيْعُهَا، فَلَوْ بَاعَهَا وَالَّذِي فِي رَحِمِهَا نُطْفَةٌ بَعْدُ فَإِنَّهُ إِنْ خَرَجَتْ عَنْ رَحِمِهَا - وَهِيَ نُطْفَةٌ بَعْدُ - فَهُوَ بَيْعٌ صَحِيحٌ؛ لِأَنَّهَا نُطْفَةٌ غَيْرُ مُخَلَّقَةٍ، فَإِنْ صَارَتْ مُضْغَةً فَالْبَيْعُ فَاسِدٌ مَرْدُودٌ؛ لِأَنَّهُ بَاعَهَا وَبَعْضُهَا مُضْغَةٌ مُخَلَّقَةٌ فِي عِلْمِ اللَّهِ تَعَالَى مِنْهُ، فَهِيَ مِنْ أَوَّلِ وُقُوعِهَا إِلَى خُرُوجِهَا وَلَدٌ فَهِيَ أُمُّ وَلَدٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ عِتْقِ الْجَنِينِ قَبْلَ نَفْخِ الرُّوحِ فِيهِ]

١٦٨٥ - مَسْأَلَةٌ: فَلَوْ أَنَّ حُرًّا تَزَوَّجَ أَمَةً لِغَيْرِهِ ثُمَّ مَاتَ وَهِيَ حَامِلٌ ثُمَّ أُعْتِقَتْ فَعَتَقَ الْجَنِينُ قَبْلَ نَفْخِ الرُّوحِ فِيهِ لَمْ يَرِثْ أَبَاهُ؛ لِأَنَّهُ لَمْ يَسْتَحِقَّ الْعِتْقَ إِلَّا بَعْدَ مَوْتِ أَبِيهِ، وَكَانَ حِينَ مَوْتِ أَبِيهِ مَمْلُوكًا لَا يَرِثُ، فَلَوْ مَاتَ لَهُ بَعْدَ أَنْ عَتَقَ مَنْ يَرِثُهُ بِرَحِمٍ أَوْ وَلَاءٍ وَرِثَهُ إِنْ خَرَجَ حَيًّا؛ لِأَنَّهُ كَانَ حِينَ مَوْتِ الْمَوْرُوثِ حُرًّا.

having been a slave (owned property) at the time of the father's death and thus ineligible to inherit. However, if after emancipation the child (now free) has someone [the deceased] from whom he inherits through kinship or clientage, he inherits from him if born alive, since he was free at the precise moment of the deceased's death.

L27160 If a Christian man dies and leaves his wife pregnant, and she converts to Islam after his death—whether before the soul is breathed into the fetus or after—the child becomes Muslim by his mother's conversion. However, he does not inherit from his father, because he did not attain the legal status of Islam that enables inheritance (as inheritor or inherited) except after his father's death, given their differing religions. Thus, the child is born as a Muslim, adhering to a religion other than his father's and not under the legal status of the religion under which, had he persisted, he would have inherited from his father. Similarly, if a Christian man dies and leaves his wife pregnant after the soul has been breathed into the fetus, and another Christian man acquires ownership of her, enslaves her, and she gives birth while under his ownership, the child does not inherit from his father. This is because he is born into slavery—a state that precludes inheritance—for the fetus is only entitled to inheritance if it remains free and adheres to the religion of the deceased from whom it inherits, from the moment of the deceased's death until it is born alive.

L27161–27163 Similarly, if a man died leaving his umm walad (a slave woman who bore him a child) pregnant, and her entitlement was confirmed after his death, then the fetus was emancipated by virtue of her emancipation. For his lineage is established, but he does not inherit from his father, because his father died free while he was enslaved and did not meet the legal condition for inheritance (through freedom) at the time of his father's death. He only inherits through freedom after his father's death. If a decedent of his dies after he is freed, he inherits provided he was born alive due to what we previously mentioned. Success comes only from Allah, the Exalted.

فَلَوْ مَاتَ نَصْرَانِيٌّ وَتَرَكَ امْرَأَتَهُ حَامِلًا فَأَسْلَمَتْ بَعْدَهُ قَبْلَ نَفْخِ الرُّوحِ فِيهِ أَوْ بَعْدَ نَفْخِ الرُّوحِ فِيهِ: فَهُوَ مُسْلِمٌ بِإِسْلَامِ أُمِّهِ، وَلَا يَرِثُ أَبَاهُ؛ لِأَنَّهُ لَمْ يَصِرْ لَهُ حُكْمُ الْإِسْلَامِ الَّذِي يَرِثُ بِهِ وَيُورَثُ لَهُ أَوْ لَا يَرِثُ بِهِ وَلَا يُورَثُ بِهِ لِاخْتِلَافِ الدِّينَيْنِ إِلَّا بَعْدَ مَوْتِ أَبِيهِ، فَخَرَجَ إِلَى الدُّنْيَا مُسْلِمًا عَلَى غَيْرِ دِينِ أَبِيهِ، وَعَلَى غَيْرِ حُكْمِ الدِّينِ الَّذِي لَوْ تَمَادَى عَلَيْهِ لَوَرِثَ أَبَاهُ. وَكَذَلِكَ لَوْ أَنَّ نَصْرَانِيًّا مَاتَ وَتَرَكَ امْرَأَتَهُ حَامِلًا قَدْ نُفِخَ فِيهِ الرُّوحُ فَتَمَلَّكَهَا نَصْرَانِيٌّ آخَرُ فَاسْتَرَقَّهَا فَوَلَدَتْ فِي مِلْكِهِ لَمْ يَرِثْ أَبَاهُ، لِأَنَّهُ لَمْ يَخْرُجْ إِلَى الدُّنْيَا إِلَّا مَمْلُوكًا لَا يَرِثُ - وَإِنَّمَا يَسْتَحِقُّ الْجَنِينُ الْمِيرَاثَ بِبَقَائِهِ حُرًّا عَلَى دِينِ مَوْرُوثِهِ مِنْ حِينِ يَمُوتُ الْمَوْرُوثُ إِلَى أَنْ يُولَدَ حَيًّا.

وَكَذَلِكَ لَوْ أَنَّ امْرَأً تَرَكَ أُمَّ وَلَدِهِ حَامِلًا فَاسْتُحِقَّتْ بَعْدَهُ ثُمَّ أُعْتِقَ الْجَنِينُ بِعِتْقِهَا، فَإِنَّ نَسَبَهُ لَاحِقٌ، وَلَا يَرِثُ أَبَاهُ؛ لِأَنَّ أَبَاهُ مَاتَ حُرًّا وَهُوَ مَمْلُوكٌ وَلَمْ يَنْتَقِلْ إِلَى الْحَالِ الَّتِي يُورَثُ بِهَا وَيَرِثُ مِنَ الْحُرِّيَّةِ إِلَّا بَعْدَ مَوْتِ أَبِيهِ فَلَوْ مَاتَ لَهُ مَوْرُوثٌ بَعْدَ أَنْ عَتَقَ وَرِثَهُ إِنْ وُلِدَ حَيًّا لِمَا ذَكَرْنَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

AL-MUHALLA

كِتَابُ الْكِتَابَةِ

The Book of Manumission Contracts (Kitabah)

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْكِتَابَةِ] [مَسْأَلَةٌ مَنْ كَانَ لَهُ مَمْلُوكٌ مُسْلِمٌ أَوْ مُسْلِمَةٌ فَدَعَا أَوْ دَعَتْ إِلَى الْكِتَابَةِ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ وَسَلِّمْ تَسْلِيمًا

كِتَابُ الْكِتَابَةِ ١٦٨٦ - مَسْأَلَةٌ: مَنْ كَانَ لَهُ مَمْلُوكٌ مُسْلِمٌ أَوْ مُسْلِمَةٌ فَدَعَا أَوْ دَعَتْ إِلَى الْكِتَابَةِ فُرِضَ عَلَى السَّيِّدِ الْإِجَابَةُ إِلَى ذَلِكَ وَيُجْبِرُهُ السُّلْطَانُ عَلَى ذَلِكَ بِمَا يُدْرَى أَنَّ الْمَمْلُوكَ الْعَبْدَ أَوْ الْأَمَةَ يُطِيقُهُ مِمَّا لَا حَيْفَ فِيهِ عَلَى السَّيِّدِ، لَكِنْ مِمَّا يُكَاتَبُ عَلَيْهِ مِثْلُهُمَا - وَلَا يَجُوزُ كِتَابَةُ عَبْدٍ كَافِرٍ أَصْلًا. بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى {وَالَّذِينَ يَبْتَغُونَ الْكِتَابَ مِمَّا مَلَكَتْ أَيْمَانُكُمْ فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] . وَاخْتَلَفَ النَّاسُ فِي الْخَيْرِ. فَقَالَتْ طَائِفَةٌ: الْمَالُ، وَقَالَتْ طَائِفَةٌ: الدِّينُ. فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا مَوْضُوعَ كَلَامِ الْعَرَبِ الَّذِي بِهِ نَزَلَ الْقُرْآنُ قَالَ تَعَالَى: {بِلِسَانٍ عَرَبِيٍّ مُبِينٍ} [الشعراء: ١٩٥] أَنَّهُ تَعَالَى لَوْ أَرَادَ الْمَالَ لَقَالَ: إِنْ عَلِمْتُمْ لَهُمْ خَيْرًا، أَوْ عِنْدَهُمْ خَيْرًا، أَوْ مَعَهُمْ خَيْرًا، لِأَنَّ بِهَذِهِ الْحُرُوفِ يُضَافُ الْمَالُ إلَى مَنْ هُوَ لَهُ فِي لُغَةِ الْعَرَبِ، وَلَا يُقَالُ أَصْلًا فِي فُلَانٍ مَالٌ، فَلَمَّا قَالَ تَعَالَى: {إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا} [النور: ٣٣] عَلِمْنَا أَنَّهُ تَعَالَى لَمْ يَرِدْ " الْمَالَ "، فَصَحَّ أَنَّهُ " الدِّينُ " وَلَا خَيْرَ فِي دِينِ الْكَافِرِ - وَكُلُّ مُسْلِمٍ عَلَى أَدِيمِ الْأَرْضِ فَقَدْ عَلِمْنَا أَنَّ فِيهِ الْخَيْرَ بِقَوْلِهِ: لَا إلَهَ إلَّا اللَّهُ مُحَمَّدٌ رَسُولُ اللَّهِ، وَأَنْ لَا دِينَ إلَّا الْإِسْلَامُ، وَهَذَا أَعْظَمُ مَا يَكُونُ مِنْ الْخَيْرِ، وَكُلُّ خَيْرٍ بَعْدَ هَذَا فَتَابِعٌ لِهَذَا - وَهَذَا قَوْلٌ رُوِيَ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ -: أَنَّهُ سَأَلَهُ عَبْدٌ مُسْلِمٌ أَكَاتِبُ وَلَيْسَ لِي مَالٌ؟ فَقَالَ لَهُ عَلِيٌّ: نَعَمْ، فَصَحَّ أَنَّ الْخَيْرَ عِنْدَهُ لَمْ يَكُنْ " الْمَالَ ".

L27164–27165 **[Book of Manumission] [Issue: If someone owns a Muslim male slave or a Muslim female slave, and the slave, whether male or female, requests manumission]**

L27166 In the name of Allah, the Most Gracious, the Most Merciful. And may Allah bless Muhammad and his family, and grant him peace in great abundance.

L27167 The Book of Kitābah 1686 - Issue: If one owns a Muslim male or female slave who requests a kitābah, it becomes obligatory upon the master to respond. The ruler compels the master through terms verified to be within the slave's capacity—whether male or female—from what is customarily stipulated for their counterparts, without undue hardship on the master. However, it is fundamentally impermissible to grant kitābah to a non-Muslim slave.

The proof is Allah's statement: *"As for those seeking kitābah from those your right hands possess, grant it to them if you discern good in them, and give them from Allah's wealth which He has bestowed upon you"* (24:33). People differed regarding the meaning of "good." Some groups said it refers to wealth, while others said it refers to religion.

Examining this, we found that according to the linguistic norms of the Arabs—the tongue in which the Qur'an was revealed, as Allah says: *"In a clear Arabic language"* (26:195)—had He intended "wealth," He would have said: *"If you recognize good for them,"* *"with them,"* or *"in their possession."* For in Arabic, these prepositions denote wealth's attribution. It is never said that wealth is "in" someone. Thus, when Allah says: *"If you discern good in them,"* we knew He did not mean "wealth." Therefore, the correct meaning is "religion," and there is no good in the religion of a disbeliever.

Every Muslim upon the earth is known to possess this good through the declaration: *"There is no deity but Allah, Muhammad is the Messenger of Allah,"* and that there is no religion except Islam. This constitutes the greatest good, and all other goods are subordinate to it.

This view is narrated from ʿAlī—may Allah be pleased with him—when a Muslim slave asked him: *"May I seek kitābah though I have no wealth?"* ʿAlī replied: *"Yes."* This confirms that "good" in his view was not "wealth."[1]

L27168–27169 And through the chain of ʿAbd al-Razzāq from Hishām ibn Ḥassān from Muḥammad ibn Sīrīn from ʿUbaydah al-Salmānī regarding the statement of Allah the Exalted: {"So write a contract of manumission with them if you know any good in them"} [24:33], he said: "If they establish prayer." And through the chain of Sufyān—he is al-Thawrī—from Yūnus from al-Ḥasan, he said: {"If you know any good in them"} [24:33], he said: "Religion and trustworthiness." And through the chain of Ḥammād ibn Salamah from Yūnus from al-Ḥasan concerning this verse, he said: "Islam and fulfillment." It is reported from Ibn ʿAbbās that it refers to wealth—and this is the opinion of ʿAṭāʾ, Ṭāwus, Mujāhid, and Abū Razīn.[2]

L27170 And a group said both matters—this being the opinion of Saʿīd ibn Abī al-Ḥasan, the brother of al-Ḥasan al-Baṣrī, and the opinion of al-Shāfiʿī—except that he contradicted himself in his legal rulings.

L27171 As for the Ḥanafīs and Mālikīs: God's stipulated condition here was nullified, devoid of meaning. Glory be to Him Who caused His condition to be disregarded in their framework while their own corrupt conditions became binding. This is because they permit the manumission contract of a disbeliever who has no wealth - undoubtedly outside the verse, as it contains no good whatsoever, and outside the statements of all predecessors. This is among matters where they diverged from those Companions from whom opinions have been preserved - may Allah be pleased with them. Among the curiosities of the world is the argument of some who said: "We analogized one devoid of good to one possessing good." ʿAlī remarked: "Has any analogy more foolish than this ever been heard? They only applied analogy to what resembles the original case, not to what bears no resemblance. Why didn't they analogize those with financial capability in the marriage of slave women to those lacking such capability?"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبِيدَةَ السَّلْمَانِيِّ فِي قَوْلِ اللَّهِ تَعَالَى: {فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا} [النور: ٣٣] قَالَ: إِنْ أَقَامُوا الصَّلَاةَ. وَمِنْ طَرِيقِ سُفْيَانَ - هُوَ الثَّوْرِيُّ - عَنْ يُونُسَ عَنْ الْحَسَنِ قَالَ: {إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا} [النور: ٣٣] قَالَ: دِينٌ وَأَمَانَةٌ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يُونُسَ عَنْ الْحَسَنِ فِي هَذِهِ الْآيَةِ قَالَ: الْإِسْلَامُ وَالْوَفَاءُ - وَجَاءَ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ الْمَالُ - وَهُوَ قَوْلُ عَطَاءٍ، وَطَاوُسٍ، وَمُجَاهِدٍ، وَأَبِي رَزِينٍ.

وَقَالَتْ طَائِفَةٌ: كِلَا الْأَمْرَيْنِ - وَهُوَ قَوْلُ سَعِيدِ بْنِ أَبِي الْحَسَنِ أَخِي الْحَسَنِ الْبَصْرِيِّ - وَهُوَ قَوْلُ الشَّافِعِيِّ، إلَّا أَنَّهُ نَاقَضَ فِي مَسَائِلِهِ.

وَأَمَّا الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ: فَكَانَ شَرْطُ اللَّهِ هَاهُنَا مُلْغًى، لَا مَعْنَى لَهُ، فَسُبْحَانَ مَنْ جَعَلَ شَرْطَهُ عِنْدَهُمْ ضَائِعًا، وَشُرُوطَهُمْ الْفَاسِدَةَ عِنْدَهُمْ لَازِمَةً، وَذَلِكَ أَنَّهُمْ يُبِيحُونَ كِتَابَةَ الْكَافِرِ الَّذِي لَا مَالَ لَهُ، وَهُوَ بِلَا شَكٍّ خَارِجٌ عَنْ الْآيَةِ، لِأَنَّهُ لَا خَيْرَ فِيهِ أَصْلًا، وَخَارِجٌ عَنْ قَوْلِ كُلِّ مَنْ سَلَفَ، وَهَذَا مِمَّا فَارَقُوا فِيهِ مَنْ حُفِظَ عَنْهُ قَوْلٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -. وَمِنْ طَرَائِفِ الدُّنْيَا: احْتِجَاجُ بَعْضِهِمْ بِأَنْ قَالَ: قِسْنَا مَنْ لَا خَيْرَ فِيهِ عَلَى مَنْ فِيهِ خَيْرٌ. قَالَ عَلِيٌّ: فَهَلْ سُمِعَ بِأَسْخَفَ مِنْ هَذَا الْقِيَاسِ؟ وَإِنَّمَا قَالُوا بِالْقِيَاسِ فِيمَا يُشْبِهُ الْمَقِيسَ عَلَيْهِ لَا فِيمَا لَا يُشْبِهُ. وَهَلَّا قَاسُوا مَنْ يَسْتَطِيعُ " الطَّوْلَ " فِي نِكَاحِ الْأَمَةِ عَلَى مَنْ لَا يَسْتَطِيعُهُ؟

[1] **Qur'an references (L27167):** Qur'an 24:33 (An-Nur); Qur'an 26:195 (Ash-Shu'ara).
[2] **Qur'an references (L27169):** Qur'an 24:33 (An-Nur).

وَهَلَّا قَاسُوا بِهِ غَيْرَ السَّائِمَةِ فِي الزَّكَاةِ عَلَى السَّائِمَةِ؟ وَهَلَّا قَاسُوا غَيْرَ السَّارِقِ عَلَى السَّارِقِ، وَغَيْرَ الْقَاتِلِ عَلَى الْقَاتِلِ؟ وَهَذِهِ حَمَاقَةٌ لَا نَظِيرَ لَهَا. وَقَالَ بَعْضُهُمْ: لَمْ يَذْكُرْ فِي الْآيَةِ إِلَّا مَنْ فِيهِ خَيْرٌ، وَبَقِيَ حُكْمُ مَنْ لَا خَيْرَ فِيهِ، فَأَجَزْنَا كِتَابَتَهُ بِالْأَخْبَارِ الَّتِي فِيهَا ذِكْرُ الْكِتَابَةِ جُمْلَةً؟ فَقُلْنَا لَهُمْ: فَأَبِيحُوا بِمِثْلِ هَذَا الدَّلِيلِ أَكْلَ كُلِّ مُخْتَلَفٍ فِيهِ لِقَوْلِهِ تَعَالَى: {كُلُوا وَاشْرَبُوا} [البقرة: ٦٠] وَهَذَا بَاطِلٌ بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» . وَيَلْزَمُكُمْ أَنْ تُجِيزُوا كِتَابَةَ الْمَجْنُونِ، وَالصَّغِيرِ: بِعُمُومِ تِلْكَ الْأَحَادِيثِ. وَأَيْضًا: فَإِنَّهُ لَا يَكُونُ مُكَاتَبًا إِلَّا مَنْ أَبَاحَ اللَّهُ تَعَالَى مُكَاتَبَتَهُ أَوْ أَمَرَ بِهَا. وَأَيْضًا: فَلَمْ يَأْتِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَثَرٌ قَطُّ فِي الْمُكَاتَبِ إِلَّا وَفِيهِ بَيَانٌ أَنَّهُ مُسْلِمٌ - وَأَمْرُ اللَّهِ تَعَالَى بِالْمُكَاتَبَةِ وَبِكُلِّ مَا أَمَرَ بِهِ فَرْضٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يَقُولَ لَهُ اللَّهُ تَعَالَى: افْعَلْ أَمْرًا كَذَا، فَيَقُولُ هُوَ: لَا أَفْعَلُ إِلَّا أَنْ يَقُولَ لَهُ تَعَالَى: إِنْ شِئْتَ فَافْعَلْ وَإِلَّا فَلَا.

L27172–27173 Why did they not analogize non-grazing livestock to grazing livestock concerning zakah? Why did they not extend the ruling for thieves to those who are not thieves, and for killers to those who are not killers? This is unmatched stupidity. Some said: "The verse mentions only those possessing good, leaving the ruling for those devoid of good. Thus, we justified contractual emancipation through narrations that mention emancipation collectively." We replied: "Then by this logic, permit consuming every disputed matter based on His saying: {Eat and drink} [Al-Baqarah: 60]." This is invalidated by the Prophet's (peace be upon him) statement: "Every condition not in Allah's Book is void." You would have to permit contractual emancipation for the insane and minors by the general scope of those narrations. Moreover, none becomes a *mukatab* except those whom Allah has permitted to be contracted or commanded it. Furthermore, no narration from the Prophet (peace be upon him) regarding the *mukatab* exists except with clarification that he is Muslim. Allah's command to enact *mukataba*—like every command of His—is a binding obligation. It is impermissible for anyone, when Allah commands an act, to respond: "I will not do it," unless He says: "Do it if you wish, otherwise not."[3][4]

وَرُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا غُنْدَرٌ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ أَنَسِ بْنِ مَالِكٍ: أَنَّ سِيرِينَ سَأَلَهُ الْمُكَاتَبَةَ؟ فَأَبَى عَلَيْهِ، فَقَالَ لَهُ عُمَرُ بْنُ الْخَطَّابِ: وَاَللَّهِ لَتُكَاتِبَنَّهُ، وَتَنَاوَلَهُ بِالدِّرَّةِ، فَكَاتَبَهُ. وَبِهِ إِلَى عَلِيِّ بْنِ عَبْدِ اللَّهِ نا رَوْحُ بْنُ عُبَادَةَ نا ابْنُ جُرَيْجٍ قُلْت لِعَطَاءٍ: أَوَاجِبٌ عَلَيَّ إِذَا عَلِمْت لَهُ مَالًا أَنْ أُكَاتِبَهُ؟ قَالَ: مَا أَرَاهُ إِلَّا وَاجِبًا، قَالَ ابْنُ جُرَيْجٍ: وَقَالَ لِي أَيْضًا عَمْرُو بْنُ دِينَارٍ: قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عَطَاءٌ: أَنَّ مُوسَى بْنَ أَنَسِ بْنِ مَالِكٍ أَخْبَرَهُ أَنَّ سِيرِينَ أَبَا مُحَمَّدِ بْنِ سِيرِينَ سَأَلَ أَنَسَ بْنَ مَالِكٍ الْكِتَابَةَ؟ وَكَانَ كَثِيرَ الْمَالِ فَأَبَى، فَانْطَلَقَ إِلَى عُمَرَ بْنِ الْخَطَّابِ فَاسْتَأْذَنَهُ فَقَالَ عُمَرُ لِأَنَسٍ: كَاتِبْهُ؟ فَأَبَى، فَضَرَبَهُ عُمَرُ بِالدِّرَّةِ وَقَالَ: كَاتِبْهُ، وَيَتْلُو {فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ

L27174–27176 It was narrated to us through the chain of Ismāʿīl ibn Isḥāq, from ʿAlī ibn ʿAbd Allāh, from Ghundar, from Saʿīd ibn Abī ʿArūbah, from Qatādah, from Anas ibn Mālik: that Sirin requested him for a contract for self-ransom, but he refused. ʿUmar ibn al-Khaṭṭāb said to him: "By Allah, you must enter into the contract with him," and he struck him with the whip. Thus, Anas contracted with him.

Via the same chain through ʿAlī ibn ʿAbd Allāh, from Rawḥ ibn ʿUbādah, from Ibn Jurayj: I asked ʿAṭāʾ: "Is it obligatory upon me—if I know the enslaved person possesses wealth—to contract with them?" He replied: "I deem it compulsory." Ibn Jurayj said: ʿAmr ibn Dīnār also told me: Ibn Jurayj said: ʿAṭāʾ informed me that Mūsā ibn Anas ibn Mālik reported to him: that Sirin, father of Muḥammad ibn Sirin, requested Anas ibn Mālik

[3] **Hadith references (L27173):** Sunan Ibn Majah 2521.
[4] **Qur'an references (L27173):** Qur'an 2:60 (Al-Baqarah).

for the contract. Though Sirin had abundant wealth, Anas refused. Sirin then went to ʿUmar ibn al-Khaṭṭāb and sought his intervention. ʿUmar said to Anas: "Contract with him!" but he refused. ʿUmar struck him with the whip and said: "Contract with him!" while reciting: {"Then contract with them if you know of good in them"} [24:33]. Thus, Anas entered into the contract.

Via the same chain through Ibn al-Madīnī, from Saʿīd ibn ʿĀmir, from Juwayriyyah ibn Asmāʾ, from Muslim ibn Abī Maryam, from a slave owned by ʿUthmān ibn ʿAffān: he mentioned a ḥadīth in which he sought help from al-Zubayr, and they entered together to [...] He stood before Uthman and said: "O Commander of the Faithful, has so-and-so entered into a kitabah contract with him?" Uthman frowned and said: "Yes. Were it not that it is in the Book of Allah the Exalted, I would not have done that."[5]

L27177 He mentioned the report narrated from Masruq and al-Dahhak. Ishaq ibn Rahawayh said: "The master's granting of the mukataba is obligatory if the enslaved person requests it, and I fear the master would be sinning if he refuses to do so, nor does the judge compel the master to do so." Abu Sulayman and our companions affirm the obligation of this ruling and the judge's authority to enforce it. This is supported by Umar and Uthman's view of its obligation. Umar enforced it and imposed penalties on those who refused. Al-Zubair was present when Uthman interpreted the Quranic verse as denoting obligation, and no criticism was directed at this. When Anas ibn Malik was reminded of the verse, he hastened to resume granting the mukataba and abandoned his refusal. This confirms that no dissent is recorded among the Companions (may Allah be pleased with them) on this matter. The Hanafis, Malikis, and Shafi'is opposed this position, claiming it is not obligatory. They attempted to obscure the issue with flawed arguments, such as citing Quranic verses indicating permissibility rather than obligation, like {When you have completed your rites, then hunt} [5:2] and {When the prayer is concluded, disperse freely in the land} [62:10].[6]

L27178 This provides no valid proof for them, for had there not been other explicit

فِيهِمْ خَيْرًا} [النور: ٣٣] فَكَاتَبَهُ أَنَسٌ. وَبِهِ إِلَى ابْنِ الْمَدِينِيِّ نا سَعِيدُ بْنُ عَامِرٍ نا جُوَيْرِيَةُ بْنُ أَسْمَاءَ عَنْ مُسْلِمِ بْنِ أَبِي مَرْيَمَ عَنْ عَبْدٍ كَانَ لِعُثْمَانَ بْنِ عَفَّانَ فَذَكَرَ حَدِيثًا وَفِيهِ: أَنَّهُ اسْتَعَانَ بِالزُّبَيْرِ فَدَخَلَ مَعَهُ عَلَى عُثْمَانَ، فَقَامَ بَيْنَ يَدَيْهِ قَائِمًا وَقَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ فُلَانٌ كَاتَبَهُ؟ فَقَطَّبَ ثُمَّ قَالَ: نَعَمْ. وَلَوْلَا أَنَّهُ فِي كِتَابِ اللَّهِ تَعَالَى مَا فَعَلْت ذَلِكَ

وَذَكَرَ الْخَبَرَ وَرُوِيَ عَنْ مَسْرُوقٍ وَالضَّحَّاكِ، وَقَالَ إِسْحَاقُ بْنُ رَاهْوَيْهِ: مُكَاتَبَتُهُ وَاجِبَةٌ إِذَا طَلَبَهَا، وَأَخْشَى أَنْ يَأْثَمَ إِنْ لَمْ يَفْعَلْ ذَلِكَ، وَلَا يُجْبِرُهُ الْحَاكِمُ عَلَى ذَلِكَ - وَبِإِيجَابِ ذَلِكَ، وَجَبْرِ الْحَاكِمِ عَلَيْهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا. فَهَذَا عُمَرُ، وَعُثْمَانُ يَرَيَانِهَا وَاجِبَةً، وَيُجْبِرُ عُمَرُ عَلَيْهَا وَيَضْرِبُ فِي الِامْتِنَاعِ مِنْ ذَلِكَ، وَالزُّبَيْرُ يَسْمَعُ حَمَلَ عُثْمَانُ الْآيَةَ عَلَى الْوُجُوبِ فَلَا يُنْكِرُ عَلَى ذَلِكَ، وَأَنَسُ بْنُ مَالِكٍ لَمَّا ذُكِّرَ بِالْآيَةِ سَارَعَ إِلَى الرُّجُوعِ إِلَى الْمُكَاتَبَةِ وَتَرَكَ امْتِنَاعَهُ. فَصَحَّ أَنَّهُ لَا يُعْرَفُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -. وَخَالَفَ ذَلِكَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، فَقَالُوا لَيْسَتْ وَاجِبَةً، وَمَوَّهُوا فِي ذَلِكَ بِتَشْغِيبَاتٍ، مِنْهَا: أَنَّهُمْ ذَكَرُوا آيَاتٍ مِنْ الْقُرْآنِ عَلَى النَّدْبِ مِثْلَ {وَإِذَا حَلَلْتُمْ فَاصْطَادُوا} [المائدة: ٢] ، {فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ} [الجمعة: ١٠] .

[5] **Qur'an references (L27174):** Qur'an 24:33 (An-Nur).

texts, these two matters would have been obligatory (fard). However, since the Messenger of Allah—peace be upon him—exited the ritual state (ihram) of his Hajj and Umrah without hunting, the command regarding that became recommended. When the Messenger of Allah—peace be upon him—urged remaining in the prayer area and encouraged it, dispersal became recommended. If they possess a text clarifying that the command to enforce the *kitabah* contract (for self-manumission) is a recommendation, would we not adopt their position? Otherwise, those who misplace the Quran's words have lied. The existence of a specific or abrogated command does not necessitate that every Quranic command is abrogated or specific. They argued: Since there is no disagreement that the owner may sell his slave if the slave requests the *kitabah* contract, we know the command for it is a recommendation. Abu Muhammad said: This is a weak distortion. Indeed, he may sell his slave—even after contracting the *kitabah* with him—as long as the slave has not fulfilled the terms, and he may sell the equivalent unpaid portion until emancipation is achieved through fulfillment. Yet they assert that if one vows to free his slave upon his father's arrival, he may sell the slave before his father arrives—thereby nullifying his vow, which he was religiously obligated to fulfill if he had not sold him. They also said: We find no basis in the foundational legal principles (*usul*) compelling anyone to enter a contract regarding property they own.

وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَوْلَا نُصُوصٌ أُخَرُ جَاءَتْ لَكَانَ هَذَانِ الْأَمْرَانِ فَرْضًا، لَكِنْ لَمَّا حَلَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ حَجِّهِ وَعُمْرَتِهِ وَلَمْ يَصْطَدْ صَارَ الْأَمْرُ بِذَلِكَ نَدْبًا - وَلَمَّا حَضَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْقُعُودِ فِي مَوْضِعِ الصَّلَاةِ وَرَغَّبَ فِي ذَلِكَ كَانَ الِانْتِشَارُ نَدْبًا. فَإِنْ كَانَ عِنْدَهُمْ نَصٌّ يُبَيِّنُ أَنَّ الْأَمْرَ بِالْكِتَابَةِ نَدْبٌ صِرْنَا إلَيْهِمْ؟ وَإِلَّا فَقَدْ كَذَبَ مُحَرِّفُ الْقُرْآنِ عَنْ مَوْضِعِ كَلِمَاتِهِ، وَلَيْسَ إذَا وُجِدَ أَمْرٌ مَخْصُوصٌ أَوْ مَنْسُوخٌ وَجَبَ أَنْ يَكُونَ كُلُّ أَمْرٍ فِي الْقُرْآنِ مَنْسُوخًا أَوْ مَخْصُوصًا. وَقَالُوا: لَمَّا لَمْ يَخْتَلِفُوا فِي أَنَّ لَهُ بَيْعَهُ إذَا طَلَبَ مِنْهُ الْكِتَابَةَ عَلِمْنَا أَنَّ الْأَمْرَ بِهَا نَدْبٌ. قَالَ أَبُو مُحَمَّد: وَهَذَا تَمْوِيهٌ بَارِدٌ، نَعَمْ، وَلَهُ بَيْعُهُ، وَإِنْ كَاتَبَهُ مَا لَمْ يُؤَدِّ، وَلَهُ بَيْعُ مَا قَابَلَ مِنْهُ مَا لَمْ يُؤَدِّ حَتَّى يَتِمَّ عِتْقُهُ بِالْأَدَاءِ. وَهُمْ يَقُولُونَ فِيمَنْ نَذَرَ عِتْقَ عَبْدِهِ إنْ قَدِمَ أَبُوهُ: أَنَّ لَهُ بَيْعَهُ مَا لَمْ يَقْدَمْ أَبُوهُ - وَفِي ذَلِكَ بُطْلَانُ نَذْرِهِ الْمُفْتَرَضِ عَلَيْهِ الْوَفَاءُ بِهِ لَوْ لَمْ أَبِعْهُ. وَقَالُوا: لَمْ نَجِدْ فِي الْأُصُولِ أَنْ يُجْبَرَ أَحَدٌ عَلَى عَقْدٍ فِيمَا يَمْلِكُ؟

L27179–27180 So we said, "What was the outcome?" You have never once found in the foundational sources that anyone is compelled to refrain from selling his female slave, and she is freed from his estate upon his death—yet you have ruled precisely this regarding the umm al-walad (the enslaved mother of her master's child).

فَقُلْنَا: فَكَانَ مَاذَا؟ وَلَا وَجَدْتُمْ قَطُّ فِي الْأُصُولِ أَنْ يُجْبَرَ أَحَدٌ عَلَى الِامْتِنَاعِ مِنْ بَيْعِ أَمَتِهِ، وَتَخْرُجُ حُرَّةً مِنْ رَأْسِ مَالِهِ إنْ مَاتَ، وَقَدْ قُلْتُمْ بِذَلِكَ فِي أُمِّ الْوَلَدِ.

L27181 Have you ever found [a valid] fasting of an isolated month besides Ramadan, yet they invalidate its fasting on that basis? There is no difference between one who says: "I will not accept divine law—until I find an analogous case for it," and one who says: "I will not accept it until I find two analogous cases."

وَلَا وَجَدْتُمْ قَطُّ صَوْمَ شَهْرٍ مُفْرَدٍ إلَّا رَمَضَانَ، فَأَبْطَلُوا صَوْمَهُ بِذَلِكَ؟ وَلَا فَرْقَ بَيْنَ مَنْ قَالَ: لَا آخُذُ بِشَرِيعَةٍ - حَتَّى أَجِدَ لَهَا نَظِيرًا، وَبَيْنَ مَنْ قَالَ: لَا آخُذُ بِهَا حَتَّى أَجِدَ لَهَا نَظِيرَيْنِ.

[6] **Qur'an references (L27177):** Qur'an 5:2 (Al-Ma'idah); Qur'an 62:10 (Al-Jumu'ah).

وَقَدْ وَجَدْنَا: الْمُفْلِسَ يُجْبَرُ عَلَى بَيْعِ مَالِهِ فِي أَدَاءِ مَا عَلَيْهِ. وَوَجَدْنَا: الشَّفِيعَ يُجْبِرُ الْمُشْتَرِيَ عَلَى تَصْيِيرِ مِلْكِهِ إِلَيْهِ. وَقَالُوا: لَوْ كَانَ ذَلِكَ وَاجِبًا عَلَى السَّيِّدِ إِذَا طَلَبَهُ الْعَبْدُ لَوَجَبَ أَيْضًا أَنْ يَكُونَ وَاجِبًا عَلَى الْعَبْدِ إِذَا طَلَبَهُ السَّيِّدُ - وَهَذَا أَسْخَفُ مَا أَتَوْا بِهِ، لِأَنَّ النَّصَّ جَاءَ بِذَلِكَ إِذَا طَلَبَهَا الْعَبْدُ، وَلَمْ يَأْتِ بِهَا إِذَا طَلَبَهَا السَّيِّدُ، فَإِنْ كَانَ هَذَا عِنْدَهُمْ قِيَاسًا صَحِيحًا فَلْيَقُولُوا: إِنَّهُ لَمَّا كَانَ الزَّوْجُ إِذَا أَرَادَ أَنْ يُطَلِّقَ امْرَأَتَهُ كَانَ لَهُ أَنْ يُطَلِّقَهَا، فَكَذَلِكَ أَيْضًا لِلْمَرْأَةِ إِذَا أَرَادَتْ طَلَاقَهُ أَنْ يَكُونَ لَهَا أَنْ تُطَلِّقَهُ. وَلَمَّا كَانَ لِلشَّفِيعِ أَخْذُ الشِّقْصِ وَإِنْ كَرِهَ الْمُشْتَرِي - كَانَ لِلْمُشْتَرِي أَيْضًا إِلْزَامُهُ إِيَّاهُ - وَإِنْ كَرِهَ الشَّفِيعُ. وَهَذِهِ وَسَاوِسُ سَخِرَ الشَّيْطَانُ بِهِمْ فِيهَا، وَشَوَاذٌّ سَبَّبَ لَهُمْ مِثْلَ هَذِهِ الْمَضَاحِكِ فِي الدِّينِ، فَاتَّبَعُوهُ عَلَيْهَا، وَلَا نَدْرِي بِأَيِّ نَصٍّ أَمْ بِأَيِّ عَقْلٍ وَجَبَ هَذَا الَّذِي يَهْذِرُونَ بِهِ؟ وَقَالُوا: كَانَ الْأَصْلُ أَنْ لَا تَجُوزَ الْكِتَابَةُ، لِأَنَّهَا عَقْدُ غَرَرٍ، وَمَا كَانَ هَكَذَا فَسَبِيلُهُ إِذْ جَاءَ بِهِ نَصٌّ - أَنْ يَكُونَ نَدْبًا، لِأَنَّهُ إِطْلَاقٌ مِنْ حَظْرٍ؟ فَقُلْنَا: كَذَبْتُمْ بَلْ الْأَصْلُ لِأَنَّهُ لَا يَلْزَمُ شَيْءٌ مِنْ الشَّرِيعَةِ، وَلَا يَجُوزُ الْقَوْلُ بِهِ حَتَّى يَأْمُرَ اللَّهُ تَعَالَى بِهِ، فَإِذَا أَمَرَ بِهِ عَزَّ وَجَلَّ فَسَبِيلُهُ أَنْ يَكُونَ فَرْضًا، يَعْصِي مَنْ أَبَى قَبُولَهُ، هَذَا هُوَ الْحَقُّ الَّذِي لَا تَخْتَلِفُ الْعُقُولُ فِيهِ، وَمَا جَاءَ قَطُّ نَصٌّ وَلَا مَعْقُولٌ بِأَنَّ الْأَمْرَ بَعْدَ التَّحْرِيمِ لَا يَكُونُ إِلَّا نَدْبًا، بَلْ قَدْ كَانَتْ الصَّلَاةُ إِلَى بَيْتِ الْمَقْدِسِ فَرْضًا، وَإِلَى الْكَعْبَةِ مَحْظُورَةً مُحَرَّمَةً، ثُمَّ جَاءَ الْأَمْرُ بِالصَّلَاةِ إِلَى الْكَعْبَةِ بَعْدَ الْحَظْرِ، فَكَانَ فَرْضًا.

L27182 We have established that an insolvent debtor is compelled to sell his property to pay what he owes. We have also established that the preemption right holder compels the purchaser to surrender ownership to him. They argued: "If this obligation were incumbent upon the master when demanded by the slave, it would equally obligate the slave when demanded by the master." This is the most preposterous argument they devised, for the explicit text stipulates this only when demanded by the slave, not the master. Were this analogy valid in their view, let them consequently assert: "Just as a husband may divorce his wife at will, the wife too should divorce him at will. And just as the preemptor may seize the share despite the buyer's objection, the buyer should equally impose it on the preemptor against his will." These are delusions Satan has mocked them with—anomalous rulings that spawned such religious absurdities they blindly follow. By what text or rational principle could this drivel they spout be deemed obligatory?

They further contended: "The fundamental principle prohibits contractual manumission (kitābah) as a speculative transaction. Had a text sanctioned it, it would merely be recommended as an exemption from prohibition." We countered: "You are gravely mistaken! The true principle is that no ruling becomes legally binding until ordained by Allah Almighty. When He commands it, compliance becomes obligatory—disobeyed only by the recalcitrant. This is the unambiguous truth, undisputed by sound reasoning. No text or logic dictates that post-prohibition injunctions are merely recommended. Consider how prayer toward Jerusalem was once obligatory while prayer toward the Kaaba was strictly forbidden. When the command shifted to the Kaaba after prohibition, it became obligatory."

وَقَالُوا: لَوْ كَانَتْ الْكِتَابَةُ إِذَا طَلَبَهَا الْعَبْدُ فَرْضًا لَوَجَبَ أَنْ يُجْبَرَ السَّيِّدُ عَلَيْهَا، وَإِنْ أَرَادَهَا الْعَبْدُ بِدِرْهَمٍ. وَهَذَا قَوْلٌ فَاسِدٌ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَأْمُرْ قَطُّ بِإِجَابَةِ الْعَبْدِ إِلَى مَا أَرَادَ أَنْ يُكَاتَبَ عَلَيْهِ، وَإِنَّمَا أُمِرَ بِإِجَابَتِهِ إِلَى الْكِتَابَةِ ثُمَّ تَرَكَ الْمُكَاتَبَةَ مُجْمَلَةً بَيْنَ السَّيِّدِ وَالْعَبْدِ،

L27183–27185 They argued: "If the emancipation contract (kitābah) were obligatory whenever the slave requests it, the master would have to be compelled to it – even if the slave offers a dirham for his freedom." This is an invalid view, for Allah the Exalted has never commanded compliance with the slave's demand to... He wished to enter into a contract of manumission, and the master was commanded to accept his request for the contract. The terms of the con-

tract were left undefined between the master and the slave because Allah's command, {So contract with them} (24:33), entails the participation of two parties. Allah also said, {Allah does not burden any soul beyond its capacity} (2:286), thus it is obligatory not to impose upon the slave what exceeds his capacity. The Messenger of Allah, peace be upon him, prohibited the squandering of wealth, so it is obligatory not to require the master to waste his wealth. These two texts establish that the obligations binding both parties must be within the slave's capacity without undue hardship, and must not involve unfair loss to the master nor squandering of his wealth. They concur with us that the master may impose the kharāj (land tax) on his slave and compel him to pay it, yet they do not permit the master to demand what the slave cannot bear, nor compel the slave to pay what the master disapproves of—even if the slave could provide more without hardship. This ruling applies specifically to the contract of manumission. Similarly, if a man marries without stipulating a dowry, he is compelled to pay a dowry equivalent to her peers, and she is compelled to accept it; neither may stipulate terms arbitrarily. The Ḥanafīs upheld the obligation of demanding service and enforcing it. Why, then, do they not confront their own stance with analogous objections—such as if the slave says, "I will pay only one dirham over sixty years," while the party entitled to the service demands, "You must pay one hundred thousand dinars immediately"?[7]

L27186 The Mālikīs have mandated the kharāj on conquered land as an obligation permitting no alternative, yet they neither clarified what it is nor specified its quantity. How many cases exist where the Shāfiʿīs imposed obligations without defining their measures—such as their statement: "Prayer is invalidated by excessive action but not by slight action"—an obligation without defined limits. They prescribed mut'ah as an obligation without setting boundaries for it, and similar instances from them are exceedingly numerous. Thus, all they have obscured with specious arguments is rendered invalid—and success is with Allah, the Exalted.

L27187 ## The Issue of What It Is Permissible to Write On

لِأَنَّ قَوْله تَعَالَى: {فَكَاتِبُوهُمْ} [النور: ٣٣] فِعْلٌ مِنْ فَاعِلَيْنِ، وَقَالَ تَعَالَى {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] فَوَجَبَ أَنْ لَا يُكَلَّفَ الْعَبْدَ مَا لَيْسَ فِي وُسْعِه. وَنَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ، فَوَجَبَ أَنْ لَا يُكَلَّفَ السَّيِّدَ إضَاعَةَ مَالِهِ. وَصَحَّ بِهَذَيْنِ النَّصَّيْنِ: أَنَّ اللَّازِمَ لَهُمَا مَا أَطَاقَهُ الْعَبْدُ بِلَا حَرَجٍ، وَمَا لَا غَبْنَ فِيهِ عَلَى السَّيِّدِ، وَلَا إضَاعَةَ لِمَالِهِ وَقَدْ وَافَقُونَا عَلَى أَنَّ لِلسَّيِّدِ تَكْلِيفَ عَبْدِهِ الْخَرَاجَ وَإِجْبَارَهُ عَلَيْهِ، وَلَمْ يَكُنْ ذَلِكَ عِنْدَهُمْ مُجِيزًا أَنْ يُكَلِّفَهُ مِنْ ذَلِكَ مَا لَا يُطِيقُ، وَلَا إجَابَةُ الْعَبْدِ إلَى أَدَاءِ مَا لَا يَرْضَى السَّيِّدُ بِهِ مِمَّا هُوَ قَادِرٌ بِلَا مَشَقَّةٍ عَلَى أَكْثَرَ مِنْهُ، وَهَذَا هُوَ الْحُكْمُ فِي الْكِتَابَةِ بِعَيْنِهِ وَكَذَلِكَ مَنْ تَزَوَّجَ وَلَمْ يَذْكُرْ صَدَاقًا، فَإِنَّهُ يُجْبَرُ عَلَى أَدَاءِ صَدَاقِ مِثْلِهَا، وَتُجْبَرُ عَلَى قَبُولِهِ، وَلَا تُعْطَى بِرَأْيِهَا، وَلَا يُعْطِي هُوَ بِرَأْيِهِ. وَقَدْ رَأَى الْحَنَفِيُّونَ الِاسْتِسْعَاءَ وَالْقَضَاءَ بِهِ وَاجِبًا، فَهَلَّا عَارَضُوا أَنْفُسَهُمْ بِمِثْلِ هَذِهِ الْمُعَارَضَةِ فَقَالُوا: إنْ قَالَ الْعَبْدُ: لَا أُؤَدِّي إلَّا دِرْهَمًا فِي سِتِّينَ سَنَةً، وَقَالَ الْمُسْتَسْعَى لَهُ: لَا تُؤَدِّي إلَّا مِائَةَ أَلْفِ دِينَارٍ مِنْ يَوْمِهِ.

وَقَدْ أَوْجَبَ الْمَالِكِيُّونَ الْخَرَاجَ عَلَى الْأَرْضِ الْمُفْتَتَحَةِ فَرْضًا لَا يَجُوزُ غَيْرُهُ، ثُمَّ لَمْ يُبَيِّنُوا مَا هُوَ وَلَا مِقْدَارَهُ. وَكَمْ قِصَّةٍ قَالَ فِيهَا الشَّافِعِيُّونَ بِإِيجَابِ فَرْضٍ حَيْثُ لَا يَحُدُّونَ مِقْدَارَهُ، كَقَوْلِهِمْ: الصَّلَاةُ تَبْطُلُ بِالْعَمَلِ الْكَثِيرِ، وَلَا تَبْطُلُ بِالْعَمَلِ الْيَسِيرِ، فَهَذَا فَرْضٌ غَيْرُ مَحْدُودٍ. وَأَوْجَبُوا الْمُتْعَةَ فَرْضًا ثُمَّ لَمْ يَحُدُّوا فِيهَا حَدًّا، وَمِثْلُ هَذَا لَهُمْ كَثِيرٌ جِدًّا فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مَا تَجُوز عَلَيْهِ الْكِتَابَة]

[7] **Qur'an references (L27183):** Qur'an 2:286 (Al-Baqarah); Qur'an 24:33 (An-Nur).

L27188 1687 - Issue: Contractual manumission is permissible for property that is permissible to own, for work to be performed within a specified term or without a specified term—whether payable immediately or as a deferred liability—and for payment in one installment, two installments, or more.

L27189–27192 We used to say previously: It is not valid except upon two installments or more, until we found what Ahmad ibn Muhammad al-Talamanki narrated to us. He said: Ibn Mufarrij narrated to us, Ibrahim ibn Ahmad ibn Firas narrated to us, Ahmad ibn Muhammad ibn Salim al-Naysaburi narrated to us, Ishaq ibn Rahawayh narrated to us, Yahya ibn Adam narrated to us, Ibn Idris - who is Abdullah - narrated to us, Muhammad ibn Ishaq narrated from Asim ibn Umar ibn Qatadah - who is the son of al-Nu'man al-Dhafari - from Muhammad ibn Labid from Ibn Abbas: "Salman al-Farisi narrated to me," mentioning a lengthy hadith that included: "A man from Banu Qurayzah came and purchased me," then he related an account containing: "I embraced Islam and slavery preoccupied me until I missed the Battle of Badr. Then the Messenger of Allah - peace be upon him - said to me: 'Write a manumission contract?' I requested this from my master, and I persisted with him until he contracted me to cultivate three hundred palm trees for him and pay forty ouqiyahs of gold. I informed the Messenger of Allah - peace be upon him - of this. He told me: 'Go and dig their trenches. When you wish to plant them, do not plant them until you come to me and notify me, so I may plant them with my own hand.' He said: 'I began digging with my companions' help until I prepared three hundred planting trenches. Every man brought palm shoots to assist me. Then the Messenger of Allah - peace be upon him - came and planted them with his hand, smoothing their soil and blessing them until completion. By Him in whose hand Salman's soul lies, not a single one perished, while the gold obligation remained. When a companion brought the Messenger of Allah - peace be upon him - a gold piece resembling an egg from mines, he said: 'What of the destitute Persian under a manumission contract? Summon him.' I came, whereupon he said: 'Take this to settle your debt.' I asked: 'How can this suffice for my debt, O Messenger of Allah?' He replied: 'Allah will discharge your debt.' By Him in whose hand my soul rests, I weighed forty ouqiyahs from it and

١٦٨٧ - مَسْأَلَةٌ: وَالْكِتَابَةُ جَائِزَةٌ عَلَى مَالٍ جَائِزٍ تَمَلُّكُهُ، وَعَلَى عَمَلٍ فِيهِ إِلَى أَجَلٍ مُسَمًّى، وَإِلَى غَيْرِ أَجَلٍ مُسَمًّى، لَكِنْ حَالًّا أَوْ فِي الذِّمَّةِ، وَعَلَى نَجْمٍ وَنَجْمَيْنِ وَأَكْثَرَ.

وَكُنَّا قَبْلُ نَقُولُ: لَا تَجُوزُ إِلَّا عَلَى نَجْمَيْنِ فَصَاعِدًا حَتَّى وَجَدْنَا مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ قَالَ: نا ابْنُ مُفَرِّجٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ فِرَاسٍ نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ سَالِمٍ النَّيْسَابُورِيُّ نا إِسْحَاقُ بْنُ رَاهْوَيْهِ نا يَحْيَى بْنُ آدَمَ نا ابْنُ إِدْرِيسَ - هُوَ عَبْدُ اللَّهِ - نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ عَاصِمِ بْنِ عُمَرَ بْنِ قَتَادَةَ - هُوَ ابْنُ النُّعْمَانَ الظَّفَرِيُّ - عَنْ مُحَمَّدِ بْنِ لَبِيدٍ عَنْ ابْنِ عَبَّاسٍ: «حَدَّثَنِي سَلْمَانُ الْفَارِسِيُّ، فَذَكَرَ حَدِيثًا طَوِيلًا، وَفِيهِ: فَقَدِمَ رَجُلٌ مِنْ بَنِي قُرَيْظَةَ فَابْتَاعَنِي، ثُمَّ ذَكَرَ خَبَرًا وَفِيهِ: فَأَسْلَمْتُ وَشَغَلَنِي الرِّقُّ حَتَّى فَاتَتْنِي بَدْرٌ، ثُمَّ قَالَ لِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: كَاتِبْ؟ فَسَأَلْتُ صَاحِبِي ذَلِكَ، فَلَمْ أَزَلْ بِهِ حَتَّى كَاتَبَنِي عَلَى أَنْ أُحْيِيَ لَهُ ثَلَاثَمِائَةِ نَخْلَةٍ، وَبِأَرْبَعِينَ أُوقِيَّةً مِنْ ذَهَبٍ: فَأَخْبَرْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ؟ فَقَالَ لِي: اذْهَبْ فَفَقِّرْ لَهَا، فَإِذَا أَرَدْتَ أَنْ تَضَعَهَا فَلَا تَضَعْهَا حَتَّى تَأْتِيَنِي فَتُؤْذِنَنِي فَأَكُونَ أَنَا الَّذِي أَضَعُهَا بِيَدِي؟ قَالَ: فَقُمْتُ بِتَفْقِيرِي وَأَعَانَنِي أَصْحَابِي حَتَّى فَقَرْتُ لَهَا سَرَبَهَا ثَلَاثَمِائَةِ سَرْبَةٍ، وَجَاءَ كُلُّ رَجُلٍ بِمَا أَعَانَنِي بِهِ مِنَ النَّخْلِ، ثُمَّ جَاءَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَعَلَ يَضَعُهُ بِيَدِهِ وَيُسَوِّي عَلَيْهَا تُرَابَهَا وَيُبَرِّكُ حَتَّى فَرَغَ مِنْهَا، فَوَالَّذِي نَفْسُ سَلْمَانَ بِيَدِهِ مَا مَاتَتْ مِنْهَا وَدِيَةٌ، وَبَقِيَتْ الذَّهَبُ فَبَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ أَتَاهُ رَجُلٌ مِنْ أَصْحَابِهِ بِمِثْلِ الْبَيْضَةِ مِنْ ذَهَبٍ أَصَابَهَا مِنْ بَعْضِ الْمَعَادِنِ فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: مَا فَعَلَ الْفَارِسِيُّ الْمِسْكِينُ الْمُكَاتَبُ؟ اُدْعُوهُ لِي؟ فَدُعِيتُ فَجِئْتُ، فَقَالَ: اذْهَبْ بِهَذِهِ

paid my due." He said: "Salman was emancipated, fought at the Trench, and participated in all subsequent battles with the Messenger of Allah - peace be upon him." Al-Shafi'i said: "The manumission contract is only valid upon two installments due to agreement on its validity thus." Abu Muhammad said: "No place remains for personal reasoning when the narration is sound." If asked: "Why claim a slave becomes free upon Islam while his master remains disbelieving - yet Salman remained enslaved?" We respond: "We only affirm this based on the Messenger's - peace be upon him - freeing Muslim slaves from the people of Ta'if who came to him, and Allah's decree: 'Allah will never grant disbelievers authority over believers' (4:141)." The city of Ta'if after the Battle of the Trench for an extended period, and the account of Salman, are consistent with the established foundational principle. Thus, the abrogation of the permissibility of a disbeliever having legal ownership of a believer was validated through the revelation of the verse, while the remainder of the ruling remains as it originally stood, and success is from Allah, the Most High.[8]

فَأَدَّهَا بِمَا عَلَيْكَ مِنْ الْمَالِ؟ فَقُلْتُ: وَأَيْنَ تَقَعُ هَذِهِ يَا رَسُولَ اللَّهِ مِمَّا عَلَيَّ؟ فَقَالَ: إنَّ اللَّهَ سَيُؤَدِّي عَنْكَ مَا عَلَيْكَ مِنْ الْمَالِ، قَالَ: فَوَالَّذِي نَفْسِي بِيَدِهِ لَقَدْ وَزَنْتُ لَهُ مِنْهَا أَرْبَعِينَ أُوقِيَّةً حَتَّى أَوْفَيْتُهُ الَّذِي عَلَيَّ، قَالَ: فَأُعْتِقَ سَلْمَانُ، وَشَهِدَ الْخَنْدَقَ، وَبَقِيَّةَ مَشَاهِدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» وَقَالَ الشَّافِعِيُّ: لَا تَجُوزُ الْكِتَابَةُ إلَّا عَلَى نَجْمَيْنِ لِلاتِّفَاقِ عَلَى جَوَازِهَا كَذَلِكَ. قَالَ أَبُو مُحَمَّد: لَا حَظَّ لِلنَّظَرِ مَعَ صِحَّةِ الْخَبَرِ. فَإِنْ قِيلَ: لِمَ قُلْتُمْ إنَّ الْعَبْدَ إذَا أَسْلَمَ وَسَيِّدُهُ كَافِرٌ فَهُوَ حُرٌّ - وَهَذَا سَلْمَانُ أَسْلَمَ وَسَيِّدُهُ كَافِرٌ وَلَمْ يُعْتَقْ بِذَلِكَ؟ قُلْنَا: لَمْ نَقُلْ بِهَذَا إلَّا لِعِتْقِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ خَرَجَ إلَيْهِ مُسْلِمًا مِنْ عَبِيدِ أَهْلِ الطَّائِفِ. وَلِقَوْلِ اللَّهِ تَعَالَى: {وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلا} [النساء: ١٤١] وَالطَّائِفُ بَعْدَ الْخَنْدَقِ بِدَهْرٍ، وَقِصَّةُ سَلْمَانَ، مُوَافِقَةٌ لِمَعْهُودِ الْأَصْلِ فَصَحَّ بِنُزُولِ الْآيَةِ نَسْخُ جَوَازِ تَمَلُّكِ الْكَافِرِ لِلْمُؤْمِنِ، وَبَقِيَ سَائِرُ الْخَبَرِ عَلَى مَا فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of Kitābah for a Slave Who Has Not Reached Puberty

[مَسْأَلَة كِتَابَة مَمْلُوك لَمْ يَبْلُغ]

L27193

L27194 Issue 1688: It is not permissible to write a kitabah contract for a slave who has not reached maturity, because the Prophet—peace and blessings be upon him—stated that "the pen is lifted from the child until he reaches maturity." Abu Hanifah said: "The writing of his kitabah contract is permissible," and this contradicts the Sunnah.

١٦٨٨ - مَسْأَلَةٌ: وَلَا تَجُوزُ كِتَابَةُ مَمْلُوكٍ لَمْ يَبْلُغْ، لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخْبَرَ بِأَنَّ الْقَلَمَ مَرْفُوعٌ عَنْ الصَّبِيِّ حَتَّى يَبْلُغَ. قَالَ أَبُو حَنِيفَةَ: كِتَابَتُهُ جَائِزَةٌ، وَهَذَا خِلَافُ السُّنَّةِ.

L27195 It is impermissible for someone to enter into a *mukataba* contract with another person's slave, based on Allah's statement, exalted is He: *"No soul earns except against itself"* [6:164]. Thus, no one is held liable for another's deeds except where permitted by the Qur'an and the Sunnah. A testamentary

وَلَا يَجُوزُ أَنْ يُكَاتِبَ عَبْدَ غَيْرِهِ لِقَوْلِ اللَّهِ تَعَالَى {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤] فَلَا يَجُوزُ عَمَلُ أَحَدٍ عَلَى غَيْرِهِ، إلَّا حَيْثُ أَجَازَهُ الْقُرْآنُ وَالسُّنَّةُ. وَلَا

[8] **Qur'an references (L27190):** Qur'an 4:141 (An-Nisa).

guardian may not enter into a *mukataba* for a slave owned by an orphan, nor may a father do so for his minor son's slave, because this action is not addressed in the verse and because it disregards the minor's interest, as the minor is capable of retaining his earnings without transferring ownership.[9]

L27196 **A juridical issue concerning an enslaved person under a mukataba contract who has not paid any portion of the agreed sum.**

L27197–27199 1689 - Issue: A mukatab (a slave contracted for manumission) remains a slave until he pays any portion [of his contract]. When he pays part of his kitabah (manumission contract), he initiates emancipation, attaining freedom proportionate to his payment while the remainder remains enslaved. The emancipated portion follows rulings for free persons regarding prescribed punishments (ḥudūd), inheritance, blood money, and other matters. The enslaved portion follows rulings for slaves regarding blood money, inheritance, prescribed punishments, and other matters. This continues perpetually until emancipation is completed through full payment. This derives from our narration through Ahmad ibn Shu'ayb's chain: Muhammad ibn 'Isa al-Dimashqi narrated to us; Yazid ibn Harun narrated to us; Hammad ibn Salamah narrated from Qatadah and Ayyub al-Sikhtiyani. Qatadah reported: From Khilas ibn 'Amr from 'Ali ibn Abi Talib. Ayyub reported: From 'Ikrimah from Ibn 'Abbas. Both narrate from Allah's Messenger—peace be upon him and his family—who said: "The mukatab is emancipated proportionally to his payment, prescribed punishments apply to him proportionally to what has been emancipated of him, and he inherits proportionally to his emancipated share." Through Abu Dawud's chain: 'Uthman ibn Abi Shaybah narrated to us; Ya'la ibn 'Ubayd al-Tanafisi narrated to us; Hajjaj the Weaver (son of Abi 'Uthman) narrated from Yahya ibn Abi Kathir from 'Ikrimah from Ibn 'Abbas, who said: The Messenger of Allah (may Allah's blessings and peace be upon him and his family) decreed regarding a *mukatab* [a slave under a manumission contract] who kills someone: he pays from the portion he has fulfilled of his *mukataba* contract the *diyah* of a free person, and from

[9] **Qur'an references (L27195):** Qur'an 6:164 (Al-An'am).

تَجُوزُ كِتَابَةُ الْوَصِيِّ غُلَامَ يَتِيمِهِ، وَلَا مُكَاتَبَةُ الْأَبِ غُلَامَ ابْنِهِ الصَّغِيرِ، لِأَنَّهُ غَيْرُ الْمُخَاطَبِ فِي الْآيَةِ، وَلِأَنَّهُ لَيْسَ نَظَرًا لِلصَّغِيرِ، إِذْ هُوَ قَادِرٌ عَلَى أَخْذِ كَسْبِهِ بِغَيْرِ إِخْرَاجِهِ عَنْ مِلْكِهِ.

[مَسْأَلَة مُكَاتَبَة عَبْد لَمْ يؤد شَيْئًا]

١٦٨٩ - مَسْأَلَةٌ: وَالْمُكَاتَبُ عَبْدٌ مَا لَمْ يُؤَدِّ شَيْئًا، فَإِذَا أَدَّى شَيْئًا مِنْ كِتَابَتِهِ فَقَدْ شَرَعَ فِيهِ الْعِتْقَ، وَالْحُرِّيَّةَ بِقَدْرِ مَا أَدَّى، وَبَقِيَ سَائِرُهُ مَمْلُوكًا، وَكَانَ لِمَا عَتَقَ مِنْهُ حُكْمُ الْحُرِّيَّةِ فِي الْحُدُودِ، وَالْمَوَارِيثِ، وَالدِّيَاتِ وَغَيْرِ ذَلِكَ وَكَانَ لِمَا بَقِيَ مِنْهُ حُكْمُ الْعَبِيدِ فِي الدِّيَاتِ، وَالْمَوَارِيثِ، وَالْحُدُودِ، وَغَيْرِ ذَلِكَ وَهَكَذَا أَبَدًا حَتَّى يَتِمَّ عِتْقُهُ بِتَمَامِ أَدَائِهِ. لِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ عِيسَى الدِّمَشْقِيُّ نا يَزِيدُ بْنُ هَارُونَ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ، وَأَيُّوبَ السِّخْتِيَانِيِّ، قَالَ قَتَادَةُ: عَنْ خِلَاسِ بْنِ عَمْرٍو عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَقَالَ أَيُّوبُ: عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ، كِلَاهُمَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، أَنَّهُ قَالَ: «الْمُكَاتَبُ يُعْتَقُ مِنْهُ بِقَدْرِ مَا أَدَّى، وَيُقَامُ عَلَيْهِ الْحَدُّ بِقَدْرِ مَا أُعْتِقَ مِنْهُ، وَيَرِثُ بِقَدْرِ مَا أُعْتِقَ مِنْهُ» . وَمِنْ طَرِيقِ أَبِي دَاوُد نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا يَعْلَى بْنُ عُبَيْدٍ الطَّنَافِسِيُّ نا حَجَّاجٌ الصَّوَّافُ - هُوَ ابْنُ أَبِي عُثْمَانَ - عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي الْمُكَاتَبِ يَقْتُلُ يُودِي مَا أَدَّى مِنْ مُكَاتَبَتِهِ دِيَةَ الْحُرِّ، وَمِمَّا بَقِيَ دِيَةَ الْمَمْلُوكِ» . وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ النَّسَائِيِّ نا سُلَيْمَانُ بْنُ سَلَمٍ الْبَلْخِيِّ، وَعُبَيْدُ اللَّهِ بْنُ سَعِيدٍ قَالَ سُلَيْمَانُ: نا النَّضْرُ بْنُ شُمَيْلٍ، وَقَالَ عُبَيْدُ اللَّهِ: نا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ، ثُمَّ اتَّفَقَ

مُعَاذٌ، وَالنَّضْرُ، كِلَاهُمَا يَقُولُ: نا هِشَامٌ الدَّسْتُوَائِيُّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «يُودِي الْمُكَاتَبُ بِقَدْرِ مَا عَتَقَ مِنْهُ دِيَةَ الْحُرِّ وَبِقَدْرِ مَا رُقَّ مِنْهُ دِيَةَ الْعَبْدِ» .

the remaining portion, the *diyah* of a slave. Through the chain of Ahmad ibn Shuʿayb al-Nasa'i: Sulayman ibn Salam al-Balkhi and ʿUbaydullah ibn Sa'id narrated. Sulayman said: al-Nadr ibn Shumayl narrated to us. ʿUbaydullah said: Muʿadh ibn Hisham al-Dastuwa'i narrated to us. Then their chains of narration converged—Muʿadh and al-Nadr—both stating: Hisham al-Dastuwa'i narrated to us from Yahya ibn Abi Kathir from ʿIkrimah from Ibn Abbas that the Messenger of Allah (may Allah's blessings and peace be upon him and his family) said: "The *mukatab* pays the *diyah* of a free person according to the portion of his manumission, and the *diyah* of a slave according to the portion still in bondage."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ نا أَبُو هِشَامٍ - هُوَ الْمُغِيرَةُ بْنُ سَلَمَةَ الْمَخْزُومِيُّ - نا وُهَيْبُ بْنُ خَالِدٍ عَنْ أَيُّوبَ عَنْ عِكْرِمَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ - قَالَ: «يُودِي الْمُكَاتَبُ بِقَدْرِ مَا أَدَّى» وَهَذَا أَثَرٌ صَحِيحٌ لَا يَضُرُّهُ قَوْلُ مَنْ قَالَ: إنَّهُ أَخْطَأَ فِيهِ، بَلْ هُوَ الَّذِي أَخْطَأَ؛ لِأَنَّهُ مِنْ رِوَايَةِ الثِّقَاتِ الْأَثْبَاتِ.

L27200 From the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn ʿAbd Allāh ibn al-Mubārak narrated to us; Abū Hishām—who is al-Mughīrah ibn Salamah al-Makhzūmī—narrated to us; Wuḥayb ibn Khālid narrated from Ayyūb from ʿIkrimah from ʿAlī ibn Abī Ṭālib from the Prophet—peace be upon him—who said: "The *mukātab* pays in proportion to what he has paid." This is an authentic narration. The claim of those who deem it erroneous does not harm it, for they are the ones who erred, as it derives from the narration of trustworthy, well-established narrators.

وَمِنْ عَجَائِبِ الدُّنْيَا عَيْبُ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ لَهُ بِأَنَّ حَمَّادَ بْنَ زَيْدٍ أَرْسَلَهُ عَنْ أَيُّوبَ عَنْ عِكْرِمَةَ، وَأَنَّ ابْنَ عُلَيَّةَ رَوَاهُ عَنْ أَيُّوبَ عَنْ عِكْرِمَةَ عَنْ عَلِيٍّ أَنَّهُ قَالَ: يُودِي الْمُكَاتَبُ بِقَدْرِ مَا أَدَّى - فَأَوْقَفَهُ عَلَى عَلِيٍّ. قَالَ أَبُو مُحَمَّدٍ: أَلَيْسَ هَذَا مِنْ عَجَائِبِ الدُّنْيَا يَكُونُ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ عِنْدَ كُلِّ كَلِمَةٍ يَقُولُونَ: الْمُرْسَلُ كَالْمُسْنَدِ، وَلَا فَرْقَ، فَإِذَا وَجَدُوا مُسْنَدًا يُخَالِفُ هَوَى أَبِي حَنِيفَةَ، وَرَأْيَ مَالِكٍ: جَعَلُوا إرْسَالَ مَنْ أَرْسَلَهُ عَيْبًا يَسْقُطُ بِهِ إسْنَادُ مَنْ أَسْنَدَهُ، وَيَكُونُ الشَّافِعِيُّونَ لَا يَخْتَلِفُونَ فِي أَنَّ الْمُسْنَدَ لَا يَضُرُّهُ إرْسَالُ مَنْ أَرْسَلَهُ، فَإِذَا وَجَدُوا مَا يُخَالِفُ رَأْيَ صَاحِبِهِمْ كَانَ ذَلِكَ يَضُرُّ أَشَدَّ الضَّرَرِ، أَيَرَوْنَ اللَّهَ غَافِلًا عَنْ هَذَا الْعَمَلِ فِي الدِّينِ؟ وَقَدْ أَسْنَدَهُ حَمَّادُ بْنُ سَلَمَةَ، وَوُهَيْبُ بْنُ

L27201–27203 Among the wonders of the world is the criticism by the Hanafis, Malikis, and Shafi'is of the narration that Hammad ibn Zayd transmitted it as *mursal* (disconnected) from Ayyub from Ikrimah, and that Ibn ʿUlayyah narrated it from Ayyub from Ikrimah from ʿAli that he said: "The *mukatab* pays in proportion to what he has paid," thereby attributing it to ʿAli. Abu Muhammad said: Is this not among the wonders of the world? The Hanafis and Malikis, whenever they encounter a statement, say: "A *mursal* (disconnected) narration is equivalent to a *musnad* (connected) one; there is no difference." Yet when they find a *musnad* narration contradicting Abu Hanifah's inclination or Malik's opinion, they treat the disconnection by those who transmitted it as a flaw that invalidates the chain of those who connected it. As for the Shafi'is, they do not differ in holding that a *musnad* narration is not harmed by the disconnection of those who transmitted it. But when they find something contradicting their imam's opinion, it causes the utmost harm. Do they think Allah is unaware of this conduct in matters

of religion? Yet this narration was narrated with a connected chain (*musnad*) by Hammad ibn Salamah, Wuhaib ibn Khalid, Yahya ibn Abi Kathir, and Qatadah from Khilas from ʻAli. Is there any among them who, if not superior to Hammad, is not inferior to him? How, then, can they dismiss it when Hammad ibn Zayd also narrated it with a connected chain, as narrated to us through the path of Ahmad ibn Shuʻayb... Al-Qasim ibn Zakariya narrated from Sa'id ibn Amr, who narrated from Hammad ibn Zayd, from Ayyub and Yahya ibn Abi Kathir—both from Ikrimah—from Ibn Abbas: "A mukatab was killed during the time of Allah's Messenger (peace and blessings be upon him), and he (peace and blessings be upon him) ordered that he pay what he had paid as the blood money of a free person, and what remained unpaid as that of a slave." As for their mention of Ibn Ulayyah's interruption of the chain at Ali, this strengthens the report, for it reflects a legal opinion from Ali based on his narration. If only I knew from where those who claim that when a reliable narrator transmits a report through his equal, while another interrupts the chain or transmits it discontinuously—asserting this as a flaw in the hadith—derive this view! This is unsupported by textual evidence, rational analysis, or sound reasoning. The proof stands firm that obedience is unconditionally due to the fully-chained (musnad) narration, thereby invalidating all contrary claims—praise be to Allah, the Exalted. They said: "You have narrated through Ahmad ibn Shu'ayb, from Humayd ibn Mas'adah, from Sufyan, from Khalid—the cobbler—from Ikrimah, from Ali ibn Abi Talib regarding the mukatab: 'If he pays half, he is considered in debt.'" And through Ibn Abi Shaybah, from Wakīʻ, from Ali ibn Al-Mubarak, from Yahya ibn Abi Kathir, from Ikrimah, from Ibn Abbas: "The legal penalty for the mukatab is that of a slave." This constitutes their disregard of what they themselves narrated. Abu Muhammad said: We responded: Suppose they disregarded what they narrated—what then? The decisive evidence lies in what they transmitted from the Prophet (peace and blessings be upon him), not in their personal statements. We have compiled a substantial section detailing their contradictions on this matter. Moreover, if this discrepancy—according to their premise—necessitates weakness in what they narrated, let them dissociate from those who take opposing positions, for such weakness would apply only to reports contradicting their own narrations—and they are

خَالِدٍ، وَيَحْيَى بْنُ أَبِي كَثِيرٍ، وَقَتَادَةُ عَنْ خِلَاسٍ عَنْ عَلِيٍّ، وَمَا مِنْهُمْ أَحَدٌ إِنْ لَمْ يَكُنْ فَوْقَ حَمَّادٍ لَمْ يَكُنْ دُونَهُ؟ فَكَيْفَ وَقَدْ أَسْنَدَهُ حَمَّادُ بْنُ زَيْدٍ كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا الْقَاسِمُ بْنُ زَكَرِيَّا نا سَعِيدُ بْنُ عَمْرٍو نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ، وَيَحْيَى بْنِ أَبِي كَثِيرٍ، كِلَاهُمَا عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: «أَنَّ مُكَاتَبًا قُتِلَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَمَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنْ يُودِيَ مَا أَدَّى دِيَةَ الْحُرِّ وَمَا لَا دِيَةَ الْمَمْلُوكِ» . وَأَمَّا مَا ذَكَرُوهُ مِنْ إِيقَافِ ابْنِ عُلَيَّةَ لَهُ عَلَى عَلِيٍّ فَهُوَ قُوَّةٌ لِلْخَبَرِ، لِأَنَّهُ فُتْيَا مِنْ عَلِيٍّ بِمَا رَوَى، وَلَيْتَ شِعْرِي مِنْ أَيْنَ وَقَعَ لِمَنْ وَقَعَ أَنَّ الْعَدْلَ إِذَا أَسْنَدَ الْخَبَرَ عَنْ مِثْلِهِ، وَأَوْقَفَهُ آخَرُ، أَوْ أَرْسَلَهُ آخَرُ: أَنَّ ذَلِكَ عِلَّةٌ فِي الْحَدِيثِ - وَهَذَا لَا يُوجِبُهُ نَصٌّ وَلَا نَظَرٌ وَلَا مَعْقُولٌ، وَالْبُرْهَانُ قَدْ صَحَّ بِوُجُوبِ الطَّاعَةِ لِلْمُسْنَدِ دُونَ شَرْطٍ، فَبَطَلَ مَا عَدَا هَذَا - وَلِلَّهِ تَعَالَى الْحَمْدُ. وَقَالُوا: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا حُمَيْدُ بْنُ مَسْعَدَةَ نا سُفْيَانُ عَنْ خَالِدٍ - هُوَ الْحَذَّاءُ - عَنْ عِكْرِمَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ فِي الْمُكَاتَبِ إِذَا أَدَّى النِّصْفَ فَهُوَ غَرِيمٌ. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ عَلِيِّ بْنِ الْمُبَارَكِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ حَدُّ الْمُكَاتَبِ حَدُّ الْمَمْلُوكِ، وَهَذَا تَرْكٌ مِنْهُمَا لِمَا رَوَيَا. قَالَ أَبُو مُحَمَّدٍ: فَقُلْنَا: هَبْكَ أَنَّهُمَا تَرَكَا مَا رَوَيَا، فَكَانَ مَاذَا؟ إِنَّمَا الْحُجَّةُ فِيمَا رَوَيَا عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَا فِي قَوْلِهِمَا. وَقَدْ أَفْرَدْنَا جُزْءًا ضَخْمًا لِمَا تَنَاقَضُوا فِيهِ مِنْ هَذَا الْبَابِ، وَأَيْضًا: فَإِنْ كَانَ هَذَا الِاخْتِلَافُ يُوجِبُ عِنْدَهُمْ الْوَهَنَ فِيمَا رَوَيَا، فَانْفَصَلُوا مِمَّنْ عَكَسَ ذَلِكَ، فَقَالَ: بَلْ ذَلِكَ يُوجِبُ الْوَهَنَ فِيمَا رُوِيَ عَنْهُمَا مِمَّا هُوَ خِلَافٌ لِمَا رَوَيَا وَحَاشَا لَهُمَا مِنْ ذَلِكَ. قَالَ عَلِيٌّ: فَكَيْفَ وَقَدْ يَتَأَوَّلُ الرَّاوِي فِيمَا رَوَى وَقَدْ يَنْسَاهُ؟ فَكَيْفَ وَلَيْسَ فِيمَا ذَكَرْنَا عَنْ عَلِيٍّ، وَابْنِ عَبَّاسٍ

خِلَافٌ لِمَا رَوَيَاهُ. أَمَّا قَوْلُ عَلِيٍّ: إِذَا أَدَّى النِّصْفَ فَهُوَ غَرِيمٌ، فَلَيْسَ مُخَالِفًا لِلْمَشْهُورِ عَنْهُ مِنْ تَوْرِيثِ مَنْ بَعْضُهُ حُرٌّ بِمَا فِيهِ مِنَ الْحُرِّيَّةِ دُونَ مَا فِيهِ مِنَ الرِّقِّ - وَلَا لِمَا رُوِيَ مِنْ حُكْمِ الْمُكَاتَبِ، لِأَنَّهُ لَمْ يَقُلْ فِيهِ: لَيْسَ بَاقِيهِ عَبْدًا، وَلَا قَالَ فِيهِ: لَيْسَ مَا قَابَلَ مَا أَدَّى حُرًّا، لَكِنْ أَخْبَرَ: أَنَّهُ لَا يَعْجِزُ، لَكِنْ يُتْبَعُ بِبَاقِي الْكِتَابَةِ فَقَطْ، فَلَا خِلَافَ فِي هَذَا لِمَا رَوَى.

far above such inconsistency. Ali said: How could this be, when a narrator might interpret his report or forget it? Where is the contradiction between what we cited from Ali and Ibn Abbas and what they narrated? As for Ali's statement: "If he pays half, he is considered in debt," it does not conflict with his established ruling that one partially free inherits based on the proportion of freedom, not enslavement—nor does it oppose the rulings on the mukatab, for he did not negate the slave status of the unpaid portion nor affirm the free status of the paid portion. He merely stated: "He is not incapable, but must fulfill the remainder of the contract." Thus, no contradiction exists with what was narrated.

وَأَمَّا قَوْلُ ابْنِ عَبَّاسٍ: حَدُّ الْمُكَاتَبِ حَدُّ مَمْلُوكٍ، فَإِنَّمَا يُحْمَلُ عَلَى أَنَّهُ أَرَادَ مَا لَمْ يُؤَدِّ شَيْئًا مِنْ كِتَابَتِهِ، وَمَا قَابَلَ مِنْهُ، إِذَا أَدَّى الْبَعْضَ مَا لَمْ يُؤَدِّ - فَهَذَا صَحِيحٌ، وَبِهِ نَقُولُ، فَبَطَلَ هَذْرُهُمْ، وَدَعْوَاهُمُ الْكَاذِبَةُ: أَنَّهُمَا - رَضِيَ اللَّهُ عَنْهُمَا - خَالَفَا مَا رَوَيَا، وَبَطَلَ أَنْ يَكُونَ لَهُمْ كَدْحٌ فِي الْخَبَرِ. وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ - فَرُوِيَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعُثْمَانَ، وَجَابِرٍ، وَأُمَّهَاتِ الْمُؤْمِنِينَ: الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ - وَلَا يَصِحُّ عَنْ أَحَدٍ مِنْهُمْ، لِأَنَّهُ عَنْ عُمَرَ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ هَالِكٌ - عَنِ ابْنِ أَبِي مُلَيْكَةَ مُرْسَلٌ. وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ الْعَرْزَمِيِّ - وَهُوَ مِثْلُهُ أَوْ دُونَهُ - ثُمَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُمَرَ مُرْسَلٌ. وَمِنْ طَرِيقِ سُلَيْمَانَ التَّيْمِيِّ: أَنَّ عُمَرَ. وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ رِجَالٍ مِنْ أَهْلِ الْعِلْمِ عَنْ عُمَرَ وَعُثْمَانَ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ، وَالَّتِي عَنْ أُمَّهَاتِ الْمُؤْمِنِينَ: هُوَ مِنْ طَرِيقِ عُمَرَ بْنِ قَيْسِ بْنِ سَنْدَلٍ - وَهُوَ ضَعِيفٌ. وَهُوَ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ مِنْ طَرِيقِ أَبِي مَعْشَرٍ الْمَدَنِيِّ - وَهُوَ ضَعِيفٌ لَكِنَّهُ صَحَّ عَنْ زَيْدِ بْنِ ثَابِتٍ، وَعَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَابْنِ عُمَرَ - وَهُوَ مَأْثُورٌ عَنْ طَائِفَةٍ مِنَ التَّابِعِينَ، مِنْهُمْ: عُرْوَةُ بْنُ الزُّبَيْرِ، وَسُلَيْمَانُ بْنُ يَسَارٍ، وَصَحَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَالزُّهْرِيِّ، وَقَتَادَةَ.

As for the statement of Ibn Abbas: "The penalty for a mukatab is that of an enslaved person," this is understood to mean he intended this applies only when the mukatab has not paid any portion of his manumission contract or fulfilled what he has committed to pay. If he has paid part but not all of what is owed - this is valid, and this is our position. Thus, their baseless assertions and false claim that the two of them - may Allah be pleased with them - contradicted what they narrated is invalidated, and their laborious effort in the report becomes baseless. This is a matter on which people have disagreed. It is reported from Umar ibn al-Khaṭṭāb, Uthman, Jabir, and the Mothers of the Believers - may Allah be pleased with them: "The mukatab retains the legal status of an enslaved person as long as one dirham remains unpaid." However, none of these reports are authenticated. The report from Umar comes through Al-Ḥajjāj ibn Arṭāh - who is rejected [as a narrator] - from Ibn Abī Mulaykah as a mursal report (a report with an interrupted chain). Another chain through Muḥammad ibn Ubaydillāh al-Arzamī - who is comparable to him or weaker - then from Saʿīd ibn al-Musayyab: that Umar [held this view] as a mursal report. From the chain of Sulaymān al-Taymī: that Umar [said this]. From the chain of Ibn Wahb through scholars among the people of knowledge: from Umar, Uthman, Jabir ibn Abdillāh. The report attributed to the Mothers of the Believers comes through Umar ibn Qays ibn Sandal - who is weak. The report from Umm Salamah, the Mother of the Believers - may Allah be pleased with her - is through Abū Maʿshar al-Madanī - who is weak. However, it is authentically established from Zayd

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وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَالْأَوْزَاعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَابْنِ شُبْرُمَةَ، وَابْنِ أَبِي لَيْلَى، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ. وَقَالَتْ طَائِفَةٌ: الْمُكَاتَبُونَ عَلَى شُرُوطِهِمْ: صَحَّ ذَلِكَ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ. وَقَالَتْ طَائِفَةٌ: هُوَ حُرٌّ سَاعَةَ الْعَقْدِ بِالْكِتَابَةِ. وَهُوَ قَوْلٌ رُوِيَ عَنِ ابْنِ عَبَّاسٍ وَلَمْ نَجِدْ لَهُ إِسْنَادًا إِلَيْهِ.

ibn Thābit, Āishah the Mother of the Believers - may Allah be pleased with her - and Ibn Umar. This is transmitted from a group of the Successors, including Urwah ibn al-Zubayr, Sulaymān ibn Yasār, and is authentically reported from Saʿīd ibn al-Musayyab, al-Zuhrī, and Qatādah. This is the position of Abū Ḥanīfah, Mālik, al-Shāfiʿī, al-Awzāʿī, Sufyān al-Thawrī, Ibn Shubrumah, Ibn Abī Laylā, Aḥmad, Isḥāq, Abū Thawr, and Abū Sulaymān. Another group held: "Mukatabs are bound by their stipulated terms" - this being authentically reported from Jabir ibn Abdillāh. Another group said: "He becomes free at the moment of formalizing the manumission contract." This is an opinion attributed to Ibn Abbas, but we found no verified chain of transmission linking it to him.

وَقَالَتْ طَائِفَةٌ: إِذَا أَدَّى نِصْفَ مُكَاتَبَتِهِ فَهُوَ غَرِيمٌ. رُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنِ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ جَابِرِ بْنِ سَمُرَةَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إِذَا أَدَّى الْمُكَاتَبُ الشَّطْرَ فَهُوَ غَرِيمٌ.

L27206 A group of scholars held: If a mukātab pays half of his mukātabah, he is a debtor. This was narrated to us through ʿAbd al-Razzāq from Maʿmar from ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Masʿūd from al-Qāsim ibn ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Masʿūd from Jābir ibn Samurah: that ʿUmar ibn al-Khaṭṭāb said: When a mukātab pays half, he becomes a debtor.

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَبْدِ الرَّحْمَنِ بِهَذَا الْإِسْنَادِ نَفْسِهِ، قَالَ عُمَرُ: إِذَا أَدَّى الشَّطْرَ فَلَا رِقَّ عَلَيْهِ. وَقَدْ ذَكَرْنَا فِي هَذِهِ الْمَسْأَلَةِ نَفْسِهَا قَوْلَ عَلِيٍّ بِمِثْلِ ذَلِكَ وَهُمَا إِسْنَادَانِ جَيِّدَانِ. وَصَحَّ عَنْ شُرَيْحٍ: إِذَا أَدَّى الْمُكَاتَبُ النِّصْفَ فَلَا رِقَّ عَلَيْهِ وَهُوَ غَرِيمٌ. رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنِ الشَّعْبِيِّ عَنْ شُرَيْحٍ. وَقَالَتْ طَائِفَةٌ: إِذَا أَدَّى الْمُكَاتَبُ الثُّلُثَ فَهُوَ غَرِيمٌ -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ عَنْ حَفْصِ بْنِ غِيَاثٍ عَنِ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنِ ابْنِ مَسْعُودٍ. إِذَا أَدَّى الْمُكَاتَبُ ثُلُثَ كِتَابَتِهِ فَهُوَ غَرِيمٌ. وَقَالَتْ طَائِفَةٌ: إِذَا أَدَّى الرُّبُعَ فَهُوَ غَرِيمٌ. رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ كَانَ يُقَالُ: إِذَا أَدَّى الْمُكَاتَبُ

L27207–27208 From the chain of Sufyān ibn ʿUyaynah via ʿAbd al-Raḥmān with this same isnād, ʿUmar stated: "If he fulfills half [of his obligation], enslavement no longer applies to him." We previously cited ʿAlī's identical ruling on this very issue, and both chains of transmission are strong. It is authentically established from Shurayḥ: "If the mukātab fulfills half [of his obligation], enslavement no longer applies to him, and he becomes a debtor." This was narrated via the chain of Sufyān ibn ʿUyaynah from Ismāʿīl ibn Abī Khālid from al-Shaʿbī from Shurayḥ.

A school of jurists held: "If the mukātab fulfills one-third, he becomes a debtor." This was narrated via the chain of Abū Bakr ibn Abī Shaybah from Ḥafṣ ibn Ghiyāth from al-Aʿmash from Ibrāhīm al-Nakhaʿī from Ibn Masʿūd: "If the mukātab fulfills one-third of his manumission contract, he becomes a debtor."

Another school held: "If he fulfills one-quarter, he becomes a debtor." This was narrated via the chain of Wakīʿ from Sufyān from Manṣūr from Ibrāhīm,

who reported: “It was said: If the mukātab fulfills one-quarter, he becomes a debtor.”

Yet another school held: “If he fulfills three-quarters of the manumission contract, he becomes a debtor.” This was narrated via the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ based on his personal opinion, and he added: “This has not been reported to me from anyone.”

L27209 A group held that if a mukatab pays his value, he becomes a debtor among the debtors. This was transmitted to us through the chain of Hammad ibn Salama from Qatada, from al-Hasan, who reported that Ibn Masʿud said this. Another narration through Sufyan ibn ʿUyayna from Ismaʿil ibn Abi Khalid states: Al-Shaʿbi told me, “Shurayh’s opinion is like Ibn Masʿud’s: if the mukatab pays his value, he is considered a debtor among the debtors.” Abu Muhammad remarked: This chain is sound, for al-Shaʿbi accompanied Shurayh, and Shurayh accompanied Ibn Masʿud. This ruling does not contradict what is reported from the same chain stating that paying half the kitaba renders him a debtor, because it is possible that both statements coexist without contradiction. This would mean he holds that if the mukatab pays the lesser of his value or half the kitaba—whichever of the two he pays—he attains debtor status.

L27210–27212 And via the chain of Shuʿbah from al-Mughīrah ibn Miqsam from al-Nakhaʿī: If the mukatab fulfills the price of his freedom, they may not enslave him. A group held the view (as we have narrated through ʿAbd al-Razzāq’s chain from ʿIkrimah ibn ʿAmmār from Yaḥyā ibn Abī Kathīr) that Ibn ʿAbbās said: “If the mukatab still owes five awāq, five dhawd [herds of camels], or...” Five wasqs: he is a debtor – this is invalid because the chain is interrupted, and Ikrimah ibn Ammar is weak. A group held an opinion similar to our view. We were narrated through Ahmad ibn Shuʿayb: Zakariyya ibn Ishaq narrated to us, Ismaʿil ibn Ulayyah narrated to us from Ayyub al-Sikhtiyānī from Ikrimah from Ali: “The mukatab (a slave contracted for manumission) pays according to what he has paid.”

L27213–27215 From the narration of Muhammad ibn al-Muthanna: Abd al-Rahman ibn

الرُّبُعَ فَهُوَ غَرِيمٌ. وَقَالَتْ طَائِفَةٌ: إِذَا أَدَّى ثَلَاثَةَ أَرْبَاعِ الْكِتَابَةِ فَهُوَ غَرِيمٌ -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ مِنْ رَأْيِهِ قَالَ: وَلَمْ يَبْلُغْنِي عَنْ أَحَدٍ.

وَقَالَتْ طَائِفَةٌ: إِذَا أَدَّى قِيمَتَهُ فَهُوَ غَرِيمٌ. رُوِّينَا ذَلِكَ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنِ الْحَسَنِ أَنَّ ابْنَ مَسْعُودٍ قَالَهُ. وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ قَالَ: قَالَ لِي الشَّعْبِيُّ: قَوْلُ شُرَيْحٍ مِثْلُ قَوْلِ ابْنِ مَسْعُودٍ: إِذَا أَدَّى الْمُكَاتَبُ قِيمَتَهُ فَهُوَ غَرِيمٌ مِنَ الْغُرَمَاءِ. قَالَ أَبُو مُحَمَّدٍ: هَذَا إِسْنَادٌ جَيِّدٌ، لِأَنَّ الشَّعْبِيَّ صَحِبَ شُرَيْحًا، وَشُرَيْحٌ صَحِبَ ابْنَ مَسْعُودٍ، وَلَيْسَ هَذَا مُخَالِفًا لِمَا رُوِيَ مِنْ هَذِهِ الطَّرِيقِ نَفْسِهَا، إِذَا أَدَّى نِصْفَ الْكِتَابَةِ فَهُوَ غَرِيمٌ، لِأَنَّهُ قَدْ يُمْكِنُ أَنَّ الْقَوْلَيْنِ مَعًا، وَلَا يَتَمَانَعَانِ، وَهُوَ أَنْ يَكُونَ يَرَى إِنْ أَدَّى الْأَقَلَّ مِنْ قِيمَتِهِ، أَوْ مِنْ نِصْفِ الْكِتَابَةِ فَهُوَ غَرِيمٌ، أَيَّهُمَا أَدَّى فَهُوَ غَرِيمٌ.

وَمِنْ طَرِيقِ شُعْبَةَ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنِ النَّخَعِيِّ: إِذَا أَدَّى الْمُكَاتَبُ ثَمَنَ رَقَبَتِهِ فَلَيْسَ لَهُمْ أَنْ يَسْتَرِقُّوهُ. وَقَالَتْ طَائِفَةٌ كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عِكْرِمَةَ بْنِ عَمَّارٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، قَالَ: قَالَ ابْنُ عَبَّاسٍ إِذَا بَقِيَ عَلَى الْمُكَاتَبِ خَمْسُ أَوَاقٍ أَوْ خَمْسُ ذَوْدٍ أَوْ خَمْسَةُ أَوْسُقٍ فَهُوَ غَرِيمٌ - وَهَذَا لَا يَصِحُّ، لِأَنَّهُ مُنْقَطِعٌ، وَعِكْرِمَةُ بْنُ عَمَّارٍ ضَعِيفٌ. وَقَالَتْ طَائِفَةٌ بِمِثْلِ قَوْلِنَا. رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا زَكَرِيَّا بْنُ إِسْحَاقَ نا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ عَلِيٍّ يُؤَدِّي الْمُكَاتَبُ بِقَدْرِ مَا أَدَّى.

Mahdi narrated from Sufyan al-Thawri from Tariq ibn Abd al-Rahman from al-Sha'bi, who said: Ali ibn Abi Talib said regarding the mukatab: "He is emancipated proportionally [based on payments]." From the narration of Abd al-Razzaq: Ma'mar narrated from Ayyub al-Sikhtiyani from Ikrimah from Ali, who said: "The mukatab is emancipated proportionally to what he has paid." From the narration of Waki': al-Mas'udi narrated from al-Hakam ibn 'Utaybah from Ali ibn Abi Talib, who said: "Emancipation suffices for the mukatab from the first stipulated installment." Abu Muhammad said: "All these statements: we know of no evidence for any of them. However, even if these opinions are not stronger than Malik's stipulations permitting a wife to give charity from her husband's wealth, his rulings on what he absolves in cases of crop loss and what he does not, or Abu Hanifah's stipulations invalidating prayer due to exposure of a free woman's head, abdomen, or thigh if a quarter of each is exposed—as for the invalid conditions they argue for using 'Muslims are bound by their conditions,' these are not weaker. Rather, these opinions have merit, as most are from the Companions—may Allah be pleased with them. However, those who say, 'The mukatab remains a slave as long as a single dirham is owed,' argue with what we have narrated through the path of Amr ibn Shu'ayb from his father from his grandfather from the Prophet—peace be upon him: 'The mukatab is a slave as long as a single dirham remains owed.'" From the path of Abd al-Baqi ibn Qani'—a fabricator—from Musa ibn Zakariyya from Abbas ibn Muhammad. From Ahmad ibn Yunus from Hushaym from Ja'far ibn Iyas from Ibn 'Umar from the Messenger of Allah — peace and blessings be upon him: "A mukatab remains a slave as long as a single dirham remains owed by him." This is undoubtedly a fabricated report. It is not known at all from the narration of 'Abbas ibn Muhammad, nor from Ahmad ibn Yunus, nor from the narration of Hushaym, nor from the narration of Ja'far, nor from the narration of Nafi', nor from the narration of Ibn 'Umar. Rather, it is known only as a statement of Ibn 'Umar. The narrations of all these individuals are more famous than the sun itself, and we do not know who Musa ibn Zakariya is either. As for the narration of 'Amr ibn Shu'ayb, it is a scroll, though it is defective due to conflicting transmissions. It has been narrated to us via the chain of Abu Dawud: Muhammad ibn al-Muthanna narrated to us via 'Abd al-Samad ibn

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ طَارِقِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الشَّعْبِيِّ، قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ فِي الْمُكَاتَبِ: يُعْتَقُ بِالْحِسَابِ.
وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ عَلِيٍّ، قَالَ: الْمُكَاتَبُ يُعْتَقُ مِنْهُ بِقَدْرِ مَا أَدَّى. وَمِنْ طَرِيقِ وَكِيعٍ نا الْمَسْعُودِيُّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، قَالَ: تُجْزِي الْعَتَاقَةُ فِي الْمُكَاتَبِ مِنْ أَوَّلِ نَجْمٍ. قَالَ أَبُو مُحَمَّدٍ: وَجَمِيعُ هَذِهِ الْأَقْوَالِ لَا نَعْلَمُ لِشَيْءٍ مِنْهَا حُجَّةً، إلَّا أَنَّهَا كُلَّهَا عَلَى كُلِّ حَالٍ إنْ لَمْ تَكُنْ أَقْوَى مِنْ تَحْدِيدِ مَالِكٍ مَا أَبَاحَ لِذَاتِ الزَّوْجِ الصَّدَقَةَ بِهِ، وَمَا أَسْقَطَ مِنْ الْجَائِحَةِ، وَمَا لَمْ يُسْقِطْ. وَمِنْ تَحْدِيدِ أَبِي حَنِيفَةَ مَا تَبْطُلُ بِهِ الصَّلَاةُ مِمَّا يَنْكَشِفُ مِنْ رَأْسِ الْحُرَّةِ، أَوْ مِنْ بَطْنِهَا، أَوْ مِنْ فَخِذِهَا مِنْ رُبُعِ كُلِّ ذَلِكَ. وَمِنْ الشُّرُوطِ الْفَاسِدَةِ الَّتِي يَحْتَجُّونَ لَهَا " الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ " فَلَيْسَتْ أَضْعَفَ، بَلْ لِهَذِهِ مَزِيَّةٌ؛ لِأَنَّ أَكْثَرَهَا مِنْ أَقْوَالِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، إلَّا أَنَّ مَنْ قَالَ: الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ، فَاحْتَجُّوا بِمَا رُوِّينَا مِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ» . وَمِنْ طَرِيقِ عَبْدِ الْبَاقِي بْنِ قَانِعٍ - رَاوِي الْكَذِبِ - عَنْ مُوسَى بْنِ زَكَرِيَّا عَنْ عَبَّاسِ بْنِ مُحَمَّدٍ عَنْ أَحْمَدَ بْنَ يُونُسَ عَنْ هُشَيْمٍ عَنْ جَعْفَرِ بْنِ إيَاسٍ عَنْ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ» . وَهَذَا خَبَرٌ مَوْضُوعٌ بِلَا شَكٍّ، لَمْ يُعْرَفْ قَطُّ مِنْ حَدِيثِ عَبَّاسِ بْنِ مُحَمَّدٍ، وَلَا مِنْ أَحْمَدَ بْنَ يُونُسَ، وَلَا مِنْ حَدِيثِ هُشَيْمٍ، وَلَا مِنْ حَدِيثِ جَعْفَرٍ، وَلَا مِنْ حَدِيثِ نَافِعٍ، وَلَا مِنْ حَدِيثِ ابْنِ عُمَرَ، إنَّمَا هُوَ مَعْرُوفٌ مِنْ

‘Abd al-Warith, via Hammam ibn Yahya, from ‘Abbas al-Jurairi, from ‘Amr ibn Shu‘ayb, from his father, from his grandfather: “The Prophet — peace and blessings be upon him — said: ’Any slave who contracts to pay one hundred ounces and pays all but ten ounces remains a slave. Any slave who contracts to pay one hundred dinars and pays all but ten dinars remains a slave.”’

قَوْلِ ابْنِ عُمَرَ، وَأَحَادِيثُ هَؤُلَاءِ كُلُّهُمْ أَشْهَرُ مِنْ الشَّمْسِ، وَلَا نَدْرِي مَنْ مُوسَى بْنُ زَكَرِيَّا أَيْضًا. وَأَمَّا حَدِيثُ عَمْرِو بْنِ شُعَيْبٍ فَصَحِيفَةٌ، عَلَى أَنَّهُ مُضْطَرِبٌ فِيهِ. قَدْ رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ الْمُثَنَّى حَدَّثَنِي عَبْدُ الصَّمَدِ - هُوَ ابْنُ عَبْدِ الْوَارِثِ - نا هَمَّامٌ - هُوَ ابْنُ يَحْيَى - نا عَبَّاسٌ الْجُرَيْرِيُّ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَيُّمَا عَبْدٍ كَاتَبَ عَلَى مِائَةِ أُوقِيَّةٍ فَأَدَّاهَا إلَّا عَشْرَ أَوَاقٍ فَهُوَ عَبْدٌ، وَأَيُّمَا عَبْدٌ كَاتَبَ عَلَى مِائَةِ دِينَارٍ فَأَدَّاهَا إلَّا عَشَرَةَ دَنَانِيرَ فَهُوَ عَبْدٌ» .

L27216 From the narration of Ibn Jurayj through ‘Ata’ al-Khurasani from ‘Abdullah ibn ‘Amr ibn al-‘As: Whoever enters into a mukatabah contract with a slave for one hundred dirhams and fulfills all but ten dirhams, the slave remains a slave; or for one hundred okiyyahs (a silver weight) and fulfills all but one okiyyah, the slave remains a slave. This ‘Ata’—al-Khurasani—did not hear anything from ‘Abdullah ibn ‘Amr ibn al-‘As nor from any of the Companions except Anas alone. The greatest astonishment is directed at those who discredit the narration of ‘Ali and Ibn ‘Abbas—despite its utmost authenticity—by alleging inconsistency in it, even though they have lied. Yet they cite this flaw as evidence, despite the evident inconsistency in their own argument, as you can see.

وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ الْخُرَاسَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ: مَنْ كَاتَبَ مُكَاتَبًا عَلَى مِائَةِ دِرْهَمٍ فَقَضَاهَا إلَّا عَشَرَةَ دَرَاهِمَ فَهُوَ عَبْدٌ، أَوْ عَلَى مِائَةِ أُوقِيَّةٍ فَقَضَاهَا إلَّا أُوقِيَّةً فَهُوَ عَبْدٌ. عَطَاءٌ هَذَا - الْخُرَاسَانِيُّ - لَمْ يَسْمَعْ مِنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ شَيْئًا، وَلَا مِنْ أَحَدٍ مِنْ الصَّحَابَةِ، إلَّا مِنْ أَنَسٍ وَحْدَهُ. وَالْعَجَبُ كُلُّهُ مِمَّنْ يُعَلِّلُ خَبَرَ عَلِيٍّ، وَابْنِ عَبَّاسٍ - وَهُوَ فِي غَايَةِ الصِّحَّةِ - بِأَنَّهُ اضْطَرَبَ فِيهِ - وَقَدْ كَذَبَ - ثُمَّ يَحْتَجُّ بِهَذِهِ الْعَوْرَةِ، وَقَدْ اضْطَرَبَ فِيهَا كَمَا تَرَى

L27217 If they say: This is the statement of the Mother of the Believers, ‘Ā’ishah—and would Allah the Exalted ever violate the sanctity of the Messenger of Allah’s privacy (peace be upon him) by permitting entry to one forbidden to approach his wives? We respond: You are correct. Allah the Exalted only prohibited free men from entering upon them. As for the mukātab: so long as he has not paid any portion, he remains a slave. While even a single fals remains owed, he is not free—rather, part of him is free and part is enslaved. The wives were never prohibited from anyone of this description.

فَإِنْ قَالُوا: هُوَ قَوْلُ أُمِّ الْمُؤْمِنِينَ عَائِشَةَ، وَمَا كَانَ اللَّهُ تَعَالَى لِيَهْتِكَ سِتْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِدُخُولِ مَنْ لَا يَحِلُّ دُخُولُهُ عَلَى أَزْوَاجِهِ؟ قُلْنَا: صَدَقْتُمْ، وَإِنَّمَا حَرَّمَ اللَّهُ تَعَالَى عَلَيْهِنَّ دُخُولَ الْأَحْرَارِ عَلَيْهِنَّ فَقَطْ، وَالْمُكَاتَبُ مَا لَمْ يُؤَدِّ شَيْئًا فَهُوَ عَبْدٌ، وَمَا دَامَ يَبْقَى عَلَيْهِ فَلْسٌ فَلَيْسَ حُرًّا، لَكِنَّ بَعْضَهُ حُرٌّ وَبَعْضَهُ عَبْدٌ، وَلَمْ يُنْهَيْنَ قَطُّ عَمَّنْ هَذِهِ صِفَتُهُ.

L27218–27219 If it is said: “It is the opinion of the majority?” We reply: “What does that matter? How many cases have you opposed the majority in? Indeed,

فَإِنْ قِيلَ: هُوَ قَوْلُ الْجُمْهُورِ؟ قُلْنَا: فَكَانَ مَاذَا؟ وَكَمْ قِصَّةٍ خَالَفْتُمْ فِيهَا الْجُمْهُورَ؟ نَعَمْ، وَأَتَيْتُمْ بِقَوْلٍ لَا يُعْرَفُ أَحَدٌ قَالَهُ قَبْلَ مَنْ قَلَّدْتُمُوهُ دِينَكُمْ. وَهَذَا الشَّافِعِيُّ خَالَفَ جُمْهُورَ الْعُلَمَاءِ فِي بُطْلَانِ الصَّلَاةِ بِتَرْكِ الصَّلَاةِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي التَّشَهُّدِ الْأَخِيرِ، وَفِي تَحْدِيدِ الْقُلَّتَيْنِ، وَفِي تَنْجِيسِ الْمَاءِ بِمَا يَمُوتُ فِيهِ مِنْ الذُّبَابِ، وَفِي نَجَاسَةِ الشَّعْرِ، وَفِي أَزْيَدَ مِنْ مِائَةِ قَضِيَّةٍ. وَهَذَا أَبُو حَنِيفَةَ خَالَفَ فِي زَكَاةِ الْبَقَرِ جُمْهُورَ الْعُلَمَاءِ. وَخَالَفَ فِي قَوْلِهِ: إنَّ الْخُلْطَةَ لَا تُغَيِّرُ الزَّكَاةَ جُمْهُورَ الْعُلَمَاءِ. وَخَالَفَ فِي وَضْعِهِ فِي الذَّهَبِ أَوْقَاصًا جُمْهُورَ الْعُلَمَاءِ - وَفِي أَزْيَدَ مِنْ أَلْفِ قَضِيَّةٍ.

you have adopted a view not known to have been stated by any of those you follow in your religion. And this Al-Shāfiʿī opposed the majority of scholars regarding the invalidity of prayer due to omitting blessings upon the Messenger of Allah—peace and blessings be upon him and his family and grant him peace—in the final Tashahhud, the definition of the two qullahs (a water measure), the impurity of water containing a dead fly, the impurity of hair, and in over a hundred rulings. And this Abū Ḥanīfah opposed the majority of scholars concerning zakāh on cows. He opposed them in his view that shared ownership does not alter zakāh obligations. He opposed them in establishing specific measures (awqāṣ) for gold, and in over a thousand rulings."

L27220 وَهَذَا مَالِكٌ خَالَفَ فِي إيجَابِ الزَّكَاةِ فِي السَّائِمَةِ جُمْهُورَ الْعُلَمَاءِ. وَفِي الْحَامِلِ، وَالْمُرْضِعِ تُفْطِرَانِ، وَفِي أَنَّ الْعُمْرَةَ تَطَوُّعٌ - وَفِي مِئِينَ مِنْ الْقَضَايَا، فَالْآنَ صَارَ أَكْثَرُ مَنْ رُوِيَ عَنْهُ - وَلَا يَبْلُغُونَ عَشَرَةً حُجَّةً لَا يَجُوزُ خِلَافُهَا، وَقَدْ خَالَفَهُمْ غَيْرُهُمْ مِنْ نُظَرَائِهِمْ. وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا رِوَايَةَ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَحَدِيثِهِ «لَا يَجُوزُ لِامْرَأَةٍ أَمْرٌ فِي مَالِهَا، وَلَا عَطِيَّةٌ، إذَا مَلَكَ زَوْجُهَا عِصْمَتَهَا» وَأَنَّ الدِّيَةَ عَلَى أَهْلِ الْبَقَرِ مِائَتَا بَقَرَةٍ، وَعَلَى أَهْلِ الشَّاءِ أَلْفَا شَاةٍ، وَفِي إحْرَاقِ رَحْلِ الْغَالِّ وَغَيْرِ ذَلِكَ - وَهَذَا لَعِبٌ وَعَبَثٌ فِي الدِّينِ.

Malik disagreed with the majority of scholars concerning the obligation of zakāh on grazing livestock, and regarding pregnant and nursing women who must break their fast, and that ʿUmrah is a supererogatory act, alongside hundreds of legal rulings. Now, most of those from whom narrations are reported—not reaching ten in number—have become a decisive proof that cannot be opposed, yet others among their scholarly peers have opposed them. Many are the cases in which they contradicted the narration of ʿAmr ibn Shuʿayb from his father from his grandfather from the Prophet (peace be upon him), such as his ḥadīth: "A woman has no authority to manage her property or make gifts once her husband possesses marital authority over her," and that the blood-money for owners of cattle is two hundred cows, and for owners of sheep two thousand sheep, and regarding burning the saddle [as punishment] for one who steals from war spoils and other such matters. This constitutes trivialization and mockery in religion.

فَإِنْ قَالُوا: قَدْ صَحَّ أَنَّ الْمُكَاتَبَ كَانَ عَبْدًا فَهُوَ كَذَلِكَ؟ فَقُلْنَا: نَعَمْ، مَا لَمْ يَأْتِ نَصٌّ بِخِلَافِ هَذَا فَيُوقَفُ عِنْدَهُ، وَقَدْ صَحَّ النَّصُّ بِخِلَافِ هَذَا، وَبِشُرُوعِ الْحُرِّيَّةِ فِيهِ.

L27221 If they say, "It has been established that the *mukātab* was a slave—so he remains as such?" We reply: Yes, provided no text contradicts this; but if such a text exists, it must be upheld. Indeed, a sound text has contradicted this, with the initiation of freedom for him.

L27222 Our companions cited as evidence the sale of Bareerah—while she was a mukatabah (a slave contracted for self-manumission). We responded: "Yes, though she had not fulfilled any part of her kitabah." This is as narrated in

the Hadith, and this is our position. Thus their claim is invalidated, and our view stands confirmed—all praise, abundant and limitless, be to Allah, Lord of the worlds.[10]

وَاحْتَجَّ أَصْحَابُنَا بِبَيْعِ بَرِيرَةَ - وَهِيَ مُكَاتَبَةٌ؟ فَقُلْنَا: نَعَمْ، وَلَمْ تَكُنْ أَدَّتْ مِنْ كِتَابَتِهَا شَيْئًا، هَكَذَا فِي الْحَدِيثِ وَبِهَذَا نَقُولُ، فَبَطَلَ قَوْلُهُمْ وَصَحَّ قَوْلُنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ كَثِيرًا.

L27223 **The legal question regarding two enslaved persons jointly entering into a mukataba (manumission contract) under one agreement.**

[مَسْأَلَة مُكَاتَبَة مملوكين مَعًا كِتَابَة وَاحِدَة]

L27224 1690 - Issue: It is not permissible to draft a single contract for two slaves, whether they are strangers or mahrams.

١٦٩٠ - مَسْأَلَةٌ: وَلَا تَجُوزُ كِتَابَةُ مَمْلُوكَيْنِ مَعًا كِتَابَةً وَاحِدَةً، سَوَاءٌ كَانَا أَجْنَبِيَّيْنِ أَوْ ذَوَيْ رَحِمٍ مَحْرَمَةٍ.

L27225–27226 The proof of this is that it is unknown, as it is not known what obligation arises from it for each individual among them or from them, and this is invalid. Furthermore, its condition stipulates that neither of the two may be emancipated except through the other's fulfillment. His emancipation being a condition is not found in the Book of Allah the Exalted, thus rendering it invalid. Allah Almighty said: "No soul earns except against itself, nor does any bearer bear another's burden" [6:164]. It is therefore confirmed to be a contract contradicting the Quran, making it impermissible. Emancipation cannot be effected through it under any circumstance—whether they fulfill or not. This is the position held by our companions.[11]

بُرْهَانُ ذَلِكَ. أَنَّهَا مَجْهُولَةٌ لَا يُدْرَى مَا يَلْزَمُ مِنْهَا كُلَّ وَاحِدٍ مِنْهُمَا أَوْ مِنْهُمْ وَهَذَا بَاطِلٌ - وَأَيْضًا: فَإِنَّ شَرْطَهُ أَنْ لَا يُعْتَقَ مِنْهُمَا وَاحِدٌ إِلَّا بِأَدَاءِ الْآخَرِ، وَعِتْقُهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، قَالَ اللَّهُ عَزَّ وَجَلَّ {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] فَصَحَّ أَنَّهُ عَقْدٌ مُخَالِفٌ لِلْقُرْآنِ فَلَا يَجُوزُ وَلَا يَقَعُ بِهِ عِتْقٌ أَصْلًا - أَدَّيَا أَوْ لَمْ يُؤَدِّيَا - وَهُوَ قَوْلُ أَصْحَابِنَا.

L27227 **The Issue of Selling a Slave Who Has Contracted for Freedom and Their Contract of Manumission.**

[مَسْأَلَة بَيْع الْمُكَاتَب وَالْمُكَاتَبَة]

L27228 Issue 1691: The sale of a mukatab (a slave contracted for manumission) and a mukataba (female mukatab) is permissible whenever the master wishes, provided they have not paid any part of their manumission contract. Similarly, intercourse with the female mukatab is permissible as long as she has not paid any portion of her contract. Whether she becomes pregnant or not, she remains bound by her contract. If the mukatab is sold, the contract is nullified. If they return to the master's ownership, no contract remains valid

١٦٩١ - مَسْأَلَةٌ: وَبَيْعُ الْمُكَاتَبِ، وَالْمُكَاتَبَةِ مَا لَمْ يُؤَدِّيَا شَيْئًا مِنْ كِتَابَتِهِمَا جَائِزٌ مَتَى شَاءَ السَّيِّدُ، وَكَذَلِكَ وَطْءُ الْمُكَاتَبَةِ جَائِزٌ مَا لَمْ تُؤَدِّ شَيْئًا مِنْ كِتَابَتِهَا، فَإِنْ حَمَلَتْ أَوْ لَمْ تَحْمِلْ فَهِيَ عَلَى مُكَاتَبَتِهَا، فَإِذَا بِيعَ بَطَلَتْ الْكِتَابَةُ فَإِنْ عَادَ إِلَى مِلْكِهِ فَلَا كِتَابَةَ لَهُمَا إِلَّا بِعَقْدٍ مُجَدَّدٍ - إِنْ طَلَبَهُ الْعَبْدُ أَوْ الْأَمَةُ - فَإِنْ أَدَّيَا شَيْئًا مِنْ الْكِتَابَةِ - قَلَّ أَوْ كَثُرَ - حَرُمَ وَطْؤُهَا جُمْلَةً، وَجَازَ بَيْعُ مَا قَابَلَ مِنْهُمَا مَا لَمْ يُؤَدِّيَا. فَإِنْ بَاعَ ذَلِكَ الْجُزْءَ بَطَلَتْ الْكِتَابَةُ

[10] **Qur'an references (L27222):** Qur'an 37:182 (As-Saffat).
[11] **Qur'an references (L27226):** Qur'an 6:164 (Al-An'am).

for them unless a newly specified contract is established—should the male or female slave request it. If they have paid any part of the contract, however minimal, intercourse with her becomes entirely prohibited. The sale of the portion corresponding to their unpaid obligations remains permissible. Selling that portion nullifies the contract specifically for it, while emancipation remains valid for the portion they have paid. If the sold portion returns to the seller's ownership at any time, the contract is not reinstated for it, nor is there any recourse to the original contract whatsoever, except through relinquishment of ownership.

فِيهِ خَاصَّةً وَصَحَّ الْعِتْقُ فِيمَا قَابَلَ مِنْهُمَا مَا أَدَّيَا، فَإِنْ عَادَ الْجُزْءُ الْمَبِيعُ إِلَى مِلْكِ الْبَائِعِ يَوْمًا مَا لَمْ تَعُدْ فِيهِ الْكِتَابَةُ وَلَا الرُّجُوعُ فِي الْكِتَابَةِ أَصْلًا، بِغَيْرِ الْخُرُوجِ مِنْ الْمِلْكِ.

L27229 Similarly, if the master dies, the equivalent of what both the mukatab and mukataba had paid becomes free, while the remainder remains enslaved to the heirs, with the kitaba contract nullified for that portion. If they had not yet paid anything, the entire kitaba contract is nullified, and they remain enslaved to the heirs. Likewise, if the mukatab or mukataba dies without having paid anything, both die as slaves, and all their property belongs to the master. If they had paid part of the kitaba contract, the equivalent of what they paid is free. The portion of their estate equivalent to the amount paid becomes an inheritance for the free individuals from their heirs, while the portion corresponding to the unpaid amount from what they left belongs to the master. The remainder of the kitaba contract is nullified.

وَكَذَلِكَ إِنْ مَاتَ السَّيِّدُ فَإِنَّ مَا قَابَلَ مِمَّا أَدَّيَا حُرٌّ وَمَا بَقِيَ رَقِيقٌ لِلْوَرَثَةِ قَدْ بَطَلَتْ فِيهِ الْكِتَابَةُ، فَإِنْ كَانَا لَمْ يَكُونَا أَدَّيَا شَيْئًا بَعْدُ فَقَدْ بَطَلَتْ الْكِتَابَةُ كُلُّهَا، وَهُمَا رَقِيقٌ لِلْوَرَثَةِ. وَكَذَلِكَ إِنْ مَاتَ الْمُكَاتَبُ أَوْ الْمُكَاتَبَةُ وَلَمْ يَكُونَا أَدَّيَا شَيْئًا، فَقَدْ مَاتَا مَمْلُوكَيْنِ، وَمَالُهُمَا كُلُّهُ لِلسَّيِّدِ، فَإِنْ كَانَا قَدْ أَدَّيَا مِنْ الْكِتَابَةِ فَمَا قَابَلَ مِنْهُمَا مَا أَدَّيَا فَهُوَ حُرٌّ، وَيَكُونُ مَا قَابَلَ ذَلِكَ الْجُزْءَ مِمَّا تَرَكَا مِيرَاثًا لِلْأَحْرَارِ مِنْ وَرَثَتِهِمَا، وَيَكُونُ مَا قَابَلَ مَا لَمْ يُؤَدِّيَا مِمَّا تَرَكَا لِلسَّيِّدِ، وَقَدْ بَطَلَ بَاقِي الْكِتَابَةِ، وَمَا حَمَلَتْ بِهِ الْمُكَاتَبَةُ قَبْلَ الْكِتَابَةِ أَوْ بَعْدَهَا، إِلَى أَنْ يَتِمَّ لَهُ مِائَةٌ وَعِشْرُونَ لَيْلَةً مُذْ حَمَلَتْ بِهِ، فَحُكْمُهُ حُكْمُهَا حَتَّى يَتِمَّ لَهُ الْعَدَدُ الْمَذْكُورُ، فَمَا عَتَقَ مِنْهَا بِالْأَدَاءِ عَتَقَ مِنْهُ. فَإِذَا نُفِخَ فِيهِ الرُّوحُ فَقَدْ اسْتَقَرَّ أَمْرُهُ وَلَا يَزِيدُ قِيمَةُ الْعِتْقِ فِيهِ بَعْدُ بِأَدَائِهَا.

Regarding the child she carries, whether conceived before or after the kitaba contract, until 120 nights pass since conception, its status follows hers until this period is completed. Whatever portion of her is freed through payment frees the equivalent portion of the child. Once the soul is breathed into it (ensoulment), the child's status is irrevocably established, and the value of its manumission does not increase further through her subsequent payments.

L27230 The proof of this is what we have mentioned in the preceding issue concerning the ruling of the Messenger of Allah—peace and blessings be upon him—that the *mukatab* is emancipated proportionally to what he has paid and remains in bondage for the unpaid portion. This necessitates everything we have mentioned. Since he remains a slave as long as he has not fulfilled his payment, it is permissible for a person to sell his slave or to have sexual

بُرْهَانُ ذَلِكَ مَا ذَكَرْنَاهُ فِي الْمَسْأَلَةِ الَّتِي قَبْلَ هَذِهِ مِنْ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ الْمُكَاتَبَ يُعْتَقُ مِنْهُ بِقَدْرِ مَا أَدَّى، وَيُرَقُّ بِقَدْرِ مَا لَمْ يُؤَدِّ فَهَذَا يُوجِبُ كُلَّ مَا ذَكَرْنَا، وَإِذْ هُوَ عَبْدٌ مَا لَمْ يُؤَدِّ، فَبَيْعُ الْمَرْءِ عَبْدَهُ وَوَطْؤُهُ أَمَتَهُ حَلَالٌ لَهُ، وَمَا عَلِمْنَا فِي دِينِ اللَّهِ تَعَالَى مَمْلُوكًا مَمْنُوعًا مِنْ بَيْعِهِ.

intercourse with his female slave. We know of no slave in the religion of Allah the Exalted who is prohibited from being sold.

L27231–27232 The Hanafis and Malikis prohibited the sale of the mukatab (a slave under contract for freedom) and sexual intercourse with them, yet we know of no valid proof for their position whatsoever—neither from the Quran, the Sunnah, analogical reasoning, nor rational deduction. Rather, their view contradicts all these sources. This is particularly evident in their reliance on the baseless argument that a mukatab remains a slave as long as a single dirham is owed. If he (the mukatab) is a slave, what prevents his sale? And if she is a slave, what prohibits intercourse with her? Allah the Exalted states: *"Those who guard their chastity, except with their spouses or those their right hands possess—for then they are blameless"* (23:5-6). The situation must be one of two possibilities: either she is among those his right hand possesses, making intercourse lawful, or she is not—in which case she is either free or another's slave. No other scenario is conceivable in Allah's religion or by the nature of rational thought. If only they had applied this objection to themselves instead of raising it against the Messenger of Allah—peace be upon him—concerning his marriage to the Mother of the Believers, Ṣafiyya, when he established her emancipation as her dowry. They would have argued: "This marriage is invalid—either he married her while she was his slave, which is impermissible, or he married her as a free woman without a dowry." Such an approach would have spared them from the sin in the latter scenario and from the ridicule of their preposterous argument in the former.[12]

L27233 Their response is: That he—peace and blessings be upon him—only married her when she was free, with a valid dowry that he duly fulfilled and gave to her, as his Lord, Exalted and Majestic, commanded him, and this was her complete emancipation before marriage if he marries her. The *mukātab* necessarily falls under one of four categories without a fifth: Either he is free from the moment of the contract, as mentioned by some Companions—may Allah be pleased with them—and they do not hold this view; or he is a

وَمَنَعَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ مِنْ الْبَيْعِ وَالْوَطْءِ، وَمَا نَعْلَمُ لَهُمْ فِي ذَلِكَ حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا قِيَاسٍ، وَلَا مَعْقُولٍ، بَلْ قَوْلُهُمْ خِلَافُ ذَلِكَ كُلِّهِ، لَا سِيَّمَا احْتِجَاجُهُمْ لِقَوْلِهِمْ الْفَاسِدِ بِمَا لَمْ يَصِحَّ مِنْ أَنَّ الْمُكَاتَبَ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ، فَإِذْ هُوَ عَبْدٌ، فَمَا الْمَانِعُ مِنْ بَيْعِهِ، وَإِذْ هِيَ أَمَةٌ فَمَا الْمَانِعُ مِنْ وَطْئِهَا، وَاَللَّهُ تَعَالَى يَقُولُ {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] فَلَا تَخْلُو مِنْ أَنْ تَكُونَ مِمَّا مَلَكَتْ يَمِينُهُ فَوَطْؤُهَا لَهُ حَلَالٌ، أَوْ مِمَّا لَا تَمْلِكُ يَمِينُهُ، فَهِيَ إمَّا حُرَّةٌ وَإِمَّا أَمَةٌ لِغَيْرِهِ، لَا يُعْقَلُ فِي دِينِ اللَّهِ تَعَالَى وَفِي طَبِيعَةِ الْعُقُولِ إلَّا هَذَا. وَلَوْ أَنَّهُمْ اعْتَرَضُوا بِهَذَا عَلَى أَنْفُسِهِمْ مَكَانَ اعْتِرَاضِهِمْ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي تَزَوُّجِهِ أُمَّ الْمُؤْمِنِينَ صَفِيَّةَ، وَجَعَلَ عِتْقَهَا صَدَاقَهَا، فَقَالُوا: لَا يَخْلُو مِنْ أَنْ يَكُونَ تَزَوَّجَهَا وَهِيَ مَمْلُوكَةٌ لَهُ، فَلَا يَجُوزُ ذَلِكَ، أَوْ يَكُونَ تَزَوَّجَهَا وَهِيَ حُرَّةٌ فَهَذَا نِكَاحٌ بِلَا صَدَاقٍ، لَكَانَ أَسْلَمَ لَهُمْ مِنْ الْإِثْمِ فِي الْأُخْرَى، وَمِنْ السُّخْرِيَةِ بِهَذَا الْقَوْلِ السَّخِيفِ فِي الْأُولَى.

وَجَوَابُهُمْ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَا تَزَوَّجَهَا إلَّا وَهِيَ حُرَّةٌ بِصَدَاقٍ صَحِيحٍ، قَدْ حَصَلَتْ عَلَيْهِ وَآتَاهَا إيَّاهُ، كَمَا أَمَرَهُ رَبُّهُ عَزَّ وَجَلَّ، وَهُوَ عِتْقُهَا التَّامُّ قَبْلَ الزَّوَاجِ إنْ تَزَوَّجَتْهُ. وَلَا يَخْلُو الْمُكَاتَبُ ضَرُورَةً مِنْ أَحَدِ أَقْسَامٍ أَرْبَعَةٍ لَا خَامِسَ لَهَا: إمَّا أَنْ يَكُونَ حُرًّا مِنْ حِينِ الْعَقْدِ كَمَا ذُكِرَ عَنْ بَعْضِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهُمْ لَا يَقُولُونَ بِهَذَا - أَوْ يَكُونَ عَبْدًا كَمَا يَقُولُونَ أَوْ يَكُونَ عَبْدًا مَا لَمْ يُؤَدِّ فَإِذَا أَدَّى شَرَعَ فِيهِ الْعِتْقُ

[12] **Qur'an references (L27232):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij).

slave, as they assert; or he is a slave until he fulfills the payment, after which emancipation is initiated, making part of him free and partly enslaved—as we ourselves hold; or he is neither free nor a slave, nor partially free nor partially enslaved, which is impossible and inconceivable.

فَكَانَ بَعْضُهُ حُرًّا وَبَعْضُهُ مَمْلُوكًا - كَمَا نَقُولُ نَحْنُ - أَوْ يَكُونَ لَا حُرًّا وَلَا عَبْدًا، وَلَا بَعْضُهُ حُرٌّ، وَلَا بَعْضُهُ عَبْدٌ، وَهَذَا مُحَالٌ لَا يُعْقَلُ.

L27234 Since he is considered a slave in their view, the sale of a slave and intercourse with a female slave are permissible unless a text prevents that, and there is no text here that prohibits this fundamentally. Rather, the authentic text and definitive consensus affirm the permissibility of selling a *mukatab* who has not paid anything.

فَإِذْ هُوَ عِنْدَهُمْ عَبْدٌ فَبَيْعُ الْعَبْدِ وَوَطْءُ الْأَمَةِ حَلَالٌ مَا لَمْ يَمْنَعْ مِنْ ذَلِكَ نَصٌّ، وَلَا نَصَّ هَاهُنَا مَانِعًا مِنْ ذَلِكَ أَصْلًا، بَلْ قَدْ جَاءَ النَّصُّ الصَّحِيحُ، وَالْإِجْمَاعُ الْمُتَيَقَّنُ عَلَى جَوَازِ بَيْعِ الْمُكَاتَبِ الَّذِي لَمْ يُؤَدِّ شَيْئًا.

L27235–27237 As it was narrated to us through the chain of Al-Bukhārī: Qutaybah narrated to us, Al-Layth narrated to us—Ibn Sa'd—from Ibn Shihāb from 'Urwah ibn Al-Zubayr that 'Ā'ishah, the Mother of the Believers, informed him that Barirah came seeking her assistance concerning her kitābah while she had not fulfilled anything of her kitābah. 'Ā'ishah said to her: "Return to your family. If they agree that I settle your kitābah on your behalf, with your patronage rights belonging to me, I shall do so." Barirah mentioned this to her family, but they refused and said: "If..." If she wishes to seek reward through you, let her do so, but the right of patronage shall belong to us. She mentioned this to the Messenger of Allah (peace be upon him), and he said to her: "Purchase and emancipate, for the right of patronage belongs solely to the one who emancipates." She said: Then the Messenger of Allah (peace be upon him) stood and declared: "Why do people stipulate conditions not ordained in Allah's Book? Whoever stipulates a condition not in Allah's Book, it holds no validity for him—even if he stipulates it a hundred times. Allah's stipulation is most rightful and binding."

كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا قُتَيْبَةُ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ «أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَخْبَرَتْهُ أَنَّ بَرِيرَةَ جَاءَتْ تَسْتَعِينُهَا فِي كِتَابَتِهَا وَلَمْ تَكُنْ قَضَتْ مِنْ كِتَابَتِهَا شَيْئًا فَقَالَتْ لَهَا عَائِشَةُ: ارْجِعِي إِلَى أَهْلِكِ فَإِنْ أَحَبُّوا أَنْ أَقْضِيَ عَنْكِ كِتَابَتَكِ وَيَكُونَ وَلَاؤُكِ لِي فَعَلْتُ فَذَكَرَتْ ذَلِكَ بَرِيرَةُ لِأَهْلِهَا فَأَبَوْا وَقَالُوا: إِنْ شَاءَتْ أَنْ تَحْتَسِبَ عَلَيْكِ فَلْتَفْعَلْ وَيَكُونُ وَلَاؤُكِ لَنَا فَذَكَرَتْ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: ابْتَاعِي فَأَعْتِقِي فَإِنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ قَالَتْ: ثُمَّ قَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: مَا بَالُ النَّاسِ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ تَعَالَى مَنْ اشْتَرَطَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَلَيْسَ لَهُ وَإِنْ اشْتَرَطَ مِائَةَ مَرَّةٍ. شَرْطُ اللَّهِ أَحَقُّ وَأَوْثَقُ» .

L27238 From the path of Muslim: Abū Kurayb Muḥammad ibn al-'Alā' narrated to us, Abū Usāmah narrated to us, Hishām ibn 'Urwah—meaning from his father—narrated to us. 'Ā'ishah, the Mother of the Believers, informed me, saying: "Barirah came to me and said: 'My family contracted a *kitābah* with me for nine awāq over nine years—one ūqiyyah each year. Will you assist me?' I replied: 'If your family agrees that I pay them the total sum at once, emancipate you, and have your *walā'* transferred to me, I will do it.' She mentioned this to her family, but they said: 'No, unless the *walā'*

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ نا أَبُو أُسَامَةَ نا هِشَامُ بْنُ عُرْوَةَ - يَعْنِي عَنْ أَبِيهِ - أَخْبَرَتْنِي عَائِشَةُ أُمُّ الْمُؤْمِنِينَ قَالَتْ: «دَخَلَتْ عَلَيَّ بَرِيرَةُ فَقَالَتْ: إِنَّ أَهْلِي كَاتَبُونِي عَلَى تِسْعِ أَوَاقٍ فِي تِسْعِ سِنِينَ فِي كُلِّ سَنَةٍ أُوقِيَّةٌ فَأَعِينِينِي؟ فَقَالَتْ لَهَا: إِنْ شَاءَ أَهْلُكِ أَنْ أَعُدَّهَا لَهُمْ عَدَّةً وَاحِدَةً وَأُعْتِقَكِ وَيَكُونُ وَلَاؤُكِ لِي فَعَلْتُ؟ فَذَكَرَتْ ذَلِكَ

remains with us.' She returned and told me, so I rebuked her and said: 'By Allah, then no!' The Messenger of Allah (peace be upon him) heard this and questioned me. I informed him, and he said: 'Purchase her, emancipate her, and stipulate that the *walā'* remains with them, for *walā'* belongs to the emancipator.' I did so. Later, the Messenger of Allah (peace be upon him) delivered an evening sermon. He praised Allah as He deserves, then said: 'Why do some people stipulate conditions not found in Allah's Book? Any condition not in Allah's Book is void, even if it were a hundred conditions. Allah's Book holds greater claim, and Allah's stipulation is more binding.'" The narrator then mentioned the remainder of the ḥadīth.

لأَهْلِهَا فَقَالُوا: لَا إِلَّا أَنْ يَكُونَ الْوَلَاءُ لَهُمْ؟ قَالَتْ: فَأَتَتْنِي فَذَكَرَتْ ذَلِكَ فَانْتَهَرْتُهَا فَقُلْتُ: لَاهَا اللَّهِ إِذًا، فَسَمِعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ فَسَأَلَنِي فَأَخْبَرْتُهُ، فَقَالَ: اشْتَرِيهَا فَأَعْتِقِيهَا وَاشْتَرِطِي لَهُمُ الْوَلَاءَ فَإِنَّ الْوَلَاءَ لِمَنْ أَعْتَقَ؟ ففَعَلْتُ، ثُمَّ خَطَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَشِيَّةً فَحَمِدَ اللَّهَ وَأَثْنَى عَلَيْهِ بِمَا هُوَ أَهْلُهُ ثُمَّ قَالَ: مَا بَالُ أَقْوَامٍ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ، مَا كَانَ مِنْ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ وَإِنْ كَانَ مِائَةَ شَرْطٍ كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ» وَذَكَرَ بَاقِيَ الْحَدِيثِ.

L27239–27241

From Malik's chain via Hisham ibn Urwah from his father from Umm al-Mu'minin Aisha in a similar account. From Al-Bukhari's chain: Abu Nu'aym—Al-Fadl ibn Dukayn—narrated to us from Abdul Wahid ibn Ayman who reported: My father Ayman said: "I visited Aisha the Mother of the Believers and asked her: 'I was owned by Utbah ibn Abi Lahab. When he died, his sons inherited me and sold me to Ibn Abi Amr al-Makhzumi who emancipated me, but Utbah's sons stipulated the patronage.' Aisha replied: 'Barirah came to me as a mukatabah and said: "Purchase me and emancipate me." I agreed. She said: "They will not sell me unless they stipulate my patronage." I said: "I have no need for that." When the Prophet—peace be upon him—heard of this, he told me: "Buy her and emancipate her." Then I related the account.'" From Abu Dawud's chain: Musa ibn Isma'il narrated to us from Hammad ibn Salamah from Khalid al-Khaddā' from Ikrimah from Ibn Abbas: "Mughith, a slave, said: 'O Messenger of Allah...'" "Intercede for her?" So the Messenger of Allah—peace and blessings be upon him—said to her: "O Barirah, fear Allah, for he is your husband and the father of your child." She said: "O Messenger of Allah, are you commanding me to do that?" He said: "No, I am merely an intercessor." At that moment, Mughīth's tears were flowing down his cheek? Then the Messenger of Allah—peace and blessings be upon him—said to Al-ʿAbbās: "Do you not marvel at Mughīth's love for Barirah and her hatred of him?"

وَمِنْ طَرِيقِ مَالِكٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ أُمِّ الْمُؤْمِنِينَ عَائِشَةَ نَحْوَهُ. وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو نُعَيْمٍ - هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - نا عَبْدُ الْوَاحِدِ بْنُ أَيْمَنَ حَدَّثَنِي «أَبِي أَيْمَنُ قَالَ: دَخَلْتُ عَلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَقُلْتُ لَهَا: كُنْتُ لِعُتْبَةَ بْنِ أَبِي لَهَبٍ وَمَاتَ وَوَرِثَهُ بَنُوهُ وَإِنَّهُمْ بَاعُونِي مِنْ ابْنِ أَبِي عَمْرٍو الْمَخْزُومِيِّ فَأَعْتَقَنِي وَاشْتَرَطَ بَنُو عُتْبَةَ الْوَلَاءَ؟ فَقَالَتْ عَائِشَةُ: دَخَلَتْ عَلَيَّ بَرِيرَةُ وَهِيَ مُكَاتَبَةٌ فَقَالَتْ: اشْتَرِينِي فَاعْتِقِينِي؟ فَقُلْتُ: نَعَمْ، فَقَالَتْ: لَا يَبِيعُونَنِي حَتَّى يَشْتَرِطُوا وَلَائِي، فَقُلْتُ: لَا حَاجَةَ لِي بِذَلِكَ، فَسَمِعَ بِذَلِكَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ بَلَغَهُ فَقَالَ لِعَائِشَةَ: اشْتَرِيهَا وَأَعْتِقِيهَا» فَذَكَرْت الْخَبَرَ. وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُوسَى بْنُ إِسْمَاعِيلَ نا حَمَّادٌ - هُوَ ابْنُ سَلَمَةَ - عَنْ خَالِدٍ - هُوَ الْحَذَّاءُ - عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ مُغِيثًا كَانَ عَبْدًا فَقَالَ: يَا رَسُولَ اللَّهِ اشْفَعْ إِلَيْهَا؟ فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: يَا بَرِيرَةُ اتَّقِي اللَّهَ فَإِنَّهُ زَوْجُكِ وَأَبُو وَلَدِكِ، قَالَتْ: يَا رَسُولَ اللَّهِ تَأْمُرُنِي بِذَلِكَ؟ قَالَ: لَا، إِنَّمَا أَنَا شَافِعٌ،

فَكَانَتْ دُمُوعُهُ تَسِيلُ عَلَى خَدِّهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْعَبَّاسِ: أَلَا تَعْجَبُ مِنْ حُبِّ مُغِيثٍ بَرِيرَةَ وَبُغْضِهَا إِيَّاهُ؟» .

L27242 From the narration of Sa'īd ibn Manṣūr: Hushaym narrated to us from Khālid, from 'Ikrimah, from Ibn 'Abbās, who said: When Barirah was given the choice, I saw her husband trailing her through Madīnah's alleyways, tears streaming down his beard. Al-'Abbās petitioned the Prophet (peace be upon him) to intercede for him with her. The Messenger of Allāh (peace be upon him) said to her: "He is your husband and the father of your child." She responded: "Do you command me to him, O Messenger of Allāh?" He replied: "I am merely an intercessor." She declared: "If you are an intercessor, I have no need for him," and she chose herself. He was known as Al-Mughīth, a slave of the family of Al-Mughīrah from Banū Makhzūm. The Messenger of Allāh (peace be upon him) then said to Al-'Abbās: "Does it not astonish you: the intensity of Barirah's aversion to her husband, and the intensity of her husband's love for her?"

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا خَالِدٌ عَنْ عِكْرِمَةَ «عَنْ ابْنِ عَبَّاسٍ قَالَ: لَمَّا خُيِّرَتْ بَرِيرَةُ رَأَيْتُ زَوْجَهَا يَتْبَعُهَا فِي سِكَكِ الْمَدِينَةِ وَدُمُوعُهُ تَسِيلُ عَلَى لِحْيَتِهِ، فَكَلَّمَ لَهُ الْعَبَّاسُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَطْلُبَ إِلَيْهَا، فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: زَوْجُكِ وَأَبُو وَلَدِكِ فَقَالَتْ: أَتَأْمُرُنِي بِهِ يَا رَسُولَ اللَّهِ؟ قَالَ: إِنَّمَا أَنَا شَافِعٌ، فَقَالَتْ فَإِنْ كُنْتَ شَافِعًا فَلَا حَاجَةَ لِي فِيهِ، وَاخْتَارَتْ نَفْسَهَا، وَكَانَ يُقَالُ لَهُ: الْمُغِيثُ، وَكَانَ عَبْدًا لِآلِ الْمُغِيرَةِ مِنْ بَنِي مَخْزُومٍ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْعَبَّاسِ: أَلَا تَعْجَبُ مِنْ شِدَّةِ بُغْضِ بَرِيرَةَ لِزَوْجِهَا وَمِنْ شِدَّةِ حُبِّ زَوْجِهَا لَهَا؟»

L27243 This is a well-known, widely transmitted report narrated from the Prophet—peace and blessings of Allah be upon him—by ʿĀ'ishah, the Mother of the Believers; Barrīrah; and Ibn ʿAbbās. It was transmitted from Ibn ʿAbbās by ʿIkrimah; from Barrīrah by ʿUrwah; from the Mother of the Believers by al-Qāsim ibn Muḥammad, ʿUrwah ibn al-Zubayr, ʿAmrah, and Ayman. It was transmitted from Ayman by his son ʿAbd al-Wāḥid; from ʿAmrah by Yaḥyā ibn Sa'īd al-Anṣārī; from al-Qāsim by his son ʿAbd al-Raḥmān; from ʿUrwah by al-Zuhrī, his son Hishām, and Yazīd ibn Rūmān. It was transmitted from these individuals by numerous transmitters and Imams—so many in number that it became a universally transmitted and mass-transmitted (mutawātir) report leaving no room for opposition. This pertains to the sale of a slave under a contractual manumission agreement (mukātab) before they have paid anything.

فَهَذَا خَبَرٌ ظَاهِرٌ فَاشٍ، رَوَاهُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَائِشَةُ أُمُّ الْمُؤْمِنِينَ، وَبَرِيرَةُ، وَابْنُ عَبَّاسٍ. وَرَوَاهُ عَنْ ابْنِ عَبَّاسٍ عِكْرِمَةُ، وَعَنْ بَرِيرَةَ عُرْوَةُ، وَعَنْ أُمِّ الْمُؤْمِنِينَ الْقَاسِمُ بْنُ مُحَمَّدٍ، وَعُرْوَةُ بْنُ الزُّبَيْرِ، وَعَمْرَةُ، وَأَيْمَنُ. وَرَوَاهُ عَنْ أَيْمَنَ ابْنُهُ عَبْدُ الْوَاحِدِ، وَعَنْ عَمْرَةَ: يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ وَعَنْ الْقَاسِمِ: ابْنُهُ عَبْدُ الرَّحْمَنِ، وَعَنْ عُرْوَةَ: الزُّهْرِيُّ، وَهِشَامٌ ابْنُهُ، وَيَزِيدُ بْنُ رُومَانَ. وَرَوَاهُ عَنْ هَؤُلَاءِ النَّاسُ، وَالْأَئِمَّةُ الَّذِينَ يَكْثُرُ عَدَدُهُمْ، فَصَارَ نَقْلَ كَافَّةٍ وَتَوَاتُرٍ لَا تَسَعُ مُخَالَفَتُهُ - وَهَذَا بَيْعُ الْمُكَاتَبِ قَبْلَ أَنْ يُؤَدِّيَ شَيْئًا.

L27244–27246 There is no doubt to every person with sound perception that none remained in Medina unaware of this matter, for it was a transaction conducted between the Mother of the Believers and a group of Companions, who were the freed-

وَلَا شَكَّ عِنْدَ كُلِّ ذِي حِسٍّ سَلِيمٍ أَنَّهُ لَمْ يَبْقَ بِالْمَدِينَةِ مَنْ لَمْ يَعْرِفْ ذَلِكَ؛ لِأَنَّهَا صَفْقَةٌ جَرَتْ بَيْنَ أُمِّ الْمُؤْمِنِينَ وَطَائِفَةٍ مِنْ الصَّحَابَةِ وَهُمْ مَوَالِي بَرِيرَةَ. ثُمَّ خَطَبَ النَّاسَ

men of Barīrah. Then Allah's Messenger—peace be upon him—addressed the people in a sermon about her sale at a time other than the appointed sermon hour, and nothing could be more widely known than this. Moreover, her husband's act of walking behind her weeping through Medina's alleyways further amplified the matter's fame among... The children, women, and vulnerable – it has become evident beyond doubt that this constitutes a consensus among all the Companions, as it is entirely impermissible to even suspect that a single Companion would oppose the command of Allah's Messenger – peace and blessings be upon him – in which he stressed this matter with utmost emphasis.

رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَمْرِ بَيْعِهَا خُطْبَةً فِي غَيْرِ وَقْتِ الْخُطْبَةِ وَلَا يَكُونُ شَيْءٌ أَشْهَرَ مِنْ هَذَا. ثُمَّ كَانَ مِنْ مَشْيِ زَوْجِهَا يَبْكِي خَلْفَهَا فِي أَزِقَّةِ الْمَدِينَةِ مَا زَادَ الْأَمْرَ شُهْرَةً عِنْدَ الصِّبْيَانِ وَالنِّسَاءِ وَالضُّعَفَاءِ، فَلَاحَ يَقِينًا أَنَّهُ إجْمَاعٌ مِنْ جَمِيعِ الصَّحَابَةِ، إذْ لَا يَجُوزُ أَلْبَتَّةَ أَنْ يُظَنَّ بِصَاحِبٍ خِلَافُ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي أَكَّدَ فِيهِ هَذَا التَّأْكِيدَ.

L27247 This is the certain consensus: there is no giving of a sa' of wheat as charity among Banū al-Ḥārith ibn al-Khazraj at approximately a mile from Medina; nor [consensus] regarding 'Umar's imposition of forty lashes added to the discretionary punishment (taʿzīr) for drinking wine, though authentic reports confirm his own contradiction of this, as do reports from other Companions before and after him. They cannot provide us with any prohibition from a Companion against selling a mukātab before he fulfills his obligation. Only that obscure report attributed to Ibn 'Abbās remains, for which we find no chain of transmission.

وَهَذَا هُوَ الْإِجْمَاعُ الْمُتَيَقَّنُ لَا إعْطَاءُ صَاعٍ مِنْ حِنْطَةٍ صَدَقَةً فِي بَنِي الْحَارِثِ بْنِ الْخَزْرَجِ عَلَى نَحْوِ مِيلٍ مِنْ الْمَدِينَةِ، وَلَا جَلْدُ عُمَرَ أَرْبَعِينَ جَلْدَةً زَائِدَةً عَلَى سَبِيلِ التَّعْزِيرِ فِي الْخَمْرِ قَدْ صَحَّ عَنْهُ خِلَافُهَا، وَعَنْ غَيْرِهِ مِنْ الصَّحَابَةِ قَبْلَهُ وَبَعْدَهُ. وَلَا سَبِيلَ لَهُمْ إلَى أَنْ يُوجِدُونَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ الْمَنْعَ مِنْ بَيْعِ الْمُكَاتَبِ قَبْلَ أَنْ يُؤَدِّيَ إلَّا تِلْكَ الْقَوْلَةَ الْخَامِلَةَ الَّتِي لَا نَعْلَمُ لَهَا سَنَدًا عَنْ ابْنِ عَبَّاسٍ.

L27248 Abu Muhammad said: They argued obstinately at this point, whereupon a faction among them asserted: "Her manumission contract was sold." We retorted: "You have contrived a lie on the spot, and the hadith itself refutes your claim, for the Mother of the Believers purchased her and emancipated her, with the patronage rights vested in her." Some of them contended: "She defaulted?" We countered: "You have contrived a lie on the spot, while the hadith confirms that this incident occurred in Medina when al-ʿAbbās and his son ʿAbdullāh were present there, that the contractual obligation lasted nine years with an annual payment of one silver ounce, and that she had still not paid anything by then."

قَالَ أَبُو مُحَمَّد: فَبَلَّحُوا عِنْدَ هَذِهِ، فَقَالَتْ مِنْهُمْ عُصْبَةٌ: إنَّمَا بِيعَتْ كِتَابَتُهَا. فَقُلْنَا: كَذَبْتُمْ كَذِبًا مُفْتَعَلًا لِلْوَقْتِ، وَفِي الْخَبَرِ تَكْذِيبُكُمْ بِأَنَّ أُمَّ الْمُؤْمِنِينَ اشْتَرَتْهَا وَأَعْتَقَتْهَا، وَكَانَ الْوَلَاءُ لَهَا. وَقَالَ بَعْضُهُمْ: إنَّهَا عَجَزَتْ؟ فَقُلْنَا: كَذَبْتُمْ كَذِبًا مُفْتَعَلًا مِنْ وَقْتِهِ، وَفِي الْخَبَرِ: أَنَّ هَذِهِ الْقِصَّةَ كَانَتْ بِالْمَدِينَةِ، وَالْعَبَّاسُ، وَابْنُهُ عَبْدُ اللَّهِ بِهَا، وَأَنَّ الْكِتَابَةَ كَانَتْ لِتِسْعِ سِنِينَ فِي كُلِّ سَنَةٍ أُوقِيَّةٌ، وَأَنَّهَا لَمْ تَكُنْ بَعْدُ أَدَّتْ شَيْئًا.

L27249 There is no disagreement among any of the scholars and ḥadīth narrators that al-ʿAbbās and ʿAbdullāh neither entered Medina nor resided in it except after the Conquest of Mecca. The Prophet—may Allah bless him and grant him peace—lived only two years and four months in Medina after the

وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ وَالرِّوَايَةِ فِي أَنَّ الْعَبَّاسَ، وَعَبْدَ اللَّهِ لَمْ يَدْخُلَا الْمَدِينَةَ وَلَا سَكَنَاهَا، إلَّا بَعْدَ فَتْحِ مَكَّةَ، وَلَمْ يَعِشْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُذْ

Conquest. So where is its weakness, and where is the fulfillment of their stars' destinies? Blessed be Allah—how easily these people forge falsehoods in matters of religion! We seek refuge with Allah from tribulation.

L27250–27252 It has been narrated to us through the chain of Abd al-Razzaq from Ibn Jurayj: I said to Ata, "A slave boy whom you entered into a manumission contract with—did you sell him as chattel or contract him and he failed to fulfill it?" Ata said, "He remains a slave belonging to the purchaser." Amr ibn Dinar also affirmed this. I said to Ata, "If he completes his contractual obligations and gains freedom?" Ata said, "He becomes the client of the purchaser." I said to Ata, "How can that be, when the contract itself constitutes manumission?" Ata said, "No! It is not true manumission. It is merely said regarding the contracted slave that he is inheritable. Thus, the inheritor cannot sell him except with the consent of the agnatic heirs of the original contractor." Amr ibn Dinar likewise affirmed this. Ibn Jurayj said, "I told Ata, 'My brothers authorized me to sell him.'" Why did the sons of my father not grant permission, while the sons of my grandfather did? ʿAṭāʾ said: It suffices that his agnate heir at that time grants you permission. ʿAṭāʾ added: As for a mukātab whom you contracted and then sold as a slave while debt remains upon him, you need not seek anyone's permission concerning him. If he defaults, he becomes the property of the purchaser, and if he is freed, he becomes the client of the purchaser. This is the position of ʿAṭāʾ and ʿAmr ibn Dīnār, who permit selling a mukātab's person as a slave in the absence of default, and Ibn Jurayj did not oppose them. What is truly astonishing is that some scholars permit selling the mukātab's contract—which is unlawful, being a sale involving uncertainty—while prohibiting the sale of his person before he fulfills his obligation, though this is unequivocally lawful. They further assert: If he fulfills his obligation and is freed, his patronage belongs to the seller of his contract, but if he defaults, he becomes a slave owned by the purchaser of his contract. This is an unprecedented and incoherent ruling, for it is a sale (not a sale combined with transferring ownership of the slave to someone unrelated to the transaction), and all of this is invalid.

L27253 Some of them argued to prohibit his sale by citing Allah Almighty's statement: "Fulfill the contracts" [Al-Mā'idah: 1]. Abū Muḥammad said: This

دَخَلَ الْمَدِينَةَ بَعْدَ الْفَتْحِ إِلَّا عَامَيْنِ وَأَرْبَعَةَ أَشْهُرٍ، فَأَيْنَ عَجْزُهَا وَأَيْنَ حُلُولُ نُجُومِهَا؟ تَبَارَكَ اللَّهُ مَا أَسْهَلَ الْكَذِبَ عَلَى هَؤُلَاءِ الْقَوْمِ فِي الدِّينِ. نَعُوذُ بِاللَّهِ مِنْ الْبَلَاءِ؟

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: غُلَامٌ كَاتَبْتَهُ فَبِعْته رَقَبَةً أَوْ كَاتَبْته فَعَجَزَ؟ قَالَ عَطَاءٌ: هُوَ عَبْدٌ لِلَّذِي ابْتَاعَهُ. وَقَالَهُ أَيْضًا: عَمْرُو بْنُ دِينَارٍ، قُلْت لِعَطَاءٍ: فَقَضَى كِتَابَتَهُ فَعَتَقَ؟ قَالَ عَطَاءٌ: هُوَ مَوْلَى لِلَّذِي ابْتَاعَهُ؟ قُلْت لِعَطَاءٍ: كَيْفَ وَالْكِتَابَةُ عِتْقٌ؟ قَالَ عَطَاءٌ: كَلَّا، لَيْسَتْ عِتْقًا، إنَّمَا يُقَالُ فِي الْمُكَاتَبِ يُورَثُ فَلَا يَبِيعُهُ الَّذِي وَرِثَهُ إلَّا بِإِذْنِ عَصَبَةِ الَّذِي كَاتَبَهُ. وَقَالَهُ أَيْضًا: عَمْرُو بْنُ دِينَارٍ، قَالَ ابْنُ جُرَيْجٍ: قُلْت لِعَطَاءٍ: أَذِنَ لِي فِي بَيْعِهِ إخْوَتِي بَنُو أَبِي وَلَمْ يَأْذَنْ بَنُو جَدِّيّ؟ قَالَ عَطَاءٌ: حَسْبُك أَنْ يَأْذَنَ لَك وَارِثُهُ مِنْ عَصَبَتِهِ يَوْمَئِذٍ، قَالَ عَطَاءٌ: وَأَمَّا مُكَاتَبٌ أَنْتَ كَاتَبْته فَبِعْته رَقَبَةً وَالَّذِي عَلَيْهِ: فَلَا تَسْتَأْذِنْ فِيهِ أَحَدًا، فَإِنْ عَجَزَ فَهُوَ لِلَّذِي ابْتَاعَهُ، وَإِنْ عَتَقَ فَهُوَ مَوْلَى الَّذِي ابْتَاعَهُ. فَهَذَا عَطَاءٌ، وَعَمْرُو بْنُ دِينَارٍ: يُجِيزَانِ بَيْعَ رَقَبَةِ الْمُكَاتَبِ بِلَا عَجْزٍ، وَلَمْ يُخَالِفْهُمَا ابْنُ جُرَيْجٍ. وَالْعَجَبُ كُلُّهُ مِنْ إجَازَةِ بَعْضِهِمْ بَيْعَ كِتَابَةِ الْمُكَاتَبِ - وَهُوَ حَرَامٌ - لِأَنَّهُ بَيْعُ غَرَرٍ، وَمَنَعُوا مِنْ بَيْعِ رَقَبَتِهِ قَبْلَ أَنْ يُؤَدِّيَ - وَهُوَ حَلَالٌ طَلْقٌ -. ثُمَّ قَالُوا: إنْ أَدَّى فَعَتَقَ فَوَلَاؤُهُ لِبَائِعِ كِتَابَتِهِ، وَإِنْ عَجَزَ فَهُوَ رَقِيقٌ لِلْمُشْتَرِي كِتَابَتُهُ - وَهَذَا تَخْلِيطٌ لَا نَظِيرَ لَهُ لِأَنَّهُ بَيْعٌ، لَا بَيْعٌ وَتَمْلِيكٌ لِلرَّقَبَةِ لِمَنْ لَمْ يَشْتَرِهَا - وَكُلُّ ذَلِكَ بَاطِلٌ.

وَاحْتَجَّ بَعْضُهُمْ فِي مَنْعِ بَيْعِهِ بِقَوْلِ اللَّهِ تَعَالَى {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] . قَالَ أَبُو مُحَمَّد: وَهَذَا عَلَيْهِمْ لَا لَهُمْ؛ لِأَنَّهُمْ يَرَوْنَ تَعْجِيزَهُ إنْ عَجَزَ، وَإِبْطَالَ كِتَابَتِهِ، وَنَسَوْا قَوْلَ اللَّهِ تَعَالَى {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] . فَقَالُوا: الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ؟ فَقُلْنَا: فَأَجِيزُوا شَرْطَهُ عَلَى الْمُكَاتَبَةِ وَطْئَهَا، كَمَا فَعَلَ سَعِيدُ بْنُ الْمُسَيِّبِ وَغَيْرُهُ، فَقَالُوا: هَذَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى؟ فَقُلْنَا: وَالتَّعْجِيزُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى وَلَا فَرْقَ. ثُمَّ لَمْ يَخْتَلِفُوا فِيمَنْ عَقَدَ عَلَى نَفْسِهِ لِلَّهِ عَزَّ وَجَلَّ عِتْقَ غُلَامِهِ هَذَا - إنْ أَفَاقَ أَبُوهُ أَوْ قَدِمَ غَائِبُهُ - فَإِنَّ لَهُ بَيْعَهُ مَا لَمْ يَقْدَمْ الْغَائِبُ، وَمَا لَمْ يُفِقْ الْأَبُ فَهَلَّا مَنَعُوا مِنْ هَذَا بِ {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] . فَإِنْ قَالُوا: قَدْ لَا يَسْتَحِقُّ الْعِتْقَ بِمَوْتِ الْأَبِ الْمَرِيضِ، وَالْغَائِبِ؟ قُلْنَا: وَقَدْ لَا يَسْتَحِقُّ الْمُكَاتَبُ الْعِتْقَ عِنْدَكُمْ بِالْعَجْزِ وَلَا فَرْقَ، فَكَيْفَ وَلَيْسَ قَوْله تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] مَانِعًا مِنْ الْبَيْعِ، وَإِنَّمَا هُوَ مَانِعٌ مِنْ أَنْ يُبْطِلَ عَقْدَهُ قَاصِدًا إلَيْهِ بِالْإِبْطَالِ، فَقَطْ.

argument is against them, not in their favor, for they hold that incapacitation invalidates the contract and annuls his *mukātabah* agreement, while disregarding Allah's words: "Fulfill the contracts" [Al-Mā'idah: 1]. They asked: "Are Muslims bound by their stipulations?" We replied: "Then permit the stipulation he imposes on the *mukātabah* contract allowing intercourse with her (the enslaved woman under the contract)—as did Saʿīd ibn al-Musayyab and others." They retorted: "This stipulation is not in the Book of Allah Almighty." We countered: "The stipulation of incapacitation is likewise absent from the Book of Allah Almighty, with no distinction between them." Moreover, they unanimously agreed that if someone pledges to Allah—Exalted and Majestic—to free his slave upon the father's recovery or the absent person's return, he retains the right to sell him as long as the absent one has not arrived and the father has not recovered. Why then do they not prohibit this in such cases based on "Fulfill the contracts" [Al-Mā'idah: 1]? If they argue: "He may not deserve manumission if the ailing father dies or the absent one fails to return," we respond: "Similarly, the *mukātab* may not deserve manumission in your view due to incapacitation—there is no difference." How then can they claim Allah's words "Fulfill the contracts" [Al-Mā'idah: 1] prohibit the sale, when it merely prohibits intentionally nullifying the contract through deliberate means?[13]

وَأَمَّا وَطْءُ الْمُكَاتَبَةِ: فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ نا عَبْدُ الصَّمَدِ بْنُ عَبْدِ الْوَارِثِ التَّنُّورِيُّ نا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، قَالَ: إذَا كَاتَبَ الرَّجُلُ أَمَتَهُ وَاشْتَرَطَ أَنْ يَغْشَاهَا حَتَّى يُؤَدِّيَ مُكَاتَبَتَهَا فَلَا بَأْسَ بِذَلِكَ - وَبِهِ يَقُولُ أَبُو ثَوْرٍ.

L27254 Regarding intercourse with a _mukataba_ female slave: It has been narrated to us through the chain of Aḥmad ibn Ḥanbal, from ʿAbd al-Ṣamad ibn ʿAbd al-Wārith al-Tannūrī, from Yaḥyā ibn Saʿīd al-Anṣārī, from Saʿīd ibn al-Musayyib, who said: If a man enters into a _mukataba_ contract with his female slave and stipulates that he may have intercourse with her until he fulfills her _mukataba_, there is no harm in that. This is also the opinion of Abū Thawr.

وَالْعَجَبُ: أَنَّ الْمَانِعِينَ مِنْ وَطْئِهَا اخْتَلَفُوا، فَقَالَ الْحَكَمُ بْنُ عُتَيْبَةَ: إنْ حَمَلَتْ بَطَلَتْ الْكِتَابَةُ وَهِيَ أُمُّ وَلَدٍ. وَقَالَ الزُّهْرِيُّ: يُجْلَدُ مِائَةً، فَإِنْ حَمَلَتْ فَهِيَ أُمُّ وَلَدٍ. قَالَ عَلِيٌّ: لَيْتَ

L27255–27256 The astonishing thing is that those who prohibit intercourse with her differed. Al-Hakam ibn ʻUtaybah said: "If she conceives, the manumission contract is voided and she becomes an *umm walad*." Al-Zuhri said: "He is to be lashed one hundred times, and if she conceives, she becomes an *umm walad*." ʻAli remarked: "Would that I knew how one could be lashed

[13] **Qur'an references (L27253):** Qur'an 5:1 (Al-Ma'idah).

a hundred times for intercourse with a woman who, if she conceives, would become the *umm walad* of his child! This is indeed astonishing! It is either lawful marriage or adultery—there is no third possibility."

شَعْرِي كَيْفَ يُجْلَدُ مِائَةً فِي وَطْئِهِ مَنْ تَكُونُ أُمَّ وَلَدِهِ إنْ حَمَلَتْ؟ إنَّ هَذَا لَعَجَبٌ، وَإِنَّمَا هُوَ فِرَاشٌ أَوْ عِهْرٌ وَلَا ثَالِثَ.

L27257 Qatadah said: He is to be lashed ninety-nine lashes, and she is subject to the same ruling if she consents to him. Sufyan al-Thawri said: There is no penalty upon him if he has intercourse with her, nor upon her. If she becomes pregnant, she may choose either to continue with the *kitabah* (contract of manumission) or to become an *umm walad* (mother of her master's child), which nullifies the *kitabah*.

وَقَالَ قَتَادَةُ: يُجْلَدُ مِائَةَ سَوْطٍ غَيْرَ سَوْطٍ، وَهِيَ كَذَلِكَ إنْ طَاوَعَتْهُ. وَقَالَ سُفْيَانُ الثَّوْرِيُّ: لَا شَيْءَ عَلَيْهِ إنْ وَطِئَهَا وَلَا عَلَيْهَا، فَإِنْ حَمَلَتْ فَهِيَ بِالْخِيَارِ بَيْنَ التَّمَادِي عَلَى الْكِتَابَةِ، وَبَيْنَ أَنْ تَكُونَ أُمَّ وَلَدٍ وَتُبْطِلُ الْكِتَابَةَ.

L27258 Abu Hanifah and Malik held the same opinion as Sufyan, except they added: "If she persists in the manumission contract, she may take from him the dower appropriate to women of her standing to assist her in her manumission contract," though Malik further stipulated: "He shall be subject to disciplinary punishment." Abu Muhammad said: "I wish I knew by what legal principle she takes a dower from him. Is she his wife, thereby entitled to a dower for this invalid union? Or is she a prostitute? Yet Allah's Messenger—peace be upon him—forbade the dower of prostitution. Or is she his slave, lawful to him yet having no right to a dower? Or is she forbidden due to a specific state, such as menstruation or fasting? Anything beyond this is illogical confusion." Al-Shafi'i said: "They shall both receive discretionary punishment, and she is entitled to the dower appropriate to women of her standing, and she is his umm walad (mother of his child)"—a self-contradictory position as we have previously explained.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، كَقَوْلِ سُفْيَانَ، إلَّا أَنَّهُ زَادَ " إنْ تَمَادَتْ عَلَى الْكِتَابَةِ أَخَذَتْ مِنْهُ مَهْرَ مِثْلِهَا فَاسْتَعَانَتْ بِهِ فِي كِتَابَتِهَا " إلَّا أَنَّ مَالِكًا زَادَ " أَنَّهُ يُؤَدَّبُ ". قَالَ أَبُو مُحَمَّدٍ: لَيْتَ شِعْرِي لِأَيِّ مَعْنًى تَأْخُذُ مِنْهُ مَهْرًا أَهِيَ زَوْجَةٌ لَهُ فَيَكُونُ لَهَا مَهْرُ هَذَا الْبَاطِلِ أَمْ هِيَ بَغْيٌ؟ فَقَدْ حَرَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَهْرَ الْبَغْيِ، أَمْ هِيَ مِلْكُ يَمِينِهِ فَهِيَ حَلَالٌ وَلَا مَهْرَ لَهَا؟ أَمْ هِيَ مُحَرَّمَةٌ بِصِفَةٍ، كَالْحَائِضِ، أَوْ الصَّائِمَةِ، وَمَا عَدَا ذَلِكَ فَتَخْلِيطٌ لَا يُعْقَلُ؟ وَقَالَ الشَّافِعِيُّ: يُعَزَّرَانِ وَلَهَا مَهْرُ مِثْلِهَا، وَهِيَ أُمُّ وَلَدِهِ - وَهَذَا تَنَاقُضٌ كَمَا ذَكَرْنَا.

L27259 And the wonder is their argument in prohibiting intercourse with her by saying: "She has exited his possession and come under her own control, like a mortgaged woman." ʿAlī said: "This is a lie. She does not exit his possession nor his ownership except through repayment alone. A claim does not establish proof. The mortgaged woman is lawful to her master, and whoever prohibits intercourse with her is in error." This is arguing falsehood with falsehood, claims with claims, and their statements with their statements.

وَالْعَجَبُ مِنْ احْتِجَاجِهِمْ فِي الْمَنْعِ مِنْ وَطْئِهَا بِأَنْ قَالُوا: قَدْ خَرَجَتْ مِنْ يَدِهِ وَصَارَتْ فِي يَدِ نَفْسِهَا، كَالْمَرْهُونَةِ. قَالَ عَلِيٌّ: هَذَا كَذِبٌ، مَا خَرَجَتْ عَنْ يَدِهِ، وَلَا عَنْ مِلْكِهِ، إلَّا بِالْأَدَاءِ فَقَطْ، وَالدَّعْوَى لَا تَقُومُ بِهَا حُجَّةٌ، وَالْمَرْهُونَةُ حَلَالٌ لِسَيِّدِهَا، وَالْمَانِعُ مِنْ وَطْئِهَا مُخْطِئٌ - وَهَذَا احْتِجَاجٌ لِلْبَاطِلِ بِالْبَاطِلِ، وَلِلدَّعْوَى بِالدَّعْوَى، وَلِقَوْلِهِمْ بِقَوْلِهِمْ.

L27260 They said: His ownership has been nullified from her benefits, and intercourse with her is among her benefits. Abu Muhammad said: This is false.

Rather, his ownership has been nullified from her person, and ownership of her person is among her benefits. The correct ruling here is that her benefits are indisputably his. Therefore, nothing is excluded from his ownership of both her person and benefits except what scriptural evidence explicitly excludes, and there is no scriptural proof prohibiting him from intercourse with her as long as she has not fulfilled her obligation.

وَقَالُوا: قَدْ سَقَطَ مِلْكُهُ عَنْ مَنَافِعِهَا وَوَطْؤُهَا مِنْ مَنَافِعِهَا. قَالَ أَبُو مُحَمَّد: هَذَا كَذِبٌ، بَلْ سَقَطَ مِلْكُهُ عَنْ رَقَبَتِهَا، وَمِلْكُ رَقَبَتِهَا مِنْ مَنَافِعِهَا، وَإِنَّمَا الْحَقُّ هَاهُنَا أَنَّ مَنَافِعَهَا لَهُ بِلَا خِلَافٍ، فَلَا يَخْرُجُ عَنْ مِلْكِهِ مِنْهُمَا إِلَّا مَا أَخْرَجَهُ النَّصُّ، وَلَا نَصَّ فِي مَنْعِهِ مِنْ وَطْئِهَا مَا لَمْ تُؤَدِّ.

L27261–27262 Some of them said: Intercourse with her is akin to destroying part of her—and this is the height of folly—for if it were equivalent to destroying part of her, it would indeed be unlawful for him before the *kitabah*, just as it is forbidden for him to destroy part of her, with no distinction. As for our statement, "If ownership reverts to him, the *kitabah* does not revive," this is because any contract invalidated rightfully cannot be restored except through initiating a new contract or by an explicit text mandating its revival after annulment, and there is no such text here. If they pay any portion, emancipation is enacted for them proportionally to what they paid. It is unlawful to sell a free person, nor to sell a portion of a free person, nor to have intercourse with one partially free, for she is not fully under his right-hand possession at that point—rather, part of her is his right-hand possession and part is not. Intercourse cannot be divided, and fundamentally unlawful intercourse is entirely prohibited. If he commits this, he is a fornicator (*zinā*) subject to the *ḥadd* penalty, and the child is not attributed to him in lineage—this being the opinion of al-Ḥasan al-Baṣrī. He may sell his share in either of them that remains under his right-hand possession, based on our earlier mention of the permissibility of selling one's owned portion.

وَقَالَ بَعْضُهُمْ: وَطْؤُهَا كَإِتْلَافِ بَعْضِهَا - وَهَذَا غَايَةُ السُّخْفِ - وَلَئِنْ كَانَ كَإِتْلَافِ بَعْضِهَا إِنَّهُ لَحَرَامٌ عَلَيْهِ قَبْلَ الْكِتَابَةِ، كَمَا يَحْرُمُ عَلَيْهِ إِتْلَافُ بَعْضِهَا وَلَا فَرْقَ. وَأَمَّا قَوْلُنَا " إِنْ عَادَ إِلَى مِلْكِهِ لَمْ تَعُدْ الْكِتَابَةُ " فَلِأَنَّ كُلَّ عَقْدٍ بَطَلَ بِحَقٍّ فَلَا يَرْجِعُ إِلَّا بِابْتِدَاءِ عَقْدِهِ، أَوْ بِأَنْ يُوجِبَ عَوْدَتَهُ بَعْدَ بُطْلَانِهِ نَصٌّ، وَلَا نَصَّ هَاهُنَا. وَأَمَّا إِذَا أَدَّيَا شَيْئًا فَقَدْ شُرِعَ الْعِتْقُ فِيهِمَا بِمِقْدَارِ مَا أَدَّيَا، وَلَا يَحِلُّ بَيْعُ حُرٍّ وَلَا بَيْعُ جُزْءِ حُرٍّ، وَلَا وَطْءُ مَنْ بَعْضُهَا حُرٌّ، لِأَنَّهَا لَيْسَتْ مِلْكَ يَمِينِهِ حِينَئِذٍ، بَلْ بَعْضُهَا مِلْكُ يَمِينِهِ وَبَعْضُهَا غَيْرُ مِلْكِ يَمِينِهِ وَالْوَطْءُ لَا يَنْقَسِمُ، وَلَا يَحِلُّ وَطْءٌ حَرَامٌ أَصْلًا، فَإِنْ فَعَلَ فَهُوَ زَانٍ فَعَلَيْهِ الْحَدُّ، وَالْوَلَدُ غَيْرُ لَاحِقٍ - وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ - وَلَهُ بَيْعُ مَا فِي مِلْكِهِ مِنْهُمَا، وَلِمَا ذَكَرْنَا مِنْ جَوَازِ بَيْعِ الْمَرْءِ حِصَّتَهُ الَّتِي فِي مِلْكِهِ.

L27263 As for our statement, "If the master dies, the kitabah is invalidated, or the equivalent of what remains unpaid is nullified," this is based on Allah's saying, exalted is He: {No soul earns except against itself} [6:164]. It is authentically established from the Messenger of Allah—peace and blessings be upon him and his family—that the initiation of manumission for the mukatab occurs through payment, while the remainder of him remains enslaved. Therefore, if the master dies, the portion freed through payment becomes irrevocably free, and what remains enslaved is owned by the heirs, the legatees, or the

وَأَمَّا قَوْلُنَا " إِنْ مَاتَ السَّيِّدُ بَطَلَتْ الْكِتَابَةُ، أَوْ مَا قَابَلَ مَا لَمْ يُؤَدِّ مِنْهُ " فَلِقَوْلِ اللَّهِ تَعَالَى {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - شُرُوعُ الْعِتْقِ فِي الْمُكَاتَبِ بِالْأَدَاءِ، وَبَقَاءُ سَائِرِهِ رَقِيقًا، فَإِذَا مَاتَ السَّيِّدُ فَمَا عَتَقَ بِالْأَدَاءِ حُرٌّ لَا يَجُوزُ أَنْ يَعُودَ رَقِيقًا، وَمَا بَقِيَ رَقِيقًا فَقَدْ مَلَكَهُ: الْوَرَثَةُ، وَالْمُوصَى لَهُمْ، أَوْ الْغُرَمَاءُ. وَلَا يَجُوزُ عَقْدُ الْمَيِّتِ فِي مَالِ غَيْرِهِ وَقَدْ ذَكَرْنَا قَبْلُ قَوْلَ

creditors. It is impermissible to enforce the contract of a deceased person on another's property. We previously mentioned Al-Sha'bi's statement that a deceased person has no binding stipulations. These proponents argue that they inherit the kitabah—but this is invalid according to their own principles, as the kitabah in their view is neither a debt nor an established, obligatory property. Thus, their claim that it is inherited is invalidated.[14]

الشَّعْبِيِّ لَيْسَ لِمَيِّتٍ شَرْطٌ وَقَالَ هَؤُلَاءِ: إِنَّمَا يَرِثُونَ الْكِتَابَةَ - وَهَذَا بَاطِلٌ عَلَى أُصُولِهِمْ؛ لِأَنَّ الْكِتَابَةَ عِنْدَهُمْ لَيْسَتْ دَيْنًا وَلَا مَالًا مُسْتَقِرًّا وَاجِبًا، فَبَطَلَ قَوْلُهُمْ: إِنَّهَا تُورَثُ.

L27264–27266 Regarding the death of the mukatab (a slave contracted to purchase their freedom), there exist ancient and modern differing opinions. A group stated that all his wealth belongs to his master. This was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from Qatādah from Maʿbad al-Juhanī, who said: ʿUmar ibn al-Khaṭṭāb ruled concerning a mukatab who dies leaving free children and possessing wealth greater than the remaining amount owed, that all his wealth belongs to his master. From ʿAbd al-Razzāq from Sufyān al-Thawrī from Ṭāriq from al-Shaʿbī from Zayd ibn Thābit: he said regarding a mukatab who dies leaving free heirs, "All his wealth belongs to his master." Another chain from ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ from Ibn ʿUmar states his opinion regarding what he left behind. The mukatab (a slave who has contracted to purchase their freedom through a kitābah agreement) entirely belongs to his master—this is the view of Umar ibn Abd al-Aziz, Qatadah, al-Nakha'i, al-Shafi'i, Ahmad ibn Hanbal, Abu Sulayman, and their followers. Another group held a differing opinion, as transmitted through Hammad ibn Salmah and Abd al-Razzaq. Hammad narrated: Simak ibn Harb reported to us from Qabus ibn Mukhariq ibn Sulaym, from his father. Abd al-Razzaq transmitted from Ibn Jurayj, from Ata', then both concurred in narrating from Ali regarding a mukatab who died and had free children: "The remainder of his kitābah is paid from his estate, and whatever remains becomes an inheritance for his children." Through Abd al-Razzaq's transmission from Sufyan ibn Uyaynah and al-Mu'tamir ibn Sulayman, both of whom narrated from Isma'il ibn Abi Khalid, who reported from al-Sha'bi, it is stated: Ibn Mas'ud would rule that if a mukatab died leaving property, the remainder of his kitābah contract would be paid from it, and any surplus would be returned to his free children. Shuraih likewise ruled ac-

وَأَمَّا مَوْتُ الْمُكَاتَبِ: فَفِيهِ خِلَافٌ قَدِيمٌ، وَحَدِيثٌ. فَقَالَتْ طَائِفَةٌ: مَالُهُ كُلُّهُ لِسَيِّدِهِ، رُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ مَعْبَدٍ الْجُهَنِيِّ، قَالَ: قَضَى عُمَرُ بْنُ الْخَطَّابِ فِي الْمُكَاتَبِ يَمُوتُ وَلَهُ وَلَدٌ أَحْرَارٌ، وَلَهُ مَالٌ أَكْثَرُ مِمَّا بَقِيَ عَلَيْهِ: أَنَّ مَالَهُ كُلَّهُ لِسَيِّدِهِ. وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ طَارِقٍ عَنْ الشَّعْبِيِّ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ فِي الْمُكَاتَبِ يَمُوتُ وَلَهُ وَرَثَةٌ: إنَّ مَالَهُ كُلَّهُ لِسَيِّدِهِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ ابْنِ عُمَرَ قَالَ فِيمَا تَرَكَ الْمُكَاتَبُ: هُوَ كُلُّهُ لِسَيِّدِهِ - وَهُوَ قَوْلُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَقَتَادَةَ، وَالنَّخَعِيِّ، وَالشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ. وَقَالَتْ طَائِفَةٌ: غَيْرَ هَذَا، كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ، وَعَبْدِ الرَّزَّاقِ، قَالَ حَمَّادٌ: نا سِمَاكُ بْنُ حَرْبٍ عَنْ قَابُوسِ بْنِ مُخَارِقِ بْنِ سُلَيْمٍ عَنْ أَبِيهِ، وَقَالَ عَبْدُ الرَّزَّاقِ: عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ، ثُمَّ اتَّفَقَا عَنْ عَلِيٍّ فِي مُكَاتَبٍ مَاتَ وَلَهُ وَلَدٌ أَحْرَارٌ قَالَ: يُؤَدِّي مِمَّا تَرَكَ مَا بَقِيَ مِنْ كِتَابَتِهِ، وَيَصِيرُ مَا بَقِيَ مِيرَاثًا لِوَلَدِهِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ، وَالْمُعْتَمِرِ بْنِ سُلَيْمَانَ، كِلَاهُمَا عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: كَانَ ابْنُ مَسْعُودٍ يَقُولُ فِي الْمُكَاتَبِ إذَا مَاتَ وَتَرَكَ مَالًا: أَدَّى عَنْهُ بَقِيَّةَ كِتَابَتِهِ، وَمَا فَضَلَ رُدَّ عَلَى وَلَدِهِ إنْ كَانَ لَهُ وَلَدٌ أَحْرَارٌ - وَبِهِ كَانَ يَقْضِي شُرَيْحٌ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ مَعْبَدٍ الْجُهَنِيِّ: أَنَّ مُعَاوِيَةَ قَالَ

[14] **Qur'an references (L27263):** Qur'an 6:164 (Al-An'am).

cording to this. Through Abd al-Razzaq's transmission from Ma'mar, from Qatadah, from Ma'bad al-Juhani: Mu'awiyah ruled regarding a mukatab who died leaving free children and property: "His master receives the remainder of his kitābah contract, and whatever remains belongs to his free children." This is also the view of Ma'bad. Al-Hasan al-Basri, Ibn Sirin, al-Nakha'i, and al-Sha'bi held that whatever remains after fulfilling the kitābah contract belongs to his legal heirs. This is likewise the view of Amr ibn Dinar.

فِي مُكَاتَبٍ مَاتَ وَلَهُ وَلَدٌ أَحْرَارٌ وَمَالٌ: أَنْ يُعْطَى سَيِّدُهُ بَقِيَّةَ كِتَابَتِهِ، وَيَكُونُ مَا بَقِيَ لِوَلَدِهِ الْأَحْرَارِ - وَبِهِ يَقُولُ مَعْبَدٌ. وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَابْنِ سِيرِينَ، وَالنَّخَعِيِّ، وَالشَّعْبِيِّ: إِنَّ ذَلِكَ لِوَرَثَتِهِ بَعْدَ أَدَاءِ كِتَابَتِهِ - وَهُوَ قَوْلُ عَمْرِو بْنِ دِينَارٍ.

L27267 From the path of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: If a mukatab has children included in his kitābah and children not included in his kitābah, he must fulfill the remaining portion of his kitābah. Thereafter, all his children inherit the remainder of his wealth, which is divided according to their prescribed shares. This is the opinion of Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, Abū Ḥanīfah, and Isḥāq ibn Rāhwayh.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: إِذَا كَانَ لِلْمُكَاتَبِ أَوْلَادٌ مَعَهُ فِي كِتَابَتِهِ، وَأَوْلَادٌ لَيْسُوا مَعَهُ فِي كِتَابَتِهِ: فَإِنَّهُ يُؤَدِّي مَا بَقِيَ مِنْ كِتَابَتِهِ، ثُمَّ يَقْسِمُ وَلَدُهُ جَمِيعًا مَا بَقِيَ مِنْ مَالِهِ عَلَى فَرَائِضِهِمْ. وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي حَنِيفَةَ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ.

L27268 Another group held a differing opinion, as transmitted from Mālik and those who followed his school: If a mukātab had included in his contract his mother, father, grandfather, grandmother, sons, daughters, sons of his sons, grandsons through daughters, brothers, sisters, or wives—or some of those mentioned—under a single contract that includes himself and those named, and if he had free children, free siblings, or free parents, then upon his death, if he left property, the remaining portion of his contract must be fulfilled from his estate. Those we mentioned from among those included in the contract with him inherit the remaining amount according to the division of inheritance shares.

وَقَالَتْ طَائِفَةٌ: غَيْرَ هَذَا، كَمَا رُوِّينَا عَنْ مَالِكٍ وَمَنْ قَلَّدَهُ: أَنَّ الْمُكَاتَبَ إِنْ كَانَ مَعَهُ فِي كِتَابَتِهِ أُمُّهُ وَأَبُوهُ وَالْجَدُّ، وَالْجَدَّةُ وَبَنُوهُ وَبَنَاتُهُ، وَبَنُو بَنِيهِ وَبَنُو بَنَاتِهِ، وَإِخْوَتُهُ وَأَخَوَاتُهُ، وَزَوْجَاتُهُ أَوْ بَعْضُ مَنْ ذَكَرْنَا، وَقَدْ كَانَ كَاتَبَ عَلَى نَفْسِهِ وَعَلَى مَنْ ذَكَرْنَا كِتَابَةً وَاحِدَةً، وَكَانَ لَهُ أَوْلَادٌ أَحْرَارٌ، وَإِخْوَةٌ أَحْرَارٌ، وَأَبَوَانِ حُرَّانِ، فَمَاتَ وَتَرَكَ مَالًا، فَإِنَّهُ يُؤَدِّي مَا بَقِيَ مِنْ كِتَابَتِهِ، وَيَرِثُ مَنْ ذَكَرْنَا مِمَّنْ كَانَ مَعَهُ فِي الْكِتَابَةِ مَا بَقِيَ عَلَى قِسْمَةِ الْمَوَارِيثِ.

L27269–27270 A free father does not, by principle, inherit from him, nor a free mother, nor free children, nor free brothers—whether any one of these was party to the *kitābah* contract [of manumission] or not.

وَلَا يَرِثُهُ أَبٌ حُرٌّ، وَلَا أُمٌّ حُرَّةٌ، وَلَا أَوْلَادٌ أَحْرَارٌ، وَلَا إِخْوَةٌ أَحْرَارٌ، أَصْلًا، كَانَ مَعَهُ فِي الْكِتَابَةِ أَحَدٌ مِنْ هَؤُلَاءِ أَوْ لَمْ يَكُنْ.

L27271 He said: If among those included in the manumission contract are relatives for whom manumission is not obligatory on the owner upon acquiring them—such as paternal uncles, paternal cousins, and nephews—they have no share, and the entire estate belongs to their master. He expressed differing views regarding the husband and wife: at times stating they inherit

قَالَ: فَإِنْ كَانَ مَعَهُ فِي الْكِتَابَةِ مَنْ لَا يُعْتَقُ عَلَى الْمَرْءِ إِذَا مَلَكَهُ، كَالْعَمِّ وَابْنِ الْعَمِّ، وَابْنِ الْأَخِ، فَلَا شَيْءَ لَهُمْ، وَالْمَالُ كُلُّهُ لِسَيِّدِهِ. وَاخْتَلَفَ قَوْلُهُ فِي الزَّوْجِ وَالزَّوْجَةِ: فَمَرَّةً قَالَ: يَرِثَانِ إِذَا كَانَا مَعَهُ فِي كِتَابَةٍ وَاحِدَةٍ - وَمَرَّةً قَالَ: لَا يَرِثَانِهِ. وَلَمْ يَخْتَلِفْ قَوْلُهُ: أَنَّهُمَا لَا

if included in the same contract, while at other times asserting they do not inherit from him. He maintained without variation that they do not inherit if excluded from the contract. We know of no one among Allah's creation before him who held this view. This is the harshest ruling we have ever heard of, contradicting the Qur'an, the Sunnah, rational principles, and the positions of every recognized scholar. Another group stated—as narrated to us via the chain of Al-Ḥajjāj ibn Minḥāl from Abū ʿAwānah from Al-Mughīrah ibn Miqsam from Ibrāhīm al-Nakhaʿī and al-Shaʿbī, both reporting from ʿAlī ibn Abī Ṭālib—who said: "The mukātab inherits proportionally to what he has paid, is barred from inheriting others proportionally to what he has paid, and is emancipated proportionally to what he has paid." Through another chain from ʿAbd al-Razzāq from Maʿmar from Qatādah: ʿAlī ibn Abī Ṭālib said concerning the mukātab: "He inherits proportionally to what he has paid, is lashed for hadd offenses proportionally to what he has paid, and his outstanding debt corresponds to what he has paid." Through another chain from Sufyān ibn ʿUyaynah from Ibn Abī Najīḥ from Mujāhid: ʿAlī ibn Abī Ṭālib said: "The mukātab is emancipated proportionally to what he has paid."

L27272–27274 From the route of Al-Ḥajjāj ibn al-Minhāl: Abū ʿAwāna narrated to us from al-Aʿmash from Ibrāhīm al-Nakhaʿī that he was asked about the mukātab. He replied: "When he pays the ransom for his freedom, he becomes a debtor. If he dies, the remainder of his mukātaba agreement is paid on his behalf. His child inherits a share proportionate to the portion of freedom already earned, while his patron-owners inherit according to the portion still owed." Abū Muḥammad said: "As for Mālik's opinion, its weakness is too well-known to require discussion. It suffices that no precedent exists before him, nor is it supported by any scriptural proof, defective narration, analogical reasoning, or rational basis." Some argued: "Since the mukātab is governed neither by the rulings applicable to slaves nor those of free persons, his inheritance necessitates a distinct ruling – differing from the inheritance principles of both slaves and free people." ʿAlī said: "We responded: Then apply this same logic to his liability for ḥudūd (fixed penalties), devise novel penalties for him, and say..." Similarly, in his blood money, and state the same regarding the umm al-walad. How can this stand when your foundational

يَرِثَانِ إِذَا لَمْ يَكُونَا مَعَهُ فِي الْكِتَابَةِ - وَلَا نَعْلَمُ هَذَا الْقَوْلَ عَنْ أَحَدٍ مِنْ خَلْقِ اللَّهِ تَعَالَى قَبْلَهُ، وَهَذِهِ فَرِيضَةُ مَا سُمِعَ بِأَطَمَّ مِنْهَا، وَهِيَ خِلَافُ الْقُرْآنِ، وَالسُّنَنِ، وَالْمَعْقُولِ، وَقَوْلُ كُلِّ أَحَدٍ يُعْرَفُ قَوْلُهُ. وَقَالَتْ طَائِفَةٌ: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ، كِلَاهُمَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، قَالَ: الْمُكَاتَبُ يَرِثُ بِقَدْرِ مَا أَدَّى، وَيُحْجَبُ بِقَدْرِ مَا أَدَّى، وَيُعْتَقُ مِنْهُ بِقَدْرِ مَا أَدَّى. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الْمُكَاتَبِ: إِنَّهُ يَرِثُ بِقَدْرِ مَا أَدَّى، وَيُجْلَدُ الْحَدَّ بِقَدْرِ مَا أَدَّى، وَيَكُونُ دَيْنُهُ بِقَدْرِ مَا أَدَّى. وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: الْمُكَاتَبُ يُعْتَقُ مِنْهُ بِقَدْرِ مَا أَدَّى.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ: أَنَّهُ سُئِلَ عَنْ الْمُكَاتَبِ؟ فَقَالَ: إِذَا أَدَّى قِيمَةَ رَقَبَتِهِ فَهُوَ غَرِيمٌ، وَإِنْ مَاتَ أَدَّى عَنْهُ بَقِيَّةَ مُكَاتَبَتِهِ، وَوَرِثَ وَلَدُهُ بِقَدْرِ مَا عَتَقَ مِنْهُ، وَوَرِثَ مَوَالِيهِ بِقَدْرِ مَا رُقَّ مِنْهُ. قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مَالِكٍ فَتَخَاذُلُهُ أَشْهَرُ مِنْ أَنْ يُشْتَغَلَ بِهِ، وَيَكْفِي مِنْهُ أَنْ لَا يُعْرَفَ عَنْ أَحَدٍ قَبْلَهُ، وَأَنَّهُ لَمْ يَأْتِ بِهِ نَصٌّ، وَلَا رِوَايَةٌ فَاسِدَةٌ، وَلَا قِيَاسٌ، وَلَا يُعْقَلُ. وَقَالَ بَعْضُهُمْ: لَمَّا كَانَ الْمُكَاتَبُ لَيْسَ لَهُ حُكْمُ الْعَبِيدِ، وَلَا حُكْمُ الْأَحْرَارِ: وَجَبَ أَنْ يَكُونَ لِمِيرَاثِهِ حُكْمٌ آخَرُ غَيْرَ حُكْمِ الْعَبِيدِ فِي مِيرَاثِهِمْ، وَغَيْرَ حُكْمِ الْأَحْرَارِ. قَالَ عَلِيٌّ: فَقُلْنَا: فَقُولُوا هَكَذَا فِي حُدُودِهِ، وَأَخْرِجُوا لَهُ حُدُودًا طَرِيفَةً، وَقُولُوا كَذَلِكَ فِي دِيَتِهِ، وَقُولُوا بِمِثْلِ هَذَا فِي أُمِّ الْوَلَدِ، فَكَيْفَ وَأَصْلُكُمْ هَذَا بَاطِلٌ، وَدَعْوَى كَاذِبَةٌ، وَلَا فَرْقَ عِنْدَكُمْ بَيْنَهُ وَبَيْنَ

premise is void—a false claim—and you make no distinction between him and an enslaved person except that his master does not seize his property, does not make use of his services, and does not prevent him from managing affairs and earning a livelihood only? Just as there is no distinction between the umm al-walad and an enslaved woman except that she is never sold, never gifted, and never returned to the rulings of slavery. They also said: "This wealth was established as an endowment for the emancipation of all of them—does this mean it belongs to them?" We replied: "Then distribute it equally among them by this reasoning. Do not divide it according to inheritance shares, and include everyone bound by the manumission contract under this same rationale." In sum, we cannot fathom how any soul could find ease in accepting this claim given its grave corruption, while its very foundation is invalid.

الْعَبْدِ، إِلَّا أَنَّ سَيِّدَهُ، لَا يَنْتَزِعُ مَالَهُ، وَلَا يَسْتَخْدِمُهُ، وَلَا يَمْنَعُهُ مِنْ التَّصَرُّفِ وَالتَّكَسُّبِ فَقَطْ، كَمَا أَنَّهُ لَا فَرْقَ بَيْنَ أُمِّ الْوَلَدِ، وَالْأَمَةِ، إِلَّا أَنَّهَا لَا تُبَاعُ أَبَدًا، وَلَا تُوهَبُ أَبَدًا، وَلَا تَعُودُ إِلَى حُكْمِ الرِّقِّ أَبَدًا. وَقَالُوا أَيْضًا: هَذَا الْمَالُ كَانَ مَوْقُوفًا لِعِتْقِ جَمِيعِهِمْ، فَكَانَ كَأَنَّهُ لَهُمْ؟ فَقُلْنَا: فَاجْعَلُوهُ بَيْنَهُمْ عَلَى السَّوَاءِ بِهَذَا الدَّلِيلِ، وَلَا تَقْسِمُوهُ قِسْمَةَ الْمَوَارِيثِ، وَأَدْخِلُوا فِيهِ كُلَّ مَنْ مَعَهُ فِي الْكِتَابَةِ بِهَذَا الدَّلِيلِ. وَبِالْجُمْلَةِ فَمَا نَدْرِي كَيْفَ انْشَرَحَتْ نَفْسُ أَحَدٍ لِقَبُولِ هَذَا الْقَوْلِ عَلَى شِدَّةِ فَسَادِهِ، مَعَ أَنَّ أَصْلَهُ فَاسِدٌ.

L27275 It is not permissible for one to enter into a single contract of manumission covering oneself and another, as this constitutes a condition absent from the Book of Allah the Almighty, rendering it void - and with Allah the Exalted is success. Regarding Abu Hanifah's opinion: it is evidently also erroneous, for they concede that the mukatab remains a slave while any dirham is owed. Since this is so, he dies a slave, and as one who dies a slave, freedom cannot apply to a deceased person. Thus the invalidity of their position becomes wholly apparent. They do not dispute that if a master tells his slave: "You are free when the sun passes its zenith today," and the slave dies a minute before midday, he dies a slave - his heirs do not inherit him, and all his property belongs to his master. As for those who say that all his property belongs to his master, they build this upon the premise that he remains a slave while any dirham is owed - a position whose falsity we have already demonstrated through the ruling of Allah's Messenger (peace be upon him) that emancipation is established for the mukatab proportionally to what he has paid, and he inherits according to the portion of his emancipation. This confirms that the emancipated portion assumes the legal status of a free person while the remainder retains the status of a slave regarding inheritance and all other matters - and with Allah the Exalted is success.

وَلَا يَجُوزُ أَنْ يُكَاتِبَ أَحَدٌ عَلَى نَفْسِهِ وَغَيْرِهِ كِتَابَةً وَاحِدَةً؛ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ، فَهُوَ بَاطِلٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ: فَخَطَأٌ ظَاهِرٌ أَيْضًا، لِأَنَّهُمْ مُقِرُّونَ بِأَنَّ الْمُكَاتَبَ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ، فَإِذْ هُوَ كَذَلِكَ، فَإِنَّمَا مَاتَ عَبْدًا، وَإِذَا مَاتَ عَبْدًا فَلَا يُمْكِنُ أَنْ تَقَعَ الْحُرِّيَّةُ عَلَى مَيِّتٍ بَعْدَ مَوْتِهِ، فَظَهَرَ فَسَادُ قَوْلِهِمْ جُمْلَةً. وَلَا يَخْتَلِفُونَ فِيمَنْ قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ إِذَا زَالَتْ الشَّمْسُ مِنْ يَوْمِنَا هَذَا، فَمَاتَ الْعَبْدُ قَبْلَ زَوَالِ الشَّمْسِ بِدَقِيقَةٍ، فَإِنَّهُ مَاتَ عَبْدًا، وَلَا تَرِثُهُ وَرَثَتُهُ وَمَالُهُ كُلُّهُ لِسَيِّدِهِ. وَأَمَّا مَنْ قَالَ: مَالُهُ كُلُّهُ لِسَيِّدِهِ، فَإِنَّمَا بَنَوْا عَلَى أَنَّهُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ - وَهَذَا قَوْلٌ قَدْ بَيَّنَّا بُطْلَانَهُ بِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ الْمُكَاتَبَ يَشْرَعُ فِيهِ الْعِتْقُ بِقَدْرِ مَا أَدَّى وَيَرِثُ بِقَدْرِ مَا عَتَقَ مِنْهُ فَصَحَّ أَنَّ لِذَلِكَ الْبَعْضِ حُكْمَ الْحُرِّ وَلِبَاقِيهِ حُكْمَ الْعَبْدِ فِي الْمِيرَاثِ وَفِي كُلِّ شَيْءٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27276 As for the fetus of the mukatabah, as long as the soul has not been breathed

into it, it remains part of her, as we previously established, and thus follows her legal rulings. However, once the soul is breathed into it, it becomes a distinct entity. Allah the Exalted says: {Then We fashioned him into a new creation} [23:14]. At that stage, it is male while she is female, or it is a female different from her. In such cases, neither it nor she is subject to the mother's legal rulings. Allah the Exalted says: {No soul bears blame except against itself} [6:164]. If it is asked: Why do you not permit the full emancipation of the entire mukatab, given that a portion of him is free by the statement of Allah's Messenger - peace and blessings be upon him -: "Whoever frees their share in a slave, the entire slave is freed," and why do you instead obligate him to perform required labor for manumission based on that narration?[15]

L27277–27278 We said: It is not permissible to contradict the narrations of the Messenger of Allah—may Allah bless him and grant him peace—by opposing some with others, nor to abandon his ruling for another of his rulings. Rather, all his rulings are obligatory to follow, and all his speech is truth to be heeded and obeyed. He—peace be upon him—commanded the emancipation of one for whom a portion has been emancipated, either by the emancipator of that portion if he possesses wealth, or through istisʿā' (working to earn emancipation). He—peace be upon him—assigned the mukatab a distinct ruling: emancipating a portion while leaving another portion in bondage. We accepted all that we were commanded and did not set any part of it against another—all praise is due to Allah, the Exalted. Whoever presumes to instruct the Messenger of Allah—may Allah bless him and grant him peace—in religion is a fool. Both these rulings have been subject to valid disagreement among earlier and later scholars, and both are transmitted via ahad reports from reliable narrators. Thus, none is more deserving of acceptance than the other—and success is granted by Allah, the Exalted.

L27279 **The legal question regarding a kitabah contract (manumission agreement) conditioned on service alone.**

L27280 Issue 1692: A manumission contract (kitābah) is invalid when conditional upon service alone, nor upon work following emancipation, nor upon any

[15] **Qur'an references (L27276):** Qur'an 23:14 (Al-Mu'minun); Qur'an 6:164 (Al-An'am).

وَأَمَّا حَمْلُ الْمُكَاتَبَةِ فَإِنَّهُ مَا لَمْ تُنفَخْ فِيهِ الرُّوحُ فَهُوَ بَعْضُهَا كَمَا قَدَّمْنَا فَلَهُ حُكْمُهَا وَأَمَّا إذَا نُفِخَ فِيهِ الرُّوحُ فَهُوَ غَيْرُهَا قَالَ تَعَالَى {ثُمَّ أَنْشَأْنَاهُ خَلْقًا آخَرَ} [المؤمنون: ١٤] وَهُوَ عِنْدَ ذَلِكَ ذَكَرٌ وَهِيَ أُنْثَى، أَوْ أُنْثَى غَيْرِهَا، فَلَيْسَ لَهُ وَلَا لَهَا حُكْمُ الْأُمِّ قَالَ اللَّهُ تَعَالَى {وَلَا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤] . فَإِنْ قِيلَ: فَهَلَّا أَجَزْتُمْ عِتْقَ جَمِيعِ الْمُكَاتَبِ إذْ بَعْضُهُ حُرٌّ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَعْتَقَ شِقْصًا لَهُ فِي مَمْلُوكٍ عَتَقَ كُلُّهُ» وَأَوْجَبْتُمْ الِاسْتِسْعَاءَ بِذَلِكَ الْخَبَرِ؟

قُلْنَا: لَا يَحِلُّ ضَرْبُ أَحَادِيثِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْضِهَا بِبَعْضٍ، وَلَا أَنْ يُتْرَكَ حُكْمُهُ بِحُكْمٍ لَهُ آخَرَ، بَلْ كُلُّ أَحْكَامِهِ فَرْضٌ اتِّبَاعُهَا، وَكُلُّ كَلَامِهِ حَقٌّ مَسْمُوعٌ لَهُ وَمُطَاعٌ، وَهُوَ - عَلَيْهِ السَّلَامُ - أَمَرَ بِعِتْقِ مَنْ أُعْتِقَ بَعْضُهُ، إمَّا عَلَى مُعْتِقِ بَعْضِهِ إنْ كَانَ لَهُ مَالٌ، وَإِمَّا بِالِاسْتِسْعَاءِ، وَهُوَ - عَلَيْهِ السَّلَامُ - خَصَّ الْمُكَاتَبَ بِحُكْمٍ آخَرَ - وَهُوَ عِتْقُ بَعْضِهِ وَبَقَاءُ بَعْضِهِ رَقِيقًا - فَقَبِلْنَا كُلَّ مَا أُمِرْنَا بِهِ، وَلَمْ نُعَارِضْ بَعْضَهُ بِبَعْضٍ - وَلِلَّهِ تَعَالَى الْحَمْدُ، وَمَنْ تَعَاطَى تَعْلِيمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الدِّينَ فَهُوَ أَحْمَقُ، وَكِلَا هَذَيْنِ الْحُكْمَيْنِ قَدْ صَحَّ فِيهِمَا اخْتِلَافُ مَنْ سَلَفَ وَخَلَفَ، وَكِلَاهُمَا نَقْلُ الْآحَادِ الثِّقَاتِ، فَلَيْسَ بَعْضُهَا أَوْلَى بِالْقَبُولِ مِنْ بَعْضٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الْكِتَابَة عَلَى شَرْط خدمة فَقَطْ]

condition not supported by a textual source whatsoever. Such contracts under all such conditions are void due to the saying of Allah's Messenger - peace and blessings be upon him and his household -: "Every condition not in the Book of Allah is invalid."[16]

Legal case concerning the kitābah contract (manumission contract) to no specified term.

L27281

L27282 1693. Issue: If someone enters into a mukataba contract without a specified term, he remains bound by his contract as long as the master lives and remains the owner. When he fulfills the stipulated payment, he is emancipated, for this constitutes the attribute of his mukataba contract and its binding conditions, which may not be violated. If someone enters into a mukataba contract with a specified term—whether a single installment, two, or more—and the installment's due time arrives without payment, people have differed on this matter. Narrated to us from ʿAbd al-Razzāq, from Ibn Jurayj, from Abū al-Zubayr, who heard Jābir ibn ʿAbd Allāh say regarding a mukatab who pays an initial portion of his contract then defaults: "He reverts to enslavement; his master has the greater right to the stipulated condition." Ibn Jurayj added: Ismāʿīl ibn Umayyah informed me, from Nāfiʿ, who reported that Ibn ʿUmar enforced this ruling—specifically, he returned his own mukatab to enslavement after the latter defaulted upon paying half of his contracted amount.

L27283 From the transmission of al-Ḥajjāj ibn Arṭaʾah, from Ḥuṣayn ibn ʿAbd al-Raḥmān, from al-Shaʿbī, that ʿAlī said: If the *mukatab* defaults and defers an installment to another, he is returned to slavery.

L27284–27285 We have been narrated from Abu Ayyub al-Ansari that he contracted a manumission agreement with Aflah, then reconsidered and requested him to annul the contract without him having defaulted. Aflah consented to this, so he reverted him to slavery and subsequently manumitted him outright. This was reported by Makhramah ibn Bukayr from his father, who deemed

[16] **Hadith references (L27280):** Sunan Ibn Majah 2521.

١٦٩٢ - مَسْأَلَةٌ: وَلَا تَحِلُّ الْكِتَابَةُ عَلَى شَرْطِ خِدْمَةٍ فَقَطْ، وَلَا عَلَى عَمَلٍ بَعْدَ الْعِتْقِ وَلَا عَلَى شَرْطٍ لَمْ يَأْتِ بِهِ نَصٌّ أَصْلًا، وَالْكِتَابَةُ بِكُلِّ ذَلِكَ بَاطِلٌ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» .

[مَسْأَلَة الْكِتَابَة إلَى غَيْر أَجَل مُسَمًّى]

١٦٩٣ - مَسْأَلَةٌ: وَمَنْ كُوتِبَ إلَى غَيْرِ أَجَلٍ مُسَمًّى فَهُوَ عَلَى كِتَابَتِهِ مَا عَاشَ السَّيِّدُ وَمَا لَمْ يَخْرُجْ عَنْ مِلْكِ السَّيِّدِ فَمَتَى أَدَّى مَا كَاتَبَ عَلَيْهِ عَتَقَ، لِأَنَّ هَذِهِ صِفَةُ كِتَابَتِهِ وَعَقْدِهِ فَلَا يَجُوزُ تَعَدِّيهِ، وَمَنْ كُوتِبَ إلَى أَجَلٍ مُسَمًّى نَجْمٍ وَاحِدٍ أَوْ نَجْمَيْنِ فَصَاعِدًا، فَحَلَّ وَقْتُ النَّجْمِ وَلَمْ يُؤَدِّ، فَقَدْ اخْتَلَفَ النَّاسُ فِي ذَلِكَ. فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ: أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ فِي الْمُكَاتَبِ يُؤَدِّي صَدْرًا مِنْ كِتَابَتِهِ ثُمَّ يَعْجِزُ؟ قَالَ: يُرَدُّ عَبْدًا، سَيِّدُهُ أَحَقُّ بِشَرْطِهِ الَّذِي شَرَطَ. قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي إسْمَاعِيلُ بْنُ أُمَيَّةَ أَنَّ نَافِعًا أَخْبَرَهُ أَنَّ ابْنَ عُمَرَ فَعَلَ ذَلِكَ. يَعْنِي أَنَّهُ رَدَّ مُكَاتَبًا لَهُ فِي الرِّقِّ، إذْ عَجَزَ بَعْدَ أَنْ أَدَّى نِصْفَ كِتَابَتِهِ.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ حُصَيْنِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الشَّعْبِيِّ أَنَّ عَلِيًّا قَالَ: إذَا عَجَزَ الْمُكَاتَبُ فَأَدْخَلَ نَجْمًا فِي نَجْمٍ رُدَّ فِي الرِّقِّ.

وَرُوِّينَا عَنْ أَبِي أَيُّوبَ الْأَنْصَارِيِّ أَنَّهُ كَاتَبَ أَفْلَحَ ثُمَّ بَدَا لَهُ فَسَأَلَهُ إبْطَالَ الْكِتَابَةِ دُونَ أَنْ يَعْجِزَ؟ فَأَجَابَهُ إلَى ذَلِكَ فَرَدَّهُ عَبْدًا ثُمَّ أَعْتَقَهُ بَتْلًا. وَقَدْ ذَكَرَ ذَلِكَ مَخْرَمَةُ بْنُ بُكَيْرٍ عَنْ أَبِيهِ: أَنَّهُ لَا بَأْسَ بِهِ. وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ.

it permissible. This is the position of Abu Hanifah, Malik, al-Shafi'i, and Abu Sulayman. These scholars maintained: Declaring the mukatab's incapacity is valid between him and his master without state authority, except Malik held a differing opinion that incapacity may only be declared through judicial ruling. Those who permitted declaring incapacity then differed. We have been narrated through Hammad ibn Salamah and Ibn Abi 'Aroubah—both from Qatadah from Khulas ibn 'Amr from 'Ali ibn Abi Talib—who said: When the mukatab becomes incapable, he is compelled to labor for two years. Ibn Abi 'Aroubah added: If he fulfills it, otherwise he is reverted to slavery. This is the view of al-Hasan al-Basri and 'Ata ibn Abi Rabah. Jabir and Ibn 'Umar did not endorse a grace period—rather, Ibn 'Umar re-enslaved him at the time it was mentioned that he defaulted. This is the opinion of Abu Sulayman and the scholars of our school. We have been narrated through 'Abd al-Razzaq from Sufyan al-Thawri from Tariq ibn 'Abd al-Rahman from al-Sha'bi that 'Ali ibn Abi Talib said regarding an incapable mukatab: He is proportionally emancipated according to what he has paid. Ibn Abi Layla, al-Hakam ibn 'Utaybah, al-Hasan ibn Hayy, Abu Yusuf, and Ahmad ibn Hanbal said: He is not re-enslaved until he fails two consecutive installments. Al-Awza'i said: If he becomes incapable, he must complete two months of labor. Abu Hanifah and al-Shafi'i said: If he becomes incapable, he must complete three days of labor only, then is re-enslaved. Malik said: The authority grants him a grace period commensurate with what it deems appropriate.

L27286 It has been conveyed to us through the chain of Ḥammād ibn Salamah from ʿAmr ibn Dīnār, who reported: Jābir ibn Zayd stated: If an enslaved person under a manumission contract becomes incapable [of payment], he must be compelled to work. We previously mentioned the rulings of ʿUmar ibn al-Khaṭṭāb, ʿAlī ibn Abī Ṭālib, and Shurayḥ: When he pays half of his manumission sum, he cannot be re-enslaved and becomes a liable debtor—this is authentically transmitted from them. Ibn Masʿūd maintained: When he pays one-third of his manumission sum, he becomes a liable debtor. Ibrāhīm held: When he pays one-quarter of his manumission sum, he becomes a liable debtor. ʿAṭāʾ ruled: When he pays three-quarters of his manumission sum, he becomes a liable debtor.

وَقَالَ هَؤُلَاءِ: تَعْجِيزُ الْمُكَاتَبِ جَائِزٌ بَيْنَهُ وَبَيْنَ سَيِّدِهِ دُونَ السُّلْطَانِ، إِلَّا أَنَّ لِمَالِكٍ قَوْلًا، أَنَّهُ لَا يَجُوزُ التَّعْجِيزُ إِلَّا بِحُكْمِ السُّلْطَانِ. ثُمَّ اخْتَلَفَ الْقَائِلُونَ بِتَعْجِيزِهِ. رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ، وَابْنِ أَبِي عَرُوبَةَ كِلَاهُمَا عَنْ قَتَادَةَ عَنْ خِلَاصِ بْنِ عَمْرٍو عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إِذَا عَجَزَ الْمُكَاتَبُ اسْتُسْعِيَ حَوْلَيْنِ - زَادَ ابْنُ أَبِي عَرُوبَةَ فَإِنْ أَدَّى، وَإِلَّا رُدَّ فِي الرِّقِّ - وَبِهَذَا يَقُولُ الْحَسَنُ الْبَصْرِيُّ، وَعَطَاءُ بْنُ أَبِي رَبَاحٍ - وَلَمْ يَقُلْ جَابِرٌ، وَلَا ابْنُ عُمَرَ بِالتَّلَوُّمِ، بَلْ أَرَقَّهُ ابْنُ عُمَرَ سَاعَةَ ذَكَرَ أَنَّهُ عَجَزَ - وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا. وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ طَارِقِ بْنِ عَبْدِ الرَّحْمَنِ عَنِ الشَّعْبِيِّ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الْمُكَاتَبِ يَعْجِزُ: إِنَّهُ يُعْتَقُ بِالْحِسَابِ - يَعْنِي بِحِسَابِ مَا أَدَّى. وَقَالَ ابْنُ أَبِي لَيْلَى، وَالْحَكَمُ بْنُ عُتَيْبَةَ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو يُوسُفَ، وَأَحْمَدُ بْنُ حَنْبَلٍ: لَا يُرَقُّ حَتَّى يَتَوَالَى عَلَيْهِ نَجْمَانِ لَا يُؤَدِّيهِمَا. وَقَالَ الْأَوْزَاعِيُّ: إِذَا عَجَزَ اُسْتُوْفِيَ بِهِ شَهْرَانِ. وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: إِذَا عَجَزَ اسْتُوْفِيَ بِهِ ثَلَاثَةُ أَيَّامٍ فَقَطْ ثُمَّ يُرَقُّ - وَقَالَ مَالِكٌ: يَتَلَوَّمُ لَهُ السُّلْطَانُ بِقَدْرِ مَا يَرَى.

وَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: قَالَ جَابِرُ بْنُ زَيْدٍ: إِذَا عَجَزَ الْمُكَاتَبُ اسْتُسْعِيَ، وَقَدْ ذَكَرْنَا قَبْلُ قَوْلَ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَشُرَيْحٍ إِذَا أَدَّى النِّصْفَ فَلَا رِقَّ عَلَيْهِ، وَهُوَ غَرِيمٌ - وَهُوَ صَحِيحٌ عَنْهُمْ. وَقَوْلَ ابْنِ مَسْعُودٍ: إِذَا أَدَّى ثُلُثَ كِتَابَتِهِ فَهُوَ غَرِيمٌ. وَقَوْلَ إِبْرَاهِيمَ: إِذَا أَدَّى رُبُعَ كِتَابَتِهِ فَهُوَ غَرِيمٌ. وَقَوْلَ عَطَاءٍ: إِذَا أَدَّى ثَلَاثَةَ أَرْبَاعِ كِتَابَتِهِ فَهُوَ غَرِيمٌ.

L27287–27288 The statement of Ibn Mas’ud and Shurayh: “If he pays its value, he is a debtor”—and this is a sound opinion from them. Abu Muhammad said: “We do not know of any valid evidence for these opinions. The most astonishing to me is the view of those who limit the grace period to three days or two months, or those who defer it to the ruler’s judgment. What if the ruler grants him only an hour’s respite, while deeming it fit to grant him fifty years?” Then we say to all of them: “The manumission-by-payment contract cannot escape being either a binding debt or an emancipation with a stipulation—not a debt. There is absolutely no third possibility, neither in religious law nor in reason. If it is an emancipation with a stipulation, then when the term arrives and he fails to fulfill it, he has not met the stipulation upon which his emancipation depends. Thus, his contract is nullified, he gains no emancipation, and no respite is permissible for him—not even the twinkling of an eye: like one who says to his servant, ’If my father arrives today, you are free,’ yet his father arrives after sunset—so no emancipation occurs.” This is the view of our school’s scholars—and it is the opinion of Jabir and Ibn Umar.

وَقَوْلَ ابْنِ مَسْعُودٍ وَشُرَيْحٍ: إِذَا أَدَّى قِيمَتَهُ فَهُوَ غَرِيمٌ - وَهُوَ قَوْلٌ صَحِيحٌ عَنْهُمَا. قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ لِشَيْءٍ مِنْ هَذِهِ الْأَقْوَالِ حُجَّةً، وَأَعْجَبُهَا قَوْلُ مَنْ حَدَّ التَّلَوُّمَ ثَلَاثَةَ أَيَّامٍ أَوْ بِشَهْرَيْنِ، وَمَنْ جَعَلَ ذَلِكَ إلَى السُّلْطَانِ أَفَرَأَيْت إنْ لَمْ يَتَلَوَّمْ لَهُ السُّلْطَانُ إلَّا سَاعَةً، إذْ رَأَى أَنْ يَتَلَوَّمَ لَهُ خَمْسِينَ عَامًا. ثُمَّ نَقُولُ لِجَمِيعِهِمْ: لَا تَخْلُو الْكِتَابَةُ مِنْ أَنْ تَكُونَ دَيْنًا لَازِمًا، أَوْ تَكُونَ عِتْقًا بِصِفَةٍ لَا دَيْنًا، وَلَا سَبِيلَ إلَى ثَالِثٍ أَصْلًا، لَا فِي الدِّيَانَةِ وَلَا فِي الْمَعْقُولِ. فَإِنْ كَانَتْ عِتْقًا بِصِفَةٍ فَالْوَاجِبُ أَنَّهُ سَاعَةَ يَحِلُّ الْأَجَلُ فَلَا يُؤَدِّيهِ، فَلَمْ يَأْتِ بِالصِّفَةِ الَّتِي لَا عِتْقَ لَهُ إلَّا بِهَا - فَقَدْ بَطَلَ عَقْدُهُ وَلَا عِتْقَ لَهُ، وَلَا يَجُوزُ التَّلَوُّمُ عَلَيْهِ طَرْفَةَ عَيْنٍ، كَمَنْ قَالَ لِغُلَامِهِ: إنْ قَدِمَ أَبِي يَوْمِي هَذَا فَأَنْتَ حُرٌّ فَقَدِمَ أَبُوهُ بَعْدَ غُرُوبِ الشَّمْسِ فَلَا عِتْقَ لَهُ. وَهَذَا قَوْلُ أَصْحَابِنَا - وَهُوَ قَوْلُ جَابِرٍ، وَابْنِ عُمَرَ.

L27289 They have contradicted themselves in the ugliest contradiction, prohibiting its sale even if he has not paid anything. This confirms that in their view, it is neither manumission by stipulated condition nor an obligatory debt, leaving no way to invalidate it. As it was narrated to us from Jābir ibn Zayd, we reflected upon this matter. We found the Messenger of Allah—may Allah bless him and his family and grant him peace—having ruled that manumission begins in it proportionally to what he paid. Thus, it is conclusively established that this constitutes an obligatory debt reduced by the amount paid, as with all debts, and that it is fundamentally not manumission by stipulated condition. For partial fulfillment of the *kitabah* does not constitute the stipulated condition upon which manumission was mutually contracted. Since this is so, Allah the Exalted has stated: “And if one is in hardship, let there be deferment until ease” [Al-Baqarah: 280], and He said: “Fulfill all covenants” [Al-Mā’idah: 1]. Thus, fulfilling the *kitabah* contract becomes obligatory, verbal retraction being wholly impermissible.

وَقَدْ تَنَاقَضُوا أَقْبَحَ تَنَاقُضٍ، وَمَنَعُوا مِنْ بَيْعِهِ - وَإِنْ لَمْ يُؤَدِّ شَيْئًا -. فَصَحَّ أَنَّهَا لَيْسَتْ عِنْدَهُمْ عِتْقًا بِصِفَةٍ، أَوْ يَكُونَ دَيْنًا وَاجِبًا، فَلَا سَبِيلَ إلَى إبْطَالِهِ. كَمَا رُوِّينَا عَنْ جَابِرِ بْنِ زَيْدٍ فَنَظَرْنَا فِي ذَلِكَ. فَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدْ حَكَمَ بِشُرُوعِ الْعِتْقِ فِيهِ بِقَدْرِ مَا أَدَّى. فَصَحَّ يَقِينًا أَنَّهَا دَيْنٌ وَاجِبٌ يَسْقُطُ مِنْهُ بِقَدْرِ مَا أَدَّى مِنْهُ كَسَائِرِ الدُّيُونِ وَأَنَّهُ لَيْسَ عِتْقًا بِصِفَةٍ أَصْلًا، لِأَنَّ أَدَاءَ بَعْضِ الْكِتَابَةِ لَيْسَ هُوَ الصِّفَةَ الَّتِي تَعَاقَدَا الْعِتْقَ عَلَيْهَا، فَإِذْ هِيَ كَذَلِكَ فَقَدْ قَالَ اللَّهُ تَعَالَى: {وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَى مَيْسَرَةٍ} [البقرة: ٢٨٠] وَقَالَ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] فَوَجَبَ الْوَفَاءُ بِعَقْدِ الْكِتَابَةِ، وَأَنَّهُ لَا يَجُوزُ الرُّجُوعُ فِيهَا بِالْقَوْلِ أَصْلًا - وَوَجَبَتْ النَّظِرَةُ إلَى الْمَيْسَرَةِ وَلَا بُدَّ.

Granting deferment until ease is attained remains obligatory and inevitable and necessary.[17]

L27290–27292 If it is said: Since this is a debt as you claim, why do you not rule on it—even if the slave or master dies, or the slave ceases to be owned—as you rule in all other debts? We respond: We do not do so because this is not an unconditional debt. Rather, it is a debt that is valid as long as ownership persists and becomes void with the termination of ownership. This is because the debt is only incumbent upon the master on the condition that he emancipates the slave upon its payment by the slave, and on the condition that... He becomes free only by fulfilling it—this is what the Quran has conveyed, and the Sunnah has explained it from the Messenger of Allah (peace be upon him and his family). If the master dies, the validity of the emancipation is invalidated, thus the condition imposed on him is invalidated, and the condition attached to the slave is invalidated, as there is no means to complete it ever. If the slave dies, his existence is invalidated, the condition attached to his emancipation is invalidated, and the master's debt is invalidated, since the debt could only be valid through him. If the slave ceases to be his property, his act of emancipating another's slave is similarly invalidated, thus invalidating any debt owed to him that depended on what has been invalidated, with no way to fulfill it. And with Allah, the Exalted, is success.

L27293 **The issue of determining the number and description of the subject matter of the kitāb contract.**

L27294 1694 - Issue: The manumission contract is valid only if the master states to the slave: "If you pay me this amount in this specified manner, you are free." If the payment involves a stipulated term or additional terms specified, this must be stated. The proof for this is that the slave is the master's property and thus cannot claim freedom unless the master verbally declares manumission for him; otherwise, it is invalid, as no scriptural text or consensus [Ijma] mandates this.

L27295 **The legal issue of a manumission contract stipulating an**

فَإِنْ قِيلَ: فَإِذْ هِيَ دَيْنٌ كَمَا تَقُولُ، فَهَلَّا حَكَمْتُمْ بِهِ - وَإِنْ مَاتَ الْعَبْدُ أَوْ السَّيِّدُ، أَوْ خَرَجَ عَنْ مِلْكِهِ - كَمَا حَكَمْتُمْ فِي سَائِرِ الدُّيُونِ؟ قُلْنَا: لَمْ نَفْعَلْ؛ لِأَنَّ ذَلِكَ لَيْسَ دَيْنًا مُطْلَقًا، وَإِنَّمَا هُوَ دَيْنٌ يَصِحُّ بِثَبَاتِ الْمِلْكِ، وَيَبْطُلُ بِبُطْلَانِ الْمِلْكِ، لِأَنَّهُ إنَّمَا وَجَبَ لِلسَّيِّدِ بِشَرْطِ أَنْ يُعْتِقَهُ بِأَدَائِهِ عَلَى الْعَبْدِ بِشَرْطِ أَنْ يَكُونَ بِأَدَائِهِ حُرًّا فَقَطْ - بِهَذَا جَاءَ الْقُرْآنُ، وَفَسَّرَتْهُ السُّنَّةُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -. فَإِذَا مَاتَ السَّيِّدُ فَقَدْ بَطَلَ وُجُودُ الْمُعْتِقِ، فَبَطَلَ الشَّرْطُ الَّذِي كَانَ عَلَيْهِ، وَبَطَلَ الشَّرْطُ عَنْ الْعَبْدِ، إذْ لَا سَبِيلَ إلَى تَمَامِهِ أَبَدًا. وَإِذَا مَاتَ الْعَبْدُ فَقَدْ بَطَلَ وُجُودُهُ، وَبَطَلَ الشَّرْطُ الَّذِي كَانَ لَهُ مِنْ الْعِتْقِ، فَبَطَلَ دَيْنُ السَّيِّدِ، إذْ لَا سَبِيلَ إلَى مَا كَانَ يَسْتَحِقُّ ذَلِكَ الدَّيْنَ إلَّا بِهِ، وَإِنْ خَرَجَ عَنْ مِلْكِهِ فَكَذَلِكَ أَيْضًا قَدْ بَطَلَ عِتْقُهُ فِي عَبْدِ غَيْرِهِ، فَبَطَلَ مَا كَانَ لَهُ مِنْ الدَّيْنِ مِمَّا لَا يَجِبُ لَهُ إلَّا بِمَا قَدْ بَطَلَ، وَلَا سَبِيلَ إلَيْهِ -. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة تَحْدِيد عَدَد وصفة الشَّيْءِ الْمُكَاتَب عَلَيْهِ]

١٦٩٤ - مَسْأَلَةٌ: وَلَا تَصِحُّ الْكِتَابَةُ إلَّا بِأَنْ يَقُولَ لَهُ: إذَا أَدَّيْت إلَيَّ هَذَا الْعَدَدَ عَلَى هَذِهِ الصِّفَةِ فَأَنْتَ حُرٌّ، فَإِنْ كَانَ إلَى أَجَلٍ مُسَمًّى أَوْ أَكْثَرَ ذَكَرَ ذَلِكَ. بُرْهَانُ ذَلِكَ أَنَّ الْعَبْدَ مِلْكٌ لِلسَّيِّدِ، فَلَا يَسْتَحِقُّ عِتْقًا إلَّا حَتَّى يَلْفِظَ سَيِّدُهُ لَهُ بِالْعِتْقِ، وَإِلَّا فَلَا؛ لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ نَصٌّ وَلَا إجْمَاعٌ.

[مَسْأَلَة الْكِتَابَة عَلَى مجهول الْعَدَد]

[17] **Qur'an references (L27289):** Qur'an 2:280 (Al-Baqarah); Qur'an 5:1 (Al-Ma'idah).

unspecified number [of payments].

L27296 1965. Issue: It is not permissible to conclude a manumission contract for an unspecified quantity, nor for an undefined quality, nor for items whose ownership is unlawful such as wine, pork, or similar. No valid emancipation occurs through any of these means at all, nor through an invalid contract. This is the position of Abū Sulaymān and our school's jurists, because all such arrangements involve prohibited gharar. Allāh the Exalted states: "Allāh does not rectify the deeds of corrupters" [Yūnus 10:81], and the Messenger of Allāh said: "Whoever performs an act inconsistent with our teachings, it is rejected. Every condition not established in Allāh's Book is void." By necessity, every person of sound discernment knows that a contract gains no validity except through the validity of what is itself invalid, thus it remains invalid. Al-Shāfiʿī held: An invalid manumission contract may be annulled if unfulfilled, but if fulfilled, the enslaved person is freed. Abū Muḥammad responded: This constitutes the essence of corruption, as falsehood cannot attain validity through its completion. Allāh the Exalted declares: "So that He might establish the truth and nullify falsehood" [al-Anfāl 8:8].[18]

L27297–27298 The Messenger of Allah (peace and blessings be upon him and his family) said: "There is no right for an unjust basis." Malik said: If a *kitābah* contract is concluded with an invalid condition, the condition becomes void while the contract remains valid. Ali said: This represents the utmost error, for it compels both parties to an obligation they never undertook, nor has Allah the Exalted commanded them to uphold. They only agreed to the *kitābah* on this condition; otherwise, no contract would exist between them. Thus, either their condition is valid—making their contract valid—or if the condition is void, no contract exists here whatsoever. Abu Hanifah said: Whoever contracts *kitābah* for an undescribed garment, under its undefined condition, for carrion, or for something of indeterminate quantity, it constitutes a void contract granting no emancipation even if he fulfills [the terms]. But if one contracts *kitābah* for a measured quantity of wine or a specified pig, and fulfills it, the slave is emancipated but must pay their value to the master. Ali said: Nothing more vile or corrupt than this distinction has

[18] **Qur'an references (L27296):** Qur'an 10:81 (Yunus); Qur'an 8:8 (Al-Anfal).

١٩٦٥ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْكِتَابَةُ عَلَى مَجْهُولِ الْعَدَدِ، وَلَا عَلَى مَجْهُولِ الصِّفَةِ، وَلَا بِمَا لَا يَحِلُّ مِلْكُهُ، كَالْخَمْرِ وَالْخِنْزِيرِ وَغَيْرِ ذَلِكَ. وَلَا يَصِحُّ بِشَيْءٍ مِنْ ذَلِكَ عِتْقٌ أَصْلًا، وَلَا بِكِتَابَةٍ فَاسِدَةٍ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ وَأَصْحَابِنَا، لِأَنَّ كُلَّ ذَلِكَ غَرَرٌ مُحَرَّمٌ، وَقَالَ اللَّهُ تَعَالَى: {إِنَّ اللَّهَ لا يُصْلِحُ عَمَلَ الْمُفْسِدِينَ} [يونس: ٨١] وَقَالَ رَسُولُ اللَّهِ: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ وَكُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» وَبِالضَّرُورَةِ يَدْرِي كُلُّ ذِي تَمْيِيزٍ صَحِيحٍ أَنَّ مَا عَقَدَا لَا صِحَّةَ لَهُ إلَّا بِصِحَّةِ مَا لَا صِحَّةَ لَهُ فَلَا صِحَّةَ لَهُ. وَقَالَ الشَّافِعِيُّ: الْكِتَابَةُ الْفَاسِدَةُ تُفْسَخُ مَا لَمْ يُؤَدِّهَا فَإِذَا أَدَّاهَا عَتَقَ. قَالَ أَبُو مُحَمَّد: هَذَا عَيْنُ الْفَسَادِ وَلَا يَجُوزُ أَنْ يَصِحَّ الْبَاطِلُ بِتَمَامِهِ، وَقَدْ قَالَ تَعَالَى: {لِيُحِقَّ الْحَقَّ وَيُبْطِلَ الْبَاطِلَ} [الأنفال: ٨] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لَيْسَ لِعِرْقٍ ظَالِمٍ حَقٌّ» . وَقَالَ مَالِكٌ: إذَا عُقِدَتْ الْكِتَابَةُ بِشَرْطٍ فَاسِدٍ بَطَلَ الشَّرْطُ وَصَحَّتْ الْكِتَابَةُ. قَالَ عَلِيٌّ: هَذَا غَايَةُ الْخَطَأِ، لِأَنَّهُ يُلْزِمُهُمَا عَقْدًا لَمْ يَلْتَزِمَاهُ قَطُّ، وَلَا أَمَرَ اللَّهُ تَعَالَى بِإِلْزَامِهِمَا إيَّاهُ، وَإِنَّمَا تَرَاضَيَا الْكِتَابَةَ بِهَذَا الشَّرْطِ، وَإِلَّا فَلَا كِتَابَةَ بَيْنَهُمَا، فَإِمَّا أَنْ يَصِحَّ شَرْطُهُمَا فَتَصِحَّ كِتَابَتُهُمَا، وَإِمَّا أَنْ يَبْطُلَ الشَّرْطُ فَلَا كِتَابَةَ هَاهُنَا أَصْلًا. وَقَالَ أَبُو حَنِيفَةَ: مَنْ كَاتَبَ عَلَى ثَوْبٍ غَيْرِ مَوْصُوفٍ أَوْ عَلَى حُكْمِهِ، أَوْ عَلَى مَيْتَةٍ، أَوْ عَلَى مَا لَا يُعْرَفُ لَهُ مِقْدَارٌ، فَهِيَ كِتَابَةٌ بَاطِلٌ، وَلَا عِتْقَ لَهُ وَإِنْ أَدَّى، وَإِنْ كَاتَبَ عَلَى خَمْرٍ مَحْدُودَةٍ، أَوْ عَلَى خِنْزِيرٍ مَوْصُوفٍ، فَإِنْ أَدَّى ذَلِكَ عَتَقَ، وَعَلَيْهِ قِيمَتُهُ لِمَوْلَاهُ. قَالَ عَلِيٌّ: مَا سُمِعَ بِأَنْتَنَ مِنْ هَذَا التَّقْسِيمِ، وَلَا بِأَفْسَدَ مِنْهُ، وَهُمْ يَقُولُونَ: مَنْ بَاعَ سِلْعَةً بِثَمَنٍ إلَّا أَنَّهُمَا لَمْ يُسَمِّيَا ذَلِكَ الثَّمَنَ وَلَا

ever been heard. They assert that if someone sells merchandise for a price they did not specify or determine, the sale is invalid. Yet if the purchaser takes possession of the goods while they are with him and emancipates the slave, the emancipation stands. Their argument here is more reprehensible than their doctrine, for they permit contracts involving wine and pigs between *dhimmis*, thereby debasing themselves by emulating *dhimmis*—though Allah the Exalted has never set disbelievers as exemplars or guides. Herein lie clear signs of evil; we seek refuge in Allah from abandonment. How could such practices be permitted among *dhimmis* since Muhammad's prophethood (peace and blessings be upon him and his family), when no precedent exists for these assertions nor do they possess any grounding for them?

عَرَفَاهُ، فَهُوَ بَيْعٌ فَاسِدٌ، وَإِنْ قَبَضَ الْمُشْتَرِي السِّلْعَةَ وَهِيَ مَعَهُ وَأَعْتَقَهُ - جَازَ عِتْقُهُ. وَكَانَتْ حُجَّتُهُمْ هَاهُنَا أَقْبَحَ مِنْ قَوْلِهِمْ؛ لِأَنَّهُمْ قَالُوا: الْعُقُودُ عَلَى الْخَمْرِ وَالْخِنْزِيرِ جَائِزَةٌ بَيْنَ أَهْلِ الذِّمَّةِ، فَلَقَدْ أَنْزَلُوا أَنْفُسَهُمْ حَيْثُ لَمْ يُنْزِلْهُمْ مِنَ الِائْتِسَاءِ بِأَهْلِ الذِّمَّةِ الْكُفَّارِ، وَمَا جَعَلَ اللَّهُ تَعَالَى قَطُّ أَهْلَ الْكُفْرِ أُسْوَةً، وَلَا قُدْوَةً، وَإِنَّ فِي هَذِهِ لَدَلَائِلَ سُوءٍ نَعُوذُ بِاللَّهِ مِنَ الْخِذْلَانِ، فَكَيْفَ وَمَا أَحَلَّ ذَلِكَ بَيْنَ أَهْلِ الذِّمَّةِ مُذْ بُعِثَ مُحَمَّدٌ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَمَا نَعْلَمُ لَهُمْ فِي هَذِهِ الْأَقْوَالِ سَلَفًا وَلَا لَهُمْ فِيهَا مُتَعَلَّقٌ بِشَيْءٍ؟

L27299 **The issue of writing concerning items whose sale is impermissible.**

[مَسْأَلَة الْكِتَابَة بِمَا لَا يَحِلّ بَيْعه]

L27300 1696. Issue: Contractual manumission (kitābah) is permissible with items whose sale remains impermissible even when ownership becomes lawful, such as a dog, a cat, water, fruit that has not yet reached edible maturity, or ears of grain that have not yet hardened. This is because all the mentioned items are lawful to own, to gift, or to use as a bridal gift, and contractual manumission (kitābah) is not a sale. And success comes only from Allah, the Exalted.

١٦٩٦ - مَسْأَلَةٌ: وَالْكِتَابَةُ جَائِزَةٌ بِمَا لَا يَحِلُّ بَيْعُهُ إِذَا حَلَّ مِلْكُهُ، كَالْكَلْبِ، وَالسِّنَّوْرِ، وَالْمَاءِ، وَالثَّمَرَةِ الَّتِي لَمْ يَبْدُ صَلَاحُهَا، وَالسُّنْبُلِ الَّذِي لَمْ يَشْتَدَّ؛ لِأَنَّ كُلَّ مَا ذَكَرْنَا مَالٌ حَلَالٌ تَمَلُّكُهُ، وَهِبَتُهُ، وَإِصْدَاقُهُ، وَالْكِتَابَةُ لَيْسَتْ بَيْعًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L27301 **The juridical ruling regarding a master confiscating property belonging to his Mukatab [an enslaved person bound by a contractual manumission agreement].**

[مَسْأَلَة نزع السَّيِّد شَيْئًا مِنْ مَال مُكَاتَبه]

L27302–27304 1697. Issue: It is not permissible for a master to seize anything from the property of his *mukatab* from the time the *mukātabah* contract is established. If the master sells the *mukatab* before he fulfills his obligation, or sells from his property an amount offsetting what remains unpaid, then the property belongs to the seller unless the buyer stipulates ownership upon purchasing him in full. As for selling part of it, the property remains his and stays with him. It has been narrated to us via Ḥammād ibn Salamah,

١٦٩٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلسَّيِّدِ أَنْ يَنْتَزِعَ شَيْئًا مِنْ مَالِ مُكَاتَبِهِ مُذْ يُكَاتِبُهُ، فَإِنْ بَاعَهُ قَبْلَ أَنْ يُؤَدِّيَ، أَوْ بَاعَ مِنْهُ مَا قَابَلَ مَا لَمْ يُؤَدِّ: فَمَالُهُ لِلْبَائِعِ، إِلَّا أَنْ يَشْتَرِطَهُ الْمُبْتَاعُ إِذَا بَاعَهُ كُلَّهُ، وَأَمَّا فِي بَيْعِ بَعْضِهِ فَمَالُهُ لَهُ وَمَعَهُ. رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ زِيَادٍ الْأَعْلَمِ، وَقَيْسٍ، قَالَ زِيَادٌ: عَنِ الْحَسَنِ، وَقَالَ قَيْسٌ: عَنْ عَطَاءٍ، ثُمَّ اتَّفَقَا جَمِيعًا: أَنَّ

who narrated from Ziyād al-Aʿlam and Qays. Ziyād said: From al-Ḥasan. Qays reported from ʿAṭāʾ—then the two of them fully agreed—that when a master enters into a *mukātabah* contract with his slave who possesses wealth, a female slave, and children: his wealth belongs to him, his female slave belongs to him, and his children are free—just as if the slave were emancipated. Among those who upheld our opinion are Mālik and Abū Sulaymān. Abū Ḥanīfah said: His wealth belongs to his master. Sufyān al-Thawrī said: The wealth belongs to the master unless the mukātab stipulates it. Al-Awzāʿī said: Whatever the master acknowledged of the slave's wealth belongs to the slave, and whatever he did not acknowledge belongs to the master. Abū Muḥammad said: The slave's wealth belongs to him, though the master is permitted to confiscate it by virtue of the textual ruling. Once the *mukātabah* is established, there is no disagreement that his earnings belong to him exclusively—for if the master could seize them, his emancipation would never be finalized. Thus, it is confirmed that the legal status during the *mukātabah* differs from the status preceding it, and all his wealth is uniformly subject to the ruling that the master cannot claim it, as no textual evidence addresses this for the mukātab.

الْعَبْدَ إِذَا كَاتَبَهُ مَوْلَاهُ وَلَهُ مَالٌ وَسُرِّيَّةٌ وَوَلَدٌ: أَنَّ مَالَهُ لَهُ، وَسُرِّيَّتَهُ لَهُ، وَوَلَدُهُ أَحْرَارٌ - وَكَذَلِكَ الْعَبْدُ إِذَا عَتَقَ. وَمِمَّنْ قَالَ بِقَوْلِنَا: مَالِكٌ، وَأَبُو سُلَيْمَانَ. وَقَالَ أَبُو حَنِيفَةَ: مَالُهُ لِسَيِّدِهِ - وَقَالَ سُفْيَانُ الثَّوْرِيُّ: الْمَالُ لِلسَّيِّدِ إِلَّا أَنْ يَشْتَرِطَهُ الْمُكَاتَبُ - وَقَالَ الْأَوْزَاعِيُّ: مَا عَرَفَهُ السَّيِّدُ مِنْ مَالِ الْعَبْدِ فَهُوَ لِلْعَبْدِ، وَمَا لَمْ يَعْرِفْهُ فَهُوَ لِلسَّيِّدِ. قَالَ أَبُو مُحَمَّدٍ: مَالُ الْعَبْدِ لَهُ، وَجَائِزٌ لِلسَّيِّدِ انْتِزَاعُهُ بِالنَّصِّ، فَإِذَا كُوتِبَ فَلَا خِلَافَ أَنَّ كَسْبَهُ لَهُ، لَا لِلسَّيِّدِ - وَلَوْ كَانَ لِلسَّيِّدِ انْتِزَاعُهُ لَمْ يَتِمَّ عِتْقُهُ أَبَدًا. فَصَحَّ أَنَّ حَالَ الْكِتَابَةِ غَيْرُ حَالِهِ قَبْلَهَا، وَكَانَ مَالُهُ كُلُّهُ حُكْمًا وَاحِدًا فِي أَنَّهُ لَيْسَ لِلسَّيِّدِ أَخْذُهُ، إِذْ لَمْ يَأْتِ بِذَلِكَ فِي الْمُكَاتَبِ نَصٌّ.

[مَسْأَلَة وَلَد الْمُكَاتَب مِنْ أمته حُرّ]

The issue of the child born to a *mukātab* (a slave under a manumission contract) from his female slave is free.

Issue 1698: The child of a mukatab born to his female slave is free. Likewise, if he (the master) owns a mahram relative of the mukatab, he may enter into a kitabah contract or grant manumission due to the textual evidences that apply to all that we have mentioned - for Allah the Exalted has not distinguished a mukatab from others - and with Allah the Exalted is success.

١٦٩٨ - مَسْأَلَةٌ: وَوَلَدُ الْمُكَاتَبِ مِنْ أَمَتِهِ حُرٌّ، وَكَذَلِكَ لَوْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ مِنْهُ، وَلَهُ أَنْ يُكَاتِبَ أَوْ يُعْتِقَ لِلنُّصُوصِ الْوَارِدَةِ فِي كُلِّ مَا ذَكَرْنَا - وَلَمْ يَخُصَّ اللَّهُ تَعَالَى مُكَاتَبًا مِنْ غَيْرِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The Question of Liability for Diacritical Dots in Script.

[مَسْأَلَة ضمان نجوم الْكِتَابَة]

1699. Issue: When the fixed term (al-najm) or the manumission contract (al-kitābah) becomes due and obligatory, guaranteeing the debt through a third party is permissible. This is the opinion of al-Zuhrī, because it constitutes an asset whose obligation to the master has been validated, being a binding debt; thus, guaranteeing it is permissible. If something was sold by the slave

١٦٩٩ - مَسْأَلَةٌ: وَإِذَا حَلَّ النَّجْمُ، أَوْ الْكِتَابَةُ وَوَجَبَتْ، فَضَمَانُهَا مِنْ أَجْنَبِيٍّ جَائِزٌ، وَهُوَ قَوْلُ الزُّهْرِيِّ، لِأَنَّهُ مَالٌ قَدْ صَحَّ وُجُوبُهُ لِلسَّيِّدِ، وَهُوَ دَيْنٌ لَازِمٌ، فَضَمَانُهُ جَائِزٌ. وَلَوْ بِيعَ مِنْ الْعَبْدِ مَا لَمْ يُؤَدِّ كَانَ مَا وَجَبَ عَلَيْهِ بَعْدُ دَيْنًا يُتْبَعُ بِهِ، وَأَمَّا قَبْلَ حُلُولِ

before fulfilling the obligation, what subsequently becomes obligatory upon him remains a debt enforceable against him. However, this is not permissible before the fixed term becomes due, because the obligation has not yet been established - as the slave might die before the obligation takes effect, or the master might die, in which case the obligation does not become binding on the slave.

The Issue of the Dissolution of the Mukatab and Remission of Debt for Him, Subject to a Condition

1700 - Issue: It is not permissible to cut off the mukatab, nor to reduce his owed amount on the condition that he accelerates payment, because these are conditions not stipulated in the Book of Allah, the Exalted and Glorified. This also applies to selling what has not been taken possession of and what is uncertain whether it exists in the world or not. Malik and Abu Hanifah said: Cutting off the mukatab is permissible with a portion of the owed amount or through tradeable commodities. It is authentically reported from Ibn Umar that cutting off the mukatab is only permissible through tradeable commodities. Thus, they opposed Ibn Umar's position, and no dissenting opinion from the Companions is known regarding this matter.

Al-Shafi'i agreed with the statement of Ibn Umar, and there is no proof except in a definitive text—. Guidance is from Allah, the Most High, and by Him we are strengthened.

The Issue of Contractual Manumission Involving Partial Ownership of an Enslaved Person.

1701 - Issue: It is not permissible to write a mukataba contract for a portion of a slave nor for a share jointly owned in a slave with others, because Allah the Exalted says: "As for those who seek a mukataba from what your right hands possess, write the contract with them if you recognize good in them" [24:33]. A portion of a slave does not qualify as what the right hand of its share-owner possesses, nor can it be termed his lawful possession or counted among what his right hand possesses. Whoever says this has certainly lied. If both co-owners jointly agree to grant a mukataba to their shared male

النَّجْمِ فَلَا؛ لِأَنَّهُ لَمْ يَجِبْ بَعْدُ - وَلَعَلَّهُ يَمُوتَ قَبْلَ وُجُوبِهِ، أَوْ يَمُوتُ السَّيِّدُ فَلَا يَجِبُ عَلَى الْعَبْدِ.

[مَسْأَلَة مقاطعة الْمُكَاتَب والوضع عَنْهُ بِشَرْطٍ]

١٧٠٠ - مَسْأَلَةٌ: وَلَا تَجُوزُ مُقَاطَعَةُ الْمُكَاتَبِ، وَلَا أَنْ يُوضَعَ عَنْهُ بِشَرْطِ أَنْ يُعَجِّلَ؛ لِأَنَّهُمَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ، وَبَيْعُ مَا لَمْ يَقْبِضْ وَمَا لَا يَدْرِي أَهُوَ فِي الْعَالَمِ أَمْ لَا؟ وَقَالَ مَالِكٌ: وَأَبُو حَنِيفَةَ: مُقَاطَعَةُ الْمُكَاتَبِ جَائِزَةٌ بِبَعْضِ مَا عَلَيْهِ، وَبِالْعُرُوضِ. وَصَحَّ عَنْ ابْنِ عُمَرَ: أَنَّهُ لَا يَجُوزُ مُقَاطَعَتُهُ إِلَّا بِالْعُرُوضِ. فَخَالَفَا ابْنَ عُمَرَ، وَلَا يُعْلَمُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ.

وَقَالَ الشَّافِعِيُّ بِقَوْلِ ابْنِ عُمَرَ، وَلَا حُجَّةَ إِلَّا فِي نَصٍّ -. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ، وَبِهِ نَتَأَيَّدُ.

[مَسْأَلَة مُكَاتَبَة بَعْض عَبْد]

١٧٠١ - مَسْأَلَةٌ: وَلَا تَجُوزُ كِتَابَةُ بَعْضِ عَبْدٍ وَلَا كِتَابَةُ شِقْصٍ لَهُ فِي عَبْدٍ مَعَ غَيْرِهِ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {وَالَّذِينَ يَبْتَغُونَ الْكِتَابَ مِمَّا مَلَكَتْ أَيْمَانُكُمْ فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا} [النور: ٣٣] وَلَيْسَ بَعْضُ الْعَبْدِ مِمَّا مَلَكَتْ يَمِينُ مَالِكِ بَعْضِهِ، وَلَا يُقَالُ فِيهِ: إنَّهُ مِلْكُ يَمِينِهِ أَصْلًا، وَلَا أَنَّهُ مِمَّا مَلَكَتْ يَمِينُهُ، وَمَنْ قَالَ ذَلِكَ فَقَدْ كَذَبَ بِيَقِينٍ. فَلَوْ

اتَّفَقَ الشَّرِيكَانِ مَعًا عَلَى كِتَابَةِ عَبْدِهِمَا أَوْ أَمَتِهِمَا مَعًا بِلَا فَصْلٍ جَازَ ذَلِكَ، لِأَنَّهُمَا حِينَئِذٍ مُخَاطَبُونَ بِالْآيَةِ بِخِلَافِ الْوَاحِدِ، لِأَنَّهُ يُقَالُ لِسَادَاتِ الْمُشْتَرَكِ - وَإِنْ كَانُوا جَمَاعَةً: هَذَا الْعَبْدُ مِلْكُ يَمِينِكُمْ، وَمِمَّا مَلَكَتْ أَيْمَانُكُمْ، فَكَانَ فِعْلُهُمَا هَذَا دَاخِلًا فِي أَمْرِ اللَّهِ تَعَالَى مَعَ صِحَّةِ خَبَرِ بَرِيرَةَ وَأَنَّهَا مُكَاتَبَةٌ لِجَمَاعَةٍ، هَكَذَا فِي نَصِّ الْخَبَرِ.

or female slave without dividing their shares, this is permissible, for they are thereby subject to the ruling of the verse, unlike a sole owner, as it is declared to the joint masters, even if they are a group: "This slave is the lawful possession of your right hands and among what your right hands possess." Thus, their joint action complies with Allah's command, aligning with the authentic narration of Barirah, who was granted a mukataba by a group, as explicitly stated in the text of the hadith.[19]

[مَسْأَلَة تَعْجِيل نجوم الْكِتَابَة]

The Issue of Accelerating Installments in Deferred Contracts (Kitābah)

١٧٠٢ - مَسْأَلَةٌ: وَإِنْ كَانَتْ الْكِتَابَةُ نَجْمَيْنِ فَصَاعِدًا، أَوْ إلَى أَجَلٍ، فَأَرَادَ الْعَبْدُ تَعْجِيلَهَا كُلَّهَا، أَوْ تَعْجِيلَ بَعْضِهَا قَبْلَ أَجَلِهِ: لَمْ يَلْزَمْ السَّيِّدَ قَبُولُ ذَلِكَ، وَلَا عِتْقَ الْعَبْدِ، وَهِيَ إلَى أَجَلِهَا، وَكُلُّ نَجْمٍ مِنْهَا إلَى أَجَلِهِ. لِقَوْلِ اللَّهِ تَعَالَى {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] . وَلَيْتَ شِعْرِي أَيْنَ مَنْ خَالَفَنَا عَنْ احْتِجَاجِهِمْ بِـ «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» . وَقَالَ مَالِكٌ: يُجْبَرُ عَلَى قَبْضِ ذَلِكَ وَتَعْجِيلِ الْعِتْقِ لِلْمُكَاتَبِ.

Issue 1702: If the kitābah stipulates two installments or more, or specifies a fixed term, and the enslaved person seeks to hasten payment of the entire sum or part of it before its due date, the master is not obligated to accept this. The enslaved person remains unemancipated, with the contract valid until its term, and each installment remains due at its specified term. This is based on Allah's command: "Fulfill your covenants" (Quran 5:1). I wonder where those who oppose us find grounds for their argument, given the principle that "Muslims are bound by their stipulations." Mālik held that the master must be compelled to accept receiving that payment and hasten the emancipation of the mukātab.[20]

وَقَالَ الشَّافِعِيُّ: إنْ كَانَتْ الْكِتَابَةُ دَرَاهِمَ أَوْ دَنَانِيرَ أُجْبِرَ السَّيِّدُ عَلَى قَبُولِهَا، وَإِنْ كَانَتْ عُرُوضًا لَمْ يُجْبَرْ. قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ الشَّافِعِيِّ: فَتَقْسِيمٌ فَاسِدٌ، لَا دَلِيلَ عَلَيْهِ لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ نَعْلَمُهُ قَبْلَهُ، وَلَا قِيَاسٍ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ بِلَا شَكٍّ. وَقَدْ يَكُونُ لِلسَّيِّدِ غَرَضٌ فِي تَأْجِيلِ الدَّرَاهِمِ وَالدَّنَانِيرِ وَمَنْفَعَةٌ ظَاهِرَةٌ مِنْ خَوْفٍ لَحِقَهُ أَوْ رَجَاءِ ارْتِفَاعِ سِعْرٍ لِدَيْنِهِ مِنْهُمَا، كَمَا فِي الْعُرُوضِ وَلَا فَرْقَ.

Al-Shāfiʿī said: If the kitābah contract stipulates dirhams or dinars, the master is compelled to accept it, but if it stipulates commodities, he is not compelled. Abū Muḥammad said: As for Al-Shāfiʿī's statement, this constitutes an invalid categorization unsupported by evidence from the Qur'an, the Sunnah, any weak narration, the opinion of anyone we know who preceded him, or analogical reasoning. Whatever rests on such foundations is undoubtedly void. The master may have an objective in deferring dirhams or dinars and an apparent benefit arising from a fear he has encountered or hope for increased value in debts owed through them, just as with commodities - and there is no distinction.

[19] **Qur'an references (L27314):** Qur'an 24:33 (An-Nur).
[20] **Qur'an references (L27316):** Qur'an 5:1 (Al-Ma'idah).

وَأَمَّا الْمَالِكِيُّونَ: فَإِنَّهُمْ أَوْهَمُوا أَنَّهُمْ يَحْتَجُّونَ بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ الْجَهْمِ نا الْوَزَّانُ نا عَلِيٌّ نا مُعَاذٌ الْعَنْبَرِيُّ نا عَلِيُّ بْنُ سُوَيْدِ بْنِ مَنْجُوفٍ نا أَنَسُ بْنُ سِيرِينَ عَنْ أَبِيهِ قَالَ: كَاتَبَنِي أَنَسُ بْنُ مَالِكٍ عَلَى عِشْرِينَ أَلْفًا، فَكُنْت فِي مِفْتَحِ تُسْتَرَ فَاشْتَرَيْت رَثَّةً فَرَبِحْت فِيهَا، فَأَتَيْت أَنَسًا بِجَمِيعِ مُكَاتَبَتِي، فَأَبَى أَنْ يَقْبَلَهَا إلَّا نُجُومًا، فَأَتَيْت عُمَرَ فَذَكَرْت ذَلِكَ لَهُ؟ فَقَالَ: أَرَادَ أَنَسٌ الْمِيرَاثَ، وَكَتَبَ إلَى أَنَسٍ: أَنْ اقْبَلْهَا، فَقَبِلَهَا. وَهَذَا أَحْسَنُ مَا رُوِيَ فِيهِ عَنْ عُمَرَ وَسَائِرُهَا مُنْقَطِعٌ. وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ أَنَّ أَبَاهُ كَاتَبَ عَبْدًا لَهُ فَلَمَّا فَرَغَ مِنْ كِتَابَتِهِ أَتَاهُ الْعَبْدُ بِمَالِهِ كُلِّهِ، فَأَبَى الْحَارِثُ أَنْ يَأْخُذَهُ وَقَالَ: لِي شَرْطِي، فَرَفَعَ ذَلِكَ إلَى عُثْمَانَ، فَقَالَ لَهُ عُثْمَانُ: هَلُمَّ الْمَالَ فَاجْعَلْهُ فِي بَيْتِ الْمَالِ فَتُعْطِيه مِنْهُ فِي كُلِّ حِلٍّ مَا يَحِلُّ، فَأَعْتَقَ الْعَبْدَ. قَالَ أَبُو مُحَمَّدٍ: هَذَا عَجِيبٌ جِدًّا إذْ رَأَى عُمَرُ، وَعُثْمَانُ إجَابَةَ السَّيِّدِ إلَى كِتَابَةِ عَبْدِهِ إذَا طَلَبَهَا الْعَبْدُ، وَخَالَفَهُ أَنَسٌ، وَاحْتَجَّ عُمَرُ، وَعُثْمَانُ بِالْقُرْآنِ كَانَ قَوْلُ أَنَسٍ حُجَّةً، وَكَانَ قَوْلُ عُمَرَ، وَعُثْمَانَ لَيْسَ بِحُجَّةٍ، وَإِذَا وَافَقَ قَوْلُ عُمَرَ، وَعُثْمَانَ رَأْيَ مَالِكٍ، خَالَفَهُمَا أَنَسٌ، وَالْحَارِثُ بْنُ هِشَامٍ، وَهُمَا صَاحِبَانِ، وَالْقُرْآنُ: صَارَ قَوْلُ عُمَرَ، وَعُثْمَانَ حُجَّةً، وَلَمْ يَكُنْ قَوْلُ أَنَسٍ حُجَّةً " إنَّ هَذَا لَعَجَبٌ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ ".

L27318–27320 As for the Malikis, they gave the impression that they base their argument on the narration transmitted via Ibn al-Jahm's chain—from al-Wazzān, from Ali, from Muʿādh al-ʿAnbarī, from Ali ibn Suwayd ibn Manjūf, from Anas ibn Sīrīn, from his father. He said: Anas ibn Malik entered into a contract of manumission with me for twenty thousand. While participating in the conquest of Tustar, I purchased inferior goods and profited from them. I brought the full amount of my contractual obligation to Anas, but he refused to accept it except through fixed installments. I approached Umar and informed him of this matter. He remarked: "Anas sought to retain inheritance rights," then wrote to Anas: "Accept the payment," which he subsequently did. This constitutes the most reliable narration from Umar regarding this issue, while other chains of transmission are discontinuous. Through the narration of Ibn Wahb from Ibn Lahīʿa, from Yazīd ibn Abī Ḥabīb, from Ibn Shihāb, from Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām: His father had established a manumission contract with his slave. When the slave fulfilled his contractual obligations and presented all his wealth, al-Ḥārith refused to accept it, insisting: "My stipulated conditions remain binding." The case was brought before Uthmān, who ruled: "Deposit the wealth into the public treasury and disburse it to him in legally valid installments." Thereupon, al-Ḥārith freed the slave.

Abū Muḥammad (Ibn Hazm) observed: "This is profoundly perplexing, for while Umar and Uthmān upheld the master's obligation to accept the slave's request for contractual manumission – citing Quranic authority – Anas opposed this. Yet Anas's opinion was deemed legally authoritative over theirs. When Umar and Uthmān's position aligned with the Quranic ruling, Anas and al-Ḥārith ibn Hishām – both being Companions – contradicted them. Thus the Quran affirmed the authority of Umar and Uthmān's position, rendering Anas's opinion non-authoritative. 'This is truly astonishing – sufficient for us is Allah, and what an excellent Trustee!'"

فَإِنْ مَوَّهُوا بِتَعْظِيمِ أَمْرِ الْعِتْقِ؟ قُلْنَا: أَيْنَ كُنْتُمْ عَنْ هَذَا التَّعْظِيمِ؟ إذْ لَمْ تُوجِبُوا الْكِتَابَةَ فَرْضًا لِعِتْقِ الْعَبْدِ إذَا طَلَبَهَا؟ وَالْقُرْآنُ يُوجِبُ ذَلِكَ، وَعُمَرُ، وَعُثْمَانُ، وَغَيْرُهُمَا. وَأَيْنَ

L27321 If they attempt to embellish their stance by emphasizing the importance of manumission, we respond: Where was this emphasis when you neglected to mandate written contracts for slaves seeking freedom? The Quran requires this, as do Umar, Uthman, and others. Where was this emphasis when you

reduced the mukātab slave to bondage over an unpaid dinar or dirham he could not afford? You hastened to nullify all he had paid, granting no delay beyond three days - some of you even for a minor matter - while claiming to be people of juridical reasoning. What distinction exists between a slave demanding immediate payment of all dues to hasten freedom while the master insists on his Quranic, Sunnah-based, and consensus-approved condition - thereby forcing the master against his wishes - and a master demanding immediate fulfillment of the entire contract to hasten manumission when the slave is capable but insists on adhering to its installments, yet you do not compel him? Is there greater inconsistency, unjust imposition, and contradiction than this?

كُنْتُمْ عَنْ هَذَا التَّعْظِيمِ إِذْ رَدَدْتُمْ الْمُكَاتَبَ رَقِيقًا مِنْ أَجْلِ دِينَارٍ أَوْ دِرْهَمٍ بَقِيَ عَلَيْهِ لَمْ يَقْدِرْ عَلَيْهِ؟ فَبَادَرْتُمْ وَأَبْطَلْتُمْ كُلَّ مَا أَعْطَى وَلَمْ تُؤَجِّلُوهُ إِلَّا ثَلَاثَةَ أَيَّامٍ، وَبَعْضُكُمْ أَيْضًا: أَمْرًا يَسِيرًا، وَأَنْتُمْ بِزَعْمِكُمْ أَصْحَابُ نَظَرٍ، فَأَيُّ فَرْقٍ بَيْنَ طَلَبِ الْعَبْدِ تَعْجِيلَ جَمِيعِ مَا عَلَيْهِ لِيَتَعَجَّلَ الْعِتْقَ وَالسَّيِّدُ يَأْبَى إِلَّا شَرْطَهُ الْجَائِزَ بِالْقُرْآنِ، وَالسُّنَّةِ، وَالْإِجْمَاعِ: فَتُجْبِرُونَ السَّيِّدَ عَلَى مَا لَا يُرِيدُ، وَبَيْنَ أَنْ يُرِيدَ السَّيِّدُ تَعْجِيلَ الْكِتَابَةِ كُلِّهَا لِيَتَعَجَّلَ عِتْقُ الْعَبْدِ وَالْعَبْدُ قَادِرٌ عَلَى ذَلِكَ، إِلَّا أَنَّهُ يَأْبَى إِلَّا الْجَرْيَ عَلَى نُجُومِهِ فَلَا تُجْبِرُونَهُ عَلَى ذَلِكَ، فَهَلْ فِي التَّخَاذُلِ وَالتَّحَكُّمِ بِالْبَاطِلِ وَالْمُنَاقَضَةِ أَكْثَرُ مِنْ هَذَا؟ .

[مَسْأَلَةٌ عَلَى السَّيِّدِ أَنْ يُعْطِيَ الْمُكَاتَبَ مَالًا مِنْ عِنْدِ نَفْسِهِ]

L27322 **It is a jurisprudential ruling that obliges the master to provide the mukatab with a sum of money from his own resources.**

١٧٠٣ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى السَّيِّدِ أَنْ يُعْطِيَ الْمُكَاتَبَ مَالًا مِنْ عِنْدِ نَفْسِهِ مَا طَابَتْ بِهِ نَفْسُهُ، مِمَّا يُسَمَّى مَالًا فِي أَوَّلِ عَقْدٍ لِلْكِتَابَةِ، وَيُجْبَرُ السَّيِّدُ عَلَى ذَلِكَ.

L27323–27325 Issue 1703: It is obligatory upon the master to provide the mukatab with whatever money from his own possession. He became content with it, from that which is termed property at the beginning of the *kitabah* contract, and the master is compelled to do so.

فَلَوْ مَاتَ قَبْلَ أَنْ يُعْطِيَهُ كُلِّفَ الْوَرَثَةُ ذَلِكَ مِنْ رَأْسِ الْمَالِ مَعَ الْغُرَمَاءِ.

L27326 If he dies before giving it to him, the heirs are obligated to fulfill this from the estate's principal assets after settling debts with the creditors.

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] فَهَذَا أَمْرٌ لَا يَجُوزُ تَعَدِّيهِ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، إِلَّا أَنَّ الشَّافِعِيَّ تَنَاقَضَ، فَرَأَى قَوْلَ اللَّهِ تَعَالَى: {فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا} [النور: ٣٣] عَلَى النَّدْبِ - وَرَأَى وَقَوْله تَعَالَى: {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] عَلَى الْوُجُوبِ - وَهَذَا تَحَكُّمٌ، وَكِلَا الْأَمْرَيْنِ لَمْ يَجِدْ فِيهِ عَدَدًا مَا أَحَدُهُمَا: مَوْكُولٌ

L27327 The proof of this is Allah's statement, the Exalted: {So enter into a manumission contract with them if you discern capability in them, and give them from the wealth of Allah which He has granted you} [An-Nur: 33]. This is an inviolable command—a view held by Al-Shafi'i and Abu Sulayman. However, Al-Shafi'i contradicted himself by interpreting Allah's command {So enter into a manumission contract with them if you discern capability in them} [An-Nur: 33] as recommended (nadb), while interpreting His command {and give them from the wealth of Allah which He has granted you} [An-Nur: 33] as obligatory (wājib). This is an unjustified distinction, as neither command specifies a quantitative stipulation to differentiate them: one is deferred to the master's discretion, and the other is deferred to both the master and

the enslaved person according to customary fairness—free from oppression, hardship, or undue burden on either.[21]

L27328 Abū Ḥanīfah and Mālik said: Both rulings are recommended acts, for the statement of the Exalted—"And give them from the wealth of Allah which He has bestowed upon you" [an-Nūr: 33]—constitutes a directive for the slaveowner and others.[22]

L27329 Abū Muḥammad said: This is erroneous. As for their statement "Both matters are recommended," it is impermissible to interpret Allah's command "Do" as meaning "Do not do if you wish"—no one derives this meaning from such wording. This constitutes diverting Allah's speech from its proper context unless another text has been reported to that effect.

L27330 As for their assertion that "this is a command for the slave master and others," it is invalid as it is grammatically linked to His injunction: {Then grant them a manumission contract} [An-Nur: 33].[23]

L27331 Thus, it was necessarily established that those commanded to document for themselves are the ones instructed to present from Allah's wealth. No one can understand from this command anything other than this. Consequently, the invalidity of their statement and their arbitrary control of the legal claim without evidence became evident.

L27332 We have been narrated this statement: He urged al-Sayyid and others toward it from Buraydah al-Aslamī through a chain containing al-Ḥasan ibn Wāqid—who is a weak narrator—and no one's authority constitutes proof except the Messenger of Allah, may Allah's peace and blessings be upon him.

L27333 A group said: It was commanded that the master and others do this, so they deemed it obligatory. As narrated through the chain of Sa'īd ibn Manṣūr, who reported from Hushaym, from Yūnus and al-Mughīrah. Yūnus reported from

إِلَى السَّيِّدِ، وَالْآخَرُ: مَوْكُولٌ إِلَيْهِ وَإِلَى الْعَبْدِ بِالْمَعْرُوفِ، مِمَّا لَا حَيْفَ فِيهِ وَلَا مَشَقَّةَ، وَلَا حَرَجَ عَلَيْهِمَا.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: كِلَا الْأَمْرَيْنِ نَدْبٌ قَوْله تَعَالَى: {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] أَمْرٌ لِلسَّيِّدِ وَلِغَيْرِهِ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا خَطَأٌ. أَمَّا قَوْلُهُمْ " كِلَا الْأَمْرَيْنِ نَدْبٌ " فَلَا يَحِلُّ أَنْ يُحْمَلَ قَوْلَ اللَّهِ تَعَالَى: افْعَلُوا، عَلَى: لَا تَفْعَلُوا إنْ شِئْتُمْ - وَلَا يَفْهَمُ هَذَا الْمَعْنَى أَحَدٌ مِنْ هَذَا اللَّفْظِ - وَهَذِهِ إحَالَةٌ لِكَلَامِ اللَّهِ تَعَالَى عَنْ مَوَاضِعِهِ إلَّا بِنَصٍّ آخَرَ وَرَدَ بِذَلِكَ.

وَأَمَّا قَوْلُهُمْ " إنَّهُ أَمْرٌ لِلسَّيِّدِ وَغَيْرِهِ " فَبَاطِلٌ، لِأَنَّهُ مَعْطُوفٌ عَلَى قَوْلِهِ: {فَكَاتِبُوهُمْ} [النور: ٣٣] .

فَصَحَّ ضَرُورَةً أَنَّ الْمَأْمُورِينَ بِالْكِتَابَةِ لَهُمْ: هُمْ الْمَأْمُورُونَ بِإِتْيَانِهِمْ مِنْ مَالِ اللَّهِ، لَا يَفْهَمُ أَحَدٌ مِنْ هَذَا الْأَمْرِ غَيْرَ هَذَا - فَظَهَرَ فَسَادُ قَوْلِهِمْ وَتَحَكُّمُهُمْ بِالدَّعْوَى بِلَا دَلِيلٍ.

وَرُوِّينَا هَذَا الْقَوْلَ: أَنَّهُ حَثَّ عَلَيْهِ السَّيِّدَ وَغَيْرَهُ عَنْ بُرَيْدَةَ الْأَسْلَمِيِّ مِنْ طَرِيقٍ فِيهَا الْحَسَنُ بْنُ وَاقِدٍ - وَهُوَ ضَعِيفٌ - وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

وَقَالَتْ طَائِفَةٌ: أَمَرَ بِذَلِكَ السَّيِّدَ وَغَيْرَهُ، فَهَؤُلَاءِ رَأَوْهُ وَاجِبًا. كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ عَنْ يُونُسَ، وَالْمُغِيرَةِ، قَالَ يُونُسُ: عَنْ الْحَسَنِ وَقَالَ الْمُغِيرَةُ: عَنْ إبْرَاهِيمَ ثُمَّ اتَّفَقَا فِي قَوْلِ اللَّهِ تَعَالَى: {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] قَالَ: أَمَرَ اللَّهُ تَعَالَى مَوْلَاهُ وَالنَّاسَ أَنْ يُعِينُوا الْمُكَاتَبَ.

[21] **Qur'an references (L27327):** Qur'an 24:33 (An-Nur).
[22] **Qur'an references (L27328):** Qur'an 24:33 (An-Nur).
[23] **Qur'an references (L27330):** Qur'an 24:33 (An-Nur).

al-Ḥasan, while al-Mughīrah reported from Ibrāhīm. Then they concurred regarding Allah's statement: {And give them from the wealth of Allah which He has given you} [24:33]. He said: Allah, the Exalted, commanded his master and the people to assist the *mukatab*.[24]

L27334–27335 And through the chain of Abd al-Razzaq from Sufyan al-Thawri from Abd al-A'la, who narrated to us: Abu Abd al-Rahman al-Sulami said, "I witnessed him enter into a mukataba contract with his slave for four thousand, then he reduced a thousand from the debt at the conclusion of the installment periods." Then he said: I heard Ali ibn Abi Talib state: "And give them from the wealth of Allah which He has given you" [24:33] - meaning a quarter of what you stipulate in the mukataba contract with them.[25]

L27336 From the chain of Ismail ibn Ishaq al-Qadi, from Ali ibn Abdullah (Ibn al-Madini), from Mu'tamir ibn Sulayman, from Layth ibn Abi Sulaym, from Mujahid concerning Allah's saying: *"And give them from the wealth of Allah which He has granted you"* [An-Nur: 33]. He said: "A quarter of the manumission contract." It has also been narrated to us that it is a tenth of the manumission contract.[26]

L27337 It was narrated to us through the chain of ʻAbd al-Razzāq from Maʻmar from Qatādah regarding the statement of Allah the Exalted: {And give them from the wealth of Allah which He has given you} [al-Nur: 33]. He said: It is the tenth left for him from his kitābah.[27]

L27338 Among those who held it obligatory is what we have narrated via the chain of Waki': Abu Shabib reported to us from Ikrimah from Ibn Abbas that Umar ibn al-Khattab entered into a mukātabah contract with a mukātab of his named Abu Umayyah. When his installment became due, he came to him with his installment. Umar said to him: "O Abu Umayyah, go and seek assistance with it." He replied: "O Commander of the Faithful, what if this were the final installment?" Umar said: "Perhaps I will not live to see it."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الْأَعْلَى نا أَبُو عَبْدِ الرَّحْمَنِ السُّلَمِيُّ وَشَهِدْته كَاتَبَ عَبْدًا لَهُ عَلَى أَرْبَعَةِ آلَافٍ فَحَطَّ عَنْهُ أَلْفًا فِي آخِرِ نُجُومِهِ - ثُمَّ قَالَ: سَمِعْت عَلِيَّ بْنَ أَبِي طَالِبٍ يَقُولُ: {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] الرُّبُعَ مِمَّا تُكَاتِبُوهُمْ عَلَيْهِ.

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي نا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ ابْنُ الْمَدِينِيِّ - نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ مُجَاهِدٍ فِي قَوْله تَعَالَى: {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] قَالَ: رُبُعُ الْكِتَابَةِ - وَرُوِّينَا أَيْضًا فِي أَنَّهُ عُشْرُ الْكِتَابَةِ.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي قَوْلِ اللَّهِ تَعَالَى: {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] قَالَ: هُوَ الْعُشْرُ يُتْرَكُ لَهُ مِنْ كِتَابَتِهِ.

وَمِمَّنْ قَالَ: إنَّهُ وَاجِبٌ كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا أَبُو شَبِيبٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَاتَبَ مَوْلًى لَهُ يُقَالُ لَهُ: أَبُو أُمَيَّةَ، فَجَاءَهُ بِنَجْمِهِ حِينَ هَلَّ؟ فَقَالَ لَهُ عُمَرُ: يَا أَبَا أُمَيَّةَ اذْهَبْ فَاسْتَعِنْ بِهِ، فَقَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ لَوْ كَانَ هَذَا فِي آخِرِ نَجْمٍ؟ فَقَالَ عُمَرُ: لِعَلِّي لَا أُدْرِكُهُ، قَالَ عِكْرِمَةُ ثُمَّ قَرَأَ: {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣]

[24] **Qur'an references (L27333):** Qur'an 24:33 (An-Nur).
[25] **Qur'an references (L27335):** Qur'an 24:33 (An-Nur).
[26] **Qur'an references (L27336):** Qur'an 24:33 (An-Nur).
[27] **Qur'an references (L27337):** Qur'an 24:33 (An-Nur).

Ikrimah then recited: “And give them from the wealth of Allah which He has bestowed upon you” [24:33].[28]

L27339 From the narration of Al-Ḥajjāj ibn Al-Minhāl: Al-Mubārak ibn Faḍālah narrated to us – my mother narrated to me from my father from my grandfather ʻUbaydullāh Al-Jaḥdarī, who said. Al-Mubārak added: And Maymūn ibn Jābān narrated to me from his uncle from his grandfather, who said: I asked ʻUmar ibn Al-Khaṭṭāb about contractual manumission. He said to me: “How much are you offering?” I said: “One hundred ūqiyya.” He said: “He did not ask me for more,” then said: “Draw up the contract with me.” He sent to Ḥafṣah, the Mother of the Believers: “I have contracted my slave and wish to advance him a portion from my wealth. Send me two hundred dirhams until something comes to me.” She sent them to him. ʻUmar took them with his right hand and recited: *“Those who seek a contract from among those your right hands possess – contract them if you recognize good in them, and give them from Allah’s wealth which He has granted you”* (24:33). He said: “Take them – may Allah bless them.”[29]

L27340–27342 Abu Muhammad said: It was indeed more akin to the principles of religion and more conducive to soundness for the Hanafi scholars to adopt Ali’s position on this issue and to assert: Such matters should not be resolved through juristic opinion on their part, given that which they themselves uphold. Exposing [body parts] incites mockery and distances one from God Almighty. It is rationally established that if a quarter of a free woman’s thigh, calf, stomach, arm, or head becomes uncovered during prayer, it invalidates the prayer. If less than a quarter is exposed, the prayer does not become invalid, especially as we have transmitted through the chain of Isḥāq ibn Rāhwayh from ʿAbd al-Razzāq, who narrated from Ibn Jurayj from ʿAṭāʾ ibn al-Sāʾib from Ḥabīb ibn Abī Thābit from ʿĀṣim ibn Ḍamrah from ʿAlī ibn Abī Ṭālib, who reported from the Prophet—peace and blessings of God be upon him and his household—regarding the verse, “And give them from the wealth

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا الْمُبَارَكُ بْنُ فَضَالَةَ حَدَّثَتْنِي أُمِّيّ عَنْ أَبِي عَنْ جَدِّي عُبَيْدِ اللَّهِ الْجَحْدَرِيِّ قَالَ الْمُبَارَكُ: وَحَدَّثَنِي مَيْمُونُ بْنُ جَابَانَ عَنْ عَمِّي عَنْ جَدِّي، قَالَ: سَأَلْت عُمَرَ بْنَ الْخَطَّابِ الْمُكَاتَبَةَ؟ قَالَ لِي: كَمْ تَعْرِضُ؟ قُلْت: مِائَةَ أُوقِيَّةٍ، قَالَ: فَمَا اسْتَزَادَنِي، قَالَ: فَكَاتِبْنِي وَأَرْسَلَ إلَى حَفْصَةَ أُمِّ الْمُؤْمِنِينَ إنِّي كَاتَبْت غُلَامِي، وَأَرَدْت أَنْ أُعَجِّلَ لَهُ طَائِفَةً مِنْ مَالِي فَأَرْسِلِي إلَيَّ بِمِائَتَيْ دِرْهَمٍ إلَى أَنْ يَأْتِيَنِي شَيْءٌ؟ فَأَرْسَلَتْ بِهَا إلَيْهِ، فَأَخَذَهَا عُمَرُ بِيَمِينِهِ وَقَرَأَ: {وَالَّذِينَ يَبْتَغُونَ الْكِتَابَ مِمَّا مَلَكَتْ أَيْمَانُكُمْ فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] خُذْهَا بَارَكَ اللَّهُ فِيهَا

قَالَ أَبُو مُحَمَّدٍ: لَقَدْ كَانَ أَشْبَهَ بِأُمُورِ الدِّينِ، وَأَدْخَلَ فِي السَّلَامَةِ أَنْ يَقُولَ الْحَنَفِيُّونَ بِقَوْلِ عَلِيٍّ فِي هَذِهِ الْمَسْأَلَةِ، وَأَنْ يَقُولُوا: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ مِنْهُمْ، حَيْثُ يَقُولُونَ مَا يُضْحِكُ الثَّكَالَى، وَيُبْعِدُ مِنْ اللَّهِ تَعَالَى، وَمِنْ الْمَعْقُولِ: أَنَّهُ إنْ انْكَشَفَ فِي نَحْوِ الْحُرَّةِ فِي الصَّلَاةِ، أَوْ مِنْ السَّاقِ، أَوْ مِنْ الْبَطْنِ، أَوْ مِنْ الذِّرَاعِ، أَوْ مِنْ الرَّأْسِ الرُّبُعُ: بَطَلَتْ الصَّلَاةُ، فَإِنْ انْكَشَفَ أَقَلُّ لَمْ تَبْطُلْ الصَّلَاةُ، لَا سِيَّمَا وَقَدْ رُوِّينَا مِنْ طَرِيقِ إسْحَاقَ بْنِ رَاهْوَيْهِ عَنْ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] قَالَ: رُبُعُ الْكِتَابَةِ» .

[28] **Qur’an references (L27338):** Qur’an 24:33 (An-Nur).
[29] **Qur’an references (L27339):** Qur’an 24:33 (An-Nur).

of God which He has granted you" [24:33]: the Prophet explained it as "a quarter of the stipulated amount in the contract."[30]

L27343 From the transmission of al-Dabarī via ʿAbd al-Razzāq: Ibn Jurayj reported to us, narrating from ʿAṭāʾ ibn al-Sāʾib, who reported from ʿAbdullāh ibn Ḥabīb—who is Abū ʿAbd al-Raḥmān al-Sulamī—who reported from ʿAlī ibn Abī Ṭālib, that the Prophet—peace and blessings of Allah be upon him and his family—said regarding the verse {And give them from the wealth of Allah which He has given you} [24:33]: "A quarter of the manumission contract." ʿAlī said: If it is asked, "Why did you not act upon this ḥadīth?" We replied: Because Ibn Jurayj only heard from ʿAṭāʾ ibn al-Sāʾib after ʿAṭāʾ's mental confusion.[31]

L27344 It was narrated to us through the route of Al-ʻUqayli: Ibrāhīm ibn Muḥammad reported to us, Sulaymān ibn Ḥarb reported to us, Abū An-Nuʻmān reported from Yaḥyā ibn Saʻīd Al-Qaṭṭān, who said: "Ibn As-Sāʾib's memory later weakened, and Ḥammād ibn Zayd heard from him before his memory deteriorated."

L27345 From the path of Al-ʿUqaylī: Muḥammad ibn Ismāʿīl narrated to us: Al-Ḥasan ibn ʿAlī al-Ḥulwānī narrated to us: ʿAlī (that is, Ibn al-Madīnī) said: Yaḥyā ibn Saʿīd al-Qaṭṭān would not transmit the ḥadīth of ʿAṭāʾ ibn al-Sāʾib except from Shuʿbah and Sufyān.

L27346 Abū Muḥammad said: His confusion was confirmed, so it is not permissible to cite from his narrations except what has been verified to have occurred before his confusion. Those we mentioned did not narrate from him except mawqūf reports stopping at ʿAlī (may Allah be pleased with him). As for them, when a report conforms to their opinion, they do not scrutinize it for defects—even if it is fabricated. Since this report has been invalidated, there remains no authoritative proof for the proponents of this position.

L27347–27349 Those who maintained that it is recommended based their argument on

[30] **Qur'an references (L27340):** Qur'an 24:33 (An-Nur).

[31] **Qur'an references (L27343):** Qur'an 24:33 (An-Nur).

وَمِنْ طَرِيقِ الدَّبَرِيِّ عَنْ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَطَاءُ بْنُ السَّائِبِ أَنَّ عَبْدَ اللَّهِ بْنَ حَبِيبٍ - هُوَ أَبُو عَبْدِ الرَّحْمَنِ السُّلَمِيُّ - أَخْبَرَهُ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ «عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] قَالَ: رُبُعُ الْكِتَابَةِ» ، قَالَ عَلِيٌّ: فَإِنْ قِيلَ: فَلِمْ لَمْ تَأْخُذُوا بِهَذَا الْحَدِيثِ؟ قُلْنَا: لِأَنَّ ابْنَ جُرَيْجٍ لَمْ يَسْمَعْ مِنْ عَطَاءِ بْنِ السَّائِبِ إِلَّا بَعْدَ اخْتِلَاطِ عَطَاءٍ.

وَرُوِّينَا مِنْ طَرِيقِ الْعُقَيْلِيُّ نا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ نا سُلَيْمَانُ بْنُ حَرْبٍ نا أَبُو النُّعْمَانِ عَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ قَالَ: تَغَيَّرَ حِفْظُ ابْنِ السَّائِبِ بَعْدُ وَحَمَّادُ بْنُ زَيْدٍ سَمِعَ مِنْهُ قَبْلَ أَنْ يَتَغَيَّرَ.

وَمِنْ طَرِيقِ الْعُقَيْلِيِّ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ نا الْحَسَنُ بْنُ عَلِيٍّ الْحُلْوَانِيُّ نا عَلِيٌّ - هُوَ ابْنُ الْمَدِينِيِّ - قَالَ: كَانَ يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ لَا يَرْوِي حَدِيثَ عَطَاءِ بْنِ السَّائِبِ إِلَّا عَنْ شُعْبَةَ، وَسُفْيَانَ

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ اخْتِلَاطُهُ، فَلَا يَحِلُّ أَنْ يُحْتَجَّ مِنْ حَدِيثِهِ إِلَّا بِمَا صَحَّ أَنَّهُ كَانَ قَبْلَ اخْتِلَاطِهِ، وَهَؤُلَاءِ الَّذِي ذَكَرْنَا لَمْ يَرْوِ أَحَدٌ مِنْهُمْ عَنْهُ إِلَّا مَوْقُوفًا عَلَى عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - وَأَمَّا هُمْ فَإِذَا وَافَقَ الْخَبَرُ رَأْيَهُمْ لَمْ يُعَلِّلُوهُ - وَإِنْ كَانَ مَوْضُوعًا - فَإِذْ قَدْ سَقَطَ هَذَا الْخَبَرُ فَلَا حُجَّةَ لِأَهْلِ هَذِهِ الْمَقَالَةِ.

وَاحْتَجَّ الْقَائِلُونَ بِأَنَّهُ عَلَى النَّدْبِ بِحَدِيثِ كِتَابَةِ سَلْمَانَ - رَضِيَ اللَّهُ عَنْهُ - وَبِحَدِيثِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ جُوَيْرِيَةَ أُمَّ الْمُؤْمِنِينَ وَقَعَتْ فِي سَهْمِ ثَابِتِ بْنِ قَيْسٍ أَوْ ابْنِ عَمٍّ

the narration regarding Salman's contractual manumission agreement—may Allah be pleased with him—and the narration from Aisha, the Mother of the Believers, that Juwayriyah, another Mother of the Believers, became part of Thabit ibn Qays's share of war spoils. "Or his paternal cousin contracted her in kitābah. She came to the Messenger of Allah—may Allah bless him and his family and grant him peace—seeking his aid. He—peace and blessings be upon him—said to her: 'Or [shall I do] better than that? I will discharge your kitābah and marry you.'"

لَهُ فَكَاتَبَهَا فَأَتَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - تَسْتَعِينُهُ فَقَالَ لَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: أَوْ خَيْرٌ مِنْ ذَلِكَ أَقْضِ عَنْكِ كِتَابَتَكِ وَأَتَزَوَّجُكِ»

L27350 They said: He did not mention in these two narrations the mukatab's handing over of his wealth.

قَالُوا: فَلَمْ يَذْكُرْ فِي هَذَيْنِ الْخَبَرَيْنِ إيتَاءَ مَالِ الْمُكَاتَبِ.

L27351 Ali said: "They have no valid argument regarding any of this. As for the narration about Salman, his owner was a Jew who was not a dhimmi, but rather a hostile aggressor upon whom the legal rulings of Islam do not apply. Thus, they have no basis to rely on this."

قَالَ عَلِيٌّ: لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْ هَذَا. أَمَّا خَبَرُ سَلْمَانَ فَإِنَّ مَالِكَهُ كَانَ يَهُودِيًّا غَيْرَ ذِمِّيٍّ، بَلْ مُنَابِذٌ لَا تَجْرِي عَلَيْهِ أَحْكَامُ الْإِسْلَامِ، فَلَا مُتَعَلَّقَ لَهُمْ بِهَذَا.

L27352 The most astonishing thing is their argumentation regarding matters where there is no mention of the giving of wealth, and their opposition to what the Messenger of God—peace and blessings be upon him and his family—explicitly permitted in the reviving of three hundred palm trees and forty ounces of gold without stipulated deadlines or physical possession, while they themselves reject any of this. Glory be to Him who unleashed their tongues to utter these grave matters that decency and religious scruple ought to restrain people from.

وَأَعْجَبُ شَيْءٍ احْتِجَاجُهُمْ بِهِ فِيمَا لَيْسَ فِيهِ لَهُ ذِكْرٌ مِنْ إيتَاءِ الْمَالِ، وَمُخَالَفَتُهُمْ لَهُ فِيمَا أَجَازَهُ فِيهِ نَصًّا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ إحْيَاءِ ثَلَاثمِائَةِ نَخْلَةٍ، وَأَرْبَعِينَ أُوقِيَّةً مِنْ ذَهَبٍ إلَى غَيْرِ أَجَلٍ مُسَمًّى، وَلَا مَقْبُوضَةً، وَهُمْ لَا يُجِيزُونَ شَيْئًا مِنْ هَذَا، فَسُبْحَانَ مَنْ أَطْلَقَ أَلْسِنَتَهُمْ بِهَذِهِ الْعَظَائِمِ الَّتِي يَجِبُ أَنْ يَرْدَعَ عَنْهَا الْحَيَاءُ، وَأَنْ يَرْدَعَ عَنْهَا الدِّينُ.

L27353 As for the report concerning Juwayriyah, it does not specify on what terms he entered into the *kitābah* contract with her, nor whether it was for a fixed term or indefinite. This necessarily entails that it constitutes a proof for the permissibility of *kitābah* contracts to indefinite terms. All contracts they invalidated because they did not stipulate the payment of money do not state that she was not given the money, leaving them no basis for their argument. How can this hold when the *kitābah* undoubtedly remained incomplete? None of the scholars ever claimed that Juwayriyah, the Mother of the Believers, was a freed slave of Thābit or his cousin. Rather, it is authentically established that the Messenger of Allah—may Allah bless him

وَأَمَّا خَبَرُ جُوَيْرِيَةَ: فَلَيْسَ فِيهِ عَلَى مَاذَا كَاتَبَهَا، وَلَا هَلْ كَاتَبَ إلَى أَجَلٍ أَمْ إلَى غَيْرِ أَجَلٍ، فَيَلْزَمُ عَلَى هَذَا أَنْ يَكُونَ حُجَّةً فِي إجَازَةِ الْكِتَابَةِ إلَى غَيْرِ أَجَلٍ، وَكُلُّ كِتَابَةٍ أَفْسَدُوهَا إذْ لَمْ يَذْكُرُوا فِيهَا إيتَاءَ الْمَالِ، فَلَيْسَ فِيهِ: أَنَّهَا لَمْ تُؤْتَ الْمَالَ، فَلَا مُتَعَلَّقَ لَهُمْ بِهِ، فَكَيْفَ وَهِيَ كِتَابَةٌ لَمْ تَتِمَّ بِلَا شَكٍّ، لِأَنَّهُ لَمْ يَقُلْ أَحَدٌ مِنْ أَهْلِ الْعِلْمِ: أَنَّ جُوَيْرِيَةَ أُمَّ الْمُؤْمِنِينَ

and his family and grant him peace—manumitted her, married her, and made her emancipation her dower.

كَانَتْ مَوْلَاةً لِثَابِتٍ، وَلَا لِابْنِ عَمِّهِ، بَلْ قَدْ صَحَّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَعْتَقَهَا وَتَزَوَّجَهَا وَجَعَلَ عِتْقَهَا صَدَاقَهَا» .

L27354 So all that they have embellished is nullified—and all praise is due to Allah, Lord of all the worlds.

فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L27355 They said: If it had been an obligation, it would have been defined in measure.

وَقَالُوا: لَوْ كَانَ فَرْضًا لَكَانَ مَحْدُودَ الْقَدْرِ.

L27356 Abu Muhammad said: So we asked, "From where have you said this? And what prevents Allah the Exalted from ordaining for us a grant that He entrusts to our choice? For whatever thing we give, we would have fulfilled what is required of us."

قَالَ أَبُو مُحَمَّد: فَقُلْنَا: مِنْ أَيْنَ قُلْتُمْ هَذَا؟ وَمَا الْمَانِعُ مِنْ أَنْ يَفْرِضَ اللَّهُ تَعَالَى عَلَيْنَا عَطَاءً يَكِلُهُ إلَى اخْتِيَارِنَا؟ وَأَيُّ شَيْءٍ أَعْطَيْنَاهُ كُنَّا قَدْ أَدَّيْنَا مَا عَلَيْنَا.

L27357 Why did you [scholars] not say this concerning temporary marriage (*mut'ah*), which the Ḥanafīs and Shāfiʿīs regarded as a *farḍ* (obligation) - despite it being unrestricted in amount? And why did the Mālikīs not say this about the *kharāj* tax levied on lands conquered by force - which, in their view, is a *farḍ* (obligation) not fixed in amount?

وَهَلَّا قُلْتُمْ هَذَا فِي الْمُتْعَةِ الَّتِي رَآهَا الْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ فَرْضًا - وَهِيَ غَيْرُ مَحْدُودَةِ الْقَدْرِ؟ وَهَلَّا قَالَ هَذَا الْمَالِكِيُّونَ فِي الْخَرَاجِ الْمَضْرُوبِ عَلَى الْأَرْضِ الْمُفْتَتَحَةِ عَنْوَةً - وَهُوَ عِنْدَهُمْ فَرْضٌ غَيْرُ مَحْدُودِ الْقَدْرِ؟

L27358–27359 Glory be to the One who, in their own eyes and presumption, caused them to scrutinize Allah the Exalted's rulings regarding what they do not scrutinize in themselves when legislating within religion through their opinions—just as they asserted regarding that in which they imposed arbitration as a binding duty from the kharaj (land tax)—which is of unspecified amount?—!

وَكَمَا قَالُوا فِيمَا أَوْجَبُوا فِيهِ الْحُكُومَةَ فَرْضًا مِنْ الْخَرَاجِ - وَهُوَ غَيْرُ مَحْدُودِ الْقَدْرِ؟ فَسُبْحَانَ مَنْ جَعَلَ لَهُمْ عِنْدَ أَنْفُسِهِمْ وَفِي ظَنِّهِمْ: أَنْ يَتَعَقَّبُوا عَلَى اللَّهِ تَعَالَى حُكْمَهُ بِمَا لَا يَتَعَقَّبُونَهُ عَلَى أَنْفُسِهِمْ فِيمَا يُشَرِّعُونَهُ فِي الدِّينِ بِآرَائِهِمْ -.

L27360 Sufficient for us is Allah, and what an excellent Disposer of Affairs!

وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

L27361 The Book of Writing has been completed, and all praise is due to Allah, the Lord of the worlds.

تَمَّ كِتَابُ الْكِتَابَةِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.



AL-MUHALLA

كِتَابُ صُحْبَةِ مِلْكِ الْيَمِينِ

The Book of Treatment of Those under One’s Ownership

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ صُحْبَةِ مِلْكِ الْيَمِينِ] [مَسْأَلَةٌ لَا يَقُولُ السَّيِّدُ لِغُلَامِهِ هَذَا عَبْدِي وَلَا لِمَمْلُوكَتِهِ هَذِهِ أَمَتِي]

L27362–27363 **The Book on the Companionship of Those under One's Ownership A legal issue: The master should not say to his young male slave, "This is my slave," nor to his female slave, "This is my female slave."**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى سَيِّدِنَا مُحَمَّدٍ وَآلِهِ وَصَحْبِهِ كِتَابُ صُحْبَةِ مِلْكِ الْيَمِينِ

١٧٠٤ - مَسْأَلَةٌ: لَا يَجُوزُ لِلسَّيِّدِ أَنْ يَقُولَ لِغُلَامِهِ: هَذَا عَبْدِي، وَلَا لِمَمْلُوكَتِهِ: هَذِهِ أَمَتِي، لَكِنْ يَقُولُ: غُلَامِي، وَفَتَايَ، وَمَمْلُوكِي، وَمَمْلُوكَتِي وَخَادِمِي، وَفَتَاتِي.

L27364 In the name of Allah, the Most Gracious, the Most Merciful. May Allah send blessings upon our master Muḥammad, his household, and his companions. *The Book on the Association with Those Whom Your Right Hand Possesses* 1704 – A legal ruling: It is not permissible for a master to say to his young male servant, "This is my slave," nor to his female servant, "This is my female slave." Instead, he should say: "my young male servant," "my young man," "my owned male," "my owned female," "my servant," or "my girl."

وَلَا يَجُوزُ لِلْعَبْدِ أَنْ يَقُولَ: هَذَا رَبِّي، أَوْ مَوْلَايَ، أَوْ رَبَّتِي.

L27365 It is not permissible for a servant to say: "This is my Lord," "my Master," or "my Lady."

وَلَا يَقُلْ أَحَدٌ لِمَمْلُوكٍ: هَذَا رَبُّك، وَلَا رَبَّتُك، لَكِنْ يَقُولُ: سَيِّدِي.

L27366 And do not say to a slave: "This is your owner" or "your female owner," but say: "My master."

وَجَائِزٌ أَنْ يَقُولَ الْمَرْءُ لِآخَرَ: هَذَا عَبْدُك، وَهَذَا عَبْدُ فُلَانٍ، وَأَمَةُ فُلَانٍ، وَمَوْلَى فُلَانٍ؛ لِأَنَّ النَّهْيَ لَمْ يَرِدْ إلَّا فِيمَا ذَكَرْنَا فَقَطْ.

L27367 It is permissible for a person to say to another: "This is your slave," "This is the slave of so-and-so," "This is the female slave of so-and-so," and "This is the client of so-and-so," because the prohibition applies only to what we have mentioned.

وَجَائِزٌ أَنْ يَقُولَ: هَؤُلَاءِ عَبِيدُك، وَعِبَادُك، وَإِمَاؤُك. رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُوسَى بْنُ إسْمَاعِيلَ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ: «لَا يَقُلْ أَحَدُكُمْ: عَبْدِي، وَأَمَتِي، وَلَا يَقُولَنَّ الْمَمْلُوكُ: رَبِّي، وَرَبَّتِي، وَلْيَقُلْ الْمَالِكُ: فَتَايَ، وَفَتَاتِي، وَلْيَقُلْ الْمَمْلُوكُ: سَيِّدِي، وَسَيِّدَتِي، فَإِنَّكُمْ: الْمَمْلُوكُونَ، وَالرَّبُّ: اللَّهُ عَزَّ وَجَلَّ» .

L27368 It is permissible to say: "These are your male slaves, your servants, and your female slaves." It has been reported to us through the chain of Abū Dāwūd: Mūsā ibn Ismāʿīl narrated to us, Ḥammād ibn Salamah narrated to us from Ayyūb al-Sikhtiyānī from Muḥammad ibn Sīrīn from Abū Hurayrah from the Messenger of Allah—peace be upon him and his family—that he said: "Let none of you say: 'My male slave' or 'My female slave,' and let not the slave say: 'My lord' or 'My lady.' Rather, let the owner say: 'My lad' and 'My lass,' and let the slave say: 'My master' and 'My mistress,' for you are all owned ones, and the Lord is Allah, the Almighty and Majestic."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يُحَدِّثُ عَنْ رَسُولِ اللَّهِ قَالَ: «لَا يَقُلْ أَحَدُكُمْ: أَطْعِمْ رَبَّكَ - اسْقِ رَبَّكَ، وَضِّئْ رَبَّكَ، وَلَا يَقُلْ

L27369–27371 From the chain of ʿAbd al-Razzāq, Maʿmar reported to us from Hammām ibn Munabbih that he heard Abū Hurairah narrating from The Messenger of Allah said: "Let none of you say: 'Feed your master,' 'Give drink to your

master,' 'Provide water for your master's ablution,' nor should any of you say: 'My master.' Instead, say: 'My liege.' Do not say: 'My master,' nor should any of you say: 'My male slave,' 'My female slave.' Rather say: 'My young man,' 'My young woman,' 'My attendant.'"

أَحَدُكُمْ: رَبِّي، وَلْيَقُلْ: سَيِّدِي، وَلَا يَقُلْ: مَوْلَايَ، وَلَا يَقُلْ أَحَدُكُمْ: عَبْدِي أَمَتِي، وَلْيَقُلْ: فَتَايَ، فَتَاتِي، غُلَامِي» .

L27372 Via Muslim's chain: Abū Kurayb → Abū Muʿāwiyah → al-Aʿmash → Abū Ṣāliḥ → Abū Hurayrah → the Prophet (may Allah bless him and his family and grant him peace), who said: "A servant should not say to his master: 'My Mawlā,' for your Mawlā is Allah." Abū Muḥammad remarked: This narration includes an additional prohibition against saying "My Mawlā," with the prohibition itself being the addition, while the transmitted ruling pertains to lifting the permissibility. Via Abū Dāwūd's chain: Ibn al-Sarḥ → Ibn Wahb → ʿAmr (Ibn al-Ḥārith), who reported that Abū Yūnus, the freedman of Abū Hurayrah, narrated this report from him. The chain is thus ascribed to Abū Hurayrah through Hammām ibn Munabbih, Abū Ṣāliḥ, Ibn Sīrīn, and ʿAbd al-Raḥmān (father of al-Alāʾ). Among those who transmitted from Abū Hurayrah concerning his legal opinions is Abū Yūnus, his servant, and no dissenter among the Companions is known regarding this.

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو كُرَيْبٍ نا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «وَلَا يَقُلْ الْعَبْدُ لِسَيِّدِهِ: مَوْلَايَ، فَإِنَّ مَوْلَاكُمْ اللَّهُ» قَالَ أَبُو مُحَمَّد: فِي هَذِهِ الرِّوَايَةِ زِيَادَةُ النَّهْيِ عَنْ قَوْلِ: مَوْلَايَ، وَالنَّهْيُ هُوَ الزَّائِدُ، وَالْوَارِدُ بِرَفْعِ الْإِبَاحَةِ. وَمِنْ طَرِيقِ أَبِي دَاوُد نا ابْنُ السَّرْحِ نا ابْنُ وَهْبٍ أَخْبَرَنِي عَمْرُو - هُوَ ابْنُ الْحَارِثِ - أَنَّ أَبَا يُونُسَ مَوْلَى أَبِي هُرَيْرَةَ حَدَّثَهُ عَنْ أَبِي هُرَيْرَةَ بِهَذَا الْخَبَرِ، فَأَسْنَدَهُ عَنْ أَبِي هُرَيْرَةَ: هَمَّامُ بْنُ مُنَبِّهٍ، وَأَبُو صَالِحٍ، وَابْنُ سِيرِينَ، وَعَبْدُ الرَّحْمَنِ وَالِدُ الْعَلَاءِ - وَرَوَى عَنْ أَبِي هُرَيْرَةَ مِنْ فُتْيَاهُ: أَبُو يُونُسَ غُلَامُهُ وَلَا يُعْلَمُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ.

L27373 And Allah, the Mighty and Majestic, has said: _"And marry the unmarried among you, and marry the righteous among your male and female slaves. If they are poor, Allah will enrich them from His bounty"_ (An-Nur 24:32).[1]

وَقَالَ اللَّهُ عَزَّ وَجَلَّ: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ} [النور: ٣٢]

L27374 If someone argues by citing the statement of Joseph—peace be upon him—"Indeed, my Lord has made my dwelling excellent" [Yusuf: 23] and his saying, "Mention me to your Lord" [Yusuf: 42], then that was one divine law, and this is another; that was one expression, and this is another. This remained permissible in our view and within our Sharia until the Messenger of Allah—may Allah bless him and his family and grant him peace—prohibited such practices.[2]

فَإِنْ احْتَجَّ مُحْتَجٌّ بِقَوْلِ يُوسُفَ - عَلَيْهِ السَّلَامُ - {إِنَّهُ رَبِّي أَحْسَنَ مَثْوَايَ} [يوسف: ٢٣] وَقَوْلِهِ: {اذْكُرْنِي عِنْدَ رَبِّكَ} [يوسف: ٤٢] فَتِلْكَ شَرِيعَةٌ، وَهَذِهِ أُخْرَى، وَتِلْكَ لُغَةٌ، وَهَذِهِ أُخْرَى، وَقَدْ كَانَ هَذَا مُبَاحًا عِنْدَنَا وَفِي شَرِيعَتِنَا حَتَّى نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ ذَلِكَ.

L27375 Indeed, Yusuf—peace be upon him—said: "Take me in death as a Muslim

وَقَدْ قَالَ يُوسُفُ - عَلَيْهِ السَّلَامُ -: {تَوَفَّنِي مُسْلِمًا وَأَلْحِقْنِي بِالصَّالِحِينَ} [يوسف: ١٠١] وَقَدْ نُهِينَا عَنْ تَمَنِّي الْمَوْتِ.

[1] **Qur'an references (L27373):** Qur'an 24:32 (An-Nur).
[2] **Qur'an references (L27374):** Qur'an 12:23 (Yusuf); Qur'an 12:42 (Yusuf).

and join me with the righteous" (Yusuf 12:101), and indeed we have been prohibited from wishing for death.[3]

The Issue of the Enslaved Person's Clothing and Sustenance

L27376

L27377 1705 - Issue: It is obligatory upon the master to clothe his male slave and female slave from what he wears—even a single garment—and to feed them from what he eats, even a morsel. He must provide them sufficient sustenance and clothe them according to customary standards, equivalent to how someone of their status is clothed and fed, and he must not burden them with what they cannot bear.

L27378–27379 It has been narrated to us through the transmission route of Al-Bukhārī: Adam ibn Abī Iyās narrated to us, Shuʿbah narrated to us, Wāṣil al-Aḥdab narrated to us: I heard Maʿrūr ibn Suwayd say: "I saw Abū Dharr al-Ghifārī wearing a set of garments, and his servant was also wearing a set of garments. We asked him about that, and he replied: 'The Messenger of God (may God's peace and blessings be upon him and his family) said to him: "Your brothers are your servants whom God the Exalted has placed under your authority. Whoever has a brother under his authority must feed him from what he eats, clothe him from what he wears, and not burden them with what overwhelms them. If you do burden them with what overwhelms them, then assist them."'"

L27380 Through the chain of Muslim: Hārūn ibn Maʿrūf and Muḥammad ibn ʿAbbād both reported: Ḥātim ibn Ismāʿīl narrated from Yaʿqūb ibn Mujāhid, Abū Ḥazrah, from ʿUbādah ibn al-Walīd ibn ʿUbādah ibn al-Ṣāmit that he encountered Abū al-Yusr wearing a cloak and a Maʿāfirī cloak, while his enslaved attendant likewise wore a cloak and a Maʿāfirī cloak. He questioned him about this, and Abū al-Yusr replied: "My two eyes have seen, my two ears have heard, and my heart has preserved the words of Allah's Messenger—peace and blessings be upon him—when he said: 'Feed them from what you eat and clothe them from what you wear.'"

[مَسْأَلَة كِسْوَة المملوك وطعامه]

١٧٠٥ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى السَّيِّدِ أَنْ يَكْسُوَ مَمْلُوكَهُ، وَمَمْلُوكَتَهُ، مِمَّا يَلْبَسُ - وَلَوْ شَيْئًا - وَأَنْ يُطْعِمَهُ مِمَّا يَأْكُلُ وَلَوْ لُقْمَةً - وَأَنْ يُشْبِعَهُ وَيَكْسُوَهُ بِالْمَعْرُوفِ، مِثْلَ مَا يُكْسَى وَيُطْعَمُ مِثْلُهُ، أَوْ مِثْلُهَا، وَأَنْ لَا يُكَلِّفَهُ مَا لَا يُطِيقُ.

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا آدَم بْنُ أَبِي إيَاسٍ نا شُعْبَةُ نا وَاصِلٌ الْأَحْدَبُ سَمِعْتُ «الْمَعْرُورَ بْنَ سُوَيْد قَالَ: رَأَيْتُ أَبَا ذَرٍّ الْغِفَارِيَّ وَعَلَيْهِ حُلَّةٌ، وَعَلَى غُلَامِهِ حُلَّةٌ، فَسَأَلْنَاهُ عَنْ ذَلِكَ؟ فَقَالَ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لَهُ: إخْوَانُكُمْ خَوَلُكُمْ جَعَلَهُمْ اللَّهُ تَعَالَى تَحْتَ أَيْدِيكُمْ فَمَنْ كَانَ أَخُوهُ تَحْتَ يَدِهِ فَلْيُطْعِمْهُ مِمَّا يَأْكُلُ، وَلْيُلْبِسْهُ مِمَّا يَلْبَسُ، وَلَا تُكَلِّفُوهُمْ مَا يَغْلِبُهُمْ، فَإِنْ كَلَّفْتُمُوهُمْ مَا يَغْلِبُهُمْ فَأَعِينُوهُمْ» .

وَمِنْ طَرِيقِ مُسْلِمٍ نا هَارُونُ بْنُ مَعْرُوفٍ، وَمُحَمَّدُ بْنُ عَبَّادٍ، قَالَا جَمِيعًا: نا حَاتِمُ بْنُ إسْمَاعِيلَ عَنْ يَعْقُوبَ بْنِ مُجَاهِدٍ أَبِي حَزْرَةَ «عَنْ عُبَادَةَ بْنِ الْوَلِيدِ بْنِ عُبَادَةَ بْنِ الصَّامِتِ أَنَّهُ سَمِعَ أَبَا الْيَسَرِ وَقَدْ لَقِيَهُ وَعَلَيْهِ بُرْدَةٌ وَمَعَافِرِيٌّ، وَعَلَى غُلَامِهِ بُرْدَةٌ وَمَعَافِرِيٌّ، فَقَالَ لَهُ فِي ذَلِكَ، فَقَالَ لَهُ أَبُو الْيَسَرِ: بَصَرَ عَيْنَايَ هَاتَانِ، وَسَمِعَ أُذُنَايَ هَاتَانِ، وَوَعَاهُ قَلْبِي رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهُوَ يَقُولُ: أَطْعِمُوهُمْ مِمَّا تَأْكُلُونَ وَاكْسُوهُمْ مِمَّا تَكْسُونَ» .

[3] **Qur'an references (L27375):** Qur'an 12:101 (Yusuf).

L27381 Abu al-Yusr said: “So, whenever I gave him from worldly possessions, it was lighter for me than him taking from my good deeds on the Day of Judgment.”

قَالَ أَبُو الْيُسْرِ: فَكَانَ إِذَا أَعْطَيْته مِنْ مَتَاعِ الدُّنْيَا أَهْوَنَ عَلَيَّ مِنْ أَنْ يَأْخُذَ مِنْ حَسَنَاتِي يَوْمَ الْقِيَامَةِ.

L27382 It has been narrated to us that a similar ruling is attributed to Abū Bakr al-Ṣiddīq, and there is no dissenter against them among the Companions—may Allah be pleased with them—whatsoever.

وَرُوِّينَا مِثْلَ هَذَا عَنْ أَبِي بَكْرٍ الصِّدِّيقِ، وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَصْلًا.

L27383 ## The Jurisprudential Issue of Naming the Boy and Children

[مَسْأَلَة تَسْمِيَة الْغُلَام والأولاد]

L27384 Issue 1706: It is not permissible for anyone to name his male slave Aflaḥ, nor Yasar, nor Nāfiʿ, nor Najīḥ, nor Rabāḥ—but he may name his sons these names.

١٧٠٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يُسَمِّيَ غُلَامَهُ: أَفْلَحَ، وَلَا يَسَارَ، وَلَا نَافِعَ، وَلَا نَجِيحَ، وَلَا رَبَاحَ - وَلَهُ أَنْ يُسَمِّيَ أَوْلَادَهُ بِهَذِهِ الْأَسْمَاءِ.

L27385 It is permissible for one to name his slaves with all kinds of names, such as Najāḥ, Munajjaḥ, Nufayʿ, Rubayḥ, Yasīr, Fulayḥ, and others, without avoiding any name. It was narrated to us through Muslim’s chain: Yahyā ibn Yahyā narrated to us that he heard al-Muʿtamir ibn Sulaymān relate that he heard al-Rukayn ibn al-Rabīʿ ibn ʿUmaylah narrate from his father from Samurah ibn Jundub, who said: “The Messenger of Allah—peace be upon him and his household—forbade us from naming our slaves four names: Aflaḥ, Rabāḥ, Yasār, and Nāfiʿ.”

وَلَهُ أَنْ يُسَمِّيَ مَمَالِيكَهُ بِسَائِرِ الْأَسْمَاءِ، مِثْلِ: نَجَاحٍ، وَمُنَجَّحٍ، وَنُفَيْعٍ، وَرُبَيْحٍ، وَيَسِيرٍ، وَفُلَيْحٍ، وَغَيْرِ ذَلِكَ، لَا تُحَاشِ شَيْئًا. رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا يَحْيَى بْنُ يَحْيَى: أَنَّهُ سَمِعَ الْمُعْتَمِرَ بْنَ سُلَيْمَانَ يُحَدِّثُ أَنَّهُ سَمِعَ الرُّكَيْنَ بْنَ الرَّبِيعِ بْنِ عُمَيْلَةَ يُحَدِّثُ عَنْ أَبِيهِ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ قَالَ: «نَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنْ نُسَمِّيَ رَقِيقَنَا بِأَرْبَعَةِ أَسْمَاءَ: أَفْلَحَ، وَرَبَاحَ، وَيَسَارَ، وَنَافِعَ» .

L27386–27387 From the path of Muslim: Aḥmad ibn ʿAbd Allāh ibn Yūnus narrated to us from Zuhayr ibn Muʿāwiyah from Manṣūr ibn al-Muʿtamir from Hilāl ibn Yasāf from al-Rabīʿ ibn ʿUmaylah from Samurah ibn Jundub, who said: The Messenger of Allah (peace be upon him) said: “Do not name your boy Yasar (Ease), Rabāḥ (Profit), Najīḥ (Successful), or Aflaḥ (Prosperous). For if you say, ‘Is there Yasar (Ease)?’ he will reply, ‘No.’ These are only four, so do not add beyond what I have mentioned.”[4]

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ يُونُسَ نا زُهَيْرُ بْنُ مُعَاوِيَةَ، نا مَنْصُورُ بْنُ الْمُعْتَمِرِ عَنْ هِلَالِ بْنِ يَسَافٍ عَنْ الرَّبِيعِ بْنِ عُمَيْلَةَ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ، قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُسَمِّيَنَّ غُلَامَك يَسَارًا، وَلَا رَبَاحًا، وَلَا نَجِيحًا، وَلَا أَفْلَحَ، فَإِنَّك تَقُولُ: أَثَمَّ هُوَ؟ فَيَقُولُ: لَا إنَّمَا هُنَّ أَرْبَعٌ، فَلَا تَزِيدُنَّ عَلَيَّ» .

L27388 Ali said: We have narrated it through various chains. Abu Muhammad said: A group opposed this and rejected it by saying: It has been authentically established through the chain of Jabir that the Prophet—peace and blessings

قَالَ عَلِيٌّ: وَرُوِّينَاهُ مِنْ طُرُقٍ قَالَ أَبُو مُحَمَّدٍ فَخَالَفَ قَوْمٌ هَذَا وَدَفَعُوهُ بِأَنْ قَالُوا: قَدْ صَحَّ يَقِينًا مِنْ طَرِيقِ جَابِرٍ أَنَّهُ قَالَ: «أَرَادَ النَّبِيُّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنْ يَنْهَى أَنْ يُسَمَّى

[4] **Hadith references (L27387):** Sunan Abi Dawud 4958.

be upon him—intended to prohibit naming with Ya'la, Barakah, Aflah, Nāfi', Yāsār, and similar names. Then I saw him remain silent about it afterward, then he passed away—may God's peace and blessings be upon him and his family—without prohibiting that. Later, Umar ibn al-Khattab intended to prohibit it but then refrained.

بِ يَعْلَى وَبَرَكَةَ، وَأَفْلَحَ وَنَافِعٍ، وَيَسَارٍ، وَبِنَحْوِ ذَلِكَ - ثُمَّ رَأَيْتُهُ سَكَتَ بَعْدُ عَنْهَا، ثُمَّ قُبِضَ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَمْ يَنْهَ عَنْ ذَلِكَ» ، ثُمَّ أَرَادَ عُمَرُ بْنُ الْخَطَّابِ أَنْ يَنْهَى عَنْ ذَلِكَ، ثُمَّ تَرَكَهُ.

L27389 Abu Muhammad said: The one who lacks knowledge is not a proof against the one who knows. Jabir relates what he knew because he did not hear the specific prohibition, while Samurah relates what he knew because he heard the prohibition. The affirmer has more right than the denier, for he possesses additional knowledge absent in Jabir. Adopting Jabir's narration would necessitate declaring Samurah a liar—we seek refuge in Allah from this! How then, when many of the names Jabir mentioned were never prohibited at all? Thus, it becomes clear that Samurah's narration does not contradict the majority of Jabir's report. For Jabir stated that the Prophet (peace and blessings be upon him) did not prohibit the names he listed—and he was truthful—while Samurah stated that the Prophet (peace and blessings be upon him) prohibited some of them—and he was likewise truthful.

قَالَ أَبُو مُحَمَّد: لَيْسَ مَنْ لَمْ يَعْلَمْ حُجَّةً عَلَى مَنْ عَلِمَ، جَابِرٌ يَقُولُ مَا عِنْدَهُ، لِأَنَّهُ لَمْ يَسْمَعْ النَّهْيَ، وَسَمُرَةُ يَقُولُ مَا عِنْدَهُ، لِأَنَّهُ سَمِعَ النَّهْيَ، وَالْمُثْبِتُ أَوْلَى مِنْ النَّافِي، لِأَنَّ عِنْدَهُ عِلْمًا زَائِدًا لَمْ يَكُنْ عِنْدَ جَابِرٍ، وَلَا يُمْكِنُ الْأَخْذُ بِحَدِيثِ جَابِرٍ إلَّا بِتَكْذِيبِ سَمُرَةَ، وَمَعَاذَ اللَّهِ مِنْ هَذَا، فَكَيْفَ وَكَثِيرٌ مِنْ الْأَسْمَاءِ الَّتِي ذَكَرَهَا جَابِرٌ لَمْ يَنْهَ عَنْهَا أَصْلًا؟ فَصَحَّ أَنَّ حَدِيثَ سَمُرَةَ لَيْسَ مُخَالِفًا لِأَكْثَرِ مَا فِي حَدِيثِ جَابِرٍ، لِأَنَّ جَابِرًا ذَكَرَ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَنْهَ عَنْ تِلْكَ الْأَسْمَاءِ الَّتِي ذَكَرَ، وَصَدَقَ - وَذَكَرَ سَمُرَةُ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - نَهَى عَنْ بَعْضِهَا، وَصَدَقَ.

L27390 They said: It has been reported that the Messenger of God—may God bless him and his family and grant him peace—had a black servant named Rabāḥ who controlled entry to him. The matter of jizya on the Magians was unknown to ʿUmar, and this precedent is more widely recognized than the prohibition of these names. What then prevents the prohibition of these names from being unknown to Jābir and a group with him, when the prohibition of leasing land was unknown to Ibn ʿUmar—until it reached him late in his life, leading him to retract it—though this prohibition is more renowned than these names?

وَقَالُوا: قَدْ رُوِيَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ لَهُ غُلَامٌ أَسْوَدُ اسْمُهُ: رَبَاحٌ، يَأْذَنُ عَلَيْهِ - وَقَدْ غَابَ عَنْ عُمَرَ أَمْرُ جِزْيَةِ الْمَجُوسِ - وَهُوَ أَشْهَرُ مِنْ النَّهْيِ عَنْ هَذِهِ الْأَسْمَاءِ، فَمَا الْمَانِعُ مِنْ أَنْ يَغِيبَ عَنْ جَابِرٍ، وَطَائِفَةٍ مَعَهُ: النَّهْيُ عَنْ هَذِهِ الْأَسْمَاءِ، وَقَدْ غَابَ عَنْ ابْنِ عُمَرَ النَّهْيُ عَنْ كَرْيِ الْأَرْضِ - ثُمَّ بَلَغَهُ فِي آخِرِ عُمُرِهِ فَرَجَعَ إلَيْهِ - وَهُوَ أَشْهَرُ مِنْ هَذِهِ الْأَسْمَاءِ

L27391–27393 As for the name Rabaah given to the Messenger of Allah's servant—may Allah bless him and his family and grant him peace—it was solely narrated by 'Ikrimah ibn 'Ammar. And it is weak—thus there is no proof in it. Even if it were authentic, it would conform to the established principle, and the prohibition would be an additional legal ruling that it is not permissible to contravene. They said: The Prophet's statement—peace and blessings be upon him and his family—"Then you say: Is he there? And he says:

وَأَمَّا تَسْمِيَةُ غُلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَبَاحًا: فَإِنَّمَا انْفَرَدَ بِهِ عِكْرِمَةُ بْنُ عَمَّارٍ وَهُوَ ضَعِيفٌ - فَلَا حُجَّةَ فِيهِ وَلَوْ صَحَّ لَكَانَ مُوَافِقًا لِمَعْهُودِ الْأَصْلِ، وَكَانَ النَّهْيُ شَرْعًا زَائِدًا لَا يَحِلُّ الْخُرُوجُ عَنْهُ؟ وَقَالُوا: قَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: " فَإِنَّك تَقُولُ: أَثَمَّ هُوَ؟ فَيَقُولُ: لَا " بَيَانٌ بِالْعِلَّةِ فِي ذَلِكَ، وَهِيَ عِلَّةٌ مَوْجُودَةٌ فِي: خِيرَةَ

No," is an explanation of the effective cause for that. This cause exists in Khayrah, Khayr, Saʿd, Saʿīd, Mahmūd, and many names. Thus, it would also be obligatory to prohibit these names according to you. We replied: This is the principle of the proponents of analogy, not our principle. We only apply what God Almighty and His Messenger—peace and blessings be upon him—have established as a cause for a ruling in the specific case mentioned in the text alone. We do not extend it to what is not explicitly stated.

L27394 Our proof for the validity of this position is that had he - peace and blessings be upon him - intended to make this a legal cause applicable to all names, he would not have been incapable of doing so through a more concise expression than the wording he actually employed. This constitutes the ruling of clarification. As for what they attribute to him - peace and blessings be upon him - that he intended numerous matters but undertook to mention some of them, suspended the legal ruling upon them, specified the cause therein, and omitted the rest: this constitutes the ruling of deceptive concealment and failure to fully convey - and we seek refuge in God from such attribution.

L27395 You have no evidence for the validity of your claim except the claim itself and the false assumption.

L27396 They said: Indeed, Ibn ʿUmar named his servant Nāfiʿ, and Abū Ayyūb named his servant Aflaḥ in the presence of the Companions. We replied: By your own admission, Abū Ayyūb was unaware of the obligation of ghusl following penetration, and Ibn ʿUmar was unaware of the ruling concerning land irrigation and other matters. Which is more reprehensible—ignorance of such rulings or ignorance of the prohibition regarding a specific name? Thus, all their disputations are invalidated, and no one possesses any proof against the Messenger of Allah—peace and blessings be upon him and his family.

L27397 The book on the companionship of those whom your right hands possess is hereby concluded, and all praise belongs to Allah, Lord of the worlds. May Allah bless Muhammad, His servant and Messenger, and grant him abundant peace.

وَخَيْر، وَسَعْد وَسَعِيد، وَمَحْمُود، وَأَسْمَاءَ كَثِيرَة: فَيَجِبُ الْمَنْعُ مِنْهَا عِنْدَكُمْ أَيْضًا؟ قُلْنَا: هَذَا أَصْلُ أَصْحَابِ الْقِيَاسِ، لَا أَصْلُنَا، وَإِنَّمَا نَجْعَلُ نَحْنُ مَا جَعَلَهُ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - سَبَبًا لِلْحُكْمِ فِي الْمَكَانِ الَّذِي وَرَدَ فِيهِ النَّصُّ فَقَطْ، لَا نَتَعَدَّاهُ إِلَى مَا لَمْ يُنَصَّ عَلَيْهِ

بُرْهَانُنَا عَلَى صِحَّةِ ذَلِكَ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَوْ أَرَادَ أَنْ يَجْعَلَ ذَلِكَ عِلَّةً فِي سَائِرِ الْأَسْمَاءِ لَمَا عَجَزَ عَنْ ذَلِكَ بِأَخْصَرَ مِنْ هَذَا اللَّفْظِ الَّذِي أَتَى بِهِ: فَهَذَا حُكْمُ الْبَيَانِ، وَالَّذِي يَنْسُبُونَهُ إِلَيْهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِنْ أَنَّهُ أَرَادَ أَشْيَاءَ كَثِيرَةً فَتَكَلَّفَ ذِكْرَ بَعْضِهَا، وَعَلَّقَ الْحُكْمَ عَلَيْهِ، وَأَخْبَرَ بِالسَّبَبِ فِي ذَلِكَ، وَسَكَتَ عَنْ غَيْرِ ذَلِكَ: هُوَ حُكْمُ التَّلْبِيسِ، وَعَدَمِ التَّبْلِيغِ، وَمَعَاذَ اللَّهِ مِنْ هَذَا.

وَلَا دَلِيلَ لَكُمْ عَلَى صِحَّةِ دَعْوَاكُمْ إِلَّا الدَّعْوَى فَقَطْ، وَالظَّنُّ الْكَاذِبُ.

وَقَالُوا: قَدْ سَمَّى ابْنُ عُمَرَ غُلَامَهُ: نَافِعًا، وَسَمَّى أَبُو أَيُّوبَ غُلَامَهُ: أَفْلَحَ بِحَضْرَةِ الصَّحَابَةِ؟ قُلْنَا: قَدْ غَابَ بِإِقْرَارِكُمْ عَنْ أَبِي أَيُّوبَ وُجُوبُ الْغُسْلِ مِنْ الْإِيلَاجِ، وَغَابَ عَنْ ابْنِ عُمَرَ حُكْمُ كَرْيِ الْأَرْضِ، وَغَيْرِ ذَلِكَ، فَأَيُّمَا أَشْنَعُ؟ مَغِيبُ مِثْلِ هَذَا، أَوْ مَغِيبُ النَّهْيِ عَنْ اسْمٍ مِنْ الْأَسْمَاءِ: فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ، وَلَا حُجَّةَ فِي أَحَدٍ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

تَمَّ كِتَابُ صُحْبَةِ مِلْكِ الْيَمِينِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ عَبْدِهِ وَرَسُولِهِ وَسَلَّمَ تَسْلِيمًا كَثِيرًا.



AL-MUHALLA

كِتَابُ الْمَوَارِيثِ

The Book of Inheritance

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْمَوَارِيثِ] [مَسْأَلَةٌ أَوَّلُ مَا يَخْرُجُ مِنْ رَأْسِ الْمَالِ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ وَسَلَّمَ.

كِتَابُ الْمَوَارِيثِ ١٧٠٧ - مَسْأَلَةٌ: أَوَّلُ مَا يَخْرُجُ مِنْ رَأْسِ الْمَالِ: دَيْنُ الْغُرَمَاءِ، فَإِنْ فَضَلَ مِنْهُ شَيْءٌ كُفِّنَ مِنْهُ الْمَيِّتُ، وَإِنْ لَمْ يَفْضُلْ مِنْهُ شَيْءٌ كَانَ كَفَنُهُ عَلَى مَنْ حَضَرَ مِنْ الْغُرَمَاءِ أَوْ غَيْرِهِمْ، لِمَا قَدْ ذَكَرْنَا فِي " كِتَابِ الْجَنَائِزِ " مِنْ دِيوَانِنَا هَذَا.

وَعُمْدَةُ ذَلِكَ قَوْله تَعَالَى: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١]

وَأَنَّ مُصْعَبَ بْنَ عُمَيْرٍ - رَضِيَ اللَّهُ عَنْهُ - لَمْ يُوجَدْ لَهُ إلَّا ثَوْبٌ وَاحِدٌ، فَكُفِّنَ فِيهِ، وَلِأَنَّ تَكْلِيفَ الْغُرَمَاءِ خَاصَّةً أَنْ يَكُونَ الْكَفَنُ نَاقِصًا مِنْ حُقُوقِهِمْ: ظُلْمٌ لَهُمْ - وَهَذَا وَاجِبٌ عَلَى كُلِّ مَنْ حَضَرَ مِنْ الْمُسْلِمِينَ وَالْغُرَمَاءُ مِنْ جُمْلَتِهِمْ.

[مَسْأَلَةَ فَضَلَتْ فَضْلَةٌ مِنْ الْمَالِ كَانَتْ الْوَصِيَّةُ فِي الثُّلُثِ فَمَا دُونَهُ]

١٧٠٨ - مَسْأَلَةٌ: فَإِنْ فَضَلَتْ فَضْلَةٌ مِنْ الْمَالِ: كَانَتْ الْوَصِيَّةُ فِي الثُّلُثِ فَمَا دُونَهُ، لَا يَتَجَاوَزُ بِهَا الثُّلُثَ عَلَى مَا نَذْكُرُ فِي " كِتَابِ الْوَصَايَا " مِنْ دِيوَانِنَا هَذَا إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ، وَكَانَ لِلْوَرَثَةِ مَا بَقِيَ لِقَوْلِ اللَّهِ تَعَالَى: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١]

[مَسْأَلَةَ مِنْ يَرِث مِنْ الرجال]

١٧٠٩ - مَسْأَلَةٌ: وَلَا يَرِثُ مِنْ الرِّجَالِ إلَّا الْأَبُ، وَالْجَدُّ أَبُو الْأَبِ، وَأَبُو الْجَدِّ الْمَذْكُورِ، وَهَكَذَا مَا وُجِدَ.

The Book of Inheritance. Issue: The first deduction from the principal estate.

In the name of Allah, the Most Gracious, the Most Merciful. And may Allah send blessings upon Muhammad and his family and grant him peace.

Book of Inheritance 1707 - Issue: The first to be disbursed from the estate is the debt owed to creditors. If any surplus remains, the deceased is shrouded from it. If no surplus remains, the responsibility for his shroud falls upon those present among the creditors or others, as we have mentioned in "The Book of Funerals" within this *diwan* of ours.

The foundation of this is His statement, the Most High, Exalted is He: "after a will he makes or a debt" (4:11).[1]

And that Mus'ab ibn Umayr—may Allah be pleased with him—had nothing but a single garment, so he was shrouded in it. For burdening the creditors specifically by making the shroud a deficiency in their rights is an injustice toward them. Instead, providing the shroud is an obligation incumbent upon every Muslim present, and the creditors are included among them.

A case where an excess remained from the estate, the bequest having been within the third or less.

Issue 1708: If surplus property remains, the will shall be made up to a third or less of the estate without exceeding the third, as we will mention - God Almighty and Majestic willing - in the "Book of Wills" within this Diwan of ours. The remainder belongs to the heirs, in accordance with Allah the Exalted's statement: after any will that was made or debt Quran 4:11.[2]

An issue of those who inherit from the men.

Issue 1709: No one inherits from male relatives except the father, the paternal grandfather, the grandfather's father, and so on in the lineage.

[1] **Qur'an references (L27402):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).
[2] **Qur'an references (L27405):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

وَلَا يَرِثُ مَعَ الْأَبِ جَدٌّ، وَلَا مَعَ الْجَدِّ أَبُو جَدٍّ، وَلَا مَعَ أَبِي الْجَدِّ جَدُّ جَدٍّ - وَلَا يَرِثُ جَدٌّ مِنْ قِبَلِ الْأُمِّ، وَلَا جَدٌّ مِنْ قِبَلِ جَدَّةٍ، وَلَا الْأَخُ الشَّقِيقُ أَوْ لِلْأَبِ فَقَطْ، أَوْ لِلْأُمِّ فَقَطْ، وَابْنُ الْأَخِ الشَّقِيقِ، وَابْنُ الْأَخِ لِلْأَبِ.

L27408 A grandfather does not inherit alongside the father, nor does a great-grandfather inherit alongside the grandfather, nor does the father of the great-grandfather inherit alongside the great-grandfather. A grandfather from the mother's side does not inherit, nor does a grandfather on the grandmother's side. A full brother does not inherit, a paternal half-brother or a maternal half-brother: the son of a full brother does not inherit, nor does the son of a paternal half-brother.

وَلَا يَرِثُ ابْنُ أَخٍ لِأُمٍّ، وَالِابْنُ، وَابْنُ الِابْنِ، وَابْنُ ابْنِ الِابْنِ، وَهَكَذَا مَا وُجِدَ، وَالْعَمُّ شَقِيقُ الْأَبِ، وَأَخُو الْأَبِ لِأَبِيهِ.

L27409–27410 A son of a maternal brother does not inherit, while the son, the son's son, the son's son's son, and so on as far as the line continues, the paternal uncle (the father's full brother), and the father's paternal brother do inherit.

وَلَا يَرِثُ أَخُو الْأَبِ لِأُمِّهِ، وَابْنُ الْعَمِّ الشَّقِيقِ، وَابْنُ الْعَمِّ أَخُو الْأَبِ لِأَبِيهِ، وَعَمُّ الْأَبِ الشَّقِيقِ، أَوْ الْأَبِ وَهَكَذَا مَا عَلَا، وَأَبْنَاؤُهُمْ الذُّكُورُ وَالزَّوْجُ وَالْمُعْتِقُ وَمُعْتِقُ الْمُعْتَقِ، وَهَكَذَا مَا عَلَا، لَا يَرِثُ مِنْ الرِّجَالِ غَيْرُ مَنْ ذَكَرْنَا - وَلَا خِلَافَ فِي أَنَّ هَؤُلَاءِ يَرِثُونَ.

L27411 The following do not inherit: the paternal half-brother through the mother, the son of the full paternal uncle, the son of the father's full brother, the grandfather's full brother, and those ascending in their categories; their male children, the husband, the emancipator, the emancipator's patron, and those ascending in their categories. No male inherits except those we have not mentioned here. There is no disagreement that these do not inherit.

وَلَا يَرِثُ مِنْ النِّسَاءِ إلَّا الْأُمُّ، وَالْجَدَّةُ، وَالِابْنَةُ، وَابْنَةُ الِابْنِ، وَابْنَةُ ابْنِ الِابْنِ، وَهَكَذَا مَا وُجِدَتْ.

L27412 From the women, only the mother, grandmother, daughter, daughter of the son, daughter of the son's son, and so on—as long as they exist—inherit.

وَلَا تَرِثُ ابْنَةُ ابْنَةٍ، وَلَا ابْنُ ابْنَةٍ، وَالْأُخْتُ الشَّقِيقَةُ، أَوْ لِلْأَبِ، أَوْ لِلْأُمِّ، وَالزَّوْجَةُ، وَالْمُعْتِقَةُ، وَمُعْتَقَةُ الْمُعْتِقَةِ، وَهَكَذَا مَا عَلَا.

L27413 A daughter of a daughter does not inherit, nor does a son of a daughter. The full sister, or the paternal sister, or the maternal sister, the wife, the emancipated female slave, the emancipated female slave's emancipated female slave, and so on for ascending relatives.

وَلَا يَرِثُ ابْنُ أُخْتٍ، وَلَا بِنْتُ أُخْتٍ، وَلَا ابْنَةُ أَخٍ، وَلَا ابْنَةُ عَمٍّ، وَلَا عَمَّةٌ، وَلَا خَالَةٌ، وَلَا خَالٌ، وَلَا جَدٌّ لِأُمٍّ، وَلَا ابْنَةُ ابْنَةٍ، وَلَا ابْنُ ابْنَةٍ، وَلَا بِنْتُ أَخٍ لِأُمٍّ، وَلَا ابْنُ أَخٍ لِأُمٍّ.

L27414 The son of a sister does not inherit, nor the daughter of a sister, nor the daughter of a brother, nor the daughter of a paternal uncle, nor a paternal aunt, nor a maternal aunt, nor a maternal uncle, nor a grandfather through the mother, nor the daughter of a daughter, nor the son of a daughter, nor the daughter of a uterine brother, nor the son of a uterine brother.

L27415 There is no disagreement that those we have mentioned do not inherit.

وَلَا خِلَافَ فِي أَنَّ مَنْ ذَكَرْنَا لَا يَرِثُ، وَلَا يَرِثُ مَعَ الْأَبِ جَدٌّ، وَلَا تَرِثُ مَعَ الْأُمِّ جَدَّةٌ، وَلَا يَرِثُ أَخٌ، وَلَا أُخْتٌ مَعَ ابْنٍ ذَكَرٍ، وَلَا مَعَ أَبٍ.

A grandfather does not inherit in the presence of the father, nor does a grandmother inherit in the presence of the mother. Neither a brother nor a sister inherits in the presence of a male son nor in the presence of a father.

وَلَا يَرِثُ ابْنُ أَخٍ مَعَ أَخٍ شَقِيقٍ، أَوْ لِأَبٍ، وَلَا يَرِثُ أَخٌ لِأُمٍّ مَعَ أَبٍ، وَلَا مَعَ ابْنٍ، وَلَا مَعَ ابْنَةٍ، وَلَا مَعَ جَدٍّ.

L27416 A son of a brother does not inherit alongside a full brother or a paternal half-brother, nor does a maternal half-brother inherit alongside a father, son, daughter, or grandfather.

وَلَا يَرِثُ عَمٌّ مَعَ أَبٍ، وَلَا مَعَ جَدٍّ، وَلَا مَعَ أَخٍ شَقِيقٍ، أَوْ لِأَبٍ، وَلَا مَعَ ابْنِ أَخٍ شَقِيقٍ، أَوْ لِأَبٍ - وَإِنْ سَفَلَ.

L27417 A paternal uncle does not inherit alongside a father, a grandfather, a full brother or a paternal half-brother, nor alongside the son of a full brother or the son of a paternal half-brother - even if the son is further removed in lineage.

بُرْهَانُ هَذَا كُلِّهِ. نُصُوصُ الْقُرْآنِ، وَقَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ وُهَيْبٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «أَلْحِقُوا الْفَرَائِضَ بِأَصْحَابِهَا، فَمَا أَبْقَتْ الْفَرَائِضُ فَلِأَوْلَى رَجُلٍ ذَكَرٍ» وَكُلُّ مَنْ ذَكَرْنَا أَيْضًا: فَلَا اخْتِلَافَ فِيهِ أَصْلًا، وَأَخَّرْنَا الَّذِي فِيهِ اخْتِلَافٌ لِنَتَكَلَّمَ عَلَيْهِ إنْ شَاءَ اللَّهُ تَعَالَى فِي أَبْوَابِهِ.

L27418 The proof of all this lies in the explicit texts of the Quran and the statement of the Prophet—peace and blessings be upon him and his family—which we have narrated through Wuhaib's chain from Tawus from Ibn Abbas from the Messenger of Allah—peace and blessings be upon him and his family: "Assign the fixed shares to their rightful recipients. Whatever remains after allocating the shares belongs to the nearest male relative." All that we have mentioned also contains absolutely no disagreement. We have deferred the matter involving disagreement to discuss it, God, the Exalted, willing, within its designated chapters.

[مَسْأَلَة أَوَّلُ مَا يُخْرَجُ مِمَّا تَرَكَهُ الْمَيِّتُ]

Jurisprudential Issue: The first liability to be settled from what the deceased left behind.

إنْ تَرَكَ شَيْئًا مِنْ الْمَالِ، قَلَّ أَوْ كَثُرَ: دُيُونُ اللَّهِ تَعَالَى، إنْ كَانَ عَلَيْهِ مِنْهَا شَيْءٌ: كَالْحَجِّ، وَالزَّكَاةِ، وَالْكَفَّارَاتِ، وَنَحْوِ ذَلِكَ، ثُمَّ إنْ بَقِيَ شَيْءٌ أُخْرِجَ مِنْهُ دُيُونُ الْغُرَمَاءِ إنْ كَانَ عَلَيْهِ دَيْنٌ فَإِنْ فَضَلَ شَيْءٌ كُفِّنَ مِنْهُ الْمَيِّتُ، وَإِنْ لَمْ يَفْضُلْ مِنْهُ شَيْءٌ كَانَ كَفَنُهُ عَلَى مَنْ حَضَرَ مِنْ الْغُرَمَاءِ، أَوْ غَيْرِهِمْ - فَإِنْ فَضَلَ بَعْدَ الْكَفَنِ شَيْءٌ: نَفَذَتْ وَصِيَّةُ الْمَيِّتِ فِي ثُلُثِ مَا بَقِيَ، وَيَكُونُ لِلْوَرَثَةِ مَا بَقِيَ بَعْدَ الْوَصِيَّةِ.

L27419–27420 L27421 If he leaves any estate, whether little or much, the debts owed to God Almighty—such as the Ḥajj, Zakāt, expiations, and similar obligations—are settled first if he owed any. Then, if anything remains from it, the debts of creditors are paid if he owed any. If anything remains after that, the deceased is shrouded from it. If nothing remains from it, his shrouding becomes the responsibility of those present among the creditors or others. If anything remains after the shrouding, the deceased's bequest is executed within a third of what remains, and the heirs receive what remains after the bequest.

L27422 The proof for this is the statement of Allah the Exalted in the verses of inheritance: {After any bequest he may have made or any debt} [An-Nisa: 11], and the Messenger of Allah—peace and blessings be upon him and his progeny—said: "The debt owed to Allah is more entitled to be settled. Fulfill Allah's right, for it is most deserving of fulfillment." We have mentioned this with its chains of transmission in the "Book of Fasting, the Zakat, and the Hajj" from this compendium of ours, rendering its repetition superfluous. The verse encompasses debts owed to Allah the Exalted and debts owed to creation, while the established Sunnah has clarified that the debt owed to Allah the Exalted takes precedence over debts owed to creation.[3]

L27423 As for the shrouding, we have previously discussed it in *The Book of Funerals*. It is authentically established that nothing was found for Ḥamza and Muṣʿab ibn ʿUmayr—may Allah be pleased with them both—except a cloak each, a cloak each, so they were shrouded in both.

L27424 A group held that the burial shroud takes precedence over debts. Abū Muḥammad said: This is erroneous, for the textual evidence establishes the priority of debts as we have recited. Since all the deceased's wealth rightfully belongs to the creditors by explicit Quranic decree, it would be unjust to exclusively burden the creditors with providing the shroud from their wealth without drawing from the wealth of others present. This obligation lacks foundation in the Quran, Sunnah, consensus, analogy, independent legal reasoning, precautionary principle, or any established source. The ruling holds that if the deceased left no wealth whatsoever, the responsibility for his shroud falls upon every Muslim present, in accordance with the injunction of Allah's Messenger (peace be upon him and his family): "Whoever assumes responsibility for shrouding a fellow believer must ensure its adequacy." Thus, providing an adequate shroud becomes an obligatory duty upon all present at the deceased's side. This ruling applies universally to creditors and others present alike.

L27425–27427 There is no disagreement that a will does not take effect except after half [the debt] is settled for the creditors, as per the saying of the Messenger of Allah—

[3] **Qur'an references (L27422):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى فِي آيَاتِ الْمَوَارِيثِ: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] ، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «فَدَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى، اقْضُوا اللَّهَ فَهُوَ أَحَقُّ بِالْوَفَاءِ») وَقَدْ ذَكَرْنَا ذَلِكَ بِأَسَانِيدِهِ فِي " كِتَابِ الصِّيَامِ، وَالزَّكَاةِ، وَالْحَجِّ " مِنْ دِيوَانِنَا هَذَا، فَأَغْنَى عَنْ إعَادَتِهِ فَالْآيَةُ تَعُمُّ دُيُونَ اللَّهِ تَعَالَى وَدُيُونَ الْخَلْقِ، وَالسُّنَنُ الثَّابِتَةُ بَيَّنَتْ أَنَّ دَيْنَ اللَّهِ تَعَالَى مُقَدَّمٌ عَلَى دُيُونِ الْخَلْقِ.

وَأَمَّا الْكَفَنُ فَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الْجَنَائِزِ وَصَحَّ " أَنَّ حَمْزَةَ، وَالْمُصْعَبَ بْنَ عُمَيْرٍ - رَضِيَ اللَّهُ عَنْهُمَا -: لَمْ يُوجَدْ لَهُمَا شَيْءٌ، إلَّا شَمْلَةٌ شَمْلَةٌ فَكُفِّنَا فِيهِمَا ".

وَقَالَ قَوْمٌ: الْكَفَنُ مُقَدَّمٌ عَلَى الدُّيُونِ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ، لِأَنَّ النَّصَّ جَاءَ بِتَقْدِيمِ الدَّيْنِ كَمَا تَلَوْنَا، فَإِذْ قَدْ صَارَ الْمَالُ كُلُّهُ لِلْغُرَمَاءِ بِنَصِّ الْقُرْآنِ فَمِنْ الظُّلْمِ أَنْ يُخَصَّ الْغُرَمَاءُ بِإِخْرَاجِ الْكَفَنِ مِنْ مَالِهِمْ دُونَ مَالِ سَائِرِ مَنْ حَضَرَ، إذْ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، وَلَا قِيَاسٌ، وَلَا نَظَرٌ، وَلَا احْتِيَاطٌ، لَكِنَّ حُكْمَهُ أَنَّهُ لَمْ يَتْرُكْ شَيْئًا أَصْلًا، وَمَنْ لَمْ يَتْرُكْ شَيْئًا فَكَفَنُهُ عَلَى كُلِّ مَنْ حَضَرَ مِنْ الْمُسْلِمِينَ، لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ وَلِيَ كَفَنَ أَخِيهِ أَنْ يُحْسِنَهُ» فَصَارَ إحْسَانُ الْكَفَنِ فَرْضًا عَلَى كُلِّ مَنْ حَضَرَ الْمَيِّتَ، فَهَذَا عُمُومٌ لِلْغُرَمَاءِ وَغَيْرِهِمْ مِمَّنْ حَضَرَ.

وَلَا خِلَافَ فِي أَنَّ الْوَصِيَّةَ لَا تَنْفُذُ إلَّا بَعْدَ انْتِصَافِ الْغُرَمَاءِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَمَالُ الْمَيِّتِ قَدْ صَارَ فِي

peace and blessings of Allah be upon him and his family. “Your blood and your wealth are inviolable to you.” Thus, the deceased’s property now enters into the domain of Allah’s rights or becomes due to creditors upon his death - whether entirely or partially. Therefore, he is forbidden to adjudicate over the wealth of others. Only rulings pertaining to his own remaining property are enforceable. This validates that testamentary bequests apply solely to what remains after debts.

The Issue of Inheritance of the Two Daughters and the Two Sisters

Issue 1711: If a person dies leaving two full sisters or two paternal sisters, or more than two of either type, while leaving no child, no full brother, no paternal brother, nor any heir from the categories we have mentioned who would reduce their share, then they are entitled to two-thirds of what he left - whether two sisters or more - shared equally among them.

Similarly, if someone leaves two daughters or more and does not leave a male child or any heir who would diminish their share, they are entitled to two-thirds of the estate as well.

The proof of that is the statement of Allah, the Mighty and Majestic: “If a man perishes without a child while having a sister, then hers is half of what he left; and he inherits her if she has no child. If there are two sisters, then theirs is two-thirds of what he left” [An-Nisa: 176].[4]

From the narration of Ahmad ibn Shu’ayb, from Isma’il ibn Mas’ud al-Jahdari, from Khalid ibn al-Harith (who is al-Hujaymi), from Hisham (who is al-Dastuwa’i), from Abu al-Zubayr, from Jabir ibn Abdullah, who said: “I fell ill while I had seven sisters of mine. The Messenger of Allah—peace and blessings be upon him and his family—came to me, blew upon my face, and I regained consciousness. I said: ’O Messenger of Allah, shall I bequeath two-thirds to my sisters?’ Then he left me. Then he returned to me and said: ’I do not perceive that you will die from this illness of yours. Indeed Allah

[4]**Qur’an references (L27431):** Qur’an 4:176 (An-Nisa).

حُقُوقِ اللَّهِ تَعَالَى، أَوْ لِلْغُرَمَاءِ بِمَوْتِه - كُلِّه أَوْ بَعْضِه - فَحَرَامٌ عَلَيْهِ الْحُكْمُ فِي مَالِ غَيْرِه، وَإِنَّمَا يَنْفُذُ حُكْمُهُ فِي مَالِهِ الَّذِي يَتَخَلَّفُ، فَصَحَّ بِهَذَا أَنَّ الْوَصِيَّةَ فِيمَا يَبْقَى بَعْدَ الدَّيْنِ.

[مَسْأَلَة مِيرَاث البنتين والأختين]

١٧١١ - مَسْأَلَةٌ: وَمَنْ مَاتَ وَتَرَكَ أُخْتَيْنِ شَقِيقَتَيْنِ أَوْ لِأَبٍ، أَوْ أَكْثَرَ مِنْ أُخْتَيْنِ كَذَلِكَ أَيْضًا، وَلَمْ يَتْرُكْ وَلَدًا، وَلَا أَخًا شَقِيقًا، وَلَا لِأَبٍ، وَلَا مَنْ يَحُطُّهُنَّ مِمَّا نَذْكُرُ فَلَهُمَا ثُلُثَا مَا تَرَكَ أَوْ لَهُنَّ - عَلَى السَّوَاءِ -.

وَكَذَلِكَ مَنْ تَرَكَ ابْنَتَيْنِ فَصَاعِدًا وَلَمْ يَتْرُكْ وَلَدًا ذَكَرًا وَلَا مَنْ يَحُطُّهُنَّ: فَلَهُمَا أَوْ لَهُنَّ ثُلُثَا مَا تَرَكَ أَيْضًا.

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {إِنِ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ فَإِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ مِمَّا تَرَكَ} [النساء: ١٧٦].

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا إِسْمَاعِيلُ بْنُ مَسْعُودٍ الْجَحْدَرِيُّ نا خَالِدُ بْنُ الْحَارِثِ - هُوَ الْهُجَيْمِيُّ - نا هِشَامٌ - هُوَ الدَّسْتُوَائِيُّ - نا أَبُو الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «اشْتَكَيْت وَعِنْدِي سَبْعُ أَخَوَاتٍ لِي فَدَخَلَ عَلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَنَفَخَ فِي وَجْهِي فَأَفَقْتُ، فَقُلْتُ: يَا رَسُولَ اللَّهِ، أَلَا أُوصِي لِأَخَوَاتِي بِالثُّلُثَيْنِ - ثُمَّ خَرَجَ وَتَرَكَنِي، ثُمَّ رَجَعَ إِلَيَّ فَقَالَ: إِنِّي لَا أَرَاك مَيِّتًا مِنْ وَجَعِك هَذَا، وَإِنَّ اللَّهَ قَدْ

has revealed and clarified the portion for your sisters—He has ordained two-thirds for them.”’ Jabir would subsequently say: “This verse was revealed regarding: ’They ask you for a ruling; say: Allah gives you a ruling concerning the *kalalah*’ [Surah An-Nisa 4:176].” There exists no disagreement regarding this.[5]

أَنْزَلَ فَبَيَّنَ الَّذِي لِأَخَوَاتِكَ: فَجَعَلَ لَهُنَّ الثُّلُثَيْنِ - فَكَانَ جَابِرٌ يَقُولُ: أُنْزِلَتْ هَذِهِ الْآيَةُ فِي: {يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلالَةِ} [النساء: ١٧٦] » وَهَذَا لَا خِلَافَ فِيهِ.

L27433–27435 As for two daughters, there is no disagreement concerning three or more that they are entitled to two-thirds, provided the deceased has no male child. If there is no one present to reduce their shares, and this is the statement of Allah, the Exalted: “But if there are daughters, more than two, then they are entitled to two-thirds of what he left.” [An-Nisāʾ: 11][6]

وَأَمَّا الْبِنْتَانِ فَلَا خِلَافَ فِي الثَّلَاثِ فَصَاعِدًا، وَلَا وَلَدَ لِلْمَيِّتِ ذَكَرًا فِي أَنَّ لَهُنَّ الثُّلُثَيْنِ إِذَا لَمْ يَكُنْ هُنَالِكَ مَنْ يَحُطُّهُنَّ، وَهُوَ قَوْلُ اللَّهِ تَعَالَى، {فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ} [النساء: ١١]

L27436 As for two daughters, it has been reported from Ibn Abbas that they are only entitled to half, just as (is the case) for a single daughter, and the reference in case of dispute is the clarification of the Messenger of Allah (peace and blessings be upon him).

وَأَمَّا الْبِنْتَانِ فَقَدْ رُوِيَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ لَيْسَ لَهُمَا إِلَّا النِّصْفُ كَمَا لِلْوَاحِدَةِ - وَالْمَرْجُوعُ إِلَيْهِ عِنْدَ التَّنَازُعِ هُوَ بَيَانُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L27437 As we have been narrated through the chain of Musaddad, who narrated to us from Bishr ibn al-Mufaḍḍal, who narrated to us from ʿAbdullāh ibn Muḥammad ibn ʿAqīl, from Jābir ibn ʿAbdullāh, who said: “We set out with the Messenger of Allah, peace and blessings be upon him, until we came to a woman from the Anṣār in the markets—she was the grandmother of Khārijah ibn Zayd ibn Thābit—and he mentioned a ḥadīth in which the woman came with her two daughters and said: ’O Messenger of Allah, these are the daughters of Saʿd ibn al-Rabīʿ, who was killed with you on the day of Uḥud. Their uncle seized their wealth and left them nothing—he took everything. What do you rule, O Messenger of Allah? By Allah, they will never marry unless they have wealth!’ The Messenger of Allah, peace and blessings be upon him, said: ’Allah will judge concerning that.’ He said: Then Sūrat al-Nisāʾ was revealed with the verse: *Allah instructs you concerning your children* [4:11]. The Messenger of Allah, peace and blessings be upon him, said: ’Call the woman and their uncle for me.’ He then said to their uncle: ’Give them two-thirds, give their mother one-eighth, and what remains is yours.’”[7]

كَمَا رُوِّينَا مِنْ طَرِيقِ مُسَدَّدٍ نا بِشْرُ بْنُ الْمُفَضَّلِ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَقِيلٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى جِئْنَا امْرَأَةً مِنْ الْأَنْصَارِ فِي الْأَسْوَاقِ - وَهِيَ جَدَّةُ خَارِجَةَ بْنِ زَيْدِ بْنِ ثَابِتٍ - فَذَكَرَ حَدِيثًا وَفِيهِ: فَجَاءَتْ الْمَرْأَةُ بِابْنَتَيْنِ لَهَا فَقَالَتْ: يَا رَسُولَ اللَّهِ هَاتَانِ بِنْتَا سَعْدِ بْنِ الرَّبِيعِ، قُتِلَ مَعَكَ يَوْمَ أُحُدٍ وَقَدْ اسْتَفَى عَمُّهُمَا مَالَهُمَا فَلَمْ يَدَعْ لَهُمَا مَالًا إِلَّا أَخَذَهُ، فَمَا تَرَى يَا رَسُولَ اللَّهِ؟ فَوَاَللَّهِ لَا يُنْكَحَانِ أَبَدًا إِلَّا وَلَهُمَا مَالٌ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: يَقْضِي اللَّهُ فِي ذَلِكَ، قَالَ: وَنَزَلَتْ سُورَةُ النِّسَاءِ {يُوصِيكُمُ اللَّهُ فِي أَوْلادِكُمْ} [النساء: ١١] الْآيَةَ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: ادْعُوا لِي الْمَرْأَةَ وَصَاحِبَهَا فَقَالَ لِعَمِّهِمَا: أَعْطِهِمَا الثُّلُثَيْنِ وَأَعْطِ أُمَّهُمَا الثُّمُنَ، وَمَا بَقِيَ فَلَكَ» .

[5] **Qur’an references (L27432):** Qur’an 4:176 (An-Nisa).
[6] **Qur’an references (L27433):** Qur’an 4:11 (An-Nisa).
[7] **Qur’an references (L27437):** Qur’an 4:11 (An-Nisa).

وَقَدْ ثَبَتَ أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَعْطَى الِابْنَةَ النِّصْفَ، وَابْنَةَ الِابْنِ السُّدُسَ تَكْمِلَةَ الثُّلُثَيْنِ وَقَدْ ادَّعَى أَصْحَابُ الْقِيَاسِ أَنَّ الثُّلُثَيْنِ إنَّمَا وَجَبَ لِلْبِنْتَيْنِ قِيَاسًا عَلَى الْأُخْتَيْنِ، قَالُوا: وَالْبِنْتَانِ أَوْلَى بِذَلِكَ مِنْ الْأُخْتَيْنِ.

L27438 It has been established that he—may Allah's blessings and peace be upon him and his family—assigned the daughter a half, and the granddaughter a sixth, thus completing the two-thirds. The adherents of qiyas argued that the two-thirds obligation applies specifically to two daughters by analogy to two sisters, stating: "Two daughters are more entitled to that than two sisters."

قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ، لِأَنَّهُ إنْ كَانَ ذَلِكَ لِأَنَّ الْبِنْتَيْنِ أَحَقُّ مِنْ الْأُخْتَيْنِ فَوَاجِبٌ أَنْ يَزِيدُوهُمَا مِنْ أَجْلِ أَنَّهُمَا أَوْلَى وَأَقْرَبُ، فَيُخَالِفُوا الْقُرْآنَ، أَوْ يُبْطِلُوا قِيَاسَهُمْ.

L27439 Abu Muhammad said: This is null and void, because if [the ruling] is based on the two daughters having a stronger entitlement than the two sisters, it would require granting them a larger share due to their greater right and closer relation—thereby contradicting the Quran or invalidating their *Qiyas*.

وَأَيْضًا فَإِنَّهُمْ - نَعْنِي هَؤُلَاءِ الْمُحْتَجِّينَ بِهَذَا الْقِيَاسِ - لَا يَخْتَلِفُونَ فِي عَشْرِ بَنَاتٍ وَأُخْتٍ لِأَبٍ: أَنَّ لِلْأُخْتِ الثُّلُثَ كَامِلًا، وَلِكُلِّ وَاحِدَةٍ مِنْ الْبَنَاتِ خُمُسُ الثُّلُثِ - فَقَدْ أَعْطُوا الْأُخْتَ الْوَاحِدَةَ أَكْثَرَ مِمَّا أَعْطُوا أَرْبَعَ بَنَاتٍ، فَأَيْنَ قَوْلُهُمْ: إنَّ الْبَنَاتِ أَحَقُّ مِنْ الْأَخَوَاتِ؟ وَهَذَا مِنْهُمْ تَخْلِيطٌ فِي الدِّينِ، وَلَيْسَتْ الْمَوَارِيثُ عَلَى قَدْرِ التَّفَاضُلِ فِي الْقَرَابَةِ، إنَّمَا هِيَ كَمَا جَاءَتْ النُّصُوصُ فَقَطْ.

L27440 Moreover, they—we refer to those who cite this analogy as proof—do not dispute the ruling concerning ten daughters and a paternal sister: that the sister receives the full third, while each daughter receives one-fifth of that third. Thus, they have granted the single sister a greater portion than four daughters combined. Where then is their assertion that daughters hold greater entitlement than sisters? This constitutes a muddling of religion on their part. Inheritance allocations are not based on degrees of precedence in kinship ties—they are only as the revealed texts have established.

وَلَا خِلَافَ فِيمَنْ تَرَكَ جَدَّهُ أَبَا أُمِّهِ، وَابْنَ بِنْتِهِ، وَبِنْتَ أَخِيهِ، وَابْنَ أُخْتِهِ، وَخَالَهُ وَخَالَتَهُ، وَعَمَّتَهُ وَابْنَ عَمٍّ لَهُ لَا يَلْتَقِي مَعَهُ إلَّا إلَى عِشْرِينَ جَدًّا: أَنَّ هَذَا الْمَالَ كُلَّهُ لِهَذَا الِابْنِ الْعَمِّ الْبَعِيدِ، وَلَا شَيْءَ لِكُلِّ مَنْ ذَكَرْنَا، وَأَيْنَ قَرَابَتُهُ مِنْ قَرَابَتِهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27441–27443 There is no disagreement that if someone excludes their maternal grandfather, their daughter's son, their brother's daughter, their sister's son, their maternal uncle and aunt, their paternal aunt, and a paternal cousin whose closest common ancestor is twenty generations removed—all of the estate belongs to this heir. The distant paternal cousin is not entitled to anything, nor does any of those we have mentioned receive anything. How far is his kinship from theirs! And with Allah alone is success.

١٧١٢ - مَسْأَلَةٌ: فَإِنْ تَرَكَ أُخْتًا شَقِيقَةً، وَأُخْتًا وَاحِدَةً لِلْأَبِ أَوْ اثْنَتَيْنِ لِلْأَبِ أَوْ أَكْثَرَ مِنْ ذَلِكَ: فَلِلشَّقِيقَةِ النِّصْفُ، وَلِلَّتِي لِلْأَبِ، أَوْ اللَّوَاتِي، لِلْأَبِ: السُّدُسُ فَقَطْ؛ لِأَنَّ اللَّهَ عَزَّ وَجَلَّ أَعْطَى الْأُخْتَ النِّصْفَ، وَأَعْطَى الْأُخْتَيْنِ فَصَاعِدًا الثُّلُثَيْنِ.

L27444 1712 - Issue: If he leaves behind a full sister and one paternal sister, two paternal sisters, or more than that: the full sister receives half, and the paternal sister(s) receive only a sixth. This is because Allah, the Mighty and Majestic, granted the sister half, and granted two sisters or more two-thirds.

L27445 Thus, it is established that paternal sisters or full sisters - even if numerous

- have no share except two-thirds exclusively. When the full sister becomes entitled to half by indisputable consensus, provided that a non-full sister does not share in it, only a sixth remains. This sixth is allocated to the paternal sister or paternal sisters.

فَصَحَّ أَنَّهُ لَيْسَ لِلْأَخَوَاتِ اللَّوَاتِي لِلْأَبِ، أَوْ اللَّوَاتِي لِلْأَبِ وَالْأُمِّ - وَإِنْ كَثُرْنَ - إِلَّا الثُّلُثَانِ فَقَطْ، وَإِذَا وَجَبَ لِلشَّقِيقَةِ النِّصْفُ بِالْإِجْمَاعِ الْمُتَيَقَّنِ فِي أَنْ لَا يُشَارِكَهَا فِيهِ الَّتِي لَيْسَتْ شَقِيقَةً، فَلَمْ يَبْقَ إِلَّا السُّدُسُ، فَهُوَ لِلَّتِي لِلْأَبِ، أَوْ اللَّوَاتِي لِلْأَبِ.

L27446 Issue 1713: A full sister or paternal half-sister does not inherit alongside a son, daughter, son's son (however low), or son's daughter (however low). The remainder after the shares of the daughter and the son's daughter is allocated to the agnates, such as a brother, brother's son, paternal uncle, paternal uncle's son, patron and his agnates. However, if the deceased has no agnate, the remainder is given to the full sister. If no full sister exists, it is given to the paternal half-sister. The same applies to the sisters accordingly. This is the opinion of Isḥāq ibn Rāhwayh, and this is the position we uphold.

١٧١٣ - مَسْأَلَةٌ: وَلَا تَرِثُ أُخْتٌ شَقِيقَةٌ وَلَا غَيْرُ شَقِيقَةٍ مَعَ ابْنٍ ذَكَرٍ وَلَا مَعَ ابْنَةٍ أُنْثَى، وَلَا مَعَ ابْنِ ابْنٍ وَإِنْ سَفَلَ، وَلَا مَعَ بِنْتِ ابْنٍ وَإِنْ سَفَلَتْ، وَالْبَاقِي بَعْدَ نَصِيبِ الْبِنْتِ وَبِنْتِ الِابْنِ لِلْعَصَبَةِ كَالْأَخِ، وَابْنِ الْأَخِ، وَالْعَمِّ، وَابْنِ الْعَمِّ، وَالْمُعْتَقِ وَعَصَبَتِهِ، إِلَّا أَنْ لَا يَكُونَ لِلْمَيِّتِ عَاصِبٌ، فَيَكُونُ حِينَئِذٍ مَا بَقِيَ لِلْأُخْتِ الشَّقِيقَةِ، أَوْ لِلَّتِي لِلْأَبِ إِنْ لَمْ يَكُنْ هُنَالِكَ شَقِيقَةٌ، وَلِلْأَخَوَاتِ كَذَلِكَ - وَهُوَ قَوْلُ إِسْحَاقَ بْنِ رَاهْوَيْهِ - وَبِهِ نَأْخُذُ.

L27447 And here are two opinions other than this.

وَهُنَا قَوْلَانِ غَيْرَ هَذَا.

L27448 One of the two rulings—that sisters are residual heirs (ʿaṣabah) alongside daughters, and that the aforementioned sister or sisters inherit the remainder after the daughter, granddaughter (through a son), two daughters, two granddaughters (through a son), or beyond—is the opinion of Mālik, Abū Ḥanīfah, al-Shāfiʿī, and Aḥmad. Authentic narrations are reported from Ibn Masʿūd, Zayd ibn Thābit, and Ibn al-Zubayr regarding this matter, though these narrations offer no substantiation for their position.

أَحَدُهُمَا - أَنَّ الْأَخَوَاتِ عَصَبَةُ الْبَنَاتِ، وَأَنَّ الْأُخْتَ الْمَذْكُورَةَ أَوْ الْأَخَوَاتِ الْمَذْكُورَاتِ يَأْخُذْنَ مَا فَضَلَ عَنْ الِابْنَةِ، أَوْ بِنْتِ الِابْنِ، أَوْ مَا فَضَلَ عَنْ الْبِنْتَيْنِ أَوْ بِنْتَيْ الِابْنِ فَصَاعِدًا - وَهُوَ قَوْلُ مَالِكٍ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ وَأَحْمَدَ - وَصَحَّ عَنْ ابْنِ مَسْعُودٍ وَزَيْدٍ، وَابْنِ الزُّبَيْرِ فِي ذَلِكَ رِوَايَاتٌ لَا مُتَعَلَّقَ لَهُمْ بِهَا.

L27449 It has been authentically established regarding the sister and the daughter, as narrated by Muʿādh, Abū Mūsā, and Salmān—and it has likewise been narrated from ʿUmar in the same manner.

وَصَحَّ فِي الْأُخْتِ وَالْبِنْتِ عَنْ مُعَاذٍ، وَأَبِي مُوسَى، وَسَلْمَانَ - وَقَدْ رُوِيَ عَنْ عُمَرَ كَذَلِكَ أَيْضًا.

L27450 The second is that a sister does not inherit fundamentally alongside a daughter or a daughter of a son. This is authentically reported from Ibn Abbas; it is the first opinion of Ibn al-Zubayr and the position of Abū Sulaymān.

وَالثَّانِي - أَنَّهُ لَا تَرِثُ أُخْتٌ أَصْلًا مَعَ ابْنَةٍ، وَلَا مَعَ ابْنَةِ ابْنٍ - وَصَحَّ عَنْ ابْنِ عَبَّاسٍ - وَهُوَ أَوَّلُ قَوْلِ ابْنِ الزُّبَيْرِ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ.

وَاحْتَجَّ مَنْ رَأَى الْأَخَوَاتِ عَصَبَةَ الْبَنَاتِ بِمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ، وَسُفْيَانَ عَنْ أَبِي قَيْسٍ الْأَوْدِيِّ - هُوَ عَبْدُ الرَّحْمَنِ بْنِ ثَرْوَانَ - عَنْ الْهُذَيْلِ بْنِ شُرَحْبِيلَ قَالَ: سُئِلَ أَبُو مُوسَى عَنْ ابْنَةٍ وَابْنَةِ ابْنٍ وَأُخْتٍ؟ فَقَالَ: لِلِابْنَةِ النِّصْفُ، وَلِلْأُخْتِ النِّصْفُ - «فَسُئِلَ ابْنُ مَسْعُودٍ وَأُخْبِرَ بِقَوْلِ أَبِي مُوسَى؟ فَقَالَ: لَقَدْ ضَلَلْتُ إذًا وَمَا أَنَا مِنْ الْمُهْتَدِينَ، أَقْضِي فِيهَا بِمَا قَضَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِلِابْنَةِ النِّصْفُ، وَلِابْنَةِ الِابْنِ السُّدُسُ تَكْمِلَةَ الثُّلُثَيْنِ، وَمَا بَقِيَ فَلِلْأُخْتِ» .

L27451–27453 Those who hold the view that sisters become agnates alongside daughters argued based on what was transmitted to us through the narration chain of Shu'bah and Sufyān from Abī Qays al-Awdī - who is 'Abd al-Raḥmān ibn Tharwān - from al-Hudhayl ibn Shuraḥbīl, who said: Abū Mūsā was asked about a daughter, a son's daughter, and a sister? He replied: "The daughter is entitled to half, and the sister is entitled to half." Then Ibn Mas'ūd was asked... Was he not informed of Abū Mūsā's opinion? He said: "Then I have surely gone astray and am not among the rightly guided! I will judge this matter as the Prophet (peace be upon him and his family) ruled: the daughter receives half, the son's daughter receives one-sixth to complete the two-thirds, and what remains belongs to the paternal sister."[8]

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ مَنْ لَمْ يُوَرِّثْ أُخْتًا مَعَ ابْنَةٍ وَلَا مَعَ ابْنَةِ ابْنٍ بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {إِنِ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ} [النساء: ١٧٦]

L27454 Abu Muhammad said: Those who do not grant inheritance to a sister alongside a daughter or a granddaughter have argued based on Allah Almighty's statement: {If a person dies leaving no child and has a sister, she shall receive half of what he left, and he (the brother) inherits her estate if she leaves no child} [An-Nisa: 176].[9]

وَاسْمُ الْوَلَدِ يَقَعُ عَلَى الِابْنَةِ، وَبِنْتِ الِابْنِ، كَمَا يَقَعُ عَلَى الِابْنِ وَابْنِ الِابْنِ فِي اللُّغَةِ وَفِي الْقُرْآنِ - وَالْعَجَبُ مِنْ مُجَاهَرَةِ بَعْضِ الْقَائِلِينَ هَاهُنَا: إنَّمَا عَنَى وَلَدًا ذَكَرًا - وَهَذَا إقْدَامٌ عَلَى اللَّهِ تَعَالَى بِالْبَاطِلِ، وَقَوْلٌ عَلَيْهِ بِمَا لَا يَعْلَمُ، بَلْ بِمَا يَعْلَمُ أَنَّهُ بَاطِلٌ.

L27455 The term "child" applies to the daughter and the son's daughter, just as it applies to the son and the son's son in the Arabic language and in the Qur'an. How astonishing that some of those who claim here brazenly state: "It specifically meant a male child!" This constitutes a presumptuous falsehood toward Allah the Exalted – attributing to Him what they do not know, nay, what they know to be baseless.

وَلَيْتَ شِعْرِي أَيُّ فَرْقٍ بَيْنَ قَوْلِهِ تَعَالَى: {إِنِ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ} [النساء: ١٧٦] وَبَيْنَ قَوْلِهِ تَعَالَى: {وَلَهُنَّ الرُّبُعُ مِمَّا تَرَكْتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكْتُمْ} [النساء: ١٢] وَقَوْلِهِ تَعَالَى: {وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ الرُّبُعُ مِمَّا تَرَكْنَ} [النساء: ١٢] وَقَوْلِهِ تَعَالَى: {وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ} [النساء: ١١] فَلَمْ يَخْتَلِفُوا

L27456 Would that I knew what distinction exists between Allah's decree: {If a man dies leaving no child and has a sister...} [4:176], the verse stating: {And for them is a fourth of what you leave if you have no child. But if you have a child, then for them is an eighth...} [4:12], His statement: {And for you is half of what your wives leave if they have no child. But if they have a child, then for you is a fourth...} [4:12], and the verse: {For the parents, a sixth each of what he leaves if he has a child. But if he has no child and his parents are his heirs, then his mother receives a third. If he has siblings,

[8] **Qur'an references (L27451):** Qur'an 6:56 (Al-An'am).
[9] **Qur'an references (L27454):** Qur'an 4:176 (An-Nisa).

his mother is allotted a sixth...} [4:11]. They unanimously agreed regarding all these verses that "the child"—regardless of being male or female, or a child's descendant—entails the same ruling. Then they concluded in the case of the sister's inheritance that "the child" specifically denotes male offspring, as indicated by the verses: {Their testimony will be recorded, and they will be questioned} [43:19] and {If they testify, do not bear witness with them} [6:150].[10]

L27457 Those who do not grant inheritance to a sister alongside a daughter or a son's daughter also argued based on what is established from the Messenger of Allah—peace and blessings be upon him and his family—through the chain of Wuhaib, from Abdullah ibn Tawus, from his father, from Ibn Abbas: "Assign the prescribed shares to their entitled recipients. What remains after allocating the prescribed shares belongs to the closest male agnate."

L27458 Abu Muhammad said: The jurists are unanimously agreed that their inclusion of the sister in inheritance along with the daughter and the son's daughter is based solely on residual shares, not a specified portion. This is because they rule in cases involving a daughter, a husband, a mother, a full sister, a paternal sister, or sisters of analogous categories: the daughter receives half, the husband receives a quarter, the mother receives a sixth, and the sister or sisters receive nothing except half of the sixth, i.e., one-twelfth of the estate.

L27459–27460 Then if the case remains as it is, and there are two daughters; neither the sister nor the sisters inherit anything. And it has been narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf: It was said to Ibn ʿAbbās, "What if a man leaves his daughter and his sister from his father and mother?" Ibn ʿAbbās replied, "His daughter receives half, his sister receives half, and the sister is not entitled to anything from the remainder, which goes to his male agnates." The questioner said, "'Umar ruled otherwise, giving the daughter half and the sister half." Ibn ʿAbbās responded, "Do you yourselves know better than Allah?" Maʿmar said, "I mentioned this to Ibn Ṭāwūs, who replied, 'My

[10] **Qur'an references (L27456):** Qur'an 4:176 (An-Nisa); Qur'an 4:12 (An-Nisa); Qur'an 4:11 (An-Nisa); Qur'an 43:19 (Az-Zukhruf); Qur'an 6:150 (Al-An'am).

فِي جَمِيعِ هَذِهِ الْآيَاتِ: أَنَّ الْوَلَدَ سَوَاءٌ كَانَ ذَكَرًا أَوْ أُنْثَى، أَوْ وَلَدَ الْوَلَدِ كَذَلِكَ فَالْحُكْمُ وَاحِدٌ. ثُمَّ بَدَا لَهُمْ فِي مِيرَاثِ الْأُخْتِ أَنَّ الْوَلَدَ إِنَّمَا أُرِيدَ بِهِ الذَّكَرَ وَ {سَتُكْتَبُ شَهَادَتُهُمْ وَيُسْأَلُونَ} [الزخرف: ١٩] {فَإِنْ شَهِدُوا فَلا تَشْهَدْ مَعَهُمْ} [الأنعام: ١٥٠] .

وَاحْتَجَّ أَيْضًا مَنْ لَمْ يُوَرِّثْ أُخْتًا مَعَ ابْنَةٍ، وَلَا مَعَ ابْنَةِ ابْنٍ: بِالثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ طَرِيقِ وُهَيْبٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ عَنِ ابْنِ عَبَّاسٍ: «أَلْحِقُوا الْفَرَائِضَ بِأَصْحَابِهَا فَمَا أَبْقَتْ الْفَرَائِضُ فَلِأَوْلَى رَجُلٍ ذَكَرٍ» .

قَالَ أَبُو مُحَمَّدٍ: وَهُمْ مُجْمِعُونَ عَلَى أَنَّ تَوْرِيثَهُمْ الْأُخْتَ مَعَ الْبِنْتِ، وَبِنْتَ الِابْنِ إِنَّمَا هُوَ بِالتَّعْصِيبِ، لَا بِفَرْضٍ مُسَمًّى، لِأَنَّهُمْ يَقُولُونَ فِي بِنْتٍ، وَزَوْجٍ، وَأُمٍّ، وَأُخْتٍ شَقِيقَةٍ أَوْ لِأَبٍ، أَوْ أَخَوَاتٍ كَذَلِكَ: إِنَّ لِلْبِنْتِ النِّصْفَ وَلِلزَّوْجِ الرُّبُعَ، وَلِلْأُمِّ السُّدُسَ، وَلَيْسَ لِلْأُخْتِ أَوْ الْأَخَوَاتِ - إِلَّا نِصْفُ السُّدُسِ.

فَإِنْ كَانَتْ الْمَسْأَلَةُ بِحَالِهَا، وَكَانَتْ ابْنَتَانِ: لَمْ تَرِثْ الْأُخْتُ وَلَا الْأَخَوَاتُ شَيْئًا -: وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: قِيلَ لِابْنِ عَبَّاسٍ: مَنْ تَرَكَ ابْنَتَهُ، وَأُخْتَه لِأَبِيهِ، وَأُمِّهِ؟ فَقَالَ ابْنُ عَبَّاسٍ: لِابْنَتِهِ النِّصْفُ، وَلِلْأُخْتِ النِّصْفُ، وَلَيْسَ لِأُخْتِهِ شَيْءٌ مِمَّا بَقِيَ، وَهُوَ لِعَصَبَتِهِ، فَقَالَ لَهُ السَّائِلُ: إِنَّ عُمَرَ قَضَى بِغَيْرِ ذَلِكَ، جَعَلَ لِلِابْنَةِ النِّصْفَ، وَلِلْأُخْتِ النِّصْفَ؟ فَقَالَ ابْنُ عَبَّاسٍ: أَأَنْتُمْ أَعْلَمُ أَمْ اللَّهُ؟ قَالَ مَعْمَرٌ: فَذَكَرْت ذَلِكَ لِابْنِ طَاوُسٍ قَالَ لِي ابْنُ طَاوُسٍ:

أَخْبَرَنِي أَبِي أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ يَقُولُ: قَالَ اللَّهُ تَعَالَى: {إِنِ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ} [النساء: ١٧٦] قَالَ ابْنُ عَبَّاسٍ: فَقُلْتُمْ أَنْتُمْ: لَهَا النِّصْفُ وَإِنْ كَانَ لَهُ وَلَدٌ.

father informed me that he heard Ibn ʿAbbās say: Allah the Exalted stated, {If a person dies leaving no child and has a sister, she shall have half of what he leaves} [Quran 4:176].' Ibn ʿAbbās said, 'Yet you claim she receives half even if he has a child!'"[11]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ ابْنُ الْمَدِينِيِّ حَدَّثَنِي سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - حَدَّثَنِي مُصْعَبُ بْنُ عَبْدِ اللَّهِ بْنِ الزِّبْرِقَانِ عَنِ ابْنِ أَبِي مُلَيْكَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: أَمْرٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى: وَلَا فِي قَضَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَسَتَجِدُونَهُ فِي النَّاسِ كُلِّهِمْ: مِيرَاثُ الْأُخْتِ مَعَ الْبِنْتِ؟ قَالَ أَبُو مُحَمَّد: هَذَا يُرِيكَ أَنَّ ابْنَ عَبَّاسٍ لَمْ يَرَ مَا فَشَا فِي النَّاسِ وَاشْتَهَرَ فِيهِمْ حُجَّةً، وَأَنَّهُ لَمْ يَرَ الْقَوْلَ بِهِ إِذَا لَمْ يَكُنْ فِي الْقُرْآنِ، وَلَا فِي سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَتَكَلَّمَ أَصْحَابُنَا فِي أَبِي قَيْسٍ.

From the path of Ismāʿīl ibn Isḥāq: ʿAlī ibn ʿAbd Allāh—he is Ibn al-Madīnī—informed us: Sufyān—he is Ibn ʿUyaynah—narrated to me: Muṣʿab ibn ʿAbd Allāh ibn al-Zibriqān, from Ibn Abī Mulaykah, from Ibn ʿAbbās, who said: "A matter not in the Book of Allah the Exalted nor in the judgment of the Messenger of Allah—may Allah bless him and his family and grant him peace—yet you will encounter it widespread among all people: How is the sister's inheritance alongside the daughter determined?" Abū Muḥammad said: "This demonstrates that Ibn ʿAbbās did not regard what proliferated among the people and became prevalent among them as proof, nor did he consider the opinion regarding it valid if it was absent from the Quran or the Sunnah of the Messenger of Allah—may Allah bless him and his family and grant him peace. Our companions discussed the case of Abū Qays."

L27461

قَالَ عَلِيٌّ: أَبُو قَيْسٍ ثِقَةٌ مَا نَعْلَمُ أَحَدًا جَرَحَهُ بِجُرْحَةٍ يَجِبُ بِهَا إِسْقَاطُ رِوَايَتِهِ، فَالْوَاجِبُ الْأَخْذُ بِمَا رَوَى - وَبِحَدِيثِ ابْنِ عَبَّاسٍ الْمُسْنَدِ الَّذِي ذَكَرْنَا.

Ali said: "Abu Qays is trustworthy; we do not know of anyone who has impugned him with a discreditation necessitating the rejection of his narrations. Therefore, it is obligatory to accept what he has narrated—and the musnad (well-attested) hadith of Ibn Abbas that we mentioned."

L27462

فَوَجَبَ بِذَلِكَ إِذَا كَانَ لِلْمَيِّتِ عَاصِبٌ أَنْ يَكُونَ مَا فَضَلَ عَنْ فَرِيضَةِ الِابْنَةِ، أَوِ الْبِنْتَيْنِ، أَوْ بِنْتِ الِابْنِ، أَوْ بِنْتَيِ الِابْنِ لِلْعَصَبَةِ؛ لِأَنَّهُ أَوْلَى رَجُلٍ ذَكَرٍ، وَلَيْسَتِ الْأُخْتُ هَاهُنَا مِنْ أَصْحَابِ الْفَرَائِضِ الَّذِينَ أُمِرْنَا بِإِلْحَاقِ فَرَائِضِهِمْ بِهِمْ - وَهَذَا وَاضِحٌ لَا إِشْكَالَ فِيهِ.

Therefore, if the deceased has agnatic heirs, it is obligatory that the remainder after the fixed share of the daughter, two daughters, the son's-daughter, or two son's-daughters belongs to the agnatic heirs. This is because they are the nearest male relatives, and the sister here is not among those entitled to fixed shares to whom we are commanded to allocate their shares. This is clear, and there is no ambiguity in it.

L27463

فَإِنْ لَمْ يَكُنْ لِلْمَيِّتِ رَجُلٌ عَاصِبٌ أَصْلًا أَخَذْنَا بِحَدِيثِ أَبِي قَيْسٍ وَجَعَلْنَا الْأُخْتَ عَصَبَةً كَمَا فِي نَصِّهِ وَلَمْ نُخَالِفْ شَيْئًا مِنَ النُّصُوصِ.

If the deceased has no male agnate (asabah) whatsoever, we adhere to the hadith of Abu Qays and treat the sister as an agnate in accordance with its explicit wording, without contravening any of the authoritative texts.

L27464

[11] **Qur'an references (L27460):** Qur'an 4:176 (An-Nisa).

L27465–27467 The emancipated slave, along with the deceased's own male descendants or male agnatic relatives, are unambiguously male individuals; thus, they take precedence over the sisters if the deceased has a daughter or a son's daughter. Ali said: There is nothing in any of the narrations from the aforementioned Companions indicating that they granted inheritance rights to the sister alongside the daughter in the presence of a male agnate. Thus, it is nullified for them to have any basis for a claim to any part of it. And success is from Allah, the Exalted.

وَالْمُعْتَقُ، وَمَنْ تَنَاسَلَ مِنْهُ مِنْ الذُّكُورِ أَوْ عَصَبَتِهِ مِنْ الذُّكُورِ هُمْ بِلَا شَكٍّ مِنْ الرِّجَالِ الذُّكُورِ: فَهُمْ أَوْلَى مِنْ الْأَخَوَاتِ إذَا كَانَ لِلْمَيِّتِ ابْنَةٌ أَوْ ابْنَةُ ابْنٍ قَالَ عَلِيٌّ: لَيْسَ فِي شَيْءٍ مِنْ الرِّوَايَاتِ عَنْ الصَّحَابَةِ الْمَذْكُورِينَ: أَنَّهُمْ وَرَّثُوا الْأُخْتَ مَعَ الْبِنْتِ مَعَ وُجُودِ عَاصِبٍ ذَكَرٍ، فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ فِي شَيْءٍ مِنْهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of the Mother's Inheritance

[مَسْأَلَة مِيرَاث الْأُمّ]

L27468

L27469 Issue 1714: The mother's share in the presence of a male child, a female child, a son of the son, or a daughter of the son – even if they are distant descendants – is one-sixth only, because this is the text of the Qur'an, as we mentioned earlier. And success is from Allah, the Most High.

١٧١٤ - مَسْأَلَةٌ: وَالْأُمُّ مَعَ الْوَلَدِ الذَّكَرِ أَوْ الْأُنْثَى، أَوْ ابْنِ الِابْنِ، أَوْ بِنْتِ الِابْنِ - وَإِنْ سَفَلَ: السُّدُسُ فَقَطْ؛ لِأَنَّهُ نَصُّ الْقُرْآنِ، كَمَا ذَكَرْنَا آنِفًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27470 1715 - Issue: If the deceased has a brother, two brothers, two sisters, a sister, or a brother and a sister, and he has neither a child nor a male lineal descendant, his mother receives one-third of the estate.

١٧١٥ - مَسْأَلَةٌ: وَإِنْ كَانَ لِلْمَيِّتِ أَخٌ، أَوْ أَخَوَانِ، أَوْ أُخْتَانِ أَوْ أُخْتٌ، أَوْ أَخٌ، وَأُخْتٌ - وَلَا وَلَدَ لَهُ وَلَا وَلَدَ وَلَدٍ ذَكَرٍ. فَلِأُمِّهِ الثُّلُثُ.

L27471 If he has three of the siblings—whether all male, all female, or some male and some female—his mother receives one-sixth, in accordance with the verse of Allah the Exalted: *"But if he has siblings, then his mother receives one-sixth"* [An-Nisāʾ 11]. This is the view of Ibn ʿAbbās.[12]

فَإِنْ كَانَ لَهُ ثَلَاثَةٌ مِنْ الْإِخْوَةِ ذُكُورٍ أَوْ إنَاثٍ، أَوْ بَعْضُهُمْ ذَكَرٌ، وَبَعْضُهُمْ أُنْثَى: فَلِأُمِّهِ السُّدُسُ، لِقَوْلِ اللَّهِ تَعَالَى: {فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ} [النساء: ١١] وَهُوَ قَوْلُ ابْنِ عَبَّاسٍ.

L27472 Another scholar held that the mother's share reverts to one-sixth in the presence of two siblings. There is no disagreement that her portion does not revert from one-third to one-sixth due to a single brother or sister, nor about its reversion to one-sixth with three siblings - as we have mentioned. The sole disagreement pertains to whether her share reverts to one-sixth in the presence of two siblings.

وَقَالَ غَيْرُهُ: بِاثْنَيْنِ مِنْ الْإِخْوَةِ تُرَدُّ الْأُمُّ إلَى السُّدُسِ، وَلَا خِلَافَ فِي أَنَّهَا لَا تُرَدُّ عَنْ الثُّلُثِ إلَى السُّدُسِ بِأَخٍ وَاحِدٍ، وَلَا بِأُخْتٍ وَاحِدَةٍ، وَلَا فِي أَنَّهَا تُرَدُّ إلَى السُّدُسِ بِثَلَاثَةٍ مِنْ الْإِخْوَةِ - كَمَا ذَكَرْنَا - إنَّمَا الْخِلَافُ فِي رَدِّهَا إلَى السُّدُسِ بِاثْنَيْنِ مِنْ الْإِخْوَةِ.

L27473–27475 Yusuf ibn Abdullah al-Namari narrated to us, saying: Yusuf ibn Muhammad

[12] **Qur'an references (L27471):** Qur'an 4:11 (An-Nisa).

ibn Umar ibn Amrus al-Astaji narrated to us from Abu al-Tahir Muhammad ibn Ja'far ibn Ibrahim al-Sa'idi, who narrated to us from Yahya ibn Ayyub ibn Badi al-Allaf, who narrated to us from Ahmad ibn Salih al-Misri, who narrated to us from Muhammad ibn Isma'il ibn Abi Fudayk, who narrated to us from the jurist Muhammad ibn Abd al-Rahman ibn Abi Dhib—he is Abu al-Harith—from Shu'bah, the freed slave of Ibn Abbas, from Abdullah ibn Abbas: He entered upon Uthman ibn Affan and said to him, "Two brothers do not diminish the mother's entitlement to one-sixth. Allah the Exalted said, {If he has brothers} [An-Nisa 4:11], and two brothers, according to the linguistic convention of your people, are not considered 'brothers' (in the plural form)?" Uthman replied, "Can I abolish a precedent established before me, which people have inherited and which has prevailed across the lands?" Abu Muhammad commented: As for Ibn Abbas, he presented Uthman with the Quranic evidence and linguistic argument, and Uthman did not deny this at all. There is no doubt that had Uthman possessed a Sunnah from the Prophet—peace and blessings be upon him—or linguistic proof on this matter, he would have opposed Ibn Abbas with it. Rather, he clung to a precedent established before him, which people had inherited and which had prevailed across the lands. Regarding the garrison towns, ʿUthmān considered this conclusive evidence, while Ibn ʿAbbās did not. The ultimate authority in matters of dispute is the Qur'an and the Sunnah, and their explicit texts affirm the validity of Ibn ʿAbbās's position.[13]

حَدَّثَنَا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ قَالَ: نا يُوسُفُ بْنُ مُحَمَّدِ بْنِ عُمَرَ بْنِ عَمْرُوسٍ الْأَسْتَجِيُّ عَنْ أَبِي الطَّاهِرِ مُحَمَّدِ بْنِ جَعْفَرِ بْنِ إِبْرَاهِيمَ السَّعِيدِيِّ نا يَحْيَى بْنُ أَيُّوبَ بْنِ بَادِيٍّ الْعَلَّافُ نا أَحْمَدُ بْنُ صَالِحٍ الْمِصْرِيُّ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ أَبِي فُدَيْكٍ نا الْفَقِيهُ مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ أَبِي ذِئْبٍ - هُوَ أَبُو الْحَارِثِ - عَنْ شُعْبَةَ مَوْلَى ابْنِ عَبَّاسٍ عَنْ عَبْدِ اللَّهِ بْنِ عَبَّاسٍ: أَنَّهُ دَخَلَ عَلَى عُثْمَانَ بْنِ عَفَّانَ فَقَالَ لَهُ: إِنَّ الْأَخَوَيْنِ لَا يَرُدَّانِ الْأُمَّ إِلَى السُّدُسِ، إِنَّمَا قَالَ اللَّهُ تَعَالَى: {فَإِنْ كَانَ لَهُ إِخْوَةٌ} [النساء: ١١] وَالْأَخَوَانِ فِي لِسَانِ قَوْمِكَ لَيْسُوا بِإِخْوَةٍ؟ فَقَالَ عُثْمَانُ: لَا أَسْتَطِيعُ أَنْ أَنْقُضَ أَمْرًا كَانَ قَبْلِي، تَوَارَثَهُ النَّاسُ وَمَضَى فِي الْأَمْصَارِ؟ قَالَ أَبُو مُحَمَّدٍ: أَمَّا ابْنُ عَبَّاسٍ فَقَدْ وَقَّفَ عُثْمَانَ عَلَى الْقُرْآنِ وَاللُّغَةِ، فَلَمْ يُنْكِرْ عُثْمَانُ ذَلِكَ أَصْلًا، وَلَا شَكَّ فِي أَنَّهُ لَوْ كَانَ عِنْدَ عُثْمَانَ فِي ذَلِكَ سُنَّةٌ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ حُجَّةٌ مِنَ اللُّغَةِ لَعَارَضَ ابْنَ عَبَّاسٍ بِهَا مَا فَعَلَ، بَلْ تَعَلَّقَ بِأَمْرٍ كَانَ قَبْلَهُ، تَوَارَثَهُ النَّاسُ وَمَضَى فِي الْأَمْصَارِ، فَعُثْمَانُ رَأَى هَذَا حُجَّةً، وَابْنُ عَبَّاسٍ لَمْ يَرَهُ حُجَّةً، وَالْمَرْجُوعُ إِلَيْهِ عِنْدَ التَّنَازُعِ هُوَ الْقُرْآنُ، وَالسُّنَّةُ، وَنَصُّهُمَا يَشْهَدُ بِصِحَّةِ قَوْلِ ابْنِ عَبَّاسٍ.

L27476 There are many cases in which they opposed Uthman and Umar, such as their assessment of diyah [blood money] using cattle, sheep, and fine robes, their reduction of it within the Sanctuary, and their ruling that children born to women captured in raids become slaves belonging to the master of their mothers - a ruling applied very frequently.

وَكَمْ قَضِيَّةٍ خَالَفُوا فِيهَا عُثْمَانَ، وَعُمَرَ: كَتَقْوِيمِهِمَا الدِّيَةَ بِالْبَقَرِ وَالْغَنَمِ، وَالْحُلَلِ، وَإِضْعَافِهَا فِي الْحَرَمِ - وَالْقَضَاءِ بِوَلَدِ الْغَارَةِ رَقِيقًا لِسَيِّدِ أُمِّهِمْ فِي كَثِيرٍ جِدًّا.

L27477 And whoever claims such a matter as Ijma - considering the one who opposes Ijma to be a disbeliever according to their view - then by their claim, Ibn Abbas would be a disbeliever, for he opposed the Ijma. God forbid this!

وَمَنْ ادَّعَى مِثْلَ هَذَا إِجْمَاعًا - وَمُخَالِفُ الْإِجْمَاعِ - عِنْدَهُمْ كَافِرٌ: فَابْنُ عَبَّاسٍ عَلَى قَوْلِهِمْ كَافِرٌ، إِذْ خَالَفَ الْإِجْمَاعَ وَمَعَاذَ اللَّهِ مِنْ هَذَا، بَلْ مُكَفِّرُهُ أَحَقُّ بِالْكُفْرِ وَأَوْلَى.

[13] **Qur'an references (L27473):** Qur'an 4:11 (An-Nisa).

Rather, the one who declares him a disbeliever is more deserving of disbelief and more worthy.

L27478 As for an error committed while intending to seek what is right, it is not absolved from anyone after the Messenger of Allah (ﷺ).

L27479 Some of them said: Does the term “brothers” apply to two brothers? ʿAlī said: This is erroneous, for ʿUthmān and Ibn ʿAbbās—both being authorities in the language—agreed in opposing this, and the structure of the language contradicts this claim. This is because the structure of the dual form in the Arabic language, through which Allah the Exalted addressed us through the words of His Prophet (peace and blessings be upon him), differs from the structure of the plural with three or more. Therefore, it is not permissible for anyone to say, “The two men stood (qāmū),” nor “The two women stood (qumna).”

L27480 They argued for this position by citing Allah’s statement: {As for the thief—male or female—cut off their hands} [Al-Mā’idah: 38]. This, however, provides no proof for their claim, for each of them has two hands, and the ruling necessitates cutting them one after another for successive offenses.[14]

L27481 They cited the words of Allah, the Exalted: {For indeed, your two hearts have inclined} [At-Tahrim: 4], but this holds no proof for them, because in the Arabic language, whenever any two entities are involved, the plural form is used to refer to them. As the rajaz poet states:[15]

L27482 Two monstrous hurlings, twice cast, their forms like the surfaces of two shields.

L27483 Therefore, this is a strictly defined chapter that must not be exceeded.

L27484 They cited as evidence the statement of Allah, the Exalted: “The news of the disputants when they climbed over the prayer chamber” (38:21), “When they entered upon David, and he was alarmed by them. They said, ’Do not fear. We are two disputants—one party among us has wronged the other”’ (38:22), up to His statement, the Exalted: “’Indeed, this is my brother. He

[14] **Qur’an references (L27480):** Qur’an 5:38 (Al-Ma’idah).
[15] **Qur’an references (L27481):** Qur’an 66:4 (At-Tahrim).

وَأَمَّا الْخَطَأُ مَعَ قَصْدِ الْحَقِّ فَلَا يُرْفَعُ عَنْ أَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَقَالَ بَعْضُهُمْ: الْأَخَوَانِ يَقَعُ عَلَيْهِمَا اسْمُ إِخْوَةٍ؟ قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِأَنَّ عُثْمَانَ، وَابْنَ عَبَّاسٍ: حُجَّةٌ فِي اللُّغَةِ، وَقَدْ اجْتَمَعَا عَلَى خِلَافِ هَذَا، وَبِنْيَةُ اللُّغَةِ مُكَذِّبَةٌ لِهَذَا الْقَوْلِ، لِأَنَّ بِنْيَةَ التَّثْنِيَةِ فِي اللُّغَةِ الْعَرَبِيَّةِ الَّتِي بِهَا خَاطَبَنَا اللَّهُ تَعَالَى عَلَى لِسَانِ نَبِيِّهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - غَيْرُ بِنْيَةِ الْجَمْعِ بِالثَّلَاثَةِ فَصَاعِدًا، فَلَا يَجُوزُ لِأَحَدٍ أَنْ يَقُولَ: الرَّجُلَانِ قَامُوا، وَلَا الْمَرْأَتَانِ قُمْنَ.

وَاحْتَجُّوا فِي هَذَا بِقَوْلِهِ تَعَالَى: {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ لِكُلِّ وَاحِدٍ مِنْهُمَا يَدَيْنِ، وَالْوَاجِبُ قَطْعُهُمَا مَرَّةً بَعْدَ مَرَّةٍ.

وَذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {فَقَدْ صَغَتْ قُلُوبُكُمَا} [التحريم: ٤] وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ فِي لُغَةِ الْعَرَبِ إِنَّ كُلَّ اثْنَيْنِ مِنْ اثْنَيْنِ فَإِنَّهُ يُخْبَرُ عَنْهُمَا بِلَفْظِ الْجَمْعِ، قَالَ الرَّاجِزُ:

وَمَهْمَهَيْنِ قَذَفَيْنِ مَرَّتَيْنِ ... ظَهْرَاهُمَا مِثْلَ ظُهُورِ التُّرْسَيْنِ

فَهَذَا بَابٌ مَضْبُوطٌ لَا يُتَعَدَّى

وَاحْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {نَبَأُ الْخَصْمِ إِذْ تَسَوَّرُوا الْمِحْرَابَ} [ص: ٢١] {إِذْ دَخَلُوا عَلَى دَاوُدَ فَفَزِعَ مِنْهُمْ قَالُوا لا تَخَفْ خَصْمَانِ بَغَى بَعْضُنَا عَلَى بَعْضٍ} [ص: ٢٢] إِلَى قَوْلِهِ تَعَالَى: {إِنَّ هَذَا أَخِي لَهُ تِسْعٌ وَتِسْعُونَ نَعْجَةً وَلِيَ نَعْجَةٌ وَاحِدَةٌ} [ص: ٢٣] وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَا نُكْرَةَ فِي دُخُولِهِمَا وَمَعَهُمَا غَيْرُهُمَا.

has ninety-nine ewes, and I have one ewe"' (38:23). This provides no proof for their position, because there is no indefiniteness in the entry of the two disputants, and there were others with them besides the two of them.[16]

وَذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {عَسَى اللَّهُ أَنْ يَأْتِيَنِي بِهِمْ جَمِيعًا} [يوسف: ٨٣] وَهَذَا عَلَيْهِمْ، لَا لَهُمْ؛ لِأَنَّهُمْ كَانُوا ثَلَاثَةً: يُوسُفُ، وَأَخُوهُ الْأَصْغَرُ الْمُحْتَبَسُ عَنْ الصُّوَاعِ، وَكَبِيرُهُمْ الَّذِي قَالَ {فَلَنْ أَبْرَحَ الأَرْضَ حَتَّى يَأْذَنَ لِي أَبِي} [يوسف: ٨٠] .

L27485 They mentioned the statement of Allah the Exalted: {"May Allah bring them all to me"} [Yusuf 12:83], and this applies to their detriment, not their benefit; for they were three: Joseph, his youngest brother detained over the measuring cup, and their eldest brother who declared {"I shall never depart this land until my father grants me permission"} [Yusuf 12:80].[17]

وَقَدْ اتَّفَقُوا عَلَى أَنَّ مَنْ أَقَرَّ لِآخَرَ بِدَرَاهِمَ أَنَّهُ يُقْضَى عَلَيْهِ بِثَلَاثَةٍ، لَا بِدِرْهَمَيْنِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27486–27487 They have unanimously agreed that whoever acknowledges owing another person dirhams must be judged liable to pay three dirhams, not two dirhams. And success is from Allah, the Most High.

وَقَالَ بَعْضُهُمْ: قَالَ اللَّهُ تَعَالَى: {وَإِنْ كَانُوا إِخْوَةً رِجَالا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ} [النساء: ١٧٦] قَالَ: وَالْحُكْمُ فِي الْأُخْتِ، وَالْأَخِ هَكَذَا، فَصَحَّ أَنَّ الْأَخَ وَالْأُخْتَ فِي قَوْلِ اللَّهِ تَعَالَى: {فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلأُمِّهِ السُّدُسُ} [النساء: ١١] كَذَلِكَ أَيْضًا.

L27488 Some of them said: Allah the Exalted stated: {And if they are siblings - both men and women - then the male receives a share equal to that of two females} [An-Nisa' 4:176]. He said: The ruling concerning the sister and the brother applies in this manner. Thus, it is established that the brother and the sister in His statement: {If he has siblings, then his mother is entitled to one-sixth} [An-Nisa' 4:11] are treated similarly.[18]

قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْآيَتَانِ فَحَقٌّ، وَأَمَّا هَذَا الِاسْتِدْلَال فَفِي غَايَةِ الْفَسَادِ لِأَنَّ اللَّهَ تَعَالَى قَالَ: {فَلِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ} [النساء: ١٧٦] وَهَذَا جَلِيٌّ مِنْ النَّصِّ فِي حُكْمِ الْأَخِ، وَالْأُخْتِ فَقَطْ.

L27489 Abū Muḥammad said: As for the two verses, they are valid. But as for this inferential reasoning, it is utterly corrupt, because Allah, the Most High, said: "For the male a share equivalent to that of two females" [4:176]. This is evident from the explicit text concerning the ruling specific to the brother and the sister alone.[19]

فَإِنْ أَوْجَدْنَا مِثْلَ ذَلِكَ فِي حَجْبِ الْأُمِّ فَهُوَ قَوْلُهُ، وَإِلَّا فَهُوَ مُبْطَلٌ مُدَّعًى بِلَا بُرْهَانٍ.

L27490 If we find a similar instance in the mother's exclusion [from inheritance], then it is his [the scholar's] ruling; otherwise, it is invalidated—a claim without proof.

وَقَالَ بَعْضُهُمْ: وَجَدْنَا كُلَّ مَا يَتَغَيَّرُ فِيهِ حُكْمُ الْفَرْضِ فِيمَا بَعْدَ الْوَاحِدِ يَسْتَوِي فِيهِ الِاثْنَانِ، مَا زَادَ عَلَيْهِمَا كَالْبِنْتَيْنِ مِيرَاثُهُمَا كَمِيرَاثِ الثَّلَاثِ، وَكَالْأُخْتَيْنِ مِيرَاثُهُمَا كَمِيرَاثِ الثَّلَاثِ، وَكَالْإِخْوَةِ لِلْأُمِّ إِنَّمَا هُوَ الثُّلُثُ لِلِاثْنَيْنِ كَمَا هُوَ لِلثَّلَاثِ فَوَجَبَ أَنْ يَكُونَ حَجْبُ

L27491 Some of them said: We found that in every case where the ruling of the oblig-

[16] **Qur'an references (L27484):** Qur'an 38:21 (Sad); Qur'an 38:22 (Sad); Qur'an 38:23 (Sad).
[17] **Qur'an references (L27485):** Qur'an 12:83 (Yusuf); Qur'an 12:80 (Yusuf).
[18] **Qur'an references (L27488):** Qur'an 4:176 (An-Nisa); Qur'an 4:11 (An-Nisa).
[19] **Qur'an references (L27489):** Qur'an 4:176 (An-Nisa).

atory share changes beyond one [heir], two are treated equivalently. What applies to two or more—such as two daughters whose inheritance equals that of three; two sisters whose inheritance equals that of three; and maternal brothers where the third is allocated to two just as to three—must logically entail that the mother's exclusion by two be equivalent to her exclusion by three. Ali said: We responded: This has never been established as you claim, for it is a ruling from you, not from God the Exalted. All that God the Exalted has decreed is truth, and whatever you assert without His declaration is falsehood and void. Present proof for the validity of this analogy—otherwise, it is invalid. And success comes from God alone.

الْأُمِّ بِالِاثْنَيْنِ كَحَجْبِهَا بِالثَّلَاثِ؟ قَالَ عَلِيٌّ: فَقُلْنَا: مَا وَجَبَ هَذَا قَطُّ كَمَا تَقُولُ، لِأَنَّهُ حُكْمٌ مِنْك لَا مِنْ اللَّهِ تَعَالَى، وَكُلُّ مَا قَالَ اللَّهُ تَعَالَى فَحَقٌّ، وَكُلُّ مَا قُلْت أَنْتَ مِمَّا لَمْ يَقُلْهُ عَزَّ وَجَلَّ فَكَذِبٌ، وَبَاطِلٌ، فَهَاتِ بُرْهَانًا عَلَى صِحَّةِ تَشْبِيهِك هَذَا؟ وَإِلَّا فَهُوَ بَاطِلٌ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27492 The mother is entitled by the explicit text of the Quran: one-third. Allah, the Exalted, does not reduce her share to one-sixth except by the presence of a child of the deceased or siblings of the deceased. Is it permissible to withhold from her what Allah, the Exalted, has ordained for her except with certainty from a reported Sunnah? There is no Sunnah in that matter, nor scholarly consensus—and success is from Allah, the Exalted.

وَقَدْ وَجَبَ لِلْأُمِّ بِنَصِّ الْقُرْآنِ: الثُّلُثُ وَلَمْ يَحُطَّهَا اللَّهُ تَعَالَى إلَى السُّدُسِ إلَّا بِوَلَدٍ لِلْمَيِّتِ، أَوْ بِأَنْ يَكُونَ لَهُ إخْوَةٌ فَلَا يَجُوزُ مَنْعُهَا مِمَّا أَوْجَبَهُ اللَّهُ تَعَالَى لَهَا، إلَّا بِيَقِينٍ مِنْ سُنَّةٍ وَارِدَةٍ؟ وَلَا سُنَّةَ فِي ذَلِكَ وَلَا إجْمَاعَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27493 Issue 1716: If a deceased man leaves behind a wife and both parents, or if a deceased woman leaves behind a husband and both parents: the husband receives half, the wife receives one-quarter, and the mother receives one-third of the complete capital. The father receives one-sixth when the deceased is his daughter, one-third when the deceased is his son, and one-quarter of one-third.

١٧١٦ - مَسْأَلَةٌ: فَإِنْ كَانَ الْمَيِّتُ تَرَكَ زَوْجَةً وَأَبَوَيْنِ، أَوْ مَاتَتْ امْرَأَةٌ وَتَرَكَتْ زَوْجًا وَأَبَوَيْنِ: فَلِلزَّوْجِ النِّصْفُ، وَلِلزَّوْجَةِ الرُّبُعُ، وَلِلْأُمِّ الثُّلُثُ مِنْ رَأْسِ الْمَالِ كَامِلًا - وَلِلْأَبِ مِنْ ابْنَتِهِ السُّدُسُ، وَمِنْ ابْنِهِ الثُّلُثُ، وَرُبُعُ الثُّلُثِ.

L27494–27495 A group has stated that the mother is entitled to only a third of what remains after deducting the inheritance shares of the husband or the wife in both scenarios. This is an opinion we have transmitted authentically from Umar ibn al-Khattab, Uthman, and Ibn Masud regarding the cases of the wife with both parents and the husband with both parents. It is authentically transmitted from Zaid, and we have transmitted it from Ali though it was not authenticated from him. This is the view of al-Harith al-Aʿwar, al-Hasan, Sufyan al-Thawri, Malik, Abu Hanifah, al-Shafi'i, their respective companions, and Ibrahim al-Nakha'i.

وَقَالَتْ طَائِفَةٌ: لَيْسَ لِلْأُمِّ فِي كِلْتَيْهِمَا إلَّا ثُلُثُ مَا بَقِيَ بَعْدَ مِيرَاثِ الزَّوْجِ، وَالزَّوْجَةِ - وَهَذَا قَوْلٌ رُوِّينَاهُ صَحِيحًا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعُثْمَانَ، وَابْنِ مَسْعُودٍ فِي الزَّوْجَةِ وَالْأَبَوَيْنِ، وَالزَّوْجِ وَالْأَبَوَيْنِ - وَصَحَّ عَنْ زَيْدٍ، وَرُوِّينَاهُ عَنْ عَلِيٍّ وَلَمْ يَصِحَّ عَنْهُ - وَهُوَ قَوْلُ الْحَارِثِ الْأَعْوَرِ، وَالْحَسَنِ، وَسُفْيَانَ الثَّوْرِيِّ، وَمَالِكٍ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمْ - وَهُوَ قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ.

L27496 Here is another opinion we have narrated through the chain of al-Ḥajjāj ibn

al-Minhāl, who reported to us from Ḥammād ibn Salamah, who reported to us from Ayyūb al-Sikhtiyānī: That Muḥammad ibn Sīrīn said regarding a man who left behind his wife and parents: “The wife receives a quarter, the mother receives a third of the entire estate, and what remains belongs to the father.” He also said regarding a woman who left behind her husband and parents: “The husband receives half, the mother receives a third of what remains, and the father receives what remains.”

وَهَا هُنَا قَوْلٌ آخَرُ رُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا أَيُّوبُ السِّخْتِيَانِيُّ: أَنَّ مُحَمَّدَ بْنَ سِيرِينَ قَالَ فِي رَجُلٍ تَرَكَ امْرَأَتَهُ وَأَبَوَيْهِ: لِلْمَرْأَةِ الرُّبُعُ، وَلِلْأُمِّ ثُلُثُ جَمِيعِ الْمَالِ، وَمَا بَقِيَ فَلِلْأَبِ وَقَالَ فِي امْرَأَةٍ تَرَكَتْ زَوْجَهَا وَأَبَوَيْهَا: لِلزَّوْجِ النِّصْفُ، وَلِلْأُمِّ ثُلُثُ مَا بَقِيَ، وَلِلْأَبِ مَا بَقِيَ

L27497 He said: If the father’s share exceeds the mother’s by any amount, the mother is allotted one-third.

- قَالَ: إذَا فَضَلَ الْأَبُ الْأُمَّ بِشَيْءٍ فَإِنَّ لِلْأُمِّ الثُّلُثَ.

L27498 As for the opinion we uphold: We have narrated it through the chain of Abd al-Razzaq from Sufyan al-Thawri from Abd al-Rahman ibn Abdullah al-Isbahani from Ikrimah and from Ibn Abbas, that Ibn Abbas said concerning a husband and two parents: The husband is allotted half, and the mother is allotted one-third from the entirety of the estate.

وَأَمَّا الْقَوْلُ الَّذِي قُلْنَا بِهِ: فَرُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ الْأَصْبَهَانِيِّ عَنْ عِكْرِمَةَ وَعَنْ ابْنِ عَبَّاسٍ: أَنَّهُ قَالَ فِي زَوْجٍ وَأَبَوَيْنِ: لِلزَّوْجِ النِّصْفُ، وَلِلْأُمِّ الثُّلُثُ مِنْ جَمِيعِ الْمَالِ.

L27499 From the path of Al-Ḥajjāj ibn Al-Minhāl: Abū ʻAwānah narrated from Al-Aʻmash, from Ibrāhīm Al-Nakhaʻī, who said: ʻAlī ibn Abī Ṭālib said: “The mother receives one-third of the entire estate in the case of [a wife and both parents] or [a husband and both parents].” It was also narrated from Muʻādh ibn Jabal — and it is the opinion of Shurayḥ. This is also the opinion held by Abū Sulaymān.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: لِلْأُمِّ ثُلُثُ جَمِيعِ الْمَالِ. فِي امْرَأَةٍ وَأَبَوَيْنِ، وَزَوْجٍ وَأَبَوَيْنِ - وَرُوِيَ أَيْضًا عَنْ مُعَاذِ بْنِ جَبَلٍ - وَهُوَ قَوْلُ شُرَيْحٍ - وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ أَهْلُ الْقَوْلِ بِأَنَّ لِلْأُمِّ ثُلُثَ مَا بَقِيَ بِمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِيهِ عَنْ الْمُسَيَّبِ بْنِ رَافِعٍ قَالَ قَالَ ابْنُ مَسْعُودٍ: مَا كَانَ اللَّهُ لِيَرَانِي أُفَضِّلُ أُمًّا عَلَى أَبٍ.

L27500 Abu Muhammad said: The proponents of the opinion that the mother is entitled to a third of the residual estate argued, citing what has been narrated to us through the chain narrated by Waki‘ from Sufyan al-Thawri, from his father, from al-Musayyib ibn Rafi‘, who said: Ibn Mas‘ud said, “Allah would not see me give preference to a mother over a father.”

وَبِمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ فُضَيْلِ بْنِ عَمْرٍو الْعَقِيمِيِّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: خَالَفَ ابْنُ عَبَّاسٍ أَهْلَ الصَّلَاةِ فِي زَوْجٍ، وَأَبَوَيْنِ.

L27501 And according to what has been narrated to us through the chain of Waki‘ from Sufyan from Fudayl ibn ‘Amr al-‘Aqimi from Ibrahim al-Nakha‘i, who said: Ibn ‘Abbas diverged from the majority opinion regarding the inheritance shares of a spouse and two parents.

وَقَالُوا: مَعْنَى قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ} [النساء: ١١] أَيْ مِمَّا يَرِثُهُ أَبَوَاهُ. مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا، وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ. أَمَّا قَوْلُ ابْنِ مَسْعُودٍ، فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا نُكْرَةَ فِي تَفْضِيلِ الْأُمِّ عَلَى الْأَبِ: فَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّ رَجُلًا سَأَلَهُ فَقَالَ: «يَا رَسُولَ اللَّهِ مَنْ أَحَقُّ بِحُسْنِ صُحْبَتِي؟ فَقَالَ لَهُ رَسُولُ اللَّهِ: أُمُّكَ، قَالَ: ثُمَّ مَنْ يَا رَسُولَ اللَّهِ؟ قَالَ: أُمُّكَ، قَالَ ثُمَّ مَنْ يَا رَسُولَ اللَّهِ؟ قَالَ: أُمُّكَ، قَالَ: ثُمَّ مَنْ يَا رَسُولَ اللَّهِ؟ قَالَ: ثُمَّ أَبُوكَ» فَفَضَّلَ الْأُمَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَى الْأَبِ فِي حُسْنِ الصُّحْبَةِ - وَقَدْ سَوَّى اللَّهُ تَعَالَى بَيْنَ الْأَبِ وَالْأُمِّ بِإِجْمَاعِنَا وَإِجْمَاعِهِمْ فِي الْمِيرَاثِ إذَا كَانَ لِلْمَيِّتِ وَلَدٌ فَ {وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ} [النساء: ١١] فَمِنْ أَيْنَ تَمْنَعُونَ مِنْ تَفْضِيلِهَا عَلَيْهِ إذَا أَوْجَبَ ذَلِكَ نَصٌّ؟ .

L27502–27504 They said: The meaning of Allah’s statement, the Almighty and Majestic: {And his parents inherit him, so his mother is entitled to one-third} [Quran 4:11] refers to **from** what his parents inherit from him. We know of no valid argument they possess beyond this, and none of this provides any argument for them. As for Ibn Mas‘ud’s statement, no argument can be derived from anyone besides the Messenger of Allah—peace and blessings of Allah be upon him—nor is there any objection to preferring... The mother over the father: It has been authentically reported from the Messenger of Allah—peace and blessings be upon him and his family—that a man asked him, saying, “O Messenger of Allah, who is most deserving of my dutiful kindness?” The Messenger of Allah replied, “Your mother.” He asked, “Then who, O Messenger of Allah?” He said, “Your mother.” He asked again, “Then who, O Messenger of Allah?” He said, “Your mother.” He asked once more, “Then who, O Messenger of Allah?” He said, “Then your father.” Thus, the Prophet—peace and blessings be upon him and his family—favored the mother over the father in dutiful kindness. Allah the Exalted has equalized between the father and mother by our consensus and theirs in inheritance when the deceased has a child, as {for each of the parents is one-sixth} [An-Nisa: 11]. How then can you deny her being favored over him when an explicit text mandates it?[1]

L27505 Moreover, these very individuals who cite Ibn Mas’ud’s statement as evidence are the first to contradict him in this matter, as narrated to us through

[1] **Qur’an references (L27502):** Qur’an 4:11 (An-Nisa).

Abd al-Razzaq from Sufyan al-Thawri from al-A'mash from Ibrahim al-Nakha'i, who said: "Umar ibn al-Khattab and Abdullah ibn Mas'ud did not prefer the mother to the grandfather."

ثُمَّ إِنَّ هَؤُلَاءِ الْمُحْتَجِّينَ بِقَوْلِ ابْنِ مَسْعُودٍ هَذَا أَوَّلُ مُخَالِفِينَ لَهُ فِي ذَلِكَ كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ، وَعَبْدُ اللَّهِ بْنُ مَسْعُودٍ لَا يُفَضِّلَانِ أُمًّا عَلَى جَدٍّ.

L27506 Abu Muhammad said: Those who equivocate by citing Ibn Mas'ud's opinion contradict him and contradict Umar, for they give precedence to the mother over the grandfather, and they give precedence to females over males in certain inheritance cases. They state regarding a woman who dies leaving her husband, her mother, two full brothers, and a uterine sister: "The uterine sister receives a full sixth, while the two full brothers receive a sixth divided between them, each taking half of the sixth." They further assert their views in the case of a woman who dies leaving her husband, or [a case where she dies] leaving her full sister and a paternal brother: "The brother inherits nothing—whereas if he were replaced by a sister, she would receive a sixth, adjusted through ʿawl for her." Thus, they do not deny giving precedence to females over males.

قَالَ أَبُو مُحَمَّدٍ: وَالْمُمَوِّهُونَ بِقَوْلِ ابْنِ مَسْعُودٍ هَذَا يُخَالِفُونَهُ، وَيُخَالِفُونَ عُمَرَ، فَيُفَضِّلُونَ الْأُمَّ عَلَى الْجَدِّ، وَهُمْ يُفَضِّلُونَ الْأُنْثَى عَلَى الذَّكَرِ فِي بَعْضِ الْمَوَارِيثِ. فَيَقُولُونَ فِي امْرَأَةٍ مَاتَتْ وَتَرَكَتْ زَوْجَهَا، وَأُمَّهَا، وَأَخَوَيْنِ شَقِيقَيْنِ، وَأُخْتَهَا لِأُمٍّ: إنَّ لِلْأُخْتِ لِلْأُمِّ السُّدُسَ كَامِلًا، وَلِلذَّكَرَيْنِ الْأَخَوَيْنِ الشَّقِيقَيْنِ السُّدُسَ بَيْنَهُمَا، لِكُلِّ وَاحِدٍ مِنْهُمَا نِصْفُ السُّدُسِ. وَيَقُولُونَ بِآرَائِهِمْ فِي امْرَأَةٍ مَاتَتْ وَتَرَكَتْ زَوْجَهَا، أَوْ أُخْتَهَا شَقِيقَتَهَا وَأَخًا لِأَبٍ: إنَّ الْأَخَ لَا يَرِثُ شَيْئًا - فَلَوْ كَانَ مَكَانَهُ أُخْتٌ: فَلَهَا السُّدُسُ، يُعَالُ لَهَا بِهِ، فَهُمْ لَا يُنْكِرُونَ تَفْضِيلَ الْأُنْثَى عَلَى الذَّكَرِ

L27507 Then they obscure by condemning the preference of the mother over the father where Allah the Exalted has made it obligatory.

ثُمَّ يُمَوِّهُونَ بِتَشْنِيعِ تَفْضِيلِ الْأُمِّ عَلَى الْأَبِ حَيْثُ أَوْجَبَهُ اللَّهُ تَعَالَى.

L27508 As for Ibrāhīm's statement that "Ibn ʿAbbās differed with the people of prayer concerning a spouse and parents," if differing with the people of prayer constitutes disbelief or transgression, then let them consider what they are entering into. The one who criticizes Ibn ʿAbbās in this matter is more liable to these two charges than Ibn ʿAbbās himself.

وَأَمَّا قَوْلُ إبْرَاهِيمَ: خَالَفَ ابْنَ عَبَّاسٍ أَهْلَ الصَّلَاةِ فِي زَوْجٍ وَأَبَوَيْنِ، فَإِنْ كَانَ خِلَافُ أَهْلِ الصَّلَاةِ كُفْرًا أَوْ فِسْقًا فَلْيَنْظُرُوا فِيمَا يَدْخُلُونَ؟ وَالْمُعَرِّضُ بِابْنِ عَبَّاسٍ فِي هَذَا أَحَقُّ بِهَاتَيْنِ الصِّفَتَيْنِ مِنْ ابْنِ عَبَّاسٍ.

L27509 The astonishment concerning this report is: how is it permissible for this Ibrahim to say this when he narrates from Ali ibn Abi Talib, given the concurrence of Ibn Abbas in that matter as we have presented?

وَالْعَجَبُ مِنْ هَذِهِ الرِّوَايَةِ كَيْفَ يَجُوزُ أَنْ يَقُولَ هَذَا إبْرَاهِيمُ وَهُوَ يَرْوِي عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ. مُوَافَقَةَ ابْنِ عَبَّاسٍ فِي ذَلِكَ كَمَا أَوْرَدْنَا؟

L27510–27511 We did not find the opinions of the opposing scholars authentically transmitted from anyone except Zayd alone. Though narrations are reported from ʿAlī and Ibn Masʿūd, none are authenticated from them. The opinions of ʿU-

mar, ʿUthmān, and Ibn Masʿūd could potentially be interpreted in alignment with Ibn Sīrīn's position. It is impermissible to argue in weakening these narrations that they contradict the people of prayer. Thus, their attempts to obscure through this are invalidated. All praise is due to Allah, the Most High.

وَمَا وَجَدْنَا قَوْلَ الْمُخَالِفِينَ يَصِحُّ عَنْ أَحَدٍ إِلَّا عَنْ زَيْدٍ وَحْدَهُ، وَرُوِيَ عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ وَلَمْ يَصِحَّ عَنْهُمَا - وَقَدْ يُمْكِنُ أَنْ يُخَرَّجَ قَوْلُ عُمَرَ، وَعُثْمَانَ، وَابْنِ مَسْعُودٍ عَلَى قَوْلِ ابْنِ سِيرِينَ - وَلَيْسَ يُقَالُ فِي إِضْعَافِ هَذِهِ الرِّوَايَاتِ: خَالَفَ أَهْلَ الصَّلَاةِ - فَبَطَلَ مَا مَوَّهُوا بِهِ مِنْ هَذَا - وَلِلَّهِ تَعَالَى الْحَمْدُ.

L27512 As for their statement concerning Allah's words, exalted is He: {And his parents inherit him, so his mother is entitled to one-third} [An-Nisāʾ 4:11]—meaning that from what his parents inherit—it is invalid, and an addition in the Qur'ān; it is not permissible to uphold it.[2]

وَأَمَّا قَوْلُهُمْ فِي قَوْلِ اللَّهِ تَعَالَى: {وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ} [النساء: ١١] أَيْ مِمَّا يَرِثُهُ أَبَوَاهُ: فَبَاطِلٌ، وَزِيَادَةٌ فِي الْقُرْآنِ لَا يَجُوزُ الْقَوْلُ بِهَا.

L27513 The proof for that is what we have narrated through the chain of Muhammad ibn al-Muthannā via ʿAbd al-Raḥmān ibn Mahdī via Sufyān al-Thawrī from ʿAbd al-Raḥmān ibn al-Iṣbahānī from ʿIkrimah, who said: Ibn ʿAbbās sent me to Zayd ibn Thābit to inquire about [the inheritance of] a husband and two parents. Zayd replied: "The husband receives half, and the mother receives one-third of the remainder." Ibn ʿAbbās asked: "Do you state this by your own opinion or find it in the Book of God Almighty?" Zayd answered: "I state it by my opinion, and I do not grant the mother precedence over the father in shares."

بُرْهَانُ ذَلِكَ مَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَصْبَهَانِيِّ عَنْ عِكْرِمَةَ، قَالَ: أَرْسَلَنِي ابْنُ عَبَّاسٍ إِلَى زَيْدِ بْنِ ثَابِتٍ أَسْأَلُهُ عَنْ زَوْجٍ وَأَبَوَيْنِ؟ فَقَالَ: لِلزَّوْجِ النِّصْفُ وَلِلْأُمِّ ثُلُثُ مَا بَقِيَ، فَقَالَ ابْنُ عَبَّاسٍ: أَتَقُولُهُ بِرَأْيِكَ أَمْ تَجِدُهُ فِي كِتَابِ اللَّهِ تَعَالَى؟ قَالَ زَيْدٌ: أَقُولُهُ بِرَأْيِي، وَلَا أُفَضِّلُ أُمًّا عَلَى أَبٍ.

L27514 Ali said: If Zayd had derived any basis from the verse, he would not have said, "I say it by my opinion: I do not prioritize a mother's share over a father's," but rather would have said, "I say it by the Book of Allah, the Almighty and Majestic."

قَالَ عَلِيٌّ: فَلَوْ كَانَ لِزَيْدٍ بِالْآيَةِ مُتَعَلَّقٌ مَا قَالَ: أَقُولُهُ بِرَأْيِي لَا أُفَضِّلُ أُمًّا عَلَى أَبٍ، وَلَقَالَ: بَلْ أَقُولُهُ بِكِتَابِ اللَّهِ عَزَّ وَجَلَّ

L27515 Abu Muhammad said: Opinion is not a proof, and the explicit text of the Quran necessitates the validity of Ibn Abbas's statement through the words of the Almighty: {Then to his mother belongs a third} [An-Nisa: 11]. This is a general ruling that cannot be particularized.[3]

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ الرَّأْيُ حُجَّةً، وَنَصُّ الْقُرْآنِ يُوجِبُ صِحَّةَ قَوْلِ ابْنِ عَبَّاسٍ بِقَوْلِهِ تَعَالَى: {فَلِأُمِّهِ الثُّلُثُ} [النساء: ١١] فَهَذَا عُمُومٌ لَا يَجُوزُ تَخْصِيصُهُ.

L27516 The astonishment lies in their unanimous agreement with us regarding His statement, the Exalted: *"If he has siblings, then his mother is entitled to a

وَالْعَجَبُ أَنَّهُمْ مُجْمِعُونَ مَعَنَا عَلَى قَوْلِهِ تَعَالَى: {فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ} [النساء: ١١] أَنَّ ذَلِكَ مِنْ رَأْسِ الْمَالِ، لَا مِمَّا يَرِثُهُ الْأَبَوَانِ، ثُمَّ يَقُولُونَ هَاهُنَا فِي قَوْلِهِ تَعَالَى:

[2] **Qur'an references (L27512):** Qur'an 4:11 (An-Nisa).
[3] **Qur'an references (L27515):** Qur'an 4:11 (An-Nisa).

sixth”* [4:11]—that this is taken from the principal estate, not from the share allocated to the parents. Yet here, concerning His statement, the Exalted: *“then his mother is entitled to a third”* [4:11], they assert the intended meaning refers to the parents’ portion. This constitutes an arbitrary interpretation of the Quran and a brazen act of ascribing to Allah—the Exalted—what He did not say. We seek refuge in Allah from such [methods].[4]

{فَلِأُمِّهِ الثُّلُثُ} [النساء: ١١] إِنَّ الْمُرَادَ بِهِ مَا يَرِثُ الْأَبَوَانِ - وَهَذَا تَحَكُّمٌ فِي الْقُرْآنِ وَإِقْدَامٌ عَلَى تَقْوِيلِ اللَّهِ تَعَالَى مَا لَمْ يَقُلْ - وَنَعُوذُ بِاللَّهِ مِنْ هَذَا.

L27517 As for the statement of Ibn Sīrīn: he was correct in one case but erred in the other, because he differentiated between the textual ruling in the two matters, while the text was established in a single manner in all cases. And success is from Allah, the Exalted.

وَأَمَّا قَوْلُ ابْنِ سِيرِينَ: فَأَصَابَ فِي الْوَاحِدَةِ وَأَخْطَأَ فِي الْأُخْرَى، لِأَنَّهُ فَرَّقَ بَيْنَ حُكْمِ النَّصِّ فِي الْمَسْأَلَتَيْنِ، وَإِنَّمَا جَاءَ النَّصُّ مَجِيئًا وَاحِدًا عَلَى كُلِّ حَالٍ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L27518 The Issue of Inheritance of the Two Spouses

[مَسْأَلَة مِيرَاث الزَّوْجَيْنِ]

L27519 Issue 1717: The husband is entitled to half if the wife has neither a child (male or female) nor a grandchild (male or female) from a male child - even if distant - whether the child is from that husband or another.

١٧١٧ - مَسْأَلَةٌ: وَلِلزَّوْجِ النِّصْفُ إِذَا لَمْ يَكُنْ لِلزَّوْجَةِ وَلَدٌ ذَكَرٌ أَوْ أُنْثَى وَلَا وَلَدُ وَلَدٍ ذَكَرٍ أَوْ أُنْثَى، مِنْ وَلَدٍ ذَكَرٍ وَإِنْ سَفَلَ - سَوَاءٌ كَانَ الْوَلَدُ مِنْ ذَلِكَ الزَّوْجِ أَوْ مِنْ غَيْرِهِ.

L27520–27521 If the woman has a male child or a female child, a son’s son, or a son’s daughter—even if they are of lower generations as mentioned—then the husband receives only a quarter.

فَإِنْ كَانَ لِلْمَرْأَةِ ابْنٌ ذَكَرٌ أَوْ أُنْثَى، أَوْ ابْنُ ابْنٍ ذَكَرٍ، أَوْ بِنْتُ ابْنٍ ذَكَرٍ - وَإِنْ سَفَلَ كَمَا ذَكَرْنَا. فَلَيْسَ لِلزَّوْجِ إِلَّا الرُّبُعُ.

L27522 The wife is entitled to a quarter if the husband has no son, daughter, male son’s son, male son’s daughter, or male son’s son’s daughter—even if such descendants are generations removed—whether they are from her or another wife.

وَلِلزَّوْجَةِ الرُّبُعُ إِنْ لَمْ يَكُنْ لِلزَّوْجِ ابْنٌ ذَكَرٌ وَلَا أُنْثَى، وَلَا ابْنُ ابْنٍ ذَكَرٍ أَوْ بِنْتُ ابْنٍ ذَكَرٍ، أَوْ بِنْتُ ابْنِ ابْنٍ ذَكَرٍ وَإِنْ سَفَلَ مَنْ ذَكَرْنَا - سَوَاءٌ مِنْ تِلْكَ الزَّوْجَةِ كَانَ الْوَلَدُ الْمَذْكُورُ، أَوْ مِنْ غَيْرِهَا.

L27523 If the husband has a child or a male grandchild—as we mentioned—the wife is entitled only to one-eighth, whether there is one, two, three, or four wives: they share in the fourth or the eighth.

فَإِنْ كَانَ لِلزَّوْجِ وَلَدٌ، أَوْ وَلَدُ وَلَدٍ ذَكَرٍ - كَمَا ذَكَرْنَا - فَلَيْسَ لِلزَّوْجَةِ إِلَّا الثُّمُنُ، وَسَوَاءٌ كَانَتْ زَوْجَةً وَاحِدَةً، أَوْ اثْنَتَانِ، أَوْ ثَلَاثٌ، أَوْ أَرْبَعٌ: هُنَّ شُرَكَاءُ فِي الرُّبُعِ، أَوْ الثُّمُنِ.

L27524 The proof of that is the text of the preserved Quran, and there is absolutely

[4] **Qur’an references (L27516):** Qur’an 4:11 (An-Nisa).

no disagreement on this fundamental matter. The offspring of daughters hold no legal entitlement to any of that. With certainty, everyone knows that in the era of Allah's Messenger—peace and blessings be upon him and his family—there were deceased individuals who left grandsons from daughters, yet the transmission of all narrators became consistent—era after era—that they neither inherited nor were excluded, as if they never existed. This contrasts with the transmitted rulings on marriage contracts and intercourse—era after era, without disagreement—which apply universally to grandsons from daughters and grandsons from sons, and contrasts likewise with the obligation of rights, manumission, and maintenance mandated by the texts.

L27525 **Issue: There is no ʿawl (proportional adjustment) in any of the prescribed inheritance shares.**

L27526 1718 - Issue: There is no reduction (ʿawl) in any of the prescribed inheritance shares. This occurs when the estate includes individuals entitled to specified shares that the estate cannot accommodate. Examples include: a husband or wife; a consanguine sister and a uterine sister; two consanguine sisters or two paternal sisters and two uterine brothers; a husband or wife, both parents, and a daughter; or two daughters. The apparent ruling in these cases is that the shares are a half, a half, and a third; or a half, a half, and two-thirds; or a half, a half, and one-sixth, and similar configurations.

L27527 The people differed. Some said: Each heir should reduce a portion from their prescribed share until the estate can be divided among them. They based this method on combining their full shares, then dividing the estate proportionally according to the total. For example: a husband entitled to half, a mother entitled to one-sixth, two full sisters entitled to two-thirds, and two maternal sisters entitled to one-third. Their collective shares would thus amount to half, one-sixth, two-thirds, and one-third - though this holds no validity within the real-world structure.

L27528–27530 They said: The husband is allocated half, amounting to three out of six parts, and the mother one-sixth, amounting to one out of six parts. Thus, these are

بُرْهَانُ ذَلِكَ نَصُّ الْقُرْآنِ الْمَحْفُوظِ، وَلَا خِلَافَ فِي هَذَا أَصْلًا، وَلَا حُكْمَ لِوَلَدِ الْبَنَاتِ فِي شَيْءٍ مِنْ ذَلِكَ، وَبِيَقِينٍ يَدْرِي كُلُّ أَحَدٍ أَنَّهُ قَدْ كَانَ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَمْوَاتٌ تَرَكُوا بَنِي بَنَاتٍ، فَاتَّسَقَ نَقْلُ الْجَمِيعِ - عَصْرًا بَعْدَ عَصْرٍ أَنَّهُمْ لَمْ يَرِثُوا، وَلَا حُجِبُوا، بَلْ كَأَنَّهُمْ لَمْ يَكُونُوا، بِخِلَافِ التَّحْرِيمِ فِي عَقْدِ النِّكَاحِ وَالْوَطْءِ الْمَنْقُولِ - عَصْرًا بَعْدَ عَصْرٍ - بِلَا خِلَافٍ أَنَّهُ عَلَى الْعُمُومِ فِي بَنِي الْبَنَاتِ، وَبَنِي الْبَنِينَ، وَبِخِلَافِ وُجُوبِ الْحَقِّ، وَالْعِتْقِ، وَالنَّفَقَةِ الَّتِي أَوْجَبَتْهُ النُّصُوصُ.

[مَسْأَلَة لَا عَوْلَ فِي شَيْءٍ مِنْ مَوَارِيثِ الْفَرَائِضِ]

١٧١٨ - مَسْأَلَةٌ: وَلَا عَوْلَ فِي شَيْءٍ مِنْ مَوَارِيثِ الْفَرَائِضِ وَهُوَ أَنْ يَجْتَمِعَ فِي الْمِيرَاثِ ذَوُو فَرَائِضَ مُسَمَّاةٍ لَا يَحْتَمِلُهَا الْمِيرَاثُ، مِثْلُ: زَوْجٍ أَوْ زَوْجَةٍ، وَأُخْتٍ شَقِيقَةٍ وَأُخْتٍ لِأُمٍّ، أَوْ أُخْتَيْنِ شَقِيقَتَيْنِ أَوْ لِأَبٍ، وَأَخَوَيْنِ لِأُمٍّ، أَوْ زَوْجٍ أَوْ زَوْجَةٍ وَأَبَوَيْنِ وَابْنَةٍ، أَوْ ابْنَتَيْنِ فَإِنَّ هَذِهِ فَرَائِضَ ظَاهِرُهَا أَنَّهُ يَجِبُ النِّصْفُ وَالنِّصْفُ وَالثُّلُثُ، أَوْ نِصْفٌ وَنِصْفٌ وَثُلُثَانِ، أَوْ نِصْفٌ وَنِصْفٌ وَسُدُسٌ، وَنَحْوُ هَذَا.

فَاخْتَلَفَ النَّاسُ. فَقَالَ بَعْضُهُمْ: يَحُطُّ كُلُّ وَاحِدٍ مِنْ فَرْضِهِ شَيْئًا حَتَّى يَنْقَسِمَ الْمَالُ عَلَيْهِمْ، وَرَتَّبُوا ذَلِكَ عَلَى أَنْ يَجْمَعُوا سِهَامَهُمْ كَامِلَةً، ثُمَّ يُقْسَمُ الْمَالُ بَيْنَهُمْ عَلَى مَا اجْتَمَعَ، مِثْلُ: زَوْجٍ وَأُمٍّ وَأُخْتَيْنِ شَقِيقَتَيْنِ وَأُخْتَيْنِ لِأُمٍّ، فَهَذِهِ: ثُلُثَانِ وَثُلُثٌ وَنِصْفٌ وَسُدُسٌ - وَلَا يَصِحُّ هَذَا فِي بِنْيَةِ الْعَالَمِ.

four shares. For the two consanguine sisters, two-thirds is allocated - being four out of six shares, making eight total shares. For the two uterine sisters through the mother, one-third is allocated - being two out of six shares, making ten total shares. The estate is divided among them into ten shares: The husband entitled to half receives three out of ten shares, which is less than one-third. The mother entitled to one-sixth receives one out of ten shares, being one-tenth. The two consanguine sisters entitled to two-thirds receive four out of ten shares, constituting two-fifths. The two uterine sisters through the mother entitled to one-third receive two out of ten shares, being one-fifth. This methodology applies similarly to all analogous cases.

قَالُوا: فَيُجْعَلُ لِلزَّوْجِ النِّصْفُ وَهُوَ ثَلَاثَةٌ مِنْ سِتَّةٍ، وَلِلْأُمِّ السُّدُسُ وَهُوَ وَاحِدٌ مِنْ سِتَّةٍ، فَهَذِهِ أَرْبَعَةُ سِهَامٍ، وَلِلشَّقِيقَتَيْنِ الثُّلُثَانِ، وَهُمَا أَرْبَعَةٌ مِنْ سِتَّةٍ، فَهَذِهِ ثَمَانِيَةٌ، وَلِلْأُخْتَيْنِ لِلْأُمِّ الثُّلُثُ، وَهُوَ اثْنَانِ مِنْ سِتَّةٍ - فَهَذِهِ عَشَرَةٌ، يُقْسَمُ الْمَالُ بَيْنَهُمْ عَلَى عَشَرَةِ أَسْهُمٍ، فَلِلزَّوْجِ الَّذِي لَهُ النِّصْفُ ثَلَاثَةٌ مِنْ عَشَرَةٍ، فَهُوَ أَقَلُّ مِنْ الثُّلُثِ. وَلِلْأُمِّ الَّتِي لَهَا السُّدُسُ وَاحِدٌ مِنْ عَشَرَةٍ وَهُوَ الْعُشْرُ. وَلِلشَّقِيقَتَيْنِ اللَّتَيْنِ لَهُمَا الثُّلُثَانِ أَرْبَعَةٌ مِنْ عَشَرَةٍ، فَذَلِكَ خُمُسَانِ. وَلِلْأُخْتَيْنِ لِلْأُمِّ اللَّتَيْنِ لَهُمَا الثُّلُثُ اثْنَانِ مِنْ عَشَرَةٍ، فَهُوَ الْخُمُسُ - وَهَكَذَا فِي سَائِرِ هَذِهِ الْمَسَائِلِ.

L27531 This is an opinion first stated by Zayd ibn Thabit, endorsed by Umar ibn al-Khattab, and this [opinion] is authentically reported from him. It has been narrated from Ali and Ibn Mas'ud without an isnad, and was mentioned from al-Abbas though unsoundly attributed. It is authentically reported from Shuraih and a small group of the Successors.

وَهُوَ قَوْلٌ أَوَّلُ مَنْ قَالَ بِهِ زَيْدُ بْنُ ثَابِتٍ، وَوَافَقَهُ عَلَيْهِ عُمَرُ بْنُ الْخَطَّابِ وَصَحَّ عَنْهُ هَذَا، وَرُوِيَ عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ غَيْرَ مُسْنَدٍ، وَذُكِرَ عَنْ الْعَبَّاسِ وَلَمْ يَصِحَّ، وَصَحَّ عَنْ شُرَيْحٍ، وَنَفَرٍ مِنْ التَّابِعِينَ يَسِيرٍ.

L27532 And with this say Abu Hanifah, Malik, Al-Shafi'i, Ahmad, and the companions of these scholars. When their opinions unite on a matter, the easiest thing for them is to proclaim consensus. If they cannot achieve this, they incur no hardship in claiming that it represents the majority opinion, that opposition to it constitutes an isolated view, and that their opponents indeed grieve for them regarding their entanglement in these false claims. We seek refuge in Allah from the likes of such a claim.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَصْحَابُ هَؤُلَاءِ الْقَوْمِ إذَا اجْتَمَعَ رَأْيُهُمْ عَلَى شَيْءٍ كَانَ أَسْهَلُ شَيْءٍ عَلَيْهِمْ دَعْوَى الْإِجْمَاعِ، فَإِنْ لَمْ يُمْكِنْهُمْ ذَلِكَ لَمْ تَكُنْ عَلَيْهِمْ مُؤْنَةٌ مِنْ دَعْوَى: أَنَّهُ قَوْلُ الْجُمْهُورِ، وَأَنَّ خِلَافَهُ شُذُوذٌ، وَأَنَّ خُصُومَهُمْ لَيَرْثُونَ لَهُمْ مِنْ تَوَرُّطِهِمْ فِي هَذِهِ الدَّعَاوَى الْكَاذِبَةِ - نَعُوذُ بِاَللَّهِ مِنْ مِثْلِهَا.

L27533 By Allah, I would not dare ascribe to anyone a statement unverified as having been uttered by that person except one who trivializes falsehood, presumes to propagate it, is stripped of moral reliability.

وَأَيْمُ اللَّهِ لَا أَقْدَمُ عَلَى أَنْ يُنْسَبَ إلَى أَحَدٍ قَوْلٌ لَمْ يَثْبُتْ عِنْدَهُ أَنَّ ذَلِكَ الْمَرْءَ قَالَهُ إلَّا مُسْتَسْهِلُ الْكَذِبِ، مَقْدِمٌ عَلَيْهِ سَاقِطُ الْعَدَالَةِ.

L27534 As for us, if a statement is verified to us from an individual, we attribute it to him. But if we narrate it and it is not verified to us, we say: "It was reported from so-and-so." If no statement is reported to us from him, we do

not attribute to him any statement that has not been transmitted to us from him. We neither spread falsehoods nor mention it—neither to our detriment nor to our benefit.

وَأَمَّا نَحْنُ فَإِنْ صَحَّ عِنْدَنَا عَنْ إِنْسَانٍ أَنَّهُ قَالَ قَوْلًا نَسَبْنَاهُ إِلَيْهِ، وَإِنْ رُوِّينَاهُ وَلَمْ يَصِحَّ عِنْدَنَا، قُلْنَا: رُوِيَ عَنْ فُلَانٍ، فَإِنْ لَمْ يُرْوَ لَنَا عَنْهُ قَوْلٌ لَمْ نَنْسُبْ إِلَيْهِ قَوْلًا لَمْ يَبْلُغْنَا عَنْهُ، وَلَا نَتَكَثَّرُ بِالْكَذِبِ، وَلَمْ نَذْكُرْهُ لَا عَلَيْنَا وَلَا لَنَا.

L27535 We have narrated it through the chain of Saʿīd ibn Manṣūr ← ʿAbd al-Raḥmān ibn Abī al-Zināد ← his father ← Khārijah ibn Zayd ibn Thābit ← his father: that he was the first to implement *ʿawl* in inheritance allocations, and the maximum extent to which he applied *ʿawl* reached two-thirds of the principal of the prescribed share.

رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ عَنْ أَبِيهِ عَنْ خَارِجَةَ بْنِ زَيْدِ بْنِ ثَابِتٍ عَنْ أَبِيهِ: أَنَّهُ أَوَّلُ مَنْ عَالَ فِي الْفَرَائِضِ، وَأَكْثَرُ مَا بَلَغَ بِالْعَوْلِ مِثْلُ ثُلُثَيْ رَأْسِ الْفَرِيضَةِ.

L27536 Abu Muhammad said: This suffices to invalidate this claim, for it is an innovation not enacted by any Sunnah of the Messenger of Allah—peace and blessings be upon him. Rather, it is a precaution taken by some of the predecessors—may Allah be pleased with them—who saw it, and they intended good through it.

قَالَ أَبُو مُحَمَّدٍ: هَذَا يَكْفِي مِنْ إِبْطَالِ هَذَا الْقَوْلِ أَنَّهُ مُحْدَثٌ لَمْ تَمْضِ بِهِ سُنَّةٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا هُوَ احْتِيَاطٌ مِمَّنْ رَآهُ مِنْ السَّلَفِ - رِضْوَانُ اللَّهِ عَلَيْهِمْ -، قَصَدُوا بِهِ الْخَيْرَ.

L27537–27538 He upheld the first opinion: ʿAbdullāh ibn ʿAbbās, as transmitted through Wakīʿ (who informed us), via Ibn Jurayj reporting from ʿAṭāʾ from Ibn ʿAbbās, who said: “The fixed inheritance shares do not undergo *ʿawl*.”

وَقَالَ بِالْقَوْلِ الْأَوَّلِ: عَبْدُ اللَّهِ بْنُ عَبَّاسٍ كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ الْفَرَائِضَ لَا تَعُولُ

L27539 And via the chain of Saʿīd ibn Manṣūr, Sufyān—he is Ibn ʿUyaynah—narrated to us from ʿAmr ibn Dīnār, who said: Ibn ʿAbbās said: A prescribed share does not undergo ʿawl.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: قَالَ ابْنُ عَبَّاسٍ: لَا تَعُولُ فَرِيضَةٌ.

L27540 From the chain of Saʿīd ibn Manṣūr: Sufyān ibn ʿUyaynah narrated to us, Muḥammad ibn Isḥāq narrated to us from al-Zuhrī, from ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah ibn Masʿūd, from Ibn ʿAbbās, who said: “Do you not see the one who enumerated the grains of ʿĀlij’s sand, yet apportioned the estate as a half, another half, and a third? It is nothing but two halves, three thirds, and four quarters!”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: أَتَرَوْنَ الَّذِي أَحْصَى رَمْلَ عَالِجٍ عَدَدًا جَعَلَ فِي مَالٍ نِصْفًا وَنِصْفًا وَثُلُثًا، إِنَّمَا هُوَ نِصْفَانِ، وَثَلَاثَةُ أَثْلَاثٍ، وَأَرْبَعَةُ أَرْبَاعٍ.

L27541 From the path of Ismāʿīl ibn Isḥāq al-Qāḍī, narrated to us ʿAlī ibn ʿAbdullāh—he is Ibn al-Madīnī—narrated to us Yaʿqūb ibn Ibrāhīm ibn Saʿd ibn Ibrāhīm

ibn ʿAbd al-Raḥmān ibn ʿAwf, narrated to us my father from Muḥammad ibn Isḥāq, who narrated to me from Ibn Shihāb al-Zuhrī from ʿUbaydullāh ibn ʿAbdullāh ibn ʿUtbah ibn Masʿūd, who said: "I went out, along with Zufar ibn Aws, to Ibn ʿAbbās. We conversed in his presence until the discussion turned to the fixed shares of inheritance. Ibn ʿAbbās remarked: 'Glory be to Allah, the Almighty. Do you not see that the One who enumerated the sand of a vast desert in number decreed in an estate a half, a half, and a third? The two halves already account for the entire estate—so where is the place of the third?' Zufar said to him: 'O Ibn ʿAbbās, who was the first to apply *ʿawl* to the inheritance shares?' He replied: 'Umar ibn al-Khaṭṭāb. When conflicting shares converged before him, and some overlapped with others—and he was a man of piety—he declared: 'By Allah, I do not know which of you Allah, exalted and glorified, has prioritized nor which He has deferred. I find no solution more comprehensive than to distribute this estate among you according to the allotted shares.'"

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ ابْنُ الْمَدِينِيِّ - نا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ نا أَبِي عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ حَدَّثَنِي ابْنُ شِهَابٍ الزُّهْرِيُّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ قَالَ: خَرَجْت أَنَا، وَزُفَرُ بْنُ أَوْسٍ إلَى ابْنِ عَبَّاسٍ فَتَحَدَّثْنَا عِنْدَهُ حَتَّى عَرَضَ ذِكْرُ فَرَائِضِ الْمَوَارِيثِ فَقَالَ ابْنُ عَبَّاسٍ: سُبْحَانَ اللَّهِ الْعَظِيمِ أَتَرَوْنَ الَّذِي أَحْصَى رَمْلَ عَالِجٍ عَدَدًا جَعَلَ فِي مَالٍ نِصْفًا وَنِصْفًا وَثُلُثًا: النِّصْفَانِ قَدْ ذَهَبَا بِالْمَالِ، أَيْنَ مَوْضِعُ الثُّلُثِ؟ فَقَالَ لَهُ زُفَرُ: يَا ابْنَ الْعَبَّاسِ مَنْ أَوَّلُ مَنْ أَعَالَ الْفَرَائِضَ؟ فَقَالَ: عُمَرُ بْنُ الْخَطَّابِ، لَمَّا الْتَقَتْ عِنْدَهُ الْفَرَائِضُ، وَدَافَعَ بَعْضُهَا بَعْضًا، وَكَانَ امْرَأً وَرِعًا، فَقَالَ: وَاَللَّهِ مَا أَدْرِي أَيُّكُمْ قَدَّمَ اللَّهُ عَزَّ وَجَلَّ وَلَا أَيُّكُمْ أَخَّرَ، فَمَا أَجِدُ شَيْئًا هُوَ أَوْسَعُ مِنْ أَنْ أَقْسِمَ بَيْنَكُمْ هَذَا الْمَالَ بِالْحِصَصِ،

L27542 He applied to every rightful claimant the proportional reduction (ʿawl) that affected them. Ibn Abbas said: "By Allah, if those whom Allah Almighty had prioritized were prioritized, no fixed share would have been subject to reduction." Zufar said to him: "Which shares, O Ibn Abbas, has Allah Almighty prioritized?" He replied: "Every fixed share that Allah has not lowered from one fixed share except to another fixed share—these are the ones He prioritized. As for what He deferred: whenever a fixed share deviates from its ordained portion, it receives only what remains. That is what He deferred."

فَأَدْخَلَ عَلَى كُلِّ ذِي حَقٍّ مَا دَخَلَ عَلَيْهِ مِنْ الْعَوْلِ. قَالَ ابْنُ عَبَّاسٍ: وَأَيْمُ اللَّهِ لَوْ قَدَّمَ مَنْ قَدَّمَ اللَّهُ عَزَّ وَجَلَّ مَا عَالَتْ فَرِيضَةٌ؟ فَقَالَ لَهُ زُفَرُ: وَأَيُّهَا يَا ابْنَ عَبَّاسٍ قَدَّمَ اللَّهُ عَزَّ وَجَلَّ؟ قَالَ: كُلُّ فَرِيضَةٍ لَمْ يُهْبِطْهَا اللَّهُ عَزَّ وَجَلَّ عَنْ فَرِيضَةٍ إلَّا إلَى فَرِيضَةٍ، فَهَذَا مَا قَدَّمَ، وَأَمَّا مَا أَخَّرَ فَكُلُّ فَرِيضَةٍ إذَا زَالَتْ عَنْ فَرْضِهَا لَمْ يَكُنْ لَهَا إلَّا مَا بَقِيَ، فَذَلِكَ الَّذِي أَخَّرَ.

L27543–27544 In the prior case, the husband is entitled to half. If a condition arises that removes this entitlement, he reverts to a quarter, and nothing can take that portion from him.

فَأَمَّا الَّذِي قَدَّمَ، فَالزَّوْجُ لَهُ النِّصْفُ، فَإِنْ دَخَلَ عَلَيْهِ مَا يُزِيلُهُ رَجَعَ إلَى الرُّبُعِ لَا يُزَايِلُهُ عَنْهُ شَيْءٌ.

L27545 The wife is entitled to a quarter. If the quarter ceases to apply, she is entitled to an eighth; nothing deprives her of it.

وَالزَّوْجَةُ لَهَا الرُّبُعُ، فَإِنْ زَالَتْ عَنْهُ صَارَتْ إلَى الثُّمُنِ لَا يُزَايِلُهَا عَنْهُ شَيْءٌ.

L27546 The mother is entitled to a third. If her third is reduced due to the presence of any of the prescribed shares entering upon her, she then receives a sixth, and nothing diminishes it further. These are the prescribed shares ordained by Allah, the Almighty.

وَالْأُمُّ لَهَا الثُّلُثُ فَإِنْ زَالَتْ عَنْهُ بِشَيْءٍ مِنْ الْفَرَائِضِ وَدَخَلَ عَلَيْهَا صَارَتْ إلَى السُّدُسِ لَا يُزَايِلُهَا عَنْهُ شَيْءٌ، فَهَذِهِ الْفَرَائِضُ الَّتِي قَدَّمَ اللَّهُ عَزَّ وَجَلَّ.

L27547 The fixed share for daughters is half [for one] and two-thirds [for multiple]. As for sisters, they are entitled to the same unless the fixed shares [of other heirs] remove their entitlement, in which case they have no right except to what remains.

وَالَّتِي أَخَّرَ: فَرِيضَةُ الْأَخَوَاتِ وَالْبَنَاتِ لَهُنَّ النِّصْفُ فَمَا فَوْقَ ذَلِكَ، وَالثُّلُثَانِ، فَإِذَا أَزَالَتْهُنَّ الْفَرَائِضُ عَنْ ذَلِكَ لَمْ يَكُنْ لَهُنَّ إلَّا مَا يَبْقَى.

L27548 When what Allah, the Mighty and Majestic, has advanced and what He has postponed are combined, precedence is given to those who were granted priority, and they are awarded their right in full. If anything remains, it belongs to those whose rights were postponed, but if nothing remains, there is nothing for him. Zufar said to him, "What prevented you, O Ibn Abbas, from advising him with this opinion?" Ibn Abbas replied, "I held back out of reverence for him."

فَإِذَا اجْتَمَعَ مَا قَدَّمَ اللَّهُ عَزَّ وَجَلَّ وَمَا أَخَّرَ: بُدِئَ بِمَنْ قَدَّمَ وَأُعْطِيَ حَقَّهُ كَمَلًا، فَإِنْ بَقِيَ شَيْءٌ كَانَ لِمَنْ أَخَّرَ، وَإِنْ لَمْ يَبْقَ شَيْءٌ فَلَا شَيْءَ لَهُ؟ فَقَالَ لَهُ زُفَرُ: فَمَا مَنَعَك يَا ابْنَ عَبَّاسٍ أَنْ تُشِيرَ عَلَيْهِ بِهَذَا الرَّأْيِ؟ قَالَ ابْنُ عَبَّاسٍ: هِبْتُهُ.

L27549 Ibn Shihab said: "By Allah, had a just Imam not come before him, his judgment would have been guided by scrupulousness, and he would have proceeded with a matter that had already been settled. No two scholars among the people of knowledge ever disagreed with Ibn Abbas regarding the opinion he expressed."

قَالَ ابْنُ شِهَابٍ: وَاَللَّهِ لَوْلَا أَنَّهُ تَقَدَّمَهُ إمَامٌ عَادِلٌ لَكَانَ أَمْرُهُ عَلَى الْوَرَعِ فَأَمْضَى أَمْرًا مَضَى مَا اخْتَلَفَ عَلَى ابْنِ عَبَّاسٍ مِنْ أَهْلِ الْعِلْمِ اثْنَانِ فِيمَا قَالَ.

L27550 And by the saying of Ibn Abbas: This is stated by 'Ata', Muhammad ibn Ali ibn Abi Talib, Muhammad ibn Ali ibn al-Husayn, Abu Sulayman, all our jurists, and others.

وَبِقَوْلِ ابْنِ عَبَّاسٍ هَذَا يَقُولُ عَطَاءٌ وَمُحَمَّدُ بْنُ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَمُحَمَّدُ بْنُ عَلِيِّ بْنِ الْحُسَيْنِ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا، وَغَيْرُهُمْ.

L27551 Abu Muhammad said: We examined the evidence relied upon by proponents of ʿawl (proportional reduction) and found the reasoning that ʿUmar (may Allah be pleased with him) had cited: that he could not determine whom Allah the Exalted had advanced or postponed.

قَالَ أَبُو مُحَمَّدٍ: فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ ذَهَبَ إلَى الْعَوْلِ فَوَجَدْنَا مَا ذَكَرَهُ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - مِنْ أَنَّهُ لَمْ يَعْرِفْ مَنْ قَدَّمَ اللَّهُ تَعَالَى، وَلَا مَنْ أَخَّرَ.

L27552–27554 The later scholars among them further asserted: None of them holds greater entitlement to diminution than others. Thus, it becomes mandatory to treat them like creditors and beneficiaries of bequests when the assets are inadequate to cover their entitlements. The obligation is therefore to apply the

زَادَ الْمُتَأَخِّرُونَ مِنْهُمْ أَنْ قَالُوا: لَيْسَ بَعْضُهُمْ أَوْلَى بِالْحَطِيطَةِ مِنْ بَعْضٍ فَالْوَاجِبُ أَنْ يَكُونُوا كَالْغُرَمَاءِ، وَالْمُوصَى لَهُمْ، يَضِيقُ الْمَالُ عَنْ حُقُوقِهِمْ، فَالْوَاجِبُ أَنْ يُعَمُّوا

diminution universally. They accused those who invalidated the ʿawl of inconsistency, confined to a single issue, while others stated it only in another matter: “They possess no valid argument whatsoever beyond what we have cited, nor any proof in any part of it.” As for ʿUmar’s statement—may Allah be pleased with him—“I do not know whom Allah the Almighty has elevated or deferred,” he spoke truthfully. Likewise, he refrained from ruling on matters unclear to him. However, we stand upon certainty and coolness of certainty that Allah the Exalted did not... He obligates us with what has not become clear to us. If it was unclear to Umar, it was not unclear to Ibn Abbas. The obscurity of a ruling to one unaware of it is not a proof against those who know it. Indeed, Umar (may Allah be pleased with him) lacked knowledge of the permissibility of excessive dowries, the time of the death of the Messenger of Allah (peace and blessings be upon him and his family), what constitutes kalāla, and many other matters. Yet this did not diminish the validity of the knowledge held by those who knew them.

L27555 As for their likening this to creditors and legatees, it is invalid and a corrupt analogy. For if the property—according to their overblown claims—were sufficient for creditors and legatees, and if after proportional division (tahass) the debtor’s property were perpetually divided among creditors and legatees until fully distributed, the case of proportional reduction (ʿawl) would still differ entirely. Indeed, all that Allah the Exalted has created in this world, Paradise, Hell, and the Throne cannot accommodate more than two halves, three thirds, four fourths, six sixths, or eight eighths. Thus, it is absurd to claim that Allah Almighty would impose upon us the impossible or what is beyond human capacity, nor is it conceivable that He would demand from us regarding the resolution or deliverance from this matter what He has not clarified for us how to implement.

L27556 As for their statement, “None of them is more entitled to remission than others,” it is a correct statement if supplemented with what it lacks—namely, that there is no text or legal necessity requiring the remission of some of them to the exclusion of others.

L27557 And it is also said to them in this ruling: You are not permitted to diminish

بِالْخَطِيطَةِ، وَادَّعَوْا عَلَى مَنْ أَبْطَلَ الْعَوْلَ تَنَاقُضًا فِي مَسْأَلَةٍ وَاحِدَةٍ فَقَطْ، وَقَالَ بَعْضُهُمْ فِي مَسْأَلَةٍ أُخْرَى فَقَطْ: مَا لَهُمْ حُجَّةٌ أَصْلًا غَيْرَ مَا ذَكَرْنَا، وَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ. أَمَّا قَوْلُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - " مَا أَدْرِي أَيُّهُمْ قَدَّمَ اللَّهُ عَزَّ وَجَلَّ وَلَا أَيُّهُمْ أَخَّرَ " فَصَدَقَ:، وَمِثْلُهُ لَمْ يَدَعْ مَا لَمْ يَتَبَيَّنْ لَهُ، إِلَّا أَنَّا عَلَى يَقِينٍ وَثَلْجٍ مِنْ أَنَّ اللَّهَ تَعَالَى لَمْ يُكَلِّفْنَا مَا لَمْ يَتَبَيَّنْ لَنَا، فَإِنْ كَانَ خَفِيَ عَلَى عُمَرَ فَلَمْ يَخْفَ عَلَى ابْنِ عَبَّاسٍ، وَلَيْسَ مَغِيبُ الْحُكْمِ عَمَّنْ غَابَ عَنْهُ حُجَّةً عَلَى مَنْ عَلِمَهُ، وَقَدْ غَابَ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - عِلْمُ جَوَازِ كَثْرَةِ الصَّدَاقِ، وَمَوْتُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَمَا الْكَلَالَةُ، وَأَشْيَاءُ كَثِيرَةٌ، فَمَا كَدَحَ ذَلِكَ فِي عِلْمِ مَنْ عَلِمَهَا.

وَأَمَّا تَشْبِيهُهُمْ ذَلِكَ بِالْغُرَمَاءِ وَالْمُوصَى لَهُمْ، فَبَاطِلٌ وَتَشْبِيهٌ فَاسِدٌ، لِأَنَّ الْمَالَ لَوْ اتَّسَعَ عَلَى مَا هَوَّلُوا وَسِعَ الْغُرَمَاءَ وَالْمُوصَى لَهُمْ، وَلَوُجِدَ بَعْدَ التَّحَاصِّ مَالُ الْغَرِيمِ يُقْسَمُ عَلَى الْغُرَمَاءِ وَالْمُوصَى لَهُمْ أَبَدًا، حَتَّى يَسَعَهُمْ، وَلَيْسَ كَذَلِكَ أَمْرُ الْعَوْلِ، فَإِنَّ كُلَّ مَا خَلَقَ اللَّهُ تَعَالَى فِي الدُّنْيَا وَالْجَنَّةِ وَالنَّارِ وَالْعَرْشِ لَا يَتَّسِعُ لِأَكْثَرَ مِنْ: نِصْفَيْنِ، أَوْ ثَلَاثَةِ أَثْلَاثٍ، أَوْ أَرْبَعَةِ أَرْبَاعٍ، أَوْ سِتَّةِ أَسْدَاسٍ، أَوْ ثَمَانِيَةِ أَثْمَانٍ، فَمِنَ الْبَاطِلِ أَنْ يُكَلِّفَنَا اللَّهُ عَزَّ وَجَلَّ الْمُحَالَ وَمَا لَيْسَ فِي الْوُسْعِ، وَمِنَ الْبَاطِلِ أَنْ يُكَلِّفَنَا مِنَ الْمَخْرَجِ مِنْ ذَلِكَ وَالْمُخَلِّصِ مِنْهُ مَا لَمْ يُبَيِّنْ عَنَّا كَيْفَ نَعْمَلُ فِيهِ

وَأَمَّا قَوْلُهُمْ " لَيْسَ بَعْضُهُمْ أَوْلَى بِالْخَطِيطَةِ مِنْ بَعْضٍ " فَكَلَامٌ صَحِيحٌ إِنْ زِيدَ فِيهِ مَا يَنْقُصُ مِنْهُ، وَهُوَ أَنْ لَا يُوجِبَ حَطَّ بَعْضِهِمْ دُونَ بَعْضٍ نَصٌّ أَوْ ضَرُورَةٌ.

any heir's share from what Allah, the Exalted, has assigned through your precaution or conjecture—except by explicit textual evidence or necessity.

وَيُقَالُ لَهُمْ هَاهُنَا أَيْضًا: وَلَا لَكُمْ أَنْ تَحُطُّوا أَحَدًا مِنْ الْوَرَثَةِ مِمَّا جَعَلَ اللَّهُ تَعَالَى بِاحْتِيَاطِك وَظَنِّك، لَكِنْ بِنَصٍّ أَوْ ضَرُورَةٍ.

L27558 As for their claim of contradiction against those who prohibit on the basis of ʿawl in the issue they mentioned, we will mention it, God willing, the Exalted, and maintain that there was no contradiction whatsoever in it.

وَأَمَّا دَعْوَاهُمْ التَّنَاقُضِ مِنْ الْمَانِعِينَ بِالْعَوْلِ فِي الْمَسْأَلَةِ الَّتِي ذَكَرُوا فَسَنَذْكُرُهَا إنْ شَاءَ اللَّهُ تَعَالَى وَنَرَى أَنَّهُمْ لَمْ يَتَنَاقَضُوا فِيهَا أَصْلًا.

L27559 Since all the arguments they raised have been refuted, it is therefore obligatory to examine the proofs cited by those who invalidate the application of ʿawl. We find that Ibn Abbas - in the narration we transmitted through ʿUbayd Allāh ibn ʿAbd Allāh - structured a systematic argument on this matter that none can challenge. The first element of this is his report stating that ʿUmar was the first to apply ʿawl to inheritance shares while admitting he did not comprehend Allah's intended ruling in this matter. This establishes that it was an opinion not preceded by any Sunnah - and this suffices to refute this view.

فَإِذْ قَدْ بَطَلَ كُلُّ مَا شَغَبُوا بِهِ فَالْوَاجِبُ أَنْ نَنْظُرَ فِيمَا احْتَجَّ بِهِ الْمُبْطِلُونَ لِلْعَوْلِ. فَوَجَدْنَا ابْنَ عَبَّاسٍ فِي الْخَبَرِ الَّذِي قَدْ أَوْرَدْنَا مِنْ طَرِيقِ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ عَنْهُ قَدْ انْتَظَمَ بِالْحُجَّةِ فِي ذَلِكَ بِمَا لَا يَقْدِرُ أَحَدٌ عَلَى الِاعْتِرَاضِ فِيهِ، وَأَوَّلُ ذَلِكَ إخْبَارُهُ بِأَنَّ عُمَرَ أَوَّلُ مَنْ عَالَ الْفَرَائِضَ بِاعْتِرَافِهِ؛ أَنَّهُ لَمْ يَعْرِفْ مُرَادَ اللَّهِ تَعَالَى فِي ذَلِكَ، فَصَحَّ أَنَّهُ رَأْيٌ لَمْ يَتَقَدَّمْهُ سُنَّةٌ - وَهَذَا يَكْفِي فِي رَدِّ هَذَا الْقَوْلِ.

L27560 As for Ibn Abbas, he described that his position on this matter is the explicit text of the Quran, hence it is the truth. He clarified that the discussion of ʿawl (proportional adjustment of shares) only occurs in a prescribed share involving both parents, a husband and a wife, sisters, and daughters only, or a subset of these heirs.

وَأَمَّا ابْنُ عَبَّاسٍ: فَإِنَّهُ وَصَفَ أَنَّ قَوْلَهُ فِي ذَلِكَ هُوَ نَصُّ الْقُرْآنِ، فَهُوَ الْحَقُّ، وَبَيَّنَ أَنَّ الْكَلَامَ فِي الْعَوْلِ لَا يَقَعُ إلَّا فِي فَرِيضَةٍ فِيهَا أَبَوَانِ وَزَوْجٌ وَزَوْجَةٌ وَأَخَوَاتٌ وَبَنَاتٌ فَقَطْ، أَوْ بَعْضُهُمْ.

L27561–27562 Abu Muhammad said: No one possessing a sound mind would doubt that Allah the Exalted never intended to impose obligations that wealth cannot accommodate. We have found three decisive arguments necessitating the validity of Ibn Abbas's opinion. The first of these—which Ibn Abbas himself mentioned—is giving precedence to those from whom Allah the Exalted has never reduced a specified obligation over those from whom He has reduced a specified obligation, to the extent that nothing remains for the latter except what is left.

قَالَ أَبُو مُحَمَّد: وَلَا يَشُكُّ ذُو مُسْكَةِ عَقْلٍ فِي أَنَّ اللَّهَ تَعَالَى لَمْ يُرِدْ قَطُّ إعْطَاءَ فَرَائِضَ لَا يَسَعُهَا الْمَالُ، وَوَجَدْنَا ثَلَاثَ حُجَجٍ قَاطِعَةٍ مُوجِبَةٍ صِحَّةَ قَوْلِ ابْنِ عَبَّاسٍ. إحْدَاهَا - الَّتِي ذَكَرَ مِنْ تَقْدِيمِ مَنْ لَمْ يَحُطَّهُ اللَّهُ تَعَالَى قَطُّ عَنْ فَرْضٍ مُسَمًّى، عَلَى مَنْ حَطَّهُ عَنْ الْفَرْضِ الْمُسَمَّى إلَى أَنْ لَا يَكُونَ لَهُ إلَّا مَا بَقِيَ.

L27563 The second is that by rational necessity we know those whom Allah the Exalted has mandated their inheritance unconditionally—when they and the deceased are both free persons sharing one religion—and those entirely un-

وَالثَّانِيَةُ - أَنَّهُ بِضَرُورَةِ الْعَقْلِ عَرَفْنَا أَنَّ تَقْدِيمَ مَنْ أَوْجَبَ اللَّهُ تَعَالَى مِيرَاثَهُ عَلَى كُلِّ حَالٍ، وَمَنْ لَا يَمْنَعُهُ مِنْ الْمِيرَاثِ مَانِعٌ أَصْلًا، إذَا كَانَ هُوَ وَالْمَيِّتُ حُرَّيْنِ عَلَى دِينٍ

hindered by any fundamental barrier must take precedence over those who may or may not inherit. For it is impermissible to deny those whom Allah has never barred from inheritance what He has ordained for them; by rational necessity we know that contingent heirs cannot inherit except after those who must inherit without fail.

وَاحِدٍ، عَلَى مَنْ قَدْ يَرِثُ وَقَدْ لَا يَرِثُ، لِأَنَّ مَنْ لَمْ يَمْنَعْهُ اللَّهُ تَعَالَى قَطُّ مِنَ الْمِيرَاثِ لَا يَحِلُّ مَنْعُهُ مِمَّا جَعَلَ اللَّهُ تَعَالَى لَهُ، وَكُلُّ مَنْ قَدْ يَرِثُ وَقَدْ لَا يَرِثُ، فَبِالضَّرُورَةِ نَدْرِي أَنَّهُ لَا يَرِثُ إِلَّا بَعْدَ مَنْ يَرِثُ وَلَا بُدَّ.

L27564 We have decreed that the spouses and parents inherit perpetually in all circumstances.

وَوَجَدْنَا الزَّوْجَيْنِ وَالْأَبَوَيْنِ يَرِثُونَ أَبَدًا عَلَى كُلِّ حَالٍ.

L27565 We hold that the sisters may inherit and may not inherit.

وَوَجَدْنَا الْأَخَوَاتِ قَدْ يَرِثْنَ وَقَدْ لَا يَرِثْنَ.

L27566 We have determined that daughters do not inherit except after the inheritance of those who inherit alongside them.

وَوَجَدْنَا الْبَنَاتِ لَا يَرِثْنَ إِلَّا بَعْدَ مِيرَاثِ مَنْ يَرِثُ مَعَهُنَّ.

L27567 The third principle is that we examine those we have mentioned. If we find the estate sufficient to fulfill its prescribed shares, we are certain that Allah the Almighty intended them for those very shares as explicitly designated for them in the Quran. But if we find the estate insufficient to fulfill their prescribed shares, we examine them one by one. For anyone among those mentioned whom we determine—through a consensus so certain it is self-evident to all Muslims—to lack entitlement to what Allah the Almighty designated in the Quran for that specific share, we are absolutely certain that Allah the Exalted never intended him to inherit what is stipulated therein. Thus, we assign him only what was unanimously agreed upon for him. If no agreement exists for him to receive anything, we assign him nothing, as it is conclusively established that he has no entitlement under the Quranic stipulations.

وَالثَّالِثَةُ - أَنْ نَنْظُرَ فِيمَنْ ذَكَرْنَا فَإِنْ وَجَدْنَا الْمَالَ يَتَّسِعُ لِفَرَائِضِهِنَّ أَيْقَنَّا أَنَّ اللَّهَ عَزَّ وَجَلَّ أَرَادَهُمْ فِي تِلْكَ الْفَرِيضَةِ نَفْسِهَا بِمَا سُمِّيَ لَهُمْ فِيهَا فِي الْقُرْآنِ، وَإِنْ وَجَدْنَا الْمَالَ لَا يَتَّسِعُ لِفَرَائِضِهِمْ نَظَرْنَا فِيهِمْ وَاحِدًا وَاحِدًا، فَمَنْ وَجَدْنَا مِمَّنْ ذَكَرْنَا قَدْ اتَّفَقَ جَمِيعُ أَهْلِ الْإِسْلَامِ اتِّفَاقًا مَقْطُوعًا بِهِ مَعْلُومًا بِالضَّرُورَةِ عَلَى أَنَّهُ لَيْسَ لَهُ فِي تِلْكَ الْفَرِيضَةِ مَا ذَكَرَ اللَّهُ عَزَّ وَجَلَّ فِي الْقُرْآنِ أَيْقَنَّا قَطْعًا أَنَّ اللَّهَ تَعَالَى لَمْ يُرِدْهُ قَطُّ فِيمَا نَصَّ عَلَيْهِ فِي الْقُرْآنِ فَلَمْ نُعْطِهِ إِلَّا مَا اتُّفِقَ لَهُ عَلَيْهِ فَإِنْ لَمْ يَتَّفِقْ لَهُ عَلَى شَيْءٍ لَمْ نُعْطِهِ شَيْئًا، لِأَنَّهُ قَدْ صَحَّ أَنْ لَا مِيرَاثَ لَهُ فِي النُّصُوصِ فِي الْقُرْآنِ.

L27568 And whoever we found among those we mentioned, about whom the Muslims have disagreed—a group said: “For him is what Allah the Exalted has named for him in the Quran.”

وَمَنْ وَجَدْنَا مِمَّنْ ذَكَرْنَا قَدْ اخْتَلَفَ الْمُسْلِمُونَ فِيهِ. فَقَالَتْ طَائِفَةٌ: لَهُ مَا سَمَّى اللَّهُ تَعَالَى لَهُ فِي الْقُرْآنِ.

L27569 A faction has stated: He is entitled only to a portion of what is specified in the Qur’an. It is indisputably obligatory that judgment be rendered in his favor according to the Quranic stipulations, and no heed must be paid to those who contradict the text, as they have not produced another textual proof to substantiate their claim.

وَقَالَتْ طَائِفَةٌ: لَيْسَ لَهُ إِلَّا بَعْضُ الْمُسَمَّى فِي الْقُرْآنِ، وَجَبَ وَلَا بُدَّ يَقِينًا أَنْ يُقْضَى لَهُ بِالْمَنْصُوصِ فِي الْقُرْآنِ، وَأَنْ لَا يُلْتَفَتَ إِلَى قَوْلِ مَنْ قَالَ بِخِلَافِ النَّصِّ، إِذْ لَمْ يَأْتِ فِي تَصْحِيحِ دَعْوَاهُ بِنَصٍّ آخَرَ.

وَهَذَا غَايَةُ الْبَيَانِ، وَلَا سَبِيلَ إِلَى شُذُوذِ شَيْءٍ عَنْ هَذِهِ الْقَضِيَّةِ؛ لِأَنَّ الْأَبَوَيْنِ، وَالزَّوْجَيْنِ فِي مَسَائِلِ الْعَوْلِ كُلِّهَا يَقُولُ الْمُبْطِلُونَ لِلْعَوْلِ: إِنَّ الْوَاجِبَ لَهُمْ مَا سَمَّاهُ اللَّهُ تَعَالَى لَهُمْ فِي الْقُرْآنِ - وَقَالَ الْقَائِلُونَ بِالْعَوْلِ: لَيْسَ لَهُمْ إِلَّا بَعْضُهُ، فَوَجَبَ الْأَخْذُ بِنَصِّ الْقُرْآنِ لَا بِقَوْلِ مَنْ خَالَفَهُ.

L27570–27572 This is the height of exposition, and there is no possibility for any anomaly to arise regarding this ruling; because the two parents And regarding both spouses in all issues of ʿawl - those who invalidate ʿawl say: "What is obligatory for them is what Allah the Exalted has specified for them in the Quran." Those who uphold ʿawl say: "They have nothing but a reduced portion of it." Thus, it is obligatory to adhere to the Quranic text, not to the opinion of those who oppose it.

وَأَمَّا الْأَخَوَاتُ وَالْبَنَاتُ: فَقَدْ أَجْمَعَ الْقَائِلُونَ بِالْعَوْلِ وَالْمُبْطِلُونَ لِلْعَوْلِ، وَلَيْسَ فِي أَهْلِ الْإِسْلَامِ لِهَاتَيْنِ الطَّائِفَتَيْنِ ثَالِثٌ لَهُمَا، وَلَا يُمْكِنُ أَنْ يُوجَدَ لَهُمَا ثَالِثٌ، إِذْ لَيْسَ فِي الْمُمْكِنِ إِلَّا إِثْبَاتٌ أَوْ نَفْيٌ: عَلَى أَنَّهُ لَا يَجِبُ فِي جَمِيعِ مَسَائِلِ الْعَوْلِ لَهُنَّ مَا جَاءَ فِي نَصِّ الْقُرْآنِ، لَكِنْ إِمَّا بَعْضُ ذَلِكَ، وَإِمَّا لَا شَيْءَ فَكَانَ إِجْمَاعُهُمْ حَقًّا بِلَا شَكٍّ، وَكَانَ مَا اخْتَلَفُوا فِيهِ لَا تَقُومُ بِهِ حُجَّةٌ، إِذْ لَمْ يَأْتِ بِهِ نَصٌّ، فَوَجَبَ إِذْ لَا حَقَّ لَهُنَّ بِالنَّصِّ أَنْ لَا يُعْطَوْا إِلَّا مَا صَحَّ الْإِجْمَاعُ لَهُنَّ بِهِ، فَإِنْ لَمْ يُجْمَعْ لَهُنَّ عَلَى شَيْءٍ وَقَدْ خَرَجْنَ بِالْإِجْمَاعِ وَبِالضَّرُورَةِ عَنْ النَّصِّ، فَلَا يَجُوزُ أَنْ يُعْطِينَ شَيْئًا بِغَيْرِ نَصٍّ وَلَا إِجْمَاعٍ - وَهَذَا بَيَانٌ لَا إِشْكَالَ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27573 As for the sisters and daughters: those who affirm *ʿawl* and those who reject it have unanimously agreed—there being no third position among Muslims for these two groups, nor any possibility of a third, since only affirmation or negation is possible—that they are not entitled in all cases of *ʿawl* to the full share specified in the Quranic text. Rather, their entitlement is either partial or nonexistent. Thus, their consensus is undoubtedly valid, while their disagreement concerns matters lacking textual evidence. Since they have no established right through the text, it becomes obligatory to grant them only what consensus validates. If no consensus exists regarding their entitlement—and their claim has been dismissed by consensus and necessarily excluded from the textual ruling—it is impermissible to grant them anything without textual or consensual basis. This explanation is unambiguous. Success comes from God Almighty.

وَأَمَّا الْمَسْأَلَةُ الَّتِي ادَّعَوْا عَلَيْنَا فِيهَا التَّنَاقُضَ، فَهِيَ: زَوْجٌ، وَأُمٌّ، وَأُخْتَانِ لِأَبٍ، وَأُخْتَانِ لِأُمٍّ - وَمَسْأَلَةٌ أُخْرَى ادَّعَوْا فِيهَا التَّنَاقُضَ عَلَى بَعْضِنَا دُونَ بَعْضٍ، وَهِيَ: زَوْجٌ، وَأُمٌّ، وَأُخْتَانِ لِأُمٍّ، فَقَالُوا فِي هَذِهِ الْمَسْأَلَةِ كُلُّ هَؤُلَاءِ أُولُو فَرْضٍ مُسَمًّى، لَا يَرِثُ مِنْهُمْ أَحَدٌ بِغَيْرِ الْفَرْضِ الْمُسَمَّى فِي شَيْءٍ مِنْ الْفَرَائِضِ، وَلَيْسَ هَاهُنَا مَنْ يَرِثُ مَرَّةً بِفَرْضٍ مُسَمًّى فَتُقَدِّمُوهُ، وَمَرَّةً مَا بَقِيَ فَتُسْقِطُوهُ أَوْ تُؤَخِّرُوهُ.

L27574 As for the issue in which they alleged contradiction against us, it is: a husband, a mother, two paternal sisters, and two maternal sisters. Another issue in which they alleged contradiction against some among us to the exclusion of others is: a husband, a mother, and two maternal sisters. They stated regarding this issue that all these are fixed-share heirs; none of them inherits except by the designated fixed share within the system of prescribed shares. There is no heir here who inherits once by a fixed share which you would prioritize him, and another instance by the remainder which you would exclude him or postpone him.

L27575 They said regarding the mother and full sisters, or [sisters] through the father alone, or through the mother alone, among those who may sometimes inherit

and sometimes inherit nothing: “From where do you derive the exclusion of some and inclusion of others?” Abu Muhammad said: As for the case involving the husband, the mother, the two paternal sisters, and the two maternal sisters, there is absolutely no contradiction in it. This is because the two paternal sisters may inherit a specified share on some occasions, while on others they inherit only what remains—if anything remains. They are not entitled to anything unless there is a specific text for them or a consensus.

وَقَالُوا فِي الْأُمِّ وَالْأَخَوَاتِ الشَّقَائِقِ، أَوْ لِلْأَبِ فَقَطْ، أَوْ لِلْأُمِّ فَقَطْ، مِمَّنْ قَدْ يَرِثُ وَقَدْ لَا يَرِثُ شَيْئًا: فَمِنْ أَيْنَ لَكُمْ إِسْقَاطُ بَعْضٍ وَإِثْبَاتُ بَعْضٍ؟ قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَسْأَلَةُ: الزَّوْجِ، وَالْأُمِّ، وَالْأُخْتَيْنِ لِلْأَبِ، وَالْأُخْتَيْنِ لِلْأُمِّ. فَلَا تَنَاقُضَ فِيهَا أَصْلًا، لِأَنَّ الْأُخْتَيْنِ لِلْأَبِ قَدْ يَرِثَانِ بِفَرْضٍ مُسَمًّى مَرَّةً، وَقَدْ لَا يَرِثَانِ إِلَّا مَا بَقِيَ - إِنْ بَقِيَ شَيْءٌ -: فَلَا يُعْطَيَانِ مَا لَمْ يَأْتِ بِهِ نَصٌّ لَهُمَا، وَلَا اتِّفَاقٌ.

L27576 The mother is entitled here solely to a sixth, as the deceased has brothers. Therefore, the husband receives half by the explicit ruling, the mother a sixth by the Quranic injunction—this totals two-thirds. The two uterine sisters are entitled to a third as stipulated in the text.

وَلَيْسَ لِلْأُمِّ هَاهُنَا إِلَّا السُّدُسُ؛ لِأَنَّ لِلْمَيِّتِ إِخْوَةً، فَوَجَبَ لِلزَّوْجِ النِّصْفُ بِالنَّصِّ، وَلِلْأُمِّ السُّدُسُ بِالنَّصِّ، فَذَلِكَ الثُّلُثَانِ، وَلِلْأُخْتَيْنِ لِلْأُمِّ الثُّلُثُ بِالنَّصِّ.

L27577–27579 Furthermore, there is unanimous consensus on their entitlement to inheritance in this prescribed share, with no disagreement from anyone, while the reduction of their share is disputed. Thus, it is obligatory to grant them inheritance based on the scriptural evidence and consensus, and the reduction [of their share] is invalidated by the contrary legal claim. According to the text and confirmed by certain consensus: God, the Exalted, did not grant the two sisters (in the case of the father) the two-thirds share in this prescribed portion. There is no textual ruling for them beyond this, nor has consensus agreed on anything to be given to them. Since they have no inheritance by text or consensus, it is fundamentally impermissible to grant them inheritance.

وَأَيْضًا: فَهَؤُلَاءِ كُلُّهُمْ مُجْمِعٌ عَلَى تَوْرِيثِهِمْ فِي هَذِهِ الْفَرِيضَةِ بِلَا خِلَافٍ مِنْ أَحَدٍ، وَمُخْتَلَفٌ فِي حَطِّهِمْ فَوَجَبَ تَوْرِيثُهُمْ بِالنَّصِّ وَالْإِجْمَاعِ، وَبَطَلَ حَطُّهُمْ بِالدَّعْوَى الْمُخَالِفَةِ لِلنَّصِّ، وَصَحَّ بِالْإِجْمَاعِ الْمُتَيَقَّنِ: أَنَّ اللَّهَ تَعَالَى لَمْ يُعْطِ الْأُخْتَيْنِ لِلْأَبِ فِي هَذِهِ الْفَرِيضَةِ الثُّلُثَيْنِ، وَلَا نَصَّ لَهُمَا بِغَيْرِهِ، وَلَمْ يُجْمِعْ لَهُمَا عَلَى شَيْءٍ يُعْطَيَانِهِ، فَإِذْ لَا مِيرَاثَ لَهُمَا بِالنَّصِّ وَلَا بِالْإِجْمَاعِ: فَلَا يَجُوزُ تَوْرِيثُهُمَا أَصْلًا.

L27580 As for the issue of the husband, the mother, and the two sisters through the mother: it does not apply to Abū Sulaymān and his adherents—those who lower the mother’s share to one-sixth due to two brothers.

وَأَمَّا مَسْأَلَةُ: الزَّوْجِ، وَالْأُمِّ، وَالْأُخْتَيْنِ لِلْأُمِّ: فَإِنَّهَا لَا تَلْزَمُ أَبَا سُلَيْمَانَ وَمَنْ وَافَقَهُ مِمَّنْ يَحُطُّ الْأُمَّ إِلَى السُّدُسِ بِالِاثْنَيْنِ مِنْ الْإِخْوَةِ.

L27581 As for us and those who adhere to Ibn Abbas’s opinion—that the reduction to one-sixth does not occur unless there are three or more brothers—our response (and with Allah, the Exalted, is success) is that the husband and the mother inherit in all respects and under all circumstances.

وَأَمَّا نَحْنُ وَمَنْ أَخَذَ بِقَوْلِ ابْنِ عَبَّاسٍ فِي أَنْ لَا يَحُطَّ إِلَى السُّدُسِ إِلَّا بِثَلَاثَةٍ مِنْ الْإِخْوَةِ فَصَاعِدًا؟ فَجَوَابُنَا فِيهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. أَنَّ الزَّوْجَ وَالْأُمَّ يَرِثَانِ بِكُلِّ وَجْهٍ، وَفِي كُلِّ حَالٍ.

L27582 As for the two maternal sisters, they may inherit or may not inherit. It is impermissible to withhold inheritance from those we are certain Allah the Exalted has obligated to inherit in all circumstances forever. Nor is it permissible to entitle those whose inheritance is uncertain except after granting it to those we are certain must inherit, and after they have received their full share decreed by Allah the Exalted. If any surplus remains thereafter, those who might not inherit receive it. If no surplus remains, they receive nothing, for the obligated party has no choice but this—otherwise they would contradict the Quran through baseless claims. The husband receives half by Quranic decree, the mother one-third by Quranic decree, leaving only one-sixth. The maternal sisters have no share beyond this, as nothing remains for them except this portion—and success comes solely from Allah the Exalted.

وَأَمَّا الْأُخْتَانِ لِلْأُمِّ، فَقَدْ يَرِثَانِ وَقَدْ لَا يَرِثَانِ، فَلَا يَجُوزُ مَنْعُ مَنْ نَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ اللَّهَ تَعَالَى أَوْجَبَ لَهُ الْمِيرَاثَ فِي كُلِّ حَالٍ وَأَبَدًا، وَلَا يَجُوزُ تَوْرِيثُ مَنْ قَدْ يَرِثُ وَقَدْ لَا يَرِثُ إِلَّا بَعْدَ تَوْرِيثِ مَنْ نَحْنُ عَلَى يَقِينٍ مِنْ وُجُوبِ تَوْرِيثِهِ وَبَعْدَ اسْتِيفَائِهِ مَا نَصَّ اللَّهُ تَعَالَى لَهُ عَلَيْهِ، فَإِنْ فَضَلَ عَنْهُ شَيْءٌ أَخَذَهُ الَّذِي قَدْ لَا يَرِثُ، وَإِنْ لَمْ يَفْضُلْ شَيْءٌ لَمْ يَكُنْ لَهُ شَيْءٌ، إِذْ لَيْسَ فِي وُسْعِ الْمُكَلَّفِ إِلَّا هَذَا، أَوْ مُخَالَفَةُ الْقُرْآنِ بِالدَّعْوَى بِلَا بُرْهَانٍ: فَلِلزَّوْجِ النِّصْفُ بِالْقُرْآنِ، وَلِلْأُمِّ الثُّلُثُ بِالْقُرْآنِ، فَلَمْ يَبْقَ إِلَّا السُّدُسُ، فَلَيْسَ لِلْإِخْوَةِ لِلْأُمِّ غَيْرُهُ، إِذْ لَمْ يَبْقَ لَهُمْ سِوَاهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of the Inheritance of the Brother or the Uterine Siblings.

[مَسْأَلَة مِيرَاث الأخ أَوْ الْأُخُوَّة لِأُمّ]

L27584 1719 - Issue: If a person dies leaving a male or female child, or male descendants of male children likewise, or leaving a father or paternal grandfather, while also leaving a maternal brother, a maternal sister, a maternal brother, or maternal siblings: then the mother's child inherits nothing at all. If the deceased leaves none of the aforementioned heirs: the maternal brother receives only one-sixth, and the maternal sister receives only one-sixth. If there exists both a maternal sister and maternal brother: they share one-third equally, with no preference given to males over females. Similarly, if they are multiple: the one-third is divided equally among them by law. The same applies if they are entitled to one-sixth in cases requiring recalculation due to over-subscription of shares ('awl), without differentiation.

١٧١٩ - مَسْأَلَةٌ: وَإِنْ مَاتَ وَتَرَكَ وَلَدًا ذَكَرًا أَوْ أُنْثَى، أَوْ وَلَدَ وَلَدٍ ذَكَرٍ كَذَلِكَ، أَوْ تَرَكَ أَبًا أَوْ جَدًّا لِأَبٍ، وَتَرَكَ أَخًا لِأُمٍّ، أَوْ أُخْتًا لِأُمٍّ، أَوْ أَخًا لِأُمٍّ، أَوْ إِخْوَةً لِأُمٍّ: فَلَا مِيرَاثَ لِوَلَدِ الْأُمِّ أَصْلًا، فَإِنْ لَمْ يَتْرُكْ أَحَدًا مِمَّنْ ذَكَرْنَا: فَلِلْأَخِ لِلْأُمِّ السُّدُسُ فَقَطْ، وَلِلْأُخْتِ لِلْأُمِّ السُّدُسُ فَقَطْ، فَإِنْ كَانَ أُخْتًا وَأَخًا لِأُمٍّ: فَلَهُمَا الثُّلُثُ بَيْنَهُمَا عَلَى السَّوَاءِ، لَا يُفَضَّلُ الذَّكَرُ عَلَى الْأُنْثَى، وَكَذَلِكَ إِنْ كَانُوا جَمَاعَةً: فَالثُّلُثُ بَيْنَهُمْ شَرْعًا سَوَاءً، وَكَذَلِكَ إِنْ وَجَبَ لَهُمْ السُّدُسُ فِي مَسْأَلَةِ الْعَوْلِ وَلَا فَرْقَ.

L27585 The proof of that is the statement of Allah, the Exalted: {If a man is inherited as kalala (leaving no parents or children) or a woman, and he leaves a brother or a sister, then each of them is entitled to a sixth. If they are more than that, they share in a third} [An-Nisa: 12].[5]

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوِ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ} [النساء: ١٢].

[5] **Qur'an references (L27585):** Qur'an 4:12 (An-Nisa).

وَهَذَا قَوْلُنَا، وَقَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ، إِلَّا رِوَايَتَيْنِ رُوِيَتَا عَنْ ابْنِ عَبَّاسٍ. إِحْدَاهُمَا: أَنَّ الْإِخْوَةَ لِلْأُمِّ يَقْسِمُونَ الثُّلُثَ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ. وَالثَّانِيَةُ: أَنَّ الْأَخَ لِلْأُمِّ وَالْأُخْتَ لِلْأُمِّ يَرِثَانِ مَعَ الْأَبِ. فَأَمَّا الْمَسْأَلَةُ الْأُولَى: فَلَا نَقُولُ بِهَا، لِأَنَّهَا خِلَافُ قَوْلِ اللَّهِ تَعَالَى: {فَهُمْ شُرَكَاءُ فِي الثُّلُثِ} [النساء: ١٢] وَلَقَدْ كَانَ يَلْزَمُ الْقَائِلِينَ بِالْقِيَاسِ أَنْ يَقُولُوا بِهَذِهِ الْقَوْلَةِ قِيَاسًا عَلَى مِيرَاثِ الْإِخْوَةِ لِلْأَبِ، أَوْ الْأَشِقَّاءِ، وَبِاَللَّهِ لَوْ صَحَّ شَيْءٌ مِنْ الْقِيَاسِ لَكَانَتْ هَذِهِ الْمَسْأَلَةُ أَوْلَى بِالصِّحَّةِ مِنْ كُلِّ مَا حَكَمُوا فِيهِ بِالْقِيَاسِ، وَأَيْنَ هَذَا الْقِيَاسُ مِنْ قِيَاسِهِمْ مِيرَاثَ الْبِنْتَيْنِ عَلَى مِيرَاثِ الْأُخْتَيْنِ، وَسَائِرِ تِلْكَ الْمَقَايِيسِ الْفَاسِدَةِ؟

L27586–27587 This is our position, and the position of Abū Ḥanīfah, Mālik, al-Shāfiʿī, Aḥmad, Abū Sulaymān, and others besides them, except for two narrations reported from Ibn ʿAbbās. The first: that uterine siblings divide the third, with the male receiving a share equal to that of two females. The second: that a maternal brother and maternal sister both inherit alongside the father. As for the first issue: we do not uphold it, for it contradicts Allah's statement: "They are partners in the third" (Quran 4:12). Indeed, it was incumbent upon those who endorse analogy to adopt this position by analogizing it to the inheritance of paternal siblings or full siblings (from both parents). By Allah, were analogy valid, this issue would be more deserving of validity than all the rulings they established through analogy. How does this analogy compare to their analogy of the inheritance of two daughters to that of two sisters, and all those other invalid analogies?[6]

وَأَمَّا الْمَسْأَلَةُ الثَّانِيَةُ: فَلَمْ تَصِحَّ عَنْ ابْنِ عَبَّاسٍ إِلَّا فِي السُّدُسِ الَّذِي حَطَّهُ الْإِخْوَةُ مِنْ مِيرَاثِ الْأُمِّ فَرَدُّوهَا إِلَى السُّدُسِ عَنْ الثُّلُثِ فَقَطْ، وَالْمَشْهُورُ عَنْهُ خِلَافُهَا - وَلَمْ نَقُلْ بِهَا: لِأَنَّ اللَّهَ تَعَالَى سَمَّى هَذَا التَّوْرِيثَ " كَلَالَةً " فَوَجَبَ أَنْ تَعْرِفَ مَا " الْكَلَالَةُ " وَمَا أَرَادَ اللَّهُ تَعَالَى بِهَذِهِ اللَّفْظَةِ، وَلَا يَجُوزُ أَنْ يُخْبَرَ عَنْ مُرَادِ اللَّهِ عَزَّ وَجَلَّ إِلَّا بِنَصٍّ ثَابِتٍ، أَوْ إجْمَاعٍ مُتَيَقَّنٍ، وَإِلَّا فَهُوَ افْتِرَاءٌ عَلَى اللَّهِ تَعَالَى. فَوَجَدْنَا: مَنْ يَرِثُهُ إِخْوَةٌ أَوْ أَخَوَانِ أَوْ أَخٌ: إمَّا شَقِيقٌ، وَإِمَّا لِأَبٍ، وَإِمَّا لِأُمٍّ - وَلَا وَلَدَ لَهُ وَلَا ابْنَةَ، وَلَا وَلَدَ ابْنِ ذَكَرٍ - وَإِنْ سَفَلَ - وَلَا أَبَ وَلَا جَدَّ لِأَبٍ - وَإِنْ عَلَا - فَهُوَ كَلَالَةٌ، مِيرَاثُهُ كَلَالَةٌ بِإِجْمَاعٍ مَقْطُوعٍ عَلَيْهِ مِنْ كُلِّ مُسْلِمٍ.

L27588 As for the second issue: the only valid report from Ibn Abbas pertains to the sixth portion which the brothers reduced from the mother's inheritance, restoring it to a sixth instead of a third exclusively. The well-known opinion from him contradicts this—and we do not adhere to it—because Allah the Exalted designated this inheritance "kalāla," necessitating comprehension of what "kalāla" denotes and what Allah the Exalted intended by this term. It is impermissible to assert Allah's intent except through an established textual proof or a definitive consensus; otherwise, it constitutes fabrication against Allah the Exalted. We affirm that the one who is inherited by brothers—whether two or one, whether full, paternal, or maternal—while having no son or daughter, no male-line descendant through a son (even if distant), no father, and no paternal ancestor (even if higher in lineage)—is "kalāla." His inheritance is "kalāla" by a definitively established consensus among all Muslims.

وَوَجَدْنَا أَنَّ مَنْ نَقَصَ مِنْ هَذِهِ الصِّفَاتِ شَيْءٌ فَقَدْ اُخْتُلِفَ فِيهِ: أَهُوَ كَلَالَةٌ أَمْ لَا؟ فَلَمْ يَجُزْ أَنْ يُقْطَعَ عَلَى مُرَادِ اللَّهِ تَعَالَى إِلَّا بِالْإِجْمَاعِ الْمُتَيَقَّنِ الثَّابِتِ - إذَا لَمْ نَجِدْ نَصًّا

L27589–27591 We have found that whoever lacks any of these conditions becomes subject to disagreement: is he considered a kalāla or not? It is therefore impermissible to conclusively determine Allah's intended ruling except through a

[6] **Qur'an references (L27587):** Qur'an 4:12 (An-Nisa).

definitively established consensus—when no explanatory text is found. This necessitates that brothers do not inherit in principle, except when all the aforementioned heirs are absent—unless a sound text mandates inheritance for some of them, in which case it is strictly adhered to. This applies only in two specific instances: the full brother, or a paternal brother with a daughter and upwards, and a sister similarly with him and upwards, provided the daughters have not received their full Qur'anic entitlement. Two-thirds. The second case: the sister likewise shares alongside the daughter or daughters, but only when there is no male agnate of the deceased. And success is from Allah, the Most High.

The Question of the Inheritance of the Male

Issue 1720: If one leaves behind a son and a daughter; a son and two or more daughters; a daughter and one or more sons; or two sons and two or more daughters - then the son receives two shares and the daughter one share. This is the explicit ruling of the Quran and a certain consensus.

Issue 1721: The brother and sister—whether full siblings, siblings through the father only, or ascendants—the male [among them] likewise also receives a share equivalent to that of two females. This is the explicit text of the Quran and a definitive scholarly consensus.

The issue of inheritance pertaining to full siblings and paternal half-siblings.

1722 - Issue: If there are one or more full brothers, and one or more full sisters, or if there are no sisters with him, the paternal half-brother does not inherit here, nor does the paternal half-sister inherit anything.

And this is the exact wording of the Messenger of Allah—may Allah bless him and grant him peace—: "Whatever the fixed shares leave unallocated goes to the closest male agnate," and there is also a definitive consensus. The closest relative through the mother, when their lineage through the father is equal, takes precedence over one unrelated through the mother, by evident necessity of reason.

مُفَسِّرًا - فَوَجَبَ بِهَذَا أَنْ لَا يَرِثَ الْإِخْوَةُ كَيْفَ كَانُوا، إِلَّا حَيْثُ يُعْدَمُ كُلُّ مَنْ ذَكَرْنَا، إِلَّا أَنْ يُوجِبَ مِيرَاثَ بَعْضِهِمْ نَصٌّ صَحِيحٌ فَيُوقَفُ عِنْدَهُ، وَلَيْسَ ذَلِكَ إِلَّا فِي مَوْضِعَيْنِ فَقَطْ: وَهُوَ الْأَخُ الشَّقِيقُ، أَوْ لِلْأَبِ مَعَ الِابْنَةِ فَصَاعِدًا، وَأُخْتٌ مِثْلُهُ مَعَهُ فَصَاعِدًا، مَا لَمْ يَسْتَوْفِ الْبَنَاتُ الثُّلُثَيْنِ. وَالْمَوْضِعُ الثَّانِي: الْأُخْتُ كَذَلِكَ مَعَ الْبِنْتِ، أَوْ الْبَنَاتِ حَيْثُ لَا عَاصِبَ لِلْمَيِّتِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مِيرَاث الذَّكَرَ]

١٧٢٠ - مَسْأَلَةٌ: وَمَنْ تَرَكَ ابْنًا وَابْنَةً، أَوْ ابْنًا وَابْنَتَيْنِ فَصَاعِدًا، أَوْ ابْنَةً وَابْنًا فَأَكْثَرَ، أَوْ اثْنَيْنِ وَبِنْتَيْنِ فَأَكْثَرَ: فَلِلذَّكَرِ سَهْمَانِ، وَلِلْأُنْثَى سَهْمٌ. هَذَا نَصُّ الْقُرْآنِ، وَإِجْمَاعٌ مُتَيَقَّنٌ.

١٧٢١ - مَسْأَلَةٌ: وَالْأَخُ، وَالْأُخْتُ الْأَشِقَّاءُ أَوْ لِلْأَبِ فَقَطْ فَصَاعِدًا - كَذَلِكَ أَيْضًا لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ - وَهَذَا نَصُّ الْقُرْآنِ، وَإِجْمَاعٌ مُتَيَقَّنٌ.

[مَسْأَلَة مِيرَاث الْأُخُوَّة الْأَشِقَّاء والأخوة لِأَب]

١٧٢٢ - مَسْأَلَةٌ: فَإِنْ كَانَ أَخٌ شَقِيقٌ وَاحِدٌ فَأَكْثَرُ، وَمَعَهُ أُخْتٌ شَقِيقَةٌ فَأَكْثَرُ، أَوْ لَا أُخْتَ مَعَهُ: لَمْ يَرِثْ هَاهُنَا الْأَخُ لِلْأَبِ، وَلَا الْأُخْتُ لِلْأَبِ شَيْئًا.

وَهَذَا نَصُّ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فَمَا أَبْقَتْ الْفَرَائِضُ فَلِأَوْلَى رَجُلٍ ذَكَرٍ» وَإِجْمَاعٌ مُتَيَقَّنٌ أَيْضًا، وَالْأَقْرَبُ بِالْأُمِّ وَقَدْ اسْتَوَيَا فِي الْأَبِ أَوْلَى مِمَّنْ لَمْ يَقْرُبْ بِالْأُمِّ بِضَرُورَةِ الْحِسِّ.

L27598 Issue 1723: If someone leaves behind a full sister and a paternal brother or paternal brothers, the full sister receives half, and the paternal brother or paternal brothers receive the remainder—even if they are numerous. This is a certain consensus and the explicit text of the Quran and the Sunnah.

١٧٢٣ - مَسْأَلَةٌ: وَمَنْ تَرَكَ أُخْتًا شَقِيقَةً، وَأَخًا لِأَبٍ، أَوْ إِخْوَةً ذُكُورًا لِأَبٍ: فَلِلشَّقِيقَةِ النِّصْفُ، وَلِلْأَخِ لِلْأَبِ أَوْ الْإِخْوَةِ مِنْ الْأَبِ: مَا بَقِيَ - وَإِنْ كَثُرُوا - وَهَذَا إجْمَاعٌ مُتَيَقَّنٌ، وَنَصُّ الْقُرْآنِ وَالسُّنَّةِ.

L27599 If he leaves two or more full sisters, a full brother, or paternal brothers: then the two or more full sisters are entitled to two-thirds, and the remainder is for the full brother or paternal brothers, as we have stated.

فَإِنْ تَرَكَ أُخْتَيْنِ شَقِيقَتَيْنِ فَصَاعِدًا، أَوْ أَخًا، أَوْ إِخْوَةً لِأَبٍ: فَلِلشَّقِيقَتَيْنِ فَصَاعِدًا الثُّلُثَانِ، وَمَا بَقِيَ: فَلِلْأَخِ، أَوْ الْإِخْوَةِ لِلْأَبِ، كَمَا قُلْنَا.

L27600 Issue 1724: If the deceased leaves a full sister and a paternal sister or paternal sisters, the full sister is entitled to half, while the paternal sister or sisters—even if numerous—receive only a sixth. This derives from Allah's decree: "But if there are two full sisters, they shall have two-thirds of what he leaves" (Quran 4:176). Thus, the Almighty has restricted paternal sisters—regardless of their number—to a sixth, while the verse specifies two-thirds exclusively for full sisters when they are two.[7]

١٧٢٤ - مَسْأَلَةٌ: فَإِنْ تَرَكَ أُخْتًا شَقِيقَةً، وَأُخْتًا لِأَبٍ، أَوْ أَخَوَاتٍ لِلْأَبِ: فَلِلشَّقِيقَةِ النِّصْفُ، وَلِلَّتِي لِلْأَبِ أَوْ اللَّوَاتِي لِلْأَبِ: السُّدُسُ فَقَطْ - وَإِنْ كَثُرْنَ - لِقَوْلِ اللَّهِ تَعَالَى: {فَإِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ مِمَّا تَرَكَ} [النساء: ١٧٦] فَلَمْ يَجْعَلْ تَعَالَى لِلْأَخَوَاتِ وَإِنْ كَثُرْنَ إلَّا الثُّلُثَيْنِ.

L27601 If he also leaves a uterine sister, she is entitled to a sixth share as the fifth allocated portion. The same ruling applies if there is a uterine brother.

فَإِنْ تَرَكَ أَيْضًا أُخْتًا لِأُمٍّ: كَانَ لَهَا سُدُسٌ خَامِسٌ وَكَذَلِكَ لَوْ كَانَ أَخًا لِأُمٍّ.

L27602 If there are two uterine brothers, two uterine sisters, a uterine brother, a uterine sister, or many uterine siblings, the remaining third belongs to the two of them, them, or them (female). This is an explicit textual ruling as we have cited and a definitive consensus.

فَإِنْ كَانَ أَخَوَانِ لِأُمٍّ، أَوْ أُخْتَانِ لِأُمٍّ، أَوْ أَخًا، أَوْ أُخْتًا، أَوْ إِخْوَةً كَثِيرًا لِأُمٍّ: فَالثُّلُثُ الْبَاقِي لَهُمَا أَوْ لَهُمْ أَوْ لَهُنَّ - وَهَذَا نَصٌّ كَمَا أَوْرَدْنَا، وَإِجْمَاعٌ مُتَيَقَّنٌ.

L27603–27604 If he leaves behind two full sisters, paternal sisters, and a paternal cousin or paternal uncle, then the two full sisters receive two-thirds. The paternal uncle or cousin receives the remainder, while those related through the father receive nothing. This is established by explicit textual evidence and certain consensus, except for something mentioned from al-Ḥasan al-Baṣrī: that the remaining third belongs to those related through the father, and he did not state this when a male agnate exists.

فَإِنْ تَرَكَ شَقِيقَتَيْنِ وَأَخَوَاتٍ لِأَبٍ، وَابْنَ عَمٍّ أَوْ عَمًّا، فَلِلشَّقِيقَتَيْنِ: الثُّلُثَانِ " وَلِلْعَمِّ، أَوْ لِابْنِ الْعَمِّ مَا بَقِيَ، وَلَا شَيْءَ لِلَّوَاتِي لِلْأَبِ - وَهَذَا دَلِيلُ النَّصِّ وَإِجْمَاعٌ مُتَيَقَّنٌ إلَّا شَيْئًا ذُكِرَ عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّ الثُّلُثَ الْبَاقِيَ لِلَّوَاتِي لِلْأَبِ، وَلَمْ يَقُلْ ذَلِكَ حَيْثُ يُوجَدُ عَاصِبٌ ذَكَرٌ.

L27605 Similarly, if he leaves two full sisters, two uterine sisters, paternal sisters,

[7] **Qur'an references (L27600):** Qur'an 4:176 (An-Nisa).

a paternal sister, or paternal brothers, the two full sisters or more receive two-thirds, and the two uterine sisters or more receive one-third. Nothing is given to the paternal sister, the paternal sisters, or the paternal brothers. This is the evidence of the explicit text, as we mentioned, and a certain and conclusive consensus.

وَكَذَلِكَ لَوْ تَرَكَ أُخْتَيْنِ شَقِيقَتَيْنِ، وَأُخْتَيْنِ لِأُمٍّ، وَأَخَوَاتٍ أَوْ أُخْتًا لِأَبٍ، أَوْ إِخْوَةً لِأَبٍ، فَلِلشَّقِيقَتَيْنِ فَصَاعِدًا: الثُّلُثَانِ، وَلِلِبْنَتَيْنِ لِلْأُمِّ فَصَاعِدًا الثُّلُثُ - وَلَا شَيْءَ لِلْأُخْتِ لِلْأَبِ، وَلَا لِلْأَخَوَاتِ لِلْأَبِ، وَلَا لِلْإِخْوَةِ لِلْأَبِ - وَهَذَا دَلِيلُ النَّصِّ، كَمَا ذَكَرْنَا، وَإِجْمَاعٌ مُتَيَقَّنٌ مَقْطُوعٌ بِهِ.

L27606 1725 - Issue: If he leaves behind a full sister and paternal brothers and sisters, the full sister receives half. The remainder is distributed among the paternal brothers and sisters, provided the sisters' obligatory share is a sixth, which they cannot exceed at all, and the remainder goes to the male alone.

١٧٢٥ - مَسْأَلَةٌ: وَلَوْ تَرَكَ أُخْتًا شَقِيقَةً وَإِخْوَةً وَأَخَوَاتٍ لِلْأَبِ، فَلِلشَّقِيقَةِ: النِّصْفُ، وَمَا بَقِيَ بَيْنَ الْإِخْوَةِ وَالْأَخَوَاتِ لِلْأَبِ، مَا لَمْ يَتَجَاوَزْ مَا يَجِبُ لِلْأَخَوَاتِ السُّدُسُ وَلَا يَزِدْنَ عَلَى السُّدُسِ أَصْلًا، وَيَكُونُ الْبَاقِي لِلذَّكَرِ وَحْدَهُ.

L27607 If there are two full sisters, a paternal sister or sisters, and an agnatic brother: two-thirds is allocated to the two full sisters, the residual portion to the agnatic brother, and nothing is granted to the paternal sister or the paternal sisters.

فَإِنْ كَانَتَا شَقِيقَتَيْنِ، وَأُخْتًا أَوْ أَخَوَاتٍ لِأَبٍ، وَأَخًا لِأَبٍ: فَالثُّلُثَانِ لِلشَّقِيقَتَيْنِ، وَالْبَاقِي لِلْأَخِ الذَّكَرِ، وَلَا شَيْءَ لِلْأُخْتِ لِلْأَبِ، وَلَا لِلْأَخَوَاتِ لِلْأَبِ.

L27608 We have been narrated via the chain of Sa'īd ibn Manṣūr: Abū Shihāb narrated to us from Al-A'mash, from Abū Al-Ḍuḥā—who is Muslim ibn Ṣubayḥ—from Masrūq ibn Al-Ajda', who said: Ibn Mas'ūd used to rule regarding full sisters (from the same father and mother) and paternal brothers and sisters (from the same father): "The full sisters receive two-thirds, and the residue of the estate is allocated to the males, to the exclusion of the females."

رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو شِهَابٍ عَنْ الْأَعْمَشِ عَنْ أَبِي الضُّحَى - هُوَ مُسْلِمُ بْنُ صُبَيْحٍ - عَنْ مَسْرُوقِ بْنِ الْأَجْدَعِ قَالَ: كَانَ ابْنُ مَسْعُودٍ يَقُولُ فِي أَخَوَاتٍ لِأَبٍ وَأُمٍّ، وَإِخْوَةٍ وَأَخَوَاتٍ لِأَبٍ: لِلْأَخَوَاتِ مِنْ الْأَبِ وَالْأُمِّ: الثُّلُثَانِ، وَسَائِرُ الْمَالِ لِلذُّكُورِ دُونَ الْإِنَاثِ.

L27609 From him to Sa'eed: Abu Mu'awiyah narrated to us, Al-A'mash narrated to us, from Ibrāhīm, from Masrūq: that Masrūq used to adhere to ʿAbdullāh's ruling concerning full siblings (from the same father and mother)—assigning the remaining portion of the two-thirds to the males, excluding the females. He then traveled to Medina and returned intending to divide it equally between them. ʿAlqamah said to him: "What made you retract from ʿAbdullāh's opinion? Did you meet anyone more firmly established in your heart than him?" He replied: "No, but I met Zayd ibn Thābit and found him among those deeply rooted in knowledge."

وَبِهِ إِلَى، سَعِيدٍ نا أَبُو مُعَاوِيَةَ نا الْأَعْمَشُ عَنْ إبْرَاهِيمَ عَنْ مَسْرُوقٍ: أَنَّهُ كَانَ يَأْخُذُ بِقَوْلِ عَبْدِ اللَّهِ فِي أَخَوَاتٍ لِأَبٍ وَأُمٍّ: فَجَعَلَ مَا بَقِيَ مِنْ الثُّلُثَيْنِ لِلذُّكُورِ دُونَ الْإِنَاثِ، فَخَرَجَ إلَى الْمَدِينَةِ فَجَاءَ وَهُوَ يَرَى أَنْ يُشْرِكَ بَيْنَهُمْ، فَقَالَ لَهُ عَلْقَمَةُ: مَا رَدَّك عَنْ قَوْلِ

عَبْدِ اللَّهِ، أَلَقِيت أَحَدًا هُوَ أَثْبَتُ فِي نَفْسِك مِنْهُ؟ قَالَ: لَا، وَلَكِنْ لَقِيت زَيْدَ بْنَ ثَابِتٍ فَوَجَدْته فِي الرَّاسِخِينَ فِي الْعِلْمِ.

L27610–27612 From the chain of Waki‘: Sufyān narrated from Ma‘bad ibn Khālid from Masrūq from ‘Abdullāh ibn Mas‘ūd that he said concerning two sisters (from the same father and mother) and paternal siblings: “The two sisters from the same father and mother receive two-thirds. So whatever...” What remains is for males, excluding females. ʿĀ’ishah shared the remainder between them, allocating what was left after two-thirds to the male, equivalent to the share of two females.

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ عَنْ مَعْبَدِ بْنِ خَالِدٍ عَنْ مَسْرُوقٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ: أَنَّهُ قَالَ فِي أُخْتَيْنِ لِأَبٍ وَأُمٍّ، وَإِخْوَةٍ وَأَخَوَاتٍ لِأَبٍ: إنَّ لِلَّتَيْنِ لِلْأَبِ وَالْأُمِّ: الثُّلُثَيْنِ، فَمَا بَقِيَ فَلِلذُّكُورِ دُونَ الْإِنَاثِ - وَأَنَّ عَائِشَةَ شَرَّكَتْ بَيْنَهُمْ، فَجَعَلَتْ مَا بَقِيَ بَعْدَ الثُّلُثَيْنِ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ.

L27613 From the path of Waki‘, who narrated from Sufyān, who narrated from al-A‘mash, who narrated from Ibrāhīm al-Nakha‘ī, who said: Masrūq said, “I saw Zayd ibn Thābit and the people of Medina collectively dividing shares among themselves.” Al-A‘mash said: Ibn Mas‘ūd would rule regarding a full sister and paternal brothers: “This sister receives half.” He would then assess: if apportioning shares with the male heirs would result in her share exceeding a sixth, he would not increase her share beyond a sixth. But if her share would fall below a sixth, he would divide the inheritance with them. Other companions of Muḥammad (peace be upon him and his family) would say: “This sister receives half, and whatever remains is allocated to the male heirs, each male receiving a share equivalent to that of two females.”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، قَالَ: قَالَ مَسْرُوقٌ رَأَيْت زَيْدَ بْنَ ثَابِتٍ وَأَهْلَ الْمَدِينَةِ يُشْرِكُونَ بَيْنَهُمْ، قَالَ الْأَعْمَشُ: وَكَانَ ابْنُ مَسْعُودٍ يَقُولُ فِي أُخْتٍ لِأَبٍ وَأُمٍّ، وَإِخْوَةٍ لِأَبٍ: لِهَذِهِ النِّصْفُ، ثُمَّ يَنْظُرُ: فَإِنْ كَانَ إذَا قَاسَمَ بِهَا الذُّكُورَ أَصَابَهَا أَكْثَرُ مِنْ السُّدُسِ لَمْ يُزِدْهَا عَلَى السُّدُسِ، وَإِذَا أَصَابَهَا أَقَلُّ مِنْ السُّدُسِ: قَاسَمَ بِهَا - وَكَانَ غَيْرُهُ مِنْ أَصْحَابِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُونَ: لِهَذِهِ النِّصْفُ، وَمَا بَقِيَ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ.

L27614 And via Waki‘’s narration, Isma‘il ibn Abi Khalid reported to us from Hakim ibn Jabir, who narrated from Zayd ibn Thabit that he said regarding it: This is among the rulings of the people of pre-Islamic ignorance: that men inherit to the exclusion of women.

وَمِنْ طَرِيقِ وَكِيعٍ نا إسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ حَكِيمِ بْنِ جَابِرٍ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّهُ قَالَ فِيهَا: هَذَا مِنْ قَضَاءِ أَهْلِ الْجَاهِلِيَّةِ: أَنْ يَرِثَ الرِّجَالُ دُونَ النِّسَاءِ.

L27615 Ali said: Alqamah and Abu Thawr adhere to the opinion of Ibn Mas’ud, and there were conflicting reports about Abu Sulayman’s stance on it.

قَالَ عَلِيٌّ: بِقَوْلِ ابْنِ مَسْعُودٍ يَقُولُ عَلْقَمَةُ، وَأَبُو ثَوْرٍ، وَاخْتَلَفَ فِيهِ عَلَى أَبِي سُلَيْمَانَ.

L27616 Abu Muhammad said: Those who differed with Ibn Mas’ud argued based on the apparent meaning of Allah’s statement, Exalted is He: “If they are

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ خَالَفَ ابْنَ مَسْعُودٍ بِظَاهِرِ قَوْلِ اللَّهِ تَعَالَى: {وَإِنْ كَانُوا إِخْوَةً رِجَالا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ} [النساء: ١٧٦]

siblings, men and women, the male is entitled to a portion equal to that of two females." [Quran 4:176][8]

وَبِمَا ذَكَرْنَا مِنْ أَنَّهُ قَوْلُ سَائِرِ أَصْحَابِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّهُ مِنْ قَضَاءِ أَهْلِ الْجَاهِلِيَّةِ.

L27617 And since, as we have mentioned, it is the position of all of Muhammad's companions (peace be upon him) and that it originates from the rulings of the people of Jāhiliyyah.

قَالَ عَلِيٌّ: لَيْسَ قَضَاءُ أَهْلِ الْجَاهِلِيَّةِ مَا أَوْجَبَهُ الْقُرْآنُ، وَقَدْ صَحَّ الْإِجْمَاعُ عَلَى تَوْرِيثِ الْعَمِّ، وَابْنِ الْعَمِّ، وَابْنِ الْأَخِ: دُونَ الْعَمَّةِ، وَبِنْتِ الْعَمِّ، وَبِنْتِ الْأَخِ - فَهَلْ هَذَا مِنْ قَضَاءِ أَهْلِ الْجَاهِلِيَّةِ.

L27618 Ali said: The rulings of the people of pre-Islamic ignorance are not what the Quran has obligated. Consensus has been established regarding inheritance for the paternal uncle, paternal uncle's son, and brother's son, to the exclusion of the paternal aunt, paternal uncle's daughter, and brother's daughter. Is this among the rulings of the people of pre-Islamic ignorance?

وَأَمَّا قَوْلُ الْأَعْمَشِ: إِنَّ سَائِرَ أَصْحَابِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى خِلَافِ هَذَا.

L27619 As for the statement of al-Aʿmash: "Indeed, all the Companions of Muhammad (peace and blessings of Allah be upon him) disagree with this."

فَنَقُولُ لِلْمُحْتَجِّ بِهَذَا: هَبْكَ صَحَّ لَك ذَلِكَ - وَهُوَ لَا يَصِحُّ - عَنْ سِتَّةٍ مِنْهُمْ، أَهَذَا حُجَّةٌ عِنْدَك، لِأَنَّهُ إجْمَاعٌ أَمْ لِمَاذَا؟ فَإِنْ قَالَ: لَيْسَ إجْمَاعًا، قُلْنَا لَهُ: فَمَا لَيْسَ إجْمَاعًا وَلَا نَصًّا: فَلَا حُجَّةَ فِيهِ، وَإِنْ كَانَ هُوَ إجْمَاعًا؟ قُلْنَا: فَمُخَالِفُ الْإِجْمَاعِ: كَافِرٌ أَوْ فَاسِقٌ، فَانْظُرْ فِيمَ تَدْخُلُ، وَبِمَاذَا تَصِفُ ابْنَ مَسْعُودٍ؟ وَاَللَّهِ إنَّ الْمُعَرِّضَ بِهِ فِي ذَلِكَ لَهُوَ الْمُسْتَحِقُّ لِهَاتَيْنِ الصِّفَتَيْنِ، لَا ابْنُ مَسْعُودٍ الْمَقْطُوعُ لَهُ بِالْجَنَّةِ، وَالْعِلْمِ، وَالدِّينِ، وَالْإِيمَانِ.

L27620–27622 So we say to the one advancing this argument: Suppose you deem this valid for yourself—though it is invalid—[even if it were] from six of them, would this constitute proof in your view because it is consensus, or why? If he says, "It is not consensus," we reply: What is neither consensus nor a definitive text is not a valid proof. But if it is consensus, we say: Is one who opposes consensus a disbeliever or a sinner? Reflect on what you are entering into and by what means. Are you describing Ibn Masʿūd? By Allah, the one who alludes to him in this matter is truly the one deserving of such accusations - not Ibn Masʿūd, who is irrevocably granted Paradise, knowledge, righteous practice, and faith.

وَأَمَّا الْآيَةُ: فَهِيَ حُجَّةٌ عَلَيْهِمْ؛ لِأَنَّ اللَّهَ تَعَالَى إنَّمَا قَالَ ذَلِكَ فِيمَا يَرِثُهُ الْإِخْوَةُ وَالْأَخَوَاتُ بِالتَّعْصِيبِ، لَا فِيمَا وَرِثَهُ الْأَخَوَاتُ بِالْفَرْضِ الْمُسَمَّى، وَالنَّصُّ قَدْ صَحَّ بِأَنْ لَا يَرِثَ الْأَخَوَاتُ بِالْفَرْضِ الْمُسَمَّى أَكْثَرَ مِنْ الثُّلُثَيْنِ.

L27623 As for the verse: it is a proof against them, because Allah the Exalted only stated this regarding what brothers and sisters inherit through taʿṣīb, not what sisters inherit through the prescribed share. The text establishes that sisters do not inherit through the prescribed share more than two-thirds.

وَقَدْ أَجْمَعَ الْمُخَالِفُونَ لَنَا: عَلَى أَنَّ مَنْ تَرَكَ أُخْتًا شَقِيقَةً، وَعَشْرَ أَخَوَاتٍ لِأَبٍ، وَعَمًّا أَوْ ابْنَ عَمٍّ، أَوْ ابْنَ أَخٍ: فَإِنَّهُ لَيْسَ لِلْأَخَوَاتِ لِلْأَبِ إلَّا السُّدُسُ فَقَطْ، وَالْبَاقِي لِمَنْ ذَكَرْنَا.

L27624 Our opponents have unanimously agreed that if someone leaves behind a full sister, ten paternal half-sisters, and a paternal uncle, paternal cousin, or

[8] **Qur'an references (L27616):** Qur'an 4:176 (An-Nisa).

son of a brother, the paternal half-sisters receive only one-sixth, with the remainder going to the paternal uncle, paternal cousin, or son of a brother.

L27625 They unanimously agreed that if one leaves two full sisters, ten paternal half-sisters, a paternal uncle, a paternal cousin, or a nephew, the paternal half-sisters do not inherit anything whatsoever. How, then, is it established that they inherit alongside a brother, yet they do not inherit alongside a paternal uncle, paternal cousin, or nephew? The Messenger of Allah (peace be upon him) said: "Assign the ordained shares to their rightful recipients. Whatever remains after the ordained shares belongs to the nearest male relative." In this case, the ordained shares are solely the following: half for one full sister; two-thirds for two full sisters; or half for one full sister with a sixth allocated exclusively to the paternal half-sister(s). Thus, it is established that the remainder belongs to the nearest male relative. This is a matter in which they opposed both the explicit text and analogical reasoning. And with Allah, the Exalted, lies all success.

L27626 ## The Legal Case of Inheritance Pertaining to the Son and the Son's Son

L27627 Legal Ruling 1726: No one inherits alongside the son except the following only: daughters, the father, the mother, the grandfather, the grandmother, the husband, and the wife.

L27628 The child of a free woman and the child of a slave woman are equal in inheritance if their mother was the umm walad (mother of the father's child), and the child was free, and if their mother was a slave belonging to someone other than his father. All of this falls under the general scope of the Quran and a definitive scholarly consensus.

L27629 Issue 1727: Grandsons do not inherit anything alongside the male son—whether their father or paternal uncle existed.

L27630–27631 The sons of a full brother or paternal half-brother cannot inherit if a full brother or paternal half-brother is present—and this is the verbatim text of the Prophet's statement (peace be upon him) in his saying: "then to the nearest male kin"—alongside a definitively established consensus.

وَأَجْمَعُوا عَلَى أَنَّهُ لَوْ تَرَكَ أُخْتَيْنِ شَقِيقَتَيْنِ، وَعَشْرَ أَخَوَاتٍ لِأَبٍ، وَعَمًّا أَوْ ابْنَ عَمٍّ، أَوْ ابْنَ أَخٍ: أَنَّ اللَّوَاتِي لِلْأَبِ لَا يَرِثْنَ شَيْئًا أَصْلًا، فَمِنْ أَيْنَ وَجَبَ أَنْ يَرِثْنَ مَعَ الْأَخِ، وَلَا يَرِثْنَ مَعَ الْعَمِّ، وَلَا مَعَ ابْنِ الْعَمِّ، وَلَا مَعَ ابْنِ الْأَخِ؟ وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَلْحِقُوا الْفَرَائِضَ بِأَصْحَابِهَا، فَمَا أَبْقَتْ الْفَرَائِضُ فَلِأَوْلَى رَجُلٍ ذَكَرٍ» وَالْفَرَائِضُ فِي هَذِهِ الْمَسْأَلَةِ إنَّمَا هُوَ النِّصْفُ لِلشَّقِيقَةِ، أَوْ الثُّلُثَانِ لِلشَّقِيقَتَيْنِ، أَوْ النِّصْفُ لِلشَّقِيقَةِ، وَالسُّدُسُ لِلَّتِي لِلْأَبِ أَوْ اللَّوَاتِي لِلْأَبِ فَقَطْ، فَصَحَّ أَنَّ الْبَاقِيَ لِأَوْلَى رَجُلٍ ذَكَرٍ، وَهَذَا مِمَّا خَالَفُوا فِيهِ النَّصَّ وَالْقِيَاسَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مِيرَاث الأبن وأبن الأبن]

١٧٢٦ - مَسْأَلَةٌ: وَلَا يَرِثُ مَعَ الِابْنِ الذَّكَرِ أَحَدٌ إلَّا الْبَنَاتُ، وَالْأَبُ وَالْأُمُّ، وَالْجَدُّ وَالْجَدَّةُ، وَالزَّوْجُ وَالزَّوْجَةُ، فَقَطْ.

وَوَلَدُ الْحُرَّةِ وَالْأَمَةِ سَوَاءٌ فِي الْمِيرَاثِ إذَا كَانَتْ أُمُّهُ أُمَّ وَلَدِ أَبِيهِ، وَكَانَ الْوَلَدُ حُرًّا، وَإِنْ كَانَتْ أُمُّهُ أَمَةً لِغَيْرِ أَبِيهِ، وَهَذَا كُلُّهُ عُمُومُ الْقُرْآنِ وَإِجْمَاعٌ مُتَيَقَّنٌ.

١٧٢٧ - مَسْأَلَةٌ: وَلَا يَرِثُ بَنُو الِابْنِ مَعَ الِابْنِ الذَّكَرِ شَيْئًا - أَبَاهُمْ كَانَ أَوْ عَمَّهُمْ.

وَلَا يَرِثُ بَنُو الْأَخِ الشَّقِيقِ أَوْ لِلْأَبِ مَعَ أَخٍ شَقِيقٍ أَوْ لِأَبٍ - وَهَذَا نَصُّ كَلَامِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي قَوْلِهِ: «فَلِأَوْلَى رَجُلٍ ذَكَرٍ» وَإِجْمَاعٌ مُتَيَقَّنٌ.

L27632 Issue: If someone leaves behind a daughter and male sons of a son, his daughter is entitled to half, and the residue is allocated to the male sons of the son.

١٧٢٨ - مَسْأَلَةٌ: وَمَنْ تَرَكَ ابْنَةً، وَبَنِي ابْنٍ ذُكُورًا: فَلِابْنَتِهِ النِّصْفُ وَلِبَنِي الِابْنِ الذُّكُورِ مَا بَقِيَ.

L27633 If he leaves two daughters or more, and male sons of a son, two-thirds are allocated to the daughters, and the remainder goes to the sons of the son. If he leaves no daughter nor son, but leaves a daughter of a son, she receives half. If there are two daughters of a son, they receive two-thirds. If he leaves daughters of a son and sons of a son, the estate is distributed among them, with to the male being equivalent to the share of two females.

فَإِنْ تَرَكَ ابْنَتَيْنِ فَصَاعِدًا، وَبَنِي ابْنٍ ذُكُورًا فَلِلْبِنْتَيْنِ الثُّلُثَانِ، وَمَا بَقِيَ فَلِبَنِي الِابْنِ - فَإِنْ لَمْ يَتْرُكْ ابْنَةً، وَلَا وَلَدًا، وَتَرَكَ بِنْتَ ابْنٍ، فَلَهَا النِّصْفُ، فَإِنْ كَانَتَا اثْنَتَيْنِ، فَلَهُمَا الثُّلُثَانِ، فَإِنْ تَرَكَ بَنَاتِ ابْنٍ وَبَنِي ابْنٍ: فَالْمَالُ بَيْنَهُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ.

L27634 If he leaves a daughter along with a son's daughter, two son's daughters, or son's daughters, the daughter receives half. The son's daughter, two son's daughters, or son's daughters receive only a sixth - even if numerous - with the remainder going to the agnatic heir.

فَإِنْ تَرَكَ ابْنَةً وَابْنَةَ ابْنٍ، أَوْ بِنْتَيْ ابْنٍ، أَوْ بَنَاتِ ابْنٍ: فَلِابْنَةِ النِّصْفُ وَلِبِنْتِ الِابْنِ، أَوْ لِبِنْتَيْ الِابْنِ، أَوْ لِبَنَاتِ الِابْنِ: السُّدُسُ فَقَطْ - وَإِنْ كَثُرْنَ - وَالْبَاقِي لِلْعَاصِبِ.

L27635 If he leaves two daughters and granddaughters through a son, along with an uncle and a paternal male cousin, or a brother, or a brother's son: then two-thirds belong to the two daughters. The remainder goes to the uncle, the paternal male cousin, the brother, or the brother's son—while the granddaughters through a son receive nothing. All of this is based on explicit textual ruling and definitive scholarly consensus, except for one issue which we will now discuss, God Almighty willing.

فَإِنْ تَرَكَ ابْنَتَيْنِ وَبَنَاتِ ابْنٍ وَعَمًّا وَابْنَ عَمٍّ، أَوْ أَخًا، أَوْ ابْنَ أَخٍ: فَلِلْبِنْتَيْنِ الثُّلُثَانِ، وَيَكُونُ مَا بَقِيَ لِلْعَمِّ، أَوْ لِابْنِ الْعَمِّ، أَوْ لِلْأَخِ، أَوْ لِابْنِ الْأَخِ - وَلَا شَيْءَ لِبَنَاتِ الِابْنِ، وَهَذَا كُلُّهُ نَصٌّ وَإِجْمَاعٌ مُتَيَقَّنٌ، إِلَّا فِي مَسْأَلَةٍ وَاحِدَةٍ نَذْكُرُهَا إِنْ شَاءَ اللَّهُ تَعَالَى الْآنَ.

L27636 1729 - Issue: If someone leaves behind a daughter and grandsons/granddaughters (through a son, both male and female), the daughter receives half. Then it is examined: if the daughters of the son would receive a sixth or less through proportional distribution, they take the lesser amount. But if their calculated share exceeds a sixth, they do not receive more than a sixth.

١٧٢٩ - مَسْأَلَةٌ: وَمَنْ تَرَكَ ابْنَةً وَبَنِي ابْنٍ ذُكُورًا وَإِنَاثًا: فَلِلْبِنْتِ النِّصْفُ - ثُمَّ يَنْظُرُ: فَإِنْ وَقَعَ لِبَنَاتِ الِابْنِ بِالْمُقَاسَمَةِ السُّدُسُ فَأَقَلُّ قَاسَمْنَ، وَإِنْ وَقَعَ لَهُنَّ أَكْثَرُ لَمْ يَزِدْنَ عَلَى السُّدُسِ.

L27637 If he leaves two daughters and male grandchildren through a son, the two daughters receive two-thirds, and the remainder is allocated to the male descendants of the son.

فَإِنْ تَرَكَ ابْنَتَيْنِ وَبَنِي ابْنٍ ذُكُورًا وَإِنَاثًا: فَلِلْبِنْتَيْنِ الثُّلُثَانِ، وَالْبَاقِي لِذُكُورِ وَلَدِ الْوَلَدِ دُونَ الْإِنَاثِ.

L27638 If he leaves a daughter, a son's daughter, and male descendants of the son's son, the daughter receives half, the son's daughter receives a sixth - the same applies if there are more son's daughters - with the remainder going

to the male descendants of the child to the exclusion of females. This is the opinion of Ibn Mas'ūd, 'Alqamah, Abī Thawr, and Abī Sulaymān. Others held: Rather, the male descendant among the child's descendants shares the inheritance with females of his kinship level, and the child's descendants also share the inheritance with their paternal aunts, with the male receiving twice the share of the female.

L27639–27640 This is an error, and the argument here mirrors the argument concerning paternal brothers and sisters alongside a sister and the full sisters—same, same, letter for letter—. And success is with Allah alone, the Most High, through divine facilitation.

The Case of the Grandmother's Inheritance Rights

L27641

L27642 Issue 1730: The grandmother inherits one-third in cases where the mother inherits one-third, provided the deceased has no mother, and she inherits one-sixth in cases where the mother inherits one-sixth, provided the deceased has no mother.

L27643 The grandmother inherits along with her son—the father of the deceased—when he is alive, just as she would inherit if he were not alive.

L27644 Every grandmother inherits if there is no mother or a grandmother closer in kinship than herself. If they [the grandmothers] are of the same degree, they share the aforementioned inheritance.

L27645 The same ruling applies to what we have mentioned regarding the mother of the mother, the mother of the father, the mother of the mother's mother, the mother of the father's mother, the mother of the father's father, the mother of the mother's father, and so on perpetually. This is a matter over which people have differed: It is reported from Abū Bakr that he only granted inheritance to one grandmother, specifically only the mother of the mother. It is also reported from him and others that he granted inheritance to two grandmothers specifically: the mother of the mother along with her female ancestors, and the mother of the father along with her female ancestors.

فَإِنْ تَرَكَ ابْنَةً، وَبِنْتَ ابْنٍ، وَبَنِي ابْنِ ابْنٍ: فَلِلْبِنْتِ النِّصْفُ، وَلِبِنْتِ الِابْنِ السُّدُسُ، وَكَذَلِكَ لَوْ كُنَّ أَكْثَرَ - وَالْبَاقِي لِذُكُورِ وَلَدِ الْوَلَدِ دُونَ الْإِنَاثِ - وَهُوَ قَوْلُ ابْنِ مَسْعُودٍ، وَعَلْقَمَةَ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ: وَقَالَ آخَرُونَ: بَلْ يُقَاسِمُ الذَّكَرُ مِنْ وَلَدِ الْوَلَدِ مَنْ فِي دَرَجَتِهِ مِنْ الْإِنَاثِ وَيُقَاسِمُ أَيْضًا وَلَدُ الْوَلَدِ عَمَّاتِهِ، لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ.

وَهَذَا خَطَأٌ، وَالْحُجَّةُ فِيهِ كَالْحُجَّةِ فِي الْإِخْوَةِ وَالْأَخَوَاتِ لِلْأَبِ مَعَ الْأُخْتِ وَالْأَخَوَاتِ الشَّقَائِقِ، سَوَاءً سَوَاءً، حَرْفًا حَرْفًا -. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ مِيرَاثِ الْجَدَّةِ]

١٧٣٠ - مَسْأَلَةٌ: وَالْجَدَّةُ تَرِثُ الثُّلُثَ إذَا لَمْ يَكُنْ لِلْمَيِّتِ أُمٌّ حَيْثُ تَرِثُ الْأُمُّ الثُّلُثَ، وَتَرِثُ السُّدُسَ حَيْثُ تَرِثُ الْأُمُّ السُّدُسَ، إذَا لَمْ يَكُنْ لِلْمَيِّتِ أُمٌّ.

وَتَرِثُ الْجَدَّةُ وَابْنُهَا أَبُو الْمَيِّتِ حَيٌّ، كَمَا تَرِثُ لَوْ لَمْ يَكُنْ حَيًّا.

وَكُلُّ جَدَّةٍ تَرِثُ إذَا لَمْ يَكُنْ هُنَالِكَ أُمٌّ أَوْ جَدَّةٌ أَقْرَبُ مِنْهَا فَإِنْ اسْتَوَيْنَ فِي الدَّرَجَةِ اشْتَرَكْنَ فِي الْمِيرَاثِ الْمَذْكُورِ.

وَسَوَاءٌ فِيمَا ذَكَرْنَا أُمُّ الْأُمِّ، وَأُمُّ الْأَبِ، وَأُمُّ أُمِّ الْأُمِّ، وَأُمُّ أُمِّ الْأَبِ، وَأُمُّ أَبِي الْأَبِ، وَأُمُّ أَبِي الْأُمِّ، وَهَكَذَا أَبَدًا. وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ: فَرُوِيَ عَنْ أَبِي بَكْرٍ أَنَّهُ لَمْ يُوَرِّثْ إلَّا جَدَّةً وَاحِدَةً، وَهِيَ أُمُّ الْأُمِّ فَقَطْ - وَرُوِيَ عَنْهُ، وَعَنْ غَيْرِهِ، تَوْرِيثُ جَدَّتَيْنِ فَقَطْ، وَهُمَا: أُمُّ الْأُمِّ وَأُمَّهَاتُهَا، وَأُمُّ الْأَبِ وَأُمَّهَاتُهَا.

وَقَالَتْ طَائِفَةٌ: بِتَوْرِيثِ ثَلَاثِ جَدَّاتٍ، وَهُمَا اللَّتَانِ ذَكَرْنَا، وَأُمُّ أَبِ الْأَبِ وَأُمَّهَاتُهَا - وَرُوِيَ عَنْ طَائِفَةٍ: تَوْرِيثُ كُلِّ جَدَّةٍ إِلَّا جَدَّةً مِنْ قِبَلِ أَبِي أُمٍّ، أَوْ مِنْ قِبَلِ أَبِي جَدَّةٍ.

L27646 A school of thought has opined that three grandmothers are entitled to inheritance: the two previously mentioned, the mother of the paternal grandfather, and her mothers. It has been reported from a school of thought that every grandmother is entitled to inheritance except a grandmother related through the mother's father or through the grandmother's father.

وَقَالَ بَعْضُهُمْ: لَا تَرِثُ الْجَدَّةُ وَالْجَدَّتَانِ وَالْأَكْثَرُ إِلَّا السُّدُسَ فَقَطْ.

L27647 And some of them said: A grandmother, two grandmothers, and more [than two] inherit nothing but a sixth exclusively.

وَقَالَ بَعْضُهُمْ: إِنْ كَانَتْ الَّتِي مِنْ قِبَلِ الْأُمِّ أَقْرَبَ انْفَرَدَتْ بِالسُّدُسِ وَلَمْ تَرِثْ مَعَهَا الَّتِي مِنْ قِبَلِ الْأَبِ، فَإِنْ كَانَتْ الَّتِي مِنْ قِبَلِ الْأَبِ مُسَاوِيَةً لِلَّتِي مِنْ قِبَلِ الْأُمِّ أَوْ كَانَتْ الَّتِي مِنْ قِبَلِ الْأُمِّ أَبْعَدَ اشْتَرَكَا فِي السُّدُسِ.

L27648 Some of them said: If the one from the mother's side is closer in degree, she exclusively receives the one-sixth share, and the female relative from the father's side does not inherit alongside her. If the female relative from the father's side is equal in proximity to the one from the mother's side, or if the one from the mother's side is farther in degree, they share the one-sixth share between them.

وَقَالَتْ طَائِفَةٌ: لَا تَرِثُ الْجَدَّةُ مَا دَامَ ابْنُهَا الَّذِي صَارَتْ بِهِ جَدَّةً حَيًّا.

L27649 A group said: The grandmother does not inherit as long as her son (through whom she became a grandmother) remains alive.

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ} [النساء: ١١] وَقَالَ تَعَالَى: {كَمَا أَخْرَجَ أَبَوَيْكُمْ مِنَ الْجَنَّةِ} [الأعراف: ٢٧] فَجَعَلَ آدَمَ وَامْرَأَتَهُ - عَلَيْهِمَا السَّلَامُ - أَبَوَيْنَا، فَهَذَا نَصُّ الْقُرْآنِ.

L27650 The proof of that is Allah, the Most High's statement: {And his parents inherited from him, so his mother is entitled to one-third} [An-Nisā': 11]. And Allah, the Most High, said: {As He brought your parents out of Paradise} [Al-Aʿrāf: 27]. Thus, He made Adam and his wife—peace be upon them—our parents. This is the Quran's explicit text.[9]

وَقَدْ جَسَرَ قَوْمٌ عَلَى الْكَذِبِ هَاهُنَا فَادَّعَوْا الْإِجْمَاعَ عَلَى أَنَّ لَيْسَ لِلْجَدَّةِ إِلَّا السُّدُسُ - وَهَذَا مِنْ تِلْكَ الْجَسَرَاتِ - كَتَبَ إِلَيَّ عَلِيُّ بْنُ إِبْرَاهِيمَ التَّبْرِيزِيُّ الْأَزْدِيُّ، قَالَ: نا أَبُو الْحُسَيْنِ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْمَعْرُوفُ بِابْنِ اللَّبَّانِ نا دِعْلِجُ بْنُ أَحْمَدَ نا الْجَارُودِيُّ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ الصَّائِغُ نا أَبُو نُعَيْمٍ الْفَضْلُ بْنُ دُكَيْنٍ عَنْ شَرِيكٍ عَنْ لَيْثٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ، قَالَ: الْجَدَّةُ بِمَنْزِلَةِ الْأُمِّ إِذَا لَمْ تَكُنْ أُمٌّ - وَقَالَ طَاوُسٌ: الْجَدَّةُ بِمَنْزِلَةِ الْأُمِّ تَرِثُ مَا تَرِثُ الْأُمُّ - وَمَا وَجَدْنَا إِيجَابَ السُّدُسِ لِلْجَدَّةِ إِلَّا مُرْسَلًا عَنْ أَبِي بَكْرٍ،

L27651–27653 Some people have audaciously lied here by falsely claiming scholarly consensus that the grandmother receives nothing but a sixth. This is among those instances—ʿAlī ibn Ibrāhīm al-Tabrīzī al-Azdī wrote to me, stating: Abū al-Ḥusayn Muḥammad ibn ʿAbdullāh, known as Ibn al-Labbān, narrated to us; Dilj ibn Aḥmad narrated to us; al-Jārūdī narrated to us; Muḥammad ibn Ismāʿīl al-Ṣāʾigh narrated to us; Abū Nuʿaym al-Faḍl ibn Dukayn narrated to us from Sharīk from Layth from Ṭāwūs from Ibn ʿAbbās, who said: "The grandmother holds the legal status of the mother when there is no mother." Ṭāwūs said: "The grandmother holds the status of the mother, inheriting what the mother inherits." We have not found the obligation of the sixth share for the grandmother except as mursal transmissions from Abū Bakr, ʿUmar, Ibn

[9] **Qur'an references (L27650):** Qur'an 4:11 (An-Nisa); Qur'an 7:27 (Al-A'raf).

Masʿūd, ʿAlī, and Zayd—only five. So where is the consensus? Abū Muḥammad said: This is especially true for those who assign the grandfather the inheritance of the father, for they have contradicted by failing to assign the grandmother the inheritance of the mother.

وَعُمَرَ، وَابْنِ مَسْعُودٍ، وَعَلِيٍّ، وَزَيْدٍ: خَمْسَةٌ فَقَطْ، فَأَيْنَ الْإِجْمَاعُ؟ قَالَ أَبُو مُحَمَّدٍ: لَا سِيَّمَا مَنْ وَرَّثَ الْجَدَّ مِيرَاثَ الْأَبِ فَإِنَّهُ نَاقَضَ، إذْ لَمْ يُوَرِّثْ الْجَدَّةَ مِيرَاثَ الْأُمِّ.

L27654 If it is said: The report of Mansur from Ibrahim al-Nakha'i—"The Messenger of Allah—peace be upon him—allocated the sixth to three grandmothers"—we have transmitted it through the narrational paths of Sufyan al-Thawri, Hammad ibn Zayd, and Jarir ibn Abdul-Hamid, all of them narrating from Mansur, who reported from Ibrahim in this manner.

فَإِنْ قِيلَ: إنَّ خَبَرَ مَنْصُورٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ «أَطْعَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَلَاثَ جَدَّاتٍ السُّدُسَ» رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ، وَحَمَّادِ بْنِ زَيْدٍ، وَجَرِيرِ بْنِ عَبْدِ الْحَمِيدِ، كُلُّهُمْ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ كَذَلِكَ.

L27655 The narration of Mālik from al-Zuhrī from ʿUthmān ibn Isḥāq ibn Kharshah from Qabīṣah ibn Dhuʾayb: that al-Mughīrah ibn Shuʿbah and Muḥammad ibn Salamah testified before Abū Bakr al-Ṣiddīq that the Messenger of Allāh (peace be upon him) granted the grandmother one-sixth.

وَخَبَرُ مَالِكٍ عَنْ الزُّهْرِيِّ عَنْ عُثْمَانَ بْنِ إسْحَاقَ بْنِ خَرَشَةَ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ: أَنَّ الْمُغِيرَةَ بْنَ شُعْبَةَ، وَمُحَمَّدَ بْنَ سَلَمَةَ شَهِدَا عِنْدَ أَبِي بَكْرٍ الصِّدِّيقِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَى الْجَدَّةَ السُّدُسَ» .

L27656 The narration of Ibn Wahb from someone who heard ʻAbd al-Wahhab ibn Mujahid ibn Jabr relate from ʻAli ibn Abi Talib: "The Messenger of Allah—peace and blessings be upon him—apportioned a sixth share to two grandmothers if there was no mother or someone of lower priority. If there is only one grandmother, she receives the sixth."

وَخَبَرُ ابْنِ وَهْبٍ عَمَّنْ سَمِعَ عَبْدَ الْوَهَّابِ بْنَ مُجَاهِدِ بْنِ جَبْرٍ يُحَدِّثُ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَطْعَمَ جَدَّتَيْنِ السُّدُسَ، إذَا لَمْ تَكُنْ أُمٌّ، أَوْ شَيْءٌ دُونَهُمَا، فَإِنْ لَمْ تُوجَدْ إلَّا وَاحِدَةٌ: فَلَهَا السُّدُسُ» .

L27657 The report of Abū Dāwūd al-Sijistānī: Muḥammad ibn ʿAbd al-ʿAzīz ibn Abī Rizmah informed me: My father informed me: ʿUbaydullāh al-ʿAtakī narrated to us from Ibn Buraidah from his father: "The Prophet—peace and blessings of Allah be upon him—allocated a sixth share to the grandmother if there was no mother beneath her."

وَخَبَرُ أَبِي دَاوُد السِّجِسْتَانِيِّ نا مُحَمَّدُ بْنُ عَبْدِ الْعَزِيزِ بْنِ أَبِي رُزْمَةَ أَخْبَرَنِي أَبِي نا عُبَيْدُ اللَّهِ الْعَتَكِيُّ عَنْ ابْنِ بُرَيْدَةَ عَنْ أَبِيهِ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ لِلْجَدَّةِ السُّدُسَ إذَا لَمْ يَكُنْ دُونَهَا أُمٌّ» .

L27658 A similar narration was reported from Ibn Abbas. They said: "It is inconceivable that this be ascribed to Ibn Abbas while contradicting him."

وَرُوِيَ نَحْوُ هَذَا عَنْ ابْنِ عَبَّاسٍ. قَالُوا: وَمِنْ الْمُحَالِ أَنْ يَكُونَ هَذَا عَنْ ابْنِ عَبَّاسٍ وَيُخَالِفُهُ.

L27659 We said: None of this is valid in any respect. The ḥadīth of Qabīṣa is disconnected, as he did not meet Abū Bakr, nor did he hear it from al-Mughīra nor from Muḥammad, and the narration of Ibrāhīm is mursal.

قُلْنَا: هَذَا كُلُّهُ لَا يَصِحُّ مِنْهُ شَيْءٌ. حَدِيثُ قَبِيصَةَ مُنْقَطِعٌ، لِأَنَّهُ لَمْ يُدْرِكْ أَبَا بَكْرٍ، وَلَا سَمِعَهُ مِنْ الْمُغِيرَةِ وَلَا مُحَمَّدٍ، وَخَبَرُ إبْرَاهِيمَ مُرْسَلٌ.

L27660–27661 If these two [cases] were valid, there would be no disagreement in our opinion, because we hold that the mother inherits the sixth in cases where she inherits the sixth alongside the child and siblings.

ثُمَّ لَوْ صَحَّا لَمَا كَانَ فِيهِ خِلَافٌ لِقَوْلِنَا؛ لِأَنَّنَا نَقُولُ بِتَوْرِيثِهَا السُّدُسَ مِنْ حَيْثُ تَرِثُ الْأُمُّ السُّدُسَ مَعَ الْوَلَدِ وَالْإِخْوَةِ.

L27662 As for the narration of Buraidah, then ʿAbdullāh al-ʿAtakī is unknown (majhūl).

وَأَمَّا خَبَرُ بُرَيْدَةَ فَعَبْدُ اللَّهِ الْعَتَكِيُّ مَجْهُولٌ.

L27663 The narration of ʿAlī invalidates all of them because Ibn Wahb did not name the intermediary who transmitted it to him from ʿAbd al-Wahhāb. Furthermore, ʿAbd al-Wahhāb's narration is invalid and discarded.

وَخَبَرُ عَلِيٍّ أَفْسَدَهَا كُلَّهَا؛ لِأَنَّ ابْنَ وَهْبٍ لَمْ يُسَمِّ مَنْ أَخْبَرَهُ بِهِ عَنْ عَبْدِ الْوَهَّابِ، وَأَيْضًا فَعَبْدُ الْوَهَّابِ هَالِكٌ سَاقِطٌ.

L27664 Furthermore, there is no valid transmission received by Mujāhid from ʿAlī, and the narration from Ibn ʿAbbās has an unknown chain of transmission. Even if it were authentic, it would align with what we mentioned: that the grandmother is entitled to a sixth in cases where the mother is entitled to a sixth.

وَأَيْضًا فَلَا سَمَاعَ يَصِحُّ لِمُجَاهِدٍ مِنْ عَلِيٍّ وَالرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ لَا يُعْرَفُ مَخْرَجُهَا، وَلَوْ صَحَّتْ لَكَانَ كَمَا ذَكَرْنَا مِنْ أَنَّ لَهَا السُّدُسَ حَيْثُ لِلْأُمِّ السُّدُسُ.

L27665 Why do they not invoke their established doctrine here—as they do when aligning with their taqlīd—by stating: "Ibn ʿAbbās only abandoned a transmitted ruling due to a consideration he deemed stronger in his judgment. As for us, had an authentic ruling from the Messenger of Allah—peace and blessings be upon him—contrary to our opinion been established here, we would have adopted it. But no such ruling has been authentically established at all."

وَهَلَّا قَالُوا هَاهُنَا بِقَوْلِهِمْ الْمَعْهُودِ إذَا وَافَقَ تَقْلِيدَهُمْ: إنَّ ابْنَ عَبَّاسٍ لَمْ يَتْرُكْ مَا رُوِيَ إلَّا لِأَمْرٍ هُوَ أَقْوَى فِي نَفْسِهِ، وَأَمَّا نَحْنُ فَلَوْ صَحَّ هَاهُنَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُكْمٌ بِخِلَافِ قَوْلِنَا لَقُلْنَا بِهِ، وَلَكِنَّهُ لَمْ يَصِحَّ أَصْلًا.

L27666 If they say: You have narrated in the mentioned report of Qabīṣah that the grandmother came to Abū Bakr and said: "My son's son or my daughter's son has died, and I have been informed that I have a right in the Book of Allah?" Abū Bakr replied: "I find no right for you in the Book, nor have I heard the Messenger of Allah—peace and blessings be upon him—decree anything for you. I will ask the people." We respond: Al-Ṣiddīq—may Allah be pleased with him—merely reported the existence of this ruling and his

فَإِنْ قَالُوا: قَدْ رَوَيْتُمْ فِي حَدِيثِ قَبِيصَةَ الْمَذْكُورِ: جَاءَتْ الْجَدَّةُ إلَى أَبِي بَكْرٍ قَالَتْ: إنَّ ابْنَ ابْنِي، أَوْ ابْنَ ابْنَتِي مَاتَ، وَقَدْ أُخْبِرْتُ أَنَّ لِي فِي كِتَابِ اللَّهِ حَقًّا؟ فَقَالَ أَبُو بَكْرٍ: مَا أَجِدُ لَك فِي الْكِتَابِ حَقًّا، وَمَا سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقْضِي لَك بِشَيْءٍ وَسَأَسْأَلُ النَّاسَ؟ قُلْنَا: إنَّمَا أَخْبَرَ الصِّدِّيقُ - رَضِيَ اللَّهُ عَنْهُ - عَنْ وُجُودِهِ

وَسَمَاعِهِ وَصَدَقَ، وَقَدْ رَوَيْتُمْ فِي هَذَا الْخَبَرِ: أَنَّ الْمُغِيرَةَ وَمُحَمَّدَ بْنَ سَلَمَةَ سَمِعَا فِي ذَلِكَ مَا لَمْ يَسْمَعْ، فَرَجَعَ هُوَ - رَضِيَ اللَّهُ عَنْهُ - إلَى مَا سَمِعَا مِمَّا لَمْ يَسْمَعْ هُوَ؟ فَأَيُّ غَرِيبَةٍ فِي أَنْ لَا يَجِدَ أَيْضًا فِي الْكِتَابِ فِي ذِكْرِهِ حِينَئِذٍ مَا يَجِدُ غَيْرُهُ وَقَدْ مَنَعَ عُمَرُ مِنْ التَّزَيُّدِ عَلَى مِقْدَارِ مَا فِي الصَّدَاقِ، فَلَمَّا ذُكِّرَ بِالْقُرْآنِ رَجَعَ، وَمِثْلُ هَذَا لَهُمْ كَثِيرٌ.

hearing of it, and he spoke truthfully. You have narrated in this report that al-Mughīrah and Muḥammad ibn Salamah heard regarding this matter what he himself had not heard, so he—may Allah be pleased with him—relied on what they had heard from sources he had not personally heard. What is strange then about him likewise not finding in the Book—specifically regarding its mention at that time—what others found? For ʿUmar—may Allah be pleased with him—had prohibited exceeding the stipulated amount in dowries, but when reminded of the Quran, he retracted. They have many similar instances like this.

وَقَدْ وَجَدْنَا نَصًّا: أَنَّ الْجَدَّةَ أَحَدُ الْأَبَوَيْنِ فِي الْقُرْآنِ، وَمِيرَاثُ الْأَبَوَيْنِ فِي الْقُرْآنِ، فَمِيرَاثُهَا فِي الْقُرْآنِ، وَلَيْسَ فِي كُلِّ وَقْتٍ يَذْكُرُ الْإِنْسَانُ مَا فِي حِفْظِهِ، وَنَسِيَ آدَمُ، فَنَسِيَ بَنُوهُ، فَهَذَا مِيرَاثُ الْجَدَّةِ بِنَصِّ الْقُرْآنِ؟ وَلَيْسَ لِمُخَالِفِنَا مُتَعَلَّقٌ أَصْلًا، لَا بِقُرْآنٍ، وَلَا بِسُنَّةٍ، وَلَا إجْمَاعٍ مُتَيَقَّنٍ، وَلَا قِيَاسٍ، وَلَا نَظَرٍ؟ وَمَا كَانَ هَكَذَا فَهُوَ مَقْطُوعٌ بِأَنَّهُ بَاطِلٌ، قَالَ اللَّهُ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١]

L27667 We have found an explicit text: that the grandmother is one of the parents in the Qur'an, and the inheritance of parents is in the Qur'an, so her inheritance is in the Qur'an. A person does not always mention what they have retained, for Adam forgot, so his children forgot. Is this then the grandmother's inheritance by explicit Qur'anic text? Our opponent has no valid basis whatsoever—neither from the Qur'an, nor the Sunnah, nor certain consensus, nor analogy, nor reasoned opinion. Whatever is thus is decisively invalid. Allah the Exalted said: "Say, 'Produce your proof if you are truthful'" (Qur'an 2:111).[10]

وَلَا مَعْنَى لِكَثْرَةِ الْقَائِلِينَ بِالْقَوْلِ وَقِلَّتِهِمْ، وَقَدْ أَفْرَدْنَا أَجْزَاءَ ضَخْمَةً فِيمَا خَالَفَ فِيهِ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ جُمْهُورَ الْعُلَمَاءِ، وَفِيمَا قَالَهُ كُلُّ وَاحِدٍ مِنْهُمْ مِمَّا لَا يُعْرَفُ أَحَدٌ قَالَ بِهِ قَبْلَهُ، وَقَطَعَهُ فِيمَا خَالَفَ فِيهِ كُلُّ وَاحِدٍ مِنْهُمْ الْإِجْمَاعَ الْمُتَيَقَّنَ الْمَقْطُوعَ بِهِ، وَلَمْ يَأْتِ قَطُّ نَصٌّ وَلَا إجْمَاعٌ وَلَا نَظَرٌ صَحِيحٌ بِتَرْجِيحِ مَا كَثُرَ الْقَائِلُونَ بِهِ عَلَى مَا قَلَّ الْقَائِلُونَ بِهِ.

L27668–27670 There is no significance to the multitude or fewness of those who uphold an opinion, for we have singled out extensive volumes regarding matters in which disagreement occurred. Abu Hanifah, Malik, and al-Shafiʿi constitute the majority of scholars. In matters where each expressed a view unknown to have been held by anyone before them, they affirmed conclusively when opposing an irrefutable, certain consensus. Never has there been a scriptural text, consensus, or sound reasoning to prioritize opinions held by many over those held by few.

فَهَذَا مِيرَاثُ الْجَدَّةِ.

L27671 Therefore, this is the share of the grandmother.

وَأَمَّا: كَمْ جَدَّةً تَرِثُ؟ فَإِنَّ طَائِفَةً قَالَتْ: لَا تَرِثُ إلَّا جَدَّةٌ وَاحِدَةٌ، وَهِيَ أُمُّ الْأُمِّ.

L27672 As for the question "How many grandmothers inherit?" a group held that only one grandmother inherits, and she is the mother of the mother.

[10] **Qur'an references (L27667):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

وَرُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ نا الْقَاسِمُ بْنُ مُحَمَّدِ بْنِ أَبِي بَكْرٍ: أَنَّ رَجُلًا مَاتَ وَتَرَكَ جَدَّتَيْهِ: أُمَّ أُمِّهِ، وَأُمَّ أَبِيهِ، فَأَتَوْا أَبَا بَكْرٍ الصِّدِّيقَ، فَأَعْطَى أُمَّ أُمِّهِ السُّدُسَ دُونَ أُمِّ الْأَبِ؟ فَقَالَ لَهُ عَبْدُ الرَّحْمَنِ بْنُ سَهْلٍ - وَكَانَ بَدْرِيًّا - لَقَدْ وَرَّثْتَ الَّتِي لَوْ كَانَتْ هِيَ الْمَيِّتَةَ مَا وَرِثَ مِنْهَا شَيْئًا، وَتَرَكَتْ امْرَأَةً لَوْ كَانَتْ هِيَ الْمَيِّتَةَ وَرِثَ مَالَهَا كُلَّهُ، فَأَشْرَكَ بَيْنَهُمَا فِي السُّدُسِ.

L27673 We have been narrated through the chain of Yaḥyā ibn Saʿīd al-Anṣārī, from al-Qāsim ibn Muḥammad ibn Abī Bakr: A man died, leaving two grandmothers—the mother of his mother and the mother of his father. They came to Abū Bakr al-Ṣiddīq, and he granted the mother of the mother one-sixth, excluding the mother of the father. ʿAbd al-Raḥmān ibn Sahl—a Badr participant—said to him, "You have given inheritance to one who, if she were the deceased, none would inherit from her. Yet she left a woman [i.e., the grandmother] whose heir would inherit all her wealth if she were the deceased." Consequently, Abū Bakr made both grandmothers share the one-sixth.

وَرُوِّينَاهُ مِنْ طَرِيقِ هُشَيْمٍ، وَابْنِ عُيَيْنَةَ، كِلَاهُمَا عَنْ يَحْيَى بْنِ سَعِيدٍ، وَدَخَلَ حَدِيثُ أَحَدِهِمَا فِي الْآخَرِ، وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَأَبِي الزِّنَادِ: أَنَّ أَبَا بَكْرٍ وَرَّثَ الْجَدَّةَ أُمَّ الْأُمِّ السُّدُسَ، فَلَمَّا كَانَ عُمَرُ بْنُ الْخَطَّابِ جَاءَتْهُ الْجَدَّةُ أُمُّ الْأَبِ، فَقَالَ لَهَا: مَا لَكِ فِي كِتَابِ اللَّهِ شَيْءٌ، وَسَوْفَ أَسْأَلُ لَكِ النَّاسَ؟ قَالَ: فَلَمْ يَجِدْ أَحَدًا يُخْبِرُهُ شَيْئًا؟ فَقَالَ غُلَامٌ مِنْ بَنِي حَارِثَةَ: لِمَ لَا تُوَرِّثُهَا يَا أَمِيرَ الْمُؤْمِنِينَ وَهِيَ لَوْ تَرَكَتْ الدُّنْيَا وَمَا فِيهَا وَرِثَهَا، وَهَذِهِ لَوْ تَرَكَتْ الدُّنْيَا وَمَا فِيهَا لَمْ يَرِثْهَا ابْنُ ابْنَتِهَا، فَوَرَّثَهَا عُمَرُ بْنُ الْخَطَّابِ وَقَالَ: إِنَّ اللَّهَ لَيَجْعَلُ فِي الْجَدَّاتِ خَيْرًا كَثِيرًا.

L27674 We have narrated it through the chain of Hushaym and Ibn ʿUyaynah, both of whom narrated from Yahya ibn Saʿid, with the narration of one of them incorporated into the other. And through the chain of Ibn Wahb from ʿAbd al-Jabbar ibn ʿUmar from Yahya ibn Saʿid al-Ansari and Abi al-Zinad: that Abu Bakr granted the grandmother—the mother of the mother—the sixth as inheritance. When Umar ibn al-Khattab assumed authority, the grandmother—the mother of the father—came to him. He said to her: "You have no entitlement in the Book of Allah, but I will ask the people on your behalf." He said that he found no one who could inform him of anything. Then a youth from Banu Harithah said: "Why do you not grant her a share, O Commander of the Faithful? For if she were to leave this world and all within it, her heirs would inherit her, whereas if this one were to leave the world and all within it, her daughter's son would not inherit her." Thus, Umar ibn al-Khattab granted her a share and said: "Truly, Allah has placed abundant good in grandmothers."

فَهَذَا أَبُو بَكْرٍ، وَعُمَرُ: جَعَلَا الْمِيرَاثَ لِلْجَدَّةِ الَّتِي لِلْأُمِّ دُونَ أُمِّ الْأَبِ.

L27675 Thus, Abu Bakr and Umar ruled that inheritance is granted to the maternal grandmother instead of the paternal grandmother.

فَإِنْ قِيلَ: قَدْ رَجَعَا عَنْ ذَلِكَ؟ قُلْنَا: قَدْ قَالَا بِهِ، وَلَا حُجَّةَ إِلَّا فِي إِجْمَاعٍ مُتَيَقَّنٍ، فَلَا إِجْمَاعَ مُتَيَقَّنٌ مَعَكُمْ أَصْلًا - وَقَدْ قَالَ بِذَلِكَ عُمَرُ بَعْدَ أَبِي بَكْرٍ كَمَا تَرَوْنَ.

L27676 If it is said: "Have they retracted from that?" We respond: "They have indeed stated it, and there is no proof except in a definitive consensus. Therefore, there is no definitive consensus with you at all - and Umar after Abu Bakr held that opinion, as you see."

L27677–27679 Ali reports that Umar ruled throughout his lifetime to prohibit the sale of *umm al-walad*, and Ali agreed with him, as did Uthman throughout his lifetime. But when Ali assumed leadership, he opposed this and did not

consider what had preceded from what we have mentioned as a consensus. This is far from being a scholarly consensus, and lying against the entire Ummah is more disgraceful and sinful than lying against a single individual. There is no good in any of that, and conjectural statements are lies—we seek refuge in Allah from it.

وَهَذَا عَلِيٌّ يُخْبِرُ بِأَنَّ عُمَرَ قَضَى مُدَّةَ حَيَاتِهِ بِمَنْعِ بَيْعِ أُمِّ الْوَلَدِ، وَعَلِيٌّ مَعَهُ يُوَافِقُهُ، وَعُثْمَانُ أَيْضًا مُدَّةَ حَيَاتِهِ، فَلَمَّا وَلِيَ عَلِيٌّ خَالَفَ ذَلِكَ، وَلَمْ يَرَ مَا سَلَفَ مِمَّا ذَكَرْنَا إِجْمَاعًا - فَهَذَا أَبْعَدُ مِنْ أَنْ يَكُونَ إِجْمَاعًا، وَالْكَذِبُ عَلَى جَمِيعِ الْأُمَّةِ أَشَدُّ عَارًا وَإِثْمًا مِنَ الْكَذِبِ عَلَى وَاحِدٍ، وَكُلُّ ذَلِكَ لَا خَيْرَ فِيهِ، وَالْقَوْلُ بِالظَّنِّ كَذِبٌ - نَعُوذُ بِاللَّهِ مِنْهُ.

L27680 A group held that only two grandmothers inherit exclusively: 1. **The maternal grandmother**: the mother of the mother, her mother, the mother of her mother, the mother of her mother's mother, and so on perpetually—mother after mother exclusively. 2. **The paternal grandmother**: the mother of the father, her mother, the mother of her mother, the mother of her mother's mother, and so on perpetually—likewise mother after mother exclusively. They do not grant inheritance to the grandfather's mother at all.

وَقَالَتْ طَائِفَةٌ: لَا يَرِثُ إِلَّا جَدَّتَانِ فَقَطْ: أُمُّ الْأُمِّ وَأُمُّهَا، وَأُمُّ أُمِّهَا، وَأُمُّ أُمِّ أُمِّهَا، وَهَكَذَا أَبَدًا: أُمًّا فَأُمًّا فَقَطْ. وَأُمُّ الْأَبِ وَأُمُّهَا، وَأُمُّ أُمِّهَا، وَأُمُّ أُمِّ أُمِّهَا، وَهَكَذَا: أُمًّا فَأُمًّا فَقَطْ، وَلَا يُوَرِّثُونَ أُمَّ جَدٍّ أَصْلًا.

L27681 And this is the view of Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām, al-Zuhrī, Rabīʿah, Ibn Abī Dhiʾb, Mālik, al-Shāfiʿī, Abū Thawr, and Abū Sulaymān.

وَهُوَ قَوْلُ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ، وَالزُّهْرِيِّ، وَرَبِيعَةَ، وَابْنِ أَبِي ذِئْبٍ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ.

L27682 A group said: Only three grandmothers inherit. As we have been narrated through ʿAbd al-Razzāq, who said: Yaḥyā narrated to me from Sufyān al-Thawrī, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī that Saʿd ibn Abī Waqqāṣ said to Ibn Masʿūd: "Do you resent me that witr is performed with one unit, while you grant inheritance to three grandmothers? Do you not then grant inheritance to Ḥawwā, the wife of Adam?"

وَقَالَتْ طَائِفَةٌ: يَرِثُ ثَلَاثُ جَدَّاتٍ فَقَطْ. كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ حَدَّثَنِي يَحْيَى عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّ سَعْدَ بْنَ أَبِي وَقَّاصٍ، قَالَ لِابْنِ مَسْعُودٍ: أَتَغْضَبُ عَلَيَّ أَنْ أُوتِرَ بِوَاحِدَةٍ، وَأَنْتَ تُوَرِّثُ ثَلَاثَ جَدَّاتٍ؟ أَفَلَا تُوَرِّثُ حَوَّاءُ امْرَأَةَ آدَمَ.

L27683 It was transmitted to us through the chain of Ibn Wahb from ʿAbd al-Jabbār ibn ʿUmar, Maslamah ibn ʿAlī, and Ibn Abī al-Zinād. Maslamah said: from Zayd ibn Wāqid, from Makhūl. ʿAbd al-Jabbār and Ibn Abī al-Zinād both said: from Abī al-Zinād, from Khārijah ibn Zayd ibn Thābit. Thereafter, Khārijah and Makhūl were in agreement that Zayd ibn Thābit ruled three grandmothers inherit: two from the mother's side and one from the father's side.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ، وَمَسْلَمَةَ بْنِ عَلِيٍّ، وَابْنِ أَبِي الزِّنَادِ، قَالَ مَسْلَمَةُ: عَنْ زَيْدِ بْنِ وَاقِدٍ عَنْ مَكْحُولٍ، وَقَالَ عَبْدُ الْجَبَّارِ، وَابْنُ أَبِي الزِّنَادِ، كِلَاهُمَا: عَنْ أَبِي الزِّنَادِ عَنْ خَارِجَةَ بْنِ زَيْدِ بْنِ ثَابِتٍ، ثُمَّ اتَّفَقَ خَارِجَةُ، وَمَكْحُولٌ: أَنَّ زَيْدَ بْنَ ثَابِتٍ وَرَّثَ ثَلَاثَ جَدَّاتٍ: اثْنَتَيْنِ مِنْ قِبَلِ الْأُمِّ، وَوَاحِدَةً مِنْ قِبَلِ الْأَبِ.

L27684 From the chain of Hammad ibn Salamah via Dawud ibn Abi Hind and Humayd, who both said together: Indeed Zayd ibn Thabit stated: Three grandmothers inherit - the two paternal grandmothers and the maternal grandmother on her mother's side - and this has also been narrated from Ali ibn Abi Talib.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد بْنِ أَبِي هِنْدَ، وَحُمَيْدٍ، قَالَا جَمِيعًا: إِنَّ زَيْدَ بْنَ ثَابِتٍ قَالَ: يَرِثْنَ ثَلَاثُ جَدَّاتٍ: جَدَّتَا الْأَبِ، وَجَدَّةُ الْأُمِّ لِأُمِّهَا - وَقَدْ رُوِيَ أَيْضًا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ.

L27685 Via the chain of Sa'id ibn Mansur: Abu Mu'awiyah reported to us → Al-A'mash reported from Ibrahim, who said: "They assigned inheritance shares to three grandmothers: two paternal grandmothers (the father's mother and his paternal grandmother) and one maternal grandmother."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ نا الْأَعْمَشُ عَنْ إِبْرَاهِيمَ، قَالَ: كَانُوا يُوَرِّثُونَ مِنْ الْجَدَّاتِ ثَلَاثًا: جَدَّتَيْنِ مِنْ قِبَلِ الْأَبِ، وَوَاحِدَةً مِنْ قِبَلِ الْأُمِّ

L27686 Narrated via ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Ashʿath—who is Ibn Sawwār—from al-Shaʿbī, who said: "Four grandmothers approached Masrūq, and he granted inheritance rights to three of them while excluding the maternal great-grandmother."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَشْعَثَ هُوَ ابْنُ سَوَّارٍ عَنْ الشَّعْبِيِّ قَالَ: جِئْنَ أَرْبَعُ جَدَّاتٍ إِلَى مَسْرُوقٍ، فَوَرَّثَ ثَلَاثًا، وَأَلْغَى أُمَّ أَبِي الْأُمِّ.

L27687 And through the chain of Abd al-Razzaq from Ma'mar from Qatadah: If there are four grandmothers, the mother of the father's mother is excluded, and the three inherit a sixth divided equally among them - this is the position upheld by al-Awzaʿī and Ahmad ibn Hanbal.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ: إِذَا كُنَّ الْجَدَّاتُ أَرْبَعًا: طُرِحَتْ أُمُّ أَبِي الْأُمِّ، وَوَرِثَ الثَّلَاثُ السُّدُسَ أَثْلَاثًا بَيْنَهُنَّ - وَبِهِ يَقُولُ الْأَوْزَاعِيِّ، وَأَحْمَدُ بْنُ حَنْبَلٍ.

L27688–27689 A group said: Four grandmothers inherit, as has been narrated to us via the chain of Hammad ibn Salamah from Laith ibn Abi Sulaym from Tawus from Ibn Abbas that he would grant inheritance to the four grandmothers.

وَقَالَتْ طَائِفَةٌ: تَرِثُ أَرْبَعُ جَدَّاتٍ، كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ يُوَرِّثُ الْجَدَّاتِ الْأَرْبَعَ.

L27690 From the chain of al-Ḥajjāj ibn al-Minhāl, Ḥammād ibn Zayd narrated to us from Ayyūb al-Sakhtiyānī, from al-Ḥasan al-Baṣrī and Ibn Sīrīn: that they both granted inheritance to four grandmothers.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ الْحَسَنِ الْبَصْرِيِّ، وَابْنِ سِيرِينَ: أَنَّهُمَا كَانَا يُوَرِّثَانِ أَرْبَعَ جَدَّاتٍ.

L27691 A group maintained that every grandmother inherits except a grandmother between whom and the deceased intervenes a maternal grandfather - this being the opinion of Sufyān al-Thawrī, Abū Ḥanīfah, and their adherents.

وَقَالَتْ طَائِفَةٌ: تَرِثُ كُلُّ جَدَّةٍ إِلَّا جَدَّةٌ بَيْنَهَا وَبَيْنَ الْمَيِّتِ أَبُو أُمٍّ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِمَا.

L27692 It was narrated to us through the chain of Saʿīd ibn Manṣūr, who reported to us from Khālid ibn ʿAbdullāh, from Dāwūd ibn Abī Hind, from al-Shaʿbī,

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا خَالِدُ بْنُ عَبْدِ اللَّهِ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ الشَّعْبِيِّ قَالَ: إِنَّمَا طُرِحَتْ أُمُّ أَبِي الْأُمِّ، لِأَنَّ أَبَا الْأُمِّ لَا يَرِثُ.

who said: “The mother of the maternal grandfather was excluded because the maternal grandfather does not inherit.”

وَقَالَتْ طَائِفَةٌ: تَرِثُ كُلُّ جَدَّةٍ. كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَشْعَثَ، وَأَبِي سَهْلٍ - هُوَ مُحَمَّدُ بْنُ سَالِمٍ - كِلَاهُمَا عَنِ الشَّعْبِيِّ، قَالَ: كَانَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ يُوَرِّثُ مَا قَرُبَ مِنَ الْجَدَّاتِ وَمَا بَعُدَ -

L27693 A group held that every grandmother is entitled to inheritance. As reported via the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī, from Ashʿath and Abū Sahl (who is Muḥammad ibn Sālim), both narrating from al-Shaʿbī, who said: “‘Abdullāh ibn Masʿūd would entitle grandmothers to inherit – those proximate and remote –”

وَقَدْ رُوِيَ هَذَا أَيْضًا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَابْنِ عَبَّاسٍ، وَزَيْدِ بْنِ ثَابِتٍ.

L27694 This has also been narrated from Ali ibn Abī Ṭālib, Ibn Abbas, and Zayd ibn Thābit.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَشْعَثُ بْنُ سَوَّارٍ نا الشَّعْبِيُّ قَالَ: جِئْنَ إِلَى مَسْرُوقٍ أَرْبَعُ جَدَّاتٍ يَتَسَاءَلْنَ؟ فَأَلْغَى أُمَّ أَبِي الْأُمِّ، قَالَ أَشْعَثُ: فَأَخْبَرْت بِذَلِكَ ابْنَ سِيرِينَ، فَقَالَ: أَوْهَمَ أَبُو عَائِشَةَ، يُوَرَّثْنَ جَمِيعًا.

L27695 Through the chain of Saʿīd ibn Manṣūr: Ashʿath ibn Sawwār narrated to us from al-Shaʿbī, who said: “Four grandmothers came to Masrūq inquiring among themselves.” He excluded the mother of the father’s mother. Ashʿath said: I informed Ibn Sīrīn of this, and he responded: “Abū ʿĀʾishah erred - they are all entitled to inheritance.”

قَالَ أَبُو مُحَمَّدٍ: أَبُو عَائِشَةَ: كُنْيَةُ مَسْرُوقٍ، وَهُوَ قَوْلُ جَابِرِ بْنِ زَيْدٍ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ، وَالْحَسَنِ، كُلُّ هَؤُلَاءِ رُوِيَ عَنْهُمْ تَوْرِيثُ أُمِّ أَبِي الْأُمِّ، وَغَيْرِهَا.

L27696 Abu Muhammad said: Abu Aisha was the kunya of Masruq. This is the opinion of Jabir ibn Zayd, Ata ibn Abi Rabah, and al-Hasan. It has been reported from all of them that they affirmed the inheritance rights of the mother of the father’s mother, along with other relatives.

قَالَ عَلِيٌّ: فَنَظَرْنَا فِي هَذِهِ الْأَقْوَالِ فَوَجَدْنَا حُجَّةَ مَنْ لَمْ يُوَرِّثْ إِلَّا جَدَّةً وَاحِدَةً، وَهِيَ أُمُّ الْأُمِّ وَأُمُّهَا ثُمَّ أُمُّهَا، هَكَذَا فَقَطْ أَنْ يَقُولَ: هَذِهِ الْمُجْتَمَعُ عَلَى تَوْرِيثِهَا - وَلَا يَصِحُّ أَثَرٌ بِخِلَافِ ذَلِكَ.

L27697 Ali said: We examined these opinions and found the evidence of those who do not grant inheritance except to one grandmother—specifically the mother’s mother, her mother, then her mother, exclusively—to be valid, as there is consensus on the entitlement of these grandmothers to inheritance, with no authentic report contradicting this.

فَإِنْ قِيلَ: قَدْ رَجَعَ أَبُو بَكْرٍ عَنْ ذَلِكَ؟ قُلْنَا: نَعَمْ، وَعُمَرُ قَدْ قَالَ بِهِ بَعْدَ أَبِي بَكْرٍ.

L27698 If it is asked, “Did Abū Bakr recant his stance on that?” our response is: Yes, and ʿUmar upheld it after Abū Bakr.

فَإِنْ قِيلَ: فَقَدْ رَجَعَ؟ قُلْنَا: فَكَانَ مَاذَا؟ إِذَا وُجِدَ الْخِلَافُ، وَوَسِعَ الْآخَرَ مَا وَسِعَ الْأَوَّلَ مِنَ الِاجْتِهَادِ وَالِاسْتِدْلَالِ، وَلَيْسَتْ الْحُجَّةُ الَّتِي احْتَجَّ بِهَا عَلَيْهِمَا - رَضِيَ اللَّهُ

L27699–27701 If it is said, “He has retracted?” We reply, “What does that signify?” When disagreement exists, and the latter has the same scope for ijtihād (independent legal reasoning) and istidlāl (inferential reasoning) as the former, the evidence he advanced against them both—may Allah be pleased with them—does not constitute a decisive proof. By the principle of return (radd), the maternal grandmother inherits others but cannot receive inheritance with

no disagreement, while the paternal aunt receives inheritance but does not inherit others with no disagreement.

عَنْهُمَا - بِمُوجَبِهِ رُجُوعًا، لِأَنَّ أُمَّ الْأُمِّ تَرِثُ وَلَا تُورَثُ بِلَا خِلَافٍ، وَالْعَمَّةُ تُورَثُ وَلَا تَرِثُ بِلَا خِلَافٍ.

L27702 Now, Umar had retracted his permanent prohibition on the husband marrying the [already] married woman during her waiting period, permitting him to marry her. Yet Malik did not retract his initial opinion despite Umar's retraction of his own ruling.

وَهَذَا عُمَرُ قَدْ رَجَعَ عَنْ تَحْرِيمِ الْمَنْكُوحَةِ فِي الْعِدَّةِ عَلَى نَاكِحِهَا فِي الْأَبَدِ، وَأَبَاحَ لَهُ نِكَاحَهَا، فَلَمْ يَرْجِعْ مَالِكٌ عَنْ قَوْلِهِ الْأَوَّلِ لِرُجُوعِ عُمَرَ عَنْهُ.

L27703 As for ʿAlī, he retracted his prohibition on the sale of ummahat al-awlad (mothers of the master's children), but Abū Ḥanīfah, Mālik, and al-Shāfiʿī did not retract their positions due to his retraction. The retraction of one who retracts is not a proof, just as the opinion of one who asserts [a view] is not a proof - unless the statement or retraction is validated as a proof.

وَهَذَا عَلِيٌّ قَدْ رَجَعَ عَنْ مَنْعِهِ بَيْعَ أُمَّهَاتِ الْأَوْلَادِ، وَلَمْ يَرْجِعْ: أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ لِرُجُوعِهِ، وَلَيْسَ رُجُوعُ مَنْ رَجَعَ حُجَّةً، كَمَا أَنَّ قَوْلَ مَنْ قَالَ لَيْسَ حُجَّةً، إلَّا أَنْ يُصَحِّحَ الْقَوْلَ أَوْ الرُّجُوعَ حُجَّةً.

L27704 They also stated: Consensus has been established that only one among grandfathers may inherit—being the father of the father, then the father of the father's father, then the father of the father's father's father—in this precise manner only. Thus, it becomes obligatory that only one among grandmothers may inherit—being the mother of the mother, then the mother of the mother's mother, then the mother of the mother's mother's mother—in this precise manner only.

وَقَالُوا أَيْضًا: قَدْ صَحَّ الْإِجْمَاعُ عَلَى أَنَّهُ لَا يَرِثُ مِنْ الْأَجْدَادِ إلَّا وَاحِدٌ، وَهُوَ أَبُ الْأَبِ، وَأَبُوهُ، وَأَبُو أَبِيهِ - هَكَذَا فَقَطْ، فَالْوَاجِبُ أَنْ لَا يَرِثَ مِنْ الْجَدَّاتِ إلَّا وَاحِدَةٌ، وَهِيَ أُمُّ الْأُمِّ، وَأُمُّهَا وَأُمُّ أُمِّهَا، وَهَكَذَا فَقَطْ.

L27705 Abū Muḥammad said: These are two inescapable arguments for the proponents of analogical reasoning, as the first is one they frequently cite, and the second constitutes the soundest analogical reasoning possible. This opinion is linked to the ḥadīth of Ibn Buraidah from his father, that the Prophet—peace and blessings of Allah be upon him—assigned the grandmother a sixth share only when there was no mother below her. This is indicated by the mention of the mother below her in other contexts, whereas here he specified only a grandmother [as inheriting] when there is a mother below her.

قَالَ أَبُو مُحَمَّد: هَاتَانِ حُجَّتَانِ لَازِمَتَانِ لِأَهْلِ الْقِيَاسِ، لِأَنَّ الْأُولَى كَثِيرًا مَا يَحْتَجُّونَ بِهَا، وَالثَّانِيَةُ أَصَحُّ مَا يُمْكِنُ أَنْ يَكُونَ مِنْ الْقِيَاسِ، وَقَدْ يَتَعَلَّقُ لِهَذَا الْقَوْلِ بِحَدِيثِ ابْنِ بُرَيْدَةَ عَنْ أَبِيهِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَى الْجَدَّةَ السُّدُسَ إذَا لَمْ يَكُنْ دُونَهَا أُمٌّ، بِدَلِيلِ ذِكْرِ الْأُمِّ الَّتِي دُونَهَا، فَلَمْ يَذْكُرْ هَاهُنَا إلَّا جَدَّةً تَكُونُ دُونَهَا أُمٌّ.

L27706 We have mentioned this report earlier along with its rationale, and these two do not bind us, for we do not prevent adopting a disputed opinion when necessitating proof requires it. Rather, we mandate adopting it in such cases. Were it not for the necessitating proof requiring inheritance for

وَقَدْ ذَكَرْنَا هَذَا الْخَبَرَ آنِفًا وَعِلَّتَهُ وَلَا يَلْزَمَانِنَا، لِأَنَّنَا لَا نَمْنَعُ مِنْ الْأَخْذِ بِقَوْلٍ مُخْتَلَفٍ فِيهِ إذَا أَوْجَبَهُ بُرْهَانٌ، بَلْ نُوجِبُ الْأَخْذَ بِهِ حِينَئِذٍ، وَلَوْلَا الْبُرْهَانُ الْمُوجِبُ لِتَوْرِيثِ كُلِّ

every grandmother, this opinion would be the only one impermissible to contradict, as it is established by consensus with certainty free from doubt, while other opinions remain disputed. We do not uphold analogy, and by Allah the Most High is success.

جَدَّةٍ لَكَانَ هَذَا الْقَوْلُ هُوَ الَّذِي لَا يَجُوزُ الْقَوْلُ بِسِوَاهُ، لِأَنَّهُ الْمُجْتَمَعُ عَلَيْهِ بِيَقِينٍ لَا شَكَّ فِيهِ وَمَا عَدَاهُ فَمُخْتَلَفٌ فِيهِ، وَنَحْنُ لَا نَقُولُ بِالْقِيَاسِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L27707 As for those who only recognize two grandmothers as heirs, we are unaware of any valid evidence for their position, except that some of them have claimed consensus on the matter—and this is baseless, as we have already stated.

وَأَمَّا مَنْ لَمْ يُوَرِّثْ إلَّا جَدَّتَيْنِ فَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا، إلَّا أَنَّ بَعْضَهُمْ ادَّعَى الْإِجْمَاعَ عَلَى ذَلِكَ - وَهَذَا بَاطِلٌ كَمَا أَوْرَدْنَا.

L27708 If they cling to the report of Mujāhid that the Prophet—peace be upon him—assigned two grandmothers a sixth share, we respond: This is a weak report, and it does not indicate that he—peace and blessings be upon him—prevented them from inheriting more. Indeed, a more sound report exists: that he—peace and blessings be upon him—granted inheritance to three grandmothers.

فَإِنْ تَعَلَّقُوا بِخَبَرِ مُجَاهِدٍ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَطْعَمَ جَدَّتَيْنِ السُّدُسَ. قُلْنَا: هَذَا خَبَرٌ فَاسِدٌ وَلَيْسَ فِيهِ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَنَعَ مِنْ تَوْرِيثِ أَكْثَرَ - وَقَدْ جَاءَ خَبَرٌ أَحْسَنُ مِنْهُ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَرَّثَ ثَلَاثَ جَدَّاتٍ.

L27709–27711 The statement of Saʿd, "Do you not make Hawwa, Adam's wife, inherit?" is not evidence, for there is no disagreement concerning the obligation of... If Eve, the wife of Adam, were alive and there were no mother or grandmother below her in lineage, her inheritance [would apply], because every deceased person among Adam's descendants has a mother, his mother has a mother, and the mother of his mother has a mother - this chain continues with absolute certainty up to Eve's daughter. She would thus incontrovertibly be a grandmother on the maternal side via the mother's mother and her maternal ancestors. Consequently, this legal objection is invalidated, leaving no basis whatsoever for this claim.

وَلَيْسَ قَوْلُ سَعْدٍ: أَلَا تُوَرِّثُ حَوَّاءَ امْرَأَةَ آدَمَ حُجَّةً، لِأَنَّهُ لَا خِلَافَ فِي وُجُوبِ تَوْرِيثِ حَوَّاءَ امْرَأَةِ آدَمَ لَوْ كَانَتْ حَيَّةً، وَلَمْ تَكُنْ دُونَهَا أُمٌّ وَلَا جَدَّةٌ، لِأَنَّ كُلَّ مَيِّتٍ فِي الْعَالَمِ مِنْ بَنِي آدَمَ فَلَهُ أُمٌّ، وَلِأُمِّهِ أُمٌّ، وَلِأُمِّ أُمِّهِ أُمٌّ، هَكَذَا قَطْعًا بِيَقِينٍ إلَى بِنْتِ حَوَّاءَ، فَهِيَ جَدَّةٌ مِنْ قِبَلِ أُمِّ الْأُمِّ وَأُمَّهَاتِهَا بِيَقِينٍ، فَبَطَلَ هَذَا الِاعْتِرَاضُ، وَلَمْ يَبْقَ لِهَذَا الْقَوْلِ مُتَعَلَّقٌ أَصْلًا.

L27712 It is utterly astonishing that Mālik and al-Shāfiʿī, in their statements on inheritance laws, followed Zayd ibn Thābit yet opposed him regarding the granting of inheritance to three grandmothers without any basis. Moreover, Saʿd's objection to Ibn Masʿūd granting inheritance to three grandmothers does not necessarily mean that Saʿd granted inheritance to two grandmothers. Rather, it is possible that he grants inheritance only to a single grandmother. Thus, this opinion is invalidated with certainty.

وَالْعَجَبُ كُلُّ الْعَجَبِ: مِنْ أَنَّ مَالِكًا، وَالشَّافِعِيَّ، فِي أَقْوَالِهِمَا فِي الْفَرَائِضِ مُقَلِّدِينَ لِزَيْدِ بْنِ ثَابِتٍ، وَزَيْدٌ يُوَرِّثُ ثَلَاثَ جَدَّاتٍ فَخَالَفُوهُ بِلَا مَعْنًى، وَلَيْسَ إنْكَارُ سَعْدٍ عَلَى ابْنِ مَسْعُودٍ تَوْرِيثَ ثَلَاثِ جَدَّاتٍ مُوجِبًا أَنَّ سَعْدًا كَانَ يُوَرِّثُ جَدَّتَيْنِ، بَلْ قَدْ يُمْكِنُ أَنْ يَكُونَ لَا يُوَرِّثُ إلَّا جَدَّةً وَاحِدَةً، فَبَطَلَ هَذَا الْقَوْلُ بِيَقِينٍ.

L27713 As for those who only recognize inheritance rights for three grandmothers,

we know of no supporting evidence for their stance except the narration from Ibrāhīm stating that Allah's Messenger—peace and blessings be upon him—assigned a sixth share to three grandmothers. However, this is a mursal narration lacking a complete chain of transmission, which does not explicitly state that he—peace and blessings be upon him—prohibited recognizing inheritance rights for more than three. Therefore, their reliance on this narration becomes baseless, and it fundamentally cannot constitute any valid proof for their position.

وَأَمَّا مَنْ لَمْ يُوَرِّثْ إِلَّا ثَلَاثَ جَدَّاتٍ، فَمَا نَعْلَمُ لَهُمْ مُتَعَلَّقًا إِلَّا خَبَرُ إِبْرَاهِيمَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَطْعَمَ ثَلَاثَ جَدَّاتٍ السُّدُسَ، وَهَذَا مُرْسَلٌ، لَيْسَ فِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَنَعَ مِنْ تَوْرِيثِ أَكْثَرَ، فَبَطَلَ تَعَلُّقُهُمْ بِهِ، وَبَطَلَ أَنْ يَكُونَ لَهُمْ حُجَّةٌ أَصْلًا.

L27714 As for those who do not grant inheritance except to four grandmothers, we know of no established basis for their position, thus it is invalidated because it lacks valid proof.

وَأَمَّا مَنْ لَمْ يُوَرِّثْ إِلَّا أَرْبَعَ جَدَّاتٍ، فَمَا نَعْلَمُ لَهُمْ مُتَعَلَّقًا أَصْلًا، فَبَطَلَ لِتَعَرِّيهِ مِنْ الْحُجَّةِ.

L27715 As for those who grant inheritance to every grandmother except a grandmother whose lineage to the deceased is mediated by a maternal grandfather, they have no valid argument whatsoever - except for Al-Sha'bi's statement that the relative through whom lineage is established does not inherit. It should be said to them: What, then, is the ruling? When a Muslim dies leaving a disbelieving father alongside a Muslim grandfather, or a Muslim uncle, or a Muslim cousin, there is no disagreement that all those we mentioned inherit, while the one through whom they establish lineage does not. Inheritances are determined solely by textual injunctions (Quran and Sunnah), not by proximity of relation nor through establishing lineage. Neither the freedwoman nor the insane person may contract marriage. Their agnatic relative may arrange marriages for the freedwoman's female dependents, the insane person's agnate may marry off the latter's daughter and sister, while the relative through whom both of them establish lineage cannot contract marriage.

وَأَمَّا مَنْ وَرَّثَ كُلَّ جَدَّةٍ إِلَّا جَدَّةً بَيْنَهَا وَبَيْنَ الْمَيِّتِ أَبُو أُمٍّ، فَلَا حُجَّةَ لَهُمْ أَصْلًا، إِلَّا مَا قَالَ الشَّعْبِيُّ: مِنْ أَنَّ الَّذِي تُدْلِي بِهِ لَا يَرِثُ؟ فَيُقَالُ لَهُمْ: فَكَانَ مَاذَا؟ هَذَا الْمُسْلِمُ يَمُوتُ لَهُ أَبٌ كَافِرٌ، وَجَدٌّ مُسْلِمٌ، أَوْ عَمٌّ مُسْلِمٌ، أَوْ ابْنُ عَمٍّ مُسْلِمٌ، فَلَا خِلَافَ فِي أَنَّ كُلَّ مَنْ ذَكَرْنَا يَرِثُ، وَأَنَّ الَّذِي يُدْلِي بِهِ لَا يَرِثُ. إِنَّمَا الْمَوَارِيثُ بِالنُّصُوصِ لَا بِالْقُرْبِ، وَلَا بِالْإِدْلَاءِ، وَهَذِهِ الْمَرْأَةُ الْمُعْتَقَةُ لَا تَكُونُ وَلِيًّا فِي النِّكَاحِ، وَلَا الْمَجْنُونُ، فَلَا يَنْكِحَانِ، وَعَاصِبُهُمَا يَنْكِحُ مَوْلَاتَهَا، وَعَاصِبُ الْمَجْنُونِ يَنْكِحُ ابْنَتَهُ وَأُخْتَهُ، وَالَّذِي يُدْلِيَانِ بِهِ لَا يَنْكِحُ.

L27716 Perhaps they may claim a consensus regarding their assertion of depriving the grandmother—the maternal great-grandmother—of inheritance, but this is not unprecedented among their audacious acts. Indeed, we have seen their falsehood in citing the statements of Ibn Sīrīn and others, rendering this claim invalid because it lacks evidence.

وَلَعَلَّهُمْ أَنْ يَدَّعُوا إِجْمَاعًا عَلَى مَا يَقُولُونَ مِنْ مَنْعِ الْجَدَّةِ أُمِّ أَبِي الْأُمِّ الْمِيرَاثَ، فَمَا هَذَا بِبِدْعٍ مِنْ جَسَارَاتِهِمْ، فَقَدْ رَأَيْنَا كَذِبَهُمْ بِقَوْلِ ابْنِ سِيرِينَ وَغَيْرِهِ - فَبَطَلَ هَذَا الْقَوْلُ لِتَعَرِّيهِ مِنْ الْحُجَّةِ.

L27717–27719 As for whoever assigns inheritance rights to all grandmothers, his argument

is what we presented earlier: that the grandmother is a mother [i.e., a female ancestor], and one of the two parents (father or mother) is established by the Quran's explicit text. The inheritance of parents is clarified through the Quran's explicit text. Thus, it is impermissible to deprive the two parents of inheritance except... By a sound text or a definitive consensus, then the definitive consensus is validated through transmission encompassing the entirety of successive eras, era after era, to the Prophet—peace and blessings of Allah be upon him.

وَأَمَّا مَنْ وَرَّثَ كُلَّ جَدَّةٍ، فَإِنَّ حُجَّتَهُ مَا صَدَّرْنَا قَبْلُ مِنْ أَنَّ الْجَدَّةَ أُمٌّ، وَأَحَدُ الْأَبَوَيْنِ بِنَصِّ الْقُرْآنِ، وَمِيرَاثُ الْأَبَوَيْنِ مُبَيَّنٌ بِنَصِّ الْقُرْآنِ، فَلَمْ يَجُزْ أَنْ يُحْرَمَ الْأَبَوَانِ الْمِيرَاثَ إِلَّا بِنَصٍّ صَحِيحٍ، أَوْ إِجْمَاعٍ مُتَيَقَّنٍ، فَصَحَّ الْإِجْمَاعُ الْمُتَيَقَّنُ بِنَقْلِ كَوَافِّ الْأَعْصَارِ، عَصْرًا بَعْدَ عَصْرٍ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L27720 That he—peace and blessings be upon him—never granted inheritance to a daughter's son through sonship, nor a daughter's son through sonship. Therefore, the inheritance of any grandfather where the deceased is his daughter's son is invalidated, and the inheritance of a grandfather who is a father and the father of a father only remains. There is no textual or consensus-based evidence to prevent the grandmother from inheriting on that basis, thus her inheritance is affirmed as obligatory by the Quranic text. And success comes from Allah, the Most High.

عَلَى أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يُوَرِّثْ قَطُّ مِنِ ابْنِ بِنْتٍ بِالْبُنُوَّةِ، وَلَا ابْنِ بِنْتٍ بِالْبُنُوَّةِ، فَسَقَطَ مِيرَاثُ كُلِّ جَدٍّ يَكُونُ الْمَيِّتُ مِنْهُ ابْنَ بِنْتٍ، وَبَقِيَ مِيرَاثُ الْجَدِّ الَّذِي هُوَ أَبٌ وَأَبُو أَبٍ فَقَطْ، وَلَمْ يَأْتِ نَصٌّ وَلَا إِجْمَاعٌ بِمَنْعِ الْجَدَّةِ مِنَ الْمِيرَاثِ بِذَلِكَ، فَبَقِيَ مِيرَاثُهَا بِنَصِّ الْقُرْآنِ وَاجِبًا. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L27721 We found the report of Qabīṣah ibn Dhuʾayb that "the Messenger of Allah—peace and blessings be upon him—granted the grandmother a sixth share" to align with this opinion, because it generalized and did not specify one grandmother over another. Therefore, it is incumbent upon those who uphold the mursal report to affirm this view, as it is more general than the other mentioned reports.

وَوَجَدْنَا خَبَرَ قَبِيصَةَ بْنِ ذُؤَيْبٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَى الْجَدَّةَ السُّدُسَ» مُوَافِقًا لِهَذَا الْقَوْلِ؛ لِأَنَّهُ عَمَّ، وَلَمْ يَخُصَّ جَدَّةً مِنْ جَدَّةٍ، فَيَلْزَمُ مَنْ قَالَ بِالْمُرْسَلِ أَنْ يَقُولَ بِهَذَا؛ لِأَنَّهُ أَعَمُّ مِنْ سَائِرِ الْأَخْبَارِ الْمَذْكُورَةِ.

L27722 As for us, we rely solely on the text of the Quran that we have mentioned, and all other statements are invalidated with absolute certainty, for they lack textual evidence or consensus. And success comes from Allah, the Most High.

وَأَمَّا نَحْنُ فَلَا نَعْتَمِدُ إِلَّا عَلَى نَصِّ الْقُرْآنِ الَّذِي ذَكَرْنَا فَقَطْ، وَبَطَلَتْ سَائِرُ الْأَقْوَالِ بِيَقِينٍ لَا مِرْيَةَ فِيهِ، لِتَعَرِّيهَا مِنْ حُجَّةِ نَصٍّ أَوْ إِجْمَاعٍ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L27723 As for the hierarchy of grandmothers in proximity, a group of scholars said: "We do not concern ourselves with which grandmother is closer or farther in inheritance—they are equal." As we have narrated through the chain of ʿAbd al-Razzāq from Maʿmar from al-Ḥajjāj ibn Arṭāh from al-Shaʿbī, who said: "Ibn Masʿūd used to treat both grandmothers equally—whether one was closer or not." It was also narrated from him: "Grandmothers are not

وَأَمَّا تَفَاضُلُ الْجَدَّاتِ فِي الْقُرْبِ فَإِنَّ طَائِفَةً قَالَتْ: لَا نُبَالِي أَيُّ الْجَدَّاتِ أَقْرَبُ، وَلَا أَيَّتُهُنَّ أَبْعَدُ فِي الْمِيرَاثِ سَوَاءٌ. كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنِ الشَّعْبِيِّ قَالَ: كَانَ ابْنُ مَسْعُودٍ يُسَاوِي بَيْنَ الْجَدَّتَيْنِ - كَانَتْ إِحْدَاهُمَا أَقْرَبَ

أَوْ لَمْ تَكُنْ أَقْرَبَ - وَرُوِيَ عَنْهُ أَيْضًا: لَا يَحْجُبُ الْجَدَّاتِ إِلَّا الْأُمُّ، وَيَرِثْنَ - وَإِنْ كَانَ بَعْضُهُنَّ أَقْرَبَ مِنْ بَعْضٍ - إِلَّا أَنْ تَكُونَ إِحْدَاهُنَّ أُمَّ الْأُخْرَى فَتَرِثُ الِابْنَةُ دُونَ أُمِّهَا.

L27724 وَقَوْلٌ آخَرُ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَشْعَثَ عَنْ الشَّعْبِيِّ قَالَ: كَانَ ابْنُ مَسْعُودٍ يُوَرِّثُ مَا قَرُبَ مِنْ الْجَدَّاتِ وَمَا بَعُدَ مِنْهُنَّ، جَعَلَ لَهُنَّ السُّدُسَ إِذَا كُنَّ مِنْ مَكَانَيْنِ شَتَّى، فَإِذَا كُنَّ مِنْ مَكَانٍ وَاحِدٍ وَرَّثَ الْقُرْبَى.

L27725 وَقَوْلٌ ثَالِثٌ: قَالَهُ الْحَسَنُ بْنُ حَيٍّ، وَزُفَرُ بْنُ الْهُذَيْلِ، وَهُوَ إِنْ كَانَتْ إِحْدَى الْجَدَّتَيْنِ جَدَّةً مِنْ جِهَتَيْنِ، وَكَانَتْ الْأُخْرَى جَدَّةً مِنْ جِهَةٍ وَاحِدَةٍ: فَلِلَّتِي مِنْ جِهَتَيْنِ ثُلُثَا السُّدُسِ، وَلِلَّتِي مِنْ جِهَةٍ وَاحِدَةٍ ثُلُثُ السُّدُسِ.

L27726–27727 مِثَالُ ذَلِكَ: امْرَأَةٌ تَزَوَّجَ ابْنُ ابْنِهَا ابْنَةَ ابْنَتِهَا فَوُلِدَ لَهُمَا وَلَدٌ، فَمَاتَ أَبَوَاهُ وَجَدَّتَاهُ وَلَمْ يَتْرُكْ إِلَّا هَذِهِ الْمَرْأَةَ الَّتِي هِيَ أُمُّ أَبِي أَبِيهِ وَأُمُّ أُمِّ أُمِّهِ، فَهِيَ جَدَّةٌ مِنْ جِهَتَيْنِ - وَجَدَّةٌ أُخْرَى هِيَ أُمُّ أُمِّ أَبِيهِ، فَهِيَ جَدَّةٌ مِنْ جِهَةٍ وَاحِدَةٍ.

L27728 وَقَوْلٌ رَابِعٌ: وَهُوَ أَنَّهُ إِنْ كَانَتْ الْجَدَّةُ الَّتِي مِنْ جِهَةِ الْأُمِّ أَبْعَدَ مِنْ الَّتِي مِنْ قِبَلِ الْأَبِ اشْتَرَكَتَا فِي الْمِيرَاثِ جَمِيعًا، وَكَذَلِكَ إِنْ كَانَتَا سَوَاءً، فَإِنْ كَانَتْ الَّتِي مِنْ قِبَلِ الْأُمِّ أَقْرَبَ مِنْ الَّتِي مِنْ قِبَلِ الْأَبِ: كَانَ الْمِيرَاثُ كُلُّهُ لِلَّتِي مِنْ قِبَلِ الْأُمِّ، وَلَا شَيْءَ لِلَّتِي مِنْ قِبَلِ الْأَبِ. كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: إِذَا كَانَتْ الْجَدَّةُ مِنْ قِبَلِ الْأُمِّ أَقْرَبَ فَهِيَ أَحَقُّ بِهِ، فَإِنْ كَانَتْ أَبْعَدَ فَهُمَا سَوَاءٌ.

excluded except by the mother, and they inherit, even if some are closer than others, unless one grandmother is the mother of the other, in which case the daughter inherits instead of her mother."

Another opinion: As transmitted to us through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī, from Ashʿath, from al-Shaʿbī, who said: Ibn Masʿūd would grant inheritance to the nearer and the more remote of the grandmothers. He designated a sixth share for them if they belonged to two different places. But if they were from a single place, he granted inheritance to the closest relative.

A third opinion, stated by Al-Ḥasan ibn Ḥayy and Zufar ibn al-Hudhayl, holds that if one grandmother is related through two sides and the other through one side, the grandmother connected through two sides receives two-thirds of the sixth, while the grandmother connected through one side receives one-third of the sixth.

An example of this is a woman whose son's son marries her daughter's daughter, and they have a child. When the child's parents and both grandmothers die, leaving only this woman—who is the great-grandmother (mother of the father's father) and the great-grandmother (mother of the mother's mother)—she is a great-grandmother from two sides. Another great-grandmother is the mother of the father's mother, making her a great-grandmother from one side.

The fourth opinion is that if the grandmother from the mother's side is more distant than the one from the father's side, they both share the inheritance jointly. Similarly, if they are equally distant, they both share the inheritance jointly. But if the grandmother from the mother's side is closer than the one from the father's side, the entire inheritance belongs to the grandmother from the mother's side, and the grandmother from the father's side is entitled to nothing. As narrated through the chain of transmission from ʿAbd al-Razzāq, who narrated from Maʿmar, from Qatādah, from Saʿīd ibn al-Musayyab, from Zayd ibn Thābit, who said: "If the grandmother from the mother's side is closer, she has greater right to it. If she is more distant, they share equally."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ، وَحُمَيْدَ عَنْ (أَهْلِ الْمَدِينَةِ) ، قَالُوا: إِذَا كَانَتْ جَدَّتَانِ مِنْ قِبَلِ الْأُمِّ وَمِنْ قِبَلِ الْأَبِ، فَإِنْ كَانَتْ الَّتِي مِنْ قِبَلِ الْأُمِّ أَقْرَبَ فَهِيَ أَحَقُّ بِالسُّدُسِ، وَإِنْ كَانَتْ الَّتِي مِنْ قِبَلِ الْأَبِ أَقْرَبَ فَالسُّدُسُ بَيْنَهُمَا.

L27729 And through the narration of Ḥammād ibn Salamah from Yaḥyā ibn Saʿīd and Ḥumayd, from (the people of Medina), they said: If there are two grandmothers - one from the mother's side and one from the father's side - then if the maternal grandmother is closer in kinship, she is exclusively entitled to the sixth. But if the paternal grandmother is closer in kinship, the sixth is divided between both of them.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ أَبِي الزِّنَادِ قَالَ: أَدْرَكْت خَارِجَةَ بْنَ زَيْدٍ، وَطَلْحَةَ بْنَ عَبْدِ اللَّهِ بْنِ عَوْفٍ، وَسُلَيْمَانَ بْنَ يَسَارٍ، يَقُولُونَ: إذَا كَانَتْ جَدَّتَانِ مِنْ قِبَلِ الْأَبِ وَمِنْ قِبَلِ الْأُمِّ، فَإِنْ كَانَتْ الَّتِي مِنْ قِبَلِ الْأُمِّ أَقْرَبَ فَهِيَ أَحَقُّ بِالسُّدُسِ، وَإِنْ كَانَتْ أَبْعَدَ: فَهُمَا سَوَاءٌ. وَهُوَ قَوْلُ عَطَاءٍ - وَبِهِ يَقُولُ مَالِكٌ، وَالْأَوْزَاعِيُّ، وَرُوِيَ عَنْ الشَّافِعِيِّ.

L27730 And through the chain of ʿAbd al-Razzāq from Sufyān ibn ʿUyaynah from Abū al-Zinād, who said: I encountered Khārijah ibn Zayd, Ṭalḥah ibn ʿAbd Allāh ibn ʿAwf, and Sulaymān ibn Yasār, who stated: If there are two grandmothers - one from the father's side and one from the mother's side - then if the one from the mother's side is closer, she is more entitled to the sixth. If she is more distant, they are equal. This is the opinion of ʿAṭāʾ, and according to this position speak Mālik, al-Awzāʿī, while it is narrated from al-Shāfiʿī.

وَقَوْلٌ خَامِسٌ: وَهُوَ أَيَّتُهُنَّ كَانَتْ أَقْرَبَ فَهِيَ أَحَقُّ بِالْمِيرَاثِ. كَمَا رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ، وَمَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ، فَذَكَرَ تَوْرِيثَ أَبِي بَكْرٍ لِلْجَدَّةِ مِنْ قِبَلِ الْأَبِ أَوْ مِنْ قِبَلِ الْأُمِّ، وَفِيهِ: فَلَمَّا كَانَتْ خِلَافَةُ عُمَرَ جَاءَتْ الْجَدَّةُ الَّتِي يُخَالِفُهَا، فَقَالَ عُمَرُ: إنَّمَا كَانَ الْقَضَاءُ فِي غَيْرِك، وَلَكِنْ إذَا اجْتَمَعْتُمَا فَالسُّدُسُ بَيْنَكُمَا، وَأَيُّكُمَا خَلَتْ بِهِ فَهُوَ لَهَا

L27731 The fifth opinion is that whichever of them is closer in relation has the greater right to inheritance. As we have reported through the narration of Sufyan and Maʿmar from Al-Zuhri from Qabisah ibn Dhu'ayb, who mentioned Abu Bakr's ruling to assign inheritance to a grandmother from the father's side or the mother's side. The narration states: During Umar's caliphate, a grandmother whose claim was disputed came to him. Umar said: "The judicial decision was only concerning someone other than you. However, if two of you are present together, the sixth share is allocated between you both. Whichever of you is the only one present to claim it, it belongs to her."

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ هُوَ الثَّوْرِيُّ - عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ عَمَّارِ بْنِ أَبِي عَمَّارٍ عَنْ زَيْدِ بْنِ ثَابِتٍ: أَنَّهُ كَانَ يُوَرِّثُ الْقُرْبَى مِنْ الْجَدَّاتِ.

L27732 From the chain of Waki', who narrated to us from Sufyan (al-Thawri), from Humaid al-Tawil, from 'Ammar ibn Abi 'Ammar, from Zayd ibn Thabit: that he used to grant inheritance to relatives on the grandmothers' side.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا مُحَمَّدُ بْنُ سَالِمٍ عَنْ الشَّعْبِيِّ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ وَزَيْدَ بْنَ ثَابِتٍ كَانَا يَجْعَلَانِ السُّدُسَ لِلْقُرْبَى مِنْهُمَا - يَعْنِي الْجَدَّتَيْنِ.

L27733–27734 And via the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us, from Muḥammad ibn Sālim, from al-Shaʿbī: that ʿAlī ibn Abī Ṭālib and Zayd ibn Thābit would assign the sixth share to close relatives from both of them—meaning the two grandmothers.

L27735 From the path of Al-Ḥajjāj ibn Al-Minḥāl, narrated to us Ḥammād ibn Zayd from Ayyūb Al-Sikhtiyānī from Muḥammad ibn Sīrīn regarding grandmothers. He said: If there is one grandmother, one-sixth is allotted to her. If there are two, the one-sixth is divided between them. If there are three, the one-sixth is divided among them. If there are four, the one-sixth is divided among them. Whichever of them is closest in kinship has priority among them. It is merely a discretionary share.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ فِي الْجَدَّاتِ قَالَ: إِنْ كَانَتْ وَاحِدَةً فَالسُّدُسُ لَهَا، وَإِنْ كَانَتْ اثْنَتَيْنِ فَالسُّدُسُ بَيْنَهُمَا فَإِنْ كُنَّ ثَلَاثًا فَالسُّدُسُ بَيْنَهُنَّ، وَإِنْ كُنَّ أَرْبَعًا فَالسُّدُسُ بَيْنَهُنَّ، وَأَيَّتُهُنَّ كَانَتْ أَقْرَبَ فَهِيَ أَحَقُّ، إِنَّمَا هِيَ طُعْمَةٌ.

L27736 And this is also the view of al-Ḥasan al-Baṣrī, Makḥūl, Abū Ḥanīfah and his disciples, Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, Sharīk, and Dāwūd—this opinion being the better-known of the two attributed to al-Shāfiʿī.

وَبِهِ يَقُولُ الْحَسَنُ الْبَصْرِيُّ، وَمَكْحُولٌ، وَأَبُو حَنِيفَةَ، وَأَصْحَابُهُ، وَسُفْيَانُ الثَّوْرِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَشَرِيكٌ، وَدَاوُد - وَهُوَ أَشْهَرُ قَوْلَيْ الشَّافِعِيِّ.

L27737 Abu Muhammad said: As for the second opinion we mentioned from Ibn Mas'ud, the third we mentioned from Zufar, and the fourth preferred by Malik—these are opinions for which there is no evidence to validate any of them: neither from the Quran, nor the Sunnah, nor a weak narration, nor the statement of a companion whom no one opposes, nor consensus, nor deductive reasoning, nor analogy, nor an opinion with a valid basis.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْقَوْلُ الثَّانِي الَّذِي ذَكَرْنَا عَنْ ابْنِ مَسْعُودٍ، وَالْقَوْلُ الثَّالِثُ الَّذِي ذَكَرْنَا عَنْ زُفَرَ، وَالرَّابِعُ الَّذِي اخْتَارَهُ مَالِكٌ: فَأَقْوَالٌ لَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا: لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ لَا مُخَالِفَ لَهُ، وَلَا مِنْ إجْمَاعٍ، وَلَا مِنْ نَظَرٍ، وَلَا قِيَاسٍ وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ.

L27738 The astonishment lies in the Malikis' *taqlid* of the opinion of the first Zayd in this matter, to the exclusion of the opinion of the second Zayd. This is truly perplexing. Thus, only the first opinion and this other opinion remain. We found among the arguments of those who upheld the first opinion the assertion that a grandmother is a mother; therefore, all of them are mothers, and all of them are heirs.

وَالْعَجَبُ مِنْ تَقْلِيدِ الْمَالِكِيِّينَ لِقَوْلِ زَيْدٍ فِي ذَلِكَ دُونَ قَوْلِ زَيْدٍ الثَّانِي، فَهَذَا عَجَبٌ جِدًّا، فَلَمْ يَبْقَ إلَّا الْقَوْلُ الْأَوَّلُ، وَهَذَا الْآخَرُ. فَوَجَدْنَا مِنْ حُجَّةِ مَنْ ذَهَبَ إلَى الْقَوْلِ الْأَوَّلِ أَنْ يَقُولَ: الْجَدَّةُ أُمٌّ، فَكُلُّهُنَّ أُمٌّ، وَكُلُّهُنَّ وَارِثَةٌ.

L27739 Ali said: We found the argument for the other opinion to be that the inheritance of the father and mother has been validly established by the Quran. Thus, the first mother found and the first father found are those whose inheritance is obligatory. It is impermissible to bypass them and proceed to a mother or father more distant than them, since no textual ruling has established such an obligation whatsoever—and this is the truth—and with Allah the Exalted lies all success.

قَالَ عَلِيٌّ: وَوَجَدْنَا حُجَّةَ الْقَوْلِ الْآخَرِ أَنَّ مِيرَاثَ الْأَبِ وَالْأُمِّ قَدْ صَحَّ بِالْقُرْآنِ، فَأَوَّلُ أُمٍّ تُوجَدُ، وَأَوَّلُ أَبٍ يُوجَدُ، فَمِيرَاثُهُمَا وَاجِبٌ، وَلَا تَجُوزُ تَعْدِيَتُهُمَا إلَى أُمٍّ وَلَا إلَى أَبٍ أَبْعَدَ مِنْهُمَا، إذْ لَمْ يُوجِبْ ذَلِكَ نَصٌّ أَصْلًا - وَهَذَا هُوَ الْحَقُّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27740 As for whether the grandmother (the father's mother) inherits while the

father is alive: a group held that she does not inherit. It was narrated to us through Abd al-Razzaq, from Sufyan al-Thawri, from Muhammad ibn Salim, from al-Shaʿbi, who said: Ali ibn Abi Talib and Zayd ibn Thabit did not grant the grandmother an inheritance share when the father is alive.

وَأَمَّا هَلْ تَرِثُ الْجَدَّةُ أُمُّ الْأَبِ وَالْأَبُ حَيٌّ؟ فَطَائِفَةٌ قَالَتْ: لَا تَرِثُ. رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُحَمَّدِ بْنِ سَالِمٍ عَنْ الشَّعْبِيِّ قَالَ: كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ، وَزَيْدُ بْنُ ثَابِتٍ لَا يُوَرِّثَانِ الْجَدَّةَ مَعَ ابْنِهَا.

L27741 And through him to ʿAbd al-Razzāq from Maʿmar from al-Zuhrī: that ʿUthmān ibn ʿAffān did not entitle the grandmother to inheritance if her son is alive. Al-Zuhrī said: And the people are upon it.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ لَمْ يُوَرِّثْ الْجَدَّةَ إنْ كَانَ ابْنُهَا حَيًّا - قَالَ الزُّهْرِيُّ: وَالنَّاسُ عَلَيْهِ.

L27742–27743 Through the chain of narration of ʿAbd al-Razzāq from Maʿmar from Qatāda from Saʿīd ibn al-Musayyab that Zayd ibn Thābit held the opinion that the grandmother - the father's mother - does not receive inheritance rights while her son is alive.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ زَيْدَ بْنَ ثَابِتٍ كَانَ لَا يُوَرِّثُ الْجَدَّةَ أُمَّ الْأَبِ وَابْنُهَا حَيٌّ.

L27744 And through the chain of Ibn Wahb, from someone he trusted, from Saʿīd ibn al-Musayyib, who said: Ibn Masʿūd stated regarding a grandmother whose son is alive: "Her [inheritance] share is barred by the son through whom her lineage is established [when he is alive]."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَمَّنْ يَثِقُ بِهِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: قَالَ ابْنُ مَسْعُودٍ فِي الْجَدَّةِ وَابْنُهَا حَيٌّ: مَنَعَهَا الَّذِي بِهِ تُمُّتُّ.

L27745 From the narration chain of Saʿīd ibn Manṣūr: Ḥammād ibn Zayd narrated to us from Kathīr ibn Shinẓīr from ʿAṭāʾ that Zayd ibn Thābit said: A man precludes his mother [from her share] just as a mother precludes her own mother from receiving the sixth—Kathīr ibn Shinẓīr opines she receives nothing—and the ḥadīth of Ibn Wahb is mursal. This has been narrated from Saʿd ibn Abī Waqqāṣ and al-Zubayr ibn al-ʿAwwām.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ كَثِيرِ بْنِ شِنْظِيرٍ عَنْ عَطَاءٍ أَنَّ زَيْدَ بْنَ ثَابِتٍ قَالَ: يَحْجُبُ الرَّجُلُ أُمَّهُ كَمَا تَحْجُبُ الْأُمُّ أُمَّهَا مِنْ السُّدُسِ - كَثِيرٌ لَا شَيْءَ - وَحَدِيثُ ابْنِ وَهْبٍ مُرْسَلٌ - وَرُوِيَ هَذَا عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ، وَالزُّبَيْرِ بْنِ الْعَوَّامِ.

L27746 This is the position of Saʿīd ibn al-Musayyib, Ṭawūs, and al-Shaʿbī—a view also held by Sufyān, al-Awzāʿī, Mālik, and Abū Ḥanīfah. Al-Shāfiʿī adheres to it as well, and it is narrated from Dāwūd.

وَهُوَ قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ، وَطَاوُسٍ، وَالشَّعْبِيِّ - وَبِهِ يَقُولُ سُفْيَانُ، وَالْأَوْزَاعِيُّ، وَمَالِكٌ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَرُوِيَ عَنْ دَاوُد.

L27747 The second opinion is that she inherits. As narrated to us through the chain of Saʿīd ibn Manṣūr—Sufyān narrated to us from Ibn Abī Laylā from al-Shaʿbī, who said: Ibn Masʿūd said: "The first grandmother to inherit in Islam did so through her son."

وَالْقَوْلُ الثَّانِي: أَنَّهَا تَرِثُ. كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ، نا سُفْيَانُ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الشَّعْبِيِّ قَالَ: قَالَ ابْنُ مَسْعُودٍ: إنَّ أَوَّلَ جَدَّةٍ وَرِثَتْ فِي الْإِسْلَامِ كَانَتْ مَعَ ابْنِهَا.

قَالَ أَبُو مُحَمَّدٍ: أَقَلُّ مَا فِي هَذَا أَنْ يُرَادَ خِلَافُ أَبِي بَكْرٍ.

وَمِنْ طَرِيقِ وَكِيعٍ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ قَالَ: مَاتَ ابْنٌ لِحَسَكَةَ الْحَبَطِيِّ فَتَرَكَ حَسَكَةَ وَأُمًّا لِحَسَكَةَ، فَكَتَبَ أَبُو مُوسَى الْأَشْعَرِيُّ إِلَى عُمَرَ فِي ذَلِكَ؟ فَكَتَبَ إِلَيْهِ عُمَرُ: وَرِّثْهَا مَعَ ابْنِهَا السُّدُسَ

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ عَنْ ابْنِ مَسْعُودٍ: أَنَّهُ وَرَّثَ الْجَدَّةَ مَعَ ابْنِهَا، قَالَ وَكِيعٌ: وَنَا الْأَعْمَشُ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ ابْنِ مَسْعُودٍ قَالَ: لَا يَحْجُبُ الْجَدَّاتِ إِلَّا الْأُمُّ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا سَلَمَةُ بْنُ عَلْقَمَةَ عَنْ حُمَيْدِ بْنِ هِلَالٍ الْعَدَوِيِّ عَنْ رَجُلٍ مِنْهُمْ: أَنَّ رَجُلًا مِنْهُمْ مَاتَ وَتَرَكَ أُمَّ أَبِيهِ، وَأُمَّ أُمِّهِ، وَأَبُوهُ حَيٌّ فَوُلِّيت تَرِكَتَهُ، فَأَعْطَيْت السُّدُسَ أُمَّ أُمِّهِ، وَتَرَكْت أُمَّ أَبِيهِ؟ فَقِيلَ لِي: كَانَ يَنْبَغِي لَك أَنْ تُشَرِّكَ بَيْنَهُمَا؟ فَأَتَيْت عِمْرَانَ بْنَ الْحُصَيْنِ فَسَأَلْته؟ فَقَالَ: أَشْرِكْ بَيْنَهُمَا فِي السُّدُسِ؟ فَفَعَلْت

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ كَثِيرِ بْنِ شِنْظِيرٍ عَنْ الْحَسَنِ، وَابْنِ سِيرِينَ أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ وَرَّثَ أُمَّ حَسَكَةَ مِنْ ابْنِ حَسَكَةَ وَحَسَكَةُ حَيٌّ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ بِلَالِ بْنِ أَبِي بُرْدَةَ أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ كَانَ يُوَرِّثُ الْجَدَّةَ مَعَ ابْنِهَا - وَقَضَى بِذَلِكَ بِلَالٌ - وَهُوَ أَمِيرٌ عَلَى الْبَصْرَةِ - وَهُوَ قَوْلُ عَامِرِ بْنِ وَاثِلَةَ.

L27748 Abu Muhammad said: At the very least, this signifies Abu Bakr's difference of opinion.

L27749 And through the route of Waki', Ḥammād ibn Salamah narrated from ʿUbayd Allāh ibn Ḥumayd ibn ʿAbd al-Raḥmān from his father, who said: A son of Ḥasakah al-Ḥabṭī died, leaving behind Ḥasakah and the mother of Ḥasakah. Abū Mūsā al-Ashʿarī wrote to ʿUmar concerning this, so ʿUmar wrote to him: "Grant her a sixth of the inheritance alongside her son."

L27750 And via the chain of Waki', it was narrated by Sufyan al-Thawri from Isma'il ibn Abi Khalid from Abu 'Amr al-Shaybani from Ibn Mas'ud that he granted the grandmother inheritance alongside her son. Waki' said: And it was narrated by al-A'mash from Ibrahim al-Nakha'i from Ibn Mas'ud, who said: "Grandmothers are not excluded from inheritance except by the mother."

L27751 From the chain of Saʿīd ibn Manṣūr: Hushaym reported to us from Salamah ibn ʿAlqamah from Ḥumayd ibn Hilāl al-ʿAdawī from a man among them: A man from them died, leaving his paternal grandmother, his maternal grandmother, and his father alive. I was appointed to manage his estate, so I gave the sixth share to his maternal grandmother and excluded his paternal grandmother. It was said to me: "Should you not have made them share equally?" I then went to ʿImrān ibn al-Ḥuṣayn and asked him. He said: "Make them share the sixth between them?" So I did.

L27752 From the transmission of Saʿīd ibn Manṣūr: Ḥammād ibn Zayd narrated to us from Kathīr ibn Shinẓīr from al-Ḥasan and Ibn Sīrīn that Abū Mūsā al-Ashʿarī granted Umm Ḥasakah inheritance rights from the son of Ḥasakah while Ḥasakah was still alive.

L27753–27754 And through the chain of ʿAbd al-Razzāq from Maʿmar from Bilāl ibn Abī Burdah: Abū Mūsā al-Ashʿarī used to grant inheritance rights to the grandmother alongside her son – and Bilāl issued this ruling while he was the governor of Basra – and this is the opinion of ʿĀmir ibn Wāthilah.

L27755 From ʿAbd al-Razzāq, who reported to us from Hishām ibn Ḥassān and Maʿmar. Hishām said: from Anas ibn Sīrīn, and Maʿmar said: from Ayyūb

al-Sikhtiyānī from Muḥammad ibn Sīrīn. Anas and Muḥammad subsequently agreed that Shurayḥ used to grant inheritance to the grandmother alongside her son while the son was alive.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا هِشَامُ بْنُ حَسَّانَ، وَمَعْمَرٌ، قَالَ هِشَامٌ: عَنْ أَنَسِ بْنِ سِيرِينَ، وَقَالَ مَعْمَرٌ: عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ، ثُمَّ اتَّفَقَ أَنَسٌ، وَمُحَمَّدٌ: عَلَى أَنَّ شُرَيْحًا كَانَ يُوَرِّثُ الْجَدَّةَ مَعَ ابْنِهَا وَهُوَ حَيٌّ.

L27756 And from the chain of ʿAbd al-Razzāq, from Sufyān ibn ʿUyaynah, from ʿAmr ibn Dīnār, from Abū al-Shaʿthāʾ Jābir ibn Zayd, who said: The grandmother inherits alongside her son.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ قَالَ: تَرِثُ الْجَدَّةُ مَعَ ابْنِهَا.

L27757 Through the chain of Sa’id ibn Mansur, who narrated from both Khalid and Mansur—and both of them narrated from Anas ibn Sirin—[it is reported that] he said: I witnessed Shurayh when a case was brought to him concerning a man who left two grandmothers—the mother of his mother and the mother of his father—while his father was alive. He joined the two grandmothers in sharing the sixth portion.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا خَالِدٌ، وَمَنْصُورٌ، كِلَاهُمَا عَنْ أَنَسِ بْنِ سِيرِينَ قَالَ: شَهِدْت شُرَيْحًا أَتَى فِي رَجُلٍ تَرَكَ جَدَّتَيْهِ: أُمَّ أُمِّهِ، وَأُمَّ أَبِيهِ، وَأَبُوهُ حَيٌّ: فَأَشْرَكَ بَيْنَ جَدَّتَيْهِ فِي السُّدُسِ.

L27758 From the transmission of Saʿīd ibn Manṣūr: Hushaym narrated to us, Ḥumayd narrated to us, from al-Ḥasan and Ibn Sīrīn regarding the grandmother: They both ruled that she inherits alongside her son. Thus, they are as you see: the position of Abū Bakr, ʿUmar, Abū Mūsā al-Ashʿarī, Ibn Masʿūd, ʿImrān ibn al-Ḥuṣayn, ʿĀmir ibn Wāthila, Jābir ibn Zayd, Shurayḥ, al-Ḥasan, and Ibn Sīrīn.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا حُمَيْدٌ عَنْ الْحَسَنِ، وَابْنِ سِيرِينَ فِي الْجَدَّةِ: أَنَّهُمَا كَانَا يُوَرِّثَانِهَا مَعَ ابْنِهَا، فَهُمْ كَمَا تَرَى: خِلَافَةُ أَبِي بَكْرٍ، وَعُمَرَ، وَأَبِي مُوسَى الْأَشْعَرِيِّ، وَابْنِ مَسْعُودٍ، وَعِمْرَانَ بْنِ الْحُصَيْنِ، وَعَامِرِ بْنِ وَاثِلَةَ، وَجَابِرِ بْنِ زَيْدٍ، وَشُرَيْحٍ، وَالْحَسَنِ، وَابْنِ سِيرِينَ.

L27759 This is the opinion of ʿUrwah ibn al-Zubayr, Sulaymān ibn Yasār, Muslim ibn Yasār, ʿAṭāʾ ibn Abī Rabāḥ, al-Musayyib, Sawwār ibn ʿAbd Allāh, ʿUbayd Allāh ibn al-Ḥasan, Sharīk ibn ʿAbd Allāh, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhwayh, and the jurists of Basra - and it was also narrated from Dāwūd. We found the proponents of the first opinion citing as evidence the report we mentioned through Ibn Wahb’s chain from one who heard ʿAbd al-Wahhāb ibn Mujāhid ibn Jabr narrate from his father from ʿAlī: “The Messenger of Allah (peace be upon him) granted the two grandmothers one-sixth when there was no mother or any closer in degree than them.”

وَهُوَ قَوْلُ عُرْوَةَ بْنِ الزُّبَيْرِ، وَسُلَيْمَانَ بْنِ يَسَارٍ، وَمُسْلِمِ بْنِ يَسَارٍ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ، وَالْمُسَيِّبِ، وَسَوَّارِ بْنِ عَبْدِ اللَّهِ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ، وَشَرِيكِ بْنِ عَبْدِ اللَّهِ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَفُقَهَاءِ الْبَصْرَةِ - وَرُوِيَ عَنْ دَاوُد أَيْضًا. فَوَجَدْنَا أَهْلَ الْقَوْلِ الْأَوَّلِ يَحْتَجُّونَ بِالْخَبَرِ الَّذِي ذَكَرْنَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَمَّنْ سَمِعَ عَبْدَ الْوَهَّابِ بْنِ مُجَاهِدِ بْنِ جَبْرٍ عَنْ أَبِيهِ عَنْ عَلِيٍّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَطْعَمَ جَدَّتَيْنِ السُّدُسَ إذَا لَمْ تَكُنْ أُمٌّ، أَوْ شَيْءٌ دُونَهُمَا» .

L27760 Abū Muḥammad said: This is a poor disconnected report between Ibn Wahb and ʿAbd al-Wahhāb. Furthermore, ʿAbd al-Wahhāb is abandoned. Moreover, there is no authentic hearing by Mujāhid from ʿAlī. Additionally, it contains no explicit mention of the father.

قَالَ أَبُو مُحَمَّد: هَذَا خَبَرُ سُوءٍ مُنْقَطِعٌ مَا بَيْنَ ابْنِ وَهْبٍ، وَعَبْدِ الْوَهَّابِ، ثُمَّ عَبْدُ الْوَهَّابِ مَتْرُوكٌ، ثُمَّ لَا يَصِحُّ لِمُجَاهِدٍ سَمَاعٌ مِنْ عَلِيٍّ، ثُمَّ لَيْسَ فِيهِ بَيَانٌ بِذِكْرِ الْأَبِ.

L27761 They also said: When the father is barred, it becomes obligatory that the mother be barred as well.

وَقَالُوا أَيْضًا: لَمَّا حَجَبَ أَبَاهُ وَجَبَ أَنْ يَحْجُبَ أُمَّهُ.

L27762–27764 Ali said: And this is analogy, and all analogy is invalid. Then, even if it were valid, this would be the utmost corruption from it. This is because the son only excludes his father because the son is a closer residuary heir than the father, while the grandmother does not inherit as a residuary heir but rather through a fixed share. Therefore, his legal category differs from hers.

قَالَ عَلِيٌّ: وَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ فَاسِدٌ، ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ غَايَةَ الْفَسَادِ، لِأَنَّهُ إِنَّمَا يَحْجُبُ أَبَاهُ بِأَنَّهُ عَاصِبٌ أَوْلَى مِنْهُ، وَالْجَدَّةُ لَا تَرِثُ بِالتَّعْصِيبِ إِنَّمَا تَرِثُ بِالسَّهْمِ، فَبَابُهُ غَيْرُ بَابِهَا.

L27765 Then they are countered by being told: Just as the mother is not excluded, so too the grandmother is not excluded; and just as the maternal grandmother is not excluded, so too the paternal grandmother is not excluded.

ثُمَّ يُعَارَضُونَ بِأَنْ يُقَالَ لَهُمْ: كَمَا لَا تُحْجَبُ الْأُمُّ كَذَلِكَ لَا تُحْجَبُ الْجَدَّةُ، وَكَمَا لَا تُحْجَبُ أُمُّ الْأُمِّ كَذَلِكَ لَا تُحْجَبُ أُمُّ نَفْسِهِ.

L27766 They said: Just as the mother excludes her mother, does the father similarly exclude his mother? We responded: This is analogy, and all analogy is invalid. Moreover, even if analogy were valid, this particular case would still be invalid, for the mother only excludes her mother because she is a closer mother than her (the grandmother), whereas the father does not share this characteristic.

وَقَالُوا: كَمَا تَحْجُبُ الْأُمُّ أُمَّهَا كَذَلِكَ يَحْجُبُ الْأَبُ أُمَّهُ؟ قُلْنَا: هَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ بَاطِلًا؛ لِأَنَّ الْأُمَّ إِنَّمَا حَجَبَتْ أُمَّهَا لِأَنَّهَا أُمٌّ أَقْرَبُ مِنْهَا، وَلَيْسَ الْأَبُ كَذَلِكَ.

L27767 Then it is said to them: Just as the mother does not exclude the grandfather - indeed, she excludes only the grandmothers - similarly, the father does not exclude the grandmothers; he excludes only the grandfather.

ثُمَّ يُقَالُ لَهُمْ: كَمَا لَا تَحْجُبُ الْأُمُّ الْجَدَّ - وَإِنَّمَا تَحْجُبُ الْجَدَّاتِ - كَذَلِكَ لَا يَحْجُبُ الْأَبُ الْجَدَّاتِ، وَإِنَّمَا يَحْجُبُ الْجَدَّ فَقَطْ.

L27768 They said: “The one through whom she establishes her relation excludes her”—but this is baseless, as it is a statement not mandated by the Quran or the Sunnah. We have encountered a paternal grandmother whose relation is through a father who is a slave, yet he does not exclude her according to them, even though she establishes her relation through him.

وَقَالُوا: حَجَبَهَا الَّذِي تُدْلِي بِهِ - وَهَذَا لَيْسَ بِشَيْءٍ؛ لِأَنَّهُ قَوْلٌ لَمْ يُوجِبْهُ قُرْآنٌ وَلَا سُنَّةٌ، وَقَدْ وَجَدْنَا الْجَدَّةَ مِنَ الْأَبِ يَكُونُ الْأَبُ عَبْدًا فَلَا يَحْجُبُهَا عِنْدَهُمْ وَهِيَ تُدْلِي بِهِ.

L27769 If they say: “Does he exclude her from inheritance only if he receives a share as an heir?” We reply: This is an addition not necessitated by any proof from

فَإِنْ قَالُوا: إِنَّمَا يَحْجُبُهَا إِذَا وَرِثَ؟ قُلْنَا: هَذِهِ زِيَادَةٌ لَمْ يُوجِبْهَا بُرْهَانُ قُرْآنٍ وَلَا سُنَّةٍ، فَهِيَ لَا شَيْءَ، إِنَّمَا هِيَ دَعْوَى لَا نُوَافِقُكُمْ عَلَيْهَا، فَهِيَ سَاقِطَةٌ مَا لَمْ يُوجِبْهَا قُرْآنٌ وَلَا سُنَّةٌ وَلَا إِجْمَاعٌ.

the Quran or the Sunnah, thus it holds no validity. It is merely a claim with which we do not concur; it is invalid unless mandated by the Quran, the Sunnah, or Ijma.

وَقَالُوا: مِيرَاثُهَا مَعَ وُجُودِ الْأَبِ مُخْتَلَفٌ فِيهِ؟ قُلْنَا: نَعَمْ، فَإِنْ لَمْ يُوجِبْ مِيرَاثَهَا بُرْهَانٌ، وَإِلَّا فَلَا مِيرَاثَ لَهَا.

L27770 "They said: 'Is her inheritance disputed when the father is present?' We replied: 'Yes. If there is no evidence mandating her inheritance, she receives none; otherwise, she does.'"

قَالَ أَبُو مُحَمَّد: فَسَقَطَ هَذَا الْقَوْلُ، إِذْ لَا بُرْهَانَ عَلَى صِحَّتِهِ، وَبَقِيَ أَنْ نُثْبِتَ صِحَّةَ قَوْلِنَا بِحَوْلِ اللَّهِ وَقُوَّتِهِ فَنَقُولُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. قَدْ جَاءَ نَصُّ الْقُرْآنِ بِإِيجَابِ مِيرَاثِ الْأَبَوَيْنِ سَوَاءً، فَوَجَبَ بِالْقُرْآنِ مِيرَاثُ الْأَبِ وَالْجَدِّ، وَأَبِي الْجَدِّ، وَجَدِّ الْجَدِّ مَعَ الْأُمِّ، لِأَنَّهُمْ أَبَوَانِ، وَوَجَبَ مِيرَاثُ الْجَدَّةِ مَعَ الْجَدَّةِ كَمَا قُلْنَا، وَمَعَ الْأَبِ، لِأَنَّهُمَا أَبَوَانِ، فَلَيْسَ مِيرَاثُ الْأَبِ أَوْلَى مِنْ مِيرَاثِ الْأُمِّ وَأُمِّهَا أُمِّهِ - وَهَذَا نَصٌّ لَا يَسَعُ خِلَافُهُ.

L27771 Abu Muhammad said: This opinion is dismissed, as there is no proof of its validity. It remains for us to establish the validity of our claim by Allah's might and power. Thus, we say—and with Allah, the Exalted, is success—the Quranic text explicitly mandates the equal inheritance of both parents. Therefore, by the Quran, the inheritance of the father, grandfather, great-grandfather, and great-great-grandfather alongside the mother is obligatory, as they are parents. Likewise, the inheritance of the grandmother alongside another grandmother, as we stated, and alongside the father is obligatory, because they are parents. Thus, the father's inheritance is not more entitled than the inheritance of the mother and her mother (the maternal grandmother) alongside his mother (the paternal grandmother). This is an explicit text that leaves no room for disagreement.

وَكَتَبَ إِلَيَّ أَبُو الْحَسَنِ عَلِيُّ بْنُ إِبْرَاهِيمَ التَّبْرِيزِيُّ نا أَبُو الْحُسَيْنِ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْبَصْرِيُّ الْمَعْرُوفُ بِابْنِ اللَّبَّانِ نا أَحْمَدُ بْنُ كَامِلِ بْنِ شَجَرَةَ الْقَاضِي نا أَحْمَدُ بْنُ عُبَيْدِ اللَّهِ نا يَزِيدُ بْنُ هَارُونَ نا مُحَمَّدُ بْنُ سَالِمٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ، رَفَعَهُ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّهُ وَرَّثَ جَدَّةً وَابْنُهَا حَيٌّ» .

L27772–27774 Abu al-Hasan Ali ibn Ibrahim al-Tabrizi wrote to me: Abu al-Husayn Muhammad ibn Abdullah al-Basri, known as Ibn al-Labban, narrated; Ahmad ibn Kamil ibn Shajarah al-Qadi narrated; Ahmad ibn Ubayd Allah narrated. Yazīd ibn Hārūn narrated to us: Muḥammad ibn Sālim narrated to us from al-Shaʿbī, from Masrūq, from ʿAbd Allāh ibn Masʿūd, who attributed it to the Prophet (ﷺ), that he assigned a grandmother a share of inheritance even though her son [the father of the deceased] was alive.

L27775 And through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from al-Ashʿath—who is Ibn ʿAbd al-Malik al-Ḥumrānī—from Ibn Sīrīn, who said: "The first grandmother to be allocated a share by the Messenger of Allah (peace and blessings be upon him) was the paternal grandmother, in the presence of her son as an heir."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَشْعَثِ - هُوَ ابْنُ عَبْدِ الْمَلِكِ الْحُمْرَانِيُّ - عَنْ ابْنِ سِيرِينَ قَالَ: «أَوَّلُ جَدَّةٍ أَطْعَمَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُمُّ أَبٍ مَعَ ابْنِهَا» .

L27776 From the chain of Al-Ḥajjāj ibn Al-Minhāl: Abū Yaḥyā Bakr ibn Muḥammad Al-Ḍarīr (the Blind) informed us from Al-Ashʿath ibn ʿAbd al-Malik from Al-Ḥasan al-Baṣrī, who said: "The first grandmother to be granted the sixth share during the time of the Messenger of Allah (peace be upon him) [was one] while her son was alive."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو يَحْيَى بَكْرُ بْنُ مُحَمَّدٍ الضَّرِيرُ عَنْ الْأَشْعَثِ بْنِ عَبْدِ الْمَلِكِ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: «أَوَّلُ جَدَّةٍ أُطْعِمَتْ السُّدُسَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَابْنُهَا حَيٌّ» .

L27777 Ali said: Our agreed position with the Hanafis and Malikis is that they hold: "The musnad and the mursal are equivalent." These two are mursal narrations, yet a valid musnad narration exists; let them take both into account.

قَالَ عَلِيٌّ: عَهْدُنَا بِالْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ يَقُولُونَ: الْمُسْنَدُ وَالْمُرْسَلُ سَوَاءٌ، وَهَذَانِ مُرْسَلَانِ وَمُسْنَدٌ صَالِحٌ، فَلْيَأْخُذُوا بِهِمَا.

L27778 If they say: "Perhaps her son was the uncle of the deceased?" We reply: The legal ruling is not subject to "perhaps," but her son is either the father or the uncle. Whichever of the two she inherited along with him, restricting [the ruling] to the uncle is impermissible, as it constitutes a false claim, a judgment based on conjecture, and a weak interpretation of the text—for there is no relevance here to the uncle's life or death. And success comes only from Allah, the Exalted.

فَإِنْ قَالُوا: لَعَلَّ ابْنَهَا كَانَ عَمَّ الْمَيِّتِ؟ قُلْنَا: لَا يَرِدُ الدِّينُ بِ " لَعَلَّ " لَكِنَّ ابْنَهَا هُوَ الْأَبُ وَالْعَمُّ، أَيُّهُمَا كَانَتْ وَرِثَتْ مَعَهُ، وَتَخْصِيصُ الْعَمِّ بِذَلِكَ لَا يَجُوزُ، لِأَنَّهُ دَعْوَى كَاذِبَةٌ، وَقَطْعٌ بِالظَّنِّ، وَتَفْسِيرٌ بَارِدٌ لِلْخَبَرِ، لِأَنَّهُ لَا فَائِدَةَ هَاهُنَا فِي حَيَاةِ الْعَمِّ وَلَا فِي مَوْتِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[فَصْلٌ فِي الحجب]

L27779 **Chapter on Exclusion**

فَصْلٌ

L27780 Chapter

قَالَ أَبُو مُحَمَّدٍ: وَلَا خِلَافَ فِي أَنَّ الْأَبَ لَا يَحْجُبُ أُمَّ الْأُمِّ، وَلَا أُمَّ أُمِّ الْأُمِّ فَصَاعِدًا، وَقَدْ قَالَ بَعْضُ التَّابِعِينَ: إنَّ الْجَدَّ أَبَا الْأَبِ يَحْجُبُ جَدَّةَ الْأَبِ أُمَّ أُمِّهِ - وَهَذَا قَوْلٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27781 Abu Muhammad said: There is no dispute that the father does not exclude the maternal grandmother from inheritance, nor the maternal great-grandmother and those above her in the maternal line. Some of the Tabi'in said: The paternal grandfather excludes from inheritance his own maternal grandmother (the mother of his mother) – and this is an opinion unsupported by evidence. And by Allah, the Exalted, is all success.

L27782 Issue 1731: Neither male siblings nor female siblings - whether they are

full siblings, paternal half-siblings, or maternal half-siblings - inherit in the presence of the grandfather (the father's father), nor in the presence of the great-grandfather [father of the aforementioned grandfather], nor in the presence of the great-great-grandfather [grandfather of his grandfather]. The aforementioned grandfather assumes the status of a father when the father is absent, and each one of them excludes his own father from inheritance.

١٧٣١ - مَسْأَلَةٌ وَلَا تَرِثُ الْإِخْوَةُ الذُّكُورُ وَلَا الْإِنَاثُ، أَشِقَّاءَ كَانُوا أَوْ لِأَبٍ، أَوْ لِأُمٍّ مَعَ الْجَدِّ أَبِي الْأَبِ، وَلَا مَعَ أَبِي الْجَدِّ الْمَذْكُورِ، وَلَا مَعَ جَدِّ جَدِّهِ، وَالْجَدُّ الْمَذْكُورُ أَبٌ إِذَا لَمْ يَكُنْ الْأَبُ، وَكُلُّ وَاحِدٍ مِنْهُمْ يَحْجُبُ أَبَاهُ.

L27783 People have considerable disagreement regarding the paternal grandfather. A group abstained from ruling on it – as we have reliably reported through the strongest chain to Shu'bah from Yaḥyā ibn Sa'īd al-Taymī – of the Rabāb clan – who said: I heard al-Sha'bī narrating from Ibn 'Umar from 'Umar, who said: "Three things I wish the Messenger of Allah (peace and blessings be upon him) had not departed until he clarified for us a definitive ruling concerning them: the paternal grandfather, kalāla, and certain types of riba."

وَلِلنَّاسِ فِي الْجَدِّ اخْتِلَافٌ كَثِيرٌ، فَطَائِفَةٌ تَوَقَّفَتْ فِيهِ -: كَمَا رُوِّينَا بِأَصَحِّ طَرِيقٍ إِلَى شُعْبَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ التَّيْمِيِّ - تَيْمِ الرَّبَابِ - قَالَ: سَمِعْت الشَّعْبِيَّ يُحَدِّثُ عَنْ ابْنِ عُمَرَ عَنْ عُمَرَ، قَالَ: ثَلَاثٌ وَدِدْت أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُقْبَضْ حَتَّى يُبَيِّنَ لَنَا فِيهِنَّ أَمْرًا يُنْتَهَى إلَيْهِ: الْجَدُّ، وَالْكَلَالَةُ، وَأَبْوَابٌ مِنْ أَبْوَابِ الرِّبَا.

L27784–27785 Abu Muhammad said: The absence of the Messenger of Allah—peace and blessings of Allah be upon him—clarifying through the Quran or his Sunnah the rulings concerning the grandfather, kalāla, and riba, as reported from Umar—may Allah be pleased with him—does not entail that such clarification was absent from the rest of the Companions—may Allah be pleased with them. Far is it from Allah that He would impose a religious ruling upon His servants while its clarification remains hidden from all Muslims. Were this so, such a ruling would stand abolished, an obligatory law rendered void, and the religion would be deficient. Yet none of the jurists whom the critics—promoting such a matter—follow in their religious practice, like Abu Hanifa, Malik, and Al-Shafi'i, except that they affirmed: The rulings of the grandfather, riba, and kalāla have indeed been clarified to them—whether through explicit Quranic text, Sunnah, juristic reasoning, or analogy.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ مَغِيبُ بَيَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقُرْآنِ أَوْ بِسُنَّتِهِ لِحُكْمٍ: الْجَدِّ، وَالْكَلَالَةِ، وَالرِّبَا، عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - بِمُوجِبٍ أَنَّ ذَلِكَ الْبَيَانَ غَابَ عَنْ غَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَحَاشَ لِلَّهِ مِنْ أَنْ يَكُونَ لَهُ حُكْمٌ فِي الدِّينِ افْتَرَضَهُ عَلَى عِبَادِهِ، ثُمَّ غَابَ بَيَانُهُ عَنْ جَمِيعِ أَهْلِ الْإِسْلَامِ، إذَا كَانَ يَكُونُ ذَلِكَ حُكْمًا مِنْ الدِّينِ قَدْ بَطَلَ، وَشَرِيعَةً لَازِمَةً قَدْ سَقَطَتْ، وَلَكَانَ الدِّينُ نَاقِصًا - وَلَيْسَ أَحَدٌ مِنْ الْفُقَهَاءِ الَّذِينَ قَلَّدَهُ - الْمُشَنِّعُونَ بِمِثْلِ هَذَا - دِينُهُمْ كَأَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ إلَّا وَهُمْ قَالُوا: بِأَنَّ حُكْمَ الْجَدِّ، وَالرِّبَا، وَالْكَلَالَةِ، قَدْ تَبَيَّنَ لَهُمْ: إمَّا بِنَصِّ قُرْآنٍ أَوْ سُنَّةٍ، أَوْ نَظَرٍ أَوْ قِيَاسٍ.

L27786 If a denier rejects this, he cannot refute their statements in all such matters regarding obligations and prohibitions. If their assertion is not based on the clarity of what they have declared, then they would have ruled in religion

فَإِنْ أَنْكَرَ هَذَا مُنْكِرٌ لَمْ يَقْدِرْ عَلَى إنْكَارِ أَقْوَالِهِمْ فِي كُلِّ ذَلِكَ بِالْإِيجَابِ وَالتَّحْرِيمِ، فَإِنْ كَانَ قَوْلُهُمْ ذَلِكَ لَا عَنْ أَنَّهُ يَتَبَيَّنُ لَهُمْ مَا قَالُوهُ مِنْ ذَلِكَ فَقَدْ حَكَمُوا فِي الدِّينِ بِالْهَوَى، وَنَحْنُ نُجِلُّهُمْ عَنْ هَذَا - وَلِلَّهِ الْأَمْرُ مِنْ قَبْلُ وَمِنْ بَعْدُ.

by personal whims—and we hold them too esteemed for such conduct. To Allah belongs the command, before and after.[11]

L27787 From the narration of Hammad ibn Zayd, narrated to us by Ayyub al-Sakhtiyānī, from Humayd ibn Hilal, who said: I asked Sa'id ibn al-Musayyib about an inheritance share involving a grandfather. He replied: "Why are you approaching this—or do you intend by this? Indeed, Umar ibn al-Khattab said: 'The boldest among you in rulings concerning the grandfather is the boldest among you regarding the Hellfire. Only one who dares regarding the grandfather is one who dares regarding the Hellfire.'"

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ حُمَيْدِ بْنِ هِلَالٍ قَالَ: سَأَلْت سَعِيدَ بْنَ الْمُسَيِّبِ عَنْ فَرِيضَةٍ فِيهَا جَدٌّ؟ فَقَالَ: مَا تَصْنَعُ إلَى هَذَا - أَوْ تُرِيدُ إلَى هَذَا - إنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: أَجْرَؤُكُمْ عَلَى الْجَدِّ أَجْرَؤُكُمْ عَلَى النَّارِ، وَإِنَّمَا يَجْتَرِئُ عَلَى الْجَدِّ مَنْ يَجْتَرِئُ عَلَى النَّارِ.

L27788 Through the chain of Ayyub ibn Sulayman: From Abdullah ibn al-Mubarak, Abd al-A'la, and Abd al-Razzaq—all of whom narrated from Ma'mar, from al-Zuhri, from Abu Salama ibn Abd al-Rahman ibn Awf: That Umar ibn al-Khattab said at the time of his death: "Take note of three things from me: I did not adjudicate anything regarding the grandfather's share in inheritance, I did not state anything concerning *kalāla*, and I did not appoint a successor." These were his words at the time of his death—may Allah be pleased with him.

وَمِنْ طَرِيقِ أَيُّوبَ بْنِ سُلَيْمَانَ أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ، وَعَبْدُ الْأَعْلَى، وَعَبْدُ الرَّزَّاقِ، كُلُّهُمْ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ عِنْدَ مَوْتِهِ: احْفَظُوا عَنِّي ثَلَاثًا -: إنِّي لَمْ أَقْضِ فِي الْجَدِّ شَيْئًا، وَلَمْ أَقُلْ فِي الْكَلَالَةِ شَيْئًا، وَلَمْ أَسْتَخْلِفْ أَحَدًا - فَهَذَا قَوْلُهُ عِنْدَ مَوْتِهِ - رَضِيَ اللَّهُ عَنْهُ -.

L27789 From the narration of Waki': I, Sufyan al-Thawri, [narrate] from Abu Ishaq al-Sabi'i, from 'Ubayd ibn 'Amr al-Khariqi, that a man asked 'Ali ibn Abi Talib, "What is the ruling for a fixed share?" He replied, "Bring it forth if there is no grandfather in it."

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عُبَيْدِ بْنِ عَمْرٍو الْخَارِقِيِّ: أَنَّ رَجُلًا سَأَلَ عَلِيَّ بْنَ أَبِي طَالِبٍ عَنْ فَرِيضَةٍ؟ فَقَالَ: هَاتِهَا إنْ لَمْ يَكُنْ فِيهَا جَدٌّ.

L27790 From the narration of Abd al-Razzaq, from Ma'mar, from Ayyub al-Sikhtiyānī, from Nafi', who said: Ibn Umar said, "Those among you most daring toward the seeds of Hellfire are those most daring in disputes."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ قَالَ قَالَ ابْنُ عُمَرَ: أَجْرَؤُكُمْ عَلَى جَرَاثِيمِ جَهَنَّمَ أَجْرَؤُكُمْ عَلَى الْجَدِّ.

L27791–27792 From the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Abū Isḥāq al-Sabīʿī: He asked Shuraih about a legal inheritance case involving a grandfather and a brother. Repeatedly, he gave him no answer at all, saying: "The authority overseeing him states nothing about the grandfather."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ: أَنَّهُ سَأَلَ شُرَيْحًا عَنْ فَرِيضَةٍ فِيهَا جَدٌّ وَأَخٌ؟ فَلَمْ يُجِبْهُ فِيهَا بِشَيْءٍ مَرَّةً بَعْدَ مَرَّةٍ، وَقَالَ لَهُ: الَّذِي يَقِفُ عَلَى رَأْسِهِ: إنَّهُ لَا يَقُولُ فِي الْجَدِّ شَيْئًا.

وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ: مَنْ سَرَّهُ أَنْ يَقْتَحِمَ جَرَاثِيمَ جَهَنَّمَ فَلْيَقْضِ بَيْنَ الْجَدِّ وَالْإِخْوَةِ.

[11] **Qur'an references (L27786):** Qur'an 30:4 (Ar-Rum).

From Sa‘īd ibn Jubayr: Whoever desires to recklessly throw himself into the lowest depths of Hellfire, let him judge between the grandfather and the brothers.

These individuals—Umar, Ali, Ibn Umar, Shurayh, and Sa‘id ibn Jubayr—entirely refrained from ruling on the grandfather’s share, as established through reliable chains of transmission. To this position Muhammad ibn al-Hasan, the companion of Abu Hanifah, reverted in his final rulings.

A group maintained that the grandfather has no fixed share alongside the brothers; rather, it is according to what the caliph decrees therein.

It was narrated to us through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: I, Ismāʿīl ibn Abī Uways, from ʿAbd al-Raḥmān ibn Abī al-Zinād, from his father, who said: Khārijah ibn Zayd ibn Thābit informed me from his father, who said: Indeed, the grandfather - being the father of the father - along with the paternal brothers, none would judge between them except the Commander of the Faithful. The brothers would sometimes be numerous and sometimes few, yet there was no ordained share that we recognize as legislated for them. However, when the Commander of the Faithful was approached for a legal verdict concerning them, he would issue a legal opinion among them according to the approach he deemed suitable, proportionate to the number of brothers - whether abundant or scarce.

Abu Muhammad said: We were narrated through the chain of Sa’id ibn Mansur - Hushaym - Mughirah - al-Haytham ibn Badr - Shu’bah ibn al-Taw’am al-Dabbi, who said: “We came to Ibn Mas’ud concerning an inheritance case involving a grandfather and brothers.” He mentioned the differing legal rulings regarding it. We asked him about this matter, whereupon Ibn Mas’ud responded: “We only judge according to the judicial precedents of our leaders.”

And it has been conveyed to us through the chain of Hammad ibn Salamah: from Hisham ibn Urwah, from Urwah ibn al-Zubayr, from Marwan ibn al-Hakam, who said: Uthman ibn Affan told me: “Umar said to me: ’I have reached a legal opinion concerning the grandfather. If you deem it worthy

فَهَؤُلَاءِ: عُمَرُ، وَعَلِيٌّ، وَابْنُ عُمَرَ، وَشُرَيْحٌ، وَسَعِيدُ بْنُ جُبَيْرٍ، تَوَقَّفُوا فِي الْجَدِّ جُمْلَةً بِأَسَانِيدَ ثَابِتَةٍ - وَإِلَى هَذَا رَجَعَ مُحَمَّدُ بْنُ الْحَسَنِ صَاحِبُ أَبِي حَنِيفَةَ فِي آخِرِ أَقْوَالِهِ.

وَقَالَتْ طَائِفَةٌ: لَيْسَ لِلْجَدِّ شَيْءٌ مَعْلُومٌ مَعَ الْإِخْوَةِ، إِنَّمَا هُوَ عَلَى حَسَبِ مَا يَقْضِي فِيهِ الْخَلِيفَةُ.

رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي أَنَا إِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ عَنْ أَبِيهِ قَالَ: أَخْبَرَنِي خَارِجَةُ بْنُ زَيْدِ بْنِ ثَابِتٍ عَنْ أَبِيهِ قَالَ: إِنَّ الْجَدَّ أَبَا الْأَبِ مَعَهُ الْإِخْوَةُ مِنْ الْأَبِ لَمْ يَكُنْ يَقْضِي بَيْنَهُمْ إِلَّا أَمِيرُ الْمُؤْمِنِينَ، يَكْثُرُ الْإِخْوَةُ حِينًا وَيَقِلُّونَ حِينًا، فَلَمْ يَكُنْ بَيْنَهُمْ فَرِيضَةٌ نَعْلَمُهَا مَفْرُوضَةً إِلَّا أَنَّ أَمِيرَ الْمُؤْمِنِينَ كَانَ إِذَا أُتِيَ يُسْتَفْتَى فِيهِمْ، يُفْتِي بَيْنَهُمْ بِالْوَجْهِ الَّذِي يَرَى فِيهِمْ، عَلَى قَدْرِ كَثْرَةِ الْإِخْوَةِ وَقِلَّتِهِمْ.

قَالَ أَبُو مُحَمَّدٍ: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا مُغِيرَةُ أَنَا الْهَيْثَمُ بْنُ بَدْرٍ عَنْ شُعْبَةَ بْنِ التَّوْأَمِ الضَّبِّيِّ قَالَ: أَتَيْنَا ابْنَ مَسْعُودٍ فِي فَرِيضَةٍ فِيهَا جَدٌّ وَإِخْوَةٌ فَذَكَرَ اخْتِلَافَ حُكْمِهِ فِيهَا، قَالَ - فَقُلْنَا لَهُ فِي ذَلِكَ؟ فَقَالَ ابْنُ مَسْعُودٍ: إِنَّمَا نَقْضِي بِقَضَاءِ أَئِمَّتِنَا.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ مَرْوَانَ بْنِ الْحَكَمِ قَالَ: قَالَ لِي عُثْمَانُ بْنُ عَفَّانَ، قَالَ لِي عُمَرُ: إِنِّي قَدْ رَأَيْت فِي الْجَدِّ رَأْيًا،

to follow, then follow it.'" Uthman responded: "If we follow your opinion, it is indeed sound. And if we follow the opinion of your predecessor, then how excellent his judgment was!"

فَإِنْ رَأَيْتُمْ أَنْ نَتَّبِعُوهُ فَاتَّبِعُوهُ؟ فَقَالَ عُثْمَانُ: إِنْ نَتَّبِعْ رَأْيَك فَإِنَّهُ رُشْدٌ، وَإِنْ نَتَّبِعْ رَأْيَ الشَّيْخِ قَبْلَك فَنِعْمَ ذُو الرَّأْيِ كَانَ.

L27799 Through the chain of ʿAbd al-Razzāq: I [Ibn Jurayj] said: Hishām ibn ʿUrwah informed me from his father, who narrated to him from Marwān ibn al-Ḥakam, that this statement of ʿUthmān to ʿUmar occurred after ʿUmar had been stabbed.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ: أَخْبَرَنِي هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ: أَنَّهُ حَدَّثَهُ عَنْ مَرْوَانَ بْنِ الْحَكَمِ أَنَّ قَوْلَ عُثْمَانَ هَذَا لِعُمَرَ كَانَ بَعْدَ أَنْ طُعِنَ عُمَرُ.

L27800–27801 So Umar, Uthman, and Zayd ibn Thabit do not issue any definitive ruling regarding it.

فَهَؤُلَاءِ عُمَرُ، وَعُثْمَانُ، وَزَيْدُ بْنُ ثَابِتٍ لَا يَقْطَعُونَ فِيهِ بِشَيْءٍ.

L27802 As for the narration from ʿUmar and ʿUthmān, it is of the utmost authenticity. As for Zayd, there is no way to find a better chain of transmission than this in anything narrated from him regarding the grandfather's inheritance, except his statement in "al-Kharqā'" concerning a sister, a mother, and two grandfathers: "The grandfather receives two shares, the sister receives one share, and the mother receives a third," for this is established through a more reliable chain than this one. A group held that the grandfather does not inherit alongside brothers. It was narrated to us via the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: I, Ismāʿīl ibn Abī Uways, narrated from ʿAbd al-Raḥmān ibn Abī al-Zinād, from his father, who reported from Khārijah ibn Zayd ibn Thābit, from his father: When ʿUmar sought counsel regarding the inheritance of the grandfather and brothers, Zayd said, "My view at the time was that brothers have a greater right to their brother's inheritance than the grandfather," and he mentioned the narration.

أَمَّا الرِّوَايَةُ عَنْ عُمَرَ، وَعُثْمَانَ فَفِي غَايَةِ الصِّحَّةِ، وَأَمَّا عَنْ زَيْدٍ فَلَا سَبِيلَ إِلَى أَنْ يُوجَدَ عَنْهُ أَحْسَنُ مِنْ هَذَا الْإِسْنَادِ فِي شَيْءٍ مِمَّا رُوِيَ عَنْهُ فِي الْجَدِّ إِلَّا قَوْلُهُ فِي " الْخَرْقَاءِ " فِي أُخْتٍ، وَأُمٍّ وَجَدَّانِ: لِلْجَدِّ سَهْمَانِ، وَلِلْأُخْتِ سَهْمٌ، وَلِلْأُمِّ الثُّلُثُ، فَإِنَّهُ ثَابِتٌ عَنْهُ بِأَحْسَنَ مِنْ هَذَا الْإِسْنَادِ. وَقَالَتْ طَائِفَةٌ: لَيْسَ لِلْجَدِّ مَعَ الْإِخْوَةِ مِيرَاثٌ -: رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي أَنَا إِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ عَنْ أَبِيهِ: أَخْبَرَنِي خَارِجَةُ بْنُ زَيْدِ بْنِ ثَابِتٍ عَنْ أَبِيهِ: أَنَّ عُمَرَ لَمَّا اسْتَشَارَ فِي مِيرَاثِ الْجَدِّ، وَالْإِخْوَةِ؟ قَالَ زَيْدٌ: وَكَانَ رَأْيِي يَوْمَئِذٍ أَنَّ الْإِخْوَةَ أَحَقُّ بِمِيرَاثِ أَخِيهِمْ مِنْ الْجَدِّ - وَذَكَرَ الْخَبَرَ.

L27803 From the narration of Hammad ibn Salama: "I [heard] from Dawud ibn Abi Hind, from Shahr ibn Hawshab, from Abd al-Rahman ibn Ghunm, that Umar ibn al-Khattab discussed the grandfather with him." Abd al-Rahman ibn Ghunm said: "Beneath the grandfather lies another branch of kinship; those deriving from it have greater entitlement to it"—referring to the father. This statement of Abd al-Rahman entails that the brothers are more entitled to the inheritance than the grandfather.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ شَهْرِ بْنِ حَوْشَبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ غُنْمٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ ذَاكَرَهُ الْجَدَّ؟ فَقَالَ عَبْدُ الرَّحْمَنِ بْنُ غَنْمٍ إِنَّ دُونَ الْجَدِّ شَجَرَةً أُخْرَى، فَمَا خَرَجَ مِنْهَا فَهُوَ أَحَقُّ بِهِ - يَعْنِي الْأَبَ - وَقَوْلُ عَبْدِ الرَّحْمَنِ هَذَا يُوجِبُ أَنَّ الْإِخْوَةَ أَحَقُّ بِالْمِيرَاثِ مِنْ الْجَدِّ.

L27804 And these three opinions refute the claim of those who argue by his opin-

وَهَذِهِ الْأَقْوَالُ الثَّلَاثَةُ تُكَذِّبُ قَوْلَ مَنْ احْتَجَّ بِقَوْلِهِ فِي تَوْرِيثِ الْجَدِّ مَعَ الْإِخْوَةِ بِالْإِجْمَاعِ.

ion—through _ijma_—regarding the inclusion of the grandfather in inheritance alongside the brothers.

L27805 A group of scholars held that the grandfather divides the inheritance with the brothers into thirteen shares, making himself the thirteenth among them. This view is narrated from ʿImrān ibn al-Ḥuṣayn and Abū Mūsā al-Ashʿarī.

وَقَالَتْ طَائِفَةٌ: يُقَاسِمُ الْجَدُّ الْإِخْوَةَ إِلَى اثْنَيْ عَشَرَ، فَيَكُونُ هُوَ ثَالِثَ عَشَرَ لَهُمْ، رُوِيَ ذَلِكَ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ، وَأَبِي مُوسَى الْأَشْعَرِيِّ.

L27806 A group said: The grandfather divides the inheritance with the brothers in the case of up to seven brothers, thus entitling him to an eighth share alongside them. As written to me by Ali ibn Ibrahim al-Tabrizi, who narrated: Muhammad ibn Abdullah ibn al-Labban narrated to us, stating: I [received it from] al-Qadi Ahmad ibn Kamal ibn Shajara, who stated: I [received it from] Ahmad ibn Ubaydullah, who stated: I [received it from] Yazid ibn Harun, on the authority of Qays ibn al-Rabi', on the authority of Firas, on the authority of al-Sha'bi, who said: Ibn Abbas wrote from Basra to Ali ibn Abi Talib regarding seven brothers and a grandfather. Ali wrote to him: Divide the estate equally among them, erase my letter, and do not preserve it permanently.

وَقَالَتْ طَائِفَةٌ: يُقَاسِمُ الْجَدُّ الْإِخْوَةَ إِلَى سَبْعَةِ إِخْوَةٍ فَيَكُونُ لَهُ الثُّمُنُ مَعَهُمْ: كَمَا كَتَبَ إِلَيَّ عَلِيُّ بْنُ إِبْرَاهِيمَ التَّبْرِيزِيُّ قَالَ: نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ اللَّبَّانِ أَنَا الْقَاضِي أَحْمَدُ بْنُ كَامِلِ بْنِ شَجَرَةَ أَنَا أَحْمَدُ بْنُ عُبَيْدِ اللَّهِ أَنَا يَزِيدُ بْنُ هَارُونَ عَنْ قَيْسِ بْنِ الرَّبِيعِ عَنْ فِرَاسٍ عَنْ الشَّعْبِيِّ قَالَ: كَتَبَ ابْنُ عَبَّاسٍ مِنْ الْبَصْرَةِ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فِي سَبْعَةِ إِخْوَةٍ وَجَدٍّ، فَكَتَبَ إِلَيْهِ عَلِيٌّ اقْسِمْ الْمَالَ بَيْنَهُمْ سَوَاءً، وَامْحُ كِتَابِي وَلَا تُخَلِّدْهُ.

L27807–27809 A group said: The grandfather apportions with the brothers up to six shares, thus receiving a seventh alongside them—we were narrated this through a chain connected to this before him, extending to Qays ibn al-Rabiʿ from Abū Isḥāq al-Shaybānī from al-Shaʿbī. He said: Ibn ʿAbbās wrote to ʿAlī concerning six brothers and a grandfather? ʿAlī wrote to him: "Give him a seventh." From the chain of Wakīʿ - who narrated to us: From Sufyān al-Thawrī, from Firās, from al-Shaʿbī - who said: Ibn ʿAbbās wrote to ʿAlī concerning six brothers and a grandfather. ʿAlī wrote to him: "Make him like one of them, and erase my letter."

وَقَالَتْ طَائِفَةٌ: يُقَاسِمُ الْجَدُّ الْإِخْوَةَ إِلَى سِتَّةٍ، فَيَكُونُ لَهُ السُّبْعُ مَعَهُمْ -: رُوِّينَا ذَلِكَ بِالْإِسْنَادِ الْمُتَّصِلِ بِهَذَا قَبْلَهُ إِلَى قَيْسِ بْنِ الرَّبِيعِ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ الشَّعْبِيِّ، قَالَ كَتَبَ ابْنُ عَبَّاسٍ إِلَى عَلِيٍّ فِي سِتَّةِ إِخْوَةٍ وَجَدٍّ؟ فَكَتَبَ إِلَيْهِ عَلِيٌّ: أَنْ أَعْطِهِ سُبْعًا، وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ - هُوَ الثَّوْرِيُّ - عَنْ فِرَاسٍ عَنْ الشَّعْبِيِّ قَالَ: كَتَبَ ابْنُ عَبَّاسٍ إِلَى عَلِيٍّ فِي سِتَّةِ إِخْوَةٍ وَجَدٍّ فَكَتَبَ إِلَيْهِ عَلِيٌّ: اجْعَلْهُ كَأَحَدِهِمْ، وَامْحُ كِتَابِي.

L27810 A group said: The grandfather divides the inheritance with the brothers down to a sixth, then his share is not reduced below the sixth even if they are numerous. This was reported to us through the chain of Saʿīd ibn Manṣūr, who reported from Ḥushaym, from ʿAwf (the son of Abī Jamīlah) from al-Ḥasan al-Baṣrī, who said: ʿUmar ibn al-Khaṭṭāb wrote to one of his governors: "Grant the grandfather half when there is one brother, a third when there are two brothers, a fourth with three brothers, a fifth with four broth-

وَقَالَتْ طَائِفَةٌ: يُقَاسِمُ الْجَدُّ الْإِخْوَةَ إِلَى السُّدُسِ ثُمَّ لَا يَنْقُصُ مِنْ السُّدُسِ وَإِنْ كَثُرُوا -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ - أَنَا عَوْفٌ - هُوَ ابْنُ أَبِي جَمِيلَةَ - عَنْ الْحَسَنِ الْبَصْرِيِّ، قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إِلَى عَامِلٍ لَهُ أَنْ أَعْطِ الْجَدَّ مَعَ

ers, and a sixth with five brothers. If they exceed this number, do not reduce his share below a sixth."

الْأَخِ الشَّطْرَ، وَمَعَ الْأَخَوَيْنِ الثُّلُثَ، وَمَعَ الثَّلَاثَةِ الرُّبُعَ، وَمَعَ الْأَرْبَعَةِ الْخُمُسَ، وَمَعَ الْخَمْسَةِ السُّدُسَ، فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَلَا تَنْقُصْهُ مِنَ السُّدُسِ.

L27811 From the chain of Saʿīd ibn Manṣūr: Abū Muʿāwiyah narrated to us: Al-Aʿmash narrated to us from Ibrāhīm al-Nakhaʿī from ʿUbayd ibn Naḍlah, who said: "Umar ibn al-Khaṭṭāb and ʿAbdullāh ibn Masʿūd would apportion the grandfather either a sixth or a share alongside the brothers, whichever was more beneficial to him than sharing with the brothers." This is a chain of the highest authenticity.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ نا الْأَعْمَشُ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عُبَيْدِ بْنِ نَضْلَةَ قَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ وَعَبْدُ اللَّهِ بْنُ مَسْعُودٍ يُقَاسِمَانِ الْجَدَّ مَعَ الْإِخْوَةِ مَا بَيْنَهُ وَبَيْنَ أَنْ يَكُونَ السُّدُسُ خَيْرًا لَهُ مِنْ مُقَاسَمَةِ الْإِخْوَةِ - وَهَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ.

L27812 From the narration of Hammad ibn Salamah, from Humaid, from al-Hasan al-Basri: Ali ibn Abi Talib would entitle the grandfather to the sixth of the inheritance when there were five brothers. If there were more than five brothers, he was granted the sixth, without anything being deducted from it.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنِ الْحَسَنِ الْبَصْرِيِّ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يُوَرِّثُ الْجَدَّ مَعَ خَمْسَةِ إِخْوَةٍ السُّدُسَ، فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَلَهُ السُّدُسُ لَا يُنْقَصُ مِنْهُ شَيْئًا.

L27813 And through the transmission of Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn Bashshār Bundār, from Abū Dāwūd—that is, al-Ṭayālisī—from Shuʿbah, from ʿAmr ibn Murrah, from ʿAbd Allāh ibn Salamah, that ʿAlī ibn Abī Ṭālib would treat the grandfather as a brother until he became the sixth [brother].

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ الْخُشَنِيِّ نا مُحَمَّدُ بْنُ بَشَّارٍ بُنْدَارٌ نا أَبُو دَاوُد - هُوَ الطَّيَالِسِيُّ - نا شُعْبَةُ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ عَبْدِ اللَّهِ بْنِ سَلَمَةَ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يَجْعَلُ الْجَدَّ أَخًا حَتَّى يَكُونَ سَادِسًا.

L27814–27816 From the narration of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from al-Aʿmash, from Ibrāhīm al-Nakhaʿī, who said: ʿAlī ibn Abī Ṭālib would assign each entitled heir their prescribed share. He did not grant inheritance to a maternal sister or maternal brother alongside the grandfather at all. He did not make a paternal brother share with another paternal brother, the mother, and the grandfather. If there was a full sister, a paternal brother, and a grandfather, he would assign the sister half, and the remaining portion he would give to the grandfather and the brother, dividing it equally between them into two halves. If the number of brothers increased, he would make the grandfather share with them until receiving a sixth [of the estate] became more advantageous to him than apportionment. If the sixth was more

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنِ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ يُعْطِي كُلَّ صَاحِبِ فَرِيضَةٍ فَرِيضَتَهُ، وَلَا يُوَرِّثُ أُخْتًا لِأُمٍّ، وَلَا أَخًا لِأُمٍّ، مَعَ الْجَدِّ شَيْئًا، وَلَا يُقَاسِمُ بِالْأَخِ لِأَبٍ مَعَ الْأَخِ لِأَبٍ، وَالْأُمِّ، وَالْجَدِّ شَيْئًا - وَإِذَا كَانَتْ أُخْتٌ لِأَبٍ وَأُمٍّ، وَأَخٌ لِأَبٍ، وَجَدٌّ: أَعْطَى الْأُخْتَ النِّصْفَ، وَمَا بَقِيَ أَعْطَاهُ الْجَدَّ وَالْأَخَ بَيْنَهُمَا بِنِصْفَيْنِ، فَإِنْ كَثُرَ الْإِخْوَةُ شَرَكَهُ مَعَهُمْ حَتَّى يَكُونَ السُّدُسُ خَيْرًا لَهُ مِنَ الْمُقَاسَمَةِ، فَإِنْ كَانَ السُّدُسُ خَيْرًا لَهُ أَعْطَاهُ السُّدُسَ -: وَبِقَوْلِ

beneficial to him, he would assign him the sixth. This opinion of ʿAlī is upheld by al-Mughīrah ibn Miqsam, ʿUbāydah al-Salmānī, Muḥammad ibn ʿAbd al-Raḥmān ibn Abī Laylā (the judge), and al-Ḥasan ibn Ḥayy. And Sharik al-Qadi, Hushaym ibn Bashir, al-Hasan ibn Ziyad al-Lu'lu'i, and some students of Abu Hanifah.

عَلِيٍّ هَذَا يَقُولُ الْمُغِيرَةُ بْنُ مِقْسَمٍ، وَعَبِيدَةُ السَّلْمَانِيُّ، وَمُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى الْقَاضِي، وَالْحَسَنُ بْنُ حَيٍّ؛ وَشَرِيكٌ الْقَاضِي، وَهُشَيْمُ بْنُ بَشِيرٍ، وَالْحَسَنُ بْنُ زِيَادٍ اللُّؤْلُؤِيُّ، وَبَعْضُ أَصْحَابِ أَبِي حَنِيفَةَ.

L27817 A group said: The grandfather is entitled to a third alongside the brothers in all cases - as has been narrated to us through the chain of Abd al-Razzaq from Ma'mar, from Qatadah, that Umar consulted Ali about the grandfather. Ali replied: He [the grandfather] is entitled to a third in all cases.

وَقَالَتْ طَائِفَةٌ: لِلْجَدِّ مَعَ الْإِخْوَةِ الثُّلُثُ عَلَى كُلِّ حَالٍ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ أَنَّ عَلِيًّا شَاوَرَهُ عُمَرُ فِي الْجَدِّ؟ فَقَالَ عَلِيٌّ: لَهُ الثُّلُثُ عَلَى كُلِّ حَالٍ.

L27818 A group held—as narrated to us through Waki''s chain from Sufyan al-Thawri, from al-A'mash, from Ibrahim al-Nakha'i, who said: Ibn Mas'ud would apportion shares between the grandfather and brothers up to a third [for the grandfather], giving each heir with a prescribed share their due entitlement. He did not grant maternal brothers any inheritance when present with the grandfather, nor would he apportion shares to paternal brothers alongside full siblings and the grandfather. When the heirs included a full sister, a paternal brother, and a grandfather, he would assign half to the full sister and half to the grandfather—excluding the paternal brother entirely. This opinion is maintained by Masruq, 'Alqamah, al-Aswad, and 'Ubaydah al-Salmani in some of his rulings, and is also transmitted from Shurayh, others, and some followers of Abu Hanifah.

وَقَالَتْ طَائِفَةٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ ابْنُ مَسْعُودٍ يُقَاسِمُ بِالْجَدِّ الْإِخْوَةَ إلَى الثُّلُثِ وَيُعْطِي كُلَّ صَاحِبِ فَرِيضَةٍ فَرِيضَتَهُ، وَلَا يُوَرِّثُ الْإِخْوَةَ مِنْ الْأُمِّ مَعَ الْجَدِّ شَيْئًا، وَلَا يُقَاسِمُ بِالْإِخْوَةِ مِنْ الْأَبِ الْإِخْوَةَ مِنْ الْأَبِ وَالْأُمِّ مَعَ الْجَدِّ - وَإِذَا كَانَتْ أُخْتٌ لِأَبٍ وَأُمٍّ، وَأَخٌ لِأَبٍ، وَجَدٌّ: أَعْطَى الْأُخْتَ لِلْأَبِ وَالْأُمِّ النِّصْفَ، وَالْجَدَّ النِّصْفَ - وَبِهِ يَقُولُ مَسْرُوقٌ، وَعَلْقَمَةُ، وَالْأَسْوَدُ، وَعَبِيدَةُ السَّلْمَانِيُّ فِي بَعْضِ أَقْوَالِهِ وَرُوِيَ أَيْضًا عَنْ شُرَيْحٍ وَغَيْرِهِ، وَعَنْ بَعْضِ أَصْحَابِ أَبِي حَنِيفَةَ.

L27819 A group said—as reported to us through the chain of Ibn Wahb—each of them (Malik and Al-Layth ibn Sa'd) informed me that Yahya ibn Sa'id al-Ansari narrated to both of them that it reached him that Mu'awiyah ibn Abi Sufyan wrote to Zayd ibn Thabit inquiring about the grandfather's share. He wrote back: "You wrote to me asking about the grandfather—and Allah knows best—and that was among matters judged only by the rulers—meaning the caliphs. I observed the two caliphs before you granting him: half when there is one brother, a third when there are two brothers. If the brothers are numerous, the two caliphs did not reduce his share below a third."

وَقَالَتْ طَائِفَةٌ كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ: أَخْبَرَنِي مَالِكٌ، وَاللَّيْثُ بْنُ سَعْدٍ: أَنَّ يَحْيَى بْنَ سَعِيدٍ - هُوَ الْأَنْصَارِيُّ - حَدَّثَهُمَا: أَنَّهُ بَلَغَهُ أَنَّ مُعَاوِيَةَ بْنَ أَبِي سُفْيَانَ كَتَبَ إلَى زَيْدِ بْنِ ثَابِتٍ يَسْأَلُهُ عَنْ الْجَدِّ؟ فَكَتَبَ إلَيْهِ: إنَّك كَتَبْت إلَيَّ تَسْأَلُنِي عَنْ الْجَدِّ - وَاَللَّهُ أَعْلَمُ - وَذَلِكَ مِمَّا لَمْ يَكُنْ يَقْضِي فِيهِ إلَّا الْأُمَرَاءُ - يَعْنِي الْخُلَفَاءَ - وَقَدْ حَضَرْت الْخَلِيفَتَيْنِ قَبْلَك يُعْطِيَانِهِ: النِّصْفَ مَعَ الْأَخِ الْوَاحِدِ، وَالثُّلُثَ مَعَ الِاثْنَيْنِ، فَإِنْ كَثُرَ الْإِخْوَةُ لَمْ يُنْقِصَاهُ مِنْ الثُّلُثِ.

L27820 From the path of Waki‘: Sufyan al-Thawri reported from Mansur from Ibrahim al-Nakha‘i, who said: “Umar wrote to Ibn Mas‘ud: ’We feared we may have wronged the grandfather. Therefore, grant him a share alongside the brothers.’ So he granted him.” It is narrated through the path of Hammad ibn Zayd, Isma‘il ibn Ulayyah, and Husaym from Abu al-Mu‘alla al-‘Attar from Ibrahim al-Nakha‘i that ‘Alqamah said: “Ibn Mas‘ud ruled: ’The grandfather shares with the brothers in the third.’” Ubaydah al-Salmani told me: “Ibn Mas‘ud said: ’The grandfather shares with the brothers up to the sixth.’” Ibrahim said: “I mentioned this to Ubaydah ibn Nudaylah. He replied: ’Both spoke truthfully. Ibn Mas‘ud came from Umar while Umar was saying: ”The grandfather shares with the brothers up to the sixth,“ so Ibn Mas‘ud adopted this opinion. Later, when Ibn Mas‘ud revisited Umar, he discovered Umar had revised his opinion, declaring: ”The grandfather shares with the brothers in the third.“”

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَتَبَ عُمَرُ إِلَى ابْنِ مَسْعُودٍ: إِنَّا قَدْ خَشِينَا أَنْ نَكُونَ قَدْ أَجْحَفْنَا بِالْجَدِّ فَأَعْطِهِ الثُّلُثَ مَعَ الْإِخْوَةِ؟ فَأَعْطَاهُ - وَرُوِيَ مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ، وَإِسْمَاعِيلَ بْنِ عُلَيَّةَ، وَهُشَيْمٍ عَنْ أَبِي الْمُعَلَّى الْعَطَّارِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ عَلْقَمَةُ: قَالَ ابْنُ مَسْعُودٍ: يُقَاسِمُ الْجَدُّ الْإِخْوَةَ فِي الثُّلُثِ، وَقَالَ لِي عَبِيدَةُ السَّلْمَانِيُّ: قَالَ ابْنُ مَسْعُودٍ: يُقَاسِمُ الْجَدُّ الْإِخْوَةَ إِلَى السُّدُسِ، قَالَ إِبْرَاهِيمُ: فَذَكَرْت ذَلِكَ لِعُبَيْدَةَ بْنِ نُضَيْلَةَ؟ فَقَالَ: صَدَقَا جَمِيعًا، إِنَّ ابْنَ مَسْعُودٍ قَدِمَ مِنْ عِنْدِ عُمَرَ، وَعُمَرُ يَقُولُ: يُقَاسِمُ الْجَدُّ الْإِخْوَةَ إِلَى السُّدُسِ، فَكَانَ ابْنُ مَسْعُودٍ يَقُولُ بِهِ، ثُمَّ رَجَعَ إِلَى عُمَرَ، فَإِذَا عُمَرُ قَدْ رَجَعَ، فَقَالَ: يُقَاسِمُ الْجَدُّ الْإِخْوَةَ إِلَى الثُّلُثِ.

L27821–27822 From the chain of Al-Ḥajjāj ibn Al-Minhāl: Hushaym narrated to us through Al-Mughīrah - he being Ibn Miqsam - from Al-Haytham ibn Badr Al-Asadī, who reported from Shuʿbah ibn Al-Tawʾam: “A brother of ours died during ʿUmar’s rule, leaving his brothers and his grandfather. We approached Ibn Masʿūd, who granted the grandfather a sixth share alongside the brothers. Later, another brother died during ʿUthmān’s reign, leaving his brothers and his grandfather. We went to Ibn Masʿūd again, and he awarded the grandfather a third share with the brothers. We questioned him: ’You gave our grandfather a sixth in the first case, yet now a third?’ He responded: ’We rule only by the judgments of our leaders.’”

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هُشَيْمٌ أَنَا الْمُغِيرَةُ - هُوَ ابْنُ مِقْسَمٍ - عَنْ الْهَيْثَمِ بْنِ بَدْرٍ الْأَسَدِيِّ أَخْبَرَنِي شُعْبَةُ بْنُ التَّوْأَمِ قَالَ: تُوُفِّيَ أَخٌ لَنَا فِي عَهْدِ عُمَرَ وَتَرَكَ إِخْوَتَهُ وَجَدَّهُ؟ فَأَتَيْنَا ابْنَ مَسْعُودٍ: فَأَعْطَى الْجَدَّ مَعَ الْإِخْوَةِ السُّدُسَ، ثُمَّ تُوُفِّيَ أَخٌ لَنَا آخَرُ فِي عَهْدِ عُثْمَانَ وَتَرَكَ إِخْوَتَهُ وَجَدَّهُ؟ فَأَتَيْنَا ابْنَ مَسْعُودٍ: فَأَعْطَى الْجَدَّ مَعَ الْإِخْوَةِ الثُّلُثَ؟ فَقُلْنَا لَهُ: إِنَّك أَعْطَيْت جَدَّنَا فِي أَخِينَا الْأَوَّلِ السُّدُسَ، وَأَعْطَيْته الْآنَ الثُّلُثَ؟ فَقَالَ: إِنَّمَا نَقْضِي بِقَضَاءِ أَئِمَّتِنَا.

L27823 From the path of Sa’id ibn Mansur: Hushaym narrated to us, [saying:] Mutarrif (ibn Tarif) reported from al-Sha’bi, who said: Umar wrote to Abu Musa al-Ash’ari: “We used to grant the grandfather a sixth alongside the brothers - and we can only think that we have treated him unjustly. When this letter of mine reaches you, grant the grandfather half if there is one brother, a third if there are two brothers. If they exceed this number, do not reduce his share below a third.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا مُطَرِّفٌ - هُوَ ابْنُ طَرِيفٍ - عَنْ الشَّعْبِيِّ قَالَ: كَتَبَ عُمَرُ إِلَى أَبِي مُوسَى الْأَشْعَرِيِّ: إِنَّا كُنَّا أَعْطَيْنَا الْجَدَّ مَعَ الْإِخْوَةِ السُّدُسَ - وَلَا أَحْسَبُنَا إِلَّا قَدْ أَجْحَفْنَا بِهِ - فَإِذَا أَتَاك كِتَابِي هَذَا فَأَعْطِ الْجَدَّ مَعَ الْأَخِ الشَّطْرَ، وَمَعَ الْأَخَوَيْنِ الثُّلُثَ، فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَلَا تُنْقِصْهُ مِنْ الثُّلُثِ.

وَقَالَتْ طَائِفَةٌ: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيِّبِ، وَعُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ وَقَبِيصَةُ بْنُ ذُؤَيْبٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى: أَنَّ الْجَدَّ يُقَاسِمُ الْإِخْوَةَ لِلْأَبِ وَالْأُمِّ، وَالْإِخْوَةَ لِلْأُمِّ مَا كَانَتْ الْمُقَاسَمَةُ خَيْرًا لَهُ مِنْ ثُلُثِ الْمَالِ، فَإِنْ كَثُرَ الْإِخْوَةُ أَعْطَى الْجَدَّ الثُّلُثَ، وَكَانَ مَا بَقِيَ لِلْإِخْوَةِ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ، وَإِنَّ بَنِي الْأَبِ وَالْأُمِّ أَوْلَى بِذَلِكَ مِنْ بَنِي الْأَبِ ذُكُورِهِمْ وَنِسَائِهِمْ، غَيْرَ أَنَّ بَنِي الْأَبِ يُقَاسِمُونَ الْجَدَّ وَبَيْنَ الْأَبِ وَالْأُمِّ، فَيَرُدُّونَ عَلَيْهِ، وَلَا يَكُونُ لِبَنِي الْأَبِ شَيْءٌ مَعَ بَنِي الْأَبِ وَالْأُمِّ إِلَّا أَنْ يَكُونَ بَنُو الْأَبِ يَرُدُّونَ عَلَى بَنَاتِ الْأَبِ وَالْأُمِّ فَإِنْ بَقِيَ شَيْءٌ بَعْدَ فَرَائِضِ بَنَاتِ الْأَبِ وَالْأُمِّ، فَهُوَ لِلْإِخْوَةِ مِنْ الْأَبِ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ.

L27824 A group said: As we have been narrated through Ibn Wahb's transmission from Yunus ibn Yazid from Ibn Shihab, who informed me that Sa'id ibn al-Musayyab, 'Ubayd Allah ibn 'Abd Allah ibn 'Utbah ibn Mas'ud, and Qabisah ibn Dhu'ayb reported that 'Umar ibn al-Khattab ruled: The grandfather shares with the full siblings from both parents and the maternal siblings, provided this division benefits him more than receiving a third of the estate. If the siblings are numerous, the grandfather receives a third, with the remainder allocated to the full siblings - males receiving twice the share of females. The children of both parents hold priority over paternal siblings (both males and females), except that paternal siblings share with the grandfather alongside the full siblings from both parents, thereby reducing his portion. Paternal siblings inherit nothing alongside the children of both parents unless they compensate the daughters from both parents [for any shortfall in their shares]. Whatever remains after fulfilling the prescribed portions of the daughters from both parents is allocated to the paternal siblings, with males receiving twice the share of females.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ قَالَ: كَانَ زَيْدُ بْنُ ثَابِتٍ يُشْرِكُ الْجَدَّ مَعَ الْإِخْوَةِ وَالْأَخَوَاتِ إلَى الثُّلُثِ، فَإِذَا بَلَغَ الثُّلُثَ أَعْطَاهُ الثُّلُثَ، وَكَانَ لِلْإِخْوَةِ وَالْأَخَوَاتِ مَا بَقِيَ، وَيُقَاسِمُ الْأَخُ لِلْأَبِ، ثُمَّ يَرُدُّ عَلَى أَخِيهِ، وَيُقَاسِمُ بِالْإِخْوَةِ مِنْ الْأَبِ أَوْ الْأَخَوَاتُ مِنْ الْأَبِ الْإِخْوَةَ وَالْأَخَوَاتِ مِنْ الْأَبِ وَالْأُمِّ - وَلَا يُوَرِّثُهُمْ شَيْئًا، فَإِذَا كَانَ الْأَخُ لِلْأَبِ وَالْأُمِّ أَعْطَاهُ النِّصْفَ، وَإِذَا كَانَ أَخَوَاتٌ وَجَدٌّ أَعْطَاهُ مَعَ الْأَخَوَاتِ الثُّلُثَ، وَلَهُنَّ الثُّلُثَانِ - وَإِنْ كَانَتَا أُخْتَيْنِ أَعْطَاهُمَا النِّصْفَ وَلَهُ النِّصْفُ، وَلَا يُعْطِي أَخًا لِأُمٍّ مَعَ الْجَدِّ شَيْئًا.

L27825 From the narration of 'Abd al-Razzāq, from Sufyān al-Thawrī, from al-A'mash, from Ibrāhīm, who said: Zayd ibn Thābit would combine the grandfather with the brothers and sisters up to one-third of the estate. When the grandfather's share reached one-third, he allocated him the third, leaving the remainder for the brothers and sisters. He would make the paternal brother compete with the full brother, then return to the brother. He would make paternal brothers or sisters compete with full siblings (from both parents) while excluding the paternal siblings entirely from inheritance. If there was a full brother, he assigned him half. When sisters and a grandfather existed, he allocated the grandfather one-third of the estate and the sisters two-thirds. If there were two sisters, he gave them half and the grandfather half. He did not assign any share to a maternal brother in the presence of the grandfather.

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا قَوْلٌ رُوِيَ كَمَا تَسْمَعُونَ عَنْ عُمَرَ، وَزَيْدٍ -: وَبِهِ يَقُولُ الْأَوْزَاعِيِّ، وَسُفْيَانُ الثَّوْرِيُّ، وَمَالِكٌ، وَعُبَيْدُ اللَّهِ بْنُ الْحُسَيْنِ، وَأَبُو ثَوْرٍ، وَأَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ

L27826–27827 Abū Muḥammad said: This is a statement transmitted as you have heard from 'Umar and Zayd ibn Thābit—a position upheld by al-Awzā'ī, Sufyān al-Thawrī, Mālik, 'Ubayd Allāh ibn al-Ḥusayn, Abū Thawr, Abū Yūsuf, Muḥammad ibn al-Ḥasan, al-Ḥasan al-Lu'lu'ī, al-Shāfi'ī, Aḥmad ibn Ḥanbal, and Abū

ʿUbayd. Later, Muḥammad ibn al-Ḥasan fully reverted to the position of tawqīf, while al-Luʾluʾī reverted to the opinion we earlier attributed to ʿAlī. It has been narrated to us that Zayd ibn Thābit retracted from this view, adopting instead the reduction of the grandfather's share from that [prior amount]—as transmitted through the chain of Ayyūb ibn Sulaymān, narrated by ʿAbd al-Wārith (Ibn Saʿīd al-Tannūrī), from Isḥāq ibn Suwayd, who heard ʿAbd Allāh ibn Buraydah, from Abū ʿIyāḍ, from Zayd ibn Thābit, who said: "I visited ʿUmar on the night of his death and told him: 'I concluded that the grandfather's share should be reduced.'" And he mentioned the report.

الْحَسَنِ، وَالْحَسَنُ اللُّؤْلُؤِيُّ، وَالشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَبُو عُبَيْدٍ - ثُمَّ رَجَعَ مُحَمَّدُ بْنُ الْحَسَنِ إِلَى التَّوْقِيفِ جُمْلَةً، وَرَجَعَ اللُّؤْلُؤِيُّ إِلَى الْقَوْلِ الَّذِي ذَكَرْنَا عَنْ عَلِيٍّ - وَقَدْ رُوِّينَا عَنْ زَيْدٍ أَنَّهُ رَجَعَ عَنْ هَذَا إِلَى أَنْ يُنْقَصَ الْجَدُّ عَنْ ذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَيُّوبَ بْنِ سُلَيْمَانَ نا عَبْدُ الْوَارِثِ - هُوَ ابْنُ سَعِيدٍ التَّنُّورِيُّ - عَنْ إِسْحَاقَ بْنِ سُوَيْدٍ: أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ بُرَيْدَةَ أَنَّهُ سَمِعَ أَبَا عِيَاضٍ أَنَّهُ سَمِعَ زَيْدَ بْنَ ثَابِتٍ يَقُولُ: دَخَلْت عَلَى عُمَرَ فِي اللَّيْلَةِ الَّتِي قُبِضَ فِيهَا فَقُلْت لَهُ: إِنِّي رَأَيْت أَنْ أَنْتَقِصَ الْجَدَّ - وَذَكَرَ الْخَبَرَ.

As for ʿUthmān, Abū Mūsā al-Ashʿarī, and Ibn Masʿūd, the only position L27828 transmitted from them is that the grandfather shares the inheritance proportionally with the brothers, strictly limited to one-third, with no reduction from that third itself. No additional rulings on this matter are reported from them.

وَأَمَّا عُثْمَانُ، وَأَبُو مُوسَى الْأَشْعَرِيُّ، وَابْنُ مَسْعُودٍ، فَلَيْسَ عَنْهُمْ إلَّا أَنْ يُقَاسِمَ الْجَدُّ الْإِخْوَةَ إلَى الثُّلُثِ فَقَطْ، وَلَا يُحَطُّ مِنْ الثُّلُثِ - وَلَيْسَ عَنْهُمْ هَذِهِ الزِّيَادَاتُ.

A group held that a brother does not inherit anything alongside the grandfa- L27829 ther—neither a full brother, nor a brother through the father, nor a brother through the mother—and the grandfather's inheritance is precisely the same, exactly equal to the father's inheritance, provided there is no inheriting father present. As transmitted to us through the chain of Hammad ibn Salamah: I [Hammad] narrate from Hisham ibn Urwah, from his father, from Marwan ibn al-Hakam, who said: Uthman ibn Affan told me, "Umar said to me: 'I have formed an opinion regarding the grandfather. If you all deem it fit to follow it, then do so.'" Uthman replied to him, "If we follow your opinion, it is sound guidance. But if we follow the opinion of the elder before you, what an excellent holder of judgment he was!" Marwan added, "Abu Bakr would treat the grandfather as a father."

وَقَالَتْ طَائِفَةٌ: لَا يَرِثُ مَعَ الْجَدِّ أَخٌ شَيْئًا، لَا شَقِيقٌ، وَلَا لِأَبٍ، وَلَا لِأُمٍّ - وَمِيرَاثُ الْجَدِّ كَمِيرَاثِ الْأَبِ، سَوَاءً سَوَاءً، إذَا لَمْ يَكُنْ هُنَالِكَ أَبٌ وَارِثٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ مَرْوَانَ بْنِ الْحَكَمِ، قَالَ: قَالَ لِي عُثْمَانُ بْنُ عَفَّانَ: إنَّ عُمَرَ قَالَ لِي: إنِّي قَدْ رَأَيْت فِي الْجَدِّ رَأْيًا فَإِنْ رَأَيْتُمْ أَنْ نَتَّبِعُوهُ فَاتَّبِعُوهُ: فَقَالَ لَهُ عُثْمَانُ: إنْ نَتَّبِعْ رَأْيَك فَإِنَّهُ رُشْدٌ، وَإِنْ نَتَّبِعْ رَأْيَ الشَّيْخِ قَبْلَك فَنِعْمَ ذُو الرَّأْيِ كَانَ قَالَ: وَكَانَ أَبُو بَكْرٍ يَجْعَلُهُ أَبًا.

From the chain of Al-Bukhari: Abu Ma'mar narrated to us, from Abd al- L27830 Warith—he is Ibn Sa'id al-Tannuri—from Ayyub—he is al-Sikhtiyānī—from Ikrimah, from Ibn Abbas, who said: Regarding the statement of the Messenger of Allah (peace and blessings of Allah be upon him), "If I were to take a close friend from this nation, I would have taken him as a close friend, but

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو مَعْمَرٍ نا عَبْدُ الْوَارِثِ - هُوَ ابْنُ سَعِيدٍ التَّنُّورِيُّ - نا أَيُّوبُ - هُوَ السِّخْتِيَانِيُّ - عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: أَمَّا الَّذِي قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَوْ كُنْت مُتَّخِذًا خَلِيلًا مِنْ هَذِهِ الْأُمَّةِ لَاتَّخَذْتُهُ خَلِيلًا وَلَكِنَّ خُلَّةَ

the bond of Islam is superior (or he said: better)," verily Allah designated him as a father (or he said: decreed him to be a father)—referring to the grandfather in matters of inheritance.

الْإِسْلَامِ أَفْضَلُ أَوْ قَالَ: خَيْرٌ» ، فَإِنَّهُ أَنْزَلَهُ أَبًا، أَوْ قَالَ: قَضَاهُ أَبًا " يَعْنِي الْجَدَّ فِي الْمِيرَاثِ.

L27831–27833 And from the chain of Muḥammad ibn ʿAbd al-Salām al-Khushanī: Muḥammad ibn al-Muthannā narrated to us, [saying:] ʿAbd al-Raḥmān ibn Mahdī narrated to us. It was narrated to us by Sufyan al-Thawri from Abu Ishaq al-Shaybani from Kurdus from Abu Musa al-Ash'ari that Abu Bakr al-Siddiq considered the grandfather as a father.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ الْخُشَنِيِّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ كُرْدُوسٍ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ: أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ كَانَ يَجْعَلُ الْجَدَّ أَبًا.

L27834 From the narration of Abū Dāwūd al-Ṭayālisī: Shuʿbah narrated from Khālid al-Ḥadhdhā', from Abū Naḍrah, from Abū Saʿīd al-Khudrī, that Abū Bakr al-Ṣiddīq considered the grandfather as a father.

وَمِنْ طَرِيقِ أَبِي دَاوُد الطَّيَالِسِيِّ نا شُعْبَةُ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ: أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ كَانَ يَجْعَلُ الْجَدَّ أَبًا.

L27835 From the narration of Abd al-Razzaq, who narrated to us from Ibn Jurayj, who said: I heard Ibn Abi Mulaykah relate that Ibn al-Zubayr wrote to the people of Iraq that the Prophet—peace and blessings of Allah be upon him—said: "If I were to take a close companion besides Allah until I meet Him, I would have taken Abu Bakr as a close companion." Ibn al-Zubayr thus considered the grandfather to be treated as a father.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ قَالَ: سَمِعْت ابْنَ أَبِي مُلَيْكَةَ يُحَدِّثُ أَنَّ ابْنَ الزُّبَيْرِ كَتَبَ إِلَى أَهْلِ الْعِرَاقِ أَنَّ الَّذِي قَالَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَوْ كُنْت مُتَّخِذًا خَلِيلًا حَتَّى أَلْقَى اللَّهَ سِوَى اللَّهِ، لَاتَّخَذْتُ أَبَا بَكْرٍ خَلِيلًا - فَكَانَ يَجْعَلُ الْجَدَّ أَبًا» .

L27836 And through the chain of Saʿīd ibn Manṣūr who narrated to us from Abū Muʿāwiyah al-Ḍarīr from Abū Isḥāq al-Shaybānī from Saʿīd ibn Abī Burdah from his father Abū Burdah ibn Abī Mūsā al-Ashʿarī: that ʿUmar ibn al-Khaṭṭāb wrote to Abū Mūsā al-Ashʿarī: "Designate the grandfather as a father, for Abū Bakr indeed decreed the grandfather as a father."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ الضَّرِيرُ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ سَعِيدِ بْنِ أَبِي بُرْدَةَ عَنْ أَبِيهِ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَتَبَ إِلَى أَبِي مُوسَى الْأَشْعَرِيِّ: أَنْ اجْعَلْ الْجَدَّ أَبًا، فَإِنَّ أَبَا بَكْرٍ جَعَلَ الْجَدَّ أَبًا.

L27837 And through the chain of Saʿīd ibn Manṣūr, who narrated to us: Khālid ibn ʿAbd Allāh, Layth ibn Abī Sulaym, ʿAṭā'—that Abū Bakr, ʿUmar, ʿUthmān, and Ibn ʿAbbās considered the grandfather a father.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا خَالِدُ بْنُ عَبْدِ اللَّهِ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ عَطَاءٍ: أَنَّ أَبَا بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَابْنُ عَبَّاسٍ كَانُوا يَجْعَلُونَ الْجَدَّ أَبًا.

L27838 Ibn Abbas said: My grandson inherits from me to the exclusion of my brother, and I do not inherit from my grandson to the exclusion of his brother.

وَقَالَ ابْنُ عَبَّاسٍ: يَرِثُنِي ابْنُ ابْنِي دُونَ أَخِي وَلَا أَرِثُ ابْنَ ابْنِي دُونَ أَخِيهِ.

L27839 From the chain of Saʿīd ibn Manṣūr, who narrated to us: Sufyān—he is Ibn ʿUyaynah—from ʿAmr ibn Dīnār from ʿAṭā' from Ibn ʿAbbās, who said: "The

grandfather is a father." He recited: {And I have followed the religion of my forefathers Ibrāhīm, Isḥāq, and Yaʿqūb} [Yūsuf: 38].[12]

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: الْجَدُّ أَبٌ، وَقَرَأَ: {وَاتَّبَعْتُ مِلَّةَ آبَائِي إِبْرَاهِيمَ وَإِسْحَاقَ وَيَعْقُوبَ} [يوسف: ٣٨] .

L27840 And through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: Ismāʿīl ibn Abī Uways reported to us, saying: ʿAbd al-Raḥmān ibn Abī al-Zinād narrated to me from his father, who informed me: Khārijah ibn Zayd ibn Thābit reported from his father that ʿUmar ibn al-Khaṭṭāb—when he sought consultation regarding an inheritance between the grandfather and the brothers, while ʿUmar at that time held the view that the grandfather had a stronger right to the inheritance of his grandson than the deceased's brothers—and Khārijah's father mentioned the remainder of the narration.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا إِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ عَنْ أَبِيهِ أَخْبَرَنِي خَارِجَةُ بْنُ زَيْدِ بْنِ ثَابِتٍ عَنْ أَبِيهِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ لَمَّا اسْتَشَارَ فِي مِيرَاثٍ بَيْنَ الْجَدِّ وَالْإِخْوَةِ وَعُمَرُ يَرَى يَوْمَئِذٍ أَنَّ الْجَدَّ أَوْلَى بِمِيرَاثِ ابْنِ ابْنِهِ مِنْ إِخْوَتِهِ - وَذَكَرَ بَاقِيَ الْخَبَرِ.

L27841–27842 From Ayyub ibn Sulayman, from Abd al-Warith - who is Ibn Sa'id al-Tannuri - from Ishaq ibn Suwayd, who heard Abdullah ibn Buraidah, who heard Abu Iyad, who heard Zayd ibn Thabit say: He entered upon Umar ibn al-Khattab on the night of his demise and said: "I have considered reducing the grandfather's share of inheritance." Umar replied: "If I were to diminish anyone's right for another's sake, I would diminish the brothers' share in favor of the grandfather. Do not the sons of Abdullah ibn Umar inherit me instead of my brothers? Why then should I not inherit them instead of their brothers? If I survive until morning, I shall certainly issue a ruling on this matter." He said: Umar died that very night.

وَمِنْ طَرِيقِ أَيُّوبَ بْنِ سُلَيْمَانَ أَنَا عَبْدُ الْوَارِثِ - هُوَ ابْنُ سَعِيدٍ التَّنُّورِيُّ - عَنْ إِسْحَاقَ بْنِ سُوَيْدٍ: أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ بُرَيْدَةَ أَنَّهُ سَمِعَ أَبَا عِيَاضٍ: أَنَّهُ سَمِعَ زَيْدَ بْنَ ثَابِتٍ يَقُولُ: إِنَّهُ دَخَلَ عَلَى عُمَرَ بْنِ الْخَطَّابِ فِي اللَّيْلَةِ الَّتِي قُبِضَ فِيهَا فَقَالَ لَهُ زَيْدٌ: إِنِّي قَدْ رَأَيْت أَنْ أَنْتَقِصَ الْجَدَّ؟ فَقَالَ لَهُ عُمَرُ: لَوْ كُنْت مُنْتَقِصًا أَحَدًا لِأَحَدٍ لَانْتَقَصْت الْإِخْوَةَ لِلْجَدِّ، أَلَيْسَ بَنُو عَبْدِ اللَّهِ بْنِ عُمَرَ يَرِثُونَنِي دُونَ إِخْوَتِي، فَمَا بَالِي لَا أَرِثُهُمْ دُونَ إِخْوَتِهِمْ، لَئِنْ أَصْبَحْت لَأَقُولَنَّ فِيهِ؟ قَالَ: فَمَاتَ مِنْ لَيْلَتِهِ.

L27843 So this is the final opinion of Umar—may Allah be pleased with him—and its chain of transmission is of utmost soundness.

فَهَذَا آخِرُ قَوْلِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَإِسْنَادُهُ فِي غَايَةِ الصِّحَّةِ.

L27844 Narrated through the chain of Ḥammād ibn Salamah: I, Layth ibn Abī Sulaym, narrate from Ṭāwūs that ʿUthmān ibn ʿAffān and Ibn Masʿūd both said: The grandfather is equivalent to the father.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا لَيْثُ بْنُ أَبِي سُلَيْمٍ عَنْ طَاوُسٍ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ، وَابْنَ مَسْعُودٍ قَالَا جَمِيعًا: الْجَدُّ بِمَنْزِلَةِ الْأَبِ.

L27845 And from the chain of ʿAbd al-Razzāq, who said: Ibn Jurayj said: "ʿAṭāʾ informed me that ʿAlī ibn Abī Ṭālib used to regard the grandfather as a father."

[12] **Qur'an references (L27839):** Qur'an 12:38 (Yusuf).

ʿAbd al-Razzāq said: “And I heard Ibn Jurayj say: ’I heard Ibn Abī Mulaikah narrate that Ibn al-Zubayr used to consider the grandfather equivalent to a father.”’

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ قَالَ: قَالَ ابْنُ جُرَيْجٍ أَخْبَرَنِي عَطَاءٌ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يَجْعَلُ الْجَدَّ أَبًا قَالَ عَبْدُ الرَّزَّاقِ: وَسَمِعْت ابْنَ جُرَيْجٍ يَقُولُ: سَمِعْت ابْنَ أَبِي مُلَيْكَةَ يُحَدِّثُ أَنَّ ابْنَ الزُّبَيْرِ كَانَ يَجْعَلُ الْجَدَّ أَبًا.

L27846 From the chain of Sa’id ibn Mansur: Hammad ibn Zayd reported to us from Kathir ibn Shinẓīr, who said, “I heard al-Hasan say: ’If I were appointed to manage people’s affairs, I would reduce the grandfather’s share to that of a father.”’

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ كَثِيرِ بْنِ شِنْظِيرٍ قَالَ: سَمِعْت الْحَسَنَ يَقُولُ: لَوْ وُلِّيت مِنْ أَمْرِ النَّاسِ لَأَنْزَلْت الْجَدَّ أَبًا.

L27847 From the chain of Abd al-Razzaq from Ma’mar from Qatadah: That he used to issue fatwas that the grandfather is a father.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ: أَنَّهُ كَانَ يُفْتِي بِأَنَّ الْجَدَّ أَبٌ.

L27848 So these are among the Companions—may Allah be pleased with them—Abu Bakr, Umar, Uthman, Ali, Ibn Masʿud, Abu Musa al-Ashʿariyy, Ibn Abbas, and Ibn al-Zubayr.

فَهَؤُلَاءِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ وَعَلِيٌّ، وَابْنُ مَسْعُودٍ، وَأَبُو مُوسَى الْأَشْعَرِيُّ، وَابْنُ عَبَّاسٍ، وَابْنُ الزُّبَيْرِ.

L27849 It has also been reported from ʿĀ’ishah, the Mother of the Believers, Abī al-Dardā’, Ubayy ibn Kaʿb, Muʿādh ibn Jabal, and Abī Hurayrah.

وَرُوِيَ أَيْضًا - عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَأَبِي الدَّرْدَاءِ، وَأُبَيِّ بْنِ كَعْبٍ، وَمُعَاذِ بْنِ جَبَلٍ، وَأَبِي هُرَيْرَةَ.

L27850 And from the Followers: Tāwūs, ʿAṭā’, Ubayd Allāh ibn ʿUtbah ibn Masʿūd, al-Ḥasan, Jābir ibn Zayd, Qatādah, ʿUthmān al-Battī, Shurayḥ, al-Shaʿbī, and a group besides them. And after them: Abū Ḥanīfah, Nuʿaym ibn Ḥammād, al-Muzanī, Abū Thawr, Isḥāq ibn Rāhuyah; Dāwūd ibn ʿAlī, all our companions, and a group besides them.

وَمِنْ التَّابِعِينَ: طَاوُسٍ، وَعَطَاءٌ، وَعُبَيْدُ اللَّهِ بْنُ عُتْبَةَ بْنِ مَسْعُودٍ، وَالْحَسَنُ، وَجَابِرُ بْنُ زَيْدٍ، وَقَتَادَةُ، وَعُثْمَانُ الْبَتِّيُّ، وَشُرَيْحٌ، وَالشَّعْبِيُّ، وَجَمَاعَةٌ سِوَاهُمْ. وَمِنْ بَعْدِهِمْ: أَبُو حَنِيفَةَ، وَنُعَيْمُ بْنُ حَمَّادٍ، وَالْمُزَنِيُّ، وَأَبُو ثَوْرٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ: وَدَاوُد بْنُ عَلِيٍّ، وَجَمِيعُ أَصْحَابِنَا، وَجَمَاعَةٌ غَيْرُهُمْ.

L27851 And he narrated it from Abu Bakr al-Siddīq: ʿUmar, ʿUthmān, Ibn Abbas, Ibn al-Zubayr, Abū Mūsā al-Ashʿarī, Abū Saʿīd al-Khudrī, and others.

وَرَوَاهُ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ: عُمَرُ، وَعُثْمَانُ، وَابْنُ عَبَّاسٍ، وَابْنُ الزُّبَيْرِ، وَأَبُو مُوسَى الْأَشْعَرِيُّ، وَأَبُو سَعِيدٍ الْخُدْرِيِّ، وَغَيْرُهُمْ -.

L27852–27853 The chains of transmission that we have mentioned are established without any doubt.

وَثَبَتَتْ الْأَسَانِيدُ الَّتِي ذَكَرْنَا بِلَا شَكٍّ.

It was narrated from ʿUmar by Abū Burdah ibn Abī Mūsā: that ʿUmar wrote regarding this matter to his [Abū Burdah's] father - constituting a sound chain of transmission. It was also narrated from him [ʿUmar] by Zayd ibn Thābit.

It was narrated from Ibn Abbas: ʿIkrimah, ʿAṭā, Tāwus, Saʿīd ibn Jubayr, and others.

And Ibn Abi Mulaykah narrated it from Ibn al-Zububayr—all of these accounts through the most rigorously verified chains of transmission.

It has been narrated from Uthman, Ali, and Ibn Masʿud through chains of transmission superior to all that has been narrated from them—and from Zaid, that which the opponents have adopted.

Abu Muhammad said: Two issues have come up regarding which they hold views that must be mentioned here.

A juristic problem concerning Al-Kharqāʾ, involving a mother, a sister, and a grandfather.

1732 - An issue termed "Al-Kharqā'" (a specific inheritance case): involving a mother, sister, and grandfather. We were narrated from Al-Bazzar, who reported from Abū al-Zinbāʿ Rawḥ ibn al-Faraj al-Miṣrī. Al-Bazzar remarked: "It is said there is none in Egypt more trustworthy or truthful than Rawḥ ibn al-Faraj." ʿAmr ibn Khālid reported: ʿĪsā ibn Yūnus narrated to me, stating: I, ʿAbbād ibn Mūsā, report from al-Shaʿbī, who said: "Al-Ḥajjāj summoned me and asked: 'What is your ruling regarding a grandfather, mother, and sister?' I answered: 'Five Companions of Allah's Messenger (peace be upon him) differed on this: Ibn Masʿūd, ʿAlī, ʿUthmān, Zayd, and Ibn ʿAbbās.' Al-Ḥajjāj pressed: 'What precisely did Ibn ʿAbbās rule?' I said: 'He equated the grandfather with a father, granted the sister nothing, and allotted the mother a third.' He asked: 'Ibn Masʿūd's view?' I replied: 'He divided the estate into six: three shares for the sister, two for the grandfather, and two for the mother (as her third).' He inquired: 'The Commander of the Faithful ʿUthmān's ruling?' I responded: 'He split it into equal thirds.' He questioned: 'And Abū Turāb - ʿAlī's verdict?' I said: 'He divided it into six: three for the sister, two for the mother, and one for the grandfather.' He asked: 'Zayd's

وَرَوَاهُ عَنْ عُمَرَ: أَبُو بُرْدَةَ بْنُ أَبِي مُوسَى: أَنَّهُ كَتَبَ بِذَلِكَ إِلَى أَبِيهِ وَهُوَ إِسْنَادٌ ثَابِتٌ - وَرَوَاهُ أَيْضًا عَنْهُ زَيْدُ بْنُ ثَابِتٍ.

وَرَوَاهُ عَنْ ابْنِ عَبَّاسٍ: عِكْرِمَةُ، وَعَطَاءٌ، وَطَاوُسٌ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَغَيْرُهُمْ.

وَرَوَاهُ عَنْ ابْنِ الزُّبَيْرِ: ابْنُ أَبِي مُلَيْكَةَ - كُلُّ ذَلِكَ بِأَصَحِّ إِسْنَادٍ.

وَرُوِيَ عَنْ عُثْمَانَ، وَعَلِيٍّ، وَابْنِ مَسْعُودٍ بِأَسَانِيدَ هِيَ أَحْسَنُ مِنْ كُلِّ مَا رُوِيَ عَنْهُمْ - وَعَنْ زَيْدٍ مِمَّا أَخَذَ بِهِ الْمُخَالِفُونَ.

قَالَ أَبُو مُحَمَّدٍ: وَجَاءَتْ مَسْأَلَتَانِ لَهُمْ فِيهَا أَقْوَالٌ يَجِبُ ذِكْرُهَا هَاهُنَا.

[مَسْأَلَةُ الْخَرْقَاءُ وَهِيَ أُمٌّ وَأُخْتٌ وَجَدٌّ]

١٧٣٢ - مَسْأَلَةٌ وَهِيَ " الْخَرْقَاءُ " وَهِيَ: أُمٌّ، وَأُخْتٌ، وَجَدٌّ -: وَرُوِّينَا عَنْ الْبَزَّارِ نا أَبُو الزِّنْبَاعِ رَوْحُ بْنُ الْفَرَجِ الْمِصْرِيُّ، قَالَ الْبَزَّارُ: يُقَالُ: لَيْسَ بِمِصْرَ أَوْثَقُ وَأَصْدَقُ مِنْهُ نا عَمْرُو بْنُ خَالِدٍ نا عِيسَى بْنُ يُونُسَ أَنَا عَبَّادُ بْنُ مُوسَى عَنْ الشَّعْبِيِّ قَالَ: بَعَثَ إِلَيَّ الْحَجَّاجُ فَقَالَ: مَا تَقُولُ فِي جَدٍّ، وَأُمٍّ، وَأُخْتٍ؟ قُلْت: اخْتَلَفَ فِيهَا خَمْسَةٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ابْنُ مَسْعُودٍ، وَعَلِيٌّ، وَعُثْمَانُ، وَزَيْدٌ، وَابْنُ عَبَّاسٍ، قَالَ الْحَجَّاجُ: فَمَا قَالَ فِيهَا ابْنُ عَبَّاسٍ - إنْ كَانَ لَمُتْقَنًا -؟ قُلْت: جَعَلَ الْجَدَّ أَبًا، وَلَمْ يُعْطِ الْأُخْتَ شَيْئًا، وَأَعْطَى الْأُمَّ الثُّلُثَ؟ قَالَ: فَمَا قَالَ فِيهَا ابْنُ مَسْعُودٍ؟ قُلْت: جَعَلَهَا مِنْ سِتَّةٍ: أَعْطَى الْأُخْتَ ثَلَاثَةً، وَأَعْطَى الْجَدَّ اثْنَيْنِ، وَأَعْطَى الْأُمَّ الثُّلُثَ، قَالَ: فَمَا قَالَ فِيهَا أَمِيرُ الْمُؤْمِنِينَ - يَعْنِي عُثْمَانَ -؟ قُلْت: جَعَلَهَا أَثْلَاثًا، قَالَ: فَمَا قَالَ فِيهَا أَبُو تُرَابٍ يَعْنِي

approach?’ I answered: ‘He apportioned nine shares: three to the mother, four to the grandfather, and two to the sister.’ Al-Ḥajjāj concluded: ‘Direct the judge to rule on this as the Commander of the Faithful ʿUthmān ruled.’”

عَلِيًّا قُلْت: جَعَلَهَا مِنْ سِتَّةٍ: أَعْطَى الْأُخْتَ ثَلَاثَةً، وَأَعْطَى الْأُمَّ اثْنَيْنِ، وَأَعْطَى الْجَدَّ سَهْمًا، قَالَ: فَمَا قَالَ فِيهَا زَيْدٌ؟ قُلْت: جَعَلَهَا مِنْ تِسْعَةٍ: أَعْطَى الْأُمَّ ثَلَاثَةً، وَأَعْطَى الْجَدَّ أَرْبَعَةً، وَأَعْطَى الْأُخْتَ: اثْنَيْنِ قَالَ الْحَجَّاجُ: مُرْ الْقَاضِي يُمْضِيهَا عَلَى مَا أَمْضَاهَا عَلَيْهِ أَمِيرُ الْمُؤْمِنِينَ - يَعْنِي عُثْمَانَ -.

L27861 And through the chain of Waki‘ who reported to us: Sufyān al-Thawrī narrated from Manṣūr ibn al-Muʿtamir from Ibrāhīm al-Nakhaʿī from ʿUmar ibn al-Khaṭṭāb regarding a sister, a mother, and a grandfather. He said: The sister receives half, the mother receives a sixth, and what remains belongs to the grandfather.

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ عُمَرَ بْنِ الْخَطَّابِ فِي أُخْتٍ، وَأُمٍّ، وَجَدٍّ، قَالَ: لِلْأُخْتِ النِّصْفُ، وَلِلْأُمِّ السُّدُسُ، وَمَا بَقِيَ فَلِلْجَدِّ.

L27862 Abū Muḥammad said: “This conforms to the statement of Ibn Masʿūd - may Allah be pleased with him.”

قَالَ أَبُو مُحَمَّدٍ: هَذَا مُوَافِقٌ لِقَوْلِ ابْنِ مَسْعُودٍ - رَضِيَ اللَّهُ عَنْهُ -.

L27863–27864 From the narration of Saʿīd ibn Manṣūr, who narrated to us from Hushaym, from ʿUbaydah, from al-Shaʿbī, who said: Al-Ḥajjāj sent for me and asked, “What do you say regarding an inheritance case presented to me involving a mother, a grandfather, and a sister?” I replied, “What did the Commander say about it?” He informed me of his statement, and I said, “This is the judgment of Abū Turāb”—meaning ʿAlī ibn Abī Ṭālib—“and seven of the Companions of the Messenger of Allah (peace and blessings be upon him) spoke on it.” ʿUmar and Ibn Masʿūd said: “The sister receives half, the mother a sixth, and the grandfather a third.” ʿAlī said: “The mother receives a third, the sister half, and the grandfather a sixth.” ʿUthmān ibn ʿAffān said: “The mother receives a third, the sister a third, and the grandfather a third.” Al-Ḥajjāj remarked, “This is invalid.” Zayd said: “The mother receives three, the grandfather four, and the sister two shares.” Ibn ʿAbbās and Ibn al-Zubayr said: “The mother receives a third, the grandfather takes the remainder, and the sister receives nothing.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ عَنْ عُبَيْدَةَ عَنْ الشَّعْبِيِّ قَالَ: أَرْسَلَ إلَيَّ الْحَجَّاجُ فَقَالَ لِي: مَا تَقُولُ فِي فَرِيضَةٍ أُتِيت بِهَا: أُمٌّ، وَجَدٌّ، وَأُخْتٌ؟ فَقُلْت: مَا قَالَ فِيهَا الْأَمِيرُ؟ فَأَخْبَرَنِي بِقَوْلِهِ، فَقُلْت: هَذَا قَضَاءُ أَبِي تُرَابٍ يَعْنِي عَلِيَّ بْنَ أَبِي طَالِبٍ - وَقَالَ فِيهَا سَبْعَةٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ عُمَرُ، وَابْنُ مَسْعُودٍ: لِلْأُخْتِ النِّصْفُ، وَلِلْأُمِّ السُّدُسُ، وَلِلْجَدِّ الثُّلُثُ، وَقَالَ عَلِيٌّ: لِلْأُمِّ الثُّلُثُ وَلِلْأُخْتِ النِّصْفُ، وَلِلْجَدِّ السُّدُسُ، وَقَالَ عُثْمَانُ بْنُ عَفَّانَ: لِلْأُمِّ الثُّلُثُ، وَلِلْأُخْتِ الثُّلُثُ، وَلِلْجَدِّ الثُّلُثُ، فَقَالَ الْحَجَّاجُ: لَيْسَ هَذَا بِشَيْءٍ، وَقَالَ زَيْدٌ: لِلْأُمِّ ثَلَاثَةٌ، وَلِلْجَدِّ أَرْبَعَةٌ، وَلِلْأُخْتِ سَهْمَانِ، وَقَالَ ابْنُ عَبَّاسٍ، وَابْنُ الزُّبَيْرِ: لِلْأُمِّ الثُّلُثُ، وَلِلْجَدِّ مَا بَقِيَ، وَلَيْسَ لِلْأُخْتِ شَيْءٌ.

[مَسْأَلَة الْأَكْدَرِيَّة]

The Juridical Case of Al-Akdariyyah

L27866 Issue 1733: Al-Akdariyyah refers to a case in inheritance law where the

heirs are a mother, grandfather, sister, and husband.

١٧٣٣ - مَسْأَلَةٌ " وَالْأَكْدَرِيَّةُ " وَهِيَ أُمٌّ، وَجَدٌّ، وَأُخْتٌ، وَزَوْجٌ.

L27867 It has been narrated to us via the path of Sa'īd ibn Manṣūr, from whom Hushaym reported to us, from al-Mughīrah, from Ibrāhīm al-Nakha'ī, who said: 'Alī stated: "The husband receives three shares, the mother two shares, the grandfather one share, and the sister three shares." Ibn Mas'ūd said: "The husband receives three shares, the mother one share, the grandfather one share, and the sister three shares." Zayd ibn Thābit said: "The husband receives three shares, the mother two shares, the grandfather one share, and the sister three shares. Multiply all shares by three, resulting in twenty-seven shares: the husband receives nine from this total, the mother six. This leaves twelve shares: the grandfather receives eight from these, and the sister four." Ibn 'Abbās said: "The husband receives half, the mother a third, the grandfather receives what remains, and the sister receives nothing."

رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا الْمُغِيرَةُ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: قَالَ عَلِيٌّ: لِلزَّوْجِ ثَلَاثَةُ أَسْهُمٍ، وَلِلْأُمِّ سَهْمَانِ، وَلِلْجَدِّ سَهْمٌ، وَلِلْأُخْتِ ثَلَاثَةُ أَسْهُمٍ، وَقَالَ ابْنُ مَسْعُودٍ: لِلزَّوْجِ ثَلَاثَةُ أَسْهُمٍ، وَلِلْأُمِّ سَهْمٌ، وَلِلْجَدِّ سَهْمٌ، وَلِلْأُخْتِ ثَلَاثَةُ أَسْهُمٍ، وَقَالَ زَيْدُ بْنُ ثَابِتٍ: لِلزَّوْجِ ثَلَاثَةُ أَسْهُمٍ وَلِلْأُمِّ سَهْمَانِ، وَلِلْجَدِّ سَهْمٌ، وَلِلْأُخْتِ ثَلَاثَةُ أَسْهُمٍ، تَضْرِبُ جَمِيعَ السِّهَامِ فِي ثَلَاثَةٍ فَتَكُونُ سَبْعَةً وَعِشْرِينَ سَهْمًا: لِلزَّوْجِ مِنْ ذَلِكَ تِسْعَةُ أَسْهُمٍ، وَلِلْأُمِّ سِتَّةٌ، تَبْقَى اثْنَا عَشَرَ سَهْمًا: لِلْجَدِّ مِنْهَا ثَمَانِيَةٌ، وَلِلْأُخْتِ أَرْبَعَةٌ، وَقَالَ ابْنُ عَبَّاسٍ لِلزَّوْجِ النِّصْفُ، وَلِلْأُمِّ الثُّلُثُ، وَلِلْجَدِّ مَا بَقِيَ، وَلَيْسَ لِلْأُخْتِ شَيْءٌ.

L27868–27869 It was narrated to us through Sufyān ibn 'Uyaynah, who said: "They narrated to me from Ismā'īl ibn Abī Khālid, from al-Sha'bī, who said: His narrator, Zayd ibn Thābit (meaning Qabīṣah ibn Dhu'ayb), reported that he (i.e., Zayd ibn Thābit) did not issue any ruling regarding 'al-Akdariyyah'."

وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ قَالَ: حَدَّثُونِي عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: حَدَّثَنِي رَاوِيهِ زَيْدِ بْنِ ثَابِتٍ - يَعْنِي قَبِيصَةَ بْنَ ذُؤَيْبٍ - أَنَّهُ لَمْ يَقُلْ فِي " الْأَكْدَرِيَّةِ " شَيْئًا - يَعْنِي زَيْدَ بْنَ ثَابِتٍ -.

L27870 From the narration of Ghundar: Shu'bah reported to us, "I heard Abū Isḥāq al-Sabī'ī say: 'We consulted 'Ubaydah al-Salmānī about a case involving a husband, a mother, a grandfather, and a sister?' He said: The husband receives half, the sister receives a sixth, the mother receives a sixth, and the grandfather receives a sixth."

وَمِنْ طَرِيقِ غُنْدَرٍ نا شُعْبَةُ سَمِعْت أَبَا إِسْحَاقَ السَّبِيعِيَّ يَقُولُ: أَتَيْنَا عَبِيدَةُ السَّلْمَانِيَّ فِي زَوْجٍ، وَأُمٍّ، وَجَدٍّ، وَأُخْتٍ؟ فَقَالَ: لِلزَّوْجِ النِّصْفُ، وَلِلْأُخْتِ السُّدُسُ، وَلِلْأُمِّ السُّدُسُ، وَلِلْجَدِّ السُّدُسُ.

L27871 An issue concerning a grandfather, a daughter, and a sister or brothers.

[مَسْأَلَة فِي جَدّ وابنة وأخت أَوْ أخوة]

L27872 Issue 1734: It has been narrated to us through the chain of Abd al-Razzaq from Sufyan al-Thawri from al-A'mash from Ibrahim from Masruq from Ibn Mas'ud that he ruled on a case involving a grandfather, a daughter, and a sister: The inheritance is from four shares - two shares for the daughter,

١٧٣٤ - مَسْأَلَةٌ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ عَنْ مَسْرُوقٍ عَنْ ابْنِ مَسْعُودٍ: أَنَّهُ قَالَ فِي جَدٍّ، وَابْنَةٍ، وَأُخْتٍ: هِيَ مِنْ أَرْبَعَةٍ:

one share for the grandfather, and one share for the sister. If there are two sisters, the inheritance is from eight shares - four shares for the daughter, two shares for the grandfather, and two shares divided between the two sisters. If there are three sisters, the inheritance is from ten shares - five shares for the daughter, two shares for the grandfather, and three shares distributed among the three sisters.

L27873 **Issue of paternal nephews assuming their fathers' legal positions alongside the grandfather.**

L27874 1735 - An issue: It was narrated to us through the chain of Al-Ḥajjāj ibn al-Minhāl, who narrated to us from Abū ʿAwānah, from Ismāʿīl ibn Abī Khālid, from Al-Shaʿbī, who said: "'Alī ibn Abī Ṭālib would assign the nephews alongside the grandfather in their fathers' positions"—meaning the positions of their fathers—"and I have not found anyone among the people who stated it except ʿAlī."

L27875 Abu Muhammad said: We have only presented these legal questions to make their contradiction to our earlier arguments clear, and to show the adherent of *taqlid* that none of them are more valid than another – and success is from Allah, the Exalted.

L27876 **The transmitted narrations concerning the grandfather.**

L27877–27879 Issue 1736: It was reported to us through the chain of Ahmad ibn Shu'ayb: [He said] I received from Mu'awiyah ibn Salih, Muhammad ibn 'Isa, and Sulayman ibn Salam al-Balkhi. Muhammad ibn 'Isa (Ibn al-Tabba') narrated to us from Hushaym. Mu'awiyah said: 'Abdullah ibn Sawwar al-'Anbari narrated to me, who narrated from Wuhaib (Ibn Khalid). Then the narrations of Hushaym and Wuhaib concurred, both transmitting from Yunus (Ibn 'Ubayd) through al-Hasan, from Ma'qil ibn Yasar: "The Messenger of Allah - peace and blessings be upon him - allocated one-sixth to the grandfather." Mu'awiyah added in his narration: "We do not know with whom." Sulayman al-Balkhi said: I am al-Nadr (Ibn Shumayl) - I was informed by Yunus (meaning Ibn Abi Ishaq) through Abu Ishaq al-Sabi'i, from 'Amr ibn Maymun: "Umar gathered the Companions of the Messenger of Allah - peace and

لِلْبِنْتِ سَهْمَانِ، وَلِلْجَدِّ سَهْمٌ، وَلِلْأُخْتِ سَهْمٌ - فَإِنْ كَانَتَا أُخْتَيْنِ فَمِنْ ثَمَانِيَةٍ: لِلْبِنْتِ أَرْبَعَةٌ، وَلِلْجَدِّ سَهْمَانِ، وَلِلْأُخْتَيْنِ بَيْنَهُمَا سَهْمَانِ - فَإِنْ كُنَّ ثَلَاثَةَ أَخَوَاتٍ، فَمِنْ عَشْرَةٍ: لِلْبِنْتِ خَمْسَةُ أَسْهُمٍ، وَلِلْجَدِّ سَهْمَانِ وَلِلْأَخَوَاتِ ثَلَاثَةُ أَسْهُمٍ بَيْنَهُنَّ.

[مَسْأَلَة نُزُول بَنِي الأخ منازل أبائهم مَعَ الْجَدّ]

١٧٣٥ - مَسْأَلَةٌ رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ إِسْمَاعِيلَ ابْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ يُنْزِلُ بَنِي الْأَخِ مَعَ الْجَدِّ مَنَازِلَهُمْ - يَعْنِي مَنَازِلَ آبَائِهِمْ - وَلَمْ أَجِدْ أَحَدًا مِنْ النَّاسِ يَقُولُهُ غَيْرَهُ.

قَالَ أَبُو مُحَمَّدٍ: إنَّمَا أَوْرَدْنَا هَذِهِ الْمَسَائِلَ لِتَلُوحَ مُنَاقَضَتُهَا لِمَا ذَكَرْنَا قَبْلَهَا، وَلِنُرِيَ الْمُقَلِّدَ أَنَّهُ لَيْسَ بَعْضُهَا أَوْلَى مِنْ بَعْضٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[الْآثَارُ الْوَارِدَةُ فِي الْجَدِّ]

١٧٣٦ - مَسْأَلَةٌ رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُعَاوِيَةُ بْنُ صَالِحٍ، وَمُحَمَّدُ بْنُ عِيسَى، وَسُلَيْمَانُ بْنُ سَلَمٍ الْبَلْخِيُّ، قَالَ مُحَمَّدُ بْنُ عِيسَى - هُوَ ابْنُ الطَّبَّاعِ - نا هُشَيْمٌ، وَقَالَ مُعَاوِيَةُ: حَدَّثَنِي عَبْدُ اللَّهِ بْنُ سَوَّارٍ الْعَنْبَرِيُّ نا وُهَيْبٌ - هُوَ ابْنُ خَالِدٍ - ثُمَّ اتَّفَقَ هُشَيْمٌ، وَوُهَيْبٌ، كِلَاهُمَا عَنْ يُونُسَ - هُوَ ابْنُ عُبَيْدٍ - عَنْ الْحَسَنِ عَنْ مَعْقِلِ بْنِ يَسَارٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَى الْجَدَّ السُّدُسَ» قَالَ مُعَاوِيَةُ فِي حَدِيثِهِ: لَا نَدْرِي مَعَ مَنْ، وَقَالَ سُلَيْمَانُ الْبَلْخِيّ: أَنَا النَّضْرُ - هُوَ ابْنُ شُمَيْلٍ - أَخْبَرَنِي يُونُسُ - يَعْنِي

blessings be upon him - concerning the matter...” Regarding the grandfather, he adjured them: “Who has heard anything from the Messenger of Allah—peace and blessings be upon him—concerning the grandfather?” Ma‘qil ibn Yāsar al-Muzanī replied: “I heard the Messenger of Allah—peace and blessings be upon him—presented a fixed share involving a grandfather, and he allocated a third or a sixth.” ‘Umar said to him: “What was the fixed share?” He answered: “I do not know”—and Ma‘qil related the report.

ابْنَ أَبِي إِسْحَاقَ - عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَمْرِو بْنِ مَيْمُونٍ: أَنَّ عُمَرَ جَمَعَ أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي شَأْنِ الْجَدِّ فَنَشَدَهُمْ: مَنْ سَمِعَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْجَدِّ شَيْئًا؟ فَقَالَ مَعْقِلُ بْنُ يَسَارٍ الْمُزَنِيُّ: سَمِعْتُ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَتَى بِفَرِيضَةٍ فِيهَا جَدٌّ، فَأَعْطَى ثُلُثًا أَوْ سُدُسًا» ، فَقَالَ لَهُ عُمَرُ: مَا الْفَرِيضَةُ؟ فَقَالَ: لَا أَدْرِي - وَذَكَرَ الْخَبَرَ. .

L27880 And through the chain of Abū Dāwūd: Muḥammad ibn Kathīr narrated to us, Hammām ibn Yaḥyā narrated to us, from Qatādah, from al-Ḥasan, from ʿImrān ibn al-Ḥuṣayn: “A man came to the Messenger of Allāh (peace be upon him) and said: ’My grandson has died—what is my share of his inheritance?’ He replied: ’One-sixth.’ When the man turned to leave, he called him back and said: ’For you is another one-sixth.’ When he turned away again, he called him back and said: ’Indeed, the additional one-sixth is a gift of kindness.’”

وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ كَثِيرٍ نا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ «أَنَّ رَجُلًا أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إنَّ ابْنَ ابْنِي مَاتَ فَمَا لِي مِنْ مِيرَاثِهِ؟ قَالَ: السُّدُسُ، فَلَمَّا أَدْبَرَ دَعَاهُ، فَقَالَ: لَك سُدُسٌ آخَرُ، فَلَمَّا أَدْبَرَ دَعَاهُ، فَقَالَ: إنَّ السُّدُسَ الْآخَرَ طُعْمَةٌ» .

L27881 Abū Muḥammad said: There is discussion concerning al-Ḥasan’s transmission from ʿImrān - and this finds its most appropriate application in the case of two daughters and a grandfather. For the two daughters, two-thirds is a prescribed and specified share. For the grandfather in the presence of descendants generally, one-sixth is a prescribed and specified portion. He receives the remaining sixth by ʿaṣabah (agnatic right), as he is the closest male agnate mentioned.

قَالَ أَبُو مُحَمَّد: فِي سَمَاعِ الْحَسَنِ مِنْ عِمْرَانَ كَلَامٌ - وَهَذَا يَخْرُجُ أَحْسَنَ خُرُوجٍ فِي ابْنَتَيْنِ وَجَدٍّ: فَلِلْبِنْتَيْنِ الثُّلُثَانِ فَرِيضَةً مُسَمَّاةً، وَلِلْجَدِّ مَعَ الْوَلَدِ عُمُومًا السُّدُسُ فَرْضًا مُسَمًّى، وَلَهُ السُّدُسُ الْآخَرُ بِالتَّعْصِيبِ؛ لِأَنَّهُ أَوْلَى رَجُلٍ ذُكِرَ.

L27882 From the path of Abd al-Razzaq, from Sufyan al-Thawri, from Isa (he is Ibn Isa al-Hannat, the grain merchant), from al-Sha‘bi: “Umar publicly inquired among the people regarding the grandfather’s share. A man stood up and said: ’I witnessed the Messenger of Allah (peace and blessings of Allah be upon him) assign him a third.’ He asked: ’Who supports this?’ The man replied: ’I do not know.’ A man said: ’I heard the Messenger of Allah (peace and blessings of Allah be upon him) assign him a sixth.’ He asked: ’Who supports this?’ The man replied: ’I do not know.’”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عِيسَى - هُوَ ابْنُ عِيسَى الْحَنَّاطُ - عَنْ الشَّعْبِيِّ: «أَنَّ عُمَرَ نَشَدَ النَّاسَ فِي الْجَدِّ؟ فَقَامَ رَجُلٌ فَقَالَ: رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَاهُ الثُّلُثَ، قَالَ: مَنْ مَعَهُ؟ قَالَ: لَا أَدْرِي، فَقَالَ رَجُلٌ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَاهُ السُّدُسَ» ، قَالَ: مَنْ مَعَهُ؟ قَالَ: لَا أَدْرِي.

L27883 From the transmission of Saʿīd ibn Manṣūr, [who reported:] Abū Maʿshar

narrated to us from ʿĪsā ibn Abī ʿĪsā al-Ḥannāṭ that ʿUmar ibn al-Khaṭṭāb asked the people: “Which of you heard the Messenger of Allah—peace be upon him—mention anything regarding the grandfather?” A man responded: “He assigned him a sixth of the estate.” Another said: “He assigned him a third of the estate.” Another said: “He assigned him half of the estate.” Another said: “He assigned him the entire estate.” None of them could definitively state alongside which [other] heirs this allocation was to be applied.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مَعْشَرٍ عَنْ عِيسَى بْنِ أَبِي عِيسَى الْخَنَّاطِ أَنَّ «عُمَرَ بْنَ الْخَطَّابِ سَأَلَ النَّاسَ: أَيُّكُمْ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي الْجَدِّ شَيْئًا؟ فَقَالَ لَهُ رَجُلٌ: أَعْطَاهُ سُدُسَ مَالِهِ، وَقَالَ آخَرُ: أَعْطَاهُ ثُلُثَ مَالِهِ، وَقَالَ آخَرُ: أَعْطَاهُ نِصْفَ مَالِهِ، وَقَالَ آخَرُ: أَعْطَاهُ الْمَالَ كُلَّهُ» - لَيْسَ مِنْهُمْ أَحَدٌ يَدْرِي مَعَ مَنْ مِنْ الْوَرَثَةِ.

L27884 Through the chain of Saʿīd ibn Manṣūr, Yaʿqūb ibn ʿAbd al-Raḥmān narrated to us from ʿAbd al-Raḥmān ibn Ḥarmalah from Saʿīd ibn al-Musayyib, who said: The Messenger of Allāh—peace and blessings be upon him—said, “The boldest among you in dividing the grandfather’s share is likewise the boldest among you in facing the Fire.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا يَعْقُوبُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ حَرْمَلَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَجْرَؤُكُمْ عَلَى قَسْمِ الْجَدِّ أَجْرَؤُكُمْ عَلَى النَّارِ» .

L27885–27887 Abu Muhammad said: This is Yaʿqūb ibn ʿAbd al-Raḥmān ibn Muḥammad al-Qāriʾ from Banū al-Hawn ibn Khuzaymah, an ally of Banū Zuhrah—a reliable narrator whose father was also reliable. We currently know of no share for the paternal grandfather beyond these [portions], which include only a sixth, a third, a half, and the entirety. According to this, we hold the opinion: The paternal grandfather is entitled to a sixth when inheriting alongside a male child, and with [...] Daughters receive one-third, and a single daughter receives half. If there is no child, mother, grandmother, husband, wife, or father, the entire estate belongs to him.

قَالَ أَبُو مُحَمَّدٍ: هَذَا يَعْقُوبُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ مُحَمَّدٍ الْقَارِئُ مِنْ بَنِي الْهَوْنِ بْنِ خُزَيْمَةَ حَلِيفٌ لِبَنِي زُهْرَةَ ثِقَةٌ ابْنُ ثِقَةٍ مَا نَعْلَمُ الْآنَ فِي الْجَدِّ أَثَرًا غَيْرَ هَذِهِ وَلَيْسَ فِيهَا إلَّا سُدُسٌ، وَثُلُثٌ، وَنِصْفٌ، وَكُلٌّ، وَبِهَا نَقُولُ: فَلِلْجَدِّ مَعَ الْوَلَدِ الذَّكَرِ السُّدُسُ، وَمَعَ الْبَنَاتِ الثُّلُثُ، وَمَعَ الْبِنْتِ النِّصْفُ - وَإِذَا لَمْ يَكُنْ وَلَدٌ، وَلَا أُمٌّ، وَلَا جَدَّةٌ، وَلَا زَوْجٌ، وَلَا زَوْجَةٌ، وَلَا أَبٌ: فَلَهُ الْكُلُّ.

L27888 Abu Muhammad said: When they differed as we mentioned, it became necessary for us to examine the evidence for each opinion to discern the truth and follow it by Allah’s power and favor. We found that those who hesitated regarding inheritance might cite the *mursal* report of Sa’id, which we mentioned three or four lines [of text] above. However, it holds no authority because it is a *mursal* report. Far be it from Allah that His Messenger, sent to clarify, would neglect to clarify what he was commanded to clarify, then threaten in that [act] that one is bold toward the Fire. Whatever he did not clarify to us is not binding upon us at all. Everything he obligated upon

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي حُجَّةِ كُلِّ قَوْلٍ مِنْهَا لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ بِحَوْلِ اللَّهِ تَعَالَى وَمَنِّهِ، فَوَجَدْنَا مَنْ تَوَقَّفَ فِي مِيرَاثِهِ يُمْكِنُ أَنْ يَحْتَجَّ بِمُرْسَلِ سَعِيدٍ الَّذِي أَوْرَدْنَا قَبْلَ هَذَا الْمَكَانِ بِثَلَاثَةِ أَسْطَارٍ أَوْ أَرْبَعَةٍ وَهُوَ لَا حُجَّةَ فِيهِ؛ لِأَنَّهُ مُرْسَلٌ، وَحَاشَ لِلَّهِ أَنْ يَكُونَ رَسُولُهُ الْمَبْعُوثُ بِالْبَيَانِ لَا يُبَيِّنُ مَا أُمِرَ بِبَيَانِهِ ثُمَّ يَتَوَعَّدُ فِيهَا بِأَنَّهُ

us, he clarified to us. When we affirm what he clarified, we do not act with boldness toward the Fire; rather, we tread the path to Paradise.

L27889 The grandfather is not exempt from either having an inheritance or not having one. If he has no inheritance, then the one withholding it is virtuous. If he does have an inheritance, granting him his rightful share is an obligation, and it is impermissible to withhold it from him. Therefore, determining the ruling in either case is an obligatory duty: one must either grant it or withhold it. It is inconceivable that the determination of the ruling regarding his inheritance could be an obligation—such that abandoning it constitutes disobedience to Allah the Exalted—while [Allah] threatens with Hellfire for fulfilling what He has ordained upon us. Rather, this is a flaw in the transmitter. By Allah, the Messenger of Allah—peace and blessings be upon him—certainly never uttered these words while reciting the words of his Lord the Exalted: "This day I have perfected for you your religion" [Al-Māʾidah: 3].[13]

L27890 "The right guidance has become clear from misguidance" (2:256).[14]

L27891 However, when Saʿīd attributed it to the Prophet—peace and blessings of Allah be upon him—it caused ambiguity. In reality, it is a mawqūf narration from ʿAlī and a narration from ʿUmar. There is a Sahih narration from Ibn ʿUmar as we cited previously, or the error originates from someone other than Saʿīd who attributed it to the Prophet—peace and blessings of Allah be upon him.

L27892 The preserved narration from Saʿīd's chain is that it is from ʿUmar as we cited before, or that Saʿīd heard it from someone who had a lapse regarding it—it must be one of the two. Thus, this statement is invalidated.

L27893 Then we examined the opinion of Zayd and ʻAbd al-Raḥmān ibn Ghanm—who denied the grandfather inheritance when brothers are present—and found their argument to be that they said: "We found the inheritance of the

جَرِيءٌ عَلَى النَّارِ، وَمَا لَمْ يُبَيِّنْهُ عَلَيْنَا فَلَا يَلْزَمُنَا أَصْلًا، وَكُلُّ مَا أَلْزَمَنَا فَقَدْ بَيَّنَهُ عَلَيْنَا، وَإِذَا قُلْنَا مَا بَيَّنَهُ عَلَيْنَا فَمَا اجْتَرَأْنَا عَلَى النَّارِ، بَلْ سَلَكْنَا فِي طَرِيقِ الْجَنَّةِ.

وَلَا يَخْلُو الْجَدُّ مِنْ أَنْ يَكُونَ لَهُ مِيرَاثٌ، أَوْ لَا يَكُونَ لَهُ مِيرَاثٌ، فَإِنْ كَانَ لَا مِيرَاثَ لَهُ، فَمَانِعُهُ مُحْسِنٌ، وَإِنْ كَانَ لَهُ مِيرَاثٌ فَإِعْطَاؤُهُ حَقَّهُ فَرْضٌ، لَا يَحِلُّ مَنْعُهُ مِنْهُ، فَالْجُرْأَةُ عَلَى أَحَدِهِمَا فَرْضٌ وَاجِبٌ، وَلَا بُدَّ مِنْ إِعْطَائِهِ أَوْ مِنْ مَنْعِهِ، فَمِنَ الْمُحَالِ أَنْ تَكُونَ الْجُرْأَةُ فِي حُكْمِهِ فِي الْمِيرَاثِ فَرْضًا، يَعْصِي اللَّهَ تَعَالَى مَنْ تَرَكَهَا، ثُمَّ يَتَوَعَّدُ عَلَى فِعْلِ مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا بِالنَّارِ، وَلَكِنَّ هَذَا عَيْبُ الْمُرْسَلِ، وَاَللَّهِ - قَطْعًا - مَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ هَذَا الْكَلَامَ وَهُوَ يَتْلُو كَلَامَ رَبِّهِ تَعَالَى: {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] .

وَ {قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ} [البقرة: ٢٥٦] .

وَلَكِنْ سَعِيدٌ إِذْ أَضَافَهُ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْهَمَ، وَإِنَّمَا هُوَ مَوْقُوفٌ عَلَى عَلِيٍّ وَعَنْ عُمَرَ، وَصَحِيحٌ عَنِ ابْنِ عُمَرَ كَمَا أَوْرَدْنَا قَبْلُ، أَوْ وَهْمٌ مِنْ دُونِ سَعِيدٍ فَأَضَافَهُ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَإِنَّمَا الْمَحْفُوظُ مِنْ طَرِيقِ سَعِيدٍ: أَنَّهُ عَنْ عُمَرَ كَمَا أَوْرَدْنَا قَبْلُ أَوْ سَمِعَهُ سَعِيدٌ مِمَّنْ وَهَمَ فِيهِ، لَا بُدَّ مِنْ أَحَدِهِمَا - فَسَقَطَ هَذَا الْقَوْلُ.

ثُمَّ نَظَرْنَا فِي قَوْلِ زَيْدٍ، وَعَبْدِ الرَّحْمَنِ بْنِ غُنْمٍ - اللَّذَيْنِ مَنَعَاهُ الْمِيرَاثَ مَعَ الْإِخْوَةِ - فَوَجَدْنَا حُجَّتَهُمْ أَنْ قَالُوا: وَجَدْنَا مِيرَاثَ الْإِخْوَةِ مَنْصُوصًا فِي الْقُرْآنِ، وَلَمْ نَجِدْ لِلْجَدِّ

[13] **Qur'an references (L27889):** Qur'an 5:3 (Al-Ma'idah).
[14] **Qur'an references (L27890):** Qur'an 2:256 (Al-Baqarah).

brothers textually specified in the Quran, and we did not find any inheritance for the grandfather mentioned in the Quran. We observed the grandfather adducing his parentage to the deceased's father, while the brothers adduce their parentage through the deceased's father, thus they are closer in kinship than him."

مِيرَاثًا فِي الْقُرْآنِ، وَوَجَدْنَا الْجَدَّ يُدْلِي بِوِلَادَتِهِ لِأَبِي الْمَيِّتِ، وَوَجَدْنَا الْإِخْوَةَ يُدْلُونَ بِوِلَادَةِ أَبِي الْمَيِّتِ: فَهُمْ أَقْرَبُ مِنْهُ.

L27894–27895 We have been narrated through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from ʿĪsā al-Ḥannāṭ from al-Shaʿbī: that ʿUmar asked Zayd about the grandfather's entitlement. Zayd offered him an analogy of a tree from which branches emerged. Al-Shaʿbī said: "He mentioned something I do not remember precisely, then allocated him a third." Sufyān said: "It reached me that he said: 'O Commander of the Faithful, consider a tree producing branches like clusters. From one branch emerge two sub-branches. Should the first branch hold precedence over the second when both originate from the same primary branch?'" He then asked ʿAlī, who proposed another analogy: "A valley through which a flood flowed, treating him as a brother between himself and six others." Thus, ʿAlī granted him a sixth.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عِيسَى الْحَنَّاطِ عَنْ الشَّعْبِيِّ: أَنَّ عُمَرَ سَأَلَ زَيْدًا عَنْ الْجَدِّ؟ فَضَرَبَ لَهُ زَيْدٌ مَثَلًا: شَجَرَةً خَرَجَتْ لَهَا أَغْصَانٌ، قَالَ الشَّعْبِيُّ: فَذَكَرَ شَيْئًا لَا أَحْفَظُهُ، فَجَعَلَ لَهُ الثُّلُثَ، قَالَ سُفْيَانُ: بَلَغَنِي أَنَّهُ قَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ شَجَرَةٌ أَنْبَتَتْ كَالشُّعَبِ مِنْهَا غُصْنٌ، فَالشُّعَبُ مِنْ الْغُصْنِ غُصْنَانِ، فَمَا جُعِلَ الْغُصْنُ الْأَوَّلُ أَوْلَى مِنْ الْغُصْنِ الثَّانِي - وَقَدْ خَرَجَ الْغُصْنَانِ جَمِيعًا مِنْ الْغُصْنِ الْأَوَّلِ؟ ثُمَّ سَأَلَ عَلِيًّا؟ فَضَرَبَ لَهُ مَثَلًا: وَادِيًا سَالَ فِيهِ سَيْلٌ، فَجَعَلَهُ أَخًا فِيمَا بَيْنَهُ وَبَيْنَ سِتَّةٍ: فَأَعْطَاهُ السُّدُسَ.

L27896 From the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: Ismāʿīl ibn Abī Uways reported to us, saying: ʿAbd al-Raḥmān ibn Abī al-Zinād narrated to me from his father, who was informed by Khārijah ibn Zayd ibn Thābit from his father that when ʿUmar ibn al-Khaṭṭāb sought counsel regarding an inheritance case between a grandfather and brothers, Zayd said: "My opinion at that time was that the brothers were more entitled to their brother's inheritance than the grandfather?" Now ʿUmar held the view that the grandfather was more entitled to the inheritance of his son's son than the brothers. We engaged in a vigorous debate—I and ʿUmar—and I presented an analogy to him, saying: "If a tree branched from its root a limb, then two twigs branched from that limb—would not the limb unite the two twigs and nourish them, rather than the root? Do you not see, O Commander of the Faithful, that one twig is closer to its brother than to the root?" Zayd continued: "I repeated this to him and offered such analogies, but he persisted in his stance that the grandfather was more entitled than the brothers, saying: 'By Allah, if I were to judge this for some of them, I would grant the entire inheritance

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا إِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ عَنْ أَبِيهِ أَخْبَرَنِي خَارِجَةُ بْنُ زَيْدِ بْنِ ثَابِتٍ عَنْ أَبِيهِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ لَمَّا اسْتَشَارَ فِي مِيرَاثٍ بَيْنَ الْجَدِّ وَالْإِخْوَةِ؟ قَالَ زَيْدٌ: وَكَانَ رَأْيِي يَوْمَئِذٍ أَنَّ الْإِخْوَةَ أَحَقُّ بِمِيرَاثِ أَخِيهِمْ مِنْ الْجَدِّ؟ وَعُمَرُ يَوْمَئِذٍ يَرَى الْجَدَّ أَوْلَى بِمِيرَاثِ ابْنِ ابْنِهِ مِنْ إِخْوَتِهِ فَتَحَاوَرْت - أَنَا وَعُمَرُ مُحَاوَرَةً شَدِيدَةً، فَضَرَبْت لَهُ فِي ذَلِكَ مَثَلًا، فَقُلْت: لَوْ أَنَّ شَجَرَةً تَشَعَّبَ مِنْ أَصْلِهَا غُصْنٌ، ثُمَّ تَشَعَّبَ مِنْ ذَلِكَ الْغُصْنِ خُوطَانِ ذَلِكَ الْغُصْنُ يَجْمَعُ الْخُوطَيْنِ دُونَ الْأَصْلِ وَيَغْذُوهُمَا، أَلَا تَرَى يَا أَمِيرَ الْمُؤْمِنِينَ أَنَّ أَحَدَ الْخُوطَيْنِ أَقْرَبُ إلَى أَخِيهِ مِنْهُ إلَى الْأَصْلِ؟ قَالَ زَيْدٌ: فَأَنَا أُعِيدُ لَهُ، وَأَضْرِبُ لَهُ هَذِهِ الْأَمْثَالَ، وَهُوَ يَأْبَى إلَّا أَنَّ الْجَدَّ أَوْلَى مِنْ الْإِخْوَةِ وَيَقُولُ: وَاَللَّهِ لَوْ أَنِّي قَضَيْته لِبَعْضِهِمْ لَقَضَيْت بِهِ

to the grandfather. Yet perhaps I will not deprive anyone's rightful share, for they may all have valid claims.'" On that occasion, ʿAlī ibn Abī Ṭālib and Ibn ʿAbbās presented an analogy to ʿUmar, implying: "If a flood flowed and a channel diverged from it, then two streams diverged from that channel..." Abū Muḥammad remarked: "As for those who claim the brothers' inheritance is textually stipulated in the Quran while the grandfather's is not—this is false. Rather, the grandfather's inheritance is textually stipulated in the Quran through Allah's words: {O children of Adam, let not Satan tempt you as he removed your parents from Paradise} [7:27], thereby making us children of Adam—peace be upon him—and him our father, though he is our most distant ancestor. Thus, the grandfather is a father. Allah also said: {And for his parents, to each one of them is a sixth} [4:11]."[15]

لِلْجَدِّ كُلِّهِ، وَلَكِنِّي لَعَلِّي لَا أُخَيِّبُ سَهْمَ أَحَدٍ، وَلَعَلَّهُمْ أَنْ يَكُونُوا كُلُّهُمْ ذَوِي حَقٍّ، وَضَرَبَ عَلِيُّ بْنُ أَبِي طَالِبٍ، وَابْنُ عَبَّاسٍ يَوْمَئِذٍ لِعُمَرَ مَثَلًا، مَعْنَاهُ: لَوْ أَنَّ سَيْلًا سَالَ فَفَلَّجَ مِنْهُ خَلِيجٌ، ثُمَّ خَلَجَ مِنْ ذَلِكَ الْخَلِيجِ شُعْبَتَانِ؟ قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مَنْ قَالَ: مِيرَاثُ الْإِخْوَةِ مَنْصُوصٌ فِي الْقُرْآنِ وَلَيْسَ مِيرَاثُ الْجَدِّ مَنْصُوصًا فِي الْقُرْآنِ فَبَاطِلٌ، بَلْ مِيرَاثُ الْجَدِّ مَنْصُوصٌ فِي الْقُرْآنِ بِقَوْلِهِ تَعَالَى: {يَا بَنِي آدَمَ لا يَفْتِنَنَّكُمُ الشَّيْطَانُ كَمَا أَخْرَجَ أَبَوَيْكُمْ مِنَ الْجَنَّةِ} [الأعراف: ٢٧] فَجَعَلَنَا بَنِينَ لِآدَمَ - عَلَيْهِ السَّلَامُ - وَجَعَلَهُ أَبًا لَنَا - وَهُوَ أَبْعَدُ جَدٍّ لَنَا - فَالْجَدُّ أَبٌ، وَقَالَ تَعَالَى: {وَلأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ} [النساء: ١١]

L27897 "His parents inherit him, and to his mother belongs the third [of the estate]." [An-Nisa: 11][16]

{وَوَرِثَهُ أَبَوَاهُ فَلأُمِّهِ الثُّلُثُ} [النساء: ١١] .

L27898–27899 As for the grandfather establishing his parentage through the deceased's father, and the brothers establishing their parentage through the deceased's father for themselves and the deceased—they are closer—inheritance is not determined by proximity or remoteness. For instance, the daughter's son is closer than a paternal cousin whose lineage converges with the deceased's only after more than twenty forefathers, yet he inherits nothing alongside that cousin. Similarly, this paternal aunt is closer than a paternal cousin but inherits nothing alongside him. How then, when the grandfather is closer because his parentage as the father of the deceased's father preceded the parentage of the deceased's father to the deceased's brothers? The son's child is a part of the grandfather, making the grandfather closer to him than his brother. Thus, this claim is invalidated with certainty.

وَأَمَّا كَوْنُ الْجَدِّ يُدْلِي بِوِلَادَتِهِ لِأَبِي الْمَيِّتِ، وَكَوْنُ الْإِخْوَةِ يُدْلُونَ بِوِلَادَةِ أَبِي الْمَيِّتِ لَهُمْ وَلِلْمَيِّتِ، فَهُمْ أَقْرَبُ، فَلَيْسَتْ الْمَوَارِيثُ بِالْقُرْبِ وَلَا بِالْبُعْدِ، فَهَذَا ابْنُ الْبِنْتِ أَقْرَبُ مِنْ ابْنِ الْعَمِّ الَّذِي لَا يَلْتَقِي مَعَ الْمَيِّتِ إلَّا إلَى أَزْيَدَ مِنْ عِشْرِينَ أَبًا، وَهُوَ لَا يَرِثُ مَعَ ابْنِ الْعَمِّ الْمَذْكُورِ شَيْئًا، وَهَذِهِ الْعَمَّةُ أَقْرَبُ مِنْ ابْنِ الْعَمِّ، وَلَا تَرِثُ مَعَهُ شَيْئًا، فَكَيْفَ وَالْجَدُّ أَقْرَبُ، لِأَنَّ وِلَادَتَهُ لِأَبِي الْمَيِّتِ كَانَتْ قَبْلَ وِلَادَةِ أَبِي الْمَيِّتِ لِإِخْوَةِ الْمَيِّتِ، فَوَلَدُ الِابْنِ هُوَ بَعْضُ الْجَدِّ، فَالْجَدُّ أَقْرَبُ إلَيْهِ مِنْ أَخِيهِ -: فَبَطَلَ هَذَا الْقَوْلُ بِيَقِينٍ -.

L27900 And success is by Allah, the Exalted.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27901 Abū Muḥammad said: This is analogical systematization, this is juristic com-

[15] **Qur'an references (L27896):** Qur'an 7:27 (Al-A'raf); Qur'an 4:11 (An-Nisa).
[16] **Qur'an references (L27897):** Qur'an 4:11 (An-Nisa).

parison, this is analogical exemplification, this is establishing legal causation, and this is the qiyas through which its practitioners argue to validate qiyas. Reflect and derive lessons. Exalted is God above the notion that Zayd, ʿAlī, or Ibn ʿAbbās—may God be pleased with them—would ever articulate such theological absurdities.

L27902 Has any possessor of sound reason ever seen two branches diverging from a single branch of a tree, or two streams splitting from a channel of a river, that would necessitate a ruling in the grandfather's inheritance alongside siblings—excluding him in favor of them alone, or excluding them in favor of him alone? How then if we were to impose a sixth, quarter, third, exclusion, or proportional division? By Allah, neither Zaid, nor Ali, nor Ibn Abbas ever uttered any of these confused notions. This is the defect of mursal narrations and the reports of weak transmitters. Sufyan: Did Zaid and Ali say to Umar, "By Allah, this is an unfounded leap!"? As for Isa al-Hannat and Abd al-Rahman ibn Abi al-Zinad—by Allah, these two are men whose narrations are disfavored and only accepted if accompanied by a credible narrator. Allah suffices us, and He is the finest trustee.

L27903 Then we examined the stance of those who claim: "The grandfather has no prescribed share; rather, it is determined by what the Commander of the Faithful allocates in proportion to the fewness or abundance of brothers." We found this position utterly invalid, for if the grandfather lacks a binding prescribed share, it is impermissible to appropriate the brothers' property and assign it to him—particularly when among them may be minors, the mentally incapacitated, coerced individuals, or absentees.

L27904 And He, the Exalted, has said: "Do not consume your wealth among yourselves wrongfully" [Al-Baqarah 188].[17]

L27905 And he – peace and blessings be upon him – said: "Indeed, your blood and wealth are sacred and forbidden to violate upon yourselves."

L27906 And the Most High said: "For men is a share of what the parents and near

[17] **Qur'an references (L27904):** Qur'an 2:188 (Al-Baqarah).

قَالَ أَبُو مُحَمَّد: هَذَا التَّنْظِيرُ، وَهَذَا التَّشْبِيهُ، وَهَذَا التَّمْثِيلُ، وَهَذَا التَّعْلِيلُ وَهَذَا الْقِيَاسُ بِهِ يَحْتَجُّ أَهْلُ الْقِيَاسِ فِي إثْبَاتِ الْقِيَاسِ، فَانْظُرُوا وَاعْتَبِرُوا، وَحَاشَ لِلَّهِ أَنْ يَقُولَ زَيْدٌ، أَوْ عَلِيٌّ، أَوْ ابْنُ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمْ - هَذِهِ الْفَضَائِحَ.

وَهَلْ رَأَى قَطُّ ذُو مَسْكَةِ عَقْلٍ أَنَّ غُصْنَيْنِ تَفَرَّعَا مِنْ غُصْنٍ مِنْ شَجَرَةٍ، أَوْ جَدْوَلَيْنِ تَشَعَّبَا مِنْ خَلِيجٍ مِنْ نَهْرٍ يُوجِبُ حُكْمًا فِي مِيرَاثِ الْجَدِّ مَعَ الْإِخْوَةِ بِانْفِرَادِهِ دُونَهُمْ، أَوْ بِانْفِرَادِهِمْ دُونَهُ، فَكَيْفَ إنْ صِرْنَا إلَى إيجَابِ سُدُسٍ، أَوْ رُبُعٍ، أَوْ ثُلُثٍ، أَوْ مُعَادَةٍ، أَوْ مُقَاسَمَةٍ، وَاَللَّهِ مَا قَالَ قَطُّ زَيْدٌ، وَلَا عَلِيٌّ، وَلَا ابْنُ عَبَّاسٍ: شَيْئًا مِنْ هَذِهِ التَّخَالِيطِ، وَهَذَا آفَةُ الْمُرْسَلِ، وَرِوَايَةُ الضُّعَفَاءِ سُفْيَانُ: أَنَّ زَيْدًا، وَعَلِيًّا، قَالَا لِعُمَرَ؟ بِاَللَّهِ إنَّ هَذِهِ لَطَفْرَةٌ وَاسِعَةٌ، وَعِيسَى الْحَنَّاطُ، وَعَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ: هُمَا وَاَللَّهِ المرءان يُرْغَبُ عَنْ رِوَايَتِهِمَا، وَلَا يُقْبَلَانِ إلَّا مَعَ عَدْلٍ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: لَيْسَ لِلْجَدِّ فَرْضٌ مَعْلُومٌ، إنَّمَا هُوَ عَلَى قَدْرِ مَا يَرَاهُ أَمِيرُ الْمُؤْمِنِينَ عَلَى حَسَبِ قِلَّةِ الْإِخْوَةِ وَكَثْرَتِهِمْ، فَوَجَدْنَاهُ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ إذَا لَمْ يَكُنْ لِلْجَدِّ فَرْضٌ لَازِمٌ، فَحَرَامٌ أَخْذُ مَالِ الْإِخْوَةِ وَإِعْطَاؤُهُ إيَّاهُ، وَقَدْ يَكُونُ فِيهِمْ الصَّغِيرُ، وَالْمَجْنُونُ، وَالْكَارِهُ، وَالْغَائِبُ.

وَقَدْ قَالَ تَعَالَى: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

وَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

وَقَالَ تَعَالَى: {لِلرِّجَالِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيباً مَفْرُوضًا} [النساء: ٧] .

relatives leave, and for women is a share of what they leave, from what little thereof or much—an ordained share." [An-Nisa: 7][18]

فَإِذْ لِكُلِّ وَارِثٍ نَصِيبٌ مَفْرُوضٌ - مِمَّا قَلَّ أَوْ كَثُرَ - فَحَرَامٌ أَخْذُ شَيْءٍ مِنْهُ وَإِعْطَاؤُهُ لِغَيْرِهِ بِغَيْرِ نَصٍّ وَارِدٍ فِي ذَلِكَ، وَلَمْ نَجِدْ لِهَذَا الْقَوْلِ حُجَّةً أَصْلًا إلَّا الَّتِي سَلَفَتْ قَبْلُ مِمَّا قَدْ أَبْطَلْنَاهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27907–27908 Since each heir has a prescribed share - whether the estate is small or large - it is forbidden to take anything from it and give it to another without textual evidence pertaining to this. We have found no valid proof whatsoever for this opinion except what was previously mentioned, which we have already invalidated - and success comes only from Allah, the Exalted.

ثُمَّ نَظَرْنَا فِي الْأَقْوَالِ الْبَاقِيَةِ مِنْ مُقَاسَمَةِ الْجَدِّ الْإِخْوَةَ إلَى اثْنَيْ عَشَرَ، أَوْ إلَى ثَمَانِيَةٍ، أَوْ إلَى سَبْعَةٍ، أَوْ إلَى سِتَّةٍ، أَوْ إلَى ثَلَاثَةٍ -: فَوَجَدْنَاهَا كُلَّهَا عَارِيَةً مِنْ الدَّلِيلِ، لَا يُوجِبُ شَيْئًا مِنْهَا، لَا قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا رِوَايَةٌ ضَعِيفَةٌ، وَلَا دَلِيلُ إجْمَاعٍ، وَلَا نَظَرٍ، وَلَا قِيَاسٍ.

L27909 Then we examined the remaining opinions concerning the division between the grandfather and the siblings into twelfths, eighths, sevenths, sixths, or thirds. We found them all bare of evidence. None of them is supported by the Quran, nor by authentic Sunnah, nor by weak narrations, nor by evidence of consensus, nor by speculative reasoning, nor by analogy.

ثُمَّ وَجَدْنَا أَكْثَرَهَا لَا يَصِحُّ - عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى.

L27910 Then we found that most of them are not sound, as we will clarify, if Allah, the Exalted, wills.

أَمَّا الرِّوَايَةُ عَنْ عِمْرَانَ، وَأَبِي مُوسَى - رَضِيَ اللَّهُ عَنْهُمَا -، فَغَيْرُ مَعْرُوفَةٍ - يَعْنِي فِي مُقَاسَمَةِ الْجَدِّ اثْنَيْ عَشَرَ أَخًا لَهُ سَهْمٌ كَسَهْمِ كُلِّ وَاحِدٍ مِنْهُمْ.

L27911 As for the narration from ʿImrān and Abū Mūsā—may Allah be pleased with them both—it is not well-known. That is, in the collateral division concerning the grandfather's share alongside his twelve brothers, the grandfather's share is equal to that of each one of them.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ -: أَنَّهُ يُقَاسِمُهُمْ إلَى سَبْعَةٍ فَيَكُونُ لَهُ الثُّمُنُ، فَفِيهَا قَيْسُ بْنُ الرَّبِيعِ، وَقَدْ تُكُلِّمَ فِيهِ.

L27912 As for the narration attributed to ʿAlī—may Allah be pleased with him—that he distributed the inheritance among seven heirs, so he receives an eighth: this narration is transmitted through Qays ibn al-Rabīʿ, who is a disparaged narrator.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ فِي الْمُقَاسَمَةِ بَيْنَ الْجَدِّ وَسِتَّةِ إخْوَةٍ فَيَكُونُ لَهُ السُّبْعُ فَصَحِيحَةٌ إلَى الشَّعْبِيِّ، ثُمَّ لَا يَصِحُّ لِلشَّعْبِيِّ سَمَاعٌ مِنْ عَلِيٍّ أَصْلًا، وَلَمْ يَذْكُرْ مَنْ أَخْبَرَهُ عَنْ عَلِيٍّ.

L27913 As for the narration attributed to Ali regarding the division by shares between the grandfather and six brothers—where he receives a seventh portion—it is authentic up to Al-Sha'bi. However, Al-Sha'bi had no valid transmission from Ali at all, nor did he identify the person who narrated it from Ali.

L27914 As for the narration from Umar, Ali, and Ibn Masʿud concerning the grand-

[18] **Qur'an references (L27906):** Qur'an 4:7 (An-Nisa).

father's apportionment of the inheritance with the brothers, whereby he receives a sixth [of the estate], it is authentically established from them through the chain of Ibrāhīm from ʿUbayd ibn Naḍla, who narrated from Umar and Ibn Masʿud.

وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ، وَعَلِيٍّ، وَابْنِ مَسْعُودٍ فِي مُقَاسَمَةِ الْجَدِّ الْإِخْوَةَ إِلَى خَمْسَةٍ، فَيَكُونُ لَهُ السُّدُسُ، فَهِيَ ثَابِتَةٌ عَنْهُمْ مِنْ طَرِيقِ إِبْرَاهِيمَ عَنْ عُبَيْدِ بْنِ نَضْلَةَ عَنْ عُمَرَ، وَابْنِ مَسْعُودٍ.

L27915 From ʿAmr ibn Murrah, from ʿAbdullāh ibn Salamah, from ʿAlī.

وَمِنْ طَرِيقِ عَمْرِو بْنِ مُرَّةَ عَنْ عَبْدِ اللَّهِ بْنِ سَلَمَةَ عَنْ عَلِيٍّ.

L27916 As for the narration attributed to Ali that the grandfather receives a third under all circumstances, it is not authentic because its chain is disconnected at Qatadah: for Qatadah was not born except after the death of Ali, may Allah be pleased with him.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ لِلْجَدِّ الثُّلُثُ عَلَى كُلِّ حَالٍ فَلَا تَصِحُّ؛ لِأَنَّهَا مُنْقَطِعَةٌ عَنْ قَتَادَةَ: أَنَّ عَلِيًّا، وَقَتَادَةَ: لَمْ يُولَدْ إِلَّا بَعْدَ مَوْتِ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ -.

L27917 And regarding the narration from ʿUmar, ʿUthman, and Ibn Masʿud: it is the grandfather sharing with the brothers up to a third. Indeed, this narration came through Yahya ibn Saʿid al-Ansari: that ʿUmar and ʿUthman [did so], and that Zayd wrote to Muʿawiyah—even though Yahya did not meet any of these individuals.

وَأُمَّا الرِّوَايَةُ عَنْ عُمَرَ، وَعُثْمَانَ، وَابْنِ مَسْعُودٍ: بِمُقَاسَمَةِ الْجَدِّ الْإِخْوَةَ إِلَى الثُّلُثِ، فَإِنَّمَا جَاءَتْ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ: أَنَّ عُمَرَ، وَعُثْمَانَ، وَأَنَّ زَيْدًا كَتَبَ إِلَى مُعَاوِيَةَ - وَلَمْ يُدْرِكْ يَحْيَى أَحَدًا مِنْ هَؤُلَاءِ.

L27918 Through the chain of Ibrāhīm: that ʿUmar—and this chain is disconnected (munqaṭiʿ).

وَمِنْ طَرِيقِ إِبْرَاهِيمَ: أَنَّ عُمَرَ - وَهَذَا مُنْقَطِعٌ.

L27919–27920 And from the chain of Abū al-Muʿallā al-ʿAṭṭār: from Ibrāhīm, from ʿAlqamah; from ʿUbayd ibn Naḍlah, from ʿUmar; and from Ibn Masʿūd.

وَمِنْ طَرِيقِ أَبِي الْمُعَلَّى الْعَطَّارِ عَنْ إِبْرَاهِيمَ عَنْ عَلْقَمَةَ، وَعُبَيْدِ بْنِ نَضْلَةَ عَنْ عُمَرَ، وَابْنِ مَسْعُودٍ.

L27921 Narrated through the path of al-Haytham ibn Badr from Shu'bah ibn at-Tawwam, from Ibn Masʿud, ʿUmar, and ʿUthman.

وَمِنْ طَرِيقِ الْهَيْثَمِ بْنِ بَدْرٍ عَنْ شُعْبَةَ بْنِ التَّوْأَمِ عَنْ ابْنِ مَسْعُودٍ، وَعُمَرَ، وَعُثْمَانَ.

L27922 And via the chain of Isra'il from Jabir al-Ju'fi from al-Sha'bi from Masruq from Umar and Ibn Mas'ud - Isra'il is weak; Jabir is rejected; and al-Haytham ibn Badr is unknown.

وَمِنْ طَرِيقِ إِسْرَائِيلَ عَنْ جَابِرٍ الْجُعْفِيِّ عَنِ الشَّعْبِيِّ عَنْ مَسْرُوقٍ عَنْ عُمَرَ وَابْنِ مَسْعُودٍ - إِسْرَائِيلُ ضَعِيفٌ - وَجَابِرٌ سَاقِطٌ - وَالْهَيْثَمُ بْنُ بَدْرٍ مَجْهُولٌ.

L27923 As for Abu al-Muʿalla al-ʿAttar, he is Yahya ibn Maymun, an Egyptian: he is reliable, and the narration is through a sound chain of transmission; to it Ibn Masʿud and ʿUmar reverted.

وَأَمَّا أَبُو الْمُعَلَّى الْعَطَّارُ، فَهُوَ يَحْيَى بْنُ مَيْمُونٍ مِصْرِيٌّ: لَا بَأْسَ بِهِ، فَهِيَ مِنْ طَرِيقٍ جَيِّدَةٍ، وَإِلَيْهَا رَجَعَ ابْنُ مَسْعُودٍ، وَعُمَرُ.

L27924 As for the detailed lengthy narration transmitted from ʿUmar and Zayd ibn Thābit, it is entirely inauthentic because the chain is broken from ʿUmar. It is only Saʿīd ibn al-Musayyib, Qabīṣa ibn Dhuʾayb, and ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah who narrate that ʿUmar—and there is no valid hearing established for ʿUbayd Allāh or Qabīṣa from ʿUmar at all, nor for Saʿīd from ʿUmar except his announcement of al-Nuʿmān ibn Muqrin's death from the pulpit alone. ʿUmar—may Allāh be pleased with him—died when Saʿīd was eight years old.

وَأَمَّا الرِّوَايَةُ بِالتَّفْصِيلِ الطَّوِيلِ عَنْ عُمَرَ، وَزَيْدِ بْنِ ثَابِتٍ: فَلَا تَصِحُّ أَلْبَتَّةَ، لِأَنَّهُ مُنْقَطِعٌ عَنْ عُمَرَ، إِنَّمَا هُوَ سَعِيدُ بْنُ الْمُسَيِّبِ، وَقَبِيصَةُ بْنُ ذُؤَيْبٍ وَعُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ: أَنَّ عُمَرَ - وَلَا يَصِحُّ سَمَاعُ لِعُبَيْدِ اللَّهِ وَلَا لِقَبِيصَةَ مِنْ عُمَرَ أَصْلًا، وَلَا لِسَعِيدٍ عَنْ عُمَرَ، إِلَّا نَعْيَهُ النُّعْمَانَ بْنَ مُقْرِنٍ عَلَى الْمِنْبَرِ فَقَطْ، مَاتَ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - وَلِسَعِيدٍ ثَمَانِ سِنِينَ.

L27925 From the narration of Zayd ibn Ibrāhīm: Zayd—while Ibrāhīm never met Zayd ibn Thābit—did not transmit from anyone who heard him, or from ʿAbd al-Raḥmān ibn Abī al-Zinād through his father from Khārija ibn Zayd from his father Zayd. ʿAbd al-Raḥmān is considered extremely weak and rejected in transmission. There is no way to establish a chain from Zayd except through these two paths—excluding those omitted from them (if found)—and nothing is authentically transmitted from Zayd regarding this matter except his statement about a mother, grandfather, and sister alone, for this comes through al-Shaʿbī from him—and al-Shaʿbī did meet him.

وَمِنْ طَرِيقِ زَيْدِ بْنِ إِبْرَاهِيمَ: أَنَّ زَيْدًا - وَلَمْ يَلْقَ إِبْرَاهِيمُ قَطُّ زَيْدَ بْنَ ثَابِتٍ - وَلَا أَخْبَرَ مِمَّنْ سَمِعَهُ، أَوْ عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ عَنْ أَبِيهِ عَنْ خَارِجَةَ بْنِ زَيْدٍ عَنْ أَبِيهِ زَيْدٍ - وَعَبْدُ الرَّحْمَنِ فِي غَايَةِ الضَّعْفِ، وَالتَّرْكِ، وَلَا سَبِيلَ إِلَى أَنْ يُوجَدَ عَنْ زَيْدٍ مِنْ غَيْرِ هَاتَيْنِ الطَّرِيقَيْنِ إِلَّا مَنْ أُسْقِطَ مِنْهُمَا - إِنْ وُجِدَتْ - وَلَا يَصِحُّ عَنْ زَيْدٍ فِي هَذَا شَيْءٌ، إِلَّا قَوْلُهُ فِي أُمٍّ، وَجَدٍّ، وَأُخْتٍ، فَقَطْ، لِأَنَّهُ عَنِ الشَّعْبِيِّ عَنْهُ، وَالشَّعْبِيُّ قَدْ لَقِيَهُ.

L27926 It has been narrated to us from al-Shaʿbī, from Qabīṣah ibn Dhuʾayb, that Zayd did not say anything regarding *al-Akdariyyah*.

وَقَدْ رُوِّينَا عَنِ الشَّعْبِيِّ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ أَنَّ زَيْدًا لَمْ يَقُلْ فِي " الْأَكْدَرِيَّةِ " شَيْئًا.

L27927 It has been narrated to us from ʿAbd al-Razzāq, who reported from Sufyān al-Thawrī, Maʿmar, and Hishām ibn Ḥusām. Sufyān and Maʿmar both narrated from Ayyūb al-Sakhtiyānī from Muḥammad ibn Sīrīn, while Hishām reported from Muḥammad ibn Sīrīn. Then they all concurred: Ibn Sīrīn said, "I asked ʿUbaydah al-Salmānī about a prescribed share involving a grandfather." ʿUbaydah replied, "I have memorized from ʿUmar ibn al-Khaṭṭāb regarding it one hundred distinct rulings." Ibn Sīrīn said, "I then asked ʿUbaydah, 'From ʿUmar?'" He responded, "From ʿUmar."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ، وَهِشَامِ بْنِ حُسَامٍ، قَالَ سُفْيَانُ، وَمَعْمَرٌ، كِلَاهُمَا عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ، وَقَالَ هِشَامٌ عَنْ مُحَمَّدِ بْنِ سِيرِينَ، ثُمَّ اتَّفَقُوا كُلُّهُمْ، قَالَ ابْنُ سِيرِينَ: سَأَلْت عُبَيْدَةَ السَّلْمَانِيَّ عَنْ فَرِيضَةٍ فِيهَا جَدٌّ؟ فَقَالَ عَبِيدَةُ لَقَدْ حَفِظْت عَنْ عُمَرَ بْنِ الْخَطَّابِ فِيهَا مِائَةَ قَضِيَّةٍ مُخْتَلِفَةٍ، قَالَ ابْنُ سِيرِينَ: فَقُلْت لِعُبَيْدَةَ عَنْ عُمَرَ؟ قَالَ: عَنْ عُمَرَ.

L27928–27930 Ali said: No chain of transmission more authentic than this can exist. It is astonishing how someone objects to it and rejects it, saying: "It is impossible for him to issue a hundred rulings in this matter"—yet Allah the Exalted has

قَالَ عَلِيٌّ: لَا سَبِيلَ إِلَى وُجُودِ إِسْنَادٍ أَصَحَّ مِنْ هَذَا وَالْعَجَبُ مِمَّنْ يَعْتَرِضُ عَلَيْهِ وَيُنْكِرُهُ، وَيَقُولُ: مُحَالٌ أَنْ يَقْضِيَ فِيهَا مِائَةَ قَضِيَّةٍ، وَمَا جَعَلَ اللَّهُ تَعَالَى قَطُّ هَذَا مُحَالًا، إِذْ قَدْ

never made this impossible. For one may revert from one opinion to another, then return to the first opinion, and then go back to the second repeatedly. Thus, they are all distinct cases, even if there are only two opinions. Then the invalid, absurd, and inconceivable becomes validated through requiring division between the grandfather and siblings into six or into three parts—due to two branches diverging from a branch of a tree, or two streams branching from a tributary of a river.

L27931 Be amazed at these calamities and these baseless assertions against the Companions—may Allah be pleased with them—in matters of religion! Be amazed at the denial of truth and the validation of falsehood that is utterly evident! Abū Muḥammad said: If they claim that Zayd's statement is transmitted through mass-narration, they lie. This opinion only gained prominence when Mālik, Sufyān, al-Awzāʿī, Abū Yūsuf, Muḥammad ibn al-Ḥasan, and al-Shāfiʿī coincided in endorsing it. It spread among their imitators, though its origin is weak, its derivation invalid, and its source entirely unsound. Those who adopted this view relied on disconnected reports—except al-Shāfiʿī, for most of his disciples acknowledged that he diverged from his own principles in inheritance laws, uncritically imitating what was narrated from Zayd. His statements indicate his superficial grasp of inheritance laws. Otherwise, let them produce a single Follower who held this view, as we find it only among these scholars! Abū Muḥammad said: Some obscured the matter by claiming, "A narration states: 'The most proficient in inheritance in my community is Zayd ibn Thābit.'" We respond: This is unreliable. It was either disconnectedly transmitted or via Aḥmad ibn ʿUmar ibn Anas al-ʿUdhri, who said: ʿAlī ibn Makkī ibn ʿĪsā al-Murādī and Abū al-Wafāʾ ʿAbd al-Salām ibn Muḥammad ibn ʿAlī al-Shīrāzī narrated to us. Makkī said: Aḥmad ibn Abī ʿImrān al-Harawī narrated to us: Abū Ḥāmid Aḥmad ibn ʿAlī ibn Ḥasanawayh al-Muqrī in Nīsābūr narrated to us: Abū ʿĪsā Muḥammad ibn ʿĪsā al-Tirmidhī narrated to us: Sufyān ibn Wakīʿ narrated to us: Ḥumayd ibn ʿAbd al-Raḥmān narrated from Dāwūd ibn ʿAbd al-Raḥmān al-ʿAṭṭār from Maʿmar from Qatādah from Anas from the Messenger of Allah—peace and blessings be upon

يَرْجِعُ مِنْ قَوْلٍ إِلَى قَوْلٍ، ثُمَّ إِلَى الْقَوْلِ الْأَوَّلِ، ثُمَّ يَعُودُ إِلَى الثَّانِي مِرَارًا، فَهِيَ كُلُّهَا قَضَايَا مُخْتَلِفَةٌ، وَإِنْ لَمْ تَكُنْ إِلَّا قَوْلَيْنِ، ثُمَّ يُصَحَّحُ الْبَاطِلُ الْمُحَالُ الَّذِي لَا يُعْقَلُ مِنْ إِيجَابِ الْمُقَاسَمَةِ بَيْنَ الْجَدِّ وَالْإِخْوَةِ إِلَى سِتَّةٍ، أَوْ إِلَى ثَلَاثَةٍ مِنْ أَجْلِ غُصْنَيْنِ تَشَعَّبَا مِنْ غُصْنٍ مِنْ شَجَرَةٍ - أَوْ مِنْ أَجْلِ جَدْوَلَيْنِ مِنْ خَلِيجٍ مِنْ نَهْرٍ.

فَاعْجَبُوا لِهَذِهِ الْمَصَائِبِ، وَلِهَذِهِ الْإِطْلَاقَاتِ عَلَى الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي الدِّينِ، وَاعْجَبُوا لِإِنْكَارِ الْحَقِّ، وَتَحْقِيقِ الْبَاطِلِ الَّذِي لَا خَفَاءَ بِهِ؟ قَالَ أَبُو مُحَمَّدٍ: فَإِنْ ادَّعَوْا أَنَّ قَوْلَ زَيْدٍ مَنْقُولٌ عَنْهُ نَقْلَ التَّوَاتُرِ كَذَبُوا، وَإِنَّمَا اشْتَهَرَتْ تِلْكَ الْمَقَالَةُ لَمَّا اتَّفَقَ أَنْ قَالَ بِهَا مَالِكٌ، وَسُفْيَانُ، وَالْأَوْزَاعِيُّ وَأَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَالشَّافِعِيُّ - اشْتَهَرَتْ عِنْدَ مَنْ قَلَّدَهُمْ فَانْتَشَرَتْ عَنْ مُقَلِّدِيهِمْ، وَأَصْلُهَا وَاهٍ، وَمَخْرَجُهَا سَاقِطٌ، وَمَنْبَعُهَا لَا يَصِحُّ أَصْلًا، وَإِنَّمَا هَؤُلَاءِ الَّذِينَ أَخَذُوا بِهَذِهِ الْقَوْلَةِ كَانُوا يَقُولُونَ بِالْمُرْسَلِ، حَاشَ الشَّافِعِيَّ، فَقَدْ أَقَرَّ أَكْثَرُ أَصْحَابِهِ أَنَّهُ فَارَقَ أَصْلَهُ فِي الْفَرَائِضِ، فَقَلَّدَ مَا رُوِيَ عَنْ زَيْدٍ، وَأَقْوَالُهُ تَدُلُّ عَلَى أَنَّهُ كَانَ قَلِيلَ الْبَصَرِ بِالْفَرَائِضِ، وَإِلَّا فَلْيَأْتُونَا عَنْ أَحَدٍ مِنَ التَّابِعِينَ قَالَ بِهَا كَمَا وَجَدْنَاهَا عَنْ هَؤُلَاءِ؟ قَالَ أَبُو مُحَمَّدٍ: وَمَوَّهَ بَعْضُهُمْ بِأَنْ قَالَ: قَدْ رُوِيَ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: أَفْرَضُ أُمَّتِهِ: زَيْدُ بْنُ ثَابِتٍ» ؟ قُلْنَا: هَذِهِ رِوَايَةٌ لَا تَصِحُّ، إِنَّمَا جَاءَتْ إِمَّا مُرْسَلَةً، وَإِمَّا مِمَّا حَدَّثَنَا بِهِ أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ، قَالَ: أَنَا عَلِيُّ بْنُ مَكِّيِّ بْنِ عَيْسُونَ الْمُرَادِيُّ، وَأَبُو الْوَفَا عَبْدُ السَّلَامِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الشِّيرَازِيُّ -: قَالَ مَكِّيٌّ: نا أَحْمَدُ بْنُ أَبِي عِمْرَانَ الْهَرَوِيُّ نا أَبُو حَامِدٍ أَحْمَدُ بْنُ عَلِيِّ بْنِ حَسْنَوَيْهِ الْمُقْرِي بِنَيْسَابُورَ نا أَبُو عِيسَى مُحَمَّدُ بْنُ عِيسَى التِّرْمِذِيُّ نا سُفْيَانُ بْنُ وَكِيعٍ نا حُمَيْدُ بْنُ

him—who said: “The most proficient in inheritance among them is Zayd ibn Thābit, and the most skilled in recitation is Ubayy ibn Kaʿb.”[19]

عَبْدِ الرَّحْمَنِ عَنْ دَاوُد بْنِ عَبْدِ الرَّحْمَنِ الْعَطَّارِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ أَنَسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَهُ، وَفِيهِ: «وَأَفْرَضُهُمْ زَيْدُ بْنُ ثَابِتٍ، وَأَقْرَؤُهُمْ أُبَيّ بْنُ كَعْبٍ» .

L27932–27934 And Abū al-Wafā said: I am ʿAbdullāh ibn Muḥammad ibn Aḥmad ibn Jaʿfar al-Saqaṭī, narrated by Ismāʿīl ibn Muḥammad ibn Ismāʿīl al-Ṣaffār. Aḥmad ibn Muḥammad ibn Ghālib narrated to us: ʿUbayd Allāh ibn Muʿādh al-ʿAnbarī narrated to us: Bishr ibn al-Mufaḍḍal narrated to us, on the authority of Khālid al-Ḥadhdhāʾ, on the authority of Abī Qilābah, on the authority of Anas, on the authority of the Prophet (peace and blessings of Allāh be upon him). He mentioned it, and in it is: “The most proficient in recitation among them is Ubayy, and the most expert in inheritance laws is Zayd.”

وَقَالَ أَبُو الْوَفَا: أَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ أَحْمَدَ بْنِ جَعْفَرٍ السَّقَطِيُّ نا إِسْمَاعِيلُ بْنُ مُحَمَّدِ بْنِ إِسْمَاعِيلَ الصَّفَّارُ نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ غَالِبٍ نا عُبَيْدُ اللَّهِ بْنُ مُعَاذٍ الْعَنْبَرِيُّ نا بِشْرُ بْنُ الْمُفَضَّلِ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَهُ، وَفِيهِ: «وَأَقْرَؤُهُمْ أُبَيٌّ وَأَفْرَضُهُمْ زَيْدٌ» .

L27935 Ismail ibn Muhammad al-Saffar said: Al-Hasan ibn al-Fadl ibn al-Samh narrated to us, Muhammad ibn Abi Ghalib narrated to us, Hushaym narrated from al-Kawthar from Nafi’ from Ibn Umar from the Prophet (peace be upon him). He mentioned it, and in it: “The most proficient in recitation among them is Ubayy, the most expert in statutory shares among them is Zayd, and the most decisive in legal judgment among them is Ali.”

قَالَ إِسْمَاعِيلُ بْنُ مُحَمَّدٍ الصَّفَّارُ: ونا الْحَسَنُ بْنُ الْفَضْلِ بْنِ السَّمْحِ نا مُحَمَّدُ بْنُ أَبِي غَالِبٍ نا هُشَيْمٌ عَنِ الْكَوْثَرِ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَهُ، وَفِيهِ: «وَإِنَّ أَقْرَأَهَا لأُبَيٌّ، وَإِنَّ أَفْرَضَهَا لَزَيْدٌ، وَإِنَّ أَقْضَاهَا لَعَلِيٌّ» .

L27936 Abu Muhammad said: These are obscure chains of transmission because Ahmad ibn Abī ʿImrān and Abū Ḥāmid ibn Ḥasanawayh are unknown – and Ismāʿīl al-Ṣaffār is like them both. As for Aḥmad ibn Muḥammad ibn Ghālib: if he is Khalīl’s disciple, he is ruined and accused; but if he is another, he is unknown.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ أَسَانِيدُ مُظْلِمَةٌ؛ لأَنَّ أَحْمَدَ بْنَ أَبِي عِمْرَانَ، وَأَبَا حَامِدِ بْنِ حَسْنَوَيْهِ مَجْهُولَانِ - وَإِسْمَاعِيلُ الصَّفَّارُ مِثْلُهُمَا، وَأَحْمَدُ بْنُ مُحَمَّدِ بْنِ غَالِبٍ - إِنْ كَانَ غُلَامَ خَلِيلٍ فَهُوَ هَالِكٌ مُتَّهَمٌ - وَإِنْ كَانَ غَيْرَهُ فَهُوَ مَجْهُولٌ.

L27937 al-Ḥasan ibn al-Faḍl, Muḥammad ibn Abī Ghālib, and Kawthar are of unknown status.

وَالْحَسَنُ بْنُ الْفَضْلِ، وَمُحَمَّدُ بْنُ أَبِي غَالِبٍ، وَالْكَوْثَرُ: مَجْهُولُونَ.

L27938 Then, even if it were valid, they would have no argument in it, because the fact that he is “the most learned among them” does not necessitate following his opinion, just as they do not deem obligatory - despite these reports stating Ubayy ibn Kaʿb was the most proficient reciter and Ali the foremost judge -

ثُمَّ لَوْ صَحَّتْ لَمَا كَانَ لَهُمْ فِيهَا حُجَّةٌ؛ لأَنَّهُ لَا يُوجِبُ كَوْنُهُ «أَفْرَضَهُمْ» أَنْ يُقَلِّدَ قَوْلَهُ، كَمَا لَمْ يَجِبْ عِنْدَهُمْ مَا فِي هَذِهِ الْأَخْبَارِ مِنْ أَنَّ أُبَيَّ بْنَ كَعْبٍ أَقْرَؤُهُمْ، وَعَلِيًّا أَقْضَاهُمْ أَنْ

[19] **Hadith references (L27931):** Jami at-Tirmidhi 3790.

to restrict themselves to Ubayy's recitation to the exclusion of other readings, nor to Ali's judicial rulings to the exclusion of others' judgments, while they themselves acknowledge that the Companions opposed Zayd on this matter.

يَقْتَصِرُوا عَلَى قِرَاءَةِ أُبَيٍّ دُونَ سَائِرِ الْقِرَاءَاتِ، وَلَا عَلَى أَقْضِيَةِ عَلِيٍّ دُونَ أَقْضِيَةِ غَيْرِهِ - وَهُمْ يُقِرُّونَ أَنَّ الصَّحَابَةَ خَالَفُوا زَيْدًا فِي هَذِهِ الْمَسْأَلَةِ.

L27939 The Malikis have opposed him regarding the inheritance obligations of grandmothers, as we mentioned in their transmission from Zayd through a similar case they have relied upon: he used to grant inheritance rights to three grandmothers, while they grant rights only to two grandmothers. Thus Zayd is sometimes upheld as an authoritative proof and sometimes not recognized as authoritative proof—this is playing games with religion.

ثُمَّ الْمَالِكِيُّونَ قَدْ خَالَفُوهُ فِي فَرَائِضِ الْجَدَّةِ، كَمَا ذَكَرْنَا فِي رِوَايَتِهِمْ عَنْ زَيْدٍ بِمِثْلِ هَذِهِ الَّتِي تَعَلَّقُوا بِهَا: أَنَّهُ كَانَ يُوَرِّثُ ثَلَاثَ جَدَّاتٍ، وَهُمْ لَا يُوَرِّثُونَ إِلَّا جَدَّتَيْنِ، فَمَرَّةً يَكُونُ زَيْدٌ حُجَّةً، وَمَرَّةً لَا يَكُونُ حُجَّةً - هَذَا هُوَ التَّلَاعُبُ بِالدِّينِ.

L27940–27942 Moreover, in those weak narrations they cling to, there lies a clear demonstration that Zayd only expressed that opinion based on personal reasoning—not any transmitted Sunnah. Even if authentically ascribed to him, his view would hold no superiority over others' opinions, and they cannot deny this fundamentally. How then, when conflicting reports from Zayd (as we presented) show divergent statements attributed to him? All this suffices to prove their falsehood and that their statement they blindly imitated from Zayd cannot validly be attributed to him. Abū Muḥammad said: We seek refuge with Allah for Zayd and ʻUmar from having uttered this opinion—the most contradictory of all positions known to us—for it stipulates: If a woman dies leaving behind a husband, mother, full sister, and grandfather, the husband receives three of six shares, the mother two of six, and the grandfather one of six. Then the shares are reduced through ʻawl: the sister's portion becomes three out of nine shares. The grandfather takes the sixth share rightfully his, then combines it with... The sister and grandfather combine her obligated half and his share. The grandfather then takes two-thirds of the combined amount, and the sister takes one-third of it.

وَأَيْضًا: فَإِنَّ فِي تِلْكَ الرِّوَايَاتِ الْوَاهِيَاتِ الَّتِي تَعَلَّقُوا بِهَا بَيَانًا جَلِيًّا بِأَنَّ زَيْدًا إِنَّمَا قَالَ ذَلِكَ بِرَأْيِهِ لَا عَنْ سُنَّةٍ عِنْدَهُ، فَلَوْ صَحَّتْ عَنْهُ لَمَا كَانَ رَأْيُهُ أَوْلَى مِنْ رَأْيِ غَيْرِهِ، وَهُمْ لَا يَقْدِرُونَ عَلَى إِنْكَارِ هَذَا أَصْلًا، فَكَيْفَ وَقَدْ جَاءَ الِاخْتِلَافُ عَنْ زَيْدٍ كَمَا أَوْرَدْنَا بِأَقْوَالٍ عَنْهُ مُخْتَلِفَةٍ، وَيَكْفِي مِنْ هَذَا كُلِّهِ أَنَّهَا بَاطِلٌ، وَأَنَّ قَوْلَتَهُمْ الَّتِي قَلَّدُوا فِيهَا زَيْدًا لَا تَصِحُّ عَنْهُ؟ قَالَ أَبُو مُحَمَّدٍ: نَعِيذُ اللَّهَ زَيْدًا وَعُمَرَ مِنْ أَنْ يَقُولَا تِلْكَ الْقَوْلَةَ الَّتِي لَا نَعْلَمُ فِي الْأَقْوَالِ أَشَدَّ تَخَاذُلًا مِنْهَا، لِأَنَّ فِيهَا: أَنَّ الْمَرْأَةَ تَمُوتُ وَتَتْرُكُ: زَوْجًا، وَأُمًّا، وَأُخْتًا شَقِيقَةً، وَجَدًّا: أَنَّ لِلزَّوْجِ ثَلَاثَةً مِنْ سِتَّةٍ، وَلِلْأُمِّ اثْنَيْنِ مِنْ سِتَّةٍ، وَلِلْجَدِّ وَاحِدًا مِنْ سِتَّةٍ، ثُمَّ يُعَالُ لِلْأُخْتِ بِثَلَاثَةٍ مِنْ سِتَّةٍ: صَارَتْ تِسْعَةً فَيَأْخُذُ الْجَدُّ السُّدُسَ الَّذِي وَجَبَ لَهُ، ثُمَّ يَضُمُّهُ إِلَى النِّصْفِ الَّذِي وَجَبَ لِلْأُخْتِ فَيَخْلِطَانِهِ، ثُمَّ يَأْخُذُ الْجَدُّ ثُلُثَيْ مَا اجْتَمَعَ، وَالْأُخْتُ ثُلُثَ مَا اجْتَمَعَ.

L27943 How astonishing! If the three shares allocated to the sister have indeed become rightfully hers, then the grandfather has not been given a single fils from them. How can the sister's rightful share be seized and given to one who has no entitlement - the grandfather - when perhaps she is a minor,

فَيَا لَلْعَجَبِ إِنْ كَانَتْ الْأَسْهُمُ الثَّلَاثَةُ الَّتِي عِيلَ بِهَا لِلْأُخْتِ قَدْ وَجَبَتْ لِلْأُخْتِ، فَلَمْ يُعْطَ الْجَدُّ مِنْهَا فَلْسًا، وَكَيْفَ يُنْتَزَعُ حَقُّ الْأُخْتِ وَيُعْطَى لِمَنْ لَا يَجِبُ لَهُ - وَهُوَ الْجَدُّ - وَلَعَلَّهَا صَغِيرَةٌ، أَوْ مَجْنُونَةٌ، أَوْ غَائِبَةٌ، أَوْ كَارِهَةٌ؟ فَهُوَ ظُلْمٌ وَأَكْلُ مَالٍ بِالْبَاطِلِ.

mentally incapacitated, absent, or unwilling? This constitutes injustice and unlawful seizure of wealth.

وَإِنْ كَانَتْ الثَّلَاثَةُ الْأَسْهُمِ الَّتِي عِيلَ بِهَا لِلْأُخْتِ لَمْ تَجِبْ لَهَا فَلِأَيِّ شَيْءٍ أَخَذُوهَا مِنْ يَدِ الزَّوْجِ وَالْأُمِّ؟ وَقَالُوا: هَذَا سَهْمُ الْأُخْتِ وَهَذَا هُوَ الْكَذِبُ، فَلَا شَكَّ أَنْ يَقُولُوا: هُوَ سَهْمُهَا وَلَيْسَ هُوَ سَهْمَهَا؟ وَهَذَا ظُلْمٌ لِلزَّوْجِ وَلِلْأُمِّ، وَأَكْلُ مَالٍ بِالْبَاطِلِ.

L27944 If the three shares reduced by ʿawl that were allocated to the sister were not rightfully hers, why did they take them from the share held by the husband and the mother? They said: “This is the sister’s share”—and this is the lie. Undoubtedly, they claim: “It is her share,” when it is not her share? This is injustice toward the husband and the mother, and wrongful consumption of wealth through falsehood.

ثُمَّ يَقُولُونَ فِي أُخْتٍ شَقِيقَةٍ، وَأَخٍ لِأَبٍ، وَجَدٍّ: أَنَّ الشَّقِيقَةَ تَقُولُ لِلْجَدِّ: هَذَا أَخِي؟ لَا بُدَّ لَهُ مِنْ أَنْ يَقْتَسِمَ الْمَالَ مَعِي وَمَعَكَ، لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ؟ فَيَقُولُ الْجَدُّ: كَلَّا، إِنَّمَا هُوَ أَخٌ لِلْمَيِّتِ لِأَبٍ، لَا يُقَاسِمُكَ أَصْلًا، إِمَّا أَنْتِ ذَاتُ فَرْضٍ مُسَمًّى؟ فَتَقُولُ لَهُ الْأُخْتُ: مَا عَلَيْكَ مِنْ هَذَا هُوَ أَخُونَا؟ فَيُقْسَمُ الْمَالُ عَلَى رَغْمِ أَنْفِ الْجَدِّ، لَهُ الْخُمُسَانِ، وَلِلْأَخِ لِلْأَبِ الْخُمُسَانِ، وَلِلْأُخْتِ الشَّقِيقَةِ الْخُمُسُ - فَإِذَا أَخَذَ الْجَدُّ سَهْمَهُ وَوَلَّى خَاسِئًا قَالَتْ الْأُخْتُ لِأَخِيهَا: مَكَانَكَ، خَلِّ يَدَكَ عَنْ الْمَالِ، إِنَّمَا أَقَمْتُكَ لِأُزِيلَ عَنْ يَدِ جَدِّنَا مَا كَانَ يَحْصُلُ لَهُ، وَأَنَا أَوْلَى بِهَذَا مِنْكَ؟ فَيُنْتَزَعُ مِنْ يَدِ الْأَخِ مِمَّا أَعْطَوْهُ عَلَى أَنَّهُ حَظُّهُ مِنْ الْمِيرَاثِ خُمُسًا وَنِصْفَ خُمُسٍ، فَتَأْخُذُهُ الْأُخْتُ، فَيَحْصُلُ لَهَا النِّصْفُ، وَلِلْجَدِّ الْخُمُسَانِ، وَلِلْأُخْتِ لِلْأَبِ نِصْفُ الْخُمُسِ، فَإِنْ كَانَتَا أُخْتَيْنِ شَقِيقَتَيْنِ، وَأَخًا لِأَبٍ، وَجَدًّا؟ فَعَلَنَا كَذَلِكَ، فَإِذَا وُلِّيَ الْجَدُّ انْتَزَعَ مَا بِيَدِ الْأُخْتِ لِلْأَبِ كُلِّهِ، وَأَخَذَهُ الْأُخْتَانِ.

L27945 Then they say regarding a full sister, paternal half-brother, and grandfather: The full sister says to the grandfather, “Is this not my brother? He must divide the wealth with me and you - the male receiving twice the female’s share?” The grandfather replies, “No. He is merely the deceased’s paternal half-brother. He does not share with you at all. You are entitled to a fixed portion.” The sister retorts, “What is that to you? Is he not our brother?” The wealth is then divided against the grandfather’s will: two-fifths for him, two-fifths for the paternal half-brother, and one-fifth for the full sister. When the grandfather takes his share and departs disgraced, the sister tells her brother: “Stay put. Do not touch the wealth. I only brought you in to strip our grandfather of what he would have claimed, for am I not more entitled to this than you?” The brother’s portion—one-fifth plus half a fifth—is then seized from his hand as his inheritance share, and the sister takes it. Thus she ends up with half, the grandfather retains two-fifths, and the paternal half-brother receives half of a fifth. If there are two full sisters, a paternal half-brother, and a grandfather, the same applies. When the grandfather assumes authority, he seizes everything from the paternal half-brother’s possession, and the two full sisters take it.

فَانْظُرُوا فِي هَذِهِ الْأُعْجُوبَةِ لَئِنْ كَانَ لِلْأَخِ لِلْأَبِ حَقٌّ وَاجِبٌ فَمَا يَحِلُّ انْتِزَاعُهُ مِنْهُ - وَإِنْ كَانَ لَا حَقَّ لَهُ - فَمَا يَحِلُّ أَنْ يُقَامَ وَلِيجَةً لِيُعْطِيَ بِالِاسْمِ مَا لَا يَأْخُذُهُ فِي الْحَقِيقَةِ، وَإِنَّمَا يَأْخُذُهُ غَيْرُهُ.

L27946 Consider this remarkable case collectively: if the paternal brother has an established right, it is impermissible to strip him of it—and if he holds no right, it is unlawful to institute a legal stratagem granting him nominally what he cannot acquire in reality, for it is another who rightfully takes possession.

L27947 They further state regarding two daughters, a husband, a grandfather, and either two full sisters, one full sister, or a full brother: that the two daughters receive two-thirds, the husband receives one-fourth, the grandfather receives one-sixth—with a proportional reduction (ʿawl) applied to his share—and nothing is allocated to the brother, the sister, the brothers, or the sisters.

ثُمَّ يَقُولُونَ فِي ابْنَتَيْنِ، وَزَوْجٍ، وَأُخْتَيْنِ شَقِيقَتَيْنِ أَوْ أُخْتٍ شَقِيقَةٍ، أَوْ أَخٍ شَقِيقٍ، وَجَدٍّ: أَنَّ لِلْبِنْتَيْنِ الثُّلُثَيْنِ وَلِلزَّوْجِ الرُّبْعَ، وَلِلْجَدِّ السُّدُسَ، يُعَالُ لَهُ بِهِ، وَلَا شَيْءَ لِلْأَخِ، وَلَا لِلْأُخْتِ، وَلَا لِلْإِخْوَةِ، وَلَا لِلْأَخَوَاتِ.

L27948–27949 At times, they exercise juristic caution for the grandfather by seizing from the sister what they deem to be her prescribed portion and returning most of it to him.

فَمَرَّةً يَحْتَاطُونَ لِلْجَدِّ فَيَنْتَزِعُونَ مِنْ يَدِ الْأُخْتِ مَا يَقُولُونَ أَنَّهُ فَرْضُهَا، وَيَرُدُّونَ أَكْثَرَهُ عَلَى الْجَدِّ.

L27950 And at times, they grant inheritance to the grandfather and entirely exclude the brothers.

وَمَرَّةً يُوَرِّثُونَ الْجَدَّ وَيَمْنَعُونَ الْإِخْوَةَ جُمْلَةً.

L27951 At times, they take preemptive steps to safeguard the sister's share by exploiting a legal loophole, feigning the inclusion of an heir in the inheritance while deliberately excluding him. Instead, they grant the inheritance to the sister and deprive the grandfather.

وَمَرَّةً يَحْتَاطُونَ لِلْأُخْتِ فَيُقِيمُونَ وَلِيجَةً يُظْهِرُونَ أَنَّهُمْ يُوَرِّثُونَهُ وَهُمْ لَا يُوَرِّثُونَهُ، إِنَّمَا يُعْطُونَهُ لِلْأُخْتِ وَيَحْرِمُونَ الْجَدَّ.

L27952 These are deceitful acts from which Allah the Exalted has purified Zayd, and we bear witness by Allah's testimony that Zayd never said them at all, nor did Umar. By Allah, Zayd and Umar—may Allah be pleased with them both—were more fearful of Allah the Exalted and more knowledgeable than to ever say this.

هَذِهِ مُخَاتَلَاتٌ قَدْ نَزَّهَ اللَّهُ تَعَالَى زَيْدًا عَنْهَا، وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ: أَنَّ زَيْدًا مَا قَالَهَا قَطُّ، وَلَا عُمَرُ، كَانَ - وَاَللَّهِ - زَيْدٌ، وَعُمَرُ - رَضِيَ اللَّهُ عَنْهُمَا - أَخْوَفَ لِلَّهِ تَعَالَى وَأَعْلَمَ مِنْ أَنْ يَقُولَا هَذَا -.

L27953 Allah is sufficient for us, and excellent is the Trustee!

وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

L27954 Ali said: Since all these opinions have been invalidated with certainty, free from ambiguity, nothing remains except the view of those who held that he is a father who does not inherit alongside him those who do not inherit alongside the father. This is a view authenticated from Abū Bakr al-Ṣiddīq, ʿUmar, Ibn ʿAbbās, and Ibn al-Zubayr.

قَالَ عَلِيٌّ: فَإِذْ قَدْ بَطَلَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا بِيَقِينٍ لَا إِشْكَالَ فِيهِ؟ فَلَمْ يَبْقَ إِلَّا قَوْلُ مَنْ قَالَ: إِنَّهُ أَبٌ لَا يَرِثُ مَعَهُ مَنْ لَا يَرِثُ مَعَ الْأَبِ، وَهُوَ قَوْلٌ قَدْ صَحَّ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ، وَعَنْ عُمَرَ، وَابْنِ عَبَّاسٍ، وَابْنِ الزُّبَيْرِ.

L27955 And it has been reported from Uthmān, Alī, and Ibn Masʿūd with chains of transmission that—if not better than the chains of the differing opinions they cited from ʿUmar, Uthmān, Alī, Ibn Masʿūd, and Zayd—are certainly not inferior to them.

وَجَاءَتْ عَنْ عُثْمَانَ، وَعَلِيٍّ، وَابْنِ مَسْعُودٍ بِأَسَانِيدَ إِنْ لَمْ تَكُنْ أَحْسَنَ مِنْ أَسَانِيدِ الْأَقْوَالِ الْمُخْتَلِفَةِ الَّتِي تَعَلَّقُوا بِهَا عَنْ عُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ، وَابْنِ مَسْعُودٍ، وَزَيْدٍ: لَمْ تَكُنْ دُونَهَا.

فَمَنْ أَعْجَبُ مِمَّنْ تَرَكَ رِوَايَةً صَحَّتْ عَنْ طَائِفَةٍ مِنْ الصَّحَابَةِ، وَرُوِيَتْ عَنْ جُمْهُورِهِمْ، وَجُمْهُورِ التَّابِعِينَ لِرِوَايَةٍ فَاسِدَةٍ لَمْ تَصِحَّ قَطُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ، وَإِنَّمَا جَاءَتْ عَنْ بَعْضِهِمْ بِاخْتِلَافٍ عَنْ الَّذِي رُوِيَتْ عَنْهُ أَيْضًا نَفْسِهِ، وَرُجُوعٍ مِنْ قَوْلٍ إلَى قَوْلٍ؟ وَالْعَجَبُ أَنَّهُمْ أَصْحَابُ تَشْنِيعٍ بِاتِّبَاعِ الْجُمْهُورِ، وَهُمْ هَاهُنَا قَدْ خَالَفُوا الْجُمْهُورَ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ وَهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَهُمْ قَدْ أَجْمَعُوا عَلَى أَنْ يُعْطَى الْجَدُّ مَعَ الْبَنِينَ الذُّكُورِ، وَالْبَنَاتِ مَا يُعْطَى الْأَبُ مَعَهُمْ.

L27956 Who is more astonishing than one who abandons a narration authenticated from a group of the Companions - reported by the majority of the Companions themselves and the majority of the Followers - in favor of an unsound narration never authenticated from any Companion, which only came from some of them with discrepancies even from the very one it was narrated from, coupled with retraction from one opinion to another? The astonishment lies in their being people who publicly condemn following the majority, yet here they have opposed the majority of the Companions and the Followers. While claiming to be people of analogical reasoning, they have unanimously agreed that the grandfather receives the same share as the father would when alongside male sons and daughters.

وَأَجْمَعُوا عَلَى تَوْرِيثِ الْجَدِّ مَعَ الْبَنِينَ الذُّكُورِ، وَعَلَى أَنَّ الْإِخْوَةَ لَا يَرِثُونَ مَعَهُ هُنَالِكَ شَيْئًا.

L27957 They have unanimously agreed that the grandfather inherits alongside the male sons, and that brothers do not inherit anything in such cases.

وَأَجْمَعُوا عَلَى أَنْ لَا يُوَرِّثُوا الْإِخْوَةَ لِلْأُمِّ مَعَ الْجَدِّ شَيْئًا، كَمَا لَا يَرِثُونَ مَعَ الْأَبِ - وَلَيْسَ هَذَا إجْمَاعًا فِي الْأَصْلِ، فَقَدْ جَاءَ عَنْ ابْنِ عَبَّاسٍ تَوْرِيثُهُمْ مَعَ الْأَبِ وَمَعَ الْجَدِّ.

L27958–27959 They unanimously agreed that maternal siblings are not entitled to inherit alongside the grandfather, just as they are not entitled alongside the father. However, this is not a foundational consensus, for it is narrated that Ibn Abbas ruled that they inherit in the presence of the father as well as the grandfather (separately).

وَأَجْمَعُوا عَلَى أَنْ لَا يُوَرِّثُوا بَنِي الْأَخِ مَعَ الْجَدِّ، كَمَا لَا يُوَرِّثُونَهُمْ مَعَ الْأَبِ - وَلَيْسَ هَذَا إجْمَاعًا فِي الْأَصْلِ: فَقَدْ جَاءَ عَنْ عَلِيٍّ تَوْرِيثُهُمْ مَعَ الْجَدِّ.

L27960 They unanimously agreed that paternal nephews do not inherit alongside the grandfather, just as they do not inherit alongside the father. Yet this is not an original consensus, for it is reported that Ali granted them inheritance alongside the grandfather.

وَأَجْمَعُوا عَلَى أَنْ لَا يُوَرِّثُوا الْأَعْمَامَ مَعَ الْجَدِّ، كَمَا لَا يَرِثُونَ مَعَ الْأَبِ.

L27961 They unanimously agreed not to grant inheritance to paternal uncles alongside the grandfather, just as they do not inherit alongside the father.

وَأَجْمَعُوا عَلَى ابْنِ الابْنِ أَنَّهُ يَرِثُ مِيرَاثَ الابْنِ إذَا لَمْ يَكُنْ ابْنٌ، وَلَا يَرِثُ إخْوَةُ الْجَدِّ مِنْهُ شَيْئًا مَعَهُمْ - ثُمَّ لَمْ يَقِيسُوا عَلَى هَذِهِ الْوُجُوهِ كُلِّهَا تَوْرِيثَ الْجَدِّ مِنْ ابْنِ ابْنِهِ دُونَ إخْوَتِهِ، وَلَا قَاسُوهُ عَلَى الْأَبِ إذَا لَمْ يَكُنْ أَبٌ.

L27962 They unanimously agreed that the grandson inherits the son's share when no son exists, and the grandfather's brothers inherit nothing from him alongside them. Yet they did not apply analogy to all these cases to establish the grandfather's inheritance from his grandson to the exclusion of his brothers, nor did they analogize it to the father's ruling in the absence of a father.

L27963 They unanimously agreed that the father holds authority in prohibiting marriage to those he married (stepmothers) and their daughters, as well as

blood relatives. Did they not excel in qiyās, nor follow taqlīd, nor adhere to rational inquiry, nor base their ruling on textual evidence? Abū Muḥammad said: What we rely upon in this matter is Allah's statement: "For each parent is a sixth of what he left if he had children. But if he had no children and his parents inherit from him, then his mother receives a third. If he had siblings, then his mother receives a sixth" [Quran 4:11].[20]

وَأَجْمَعُوا عَلَى أَنَّهُ أَبٌ فِي تَحْرِيمِ مَا نَكَحَ، وَفِي تَحْرِيمِ الْقَرَائِبِ، فَلَا الْقِيَاسَ أَحْسَنُوا، وَلَا التَّقْلِيدَ اتَّبَعُوا، وَلَا النَّظَرَ الْتَزَمُوا، وَلَا بِالنَّصِّ أَخَذُوا؟ قَالَ أَبُو مُحَمَّدٍ: وَالَّذِي نَعْتَمِدُ عَلَيْهِ فِي هَذَا هُوَ قَوْلُ اللَّهِ تَعَالَى: {وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ} [النساء: ١١] .

L27964 And His statement, the Exalted: {O children of Adam, let not Satan tempt you as he expelled your parents from Paradise} [Al-Aʿrāf: 27]. Thus, it is established that the grandfather is a father, and that the son's son is a son. Therefore, the grandfather is entitled to the inheritance of the father, because he is a father, and the son's son is entitled to the inheritance of the son, because he is a son—and that suffices. Indeed, astonishment is immense at one who is unaware of this—and sufficient is Allah for us, and how excellent is He as the Disposer of Affairs.[21]

وقَوْله تَعَالَى: {يَا بَنِي آدَمَ لا يَفْتِنَنَّكُمُ الشَّيْطَانُ كَمَا أَخْرَجَ أَبَوَيْكُمْ مِنَ الْجَنَّةِ} [الأعراف: ٢٧] فَصَحَّ أَنَّ الْجَدَّ أَبٌ، وَأَنَّ ابْنَ الِابْنِ ابْنٌ، فَلَهُ مِيرَاثُ الْأَبِ؛ لِأَنَّهُ أَبٌ، وَلِابْنِ الِابْنِ مِيرَاثُ الِابْنِ؛ لِأَنَّهُ ابْنٌ وَكَفَى - وَإِنَّ الْعَجَبَ لَيَعْظُمُ مِمَّنْ خَفِيَ عَلَيْهِ هَذَا - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

L27965 Ali said: Some of them advanced a baseless claim, asserting that the narration stating Abū Bakr designated the grandfather as holding the status of a father does not clarify that this pertains to inheritance. He added: Had this been the case, Umar would not have opposed him—despite Umar's profound reverence for Abū Bakr.

قَالَ عَلِيٌّ: وَقَدْ أَتَى بَعْضُهُمْ بِآبِدَةٍ، وَهِيَ أَنْ قَالَ: لَيْسَ مَا رُوِيَ مِنْ أَنَّ أَبَا بَكْرٍ جَعَلَ الْجَدَّ أَبًا: بَيَانَ أَنَّ ذَلِكَ فِي الْمِيرَاثِ، قَالَ: وَلَوْ كَانَ ذَلِكَ مَا خَالَفَهُ عُمَرُ عَلَى تَعْظِيمِهِ أَبَا بَكْرٍ.

L27966 They mentioned what was narrated to us through Shuʿbah's chain: ʿĀṣim al-Aḥwal reported to us from al-Shaʿbī that Abū Bakr said regarding "al-Kalālah": "Shall I judge concerning it? If it is correct, then it is from Allah, and if it is an error, then it is from me and from Satan—and Allah is free from it. Is it not those besides the child and the parent?" Then ʿUmar said: "Would I feel ashamed before Allah to oppose Abū Bakr?"

وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ نا عَاصِمٌ الْأَحْوَلُ عَنِ الشَّعْبِيِّ: أَنَّ أَبَا بَكْرٍ قَالَ فِي " الْكَلَالَةِ " أَقْضِي فِيهَا؟ فَإِنْ يَكُنْ صَوَابًا فَمِنَ اللَّهِ، وَإِنْ يَكُنْ خَطَأً فَمِنِّي وَمِنَ الشَّيْطَانِ، وَاللَّهُ مِنْهُ بَرِيءٌ: هُوَ مَا دُونَ الْوَلَدِ وَالْوَالِدِ؟ فَقَالَ عُمَرُ: إِنِّي لَأَسْتَحْيِي مِنَ اللَّهِ أَنْ أُخَالِفَ أَبَا بَكْرٍ؟

L27967–27968 Abū Muḥammad said: All of this stems from shameful public persistence. The first point is that this narration is disconnected—how could al-Shaʿbī

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّهُ مِنَ الْمُجَاهَرَةِ الْقَبِيحَةِ -: أَوَّلُ ذَلِكَ: أَنَّ هَذِهِ رِوَايَةٌ مُنْقَطِعَةٌ، أَيْنَ الشَّعْبِيُّ مِنْ عُمَرَ؟ وَاللَّهِ مَا وُلِدَ إِلَّا بَعْدَ مَوْتِ عُمَرَ بِأَزْيَدَ مِنْ عَشَرَةِ أَعْوَامٍ - ثُمَّ إِنَّهَا

[20] **Qur'an references (L27963):** Qur'an 4:11 (An-Nisa).
[21] **Qur'an references (L27964):** Qur'an 7:27 (Al-A'raf).

have heard from ʿUmar? By Allah, he was not born until over ten years after ʿUmar's death. Moreover, it is undeniably a false narration, for ʿUmar's disagreement with Abū Bakr is more evident than the sun. His reverence for him does not preclude opposition. Furthermore, there is the report we conveyed through the most authentic chain from ʿUthmān ibn ʿAffān—may Allah be pleased with him—who said ʿUmar told him: "I have formed a view regarding the grandfather's share." ʿUthmān replied: "If we follow your view, it is an opinion of sound judgment. But if we follow the view of the elder before you, how excellent were those people of sound judgment!" ʿUthmān added: "Abū Bakr used to consider the grandfather as a father." Marvel at this blindness, at the worship of whims, and at the brazen persistence in falsehood! Does ʿUthmān's statement admit of any meaning other than that Abū Bakr regarded the grandfather as a father in inheritance?

L27969 It is authentically established that ʿUmar differed from Abū Bakr regarding "Al-Kalālah" itself, the failure to appoint a successor, and numerous other judicial cases—we seek refuge in Allah from being deprived of His support.

L27970 Moreover, if what he said were correct, then ʿUmar would not have contradicted him—for it is authentically established from ʿUmar that he held the opinion that the grandfather is considered a father in inheritance, as we cited. Thus, he did not oppose Abu Bakr if he agreed with him on that matter. Rather, it was the last opinion he held—and to which he reverted, as we mentioned—so is it not the first and last of ʿUmar's opinions, supported by a sound chain of transmission without any interpolation? Abu Muhammad said: Among our proofs in this matter is also that Allah—Exalted is He—did not mention the inheritance of siblings at all in the Quran, nor the inheritance of sisters except in the two verses of *Kalālah*. Therefore, it is necessarily established by the text of the Quran that no sibling or sister inherits except in the inheritance of *Kalālah*, and it is obligatory that the inheritance of *Kalālah* be derived only from a textual ruling or a consensus rooted in the text: We have found that those who inherit him are siblings—whether males, females, or both; full siblings, paternal siblings, or maternal siblings—when the deceased has no male child, no male grandchild, no daughter, no father,

رِوَايَةٌ بَاطِلَةٌ بِلَا شَكٍّ، لِأَنَّ مُخَالَفَةَ عُمَرَ لِأَبِي بَكْرٍ أَشْهَرُ مِنْ الشَّمْسِ، وَلَيْسَ تَعْظِيمُهُ إيَّاهُ بِمُوجِبٍ أَنْ لَا يُخَالِفَهُ -: وَأَوَّلُ ذَلِكَ: الْخَبَرُ الَّذِي أَوْرَدْنَا بِأَصَحِّ إسْنَادٍ مِنْ طَرِيقِ عُثْمَانَ بْنِ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ قَالَ لَهُ عُمَرُ: إنِّي قَدْ رَأَيْت فِي الْجَدِّ رَأْيًا، فَقَالَ لَهُ عُثْمَانُ: إنْ نَتَّبِعْ رَأْيَك فَإِنَّهُ رَأْيُ رُشْدٍ، وَإِنْ نَتَّبِعْ رَأْيَ الشَّيْخِ قَبْلَك، فَنِعْمَ ذَوِي الرَّأْيِ كَانَ قَالَ عُثْمَانُ: وَكَانَ أَبُو بَكْرٍ يَجْعَلُهُ أَبًا فَاعْجَبُوا لِهَذَا الْعَمَى، وَلِعِبَادَةِ الْهَوَى وَالْمُجَاهَرَةِ بِالْكَذِبِ، وَانْظُرُوا هَلْ يَحْتَمِلُ هَذَا الْقَوْلُ مِنْ عُثْمَانَ شَيْئًا غَيْرَ أَنَّ أَبَا بَكْرٍ كَانَ يَجْعَلُ الْجَدَّ أَبًا فِي الْمِيرَاثِ.

وَقَدْ صَحَّ خِلَافُ عُمَرَ لِأَبِي بَكْرٍ فِي " الْكَلَالَةِ " نَفْسِهَا، وَفِي تَرْكِ الِاسْتِخْلَافِ وَفِي قَضَايَا كَثِيرَةٍ جِدًّا - نَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

ثُمَّ لَوْ صَحَّ مَا قَالَ لَكَانَ لَمْ يُخَالِفْهُ عُمَرُ، لِأَنَّهُ قَدْ صَحَّ عَنْ عُمَرَ: الْقَوْلُ بِأَنَّ الْجَدَّ أَبٌ فِي الْمِيرَاثِ كَمَا أَوْرَدْنَا، فَلَمْ يُخَالِفْ أَبَا بَكْرٍ إذَا وَافَقَهُ فِي ذَلِكَ، بَلْ هُوَ آخِرُ قَوْلٍ قَالَهُ - وَإِلَيْهِ رَجَعَ كَمَا أَوْرَدْنَا، فَهُوَ أَوَّلُ أَقْوَالِ عُمَرَ وَآخِرُ أَقْوَالِهِ بِإِسْنَادٍ صَحِيحٍ لَا دَاخِلَةَ فِيهِ؟ قَالَ أَبُو مُحَمَّدٍ: وَمِنْ بَرَاهِينِنَا أَيْضًا فِي هَذِهِ الْمَسْأَلَةِ: أَنَّ اللَّهَ - تَعَالَى - لَمْ يَذْكُرْ فِي الْقُرْآنِ مِيرَاثَ الْإِخْوَةِ أَلْبَتَّةَ، وَلَا مِيرَاثَ الْأَخَوَاتِ إلَّا فِي آيَتَيْ " الْكَلَالَةِ " فَوَجَبَ ضَرُورَةً بِنَصِّ الْقُرْآنِ أَنْ لَا يَرِثَ أَخٌ، وَلَا أُخْتٌ، إلَّا فِي مِيرَاثِ الْكَلَالَةِ، وَوَجَبَ أَنْ لَا يُؤْخَذَ مِيرَاثُ الْكَلَالَةِ، إلَّا مِنْ نَصٍّ أَوْ إجْمَاعٍ رَاجِعٍ إلَى النَّصِّ -: فَوَجَدْنَا مَنْ وَرِثَهُ إخْوَةٌ ذُكُورٌ أَوْ إنَاثٌ، أَوْ كِلَاهُمَا - أَشِقَّاءُ، أَوْ لِأَبٍ أَوْ لِأُمٍّ - وَلَمْ يَكُنْ لِلْمَيِّتِ وَلَدٌ ذَكَرٌ،

nor paternal grandfather. This is an indisputable consensus among the entire Ummah that it constitutes the inheritance of *Kalālah*.

وَلَا وَلَدُ وَلَدٍ ذَكَرٌ، وَلَا ابْنَةٌ، وَلَا أَبٌ، وَجَدٌّ لِأَبٍ، فَإِنَّهُ إِجْمَاعٌ مَقْطُوعٌ عَلَيْهِ مِنْ جَمِيعِ الْأُمَّةِ، عَلَى أَنَّهُ مِيرَاثُ كَلَالَةٍ.

L27971–27973 We found the predecessors differing in opinion **if** the deceased has any of those we mentioned—some of them say: "**This constitutes** an inheritance **of** *kalāla*," while others say: "It is not an inheritance **of** *kalāla*." Thus, **submission** to the definitively established consensus is obligatory, and what is disputed must be abandoned, as there is no explicit text **according to** those who differ on this matter. Consequently, it is obligatory that there be no inheritance whatsoever to a brother. Nor for a sister—as long as the deceased has any of the aforementioned heirs—unless an explicit ruling necessitates an exception, in which case such an exception is stipulated by this other text. This applies exclusively to a full brother, to the father alongside the daughter, the two daughters or more, or to the sister alongside the daughter, the two daughters or more—provided no male agnate exists there—and success is from Allah, the Most High.

وَوَجَدْنَا السَّلَفَ مُخْتَلِفِينَ - إِذَا كَانَ لِلْمَيِّتِ أَحَدٌ مِمَّنْ ذَكَرْنَا - فَبَعْضُهُمْ يَقُولُ: هُوَ مِيرَاثُ كَلَالَةٍ، وَبَعْضُهُمْ يَقُولُ: لَيْسَ مِيرَاثَ كَلَالَةٍ، فَوَجَبَ الِانْقِيَادُ لِلْإِجْمَاعِ الْمُتَيَقَّنِ، وَتَرْكُ مَا اُخْتُلِفَ فِيهِ، إِذْ لَا نَصَّ عِنْدَ الْمُخْتَلِفِينَ فِي ذَلِكَ، فَوَجَبَ أَنْ لَا مِيرَاثَ أَلْبَتَّةَ لِأَخٍ، وَلَا لِأُخْتٍ - مَا دَامَ لِلْمَيِّتِ أَحَدٌ مِمَّنْ ذَكَرْنَا - إِلَّا أَنْ يُوجِبَ ذَلِكَ نَصٌّ فَيُسْتَثْنَى مِنْ هَذَا النَّصِّ الْآخَرِ، وَلَيْسَ ذَلِكَ إِلَّا فِي الْأَخِ الذَّكَرِ الشَّقِيقِ، أَوْ لِلْأَبِ مَعَ الِابْنَةِ وَالْبِنْتَيْنِ فَصَاعِدًا، وَفِي الْأُخْتِ مَعَ الْبِنْتِ وَالْبِنْتَيْنِ فَصَاعِدًا - إِذَا لَمْ يَكُنْ هُنَالِكَ عَاصِبٌ ذَكَرٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ

The First Issue in Inheritance

[مَسْأَلَة الْأُولَى بِالْمِيرَاثِ]

L27974

L27975 1737 – A question: Abū Muḥammad said: If someone dies and leaves behind a paternal half-brother and a son of a full brother, the paternal half-brother is more entitled to the inheritance by consensus, because he is the nearest male agnate. The son of the full brother is more entitled to the inheritance than the son of the paternal half-brother, as there is consensus that he is the nearest male agnate.

١٧٣٧ - مَسْأَلَةٌ قَالَ أَبُو مُحَمَّدٍ: وَمَنْ مَاتَ وَتَرَكَ: أَخًا لِأَبٍ، وَابْنَ أَخٍ شَقِيقٍ: فَالْأَخُ لِلْأَبِ أَحَقُّ بِالْمِيرَاثِ بِلَا خِلَافٍ، لِأَنَّهُ أَوْلَى رَجُلٍ ذُكِرَ، وَابْنُ الْأَخِ الشَّقِيقِ أَوْلَى بِالْمِيرَاثِ مِنْ ابْنِ الْأَخِ لِلْأَبِ، لِأَنَّهُ أَوْلَى رَجُلٍ ذُكِرَ بِلَا خِلَافٍ.

L27976 If the deceased leaves behind a paternal cousin and a paternal uncle, the paternal uncle takes precedence over the paternal cousin. The son of a full paternal uncle takes precedence over the son of a paternal half-uncle. If the deceased leaves two paternal cousins: one whose father was a full brother of the deceased's father, and the other whose father was a paternal half-brother of the deceased's father, but this latter cousin himself is a uterine brother of the deceased, then the entire estate belongs to the paternal cousin who is the uterine brother.

فَلَوْ تَرَكَ: ابْنَ عَمٍّ، وَعَمًّا، فَالْعَمُّ أَوْلَى مِنْ ابْنِ الْعَمِّ، وَابْنُ الْعَمِّ الشَّقِيقِ أَوْلَى مِنْ ابْنِ الْعَمِّ لِلْأَبِ - فَإِنْ تَرَكَ ابْنَيْ عَمٍّ، أَحَدُهُمَا: كَانَ أَبُوهُ شَقِيقَ أَبِي الْمَيِّتِ، وَالْآخَرُ: كَانَ أَبُوهُ أَخَا أَبِي الْمَيِّتِ لِأَبِيهِ، إِلَّا أَنَّ هَذَا هُوَ أَخُو الْمَيِّتِ لِأُمِّهِ، فَالْمَالُ كُلُّهُ لِابْنِ الْعَمِّ الَّذِي هُوَ أَخٌ لِلْأُمِّ.

وَهُوَ قَوْلُ ابْنِ مَسْعُودٍ، وَشُرَيْحٍ؛ لِأَنَّهُمْ قَدْ أَجْمَعُوا فِي ابْنَيْ عَمَّيْنِ، أَحَدُهُمَا: ابْنُ شَقِيقِ أَبِي الْمَيِّتِ، وَالْآخَرُ: ابْنُ أَخِي أَبِي الْمَيِّتِ لِأَبِيهِ: أَنَّ ابْنَ شَقِيقِ أَبِي الْمَيِّتِ أَوْلَى، لِاسْتِوَائِهِ مَعَ أَبِي الْمَيِّتِ فِي وِلَادَةِ جَدِّ الْمَيِّتِ، دُونَ ابْنِ الْعَمِّ الْآخَرِ، وَبِالْحِسِّ يَدْرِي كُلُّ أَحَدٍ أَنَّهُمَا قَدْ اسْتَوَيَا فِي وِلَادَةِ جَدِّ الْمَيِّتِ أَبِي أَبِيهِ، وَانْفَرَدَ أَحَدُهُمَا بِوِلَادَةِ جَدِّ الْمَيِّتِ لِأَبِيهِ وَأَبِي الْمَيِّتِ، وَانْفَرَدَ الْآخَرُ بِوِلَادَةِ أُمِّ الْمَيِّتِ لَهُ، وَلَا يُخَيَّلُ عَلَى أَحَدٍ أَنَّ وِلَادَةَ الْأُمِّ أَقْرَبُ مِنْ وِلَادَةِ الْجَدَّةِ، فَهُوَ أَوْلَى رَجُلٍ ذُكِرَ - فَإِنْ تَرَكَتْ: ابْنَيْ عَمٍّ، أَحَدُهُمَا: زَوْجٌ، فَالنِّصْفُ لِلزَّوْجِ بِالزَّوْجِيَّةِ، وَمَا بَقِيَ فَبَيْنَ الِابْنَيْ عَمٍّ سَوَاءً؟ .

L27977 This is the opinion of Ibn Masʿūd and Shurayḥ, for they unanimously ruled regarding two male cousins: one being the son of the deceased's father's full brother, and the other being the son of the deceased's father's paternal uncle. They held that the son of the deceased's father's full brother is more entitled, due to his equality in lineage with the deceased's father through their shared descent from the grandfather of the deceased—unlike the other cousin. Anyone with sense understands that both share lineage through the deceased's paternal grandfather (the father of his father). One cousin exclusively shares lineage traced to the deceased's grandfather through both his own father and the deceased's father, while the other exclusively shares lineage through the deceased's mother. No one could imagine that maternal lineage holds closer proximity than paternal lineage. Thus, the former is the most entitled male heir specified. If she leaves two male cousins, one being her husband, half the estate is allocated to the husband by spousal right, and the remainder is divided equally between the two cousins.

[مَسْأَلَة مِيرَاث المعتق]

١٧٣٨ - مَسْأَلَةٌ وَالرَّجُلُ، وَالْمَرْأَةُ إِذَا أَعْتَقَ أَحَدُهُمَا عَبْدًا أَوْ أَمَةً: وَرِثَ مَالَ الْمُعْتَقِ إِنْ مَاتَ وَلَمْ يَكُنْ لَهُ مَنْ يَحُطُّ بِمِيرَاثِهِ، أَوْ مَا فَضَلَ عَنْ ذَوِي السِّهَامِ.

وَكَذَلِكَ يَرِثُ مَنْ تَنَاسَلَ مِنْهُ مِنْ نَسْلِ الذُّكُورِ مِنْ وَلَدِهِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ» فَعَمَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَلَمْ يَخُصَّ.

«وَأَعْتَقَتْ ابْنَةُ حَمْزَةَ عَبْدًا فَمَاتَ وَتَخَلَّفَ ابْنَةً، فَأَعْطَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - ابْنَتَهُ النِّصْفَ، وَبِنْتَ حَمْزَةَ النِّصْفَ» - وَكَذَلِكَ يَرِثُ مَنْ أَعْتَقَ مَنْ أَعْتَقَتْ - وَهَكَذَا مَنْ سَفَلَ.

The Issue of the Emancipated Slave's Inheritance

L27978

L27979 Issue 1738: If a man or a woman emancipates a male or female slave, the emancipated slave inherits the emancipator's estate upon the emancipator's death if there is no heir who diminishes the inheritance by his share, or what remains after the shares of those entitled to fixed shares.

L27980 Likewise, descendants from his male lineage inherit, according to the statement of Allah's Messenger (peace and blessings be upon him): "Guardianship (walā') belongs solely to the one who manumits." Thus, he generalized the ruling (peace and blessings be upon him) and did not specify exceptions.

L27981 The daughter of Hamza emancipated a male slave, and he died, leaving behind a daughter. The Prophet—peace be upon him—awarded half to the slave's daughter and half to the daughter of Hamza. Likewise, the male emancipator inherits from the one whom the female emancipated, and the same applies to the emancipator's descendants.

L27982–27984 1739. Issue: If a woman manumitted a slave and then died, leaving sons and male agnate relatives consisting of brothers or sons... Brothers (even if

lower in lineage), uncles, or paternal cousins (even if distant and lower in lineage): the inheritance of the emancipator belongs to her agnatic relatives, not her children, unless her children are themselves her agnatic relatives—such as children born to an umm walad by her master—or unless they are from her paternal cousins with no one closer to her among her grandfather's descendants or her father's sons than them.

١٧٣٩ - مَسْأَلَةٌ وَمَا أَعْتَقَتْ الْمَرْأَةُ ثُمَّ مَاتَتْ، وَلَهَا بُنُونَ وَعُصْبَةٌ مِنْ إخْوَةٍ، أَوْ بَنِي إخْوَةٍ - وَإِنْ سَفَلُوا - أَوْ أَعْمَامٍ، أَوْ بَنِي أَعْمَامٍ - وَإِنْ بَعُدُوا وَسَفَلُوا -: فَمِيرَاثُ مَنْ أَعْتَقَتْ لِعُصْبَتِهَا لَا لِوَلَدِهَا، إلَّا أَنْ يَكُونَ وَلَدُهَا عُصْبَتَهَا، كَأَوْلَادِ أُمِّ الْوَلَدِ مِنْ سَيِّدِهَا، أَوْ يَكُونُوا مِنْ بَنِي عَمِّهَا لَا أَحَدَ مِنْ بَنِي جَدِّهَا، وَلَا مِنْ بَنِي أَبِيهَا: أَقْرَبُ إلَيْهَا مِنْهُمْ.

L27985 Others said: Rather, the inheritance belongs to her child, and this is an issue regarding which people differed. It was narrated to us via the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī: that ʿAlī ibn Abī Ṭālib and al-Zubayr ibn al-ʿAwwām disputed before ʿUmar regarding a client belonging to Ṣafiyyah bint ʿAbd al-Muṭṭalib. ʿUmar ruled that ʿAlī was responsible for the blood money, and that the inheritance belonged to al-Zubayr.

وَقَالَ آخَرُونَ: بَلْ الْمِيرَاثُ لِوَلَدِهَا، وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ، وَالزُّبَيْرَ بْنَ الْعَوَّامِ: اخْتَصَمَا إلَى عُمَرَ فِي مَوْلَى لِصَفِيَّةَ بِنْتِ عَبْدِ الْمُطَّلِبِ؟ فَقَضَى عُمَرُ بِالْعَقْلِ عَلَى عَلِيٍّ، وَبِالْمِيرَاثِ لِلزُّبَيْرِ.

L27986 And through the chain of ʿAbd al-Razzāq from Sufyān ibn ʿUyaynah from Misʿar ibn Kidām from ʿAbdullāh ibn Rabāḥ from ʿAbdullāh ibn Maʿqil from ʿAlī ibn Abī Ṭālib, who said: "Walā' (clientage) is a branch of lineage. Whoever acquires the walā' acquires the inheritance."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ عَبْدِ اللَّهِ بْنِ رَبَاحٍ عَنْ عَبْدِ اللَّهِ بْنِ مَعْقِلٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: الْوَلَاءُ شُعْبَةٌ مِنْ النَّسَبِ، مَنْ أَحْرَزَ الْوَلَاءَ أَحْرَزَ الْمِيرَاثَ.

L27987 And from the chain of Al-Ḥajjāj ibn Al-Minhāl: Ḥammād ibn Zayd narrated to us, Ayyūb Al-Sakhtiyānī narrated to us, from Muḥammad ibn Sīrīn, that he would say: The most deserving among them of walā' (patronage rights) is the most deserving of inheritance.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ زَيْدٍ نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ كَانَ يَقُولُ: أَحَقُّهُمْ بِالْوَلَاءِ أَحَقُّهُمْ بِالْمِيرَاثِ.

L27988 Ali said: "The most entitled to patronage are her male agnates—those to whom the clients trace their lineage. Thus, they would declare: 'We are the clients of Banu Asad if she is of the Asadi women,' and they do not claim affiliation with Banu Tamim if her child is of Tamim descent."

قَالَ عَلِيٌّ: الْأَحَقُّ بِالْوَلَاءِ هُمْ عُصْبَتُهَا الَّذِينَ إلَيْهِمْ يَنْتَمِي الْمَوَالِي، فَيَقُولُونَ: نَحْنُ مَوَالِي بَنِي أَسَدٍ إنْ كَانَتْ هِيَ أَسْدِيَةً، وَلَا يَنْتَمُونَ إلَى بَنِي تَمِيمٍ إنْ كَانَ وَلَدُهَا مِنْ تَمِيمٍ.

L27989 Abu Muhammad said: We hold here to the opinion of Ali. Those who affirmed the opinion of Umar are: Al-Shaʿbi, 'Ata', Ibn Abi Layla, Abu Hanifa, Malik, Al-Shafiʿi, and their companions.

قَالَ أَبُو مُحَمَّدٍ: بِقَوْلِ عَلِيٍّ هَاهُنَا نَقُولُ، وَقَالَ بِقَوْلِ عُمَرَ: الشَّعْبِيُّ، وَعَطَاءٌ، وَابْنُ أَبِي لَيْلَى، وَأَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمْ.

L27990 Abu Muhammad said: The proof for the validity of our statement is the

statement of the Messenger of Allah (peace be upon him): “The ally of the people is one of them.”

قَالَ أَبُو مُحَمَّدٍ: بُرْهَانُ صِحَّةُ قَوْلِنَا -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَوْلَى الْقَوْمِ مِنْهُمْ» .

L27991 The Prophet, peace and blessings be upon him, said: “What the fixed shares do not leave belongs to the nearest male relative.” If a woman is from Mudar and her sons are from the Yemeni tribe, her agnatic kin are undoubtedly from Mudar.

وَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «مَا أَبْقَتْ الْفَرَائِضُ فَلِأَوْلَى رَجُلٍ ذَكَرٍ» وَإِذَا كَانَتْ الْمَرْأَةُ مِنْ مُضَرَ وَبَنُوهَا مِنْ الْيَمَنِ: فَمَوَالِيهَا مِنْ مُضَرَ، بِلَا شَكٍّ.

L27992 It is impossible for a Yemeni man to inherit a Mudari man by agnatic right; rather, he is inherited by someone from his own tribe (Mudar). And it is impossible for a Yemeni man to have priority over a Mudari man in inheritance.

وَمِنْ الْمُحَالِ أَنْ يَكُونَ رَجُلٌ يَمَانِيٌّ يَرِثُ مُضَرِّيًا بِالتَّعْصِيبِ، بَلْ يَرِثُهُ الَّذِي هُوَ مِنْهُمْ، وَمِنْ الْمُحَالِ أَنْ يَكُونَ رَجُلٌ يَمَانِيٌّ أَوْلَى بِرَجُلٍ مُضَرِيٍّ.

L27993–27994 It is astonishing that they assert: If her offspring die out, their inheritance reverts to the agnates of their mother from Mudar, not to the agnates of the freedwoman’s children. Has anything more astonishing than this ever been heard? How can they inherit patronage rights from their mother when their own agnates do not inherit it from them? This impossibility is glaringly obvious, for if nothing is inherited from them in the end, how could they have inherited it initially?

وَالْعَجَبُ أَنَّهُمْ يَقُولُونَ: إنْ انْقَرَضَ وَلَدُهَا عَادَ مِيرَاثُهُمْ إلَى عُصْبَةِ أُمِّهِمْ مِنْ مُضَرَ، لَا إلَى عُصْبَةِ أَبْنَاءِ الْمُعْتَقَةِ، فَهَلْ سُمِعَ بِأَعْجَبَ مِنْ هَذَا؟ وَكَيْفَ يَرِثُونَ عَنْ أُمِّهِمْ وَلَاءً لَا يَرِثُهُ عَنْهُمْ عُصْبَتُهُمْ، إنَّ هَذَا الْمُحَالَ ظَاهِرٌ، وَإِذَا لَمْ يُورَثُ عَنْهُمْ آخِرًا فَمِنْ الْمُحَالِ أَنْ يَرِثُوهُ هُمْ أَوَّلًا.

L27995 We do not know of anything they have contested more vehemently than their assertion: “Just as they inherit their mother’s wealth, so too do they inherit the clientage of her patron - which she herself would have inherited were she alive.”

وَمَا نَعْلَمُ لَهُمْ شَيْئًا شَغَبُوا بِهِ أَكْثَرَ مِنْ أَنْ قَالُوا: كَمَا يَرِثُونَ مَالَ أُمِّهِمْ كَذَلِكَ يَرِثُونَ وَلَاءَ مَوْلَاهَا الَّذِي لَوْ كَانَتْ حَيَّةً لَوَرِثَتْهُ هِيَ.

L27996 Ali said: This is invalid, for whoever inherits the wealth does not inherit the rights of clientage. They do not dispute with us that if a woman dies possessing property and clients, leaving behind her husband, her sister, and her male paternal cousins, then all her inheritance belongs to her husband and sister, with no entitlement for them to the rights of clientage over her clients. And that the rights of clientage over her clients belong to her male paternal cousins, who receive nothing from her estate.

قَالَ عَلِيٌّ: وَهَذَا بَاطِلٌ لَيْسَ مَنْ يَرِثُ الْمَالَ يَرِثُ الْوَلَاءَ، وَهُمْ لَا يَخْتَلِفُونَ مَعَنَا فِي أَنَّ امْرَأَةً لَوْ مَاتَتْ وَلَهَا مَالٌ وَمَوَالٍ، وَتَرَكَتْ: زَوْجَهَا، وَأُخْتَهَا، وَبَنِي عَمِّهَا: فَإِنَّ جَمِيعَ مِيرَاثِهَا لِزَوْجِهَا وَأُخْتِهَا، وَلَا حَقَّ لَهُمَا فِي وَلَاءِ مَوَالِيهَا، وَأَنَّ وَلَاءَ مَوَالِيهَا لِبَنِي عَمِّهَا الَّذِينَ لَا يَأْخُذُونَ مِنْ مَالِهَا شَيْئًا.

L27997 Similarly, if a woman dies leaving behind a husband, two daughters, a mother, and sons of a son (grandsons), the entire estate belongs to the hus-

band, the two daughters, and the mother, while the grandsons receive nothing. According to their view, the clientage of her patrons passes to the grandsons, and those who inherited the estate do not receive anything from this clientage. Thus, the invalidity of their argument becomes evident, and their claim is nullified, as it is stripped of any proof—and success is from Allah, the Most High. If they deceptively cite the ruling of ʿUmar, ʿUmar himself ruled in this very case that the male agnatic relatives of her son inherit the clientage of her patrons through her son, while her siblings do not inherit it. Yet they opposed ʿUmar in this, arbitrarily asserting falsehood—and success is from Allah, the Most High.

L27998 Issue: A child born to a male slave by a free woman is not inherited by the one who emancipated his father afterward. A person only inherits from an ensouled fetus conceived after the emancipator freed the father.

L27999 The proof of this is the statement of Allah's Messenger—may Allah bless him and grant peace—: "The right of patronage belongs to the emancipator." This newborn is created free, and no right of patronage over him exists for anyone. It is therefore impermissible for patronage to arise over him after his freedom in favor of one who did not emancipate him. Nor was such patronage established over him previously except through explicit textual evidence, and there is no explicit text regarding this.

وَكَذَلِكَ: امْرَأَةٌ مَاتَتْ وَتَرَكَتْ: زَوْجًا، وَبِنْتَيْنِ، وَأُمًّا، وَبَنِي ابْنٍ -: فَإِنَّ الْمَالَ كُلَّهُ لِلزَّوْجِ وَالْبِنْتَيْنِ وَالْأُمِّ، وَلَا يَأْخُذُ مِنْهُ بَنُو الِابْنِ شَيْئًا، وَأَنَّ وَلَاءَ مَوَالِيهَا عِنْدَهُمْ لِبَنِي الِابْنِ، وَلَا يَرِثُ مِنْهُ الَّذِينَ وَرِثُوا الْمَالَ شَيْئًا -: فَظَهَرَ فَسَادُ احْتِجَاجِهِمْ، وَبَطَلَ قَوْلُهُمْ، إِذْ عُرِّيَ مِنْ بُرْهَانٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. فَإِنْ مَوَّهُوا بِقَضَاءِ عُمَرَ: فَقَدْ قَضَى عُمَرُ فِي هَذِهِ الْمَسْأَلَةِ نَفْسِهَا بِأَنَّ عُصْبَةَ وَلَدِهَا يَرِثُونَ وَلَاءَ مَوَالِيهَا عَنْ وَلَدِهَا، وَلَا يَرِثُهُ إِخْوَتُهَا -: فَقَدْ خَالَفُوا عُمَرَ فِي ذَلِكَ تَحَكُّمًا بِالْبَاطِلِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

١٧٤٠ - مَسْأَلَةٌ وَمَا وُلِدَ لِلْمَمْلُوكِ مِنْ حُرَّةٍ فَإِنَّهُ لَا يَرِثُهُ مَنْ أَعْتَقَ أَبَاهُ بَعْدَ ذَلِكَ، وَإِنَّمَا يَرِثُ الْمَرْءُ مَا نُفِخَ فِيهِ الرُّوحُ مِنْ حَمْلٍ بَعْدَ أَنْ أَعْتَقَ أَبَاهُ.

بُرْهَانُ ذَلِكَ -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْوَلَاءُ لِمَنْ أَعْتَقَ» وَهَذَا الْمَوْلُودُ خُلِقَ حُرًّا، وَلَا وَلَاءَ عَلَيْهِ لِأَحَدٍ، فَلَا يَجُوزُ أَنْ يَحْدُثَ عَلَيْهِ بَعْدَ حُرِّيَّتِهِ وَلَاءٌ لِمَنْ لَمْ يُعْتِقْهُ، وَلَا كَانَ ذَلِكَ الْوَلَاءُ عَلَيْهِ قَبْلُ إِلَّا بِنَصٍّ، وَلَا نَصَّ فِي ذَلِكَ.

L28000–28001 As for one who is ensouled after the patronage bond had been irrevocably established over his father, he never comes into existence except with that bond established over him. Thus, his inheritance belongs to his patron (mawlā).

وَأَمَّا مَنْ نُفِخَ فِيهِ الرُّوحُ بَعْدَ ثَبَاتِ الْوَلَاءِ عَلَى أَبِيهِ فَإِنَّهُ لَمْ يَكُنْ قَطُّ مَوْجُودًا إِلَّا وَالْوَلَاءُ عَلَيْهِ ثَابِتٌ - فَمِيرَاثُهُ لِمَوْلَاهُ.

L28002 And it has been narrated to us from Al-Sha'bi: There is no clientage [owed] except to the one who has conferred a favor [i.e., the patron].

وَقَدْ رُوِّينَا عَنْ الشَّعْبِيِّ: لَا وَلَاءَ إِلَّا لِذِي نِعْمَةٍ.

L28003 1741 – Issue: If a child is born to a freed male slave and a freed female slave, both belonging to others, his patronage belongs to the one who emancipated his father or grandfathers—and there is no disagreement on this ruling.

١٧٤١ - مَسْأَلَةٌ وَمَا وُلِدَ لِمَوْلًى مِنْ مَوْلَاةٍ لِآخَرِينَ فَوَلَاؤُهُ لِمَنْ أَعْتَقَ، أَبَاهُ، أَوْ أَجْدَادَهُ - وَهَذَا لَا خِلَافَ فِيهِ.

L28004 A child born to a freedwoman from an Arab man has no patronage right over him belonging to the patrons of his mother, and there is consensus on this matter.

وَمَا وَلَدَتْ الْمَوْلَاةُ مِنْ عَرَبِيٍّ فَلَا وَلَاءَ عَلَيْهِ لِمَوَالِي أُمِّهِ، وَهَذَا لَا خِلَافَ فِيهِ.

L28005 And what a female client bears from an enslaved spouse, or from fornication, or coercion, or a ḥarbī, or if she has performed li'ān against him—some scholars have stated: his patronage belongs to the patrons of his mother. We do not uphold this view; rather, no patronage obligation binds him to anyone. This is because no textual proof or consensus exists imposing patronage upon him. Indeed, they have unanimously agreed upon all we mentioned: that the patronage established over his mother holds no legal validity if his father was a client or an Arab—thereby exposing their inconsistency. And success is attained through Allah, the Exalted.

وَمَا وَلَدَتْ الْمَوْلَاةُ مِنْ زَوْجٍ مَمْلُوكٍ، أَوْ مِنْ زِنًى، أَوْ مِنْ إكْرَاهٍ، أَوْ حَرْبِيٍّ، أَوْ لَاعَنَتْ عَلَيْهِ، فَقَدْ قَالَ قَوْمٌ: وَلَاؤُهُ لِمَوَالِي أُمِّهِ - وَلَا نَقُولُ بِهَذَا، بَلْ لَا وَلَاءَ عَلَيْهِ لِأَحَدٍ؛ لِأَنَّهُ لَمْ يَأْتِ بِإِيجَابِ الْوَلَاءِ عَلَيْهِ نَصٌّ، وَلَا إجْمَاعٌ، بَلْ قَدْ أَجْمَعُوا عَلَى كُلِّ مَا ذَكَرْنَا مِنْ أَنَّهُ لَا حُكْمَ لِلْوَلَاءِ الْمُنْعَقِدِ عَلَى أُمِّهِ إنْ كَانَ أَبُوهُ مَوْلًى، أَوْ عَرَبِيًّا - فَظَهَرَ تَنَاقُضُهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: The slave neither inherits nor is inherited.

L28006

[مَسْأَلَةٌ الْعَبْدُ لَا يَرِثُ وَلَا يُورَثُ]

L28007 1742. Issue: A slave does not inherit, nor is he inherited. All his wealth belongs to his master. This is a matter on which there is no disagreement, and a definitive text exists regarding it, which we will mention hereafter, Allah, the Exalted, willing.

١٧٤٢ - مَسْأَلَةٌ وَالْعَبْدُ لَا يَرِثُ، وَلَا يُورَثُ: مَالُهُ كُلُّهُ لِسَيِّدِهِ، هَذَا مَا لَا خِلَافَ فِيهِ، وَقَدْ جَاءَ بِهِ نَصٌّ نَذْكُرُهُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

L28008 It has been reported from some of the Companions that a slave may be sold, then emancipated, then inherit from his former master. Since this ruling is not mandated by the Quran or the Sunnah, it is impermissible to adopt this view.

وَرُوِّينَا عَنْ بَعْضِ الصَّحَابَةِ: أَنَّهُ يُبَاعُ فَيُعْتَقُ فَيَرِثُ - وَهَذَا لَا يُوجِبُهُ قُرْآنٌ وَلَا سُنَّةٌ، فَلَا يَجُوزُ الْقَوْلُ بِهِ.

The Issue of the Mukatab's Inheritance

[مَسْأَلَة مِيرَاث الْمُكَاتَب]

L28009

L28010 Issue 1743: If a mukatab (a slave contracted to purchase their freedom) pays part of his mukatabah and dies, his heirs inherit from him only according to the portion he paid. If a person from whom he inherits dies, he (the mukatab) inherits from them only according to the portion he paid. Any surplus beyond what he (the mukatab) inherited belongs to the remaining heirs, and any surplus remaining after his heirs' inheritance belongs to his master.

١٧٤٣ - مَسْأَلَةٌ وَالْمُكَاتَبُ إِذَا أَدَّى شَيْئًا مِنْ مُكَاتَبَتِهِ فَمَاتَ، أَوْ مَاتَ لَهُ مُورِثٌ وَرِثَ مِنْهُ وَرَثَتُهُ بِقَدْرِ مَا أَدَّى فَقَطْ، وَوَرِثَ هُوَ أَيْضًا بِمِقْدَارِ مَا أَدَّى فَقَطْ، وَيَكُونُ مَا فَضَلَ عَمَّا وَرِثَ لِسَائِرِ الْوَرَثَةِ، وَيَكُونُ مَا فَضَلَ عَنْ وَرَثَتِهِ لِسَيِّدِهِ.

L28011 This is a matter regarding which people have differed. We have mentioned in the chapter *al-Mukātab* and have also cited the authentic narrations from the Prophet (peace and blessings be upon him) concerning this matter, rendering repetition unnecessary.

وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ، وَقَدْ ذَكَرْنَا فِي " كِتَابِ الْمُكَاتَبِ " وَذَكَرْنَا مَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ فَأَغْنَى عَنْ إعَادَتِهِ.

L28012 Whoever dies partially free and partially enslaved: the one entitled to patronage rights inherits from the estate proportionally to their share in the clientage relationship, and the remainder belongs to the owner of the enslaved portion, regardless of whether the latter takes their share from the deceased's earnings.

وَمَنْ مَاتَ وَبَعْضُهُ حُرٌّ وَبَعْضُهُ عَبْدٌ: فَلِلَّذِي لَهُ الْوَلَاءُ مِمَّا تَرَكَ بِمِقْدَارِ مَا لَهُ فِيهِ مِنْ الْوَلَاءِ وَالْبَاقِي لِلَّذِي لَهُ الرِّقُّ - سَوَاءٌ كَانَ يَأْخُذُ حِصَّتَهُ مِنْ كَسْبِهِ.

L28013–28015 During his lifetime or if he had not been taking it—because what remains after what he used to take is property wholly belonging to the *mukatab*: he may consume it, use it to marry, take a concubine, settle his debts from it, and give it as charity, for it is his wealth—and this refers to what the entitled party did not take from it. The remainder—if he dies, it becomes property he leaves behind. The one asserting ownership through slavery no longer has the right to claim it now, as a right has been established in it for the party entitled to a partial allegiance over him.

فِي حَيَاتِهِ أَوْ لَمْ يَكُنْ يَأْخُذُهُ - لِأَنَّ الْبَاقِيَ بَعْدَ مَا كَانَ يَأْخُذُ: مِلْكٌ لِجَمِيعِ الْمُكَاتَبِ يَأْكُلُهُ، وَيَتَزَوَّجُ فِيهِ، وَيَتَسَرَّى، وَيَقْضِي مِنْهُ دُيُونَهُ، وَيَتَصَدَّقُ بِهِ، فَهُوَ مَالُهُ - وَهُوَ مَا لَمْ يَأْخُذْهُ الَّذِي لَهُ فِيهِ بَقِيَّةٌ - فَإِذَا مَاتَ فَهُوَ مَالٌ يُخَلِّفُهُ، لَيْسَ لِلَّذِي تَمَسَّكَ بِالرِّقِّ أَنْ يَأْخُذَهُ الْآنَ، إذْ قَدْ وَجَبَ فِيهِ حَقٌّ لِلَّذِي لَهُ فِيهِ بَعْضُ الْوَلَاءِ.

L28016 People have differed regarding this. Mālik held that all his property belongs to the one who holds any portion of ownership over him [as a slave]. This is the opinion of al-Zuhrī and one of the two opinions of al-Shāfiʿī.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَ مَالِكٌ: مَالُهُ كُلُّهُ لِلَّذِي لَهُ فِيهِ شَيْءٌ مِنْ الرِّقِّ - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ.

L28017 Qatadah said: All of his inheritance belongs to the one who has a share in shared manumission therein.

وَقَالَ قَتَادَةُ: مِيرَاثُهُ كُلُّهُ لِلَّذِي لَهُ فِيهِ شُعْبَةُ الْعِتْقِ.

L28018 Abū Ḥanīfah said: He must pay from his wealth the value of the slavery liability therein, and his heirs inherit the remainder. If the enslaved person is not manumitted through this payment, then all his wealth belongs to the party asserting the slavery claim.

L28019 Some scholars of Al-Shafi'i's school said that his wealth belongs to the Muslim treasury (Bayt al-Māl).

L28020 Al-Shāfiʿī said in one of his statements: "He is inherited [a share] proportionate to the measure of manumission involved, but he himself does not inherit through that same measure."

L28021 Our statement regarding that which we have mentioned is the opinion of Ali ibn Abi Talib, Ibn Mas'ud, Ibrahim al-Nakha'i, Uthman al-Batti, al-Sha'bi, Sufyan al-Thawri, Ahmad ibn Hanbal, Dawud, all of his companions, and one of the opinions of al-Shafi'i.

L28022 ## The Issue of Inheritance for a Child of Zina.

L28023 Issue 1744: A child born of illicit intercourse inherits from his mother, and his mother inherits from him. She has motherhood rights over him encompassing filial piety, financial support, prohibition of marriage, and all other rulings pertaining to mothers. However, the man from whose sperm he was created does not inherit from him, nor does the child inherit from the biological father. The child has no rights based on paternity against him—neither in filial piety, financial support, marriage prohibition, nor anything else. The child remains a stranger to him, and we know of no disagreement on this matter except regarding the prohibition of marriage alone.

L28024 The proof of the validity of what we have stated is the statement of Allah's Messenger—may Allah's blessings and peace be upon him—"The child belongs to the bed, and the stone is for the adulterer," and his statement—upon him be blessings and peace—"The child belongs to the owner of the bed, and the stone is for the adulterer."

L28025 Thus, the child is ascribed to the marital bed – which is the mother – and

وَقَالَ أَبُو حَنِيفَةَ: يُؤَدِّي مِنْ مَالِهِ قِيمَةَ مَا فِيهِ مِنْ الرِّقِّ وَيَرِثُ الْبَاقِيَ وَرَثَتُهُ - وَإِنْ لَمْ يُرَقَّ بِذَلِكَ: فَمَالُهُ كُلُّهُ لِلْمُتَمَسِّكِ بِالرِّقِّ.

وَقَالَ بَعْضُ أَصْحَابِ الشَّافِعِيِّ: مَالُهُ لِبَيْتِ مَالِ الْمُسْلِمِينَ.

وَقَالَ الشَّافِعِيُّ فِي أَحَدِ أَقْوَالِهِ: إنَّهُ يُورَثُ بِمِقْدَارِ مَا فِيهِ مِنْ الْعِتْقِ، وَلَا يَرِثُ هُوَ بِذَلِكَ الْمِقْدَارِ.

وَقَوْلُنَا فِي ذَلِكَ الَّذِي ذَكَرْنَا هُوَ قَوْلُ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَابْنِ مَسْعُودٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَعُثْمَانَ الْبَتِّيِّ، وَالشَّعْبِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ وَدَاوُد، وَجَمِيعِ أَصْحَابِهِ، وَأَحَدِ أَقْوَالِ الشَّافِعِيِّ.

[مَسْأَلَة مِيرَاث وَلَد الزِّنَا]

١٧٤٤ - مَسْأَلَةٌ وَوَلَدُ الزِّنَى يَرِثُ أُمَّهُ، وَتَرِثُهُ أُمُّهُ، وَلَهَا عَلَيْهِ حَقُّ الْأُمُومِيَّةِ مِنْ: الْبِرِّ، وَالنَّفَقَةِ، وَالتَّحْرِيمِ، وَسَائِرِ حُكْمِ الْأُمَّهَاتِ -: وَلَا يَرِثُهُ الَّذِي تَخَلَّقَ مِنْ نُطْفَتِهِ، وَلَا يَرِثُهُ هُوَ، وَلَا لَهُ عَلَيْهِ حَقُّ الْأُبُوَّةِ لَا فِي بِرٍّ، وَلَا فِي نَفَقَةٍ، وَلَا فِي تَحْرِيمٍ، وَلَا فِي غَيْرِ ذَلِكَ، وَهُوَ مِنْهُ أَجْنَبِيٌّ وَلَا نَعْلَمُ فِي هَذَا خِلَافًا إلَّا فِي التَّحْرِيمِ فَقَطْ.

بُرْهَانُ صِحَّةِ مَا قُلْنَا -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ» وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَيْضًا «الْوَلَدُ لِصَاحِبِ الْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ» .

to its owner – the husband or the master (in cases of enslavement) – and nothing is granted to the fornicator except exclusion.

فَأَلْحَقَ الْوَلَدَ بِالْفِرَاشِ - وَهِيَ الْأُمُّ - وَبِصَاحِبِهِ - وَهُوَ الزَّوْجُ، أَوْ السَّيِّدُ - وَلَمْ يَجْعَلْ لِلْعَاهِرِ إِلَّا الْحَجَرَ.

L28026–28027 Whoever declares something forbidden in matters of paternity where he has no right has acted contradictorily. And success is from Allah, the Most High.

وَمَنْ جَعَلَ تَحْرِيمًا بِمَا لَا حَقَّ لَهُ فِي الْأُبُوَّةِ فَقَدْ نَاقَضَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مِيرَاث المولدون فِي أَرْض الشِّرْك]

L28028 **The jurisprudential issue regarding the inheritance of those born in polytheistic territories.**

١٧٤٥ - مَسْأَلَةٌ وَالْمَوْلُودُونَ فِي أَرْضِ الشِّرْكِ يَتَوَارَثُونَ كَمَا يَتَوَارَثُ مَنْ وُلِدَ فِي أَرْضِ الْإِسْلَامِ بِالْبَيِّنَةِ أَوْ بِإِقْرَارِهِمْ إِنْ لَمْ تَكُنْ بَيِّنَةٌ - سَوَاءٌ أَسْلَمُوا وَأَقَرُّوا مَكَانَهُمْ، أَوْ تَحَمَّلُوا، أَوْ سُبُوا فَأُعْتِقُوا.

L28029 1745 - Issue: Those born in the land of polytheism inherit in the same manner as those born in the land of Islam—through clear evidence or, in its absence, their acknowledgment—whether they embrace Islam and legally acknowledge [their status], assume responsibility [as guarantors], or are taken captive and later freed.

وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ -: فَرُوِّينَا عَنْ عُمَرَ، وَعُثْمَانَ: أَنَّهُ لَا يَرِثُ أَحَدٌ بِوِلَادَةِ الشِّرْكِ.

L28030 This is an issue regarding which people have differed: It has been transmitted to us from ʻUmar and ʻUthmān that no one may inherit by virtue of being born to polytheist parents.

وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ: أَدْرَكْت الصَّالِحِينَ يَذْكُرُونَ: أَنَّ فِي السُّنَّةِ: أَنَّ وِلَادَةَ الْعَجَمِ مِمَّنْ وُلِدَ فِي أَرْضِ الشِّرْكِ ثُمَّ تَحَمَّلَ: أَنْ لَا يَتَوَارَثُوا.

L28031 And from Yaḥyā ibn Saʿīd al-Anṣārī: I encountered the righteous people mentioning that the Sunnah states: “The offspring of non-Arabs born in the land of polytheism, who subsequently migrated, do not inherit from one another.”

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَعَمْرِو بْنِ عُثْمَانَ بْنِ عَفَّانَ، وَأَبِي بَكْرِ بْنِ سُلَيْمَانَ بْنِ أَبِي خَيْثَمَةَ، وَأَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ: لَا يُورَثُ أَحَدٌ بِوِلَادَةِ الْأَعَاجِمِ إِلَّا أَحَدٌ وُلِدَ فِي الْعَرَبِ.

L28032 From Umar ibn Abd al-Aziz, Urwah ibn al-Zubayr, Amr ibn Uthman ibn Affan, Abu Bakr ibn Sulayman ibn Abi Khaythama, and Abu Bakr ibn Abd al-Rahman ibn al-Harith ibn Hisham: No one is entitled to inheritance rights by virtue of being born to non-Arabs, except one born into Arab lineage.

وَلَا نَعْلَمُ يَصِحُّ عَنْ عُمَرَ، وَعُثْمَانَ: شَيْءٌ مِنْ هَذَا، لِأَنَّهَا مُنْقَطِعَةٌ عَنْ مَالِكٍ عَنْ الثِّقَةِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُمَرَ ..

L28033 We do not know of any authentic report from ʻUmar or ʻUthmān regarding this matter, as the chain is disconnected (munqatiʿ) from Mālik from the trustworthy narrator from Saʿīd ibn al-Musayyab: that ʻUmar...

وَمِنْ طَرِيقٍ فِيهَا علي بن زيد بن جدعان - ضعيف - وأبان بن عثمان - لم يدرك عمر -: أن عمر؛ ومحمد

L28034 And from a chain containing Ali ibn Zayd ibn Jud’an—who is weak—and Aban ibn Uthman—who did not meet Umar—: that Umar; and Muhammad

ibn Abd al-Rahman ibn Thawban: that Umar and Uthman—though this chain is weaker; and al-Zuhri: that Umar and Uthman—and Umar's child Abdullah and the Mother of the Believers Hafsah only inherited due to birth during the era of polytheism.

وَمِنْ طَرِيقٍ فِيهَا عَلِيُّ بْنُ زَيْدِ بْنِ جُدْعَانَ - وَهُوَ ضَعِيفٌ - وَأَبَانُ بْنُ عُثْمَانَ: أَنَّ عُمَرَ - وَلَمْ يُدْرِكْ أَبَانُ عُمَرَ - وَمُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ: أَنَّ عُمَرَ، وَعُثْمَانَ - وَهَذَا أَبْعَدُ - وَالزُّهْرِيُّ: أَنَّ عُمَرَ، وَعُثْمَانَ - وَمَا وَرِثَ عُمَرُ وَلَدُهُ عَبْدَ اللَّهِ، وَأُمَّ الْمُؤْمِنِينَ حَفْصَةَ إِلَّا بِوِلَادَةِ الشِّرْكِ.

L28035 A group said, as reported to us through the chain of Abd al-Razzaq, who narrated to us from Ma'mar, from Sufyan al-Thawri, from Mujalid, from al-Sha'bi, from Shurayh: that Umar ibn al-Khattab wrote to him: "Do not grant inheritance to the child of disputed lineage except upon clear evidence."

وَقَالَتْ طَائِفَةٌ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُجَالِدٍ عَنِ الشَّعْبِيِّ عَنْ شُرَيْحٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَتَبَ إِلَيْهِ: أَنْ لَا يُوَرِّثَ الْحَمِيلَ إِلَّا بِبَيِّنَةٍ.

L28036 Via the chain of Abd al-Razzaq, who narrated to us from Ma'mar: Asim ibn Sulayman informed me, saying: Umar ibn Abd al-Aziz decreed that contractual allies should not inherit one another in a state of disbelief. Al-Hasan and Ibn Sirin censured him for this, stating, "What prevents them from inheriting if they have been reconciled and clear evidence is established?"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ: أَخْبَرَنِي عَاصِمُ بْنُ سُلَيْمَانَ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَنْ لَا يَتَوَارَثَ الْحُلَفَاءُ فِي وِلَادَةِ الْكُفْرِ؟ فَعَابَ ذَلِكَ عَلَيْهِ الْحَسَنُ، وَابْنُ سِيرِينَ، وَقَالُوا: مَا شَأْنُهُمْ أَنْ لَا يَتَوَارَثُوا إِذَا عُوفُوا وَقَامَتْ الْبَيِّنَةُ.

L28037–28038 And through the narration of Hammad ibn Salamah, from Habib ibn al-Shahid, from Ibn Sirin and al-Hasan, both stated together: When clear evidence is established, the fetus is entitled to inherit.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَبِيبِ بْنِ الشَّهِيدِ عَنِ ابْنِ سِيرِينَ، وَالْحَسَنِ، قَالَا جَمِيعًا: إِذَا قَامَتْ الْبَيِّنَةُ وَرِثَ الْحَمِيلُ.

L28039 And through the narration of Ḥammād ibn Salamah from al-Ḥajjāj and Ḥammād ibn Abī Sulaymān (or one of them) from al-Shaʿbī and al-Nakhaʿī, they both stated: The unborn child does not inherit except by conclusive evidence. This is the position of al-Thawrī, Abū Ḥanīfah, Abū Sulaymān, and the companions of the latter two.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنِ الْحَجَّاجِ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، أَوْ أَحَدِهِمَا عَنِ الشَّعْبِيِّ، وَالنَّخَعِيِّ، قَالَا جَمِيعًا: لَا يُورَثُ الْحَمِيلُ إِلَّا بِبَيِّنَةٍ - وَهُوَ قَوْلُ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

L28040 A group has stated that agnatic heirs inherit through testimony or through admission if there is no testimony, as has been reported to us through the chain of Muḥammad ibn ʿAbd al-Salām al-Khushanī: Muḥammad ibn al-Muthannā reported to us, from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī, who said: ʿUmar ibn al-Khaṭṭāb stated, "Every lineage upon which kinship ties are maintained in Islam is an heir who both inherits and can be inherited from."

وَقَالَتْ طَائِفَةٌ: يَتَوَارَثُ الْحُلَفَاءُ بِالْبَيِّنَةِ أَوْ بِالْإِقْرَارِ إِنْ لَمْ تَكُنْ بَيِّنَةٌ، كَمَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ الْخُشَنِيِّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: كُلُّ نَسَبٍ يُتَوَاصَلُ عَلَيْهِ فِي الْإِسْلَامِ فَهُوَ وَارِثٌ مَوْرُوثٌ.

L28041 And through the chain of Ghundar from Shu’bah from Al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān, they both concurred—the uterine relative inherits.

وَمِنْ طَرِيقِ غُنْدَرٍ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ قَالَا جَمِيعًا: الْخَمِيلُ يُورَثُ.

L28042 From the chain of Ghundar, from Shuʿbah, from al-Mughīrah ibn Miqsam al-Ḍabbī, from Ibrāhīm al-Nakhaʿī, who said regarding the uterine brother: If conclusive legal proof is established that he maintained kinship ties with him as with a brother and observed the same inheritance prohibitions toward him as toward a brother, he would inherit from him.

وَمِنْ طَرِيقِ غُنْدَرٍ عَنْ شُعْبَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ الضَّبِّيِّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ فِي الْخَمِيلِ: إذَا قَامَتْ الْبَيِّنَةُ أَنَّهُ كَانَ يَصِلُ مِنْهُ مَا يَصِلُ مِنْ أَخِيهِ، وَيَحْرِمُ مِنْهُ مَا يَحْرِمُ مِنْ أَخِيهِ: وَرِثَهُ.

L28043 From the narration of Abu Dawud al-Tayalisi through Shu’bah, from al-A’mash, who said: “My father was a milk brother, so Masruq granted him inheritance.” Through another chain from ’Abd al-Rahman ibn Udhaynah: he established inheritance rights for a milk brother based on the testimony of one man and one woman affirming he was his brother, and the testimony of another woman who heard him declare: “He is my brother.”

وَمِنْ طَرِيقِ أَبِي دَاوُد الطَّيَالِسِيِّ عَنْ شُعْبَةَ عَنْ الْأَعْمَشِ قَالَ: كَانَ أَبِي خَمِيلًا فَوَرَّثَهُ مَسْرُوقٌ - وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ أُذَيْنَةَ أَنَّهُ وَرَّثَ خَمِيلًا بِشَهَادَةِ رَجُلٍ وَامْرَأَةٍ أَنَّهُ كَانَ أَخَاهُ - وَبِشَهَادَةِ امْرَأَةٍ أُخْرَى أَنَّهَا سَمِعَتْهُ يَقُولُ: هُوَ أَخِي.

L28044 And via the route of ʿAbd al-Razzāq, from Isrāʾīl ibn Yūnus, from Ashʿath ibn Abī al-Shaʿthāʾ: He said: I brought a lawsuit before Shurayḥ concerning a freedwoman affiliated with the tribe who died leaving considerable wealth. A man came to contest her agnatic heirs, presenting evidence that she would say, “My brother?” Thereupon Shurayḥ awarded him the inheritance.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إسْرَائِيلَ بْنِ يُونُسَ عَنْ أَشْعَثَ بْنِ أَبِي الشَّعْثَاءِ: أَنَّهُ قَالَ: خَاصَمْت إلَى شُرَيْحٍ فِي مَوْلَاةٍ لِلْحَيِّ مَاتَتْ عَنْ مَالٍ كَثِيرٍ، فَجَاءَ رَجُلٌ فَخَاصَمَ مَوَالِيَهَا، وَجَاءَ بِالْبَيِّنَةِ أَنَّهَا كَانَتْ تَقُولُ: أَخِي؟ فَوَرَّثَهُ شُرَيْحٌ.

L28045 Al-Shafi’i said: If evidence is established, the client inherits—whether clientage was incumbent on the deceased or not. But if there is only an acknowledgment, then the one not bound by clientage inherits through it, and the one bound by clientage does not inherit through it.

وَقَالَ الشَّافِعِيُّ: إذَا قَامَتْ الْبَيِّنَةُ وَرِثَ الْخَمِيلُ - كَانَ عَلَيْهِ وَلَاءٌ أَوْ لَمْ يَكُنْ - فَإِنْ لَمْ يَكُنْ إلَّا إقْرَارٌ فَقَطْ وَرِثَ بِهِ مَنْ لَا وَلَاءَ عَلَيْهِ، وَلَا يُورَثُ بِهِ مَنْ عَلَيْهِ وَلَاءٌ.

L28046 Mālik said: An illegitimate child does not inherit through testimony at all, unless the people of a city embraced Islam and then some of them testified for others in a manner that necessitates inheritance—in such cases, they inherit from one another based on that.

وَقَالَ مَالِكٌ: لَا يَرِثُ الْخَمِيلُ بِبَيِّنَةٍ أَصْلًا، إلَّا أَنْ يَكُونَ أَهْلُ مَدِينَةٍ أَسْلَمُوا فَشَهِدَ بَعْضُهُمْ لِبَعْضٍ بِمَا يُوجِبُ الْمِيرَاثَ فَإِنَّهُمْ يَتَوَارَثُونَ بِذَلِكَ.

L28047–28048 Abū Muḥammad said: As for the statements of Mālik and al-Shāfiʿī—we know of none before them who formulated this classification. These two opinions contradict the Qur’ān, the prophetic traditions, and foundational

principles through Mālik's omission of adjudication based on clear evidence of justice in that matter, contrary to all other rulings.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ - فَلَا نَعْلَمُ أَحَدًا قَبْلَهُمَا قَسَّمَ هَذَا التَّقْسِيمَ، وَهُمَا قَوْلَانِ مُخَالِفَانِ لِلْقُرْآنِ، وَالسُّنَنِ، وَالْأُصُولِ، فِي إِسْقَاطِ مَالِكٍ الْحُكْمَ بِبَيِّنَةِ الْعَدْلِ فِي ذَلِكَ، بِخِلَافِ جَمِيعِ الْأَحْكَامِ.

L28049 The distinction made by Al-Shāfiʿī and Mālik between those bound by clientage and those not bound by it, and between the people of Medina who embrace Islam or are captured and subsequently embrace Islam. We hold that acknowledgment of births necessitating inheritance is indispensable. We do not know of any validity for parentage at all except through such acknowledgment. Thus, no one's filiation is valid unless acknowledged by the fathers that he was born, or by two brothers who come forward as traveling witnesses, and their inheritance is obligatory.

وَتَفْرِيقُ الشَّافِعِيِّ، وَمَالِكٍ بَيْنَ مَنْ عَلَيْهِ وَلَاءٌ وَبَيْنَ مَنْ لَا وَلَاءَ عَلَيْهِ، وَبَيْنَ أَهْلِ الْمَدِينَةِ يُسْلِمُونَ، أَوْ يُسْبَوْنَ فَيُسْلِمُوا، وَوَجَدْنَا الْإِقْرَارَ بِالْمَوَالِيدِ الْمُوجِبَةِ لِلْمَوَارِيثِ: لَا نَعْلَمُ أَلْبَتَّةَ صِحَّةَ الْمَوَالِيدِ إِلَّا بِهِ، فَمَا تَصِحُّ بُنُوَّةُ أَحَدٍ إِلَّا بِإِقْرَارِ الْآبَاءِ أَنَّهُ وُلِدَ، أَوْ بِإِقْرَارِ أَخَوَيْنِ يَقْدُمَانِ مُسَافِرَيْنِ وَيَجِبُ مِيرَاثُهُمَا.

L28050 With this acknowledgment, the disbelievers from the Dhimmis inherit from one another when they embrace Islam according to our school. Thus, there is no valid basis for distinguishing between any of these matters. Through this acknowledgment, the emigrants during the time of the Messenger of Allah—peace and blessings be upon him—inherited from the Arab tribes and others. Therefore, differentiating between these rulings is an evident error—and success is from Allah, the Exalted.

وَبِهَذَا الْإِقْرَارِ يَتَوَارَثُ أَهْلُ الْكُفْرِ إِذَا أَسْلَمُوا عِنْدَنَا مِنْ أَهْلِ الذِّمَّةِ، فَالتَّفْرِيقُ بَيْنَ كُلِّ ذَلِكَ لَا وَجْهَ لَهُ، وَبِالْإِقْرَارِ تَوَارَثَ الْمُهَاجِرُونَ فِي عَصْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَحْيَاءِ الْعَرَبِ وَغَيْرِهِمْ، فَالتَّفْرِيقُ بَيْنَ ذَلِكَ خَطَأٌ لَا خَفَاءَ بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مِيرَاث الْمُسْلِم الْكَافِر والكافر الْمُسْلِم]

The legal issue concerning the inheritance of a Muslim from a non-Muslim and a non-Muslim from a Muslim.

١٧٤٦ - مَسْأَلَةٌ وَلَا يَرِثُ الْمُسْلِمُ الْكَافِرَ، وَلَا الْكَافِرُ الْمُسْلِمَ - الْمُرْتَدُّ وَغَيْرُ الْمُرْتَدِّ سَوَاءٌ - إِلَّا أَنَّ الْمُرْتَدَّ مُذْ يَرْتَدُّ فَكُلُّ مَا ظَفِرَ بِهِ مِنْ مَالِهِ فَلِبَيْتِ مَالِ الْمُسْلِمِينَ - رَجَعَ إِلَى الْإِسْلَامِ أَوْ مَاتَ مُرْتَدًّا، أَوْ قُتِلَ مُرْتَدًّا، أَوْ لَحِقَ بِدَارِ الْحَرْبِ - وَكُلُّ مَنْ لَمْ يَظْفَرْ بِهِ مِنْ مَالِهِ حَتَّى قُتِلَ أَوْ مَاتَ مُرْتَدًّا: فَلِوَرَثَتِهِ مِنْ الْكُفَّارِ، فَإِنْ رَجَعَ إِلَى الْإِسْلَامِ فَهُوَ لَهُ، أَوْ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ إِنْ مَاتَ مُسْلِمًا.

Issue 1746: A Muslim does not inherit from a non-Muslim, nor does a non-Muslim inherit from a Muslim—whether the non-Muslim is an apostate or a disbeliever who never apostatized. However, from the moment one apostatizes, any of their property seized thereafter belongs to the Muslim public treasury, whether they return to Islam, die as apostates, are killed as apostates, or flee to the abode of war. Any of their property not seized before their death or execution as apostates goes to their non-Muslim heirs. If they return to Islam, the property reverts to them; if they die as Muslims, it goes to their Muslim heirs.

L28053 It has been narrated to us through the chain of Sufyān ibn 'Uyaynah from

رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ عَمْرِو بْنِ عُثْمَانَ بْنِ عَفَّانَ عَنْ أُسَامَةَ بْنِ زَيْدٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَرِثُ الْكَافِرُ الْمُسْلِمَ وَلَا الْمُسْلِمُ الْكَافِرَ» وَهَذَا عُمُومٌ لَا يَجُوزُ أَنْ يُخَصَّ مِنْهُ شَيْءٌ.

al-Zuhrī from ʾAlī ibn al-Ḥusayn from ʾAmr ibn ʾUthmān ibn ʾAffān from Usāmah ibn Zayd from the Prophet—peace and blessings of Allah be upon him—who said: "The disbeliever does not inherit from the Muslim, nor does the Muslim inherit from the disbeliever." This is a general ruling, and nothing from it may be particularized.

فَإِنْ قِيلَ: إنَّكُمْ تَقُولُونَ: إنْ مَاتَ عَبْدٌ نَصْرَانِيٌّ، أَوْ مَجُوسِيٌّ، أَوْ يَهُودِيٌّ - وَسَيِّدُهُ مُسْلِمٌ - فَمَالُهُ لِسَيِّدِهِ؟ قُلْنَا: نَعَمْ، لَا بِالْمِيرَاثِ، لَكِنْ لِأَنَّ لِلسَّيِّدِ أَخْذَهُ فِي حَيَاتِهِ فَهُوَ لَهُ بَعْدَ وَفَاتِهِ وَالْعَبْدُ لَا يُورَثُ بِالْخَبَرِ الَّذِي جَاءَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي مِيرَاثِ الْمُكَاتَبِ فَلَمْ يَجْعَلْ لِلْجُزْءِ الْمَمْلُوكِ مِيرَاثًا - لَا لَهُ وَلَا مِنْهُ -.

L28054 If it is said: "Do you claim that if a Christian, Zoroastrian, or Jewish slave dies—while his master is Muslim—his property belongs to his master?" We answer: Yes, not through inheritance, but because the master retains ownership of it during the slave's lifetime, thus it remains with him after the slave's death. The slave is not subject to inheritance, according to the prophetic report transmitted about the inheritance of a mukatab (a slave under manumission contract), wherein no inheritance rights were established for the master's share—neither does it inherit nor can it be inherited from.

وَاخْتَلَفَ النَّاسُ فِي بَعْضِ هَذَا -: فَرُوِّينَا عَنْ مُعَاذِ بْنِ جَبَلٍ، وَمُعَاوِيَةَ، وَيَحْيَى بْنِ يَعْمُرَ، وَإِبْرَاهِيمَ، وَمَسْرُوقٍ: تَوْرِيثَ الْمُسْلِمِ مِنْ الْكَافِرِ، وَلَا يَرِثُ الْكَافِرُ الْمُسْلِمَ -: وَهُوَ قَوْلُ إِسْحَاقَ بْنِ رَاهْوَيْهِ، وَهُوَ عَنْ مُعَاوِيَةَ ثَابِتٌ.

L28055–28057 People have differed concerning some of this—: It has been narrated to us from Mu'adh ibn Jabal, Mu'awiyah, Yahya ibn Ya'mur, Ibrāhīm al-Nakhaʿī, and Masruq regarding the permissibility of a Muslim inheriting from a disbeliever, while a disbeliever does not inherit from a Muslim. This is the opinion of Ishaq ibn Rahawayh, and it is firmly established from Mu'awiyah.

كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّ مُعَاوِيَةَ كَانَ يُوَرِّثُ الْمُسْلِمَ مِنْ الْكَافِرِ، وَلَا يُوَرِّثُ الْكَافِرَ مِنْ الْمُسْلِمِ.

L28058 As we have been narrated through the chain of Ḥammād ibn Salmah: reported from Dāwūd ibn Abī Hind, from al-Shaʿbī, from Masrūq, that Muʿāwiyah granted Muslims inheritance rights from disbelievers but denied disbelievers inheritance rights from Muslims.

قَالَ مَسْرُوقٌ: مَا حَدَثَ فِي الْإِسْلَامِ قَضَاءٌ أَعْجَبُ إلَيَّ مِنْهُ؟ وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ وَلَا الْكَافِرُ الْمُسْلِمَ إلَّا أَنْ يَكُونَ مُسْلِمٌ أَعْتَقَ كَافِرًا فَإِنَّهُ يَرِثُهُ - وَاحْتَجَّ لِهَذَا الْقَوْلِ بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ ابْنِ جُرَيْجٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَرِثُ الْمُسْلِمُ النَّصْرَانِيَّ إلَّا أَنْ يَكُونَ عَبْدَهُ أَوْ أَمَتَهُ» .

L28059 Masruq said: "No legal ruling has occurred in Islam more astonishing to me than this." Ahmad ibn Hanbal said: "A Muslim does not inherit from a disbeliever, nor does a disbeliever inherit from a Muslim, unless a Muslim manumits a disbeliever, in which case he inherits from him." He cited as evidence for this opinion what was narrated to us through Ibn Wahb's chain from Muhammad ibn ʻAmr, from Ibn Jurayj, from Abu al-Zubayr, from Jabir, who said: The Messenger of Allah—peace and blessings be upon him—said: "A Muslim does not inherit from a Christian unless he is his male slave or female slave."

L28060 Abu Muhammad said: Abu al-Zubayr's narration from Jabir constitutes

tadlis (deliberate omission of a narrator's identity to conceal a weak link) if he does not explicitly state "I heard," "I," or "we." Even if the narration were authentic, its chain includes no narrators except his own male slave or female slave. Neither a freed male slave nor a freed female slave may be referred to as "male slave" or "female slave."

قَالَ أَبُو مُحَمَّد: أَبُو الزُّبَيْرِ عَنْ جَابِرٍ مَا لَمْ يَقُلْ " سَمِعْت، أَوْ أَنَا، أَوْ أَرِنَا " تَدْلِيسٌ، وَلَوْ صَحَّ فَلَيْسَ فِيهِ: إلَّا عَبْدُهُ، أَوْ أَمَتُهُ، وَلَا يُسَمَّى الْمُعْتَقُ، وَلَا الْمُعْتَقَةُ: عَبْدًا، وَلَا أَمَةً.

L28061 They differed regarding the inheritance of the apostate. It is authentically established from Ali ibn Abi Talib that it belongs to his Muslim heirs—as we were transmitted through the chain of Al-Hajjaj ibn Al-Minhal, who narrated to us: Abu Mu'awiyah al-Darir from al-A'mash from Abi Amr al-Shaybani—that he assigned the apostate's inheritance to their Muslim heirs. A similar narration is reported from Ibn Mas'ud, but it has not been authenticated.

وَاخْتَلَفُوا فِي مِيرَاثِ الْمُرْتَدِّ: فَصَحَّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّهُ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو مُعَاوِيَةَ الضَّرِيرُ عَنْ الْأَعْمَشِ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ جَعَلَ مِيرَاثَ الْمُرْتَدِّ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ - وَرُوِيَ مِثْلُهُ عَنْ ابْنِ مَسْعُودٍ، وَلَمْ يَصِحَّ.

L28062 From Waki', from Sufyan al-Thawri, from Musa ibn Abi Kathir, who said: I asked Sa'id ibn al-Musayyib about the apostate: Do his sons inherit from him? He replied: "Muslims inherit from apostates, but apostates do not inherit from Muslims. His wife observes a waiting period of three qurū'. If he is killed, his wife observes a waiting period of four months and ten days."

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مُوسَى بْنِ أَبِي كَثِيرٍ قَالَ: سَأَلْت سَعِيدَ بْنَ الْمُسَيِّبِ عَنْ الْمُرْتَدِّ هَلْ يَرِثُ الْمُرْتَدَّ بَنُوهُ؟ فَقَالَ: نَرِثُهُمْ وَلَا يَرِثُونَنَا، قَالَ: وَتَعْتَدُّ امْرَأَتُهُ ثَلَاثَةَ قُرُوءٍ، فَإِنْ قُتِلَ: فَأَرْبَعَةَ أَشْهُرٍ وَعَشْرًا.

L28063 And through the narration of Sufyān al-Thawrī from ʿAmr ibn ʿUbayd, who narrated from al-Ḥasan, he said: The Muslims would validate the inheritance of the apostate for his family when he was killed.

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمْرِو بْنِ عُبَيْدٍ عَنْ الْحَسَنِ قَالَ: كَانَ الْمُسْلِمُونَ يُطَيِّبُونَ مِيرَاثَ الْمُرْتَدِّ لِأَهْلِهِ إذَا قُتِلَ.

L28064 It has been narrated that the transfer of inheritance of the property of one killed for apostasy is to his Muslim heirs, as narrated from ʿUmar ibn ʿAbd al-ʿAzīz, al-Shaʿbī, al-Ḥakam ibn ʿUtaybah, al-Awzāʿī, and Isḥāq ibn Rāhawayh.

وَرُوِيَ تَوْرِيثُ مَالِ الْمَقْتُولِ عَلَى الرِّدَّةِ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَالشَّعْبِيِّ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَالْأَوْزَاعِيِّ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ.

L28065–28067 Sufyan al-Thawri said: Any wealth that remained in his ownership until he committed apostasy belongs to his Muslim legal heirs. Whatever he acquires after his apostasy belongs to all Muslims. Abu Hanifah said: If he returns to Islam, his wealth remains his. If he is executed for apostasy or flees to the land of war, whatever he acquired after apostasy belongs to all Muslims, while what he owned beforehand belongs to his Muslim heirs. The judge must decree the emancipation of his slaves designated for eventual emancipation and the mothers of his children. If he returns to the land of Islam as a Muslim,

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: مَا كَانَ مِنْ مَالِهِ فِي مِلْكِهِ إلَى أَنْ ارْتَدَّ فَلِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ، وَمَا كَسَبَ بَعْدَ رِدَّتِهِ فَلِجَمِيعِ الْمُسْلِمِينَ - وَقَالَ أَبُو حَنِيفَةَ: إنْ رَاجَعَ الْإِسْلَامَ فَمَالُهُ فَإِنْ قُتِلَ عَلَى الرِّدَّةِ أَوْ لَحِقَ بِدَارِ الْحَرْبِ فَمَا كَسَبَ بَعْدَ الرِّدَّةِ فَلِجَمِيعِ الْمُسْلِمِينَ، وَمَا كَانَ لَهُ قَبْلَ الرِّدَّةِ فَلِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ، وَيَقْضِي الْقَاضِي بِعِتْقِ مُدَبِّرِيهِ، وَأُمَّهَاتِ أَوْلَادِهِ،

فَإِنْ رَجَعَ إِلَى أَرْضِ الْإِسْلَامِ مُسْلِمًا أَخَذَ مَا وَجَدَ مِنْ مَالِهِ بِأَيْدِي وَرَثَتِهِ، وَلَا يَرْجِعُ عَلَيْهِمْ بِشَيْءٍ مِمَّا أَكَلُوهُ، أَوْ أَتْلَفُوهُ، وَكُلُّ مَا حَمَلَ مِنْ مَالِهِ إِلَى أَرْضِ الْحَرْبِ فَهُوَ لِجَمِيعِ الْمُسْلِمِينَ إِذَا ظُفِرَ بِهِ، لَا لِوَرَثَتِهِ، فَلَوْ رَجَعَ مِنْ أَرْضِ الْحَرْبِ إِلَى أَرْضِ الْإِسْلَامِ فَأَخَذَ مَالًا مِنْ مَالِهِ فَنَهَضَ بِهِ إِلَى أَرْضِ الْحَرْبِ فَظُفِرَ بِهِ، فَهُوَ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ، فَلَوْ كَانَتْ لَهُ أَمَتَانِ إِحْدَاهُمَا مُسْلِمَةٌ، وَالْأُخْرَى كَافِرَةٌ، فَوَلَدَتَا مِنْهُ لِأَكْثَرَ مِنْ سِتَّةِ أَشْهُرٍ - مُذْ ارْتَدَّ - فَأَقَرَّ بِهِمَا لَحِقَا بِهِ جَمِيعًا، وَوَرِثَهُ ابْنُ الْمُسْلِمَةِ، وَلَمْ يَرِثْهُ ابْنُ الذِّمِّيَّةِ.

he reclaims whatever portion of his wealth remains in the possession of his heirs, but cannot claim restitution for anything they consumed or destroyed. All property he transports from his wealth to the land of war becomes forfeit to all Muslims if captured, not to his heirs. If he returns from the land of war to the land of Islam, takes possession of his wealth, then transports it to the land of war where it is captured, such wealth belongs to his Muslim heirs. If he had two female slaves—one Muslim and the other a non-Muslim—and both bore him children more than six months since his apostasy, with his acknowledgment of parentage, both children are legally recognized as his offspring. Only the child of the Muslim slave inherits from him, while the child of the dhimmi woman does not.

L28068 قَالَ: وَلَا يَرِثُ الْمُرْتَدُّ - مُذْ يَرْتَدُّ - إِلَى أَنْ يُقْتَلَ أَوْ يَمُوتَ، أَوْ يُسْلِمَ أَحَدٌ مِنْ وَرَثَتِهِ الْمُسْلِمِينَ، وَلَا الْكُفَّارِ أَصْلًا.

He said: The apostate does not inherit—from the moment he apostatizes—until he is killed, dies, or one of his Muslim heirs embraces Islam, nor do non-Muslims inherit anything at all.

L28069 وَقَالَتْ طَائِفَةٌ: مِيرَاثُهُ لِبَيْتِ مَالِ الْمُسْلِمِينَ: - كَمَا رُوِّينَا عَنْ ابْنِ وَهْبٍ عَنْ الثِّقَةِ عِنْدَهُ عَنْ عَبَّادِ بْنِ كَثِيرٍ عَنْ أَبِي إِسْحَاقَ الْهَمْدَانِيِّ عَنْ الْحَارِثِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: مِيرَاثُ الْمُرْتَدِّ فِي بَيْتِ مَالِ الْمُسْلِمِينَ وَبِهِ يَقُولُ رَبِيعَةُ، وَابْنُ أَبِي لَيْلَى، وَالشَّافِعِيُّ، وَأَبُو ثَوْرٍ.

A group said: His inheritance belongs to the treasury of the Muslims - as we reported from Ibn Wahb, from a reliable narrator according to him, from Abbad ibn Kathir, from Abu Ishaq al-Hamdani, from al-Harith, from Ali ibn Abi Talib, who said: "The inheritance of the apostate goes to the treasury of the Muslims." This is the view of Rabi'ah, Ibn Abi Layla, al-Shafi'i, and Abu Thawr.

L28070 وَقَالَ مَالِكٌ: إِنْ قُتِلَ، أَوْ مَاتَ، أَوْ لَحِقَ بِدَارِ الْحَرْبِ، فَهُوَ فِي بَيْتِ مَالِ الْمُسْلِمِينَ، فَإِنْ رَجَعَ إِلَى الْإِسْلَامِ فَمَالُهُ لَهُ، فَإِنْ ارْتَدَّ عِنْدَ مَوْتِهِ، فَإِنْ اُتُّهِمَ: إِنَّمَا ارْتَدَّ لِيَمْنَعَ وَرَثَتَهُ؟ فَمَالُهُ لِوَرَثَتِهِ - هَذَا مَعَ قَوْلِهِ: إِنَّ مَنْ ارْتَدَّ عِنْدَ مَوْتِهِ لَمْ تَرِثْهُ امْرَأَتُهُ؛ لِأَنَّهُ لَا يُتَّهَمُ أَحَدٌ بِأَنَّهُ يَرْتَدُّ لِيَمْنَعَ أَخْذَ الْمِيرَاثِ.

Malik said: If he is killed, dies, or joins the territory of war, his property belongs to the Muslim public treasury. If he returns to Islam, his property is restored to him. If he apostatizes at the time of his death and is suspected of having apostatized to prevent the taking of inheritance, then his property belongs to his heirs. This is in accordance with his view that if someone apostatizes at the time of death, his wife does not inherit from him, because no one is suspected of apostatizing to prevent the taking of inheritance.

L28071 وَقَالَ أَبُو سُلَيْمَانَ: مِيرَاثُ الْمُرْتَدِّ إِنْ قُتِلَ لِوَرَثَتِهِ مِنْ الْكُفَّارِ.

Abu Sulaiman said: If an apostate is killed, his estate belongs to his heirs among the disbelievers.

L28072 وَقَالَ أَشْهَبُ: مَالُ الْمُرْتَدِّ - مُذْ يَرْتَدُّ - لِبَيْتِ مَالِ الْمُسْلِمِينَ.

Ashhab said: The property of the apostate—from the moment he apostatizes—belongs to the *Bayt al-Mal* of the Muslims.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مَالِكٍ: فَظَاهِرُ الِاضْطِرَابِ وَالتَّنَاقُضِ كَمَا ذَكَرْنَا، وَحُكْمٌ بِالتُّهَمَةِ؟ وَهُوَ الظَّنُّ الْكَاذِبُ الَّذِي حَرَّمَ الْقُرْآنُ وَالسُّنَّةُ الْحُكْمَ بِهِ، وَأَمَّا قَوْلُ سُفْيَانَ: فَتَقْسِيمٌ فَاسِدٌ لَا دَلِيلَ عَلَيْهِ مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا قِيَاسٍ، وَلَا قَوْلِ صَاحِبٍ.

L28073 Abu Muhammad said: As for Malik's statement, it exhibits apparent inconsistency and contradiction as we have mentioned—a ruling based on suspicion? That is the false presumption which the Quran and Sunnah prohibited ruling by it. As for Sufyan's statement, it constitutes an invalid division unsupported by any evidence from the Quran, Sunnah, analogical reasoning, or opinion of a companion.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ - فَوَسَاوِسُ كَثِيرَةٌ فَاحِشَةٌ -: مِنْهَا: تَفْرِيقُهُ بَيْنَ الْمُرْتَدِّ وَسَائِرِ الْكُفَّارِ.

L28074–28076 As for the statement of Abū Ḥanīfah—numerous shameful whisperings—Among them is his distinction between the apostate and the rest of the disbelievers.

وَمِنْهَا: تَوْرِيثُهُ وَرَثَتَهُ عَلَى حُكْمِ الْمَوَارِيثِ وَهُوَ حَيٌّ بَعْدُ.

L28077 Among these rulings is his causing his heirs to inherit according to the rules of inheritance while he is still alive.

وَمِنْهَا: قَضَاؤُهُ لَهُ إِنْ رَجَعَ بِمَا وَجَدَ، لَا بِمَا اسْتَهْلَكُوا - وَلَا يَخْلُو مِنْ أَنْ يَكُونَ وَجَبَ لِلْوَرَثَةِ مَا قَضَوْا لَهُمْ بِهِ، أَوْ لَمْ يَجِبْ لَهُمْ، وَلَا سَبِيلَ إِلَى ثَالِثٍ.

L28078 Among them is his ruling in his favor if he bases [compensation] on what is established, not what they consumed. This cannot but result in either the heirs being obligated to what was ruled for them, or not being obligated – with no possibility of a third alternative.

فَإِنْ كَانَ وَجَبَ لَهُمْ؟ فَلِأَيِّ شَيْءٍ يَنْتَزِعُهُ مِنْ أَيْدِيهِمْ - وَهَذَا ظُلْمٌ وَبَاطِلٌ وَجَوْرٌ.

L28079 If it was their due, then why does he seize it from their hands? This is oppression, falsehood, and tyranny.

وَإِنْ كَانَ لَمْ يَجِبْ لَهُمْ؟ فَلِأَيِّ شَيْءٍ اسْتَحَلُّوا أَنْ يَقْضُوا لَهُمْ بِهِ حَتَّى أَكَلُوهُ، وَوَرِثَ عَنْهُمْ، وَتَحَكَّمُوا فِيهِ، وَلَئِنْ كَانَ رَجَعَ إِلَى الْمُرَاجِعِ إِلَى الْإِسْلَامِ؟ فَمَا الَّذِي خُصَّ بِرُجُوعِهِ إِلَيْهِ مَا وَجَدَ دُونَ مَا لَمْ يَجِدْ؟ وَإِنْ كَانَ لَمْ يَرْجِعْ إِلَيْهِ، فَبِأَيِّ شَيْءٍ قَضَوْا لَهُ بِهِ؟ إِنَّ هَذَا لَضَلَالٌ لَا خَفَاءَ بِهِ وَأَعْجَبُ شَيْءٍ اعْتِرَاضُ هَؤُلَاءِ النَّوْكَى عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي نِكَاحِهِ أُمَّ الْمُؤْمِنِينَ صَفِيَّةَ، وَجَعْلِهِ عِتْقَهَا صَدَاقَهَا بِقَوْلِهِمْ السَّخِيفِ: لَا يَخْلُو مِنْ أَنْ يَكُونَ تَزَوَّجَهَا وَهِيَ أَمَةٌ، فَهَذَا لَا يَجُوزُ، أَوْ تَزَوَّجَهَا وَهِيَ حُرَّةٌ مُعْتَقَةٌ - فَهَذَا نِكَاحٌ بِلَا صَدَاقٍ، مَعَ إِجَازَتِهِمْ لِأَبِي حَنِيفَةَ هَذِهِ الْحَمَاقَاتِ،

L28080 If it had not been obligatory for them, then why did they deem it permissible to adjudicate in their favor until they consumed it, it was inherited from them, and exercised dominion over it? If the one returning had returned to Islam, why was his return specifically applied to what was established rather than what was not? If he had not returned to Islam, by what justification did they rule in his favor? Verily, this is manifest misguidance. Most astounding is the objection of these fools against the Messenger of Allah (peace and blessings of Allah be upon him) concerning his marriage to Umm al-Mu'minīn Ṣafiyyah and his making her emancipation her dowry, through their frivolous claim: "Either he married her while she was a slave—which is impermissible—or he married her as an emancipated woman, a marriage without a dowry"—despite their endorsement of such follies and contradictions by Abū Ḥanīfah. The Messenger of Allah (peace and blessings of Allah be upon him) only married Ṣafiyyah (may Allah be pleased with her) when

she was an emancipated woman, with a valid and complete dowry, his act of emancipating her.

وَالْمُنَاقَضَاتِ، وَمَا تَزَوَّجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَفِيَّةَ - رَضِيَ اللَّهُ عَنْهَا - إِلَّا وَهِيَ حُرَّةٌ مُعْتَقَةٌ بِصَدَاقٍ قَدْ صَحَّ لَهَا وَتَمَّ، وَهُوَ عِتْقُهُ لَهَا.

L28081 Then, Abu Hanifah's distinction between property left in the land of Islam, property he carried with him to the land of disbelief, and property he abandoned but later retrieved and transported - this is a compounded fabrication of his own making - and we seek refuge in Allah from such confounding. Yet these corrupt rulings are not preserved from anyone before Abu Hanifah, nor from anyone other than him except those who strayed through blind imitation of him.

ثُمَّ تَفْرِيقُ أَبِي حَنِيفَةَ بَيْنَ مَالٍ تَرَكَهُ فِي أَرْضِ الْإِسْلَامِ، أَوْ مَالٍ حَمَلَهُ مَعَ نَفْسِهِ إِلَى أَرْضِ الْكُفْرِ، وَمَالٍ تَرَكَهُ ثُمَّ رَجَعَ فِيهِ فَحَمَلَهُ - فَهَذَا مِنْ الْمُضَاعَفِ نَسْجُهُ - وَنَعُوذُ بِاَللَّهِ مِنْ التَّخْلِيطِ - مَعَ أَنَّ هَذِهِ الْأَحْكَامَ الْفَاسِدَةَ لَا تُحْفَظُ عَنْ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ، وَلَا عَنْ أَحَدٍ غَيْرِهِ قَبْلَ مَنْ ضَلَّ بِتَقْلِيدِهِ.

L28082 As for those among the early scholars who claimed that his inheritance belongs to his Muslim heirs, this view has no basis except clinging to the apparent meaning of inheritance verses and the claim that He the Exalted did not distinguish between a believer and a disbeliever. They should be told: The Sunnah has clarified that, yet you yourselves denied the mukatab his inheritance while the Quran entitles him to it, as does the Sunnah. You prohibited the killer from inheriting based on an unreliable narration, and barred Muslims from inheriting from other disbelievers—even though some early scholars themselves upheld this view. This constitutes arbitrary judgment with no basis, thus rendering their reliance on the Quran invalid.

وَأَمَّا مَنْ قَالَ مِنْ السَّلَفِ: بِأَنَّ مِيرَاثَهُ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ؟ فَلَا حُجَّةَ لِهَذَا الْقَوْلِ إِلَّا التَّعَلُّقُ بِظَاهِرِ آيَاتِ الْمَوَارِيثِ، وَأَنَّهُ تَعَالَى لَمْ يَخُصَّ مُؤْمِنًا مِنْ كَافِرٍ؟ فَيُقَالُ لَهُمْ: لَقَدْ بَيَّنَتْ السُّنَّةُ ذَلِكَ، وَأَنْتُمْ قَدْ مَنَعْتُمْ الْمُكَاتَبَ مِنْ الْمِيرَاثِ وَالْقُرْآنُ يُوجِبُهُ لَهُ، وَالسُّنَّةُ كَذَلِكَ، وَمَنَعْتُمْ الْقَاتِلَ بِرِوَايَةٍ لَا تَصِحُّ، وَمَنَعْتُمْ سَائِرَ الْكُفَّارِ مِنْ أَنْ يَرِثَهُمْ الْمُسْلِمُونَ؟ وَقَدْ قَالَ بِذَلِكَ بَعْضُ السَّلَفِ؟ وَهَذَا تَحَكُّمٌ لَا وَجْهَ لَهُ، فَبَطَلَ تَعَلُّقُهُمْ بِالْقُرْآنِ فِي ذَلِكَ.

L28083–28085 Abū Muḥammad said: The position we state is what we previously mentioned. Our demonstrative evidence for this -: that every Whatever is seized from his wealth is the property of a disbeliever with no covenant of protection for him. The Exalted has said: _"And He caused you to inherit their land, their homes, and their wealth"_ [Al-Aḥzāb: 27]. The wealth of a disbeliever is not prohibited except by a covenant of protection, and this one has no such covenant. If he returns to Islam, he does so only when his ownership of it—whether for him or from him—has been nullified, and it becomes assigned to the Muslims. Thus, he has no right to it except as one of the Muslims.[1]

قَالَ أَبُو مُحَمَّدٍ: وَالَّذِي نَقُولُ بِهِ فَهُوَ الَّذِي ذَكَرْنَا قَبْلُ، بُرْهَانُنَا عَلَى ذَلِكَ -: أَنَّ كُلَّ مَا ظُفِرَ بِهِ مِنْ مَالِهِ فَهُوَ مَالُ كَافِرٍ، لَا ذِمَّةَ لَهُ، وَقَدْ قَالَ تَعَالَى: {وَأَوْرَثَكُمْ أَرْضَهُمْ وَدِيَارَهُمْ وَأَمْوَالَهُمْ} [الأحزاب: ٢٧] وَلَا يُحَرَّمُ مَالُ كَافِرٍ إِلَّا بِالذِّمَّةِ، وَهَذَا لَا ذِمَّةَ لَهُ، فَإِنْ رَجَعَ إِلَى الْإِسْلَامِ فَلَمْ يَرْجِعْ إِلَّا وَقَدْ بَطَلَ مِلْكُهُ لَهُ، أَوْ عَنْهُ، وَوَجَبَ لِلْمُسْلِمِينَ، فَلَا حَقَّ لَهُ فِيهِ إِلَّا كَأَحَدِ الْمُسْلِمِينَ.

L28086 As for the property of his that has not been seized, it remains established

[1] **Qur'an references (L28083):** Qur'an 33:27 (Al-Ahzab).

and valid in his ownership as long as Muslims have not seized it. There is no distinction between him and the rest of the people of war who have no pledge of security in this matter.

L28087 If he dies or is killed, it belongs exclusively to his heirs who are disbelievers, based on the verse of Allah the Exalted: "And those who disbelieve are allies of one another" [Al-Anfal: 73]. The general verses of inheritance apply to Muslims and disbelievers, and nothing is exempted from their ruling except what is excluded by an authentic Sunnah text.[2]

L28088 If they are under the *dhimmah*, he must surrender to them whoever he captures, for they have acquired ownership of him through inheritance.

L28089 And if they are combatants, what is seized is taken for the Muslims whenever it is obtained.

L28090 If he embraces Islam, it is his, and his heirs from among the Muslims inherit it from him, as with the rest of the Muslims.

L28091 This is the ruling of the Quran and the Sunnahs, and the dictate of consensus—and all praise is due to Allah, Lord of the worlds.

L28092 1747 - Issue: If someone for whom an heir has died while both [the inheritor and heir] were disbelievers, then if the surviving inheritor embraces Islam, their inheritance is taken according to the Sunnah of Islam. The inheritances of Dhimmis are not divided except by the division ordained by Allah the Exalted in the Quran for inheritances.

L28093 The proof of this -: the word of Allah, the Most High: "And whoever seeks a religion other than Islam, it will never be accepted of him" [Al-Imran: 85].[3]

L28094 And the statement of the Exalted One: {Is it the judgment of the Jahiliyyah they desire? And who is better than Allah in judgment?} [Al-Ma'idah: 50].[4]

L28095 And I do not marvel at one who abandons the judgment of the Quran—

وَأَمَّا مَا لَمْ يُظْفَرْ بِهِ مِنْ مَالِهِ فَهُوَ بَاقٍ عَلَى مَا قَدْ ثَبَتَ وَصَحَّ مِنْ مِلْكِهِ لَهُ مَا لَمْ يَظْفَرْ الْمُسْلِمُونَ بِهِ، لَا فَرْقَ بَيْنَهُ وَبَيْنَ سَائِرِ أَهْلِ الْحَرْبِ الَّذِينَ لَا ذِمَّةَ لَهُمْ فِي ذَلِكَ.

فَإِنْ مَاتَ أَوْ قُتِلَ فَهُوَ لِوَرَثَتِهِ الْكُفَّارِ خَاصَّةً، لِقَوْلِ اللَّهِ تَعَالَى: {وَالَّذِينَ كَفَرُوا بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [الأنفال: ٧٣] وَآيَاتُ الْمَوَارِيثِ الْعَامَّةِ لِلْمُسْلِمِينَ وَالْكُفَّارِ، فَلَا يَخْرُجُ عَنْ حُكْمِهَا إِلَّا مَا أَخْرَجَهُ نَصُّ سُنَّةٍ صَحِيحٌ.

فَإِنْ كَانُوا ذِمَّةً سَلَّمَ إِلَيْهِمْ مَنْ ظَفِرَ بِهِ؛ لِأَنَّهُمْ قَدْ مَلَكُوهُ بِالْمِيرَاثِ.

وَإِنْ كَانُوا حَرْبِيِّينَ أُخِذَ لِلْمُسْلِمِينَ مَتَى ظُفِرَ بِهِ.

فَإِنْ أَسْلَمَ فَهُوَ لَهُ يَرِثُهُ عَنْهُ وَرَثَتُهُ مِنْ الْمُسْلِمِينَ كَسَائِرِ الْمُسْلِمِينَ.

وَهَذَا حُكْمُ الْقُرْآنِ وَالسُّنَنِ، وَمُوجَبُ الْإِجْمَاعِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

١٧٤٧ - مَسْأَلَةٌ وَمَنْ مَاتَ لَهُ مَوْرُوثٌ وَهُمَا كَافِرَانِ، ثُمَّ أَسْلَمَ الْحَيُّ أُخِذَ مِيرَاثُهُ عَلَى سُنَّةِ الْإِسْلَامِ - وَلَا تُقَسَّمُ مَوَارِيثُ أَهْلِ الذِّمَّةِ إِلَّا عَلَى قَسْمِ اللَّهِ تَعَالَى الْمَوَارِيثَ فِي الْقُرْآنِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَمَنْ يَبْتَغِ غَيْرَ الإِسْلامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ} [آل عمران: ٨٥] .

وقَوْله تَعَالَى: {أَفَحُكْمَ الْجَاهِلِيَّةِ يَبْغُونَ وَمَنْ أَحْسَنُ مِنَ اللَّهِ حُكْمًا} [المائدة: ٥٠] .

[2] **Qur'an references (L28087):** Qur'an 8:73 (Al-Anfal).
[3] **Qur'an references (L28093):** Qur'an 3:85 (Ali 'Imran).
[4] **Qur'an references (L28094):** Qur'an 5:50 (Al-Ma'idah).

while acknowledging it to be the truth and the ruling of Allah, the Most High—and adjudicates by the rulings of disbelief—while acknowledging it to be the judgment of the accursed Satan, manifest misguidance, and that which it is unlawful to act upon. Verily, this is an astounding wonder!

وَلَا أَعْجَبُ مِمَّنْ يَدَعُ حُكْمَ الْقُرْآنِ - وَهُوَ يُقِرُّ أَنَّهُ الْحَقُّ، وَأَنَّهُ حُكْمُ اللَّهِ تَعَالَى - وَيَحْكُمُ بِحُكْمِ الْكُفْرِ - وَهُوَ يُقِرُّ أَنَّهُ حُكْمُ الشَّيْطَانِ الرَّجِيمِ، وَأَنَّهُ الضَّلَالُ الْمُبِينُ، وَالَّذِي لَا يَحِلُّ الْعَمَلُ بِهِ؟ إِنَّ هَذَا لَعَجَبٌ عَجِيبٌ.

L28096–28098 It has been transmitted to us by way of Ibn Wahb from ʿAmr ibn al-Ḥārith from Saʿīd ibn Abī Hilāl—Zayd ibn Aslam. He was informed that a Jewish woman came to Umar ibn al-Khattab and said: "My son has died, and the Jews claim I have no right to his inheritance." Umar summoned them and said: "Will you not give this woman her right?" They replied: "We find no right for her in our scripture." He asked: "In the Torah?" They said: "Yes, in the Doubled." He asked: "What is the Doubled?" They answered: "A book written by groups of learned and wise scholars." Umar rebuked them and said: "Go and give her her right."

رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ سَعِيدِ بْنِ أَبِي هِلَالٍ: أَنَّ زَيْدَ بْنَ أَسْلَمَ حَدَّثَهُ أَنَّ يَهُودِيَّةً جَاءَتْ إِلَى عُمَرَ بْنِ الْخَطَّابِ فَقَالَتْ: إِنَّ ابْنِي هَلَكَ، فَزَعَمَتْ الْيَهُودُ أَنَّهُ لَا حَقَّ لِي فِي مِيرَاثِهِ؟ فَدَعَاهُمْ عُمَرُ فَقَالَ: أَلَا تُعْطُونَ هَذِهِ حَقَّهَا؟ فَقَالُوا: لَا نَجِدُ لَهَا حَقًّا فِي كِتَابِنَا؟ فَقَالَ: أَفِي التَّوْرَاةِ؟ قَالُوا: بَلَى، فِي الْمُثَنَّاةِ قَالَ: وَمَا الْمُثَنَّاةُ؟ قَالُوا: كِتَابٌ كَتَبَهُ أَقْوَامٌ عُلَمَاءُ حُكَمَاءُ؟ فَسَبَّهُمْ عُمَرُ وَقَالَ: اذْهَبُوا فَأَعْطُوهَا حَقَّهَا.

L28099 Through the narration of Ibn Wahb, from Ibn Lahīʿah, from Yazīd ibn Abī Ḥabīb, that ʿUmar ibn ʿAbd al-ʿAzīz wrote to Ḥayyān ibn Shurayḥ: "Ensure that the inheritances of the Dhimmīs are in accordance with the shares ordained by Allah, the Mighty and Majestic."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ كَتَبَ إِلَى حَيَّانَ بْنِ شُرَيْحٍ: أَنْ اجْعَلْ مَوَارِيثَ أَهْلِ الذِّمَّةِ عَلَى فَرَائِضِ اللَّهِ عَزَّ وَجَلَّ.

L28100 Abu Hanifah said: The inheritance of dhimmis is divided according to the rulings of their religion unless they seek adjudication by our Islamic law.

وَقَالَ أَبُو حَنِيفَةَ: مَوَارِيثُ أَهْلِ الذِّمَّةِ مَقْسُومَةٌ عَلَى أَحْكَامِ دِينِهِمْ، إِلَّا أَنْ يَتَحَاكَمُوا إِلَيْنَا.

L28101 Malik said: The division of inheritances for the People of the Book follows the rulings of their own religion—whether any heir embraced Islam before the division or not. As for those who are not People of the Book: if one of their heirs embraces Islam after the division, he has no right to anything other than what he received. If one of them embraces Islam before the division, the division is made according to the rulings of Islam. Al-Shāfiʿī and Abū Sulaymān held the same opinion as us.

وَقَالَ مَالِكٌ: تَقْسِيمُ مَوَارِيثِ أَهْلِ الْكِتَابِ عَلَى حُكْمِ دِينِهِمْ - سَوَاءٌ أَسْلَمَ أَحَدُ الْوَرَثَةِ قَبْلَ الْقَسْمِ أَوْ لَمْ يُسْلِمْ - وَأَمَّا غَيْرُ أَهْلِ الْكِتَابِ فَمَنْ أَسْلَمَ مِنْهُمْ مِنْ الْوَرَثَةِ بَعْدَ الْقِسْمَةِ فَلَيْسَ لَهُ غَيْرُ مَا أَخَذَ، وَمَنْ أَسْلَمَ مِنْهُمْ قَبْلَ الْقِسْمَةِ: قَسَمَ عَلَى حُكْمِ الْإِسْلَامِ - وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ كَقَوْلِنَا.

L28102 Abu Muhammad said: As for Malik's division, it is utterly corrupt because he did not uphold the distinction that was mentioned—neither the Qur'an, the Sunnah, a weak narration, evidence, consensus, the statement of a Companion, analogy, nor an opinion with a valid basis. We do not know of this division from anyone before Malik.

قَالَ أَبُو مُحَمَّد: أَمَّا تَقْسِيمُ مَالِكٍ: فَفِي غَايَةِ الْفَسَادِ، لِأَنَّهُ لَمْ يُوجِبْ الْفَرْقَ الَّذِي ذُكِرَ: قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا دَلِيلٌ، وَلَا إجْمَاعٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ، وَمَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَ مَالِكٍ.

L28103 As for the statement of Abū Ḥanīfah and that in which Mālik agreed with him: we have already invalidated it. What greater outrage exists than appointing disbelievers, Jews, and Christians as arbiters over a Muslim? This is truly astonishing! We have never known their ruling in a case between a Muslim and a dhimmi except that it must inevitably be judged by Islamic law—except in this case. For they mandated that a Muslim be judged by the law of Satan in the religion of the Jews and Christians—especially if all the heirs embraced Islam. By my life! Their division of inheritance according to the rulings of "Dakrīz the Visigoth" and "Hilāl the Jew" is truly astounding! We seek refuge in Allah from this. Yet they cite as evidence in this matter two narrations weaker than both, relying on their own chains of transmission—if these align with their adherence to precedent—as narrated to us via Abū Dāwūd: Ḥajjāj ibn Yaʿqūb narrated to us; Mūsā ibn Dāwūd narrated to us; Muḥammad ibn Muslim al-Ṭā'ifī narrated to us from ʿAmr ibn Dīnār from Abū al-Shaʿthā' from Ibn ʿAbbās, who said: The Prophet—peace and blessings of Allah be upon him—stated, "Every division established in the pre-Islamic era remains valid under pre-Islamic rules. But whatever [property] existed at the advent of Islam that had not yet been divided must be divided according to Islamic law."

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ وَمَا وَافَقَهُ فِيهِ مَالِكٌ: فَقَدْ ذَكَرْنَا إبْطَالَهُ، وَمَا فِي الشُّنْعَةِ أَعْظَمُ مِنْ تَحْكِيمِ الْكُفْرِ وَالْيَهُودِ وَالنَّصَارَى عَلَى مُسْلِمٍ؟ إنَّ هَذَا لَعَجَبٌ؟ وَمَا عَهِدْنَا قَوْلَهُمْ فِي حُكْمٍ بَيْنَ مُسْلِمٍ وَذِمِّيٍّ إلَّا أَنَّهُ يُحْكَمُ فِيهِ وَلَا بُدَّ بِحُكْمِ الْإِسْلَامِ إلَّا هَاهُنَا، فَإِنَّهُمْ أَوْجَبُوا أَنْ يُحْكَمَ عَلَى الْمُسْلِمِ بِحُكْمِ الشَّيْطَانِ فِي دِينِ الْيَهُودِ وَالنَّصَارَى، لَا سِيَّمَا إنْ أَسْلَمَ الْوَرَثَةُ كُلُّهُمْ، فَلَعَمْرِي إنَّ اقْتِسَامَهُمْ مِيرَاثَهُمْ بِقَوْلِ " دكريز الْقُوطِيِّ " " وَهِلَالٍ الْيَهُودِيِّ " لَعَجَبٌ، نَعُوذُ بِاَللَّهِ مِنْهُ، عَلَى أَنَّهُ قَدْ جَاءَ فِي هَذَا أَثَرَانِ يَحْتَجُّونَ بِأَضْعَفَ مِنْهُمَا، وَبِإِسْنَادِهِمَا نَفْسِهِ، إذَا وَافَقَ تَقْلِيدَهُمْ - وَهُوَ كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا حَجَّاجُ بْنُ يَعْقُوبَ نا مُوسَى بْنُ دَاوُد نا مُحَمَّدُ بْنُ مُسْلِمٍ الطَّائِفِيُّ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي الشَّعْثَاءِ عَنْ ابْنِ عَبَّاسٍ قَالَ قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ قَسْمٍ قُسِمَ فِي الْجَاهِلِيَّةِ فَهُوَ عَلَى قِسْمَةِ الْجَاهِلِيَّةِ وَإِنَّ مَا أَدْرَكَ إسْلَامٌ وَلَمْ يُقْسَمْ فَهُوَ عَلَى قَسْمِ الْإِسْلَامِ» .

L28104–28105 From the narration of ʿAbd al-Razzāq, from Ibn Jurayj, ʿAmr ibn Shuʿayb said: "The Messenger of Allah—peace and blessings of Allah be upon him—ruled that whatever was divided during the pre-Islamic era is upon the division of the pre-Islamic era, and whatever Islam came upon that had not been divided is upon the division of Islam."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ عَمْرُو بْنُ شُعَيْبٍ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ كُلَّ مَا قُسِمَ فِي الْجَاهِلِيَّةِ فَهُوَ عَلَى قِسْمَةِ الْجَاهِلِيَّةِ، وَأَنَّ مَا أَدْرَكَ الْإِسْلَامُ، وَلَمْ يُقْسَمْ فَهُوَ عَلَى قِسْمَةِ الْإِسْلَامِ» .

L28106 Ali said: Muhammad ibn Muslim is weak, and the second is mursal; we do not rely on these two. Our proof is only what we mentioned previously. And by Allah, the Most High, is success.

قَالَ عَلِيٌّ: مُحَمَّدُ بْنُ مُسْلِمٍ ضَعِيفٌ، وَالثَّانِي مُرْسَلٌ، وَلَا نَعْتَمِدُ عَلَيْهِمَا، إنَّمَا حُجَّتُنَا مَا ذَكَرْنَا قَبْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The Jurisprudential Issue of Inheritance for a Born Child

1748 - Issue: If one is born after the death of the person from whom they inherit and emerges alive—whether wholly or partially (the smallest or largest part of it)—then dies after its exit is fully completed (whether it sneezed or not), provided its life is confirmed with certainty through movement of an eye, hand, respiration, or any sign establishing life, it inherits and can be inherited from. The first cry holds no legal significance.

And this is the opinion of Abū Ḥanīfah, Sufyān al-Thawrī, al-Awzāʿī, and Abī Sulaymān.

The evidence for that is the word of Allah, the Exalted: “He instructs you concerning your children” [An-Nisāʾ 4:11].[5]

And this is a boy without a doubt.

If it is said: “Why do you not entitle him to inherit even if he was born dead despite having life in the womb?” We reply: Had we been certain of his life, we would have entitled him to inherit. However, movement might be caused by gas—while the fetus is dead—or the pregnancy might collapse, and it becomes known that it was not a fetus but rather an abnormality. Thus, we are only certain of his life if we witness him alive.

Al-Shafiʿi said: He neither inherits nor is inherited from until he is born alive.

This is an assertion without proof of its validity.

A group maintained that he does not inherit nor can he be inherited from, even if he was breastfed and took milk, unless he let out a loud cry at birth - this being the opinion of Mālik. His followers cited as evidence in support of his opinion the report that ʿUmar would assign a share for a child only if he let out a loud cry at birth.

And from Ibn Umar: When a rooster crows, prayer should be performed at that time.

[مَسْأَلَة مِيرَاث الْمَوْلُود]

١٧٤٨ - مَسْأَلَةٌ وَمَنْ وُلِدَ بَعْدَ مَوْتِ مَوْرُوثِهِ فَخَرَجَ حَيًّا كُلُّهُ - أَوْ بَعْضُهُ أَقَلُّهُ أَوْ أَكْثَرُهُ - ثُمَّ مَاتَ بَعْدَ تَمَامِ خُرُوجِهِ - عَطَسَ أَوْ لَمْ يَعْطِسْ - وَصَحَّتْ حَيَاتُهُ بِيَقِينٍ بِحَرَكَةِ عَيْنٍ، أَوْ يَدٍ، أَوْ نَفْسٍ، أَوْ بِأَيِّ شَيْءٍ صَحَّتْ، فَإِنَّهُ يَرِثُ وَيُورَثُ، وَلَا مَعْنَى لِلِاسْتِهْلَالِ.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَأَبِي سُلَيْمَانَ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {يُوصِيكُمُ اللَّهُ فِي أَوْلادِكُمْ} [النساء: ١١] .

وَهَذَا وَلَدٌ بِلَا شَكٍّ.

فَإِنْ قِيلَ: هَلَّا وَرَّثْتُمُوهُ وَإِنْ وُلِدَ مَيِّتًا بِحَيَاتِهِ فِي الْبَطْنِ؟ قُلْنَا: لَوْ أَيْقَنَّا حَيَاتَهُ لَوَرَّثْنَاهُ، وَقَدْ تَكُونُ لِحَرَكَةِ رِيحٍ - وَالْجَنِينُ مَيِّتٌ - وَقَدْ يَنْفُشُ الْحَمْلُ، وَيُعْلَمُ أَنَّهُ لَيْسَ حَمْلًا وَإِنَّمَا كَانَ عِلَّةً، فَإِنَّمَا نُوقِنُ حَيَاتَهُ إذَا شَاهَدْنَاهُ حَيًّا.

وَقَالَ الشَّافِعِيُّ: لَا يَرِثُ وَلَا يُورَثُ حَتَّى يَخْرُجَ حَيًّا كُلُّهُ.

وَهَذَا قَوْلٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ.

وَقَالَتْ طَائِفَةٌ لَا يَرِثُ وَلَا يُورَثُ وَإِنْ رَضَعَ وَأَكَلَ مَا لَمْ يَسْتَهِلَّ صَارِخًا - وَهُوَ قَوْلُ مَالِكٍ، وَاحْتَجَّ لَهُ مُقَلِّدُوهُ بِمَا رُوِيَ مِنْ أَنَّ عُمَرَ كَانَ يَفْرِضُ لِلصَّبِيِّ إذَا اسْتَهَلَّ صَارِخًا.

وَعَنْ ابْنِ عُمَرَ: إذَا صَاحَ صُلِّيَ عَلَيْهِ.

[5] **Qur’an references (L28110):** Qur’an 4:11 (An-Nisa).

L28117 It is narrated from Ibn Abbas: If the newborn cries at birth, he inherits and is inherited from.

وَعَنْ ابْنِ عَبَّاسٍ: إذَا اسْتَهَلَّ الصَّبِيُّ وَرِثَ وَوُرِّثَ.

L28118 On the authority of ʿAbd al-Razzāq through Ibn Jurayj: Abu al-Zubayr informed me that he heard Jābir ibn ʿAbdullāh say regarding the newborn whose cry is heard: "He inherits if his voice is heard."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ: أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ فِي الْمَنْفُوسِ: يَرِثُ إذَا سُمِعَ صَوْتُهُ.

L28119 Narrated by Wakiʿ, from Sufyan al-Thawri, from ʿAbdullah ibn Sharik al-ʿĀmirī, from Bishr ibn Ghālib, who said: Al-Ḥasan ibn ʿAlī was asked, "When does the newborn's entitled share become obligatory?" He replied, "When it cries out."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ شَرِيكٍ الْعَامِرِيِّ عَنْ بِشْرِ بْنِ غَالِبٍ، قَالَ: سُئِلَ الْحَسَنُ بْنُ عَلِيٍّ: مَتَى يَجِبُ سَهْمُ الْمَوْلُودِ؟ قَالَ: إذَا اسْتَهَلَّ.

L28120–28121 It is authentically narrated from Ibrāhīm al-Nakhaʿī: When a child cries at birth, his liability for blood money (ʿaql) is incurred, and he becomes eligible for inheritance.

وَصَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: إذَا اسْتَهَلَّ الصَّبِيُّ وَجَبَ عَقْلُهُ وَمِيرَاثُهُ.

L28122 It has been authentically reported from Shurayh that he did not grant inheritance to a child who did not cry (as a sign of live birth). This has also been narrated from al-Qāsim ibn Muḥammad, Ibn Sīrīn, al-Shaʿbī, al-Ḥasan al-Basrī, al-Zuhrī, and Qatādah.

وَصَحَّ عَنْ شُرَيْحٍ: أَنَّهُ لَمْ يُوَرِّثْ مَنْ لَمْ يَسْتَهِلَّ وَرُوِيَ أَيْضًا: عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَابْنِ سِيرِينَ، وَالشَّعْبِيِّ، وَالْحَسَنِ، وَالزُّهْرِيِّ، وَقَتَادَةَ

L28123 And it is the opinion of Malik - and it has also been reported from Abū Ḥanīfah.

- وَهُوَ قَوْلُ مَالِكٍ - وَرُوِيَ أَيْضًا عَنْ أَبِي حَنِيفَةَ.

L28124 Abu Muhammad said: Those who blindly adopt this opinion cited as evidence the authentic report from the Messenger of Allah—peace and blessings of Allah be upon him: "There is no child born except that Satan pierces it, so it shrieks loudly from Satan's piercing—except the son of Mary and his mother." He then mentioned the remainder of the report.[6]

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ قَلَّدَ هَذَا الْقَوْلَ بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَا مِنْ مَوْلُودٍ يُولَدُ إلَّا نَخَسَهُ الشَّيْطَانُ فَيَسْتَهِلُّ صَارِخًا مِنْ نَخْسَةِ الشَّيْطَانِ إلَّا ابْنَ مَرْيَمَ وَأُمَّهُ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

L28125 And by the authentically transmitted report from him—peace and blessings be upon him—that he said: "The newborn's cry when it occurs is an incitement from Satan."

وَبِالْخَبَرِ الثَّابِتِ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ قَالَ «صِيَاحُ الْمَوْلُودِ حِينَ يَقَعُ نَزْغَةٌ مِنْ الشَّيْطَانِ» .

L28126 And according to what has been narrated to us through the chain of Muḥammad ibn Isḥāq from Yazīd ibn ʿAbdullāh ibn Qusayṭ from Abū Hurayrah from

وَبِمَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ إسْحَاقَ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا اسْتَهَلَّ الْمَوْلُودِ وَرِثَ» .

[6] **Hadith references (L28124):** Sahih Muslim 2366a.

the Prophet (peace be upon him), who said: “If a newborn utters a cry, he is entitled to inheritance.”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا يَحْيَى بْنُ مُوسَى الْبَلْخِيّ نا شَبَابَةُ بْنُ سَوَّارٍ نا الْمُغِيرَةُ بْنُ مُسْلِمٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الصَّبِيُّ إذَا اسْتَهَلَّ وَرِثَ وَصُلِّيَ عَلَيْهِ» .

L28127 From the chain of Ahmad ibn Shuʿayb: Yahyā ibn Mūsā al-Balkhī reported to us: Shabābah ibn Sawwār narrated to us: al-Mughīrah ibn Muslim narrated to us, from Abū al-Zubayr, from Jābir, from the Prophet - peace and blessings be upon him - who said: “If an infant cries after birth, he is entitled to inheritance, and the funeral prayer should be offered for him.”

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ حَدَّثَ عَنْ أَبِي الْأَحْوَصِ مُحَمَّدِ بْنِ الْهَيْثَمِ نا مُحَمَّدُ بْنُ أَبِي السَّرِيِّ الْعَسْقَلَانِيُّ عَنْ بَقِيَّةَ عَنْ الْأَوْزَاعِيِّ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا اسْتَهَلَّ الْمَوْلُودُ صُلِّيَ عَلَيْهِ وَوَرِثَ وَلَا يُصَلَّى عَلَيْهِ حَتَّى يَسْتَهِلَّ» .

L28128 And from the chain of Muhammad ibn Abd al-Malik ibn Ayman, who narrated from Abu al-Ahwas Muhammad ibn al-Haytham; Muhammad ibn Abi al-Sarri al-Asqalani reported to us from Baqiyyah, from al-Awza’i, from Abu al-Zubayr, from Jabir, from the Prophet (peace be upon him): “When a newborn utters a cry, prayer is offered for him, he inherits, and prayer is not offered for him until he utters a cry.”

وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ حَدَّثَنِي طَلْقٌ عَنْ نَافِعِ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا اسْتَهَلَّ الْمَوْلُودُ وَجَبَتْ دِيَتُهُ وَمِيرَاثُهُ وَصُلِّيَ عَلَيْهِ إنْ مَاتَ» .

L28129 From the chain of ʿAbd al-Malik ibn Ḥabīb, Ṭalq narrated to me from Nāfiʿ ibn Yazīd from Ibn Shihāb from Saʿīd ibn al-Musayyab that the Messenger of Allah—peace and blessings be upon him—said: “When a newborn utters a cry, his diyah becomes due, his inheritance becomes due, and the funeral prayer is performed for him if he dies.”

قَالَ ابْنُ حَبِيبٍ: وَحَدَّثَنِيهِ أَيْضًا: مُطَرِّفٌ عَنْ ابْنِ أَبِي حَازِمٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L28130 Ibn Habib said: And he also narrated to me: Muṭarrif from Ibn Abī Ḥāzim from ʿAmr ibn Shuʿayb from his father from his grandfather from the Prophet—peace and blessings of God be upon him.

قَالُوا وَهُوَ قَوْلُ عُمَرَ، وَابْنِ عُمَرَ وَالْحُسَيْنِ، وَابْنِ عَبَّاسٍ، وَجَابِرٍ وَأَبِي هُرَيْرَةَ: سِتَّةٌ مِنْ الصَّحَابَةِ، وَجَمَاعَةٍ مِنْ التَّابِعِينَ، لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ -: هَذَا كُلُّ مَا شَغَبُوا بِهِ، وَمَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ هَذَا، وَكُلُّهُ إمَّا لَا شَيْءَ وَإِمَّا لَا حُجَّةَ لَهُمْ فِيهِ.

L28131–28133 They said—and this is the opinion of ‘Umar, Ibn ‘Umar, al-Ḥusayn, Ibn ‘Abbās, Jābir, and Abū Hurayrah: six in total. From the Companions, and a group of the Followers, with no dissenter known among them: this is all they have protested against, and we know of nothing else from them besides this. All of it is either nothing or there is no argument for them in it.

أَمَّا الْخَبَرُ الصَّحِيحُ: فَيَنْبَغِي لَهُمْ أَنْ يَسْتَغْفِرُوا اللَّهَ تَعَالَى مِنْ تَمْوِيهِهِمْ بِهِ فِيمَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ؟ هَلْ ذَكَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيهِ شَيْئًا مِنْ حُكْمِ الْمِيرَاثِ

L28134 As for the authentic report: Should they not seek Allah’s forgiveness, the Exalted, for obscuring it by attributing to it what is entirely unrelated? Did the Messenger of Allah—peace and blessings be upon him—mention anything

بِنَصٍّ أَوْ بِدَلِيلٍ؟ أَمَّا هَذَا تَقْوِيلٌ لَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَا لَمْ يَقُلْ؟ وَهَلْ فِي ذَلِكَ الْخَبَرِ إِلَّا أَنَّ كُلَّ مَوْلُودٍ فَإِنَّ الشَّيْطَانَ يَنْخُسُهُ؟ وَهَذَا حَقٌّ نُؤْمِنُ بِهِ، وَمَا خُولِفُوا قَطُّ فِي هَذَا، ثُمَّ فِيهِ «أَنَّهُ يَسْتَهِلُّ صَارِخًا مِنْ نَخْسَةِ الشَّيْطَانِ» هَذَا فَبِضَرُورَةِ الْحِسِّ وَالْمُشَاهَدَةِ نَدْرِي يَقِينًا أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إِنَّمَا عَنِي بِذَلِكَ مَنْ اسْتَهَلَّ مِنْهُمْ، وَبَقِيَ حُكْمُ مَنْ لَمْ يَسْتَهِلَّ؟ فَنَقُولُ لَهُمْ: أَخْبِرُونَا أَيُوجَدُ مَوْلُودٌ يَخْرُجُ حَيًّا وَلَا يَسْتَهِلُّ؟ أَمْ لَا يُوجَدُ أَصْلًا؟ فَإِنْ قَالُوا: لَا يُوجَدُ أَصْلًا كَابَرُوا الْعِيَانَ وَأَنْكَرُوا الْمُشَاهَدَةَ، فَهَذَا مَوْجُودٌ كَثِيرٌ لَا يَسْتَهِلُّ إِلَّا بَعْدَ أَزْيَدَ مِنْ سَاعَةٍ زَمَانِيَّةٍ، وَرُبَّمَا لَمْ يَسْتَهِلَّ حَتَّى يَمُوتَ؟ ثُمَّ نَقُولُ لَهُمْ: فَإِذْ لَا يُوجَدُ هَذَا أَبَدًا فَكَلَامُكُمْ وَكَلَامُنَا فِيهَا عَنَاءٌ، وَبِمَنْزِلَةِ مَنْ تَكَلَّمَ فِيمَنْ يُولَدُ مِنَ الْفَمِ وَنَحْوِ ذَلِكَ مِنَ الْمُحَالِّ؟ فَإِنْ قَالُوا: بَلْ قَدْ يُوجَدُ هَذَا؟ قُلْنَا لَهُمْ: فَأَخْبِرُونَا الْآنَ أَتَقُولُونَ: إِنَّهُ لَيْسَ مَوْلُودًا؟ فَهَذِهِ حَمَاقَةٌ وَمُكَابَرَةٌ لِلْعِيَانِ، أَمْ تَقُولُونَ: إِنَّ الشَّيْطَانَ لَمْ يَنْخُسْهُ، فَتُكَذِّبُوا رَسُولَ اللَّهِ؟ وَهَذَا كَمَا تَرَوْنَ؟ أَمْ تَقُولُونَ: إِنَّهُ نَخَسَهُ فَلَمْ يَسْتَهِلَّ؟ فَهَذَا قَوْلُنَا، وَرَجَعْتُمْ إِلَى الْحَقِّ مِنْ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - ذَكَرَ فِي هَذَا الْخَبَرِ: مَنْ يَسْتَهِلُّ دُونَ مَنْ لَا يَسْتَهِلُّ، وَلَا بُدَّ مِنْ أَحَدِ هَذِهِ الثَّلَاثِ، إِلَّا أَنَّهُ بِكُلِّ حَالٍ لَيْسَ فِي هَذَا الْخَبَرِ شَيْءٌ مِنْ حُكْمِ الْمَوَارِيثِ، فَبَطَلَ احْتِجَاجُهُمْ بِهِ - وَهَكَذَا الْقَوْلُ فِي الْخَبَرِ الْآخَرِ سَوَاءً سَوَاءً.

in it regarding inheritance rulings through explicit text or evidence? Is this not attributing to him—peace and blessings be upon him—what he did not say? Does that report contain anything beyond the fact that every newborn is prodded by Satan? This is a truth we affirm, and they have never been opposed in this. Then it states, "He utters a first cry due to Satan's prod." By necessity of sense and observation, we know with certainty that he—peace and blessings be upon him—referred only to those who uttered a first cry, leaving the ruling for those who did not. We say to them: Inform us—is there any newborn who emerges alive yet does not utter a first cry? Or does this never occur? If they say it never occurs, they persistently deny plain evidence and reject what is witnessed, for this is frequently found: a newborn does not utter a first cry until after more than an hour passes, and perhaps does not cry until dying. We then say: If this never occurs, your discourse and ours concerning it is futile, akin to discussing one born from the mouth or similar impossibilities. If they say, "But this does occur," we say: Now inform us—do you claim it is not a newborn? This is folly and denial of plain evidence. Or do you say Satan did not prod it, thereby contradicting the Messenger of Allah—as you see? Or do you say he prodded it but it did not utter a cry? This is our position, and you thereby revert to the truth that he—peace and blessings be upon him—referred in this report only to those who cried, excluding those who did not. One of these three is inevitable. Yet in any case, this report contains nothing of inheritance rulings, invalidating their argument—and the same applies without exception to the other report.

وَأَمَّا حَدِيثُ ابْنِ قُسَيْطٍ عَنْ أَبِي هُرَيْرَةَ، فَلَيْسَ فِيهِ إِلَّا: أَنَّهُ إِذَا اسْتَهَلَّ وَرِثَ، وَهَكَذَا نَقُولُ، وَلَيْسَ فِيهِ: أَنَّهُ إِذَا لَمْ يَسْتَهِلَّ لَمْ يَرِثْ، فَإِقْحَامُهُ فِيهِ: كَذِبٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَطَلَ تَعَلُّقُهُمْ بِهِ.

L28135 As for the Hadith of Ibn Qusayṭ from Abū Hurayrah, it contains nothing except: "If the newborn utters a cry (after birth), he inherits," and this is our established ruling. It does not state: "If he does not utter a cry, he does not inherit." Inserting this into the Hadith constitutes a lie against the Messenger of Allah—peace and blessings be upon him—thereby nullifying their argument.

L28136 Additionally, the term "istihlāl" in the Arabic language signifies visibility.

One says, “The crescent moon has istahalla (begun to appear),” meaning “it became visible.” Thus, the meaning is: when the newborn emerges, he inherits. This is our view.

L28137–28138 As for the report of Abū al-Zubayr from Jābir, Abū al-Zubayr did not state that he heard it; therefore, he is a *mudallis* (practitioner of *tadlīs*).

L28139 In the hadith of Al-Awzāʿī: Baqiyyah—and he is weak.

L28140 The two narrations of ʿAbd al-Malik ibn Ḥabīb are mursal (disconnected), and ʿAbd al-Malik—rejected.

L28141 Thus, their reliance on these traditions ceased.

L28142 As for their assertion that it is the position of six Companions with no opposition from among them known—how many such cases exist where they opposed positions held by groups of Companions, with no dissent from within those groups recorded? These include retributive equivalence (qisas) for a slap, leading prayer while seated, and numerous other matters. There is no conclusive proof for anyone apart from the Messenger of Allah (peace and blessings be upon him).

L28143 Moreover, the reports mentioned from the Companions only state that if the child cries at birth, the child inherits—and we do not disagree with them on that—but they do not state that if the child does not cry at birth, no one inherits from them. Thus, there is no proof for them in these reports.

L28144 Then we ask them about a newborn who did not cry out, though he moved, breastfed, and blinked, then was intentionally killed. Is retaliation (qisas), blood money, or only ghurra required? If they say: “Retaliation (qisas) or blood money applies,” they contradict their own stance—for they would be compelled to acknowledge he was a living child, so why then deny him inheritance? If they say: “Only ghurra applies,” they abandon their position—and success comes from Allah, the Exalted.

L28145 **The Issue of the Presence of the Deceased’s Relatives in Inheritance**

وَأَيْضًا: فَإِنَّ لَفْظَةَ " الِاسْتِهْلَالِ " فِي اللُّغَةِ هُوَ الظُّهُورُ، تَقُولُ اسْتَهَلَّ الْهِلَالُ بِمَعْنَى ظَهَرَ، فَيَكُونُ مَعْنَاهُ: إذَا ظَهَرَ الْمَوْلُودُ وَرِثَ، وَهُوَ قَوْلُنَا.

وَأَمَّا خَبَرُ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ، فَلَمْ يَقُلْ أَبُو الزُّبَيْرِ: إنَّهُ سَمِعَهُ، فَهُوَ مُدَلِّسٌ.

وَفِي حَدِيثِ الْأَوْزَاعِيِّ: بَقِيَّةُ وَهُوَ ضَعِيفٌ.

وَحَدِيثَا: عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ مُرْسَلَانِ، وَعَبْدُ الْمَلِكِ - هَالِكٌ.

فَسَقَطَ تَعَلُّقُهُمْ بِهَذِهِ الْآثَارِ.

وَأَمَّا قَوْلُهُمْ: إنَّهُ قَوْلُ سِتَّةٍ مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، فَكَمْ قِصَّةً مِثْلَ هَذِهِ قَدْ خَالَفُوا فِيهَا طَوَائِفَ مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، كَالْقِصَاصِ فِي اللَّطْمَةِ، وَإِمَامَةِ الْجَالِسِ وَغَيْرُ ذَلِكَ كَثِيرٌ جِدًّا، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَأَيْضًا: فَالْآثَارُ الْمَذْكُورَةُ عَنْ الصَّحَابَةِ إنَّمَا فِيهَا: أَنَّهُ إذَا اسْتَهَلَّ وَرِثَ - وَلَمْ نُخَالِفْهُمْ فِي ذَلِكَ، وَلَيْسَ فِيهَا إذَا لَمْ يَسْتَهِلَّ لَمْ يُورَثْ - فَلَا حُجَّةَ لَهُمْ فِيهَا.

ثُمَّ نَسْأَلُهُمْ عَنْ مَوْلُودٍ وُلِدَ فَلَمْ يَسْتَهِلَّ، إلَّا أَنَّهُ تَحَرَّكَ، وَرَضَعَ، وَطَرَفَ بِعَيْنِهِ، ثُمَّ قَتَلَهُ قَاتِلٌ عَمْدًا، أَيَجِبُ فِيهِ قِصَاصٌ أَوْ دِيَةٌ أَمْ لَيْسَ فِيهِ إلَّا غُرَّةٌ؟ فَإِنْ قَالُوا: فِيهِ الْقَوَدُ أَوْ الدِّيَةُ: نَقَضُوا قَوْلَهُمْ، وَأَوْجَبُوا أَنَّهُ وَلَدٌ حَيٌّ فَلِمَ مَنَعُوهُ الْمِيرَاثَ؟ وَإِنْ قَالُوا: لَيْسَ فِيهِ إلَّا غُرَّةٌ تَرَكُوا قَوْلَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ حُضُورِ قَرَابَةِ الْمَيِّتِ الْمِيرَاثَ]

L28146 1749 - Issue: When the inheritance is divided and there are present relatives of the deceased, relatives of the heirs, orphans, or the poor, it is made obligatory upon the adult heirs, the guardian of the minors, and the agent of the absent heir to give each of the aforementioned parties from that which their souls are content with, provided it does not harm the heirs. The judge compels them to fulfill this if they refuse.

١٧٤٩ - مَسْأَلَةٌ وَإِذَا قُسِّمَ الْمِيرَاثُ فَحَضَرَ قَرَابَةُ الْمَيِّتِ، أَوْ لِلْوَرَثَةِ، أَوْ يَتَامَى، أَوْ مَسَاكِينُ: فَفُرِضَ عَلَى الْوَرَثَةِ الْبَالِغِينَ، وَعَلَى وَصِيِّ الصِّغَارِ، وَعَلَى وَكِيلِ الْغَائِبِ: أَنْ يُعْطُوا كُلَّ مَنْ ذَكَرْنَا مَا طَابَتْ بِهِ أَنْفُسُهُمْ مِمَّا لَا يُجْحِفُ بِالْوَرَثَةِ، وَيُجْبِرُهُمْ الْحَاكِمُ عَلَى ذَلِكَ إنْ أَبَوْا.

L28147 Due to the saying of Allah the Exalted: {And when relatives, orphans, and the needy are present at the division, provide for them from it and speak to them kindly speech} [An-Nisa: 8], and the command of Allah the Exalted is an obligation which it is impermissible to oppose—this being the opinion of a group among the Salaf—as narrated to us through the chain of Yahya ibn Sa'id al-Qattan, who narrated to us from Shu'bah, from Qatadah, from Yunus ibn Jubayr, from Hittan ibn 'Abdullah, who said: Abu Musa al-Ash'ari allocated a portion to me in accordance with the verse of Allah the Exalted {And when relatives, orphans, and the needy are present at the division...} [An-Nisa: 8].[7]

لِقَوْلِ اللَّهِ تَعَالَى: {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ وَقُولُوا لَهُمْ قَوْلا مَعْرُوفًا} [النساء: ٨] وَأَمْرُ اللَّهِ تَعَالَى فَرْضٌ لَا يَحِلُّ خِلَافُهُ - وَهُوَ قَوْلُ طَائِفَةٍ: مِنْ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نا شُعْبَةُ عَنْ قَتَادَةَ عَنْ يُونُسَ بْنِ جُبَيْرٍ عَنْ حِطَّانَ بْنِ عَبْدِ اللَّهِ، قَالَ: قَسَمَ لِي بِهَا أَبُو مُوسَى الْأَشْعَرِيُّ فِي قَوْله تَعَالَى {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى} [النساء: ٨] الْآيَةَ.

L28148–28149 And through the chain of al-Bukhārī: Abū al-Nuʿmān - he is Muḥammad ibn al-Faḍl ʿĀrim - narrated to us: Abū ʿAwānah narrated to us from Abī Bishr from Saʿīd ibn Jubayr from Ibn ʿAbbās, who said: They presume that this verse has been abrogated: _"And when relatives are present at the division"_ [4:8]. But no, by Allah! It has not been abrogated. Rather, it concerns matters people have neglected. There are two types of guardians: a guardian who inherits - that is the one granted provision - and a guardian who does not inherit. That is the one who must speak with fairness, saying: "I have no authority to grant you anything."[8]

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو النُّعْمَانِ - هُوَ مُحَمَّدُ بْنُ الْفَضْلِ عَارِمٌ - نا أَبُو عَوَانَةَ عَنْ أَبِي بِشْرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: يَزْعُمُونَ: أَنَّ هَذِهِ الْآيَةَ نَسَخَتْ: {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى} [النساء: ٨] فَلَا وَاَللَّهِ مَا نَسَخَتْ وَلَكِنَّهَا مِمَّا تَهَاوَنَ النَّاسُ بِهَا، هُمَا وَالِيَانِ: وَالٍ يَرِثُ، وَذَاكَ الَّذِي يُرْزَقُ، وَوَالٍ لَا يَرِثُ، فَذَلِكَ الَّذِي يَقُولُ بِالْمَعْرُوفِ، يَقُولُ: لَا أَمْلِكُ لَك أَنْ أُعْطِيَك.

L28150 From the chain of Ismail ibn Ishaq al-Qadi: Mahmud ibn Khidash narrated to us from Abbad ibn al-Awwam from Hajjaj from Ata ibn Abi Rabah from Abd al-Rahman ibn Abi Bakr al-Siddiq that he said regarding the words of Allah Almighty, {When close relatives, orphans, and the needy are present at

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي نا مَحْمُودُ بْنُ خِدَاشٍ نا عَبَّادُ بْنُ الْعَوَّامِ نا حَجَّاجٌ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ أَنَّهُ قَالَ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ، {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ} [النساء: ٨] قَالَ: هِيَ وَاجِبَةٌ يُعْمَلُ بِهَا وَقَدْ أَعْطَيْت بِهَا.

[7] **Qur'an references (L28147):** Qur'an 4:8 (An-Nisa).
[8] **Qur'an references (L28149):** Qur'an 4:8 (An-Nisa).

the division [of inheritance], provide for them from it} [An-Nisa: 8]. He said: It is an obligation to be acted upon, and I have given by it.[9]

L28151 From the path of Ismāʿīl ibn Isḥāq: Yaḥyā ibn Khalaf narrated to us, Abū ʿĀṣim—that is, Al-Ḍaḥḥāk ibn Makhled—narrated to us, Ibn Jurayj narrated to us: ʿAbdullāh ibn Abī Mulaykah informed me that Asmāʾ bint ʿAbd al-Raḥmān ibn Abī Bakr al-Ṣiddīq and Al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq together informed him that ʿAbdullāh ibn ʿAbd al-Raḥmān ibn Abī Bakr al-Ṣiddīq distributed the inheritance of his father ʿAbd al-Raḥmān while ʿĀʾisha was alive at that time. He ensured no poor person or relative in the household was left without receiving a share, and he recited: {And when relatives and orphans and the needy are present at the division, then provide for them out of it} [Quran 4:8]. He then mentioned the remainder of the ḥadīth.[10]

L28152 It is also authentically established from Urwah ibn al-Zubayr, Ibn Sirin, Humaid ibn Abd al-Rahman al-Himyari, Yahya ibn Yaʿmur, al-Shaʿbi, al-Nakhaʿī, Hasan, al-Zuhri, Abu al-Aliyah, al-Ala' ibn Badr, Saʿid ibn Jubayr, and Mujahid.

L28153 It has been narrated from ʻAṭāʾ—and this is the saying of Abū Sulaymān.

L28154 It has been reported that it is not obligatory, as narrated from Ibn Abbas, Saʿid ibn al-Musayyab, Abu Malik, and Zayd ibn Aslam. This view is also held by Malik, Abu Hanifah, and al-Shafiʿi. We do not know of any valid evidence whatsoever for the proponents of this view. Rather, it is a mere assertion without proof. Nor does anyone interpret the imperative "Do!" to mean "If you wish, you may refrain from doing it."

L28155 The mere existence among us of verses for which evidence has established that they are abrogated, specified, or recommended does not justify declaring regarding what lacks such proof: "This is recommended," "This is abrogated,"

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا يَحْيَى بْنُ خَلَفٍ نا أَبُو عَاصِمٍ - هُوَ الضَّحَّاكُ بْنُ مَخْلَدٍ - نا ابْنُ جُرَيْجٍ: أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ أَبِي مُلَيْكَةَ أَنَّ أَسْمَاءَ بِنْتَ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ، وَالْقَاسِمَ بْنَ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ أَخْبَرَاهُ: أَنَّ عَبْدَ اللَّهِ بْنَ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ قَسَمَ مِيرَاثَ أَبِيهِ عَبْدِ الرَّحْمَنِ، وَعَائِشَةُ يَوْمَئِذٍ حَيَّةٌ، فَلَمْ يَدَعْ فِي الدَّارِ مِسْكِينًا، وَلَا ذَا قَرَابَةٍ إِلَّا أَعْطَاهُمْ، وَتَلَا: {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ} [النساء: ٨] وَذَكَرَ بَاقِيَ الْحَدِيثِ.

وَصَحَّ أَيْضًا: عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ، وَابْنِ سِيرِينَ، وَحُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ الْحِمْيَرِيِّ، وَيَحْيَى بْنِ يَعْمُرَ، وَالشَّعْبِيِّ، وَالنَّخَعِيِّ، وَالْحَسَنِ، وَالزُّهْرِيِّ، وَأَبِي الْعَالِيَةِ، وَالْعَلَاءِ بْنِ بَدْرٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَمُجَاهِدٍ.

وَرُوِيَ عَنْ عَطَاءٍ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ.

وَرُوِيَ أَنَّهَا لَيْسَتْ بِوَاجِبَةٍ: عَنِ ابْنِ عَبَّاسٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَأَبِي مَالِكٍ، وَزَيْدِ بْنِ أَسْلَمَ - وَبِهِ يَقُولُ مَالِكٌ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَمَا نَعْلَمُ لِأَهْلِ هَذَا الْقَوْلِ حُجَّةً أَصْلًا، بَلْ هُوَ دَعْوَى مُجَرَّدَةٌ، وَمَا يَفْهَمُ أَحَدٌ مِنْ: افْعَلْ -: إِنْ شِئْتَ فَلَا تَفْعَلْ.

وَلَيْسَ وُجُودُنَا آيَاتٍ قَامَ الْبُرْهَانُ عَلَى أَنَّهَا مَنْسُوخَةٌ، أَوْ مَخْصُوصَةٌ، أَوْ أَنَّهَا نَدْبٌ، بِمُوجِبٍ أَنْ يُقَالَ فِيمَا لَا دَلِيلَ بِذَلِكَ فِيهِ: هَذَا نَدْبٌ، أَوْ هَذَا مَنْسُوخٌ، أَوْ هَذَا مَخْصُوصٌ، فَيَكُونُ قَوْلًا بِالْبَاطِلِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[9] **Qur'an references (L28150):** Qur'an 4:8 (An-Nisa).
[10] **Qur'an references (L28151):** Qur'an 4:8 (An-Nisa).

or “This is specified”—thereby making such a statement falsehood. And with Allah alone is success.

L28156–28157 And is this not among the matters in which they opposed the majority of the Salaf (may Allah be pleased with them)? The Book of Inheritance Shares is completed.

An Issue Concerning the Inheritance of the Maternal Uncle

L28158

L28159 1750 - A supplementary issue: There is no valid textual evidence concerning the inheritance of the maternal uncle. Whatever remains after the shares of the fixed-share heirs (those entitled to prescribed portions), where there is no residual heir, freed slave, or freed slave who is a residual heir, belongs to the public interests of the Muslims. None of this is returned to a shareholding heir or non-shareholder among the Distant Kindred, as neither the Quran, the Sunnah, nor consensus mandates such restitution.

L28160 If the distant relatives are poor, they are given according to the degree of their poverty, and the remainder is allocated to the welfare of the Muslim community.

L28161 All praise is due to Allah, Lord of the worlds, and may Allah bless Muhammad and his family and grant him peace abundantly.

وَهَذَا مِمَّا خَالَفُوا فِيهِ جُمْهُورَ السَّلَفِ - رَضِيَ اللَّهُ عَنْهُمْ -؟ تَمَّ كِتَابُ الْفَرَائِضِ.

[مَسْأَلَةُ مِيرَاثِ الْخَالِ]

١٧٥٠ - مَسْأَلَةٌ مُسْتَدْرَكَةٌ: وَلَا يَصِحُّ نَصٌّ فِي مِيرَاثِ الْخَالِ، فَمَا فَضَلَ عَنْ سِهَامِ ذَوِي السِّهَامِ، وَذَوِي الْفَرَائِضِ، وَلَمْ يَكُنْ هُنَالِكَ عَاصِبٌ، وَلَا مُعْتَقٌ وَلَا عَاصِبُ مُعْتَقٌ: فَفِي مَصَالِحِ الْمُسْلِمِينَ، لَا يُرَدُّ شَيْءٌ مِنْ ذَلِكَ عَلَى ذِي سَهْمٍ، وَلَا عَلَى غَيْرِ ذِي سَهْمٍ مِنْ ذَوِي الْأَرْحَامِ، إِذْ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ وَلَا سُنَّةٌ وَلَا إِجْمَاعٌ.

فَإِنْ كَانَ ذَوُو الْأَرْحَامِ فُقَرَاءَ أُعْطُوا عَلَى قَدْرِ فَقْرِهِمْ، وَالْبَاقِي فِي مَصَالِحِ الْمُسْلِمِينَ.

وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ وَسَلَّمَ تَسْلِيمًا.



AL-MUHALLA

كِتَابُ الْوَصَايَا

The Book of Bequests

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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The Book of Bequests Issue: A bequest is obligatory upon everyone who leaves wealth.

In the name of Allah, the Most Gracious, the Most Merciful. The Book of Bequests. Issue 1751: The writing of a will is an obligation upon everyone who leaves property behind, based on what we have narrated through Malik's chain from Nāfiʿ, from Ibn ʿUmar, who said: The Messenger of Allah (peace and blessings be upon him) stated, "It is not permissible for a Muslim who has something to bequeath to spend two nights unless his written will is ready with him." Ibn ʿUmar added, "No night has passed since I heard the Messenger of Allah (peace and blessings be upon him) say this without my will being with me."

It has been narrated to us that the obligation of bequest is established through the chain of Ibn al-Mubārak from ʿAbd Allāh ibn ʿAwn from Nāfiʿ from Ibn ʿUmar, from his statement.

And through the chain of Abd al-Razzaq from al-Hasan ibn Ubayd Allah, who said: Talha and al-Zubayr were strict concerning wills—this being the opinion of Abdullah ibn Abi Awfa, Talha ibn Mutarrif, Tawus, al-Shaʿbi, and others—and it is the opinion of Abu Sulayman and all our companions.

A group of people said: It is not obligatory, arguing that this report was transmitted by Yaḥyā ibn Saʿīd al-Qaṭṭān from ʿUbayd Allāh ibn ʿUmar from Nāfiʿ from Ibn ʿUmar from the Prophet—peace and blessings of Allāh be upon him—and in it, he said: "He has something he wishes to bequeath."

They said: Did he defer the matter to his own discretion? They said: Indeed, the Messenger of Allah—peace and blessings be upon him—did not make a will. They narrated that Ibn Umar—the narrator of the tradition—did not make a will, that Hatib ibn Abi Balta'ah in Umar's presence did not make a will, that Ibn Abbas said regarding one who left eight hundred dirhams: "It is insignificant—there is no will in it," that Ali forbade those leaving only from seven hundred to nine hundred from making a will, and that Aisha, the

[كِتَابُ الْوَصَايَا] [مَسْأَلَةٌ الْوَصِيَّةُ فَرْضٌ عَلَى كُلِّ مَنْ تَرَكَ مَالًا]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الْوَصَايَا ١٧٥١ - مَسْأَلَةٌ الْوَصِيَّةُ فَرْضٌ عَلَى كُلِّ مَنْ تَرَكَ مَالًا، لِمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَا حَقُّ امْرِئٍ مُسْلِمٍ لَهُ شَيْءٌ يُوصِي فِيهِ يَبِيتُ لَيْلَتَيْنِ إِلَّا وَوَصِيَّتُهُ عِنْدَهُ مَكْتُوبَةٌ» قَالَ ابْنُ عُمَرَ: مَا مَرَّتْ عَلَيَّ لَيْلَةٌ مُذْ سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ ذَلِكَ إِلَّا وَعِنْدِي وَصِيَّتِي.

وَرُوِّينَا إيجَابَ الْوَصِيَّةِ مِنْ طَرِيقِ ابْنِ الْمُبَارَكِ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ مِنْ قَوْلِهِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْحَسَنِ بْنِ عُبَيْدِ اللَّهِ قَالَ: كَانَ طَلْحَةُ، وَالزُّبَيْرُ يُشَدِّدَانِ فِي الْوَصِيَّةِ - وَهُوَ قَوْلُ عَبْدِ اللَّهِ بْنِ أَبِي أَوْفَى، وَطَلْحَةَ بْنِ مُطَرِّفٍ، وَطَاوُسٍ، وَالشَّعْبِيِّ، وَغَيْرِهِمْ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ وَجَمِيعِ أَصْحَابِنَا.

وَقَالَ قَوْمٌ: لَيْسَتْ فَرْضًا، وَاحْتَجُّوا: بِأَنَّ هَذَا الْخَبَرَ رَوَاهُ يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ فِيهِ «لَهُ شَيْءٌ يُرِيدُ أَنْ يُوصِيَ فِيهِ» .

قَالُوا: فَرَدَّ الْأَمْرَ إلَى إرَادَتِهِ؟ وَقَالُوا: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُوصِ، وَرَوَوْا: أَنَّ ابْنَ عُمَرَ - وَهُوَ رَاوِي الْخَبَرِ - لَمْ يُوصِ، وَأَنَّ حَاطِبَ بْنَ أَبِي بَلْتَعَةَ بِحَضْرَةِ عُمَرَ لَمْ يُوصِ، وَأَنَّ ابْنَ عَبَّاسٍ قَالَ فِيمَنْ تَرَكَ ثَمَانِمِائَةِ دِرْهَمٍ: قَلِيلٌ، لَيْسَ فِيهَا وَصِيَّةٌ،

Mother of the Believers, said regarding one who left four hundred dinars: "In this lies a surplus beyond his children's needs."

وَأَنَّ عَلِيًّا نَهَى مَنْ لَمْ يَتْرُكْ إلَّا مِنْ السَّبْعِمِائَةِ إلَى التِّسْعِمِائَةِ عَنْ الْوَصِيَّةِ، وَأَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ قَالَتْ فِيمَنْ تَرَكَ أَرْبَعَمِائَةِ دِينَارٍ: فِي هَذَا فَضْلٌ عَنْ وَلَدِهِ.

L28170 From al-Nakhaʿī: The bequest is not an obligation.

وَعَنْ النَّخَعِيِّ لَيْسَتْ الْوَصِيَّةُ فَرْضًا.

L28171 This is the opinion of Abu Hanifah, Malik, and Al-Shafi'i.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ.

L28172 Abu Muhammad said: None of this constitutes valid evidence for their position in any respect. As for the one who added in his narration "he intends to bequeath," verily Malik ibn Anas narrated it as we presented without this wording, but with the precise wording of binding declaration alone.

قَالَ أَبُو مُحَمَّد: كُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ -: أَمَّا مَنْ زَادَ فِي رِوَايَتِهِ " يُرِيدُ أَنْ يُوصِيَ " فَإِنَّ مَالِكَ بْنَ أَنَسٍ رَوَاهُ كَمَا أَوْرَدْنَا بِغَيْرِ هَذَا اللَّفْظِ، لَكِنْ بِلَفْظِ الْإِيجَابِ فَقَطْ.

L28173 And ʿAbdullāh ibn Numayr and ʿAbdah ibn Sulaymān narrated it from ʿUbaydullāh ibn ʿUmar from Nāfiʿ from Ibn ʿUmar, as narrated by Mālik.

وَرَوَاهُ عَبْدُ اللَّهِ بْنُ نُمَيْرٍ، وَعَبْدَةُ بْنُ سُلَيْمَانَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ، كَمَا رَوَاهُ مَالِكٌ.

L28174 And it was narrated by Yunus ibn Yazid from Nafi', from Ibn 'Umar, as Malik narrated it.

وَرَوَاهُ يُونُسُ بْنُ يَزِيدَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ كَمَا رَوَاهُ مَالِكٌ.

L28175 It was narrated by Ibn Wahb from 'Amr ibn al-Ḥārith, from Sālim ibn 'Abdullāh ibn 'Umar, from his father, from the Prophet (peace be upon him) - as narrated by Mālik and Yūnus from Nāfiʿ - and both narrations are authentic.

وَرَوَاهُ ابْنُ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا رَوَاهُ مَالِكٌ، وَيُونُسُ عَنْ نَافِعٍ - وَكِلَا الرِّوَايَتَيْنِ صَحِيحٌ.

L28176 When the two are valid, the will is indeed obligatory according to the narration of Mālik, and he is unequivocally required to intend it. And success lies with Allah, the Exalted.

فَإِذْ هُمَا صَحِيحَانِ فَقَدْ وَجَبَتْ الْوَصِيَّةُ بِرِوَايَةِ مَالِكٍ، وَوَجَبَ عَلَيْهِ أَنْ يُرِيدَهَا وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28177–28178 As for their claim that the Messenger of Allah—peace and blessings of Allah be upon him—did not leave a will, his will had already been made beforehand, encompassing all he left through his definitive and certain statement: "We, the community of prophets, are not inherited from; whatever we leave is charity." This is undoubtedly a valid will, for he bequeathed as charity all

وَأَمَّا قَوْلُهُمْ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُوصِ فَقَدْ كَانَتْ تَقَدَّمَتْ وَصِيَّتُهُ بِجَمِيعِ مَا تَرَكَ بِقَوْلِهِ الثَّابِتِ يَقِينًا «إنَّا مَعْشَرَ الْأَنْبِيَاءِ لَا نُورَّثُ، مَا تَرَكْنَا صَدَقَةٌ»

that he left upon his death. The narration negating the will is authentically established only in refuting the will that al-Rāfiḍah attribute solely to Ali.

L28179 As for what they reported—that Ibn ʻUmar did not leave a will—this is false, since it was only narrated via the chain of transmission of Ashhal ibn Ḥātim, who is a weak transmitter.

L28180 And from the transmission of Ibn Lahiʿah—who is unreliable—the established reports from him are those Mālik narrated from Nāfiʿ concerning his affirmation of the will's obligation, and that he never spent a night after hearing this report from the Prophet—peace be upon him—without having his will written down and kept with him.

L28181 As for the ḥadīth of Ḥāṭib and ʻUmar, it is transmitted through Ibn Lahīʿah's narration, which is too weak to warrant consideration.

L28182 As for the report of Ibn Abbas, in its chain is Laith ibn Abi Sulaim—and he is weak—.

L28183 As for the ḥadīth of ʻAlī, it establishes the minimum threshold [for theft] as being between seven hundred to nine hundred dirhams, but the scholars in question do not uphold this - and there is no clarification in the ḥadīth of the Mother of the Believers [ʻĀ'ishah] regarding what they claimed.

L28184 Then, even if all of that were valid, there would be no decisive argument in it, because some Companions opposed them, as we have cited. When disagreement occurs, the opinion of one group is no more valid than that of another, and the obligation in such a case is to refer to the Quran and the Sunnah. Both impose the obligation of the bequest. As for the Sunnah, it is as we have cited; as for the Quran, it is as we will cite—God Almighty willing?

L28185 **Issue: He died without leaving a will.**

L28186 1752 - Issue: If someone dies without leaving a will, it is obligatory to give charity on their behalf with whatever is feasible - this being necessary

وَهَذِهِ وَصِيَّةٌ صَحِيحَةٌ بِلَا شَكٍّ، لِأَنَّهُ أَوْصَى بِصَدَقَةِ كُلِّ مَا يَتْرُكُ إذَا مَاتَ، وَإِنَّمَا صَحَّ الْأَثَرُ بِنَفْيِ الْوَصِيَّةِ الَّتِي تَدَّعِيهَا الرَّافِضَةُ إلَى عَلِيٍّ فَقَطْ.

وَأَمَّا مَا رَوَوْا مِنْ أَنَّ ابْنَ عُمَرَ لَمْ يُوصِ، فَبَاطِلٌ؛ لِأَنَّ هَذَا إنَّمَا رُوِيَ مِنْ طَرِيقِ أَشْهَلَ بْنِ حَاتِمٍ - وَهُوَ ضَعِيفٌ -.

وَمِنْ طَرِيقِ ابْنِ لَهِيعَةَ - وَهُوَ لَا شَيْءَ - وَالثَّابِتُ عَنْهُ مَا رَوَاهُ مَالِكٌ عَنْ نَافِعٍ مِنْ إيجَابِهِ الْوَصِيَّةَ، وَأَنَّهُ لَمْ يَبِتْ لَيْلَتَهُ مُذْ سَمِعَ هَذَا الْخَبَرَ مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا وَوَصِيَّتُهُ عِنْدَهُ مَكْتُوبَةٌ.

وَأَمَّا حَدِيثُ حَاطِبٍ وَعُمَرَ: فَمِنْ رِوَايَةِ ابْنِ لَهِيعَةَ، وَهِيَ أَسْقَطُ مِنْ أَنْ يُشْتَغَلَ بِهَا.

وَأَمَّا خَبَرُ ابْنِ عَبَّاسٍ: فَفِيهِ لَيْثُ بْنُ أَبِي سُلَيْمٍ - وَهُوَ ضَعِيفٌ -.

وَأَمَّا حَدِيثُ عَلِيٍّ فَإِنَّهُ حَدُّ الْقَلِيلِ بِمَا بَيْنَ السَّبْعِمِائَةِ إلَى التِّسْعِمِائَةِ وَهُمْ لَا يَقُولُونَ بِهَذَا - وَلَيْسَ فِي حَدِيثِ أُمِّ الْمُؤْمِنِينَ بَيَانٌ بِمَا ادَّعَوْا.

ثُمَّ لَوْ صَحَّ كُلُّ ذَلِكَ لَمَا كَانَتْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ قَدْ عَارَضَهُمْ صَحَابَةٌ، كَمَا أَوْرَدْنَا، وَإِذَا وَقَعَ التَّنَازُعُ لَمْ يَكُنْ قَوْلُ طَائِفَةٍ أَوْلَى مِنْ قَوْلِ أُخْرَى، وَالْفَرْضُ حِينَئِذٍ هُوَ الرُّجُوعُ إلَى الْقُرْآنِ وَالسُّنَّةِ، وَكِلَاهُمَا يُوجِبُ فَرْضَ الْوَصِيَّةِ، أَمَّا السُّنَّةُ: فَكَمَا أَوْرَدْنَا، وَأَمَّا الْقُرْآنُ: فَكَمَا نُورِدُ - إنْ شَاءَ اللَّهُ تَعَالَى؟

[مَسْأَلَة مَاتَ وَلَمْ يُوصِ]

- because the obligation of the will is binding, as we previously mentioned. Thus, it is established that something from their wealth must be expended after death. Since this is the case, their ownership ceases over what must be expended from their wealth. There is no fixed measure for this except what the heirs or executor determine from that which entails no harm to the heirs. This is the view held by a group of early scholars, supported by an authentic narration from the Prophet—peace and blessings be upon him.

١٧٥٢ - مَسْأَلَةٌ فَمَنْ مَاتَ وَلَمْ يُوصِ: فَفُرِضَ أَنْ يَتَصَدَّقَ عَنْهُ بِمَا تَيَسَّرَ وَلَا بُدَّ، لِأَنَّ فَرْضَ الْوَصِيَّةِ وَاجِبٌ، كَمَا أَوْرَدْنَا، فَصَحَّ أَنَّهُ قَدْ وَجَبَ أَنْ يَخْرُجَ شَيْءٌ مِنْ مَالِهِ بَعْدَ الْمَوْتِ، فَإِذْ ذَلِكَ كَذَلِكَ فَقَدْ سَقَطَ مِلْكُهُ عَمَّا وَجَبَ إخْرَاجُهُ مِنْ مَالِهِ، وَلَا حَدَّ فِي ذَلِكَ إلَّا مَا رَآهُ الْوَرَثَةُ، أَوْ الْوَصِيُّ مِمَّا لَا إجْحَافَ فِيهِ عَلَى الْوَرَثَةِ - وَهُوَ قَوْلُ طَائِفَةٍ مِنْ السَّلَفِ، وَقَدْ صَحَّ بِهِ أَثَرٌ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L28187–28189 It has been narrated to us through the chain of Mālik, from Hishām ibn ʿUrwah, from his father, from ʿĀ'ishah, the Mother of the Believers, that a man said to the Prophet (may Allah's peace and blessings be upon him): "My mother's soul was snatched suddenly. Had she been able to express her wishes, she would have donated. Shall I donate on her behalf, O [...]" "The Messenger of Allah?" The Messenger of Allah (peace and blessings be upon him) said: "Yes," so charity was given on her behalf. This establishes the obligating of charity for one who did not leave a will, and his command (peace and blessings be upon him) constitutes an obligation.

كَمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: «أَنَّ رَجُلًا قَالَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ أُمِّي افْتُلِتَتْ نَفْسُهَا وَإِنَّهَا لَوْ تَكَلَّمَتْ تَصَدَّقَتْ، أَفَأَتَصَدَّقُ عَنْهَا يَا رَسُولَ اللَّهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: نَعَمْ، فَتَصَدَّقَ عَنْهَا» فَهَذَا إيجَابُ الصَّدَقَةِ عَمَّنْ لَمْ يُوصِ، وَأَمْرُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: فَرْضٌ.

L28190 From the chain of Muslim ibn al-Ḥajjāj: Qutaybah narrated to us, from Ismāʿīl ibn Jaʿfar, from al-ʿAlāʾ ibn ʿAbd al-Raḥmān, from his father, from Abū Hurayrah: "A man said to the Messenger of Allah, 'My father died without leaving a will. Will it atone for his sins if I give charity for him?' He (prayers and peace be upon him) said: 'Yes.'"

وَمِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا قُتَيْبَةُ نا إسْمَاعِيلُ - هُوَ ابْنُ جَعْفَرٍ - عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ: «أَنَّ رَجُلًا قَالَ لِرَسُولِ اللَّهِ إنَّ أَبِي مَاتَ وَلَمْ يُوصِ، فَهَلْ يُكَفِّرُ عَنْهُ أَنْ أَتَصَدَّقَ عَنْهُ؟ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: نَعَمْ» .

L28191 This establishes the obligation of making a will and necessitates giving charity on behalf of one who did not leave a will - for expiation applies only to sins. The Prophet (peace and blessings be upon him) clarified that the one who neglected it requires that expiation be performed for that by giving charity on his behalf. This is a matter that admits no disagreement from anyone.

فَهَذَا إيجَابٌ لِلْوَصِيَّةِ، وَلِأَنْ يُتَصَدَّقَ عَمَّنْ لَمْ يُوصِ وَلَا بُدَّ، لِأَنَّ التَّكْفِيرَ لَا يَكُونُ إلَّا فِي ذَنْبٍ، فَبَيَّنَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: أَنَّ تَرْكَ الْوَصِيَّةِ يَحْتَاجُ فَاعِلُهُ إلَى أَنْ يُكَفِّرَ عَنْهُ ذَلِكَ، بِأَنْ يَتَصَدَّقَ عَنْهُ، وَهَذَا مَا لَا يَسَعُ أَحَدًا خِلَافُهُ.

L28192 And through the chain of ʿAbd al-Razzāq from Sufyān ibn ʿUyaynah from Yaḥyā ibn Saʿīd al-Anṣārī from al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq, who said: ʿAbd al-Raḥmān ibn Abī Bakr died in his sleep, so ʿĀ'ishah,

the Mother of the Believers, manumitted on his behalf a long-held possession from his possessions.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ قَالَ: مَاتَ عَبْدُ الرَّحْمَنِ بْنُ أَبِي بَكْرٍ فِي مَنَامٍ لَهُ فَأَعْتَقَتْ عَنْهُ عَائِشَةُ أُمُّ الْمُؤْمِنِينَ تِلَادًا مِنْ تِلَادِهِ.

L28193 This clarifies that, according to her view—may Allah be pleased with her—making a will is an obligation, and that righteousness toward one who did not leave a will is also obligatory. For had this not been the case, she would not have disbursed from his estate what was not obligated to be given.

فَهَذَا يُوَضِّحُ أَنَّ الْوَصِيَّةَ عِنْدَهَا - رَضِيَ اللَّهُ عَنْهَا -: فَرْضٌ، وَأَنَّ الْبِرَّ عَمَّنْ لَمْ يُوصِ: فَرْضٌ، إذْ لَوْلَا ذَلِكَ مَا أَخْرَجَتْ مِنْ مَالِهِ مَا لَمْ يُؤْمَرْ بِإِخْرَاجِهِ.

L28194 From Abd al-Razzaq: Ibn Jurayj narrated from Ibrahim ibn Maysarah that he heard Tawus saying, “There is no Muslim who dies without leaving a will, but his family is most entitled—or deserving—to make a will on his behalf.” Ibn Jurayj said, “I presented this to Ibn Tawus and asked, ’Is it so?’ He replied, ’Yes.’”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ عَنْ إبْرَاهِيمَ بْنِ مَيْسَرَةَ أَنَّهُ سَمِعَ طَاوُسًا يَقُولُ: مَا مِنْ مُسْلِمٍ يَمُوتُ لَمْ يُوصِ إلَّا وَأَهْلُهُ أَحَقُّ، أَوْ مُحِقُّونَ أَنْ يُوصُوا عَنْهُ قَالَ ابْنُ جُرَيْجٍ فَعَرَضْت عَلَى ابْنِ طَاوُسٍ هَذَا وَقُلْت: أَكَذَلِكَ؟ فَقَالَ: نَعَمْ.

L28195 What is astonishing is that certain scholars say, “The *mursal* is like the *musnad*.”

وَالْعَجَبُ أَنَّهُمْ يَقُولُونَ: إنَّ الْمُرْسَلَ كَالْمُسْنَدِ.

L28196 It has been reported to us from Abd al-Razzaq from Ibn Juraij, Sufyan, and Ma’mar, all of them from Abdullah ibn Tawus from his father: “A man said: ’O Messenger of Allah, my mother has died without leaving a bequest. Should I make a bequest on her behalf?’ He replied: ’Yes.’”

وَقَدْ رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ، وَسُفْيَانَ، وَمَعْمَرٍ، كُلُّهُمْ: عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ: «أَنَّ رَجُلًا قَالَ: يَا رَسُولَ اللَّهِ إنَّ أُمِّي تُوُفِّيَتْ وَلَمْ تُوصِ، أَفَأُوصِي عَنْهَا؟ فَقَالَ: نَعَمْ» .

L28197–28199 And via the chain of Ma’mar from Yahya ibn Abi Kathir from Abi Bakr ibn Abd al-Rahman ibn al-Harith ibn Hisham. That the Messenger of Allah—may the peace and blessings of Allah be upon him—freed a female slave on behalf of a woman who died without leaving a will and donated her belongings as charity on her behalf.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ " «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْتَقَ عَنْ امْرَأَةٍ مَاتَتْ وَلَمْ تُوصِ وَلِيدَةً وَتَصَدَّقَ عَنْهَا بِمَتَاعٍ» .

L28200 And is there no mursal better than these two? So they opposed them due to their corrupt opinion.

وَلَا مُرْسَلَ أَحْسَنُ مِنْ هَذَيْنِ؟ فَخَالَفُوهُمَا، لِرَأْيِهِمَا الْفَاسِدِ

L28201 **The Ruling on Testamentary Bequests to Kin**

[مَسْأَلَة الْوَصِيَّة لِلْأَقَارِبِ]

L28202 Issue 1753: It is obligatory for every Muslim to bequeath to relatives who do not inherit - whether due to enslavement, disbelief, the presence of those who preclude them from inheritance, or because they themselves do not inherit. They must bequeath to them whatever their soul is content with, as no fixed measure applies in this matter. If they fail to do so, these relatives must inevitably be given what the heirs or the executor deem appropriate.

١٧٥٣ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى كُلِّ مُسْلِمٍ أَنْ يُوصِيَ لِقَرَابَتِهِ الَّذِينَ لَا يَرِثُونَ، إمَّا لِرِقٍّ، وَإِمَّا لِكُفْرٍ، وَإِمَّا لِأَنَّ هُنَالِكَ مَنْ يَحْجُبُهُمْ عَنْ الْمِيرَاثِ أَوْ لِأَنَّهُمْ لَا يَرِثُونَ فَيُوصِي لَهُمْ بِمَا طَابَتْ بِهِ نَفْسُهُ، لَا حَدَّ فِي ذَلِكَ، فَإِنْ لَمْ يَفْعَلْ أُعْطُوا وَلَا بُدَّ مَا رَآهُ الْوَرَثَةُ، أَوْ الْوَصِيُّ.

L28203 If his parents, or one of them, are disbelievers or a slave, it is also obligatory upon him to bequeath to them or to one of them if the other is not as such. If he does not do so, the parent(s) must necessarily be given from his wealth, then he may bequeath as he wishes thereafter.

فَإِنْ كَانَ وَالِدَاهُ، أَوْ أَحَدُهُمَا عَلَى الْكُفْرِ، أَوْ مَمْلُوكًا فَفَرْضٌ عَلَيْهِ أَيْضًا أَنْ يُوصِيَ لَهُمَا، أَوْ لِأَحَدِهِمَا إنْ لَمْ يَكُنْ الْآخَرُ كَذَلِكَ، فَإِنْ لَمْ يَفْعَلْ أُعْطِيَ، أَوْ أُعْطِيَا مِنْ الْمَالِ وَلَا بُدَّ، ثُمَّ يُوصِي فِيمَا شَاءَ بَعْدَ ذَلِكَ.

L28204 If he bequeaths to three of his aforementioned relatives, it suffices.

فَإِنْ أَوْصَى لِثَلَاثَةٍ مِنْ أَقَارِبِهِ الْمَذْكُورِينَ أَجْزَأَهُ.

L28205 And the closest relatives: they are those who share a common paternal ancestor with the deceased through whom lineage is recognized when traced. Similarly, on the maternal side: it refers to those who share a common paternal ancestor with the mother through whom lineage is recognized. For these are considered relatives in the linguistic sense, and it is impermissible to designate others as “relatives” without proof.

وَالْأَقْرَبُونَ: هُمْ مَنْ يَجْتَمِعُونَ مَعَ الْمَيِّتِ فِي الْأَبِ الَّذِي بِهِ يُعْرَفُ إذَا نُسِبَ، وَمِنْ جِهَةِ أُمِّهِ كَذَلِكَ أَيْضًا: هُوَ مَنْ يَجْتَمِعُ مَعَ أُمِّهِ فِي الْأَبِ الَّذِي يُعْرَفُ بِالنِّسْبَةِ إلَيْهِ؛ لِأَنَّ هَؤُلَاءِ فِي اللُّغَةِ أَقَارِبُ، وَلَا يَجُوزُ أَنْ يُوقَعَ عَلَى غَيْرِ هَؤُلَاءِ اسْمُ أَقَارِبَ بِلَا بُرْهَانٍ.

L28206 The proof of that is the statement of Allah, the Most High: “Prescribed for you when death approaches any of you, if he leaves wealth, is to make a bequest for parents and relatives in fairness—a duty rightfully incumbent upon the God-fearing. Then whoever alters it after hearing it, the sin falls solely on those who alter it. Indeed, Allah is All-Hearing, All-Knowing.” [Al-Baqarah: 180-181]. This is an obligation, as you hear. Thus, parents and inheriting relatives are excluded from receiving the bequest, while those among them who do not inherit remain bound by this obligation.[1]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {الْوَصِيَّةُ لِلْوَالِدَيْنِ وَالأَقْرَبِينَ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ - فَمَنْ بَدَّلَهُ بَعْدَمَا سَمِعَهُ فَإِنَّمَا إِثْمُهُ عَلَى الَّذِينَ يُبَدِّلُونَهُ إِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ} [البقرة: ١٨٠ - ١٨١] فَهَذَا فَرْضٌ كَمَا تَسْمَعُ، فَخَرَجَ مِنْهُ الْوَالِدَانِ، وَالْأَقْرَبُونَ الْوَارِثُونَ، وَبَقِيَ مَنْ لَا يَرِثُ مِنْهُمْ عَلَى هَذَا الْفَرْضِ.

L28207 And since it is an obligatory right due to them, an obligatory portion from his wealth has become incumbent upon them to disburse to those entitled

[1] **Qur’an references (L28206):** Qur’an 2:180 (Al-Baqarah); Qur’an 2:181 (Al-Baqarah).

to it if the wealth owner was wronged and did not command its disbursal. If he bequeaths to those whom he was commanded to bequeath, and he is not prohibited from bequeathing to others, he has fulfilled what he was commanded to do, and he may thereafter bequeath as he wishes.

وَإِذْ هُوَ حَقٌّ لَهُمْ وَاجِبٌ فَقَدْ وَجَبَ لَهُمْ مِنْ مَالِهِ جُزْءٌ مَفْرُوضٌ إِخْرَاجُهُ لِمَنْ وَجَبَ لَهُ إِنْ ظُلِمَ هُوَ، وَلَمْ يَأْمُرْ بِإِخْرَاجِهِ، وَإِذَا أَوْصَى لِمَنْ أَمَرَ بِهِ فَلَمْ يَنْهَ عَنْ الْوَصِيَّةِ لِغَيْرِهِمْ، فَقَدْ أَدَّى مَا أُمِرَ بِهِ - وَلَهُ أَنْ يُوصِيَ بَعْدَ ذَلِكَ بِمَا أَحَبَّ.

L28208 And whoever bequeaths to three close relatives has indeed bequeathed to the close relatives - this being the view of a group from the Salaf. It has been narrated to us through the chain of Abd al-Razzaq from Ma'mar and Ibn Jurayj, both of whom narrate from Abdullah ibn Tawus from his father, who said: Whoever bequeaths to a people, naming them while leaving his close relatives in need, the bequest was seized from them and was returned to his close relatives. If there are no poor among his family, then it is given to the poor regardless of their identity.

وَمَنْ أَوْصَى لِثَلَاثَةٍ أَقْرِبِينَ فَقَدْ أَوْصَى لِلْأَقْرَبِينَ - وَهَذَا قَوْلُ طَائِفَةٍ مِنْ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَابْنِ جُرَيْجٍ، كِلَاهُمَا عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ، قَالَ: مَنْ أَوْصَى لِقَوْمٍ وَسَمَّاهُمْ وَتَرَكَ ذَوِي قَرَابَتِهِ مُحْتَاجِينَ انْتُزِعَتْ مِنْهُمْ وَرُدَّتْ عَلَى ذَوِي قَرَابَتِهِ، فَإِنْ لَمْ يَكُنْ فِي أَهْلِهِ فُقَرَاءُ فَلِأَهْلِ الْفَقْرِ مَنْ كَانُوا.

L28209–28210 From the chain of Abd al-Razzaq, who narrated to us from Ma'mar, from Qatadah, from al-Hasan, who said: If one bequeaths a third to non-relatives, they may receive a third of that third, and two-thirds of the third are returned to his relatives.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ قَتَادَةَ عَنْ الْحَسَنِ، قَالَ: إذَا أَوْصَى فِي غَيْرِ أَقَارِبِهِ بِالثُّلُثِ: جَازَ لَهُمْ ثُلُثُ الثُّلُثِ، وَرُدَّ عَلَى قَرَابَتِهِ: ثُلُثَا الثُّلُثِ.

L28211 And through the chain of Al-Ḥajjāj ibn al-Minhāl: Abū Hilāl narrated from Qatādah, from Saʿīd ibn al-Musayyab, who said regarding one who bequeaths to three non-relatives: "Two-thirds go to the kinship heirs, and one-third goes to the three non-relatives he designated in the will."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو هِلَالٍ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ فِيمَنْ أَوْصَى لِثَلَاثَةٍ فِي غَيْرِ قَرَابَتِهِ، فَقَالَ: لِلْقَرَابَةِ الثُّلُثَانِ، وَلِمَنْ أَوْصَى لَهُ الثُّلُثُ.

L28212 Through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī (the Judge), from ʿAlī ibn ʿAbdullāh—known as Ibn al-Madīnī—from Abū Muʿāwiyah al-Ḍarīr (the Blind), from al-Aʿmash, from Masrūq, who said: "Allah has apportioned among you and perfected the distribution. Whoever prefers his own opinion over that of Allah, the Exalted and Glorious, will go astray. Make bequests to relatives who are not heirs, then leave the wealth as Allah has apportioned it."

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي نا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ ابْنُ الْمَدِينِيِّ - نا أَبُو مُعَاوِيَةَ الضَّرِيرُ نا الْأَعْمَشُ عَنْ مَسْرُوقٍ: أَنَّهُ قَالَ: إنَّ اللَّهَ قَسَمَ بَيْنَكُمْ فَأَحْسَنَ الْقِسْمَةَ، وَإِنَّهُ مَنْ يَرْغَبُ بِرَأْيِهِ عَنْ رَأْيِ اللَّهِ عَزَّ وَجَلَّ يَضِلُّ، أَوْصِ لِقَرَابَتِك مِمَّنْ لَا يَرِثُ، ثُمَّ دَعْ الْمَالَ عَلَى مَا قَسَمَهُ اللَّهُ عَلَيْهِ.

L28213 And through the chain of Ismāʿīl: Sulaymān ibn Ḥarb narrated to us, Ḥammād ibn Salamah narrated to us, from ʿAṭāʾ ibn Abī Maymūnah, who said: I asked Sālim ibn Yasār and al-ʿAlāʾ ibn Ziyād about the statement of Allah, the Almighty and Majestic: {If he leaves good, the bequest is for the parents

وَمِنْ طَرِيقِ إسْمَاعِيلَ نا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَطَاءِ بْنِ أَبِي مَيْمُونَةَ قَالَ: سَأَلْت سَالِمَ بْنَ يَسَارٍ، وَالْعَلَاءَ بْنَ زِيَادٍ عَنْ قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {إِنْ تَرَكَ خَيْرًا

and the near relatives} [al-Baqarah: 180]. They called for the *Mushaf* and recited this verse, then said: “It pertains to the relatives.”[2]

الْوَصِيَّةُ لِلْوَالِدَيْنِ وَالأَقْرَبِينَ} [البقرة: ١٨٠] فَدَعَوَا بِالْمُصْحَفِ فَقَرَآ هَذِهِ الآيَةَ، فَقَالَا: هِيَ لِلْقَرَابَةِ.

L28214 From the transmission of Ismāʿīl: ʿAlī ibn ʿAbd Allāh reported to us: Muʿādh ibn Hishām al-Dastuwāʾī reported to us: My father narrated to me from Qatādah from ʿAbd al-Malik ibn Yaʿlā: He held the opinion regarding one who bequeaths to a non-heir while having relatives who are not his heirs: Two-thirds of the one-third (of the estate) is assigned to the relatives, and one-third of the one-third is assigned to the one he designated in his will.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ: حَدَّثَنِي أَبِي عَنْ قَتَادَةَ عَنْ عَبْدِ الْمَلِكِ بْنِ يَعْلَى: أَنَّهُ كَانَ يَقُولُ فِيمَنْ يُوصِي لِغَيْرِ ذِي الْقُرْبَى وَلَهُ ذُو قَرَابَةٍ مِمَّنْ لَا يَرِثُهُ: أَنَّهُ يُجْعَلُ ثُلُثَا الثُّلُثِ لِذَوِي الْقَرَابَةِ وَثُلُثُ الثُّلُثِ لِمَنْ أَوْصَى لَهُ بِهِ.

L28215 And from the chain of Ismāʾīl: Muḥammad ibn ʾUbayd narrated to us, Muḥammad ibn Thawr narrated to us from Maʾmar from Qaṭādah concerning Allah the Exalted’s statement: {If one leaves property, the will is to be made for the parents and close relatives} [Al-Baqarah: 180]. He said: “The obligation for parents was abrogated from this ruling, while the ruling for relatives who do not inherit remains.”[3]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نا مُحَمَّدُ بْنُ عُبَيْدٍ نا مُحَمَّدُ بْنُ ثَوْرٍ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي قَوْلِ اللَّهِ تَعَالَى: {إِنْ تَرَكَ خَيْرًا الْوَصِيَّةُ لِلْوَالِدَيْنِ وَالأَقْرَبِينَ} [البقرة: ١٨٠] قَالَ: نُسِخَ مِنْهَا الْوَالِدَانِ، وَتُرِكَ الأَقَارِبُ مِمَّنْ لَا يَرِثُ.

L28216 Through the chain of Ismail, al-Ḥajjāj ibn al-Minhāl narrated to us from Ḥammād ibn Salamah, from Iyās ibn Muʿāwiyah, who said: “It is for the relatives”—meaning the will.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ إِيَاسِ بْنِ مُعَاوِيَةَ قَالَ: هِيَ لِلْقَرَابَةِ - يَعْنِي الْوَصِيَّةَ -.

L28217 Ishāq and Abū Sulaymān maintain that it is obligatory to make a will for relatives who do not inherit.

وَبِوُجُوبِ الْوَصِيَّةِ لِلْقَرَابَةِ الَّذِينَ لَا يَرِثُونَ يَقُولُ إِسْحَاقُ، وَأَبُو سُلَيْمَانَ.

L28218 Others said: This is not an obligation; rather, one may bequeath to those outside their kinship.

وَقَالَ آخَرُونَ: لَيْسَ ذَلِكَ فَرْضًا، بَلْ لَهُ أَنْ يُوصِيَ لِغَيْرِ ذِي قَرَابَتِهِ.

L28219 This is the opinion of al-Zuhrī, Sālim ibn ʿAbd Allāh ibn ʿUmar, Sulaymān ibn Yasār, ʿAmr ibn Dīnār, and Muḥammad ibn Sīrīn.

وَهُوَ قَوْلُ الزُّهْرِيِّ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، وَسُلَيْمَانَ بْنِ يَسَارٍ، وَعَمْرِو بْنِ دِينَارٍ، وَمُحَمَّدِ بْنِ سِيرِينَ.

L28220–28221 This is the opinion of Abū Ḥanīfa, al-Awzāʿī, Sufyān al-Thawrī, Imām Mālik, and al-Shāfiʿī.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالأَوْزَاعِيُّ، وَسُفْيَانَ الثَّوْرِيِّ، وَمَالِكٍ، وَالشَّافِعِيِّ.

L28222 They argued using the ḥadīth of the man who bequeathed the emancipation of six slaves, though he owned no property besides them. The Messenger

[2] **Qur’an references (L28213):** Qur’an 2:180 (Al-Baqarah).
[3] **Qur’an references (L28215):** Qur’an 2:180 (Al-Baqarah).

of Allah—peace and blessings be upon him—drew lots among them, freeing two and leaving four in bondage. They said: "This is a testamentary bequest for non-relatives."

وَاحْتَجُّوا بِحَدِيثِ الَّذِي أَوْصَى بِعِتْقِ السِّتَّةِ الْأَعْبُدِ، وَلَا مَالَ لَهُ غَيْرُهُمْ، فَأَقْرَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمْ فَأَعْتَقَ اثْنَيْنِ وَأَرَقَّ أَرْبَعَةً فَقَالُوا: هَذِهِ وَصِيَّةٌ لِغَيْرِ الْأَقَارِبِ.

L28223 Abu Muhammad said: This affords them no argument, for it does not specify that it occurred after the revelation of the aforementioned verse. We do not dispute their claim that before its revelation, one could bequeath to whomever they wished. Thus, this narration corresponds to the abrogated situation—definitively and unquestionably annulled with absolute certainty. Therefore, the ruling of this narration is undoubtedly abrogated, and the verse unequivocally abolishes its ruling.

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّهُ لَيْسَ فِيهِ بَيَانُ أَنَّهُ كَانَ بَعْدَ نُزُولِ الْآيَةِ الْمَذْكُورَةِ، وَنَحْنُ لَا نُخَالِفُهُمْ فِي أَنَّ قَبْلَ نُزُولِهَا كَانَ لِلْمَرْءِ أَنْ يُوصِيَ لِمَنْ شَاءَ، فَهَذَا الْخَبَرُ مُوَافِقٌ لِلْحَالِ الْمَنْسُوخَةِ الْمُرْتَفِعَةِ بِيَقِينٍ لَا شَكَّ فِيهِ قَطْعًا - فَحُكْمُ هَذَا الْخَبَرِ مَنْسُوخٌ بِلَا شَكٍّ وَالْآيَةُ رَافِعَةٌ لِحُكْمِهِ نَاسِخَةٌ لَهُ بِلَا شَكٍّ.

L28224 Whoever claims regarding the abrogating text that it has reverted to being abrogated, and regarding the abrogated text that it has reverted to being abrogating, without an established and transmitted text as evidence for such a claim, has indeed uttered falsehood, pursued what he has no knowledge of, ascribed to Allah the Exalted what he does not know, abandoned certainty, and judged based on speculation. This is prohibited by the text of the Qur'an.

وَمَنْ ادَّعَى فِي النَّاسِخِ أَنَّهُ عَادَ مَنْسُوخًا، وَفِي الْمَنْسُوخِ أَنَّهُ عَادَ نَاسِخًا بِغَيْرِ نَصٍّ ثَابِتٍ وَارِدٍ بِذَلِكَ، فَقَدْ قَالَ الْبَاطِلَ وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَقَالَ عَلَى اللَّهِ تَعَالَى مَا لَا يَعْلَمُ وَتَرَكَ الْيَقِينَ وَحَكَمَ بِالظُّنُونِ، وَهَذَا مُحَرَّمٌ بِنَصِّ الْقُرْآنِ.

L28225 And we say: Indeed, Allah, the Exalted, said: "as a clarification for all things" [An-Nahl: 89]. Therefore, we decisively affirm, resolve, and bear witness that there is no means to abrogate an abrogator or reinstate an abrogated without a clarification conveyed to us regarding that. Were anything other than this permissible, we would be in uncertainty about our religion, and we would not discern what Allah, the Exalted, has commanded us to do from what He has prohibited us from doing. Far be it from Allah! Thus, the falsity of their obfuscation through this report has become evident to us.[4]

وَنَحْنُ نَقُولُ: إِنَّ اللَّهَ تَعَالَى قَالَ: {تِبْيَانًا لِكُلِّ شَيْءٍ} [النحل: ٨٩] فَنَحْنُ نَقْطَعُ وَنَبُتُّ وَنَشْهَدُ أَنَّهُ لَا سَبِيلَ إلَى نَسْخِ نَاسِخٍ، وَرَدِّ حُكْمٍ مَنْسُوخٍ دُونَ بَيَانٍ وَارِدٍ لَنَا بِذَلِكَ، وَلَوْ جَازَ غَيْرُ هَذَا لَكُنَّا مِنْ دِينِنَا فِي لَبْسٍ، وَلَكُنَّا لَا نَدْرِي مَا أَمَرَنَا اللَّهُ تَعَالَى بِهِ مِمَّا نَهَانَا عَنْهُ، حَاشَا لِلَّهِ مِنْ هَذَا - فَظَهَرَ لَنَا بُطْلَانُ تَمْوِيهِهِمْ بِهَذَا الْخَبَرِ.

L28226 Moreover, it is not stated therein that the man was a pure-blooded member of the Ansar with relatives who do not inherit from him. Since this is not specified, it is possible he was an ally without male progeny or any relatives. Thus, they have no proof in this matter, and it is impermissible to make

وَأَيْضًا: فَلَيْسَ فِيهِ أَنَّ ذَلِكَ الرَّجُلَ كَانَ صَلِيبَةً مِنْ الْأَنْصَارِ، وَكَانَ لَهُ قَرَابَةٌ لَا يَرِثُونَ، فَإِذْ لَيْسَ ذَلِكَ فِيهِ فَمُمْكِنٌ أَنْ يَكُونَ حَلِيفًا أَتِيًّا لَا قَرَابَةَ لَهُ، فَلَا حُجَّةَ لَهُمْ فِيهِ، وَلَا يَحِلُّ الْقَطْعُ بِالظَّنِّ، وَلَا تَرْكُ الْيَقِينِ لَهُ.

[4] **Qur'an references (L28225):** Qur'an 16:89 (An-Nahl).

definitive judgments based on speculation nor to discard certainty in favor of conjecture.

L28227–28229 The most astonishing aspect is their argument in this matter, citing that ʿAbd al-Raḥmān ibn ʿAwf bequeathed a garden to the Mothers of the Believers, which was sold for four hundred thousand dirhams—and to the participants of Badr, one hundred dinars for each individual among them—and that ʿUmar bequeathed four thousand dirhams, reiterating, four thousand dirhams, to every wife who bore him a child—and that ʿĀ'ishah, the Mother of the Believers, bequeathed her estate to the family of Abū Yūnus, her freed slave. Abū Muḥammad said: This is indeed among the reprehensible acts of doctrinal deception in religion. Would that I knew: What in any of this justifies abstaining from bequeathing to one's relatives? Do any of these reports state that they—may Allah be pleased with them—did not bequeath to their relatives? If they say: "This is not mentioned in them," we reply: Nor is it mentioned that they bequeathed a third or less, and perhaps they... They bequeathed more than a third—and all of these are abominations (we seek refuge with Allah from the likes of these)—and we ask Him for protection and guidance.

وَأَعْجَبُ شَيْءٍ احْتِجَاجُهُمْ فِي هَذَا بِأَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ أَوْصَى لِأُمَّهَاتِ الْمُؤْمِنِينَ بِحَدِيقَةٍ بِيعَتْ بِأَرْبَعِمِائَةِ أَلْفِ دِرْهَمٍ - وَلِأَهْلِ بَدْرٍ بِمِائَةِ دِينَارٍ، مِائَةُ دِينَارٍ لِكُلِّ وَاحِدٍ مِنْهُمْ - وَأَنَّ عُمَرَ أَوْصَى لِكُلِّ أُمِّ وَلَدٍ لَهُ بِأَرْبَعَةِ آلَافِ دِرْهَمٍ، أَرْبَعَةِ آلَافِ دِرْهَمٍ - وَأَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَوْصَتْ لِآلِ أَبِي يُونُسَ مَوْلَاهَا بِمَتَاعِهَا؟ قَالَ أَبُو مُحَمَّدٍ: إنَّ هَذَا لَمِنْ قَبِيحِ التَّدْلِيسِ فِي الدِّينِ، وَلَيْتَ شِعْرِي: أَيُّ شَيْءٍ فِي هَذَا مِمَّا يُبِيحُ أَنْ لَا يُوصِيَ لِقَرَابَتِهِ؟ وَهَلْ فِي شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ أَنَّهُمْ - رَضِيَ اللَّهُ عَنْهُمْ - لَمْ يُوصُوا لِقَرَابَتِهِمْ؟ فَإِنْ قَالُوا: لَمْ يُذْكَرْ هَذَا فِيهِ؟ قُلْنَا: وَلَا ذُكِرَ فِيهِ أَنَّهُمْ أَوْصَوْا بِالثُّلُثِ فَأَقَلَّ، وَلَعَلَّهُمْ أَوْصَوْا بِأَكْثَرَ مِنْ الثُّلُثِ - وَهَذِهِ كُلُّهَا فَضَائِحُ، نَعُوذُ بِاَللَّهِ مِنْ مِثْلِهَا - وَنَسْأَلُهُ الْعِصْمَةَ وَالتَّوْفِيقَ.

The Issue of Bequest to an Heir

[مَسْأَلَة الْوَصِيَّة لوارث]

L28230

L28231 1754. Issue: A bequest is absolutely impermissible to an heir. If one bequeaths to a non-heir who becomes an heir upon the testator's death, the bequest to him is void. If one bequeaths to an heir who later ceases to be an heir, the bequest is not permissible for him, since it was invalid when established. This ruling holds whether the heirs consent or not, for the community transmitted that the Messenger of Allah (peace be upon him) said: "There is no bequest for an heir."

١٧٥٤ - مَسْأَلَةٌ: وَلَا تَحِلُّ الْوَصِيَّةُ لِوَارِثٍ أَصْلًا، فَإِنْ أَوْصَى لِغَيْرِ وَارِثٍ فَصَارَ وَارِثًا عِنْدَ مَوْتِ الْمُوصِي: بَطَلَتْ الْوَصِيَّةُ لَهُ، فَإِنْ أَوْصَى لِوَارِثٍ ثُمَّ صَارَ غَيْرَ وَارِثٍ لَمْ تَجُزْ لَهُ الْوَصِيَّةُ، لِأَنَّهَا إذْ عَقَدَهَا كَانَتْ بَاطِلًا، وَسَوَاءٌ جَوَّزَ الْوَرَثَةُ ذَلِكَ أَوْ لَمْ يُجَوِّزُوا؛ لِأَنَّ الْكَوَافَّ نَقَلَتْ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا وَصِيَّةَ لِوَارِثٍ» .

L28232 Since God the Exalted has prohibited that, the heirs have no right to permit what God has nullified through the words of the Messenger of God—may God bless him and grant him peace—unless they voluntarily offer a gift for it of their own accord, for it is their property. This is the view of al-Muzanī and Abū Sulaymān.

فَإِذْ قَدْ مَنَعَ اللَّهُ تَعَالَى مِنْ ذَلِكَ فَلَيْسَ لِلْوَرَثَةِ أَنْ يُجِيزُوا مَا أَبْطَلَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا أَنْ يَبْتَدِئُوا هِبَةً لِذَلِكَ مِنْ عِنْدِ أَنْفُسِهِمْ، فَهُوَ مَالُهُمْ - وَهَذَا قَوْلُ الْمُزَنِيِّ، وَأَبِي سُلَيْمَانَ.

L28233 If it is said: You have narrated through the chain of Ibn Wahb from ʿAbd Allāh ibn Samʿān, ʿAbd al-Jalīl ibn Ḥumayd al-Yaḥṣubī, Yaḥyā ibn Ayyūb, and ʿAmr ibn Qays Sandal. ʿUmar ibn Qays said: From ʿAṭāʾ ibn Abī Rabāḥ, while the others said: "I am ʿAbd Allāh ibn ʿAbd al-Raḥmān ibn Abī Ḥusayn." Then ʿAṭāʾ and ʿAbd Allāh concurred: "The Messenger of Allah—peace and blessings be upon him—said during the year of the Conquest in his sermon: 'No bequest is permissible to an heir unless the heirs consent.'" ʿAṭāʾ added in his narration: "If they approve it, they have no right to retract?"' We reply: This is a *mursal* report, and it stands as a scandalous example among *mursal* reports, for the four narrators mentioned by Ibn Wahb are all rejected, and their convergence is truly astonishing.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ اللَّهِ بْنِ سَمْعَانَ، وَعَبْدِ الْجَلِيلِ بْنِ حُمَيْدٍ الْيَحْصُبِيِّ، وَيَحْيَى بْنِ أَيُّوبَ، وَعَمْرِو بْنِ قَيْسٍ سَنْدَلٍ، قَالَ عُمَرُ بْنُ قَيْسٍ: عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ، وَقَالَ الْآخَرُونَ: أَنَا عَبْدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ أَبِي حُسَيْنٍ، ثُمَّ اتَّفَقَ عَطَاءٌ، وَعَبْدُ اللَّهِ: أَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ عَامَ الْفَتْحِ فِي خُطْبَتِهِ: لَا تَجُوزُ وَصِيَّةٌ لِوَارِثٍ إِلَّا أَنْ يَشَاءَ الْوَرَثَةُ» - زَادَ عَطَاءٌ فِي حَدِيثِهِ: «وَإِنْ أَجَازُوا فَلَيْسَ لَهُمْ أَنْ يَرْجِعُوا» ؟ قُلْنَا: هَذَا مُرْسَلٌ، ثُمَّ هُوَ مِنَ الْمُرْسَلِ فَضِيحَةٌ، لِأَنَّ الْأَرْبَعَةَ الَّذِينَ ذَكَرَهُمُ ابْنُ وَهْبٍ كُلُّهُمْ مُطَّرَحٌ، وَإِنَّ فِي اجْتِمَاعِهِمْ لَأُعْجُوبَةً.

L28234 Our understanding regarding the Hanafis and Malikis is that they assert: "The *mursal* is like the *musnad*, and the *musnad* like the *mursal*," and they do not concern themselves with weak [narrations]. Why then did they not adopt this *mursal*? Yet this is among the matters in which they contradicted each other.

وَعَهْدُنَا بِالْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ يَقُولُونَ: إِنَّ الْمُرْسَلَ كَالْمُسْنَدِ، وَالْمُسْنَدَ كَالْمُرْسَلِ، وَلَا يُبَالُونَ بِضَعِيفٍ، فَهَلَّا أَخَذُوا بِهَذَا الْمُرْسَلِ؟ وَلَكِنَّ هَذَا مِمَّا تَنَاقَضُوا فِيهِ.

L28235 Abu Hanifah said: They may revoke after his death.

وَقَالَ أَبُو حَنِيفَةَ: لَهُمْ أَنْ يَرْجِعُوا بَعْدَ مَوْتِهِ.

L28236 Mālik said: They may not rescind unless they are under his surety (kafālah), in which case they may do so.

وَقَالَ مَالِكٌ: لَا رُجُوعَ لَهُمْ إِلَّا أَنْ يَكُونُوا فِي كَفَالَتِهِ، فَلَهُمْ أَنْ يَرْجِعُوا.

L28237 The ruling on a bequest involving more than one-third [of the estate].

[مَسْأَلَة الْوَصِيَّة بِأَكْثَرَ مِنْ الثُّلُث]

L28238–28240 Issue 1755: It is not permissible to bequeath more than a third - whether the deceased has an heir or not; whether the heirs approved or did not approve - as established through multiple chains of transmission from Sa'd ibn Abi Waqqās that he said: "The Messenger of Allah - may Allah bless him and his family and grant him peace - visited me..." "I said, 'Shall I bequeath all my wealth?' He said, 'No.' I said, 'What about half?' He said, 'No.' I said, 'What about a third?' He said, 'Yes, and a third is already much.'"

١٧٥٥ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْوَصِيَّةُ بِأَكْثَرَ مِنَ الثُّلُثِ - كَانَ لَهُ وَارِثٌ أَوْ لَمْ يَكُنْ لَهُ وَارِثٌ، أَجَازَ الْوَرَثَةُ، أَوْ لَمْ يُجِيزُوا -: صَحَّ مِنْ طُرُقٍ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ أَنَّهُ قَالَ: «عَادَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقُلْتُ: أُوصِي بِمَالِي كُلِّهِ؟ قَالَ: لَا، قُلْتُ: فَالنِّصْفُ؟ قَالَ: لَا، قُلْتُ: فَالثُّلُثُ؟ قَالَ: نَعَمْ، وَالثُّلُثُ كَثِيرٌ» .

L28241 The report states that "a man from the Ansar, upon his death, bequeathed

that six slaves be emancipated, as he owned no other property. The Messenger of Allah (peace be upon him and his family) summoned them, drew lots among them, freed two, and kept four enslaved."

وَالْخَبَرُ بِأَنَّ «رَجُلًا مِنْ الْأَنْصَارِ أَوْصَى عِنْدَ مَوْتِهِ بِعِتْقِ سِتَّةِ أَعْبُدٍ لَا مَالَ لَهُ غَيْرُهُمْ، فَدَعَاهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَقْرَعَ بَيْنَهُمْ، فَأَعْتَقَ اثْنَيْنِ وَأَرَقَّ أَرْبَعَةً» .

L28242 Malik said: If his bequest exceeds the third by a small amount such as two dirhams or similar, the bequest is permissible in all such cases. This [opinion of Malik] contradicts the transmitted textual evidence and constitutes an error in restricting the ruling to the explicitly mentioned amount while disregarding what exceeds or falls short of it. Moreover, this excess—whether minor or significant—must inherently belong to either the testator's rightful share or the heirs' rightful share. If it belongs to the testator's share, the excess beyond the third is also his rightful portion and must be upheld. If it belongs to the heirs' share, the testator has no lawful right to exercise authority over their property.

وَقَالَ مَالِكٌ: إنْ زَادَتْ وَصِيَّتُهُ عَنْ الثُّلُثِ بِيَسِيرٍ كَالدِّرْهَمَيْنِ، وَنَحْوِ ذَلِكَ جَازَتْ الْوَصِيَّةُ فِي كُلِّ ذَلِكَ - وَهَذَا خِلَافُ الْخَبَرِ، وَخَطَأٌ فِي تَحْدِيدِهِ مَا ذُكِرَ دُونَ مَا زَادَ وَمَا نَقَصَ، وَلَا تَخْلُو تِلْكَ الزِّيَادَةُ - قَلَّتْ أَوْ كَثُرَتْ - مِنْ أَنْ تَكُونَ مِنْ حَقِّ الْمُوصِي أَوْ حَقِّ الْوَرَثَةِ، فَإِنْ كَانَتْ مِنْ حَقِّ الْمُوصِي فَمَا زَادَ عَلَى ذَلِكَ فَمِنْ حَقِّهِ أَيْضًا، فَيَنْبَغِي أَنْ يُنَفَّذَ، وَإِنْ كَانَتْ مِنْ حَقِّ الْوَرَثَةِ فَلَا يَحِلُّ لِلْمُوصِي أَنْ يَحْكُمَ فِي مَالِهِمْ.

L28243 A group said: Whoever has no heir is entitled to bequeath all his wealth.

وَقَالَتْ طَائِفَةٌ: مَنْ لَا وَارِثَ لَهُ فَلَهُ أَنْ يُوصِيَ بِمَالِهِ كُلِّهِ.

L28244 This has been authentically reported from Ibn Masʿūd and others, as we have narrated through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from Abū Isḥāq al-Sabīʿī from Abū Maysarah ʿAmr ibn Shuraḥbīl, who said: ʿAbdullāh ibn Masʿūd said to me: "You are among the people of the tribe in Kufah most likely to face a situation where one of you may die without leaving agnates or kin. Therefore, if such a situation arises, he should not hesitate to give his wealth to the poor and needy."

صَحَّ ذَلِكَ عَنْ ابْنِ مَسْعُودٍ، وَغَيْرِهِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ أَبِي مَيْسَرَةَ عَمْرِو بْنِ شُرَحْبِيلَ قَالَ: قَالَ لِي عَبْدُ اللَّهِ بْنُ مَسْعُودٍ: إنَّكُمْ مِنْ أَحْرَى حَيٍّ بِالْكُوفَةِ أَنْ يَمُوتَ أَحَدُكُمْ فَلَا يَدَعُ عَصَبَةً وَلَا رَحِمًا فَلَا يَمْنَعُهُ إذَا كَانَ ذَلِكَ أَنْ يَضَعَ مَالَهُ فِي الْفُقَرَاءِ وَالْمَسَاكِينِ.

L28245 And through the chain of Sufyān ibn ʿUyaynah, from Ismāʿīl ibn Abī Khālid, from al-Shaʿbī, from Masrūq, who said regarding the case of one who has no patron through manumission: He may allocate his wealth as he deems fit. If the deceased does not do so, it goes to the public treasury [Bayt al-Mal].

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّهُ قَالَ فِيمَنْ لَيْسَ لَهُ مَوْلَى عَتَاقَةٍ: أَنَّهُ يَضَعُ مَالَهُ حَيْثُ يَشَاءُ فَإِنْ لَمْ يَفْعَلْ فَهُوَ فِي بَيْتِ الْمَالِ.

L28246–28248 And through the chain of ʿAbd al-Razzāq, from Maʿmar, from Ayyūb al-Sakhtiyānī, from Ibn Sīrīn, from ʿUbaydah al-Salmānī. He said: If a person dies with no outstanding contractual obligations to anyone or surviving agnates who inherit, he should bequeath his entire estate to whoever he wishes.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ سِيرِينَ عَنْ عَبِيدَةَ السَّلْمَانِيِّ قَالَ: إذَا مَاتَ وَلَيْسَ عَلَيْهِ عَقْدٌ لِأَحَدٍ وَلَا عَصَبَةَ يَرِثُونَ فَإِنَّهُ يُوصِي بِمَالِهِ كُلِّهِ حَيْثُ شَاءَ.

Through the chain of Ḥammād ibn Salamah: Abū al-ʿĀliyah al-Riyāḥī - his female owner Sā'ibah emancipated him. When he neared death, he willed all his wealth to others instead of her. Did she litigate this? The court ruled she inherited. This constitutes the position of al-Ḥasan al-Baṣrī, Abū Ḥanīfah, his disciples, Sharik al-Qāḍī, and Isḥāq ibn Rāhūyah.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَّ أَبَا الْعَالِيَةَ الرِّيَاحِيَّ أَعْتَقَتْهُ مَوْلَاتُهُ سَائِبَةً، فَلَمَّا احْتُضِرَ أَوْصَى بِمَالِهِ كُلِّهِ لِغَيْرِهَا، فَخَاصَمَتْ فِي ذَلِكَ؟ فَقُضِيَ لَهَا بِالْمِيرَاثِ - وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَشَرِيكٍ الْقَاضِي، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ.

Malik, Ibn Shubrumah, al-Awzāʿī, al-Ḥasan ibn Ḥayy, al-Shāfiʿī, Aḥmad, and Abū Sulaymān said: He may not bequeath more than a third—whether he has an heir or not.

وَقَالَ مَالِكٌ، وَابْنُ شُبْرُمَةَ، وَالْأَوْزَاعِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَبُو سُلَيْمَانَ: لَيْسَ لَهُ أَنْ يُوصِيَ بِأَكْثَرَ مِنْ الثُّلُثِ - كَانَ لَهُ وَارِثٌ أَوْ لَمْ يَكُنْ.

Abu Muhammad said: Those who permit it argued in support of that by citing the statement of the Messenger of Allah—may Allah's peace and blessings be upon him—to Sa'd: "A third, and a third is much. Indeed, if you leave your heirs wealthy, it is better than leaving them destitute, begging from people."[5]

قَالَ أَبُو مُحَمَّد: احْتَجَّ الْمُجِيزُونَ لِذَلِكَ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِسَعْدٍ: «الثُّلُثُ وَالثُّلُثُ كَثِيرٌ إنَّكَ إنْ تَدَعْ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَدَعَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ» .

They said: The Messenger of Allah—peace and blessings be upon him—established the effective cause for restricting bequests to a third as being to ensure the sufficiency of the heirs. Thus, if one has no heirs, the effective cause is lifted, and he may bequeath as he pleases. They said: This is the view of Ibn Masʿūd, and none among the Companions are known to have opposed him. They said: Since the wealth of one without heirs rightfully belongs to the Muslims—being ownerless property—and since none hold a rightful claim to it, its owner may dispose of it as he wills. They said: Just as the Imam may dispose of it after the owner's death as he deems fit, so too may the owner. We know of no contentious argument they advance beyond this, and none of it holds any valid proof for them.

قَالُوا: فَإِنَّمَا جَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْعِلَّةَ فِي أَنْ لَا يُتَجَاوَزَ الثُّلُثُ فِي الْوَصِيَّةِ أَنْ يُغْنِيَ الْوَرَثَةَ فَإِذَا لَمْ تَكُنْ لَهُ وَرَثَةٌ فَقَدْ ارْتَفَعَتْ الْعِلَّةُ فَلَهُ أَنْ يُوصِيَ بِمَا شَاءَ؟ وَقَالُوا: هُوَ قَوْلُ ابْنِ مَسْعُودٍ وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ؟ وَقَالُوا: فَلَمَّا كَانَ مَالُ مَنْ لَا وَارِثَ لَهُ إنَّمَا يَسْتَحِقُّهُ الْمُسْلِمُونَ، لِأَنَّهُ مَالٌ لَا يُعْرَفُ لَهُ رَبٌّ، فَإِذْ هُوَ هَكَذَا وَلَمْ يَكُنْ فِيهِ لِأَحَدٍ حَقٌّ فَلِصَاحِبِهِ أَنْ يَضَعَهُ حَيْثُ شَاءَ؟ وَقَالُوا: كَمَا لِلْإِمَامِ أَنْ يَضَعَهُ بَعْدَ مَوْتِهِ حَيْثُ شَاءَ فَكَذَلِكَ لِصَاحِبِهِ؟ مَا نَعْلَمُ لَهُمْ شَيْئًا يَشْغَبُونَ بِهِ غَيْرَ هَذَا وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ

[5] **Hadith references (L28251):** Sunan an-Nasai 3627; Sunan an-Nasai 3628; Jami at-Tirmidhi 2116.

أَمَّا قَوْلُهُمْ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ الْعِلَّةَ فِي أَنْ لَا يُتَجَاوَزَ الثُّلُثُ غِنَى الْوَرَثَةِ فَبَاطِلٌ مِنْ قَوْلِهِمْ؟ مَا قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَطُّ إنَّ أَمْرِي بِأَنْ لَا يُتَجَاوَزَ الثُّلُثُ فِي الْوَصِيَّةِ؟ إنَّمَا هُوَ لِغِنَى الْوَرَثَةِ؟ إنَّمَا قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «الثُّلُثُ وَالثُّلُثُ كَثِيرٌ» ؟ فَهَذِهِ قَضِيَّةٌ قَائِمَةٌ بِنَفْسِهَا، وَحُكْمٌ فَصْلٌ غَيْرُ مُتَعَلِّقٍ بِمَا بَعْدَهُ ثُمَّ ابْتَدَأَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَضِيَّةً أُخْرَى مُبْتَدَأَةً قَائِمَةً بِنَفْسِهَا، غَيْرَ مُتَعَلِّقَةٍ بِمَا قَبْلَهَا، فَقَالَ «إنَّكَ إنْ تَدَعْ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَدَعَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ» .

L28253 As for their claim that the Messenger of Allah—peace and blessings be upon him—made the wealth of the heirs the reason for not exceeding one-third in bequests, this is invalid. Did he—peace and blessings be upon him—ever say that his command to avoid exceeding one-third in bequests is solely for the heirs' affluence? He—peace and blessings be upon him—merely stated: "One-third, and one-third is much." This is an independent ruling, a decisive ruling unrelated to subsequent matters. Then he—peace and blessings be upon him—introduced another independent ruling, newly established and self-contained, unconnected to the prior context, stating: "Leaving your heirs wealthy is better than leaving them destitute, begging people for sustenance."[6]

بُرْهَانُ صِحَّةِ هَذَا الْقَوْلِ -: أَنَّهُ لَا يَحِلُّ أَنْ يُنْسَبَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ عَلَّلَ عِلَّةً فَاسِدَةً مُنْكَرَةً حَاشَ لَهُ مِنْ ذَلِكَ.

L28254 The proof for the validity of this statement is that it is impermissible to attribute to the Messenger of Allah—may Allah bless him and grant him peace—that he posited an invalid and reprehensible rationale; far is he from that.

وَنَحْنُ نَجِدُ مَنْ لَهُ عَشَرَةٌ مِنْ الْوَرَثَةِ فُقَرَاءُ وَلَمْ يَتْرُكْ إلَّا دِرْهَمًا وَاحِدًا فَإِنَّ لَهُ بِإِقْرَارِهِمْ أَنْ يُوصِيَ بِثُلُثِهِ، وَلَا يَتْرُكُ لَهُمْ مَا يُغْنِيهِمْ مِنْ جُوعٍ غَدَاءً وَاحِدًا، وَلَا عَشَاءً وَاحِدًا.

L28255–28256 We find someone who has ten of the heirs as poor and has left behind only a single dirham. In such a case, he has the right, upon their acknowledgment, to bequeath a third of it, and he does not leave them sufficient to alleviate their hunger—not even a single lunch or dinner.

وَنَحْنُ نَجِدُ مَنْ لَا يَتْرُكُ وَارِثًا إلَّا وَاحِدًا غَنِيًّا مُوسِرًا مُكْثِرًا وَلَا يُخَلِّفُ إلَّا دِرْهَمًا وَاحِدًا، فَلَيْسَ لَهُ عِنْدَهُمْ وَلَا عِنْدَنَا أَنْ يُوصِيَ إلَّا بِثُلُثِهِ، وَلَيْسَ لَهُ غِنًى فِيمَا يَدَعُ لَهُ؟ وَلَوْ كَانَتْ الْعِلَّةُ مَا ذَكَرُوا لَكَانَ مَنْ تَرَكَ ابْنًا وَاحِدًا، وَتَرَكَ ثَلَاثَمِائَةِ أَلْفِ دِينَارٍ يَكُونُ لَهُ أَنْ يُوصِيَ بِالنِّصْفِ؛ لِأَنَّ لَهُ فِيمَا يَبْقَى غِنَى الْأَبَدِ، فَلَوْ كَانَتْ الْعِلَّةُ غِنَى الْوَرَثَةِ لَرُوعِيَ مَا يُغْنِيهِمْ عَلَى حَسَبِ كَثْرَةِ الْمَالِ وَقِلَّتِهِ - وَهَذَا بَاطِلٌ عِنْدَ الْجَمِيعِ.

L28257 We find a scenario where one leaves no heir except a single wealthy, affluent, and prosperous individual, yet bequeaths only one dirham. According to neither their position nor ours does he have the right to will except a third of it. Is there not sufficiency for him in what he leaves behind? Had the legal rationale been as they asserted, one who leaves a single son and three hundred thousand dinars would be entitled to will half, since what remains provides perpetual sufficiency. If the rationale were the heirs' sufficiency, consideration would be given to what suffices them relative to the wealth's abundance or scarcity—yet this position is null and void according to all jurists.

فَصَحَّ أَنَّ الَّذِي قَالُوا بَاطِلٌ، وَأَنَّ الشَّرِيعَةَ فِي ذَلِكَ إنَّمَا هُوَ تَحْدِيدُ الثُّلُثِ فَمَا دُونَهُ فَقَطْ - قَلَّ الْمَالُ أَوْ كَثُرَ، كَانَ فِيهِ لِلْوَرَثَةِ غِنًى أَوْ لَمْ يَكُنْ -.

L28258 Thus, it is established that what they claimed is invalid, and that the legisla-

[6] **Hadith references (L28253):** Sahih al-Bukhari 2742; Sunan an-Nasai 3627; Sunan an-Nasai 3628.

tive ruling in this matter is solely the restriction to a third or less—whether the estate is small or large, whether the heirs have sufficiency in it or not.

L28259 As for their statement: "It is the opinion of Ibn Masʿūd, and no opposing view is known from the Companions"—they may well be refuting the Mālikīs and Shāfiʿīs with this legal reasoning, those who advance proofs against them using similar reasoning, introducing it outside its intended framework, and perpetually bandying it about.

وَأَمَّا قَوْلُهُمْ: إِنَّهُ قَوْلُ ابْنِ مَسْعُودٍ وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، فَلَعَلَّهُمْ يَقْرَعُونَ بِهَذِهِ الْعِلَّةِ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، الَّذِينَ يَحْتَجُّونَ عَلَيْهِمْ بِمِثْلِهَا، وَيُورِدُونَهَا عَلَيْهِمْ فِي غَيْرِ مَا وُضِعَ وَيَتَقَاذَفُونَ لَهَا أَبَدًا.

L28260 As for us, we do not consider any proof valid except textual evidence from the Quran or the Sunnah of the Messenger of Allah—peace and blessings be upon him—and success comes only from Allah, the Exalted.

وَأَمَّا نَحْنُ فَلَا نَرَى حُجَّةً إلَّا فِي نَصِّ قُرْآنٍ أَوْ سُنَّةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28261 As for their assertion that the Muslim community takes the wealth of one who has no heir because it has no rightful owner—since no one becomes entitled to it upon his death, and thus the original owner retains the strongest claim to it—they have merely restated their claim and presented their own assertion as proof for itself. This is the point we contest, for their position is invalid. Rather, we and our wealth belong to Allah, the Exalted. It is impermissible for anyone to act regarding their own person or any wealth except with what Allah has authorized its owner [to do]. Your wealth is solely the wealth of Allah, the Almighty and Majestic.

وَأَمَّا قَوْلُهُمْ: إنَّمَا يَأْخُذُ الْمُسْلِمُونَ مَالَ مَنْ لَا وَارِثَ لَهُ؛ لِأَنَّهُ لَا رَبَّ لَهُ، فَإِذْ لَا يَسْتَحِقُّهُ بِمَوْتِهِ أَحَدٌ فَصَاحِبُهُ أَحَقُّ بِهِ؛ فَمَا زَادُونَا عَلَى تَكْرَارِ قَوْلِهِمْ، وَأَنْ جَعَلُوا دَعْوَاهُمْ حُجَّةً لِدَعْوَاهُمْ، وَفِي هَذَا نَازَعْنَاهُمْ، وَلَيْسَ كَمَا قَالُوا، لَكِنْ نَحْنُ وَأَمْوَالُنَا لِلَّهِ تَعَالَى وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَتَصَرَّفَ فِي نَفْسِهِ، وَلَا فِي مَالٍ إلَّا بِمَا أَذِنَ اللَّهُ لَهُ فِيهِ مَالِكُهُ، وَمَالُك مَالِهِ عَزَّ وَجَلَّ فَقَطْ.

L28262 Had Allah the Exalted not freed our hands over our wealth as He wills, we would have no legal authority over it, just as we have no legal discretion where He has not permitted us to manage it.

وَلَوْلَا أَنَّ اللَّهَ تَعَالَى أَطْلَقَ أَيْدِينَا عَلَى أَمْوَالِنَا فِيمَا شَاءَ لَمَا جَازَ لَنَا فِيهَا حُكْمٌ، كَمَا لَا يَجُوزُ لَنَا فِيهَا حُكْمٌ، حَيْثُ لَمْ يُبِحْ اللَّهُ تَعَالَى لَنَا التَّصَرُّفَ فِيهَا.

L28263 If it were not that Allah the Exalted permitted us to make a will after death, it would not be permissible for us to bequeath anything. Thus, Allah the Exalted permitted up to a third, and that is permissible, but He did not permit more than that; therefore, it is not permitted.

وَلَوْلَا أَنَّ اللَّهَ تَعَالَى أَذِنَ لَنَا فِي الْوَصِيَّةِ بَعْدَ الْمَوْتِ لَمَا جَازَ لَنَا أَنْ نُوصِيَ بِشَيْءٍ، فَأَبَاحَ اللَّهُ تَعَالَى الثُّلُثَ فَمَا دُونَهُ فَكَانَ ذَلِكَ مُبَاحًا وَلَمْ يُبِحْ أَكْثَرَ فَهُوَ غَيْرُ مُبَاحٍ.

L28264–28266 As for their assertion, "If the Imam may allocate it as he wills, does his companion not have greater right?"—this is a weak argument and flawed analogical reasoning (Qiyas). The ruling is invalid. Scholars state regarding one who leaves behind a wife but no blood relatives, patron, or male agnatic heirs: one-fourth of the estate is allotted to the wife, the Imam distributes the

وَأَمَّا قَوْلُهُمْ كَمَا لِلْإِمَامِ أَنْ يَضَعَهُ حَيْثُ يَشَاءُ فَصَاحِبُهُ أَوْلَى؟ فَكَلَامٌ بَارِدٌ، وَقِيَاسٌ فَاسِدٌ، وَهُمْ يَقُولُونَ فِيمَنْ تَرَكَ زَوْجَةً وَلَمْ يَتْرُكْ ذَا رَحِمٍ وَلَا مَوْلًى وَلَا عَاصِبًا: أَنَّ

remaining three-fourths as he deems fit, and the deceased is not permitted to bequeath more than one-third of the estate.

الرُّبُعَ لِلزَّوْجَةِ، وَأَنَّ الثَّلَاثَةَ الْأَرْبَاعِ يَضَعُهَا الْإِمَامُ حَيْثُ يَشَاءُ وَأَنَّهُ لَيْسَ لَهُ أَنْ يُوصِيَ بِأَكْثَرَ مِنْ الثُّلُثِ.

L28267 Why do they not analogize here? Just as the Imam may allocate three-fourths [of a share] as he deems fit, so too may the wealth owner. Yet this is the measure of their analogy - reflect upon it carefully.

فَهَلَّا قَاسُوا هَاهُنَا كَمَا لِلْإِمَامِ أَنْ يَضَعَ الثَّلَاثَةَ الْأَرْبَاعِ حَيْثُ يَشَاءُ، فَكَذَلِكَ صَاحِبُ الْمَالِ - وَلَكِنَّ هَذَا مِقْدَارُ قِيَاسِهِمْ فَتَأَمَّلُوهُ.

L28268 As for when the heirs consent to more than a third, then ʿAṭāʾ, al-Ḥasan, al-Zuhrī, Rabīʿah, Ḥammād ibn Abī Sulaymān, ʿAbd al-Malik ibn Yaʿlā, Muḥammad ibn Abī Laylā, and al-Awzāʿī said: If the heirs consent, their consent is irrevocable, and they did not specify any restriction on the validity of the one who consented during illness.

وَأَمَّا إذَا أَذِنَ الْوَرَثَةُ فِي أَكْثَرَ مِنْ الثُّلُثِ، فَإِنَّ عَطَاءً، وَالْحَسَنَ، وَالزُّهْرِيَّ، وَرَبِيعَةَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ، وَعَبْدَ الْمَلِكِ بْنَ يَعْلَى، وَمُحَمَّدَ بْنَ أَبِي لَيْلَى، وَالْأَوْزَاعِيَّ قَالُوا: إذَا أَذِنَ الْوَرَثَةُ فَلَا رُجُوعَ لَهُمْ، وَلَمْ يَخُصُّوا إذْنًا فِي صِحَّةِ مَنْ أَذِنَ فِي مَرَضٍ.

L28269 Shuraih, Tawus, al-Hakam ibn Utaybah, al-Nakha'i, al-Sha'bi, Sufyan al-Thawri, al-Hasan al-Basri, Abu Hanifah, al-Shafi'i, Abu Thawr, and Ahmad ibn Hanbal said: If the heirs permitted him during his illness, at the time of his death, or while he was healthy to bequeath more than a third, it is not enforceable against them, and they retain the right to retract [their consent] once he dies.

وَقَالَ شُرَيْحٌ، وَطَاوُسٌ، وَالْحَكَمُ بْنُ عُتَيْبَةَ، وَالنَّخَعِيُّ وَالشَّعْبِيُّ، وَسُفْيَانُ الثَّوْرِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَحْمَدُ بْنُ حَنْبَلٍ: إذَا أَذِنُوا لَهُ فِي مَرَضِهِ أَوْ عِنْدَ مَوْتِهِ أَوْ فِي صِحَّتِهِ: بِأَنْ يُوصِيَ بِأَكْثَرَ مِنْ الثُّلُثِ لَمْ يَلْزَمْهُمْ، وَلَهُمْ الرُّجُوعُ إذَا مَاتَ.

L28270 A group said: That is not permissible at all, as we have narrated through the chain of Wakiʿ from al-Masʿūdī—he is Abū ʿUmayṣ ʿUtbah ibn ʿAbdullāh ibn ʿUtbah ibn ʿAbdullāh ibn Masʿūd—from Abū ʿAwn—he is Muḥammad ibn ʿUbaydullāh al-Thaqafī—from al-Qāsim ibn ʿAbd al-Raḥmān that a man sought formal consent from his heirs to bequeath more than a third. They permitted him, but when he died, they retracted. Ibn Masʿūd was asked, and he said to them: That nakirah (reprehensible matter) is impermissible.

وَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ ذَلِكَ أَصْلًا كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ الْمَسْعُودِيِّ - هُوَ أَبُو عُمَيْسٍ عُتْبَةُ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ أَبِي عَوْنٍ - هُوَ مُحَمَّدُ بْنُ عُبَيْدِ اللَّهِ الثَّقَفِيُّ - عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ أَنَّ رَجُلًا اسْتَأْمَرَ وَرَثَتَهُ فِي أَنْ يُوصِيَ بِأَكْثَرَ مِنْ الثُّلُثِ؟ فَأَذِنُوا لَهُ، فَلَمَّا مَاتَ رَجَعُوا، فَسُئِلَ ابْنُ مَسْعُودٍ، فَقَالَ لَهُمْ ذَلِكَ النَّكِرَةُ لَا يَجُوزُ.

L28271 And through the chain of Abd al-Razzaq from Sufyan al-Thawri from Dawud from Ikrimah from Ibn Abbas, he said: Causing harm in a will is among the major sins. Then Ibn Abbas recited: "These are Allah's limits, so do

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ دَاوُد عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: الضِّرَارُ فِي الْوَصِيَّةِ مِنْ الْكَبَائِرِ، ثُمَّ قَرَأَ ابْنُ عَبَّاسٍ، {تِلْكَ حُدُودُ اللَّهِ فَلا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ} [البقرة: ٢٢٩] .

not transgress them. And whoever transgresses Allah's limits..." [Al-Baqarah 2:229].[7]

L28272–28274 And through the chain of Abd al-Razzaq from Ma'mar from Ash'ath ibn Abdullah from Shahr ibn Hawshab from Abu Hurayrah as a musnad narration: "Verily, a man may perform the deeds of the people of righteousness for seventy years, but when he makes his will, he acts unjustly in it, and thus his deeds are sealed with the worst of his actions, so he enters Hell. And verily, a man may perform the deeds of the people of wickedness for seventy years, yet he acts justly in his will, and thus his deeds are sealed with the best of his actions, so he enters Paradise." Then Abu Hurayrah said: "Read, if you will: 'These are the limits set by Allah' [Al-Baqarah 2:229]—up to His saying—'a humiliating punishment' [Al-Baqarah 2:90]." Abu Muhammad said: We cited it solely for the statement of Abu Hurairah alone.[8]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَشْعَثَ بْنِ عَبْدِ اللَّهِ عَنْ شَهْرِ بْنِ حَوْشَبٍ عَنْ أَبِي هُرَيْرَةَ مُسْنَدًا «أَنَّ الرَّجُلَ لَيَعْمَلُ بِعَمَلِ أَهْلِ الْخَيْرِ سَبْعِينَ سَنَةً فَإِذَا أَوْصَى جَارَ فِي وَصِيَّتِهِ، فَيُخْتَمُ لَهُ بِشَرِّ عَمَلِهِ فَيَدْخُلُ النَّارَ - وَإِنَّ الرَّجُلَ لَيَعْمَلُ بِعَمَلِ أَهْلِ الشَّرِّ سَبْعِينَ سَنَةً فَيَعْدِلُ فِي وَصِيَّتِهِ، فَيُخْتَمُ لَهُ بِخَيْرِ عَمَلِهِ فَيَدْخُلُ الْجَنَّةَ» - ثُمَّ يَقُولُ أَبُو هُرَيْرَةَ: اقْرَءُوا إِنْ شِئْتُمْ {تِلْكَ حُدُودُ اللَّهِ} [البقرة: ٢٢٩]- إِلَى قَوْلِهِ - {عَذَابٌ مُهِينٌ} [البقرة: ٩٠] قَالَ أَبُو مُحَمَّدٍ: إِنَّمَا أَوْرَدْنَاهُ لِقَوْلِ أَبِي هُرَيْرَةَ فَقَطْ.

L28275 And through the chain of Abd al-Razzaq from Ma'mar from al-Zuhri from Urwah ibn al-Zubayr, who said: The living heirs may nullify the unfair bequest of the testator as they nullify the unfair bequest of the testator in his will. These three Companions—with none among the Companions (may Allah be pleased with them) known to have opposed them—invalidated whatever contradicted the Sunnah regarding wills, neither permitting it nor requiring the heirs' consent. This is the position of al-Muzani, Abu Sulayman, and our fellow scholars.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: يَرُدُّ عَنْ حَيْفِ النَّاحِلِ الْحَيُّ مَا يَرُدُّ مِنْ حَيْفِ النَّاحِلِ فِي وَصِيَّتِهِ، فَهَؤُلَاءِ ثَلَاثَةٌ مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ أَبْطَلُوا مَا خَالَفَ السُّنَّةَ فِي الْوَصِيَّةِ، وَلَمْ يُجِيزُوهُ، وَلَمْ يَشْتَرِطُوا رِضَا الْوَرَثَةِ - وَهُوَ قَوْلُ الْمُزَنِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L28276 Mālik said: If he sought their permission while he was in good health and they permitted him, they may revoke [the permission] after his death. If he sought their permission during his deathbed illness and they permitted him, they cannot revoke—unless they are his household dependents whom he financially supports, in which case they may revoke.

وَقَالَ مَالِكٌ: إِنْ اسْتَأْذَنَهُمْ فِي صِحَّتِهِ فَأَذِنُوا لَهُ فَلَهُمْ الرُّجُوعُ إِذَا مَاتَ، وَإِنْ اسْتَأْذَنَهُمْ فِي مَرَضِ مَوْتِهِ فَأَذِنُوا لَهُ فَلَا رُجُوعَ لَهُمْ، إِلَّا أَنْ يَكُونُوا فِي عِيَالِهِ وَنَفَقَتِهِ فَلَهُمْ الرُّجُوعُ.

L28277 Abu Muhammad said: As for Mālik's statement—we do not know of anyone before him who held this view, nor do we know of any foundational evidence for it. The estate—whether in whole or in part—must either belong to its

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مَالِكٍ: فَلَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ، وَلَا نَعْلَمُ لَهُ حُجَّةً أَصْلًا - وَلَا يَخْلُو الْمَالُ كُلُّهُ أَوْ بَعْضُهُ مِنْ أَنْ يَكُونَ لِمَالِكِهِ فِي صِحَّتِهِ وَفِي مَرَضِهِ، أَوْ يَكُونَ كُلُّهُ أَوْ بَعْضُهُ لِوَرَثَتِهِ فِي صِحَّتِهِ وَمَرَضِهِ فَإِنْ كَانَ الْمَالُ لِصَاحِبِهِ فِي صِحَّتِهِ وَمَرَضِهِ فَلَا إِذْنَ لِلْوَرَثَةِ فِيهِ - وَمِنْ الْمُحَالِ الْبَاطِلِ جَوَازُ إِذْنِهِمْ فِيمَا لَا حَقَّ لَهُمْ فِيهِ، وَفِيمَا هُوَ حَرَامٌ عَلَيْهِمْ،

[7] **Qur'an references (L28271):** Qur'an 2:229 (Al-Baqarah).

[8] **Qur'an references (L28272):** Qur'an 2:187 (Al-Baqarah); Qur'an 2:229 (Al-Baqarah); Qur'an 4:13 (An-Nisa); Qur'an 2:90 (Al-Baqarah).

owner during his sound health and illness, or belong wholly or partially to his heirs during their sound health and illness. If the estate belongs to its owner during his health and illness, then the heirs hold no authority over it. It is utterly absurd and invalid to validate their permission regarding matters they have no legitimate claim to—matters that are inherently forbidden for them. Were they to steal a single dinar from it, the thief among them would warrant amputation. Moreover, should one of them die before the sick person's death, their share would pass to their own heirs. No rational basis exists for claiming any portion of the sick person's estate belongs to an heir prior to the death of the testator, for the reasons we have outlined. Thus, this assertion is definitively invalid.

حَتَّى لَوْ سَرَقُوا مِنْهُ دِينَارًا لَوَجَبَ الْقَطْعُ عَلَى مَنْ سَرَقَهُ مِنْهُمْ - وَقَدْ يَمُوتُ أَحَدُهُمْ قَبْلَ مَوْتِ الْمَرِيضِ فَيَرِثُهُ، وَلَا سَبِيلَ إلَى أَنْ يَقُولَ أَحَدٌ: إنَّ شَيْئًا مِنْ مَالِ الْمَرِيضِ لِوَارِثِهِ قَبْلَ مَوْتِ الْمَوْرُوثِ لِمَا ذَكَرْنَا، فَبَطَلَ هَذَا الْقَوْلُ بِيَقِينٍ.

L28278 As for those who deem their permission valid, they cite as evidence the words of Allah, Mighty and Majestic: "Fulfill the covenants" (Q. 5:1), and this is a covenant they have bound themselves to, so they must discharge it.[9]

وَأَمَّا مَنْ أَجَازَ إذْنَهُمْ فَإِنَّهُمْ يَحْتَجُّونَ بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] وَهَذَا عَقْدٌ قَدْ الْتَزَمُوهُ فَعَلَيْهِمْ الْوَفَاءُ بِهِ.

L28279 Abū Muḥammad said: It would necessarily follow for those who validate manumission before ownership and divorce before marriage—that they must affirm the binding authority of this ruling. Yet they contradicted themselves regarding this matter.

قَالَ أَبُو مُحَمَّدٍ: وَلَقَدْ كَانَ يَلْزَمُ مَنْ أَجَازَ الْعِتْقَ قَبْلَ الْمِلْكِ، وَالطَّلَاقَ قَبْلَ النِّكَاحِ: أَنْ يَقُولَ بِإِلْزَامِهِمْ هَذَا الْإِذْنَ، وَلَكِنَّهُمْ تَنَاقَضُوا فِي ذَلِكَ.

L28280 Ali said: "As for us, we say: Every contract not established by the Quran or the Sunnah through explicit command or permission is invalid. Indeed, Allah, the Exalted, has commanded the honoring only of contracts that He has explicitly ordained through textual proof or explicitly permitted through textual proof."

قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَنَقُولُ: كُلُّ عَقْدٍ لَمْ يَأْتِ بِهِ قُرْآنٌ وَلَا سُنَّةٌ بِالْأَمْرِ بِهِ أَوْ بِإِبَاحَتِهِ فَهُوَ بَاطِلٌ، وَإِنَّمَا أَمَرَ اللَّهُ تَعَالَى بِالْوَفَاءِ بِالْعُقُودِ الَّتِي أَمَرَ بِهَا نَصًّا أَوْ أَبَاحَهَا نَصًّا.

L28281 As for one who makes a vow to commit a sin, Allah the Exalted has never permitted fulfilling such a pledge—rather, He has prohibited it. This applies to one who vows to commit adultery, drink alcohol, or exceed the one-third share [in bequests], which constitutes a prohibited transgression. Therefore, any commitment made in [seeking] permission regarding that which Allah the Exalted has not permitted is invalid and forbidden. Thus, this assertion is invalidated.

وَأَمَّا مَنْ عَقَدَ مَعْصِيَةً فَمَا أَذِنَ اللَّهُ تَعَالَى قَطُّ فِي الْوَفَاءِ بِهَا، بَلْ حَرَّمَ عَلَيْهِ ذَلِكَ، كَمَنْ عَقَدَ عَلَى نَفْسِهِ أَنْ يَزْنِيَ، أَوْ يَشْرَبَ الْخَمْرَ - وَالزِّيَادَةُ عَلَى الثُّلُثِ مَعْصِيَةٌ مَنْهِيٌّ عَنْهَا، فَالْعَقْدُ فِي الْإِذْنِ مِنْ ذَلِكَ فِيمَا لَمْ يَأْذَنْ اللَّهُ تَعَالَى فِيهِ بَاطِلٌ مُحَرَّمٌ - فَسَقَطَ هَذَا الْقَوْلُ.

[9] **Qur'an references (L28278):** Qur'an 5:1 (Al-Ma'idah).

وَأَمَّا مَنْ أَجَازَ لِلْوَرَثَةِ أَنْ يُجِيزُوا ذَلِكَ بَعْدَ الْمَوْتِ خَطَأً ظَاهِرًا، لِأَنَّ الْمَالَ حِينَئِذٍ صَارَ لِلْوَرَثَةِ، فَحُكْمُ الْمُوصِي فِيمَا اسْتَحَقُّوهُ بِالْمِيرَاثِ بَاطِلٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَيْسَ لَهُمْ إِجَازَةُ الْبَاطِلِ، لَكِنْ إِنْ أَحَبُّوا أَنْ يُنَفِّذُوا ذَلِكَ مِنْ مَالِهِمْ بِاخْتِيَارِهِمْ فَلَهُمْ ذَلِكَ وَلَهُمْ حِينَئِذٍ أَنْ يَجْعَلُوا الْأَجْرَ لِمَنْ شَاءُوا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

As for those who permit the heirs to validate such acts after death, this is a clear error, for the wealth at that point becomes the property of the heirs. Therefore, the testator's ruling regarding what they have rightfully acquired by inheritance is invalid, based on the statement of Allah's Messenger (peace and blessings be upon him): "Your blood, your wealth, and your honor are inviolable to you." Thus, they may not validate invalid matters. However, if they wish to voluntarily fulfill this from their own wealth, they may do so, and at that point, they may designate the reward to whomever they wish—and success is from Allah, the Exalted.

وَهَذَا مِمَّا خَالَفُوا فِيهِ ثَلَاثَةً مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ.

This is among the matters in which they differed from three Companions, with no dissent against them known from the other Companions.

[مَسْأَلَةٌ أَوْصَى بِأَكْثَرَ مِنْ ثُلُثِ مَالِهِ ثُمَّ حَدَثَ لَهُ مَالٌ]

Issue: A case where one bequeathed more than a third of their wealth, then additional wealth came into their possession.

١٧٥٦ - مَسْأَلَةٌ: وَمَنْ أَوْصَى بِأَكْثَرَ مِنْ ثُلُثِ مَالِهِ، ثُمَّ حَدَثَ لَهُ مَالٌ لَمْ يَجُزْ مِنْ وَصِيَّتِهِ إِلَّا مِقْدَارُ ثُلُثِ مَا كَانَ لَهُ حِينَ الْوَصِيَّةِ، لِأَنَّ مَا زَادَ عَلَى ذَلِكَ عَقَدَهُ عَقْدًا حَرَامًا لَا يَحِلُّ كَمَا ذَكَرْنَا وَمَا كَانَ بَاطِلًا فَلَا يَجُوزُ أَنْ يَصِحَّ فِي ثَانٍ، إذْ لَمْ يُعْقَدْ وَلَا مُحَالَ أَكْثَرُ مِنْ عَقْدٍ لَمْ يَصِحَّ حُكْمُهُ إذْ عُقِدَ، ثُمَّ يَصِحُّ حُكْمُهُ إذْ لَمْ يُعْقَدْ.

1756. Issue: If someone bequeaths more than a third of their estate and later acquires new wealth, only a third of what they owned at the time of the bequest is permissible from their will. This is because anything exceeding that constitutes a forbidden contract, which is impermissible as we have explained. What is void cannot become valid afterward, since it was never contracted. It is impossible for the ruling of a contract that was invalid when contracted to subsequently become valid when not contracted.

فَلَوْ أَوْصَى بِثُلُثِهِ فَأَقَلَّ، ثُمَّ نَقَصَ مَالُهُ حَتَّى لَمْ يَحْتَمِلْ وَصِيَّتَهُ، ثُمَّ زَادَ لَمْ يُنَفَّذْ مِنْ وَصِيَّتِهِ إِلَّا مِقْدَارُ ثُلُثِ مَا رَجَعَ إلَيْهِ مِنْ مَالِهِ، لِأَنَّ وَصِيَّتَهُ بِمَا زَادَ عَلَى ثُلُثِ مَا رَجَعَ إلَيْهِ مَالُهُ قَدْ بَطَلَتْ، وَمَا بَطَلَ فَلَا سَبِيلَ إلَى عَوْدَتِهِ دُونَ أَنْ تَبْتَدِئَ إعَادَتُهُ بِعَقْدٍ آخَرَ، إذْ قَدْ بَطَلَ الْعَقْدُ الْأَوَّلُ.

If he bequeaths a third or less of his estate, then his wealth diminishes until it cannot sustain his bequest, and later increases, only the amount equivalent to a third of the wealth that returned to him is executed from the bequest. This is because the portion of his bequest exceeding a third of the wealth restored to him has been invalidated. Once invalidated, there is no way to reinstate it without initiating its restoration through a new contract, as the original contract has been nullified.

فَلَوْ أَوْصَى بِأَكْثَرَ مِنْ ثُلُثِ مَالِهِ عَامِدًا وَلَهُ مَالٌ لَمْ يَعْلَمْ بِهِ لَمْ يُنَفَّذْ إلَّا فِي مِقْدَارِ ثُلُثِ مَا عَلِمَ فَقَطْ، لِأَنَّهُ عَقَدَ مَا زَادَ عَلَى ذَلِكَ عَقْدَ مَعْصِيَةٍ، فَهُوَ بَاطِلٌ.

If someone intentionally bequeaths more than a third of their wealth while possessing unknown property, only the measure equivalent to a third of what they were aware of is executed. This is because the excess beyond that is bound as a sinful act, hence invalid.

فَلَوْ قَالَ فِي كُلِّ مَا ذَكَرْنَا: إنْ رَزَقَنِي اللَّهُ مَالًا فَإِنِّي أُوصِي مِنْهُ بِكَذَا، أَوْ قَالَ أُوصِي إذَا مَاتَ أَنْ يُخْرَجَ عَنْهُ ثُلُثُ مَا يَتَخَلَّفُ، أَوْ جُزْءًا مُشَاعًا أَقَلَّ مِنْ الثُّلُثِ - أَوْ قَالَ: فَيَخْرُجُ مِمَّا يَتَخَلَّفُ كَذَا وَكَذَا: فَهَذَا جَائِزٌ وَتُنَفَّذُ وَصِيَّتُهُ مِنْ كُلِّ مَا كَسَبَهُ قَبْلَ مَوْتِهِ وَبَعْدَ تِلْكَ الْوَصِيَّةِ، بِأَيِّ وَجْهٍ كَسَبَهُ، أَوْ بِأَيِّ وَجْهٍ صَحِيحٍ مَلَكَهُ، بِمِيرَاثٍ أَوْ غَيْرِهِ، عَلِمَ بِهِ أَوْ لَمْ يَعْلَمْ؛ لِأَنَّهُ عَقَدَ عَقْدًا صَحِيحًا فِيمَا يَتَخَلَّفُهُ، وَلَمْ يَخُصَّ بِوَصِيَّتِهِ مَا يَمْلِكُ حِينَ الْوَصِيَّةِ، وَقَدْ عَقَدَ وَصِيَّتَهُ عَقْدًا صَحِيحًا لَمْ يَتَعَدَّ فِيهِ مَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ، فَهِيَ وَصِيَّةٌ صَحِيحَةٌ كَمَا ذَكَرْنَا.

L28289 If he stated in each case we have mentioned: “If God provides me with wealth, I will bequeath from it such-and-such,” or said: “I bequeath that when I die, a third of what remains shall be taken from it,” or an undivided share less than a third—or said: “Then such-and-such shall be taken from what remains”—this is permissible. His will is fulfilled from everything he acquired before his death and after that will, regardless of how he acquired it or by what valid means he came to own it, whether through inheritance or otherwise, whether he was aware of it or not. This is because he executed a valid undertaking concerning what he would leave behind, without restricting his will to what he owned at the time of its creation. He established his will through a valid declaration without transgressing what God Almighty has commanded. Thus, it is a valid will as we have mentioned.

فَلَوْ أَوْصَى بِثُلُثِ مَالِهِ - وَمَالُهُ يَحْتَمِلُهُ - وَلَهُ مَالٌ لَمْ يَعْلَمْ بِهِ، ثُمَّ نَقَصَ مَالُهُ الَّذِي عَلِمَ أَوْ لَمْ يَنْقُصْ، فَوَصِيَّتُهُ نَافِذَةٌ فِيمَا عَلِمَ وَفِيمَا لَمْ يَعْلَمْ؛ لِأَنَّهُ عَقَدَهَا عَقْدًا صَحِيحًا تَامًّا مِنْ حِينِ عَقَدَهُ إلَى حِينِ مَاتَ، وَلَا تَدْخُلُ دِيَتُهُ إنْ قُتِلَ خَطَأً فِيمَا تُنَفَّذُ مِنْهُ وَصَايَاهُ؛ لِأَنَّهَا لَمْ تَجِبْ لَهُ قَطُّ، وَلَا مَلَكَهَا قَطُّ، وَإِنَّمَا وَجَبَتْ بَعْدَ مَوْتِهِ لِوَرَثَتِهِ فَقَطْ - وَهُوَ قَوْلُ طَائِفَةٍ مِنْ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ، وَزِيَادٍ الْأَعْلَمِ، قَالَ الْحَجَّاجُ: عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ الْحَارِثِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَقَالَ زِيَادٌ الْأَعْلَمُ: عَنْ الْحَسَنِ، ثُمَّ اتَّفَقَ عَلِيٌّ، وَالْحَسَنُ فِيمَنْ أَوْصَى بِثُلُثِ مَالِهِ، ثُمَّ قُتِلَ خَطَأً: أَنَّهُ يَدْخُلُ ثُلُثُ دِيَتِهِ فِي ثُلُثِهِ، وَإِنْ كَانَ اسْتَفَادَ مَالًا وَلَمْ يَكُنْ شَعَرَ بِهِ: دَخَلَ ثُلُثُهُ فِي وَصِيَّتِهِ - وَهُوَ قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ، وَالْأَوْزَاعِيِّ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ - وَبِهِ قَالَ أَبُو ثَوْرٍ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ، حَاشَ الدِّيَةَ فَلَا تَدْخُلُ وَصِيَّتُهُ فِيهَا.

L28290–28292 If he bequeaths a third of his wealth—while his estate can bear it and he possesses assets he was unaware of—then whether his known wealth diminishes or remains unchanged, his will applies to what he knew of and what he did not, for he established it as a legally sound and complete contract. From the time he contracted his will until his death, his diyah (blood money) – if he is killed unintentionally – does not enter the portion from which his bequests are executed. This is because it was never owed to him personally nor did he ever own it, as it becomes due solely to his heirs after his death. This is the view of a group of the Salaf, as narrated through Ḥammād ibn Salamah from al-Ḥajjāj ibn Arṭāh and Ziyād al-Aʿlam. Al-Ḥajjāj narrated from Abū Isḥāq al-Sabīʿī, from al-Ḥārith, from ʿAlī ibn Abī Ṭālib. Ziyād al-Aʿlam narrated from al-Ḥasan. Both ʿAlī and al-Ḥasan agreed regarding one who bequeaths a third of his property and is later killed unintentionally: a third of his diyah enters into his third. If he acquired property without being aware of it, a third of it enters into his bequest. This ruling is endorsed by Ibrāhīm al-Nakhaʿī, al-Awzāʿī, Abū Ḥanīfah, his companions, Abū Thawr, Aḥmad ibn Ḥanbal, and Isḥāq – with the exception of the diyah, which his bequest does not include.

L28293 Others said: His will applies only regarding what he knew of his wealth, not regarding what he was unaware of. This was reported from Abān ibn

ʿUthmān, ʿUmar ibn ʿAbd al-ʿAzīz, Makhūl, Yaḥyā ibn Saʿīd al-Anṣārī, and Rabīʿah.

وَقَالَ آخَرُونَ: لَا تَدْخُلُ وَصِيَّتُهُ إِلَّا فِيمَا عَلِمَ مِنْ مَالِهِ، لَا فِيمَا لَمْ يَعْلَمْ بِهِ - رُوِيَ ذَلِكَ عَنْ أَبَانَ بْنِ عُثْمَانَ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَمَكْحُولٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَرَبِيعَةَ.

L28294 Mālik also held the same view, except regarding what he anticipated without knowing its measure - such as profit from wealth he awaited or produce whose quantity he did not know - for indeed his bequests encompass these. We know of no one before him who made this division, nor do we know of any evidence for it whatsoever.

وَقَالَ مَالِكٌ كَذَلِكَ، إِلَّا فِيمَا رَجَاهُ وَلَمْ يَعْلَمْ قَدْرَهُ، كَرِبْحِ مَالٍ يَنْتَظِرُهُ، أَوْ غَلَّةٍ لَا يَدْرِي مَبْلَغَهَا، فَإِنَّ وَصَايَاهُ تَدْخُلُ فِيهَا - وَمَا نَعْلَمُ هَذَا التَّقْسِيمَ عَنْ أَحَدٍ قَبْلَهُ، وَلَا نَعْلَمُ لَهُ حُجَّةً أَصْلًا

L28295 The proof for the validity of our position is Allah's statement in the verse of inheritance: {after any bequest he may have ordained or any debt} [An-Nisā' 4:11]. Thus, the Almighty has mandated inheritance from all his wealth - whether he knew of it or not - while similarly ordaining that bequests and debts have priority over inheritance. Therefore, differentiating between them without evidence is void. Only what from the bequest is intended for what Allah has forbidden becomes invalid. We know of no foundational argument from our opponents whatsoever - indeed, they have opposed a Companion in this matter for whom no opposition from the Companions is known.[10]

وَبُرْهَانُ صِحَّةِ قَوْلِنَا: - قَوْلُ اللَّهِ تَعَالَى فِي آيَةِ الْمَوَارِيثِ: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] فَأَوْجَبَ عَزَّ وَجَلَّ الْمِيرَاثَ فِي كُلِّ مَا عَلِمَ بِهِ مِنْ مَالِهِ أَوْ لَمْ يَعْلَمْ، وَأَوْجَبَ الْوَصِيَّةَ وَالدَّيْنَ مُقَدَّمَيْنِ كَذَلِكَ عَلَى الْمَوَارِيثِ، فَالْمُفَرَّقُ بَيْنَ ذَلِكَ مُبْطِلٌ بِلَا دَلِيلٍ، وَإِنَّمَا يَبْطُلُ مِنَ الْوَصِيَّةِ مَا قَصَدَ بِهِ مَا نَهَى اللَّهُ تَعَالَى عَنْهُ فَقَطْ، وَمَا نَعْلَمُ لِمُخَالِفِينَا حُجَّةً أَصْلًا - وَقَدْ خَالَفُوا فِي ذَلِكَ صَاحِبًا لَا يُعْرَفُ لَهُ مِنَ الصَّحَابَةِ مُخَالِفٌ.

L28296 If they say: "The narration regarding that from Ali is not valid because its chain includes Al-Hajjaj and Al-Harith?" we reply: And the narration from Aban ibn Uthman is not valid because it is transmitted through Abd al-Hakam ibn Abdullah (who is weak); nor is it valid from Umar ibn Abd al-Aziz, as it comes through Yazid ibn Iyad (who is known for lying); nor from Makhul because its chain contains Maslamah ibn Ali (who is weak); nor from Rabi'ah and Yahya ibn Sa'id since their narration derives from an anonymous narrator. And success comes from Allah, the Exalted.

فَإِنْ قَالُوا: إِنَّ الرِّوَايَةَ فِي ذَلِكَ عَنْ عَلِيٍّ لَا تَصِحُّ، لِأَنَّ فِيهَا الْحَجَّاجَ، وَالْحَارِثَ؟ قُلْنَا: وَالرِّوَايَةُ عَنْ أَبَانَ بْنِ عُثْمَانَ لَا تَصِحُّ، لِأَنَّهَا عَنْ عَبْدِ الْحَكَمِ بْنِ عَبْدِ اللَّهِ - وَهُوَ ضَعِيفٌ - وَلَا تَصِحُّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، لِأَنَّهَا عَنْ يَزِيدَ بْنِ عِيَاضٍ - وَهُوَ مَذْكُورٌ بِالْكَذِبِ - وَلَا تَصِحُّ عَنْ مَكْحُولٍ، لِأَنَّهَا عَنْ مَسْلَمَةَ بْنِ عَلِيٍّ - وَهُوَ ضَعِيفٌ - وَلَا عَنْ رَبِيعَةَ، وَيَحْيَى بْنِ سَعِيدٍ، لِأَنَّهَا عَمَّنْ لَمْ يُسَمَّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Legal Ruling on a Bequest to a Deceased Person

[مَسْأَلَة الْوَصِيَّة لميت]

L28297–28298

L28299 Issue: It is not permissible to bequeath anything to a deceased person, be-

[10] **Qur'an references (L28295):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

cause the deceased cannot own anything. Furthermore, if a testator bequeaths property to a living person and then dies, the bequest to that person is invalidated.

L28300 If a bequest is made to both a living and deceased person, half of the bequest is permissible for the living, and the half for the deceased is void.

L28301 Similarly, if he bequeaths to two living persons and then one of them dies, the survivor is entitled to half, and the deceased's share becomes void. This is the opinion of Ali ibn Abi Talib and others.

L28302 Malik said: If the testator knew that the one to whom he bequeathed was deceased, then it belongs to the heirs of the deceased. Then if he did not know, it belongs to the heirs of the testator.

L28303 Ali said: This is a corrupt division without proof. If it is argued: "If he bequeathed to someone while on his deathbed, does that mean he intended it for his heirs?" We respond: This is void. Had he intended the bequest for his heirs, he could have stated that. Imputing to him words he did not utter constitutes ruling by conjecture, and ruling by conjecture is impermissible.

L28304 **The Jurisprudential Issue of Bequest to a Dhimmi.**

L28305 1758 - Issue: A will for a *Dhimmi* is permissible, and no scholarly dissent is recorded on this matter. The Messenger of Allah (peace be upon him) said, "There is a reward for every living being."

L28306 **The Issue of the Bequest of What Cannot Be Fulfilled for the One to Whom It Was Bequeathed**

L28307 1759 - Issue: A bequest is not valid for anything that cannot be executed for the beneficiary, nor for what is bequeathed at the time of the testator's death. Examples include: bequeathing maintenance for a person over a specified period; manumitting a slave after he serves someone for a specified period—whether short or long; assuming responsibility for his garden during the newly established period; the mule of his household; or similar cases. All such

مَسْأَلَةٌ: وَلَا تَجُوزُ الْوَصِيَّةُ لِمَيِّتٍ، لِأَنَّ الْمَيِّتَ لَا يَمْلِكُ شَيْئًا، فَمَنْ أَوْصَى لِحَيٍّ ثُمَّ مَاتَ بَطَلَتْ الْوَصِيَّةُ لَهُ.

فَإِنْ أَوْصَى لِحَيٍّ وَلِمَيِّتٍ جَازَ نِصْفُهَا لِلْحَيِّ وَبَطَلَ نِصْفُ الْمَيِّتِ.

وَكَذَلِكَ لَوْ أَوْصَى لِحَيَّيْنِ ثُمَّ مَاتَ أَحَدُهُمَا جَازَ لِلْحَيِّ فِي النِّصْفِ وَبَطَلَتْ حِصَّةُ الْمَيِّتِ - وَهُوَ قَوْلُ عَلِيِّ بْنِ أَبِي طَالِبٍ وَغَيْرِهِ.

وَقَالَ مَالِكٌ: إنْ كَانَ عَلِمَ الْمُوصِي بِأَنَّ الَّذِي أَوْصَى لَهُ مَيِّتٌ فَهُوَ لِوَرَثَةِ الْمَيِّتِ، فَإِنْ كَانَ لَمْ يَعْلَمْ فَهُوَ لِوَرَثَةِ الْمُوصِي.

قَالَ عَلِيٌّ: هَذَا تَقْسِيمٌ فَاسِدٌ بِلَا بُرْهَانٍ -: فَإِنْ قِيلَ: إذَا أَوْصَى لَهُ وَهُوَ مَيِّتٌ فَإِنَّمَا أَرَادَ أَنْ يَكُونَ لِوَرَثَتِهِ؟ قُلْنَا: هَذَا بَاطِلٌ، وَلَوْ أَرَادَ الْوَصِيَّةَ لِوَرَثَتِهِ لَقَدَرَ عَلَى أَنْ يَقُولَ ذَلِكَ، فَتَقْوِيلُهُ مَا لَمْ يَقُلْ حُكْمٌ بِالظَّنِّ، وَالْحُكْمُ بِالظَّنِّ لَا يَحِلُّ.

[مَسْأَلَةُ الْوَصِيَّةِ لِلذِّمِّيِّ]

١٧٥٨ - مَسْأَلَةٌ: وَالْوَصِيَّةُ لِلذِّمِّيِّ جَائِزَةٌ، وَلَا نَعْلَمُ فِي هَذَا خِلَافًا، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فِي كُلِّ ذِي كَبِدٍ رَطْبَةٍ أَجْرٌ» .

[مَسْأَلَةُ الْوَصِيَّةُ بِمَا لَا يُنَفَّذُ لِمَنْ أَوْصَى لَهُ بِهَا]

١٧٥٩ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْوَصِيَّةُ بِمَا لَا يُنَفَّذُ لِمَنْ أَوْصَى لَهُ بِهَا، أَوْ فِيمَا أَوْصَى بِهِ سَاعَةَ مَوْتِ الْمُوصِي -: مِثْلُ أَنْ يُوصِيَ بِنَفَقَةٍ عَلَى إنْسَانٍ مُدَّةً مُسَمَّاةً، أَوْ بِعِتْقِ عَبْدٍ بَعْدَ أَنْ يَخْدُمَ فُلَانًا مُدَّةً مُسَمَّاةً قَلَّتْ أَوْ كَثُرَتْ، أَوْ يَحْمِلُ بُسْتَانَهُ فِي الْمُسْتَأْنَفِ، أَوْ بَغْلَةَ

bequests are invalid, and none of them are executed. This is a matter where scholars have differed. It has been narrated to us through Ibn Wahb's chain from al-Layth ibn Saʿd, from Yazīd ibn Abī Ḥabīb, from Ibn Shihāb, regarding one who bequeaths sheep to another during his lifetime: it is permissible. The beneficiary may claim their milk, wool, and offspring during his [the beneficiary's] lifetime, as he tends to them and oversees them. However, he may only consume from the flock to the extent its owner would consume from the livestock. Likewise, he may take from their offspring what he would take from their mothers.

دَارِهِ، وَمَا أَشْبَهَ ذَلِكَ: فَهَذَا كُلُّهُ بَاطِلٌ لَا يُنَفَّذُ مِنْهُ شَيْءٌ، وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ -: فَرُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ ابْنِ شِهَابٍ: أَنَّهُ قَالَ فِيمَنْ أَوْصَى لِآخَرَ بِغَنَمٍ حَيَاتَهُ أَنَّهُ جَائِزٌ، وَيَكُونُ لِلْمُوصِي لَهُ مِنْ الْغَنَمِ أَلْبَانُهَا وَأَصْوَافُهَا وَأَوْلَادُهَا مُدَّةَ حَيَاتِهِ؛ لِأَنَّهُ يَعْمَلُ فِيهَا وَيَقُومُ عَلَيْهَا، وَلَيْسَ لَهُ أَنْ يَأْكُلَ مِنْهَا إلَّا بِقَدْرِ مَا كَانَ رَبُّهَا يَأْكُلُ مِنْ عُرُوضِهَا، وَكَذَلِكَ يُصِيبُ مِنْ أَوْلَادِهَا مَا يُصِيبُ مِنْ أُمَّهَاتِهَا.

L28308–28310 Abu Muhammad said: This is a clearly erroneous view. The first reason for this is that he granted him its wool, milk, and offspring for the duration of his life, since he is responsible for its upkeep. Thus, this constitutes a lease, and a lease involving an unspecified element for an unspecified duration. It is invalid and impermissible; consuming wealth wrongfully is invalid; and any condition not in the Book of Allah Almighty is invalid. He has no right to consume from the actual sheep except what the testator used to consume from them. This is utterly void because it is undefined, as it was possible for him to consume much from them in a year, possible to consume nothing, and possible to consume little. This too constitutes wrongful consumption of wealth. The testator had the right to sell them, gift them, or sell from them. Why did he not grant the legatee the right to sell from them or gift them as the testator could? Otherwise, what distinguishes consumption through eating from consumption through sale or gift? Ali said: What suffices here is that the legatee either owns the sheep bequeathed to him for the duration of his lifetime or does not own them - there being no third category. If he owns them, he may sell all or any portion he wills, gift them likewise, or consume them likewise.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قَوْلٌ ظَاهِرُ الْخَطَأِ، أَوَّلُ ذَلِكَ: أَنْ جَعَلَ لَهُ أَصْوَافَهَا وَأَلْبَانَهَا وَأَوْلَادَهَا مُدَّةَ حَيَاتِهِ؛ لِأَنَّهُ يَقُومُ عَلَيْهَا فَهَذِهِ إجَارَةٌ إذًا، وَالْإِجَارَةُ بِمَجْهُولٍ عَلَى مُدَّةٍ مَجْهُولَةٍ بَاطِلٌ لَا يَحِلُّ، وَأَكْلُ مَالٍ بِالْبَاطِلِ، وَشَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ - ثُمَّ لَمْ يَجْعَلْ لَهُ أَنْ يَأْكُلَ مِنْ أَعْيَانِ الْغَنَمِ إلَّا مَا كَانَ يَأْكُلُ الْمُوصِي مِنْهَا، وَهَذَا فِي غَايَةِ الْبُطْلَانِ؛ لِأَنَّهُ مَجْهُولٌ، وَقَدْ كَانَ يُمْكِنُ أَنْ يَأْكُلَ مِنْهَا الْكَثِيرَ فِي الْعَامِ وَيُمْكِنُ أَنْ لَا يَأْكُلَ مِنْهَا شَيْئًا وَيُمْكِنُ أَنْ يَأْكُلَ مِنْهَا قَلِيلًا - فَهَذَا أَيْضًا أَكْلُ مَالٍ بِالْبَاطِلِ، وَقَدْ كَانَ لِلْمُوصِي أَنْ يَبِيعَهَا، وَيَهَبَهَا، وَيَبِيعَ مِنْهَا، فَهَلَّا جَعَلَ لِلْمُوصَى لَهُ أَنْ يَبِيعَ مِنْهَا، وَأَنْ يَهَبَ كَمَا كَانَ لِلْمُوصِي، وَإِلَّا فَمَا الْفَرْقُ بَيْنَ الِاسْتِهْلَاكِ بِالْأَكْلِ وَبَيْنَ الِاسْتِهْلَاكِ بِالْبَيْعِ أَوْ الْهِبَةِ؟ قَالَ عَلِيٌّ: وَيَكْفِي مِنْ هَذَا أَنَّ الْمُوصَى لَهُ لَا يَخْلُو مِنْ أَنْ يَكُونَ مَلَكَ الْغَنَمَ الَّتِي أَوْصَى لَهُ بِهَا مُدَّةَ حَيَاتِهِ، أَوْ لَمْ يَمْلِكْهَا، وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ -: فَإِنْ كَانَ مَلَكَهَا فَلَهُ أَنْ يَبِيعَهَا كُلَّهَا أَوْ مَا شَاءَ مِنْهَا وَأَنْ يَهَبَهَا كَذَلِكَ، وَأَنْ يَأْكُلَهَا كَذَلِكَ.

L28311 If he does not own her, it is not permissible for him to use any part of her, nor her wool, milk, or offspring, because she is the property of another. The

Messenger of Allah (peace be upon him) said: “Your blood and your wealth are inviolable to you.”

وَإِنْ كَانَ لَمْ يَمْلِكْهَا لَمْ يَحِلَّ لَهُ أَكْلُ شَيْءٍ مِنْهَا، وَلَا مِنْ أَصْوَافِهَا وَلَا مِنْ أَلْبَانِهَا وَأَوْلَادِهَا، لِأَنَّهَا مَالُ غَيْرِهِ وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L28312 There is no doubt—by the explicit text of the Quran—that whatever the deceased leaves behind, which was unquestionably not bequeathed, is the property of the heirs. Since it is their property, it is impermissible for the testator to exercise any legal authority over the heirs’ property.

وَلَا شَكَّ - بِنَصِّ الْقُرْآنِ - فِي أَنَّ مَا يُخَلِّفُهُ الْمَيِّتُ مِمَّا لَمْ يُوصَ بِهِ قَطْعًا فَهُوَ مِلْكٌ لِلْوَرَثَةِ، وَإِذْ هُوَ مِلْكُهُمْ فَلَا يَحِلُّ لِلْمُوصِي حُكْمٌ فِي مَالِ الْوَرَثَةِ -.

L28313 And with Allah, the Exalted, is all success.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28314 It is narrated on the authority of Abd al-Razzaq from Ma’mar concerning one who bequeaths a third of his wealth to Zaid and assigns maintenance (until the legatee’s death) to another person: half of the third is allocated to the legatee entitled to maintenance.

وَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ فِيمَنْ أَوْصَى لِزَيْدٍ بِثُلُثِ مَالِهِ وَلِآخَرَ بِنَفَقَتِهِ حَتَّى يَمُوتَ: أَنَّهُ يُوقَفُ لِلْمُوصَى لَهُ بِالنَّفَقَةِ نِصْفُ الثُّلُثِ.

L28315 Abu Muhammad said: This is an error because he may live only a day or less, and he may live for decades - thus this is uncertain, so it is invalid as it is not known what was bequeathed to him.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ لِأَنَّهُ قَدْ لَا يَعِيشُ إلَّا يَوْمًا أَوْ أَقَلَّ، وَقَدْ يَعِيشُ عَشَرَاتِ أَعْوَامٍ - فَهَذَا مَجْهُولٌ، فَهُوَ بَاطِلٌ لَا يُعْرَفُ بِمَاذَا أَوْصَى لَهُ.

L28316 It has been narrated to us from Sufyān al-Thawrī concerning a person who stipulates in his will that his slave should enter a *kitābah* contract for one thousand dirhams when the slave’s value is one thousand dirhams or more. In this case, he has not made any bequest for the slave. But if he stipulates a *kitābah* for less than the slave’s value, the shortfall from his actual value constitutes a bequest for him.

وَرُوِّينَا عَنْ سُفْيَانَ الثَّوْرِيِّ فِيمَنْ أَوْصَى أَنْ يُكَاتَبَ عَبْدُهُ بِأَلْفِ دِرْهَمٍ وَقِيمَتُهُ أَلْفُ دِرْهَمٍ أَوْ أَكْثَرُ؟ فَلَمْ يُوصِ لَهُ بِشَيْءٍ، فَإِنْ أَوْصَى أَنْ يُكَاتَبَ بِأَقَلَّ مِنْ قِيمَتِهِ فَإِنَّ مَا نَقَصَ مِنْ قِيمَتِهِ وَصِيَّةٌ لَهُ.

L28317–28319 Ali said: This is an error, and a bequest for manumission by contractual agreement (mukātaba) in its entirety is void because the enslaved person is emancipated upon the death [of the master]. If the testator’s bequest pertains to the property of the heirs, his bequest through a mukataba contract for the heirs’ slave is invalid, because the slave is the property of the heirs.

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ وَالْوَصِيَّةُ بِالْمُكَاتَبَةِ جُمْلَةً بَاطِلٌ؛ لِأَنَّ الْعَبْدَ خَارِجٌ بِمَوْتِ الْمُوصِي إلَى مِلْكِ الْوَرَثَةِ فَوَصِيَّتُهُ بِمُكَاتَبَةِ عَبْدِ الْوَرَثَةِ بَاطِلٌ؛ لِأَنَّهُ مَالُ الْوَرَثَةِ.

L28320 Al-Awzāʿī said regarding a man who had three children and a slave, and he bequeathed that the slave should serve one of his children—whom he named

and specified—for a year, after which the slave is free: He must serve all his children for one year each, and then he is free.

وَقَالَ الْأَوْزَاعِيّ فِيمَنْ لَهُ ثَلَاثَةُ أَوْلَادٍ وَعَبْدٌ فَأَوْصَى بِأَنْ يَخْدُمَ ذَلِكَ الْعَبْدُ وَاحِدًا مِنْ أَوْلَادِهِ - سَمَّاهُ وَعَيَّنَهُ - سَنَةً ثُمَّ الْعَبْدُ حُرٌّ: فَإِنَّهُ يَخْدُمُ أَوْلَادَهُ كُلَّهُمْ سَنَةً ثُمَّ هُوَ حُرٌّ.

L28321 Ali said: This is an error, because it is a judgment contrary to what the testator stipulated. He neither executed the will nor invalidated it. It cannot but be either valid or invalid. If it was valid, then he has invalidated the valid, and if it was invalid, then he has approved the invalid.

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِأَنَّهُ حُكْمٌ بِغَيْرِ مَا أَوْصَى بِهِ الْمُوصِي، فَلَا هُوَ أَنْفَذَ وَصِيَّتَهُ وَلَا هُوَ أَبْطَلَهَا، وَلَا يَخْلُو مِنْ أَنْ تَكُونَ صَحِيحَةً أَوْ فَاسِدَةً، فَإِنْ كَانَتْ صَحِيحَةً فَقَدْ أَبْطَلَ الصَّحِيحَ، وَإِنْ كَانَتْ فَاسِدَةً فَقَدْ أَجَازَ الْفَاسِدَ.

L28322 If he were to say: "It combined corruption and validity, so I validated the valid and nullified the corrupt," we would reply: "Rather, you validated the corrupt—which is his emancipation of the slave who is the property of his sons and their slave—for the Messenger of Allah (peace be upon him) said: 'Your blood and your wealth are sacred to you.'"

فَإِنْ قَالَ: جَمَعَتْ فَسَادًا وَصِحَّةً فَأَجَزْت الصَّحِيحَ وَأَبْطَلْت الْفَاسِدَ؟ قُلْنَا لَهُ: بَلْ أَجَزْت الْفَاسِدَ - وَهُوَ عِتْقُهُ مِلْكَ بَنِيهِ وَعَبْدَهُمْ - وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L28323 Layth ibn Sa'd affirmed the permissibility of the bequests we mentioned but ruled impermissibility in the case of one who bequeaths a third of his estate to a person and to another for lifelong maintenance, holding that the third is divided into two halves between them.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ بِجَوَازِ الْوَصِيَّةِ بِكُلِّ مَا ذَكَرْنَا: أَنَّهُ لَا يَجُوزُ - وَقَالَ فِيمَنْ أَوْصَى لِإِنْسَانٍ بِثُلُثِهِ، وَلِآخَرَ بِالنَّفَقَةِ مَا عَاشَ: أَنَّ الثُّلُثَ بَيْنَهُمَا بِنِصْفَيْنِ.

L28324 Abu Muhammad said: This is an error, for it contradicts what the testator stipulated.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ، لِأَنَّهُ غَيْرُ مَا أَوْصَى بِهِ الْمُوصِي.

L28325 It is not permissible for what the testator has bequeathed to be redirected to other than what he bequeathed except by an explicit text, and there is no explicit text concerning what al-Layth stated.

وَلَا يَجُوزُ أَنْ يُحَالَ مَا أَوْصَى بِهِ الْمُوصِي إلَى غَيْرِ مَا أَوْصَى بِهِ إلَّا بِنَصٍّ، وَلَا نَصَّ بِمَا قَالَ اللَّيْثُ.

L28326 Uthman al-Batti ruled regarding one who bequeaths a monthly expenditure of ten dirhams for Zaid and one hundred dirhams for Amr: their shares are proportionally divided. A multiplier of 100 is applied for the legatee entitled to 100 dirhams, and a multiplier of 10 for the legatee entitled to 10 dirhams. Each is given his proportionate share, and the remainder is allocated to the legatee designated for 100 dirhams. In the second month, the 10-dirham legatee is assigned a multiplier of 20, while the 100-dirham legatee retains a multiplier of 100. The 10-dirham legatee's share is calculated using a mul-

وَقَالَ عُثْمَانُ الْبَتِّيُّ فِيمَنْ أَوْصَى لِزَيْدٍ بِنَفَقَةِ عَشَرَةِ دَرَاهِمَ كُلَّ شَهْرٍ، وَلِعَمْرٍو بِمِائَةِ دِرْهَمٍ كُلَّ شَهْرٍ فَإِنَّهُمَا يَتَحَاصَّانِ، وَيُضْرَبُ بِمِائَةٍ لِلْمُوصَى لَهُ بِمِائَةٍ، وَيُضْرَبُ بِعَشَرَةٍ لِلْمُوصَى لَهُ بِعَشَرَةٍ فَيُعْطَى حِصَّتَهُ، وَيُعْطَى الْبَاقِيَ الَّذِي أَوْصَى لَهُ بِالْمِائَةِ، فَإِذَا كَانَ فِي الشَّهْرِ الثَّانِي ضَرَبَ الْمُوصَى لَهُ بِعَشَرَةٍ بِعِشْرِينَ، وَضَرَبَ صَاحِبُ الْمِائَةِ بِمِائَةٍ، وَحُسِبَ صَاحِبُ الْعَشَرَةِ بِعَشَرَةٍ، وَحُسِبَ لَهُ مَا أَخَذَ فِي الشَّهْرِ الْأَوَّلِ، وَكَذَلِكَ يُقْسَمُ بَيْنَهُمَا كُلَّ شَهْرٍ.

tiplier of 10, accounting for what he received in the first month. Likewise, the allocation between them is divided every month in this manner.

L28327 Abu Muhammad said: And this is a speech that cannot be comprehended by reason, nor can its origin be known.

L28328 Abu Hanifah said regarding one who bequeathed the service of his slave so-and-so for a year – intending his emancipation thereafter, though the slave was his sole property – that the slave must serve the beneficiary one day and the heirs two days. When three years have elapsed under this arrangement, he is to be freed.

L28329 Abu Muhammad said: We hold that, according to a juristic opinion, he must strive within two-thirds of its value for the heirs.

L28330–28331 Ali said: "His statement is invalid."

L28332 He said: If someone bequeaths to another the right of residence in his house when he owns no other property besides it, the legatee may reside in one-third of the house, and the heirs may reside in two-thirds of it. The legatee may neither rent out the house, nor rent out the slave bequeathed for his service, nor remove him from that city unless the legatee resides in another city - in which case he may relocate the slave to his own city.

L28333 Ali said: This is extremely invalid, as it contravenes the deceased's stipulation in the bequest regarding the right to reside in the entire house, for he only granted residence in a third of it. The value of the right to reside in a third of the house is unquestionably less than the third of the deceased, since the entire house is property left behind by the deceased. If this bequest is considered valid according to him, why did he not execute all of it, because it is unquestionably less than the third?

L28334 Additionally, there is no distinction between the beneficiary being in another country and his moving to another country. If the slave belongs to the testator, the beneficiary may manage the bequeathed property as he wishes. If the slave does not belong to the testator, the bequest of his service is invalid.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كَلَامٌ لَا يُعْقَلُ وَلَا يُدْرَى مُنْبَعِثُهُ.

وَقَالَ أَبُو حَنِيفَةَ فِيمَنْ أَوْصَى بِخِدْمَةِ عَبْدِهِ فُلَانًا سَنَةً ثُمَّ يُعْتَقُ وَلَا مَالَ لَهُ غَيْرُهُ: فَإِنَّهُ يَخْدُمُ الْمُوصَى لَهُ يَوْمًا وَالْوَرَثَةَ يَوْمَيْنِ، فَإِذَا مَضَتْ لَهُ ثَلَاثُ سِنِينَ هَكَذَا أُعْتِقَ.

قَالَ أَبُو مُحَمَّدٍ: نَرَى أَنَّهُ فِي قَوْلٍ أَنَّهُ يَسْعَى فِي ثُلُثَيْ قِيمَتِهِ لِلْوَرَثَةِ.

قَالَ عَلِيٌّ: وَقَوْلُهُ هَذَا فَاسِدٌ.

قَالَ: وَمَنْ أَوْصَى لِآخَرَ بِسُكْنَى دَارِهِ وَلَا مَالَ لَهُ غَيْرُهَا سَكَنَ الْمُوصَى لَهُ بِثُلُثِ الدَّارِ وَسَكَنَ الْوَرَثَةُ بِثُلُثَيْهَا، وَلَيْسَ لَهُ أَنْ يُؤَاجِرَهَا، وَلَا أَنْ يُؤَاجِرَ الْعَبْدَ الْمُوصَى لَهُ بِخِدْمَتِهِ، وَلَا أَنْ يُخْرِجَهُ عَنْ ذَلِكَ الْبَلَدِ إِلَّا أَنْ يَكُونَ الْمُوصَى لَهُ فِي بَلَدٍ آخَرَ، فَلَهُ أَنْ يُخْرِجَهُ إِلَى بَلَدِهِ.

قَالَ عَلِيٌّ: وَهَذَا فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ خَالَفَ عَهْدَ الْمَيِّتِ فِي الْوَصِيَّةِ بِسُكْنَى جَمِيعِ الدَّارِ، فَلَمْ يَجْعَلْ لَهُ إِلَّا سُكْنَى ثُلُثِهَا فَقَطْ، وَقِيمَةُ سُكْنَى ثُلُثِ الدَّارِ أَقَلُّ مِنْ ثُلُثِ الْمَيِّتِ بِلَا شَكٍّ، لِأَنَّ جَمِيعَ الدَّارِ مَالٌ تَخَلَّفَهُ، فَإِذْ هَذِهِ الْوَصِيَّةُ عِنْدَهُ جَائِزَةٌ، فَهَلَّا أَنْفَذَ لَهُ جَمِيعَهَا لِأَنَّهَا أَقَلُّ مِنْ الثُّلُثِ بِلَا شَكٍّ.

وَأَيْضًا: فَلَا فَرْقَ بَيْنَ كَوْنِ الْمُوصَى لَهُ فِي بَلَدٍ آخَرَ وَبَيْنَ رَحِيلِهِ إلَى بَلَدٍ آخَرَ، فَإِنْ كَانَ الْعَبْدُ لِلْمُوصِي فَلِلْمُوصَى لَهُ التَّصَرُّفُ فِيمَا أَوْصَى لَهُ بِهِ حَيْثُ شَاءَ، وَإِنْ كَانَ لَيْسَ هُوَ لِلْمُوصِي فَالْوَصِيَّةُ بِخِدْمَتِهِ بَاطِلٌ.

L28335 Abu Hanifa said: If someone bequeaths the produce of his orchard to Zayd, and there is existing produce in it at the time of the testator's death, the beneficiary has no right except to that specific produce alone. But if there is no produce in it when he dies, the beneficiary is entitled to one-third of the produce for as long as he lives.

قَالَ أَبُو حَنِيفَةَ: وَمَنْ أَوْصَى بِغَلَّةِ بُسْتَانِهِ لِزَيْدٍ وَفِيهِ غَلَّةٌ ظَاهِرَةٌ إذْ مَاتَ الْمُوصِي فَلَيْسَ لِلْمُوصَى لَهُ إلَّا تِلْكَ الْغَلَّةُ بِعَيْنِهَا فَقَطْ، فَلَوْ لَمْ يَكُنْ فِيهَا غَلَّةٌ إذْ مَاتَ فَلَهُ ثُلُثُهَا أَبَدًا مَا عَاشَ.

L28336 Abū Muḥammad said: This too is invalid - a distinction without evidence. Why on earth did they not limit him to merely the first evident yield that appears after the testator's death? Then he would have no right to subsequent yields, just as they ruled regarding the evident yield.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ أَيْضًا، وَفَرْقٌ بِلَا بُرْهَانٍ، وَهَلَّا جَعَلُوا لَهُ أَوَّلَ غَلَّةٍ تَظْهَرُ بَعْدَ مَوْتِ الْمُوصِي فَقَطْ، ثُمَّ لَا شَيْءَ لَهُ فِي الْمُسْتَأْنَفِ كَمَا قَالُوا فِي الْغَلَّةِ الظَّاهِرَةِ.

L28337 If they say, "We applied that according to general applicability," we reply: "Why did you not apply his will also to general applicability when he dies while produce exists in the orchard?" If one were to reverse their reasoning by granting him the orchard's produce indefinitely when he dies with manifest produce present, yet deny it if he dies with no produce in the orchard except the first crop that later appears, there is no legitimate difference between these two judgments.

فَإِنْ قَالُوا: حَمَلْنَا ذَلِكَ عَلَى الْعُمُومِ؟ قُلْنَا لَهُمْ: وَهَلَّا حَمَلْتُمْ وَصِيَّتَهُ أَيْضًا عَلَى الْعُمُومِ إذَا مَاتَ وَفِي الْبُسْتَانِ غَلَّةٌ وَلَوْ أَنَّ عَاكِسًا عَكَسَ قَوْلَهُمْ فَأَعْطَاهُ غَلَّةَ الْبُسْتَانِ أَبَدًا إذَا مَاتَ وَفِيهِ غَلَّةٌ ظَاهِرَةٌ، وَلَمْ يُعْطِهِ إذَا مَاتَ وَلَا غَلَّةَ فِي الْبُسْتَانِ إلَّا أَوَّلُ غَلَّةٍ تَظْهَرُ: مَا كَانَ بَيْنَ الْحُكْمَيْنِ بِالْبَاطِلِ فَرْقٌ.

L28338 Abu Hanifah said: A bequest granting the right of residence in a dwelling or the services rendered by a slave is valid only if made to a specifically named individual. If one bequeaths such to the Poor and the Needy, it is invalid.

قَالَ أَبُو حَنِيفَةَ: وَإِنَّمَا تَجُوزُ الْوَصِيَّةُ بِسُكْنَى الدَّارِ وَخِدْمَةِ الْعَبْدِ، إذَا أَوْصَى بِهِ لِإِنْسَانٍ بِعَيْنِهِ - قَالَ: فَلَوْ أَوْصَى بِذَلِكَ لِلْفُقَرَاءِ، وَالْمَسَاكِينِ: لَمْ يَجُزْ ذَلِكَ.

L28339–28341 Ali said: There is no greater calamity than the fact that if one bequeaths to a disbeliever or a sinner, it is permissible, yet if one bequeaths to the poor among the Muslims, it is impermissible. Ugh! How detestable this ruling is! Abu Hanifa said: If someone bequeaths to Zaid provision for as long as he lives, and the heirs permit this, the entire estate is set aside for him, and he shares proportionally with the other legatees—unless the legatees specify that his provision is to come from the One-Third. In that case, only

قَالَ عَلِيٌّ: لَيْسَ فِي الْمُصِيبَةِ أَكْثَرُ مِنْ هَذَا أَنْ يَكُونَ إنْ أَوْصَى لِكَافِرٍ أَوْ لِفَاسِقٍ: جَازَ، فَإِنْ أَوْصَى لِفُقَرَاءِ الْمُسْلِمِينَ لَمْ يَجُزْ - أُفٍّ لِهَذَا الْقَوْلِ قَالَ أَبُو حَنِيفَةَ: وَلَوْ أَوْصَى لِزَيْدٍ بِالنَّفَقَةِ مَا عَاشَ؟ فَإِنْ جَوَّزَ الْوَرَثَةُ ذَلِكَ وُقِفَ لَهُ جَمِيعُ الْمَالِ كُلِّهِ، وَتَحَاصَّ هُوَ وَسَائِرُ

the One-Third is specifically set aside for him, and the legatees also share proportionally.

الْمُوصَى لَهُمْ، إِلَّا أَنْ يُعَيِّنَ الْمُوصَى لَهُمْ أَنْ يُنْفَقَ عَلَيْهِ مِنَ الثُّلُثِ، فَيُوقَفَ لَهُ الثُّلُثُ خَاصَّةً، وَيُحَاصُّ أَيْضًا الْمُوصَى لَهُمْ.

L28342 Abu Yusuf said: A lifespan of one hundred years is established for him, then one-third [of his estate] is allocated as an exclusive waqf to be spent on his maintenance for the remaining years of the hundred-year period. If he lives beyond that period, he is to be granted maintenance until the one-third is depleted.

وَقَالَ أَبُو يُوسُفَ: يُجْعَلُ لَهُ عُمْرُ مِائَةِ سَنَةٍ، ثُمَّ يُوقَفُ لَهُ الثُّلُثُ خَاصَّةً مَا يُنْفَقُ عَلَيْهِ فِيمَا بَقِيَ لَهُ مِنْ مِائَةِ سَنَةٍ، فَإِنْ عَاشَ أَكْثَرَ أُعْطِيَ النَّفَقَةَ أَيْضًا حَتَّى يَفْرُغَ الثُّلُثُ.

L28343 Abu Muhammad said: These are baseless whispers, and prices fluctuate in widely varying ways, so how could it be possible to assess such folly?

قَالَ أَبُو مُحَمَّد: وَهَذِهِ وَسَاوِسُ لَا تُعْقَلُ، وَالْأَسْعَارُ تَخْتَلِفُ اخْتِلَافًا مُتَبَايِنًا، فَكَيْفَ يُقْدَرُ عَلَى هَذَا الْجُنُونِ.

L28344 Abu Hanifah permitted bequeathing a slave's lifelong service to one person and the slave's ownership to another. He ruled that maintenance and clothing for the slave are incumbent upon the beneficiary of the service, and he held that anything gifted to the slave belongs to the owner of the slave's person.

وَأَجَازَ أَبُو حَنِيفَةَ أَنْ يُوصِيَ لِإِنْسَانٍ بِخِدْمَةِ عَبْدٍ مَا عَاشَ، وَلِآخَرَ بِرَقَبَةِ ذَلِكَ الْعَبْدِ، وَرَأَى النَّفَقَةَ، وَالْكِسْوَةَ عَلَى الَّذِي أَوْصَى لَهُ بِالْخِدْمَةِ، وَرَأَى مَا وُهِبَ لِلْعَبْدِ لِلَّذِي لَهُ الرَّقَبَةُ.

L28345 Ali said: This is also invalid. How can it be permissible to oblige the legatee assigned to service to cover expenses for someone other than his slave and his clothing? Truly, this is indeed astonishing.

قَالَ عَلِيٌّ: وَهَذَا بَاطِلٌ أَيْضًا، وَمِنْ أَيْنَ أَسْتَحِلُّ أَنْ يُلْزِمَ الْمُوصَى لَهُ بِالْخِدْمَةِ نَفَقَةَ غَيْرِ عَبْدِهِ وَكِسْوَتَهُ؟ إِنَّ هَذَا لَعَجَبٌ.

L28346 Muhammad ibn al-Hussein said: If someone bequeaths the freeing of his slave one month after his death, and he dies and the month elapses, the slave is not freed unless a new act of manumission is performed. This is because if the slave commits a wrongdoing before the completion of the month, the heirs may hand him over due to his offense.

وَقَالَ مُحَمَّدُ بْنُ الْحُسَيْنِ: مَنْ أَوْصَى بِعِتْقِ عَبْدِهِ بَعْدَ مَوْتِهِ بِشَهْرٍ فَمَاتَ وَمَضَى شَهْرٌ لَمْ يُعْتَقْ إِلَّا بِتَجْدِيدِ عِتْقٍ لِأَنَّهُ لَوْ جَنَى جِنَايَةً قَبْلَ تَمَامِ الشَّهْرِ كَانَ لِلْوَرَثَةِ أَنْ يُسَلِّمُوهُ بِجِنَايَتِهِ.

L28347 Ali said: "When he has vested ownership of it to the heirs as he said, how can their slave be emancipated without their consent? All of this is undeniably invalid."

قَالَ عَلِيٌّ: فَإِذْ مَلَّكَهُ لِلْوَرَثَةِ كَمَا قَالَ، فَكَيْفَ يُعْتَقُ عَبْدُهُمْ بِغَيْرِ رِضَاهُمْ، وَهَذَا كُلُّهُ لَا خَفَاءَ بِفَسَادِهِ.

L28348 Mālik said: Whoever bequeaths the service of his slave, the produce of his garden, the occupancy of his house, or the provision of upkeep for a person—

all of this is permissible. If one bequeaths his slave's service to Zayd for as long as the slave lives, and the right to his manumission to ʿAmr, this is valid.

وَقَالَ مَالِكٌ: مَنْ أَوْصَى بِخِدْمَةِ عَبْدِهِ، أَوْ بِغَلَّةِ بُسْتَانِهِ، أَوْ بِسُكْنَى دَارِهِ، أَوْ بِنَفَقَتِهِ عَلَى إِنْسَانٍ فَكُلُّ ذَلِكَ جَائِزٌ، فَلَوْ أَوْصَى بِخِدْمَةِ عَبْدِهِ مَا عَاشَ لِزَيْدٍ، وَبِرَقَبَتِهِ لِعَمْرٍو فَهُوَ جَائِزٌ.

L28349 He said: If the legatee to whom the slave's service is bequeathed were to gift or sell that service to the slave, the slave would be emancipated then and there, and the heirs have no right to intervene in that matter.

قَالَ: فَلَوْ أَنَّ الْمُوصَى لَهُ بِخِدْمَةِ الْعَبْدِ وَهَبَ لِذَلِكَ الْعَبْدِ مَا أَوْصَى لَهُ بِهِ مِنْ خِدْمَتِهِ، أَوْ بَاعَهَا مِنْهُ: عَتَقَ الْعَبْدُ سَاعَتِئِذٍ، وَلَا مَدْخَلَ لِلْوَرَثَةِ فِي ذَلِكَ.

L28350 Ali said: This contradicts his well-known positions that if the legatee does not accept the will, it reverts to inheritance - and this is a contradiction in his statements.

قَالَ عَلِيٌّ: وَهَذَا خِلَافُ أَقْوَالِهِ الْمَعْهُودَةِ مِنْ أَنَّ الْوَصِيَّةَ إِذَا لَمْ يَقْبَلْهَا الْمُوصَى لَهُ بِهَا رَجَعَتْ مِيرَاثًا - وَهَذَا تَنَاقُضٌ مِنْ قَوْلِهِ.

L28351–28352 And it is also – contrary to what the testator has bequeathed.

وَهُوَ أَيْضًا - خِلَافُ مَا أَوْصَى بِهِ الْمُوصِي.

L28353 The most objectionable [opinion] is his statement: "If the heirs emancipate him, their emancipation is invalid," thereby nullifying the owners' act of emancipation through their own acknowledgment, while permitting his emancipation contrary to the testator's explicit stipulation to free him.

وَأَطْرَفُ شَيْءٍ قَوْلُهُ فَإِنْ أَعْتَقَهُ الْوَرَثَةُ لَمْ يَنْفُذْ عِتْقُهُمْ، فَأَبْطَلَ عِتْقَ مَالِكِيهِ بِإِقْرَارِهِ، وَأَجَازَ عِتْقَهُ بِخِلَافِ وَصِيَّةِ الْمُوصِي بِعِتْقِهِ.

L28354 Malik said: "The legatee granted the service of a slave or the right to residence in a house may lease it. However, if the will stipulates that the slave serves the testator's son for as long as the son lives, after which the slave becomes free, this [service] may not be leased, as the intent was custody?" Abu Muhammad said: "This constitutes contradictory reasoning and contradicts what the testator stipulated regarding residence and service."

وَقَالَ مَالِكٌ: لِلْمُوصَى لَهُ بِخِدْمَةِ الْعَبْدِ أَوْ بِسُكْنَى الدَّارِ: أَنْ يُؤَاجِرَهَا، قَالَ: إِلَّا أَنْ يُوصِيَ بِأَنْ يَخْدُمَ ابْنَهُ مَا عَاشَ، ثُمَّ هُوَ حُرٌّ - فَهَذَا لَا يُؤَاجَرُ، لِأَنَّهُ قَصَدَ بِهِ قَصْدَ الْحَضَانَةِ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَنَاقُضٌ وَخِلَافُ مَا أَوْصَى بِهِ الْمُوصِي مِنْ السُّكْنَى وَالْخِدْمَةِ.

L28355 Mālik said: If someone bequeaths to him the service of his slave for a year, and the testator owns no property besides the slave, the heirs have the option to either grant him the slave's service for a year—after which the slave returns to them—or give him a third of all the property the testator left as property. ʿAlī said: This is openly contrary to the bequest.

قَالَ مَالِكٌ: وَلَوْ أَوْصَى لَهُ بِخِدْمَةِ عَبْدِهِ سَنَةً وَلَيْسَ لِلْمُوصِي مَالٌ غَيْرُهُ، فَالْوَرَثَةُ بِالْخِيَارِ بَيْنَ أَنْ يُسَلِّمُوا لَهُ خِدْمَةَ الْعَبْدِ سَنَةً ثُمَّ يَرْجِعُ إِلَيْهِمْ، وَبَيْنَ أَنْ يُعْطُوهُ ثُلُثَ جَمِيعِ مَا تَرَكَهُ الْمُوصِي مِلْكًا؟ قَالَ عَلِيٌّ: وَهَذَا خِلَافُ الْوَصِيَّةِ جِهَارًا.

L28356 Malik said concerning one who is bequeathed lifelong sustenance: his lifespan is calculated as seventy years, and the amount to be spent on him is

allocated for the remaining period of his life up to seventy years. Whatever surplus remains is returned to other bequests or to the heirs.

وَقَالَ مَالِكٌ فِيمَنْ أُوصِيَ لَهُ بِالنَّفَقَةِ مَا عَاشَ: حُسِبَ لَهُ عُمْرُ سَبْعِينَ سَنَةً، وَوُقِفَ لَهُ مَا يُنْفَقُ عَلَيْهِ فِيمَا بَقِيَ مِنْ عُمْرِهِ إِلَى تَمَامِ السَّبْعِينَ، فَمَا فَضَلَ رُدَّ عَلَى سَائِرِ الْوَصَايَا أَوْ عَلَى الْوَرَثَةِ.

L28357 Ali said: "And this is a grave error—the first aspect of this error is his specification of seventy years."

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ فَاحِشٌ -: أَوَّلُ ذَلِكَ تَخْصِيصُهُ سَبْعِينَ سَنَةً.

L28358 Then the view [states]: An endowment is designated to provide for his maintenance for the remainder of his life, up to the completion of seventy years, and prices may vary excessively.

ثُمَّ قَوْلُ: يُوقَفُ لَهُ مَا يُنْفَقُ عَلَيْهِ مَا بَقِيَ مِنْ عُمْرِهِ إِلَى تَمَامِ سَبْعِينَ، وَالْأَسْعَارُ تَخْتَلِفُ اخْتِلَافًا فَاحِشًا.

L28359 Moreover, maintenance is not a fixed amount, because it includes non-essential items such as spices, meat, and the like – things that extend beyond basic necessities.

ثُمَّ النَّفَقَةُ أَيْضًا - شَيْءٌ غَيْرُ مَحْدُودٍ، لِأَنَّهُ يَدْخُلُ فِي النَّفَقَةِ مَا يُسْتَغْنَى عَنْهُ كَالتَّوَابِلِ وَاللَّحْمِ وَغَيْرِ ذَلِكَ.

L28360 None of these statements are derived from the Quran, the Sunnah, any weak narration, the statements of anyone before them, analogical reasoning, or sound reason. Rather, they contradict all of that.

وَكُلُّ هَذِهِ الْأَقْوَالِ فَلَيْسَ شَيْءٌ مِنْهَا عَنْ قُرْآنٍ وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ قَبْلَهُمْ، وَلَا قِيَاسٍ وَلَا مَعْقُولٍ، بَلْ هِيَ مُخَالِفَةٌ لِكُلِّ ذَلِكَ.

L28361 Al-Shafi'i said: It is permissible to bequeath the service of a slave, the right to reside in a house, and the yield of an orchard and land. He also permitted the legatee granted the right to reside in the house to rent it out – and this constitutes an alteration of the bequest.

وَقَالَ الشَّافِعِيُّ: تَجُوزُ الْوَصِيَّةُ بِخِدْمَةِ الْعَبْدِ، وَبِسُكْنَى الدَّارِ، وَبِغَلَّةِ الْبُسْتَانِ وَالْأَرْضِ، وَأَجَازَ لِلْمُوصَى لَهُ بِسُكْنَى الدَّارِ أَنْ يُؤَاجِرَهَا - وَهَذَا تَبْدِيلٌ لِلْوَصِيَّةِ.

L28362 And he permitted the bequest of a slave's service to Zaid and of his manumission to Amr.

وَأَجَازَ الْوَصِيَّةَ بِخِدْمَةِ عَبْدٍ لِزَيْدٍ وَبِرَقَبَتِهِ لِعَمْرٍو.

L28363 He ruled regarding one who bequeaths to another person the service of their slave for one year—while possessing no property besides that slave—that only what does not exceed one-third of the estate from this bequest is permissible.

وَقَالَ فِيمَنْ أَوْصَى لِإِنْسَانٍ بِخِدْمَةِ عَبْدِهِ سَنَةً وَلَا مَالَ لِلْمُوصِي غَيْرُ ذَلِكَ الْعَبْدِ: أَنَّهُ يَجُوزُ مِنْ ذَلِكَ مَا حَمَلَ الثُّلُثَ فَقَطْ.

L28364–28365 Abu Thawr said: All of that is permissible, and the heirs may sell the slave. The buyer is required to fully fulfill the service stipulated by the testator and to permit the legatee to whom the slave's service is bequeathed to take him out to any country he wishes.

وَقَالَ أَبُو ثَوْرٍ: بِجَوَازِ كُلِّ ذَلِكَ، وَأَنَّ لِلْوَرَثَةِ بَيْعَ الْعَبْدِ، وَيُشْتَرَطُ عَلَى الْمُشْتَرِي تَمَامُ الْخِدْمَةِ لِلْمُوصِي بِهَا، وَأَنْ يُخْرِجَهُ الْمُوصَى لَهُ بِخِدْمَتِهِ إِلَى أَيِّ بَلَدٍ شَاءَ.

L28366 Abu Muhammad said: Those we mentioned agreed on the permissibility of bequeathing a slave's service, an orchard's produce, and the right to reside in a house. Sawwār ibn ʿAbdullāh and ʿUbaydullāh ibn al-Ḥasan - the two al-Anbarīs - along with Isḥāq ibn Rāhawayh, agreed with them.

قَالَ أَبُو مُحَمَّد: فَاتَّفَقَ مَنْ ذَكَرْنَا عَلَى جَوَازِ الْوَصِيَّةِ بِخِدْمَةِ الْعَبْدِ، وَغَلَّةِ الْبُسْتَانِ، وَسُكْنَى الدَّارِ - وَوَافَقَهُمْ عَلَى ذَلِكَ سَوَّارُ بْنُ عَبْدِ اللَّهِ، وَعُبَيْدُ اللَّهِ بْنُ الْحَسَنِ الْعَنْبَرِيَّانِ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ.

L28367 Ibn Abī Laylā, Abū Sulaymān, and all the jurists of our school held that none of that is permissible.

وَقَالَ ابْنُ أَبِي لَيْلَى، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا: لَا يَجُوزُ شَيْءٌ مِنْ ذَلِكَ

L28368 Ali said: Those who permitted that argued that just as leasing is permissible regarding the usufructs of all such things, similarly bequeathing the usufructs of all such things is permissible - and we know of nothing else they have besides this. This constitutes analogical reasoning, and analogical reasoning is invalid. Moreover, this actually constitutes evidence against them rather than for them, because leasing is only permissible regarding what the lessor owns the corpus of, not what he holds no ownership over. The house, the slave, and the garden become transferrable upon the owner's death, either passing to what he bequeathed concerning all such things, or to the heirs' ownership. It is inevitable that one of these two must occur.

قَالَ عَلِيٌّ: احْتَجَّ مَنْ أَجَازَ ذَلِكَ بِأَنَّهُ كَمَا تَجُوزُ الْإِجَارَةُ فِي مَنَافِعِ كُلِّ ذَلِكَ فَكَذَلِكَ تَجُوزُ الْوَصِيَّةُ بِمَنَافِعِ كُلِّ ذَلِكَ - وَمَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ هَذَا، وَهُوَ قِيَاسٌ وَالْقِيَاسُ بَاطِلٌ، ثُمَّ هُوَ أَيْضًا حُجَّةٌ عَلَيْهِمْ لَا لَهُمْ؛ لِأَنَّ الْإِجَارَةَ إنَّمَا تَجُوزُ فِيمَا مَلَكَ الْمُؤَاجِرُ رَقَبَتَهُ، لَا فِيمَا لَا مِلْكَ لَهُ فِيهِ، وَالدَّارُ، وَالْعَبْدُ، وَالْبُسْتَانُ مُتَنَقِّلَةٌ بِمَوْتِ الْمَالِكِ لَهَا إلَى مَا أَوْصَى فِيهِ بِكُلِّ ذَلِكَ، أَوْ إلَى مِلْكِ الْوَرَثَةِ، لَا بُدَّ مِنْ أَحَدِهِمَا.

L28369 And this, by their admission, is transferred to the ownership of the heirs. A person's bequest over what is owned by another is invalid and impermissible, just as his leasing of what is owned by another is impermissible. Leasing is specifically usufructs arising within one's own ownership, whereas a bequest involves usufructs that arise in the ownership of someone other than the testator—and this is forbidden.

وَهَذَا بِإِقْرَارِهِمْ مُنْتَقِلٌ إلَى مِلْكِ الْوَرَثَةِ وَوَصِيَّةُ الْمَرْءِ فِي مِلْكِ غَيْرِهِ بَاطِلٌ، لَا تَحِلُّ كَمَا أَنَّ إجَارَتَهُ لِمِلْكِ غَيْرِهِ لَا تَحِلُّ، وَالْإِجَارَةُ إنَّمَا هِيَ مَنَافِعُ حَدَثَتْ فِي مِلْكِهِ، وَالْوَصِيَّةُ هِيَ فِي مَنَافِعَ تَحْدُثُ فِي مِلْكِ غَيْرِ الْمُوصِي، وَهَذَا حَرَامٌ.

L28370 Abu Muhammad said: Allah, the Most High, stated: {After any bequest he [may have] made or debt} [An-Nisa: 11]. Thus, He did not assign to the heirs except what remains after the debt and the bequest—[11]

قَالَ أَبُو مُحَمَّد: قَالَ اللَّهُ تَعَالَى: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] فَلَمْ يَجْعَلْ عَزَّ وَجَلَّ لِلْوَرَثَةِ إلَّا مَا فَضَلَ عَنْ الدَّيْنِ وَالْوَصِيَّةِ -.

L28371 It has been established by the Quran's text that whatever the testator bequeaths never enters the heirs' ownership; rather, upon the testator's death, it transfers to the bequest according to the Quran's text.

فَصَحَّ بِنَصِّ الْقُرْآنِ أَنَّ مَا أَوْصَى بِهِ الْمُوصِي فَلَمْ يَقَعْ قَطُّ عَلَيْهِ مِلْكُ الْوَرَثَةِ لَكِنْ خَرَجَ بِمَوْتِ الْمُوصِي إلَى الْوَصِيَّةِ بِنَصِّ الْقُرْآنِ.

L28372 It has been established by the Quranic text that what the heirs are entitled

[11] **Qur'an references (L28370):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

to is excluded from the will, thereby confirming that the testator has no right to make a bequest over it at all.

L28373 The Messenger of Allah—peace and blessings be upon him—said: "Indeed, your blood and your wealth are sacred and forbidden for you to violate."

L28374 It is conclusively affirmed that property owned exclusively by the heirs ceases to be part of the deceased's estate. Since the deceased holds no ownership over it, his bequests concerning it—whether for manumission, maintenance, or other purposes—are null, void, and revoked. Success is from Allah, the Exalted.

L28375 **The issue of the testamentary will concerning household belongings.**

L28376–28378 1760 - Issue: If someone bequeaths the contents of his house to his umm walad or to others besides her, the beneficiary of the bequest is entitled solely to that which... It is customary to ascribe to the house: the carpets spread within it, the curtains, the mattress used for sitting, what is slept on, what is used to cover oneself in it or as a pillow, the vessels for drinking and eating, the dining table, the nails fixed in it, the napkins, the ablution basin, and the pitcher.

L28379 Excluded from this are items not attributed to the house, such as clothing for wear, raised items, benches, bedding not used within the house, dirhams and dinars, jewelry, storage units, and other similar things—because only what is understood from the testator's explicit wording is applied in such matters.

L28380 And by Allah, the Exalted, do we seek aid.

L28381 **The Legal Ruling on a Will Containing a Sinful Directive**

L28382 Issue 1761: It is not permissible to execute a will that entails an act of disobedience—neither from a Muslim nor from a disbeliever—such as one

وَصَحَّ بِنَصِّ الْقُرْآنِ أَنَّ مَا مَلَكَهُ الْوَرَثَةُ فَهُوَ خَارِجٌ عَنْ الْوَصِيَّةِ، فَثَبَتَ أَنَّهُ لَا وَصِيَّةَ فِيهِ لِلْمُوصِي أَصْلًا.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَصَحَّ يَقِينًا أَنَّ مَا مَلَكَهُ الْوَرَثَةُ فَقَطْ سَقَطَ عَنْهُ مِلْكُ الْمَيِّتِ، وَإِذْ لَا مِلْكَ لَهُ عَلَيْهِ فَوَصَايَاهُ فِيهِ بِعِتْقٍ أَوْ بِنَفَقَةٍ أَوْ بِغَيْرِ ذَلِكَ بَاطِلٌ، مَرْدُودٌ مَفْسُوخٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةَ الْوَصِيَّةِ بمتاع الْبَيْتِ]

١٧٦٠ - مَسْأَلَةٌ: وَمَنْ أَوْصَى بِمَتَاعِ بَيْتِهِ لِأُمِّ وَلَدِهِ، أَوْ لِغَيْرِهَا، فَإِنَّمَا لِلْمُوصَى لَهُ بِذَلِكَ مَا الْمَعْهُودُ أَنْ يُضَافَ إلَى الْبَيْتِ مِنْ الْفُرُشِ الْمَبْسُوطَةِ فِيهِ، وَالْمُعَلَّقِ، وَالْفِرَاشِ الَّذِي يُقْعَدُ عَلَيْهِ، وَالَّذِي يُنَامُ عَلَيْهِ وَبِمَا يَتَغَطَّى فِيهِ، وَيَتَوَسَّدُهُ، وَالْآنِيَةِ الَّتِي يُشْرَبُ فِيهَا وَيُؤْكَلُ، وَالْمَائِدَةِ، وَالْمَسَامِيرِ الْمُسَمَّرَةِ فِيهِ، وَالْمَنَادِيلِ، وَالطَّسْتِ، وَالْإِبْرِيقِ.

وَلَا يَدْخُلُ فِي ذَلِكَ مَا لَا يُضَافُ إلَى الْبَيْتِ مِنْ ثِيَابِ اللِّبَاسِ، وَالْمَرْفُوعَةِ، وَالتُّخُوتِ، وَوِطَاءٍ لَا يُسْتَعْمَلُ فِي الْبَيْتِ، وَدَرَاهِمَ وَدَنَانِيرَ، وَحُلِيٍّ، وَخِزَانَةٍ، وَغَيْرِ ذَلِكَ؛ لِأَنَّهُ إنَّمَا يُسْتَعْمَلُ فِي ذَلِكَ مَا يُفْهَمُ مِنْ لُغَةِ الْمُوصِي -.

وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

[مَسْأَلَةَ الْوَصِيَّةِ بمعصية]

who bequeaths to build a church or the like, due to the statement of Allah, the Exalted: “And do not cooperate in sin and transgression” (Quran 5:2).[12]

١٧٦١ - مَسْأَلَةٌ: وَلَا تَحِلُّ وَصِيَّةٌ فِي مَعْصِيَةٍ - لَا مِنْ مُسْلِمٍ وَلَا مِنْ كَافِرٍ - كَمَنْ أَوْصَى بِبُنْيَانِ كَنِيسَةٍ أَوْ نَحْوِ ذَلِكَ، لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L28383 And His saying, the Exalted: “And judge between them by what Allah has revealed” [Al-Ma’idah 5:49]. Thus, whoever allows them to enforce rulings contrary to Islam while he is able to stop them has indeed aided them in sin and transgression.[13]

وقَوْله تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] فَمَنْ تَرَكَهُمْ يُنَفِّذُونَ خِلَافَ حُكْمِ الْإِسْلَامِ وَهُوَ قَادِرٌ عَلَى مَنْعِهِمْ فَقَدْ أَعَانَهُمْ عَلَى الْإِثْمِ وَالْعُدْوَانِ.

L28384 A Jurisprudential Issue Regarding the Woman’s Testament

[مَسْأَلَةٌ وَصِيَّةُ الْمَرْأَةِ]

L28385 Issue 1762: The will of a never-married woman under her father’s guardianship, an adult woman with a husband, and a previously married woman with a husband is valid, just like the will of a man, whether the father or husband has consented or objected.

١٧٦٢ - مَسْأَلَةٌ: وَوَصِيَّةُ الْمَرْأَةِ الْبِكْرِ ذَاتِ الْأَبِ، وَذَاتِ الزَّوْجِ الْبَالِغَةِ، وَالثَّيِّبِ ذَاتِ الزَّوْجِ: جَائِزَةٌ، كَوَصِيَّةِ الرَّجُلِ، أَحَبَّ الْأَبُ أَوْ الزَّوْجُ أَوْ كَرِهَا.

L28386 There is no validity to the permission of both of them in this matter, for Allah the Almighty and Majestic’s command regarding the bequest was a universal command for the believers, encompassing both men and women. He did not exclude anyone in it: “And your Lord is never forgetful” [19:64]. We know of no disagreement from anyone regarding this.[14]

وَلَا مَعْنَى لِإِذْنِهِمَا فِي ذَلِكَ لِأَنَّ أَمْرَ اللَّهِ تَعَالَى بِالْوَصِيَّةِ جَاءَ عَامًّا لِلْمُؤْمِنِينَ، وَهُوَ يَعُمُّ الرِّجَالَ وَالنِّسَاءَ، وَلَمْ يَخُصَّ عَزَّ وَجَلَّ فِيهِ أَحَدًا مِنْ أَحَدٍ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَمَا نَعْلَمُ فِي ذَلِكَ خِلَافًا مِنْ أَحَدٍ

L28387 And with Allah, the Exalted, is all divine enablement.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28388 The Issue of the Bequest to the Slave.

[مَسْأَلَةُ الْوَصِيَّةِ لِلْعَبْدِ]

L28389 Issue 1763: It is permissible for a person to bequeath specified property or a portion of his wealth to his own slave or to the slave of his heir. However, the testator’s slave is not emancipated through such a bequest. The heir may reclaim from his own slave whatever was bequeathed to him. If the testator bequeaths to his slave the latter’s freedom, the bequest is invalid, the slave

١٧٦٣ - مَسْأَلَةٌ: وَوَصِيَّةُ الْمَرْءِ لِعَبْدِهِ بِمَالٍ مُسَمًّى أَوْ بِجُزْءٍ مِنْ مَالِهِ: جَائِزٌ، وَكَذَلِكَ لِعَبْدِ وَارِثِهِ، وَلَا يُعْتَقُ عَبْدُ الْمُوصِي بِذَلِكَ، وَلِوَارِثِ الْمُوصِي أَنْ يَنْتَزِعَ مِنْ عَبْدِهِ نَفْسِهِ مَا أَوْصَى لَهُ فَلَوْ أَوْصَى لِعَبْدِهِ بِرَقَبَتِهِ، فَالْوَصِيَّةُ بَاطِلٌ، وَلَا يُعْتَقُ الْعَبْدُ بِذَلِكَ - وَلَا شَيْءَ

[12] **Qur’an references (L28382):** Qur’an 5:2 (Al-Ma’idah).
[13] **Qur’an references (L28383):** Qur’an 5:49 (Al-Ma’idah).
[14] **Qur’an references (L28386):** Qur’an 19:64 (Maryam).

is not emancipated by it, and he has no claim to anything. If the testator bequeaths a third of his wealth to his slave, the slave shall receive a third of the remaining estate after deducting the slave's value from the testator's property, and the slave is not emancipated by this bequest.

L28390–28392 And the people have differed regarding this—Al-Ḥasan, Ibn Sīrīn, Abū Ḥanīfah, and Mālik said, Al-Shāfiʿī holds that if someone allocates a third of their wealth to emancipate their slave, the slave is freed from that third. If anything remains of the third, it is likewise given to them.

L28393 Similarly, if he bequeaths to him an undivided share in his estate less than a third, he is to be manumitted and granted the remaining portion of that share.

L28394 Then they disagreed—if the third (of the estate) does not cover his (the slave's) value—so al-Ḥasan, Ibn Sīrīn, and Abū Ḥanīfah said: "The portion of the slave that the third covers is emancipated, then the remainder of him is emancipated, and he must work to redeem the value of what exceeds the third."

L28395 Mālik and al-Shāfiʿī said: As much as can be manumitted with one-third [of the estate] is freed, and the rest [of the enslaved individuals] remain in bondage.

L28396 Similarly, according to those we mentioned, if one bequeaths the manumission of himself (as a slave) or himself (manumission), or if he bequeaths a specified item from his wealth, items measured by volume, by weight, or by count, then Abū Ḥanīfa, Sufyān al-Thawrī, and Isḥāq ibn Rāhawayh ruled the bequest invalid. This resembles the opinion of al-Shāfiʿī.

L28397 And Mālik said: The bequest is valid, and the heir has no right to contest it.

L28398 Al-Awzāʿī said: A bequest to a slave is null and void under all circumstances.

L28399 As we have stated, Abu Thawr and Abu Sulayman said.

لَهُ - فَلَوْ أَوْصَى لِعَبْدِهِ بِثُلُثِ مَالِهِ أُعْطِيَ ثُلُثَ سَائِرِ مَا يَبْقَى مِنْ مَالِ الْمُوصِي بَعْدَ إِخْرَاجِ الْعَبْدِ عَنْ مَالِهِ، وَلَا يُعْتَقُ بِذَلِكَ.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَ الْحَسَنُ، وَابْنُ سِيرِينَ، وَأَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: مَنْ أَوْصَى لِعَبْدِهِ بِثُلُثِ مَالِهِ أُعْتِقَ الْعَبْدُ مِنْ الثُّلُثِ، فَإِنْ فَضَلَ مِنْ الثُّلُثِ شَيْءٌ أُعْطِيَهُ أَيْضًا.

وَكَذَلِكَ إِنْ أَوْصَى لَهُ بِجُزْءٍ مَشَاعٍ فِي مَالِهِ أَقَلَّ مِنْ الثُّلُثِ فَيُعْتَقُ، وَيُعْطَى مَا فَضَلَ مِنْ ذَلِكَ الْجُزْءِ.

ثُمَّ اخْتَلَفُوا - إِنْ لَمْ يَحْمِلْهُ الثُّلُثُ - فَقَالَ الْحَسَنُ، وَابْنُ سِيرِينَ، وَأَبُو حَنِيفَةَ: يُعْتَقُ مِنْهُ مَا حَمَلَ الثُّلُثُ، ثُمَّ يُعْتَقُ بَاقِيهِ، وَيَسْتَسْعِي فِي قِيمَةِ مَا فَضَلَ مِنْهُ عَنْ الثُّلُثِ.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: يُعْتَقُ مِنْهُ مَا يَحْمِلُ الثُّلُثُ وَيَبْقَى سَائِرُهُ رَقِيقًا.

وَكَذَلِكَ أَيْضًا عِنْدَ مَنْ ذَكَرْنَا إِنْ أَوْصَى لَهُ بِرَقَبَتِهِ أَوْ بِنَفْسِهِ -: فَلَوْ أَوْصَى لَهُ بِشَيْءٍ مُعَيَّنٍ مِنْ مَالِهِ، أَوْ بِمَكِيلٍ، أَوْ مَوْزُونٍ، أَوْ مَعْدُودٍ، فَإِنَّ أَبَا حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيَّ، وَإِسْحَاقَ بْنَ رَاهْوَيْهِ قَالُوا: الْوَصِيَّةُ بَاطِلٌ - وَيُشْبِهُ أَنْ يَكُونَ هَذَا قَوْلَ الشَّافِعِيِّ.

وَقَالَ مَالِكٌ: الْوَصِيَّةُ نَافِذَةٌ، وَلَيْسَ لِلْوَارِثِ أَنْ يَنْتَزِعَ ذَلِكَ.

وَقَالَ الْأَوْزَاعِيِّ: الْوَصِيَّةُ لِلْعَبْدِ بَاطِلَةٌ بِكُلِّ حَالٍ.

وَقَالَ أَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ كَمَا قُلْنَا.

قَالَ أَبُو مُحَمَّد: أَمَّا مَنْ جَوَّزَ الْوَصِيَّةَ لِلْمَمْلُوكِ بِرَقَبَتِهِ فَبَاطِلٌ، وَكَذَلِكَ مَنْ أَجَازَ أَنْ يُوهِبَ لِلْمَمْلُوكِ نَفْسَهُ، أَوْ رَقَبَتَهُ، أَوْ يَتَصَدَّقُ عَلَيْهِ بِهَا، أَوْ أَنْ يُمَلِّكَهَا، وَأَوْجَبَ لَهُ الْعِتْقَ بِذَلِكَ.

L28400 Abu Muhammad said: As for those who permit bequeathing a slave's manumission [i.e., freedom], this is invalid. Similarly, those who permit gifting a slave himself, his manumission, giving his freedom as alms (ṣadaqah), granting him ownership of his freedom, or thereby making his emancipation obligatory—this is invalid.

بُرْهَانُ ذَلِكَ -: أَنَّهُ لَمْ يَأْتِ نَصٌّ قُرْآنٍ وَلَا سُنَّةٌ قَطُّ بِأَنَّ الْمَرْءَ يَمْلِكُ رِقَّ نَفْسِهِ، فَإِذْ لَمْ يَأْتِ بِذَلِكَ قُرْآنٌ وَلَا سُنَّةٌ، وَهُوَ فِي الْعَقْلِ مَمْنُوعٌ؛ لِأَنَّ الْمِلْكَ يَقْتَضِي مَالِكًا وَمَمْلُوكًا وَقَدْ جَاءَتْ النُّصُوصُ بِإِبَاحَةِ فَرْجِ الْمَمْلُوكَةِ، وَبِحُسْنِ الْوَصَاةِ بِمَا مَلَكْنَا - فَصَحَّ أَنَّ الْمَمْلُوكَ غَيْرُ الْمَالِكِ بِيَقِينٍ.

L28401 The proof of this is that neither a Quranic text nor a Sunnah has ever provided that a person owns the enslavement of himself. Since neither the Quran nor the Sunnah has affirmed this, and it is logically prohibited—because ownership inherently necessitates an owner and an owned person—while the texts have permitted sexual access to female slaves and exhorted excellent care of those under our ownership, it is conclusively established with certainty that the owned person cannot be the owner.

وَأَيْضًا - فَلَوْ أَنَّ الْمَمْلُوكَ جَازَ أَنْ يَمْلِكَ نَفْسَهُ لَكَانَ حِينَئِذٍ لَا بُدَّ ضَرُورَةً مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا -:

L28402 Moreover, if it were permissible for a slave to own himself, this would necessarily and inevitably result in one of two scenarios, with no third alternative.

إمَّا أَنْ يُعْتِقَ بِمِلْكِهِ لَهُ نَفْسَهُ

L28403 He may emancipate himself through his ownership for himself.

وَإِمَّا أَنْ لَا يُعْتِقَ بِذَلِكَ.

L28404 Or that manumission is not effected by that.

فَإِنْ قَالُوا: يُعْتِقُ وَلَا بُدَّ؟ قُلْنَا: وَمِنْ أَيْنَ قُلْتُمْ هَذَا وَلَا نَصَّ فِي ذَلِكَ.

L28405–28406 If they were to say, "He is to be emancipated without fail?" we would respond: "From where have you derived this, when there is no explicit textual evidence whatsoever for that?"

فَإِنْ قَالُوا: قِيَاسًا عَلَى مَنْ يُعْتَقُ عَلَيْهِ مِنْ ذَوِي رَحِمِهِ فَهُوَ أَوْلَى بِذَلِكَ؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّهُ لَا خِلَافَ فِي افْتِرَاقِ حُكْمِ الْمَرْءِ فِي نَفْسِهِ، وَحُكْمِهِ فِي ذَوِي رَحِمِهِ، وَأَنَّهُ يَجُوزُ لَهُ فِي نَفْسِهِ مَا لَا يَجُوزُ لَهُ فِي ذَوِي رَحِمِهِ، فَلِلْمَرْءِ أَنْ يُؤَاجِرَ نَفْسَهُ لِلْخِدْمَةِ، وَلَيْسَ لَهُ أَنْ يُؤَاجِرَ ذَا رَحِمِهِ لِلْخِدْمَةِ - فَبَطَلَ هَذَا الْقِيَاسُ الْفَاسِدُ عَلَى كُلِّ حَالٍ.

L28407 If they say: "By analogy to one upon whom emancipation is required due to his blood relatives, would he not be most entitled to this?" We reply: "All analogy is inherently invalid. Moreover, even were analogy valid, this case would constitute the very essence of invalidity. For there is no disagreement that a person's legal ruling concerning himself differs from his ruling concerning his blood relatives, and that what is permissible for him regarding himself is impermissible regarding his relatives. A person may contract himself for service, but he may not contract his blood relative for service. Thus, this invalid analogy is nullified in all circumstances."

L28408 Furthermore, if his manumission were obligatory due to that, it would un-

doubtedly be valid, for if he acquired ownership of his own person, his master's ownership over him would cease completely, and the slave would become the one manumitting himself.

L28409 The Messenger of Allah - peace and blessings be upon him - said: Indeed, clientage belongs solely to the one who manumitted.

L28410 Therefore, the legal bond of patronage (walā') in this matter cannot belong to the master, and his walā' must belong to himself, for he is the one who was emancipated upon himself. This contradicts your juristic opinion.

L28411 And if you say, "He is not emancipated by that?" it would necessitate that you permit him to sell himself—yet you do not uphold this. Thus, the contradiction of your statement and its invalidity have become evident beyond doubt.

L28412 Divine success is with Allah, the Exalted.

L28413 If they say: Allah, the Exalted, has stated—quoting Moses, peace be upon him, and approving him—"My Lord, I have control over none but myself and my brother" [Al-Mā'idah 5:25].[15]

L28414 We said: Allah, the Mighty and Majestic, spoke the truth, and Musa—peace and blessings be upon him—spoke the truth. He who distorts words from their proper contexts has lied. Indeed, Musa—peace and blessings be upon him—never meant by sensory necessity, without any disagreement from anyone, the ownership of his own enslavement or the enslavement of his brother—peace be upon them both. Whoever asserts this has committed disbelief, descended into foolishness, and displayed brazenness. Rather, he undoubtedly meant without doubt or dispute: the right to act in the affairs of his Lord, the Mighty and Majestic—and this is a truth no rational person would deny. Who is weaker in argument and more grossly ignorant than one who cites a verse contrary to its explicit wording and intended meaning? Truly, this is a grave matter—we seek refuge in Allah from the likes of it.

ثُمَّ لَوْ وَجَبَ عِتْقُهُ بِذَلِكَ لَكَانَ بِلَا شَكٍّ إذْ مَلَكَ رِقَّ نَفْسِهِ فَقَدْ سَقَطَ مِلْكُ سَيِّدِهِ عَنْهُ جُمْلَةً، وَصَارَ الْعَبْدُ هُوَ الْمُعْتِقُ لِنَفْسِهِ.

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ» .

فَبَطَلَ أَنْ يَكُونَ الْوَلَاءُ فِي ذَلِكَ لِلسَّيِّدِ، وَوَجَبَ أَنْ يَكُونَ وَلَاؤُهُ لِنَفْسِهِ لِأَنَّهُ هُوَ الَّذِي أُعْتِقَ عَلَى نَفْسِهِ، وَهَذَا خِلَافُ قَوْلِكُمْ.

وَإِنْ قُلْتُمْ: لَا يُعْتَقُ بِذَلِكَ؟ لَزِمَكُمْ أَنْ تُجِيزُوا لَهُ أَنْ يَبِيعَ نَفْسَهُ، وَأَنْتُمْ لَا تَقُولُونَ بِهَذَا - فَوَضَحَ تَنَاقُضُ قَوْلِكُمْ وَفَسَادُهُ بِلَا شَكٍّ -.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَإِنْ قَالُوا: قَدْ قَالَ اللَّهُ تَعَالَى حَاكِيًا عَنْ مُوسَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَمُصَوِّبًا لَهُ أَنَّهُ: {قَالَ رَبِّ إِنِّي لا أَمْلِكُ إِلا نَفْسِي وَأَخِي} [المائدة: ٢٥]

قُلْنَا: صَدَقَ اللَّهُ عَزَّ وَجَلَّ وَصَدَقَ مُوسَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَكَذَبَ مَنْ يُحَرِّفُ الْكَلِمَ عَنْ مَوَاضِعِهِ إنَّ مُوسَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَعْنِ قَطُّ بِلَا خِلَافٍ مِنْ أَحَدٍ وَبِضَرُورَةِ الْحِسِّ مِلْكَ رِقِّ نَفْسِهِ وَرِقِّ أَخِيهِ - عَلَيْهِمَا السَّلَامُ -، وَمَنْ قَالَ هَذَا فَقَدْ كَفَرَ وَسَخُفَ وَتَوَقَّحَ مَا شَاءَ، وَإِنَّمَا عَنَى بِلَا شَكٍّ وَلَا خِلَافٍ: مِلْكَ التَّصَرُّفِ فِي أَمْرِ رَبِّهِ عَزَّ وَجَلَّ - وَهَذَا حَقٌّ لَا يُنْكِرُهُ ذُو عَقْلٍ، فَمَنْ أَضْعَفُ قَوْلًا وَأَفْحَشُ جَهْلًا مِمَّنْ يَحْتَجُّ بِآيَةٍ فِي خِلَافِ نَصِّهَا وَمَعْنَاهَا، إنَّ هَذَا لَأَمْرٌ عَظِيمٌ - نَعُوذُ بِاَللَّهِ مِنْ مِثْلِهِ.

[15] **Qur'an references (L28413):** Qur'an 5:25 (Al-Ma'idah).

فَإِذْ قَدْ بَطَلَ أَنْ يَمْلِكَ أَحَدٌ رِقَّ نَفْسِهِ فَقَدْ بَطَلَ تَمْلِيكُهُ ذَلِكَ، وَإِذْ بَطَلَ تَمْلِيكُهُ ذَلِكَ فَقَدْ بَطَلَ أَنْ يَكُونَ لَهُ حُكْمٌ نَافِذٌ غَيْرُ الْإِنْكَارِ وَالْإِبْطَالِ، وَصَحَّ قَوْلُنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L28415–28417 Since it is invalid for anyone to own the enslavement of oneself, his act of transferring such ownership is likewise invalidated. And since this transfer of ownership is invalidated... It is thus invalid for it to have any binding ruling other than rejection and annulment, and our position is affirmed—and all praise is due to Allah, the Lord of all worlds.

وَأَمَّا إِبْطَالُ الْأَوْزَاعِيِّ الْوَصِيَّةَ لِلْعَبْدِ جُمْلَةً فَخَطَأٌ ظَاهِرٌ، لِأَنَّ اللَّهَ تَعَالَى أَمَرَ بِالْوَصِيَّةِ جُمْلَةً وَلَمْ يَخُصَّ الْعَبْدَ مِنْ الْحُرِّ.

L28418 As for Al-Awza'i's absolute invalidation of bequests to slaves altogether, this constitutes a manifest error, since Allah the Exalted commanded bequests as a general obligation and did not single out the slave in contrast to the free person.

قَالَ تَعَالَى: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] فَكُلُّ وَصِيَّةٍ جَائِزَةٌ إِلَّا وَصِيَّةً مَنَعَ مِنْهَا نَصُّ قُرْآنٍ أَوْ سُنَّةٍ.

L28419 He, the Exalted, said: {After any bequest he may make or debt} [An-Nisā': 11]. Thus, every will is valid except one prohibited by an explicit ruling from the Qur'an or the Sunnah.[16]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «فِي كُلِّ ذِي كَبِدٍ رَطْبَةٍ أَجْرٌ» .

L28420 The Messenger of Allah—peace be upon him and his family—said, "There is reward for every living creature with a moist liver."

فَإِنْ قِيلَ: الْعَبْدُ لَا يَمْلِكُ؟

L28421 If it is said: Does the slave not own?

قُلْنَا: بَلْ يَمْلِكُ لِأَنَّ اللَّهَ تَعَالَى أَجَازَ لِلْعَبْدِ النِّكَاحَ، وَأَمَرَ بِإِنْكَاحِ الْإِمَاءِ وَكَلَّفَ النَّاكِحَ جُمْلَةً النَّفَقَةَ وَالْإِسْكَانَ وَالصَّدَاقَ، وَلَا يُكَلَّفُ ذَلِكَ إِلَّا مَالِكٌ، وَكُلُّ ذَلِكَ فَرْضٌ عَلَى كُلِّ نَاكِحٍ، قَالَ تَعَالَى: {فَانْكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ وَآتُوهُنَّ أُجُورَهُنَّ} [النساء: ٢٥] فَأَمَرَ تَعَالَى بِإِعْطَاءِ الْأَمَةِ مَهْرَهَا - فَصَحَّ أَنَّهُ لَهَا مِلْكٌ صَحِيحٌ.

L28422 We said: Rather, he possesses legal capacity because Allah the Exalted permitted the male slave to marry, enjoined the marrying of female slaves, and obligated the marrying party to provide, in full, maintenance, housing, and dower. None is charged with this except one holding rightful authority, and all of this constitutes an obligatory duty upon every marrying individual. The Exalted said: *"Marry them with their guardians' permission and give them their bridal dues"* [4:25]. Thus, the Exalted commanded granting the female slave her rightful dower—thereby establishing that she possesses valid ownership rights over it.[17]

وَقَالَ تَعَالَى: {وَأَنْكِحُوا الْأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ} [النور: ٣٢] وَهَذَا نَصٌّ ظَاهِرٌ.

L28423 And He, the Exalted, said: {Marry off those without spouses among you, and the righteous from your male slaves and female slaves. If they are poor, Allah will enrich them from His bounty.} [An-Nur: 32] And this is an explicit text.[18]

[16] **Qur'an references (L28419):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).
[17] **Qur'an references (L28422):** Qur'an 4:25 (An-Nisa).
[18] **Qur'an references (L28423):** Qur'an 24:32 (An-Nur).

فَصَحَّ أَنَّ مِلْكَ الْعَبِيدِ وَالْإِمَاءِ لِلْمَالِ وَكَوْنَهُمْ أَغْنِيَاءَ وَفُقَرَاءَ كَالْأَحْرَارِ.

فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {عَبْدًا مَمْلُوكًا لا يَقْدِرُ عَلَى شَيْءٍ} [النحل: ٧٥] .

قُلْنَا: لَمْ يَقُلْ اللَّهُ تَعَالَى: إنَّ هَذِهِ صِفَةُ كُلِّ مَمْلُوكٍ، إنَّمَا ذَكَرَ مَنْ هَذِهِ صِفَتُهُ مِنْ الْمَمَالِيكِ، وَقَدْ قَالَ تَعَالَى: {رَجُلَيْنِ أَحَدُهُمَا أَبْكَمُ لا يَقْدِرُ عَلَى شَيْءٍ} [النحل: ٧٦] أَفَتَرَوْنَ كُلَّ أَبْكَمَ؟ فَوَاجِبٌ لَا يَمْلِكُ الْمَالَ أَصْلًا، وَلَا فَرْقَ بَيْنَ النَّصَّيْنِ؟ وَبُرْهَانُ صِحَّةِ قَوْلِنَا -: أَنَّ اللَّهَ تَعَالَى لَمْ يَقُلْ عَبْدًا مَمْلُوكًا لَا يُمْكِنُ أَنْ يَمْلِكَ مَالًا، إنَّمَا قَالَ: لَا يَقْدِرُ عَلَى شَيْءٍ، وَاَللَّهُ تَعَالَى لَا يَقُولُ إلَّا الْحَقَّ وَنَحْنُ نَرَى الْعَبِيدَ يَقْدِرُونَ عَلَى أَشْيَاءَ كَقُدْرَةِ الْأَحْرَارِ، أَوْ أَكْثَرَ، فَيَقْدِرُونَ عَلَى الصَّلَاةِ، وَالصِّيَامِ، وَالطَّهَارَةِ، وَالْجِمَاعِ، وَالْحَرَكَةِ، وَحَمْلِ الْأَثْقَالِ، وَالْقِتَالِ، وَالْغَزْوِ.

فَصَحَّ أَنَّ اللَّهَ تَعَالَى لَمْ يَعْنِ قَطُّ بِتِلْكَ الْآيَةِ: مِلْكَ الْمَالِ، وَإِنَّمَا عَنَى عَبْدًا لَا يَقْدِرُ عَلَى شَيْءٍ لِضَعْفِ جِسْمِهِ جُمْلَةً - فَبَطَلَ تَمْوِيهُهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَمِنْ الْعَجَائِبِ إبْطَالُهُمْ مِلْكَ الْعَبْدِ لِشَيْءٍ مِنْ الْأَمْوَالِ، ثُمَّ مَلَّكُوهُ مَا لَا يَمْلِكُ وَهُوَ رَقَبَتُهُ.

وَأَمَّا إجَازَةُ أَبِي حَنِيفَةَ الْوَصِيَّةَ لِلْمَمْلُوكِ بِالْجُزْءِ الْمَشَاعِ فِي الْمَالِ وَإِبْطَالُهُ الْوَصِيَّةَ لَهُ بِالشَّيْءِ الْمُعَيَّنِ، أَوْ الْمَكِيلِ الْمُعَيَّنِ، أَوْ الْمَوْزُونِ، أَوْ الْمَعْدُودِ: خَطَأٌ، لَا خَفَاءَ بِهِ، وَفَرْقٌ لَا بُرْهَانَ لَهُ أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَاقِطَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ.

L28424 Thus, it is established that ownership of male and female slaves is wealth, and their wealth or poverty is akin to that of free individuals.

L28425 If they cite the words of Allah, the Mighty and Sublime: “an owned slave unable to do anything” [An-Nahl 16:75].[19]

L28426 We said: Allah, the Exalted, did not state that this is the attribute of every slave; rather, He mentioned those among the owned slaves who possess this attribute. He, the Exalted, said: *“Two men, one of whom is mute and has no power over anything”* [Qur’an 16:76]. Do you then consider every mute person? Thus, it would necessarily follow that such a person cannot own property at all, and there is no difference between the two texts? The proof of the validity of our statement—that Allah, the Exalted, did not say “a slave who is owned and cannot own property”; rather, He said: *“has no power over anything”*. Allah, the Exalted, speaks only the truth, and we observe that slaves are capable of acts just as free people are, or even more. They are capable of prayer, fasting, purification, sexual intercourse, movement, carrying heavy loads, fighting, and military expeditions.[20]

L28427 Thus, it is established that Allah the Exalted never intended by that verse the ownership of wealth, but rather intended a slave who is wholly incapable of anything due to the weakness of his body as a whole—thus their deception has been invalidated. And divine facilitation is from Allah, the Exalted.

L28428–28429 Among the astonishing matters is their invalidation of the slave’s ownership of any property, then they grant him ownership of what he cannot own - and that is his neck.

L28430 As for Abū Ḥanīfah’s validation of bequeathing an undivided share in property to a slave and his invalidation of bequeathing a specific object, a specified measured amount, a weighed amount, or a counted item to him: this is an undeniably erroneous distinction, entirely devoid of any proof whatsoever—neither from the Quran, nor the Sunnah, nor a weak narration, nor the statement of a Companion, nor a follower (Tābiʿūn), nor analogy, nor well-founded opinion.

[19] **Qur’an references (L28425):** Qur’an 16:75 (An-Nahl).
[20] **Qur’an references (L28426):** Qur’an 16:76 (An-Nahl).

وَقَدْ عَلِمَ كُلُّ ذِي حِسٍّ سَلِيمٍ: أَنَّ مَنْ أَوْصَى لِعَبْدِهِ بِثُلُثِ مَالِهِ فَإِنَّ الشَّيْءَ الْمُوصَى بِهِ هُوَ غَيْرُ الْإِنْسَانِ الْمُوصَى لَهُ بِذَلِكَ الشَّيْءِ، فَصَحَّ يَقِينًا أَنَّهُ لَمْ يُوصِ لَهُ مِنْ رَقَبَتِهِ بِشَيْءٍ وَإِنَّمَا أَوْصَى لَهُ بِجُزْءٍ مِنْ مَالِهِ لَا تَدْخُلُ فِيهِ رَقَبَتُهُ.

L28431 Every person of sound perception knows that whoever bequeaths to his slave a third of his wealth, the thing bequeathed is distinct from the human being to whom it is bequeathed. Thus, it is conclusively valid that he did not bequeath anything from his own person, but rather bequeathed to him a portion of his wealth which does not include his own person.

وَأَمَّا قَوْلُ مَالِكٍ: أَنَّ الْوَصِيَّةَ جَائِزَةٌ، وَلَيْسَ لِلْوَارِثِ أَنْ يَنْتَزِعَهُ مِنْهُ: فَخَطَأٌ فَاحِشٌ، وَقَوْلٌ لَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ، وَقَوْلٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ.

L28432 As for Mālik's ruling that the bequest is permissible and that the heir has no right to forcibly seize it from the testator: this constitutes an egregious error, a position unknown to have been held by any predecessor, and an assertion devoid of evidentiary support for its validity.

فَإِنْ قِيلَ: إِنَّهُ إِذَا انْتَزَعَهُ مِنْهُ صَارَتْ الْوَصِيَّةُ لِلْوَارِثِ؟ قُلْنَا: هَذَا بَاطِلٌ، مَا صَارَتْ قَطُّ وَصِيَّةً لِوَارِثٍ، لَكِنْ هِيَ وَصِيَّةٌ لِغَيْرِ وَارِثٍ، ثُمَّ أَخَذَهَا الْوَارِثُ بِحَوْلِهِ، كَمَا يُجِيزُ مَالِكٌ: الْوَصِيَّةَ لِزَوْجِ الِابْنَةِ الْفَقِيرِ الَّذِي لَا شَيْءَ لَهُ ثُمَّ تَأْخُذُهُ الْوَارِثَةُ فِي صَدَاقِهَا، وَفِي نَفَقَتِهَا، وَكِسْوَتِهَا.

L28433 If it is said: If he seizes it from him, does the bequest then become directed to the heir? We respond: This is invalid, as it never constitutes a valid bequest to an heir. Rather, it remains a bequest to a non-heir, which the heir subsequently acquires by his own capacity, just as Mālik permits a bequest to the daughter's destitute husband—who possesses nothing—after which the female heir takes it for her dower, her maintenance, and her clothing.

وَكَمَا أَجَازَ أَيْضًا - الْوَصِيَّةَ لِغَرِيمِ الْوَارِثِ الْعَدِيمِ، ثُمَّ يَأْخُذُهُ الْوَارِثُ فِي دَيْنِهِ، فَأَيُّ فَرْقٍ بَيْنَ الْأَمْرَيْنِ؟ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L28434 Just as it is also permissible to bequeath to the creditor of an insolvent heir, where the heir then applies it toward his debt, what difference is there between the two cases? And with Allah, the Most High, is success.

[مَسْأَلَة وَصِيَّة مِنْ لَمْ يَبْلُغ مِنْ الرجال وَالنِّسَاء]

A jurisprudential ruling on the will of prepubescent individuals among men and women.

١٧٦٤ - مَسْأَلَةٌ: وَلَا تَجُوزُ وَصِيَّةُ مَنْ لَمْ يَبْلُغْ مِنْ الرِّجَالِ وَالنِّسَاءِ أَصْلًا.

L28435 Issue 1764: The will of a person who has not reached puberty from among men and women is not valid at all.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ عَمْرِو بْنِ سُلَيْمٍ الزُّرَقِيِّ عَنْ أُمِّهِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ أَجَازَ لَهَا وَصِيَّةَ غُلَامٍ لَمْ يَحْتَلِمْ بِبِئْرِ جُشَمَ، قَالَ عَمْرُو بْنُ سُلَيْمٍ: فَبِعْتُهَا أَنَا بِثَلَاثِينَ أَلْفَ دِرْهَمٍ.

L28436 People have differed regarding this—it was narrated to us through the chain of Mālik from ʿAbdullāh ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm from his father from ʿAmr ibn Sulaym al-Zurqī from his mother: that ʿUmar ibn al-Khaṭṭāb permitted her to retain a prepubescent male servant at Bi'r Jusham. ʿAmr ibn Sulaym said: "I sold him for thirty thousand dirhams."

وَبِابْنِ وَهْبٍ، عَنْ رِجَالٍ مِنْ أَهْلِ الْعِلْمِ، عَنْ

L28437 And via Ibn Wahb, through some men among the people of knowledge, from

Ibn Masʿud: that he deemed the bequest of a minor valid, stating, “Whoever fulfills the right, we validate it.” It is also narrated—though unauthenticated—from Aban ibn ʻUthman: that he permitted the bequest of a nine-year-old girl up to a third.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ رِجَالٍ مِنْ أَهْلِ الْعِلْمِ عَنِ ابْنِ مَسْعُودٍ: أَنَّهُ أَجَازَ وَصِيَّةَ الصَّبِيِّ، وَقَالَ: مَنْ أَصَابَ الْحَقَّ أَجَزْنَا، وَرُوِيَ - وَلَمْ يَصِحَّ - عَنْ أَبَانَ بْنِ عُثْمَانَ: أَنَّهُ أَجَازَ وَصِيَّةَ جَارِيَةٍ بِنْتِ تِسْعِ سِنِينَ بِالثُّلُثِ.

L28439–28440 And from Jābir al-Juʿfī, from al-Shaʿbī: Whoever fulfills what is rightfully due—whether small or large—we uphold his will.

وَعَنْ جَابِرٍ الْجُعْفِيِّ عَنِ الشَّعْبِيِّ: مَنْ أَصَابَ الْحَقَّ - مِنْ صَغِيرٍ أَوْ كَبِيرٍ - أَجَزْنَا وَصِيَّتَهُ.

L28441 From Ibn Samʿān, from Al-Zuhrī: If a young male or female understands prayer, his or her will is valid even if they have not experienced puberty. The ruling applies equally to both.

وَعَنِ ابْنِ سَمْعَانَ عَنِ الزُّهْرِيِّ: إِذَا عَرَفَ الصَّلَاةَ جَازَتْ وَصِيَّتُهُ وَإِنْ لَمْ يَحْتَلِمْ - الْغُلَامُ وَالْجَارِيَةُ سَوَاءٌ.

L28442 It is authentically reported from Shurayh, ʿAbdullāh ibn ʿUtbah ibn Masʿūd, and Ibrāhīm al-Nakhaʿī that the will of minors is permissible if they meet the requisite conditions [of maturity].

وَصَحَّ عَنْ شُرَيْحٍ، وَعَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ: إِجَازَةُ وَصِيَّةِ الصَّغِيرَيْنِ إِذَا أَصَابَا الْحَقَّ.

L28443 Al-Layth ibn Saʿd said according to the opinion of al-Zuhri.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ كَقَوْلِ الزُّهْرِيِّ.

L28444 Malik permitted a person who has attained nine years of age or older to make a will.

وَأَجَازَ مَالِكٌ وَصِيَّةَ مَنْ بَلَغَ تِسْعَ سِنِينَ فَصَاعِدًا.

L28445 Another opinion—authenticated from ʿUmar ibn ʿAbd al-ʿAzīz—states that the will of one who has not reached puberty is valid if close to one-third [of the estate], but we do not opine that it may reach one-third.

وَقَوْلٌ آخَرُ - صَحَّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّ مَنْ لَمْ يَبْلُغِ الْحُلُمَ فَإِنَّ وَصِيَّتَهُ تَجُوزُ فِي قُرْبِ الثُّلُثِ، وَلَا نَرَى أَنْ تَبْلُغَ الثُّلُثَ.

L28446 And it has been narrated to us through the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who narrated from him [the Prophet].

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْهُ.

L28447 A third opinion: Al-Qāḍī ʿUbayd Allāh ibn al-Ḥasan al-ʿAnbarī said: It is that when the two minors reach an age corresponding to the average at which boys begin to experience wet dreams (as a sign of puberty), their bequest becomes valid.

وَقَوْلٌ ثَالِثٌ: قَالَ الْقَاضِي عُبَيْدُ اللَّهِ بْنُ الْحَسَنِ الْعَنْبَرِيُّ: وَهُوَ أَنَّهُ إِذَا بَلَغَ الصَّغِيرَانِ سِنًّا مِنْ وَسَطِ مَا يَحْتَلِمُ لَهُ الْغِلْمَانُ: جَازَتْ وَصِيَّتُهُمَا.

L28448 The fourth opinion is that the will of one who has not experienced nocturnal emission is not valid, and likewise a woman’s will is not valid until she experiences nocturnal emission or menstruates—as reported to us through the transmission of ʿAbd al-Razzāq from Ibrāhīm ibn Abī Yaḥyā from al-

وَقَوْلٌ رَابِعٌ: وَهُوَ أَنَّ وَصِيَّةَ مَنْ لَمْ يَحْتَلِمْ لَا تَجُوزُ، وَكَذَلِكَ الْمَرْأَةُ مَا لَمْ تَحْتَلِمْ أَوْ تَحِضْ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إِبْرَاهِيمَ بْنِ أَبِي يَحْيَى عَنِ الْحَجَّاجِ بْنِ أَرْطَاةَ

Ḥajjāj ibn Arṭāḥ from ʿAṭāʾ from Ibn ʿAbbās: “The will of a prepubescent boy is not valid until he experiences nocturnal emission”—and this is established from al-Ḥasan al-Baṣrī and Ibrāhīm al-Nakhaʿī as well. It is also the opinion of Abū Ḥanīfah, al-Shāfiʿī, Abū Sulaymān, and their companions.

عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ: لَا تَجُوزُ وَصِيَّةُ الْغُلَامِ حَتَّى يَحْتَلِمَ - وَصَحَّ هَذَا عَنْ الْحَسَنِ الْبَصْرِيِّ، وَإِبْرَاهِيمَ النَّخَعِيِّ أَيْضًا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L28449 Abu Muhammad said: As for ‘Ubayd Allah ibn al-Hasan’s specification of puberty as the midpoint of the age range at which boys experience nocturnal emissions, ‘Umar ibn ‘Abd al-‘Aziz’s rejection of the notion that puberty occurs at one-third of a presumed age, and his allowance of ages close to that, along with Malik’s specification for a boy aged nine and above—these are opinions with no basis whatsoever. We know of no one who defined this age before Malik.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا تَحْدِيدُ عُبَيْدِ اللَّهِ بْنِ الْحَسَنِ بِبُلُوغِ مَنْ هِيَ وَسَطُ مَا يَحْتَلِمُ لَهَا الْغِلْمَانُ - وَمَنْعُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ مِنْ بُلُوغِ الثُّلُثِ، وَإِجَازَتُهُ مَا قَرُبَ مِنْ ذَلِكَ - وَتَخْصِيصُ مَالِكٍ ابْنَ تِسْعٍ فَصَاعِدًا -: فَأَقْوَالٌ لَا مُتَعَلَّقَ لَهَا بِشَيْءٍ أَصْلًا، وَمَا نَعْلَمُ أَحَدًا حَدَّ ذَلِكَ قَبْلَ مَالِكٍ.

L28450 And perhaps some of his followers may say: “It is authenticated that the Prophet (peace be upon him) consummated the marriage with ʿĀ’ishah, the Mother of the Believers, when she was nine years of age?”

وَلَعَلَّ بَعْضَ مُقَلِّدِيهِ يَقُولُ: صَحَّ أَنَّ «النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَخَلَ بِعَائِشَةَ أُمِّ الْمُؤْمِنِينَ وَهِيَ بِنْتُ تِسْعِ سِنِينَ» ؟

L28451–28452 Then we say to him: Yes, and it is established that he (peace and blessings be upon him) married her when she was a six-year-old girl, so validate the will of a six-year-old son based on that.

فَنَقُولُ لَهُ: نَعَمْ، وَصَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - تَزَوَّجَهَا وَهِيَ بِنْتُ سِتِّ سِنِينَ، فَأَجِيزُوا وَصِيَّةَ ابْنِ سِتِّ سِنِينَ بِذَلِكَ -.

L28453 And all of this has no bearing whatsoever on the will at all.

وَهَذَا كُلُّهُ لَا مَدْخَلَ لَهُ فِي الْوَصِيَّةِ أَصْلًا.

L28454 As for those who permit the bequest made by the two minors when they met the rightful criteria, they cite as evidence the statement of Allah, the Exalted: “And do good” [Surah al-Ḥajj 22:77].[21]

وَأَمَّا مَنْ أَجَازَ وَصِيَّةَ الصَّغِيرَيْنِ إذَا أَصَابَا الْحَقَّ، فَإِنَّهُمْ احْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] .

L28455 They said: This is a general principle. The Almighty stated concerning inheritance: *“After any bequest he bequeaths or debt”* [4:11]. This is a general principle. There is an established narration from the Prophet (peace and blessings be upon him) when a woman asked him: “Does the minor have

قَالُوا: وَهَذَا عُمُومٌ، وَقَالَ تَعَالَى فِي الْمَوَارِيثِ: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] وَهَذَا عُمُومٌ، وَبِالثَّابِتِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ «سَأَلَتْهُ الْمَرْأَةُ عَنْ الصَّغِيرِ أَلَهُ حَجٌّ؟ فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: نَعَمْ، وَلَكِ أَجْرٌ»

[21] **Qur’an references (L28454):** Qur’an 22:77 (Al-Hajj).

to perform Hajj?" He (peace and blessings be upon him) replied: "Yes, and you (the woman) will have a reward."[22]

L28456 And we found him urging prayer and fasting, so the bequest is likewise enjoined.

L28457 They said: The spendthrift and the minor are prohibited from their wealth during their lifetimes, and the will of the spendthrift is valid. Does the same apply to the minor?

L28458 They said: This is the ruling of ʿUmar in the presence of the Companions—may Allah be pleased with them—and the narration from Ibn ʿAbbās contrary to that is invalid, as its chain includes weak transmitters: Ibrāhīm ibn Abī Yaḥyā and al-Ḥajjāj ibn Arṭāh. Such a ruling cannot be established through independent reasoning—they have no valid objection beyond what we have stated.

L28459 None of this applies to Mālik and those who followed his opinion in any respect, for they singled out those below nine without proof, thereby opposing all of that.

L28460 Abū Muḥammad said: All of it—they have no authoritative proof for any part of it—as for the saying of Allah, the Exalted: {Perform acts of righteousness} [Al-Ḥajj: 77].[23]

L28461 His statement, Exalted is He: {after a bequest he has made or debt} [Quran 4:11].[24]

L28462 For indeed, one who has not reached puberty is not addressed by any of the Sharia's rulings—neither obligations, prohibitions, nor recommended acts—nor included in this discourse. However, Allah the Exalted has graced him by accepting his deeds, which are physical acts of righteousness, without obligating him to them.

L28463 It has been authentically reported from the Messenger of Allah (peace be

وَوَجَدْنَاهُ يَحُضُّ عَلَى الصَّلَاةِ وَالصِّيَامِ فَالْوَصِيَّةُ كَذَلِكَ.

وَقَالُوا: السَّفِيهُ، وَالصَّغِيرُ مَمْنُوعَانِ مِنْ أَمْوَالِهِمَا فِي حَيَاتِهِمَا، وَوَصِيَّةُ السَّفِيهِ: جَائِزَةٌ، فَالصَّغِيرُ كَذَلِكَ؟

وَقَالُوا: هَذَا حُكْمُ عُمَرَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَالرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ بِخِلَافِ ذَلِكَ لَا تَصِحُّ، لِأَنَّهَا عَنْ هَالِكِينَ: إبْرَاهِيمُ بْنُ أَبِي يَحْيَى، وَالْحَجَّاجُ بْنُ أَرْطَاةَ، وَمِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ - مَا لَهُمْ شُبْهَةٌ غَيْرَ مَا ذَكَرْنَا -.

وَكُلُّ ذَلِكَ لَا مُتَعَلَّقَ لِمَالِكٍ وَمَنْ قَلَّدَهُ بِشَيْءٍ مِنْهُ، لِأَنَّهُمْ خَصُّوا مَنْ دُونَ التِّسْعِ بِلَا؛ بُرْهَانٍ، فَخَالَفُوا كُلَّ ذَلِكَ.

قَالَ أَبُو مُحَمَّدٍ: وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ -: أَمَّا قَوْله تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] .

وقَوْله تَعَالَى: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] .

فَإِنَّ مَنْ لَمْ يَبْلُغْ غَيْرُ مُخَاطَبٍ بِشَيْءٍ مِنْ الشَّرَائِعِ، لَا بِفَرْضٍ وَلَا بِتَحْرِيمٍ وَلَا بِنَدْبٍ، وَلَا دَاخِلًا فِي هَذَا الْخِطَابِ، لَكِنَّ اللَّهَ تَعَالَى تَفَضَّلَ عَلَيْهِ بِقَبُولِ أَعْمَالِهِ الَّتِي هِيَ أَعْمَالُ الْبِرِّ بِبَدَنِهِ دُونَ أَنْ يُلْزِمَهُ ذَلِكَ.

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ الْقَلَمَ مَرْفُوعٌ عَنْ الصَّبِيِّ حَتَّى يَبْلُغَ فَصَحَّ أَنَّهُ غَيْرُ مُخَاطَبٍ، فَبَطَلَ التَّعْلِيقُ بِالْآيَتَيْنِ الْمَذْكُورَتَيْنِ.

[22] **Qur'an references (L28455):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).
[23] **Qur'an references (L28460):** Qur'an 22:77 (Al-Hajj).
[24] **Qur'an references (L28461):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

upon him) that the pen is lifted [from recording deeds] for a child until he attains maturity. Thus, it is established that he is not held accountable, thereby invalidating the conditional ruling derived from the two aforementioned verses.

L28464–28465 As for his statement—peace and blessings be upon him—regarding the minor: "Does he have Hajj?" Then yes, it is valid. This does not entail extending it to seeking closeness through wealth or giving the wealth as charity—neither in his lifetime nor in his bequest after death. Thus, their reliance on this narration is invalidated, and success comes solely from Allah, the Most High.

وَأَمَّا قَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي الصَّغِيرِ لَهُ حَجٌّ؟ فَنَعَمْ، هُوَ حَقٌّ، وَلَيْسَ فِي ذَلِكَ إطْلَاقُهُ عَلَى التَّقَرُّبِ بِالْمَالِ وَالصَّدَقَةِ بِهِ، لَا فِي حَيَاتِهِ وَلَا فِي وَصِيَّتِهِ بَعْدَ وَفَاتِهِ، فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28466 Analogy is invalid. Moreover, even if analogy were valid, this instance would epitomize invalidity itself, for they did not analogize charity performed by a minor during his lifetime to Hajj performed on his behalf. Therefore, analogizing bequests involving wealth to charity involving wealth would be more appropriate—if analogy were valid—than analogizing bequests to Hajj and prayer.

وَالْقِيَاسُ بَاطِلٌ، ثُمَّ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّهُمْ لَمْ يَقِيسُوا الصَّدَقَةَ فِي الْحَيَاةِ مِنْ الصَّغِيرِ عَلَى الْحَجِّ مِنْهُ، فَقِيَاسُ الْوَصِيَّةِ بِالْمَالِ عَلَى الصَّدَقَةِ بِالْمَالِ أَوْلَى أَنْ يَكُونَ لَوْ كَانَ الْقِيَاسُ حَقًّا مِنْ قِيَاسِ الْوَصِيَّةِ عَلَى الْحَجِّ وَالصَّلَاةِ.

L28467 As for their claim that minors are urged to pray and fast, and thus the same applies to the will—this too is baseless, for it is a corrupt analogy, as we have explained.

وَأَمَّا قَوْلُهُمْ: إنَّ مَنْ لَمْ يَبْلُغْ يُحَضُّ عَلَى الصَّلَاةِ، وَالصِّيَامِ فَكَذَلِكَ الْوَصِيَّةُ - فَبَاطِلٌ أَيْضًا لِأَنَّهُ قِيَاسٌ فَاسِدٌ كَمَا ذَكَرْنَا.

L28468 As for their claim that minors and prodigals are restricted from managing their wealth, yet the will of a prodigal is valid—likewise the minor—this is among the most flawed of their arguments, for we do not concede that a rational Muslim could ever be considered a prodigal. Glory be to Allah, far above that! The term "prodigal" applies only to a disbeliever or an insane person lacking discernment. Rather, we affirm to them: A minor and a foolish person lacking discernment are both restricted from managing their wealth, and the will of a foolish person lacking discernment is invalid—thus the same applies to a minor. This constitutes a sounder analogy than theirs, as the initial premise is universally agreed upon.

وَأَمَّا قَوْلُهُمْ: إنَّ الصَّغِيرَ، وَالسَّفِيهَ مَمْنُوعَانِ مِنْ مَالِهِمَا، وَوَصِيَّةُ السَّفِيهِ جَائِزَةٌ فَكَذَلِكَ الصَّغِيرُ - فَهَذَا مِنْ أَفْسَدِ مَا شَغَبُوا بِهِ، لِأَنَّنَا لَا نُسَاعِدُهُمْ عَلَى أَنَّ مُسْلِمًا يَعْقِلُ يَكُونُ سَفِيهًا أَصْلًا، حَاشَ لِلَّهِ مِنْ ذَلِكَ، إنَّمَا السَّفِيهُ الْكَافِرُ، أَوْ الْمَجْنُونُ الَّذِي لَا يُمَيِّزُ - لَكِنْ نَقُولُ لَهُمْ: إنَّ الصَّغِيرَ وَالْأَحْمَقَ الَّذِي لَا يُمَيِّزُ: مَمْنُوعَانِ مِنْ مَالِهِمَا، وَوَصِيَّةُ الْأَحْمَقِ الَّذِي لَا يُمَيِّزُ لَا تَجُوزُ، فَالصَّغِيرُ كَذَلِكَ - فَهَذَا قِيَاسٌ أَصَحُّ مِنْ قِيَاسِهِمْ؛ لِأَنَّ الْقَضِيَّةَ الْأُولَى مُتَّفَقٌ عَلَيْهَا -.

L28469 And by Allah, the Exalted, is the success.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا قَوْلُهُمْ: إنَّهُ فِعْلُ عُمَرَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَمِثْلُهُ لَا يُقَالُ بِالرَّأْيِ؟ فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L28470 As for their statement: "Indeed, it is the action of ʿUmar in the presence of the Companions—may Allah be pleased with them—and such a matter is not determined by independent reasoning." Therefore, no one besides the Messenger of Allah—may Allah bless him and grant him peace—holds conclusive proof.

ثُمَّ إنَّهَا لَا تَصِحُّ عَنْ عُمَرَ، وَلَا عَنْ ابْنِ مَسْعُودٍ، لِأَنَّ أُمَّ عَمْرِو بْنِ سُلَيْمٍ مَجْهُولَةٌ، وَعَمْرُو بْنُ سُلَيْمٍ لَمْ يُدْرِكْ عُمَرَ، وَلَا يُدْرَى مَنْ رَوَاهُ عَنْ ابْنِ مَسْعُودٍ، وَقَدْ خَالَفَهُمَا ابْنُ عَبَّاسٍ، وَالرِّوَايَةُ عَنْهُمْ كُلِّهِمْ فِي ذَلِكَ لَا تَصِحُّ.

L28471 Furthermore, it is not authentically transmitted from Umar nor from Ibn Mas'ud, because the mother of 'Amr ibn Sulaym is unknown, and 'Amr ibn Sulaym did not meet Umar. It is also unknown who narrated it from Ibn Mas'ud. Moreover, Ibn Abbas contradicted both of them, and the narrations from all of them on this matter are inauthentic.

وَكَمْ قَضِيَّةٍ خَالَفُوا فِيهَا عُمَرَ بْنَ الْخَطَّابِ لَا يُعْرَفُ لَهُ فِيهَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28472 Countless are the issues in which they opposed Umar ibn al-Khattab, yet no dissenter from the Companions—may Allah be pleased with them—is known to have opposed him therein. Thus, all their clamorous objections are rendered void. And success is by Allah, the Most High.

فَلَمَّا بَطَلَ كُلُّ مَا احْتَجُّوا بِهِ وَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَامًا وَارْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ وَقُولُوا لَهُمْ قَوْلا مَعْرُوفًا} [النساء: ٥] {وَابْتَلُوا الْيَتَامَى حَتَّى إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ} [النساء: ٦] فَصَحَّ بِنَصِّ الْقُرْآنِ أَنَّ الْمَجْنُونَ، وَالصَّغِيرَ: مَمْنُوعَانِ مِنْ أَمْوَالِهِمَا حَتَّى يَعْقِلَ الْأَحْمَقُ، وَيَبْلُغَ الصَّغِيرُ - فَصَحَّ أَنَّهُ لَا يَجُوزُ لَهُمَا حُكْمٌ فِي أَمْوَالِهِمَا أَصْلًا، وَتَخْصِيصُ الْوَصِيَّةِ فِي ذَلِكَ خَطَأٌ.

L28473–28475 When all their arguments were invalidated, we find that Allah, the Exalted, says: "And do not entrust the foolish with your properties which Allah has made a means of sustenance for you, but provide for them from it, clothe them, and address them with gracious words" [An-Nisa: 5]. "And test the orphans until they reach marriageable age; then if you perceive in them sound judgment, deliver their property to them" [An-Nisa: 6]. Thus, by the explicit text of the Qur'an, the insane person and the minor are prohibited from their wealth until the prodigal attains understanding and the minor reaches maturity. Therefore, it is established that they have no legal authority over their wealth whatsoever, and specifying the will in this context is erroneous.[25]

وَكَذَلِكَ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ» فَذَكَرَ فِيهِمْ الصَّغِيرَ حَتَّى يَبْلُغَ - فَصَحَّ أَنَّهُ غَيْرُ مُخَاطَبٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28476 Similarly, it has been authentically reported from the Prophet (may Allah's blessings and peace be upon him) that he said: "The pen is lifted from three," and he mentioned among them the minor until he reaches puberty. Thus, it is established that he is not held accountable. And success is from Allah, the Exalted.

[مَسْأَلَة وَصِيَّة الْعَبْد]

[25] **Qur'an references (L28473):** Qur'an 4:5 (An-Nisa); Qur'an 4:6 (An-Nisa).

The Issue of a Slave's Will.

Issue 1765: A slave's will is fundamentally invalid, for Allah the Exalted established wills only in the context of inheritance, and a slave is not inherited. Thus he falls outside those affirmed through wills in the Quran. The Messenger of Allah - peace and blessings be upon him and his family - stated regarding wills: "Whoever has something to bequeath..." None may bequeath anything except those permitted by the text, and a slave has nothing to bequeath. Whatever he possesses, when he dies, passes to his master; it is not inherited from him.

As for one who is part-free and part-enslaved, his will is equivalent to that of a free person, because he inherits; thus, he is included in the general obligation imposed on those commanded to make a will. And divine success is from Allah, the Exalted.

The Issue of Bequests That the Third Cannot Sustain

1766 - Issue: If someone bequeaths what a third [of their estate] cannot bear, execution begins with what the testator first mentioned in their statement—regardless of its nature—until the third is fulfilled. Once the third is fulfilled, the remainder of the bequest is invalidated.

If the matter was concisely stated [to mean] their mutual allocation of shares in the will—and this is an issue on which people have differed—it is reported from Ibn ʿUmar and ʿAṭāʾ al-Khurāsānī.

It has been authentically narrated by Masrūq, Shurayḥ, al-Ḥasan al-Baṣrī, Ibrāhīm al-Nakhaʿī, Saʿīd ibn al-Musayyib, al-Zuhrī, Qatādah, Sufyān al-Thawrī, and Isḥāq ibn Rāhawayh that manumission takes precedence over all bequests.

Another opinion: We narrated it through Saʿīd ibn Manṣūr, from Jarīr, from al-Mughīrah, from Ibrāhīm al-Nakhaʿī, who said: "Manumission is only prioritized first when the slave is owned by him and he specifies the slave by name. But if he says: 'Free a slave on my behalf,' then the freeing

١٧٦٥ - مَسْأَلَةٌ: وَلَا تَجُوزُ وَصِيَّةُ الْعَبْدِ أَصْلًا، لِأَنَّ اللَّهَ تَعَالَى إنَّمَا جَعَلَ الْوَصِيَّةَ حَيْثُ الْمَوَارِيثُ وَالْعَبْدُ لَا يُورَثُ فَهُوَ غَيْرُ دَاخِلٍ فِيمَنْ أَقَرَّ بِالْوَصِيَّةِ فِي الْقُرْآنِ وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي وَصِيَّةٍ " مَنْ لَهُ شَيْءٌ يُوصِي فِيهِ " وَلَيْسَ لِأَحَدٍ شَيْءٌ يُوصِي فِيهِ إلَّا مَنْ أَبَاحَ لَهُ النَّصُّ ذَلِكَ، وَلَيْسَ لِلْعَبْدِ شَيْءٌ يُوصِي فِيهِ، إنَّمَا لَهُ شَيْءٌ إذَا مَاتَ صَارَ لِسَيِّدِهِ لَا يُورَثُ عَنْهُ.

فَأَمَّا مَنْ بَعْضُهُ حُرٌّ وَبَعْضُهُ عَبْدٌ فَوَصِيَّتُهُ كَوَصِيَّةِ الْحُرِّ، لِأَنَّهُ يُورَثُ فَهُوَ دَاخِلٌ فِي عُمُومِ الْمَأْمُورِينَ بِالْوَصِيَّةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الْوَصِيَّة بِمَا لَا يتحمله الثُّلُث]

١٧٦٦ - مَسْأَلَةٌ: وَمَنْ أَوْصَى بِمَا لَا يَحْمِلُهُ ثُلُثُهُ بُدِئَ بِمَا بَدَأَ بِهِ الْمُوصِي فِي الذِّكْرِ أَيَّ شَيْءٍ كَانَ حَتَّى يَتِمَّ الثُّلُثُ، فَإِذَا تَمَّ بَطَلَ سَائِرُ الْوَصِيَّةِ.

فَإِنْ كَانَ أَجْمَلَ الْأَمْرَ تَخَاصُّوا فِي الْوَصِيَّةِ، وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ -: فَرُوِيَ عَنْ ابْنِ عُمَرَ، وَعَطَاءٍ الْخُرَاسَانِيِّ.

وَصَحَّ عَنْ مَسْرُوقٍ، وَشُرَيْحٍ، وَالْحَسَنِ الْبَصْرِيِّ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَالزُّهْرِيِّ، وَقَتَادَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ: أَنَّهُ يُبْدَأُ بِالْعِتْقِ عَلَى جَمِيعِ الْوَصَايَا.

of this slave and the remainder of the bequest are considered equal." This is the opinion of al-Shaʿbī.

وَقَوْلٌ آخَرُ: رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرٌ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إنَّمَا يُبْدَأُ بِالْعِتْقِ إذَا كَانَ مَمْلُوكًا لَهُ سَمَّاهُ بِاسْمِهِ، فَأَمَّا إذَا قَالَ: أَعْتِقُوا عَنِّي نَسَمَةً، فَالنَّسَمَةُ وَسَائِرُ الْوَصِيَّةِ سَوَاءٌ - وَهُوَ قَوْلُ الشَّعْبِيِّ.

L28485–28486 We have transmitted it through the chain of Saʿīd ibn Manṣūr, who said: Ashʿath ibn Sawwār narrated to us from al-Shaʿbī. Hushaym said: "I heard Ibn Abī Laylā and Ibn Shubrumah both stating it."

وَرُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ قَالَ: نا أَشْعَثُ بْنُ سَوَّارٍ عَنْ الشَّعْبِيِّ قَالَ هُشَيْمٌ: وَسَمِعْت ابْنَ أَبِي لَيْلَى، وَابْنَ شُبْرُمَةَ يَقُولَانِهِ.

L28487 A third opinion is that bequests—whether manumission or other obligations—are subject to proportional allocation. We have transmitted this via al-Ḥajjāj ibn al-Minhāl, who narrated to us from Ḥammād ibn Salamah, who narrated to us from Ḥammād ibn Zayd. Ibn Salamah stated: "I, Qays, narrate from ʿAṭāʾ ibn Abī Rabāḥ," while Ibn Zayd stated: "I, Ayyūb al-Sikhtiyānī, narrate from Muḥammad ibn Sīrīn." Then ʿAṭāʾ and Ibn Sīrīn agreed regarding someone who bequeaths manumission and other obligations exceeding a third: the third is divided among them by shares.

وَقَوْلٌ ثَالِثٌ: وَهُوَ أَنَّهُ تَتَحَاصُّ الْوَصَايَا، الْعِتْقُ وَغَيْرُهُ سَوَاءٌ -: رُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا حَمَّادُ بْنُ زَيْدٍ، قَالَ ابْنُ سَلَمَةَ: أَنَا قَيْسٌ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ، وَقَالَ ابْنُ زَيْدٍ: أَنَا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ، ثُمَّ اتَّفَقَ عَطَاءٌ، وَابْنُ سِيرِينَ فِيمَنْ أَوْصَى بِعِتْقٍ وَأَشْيَاءَ، فَزَادَتْ عَلَى الثُّلُثِ: أَنَّ الثُّلُثَ بَيْنَهُمْ بِالْحِصَصِ.

L28488 From the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us: Muṭarrif ibn Ṭarīf narrated to us, from Ibrāhīm al-Nakhaʿī, who said: "One must begin with manumission." Al-Shāfiʿī held the opinion: "With the shares."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا مُطَرِّفٌ - هُوَ ابْنُ طَرِيفٍ - عَنْ إبْرَاهِيمَ النَّخَعِيِّ، قَالَ: يُبْدَأُ بِالْعَتَاقَةِ، وَقَالَ الشَّافِعِيُّ: بِالْحِصَصِ.

L28489 From the chain of Saʿīd ibn Manṣūr: Hushaym said: "Yūnus ibn ʿUbayd narrated from al-Ḥasan that he said: 'Begin with manumission.'" He then added afterward: "By shares." This is the position of Aḥmad ibn Ḥanbal, Abū Thawr, and one of the two opinions of Ibn Shubruma. Ibn Shubruma further stated: "The slave must labor toward self-manumission through what remains from the bequest."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ قَالَ هُشَيْمٌ: أَنَا يُونُسُ بْنُ عُبَيْدٍ عَنْ الْحَسَنِ أَنَّهُ قَالَ: يُبْدَأُ بِالْعِتْقِ، ثُمَّ قَالَ بَعْدَ ذَلِكَ: بِالْحِصَصِ - وَهُوَ قَوْلُ أَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي ثَوْرٍ، وَأَحَدُ قَوْلَيْ ابْنِ شُبْرُمَةَ، وَزَادَ: أَنَّهُ يَسْتَسْعِي فِي الْعِتْقِ فِيمَا فَضَلَ عَنْ الْوَصِيَّةِ.

L28490 As for later jurists: Al-Layth ibn Saʿd stated that priority is given to the *mudabbar*—a slave designated for gradual emancipation—and the one unconditionally emancipated during terminal illness. If the third portion of the estate cannot cover both, their claims are proportionally reduced. Thereafter, priority goes to those whom the testator explicitly bequeathed to emancipate, provided the slave was owned by him at the time of the bequest. Finally,

وَأَمَّا الْمُتَأَخِّرُونَ: فَإِنَّ اللَّيْثَ بْنَ سَعْدٍ قَالَ: يُبْدَأُ بِالْمُدَبَّرِ وَالْمُعْتَقِ بَتْلًا فِي الْمَرَضِ وَيَتَحَاصَّانِ إنْ لَمْ يَحْمِلْهُمَا الثُّلُثُ، ثُمَّ مَنْ بَعْدَهُمَا بِمَنْ أَوْصَى بِعِتْقِهِ بِعَيْنِهِ، وَهُوَ فِي مِلْكِهِ حِينَ الْوَصِيَّةِ، ثُمَّ يُتَحَاصُّ الْعِتْقُ الْمُوصَى بِهِ جُمْلَةً مَعَ سَائِرِ الْوَصَايَا

emancipation bequests made collectively are proportionally reduced alongside all other bequests.

L28491 Al-Hasan ibn Ḥayy said: Begin with unconditional manumission (batlan) during terminal illness. Thereafter, remaining manumission and all other bequests are treated equally; they are proportionally divided among all of that.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: يُبْدَأُ بِالْمُعْتَقِ بَتْلًا فِي الْمَرَضِ، ثُمَّ الْعِتْقُ وَسَائِرُ الْوَصَايَا سَوَاءٌ، يُتَحَاصُّ فِي كُلِّ ذَلِكَ.

L28492 Abu Hanifah said: Priority begins with gratuitous transactions during terminal illness, followed by outright emancipation during the illness if emancipation occurs after the gratuitous transaction. If emancipation is granted during the illness and then a gratuitous transaction is made, both are proportionally reduced. If a gratuitous transaction is made during the illness, followed by emancipation, and then another gratuitous transaction, the seller who made the first gratuitous transaction receives half of the [bequeathable] third. The remaining half of the [bequeathable] third is divided between the one emancipated outright during the illness and the one who made the last gratuitous transaction during the illness. This takes precedence over all bequests, whether it is mentioned first or last in the statement.

وَقَالَ أَبُو حَنِيفَةَ: يُبْدَأُ بِالْمُحَابَاةِ فِي الْمَرَضِ، ثُمَّ بَعْدَهُ بِالْعِتْقِ بَتْلًا فِي الْمَرَضِ إِذَا كَانَ الْعِتْقُ بَعْدَ الْمُحَابَاةِ، فَإِنْ أُعْتِقَ فِي مَرَضِهِ ثُمَّ حَابَى تَحَاصَّا جَمِيعًا، فَإِنْ حَابَى فِي مَرَضِهِ ثُمَّ أُعْتِقَ، ثُمَّ حَابَى، فَلِلْبَائِعِ الْمُحَابِي أَوَّلًا نِصْفُ الثُّلُثِ، وَيَكُونُ نِصْفُ الثُّلُثِ الْبَاقِي بَيْنَ الْمُعْتَقِ فِي الْمَرَضِ بَتْلًا وَبَيْنَ الْمُحَابِي فِي الْمَرَضِ آخِرًا - فَهَذَا يُقَدَّمُ عَلَى جَمِيعِ الْوَصَايَا، سَوَاءٌ قُدِّمَ فِي ذَلِكَ فِي الذِّكْرِ أَوْ آخِرِهِ.

L28493–28495 If he bequeaths, alongside that, Ḥajj, manumission, ṣadaqah, and bequests to individuals explicitly named, the third (or what remains thereof) is divided between those explicitly named in the bequests and other acts of worship. Whatever is allocated to those explicitly named in the bequests. He handed it over to them, and they divided it among themselves. What has been determined for all the heirs begins with what the testator first stipulated in his statement. Once that is fulfilled, there is nothing left for what remains.

فَإِنْ أَوْصَى مَعَ ذَلِكَ بِحَجٍّ وَعِتْقٍ وَصَدَقَةٍ وَوَصَايَا لِقَوْمٍ بِأَعْيَانِهِمْ: قُسِمَ الثُّلُثُ، أَوْ مَا بَقِيَ مِنْهُ بَيْنَ الْمُوصَى لَهُمْ بِأَعْيَانِهِمْ وَبَيْنَ سَائِرِ الْقُرَبِ، فَمَا وَقَعَ لِلْمُوصَى لَهُمْ بِأَعْيَانِهِمْ دُفِعَ إِلَيْهِمْ وَتَحَاصُّوا فِيهِ، وَمَا وَقَعَ لِسَائِرِ الْقُرَبِ بُدِئَ بِمَا بَدَأَ بِهِ الْمُوصِي فِي الذِّكْرِ، فَإِذَا تَمَّ فَلَا شَيْءَ لِمَا بَقِيَ.

L28496 Abu Yusuf and Muhammad ibn al-Hasan, the judge, said: In illness, manumission is invariably prioritized over muḥābāh [deathbed gifts] during that illness, followed by the [rules of] muḥābāh.

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ الْقَاضِي يُبْدَأُ بِالْعِتْقِ فِي الْمَرَضِ أَبَدًا عَلَى الْمُحَابَاةِ فِي الْمَرَضِ ثُمَّ الْمُحَابَاةُ.

L28497 If he bequeaths unconditional manumission, or the manumission of a slave in his possession, a specified amount of wealth in the cause of Allah the Almighty and Majestic, charity, in Hajj, and to a specific person, all these are apportioned. Whatever is allocated to the specifically designated legatee is

فَإِنْ أَوْصَى بِعِتْقٍ مُطْلَقٍ، أَوْ بِعِتْقِ عَبْدٍ فِي مِلْكِهِ، وَبِمَالٍ مُسَمًّى فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ، وَبِصَدَقَةٍ، وَفِي الْحَجِّ، وَلِإِنْسَانٍ بِعَيْنِهِ: تَحَاصَّ كُلُّ ذَلِكَ، فَمَا وَقَعَ لِلْمُوصَى لَهُ

بِعَيْنِهِ أَخَذَهُ، وَسَائِرُ ذَلِكَ يُبْدَأُ بِمَا بَدَأَ بِهِ الْمُوصِي بِذِكْرِهِ أَوَّلًا فَأَوَّلًا، فَإِذَا تَمَّ الثُّلُثُ فَلَا شَيْءَ لِمَا بَقِيَ.

granted to them. The remainder is allocated starting with the bequest the testator mentioned first, proceeding in the order they were first mentioned. Once the third has been allocated, nothing is allocated to the remaining bequests.

وَقَالَ زُفَرُ بْنُ الْهُذَيْلِ: إِنْ أُعْتِقَ بَتْلًا فِي مَرَضِهِ، ثُمَّ حَابَى فِي مَرَضِهِ بُدِئَ بِالْعِتْقِ، وَإِنْ حَابَى فِي مَرَضِهِ ثُمَّ أُعْتِقَ بُدِئَ بِالْمُحَابَاةِ، ثُمَّ سَائِرُ الْوَصَايَا، سَوَاءٌ مَا أَوْصَى بِهِ مِنْ الْقُرَبِ وَمَا أَوْصَى بِهِ لِإِنْسَانٍ بِعَيْنِهِ: كُلُّ ذَلِكَ بِالْحِصَصِ، لَا يُقَدَّمُ مِنْهُ شَيْءٌ عَلَى شَيْءٍ.

L28498 Zufar ibn al-Hudhayl said: If a slave is unconditionally emancipated during the testator's terminal illness, and he subsequently makes an excessive bequest during that illness, the emancipation takes precedence. If he first makes an excessive bequest during his illness and later emancipates a slave, the excessive bequest is prioritized, followed by the remaining bequests. This applies equally whether he bequeaths for charitable acts or to a specific individual: all are distributed proportionally, with no portion given priority over another.

وَقَالَ مَالِكٌ: يُبْدَأُ بِالْمُحَابَاةِ فِي الْمَرَضِ، ثُمَّ بِالْعِتْقِ بَتْلًا فِي الْمَرَضِ، وَالْمُدَبَّرِ فِي الصِّحَّةِ، وَيَتَحَاصَّانِ، ثُمَّ عِتْقِ مَنْ أَوْصَى بِعِتْقِهِ وَهُوَ فِي مِلْكِهِ، وَعِتْقِ مَنْ سَمَّاهُ وَأَوْصَى بِأَنْ يُبْتَاعَ فَيُعْتَقَ بِعَيْنِهِ، وَيَتَحَاصَّانِ، ثُمَّ سَائِرُ الْوَصَايَا، وَيَتَحَاصُّ مَعَ مَا أَوْصَى بِهِ مِنْ عِتْقِ غَيْرِ مُعَيَّنٍ.

L28499 Begin with deathbed compensatory gifts during illness, then [prioritize] unconditional manumission during illness and posthumous manumission established during health - these two are subject to pro rata reduction. Next comes the manumission of those he bequeathed to free while they remained under his ownership, and the manumission of a named individual whom he instructed to be purchased and freed specifically - these two are also subject to pro rata reduction. Thereafter follow all other bequests, including those for the manumission of unspecified individuals, all subject to pro rata reduction collectively.

وَقَدْ رُوِيَ عَنْهُ: أَنَّ الْمُدَبَّرَ يَبْدَأُ أَبَدًا عَلَى الْعِتْقِ بَتْلًا فِي الْمَرَضِ.

L28500 It has been reported from him that the emancipation of a mudabbar—a slave designated for posthumous freedom—begins perpetually as irrevocable emancipation upon declaration during illness.

وَقَالَ الشَّافِعِيُّ: إذَا أَعْتَقَ فِي الْمَرَضِ عَبْدًا بَتْلًا بُدِئَ بِمَنْ أَعْتَقَ أَوَّلًا فَأَوَّلًا، وَلَا يَتَحَاصُّونَ فِي ذَلِكَ، وَيُرَقُّ مَنْ لَمْ يَحْمِلْهُ الثُّلُثُ، أَوْ يُرَقُّ مِنْهُ مَا يَحْمِلُهُ الثُّلُثُ.

L28501 Al-Shāfiʿī said: If someone manumits an unshared slave during [their final] illness, priority is given to the earliest manumission, followed by subsequent ones in chronological order. They do not share liability proportionally in this matter. Those whose manumission cannot be validated by the third of the estate are re-enslaved, or only the portion [of the slave] validated by the third of the estate is manumitted, and the remainder is re-enslaved.

وَالْهِبَةُ فِي الْمَرَضِ مُبَدَّاةٌ عَلَى جَمِيعِ الْوَصَايَا بِالْعِتْقِ وَغَيْرِهِ.

L28502 A gift given during illness is treated as equivalent in all bequests, whether for manumission or other purposes.

وَقَالَ مَرَّةً أُخْرَى: يَتَحَاصُّ فِي الْمُحَابَاةِ فِي الْمَرَضِ وَسَائِرِ الْوَصَايَا عَلَى السَّوَاءِ، قَالَ: وَقَدْ قِيلَ: إنَّ الْمُحَابَاةَ فِي الْبَيْعِ فِي الْمَرَضِ مَفْسُوخٌ، لِأَنَّهُ وَقَعَ عَلَى غَرَرٍ.

L28503 He said on another occasion: Preferential treatment in bequests during illness and all other bequests are divided equally. He said: It has been stated that preferential treatment in a sale during illness is annulled because it involves *gharar* (uncertainty).

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَزُفَرَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَاللَّيْثِ، وَالْحَسَنِ بْنِ حَيٍّ: فَظَاهِرَةُ الْخَطَأِ؛ لِأَنَّهَا دَعَاوَى وَآرَاءٌ بِلَا بُرْهَانٍ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ مِنْ خَلْقِ اللَّهِ تَعَالَى نَعْلَمُهُ قَبْلَهُمْ، وَلَا قِيَاسٍ وَلَا رَأْيٍ سَدِيدٍ.

L28504 Abu Muhammad said: As for the statements of Abu Hanifa, Abu Yusuf, Muhammad ibn al-Hasan, Zufar, Malik, al-Shafi'i, al-Layth, and al-Hasan ibn Ḥayy, their positions are manifestly erroneous, for they are mere claims and opinions without evidence - neither derived from the Qur'an, nor from a weak narration, nor from any statement within Allah's creation that we recognize from before their time, nor from analogical reasoning, nor from sound personal judgment.

وَلَيْسَ لِأَحَدٍ أَنْ يُمَوِّهَ هَاهُنَا بِكَثْرَةِ الْقَائِلِينَ؛ لِأَنَّهُمْ كُلُّهُمْ مُخْتَلِفُونَ كَمَا تَرَى، وَأَفْسَدُهَا كُلِّهَا قَوْلُ أَبِي حَنِيفَةَ، ثُمَّ قَوْلُ مَالِكٍ لِكَثْرَةِ تَنَاقُضِهِمَا، وَتَفَاسُدِ أَقْسَامِهِمَا، وَهِيَ أَقْوَالٌ تُؤَدِّي إلَى تَبْدِيلِ الْوَصِيَّةِ بَعْدَ مَا سَمِعْت، وَفِي هَذَا مَا فِيهِ.

L28505–28506 No one should be permitted to obscure the matter here by citing the multitude of proponents, for they all contradict one another, as you see. The most corrupt of all these is the opinion of Abū Ḥanīfah, then that of Mālik, due to the abundance of their contradictions and the corruption of their divisions. These are opinions that lead to altering the testament after what you have heard, and this entails inherent issues.

ثُمَّ نَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - قَوْلًا جَامِعًا فِي إبْطَالِ مَا اتَّفَقَ عَلَيْهِ الْمَذْكُورُونَ مِنْ تَبْدِيَةِ الْعِتْقِ بَتْلًا فِي الْمَرَضِ، وَالْمُحَابَاةِ فِي الْمَرَضِ، فَنَقُولُ لَهُمْ: يَا هَؤُلَاءِ أَخْبِرُونَا عَنْ

L28507 Then we say—and success is by Allah, the Exalted—a comprehensive statement invalidating what the mentioned parties have agreed upon regarding declaring the nullification of manumission during terminal illness and favoritism in transactions during illness. We say to them: O you, inform us

قَضَاءِ الْمَرِيضِ فِي عِتْقِه، وَهِبَتِه، وَمُحَابَاتِه فِي بَيْعِه، أَهُوَ كُلُّهُ وَصِيَّةٌ، أَمْ لَيْسَ وَصِيَّةً؟ وَلَا بُدَّ مِنْ أَحَدِهِمَا؟ فَإِنْ قَالُوا: لَيْسَ شَيْءٌ مِنْهُ وَصِيَّةً؟ قُلْنَا: صَدَقْتُمْ، وَهَذَا قَوْلُنَا، وَإِذَا لَمْ يَكُنْ وَصِيَّةً فَلَا مَدْخَلَ لَهُ فِي الثُّلُثِ أَصْلًا؛ لِأَنَّ الثُّلُثَ بِالسُّنَّةِ الْمُسْنَدَةِ مَقْصُورٌ عَلَى الْوَصَايَا، فَقَدْ أَبْطَلْتُمْ إِذْ جَعَلْتُمْ ذَلِكَ فِي الثُّلُثِ؟ فَإِنْ قَالُوا: بَلْ كُلُّ ذَلِكَ وَصِيَّةٌ؟ قُلْنَا لَهُمْ: مِنْ أَيْنَ وَقَعَ لَكُمْ تَبْدِيَةُ ذَلِكَ عَلَى سَائِرِ الْوَصَايَا، وَإِبْطَالُ مَا أَوْصَى بِهِ الْمُسْلِمُ، وَتَبْدِيلُهُ بَعْدَ مَا سَمِعْتُمُوهُ، وَقَدْ قَالَ اللَّهُ تَعَالَى: {فَمَنْ بَدَّلَهُ بَعْدَمَا سَمِعَهُ فَإِنَّمَا إِثْمُهُ عَلَى الَّذِينَ يُبَدِّلُونَهُ} [البقرة: ١٨١]

about the legal ruling concerning the sick person's acts of manumission, gifting, and preferential treatment in sales. Is all this considered a will, or is it not a will? One of these two possibilities must apply. If they say: "None of it constitutes a will," we respond: You have spoken truthfully—this being our own position. If it is not a will, then it has no relation to the third [of the estate] whatsoever, for the third by established Sunnah applies exclusively to wills. Thus you have invalidated [your stance] by including such matters within the third. If they say: "Rather, all of that constitutes a will," we respond: How did you justify applying this ruling to all other wills, thereby invalidating what a Muslim has bequeathed and altering it after hearing it? Allah the Exalted said: *"Whoever alters it after hearing it, the sin thereof lies upon those who alter it"* (al-Baqarah 2:181).[1]

L28508 وَاعْلَمُوا: أَنَّهُ لَا مُتَعَلَّقَ لَهُمْ بِمَنْ رُوِيَ عَنْهُ تَبْدِيَةُ الْعِتْقِ مِنْ ابْنِ عُمَرَ، وَمَسْرُوقٍ، وَشُرَيْحٍ، وَالزُّهْرِيِّ، وَقَتَادَةَ - ثُمَّ عَنِ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَالْحَسَنِ، فِي أَحَدِ أَقْوَالِهِمْ؛ لِأَنَّهُ لَمْ يَأْتِ قَطُّ عَنْ أَحَدٍ مِنْ هَؤُلَاءِ، وَلَا مِنْ غَيْرِهِمْ تَبْدِيَةُ الْعِتْقِ فِي الْمَرَضِ فِي الثُّلُثِ، وَالْمُحَابَاةِ فِي الْمَرَضِ فِي الثُّلُثِ، عَلَى سَائِرِ الْوَصَايَا، إِنَّمَا جَاءَ عَمَّنْ ذَكَرْنَا تَبْدِيَةُ الْعِتْقِ عَلَى سَائِرِ الْوَصَايَا.

L28508 Know that there is no valid basis to attribute [the doctrine] to those from whom it is narrated - such as Ibn Umar, Masruq, Shuraih, al-Zuhri, and Qatadah - nor to al-Nakhaʿi, al-Shaʿbi, and al-Hasan in one of their statements, regarding the explicit declaration of emancipation superseding all other bequests during illness within the third [of the estate] or favoritism in bequests during illness concerning the third. This is because no evidence has ever been transmitted from any of these individuals nor others establishing that emancipation during illness within the third [portion] or preferential bequests during illness within the third take priority over other bequests. Rather, reports about the explicit declaration of emancipation superseding all other bequests only originate from those we have mentioned.

وَعَنِ النَّخَعِيِّ، وَالشَّعْبِيِّ فِي أَحَدِ قَوْلَيْهِمَا: تَبْدِيَةُ عِتْقِ مَنْ أَوْصَى بِعِتْقِه بِاسْمِه وَعَيَّنَهُ - وَهُوَ فِي مِلْكِ الْمُوصِي - عَلَى سَائِرِ الْوَصَايَا - فَقَدْ خَالَفَ الْمَذْكُورُونَ كُلَّ مَنْ ذَكَرْنَا بِآرَاءٍ مُخْتَرَعَةٍ فِي غَايَةِ الْفَسَادِ.

L28509 And from Al-Nakhaʿī and Al-Shaʿbī in one of their two opinions: Prioritizing the emancipation of someone the testator designated by name for manumission—while still owned by the testator—over all other bequests. Indeed, these two scholars have contradicted all others we mentioned with fabricated opinions that are utterly invalid.

فَإِنْ قَالُوا: وَقَعَ ذَلِكَ لَنَا، لِأَنَّ الْعِتْقَ فِي الْمَرَضِ، وَالْمُحَابَاةَ فِي الْمَرَضِ: أَوْكَدُ مِنْ سَائِرِ الْوَصَايَا؟ قُلْنَا: هَذَا بَاطِلٌ مِنْ وَجْهَيْنِ -: أَحَدُهُمَا - أَنَّهُ دَعْوَى كَاذِبَةٌ لَا دَلِيلَ عَلَى صِحَّتِهَا، وَمِنْ أَيْنَ وَجَبَ أَنْ تَكُونَ مُحَابَاةُ النَّصْرَانِيِّ فِي بَيْعِ ثَوْبٍ حَرِيرٍ، أَوْ خِلْيَعٍ

L28510–28512 If they argue, "This has occurred in our case because manumission during illness and favoritism during illness carry greater weight than other bequests?" We respond: This is invalid for two reasons. First, it is a false claim with

[1] **Qur'an references (L28507):** Qur'an 2:181 (Al-Baqarah).

no evidence to support its validity. And from where is it obligatory to show partiality in sale to a Christian for a silk garment, or to a depraved libertine for selling apples to transport it—considering this more binding than bequeathing in Allah's cause at critical frontiers, or than freeing an upright Muslim, a similarly upright Muslim woman, or Muslim minors from enemy captivity, fearing for them religious corruption and personal disgrace? Verily, this is astonishing—nothing like it is astounding! These are scandalous claims exposed as false. If they argue: "Manumission during illness entitles the freed slave, as does preferential treatment," we respond: If both are entitled, why then restrict them to a third of the estate? What is this confused reasoning? At times they merit entitlement, at times not—and this suffices to demonstrate the corruption of those assertions, which epitomize ultimate corruption. We praise Allah the Exalted for delivering us from ruling by such in His religion and concerning His servants.

مَاجِنٍ فِي بَيْعِ تُفَّاحٍ لِنَقْلِهِ: أَوْكَدُ مِنَ الْوَصِيَّةِ فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ فِي ثُغُورٍ مُهِمَّةٍ، وَمِنْ فَكِّ مُسْلِمٍ فَاضِلٍ، أَوْ مُسْلِمَةٍ كَذَلِكَ، أَوْ صِغَارٍ مُسْلِمِينَ مِنْ أَسْرِ الْعَدُوِّ، وَنَخَافُ عَلَيْهِمْ الْفِتْنَةَ فِي الدِّينِ، وَالْفَضِيحَةَ فِي النَّفْسِ، إِنَّ هَذَا لَعَجَبٌ مَا مِثْلُهُ عَجَبٌ؟ وَدَعَاوَى فَاحِشَةٌ مَفْضُوحَةٌ بِالْكَذِبِ؟ فَإِنْ قَالُوا: الْعِتْقُ فِي الْمَرَضِ قَدْ اسْتَحَقَّهُ الْمُعْتَقُ، وَكَذَلِكَ الْمُحَابَاةُ؟ قُلْنَا: فَإِنْ كَانَا قَدْ اسْتَحَقَّاهُ فَلِمَ تَرُدَّانِهِمَا إِلَى الثُّلُثِ إِذًا، وَمَا هَذَا التَّخْلِيطُ؟ تَارَةً يَسْتَحِقُّ ذَلِكَ، وَتَارَةً لَا يَسْتَحِقُّ - وَفِي هَذَا كِفَايَةٌ فِي فَسَادِ تِلْكَ الْأَقْوَالِ الَّتِي هِيَ النِّهَايَةُ فِي الْفَسَادِ - وَنَحْمَدُ اللَّهَ تَعَالَى عَلَى تَخْلِيصِهِ إِيَّانَا مِنَ الْحُكْمِ بِهَا فِي دِينِهِ، وَعَلَى عِبَادِهِ.

L28513 And there remains only the opinion of those who held that emancipation as a whole takes precedence over all other bequests. This is the opinion from the predecessors we mentioned, as well as Sufyān and Isḥāq.

وَلَمْ يَبْقَ إِلَّا قَوْلُ مَنْ قَالَ بِتَقْدِيمِ الْعِتْقِ جُمْلَةً عَلَى سَائِرِ الْوَصَايَا؟ وَهُوَ قَوْلُ مَنْ ذَكَرْنَا مِنَ الْمُتَقَدِّمِينَ، وَقَوْلُ سُفْيَانَ، وَإِسْحَاقَ.

L28514 Abu Muhammad said: These individuals cited as evidence the authentic narration from the Messenger of Allah—peace be upon him—in his statement: "Whoever frees a slave, Allah will liberate from the Fire a corresponding limb of his body for each limb of the slave's, even his private part with the slave's private part from the Fire."

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ هَؤُلَاءِ بِمَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ: «وَمَنْ أَعْتَقَ رَقَبَةً أَعْتَقَ اللَّهُ بِكُلِّ عُضْوٍ مِنْهَا عُضْوًا مِنْ أَعْضَائِهِ مِنَ النَّارِ، حَتَّى فَرْجُهُ بِفَرْجِهِ» .

L28515–28517 They said: Among the proofs confirming the affirmation of manumission is that "the Messenger of Allah—may Allah bless him and grant him peace—enforced a partner's manumission over his co-owner's share." They cited a report narrated by Bishr ibn Mūsā from ʿAbdullāh ibn Yazīd al-Muqri from Ḥaywah ibn Shurayḥ from Yaḥyā ibn Saʿīd al-Anṣārī from Saʿīd ibn al-Musayyab, who said: "It is an established Sunnah that manumission takes priority in wills." They said: This is the opinion of Ibn ʿUmar—a Companion for whom no opposing stance from other Companions is recorded. They said: This is the position of the majority of scholars. Some stated: Manumission cannot be annulled, while all other transactions are subject to

وَقَالُوا: مِنَ الدَّلِيلِ عَلَى تَأْكِيدِ الْعِتْقِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْفَذَ عِتْقَ الشَّرِيكِ فِي حِصَّةِ شَرِيكِهِ» - وَذَكَرُوا خَبَرًا رَوَاهُ بِشْرُ بْنُ مُوسَى عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي عَنْ حَيْوَةَ بْنِ شُرَيْحٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، قَالَ: مَضَتْ السُّنَّةُ أَنْ يُبْدَأَ بِالْعَتَاقِ فِي الْوَصِيَّةِ؟ وَقَالُوا: هُوَ قَوْلُ ابْنِ عُمَرَ، وَهُوَ صَاحِبٌ لَا يُعْرَفُ لَهُ مِنَ الصَّحَابَةِ مُخَالِفٌ؟ وَقَالُوا: هُوَ قَوْلُ جُمْهُورِ الْعُلَمَاءِ؟ وَقَالَ بَعْضُهُمْ: الْعِتْقُ لَا يَلْحَقُهُ الْفَسْخُ، وَسَائِرُ الْأَشْيَاءِ يَلْحَقُهَا الْفَسْخُ؟ وَقَالَ بَعْضُهُمْ: لَوْ أَنَّ امْرَأً أَعْتَقَ عَبْدَ

annulment. Others said: If a man manumits another's slave while a second party sells him, and when this reaches the master, he upholds both acts, the manumission remains valid and the sale becomes void. Similarly, if one appoints an agent to manumit his slave and another to sell him, with both acts occurring simultaneously, the manumission prevails and the sale is invalid. ʿAlī remarked: As for these two rulings—they constitute a vindication of error through misguidance and delusion. Wrongfully? Rather, the master cannot ratify a manumission that occurred without his permission, nor a sale that occurred without his authorization: because all such acts are prohibited by the explicit text of the Quran, the Sunnah, and scholarly consensus.

غَيْرِهِ وَبَاعَهُ آخَرُ، فَبَلَغَ ذَلِكَ السَّيِّدَ، فَأَجَازَ الْأَمْرَيْنِ جَمِيعًا، أَنَّهُ يَجُوزُ الْعِتْقُ، وَيَبْطُلُ الْبَيْعُ - وَلَوْ أَنَّ امْرَأً وَكَّلَ رَجُلًا بِعِتْقِ عَبْدِهِ، وَوَكَّلَ آخَرَ بِبَيْعِهِ فَوَقَعَ الْبَيْعُ وَالْعِتْقُ مِنَ الْوَكِيلَيْنِ مَعًا: أَنَّ الْعِتْقَ نَافِذٌ، وَالْبَيْعَ بَاطِلٌ؟ قَالَ عَلِيٌّ: أَمَّا هَاتَانِ الْقَضِيَّتَانِ - فَهُوَ نَصْرٌ مِنْهُمْ لِلْخَطَأِ بِالضَّلَالِ، وَلِلْوَهْمِ بِالْبَاطِلِ، بَلْ لَيْسَ لِلسَّيِّدِ إِجَازَةُ عِتْقٍ وَقَعَ بِغَيْرِ إِذْنِهِ، وَلَا إِجَازَةُ بَيْعٍ وَقَعَ بِغَيْرِ أَمْرِهِ؛ لِأَنَّ كُلَّ ذَلِكَ حَرَامٌ بِنَصِّ الْقُرْآنِ، وَالسُّنَّةِ، وَالْإِجْمَاعِ.

L28518 Allah, the Exalted, said: "No soul earns except against itself." [Al-An'ām 6:164].[2]

قَالَ اللَّهُ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

L28519 The Messenger of Allah—peace and blessings be upon him—said: "Indeed, your blood and wealth are inviolable upon you."

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L28520 Whoever deems the forbidden permissible, their legalization is invalid and their statement rejected. Yet if one desires to enact the emancipation of their slave, let them personally pronounce it with their own explicit wording. If they wish to sell them, let them likewise sell them through their own direct declaration - this being absolutely necessary.

فَمَنْ أَحَلَّ الْحَرَامَ فَتَحْلِيلُهُ بَاطِلٌ، وَقَوْلُهُ مَرْدُودٌ، لَكِنْ إِنْ أَحَبَّ إِنْفَاذَ عِتْقِ عَبْدِهِ فَلْيُعْتِقْهُ هُوَ بِلَفْظِهِ مُبْتَدِئًا وَإِنْ أَحَبَّ بَيْعَهُ فَلْيَبِعْهُ كَذَلِكَ مُبْتَدِئًا وَلَا بُدَّ.

L28521 Appointing an agent to perform manumission is invalid, as neither the Qur'an nor the Sunnah provides authorization for it.

وَالتَّوْكِيلُ فِي الْعِتْقِ: لَا يَجُوزُ؛ لِأَنَّهُ لَمْ يَأْتِ بِإِجَازَتِهِ قُرْآنٌ، وَلَا سُنَّةٌ.

L28522 As for appointing an agent in sale transactions, this is permissible according to the Sunnah. Whoever appoints an agent to manumit his slave, the manumission is not executed at all. And whoever appoints an agent to sell his slave, this is permissible.

وَأَمَّا التَّوْكِيلُ فِي الْبَيْعِ: فَجَائِزٌ بِالسُّنَّةِ، فَمَنْ وَكَّلَ بِعِتْقِ عَبْدِهِ لَمْ يُنَفَّذْ عِتْقُهُ أَصْلًا، وَمَنْ وَكَّلَ فِي بَيْعِهِ: جَازَ ذَلِكَ.

L28523 As for their statement: "Manumission is not subject to annulment, while all other matters are subject to annulment"—they have lied. Every valid contract, whether manumission or otherwise, cannot be annulled unless the Quran or Sunnah provides a basis for its revocation. Valid manumission can indeed be annulled, such as when one manumits a Christian slave who subsequently

وَأَمَّا قَوْلُهُمْ: الْعِتْقُ لَا يَلْحَقُهُ فَسْخٌ وَسَائِرُ الْأَشْيَاءِ يَلْحَقُهَا فَسْخٌ: فَقَدْ كَذَبُوا، وَكُلُّ عَقْدٍ مِنْ عِتْقٍ أَوْ غَيْرِهِ وَقَعَ صَحِيحًا فَلَا يَجُوزُ فَسْخُهُ، إِلَّا أَنْ يَأْتِيَ بِإِيجَابِ فَسْخِهِ قُرْآنٌ، أَوْ سُنَّةٌ، وَالْعِتْقُ الصَّحِيحُ قَدْ يُفْسَخُ، وَذَلِكَ مَنْ أَعْتَقَ عَبْدًا نَصْرَانِيًّا ثُمَّ إِنَّ ذَلِكَ الْعَبْدَ

[2] **Qur'an references (L28518):** Qur'an 6:164 (Al-An'am).

flees to the abode of war, takes captives, and divides spoils. In this case, the initial manumission is annulled according to our position and theirs. Thus, the falsity of their entire argument becomes evident.

L28524 As for their claim that it represents the majority opinion of scholars, scholars of equal stature have opposed them—such as ʻAṭāʼ, Ibn Sīrīn, Al-Shaʻbī, and Al-Ḥasan. The majority's view holds no decisive proof, for neither the Qur'ān nor the Sunnah has affirmed this, and whatever lacks such basis cannot be deemed valid in matters of religion.

L28525 As for their claim that this is the opinion of Ibn ʻUmar and that no opposing view is reported from the Companions, the narration attributed to Ibn ʻUmar is invalid as it comes through Ashʻath ibn Sawwār—a weak narrator. Allah the Exalted has not commanded that disputes be referred except to His words and the words of His Messenger—peace and blessings be upon him—not to the words of a Companion or anyone else. Whoever refers disputes to other than the words of Allah the Exalted and the words of His Messenger—may Allah bless him and grant him peace—has transgressed the boundaries of Allah: "And whoever transgresses the limits of Allah has indeed wronged his own soul" [Quran 65:1].[3]

L28526 He, the Exalted, said: "If you dispute over something, then refer it back to Allah and the Messenger, if you believe in Allah and the Last Day." [An-Nisa 4:59][4]

L28527–28529 As for the narration from Sa'id ibn al-Musayyib that "the Sunnah has been established that emancipation is to be initiated in the will," this... It is neither authenticated nor is it mursal either. Whoever attributes something like this to the Messenger of Allah—peace and blessings be upon him—has indeed lied against him, and whoever intentionally lies against him, let him prepare his abode in the Fire. Saʻīd—may Allah have mercy on him—did not state that this was the saying of the Messenger of Allah—peace and blessings be

[3] **Qur'an references (L28525):** Qur'an 65:1 (At-Talaq).
[4] **Qur'an references (L28526):** Qur'an 4:59 (An-Nisa).

النَّصْرَانِيَّ لَحِقَ بِدَارِ الْحَرْبِ فَسَبَى وَقَسَمَ، فَإِنَّ عِتْقَهُ الْأَوَّلَ يُفْسَخُ عِنْدَنَا وَعِنْدَهُمْ - فَظَهَرَ فَسَادُ قَوْلِهِمْ كُلُّهُ.

وَأَمَّا قَوْلُهُمْ: إِنَّهُ قَوْلُ جُمْهُورِ الْعُلَمَاءِ، فَقَدْ خَالَفَهُمْ مَنْ لَيْسَ دُونَهُمْ، كَعَطَاءٍ، وَابْنِ سِيرِينَ، وَالشَّعْبِيِّ، وَالْحَسَنِ، وَلَيْسَ قَوْلُ الْجُمْهُورِ حُجَّةً؛ لِأَنَّهُ لَمْ يَأْتِ بِذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَمَا كَانَ هَكَذَا فَلَا يُعْتَمَدُ عَلَيْهِ فِي الدِّينِ.

وَأَمَّا قَوْلُهُمْ: إِنَّهُ قَوْلُ ابْنِ عُمَرَ، وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنَ الصَّحَابَةِ، فَإِنَّهُ عَنِ ابْنِ عُمَرَ لَا يَصِحُّ؛ لِأَنَّهُ مِنْ رِوَايَةِ أَشْعَثِ بْنِ سَوَّارٍ - وَهُوَ ضَعِيفٌ - وَلَمْ يَأْمُرِ اللَّهُ تَعَالَى بِالرَّدِّ عِنْدَ التَّنَازُعِ إِلَّا إِلَى كَلَامِهِ، وَكَلَامِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَا إِلَى كَلَامِ صَاحِبٍ وَلَا غَيْرِهِ، فَمَنْ رَدَّ عِنْدَ التَّنَازُعِ إِلَى غَيْرِ كَلَامِ اللَّهِ تَعَالَى وَكَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ تَعَدَّى حُدُودَ اللَّهِ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

قَالَ تَعَالَى: {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ} [النساء: ٥٩]

وَأَمَّا الرِّوَايَةُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مَضَتْ السُّنَّةُ أَنْ يُبْدَأَ بِالْعَتَاقِ فِي الْوَصِيَّةِ، فَهَذَا غَيْرُ مُسْنَدٍ، وَلَا مُرْسَلٌ أَيْضًا، وَمَنْ أَضَافَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلَ هَذَا فَقَدْ كَذَبَ عَلَيْهِ، وَمَنْ كَذَبَ عَلَيْهِ مُتَعَمِّدًا فَلْيَتَبَوَّأْ مَقْعَدَهُ مِنَ النَّارِ، وَلَمْ يَقُلْ سَعِيدٌ - رَحِمَهُ اللَّهُ - إِنَّ هَذَا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا حُكْمُهُ وَقَدْ يَقُولُ ابْنُ الْمُسَيِّبِ وَغَيْرُهُ: مِثْلَ هَذَا فِي قَوْلِ صَاحِبٍ.

upon him—nor his ruling. Ibn al-Musayyib and others have said something like this regarding the statement of a Companion.

وَمِنْ أَعْجَبْ مِمَّنْ لَا يَرَى قَوْلَ ابْنِ عَبَّاسٍ بِأَصَحِّ طَرِيقٍ إِلَيْهِ فِي قِرَاءَةِ أُمِّ الْقُرْآنِ فِي الصَّلَاةِ عَلَى الْجَنَازَةِ أَنَّهَا السُّنَّةُ حُجَّةً، ثُمَّ يَرَى قَوْلَ سَعِيدِ بْنِ الْمُسَيِّبِ لِذَلِكَ: حُجَّةً، وَحَتَّى لَوْ أَنَّ سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ: إِنَّ هَذَا حُكْمُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَوْلُهُ لَكَانَ مُرْسَلًا، لَا حُجَّةَ فِيهِ.

L28530 And among the more astonishing is one who does not consider Ibn Abbas' statement - transmitted through the most authentic chain - that reciting the Mother of the Quran in funeral prayer is the Sunnah, a proof, yet deems Sa'id ibn al-Musayyib's statement on this matter a proof. Even if Sa'id ibn al-Musayyib were to say: "This is the ruling of Allah's Messenger - peace and blessings be upon him - and his saying," it would be mursal (a narratively disconnected report), containing no proof within it.

وَأَمَّا احْتِجَاجُهُمْ فِي تَأْكِيدِ الْعِتْقِ بِالْخَبَرِ الثَّابِتِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَنْ أَعْتَقَ رَقَبَةً، وَإِنْفَاذُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عِتْقَ الشَّرِيكِ فِي حِصَّةِ شَرِيكِهِ: فَهُمَا سُنَّتَا حَقٍّ بِلَا شَكٍّ، وَلَيْسَ فِيهِمَا إِلَّا فَضْلُ الْعِتْقِ وَالْحُكْمُ فِيهِ فَقَطْ، وَلَمْ يُخَالِفُونَا فِي شَيْءٍ مِنْ هَذَا.

L28531 As for their argument in confirming emancipation through the authenticated report from the Prophet—peace and blessings be upon him—regarding one who frees a slave, and his enforcement of the co-owner's emancipation of his portion from his partner's share: these are two established Sunnahs without doubt. They pertain solely to the merit of emancipation and its ruling alone, and they did not differ with us in any aspect of this.

وَلَيْسَ فِي هَذَيْنِ الْخَبَرَيْنِ: أَنَّ الْعِتْقَ أَوْكَدُ مِمَّا سِوَاهُ مِنَ الْقُرَبِ أَصْلًا، وَمَنِ ادَّعَى ذَلِكَ فِيهِمَا فَقَدْ كَذَبَ وَقَالَ الْبَاطِلَ، بَلْ قَدْ جَاءَ نَصُّ الْقُرْآنِ بِالتَّسْوِيَةِ بَيْنَ الْعِتْقِ وَالْإِطْعَامِ لِمِسْكِينٍ قَالَ تَعَالَى: {وَمَا أَدْرَاكَ مَا الْعَقَبَةُ} [البلد: ١٢] {فَكُّ رَقَبَةٍ} [البلد: ١٣] {أَوْ إِطْعَامٌ فِي يَوْمٍ ذِي مَسْغَبَةٍ} [البلد: ١٤] {يَتِيمًا ذَا مَقْرَبَةٍ} [البلد: ١٥] {أَوْ مِسْكِينًا ذَا مَتْرَبَةٍ} [البلد: ١٦]

L28532 There is nothing in these two narrations indicating that manumission is fundamentally more emphasized than other acts of devotion. Whoever claims this about them has lied and uttered falsehood. Rather, the Quranic text explicitly equates manumission with feeding a needy person, as the Exalted states: {And what can make you know what the difficult pass is?} [Surah al-Balad:12] {It is the freeing of a neck} [Surah al-Balad:13] {Or feeding on a day of severe hunger} [Surah al-Balad:14] {An orphan of close relationship} [Surah al-Balad:15] {Or a needy person in desolation} [Surah al-Balad:16].[5]

وَكَذَلِكَ فِي كَفَّارَةِ الْأَيْمَانِ، وَهَذِهِ كَفَّارَةُ حَلْقِ الرَّأْسِ فِي الْحَجِّ لِمَنْ بِهِ أَذًى مِنْهُ لَوْ أَعْتَقَ فِيهِ أَلْفَ رَقَبَةٍ مَا أَجْزَأَهُ، وَإِنَّمَا يُجْزِيهِ صِيَامٌ أَوْ صَدَقَةٌ أَوْ نُسُكٌ، أَفَتَرَى هَذَا دَلِيلًا عَلَى فَضْلِ النُّسُكِ عَلَى الْعِتْقِ حَاشَ لِلَّهِ مِنْ هَذَا؟ إِنَّمَا هِيَ أَحْكَامٌ يُطَاعُ لَهَا وَلَا يُزَادُ فِيهَا

L28533 Similarly, in the expiation of oaths, and this is the expiation for shaving the head during Hajj for one who has an ailment in it. Even if he were to free a thousand slaves for this act, it would not suffice him; rather, what suffices him is fasting, charity, or sacrifice. Do you think this indicates the superiority of sacrifice over manumission? Far be it from Allah, such a thing! These are rulings to be obeyed without adding anything extraneous to them.

[5] **Qur'an references (L28532):** Qur'an 90:12 (Al-Balad); Qur'an 90:13 (Al-Balad); Qur'an 90:14 (Al-Balad); Qur'an 90:15 (Al-Balad); Qur'an 90:16 (Al-Balad).

Moreover, the authentic text has explicitly established that some acts of worship are superior to manumission with an unequivocal clarity, refuting their claim regarding the asserted primacy of manumission over all other acts of devotion.

مَا لَيْسَ فِيهَا - ثُمَّ قَدْ جَاءَ النَّصُّ الصَّحِيحُ بِأَنَّ بَعْضَ الْقُرَبِ أَفْضَلُ مِنْ الْعِتْقِ بِبَيَانٍ لَا إشْكَالَ فِيهِ يُكَذِّبُ دَعْوَاهُمْ فِي تَأْكِيدِ الْعِتْقِ عَلَى سَائِرِ الْقُرَبِ.

L28534 Abdullah ibn Yusuf informed us via Ahmad ibn Fath, Abdul Wahhab ibn Isa, Ahmad ibn Muhammad, Ahmad ibn Ali, Muslim ibn Al-Hajjaj, Muhammad ibn Ja'far ibn Ziyad, Ibrahim ibn Sa'd from Ibn Shihab from Sa'id ibn Al-Musayyab from Abu Hurairah, who said: "The Messenger of Allah (Peace and blessings of Allah be upon him and his family) was asked, 'Which deed is most virtuous?' He replied, 'Faith in Allah and His Messenger.' It was said, 'Then what?' He said, 'Jihad in the cause of Allah.' It was said, 'Then what?' He said, 'A righteous Hajj.'"

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا مُحَمَّدُ بْنُ جَعْفَرِ بْنِ زِيَادٍ نا إبْرَاهِيمُ بْنُ سَعْدٍ عَنْ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَيُّ الْأَعْمَالِ أَفْضَلُ؟ قَالَ: إيمَانٌ بِاَللَّهِ وَرَسُولِهِ، قِيلَ: ثُمَّ مَاذَا؟ قَالَ: الْجِهَادُ فِي سَبِيلِ اللَّهِ، قِيلَ: ثُمَّ مَاذَا؟ قَالَ: حَجٌّ مَبْرُورٌ» .

L28535–28536 Abdullah ibn Rabee'ah narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: **I am** Ahmad ibn Yahya ibn al-Wazir ibn Sulayman—he said: I heard Ibn Wahb say: Amr ibn al-Harith informed me from Bukayr—Ibn al-Ashajj—that he heard Kurayb, the freed slave of Ibn Abbas, say: "I heard Maymunah bint al-Harith—the Mother of the Believers—say: 'I manumitted a female slave during the time of the Messenger of Allah (peace be upon him and his family). I mentioned that to the Messenger of Allah (peace be upon him and his family), and he said: "Had you given **to** your maternal uncles, it would have been greater **in** your reward.""'

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ يَحْيَى بْنِ الْوَزِيرِ بْنِ سُلَيْمَانَ قَالَ: سَمِعْت ابْنَ وَهْبٍ قَالَ: أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ بُكَيْرٍ - هُوَ ابْنُ الْأَشَجِّ - أَنَّهُ سَمِعَ كُرَيْبًا مَوْلَى بْنِ عَبَّاسٍ يَقُولُ: سَمِعْت مَيْمُونَةَ بِنْتَ الْحَارِثِ - هِيَ أُمُّ الْمُؤْمِنِينَ - تَقُولُ: «أَعْتَقْتُ وَلِيدَةً فِي زَمَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَذَكَرْتُ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: لَوْ أَعْطَيْتِ أَخْوَالَكِ كَانَ أَعْظَمَ لِأَجْرِكِ» ".

L28537 This is an unequivocal text through which Allah, the Exalted, dispenses with the need for reckless indulgence in lies or laboriously asserting falsehood by means of false conjecture. All praise is due to Allah, Lord of the worlds.

فَهَذَا نَصٌّ جَلِيٌّ يُغْنِي اللَّهُ تَعَالَى بِهِ عَنْ تَقَحُّمِ الْكَذِبِ وَتَكَلُّفِ الْقَوْلِ بِالْبَاطِلِ بِالظَّنِّ الْكَاذِبِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L28538 Then, even if it were valid for them that manumission is superior to every act of devotion, how can they justify invalidating all that the testator devoted to God Most High, favoring manumission—which is more immediate in benefit? This is an impermissible arbitrary ruling. Those who uphold this view must necessarily affirm what is authentically transmitted from 'Aṭā' and Ibn Jurayj, as we have narrated through 'Abd al-Razzāq's chain from Ibn Jurayj, who said:

ثُمَّ لَوْ صَحَّ لَهُمْ أَنَّ الْعِتْقَ أَفْضَلُ مِنْ كُلِّ قُرْبَةٍ، فَمِنْ أَيْنَ لَهُمْ إبْطَالُ سَائِرِ مَا تَقَرَّبَ بِهِ الْمُوصِي إلَى اللَّهِ تَعَالَى إيثَارًا لِلْعِتْقِ الَّذِي هُوَ أَقْرَبُ؟ وَهَذَا تَحَكُّمٌ لَا يَجُوزُ، وَيَلْزَمُ مَنْ قَالَ بِهَذَا أَنْ يَقُولَ بِمَا صَحَّ عَنْ عَطَاءٍ، وَابْنِ جُرَيْجٍ، الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ

I asked ʻAṭāʾ, "If someone bequeaths something for a purpose, and I consider another purpose better?" He replied, "Act in the manner most beneficial to the poor or in God's cause. If you deem another course superior, pursue it, provided no person is named by name." Ibn Jurayj said: Later, ʻAṭāʾ retracted this and stated, "His instruction must be carried out." Ibn Jurayj remarked, "Yet his first statement remains more preferable to me."

عَنْ ابْنِ جُرَيْجٍ، قَالَ: قُلْت لِعَطَاءٍ: أَوْصَى إنْسَانٌ فِي أَمْرٍ فَرَأَيْتُ غَيْرَهُ خَيْرًا مِنْهُ؟ قَالَ: فَافْعَلْ الَّذِي هُوَ خَيْرٌ لِلْمَسَاكِينِ، أَوْ فِي سَبِيلِ اللَّهِ فَرَأَيْتَ خَيْرًا مِنْ ذَلِكَ فَافْعَلْ الَّذِي هُوَ خَيْرٌ مَا لَمْ يُسَمِّ إنْسَانًا بِاسْمِهِ، قَالَ ابْنُ جُرَيْجٍ: ثُمَّ رَجَعَ عَطَاءٌ عَنْ ذَلِكَ فَقَالَ: لِيُنَفَّذْ قَوْلُهُ - قَالَ ابْنُ جُرَيْجٍ: وَقَوْلُهُ الْأَوَّلُ أَعْجَبُ إلَيَّ.

L28539 Abū Muḥammad said: Whoever nullifies any part of what a Muslim has bequeathed while prioritizing manumission has indeed followed the path of ʻAṭāʾ's initial opinion and the view of Ibn Jurayj, except that they combined this with an additional, repugnant contradiction.

قَالَ أَبُو مُحَمَّد: مَنْ أَبْطَلَ شَيْئًا مِمَّا أَوْصَى بِهِ الْمُسْلِمُ إيثَارًا لِلْعِتْقِ فَقَدْ سَلَكَ سَبِيلَ قَوْلِ عَطَاءٍ الْأَوَّلِ، وَقَوْلِ ابْنِ جُرَيْجٍ، إلَّا أَنَّهُمْ جَمَعُوا إلَى ذَلِكَ تَنَاقُضًا قَبِيحًا زَائِدًا.

L28540 Ali said: Since the opinion of those who advocate prioritizing some bequests over others has been invalidated, only our view remains, or the view of those who advocate proportional division in all such cases. We examined this matter and found that those who do that have opposed the testator's bequests and lack any textual basis from the Quran or Sunnah. This is impermissible.

قَالَ عَلِيٌّ: فَإِذْ قَدْ بَطَلَ قَوْلُ مَنْ يَرَى تَبْدِيَةَ بَعْضِ الْوَصَايَا عَلَى بَعْضٍ، فَلَمْ يَبْقَ إلَّا قَوْلُنَا، أَوْ قَوْلُ مَنْ رَأَى التَّحَاصَّ فِي كُلِّ ذَلِكَ -: فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَا مَنْ فَعَلَ ذَلِكَ قَدْ خَالَفَ مَا أَوْصَى بِهِ الْمُوصِي أَيْضًا بِغَيْرِ نَصٍّ، مِنْ قُرْآنٍ، أَوْ سُنَّةٍ، وَهَذَا لَا يَجُوزُ.

L28541 If they say: "But you too have contradicted what the testator enjoined?" We reply: Our contradiction of what he enjoined is not akin to your contradiction. For you have contradicted his injunction without any explicit textual basis—neither from the Quran nor the Sunnah—whereas we have contradicted it by the authority of the explicit text of the Quran and the Sunnah. This is the truth that admits no alternative.

فَإِنْ قَالُوا: وَأَنْتُمْ قَدْ خَالَفْتُمْ أَيْضًا مَا أَوْصَى بِهِ الْمُوصِي؟ قُلْنَا: خِلَافُنَا لِمَا أَوْصَى غَيْرُ خِلَافِكُمْ؛ لِأَنَّكُمْ قَدْ خَالَفْتُمُوهُ بِغَيْرِ نَصٍّ، مِنْ قُرْآنٍ وَلَا سُنَّةٍ، وَنَحْنُ خَالَفْنَاهُ بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ، وَهَذَا هُوَ الْحَقُّ الَّذِي لَا يَجُوزُ غَيْرُهُ.

L28542–28543 Abū Muḥammad said: Since this assertion is likewise devoid of proof, it became incumbent upon us to present evidence validating our position. Thus we declare—and by Allah's Exalted guidance—: We find Allah the Exalted stating: "Obey Allah and obey the Messenger" [Surah al-Nisāʾ 4:59]. It is authentically established that the Messenger of Allah—peace and blessings of Allah be upon him—did not permit bequests beyond one-third. Therefore, it is conclusively established that whoever bequeaths a third or less is obeying

قَالَ أَبُو مُحَمَّد: فَلَمَّا عُرِّيَ هَذَا الْقَوْلُ أَيْضًا مِنْ الْبُرْهَانِ لَزِمَنَا أَنْ نَأْتِيَ بِالْبُرْهَانِ عَلَى صِحَّةِ قَوْلِنَا فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: وَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ} [النساء: ٥٩] وَصَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُجِزْ الْوَصِيَّةَ إلَّا بِالثُّلُثِ فَأَقَلَّ، فَصَحَّ يَقِينًا أَنَّ مَنْ أَوْصَى بِثُلُثِهِ فَأَقَلَّ: أَنَّهُ مُطِيعٌ لِلَّهِ تَعَالَى، فَوَجَبَ إنْفَاذُ طَاعَةِ اللَّهِ عَزَّ وَجَلَّ.

Allah the Exalted, making it obligatory to carry out obedience to Allah, the Almighty, the Majestic.[6]

L28544 We have determined that one who bequeaths more than a third is disobedient to Allah the Almighty if he intentionally does so with knowledge and deliberate intent, or if he acted mistakenly out of ignorance, the sin is forgiven for him, though his action remains invalid without exception. It is impermissible to enforce acts of disobedience against Allah the Almighty or to ratify an error.

L28545 Allah, the Exalted, said: "That He may make the truth prevail and abolish falsehood" [Al-Anfāl: 8].[7]

L28546 We have found that when a testator bequeaths for a certain purpose a portion less than a third, it becomes obligatory to execute all that he has bequeathed, as we mentioned. If he exceeds a third, the excess is invalid and it is impermissible to execute it. Thus, the text of our statement is confirmed as valid, letter by letter, as Allah, the Exalted, and His Messenger have commanded (peace and blessings be upon him).

L28547 If someone were to ask: "Who has said this before you?" We would reply: If he is a Hanafi, a Maliki, or someone who espoused opinions akin to theirs in this issue before Malik and Abu Hanifa—except that there is a distinction between the two matters: their positions are not supported by any explicit text nor analogy, while our statement is precisely what Allah the Exalted and His Messenger—peace and blessings be upon him—have commanded.

L28548 In this matter, there is only a statement from ten of the Successors and one Companion—may Allah be pleased with them—though they numbered tens of thousands. Where then are the statements of the rest? How could this be when Abū Ḥanīfah and Al-Shāfiʿī—as we mentioned in some of their positions—held the view of initiating what the testator began? We do not say this to glorify anyone other than the Messenger of Allah—peace and

وَوَجَدْنَا مَنْ أَوْصَى بِأَكْثَرَ مِنْ الثُّلُثِ عَاصِيًا لِلَّهِ عَزَّ وَجَلَّ إنْ تَعَمَّدَ ذَلِكَ عَلَى عِلْمٍ وَقَصْدٍ، وَإِمَّا مُخْطِئًا مَعْفُوًّا عَنْهُ الْإِثْمُ إنْ كَانَ جَهِلَ ذَلِكَ، وَفِعْلُهُ بَاطِلٌ بِكُلِّ حَالٍ، وَلَا يَحِلُّ إنْفَاذُ مَعْصِيَةِ اللَّهِ عَزَّ وَجَلَّ، وَلَا إمْضَاءُ الْخَطَأِ.

قَالَ اللَّهُ تَعَالَى: {لِيُحِقَّ الْحَقَّ وَيُبْطِلَ الْبَاطِلَ} [الأنفال: ٨] .

وَوَجَدْنَا الْمُوصِيَ إذَا أَوْصَى فِي وَجْهٍ مَا بِمِقْدَارٍ مَا دُونَ الثُّلُثِ فَقَدْ وَجَبَ إنْفَاذُ كُلِّ مَا أَوْصَى بِهِ، كَمَا ذَكَرْنَا، فَإِذَا زَادَ عَلَى الثُّلُثِ كَانَتْ الزِّيَادَةُ بَاطِلًا لَا يَحِلُّ إنْفَاذُهُ - فَصَحَّ نَصُّ قَوْلِنَا حَرْفًا حَرْفًا كَمَا أَمَرَ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -

فَإِنْ قَالَ قَائِلٌ: وَمَنْ قَالَ هَذَا قَبْلَكُمْ؟ قُلْنَا لَهُ: إنْ كَانَ حَنِيفِيًّا أَوْ مَالِكِيًّا وَمَنْ قَالَ قَبْلَ مَالِكٍ وَأَبِي حَنِيفَةَ بِأَقْوَالِهِمَا فِي هَذِهِ الْمَسْأَلَةِ إلَّا أَنَّ بَيْنَ الْأَمْرَيْنِ فَرْقًا، وَهُوَ أَنَّ أَقْوَالَهُمَا لَا يُوَافِقُهُمَا نَصٌّ وَلَا قِيَاسٌ، وَقَوْلُنَا هُوَ نَفْسُ مَا أَمَرَ بِهِ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

وَإِنَّمَا فِي هَذِهِ الْمَسْأَلَةِ قَوْلُ عَنْ عَشَرَةٍ مِنْ التَّابِعِينَ، وَوَاحِدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهُمْ عَشَرَاتُ أُلُوفٍ، فَأَيْنَ أَقْوَالُ سَائِرِهِمْ؟ فَكَيْفَ وَقَدْ قَالَ بِتَبْدِيَةِ مَا ابْتَدَأَ بِهِ الْمُوصِي أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، كَمَا ذَكَرْنَا فِي بَعْضِ أَقْوَالِهِمَا، وَمَا نَقُولُ هَذَا مُتَكَثِّرِينَ بِأَحَدٍ غَيْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا مُسْتَوْحِشِينَ إلَى سِوَاهُ، وَلَكِنْ لِنُرِيَ الْمُخَالِفَ فَسَادَ اعْتِرَاضِهِ، وَفَاحِشَ انْتِقَاضِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[6] **Qur'an references (L28543):** Qur'an 4:59 (An-Nisa); Qur'an 24:54 (An-Nur); Qur'an 47:33 (Muhammad).

[7] **Qur'an references (L28545):** Qur'an 8:8 (Al-Anfal).

blessings be upon him—nor to feel estranged toward any besides him. Rather, it is to show the opponent the corruption of his objection and the blatant shamefulness of his refutation. And success comes only from Allah, the Exalted.

L28549 Abū Muḥammad said: If the testator did not specify anything initially, but merely declared, "So-and-so, so-and-so, and so-and-so are each to be given such-and-such," and the third portion cannot accommodate those amounts, then they must receive proportional reductions. This is because they are entitled only to the third, thus what Allah the Exalted has permitted is permissible for them, and what He has invalidated is invalid for them. The same applies to all other charitable acts—and with Allah the Exalted is success.

L28550–28551 Then perform the funeral prayer for one who died having failed to pay Zakah or perform Hajj.

L28552 Chapter 1767 - Issue: Abū Muḥammad said: We have mentioned in the "Book of Zakāt" within this work of ours, in its "Book of Ḥajj," and in its "Book of Bankruptcy" that whoever dies—whether they neglected or did not neglect—[the obligations of] zakāt, the obligatory Ḥajj or his Umrah, a vow, expiation for ẓihār, expiation for killing, expiation for an oath, intentional sexual intercourse during Ramadan's daytime, or some essential rites of Ḥajj, then all such debts to Allah the Almighty and Majestic must be settled from the principal of his estate. Nothing is allocated to the creditors until all debts owed to Allah are fully discharged. If anything then remains, it goes to the creditors, followed by the will's execution, then the inheritance, as Allah the Almighty and Majestic has commanded. We have cited as evidence the statement of Allah's Messenger—peace and blessings be upon him and his family—"Fulfill what is owed to Allah, for He is most deserving of fulfillment, and the debt owed to Allah is most worthy of being settled."

L28553 We mentioned there the statement of Al-Ḥasan and Ṭāwūs through the most authentic chain of narration from them: that the Hajj of Islam and the Zakat of wealth are equivalent to a debt.

L28554 The statement of al-Zuhrī: Zakāh is taken from the principal wealth of the

قَالَ أَبُو مُحَمَّد: فَإِنْ لَمْ يَبْدَأْ الْمُوصِي بِشَيْءٍ، لَكِنْ قَالَ فُلَانٌ وَفُلَانٌ وَفُلَانٌ: يُعْطَى كُلُّ وَاحِدٍ مِنْهُمْ كَذَا وَكَذَا، فَلَمْ يَحْمِلْ الثُّلُثُ ذَلِكَ، فَهَاهُنَا يَتَحَاصُّونَ وَلَا بُدَّ؛ لِأَنَّهُ لَيْسَ لَهُمْ إلَّا الثُّلُثُ فَيَجُوزُ لَهُمْ مَا أَجَازَهُ اللَّهُ تَعَالَى، وَيَبْطُلُ لَهُمْ مَا أَبْطَلَهُ اللَّهُ تَعَالَى، وَكَذَلِكَ سَائِرُ الْقُرَبِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[فَصْلٌ فِيمَنْ مَاتَ وَقَدْ فرط فِي زَكَاةٍ أَوْ فِي حَجٍّ]

فَصْلٌ ١٧٦٧ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: قَدْ ذَكَرْنَا فِي " كِتَابِ الزَّكَاةِ " مِنْ كِتَابِنَا هَذَا، وَفِي " كِتَابِ الْحَجِّ " مِنْهُ، وَفِي " كِتَابِ التَّفْلِيسِ " مِنْهُ أَنَّ كُلَّ مَنْ مَاتَ وَقَدْ فَرَّطَ: فِي زَكَاةٍ، أَوْ فِي حَجِّ الْإِسْلَامِ، أَوْ عُمْرَتِهِ، أَوْ فِي نَذْرٍ، أَوْ فِي كَفَّارَةِ ظِهَارٍ، أَوْ قَتْلٍ، أَوْ يَمِينٍ، أَوْ تَعَمَّدَ وَطْءً فِي نَهَارِ رَمَضَانَ، أَوْ بَعْضِ لَوَازِمِ الْحَجِّ أَوْ لَمْ يُفَرِّطْ، فَإِنَّ كُلَّ ذَلِكَ مِنْ رَأْسِ مَالِهِ لَا شَيْءَ لِلْغُرَمَاءِ حَتَّى يَقْضِيَ دُيُونَ اللَّهِ تَعَالَى كُلَّهَا، ثُمَّ إنْ فَضَلَ شَيْءٌ فَلِلْغُرَمَاءِ، ثُمَّ الْوَصِيَّةُ، ثُمَّ الْمِيرَاثُ، كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ، وَذَكَرْنَا الْحُجَّةَ فِي ذَلِكَ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «اقْضُوا اللَّهَ فَهُوَ أَحَقُّ بِالْوَفَاءِ فَدَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى» .

وَذَكَرْنَا هُنَالِكَ قَوْلَ الْحَسَنِ، وَطَاوُسٍ بِأَصَحِّ طَرِيقٍ عَنْهُمَا: أَنَّ حَجَّةَ الْإِسْلَامِ، وَزَكَاةَ الْمَالِ هُمَا بِمَنْزِلَةِ الدَّيْنِ.

deceased, and all obligations [owed by the deceased] are deducted from the entirety of the wealth—this is the opinion of al-Shāfiʿī, Aḥmad ibn Ḥanbal, Abū Sulaymān, and others.

وَقَوْلُ الزُّهْرِيِّ: إِنَّ الزَّكَاةَ تُؤْخَذُ مِنْ رَأْسِ مَالِ الْمَيِّتِ وَكُلُّ شَيْءٍ وَاجِبٌ فَهُوَ مِنْ جَمِيعِ الْمَالِ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ.

L28555 And the statement of Abu Huraira: Indeed, the Hajj and the vow are to be fulfilled on behalf of the deceased.

وَقَوْلُ أَبِي هُرَيْرَةَ: إِنَّ الْحَجَّ وَالنَّذْرَ يُقْضَيَانِ عَنْ الْمَيِّتِ.

L28556 And the statement of Ibn Abbas regarding the obligation to perform Hajj concerning those among the deceased who did not fulfill it.

وَقَوْلُ ابْنِ عَبَّاسٍ بِإِيجَابِ الْحَجِّ عَمَّنْ لَمْ يَحُجَّ مِنْ الْمَوْتَى.

L28557 Similarly, the opinion of Ṭāwus, al-Ḥasan al-Baṣrī, and ʿAṭāʾ is that this is taken from the principal estate, even if not bequeathed – and this is the view of Ibn al-Musayyab, ʿAbd al-Raḥmān ibn Abī Laylā, al-Awzāʿī, al-Ḥasan ibn Ḥayyin, Muḥammad ibn Abī Laylā, Sufyān al-Thawrī, al-Shāfiʿī, Abū Thawr, Aḥmad, Isḥāq, Abū Sulaymān, and their companions.

وَكَذَلِكَ قَوْلُ طَاوُسٍ، وَالْحَسَنِ الْبَصْرِيِّ، وَعَطَاءٍ، وَأَنَّ ذَلِكَ مِنْ رَأْسِ الْمَالِ وَإِنْ لَمْ يُوصِ بِذَلِكَ - وَهُوَ قَوْلُ ابْنِ الْمُسَيِّبِ، وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَمُحَمَّدِ بْنِ أَبِي لَيْلَى، وَسُفْيَانَ الثَّوْرِيِّ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L28558 However, Al-Shafiʿī once stated: "The debts owed to God the Exalted and those owed to people are to be prorated," while on another occasion he affirmed the position we have mentioned. We know of no one among the Successors who maintained that zakāt should only be discharged from one-third of the estate if one bequeaths it, except Rabīʿah.

إِلَّا أَنَّ الشَّافِعِيَّ مَرَّةً قَالَ: تَتَحَاصَّ دُيُونُ اللَّهِ تَعَالَى وَدُيُونُ النَّاسِ، وَمَرَّةً قَالَ كَمَا قُلْنَا، وَمَا نَعْلَمُ أَحَدًا قَالَ بِأَنْ لَا تَخْرُجَ الزَّكَاةُ إِلَّا مِنْ الثُّلُثِ إِنْ أَوْصَى بِهَا مِنْ التَّابِعِينَ، إِلَّا رَبِيعَةُ.

L28559 It remains to mention the opinions of Abū Ḥanīfa and Mālik on this issue: Abū Ḥanīfa said: If a Muslim stipulates bequests—including obligatory Zakāt and the obligatory Hajj of Islam—these obligatory duties are fulfilled first from the third (of the estate), whether he mentioned them first or last. The mentioned duties are distributed proportionally, then as we have previously detailed regarding his opinions on bequests.

وَبَقِيَ أَنْ نَذْكُرَ أَقْوَالَ أَبِي حَنِيفَةَ، وَمَالِكٍ فِي هَذِهِ الْمَسْأَلَةِ -: قَالَ أَبُو حَنِيفَةَ: إِنْ أَوْصَى الْمُسْلِمُ بِوَصَايَا: مِنْهَا زَكَاةٌ وَاجِبَةٌ، وَحَجَّةُ الْإِسْلَامِ أَنَّهُ يُبْدَأُ فِي الثُّلُثِ بِهَذِهِ الْفُرُوضِ - سَوَاءٌ ذَكَرَهَا أَوَّلًا أَوْ آخِرًا - وَتَتَحَاصَّ الْفُرُوضُ الْمَذْكُورَةُ، ثُمَّ كَمَا ذَكَرْنَا مِنْ أَقْوَالِهِ فِي الْوَصَايَا.

L28560–28561 Abu Yusuf said: One begins with zakah, then the obligatory Hajj. On another occasion, he affirmed Abu Hanifah's opinion, who said: After zakah and the obligatory Hajj comes what the deceased bequeathed regarding emancipation for oath expiation, expiation for hunting violations, and compensation for ritual harm. These are prioritized according to the order specified in his will, followed by voluntary acts.

وَقَالَ أَبُو يُوسُفَ: يُبْدَأُ بِالزَّكَاةِ، ثُمَّ بِحَجَّةِ الْإِسْلَامِ، وَمَرَّةً قَالَ كَقَوْلِ أَبِي حَنِيفَةَ، قَالَ: ثُمَّ بَعْدَ الزَّكَاةِ وَالْحَجَّةِ الْمَفْرُوضَةِ مَا أَوْصَى بِهِ مِنْ عِتْقٍ فِي كَفَّارَةِ يَمِينٍ، وَكَفَّارَةِ جَزَاءِ صَيْدٍ، وَفِدْيَةِ الْأَذَى: يُبْدَأُ بِمَا بَدَأَ بِهِ بِذِكْرِهِ مِنْ ذَلِكَ فِي وَصِيَّتِهِ، ثُمَّ التَّطَوُّعِ.

L28562 Muhammad ibn al-Hasan said: One should begin with the Hajj obligation in Islam and Zakat, following the sequence the testator initiated by mentioning them in his will.

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: يُبْدَأُ مِنْ حَجَّةِ الْإِسْلَامِ وَمِنْ الزَّكَاةِ بِمَا بَدَأَ الْمُوصِي بِذِكْرِهِ فِي وَصِيَّتِهِ.

L28563 Malik said: Priority begins with absolute manumission during illness and tadbir (deferred manumission) during health, followed by neglected obligatory Zakat payments, then the manumission of specific slaves he instructed to be freed - whether directly manumitted by bequest or requiring purchase before emancipation. Next comes granting a kitabah contract if he bequeathed contractual self-purchase for his slave, followed by Hajj, and finally acknowledging debts in favor of those for whom such acknowledgment holds no legal validity.

وَقَالَ مَالِكٌ: يُبْدَأُ بِالْعِتْقِ الْبَتِّ فِي الْمَرَضِ، وَالتَّدْبِيرِ فِي الصِّحَّةِ، ثُمَّ بَعْدَهُمَا الزَّكَاةُ الْمَفْرُوضَةُ الَّتِي فَرَّطَ فِيهَا، ثُمَّ عِتْقِ عَبْدٍ بِعَيْنِهِ أَوْصَى بِعِتْقِهِ، وَعِتْقِ عَبْدٍ بِعَيْنِهِ أَوْصَى بِأَنْ يُشْتَرَى فَيُعْتَقَ، ثُمَّ الْكِتَابَةِ إذَا أَوْصَى بِأَنْ يُكَاتَبَ عَبْدُهُ، ثُمَّ الْحَجِّ، ثُمَّ إقْرَارِهِ بِالدَّيْنِ لِمَنْ لَا يَجُوزُ لَهُ إقْرَارُهُ بِهِ.

L28564 He said: Priority is given to the zakah he bequeathed, beginning with what he stipulated regarding the freeing of a slave for expiation of ẓihār, or unintentional killing, or proportionally allocating the freeing of a slave between ẓihār and unintentional killing. Then comes what he stipulated regarding expiation for oaths. He said: Priority is given to feeding the poor for what he bequeathed concerning neglected fulfillment of vowed Ramadan fasts he had pledged to observe.

قَالَ: وَيُبْدَأُ بِالزَّكَاةِ الَّتِي أَوْصَى بِهَا عَلَى مَا أَوْصَى بِهِ مِنْ عِتْقِ رَقَبَةٍ عَنْ ظِهَارٍ، أَوْ قَتْلٍ خَطَإٍ، أَوْ يَتَخَاصُّ رَقَبَةَ الظِّهَارِ مَعَ رَقَبَةِ قَتْلِ الْخَطَإِ، ثُمَّ مَا أَوْصَى بِهِ مِنْ كَفَّارَةِ الْأَيْمَانِ - قَالَ: وَيُبْدَأُ بِالْإِطْعَامِ عَمَّا أَوْصَى بِهِ مِمَّا فَرَّطَ فِيهِ مِنْ قَضَاءِ رَمَضَانَ عَلَى النَّذْرِ.

L28565 Abū Muḥammad said: In these statements lies an admonition for those who reflect and a sign for those who contemplate—as for Abū Ḥanīfa's opinion, it is the most consistent due to his error and the least contradictory. However, it should be said to him: If the obligatory zakāh, the Hajj obligation of Islam, and all other religious duties—when neglected and disowned at the time of death—are treated as equivalent to bequests, then why have you prioritized them over other bequests? If he replies: "Because they are more binding," it is said to him: How do they become more binding in your view when you have removed them from the ruling of obligations—which it is impermissible to neglect—to the ruling of bequests? Thus, the binding nature is invalidated by your erroneous opinion, and they must be treated like all other bequests without distinction. Alternatively, all such obligations must remain outside the ruling of bequests, persisting under the ruling of obligations that cannot be neglected. Then why have you made them subject to the third of the

قَالَ أَبُو مُحَمَّدٍ: فِي هَذِهِ الْأَقْوَالِ عِبْرَةٌ لِمَنْ اعْتَبَرَ، وَآيَةٌ لِمَنْ تَدَبَّرَ -: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَهُوَ أَطْرَدُهَا لِخَطَئِهِ، وَأَقَلُّهَا تَنَاقُضًا، لَكِنْ يُقَالُ لَهُ: إنْ كَانَتْ الزَّكَاةُ الْمَفْرُوضَةُ، وَحَجَّةُ الْإِسْلَامِ، وَسَائِرُ الْفُرُوضِ، إذَا فَرَّطَ فِيهَا وَتَبَرَّأَ مِنْ ذَلِكَ عِنْدَ مَوْتِهِ -: يَجْرِي كُلُّ ذَلِكَ مَجْرَى الْوَصَايَا، فَلِأَيِّ شَيْءٍ قَدَّمْتَهَا عَلَى سَائِرِ الْوَصَايَا، فَإِنْ قَالَ: لِأَنَّهَا أَوْكَدُ، قِيلَ لَهُ: وَمِنْ أَيْنَ صَارَتْ أَوْكَدَ عِنْدَك وَأَنْتَ قَدْ أَخْرَجْتَهَا عَنْ حُكْمِ الْفَرْضِ الَّذِي لَا يَحِلُّ إضَاعَتُهُ إلَى حُكْمِ الْوَصَايَا - فَبَطَلَ التَّأْكِيدُ عَلَى قَوْلِك الْفَاسِدِ، وَوَجَبَ أَنْ يَكُونَ كَسَائِرِ الْوَصَايَا وَلَا فَرْقَ، وَيَكُونُ كُلُّ ذَلِكَ خَارِجًا عَنْ حُكْمِ الْوَصَايَا، وَبَاقِيًا عَلَى

estate if he bequeaths them? What is this confusion and mixing of falsehood into the religion of Allāh, the Almighty?

حُكْمِ الْفَرْضِ الَّذِي لَا يَسَعُ تَعْطِيلُهُ، فَلِمَ جَعَلْتَهَا مِنْ الثُّلُثِ إنْ أَوْصَى بِهَا أَيْضًا؟ وَمَا هَذَا الْخَبْطُ وَالتَّخْلِيطُ بِالْبَاطِلِ فِي دِينِ اللَّهِ عَزَّ وَجَلَّ.

L28566 As for the statement of Abū Yūsuf: Is there a perpetual issue in his prioritization of zakat over hajj? If he argues: "Zakat is a financial obligation while hajj is a physical duty," it is countered: Then why did you include it within bequests? Why did you not prohibit bequeathing it, as Ayyūb al-Sikhtiyānī, al-Qāsim ibn Muḥammad, and al-Nakhaʿī prohibited from that—and this is also reported from Ibn ʿUmar?

وَأَمَّا قَوْلُ أَبِي يُوسُفَ: فَآبِدَةٌ فِي تَقْدِيمِهِ الزَّكَاةَ عَلَى الْحَجِّ؟ فَإِنْ قَالَ: الزَّكَاةُ حَقٌّ فِي الْمَالِ، وَالْحَجُّ عَلَى الْبَدَنِ؟ قِيلَ: فَلِمَ أَدْخَلْته فِي الْوَصَايَا إذًا؟ وَهَلَّا مَنَعْت مِنْ الْوَصِيَّةِ بِهِ كَمَا مَنَعَ مِنْ ذَلِكَ أَيُّوبُ السِّخْتِيَانِيُّ، وَالْقَاسِمُ بْنُ مُحَمَّدٍ، وَالنَّخَعِيُّ - وَرُوِيَ أَيْضًا عَنْ ابْنِ عُمَرَ.

L28567–28568 If it is said: What about the textual evidence concerning this matter? The response is: That text obligates that it is taken from the principal of the estate—contradicting your invalid opinion—and this very point confronts Muḥammad ibn al-Ḥasan regarding his prioritization of this ruling over other bequests. As for Mālik's opinion: it is the most contradictory in extremeness, the most aberrant, and the most profoundly invalid. This is because he prioritized some obligatory shares over others without proof, prioritized certain voluntary acts above some obligatory shares without evidence, rendering the entire position fundamentally disconnected from any form of legal proofs—even though it is a view unattested among any of God's creation before him. We refer to that hierarchy he devised. The most outrageous aspect is his statement "acknowledgment for one who has no right to acknowledgment." How can what he concedes to be impermissible be deemed permissible? Is this not an astounding wonder? ʿAlī said: If someone objects: Were your opinion valid, anyone wishing to deprive their heirs of their wealth could achieve this by allocating obligatory shares and then bequeathing them upon death? We respond: If one deliberately does this, he bears the sin. His disobedience does not nullify God's rights, for the Almighty has not commanded the forfeiture of His rights due to such pretexts.

فَإِنْ قِيلَ: لِلنَّصِّ الْوَارِدِ فِي ذَلِكَ؟ قِيلَ: فَذَلِكَ النَّصُّ يُوجِبُ أَنَّهُ مِنْ رَأْسِ الْمَالِ - وَهُوَ خِلَافُ قَوْلِك الْفَاسِدِ - وَهَذَا نَفْسُهُ يَدْخُلُ عَلَى مُحَمَّدِ بْنِ الْحَسَنِ فِي تَقْدِيمِهِ ذَلِكَ عَلَى سَائِرِ الْوَصَايَا؟ وَأَمَّا قَوْلُ مَالِك: فَأَفْحَشُهَا تَنَاقُضًا، وَأَوْحَشُهَا وَأَشَدُّهَا فَسَادًا؛ لِأَنَّهُ قَدَّمَ بَعْضَ الْفَرَائِضِ عَلَى بَعْضٍ بِلَا بُرْهَانٍ، فَقَدَّمَ بَعْضَ التَّطَوُّعِ عَلَى بَعْضِ الْفَرَائِضِ بِلَا بُرْهَانٍ، وَصَارَ كُلُّهُ لَا مُتَعَلَّقَ لَهُ بِشَيْءٍ مِنْ وُجُوهِ الْأَدِلَّةِ أَصْلًا، مَعَ أَنَّهُ قَوْلٌ لَا يُعْرَفُ عَنْ أَحَدٍ مِنْ خَلْقِ اللَّهِ تَعَالَى قَبْلَهُ؟ نَعْنِي: ذَلِكَ التَّرْتِيبَ الَّذِي رَتَّبَ - وَأَطْرَفُ شَيْءٍ قَوْلُهُ " إقْرَارُهُ لِمَنْ لَا يَجُوزُ لَهُ إقْرَارُهُ " فَكَيْفَ يَجُوزُ مَا هُوَ مُقِرٌّ أَنَّهُ لَا يَجُوزُ؟ إنَّ هَذَا لَعَجَبٌ عَجِيبٌ؟ قَالَ عَلِيٌّ: فَإِنْ قَالَ قَائِلٌ: لَوْ كَانَ قَوْلُكُمْ لَمَا شَاءَ أَحَدٌ أَنْ يَحْرِمَ وَرَثَتَهُ مَالَهُ إلَّا قَدَرَ عَلَى ذَلِكَ، بِأَنْ يَضَعَ فُرُوضَهُ، ثُمَّ يُوصِي بِهَا عِنْدَ مَوْتِهِ؟ قُلْنَا لَهُ: إنْ تَعَمَّدَ ذَلِكَ فَعَلَيْهِ إثْمُهُ، وَلَا تَسْقُطُ عَنْهُ مَعْصِيَتُهُ حُقُوقَ اللَّهِ تَعَالَى؛ إذْ لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِإِسْقَاطِ حُقُوقِهِ مِنْ أَجْلِ مَا ذَكَرْتُمْ.

L28569 Then we say to them: Why do you not argue against yourselves with this very proof when you said, "People's debts are taken from the principal wealth?"

We say to you: If this were the case, no one would seek to disinherit their heirs unless they affirmed its validity for whomever they wish by that which exhausts his entire wealth. This would then become apparent after his death, and there is no distinction.

L28570–28572 And it is also said to you: If your claim were valid, would anyone ever wish to nullify the rights of Allah Almighty and the rights of those entitled to charities? Would this not demean his heirs unless they were capable of that? Moreover, their objection through this aforementioned argument is utterly corrupt, for it nullifies Allah Almighty's commandments and His ordained obligations. Should they cite what we have narrated through Abd al-Razzaq's chain from Maʿmar from Qatadah—that the Prophet (peace be upon him) said: "Let me not find a man who withholds Allah's due until death approaches him and he begins to scatter his wealth here and there"—we respond: This is a fabricated ḥadīth, for it has never been supported by a chain of narration. Even if it were authentic, it would not serve as evidence for them, as it does not indicate the annulment of Allah's rights due to one's withholding until death. Rather, it censures him for that. Whoever does it exclusively—indeed, it is undeniably a reprehensible act—and the rights of Allah the Exalted are inevitably enforced in his wealth—and success comes solely from Allah the Exalted.

L28573 ## Does the testator have the right to revoke all that he has bequeathed?

L28574 Issue 1768: It is permissible for a testator to revoke any bequest he has made, except for a testamentary bequest to manumit a slave he owned at the time of the bequest. In such a case, he may not revoke it whatsoever unless he removes the slave from his ownership through a gift, sale, or other methods of transferring ownership.

L28575 As for one who bequeaths that a slave be emancipated on his behalf, he may revoke this. People have differed regarding this matter—: It has been narrated to us via the narration of al-Ḥajjāj ibn al-Minhāl, from Hammām ibn Yaḥyā, from Qatādah, from ʿAmr ibn Shuʿayb, from ʿAbdullāh ibn Abī

ثُمَّ نَقُولُ لَهُمْ: هَلَّا احْتَجَجْتُمْ عَلَى أَنْفُسِكُمْ بِهَذَا الِاحْتِجَاجِ نَفْسِهِ إِذْ قُلْتُمْ: إِنَّ دُيُونَ النَّاسِ مِنْ رَأْسِ الْمَالِ؟ فَنَقُولُ لَكُمْ: لَوْ كَانَ هَذَا لَمَا شَاءَ أَحَدٌ أَنْ يَحْرِمَ وَرَثَتَهُ إِلَّا أَقَرَّ فِي صِحَّتِهِ لِمَنْ شَاءَ بِمَا يَسْتَوْعِبُ مَالَهُ، ثُمَّ يَظْهَرُ ذَلِكَ بَعْدَ مَوْتِهِ وَلَا فَرْقَ.

وَيُقَالُ لَكُمْ أَيْضًا: لَوْ كَانَ قَوْلُكُمْ لَمَا شَاءَ أَحَدٌ أَنْ يُبْطِلَ حُقُوقَ اللَّهِ تَعَالَى وَحُقُوقَ أَهْلِ الصَّدَقَاتِ؟ وَيُهَنِّي ذَلِكَ وَرَثَتَهُ إِلَّا قَدَرَ عَلَى ذَلِكَ؟ ثُمَّ إِنَّ اعْتِرَاضَهُمْ بِذَلِكَ الْمَذْكُورِ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ إِبْطَالٌ لِأَوَامِرِ اللَّهِ تَعَالَى وَفَرَائِضِهِ، فَإِنْ ذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا أَعْرِفَنَّ امْرَأً بَخِلَ بِحَقِّ اللَّهِ حَتَّى إِذَا حَضَرَهُ الْمَوْتُ أَخَذَ يُدَغْدِغُ مَالَهُ هَاهُنَا وَهَا هُنَا» ؟ قُلْنَا: هَذَا حَدِيثٌ بَاطِلٌ، لِأَنَّهُ لَمْ يُسْنَدْ قَطُّ، ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ سُقُوطُ حُقُوقِ اللَّهِ تَعَالَى مِنْ أَجْلِ بُخْلِهِ بِهِ إِلَى أَنْ يَمُوتَ؟ إِنَّمَا فِيهِ إِنْكَارُ ذَلِكَ عَلَى مَنْ فَعَلَهُ فَقَطْ، وَنَعَمْ، فَهُوَ مُنْكَرٌ بِلَا شَكٍّ، وَحُقُوقُ اللَّهِ تَعَالَى نَافِذَةٌ فِي مَالِهِ وَلَا بُدَّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة هَلْ للموصي أَنْ يرجع فِي كُلّ مَا أَوْصَى بِهِ]

١٧٦٨ - مَسْأَلَةٌ: وَجَائِزٌ لِلْمُوصِي أَنْ يَرْجِعَ فِي كُلِّ مَا أَوْصَى بِهِ إِلَّا الْوَصِيَّةُ بِعِتْقِ مَمْلُوكٍ لَهُ يَمْلِكُهُ حِينَ الْوَصِيَّةِ فَإِنَّهُ لَيْسَ لَهُ أَنْ يَرْجِعَ فِيهِ أَصْلًا إِلَّا بِإِخْرَاجِهِ إِيَّاهُ عَنْ مِلْكِهِ بِهِبَةٍ أَوْ بَيْعٍ أَوْ غَيْرِ ذَلِكَ مِنْ وُجُوهِ التَّمْلِيكِ.

وَأَمَّا مَنْ أَوْصَى بِأَنْ يُعْتَقَ عَنْهُ رَقَبَةً فَلَهُ أَنْ يَرْجِعَ فِي ذَلِكَ وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ عَمْرِو بْنِ

Rabīʿah that ʿUmar ibn al-Khaṭṭāb said: "Allah decrees in the testator's will what He wills, and the essence of the will is its finality."

شُعَيْبٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي رَبِيعَةَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: يُحْدِثُ اللَّهُ فِي وَصِيَّتِهِ مَا شَاءَ، وَمَلَاكُ الْوَصِيَّةِ آخِرُهَا.

L28576 It has been authentically reported from Ṭāwus, ʿAṭāʾ, Abī al-Shaʿthāʾ Jābir ibn Zayd, Qatādah, and al-Zuhrī that the testator may retract his will, whether it pertained to manumission or otherwise-.

وَصَحَّ عَنْ طَاوُسٍ، وَعَطَاءٍ، وَأَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ، وَقَتَادَةَ، وَالزُّهْرِيِّ: أَنَّ لِلْمُوصِي أَنْ يَرْجِعَ فِي وَصِيَّتِهِ عِتْقًا كَانَ أَوْ غَيْرَهُ -.

L28577 This is the opinion of Abū Ḥanīfah, Mālik, and al-Shāfiʿī.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ.

L28578 Others held a contrary opinion: We have been narrated from Ibrāhīm al-Nakhaʿī concerning someone who bequeaths that if he dies, a male slave of his should be emancipated. He said: "Is it not his right to return him to slavery? Emancipation is not like other bequests."

وَقَالَ آخَرُونَ: بِخِلَافِ ذَلِكَ -: رُوِّينَا عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِيمَنْ أَوْصَى إِنْ مَاتَ أَنْ يُعْتَقَ غُلَامٌ لَهُ؟ فَقَالَ: أَلَيْسَ لَهُ أَنْ يَرُدَّهُ فِي الرِّقِّ، وَلَيْسَ الْعِتْقُ كَسَائِرِ الْوَصِيَّةِ.

L28579 Through the chain of ʿAbd al-Razzāq and al-Ḍaḥḥāk ibn Makhlad, both narrating from Sufyān al-Thawrī via Abū Isḥāq al-Shaybānī via al-Shaʿbī, who stated: Every testator is permitted to retract their testamentary provisions except in the case of emancipation.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ، وَالضَّحَّاكِ بْنِ مَخْلَدٍ، كِلَاهُمَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ الشَّعْبِيِّ قَالَ: كُلُّ صَاحِبِ وَصِيَّةٍ يَرْجِعُ فِيهَا إِلَّا الْعَتَاقَةَ.

L28580 It is reported via the chain of Abd al-Razzaq, from Maʿmar, from Ibn Shubrumah and other scholars of Kufa, that they said: Every testator can revoke his will except in matters of manumission—and this is the opinion of Sufyan al-Thawri.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ شُبْرُمَةَ وَغَيْرِهِ مِنْ عُلَمَاءِ أَهْلِ الْكُوفَةِ، قَالُوا: كُلُّ صَاحِبِ وَصِيَّةٍ يَرْجِعُ فِيهَا إِلَّا الْعَتَاقَةَ - وَبِهِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ.

L28581 Abu Muhammad said: Those who permit retracting manumission in bequests argued that this rests on the opinion of a Companion with no known opposition among the Companions, and that they analogized it to all other bequests. We know of nothing else they relied upon besides this, and all of it provides them with no valid basis.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ الْمُجِيزُونَ لِلرُّجُوعِ فِي الْعِتْقِ فِي الْوَصِيَّةِ بِأَنَّهُ قَوْلُ صَاحِبٍ لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ، وَبِأَنَّهُمْ قَاسُوهُ عَلَى سَائِرِ الْوَصَايَا - مَا نَعْلَمُ لَهُمْ شَيْئًا تَعَلَّقُوا بِهِ غَيْرَ هَذَا، وَكُلُّهُ لَا مُتَعَلَّقَ لَهُمْ بِهِ

L28582–28584 As for their assertion: "This is the opinion of a Companion with no known opposition from other Companions?" — there is no valid proof in anyone's statement apart from the Messenger of Allah (peace and blessings be upon him and his family). Moreover, there may be cases where they opposed ʿUmar, yet no opposition to this [Companion's opinion] is known. A differing

أَمَّا قَوْلُهُمْ: إنَّهُ قَوْلُ صَاحِبٍ لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ؟ فَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَرُبَّ قَضِيَّةٍ خَالَفُوا فِيهَا عُمَرَ وَلَا يُعْرَفُ

لَهُ مُخَالِفٌ فِي ذَلِكَ مِنْ الصَّحَابَةِ كَقَوْلِهِ فِي الْيَرْبُوعِ يُصِيبُهُ الْمُحْرِمُ بِعَنَاقٍ، وَفِي الْأَرْنَبِ بِجَدْيٍ وَسَائِرِ ذَلِكَ مِمَّا قَدْ تَقَصَّيْنَاهُ فِي مَوَاضِعِهِ.

opinion among the Companions regarding that, such as the Prophet's statement concerning the jerboa - that a pilgrim who kills it must offer a female kid as expiation, and concerning the rabbit a male kid, and all of that being among what we have detailed in its respective places.

وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ عَلَى ذَلِكَ.

L28585 And all praise is due to Allah, Lord of the worlds, for this.

وَأَمَّا قِيَاسُهُمْ لِذَلِكَ عَلَى سَائِرِ الْوَصَايَا فَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ لَا يُجِيزُونَ الرُّجُوعَ فِي التَّدْبِيرِ، وَلَا بَيْعَ الْمُدَبَّرِ، وَهَذِهِ وَصِيَّةٌ بِالْعِتْقِ فِي كُلِّ حَالٍ؛ لِأَنَّهُ عِتْقٌ لِمَا لَا يَجِبُ إلَّا بِالْمَوْتِ، وَلَا يَخْرُجُ إلَّا مِنْ الثُّلُثِ وَهَذِهِ صِفَةُ سَائِرِ الْوَصَايَا.

L28586 As for their analogy of this matter to other bequests, the entire analogy is invalid. Even if analogy were valid, this would be the very essence of invalidity within it, because Ḥanafīs and Mālikīs do not permit retracting a *tadbīr* (manumission upon death) or selling a *mudabbar* (a slave designated for posthumous manumission). This constitutes a bequest of manumission in all circumstances, as it is manumission that only takes effect upon death and is solely deducted from one-third of the estate. This is the attribute of all other bequests.

وَأَعْجَبُ شَيْءٍ تَبْدِيئُهُمْ الْعِتْقَ عَلَى سَائِرِ الْوَصَايَا وَتَأْكِيدُهُمْ إيَّاهُ، وَتَغْلِيظُهُمْ فِيهِ، ثُمَّ سَوَّوْهُ هَاهُنَا بِسَائِرِ الْوَصَايَا؟ فَاعْجَبُوا لِهَذِهِ الْآرَاءِ وَهَذِهِ الْمَقَايِيسِ؟ وَالشَّافِعِيُّ فِي أَحَدِ قَوْلَيْهِ لَا يُجِيزُ الرُّجُوعَ فِي التَّدْبِيرِ، وَهُوَ عِنْدَهُ وَصِيَّةٌ بِالْعِتْقِ - وَهَذَا تَنَاقُضٌ لَا خَفَاءَ بِهِ، وَقِيَاسُ الْوَصِيَّةِ بِالْعِتْقِ عَلَى الْوَصِيَّةِ بِالْعِتْقِ أَوْلَى مِنْ قِيَاسِ الْوَصِيَّةِ بِالْعِتْقِ عَلَى الْوَصِيَّةِ بِغَيْرِ الْعِتْقِ، وَكُلُّهُمْ لَا يُجِيزُ الرُّجُوعَ فِي الْعِتْقِ بِالصِّفَةِ الْبَتَّةَ وَالْوَصِيَّةُ بِالْعِتْقِ عِتْقٌ بِصِفَةٍ فَعَادَ قِيَاسُهُمْ عَلَيْهِمْ فَإِذْ قَدْ بَطَلَ قَوْلُهُمْ فَعَلَيْنَا بِعَوْنِ اللَّهِ تَعَالَى أَنْ نَأْتِيَ بِالْبُرْهَانِ عَلَى صِحَّةِ قَوْلِنَا.

L28587 The most astonishing matter is their prioritization of emancipation above all other bequests, their emphasis upon it, and their severity regarding it, yet here they equate it with other bequests? Marvel then at these opinions and these standards! Al-Shāfiʿī in one of his two rulings does not permit revocation in manumission via *tadbīr*—which he deems a bequest of emancipation—and this constitutes a contradiction utterly evident. Analogizing one bequest of emancipation to another holds greater validity than analogizing a bequest of emancipation to a bequest of non-emancipation. All scholars categorically prohibit revocation in stipulated emancipation, while a bequest of emancipation itself constitutes stipulated emancipation—thus their analogy recoils upon them. Since their claim is invalidated, we must, by God Almighty's aid, present proof for the validity of our position.

فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: قَالَ اللَّهُ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ} [المائدة: ١] وَكَانَ عَهْدُهُ بِعِتْقِهِ عَبْدَهُ إنْ مَاتَ عَقْدًا مَأْمُورًا بِالْوَفَاءِ بِهِ، وَمَا هَذِهِ صِفَتُهُ فَلَا يَحِلُّ الرُّجُوعُ فِيهِ.

L28588 We say—and with Allah, the Exalted, is all success—Allah the Exalted said: {O you who have believed, fulfill contracts} [Al-Mā'idah: 1]. A person's covenant to free his slave if he dies is a contract commanded to be fulfilled, and any agreement characterized as such may not lawfully be reneged upon.[8]

[8] **Qur'an references (L28588):** Qur'an 5:1 (Al-Ma'idah).

L28589 As for other bequests, they are merely promises, and a promise is not binding to fulfill as we clarified in the chapter on vows within this volume. And praise be to Allah, Lord of the worlds.

L28590 As for the bequest stipulating that an unspecified slave be freed on his behalf, it is merely a directive and a notion of a good deed. Did he not carry it out? That is permissible for him, and it is not a contract—and success comes from Allah, the Exalted.

L28591–28593 As for when he transfers it out of his ownership, he has done what is permissible for him. Once it enters the ownership of another, his contract over it becomes void, based on the statement of Allah, the Exalted: _"No soul bears the burden of another"_ [Al-An'ām 6:164]. If it returns to his ownership, the contract is not reinstated, because what is nullified by a mandatory cause cannot be revived except by textual evidence, and no such text exists. In the event of the contract's revocation, if he removes part of the property from his ownership, the contract is invalidated in the portion where his ownership has ceased, while remaining valid for the portion that remains in his ownership.[9]

L28594 ## The issue of bequest to the *umm al-walad*.

L28595 Issue 1769: If someone bequeaths to the mother of his child (umm walad) as long as she remains unmarried, the bequest is invalid, unless he establishes an endowment (waqf) for her from his real estate. If she becomes married, she has no right to it, but the endowment is redirected to another category of charitable causes. Such an arrangement is permissible.

L28596 People have differed regarding this—it has been narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī concerning one who bequeaths land to the mothers of his children for them to consume its usufruct: "If they marry, does it belong to the heirs?" He replied: "His bequest is valid according to his stipulated condition."

[9] **Qur'an references (L28591):** Qur'an 6:164 (Al-An'am).

وَأَمَّا سَائِرُ الْوَصَايَا فَإِنَّمَا هِيَ مَوَاعِيدُ، وَالْوَعْدُ لَا يَلْزَمُ إِنْفَاذُهُ عَلَى مَا ذَكَرْنَا فِي " بَابِ النَّذْرِ " مِنْ هَذَا الدِّيوَانِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَأَمَّا الْوَصِيَّةُ بِأَنْ يُعْتِقَ عَنْهُ رَقَبَةً غَيْرَ مُعَيَّنَةٍ، فَإِنَّمَا هُوَ أَمْرٌ وَهَمٌّ بِحَسَنَةٍ فَلَمْ يُنَفِّذْهَا؟ فَلَهُ ذَلِكَ، وَلَيْسَ عَقْدًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا إِذَا أَخْرَجَهُ عَنْ مِلْكِهِ فَقَدْ فَعَلَ مَا هُوَ مُبَاحٌ لَهُ، فَإِذْ صَارَ فِي مِلْكِ غَيْرِهِ فَقَدْ بَطَلَ عَقْدُهُ فِيهِ: لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَإِنْ عَادَ إِلَى مِلْكِهِ لَمْ يَرْجِعْ الْعَقْدُ، لِأَنَّ مَا بَطَلَ بِوَاجِبٍ فَلَا يَعُودُ إِلَّا بِنَصٍّ وَلَا نَصَّ فِي عَوْدَتِهِ، فَلَوْ أَخْرَجَ بَعْضَهُ عَنْ مِلْكِهِ، بَطَلَ الْعَقْدُ فِيمَا سَقَطَ مِلْكُهُ عَنْهُ، وَبَقِيَ الْعَقْدُ فِيمَا بَقِيَ فِي مِلْكِهِ.

[مَسْأَلَة الْوَصِيَّة لِأُمِّ الْوَلَد]

١٧٦٩ - مَسْأَلَةٌ: وَمَنْ أَوْصَى لِأُمِّ وَلَدِهِ مَا لَمْ تُنْكَحْ فَهُوَ بَاطِلٌ، إِلَّا أَنْ يَكُونَ يُوقِفُ عَلَيْهَا وَقْفًا مِنْ عَقَارِهِ، فَإِنْ نَكَحَتْ فَلَا حَقَّ لَهَا فِيهِ، لَكِنْ يَعُودُ الْوَقْفُ إِلَى وَجْهٍ آخَرَ مِنْ وُجُوهِ الْبِرِّ، فَهَذَا جَائِزٌ.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِيمَنْ أَوْصَى لِأُمَّهَاتِ أَوْلَادِهِ بِأَرْضٍ يَأْكُلْنَهَا فَإِنْ نَكَحْنَ فَهِيَ لِلْوَرَثَةِ؟ قَالَ: تَجُوزُ وَصِيَّتُهُ عَلَى شَرْطِهِ.

وَقَالَ أَبُو حَنِيفَةَ: إنْ أَوْصَى لِأُمِّ وَلَدِهِ بِمَالٍ سَمَّاهُ عَلَى أَنْ لَا تَتَزَوَّجَ أَبَدًا؟ قَالَ: إنْ تَزَوَّجَتْ فَلَا شَيْءَ لَهَا - وَهُوَ قَوْلُ مَالِكٍ.

L28597 Abu Hanifa was asked: If a man bequeaths to his *umm walad* [an enslaved woman who bore him a child] a specified property on the condition that she never marries—what is the ruling? He said: If she marries, she is entitled to nothing. This is also the opinion of Malik.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّهُ خَطَأٌ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» وَهَذَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ.

L28598 Abū Muḥammad said: All of this is invalid, as it contradicts the statement of the Messenger of Allah (peace be upon him): "Every condition not in the Book of Allah is invalid." Since this is a condition not in the Book of Allah, it is therefore invalid.[10]

وَأَيْضًا: فَإِنَّهُ لَا يَعْلَمُ هَلْ يَسْتَحِقُّ هَذِهِ الْوَصِيَّةَ أَمْ لَا إلَّا بِمَوْتِهَا، وَهِيَ بَعْدَ الْمَوْتِ لَا تَمْلِكُ شَيْئًا وَلَا تَسْتَحِقُّهُ.

L28599 Moreover, he cannot ascertain whether he is entitled to this bequest until her death, for after death she retains no ownership nor has any valid claim to it.

وَأَيْضًا - فَلَا يَخْلُو مِنْ أَنْ تَكُونَ مَلَكَتْ مَا أَوْصَى لَهَا بِهِ أَوْ لَمْ تَمْلِكْهُ؟ فَإِنْ كَانَتْ مَلَكَتْهُ فَلَا يَجُوزُ إزَالَةُ مِلْكِهَا عَنْ يَدِهَا بَعْدَ صِحَّتِهِ بِغَيْرِ نَصٍّ فِي ذَلِكَ، وَإِنْ كَانَتْ لَمْ تَمْلِكْهُ فَلَا يَحِلُّ أَنْ تُعْطَى مَا لَيْسَ لَهَا؟ وَلَا بُدَّ مِنْ أَحَدِ الْوَجْهَيْنِ.

L28600 Moreover, does it not necessarily entail that she either owns what was bequeathed to her or does not? If she owned it, it is impermissible to remove her ownership after its validation without an explicit textual basis. If she did not own it, how can it be lawful to grant her what is not rightfully hers? One of these two scenarios must inevitably apply.

وَأَمَّا إدْخَالُهَا فِي الْوَقْفِ بِصِفَةٍ فَهَذَا جَائِزٌ، لِأَنَّهُ تَسْبِيلُ وُقُوفٍ فِيهِ عِنْدَ حَدِّ الْمُسَبَّلِ، وَلَيْسَ تَمْلِيكًا لِرَقَبَةِ الْوَقْفِ -.

L28601 As for incorporating it into the endowment as a condition, this is permissible because it entails dedicating endowments within the confines of the endowed property, and it does not entail ownership of the endowment's corpus.

وَلَا يَجُوزُ أَنْ يُؤْخَذَ مِنْهَا مَا اسْتَحَقَّتْ مِنْ غَلَّةِ الْوَقْفِ قَبْلَ أَنْ تَتَزَوَّجَ، لِأَنَّهَا قَدْ مَلَكَتْهُ، فَلَوْ أَوْصَى بِذَلِكَ كَانَتْ وَصِيَّتُهُ بِذَلِكَ بَاطِلًا.

L28602 It is not permissible to take from her what she rightfully deserves from the proceeds of the endowment before she marries, because she has acquired ownership of it. Therefore, if someone bequeaths such a directive, his bequest concerning it would be invalid.

[مَسْأَلَة الْوَصِيَّة بِالْعِتْقِ]

The Issue of Manumission by Bequest

مَسْأَلَةٌ: وَمَنْ أَوْصَى بِعِتْقِ رَقِيقٍ لَهُ لَا يَمْلِكُ غَيْرَهُمْ، أَوْ كَانُوا أَكْثَرَ مِنْ ثَلَاثَةٍ؟ لَمْ يُنَفَّذْ مِنْ ذَلِكَ شَيْءٌ إلَّا بِالْقُرْعَةِ فَمَنْ خَرَجَ سَهْمُهُ صَحَّ فِيهِ الْعِتْقُ، سَوَاءٌ مَاتَ الْعَبْدُ بَعْدَ الْمُوصِي وَقَبْلَ الْقُرْعَةِ، أَوْ عَاشَ إلَى حِينِ الْقُرْعَةِ.

L28603–28604

Issue: What is the ruling if someone bequeaths the emancipation of slaves he owns—when he owns no others besides them, or if they exceed three in number? **Ruling:** None of that is executed except by drawing lots. Whichever slave's lot is drawn, their emancipation is valid—whether

L28605

[10] **Hadith references (L28598):** Sunan Ibn Majah 2521.

the slave died after the testator's death but before the drawing of lots, or survived until the time of the drawing.

وَمَنْ خَرَجَ سَهْمُهُ كَانَ بَاقِيًا عَلَى الرِّقِّ سَوَاءٌ مَاتَ قَبْلَ الْقُرْعَةِ أَوْ عَاشَ إلَيْهَا؟ فَإِنْ شَرَعَ السَّهْمُ فِي بَعْضِ مَمْلُوكٍ عَتَقَ مِنْهُ مَا حَمَلَ الثُّلُثُ بِلَا اسْتِسْعَاءٍ، وَعَتَقَ بَاقِيهِ وَاسْتَسْعَى لِلْوَرَثَةِ فِي قِيمَةِ مَا بَقِيَ مِنْهُ بَعْدَ الثُّلُثِ.

L28606 Does the person whose lot is drawn remain enslaved, regardless of whether they died before the drawing or lived until it? If the lot applies to a portion of a slave, the part equivalent to one-third of their value is freed without *istis'a* (manumission through labor), and the remainder is freed while the slave must compensate the heirs through *istis'a* for the value exceeding the third portion.

فَلَوْ سَمَّاهُمْ بِأَسْمَائِهِمْ بُدِئَ بِالَّذِي سَمَّى أَوَّلًا فَأَوَّلًا، فَإِذَا تَمَّ الثُّلُثُ رَقَّ الْبَاقُونَ - فَلَوْ شَرَعَ الْعِتْقُ فِي بَعْضِ مَمْلُوكٍ أُعْتِقَ كُلُّهُ وَاسْتَسْعَى لِلْوَرَثَةِ فِيمَا زَادَ مِنْهُ عَلَى الثُّلُثِ، فَلَوْ أَعْتَقَ جُزْءًا مُسَمًّى مِنْ كُلِّ مَمْلُوكٍ مِنْهُمْ بِاسْمِهِ أُعْتِقَ ذَلِكَ الْجُزْءُ - إنْ كَانَ الثُّلُثُ فَأَقَلَّ - وَأُعْتِقَ بَاقِيهِمْ، وَاسْتَسْعُوا فِيمَا زَادَ عَلَى الثُّلُثِ أَوْ فِيمَا زَادَ عَلَى مَا أَوْصَى بِهِ مِمَّا هُوَ دُونَ الثُّلُثِ.

L28607 If he names them by their names, the process begins with the one named first in sequence. When the third [of the estate] is completed, the remaining [slaves] return to slavery. If emancipation is initiated for part of a slave, the entire slave is freed and must undertake istis'ā for the heirs regarding what exceeds the third. If he frees an explicitly designated portion of each slave by their names—provided it constitutes the third or less—that portion is emancipated, and the remainder of their [shares] is freed. They must undertake istis'ā for what exceeds the third or for what exceeds what he bequeathed from what is below the third.

فَإِنْ أَعْتَقَ مِنْ كُلِّ وَاحِدٍ مِنْهُمْ بِاسْمِهِ أَوْ جُمْلَةً أَكْثَرَ مِنْ الثُّلُثِ أُقْرِعَ بَيْنَهُمْ إنْ أَجْمَلَهُمْ فَإِذَا تَمَّ الثُّلُثُ رَقَّ الْبَاقُونَ إلَّا أَنْ يَشْرَعَ الْعِتْقُ فِي وَاحِدٍ مِنْهُمْ فَيُعْتَقُ وَيَسْتَسْعِي فِيمَا زَادَ عَلَى الثُّلُثِ، وَيُبْدَأُ بِالْأَوَّلِ فَالْأَوَّلِ - إنْ سَمَّاهُمْ بِأَسْمَائِهِمْ - فَإِذَا تَمَّ الثُّلُثُ رَقَّ الْبَاقُونَ، إلَّا مَنْ شَرَعَ فِيهِ الْعِتْقُ، فَإِنَّهُ يَسْتَسْعِي فِيمَا زَادَ مِنْهُ عَلَى الثُّلُثِ.

L28608 If he frees from each one of them by their names or collectively more than a third of his estate, lots are drawn among them if he referred to them collectively. Once the third is fulfilled, the remainder remain enslaved unless manumission is initiated for one of them, in which case he is freed and must work to pay off the excess beyond the third. If he named them individually, the process begins with the first, then the next. When the third is fulfilled, the others remain enslaved except the one for whom manumission was initiated, for he must work to pay off the excess beyond the third.

بُرْهَانُ صِحَّةِ قَوْلِنَا -: أَنَّهُ إذَا أَعْتَقَ فِي وَصِيَّتِهِ الثُّلُثَ مِنْ كُلِّ وَاحِدٍ مِنْهُمْ فَأَقَلَّ، فَإِنَّهُ لَمْ يَتَعَدَّ مَا أَمَرَهُ اللَّهُ تَعَالَى إذْ لَهُ أَنْ يُوصِيَ بِالثُّلُثِ فَيُنَفَّذُ قَوْلُهُ.

L28609 The proof for the validity of our position is that if he emancipates in his will one-third or less of each individual slave, he has not transgressed what Allah the Exalted commanded him, for he is permitted to bequeath one-third, and thus his stipulation is enacted.

L28610 It has been authentically reported from the Prophet—peace and blessings of Allah be upon him—as we cited in the "Book of Emancipation" from this compilation of ours with its chain of transmission, regarding one who frees

his share in a slave: the slave becomes entirely free, and he must work to compensate for the share of his co-owner. Here, the heirs are co-owners alongside the testator. Thus, all the slaves were emancipated by the decree of Allah the Exalted as conveyed through His Messenger—peace be upon him—and they must work to compensate for the share of the heirs.

وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا أَوْرَدْنَاهُ فِي " كِتَابِ الْعِتْقِ " مِنْ دِيوَانِنَا هَذَا بِإِسْنَادِهِ فِيمَنْ أَعْتَقَ شِرْكًا لَهُ فِي مَمْلُوكٍ فَإِنَّهُ حُرٌّ كُلُّهُ وَيَسْتَسْعِي فِي حِصَّةِ شَرِيكِهِ وَالْوَرَثَةُ هَاهُنَا شُرَكَاءُ لِلْمُوصِي، فَقَدْ عَتَقَ الْمَمَالِيكُ كُلُّهُمْ بِحُكْمِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَيَسْتَسْعُونَ فِي حِصَّةِ الْوَرَثَةِ -.

L28611 And with Allah, the Most High, lies the success.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28612–28614 As for when he manumits all of them in his will, explicitly naming them by their names, or manumits in his will more than a third of his estate for each one of them, explicitly naming them by their names—every Muslim knows with certainty that the first one who named them did not transgress in this matter nor oppose the truth. Rather, he bequeathed as was permitted to him, making it a righteous bequest. and piety, and so on until the third [of the estate] is completed. Thus, executing his will becomes obligatory due to its validity, and the manumitted slaves—who were partners of the testator when the will became obligatory—must work to compensate the heirs for the shares [of slaves] that the heirs themselves did not manumit.

وَأَمَّا إذَا أَعْتَقَ فِي وَصِيَّتِهِ جَمِيعَهُمْ وَسَمَّاهُمْ بِأَسْمَائِهِمْ، أَوْ أَعْتَقَ فِي وَصِيَّتِهِ أَكْثَرَ مِنْ ثُلُثِ كُلِّ وَاحِدٍ مِنْهُمْ وَسَمَّاهُمْ بِأَسْمَائِهِمْ؟ فَالْيَقِينُ يَدْرِي كُلُّ مُسْلِمٍ أَنَّ أَوَّلَ مَنْ سُمِّيَ مِنْهُمْ، فَإِنَّهُ لَمْ يَجُرْ فِي ذَلِكَ، وَلَا خَالَفَ الْحَقَّ، بَلْ أَوْصَى كَمَا أُبِيحَ لَهُ فَهِيَ وَصِيَّةُ بِرٍّ وَتَقْوَى، وَهَكَذَا حَتَّى يَتِمَّ الثُّلُثُ، فَوَجَبَ تَنْفِيذُ وَصِيَّتِهِ لِصِحَّتِهَا، وَأَنْ يَسْتَسْعِيَ الْمُعْتَقُونَ فِي حِصَصِ الْوَرَثَةِ الَّذِينَ هُمْ شُرَكَاءُ الْمُوصِي حِينَ وُجُوبِ الْوَصِيَّةِ وَلَمْ يُعْتِقُوا حِصَصَهُمْ.

L28615 The testator's bequest exceeding a third of his estate is invalid, and he is sinful—contravening what is right if he knew [the ruling], or mistaken while merely contravening what is right, yet excused if he was unaware. The invalid [act] is mere transgression, or [both] sin and transgression—void and impermissible to enforce. Allah the Exalted says: *"Cooperate in righteousness and piety, and do not cooperate in sin and transgression"* (*al-Mā'idah* 5:2).[11]

وَكَانَ الْمُوصِي فِي وَصِيَّتِهِ فِيمَا زَادَ عَلَى ثُلُثِهِ مُبْطِلًا عَاصِيًا، مُخَالِفًا لِلْحَقِّ إنْ كَانَ عَالِمًا، أَوْ مُخْطِئًا مُخَالِفًا لِلْحَقِّ فَقَطْ، مَعْفُوًّا عَنْهُ إنْ كَانَ غَيْرَ عَالِمٍ، وَالْبَاطِلُ عُدْوَانٌ فَقَطْ، أَوْ إثْمٌ وَعُدْوَانٌ سَاقِطٌ لَا يَحِلُّ إنْفَاذُهُ - قَالَ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢]

L28616 Therefore, nullification of what exceeds one-third becomes obligatory, as we have mentioned, and success is from Allah, the Most High.

فَوَجَبَ إبْطَالُ مَا زَادَ عَلَى الثُّلُثِ كَمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28617 If he vaguely states their emancipation in his will, or ambiguously includes freeing what exceeds one-third of each of them, every Muslim inherently knows by necessity and observable reality that he conflated bequeathing

وَأَمَّا إذَا أَجْمَلَ فِي وَصِيَّتِهِ عِتْقَهُمْ، أَوْ أَجْمَلَ عِتْقَ مَا زَادَ عَلَى الثُّلُثِ مِنْ كُلِّ وَاحِدٍ مِنْهُمْ فِي وَصِيَّتِهِ، فَبِالضَّرُورَةِ وَالْمُشَاهَدَةِ يَدْرِي كُلُّ مُسْلِمٍ أَنَّهُ خَلَطَ الْوَصِيَّةَ بِعِتْقِ مَنْ

[11] **Qur'an references (L28615):** Qur'an 5:2 (Al-Ma'idah).

لَا يَجُوزُ لَهُ أَنْ يُوصِيَ بِعِتْقِهِ، مَعَ الْوَصِيَّةِ بِعِتْقِ مَنْ لَا يَحِلُّ لَهُ أَنْ يُوصِيَ بِعِتْقِهِ، وَلَا يَدْرِي غَيْرُ اللَّهِ تَعَالَى أَيُّهُمْ الْمُسْتَحِقُّ لِلْعِتْقِ، وَأَيُّهُمْ لَا، فَصَارُوا جُمْلَةً فِيهَا حَقٌّ لِلَّهِ تَعَالَى فِي أَحْرَارٍ، أَوْ فِي حُرٍّ لَا يُعْرَفُ بِعَيْنِهِ، وَفِيهَا حَقٌّ لِلْوَرَثَةِ فِي رَقِيقٍ لَا يُعْرَفُ بِعَيْنِهِ، فَلَا بُدَّ مِنْ الْقِسْمَةِ لِيُمَيَّزَ حَقُّ اللَّهِ تَعَالَى مِنْ حَقِّ الْوَرَثَةِ، كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ أَنْ يُعْطِيَ كُلَّ ذِي حَقٍّ حَقَّهُ، وَلَا سَبِيلَ إلَى تَمْيِيزِ الْحُقُوقِ وَالْأَنْصِبَاءِ فِي الْقِسْمَةِ إلَّا بِالْقُرْعَةِ، فَوَجَبَ الْإِقْرَاعُ بَيْنَهُمْ، فَأَيُّهُمْ خَرَجَ عَلَيْهِ سَهْمُ الْعِتْقِ عَلِمْنَا أَنَّهُ الَّذِي اسْتَحَقَّ الْعِتْقَ بِمَوْتِ الْمُوصِي، وَأَنَّهُ هُوَ حَقُّ اللَّهِ تَعَالَى مِنْ تِلْكَ الْجُمْلَةِ - مَاتَ قَبْلَ الْقُرْعَةِ أَوْ لَمْ يَمُتْ - وَأَيُّهُمْ خَرَجَ عَلَيْهِ سَهْمُ الرِّقِّ عَلِمْنَا أَنَّهُ لَمْ يُوصِ فِيهِ الْمُوصِي وَصِيَّةً جَائِزَةً، وَأَنَّهُ هُوَ حَقُّ الْوَرَثَةِ مِنْ تِلْكَ الْجُمْلَةِ قَدْ مَلَكُوهُ بِمَوْتِ الْمُوصِي - مَاتَ قَبْلَ الْقُرْعَةِ أَوْ لَمْ يَمُتْ.

emancipation for those he lacked permission to free with those it was unlawful for him to free. No one knows except Allah, the Exalted, which of them rightfully deserves emancipation and which does not. Thus, they form a collective containing a right due to Allah, the Exalted, pertaining to those to be freed—or a specific individual to be freed though unidentified—and a right due to the heirs pertaining to slaves remaining unidentified. Division becomes obligatory to distinguish Allah's right from the heirs' right, as Allah, the Exalted, commanded that each entitled party receive its due. There is no way to differentiate these rights and shares in division except by lottery. Therefore, conducting the lottery among them is obligatory. Whomever the emancipation lot falls upon, we know they are rightfully entitled to emancipation upon the testator's death—whether the slave died before the lottery or not—and that this constitutes Allah's right within that collective. Whomever the enslavement lot falls upon, we know the testator's stipulation for their emancipation was invalid, and that they constitute the heirs' right within that collective—owned by them upon the testator's death, whether the slave died before the lottery or not.

فَإِنْ شَرَعَ الْعِتْقُ فِي مَمْلُوكٍ أُعْتِقَ وَاسْتَسْعَى فِيمَا زَادَ مِنْهُ عَلَى مَا عَتَقَ بِالْقُرْعَةِ؛ لِأَنَّ الْوَرَثَةَ شُرَكَاءُ الْمُوصِي فِيهِ، وَهَكَذَا كُلُّ مَا أَوْصَى فِيهِ بِالثُّلُثِ فَأَقَلَّ مِنْ حَيَوَانٍ أَوْ عَقَارٍ أَوْ مَتَاعٍ.

L28618 If manumission is initiated for a slave, he is emancipated and required to work for the unemancipated portion of himself, determined by lot, because the heirs are co-owners with the testator in him. Similarly, this applies to every case wherein a third or less of an animal, real estate, or movable property owned by the testator is bequeathed.

وَلَا بُدَّ مِنْ تَمْيِيزِ حَقِّ الْوَصِيَّةِ مِنْ حَقِّ الْوَرَثَةِ، وَلَا يَكُونُ ذَلِكَ إلَّا بِتَعْدِيلِ الْقِيمَةِ وَالْقُرْعَةِ، وَقَدْ جَاءَ أَيْضًا فِي هَذَا أَثَرٌ صَحِيحٌ، يُؤَكِّدُ مَا قُلْنَا، وَلَوْ لَمْ يَأْتِ لَكَانَ الْحُكْمُ مَا وَصَفْنَا لِمَا ذَكَرْنَا مِنْ وُجُوبِ تَمْيِيزِ حَقِّ الْوَصِيَّةِ مِنْ حَقِّ الْوَرَثَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28619 It is essential to distinguish the right of the bequest from the right of the heirs, and this can only be achieved by equitable adjustment of the value and casting lots. There is also an authentic report in this matter that confirms what we have stated. Even if it had not been reported, the ruling would still be as we described, due to what we mentioned of the necessity of distinguishing the right of the bequest from the right of the heirs—and success is from Allah, the Most High.

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - وَابْنُ أَبِي عُمَرَ، كِلَاهُمَا عَنْ الثَّقَفِيِّ - هُوَ عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ

L28620–28622 It has been narrated to us through the chain of Muslim, who informed us: Isḥāq ibn Ibrāhīm (who is Ibn Rāhawayh) and Ibn Abī ʿUmar, Both of them reported from al-Thaqafi—he was ʿAbd al-Wahhāb ibn ʿAbd al-Majīd—from

Ayyūb al-Sikhtiyānī from Abī Qilābah from Abī al-Muhallab from ʻImrān ibn al-Huṣayn: "A man on his deathbed willed the emancipation of six slaves he owned, as he had no wealth other than them. The Prophet—peace and blessings of Allāh be upon him—summoned them, divided them into thirds, then cast lots among them. He emancipated two and enslaved four, rebuking him sternly."

أَبِي الْمُهَلَّبِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ «أَنَّ رَجُلًا أَوْصَى عِنْدَ مَوْتِهِ فَأَعْتَقَ سِتَّةَ مَمْلُوكِينَ لَهُ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُمْ فَدَعَا بِهِمِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَزَّأَهُمْ أَثْلَاثًا ثُمَّ أَقْرَعَ بَيْنَهُمْ فَأَعْتَقَ اثْنَيْنِ وَأَرَقَّ أَرْبَعَةً، وَقَالَ لَهُ قَوْلًا شَدِيدًا» .

L28623 People have differed regarding this matter, and we say: We have not found any of the Companions—may Allah be pleased with them—nor any of the Followers—may Allah have mercy on them—permitting a bequest of manumission exceeding one-third by any amount, except for Ata alone. He held regarding one who bequeaths the manumission of one-third of a slave they own if they have no other property besides him: the entire slave is to be freed, and the slave is required to work off the value of the remaining two-thirds for the heirs.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا، وَنَقُولُ -: إِنَّنَا لَمْ نَجِدْ لِأَحَدٍ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا لِأَحَدٍ مِنَ التَّابِعِينَ - رَحِمَهُمُ اللَّهُ - فِي الْوَصِيَّةِ بِالْعِتْقِ، فِيمَا هُوَ أَكْثَرُ مِنَ الثُّلُثِ شَيْئًا، إِلَّا لِعَطَاءٍ وَحْدَهُ: فِيمَنْ أَوْصَى بِعِتْقِ ثُلُثِ عَبْدٍ لَهُ لَا مَالَ لَهُ غَيْرُهُ، فَإِنَّهُ يُعْتَقُ كُلُّهُ، وَيَسْتَسْعِي لِلْوَرَثَةِ فِي قِيمَةِ ثُلُثَيْهِ.

L28624 And through the chain of Ibn Abī Shaybah: I, Hushaym, [relate] from Ismāʿīl ibn Sālim from al-Shaʿbī, who said: "Whoever bequeaths the emancipation of his slave, it is to be fulfilled from the third [of his estate]. If it exceeds a third, [the executor] must strive to fulfill the surplus—and this is our view. As for the others, we have only found that they permitted emancipation from the third at death. We are among those who do not apply the explicit texts of narrations explicitly in a way that diverts them from their proper contexts—and Allāh the Exalted has already protected us from such—and all praise is due to Allāh in abundance for His blessings."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا هُشَيْمٌ عَنْ إِسْمَاعِيلَ بْنِ سَالِمٍ عَنِ الشَّعْبِيِّ قَالَ: مَنْ أَوْصَى بِعِتْقِ مَمْلُوكٍ لَهُ فَهُوَ مِنَ الثُّلُثِ، فَإِنْ كَانَ أَكْثَرَ مِنَ الثُّلُثِ سَعَى فِيمَا زَادَ - وَهُوَ قَوْلُنَا - وَأَمَّا سَائِرُهُمْ فَإِنَّمَا وَجَدْنَا عَنْهُمْ مَنْ أَعْتَقَ مِنْ ثُلُثِهِ عِنْدَ مَوْتِهِ، وَنَحْنُ مَنْ لَا يُعْطِي نُصُوصَ الرِّوَايَاتِ نَصًّا مِمَّا يُحَرِّفُهَا عَنْ مَوَاضِعِهَا - وَقَدْ أَعَاذَنَا اللَّهُ تَعَالَى مِنْ ذَلِكَ - وَالْحَمْدُ لِلَّهِ عَلَى نِعَمِهِ كَثِيرًا.

L28625 They may legitimately adopt a position in matters of bequests that differs from their stance regarding one who manumits at the time of death. Whoever bars them from this view has blindly adhered to what he possesses no knowledge of, incurred Allah's prohibition upon himself in this matter, and trivialized falsehood alongside issuing definitive judgments based on speculation.

وَقَدْ يُمْكِنُ لَهُمْ فِي الْوَصِيَّةِ قَوْلٌ غَيْرُ قَوْلِهِمْ فِيمَنْ أَعْتَقَ عِنْدَ مَوْتِهِ، وَمَنْ مَنَعَ مِنْ ذَلِكَ عَنْهُمْ، فَقَدْ قَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَأَوْقَعَ نَهْيَ اللَّهِ تَعَالَى لَهُ عَنْ ذَلِكَ، وَاسْتَسْهَلَ الْكَذِبَ وَالْقَطْعَ بِالظَّنِّ.

L28626 As for us, we relate only what has been transmitted to us, nor do we narrate what we have not heard, nor do we report what has not reached us. Far be it from Allah to be attributed such a perilous status in this world and the

وَأَمَّا نَحْنُ فَلَا نُورِدُ إِلَّا مَا رُوِّينَا، وَلَا نَحْكِي مَا لَمْ نَسْمَعْ، وَلَا نُخْبِرُ بِمَا لَمْ يَبْلُغْنَا وَحَاشَ لِلَّهِ مِنْ هَذَا الرُّتْبَةِ الْمُهْلِكَةِ فِي الدُّنْيَا وَالْآخِرَةِ، وَسَنَذْكُرُ الرِّوَايَاتِ الَّتِي بَلَغَتْنَا فِي ذَلِكَ

- إِنْ شَاءَ اللَّهُ تَعَالَى - إِثْرَ تَمَامِ هَذِهِ الْمَسْأَلَةِ " فِي مَسْأَلَةِ حُكْمِ الْمَرِيضِ وَمَنْ حَضَرَهُ الْمَوْتُ فِي مَالِهِ " وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Hereafter. We shall mention the narrations that have reached us concerning this—Allah, the Exalted, willing—after concluding this issue: the ruling pertaining to the sick person and those nearing death regarding their wealth. And success is attained only through Allah, the Exalted.

فَإِذْ الْأَمْرُ كَمَا ذَكَرْنَا فَلْنَذْكُرْ مَا وَجَدْنَا عَنْ الْمُتَأَخِّرِينَ الْمُصَرِّحِينَ بِمَا قَالُوا فِي حُكْمِ الْوَصِيَّةِ بِعِتْقٍ أَكْثَرَ مِنْ الثُّلُثِ -: قَالَ أَبُو حَنِيفَةَ: مَنْ أَوْصَى بِعِتْقِ مَمَالِيكَ لَهُ لَا يَمْلِكُ غَيْرَهُمْ وَكَانُوا أَكْثَرَ مِنْ الثُّلُثِ أُعْتِقُوا كُلُّهُمْ، وَاسْتَسْعُوا جَمِيعُهُمْ فِيمَا زَادَ مِنْ قِيمَتِهِمْ عَلَى مِقْدَارِ ثُلُثِ الْمُوصِي.

L28627 Since the matter is as we have mentioned, let us mention what we have found from the later jurists who explicitly stated their position regarding the ruling on bequeathing manumission exceeding a third. Abu Hanifa said: If someone bequeaths the manumission of all his slaves and owns nothing else, and they are more than a third, they are all to be freed, and they are obligated to compensate through labor collectively for the excess of their value beyond the amount of the testator's third.

وَقَالَ مَالِكٌ: مَنْ أَوْصَى بِعِتْقِ جُزْءٍ مِنْ عَبْدِهِ لَمْ يُعْتَقْ مِنْهُ إِلَّا مَا أَوْصَى بِعِتْقِهِ مِنْهُ فَقَطْ وَرَقَّ بَاقِيهِ - سَوَاءٌ حَمَلَهُ الثُّلُثُ كُلُّهُ أَوْ قَصُرَ عَنْهُ -.

L28628–28629 Malik said: Whoever stipulates in their will the manumission of a share in their slave, only the portion they stipulated for manumission is freed, while the remainder remains in slavery - whether the third [of the estate] fully covers it or falls short.

فَإِنْ لَمْ يَحْمِلْ الثُّلُثُ مَا أَوْصَى بِعِتْقِهِ لَمْ يُعْتَقْ مِنْهُ إِلَّا مَا حَمَلَ الثُّلُثُ مِمَّا أَوْصَى بِعِتْقِهِ مِنْهُ وَرَقَّ سَائِرُهُ.

L28630 If the one-third [of the estate] does not suffice to emancipate all the slaves he instructed to free, only the number proportionate to the one-third [from those he designated] is emancipated, while the remainder remain in slavery.

فَإِنْ أَوْصَى بِعِتْقِ عَبِيدِهِ أَوْ دَبَّرَهُمْ فَإِنَّهُ يُعْتَقُ مِنْ كُلِّ وَاحِدٍ مِنْهُمْ مَا حَمَلَهُ الثُّلُثُ فَقَطْ وَيُرَقُّ سَائِرُهُ.

L28631 If he bequeaths the manumission of his slaves or decrees their deferred manumission, only the portion of each slave that the third [of the estate] can bear is freed, while the remainder is retained in servitude.

فَلَوْ دَبَّرَ فِي صِحَّتِهِ أَوْ فِي مَرَضِهِ بُدِئَ بِالْأَوَّلِ فَالْأَوَّلِ عَلَى رُتْبَةِ تَدْبِيرِهِ لَهُمْ، فَإِذَا تَمَّ الثُّلُثُ رَقَّ الْبَاقُونَ وَرَقَّ بَاقِي مَنْ لَمْ يَحْمِلْ الثُّلُثُ جَمِيعَهُ.

L28632 If he were to enact a stipulation of posthumous emancipation (tadbeer) while he is healthy or during illness, the process would commence with the first [slave] and proceed sequentially in the order he stipulated for them. When the third [of the estate] is fully allocated, the remaining [slaves] would be emancipated, and those whose full emancipation exceeds the third's capacity would likewise be emancipated.

وَقَالَ الشَّافِعِيُّ: مَنْ أَوْصَى بِعِتْقِ رَقِيقٍ لَهُ لَا يَحْمِلُهُمْ الثُّلُثُ قُوِّمُوا ثُمَّ أُقْرِعَ بَيْنَهُمْ فَأُعْتِقَ مِنْهُمْ مَا حَمَلَهُ الثُّلُثُ وَرَقَّ سَائِرُهُمْ، وَيُرَقُّ بَاقِي مَنْ لَمْ يَحْمِلْ الثُّلُثُ جَمِيعَهُ.

L28633 Al-Shafi'i said: If someone bequeaths to free his slaves, and the third [of the estate] cannot cover them all, they are appraised. Then lots are drawn among them, and those whom the third can cover are freed, while the rest remain enslaved, including those whom the third, in its entirety, could not cover.

L28634 Abu Muhammad said: As for the statement of Imam al-Shafiʿi, he confined himself to the report of ʿImrān ibn al-Ḥuṣayn that we cited, omitting the report of al-istisʿāʾ. We have already mentioned the latter with its chain of transmission in the *Book of Manumission* within this compendium of ours. It is impermissible to disregard any of the firmly established sunnahs.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ الشَّافِعِيِّ - فَاقْتَصَرَ عَلَى خَبَرِ عِمْرَانَ بْنِ الْحُصَيْنِ الَّذِي ذَكَرْنَا وَتَرَكَ خَبَرَ الِاسْتِسْعَاءِ، وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِي " كِتَابِ الْعِتْقِ " مِنْ دِيوَانِنَا هَذَا وَلَا يَجُوزُ تَرْكُ شَيْءٍ مِنْ السُّنَنِ الثَّابِتَةِ.

L28635 As for Mālik's opinion, it contradicts all the established Sunnahs pertaining to this matter: he neither adopts the hadith of the lottery narrated by ʿImrān, nor adopts the hadiths of Abū Hurayrah and Ibn ʿUmar regarding the valuation imposed on one who manumits his co-owned portion of a slave, nor accepts that the testator is a partner with the heirs in the slave who was manumitted, nor [acknowledges] the istisʿāʾ (self-redemption through labor)—and this position is entirely impermissible.

وَأَمَّا قَوْلُ مَالِك - فَمُخَالِفٌ لِجَمِيعِ السُّنَنِ الْوَارِدَةِ فِي ذَلِكَ لَا بِحَدِيثِ الْقُرْعَةِ الَّذِي رَوَاهُ عِمْرَانُ أَخَذَ، وَلَا بِحَدِيثِ أَبِي هُرَيْرَةَ، وَابْنِ عُمَرَ، فِي التَّقْوِيمِ عَلَى مَنْ أَعْتَقَ شِرْكًا لَهُ فِي مَمْلُوكٍ أَخَذَ، وَالْمُوصِي شَرِيكٌ لِلْوَرَثَةِ فِي الْعَبْدِ الَّذِي أُعْتِقَ، وَفِي الِاسْتِسْعَاءِ - وَهَذَا لَا يَجُوزُ أَلْبَتَّةَ.

L28636 As for Abū Ḥanīfah, he confined himself to the ḥadīth of istisʿāʾ and opposed the report of ʿImrān ibn Ḥuṣayn—and it is impermissible to abandon any of the established Sunnahs.

وَأَمَّا أَبُو حَنِيفَةَ: فَاقْتَصَرَ عَلَى حَدِيثِ الِاسْتِسْعَاءِ وَخَالَفَ خَبَرَ عِمْرَانَ بْنِ الْحُصَيْنِ - وَلَا يَجُوزُ تَرْكُ شَيْءٍ مِنْ السُّنَنِ الثَّابِتَةِ.

L28637 They relied on invalid arguments to reject the report of ʿImrān ibn al-Ḥuṣayn, including their claim: "If the lottery had been applied as ʿAlī ruled in Yemen regarding the child claimed by three claimants—attaching him to the one whose share was determined—it would have been abrogated afterward, and the Muslims unanimously agreed to abandon it."

وَاعْتَلُّوا فِي رَدِّ خَبَرِ عِمْرَانَ بْنِ الْحُصَيْنِ بِأَشْيَاءَ فَاسِدَةٍ -: مِنْهَا أَنَّهُمْ قَالُوا: لَوْ كَانَتْ الْقُرْعَةُ تُسْتَعْمَلُ كَمَا قَضَى بِهَا عَلِيٌّ بِالْيَمَنِ فِي الْوَلَدِ الَّذِي ادَّعَاهُ ثَلَاثَةُ رِجَالٍ فَأَلْحَقَهُ بِالَّذِي خَرَجَ سَهْمُهُ عَلَيْهِ - ثُمَّ نُسِخَ ذَلِكَ، وَأَجْمَعَ الْمُسْلِمُونَ عَلَى تَرْكِهِ.

L28638–28640 Abu Muhammad said: "And indeed, they have lied; that was never abrogated. How could the Muslims be united in abandoning it?" Ali—may Allah be pleased with him—had issued this ruling in Yemen, and the Prophet—peace and blessings be upon him—approved and knew it, and died—peace and blessings be upon him—approximately three months later. So who is the one who abrogated that? May Allah's curse be upon every consensus that contradicts Ali ibn Abi Talib and the Companions in his presence.

قَالَ أَبُو مُحَمَّد: وَقَدْ كَذَبُوا، مَا نُسِخَ ذَلِكَ قَطُّ، وَكَيْفَ يُجْمِعُ الْمُسْلِمُونَ عَلَى تَرْكِهِ وَقَدْ قَضَى بِهِ عَلِيٌّ - رَضِيَ اللَّهُ عَنْهُ - بِالْيَمَنِ، وَأَقَرَّهُ النَّبِيُّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَعَلِمَهُ، وَمَاتَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إلَى نَحْوِ ثَلَاثَةِ أَشْهُرٍ؟ فَمَنْ ذَا الَّذِي نَسَخَ ذَلِكَ؟ وَلَعْنَةُ اللَّهِ عَلَى كُلِّ إجْمَاعٍ يَخْرُجُ عَنْهُ عَلِيُّ بْنُ أَبِي طَالِبٍ وَمَنْ بِحَضْرَتِهِ مِنْ الصَّحَابَةِ.

L28641 We did not find any rejection from any of the Companions—may Allah be pleased with them—nor from the Successors regarding ʿAlī's action in that matter and his ruling. Who then is more deceitful than the proponents of these claims? The full extent of astonishment lies in their opposition to ʿAlī's

وَمَا وَجَدْنَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا مِنْ التَّابِعِينَ إنْكَارًا لِفِعْلِ عَلِيٍّ فِي ذَلِكَ وَحُكْمِهِ، فَمَنْ أَكْذَبُ مِنْ أَصْحَابِ هَذِهِ الدَّعَاوَى؟ وَالْعَجَبُ كُلُّهُ فِي مُخَالَفَتِهِمْ

ruling—established through the knowledge of Allah's Messenger (peace and blessings be upon him), sound and verified—while they themselves adopt in this very issue a morally corrupt and invalid narration falsely attributed to ʿUmar (may Allah be pleased with him) concerning the attribution of a child to two parents—a practice invalidated by the Quran, the Sunnah, and rational judgment.

حُكْمَ عَلِيٍّ بِعِلْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ ثَابِتٌ صَحِيحٌ وَأَخْذُهُمْ فِي الْمَسْأَلَةِ نَفْسِهَا بِرِوَايَةٍ فَاسِدَةٍ لَا تَصِحُّ، نُسِبَتْ إلَى عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - مِنْ إلْحَاقِهِ الْوَلَدَ بِأَبَوَيْنِ - وَالْقُرْآنُ وَالسُّنَّةُ وَالْمَعْقُولُ يُبْطِلُ ذَلِكَ.

L28642 They said: Indeed, whoever adopts the report of ʿImrān ibn al-Ḥuṣayn concerning the lottery has contradicted him regarding one who initiates manumission by freeing the first [slave] each time in his will. So they have lied. We did not contradict ʿImrān's report, for his report does not mention that he began by specifying their names individually in the will. Rather, its wording establishes that his manumission of them through the will applies collectively as a single act? Thus, we did not transgress the wording of the report to include what is absent from it.

وَقَالُوا: إنَّ مَنْ أَخَذَ بِحَدِيثِ عِمْرَانَ بْنِ الْحُصَيْنِ فِي الْقُرْعَةِ قَدْ خَالَفَهُ فِيمَنْ بَدَأَ بِعِتْقِ الْأَوَّلِ فَالْأَوَّلِ فِي وَصِيَّتِهِ، فَكَذَبُوا، مَا خَالَفْنَا خَبَرَ عِمْرَانَ لِأَنَّهُ لَيْسَ فِي خَبَرِ عِمْرَانَ: أَنَّهُ بَدَأَ بِالْوَصِيَّةِ بِأَسْمَائِهِمْ اسْمًا اسْمًا، وَإِنَّمَا لَفْظُهُ أَنَّهُ يَقْتَضِي عِتْقَهُ لَهُمْ بِالْوَصِيَّةِ جُمْلَةً وَاحِدَةً؟ فَلَمْ نَتَعَدَّ لَفْظَ الْخَبَرِ إلَى مَا لَيْسَ فِيهِ.

L28643 They said: We found the narration of Imrān ibn al-Ḥuṣayn inconsistent. At times, Abū Qilābah narrated it from Abū al-Muhallab from Imrān, and at other times he narrated from Abū Zayd that there was a man from the Anṣār? Abū Muḥammad retorted: "So what? None would resort to this excuse except one lacking in shame." Abū Qilābah narrated it from Abū Zayd - who is unknown [majhul status] - thus it cannot be used as evidence.

وَقَالُوا: وَجَدْنَا حَدِيثَ عِمْرَانَ بْنِ الْحُصَيْنِ مُضْطَرِبًا فِيهِ، فَمَرَّةً رَوَاهُ أَبُو قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ عَنْ عِمْرَانَ، وَمَرَّةً رَوَاهُ عَنْ أَبِي زَيْدٍ: أَنَّ رَجُلًا مِنْ الْأَنْصَارِ؟ قَالَ أَبُو مُحَمَّد: فَكَانَ مَاذَا؟ وَمَا يَتَعَلَّلُ بِهَذَا إلَّا قَلِيلُ الْحَيَاءِ -: رَوَاهُ أَبُو قِلَابَةَ عَنْ أَبِي زَيْدٍ - وَهُوَ مَجْهُولٌ - فَلَمْ يَحْتَجَّ بِهِ.

L28644 And it was narrated from Abu al-Muhallab from Imran ibn al-Husayn, where it was provided with an *isnād* and authenticated, so we acted upon it.

وَرَوَاهُ عَنْ أَبِي الْمُهَلَّبِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ فَأُسْنِدَ وَثَبَتَ، فَأَخَذْنَا بِهِ.

L28645 Any irregularity in a scholar's narration of a single report transmitted via ten chains—some authentic and others defective—[must be evaluated]. For every report on earth is relayed by both reliable and unreliable narrators. Thus, the reliable transmission is accepted, and the rest are discarded.

وَأَيُّ نَكِرَةٍ فِي رِوَايَةِ رَجُلٍ مِنْ أَهْلِ الْعِلْمِ خَبَرًا وَاحِدًا مِنْ عَشْرِ طُرُقٍ، مِنْهَا صَحِيحٌ وَمِنْهَا مَدْخُولٌ، وَكُلُّ خَبَرٍ فِي الْأَرْضِ فَإِنَّهُ يَنْقُلُهُ الثِّقَةُ وَغَيْرُ الثِّقَةِ، فَيُؤْخَذُ نَقْلُ الثِّقَةِ وَيُتْرَكُ مَا عَدَاهُ.

L28646 They said: We found that one who emancipates his slaves through a will had ownership over a third of all of them. Since this is established, a third of each individual among them has been rightfully emancipated. Therefore, is it not permissible for those who have been emancipated to be re-enslaved?

وَقَالُوا: وَجَدْنَا مُعْتِقَ عَبِيدِهِ بِالْوَصِيَّةِ قَدْ كَانَ مَالِكًا لِثُلُثِ جَمِيعِهِمْ، وَإِذْ ذَلِكَ كَذَلِكَ فَقَدْ عَتَقَ ثُلُثُ كُلِّ وَاحِدٍ مِنْهُمْ بِالْحَقِّ، فَلَا يَجُوزُ أَنْ يُرَقَّ مَنْ وَقَعَ عَلَيْهِ الْعِتْقُ؟

فَقُلْنَا: صَدَقْتُمْ إِلَّا أَنَّ هَذَا الْمُوصِيَ بِعِتْقِ جَمِيعِهِمْ، لَمْ يُعْتِقْ قَطُّ ثُلُثَ كُلِّ وَاحِدٍ مِنْهُمْ، إِنَّمَا أَعْتَقَهُمْ جُمْلَةً، فَكَانَ فِعْلُهُ ذَلِكَ جَامِعًا لِبَاطِلٍ وَحَقٍّ، فَلَمْ يُمْكِنْ إِنْفَاذُ ذَلِكَ وَمَعْرِفَتُهُ إِلَّا بِالْقُرْعَةِ، وَمَا وَقَعَ الْعِتْقُ قَطُّ عَلَى جَمِيعِهِمْ، لَكِنْ عَلَى بَعْضِهِمْ دُونَ بَعْضٍ، فَلَمْ يَكُنْ بُدٌّ مِنْ الْقُرْعَةِ فِي تَمْيِيزِ ذَلِكَ.

L28647–28648 We said: You are correct, except that this testator who stipulated the emancipation of all his slaves did not allocate a third [of his estate] for each individual's emancipation. Rather, he emancipated them collectively. Thus, his action conflated invalid and valid elements, making it impossible to implement or determine [validity] except through drawing lots. Emancipation never applied to all of them, but only to some to the exclusion of others. Therefore, there was no recourse but to draw lots in distinguishing this matter.

وَنَسْأَلُهُمْ هَاهُنَا: عَمَّنْ أَوْصَى بِجَمِيعِ غَنَمِهِ، وَلَا مَالَ لَهُ غَيْرُهَا، أَوْ بِجَمِيعِ خَيْلِهِ وَلَا مَالَ لَهُ غَيْرُهَا، أَوْ بِجَمِيعِ عَبِيدِهِ فِي أَهْلِ الْجِهَادِ فِي الثُّغُورِ وَلَا مَالَ لَهُ غَيْرُهُمْ، أَيُنَفِّذُونَ ذَلِكَ بِرَغْمِ الْوَرَثَةِ فَيَنْسَلِخُوا عَنْ الْإِسْلَامِ؟ أَمْ يُبْطِلُونَ وَصِيَّتَهُ فَيَفْسُقُوا؟ أَمْ يَقْسِمُونَ الثُّلُثَ لِلْوَصِيَّةِ وَالثُّلُثَيْنِ لِوَرَثَتِهِ بِالْقُرْعَةِ؟ وَهَذَا الَّذِي أَنْكَرُوا.

L28649 We ask them here: concerning one who bequeaths all his sheep while having no other wealth besides them, or all his horses with no other property apart from these, or all his slaves among those engaged in jihad in the frontier regions possessing no assets beyond them—would the executors enforce this against the heirs' wishes, thereby causing them to strip themselves of Islam? Or would they invalidate his will, thus becoming sinful? Or would they allocate one-third to the bequest through drawing lots [qurʿa] while granting two-thirds to his heirs? Yet this is what they rejected.

وَقَالُوا: لَمَّا تَسَاوَوْا كُلُّهُمْ فِي السَّبَبِ الْمُوجِبِ لِلْعِتْقِ دُونَ تَفَاضُلٍ لَمْ يَجُزْ أَنْ يُحَابِيَ بِإِنْفَاذِهِ بَعْضَهُمْ دُونَ بَعْضٍ؟ فَقُلْنَا: كَذَبْتُمْ مَا اسْتَوَوْا قَطُّ فِي السَّبَبِ الْمُوجِبِ لِلْعِتْقِ؛ لِأَنَّ ذَلِكَ السَّبَبَ هُوَ الْوَصِيَّةُ بِعِتْقِهِمْ، وَقَدْ وَقَعَتْ فِي بَعْضِهِمْ بِحَقٍّ وَجَبَ تَنْفِيذُهُ، وَفِي بَعْضِهِمْ بِحَرَامٍ لَا يَحِلُّ تَنْفِيذُهُ - وَهُوَ مَا زَادَ عَلَى الثُّلُثِ - فَلَمْ يَكُنْ بُدٌّ فِي تَمْيِيزِ ذَلِكَ مِنْ الْقُرْعَةِ.

L28650 They said: Since they all equally share the cause necessitating manumission without distinction, how can it be permissible to favor some over others in executing it? We replied: You have lied! They were never equal in the cause necessitating manumission, for that cause is the testamentary will to free them. The will rightfully applies to some, mandating its execution, and unlawfully to others—specifically the portion exceeding one-third of the estate—which cannot lawfully be executed. Thus, there was no alternative but to distinguish between them through casting lots.

وَقَالُوا: يُحْتَمَلُ أَنْ يَكُونَ قَوْلُ عِمْرَانَ «فَأَعْتَقَ اثْنَيْنِ» أَيْ شَائِعَيْنِ فِي الْجَمِيعِ، كَمَا يَقُولُ «فِي كُلِّ أَرْبَعِينَ شَاةً شَاةٌ» يَعْنِي شَائِعَةً فِي الْجَمِيعِ - وَذَكَرُوا أَخْبَارًا لَا تَصِحُّ فِيهَا - فَأَعْتَقَ الثُّلُثَ؟ فَقُلْنَا: جَمَعْتُمْ فِي هَذَا الْكَذِبَ وَالْمُجَاهَرَةَ بِهِ؛ لِأَنَّ فِي حَدِيثِ عِمْرَانَ «وَأَرَقَّ

L28651 They said: It is plausible that ʿImrān's statement "so he freed two" refers to two shared among all, just as one says "for every forty sheep, one sheep" meaning one distributed among all. They cited unreliable reports in this matter—so did he free a third? We responded: You have combined falsehood and bold assertion in this, for ʿImrān's ḥadīth states "and he freed four," thereby invalidating what you sought to insert into the report. Never has the sheep been distributed among the forty; rather, it is one unspecified in

identity. Whichever ones he gives from what fulfills the obligation, he has discharged his duty.

أَرْبَعَةً» فَبَطَلَ مَا رُمْتُمْ إِلْحَامَهُ فِي الْخَبَرِ - وَمَا كَانَتْ الشَّاةُ قَطُّ شَائِعَةً فِي الْأَرْبَعِينَ، بَلْ وَاحِدَةٌ بِغَيْرِ عَيْنِهَا، أَيُّهَا أَعْطَى مِمَّا فِيهِ وَفَاءٌ: فَقَدْ أَدَّى مَا عَلَيْهِ.

L28652 They said: This is a ruling from the Prophet - peace and blessings of Allah be upon him - and not a general term encompassing what falls under it? We respond: Why do you not say this to yourselves when you deem the sermon obligatory in Friday prayer - though it is an action, not a general term - and when you permit ablution with nabidh based on a fabricated report, which is furthermore an action and not a general term? Their statement can only imply attributing restriction to the Prophet - peace and blessings of Allah be upon him and his family - and this is sheer disbelief.

وَقَالُوا: هَذَا قَضَاءٌ مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَيْسَ عُمُومَ اسْمٍ يَتَنَاوَلُ مَا تَحْتَهُ؟ فَنَقُولُ لَهُمْ: هَلَّا قُلْتُمْ هَذَا لِأَنْفُسِكُمْ إذْ جَعَلْتُمْ الْخُطْبَةَ فَرْضًا فِي الْجُمُعَةِ - وَهُوَ فِعْلٌ لَا عُمُومُ اسْمٍ - وَإِذْ قَضَيْتُمْ بِجَوَازِ الْوُضُوءِ بِالنَّبِيذِ فِي خَبَرٍ مَكْذُوبٍ ثُمَّ هُوَ فِعْلٌ وَلَيْسَ عُمُومَ اسْمٍ - لَا يَحْتَمِلُ قَوْلُهُمْ هَذَا إلَّا تَجْوِيرَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهَذَا كُفْرٌ مُجَرَّدٌ.

L28653 And they said, “Is this from the category of gambling and games of chance?”

وَقَالُوا: هَذَا مِنْ بَابِ الْقِمَارِ، وَالْمَيْسِرِ؟

L28654–28655 Abu Muhammad said: This is sheer, manifest disbelief. Whoever attributes to the Prophet—peace and blessings be upon him—that he judged by gambling and games of chance, we disavow him. Is this not sufficient? Allah the Exalted said: *“But no, by your Lord, they will not believe until they make you judge in what disputes arise between them, then find no uneasiness in their hearts regarding your verdict, and surrender in full submission”* [al-Nisā’ 4:65]. We have made him—peace and blessings be upon him—the judge in what arises between us, then found no uneasiness in our hearts regarding his decree, and surrendered in full submission. But they did not make him judge in what arose among them, then found uneasiness in their hearts regarding his decree, and did not surrender in submission—destruction upon them and banishment![12]

قَالَ أَبُو مُحَمَّد: وَهَذَا كُفْرٌ مَكْشُوفٌ مُجَرَّدٌ مَنْ نَسَبَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ حَكَمَ بِالْقِمَارِ، وَالْمَيْسِرِ، وَنَحْنُ بَرَاءٌ مِنْهُ وَكَفَى؟ قَالَ اللَّهُ تَعَالَى: {فَلا وَرَبِّكَ لا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا} [النساء: ٦٥] فَنَحْنُ حَكَّمْنَاهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِيمَا شَجَرَ بَيْنَنَا، ثُمَّ لَمْ نَجِدْ فِي أَنْفُسِنَا حَرَجًا مِمَّا قَضَى وَسَلَّمْنَا تَسْلِيمًا، وَهُمْ لَمْ يُحَكِّمُوهُ فِيمَا شَجَرَ بَيْنَهُمْ، ثُمَّ وَجَدُوا فِي أَنْفُسِهِمْ الْحَرَجَ مِمَّا قَضَى، وَلَمْ يُسَلِّمُوا تَسْلِيمًا - فَتَبًّا لَهُمْ وَسُحْقًا.

L28656 They said: “This is from Aḥādīth, and it is not permissible to use them to challenge the *Usūl*?” We replied: “This is more untenable than what you have presented. We know of no foundational principles in the religion except the Quran and its elucidation: that which has been authentically established from the Prophet, peace be upon him, whether through a trustworthy

وَقَالُوا: هَذَا مِنْ أَخْبَارِ الْآحَادِ، وَلَا يَجُوزُ أَنْ يُعْتَرَضَ بِهِ عَلَى الْأُصُولِ؟ فَقُلْنَا: هَذَا أَبْرَدُ مِمَّا أَتَيْتُمْ بِهِ، وَمَا عَلِمْنَا فِي الدِّينِ أُصُولًا إلَّا الْقُرْآنَ وَبَيَانَهُ، مِمَّا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَوَاءٌ بِنَقْلِ ثِقَةٍ عَنْ مِثْلِهِ مُسْنَدًا، أَوْ بِنَقْلِ تَوَاتُرٍ - وَأَمَّا فَرْقُكُمْ فَضَلَالٌ وَدَعْوَى كَاذِبَةٌ، وَإِفْكٌ مُطَّرَحٌ {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١]

[12] **Qur’an references (L28655):** Qur’an 4:65 (An-Nisa).

narration from one like him in a connected chain, or through *mutawātir* transmission. As for your distinction, it is misguidance, a false claim, and a rejected falsehood. *Say, 'Produce your proof, if you should be truthful'*" [Al-Baqarah 2:111].[13]

فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L28657 Thus, all that they have camouflaged with it is nullified—and praise be to Allah, Lord of the worlds.

١٧٧١ - مَسْأَلَةٌ: وَمَنْ أَوْصَى بِعِتْقِ مَمْلُوكٍ لَهُ أَوْ مَمَالِيكَ، وَعَلَيْهِ دَيْنٌ لِلَّهِ تَعَالَى أَوْ لِلنَّاسِ، فَإِنْ كَانَ ذَلِكَ الدَّيْنُ مُحِيطًا بِمَالِهِ كُلِّهِ: بَطَلَ كُلُّ مَا أَوْصَى بِهِ مِنْ الْعِتْقِ جُمْلَةً، وَبِيعُوا فِي الدَّيْنِ.

L28658 1771 - Issue: If a person bequeaths the manumission of a slave he owns or multiple slaves, and he owes a debt to God Almighty or to others, then if that debt encompasses his entire wealth, all the manumission he bequeathed is completely invalidated, and the slaves are to be sold to settle the debt.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى فِي الْمَوَارِيثِ: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] وَحَكَمَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّ الْوَصِيَّةَ لَا تَجُوزُ فِي أَكْثَرَ مِنْ الثُّلُثِ فِيمَا يُخَلِّفُهُ الْمُوصِي، وَأَنَّ لِلْوَرَثَةِ الثُّلُثَيْنِ، أَوْ مَا فَضَلَ عَنْ الْوَصِيَّةِ إنْ كَانَتْ أَقَلَّ مِنْ الثُّلُثِ.

L28659 The proof of this is Allah the Exalted's statement concerning inheritance: {After any bequest he bequeaths or debt} [An-Nisā' 4:11]. Allah the Exalted has decreed through His Messenger—upon him be peace and blessings—that a bequest may not exceed one-third of what the testator leaves behind, and that the heirs are entitled to two-thirds [if the bequest equals one-third] or to what remains after fulfilling the bequest, should it amount to less than one-third.[14]

فَصَحَّ ضَرُورَةً: أَنَّ الْوَصِيَّةَ لَا تَكُونُ إلَّا بَعْدَ أَدَاءِ الدَّيْنِ وَاجِبًا لِلْغُرَمَاءِ - فَصَحَّ أَنَّ مَنْ أَحَاطَ الدَّيْنُ بِجَمِيعِ مَا تَرَكَ، فَإِنَّهُ لَمْ يَتْخَلَّفْ مَا لَا يُوصِي فِيهِ، وَأَنَّ مَا تَخَلَّفَهُ انْتَقَلَ إلَى مِلْكِ الْغُرَمَاءِ إثْرَ مَوْتِهِ بِلَا فَصْلٍ، وَلَيْسَ لِأَحَدٍ أَنْ يُوصِيَ فِي مَالِ غَيْرِهِ: فَبَطَلَتْ الْوَصِيَّةُ لِذَلِكَ.

L28660 Thus, it is necessarily confirmed that a will cannot take effect except after the payment of debts as an obligation to creditors. Therefore, it is confirmed that if debt envelops all that one leaves behind, nothing remains in which one cannot make a bequest, and whatever remains transfers to the ownership of the creditors immediately after death without delay. And no one has the right to bequeath in another's property: thus, the will is invalidated for this reason.

وَهَذَا قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L28661 This is the opinion of Mālik, al-Shāfiʿī, Abū Sulaymān, and their companions.

وَقَالَ أَبُو حَنِيفَةَ: يَسْعَى فِي قِيمَتِهِ لِلْغُرَمَاءِ وَيَعْتِقُ - وَهَذَا بَاطِلٌ لِمَا ذَكَرْنَا.

L28662 Abu Hanifah said: He must work to pay its value to the creditors and the slave is freed - and this is invalid due to what we have mentioned.

L28663–28664 They attempted to obscure their argument by citing a report containing no

[13] **Qur'an references (L28656):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).
[14] **Qur'an references (L28659):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

mention of the will. The report merely states that a man - while indebted and possessing no property other than his slave - manumitted a slave near his death, whereupon the Prophet (peace and blessings of Allah be upon him) ordered that the slave work to pay the slave's value. Even if this report were authentic, it would provide no valid evidence for their claim whatsoever, for it does not address the ruling on wills. Rather, it addresses the ruling concerning one who manumits during his lifetime close to his death.

L28665 If they say: "The matter is equal in both cases?" We respond: This is invalid because it is analogical reasoning, and all such reasoning is invalid. Moreover, even if analogical reasoning were valid, this instance would constitute the very essence of invalidity, for there exists an underlying cause connecting bequests and the actions of the living - as we shall mention hereafter, if Allah the Exalted wills. How could this be acceptable when it is a fabricated narration that is unsound? It has been narrated to us through the chain of Sa'īd ibn Manṣūr - narrated to us Hushaym, who said: Ḥajjāj (that is, Ibn Arṭā'ah) - from al-'Alā' ibn Badr - from Abū Yaḥyā al-Makkī: that the Messenger of Allah - peace and blessings be upon him - : This narration contains four defects - one of which suffices:

L28666 The first is that it is a mursal ḥadīth, and a mursal ḥadīth cannot serve as valid evidence.

L28667 The second is reported through Al-Ḥajjāj ibn Arṭā'ah, who is discarded.

L28668 And the third report: from al-'Alā' ibn Badr, who is heretical and abandoned.

L28669 And the fourth of them: that it is narrated from Abū Yaḥyā al-Makkī, who is unknown.

L28670 It is not permissible to adopt in the religion of Allah, the Exalted, that which bears such a description.

L28671 Abu Muhammad said: If one bequeaths the emancipation of a slave or slaves they own while owing a debt exceeding their estate, and a surplus from the slave's value remains beyond the debt—even if minimal—the designated slave(s) shall be emancipated. The emancipated slave must labor to repay the

وَمَوَّهُوا فِي الِاحْتِجَاجِ بِخَبَرٍ لَيْسَ فِيهِ لِلْوَصِيَّةِ ذِكْرٌ، وَإِنَّمَا فِيهِ «أَنَّ رَجُلًا أَعْتَقَ عِنْدَ مَوْتِهِ عَبْدًا وَعَلَيْهِ دَيْنٌ وَلَيْسَ لَهُ مَالٌ غَيْرُهُ فَأَمَرَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَسْعَى فِي قِيمَتِهِ» وَهَذَا خَبَرٌ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ أَصْلًا؛ لِأَنَّهُ لَيْسَ فِيهِ: حُكْمُ الْوَصِيَّةِ، إنَّمَا فِيهِ حُكْمُ مَنْ أَعْتَقَ فِي حَيَاتِهِ عِنْدَ مَوْتِهِ.

فَإِنْ قَالُوا: الْأَمْرُ سَوَاءٌ فِي كِلَا الْأَمْرَيْنِ؟ قُلْنَا: هَذَا بَاطِلٌ لِأَنَّهُ قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّ بَيْنَ الْوَصِيَّةِ وَبَيْنَ فِعْلِ الْحَيِّ عِلَّةً تَجْمَعُ بَيْنَهُمَا - عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى - فَكَيْفَ وَهُوَ خَبَرٌ مَكْذُوبٌ لَا يَصِحُّ -: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا حَجَّاجٌ - هُوَ ابْنُ أَرْطَاةَ - عَنْ الْعَلَاءِ بْنِ بَدْرٍ عَنْ أَبِي يَحْيَى الْمَكِّيِّ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: وَهَذَا فِيهِ أَرْبَعُ فَضَائِحَ -: إحْدَاهَا يَكْفِي -:

أَوَّلُهَا: أَنَّهُ مُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ.

وَثَانِيهَا: أَنَّهُ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ وَهُوَ مُطْرَحٌ.

وَثَالِثُهَا: عَنْ الْعَلَاءِ بْنِ بَدْرٍ وَهُوَ هَالِكٌ مَتْرُوكٌ.

وَرَابِعُهَا: أَنَّهُ عَنْ أَبِي يَحْيَى الْمَكِّيِّ وَهُوَ مَجْهُولٌ.

وَلَا يَحِلُّ الْأَخْذُ فِي دِينِ اللَّهِ تَعَالَى بِمَا هَذِهِ صِفَتُهُ.

creditors. Thereafter, one-third of the slave's remaining value is emancipated without requiring labor, and the slave must labor to fulfill the heirs' right.

قَالَ أَبُو مُحَمَّدٍ: فَلَوْ أَوْصَى بِعِتْقِ مَمْلُوكٍ لَهُ أَوْ مَمَالِيكَ - وَعَلَيْهِ دَيْنٌ لَا يُحِيطُ بِمَا تَرَكَ - وَكَانَ يَفْضُلُ مِنْ الْمَمْلُوكِ فَضْلَةٌ عَنْ الدَّيْنِ - وَإِنْ قَلَّتْ - أُعْتِقَ مَنْ أَوْصَى بِعِتْقِهِ، وَيَسْعَى لِلْغُرَمَاءِ فِي دَيْنِهِمْ، ثُمَّ عَتَقَ مِنْهُ ثُلُثُ مَا بَقِيَ بِلَا اسْتِسْعَاءٍ وَاسْتَسْعَى لِلْوَرَثَةِ فِي حَقِّهِمْ.

L28672 The proof of that is: The Messenger of Allah—may Allah bless him and grant him peace—commanded the enforcement of emancipation for one who manumits his share in a slave, and that the emancipated slave must labor to compensate the emancipator's co-owner. This slave whose emancipation is bequeathed (as an obligation for the testator)—in whom the testator holds a right, and whom the creditors and heirs co-own—is emancipated but must labor to pay off their shares.

بُرْهَانُ ذَلِكَ -: أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِإِنْفَاذِ عِتْقِ مَنْ أَعْتَقَ شِرْكًا لَهُ فِي مَمْلُوكٍ، وَأَنْ يَسْتَسْعِيَ الْمَمْلُوكُ الْمُعْتَقُ لِشَرِيكِ مُعْتِقِهِ، وَهَذَا الْمُوصَى بِعِتْقِهِ لِلْمُوصِي فِيهِ حَقٌّ - وَقَدْ شَرِكَهُ الْغُرَمَاءُ وَالْوَرَثَةُ - فَيُعْتَقُ وَيَسْعَى.

L28673–28674 If there are multiple [enslaved individuals], lots are drawn among them. Whoever is selected for the debt remains enslaved, and whoever is selected for the bequest is freed, while the rest remain enslaved—unless an emancipation process is initiated for an enslaved person, in which case the remaining part of their emancipation is completed through working to earn manumission, as detailed in the preceding case.

فَإِنْ كَانُوا أَكْثَرَ مِنْ وَاحِدٍ أُقْرِعَ بَيْنَهُمْ، فَمَنْ خَرَجَ لِلدَّيْنِ رَقَّ، وَمَنْ خَرَجَ لِلْوَصِيَّةِ عَتَقَ، وَرَقَّ الْبَاقُونَ، إلَّا أَنْ يَشْرَعَ بَيْنَهُمْ لِلْعِتْقِ فِي مَمْلُوكٍ فَيُعْتَقَ مَا بَقِيَ مِنْهُ بِالِاسْتِسْعَاءِ لِمَا ذَكَرْنَا فِي الْمَسْأَلَةِ الَّتِي قَبْلَ هَذِهِ.

L28675 And by Allah, the Exalted, is all success.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28676 The Book of Bequests has been completed. All praise is due to Allah, Lord of the worlds, and may Allah send blessings upon Muhammad and his family.

تَمَّ " كِتَابُ الْوَصَايَا " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ

AL-MUHALLA

كِتَابُ فِعْلِ الْمَرِيضِ أَوْ الْمَوْقُوفِ لِلْقَتْلِ أَوْ الْحَامِلِ أَوْ الْمُسَافِرِ فِي أَمْوَالِهِمْ

The Book of Disposals of Property in Illness and Other Special Circumstances

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ فِعْلِ الْمَرِيضِ أَوْ الْمَوْقُوفِ لِلْقَتْلِ أَوْ الْحَامِلِ أَوْ الْمُسَافِرِ فِي أَمْوَالِهِمْ]

The Book of the Acts of the Sick, Those Detained for Execution, Pregnant Women, or Travelers Regarding Their Wealth.

كِتَابُ فِعْلِ الْمَرِيضِ مَرَضًا يَمُوتُ مِنْهُ أَوْ الْمَوْقُوفِ لِلْقَتْلِ، أَوْ الْحَامِلِ، أَوْ الْمُسَافِرِ فِي أَمْوَالِهِمْ ١٧٧٢ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: كُلُّ مَنْ ذَكَرْنَا فَكُلُّ مَا أَنْفَذُوا فِي أَمْوَالِهِمْ مِنْ هِبَةٍ أَوْ صَدَقَةٍ أَوْ مُحَابَاةٍ فِي بَيْعٍ أَوْ هَدِيَّةٍ - أَوْ إقْرَارٍ: كَانَ كُلُّ ذَلِكَ لِوَارِثٍ، أَوْ لِغَيْرِ وَارِثٍ، أَوْ إقْرَارٍ بِوَارِثٍ، أَوْ عِتْقٍ - أَوْ قَضَاءِ بَعْضِ غُرَمَائِهِ دُونَ بَعْضٍ - كَانَ عَلَيْهِمْ دَيْنٌ أَوْ لَمْ يَكُنْ - فَكُلُّهُ نَافِذٌ مِنْ رُءُوسِ أَمْوَالِهِمْ، كَمَا قَدَّمْنَا فِي الْأَصِحَّاءِ الْآمِنِينَ الْمُقِيمِينَ، وَلَا فَرْقَ فِي شَيْءٍ أَصْلًا، وَوَصَايَاهُمْ كَوَصَايَا الْأَصِحَّاءِ وَلَا فَرْقَ.

L28679 The Book on the Actions of a Terminally Ill Person, One Condemned to Execution, a Pregnant Woman, or a Traveler Regarding Their Assets 1772 - An Issue: Abu Muhammad said: All those we have mentioned - whatever they dispose of concerning their assets, whether a formal gift (hiba), charity, a preferential sale, a casual gift (hadiyya), an acknowledgment (whether in favor of an heir, a non-heir, or acknowledgment of an heir), manumission, or settling some debts to the exclusion of others - whether they had debts or not - all such actions are valid from their principal assets, as we previously established for healthy, unthreatened, and resident individuals. There is absolutely no distinction in any matter whatsoever. Their wills are treated like those of sound individuals, with no difference.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] وَحَضُّهُ عَلَى الصَّدَقَةِ وَإِحْلَالُهُ الْبَيْعَ وَقَوْله تَعَالَى: {وَلا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ} [البقرة: ٢٣٧] وَلَمْ يَخُصَّ عَزَّ وَجَلَّ صَحِيحًا مِنْ مَرِيضٍ، وَلَا حَامِلًا مِنْ حَائِلٍ، وَلَا آمِنًا مِنْ خَائِفٍ، وَلَا مُقِيمًا مِنْ مُسَافِرٍ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L28680 The evidence for that is: the statement of Allah, the Exalted: "And do good" [Al-Hajj: 77], His encouragement toward charity, His making trade lawful, and His saying, the Exalted: "And do not neglect bounty among yourselves" [Al-Baqarah: 237]. He, the Almighty and Majestic, has not distinguished between the healthy and the sick, the pregnant and the barren, the secure and the fearful, nor the resident and the traveler: "And your Lord is never forgetful" [Maryam: 64].[1]

وَلَوْ أَرَادَ اللَّهُ تَعَالَى تَخْصِيصَ شَيْءٍ مِنْ ذَلِكَ لَبَيَّنَهُ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَإِذْ لَمْ يَفْعَلْ فَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ الصَّادِقَةِ: إنَّهُ تَعَالَى مَا أَرَادَ قَطُّ تَخْصِيصَ أَحَدٍ مِمَّنْ ذَكَرْنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L28681 Had Allah the Exalted intended to specify anything from that, He would have clarified it through the speech of His Messenger—peace and blessings be upon him. Since He did not do so, we bear witness by Allah's truthful testimony—the Almighty and Majestic: Indeed, He, the Exalted, never intended to specify any of those we have mentioned—and all praise is due to Allah, Lord of the worlds.

وَقَدْ اخْتَلَفَ النَّاسُ فِي ذَلِكَ - فَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّ أَبَا بَكْرٍ نَحَلَهَا جَادَ عِشْرِينَ وَسْقًا مِنْ مَالِهِ بِالْغَابَةِ، فَلَمَّا حَضَرَتْهُ

L28682 People have differed regarding that matter. It has been narrated to us through the chain of Mālik, from al-Zuhrī, from ʿUrwah, from ʿĀ'ishah, the

[1] **Qur'an references (L28680):** Qur'an 2:237 (Al-Baqarah); Qur'an 19:64 (Maryam); Qur'an 22:77 (Al-Hajj).

Mother of the Believers, that Abū Bakr gifted her twenty wasqs from his property at al-Ghābah as a legal grant. When death approached him, he said to her: “I had gifted you twenty wasqs from my property at al-Ghābah as a legal grant. If you had formally established possession of it and taken control of it, it would have been yours. But today, it is the heir’s property. Divide it in accordance with the Book of Allah, the Most High.”

الْوَفَاةُ قَالَ لَهَا: إِنِّي كُنْت نَحَلْتُك جَادَ عِشْرِينَ وَسْقًا مِنْ مَالِي بِالْغَابَةِ، فَلَوْ كُنْت جَدَدْتِيهِ وَحُزْتِيهِ كَانَ لَك، وَإِنَّمَا هُوَ الْيَوْمَ مَالُ الْوَارِثِ، فَاقْتَسِمُوهُ عَلَى كِتَابِ اللَّهِ تَعَالَى.

L28683–28684 Via the chain of Ibn Abī Shaybah: Wakīʿ narrated to us from Hishām al-Dastawā’ī, from Qatādah, from al-Ḥasan, from Ibn Masʿūd, regarding one who frees a slave during his deathbed illness when he owns no other property except the slave: “One-third of the slave is to be emancipated.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ ابْنِ مَسْعُودٍ فِيمَنْ أَعْتَقَ عَبْدًا فِي مَرَضِ مَوْتِهِ لَيْسَ لَهُ مَالٌ غَيْرُهُ قَالَ: يُعْتَقُ ثُلُثُهُ

L28685 And through him to Ibn Abi Shaybah: Hafs reported to us from Hajjaj - he is Ibn Artah - from al-Qasim ibn Abd al-Rahman ibn Abd Allah ibn Mas’ud, who said: A woman freed a slave girl when the woman had no property other than the slave girl. Ibn Mas’ud said: She is to work to compensate for her value.

- وَبِهِ إلَى ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ عَنْ حَجَّاجٍ - هُوَ ابْنُ أَرْطَاةَ - عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: أَعْتَقَتْ امْرَأَةٌ جَارِيَةً لَيْسَ لَهَا مَالٌ غَيْرُهَا، فَقَالَ ابْنُ مَسْعُودٍ: تَسْعَى فِي ثَمَنِهَا.

L28686 And through the narration of Abd al-Razzaq from Ma’mar from Abd al-Rahman ibn Abdullah from al-Qasim ibn Abd al-Rahman, he said: A man bought a female slave during his illness and manumitted her at his death. The sellers came to claim her purchase price but found no property. They brought the case to Ibn Mas’ud, who told her: “Strive to earn your purchase price.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: اشْتَرَى رَجُلٌ جَارِيَةً فِي مَرَضِهِ فَأَعْتَقَهَا عِنْدَ مَوْتِهِ، فَجَاءَ الَّذِينَ بَاعُوهَا يَطْلُبُونَ ثَمَنَهَا، فَلَمْ يَجِدُوا لَهَا مَالًا، فَرَفَعُوا ذَلِكَ إلَى ابْنِ مَسْعُودٍ فَقَالَ لَهَا: اسْعَيْ فِي ثَمَنِك.

L28687 From the narration of Ibn Abi Shaybah, Hafs narrated to us from Hajjaj ibn Arta’ah from Qatadah from Al-Hasan who said: Ali was asked about a man who freed his slave upon his death while he had no property other than the slave and had debt. He replied: The slave is freed and is obligated to work to pay the value [to the creditors].

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ عَنْ حَجَّاجِ بْنِ أَرْطَاةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ قَالَ: سُئِلَ عَلِيٌّ عَمَّنْ أَعْتَقَ عَبْدًا لَهُ عِنْدَ مَوْتِهِ وَلَيْسَ لَهُ مَالٌ غَيْرُهُ وَعَلَيْهِ دَيْنٌ؟ قَالَ: يُعْتَقُ وَيَسْعَى فِي الْقِيمَةِ.

L28688 As for those after them, it is authentically transmitted from Qatādah that if a person who owes debt and owns no other property emancipates his slave at death, the slave becomes free and must labor to pay his value. If no debt exists, the slave is compelled to work off two-thirds of his value. This ruling is likewise established through Ibrāhīm.

وَأَمَّا مَنْ بَعْدَهُمْ فَصَحَّ عَنْ قَتَادَةَ أَنَّ مَنْ أَعْتَقَ مَمْلُوكًا لَهُ عِنْدَ مَوْتِهِ لَيْسَ لَهُ غَيْرُهُ، وَعَلَيْهِ دَيْنٌ، فَإِنَّهُ حُرٌّ وَيَسْعَى فِي ثَمَنِهِ، فَإِنْ لَمْ يَكُنْ عَلَيْهِ دَيْنٌ اسْتَسْعَى فِي ثُلُثَيْ ثَمَنِهِ - وَصَحَّ هَذَا أَيْضًا عَنْ إبْرَاهِيمَ.

L28689 It has been authentically reported from Ata ibn Abi Rabah and Ubaidullah ibn Abi Yazid that if a person manumits a third of his slave on his deathbed, the manumission was upheld within the third of his estate, and the entire slave is thereby freed.

وَصَحَّ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ، وَعُبَيْدِ اللَّهِ بْنِ أَبِي يَزِيدَ مَنْ أَعْتَقَ عِنْدَ مَوْتِهِ ثُلُثَ عَبْدٍ لَهُ أُقِيمَ فِي ثُلُثِهِ وَعَتَقَ كُلُّهُ.

L28690 It is authentically reported from Al-Shaʿbi: “Whoever frees the child of his male slave upon the master’s death, it is valid, and the child is legally obligated to work toward two-thirds of his value.” It is also authentically reported from him: “Whoever frees his male slave upon the master’s death and has no property other than the slave, he is appraised at a just valuation and must work to cover his full value.”

وَصَحَّ عَنْ الشَّعْبِيِّ مَنْ أَعْتَقَ وَلَدَ عَبْدِهِ عِنْدَ مَوْتِهِ نَفَذَ وَاسْتَسْعَى فِي ثُلُثَيْ قِيمَتِهِ - وَصَحَّ عَنْهُ أَيْضًا: مَنْ أَعْتَقَ عَبْدَهُ عِنْدَ مَوْتِهِ، وَلَيْسَ لَهُ مَالٌ غَيْرُهُ، فَإِنَّهُ يُقَوَّمُ قِيمَةَ عَدْلٍ، ثُمَّ يَسْعَى فِي قِيمَتِهِ.

L28691–28693 It is authentically reported from Shuraih regarding one who manumits his enslaved person at the time of his death while possessing no property other than him, that one-third of the enslaved person is emancipated. He is required to labor as compensation for two-thirds of its value—a similar ruling is also reported from al-Ḥasan, also from ʿAṭāʾ, and Sulaymān ibn Musā—.

وَصَحَّ عَنْ شُرَيْحٍ فِيمَنْ أَعْتَقَ مَمْلُوكًا لَهُ عِنْدَ مَوْتِهِ، لَا مَالَ لَهُ غَيْرُهُ، أَنَّهُ يُعْتَقُ ثُلُثُهُ، وَيَسْتَسْعِي فِي ثُلُثَيْ قِيمَتِهِ - وَعَنْ الْحَسَنِ أَيْضًا مِثْلُ هَذَا - وَعَنْ عَطَاءٍ أَيْضًا، وَسُلَيْمَانَ بْنِ مُوسَى.

L28694 And this is the opinion of Abū Ḥanīfah, Sufyān al-Thawrī, Ibn Shubrumah, ʿUthmān al-Battī, Sawwār Ibn ʿAbd Allāh, and ʿUbayd Allāh Ibn al-Ḥasan.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَسُفْيَانُ الثَّوْرِيُّ، وَابْنُ شُبْرُمَةَ، وَعُثْمَانُ الْبَتِّيُّ، وَسَوَّارُ بْنُ عَبْدِ اللَّهِ، وَعُبَيْدُ اللَّهِ بْنُ الْحَسَنِ

L28695 Another opinion: We have transmitted it through the chain of Saʿīd ibn Manṣūr, who narrated from Hushaym, who narrated from Yūnus—meaning Ibn ʿUbayd—from Al-Ḥasan, Ibrāhīm, and Al-Shaʿbī: They held that if the emancipator has no debt, one-third of the slave’s freedom is granted and the slave must work to redeem the remaining two-thirds. If the debt owed exceeds the value of the slave intended for emancipation, the slave is sold unless the debt is less than his value by at least one dirham. In such a case, the service obligation applies.

وَقَوْلٌ آخَرُ: رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يُونُسُ - هُوَ ابْنُ عُبَيْدٍ - عَنْ الْحَسَنِ، وَإِبْرَاهِيمَ وَالشَّعْبِيِّ: إنَّهُمْ كَانُوا يَقُولُونَ: إذَا لَمْ يَكُنْ عَلَى الْمُعْتَقِ دَيْنٌ أُعْتِقَ الثُّلُثُ وَاسْتَسْعَى فِي الثُّلُثَيْنِ، فَإِنْ كَانَ عَلَيْهِ دَيْنٌ أَكْثَرُ مِنْ قِيمَةِ الْمَمْلُوكِ الْمُعْتَقِ بِيعَ، إلَّا أَنْ يَكُونَ الدَّيْنُ أَقَلَّ مِنْ قِيمَتِهِ بِدِرْهَمٍ وَاحِدٍ فَمَا سِوَاهُ، فَإِذَا كَانَ كَذَلِكَ وَقَعَتْ السِّعَايَةُ.

L28696 A third opinion: We have transmitted it through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: Dāwūd ibn Abī ʿĀṣim informed me, stating: I heard Saʿīd ibn al-Musayyib being asked about one who died leaving nothing except a slave whom he emancipated. Saʿīd said: Indeed, a third of him belongs to him [the deceased]. The slave is appraised at his value, then compelled to work to pay off the two-thirds. He works one day for himself and two days for them.

وَقَوْلٌ ثَالِثٌ: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي دَاوُد بْنُ أَبِي عَاصِمٍ قَالَ: سَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ سُئِلَ عَمَّنْ مَاتَ وَلَيْسَ لَهُ إلَّا غُلَامٌ فَأَعْتَقَهُ؟ فَقَالَ سَعِيدٌ: إنَّمَا لَهُ ثُلُثُهُ، فَيُقَوَّمُ الْعَبْدُ قِيمَتَهُ، فَيُسْتَسْعَى فِي الثُّلُثَيْنِ، فَلَهُ مِنْ نَفْسِهِ يَوْمٌ وَلَهُمْ يَوْمَانِ.

L28697 A fourth opinion: We have transmitted it through the chain of ʿAbd al-Razzāq, on the authority of Maʿmar, on the authority of Ayyūb al-Sikhtiyānī: ʿUmar ibn ʿAbd al-ʿAzīz wrote a decree regarding one who owed a debt and possessed nothing but a slave whom he manumitted at the time of the debtor's death—that the slave is to be sold and the debt settled.

وَقَوْلٌ رَابِعٌ: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِيمَنْ عَلَيْهِ دَيْنٌ، وَلَيْسَ لَهُ إلَّا عَبْدٌ فَأَعْتَقَهُ عِنْدَ مَوْتِهِ أَنَّهُ يُبَاعُ وَيُقْضَى الدَّيْنُ.

L28698 A fifth opinion: We have reported it through the chain of Ibn Wahb from al-Layth ibn Saʿīd from Yaḥyā ibn Saʿīd al-Anṣārī, who said: I encountered a freed slave of Saʿīd ibn Bakr who emancipated a third of his slaves – approximately twenty. He presented their case to Abān ibn ʿUthmān, who divided them into three parts, conducted a lottery among them, and emancipated one-third of them.

وَقَوْلٌ خَامِسٌ: رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ اللَّيْثِ بْنِ سَعِيدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ قَالَ: أَدْرَكْت مَوْلًى لِسَعِيدِ بْنِ بَكْرٍ أَعْتَقَ ثُلُثَ رَقِيقٍ لَهُ نَحْوَ عِشْرِينَ، فَرَفَعَ أَمْرَهُمْ إلَى أَبَانَ بْنِ عُثْمَانَ، فَقَسَّمَهُمْ أَثْلَاثًا، فَأَقْرَعَ بَيْنَهُمْ فَأَعْتَقَ ثُلُثَهُمْ.

L28699 It has been authentically established from Ibn Jurayj that manumitting a third of them is valid by means of lottery and valuation. It is reported from Makhul that manumitting a third of them by means of lottery based on their number without valuation—and it makes no difference whether those manumitted have the lowest or highest market value among them—their manumission is executed.

وَصَحَّ عَنْ ابْنِ جُرَيْجٍ عَتْقُ ثُلُثِهِمْ بِالْقُرْعَةِ وَالْقِيمَةِ. وَعَنْ مَكْحُولٍ عِتْقُ ثُلُثِهِمْ بِالْقُرْعَةِ بِالْعَدَدِ دُونَ تَقْوِيمٍ - وَسَوَاءٌ خَرَجَ فِي الْعِتْقِ أَقَلُّهُمْ قِيمَةً أَوْ أَكْثَرُهُمْ - يَنْفُذُ عِتْقُهُ.

L28700 So these are the statements of the predecessors.

فَهَذِهِ أَقْوَالُ الْمُتَقَدِّمِينَ.

L28701 As for the later jurists: We have mentioned Abū Ḥanīfah's view that he does not accept drawing lots (qurʿah) at all, nor partial retention of labor (irqāq). Instead, one-third [of ownership] is emancipated without requiring labor for self-manumission (istisʿāʾ), and two-thirds are emancipated through such labor.

وَأَمَّا الْمُتَأَخِّرُونَ: فَقَدْ ذَكَرْنَا قَوْلَ أَبِي حَنِيفَةَ أَنَّهُ لَا يَرَى الْقُرْعَةَ أَصْلًا، وَلَا الْإِرْقَاقَ، لَكِنْ يُعْتَقُ الثُّلُثُ بِلَا اسْتِسْعَاءٍ، وَيُعْتَقُ الثُّلُثَانِ بِالِاسْتِسْعَاءِ.

L28702–28703 Mālik said: If he manumitted slaves outright during his illness, he man-

umitted one-third by means of lot and valuation while two-thirds became enslaved, whether he manumitted them in a single utterance or manumitted them individually by name.

وَقَالَ مَالِكٌ: إِنْ أَعْتَقَ فِي مَرَضِهِ بَتًّا أَعْتَقَ الثُّلُثَ بِالْقُرْعَةِ وَالْقِيمَةِ، وَرَقَّ الثُّلُثَانِ، سَوَاءٌ أَعْتَقَهُمْ فِي كَلِمَةٍ وَاحِدَةٍ أَوْ أَعْتَقَهُمْ وَاحِدًا بَعْدَ وَاحِدٍ بِأَسْمَائِهِمْ

L28704 Al-Shāfiʿī said: If someone manumits during his terminal illness slaves he owns absolutely—and they were more than three in number—then if he manumits them individually by their names, one after another, those named first are emancipated successively. When the third (of the total value) is reached through this valuation, the remainder revert to slavery. If the manumission starts with one, the rest remain enslaved. But if he manumits them in a single utterance, their value is assessed, then lots are drawn among them: a third are emancipated and two-thirds remain enslaved, as we have also mentioned.

وَقَالَ الشَّافِعِيُّ: مَنْ أَعْتَقَ فِي مَرَضِهِ الَّذِي يَمُوتُ مِنْهُ عَبِيدًا لَهُ بَتْلًا - وَكَانُوا أَكْثَرَ مِنْ ثَلَاثَةٍ - فَإِنْ كَانَ أَعْتَقَهُمْ بِأَسْمَائِهِمْ وَاحِدًا وَاحِدًا -: أَعْتَقَ مَنْ سَمَّى أَوَّلًا فَأَوَّلًا، فَإِذَا تَمَّ الثُّلُثُ بِالْقِيمَةِ رَقَّ الْبَاقُونَ، وَإِنْ شَرَعَ الْعِتْقُ فِي وَاحِدٍ كَانَ بَاقِيهِ رَقِيقًا - وَإِنْ كَانَ أَعْتَقَهُمْ فِي كَلِمَةٍ وَاحِدَةٍ قُوِّمُوا، ثُمَّ أَقْرَعَ بَيْنَهُمْ فَأُعْتِقَ الثُّلُثُ وَرَقَّ الثُّلُثَانِ، كَمَا ذَكَرْنَا أَيْضًا

L28705 These are legal opinions concerning manumission during illness.

فَهَذِهِ أَقْوَالٌ فِي الْعِتْقِ فِي الْمَرَضِ.

L28706 As for matters other than manumission: We have been narrated through the chain of Abd al-Razzaq from Sufyan al-Thawri from Jabir al-Ju'fi from al-Sha'bi concerning a man who buys and sells while terminally ill. He said: It falls under the third, even if he survives for ten years.

وَأَمَّا مَا سِوَى الْعِتْقِ -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الشَّعْبِيِّ فِي الرَّجُلِ يَبِيعُ وَيَشْتَرِي وَهُوَ مَرِيضٌ قَالَ: هُوَ فِي الثُّلُثِ وَإِنْ مَكَثَ عَشْرَ سِنِينَ.

L28707 Al-Sha'bī maintained that any action performed by a pregnant woman during her pregnancy constituted a bequest from the third.

قَالَ الشَّعْبِيُّ: وَكَانَ يَرَى مَا صَنَعَتْ الْحَامِلُ فِي حَمْلِهَا وَصِيَّةً مِنْ الثُّلُثِ.

L28708 From the transmission of Saʿīd ibn Manṣūr: I narrate from Hushaym and Jarīr, both of whom reported from al-Mughīrah from al-Shaʿbī. In his narration, Jarīr said: "If a man gives a gift when he places his foot in the stirrup to depart on travel, it is a bequest valid under travel circumstances." In his narration, Hushaym said: "If a traveler places his foot in the stirrup, any disposition he makes regarding any matter is considered part of the third."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ، وَجَرِيرٌ، كِلَاهُمَا عَنْ الْمُغِيرَةِ عَنْ الشَّعْبِيِّ، قَالَ جَرِيرٌ فِي رِوَايَتِهِ: إذَا أَعْطَى الرَّجُلُ الْعَطِيَّةَ حِينَ يَضَعُ رِجْلَهُ فِي الْغَرْزِ لِلسَّفَرِ فَهُوَ وَصِيَّةٌ مِنْ السَّفَرِ، وَقَالَ هُشَيْمٌ فِي رِوَايَتِهِ: إذَا وَضَعَ الْمُسَافِرُ رِجْلَهُ فِي الْغَرْزِ فَمَا صَنَعَ فِي شَيْءٍ فَهُوَ مِنْ الثُّلُثِ.

L28709 Through the chain of ʿAbd al-Razzāq from Ibn Jurayj, ʿAṭāʾ said to me: Whatever a pregnant woman does during her pregnancy is a will.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ لِي عَطَاءٌ: مَا صَنَعَتْ الْحَامِلُ فِي حَمْلِهَا فَهُوَ وَصِيَّةٌ.

قُلْت لِعَطَاءٍ: أَرَأْيٌ أَمْ شَيْءٌ سَمِعْتَهُ؟ قَالَ: بَلْ سَمِعْنَاهُ.

L28710 I said to ʿAṭāʾ: “Is it an opinion or something you have heard?” He replied: “Rather, we heard it.”

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، قَالَ: مَا صَنَعَتْ الْحَامِلُ فِي حَمْلِهَا فَهُوَ وَصِيَّةٌ، وَقَالَ مَعْمَرٌ: وَأَخْبَرَنِي مَنْ سَمِعَ عِكْرِمَةَ يَقُولُ مِثْلَ ذَلِكَ.

L28711 Through him to Abd al-Razzaq, from Ma’mar, from Qatadah, who said: Whatever a pregnant woman does regarding her pregnancy is a will. Ma’mar said: Someone who heard Ikrimah informed me that he said the same thing.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّهُ سَمِعَ الْقَاسِمَ بْنَ مُحَمَّدٍ يَقُولُ: مَا أَعْطَتْ الْحَامِلُ فَثُلُثُهُ لِزَوْجِهَا، أَوْ لِبَعْضِ مَنْ يَرِثُهَا فِي غَيْرِ الثُّلُثِ، وَذَلِكَ إذَا لَمْ تَكُنْ مَرِيضَةً.

L28712 From the narration of Ibn Wahb via ʿAmr ibn al-Ḥārith via Yaḥyā ibn Saʿīd al-Anṣārī, who heard al-Qāsim ibn Muḥammad say: “If a pregnant woman gives [a gift], a third of it then belongs to her husband or to some heirs outside the third [allotted for discretionary gifts], provided she is not ill.”

وَبِهِ إلَى ابْنِ وَهْبٍ عَنْ يُونُسَ عَنْ ابْنِ شِهَابٍ قَالَ جَابِرٌ: لِلْحَامِلِ مَا أَعْطَتْ مَا لَمْ يُخَفْ عَلَيْهَا.

L28713 Through him (the narrator) to Ibn Wahb, from Yunus, from Ibn Shihāb, who reported that Jābir said: “The pregnant woman is entitled to what was given to her [as mahr], as long as there is no fear for her.”

قَالَ يُونُسُ: وَقَالَ رَبِيعَةُ: يَجُوزُ عَطَاؤُهَا مَا لَمْ تَثْقُلْ أَوْ يَحْضُرْهَا نِفَاسٌ.

L28714 Yunus said: Rabi’ah said, “It is permissible to grant her as long as she is neither heavily pregnant nor experiencing postpartum bleeding.”

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي رِجَالٌ مِنْ أَهْلِ الْعِلْمِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَابْنِ حُجَيْرَةَ الْخَوْلَانِيِّ مِثْلَ ذَلِكَ. وَقَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ أَنَّهُ قَالَ فِي مَسْجُونٍ فِي قَتْلٍ أَوْ فِي جُرْحٍ أَوْ خَرَجَ إلَى صَفٍّ أَوْ يُعَذَّبُ. أَنَّهُ لَا يَجُوزُ لَهُ مِنْ مَالِهِ إلَّا مَا يَجُوزُ لِلْمُوصِي.

L28715–28716 Ibn Wahb said: Learned men from the people of knowledge informed me on the authority of Saʿīd ibn al-Musayyib, Yaḥyā ibn Saʿīd al-Anṣārī, and Ibn Ḥujayrah al-Khawlānī in a similar manner. Ibn Wahb added: Yūnus informed me on the authority of Ibn Shihāb that he ruled regarding one imprisoned for homicide or injury, or who joined the battle line, or is tortured: He is not permitted to use any of his wealth except for that which a testator is lawfully permitted to bequeath.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ مُحَمَّدِ بْنِ أَبَانَ عَنْ النَّخَعِيِّ قَالَ: الْحَامِلُ إذَا ضَرَبَهَا الطَّلْقُ فَوَصِيَّتُهَا - يَعْنِي أَنَّ فِعْلَهَا - مِنْ الثُّلُثِ.

L28717 From the narration of Saʿīd ibn Manṣūr, from Muḥammad ibn Abān, from al-Nakhaʿī, who said: When a pregnant woman experiences labor pains, her will—meaning her act (of bequeathing)—is to be fulfilled from one-third of her estate.

وَرُوِيَ عَنْ الْحَسَنِ، وَمَكْحُولٍ: أَنَّ فِعْلَ الْحَامِلِ مِنْ رَأْسِ مَالِهَا.

L28718 It has been narrated from Al-Ḥasan and Makhūl that the pregnant woman’s liability is discharged from her own capital.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مَا أَعْطَاهُ الْغَازِي فَمِنْ الثُّلُثِ.

L28719 From Sa’id ibn al-Musayyib: Whatever is given to the warrior comes from the third.

وَقَالَ مَكْحُولٌ: مِنْ رَأْسِ مَالِهِ مَا لَمْ تَقَعْ الْمُسَايَفَةُ.

وَعَنْ الْحَسَنِ فِي الْمَحْبُوسِ: أَنَّ فِعْلَهُ مِنْ الثُّلُثِ وَقَالَ فِي رَاكِبِ الْبَحْرِ، وَمَنْ كَانَ فِي بَلَدٍ وَقَدْ وَقَعَ فِيهِ الطَّاعُونُ: إنَّ عَطِيَّتَهُ مِنْ رَأْسِ مَالِهِ.

وَقَالَ مَكْحُولٌ كَذَلِكَ فِي رَاكِبِ الْبَحْرِ مَا لَمْ يَهِجْ الْبَحْرُ.

فَهَذِهِ أَقْوَالُ السَّلَفِ الْمُتَقَدِّمِ.

أَمَّا فِي الْعِتْقِ فَرُوِيَ فِيهِ مَا ذَكَرْنَا - عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ

وَصَحَّ عَنْ قَتَادَةَ، وَعَطَاءٍ، وَعُبَيْدِ اللَّهِ بْنِ يَزِيدَ، وَالنَّخَعِيِّ، وَالشَّعْبِيِّ وَشُرَيْحٍ، وَالْحَسَنِ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَأَبَانَ بْنِ عُثْمَانَ، وَسَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عِتْقَ الْمَرِيضِ مِنْ الثُّلُثِ.

ثُمَّ اخْتَلَفُوا فِي الْحُكْمِ فِي ذَلِكَ كَمَا ذَكَرْنَا.

وَأَمَّا غَيْرُ الْعِتْقِ فَكَمَا ذَكَرْنَا فِي الْمُسَافِرِ عَنْ الشَّعْبِيِّ.

وَفِي الْغَازِي عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ - وَخَالَفَهُمَا إبْرَاهِيمُ، وَمَكْحُولٌ مَا لَمْ تَقَعْ الْمُسَايَفَةُ.

وَفِي الْمَرِيضِ عَنْ الشَّعْبِيِّ، وَفِي الْحَامِلِ عَنْ عَطَاءٍ، وَذَكَرَ أَنَّهُ سَمِعَهُ.

وَعَنْ قَتَادَةَ، وَعِكْرِمَةَ - وَخَالَفَهُمْ الْقَاسِمُ بْنُ مُحَمَّدٍ، وَمَكْحُولٌ، وَالزُّهْرِيُّ وَقَالَ النَّخَعِيُّ: إذَا ضَرَبَهَا الطَّلْقُ - وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَابْنِ حُجَيْرَةَ.

L28720 And Makhul said: It is from his capital, provided the deferred sale has not occurred.

L28721 And from Al-Hasan regarding the detained person: his bequest is to be taken from one-third of his wealth. He said concerning a sea traveler, and similarly for one residing in a land afflicted by plague: their charitable gifts should come from their principal wealth.

L28722 And Makḥūl likewise said regarding the seafarer: as long as the sea does not become agitated.

L28723 Thus, these are the sayings of the early Salaf.

L28724 As for the ruling in manumission, what we have mentioned is narrated concerning it - from ʿAlī and Ibn Masʿūd.

L28725 It has been authentically reported from Qatādah, ʿAṭāʾ, ʿUbayd Allāh ibn Yazīd, al-Nakhaʿī, al-Shaʿbī, Shurayḥ, al-Ḥasan, ʿUmar ibn ʿAbd al-ʿAzīz, Abān ibn ʿUthmān, and Saʿīd ibn al-Musayyab that a sick person's act of manumission is drawn from one-third of the estate.

L28726 Then they differed concerning the ruling in that, as we mentioned.

L28727 As for matters other than manumission, it is as we mentioned regarding the traveler from Al-Shaʿbi.

L28728 According to Saʿīd ibn al-Musayyab concerning the combatant in jihad, Ibrāhīm and Makhūl disagreed with both opinions unless close sword combat had ensued.

L28729 Concerning the sick person, it is reported from Ash-Shaʿbi; and concerning the pregnant woman, from ʿAta. He mentioned that he heard it.

L28730 From Qatādah and ʿIkrimah—while Al-Qāsim ibn Muḥammad, Makhūl, and Al-Zuhrī disagreed with them—Al-Nakhaʿī said: "When labor pains strike her." It was also narrated from Saʿīd ibn al-Musayyib and Ibn Ḥujayrah.

L28731–28732 It is authentically reported from Rabiʿah regarding what is not burdensome.

Concerning the imprisoned person, from Al-Ḥasan and Al-Zuhrī, and Iyās ibn Muʿāwiyah opposed both of them.

وَصَحَّ عَنْ رَبِيعَةَ مَا لَمْ نَثْقُلْ، وَفِي الْمَسْجُونِ عَنْ الْحَسَنِ وَالزُّهْرِيِّ وَخَالَفَهُمَا إيَاسُ بْنُ مُعَاوِيَةَ،

L28733 And from Makḥūl regarding the rider of the sea when the sea becomes terrifying.

وَعَنْ مَكْحُولٍ فِي رَاكِبِ الْبَحْرِ إذَا هَالَ الْبَحْرُ.

L28734 A differing opinion regarding that has been reported from some of the predecessors: As we have been narrated through the chain of Hammad ibn Salamah, from Yunus ibn ʻUbayd, from Muhammad ibn Sirin: A woman saw in her sleep, in what a sleeper sees, that she would die within three days. She devoted herself to learning the remaining portion of the Quran she had yet to learn, arranged her wealth while she was in good health. When the third day arrived, she visited her neighbors and began saying, "O so-and-so, I entrust you to Allah and send you greetings of peace." They started telling her, "You are not dying today; you are not dying, Allah willing." But she died. Her husband asked Abu Musa al-Ashʻari. He said to him, "What kind of woman was your wife?" He replied, "I do not know anyone more deserving to enter Paradise than her, except the martyr. However, she did what she did while she was in good health." Abu Musa said, "Is she as you say: she did what she did while she was in good health?" Abu Musa did not object to his statement.

وَرُوِيَ خِلَافُ ذَلِكَ عَنْ بَعْضِ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا يُونُسُ بْنُ عُبَيْدٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ امْرَأَةً رَأَتْ فِي مَنَامِهَا فِيمَا يَرَى النَّائِمُ: أَنَّهَا تَمُوتُ إلَى ثَلَاثَةِ أَيَّامٍ فَأَقْبَلَتْ عَلَى مَا بَقِيَ عَلَيْهَا مِنْ الْقُرْآنِ فَتَعَلَّمَتْهُ، وَشَذَّبَتْ مَالَهَا وَهِيَ صَحِيحَةٌ، فَلَمَّا كَانَ الْيَوْمُ الثَّالِثُ دَخَلَتْ عَلَى جَارَاتِهَا فَجَعَلَتْ تَقُولُ: يَا فُلَانَةُ اسْتَوْدَعْتُكِ اللَّهَ وَأَقْرَأُ عَلَيْكِ السَّلَامَ فَجَعَلْنَ يَقُلْنَ لَهَا: لَا تَمُوتِينَ الْيَوْمَ، لَا تَمُوتِينَ إنْ شَاءَ اللَّهُ فَمَاتَتْ فَسَأَلَ زَوْجُهَا أَبَا مُوسَى الْأَشْعَرِيَّ؟ فَقَالَ لَهُ أَبُو مُوسَى: أَيُّ امْرَأَةٍ كَانَتْ امْرَأَتُك؟ قَالَ: مَا أَعْلَمُ أَحَدًا أَحْرَى أَنْ يَدْخُلَ الْجَنَّةَ مِنْهَا إلَّا الشَّهِيدَ، وَلَكِنَّهَا فَعَلَتْ مَا فَعَلَتْ وَهِيَ صَحِيحَةٌ فَقَالَ أَبُو مُوسَى: هِيَ كَمَا تَقُولُ فَعَلَتْ مَا فَعَلَتْ وَهِيَ صَحِيحَةٌ؟ فَلَمْ يَرُدَّهُ أَبُو مُوسَى.

L28735 And from the chain of Hammad ibn Salamah via Ayyub al-Sikhtiyani, Ubayd Allah ibn Umayr via Nafi', and Yahya ibn Sa'id al-Ansari: A man saw in his dream that he would die by three days, so he divorced his wives one divorce each and divided his wealth. Umar ibn al-Khattab said to him: "Did Satan come to you in your sleep and inform you that you would die by three days, so you divorced your wives and divided your wealth? Revoke them! If you die, I will stone your grave as Abu Righal's grave is stoned!" He then returned his wealth and wives. Umar said to him: "I do not think you will remain except briefly." He died on the third day.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، وَعُبَيْدِ اللَّهِ بْنِ عُمَيْرٍ عَنْ نَافِعٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ: أَنَّ رَجُلًا رَأَى فِيمَا يَرَى النَّائِمُ: أَنَّهُ يَمُوتُ إلَى ثَلَاثَةِ أَيَّامٍ، فَطَلَّقَ نِسَاءَهُ تَطْلِيقَةً تَطْلِيقَةً، وَقَسَّمَ مَالَهُ فَقَالَ لَهُ عُمَرُ بْنُ الْخَطَّابِ: أَجَاءَك الشَّيْطَانُ فِي مَنَامِك فَأَخْبَرَك أَنَّك تَمُوتُ إلَى ثَلَاثَةِ أَيَّامٍ، فَطَلَّقْت نِسَاءَك وَقَسَمْت مَالَك رُدَّهُ وَلَوْ مِتّ لَرَجَمْت قَبْرَك كَمَا يُرْجَمُ قَبْرُ أَبِي رِغَالَ؟ فَرَدَّ مَالَهُ وَنِسَاءَهُ، وَقَالَ لَهُ عُمَرُ: مَا أَرَاك تَلْبَثُ إلَّا يَسِيرًا؟ قَالَ: فَمَاتَ فِي الْيَوْمِ الثَّالِثِ

L28736 From the narration of Ibn Abi Shaybah: Ali ibn Mushir reported to us, Ismail

ibn Abi Khalid reported to us from Al-Sha'bi from Masruq: He was asked about a man who emancipated a slave for Allah's sake during his illness while possessing no other property. Masruq said: "I approve it - it is something Allah the Exalted has decreed; I do not reject it." Shurayh said: "I validate one-third of the emancipation and require him to work off the remaining two-thirds." Al-Sha'bi remarked: "Masruq's opinion is preferable to me for formal legal verdicts, and Shurayh's for judicial rulings."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَلِيُّ بْنُ مُسْهِرٍ نا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ: أَنَّهُ سُئِلَ عَمَّنْ أَعْتَقَ عَبْدًا لِلَّهِ فِي مَرَضِهِ لَيْسَ لَهُ مَالٌ غَيْرُهُ؟ قَالَ مَسْرُوقٌ: أُجِيزُهُ، شَيْءٌ جَعَلَهُ اللَّهُ تَعَالَى، لَا أَرُدُّهُ، وَقَالَ شُرَيْحٌ: أُجِيزُ ثُلُثَهُ وَاسْتَسْعِيهِ فِي ثُلُثَيْهِ، قَالَ الشَّعْبِيُّ: قَوْلُ مَسْرُوقٍ أَحَبُّ إلَيَّ فِي الْفُتْيَا، وَقَوْلُ شُرَيْحٍ أَحَبُّ إلَيَّ فِي الْقَضَاءِ.

L28737 From the chain of 'Abd al-Razzāq via Ma'mar, who said: 'Umar ibn 'Abd al-'Azīz wrote regarding a man who donates all his wealth: "If he allocates it to a rightful cause, no one has a stronger claim to his wealth than himself. But if he gives to some heirs while excluding others, he may not dispose of more than a third."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي الرَّجُلِ يَتَصَدَّقُ بِمَالِهِ كُلِّهِ قَالَ إذَا وَضَعَهُ فِي حَقٍّ فَلَا أَحَدَ أَحَقَّ بِمَالِهِ مِنْهُ، وَإِذَا أَعْطَى الْوَرَثَةَ بَعْضَهُمْ دُونَ بَعْضٍ فَلَيْسَ لَهُ إلَّا الثُّلُثُ.

L28738–28740 And via the chain of Abd al-Rahman ibn Mahdi, from Sufyan al-Thawri, from Ibn Abi Layla, from al-Hakam ibn ʿUtaibah. Ibrāhīm al-Nakhaʿī said: If a woman absolves her husband from her dowry during her illness, it is permissible. Sufyān said: It is impermissible.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ طَعَنَ إبْرَاهِيمُ النَّخَعِيُّ قَالَ: إذَا أَبْرَأَتْ الْمَرْأَةُ زَوْجَهَا فِي مَرَضِهَا مِنْ صَدَاقِهَا فَهُوَ جَائِزٌ، وَقَالَ سُفْيَانُ: لَا يَجُوزُ.

L28741 Abu Muhammad said: Thus, Abu Musa al-Ash'ari permits the act of one who is certain of death while in a state graver than that of a sick person—[specifically] a married woman whose husband does not consent to her disposal of all her wealth.

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا أَبُو مُوسَى الْأَشْعَرِيُّ يُجِيزُ فِعْلَ مَنْ أَيْقَنَ بِالْمَوْتِ وَهُوَ فِي أَشَدِّ حَالٍ مِنْ الْمَرِيضِ - هِيَ أَيْضًا ذَاتُ زَوْجٍ غَيْرِ رَاضٍ بِمَا فَعَلَتْ فِي مَالِهَا كُلِّهِ.

L28742 Umar ibn al-Khattab rejected the action of one who was certain of death and did not permit anything similar—neither a third nor otherwise. Masruq, by the soundest method, implemented what a sick person did with his entire wealth to draw closer to Allah Almighty, and Al-Sha'bi leaned toward this position in his legal rulings.

وَهَذَا عُمَرُ بْنُ الْخَطَّابِ رَدَّ فِعْلَ مَنْ أَيْقَنَ بِالْمَوْتِ وَلَمْ يُجِزْ مِثْلَهُ لَا ثُلُثًا وَلَا غَيْرَهُ - وَهَذَا مَسْرُوقٌ بِأَصَحِّ طَرِيقٍ يُنَفِّذُ مَا فَعَلَهُ الْمَرِيضُ فِي مَالِهِ كُلِّهِ مُتَقَرِّبًا إلَى اللَّهِ عَزَّ وَجَلَّ، وَمَالَ إلَيْهِ الشَّعْبِيُّ فِي الْفُتْيَا.

L28743 And from Ibrahim is the permissibility of a sick person's action regarding his principal wealth.

وَعَنْ إبْرَاهِيمَ جَوَازُ فِعْلِ الْمَرِيضِ مِنْ رَأْسِ مَالِهِ.

L28744 As for the later opinions: Abu Hanifah stated that a sick person may not settle debts with some creditors over others. Regarding preferential treatment

in sales, gifts, charitable acts, or slave manumission—all such transactions are drawn from one-third of his estate, except that the manumitted slave becomes obligated to work to offset two-thirds of his value if the one-third does not suffice. He said: If the sick person recovers, all such actions become permissible from his principal wealth. He said: Similarly, a pregnant woman—whether experiencing labor pains or not—is treated as a healthy person concerning her entire wealth. A fighter stationed in the battlefront is deemed healthy regarding his entire wealth, whether he dies or survives. He said: One sentenced to execution for retribution or stoning for adultery is treated as a sick person; his transactions are only valid within one-third of his estate. He said: If a sick person purchases his son, and the transaction comes out of his one-third, the son is freed and inherits him. If it does not come out of his one-third, the son does not inherit him.

وَأَمَّا الْمُتَأَخِّرُونَ -: فَإِنَّ أَبَا حَنِيفَةَ قَالَ: لَيْسَ لِلْمَرِيضِ أَنْ يَقْضِيَ غُرَمَاءَهُ بَعْضَهُمْ دُونَ بَعْضٍ - وَأَمَّا مُحَابَاتُهُ فِي الْبَيْعِ، وَهِبَتُهُ، وَصَدَقَتُهُ، وَعِتْقُهُ - كُلُّ ذَلِكَ مِنْ الثُّلُثِ إلَّا أَنَّ الْمُعْتَقَ يُسْتَسْعَى فِي ثُلُثَيْ قِيمَتِهِ إنْ لَمْ يَحْمِلْهُ الثُّلُثُ، قَالَ: فَإِنْ أَفَاقَ مِنْ مَرَضِهِ: جَازَ ذَلِكَ كُلُّهُ مِنْ رَأْسِ مَالِهِ قَالَ: وَكَذَلِكَ الْحَامِلُ إذَا ضَرَبَهَا وَجَعُ الطَّلْقِ وَمَا لَمْ يَضْرِبْهَا: فَكَالصَّحِيحِ فِي جَمِيعِ مَالِهَا، وَالْوَاقِفُ فِي الصَّفِّ فَكَالصَّحِيحِ فِي جَمِيعِ مَالِهِ قُتِلَ أَوْ عَاشَ، قَالَ: وَالَّذِي يُقَدَّمُ لِلْقَتْلِ فِي قِصَاصٍ أَوْ رَجْمٍ فِي زِنًى كَالْمَرِيضِ لَا يَجُوزُ فِعْلُهُ إلَّا فِي الثُّلُثِ - قَالَ: فَإِنْ اشْتَرَى ابْنَهُ وَهُوَ مَرِيضٌ؟ فَإِنْ خَرَجَ مِنْ ثُلُثِهِ عَتَقَ وَوَرِثَهُ، وَإِنْ لَمْ يَخْرُجْ مِنْ ثُلُثِهِ لَمْ يَرِثْهُ.

L28745 Abu Yusuf and Muhammad ibn al-Hasan said: Rather, he inherits it, except that he must work to ensure the portion apportioned from its value is given to the heirs, and they take it.

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: بَلْ يَرِثُهُ إلَّا أَنَّهُ يَسْعَى فِيمَا يَقَعُ مِنْ قِيمَتِهِ لِلْوَرَثَةِ فَيَأْخُذُونَهُ.

L28746 They all said: That applies only to a severe illness, such as persistent fever, diaphragmitis, abdominal diseases, and the like. As for leprosy, quartan fever, tuberculosis, and one whose illness comes and goes, their deeds are like those of a healthy person.

وَقَالُوا كُلُّهُمْ: إنَّمَا ذَلِكَ فِي الْمَرَضِ الْمُخِيفِ، كَحُمَّى الصَّالِبِ، وَالْبِرْسَامِ، وَالْبَطْنِ، وَنَحْوِ ذَلِكَ - وَأَمَّا الْجُذَامُ، وَحُمَّى الرُّبْعِ، وَالسُّلُّ، وَمَنْ يَذْهَبُ وَيَجِيءُ فِي مَرَضِهِ فَأَفْعَالُهُ كَالصَّحِيحِ.

L28747 Malik said: A terminally ill person may not repay some of their creditors to the exclusion of others.

وَقَالَ مَالِكٌ: لَيْسَ لِلْمَرِيضِ أَنْ يَقْضِيَ بَعْضَ غُرَمَائِهِ دُونَ بَعْضٍ.

L28748 They said: The pregnant woman, as long as she has not completed six months, is like one with full legal capacity. Once she completes the six months, her dispositions over her wealth are limited to one-third of her estate - this being the opinion of Imam al-Layth ibn Saʿd.

قَالُوا: وَالْحَامِلُ مَا لَمْ تَتِمَّ سِتَّةَ أَشْهُرٍ فَكَالصَّحِيحِ، فَإِذَا أَتَمَّتْهَا، فَأَفْعَالُهَا فِي مَالِهَا مِنْ الثُّلُثِ - وَهُوَ قَوْلُ اللَّيْثِ.

L28749–28751 He said: The sick person and the one crawling in battle - their charity (ṣadaqah) and showing them favor in selling. The gift of both and the manumission of both fall within the third [of the estate]. He also ruled regarding one who purchased his son during his illness. Concerning the nature of the

illness, the ruling corresponds to Abū Ḥanīfah's position: they are entirely equal, entirely equal.

قَالَ: وَالْمَرِيضُ، وَالزَّاحِفُ فِي الْقِتَالِ - صَدَقَتُهُمَا، وَمُحَابَاتُهُمَا فِي الْبَيْعِ وَهِبَتُهُمَا، وَعِتْقُهُمَا فِي الثُّلُثِ - وَقَالَ فِيمَنْ اشْتَرَى ابْنَهُ فِي مَرَضِهِ وَفِي صِفَةِ الْمَرَضِ كَقَوْلِ أَبِي حَنِيفَةَ سَوَاءً سَوَاءً.

L28752 Al-Shāfiʿī and Sufyān al-Thawrī said: A sick person may settle with some of his creditors but not others.

وَقَالَ الشَّافِعِيُّ، وَسُفْيَانُ الثَّوْرِيُّ: لِلْمَرِيضِ أَنْ يَقْضِيَ غُرَمَاءَهُ بَعْضَهُمْ دُونَ بَعْضٍ.

L28753 They both unanimously held regarding the pregnant woman the same opinion as Abū Ḥanīfah - this being Al-Awzāʿī's view. Al-Shāfiʿī, Al-Thawrī, and Al-Awzāʿī held the opinion concerning the acts of the sick person in accordance with the views of Abū Ḥanīfah and Mālik, and similarly regarding the legal rulings pertaining to the sick person.

وَقَالَا جَمِيعًا فِي الْحَامِلِ كَقَوْلِ أَبِي حَنِيفَةَ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ. وَقَالَ الشَّافِعِيُّ، وَالثَّوْرِيُّ، وَالْأَوْزَاعِيُّ فِي أَفْعَالِ الْمَرِيضِ كَقَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَكَذَلِكَ فِي صِفَةِ الْمَرِيضِ.

L28754 He said regarding the captive: he is to be presented for execution; the combatant who charges into battle [is also subject to a ruling]; and those captives held by a group that kills captives. Their status is likened to the sick at one time and to the healthy at another, as they may be spared from execution.

وَقَالَ فِي الْأَسِيرِ يُقَدَّمُ لِلْقَتْلِ، وَالْمُقْتَحِمِ فِي الْقِتَالِ، وَمَنْ كَانَ فِي أَيْدِي قَوْمٍ يَقْتُلُونَ الْأَسْرَى مَرَّةً أَنَّهُمْ كَالْمَرِيضِ، وَمَرَّةً أُخْرَى أَنَّهُمْ كَالصَّحِيحِ، إذْ قَدْ يَسْلَمُونَ مِنْ الْقَتْلِ.

L28755 Al-Ḥasan ibn Ḥayy and Al-Thawrī said: When the two rows meet, their acts are like those of the sick person.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ، وَالثَّوْرِيُّ: إذَا الْتَقَى الصَّفَّانِ فَأَفْعَالُهُمْ كَالْمَرِيضِ

L28756 Ubaydullah ibn al-Ḥasan, Aḥmad, and Isḥāq said: A sick person's acts concerning their property are from one-third.

وَقَالَ عُبَيْدُ اللَّهِ بْنُ الْحَسَنِ، وَأَحْمَدُ، وَإِسْحَاقُ: أَفْعَالُ الْمَرِيضِ فِي مَالِهِ مِنْ الثُّلُثِ.

L28757 Abu Sulaiman stated: All acts of a sick person are drawn entirely from his own wealth, as if he were healthy. The same applies to a pregnant woman. All those we have mentioned - except for a sick person's act of manumission done alone - are from one-third of his estate, whether he recovers or dies.

وَقَالَ أَبُو سُلَيْمَانَ: أَفْعَالُ الْمَرِيضِ كُلُّهَا مِنْ رَأْسِ مَالِهِ كَالصَّحِيحِ، وَكَذَلِكَ الْحَامِلُ، وَكُلُّ مَنْ ذَكَرْنَا - حَاشَ عِتْقِ الْمَرِيضِ وَحْدَهُ - فَهُوَ مِنْ الثُّلُثِ أَفَاقَ أَوْ مَاتَ.

L28758 Abu Muhammad said: As for the position of Abu Hanifa and Malik regarding one who purchases his son during his terminal illness, this is a view we do not know to have been held by any scholar of Islam before them. Rather, Ali ibn Abi Talib stated that the son is purchased from his father's estate after death and inherits like the rest of the heirs. Truly, their position here contains an astonishing contradiction, for the purchase of his son must inevitably be either a bequest or not a bequest. If it were a bequest, the son should not

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ: فِيمَنْ يَشْتَرِي ابْنَهُ فِي مَرَضِهِ فَقَوْلٌ لَا نَعْلَمُهُ لِأَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ قَبْلَهُمَا، بَلْ قَدْ قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: إنَّهُ يُشْتَرَى مِنْ مَالِ أَبِيهِ بَعْدَ الْمَوْتِ، وَيَرِثُ كَسَائِرِ الْوَرَثَةِ - وَإِنَّ فِي قَوْلِهِمَا هَذَا لَأُعْجُوبَةً، لِأَنَّهُ لَا يَخْلُو شِرَاؤُهُ لِابْنِهِ مِنْ أَنْ يَكُونَ وَصِيَّةً أَوْ لَا يَكُونَ وَصِيَّةً، فَإِنْ كَانَ وَصِيَّةً فَلَا يَجِبُ أَنْ

inherit at all—whether the bequest consumes a third [of the estate] or not—since it constitutes a bequest to an heir. If it is not a bequest, the son should inherit like the rest of the heirs without distinction. Their position here is indeed at the peak of corruption and opposition to the scriptural texts.

يَرِثَ أَصْلًا حَمَلَهُ الثُّلُثُ أَوْ لَمْ يَحْمِلْهُ؛ لِأَنَّهَا وَصِيَّةٌ لِوَارِثٍ، وَإِنْ كَانَ لَيْسَ وَصِيَّةً فَيَنْبَغِي أَنْ يَرِثَ كَسَائِرِ الْوَرَثَةِ وَلَا فَرْقَ، وَإِنَّ قَوْلَهُمَا هَاهُنَا لَفِي غَايَةِ الْفَسَادِ وَمُخَالَفَةِ النُّصُوصِ.

L28759 As for the opinion of Mālik and al-Layth concerning the pregnant woman, it is also a view we do not know to have been reported from anyone before them. The most astonishing thing is some of them citing as evidence for this opinion the words of God Almighty: "She carried a light pregnancy and went about with it, then when she became heavy [with it]" [Al-Aʿrāf: 189].[2]

وَأَمَّا قَوْلُ مَالِكٍ، وَاللَّيْثِ - فِي الْحَامِلِ فَقَوْلٌ أَيْضًا لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُمَا وَأَطْرَفُ شَيْءٍ احْتِجَاجُ بَعْضِهِمْ لِهَذَا الْقَوْلِ بِقَوْلِ اللَّهِ تَعَالَى: {حَمَلَتْ حَمْلا خَفِيفًا فَمَرَّتْ بِهِ فَلَمَّا أَثْقَلَتْ} [الأعراف: ١٨٩] .

L28760 So we said: O you here, who among you can prove that the gestation period is six months?

فَقُلْنَا: يَا هَؤُلَاءِ، وَمَنْ لَكُمْ بِأَنَّ الْإِثْقَالَ هُوَ سِتَّةُ أَشْهُرٍ.

L28761 Then, suppose it is an encumbrance - not what preceded it - what would that result in? And on what basis is it obligatory to prevent her from disposing of all her property if she becomes burdensome?

ثُمَّ هَبْكُمْ أَنَّهُ إِثْقَالٌ، لَا مَا قَبْلَهُ، فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ وَجَبَ مَنْعُهَا مِنَ التَّصَرُّفِ فِي جَمِيعِ مَالِهَا إِذَا أَثْقَلَتْ؟

L28762–28763 Similarly, their statement concerning differentiation between diseases has no foundation whatsoever, as it is not known from any Companion or Follower, nor found in any scriptural texts. Thus, their claim lacks any proof at all—neither from the Quran, nor the Sunnah, nor a weak narration, nor a Companion's view, nor analogy, nor juristic reasoning. Indeed, if a person were to allege that they oppose the consensus of all predecessors in these opinions, this would be nearer to truth than their own claim of contradicting consensus in matters where sound disagreement exists—as we have reported from Masrūq, al-Shaʿbī, and others.

وَكَذَلِكَ قَوْلُهُمْ فِي التَّفْرِيقِ بَيْنَ الْأَمْرَاضِ، فَإِنَّهُ لَا يُعْرَفُ عَنْ صَاحِبٍ وَلَا تَابِعٍ أَصْلًا، وَلَا فِي شَيْءٍ مِنَ النُّصُوصِ، فَحَصَلَ قَوْلُهُمْ لَا حُجَّةَ لَهُ أَصْلًا لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا نَظَرٍ، وَلَوْ أَنَّ امْرَأً ادَّعَى عَلَيْهِمْ خِلَافَ إِجْمَاعِ كُلِّ مَنْ تَقَدَّمَ فِي هَذِهِ الْأَقْوَالِ لَكَانَ أَقْرَبَ إِلَى الصِّدْقِ مِنْ دَعْوَاهُمْ خِلَافَ الْإِجْمَاعِ فِيمَا قَدْ صَحَّ فِيهِ الْخِلَافُ، كَمَا أَوْرَدْنَا عَنْ مَسْرُوقٍ، وَالشَّعْبِيِّ وَغَيْرِهِمَا

L28764 We do not know of any fundamental argument for them whatsoever, except that they said: "We analogize that to the testamentary will through qiyas."

وَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا، إِلَّا أَنَّهُمْ قَالُوا: نَقِيسُ ذَلِكَ عَلَى الْوَصِيَّةِ.

L28765 We said: All analogical reasoning is invalid. Furthermore, even if it were valid, this instance from it would be the very essence of invalidity, for the ruling on bequests applies equally to the healthy and the sick—being imper-

فَقُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّ الْوَصِيَّةَ مِنَ الصَّحِيحِ، وَالْمَرِيضِ سَوَاءٌ: لَا تَجُوزُ إِلَّا فِي الثُّلُثِ، فَيَلْزَمُ أَنْ يَكُونَ غَيْرُ الْوَصِيَّةِ أَيْضًا مِنَ الصَّحِيحِ وَالْمَرِيضِ سَوَاءً، فَهَذَا قِيَاسٌ أَصَحُّ مِنْ قِيَاسِهِمْ.

[2] **Qur'an references (L28759):** Qur'an 7:189 (Al-A'raf).

missible beyond one-third. This necessarily entails that matters other than bequests must also apply equally to the healthy and the sick. This constitutes analogical reasoning more sound than their analogical reasoning.

وَقَالُوا: نتَّهِمُهُ بِالْفِرَارِ بِمَالِهِ عَنْ الْوَرَثَةِ.

L28766 And they said: We accuse him of absconding with his wealth away from the heirs.

فَقُلْنَا: الظَّنُّ أَكْذَبُ الْحَدِيثِ، وَلَعَلَّهُ يَمُوتُ الْوَارِثُ قَبْلَهُ فَيَرِثُهُ الْمَرِيضُ فَهَذَا مُمْكِنٌ - وَأَيْضًا: فَإِذْ لَيْسَ إلَّا التُّهْمَةُ فَامْنَعُوا الصَّحِيحَ أَيْضًا مِنْ أَكْثَرِ ثُلُثِ مَالِهِ، وَاتَّهِمُوهُ أَيْضًا أَنَّهُ يَفِرُّ بِمَالِهِ عَنْ وَرَثَتِهِ، فَجَائِزٌ أَنْ يَمُوتَ وَيَرِثُوهُ كَمَا يَجُوزُ ذَلِكَ فِي الْمَرِيضِ، وَجَائِزٌ أَنْ يَمُوتَ الْوَارِثُ فَيَرِثَهُ الْمَرِيضُ كَمَا يَرِثُهُ الصَّحِيحُ وَلَا فَرْقَ، وَكَمْ مِنْ صَحِيحٍ يَمُوتُ قَبْلَ مَرِيضٍ.

L28767 So we said: Conjecture is the falsest of reports. Perhaps the heir may die before the sick person, and the sick person would then inherit from him, for this is possible. Moreover, since there is only suspicion, then prevent the healthy person too from disposing of more than a third of his wealth, and suspect him too of diverting his wealth away from his heirs. For it is possible that he dies and they inherit from him, just as that is possible in the case of the sick person. It is also possible that the heir dies, and the sick person inherits from him, just as the healthy person inherits from him, with no distinction. How many healthy people die before a sick person.

وَأَيْضًا: فَاتَّهِمُوا الشَّيْخَ الَّذِي قَدْ جَاوَزَ التِّسْعِينَ وَامْنَعُوهُ أَكْثَرَ مِنْ ثُلُثِهِ لِئَلَّا يَفِرَّ بِمَالِهِ عَنْ وَرَثَتِهِ.

L28768 Moreover, be wary of the elder who has surpassed ninety years of age and restrict him from bequeathing more than a third of his estate, lest he unjustly deprive his heirs of his property.

فَإِنْ قُلْتُمْ: قَدْ يَعِيشُ أَعْوَامًا؟ قُلْنَا: وَقَدْ يَبْرَأُ الْمَرِيضُ فَيَعِيشُ عَشَرَاتِ أَعْوَامٍ، وَإِذْ لَيْسَ إلَّا التُّهْمَةُ، فَلَا تَتَّهِمُوا مَنْ يَرِثُهُ وَلَدُهُ فَاجْعَلُوا فِعْلَهُ مِنْ رَأْسِ مَالِهِ، وَاتَّهِمُوا مَنْ يَرِثُهُ عَصَبَتُهُ فَلَا تُطْلِقُوا لَهُ الثُّلُثَ.

L28769 If you say: "He may live for years?" We reply: "A sick person may recover and live for decades. Since there is only suspicion, do not accuse the one whose heir is his child; instead, treat his expenses as part of his principal capital. But accuse the one whose heirs are his agnates, and do not grant him unrestricted access to the third portion."

فَإِنْ قَالُوا: هَذَا خِلَافُ النَّصِّ؟ قُلْنَا: وَفِعْلُكُمْ خِلَافُ النَّصِّ فِي التَّقَرُّبِ إلَى اللَّهِ تَعَالَى بِمَا يُحِبُّهُ الْمَرْءُ مِنْ مَالِهِ، قَالَ تَعَالَى: {أَنْفِقُوا مِمَّا رَزَقْنَاكُمْ} [البقرة: ٢٥٤] وَقَالَ تَعَالَى: {لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ} [آل عمران: ٩٢] .

L28770 If they say, "This contradicts the divine text?" We reply: "But your action contradicts the divine text in drawing near to Allah Almighty with what one cherishes of his wealth." He, the Exalted, said: "Spend from what We have provided you" [Al-Baqarah: 254]. And He, the Exalted, said: "You will never attain righteousness until you spend from what you love" [Āl ʿImrān: 92].[3]

وَالْمَرِيضُ أَحْوَجُ مَا كَانَ إلَى ذَلِكَ.

L28771 And the sick person is most in need of that when they are at their most needy.

[3]**Qur'an references (L28770):** Qur'an 2:254 (Al-Baqarah); Qur'an 3:92 (Ali 'Imran).

«وَسُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَفْضَلِ الصَّدَقَةِ؟ فَقَالَ: جُهْدُ الْمُقِلِّ» . فَإِنْ قَالُوا: قَدْ «سُئِلَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَفْضَلِ الصَّدَقَةِ؟ فَقَالَ: أَنْ تَصَدَّقَ وَأَنْتَ صَحِيحٌ شَحِيحٌ تَخْشَى الْفَقْرَ وَتَأْمُلُ الْغِنَى لَا أَنْ تُمْهِلَ حَتَّى إذَا بَلَغَتْ الْحُلْقُومَ قُلْتَ: لِفُلَانٍ كَذَا وَلِفُلَانٍ كَذَا، أَلَا وَقَدْ كَانَ لِفُلَانٍ؟» .

L28772–28773 The Messenger of Allah—peace and blessings be upon him—was asked about the best charity. He replied: “The effort of one with meager means.” If they object: “The Prophet—peace and blessings be upon him—had indeed been asked about the best charity, and he said: ’To give charity while you are healthy yet attached to wealth, fearing poverty while hoping for affluence—not delaying until death approaches, when your soul reaches the throat and you declare: ”This is for so-and-so, and that is for so-and-so¡‘ But indeed, it had already belonged to so-and-so!”’”

قُلْنَا: نَعَمْ، هَذَا حَقٌّ صَحِيحٌ، وَإِنَّمَا فِيهِ تَفَاضُلُ الصَّدَقَةِ فَقَطْ، وَلَيْسَ فِيهِ مَنْعٌ مِنْ مَرَضٍ، وَأَيْقَنَ بِالْمَوْتِ مِنْ أَكْثَرَ مِنْ ثُلُثِ مَالِهِ أَصْلًا، لَا بِنَصٍّ، وَلَا بِدَلِيلٍ، وَلَا بِوَجْهٍ مِنْ الْوُجُوهِ.

L28774 We said: Yes, this is sound and correct, for it pertains solely to the superiority in charitable acts. It contains no prohibition related to illness, nor is there any basis for asserting that someone who gives more than a third of their wealth is certain of death—neither through explicit textual proof, nor evidence, nor any conceivable juristic rationale.

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَسْأَلُهُمْ عَنْ مَالِ الْمَرِيضِ لِمَنْ أَلَهُ أَمْ لِلْوَرَثَةِ؟ فَإِنْ قَالُوا: بَلْ لَهُ كَمَا هُوَ لِلصَّحِيحِ.

L28775 Abu Muhammad said: Then we ask them about the wealth of a sick person—does it belong to him or to the heirs? If they say: Rather, it belongs to him just as it does for a healthy person.

قُلْنَا: فَلِمَ تَمْنَعُونَهُ مَالَهُ دُونَ أَنْ تَمْنَعُوا الصَّحِيحَ، وَهَذَا ظُلْمٌ ظَاهِرٌ.

L28776 We said: Why do you withhold his wealth from him, yet fail to withhold it from the legally competent person? This is manifest injustice.

وَلَوْ قَالُوا: بَلْ هُوَ لِلْوَرَثَةِ. لَقَالُوا الْبَاطِلَ؛ لِأَنَّ الْوَارِثَ لَوْ أَخَذَ مِنْهُ شَيْئًا لَقُضِيَ عَلَيْهِ بِرَدِّهِ، وَلَوْ وَطِئَ أَمَةَ الْمَرِيضِ لَحُدَّ، وَلَوْ كَانَ ذَلِكَ لَمَا حَلَّ لِلْمَرِيضِ أَنْ يَأْكُلَ مِنْهُ هُوَ وَمَنْ تَلْزَمُهُ نَفَقَتُهُ مِنْ غَيْرِ الْوَرَثَةِ.

L28777 If they were to say, “Rather, it belongs to the heirs,” they would be asserting falsehood, because if an heir were to take anything from it, a judgment would be passed against him to return it. If he were to have intercourse with the sick person’s slave woman, he would be subjected to the *ḥadd* punishment. If that were the case, it would not be lawful for the sick person himself, nor for those he is obligated to maintain (excluding the heirs), to consume from [the estate].

وَلَا نَدْرِي مِنْ أَيْنَ أَطْلَقُوا لِلْمَرِيضِ أَنْ يَأْكُلَ مِنْ مَالِهِ مَا شَاءَ، وَيَلْبَسَ مَا شَاءَ، وَيُنْفِقَ عَلَى مَنْ إلَيْهِ مِنْ عَبِيدٍ وَإِمَاءٍ.

L28778 We do not know from what source they granted the sick person unrestricted allowance to consume from his wealth whatever he wishes, wear what he desires, and spend on those under his responsibility from among his male and female slaves.

وَإِنْ أَتَى عَلَى جَمِيعِ الْمَالِ، وَمَنَعُوهُ مِنْ الصَّدَقَةِ بِأَكْثَرَ مِنْ الثُّلُثِ.

L28779 And if the bequest encroaches on the entire estate, and the heirs prevent him from exceeding a third of it in his bequest.

L28780–28782 Indeed, this is an astonishing marvel without parallel! Thus, the invalidity of this statement has become entirely evident, stripped of any attribution to a single Companion. Rather, it is found only among a small group of divergent Followers, some of whom contradicted others in their statements on the matter—such as their disagreement with al-Shaʿbī concerning a traveler's financial obligations and other matters. That is, moreover, Al-Shaʿbi presents a stronger argument than them, as it is authentically established from the Prophet, peace and blessings of Allah be upon him, that "Travel is a portion of punishment."

إِنَّ هَذَا لَعَجَبٌ لَا نَظِيرَ لَهُ؟ فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ جُمْلَةً وَتَعَرِّيهِ عَنْ أَنْ يُوجَدَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ، وَإِنَّمَا وُجِدَ عَنْ نَفَرٍ يَسِيرٍ مِنْ التَّابِعِينَ مُخْتَلِفِينَ، وَقَدْ خَالَفُوا بَعْضُهُمْ فِي قَوْلِهِ فِي ذَلِكَ، كَخِلَافِهِمْ لِلشَّعْبِيِّ فِي فِعْلِ الْمُسَافِرِ فِي مَالِهِ وَغَيْرِ ذَلِكَ، عَلَى أَنَّ الشَّعْبِيَّ أَقْوَى حُجَّةً مِنْهُمْ، لِأَنَّهُ قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «السَّفَرُ قِطْعَةٌ مِنْ الْعَذَابِ» .

L28783 It has also been narrated: "The traveler and his mount are upon scarcity except what Allah safeguards."

وَرُوِيَ أَيْضًا «الْمُسَافِرُ وَرَحْلُهُ عَلَى قَلَتٍ إلَّا مَا وَقَى اللَّهُ» .

L28784 And by Allah, the Exalted, is success.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28785 Abu Muhammad said: We found them objecting with narrations in which they possess no valid evidence—it is necessary to draw attention to these by the grace of Allah the Exalted. Among them is the narration we previously mentioned several pages earlier in the chapter on commencing the payment of debts owed to Allah the Exalted from the principal wealth. It is a mursal narration transmitted through Qatādah: "May I never know of anyone who withholds Allah's rightful due until, when death approaches him, he begins frittering away his wealth here and there." Even if it were authentic, it would contain no evidence to prohibit disposing of the rightful portion in the wealth.

قَالَ أَبُو مُحَمَّد: وَوَجَدْنَاهُمْ يُشَنِّعُونَ بِآثَارٍ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهَا يَجِبُ التَّنْبِيهُ عَلَيْهَا بِحَوْلِ اللَّهِ تَعَالَى -: مِنْهَا - الْأَثَرُ الَّذِي قَدْ ذَكَرْنَاهُ قَبْلَ هَذَا بِأَوْرَاقٍ فِي بَابِ تَبْدِئَةِ دُيُونِ اللَّهِ تَعَالَى مِنْ رَأْسِ الْمَالِ وَهُوَ مُرْسَلٌ مِنْ طَرِيقِ قَتَادَةَ «لَا أَعْرِفَنَّ أَحَدًا بَخِلَ بِحَقِّ اللَّهِ حَتَّى إذَا حَضَرَهُ الْمَوْتُ أَخَذَ يُدَغْدِغُ مَالَهُ هَاهُنَا وَهَا هُنَا» ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ فِيهِ حُجَّةٌ فِي الْمَنْعِ مِنْ التَّصَرُّفِ بِالْحَقِّ فِي الْمَالِ.

L28786 Among them is what was narrated to us by Ḥumām, narrated by ʿAbbās ibn Aṣbagh, narrated by Muḥammad ibn ʿAbd al-Malik ibn Ayman, narrated by Yazīd ibn Muḥammad al-ʿUqaylī, narrated by Ḥafṣ ibn ʿUmar ibn Maymūn, from Thawr ibn Yazīd, from Makḥūl, from al-Ṣunābiḥī, from Abū Bakr al-Ṣiddīq—that the Prophet, peace and blessings of Allāh be upon him—said: "Allāh has given charity upon you with a third of your wealth at the time of your death as a mercy to you and an increase in your deeds and good works." Narrated by Muḥammad ibn Saʿīd ibn Nabāt, narrated by ʿAbd Allāh ibn Naṣr, narrated by Qāsim ibn Aṣbagh, narrated by Ibn Waḍḍāḥ, narrated by Mūsā ibn Muʿāwiyah, narrated by Wakīʿ, from Ṭalḥah ibn ʿAmr al-Makkī,

وَمِنْهَا: مَا حَدَّثَنَاهُ حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا يَزِيدُ بْنُ مُحَمَّدٍ الْعُقَيْلِيُّ نا حَفْصُ بْنُ عُمَرَ بْنِ مَيْمُونٍ عَنْ ثَوْرِ بْنِ يَزِيدَ عَنْ مَكْحُولٍ عَنْ الصُّنَابِحِيِّ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّ اللَّهَ قَدْ تَصَدَّقَ عَلَيْكُمْ بِثُلُثِ أَمْوَالِكُمْ عِنْدَ مَوْتِكُمْ رَحْمَةً لَكُمْ وَزِيَادَةً فِي أَعْمَالِكُمْ وَحَسَنَاتِكُمْ» . نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ

from ʿAṭāʾ, from Abū Hurayrah—that the Prophet, peace and blessings of Allāh be upon him—said: "Allāh has given charity upon you with a third of your wealth."

نا وَكِيعٌ عَنْ طَلْحَةَ بْنِ عَمْرٍو الْمَكِّيِّ عَنْ عَطَاءٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِنَّ اللَّهَ تَصَدَّقَ عَلَيْكُمْ بِالثُّلُثِ مِنْ أَمْوَالِكُمْ» .

L28787–28788 From the narration of Abd al-Razzaq via Ibn Jurayj: I heard Sulayman ibn Musa say: "I heard the Messenger of Allah - peace and blessings of Allah be upon him - declare: 'I have ordained a third of your wealth as an increase in your good deeds.'"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ سَمِعْت سُلَيْمَانَ بْنَ مُوسَى يَقُولُ: سَمِعْت " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «جَعَلْتُ لَكُمْ ثُلُثَ أَمْوَالِكُمْ زِيَادَةً فِي أَعْمَالِكُمْ» .

L28789 From the chain of Abd al-Razzaq, from Ma'mar, from Ayyub, from Abu Qilabah: "That the Prophet (peace be upon him) said, quoting Allah the Exalted: 'I have made a portion of your wealth available at your death to show you mercy by means of it.'" Abu Muhammad said: All of this provides them no valid basis whatsoever to rely on. As for the narration of Abu Bakr, it comes through the chain of Hafs ibn Umar al-Shami—and he is rejected.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ أَبِي قِلَابَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ عَنْ اللَّهِ تَعَالَى: جَعَلْتُ لَكَ طَائِفَةً مِنْ مَالِكَ عِنْدَ مَوْتِكَ أَرْحَمُكَ بِهِ» ". قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كُلُّهُ لَا مُتَعَلَّقَ لَهُمْ بِشَيْءٍ مِنْهُ أَصْلًا -: أَمَّا خَبَرُ أَبِي بَكْرٍ: فَمِنْ طَرِيقِ حَفْصِ بْنِ عُمَرَ الشَّامِيِّ وَهُوَ مَتْرُوكٌ.

L28790 As for the ḥadīth of Abū Hurayrah: It is transmitted through the chain of Ṭalḥah ibn ʿAmr - who is a foundational pillar of falsehood - while the other two chains are interrupted. Even if it were authentic, they would have no basis to rely upon it whatsoever, for it contains nothing except that Allah the Exalted has designated for us, at the time of our death, a third of our wealth. This is a sound meaning, which is undoubtedly the testamentary bequest that is never executed whatsoever except upon death. None of these narrations mention illness in the slightest - neither by explicit text nor by textual indication. Thus, their obfuscation through it is invalidated.

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ: فَمِنْ طَرِيقِ طَلْحَةَ بْنِ عَمْرٍو وَهُوَ رُكْنٌ مِنْ أَرْكَانِ الْكَذِبِ وَالْآخَرَانِ مُرْسَلَانِ، ثُمَّ لَوْ صَحَّتْ لَمَا كَانَ لَهُمْ بِهَا مُتَعَلَّقٌ أَصْلًا، لِأَنَّهُ لَيْسَ فِيهَا إلَّا أَنَّ اللَّهَ تَعَالَى جَعَلَ لَنَا عِنْدَ مَوْتِنَا ثُلُثَ أَمْوَالِنَا، وَهَذَا مَعْنًى صَحِيحٌ وَهُوَ بِلَا شَكٍّ الْوَصِيَّةُ الَّتِي لَا تُنَفَّذُ أَلْبَتَّةَ إلَّا عِنْدَ الْمَوْتِ، وَلَيْسَ فِي شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ ذِكْرٌ لِلْمَرَضِ أَصْلًا، لَا بِنَصٍّ وَلَا بِدَلِيلٍ، فَبَطَلَ تَمْوِيهُهُمْ بِهَا.

L28791 And we ask them: Regarding someone who gave two-thirds of his wealth in charity while in sound health, then died suddenly immediately after that.

وَنَسْأَلُهُمْ: عَمَّنْ تَصَدَّقَ بِثُلُثَيْ مَالِهِ وَهُوَ صَحِيحٌ ثُمَّ مَاتَ بَغْتَةً إثْرَ ذَلِكَ.

L28792 Or if he emancipates all his enslaved persons in the same manner? According to their opinion, all such dispositions are validly deducted from his capital.

أَوْ أَعْتَقَ جَمِيعَ مَمَالِيكِهِ كَذَلِكَ أَيْضًا؟ فَمِنْ قَوْلِهِمْ: أَنَّ كُلَّ ذَلِكَ نَافِذٌ مِنْ رَأْسِ مَالِهِ.

L28793 We respond to them: You have contradicted all these reports because this act of charity and emancipation is performed at his death, as in the aforementioned reports. None of those reports indicate that he became certain he

فَنَقُولُ لَهُمْ: قَدْ خَالَفْتُمْ جَمِيعَ هَذِهِ الْآثَارِ لِأَنَّ هَذَا فِعْلُ الصَّدَقَةِ وَالْعِتْقِ عِنْدَ مَوْتِهِ كَمَا فِي الْآثَارِ الْمَذْكُورَةِ، وَلَيْسَ فِي شَيْءٍ مِنْ تِلْكَ الْآثَارِ أَنَّهُ أَيْقَنَ بِأَنَّهُ يَمُوتُ إِذَا أَعْتَقَ أَعْبُدَهُ، إِنَّمَا فِيهَا عِنْدَ مَوْتِهِ فَقَطْ - فَظَهَرَ خِلَافُهُمْ لِلْآثَارِ كُلِّهَا.

would die when he emancipated his male slaves; they only contain [the act] at his death. Thus, their contradiction to all the reports has become evident.

وَمِنْهَا - الْخَبَرُ الصَّحِيحُ مِنْ طَرِيقِ مَالِكٍ عَنْ الزُّهْرِيِّ عَنْ «عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ قَالَ جَاءَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَعُودُنِي مِنْ وَجَعٍ اشْتَدَّ بِي فَقُلْتُ: يَا رَسُولَ اللَّهِ قَدْ بَلَغَ بِي مِنْ الْوَجَعِ مَا تَرَى وَأَنَا ذُو مَالٍ وَلَا يَرِثُنِي إِلَّا ابْنَةٌ لِي أَفَأَتَصَدَّقُ بِثُلُثَيْ مَالِي. قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَا، قُلْت: فَالشَّطْرُ؟ قَالَ: لَا، ثُمَّ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: الثُّلُثُ، وَالثُّلُثُ كَثِيرٌ إِنَّك أَنْ تَذَرْ وَرَثَتَك أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ» .

L28794–28796 And among them is the authentic narration transmitted through Mālik from al-Zuhrī from ʿĀmir ibn Saʿd ibn Abī Waqqāṣ from his father, who said: The Messenger of Allah—may the peace and blessings of Allah be upon him—came to visit me during an illness that had intensified upon me. I said: "O Messenger of Allah, my pain has reached the severity you witness, and I possess wealth with none to inherit from me except a daughter of mine. Shall I give two-thirds of my wealth as charity?" The Messenger of Allah—may the peace and blessings of Allah be upon him—said: "No." I asked: "Then half?" He said: "No." Then he—may the peace and blessings of Allah be upon him—said: One-third, and one-third is a lot. Indeed, it is better for you to leave your heirs wealthy than to leave them a burden, begging from others.

ثُمَّ ذَكَرَ الْحَدِيثَ وَفِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «قَالَ لِسَعْدٍ يَوْمَئِذٍ وَلَعَلَّك أَنْ تُخَلَّفَ حَتَّى يَنْتَفِعَ بِك أَقْوَامٌ وَيُضَرَّ بِك آخَرُونَ» .

L28797 Then he mentioned the ḥadīth, in which the Prophet—peace and blessings be upon him—said to Saʿd on that day: "And perhaps you will survive until peoples benefit through you and others are harmed through you."

وَهَكَذَا رَوَاهُ سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ بِإِسْنَادِهِ.

L28798 And thus Sufyān ibn ʿUyaynah narrated it from al-Zuhrī with his *isnad*.

وَبِلَفْظَةِ " الصَّدَقَةِ " فَقَالُوا: فَقَدْ مَنَعَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الصَّدَقَةِ فِي مَرَضِهِ بِأَكْثَرَ مِنْ الثُّلُثِ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ -: أَحَدُهَا: أَنَّنَا رُوِّينَا هَذَا الْخَبَرَ نَفْسَهُ مِنْ طَرِيقِ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ فَذَكَرَ هَذَا الْخَبَرَ وَفِيهِ «قَالَ سَعْدٌ: فَقُلْت: يَا رَسُولَ اللَّهِ أَفَأُوصِي بِثُلُثَيْ مَالِي قَالَ: لَا، قُلْتُ: فَبِشَطْرِ مَالِي؟ قَالَ: لَا، قُلْتُ: فَبِثُلُثِ مَالِي؟ قَالَ: الثُّلُثُ وَالثُّلُثُ كَثِيرٌ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

L28799 And regarding the term "charity," they said: Indeed, the Messenger of Allah—peace and blessings be upon him—restricted him from giving charity during his [Saʿd's] illness to more than a third. Abu Muhammad said: This contains no valid proof for them due to several considerations. One of them is that we received this very report through the chain of Maʿmar from al-Zuhri from ʿAmir ibn Saʿd ibn Abi Waqqas from his father, who mentioned this report. In it: "Saʿd said: I asked, 'O Messenger of Allah, may I bequeath two-thirds of my wealth?' He replied, 'No.' I said, 'Half of my wealth?' He replied, 'No.' I said, 'A third of my wealth?' He replied, 'A third, and a third is already significant.'" He then mentioned the rest of the report.

وَرُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد الطَّيَالِسِيِّ قَالَ: نا إِبْرَاهِيمُ بْنُ سَعْدٍ، وَعَبْدُ الْعَزِيزِ بْنُ أَبِي سَلَمَةَ الْمَاجِشُونِ، كِلَاهُمَا عَنْ الزُّهْرِيِّ عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ أَنَّهُ ذَكَرَ هَذَا الْخَبَرَ، وَفِيهِ " قَالَ: «قُلْتُ: أَفَأَتَصَدَّقُ بِمَالِي كُلِّهِ قَالَ: لَا، قُلْتُ: أَفَأُوصِي بِالشَّطْرِ؟ قَالَ: لَا، قُلْتُ: يَا رَسُولَ اللَّهِ فَبِمَ أُوصِي؟ قَالَ: الثُّلُثُ: وَالثُّلُثُ كَثِيرٌ»

L28800 We have transmitted it through the chain of Abū Dāwūd al-Ṭayālisī, who said: Ibrāhīm ibn Saʿd and ʿAbd al-ʿAzīz ibn Abī Salamah al-Mājishūn narrated to him—both of them transmitting from al-Zuhrī, from ʿĀmir ibn Saʿd ibn Abī Waqqāṣ, from his father—that he mentioned this report, which states: "I asked, 'Shall I give all my wealth in charity?' He replied, 'No.' I asked, 'Shall I bequeath half?' He said, 'No.' I said, 'O Messenger of Allah, what then should I bequeath?' He responded, 'A third; a third is much.'"

وَذَكَرَ الْخَبَرَ، فَذَكَرُوا أَنَّهُ إِنَّمَا سَأَلَ سَعْدٌ عَنْ الْوَصِيَّةِ وَهُوَ خَبَرٌ وَاحِدٌ عَنْ مَقَامٍ وَاحِدٍ - فَصَحَّ أَنَّ لَفْظَةَ " الصَّدَقَةِ " الَّتِي رَوَاهَا: مَالِكٌ، وَسُفْيَانُ عَنْ الزُّهْرِيِّ إِنَّمَا مَعْنَاهَا الْوَصِيَّةُ.

L28801 He mentioned the report, and they related that Saʿd specifically inquired about the will—a single report pertaining to a specific circumstance. Thus, it was confirmed that the term "charity" as transmitted by Mālik and Sufyān on the authority of al-Zuhrī indeed denotes "the will."

كَمَا رَوَاهُ مَعْمَرٌ، وَعَبْدُ الْعَزِيزِ بْنُ أَبِي سَلَمَةَ الْمَاجِشُونِ - وَمَعْمَرٌ، وَعَبْدُ الْعَزِيزِ دُون مَالِكٍ - وَسُفْيَانَ، وَالزُّهْرِيِّ، وَغَيْرُهُ، فَكَيْفَ وَقَدْ وَافَقَ مَعْمَرٌ، وَعَبْدُ الْعَزِيزِ عَلَى لَفْظَةِ " أُوصِي " وَفِي هَذَا الْخَبَرِ جَمَاعَةُ الْإِثْبَاتِ.

L28802 As narrated by Maʿmar and ʿAbd al-ʿAzīz ibn Abī Salamah al-Mājishūn—Maʿmar and ʿAbd al-ʿAzīz (distinct from Mālik)—along with Sufyān, al-Zuhrī, and others. How [is this possible], when Maʿmar and ʿAbd al-ʿAzīz concurred on the wording "I bequeath"? And in this narration are a group of trustworthy transmitters.

كَمَا رُوِّينَاهُ عَنْ مُسْلِمِ بْنِ الْحَجَّاجِ عَنْ الْقَاسِمِ بْنِ زَكَرِيَّا عَنْ حُسَيْنِ بْنِ عَلِيٍّ الْجُعْفِيِّ عَنْ زَائِدَةَ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ عَنْ مُصْعَبِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ.

L28803–28805 As we have narrated it from Muslim ibn al-Ḥajjāj, from al-Qāsim ibn Zakariyyā, from Ḥusayn ibn ʿAlī al-Juʿfī. Narrated by Zāʾidah on the authority of ʿAbd al-Malik ibn Umayr, on the authority of Muṣʿab ibn Saʿd ibn Abī Waqqāṣ, on the authority of his father Saʿd ibn Abī Waqqāṣ.

وَعَنْ مُسْلِمٍ عَنْ ابْنِ أَبِي عُمَرَ الْمَكِّيِّ عَنْ عَبْدِ الْوَهَّابِ بْنِ عَبْدِ الْمَجِيدِ الثَّقَفِيِّ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عَمْرِو بْنِ سَعِيدٍ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ الْحِمْيَرِيِّ عَنْ ثَلَاثَةٍ مِنْ وَلَدِ سَعْدٍ، كُلِّهِمْ عَنْ سَعْدٍ.

L28806 From Muslim from Ibn Abī ʿUmar al-Makkī from ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī from Ayyūb al-Sakhtiyānī from ʿAmr ibn Saʿīd from Ḥumayd ibn ʿAbd al-Raḥmān al-Ḥimyarī from three of Saʿd's children, all of whom narrate from Saʿd.

وَمِنْ طَرِيقِ الْبُخَارِيِّ عَنْ أَبِي نُعَيْمٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سَعْدِ بْنِ إِبْرَاهِيمَ عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ.

L28807 And through the chain of al-Bukhārī from Abū Nuʿaym from Sufyān al-Thawrī from Saʿd ibn Ibrāhīm from ʿĀmir ibn Saʿd ibn Abī Waqqāṣ from his father.

L28808 Narrated via Al-Bukhārī's chain of transmission: Muḥammad ibn ʿAbd al-

Raḥīm from Zakariyyā ibn ʿAdiyy from Marwān ibn Muʿāwiyah al-Fazārī from Hāshim ibn Hāshim ibn ʿUtbah ibn Abī Waqqāṣ from ʿĀmir ibn Saʿd ibn Abī Waqqāṣ from his father.

وَمِنْ طَرِيقِ الْبُخَارِيِّ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحِيمِ عَنْ زَكَرِيَّا بْنِ عَدِيٍّ عَنْ مَرْوَانَ بْنِ مُعَاوِيَةَ الْفَزَارِيِّ عَنْ هَاشِمِ بْنِ هَاشِمِ بْنِ عُتْبَةَ بْنِ أَبِي وَقَّاصٍ عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ.

L28809 Via the chain of Aḥmad ibn Shuʿayb, from Muḥammad ibn al-Muthannā, from al-Ḥajjāj ibn al-Minhāl, from Hammām ibn Yaḥyā, from Qatādah, from Yūnus ibn Jubayr, from Muḥammad ibn Saʿd ibn Abī Waqqāṣ, from his father.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ عَنْ مُحَمَّدِ بْنِ الْمُثَنَّى عَنْ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ هَمَّامِ بْنِ يَحْيَى عَنْ قَتَادَةَ عَنْ يُونُسَ بْنِ جُبَيْرٍ عَنْ مُحَمَّدِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ.

L28810 And via the route of Ahmad ibn Shu'ayb from Isḥāq ibn Rāhūyah from Jarīr ibn ʿAbd al-Ḥamīd from ʿAṭāʾ ibn al-Sāʾib from Abū ʿAbd al-Raḥmān al-Sulamī from Saʿd ibn Abī Waqqāṣ

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ عَنْ إِسْحَاقَ بْنِ رَاهْوَيْهِ عَنْ جَرِيرِ بْنِ عَبْدِ الْحَمِيدِ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ.

L28811 And through the chain of Aḥmad ibn Shuʿayb, from Isḥāq ibn Rāhwayh, from Wakīʿ, from Hishām ibn ʿUrwah ibn al-Zubayr, from his father, from Saʿd ibn Abī Waqqāṣ—all of them explicitly state that Saʿd asked the Messenger of Allah (peace be upon him) about what he should bequeath.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ عَنْ إِسْحَاقَ بْنِ رَاهْوَيْهِ عَنْ وَكِيعٍ عَنْ هِشَامِ بْنِ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ، كُلُّهُمْ يَذْكُرُ نَصًّا: أَنَّ سَعْدًا إنَّمَا سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَمَّا يُوصِي بِهِ.

L28812 The other perspective is that they are only prevented from giving charity exceeding one-third during the illness from which one dies, not an illness from which one recovers. It has been authentically established that the Messenger of Allah (peace be upon him) knew Saʿd would recover from that illness, as we narrate through the chain of Abū Dāwūd al-Sijistānī: ʿUthmān ibn Abī Shaybah reported to us, Jarīr reported from al-Aʿmash from Abū Wāʾil from Ḥudhayfah, who said: "The Messenger of Allah (peace be upon him) stood among us and omitted nothing related to the context of his stance until the Hour's arrival except what he informed us of. Those who memorized it did so, and those who forgot it did so. These companions of mine indeed knew it."

وَالْوَجْهُ الْآخَرُ: أَنَّهُمْ إنَّمَا يُمْنَعُونَ مِنْ الصَّدَقَةِ فِيمَا زَادَ عَلَى الثُّلُثِ فِي الْمَرَضِ الَّذِي يَمُوتُ مِنْهُ صَاحِبُهُ، لَا الَّذِي يَبْرَأُ مِنْهُ، وَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلِمَ أَنَّ سَعْدًا سَيَبْرَأُ مِنْ ذَلِكَ الْمَرَضِ كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا جَرِيرٌ عَنْ الْأَعْمَشِ عَنْ أَبِي وَائِلٍ عَنْ حُذَيْفَةَ " قَالَ «قَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِينَا فَمَا تَرَكَ شَيْئًا يَكُونُ فِي مَقَامِهِ ذَلِكَ حَتَّى إلَى قِيَامِ السَّاعَةِ إلَّا أَخْبَرَ بِهِ حَفِظَهُ مَنْ حَفِظَهُ وَنَسِيَهُ مَنْ نَسِيَهُ قَدْ عَلِمَهُ أَصْحَابِي هَؤُلَاءِ» .

L28813–28815 Abu Muhammad said: Saʿd ibn Abi Waqqas was the one who defeated the Persian armies on the Day of al-Qadisiyyah and conquered their lands. The city of Kisra is among what he foretold—peace and blessings be upon him—

and indeed, it stands as one of the greatest, most pivotal, and most comprehensive conquests in the history of Islam.

قَالَ أَبُو مُحَمَّد: وَسَعْدُ بْنُ أَبِي وَقَّاصٍ هُوَ هَزَمَ عَسَاكِرَ الْفُرْسِ يَوْمَ الْقَادِسِيَّةِ وَافْتَتَحَ مَدِينَةَ كِسْرَى فَهُوَ مِنْ جُمْلَةِ مَا أَخْبَرَ بِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَلْ مِنْ أَكْبَرِ ذَلِكَ وَأَهَمِّهِ وَأَعَمِّهِ فَتْحًا فِي الْإِسْلَامِ.

L28816 And this is what he—peace be upon him—had forewarned of during that illness when he said to him, "You may linger so that some people benefit from you while others suffer harm because of you." And this contradicts their assertion.

وَهَذَا قَدْ أَنْذَرَ بِهِ - عَلَيْهِ السَّلَامُ - فِي ذَلِكَ الْمَرَضِ إِذْ قَالَ لَهُ: لَعَلَّك سَتُخَلَّفُ حَتَّى يَنْتَفِعَ بِك أَقْوَامٌ وَيُضَرَّ بِك آخَرُونَ - وَهَذَا خِلَافُ قَوْلِهِمْ.

L28817 The third consideration is that in the explicit text of the report we have just mentioned—transmitted through the chain of Ḥumayd ibn ʿAbd al-Raḥmān al-Ḥimyarī from three descendants of Saʿd, from Saʿd ibn Abī Waqqāṣ—it states: "The Messenger of Allah (peace and blessings be upon him) said to him on that day: 'Your giving of charity from your wealth is an act of *ṣadaqah*, your expenditure on your family is an act of *ṣadaqah*, and whatever your wife consumes from your wealth is an act of *ṣadaqah*.'"

وَالْوَجْهُ الثَّالِثُ أَنَّ فِي نَصِّ الْخَبَرِ الَّذِي ذَكَرْنَا الْآنَ إسْنَادُهُ مِنْ طَرِيقِ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ الْحِمْيَرِيِّ عَنْ ثَلَاثَةٍ مِنْ وَلَدِ سَعْدٍ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ، «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ يَوْمَئِذٍ: إنَّ صَدَقَتَك مِنْ مَالِك صَدَقَةٌ وَإِنَّ نَفَقَتَك عَلَى عِيَالِك صَدَقَةٌ وَإِنَّ مَا تَأْكُلُ امْرَأَتُك مِنْ مَالِك صَدَقَةٌ» .

L28818 Ali said: All of this is by consensus among us, them, and all Muslims—that [the ruling] is from the sick person's capital, whether he dies or survives. Thus it is established with indubitable certainty that the charity of a sick person is taken from his capital, not from a third of it, by the explicit textual ruling of the Prophet (peace be upon him). Whatever contradicts this is invalidated with unambiguous certainty, and this narration has now become the most decisive evidence against them and the clearest proof for our position—and all praise is due to Allah, Lord of the worlds.

قَالَ عَلِيٌّ: وَهَذَا كُلُّهُ بِإِجْمَاعٍ مِنَّا وَمِنْهُمْ، وَمِنْ جَمِيعِ أَهْلِ الْإِسْلَامِ مِنْ رَأْسِ مَالِ الْمَرِيضِ - مَاتَ أَوْ عَاشَ - فَثَبَتَ يَقِينًا ضَرُورِيًّا: أَنَّ صَدَقَةَ الْمَرِيضِ خَارِجَةٌ مِنْ رَأْسِ مَالِهِ، لَا مِنْ ثُلُثِهِ بِنَصِّ حُكْمِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبَطَلَ مَا خَالَفَ هَذَا بِيَقِينٍ لَا إشْكَالَ فِيهِ، وَعَادَ هَذَا الْخَبَرُ أَعْظَمَ حُجَّةً عَلَيْهِمْ، وَأَوْضَحَ حُجَّةً لِقَوْلِنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L28819 As for the report regarding Abū Bakr's discretionary gift (nahl) to ʿĀ'ishah (may Allah be pleased with them), their citation of it constitutes the scandal of the age, for it contains no mention whatsoever of a deathbed gift—neither explicitly nor implicitly. Rather, he had granted her that gift during his good health, and its renewal was delayed due to his illness until his death (may Allah be pleased with him). How can this be cited when it is authentically established—may Allah be pleased with him—that he sought her consent to revoke that gift?

وَأَمَّا خَبَرُ أَبِي بَكْرٍ فِي نَحْلِهِ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهُمَا - فَإِيرَادُهُمْ إيَّاهُ فَضِيحَةُ الدَّهْرِ، لِأَنَّهُ لَيْسَ فِيهِ مِنْ هِبَةِ الْمَرِيضِ ذِكْرٌ أَصْلًا، لَا بِنَصٍّ وَلَا بِدَلِيلٍ، وَإِنَّمَا كَانَ نَحَلَهَا ذَلِكَ فِي صِحَّتِهِ وَتَأَخَّرَ جِدَادُهَا لِذَلِكَ إلَى أَنْ مَاتَ - رَضِيَ اللَّهُ عَنْهُ - فَكَيْفَ وَقَدْ صَحَّ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ رَغِبَ إلَيْهَا فِي رَدِّ تِلْكَ النِّحْلَةِ بِرِضَاهَا.

فَكَيْفَ وَإِنَّمَا كَانَ وَعْدًا بِمَجْهُولٍ لَا يُدْرَى مِنْ كَمْ مِنْ نَخْلَةٍ تَجِدُ الْعِشْرِينَ وَسْقًا، وَلَا مِنْ أَيِّ تِلْكَ النَّخْلِ تَجِدُ؟ فَسَقَطَتْ الْأَقْوَالُ الْمَذْكُورَةُ بِيَقِينٍ لَا مِرْيَةَ فِيهِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L28820 How then, when it was only an obligation tied to the unknown—it is not known from how many palm trees you would find the twenty *wasq*, nor from which of those palm trees you would find it? Thus, the aforementioned statements have been invalidated with certainty that admits no doubt—and all praise belongs to Allah, Lord of the worlds.

وَلَمْ يَبْقَ إِلَّا قَوْلُنَا، وَقَوْلُ أَبِي سُلَيْمَانَ: أَنَّ جَمِيعَ أَفْعَالِ الْمَرِيضِ مِنْ رَأْسِ مَالِهِ، إِلَّا الْعِتْقَ فَإِنَّهُ مِنْ الثُّلُثِ: فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ ذَهَبَ إِلَى هَذَا.

L28821 No opinion remains except ours and that of Abū Sulaymān: all acts of a sick person are drawn from their capital, except manumission, which is taken from the third. We therefore examined the evidence cited by those who adopted this position.

فَوَجَدْنَا الْخَبَرَ الصَّحِيحَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ أَيُّوبَ السِّخْتِيَانِيِّ، وَمُحَمَّدِ بْنِ سِيرِينَ، كِلَاهُمَا: عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ: «أَنَّ رَجُلًا مِنْ الْأَنْصَارِ أَعْتَقَ سِتَّةَ أَعْبُدٍ لَهُ عِنْدَ مَوْتِهِ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُمْ فَبَلَغَ ذَلِكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ فِيهِ قَوْلًا شَدِيدًا، ثُمَّ دَعَاهُمْ فَجَزَّأَهُمْ أَثْلَاثًا ثُمَّ أَقْرَعَ بَيْنَهُمْ، فَأَعْتَقَ اثْنَيْنِ وَأَرَقَّ أَرْبَعَةً» .

L28822–28824 We identified the authentic report narrated via the chain of Ayyub al-Sikhtiyānī and Muḥammad ibn Sīrīn, both of them from Abū Qilābah, from Abū al-Muhallab, from ʿImrān ibn al-Ḥuṣayn: that a man from the Anṣār emancipated six slaves of his at [text cut off]. Upon his death, he owned no property besides them. When this matter reached the Prophet (peace be upon him), he spoke harshly about it. He then summoned them, divided them into three equal parts, cast lots among them, freed two, and enslaved four.

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ أَيُّوبَ، وَحَبِيبِ بْنِ الشَّهِيدِ، وَهِشَامِ بْنِ حَسَّانَ، وَيَحْيَى بْنِ عَتِيقٍ، كُلِّهِمْ: عَنْ ابْنِ سِيرِينَ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ كَمَا أَوْرَدْنَا.

L28825 We have also transmitted it: through the chain of Ayyūb, Ḥabīb ibn al-Shahīd, Hishām ibn Ḥassān, and Yaḥyā ibn ʿAṭīq—all of them: from Ibn Sīrīn, from ʿImrān ibn al-Ḥuṣayn, as we have presented.

وَسَمَاعُ ابْنِ سِيرِينَ مِنْ عِمْرَانَ صَحِيحٌ.

L28826 Ibn Sirin's hearing from ʿImran is authentic.

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ عَوْفِ بْنِ أَبِي جَمِيلَةَ عَنْ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ.

L28827 It was also narrated to us through the chain of ʿAwf ibn Abī Jamīlah from Ibn Sīrīn from Abū Hurayrah.

قَالَ أَبُو مُحَمَّدٍ: فَقُلْنَا: هَذَا خَبَرٌ صَحِيحٌ لَا تَحِلُّ مُخَالَفَتُهُ إِلَّا أَنَّهُ لَا يَحِلُّ لِلْحَنَفِيِّينَ، وَلَا لِلْمَالِكِيِّينَ - وَلَا لِلشَّافِعِيِّينَ: الْحُجَّةُ بِهِ أَصْلًا، فِيمَا عَدَا الْعِتْقِ؛ لِأَنَّهُ قِيَاسٌ، وَالْقِيَاسُ بَاطِلٌ كُلُّهُ.

L28828 Abu Muhammad said: We stated: This is an authentic report that may not be contravened. However, it is impermissible for the Ḥanafīs, nor the Mālikīs, nor the Shāfiʿīs to employ it as a foundational proof in any matter apart from manumission, for it constitutes analogy, and all analogy is wholly invalid.

L28829 Just as they did not differ regarding the prohibition of applying analogy to the established report concerning the valuation imposed on one who manu-

كَمَا لَمْ يَخْتَلِفُوا فِي أَنَّهُ لَا يَحِلُّ أَنْ يُقَاسَ عَلَى الْخَبَرِ الثَّابِتِ فِي التَّقْوِيمِ عَلَى مَنْ أَعْتَقَ شِرْكًا لَهُ فِي مَمْلُوكٍ وَأَنَّهُ لَا يَجُوزُ أَنْ يَتَعَدَّى بِهِ مَا جَاءَ فِيهِ مِنَ الْعِتْقِ خَاصَّةً: لَا إِلَى صَدَقَةٍ، وَلَا إِلَى إِنْفَاقٍ، وَلَا إِلَى إِصْدَاقٍ، وَلَا إِلَى غَيْرِ ذَلِكَ، لَا سِيَّمَا وَالْحَنَفِيُّونَ قَدْ خَالَفُوا نَصَّهُ فِيمَا جَاءَ فِيهِ، فَكَيْفَ يَحْتَجُّونَ بِهِ فِيمَا لَيْسَ فِيهِ مِنْهُ أَثَرٌ، وَهَذَا عَارٌ جِدًّا.

mits his shared portion in a slave, and that it is impermissible to extend this ruling beyond the specific case of manumission mentioned in the text—not to charity, nor to general maintenance, nor to dowry, nor to anything else—especially given that the Ḥanafīs themselves have contradicted its explicit ruling in the very matters it addresses, how then can they cite it as evidence in matters where no precedent of it exists? This constitutes a glaring contradiction.

L28830 وَأَمَّا أَصْحَابُنَا: فَلَيْسَ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْ هَذَا الْخَبَرِ: أَنَّ الرَّجُلَ كَانَ مَرِيضًا، وَإِنَّمَا فِيهِ «عِنْدَ مَوْتِهِ» وَقَدْ يُفْجَأُ الْمَوْتُ الصَّحِيحَ فَيُوقِنُ بِهِ، فَلَا يَحِلُّ أَنْ يُقْحَمَ فِي الْخَبَرِ مَا لَيْسَ فِيهِ مِنْ ذِكْرِ الْمَرَضِ - فَبَطَلَ تَعَلُّقُهُمْ بِهِ.

As for our scholarly companions, they have no valid proof in this matter, because there is nothing in any part of this narration indicating that the man was ill. It merely states “at the time of his death,” for death may suddenly come upon a healthy person, leading him to certainty of its occurrence. Therefore, it is impermissible to insert into the narration what is not mentioned therein—the mention of illness. Thus, their reliance upon it is invalidated.

L28831 وَأَيْضًا: فَقَدْ بَيَّنَّا قَبْلُ أَنَّ هَذَا الْعِتْقَ لِلسِّتَّةِ الْأَعْبُدِ إِنَّمَا كَانَ وَصِيَّةً -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الْوَهَّابِ الثَّقَفِيِّ عَنْ أَيُّوبَ بِالْإِسْنَادِ الْمَذْكُورِ، وَفِي هَذَا كِفَايَةٌ.

Moreover, we have previously clarified that this emancipation of the six slaves was indeed a bequest, as narrated to us through ʿAbd al-Wahhāb al-Thaqafī from Ayyūb with the mentioned chain, and this suffices.

L28832 وَوَجْهٌ ثَالِثٌ: هُوَ أَنَّهُ قَدْ بَيَّنَ ذَلِكَ الْخَبَرَ أَنَّهُ لَهُ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُمْ، وَنَحْنُ نَقُولُ بِهَذَا حَقًّا، فَلَا يَجُوزُ لِأَحَدٍ عِتْقٌ فِي عَبْدٍ أَوْ عَبِيدٍ لَا مَالَ لَهُ غَيْرُهُ، يُنَفَّذُ مِنْ ذَلِكَ الْعِتْقِ مَا وَقَعَ فِيمَنْ بِهِ عَنْهُ غِنًى، وَيَبْطُلُ فِي مِقْدَارِ مَا لَا غِنًى بِهِ عَنْهُ.

A third perspective is that the report clarified there existed no property for him other than them, and we genuinely uphold this ruling. Thus, it is impermissible for one to enact manumission concerning a slave or slaves when possessing no other wealth. The portion of manumission applicable to those through whom sufficient means are provided shall be implemented, while it becomes void to the extent of that which does not furnish sufficiency through itself.

L28833 فَلَوْ صَحَّ أَنَّ ذَلِكَ الْفِعْلَ لَمْ يَكُنْ وَصِيَّةً لَكَانَ حَمْلُ الْحَدِيثِ عَلَى هَذَا الْوَجْهِ أَحَقَّ بِظَاهِرِهِ، وَأَوْلَى مِنْ حَمْلِهِ عَلَى أَنَّهُ - عَلَيْهِ السَّلَامُ - أَجَازَ لِلْمَرِيضِ ثُلُثَ مَالِهِ، إِذْ لَيْسَ فِي الْخَبَرِ دَلِيلٌ - عَلَى هَذَا أَصْلًا.

If it were established that this act was not a bequest, interpreting the hadith according to this perspective would be more appropriate to its apparent meaning and preferable to interpreting it as him (peace be upon him) permitting the sick person to dispose of a third of his wealth, since there is no evidence in the report supporting this whatsoever.

L28834–28835 فَبَطَلَ تَعَلُّقُ أَصْحَابِنَا بِهَذَا الْخَبَرِ جُمْلَةً، وَصَحَّ قَوْلُنَا - وَلِلَّهِ الْحَمْدُ.

Therefore, the reliance of our companions upon this report has been entirely voided, and our position is validated. All praise is due to Allah.

L28836 Similarly, the discarded report we narrated through the chain of Saʿīd ibn

Manṣūr—who reported to us: Hushaym informed us: I am Khālid, from Abī Qilābah—from a man of Banū ʻUdhrah: A man among them manumitted his slave upon his death, having no property other than him. This matter was presented to the Messenger of Allah—peace and blessings be upon him—so he manumitted one-third of the slave and commanded him to earn the remaining two-thirds. The ruling concerning this report—even if it were authentic—would align with the ruling regarding the report of ʻImrān. How then, when it is invalid? For it is mursal and narrated from an unknown individual whose identity is also undetermined.

L28837 As for what is narrated regarding that from Ali and Ibn Mas'ud, it is baseless and unauthenticated. This is because when Abdullah—may Allah be pleased with him—died, al-Qasim's father Abd al-Rahman was six years old. How, then, could al-Qasim—his son—have existed? Moreover, the narration comes either through al-Hajjaj ibn Arta'ah—who is abandoned (as a narrator)—or through Abd al-Rahman ibn Abdullah—who is unknown—both narrating from al-Qasim.

L28838 As for the narration attributed to ʿAlī: it is transmitted through the chain of al-Ḥajjāj ibn Arṭaḥ—who is discredited—moreover, it is mursal, since al-Ḥasan did not hear a single word from ʿAlī. Thus, it becomes invalid for there to exist a sound report from the Companions—may Allah be pleased with them—that contradicts our position. All praise is due to Allah, Lord of all creation.

L28839–28840 **The issue of a Muslim who spends two nights without having a pledge of allegiance incumbent upon him toward the Imam.**

L28841 The Book of Imamate 1773 - An Issue: It is not permissible for a Muslim to spend two nights without having a pledge of allegiance to the Imam upon his neck, based on what we have reported through the chain of Muslim, who said: Ubayd Allāh ibn Muʿādh al-ʿAnbarī narrated to us from his father, who narrated from ʿĀṣim ibn Muḥammad ibn Zayd ibn ʿAbd Allāh ibn ʿUmar ibn al-Khaṭṭāb from Nāfiʿ, who said: ʿUmar told me, "I heard Allah's Messenger

وَكَذَلِكَ الْخَبَرُ السَّاقِطُ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا خَالِدٌ عَنْ أَبِي قِلَابَةَ «عَنْ رَجُلٍ مِنْ بَنِي عُذْرَةَ أَنَّ رَجُلًا مِنْهُمْ أَعْتَقَ غُلَامًا لَهُ عِنْدَ مَوْتِهِ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ فَرُفِعَ ذَلِكَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَعْتَقَ مِنْهُ الثُّلُثَ وَاسْتَسْعَى فِي الثُّلُثَيْنِ» ، فَالْقَوْلُ فِي هَذَا الْخَبَرِ - وَلَوْ صَحَّ - كَالْقَوْلِ فِي خَبَرِ عِمْرَانَ، فَكَيْفَ وَهُوَ بَاطِلٌ؛ لِأَنَّهُ مُرْسَلٌ، وَعَنْ مَجْهُولٍ لَا يُدْرَى مَنْ هُوَ أَيْضًا.

وَأَمَّا مَا رُوِيَ فِي ذَلِكَ عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ فَبَاطِلٌ لَا يَصِحُّ؛ لِأَنَّ الْقَاسِمَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ كَانَ لِأَبِيهِ إذْ مَاتَ عَبْدُ اللَّهِ - رَضِيَ اللَّهُ عَنْهُ - سِتُّ سِنِينَ فَكَيْفَ ابْنُهُ؟ ثُمَّ هُوَ أَيْضًا عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ هَالِكٌ - أَوْ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ - وَهُوَ مَجْهُولٌ - عَنْ الْقَاسِمِ.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ: فَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ هَالِكٌ - ثُمَّ هِيَ مُرْسَلَةٌ، لِأَنَّ الْحَسَنَ لَمْ يَسْمَعْ مِنْ عَلِيٍّ كَلِمَةً - فَبَطَلَ أَنْ يَصِحَّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافُ قَوْلِنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[مَسْأَلَةُ الْمُسْلِمِ يبيت ليلتين لَيْسَ فِي عنقه للإمام بيعة]

كِتَابُ الْإِمَامَةِ ١٧٧٣ - مَسْأَلَةٌ: لَا يَحِلُّ لِمُسْلِمٍ أَنْ يَبِيتَ لَيْلَتَيْنِ لَيْسَ فِي عُنُقِهِ لِإِمَامٍ بَيْعَةٌ لِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ قَالَ: نا عُبَيْدُ اللَّهِ بْنُ مُعَاذٍ الْعَنْبَرِيُّ نا أَبِي قَالَ: نا عَاصِمُ بْنُ مُحَمَّدِ بْنِ زَيْدِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ عَنْ نَافِعٍ قَالَ: قَالَ لِي عُمَرُ " سَمِعْت

- peace and blessings be upon him - say: 'Whoever withdraws his hand from obedience will meet Allah on the Day of Resurrection without any proof, and whoever dies without having a pledge of allegiance upon his neck dies a death of Jahiliyyah.'"[4]

L28842 If it is said: Umar—may Allah be pleased with him—died and established the caliphate as a shura among six men: Uthman, Ali, Abd al-Rahman ibn Awf, Sa'd ibn Abi Waqqas, Talhah, and al-Zubayr—may Allah be pleased with them—and he commanded them to deliberate for three days regarding which of them should be appointed.

L28843 We said: Yes, and there is no disagreement in this matter regarding the command of the Messenger of Allah (peace and blessings of Allah be upon him) that we mentioned, because ʿUmar (may Allah be pleased with him) appointed one of them as his successor (a matter they agreed upon), so ʿUthmān thus became the caliph from the moment of ʿUmar's death. The people during those three days were in the same situation as someone distant from the caliph's city who did not know him by name or sight except after a period. Thus, he acknowledged his imamate and pledge of allegiance—even without knowing him by name, lineage, or sight—and success is from Allah, the Exalted.

L28844 **It is a juristic issue that the caliphate is not permissible except for a man from Quraysh.**

L28845 The caliphate is not permissible except for a man from Quraysh of pure Qurayshī lineage through both parents, being a descendant of Fihr ibn Malik through his fathers.

L28846–28847 It is not permissible for one who has not attained legal maturity—even if he is from Quraysh—nor for their ally, nor for their freed slave, nor for one whose mother is from them while his father is from others. It was reported to us through the chain of Muslim: Aḥmad ibn Yūnus narrated to us, stating: ʿĀṣim ibn Muḥammad ibn Zayd ibn ʿAbd Allāh ibn ʿUmar narrated from his father, who said: ʿAbd Allāh ibn ʿUmar said: The Messenger of Allah—peace

[4] **Hadith references (L28841):** Sahih Muslim 1851a.

رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ خَلَعَ يَدًا مِنْ طَاعَةٍ لَقِيَ اللَّهَ يَوْمَ الْقِيَامَةِ لَا حُجَّةَ لَهُ وَمَنْ مَاتَ وَلَيْسَ فِي عُنُقِهِ بَيْعَةٌ مَاتَ مِيتَةً جَاهِلِيَّةً» .

فَإِنْ قِيلَ: قَدْ مَاتَ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - وَجَعَلَ الْخِلَافَةَ شُورَى فِي سِتَّةِ نَفَرٍ: عُثْمَانُ، وَعَلِيٌّ، وَعَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ، وَسَعْدُ بْنُ أَبِي وَقَّاصٍ، وَطَلْحَةُ، وَالزُّبَيْرُ - رَضِيَ اللَّهُ عَنْهُمْ - وَأَمَرَهُمْ أَنْ يَتَشَاوَرُوا ثَلَاثَةَ أَيَّامٍ فِي أَيِّهِمْ يُوَلَّى.

قُلْنَا: نَعَمْ، وَلَيْسَ فِي هَذَا خِلَافٌ لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَا، لِأَنَّهُ - رَضِيَ اللَّهُ عَنْهُ - اسْتَخْلَفَ أَحَدَهُمْ - وَهُوَ الَّذِي يَتَّفِقُونَ عَلَيْهِ - فَعُثْمَانُ هُوَ الْخَلِيفَةُ مِنْ حِينِ مَوْتِ عُمَرَ وَالنَّاسُ تِلْكَ الثَّلَاثَةَ الْأَيَّامِ بِمَنْزِلَةِ مَنْ بَعُدَ عَنْ بَلَدِ الْخَلِيفَةِ فَلَمْ يَعْلَمْهُ بِاسْمِهِ وَلَا بِعَيْنِهِ إِلَّا بَعْدَ مُدَّةٍ فَهُوَ مُعْتَقِدٌ لِإِمَامَتِهِ وَبَيْعَتِهِ - وَإِنْ لَمْ يَعْلَمْهُ بِاسْمِهِ وَلَا بِنَسَبِهِ وَلَا بِعَيْنِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة لَا تَحِلُّ الْخِلَافَةُ إِلَّا لِرَجُلٍ مِنْ قُرَيْشٍ]

١٧٧٤ - مَسْأَلَةٌ: وَلَا تَحِلُّ الْخِلَافَةُ إِلَّا لِرَجُلٍ مِنْ قُرَيْشٍ صَلِيبَةً، مِنْ وَلَدِ فِهْرِ بْنِ مَالِكٍ مِنْ قِبَلِ آبَائِهِ.

وَلَا تَحِلُّ لِغَيْرِ بَالِغٍ - وَإِنْ كَانَ قُرَشِيًّا - وَلَا لِحَلِيفٍ لَهُمْ، وَلَا لِمَوْلًى لَهُمْ، وَلَا لِمَنْ أُمُّهُ مِنْهُمْ وَأَبُوهُ مِنْ غَيْرِهِمْ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَحْمَدُ بْنُ يُونُسَ قَالَ: نا عَاصِمُ بْنُ مُحَمَّدِ بْنِ زَيْدِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ عُمَرَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَزَالُ هَذَا الْأَمْرُ فِي قُرَيْشٍ مَا بَقِيَ مِنَ النَّاسِ اثْنَانِ» .

and blessings be upon him—said: “The authority of governance shall remain with Quraysh so long as two individuals remain among mankind.”[5]

L28848 And via the chain of Al-Bukhari: Abu al-Yaman narrated to us, from Shu’ayb—who is Ibn Abi Hamzah—who narrated from al-Zuhri: that Muhammad ibn Jubayr ibn Mut’im used to narrate from Mu’awiyah that he said: I heard the Messenger of Allah—peace be upon him—say: “Indeed, this authority rests with Quraysh. No one opposes them except that Allah cast him down upon his face, so long as they establish the religion.”

وَمِنْ طَرِيقِ الْبُخَارِيِّ، نا أَبُو الْيَمَانِ أَنَا شُعَيْبٌ - هُوَ ابْنُ أَبِي حَمْزَةَ عَنِ الزُّهْرِيِّ: أَنَّ مُحَمَّدَ بْنَ جُبَيْرِ بْنِ مُطْعِمٍ كَانَ يُحَدِّثُ عَنْ مُعَاوِيَةَ أَنَّهُ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إِنَّ هَذَا الْأَمْرَ فِي قُرَيْشٍ لَا يُعَادِيهِمْ أَحَدٌ إِلَّا أَكَبَّهُ اللَّهُ عَلَى وَجْهِهِ مَا أَقَامُوا الدِّينَ» .

L28849 Abu Muhammad said: The narration of Ibn Umar is more comprehensive than that of Muʿāwiyah. These two narrations—though phrased as reports—are in reality a sound and emphatic ruling. For if it were permissible for authority to exist outside the Quraysh, it would amount to a denial of the Prophet’s narration—peace and blessings be upon him—and this constitutes an act of disbelief by whoever permits it.

قَالَ أَبُو مُحَمَّدٍ: حَدِيثُ ابْنِ عُمَرَ أَعَمُّ مِنْ حَدِيثِ مُعَاوِيَةَ، وَهَذَانِ الْخَبَرَانِ - وَإِنْ كَانَا بِلَفْظِ الْخَبَرِ - فَهُمَا أَمْرٌ صَحِيحٌ مُؤَكَّدٌ، إِذْ لَوْ جَازَ أَنْ يُوجَدَ الْأَمْرُ فِي غَيْرِ قُرَيْشٍ لَكَانَ تَكْذِيبًا لِخَبَرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا كُفْرٌ مِمَّنْ أَجَازَهُ.

L28850 It is correct that whoever assumes the titles of authority and caliphate without being from Quraysh is neither a caliph, nor an imam, nor one of those in authority, nor does he possess any authority. Such a person is a transgressing sinner, disobedient to Allah the Exalted, as are all who aid him or are content with his authority, for they have transgressed the boundaries set by Allah the Exalted upon the tongue of the Messenger of Allah—may Allah’s peace and blessings be upon him.

فَصَحَّ أَنَّ مَنْ تَسَمَّى بِالْأَمْرِ وَالْخِلَافَةِ مِنْ غَيْرِ قُرَيْشٍ فَلَيْسَ خَلِيفَةً، وَلَا إمَامًا وَلَا مِنْ أُولِي الْأَمْرِ، وَلَا أَمْرَ لَهُ -: فَهُوَ فَاسِقٌ عَاصٍ لِلَّهِ تَعَالَى، هُوَ وَكُلُّ مَنْ سَاعَدَهُ أَوْ رَضِيَ أَمْرَهُ، لِتَعَدِّيهِمْ حُدُودَ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L28851 And whoever is an ally, a client, or one whose father is from other than Quraysh: he is not genealogically Quraysh by definitive proof. He is only ascribed to them due to his affiliation under their protection. Since he is not of Quraysh in reality, nor by any specific consideration, nor in an absolute sense, he has no rightful claim to leadership.

وَمَنْ كَانَ حَلِيفًا أَوْ مَوْلًى أَوْ أَبُوهُ مِنْ غَيْرِ قُرَيْشٍ: فَإِنَّهُ لَيْسَ مِنْ قُرَيْشٍ بِيَقِينِ الْحِسِّ وَإِنَّمَا نُسِبَ إلَيْهِمْ لِاسْتِضَافَتِهِ إلَيْهِمْ، وَإِذْ لَيْسَ مِنْ قُرَيْشٍ عَلَى الْحَقِيقَةِ، وَلَا عَلَى جِهَةٍ، وَلَا عَلَى الْإِطْلَاقِ، فَلَا حَقَّ لَهُ فِي الْأَمْرِ.

L28852 As for those who have not reached puberty and women, this is based on the Prophet’s statement—may Allah bless him and his family and grant him peace—“The pen is lifted from three,” wherein he mentioned “the child until he reaches puberty.”

وَأَمَّا مَنْ لَمْ يَبْلُغْ، وَالْمَرْأَةُ، فَلِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ» فَذَكَرَ «الصَّبِيَّ حَتَّى يَبْلُغَ» .

[5] **Hadith references (L28847):** Sahih Muslim 1820.

L28853 Because contracts in Islam are under the authority of the Caliph, there is no valid contract for a boy who has not reached puberty, nor can any contract be enforced against him.

وَلِأَنَّ عُقُودَ الْإِسْلَامِ إلَى الْخَلِيفَةِ - وَلَا عَقْدَ لِغُلَامٍ لَمْ يَبْلُغْ وَلَا عَقْدَ عَلَيْهِ.

L28854–28856 Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Wuḥayb ibn Masarrata informed us: Ibn Waḍḍāḥ informed us: Abū Bakr ibn Abī Shaybah informed us. From Abu Dawud al-Tayalisi, from Uyaynah ibn Abd al-Rahman, from his father, from Abu Bakrah, who said: “I heard the Messenger of Allah (peace be upon him) say: ‘No community that entrusts its affairs to a woman as their leader will ever succeed.’”

وَقَدْ حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا وُهَيْبُ بْنُ مَسَرَّةَ نا ابْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ أَبِي دَاوُد الطَّيَالِسِيِّ عَنْ عُيَيْنَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي بَكْرَةَ قَالَ " سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ: «لَنْ يُفْلِحَ قَوْمٌ أَسْنَدُوا أَمْرَهُمْ إلَى امْرَأَةٍ» "

L28857 A jurisprudential question: It is impermissible for there to exist more than one imam in the world.

[مَسْأَلَة لَا يَحِلُّ أَنْ يَكُونَ فِي الدُّنْيَا إلَّا إمَامٌ وَاحِدٌ]

L28858 1775 - Issue: It is impermissible for there to exist in the world except a single Imam, and authority lies with the first to receive the pledge of allegiance. This is based on what we have narrated through Muslim’s transmission: Isḥāq ibn Ibrāhīm—who is Ibn Rāhwayh—and Zuhayr ibn Ḥarb both narrated to us from Jarīr, from al-Aʿmash, from Zayd ibn Wahb, from ʿAbd al-Raḥmān ibn ʿAbd Rabb al-Kaʿbah al-Ṣāʾidī, who said: I heard ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ say, “I heard the Messenger of Allah—peace and blessings be upon him and his family—say in a lengthy ḥadīth: ‘Whoever pledges allegiance to an Imam, giving him the clasp of his hand and the fruit of his heart, must obey him to the best of his ability. If another comes to dispute him, strike the neck of the other.’”

١٧٧٥ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَنْ يَكُونَ فِي الدُّنْيَا إلَّا إمَامٌ وَاحِدٌ، وَالْأَمْرُ لِلْأَوَّلِ بَيْعَةً -: لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - وَزُهَيْرُ بْنُ حَرْبٍ، كِلَاهُمَا سَمِعَ جَرِيرًا عَنْ الْأَعْمَشِ عَنْ زَيْدِ بْنِ وَهْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ رَبِّ الْكَعْبَةِ الصَّائِدِيِّ أَنَّهُ قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ عَمْرِو بْنَ الْعَاصِ يَقُولُ " إنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ فِي حَدِيثٍ طَوِيلٍ: «وَمَنْ بَايَعَ إمَامًا فَأَعْطَاهُ صَفْقَةَ يَدِهِ وَثَمَرَةَ قَلْبِهِ فَلْيُطِعْهُ إنْ اسْتَطَاعَ فَإِنْ جَاءَ آخَرُ يُنَازِعُهُ فَاضْرِبُوا عُنُقَ الْآخَرِ» .

L28859 And through the chain of Muslim: Uthman ibn Abi Shaybah narrated to me: Yunus ibn Abi Ya’fur narrated to us from his father from Arfajah ibn Shurayh, who said: I heard the Messenger of Allah - peace and blessings be upon him and his family - say: “Whoever comes to you while your affairs are united under one man, intending to break your staff or disperse your community, then kill him.”[6]

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا يُونُسُ بْنُ أَبِي يَعْفُورَ عَنْ أَبِيهِ عَنْ عَرْفَجَةَ - هُوَ ابْنُ شُرَيْحٍ - قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ: «مَنْ أَتَاكُمْ وَأَمْرُكُمْ جَمِيعٌ عَلَى رَجُلٍ وَاحِدٍ يُرِيدُ أَنْ يَشُقَّ عَصَاكُمْ أَوْ يُفَرِّقَ جَمَاعَتَكُمْ فَاقْتُلُوهُ» .

L28860–28862 And from the transmission path of Muslim: Wahb ibn Baqiyyah al-Wasiti

[6] **Hadith references (L28859):** Sahih Muslim 1852c; Mishkat al-Masabih 3678.

narrated to me: Khalid ibn Abdullah [al-Tahhan] narrated to us from al-Jurayri, from Abu Naḍrah, from Abu Saʿid al-Khudri, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said: "If allegiance is pledged to his caliph, then kill the other one of the two."

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي وَهْبُ بْنُ بَقِيَّةَ الْوَاسِطِيُّ نا خَالِدُ بْنُ عَبْدِ اللَّهِ - هُوَ الطَّحَّانُ - عَنْ الْجُرَيْرِيِّ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إذَا بُوِيعَ لِخَلِيفَتِهِ فَاقْتُلُوا الْآخَرَ مِنْهُمَا» .

L28863 And through him to Muslim: Muḥammad ibn Bashār informed us, Muḥammad ibn Jaʿfar informed us, Shuʿbah informed us from Furāt al-Qazzāz from Abū Ḥāzim, who said: I heard Abū Hurayrah narrating from the Prophet, peace and blessings be upon him and his family, that he said in his hadith: "There will be no prophet after me. There will be caliphs, and they will become numerous." They said, "What do you command us, O Messenger of God?" He said, "Fulfill the pledge to the first, then the first. Give them their due rights, for God will question them about what He entrusted to them."

وَبِهِ إلَى مُسْلِمٍ نا مُحَمَّدُ بْنُ بَشَّارٍ نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ عَنْ فُرَاتٍ الْقَزَّازِ عَنْ أَبِي حَازِمٍ قَالَ: سَمِعْت أَبَا هُرَيْرَةَ يُحَدِّثُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ فِي حَدِيثِهِ: «أَنَّهُ لَا نَبِيَّ بَعْدِي وَسَتَكُونُ خُلَفَاءُ فَتَكْثُرُ قَالُوا: فَمَا تَأْمُرُنَا يَا رَسُولَ اللَّهِ؟ قَالَ: فُوا بِبَيْعَةِ الْأَوَّلِ فَالْأَوَّلِ، وَأَعْطُوهُمْ حَقَّهُمْ، فَإِنَّ اللَّهَ سَائِلُهُمْ عَمَّا اسْتَرْعَاهُمْ» .

Chapter on Enjoining Good and Forbidding Evil

[مَسْأَلَة الْأَمْرُ بِالْمَعْرُوفِ وَالنَّهْيُ عَنْ الْمُنْكَرِ]

L28865 1776. Issue: Enjoining good and forbidding evil is an obligatory duty upon every Muslim. If he can act with his hand, let him do so; if he cannot with his hand, then with his tongue; and if he cannot with his tongue, then with his heart—and that is obligatory. That is the weakest part of faith. If he does not do this, he has no faith.

١٧٧٦ - مَسْأَلَةٌ: وَالْأَمْرُ بِالْمَعْرُوفِ وَالنَّهْيُ عَنْ الْمُنْكَرِ فَرْضٌ عَلَى كُلِّ مُسْلِمٍ إنْ قَدَرَ بِيَدِهِ فَبِيَدِهِ وَإِنْ لَمْ يَقْدِرْ بِيَدِهِ فَبِلِسَانِهِ وَإِنْ لَمْ يَقْدِرْ بِلِسَانِهِ فَبِقَلْبِهِ وَلَا بُدَّ، وَذَلِكَ أَضْعَفُ الْإِيمَانِ، فَإِنْ لَمْ يَفْعَلْ فَلَا إيمَانَ لَهُ.

L28866 Whoever fears being killed, beaten, or losing wealth has an excuse permitting him only to denounce in his heart and to remain silent about enjoining good and forbidding evil.

وَمَنْ خَافَ الْقَتْلَ أَوْ الضَّرْبَ، أَوْ ذَهَابَ الْمَالِ، فَهُوَ عُذْرٌ يُبِيحُ لَهُ أَنْ يُغَيِّرَ بِقَلْبِهِ فَقَطْ وَيَسْكُتَ عَنْ الْأَمْرِ بِالْمَعْرُوفِ وَعَنْ النَّهْيِ عَنْ الْمُنْكَرِ فَقَطْ.

L28867 This does not permit him to assist—whether verbally or physically—in approving wrongdoing in any manner, based on the statement of Allah the Exalted: {If two factions of believers fight each other, reconcile between them. But if one aggresses against the other, fight the aggressing faction until it returns to Allah's command. If it returns, then reconcile between them with justice} [Al-Ḥujurāt: 9].[7]

وَلَا يُبِيحُ لَهُ ذَلِكَ: الْعَوْنُ بِلِسَانٍ، أَوْ بِيَدٍ عَلَى تَصْوِيبِ الْمُنْكَرِ أَصْلًا، لِقَوْلِ اللَّهِ تَعَالَى: {وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الأُخْرَى فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ فَإِنْ فَاءَتْ فَأَصْلِحُوا بَيْنَهُمَا بِالْعَدْلِ} [الحجرات: ٩] .

[7] **Qur'an references (L28867):** Qur'an 49:9 (Al-Hujurat).

L28868 And He, the Almighty and Majestic, has said: “Let there be among you a community calling to good, enjoining what is right, and forbidding what is wrong. And it is they who are the prosperous.” [Āl ʿImrān 3:104][8]

وَقَالَ عَزَّ وَجَلَّ: {وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَأُولَئِكَ هُمُ الْمُفْلِحُونَ} [آل عمران: ١٠٤] .

L28869–28871 And from the chain of Muslim: Abu Bakr ibn Abi Shaybah narrated to Muhammad ibn al-Muthanna and Muhammad ibn al-’Ala, Abu Kurayb. Ibn Abi Shaybah said: Waki’ narrated to us from Sufyan al-Thawri. Muhammad ibn al-Muthanna said: Muhammad ibn Ja’far narrated to us from Shu’bah. Then both Sufyan and Shu’bah concurred, each narrating from Qays ibn Muslim from Tariq ibn Shihab. Abu Kurayb said: Abu Mu’awiyah narrated to us from al-A’mash from Isma’il ibn Raja’ from his father. Then both Tariq and Raja’ concurred, each narrating from Abu Sa’id al-Khudri, who said: I heard the Messenger... Allah—peace and blessings of Allah be upon him—says: “Whoever among you witnesses a reprehensible act must change it with his hand. If he is unable, then with his tongue. If he is unable, then with his heart—and that is the weakest degree of faith.”[9]

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، لِمُحَمَّدِ بْنِ الْمُثَنَّى، وَمُحَمَّدِ بْنِ الْعَلَاءِ أَبُو كُرَيْبٍ قَالَ ابْنُ أَبِي شَيْبَةَ: نا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَقَالَ مُحَمَّدُ بْنُ الْمُثَنَّى: نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ، ثُمَّ اتَّفَقَ سُفْيَانُ، وَشُعْبَةُ، كِلَاهُمَا عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ، وَقَالَ أَبُو كُرَيْبٍ: نا أَبُو مُعَاوِيَةَ نا الْأَعْمَشُ عَنْ إِسْمَاعِيلَ بْنِ رَجَاءٍ عَنْ أَبِيهِ، ثُمَّ اتَّفَقَ طَارِقٌ، وَرَجَاءُ، كِلَاهُمَا: عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ، قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِقَلْبِهِ وَذَلِكَ أَضْعَفُ الْإِيمَانِ» .

L28872 From the chain of Muslim: ‘Amr al-Naqid, Abu Bakr ibn al-Nadr, and ‘Abd ibn Humayd (with his wording) narrated to us—all stating: Ya‘qub ibn Ibrahim ibn Sa‘d ibn Ibrahim ibn ‘Abd al-Rahman ibn ‘Awf narrated to us; from his father; from Salih ibn Kaysan; from al-Harith—that is, Ibn al-Fudayl al-Khitmi al-Ansari; from Ja‘far ibn ‘Abd Allah ibn al-Hakam; from ‘Abd al-Rahman ibn al-Miswar ibn Makhramah; from Abu Rafi‘, the freed slave of Allah’s Messenger (peace be upon him)—that ‘Abd Allah ibn Mas‘ud reported to him: “Allah’s Messenger (peace and blessings be upon him and his family) said: ’There is no prophet Allah sent to a nation before me except that he had devoted companions and followers from his community who adhered to his tradition and obeyed his command. Then after them arise untrustworthy successors who preach what they do not practice and act without being commanded. Whoever fights them physically is a believer; whoever opposes them with his tongue is a believer; and whoever rejects them in his heart is

وَمِنْ طَرِيقِ مُسْلِمٍ نا عَمْرٌو النَّاقِدُ، وَأَبُو بَكْرِ بْنُ النَّضْرِ، وَعَبْدُ بْنُ حُمَيْدٍ وَاللَّفْظُ لَهُ، قَالُوا كُلُّهُمْ: نا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ نا أَبِي عَنْ صَالِحِ بْنِ كَيْسَانَ عَنِ الْحَارِثِ هُوَ ابْنُ الْفُضَيْلِ الْخِطْمِيُّ الْأَنْصَارِيُّ عَنْ جَعْفَرِ بْنِ عَبْدِ اللَّهِ بْنِ الْحَكَمِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْمِسْوَرِ بْنِ مَخْرَمَةَ عَنْ أَبِي رَافِعٍ مَوْلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ عَبْدَ اللَّهِ بْنَ مَسْعُودٍ حَدَّثَهُ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «مَا مِنْ نَبِيٍّ بَعَثَهُ اللَّهُ فِي أُمَّةٍ قَبْلِي إِلَّا كَانَ لَهُ مِنْ أُمَّتِهِ حَوَارِيُّونَ وَأَصْحَابٌ يَأْخُذُونَ بِسُنَّتِهِ وَيَقْتَدُونَ بِأَمْرِهِ ثُمَّ يَحْدُثُ مِنْ بَعْدِهِمْ خُلُوفٌ يَقُولُونَ مَا لَا يَفْعَلُونَ وَيَفْعَلُونَ مَا لَا يُؤْمَرُونَ فَمَنْ جَاهَدَهُمْ بِيَدِهِ فَهُوَ مُؤْمِنٌ وَمَنْ جَاهَدَهُمْ بِلِسَانِهِ فَهُوَ مُؤْمِنٌ وَمَنْ جَاهَدَهُمْ بِقَلْبِهِ فَهُوَ مُؤْمِنٌ لَيْسَ وَرَاءَ ذَلِكَ مِنَ الْإِيمَانِ حَبَّةُ خَرْدَلٍ» .

[8] **Qur’an references (L28868):** Qur’an 3:104 (Ali ’Imran).
[9] **Hadith references (L28869):** Sahih Muslim 49a; Riyad as-Salihin 184.

a believer. Beyond that, there remains not even a mustard seed's weight of faith.'"

L28873 Narrated by Muḥammad ibn Saʿīd ibn Nabāt, narrated by Aḥmad ibn ʿAbd Allāh ibn ʿAbd al-Baṣīr, narrated by Qāsim ibn Aṣbagh, narrated by Muḥammad ibn ʿAbd al-Salām al-Khushanī, narrated by Muḥammad al-Muthannā, narrated by ʿAbd al-Raḥmān ibn Mahdī, narrated by Sufyān al-Thawrī, narrated by Zubayd al-Yāmī, narrated by Saʿd ibn ʿUbaydah, narrated by ʿAlī ibn Abī Ṭālib, from the Prophet—may Allah's peace and blessings be upon him—who said: "No obedience is due to any created being in matters involving disobedience to Allah."

L28874 From the narration of Abī Dāwūd: Musaddad narrated to us from Yaḥyā ibn Saʿīd al-Qaṭṭān from ʿUbaydullāh ibn ʿUmar from Nāfiʿ from Ibn ʿUmar, who said: The Messenger of Allah (peace and blessings be upon him and his family and grant him peace) said: "Listening and obeying are obligatory for a Muslim in what he likes or dislikes, as long as he is not commanded to disobey [Allah]. If he is commanded to disobey, then there is no listening and no obeying."

L28875–28877 Via him to Abu Dawud, Yahya ibn Maʿin narrated to us, ʿAbd al-Samad ibn ʿAbd al-Warith narrated to us, Sulayman ibn al-Mughirah narrated to us. Humaid ibn Hilaal reported from Bishr ibn Asim from Uqbah ibn Malik from a man of his tribe, who said: "The Messenger of Allah (may blessings and peace be upon him and his family) sent out a detachment. I armed one of them with a sword. When they returned, he said: 'If only you had seen how the Messenger of Allah rebuked us! He said: "Were you incapable, after I sent a man who failed to execute my command, of replacing him with one who would execute my command?"'"

L28878 Abu Muhammad said: "Uqbah's status as a Companion is authenticated, and what is narrated from him is from a Companion—even if unnamed—for all Companions are deemed upright. Thus, when his companionship [with the Prophet] is confirmed, he is conclusively established as a just person (ʿadl),

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ زُبَيْدٍ الْيَامِيِّ عَنْ سَعْدِ بْنِ عُبَيْدَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «لَا طَاعَةَ لِبَشَرٍ فِي مَعْصِيَةِ اللَّهِ»

وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُسَدَّدٌ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «السَّمْعُ وَالطَّاعَةُ عَلَى الْمَرْءِ الْمُسْلِمِ فِيمَا أَحَبَّ أَوْ كَرِهَ مَا لَمْ يُؤْمَرْ بِمَعْصِيَةٍ فَإِذَا أُمِرَ بِمَعْصِيَةٍ فَلَا سَمْعَ وَلَا طَاعَةَ» .

وَبِهِ إِلَى أَبِي دَاوُد نا يَحْيَى بْنُ مَعِينٍ نا عَبْدُ الصَّمَدِ بْنُ عَبْدِ الْوَارِثِ نا سُلَيْمَانُ بْنُ الْمُغِيرَةِ نا حُمَيْدُ بْنُ هِلَالٍ عَنْ بِشْرِ بْنِ عَاصِمٍ عَنْ عُقْبَةَ بْنِ مَالِكٍ عَنْ رَجُلٍ مِنْ رَهْطِهِ قَالَ «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - سَرِيَّةً فَسَلَحْتُ رَجُلًا مِنْهُمْ سَيْفًا فَلَمَّا رَجَعَ قَالَ: لَوْ رَأَيْتَ مَا لَامَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: أَعَجَزْتُمْ إِذْ بَعَثْتُ رَجُلًا فَلَمْ يَمْضِ لِأَمْرِي أَنْ تَجْعَلُوا مَكَانَهُ مَنْ يَمْضِي لِأَمْرِي» ".

قَالَ أَبُو مُحَمَّد: عُقْبَةُ صَحِيحُ الصُّحْبَةِ، وَالَّذِي رُوِيَ عَنْهُ صَاحِبٌ - وَإِنْ لَمْ يُسَمِّهِ - فَالصَّحَابَةُ كُلُّهُمْ عُدُولٌ، فَإِذَا ثَبَتَتْ صِحَّةُ صُحْبَتِهِ فَهُوَ عَدْلٌ مَقْطُوعٌ بِعَدَالَتِهِ، لِقَوْلِ اللَّهِ تَعَالَى: {مُحَمَّدٌ رَسُولُ اللَّهِ وَالَّذِينَ مَعَهُ أَشِدَّاءُ عَلَى الْكُفَّارِ} [الفتح: ٢٩] .

in accordance with Allah's decree: *{Muhammad is the Messenger of Allah, and those with him are resolute against the disbelievers}* [Al-Fatḥ: 29]."[10]

قَالَ عَلِيٌّ: وَكُلِّ مَنْ مَعَهُ مِنْ الصَّحَابَةِ وَأُمِّ الْمُؤْمِنِينَ وَطَلْحَةَ، وَالزُّبَيْرِ، وَكُلِّ مَنْ مَعَهُمْ مِنْ الصَّحَابَةِ، وَمُعَاوِيَةَ، وَكُلِّ مَنْ مَعَهُ مِنْ الصَّحَابَةِ، وَابْنِ الزُّبَيْرِ، وَالْحُسَيْنِ بْنِ عَلِيٍّ - رَضِيَ اللَّهُ عَنْ جَمِيعِهِمْ - وَكُلِّ مَنْ قَامَ فِي الْحَرَّةِ مِنْ الصَّحَابَةِ، وَالتَّابِعِينَ، وَغَيْرِهِمْ.

L28879 Ali said: All those with him among the Companions, the Mother of the Believers, Talḥah, al-Zubayr, and their Companions, Muʿāwiyah and his Companions, Ibn al-Zubayr, al-Ḥusayn ibn ʿAli—along with all who took part in al-Ḥarrah among the Companions, the successors, and others—may Allah be pleased with all of them.

وَهَذَا الْأَحَادِيثُ نَاسِخَةٌ لِلْأَخْبَارِ الَّتِي فِيهَا خِلَافُ هَذَا، لِأَنَّ تِلْكَ مُوَافِقَةٌ لِمَا كَانَ عَلَيْهِ الدِّينُ قَبْلَ الْأَمْرِ بِالْقِتَالِ، وَلِأَنَّ الْأَمْرَ بِالْمَعْرُوفِ وَالنَّهْيَ عَنْ الْمُنْكَرِ بَاقٍ مُفْتَرَضٌ لَمْ يُنْسَخْ، فَهُوَ النَّاسِخُ لِخِلَافِهِ بِلَا شَكٍّ -.

L28880 These hadiths abrogate the reports that contradict this [ruling], because those [earlier reports] conform to the state of the religion prior to the command to fight, and because enjoining good and forbidding evil remain obligatory and have not been abrogated. Thus, it [enjoining good and forbidding evil] undoubtedly abrogates what contradicts it.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28881 And success is by Allah, the Exalted.

[مَسْأَلَةُ صِفَةُ الْإِمَامِ]

An Issue: The Attribute of the Imam

١٧٧٧ - مَسْأَلَةٌ: وَصِفَةُ الْإِمَامِ أَنْ يَكُونَ مُجْتَنِبًا لِلْكَبَائِرِ، مُسْتَتِرًا بِالصَّغَائِرِ، عَالِمًا بِمَا يَخُصُّهُ، حَسَنُ السِّيَاسَةِ، لِأَنَّ هَذَا هُوَ الَّذِي كُلِّفَ - وَلَا مَعْنَى لِأَنْ يُرَاعَى أَنْ يَكُونَ غَايَةَ الْفَضْلِ، لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، فَإِنْ قَامَ عَلَى الْإِمَامِ الْقُرَشِيِّ مَنْ هُوَ خَيْرٌ مِنْهُ أَوْ مِثْلُهُ، أَوْ دُونَهُ: قُوتِلُوا كُلُّهُمْ مَعَهُ لِمَا ذَكَرْنَا قَبْلُ إلَّا أَنْ يَكُونَ جَائِرًا.

1777 - Issue: The qualifications of the Imam are that he must avoid major sins, be discreet about his minor sins, possess knowledge pertinent to his role, and exercise sound governance. This is because he is the one charged, and there is no basis to require him to epitomize absolute virtue, as neither the Quran nor the Sunnah stipulates this. If those who are superior, equal, or inferior to the Qurashi Imam rise against him, they must all be fought against in support of him for the reasons previously stated—unless it is permissible.

فَإِنْ كَانَ جَائِرًا فَقَامَ عَلَيْهِ مِثْلُهُ أَوْ دُونُهُ: قُوتِلَ مَعَهُ الْقَائِمُ، لِأَنَّهُ مُنْكَرٌ زَائِدٌ ظَهَرَ، فَإِنْ قَامَ عَلَيْهِ أَعْدَلُ مِنْهُ وَجَبَ أَنْ يُقَاتَلَ مَعَ الْقَائِمِ، لِأَنَّهُ تَغْيِيرُ مُنْكَرٍ.

L28884–28885 If it was permissible and someone of equal or lesser standing rose against him, the one who rose must be fought alongside, for it is an additional wrong that has become apparent. If someone more just than him rose against him, it is obligatory to fight alongside the one who rose, as this constitutes changing a wrong.

L28886 As for oppressors from non-Quraysh, it is not permissible to fight alongside

[10] **Qur'an references (L28878):** Qur'an 48:29 (Al-Fath).

any of them, for they are all people of evil—except if one of them is less oppressive, in which case fighting is done alongside him against someone more oppressive than him, based on what we have stated. Success is from Allah, the Exalted.

وَأَمَّا الْجَوَرَةُ مِنْ غَيْرِ قُرَيْشٍ فَلَا يَحِلُّ أَنْ يُقَاتَلَ مَعَ أَحَدٍ مِنْهُمْ؛ لِأَنَّهُمْ كُلُّهُمْ أَهْلُ مُنْكَرٍ، إِلَّا أَنْ يَكُونَ أَحَدُهُمْ أَقَلَّ جَوْرًا فَيُقَاتَلُ مَعَهُ مَنْ هُوَ أَجْوَرُ مِنْهُ، لِمَا ذَكَرْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.



AL-MUHALLA

كِتَابُ الْأَقْضِيَةِ

The Book of Judicial Rulings

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْأَقْضِيَةِ] [مَسْأَلَةٌ لَا يَحِلُّ الْحُكْمُ إِلَّا بِمَا أَنْزَلَ اللَّهُ تَعَالَى]

١٧٧٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْحُكْمُ إِلَّا بِمَا أَنْزَلَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ الْحَقُّ وَكُلُّ مَا عَدَا ذَلِكَ فَهُوَ جَوْرٌ وَظُلْمٌ لَا يَحِلُّ الْحُكْمُ بِهِ وَيُفْسَخُ أَبَدًا إذَا حَكَمَ بِهِ حَاكِمٌ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩]

وَقَالَ تَعَالَى: {وَآمَنُوا بِمَا نُزِّلَ عَلَى مُحَمَّدٍ وَهُوَ الْحَقُّ مِنْ رَبِّهِمْ} [محمد: ٢]

وَقَالَ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] .

وَقَالَ تَعَالَى: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤]

وَقَالَ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١]

وَالظُّلْمُ لَا يَحِلُّ إقْرَارُهُ، وَالْخَطَأُ لَا يَجُوزُ إمْضَاؤُهُ.

[مَسْأَلَة مَا يَجِب فِيمَنْ يلي الْقَضَاء]

١٧٧٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَنْ يَلِيَ الْقَضَاءَ وَالْحُكْمَ فِي شَيْءٍ مِنْ أُمُورِ الْمُسْلِمِينَ وَأَهْلِ الذِّمَّةِ: إلَّا مُسْلِمٌ، بَالِـغٌ، عَاقِلٌ، عَالِمٌ بِأَحْكَامِ الْقُرْآنِ، وَالسُّنَّةِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنَاسِخِ كُلِّ ذَلِكَ، وَمَنْسُوخِهِ، وَمَا كَانَ مِنْ النُّصُوصِ مَخْصُوصًا بِنَصٍّ آخَرَ صَحِيحٍ؛ لِأَنَّ الْحُكْمَ لَا يَجُوزُ إلَّا بِمَا ذَكَرْنَا لِمَا ذَكَرْنَا قَبْلُ.

L28887–28888 **[The Book of Judicial Rulings] [A Legal Inquiry: It is not permissible to pass judgment except by that which Allah, the Most High, has revealed.]**

L28889 Issue 1778: It is impermissible to judge except by what Allah the Exalted has revealed through the tongue of His Messenger—peace and blessings be upon him—for that is the truth. Whatever differs from that is injustice and oppression; it is unlawful to judge by it, and any judgment issued by a judge according to it is perpetually annulled.

L28890 The proof of that is the saying of Allah, the Exalted: "And to judge between them by what Allah has revealed" [Surah Al-Mā'idah 5:49].[1]

L28891 And He, the Exalted, said: "And they believe in what has been revealed to Muhammad, which is the truth from their Lord" [47:2].[2]

L28892 And He, the Exalted, said: "So that you may clarify to the people what was sent down to them." [16:44][3]

L28893 And He, the Exalted, said: "Nor does he speak from desire. It is nothing but a revelation revealed." [An-Najm: 3–4][4]

L28894 And He, the Exalted, said: "Whoever transgresses the limits ordained by Allah has certainly wronged himself." [Surah at-Talaq 65:1].[5]

L28895 It is unlawful to affirm injustice and impermissible to proceed with error.

L28896 **The Issue of the Duties Required for One Who Assumes Judicial Authority.**

L28897 Issue 1779 - It is impermissible for anyone to assume judicial authority or pass rulings in matters concerning Muslims or dhimmis except a Muslim who is adult, sane, knowledgeable in the rulings of the Quran and the

[1] **Qur'an references (L28890):** Qur'an 5:49 (Al-Ma'idah).
[2] **Qur'an references (L28891):** Qur'an 47:2 (Muhammad).
[3] **Qur'an references (L28892):** Qur'an 16:44 (An-Nahl).
[4] **Qur'an references (L28893):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).
[5] **Qur'an references (L28894):** Qur'an 65:1 (At-Talaq).

established Sunnah of the Messenger of Allah—peace and blessings be upon him—including what abrogates those rulings, what is abrogated of them, and what is specified by another authentic scriptural text. This restriction exists because judgment is only permitted through what we have described, for the reasons we previously mentioned.

فَإِذَا لَمْ يَكُنْ عَالِمًا بِمَا لَا يَجُوزُ الْحُكْمُ إِلَّا بِهِ لَمْ يَحِلَّ لَهُ أَنْ يَحْكُمَ بِجَهْلِهِ بِالْحُكْمِ وَلَا يَحِلُّ لَهُ إِذَا كَانَ جَاهِلًا بِمَا ذَكَرْنَا أَنْ يُشَاوِرَ مَنْ يَرَى أَنَّ عِنْدَهُ عِلْمًا ثُمَّ يَحْكُمَ بِقَوْلِهِ، لِأَنَّهُ لَا يَدْرِي أَفْتَاهُ بِحَقٍّ أَمْ بِبَاطِلٍ.

L28898–28899 If he is not knowledgeable about that without which judgment is not permissible, it is unlawful for him to pass judgment due to his ignorance of the ruling. Nor is it lawful for him—if ignorant of what we have mentioned—to consult someone he believes has knowledge and then judge based on his opinion, for he does not know whether the advisor issued him a fatwa rooted in truth or falsehood.

وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَلا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ} [الإسراء: ٣٦] فَمَنْ أَخَذَ بِمَا لَا يَعْلَمُ فَقَدْ قَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَعَصَى اللَّهَ عَزَّ وَجَلَّ.

L28900 Allah the Exalted has said: *"And do not follow that of which you have no knowledge"* [Al-Isrāʾ 17:36]. Thus, whoever acts upon what he does not know has followed what he has no knowledge of, thereby disobeying Allah, the Almighty, the Majestic.[6]

وَلَيْسَ هَذَا بِمَنْزِلَةِ الْجَاهِلِ مِنْ الْعَامَّةِ تَنْزِلُ بِهِ النَّازِلَةُ فَيَسْأَلُ مَنْ يُوصَفُ لَهُ بِعِلْمِ الْقُرْآنِ وَالسُّنَّةِ، وَيَأْخُذُ بِقَوْلِهِ بَعْدَ أَنْ يُخْبِرَهُ أَنَّهُ حُكْمُ اللَّهِ تَعَالَى أَوْ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ أَنَّ الْعَامِّيَّ مُكَلَّفٌ فِي تِلْكَ النَّازِلَةِ عَمَلًا مَا قَدْ افْتَرَضَهُ اللَّهُ عَلَيْهِ، وَلَمْ يُفْسَحْ لَهُ فِي إهْمَالِهِ فَعَلَيْهِ فِي ذَلِكَ أَنْ يَبْلُغَ فِي ذَلِكَ حَيْثُ بَلَغَ وُسْعُهُ مِنْ الْعِلْمِ مَا لَمْ يَلْزَمْهُ.

L28901–28902 This is not akin to the situation of an ignorant commoner upon whom a calamity befalls, so he asks someone who describes to him with knowledge of the Quran and Sunnah, then follows his statement after being informed that it is the ruling of Allah the Exalted or the command of the Messenger of Allah (peace be upon him), or that the commoner is obligated in that calamity to perform an act that Allah has enjoined upon him, with no allowance for neglecting it. Thus, he must extend his efforts in that matter as far as his capacity within the scope of his knowledge permits, provided it does not become obligatory upon him.

قَالَ اللَّهُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

L28903 Allah, the Exalted, said: "He does not burden any soul beyond its capacity" [Al-Baqarah: 286].[7]

وَأَمَّا الْحَاكِمُ فَبِضِدِّ هَذَا، لِأَنَّهُ غَيْرُ مُكَلَّفٍ مَا لَا يَدْرِي مِنْ الْحُكْمِ بَيْنَ غَيْرِهِ مِنْ النَّاسِ، بَلْ هُوَ مُحَرَّمٌ عَلَيْهِ ذَلِكَ، وَإِنَّمَا كَلَّفَهُ اللَّهُ تَعَالَى سِوَاهُ مِنْ أَهْلِ الْعِلْمِ.

L28904 As for the judge, the opposite applies, for he is not obligated to rule on matters he does not know concerning disputes between others among the people. Rather, this is forbidden to him. Allah the Exalted has obligated him, just as He has obligated others among the people of knowledge.

[6] **Qur'an references (L28900):** Qur'an 17:36 (Al-Isra).
[7] **Qur'an references (L28903):** Qur'an 2:286 (Al-Baqarah).

Issue concerning that which necessitates a ruling by it.

1780 - Issue: It is not permissible to judge by analogy, nor by personal opinion, nor by juristic preference, nor by the opinion of anyone below the Messenger of Allah (peace be upon him) unless it conforms to the Quran or an authentic Sunnah; for all of that constitutes judgment based on preponderant assumption.

Allah, the Exalted, has said: "Indeed, conjecture does not avail anything from the truth" [Jonah (Yunus) 10:36].[8]

And He, the Most High, said: "They follow nothing but conjecture and what their souls desire, and indeed there has come to them from their Lord the guidance." [An-Najm: 23].[9]

The Messenger of Allah - peace and blessings be upon him - said: "Beware of suspicion, for suspicion is the most false of speech."

If it is said: "Then, in your acceptance of solitary reports, you are adhering to conjecture."

We said: By no means! Rather, it is for the certain truth. The Most High said: "Indeed, We Ourselves have sent down the Reminder, and We are assuredly its guardians." [Al-Hijr: 9][10]

And He, the Exalted, said: "He does not speak from [his own] inclination" [An-Najm: 3], "It is not except a revelation revealed" [An-Najm: 4].[11]

If it is said: "You rule by clear evidence and oath, and your judgment is in fact based on conjecture."

We said: Certainly not! Rather, with certainty that Allah, the Exalted, has

[8] **Qur'an references (L28907):** Qur'an 10:36 (Yunus).
[9] **Qur'an references (L28908):** Qur'an 53:23 (An-Najm).
[10] **Qur'an references (L28911):** Qur'an 15:9 (Al-Hijr).
[11] **Qur'an references (L28913):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).

[مَسْأَلَة فِيمَا يَجِب الْحُكْم بِهِ]

١٧٨٠ - مَسْأَلَة: وَلَا يَحِلُّ الْحُكْمُ بِقِيَاسٍ، وَلَا بِالرَّأْيِ وَلَا بِالِاسْتِحْسَانِ وَلَا بِقَوْلِ أَحَدٍ مِمَّنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دُونَ أَنْ يُوَافِقَ قُرْآنًا أَوْ سُنَّةً صَحِيحَةً، لِأَنَّ كُلَّ ذَلِكَ حُكْمٌ بِغَالِبِ الظَّنِّ.

وَقَدْ قَالَ اللَّهُ تَعَالَى: {إِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [يونس: ٣٦] .

وَقَالَ تَعَالَى: {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَمَا تَهْوَى الأَنْفُسُ وَلَقَدْ جَاءَهُمْ مِنْ رَبِّهِمُ الْهُدَى} [النجم: ٢٣] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» .

فَإِنْ قِيلَ: فَإِنَّكُمْ فِي أَخْذِكُمْ بِخَبَرِ الْوَاحِدِ مُتَّبِعُونَ لِلظَّنِّ.

قُلْنَا: كَلَّا، بَلْ لِلْحَقِّ الْمُتَيَقَّنِ، قَالَ تَعَالَى: {إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ} [الحجر: ٩] .

وَقَالَ تَعَالَى: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] .

فَإِنْ قِيلَ: فَإِنَّكُمْ فِي الْحُكْمِ بِالْبَيِّنَةِ وَالْيَمِينِ حَاكِمُونَ بِالظَّنِّ.

قُلْنَا: كَلَّا، بَلْ بِيَقِينٍ أَنَّ اللَّهَ تَعَالَى أَمَرَنَا بِذَلِكَ نَصًّا وَمَا عَلَيْنَا مِنْ مَغِيبِ الْأَمْرِ شَيْءٌ إِذْ لَمْ نُكَلَّفْهُ.

explicitly commanded us thus, and we bear no responsibility for the unseen dimensions of the matter, since we were not tasked with it.

وَأَيْضًا - فَإِنَّهُ لَا يَخْلُو مَا أَوْجَبَهُ الْقِيَاسُ، أَوْ مَا قِيلَ بِرَأْيٍ أَوْ اسْتِحْسَانٍ أَوْ تَقْلِيدِ قَائِلٍ مِنْ أَحَدِ، أَوْجُهٍ ثَلَاثَةٍ لَا رَابِعَ لَهَا ضَرُورَةً -: إمَّا أَنْ يَكُونَ ذَلِكَ مُوَافِقًا لِقُرْآنٍ أَوْ لِسُنَّةٍ صَحِيحَةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَذَا إنَّمَا يُحْكَمُ فِيهِ بِالْقُرْآنِ أَوْ بِالسُّنَّةِ، وَلَا مَعْنَى لِطَلَبِ قِيَاسٍ، أَوْ رَأْيٍ، أَوْ قَوْلِ قَائِلٍ مُوَافِقٍ لِذَلِكَ، وَمَنْ لَمْ يَحْكُمْ بِالْقُرْآنِ، أَوْ بِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا حَتَّى يُوَافِقَ ذَلِكَ قِيَاسٌ، أَوْ رَأْيٌ، أَوْ قَوْلُ قَائِلٍ فَقَدْ انْسَلَخَ عَنْ الْإِيمَانِ.

L28916 Moreover, any ruling necessitated by analogical reasoning, or what is posited by personal opinion, juristic preference, or blind adherence to a scholar's view, must by necessity align with one of three aspects—no fourth exists. Either it conforms to the Qur'an or to an authentic Sunnah of the Messenger of Allah (peace be upon him). In such a case, judgment is based solely on the Qur'an or the Sunnah, and there is no justification for seeking analogical reasoning, personal opinion, or a scholar's statement that aligns with them. Whoever does not judge by the Qur'an or the ruling of the Messenger of Allah (peace be upon him) except when it coincides with analogical reasoning, personal opinion, or a scholar's statement has indeed been cast off from faith.

قَالَ اللَّهُ عَزَّ وَجَلَّ: {فَلا وَرَبِّكَ لا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا} [النساء: ٦٥] وَهَذَا الَّذِي لَمْ يَحْكُمْ بِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَا شَجَرَ عِنْدَهُ فِيمَا بَيْنَ النَّاسِ إلَّا حَتَّى وَافَقَهُ قِيَاسٌ أَوْ رَأْيٌ، أَوْ قَوْلُ قَائِلٍ فَلَمْ يُحَكِّمْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا سَلَّمَ لَهُ تَسْلِيمًا، بَلْ وَجَدَ فِي نَفْسِهِ حَرَجًا مِمَّا قَضَى بِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَوَرَبِّنَا مَا آمَنَ.

L28917 Allah the Almighty said: "But no, by your Lord, they will not truly believe until they make you judge in matters disputed among them, then find no inner resistance to your verdict in their hearts, and submit with full submission." [An-Nisa: 65] Whoever refrained from applying the judgment of Allah's Messenger—peace and blessings be upon him—in disputes presented to him among the people unless it conformed to analogy, opinion, or another's statement—such a person neither implemented the Prophet's judgment—peace and blessings be upon him—nor submitted to him with full submission. Rather, he harbored resentment in his soul against what the Prophet—peace and blessings be upon him—decreed. By our Lord, such a one is no true believer![12]

وَأَمَّا أَنْ يَكُونَ مُخَالِفًا لِلْقُرْآنِ أَوْ لِسُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَذَا الضَّلَالُ الْمُتَيَقَّنُ، وَخِلَافُ دِينِ الْإِسْلَامِ، وَلَا نَحْتَاجُ أَنْ نُطَوِّلَ فِي هَذَا مَعَ مُسْلِمٍ.

L28918 Or if it contradicts the Quran or the Sunnah of the Messenger of Allah—may Allah send blessings and peace upon him—then this is definite misguidance—contrary to the religion of Islam—and we need not elaborate on this with a Muslim.

قَالَ تَعَالَى: {تِلْكَ حُدُودُ اللَّهِ فَلا تَعْتَدُوهَا} [البقرة: ٢٢٩]

L28919 He, the Exalted, said: "These are Allah's limits, so do not transgress them." [Al-Baqarah: 229][13]

[12] **Qur'an references (L28917):** Qur'an 4:65 (An-Nisa).
[13] **Qur'an references (L28919):** Qur'an 2:229 (Al-Baqarah).

L28920 And the Most High said: *"Whoever disobeys Allah and His Messenger and transgresses His limits, He will cast him into a Fire, wherein he will abide eternally"* [An-Nisāʾ 4:14].[14]

وَقَالَ تَعَالَى: {وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ يُدْخِلْهُ نَارًا خَالِدًا فِيهَا} [النساء: ١٤] .

L28921 If there is nothing in the Qur'an and Sunnah that is textually concordant with it nor contradictory to it, then such an opinion cannot originate from a scholar, and there is no way for it to exist.

وَإِمَّا أَنْ لَا يُوجَدَ فِي الْقُرْآنِ وَالسُّنَّةِ مَا يُوَافِقُهُ نَصًّا وَلَا مَا يُخَالِفُهُ، فَهَذَا مَعْدُومٌ مِنْ الْعَالِمِ وَلَا سَبِيلَ إلَى وُجُودِهِ.

L28922 He, the Exalted, said: {This day I have perfected for you your religion} [Al-Ma'idah: 3].[15]

قَالَ تَعَالَى: {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] .

L28923 And He, the Exalted, said: "We have neglected nothing in the Book." [Al-An'am 6:38][16]

وَقَالَ تَعَالَى: {مَا فَرَّطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ} [الأنعام: ٣٨] .

L28924–28926 The Messenger of Allah—peace and blessings of Allah be upon him—said: "Do not ask me about what I have left unregulated for you, for those before you were destroyed only due to their excessive..." "Their matters and disagreements concerning their prophets. So when I command you to do something, do as much of it as you can, and when I forbid you from something, leave it."

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «دَعُونِي مَا تَرَكْتُكُمْ فَإِنَّمَا هَلَكَ مَنْ كَانَ قَبْلَكُمْ بِكَثْرَةِ مَسَائِلِهِمْ وَاخْتِلَافِهِمْ عَلَى أَنْبِيَائِهِمْ فَإِذَا أَمَرْتُكُمْ بِشَيْءٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ وَإِذَا نَهَيْتُكُمْ عَنْ شَيْءٍ فَاتْرُكُوهُ» .

L28927 It is necessarily established that no ruling ever deviates from being either: what Allah the Exalted commands through His Messenger—peace and blessings be upon him—thereby making it obligatory to the extent of our capability in it; or what Allah the Exalted prohibits through His Messenger—peace and blessings be upon him—thereby making it forbidden; or what entails neither command nor prohibition, rendering its performance or omission permissible. It is invalid that a newly arising matter in religion should occur—even if it were to occur (though Allah the Almighty has refused for it to exist)—without having a ruling in the Quran and Sunnah. For then whoever seeks to prescribe a ruling as part of the religion for such a matter would be condemned by Allah the Exalted, as stated in His words: "They

فَصَحَّ ضَرُورَةً أَنَّهُ لَا يَخْرُجُ حُكْمٌ أَبَدًا عَنْ أَنْ يَأْمُرَ بِهِ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَيَكُونُ فَرْضًا مَا اسْتَطَعْنَا مِنْهُ أَوْ يَنْهَى عَنْهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَيَكُونُ حَرَامًا، أَوْ لَا يَكُونُ فِيهِ أَمْرٌ وَلَا نَهْيٌ فَهُوَ مُبَاحٌ فِعْلُهُ وَتَرْكُهُ، وَبَطَلَ أَنْ تَنْزِلَ نَازِلَةٌ فِي الدِّينِ لَا حُكْمَ لَهَا فِي الْقُرْآنِ وَالسُّنَّةِ - وَلَوْ وُجِدَتْ - وَقَدْ أَبَى اللَّهُ عَزَّ وَجَلَّ أَنْ تُوجَدَ -: لَكَانَ مَنْ أَرَادَ أَنْ يُشَرِّعَ فِيهَا حُكْمًا دَاخِلًا فِي الدِّينِ ذَمَّ اللَّهُ تَعَالَى إذْ قَوْله تَعَالَى: {شَرَعُوا لَهُمْ مِنَ الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ} [الشورى: ٢١] .

[14] **Qur'an references (L28920):** Qur'an 4:14 (An-Nisa).
[15] **Qur'an references (L28922):** Qur'an 5:3 (Al-Ma'idah).
[16] **Qur'an references (L28923):** Qur'an 6:38 (Al-An'am).

have prescribed for them laws of religion which Allah has not sanctioned" (42:21).[17]

L28928 If they say: "We judge therein by a ruling from the Quran and Sunnah that resembles it?" We say: "Where has Allah, the Exalted, commanded you to do this?" This constitutes legislating in religion that which Allah has not permitted.

L28929 If they say: "Allah the Exalted said: 'Take lesson, O people of insight' [59:2]," we reply: Yes, "take lesson" means "marvel." Allah the Exalted said: "There is indeed a lesson for you in livestock - We give you drink from what lies within their bellies, between waste and blood" [16:66]. Yet no one has ever understood "take lesson" to mean judging something by the ruling of its equivalent (qiyās). This distorts the words from their proper contexts, falsely attributing to Allah the Exalted what is baseless and what He did not say.[18]

L28930 If they say: "Allah, the Most High, has said: 'And consult them in the matter'" (Quran 3:159).[19]

L28931 We said: Yes, in matters where acting or abstaining is permissible, but not in legislating within the religion in that which Allah the Exalted has not permitted, nor in abandoning an obligation Allah the Exalted has ordained, nor in permitting what Allah the Exalted has prohibited, nor in forbidding what Allah the Exalted has made lawful, nor in mandating what Allah the Exalted has not obligated.

L28932 And Allah, the Most High, has said: "And know that the Messenger of Allah is among you. If he were to obey you in many affairs, you would surely have suffered" [Al-Hujurat: 7].[20]

L28933 Thus, it is established that adopting their opinions is not permissible in matters of religion except in cases where the Messenger of Allah—may Al-

فَإِنْ قَالُوا: نَحْكُمُ فِيهَا بِحُكْمٍ مَا يُشْبِهُهَا مِنْ الْقُرْآنِ وَالسُّنَّةِ؟ قُلْنَا: وَأَيْنَ أَمَرَكُمْ اللَّهُ تَعَالَى بِهَذَا؟ وَهَذَا هُوَ الشَّرْعُ فِي الدِّينِ بِمَا لَمْ يَأْذَنْ بِهِ اللَّهُ.

فَإِنْ قَالُوا: قَالَ اللَّهُ تَعَالَى: {فَاعْتَبِرُوا يَا أُولِي الأَبْصَارِ} [الحشر: ٢] ؟ قُلْنَا: نَعَمْ، اعْتَبِرُوا مَعْنَاهُ اعْجَبُوا قَالَ اللَّهُ تَعَالَى: {وَإِنَّ لَكُمْ فِي الأَنْعَامِ لَعِبْرَةً نُسْقِيكُمْ مِمَّا فِي بُطُونِهِ مِنْ بَيْنِ فَرْثٍ وَدَمٍ} [النحل: ٦٦] ، وَمَا فَهِمَ أَحَدٌ قَطُّ مِنْ " {فَاعْتَبِرُوا} [الحشر: ٢] أَحْكُمُوا لِلشَّيْءِ بِحُكْمِ نَظِيرِهِ، وَهَذَا هُوَ تَحْرِيفُ لِلْكَلِمِ عَنْ مَوَاضِعِهِ، وَالْقَوْلُ عَلَى اللَّهِ تَعَالَى بِالْبَاطِلِ وَبِمَا لَمْ يَقُلْهُ.

فَإِنْ قَالُوا: قَدْ قَالَ اللَّهُ تَعَالَى: {وَشَاوِرْهُمْ فِي الأَمْرِ} [آل عمران: ١٥٩] .

قُلْنَا: نَعَمْ، فِيمَا أُبِيحَ لَهُ فِعْلُهُ وَتَرْكُهُ، لَا فِي شَرْعِ الدِّينِ بِمَا لَمْ يَأْذَنْ فِيهِ اللَّهُ تَعَالَى، وَلَا فِي إِسْقَاطِ فَرْضٍ فَرَضَهُ اللَّهُ تَعَالَى، وَلَا فِي إِبَاحَةِ مَا حَرَّمَهُ اللَّهُ تَعَالَى، وَلَا فِي تَحْرِيمِ مَا أَحَلَّهُ اللَّهُ تَعَالَى، وَلَا فِي إِيجَابِ مَا لَمْ يُوجِبْهُ اللَّهُ تَعَالَى.

وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَاعْلَمُوا أَنَّ فِيكُمْ رَسُولَ اللَّهِ لَوْ يُطِيعُكُمْ فِي كَثِيرٍ مِنَ الأَمْرِ لَعَنِتُّمْ} [الحجرات: ٧] .

فَصَحَّ أَنَّ الْأَخْذَ بِرَأْيِهِمْ لَا يَجُوزُ فِي الدِّينِ إِلَّا حَيْثُ صَحَّحَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَطْ، وَمَا كَانَ هَكَذَا فَإِنَّمَا صَحَّ طَاعَةً لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

[17] **Qur'an references (L28927):** Qur'an 42:21 (Ash-Shuraa).
[18] **Qur'an references (L28929):** Qur'an 59:2 (Al-Hashr); Qur'an 16:66 (An-Nahl).
[19] **Qur'an references (L28930):** Qur'an 3:159 (Ali 'Imran).
[20] **Qur'an references (L28932):** Qur'an 49:7 (Al-Hujurat).

lah bless him and grant him peace—has specifically validated them. When such validation exists, it is considered valid solely as an act of obedience to the Messenger of Allah—may Allah bless him and grant him peace—not as adherence to the one who proposed it. Moreover, every verse or Sunnah they cite which states that Allah the Exalted has decreed such-and-such in a particular matter due to such-and-such reasons and considerations, or as He decreed in such a matter.

- لَا اتِّبَاعًا لِمَنْ أَشَارَ بِهِ - ثُمَّ كُلُّ مَا أَتَوْا بِهِ مِنْ آيَةٍ أَوْ سُنَّةٍ فِيهَا: أَنَّ اللَّهَ تَعَالَى حَكَمَ فِي أَمْرِ كَذَا بِكَذَا مِنْ أَجْلِ كَذَا وَكَذَا، أَوْ كَمَا حَكَمَ فِي أَمْرِ كَذَا.

L28934–28935 We said: It is truth as it is.

قُلْنَا: هُوَ حَقٌّ كَمَا هُوَ.

L28936 Whenever you seek to legislate by analogizing something to another ruling without a textual basis, it is sheer invalidity and impermissible. No one may prohibit what Allah, the Exalted, has not prohibited solely because He prohibited other matters, nor may they obligate what Allah, the Almighty and Majestic, has not obligated solely because He obligated other matters—all of this transgresses the boundaries set by Allah, the Almighty and Majestic, and constitutes legislating in religion what Allah, the Exalted, has not authorized.

وَكُلَّمَا أَرَدْتُمْ أَنْ تُشَرِّعُوا أَنْتُمْ فِيهِ تَشْبِيهًا لَهُ بِحُكْمٍ آخَرَ دُونَ نَصٍّ فَهُوَ بَاطِلٌ بَحْتٌ لَا يَحِلُّ، فَلَيْسَ لِأَحَدٍ أَنْ يُحَرِّمَ مَا لَمْ يُحَرِّمْهُ اللَّهُ تَعَالَى مِنْ أَجْلِ أَنَّ اللَّهَ تَعَالَى حَرَّمَ أَشْيَاءَ أُخَرَ، وَلَا أَنْ يُوجِبَ مَا لَمْ يُوجِبْهُ اللَّهُ عَزَّ وَجَلَّ مِنْ أَجْلِ أَنَّ اللَّهَ عَزَّ وَجَلَّ أَوْجَبَ أَشْيَاءَ أُخَرَ -: فَهَذَا كُلُّهُ تَعَدٍّ لِحُدُودِ اللَّهِ عَزَّ وَجَلَّ، وَشَرْعٌ فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى.

L28937 “Then if they claim consensus regarding the permissibility of that...”

فَإِنْ ادَّعَوْا فِي جَوَازِ ذَلِكَ إِجْمَاعًا.

L28938 We said: This is a lie and slander. Rather, the consensus has been confirmed regarding the invalidity of all that, for the entire nation is in consensus upon affirming the truth of Allah’s statement, the Exalted: “This day I have perfected for you your religion” (Al-Mā’idah 3).[21]

قُلْنَا: هَذَا الْكَذِبُ وَالْبَهْتُ، بَلْ الْإِجْمَاعُ قَدْ صَحَّ عَلَى بُطْلَانِ كُلِّ ذَلِكَ، لِأَنَّ الْأُمَّةَ كُلَّهَا مُجْمِعَةٌ عَلَى تَصْدِيقِ قَوْلِ اللَّهِ تَعَالَى: {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] .

L28939 And to confirm the truthfulness of Allah’s statement, the Exalted: “Obey Allah and obey the Messenger and those entrusted with authority among you. If you dispute over any matter, refer it to Allah and the Messenger - if you truly believe in Allah and the Last Day” [An-Nisa: 59].[22]

وَعَلَى تَصْدِيقِ قَوْلِ اللَّهِ تَعَالَى: {أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [النساء: ٥٩] .

L28940 In this lies the invalidity of ruling by anything other than the Quran and the Sunnah.

وَفِي هَذَا بُطْلَانُ الْحُكْمِ بِمَا عَدَا الْقُرْآنِ وَالسُّنَّةَ.

L28941 Then those who broke [the covenant] and erred while intending good have

ثُمَّ نَقَضَ مَنْ نَقَضَ فَأَخْطَأَ قَاصِدًا إِلَى الْخَيْرِ، وَلَا سَبِيلَ لَهُمْ أَلْبَتَّةَ إِلَى وُجُودِ حُكْمٍ طُولَ مُدَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقِيَاسٍ أَصْلًا، وَلَا بِرَأْيٍ أَلْبَتَّةَ، وَكُلُّ

[21] **Qur’an references (L28938):** Qur’an 5:3 (Al-Ma’idah).
[22] **Qur’an references (L28939):** Qur’an 4:59 (An-Nisa).

absolutely no means to establish any ruling during the lifetime of Allah's Messenger - peace and blessings be upon him - through analogy as a valid source, nor through independent reasoning whatsoever. Every religious legislation that emerged after him - upon him be peace - which he did not rule by is undoubtedly invalid and has no place in the religion at all. Allah the Exalted said: "This day I have perfected for you your religion" [Al-Mā'idah 5:3]. What has been perfected cannot accept any addition whatsoever, nor is there any valid evidence that the Companions - may Allah be pleased with them - ever commanded the use of legal analogy in religion through authentic means.[23]

L28942 Moreover, those who claim consensus regarding a matter not confirmed to have been known and affirmed by every Muslim are lying against the entire Ummah. Allah the Exalted has explicitly stated that a group of jinn believed and heard the Quran from the Messenger of Allah—peace and blessings be upon him—thus becoming noble and virtuous believers. How then can this claimant wrongfully assert their consensus? The statements of the Companions—may Allah be pleased with them—cannot be confined except in matters where there is no doubt that every Muslim has indeed known it.

L28943–28945 Indeed, Ahmad ibn Hanbal—may Allah be pleased with him—said: "Whoever claims consensus has lied. What informs him? Perhaps people have differed on that." This was narrated to us concerning that by Humaam ibn Ahmad and Yahya ibn Abd al-Rahman ibn Mas'ud. Humaam said: 'Abbas ibn Asbagh narrated to us,' and Yahya said: 'Ahmad ibn Sa'id ibn Hazm narrated to us.' Then their chains converged – both Ahmad and Abbas said: 'Muhammad ibn Abd al-Malik ibn Ayman narrated to us, and Abdullah ibn Ahmad ibn Hanbal narrated to us, who said: "My father [Ahmad ibn Hanbal] stated" – and he [Ahmad ibn Hanbal] related the hadith.'

L28946 **The legal issue of a judge passing judgment while angry.**

L28947 Issue 1781: A judge should not pass judgment while angry, due to what has

شَرْعٍ حَدَثَ بَعْدَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَحْكُمْ هُوَ بِهِ، فَهُوَ بَاطِلٌ بِيَقِينٍ، وَلَيْسَ مِنْ الدِّينِ أَلْبَتَّةَ، قَالَ تَعَالَى: {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] وَمَا كَمُلَ فَلَا يَجُوزُ أَلْبَتَّةَ أَنْ يُزَادَ فِيهِ شَيْءٌ أَصْلًا، وَلَا سَبِيلَ أَلْبَتَّةَ إلَى أَنْ يُوجَدَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - الْأَمْرُ بِالْقِيَاسِ فِي الدِّينِ مِنْ طَرِيقٍ صَحِيحَةٍ أَبَدًا.

وَأَيْضًا - فَمُدَّعِي الْإِجْمَاعِ عَلَى مَا لَا يَتَيَقَّنُ أَنَّ كُلَّ مُسْلِمٍ فَقَدْ عَرَفَهُ وَقَالَ بِهِ: كَاذِبٌ عَلَى الْأُمَّةِ كُلِّهَا، وَقَدْ نَصَّ اللَّهُ تَعَالَى عَلَى أَنَّ نَفَرًا مِنْ الْجِنِّ آمَنُوا، وَسَمِعُوا الْقُرْآنَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُمْ صَحَابَةٌ وَفُضَلَاءُ، فَمَنْ لِهَذَا الْمُدَّعِي بِالْبَاطِلِ بِإِجْمَاعِ أُولَئِكَ، فَكَيْفَ وَإِحْصَاءُ أَقْوَالِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا تُحْصَرُ إلَّا حَيْثُ لَا يُشَكُّ فِي أَنَّ كُلَّ مُسْلِمٍ فَقَدْ عَرَفَهُ.

وَقَدْ قَالَ أَحْمَدُ بْنُ حَنْبَلٍ - رَضِيَ اللَّهُ عَنْهُ -: مَنْ ادَّعَى الْإِجْمَاعَ فَقَدْ كَذَبَ، وَمَا يُدْرِيهِ لَعَلَّ النَّاسَ اخْتَلَفُوا فِي ذَلِكَ -: حَدَّثَنَا بِذَلِكَ: حُمَامُ بْنُ أَحْمَدَ، وَيَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ، قَالَ حُمَامٌ: نا عَبَّاسُ بْنُ أَصْبَغَ، وَقَالَ يَحْيَى: نا أَحْمَدُ بْنُ سَعِيدِ بْنِ حَزْمٍ، ثُمَّ اتَّفَقَ أَحْمَدُ، وَعَبَّاسٌ، قَالَا: نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ قَالَ: قَالَ أَبِي فَذَكَرَهُ

[مَسْأَلَة قَضَاء الْقَاضِي وَهُوَ غضبان]

[23] **Qur'an references (L28941):** Qur'an 5:3 (Al-Ma'idah).

been narrated to us through the chain of Ahmad ibn Shu‘ayb—narrated to us by ‘Ali ibn Hajar—narrated to us by Hushaym—from ‘Abd al-Malik ibn ‘Umayr—from ‘Abd al-Rahman ibn Abi Bakrah—from his father, who said: The Prophet—peace and blessings of Allah be upon him and his family—said: “A judge should not pass judgment between two parties while he is angry.”

The Issue of Agency at the Time of a Ruling

1782 - Issue: Agency is permissible before the judge only for producing evidence, asserting a right, pursuing its claim, and demanding the oath - because all these fall under the agent’s authority as a substitute for the principal’s authority.

Indeed, the Messenger of Allah—peace and blessings be upon him and his family—sent Ali to Yemen to collect the right of the near relatives from a fifth of the khums. And the Almighty said: “Be upholders of justice” [An-Nisa: 135]. Among upholding justice is seeking the right of every rightful claimant.[24]

A Jurisprudential Inquiry into Agency in the Context of Affirmation and Repudiation

1783 - Issue: It is not permissible to appoint an agent for the purpose of confession or denial under any circumstance. Neither the denial by one person on behalf of another nor the confession by one person against another is accepted. Evidence must be presented before the judge pertaining to the confessor’s own admission or denial.

The proof of this is the statement of Allah, the Exalted: {No soul earns except against itself, and no bearer of burdens will bear the burden of another} [Al-An’ām 6:164].[25]

١٧٨١ - مَسْأَلَةٌ: وَلَا يَقْضِي الْقَاضِي وَهُوَ غَضْبَانُ، لِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَلِيُّ بْنُ حَجَرٍ أَنَا هُشَيْمٌ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرَةَ عَنْ أَبِيهِ قَالَ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لَا يَقْضِي الْقَاضِي بَيْنَ اثْنَيْنِ وَهُوَ غَضْبَانُ» .

[مَسْأَلَة الْوَكَالَة عِنْد الْحُكْم]

١٧٨٢ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْوَكَالَةُ عِنْدَ الْحَاكِمِ إلَّا عَلَى جَلْبِ الْبَيِّنَةِ، وَعَلَى طَلَبِ الْحَقِّ، وَعَلَى تَقَاضِيهِ، وَعَلَى تَقَاضِي الْيَمِينِ -: لِأَنَّ كُلَّ هَذَا بِيَدِ الْوَكِيلِ مَقَامُ يَدِ الْمُوَكِّلِ.

وَقَدْ «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَلِيًّا إلَى الْيَمَنِ لِقَبْضِ حَقِّ ذَوِي الْقُرْبَى مِنْ خُمْسِ الْخُمْسِ» ، وَقَالَ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] وَمِنْ الْقِيَامِ بِالْقِسْطِ طَلَبُ حَقِّ كُلِّ ذِي حَقٍّ.

[مَسْأَلَة التَّوْكِيلُ عَلَى الْإِقْرَارِ وَالْإِنْكَارِ]

١٧٨٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ التَّوْكِيلُ عَلَى الْإِقْرَارِ وَالْإِنْكَارِ أَصْلًا، وَلَا يُقْبَلُ إنْكَارُ أَحَدٍ عَنْ أَحَدٍ، وَلَا إقْرَارُ أَحَدٍ عَلَى أَحَدٍ، وَلَا بُدَّ مِنْ قِيَامِ الْبَيِّنَةِ عِنْدَ الْحَاكِمِ عَلَى إقْرَارِ الْمُقِرِّ نَفْسِهِ أَوْ إنْكَارِهِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

[24] **Qur’an references (L28950):** Qur’an 4:135 (An-Nisa).
[25] **Qur’an references (L28953):** Qur’an 6:164 (Al-An’am).

L28954–28956 The consensus of the people of Islam is soundly established that none may be deemed credible against another except within the ruling of testimony alone. Then those who breached it enforced the agent's admission against his principal and held him accountable in matters of bloodshed, wealth, and chastity. This is a matter known with certainty to have never occurred, nor been permitted, nor recognized during the era of the Messenger of Allah. May Allah bless him, his family, and grant him peace - nor during the era of any of the Companions - may Allah be pleased with them - and it was not so, for it would indeed constitute a true contradiction of the consensus of the Muslims, a contradiction of the Quran, and a falsehood that is impermissible - and success is granted by Allah, the Most High.

وَقَدْ صَحَّ إجْمَاعُ أَهْلِ الْإِسْلَامِ عَلَى أَنْ لَا يُصَدَّقَ أَحَدٌ عَلَى غَيْرِهِ إلَّا عَلَى حُكْمِ الشَّهَادَةِ فَقَطْ، ثُمَّ نَقَضَ مَنْ نَقَضَ فَأَنْفَذَ إقْرَارَ الْوَكِيلِ عَلَى مُوَكِّلِهِ وَأَخَذَهُ بِهِ فِي الدَّمِ، وَالْمَالِ، وَالْفَرْجِ، وَهَذَا أَمْرٌ يُوقَنُ أَنَّهُ لَمْ يَكُنْ قَطُّ، وَلَا جَازَ وَلَا عُرِفَ فِي عَصْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَا فِي عَصْرِ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَمَا كَانَ هَكَذَا فَهُوَ حَقًّا خِلَافُ إجْمَاعِ الْمُسْلِمِينَ، وَخِلَافُ الْقُرْآنِ، وَالْبَاطِلُ الَّذِي لَا يَجُوزُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The issue of the judicial ruling upon the absent individual.

[مَسْأَلَةُ الْقَضَاءُ عَلَى الْغَائِبِ]

L28957

L28958 Ruling 1784: Judgment is passed against an absent party just as it is passed against a present party.

١٧٨٤ - مَسْأَلَةٌ: وَيُقْضَى عَلَى الْغَائِبِ كَمَا يُقْضَى عَلَى الْحَاضِرِ.

L28959 This is the opinion of Al-Shafi'i, Abu Sulayman, and their respective companions.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

L28960 Ibn Shubruma said: Judgment is not rendered against an absent person.

وَقَالَ ابْنُ شُبْرُمَةَ: لَا يُقْضَى عَلَى غَائِبٍ.

L28961 Abu Hanifa and his companions ruled: No judgment may be issued against an absentee except in certain circumstances.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا يُقْضَى عَلَى غَائِبٍ إلَّا فِي بَعْضِ الْمَوَاضِعِ

L28962 Malik said: Judgment may be passed against an absent person in all matters except those involving lands and residential properties, unless he has been absent for a prolonged period. Ibn al-Qasim said: Such as the distance between Egypt and al-Andalus.

وَقَالَ مَالِكٌ: يُقْضَى عَلَى الْغَائِبِ فِي كُلِّ شَيْءٍ إلَّا فِي الْأَرْضِينَ، وَالدُّورِ، إلَّا أَنْ يَكُونَ غَائِبًا غَيْبَةً طَوِيلَةً - قَالَ ابْنُ الْقَاسِمِ: كَمَا بَيْنَ مِصْرَ وَالْأَنْدَلُسِ

L28963 Abū Muḥammad said: As for Mālik's statement, it is manifestly erroneous in two aspects—the first being his differentiation between immovable property and other types without evidence. For Allāh the Exalted has not imposed restrictions on anyone regarding another's immovable property except as He imposed regarding non-immovable property, with no distinction. Rather, immovable property is more justifiable in sound legal reasoning to adjudicate rulings upon in absentia, since it cannot be relocated, concealed, or lost.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مَالِكٍ فَظَاهِرُ الْخَطَأِ مِنْ وَجْهَيْنِ -: أَحَدُهُمَا - تَفْرِيقُهُ بَيْنَ الْعَقَارِ وَغَيْرِهِ وَهُوَ قَوْلٌ بِلَا بُرْهَانٍ، وَمَا حَرَّمَ اللَّهُ تَعَالَى عَلَى أَحَدٍ مِنْ النَّاسِ مِنْ عَقَارِ غَيْرِهِ إلَّا كَالَّذِي حَرَّمَهُ مِنْ غَيْرِ الْعَقَارِ وَلَا فَرْقَ، بَلْ الْعَقَارُ كَانَ أَوْلَى فِي الرَّأْيِ أَنْ يُحْكَمَ

فِيهِ عَلَى الْغَائِبِ، لِأَنَّهُ لَا يُنْقَلُ وَلَا يُغَابُ عَلَيْهِ، وَلَا يَفُوتُ، بَلْ يُسْتَدْرَكُ الْخَطَأُ فِيهِ فِي كُلِّ وَقْتٍ، وَلَيْسَ كَذَلِكَ سَائِرُ الْأَمْوَالِ.

Indeed, any error regarding it can be rectified at any time—unlike all other forms of property.

وَالْوَجْهُ الثَّانِي - تَفْرِيقُهُ بَيْنَ الْغَائِبِ غَيْبَةً طَوِيلَةً وَغَيْبَةً غَيْرَ طَوِيلَةٍ، فَهَذَا قَوْلٌ بِلَا بُرْهَانٍ، وَتَفْرِيقٌ فَاسِدٌ، وَلَيْسَ فِي الْعَالَمِ غَيْبَةٌ إِلَّا وَهِيَ طَوِيلَةٌ بِالْإِضَافَةِ إِلَى مَا هُوَ أَقْصَرُ مِنْهَا فِي الزَّمَانِ، وَالْمَكَانِ، وَهِيَ أَيْضًا قَصِيرَةٌ بِالْإِضَافَةِ إِلَى مَا هُوَ أَطْوَلُ مِنْهَا فِي الْمَكَانِ وَالزَّمَانِ، فَمَنْ غَابَ عَامَيْنِ إِلَى الْعِرَاقِ فَقَدْ غَابَ غَيْبَةً طَوِيلَةً بِالْإِضَافَةِ إِلَى مَنْ غَابَ نِصْفَ عَامٍ إِلَى مِصْرَ، وَقَدْ غَابَ غَيْبَةً قَصِيرَةً بِالْإِضَافَةِ إِلَى مَنْ غَابَ عَشَرَةَ أَعْوَامٍ إِلَى الْهِنْدِ، وَهَكَذَا فِي كُلِّ زَمَانٍ وَكُلِّ مَكَانٍ.

L28964 The second aspect is his differentiation between a prolonged absence and a non-prolonged absence. This is an assertion without proof and an invalid distinction, for there is no absence in existence except that it is prolonged relative to what is shorter than it in time and place, while also being brief relative to what is longer than it in place and time. One who is absent for two years to Iraq has had a prolonged absence compared to one absent half a year to Egypt, and indeed has had a brief absence compared to one absent ten years to India. And so it is with every time and every place.

ثُمَّ تَحْدِيدُ ابْنِ الْقَاسِمِ خَطَأٌ ثَالِثٌ: وَهَذَا قَوْلٌ مَا نَعْلَمُهُ لِأَحَدٍ مِنْ خَلْقِ اللَّهِ عَزَّ وَجَلَّ قَبْلَ مَالِكٍ - فَسَقَطَ هَذَا الْقَوْلُ.

L28965 Then Ibn al-Qāsim's determination constitutes a third error: this is a statement we do not know to have been attributed to any of Allah's creation—the Almighty and Majestic—before Mālik. Thus, this opinion is invalidated.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ - فَفَاسِدٌ أَيْضًا، لِأَنَّ كُلَّ مَنْ لَمْ يَحْضُرْ مَجْلِسَ الْحَاكِمِ فَهُوَ غَائِبٌ عَنْهُ - وَلَوْ أَنَّهُ فِي رَحْبَةِ بَابِ دَارِ الْحَاكِمِ - فَعَلَى هَذَا لَا يُحْكَمُ عَلَى أَحَدٍ أَبَدًا - وَهُوَ فَاسِدٌ كَمَا تَرَى.

L28966 As for the statement of Abū Ḥanīfa and his followers, it is likewise defective because anyone not present at the judge's session is considered legally absent—even if he were in the open space at the entrance to the judge's residence. By this logic, no judgment could ever be issued against anyone—which is clearly defective, as you can see.

فَإِنْ قَالُوا: يَبْعَثُ فِيهِ؟ قُلْنَا: وَابْعَثُوا أَيْضًا فِي كُلِّ غَائِبٍ وَلَا فَرْقَ.

L28967–28968 If they say, "Does He resurrect [something] within it?" We say, "Then resurrect [yourselves] in every matter of the unseen as well—there is no difference!"

فَإِنْ قَالُوا: قَدْ يَكُونُ بِحَيْثُ تَتَعَذَّرُ الْبَعْثَةُ فِيهِ.

L28969 If they say: It may be such that the sending therein becomes difficult.

قُلْنَا: وَقَدْ يَكُونُ إِلَى جَانِبِ حَائِطِ الْحَاكِمِ، وَتَتَعَذَّرُ الْبَعْثَةُ فِيهِ أَيْضًا لِتَعَذُّرِهِ أَوْ لِبَعْضِ الْوُجُوهِ، ثُمَّ قَدْ فَحُشَ تَنَاقُضُهُمْ هَاهُنَا، فَقَالُوا: مَنْ غَابَ بِحَيْثُ لَا يُعْرَفُ، فَإِنَّهُ يُنْفِقُ مِنْ مَالِهِ عَلَى زَوْجَتِهِ وَأَصَاغِرِ وَلَدِهِ، وَعَلَى أَكَابِرِ وَلَدِهِ - إِنْ كَانُوا زَمْنَى - وَعَلَى بَنَاتِهِ الْأَبْكَارِ

L28970 We said: It may be adjacent to the judge's wall, and dispatching someone to it becomes impossible either due to its impracticality or for certain reasons. Moreover, their contradiction here has become egregious, for they stated: If someone is absent in an unknown location, his wealth must be spent on his wife, his minor children, his adult children—if they are chronically ill—

his unmarried daughters even if they are of age and not chronically ill, and his poor, chronically ill parents. This expenditure is to be taken from his food, oil, clothing equivalent in kind to what those we mentioned wear, his dirhams (silver coins) and dinars (gold coins). Under no circumstances may real estate, merchandise, or animals be sold for this purpose. This applies equally whether the mentioned food, oil, cash, and clothing are held as a deposit with someone who acknowledges them or not, or are located in the absent person's residence.

- وَإِنْ كُنَّ بَالِغَاتٍ غَيْرَ زَمِنَاتٍ - وَعَلَى أَبَوَيْهِ - الْفَقِيرَيْنِ الزَّمِنَيْنِ - مِنْ طَعَامِهِ وَزَيْتِهِ وَثِيَابِهِ الَّذِي تَشَاكَلَ لِبَاسُ مَنْ ذَكَرْنَا، وَمِنْ دَرَاهِمِهِ وَدَنَانِيرِهِ، وَلَا يُبَاعُ فِي ذَلِكَ أَلْبَتَّةَ عَقَارٌ، وَلَا عُرُوضٌ، وَلَا حَيَوَانٌ، وَسَوَاءٌ كَانَ مَا ذَكَرْنَا مِنْ الطَّعَامِ وَالزَّيْتِ وَالنَّاضِّ وَالثِّيَابِ - وَدِيعَةً عِنْدَ مُقِرٍّ أَوْ غَيْرِ مُقِرٍّ، أَوْ فِي مَنْزِلِ الْغَائِبِ -.

L28971 This statement gathers significant aspects of absurdity, being a ruling against an absent party and a judgment is made to falsely differentiate between properties, leading them into confusions here of utter corruption. They decreed against the apostate who reaches enemy territory that he is dead—while he lives—and apportioned what belongs to God among his heirs. This is a false ruling against an absent party.

وَهَذَا كَلَامٌ جَمَعَ مِنْ السُّخْفِ وُجُوهًا عَظِيمَةً، وَهُوَ حُكْمٌ عَلَى الْغَائِبِ، وَتُحْكَمُ بِالْفَرْقِ بَيْنَ الْأَمْوَالِ بِالْبَاطِلِ، إلَى تَخَالِيطَ لَهُمْ هَاهُنَا فِي غَايَةِ الْفَسَادِ، وَقَضَوْا عَلَى الْمُرْتَدِّ إذَا لَحِقَ بِأَرْضِ الْحَرْبِ بِأَنَّهُ مَيِّتٌ - وَهُوَ حَيٌّ - وَقَسَمُوا مَا لِلَّهِ عَلَى وَرَثَتِهِ - وَهَذَا قَضَاءٌ بِالْبَاطِلِ عَلَى غَائِبٍ.

L28972 There is no distinction between the right of those we mentioned regarding maintenance, the right of creditors in debts, and the right of the wrongfully dispossessed in what was seized from them, nor between legal distinctions unknown to any of God's creation before them. Abu Muhammad said: They disguised this matter with deceptive arguments—which stand against them, not in their favor—we shall mention these, God willing, and demonstrate through God's enabling will and power, the Exalted, that they constitute evidence against them.

وَلَا فَرْقَ بَيْنَ حَقِّ مَنْ ذَكَرْنَا فِي النَّفَقَةِ وَبَيْنَ حَقِّ الْغُرَمَاءِ فِي الدُّيُونِ، وَحَقِّ الْمَغْصُوبِينَ فِيمَا غُصِبَ مِنْهُمْ، وَتَقَاسِيمُ لَا تُعْرَفُ عَنْ أَحَدٍ مِنْ خَلْقِ اللَّهِ تَعَالَى قَبْلَهُمْ. قَالَ أَبُو مُحَمَّد: وَمَوَّهُوا فِي ذَلِكَ بِأَشْيَاءَ - وَهِيَ عَلَيْهِمْ لَا لَهُمْ - نَذْكُرُهَا إنْ شَاءَ اللَّهُ تَعَالَى وَنُبَيِّنُ أَنَّهَا عَلَيْهِمْ بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ.

L28973–28975 As for those who held that judgment should not be passed against an absent party, like Ibn Shubruma, Sufyān, and their adherents, they argued by citing what was narrated to us through Shurayk's chain from Simāk ibn Ḥarb, from Ḥanash ibn al-Muʿtamir, from ʿAlī ibn Abī Ṭālib, who said: "Allah's Messenger—may Allah's blessings and peace be upon him and his family—sent me to Yemen as a judge. I said: 'O Messenger of Allah, you dispatch me while I am young in age and have no knowledge of judgment.' He replied: 'Allah the Almighty will guide your heart and steady your tongue. When two litigants sit before you, do not pass judgment until you have heard the second party as you heard the first, for this is more likely to clarify the

وَأَمَّا مَنْ أَجْمَلَ أَنْ لَا يُقْضَى عَلَى غَائِبٍ كَابْنِ شُبْرُمَةَ، وَسُفْيَانَ وَمَنْ وَافَقَهُ، فَإِنَّهُمْ احْتَجُّوا: بِمَا رُوِّينَا مِنْ طَرِيقِ شَرِيكٍ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ حَنَشِ بْنِ الْمُعْتَمِرِ عَنْ «عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: بَعَثَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إلَى الْيَمَنِ قَاضِيًا، فَقُلْتُ: يَا رَسُولَ اللَّهِ تُرْسِلُنِي وَأَنَا حَدِيثُ السِّنِّ لَا عِلْمَ لِي بِالْقَضَاءِ، فَقَالَ: إنَّ اللَّهَ عَزَّ وَجَلَّ سَيَهْدِي قَلْبَكَ وَيُثَبِّتُ لِسَانَكَ، فَإِذَا جَلَسَ بَيْنَ يَدَيْكَ الْخَصْمَانِ فَلَا تَقْضِيَنَّ حَتَّى تَسْمَعَ مِنْ الْآخَرِ كَمَا سَمِعْتَ مِنْ الْأَوَّلِ، فَإِنَّهُ أَحْرَى أَنْ يَتَبَيَّنَ لَكَ الْقَضَاءُ»

judgment for you.'" He added: "I remained a judge thereafter and never doubted any judgment again." We have also narrated through Ibn ʿUyayna's chain from Simāk ibn Ḥarb, from Ḥanash ibn al-Muʿtamir, from ʿAlī ibn Abī Ṭālib. The Prophet (peace be upon him and his family) said to him: "When two disputants sit before you, do not judge in favor of the first until you hear the argument of the other." Muḥammad ibn al-Ḥasan al-Rāzī narrated to us: ʿAbd al-Raḥmān ibn ʿUmar ibn al-Naḥḥās narrated to us; Ibn al-Aʿrābī narrated to us; Sahl ibn Aḥmad ibn ʿUthmān al-Wāsiṭī narrated to us; al-Qāsim ibn ʿĪsā ibn Ibrāhīm al-Ṭāʾī narrated to us; al-Muʾammal ibn Ismāʿīl narrated from Sufyān al-Thawrī, from ʿAlī ibn al-Aqmar, from Juḥayfah, from ʿAlī, that the Prophet (peace be upon him and his family) said to him in a narration: "When two disputants sit before you, do not judge in favor of the first until you hear from the other, for that is more likely to make the judgment clear to you."

L28976 Abū Muḥammad said: Thus in my book from al-Rāzī from "Juḥayfata," and the correct form is Juḥayfatu.

L28977 They mentioned from those other than the Messenger of Allah (peace and blessings be upon him and his family) what we have narrated through the chain of al-Kashwārī from al-Ḥuḍāfī: from ʿAbd al-Malik al-Dhimmārī, from Muḥammad al-Ghifārī, from Ibn Abī Dhiʾb al-Juhanī, from ʿAmr ibn ʿUthmān ibn ʿAffān, who said: A man whose eye had been gouged out came to ʿUmar ibn al-Khaṭṭāb. ʿUmar commanded him, "Bring your opponent!" The man replied, "O Commander of the Faithful, is this all the anger you possess?" ʿUmar retorted, "Perhaps you have gouged out both of your opponent's eyes together." When his opponent arrived—both eyes gouged out—ʿUmar declared, "When you hear the argument of the other party, the ruling becomes clear."

L28978 They said: It is not known that any of the Companions opposed Umar's position in that matter.

L28979 Narrated through ʿAbd al-Razzāq, via al-Ḥudhāfī, via Muḥammad ibn Muslim al-Ṭāʾifī, via ʿAmr ibn Dīnār, who said: ʿUmar ibn ʿAbd al-ʿAzīz said:

، قَالَ: فَمَا زِلْت قَاضِيًا وَمَا شَكَكْت فِي قَضَاءٍ بَعْدُ. وَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ عُيَيْنَةَ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ حَنَشِ بْنِ الْمُعْتَمِرِ عَنْ «عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لَهُ: إذَا قَعَدَ الْخَصْمَانِ فَلَا تَقْضِ لِلْأَوَّلِ حَتَّى تَسْمَعَ حُجَّةَ الْآخَرِ» . وَنَا مُحَمَّدُ بْنُ الْحَسَنِ الرَّازِيُّ نا عَبْدُ الرَّحْمَنِ بْنُ عُمَرَ بْنِ النَّحَّاسُ نا ابْنُ الْأَعْرَابِيِّ نا سَهْلُ بْنُ أَحْمَدَ بْنِ عُثْمَانَ الْوَاسِطِيُّ نا الْقَاسِمُ بْنُ عِيسَى بْنُ إبْرَاهِيمَ الطَّائِيُّ نا الْمُؤَمَّلُ بْنُ إسْمَاعِيلَ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَلِيِّ بْنِ الْأَقْمَرِ عَنْ جُحَيْفَةَ عَنْ عَلِيٍّ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لَهُ فِي حَدِيثٍ «فَإِذَا جَلَسَ بَيْنَ يَدَيْكَ الْخَصْمَانِ فَلَا تَقْضِ لِلْأَوَّلِ حَتَّى تَسْمَعَ مِنْ الْآخَرِ، فَإِنَّهُ أَحْرَى أَنْ يَتَّبِيَّنَ لَكَ الْقَضَاءُ» .

قَالَ أَبُو مُحَمَّدٍ: هَكَذَا فِي كِتَابِي عَنْ الرَّازِيِّ عَنْ " جُحَيْفَةَ " وَالصَّوَابُ جُحَيْفَةُ.

وَذَكَرُوا عَمَّنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا رُوِّينَاهُ مِنْ طَرِيقِ الْكَشْوَرِيِّ عَنْ الْحُذَافِيِّ نا عَبْدُ الْمَلِكِ الذِّمَارِيُّ نا مُحَمَّدٌ الْغِفَارِيُّ حَدَّثَنِي ابْنُ أَبِي ذِئْبٍ الْجُهَنِيُّ عَنْ عَمْرِو بْنِ عُثْمَانَ بْنِ عَفَّانَ قَالَ: أَتَى عُمَرَ بْنَ الْخَطَّابِ رَجُلٌ قَدْ فُقِئَتْ عَيْنُهُ فَقَالَ لَهُ عُمَرُ: تُحْضِرُ خَصْمَك فَقَالَ لَهُ: يَا أَمِيرَ الْمُؤْمِنِينَ أَمَا بِك مِنْ الْغَضَبِ إلَّا مَا أَرَى فَقَالَ لَهُ عُمَرُ: فَلَعَلَّك قَدْ فَقَأْت عَيْنَيْ خَصْمِك مَعًا، فَحَضَرَ خَصْمُهُ قَدْ فُقِئَتْ عَيْنَاهُ مَعًا، فَقَالَ عُمَرُ: إذَا سَمِعْت حُجَّةَ الْآخَرِ بَانَ الْقَضَاءُ -.

قَالُوا: وَلَا يُعْلَمُ لِعُمَرَ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ.

Luqmān said, “If a man comes to you with his eyes fallen into his hands [i.e., in distress], do not rule in his favor until his adversary arrives.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْحُذَافِيِّ عَنْ مُحَمَّدِ بْنِ مُسْلِمٍ الطَّائِفِيِّ عَنْ عَمْرِو بْنِ دِينَارٍ وَقَالَ قَالَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ، قَالَ لُقْمَانُ: إذَا جَاءَك الرَّجُلُ وَقَدْ سَقَطَتْ عَيْنَاهُ فِي يَدِهِ فَلَا تَقْضِ لَهُ حَتَّى يَأْتِيَ خَصْمُهُ.

L28980 And via the chain of Mujālid from Al-Shaʿbī from Shuraih: No judgment may be issued against an absent person.

وَمِنْ طَرِيقِ مُجَالِدٍ عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ: لَا يُقْضَى عَلَى غَائِبٍ.

L28981 From the narration of Abu ’Ubayd, from ’Abd al-Rahman ibn Mahdi, from Sufyan al-Thawri, from al-Ja’d ibn Dhakwan: A man asked Shurayh about a matter, and he replied, “I do not incite the present against the absent.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْجَعْدِ بْنِ ذَكْوَانَ: أَنَّ رَجُلًا سَأَلَ شُرَيْحًا عَنْ شَيْءٍ؟ فَقَالَ: لَا أُغْرِي حَاضِرًا بِغَائِبٍ.

L28982 Abū Muḥammad said: We know nothing for them besides this, and none of it provides valid proof for them in any matter. As for the report from the Messenger of Allah—peace and blessings of Allah be upon him and his family—it is rejected, for Sharīk is a *mudallis*, Simāk ibn Ḥarb accepts *talqīn*, and Ḥanash ibn al-Muʿtamir is rejected and discarded.

قَالَ أَبُو مُحَمَّدٍ: لَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ هَذَا، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ، أَمَّا الْخَبَرُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَسَاقِطٌ، لِأَنَّ شَرِيكًا مُدَلِّسٌ، وَسِمَاكَ بْنَ حَرْبٍ يَقْبَلُ التَّلْقِينَ، وَحَنَشُ بْنُ الْمُعْتَمِرِ سَاقِطٌ مُطَّرَحٌ.

L28983–28984 As for the other chain of transmission, Al-Qāsim ibn ʿĪsā ibn Ibrāhīm al-Ṭā’ī is majhūl (a narrator of unknown status), and it is not known who he is.

وَأَمَّا الطَّرِيقُ الْأُخْرَى، فَالْقَاسِمُ بْنُ عِيسَى بْنِ إبْرَاهِيمَ الطَّائِيُّ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ.

L28985 Then, the most astonishing thing is that we have been narrated through the chain of al-Bazzar—narrated by Abu Kamil, narrated by Abu ‘Awanah—from Simak ibn Harb—from Hanash ibn al-Muʿtamir, who said: ‘Ali ibn Abi Talib arrived in Yemen, where a dispute was brought to him regarding a collapsed structure that fell into a well. People gathered around it, then a man fell in and clung to another, who clung to a third, and the third clung to a fourth—causing all to fall. Their blood monies were sought from the first man. He ruled that two blood monies and a sixth of a blood money be imposed upon the people present at the well: the first man received a quarter of a blood money because three died above him; the second received a third of a blood money because two died above him; the third received half a blood money because one died above him; and the fourth received a full blood money. When Allah’s Messenger—peace and blessings be upon him and his family—was informed of ‘Ali’s ruling, he said: “It is as he has judged among you.”

ثُمَّ أَعْجَبُ شَيْءٍ: أَنَّنَا رُوِّينَا مِنْ طَرِيقِ الْبَزَّارِ نا أَبُو كَامِلٍ نا أَبُو عَوَانَةَ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ حَنَشِ بْنِ الْمُعْتَمِرِ، قَالَ: إنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَدِمَ الْيَمَنَ فَاخْتُصِمَ إلَيْهِ فِي أَسَدٍ سَقَطَ فِي بِئْرٍ فَاجْتَمَعَ النَّاسُ إلَيْهَا، فَسَقَطَ فِيهَا رَجُلٌ فَتَعَلَّقَ بِآخَرَ، وَتَعَلَّقَ الْآخَرُ بِثَالِثٍ وَتَعَلَّقَ الثَّالِثُ بِرَابِعٍ فَسَقَطُوا كُلُّهُمْ، فَطُلِبَتْ دِيَاتُهُمْ مِنْ الْأَوَّلِ، فَقَضَى فِي ذَلِكَ بِدِيَتَيْنِ وَسُدُسٍ عَلَى مَنْ حَضَرَ الْبِئْرَ مِنْ النَّاسِ: فَلِلْأَوَّلِ رُبْعُ دِيَةٍ، لِأَنَّهُ هَلَكَ فَوْقَهُ ثَلَاثَةٌ، وَلِلثَّانِي ثُلُثُ دِيَةٍ، لِأَنَّهُ هَلَكَ فَوْقَهُ اثْنَانِ، وَلِلثَّالِثِ نِصْفُ دِيَةٍ لِأَنَّهُ هَلَكَ فَوْقَهُ وَاحِدٌ، وَلِلرَّابِعِ دِيَةٌ - فَأُخْبِرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِقَضَاءِ عَلِيٍّ «فَقَالَ: هُوَ مَا قَضَى بَيْنَكُمْ»

L28986 They contradict this and do not adhere to it. At times, the narration of Simak ibn Harb from Hanash is considered a proof when they believe their obfuscation through it is permissible, and at other times, it is not considered a proof when they cannot obfuscate with it. I do not know which religion can endure such practices.

- وَهُمْ يُخَالِفُونَ هَذَا وَلَا يَقُولُونَ بِهِ، فَمَرَّةً تَكُونُ رِوَايَةُ سِمَاكِ بْنِ حَرْبٍ عَنْ حَنَشٍ حُجَّةً إِذَا ظَنُّوا أَنَّ تَمْوِيهَهُمْ بِهَا يَجُوزُ لَهُمْ، وَمَرَّةً لَا تَكُونُ حُجَّةً إِذَا لَمْ يُمْكِنْهُمْ أَنْ يُمَوِّهُوا بِهَا - وَمَا أَدْرِي أَيَّ دِينٍ يَبْقَى مَعَ هَذَا.

L28987 Moreover, if the narrations we presented were sound, they would have no basis for their claim in any respect, because these narrations do not state that a judgment should not be rendered against an absent person. Rather, they state that a judgment should not be rendered against a present person based on his opponent's claim without hearing his argument—and this is a point on which we agree with them.

ثُمَّ لَوْ صَحَّتْ الْأَخْبَارُ الَّتِي قَدَّمْنَا لَمَا كَانَ لَهُمْ بِهَا مُتَعَلَّقٌ أَصْلًا، لِأَنَّهُ لَيْسَ فِيهَا: أَنْ لَا يُقْضَى عَلَى غَائِبٍ، بَلْ فِيهَا: أَنْ لَا يُقْضَى عَلَى حَاضِرٍ بِدَعْوَى خَصْمِهِ دُونَ سَمَاعِ حُجَّتِهِ - وَهَذَا شَيْءٌ لَا نُخَالِفُهُمْ فِيهِ.

L28988 It is not permissible to pass judgment against a present person or an absent one based on the claim of his opponent, but rather only through the just evidence that Allah, the Exalted, has commanded. Thus, the enormity of their concealment through falsehood has become manifest.

وَلَا يَجُوزُ أَنْ يُقْضَى عَلَى حَاضِرٍ وَلَا غَائِبٍ بِقَوْلِ خَصْمِهِ، وَلَكِنْ بِالَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ مِنْ الْبَيِّنَةِ الْعَادِلَةِ فَقَطْ، فَظَهَرَ عَظِيمُ تَمْوِيهِهِمْ بِالْبَاطِلِ -

L28989 And we seek refuge in Allah from abandonment.

وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L28990 And among the absurdities is that they contradicted these traditions they used to obscure [the truth] in another context: their ruling holding an absent person liable based on his agent's admission. This has no basis in any of the transmitted reports whatsoever.

وَمِنْ الْعَجَائِبِ: أَنَّهُمْ قَدْ خَالَفُوا هَذِهِ الْآثَارَ الَّتِي مَوَّهُوا بِهَا فِي مَكَان آخَرَ، وَهُوَ أَنَّهُمْ قَضَوْا عَلَى الْغَائِبِ بِإِقْرَارِ وَكِيلِهِ عَلَيْهِ - وَلَيْسَ هَذَا فِي شَيْءٍ مِنْ الْأَخْبَارِ أَصْلًا.

L28991 As for their specious citation of ʿUmar, this attribution is likewise invalid, for its chain passes through Muḥammad al-Ghifārī from Ibn Abī Dhi'b al-Juhanī - and the identities of these two are unknown among Allah's creation—the Exalted—then through ʿAmr ibn ʿUthmān ibn ʿAffān from ʿUmar, though ʿAmr was not born until the night of ʿUmar's death.

وَأَمَّا تَمْوِيهُهُمْ بِعُمَرَ فَإِنَّهُ لَا يَصِحُّ عَنْهُ أَيْضًا، لِأَنَّهُ مِنْ طَرِيقِ مُحَمَّدٍ الْغِفَارِيِّ عَنْ ابْنِ أَبِي ذِئْبٍ الْجُهَنِيُّ - وَلَا يُدْرَى مَنْ هُمَا فِي خَلْقِ اللَّهِ تَعَالَى - ثُمَّ عَنْ عَمْرِو بْنِ عُثْمَانَ بْنِ عَفَّانَ عَنْ عُمَرَ - وَلَمْ يُولَدْ عَمْرٌو إلَّا لَيْلَةَ مَوْتِ عُمَرَ.

L28992 Moreover, how many rulings of ʿUmar and ʿAlī have been opposed where opposing them is impermissible?

وَأَيْضًا - فَكَمْ قَضِيَّةٍ لِعُمَرَ، وَعَلِيٍّ، قَدْ خَالَفُوهَا حَيْثُ لَا يَجُوزُ خِلَافُهَا.

L28993 Moreover, even if it were authentically reported from ʿUmar, it merely states that no judgment should be rendered against an absent person based on the claim of his litigant - and this is a right we do not deny.

وَأَيْضًا - فَلَوْ صَحَّ عَنْ عُمَرَ فَلَيْسَ فِيهِ إلَّا أَنْ لَا يُقْضَى عَلَى غَائِبٍ بِدَعْوَى خَصْمِهِ - وَهَذَا حَقٌّ لَا نُنْكِرُهُ.

وَأَيْضًا - فَإِنَّ الصَّحِيحَ عَنْ عُمَرَ، وَعُثْمَانَ: الْقَضَاءُ عَلَى الْغَائِبِ إذَا صَحَّ الْحَقُّ قَبْلَهُ، وَلَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ خِلَافُ ذَلِكَ.

L28994–28995 Moreover, the sound position transmitted from ʻUmar and ʻUthman is that a judgment may be passed against an absent party if the right has been established prior to the judgment, and no valid contrary opinion to this is reported from any of the Companions.

وَأَمَّا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَإِنَّمَا ذَكَرَ عَنْ لُقْمَانَ كَلَامًا، وَأَيْنَ لُقْمَانُ مِنْ أَيَّامِ عُمَرَ.

L28996 As for what is reported from Umar ibn Abd al-Azīz, he merely mentioned words from Luqmān—and how distant is Luqmān's time from the era of Umar?

ثُمَّ لَيْسَ فِيهِ إلَّا أَنْ يُقْضَى عَلَى غَائِبٍ بِدَعْوَى خَصْمِهِ فَقَطْ - وَهَكَذَا نَقُولُ.

L28997 Furthermore, the ruling entails nothing except issuing a verdict against an absent defendant based solely on the plaintiff's claim—and this is our position.

وَكَمْ قِصَّةٍ خَالَفُوا فِيهِمَا قَضَاءَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَغَيْرِهِ.

L28998 There are many cases in which they opposed the rulings of ʻUmar ibn ʻAbd al-ʻAzīz in these two matters and others.

وَأَمَّا شُرَيْحٌ - فَإِنَّهُ لَا يَصِحُّ عَنْهُ؛ لِأَنَّهُ عَنْ مُجَالِدٍ، وَمُجَالِدٌ ضَعِيفٌ

L28999 As for Shuraih, no authentic narration is reported from him because it is from Mujalid, and Mujalid is a weak transmitter.

L29000 The other approach is that it entails not merely coaching an adversary—for if this were valid, no authoritative proof would exist in anyone besides the Messenger of Allah (peace and blessings be upon him and his family). Thus, nothing remains for them to rely upon, and their argument collapses because it is entirely devoid of demonstrative proof.

L29001 We found Allah, the Exalted, saying: "Be steadfast upholders of justice, witnesses for Allah" [An-Nisa: 135]. Thus, the Exalted did not distinguish between the present and the absent.[1]

L29002 And He, the Exalted, said: "And establish testimony for Allah" [At-Talaq: 2]. Thus, the Exalted did not specify a present [witness] from an absent one.[2]

L29003 Thus, the obligation of the ruling is valid for the absent person, just as it is for the one present.

L29004 We know of no greater misguidance than the act of a judge before whom credible witnesses testify that a certain absent person intentionally or accidentally killed Zayd, or that he forcibly seized this free woman or asserted ownership over her, or that he divorced his wife three times, or that he seized this female slave from this person, or wrongfully appropriated a mosque or cemetery—yet he disregards all of this, allowing the free woman, the sanctity of inviolability, and illicit wealth to remain in his possession. Truly, this is clear misguidance, certain oppression, entrenched transgression, and collaboration in sin and aggression.

L29005 It has been authentically reported that the Messenger of Allah—peace and blessings of Allah be upon him and his family—ruled against absent parties, just as he ruled against the Urayniyyun who killed the shepherds, burned their eyes, and fled. He pursued them with a tracker while they were absent until they were apprehended, and he exacted qisas (retribution) from them. He also ruled against the people of Khaybar while they were absent—that the Harithiyyun, the guardians of Abdullah ibn Sahl (may Allah be pleased with him), must present definitive evidence (bayyinah), or fifty of them must

وَالطَّرِيقُ الْأُخْرَى: إنَّمَا فِيهَا أَنَّهُ لَا يُلَقَّنُ خَصْمًا فَقَطْ - وَلَوْ صَحَّ لَمَا كَانَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حُجَّةٌ، فَلَمْ يَبْقَ لَهُمْ شَيْءٌ يَتَعَلَّقُونَ بِهِ - فَسَقَطَ قَوْلُهُمْ لِتَعَرِّيهِ مِنْ الْبُرْهَانِ.

وَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥] فَلَمْ يَخُصَّ تَعَالَى حَاضِرًا مِنْ غَائِبٍ.

وَقَالَ تَعَالَى: {وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ} [الطلاق: ٢] فَلَمْ يَخُصَّ تَعَالَى حَاضِرًا مِنْ غَائِبٍ.

فَصَحَّ وُجُوبُ الْحُكْمِ عَلَى الْغَائِبِ كَمَا هُوَ عَلَى الْحَاضِرِ.

وَمَا نَدْرِي فِي الضَّلَالِ أَعْظَمَ مِنْ فِعْلِ حَاكِمٍ شَهِدَ عِنْدَهُ الْعُدُولُ بِأَنَّ فُلَانًا الْغَائِبَ قَتَلَ زَيْدًا عَمْدًا أَوْ خَطَأً، أَوْ أَنَّهُ غَصَبَ هَذِهِ الْحُرَّةَ أَوْ تَمَلَّكَهَا، أَوْ أَنَّهُ طَلَّقَ امْرَأَتَهُ ثَلَاثًا، أَوْ أَنَّهُ غَصَبَ هَذِهِ الْأَمَةَ مِنْ هَذَا، أَوْ تَمَلَّكَ مَسْجِدًا أَوْ مَقْبَرَةً، فَلَا يَلْتَفِتُ إلَى كُلِّ ذَلِكَ وَتَبْقَى فِي مِلْكِهِ الْحُرَّةُ وَالْفَرْجُ الْحَرَامُ، وَالْمَالُ الْحَرَامُ، أَلَا إنَّ هَذَا هُوَ الضَّلَالُ الْمُبِينُ، وَالْجَوْرُ الْمُتَيَقَّنُ، وَالْفِسْقُ الْمَتِينُ، وَالتَّعَاوُنُ عَلَى الْإِثْمِ وَالْعُدْوَانِ.

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الْحُكْمُ عَلَى الْغَائِبِ كَمَا حَكَمَ عَلَى الْعُرَنِيِّينَ الَّذِينَ قَتَلُوا الرِّعَاءَ وَسَمَلُوا أَعْيُنَهُمْ وَفَرُّوا، فَأَتْبَعَهُمْ بِقَائِفٍ - وَهُمْ غُيَّبٌ - حَتَّى أُدْرِكُوا وَاقْتَصَّ مِنْهُمْ. وَعَلَى أَهْلِ خَيْبَرَ - وَهُمْ غُيَّبٌ - بِأَنْ يُقِيمَ الْحَارِثِيُّونَ أَوْلِيَاءُ عَبْدِ اللَّهِ بْنِ سَهْلٍ - رَضِيَ اللَّهُ عَنْهُ - الْبَيِّنَةَ أَوْ يَحْلِفُ خَمْسُونَ مِنْهُمْ عَلَى قَاتِلِهِ مِنْ أَهْلِ خَيْبَرَ وَيُسَلَّمُ إلَيْهِمْ أَوْ يُؤَدُّوا دِيَتَهُ، أَوْ يَحْلِفُ خَمْسُونَ مِنْ يَهُودَ أَنَّهُمْ مَا قَتَلُوهُ وَيَبْرَءُونَ.

[1] **Qur'an references (L29001):** Qur'an 4:135 (An-Nisa).
[2] **Qur'an references (L29002):** Qur'an 65:2 (At-Talaq).

swear concerning his killer from the people of Khaybar so the killer would be surrendered to them, or they would pay his diyah (blood money). Alternatively, fifty from the Jews of Khaybar could swear they did not kill him and thereby be absolved.

وَالْخَبَرُ الْمَشْهُورُ الَّذِي رُوِّيناهُ مِنْ طُرُقٍ، مِنْهَا: عَنْ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - أَنَا أَبُو مُعَاوِيَةَ نا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «جَاءَتْ هِنْدُ بِنْتُ عُتْبَةَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَتْ: إِنَّ زَوْجِي أَبَا سُفْيَانَ رَجُلٌ مِسِّيكٌ شَحِيحٌ، لَا يُعْطِينِي مَا يَكْفِينِي وَبَنِي، أَفَآخُذُ مِنْ مَالِهِ وَهُوَ لَا يَعْلَمُ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: خُذِي مَا يَكْفِيكِ وَبَنِيكِ بِالْمَعْرُوفِ» .

L29006–29007 The well-known report we have narrated through various chains, among them: From Ahmad ibn Shu'ayb: I am Ishaq ibn Ibrahim—that is, Ibn Rahawayh—from Abu Mu'awiyah, who narrated to us: Hisham ibn Urwah narrated to us from his father, from Aisha, the Mother of the Believers, who said: "Hind bint Utbah came to the Messenger of Allah—peace and blessings of Allah be upon him and his family—and said: 'My husband Abu Sufyan is a stingy and miserly man. He does not give me enough to sustain myself and my children. May I take from his wealth without his knowledge?' The Messenger of Allah—peace and blessings of Allah be upon him and his family—replied: 'Take what suffices you and your children in a reasonable manner.'"

وَهَذَا حُكْمٌ عَلَى الْغَائِبِ.

L29008 This is a ruling upon the absent person.

فَإِنْ قَالُوا: إِنَّمَا حَكَمَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَى أَبِي سُفْيَانَ لِعِلْمِهِ بِصِحَّةِ مَا ذَكَرَتْ لَهُ هِنْدُ.

L29009 If they say: He (prayers and peace be upon him) ruled against Abū Sufyān only because he knew the validity of what Hind had conveyed to him.

قُلْنَا: إِنَّ هَذَا لَعَجَبٌ عَهِدْنَا بِكُمْ تَجْعَلُونَ الْبَيِّنَةَ أَقْوَى مِنْ عِلْمِ الْحَاكِمِ فِي مَوَاضِعَ، مِنْهَا: مَا عِلْمَ قَبْلَ أَنْ يَلِيَ الْحُكْمَ، وَمِنْهَا: الْحُدُودُ فِي الزِّنَى، وَالْقَطْعُ، وَالْخَمْرُ، فَإِنَّكُمْ تَرَوْنَ أَنْ يُحْكَمَ فِي كُلِّ ذَلِكَ بِالْبَيِّنَةِ، وَلَا تُجِيزُونَ أَنْ يَحْكُمَ فِي ذَلِكَ بِعِلْمِهِ، وَإِنْ عَلِمَهُ بَعْدَ وِلَايَتِهِ الْقَضَاءَ، فَمَرَّةً يَكُونُ الْحُكْمُ بِالْعِلْمِ عِنْدَكُمْ أَقْوَى مِنَ الْبَيِّنَةِ، وَمَرَّةً تَكُونُ الْبَيِّنَةُ أَقْوَى مِنَ الْعِلْمِ فَكَمْ هَذَا الْخَبْطِ فِي ظُلُمَاتِ الْجَهْلِ، وَالتَّحَكُّمِ فِي الدِّينِ بِالْبَاطِلِ.

L29010 We said: This is truly astonishing! We have observed your practice of prioritizing conclusive evidence over a judge's personal knowledge in certain matters—such as cases known prior to his judicial appointment, the *ḥadd* penalties for adultery, theft amputation, and wine consumption. You maintain that rulings in all such matters must be based on evidence, rejecting judgment through his knowledge—even if acquired after assuming judicial authority. At times, you consider personal knowledge more authoritative than evidence; at others, evidence superior to knowledge. What confusion is this in the depths of ignorance, this imposition of falsehood upon religion through arbitrary judgment!

L29011 Every matter requiring a judge to rule based on his personal knowledge also obligates him to rule based on clear evidence, and every matter requiring him to rule based on clear evidence likewise obligates him to rule based

on his personal knowledge, due to the statement of Allah, the Exalted: “Be upholders of justice” [An-Nisa’ 135].[3]

وَكُلُّ مَا لَزِمَ الْحَاكِمَ أَنْ يَحْكُمَ فِيهِ بِعِلْمِهِ فَلَازِمٌ لَهُ أَنْ يَحْكُمَ فِيهِ بِالْبَيِّنَةِ، وَكُلُّ مَا لَزِمَهُ أَنْ يَحْكُمَ فِيهِ بِالْبَيِّنَةِ لَزِمَهُ أَنْ يَحْكُمَ فِيهِ بِعِلْمِهِ، لِقَوْلِ اللَّهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] .

L29012–29014 As for the Companions - may Allah be pleased with them - we have been narrated through the chain of Ḥammād ibn Salamah, from ʿAṭāʾ ibn al-Sāʾib, from Abū Zurʿah ibn ʿAmr ibn Jarīr ibn ʿAbdullāh al-Bajalī: A man accompanied Abū Mūsā al-Ashʿarī, possessing a powerful voice that caused significant harm to the enemy. When they acquired spoils, Abū Mūsā granted him a portion of his share, but he refused to accept anything but the entirety. Abū Mūsā then lashed him twenty times and shaved his head. The man gathered his hair, journeyed to ʿUmar, and entered his presence. Jarīr ibn ʿAbdullāh said: “I was seated nearest to ʿUmar in the assembly.” The man brought out his hair and struck ʿUmar’s chest with it, exclaiming: “By Allah, were it not for—” ʿUmar demanded: “Were it not for what? By Allah, he speaks truth! Were it not for the Fire?” The man replied: “I used my powerful voice to inflict harm upon the enemy,” then recounted his story to ʿUmar. Thereupon, ʿUmar wrote to... Abu Musa said: “So-and-so came to me—inform me of such-and-such. If you did this to him, I have resolved against you: If you did it to him publicly, I will surely make you face him publicly until he exacts retaliation from you. And if you did it to him privately, I will surely make you face him privately until he exacts retaliation from you.” The people said: “Pardon him.” He replied: “No, by Allah! I will not spare him for anyone’s sake.” When Abu Musa positioned himself to enact retaliation, he raised his head to the sky and said: “O Allah, I have forgiven him.”

وَأَمَّا الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - فَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي زُرْعَةَ بْنِ عَمْرِو بْنِ جَرِيرِ بْنِ عَبْدِ اللَّهِ الْبَجَلِيِّ: أَنَّ رَجُلًا كَانَ مَعَ أَبِي مُوسَى الْأَشْعَرِيِّ وَكَانَ ذَا صَوْتٍ وَنِكَايَةٍ فِي الْعَدُوِّ فَغَنِمُوا فَأَعْطَاهُ أَبُو مُوسَى الْأَشْعَرِيُّ بَعْضَ سَهْمِهِ فَأَبَى أَنْ يَأْخُذَ إِلَّا جَمِيعًا، فَضَرَبَهُ عِشْرِينَ سَوْطًا وَحَلَقَ رَأْسَهُ، فَجَمَعَ شَعْرَهُ وَرَحَلَ إِلَى عُمَرَ فَدَخَلَ عَلَيْهِ، قَالَ جَرِيرُ بْنُ عَبْدِ اللَّهِ: وَأَنَا أَقْرَبُ النَّاسِ مَجْلِسًا مِنْ عُمَرَ، فَأَخْرَجَ شَعْرَهُ فَضَرَبَ بِهِ صَدْرَ عُمَرَ، وَقَالَ: أَمَا وَاَللَّهِ لَوْلَا فَقَالَ عُمَرُ: لَوْلَا مَاذَا؟ صَدَقَ وَاَللَّهِ لَوْلَا النَّارُ؟ فَقَالَ: كُنْت ذَا صَوْتٍ وَنِكَايَةٍ فِي الْعَدُوِّ، ثُمَّ قَصَّ قِصَّتَهُ عَلَى عُمَرَ. فَكَتَبَ عُمَرُ إِلَى أَبِي مُوسَى: إِنَّ فُلَانًا قَدِمَ عَلَيَّ فَأَخْبَرَنِي بِكَذَا وَكَذَا، فَإِنْ كُنْت فَعَلْت ذَلِكَ بِهِ فَعَزَمْت عَلَيْك إِنْ كُنْت فَعَلْت بِهِ ذَلِكَ فِي مَلَأٍ مِنْ النَّاسِ، فَعَزَمْت عَلَيْك لَمَا جَلَسْت لَهُ فِي مَلَأٍ مِنْ النَّاسِ حَتَّى يَقْتَصَّ مِنْك، وَإِنْ كُنْت فَعَلْت بِهِ ذَلِكَ فِي خَلَاءٍ لَمَا جَلَسْت لَهُ فِي خَلَاءٍ حَتَّى يَقْتَصَّ مِنْك فَقَالَ لَهُ النَّاسُ: اُعْفُ عَنْهُ فَقَالَ: لَا وَاَللَّهِ لَا أَدَعُهُ لِأَحَدٍ، فَلَمَّا قَعَدَ أَبُو مُوسَى لِلْقِصَاصِ رَفَعَ رَأْسَهُ إِلَى السَّمَاءِ وَقَالَ: اللَّهُمَّ قَدْ عَفَوْت عَنْهُ.

L29015 Yunus ibn Abdullah narrated to us: Ahmad ibn Abdullah ibn Abd al-Rahim narrated to us: Ahmad ibn Khalid narrated to us: Muhammad ibn Abd al-Salam al-Khushani narrated to us: Muhammad ibn Bashshar narrated to us: Yahya Sa’id al-Qattan narrated to us: Yahya ibn Sa’id al-Taymi narrated to us: Abaya ibn Rifa’a ibn Rafi’ ibn Khadij said: Umar ibn al-Khattab was in-

حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى سَعِيدٌ الْقَطَّانُ نا يَحْيَى بْنُ سَعِيدٍ التَّيْمِيُّ نا عَبَايَةُ بْنُ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ قَالَ: بَلَغَ عُمَرَ بْنَ الْخَطَّابِ أَنَّ سَعْدَ بْنَ

[3] **Qur’an references (L29011):** Qur’an 4:135 (An-Nisa).

formed that Sa'd ibn Abi Waqqas had installed a door and said, "The noise has been blocked." Umar sent someone to him and had it burned. He dispatched Muhammad ibn Maslamah al-Ansari, who took Sa'd by the hand, brought him out, seated him, and said: "Sit here to attend to the people." Sa'd apologized to Umar and swore he had not made that statement.

أَبِي وَقَّاصٍ اتَّخَذَ بَابًا وَقَالَ: انْقَطَعَ الصَّوْتُ فَأَرْسَلَ إِلَيْهِ عُمَرُ فَحَرَقَهُ، وَأَرْسَلَ مُحَمَّدَ بْنَ مَسْلَمَةَ الْأَنْصَارِيَّ وَأَخَذَ بِيَدِ سَعْدٍ وَأَخْرَجَهُ وَأَجْلَسَهُ وَقَالَ: هُنَا اجْلِسْ لِلنَّاسِ، فَاعْتَذَرَ إِلَيْهِ سَعْدٌ وَحَلَفَ أَنَّهُ مَا تَكَلَّمَ بِذَلِكَ.

L29016 Muhammad ibn Saʿīd ibn Nabāt narrated to us: Ahmad ibn ʿAwn Allah narrated to us: Qasim ibn Asbagh narrated to us: Muhammad ibn Abd al-Salam al-Khushani narrated to us: Muhammad ibn Bashshar narrated to us: Muhammad ibn Jaʿfar narrated to us: Shuʿbah narrated from Abu Husayn, who said: I heard al-Shaʿbi say: Umar wrote to Abu Musa: "It has reached me that some people in your region are making the calls of the pre-Islamic era: 'O clan of Dabba!' When this letter of mine reaches you, discipline them with punishment involving their wealth and bodies until they disperse, for they have not understood."

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ عَنْ أَبِي حُصَيْنٍ قَالَ: سَمِعْتُ الشَّعْبِيَّ قَالَ: كَتَبَ عُمَرُ إِلَى أَبِي مُوسَى: أَنَّهُ بَلَغَنِي أَنَّ نَاسًا مِنْ قِبَلِكَ دَعَوْا بِدَعْوَى الْجَاهِلِيَّةِ: يَا آلَ ضَبَّةَ، فَإِذَا أَتَاكَ كِتَابِي هَذَا فَأَنْهِكْهُمْ عُقُوبَةً فِي أَمْوَالِهِمْ وَأَجْسَامِهِمْ حَتَّى يُفَرِّقُوا، إِذْ لَمْ يَفْقَهُوا.

L29017 From the chain of Abd al-Razzaq, from Ma'mar, from al-Zuhri, from Sa'id ibn al-Musayyab, who said: Umar ibn al-Khattab and Uthman ibn Affan decreed regarding the missing person that his wife must observe a waiting period of four years, four months, and ten days, after which she may marry.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: قَضَى عُمَرُ بْنُ الْخَطَّابِ، وَعُثْمَانُ بْنُ عَفَّانَ فِي الْمَفْقُودِ: أَنَّ امْرَأَتَهُ تَتَرَبَّصُ أَرْبَعَ سِنِينَ وَأَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، ثُمَّ تَتَزَوَّجُ -.

L29018 And all of this constitutes a judicial ruling upon the absentee.

وَهَذَا كُلُّهُ قَضَاءٌ عَلَى الْغَائِبِ.

L29019 If one were to pursue such matters regarding the Companions after what is established concerning the Prophet—may Allah bless him and his family and grant him peace—it would be exceedingly abundant. What we have cited from 'Umar and 'Uthmān is authentic, and no contradiction to it from any of the Companions is ever valid—and with Allah, the Exalted, lies all success.

وَلَوْ تَتَبَّعَ ذَلِكَ لِلصَّحَابَةِ بَعْدَمَا يُوجَدُ مِنْ ذَلِكَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَكَثُرَ جِدًّا - وَالَّذِي أَوْرَدْنَا عَنْ عُمَرَ، وَعُثْمَانَ صَحِيحٌ، وَلَا يَصِحُّ عَنْ أَحَدٍ مِنَ الصَّحَابَةِ خِلَافُهُ أَبَدًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L29020 **A ruling was issued against someone based on testimony from just witnesses, imposing a monetary penalty or other sanction. Subsequently, the defendant themselves presented testimony from just witnesses.**

[مَسْأَلَة قُضِيَ عَلَيْهِ بِبَيِّنَةِ عَدْلٍ بِغَرَامَةٍ أَوْ غَيْرِهَا ثُمَّ أَتَى هُوَ بِبَيِّنَةِ عَدْلٍ]

L29021–29023 1785 – Issue: If someone is adjudged liable, based on the testimony of

upright witnesses, to pay a fine or other obligation, and he himself then produces upright witnesses proving that he had already discharged that due or was absolved of it, what he paid as a fine must be reimbursed to him, and the judgment must be rescinded. The first judgment is from him because it is a right that became evident—a fact not within the knowledge of the evidence initially presented—and success is from Allah, the Exalted.

١٧٨٥ - مَسْأَلَةٌ: وَكُلُّ مَنْ قُضِيَ عَلَيْهِ بِبَيِّنَةِ عَدْلٍ بِغَرَامَةٍ أَوْ غَيْرِهَا، ثُمَّ أَتَى هُوَ بِبَيِّنَةِ عَدْلٍ: أَنَّهُ كَانَ قَدْ أَدَّى ذَلِكَ الْحَقَّ أَوْ بَرِئَ مِنْ ذَلِكَ الْحَقِّ: رُدَّ عَلَيْهِ مَا كَانَ غَرِمَ، وَفُسِخَ عَنْهُ الْقَضَاءُ الْأَوَّلُ؛ لِأَنَّهُ حَقٌّ ظَهَرَ لَمْ يَكُنْ فِي عِلْمِ الْبَيِّنَةِ الَّتِي شَهِدَتْ أَوَّلًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة ادَّعَى عَلَى أَحَدٍ وَأَنْكَرَ الْمُدَّعَى عَلَيْهِ فَكُلِّفَ الْمُدَّعِي الْبَيِّنَةَ]

L29024 **Issue: If someone makes a claim against another and the defendant denies it, the claimant is required to present evidence.**

١٧٨٦ - مَسْأَلَةٌ: وَكُلُّ مَنْ ادَّعَى عَلَى أَحَدٍ وَأَنْكَرَ الْمُدَّعَى عَلَيْهِ فَكُلِّفَ الْمُدَّعِي الْبَيِّنَةَ فَقَالَ: لِي بَيِّنَةٌ غَائِبَةٌ، أَوْ قَالَ: لَا أَعْرِفُ لِنَفْسِي بَيِّنَةً، أَوْ قَالَ: لَا بَيِّنَةَ لِي قِيلَ لَهُ: إِنْ شِئْتَ فَدَعْ تَحْلِيفَهُ حَتَّى تُحْضِرَ بَيِّنَتَك أَوْ لَعَلَّك تَجِدُ بَيِّنَةً، وَإِنْ شِئْت حَلَّفْته وَقَدْ سَقَطَ حُكْمُ بَيِّنَتِك الْغَائِبَةِ جُمْلَةً، فَلَا يُقْضَى لَك بِهَا أَبَدًا، وَسَقَطَ حُكْمُ بَيِّنَةٍ تَأْتِي بِهَا بَعْدَ هَذَا عَلَيْهِ، لَيْسَ لَك إلَّا هَذَا فَقَطْ، فَأَيُّ الْأَمْرَيْنِ اخْتَارَ قُضِيَ لَهُ بِهِ - وَلَمْ يُلْتَفَتْ لَهُ إلَى بَيِّنَةٍ فِي تِلْكَ الدَّعْوَى بَعْدَهَا، إلَّا أَنْ يَكُونَ تَوَاتُرٌ يُوجِبُ صِحَّةَ الْعِلْمِ وَيَقِينَهُ: أَنَّهُ حَلَفَ كَاذِبًا فَيُقْضَى عَلَيْهِ بِالْحَقِّ أَوْ يُقِرُّ بَعْدَ أَنْ حَلَفَ فَيَلْزَمُهُ مَا أَقَرَّ بِهِ.

L29025 1786 - Issue: When someone makes a claim against another and the defendant denied it, the claimant was required to present evidence. If the claimant states, “I have evidence that is unavailable,” or says, “I know of no evidence for myself,” or declares, “I have no evidence,” he is told: “If you wish, forgo his swearing until you present your evidence or perhaps find evidence. If you wish, have him swear the oath, but the legal effect of your unavailable evidence is entirely nullified, and you will never be granted a ruling based on it. Moreover, the legal effect of any evidence you bring afterward is nullified. You have no choice but these two options alone.” Whichever choice he selects, the ruling is issued accordingly. No consideration is given to any evidence presented in that claim afterward unless there is tawātur (recurrent, certainty-inducing reports) establishing definitive knowledge and certainty that he swore falsely, in which case judgment is passed against him in accordance with the truth, or unless he confesses after swearing the oath, thereby binding him to his admission.

L29026 People have differed concerning this matter. It has been narrated to us via the chain of transmission from Waki‘, who narrated to us from Sufyān al-Thawrī, from Hishām ibn Ḥassān, from Ibn Sīrīn, who said: Shurayḥ would require a man to swear an oath despite the presence of his evidence, and he would accept evidence even after administering the oath. He would state: “Credible testimony is more rightful than a perjurious oath.”

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ هِشَامِ بْنِ حَسَّانٍ عَنْ ابْنِ سِيرِينَ قَالَ: كَانَ شُرَيْحٌ يَسْتَحْلِفُ الرَّجُلَ مَعَ بَيِّنَتِهِ وَيَقْبَلُ الْبَيِّنَةَ بَعْدَ الْيَمِينِ، وَيَقُولُ الْبَيِّنَةُ الْعَادِلَةُ أَحَقُّ مِنْ الْيَمِينِ الْفَاجِرَةِ.

L29027 And concerning the ruling on the swearer when the claimant furnishes

evidence subsequent to the defendant's oath, Sufyān al-Thawrī and al-Layth ibn Saʿd hold this view; this is also the position of Abū Ḥanīfa, al-Shāfiʿī, Aḥmad, and Isḥāq.

وَبِالْحُكْمِ عَلَى الْحَالِفِ إذَا أَقَامَ الطَّالِبُ بَيِّنَةً بَعْدَ يَمِينِ الْمَطْلُوبِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَاللَّيْثُ بْنُ سَعْدٍ. وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَإِسْحَاقُ.

L29028 Mālik said: If the plaintiff knows he has evidence but chooses to make the defendant swear an oath, the legal validity of his evidence is nullified, and no ruling shall be issued for him based on it if he presents it thereafter. However, if he is unaware he possesses evidence, opts for the defendant's oath, and the defendant swears, then later discovers evidence, a judgment shall be rendered in his favor on the basis of it.

وَقَالَ مَالِكٌ: إنْ عَرَفَ الطَّالِبُ أَنَّ لَهُ بَيِّنَةً فَاخْتَارَ تَحْلِيفَ الْمَطْلُوبِ فَقَدْ سَقَطَ حُكْمُ بَيِّنَتِهِ وَلَا يُقْضَى بِهَا لَهُ إنْ جَاءَ بِهَا بَعْدَ ذَلِكَ، وَأَمَّا إنْ لَمْ يَعْرِفْ أَنَّ لَهُ بَيِّنَةً فَاخْتَارَ تَحْلِيفَ الْمَطْلُوبِ فَحَلَّفَ، ثُمَّ وَجَدَ بَيِّنَةً، فَإِنَّهُ يُقْضَى لَهُ بِهَا.

L29029 It has been reported from him that he said: If the claimant says, "I have distant evidence, but administer the oath to him now for my case. Then if my evidence materializes, I will present it."

وَقَدْ رُوِيَ عَنْهُ أَنَّهُ قَالَ: إنْ قَالَ الطَّالِبُ: إنَّ لَهُ بَيِّنَةً بَعِيدَةً وَلَكِنْ أَحْلِفْهُ لِي الْآنَ، ثُمَّ إنْ حَضَرَتْ بَيِّنَتِي أَتَيْت بِهَا.

L29030 His request is accepted in that regard, and the defendant swears to him. Judgment is then rendered in his favor based on his proof when he presents it.

فَإِنَّهُ يُجَابُ إلَى ذَلِكَ وَيَحْلِفُ لَهُ الْمَطْلُوبُ، ثُمَّ يُقْضَى لَهُ بِبَيِّنَتِهِ إذَا أَحْضَرَهَا -.

L29031 And something akin to this has been narrated from Shuraih.

وَقَدْ رُوِيَ نَحْوُ هَذَا عَنْ شُرَيْحٍ.

L29032 Ibn Abī Laylā said our opinion, as did Abū ʿUbayd, Abū Sulaymān, and all our companions.

وَقَالَ بِقَوْلِنَا ابْنُ أَبِي لَيْلَى، وَأَبُو عُبَيْدٍ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا.

L29033–29035 Abu Muhammad said: Abu Hanifah, Malik, al-Shafi'i, and Ahmad have no basis in Shuraih, because they... They opposed him for requiring the presenter of evidence to take an oath despite his evidence, and it is baseless to deem Shurayh's opinion authoritative in one case yet non-authoritative in another.

قَالَ أَبُو مُحَمَّد: لَا مُتَعَلَّقَ لِأَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ بِشُرَيْحٍ؛ لِأَنَّهُمْ قَدْ خَالَفُوهُ فِي تَحْلِيفِهِ مُقِيمَ الْبَيِّنَةِ مَعَ بَيِّنَتِهِ، وَمِنْ الْبَاطِلِ أَنْ يَكُونَ قَوْلُ شُرَيْحٍ حُجَّةً فِي مَوْضِعٍ وَغَيْرَ حُجَّةٍ فِي آخَرَ.

L29036 As for Mālik's position—we do not know anyone before him who stated it concerning the distinction between a claimant's knowledge of possessing clear evidence and their ignorance of such evidence—this is an opinion not supported by the Quran, nor the Sunnah, nor the statement of any predecessor, nor analogical reasoning.

وَأَمَّا قَوْلُ مَالِكٍ - فَمَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ فِي التَّفْرِيقِ بَيْنَ عِلْمِ الطَّالِبِ بِأَنَّ لَهُ بَيِّنَةً وَبَيْنَ جَهْلِهِ بِذَلِكَ - وَهُوَ قَوْلٌ لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قَوْلُ مُتَقَدِّمٍ، وَلَا قِيَاسٌ.

L29037 If they say: If he knows he has evidence, then is made to swear an oath, he has indeed invalidated his evidence.

فَإِنْ قَالُوا: إذَا عَلِمَ أَنَّ لَهُ بَيِّنَةً ثُمَّ أَحْلَفَهُ فَقَدْ أَسْقَطَ بَيِّنَتَهُ.

So we said, “He did not do, nor did he inform that he annulled it.”

فَقُلْنَا: مَا فَعَلَ وَلَا أَخْبَرَ أَنَّهُ أَسْقَطَهَا.

Similarly, if he is unaware that he possesses evidence and he makes his opponent swear an oath, he has thereby forfeited his evidence as well, and there is no distinction.

وَكَذَلِكَ أَيْضًا إِذَا لَمْ يَعْلَمْ بِأَنَّ لَهُ بَيِّنَةً فَأَحْلَفَ خَصْمَهُ فَقَدْ أَسْقَطَ بَيِّنَتَهُ أَيْضًا وَلَا فَرْقَ.

As for the positions of Abu Hanifa, Al-Shafi’i, Malik, and Ahmad regarding their judgment through testimonial evidence after the oath of the denier, their statement that “the just testimonial evidence is superior to the false oath” would be valid if we were certain that the evidence is just before Allah the Almighty and that the oath-taker’s vow is undeniably false. However, when we lack certainty about the testimonial evidence being truthful or the oath being false, the testimony does not take precedence over the oath, for truth may exist in either and falsehood may exist in either - unless supported by a Quranic text or Prophetic tradition commanding us to implement testimonial evidence. If the denier swears an oath and no such textual evidence exists at all, this opinion is definitively invalidated. Rather, we have found textual evidence aligning with our view. All praise is due to Allah, Lord of the worlds.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَمَالِكٍ، وَأَحْمَدَ، فِي قَضَائِهِمْ بِالْبَيِّنَةِ بَعْدَ يَمِينِ الْمُنْكِرِ، فَإِنَّ قَوْلَهُمْ: الْبَيِّنَةُ الْعَادِلَةُ خَيْرٌ مِنَ الْيَمِينِ الْفَاجِرَةِ، فَقَوْلٌ صَحِيحٌ لَوْ أَيْقَنَّا أَنَّ الْبَيِّنَةَ عَادِلَةٌ عِنْدَ اللَّهِ عَزَّ وَجَلَّ، وَأَنَّ يَمِينَ الْحَالِفِ فَاجِرَةٌ بِلَا شَكٍّ، وَأَمَّا إِذَا لَمْ يُوقِنْ أَنَّ الْبَيِّنَةَ صَادِقَةٌ، وَلَا أَنَّ الْيَمِينَ فَاجِرَةٌ، فَلَيْسَتْ الشَّهَادَةُ أَوْلَى مِنَ الْيَمِينِ، إِذْ الصِّدْقُ فِي كِلَيْهِمَا مُمْكِنٌ وَالْكَذِبُ فِي كِلَيْهِمَا مُمْكِنٌ، إِلَّا بِنَصِّ قُرْآنٍ أَوْ سُنَّةٍ تَأْمُرُنَا بِإِنْفَاذِ الْبَيِّنَةِ، وَإِنْ حَلَفَ الْمُنْكِرُ وَلَا يُوجَدُ فِي ذَلِكَ نَصٌّ أَصْلًا - فَسَقَطَ هَذَا الْقَوْلُ بِيَقِينٍ، بَلْ وَجَدْنَا النَّصَّ بِمِثْلِ قَوْلِنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

As Muslim ibn al-Hajjaj narrated to us through his chain: Zuhayr ibn Harb and Ishaq ibn Ibrahim—the latter being Ibn Rahwayh—both narrated to us from Abu al-Walid al-Tayalisi, who narrated to us from Abu Awanah, from Abdul Malik ibn Umayr, from Alqamah ibn Wail ibn Hujr, who said: “I was in the presence of the Messenger of Allah—may the peace and blessings of Allah be upon him—when two men came disputing over a piece of land.” He mentioned that the Messenger of Allah—may the peace and blessings of Allah be upon him—said to the claimant: “Your evidence?” The man replied: “I have no evidence.” He said: “His oath.” The man said: “Then he would take it (meaning what is mine).” The Messenger of Allah—may the peace and blessings of Allah be upon him—responded: “This is all you are entitled to.”

كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا زُهَيْرُ بْنُ حَرْبٍ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - جَمِيعًا عَنْ أَبِي الْوَلِيدِ الطَّيَالِسِيِّ نا أَبُو عَوَانَةَ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ عَنْ «عَلْقَمَةَ بْنِ وَائِلِ بْنِ حُجْرٍ قَالَ كُنْتُ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَتَاهُ رَجُلَانِ يَخْتَصِمَانِ فِي أَرْضٍ فَذَكَرَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِلطَّالِبِ: بَيِّنَتُكَ؟ قَالَ: لَيْسَ لِي بَيِّنَةٌ، قَالَ: يَمِينُهُ قَالَ: إِذَا يَذْهَبُ بِهَا - يَعْنِي بِمَا لِي قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَيْسَ لَكَ إِلَّا ذَلِكَ»

As for the positions of Abu Hanifa, Al-Shafi’i, Malik, and Ahmad regarding their judgment through testimonial evidence after the oath of the denier, their statement that “the just testimonial evidence is superior to the false oath” would be valid if we were certain that the evidence is just before Allah the Almighty and that the oath-taker’s vow is undeniably false. However, when we lack certainty about the testimonial evidence being truthful or the oath being false, the testimony does not take precedence over the oath, for truth may exist in either and falsehood may exist in either - unless supported by a Quranic text or Prophetic tradition commanding us to implement testimonial evidence. If the denier swears an oath and no such textual evidence exists at all, this opinion is definitively invalidated. Rather, we have found textual evidence aligning with our view. All praise is due to Allah, Lord of the worlds.

“He – peace and blessings be upon him – ruled that the claimant is entitled to nothing beyond his evidence or the defendant’s oath. Thus, it is conclusively established that only one of the two options is valid, not both, and it is invalid with certainty for both to hold legal weight.”

“ فَنَصَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَى أَنَّهُ لَيْسَ لِلطَّالِبِ إِلَّا بَيِّنَتُهُ أَوْ يَمِينُ الْمَطْلُوبِ - فَصَحَّ يَقِينًا: أَنَّهُ لَيْسَ إِلَّا أَحَدُهُمَا لَا كِلَاهُمَا وَبَطَلَ أَنْ يَكُونَ لَهُ كِلَا الْأَمْرَيْنِ بِيَقِينٍ

فَإِنْ قِيلَ: فَإِنَّكُمْ تَحْكُمُونَ لِلطَّالِبِ بَعْدَ يَمِينِ الْمَطْلُوبِ بِالتَّوَاتُرِ، وَبِعِلْمِ الْحَاكِمِ وَبِإِقْرَارِهِ.

قُلْنَا: نَعَمْ، وَكُلُّ هَذَا لَيْسَ بِبَيِّنَةٍ، لَكِنَّهُ بِيَقِينِ الْحَقِّ، وَيَقِينُ الْحَقِّ فُرِضَ إنْفَاذُهُ، وَلَيْسَتْ شَهَادَةُ الْعُدُولِ كَذَلِكَ، بَلْ يُمْكِنُ أَنْ يَكُونُوا كَاذِبِينَ، أَوْ مُغَفَّلِينَ، وَلَوْلَا النَّصُّ بِقَبُولِهِمْ وَبِالْيَمِينِ مَا حَكَمْنَا بِشَيْءٍ مِنْ ذَلِكَ بِخِلَافِ يَقِينِ الْعِلْمِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L29043 If it is said: "You indeed rule in favor of the claimant after the defendant's oath, based on tawātur (mass-transmitted evidence), the judge's personal knowledge, or the defendant's admission."

L29044 We said: Yes, and all of this does not constitute conclusive proof, but it rests on the certainty of divine truth, and the enforcement of the certainty of divine truth is mandated. The testimony of upright witnesses is not equivalent to this; rather, they may be lying or deceived. Had it not been for the scriptural injunction regarding their acceptance and the oath, we would not have ruled on any of that contrary to certainty of knowledge—and success is from Allah, the Exalted.

[مَسْأَلَة لَمْ يَكُنْ لِلطَّالِبِ بَيِّنَةٌ وَأَبَى الْمَطْلُوبُ مِنْ الْيَمِينِ]

A case in which the claimant possessed no evidence and the defendant refused to take the oath.

مَسْأَلَةٌ: فَإِنْ لَمْ يَكُنْ لِلطَّالِبِ بَيِّنَةٌ وَأَبَى الْمَطْلُوبُ مِنْ الْيَمِينِ: أُجْبِرَ عَلَيْهَا - أَحَبَّ أَمْ كَرِهَ - بِالْأَدَبِ، وَلَا يُقْضَى عَلَيْهِ بِنُكُولِهِ فِي شَيْءٍ مِنْ الْأَشْيَاءِ أَصْلًا، وَلَا تُرَدُّ الْيَمِينُ عَلَى الطَّالِبِ أَلْبَتَّةَ.

L29047 Issue: If the plaintiff lacks evidence and the defendant refuses to swear the oath, he is compelled to take it - whether willing or unwilling - through disciplinary means. No judgment is passed against him for his refusal to swear the oath in any matter whatsoever, nor is the oath returned to the plaintiff under absolutely no circumstances.

وَلَا تُرَدُّ يَمِينٌ أَصْلًا، إلَّا فِي ثَلَاثَةِ مَوَاضِعَ فَقَطْ -: وَهِيَ الْقَسَامَةُ: فِيمَنْ وُجِدَ مَقْتُولًا، فَإِنَّهُ إنْ لَمْ تَكُنْ لِأَوْلِيَائِهِ بَيِّنَةٌ حَلَفَ خَمْسُونَ مِنْهُمْ، وَاسْتَحَقُّوا الْقِصَاصَ أَوْ الدِّيَةَ، فَإِنْ أَبَوْا حَلَفَ خَمْسُونَ مِنْ الْمُدَّعَى عَلَيْهِمْ وَبَرِئُوا، فَإِنْ نَكَلُوا أُجْبِرُوا عَلَى الْيَمِينِ أَبَدًا - وَهَذَا مَكَانٌ يَحْلِفُ فِيهِ الطَّالِبُونَ، فَإِنْ نَكَلُوا رُدَّ عَلَى الْمَطْلُوبِينَ.

L29048 An oath is not rejected in principle, except in three cases only: Qasamah—in the case of a person found murdered. If the heirs of the deceased lack clear evidence, fifty of them must swear, thereby becoming entitled to retribution or blood money. If they refuse, fifty of the defendants must swear and are thereby absolved. If they refuse to swear, they are compelled to take the oath without exception—and this is a case where the claimants swear; if they refuse, the oath is transferred to the defendants.

وَالْمَوْضِعُ الثَّانِي: الْوَصِيَّةُ فِي السَّفَرِ، لَا يَشْهَدُ عَلَيْهَا إلَّا كُفَّارٌ، وَأَنَّ الشَّاهِدَيْنِ الْكَافِرَيْنِ يَحْلِفَانِ مَعَ شَهَادَتِهَا، فَإِنْ نَكَلَا لَمْ يُقْضَ بِشَهَادَتِهَا، فَإِنْ قَامَتْ بَعْدَ ذَلِكَ بَيِّنَةٌ مِنْ الْمُسْلِمِ حَلَفَ اثْنَانِ مِنْهُمْ مَعَ شَهَادَتِهِمَا، وَحُكِمَ بِهَا، وَفُسِخَ مَا شَهِدَ بِهِ الْأَوَّلَانِ، فَإِنْ

L29049 The second scenario involves a will made during travel, witnessed only by non-Muslims. The two non-Muslim witnesses must swear an oath alongside their testimony regarding the will. If they refuse, their testimony is not accepted. If evidence is later presented by a Muslim, two Muslims must swear an oath alongside their testimony, after which a ruling is issued accordingly, nullifying the ruling based on the initial two witnesses' testimony. If they refuse, their testimony is invalidated, and the original ruling remains as pre-

viously adjudicated. This is a situation where the witnesses swear the oath—not the claimant or the defendant.

L29050 The third situation: If someone has a single upright male witness or two upright female witnesses supporting his claim, he swears an oath, and the judgment is rendered in his favor. If he refuses to swear, the defendant swears an oath and is absolved. If the defendant refuses, he is indefinitely compelled to swear. This is a case where the claimant swears; if he refuses, the defendant counters him and is absolved.

L29051 In all that we have mentioned, there is a difference of opinion. A group stated: If the defendant refuses to take the oath, judgment is rendered against him based on the plaintiff's claim without requiring the defendant to swear.

L29052 Others said: A judgment is not passed against the defendant unless he swears to the validity of his claim, at which point judgment is rendered in his favor. Thus, the proponents hold that judgment is passed against the defendant for his refusal, without requiring the oath to be re-administered.

L29053 As narrated through the chain of Abu Ubaydah - Yazid (Ibn Harun) - Yahya ibn Sa'id al-Ansari - Salim ibn Abdullah ibn Umar ibn al-Khattab: That his father Abdullah sold his slave for eight hundred dirhams without warranty. The buyer then brought a lawsuit against Ibn Umar concerning the slave before Uthman. Uthman said to Ibn Umar: "Swear by Allah that you sold him and there was no ailment in him you were aware of." When Ibn Umar refused to take the oath, Uthman returned the slave to the buyer.

L29054–29056 And from the chain of Ibn Abi Shaybah: Hafs ibn Ghiyath narrated to us from Ibn Jurayj from Ibn Abi Mulaykah from... It is reported from Ibn Abbas that he instructed Ibn Abi Mulaykah to administer an oath to a woman, but she refused to swear, so he compelled her to do so. A similar report was narrated from Abu Musa al-Ash'ari.

L29057 From the narration of Ibn Abi Shaybah from Sharīk from Mughīrah from al-Ḥārith, who said: A man retracted from taking the oath before Shurayḥ,

نَكَلَا بَطَلَتْ شَهَادَتُهَا، وَبَقِيَ الْحُكْمُ الْأَوَّلُ كَمَا حُكِمَ بِهِ - فَهَذَا مَكَانٌ يَحْلِفُ فِيهِ الشُّهُودُ لَا الطَّالِبُ وَلَا الْمَطْلُوبُ.

وَالْمَوْضِعُ الثَّالِثُ: مَنْ قَامَ لَهُ بِدَعْوَاهُ شَاهِدٌ وَاحِدٌ عَدْلٌ، أَوْ امْرَأَتَانِ عَدْلَتَانِ، فَيَحْلِفُ وَيُقْضَى لَهُ، فَإِنْ نَكَلَ حَلَفَ الْمُدَّعَى عَلَيْهِ وَبَرِئَ، فَإِنْ نَكَلَ أُجْبِرَ عَلَى الْيَمِينِ أَبَدًا، فَهَذَا مَكَانٌ يَحْلِفُ فِيهِ الطَّالِبُ فَإِنْ نَكَلَ رَدَّ عَلَيْهِ الْمَطْلُوبُ.

وَفِي كُلِّ مَا ذَكَرْنَا اخْتِلَافٌ -: فَقَالَتْ طَائِفَةٌ: إِنْ نَكَلَ الْمُدَّعَى عَلَيْهِ عَنْ الْيَمِينِ قُضِيَ عَلَيْهِ بِدَعْوَى الطَّالِبِ دُونَ أَنْ يَحْلِفَ.

وَقَالَ آخَرُونَ: لَا يُقْضَى عَلَيْهِ إلَّا حَتَّى يَحْلِفَ عَلَى صِحَّةِ دَعْوَاهُ، فَيُقْضَى لَهُ حِينَئِذٍ، فَالْقَائِلُونَ يُقْضَى عَلَى الْمَطْلُوبِ بِنُكُولِهِ دُونَ أَنْ تُرَدَّ الْيَمِينُ -.

فَكَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدَةَ نا يَزِيدُ - هُوَ ابْنُ هَارُونَ - عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ أَنَّ أَبَاهُ عَبْدَ اللَّهِ بَاعَ عَبْدًا لَهُ بِثَمَانِمِائَةِ دِرْهَمٍ بِالْبَرَاءَةِ، ثُمَّ إنَّ صَاحِبَ الْعَبْدِ خَاصَمَ فِيهِ ابْنَ عُمَرَ إلَى عُثْمَانَ فَقَالَ عُثْمَانُ لِابْنِ عُمَرَ: احْلِفْ بِاَللَّهِ لَقَدْ بِعْته وَمَا بِهِ مِنْ دَاءٍ عَلِمْته فَأَبَى ابْنُ عُمَرَ مِنْ أَنْ يَحْلِفَ، فَرَدَّ عَلَيْهِ عُثْمَانُ الْعَبْدَ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ أَمَرَ ابْنَ أَبِي مُلَيْكَةَ أَنْ يَسْتَحْلِفَ امْرَأَةً فَأَبَتْ أَنْ تَحْلِفَ، فَأَلْزَمَهَا ذَلِكَ وَرُوِيَ نَحْوُ ذَلِكَ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ.

so he ruled against him. The man said: “Shall I swear?” Shurayḥ responded: “My judgment has already been concluded.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ شَرِيكٍ عَنْ مُغِيرَةَ عَنْ الْحَارِثِ، قَالَ: نَكَلَ رَجُلٌ عِنْدَ شُرَيْحٍ عَنْ الْيَمِينِ، فَقَضَى عَلَيْهِ فَقَالَ: أَنَا أَحْلِفُ؟ فَقَالَ شُرَيْحٌ: قَدْ مَضَى قَضَائِي.

L29058 Aḥmad ibn Ḥanbal and Isḥāq adopt this view, with the latter in one of his two opinions.

وَبِهَذَا يَأْخُذُ أَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ فِي أَحَدِ قَوْلَيْهِ.

L29059 Abu Hanifah said: In all matters involving property, sexual integrity, and retaliation for injuries short of homicide, judgment is rendered against one who refuses to swear the oath. Save for retaliation pertaining to life (homicide) - no judgment is rendered therein due to the respondent’s refusal to swear, nor is the oath returned to the plaintiff. Rather, the respondent is imprisoned until he either swears or confesses.

وَقَالَ أَبُو حَنِيفَةَ: يُقْضَى عَلَى النَّاكِلِ عَنْ الْيَمِينِ فِي كُلِّ شَيْءٍ مِنْ الْأَمْوَالِ وَالْفُرُوجِ، وَالْقِصَاصِ فِيمَا دُونَ النَّفْسِ، حَاشَا الْقِصَاصَ فِي النَّفْسِ فَلَا يُقْضَى فِيهِ بِنُكُولِ الْمَطْلُوبِ، وَلَا تُرَدُّ الْيَمِينُ عَلَى الطَّالِبِ، لَكِنْ يُسْجَنُ الْمَطْلُوبُ حَتَّى يَحْلِفَ أَوْ يُقِرَّ.

L29060 Zufar said: The ruling applies to refusal to take the oath in all matters, and to qisas (retaliation) in cases involving life and lesser injuries - which represents the opinion of Abū Yūsuf and Muḥammad in one of their two juristic opinions.

وَقَالَ زُفَرُ: أَقْضِي فِي النُّكُولِ فِي كُلِّ شَيْءٍ، وَفِي الْقِصَاصِ فِي النَّفْسِ وَمَا دُونَ النَّفْسِ - وَهُوَ قَوْلُ أَبِي يُوسُفَ، وَمُحَمَّدٍ فِي أَحَدِ قَوْلَيْهِمَا.

L29061 They also said on another occasion: A ruling is issued based on refusal [to swear an oath] in all matters except retaliation (qisas) for murder or lesser injuries. For indeed, compensatory damages (arsh) and blood money (diyya) become obligatory through refusal in all such cases, and retaliation is not imposed due to it.

وَقَالَا مَرَّةً أُخْرَى: يُقْضَى بِالنُّكُولِ فِي كُلِّ شَيْءٍ حَاشَ الْقِصَاصَ فِي النَّفْسِ وَفِيمَا دُونَهَا، فَإِنَّهُ يَلْزَمُ الْأَرْشُ وَالدِّيَةُ بِالنُّكُولِ فِي كُلِّ ذَلِكَ وَلَا يُقَصُّ مِنْهُ.

L29062 They all said: If someone claims another stole from him property warranting the cutting punishment without presenting proof, the accused must swear an oath and is acquitted. If he refuses to swear, he becomes liable for the property’s value but is not subjected to the cutting punishment.

وَقَالُوا كُلُّهُمْ: مَنْ ادَّعَى عَلَى آخَرَ أَنَّهُ سَرَقَ مِنْهُ مَا فِيهِ الْقَطْعُ وَلَا بَيِّنَةَ لَهُ: حَلَفَ الْمَطْلُوبُ وَبَرِئَ، فَإِنْ نَكَلَ غَرِمَ الْمَالَ وَلَا قَطْعَ عَلَيْهِ.

L29063 They all said: No judgment is to be passed against him for refusal until he is called to the oath three times.

وَقَالُوا كُلُّهُمْ: لَا يُقْضَى عَلَيْهِ بِالنُّكُولِ حَتَّى يَدْعُوَهُ إلَى الْيَمِينِ ثَلَاثَ مَرَّاتٍ.

L29064 If he refuses and persists, judgment is passed against him.

فَإِنْ أَبَى وَتَمَادَى قُضِيَ عَلَيْهِ.

L29065 Al-Hasan ibn Ḥayy said: If a slain person is found in the district of a people, and his next of kin accuse them of killing him without evidence, fifty of them

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: إنْ وُجِدَ قَتِيلٌ فِي مَحَلَّةِ قَوْمٍ فَادَّعَى أَوْلِيَاؤُهُ عَلَيْهِمْ قَتْلَهُ وَلَا بَيِّنَةَ لَهُمْ: حَلَفَ خَمْسُونَ مِنْهُمْ بِاَللَّهِ مَا قَتَلْنَاهُ، ثُمَّ يَغْرَمُونَ الدِّيَةَ، فَإِنْ نَكَلُوا قُتِلُوا قِصَاصًا.

must swear by Allah that they did not kill him, and they must pay the diyah. If they refuse to swear, they are to be killed in qiṣāṣ.

L29066 Mālik said: Whoever claims a financial right against a denying party and produces one witness is to swear along with his witness. If he refuses, the defendant is told: "Swear, and you shall be absolved."

وَقَالَ مَالِكٌ: مَنْ ادَّعَى حَقًّا مِنْ مَالٍ عَلَى مُنْكِرٍ وَأَقَامَ شَاهِدًا وَاحِدًا حَلَفَ مَعَ شَاهِدِهِ، فَإِنْ أَبَى قِيلَ لِلْمَطْلُوبِ احْلِفْ فَتَبْرَأُ.

L29067 If he refuses to take the oath, judgment is passed against him based on the testimony of the claimant's witness. He said: Whoever declares, "I accuse so-and-so of taking my property," must specify its amount—though I do not verify that.

فَإِنْ نَكَلَ قُضِيَ عَلَيْهِ بِمَا شَهِدَ بِهِ شَاهِدُ طَالِبِهِ عَلَيْهِ. قَالَ: وَمَنْ قَالَ: أَنَا أَتَّهِمُ فُلَانًا بِأَنَّهُ أَخَذَ لِي مَالًا ذَكَرَ عَدَدَهُ - وَلَا أُحَقِّقُ ذَلِكَ.

L29068 The defendant is told: "Swear an oath and absolve yourself." If he refuses, judgment is passed against him based on what the claimant has stated, without requiring a rebuttal oath.

قِيلَ لِلْمَطْلُوبِ: احْلِفْ وَتَبْرَأُ، فَإِنْ نَكَلَ قُضِيَ عَلَيْهِ بِمَا ذَكَرَهُ الْمُتَّهَمُ دُونَ رَدِّ يَمِينٍ.

L29069–29070 He said: If someone dies leaving minor heirs, and their guardian produces a single upright witness testifying to a debt owed to their estate by another person, the defendant is told: "Swear an oath until the minors come of age, at which point they will swear alongside their witness, and the ruling will be made in their favor." If he swears, the case is postponed until they reach adulthood, swear, and the ruling is granted. If he refuses, he must pay what the witness testified.

قَالَ: مَنْ مَاتَ وَتَرَكَ وَرَثَتَهُ صِغَارًا فَأَقَامَ وَصِيُّهُمْ شَاهِدًا وَاحِدًا عَدْلًا بِدَيْنٍ لِمَوْرُوثِهِمْ عَلَى إِنْسَانٍ: قِيلَ لِلْمُدَّعَى عَلَيْهِ: احْلِفْ حَتَّى تَبْلُغَ الصِّغَارُ فَيَحْلِفُوا مَعَ شَاهِدِهِمْ، وَيُقْضَى لَهُمْ، فَإِنْ حَلَفَ تُرِكَ حَتَّى يَبْلُغُوا وَيَحْلِفُوا وَيُقْضَى لَهُمْ، وَإِنْ نَكَلَ غَرِمَ مَا شَهِدَ بِهِ الشَّاهِدُ.

L29071 He said regarding a man whose wife claims he divorced her, or whose female slave or male slave claims he emancipated her or him, and a single just witness testifies to that against him: He is told, "Swear that you have neither divorced nor emancipated, and clear yourself."

وَقَالَ فِيمَنْ ادَّعَتْ عَلَيْهِ امْرَأَتُهُ طَلَاقًا، أَوْ ادَّعَتْ عَلَيْهِ أَمَتُهُ أَوْ عَبْدُهُ عَتَاقًا، وَقَامَ عَلَيْهِ بِذَلِكَ، شَاهِدٌ وَاحِدٌ عَدْلٌ: إِنَّهُ يُقَالُ لَهُ: احْلِفْ مَا طَلَّقْتَ، وَلَا أَعْتَقْتَ وَتَبَرَّأُ.

L29072 If he refuses, it is ruled against him to effect divorce and manumission.

فَإِنْ نَكَلَ قُضِيَ عَلَيْهِ بِالطَّلَاقِ وَالْعِتْقِ.

L29073 He said in another instance, "He is to be imprisoned until his matter becomes prolonged," setting that duration at one year, then he divorces. On one occasion, he stated, "He is to be imprisoned perpetually until he swears."

وَقَالَ مَرَّةً أُخْرَى يُسْجَنُ حَتَّى يَطُولَ أَمْرُهُ، وَحَدَّ ذَلِكَ بِسَنَةٍ، ثُمَّ يُطَلِّقُ - وَمَرَّةً قَالَ: يُسْجَنُ أَبَدًا حَتَّى يَحْلِفَ.

L29074 Abu Muhammad said: As for Mālik's opinion, its erroneous nature is evident because it is self-contradictory: at times he rules based on refusal (nukūl) as cited, while in other claims he does not rule based on it. These are distinc-

tions that, to our knowledge, no Muslim before him ever made, nor does he possess any evidence for his distinctions—neither from the Qur'an, nor the Sunnah, nor an infirm narration, nor the statement of any predecessors, nor analogy. Rather, all of that invalidates his distinctions. Thus, this opinion is invalid with certainty.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مَالِكٍ فَظَاهِرُ الْخَطَأِ، لِأَنَّهُ مُتَنَاقِضٌ: مَرَّةً يَقْضِي بِالنُّكُولِ كَمَا أَوْرَدْنَا، وَفِي سَائِرِ الدَّعَاوَى لَا يَقْضِي بِهِ، وَهَذِهِ فُرُوقٌ مَا نَعْلَمُ أَحَدًا مِنْ الْمُسْلِمِينَ فَرَّقَ بِهَا قَبْلَهُ وَلَا دَلِيلَ لَهُ عَلَى تَفْرِيقِهِ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ سَبَقَهُ إلَى ذَلِكَ، وَلَا قِيَاسٍ، بَلْ كُلُّ ذَلِكَ مُبْطِلٌ لِفُرُوقِهِ - فَسَقَطَ هَذِهِ الْقَوْلُ بِيَقِينٍ.

L29075 As for the statements of Abū Ḥanīfa, Abū Yūsuf, and Muḥammad ibn al-Ḥasan, they are manifestly contradictory. We know of no one who preceded them in making those corrupt distinctions, nor in reiterating his call to swear an oath three times. This has not been validated by the Qur'an, the Sunnah, not even a flawed narration, the opinion of any predecessor, or analogy. Rather, all such sources contradict their distinctions.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ: فَظَاهِرُ التَّنَاقُضِ أَيْضًا، وَمَا نَعْلَمُ أَحَدًا سَبَقَهُمْ إلَى تِلْكَ الْفُرُوقِ الْفَاسِدَةِ، وَلَا إلَى تَرْدِيدِ دُعَائِهِ إلَى الْيَمِينِ ثَلَاثَ مَرَّاتٍ، وَلَا صَحَّحَ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ أَحَدٍ قَبْلَهُمْ، وَلَا قِيَاسٌ، بَلْ كُلُّ ذَلِكَ مُخَالِفٌ لِفُرُوقِهِمْ.

L29076–29078 The ruling based on refusal to take the oath must necessarily be either a valid and obligatory ruling or an invalid one. If it is invalid, then issuing an invalid ruling is impermissible. If it is valid, then ruling by it in all circumstances becomes obligatory—as stated by Zufar, Al-Hasan ibn Hayy, and by Abu Yusuf and Muhammad in one of their two opinions—since neither the Qur'an has been revealed nor the Sunnah established to differentiate between any aspect of this matter. Thus, this opinion is entirely invalidated as well. Allah has never deemed precaution for protecting blood more imperative than precaution for safeguarding chastity, wealth, or bodies. Rather, the prohibition of all these is equal in their inviolability. The Messenger of Allah—peace and blessings be upon him—said: "Verily, your blood, your wealth, your honor, and your bodies are sacred to you." "Just as the sanctity of this day of yours, in this month of yours, in this land of yours - Take heed! Have I not conveyed? O Allah, bear witness."

وَلَا يَخْلُو الْحُكْمُ بِالنُّكُولِ مِنْ أَنْ يَكُونَ حَقًّا وَاجِبًا أَوْ بَاطِلًا، فَإِنْ كَانَ بَاطِلًا فَالْحُكْمُ بِالْبَاطِلِ لَا يَحِلُّ، وَإِنْ كَانَ حَقًّا فَالْحُكْمُ بِهِ فِي كُلِّ مَكَانٍ وَاجِبٌ -: كَمَا قَالَ زُفَرُ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو يُوسُفَ، وَمُحَمَّدٌ - فِي أَحَدِ قَوْلَيْهِمَا - إذْ لَمْ يَأْتِ قُرْآنٌ، وَلَا سُنَّةٌ بِالْفَرْقِ بَيْنَ شَيْءٍ مِنْ ذَلِكَ - فَسَقَطَ هَذَا الْقَوْلُ أَيْضًا جُمْلَةً، وَمَا جَعَلَ اللَّهُ قَطُّ الِاحْتِيَاطَ لِلدَّمِ بِأَوْلَى مِنْ الِاحْتِيَاطِ لِلْفُرُوجِ، وَالْمَالِ، وَالْبَشَرَةِ، بَلْ الْحَرَامُ مِنْ كُلِّ ذَلِكَ سَوَاءٌ فِي أَنَّهُ حَرَامٌ. قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ كَحُرْمَةِ يَوْمِكُمْ هَذَا فِي شَهْرِكُمْ هَذَا فِي بَلَدِكُمْ هَذَا أَلَا هَلْ بَلَّغْتُ؟ اللَّهُمَّ اشْهَدْ» .

L29079 Rather, we have found that bloodshed is permitted with two witnesses, and the penalty of one hundred lashes for adultery or fifty is not permitted except

with four upright witnesses. Thus, it is confirmed that submission is solely to the textual rulings.

بَلْ قَدْ وَجَدْنَا الدَّمَ يُبَاحُ بِشَاهِدَيْنِ، وَجَلْدِ مِائَةٍ فِي الزِّنَى أَوْ خَمْسِينَ لَا يُبَاحُ إلَّا بِأَرْبَعَةِ عُدُولٍ - فَصَحَّ أَنَّهُ التَّسْلِيمُ لِلنُّصُوصِ فَقَطْ.

L29080 The only remaining opinion regarding the ruling on refusal to take oaths is that of Zufar, which was agreed upon by his two companions Abu Yusuf and Muhammad ibn al-Hasan. We found in the evidence of those who adopted this view that he cited the verse of liʿān, stating: There is no disagreement that if the husband refuses the oaths or she refuses, then a ruling obligating the aforementioned refuser takes effect due to this refusal—either imprisonment or ḥadd punishment. Thus, this constitutes a ruling based on refusal.

وَلَمْ يَبْقَ فِي الْحُكْمِ بِالنُّكُولِ إلَّا قَوْلُ زُفَرَ الَّذِي وَافَقَهُ عَلَيْهِ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ صَاحِبَاهُ، فَوَجَدْنَا مِنْ حُجَّةِ مَنْ ذَهَبَ إلَيْهِ: أَنَّهُ ذَكَرَ آيَةَ اللِّعَانِ وَقَالَ: إنَّهُ لَا خِلَافَ فِي أَنَّ الزَّوْجَ إنْ نَكَلَ عَنْ الْأَيْمَانِ، أَوْ نَكَلَتْ هِيَ، فَإِنَّ عَلَى النَّاكِلِ حُكْمًا مَا يَلْزَمُهُ بِنُكُولِ النَّاكِلِ الْمَذْكُورِ إمَّا السِّجْنُ وَإِمَّا الْحَدُّ - فَهَذَا قَضَاءٌ بِالنُّكُولِ.

L29081 So we said: They have no proof in this, for two reasons:

فَقُلْنَا: لَا حُجَّةَ لَهُمْ فِي هَذَا، لِوَجْهَيْنِ -:

L29082 One of the two scenarios is that the husband is a slanderer, and the text stipulates the removal of the hadd punishment for slander from him by his four oaths, with the fifth oath cursing him. Compliance with this ruling is therefore obligatory. If he does not swear, the hadd punishment remains incumbent upon him as per the text. As for the woman, God Almighty has mandated punishment upon her unless she swears. If she swears, the punishment is averted from her by her four oaths, and she incurs God's wrath in the fifth oath as per the text. If she refuses to swear, the punishment becomes obligatory upon her. This ruling differs from all other legal cases, without disagreement between us and you.

أَحَدُهُمَا - أَنَّ الزَّوْجَ قَاذِفٌ، فَجَاءَ النَّصُّ بِإِزَالَةِ حَدِّ الْقَذْفِ عَنْهُ بِأَيْمَانِهِ الْأَرْبَعِ وَلَعَنَتْهُ الْخَامِسَةُ فَلَزِمَتْ الطَّاعَةُ لِذَلِكَ، فَإِنْ لَمْ يَحْلِفْ فَالْحَدُّ بَاقٍ عَلَيْهِ بِالنَّصِّ - وَأَمَّا الْمَرْأَةُ فَقَدْ أَوْجَبَ اللَّهُ تَعَالَى عَلَيْهَا الْعَذَابَ، إلَّا أَنْ تَحْلِفَ، فَإِنْ حَلَفَتْ دُرِئَ عَنْهَا الْعَذَابُ بِأَيْمَانِهَا الْأَرْبَعِ، وَغَضِبَ اللَّهُ عَلَيْهَا فِي الْخَامِسَةِ بِالنَّصِّ، وَإِنْ نَكَلَتْ فَالْعَذَابُ عَلَيْهَا وَاجِبٌ، وَلَيْسَ كَذَلِكَ سَائِرُ الدَّعَاوَى، بِلَا خِلَافٍ مِنَّا وَمِنْكُمْ.

L29083 The second point is that what you have derived from this verse is merely that a ruling becomes incumbent upon it due to refusal—which, according to you, is imprisonment. We assert that the refusal of one who declines to swear an oath in every instance where it is obligatory upon him also necessitates a ruling upon him—namely, the disciplinary action that the Messenger of Allah (peace be upon him) commanded for anyone who commits a reprehensible act that we are able to rectify by force. By refusing to fulfill what Allah the Exalted has obligated upon him, he has indeed committed a reprehensible act, making it obligatory to rectify the act by force. Thus, their misleading use of the verse in an inappropriate context is invalidated.

وَالْوَجْهُ الثَّانِي - أَنَّهُ إنَّمَا حَصَلَ لَكُمْ مِنْ هَذِهِ الْآيَةِ أَنَّ حُكْمًا مَا يَلْزَمُهَا بِالنُّكُولِ، وَهُوَ عِنْدَكُمْ السِّجْنُ، وَنَحْنُ نَقُولُ: إنَّ نُكُولَ النَّاكِلِ عَنْ الْيَمِينِ فِي كُلِّ مَوْضِعٍ وَجَبَتْ عَلَيْهِ يُوجِبُ أَيْضًا عَلَيْهِ حُكْمًا مَا وَهُوَ الْأَدَبُ الَّذِي أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى كُلِّ مَنْ أَتَى مُنْكَرًا قَدَرْنَا عَلَى تَغْيِيرِهِ بِالْيَدِ - وَهُوَ بِامْتِنَاعِهِ مِمَّا أَوْجَبَهُ اللَّهُ تَعَالَى عَلَيْهِ قَدْ أَتَى مُنْكَرًا فَوَجَبَ تَغْيِيرُهُ بِالْيَدِ فَبَطَلَ تَمْوِيهُهُمْ بِالْآيَةِ فِي غَيْرِ مَوْضِعِهَا.

L29084 He also said: The community unanimously agrees that the defendant's oath-refusal necessitates a ruling imposing a right upon the claimant. Then they differed: one group held it to be returning the oath, another group maintained it requires imprisonment and discipline, while a third group affirmed enforcing the judgment against the oath-refuser. Thus returning the oath becomes invalidated, and the claimant derives no benefit from imprisoning or disciplining the oath-refusing defendant. Therefore, nothing remains except obligating the defendant to the judgment by virtue of his refusal.

وَقَالَ أَيْضًا: إِنَّ الْأُمَّةَ مُجْمِعَةٌ عَلَى أَنَّ لِنُكُولِ الْمُدَّعَى عَلَيْهِ حُكْمًا مُوجِبًا لِلْمُدَّعِي حَقًّا، ثُمَّ اخْتَلَفُوا، فَقَالَتْ طَائِفَةٌ: هُوَ رَدُّ الْيَمِينِ، وَقَالَتْ طَائِفَةٌ: هُوَ السِّجْنُ وَالْأَدَبُ، وَقَالَتْ طَائِفَةٌ: هُوَ إِنْفَاذُ الْحُكْمِ عَلَى النَّاكِلِ، فَبَطَلَ رَدُّ الْيَمِينِ، وَلَا فَائِدَةَ لِلْمُدَّعِي فِي سِجْنِ الْمَطْلُوبِ النَّاكِلِ وَتَأْدِيبِهِ، فَلَمْ يَبْقَ إِلَّا إِلْزَامُ الْمُدَّعَى عَلَيْهِ الْحُكْمَ بِنُكُولِهِ.

L29085–29087 So we said: This statement is utterly corrupt, for you have added to it what does not belong to it. No one has a right against another except only that which Allah the Exalted has obligated in the Quran or through the tongue of His Messenger—peace be upon him. Nor does a claimant hold any right against the defendant. In the apparent case and ruling, except for the monetary penalty if one admits liability, or if it is established against them through evidence, by the judge's certainty, or the oath required solely upon denial. If they neither admit liability, nor is evidence established against them, nor does the judge ascertain the claimant's truthfulness, the penalty is waived. Only the oath ordained by Allah the Exalted remains, which constitutes the respondent's obligated right. It is therefore imperative to enforce this oath exclusively, not any other obligation not legally required of them—whether the claimant benefits from it or not—for considering the claimant's interest amounts to a false claim, unlike upholding the respondent's rightful interest.

فَقُلْنَا: هَذَا الْقَوْلُ فِي غَايَةِ الْفَسَادِ، إِذْ زِدْتُمْ فِيهِ مَا لَيْسَ مِنْهُ، وَلَا حَقَّ لِأَحَدٍ عِنْدَ أَحَدٍ إِلَّا أَنْ يُوجِبَهُ اللَّهُ تَعَالَى فِي الْقُرْآنِ أَوْ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، وَلَا حَقَّ لِلْمُدَّعِي عَلَى الْمُدَّعَى عَلَيْهِ فِي ظَاهِرِ الْأَمْرِ، وَالْحُكْمِ، إِلَّا الْغَرَامَةُ إِنْ أَقَرَّ أَوْ ثَبَتَ عَلَيْهِ بِبَيِّنَةٍ، أَوْ بِيَقِينِ الْحَاكِمِ، أَوْ الْيَمِينُ إِنْ أَنْكَرَ فَقَطْ، فَلَمَّا لَمْ يُقِرَّ، وَلَا قَامَتْ عَلَيْهِ بَيِّنَةٌ، وَلَا تَيَقَّنَ الْحَاكِمُ صِدْقَ الْمُدَّعِي: سَقَطَتْ الْغَرَامَةُ، وَلَمْ يَبْقَ عَلَيْهِ إِلَّا الْيَمِينُ الَّتِي أَوْجَبَ اللَّهُ تَعَالَى، فَهُوَ حَقُّهُ قِبَلَ الْمَطْلُوبِ، فَوَجَبَ أَخْذُهُ بِهِ وَلَا بُدَّ، لَا بِمَا سِوَاهُ مِمَّا لَمْ يَجِبْ عَلَيْهِ - سَوَاءٌ كَانَ لِلطَّالِبِ فِي ذَلِكَ فَائِدَةٌ أَوْ لَمْ يَكُنْ - لِأَنَّ مُرَاعَاةَ فَائِدَتِهِ دَعْوَى كَاذِبَةٌ دُونَ مُرَاعَاةِ فَائِدَةِ الْمَطْلُوبِ.

L29088 He said: The termination of litigation is a right for the claimant against the defendant. If the defendant takes the oath, the litigation is terminated. When he refuses to swear, the termination becomes obligatory upon him. Since litigation cannot be terminated through his imprisonment or corporal punishment, no option remains except to terminate it by ruling in accordance with the claimant's claim. His imprisonment constitutes a restriction on his capacity to manage affairs, which is impermissible. Thus the litigation is halted, leaving no alternative except to issue judgment based on his refusal to swear.

وَقَالَ: إِنَّ قَطْعَ الْخُصُومَةِ حَقٌّ لِلْمُدَّعِي عَلَى الْمُدَّعَى عَلَيْهِ فَلَوْ حَلَفَ الْمُدَّعَى عَلَيْهِ لَانْقَطَعَتْ الْخُصُومَةُ، فَإِذْ نَكَلَ فَقَدْ لَزِمَهُ قَطْعُ الْخُصُومَةِ، وَهِيَ لَا تَنْقَطِعُ بِسَجْنِهِ وَلَا بِأَدَبِهِ، فَلَمْ يَبْقَ إِلَّا قَطْعُهَا بِالْقَضَاءِ عَلَيْهِ بِمَا يَدَّعِيهِ الطَّالِبُ، وَكَانَ فِي سَجْنِهِ قَطْعٌ لَهُ عَنْ التَّصَرُّفِ، وَذَلِكَ لَا يَجُوزُ، فَتَقِفُ الْخُصُومَةُ، فَلَمْ يَبْقَ إِلَّا الْحُكْمُ بِالنُّكُولِ.

L29089 So we said: All of this is invalid and contradicts your claim—: As for the contradiction in your claim—that were one to swear an oath, the legal con-

tention would cease—you instead assert it does not cease by that act; rather, whenever the claimant produces evidence, the legal contention resumes. The remainder of your statement is invalid.

فَقُلْنَا: هَذَا كُلُّهُ بَاطِلٌ وَخِلَافُ قَوْلِكُمْ -: أَمَّا خِلَافُ قَوْلِكُمْ: لَوْ حَلَفَ لَانْقَطَعَتْ الْخُصُومَةُ، فَأَنْتُمْ تَقُولُونَ: إنَّهَا لَا تَنْقَطِعُ بِذَلِكَ، بَلْ مَتَى أَقَامَ الطَّالِبُ الْبَيِّنَةَ عَادَتْ الْخُصُومَةُ - وَسَائِرُ قَوْلِكُمْ بَاطِلٌ.

L29090 There is no basis at all for terminating a dispute except through one of two means—there being no third for them—: either by admission, provided the claimant is truthful.

وَمَا عَلَيْهِ قَطْعُ الْخُصُومَةِ أَصْلًا إلَّا بِأَحَدِ وَجْهَيْنِ، لَا ثَالِثَ لَهُمَا -: إمَّا بِالْإِقْرَارِ، إنْ كَانَ الْمُدَّعِي صَادِقًا.

L29091 Alternatively, by oath—if the claimant is lying—while it is incumbent upon the judge to terminate the dispute through a ruling mandated by the evidence, or by the defendant's oath only if no evidence exists against him. One of these two matters is necessarily required.

وَإِمَّا بِالْيَمِينِ، إنْ كَانَ الْمُدَّعِي كَاذِبًا، وَعَلَى الْحَاكِمِ قَطْعُ الْخُصُومَةِ بِالْقَضَاءِ بِمَا تُوجِبُهُ الْبَيِّنَةُ، أَوْ بِيَمِينِ الْمَطْلُوبِ إنْ لَمْ تَكُنْ عَلَيْهِ بَيِّنَةٌ فَقَطْ - وَلَا بُدَّ مِنْ أَحَدِ الْأَمْرَيْنِ.

L29092 Or, if it is a fine - one not mandated by the Qur'an or the Sunnah - then it is definitively invalid.

وَإِمَّا غَرَامَةً - بِأَنْ لَا يُوجِبَهَا قُرْآنٌ وَلَا سُنَّةٌ، فَهِيَ بَاطِلٌ بِيَقِينٍ.

L29093 Then the height of irony is that after ruling against him for refusal to take the oath, you imprison him until he complies; you have reverted to the imprisonment you had denounced.

ثُمَّ الْعَجَبُ كُلُّهُ: أَنَّكُمْ بَعْدَ قَضَائِكُمْ عَلَيْهِ بِالنُّكُولِ تَسْجُنُونَهُ حَتَّى يُؤَدِّيَ، قَدْ عُدْتُمْ إلَى السِّجْنِ الَّذِي أَنْكَرْتُمْ.

L29094 And this is impurity and absurdity—let that suffice!

وَهَذَا تَلَوُّثٌ وَسَخَافَةٌ نَاهِيكَ بِهَا.

L29095 He said: It is a statement narrated from Uthman, Ibn Umar, Ibn Abbas, and Abu Musa. No one besides the Messenger of Allah (peace and blessings of Allah be upon him) holds authoritative proof.

وَقَالَ: هُوَ قَوْلٌ رُوِيَ عَنْ عُثْمَانَ، وَابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ، وَأَبِي مُوسَى، فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L29096 How then can this be, when contrary to this have been reported from ʿUmar, ʿAlī, al-Miqdād ibn al-Aswad, Ubayy ibn Kaʿb, and Zayd ibn Thābit—may Allah be pleased with them—what makes the opinion of some of them more deserving than that of others?

فَكَيْفَ وَقَدْ رُوِيَ خِلَافُ هَذَا عَنْ عُمَرَ، وَعَلِيٍّ، وَالْمِقْدَادِ بْنِ الْأَسْوَدِ، وَأُبَيِّ بْنِ كَعْبٍ، وَزَيْدِ بْنِ ثَابِتٍ - رَضِيَ اللَّهُ عَنْهُمْ - فَمَا الَّذِي جَعَلَ قَوْلَ بَعْضِهِمْ أَوْلَى مِنْ قَوْلِ بَعْضٍ مِنْهُمْ.

L29097–29098 How then, when they themselves opposed Uthman on this very issue—for he did not permit sale with absolution from liability except in the case of a defect unknown to the seller, and this contradicts your position?

فَكَيْفَ وَقَدْ خَالَفُوا عُثْمَانَ فِي هَذِهِ الْقَضِيَّةِ نَفْسِهَا، لِأَنَّهُ لَمْ يُجِزْ الْبَيْعَ بِالْبَرَاءَةِ إِلَّا فِي عَيْبٍ لَمْ يَعْلَمْهُ الْبَائِعُ - وَهَذَا خِلَافُ قَوْلِكُمْ.

L29099 It is perplexing that some of ʿUthmān's rulings are deemed authoritative evidence while others are not. This is despite the fact that Mālik ibn Anas narrated this report from Yaḥyā ibn Saʿīd al-Anṣārī, from Sālim ʿAbdullāh, who said in it, from his father: "He refused to take the oath and reclaimed the slave." This indicates that he chose to reclaim the slave, so ʿUthmān restored the slave to him with the owner's consent.

وَمِنْ الْعَجَبِ أَنْ يَكُونَ حُكْمُ عُثْمَانَ بَعْضُهُ حُجَّةٌ وَبَعْضُهُ لَيْسَ بِحُجَّةٍ، هَذَا عَلَى أَنَّ مَالِكَ بْنَ أَنَسٍ رَوَى هَذَا الْخَبَرَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَالِمٍ عَبْدِ اللَّهِ فَقَالَ فِيهِ، عَنْ أَبِيهِ: فَأَبَى أَنْ يَحْلِفَ وَارْتَجَعَ الْعَبْدَ فَدَلَّ هَذَا عَلَى أَنَّهُ اخْتَارَ أَنْ يَرْتَجِعَ الْعَبْدَ، فَرَدَّهُ إلَيْهِ عُثْمَانُ بِرِضَاهُ -.

L29100 Thus, this invalidates the validity of the judicial ruling based on refusal (nukūl) as narrated from ʿUthmān.

فَبَطَلَ بِهَذَا أَنْ يَصِحَّ عَنْ عُثْمَانَ الْقَضَاءُ بِالنُّكُولِ.

L29101 As for the narration from Abū Mūsā, I drop it because its provenance cannot be known or ascertained.

وَأَمَّا الرِّوَايَةُ عَنْ أَبِي مُوسَى فَأَسْقَطُ مِنْ أَنْ يُعْرَفَ أَوْ يُدْرَى مَخْرَجُهَا.

L29102 As for Ibn Umar, that report does not indicate that he deemed rulings based on abstention from oath-taking permissible. Rather, the report only states that it was Uthman's ruling, and you dissent from Uthman in that very ruling.

وَأَمَّا ابْنُ عُمَرَ فَلَيْسَ فِي ذَلِكَ الْخَبَرِ: أَنَّهُ رَأَى الْحُكْمَ بِالنُّكُولِ جَائِزًا، وَإِنَّمَا فِيهِ: أَنَّهُ حُكْمُ عُثْمَانُ، وَأَنْتُمْ مُخَالِفُونَ لِعُثْمَانَ فِي ذَلِكَ الْحُكْمِ بِعَيْنِهِ.

L29103 As for the narration from Ibn Abbas, you have no basis to connect it to your position, for it does not state that Ibn Abbas imposed financial liability due to refusal. Rather, it mentions that Ibn Abbas ordered the defendant to be adjured by oath, but she refused, so he compelled her to that [oath]—and this points to the oath, since the report makes absolutely no mention of financial liability whatsoever. Thus, Ibn Abbas's statement aligns with our position, not to yours.

وَأَمَّا الرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ فَلَا مُتَعَلَّقَ لَكُمْ بِهَا، لِأَنَّهُ لَيْسَ فِيهَا: أَنَّ ابْنَ عَبَّاسٍ أَلْزَمَ الْغَرَامَةَ بِالنُّكُولِ، إنَّمَا فِيهِ: أَنَّ ابْنَ عَبَّاسٍ أَمَرَ أَنْ يَسْتَحْلِفَ الْمُدَّعَى عَلَيْهَا فَأَبَتْ، فَأَلْزَمَهَا ذَلِكَ - وَهَذِهِ إشَارَةٌ إلَى الْيَمِينِ، إذْ لَيْسَ لِلْغَرَامَةِ فِي الْخَبَرِ ذِكْرٌ أَصْلًا، فَقَوْلُ ابْنِ عَبَّاسٍ مُوَافِقٌ لِقَوْلِنَا، لَا لِقَوْلِكُمْ.

L29104 If it is said: Indeed, Abū Nuʿaym narrated this report from Ismāʿīl ibn ʿAbd al-Malik al-Asadī, from Ibn Abī Mulaykah, wherein he stated: "If he does not swear, then hold her liable."

فَإِنْ قِيلَ: فَإِنَّ أَبَا نُعَيْمٍ رَوَى عَنْ إسْمَاعِيلَ بْنِ عَبْدِ الْمَلِكِ الْأَسَدِيِّ عَنْ ابْنِ أَبِي مُلَيْكَةَ هَذَا الْخَبَرَ، فَذَكَرَ فِيهِ: فَإِنْ لَمْ يَحْلِفْ فَضَمِّنْهَا.

L29105 It was said to him: Isma'il ibn 'Abd al-Malik al-Asadi is unknown—no one knows who he is—and Isma'il ibn 'Abd al-Rahman al-Asadi is rejected and disregarded.

قِيلَ لَهُ: إسْمَاعِيلُ بْنُ عَبْدِ الْمَلِكِ الْأَسَدِيُّ مَجْهُولٌ - لَا يَدْرِي أَحَدٌ مَنْ هُوَ - وَإِسْمَاعِيلُ بْنُ عَبْدِ الرَّحْمَنِ الْأَسَدِيُّ - مَتْرُوكٌ مُطَرَّحٌ.

فَبَطَلَ أَنْ يَصِحَّ فِي هَذَا شَيْءٌ عَنْ الصَّحَابَةِ أَصْلًا.

فَبَطَلَ الْقَوْلُ بِأَنْ يُقْضَى بِالْغَرَامَةِ عَلَى النَّاكِلِ لِتَعَرِّيهِ مِنْ الْأَدِلَّةِ -.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا مَنْ قَالَ بِرَدِّ الْيَمِينِ عَلَى الطَّالِبِ -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ عَفَّانَ بْنِ مُسْلِمٍ عَنْ مَسْلَمَةَ بْنِ عَلْقَمَةَ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ الشَّعْبِيِّ قَالَ: اسْتَسْلَفَ الْمِقْدَادُ بْنُ الْأَسْوَدِ مِنْ عُثْمَانَ بْنِ عَفَّانَ سَبْعَةَ آلَافِ دِرْهَمٍ فَلَمَّا قَضَاهُ أَتَاهُ بِأَرْبَعَةِ آلَافٍ، فَقَالَ عُثْمَانُ: إنَّهَا سَبْعَةُ آلَافٍ فَقَالَ الْمِقْدَادُ: مَا كَانَتْ إلَّا أَرْبَعَةَ آلَافٍ، فَارْتَفَعَا إلَى عُمَرَ، فَقَالَ الْمِقْدَادُ: يَا أَمِيرَ الْمُؤْمِنِينَ لِيَحْلِفْ أَنَّهَا كَمَا يَقُولُ، وَيَأْخُذْهَا فَقَالَ لَهُ عُمَرُ: أَنْصَفَكَ، احْلِفْ أَنَّهَا كَمَا تَقُولُ وَخُذْهَا.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْجَهْمِ أَنَا إسْمَاعِيلُ بْنُ إسْحَاقَ أَنَا إسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ نا حُسَيْنُ بْنُ عَبْدِ اللَّهِ بْنِ ضُمَيْرَةَ بْنِ أَبِي ضُمَيْرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: الْيَمِينُ مَعَ الشَّاهِدِ، فَإِنْ لَمْ تَكُنْ بَيِّنَةٌ فَالْيَمِينُ عَلَى الْمُدَّعَى عَلَيْهِ، إذَا كَانَ قَدْ خَالَطَهُ، فَإِنْ نَكَلَ حَلَفَ الْمُدَّعِي.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَزِيدُ بْنُ هَارُونَ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ شُرَيْحٍ أَنَّهُ كَانَ إذَا قَضَى بِالْيَمِينِ فَرَدَّهَا عَلَى الطَّالِبِ فَلَمْ يَحْلِفْ لَمْ يُعْطِهِ شَيْئًا، وَلَمْ يَسْتَحْلِفْ الْآخَرَ.

L29106 Thus, it is fundamentally invalid for anything to be authentically attributed to the Companions regarding this matter.

L29107 Thus, the opinion that a fine be imposed on the reneger is invalidated because it is devoid of evidence.

L29108 And success is from Allah, the Exalted.

L29109–29111 As for those who hold the opinion of reverting the oath to the claimant, it is as narrated through the chain of Abū Ubayd from Affān ibn Muslim from Maslamah ibn ʿAlqamah from Dāwūd ibn Abī Hind from al-Shaʿbī, who said: Al-Miqdād ibn al-Aswad took a loan of seven thousand dirhams from Uthmān ibn Affān. When he repaid him, he brought four thousand. Uthmān said, "It was seven thousand." Al-Miqdād responded, "It was no more than four thousand." They then referred the matter to Umar. Al-Miqdād said, "O Commander of the Faithful, let him swear that it is as he claims and take her." Umar replied to him, "He has done you justice. Swear that it is as you claim and take possession of her."

L29112 And from the chain of Muḥammad ibn al-Jahm: I am Ismāʿīl ibn Isḥāq, I am Ismāʿīl ibn Abī Uways, who reported to us from Ḥusayn ibn ʿAbd Allāh ibn Ḍumayrah ibn Abī Ḍumayrah, from his father, from his grandfather (Ḍumayrah ibn Abī Ḍumayrah), from ʿAlī ibn Abī Ṭālib, who said: "The oath is taken alongside the witness. If there is no clear evidence, the oath falls upon the defendant if he was involved in it. If he refuses to swear, the claimant must take the oath."

L29113 Through the chain of Abu 'Ubayd: Yazid ibn Harun narrated to us from Hisham ibn Hassan from Muhammad ibn Sirin from Shurayh that when he ruled by directing the oath to the plaintiff and they refused to swear, he would neither grant their claim nor administer the oath to the opposing party.

L29114 Through the chain of Abi 'Ubayd: 'Abd ibn al-Awwam narrated to us from Ash'ath, from al-Hakam ibn 'Utaybah, from 'Awn ibn 'Abdillah ibn 'Utbah that his father, when he judged by requiring an oath, then referred the oath back to the claimant, then if the claimant refused to swear, he would not

grant him anything. He said: “I do not give you what you do not swear upon.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا عَبْدُ بْنُ الْعَوَّامِ عَنْ أَشْعَثَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَوْنِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ أَنَّ أَبَاهُ كَانَ إذَا قَضَى بِالْيَمِينِ فَرَدَّهَا عَلَى الْمُدَّعِي فَأَبَى أَنْ يَحْلِفَ لَمْ يَجْعَلْ لَهُ شَيْئًا، وَقَالَ: لَا أُعْطِيك مَا لَا تَحْلِفُ عَلَيْهِ.

L29115 And through the chain of Ibn Abi Shaybah from Jarīr from al-Mughīrah: al-Shaʿbī would not issue a judgment for the claimant if the defendant refused to take the required oath except until the claimant swore an oath.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ جَرِيرٍ عَنْ الْمُغِيرَةِ: أَنَّ الشَّعْبِيَّ لَمْ يَقْضِ لِلطَّالِبِ إنْ نَكَلَ الْمَطْلُوبُ إلَّا حَتَّى يَحْلِفَ الطَّالِبُ.

L29116 Through the transmission of Saʿīd ibn Manṣūr: Hushaym narrated to us from al-Shaybānī - who is Abū Isḥāq - from al-Shaʿbī, who said: Shurayḥ would return the oath to the claimant if the defendant requested that, and al-Shaʿbī held this opinion.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا الشَّيْبَانِيُّ - هُوَ أَبُو إِسْحَاقَ - عَنْ الشَّعْبِيِّ قَالَ: كَانَ شُرَيْحٌ يَرُدُّ الْيَمِينَ عَلَى الْمُدَّعِي إذَا طَلَبَ ذَلِكَ الْمُدَّعَى عَلَيْهِ - وَكَانَ الشَّعْبِيُّ يَرَى ذَلِكَ.

L29117 Hushaym reported to us from Ubaydah, from Ibrāhīm al-Nakhaʿī, that he did not invalidate the oath. This was also narrated from Ibn Sīrīn, as well as the two al-ʿAnbarī judges: Sawwār ibn ʿAbd Allāh and ʿUbaydullāh ibn al-Ḥasan. This ruling is the view of Abū ʿUbayd and one of the two views of Isḥāq.

وَقَالَ هُشَيْمٌ نا عُبَيْدَةُ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ كَانَ لَا يَرُدُّ الْيَمِينَ وَرُوِيَ هَذَا أَيْضًا عَنْ ابْنِ سِيرِينَ، وَسَوَّارِ بْنِ عَبْدِ اللَّهِ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ الْعَنْبَرِيِّينَ الْقَاضِيَيْنِ - هُوَ قَوْلُ أَبِي عُبَيْدٍ - وَأَحَدُ قَوْلَيْ إِسْحَاقَ.

L29118 Two opinions have been reported from Ibn Abī Laylā: one is the unconditional return of the oath as a whole without restriction.

وَرُوِيَ عَنْ ابْنِ أَبِي لَيْلَى قَوْلَانِ -: أَحَدُهُمَا: رَدُّ الْيَمِينِ جُمْلَةً عَلَى الْإِطْلَاقِ.

L29119 Secondly, if he is accused, the oath is returned to him, but if he is not accused, it is not returned. The apparent meaning of the scholar’s statement indicates that the defendant remains perpetually bound by the oath, as no ruling of refusal [to swear] has ever been reported from him.

وَالثَّانِي: أَنَّهُ إنْ كَانَ مُتَّهَمًا رُدَّ عَلَيْهِ الْيَمِينُ، وَإِنْ كَانَ غَيْرَ مُتَّهَمٍ لَمْ يُرَدَّ عَلَيْهِ - وَالظَّاهِرُ مِنْ قَوْلِهِ أَنْ يَلْزَمَ الْمَطْلُوبَ الْيَمِينُ أَبَدًا، لِأَنَّهُ لَمْ يُرْوَ عَنْهُ قَطُّ الْحُكْمُ بِالنُّكُولِ.

L29120–29121 Mālik said: The oath must be retaken in financial matters, but he did not uphold its retaking in marriage, divorce, or manumission.

وَقَالَ مَالِكٌ: تُرَدُّ الْيَمِينُ فِي الْأَمْوَالِ - وَلَا يَرَى رَدَّهَا فِي النِّكَاحِ، وَلَا فِي الطَّلَاقِ، وَلَا فِي الْعِتْقِ.

L29122 Al-Shāfiʿī, Abū Thawr, and all their companions held that the oath is administered in all matters—including retaliation for homicide or lesser harms, marriage, divorce, and manumission. If a wife claims against her husband

وَقَالَ الشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَسَائِرُ أَصْحَابِهِ: تُرَدُّ الْيَمِينُ فِي كُلِّ شَيْءٍ، وَفِي الْقِصَاصِ فِي النَّفْسِ فَمَا دُونَهَا، وَفِي النِّكَاحِ، وَالطَّلَاقِ، وَالْعَتَاقِ - فَمَنْ ادَّعَتْ عَلَيْهِ امْرَأَتُهُ الطَّلَاقَ،

that he divorced her, or his male or female slave claims he performed manumission, or if a husband claims the existence of a marriage with his wife or she asserts it against him—with neither witnesses nor clear evidence—the oath becomes binding upon him to swear that he did not divorce or manumit. He must also swear that he did not contract marriage with her, or she must swear likewise. Whichever party refuses must have the claimant swear, thereby validating the manumission, marriage, and divorce. The same applies to retaliation.

وَعَبْدُهُ أَوْ أَمَتُهُ الْعَتَاقَ - وَمَنْ ادَّعَى عَلَى امْرَأَتِهِ النِّكَاحَ أَوْ ادَّعَتْهُ عَلَيْهِ وَلَا شَاهِدَ لَهُمَا وَلَا بَيِّنَةَ: لَزِمَتْهُ الْيَمِينُ: أَنَّهُ مَا طَلَّقَ، وَلَا أَعْتَقَ، وَلَزِمَتْهُ الْيَمِينُ: أَنَّهُ مَا أَنْكَحَهَا، أَوْ لَزِمَتْهَا الْيَمِينُ كَذَلِكَ، فَأَيُّهُمَا نَكَلَ حَلَفَ الْمُدَّعِي - وَصَحَّ الْعِتْقُ، وَالنِّكَاحُ، وَالطَّلَاقُ، وَكَذَلِكَ فِي الْقِصَاصِ.

L29123 Abu Muhammad said: As for Malik's statement—it is clearly erroneous due to its contradiction. If the refutation of the oath is valid in one circumstance, then it must be valid in every circumstance where the oath is required from the denier. If it is invalid in one situation, it must be invalid in all situations, unless evidence from the Quran or Sunnah establishes its obligation in specific cases, thereby implementing it. There is absolutely no basis in the Quran or Sunnah for this whatsoever. Thus, Malik's opinion is nullified, as it lacks support from the Quran, the Sunnah, any weak narration, the view of a companion [of the Prophet] before him, or analogical reasoning.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مَالِكٍ - فَظَاهِرُ الْخَطَأِ لِتَنَاقُضِهِ، وَلَئِنْ كَانَ رَدُّ الْيَمِينِ حَقًّا فِي مَوْضِعٍ، فَإِنَّهُ لَحَقٌّ فِي كُلِّ مَوْضِعٍ يَجِبُ فِيهِ الْيَمِينُ عَلَى الْمُنْكِرِ، وَلَئِنْ كَانَ بَاطِلًا فِي مَكَانٍ، فَإِنَّهُ لَبَاطِلٌ فِي كُلِّ مَكَانٍ، إلَّا أَنْ يَأْتِيَ بِإِيجَابِهِ فِي مَكَانٍ دُونَ مَكَانٍ: قُرْآنٌ أَوْ سُنَّةٌ، فَيَنْفُذُ ذَلِكَ، وَلَا سَبِيلَ إلَى وُجُودِ قُرْآنٍ وَلَا سُنَّةٍ بِذَلِكَ أَصْلًا - فَبَطَلَ قَوْلُ مَالِكٍ، إذْ لَا يُعَضِّدُهُ قُرْآنٌ وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ قَبْلَهُ وَلَا قِيَاسٌ.

L29124 If he says: Only what has been reported from the Companions concerning wealth is considered.

فَإِنْ قَالَ: إنَّمَا رُوِيَ عَنْ الصَّحَابَةِ فِي الْأَمْوَالِ.

L29125 We said: This is invalid because it was narrated from ʿAlī in general terms, and from ʿUmar and Al-Miqdād concerning dirhams in debts. How then do you justify applying analogy to this for all other forms of wealth, all claims pertaining to usurpations, and other than that, while you do not analogize it to every claim? Thus, the corruption of this opinion has become evident.

قُلْنَا: بَاطِلٌ؛ لِأَنَّهُ رُوِيَ عَنْ عَلِيٍّ جُمْلَةً، وَرُوِيَ عَنْ عُمَرَ، وَالْمِقْدَادِ فِي الدَّرَاهِمِ فِي الدَّيْنِ، فَمِنْ أَيْنَ لَكُمْ أَنْ تَقِيسُوا عَلَى ذَلِكَ سَائِرَ الْأَمْوَالِ، وَسَائِرَ الدَّعَاوَى مِنْ الْغُصُوبِ، وَغَيْرَ ذَلِكَ، وَلَمْ تَقِيسُوا عَلَيْهِ كُلَّ دَعْوَى، فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ -.

L29126 And with Allah, the Most High, is success.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29127 As for the statement of Ibn Abī Laylā regarding returning the oath to the accused, it is invalid because it constitutes a division not established by the Qur'ān or the Sunnah. Allāh the Exalted has not ordained judgment through evidence or oath upon the disbeliever, the liar against Allāh the Exalted and His Messenger—peace and blessings be upon him—including the Jews, Chris-

وَأَمَّا قَوْلُ ابْنِ أَبِي لَيْلَى فِي رَدِّهِ الْيَمِينَ عَلَى الْمُتَّهَمِ، فَبَاطِلٌ؛ لِأَنَّهُ تَقْسِيمٌ لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَمَا جَعَلَ اللَّهُ تَعَالَى فِي الْحُكْمِ بِالْبَيِّنَةِ أَوْ الْيَمِينِ عَلَى الْكَافِرِ، وَالْكَاذِبِ عَلَى اللَّهِ تَعَالَى، وَعَلَى رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِنْ الْيَهُودِ، وَالنَّصَارَى، وَالْمَجُوسِ،

tians, Magians, and those notorious for lying and transgression, except what He has ordained concerning Abū Bakr al-Ṣiddīq, ʿUmar, ʿUthmān, ʿAlī, the Mothers of the Believers, Abū Dharr al-Ghifārī, Khuzaymah ibn Thābit, and all the Muhājirūn and Anṣār about whom Allāh the Exalted said: *{It is they who are the truthful}* [al-Ḥujurāt: 15]. This nullifies every opinion, analogy, and precautionary measure in religion not supported by textual evidence—if only they were just to themselves.[4]

وَعَلَى الْمَشْهُورِينَ بِالْكَذِبِ، وَالْفِسْقِ، إِلَّا الَّذِي جَعَلَ مِنْ ذَلِكَ عَلَى أَبِي بَكْرٍ الصِّدِّيقِ وَعُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ، وَأُمَّهَاتِ الْمُؤْمِنِينَ، وَأَبِي ذَرٍّ الْغِفَارِيِّ، وَخُزَيْمَةَ بْنِ ثَابِتٍ وَسَائِرِ الْمُهَاجِرِينَ، وَالْأَنْصَارِ الَّذِينَ قَالَ اللَّهُ تَعَالَى فِيهِمْ: {أُولَئِكَ هُمُ الصَّادِقُونَ} [الحجرات: ١٥] وَفِي هَذَا إِبْطَالُ كُلِّ رَأْيٍ، وَكُلِّ قِيَاسٍ، وَكُلِّ احْتِيَاطٍ فِي الدِّينِ، مِمَّا لَمْ يَأْتِ بِهِ نَصٌّ لَوْ أَنْصَفُوا مِنْ أَنْفُسِهِمْ.

L29128–29129 As for the statement of Al-Shafi'i—they cited the verse of bequest during travel as evidence from the words of Allah the Exalted: *"Detain them both after the prayer, then if you doubt, they shall swear by Allah: 'We will not exchange this oath for any price, even if the beneficiary were a relative, nor will we conceal Allah's testimony—for then we would certainly be among the sinners.'"* [Al-Ma'idah: 106] *"But if it is proven that they have incurred sin, two others from those against whom the first two [witnesses] have a rightful claim shall replace them. They shall swear: 'Our testimony has greater right than their testimony, and we have not transgressed—for then we would certainly be among the wrongdoers.'"* [Al-Ma'idah: 107] *"That is more likely to ensure they present testimony truthfully, or they will fear that their oaths might be rejected after their oaths. Be mindful of Allah and obey."* [Al-Ma'idah: 108][5]

وَأَمَّا قَوْلُ الشَّافِعِيِّ - فَإِنَّهُمُ احْتَجُّوا بِآيَةِ الْوَصِيَّةِ فِي السَّفَرِ مِنْ قَوْلِ اللَّهِ تَعَالَى: {تَحْبِسُونَهُمَا مِنْ بَعْدِ الصَّلاةِ فَيُقْسِمَانِ بِاللَّهِ إِنِ ارْتَبْتُمْ لا نَشْتَرِي بِهِ ثَمَنًا وَلَوْ كَانَ ذَا قُرْبَى وَلا نَكْتُمُ شَهَادَةَ اللَّهِ إِنَّا إِذًا لَمِنَ الآثِمِينَ} [المائدة: ١٠٦] {فَإِنْ عُثِرَ عَلَى أَنَّهُمَا اسْتَحَقَّا إِثْمًا فَآخَرَانِ يَقُومَانِ مَقَامَهُمَا مِنَ الَّذِينَ اسْتَحَقَّ عَلَيْهِمُ الأَوْلَيَانِ فَيُقْسِمَانِ بِاللَّهِ لَشَهَادَتُنَا أَحَقُّ مِنْ شَهَادَتِهِمَا وَمَا اعْتَدَيْنَا إِنَّا إِذًا لَمِنَ الظَّالِمِينَ} [المائدة: ١٠٧] {ذَلِكَ أَدْنَى أَنْ يَأْتُوا بِالشَّهَادَةِ عَلَى وَجْهِهَا أَوْ يَخَافُوا أَنْ تُرَدَّ أَيْمَانٌ بَعْدَ أَيْمَانِهِمْ وَاتَّقُوا اللَّهَ وَاسْمَعُوا} [المائدة: ١٠٨].

L29130 They mentioned the report of Qasamah when the Messenger of Allah—peace and blessings be upon him—said to Banu Harithah regarding their claim concerning the blood of Abdullah ibn Sahl against the Jews of Khaybar: "Let fifty of you swear an oath against a man among them, and he shall be surrendered in full." They said: "How can we swear to a matter we did not witness?" He said: "Then the Jews shall absolve you through the oaths of fifty of them."

وَذَكَرُوا خَبَرَ الْقَسَامَةِ إِذْ «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِبَنِي حَارِثَةَ فِي دَعْوَاهُمْ دَمَ عَبْدِ اللَّهِ بْنِ سَهْلٍ عَلَى يَهُودِ خَيْبَرَ يُقْسِمُ خَمْسُونَ مِنْكُمْ عَلَى رَجُلٍ مِنْهُمْ فَيُدْفَعُ بِرُمَّتِهِ، قَالُوا: أَمْرٌ لَمْ نَشْهَدْهُ كَيْفَ نَحْلِفُ؟ قَالَ: فَتُبْرِئُكُمْ يَهُودُ بِأَيْمَانِ خَمْسِينَ مِنْهُمْ».

L29131 They mentioned the obligation of the oath upon the respondent, and that the Messenger of Allah—peace and blessings be upon him—ruled by oath

وَذَكَرُوا وُجُوبَ الْيَمِينِ عَلَى الْمُدَّعَى عَلَيْهِ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ بِالْيَمِينِ مَعَ الشَّاهِدِ فَرَدَّ الْيَمِينَ عَلَى الطَّالِبِ مِنْ أَجْلِ شَاهِدِهِ، فَكَانَ الشَّاهِدُ سَبَبًا

[4] **Qur'an references (L29127):** Qur'an 49:15 (Al-Hujurat); Qur'an 59:8 (Al-Hashr).

alongside a witness, thereby returning the oath to the claimant due to his witness. Thus, the witness became the cause for returning the oath. Consequently, it became obligatory that the respondent's refusal to take the oath must likewise serve as a cause for returning the oath. He did not rule in favor of the claimant based on a single witness until the claimant combined it with his own oath, thereby serving as a second witness. Similarly, it was impermissible to rule in his favor based on the refusal until he supplemented it with his oath. Thus, the respondent's refusal stands in the place of a witness, and the claimant's oath stands in the place of another witness.

لِرَدِّ الْيَمِينِ، فَوَجَبَ أَنْ يَكُونَ النُّكُولُ مِنْ الْمَطْلُوبِ أَيْضًا سَبَبًا لِرَدِّ الْيَمِينِ وَلَمْ يَقْضِ لَهُ بِشَهَادَةِ وَاحِدٍ حَتَّى يَضُمَّ إلَيْهِ يَمِينَهُ، فَيَقُومُ مَقَامَ شَاهِدٍ آخَرَ، كَذَلِكَ لَمْ يَجُزْ أَنْ يُقْضَى لَهُ بِالنُّكُولِ حَتَّى يَضُمَّ إلَى ذَلِكَ يَمِينَهُ فَيَكُونَ نُكُولُ الْمَطْلُوبِ مَقَامَ شَاهِدٍ، وَيَمِينُ الطَّالِبِ مَقَامَ شَاهِدٍ آخَرَ.

L29132 Abū Muḥammad said: As for the verse of bequest during travel, it constitutes a proof against them, not for them. Indeed, their reliance on it is an eternal disgrace upon them for three sufficient reasons: First, they do not act upon it regarding the matter it was revealed for—how then do they deem it lawful to cite a verse they contradict? Second, the verse contains no mention—neither by explicit text nor by implication—of administering an oath to the defendant or returning the oath to the plaintiff. It only addresses the swearing of witnesses initially, then the swearing of a witness and two witnesses, contrary to the initial testimony. How could they so easily invalidate the explicit text of the verse and derive from it a ruling for which there is neither evidence nor explicit text?

قَالَ أَبُو مُحَمَّد: أَمَّا آيَةُ الْوَصِيَّةِ فِي السَّفَرِ فَحُجَّةٌ عَلَيْهِمْ لَا لَهُمْ، وَإِنَّ احْتِجَاجَهُمْ بِهَا لَفَضِيحَةُ الدَّهْرِ عَلَيْهِمْ لِوُجُوهٍ ثَلَاثَةٍ كَافِيَةٍ -: أَحَدُهَا - أَنَّهُمْ لَا يَأْخُذُونَ بِهَا فِيمَا جَاءَتْ فِيهِ، فَكَيْفَ يَسْتَحِلُّونَ الِاحْتِجَاجَ بِآيَةٍ هُمْ مُخَالِفُونَ لَهَا؟ وَالثَّانِي - أَنَّهُ لَيْسَ فِيهَا مِنْ تَحْلِيفِ الْمُدَّعَى عَلَيْهِ، وَلَا رَدِّ الْيَمِينِ عَلَى الْمُدَّعِي كَلِمَةٌ، لَا بِنَصٍّ وَلَا بِدَلِيلٍ، إنَّمَا فِيهَا تَحْلِيفُ الشُّهُودِ أَوَّلًا، وَتَحْلِيفُ الشَّاهِدِ وَالشَّاهِدَيْنِ، بِخِلَافِ شَهَادَةِ الْأَوَّلِ، فَكَيْفَ سَهُلَ عَلَيْهِمْ إبْطَالُ نَصِّ الْآيَةِ، وَأَنْ يَحْكُمُوا مِنْهَا بِمَا لَيْسَ فِيهَا عَلَيْهِ، لَا دَلِيلٌ وَلَا نَصٌّ.

L29133 This is indeed most certainly a calamity.

إنَّ هَذِهِ لَمُصِيبَةٌ.

L29134 If someone who advocates requiring the one in whose favor testimony is given to swear an oath alongside their evidence were to cite this verse as proof, their argument would resemble the ambiguity found in reports transmitted from Shuraīḥ, al-Awzāʿī, and others. It has been reported that Muḥammad ibn Bashīr, the judge in Cordoba, once required witnesses to swear when validating their credibility: "By Allah, what they have testified to is truly the truth."

وَلَوْ احْتَجَّ بِهَذِهِ الْآيَةِ مَنْ يَرَى تَحْلِيفَ الْمَشْهُودِ لَهُ مَعَ بَيِّنَتِهِ لَكَانَ أَشْبَهَ فِي التَّمْوِيهِ عَلَى مَا رُوِيَ عَنْ شُرَيْحٍ، وَالْأَوْزَاعِيِّ، وَغَيْرِهِمَا - وَقَدْ رُوِيَ عَنْ مُحَمَّدِ بْنِ بَشِيرٍ الْقَاضِي بِقُرْطُبَةَ أَنَّهُ أَحْلَفَ شُهُودًا فِي تَزْكِيَتِهِ: بِاَللَّهِ إنَّ مَا شَهِدُوا بِهِ لَحَقٌّ.

L29135–29136 It is narrated from Ibn Waḍḍāḥ that he said: "I hold that due to the corruption of the people, the judge should administer an oath to the witnesses."

وَرُوِيَ عَنْ ابْنِ وَضَّاحٍ أَنَّهُ قَالَ: أَرَى لِفَسَادِ النَّاسِ أَنْ يُحَلِّفَ الْحَاكِمُ الشُّهُودَ، ذَكَرَ ذَلِكَ خَالِدُ بْنُ سَعْدٍ فِي كِتَابِهِ فِي " أَخْبَارِ فُقَهَاءِ قُرْطُبَةَ " فَلَوْ احْتَجَّ أَهْلُ هَذَا الْمَذْهَبِ بِهَذِهِ

[5] **Qur'an references (L29129):** Qur'an 5:106 (Al-Ma'idah); Qur'an 5:107 (Al-Ma'idah); Qur'an 5:108 (Al-Ma'idah).

الْآيَةِ لَكَانُوا أَوْلَى بِهَا مِمَّنْ احْتَجَّ فِي رَدِّ الْيَمِينِ عَلَى الطَّالِبِ، لَا سِيَّمَا مَعَ مَا فِي نَصِّهَا مِنْ قَوْلِ اللَّهِ تَعَالَى: {ذَلِكَ أَدْنَى أَنْ يَأْتُوا بِالشَّهَادَةِ عَلَى وَجْهِهَا} [المائدة: ١٠٨] وَلَكِنْ يُبْطِلُ هَذَا أَنَّهُ قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، إِلَّا أَنَّهُ مِنْ أَقْوَى قِيَاسٍ فِي الْأَرْضِ.

Khālid ibn Saʿd mentioned this in his book on *Reports of the Jurists of Cordoba*. If the adherents of this school were to cite this verse as evidence, they would have a stronger claim to it than those who cited it in shifting the oath back to the plaintiff—particularly given the explicit wording of the verse where Allah Almighty states: *"That is nearer to their giving testimony properly"* [5:108]. However, this is nullified as it constitutes qiyas, and all qiyas is invalid—though this is among the strongest forms of qiyas in existence.[6]

وَأَمَّا حَدِيثُ الْقَسَامَةِ فَاحْتِجَاجُهُمْ بِهِ أَيْضًا إِحْدَى فَضَائِحِهِمْ؛ لِأَنَّ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ مُخَالِفُونَ لِمَا فِيهِ -: فَأَمَّا الْمَالِكِيُّونَ: فَخَالَفُوهُ جُمْلَةً.

L29137 As for the ḥadīth of *qasāmah*, their use of it as evidence also constitutes one of their scandals, for both the Mālikīs and Shāfiʿīs contradict its contents. As for the Mālikīs, they oppose it in its entirety.

وَأَمَّا الشَّافِعِيُّونَ: فَخَالَفُوا مَا فِيهِ مِنْ إِيجَابِ الْقَوَدِ، فَكَيْفَ يَسْتَحِلُّونَ الِاحْتِجَاجَ بِحَدِيثٍ قَدْ هَانَ عَلَيْهِمْ خِلَافُهُ فِيمَا فِيهِ وَأَرَادُوا مِنْ ذَلِكَ تَثْبِيتَ الْبَاطِلِ الَّذِي لَيْسَ فِي الْحَدِيثِ مِنْهُ أَثَرٌ أَصْلًا.

L29138 As for the Shāfiʿīs: they opposed the obligation of retaliation (qawad) mentioned in the ḥadīth. How then do they deem it permissible to cite a ḥadīth whose contradictions they dismissed as trivial, seeking thereby to establish a falsehood that has no trace whatsoever in the ḥadīth.

وَإِنَّمَا فِي هَذَا الْحَدِيثِ تَحْلِيفُ الْمُدَّعِينَ أَوَّلًا خَمْسِينَ يَمِينًا - بِخِلَافِ جَمِيعِ الدَّعَاوَى - ثُمَّ رَدُّ الْيَمِينِ عَلَى الْمُدَّعَى عَلَيْهِمْ - بِخِلَافِ قَوْلِهِمْ - فَمِنْ أَيْنَ رَأَوْا أَنْ يَقِيسُوا عَلَيْهِ ضِدَّهُ مِنْ تَحْلِيفِ الْمُدَّعَى عَلَيْهِ أَوَّلًا.

L29139 In this ḥadīth lies the unique ruling of first requiring fifty oaths from the claimants—contrary to all other claims—then returning the oath to the defendants, contrary to their doctrine. From what basis then did they see fit to apply the opposite analogy to this ruling by first administering oaths to the defendant?

فَإِنْ نَكَلَ حَلَفَ الْمُدَّعِي وَلَمْ يَقِيسُوا عَلَيْهِ فِي تَبْدِيَةِ الْمُدَّعِي فِي سَائِرِ الدَّعَاوَى.

L29140 If he refuses, the claimant must swear, and they do not apply qiyas (analogical reasoning) to his case in the claimant's presentation of all other claims.

وَأَنْ يَجْعَلُوا الْأَيْمَانَ فِي كُلِّ دَعْوَى خَمْسِينَ يَمِينًا، فَهَلْ فِي التَّخْلِيطِ، وَخِلَافِ السُّنَنِ، وَعَكْسِ الْقِيَاسِ وَضَعْفِ النَّظَرِ: أَكْثَرُ مِنْ هَذَا؟

L29141 And that they impose fifty oaths for every legal claim. Is there greater confusion, greater contradiction of the Sunnah, greater reversal of Qiyas, or greater weakness in legal reasoning than this?

وَأَمَّا خَبَرُ الْيَمِينِ مَعَ الشَّاهِدِ: فَحَقٌّ، وَلَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ قَوْلَهُمْ: إِنَّ النُّكُولَ يَقُومُ مَقَامَ الشَّاهِدِ: بَاطِلٌ، لَمْ يَأْتِ بِهِ قَطُّ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا مَعْقُولٌ، وَقَدْ يَنْكُلُ الْمَرْءُ عَنْ

L29142 As for the matter of the oath alongside a witness: it is valid, and they have no argument against it. This is because their claim that refusal substitutes for the witness is invalid—neither the Quran, the Sunnah, nor rational reasoning has ever brought it forth. A person may refuse to swear out of modesty or fear

[6] **Qur'an references (L29136):** Qur'an 5:108 (Al-Ma'idah).

of public exposure. Otherwise, whoever deems it permissible to wrongfully seize forbidden wealth, it is not inconceivable that he would swear falsely.

الْيَمِينِ تَصَاوُنًا وَخَوْفَ الشُّهْرَةِ، وَإِلَّا فَمَنْ اسْتَجَازَ أَكْلَ الْمَالِ الْحَرَامِ بِالْبَاطِلِ فَلَا يُنْكَرُ مِنْهُ أَنْ يَحْلِفَ كَاذِبًا.

L29143 The burden of proof lies upon the claimant, and thus the oath is not yet incumbent upon the respondent. When the claimant produced a single witness, the ruling necessitating his provision of evidence remained in effect, and the oath still did not become obligatory upon the respondent. Thereupon, the Prophet (peace be upon him) ruled for the claimant based on his oath ab initio—not as a rebuttal of the oath against him. If he refuses, he has invalidated the legal effect of his witness. Having invalidated the legal effect of his witness, he possesses no evidence. Since he possesses no evidence, the oath now becomes obligatory upon the respondent—not that there exists any original rebuttal of the oath whatsoever. Thus, their reliance upon the cited textual evidences is invalidated, and all praise is due to Allah, Lord of the worlds.

وَإِنَّمَا الْبَيِّنَةُ عَلَى الْمُدَّعِي، فَلَمْ يَجِبْ بَعْدُ عَلَى الْمُنْكِرِ يَمِينٌ، فَلَمَّا أَتَى الْمُدَّعِي بِشَاهِدٍ وَاحِدٍ: كَانَ بَعْدُ حُكْمِ طَلَبِهِ الْبَيِّنَةَ، وَلَمْ يَجِبْ بَعْدُ يَمِينٌ عَلَى الْمَطْلُوبِ، فَحَكَمَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلطَّالِبِ بِيَمِينِهِ ابْتِدَاءً لَا رَدًّا لِلْيَمِينِ عَلَيْهِ، فَإِنْ أَبَى فَقَدْ أَسْقَطَ حُكْمَ شَاهِدِهِ، وَإِذَا أَسْقَطَ حُكْمَ شَاهِدِهِ فَلَا بَيِّنَةَ لَهُ، وَإِذْ لَا بَيِّنَةَ لَهُ: فَالْآنَ وَجَبَتْ الْيَمِينُ عَلَى الْمَطْلُوبِ، لَا أَنَّ هَاهُنَا رَدَّ يَمِينٍ أَصْلًا - فَبَطَلَ تَعَلُّقُهُمْ بِالنُّصُوصِ الْمَذْكُورَةِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L29144–29145 Some of them mentioned a lost narration: We have narrated it through the chain of transmission of ʿAbd al-Malik ibn Ḥabīb al-Andalusī from Aṣbagh ibn al-Faraj from Ibn Wahb from Ḥaywah ibn Shurayḥ, that Sālim ibn Ghaylān al-Tujībī informed him that the Messenger of Allah—peace and blessings be upon him—said: "Whoever has a claim against his brother must produce evidence." The defendant is more entitled to take the oath. If he refuses to swear, the claimant may take an oath and take it.

وَذَكَرَ بَعْضُهُمْ رِوَايَةً هَالِكَةً: رُوِّينَاهَا مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ عَنْ أَصْبَغَ بْنِ الْفَرَجِ عَنْ ابْنِ وَهْبٍ عَنْ حَيْوَةَ بْنِ شُرَيْحٍ: أَنَّ سَالِمَ بْنَ غَيْلَانَ التُّجِيبِيَّ أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ كَانَتْ لَهُ طَلِبَةٌ عِنْدَ أَخِيهِ فَعَلَيْهِ الْبَيِّنَةُ» وَالْمَطْلُوبُ أَوْلَى بِالْيَمِينِ فَإِنْ نَكَلَ حَلَفَ الطَّالِبُ وَأَخَذَ.

L29146 Abu Muhammad said: This is a mursal narration (a narration with an incomplete chain), and there is no valid proof in a mursal narration according to our school nor the Shafiʿis. — Furthermore, even if it were authentic, it would constitute a decisive proof against the Malikis, for they contradict its explicit content regarding the universal rejection of oaths in every claimant's demand. There is no dispute that the ruling's initial application encompasses all claims involving bloodshed, marriage, divorce, manumission, or other such matters. Thus, their restriction of its final application to financial matters is invalid, a contradiction, and opposition to the textual evidence they attempted to exploit. This constitutes a grave inconsistency.

قَالَ أَبُو مُحَمَّد: هَذَا مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ عِنْدَنَا وَلَا عِنْدَ الشَّافِعِيِّينَ - ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَى الْمَالِكِيِّينَ، لِأَنَّهُمْ مُخَالِفُونَ لِمَا فِيهِ مِنْ عُمُومِ رَدِّ الْيَمِينِ فِي كُلِّ طَلِبَةِ طَالِبٍ، وَلَا خِلَافَ فِي أَنَّ أَوَّلَهُ فِي كُلِّ دَعْوَى مِنْ دَمٍ، أَوْ نِكَاحٍ، أَوْ طَلَاقٍ، أَوْ عَتَاقٍ، أَوْ غَيْرِ ذَلِكَ، فَتَخْصِيصُهُمْ آخِرَهُ فِي الْأَمْوَالِ بَاطِلٌ وَتَنَاقُضٌ، وَخِلَافٌ لِلْخَبَرِ الَّذِي مَوَّهُوا بِهِ، وَهَذَا قَبِيحٌ جِدًّا.

وَقَالَ مَالك فِي " مُوَطَّئِهِ فِي بَابِ الْيَمِينِ مَعَ الشَّاهِدِ فِي كِتَابِ الْأَقْضِيَةِ " أَرَأَيْت رَجُلًا ادَّعَى عَلَى رَجُلٍ مَالًا أَلَيْسَ يَحْلِفُ الْمَطْلُوبُ: مَا ذَلِكَ الْحَقُّ عَلَيْهِ، فَإِنْ حَلَفَ بَطَلَ ذَلِكَ عَنْهُ وَإِنْ أَبَى أَنْ يَحْلِفَ وَنَكَلَ عَنْ الْيَمِينِ حَلَفَ طَالِبُ الْحَقِّ أَنَّ حَقَّهُ لَحَقٌّ وَثَبَتَ حَقُّهُ عَلَى صَاحِبِهِ - فَهَذَا مَا لَا اخْتِلَافَ فِيهِ عِنْدَ أَحَدٍ مِنْ النَّاسِ، وَلَا فِي بَلَدٍ مِنْ الْبُلْدَانِ، فَبِأَيِّ شَيْءٍ أَخَذَ هَذَا؟ أَمْ فِي أَيِّ كِتَابِ اللَّهِ وَجَدَهُ؟ فَإِذَا أَقَرَّ بِهَذَا فَلْيُقِرَّ بِالْيَمِينِ مَعَ الشَّاهِدِ، وَإِنْ لَمْ يَكُنْ ذَلِكَ فِي كِتَابِ اللَّهِ تَعَالَى.

L29147 Malik said in his *Muwatta'* under "The Oath with a Witness" in the Book of Judgments: "Suppose a man claims another owes him property. Should the defendant not swear, 'This right is not upon me'? If he swears, the claim against him is voided. But if he refuses to take the oath and recoils from swearing, the claimant swears that his right is indeed a right, and his right becomes binding upon the other party. This principle is undisputed among any people or in any land. By what authority is this established? In which Book of God is it found? Whoever acknowledges this ruling must acknowledge the oath with a witness, even if it is not in the Book of God Almighty."

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا احْتِجَاجٌ نَاهِيكَ بِهِ عَجَبًا فِي الْغَفْلَةِ -: أَوَّلُ ذَلِكَ قَوْلُهُ: إنَّهُ لَا خِلَافَ فِي رَدِّ الْيَمِينِ بَيْنَ أَحَدٍ مِنْ النَّاسِ، وَلَا فِي بَلَدٍ مِنْ الْبُلْدَانِ - فَلَئِنْ كَانَ خَفِيَ عَلَيْهِ قَضَاءُ أَهْلِ الْعِرَاقِ بِالنُّكُولِ فَإِنَّهُ لَعَجَبٌ.

L29148 Abū Muḥammad said: This is an argument—a marvel in itself regarding negligence: The first instance of this is his statement, "There is no disagreement among any people or in any country concerning the administering of the oath." If he has indeed remained ignorant of the Iraqi jurists' ruling regarding refusal to swear, then this is truly astonishing.

ثُمَّ قَوْلُهُ: إذَا أَقَرَّ بِرَدِّ الْيَمِينِ - وَإِنْ لَمْ يَكُنْ فِي كِتَابِ اللَّهِ تَعَالَى فَلْيُقِرَّ - بِالْيَمِينِ عَلَى الشَّاهِدِ - وَإِنْ لَمْ يَكُنْ فِي كِتَابِ اللَّهِ تَعَالَى - فَهَذَا أَيْضًا عَجَبٌ آخَرُ؛ لِأَنَّ الْيَمِينَ مَعَ الشَّاهِدِ ثَابِتٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ قَالَ اللَّهُ تَعَالَى: {وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا} [الحشر: ٧] .

L29149 Then his statement: "If he acknowledges the responsive oath—even if it is not in the Book of Allah (the Exalted and Majestic)—he must affirm it with an oath alongside the witness—even if it is not in the Book of Allah (the Exalted and Majestic)"—this is another astonishing matter. For the oath combined with a witness is established from the Messenger of Allah, peace be upon him, and thus it is in the Book of Allah, the Exalted and Majestic. Allah, the Exalted and Majestic, said: "Whatever the Messenger gives you, take it; and whatever he forbids you, desist from it" [Al-Ḥashr 59:7].[7]

وَأَمَّا رَدُّ الْيَمِينِ عَلَى الطَّالِبِ إذَا نَكَلَ الْمَطْلُوبُ - فَمَا كَانَ قَطُّ فِي كِتَابِ اللَّهِ تَعَالَى، وَلَا فِي سُنَّةِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَيْنَ الْأَمْرَيْنِ فَرْقٌ، كَمَا بَيْنَ السَّمَاءِ وَالْأَرْضِ.

L29150 As for transferring the oath to the plaintiff when the defendant refuses to swear—this has never been established in the Book of Allah the Exalted nor in the Sunnah of His Messenger (peace be upon him). The difference between the two is as vast as that between the heavens and the earth.

وَإِذَا وَجَبَ الْأَخْذُ بِمَا جَاءَتْ بِهِ السُّنَّةُ، وَإِنْ لَمْ يُوجَبْ فِي لَفْظِ آيَاتِ الْقُرْآنِ فَمَا وَجَبَ قَطُّ مِنْ ذَلِكَ أَنْ يُؤْخَذَ بِمَا لَا يُوجَدُ فِي الْقُرْآنِ، وَلَا فِي سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L29151–29153 And when it becomes obligatory to adhere to what the Sunnah has conveyed, even if it is not stipulated in the wording of the Quranic verses, then what...

[7] **Qur'an references (L29149):** Qur'an 59:7 (Al-Hashr).

It is absolutely impermissible to adopt what is not found in the Qur'an or the Sunnah of the Messenger of Allah (peace and blessings be upon him).

L29154 As for Abū Thawr, he said: When the defendant refuses to take the oath and the judge compels the claimant to swear, we have agreed upon the obligation to rule in his favor for that claim as long as the claimant has not sworn. Where we did not agree to rule in his favor for that claim, it becomes obligatory to adhere to what we have unanimously agreed upon, and that no judgment may be passed against anyone based on a disagreement unaccompanied by textual evidence.

وَأَمَّا أَبُو ثَوْرٍ فَإِنَّهُ قَالَ: إذَا نَكَلَ الْمَطْلُوبُ عَنْ الْيَمِينِ وَأَحْلَفَ الْحَاكِمُ الطَّالِبَ فَقَدْ اتَّفَقْنَا عَلَى وُجُوبِ الْقَضَاءِ لَهُ بِتِلْكَ الدَّعْوَى مَا لَمْ يَحْلِفْ الطَّالِبُ فَلَمْ نَتَّفِقْ عَلَى الْقَضَاءِ لَهُ بِتِلْكَ الدَّعْوَى فَوَجَبَ الْقَوْلُ بِمَا أَجْمَعْنَا عَلَيْهِ، وَأَنْ لَا يُقْضَى عَلَى أَحَدٍ بِاخْتِلَافٍ لَا نَصَّ مَعَهُ.

L29155 Abu Muhammad said: The opinion of four Followers, weak narrations with unreliable chains of transmission, and then baseless conjectures about six differing Companions—this cannot be termed consensus except by one who does not grasp what constitutes consensus.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ قَوْلُ أَرْبَعَةٍ مِنْ التَّابِعِينَ، وَرِوَايَاتٌ سَاقِطَةٌ لَا تَصِحُّ أَسَانِيدُهَا، ثُمَّ بِظُنُونٍ غَيْرِ صَادِقَةٍ عَلَى سِتَّةٍ مِنْ الصَّحَابَةِ مُخْتَلِفِينَ مِمَّا يَقُولُ: إنَّهُ إجْمَاعٌ إلَّا مَنْ لَا يَدْرِي مَا الْإِجْمَاعُ.

L29156 That which Abū Ḥanīfah, Mālik, and al-Shāfiʿī have agreed upon is not an authoritative proof against those who do not adhere to their legal schools.

وَلَيْسَ مَا اتَّفَقَ عَلَيْهِ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: حُجَّةً عَلَى مَنْ لَا يُقَلِّدُهُمْ.

L29157 Allah the Exalted said: {If you disagree over anything, refer it to Allah and the Messenger, if you believe in Allah and the Last Day} [An-Nisa: 59]. He, the Almighty and Majestic, has not commanded to refer disputed matters to any of those we mentioned. Whoever refers it to them has indeed contravened the command of Allah the Exalted—thus this claim is also invalidated—and success comes only from Allah the Exalted.[8]

قَالَ اللَّهُ تَعَالَى: {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [النساء: ٥٩] فَلَمْ يَأْمُرْ عَزَّ وَجَلَّ بِرَدِّ مَا اُخْتُلِفَ فِيهِ إلَى أَحَدٍ مِمَّنْ ذَكَرْنَا، فَمَنْ رَدَّ إلَيْهِمْ فَقَدْ خَالَفَ أَمْرَ اللَّهِ تَعَالَى - فَسَقَطَ هَذَا الْقَوْلُ أَيْضًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29158 As for their argument citing ʿUmar, al-Miqdād, and ʿUthmān—may Allah be pleased with them—there is no valid proof in the statement of anyone apart from the Messenger of Allah—peace and blessings of Allah be upon him—even if that were authentically reported from them. How could it be, when it is not authentic? For it is transmitted through al-Shaʿbī, and al-Shaʿbī did not meet ʿUthmān or al-Miqdād—how then ʿUmar?

وَأَمَّا احْتِجَاجُهُمْ: بِعُمَرَ، وَالْمِقْدَادِ، وَعُثْمَانَ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَوْ صَحَّ ذَلِكَ عَنْهُمْ فَكَيْفَ وَهُوَ لَا يَصِحُّ لِأَنَّهُ مِنْ طَرِيقِ الشَّعْبِيِّ وَالشَّعْبِيُّ لَمْ يُدْرِكْ عُثْمَانَ وَلَا الْمِقْدَادَ فَكَيْفَ عُمَرُ.

L29159 As for the narration from Ali, it is invalid because it is transmitted through

[8] **Qur'an references (L29157):** Qur'an 4:59 (An-Nisa).

al-Ḥasan ibn Ḍumayrah from his father—who is an abandoned narrator (matruk), the son of an abandoned narrator—and it is impermissible to cite his narration as evidence. Thus, no word from any of the Companions has been authenticated regarding this matter.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ فَسَاقِطَةٌ، لِأَنَّهَا عَنْ الْحَسَنِ بْنِ ضُمَيْرَةَ عَنْ أَبِيهِ - وَهُوَ مَتْرُوكٌ ابْنُ مَتْرُوكٍ - لَا يَحِلُّ الِاحْتِجَاجُ بِرِوَايَتِهِ - فَلَمْ يَصِحَّ فِي هَذَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ كَلِمَةٌ.

L29160 Abu Muhammad said: As for our statement—it is as was narrated to us through the chain of Waki‘ who narrated to us from Isma‘il ibn Abi Khalid, from al-Sha‘bi, who said: A dispute and contention arose between Ubayy ibn Ka‘b and ‘Umar ibn al-Khattab over a walled orchard. Ubayy said: “Let Zayd ibn Thabit arbitrate between us.” They went to him and knocked at his door. He came out and said: “O commander of the faithful, why didn’t you send for me so I could come to you?” ‘Umar replied: “The judge is approached in his own house.” Zayd brought out a cushion and laid it down. ‘Umar said to him: “This is your first act of injustice,” and refused to sit on it. They argued their case, and Zayd said to Ubayy ibn Ka‘b: “Where is your evidence? If you wish to exempt the commander of the faithful from taking an oath, then exempt him.” ‘Umar retorted: “Would you rule against me with an oath while I refuse to swear?” So he swore.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا قَوْلُنَا -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: كَانَ بَيْنَ أُبَيِّ بْنِ كَعْبٍ، وَعُمَرَ بْنِ الْخَطَّابِ مُنَازَعَةٌ وَخُصُومَةٌ فِي حَائِطٍ فَقَالَ: بَيْنِي وَبَيْنَك زَيْدُ بْنُ ثَابِتٍ فَأَتَيَاهُ فَضَرَبَا عَلَيْهِ الْبَابَ، فَخَرَجَ فَقَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ أَلَا أَرْسَلْتَ إلَيَّ حَتَّى آتِيَك؟ فَقَالَ لَهُ عُمَرُ: فِي بَيْتِهِ يُؤْتَى الْحَكَمُ، فَأَخْرَجَ زَيْدٌ وِسَادَةً فَأَلْقَاهَا، فَقَالَ لَهُ عُمَرُ: هَذَا أَوَّلُ جَوْرِك وَأَبَى أَنْ يَجْلِسَ عَلَيْهَا، فَتَكَلَّمَا فَقَالَ زَيْدٌ لِأُبَيِّ بْنِ كَعْبٍ: بَيِّنَتُك؟ وَإِنْ رَأَيْت أَنْ تُعْفِيَ أَمِيرَ الْمُؤْمِنِينَ مِنْ الْيَمِينِ فَأَعْفِهِ؟ فَقَالَ عُمَرُ: تَقْضِي عَلَيَّ بِالْيَمِينِ وَلَا أَحْلِفُ؟ فَحَلَفَ -.

L29161–29163 Thus, Zayd did not mention redirecting the oath or issuing a ruling based on refusal to swear; rather, he definitively obligated the oath upon the denier. Unless the claimant waives it, and this is ‘Umar’s denial that a judge may rule by an oath without administering the oath to the denier—and this is our explicitly stated position.

فَهَذَا زَيْدٌ لَمْ يَذْكُرْ رَدَّ يَمِينٍ وَلَا حُكْمًا بِنُكُولٍ، بَلْ أَوْجَبَ الْيَمِينَ عَلَى الْمُنْكِرِ قَطْعًا إلَّا أَنْ يُسْقِطَهَا الطَّالِبُ، وَهَذَا عُمَرُ يُنْكِرُ أَنْ يَحْكُمَ الْحَاكِمُ بِالْيَمِينِ وَلَا يُحَلِّفَ الْمُنْكِرَ - وَهُوَ قَوْلُنَا نَصًّا.

L29164 And through the chain of Abū Ubayd: Kathīr ibn Hishām narrated to us from Ja‘far ibn Burqān, who said: “Umar ibn al-Khaṭṭāb wrote to Abū Mūsā al-Ash‘arī in a letter he mentioned: ’The burden of proof lies upon the claimant, and the oath is upon the one who denies.’ He did not mention refusal [to swear] or redirection of the oath.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا كَثِيرُ بْنُ هِشَامٍ عَنْ جَعْفَرِ بْنِ بُرْقَانَ قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إلَى أَبِي مُوسَى الْأَشْعَرِيِّ فِي رِسَالَةٍ ذَكَرَهَا: الْبَيِّنَةُ عَلَى مَنْ ادَّعَى وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ - فَلَمْ يَذْكُرْ نُكُولًا وَلَا رَدَّ يَمِينٍ.

L29165 Hummam ibn Ahmad narrated to us from Abbas ibn Asbagh from Muhammad ibn Abdul-Malik ibn Ayman from Muhammad ibn Isma’il al-Sa’igh from Yahya ibn Abi Bakr al-Karmani from Nafi’ ibn Umar al-Jumahi, who reported from Ibn Abi Mulaikah: I wrote to Ibn Abbas regarding two women guarding a secured deposit in a house where young attendants were present. One

حَدَّثَنَا حُمَامُ بْنُ أَحْمَدَ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ إسْمَاعِيلَ الصَّائِغُ نا يَحْيَى بْنُ أَبِي بَكْرٍ الْكَرْمَانِيُّ نا نَافِعُ بْنُ عُمَرَ الْجُمَحِيُّ عَنْ ابْنِ أَبِي مُلَيْكَةَ قَالَ: كَتَبْت إلَى ابْنِ عَبَّاسٍ فِي امْرَأَتَيْنِ كَانَتَا تُحْرِزَانِ حَرِيزًا فِي بَيْتٍ، وَفِي الْحُجْرَةِ حِدَاثٌ،

of them extended her hand flowing with blood and said, “This has happened to me,” while the other denied responsibility. Ibn Abbas wrote back to me: “Allah’s Messenger—peace and blessings be upon him—judged that the oath rests upon the defendant, stating: ’If people were granted [claims] based on mere assertions, some would falsely claim others’ blood and wealth.’ Summon her and recite to her: {Those who sell Allah’s covenant and their oaths for a trivial price} [3:77].” Ibn Abi Mulaikah said: “I recited it to her, and she confessed.”[9]

فَأَخْرَجَتْ إِحْدَاهُمَا يَدَهَا تَشْخَبُ دَمًا فَقَالَتْ: أَصَابَتْنِي هَذِهِ، وَأَنْكَرَتْ الْأُخْرَى، قَالَ: فَكَتَبَ إِلَيَّ ابْنِ عَبَّاسٍ «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى أَنَّ الْيَمِينَ عَلَى الْمُدَّعَى عَلَيْهِ، وَقَالَ: لَوْ أَنَّ النَّاس أُعْطُوا بِدَعْوَاهُمْ لَادَّعَى نَاسٌ دِمَاءَ قَوْمٍ وَأَمْوَالَهُمْ» ، اُدْعُهَا فَاقْرَأْ عَلَيْهَا: {إِنَّ الَّذِينَ يَشْتَرُونَ بِعَهْدِ اللَّهِ وَأَيْمَانِهِمْ ثَمَنًا قَلِيلا} [آل عمران: ٧٧] الْآيَةَ، قَالَ ابْنُ أَبِي مُلَيْكَةَ فَقَرَأْت عَلَيْهَا، فَاعْتَرَفَتْ “.

L29166 This is a narration of the highest authenticity from Ibn Abbas. He issued no legal ruling except to impose the oath exclusively, invalidating any judgment in favor of the claimant based on their claim. He made no exception in that ruling whatsoever for the defendant’s refusal to swear the oath or the redirection of the oath.

فَهَذَا فِي غَايَةِ الصِّحَّةِ عَنْ ابْنِ عَبَّاسٍ وَلَمْ يُفْتِ إِلَّا بِإِيجَابِ الْيَمِينِ فَقَطْ، وَأَبْطَلَ أَنْ يُعْطَى الْمُدَّعِي بِدَعْوَاهُ وَلَمْ يَسْتَثْنِ فِي ذَلِكَ نُكُولَ الْمَطْلُوبِ وَلَا رَدَّ الْيَمِينِ أَصْلًا.

L29167 Through the narration of Abu ‘Ubayd: ‘Abd al-Rahman ibn Mahdi narrated to us, Sufyan al-Thawri narrated to us, from Abu Ishaq al-Shaybani, from al-Hakam ibn ‘Utaybah, who said: “I do not reject the oath.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: لَا أَرُدُّ الْيَمِينَ.

L29168 And through the chain of Al-Kashūrī from Al-Ḥudhāfī from ʿAbd al-Razzāq, who reported from Sufyān al-Thawrī, he said: Ibn Abī Laylā and Al-Ḥakam ibn ʿUtaybah did not uphold the oath—meaning they did not approve of returning it to the claimant if the defendant refused to swear.

وَمِنْ طَرِيقِ الْكَشْوَرِيِّ عَنْ الْحُذَافِيِّ عَنْ عَبْدِ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ قَالَ: كَانَ ابْنِ أَبِي لَيْلَى، وَالْحَكَمُ بْنُ عُتَيْبَةَ لَا يَرَيَانِ الْيَمِينَ - يَعْنِي لَا يَرَيَانِ رَدَّهَا - عَلَى الطَّالِبِ إِذَا نَكَلَ الْمَطْلُوبُ.

L29169 We have mentioned Abū Ḥanīfah’s opinion: that if the defendant accused of homicide refuses to take the oath, the oath is not redirected to the claimant, nor is a judgment passed against him for refusing the oath (nukūl). Instead, he is imprisoned indefinitely until he swears.

وَقَدْ ذَكَرْنَا قَوْلَ أَبِي حَنِيفَةَ: أَنَّ الْمُدَّعَى عَلَيْهِ بِالدَّمِ يَأْبَى عَنْ الْيَمِينِ أَنَّهُ لَا يُرَدُّ الْيَمِينُ عَلَى الطَّالِبِ، وَلَا يُقْضَى عَلَيْهِ بِالنُّكُولِ، لَكِنْ يُسْجَنُ أَبَدًا حَتَّى يَحْلِفَ.

L29170–29172 This is the opinion of Mālik regarding someone whose wife had claimed that he had pronounced a divorce against her, or his female slave or male slave had claimed that he had freed them, and they produced a witness. The single just principle is that the oath is incumbent upon him, and no judgment

وَهُوَ قَوْلُ مَالِكٍ فِيمَنْ ادَّعَتْ عَلَيْهِ امْرَأَتُهُ طَلَاقًا وَأَمَتُهُ أَوْ عَبْدُهُ عَتَاقًا وَأَقَامُوا شَاهِدًا وَاحِدًا عَدْلًا بِذَلِكَ أَنَّهُ يَلْزَمُهُ الْيَمِينُ، وَأَنَّهُ لَا يُقْضَى عَلَيْهِ بِالنُّكُولِ، وَلَا بِرَدِّ الْيَمِينِ، لَكِنْ يُسْجَنُ أَبَدًا حَتَّى يَحْلِفَ -.

[9] **Qur’an references (L29165):** Qur’an 3:77 (Ali ’Imran).

may be issued against him for refusal or rejection of the oath. However, he is imprisoned indefinitely until he takes the oath.

وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا: فِي كُلِّ شَيْءٍ.

L29173 This is the opinion of Abū Sulaymān and our school's scholars, applying to all matters.

قَالَ أَبُو مُحَمَّد: فَإِنْ قِيلَ: فَإِنَّكُمْ رَدَدْتُمْ الرِّوَايَةَ فِي رَدِّ الْيَمِينِ بِأَنَّهَا عَنْ الشَّعْبِيِّ - وَلَمْ يُدْرِكْ عُثْمَانَ، وَلَا الْمِقْدَادَ، وَلَا عُمَرُ - ثُمَّ ذَكَرْتُمْ لِأَنْفُسِكُمْ رِوَايَةَ حُكُومَةٍ كَانَتْ بَيْنَ عُمَرَ، وَأُبَيٍّ.

L29174 Abu Muhammad said: If it is objected, "You have rejected the narration concerning the rebuttal of the oath because it is from al-Shaʿbī - who did not meet ʿUthmān, nor al-Miqdād, nor ʿUmar - yet you have cited for yourselves a narration of an arbitration that occurred between ʿUmar and Ubayy."

قُلْنَا: لَمْ نُورِدْ شَيْئًا مِنْ هَذَا كُلِّهِ احْتِجَاجًا لِأَنْفُسِنَا فِي تَصْحِيحِ مَا قُلْنَاهُ، وَنَعُوذُ بِاَللَّهِ مِنْ أَنْ نَرَى فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُجَّةً فِي الدِّينِ، وَلَكِنْ تَكْذِيبًا لِمَنْ قَدْ سَهَّلَ الشَّيْطَانُ لَهُ الْكَذِبَ عَلَى جَمِيعِ الْأُمَّةِ فِي دَعْوَى الْإِجْمَاعِ مُجَاهَرَةً، حَيْثُ لَا يَجِدُ إلَّا رِوَايَاتٍ كُلَّهَا هَالِكَةٌ، بِظُنُونٍ كَاذِبَةٍ، عَلَى ثَلَاثَةٍ مِنْ الصَّحَابَةِ قَدْ رُوِيَ مِثْلُهَا بِخِلَافِهَا عَنْ ثَلَاثَةٍ آخَرِينَ مِنْهُمْ، فَأَرَيْنَاهُمْ لِأَنْفُسِنَا مِثْلَهَا، بَلْ أَحْسَنَ مِنْهَا عَنْ ثَلَاثَةٍ أَيْضًا مِنْهُمْ أَوْ أَرْبَعَةٍ، إلَّا أَنَّ الْمُوَافَقَةَ لِقَوْلِنَا أَصَحُّ، لِأَنَّهَا عَنْ الشَّعْبِيِّ فِي ذِكْرِ قَضِيَّةٍ بَيْنَ عُمَرَ وَأُبَيٍّ قَضَى فِيهَا زَيْدُ بْنُ ثَابِتٍ بَيْنَهُمَا وَالشَّعْبِيُّ: قَدْ لَقِيَ زَيْدَ بْنَ ثَابِتٍ وَصَحِبَهُ وَأَخَذَ عَنْهُ كَثِيرًا - فَهَذِهِ أَقْرَبُ بِلَا شَكٍّ إلَى أَنْ تَكُونَ مُسْنَدَةً مِنْ تِلْكَ الَّتِي لَمْ يَلْقَ الشَّعْبِيُّ أَحَدًا مِمَّنْ ذَكَرَ فِي تِلْكَ الْقِصَّةِ وَلَا أَدْرَكَهُ بِعَقْلِهِ.

L29175 We said: We have not presented any of this as evidence to validate our own position, and we seek refuge in Allah from considering anyone's statement—other than the Messenger of Allah, peace and blessings be upon him—as authoritative in matters of religion. Rather, this is to refute those whom Satan has facilitated lying for, openly claiming consensus while relying solely on entirely invalid narrations built upon false conjectures—attributed to three Companions, though contradictory narrations have been reported from three others among them. We have presented for ourselves narrations equivalent to theirs, indeed superior, from three or four others among them. However, the narrations supporting our position are more authentic, as they originate from al-Shaʿbi's account of a legal dispute between ʿUmar and Ubayy, wherein Zayd ibn Thabit issued a judgment. Al-Shaʿbi met Zayd ibn Thabit, accompanied him, and acquired extensive knowledge from him. Thus, these narrations are undoubtedly closer to being substantiated by chains of transmission than those in which al-Shaʿbi neither met any of the individuals mentioned in that incident nor comprehended it through his own reasoning.

قَالَ أَبُو مُحَمَّد: مِنْ الْعَجَبِ أَنْ يُجَوِّزَ أَهْلُ الْجَهْلِ وَالْغَبَاوَةِ لِأَبِي حَنِيفَةَ أَنْ لَا يَقْضِيَ بِالنُّكُولِ، وَلَا بِرَدِّ الْيَمِينِ، لَكِنْ بِالْأَخْذِ بِالْيَمِينِ وَلَا بُدَّ فِي بَعْضِ الدَّعَاوَى دُونَ بَعْضٍ بِرَأْيِهِ - وَيُجَوِّزَ مِثْلَ ذَلِكَ لِمَالِكٍ فِي دَعْوَى الطَّلَاقِ وَالْعَتَاقِ، وَلَا يُجَوِّزَ لِمَنْ اتَّبَعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - ذَلِكَ فِي جَمِيعِ الدَّعَاوَى، إنَّ هَذَا لَعَجَبٌ.

L29176 Abu Muhammad said: It is astonishing that people of ignorance and stupidity would permit Abu Hanifah not to rule by relying on the defendant's refusal to swear or the plaintiff's counter-oath, but instead to mandate the oath necessarily in some cases but not others according to his opinion—and would permit the like of that for Malik in claims of divorce and emancipation—yet would not permit those who follow the Messenger of Allah, may Allah bless

him and his family and grant him peace, to do so in all claims. Verily, this is truly astonishing.

L29177 Abu Muhammad said: Since the opinion advocating judgment based on refusal to take the oath, and the opinion advocating the reversion of the oath to the claimant when the defendant refuses, have been invalidated—because these two opinions lack any evidence from the Quran or the Sunnah, and because no valid statement from the Companions (may Allah be pleased with them) exists regarding either of them—it is obligatory for us to provide proof for the validity of our position.

قَالَ أَبُو مُحَمَّد: فَإِذْ قَدْ بَطَلَ الْقَوْلُ بِالْقَضَاءِ بِالنُّكُولِ، وَالْقَوْلُ بِرَدِّ الْيَمِينِ عَلَى الطَّالِبِ إِذَا نَكَلَ الْمَطْلُوبُ، لِتَعَرِّي هَذَيْنِ الْقَوْلَيْنِ عَنْ دَلِيلٍ مِنْ الْقُرْآنِ، أَوْ مِنْ السُّنَّةِ - وَبَطَلَ أَنْ يَصِحَّ فِي أَحَدِهِمَا قَوْلٌ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَالْوَاجِبُ أَنْ نَأْتِيَ بِالْبُرْهَانِ عَلَى صِحَّةِ قَوْلِنَا -.

L29178 And with Allah, the Most High, is [all] divine facilitation.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29179–29181 Abu Muhammad said: It is established that what we previously cited from the Prophet—peace be upon him and his family—regarding judgment by the defendant's oath, and that "were people granted their claims based solely on their assertions, some would claim the blood of a people." "and their wealth", and what we have discussed previously in the preceding issue from the statement of the Messenger of Allah—may Allah bless him and grant him peace—: "Either you provide evidence, or he must swear an oath – that is your only option."

قَالَ أَبُو مُحَمَّد: قَدْ صَحَّ مَا قَدْ أَوْرَدْنَاهُ آنِفًا مِنْ قَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِالْقَضَاءِ بِالْيَمِينِ عَلَى الْمُدَّعَى عَلَيْهِ، وَأَنَّهُ «لَوْ أَعْطَى النَّاسَ بِدَعْوَاهُمْ لَادَّعَى نَاسٌ دِمَاءَ قَوْمٍ وَأَمْوَالَهُمْ» ، وَمَا قَدْ أَتَيْنَا بِهِ قَبْلُ فِي الْمَسْأَلَةِ الَّتِي قَبْلَ هَذِهِ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «بَيِّنَتُكَ أَوْ يَمِينُهُ لَيْسَ لَك إلَّا ذَلِكَ» .

L29182 Thus, it is established with certainty that it is impermissible to grant the claimant [a judgment] based on his claim without evidence. Thereby, it becomes invalid to grant anything due to the opponent's refusal or the claimant's oath upon such refusal, because he is awarded [a judgment] based on his claim.

فَصَحَّ يَقِينًا أَنَّهُ لَا يَجُوزُ أَنْ يُعْطَى الْمُدَّعِي بِدَعْوَاهُ دُونَ بَيِّنَةٍ، فَبَطَلَ بِهَذَا أَنْ يُعْطَى شَيْئًا بِنُكُولِ خَصْمِهِ أَوْ بِيَمِينِهِ إذَا نَكَلَ خَصْمُهُ؛ لِأَنَّهُ أُعْطِيَ بِالدَّعْوَى.

L29183 It has been established that the oath by Allah's decree rests upon the defendant, as conveyed through the tongue of His Messenger—peace and blessings be upon him. Therefore, it becomes obligatory that the claimant is never granted an oath except where explicit texts specify its application—solely in cases of collective oath (qasāmah) when a slain Muslim is discovered, and when a claimant produces a single just witness only. Whoever grants the claimant the oath merely due to his opponent's refusal, or grants him the oath when the defendant refuses, has committed a grave error. This

وَصَحَّ أَنَّ الْيَمِينَ بِحُكْمِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَى الْمُدَّعَى عَلَيْهِ، فَوَجَبَ بِذَلِكَ أَنَّهُ لَا يُعْطَى الْمُدَّعِي يَمِينًا أَصْلًا إلَّا حَيْثُ جَاءَ النَّصُّ بِأَنْ يُعْطَاهَا، وَلَيْسَ ذَلِكَ إلَّا فِي الْقَسَامَةِ فِي الْمُسْلِمِ يُوجَدُ مَقْتُولًا، وَفِي الْمُدَّعِي يُقِيمُ شَاهِدًا عَدْلًا فَقَطْ، وَكَانَ مَنْ أَعْطَى الْمُدَّعِيَ بِنُكُولِ خَصْمِهِ فَقَطْ أَوْ بِيَمِينِهِ إذَا نَكَلَ خَصْمُهُ قَدْ أَخْطَأَ كَثِيرًا، وَذَلِكَ أَنَّهُ أَعْطَاهُ مَا أَخْبَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ لَيْسَ

لَهُ، وَأَعْطَاهُ بِدَعْوَاهُ الْمُجَرَّدَةِ عَنْ الْبَيِّنَةِ وَأَسْقَطَ الْيَمِينَ عَمَّنْ أَوْجَبَهَا اللَّهُ تَعَالَى عَلَيْهِ، وَلَمْ يُزِلْهَا عَنْهُ إلَّا أَنْ يُسْقِطَهَا الَّذِي هِيَ لَهُ - وَهُوَ الطَّالِبُ - الَّذِي جَعَلَ اللَّهُ تَعَالَى لَهُ الْبَيِّنَةَ فَيَأْخُذُ أَوْ يَمِينَ مَطْلُوبِهِ، فَإِذْ هِيَ لَهُ فَلَهُ تَرْكُ حَقِّهِ - إنْ شَاءَ - فَظَهَرَ صِحَّةُ قَوْلِنَا يَقِينًا.

is because he grants what the Prophet—peace and blessings of Allah upon him and his family—declared the claimant undeserving of, granting it for a mere unsubstantiated claim while absolving the defendant of the oath Allah obligated upon him. The oath cannot be removed from the defendant except by the claimant (the one entitled to it)—to whom Allah granted the right to demand evidence, thereby either claiming his right or compelling his defendant's oath. Since the oath rightfully belongs to the claimant, he may relinquish his claim if he chooses. Thus, the soundness of our position becomes undeniably evident.

وَقَالَ اللَّهُ تَعَالَى: {وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L29184 "And Allah, the Most High, said: 'Do not cooperate in sin and transgression' [*Al-Mā'idah* 2]."[10]

فَمَنْ أَطْلَقَ لِلْمَطْلُوبِ الامْتِنَاعَ مِنْ الْيَمِينِ وَلَمْ يَأْخُذْهُ بِهَا - وَقَدْ أَوْجَبَهَا اللَّهُ تَعَالَى عَلَيْهِ - فَقَدْ أَعَانَهُ عَلَى الْإِثْمِ وَالْعُدْوَانِ، وَعَلَى تَرْكِ مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ إلْزَامَهُ إيَّاهُ وَأَخْذَهُ بِهِ.

L29185 Whoever allows the one pursued to refuse the oath and does not hold him to it—though God Almighty has obligated it upon him—has indeed assisted him in sin, transgression, and abandoning what God Almighty has obligated: to enforce it upon him and hold him to it.

وَقَدْ ذَكَرْنَا فِي كَلَامِنَا " فِي الْإِمَامَةِ " قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ» فَوَجَدْنَا الْمُمْتَنِعَ مِمَّا أَوْجَبَ اللَّهُ عَزَّ وَجَلَّ أَخْذَهُ بِهِ مِنْ الْيَمِينِ قَدْ أَتَى مُنْكَرًا بِيَقِينٍ، فَوَجَبَ تَغْيِيرُهُ بِالْيَدِ بِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَالتَّغْيِيرُ بِالْيَدِ: هُوَ الضَّرْبُ فِيمَنْ لَمْ يَمْتَنِعْ، أَوْ بِالسِّلَاحِ فِي الْمُدَافِعِ بِيَدِهِ، الْمُمْتَنِعِ مِنْ أَخْذِهِ بِالْحَقِّ فَوَجَبَ ضَرْبُهُ أَبَدًا حَتَّى يُحْيِيَهُ الْحَقُّ مِنْ إقْرَارِهِ، أَوْ يَمِينِهِ، أَوْ يَقْتُلَهُ الْحَقُّ، مِنْ تَغْيِيرِ مَا أَعْلَنَ بِهِ مِنْ الْمُنْكَرِ: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] وَمَنْ أَطَاعَ اللَّهَ تَعَالَى فَقَدْ أَحْسَنَ.

L29186 In our discussion on "The Imamate," we cited the statement of Allah's Messenger - may Allah bless him and his family and grant him peace: "Whoever among you sees evil, let him change it with his hand if he is able." We concluded that one who refuses what Allah the Mighty and Majestic has obligated to be taken by the right hand has undeniably committed evil. Thus, changing it through physical action becomes obligatory by the command of Allah's Messenger - may Allah bless him and his family and grant him peace. Changing with the hand entails striking those who do not resist, or using weapons against those who physically defend themselves while refusing rightful compliance. Such a person must be struck continuously until the truth revives him through his admission or his oath, or the truth kills him for persisting in the openly manifested evil: {Whoever transgresses Allah's limits has wronged himself} [at-Talāq 65:1]. Whoever obeys Allah the Exalted has done well.[11]

وَأَمَّا السِّجْنُ: فَلَا يَخْتَلِفُ اثْنَانِ فِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَمْ يَكُنْ لَهُ قَطُّ سِجْنٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29187 As for imprisonment: No two differ in opinion that the Messenger of Allah

[10] **Qur'an references (L29184):** Qur'an 5:2 (Al-Ma'idah).
[11] **Qur'an references (L29186):** Qur'an 65:1 (At-Talaq).

(peace and blessings be upon him and his family) never had a prison at all. And success comes only from Allah, the Exalted.

L29188–29189 From what we have mentioned, it has become clear that our statement is confirmed through Ibn Abbas as we have cited, and no authentic contrary report from any of the Companions (may Allah be pleased with them) exists. All praise is due to Allah, Lord of all the worlds.

L29190 **Issue: There is no obligation upon one for whom an oath is required to swear except by Allah, the Exalted.**

L29191 1788 - Issue: One upon whom an oath has become obligatory must swear only by Allah the Exalted or by one of His names, exclusively in the judge's council. He may do so in whatever manner he chooses—whether sitting, standing, or in any other state—and he need not concern himself with the direction his face is turned.

L29192 People have differed regarding this matter. It has been reported to us from Mālik that he learned that a man from Iraq wrote to ʿUmar ibn al-Khaṭṭāb, stating that a man had said to his wife, "Your rope is on your nape." ʿUmar wrote to his governor to have the man meet him in Mecca during the pilgrimage season. He complied, and the man came to him while ʿUmar was circumambulating the House. The man said, "I am the man you ordered to be brought before you." ʿUmar said, "I adjure you by the Lord of this building: Did you intend by your words 'Your rope is on your nape' to effect divorce?" The man replied, "Had you adjured me anywhere other than this place, I would not have told you the truth. I did intend divorce by that." ʿUmar said, "It is as you intended."

L29193 Through the narration of Abd al-Razzaq from Ma'mar from Layth ibn Abi Sulaym from Mujahid: A man said to his wife during the time of Umar, "Your marital bond is on your back," three times. Umar then made him swear an oath between the Black Stone and the Station of Ibrahim, whereupon the man declared, "I intended three divorces." Umar consequently enforced it upon him.

L29194 Via the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān, from ʿAbd al-Malik ibn Abī

وَقَدْ لَاحَ بِمَا ذَكَرْنَا أَنَّ قَوْلَنَا ثَابِتٌ عَنْ ابْنِ عَبَّاسٍ كَمَا أَوْرَدْنَا، وَلَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافُهُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[مَسْأَلَة لَيْسَ عَلَى مَنْ وَجَبَتْ عَلَيْهِ يَمِينٌ أَنْ يَحْلِفَ إلَّا بِاَللَّهِ تَعَالَى]

١٧٨٨ - مَسْأَلَةٌ: وَلَيْسَ عَلَى مَنْ وَجَبَتْ عَلَيْهِ يَمِينٌ أَنْ يَحْلِفَ إلَّا بِاَللَّهِ تَعَالَى، أَوْ بِاسْمٍ مِنْ أَسْمَاءِ اللَّهِ تَعَالَى فِي مَجْلِسِ الْحَاكِمِ فَقَطْ، كَيْفَمَا شَاءَ مِنْ قُعُودٍ أَوْ قِيَامٍ أَوْ غَيْرِ ذَلِكَ مِنْ الْأَحْوَالِ، وَلَا يُبَالِي إلَى أَيِّ جِهَةٍ كَانَ وَجْهُهُ.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا عَنْ مَالِكٍ أَنَّهُ بَلَغَهُ أَنَّهُ كَتَبَ إلَى عُمَرَ بْنِ الْخَطَّابِ رَجُلٌ مِنْ الْعِرَاقِ: أَنَّ رَجُلًا قَالَ لِامْرَأَتِهِ: حَبْلُكِ عَلَى غَارِبِكِ، فَكَتَبَ عُمَرُ إلَى عَامِلِهِ أَنْ يُوَافِيَهُ الرَّجُلُ بِمَكَّةَ فِي الْمَوْسِمِ، فَفَعَلَ، فَأَتَاهُ الرَّجُلُ - وَعُمَرُ يَطُوفُ بِالْبَيْتِ - فَقَالَ لِعُمَرَ: أَنَا الرَّجُلُ الَّذِي أَمَرْتَ أَنْ أُجْلَبَ عَلَيْكَ فَقَالَ لَهُ عُمَرُ: أَنْشُدُكَ بِرَبِّ هَذِهِ الْبِنْيَةِ مَا أَرَدْت بِقَوْلِك " حَبْلُكِ عَلَى غَارِبِكِ " الْفِرَاقَ فَقَالَ لَهُ الرَّجُلُ: لَوْ اسْتَحْلَفْتَنِي فِي غَيْرِ هَذَا الْمَكَانِ مَا صَدَقْتُك؟ أَرَدْت بِذَلِكَ الْفِرَاقَ قَالَ عُمَرُ: هُوَ مَا أَرَدْتَ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ مُجَاهِدٍ أَنَّ رَجُلًا قَالَ لِامْرَأَتِهِ فِي زَمَنِ عُمَرَ: حَبْلُكِ عَلَى غَارِبِكِ ثَلَاثَ مَرَّاتٍ فَاسْتَحْلَفَهُ عُمَرُ بَيْنَ الرُّكْنِ وَالْمَقَامِ فَقَالَ: أَرَدْت الطَّلَاقَ ثَلَاثًا، فَأَمْضَاهُ عَلَيْهِ.

Sulaymān al-ʿArzamī, from ʿAṭāʾ ibn Abī Rabāḥ: A man said to his wife, "Your marital bond is on your shoulder." The man consulted Ibn Masʿūd, who wrote to ʿUmar. ʿUmar instructed him to meet during the pilgrimage rites. When he met him, the narrator mentioned the hadith.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي سُلَيْمَانَ الْعَرْزَمِيِّ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ: أَنَّ رَجُلًا قَالَ لِامْرَأَتِهِ: حَبْلُكِ عَلَى غَارِبِكِ، فَسَأَلَ ابْنَ مَسْعُودٍ فَكَتَبَ إِلَى عُمَرَ، فَكَتَبَ عُمَرُ بِأَنْ يُوَافِيَهُ بِالْمَوْسِمِ، فَوَافَاهُ - وَذَكَرَ الْحَدِيثَ.

L29195 And through the chain of Al-Kashwārī from Al-Ḥudhāfī from ʿAbd al-Razzāq, who reported to us from Maʿmar from Al-Zuhrī, he said: Muʿāwiyah administered an oath regarding blood [matter] between the Rukn (Black Stone corner) and the Maqām (Station of Abraham).

وَمِنْ طَرِيقِ الْكَشْوَرِيِّ عَنْ الْحُذَافِيِّ عَنْ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ قَالَ: اسْتَحْلَفَ مُعَاوِيَةُ فِي دَمٍ بَيْنَ الرُّكْنِ وَالْمَقَامِ.

L29196 Al-Shafiʿī mentioned without citing a chain of transmission that ʿAbd al-Raḥmān ibn ʿAwf rejected the administration of oaths at the Kaaba except in cases involving bloodshed or a large amount of wealth.

وَذَكَرَ الشَّافِعِيُّ بِغَيْرِ إسْنَادٍ: أَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ أَنْكَرَ التَّحْلِيفَ عِنْدَ الْكَعْبَةِ إلَّا فِي دَمٍ أَوْ كَثِيرٍ مِنْ الْمَالِ.

L29197–29199 As for the aforementioned action of Mu'awiyah: We have narrated it through the chain of Abd al-Razzaq, from Ma'mar, from al-Zuhri, from Sa'id ibn al-Musayyab, that Mu'awiyah adjured Mus'ab ibn Abd al-Rahman ibn Awf. And Mu'adh ibn Ubayd Allāh ibn Ma'mar, and Uqbah ibn Ja'wana ibn Sha'ūb al-Laythī concerning the blood of Ismā'īl ibn Habbār between the Corner and the Station—and these were Medinans whom he had brought to Mecca.

وَأَمَّا فِعْلُ مُعَاوِيَةَ الْمَذْكُورُ: فَإِنَّنَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ مُعَاوِيَةَ أَحْلَفَ مُصْعَبَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَمُعَاذَ بْنَ عُبَيْدِ اللَّهِ بْنِ مَعْمَرٍ، وَعُقْبَةَ بْنَ جَعْوَنَةَ بْنِ شَعُوبٍ اللَّيْثِيُّ فِي دَمِ إسْمَاعِيلَ بْنِ هَبَّارٍ بَيْنَ الرُّكْنِ وَالْمَقَامِ - وَهَؤُلَاءِ مَدَنِيُّونَ اسْتَجْلَبَهُمْ إلَى مَكَّةَ.

L29200 And from the chain of Waki', from Sufyan al-Thawri, from 'Abdullah ibn Abi al-Safar, from al-Sha'bi, from Shurayh, who said: The People of the Book are made to swear by Allah's name in situations they dislike.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ قَالَ: يُسْتَحْلَفُ أَهْلُ الْكِتَابِ " بِاَللَّهِ " حَيْثُ يَكْرَهُونَ.

L29201 And through him to Sufyan from Ayyub al-Sikhtiyani from Ibn Sirin that Ka'b ibn Sawwar brought a Jew into the synagogue, placed the Torah on the Jew's head, and made him swear by God.

وَبِهِ إلَى سُفْيَانَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ سِيرِينَ أَنَّ كَعْبَ بْنَ سَوَّارٍ أَدْخَلَ يَهُودِيًّا الْكَنِيسَةَ وَوَضَعَ التَّوْرَاةَ عَلَى رَأْسِهِ وَاسْتَحْلَفَهُ بِاَللَّهِ.

L29202 And through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from Ayyūb al-Sikhtiyānī from Ibn Sīrīn: Kaʿb ibn Sawwār would administer oaths to the People of the Book—referring to Christians—by placing the Gospel upon his head, then bringing him to the altar where he would make him swear by Allah.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنِ ابْنِ سِيرِينَ أَنَّ كَعْبَ بْنَ سَوَّارٍ كَانَ يُحَلِّفُ أَهْلَ الْكِتَابِ - يَعْنِي النَّصَارَى - يَضَعُ الْإِنْجِيلَ عَلَى رَأْسِهِ، ثُمَّ يَأْتِي بِهِ إِلَى الْمَذْبَحِ فَيُحَلِّفُهُ بِاللَّهِ.

L29203 Through the chain of Abu ʻUbayd, who narrated to us: Muhammad ibn ʻUbayd narrated from Ishaq ibn Abi Masirah, who said: A Muslim and a Christian brought their dispute to Al-Shaʻbi. The Christian said, “I swear by Allah.” Al-Shaʻbi declared, “No, O wicked one! You have been negligent toward Allah. Rather, go to the church and have him swear there by what those of his faith swear by.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا مُحَمَّدُ بْنُ عُبَيْدٍ عَنْ إِسْحَاقَ بْنِ أَبِي مسيرة قَالَ: اخْتَصَمَ إِلَى الشَّعْبِيِّ مُسْلِمٌ وَنَصْرَانِيٌّ، فَقَالَ النَّصْرَانِيُّ: أَحْلِفُ بِاللَّهِ فَقَالَ لَهُ الشَّعْبِيُّ: لَا، يَا خَبِيثُ قَدْ فَرَّطْت فِي اللَّهِ، وَلَكِنْ اذْهَبْ إِلَى الْبَيْعَةِ فَاسْتَحْلَفَهُ بِمَا يُسْتَحْلَفُ بِهِ مِثْلُهُ.

L29204 From the path of Mālik, from Dāwud ibn al-Ḥuṣayn, that he heard Abū Ghaṭafān ibn Ṭarīf al-Murrī say: Zayd ibn Thābit and Ibn Muṭīʿ disputed before Marwān regarding a property. Marwān ruled against Zayd, requiring him to swear upon the pulpit. Zayd said to him: “Shall I swear to him in my place?” Marwān replied: “No, by Allah—except in the places where rights are decided.” Zayd then began to swear that his right was indeed a true right, yet refused to swear upon the pulpit. Marwān began to marvel at Zayd.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ دَاوُد بْنِ الْحُصَيْنِ أَنَّهُ سَمِعَ أَبَا غَطَفَانَ بْنَ طَرِيفٍ الْمُرِّيَّ يَقُولُ: اخْتَصَمَ زَيْدُ بْنُ ثَابِتٍ، وَابْنُ مُطِيعٍ إِلَى مَرْوَانَ فِي دَارٍ، فَقَضَى مَرْوَانُ عَلَى زَيْدٍ بِالْيَمِينِ عَلَى الْمِنْبَرِ فَقَالَ لَهُ زَيْدٌ: أَحْلِفُ لَهُ مَكَانِي؟ فَقَالَ لَهُ مَرْوَانُ: لَا، وَاَللَّهِ إلَّا فِي مَقَاطِعِ الْحُقُوقِ، فَجَعَلَ زَيْدٌ يَحْلِفُ أَنَّ حَقَّهُ لَحَقٌّ، وَيَأْبَى أَنْ يَحْلِفَ عَلَى الْمِنْبَرِ فَجَعَلَ مَرْوَانُ يَعْجَبُ مِنْ زَيْدٍ.

L29205 It has been reported that ʿUmar ibn ʿAbd al-ʿAzīz made Sulaymān’s governors swear an oath at the Rock in Jerusalem, known as Bayt al-Maqdis.

وَقَدْ رُوِيَ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَحْلَفَ عُمَّالَ سُلَيْمَانَ عِنْدَ الصَّخْرَةِ فِي بَيْتِ الْمَقْدِسِ.

L29206 And via the chain of narration of Al-Kashwārī from Ḥudhāfī from ʿAbd al-Razzāq from Isrāʾīl from Simāk ibn Ḥarb from Al-Shaʿbī: that Abū Mūsā al-Ashʿarī administered an oath to a Jew by Allah the Exalted. Al-Shaʿbī said: If only he had entered the Jewish prayer house with him.

وَمِنْ طَرِيقِ الْكَشْوَرِيِّ عَنْ الْحُذَافِيِّ عَنْ عَبْدِ الرَّزَّاقِ عَنْ إِسْرَائِيلَ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ الشَّعْبِيِّ: أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ أَحْلَفَ يَهُودِيًّا بِاللَّهِ تَعَالَى: فَقَالَ الشَّعْبِيُّ: لَوْ أَدْخَلَهُ الْكَنِيسَةَ.

L29207–29208 So this clarifies that Abu Musa did not bring him into the church.

فَهَذَا يُوضِحُ أَنَّ أَبَا مُوسَى لَمْ يُدْخِلْهُ الْكَنِيسَةَ.

L29209 And through the chain of Abū ʻUbayd: Azhar al-Sammān narrated to us from ʻAbdullāh ibn ʻAwn from Nāfiʻ that Ibn ʻUmar was the trustee of a man. A man came to him with a document whose witnesses’ names had faded. Ibn

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا أَزْهَرُ السَّمَّانُ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ كَانَ وَصِيَّ رَجُلٍ فَأَتَاهُ رَجُلٌ بِصَكٍّ قَدْ دَرَسَتْ أَسْمَاءُ شُهُودِهِ، فَقَالَ ابْنُ عُمَرَ: يَا نَافِعُ

‘Umar said, “O Nāfi‘, take him to the pulpit and have him swear an oath.” The man said, “O Ibn ‘Umar—do you want to make me heard in the place where I am heard, then have me heard here?” Ibn ‘Umar replied, “He has spoken the truth,” so he administered the oath to him and granted him his due.

اذْهَبْ بِهِ إِلَى الْمِنْبَرِ فَاسْتَحْلِفْهُ فَقَالَ: يَا ابْنَ عُمَرَ أَتُرِيدُ أَنْ تُسْمِعَ فِي الَّذِي يَسْمَعُنِي، ثُمَّ يَسْمَعُنِي هَاهُنَا فَقَالَ ابْنُ عُمَرَ: صَدَقَ فَاسْتَحْلَفَهُ، وَأَعْطَاهُ إِيَّاهُ.

L29210 Abu Muhammad said: This does not indicate that Ibn Umar maintained the position of redirecting the oath to the claimant. It may be that this document serves as an acquittal from a liability against that man, in which case his entitlement is to swear the oath, unless he establishes conclusive proof of the acquittal.

قَالَ أَبُو مُحَمَّد: لَيْسَ فِي هَذَا أَنَّ ابْنَ عُمَرَ كَانَ يَرَى رَدَّ الْيَمِينِ عَلَى الطَّالِبِ، وَقَدْ يَكُونُ ذَلِكَ الصَّكُّ بَرَاءَةً مِنْ حَقٍّ عَلَى ذَلِكَ الرَّجُلِ فَحَقُّهُ الْيَمِينُ، إلَّا أَنْ يُقِيمَ بَيِّنَةً بِالْبَرَاءَةِ.

L29211 And through the chain of Waki‘ from Sharik from Jabir from a man among the descendants of Abu al-Hayyaj: that Ali ibn Abi Talib sent Abu al-Hayyaj as a judge to Sawad and ordered him to have them swear by Allah.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شَرِيكٍ عَنْ جَابِرٍ عَنْ رَجُلٍ مِنْ وَلَدِ أَبِي الْهَيَّاجِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ بَعَثَ أَبَا الْهَيَّاجِ قَاضِيًا إلَى السَّوَادِ، وَأَمَرَ أَنْ يُحَلِّفَهُمْ بِاَللَّهِ.

L29212 In this context: It is reported from Umar ibn al-Khattab and Ibn Mas’ud that a man was brought from Iraq to Mecca for judgment and to swear an oath at the Kaaba; Muawiyah’s administration of oaths concerning bloodshed between the Rukn (Black Stone Corner) and the Maqam (Station of Ibrahim); and Abd al-Rahman ibn Awf’s disapproval of oath-taking at the Kaaba except in cases involving bloodshed or substantial wealth.

فَفِي هَذَا: عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ مَسْعُودٍ: جُلِبَ رَجُلٌ مِنْ الْعِرَاقِ إلَى مَكَّةَ لِلْحُكْمِ وَاحْلَافِهِ عِنْدَ الْكَعْبَةِ، وَاسْتِحْلَافُ مُعَاوِيَةَ فِي دَمٍ بَيْنَ الرُّكْنِ وَالْمَقَامِ، وَإِنْكَارُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ الِاسْتِحْلَافَ عِنْدَ الْكَعْبَةِ، إلَّا فِي دَمٍ أَوْ كَثِيرٍ مِنْ الْمَالِ.

L29213 From Shurayh and Al-Shaʿbī: Administering oaths to disbelievers should be conducted according to their own revered practices. Similarly, Kaʿb ibn Sawwār added: placing the Torah on a Jew’s head and the Gospel on a Christian’s head.

وَعَنْ شُرَيْحٍ، وَالشَّعْبِيِّ: اسْتِحْلَافُ الْكُفَّارِ حَيْثُ يُعَظِّمُونَ وَكَذَلِكَ كَعْبُ بْنُ سَوَّارٍ - وَزَادَ: وَضْعَ التَّوْرَاةِ عَلَى رَأْسِ الْيَهُودِيِّ، وَالْإِنْجِيلِ عَلَى رَأْسِ النَّصْرَانِيِّ.

L29214 It is narrated from Marwan that the administering of oaths in Medina takes place near the pulpit of the Prophet (peace and blessings be upon him).

وَعَنْ مَرْوَانَ: أَنَّ الِاسْتِحْلَافَ بِالْمَدِينَةِ عِنْدَ مِنْبَرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L29215 It is narrated that Umar ibn Abd al-Aziz administered the oath to officials at the Rock of Jerusalem.

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ اسْتِحْلَافُ الْعُمَّالِ عِنْدَ صَخْرَةِ بَيْتِ الْمَقْدِسِ.

L29216 From Ibn ‘Umar, ‘Ali, Zayd, and Abu Musa al-Ash‘ari: The administration of the oath is by Allah alone when conducted as part of the judge’s court proceedings.

وَعَنْ ابْنِ عُمَرَ، وَعَلِيٍّ، وَزَيْدٍ، وَأَبِي مُوسَى الْأَشْعَرِيِّ: الِاسْتِحْلَافُ " بِاَللَّهِ " فَقَطْ حَيْثُ كَانَ مِنْ مَجْلِسِ الْحَاكِمِ -.

L29217 It is narrated from Ibn ʻUmar and Zayd with the utmost soundness—and similarly from Abū ʻUbaydah ibn ʻAbdullāh ibn Masʻūd, according to what we will mention after this—if Allāh the Exalted wills.

وَهُوَ عَنْ ابْنِ عُمَرَ، وَزَيْدٍ فِي غَايَةِ الصِّحَّةِ - وَكَذَلِكَ عَنْ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَلَى مَا نَذْكُرُهُ بَعْدَ هَذَا - إنْ شَاءَ اللَّهُ تَعَالَى.

L29218 As for what they swear by, we have previously mentioned in “the chapter on rulings related to refusal to take an oath” that ʿUthmān made Ibn ʿUmar swear by Allah alone.

وَأَمَّا بِمَاذَا يَحْلِفُونَ - فَقَدْ ذَكَرْنَا قَبْلَ هَذَا فِي " بَابِ الْحُكْمِ بِالنُّكُولِ " تَحْلِيفَ عُثْمَانَ لِابْنِ عُمَرَ " بِاَللَّهِ " فَقَطْ.

L29219 And from Zayd ibn Thabit: He swore by Allah that he had indeed sold the slave, and there was no disease in him that he [the seller] was aware of.

وَعَنْ زَيْدِ بْنِ ثَابِتٍ الْحَلِفُ بِاَللَّهِ لَقَدْ بَاعَ الْعَبْدَ وَمَا بِهِ دَاءٌ يَعْلَمُهُ.

L29220 We previously mentioned—as reported by ʿAlī and Abū Mūsā—the imposition of an oath upon the disbelievers by Allah alone.

وَذَكَرْنَا آنِفًا عَنْ عَلِيٍّ، وَأَبِي مُوسَى اسْتِحْلَافَ الْكُفَّارِ " بِاَللَّهِ " فَقَطْ.

L29221–29222 And from Zayd ibn Thābit: “Swearing by Allah” alone - and it is from him, and from ʿUthmān in the utmost soundness.

وَعَنْ زَيْدِ بْنِ ثَابِتٍ الْحَلِفُ " بِاَللَّهِ " فَقَطْ - وَهُوَ عَنْهُ، وَعَنْ عُثْمَانَ فِي غَايَةِ الصِّحَّةِ.

L29223 And through the chain of Abu ʾUbayd: Hushaym narrated to us - I, Al-Mughirah ibn Miqsam, said: “Umar ibn Abd al-Aziz wrote concerning the People of the Book that they should be made to swear by Allah.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا هُشَيْمٌ أَنَا الْمُغِيرَةُ بْنُ مِقْسَمٍ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي أَهْلِ الْكِتَابِ أَنْ يُسْتَحْلَفُوا " بِاَللَّهِ ".

L29224 And through the chain of Saʿīd ibn Manṣūr: Ismāʿīl ibn Sālim narrated: I heard Al-Shaʿbī say in extensive discourse: “If they fail to provide conclusive proof, then his oath is by Allah.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا إسْمَاعِيلُ بْنُ سَالِمٍ سَمِعْت الشَّعْبِيَّ يَقُولُ فِي كَلَامٍ كَثِيرٍ: إنْ لَمْ يُقِيمُوا الْبَيِّنَةَ فَيَمِينُهُ " بِاَللَّهِ ".

L29225 And through the chain of Abī ʻUbayd from Marwān ibn Muʿāwiyah al-Fazārī from Yaḥyā ibn Maysarah from ʻAmr ibn Murrah, who said: I was with Abū ʻUbaydah ibn ʻAbd Allāh ibn Masʻūd when he was a judge, and a Muslim and a Christian came to him disputing. He ruled to impose the oath on the Christian. The Muslim said to him: “Make him swear to me regarding the pledge?” Abū ʻUbaydah replied: “Make him swear by Allāh” and release him. A similar [ruling] is reported from ʻAṭā’.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ مَرْوَانَ بْنِ مُعَاوِيَةَ الْفَزَارِيِّ عَنْ يَحْيَى بْنِ مَيْسَرَةَ عَنْ عَمْرِو بْنِ مُرَّةَ قَالَ: كُنْت مَعَ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ وَهُوَ قَاضٍ فَاخْتَصَمَ إلَيْهِ: مُسْلِمٌ، وَنَصْرَانِيٌّ، فَقَضَى بِالْيَمِينِ عَلَى النَّصْرَانِيِّ فَقَالَ لَهُ الْمُسْلِمُ: اسْتَحْلِفْهُ لِي فِي الْبَيْعَةِ؟ فَقَالَ لَهُ أَبُو عُبَيْدَةَ: اسْتَحْلِفْهُ " بِاَللَّهِ " وَخَلِّ سَبِيلَهُ - وَنَحْوُهُ عَنْ عَطَاءٍ.

L29226 They require oaths to be sworn solely by Allah.

وَعَنْ مَسْرُوقٍ: اسْتِحْلَافُهُمْ بِاَللَّهِ فَقَطْ.

L29227 Through the chain of Ibrāhīm al-Nakhaʿī: They are adjured to swear by Allah, and a more stringent oath is imposed on them in accordance with their religion.

وَمِنْ طَرِيقِ إبْرَاهِيمَ النَّخَعِيِّ: يُسْتَحْلَفُونَ " بِاَللَّهِ " وَيُغَلَّظُ عَلَيْهِمْ بِدِينِهِمْ.

وَعَنْ شُرَيْحٍ: أَنَّهُ كَانَ يَسْتَحْلِفُهُمْ بِدِينِهِمْ وَقَدْ ذَكَرْنَاهُ قَبْلُ عَنْ الشَّعْبِيِّ.

L29228 And it is narrated from Shuraih that he would require them to swear by their religion, and we have mentioned this previously through the narration of Al-Sha'bi.

وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ أَبَا حَنِيفَةَ قَالَ: يُسْتَحْلَفُ الْمُسْلِمُ وَالْكَافِرُ فِي مَجْلِسِ الْحَاكِمِ.

L29229 As for the later scholars, Abū Ḥanīfah said: A Muslim and a non-Muslim must be made to swear an oath in the judge's council.

فَأَمَّا الْمُسْلِمُ فَيُسْتَحْلَفُ " بِاَللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ عَالِمُ الْغَيْبِ وَالشَّهَادَةِ الرَّحْمَنُ الرَّحِيمُ الطَّالِبُ الْغَالِبُ الَّذِي يَعْلَمُ مِنْ السِّرِّ مَا يَعْلَمُ مِنْ الْعَلَانِيَةِ ".

L29230 As for the Muslim, he is to be made to swear by Allah, there is no deity except Him, the Knower of the unseen and the seen, the Most Gracious, the Most Merciful, the All-Pursuing, the Overpowering, Who knows from the hidden what He knows from the manifest.[12]

وَيُسْتَحْلَفُ الْيَهُودِيُّ " بِاَللَّهِ الَّذِي أَنْزَلَ التَّوْرَاةَ عَلَى مُوسَى ".

L29231 The Jew is made to swear: "By God, who revealed the Torah to Moses."

وَيُسْتَحْلَفُ النَّصْرَانِيُّ " بِاَللَّهِ الَّذِي أَنْزَلَ الْإِنْجِيلَ عَلَى عِيسَى ".

L29232 The Christian is made to swear by Allah, who sent down the Gospel upon Jesus.

وَيُسْتَحْلَفُ الْمَجُوسِيُّ " بِاَللَّهِ الَّذِي خَلَقَ النَّارَ ".

L29233 The Zoroastrian is made to swear, "By God, who created the fire."

وَكُلُّ هَذَا هُوَ قَوْلُ الشَّافِعِيِّ، إلَّا أَنَّهُ لَمْ يَذْكُرْ فِي التَّحْلِيفِ الطَّالِبَ الْغَالِبَ - وَرَأَى أَنْ يُحَلَّفَ فِي عِشْرِينَ دِينَارًا أَوْ فِي جِرَاحِ الْعَمْدِ عِنْدَ الْمَقَامِ بِمَكَّةَ، وَعِنْدَ مِنْبَرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمَدِينَةِ، وَأَنْ يُحَلَّفَ سَائِرُ أَهْلِ الْبِلَادِ فِي جَوَامِعِهِمْ.

L29234 All of this is the opinion of al-Shāfiʿī, except that he did not mention the prevailing claimant in the oath-taking. He held that the oath should be administered in twenty dinars or in intentional injury at the Station in Mecca and at the pulpit of the Prophet—peace and blessings be upon him—in Medina, and that all the people of the regions be made to swear in their congregational mosques.

وَأَمَّا مَا دُونَ عِشْرِينَ دِينَارًا فَفِي مَجْلِسِ الْحَاكِمِ.

L29235 As for what is less than twenty dinars, the ruling applies during the judge's session.

وَرَأَى أَنْ يُحَلَّفَ الْكُفَّارُ حَيْثُ يُعَظِّمُونَ.

L29236 He held the view that disbelievers should be made to swear oaths in the places they hold sacred.

وَقَالَ مَالِكٌ: يُحَلَّفُونَ فِي ثَلَاثَةِ دَرَاهِمَ فَصَاعِدًا فِي مَكَّةَ عِنْدَ الْمَقَامِ، وَفِي الْمَدِينَةِ عِنْدَ مِنْبَرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَأَمَّا سَائِرُ أَهْلِ الْبِلَادِ فَحَيْثُ يُعَظَّمُ مِنْ الْجَوَامِعِ - وَتَخْرُجُ الْمَرْأَةُ الْمَسْتُورَةُ لِذَلِكَ لَيْلًا.

L29237–29238 Mālik said: They are to be sworn in cases involving three dirhams and upwards in Mecca at the Station of Abraham, and in Medina at the pulpit of the Prophet (peace and blessings of God be upon him and his family). As for the rest of the inhabitants of the regions, it is where the most venerated

[12] **Qur'an references (L29230):** Qur'an 59:22 (Al-Hashr).

among the congregational mosques is. A modestly covered woman may go out for this purpose at night.

وَأَمَّا مَا دُونَ ثَلَاثَةِ دَرَاهِمَ فَفِي مَجْلِسِ الْحَاكِمِ.

L29239 As for amounts below three dirhams, they are addressed in the judge's court.

وَيُحَلَّفُ الْمُسْلِمُ وَالْكَافِرُ " بِاللَّهِ الَّذِي لَا إِلَهَ إِلَّا هُوَ ".

L29240 The Muslim and the disbeliever are made to swear, "By Allah, there is no deity except Him."

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: يُحَلَّفُ الْمُسْلِمُ " بِاللَّهِ " فِي مَجْلِسِ الْحَاكِمِ فِي الْمُصْحَفِ.

L29241 Ahmad ibn Hanbal said: A Muslim is adjured to swear by Allah in the judge's court upon the Quran.

وَأَمَّا الْكَافِرُ فَكَمَا قَالَ الشَّافِعِيُّ فِيهِمْ سَوَاءٌ سَوَاءٌ.

L29242 As for the disbeliever, Al-Shāfiʿī said concerning them: "Equal, equal."

وَمَا رُوِّينَا مِثْلُ قَوْلِ مَالِكٍ إِلَّا عَنْ شُرَيْحٍ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ، نا دَاوُد عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ: أَنَّهُ قَالَ فِي كَلَامٍ كَثِيرٍ " وَيَمِينُك بِاللَّهِ الَّذِي لَا إِلَهَ إِلَّا هُوَ " يَعْنِي عَلَى الْمَطْلُوبِ.

L29243 Nothing resembling Mālik's statement has been narrated to us except from Shuraīḥ via the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us; Dāwūd narrated to us from al-Shaʿbī, from Shuraīḥ—that he said in a lengthy discourse: "Your oath by Allah—there is no deity except Him—" meaning this applies against the respondent.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ فِيمَا يُسْتَحْلَفُ بِهِ الْمُسْلِمُ فَمَا نَدْرِي مِنْ أَيْنَ أَخَذَاهُ، وَلَا مُتَعَلَّقَ لَهُمْ فِيهِ بِقُرْآنٍ، وَلَا بِسُنَّةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا بِقَوْلِ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ.

L29244 Abu Muhammad said: As for the opinion of Abū Ḥanīfa and al-Shāfiʿī concerning what a Muslim is obligated to swear by, we do not know where the two of them derived it from. They have no basis for it in the Quran, nor in a sound Sunnah or a sick one, nor in the juridical opinions of any scholar before Abū Ḥanīfa.

وَقَالَ بَعْضُهُمْ: قُلْنَا عَلَى سَبِيلِ التَّأْكِيدِ فِي الْيَمِينِ.

L29245 And some of them said, "We stated this to emphasize the binding nature of the oath."

قُلْنَا: مَا هَذَا بِتَأْكِيدٍ، لِأَنَّ اللَّهَ تَعَالَى إذَا ذُكِرَ بِاسْمِهِ اقْتَضَى الْقُدْرَةَ وَالْعِلْمَ وَأَنَّهُ لَمْ يَزَلْ، وَأَنَّهُ خَالِقُ كُلِّ شَيْءٍ، وَاقْتَضَى كُلَّ مَا يُخْبَرُ بِهِ عَنْ اللَّهِ تَعَالَى، فَإِنْ أَرَدْتُمْ أَنْ تَسْلُكُوا مَسْلَكَ الدُّعَاءِ وَالتَّعَبُّدِ فَكَانَ أَوْلَى بِكُمْ أَنْ تَزِيدُوا مَا زَادَهُ اللَّهُ تَعَالَى إذْ يَقُولُ: {الْمَلِكُ الْقُدُّوسُ السَّلامُ الْمُؤْمِنُ الْمُهَيْمِنُ الْعَزِيزُ الْجَبَّارُ الْمُتَكَبِّرُ سُبْحَانَ اللَّهِ عَمَّا يُشْرِكُونَ}

L29246 We said: This is not an affirmation, for when Allah the Exalted is mentioned by His name, it inherently necessitates His power, knowledge, eternal existence without beginning, His being the Creator of all things, and all that is attributed to Him. If you intend to adopt the path of supplication and devotion, it would be more appropriate for you to enumerate what Allah the Exalted Himself enumerated when He says: {The Sovereign, the Most Holy, the Source of Peace, the Affirmer of Truth, the Overseer, the Almighty, the Compeller, the Supreme. Glory be to Allah, above what they associate with Him} [al-Ḥashr 59:23]. Continue adding thus until your lifespans conclude

and your breaths cease. We are presently in the realm of legal judgment, not in a state of leisure for remembrance and worship.[13]

[الحشر: ٢٣] الْآيَةَ، فَزِيدُوا هَكَذَا حَتَّى تَفْنَى أَعْمَارُكُمْ، وَتَنْقَطِعَ أَنْفَاسُكُمْ، وَإِنَّمَا نَحْنُ فِي مَكَانِ حُكْمٍ لَا فِي تَفَرُّغٍ لِذِكْرٍ وَعِبَادَةٍ.

L29247 The most bizarre thing is Abū Ḥanīfah's addition to the names of Allah the Exalted: "the Seeker, the Prevailing One"—we do not know how he arrived at this. Whoever speaks excessively about matters they were neither commanded nor encouraged to engage with—their errors multiply. We seek refuge in Allah from going astray.

ثُمَّ أَغْرَبُ شَيْءٍ زِيَادَةُ أَبِي حَنِيفَةَ فِي أَسْمَاءِ اللَّهِ تَعَالَى: " الطَّالِبَ الْغَالِبَ " فَمَا نَدْرِي مِنْ أَيْنَ وَقَعَ عَلَيْهِ، وَمَنْ كَثُرَ كَلَامُهُ بِمَا لَمْ يُؤْمَرْ بِهِ، وَلَا نُدِبَ إِلَيْهِ -: كَثُرَ خَطَؤُهُ - وَنَعُوذُ بِاللَّهِ مِنْ الضَّلَالِ.

L29248–29250 If they say: "We intended by that to impose a harsher penalty," we say: "Then force them to relocate from Iraq and other regions to Mecca, for this is a severer sanction as reported from 'Umar, or make them swear upon the Quran as Ahmad ibn Hanbal stated, for this is..." It is more severe in strictness, and administer oaths you deem valid—such as those pertaining to divorce, manumission, and alms of wealth—for these are in your view stricter and more binding than swearing by Allah. Whatever arguments they present, refute them regarding these additions they have introduced, and there is no distinction.

فَإِنْ قَالُوا: قَصَدْنَا بِذَلِكَ التَّغْلِيظَ قُلْنَا: فَاجْلُبُوهُمْ مِنْ الْعِرَاقِ وَغَيْرِهَا إلَى مَكَّةَ فَهُوَ أَشَدُّ تَغْلِيظًا كَمَا رُوِيَ عَنْ عُمَرَ، أَوْ حَلِّفُوهُمْ فِي الْمُصْحَفِ كَمَا قَالَ أَحْمَدُ بْنُ حَنْبَلٍ، فَهُوَ أَشَدُّ تَغْلِيظًا، وَحَلِّفُوهُمْ بِمَا تَرَوْنَهُ أَيْمَانًا مِنْ الطَّلَاقِ، وَالْعَتَاقِ، وَصَدَقَةِ الْمَالِ، فَهُوَ عِنْدَكُمْ أَغْلَظُ وَأَوْكَدُ مِنْ الْيَمِينِ بِاَللَّهِ، فَأَيُّ شَيْءٍ قَالُوا رُدَّ عَلَيْهِمْ فِي هَذِهِ الزِّيَادَاتِ الَّتِي زَادُوهَا وَلَا فَرْقَ.

L29251 Or we say: Have them swear, "Upon him is the curse of Allah if he is lying," by juristic analogy to the procedure of mutual imprecation (liʿān), or respond to his oaths with reciprocal ones in the same manner.

أَوْ نَقُولُ: حَلِّفُوهُمْ بِ " عَلَيْهِ لَعْنَةُ اللَّهِ إنْ كَانَ كَاذِبًا " قِيَاسًا عَلَى الْمُلَاعِنِ، أَوْ رُدُّوا عَلَيْهِ الْأَيْمَانَ كَذَلِكَ.

L29252 As for his statement and that of al-Shafi'i - that a Christian should be made to swear "by Allah who revealed the Injīl to Jesus" - this is perplexing. We do not know from where they derived this, for there is no Quranic basis for them in this oath, neither a sound Sunnah nor a weak one, nor any statement of a Companion of the Prophet whatsoever.

وَأَمَّا قَوْلُهُ وَقَوْلُ الشَّافِعِيِّ: أَنْ يُحَلَّفَ النَّصْرَانِيُّ " بِاَللَّهِ الَّذِي أَنْزَلَ الْإِنْجِيلَ عَلَى عِيسَى " فَعَجَبٌ، وَلَا نَدْرِي مِنْ أَيْنَ أَخَذَاهُ، فَمَا فِي الْأَمْرِ لَهُمْ بِهَذِهِ الْيَمِينِ قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ أَصْلًا.

L29253 The most astonishing thing is the ignorance of one who makes them swear by this, while they neither recognize it nor acknowledge it, nor has any Christian ever said: "Indeed, God revealed the Gospel to Jesus." Rather, the Gospel according to all Christians (without excluding a single one among them) consists of four histories: one was authored by Matthew, another by

وَأَعْجَبُ شَيْءٍ جَهْلُ مَنْ يُحَلِّفُهُمْ بِهَذَا، وَهُمْ لَا يَعْرِفُونَهُ وَلَا يُقِرُّونَ بِهِ، وَلَا قَالَ نَصْرَانِيٌّ قَطُّ: إنَّ اللَّهَ أَنْزَلَ الْإِنْجِيلَ عَلَى عِيسَى، وَإِنَّمَا الْإِنْجِيلُ عِنْدَ جَمِيعِ النَّصَارَى - لَا نُحَاشِي

[13] **Qur'an references (L29246):** Qur'an 59:23 (Al-Hashr).

John - both being disciples in their view - while the remaining two were authored by others.

مِنْهُمْ أَحَدًا - أَرْبَعَةُ تَوَارِيخَ -: أَلَّفَ أَحَدَهَا: مَتَّى - وَأَلَّفَ الْآخَرَ: يُوحَنَّا - وَهُمَا عِنْدَهُمْ حَوَارِيَّانِ.

L29254 And the third was authored by Marcos, and the fourth by Luke. They were disciples of some of the apostles according to all Christians on the face of the earth.

وَأَلَّفَ الثَّالِثَ: مُرْقُسُ - وَأَلَّفَ الرَّابِعَ: لُوقَا، وَهُمَا تِلْمِيذَانِ لِبَعْضِ الْحَوَارِيِّينَ عِنْدَ كُلِّ نَصْرَانِيٍّ عَلَى ظَهْرِ الْأَرْضِ.

L29255 They do not differ that its composition took place over years since the ascension of Jesus (peace be upon him).

وَلَا يَخْتَلِفُونَ: أَنَّ تَأْلِيفَهَا كَانَ عَلَى سِنِينَ مِنْ رَفْعِ عِيسَى - عَلَيْهِ السَّلَامُ -.

L29256 If they say, “We have made them swear by what is the truth,” we say: “Then make them swear by the Qur’an, for it is the truth.”

فَإِنْ قَالُوا: حَلَّفْنَاهُمْ بِمَا هُوَ الْحَقُّ قُلْنَا: فَحَلِّفُوهُمْ " بِالْقُرْآنِ " فَهُوَ حَقٌّ.

L29257 Then if they said: “They do not admit to it.”

فَإِنْ قَالُوا: هُمْ لَا يُقِرُّونَ بِهِ.

L29258 We said: They do not acknowledge that Allah, the Exalted, sent down the Gospel to Jesus (peace be upon him), nor do they acknowledge any distinction.

قُلْنَا: وَهُمْ لَا يُقِرُّونَ بِأَنَّ الْإِنْجِيلَ أَنْزَلَهُ اللَّهُ تَعَالَى عَلَى عِيسَى - عَلَيْهِ السَّلَامُ - وَلَا فَرْقَ.

L29259 As for their adjuring the Jews by “Allah who revealed the Torah to Moses,” they justified this through two authentic reports—one narrated via Al-Bara: “A lashed, soot-covered Jew passed by him (the Messenger of Allah, peace be upon him and his family), whereupon he summoned one of their scholars and said: ’I solemnly ask you by Allah who revealed the Torah to Moses—do you find this to be the prescribed punishment for the adulterer in your book?’ He replied: ’No. Had you not adjured me by this oath, I would not have informed you about the hadd of stoning.’”[14]

وَأَمَّا تَحْلِيفُهُمْ الْيَهُودَ " بِاللَّهِ الَّذِي أَنْزَلَ التَّوْرَاةَ عَلَى مُوسَى " فَإِنَّهُمْ مَوَّهُوا فِي ذَلِكَ بِالْخَبَرَيْنِ الصَّحِيحَيْنِ -: أَحَدُهُمَا: مِنْ طَرِيقِ الْبَرَاءِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَرَّ عَلَيْهِ يَهُودِيٌّ مُحَمَّمٌ مَجْلُودٌ، فَدَعَا رَجُلًا مِنْ عُلَمَائِهِمْ فَقَالَ: أَنْشُدُكَ بِاللَّهِ الَّذِي أَنْزَلَ التَّوْرَاةَ عَلَى مُوسَى أَهَكَذَا تَجِدُونَ حَدَّ الزَّانِي فِي كِتَابِكُمْ؟ قَالَ: لَا، وَلَوْلَا أَنَّكَ أَنْشَدْتَنِي بِهَذَا مَا أَخْبَرْتُكَ بِحَدِّ الرَّجْمِ» .

L29260–29261 Another narration is through the chain of Abu Hurairah: “The Messenger of Allah—peace and blessings be upon him and his family—said to the Jewish man: ’I adjure you by Allah who revealed the Torah to Moses, what do you find in the Torah as the punishment for a muḥṣan [a lawfully married person who has consummated marriage] who commits adultery?’ They replied: ’He

وَالْآخَرُ: مِنْ طَرِيقِ أَبِي هُرَيْرَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لِلْيَهُودِيِّ أَنْشُدُكُمْ بِاللَّهِ الَّذِي أَنْزَلَ التَّوْرَاةَ عَلَى مُوسَى مَا تَجِدُونَ فِي التَّوْرَاةِ عَلَى مَنْ زَنَى إذَا أَحْصَنَ قَالُوا: يُحَمَّمُ وَيُجَبَّهُ، وَشَابٌّ مِنْهُمْ سَكَتَ -» وَذَكَرَ الْحَدِيثَ.

[14] **Hadith references (L29259):** Sahih Muslim 1700a.

is blackened and struck on the forehead,' while a young man among them remained silent." And he mentioned the hadith.[15]

L29262 Abu Muhammad said: "This provides no proof for their argument, because this swearing of an oath did not occur during litigation, but rather during a solemn appeal. We do not prevent the appellant from invoking whatever he wishes of glorifying Allah—the Almighty and Majestic."

L29263 And there is not in both of them that the Messenger of Allah—peace be upon him and his family—commanded an oath to be administered thus. Therefore, whoever enforced this in the administration of oaths would be assuming the role of a legislator without Allah the Exalted's permission.

L29264 As for Mālik's statement that both the Muslim and the non-Muslim are to be made to swear "By Allah, there is no deity except Him," they based this on a report we narrated through the chain of Abū Dāwūd: Musaddad narrated to us, from Abū al-Ahwas, from ʿAṭāʾ ibn al-Sāʾib, from Abū Yaḥyā, from Ibn ʿAbbās: "The Prophet—peace be upon him and his family and grant him peace—said to a man whom he compelled to take an oath: 'Swear: By Allah, there is no deity except Him, that nothing of his is in your possession.'"[16]

L29265 Abu Muhammad said: This is a rejected ḥadīth for two reasons—the first: that it is narrated by Abū Yaḥyā, known as Miṣdaʿ the Lame—a discredited narrator whose Achilles tendons were severed for Shiʿism.

L29266 The second [point] is that Abu al-Ahwas only heard from 'Ata' ibn al-Sa'ib after the latter's mental confusion. Those who heard from 'Ata' before his mental decline were Sufyan, Shu'bah, Hammad ibn Zayd, and the well-known senior scholars.

L29267 It has been narrated to us through the chain of Waki' from Sufyan al-Thawri from 'Ata' ibn al-Sa'ib from Abu Yahya from Ibn 'Abbas, who said: "Two men came disputing to the Messenger of Allah (peace and blessings be upon him and his family). He said to the claimant: 'Present your evidence,' but he did

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ هَذَا التَّحْلِيفَ لَمْ يَكُنْ فِي خُصُومَةٍ، وَإِنَّمَا كَانَ فِي مُنَاشَدَةٍ، وَنَحْنُ لَا نَمْنَعُ الْمُنَاشِدَ أَنْ يَنْشُدَ بِمَا شَاءَ مِنْ تَعْظِيمِ اللَّهِ عَزَّ وَجَلَّ.

وَلَيْسَ فِيهِمَا: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَمَرَ أَنْ يُحَلَّفَ هَكَذَا فَكَانَ مَنْ أَلْزَمَ ذَلِكَ فِي التَّحْلِيفِ شَارِعًا مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى.

وَأَمَّا قَوْلُ مَالِكٍ يُسْتَحْلَفُ الْمُسْلِمُ وَالْكَافِرُ " بِاللَّهِ الَّذِي لَا إِلَهَ إِلَّا هُوَ " فَإِنَّهُمْ عَوَّلُوا فِي ذَلِكَ عَلَى خَبَرٍ: رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا مُسَدَّدٌ نا أَبُو الْأَحْوَصِ نا عَطَاءُ بْنُ السَّائِبِ عَنْ أَبِي يَحْيَى عَنْ ابْنِ عَبَّاسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لِرَجُلٍ أَحْلَفَهُ احْلِفْ: بِاللَّهِ الَّذِي لَا إِلَهَ إِلَّا هُوَ مَا لَهُ عِنْدَكَ شَيْءٌ» .

قَالَ أَبُو مُحَمَّد: هَذَا حَدِيثٌ سَاقِطٌ لِوَجْهَيْنِ -: أَحَدُهُمَا: أَنَّهُ عَنْ أَبِي يَحْيَى - وَهُوَ مِصْدَعٌ الْأَعْرَجُ - وَهُوَ مُجَرَّحٌ قُطِعَتْ عُرْقُوبَاهُ فِي التَّشَيُّعِ.

وَالثَّانِي - أَنَّ أَبَا الْأَحْوَصِ لَمْ يَسْمَعْ مِنْ عَطَاءِ بْنِ السَّائِبِ إلَّا بَعْدَ اخْتِلَاطِ عَطَاءٍ، وَإِنَّمَا سَمِعَ مِنْ عَطَاءٍ قَبْلَ اخْتِلَاطِهِ: سُفْيَانُ، وَشُعْبَةُ، وَحَمَّادُ بْنُ زَيْدٍ، وَالْأَكَابِرُ الْمَعْرُوفُونَ.

وَقَدْ رُوِّينَا هَذَا الْخَبَرَ مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي يَحْيَى عَنْ ابْنِ عَبَّاسٍ " قَالَ: «جَاءَ رَجُلَانِ يَخْتَصِمَانِ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ لِلْمُدَّعِي: أَقِمْ الْبَيِّنَةَ، فَلَمْ يُقِمْ، وَقَالَ لِلْآخَرِ: احْلِفْ، فَحَلَّفَ -

[15] **Hadith references (L29261):** Sunan Abi Dawud 4450; Sunan Abi Dawud 3624.

[16] **Qur'an references (L29264):** Qur'an 20:98 (Taha); Qur'an 59:22 (Al-Hashr); Qur'an 59:23 (Al-Hashr).

not present it. Then he said to the other: 'Swear an oath,' so he swore by Allah, the One who there is no deity except Him. The Prophet (peace and blessings be upon him and his family) said to him: 'Give him his right, and the oath you swore by "There is no deity except Him" will atone for what you did.'"

بِاللَّهِ الَّذِي لَا إِلَهَ إِلَّا هُوَ - فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: ادْفَعْ حَقَّهُ وَسَتُكَفِّرُ عَنْكَ لَا إِلَهَ إِلَّا هُوَ مَا صَنَعْتَ» .

L29268 Sufyan—whose hearing from ʿAṭāʾ is authenticated—states that the man swore in that manner because the Messenger of Allah—peace and blessings be upon him and his family—commanded him to swear thus. In any case, Abu Yaḥyā is of no account. How astonishing that even if it were authentic, it would contradict the doctrine of Mālik regarding a judge ruling based on his own knowledge without evidence.

فَسُفْيَانُ الَّذِي صَحَّ سَمَاعُهُ مِنْ عَطَاءٍ يَذْكُرُ أَنَّ الرَّجُلَ حَلَفَ كَذَلِكَ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَمَرَهُ أَنْ يَحْلِفَ كَذَلِكَ، وَعَلَى كُلِّ حَالٍ فَأَبُو يَحْيَى لَا شَيْءَ ثُمَّ الْعَجَبُ أَنَّهُ لَوْ صَحَّ لَكَانَ خِلَافًا لِمَذْهَبِ مَالِكٍ فِي حُكْمِ الْحَاكِمِ بِعِلْمِهِ بِلَا بَيِّنَةٍ.

L29269–29270 Moreover, it is a rejected, fabricated, and corrupt narration, for it constitutes falsehood that is utterly impossible—that the Messenger of Allah (may Allah bless him and his family and grant him peace) would command him to swear a false oath while he (peace and blessings be upon him) knowingly recognizes him as a liar, thereby commanding him to lie. Allah is far exalted above such a thing!

ثُمَّ هُوَ حَدِيثٌ مُنْكَرٌ مَكْذُوبٌ فَاسِدٌ، لِأَنَّ مِنْ الْبَاطِلِ الْمُحَالِ أَنْ يَكُونَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَأْمُرُهُ بِالْيَمِينِ الْكَاذِبَةِ، وَهُوَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - يَدْرِي أَنَّهُ كَاذِبٌ فَيَأْمُرُهُ بِالْكَذِبِ، حَاشَ لِلَّهِ مِنْ هَذَا.

L29271 And according to another report: narrated via Shuʿbah from ʿAṭāʾ ibn al-Sāʾib from Abu al-Bakhtariyy from ʿAbīdah al-Salmānī from Ibn al-Zubayr from the Prophet—may Allah bless him and his family and grant him peace—that a man swore falsely by Allah, besides whom there is no deity, and he was forgiven.[17]

وَعَلَى خَبَرٍ آخَرَ: مِنْ طَرِيقِ شُعْبَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي الْبَخْتَرِيِّ عَنْ عَبِيدَةَ السَّلْمَانِيِّ عَنْ ابْنِ الزُّبَيْرِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنَّ رَجُلًا حَلَفَ بِاللَّهِ الَّذِي لَا إِلَهَ إِلَّا هُوَ كَاذِبًا فَغُفِرَ لَهُ» .

L29272 Abū Muḥammad said: This contains no valid proof for them, as there exists neither an explicit text nor any evidence whatsoever indicating the obligation of swearing by this in matters of rights. Rather, it contradicts their assertion that they added this for emphasis and veneration. According to this report, it is merely an additional leniency that grants forgiveness for the liar in his oath, thereby facilitating for transgressors to swear falsely by it.

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَيْسَ فِيهِ نَصٌّ، وَلَا دَلِيلٌ عَلَى وُجُوبِ الْحَلِفِ بِذَلِكَ فِي الْحُقُوقِ أَصْلًا، بَلْ هُوَ ضِدُّ قَوْلِهِمْ: إنَّهُمْ زَادُوا ذَلِكَ تَأْكِيدًا وَتَعْظِيمًا فَعَلَى هَذَا الْخَبَرِ مَا هِيَ إلَّا زِيَادَةُ تَخْفِيفٍ مُوجِبَةٌ لِلْمَغْفِرَةِ لِلْكَاذِبِ فِي يَمِينِهِ، مُسَهِّلَةٌ عَلَى الْفُسَّاقِ أَنْ يَحْلِفُوا بِهَا كَاذِبِينَ.

[17] **Qur'an references (L29271):** Qur'an 20:98 (Taha); Qur'an 59:22 (Al-Hashr); Qur'an 59:23 (Al-Hashr).

وَنَحْنُ لَا نُنْكِرُ أَنْ يَكُونَ تَعْظِيمُ اللَّهِ تَعَالَى وَالتَّوْحِيدُ لَهُ يُوَازِنُ مَا شَاءَ اللَّهُ أَنْ يُوَازِنَهُ مِنْ الْمَعَاصِي فَيُذْهِبُهَا.

L29273 We do not deny that glorifying Allah the Exalted and affirming His oneness counterbalances whatever sins Allah wills to counterbalance, so He eradicates them.

قَالَ تَعَالَى: {إِنَّ الْحَسَنَاتِ يُذْهِبْنَ السَّيِّئَاتِ} [هود: ١١٤] .

L29274 He, the Exalted, said: "Indeed, good deeds remove the evil deeds" [Surah Hud 11:114].[18]

وَذَكَرُوا حَدِيثًا آخَرَ: رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ حَفْصِ بْنِ عَبْدِ اللَّهِ حَدَّثَنِي أَبِي نا إبْرَاهِيمُ عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ صَفْوَانَ بْنِ سُلَيْمٍ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي هُرَيْرَةَ قَالَ «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَأَى عِيسَى ابْنُ مَرْيَمَ رَجُلًا يَسْرِقُ فَقَالَ لَهُ أَسَرَقْتَ فَقَالَ: لَا، وَاَللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ فَقَالَ عِيسَى - عَلَيْهِ السَّلَامُ -: آمَنْتُ بِاَللَّهِ وَكَذَّبْتُ بَصَرِي» .

L29275 They mentioned another narration: We have reported it via the chain of Ahmad ibn Shuʿayb—Ahmad ibn Hafs ibn ʿAbdullāh reported: My father narrated to me, from Ibrāhīm, who informed us from Mūsā ibn ʿUqbah, from Ṣafwān ibn Sulaym, from ʿAṭāʾ ibn Yasār, from Abū Hurayrah, who said: "The Messenger of Allah—peace and blessings be upon him and his family—said: 'ʿĪsā ibn Maryam saw a man stealing and said to him: "Did you steal¿' He replied: "No, by Allah—the One besides whom there is no deity¡' Then ʿĪsā—peace be upon him—said: "I have believed in Allah and disbelieved my own sight.'"'"[19]

قَالَ أَبُو مُحَمَّدٍ: وَحَتَّى لَوْ صَحَّ هَذَا، فَلَيْسَ فِيهِ أَنَّ عِيسَى - عَلَيْهِ السَّلَامُ - أَمَرَهُ بِأَنْ يَحْلِفَ كَذَلِكَ فِي خُصُومَةٍ - ثُمَّ لَوْ كَانَ ذَلِكَ فِيهِ فَشَرِيعَةُ عِيسَى - عَلَيْهِ السَّلَامُ - لَا تَلْزَمُنَا، إنَّمَا يَلْزَمُنَا مَا أَتَانَا بِهِ مُحَمَّدٌ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L29276 Abū Muḥammad said: Even if this were valid, there is no indication in it that Jesus—peace be upon him—commanded him to swear thus in a dispute. Moreover, even if that were present in it, the divine law of Jesus—peace be upon him—would not bind us. Only what Muḥammad—may Allah bless him, his family, and grant him peace—brought to us binds us.

وَذَكَرُوا الْخَبَرَ الَّذِي رُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ هِشَامٍ الْحَرَّانِيُّ نا مُحَمَّدُ بْنُ مَسْلَمَةَ عَنْ أَبِي عَبْدِ الرَّحِيمِ عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ عَنْ أَبِي إسْحَاقَ عَنْ عَمْرِو بْنِ مَيْمُونٍ الْأَوْدِيِّ عَنْ ابْنِ مَسْعُودٍ فَذَكَرَ «أَنَّهُ قَتَلَ أَبَا جَهْلٍ يَوْمَ بَدْرٍ، قَالَ: ثُمَّ أَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَخْبَرْتُهُ فَقَالَ: آللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ، قُلْتُ: آللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ، قَالَ: آللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ؟ قُلْتُ: آللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ قَالَ: انْطَلِقْ فَاسْتَثْبِتْ؟ فَانْطَلَقْتُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إنْ جَاءَكُمْ يَسْعَى مِثْلَ الطَّيْرِ يَضْحَكُ فَقَدْ صَدَقَ، فَانْطَلَقْتُ فَاسْتَثْبَتُّ ثُمَّ جِئْتُ وَأَنَا أَسْعَى

L29277–29279 They mentioned the report that we have also narrated through the chain of Aḥmad ibn Shuʿayb — ʿAmr ibn Hishām al-Ḥarrānī — Muḥammad ibn Maslamah — Abū ʿAbd al-Raḥīm — Zayd ibn Abī Unaysah — Abū Isḥāq — ʿAmr ibn Maymūn al-Awdī — Ibn Masʿūd, who mentioned that he killed Abū Jahl on the day of Badr. He said, "Then I came to the Messenger of Allah — may Allah bless him and his family and grant him peace — and informed him. He said, 'By Allah, besides whom there is no deity.' I said, 'By Allah.'" The One besides whom there is no deity. He said: "By Allah, besides whom there is no deity?" I responded: "By Allah, besides whom there is no deity." He said: "Go and verify?" I departed, and the Messenger of Allah (peace

[18] **Qur'an references (L29274):** Qur'an 11:114 (Hud).

[19] **Qur'an references (L29275):** Qur'an 20:98 (Taha); Qur'an 59:22 (Al-Hashr); Qur'an 59:23 (Al-Hashr).

be upon him and his family) said: “If he comes to you hastening like a bird while laughing, he has spoken truthfully.” I went to verify, then returned hastening like a bird, laughing, and informed him. He said: “Go and show me the place.” I went with him and showed him the place. He praised Allah and said: “This is the Pharaoh of this nation.”[20]

مِثْلَ الطَّيْرِ أَضْحَكُ فَأَخْبَرْتُهُ فَقَالَ: انْطَلِقْ فَأَرِنِي مَكَانَهُ فَانْطَلَقْتُ مَعَهُ فَأَرَيْتُهُ مَكَانَهُ؟ فَحَمِدَ اللَّهَ وَقَالَ: هَذَا فِرْعَوْنُ هَذِهِ الْأُمَّةِ» .

L29280 Ali said: “This is a narrative to which they have no valid connection whatsoever, for several reasons—among them, that its chain of transmission is disputed. The authentic account is that none other than the two sons of Afraʾ killed Abū Jahl.”

قَالَ عَلِيٌّ: وَهَذَا خَبَرٌ لَا مُتَعَلَّقَ لَهُمْ بِهِ أَصْلًا، لِوُجُوهٍ -: مِنْهَا - أَنَّهُ إسْنَادٌ مُتَكَلَّمٌ فِيهِ، وَالصَّحِيحُ: أَنَّهُ إنَّمَا قَتَلَ أَبَا جَهْلٍ ابْنَا عَفْرَاءَ.

L29281 Furthermore, it was not a dispute, but rather an appeal.

ثُمَّ إنَّهَا لَمْ تَكُنْ خُصُومَةً، إنَّمَا كَانَتْ مُنَاشَدَةً.

L29282 Then, if the Prophet’s oath to Ibn Mas‘ud—may Allah bless him and his household and grant him peace—necessitates that swearing in matters of rights must only be in that manner, his repetition of the oath—peace be upon him—would require reiterating the oath upon the swearer in such cases. Since this is invalid, your reliance upon it is thereby invalidated.

ثُمَّ إنْ كَانَتْ مُنَاشَدَةُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِابْنِ مَسْعُودٍ تُوجِبُ أَنْ لَا يَكُونَ التَّحْلِيفُ فِي الْحُقُوقِ إلَّا كَذَلِكَ، فَإِنَّ تَكْرَارَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مُنَاشَدَتَهُ يُوجِبُ أَنْ تَتَكَرَّرَ الْيَمِينُ عَلَى الْحَالِفِ فِي الْحُقُوقِ، وَهَذَا بَاطِلٌ - فَبَطَلَ مَا تَعَلَّقْتُمْ بِهِ.

L29283 Abū Muḥammad said: Thus, they were left with no valid justification whatsoever for stipulating this additional requirement in oath-taking.

قَالَ أَبُو مُحَمَّدٍ: فَلَمْ يَبْقَ لَهُمْ حُجَّةٌ أَصْلًا فِي إيجَابِهِمْ هَذِهِ الزِّيَادَةَ فِي التَّحْلِيفِ.

L29284 If they say, “It is an increase of good.”

فَإِنْ قَالُوا: هِيَ زِيَادَةُ خَيْرٍ.

L29285 We said: Yes, so oblige him to give charity and to pray four *rak’ahs*, for all of that is an increase in goodness—and it is not permissible for anyone to obligate another to perform a specific act of remembrance or righteous deed except through texts from the Qur’an or Sunnah that explicitly mandate that obligation; otherwise, the one who imposes what has no textual mandate in its obligation is disobedient to Allah, the Exalted and Glorious, and is transgressing His boundaries.

قُلْنَا: نَعَمْ فَأَلْزِمُوهُ الصَّدَقَةَ، وَأَنْ يُصَلِّيَ أَرْبَعَ رَكَعَاتٍ، فَكُلُّ ذَلِكَ زِيَادَةُ خَيْرٍ - وَلَا يَحِلُّ لِأَحَدٍ أَنْ يُلْزِمَ آخَرَ فِعْلَ شَيْءٍ مُعَيَّنٍ مِنْ الذِّكْرِ وَالْبِرِّ إلَّا بِقُرْآنٍ أَوْ سُنَّةٍ يُوجِبُ نَصُّهُمَا ذَلِكَ، وَإِلَّا فَالْمُوجِبُ مَا لَا نَصَّ فِي إيجَابِهِ عَاصٍ لِلَّهِ عَزَّ وَجَلَّ مُتَعَدٍّ لِحُدُودِهِ.

L29286 Abu Muhammad said: It is obligatory for us to examine what supports the validity of our position from the texts—so we found Allah, the Mighty and

قَالَ أَبُو مُحَمَّدٍ: وَوَجَبَ أَنْ نَنْظُرَ فِيمَا يَشْهَدُ بِصِحَّةِ قَوْلِنَا مِنْ النُّصُوصِ -: فَوَجَدْنَا اللَّهَ عَزَّ وَجَلَّ يَقُولُ: {تَحْبِسُونَهُمَا مِنْ بَعْدِ الصَّلَاةِ فَيُقْسِمَانِ بِاللَّهِ إنِ ارْتَبْتُمْ} [المائدة: ١٠٦] .

[20] **Qur’an references (L29277):** Qur’an 20:98 (Taha); Qur’an 59:22 (Al-Hashr); Qur’an 59:23 (Al-Hashr).

Majestic, saying: “Detain them both after the prayer; then they shall swear by Allah if you are in doubt” [Al-Ma’idah: 106].[21]

L29287 And He, the Exalted, said: “Then they both swear by Allah: Our testimony is more rightful than theirs.” [Al-Ma’idah: 107][22]

L29288 And He, the Exalted, said: {So the testimony of one of them shall be four testimonies by Allah} [An-Nur: 6].[23]

L29289 And He, the Exalted, said: “That she testifies four testimonies by Allah averts the punishment from her” [An-Nur: 8].[24]

L29290 And Allah, the Most High, said: “They swore by Allah with the strongest of their oaths” [Al-An‘am 109].[25]

L29291 And He, the Most High, said: “Say, ’Yes, by my Lord!’” [Jonah 53].[26]

L29292–29293 Allah, the Exalted, has never commanded anyone to add anything in the act of swearing by Him beyond [saying] “by Allah.” Therefore, it is not permissible for anyone to add anything beyond that, thereby making such an addition obligatory.

L29294 Yunus ibn Abdullah narrated to us: Abu Bakr ibn Ahmad ibn Khalid narrated to us: Abi Ali ibn Abd al-Aziz narrated to us: Abu Ubayd narrated to us: Ismail ibn Ja’far—al-Muqri (the Quran reciter)—narrated to us: Abdullah ibn Dinar narrated from Ibn Umar, who said: “The Messenger of Allah—peace and blessings be upon him and his family—said: ’Whoever takes an oath, let him not swear except by Allah.’”

L29295 This is a clear text invalidating their additions and their imposition thereof as obligatory, contrary to what Allah, the Exalted, has commanded in the Qur’an and the Sunnah.

وَقَالَ تَعَالَى: {فَيُقْسِمَانِ بِاللَّهِ لَشَهَادَتُنَا أَحَقُّ مِنْ شَهَادَتِهِمَا} [المائدة: ١٠٧] .

وَقَالَ تَعَالَى: {فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ} [النور: ٦] .

وَقَالَ تَعَالَى: {وَيَدْرَأُ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ} [النور: ٨] .

وَقَالَ تَعَالَى: {وَأَقْسَمُوا بِاللَّهِ جَهْدَ أَيْمَانِهِمْ} [الأنعام: ١٠٩] .

وَقَالَ تَعَالَى: {قُلْ إِي وَرَبِّي} [يونس: ٥٣] .

فَلَمْ يَأْمُرْ اللَّهُ تَعَالَى قَطُّ أَحَدًا بِأَنْ يَزِيدَ فِي الْحَلِفِ عَلَى " بِاللَّهِ " شَيْئًا، فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَزِيدَ عَلَى ذَلِكَ شَيْئًا مُوجِبًا لِتِلْكَ الزِّيَادَةِ.

حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَبُو بَكْرِ بْنُ أَحْمَدَ بْنِ خَالِدٍ نا أَبِي عَلِيِّ بْنِ عَبْدِ الْعَزِيزِ نا أَبُو عُبَيْدٍ نا إِسْمَاعِيلُ بْنُ جَعْفَرٍ - هُوَ الْمُقْرِي - نا عَبْدُ اللَّهِ بْنُ دِينَارٍ عَنْ ابْنِ عُمَرَ قَالَ " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ كَانَ حَالِفًا فَلَا يَحْلِفْ إِلَّا بِاللَّهِ» .

وَهَذَا نَصٌّ جَلِيٌّ عَلَى إبْطَالِ زِيَادَتِهِمْ وَإِيجَابِهِمْ مِنْ ذَلِكَ خِلَافَ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ فِي الْقُرْآنِ وَالسُّنَّةِ -.

وَصَحَّ: «أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كَانَ يَحْلِفُ: لَا وَمُقَلِّبِ الْقُلُوبِ» .

[21] **Qur’an references (L29286):** Qur’an 5:106 (Al-Ma’idah).
[22] **Qur’an references (L29287):** Qur’an 5:107 (Al-Ma’idah).
[23] **Qur’an references (L29288):** Qur’an 24:6 (An-Nur).
[24] **Qur’an references (L29289):** Qur’an 24:8 (An-Nur).
[25] **Qur’an references (L29290):** Qur’an 6:109 (Al-An’am).
[26] **Qur’an references (L29291):** Qur’an 10:53 (Yunus).

فَصَحَّ: أَنَّ أَسْمَاءَ اللَّهِ تَعَالَى كُلَّهَا يَحْلِفُ الْحَالِفُ بِأَيِّهَا شَاءَ.

قَالَ أَبُو مُحَمَّد: وَهَذَا مِمَّا خَالَفُوا فِيهِ عُثْمَانَ بْنَ عَفَّانَ، وَزَيْدَ بْنَ ثَابِتٍ مِمَّا صَحَّ عَنْهُمَا، وَمَا رُوِيَ عَنْ أَبِي مُوسَى، وَعَلِيٍّ، وَلَا يُعْرَفُ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمْ - مُخَالِفٌ فِي ذَلِكَ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَمَا وَجَدْنَا قَوْلَ أَبِي حَنِيفَةَ فِي ذَلِكَ عَنْ أَحَدٍ قَبْلَهُ.

وَأَمَّا قَوْلُ مَالِكٍ: فَعَنْ شُرَيْحٍ وَحْدَهُ كَمَا ذَكَرْنَا.

وَأَمَّا قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ: مِنْ حَيْثُ يَحْلِفُ النَّاسُ، فَقَوْلٌ لَمْ يُوجِبْهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَقَلَّدُوا فِيهَا مَرْوَانَ.

وَخَالَفُوا: زَيْدَ بْنَ ثَابِتٍ، وَابْنَ عُمَرَ، وَهَذَا عَجَبٌ جِدًّا.

وَخَالَفُوا: عُمَرَ بْنَ الْخَطَّابِ فِي جَلْبِهِ رَجُلًا مِنْ الْعِرَاقِ لِيَحْلِفَ بِمَكَّةَ بِحَضْرَةِ الصَّحَابَةِ بِالْعِرَاقِ، وَالْحِجَازِ، وَمُعَاوِيَةَ فِي جَلْبِهِ مِنْ الْمَدِينَةِ إلَى مَكَّةَ بِحَضْرَةِ الصَّحَابَةِ - وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا وَافَقَ أَهْوَاءَهُمْ - وَمَا نَعْلَمُ لِقَوْلِهِمْ سَلَفًا مِنْ الصَّحَابَةِ تَعَلَّقُوا بِهِ، إلَّا أَنَّهُمْ شَغَبُوا بِأَخْبَارٍ نَذْكُرُهَا - إنْ شَاءَ اللَّهُ تَعَالَى.

L29296 And it is authenticated that he—peace and blessings be upon him—would swear: “No, by Him who turns the hearts!”

L29297 It is valid for the swearer to swear by all the names of Allah the Exalted, as he chooses.

L29298 Abu Muhammad said: This is among the matters in which they opposed Uthman ibn Affan and Zayd ibn Thabit regarding what is authentically reported from them and what has been narrated from Abu Musa and Ali. No opponent among the Companions—may Allah the Exalted be pleased with them—is known to have opposed them in this matter at all. And success comes from Allah, the Exalted.

L29299 And we have not found Abu Hanifa’s statement on that transmitted from anyone before him.

L29300 As for Mālik’s opinion, it is from Shurayḥ alone, as we have mentioned.

L29301 As for the statement of Mālik and al-Shāfiʿī concerning the place where people swear oaths, it is a position not established by the Quran, the Sunnah, nor even an unsound narration, and they blindly followed Marwan in this matter.

L29302 They differed from Zayd ibn Thābit and Ibn ʿUmar, and this is a matter of profound astonishment.

L29303 They opposed ʿUmar ibn al-Khaṭṭāb regarding his bringing a man from Iraq to swear an oath in Mecca in the presence of the Companions in Iraq and the Hijaz, and Muʿāwiyah regarding his bringing someone from Medina to Mecca in the presence of the Companions—even though they revere such actions when these align with their desires. We know of no predecessor from the Companions to support their position, except that they clamored with reports we shall mention—if Allah the Exalted wills.

L29304–29306 It was narrated to us via the route of Mālik from Hāshim ibn Hāshim ibn ʿUtbah ibn Abī Waqqāṣ from ʿAbdullāh ibn Niṣṭās. Jabir ibn Abdullah reported that the Messenger of Allah—peace and blessings be upon him—

said: “Whoever swears a sinful oath near this pulpit of mine has taken his seat in the Fire.”

رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ هَاشِمِ بْنِ هَاشِمِ بْنِ عُتْبَةَ بْنِ أَبِي وَقَّاصٍ عَنْ عَبْدِ اللَّهِ بْنِ نِسْطَاسٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ حَلَفَ عِنْدَ مِنْبَرِي هَذَا بِيَمِينٍ آثِمَةٍ تَبَوَّأَ مَقْعَدَهُ مِنْ النَّارِ» .

L29307 Through the chain of Aḥmad ibn Shuʿayb: From Ibrāhīm ibn Yaʿqūb, from Ibn Abī Maryam, from ʿAbdullāh ibn Munīb ibn ʿAbdillāh ibn Abī Umāmah ibn Thaʿlabah: My father informed me from ʿAbdullāh ibn ʿAṭiyyah, from ʿAbdullāh ibn Unays, from Abū Umāmah ibn Thaʿlabah, that the Messenger of Allah—peace and blessings be upon him and his family—said: “Whoever swears a false oath by this pulpit of mine to unlawfully seize a Muslim person’s property by it, upon him shall be the curse of Allah, the angels, and all humankind. Allah the Exalted will accept from him neither compensation nor ransom.”[27]

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي إبْرَاهِيمُ بْنُ يَعْقُوبَ نا ابْنُ أَبِي مَرْيَمَ نا عَبْدُ اللَّهِ بْنُ مُنِيبِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي أُمَامَةَ بْنِ ثَعْلَبَةَ أَخْبَرَنِي أَبِي عَنْ عَبْدِ اللَّهِ بْنِ عَطِيَّةَ عَنْ عَبْدِ اللَّهِ بْنِ أُنَيْسٍ نا أَبُو أُمَامَةَ بْنُ ثَعْلَبَةَ، أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «مَنْ حَلَفَ عِنْدَ مِنْبَرِي هَذَا بِيَمِينٍ كَاذِبَةٍ يَسْتَحِلُّ بِهَا مَالَ امْرِئٍ مُسْلِمٍ فَعَلَيْهِ لَعْنَةُ اللَّهِ وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ لَا يَقْبَلُ اللَّهُ تَعَالَى مِنْهُ عَدْلًا وَلَا صَرْفًا» .

L29308 From the path of Ibn Waḍḍāḥ, from Abū Bakr ibn Abī Shaybah, narrated by Abū al-Aḥwaṣ from Simāk from ʿAlqamah ibn Wāʾil ibn Ḥujr from his father: “Two men disputed over land before the Messenger of Allah (peace be upon him). The Messenger of Allah (peace be upon him and his family) said to the claimant: ’Do you have evidence?’ He replied: ’No.’ He said: ’Then you may require his oath.’ The man said: ’O Messenger of Allah, he is a transgressor who does not care what he swears; he refrains from nothing.’ The Messenger of Allah (peace be upon him and his family) said: ’You have no option against him except that.’ When he went to swear for him, the Messenger of Allah (peace be upon him and his family) said: ’By Allah! If he swears falsely to wrongfully seize wealth, he will surely meet Allah with Him turning away from him.’”

وَمِنْ طَرِيقِ ابْنِ وَضَّاحٍ عَنْ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا أَبُو الْأَحْوَصِ عَنْ سِمَاكٍ عَنْ عَلْقَمَةَ بْنِ وَائِلِ بْنِ حُجْرٍ عَنْ أَبِيهِ، «أَنَّ رَجُلَيْنِ اخْتَصَمَا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَرْضٍ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لِلْمُدَّعِي: أَلَكَ بَيِّنَةٌ قَالَ: لَا، قَالَ: فَلَكَ يَمِينُهُ. فَقَالَ: يَا رَسُولَ اللَّهِ إنَّهُ فَاجِرٌ لَيْسَ يُبَالِي مَا حَلَفَ لَيْسَ يَتَوَرَّعُ مِنْ شَيْءٍ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَيْسَ لَكَ مِنْهُ إلَّا ذَلِكَ قَالَ: فَانْطَلَقَ لِيَحْلِفَ لَهُ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَمَا وَاَللَّهِ لَئِنْ حَلَفَ عَلَى مَالِهِ لِيَأْكُلَهُ ظُلْمًا لَيَلْقَيَنَّ اللَّهَ وَهُوَ عَنْهُ مُعْرِضٌ» .

L29309 And through the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn Maʿmar narrated to us: Ḥibbān - he is Ibn Hilāl - narrated to us: Abū ʿAwānah narrated from ʿAbd al-Malik - he is Ibn ʿUmayr - from ʿAlqamah - he is Ibn Wāʾil - from Wāʾil ibn Ḥujr: “He heard the Prophet - may Allah’s peace and blessings be upon him and his family - say to a claimant regarding land:

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ مَعْمَرٍ نا حِبَّانُ - هُوَ ابْنُ هِلَالٍ - نا أَبُو عَوَانَةَ عَنْ عَبْدِ الْمَلِكِ - هُوَ ابْنُ عُمَيْرٍ - عَنْ عَلْقَمَةَ - هُوَ ابْنُ وَائِلٍ - عَنْ وَائِلِ بْنِ حُجْرٍ " أَنَّهُ «سَمِعَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ لِلْمُدَّعِي فِي أَرْضٍ: بَيِّنَتُكَ قَالَ: لَيْسَ

[27] **Qur’an references (L29307):** Qur’an 2:161 (Al-Baqarah); Qur’an 3:87 (Ali ’Imran).

'Present your evidence.' He said: 'I have none.' The Prophet said: 'Then his oath.' He said: 'Then he will take away my property.' The Prophet said: 'You have nothing but that.' When he stood to swear, the Messenger of Allah - may Allah's peace and blessings be upon him and his family - said: 'Whoever seizes land unjustly will meet Allah on the Day of Resurrection while He is angry with him.'"

L29310 Abū Muḥammad said: This covers all their objections—as for the narration of ʿAlqamah ibn Wāʾil: The transmitter of the word "he proceeded" is Simāk ibn Ḥarb—and he is weak, prone to influence—moreover, the narration does not state that he proceeded to the pulpit. It may instead mean he proceeded in his speech to take an oath. Nor does it contain any indication that the Messenger of Allāh—may Allāh bless him and his family and grant him peace—commanded him to proceed or to stand. There is no proof in the action of anyone unless the Messenger of Allāh—may Allāh bless him and his family and grant him peace—had commanded him to do so.

L29311–29312 As for the first two reports: they contain nothing but emphasizing the gravity of the oath at his pulpit—peace and blessings be upon him—and they do not indicate that he—peace and blessings be upon him—commanded that the defendant should not swear an oath except before him. We have not differed with them on this point.

L29313 If these two reports had necessitated that the defendant only swear an oath at his *minbar*—peace and blessings be upon him—then Mālik and al-Shāfiʿī would have contradicted them on two points. The first is that they administer oaths at his *minbar* only for a certain amount of property, not for lesser quantities. I wonder where they derived this, for these two reports contain no restriction to specific quantities in oath-taking at his *minbar*. Rather, they explicitly establish equal treatment between small and large amounts in this matter—as narrated to us by Ḥumām, who narrated from ʿAbd Allāh ibn Muḥammad ibn ʿAlī al-Bājī, who narrated from ʿAbd Allāh ibn Yūnus, who narrated from Baqī ibn Makhlad, who narrated from Abū Bakr ibn Abī Shaybah, who narrated from ʿAbd Allāh ibn Numayr, who narrated from Hāshim ibn Hāshim ibn ʿUtbah, who reported: ʿAbd Allāh ibn Nisṭās informed me that he heard Jābir ibn ʿAbd Allāh say: The Messenger of God—peace and

لِي، قَالَ: يَمِينُهُ، قَالَ: إِذًا يَذْهَبُ بِمَالِي قَالَ: لَيْسَ لَكَ إِلَّا ذَلِكَ، فَلَمَّا قَامَ لِيَحْلِفَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَنْ اقْتَطَعَ أَرْضًا ظَالِمًا لَقِيَ اللَّهَ يَوْمَ الْقِيَامَةِ وَهُوَ عَلَيْهِ غَضْبَانُ» .

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا شَغَبُوا بِهِ -: فَأَمَّا خَبَرُ عَلْقَمَةَ بْنِ وَائِلٍ: فَإِنَّ رَاوِيَ لَفْظَةِ " انْطَلَقَ ": سِمَاكُ بْنُ حَرْبٍ - وَهُوَ ضَعِيفٌ يَقْبَلُ التَّلْقِينَ - ثُمَّ لَيْسَ فِيهِ: أَنَّهُ انْطَلَقَ إلَى الْمِنْبَرِ، وَقَدْ يُرِيدُ انْطَلَقَ فِي كَلَامِهِ لِيَحْلِفَ، وَلَا فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَمَرَهُ بِالِانْطِلَاقِ، وَلَا بِالْقِيَامِ، وَلَا حُجَّةَ فِي فِعْلِ أَحَدٍ دُونَ أَنْ يَأْمُرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

وَأَمَّا الْخَبَرَانِ الْأَوَّلَانِ: فَلَيْسَ فِيهِمَا إلَّا تَعْظِيمُ الْيَمِينِ عِنْدَ مِنْبَرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَقَطْ، وَلَيْسَ فِيهِمَا: أَنَّهُ أَمَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنْ لَا يَحْلِفُ الْمَطْلُوبُ إلَّا عِنْدَهُ، وَنَحْنُ لَمْ نُخَالِفْهُمْ فِي هَذَا.

وَلَوْ كَانَ هَذَانِ الْخَبَرَانِ يُوجِبَانِ أَنْ لَا يَحْلِفَ الْمَطْلُوبُ إلَّا عِنْدَ مِنْبَرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَكَانَ مَالِكٌ، وَالشَّافِعِيُّ، قَدْ خَالَفَهَا فِي مَوْضِعَيْنِ -: أَحَدُهُمَا: أَنَّهُمَا لَا يُحَلِّفَانِ عِنْدَهُ إلَّا فِي مِقْدَارٍ مَا مِنْ الْمَالِ لَا فِي أَقَلَّ مِنْهُ، فَلَيْتَ شِعْرِي أَيْنَ وَجَدَا هَذَا؟ وَلَيْسَ فِي هَذَيْنِ الْخَبَرَيْنِ تَخْصِيصُ الْحَلِفِ عِنْدَهُ فِي عَدَدٍ دُونَ عَدَدٍ، بَلْ فِيهِ نَصُّ التَّسْوِيَةِ بَيْنَ الْقَلِيلِ وَالْكَثِيرِ فِي ذَلِكَ -: كَمَا حَدَّثَنَا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ نا هَاشِمُ بْنُ هَاشِمِ بْنِ عُتْبَةَ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ نِسْطَاسٍ: أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: قَالَ

blessings be upon him—said: “No one swears a sinful oath at this *minbar* of mine, even concerning a green *miswak* (a tooth-stick), except that they will take their seat in the Fire.”[28]

رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لَا يَحْلِفُ أَحَدٌ عِنْدَ مِنْبَرِي هَذَا عَلَى يَمِينٍ آثِمَةٍ وَلَوْ عَلَى سِوَاكٍ أَخْضَرَ إِلَّا تَبَوَّأَ مَقْعَدَهُ مِنْ النَّارِ» .

L29314 Thus, their disagreement became apparent concerning this very report.

فَظَهَرَ خِلَافُهُمْ لِهَذَا الْخَبَرِ نَفْسِهِ.

L29315 The other position is that they both administer oaths to those who are distant in other mosques besides it, thereby contradicting this ḥadīth as well. If it were permissible not to administer an oath to someone distant from the judge, it would necessarily be permissible for one who is near as well, for there is absolutely no distinction. There is no defined measure for distance or proximity in the Sharīʿah, unless someone arbitrarily sets a limit by personal opinion, thereby increasing hardship and introducing into the legal framework what Allah the Exalted has not authorized. Indeed, we find one for whom walking a hundred cubits is burdensome due to weakness, and another for whom walking fifty mīls is not burdensome. Thus, the invalidity of their statement in its entirety becomes evident.

وَالْمَوْضِعُ الْآخَرُ: أَنَّهُمَا يُحَلِّفَانِ مَنْ بَعُدَ فِي غَيْرِهِ مِنْ الْجَوَامِعِ، فَقَدْ خَالَفَا هَذَا الْخَبَرَ أَيْضًا، وَلَئِنْ جَازَ أَنْ لَا يُحَلَّفَ مَنْ بَعُدَ عَنْهُ عَلَيْهِ إنَّهُ لَجَائِزٌ فِيمَا قَرُبَ أَيْضًا وَلَا فَرْقَ، وَلَيْسَ لِلْبُعْدِ وَالْقُرْبِ حَدٌّ فِي الشَّرِيعَةِ، إلَّا أَنْ يَحُدَّ حَادٌّ بِرَأْيِهِ فَيَزِيدُ فِي الْبَلَاءِ وَالشَّرْعِ بِمَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى، وَقَدْ نَجِدُ مَنْ يَشُقُّ عَلَيْهِ الْمَشْيُ لِضَعْفِهِ مِائَةَ ذِرَاعٍ وَمَنْ لَا يَشُقُّ عَلَيْهِ مَشْيُ خَمْسِينَ مِيلًا، فَظَهَرَ فَسَادُ قَوْلِهِمْ جُمْلَةً.

L29316 Moreover, it has been authentically established from the Messenger of Allah—peace and blessings be upon him and his family—through the strongest chain of these two reports: what we have narrated via the chain of Mālik, from al-ʿAlāʾ ibn ʿAbd al-Raḥmān, from Maʿbad ibn Kaʿb ibn Mālik, from his brother ʿAbdullāh ibn Kaʿb, from Abū Umāmah, that the Messenger of Allah—peace and blessings be upon him and his family—said: “Whoever seizes the right of a Muslim by his oath, Allah has forbidden Paradise to him and decreed the Fire for him.” They said: “Even if it is something minor, O Messenger of Allah?” He said: “Even if it is a twig from an arak tree.” He repeated it three times.

وَأَيْضًا: فَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِأَصَحِّ طَرِيقٍ مِنْ هَذَيْنِ الْخَبَرَيْنِ: مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ مَعْبَدِ بْنِ كَعْبِ بْنِ مَالِكٍ عَنْ أَخِيهِ عَبْدِ اللَّهِ بْنِ كَعْبٍ عَنْ أَبِي أُمَامَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «مَنْ اقْتَطَعَ حَقَّ امْرِئٍ مُسْلِمٍ بِيَمِينِهِ حَرَّمَ اللَّهُ عَلَيْهِ الْجَنَّةَ وَأَوْجَبَ النَّارَ، قَالُوا: وَإِنْ كَانَ شَيْئًا يَسِيرًا يَا رَسُولَ اللَّهِ قَالَ: وَإِنْ كَانَ قَضِيبًا مِنْ أَرَاكٍ قَالَهَا ثَلَاثًا» .

L29317–29318 It was narrated through Al-Bazzar’s chain: Ahmad ibn Mansur → Abdur-Rahman ibn Yunus → Sufyan ibn Uyaynah → Amr ibn Dinar → Abi Salih → Abi Hurairah → the Prophet (peace and blessings be upon him and his household), who said: “Three whom Allah will not speak to on the Day of Resurrection,” including among them “a man who swears upon an oath

وَرُوِّينَا مِنْ طَرِيقِ الْبَزَّارِ نا أَحْمَدُ بْنُ مَنْصُورٍ نا عَبْدُ الرَّحْمَنِ بْنُ يُونُسَ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «ثَلَاثَةٌ لَا يُكَلِّمُهُمْ اللَّهُ يَوْمَ الْقِيَامَةِ فَذَكَرَ فِيهِمْ وَرَجُلٌ حَلَفَ عَلَى يَمِينٍ بَعْدَ

[28] **Hadith references (L29313):** Sunan Abi Dawud 3246; Mishkat al-Masabih 3778.

after the Asr prayer to unlawfully seize the property of a Muslim man." Abu Muhammad said: If treating oaths with utmost gravity at his pulpit (peace and blessings be upon him) necessitates that those required to swear may only be made to do so in his presence, then his emphasis (peace and blessings be upon him) on the gravity of oaths after Asr prayer would similarly necessitate that those required to swear may only be made to do so at that specific time. Yet this contradicts their own position.

صَلَاةِ الْعَصْرِ لِيَقْتَطِعَ بِهَا مَالَ امْرِئٍ مُسْلِمٍ» . قَالَ أَبُو مُحَمَّد: فَإِنْ كَانَ تَعْظِيمُ الْحَلَفِ عِنْدَ مِنْبَرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مُوجِبًا لِأَنْ لَا يُحَلَّفَ الْمَطْلُوبُونَ إِلَّا عِنْدَهُ، فَإِنَّ تَعْظِيمَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْحَلَفَ بَعْدَ صَلَاةِ الْعَصْرِ مُوجِبٌ أَيْضًا: أَنْ لَا يُحَلَّفَ الْمَطْلُوبُونَ إِلَّا فِي ذَلِكَ الْوَقْتِ، وَهَذَا خِلَافُ قَوْلِهِمْ.

L29319 The height of amazement lies entirely in their analogy of all congregational mosques to his mosque—may Allah bless him and his family and grant him peace—when there is no dispute that no congregational mosque in all lands holds superiority over other mosques, and that if another mosque were designated as a congregational mosque while congregational prayers were abandoned in the existing one, there would fundamentally be no harm nor any [religious] disapproval. How, then, did these invalid analogies arise?

ثُمَّ الْعَجَبُ كُلُّهُ قِيَاسُهُمْ سَائِرَ الْجَوَامِعِ عَلَى مَسْجِدِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَا خِلَافَ فِي أَنَّهُ لَا فَضْلَ لِجَامِعٍ فِي سَائِرِ الْبِلَادِ عَلَى سَائِرِ الْمَسَاجِدِ، وَأَنَّهُ لَوْ جُعِلَ مَسْجِدٌ آخَرُ جَامِعًا وَتُرِكَ التَّجْمِيعُ فِي الْجَامِعِ لَمَا كَانَ فِي ذَلِكَ حَرَجٌ أَصْلًا وَلَا كَرَاهَةٌ، فَمِنْ أَيْنَ خَرَجَتْ هَذِهِ الْقِيَاسَاتُ الْفَاسِدَةُ.

L29320 If they say, "We did that to deter the wrongdoer," we reply: "Then apply this to the minor and the major alike, for the warning in the Qur'an and Sunnah applies equally to all such cases—even to a twig of the arak tree (used for a toothstick)—unless you deem the minor [offense] trivial. This is the doctrine of an-Naẓẓām, Abū al-Hudhayl al-ʿAllāf, and Bishr ibn al-Muʿtamir—a group of no significant number."

فَإِنْ قَالُوا: فَعَلْنَا ذَلِكَ لِيَزْدَجِرَ الْمُبْطِلُ؟ قُلْنَا: فَافْعَلُوا ذَلِكَ فِي الْقَلِيلِ وَالْكَثِيرِ، فَإِنَّ الْوَعِيدَ جَاءَ فِي ذَلِكَ كُلِّهِ فِي الْقُرْآنِ وَالسُّنَّةِ سَوَاءً، حَتَّى فِي قَضِيبٍ مِنْ أَرَاكٍ، إِلَّا إِنْ كَانَ الْقَلِيلُ عِنْدَكُمْ خَفِيفًا - فَهَذَا مَذْهَبُ النَّظَّامِ، وَأَبِي الْهُذَيْلِ الْعَلَّافِ، وَبِشْرِ بْنِ الْمُعْتَمِرِ، وَهُمْ الْقَوْمُ لَا يُتَكَثَّرُ بِهِمْ.

L29321 Moreover, the rightful claimant may fear reputation and fame in bringing his case to the mosque, causing him to abandon his right. By your reasoning, you have caused the nullification of rights—fie on such reasoning!

وَأَيْضًا: فَإِنَّ الْمُحِقَّ قَدْ يَخْشَى السُّمْعَةَ وَالشُّهْرَةَ فِي حَمْلِهِ إِلَى الْجَامِعِ فَيَتْرُكُ حَقَّهُ، فَقَدْ حَصَلْتُمْ بِنَظَرِكُمْ عَلَى إبْطَالِ الْحُقُوقِ، وَأُفٍّ لِهَذَا نَظَرًا.

L29322 Abu Muhammad said: It became evident that if the oath had been obligatory in one place to the exclusion of another, or in one circumstance to the exclusion of another, the Prophet—peace and blessings be upon him—would have specified it. Since he did not specify this, no place may be singled out to the exclusion of another, nor any circumstance to the exclusion of another for the oath.

قَالَ أَبُو مُحَمَّد: فَصَحَّ أَنَّهُ لَوْ وَجَبَتْ الْيَمِينُ فِي مَكَانٍ دُونَ مَكَانٍ، وَفِي حَالٍ دُونَ حَالٍ: لَبَيَّنَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَإِذْ لَمْ يُبَيِّنْ ذَلِكَ فَلَا يُخَصُّ بِالْيَمِينِ مَكَانٌ دُونَ مَكَانٍ، وَلَا حَالٌ دُونَ حَالٍ.

L29323–29325 As for the extent of what Mālik and Al-Shāfiʿī hold regarding swearing in mosques, we have mentioned that Al-Shāfiʿī stated: ʿAbd al-Raḥmān ibn ʿAwf

rejected swearing near the Kaaba except in cases involving bloodshed or a substantial amount of wealth. This is baseless for several reasons, the first of which is: it is a weak narration with no known basis, origin, or chain of transmission. Then, even if it were authentic, there is no authoritative evidence in anyone other than the Messenger of Allah—peace and blessings be upon him and his family. Then, Abd al-Rahman died during the time of Uthman (may Allah be pleased with them both), and the governor of Mecca at that time was undoubtedly from the Companions due to the closeness of the Prophet's era. Therefore, the statement of Abd al-Rahman is not more valid than the statements of other Companions.

وَأَمَّا مِقْدَارُ مَا يُرَى فِيهِ مَالِكٌ، وَالشَّافِعِيُّ: التَّحْلِيفَ فِي الْجَوَامِعِ، فَقَدْ ذَكَرْنَا أَنَّ الشَّافِعِيَّ ذَكَرَ: أَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ أَنْكَرَ التَّحْلِيفَ عِنْدَ الْكَعْبَةِ إلَّا فِي دَمٍ أَوْ كَثِيرٍ مِنْ الْمَالِ وَهَذَا لَيْسَ بِشَيْءٍ لِوُجُوهٍ -: أَوَّلُهَا: أَنَّهَا رِوَايَةٌ سَاقِطَةٌ لَا يُدْرَى لَهَا أَصْلٌ وَلَا مُنْبَعَثٌ وَلَا مَخْرَجٌ، ثُمَّ لَوْ صَحَّتْ فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؛ ثُمَّ إنَّ عَبْدَ الرَّحْمَنِ مَاتَ زَمَنَ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُمَا - فَوَالِي مَكَّةَ يَوْمئِذٍ كَانَ بِلَا شَكٍّ مِنْ الصَّحَابَةِ لِقُرْبِ الْعَهْدِ، فَلَيْسَ قَوْلُ عَبْدِ الرَّحْمَنِ أَوْلَى مِنْ قَوْلِ غَيْرِهِ مِنْ الصَّحَابَةِ.

L29326 Moreover, Abd al-Rahman did not set the limit regarding abundant wealth as Malik and al-Shafi'i did. We know of no one who preceded Malik in setting this limit at three dirhams, nor anyone who preceded al-Shafi'i in setting it at twenty dinars.

ثُمَّ لَمْ يَحُدَّ عَبْدُ الرَّحْمَنِ فِي كَثِيرِ الْمَالِ مَا حَدَّهُ مَالِكٌ، وَالشَّافِعِيُّ، وَمَا نَعْلَمُ أَحَدًا سَبَقَ مَالِكًا إلَى تَحْدِيدِ ذَلِكَ بِثَلَاثَةِ دَرَاهِمَ، وَلَا مَنْ سَبَقَ الشَّافِعِيَّ إلَى تَحْدِيدِهِ بِعِشْرِينَ دِينَارًا.

L29327 If it is said: "That the hand is severed for three dirhams for which [this punishment applies]..."

فَإِنْ قِيلَ: إنَّ فِي ثَلَاثَةِ دَرَاهِمَ تُقْطَعُ الْيَدُ فِيهَا.

L29328 We said: And who set that limit? Only a group of scholars set it at a quarter dinar, while regarding three dirhams they did not. This contradicts al-Shāfiʿī's specification that twenty dinars constitute the threshold for obligatory zakāh. How then did they arrive at this particularization, excluding the two hundred dirhams for which the scriptural text is authenticated?

قُلْنَا: وَمَنْ حَدَّ ذَلِكَ، إنَّمَا حَدَّ قَوْمٌ بِرُبُعِ دِينَارٍ، وَأَمَّا بِثَلَاثَةِ دَرَاهِمَ فَلَا - وَيُعَارِضُ هَذَا تَحْدِيدُ الشَّافِعِيِّ بِأَنَّ عِشْرِينَ دِينَارًا تَجِبُ فِيهَا الزَّكَاةُ، فَمِنْ أَيْنَ وَقَعَ لَهُمْ تَخْصِيصُ ذَلِكَ دُونَ مِائَتَيْ دِرْهَمٍ الَّتِي صَحَّ فِيهَا النَّصُّ.

L29329 Or others contest them with an equivalent to the diyah, and all of this is confused and meaningless.

أَوْ يُعَارِضُهُمْ آخَرُونَ بِمِقْدَارِ الدِّيَةِ، وَهَذَا كُلُّهُ تَخْلِيطٌ لَا مَعْنَى لَهُ.

L29330 They are told: "Do you not see that oppression against Muslims is taken lightly in cases below the value that necessitates hand amputation? Allah is far removed from this! We find a million dinars seized through usurpation without requiring amputation, though usurpation and theft are equal as unjust acts and wrongful appropriation of wealth. Indeed, the usurper may bear greater sin for openly humiliating a Muslim - we have no doubt that one who usurps a single dinar commits greater sin than a thief stealing

وَيُقَالُ لَهُمْ: أَتَرَوْنَ مَا دُونَ مَا تُقْطَعُ فِيهِ الْيَدُ أَيُتَسَاهَلُ فِي ظُلْمِ الْمُسْلِمِينَ فِيهِ؟ حَاشَ لِلَّهِ مِنْ هَذَا، وَقَدْ وَجَدْنَا أَلْفَ أَلْفِ دِينَارٍ تُؤْخَذُ غَصْبًا فَلَا يَجِبُ فِيهَا قَطْعٌ، وَالْغَصْبُ وَالسَّرِقَةُ سَوَاءٌ فِي أَنَّهُمَا ظُلْمٌ، وَأَخْذُ مَالٍ بِالْبَاطِلِ وَلَعَلَّ الْغَاصِبَ أَعْظَمُ إثْمًا، لِاهْتِضَامِهِ

a quarter-dinar. Among Muslims, a dirhem is of immense value to a poor person, while a thousand dinars are trivial to a wealthy person. Thus, the corruption of these claims becomes evident through undeniable certainty - all praise belongs to Allah, Lord of the worlds."

الْمُسْلِمَ عَلَانِيَةً، بَلْ لَا نَشُكُّ فِي أَنَّ غَاصِبَ دِينَارٍ أَعْظَمُ إِثْمًا مِنْ سَارِقِ رُبُعِ دِينَارٍ، وَفِي الْمُسْلِمِينَ مَنْ الدِّرْهَمُ عِنْدَهُ عَظِيمٌ لِفَقْرِهِ، وَفِيهِمْ مَنْ أَلْفُ دِينَارٍ عِنْدَهُ قَلِيلٌ لِيَسَارِهِ، فَظَهَرَ فَسَادُ هَذِهِ الْأَقْوَالِ بِيَقِينٍ لَا إِشْكَالَ فِيهِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.



AL-MUHALLA

كِتَابُ الشَّهَادَاتِ

The Book of Testimony

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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The Book of Testimony

[كِتَابُ الشَّهَادَاتِ]

In the name of Allah, the Most Gracious, the Most Merciful. Book of Testimonies 1789 – Chapter: It is impermissible to accept any testimony from men or women except [that of] a just and approved person.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الشَّهَادَاتِ ١٧٨٩ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُقْبَلَ فِي شَيْءٍ مِنْ الشَّهَادَاتِ مِنْ الرِّجَالِ وَالنِّسَاءِ إلَّا عَدْلٌ رَضِيٌّ.

A just person is one who is not known to have committed a major sin nor openly persists in a minor sin.

وَالْعَدْلُ: هُوَ مَنْ لَمْ تُعْرَفْ لَهُ كَبِيرَةٌ، وَلَا مُجَاهَرَةٌ بِصَغِيرَةٍ.

A major sin is that which the Messenger of Allah—may Allah bless him and grant him peace—has termed a major sin, or that which entails a divine threat of punishment.

وَالْكَبِيرَةُ: هِيَ مَا سَمَّاهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَبِيرَةً، أَوْ مَا جَاءَ فِيهِ الْوَعِيدُ.

A minor sin is one for which no divine punishment is prescribed.

وَالصَّغِيرَةُ: مَا لَمْ يَأْتِ فِيهِ وَعِيدٌ.

The proof of this is the statement of Allah the Exalted: “O you who believe, if a transgressor comes to you with information, verify it, lest you harm a people in ignorance and become regretful for what you have done” [Al-Hujurat 49:6].[1]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَإٍ فَتَبَيَّنُوا أَنْ تُصِيبُوا قَوْمًا بِجَهَالَةٍ فَتُصْبِحُوا عَلَى مَا فَعَلْتُمْ نَادِمِينَ} [الحجرات: ٦] .

There is none except a transgressor or a non-transgressor. The transgressor is one from whom transgression originates, and all major sins are transgressions. Thus, the acceptance of a transgressor’s report is invalidated, leaving none except the just: he who is not a transgressor.

وَلَيْسَ إلَّا فَاسِقٌ أَوْ غَيْرُ فَاسِقٍ، فَالْفَاسِقُ: هُوَ الَّذِي يَكُونُ مِنْهُ الْفِسْقُ، وَالْكَبَائِرُ كُلُّهَا فُسُوقٌ - فَسَقَطَ قَبُولُ خَبَرِ الْفَاسِقِ، فَلَمْ يَبْقَ إلَّا الْعَدْلُ: وَهُوَ مَنْ لَيْسَ بِفَاسِقٍ.

As for minor sins, Allah, the Almighty and Majestic, said: “If you avoid the major sins which you are forbidden, We will remove your misdeeds” [An-Nisa: 31].[2]

وَأَمَّا الصَّغَائِرُ: فَإِنَّ اللَّهَ عَزَّ وَجَلَّ قَالَ: {إِنْ تَجْتَنِبُوا كَبَائِرَ مَا تُنْهَوْنَ عَنْهُ نُكَفِّرْ عَنْكُمْ سَيِّئَاتِكُمْ} [النساء: ٣١] .

It is established that sins lesser than major ones are expiated by avoiding major sins. As for what Allah the Exalted has expiated and remitted, no one may blame his companion for it nor describe him with it.

فَصَحَّ: أَنَّ مَا دُونَ الْكَبَائِرِ مُكَفَّرَةٌ بِاجْتِنَابِ الْكَبَائِرِ، وَمَا كَفَّرَهُ اللَّهُ تَعَالَى وَأَسْقَطَهُ فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَذُمَّ بِهِ صَاحِبَهُ وَلَا أَنْ يَصِفَهُ بِهِ.

Similarly, whoever repents from disbelief or what is lesser than it - when

وَكَذَلِكَ مَنْ تَابَ مِنْ الْكُفْرِ فَمَا دُونَهُ فَإِنَّهُ إذَا سَقَطَ عَنْهُ بِالتَّوْبَةِ مَا تَابَ عَنْهُ لَمْ يَجُزْ لِأَحَدٍ أَنْ يَذُمَّهُ بِمَا سَقَطَ عَنْهُ، وَلَا أَنْ يَصِفَهُ بِهِ.

[1] **Qur’an references (L29337):** Qur’an 49:6 (Al-Hujurat).
[2] **Qur’an references (L29339):** Qur’an 4:31 (An-Nisa).

what he repented from has been lifted from him through repentance, it becomes impermissible for anyone to censure him for what has been removed, nor to attribute those lifted misdeeds to him.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَتْ طَائِفَةٌ: كُلُّ مُسْلِمٍ فَهُوَ عَدْلٌ حَتَّى يَثْبُتَ عَلَيْهِ الْفِسْقُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدَةَ قَالَ: نا كَثِيرُ بْنُ هِشَامٍ قَالَ: نا جَعْفَرُ بْنُ بُرْقَانَ قَالَ: كَتَبَ عُمَرُ إِلَى أَبِي مُوسَى: الْمُسْلِمُونَ عُدُولٌ بَعْضُهُمْ عَلَى بَعْضٍ إِلَّا مُجَرَّبًا عَلَيْهِ شَهَادَةُ زُورٍ، أَوْ مَجْلُودًا فِي حَدٍّ، أَوْ ظَنِينًا فِي وَلَاءٍ، أَوْ قَرَابَةٍ.

L29342–29344 And indeed, people have differed concerning this: A group said: Every Muslim is deemed trustworthy until moral transgression is established against him, as transmitted through Abū ʿUbaydah's chain: Kathīr ibn Hishām narrated to us, saying: Jaʿfar ibn Burqān narrated to us, saying: ʿUmar wrote to Abū Mūsā: "Muslims are deemed trustworthy by one another, except one proven to have given false testimony, one flogged for a ḥadd, or one suspected of partiality in patronage or kinship."

وَحَدَّثَنَاهُ أَيْضًا: أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ قَالَ: نا أَبُو ذَرٍّ الْهَرَوِيُّ، وَعَبْدُ الرَّحْمَنِ بْنُ الْحَسَنِ الْفَارِسِيُّ قَالَ: نا أَبُو ذَرٍّ: نا الْخَلِيلُ بْنُ أَحْمَدَ الْقَاضِي السِّجِسْتَانِيُّ نا يَحْيَى بْنُ مُحَمَّدِ بْنِ صَاعِدٍ نا يُوسُفُ بْنُ مُوسَى الْقَطَّانُ نا عُبَيْدُ اللَّهِ بْنُ مُوسَى نا عَبْدُ الْمَلِكِ بْنُ الْوَلِيدِ بْنُ مَعْدَانَ عَنْ أَبِيهِ: أَنَّ عُمَرَ كَتَبَ إِلَى أَبِي مُوسَى فَذَكَرَهُ كَمَا هُوَ - وَقَالَ عَبْدُ الرَّحْمَنِ بْنُ الْحَسَنِ الْفَارِسِيُّ: نا الْقَاضِي أَحْمَدُ بْنُ مُحَمَّدٍ الْكَرْخِيُّ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْعَلَّافُ نا أَحْمَدُ بْنُ عَلِيِّ بْنُ مُحَمَّدٍ الْوَرَّاقُ نا عَبْدُ اللَّهِ بْنُ أَبِي سَعِيدٍ نا مُحَمَّدُ بْنُ يَحْيَى بْنُ أَبِي عُمَرَ الْعَدَنِيُّ نا سُفْيَانُ عَنْ إِدْرِيسَ بْنِ يَزِيدَ الْأَوْدِيِّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إِلَى أَبِي مُوسَى الْأَشْعَرِيِّ، فَذَكَرَهُ كَمَا أَوْرَدْنَاهُ.

L29345 And it was also narrated to us by Ahmad ibn Umar ibn Anas al-Udhuri, who said: Abu Dharr al-Harawi and Abd al-Rahman ibn al-Hasan al-Farisi narrated to us from Abu Dharr: Al-Khalil ibn Ahmad al-Qadi al-Sijistani narrated to us: Yahya ibn Muhammad ibn Ṣāʿid narrated to us: Yusuf ibn Musa al-Qattan narrated to us: Ubayd Allah ibn Musa narrated to us: Abd al-Malik ibn al-Walid ibn Maʿdan narrated from his father: that Umar wrote to Abu Musa and mentioned it as it is. And Abd al-Rahman ibn al-Hasan al-Farisi narrated: Al-Qadi Ahmad ibn Muhammad al-Karkhi narrated to us: Muhammad ibn Abd Allah al-Allaf narrated to us: Ahmad ibn Ali ibn Muhammad al-Warraq narrated to us: Abdullah ibn Abi Saʿid narrated to us: Muhammad ibn Yahya ibn Abi Umar al-Adani narrated to us: Sufyan narrated from Idris ibn Yazid al-Awdi from Abdullah ibn Abi Burdah ibn Abi Musa al-Ashʿari from his father, who said: Umar ibn al-Khattab wrote to Abu Musa al-Ashʿari, and mentioned it as we have cited it.

قَالَ أَبُو مُحَمَّدٍ: فِي هَذِهِ الرِّسَالَةِ بِبَعْضِ هَذِهِ الْأَسَانِيدِ " وَقِسْ الْأُمُورَ بَعْضَهَا بِبَعْضٍ " وَفِي بَعْضِهَا " وَاعْرِفْ الْأَشْبَاهَ وَالْأَمْثَالَ " وَعَلَيْهَا عَوَّلَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، فِي الْحُكْمِ بِالْقِيَاسِ، ثُمَّ لَمْ يُبَالُوا بِخِلَافِهَا فِي أَنَّ " الْمُسْلِمِينَ عُدُولٌ بَعْضُهُمْ عَلَى بَعْضٍ، إِلَّا مُجَرَّبًا عَلَيْهِ شَهَادَةُ زُورٍ، أَوْ ظَنِينًا فِي وَلَاءٍ، أَوْ قَرَابَةٍ ".

L29346 Abu Muhammad said: In this treatise, with some of these chains of transmission, "Measure matters against one another," and in some of them, "Recognize the analogies and examples." Upon this the Hanafis, Malikis, and Shafi'is relied in ruling by analogy. Then they disregarded its contradiction to the principle that "Muslims are upright among each other, except one proven to have faced false testimony, or suspected due to allegiance (walā') or kinship."

L29347 The Mālikīs and Shāfiʿīs openly oppose this position, maintaining that Muslims are subject to rejection in their school until their moral integrity becomes valid.

فَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: مُجَاهِرُونَ بِخِلَافِ هَذَا، وَالْمُسْلِمُونَ عِنْدَهُمْ عَلَى الرَّدِّ حَتَّى تَصِحَّ الْعَدَالَةُ.

L29348 According to Abū Ḥanīfah, Muslims are presumed to possess integrity until the opposing party impugns the witness. If the opposing party does so, the testimony remains suspended until the witness's integrity is conclusively established.

وَأَمَّا أَبُو حَنِيفَةَ: فَالْمُسْلِمُونَ عِنْدَهُ عَلَى الْعَدَالَةِ حَتَّى يَطْعَنَ الْخَصْمُ فِي الشَّاهِدِ فَإِذَا طَعَنَ فِيهِ الْخَصْمُ تَوَقَّفَ فِي شَهَادَتِهِ حَتَّى تَثْبُتَ لَهُ الْعَدَالَةُ.

L29349 All of this contradicts the position of ʿUmar, for sometimes his statement is authoritative evidence, and sometimes his statement is not authoritative evidence - as is evident. If it is argued: "You have narrated through the chain of transmission of Abū ʿUbayd, from al-Ashjaʿī, from Sufyān al-Thawrī, from Manṣūr, from Ibrāhīm al-Nakhaʿī, who said: 'The reliable narrator among Muslims is one from whom no moral doubt has arisen'..."

فَهَذَا كُلُّهُ بِخِلَافِ قَوْلِ عُمَرَ، فَمَرَّةً قَوْلُهُ حُجَّةٌ، وَمَرَّةً قَوْلُهُ لَيْسَ بِحُجَّةٍ، وَهَذَا كَمَا تَرَى، فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا الْأَشْجَعِيُّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: الْعَدْلُ مِنْ الْمُسْلِمِينَ الَّذِي لَمْ تَظْهَرْ مِنْهُ رِيبَةٌ.

L29350–29352 And via the chain of Al-Bukhari: Al-Ḥakam ibn Nāfiʿ (Abū al-Yamān) narrated to us, Shuʿayb (Ibn Abī Ḥamzah) narrated to us. From Az-Zuhri, Humaid ibn Abdur-Rahman ibn Awf narrated to us: That Abdullah ibn Utbah ibn Mas'ud said: I heard Umar ibn al-Khattab say: "People were judged by revelation during the time of Allah's Messenger ﷺ, but revelation has now ceased. We now judge you only by your apparent deeds. Whoever shows us good, we grant him security and draw him close, though we have nothing to do with his inner state - Allah will call him to account for his inner state. But whoever shows us evil, we neither grant him security nor believe him, even if he says his inner state is good."

وَمِنْ طَرِيقِ الْبُخَارِيِّ: نا الْحَكَمُ بْنُ نَافِعٍ - هُوَ أَبُو الْيَمَانِ - نا شُعَيْبٌ - هُوَ ابْنُ أَبِي حَمْزَةَ عَنْ الزُّهْرِيِّ نا حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ بْنُ عَوْفٍ: أَنَّ عَبْدَ اللَّهِ بْنَ عُتْبَةَ بْنِ مَسْعُودٍ قَالَ: سَمِعْت عُمَرَ بْنَ الْخَطَّابِ يَقُولُ: إنَّ نَاسًا كَانُوا يُؤْخَذُونَ بِالْوَحْيِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّ الْوَحْيَ قَدْ انْقَطَعَ، وَإِنَّمَا نَأْخُذُكُمْ الْآنَ بِمَا ظَهَرَ مِنْ أَعْمَالِكُمْ، فَمَنْ أَظْهَرَ لَنَا خَيْرًا أَمِنَّاهُ وَقَرَّبْنَاهُ، وَلَيْسَ لَنَا مِنْ سَرِيرَتِهِ شَيْءٌ، وَاَللَّهُ يُحَاسِبُهُ فِي سَرِيرَتِهِ، وَمَنْ أَظْهَرَ لَنَا سُوءًا لَمْ نَأْمَنْهُ وَلَمْ نُصَدِّقْهُ، وَإِنْ قَالَ: إنَّ سَرِيرَتَهُ حَسَنَةٌ.

L29353 We said: This is an authentic report from ʿUmar, and all that we have mentioned from him is agreed upon as we have mentioned - that every Muslim is upright unless wrongdoing becomes apparent from him. Similarly, the statement of Ibrāhīm, and likewise what has been narrated - that it was said to ʿUmar, "False testimony has become widespread," and he replied, "No man in Islam is facilitated except through the just ones" - its apparent meaning is that the just ones refer to Muslims, except one against whom false testimony is established.

قُلْنَا: هَذَا خَبَرٌ صَحِيحٌ عَنْ عُمَرَ، وَكُلُّ مَا ذَكَرْنَا عَنْهُ فَمُتَّفَقٌ عَلَى مَا ذَكَرْنَا مِنْ أَنَّ كُلَّ مُسْلِمٍ فَهُوَ عَدْلٌ مَا لَمْ يَظْهَرْ مِنْهُ شَرٌّ، وَكَذَلِكَ قَوْلُ إبْرَاهِيمَ، وَكَذَلِكَ مَا رُوِيَ مِنْ أَنَّ عُمَرَ قِيلَ لَهُ: إنَّ شَهَادَةَ الزُّورِ قَدْ فَشَتْ؟ فَقَالَ: لَا يُوسَرُ رَجُلٌ فِي الْإِسْلَامِ بِغَيْرِ الْعُدُولِ: مَعْنَاهُ عَلَى ظَاهِرِهِ: أَنَّ الْعُدُولَ هُمْ الْمُسْلِمُونَ إلَّا مَنْ صَحَّتْ عَلَيْهِ شَهَادَةُ زُورٍ.

L29354 This was narrated to us by Ḥumām from al-Bājī from ʿAbd Allāh ibn Yūnus;

narrated to us Baqī ibn Makhlad; narrated to us Abū Bakr ibn Abī Shaybah; narrated to us Wakīʿ; narrated to us al-Masʿūdī from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad from his father, who said: ʿUmar ibn al-Khaṭṭāb declared: Indeed, let no one in Islam be granted ease through false testimony, for we accept none except the just.

حَدَّثَنَا بِذَلِكَ حُمَامٌ عَنْ الْبَاجِيِّ عَنْ عَبْدِ اللَّهِ بْنِ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا وَكِيعٌ نا الْمَسْعُودِيُّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: أَلَّا لَا يُوسَرُ أَحَدٌ فِي الْإِسْلَامِ بِشُهُودِ الزُّورِ، فَإِنَّا لَا نَقْبَلُ إِلَّا الْعُدُولَ.

L29355 It has been narrated to us through Ibn Abī Shaybah's chain: Ibn Abī Zā'idah reported from Ṣāliḥ ibn Ḥayy from al-Shaʿbī, who said: "The testimony of a Muslim man is admissible provided he has not committed an offense against a free person or is known to have corruption in his religion."

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: نا ابْنُ أَبِي زَائِدَةَ عَنْ صَالِحِ بْنِ حَيٍّ عَنْ الشَّعْبِيِّ قَالَ: تَجُوزُ شَهَادَةُ الرَّجُلِ الْمُسْلِمِ مَا لَمْ يُصِبْ حُرًّا أَوْ تُعْلَمْ عَلَيْهِ خَرَبَةٌ فِي دِينِهِ.

L29356 Through the chain of Ibn Abi Shaybah: 'Abbād ibn al-'Awwām narrated to us from 'Awf from al-Ḥasan that he would accept the testimony of one who prays unless the opposing party presented evidence to impugn him.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ عَوْفٍ عَنْ الْحَسَنِ أَنَّهُ كَانَ يُجِيزُ شَهَادَةَ مَنْ صَلَّى إِلَّا أَنْ يَأْتِيَ الْخَصْمُ بِمَا يُجَرِّحُهُ بِهِ.

L29357 If it is said: You have transmitted via Ibn Abi Shaybah's chain—narrated to us by Jarir, who reported from Mansur from Ibrahim: "Neither the testimony of a person of doubtful integrity nor that of an accused party is valid in divorce matters."

فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ لَا يَجُوزُ فِي الطَّلَاقِ شَهَادَةُ ظَنِينٍ وَلَا مُتَّهَمٍ.

L29358 We said: It is possible that He specified divorce, due to Allah's statement, exalted is He, regarding it: {When you divorce women, divorce them for their waiting period} [At-Talaq: 1] up to His statement: {And take two just witnesses from among you} [At-Talaq: 2]. Thus, by the definitive text, divorce is only permissible if initiated by someone known, not someone suspected.[3]

قُلْنَا: قَدْ يُمْكِنُ أَنْ يَكُونَ خَصَّ الطَّلَاقَ، لِقَوْلِ اللَّهِ تَعَالَى فِيهِ: {إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] إِلَى قَوْلِهِ تَعَالَى: {وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ} [الطلاق: ٢] فَلَمْ يَجُزْ فِي الطَّلَاقِ بِالنَّصِّ إِلَّا مَنْ عُرِفَ لَا مَنْ يُتَّهَمُ.

L29359 Abu Muhammad said: Those who held the view that Muslims are presumed upright individuals until valid impugnment is established argued: Before puberty, one is free from any grounds for impugnment. When he reaches puberty as a Muslim—given that Islam constitutes goodness, nay, it encompasses all that is good—goodness is confirmed in him. Thus he remains upright until certainty is established of the contrary.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ ذَهَبَ إِلَى أَنَّ الْمُسْلِمِينَ عُدُولٌ حَتَّى تَصِحَّ الْجُرْحَةُ: بِأَنَّهُ قَبْلَ الْبُلُوغِ بَرِيءٌ مِنْ كُلِّ جُرْحَةٍ، فَلَمَّا بَلَغَ مُسْلِمًا، فَالْإِسْلَامُ خَيْرٌ، بَلْ هُوَ جَامِعٌ لِكُلِّ خَيْرٍ فَقَدْ صَحَّ مِنْهُ الْخَيْرُ، فَهُوَ عَدْلٌ حَتَّى يُوقَنَ مِنْهُ بِضِدِّ ذَلِكَ.

L29360–29361 Thus, we said: When a Muslim reaches puberty, he enters the category of those for whom good is recorded and evil is recorded against him, and it is not possible for anyone to be free from sin.

فَقُلْنَا: إِذَا بَلَغَ الْمُسْلِمُ فَقَدْ صَارَ فِي نِصَابِ مَنْ يُكْتَبُ لَهُ الْخَيْرُ، وَيُكْتَبُ عَلَيْهِ الشَّرُّ، وَلَا يُمْكِنُ أَنْ يَكُونَ أَحَدٌ سَلِمَ مِنْ ذَنْبٍ.

[3] **Qur'an references (L29358):** Qur'an 65:1 (At-Talaq); Qur'an 65:2 (At-Talaq).

L29362 He, the Exalted, said: “And if Allah were to punish people for their wrongdoing, He would not leave upon the earth any creature” [An-Nahl: 61]. And He said: “And if Allah were to punish people for what they have earned, He would not leave upon the earth any creature” [Fatir: 45].[4]

L29363 It is established that there is no one who has not wronged himself or committed sin. Since this is confirmed and inevitable, judgment regarding his report and testimony must be suspended until it is determined where his sins have placed him—whether among the transgressors (in which case his testimony becomes invalid by God’s explicit decree: *{If a transgressor comes to you with news, verify it}* [Al-Hujurat: 6]) or among those forgiven for their sins, the wrong they did to themselves in them, and the sins they committed—whether through repentance, abstaining from major sins, or having minor sins covered [by divine grace]—by the boundless favor of God Almighty upon us.[5]

L29364 Abu Muhammad said: Abu Yusuf said: Whoever is free from the immoral acts that incur prescribed punishments and from major sins among those resembling offenses requiring prescribed punishments, performs the obligatory duties, and whose virtuous traits outweigh his disobedience—we accept his testimony, for no servant [of God] is entirely free from sin.

L29365 And if sins exceed the morals of righteousness, we reject his testimony.

L29366 We do not permit the testimony of someone who plays chess and gambles in connection with it.

L29367 Nor the one who plays with the pigeons by racing them.

L29368 Nor the one who habitually swears false oaths.

L29369 Abu Muhammad said: This is a contradictory statement; because he based it on the abundance of good and the abundance of evil—and this is invalid. For whoever is confirmed to have committed adultery once is a sinner until he repents.

قَالَ تَعَالَى: {وَلَوْ يُؤَاخِذُ اللَّهُ النَّاسَ بِظُلْمِهِمْ مَا تَرَكَ عَلَيْهَا مِنْ دَابَّةٍ} [النحل: ٦١] وَقَالَ تَعَالَى: {وَلَوْ يُؤَاخِذُ اللَّهُ النَّاسَ بِمَا كَسَبُوا مَا تَرَكَ عَلَى ظَهْرِهَا مِنْ دَابَّةٍ} [فاطر: ٤٥] .

فَصَحَّ: أَنَّهُ لَا أَحَدَ إِلَّا وَقَدْ ظَلَمَ نَفْسَهُ وَاكْتَسَبَ إِثْمًا، فَإِذْ قَدْ صَحَّ هَذَا وَلَا بُدَّ، فَلَا بُدَّ مِنْ التَّوَقُّفِ فِي خَبَرِهِ وَشَهَادَتِهِ حَتَّى يُعْلَمَ أَيْنَ أَحَلَّتْهُ ذُنُوبُهُ فِي جُمْلَةِ الْفَاسِقِينَ: فَتَسْقُطُ شَهَادَتُهُ بِنَصِّ كَلَامِ اللَّهِ تَعَالَى: {إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَإٍ فَتَبَيَّنُوا} [الحجرات: ٦] أَمْ فِي جُمْلَةِ الْمَغْفُورِ لَهُمْ مَا أَذْنَبُوا، وَمَا ظَلَمُوا فِيهِ أَنْفُسَهُمْ، وَمَا كَسَبُوا مِنْ إثْمٍ بِالتَّوْبَةِ، أَوْ بِاجْتِنَابِ الْكَبَائِرِ، وَالتَّسَتُّرِ بِالصَّغَائِرِ: بِفَضْلِ اللَّهِ تَعَالَى عَلَيْنَا.

قَالَ أَبُو مُحَمَّدٍ: وَقَالَ أَبُو يُوسُفَ: مَنْ سَلِمَ مِنْ الْفَوَاحِشِ الَّتِي تَجِبُ فِيهَا الْحُدُودُ وَمَا يُشْبِهُ مَا يَجِبُ فِيهِ الْحُدُودُ مِنْ الْعَظَائِمِ، وَكَانَ يُؤَدِّي الْفَرَائِضَ، وَأَخْلَاقُ الْبِرِّ فِيهِ أَكْثَرُ مِنْ الْمَعَاصِي: قَبِلْنَا شَهَادَتَهُ، لِأَنَّهُ لَا يَسْلَمُ عَبْدٌ مِنْ ذَنْبٍ.

وَإِنْ كَانَتْ الْمَعَاصِي أَكْثَرَ مِنْ أَخْلَاقِ الْبِرِّ رَدَدْنَا شَهَادَتَهُ.

وَلَا نُجِيزُ شَهَادَةَ مَنْ يَلْعَبُ بِالشِّطْرَنْجِ وَيُقَامِرُ عَلَيْهَا.

وَلَا مَنْ يَلْعَبُ بِالْحَمَامِ وَيُطَيِّرُهَا.

وَلَا مَنْ يُكْثِرُ الْحَلِفَ بِالْكَذِبِ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كَلَامٌ مُتَنَاقِضٌ، لِأَنَّهُ بَنَاهُ عَلَى كَثْرَةِ الْخَيْرِ وَكَثْرَةِ الشَّرِّ - وَهَذَا بَاطِلٌ، لِأَنَّهُ مَنْ ثَبَتَ عَلَيْهِ زِنًى مَرَّةً فَهُوَ فَاسِقٌ حَتَّى يَتُوبَ.

[4] **Qur’an references (L29362):** Qur’an 16:61 (An-Nahl); Qur’an 35:45 (Fatir).

L29370 Then he rejected the testimony on the grounds of playing with pigeons—and we are not certain that such an act is forbidden unless there is theft of people's pigeons.

ثُمَّ رَدَّ الشَّهَادَةَ بِاللَّعِبِ بِالْحَمَامِ - وَمَا نَدْرِي ذَلِكَ مُحَرَّمًا مَا لَمْ يَسْرِقْ حَمَامَ النَّاسِ.

L29371 Al-Shafiʿi said: If obedience and moral integrity predominantly characterize his conduct, his testimony is accepted. However, if transgression and behavior contrary to moral integrity predominantly characterize his conduct, his testimony is rejected.

وَقَالَ الشَّافِعِيُّ: إِذَا كَانَ الْأَغْلَبُ وَالْأَظْهَرُ مِنْ أَمْرِهِ الطَّاعَةَ وَالْمُرُوءَةَ: قُبِلَتْ شَهَادَتُهُ، وَإِذَا كَانَ الْأَغْلَبُ مِنْ أَمْرِهِ الْمَعْصِيَةَ، وَخِلَافَ الْمُرُوءَةِ: رُدَّتْ شَهَادَتُهُ.

L29372–29374 Abū Muḥammad said: It should have sufficed to mention obedience and disobedience. As for his mention of virtuous conduct here, it is a superfluity of speech and a flaw in the matter, for if it is part of obedience, then obedience suffices. Regarding that, even if it is not an act of obedience, it is impermissible to stipulate it in religious matters, as no explicit text from the Quran or Sunnah has been provided regarding it.

قَالَ أَبُو مُحَمَّدٍ: كَانَ يَجِبُ أَنْ يَكْتَفِيَ بِذِكْرِ الطَّاعَةِ وَالْمَعْصِيَةِ، وَأَمَّا ذِكْرُهُ الْمُرُوءَةَ هَاهُنَا فَفُضُولٌ مِنْ الْقَوْلِ وَفَسَادٌ فِي الْقَضِيَّةِ؛ لِأَنَّهَا إنْ كَانَتْ مِنْ الطَّاعَةِ فَالطَّاعَةُ تُغْنِي عَنْهَا، وَإِنْ كَانَتْ لَيْسَتْ مِنْ الطَّاعَةِ فَلَا يَجُوزُ اشْتِرَاطُهَا فِي أُمُورِ الدِّيَانَةِ، إذْ لَمْ يَأْتِ بِذَلِكَ نَصُّ قُرْآنٍ وَلَا سُنَّةٍ.

L29375 Mālik said in the narration transmitted by Muḥammad ibn ʿAbd al-Ḥakam from him: Whoever's predominant behavior is obedience and has not committed a major sin is considered upright—and this is the view of Abū Sulaymān, our companions, and it is the truth as we have clarified—and success is through Allah, the Exalted.

وَقَالَ مَالِكٌ فِي رِوَايَةِ مُحَمَّدِ بْنِ عَبْدِ الْحَكَمِ عَنْهُ: مَنْ كَانَ أَكْثَرُ أَمْرِهِ الطَّاعَةَ وَلَمْ يُقْدِمْ عَلَى كَبِيرَةٍ فَهُوَ عَدْلٌ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا، وَهُوَ الْحَقُّ كَمَا بَيَّنَّا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29376 The issue of what is admissible in testimony in cases of zina [unlawful sexual intercourse].

[مَسْأَلَةُ مَا يُقْبَلُ فِي شَهَادَةِ الزِّنَا]

L29377 Issue 1790: It is impermissible to accept fewer than four upright Muslim male witnesses in cases of unlawful sexual intercourse (zinā). If four men are unavailable, two upright Muslim women may testify in place of each missing man. This results in the following valid configurations: three men and two women, two men and four women, one man and six women, or eight women alone.

١٧٩٠ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُقْبَلَ فِي الزِّنَى أَقَلُّ مِنْ أَرْبَعَةِ رِجَالٍ عُدُولٍ مُسْلِمِينَ، أَوْ مَكَانَ كُلِّ رَجُلٍ امْرَأَتَانِ مُسْلِمَتَانِ عَدْلَتَانِ، فَيَكُونُ ذَلِكَ ثَلَاثَةَ رِجَالٍ وَامْرَأَتَيْنِ، أَوْ رَجُلَيْنِ وَأَرْبَعَ نِسْوَةٍ، أَوْ رَجُلًا وَاحِدًا وَسِتَّ نِسْوَةٍ، أَوْ ثَمَانِ نِسْوَةٍ فَقَطْ.

L29378 And in all rights—including prescribed punishments, blood money, retribution, marriage, divorce, retraction of divorce, and financial matters—no

وَلَا يُقْبَلُ فِي سَائِرِ الْحُقُوقِ كُلِّهَا مِنْ الْحُدُودِ وَالدِّمَاءِ، وَمَا فِيهِ الْقِصَاصُ وَالنِّكَاحُ، وَالطَّلَاقُ، وَالرَّجْعَةُ، وَالْأَمْوَالُ، إلَّا رَجُلَانِ مُسْلِمَانِ عَدْلَانِ، أَوْ رَجُلَانِ وَامْرَأَتَانِ

[5] **Qur'an references (L29363):** Qur'an 49:6 (Al-Hujurat).

testimony is accepted except from two upright Muslim men; or two men and two women of the same qualifications; or four women of the same qualifications. However, in all these matters except the prescribed punishments, the testimony of a single upright man or two women of the same qualifications is accepted alongside the plaintiff's oath.

كَذَلِكَ، أَوْ أَرْبَعُ نِسْوَةٍ كَذَلِكَ - وَيُقْبَلُ فِي كُلِّ ذَلِكَ - حَاشَا الْحُدُودَ - رَجُلٌ وَاحِدٌ عَدْلٌ أَوْ امْرَأَتَانِ كَذَلِكَ مَعَ يَمِينِ الطَّالِبِ.

L29379 In breastfeeding alone, one righteous woman or one righteous man is accepted.

وَيُقْبَلُ فِي الرَّضَاعِ وَحْدَهُ امْرَأَةٌ وَاحِدَةٌ عَدْلَةٌ أَوْ رَجُلٌ وَاحِدٌ عَدْلٌ.

L29380 As for the obligation of accepting four witnesses in cases of illicit sexual intercourse, it is established by the explicit text of the Quran, and there is no disagreement concerning it. Allah, the Exalted, said: "And those who accuse chaste women and then do not produce four witnesses, flog them eighty lashes" [An-Nur: 4].[6]

فَأَمَّا وُجُوبُ قَبُولِ أَرْبَعَةٍ فِي الزِّنَى فَبِنَصِّ الْقُرْآنِ، وَلَا خِلَافَ فِيهِ، قَالَ تَعَالَى: {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً} [النور: ٤] .

L29381–29383 As for the acceptance of two men in all rights comprehensively, or a man and two women in deferred debts, Allah the Exalted said: {When you incur debt between yourselves for a fixed term, record it} [Al-Baqarah: 282] up to His statement: {And take as witnesses two men from your people. If two men are not available, then a man and two women from those you approve as witnesses} [Al-Baqarah: 282]. Allah the Exalted also said: {When you divorce women, divorce them at the commencement of their waiting period} [At-Talaq: 1] up to His statement: {Then either retain them honorably or release them honorably, and take as witnesses two just men from among you} [At-Talaq: 2]. And a group claimed that the acceptance of two just male witnesses in all legal rulings is established by analogy to the explicit text of Allah the Exalted concerning divorce and revocable divorce.[7]

وَأَمَّا قَبُولُ رَجُلَيْنِ فِي سَائِرِ الْحُقُوقِ كُلِّهَا، أَوْ رَجُلٍ وَامْرَأَتَيْنِ فِي الدُّيُونِ الْمُؤَجَّلَةِ، فَإِنَّ اللَّهَ تَعَالَى قَالَ: {إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ} [البقرة: ٢٨٢] إِلَى قَوْلِهِ - {وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ} [البقرة: ٢٨٢] وَقَالَ تَعَالَى: {إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] إِلَى قَوْلِهِ -: {فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ} [الطلاق: ٢] وَادَّعَى قَوْمٌ: أَنَّ قَبُولَ عَدْلَيْنِ مِنَ الرِّجَالِ فِي سَائِرِ الْأَحْكَامِ قِيَاسًا عَلَى نَصِّ اللَّهِ تَعَالَى فِي الطَّلَاقِ وَالرَّجْعَةِ.

L29384 They differed regarding the acceptance of women's testimony when given independently in any matter, and regarding their testimony alongside a man's in cases other than deferred debts.

وَاخْتَلَفُوا فِي قَبُولِ شَهَادَةِ النِّسَاءِ مُنْفَرِدَاتٍ فِي شَيْءٍ مِنَ الْأَشْيَاءِ، وَفِي قَبُولِهِنَّ مَعَ رَجُلٍ فِيمَا عَدَا الدُّيُونَ الْمُؤَجَّلَةَ.

L29385 Those who assert the acceptability of female narrators as single transmitters

وَاخْتَلَفَ الْقَائِلُونَ بِقَبُولِهِنَّ مُنْفَرِدَاتٍ فِي كَمْ يُقْبَلُ مِنْهُنَّ فِي ذَلِكَ.

[6] **Qur'an references (L29380):** Qur'an 24:4 (An-Nur).

[7] **Qur'an references (L29381):** Qur'an 2:282 (Al-Baqarah); Qur'an 65:1 (At-Talaq); Qur'an 65:2 (At-Talaq).

differed regarding how many of them should be accepted in this matter.

وَاخْتَلَفُوا أَيْضًا فِي الشَّاهِدِ وَيَمِينِ الطَّالِبِ؟ فَقَالَ زُفَرُ صَاحِبُ أَبِي حَنِيفَةَ: لَا يَجُوزُ قَبُولُ النِّسَاءِ مُنْفَرِدَاتٍ دُونَ رَجُلٍ فِي شَيْءٍ أَصْلًا، لَا فِي وِلَادَةٍ وَلَا فِي رَضَاعٍ، وَلَا فِي عُيُوبِ النِّسَاءِ، وَلَا فِي غَيْرِ ذَلِكَ - وَأَجَازَهُنَّ مَعَ رَجُلٍ فِي الطَّلَاقِ، وَالنِّكَاحِ، وَالْعِتْقِ.

L29386 They also differed regarding testimony and the claimant's oath. Zufar, the companion of Abu Hanifah, said: "It is impermissible to accept women's testimony alone without a man in any matter whatsoever—not in childbirth, breastfeeding, women's defects, nor anything else. However, he permitted their testimony alongside a man in divorce, marriage, and manumission."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ بُرْدٍ عَنْ مَكْحُولٍ قَالَ: لَا تَجُوزُ شَهَادَةُ النِّسَاءِ إلَّا فِي الدَّيْنِ.

L29387 Through the chain of Ibn Abi Shaybah, 'Abd al-Rahman ibn Mahdi reported from Sufyan al-Thawri from Burd from Makhul, who said: The testimony of women is not valid except in debt.

وَرُوِّينَا ضِدَّ هَذَا عَنْ الشَّعْبِيِّ كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ أَبِي زَائِدَةَ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: مِنْ الشَّهَادَاتِ شَهَادَةٌ لَا يَجُوزُ فِيهَا إلَّا شَهَادَاتُ النِّسَاءِ.

L29388 It has been narrated to us, contrary to this, from al-Sha'bī – as we have received through the chain of Ibn Abī Shaybah: Ibn Abī Zā'idah narrated to us from Ismā'īl ibn Abī Khālid, from al-Sha'bī, who said, "Among testimonies, there is a type in which only the testimonies of women are permissible."

وَمِنْ طَرِيقِ الزُّهْرِيِّ قَالَ: مَضَتْ السُّنَّةُ أَنْ تَجُوزَ شَهَادَةُ النِّسَاءِ فِيمَا لَا يَطَّلِعُ عَلَيْهِ غَيْرُهُنَّ - وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي سَبْرَةَ عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ الْقَعْقَاعِ عَنْ ابْنِ عُمَرَ: لَا تَجُوزُ شَهَادَةُ النِّسَاءِ وَحْدَهُنَّ إلَّا عَلَى مَا لَا يَطَّلِعُ عَلَيْهِ غَيْرُهُنَّ مِنْ عَوْرَاتِ النِّسَاءِ وَحَمْلِهِنَّ وَحَيْضِهِنَّ.

L29389–29390 And through the chain of transmission of Al-Zuhri, he said: The Sunnah has established that women's testimony is valid in matters others cannot witness. It has been narrated to us through Ibn Abi Sabrah's chain of transmission, from Musa ibn Uqbah, from Al-Qa'qa', from Ibn Umar: The testimony of women alone is not permissible except regarding matters such as women's intimate parts, their pregnancy, and their menstruation—matters that none besides them can observe.

وَمِنْ طَرِيقِ إبْرَاهِيمَ بْنِ أَبِي يَحْيَى عَنْ ابْنِ ضُمَيْرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيٍّ: لَا تَجُوزُ شَهَادَةُ النِّسَاءِ بَحْتًا حَتَّى يَكُونَ مَعَهُنَّ رَجُلٌ.

L29391 And through the chain of Ibrāhīm ibn Abī Yaḥyā, from Ibn Ḍumayrah, from his father, from his grandfather, from 'Alī: The testimony of women alone is not permissible unless there is a man with them.

وَعَنْ عَطَاءٍ مِثْلُ هَذَا - وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ مِثْلُهُ صَحَّ عَنْهُمَا.

L29392 And from 'Aṭā' like this — and from 'Umar ibn 'Abd al-'Azīz the same. It is soundly narrated.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَعَبْدِ اللَّهِ بْنِ عُتْبَةَ: لَا تُقْبَلُ النِّسَاءُ إلَّا فِيمَا لَا يَطَّلِعُ عَلَيْهِ غَيْرُهُنَّ.

L29393 According to Sa'īd ibn al-Musayyab and 'Abdullāh ibn 'Utbah, the testimony of women is not accepted except in matters that others besides them cannot witness.

L29394 It has been narrated to us through the chain of al-Ḥasan ibn 'Umārah from

وَرُوِّينَا مِنْ طَرِيقِ الْحَسَنِ بْنِ عُمَارَةَ عَنْ الزُّهْرِيِّ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، قَالَ الزُّهْرِيُّ: عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُمَرَ، وَقَالَ الْحَكَمُ: عَنْ عَلِيٍّ، ثُمَّ اتَّفَقَ عُمَرُ، وَعَلِيٌّ: عَلَى أَنَّهُ لَا تَجُوزُ شَهَادَةُ النِّسَاءِ فِي الطَّلَاقِ، وَلَا فِي النِّكَاحِ، وَلَا فِي الدِّمَاءِ، وَلَا الْحُدُودِ.

al-Zuhrī and al-Ḥakam ibn ʻUtaybah. Al-Zuhrī narrated from Saʻīd ibn al-Musayyib, who narrated from ʻUmar, while al-Ḥakam narrated from ʻAlī. Then ʻUmar and ʻAlī concurred that women's testimony is not permissible in matters of divorce, nor in marriage, nor in bloodshed, nor in Ḥudūd.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ الزُّهْرِيِّ: مَضَتْ السُّنَّةُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْخَلِيفَتَيْنِ بَعْدَهُ: أَنَّهُ لَا تَجُوزُ شَهَادَةُ النِّسَاءِ فِي الْحُدُودِ، وَالنِّكَاحِ، وَالطَّلَاقِ.

L29395 From the narration chain of Ibn Wahb, from Ismāʻīl ibn ʻAyyāsh, from al-Ḥajjāj ibn Arṭāʾ, from al-Zuhrī: It is established in the Sunnah through the Messenger of Allah—peace and blessings of Allah be upon him—and the two caliphs after him that the testimony of women is not valid in matters of Ḥudūd [prescribed punishments], and marriage, and divorce.

وَصَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّهُ لَا تَجُوزُ شَهَادَةُ النِّسَاءِ فِي الطَّلَاقِ، وَلَا فِي النِّكَاحِ، وَلَا فِي الْحُدُودِ - وَأَجَازَ شَهَادَةَ امْرَأَتَيْنِ مَعَ رَجُلٍ فِي الْعِتْقِ، وَالْوَصِيَّةِ، وَالدَّيْنِ.

L29396 It is authentically established from *Ibrāhīm al-Nakhaʻī* that women's testimony is not valid in divorce, marriage, or ḥudūd (prescribed punishments), but he deemed valid the testimony of two women in conjunction with one man in matters of manumission, wills, and debts.

وَصَحَّ عَنْ الْحَسَنِ الْبَصْرِيِّ: لَا تَجُوزُ شَهَادَةُ النِّسَاءِ فِي الْحُدُودِ، وَلَا فِي جِرَاحِ الْعَمْدِ، وَلَا فِي الطَّلَاقِ، وَلَا فِي النِّكَاحِ، وَلَا مَعَ رَجُلٍ وَلَا دُونَهُ، وَأَنَّهَا جَائِزَةٌ فِي جِرَاحِ الْخَطَأِ، وَفِي الْوَصَايَا، وَفِي الدُّيُونِ مَعَ رَجُلٍ، وَفِيمَا لَا بُدَّ مِنْهُ.

L29397 It has been authentically reported from Al-Hasan Al-Basri: The testimony of women is not valid in cases involving prescribed punishments, nor in intentional injuries, nor in divorce, nor in marriage—neither alongside a man nor independently. However, their testimony is valid in cases of accidental injuries, in wills, in debts when alongside a man, and in matters of necessity.

وَعَنْ ابْنِ الْمُسَيِّبِ لَا تَجُوزُ شَهَادَةُ النِّسَاءِ: فِي قَتْلٍ، وَلَا فِي حَدٍّ، وَلَا فِي طَلَاقٍ، وَلَا نِكَاحٍ.

L29398 It is reported from Ibn al-Musayyib that women's testimony is not admissible in cases of homicide, prescribed punishments (ḥudūd), divorce, or marriage.

وَعَنْ قَتَادَةَ: لَا تَجُوزُ شَهَادَةُ النِّسَاءِ: فِي طَلَاقٍ، وَلَا فِي نِكَاحٍ.

L29399 It is narrated from Qatadah that the testimony of women is not permissible: neither in divorce nor in marriage contracts.

وَعَنْ الزُّهْرِيِّ لَا تُقْبَلُ شَهَادَةُ النِّسَاءِ: فِي حَدٍّ، وَلَا طَلَاقٍ، وَلَا نِكَاحٍ وَلَا عِتْقٍ - وَأَجَازَهَا: فِي الْوَصَايَا فِي الدُّيُونِ، وَفِي الْقَتْلِ.

L29400–29401 The testimony of women is not accepted in ḥadd punishments, divorce, marriage, or emancipation of slaves. However, Az-Zuhri permitted their testimony in wills, in debts, and in homicide cases.

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: لَا تَجُوزُ شَهَادَةُ النِّسَاءِ فِي الطَّلَاقِ.

L29402 Narrated from Umar ibn Abd al-Aziz: Women's testimony in divorce is not permissible.

وَعَنْ رَبِيعَةَ: لَا تَجُوزُ شَهَادَةُ النِّسَاءِ فِي طَلَاقٍ، وَلَا نِكَاحٍ، وَلَا حَدٍّ، وَلَا عِتْقٍ - وَتَجُوزُ فِي الْبُيُوعِ، وَفِي كُلِّ حَقٍّ يَتَرَاضَوْنَ فِيهِ، وَيَتَعَاطَوْنَ الْمَعْرُوفَ عَلَيْهِ.

L29403 From Rabi'ah: The testimony of women is not permissible in divorce, marriage, prescribed punishments, or manumission—but it is permissible in sales and in every right in which they mutually agree and upon which they practice customary good deeds.

وَعَنْ مُحَمَّدِ بْنِ الْحَنَفِيَّةِ: تَجُوزُ شَهَادَةُ النِّسَاءِ فِي الدِّيَةِ.

L29404 On the authority of Muhammad ibn al-Hanafiyyah: The testimony of women is permissible in diyah (blood money).

وَصَحَّ عَنْ شُرَيْحٍ: أَنَّهُ أَجَازَ شَهَادَةَ امْرَأَتَيْنِ فِي عَتَاقَةٍ مَعَ رَجُلٍ.

L29405 It has been authentically reported from Shuraih that he permitted the testimony of two women in manumission with a man.

وَصَحَّ عَنِ الشَّعْبِيِّ: قَبُولُ شَهَادَةِ رَجُلٍ وَامْرَأَتَيْنِ فِي الطَّلَاقِ، وَجِرَاحِ الْخَطَأِ، وَلَمْ يُجِزْ شَهَادَةَ النِّسَاءِ فِي جِرَاحِ عَمْدٍ، وَلَا فِي حَدٍّ.

L29406 It has been authentically reported from Ash-Sha'bī that the testimony of one man and two women is acceptable in divorce and accidental injuries, but he did not permit the testimony of women in intentional injuries or in a ḥadd punishment.

وَصَحَّ عَنْ أَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ: قَبُولُ النِّسَاءِ مَعَ رَجُلٍ فِي الطَّلَاقِ وَالنِّكَاحِ.

L29407 It has been authentically reported from Abu al-Sha'thā' Jābir ibn Zayd that the acceptance of women alongside a man in divorce and marriage is permissible.

وَصَحَّ عَنْ إِيَاسِ بْنِ مُعَاوِيَةَ: قَبُولُ امْرَأَتَيْنِ فِي الطَّلَاقِ.

L29408 It has been authentically reported from Iyas ibn Muʿāwiyah: the acceptance of the testimony of two women in divorce.

وَعَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ: لَا تُقْبَلُ النِّسَاءُ فِي الْحُدُودِ.

L29409 From Hammad ibn Abi Sulaiman: Women are not accepted in ḥudūd cases.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ شُرَيْحًا أَجَازَ شَهَادَةَ أَرْبَعِ نِسْوَةٍ عَلَى رَجُلٍ فِي صَدَاقِ امْرَأَةٍ.

L29410 And through the chain of al-Hajjaj ibn al-Minhal, from Hammad ibn Salamah, from Abdullah ibn Awn, from Muhammad ibn Sirin: that Shuraij accepted the testimony of four women against a man concerning the dowry of a woman.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ هِشَامِ بْنِ حُجَيْرٍ عَمَّنْ يَرْضَى - كَأَنَّهُ يُرِيدُ طَاوُسًا - قَالَ: تَجُوزُ شَهَادَةُ النِّسَاءِ فِي كُلِّ شَيْءٍ مَعَ الرِّجَالِ، إِلَّا الزِّنَى مِنْ أَجْلِ أَنَّهُ لَا يَنْبَغِي أَنْ يَنْظُرْنَ إِلَى ذَلِكَ.

L29411 Via ʿAbd al-Razzāq, from Ibn Jurayj, from Hishām ibn Ḥujayr, from someone he deemed reliable—likely referring to Ṭāwūs—who said: The testimony of women is permissible in all matters together with men, except in cases of unlawful sexual intercourse, because it is improper for them to look upon such acts.

L29412 Through the chain of Abu 'Ubayd: Yazid (Ibn Harun) narrated to us from Jarir ibn Hazim from al-Zubayr ibn al-Khirrīt from Abu Labid, who said: An intoxicated man divorced his wife thrice, and four women testified against

him. The case was elevated to ʻUmar ibn al-Khattab, who validated the women's testimony and irrevocably separated the couple.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَزِيدُ - هُوَ ابْنُ هَارُونَ - عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ الزُّبَيْرِ بْنِ الْخِرِّيتِ عَنْ أَبِي لَبِيدٍ قَالَ: إنَّ سَكْرَانَ طَلَّقَ امْرَأَتَهُ ثَلَاثًا، فَشَهِدَ عَلَيْهِ أَرْبَعُ نِسْوَةٍ، فَرُفِعَ إلَى عُمَرَ بْنِ الْخَطَّابِ، فَأَجَازَ شَهَادَةَ النِّسْوَةِ، وَفَرَّقَ بَيْنَهُمَا.

L29413–29415 From the chain of transmission of Muḥammad ibn al-Muthannā, who narrated to us from ʿAbd al-Raḥmān ibn Mahdī, from Ḥirāsh ibn Mālik al-Jahḍamī, who narrated to us from Yaḥyā ibn ʿUbayd, from his father: that a man from Oman filled himself with drink and then divorced his wife. Three times, and married women testified against him. A report was sent regarding it to Umar ibn al-Khattab, so he accepted the testimony of the married women and finalized the divorce as irrevocable for him.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ حِرَاشِ بْنِ مَالِكٍ الْجَهْضَمِيِّ نا يَحْيَى بْنُ عُبَيْدٍ عَنْ أَبِيهِ: أَنَّ رَجُلًا مِنْ عُمَانَ تَمَلَّأَ مِنْ الشَّرَابِ فَطَلَّقَ امْرَأَتَهُ ثَلَاثًا، فَشَهِدَ عَلَيْهِ نِسْوَةٌ، فَكُتِبَ فِي ذَلِكَ إلَى عُمَرَ بْنِ الْخَطَّابِ فَأَجَازَ شَهَادَةَ النِّسْوَةِ، وَأَبَتَّ عَلَيْهِ الطَّلَاقَ.

L29416 Through the chain of Muḥammad ibn ʿAbd Allāh ibn Yazīd al-Muqri, who narrated to us from Sufyān ibn ʿUyaynah, who narrated to us from Abū Ṭalq, from a woman: A woman had intercourse with a boy and killed him. Four women testified against her, and ʿAlī ibn Abī Ṭālib accepted their testimony.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي نا سُفْيَانُ بْنُ عُيَيْنَةَ نا أَبُو طَلْقٍ عَنْ امْرَأَةٍ: أَنَّ امْرَأَةً وَطِئَتْ صَبِيًّا فَقَتَلَتْهُ، فَشَهِدَ عَلَيْهَا أَرْبَعُ نِسْوَةٍ، فَأَجَازَ عَلِيُّ بْنُ أَبِي طَالِبٍ شَهَادَتَهُنَّ.

L29417 From the path of Abū Bakr ibn Abī Shaybah, informed by Ḥafṣ ibn Ghiyāth from Abū Ṭalq from his sister Hind bint Ṭalq, who said: I was among a group of women when a shrouded child lay [on the ground]. A woman stood up, passed by, and stepped on him. The child's mother said, "By Allah, you have killed him!" Ten women testified before Ali—I being the tenth among them—so Ali ruled against her for the blood money and aided her with two thousand.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ أَبِي طَلْقٍ عَنْ أُخْتِهِ هِنْدَ بِنْتِ طَلْقٍ قَالَتْ: كُنْت فِي نِسْوَةٍ وَصَبِيٌّ مُسَجًّى، فَقَامَتْ امْرَأَةٌ فَمَرَّتْ فَوَطِئَتْهُ، فَقَالَتْ أُمُّ الصَّبِيِّ: قَتَلْتِهِ وَاَللَّهِ، فَشَهِدَ عِنْدَ عَلِيٍّ عَشْرُ نِسْوَةٍ - أَنَا عَاشِرَتُهُنَّ - فَقَضَى عَلِيٌّ عَلَيْهَا بِالدِّيَةِ وَأَعَانَهَا بِأَلْفَيْنِ.

L29418 From the transmission of Abū ʻUbayd, who reported to us via Hushaym, from Ḥajjāj ibn Arṭāh, from ʻAṭāʼ, who said: ʻUmar ibn al-Khaṭṭāb permitted the testimony of women together with men in matters of divorce and marriage.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا هُشَيْمٌ عَنْ حَجَّاجِ بْنِ أَرْطَاةَ عَنْ عَطَاءٍ قَالَ: أَجَازَ عُمَرُ بْنُ الْخَطَّابِ شَهَادَةَ النِّسَاءِ مَعَ الرِّجَالِ: فِي الطَّلَاقِ، وَالنِّكَاحِ.

L29419 And through the chain of transmission of Abu ʼUbayd, Yazid reported to us from Hajjaj from ʼAtaʼ ibn Abi Rabah that he permitted women's witnessing in marriage.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَزِيدُ عَنْ حَجَّاجٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ: أَنَّهُ أَجَازَ شَهَادَةَ النِّسَاءِ فِي النِّكَاحِ.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا أَبُو مُعَاوِيَةَ - وَهُوَ مُحَمَّدُ بْنُ خَازِمٍ الضَّرِيرُ - عَنْ أَبِيهِ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: لَوْ شَهِدَ عِنْدِي ثَمَانِي نِسْوَةٍ عَلَى امْرَأَةٍ بِالزِّنَى لَرَجَمْتُهَا.

L29420 Through the chain of Muḥammad ibn al-Muthannā: Abū Muʿāwiyah (Muḥammad ibn Khāzim al-Ḍarīr) narrated to us from his father from ʿAṭāʾ ibn Abī Rabāḥ, who said: "If eight women testified before me against a woman for adultery, I would carry out her stoning [as the legal punishment]."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: تَجُوزُ شَهَادَةُ النِّسَاءِ مَعَ الرِّجَالِ فِي كُلِّ شَيْءٍ - وَتَجُوزُ عَلَى الزِّنَى امْرَأَتَانِ وَثَلَاثَةُ رِجَالٍ.

L29421 Through the chain of ʿAbd al-Razzāq, who narrated to us from Ibn Jurayj, from ʿAṭāʾ ibn Abī Rabāḥ, who said: "The testimony of women alongside men is permissible in all matters. In cases of adultery, the testimony of two women and three men is permissible."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ رَجُلًا ادَّعَى مَتَاعَ الْبَيْتِ، فَجَاءَ أَرْبَعُ نِسْوَةٍ يَشْهَدْنَ فَقُلْنَ: دَفَعْنَا إِلَيْهِ الصَّدَاقَ وَقُلْنَا: جَهِّزْهَا؟ فَقَضَى شُرَيْحٌ عَلَيْهِ بِالْمَتَاعِ وَقَالَ لَهُ: إِنَّ عُقْرَهَا مِنْ مَالِكَ - هَذَا فِي غَايَةِ الصِّحَّةِ.

L29422 From the chain of Ibn Abi Shaybah, narrated to us by Ismāʿīl ibn ʿUlayyah from ʿAbdullāh ibn ʿAwn from Muḥammad ibn Sīrīn: A man claimed ownership of the trousseau. Four women came to testify, saying: "We gave him the dowry and asked: 'Should we not prepare her trousseau?'" Shurayḥ ruled against him, ordering him to surrender the trousseau, and said: "Her indemnity is from your wealth." This ruling is entirely sound.

وَأَمَّا الْمُتَأَخِّرُونَ: فَإِنَّ سُفْيَانَ الثَّوْرِيَّ قَالَ فِي أَحَدِ قَوْلَيْهِ: تُقْبَلُ الْمَرْأَتَانِ مَعَ رَجُلٍ فِي الْقِصَاصِ، وَفِي الطَّلَاقِ، وَالنِّكَاحِ، وَكُلِّ شَيْءٍ - حَاشَ الْحُدُودَ - وَيُقْبَلْنَ مُنْفَرِدَاتٍ فِيمَا لَا يَطَّلِعُ عَلَيْهِ إِلَّا النِّسَاءُ.

L29423 As for the later jurists: Sufyan al-Thawri held in one of his two opinions that two women are accepted alongside one man in matters of retribution (qisas), divorce, marriage, and everything—excluding Hudud punishments—and their testimony alone is accepted in matters that only women can have knowledge of.

وَقَالَ عُثْمَانُ الْبَتِّيُّ، وَسُفْيَانُ فِي أَحَدِ قَوْلَيْهِ: يُقْبَلْنَ مَعَ رَجُلٍ فِي الطَّلَاقِ، وَالنِّكَاحِ، وَكُلِّ شَيْءٍ - حَاشَ الْحُدُودِ وَالْقِصَاصِ - وَيُقْبَلْنَ مُنْفَرِدَاتٍ فِيمَا لَا يَطَّلِعُ عَلَيْهِ إِلَّا النِّسَاءُ، وَلَا يُقْبَلُ فِي الرَّضَاعِ إِلَّا رَجُلٌ وَامْرَأَتَانِ.

L29424–29425 Uthman al-Batti and Sufyan, in one of his two opinions, said: [Women] are accepted alongside a man in divorce, marriage, and all matters—excluding Ḥudūd and Qiṣāṣ—and they are accepted alone in matters only women would be privy to. And in breastfeeding, only a man and two women are accepted.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: لَا تَجُوزُ شَهَادَةُ النِّسَاءِ مَعَ رَجُلٍ فِي الْحُدُودِ، وَتُصَدَّقُ الْمَرْأَةُ وَحْدَهَا فِي الْوِلَادَةِ: أَنَّهَا وَلَدَتْ هَذَا الْوَلَدَ، وَيُلْحَقُ نَسَبُهُ - وَإِنْ لَمْ يَشْهَدْ لَهَا بِذَلِكَ أَحَدٌ سِوَاهَا.

L29426 Al-Ḥasan ibn Ḥayy said: The testimony of women alongside a man is not permissible in prescribed punishments, but a woman alone is deemed truthful regarding childbirth: that she gave birth to this child, and his lineage is established—even if no one besides her testifies to that effect for him.

L29427 Ibn Abi Layla said: Women's testimony is accepted individually in cases

involving women's defects or matters only women can know. In matters of breastfeeding, testimony is not accepted except from one man and two women or two men.

وَقَالَ ابْنُ أَبِي لَيْلَى: يُقْبَلْنَ مُنْفَرِدَاتٍ فِي عُيُوبِ النِّسَاءِ، وَمَا لَا يَطَّلِعُ عَلَيْهِ إِلَّا النِّسَاءُ، وَلَا يُقْبَلُ فِي الرَّضَاعِ إِلَّا رَجُلٌ وَامْرَأَتَانِ أَوْ رَجُلَانِ.

L29428 And Layth ibn Sa'd said: Women's testimony is accepted individually in matters that men are not privy to, but women's testimonies are not accepted alongside a man in cases of qisas, ḥudūd (prescribed punishments), divorce, or marriage. The testimony of two women and a man is permissible in manumission and wills.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ: يُقْبَلْنَ مُنْفَرِدَاتٍ فِيمَا لَا يَطَّلِعُ عَلَيْهِ الرِّجَالُ، وَلَا يُقْبَلْنَ مَعَ رَجُلٍ: لَا فِي قِصَاصٍ، وَلَا حَدٍّ، وَلَا طَلَاقٍ، وَلَا نِكَاحٍ - وَتَجُوزُ شَهَادَةُ امْرَأَتَيْنِ وَرَجُلٍ فِي الْعِتْقِ وَالْوَصِيَّةِ.

L29429 Abu Hanifah said: The testimony of two women and one man is accepted comprehensively in all legal rulings excepting entirely qisas and hudud. They are accepted in divorce, marriage, and retraction of divorce when accompanied by a man. Their testimony alone is not accepted in breastfeeding matters, the completion of the waiting period through childbirth, or istihlāl unless joined by a man. However, their testimony is accepted independently in cases of unrestricted childbirth and physical defects in women.

وَقَالَ أَبُو حَنِيفَةَ: تُقْبَلُ شَهَادَةُ امْرَأَتَيْنِ، وَرَجُلٍ فِي جَمِيعِ الْأَحْكَامِ أَوَّلِهَا عَنْ آخِرِهَا، حَاشَ الْقِصَاصَ وَالْحُدُودَ - وَيُقْبَلْنَ فِي الطَّلَاقِ وَالنِّكَاحِ وَالرَّجْعَةِ مَعَ رَجُلٍ - وَلَا يُقْبَلْنَ مُنْفَرِدَاتٍ: لَا فِي الرَّضَاعِ، وَلَا فِي انْقِضَاءِ الْعِدَّةِ بِالْوِلَادَةِ، وَلَا فِي الِاسْتِهْلَالِ لَكِنْ مَعَ رَجُلٍ - وَيُقْبَلْنَ فِي الْوِلَادَةِ الْمُطْلَقَةِ، وَعُيُوبِ النِّسَاءِ مُنْفَرِدَاتٍ.

L29430 Abū Yūsuf and Muḥammad ibn al-Ḥasan said: Women are accepted as solitary [witnesses] in the expiration of the waiting period through childbirth and in the sighting of the new moon.

قَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: وَيُقْبَلْنَ مُنْفَرِدَاتٍ فِي انْقِضَاءِ الْعِدَّةِ بِالْوِلَادَةِ، وَفِي الِاسْتِهْلَالِ.

L29431 Malik said: Women are not accepted either alongside a man or independently in matters of retaliation (qiṣāṣ), prescribed penalties (ḥudūd), divorce, marriage, revocation of divorce, manumission, lineage, clientage, or marital status (iḥṣān).

وَقَالَ مَالِكٌ: لَا تُقْبَلُ النِّسَاءُ مَعَ رَجُلٍ وَلَا دُونَهُ: فِي قِصَاصٍ، وَلَا حَدٍّ، وَلَا طَلَاقٍ، وَلَا نِكَاحٍ، وَلَا رَجْعَةٍ، وَلَا عِتْقٍ، وَلَا نَسَبٍ، وَلَا وَلَاءٍ، وَلَا إحْصَانٍ.

L29432 Their testimony is permissible alongside a man in debts, properties, agency, and wills that do not involve manumission. They are accepted alone in matters of defects in women, childbirth, breastfeeding, and the commencement of puberty. In cases where a witness and the claimant's oath are accepted, judgment is rendered based on the testimony of two women and the claimant's oath. Judgment is also rendered with two women alongside the claimant's oaths in *qasamah* (the collective oath procedure).

وَتَجُوزُ شَهَادَتُهُنَّ مَعَ رَجُلٍ فِي الدُّيُونِ، وَالْأَمْوَالِ، وَالْوَكَالَةِ، وَالْوَصِيَّةِ الَّتِي لَا عِتْقَ فِيهَا - وَيُقْبَلْنَ مُنْفَرِدَاتٍ: فِي عُيُوبِ النِّسَاءِ، وَالْوِلَادَةِ، وَالرَّضَاعِ وَالِاسْتِهْلَالِ - وَحَيْثُ يُقْبَلُ شَاهِدٌ وَيَمِينُ الطَّالِبِ، فَإِنَّهُ يُقْضَى فِيهِ بِشَهَادَةِ امْرَأَتَيْنِ وَيَمِينِ الطَّالِبِ، وَيُقْضَى بِامْرَأَتَيْنِ مَعَ أَيْمَانِ الْمُدَّعِي فِي الْقَسَامَةِ.

L29433–29435 Al-Shafi'ī said: The testimony of two women alongside one man is acceptable in all matters pertaining to wealth and manumission, because he [...] In

wealth, accidental killing, and bequests of wealth to a person, women's testimonies are not accepted in the basic ruling of bequests—neither alongside a man nor without him. However, they are valid as sole witnesses in matters to which only women are privy.

وَقَالَ الشَّافِعِيُّ: تُقْبَلُ شَهَادَةُ امْرَأَتَيْنِ مَعَ رَجُلٍ فِي الْأَمْوَالِ كُلِّهَا، وَفِي الْعِتْقِ، لِأَنَّهُ مَالٌ، وَفِي قَتْلِ الْخَطَأِ، وَفِي الْوَصِيَّةِ لِإِنْسَانٍ بِمَالٍ - وَلَا يُقْبَلْنَ فِي أَصْلِ الْوَصِيَّةِ لَا مَعَ رَجُلٍ وَلَا دُونَهُ - وَيُقْبَلْنَ مُنْفَرِدَاتٍ فِيمَا لَا يَطَّلِعُ عَلَيْهِ إِلَّا النِّسَاءُ.

L29436 Abū ʿUbayd said: Women are not accepted alongside a man except in matters of wealth specifically.

وَقَالَ أَبُو عُبَيْدٍ: لَا تُقْبَلُ النِّسَاءُ مَعَ رَجُلٍ إِلَّا فِي الْأَمْوَالِ خَاصَّةً.

L29437 Abu Sulayman said: Their testimonies are not accepted even when accompanied by a man, except specifically in financial matters.

وَقَالَ أَبُو سُلَيْمَانَ: لَا يُقْبَلْنَ مَعَ رَجُلٍ إِلَّا فِي الْأَمْوَالِ خَاصَّةً.

L29438 As for their differing opinions regarding the number of women from whom acceptance applies where they are accepted individually.

وَأَمَّا اخْتِلَافُهُمْ فِي عَدَدِ مَا يُقْبَلُ مِنْهُنَّ حَيْثُ يُقْبَلْنَ مُنْفَرِدَاتٍ.

L29439 It has been narrated to us from Umar ibn al-Khattab, as previously cited, that the place of one male witness is taken by two women. Thus, in matters where two male witnesses are accepted, testimony is not valid unless four women [testify].

فَرُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ كَمَا ذَكَرْنَا أَنَّ مَكَانَ كُلِّ شَاهِدٍ رَجُلٌ امْرَأَتَانِ فَلَا يُقْبَلُ فِيمَا يُقْبَلُ فِيهِ رَجُلَانِ إِلَّا أَرْبَعُ نِسْوَةٍ.

L29440 And from ʿAli ibn Abi Talib is a similar position. This is the view of al-Shaʿbi; al-Nakhaʿi (in one of his two opinions); ʿAta' and Qatadah in their general opinion; Ibn Shubrumah; al-Shafiʿi and his school; and Abu Sulayman and his school—except that they said: The testimony of a single woman is accepted concerning breastfeeding.

وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ مِثْلُ ذَلِكَ - وَهُوَ قَوْلُ الشَّعْبِيِّ، وَالنَّخَعِيِّ فِي أَحَدِ قَوْلَيْهِمَا، وَعَطَاءٍ، وَقَتَادَةَ فِي قَوْلِهِ جُمْلَةً، وَابْنِ شُبْرُمَةَ، وَالشَّافِعِيُّ، وَأَصْحَابِهِ، وَأَبِي سُلَيْمَانَ وَأَصْحَابِهِ، إِلَّا أَنَّهُمْ قَالُوا: تُقْبَلُ فِي الرَّضَاعِ امْرَأَةٌ وَاحِدَةٌ.

L29441 Uthman al-Batti said: It is not accepted in matters where women's testimony alone suffices except with three women—not fewer.

وَقَالَ عُثْمَانُ الْبَتِّيُّ: لَا يُقْبَلُ فِيمَا يُقْبَلُ فِيهِ النِّسَاءُ مُنْفَرِدَاتٍ إِلَّا ثَلَاثُ نِسْوَةٍ لَا أَقَلُّ.

L29442 A group held that two women are accepted in all matters where women are accepted when alone—and that is the view of Al-Zuhri—except specifically in *al-istihlāl* (certification of childbirth onset), where only the midwife is accepted alone.

وَقَالَتْ طَائِفَةٌ: تُقْبَلُ امْرَأَتَانِ فِي كُلِّ مَا يُقْبَلُ فِيهِ النِّسَاءُ مُنْفَرِدَاتٍ - وَهُوَ قَوْلُ الزُّهْرِيِّ إِلَّا فِي الِاسْتِهْلَالِ خَاصَّةً، فَإِنَّهُ يُقْبَلُ فِيهِ الْقَابِلَةُ وَحْدَهَا.

L29443 Al-Hakam ibn Utaybah said: In all of this, two women are accepted as witnesses (and this is the opinion of Ibn Abi Layla, Malik, his companions, and Abu ʿUbayd), while a group said: One woman is accepted as witnesses.

وَقَالَ الْحَكَمُ بْنُ عُتَيْبَةَ: يُقْبَلُ فِي ذَلِكَ كُلِّهِ امْرَأَتَانِ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى وَمَالِكٍ وَأَصْحَابِهِ، وَأَبِي عُبَيْدٍ - وَقَالَتْ طَائِفَةٌ: تُقْبَلُ امْرَأَةٌ وَاحِدَةٌ.

L29444 It has been reported to us from Ali ibn Abi Talib—may Allah be pleased with

him—that he permitted the testimony of a midwife alone. Similar reports are narrated from Abu Bakr and Umar—may Allah be pleased with them both—regarding the newborn's cry, and it is reported that Umar granted inheritance based on that [testimony]. This is the opinion of al-Zuhri, al-Nakha'i, and al-Sha'bi in one of the two opinions of them both. It is also the view of al-Hasan al-Basri, Shurayh, Abu al-Zinad, Yahya ibn Sa'id al-Ansari, Rabi'ah, and Hammad ibn Abi Sulayman.

رُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ -: أَنَّهُ أَجَازَ شَهَادَةَ الْقَابِلَةِ وَحْدَهَا وَرُوِّينَا ذَلِكَ عَنْ أَبِي بَكْرٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - فِي الِاسْتِهْلَالِ، وَأَنَّ عُمَرَ وَرَّثَ بِذَلِكَ - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَالنَّخَعِيِّ، وَالشَّعْبِيِّ فِي أَحَدِ قَوْلَيْهِمَا - وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَشُرَيْحٍ، وَأَبِي الزِّنَادِ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ وَرَبِيعَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ

L29445 He said: If she were a Jewish woman, all of them said this regarding the commencement of the lunar month—except al-Sha'bi and Hammad, who instead said: "In anything that cannot be ascertained except by women"—and this is the opinion of al-Layth ibn Sa'd.

- قَالَ: وَإِنْ كَانَتْ يَهُودِيَّةً كُلُّ ذَلِكَ قَالُوهُ فِي الِاسْتِهْلَالِ، إلَّا الشَّعْبِيُّ، وَحَمَّادًا فَقَالَا: فِي كُلِّ مَا لَا يَطَّلِعُ عَلَيْهِ إلَّا النِّسَاءُ - وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ.

L29446–29448 Sufyan al-Thawri said: Testimony is accepted concerning defects in women and matters only women can know, with one woman's testimony being sufficient—this being the opinion of Abū Ḥanīfah and his companions. It is authentically reported from Ibn ʿAbbās and narrated from ʿUthmān. Ali—Commander of the Faithful—Ibn Umar, al-Ḥasan al-Baṣrī, and al-Zuhrī hold that the ruling concerning breastfeeding is established by the testimony of one woman. This is narrated from Rabīʿah, Yaḥyā ibn Saʿīd, Abū al-Zinād, al-Nakhaʿī, Shurayḥ, Ṭāwūs, and al-Shaʿbī.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: يُقْبَلُ فِي عُيُوبِ النِّسَاءِ، وَمَا لَا يَطَّلِعُ عَلَيْهِ إلَّا النِّسَاءُ امْرَأَةٌ وَاحِدَةٌ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ - وَصَحَّ عَنْ ابْنِ عَبَّاسٍ، وَرُوِيَ عَنْ عُثْمَانَ، وَعَلِيٍّ - أَمِيرَيْ الْمُؤْمِنِينَ - وَابْنُ عُمَرَ، وَالْحَسَنُ الْبَصْرِيُّ، وَالزُّهْرِيُّ - وَرُوِيَ عَنْ رَبِيعَةَ، وَيَحْيَى بْنِ سَعِيدٍ وَأَبِي الزِّنَادِ، وَالنَّخَعِيِّ، وَشُرَيْحٍ، وَطَاوُسٍ، وَالشَّعْبِيِّ: الْحُكْمُ فِي الرَّضَاعِ بِشَهَادَةِ امْرَأَةٍ وَاحِدَةٍ.

L29449 And that Uthman separated men from their wives based on the testimony of two witnesses. Al-Zuhri mentioned that the people upheld this practice. Al-Sha'bi mentioned this as a general principle concerning judicial rulings. It is narrated from Ibn Abbas that the wife is required to take an oath in addition to that.

وَأَنَّ عُثْمَانَ فَرَّقَ بِشَهَادَتِهِمَا بَيْنَ الرِّجَالِ وَنِسَائِهِمْ - وَذَكَرَ الزُّهْرِيُّ أَنَّ النَّاسَ عَلَى ذَلِكَ - وَذَكَرَ الشَّعْبِيُّ ذَلِكَ عَنْ الْقَضَاءِ جُمْلَةً - وَرُوِيَ عَنْ ابْنِ عَبَّاسٍ أَنَّهَا تُسْتَحْلَفُ مَعَ ذَلِكَ.

L29450 It has been authentically established from Mu'awiyah that he ruled regarding a house based on the testimony of Umm Salamah, the Mother of the Believers—may Allah be pleased with her—without summoning anyone else as a witness for that matter.

وَصَحَّ عَنْ مُعَاوِيَةَ: أَنَّهُ قَضَى فِي دَارٍ بِشَهَادَةِ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - وَلَمْ يُشْهِدْ بِذَلِكَ غَيْرَهَا.

L29451 It has been narrated to us from Umar, Ali, al-Mughīrah ibn Shu'bah, and Ibn Abbas that they did not effect separation based on the testimony of a single woman concerning breastfeeding. This is the position of Abū Ubayd,

وَرُوِّينَا عَنْ عُمَرَ، وَعَلِيٍّ، وَالْمُغِيرَةِ بْنِ شُعْبَةَ، وَابْنِ عَبَّاسٍ: أَنَّهُمْ لَمْ يُفَرِّقُوا بِشَهَادَةِ امْرَأَةٍ وَاحِدَةٍ فِي الرَّضَاعِ - وَهُوَ قَوْلُ أَبِي عُبَيْدٍ، قَالَ: أُفْتِي فِي ذَلِكَ بِالْفُرْقَةِ - وَلَا أَقْضِي بِهَا.

who said: “I was asked for a legal opinion on separation in that matter and provided it, but I do not rule based on that testimony.”

L29452 It has been reported to us from Umar that he said: If we were to open this door, no woman would wish to separate a man from his wife but that she would do so.

وَرُوِّينَا عَنْ عُمَرَ: أَنَّهُ قَالَ: لَوْ فَتَحْنَا هَذَا الْبَابَ لَمْ تَشَأْ امْرَأَةٌ أَنْ تُفَرِّقَ بَيْنَ رَجُلٍ وَامْرَأَتِهِ إِلَّا فَعَلَتْ.

L29453 Al-Awzaʿī said: I accept the testimony of a single woman before marriage and prohibit the marriage, but I do not annul it based on the testimony of two women after marriage.

وَقَالَ الْأَوْزَاعِيِّ: أَقْضِي بِشَهَادَةِ امْرَأَةٍ وَاحِدَةٍ، قَبْلَ النِّكَاحِ، وَأَمْنَعُ مِنْ النِّكَاحِ، وَلَا أُفَرِّقُ بِشَهَادَتِهِمَا بَعْدَ النِّكَاحِ.

L29454 Abu Muhammad said: Among the arguments of those who do not accept the testimony of women alone nor the testimony of a woman alongside a man except in deferred debts exclusively is that they stated: Allah, the Exalted, commanded four male witnesses for adultery; two men or a man and two women for deferred debts; two Muslims for bequests during travel; or two non-Muslims who swear an oath alongside their testimony; and two just men from among us for divorce and retraction of divorce.

قَالَ أَبُو مُحَمَّدٍ: فَكَانَ مِنْ حُجَّةِ مَنْ لَمْ يَرَ قَبُولَ النِّسَاءِ مُنْفَرِدَاتٍ، وَلَا قَبُولَ امْرَأَةٍ مَعَ رَجُلٍ إِلَّا فِي الدُّيُونِ الْمُؤَجَّلَةِ فَقَطْ، أَنْ قَالُوا: أَمَرَ اللَّهُ تَعَالَى فِي الزِّنَى بِقَبُولِ أَرْبَعَةٍ، وَفِي الدُّيُونِ الْمُؤَجَّلَةِ بِرَجُلَيْنِ، أَوْ رَجُلٍ وَامْرَأَتَيْنِ، وَفِي الْوَصِيَّةِ فِي السَّفَرِ بِاثْنَيْنِ مِنْ الْمُسْلِمِينَ، أَوْ بِاثْنَيْنِ مِنْ غَيْرِ الْمُسْلِمِينَ يَحْلِفَانِ مَعَ شَهَادَتِهِمَا، وَفِي الطَّلَاقِ وَالرَّجْعَةِ بِذَوَيْ عَدْلٍ مِنَّا.

L29455–29457 The Messenger of Allah (prayers and peace be upon him) said regarding a dispute over land: “Your two witnesses or his oath; you have nothing but that.” Neither Allah the Exalted nor His Messenger (prayers and peace be upon him) mentioned the number of witnesses or their attributes except [...] Therefore, in these texts alone, it is obligatory to abide by them, not to exceed, and to accept nothing beyond them except what Muslims have agreed to accept.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي التَّدَاعِي فِي أَرْضٍ «شَاهِدَاكَ أَوْ يَمِينُهُ، لَيْسَ لَكَ إِلَّا ذَلِكَ» فَلَمْ يَذْكُرْ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَدَدَ الشُّهُودِ وَصِفَتَهُمْ إِلَّا فِي هَذِهِ النُّصُوصِ فَقَطْ، فَوَجَبَ الْوُقُوفُ عِنْدَهَا، وَأَنْ لَا نَتَعَدَّى، وَأَنْ لَا يُقْبَلَ فِيمَا عَدَا ذَلِكَ إِلَّا مَا اتَّفَقَ الْمُسْلِمُونَ عَلَى قَبُولِهِ.

L29458 Abū Muḥammad said: We do not know of anyone among those who oppose us who has followed in their rulings on testimonies the established texts from the Qur’ān, nor from the Sunnah, nor from consensus, nor from legal analogy, nor from the precautionary principle, nor from the statements of the Companions—may Allah be pleased with them. All rulings formulated thus are feeble, mutually contradictory, and invalid. It is religiously impermissible to uphold them in the religion of Allah the Exalted, nor is it lawful to judge

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ أَحَدًا مِمَّنْ يُخَالِفُنَا اتَّبَعَ فِي أَقْوَالِهِ فِي الشَّهَادَاتِ النُّصُوصَ الثَّابِتَةَ مِنْ الْقُرْآنِ، وَلَا مِنْ السُّنَنِ، وَلَا مِنْ الْإِجْمَاعِ، وَلَا مِنْ الْقِيَاسِ، وَلَا مِنْ الِاحْتِيَاطِ، وَلَا مِنْ قَوْلِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَكُلُّ أَقْوَالٍ كَانَتْ هَكَذَا فَهِيَ مُتَخَاذِلَةٌ مُتَنَاقِضَةٌ بَاطِلٌ، لَا يَحِلُّ الْقَوْلُ بِهَا فِي دِينِ اللَّهِ تَعَالَى، وَلَا يَجُوزُ الْحُكْمُ بِهَا، فِي دِمَاءِ الْمُسْلِمِينَ،

by them concerning the blood, private parts, bodily integrity, or wealth of Muslims. This is because suppose we were to abstain now from challenging their reliance on the aforementioned texts, we would still demonstrate to them—by Allah's might—their blatant contravention of these texts. As for Abū Ḥanīfah: He permitted women's testimony in marriage, divorce, and revocation alongside a man's testimony. Yet this finds no basis in any of the verses, which explicitly state: *"When they have fulfilled their term, either retain them honorably or separate from them honorably, and appoint two just witnesses from among you..."* [At-Ṭalāq 65:2].[8]

وَفُرُوجِهِمْ، وَأَبْشَارِهِمْ، وَأَمْوَالِهِمْ، وَذَلِكَ أَنَّنَا هَبْكَ أَمْسَكْنَا الْآنَ عَنْ الِاعْتِرَاضِ عَلَى احْتِجَاجِهِمْ بِالنُّصُوصِ الْمَذْكُورَةِ، لَكِنْ لِنُرِيَهُمْ - بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ - مُخَالَفَتَهُمْ لَهَا جِهَارًا -: أَمَّا أَبُو حَنِيفَةَ: فَأَجَازَ شَهَادَةَ النِّسَاءِ فِي النِّكَاحِ، وَالطَّلَاقِ، وَالرَّجْعَةِ مَعَ رَجُلٍ، وَلَيْسَ هَذَا فِي شَيْءٍ مِنْ الْآيَاتِ، بَلْ فِيهَا: {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ} [الطلاق: ٢] .

L29459 Who is more astonishing in circumstance than one who deems sworn testimony alongside the witness to contradict the words of Allah the Exalted: {And take two witnesses from among your men. If there are not two men, then a man and two women...} [Al-Baqarah: 282], yet does not regard his opinion permitting two women with a man as contradicting the words of Allah the Exalted: {And take as witnesses two just men from among you...} [At-Talaq: 2]?[9]

فَمَنْ أَعْجَبُ شَأْنًا مِمَّنْ يَرَى خَبَرَ الْيَمِينِ مَعَ الشَّاهِدِ خِلَافًا لِقَوْلِ اللَّهِ تَعَالَى: {وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ} [البقرة: ٢٨٢] وَلَا يَرَى قَوْلَهُ بِإِجَازَةِ امْرَأَتَيْنِ مَعَ رَجُلٍ خِلَافًا لِقَوْلِهِ تَعَالَى: {وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ} [الطلاق: ٢] .

L29460 If they say: "Does the testimony of one just woman and one just man suffice as two just witnesses from us?" We reply: "The testimony of three men and two women suffices for adultery, but four witnesses are required for one of the two parties involved—with no distinction."

فَإِنْ قَالُوا: إنَّ امْرَأَةً عَدْلَةً وَرَجُلًا عَدْلًا يَقَعُ عَلَيْهِمَا ذَوَيْ عَدْلٍ مِنَّا؟ قُلْنَا: وَشَهَادَةُ ثَلَاثَةِ رِجَالٍ وَامْرَأَتَيْنِ فِي الزِّنَى يَقَعُ عَلَيْهِمْ وَعَلَى وَاحِدَةٍ مِنْهُمَا أَرْبَعَةُ شُهَدَاءَ وَلَا فَرْقَ.

L29461 Then they accepted the testimony of a single woman in cases where women's testimony is accepted independently, but they did not accept it in matters of breastfeeding where the Sunnah explicitly establishes its acceptance—and this is the position upheld by the majority of the Salaf (early scholars).

ثُمَّ قَبِلُوا شَهَادَةَ امْرَأَةٍ وَاحِدَةٍ حَيْثُ تُقْبَلُ النِّسَاءُ مُنْفَرِدَاتٍ وَلَمْ يَقْبَلُوهَا فِي الرَّضَاعِ حَيْثُ جَاءَتْ السُّنَّةُ بِقَبُولِهَا - وَبِهِ قَالَ جُمْهُورُ السَّلَفِ.

L29462–29464 If they say, "We have analogized that to deferred debts." We said: Therefore, apply analogy in this matter to the prescribed punishments and retaliation based on deferred debts, as there is no distinction. If they claim that there is a consensus that deferred debts are not accepted in the prescribed punishments, 'Aṭā' would have refuted them.

فَإِنْ قَالُوا: قِسْنَا ذَلِكَ عَلَى الدُّيُونِ الْمُؤَجَّلَةِ قُلْنَا: فَقِيسُوا الْحُدُودَ فِي ذَلِكَ وَالْقِصَاصَ عَلَى الدُّيُونِ الْمُؤَجَّلَةِ وَلَا فَرْقَ فَإِنْ ادَّعَوْا إجْمَاعًا عَلَى أَنْ لَا يُقْبَلْنَ فِي الْحُدُودِ أَكْذَبَهُمْ عَطَاءٌ.

L29465 If they say, "He opposed the majority of scholars," we respond, "And you

فَإِنْ قَالُوا: خَالَفَ جُمْهُورَ الْعُلَمَاءِ: قُلْنَا: وَأَنْتُمْ خَالَفْتُمْ فِي أَنْ لَا يُقْبَلْنَ النِّسَاءُ مُنْفَرِدَاتٍ فِي الرَّضَاعِ جُمْهُورَ الْعُلَمَاءِ.

[8] **Qur'an references (L29458):** Qur'an 65:2 (At-Talaq).
[9] **Qur'an references (L29459):** Qur'an 2:282 (Al-Baqarah); Qur'an 65:2 (At-Talaq).

opposed the majority of scholars in not accepting women [as witnesses] alone in matters of breastfeeding (al-rida‘).”

وَأَمَّا مَالِكٌ: فَقَاسَ بَعْضَ الْأَمْوَالِ عَلَى الدُّيُونِ الْمُؤَجَّلَةِ وَلَمْ يَقِسْ عَلَيْهَا الْعِتْقَ - وَقَبِلَ امْرَأَتَيْنِ لَا رَجُلَ مَعَهُمَا مَعَ يَمِينِ الطَّالِبِ فِي الْأَمْوَالِ وَالْقَسَامَةِ - وَمَا نَعْلَمُ لَهُ سَلَفًا فِي هَذَا رُوِيَ عَنْهُ هَذَا الْقَوْلُ.

L29466 As for Mālik: he analogized certain assets to deferred debts but did not extend this analogy to manumission. He accepted [the testimony of] two women with no man accompanying them in matters of wealth and qasamah along with the claimant’s oath. We know of no precedent for this position among earlier scholars, and this opinion has been narrated from him.

وَخَالَفَ جُمْهُورَ الْعُلَمَاءِ فِي رَدِّ شَهَادَةِ امْرَأَةٍ وَاحِدَةٍ فِي الِاسْتِهْلَالِ.

L29467 He opposed the majority of scholars in their rejection of the testimony of a single woman regarding the crescent sighting.

وَفِي قَبُولِ امْرَأَتَيْنِ تُقْبَلُ النِّسَاءُ مُنْفَرِدَاتٍ.

L29468 In the acceptance of two women as witnesses, women are admissible alone.

وَأَمَّا الشَّافِعِيُّ: فَقَاسَ الْأَمْوَالَ عَلَى الدُّيُونِ الْمُؤَجَّلَةِ؟ فَيُقَالُ لَهُ: هَلَّا قِسْت سَائِرَ الْأَحْكَامِ عَلَى ذَلِكَ؟ وَمَا الْفَرْقُ بَيْنَ مَنْ قَالَ: أَقِيسُ عَلَى ذَلِكَ كُلَّ حُكْمٍ، لِأَنَّهُ حُكْمٌ وَحُكْمٌ، وَبَيْنَ قَوْلِك أَقِيسُ عَلَى ذَلِكَ الْأَمْوَالَ كُلَّهَا، لِأَنَّهُ مَالٌ وَمَالٌ، وَهَلْ هَاهُنَا إلَّا التَّحَكُّمُ؟ فَهَذَا خِلَافُهُمْ لِلنُّصُوصِ، وَلِلْقِيَاسِ، وَلِقَوْلِ السَّلَفِ، وَلَيْسَ مِنْهُمْ أَحَدٌ رَاعَى الْإِجْمَاعَ، لِأَنَّنَا قَدْ ذَكَرْنَا عَنْ زُفَرَ أَنَّهُ لَا يُقْبَلُ النِّسَاءُ مُنْفَرِدَاتٍ فِي شَيْءٍ مِنْ الْأَشْيَاءِ.

L29469 As for Al-Shafi‘i: he analogized property to deferred debts. It may be said to him: Why did you not analogize all other rulings to this principle? What distinguishes one who says, “I analogize every ruling to this, since both are rulings,” from your statement, “I analogize all property to this, since both are forms of property”? Is this not merely arbitrary imposition? This reflects their contradiction of textual evidences, analogical reasoning, and the positions of earlier scholars. None of them adhered to scholarly consensus, for we have reported from Zufar that women’s testimony alone is not accepted in any category of legal cases.

وَقَدْ حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَبُو بَكْرِ بْنُ أَحْمَدَ بْنِ خَالِدٍ نا أَبِي نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا أَبُو عُبَيْدٍ نا هُشَيْمٌ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: الشَّهَادَةُ عَلَى الْقَتْلِ أَرْبَعَةٌ كَالشَّهَادَةِ عَلَى الزِّنَى.

L29470 Yunus ibn Abdullah narrated to us: Abu Bakr ibn Ahmad ibn Khalid informed us, his father informed us, Ali ibn Abd al-Aziz informed us, Abu Ubayd informed us, Hushaym informed us, from Yunus ibn Ubayd, from al-Hasan al-Basri, who said: Testimony for murder requires four witnesses, like testimony for adultery.

وَلَيْتَ شِعْرِي مِنْ أَيْنَ قَاسُوا الْقَتْلَ، وَالْقِصَاصَ، وَالْحُدُودَ عَلَى مَا يُقْبَلُ فِيهِ رَجُلَانِ فَقَطْ دُونَ أَنْ يَقِيسُوهَا عَلَى الزِّنَى الَّذِي هُوَ أَشْبَهُ بِهَا، لِأَنَّهُ حَدٌّ وَحَدٌّ، وَدَمٌ وَدَمٌ - أَوْ عَلَى مَا يُقْبَلُ فِيهِ رَجُلٌ وَامْرَأَتَانِ، لِأَنَّهُ حُكْمٌ وَحُكْمٌ، وَشَهَادَةٌ وَشَهَادَةٌ؟ فَظَهَرَ فَسَادُ قَوْلِهِمْ بِيَقِينٍ.

L29471 I wish I knew from where they analogized killing, retribution, and hudud to cases where only two men are accepted, rather than analogizing them to adultery - which more closely resembles them, since it is a hudud and a hudud, blood and blood - or to cases where one man and two women are accepted, since it is a ruling and a ruling, testimony and testimony? Thus, the corruption of their claim became evident with certainty.

L29472 Thus, the aforementioned statements are dismissed. For the correct understanding and bold declaration of the truth are that Allah, the Exalted, has commanded us to have witnesses when engaging in buying and selling. He, the Exalted, said: “And take witnesses when you engage in trade” [Al-Baqarah: 282].[10]

فَإِذًا قَدْ سَقَطَتْ الْأَقْوَالُ الْمَذْكُورَةُ فَإِنَّ وَجْهَ الْكَلَامِ وَالصَّدْعِ بِالْحَقِّ: هُوَ أَنَّ اللَّهَ تَعَالَى أَمَرَنَا عِنْدَ التَّبَايُعِ بِالْإِشْهَادِ، فَقَالَ تَعَالَى: {وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ} [البقرة: ٢٨٢] .

L29473 He has commanded us that when we incur a deferred debt, we must document it and have it witnessed by two men from our men, or one man and two approved women.

وَأَمَرَنَا إذَا تَدَايَنَّا بِدَيْنٍ مُؤَجَّلٍ أَنْ نَكْتُبَهُ، وَأَنْ نُشْهِدَ شَهِيدَيْنِ مِنْ رِجَالِنَا، أَوْ رَجُلًا وَامْرَأَتَيْنِ مَرْضِيَّتَيْنِ.

L29474–29475 And He has commanded us, upon divorce or revocation, to obtain the testimony of two just witnesses from among us.

وَأَمَرَنَا عِنْدَ الطَّلَاقِ وَالْمُرَاجَعَةِ بِإِشْهَادِ ذَوَيْ عَدْلٍ مِنَّا.

L29476 None of these texts mention the basis for our rulings in cases of dispute regarding that matter and conflict over the number of witnesses, for the two witnesses—or one of them—may die, forget, or alter their testimony.

وَلَيْسَ فِي شَيْءٍ مِنْ هَذِهِ النُّصُوصِ ذِكْرُ مَا نَحْكُمُ بِهِ عِنْدَ التَّنَازُعِ فِي ذَلِكَ وَالْخِصَامِ مِنْ عَدَدِ الشُّهُودِ، إذْ قَدْ يَمُوتُ الشَّاهِدَانِ أَوْ أَحَدُهُمَا، أَوْ يَنْسَيَانِ أَوْ أَحَدُهُمَا، أَوْ يَتَغَيَّرَانِ أَوْ أَحَدُهُمَا.

L29477 Who is more astonishing in conduct or more misguided in their way than one who openly opposes God Almighty’s command in the aforementioned verses by declaring: “When you conduct trade transactions, you need not have witnesses present,” and “When you incur time-bound debts, do not write them down if you wish”?

فَمَنْ أَعْجَبُ شَأْنًا أَوْ أَضَلُّ سَبِيلًا مِمَّنْ خَالَفَ أَمْرَ اللَّهِ تَعَالَى فِي الْآيَاتِ الْمَذْكُورَةِ جِهَارًا فَقَالَ: إذَا تَبَايَعْتُمْ فَلَيْسَ عَلَيْكُمْ أَنْ تُشْهِدُوا؟ وَإِذَا تَدَايَنْتُمْ بِدَيْنٍ إلَى أَجَلٍ مُسَمًّى فَلَا تَكْتُبُوهُ إنْ شِئْتُمْ.

L29478 And do not take anyone as a witness against him if you intended. Then he sought to distort using the aforementioned text—which contains nothing of it—thereby contradicting the verse’s explicit content and falsely attributing to it what it does not contain. We seek refuge in Allah from such tribulation.

وَلَا تُشْهِدُوا عَلَيْهِ أَحَدًا إنْ أَرَدْتُمْ؟ ثُمَّ أَرَادَ التَّمْوِيهَ بِالنَّصِّ الْمَذْكُورِ فِيمَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ فَخَالَفَ الْآيَةَ فِيمَا فِيهَا وَادَّعَى عَلَيْهَا مَا لَيْسَ فِيهَا - نَعُوذُ بِاَللَّهِ مِنْ الْبَلَاءِ.

L29479 Thus, their reliance on the aforementioned scriptural texts has ceased to apply.

فَسَقَطَ تَعَلُّقُهُمْ بِالنُّصُوصِ الْمَذْكُورَةِ.

L29480 As for the statement of the Messenger of Allah—peace and blessings be upon him—“Your two witnesses or his oath; that is all you have,” the Ḥanafīs, Mālikīs, and Shāfiʿīs are the first to add to this text what it does not contain, permitting one man and two women in all matters of wealth. This ruling

وَأَمَّا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «شَاهِدَاكَ أَوْ يَمِينُهُ، لَيْسَ لَكَ إلَّا ذَلِكَ» فَإِنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ أَوَّلُ مَنْ يَضُمُّ إلَى هَذَا النَّصِّ مَا لَيْسَ

[10] **Qur’an references (L29472):** Qur’an 2:282 (Al-Baqarah).

is not in the Quran except for deferred debts alone. They have thus added beyond what is in this narration through their invalid analogy.

فِيهِ، فَيُجِيزُونَ فِي الْأَمْوَالِ كُلِّهَا رَجُلًا وَامْرَأَتَيْنِ، وَلَيْسَ ذَلِكَ فِي الْقُرْآنِ إِلَّا فِي الدُّيُونِ الْمُؤَجَّلَةِ فَقَطْ، فَقَدْ زَادُوا عَلَى مَا فِي هَذَا الْخَبَرِ بِقِيَاسِهِمْ الْفَاسِدِ.

L29481 As for us, our approach in this matter differs from theirs. However, we say—and with Allah the Exalted we seek assistance—it has been authentically established from him (peace and blessings be upon him) what we narrated through the chain of Abd al-Razzaq from Sufyan al-Thawri, from both Mansur ibn al-Mu'tamir and al-A'mash—each narrating from Abu Wa'il: "Al-Ash'ath entered upon Abdullah ibn Mas'ud while he was explaining to them the revelation of Allah's words the Exalted: {Indeed those who sell Allah's covenant and their oaths for a small price} [Al-Imran:77]. Al-Ash'ath said: 'This verse was revealed concerning my case—regarding a man I disputed with over a well. The Prophet (peace and blessings be upon him) asked: "Do you have clear proof؟' I replied: "No." He said: "Then let him swear.""[11]

وَأَمَّا نَحْنُ: فَطَرِيقُنَا فِي ذَلِكَ غَيْرُ طَرِيقِهِمْ، لَكِنْ نَقُولُ - وَبِاَللَّهِ تَعَالَى نَسْتَعِينُ -: قَدْ صَحَّ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ، وَالْأَعْمَشِ، كِلَاهُمَا عَنْ أَبِي وَائِلٍ «أَنَّ الْأَشْعَثَ دَخَلَ عَلَى عَبْدِ اللَّهِ بْنِ مَسْعُودٍ وَهُوَ يُحَدِّثُهُمْ بِنُزُولِ قَوْلِ اللَّهِ تَعَالَى: {إِنَّ الَّذِينَ يَشْتَرُونَ بِعَهْدِ اللَّهِ وَأَيْمَانِهِمْ ثَمَنًا قَلِيلا} [آل عمران: ٧٧] فَقَالَ الْأَشْعَثُ: فِي نَزَلَتْ، وَفِي رَجُلٍ خَاصَمْتُهُ فِي بِئْرٍ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَلَكَ بَيِّنَةٌ؟ قُلْتُ: لَا، قَالَ: فَلْيَحْلِفْ» .

L29482 We found him—peace and blessings be upon him—having required the claimant at one time to produce two witnesses, and at another time absolute evidence. Thus, it follows that evidence must be whatever any Muslim considers valid as proof.

فَوَجَدْنَاهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَدْ كَلَّفَ الْمُدَّعِيَ مَرَّةً شَاهِدَيْنِ، وَمَرَّةً بَيِّنَةً مُطْلَقَةً، فَوَجَبَ أَنْ تَكُونَ الْبَيِّنَةُ كُلَّ مَا قَالَ قَائِلٌ مِنْ الْمُسْلِمِينَ إنَّهُ بَيِّنَةٌ.

L29483–29484 We have determined that the two upright witnesses, to whom the term 'bayyinah' (conclusive proof) applies: their acceptance is obligatory in all matters, except where Allah, the Exalted, has required only four.

وَوَجَدْنَا الشَّاهِدَيْنِ الْعَدْلَيْنِ يَقَعُ عَلَيْهِمَا اسْمُ بَيِّنَةٍ، فَوَجَبَ قَبُولُهُمَا فِي كُلِّ شَيْءٍ، حَاشَ حَيْثُ أَلْزَمَ اللَّهُ تَعَالَى أَرْبَعَةً فَقَطْ.

L29485 We found him—peace and blessings be upon him—saying: What we have narrated through the chain of Muslim ibn al-Hajjaj: Muhammad ibn Rumh narrated to us, al-Layth—that is Ibn Sa'd—narrated to us, from Ibn al-Hadi, from 'Abdullah ibn Dinar, from 'Abdullah ibn 'Umar, from the Messenger of Allah—may Allah's prayers and peace be upon him—that he said: "The testimony of two women equals the testimony of one man."

وَوَجَدْنَاهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا مُحَمَّدُ بْنُ رُمْحٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ الْهَادِي عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ فِي حَدِيثٍ «فَشَهَادَةُ امْرَأَتَيْنِ تَعْدِلُ شَهَادَةَ رَجُلٍ» .

L29486 From the chain of transmission of al-Bukhārī: Saʿīd ibn Abī Maryam narrated to us, Muḥammad ibn Jaʿfar narrated to us, Zayd—who is Ibn Aslam—

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا سَعِيدُ بْنُ أَبِي مَرْيَمَ نا مُحَمَّدُ بْنُ جَعْفَرٍ أَخْبَرَنِي زَيْدٌ - هُوَ ابْنُ أَسْلَمَ - عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ، " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ

[11] **Qur'an references (L29481):** Qur'an 3:77 (Ali 'Imran).

informed me, from ʿIyāḍ ibn ʿAbd Allāh, from Abū Saʿīd al-Khudrī, "That the Messenger of Allāh (PBUH) said in a ḥadīth: 'Is not the testimony of a woman equivalent to half the testimony of a man?' We replied: 'Yes, O Messenger of Allāh.' Then he (PBUH) affirmed conclusively that the testimony of two women equals the testimony of one man. It necessarily follows that wherever a man's testimony would be accepted if he testified, only the testimony of two women is accepted, and likewise for any greater number."

عَلَيْهِ وَسَلَّمَ - قَالَ فِي حَدِيثٍ: «أَلَيْسَ شَهَادَةُ الْمَرْأَةِ مِثْلَ نِصْفِ شَهَادَةِ الرَّجُلِ؟ قُلْنَا: بَلَى يَا رَسُولَ اللَّهِ» فَقَطَعَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنَّ شَهَادَةَ امْرَأَتَيْنِ تَعْدِلُ شَهَادَةَ رَجُلٍ، فَوَجَبَ ضَرُورَةً: أَنَّهُ لَا يُقْبَلُ حَيْثُ يُقْبَلُ رَجُلٌ لَوْ شَهِدَ إلَّا امْرَأَتَانِ، وَهَكَذَا مَا زَادَ.

L29487 If it is said: "Why do you not accept this evidence from a single man, for it has been authentically reported from Shuraih, Mutarrif ibn Mazin, and Zurarah ibn Awfa—or the testimony of a single woman, which Muawiyah accepted?" We respond: What prevents us is the ruling of the Messenger of Allah—peace and blessings be upon him—requiring an oath alongside a single witness. Were it permissible to accept the testimony of a single man in matters where the Messenger of Allah—peace and blessings be upon him—did not accept it, the oath would become redundant. Far is He above such a thing! Thus, it is established that it is impermissible to accept the testimony of a single man or a single woman except in moon-sighting, as we specified solely in the "Book of Fasting," and in cases of nursing (radāʿ).

فَإِنْ قِيلَ: فَهَلَّا قَبِلْتُمْ بِهَذَا الِاسْتِدْلَالِ رَجُلًا وَاحِدًا، فَقَدْ صَحَّ ذَلِكَ عَنْ شُرَيْحٍ، وَمُطَرِّفِ بْنِ مَازِنٍ، وَزُرَارَةَ بْنِ أَوْفَى، أَوْ شَهَادَةَ امْرَأَةٍ وَاحِدَةٍ، فَقَدْ قَبِلَهَا مُعَاوِيَةُ؟ قُلْنَا: مَنَعَنَا مِنْ ذَلِكَ حُكْمُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْيَمِينِ مَعَ الشَّاهِدِ، فَلَوْ جَازَ قَبُولُ وَاحِدٍ حَيْثُ لَمْ يَقْبَلْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكَانَتْ الْيَمِينُ فُضُولًا، وَحَاشَ لَهُ مِنْ ذَلِكَ، فَصَحَّ: أَنَّهُ لَا يَجُوزُ قَبُولُ رَجُلٍ وَاحِدٍ، وَلَا امْرَأَةٍ وَاحِدَةٍ إلَّا فِي الْهِلَالِ كَمَا ذَكَرْنَا فِي " كِتَابِ الصِّيَامِ " فَقَطْ وَفِي الرَّضَاعِ.

L29488–29490 From what has been narrated to us through the chain of ʿAbdullāh ibn Rabīʿ who narrated from Muḥammad ibn Abān al-Balkhī and Yaʿqūb ibn Ibrāhīm, both of whom said: "Ismāʿīl ibn Ibrāhīm – he is Ibn ʿUlayyah – narrated to us from Ayyūb al-Sakhtiyānī, from Ibn Abī Mulaykah: ʿUbayd ibn Abī Maryam narrated to me from ʿUqbah ibn al-Ḥārith, who said..." Ibn Abī Mulaykah added: "I heard it directly from ʿUqbah ibn al-Ḥārith, but I preserve ʿUbayd's narration more accurately." He said: "I married a woman. Then a black woman came and said: 'I have breastfed both of you.' I went to the Messenger of Allah (peace be upon him) and said: 'O Messenger of Allah, I married a woman, and a black woman came claiming, "I have breastfed both of you" (and she was lying).' But the Messenger of Allah turned away." He moved away from me, so I approached him from the front and said: "She is lying." He responded: "What about her when she claimed that she breastfed both of you? Leave her alone."

لَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ رَبِيعٍ نا مُحَمَّدُ بْنُ أَبَانَ الْبَلْخِيّ، وَيَعْقُوبُ بْنُ إبْرَاهِيمَ، قَالَا جَمِيعًا: نا إسْمَاعِيلُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ عُلَيَّةَ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ أَبِي مُلَيْكَةَ حَدَّثَنِي عُبَيْدُ بْنُ أَبِي مَرْيَمَ عَنْ عُقْبَةَ بْنِ الْحَارِثِ قَالَ ابْنُ أَبِي مُلَيْكَةَ: وَقَدْ سَمِعْتُهُ مِنْ عُقْبَةَ بْنِ الْحَارِثِ، وَلَكِنِّي لِحَدِيثِ عُبَيْدٍ أَحْفَظُ، قَالَ: «تَزَوَّجْتُ امْرَأَةً فَجَاءَتْ امْرَأَةٌ سَوْدَاءُ فَقَالَتْ: إنِّي قَدْ أَرْضَعْتُكُمَا؟ فَأَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْتُ: يَا رَسُولَ اللَّهِ إنِّي تَزَوَّجْتُ امْرَأَةً، فَجَاءَتْ امْرَأَةٌ سَوْدَاءُ فَقَالَتْ إنِّي قَدْ أَرْضَعْتُكُمَا - وَهِيَ كَاذِبَةٌ - فَأَعْرَضَ عَنِّي، فَأَتَيْتُهُ مِنْ قِبَلِ وَجْهِهِ فَقُلْتُ: إنَّهَا كَاذِبَةٌ، فَقَالَ: كَيْفَ بِهَا وَقَدْ زَعَمَتْ أَنَّهَا أَرْضَعَتْكُمَا؟ دَعْهَا عَنْك» .

L29491 Abū Muḥammad said: The Prophet's prohibition—peace and blessings of

Allāh be upon him—constitutes a legal prohibition. It was narrated to us through the route of Al-Ḥudhāfī, from ʿAbd al-Razzāq, from Ibn Jurayj, who said: Ibn Shihāb said: A black woman came to three families that had intermarried and said, "They are my sons and daughters," so ʿUthmān—may Allāh be pleased with him—dissolved the marriages between them.

قَالَ أَبُو مُحَمَّدٍ: فَنَهْيُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَحْرِيمٌ، وَرُوِّينَا مِنْ طَرِيقِ الْحُذَافِيِّ نا عَبْدُ الرَّزَّاقِ قَالَ: نا ابْنُ جُرَيْجٍ قَالَ " قَالَ ابْنُ شِهَابٍ: جَاءَتْ امْرَأَةٌ سَوْدَاءُ إلَى أَهْلِ ثَلَاثَةِ أَبْيَاتٍ تَنَاكَحُوا فَقَالَتْ: هُمْ بَنِيَّ وَبَنَاتِي، فَفَرَّقَ عُثْمَانُ - رَضِيَ اللَّهُ عَنْهُ - بَيْنَهُمْ.

L29492 And it has been narrated to us from Az-Zuhri that he said: "People today adopt that ruling from ʿUthman's opinion concerning nursing women if they are not suspected."

وَرُوِّينَا عَنْ الزُّهْرِيِّ أَنَّهُ قَالَ: فَالنَّاسُ يَأْخُذُونَ الْيَوْمَ بِذَلِكَ مِنْ قَوْلِ عُثْمَانَ فِي الْمُرْضِعَاتِ إذَا لَمْ يُتَّهَمْنَ.

L29493 Narrated through the chain of Qatadah from Jabir ibn Zayd Abu al-Sha'tha from Ibn Abbas, who said: The testimony of a single woman is permissible regarding breastfeeding.

وَمِنْ طَرِيقِ قَتَادَةَ عَنْ جَابِرِ بْنِ زَيْدٍ أَبِي الشَّعْثَاءِ عَنْ ابْنِ عَبَّاسٍ قَالَ: تَجُوزُ شَهَادَةُ امْرَأَةٍ وَاحِدَةٍ فِي الرَّضَاعِ.

L29494 Abu Muhammad said: As for the report we introduced from al-Zuhri's statement - "The Sunnah has been established from the Prophet, peace be upon him, and from Abu Bakr and Umar that women's testimony is inadmissible in divorce, marriage, or hudud" - it is baseless, for its chain is disconnected through Ismāʿīl ibn ʿAyyāsh - who is weak - from al-Ḥajjāj ibn Arṭāh - who is rejected.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا الْخَبَرُ الَّذِي صَدَّرْنَا بِهِ مِنْ قَوْلِ الزُّهْرِيِّ مَضَتْ السُّنَّةُ مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمِنْ أَبِي بَكْرٍ، وَعُمَرَ: أَنْ لَا تَجُوزَ شَهَادَةُ النِّسَاءِ فِي الطَّلَاقِ، وَلَا فِي النِّكَاحِ، وَلَا فِي الْحُدُودِ: فَبَلِيَّةٌ؛ لِأَنَّهُ مُنْقَطِعٌ مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ عَيَّاشٍ - وَهُوَ ضَعِيفٌ - عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ هَالِكٌ.

L29495 As for the narration attributed to ʿUmar—"If we were to open this door, there would be no woman who wishes to separate a man from his wife but that she would do so"—it is transmitted by al-Ḥārith al-Ghanawī—who is an unknown narrator—that ʿUmar...

وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ " لَوْ فَتَحْنَا هَذَا الْبَابَ لَمْ تَشَأْ امْرَأَةٌ أَنْ تُفَرِّقَ بَيْنَ رَجُلٍ وَامْرَأَتِهِ إلَّا فَعَلَتْ ذَلِكَ " فَهُوَ عَنْ الْحَارِثِ الْغَنَوِيِّ - وَهُوَ مَجْهُولٌ - أَنَّ عُمَرَ.

L29496 Moreover, such a statement is far removed from ʿUmar's position - or any similar wording from him - because there is no distinction between this case and two men refraining from willing to kill a man, give his wealth to another, or separate his wife from him, except through their capacity to accomplish this by testifying against him.

وَأَيْضًا - فَإِنَّ هَذَا كَلَامٌ بَعِيدٌ عَنْ عُمَرَ قَوْلُ مِثْلِهِ؛ لِأَنَّهُ لَا فَرْقَ بَيْنَ هَذَا وَبَيْنَ أَنْ لَا يَشَاءَ رَجُلَانِ قَتْلَ رَجُلٍ وَإِعْطَاءَ مَالِهِ لِآخَرَ، وَتَفْرِيقَ امْرَأَتِهِ عَنْهُ إلَّا قَدَرَا عَلَى ذَلِكَ، بِأَنْ يَشْهَدَا عَلَيْهِ بِذَلِكَ.

L29497 By the necessity of reason, everyone knows that there is no distinction between a woman and a man, between two men and two women, and between four men and four women regarding the permissibility of intentional false-

وَبِضَرُورَةِ الْعَقْلِ يَدْرِي كُلُّ أَحَدٍ: أَنَّهُ لَا فَرْقَ بَيْنَ امْرَأَةٍ وَبَيْنَ رَجُلٍ، وَبَيْنَ رَجُلَيْنِ، وَبَيْنَ امْرَأَتَيْنِ، وَبَيْنَ أَرْبَعَةِ رِجَالٍ، وَبَيْنَ أَرْبَعِ نِسْوَةٍ، فِي جَوَازِ تَعَمُّدِ الْكَذِبِ وَالتَّوَاطُؤِ

hood or collusion against them. Likewise, heedlessness—even momentary—applies to this as well. However, the soul finds it more agreeable with the testimony of eight women over that of four men.

L29498–29499 And all of this is meaningless - it is only the Quran and the Sunnah, with no addition.

عَلَيْهِمْ، وَكَذَلِكَ الْغَفْلَةُ - وَلَوْ حِينًا - إِلَى هَذَا، لَكِنَّ النَّفْسَ أَطْيَبُ عَلَى شَهَادَةِ ثَمَانِي نِسْوَةٍ مِنْهَا عَلَى شَهَادَةِ أَرْبَعَةِ رِجَالٍ.

وَهَذَا كُلُّهُ لَا مَعْنَى لَهُ، إِنَّمَا هُوَ الْقُرْآنُ وَالسُّنَّةُ وَلَا مَزِيدَ.

وَأَمَّا مَنْ احْتَجَّ بِتَخْصِيصِ مَا لَا يَجُوزُ أَنْ يَنْظُرَ إِلَيْهِ الرِّجَالُ فَبَاطِلٌ، وَمَا يَحِلُّ لِلْمَرْأَةِ مِنْ النَّظَرِ إِلَى عَوْرَةِ الْمَرْأَةِ إِلَّا كَالَّذِي يَحِلُّ لِلرَّجُلِ مِنْ ذَلِكَ، وَلَا يَجُوزُ ذَلِكَ إِلَّا عِنْدَ الشَّهَادَةِ أَوْ الضَّرُورَةِ، كَنَظَرِهِمْ إِلَى عَوْرَةِ الزَّانِيَيْنِ، وَالرِّجَالُ وَالنِّسَاءُ فِي ذَلِكَ سَوَاءٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29500 As for those who argue by specifying what men are not permitted to look at, their argument is invalid. What is permissible for a woman regarding looking at the *ʿawrah* of a woman is equivalent to what is permissible for a man in that regard. This is permitted only in cases of testimony or necessity, such as viewing the *ʿawrah* of the two adulterers. Men and women are equal in this ruling, and success is through Allah, the Most High's facilitation.

وَأَمَّا الْيَمِينُ مَعَ الشَّاهِدِ: فَرُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَضَى بِالْيَمِينِ مَعَ الشَّاهِدِ الْوَاحِدِ.

L29501 As for the oath in conjunction with a witness, it was narrated to us that ʾUmar ibn al-Khaṭṭāb ruled with the oath together with a single witness.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ أَنَسِ بْنِ عِيَاضٍ أَخْبَرَنِي ضَمْرَةُ: أَنَّ جَعْفَرَ بْنَ مُحَمَّدٍ أَخْبَرَهُمْ قَالَ: سَمِعْت أَبِي يَقُولُ لِلْحَكَمِ بْنِ عُتَيْبَةَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْيَمِينِ مَعَ الشَّاهِدِ» وَقَضَى بِهَا عَلِيٌّ بَيْنَ أَظْهُرِكُمْ.

L29502 And through the chain of Ibn Wahb from Anas ibn ʿIyāḍ, who reported that Ḍamrah informed me: that Jaʿfar ibn Muḥammad reported to them, saying: I heard my father say to al-Ḥakam ibn ʿUtaybah: "The Messenger of Allah - may Allah bless him and grant him peace - adjudicated by the oath alongside the witness," and ʿAlī implemented this ruling among you.[1]

وَمِنْ طَرِيقِ هُشَيْمٍ عَنْ حُصَيْنِ بْنِ عَبْدِ الرَّحْمَنِ: أَنَّ عَبْدَ اللَّهِ بْنَ عُتْبَةَ بْنِ مَسْعُودٍ قَضَى عَلَيْهِ بِدَيْنٍ لِإِنْسَانٍ أَقَامَ شَاهِدًا وَاحِدًا وَأَحْلَفَهُ مَعَ شَاهِدِهِ.

L29503 From the chain of Hushaym, from Husayn ibn Abd al-Rahman: that Abdullah ibn Utbah ibn Mas'ud ruled against him regarding a debt owed to a man who produced one witness and was made to swear an oath alongside his witness.

وَصَحَّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَعَبْدِ الرَّحْمَنِ بْنِ عَبْدِ الْحَمِيدِ، وَعَنْ شُرَيْحٍ.

L29504 It has been authenticated from Umar ibn Abd al-Aziz and Abd al-Rahman ibn Abd al-Hamid, and from Shurayh.

وَرُوِيَ عَنْ جَمَاعَةٍ: مِنْهُمْ سُلَيْمَانُ بْنُ يَسَارٍ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَأَبُو الزِّنَادِ، وَرَبِيعَةُ، وَيَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ، وَإِيَاسُ بْنُ مُعَاوِيَةَ، وَيَحْيَى بْنُ مَعْمَرٍ، وَالْفُقَهَاءُ السَّبْعَةُ، وَغَيْرُهُمْ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، إلَّا أَنَّهُمَا لَا يَقْضِيَانِ بِذَلِكَ إلَّا فِي الْأَمْوَالِ.

L29505 It has been reported from a group: among them are Sulaymān ibn Yasār, Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, Abū al-Zinād, Rabīʿah, Yaḥyā ibn Saʿīd al-Anṣārī, Iyās ibn Muʿāwiyah, Yaḥyā ibn Maʿmar, the Seven Fuqahā, and others—and this is the opinion of Mālik and al-Shāfiʿī, however, they only rule by this in financial matters.

وَجَاءَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ قَضَى بِذَلِكَ فِي جِرَاحِ الْعَمْدِ وَالْخَطَأِ، وَيَقْضِي بِهِ مَالِكٌ أَيْضًا فِي الْقِصَاصِ فِي النَّفْسِ وَلَا يَقْضِي بِهِ فِي الْعِتْقِ، وَالشَّافِعِيُّ يَقْضِي بِهِ فِي الْعِتْقِ.

L29506 It is reported from Umar ibn Abd al-Aziz that he ruled in accordance with that principle regarding intentional and accidental injuries. Malik also rules by it in cases of retaliation for homicide but does not rule by it in matters

[1] **Hadith references (L29502):** Jami at-Tirmidhi 1343.

of manumission, whereas al-Shafi'i rules in accordance with it in cases of manumission.

L29507 It has been reported to us that the disapproval of ruling by it is narrated from al-Zuhrī, who said: "It is an innovation among what people have newly introduced. The first to issue judgments based on it was Muʿāwiyah." ʿAṭā said: "The first to issue judgments based on it was ʿAbd al-Malik ibn Marwān." Al-Ḥakam ibn ʿUtaybah also pointed to his disapproval of it.

وَرُوِّينَا إِنْكَارَ الْحُكْمِ بِهِ عَنْ الزُّهْرِيِّ، وَقَالَ: هُوَ بِدْعَةٌ مَا أَحْدَثَهُ النَّاسُ أَوَّلُ مَنْ قَضَى بِهِ مُعَاوِيَةُ وَقَالَ عَطَاءٌ: أَوَّلُ مَنْ قَضَى بِهِ عَبْدُ الْمَلِكِ بْنُ مَرْوَانَ، وَأَشَارَ إلَى إنْكَارِهِ الْحَكَمُ بْنُ عُتَيْبَةَ.

L29508 It is related from ʿUmar ibn ʿAbd al-ʿAzīz that he returned to abandoning the ruling on it because he found the people of Syria opposed to it. Ibn Shubrumah, Abū Ḥanīfa, and his companions prohibited it.

وَرُوِيَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: الرُّجُوعُ إلَى تَرْكِ الْقَضَاءِ بِهِ، لِأَنَّهُ وَجَدَ أَهْلَ الشَّامِ عَلَى خِلَافِهِ، وَمَنَعَ مِنْهُ: ابْنُ شُبْرُمَةَ، وَأَبُو حَنِيفَةَ، وَأَصْحَابُهُ.

L29509 Abu Muhammad said: We have already discussed the invalidity of relying [on this approach] to reject this ruling and others like it, when such reliance is based on the saying of Allah, the Exalted: {And seek the testimony of two witnesses from among your men} [Al-Baqarah: 282].[2]

قَالَ أَبُو مُحَمَّد: قَدْ ذَكَرْنَا بُطْلَانَ التَّعَلُّقِ فِي رَدِّ هَذَا الْحُكْمِ وَغَيْرِهِ بِالتَّعَلُّقِ بِقَوْلِ اللَّهِ تَعَالَى: {وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ} [البقرة: ٢٨٢] .

L29510–29511 And by His statement, the Most High: {And have two just witnesses from among you} [At-Talaq: 2] in the section preceding this one.[3]

وَبِقَوْلِهِ تَعَالَى: {وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ} [الطلاق: ٢] فِي الْفَصْلِ الَّذِي قَبْلَ هَذَا.

L29512 Similarly, by his statement – peace and blessings be upon him – "your two witnesses or his oath," and all that they have relied upon in preventing judgment by an oath and a witness is baseless talk. It is astonishing that their objection here is based on al-Zuhri's statement: "The first to pass judgment on that was Mu'awiyah," while they themselves have adopted a valuation introduced by Mu'awiyah concerning the Zakāt al-Fiṭr, even though there is no authentic report from the Prophet – peace and blessings be upon him – regarding it.

وَكَذَلِكَ بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «شَاهِدَاكَ أَوْ يَمِينُهُ» وَسَائِرُ مَا تَعَلَّقُوا بِهِ فِي مَنْعِ الْحُكْمِ بِيَمِينٍ وَشَاهِدٍ أَهْذَارٌ، وَالْعَجَبُ اعْتِرَاضُهُمْ فِي هَذَا بِقَوْلِ الزُّهْرِيِّ أَوَّلُ مَنْ قَضَى بِذَلِكَ مُعَاوِيَةُ، وَهُمْ قَدْ أَخَذُوا بِقِيمَةٍ أَحْدَثَهَا مُعَاوِيَةُ فِي زَكَاةِ الْفِطْرِ وَلَا يَصِحُّ فِيهَا أَثَرٌ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L29513 Abū Muḥammad said: It was narrated to us through the ṭarīq of Muslim: Abū Bakr ibn Abī Shaybah narrated to us, Muḥammad ibn Bishr and ʿAbdullāh ibn Numayr both narrated to us—they said together: Sayf ibn Sulaymān narrated to us, informing me through Qays ibn Saʿd from ʿAmr ibn Dīnār from Ibn ʿAbbās that the Messenger of Allāh—peace and blessings of Allāh

قَالَ أَبُو مُحَمَّد: وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ بِشْرٍ، وَعَبْدُ اللَّهِ بْنُ نُمَيْرٍ، قَالَا جَمِيعًا: نا سَيْفُ بْنُ سُلَيْمَانَ أَخْبَرَنِي قَيْسُ بْنُ سَعْدٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِيَمِينٍ وَشَاهِدٍ» -: نا أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ سُلَيْمَانَ الْمُنْقِرِيُّ

[2] **Qur'an references (L29509):** Qur'an 2:282 (Al-Baqarah).
[3] **Qur'an references (L29511):** Qur'an 65:2 (At-Talaq).

be upon him—ruled by [accepting] an oath alongside a witness. Aḥmad ibn Qāsim narrated to us, Qāsim ibn Muḥammad ibn Qāsim narrated to us, his grandfather Qāsim ibn Aṣbagh narrated to us, Muḥammad ibn Sulaymān al-Munqirī narrated to us, Musaddad, Muḥammad ibn al-Muthannā, and ʿAbdullāh ibn ʿAbd al-Wahhāb narrated to us—they all said: ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī narrated to us from Jaʿfar ibn Muḥammad from his father from Jābir ibn ʿAbdillāh that the Prophet—peace and blessings of Allāh be upon him—ruled by [accepting] an oath alongside a witness.[4]

نا مُسَدَّدٌ، وَمُحَمَّدُ بْنُ الْمُثَنَّى، وَعَبْدُ اللَّهِ بْنُ عَبْدِ الْوَهَّابِ قَالُوا كُلُّهُمْ: نا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالْيَمِينِ مَعَ الشَّاهِدِ» .

L29514 From the chain of Abū Dāwūd: Abū al-Muṣʿab narrated to us, ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī narrated to us, from Rabīʿah ibn Abī ʿAbd al-Raḥmān, from Suhayl ibn Abī Ṣāliḥ, from his father, from Abū Hurayrah: "That the Prophet (peace be upon him) ruled on the basis of the oath along with the witness."[5]

وَمِنْ طَرِيقِ أَبِي دَاوُد نا أَبُو الْمُصْعَبِ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ رَبِيعَةَ ابْنِ أَبِي عَبْدِ الرَّحْمَنِ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالْيَمِينِ مَعَ الشَّاهِدِ» .

L29515 Abū Dāwūd said: Al-Rabīʿ ibn Sulaymān added to me in this report. He said: I am Al-Shāfiʿī, from ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī, who said: I mentioned that to Suhayl ibn Abī Ṣāliḥ, and he said: Rabīʿah—who is trustworthy in my view—informed me that I narrated it to him, but I do not remember it. ʿAbd al-ʿAzīz said: An illness had afflicted Suhayl which impaired part of his mind and caused him to forget some of his ḥadīth. After that, Suhayl would narrate it to ʿAbd al-ʿAzīz from Rabīʿah, from his father, from Abū Hurayrah.

قَالَ أَبُو دَاوُد: وَزَادَنِي الرَّبِيعُ بْنُ سُلَيْمَانَ فِي هَذَا الْخَبَرِ قَالَ: أَنَا الشَّافِعِيُّ عَنْ عَبْدِ الْعَزِيزِ بْنِ مُحَمَّدٍ الدَّرَاوَرْدِيِّ قَالَ: فَذَكَرْت ذَلِكَ لِسُهَيْلِ بْنِ أَبِي صَالِحٍ فَقَالَ: أَخْبَرَنِي رَبِيعَةُ - وَهُوَ ثِقَةٌ عِنْدِي - أَنِّي حَدَّثْتُهُ إيَّاهُ وَلَا أَحْفَظُهُ، قَالَ عَبْدُ الْعَزِيزِ: وَقَدْ كَانَتْ أَصَابَتْ سُهَيْلًا عِلَّةٌ أَذْهَبَتْ بَعْضَ عَقْلِهِ وَنَسِيَ بَعْضَ حَدِيثِهِ، فَكَانَ سُهَيْلٌ بَعْدُ يُحَدِّثُهُ عَنْ رَبِيعَةَ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ.

L29516 Abū Muḥammad said: These are overwhelmingly corroborated reports that it is not permissible to disregard. Therefore, it is obligatory to adjudicate based on them concerning bloodshed, retributive justice, marriage, divorce, retraction [of divorce], and wealth—with the explicit exception of the ḥudūd—because these matters fall under the universal scope of the cited reports, and no prohibition of this has been transmitted in any of the narrations.

قَالَ أَبُو مُحَمَّد: فَهَذِهِ آثَارٌ مُتَظَاهِرَةٌ لَا يَحِلُّ التَّرْكُ لَهَا، فَالْوَاجِبُ أَنْ يُحْكَمَ بِذَلِكَ فِي الدِّمَاءِ وَالْقِصَاصِ، وَالنِّكَاحِ، وَالطَّلَاقِ، وَالرَّجْعَةِ، وَالْأَمْوَالِ، حَاشَا الْحُدُودَ؛ لِأَنَّ ذَلِكَ عُمُومُ الْأَخْبَارِ الْمَذْكُورَةِ، وَلَمْ يَأْتِ فِي شَيْءٍ مِنْ الْأَخْبَارِ مَنْعٌ مِنْ ذَلِكَ.

[4] **Hadith references (L29513):** Sunan Abi Dawud 3608; Sahih Muslim 1712; Mishkat al-Masabih 3763; Sunan Ibn Majah 2369; Jami at-Tirmidhi 1344; Jami at-Tirmidhi 1343.

[5] **Hadith references (L29514):** Sunan Ibn Majah 2369; Jami at-Tirmidhi 1344; Jami at-Tirmidhi 1343.

وَأَمَّا الْحُدُودُ: فَلَا طَالِبَ لَهَا إِلَّا اللَّهُ تَعَالَى، وَلَا حَقَّ لِلْمَقْذُوفِ فِي إِثْبَاتِهَا، وَلَا فِي إِسْقَاطِهَا، وَلَا فِي طَلَبِهَا، وَكَذَلِكَ الْمَسْرُوقُ مِنْهُ، وَالْمَزْنِيُّ بِامْرَأَتِهِ أَوْ حَرِيمَتِهِ أَوْ أَمَتِهِ، أَوْ غَيْرِ ذَلِكَ -: فَلَيْسَ لِذَلِكَ كُلِّهِ طَالِبٌ بِلَا يَمِينٍ فِي شَيْءٍ مِنْهَا.

L29517–29519 As for the prescribed punishments (ḥudūd), there is no claimant for them except Allah, the Exalted, and the person accused of defamation (qadhf) has no right to establishing them nor to... In cases of dropping a claim, pursuing it, the victim of theft, the husband who committed adultery with his wife, his female mahram relative, his female slave, or other such matters—for all these, there is no claimant without an oath.

وَقَالَ الشَّافِعِيُّ: إِنَّ فِي بَعْضِ الْآثَارِ إِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ بِذَلِكَ فِي الْأَمْوَالِ - وَهَذَا لَا يُوجَدُ أَبَدًا فِي شَيْءٍ مِنْ الْآثَارِ الثَّابِتَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29520 Al-Shafi'i said: "Indeed, in some reports, the Prophet—peace and blessings of Allah be upon him—ruled thus concerning wealth—but this is never found in any of the established reports—and success is from Allah, the Most High."

وَالْعَجَبُ مِنْ أَصْحَابِ أَبِي حَنِيفَةَ يَقُولُونَ دَهْرَهُمْ كُلَّهُ: الْمُرْسَلُ، وَالْمُسْنَدُ: سَوَاءٌ، فِي كُلِّ بَلِيَّةٍ يَقُولُونَ بِهَا، ثُمَّ يَرُدُّونَ خَبَرَ جَابِرٍ هَذَا: بِأَنَّ غَيْرَ الثَّقَفِيِّ أَرْسَلَهُ، وَأَنَّهُ رُوِيَ مُرْسَلًا مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ، وَغَيْرِهِ، فَاعْجَبُوا لِعَدَمِ الْحَيَاءِ وَرِقَّةِ الدِّينِ.

L29521 It is astonishing that the followers of Abū Ḥanīfah persistently claim throughout their entire time that the *mursal* and *musnad* are equivalent in every jurisprudential issue they invoke. Yet they reject this report of Jābir by arguing that a narrator other than al-Thaqafī transmitted it as *mursal*, and that it was narrated as *mursal* through the chain of Saʿīd ibn al-Musayyib and others. Marvel at their brazenness and the deficiency in their religious adherence.

وَعَجَبٌ آخَرُ: وَهُوَ أَنَّهُمْ يَقْضُونَ بِالنُّكُولِ فِي الدِّمَاءِ، وَالْأَمْوَالِ، فَيُعْطُونَ الْمُدَّعِيَ بِلَا شَاهِدٍ وَلَا يَمِينٍ، لَكِنْ بِدَعْوَاهُ الْمُجَرَّدَةِ - وَإِنْ كَانَ يَهُودِيًّا أَوْ نَصْرَانِيًّا - بِرَأْيِهِمْ الْفَاسِدِ، وَيَرُدُّونَ الْحُكْمَ بِالْيَمِينِ وَالشَّاهِدِ، وَيَقْضُونَ بِالْعَظَائِمِ بِشَهَادَةِ امْرَأَتَيْنِ دُونَ يَمِينِ الطَّالِبِ بِآرَائِهِمْ الْفَاسِدَةِ، وَاخْتِيَارِهِمْ الْمُهْلِكِ، وَيُنْكِرُونَ الْحُكْمَ بِشَهَادَةِ امْرَأَتَيْنِ مَعَ يَمِينِ الطَّالِبِ، وَبِشَهَادَةِ رَجُلٍ مَعَ يَمِينِ الطَّالِبِ، وَيُنْكِرُونَ الْحُكْمَ بِشَهَادَةِ مُسْلِمٍ ثِقَةٍ مَعَ يَمِينِ الطَّالِبِ، وَهُمْ يَقْضُونَ بِشَهَادَةِ يَهُودِيَّيْنِ، أَوْ نَصْرَانِيَّيْنِ حَيْثُ لَمْ يَأْتِ بِذَلِكَ نَصُّ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ، وَيُضَعِّفُونَ سَيْفَ بْنَ سُلَيْمَانَ - وَهُوَ ثِقَةٌ -.

L29522 Another astonishment is their ruling in cases involving bloodshed and property based on the defendant's refusal to swear, granting judgments to claimants—even if the claimant is a Jew or a Christian—without a witness or an oath (from the defendant), relying solely on their corrupt opinions. They reject rulings based on oaths and witnesses, yet issue judgments in grave matters using the testimony of two women without the claimant's oath, following their corrupt views and ruinous choices. They deny rulings founded on the testimony of two women alongside the claimant's oath, or a man's testimony alongside the claimant's oath, and reject judgments based on the testimony of a trustworthy Muslim combined with the claimant's oath. Yet they rule by the testimony of two Jews or two Christians despite the absence of any Quranic text or authentic Sunnah supporting this, while discrediting Sayf ibn Sulaymān—though he is a reliable narrator.

وَهُمْ آخَذُ النَّاسِ بِرِوَايَةِ كُلِّ كَذَّابٍ، كَجَابِرِ الْجُعْفِيِّ، وَغَيْرِهِ، وَيَحْتَجُّونَ بِمَغِيبِ ذَلِكَ عَنْ الزُّهْرِيِّ وَعَطَاءٍ وَقَدْ غَابَ عَنْهُمَا حُكْمُ زَكَاةِ الذَّهَبِ وَزَكَاةِ الْبَقَرِ، أَوْ عَلِمَاهُ وَرَأَيَاهُ

L29523 They are the foremost among people in narrating from every liar, such as Jābir al-Juʿfī and others. They argue by citing that this ruling was unknown to al-Zuhri and ʿAṭāʾ—though the rulings on zakat for gold and cattle were

either unknown to both of them, or they knew them and deemed them abrogated. Yet they disregarded their opinion in that ruling while emulating them in this ruling. This—as you see—we ask Allah for the outcome—Mālik and al-Shāfiʿī held that judgment should not be issued by oath and witness except in matters of wealth.

L29524 Malik said: As for qasāmah [oath-sworn testimony]—this has no meaning, as it arbitrarily specifies the report without evidence.

L29525 ## The Issue of the Testimony of the Disbeliever.

L29526 Issue 1791: It is impermissible to accept a disbeliever as a witness under any circumstance—neither against a disbeliever nor a Muslim—except exclusively in the case of a will during travel. In such a case, two Muslims, two disbelievers (from any religion they may belong to), one male and two female disbelievers, or four female disbelievers are accepted as witnesses.

L29527–29529 The non-Muslims are to be sworn here along with their testimony, and it is necessary after the prayer—whichever prayer it was, even if it was... If the time [of death] had been more pressing for us: "By Allah - if you doubt - we would not accept any compensation for this even if it involved a close relative, nor conceal what Allah has testified to. Indeed, we would then be among the sinful." [Al-Ma'idah: 106] Judgment is then rendered according to their testimony. Should clear evidence come from Muslims that the disbelievers lied, the Muslim male witnesses must swear by Allah - whether two men, one man and two women, or four women [as witnesses]: "Our testimony is more valid than their testimony. We have not transgressed, for we would then surely be among the wrongdoers." [Al-Ma'idah: 107] Thereupon, the testimony given by the disbelievers is annulled.[6]

L29530 The proof of this is the statement of Allah, the Exalted: "O you who have believed, if a transgressor comes to you with news, ascertain" [Al-Hujurat: 6]. Since the disbeliever is a transgressor, it is necessary that his report not be accepted.[7]

[6] **Qur'an references (L29527):** Qur'an 5:106 (Al-Ma'idah); Qur'an 5:107 (Al-Ma'idah).
[7] **Qur'an references (L29530):** Qur'an 49:6 (Al-Hujurat).

مَنْسُوخًا، فَلَمْ يَلْتَفِتُوا هُنَالِكَ إِلَى قَوْلِهِمَا، وَقَلَّدُوهُمَا هَاهُنَا، وَهَذَا كَمَا تَرَوْنَ - وَنَسْأَلُ اللَّهَ الْعَاقِبَةَ وَرَأَى مَالِكٌ، وَالشَّافِعِيُّ: أَنْ لَا يُقْضَى بِالْيَمِينِ وَالشَّاهِدِ، إِلَّا فِي الْأَمْوَالِ.

قَالَ مَالِكٌ: وَفِي الْقَسَامَةِ - وَهَذَا لَا مَعْنَى لَهُ، لِأَنَّهُ تَخْصِيصٌ لِلْخَبَرِ بِلَا دَلِيلٍ.

[مَسْأَلَة شَهَادَة الْكَافِر]

١٧٩١ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُقْبَلَ كَافِرٌ أَصْلًا، لَا عَلَى كَافِرٍ، وَلَا عَلَى مُسْلِمٍ حَاشَ الْوَصِيَّةَ فِي السَّفَرِ فَقَطْ، فَإِنَّهُ يُقْبَلُ فِي ذَلِكَ مُسْلِمَانِ، أَوْ كَافِرَانِ - مِنْ أَيِّ دِينٍ كَانَا - أَوْ كَافِرٌ وَكَافِرَتَانِ، أَوْ أَرْبَعُ كَوَافِرَ.

وَيُحَلَّفُ الْكُفَّارُ هَاهُنَا مَعَ شَهَادَتِهِمْ وَلَا بُدَّ بَعْدَ الصَّلَاةِ - أَيِّ صَلَاةٍ كَانَتْ وَلَوْ أَنَّهَا الْعَصْرُ - لَكَانَ أَحَبَّ إِلَيْنَا {بِاللَّهِ إِنِ ارْتَبْتُمْ لا نَشْتَرِي بِهِ ثَمَنًا وَلَوْ كَانَ ذَا قُرْبَى وَلا نَكْتُمُ شَهَادَةَ اللَّهِ إِنَّا إِذًا لَمِنَ الآثِمِينَ} [المائدة: ١٠٦] ثُمَّ يُحْكَمُ بِمَا شَهِدُوا بِهِ، فَإِنْ جَاءَتْ بَيِّنَةٌ مُسْلِمُونَ: بِأَنَّ الْكُفَّارَ كَذَبُوا: حَلَفَ الْمُسْلِمَانِ الشَّاهِدَانِ، أَوْ الْمُسْلِمُ وَالْمَرْأَتَانِ، أَوْ الْأَرْبَعُ نِسْوَةٍ {بِاللَّهِ لَشَهَادَتُنَا أَحَقُّ مِنْ شَهَادَتِهِمَا وَمَا اعْتَدَيْنَا إِنَّا إِذًا لَمِنَ الظَّالِمِينَ} [المائدة: ١٠٧] ثُمَّ يُفْسَخُ مَا شَهِدَ بِهِ الْكُفَّارُ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَإٍ فَتَبَيَّنُوا} [الحجرات: ٦] وَالْكَافِرُ فَاسِقٌ فَوَجَبَ أَنْ لَا يُقْبَلَ -.

وَقَالَ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا شَهَادَةُ بَيْنِكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ حِينَ الْوَصِيَّةِ اثْنَانِ ذَوَا عَدْلٍ مِنْكُمْ أَوْ آخَرَانِ مِنْ غَيْرِكُمْ إِنْ أَنْتُمْ ضَرَبْتُمْ فِي الأَرْضِ} [المائدة: ١٠٦] الْآيَةَ فَوَجَبَ أَخْذُ حُكْمِ اللَّهِ تَعَالَى كُلِّهِ، وَأَنْ يَسْتَثْنِيَ الْأَخَصَّ مِنَ الْأَعَمِّ، لِيُتَوَصَّلَ بِذَلِكَ إِلَى طَاعَةِ الْجَمِيعِ، وَمَنْ تَعَدَّى هَذَا الطَّرِيقَ فَقَدْ خَالَفَ بَعْضَ أَوَامِرِ اللَّهِ تَعَالَى: وَهَذَا لَا يَحِلُّ -: رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ أَبِي النَّضْرِ عَنْ زَاذَانَ مَوْلَى أُمِّ هَانِئٍ عَنِ ابْنِ عَبَّاسٍ «عَنْ تَمِيمٍ الدَّارِيِّ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ {شَهَادَةُ بَيْنِكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ} [المائدة: ١٠٦] الْآيَةَ، قَالَ: بَرِئَ النَّاسُ مِنْهَا غَيْرِي، وَغَيْرَ عَدِيِّ بْنِ بُدَاءٍ، وَكَانَا نَصْرَانِيَّيْنِ يَخْتَلِفَانِ إِلَى الشَّامِ، فَأَتَيَا إِلَى الشَّامِ، وَقَدِمَ عَلَيْهِمَا بُدَيْلُ بْنُ أَبِي مَرْيَمَ مَوْلَى بَنِي سَهْمٍ، وَمَعَهُ جَامٌ مِنْ فِضَّةٍ يُرِيدُ بِهِ الْمَلِكَ هُوَ عُظْمُ تِجَارَتِهِ، فَمَرِضَ، فَأَوْصَى إِلَيْهَا، قَالَ تَمِيمٌ: فَلَمَّا مَاتَ أَخَذْنَا ذَلِكَ الْجَامَ فَبِعْنَاهُ بِأَلْفٍ ثُمَّ اقْتَسَمْنَاهُ أَنَا وَعَدِيُّ بْنُ بُدَاءٍ، فَلَمَّا قَدِمْنَا دَفَعْنَاهُ إِلَى أَهْلِهِ، فَسَأَلُوا عَنِ الْجَامِ؟ فَقُلْنَا: مَا دَفَعَ إِلَيْنَا غَيْرَ هَذَا، فَلَمَّا أَسْلَمْتُ بَعْدَ قُدُومِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَدِينَةَ تَأَثَّمْتُ مِنْ ذَلِكَ، فَأَتَيْتُ أَهْلَهُ فَأَخْبَرْتُهُمُ الْخَبَرَ، وَأَدَّيْتُ إِلَيْهِمْ خَمْسَمِائَةِ دِرْهَمٍ، وَأَخْبَرْتُهُمْ: أَنَّ عِنْدَ صَاحِبِي مِثْلَهَا، فَأَتَوْا بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَأَلَهُمُ الْبَيِّنَةَ؟ فَلَمْ يَجِدُوا، فَأَحْلَفَهُ بِمَا يُعْظَمُ بِهِ عَلَى أَهْلِ دِينِهِ فَحَلَفَ فَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ: {يَا أَيُّهَا الَّذِينَ آمَنُوا شَهَادَةُ بَيْنِكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ} [المائدة: ١٠٦] الْآيَةَ، فَحَلَفَ عَمْرُو بْنُ الْعَاصِ وَوَاحِدٌ مِنْهُمْ، فَنُزِعَتِ الْخَمْسُمِائَةِ دِرْهَمٍ مِنْ عَدِيِّ بْنِ بُدَاءٍ» .

L29531 Allah the Exalted said: “O you who have believed, let there be testimony between you when death approaches one of you at the time of bequest, two just men from among you or two others from beyond you if you are traveling through the land” [Al-Mā’idah: 106]. Thus, it is obligatory to uphold all of Allah’s rulings and to make an exception of the specific from the general ruling, so that the obedience of all may be achieved. Whoever transgresses this path has opposed some of Allah’s commands, and this is impermissible. We were narrated through the chain of Muḥammad ibn Isḥāq from Abū al-Naḍr from Zādhan – freed slave of Umm Hāni’ – from Ibn ʿAbbās regarding Tamīm al-Dāri’s account concerning Allah’s words “let there be testimony between you when death approaches one of you” [Al-Mā’idah: 106]. Tamīm said: “People were absolved of this except me and ʿAdī ibn Budāʾ. We were two Christians who traveled frequently to Syria. We went to Syria where Budayl ibn Abī Maryam – freed slave of Banū Sahm – arrived carrying a silver jar that formed the bulk of his merchandise, intending it for the king. He fell ill and entrusted it to us. When he died, we took the jar, sold it for a thousand dirhams, and divided it between me and ʿAdī ibn Budāʾ. Upon our return, we delivered the proceeds to his family. They inquired about the jar, and we replied: ‘He entrusted nothing else to us.’ After embracing Islam following the Prophet’s (peace be upon him) arrival in Medina, I felt guilty for this deed. I went to his family, disclosed the truth, and paid them five hundred dirhams, informing them that my companion held an equal amount. They brought the case to the Prophet (peace be upon him), who demanded evidence. Finding none, he required him to swear by that which is revered among his people. When he swore, Allah revealed: ‘O you who have believed, let there be testimony between you when death approaches one of you’ [Al-Mā’idah: 106]. ʿAmr ibn al-ʿĀṣ and another man then took oath, whereupon the five hundred dirhams were seized from ʿAdī ibn Budāʾ.”[8]

وَمِنْ طَرِيقِ يَحْيَى بْنِ أَبِي زَائِدَةَ عَنْ مُحَمَّدِ بْنِ أَبِي الْقَاسِمِ عَنْ عَبْدِ الْمَلِكِ بْنِ سَعِيدِ بْنِ جُبَيْرٍ عَنْ أَبِيهِ عَنِ ابْنِ عَبَّاسٍ قَالَ: «كَانَ تَمِيمٌ الدَّارِيِّ، وَعَدِيُّ بْنُ بُدَاءٍ: يَخْتَلِفَانِ

L29532–29534 Through the chain of Yaḥyā ibn Abī Zāʾidah, from Muḥammad ibn Abī al-Qāsim, from ʿAbd al-Malik ibn Saʿīd ibn Jubayr, from his father, from Ibn

[8]**Qur’an references (L29531):** Qur’an 5:106 (Al-Ma’idah).

ʿAbbās, who said: "Tamīm al-Dārī and ʿAdī ibn Budā' used to travel frequently to Mecca." A man from the tribe of Sahm accompanied them for trade and died in a land with no Muslims. He had entrusted two men with his will, and they delivered his estate to his family but withheld a silver cup inlaid with gold. When his legal guardians noticed its absence, they came to Allah's Messenger—peace and blessings be upon him. Allah's Messenger—peace and blessings be upon him—made the two swear they had neither concealed it nor gained knowledge of it. Later, the cup was identified in Mecca, where people claimed: "We bought it from Tamim and Adi." Two legal guardians of the Sahmi man stood and swore by Allah: "Indeed, this is the Sahmi's cup. **'Our testimony has greater right than their testimony, and we have not transgressed—for then we would surely be among the wrongdoers'** [Quran 5:107]." They took back the cup, and this verse was revealed concerning them.[9]

إِلَى مَكَّةَ لِلتِّجَارَةِ فَخَرَجَ مَعَهُمْ رَجُلٌ مِنْ بَنِي سَهْمٍ، فَتُوُفِّيَ بِأَرْضٍ لَيْسَ فِيهَا مُسْلِمٌ، فَأَوْصَى إِلَيْهِمَا، فَدَفَعَا تَرِكَتَهُ إِلَى أَهْلِهِ وَحَبَسَا جَامًا مِنْ فِضَّةٍ، مُخَوَّصًا بِالذَّهَبِ، فَفَقَدَهُ أَوْلِيَاؤُهُ، فَأَتَوْا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاسْتَحْلَفَهُمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا كَتَمْنَا، وَلَا اطَّلَعْنَا، ثُمَّ عُرِفَ الْجَامُ بِمَكَّةَ، فَقَالُوا: اشْتَرَيْنَاهُ مِنْ تَمِيمٍ، وَعَدِيٍّ، فَقَامَ رَجُلَانِ مِنْ أَوْلِيَاءِ السَّهْمِيِّ فَحَلَفَا بِاللَّهِ إِنَّ هَذَا لَجَامُ السَّهْمِيِّ، {لَشَهَادَتُنَا أَحَقُّ مِنْ شَهَادَتِهِمَا وَمَا اعْتَدَيْنَا إِنَّا إِذًا لَمِنَ الظَّالِمِينَ} [المائدة: ١٠٧] فَأَخَذَا الْجَامَ، وَفِيهِمْ نَزَلَتْ هَذِهِ الْآيَةُ» .

L29535 In accordance with our position, Jahwar al-Salaf states: We have received narrations through the chain of Aisha, the Mother of the Believers—may Allah be pleased with her—that the last chapter revealed was Surah al-Mā'idah. Therefore, whatever you find therein permissible, consider it lawful, and whatever you find therein forbidden, consider it prohibited. As for this verse in al-Mā'idah, its abrogation is thereby invalidated, and its status as unequivocal is confirmed.

وَبِقَوْلِنَا يَقُولُ جَهْوَرُ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا -: أَنَّ آخِرَ سُورَةٍ نَزَلَتْ سُورَةُ الْمَائِدَةِ، فَمَا وَجَدْتُمْ فِيهَا حَلَالًا فَحِلُّوهُ، وَمَا وَجَدْتُمْ فِيهَا حَرَامًا فَحَرِّمُوهُ، وَهَذِهِ الْآيَةُ فِي الْمَائِدَةِ - فَبَطَلَ أَنَّهَا مَنْسُوخَةٌ وَصَحَّ أَنَّهَا مُحْكَمَةٌ.

L29536 From the narration of Ibn Abbas, he said regarding this verse: This applies to one who dies while Muslims are present with him, so Allah the Exalted and Majestic commanded him to have two just men from the Muslims bear witness to his will. Then He the Exalted and Majestic said: {or two others from non-you [i.e., non-Muslims] if you are journeying through the land} [Al-Ma'idah: 106]. This applies to one who dies with no Muslims present, so Allah the Exalted commanded him to have two men from the disbelievers bear witness to his will. If doubt arises regarding their testimony, they are required to swear by Allah after the prayer: "We will not trade our testimony for a trivial price." If the guardians discover the two disbelievers lied, they

وَمِنْ طَرِيقِ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ فِي هَذِهِ الْآيَةِ: هَذَا لِمَنْ مَاتَ وَعِنْدَهُ الْمُسْلِمُونَ فَأَمَرَهُ اللَّهُ عَزَّ وَجَلَّ أَنْ يُشْهِدَ عَلَى وَصِيَّتِهِ عَدْلَيْنِ مِنْ الْمُسْلِمِينَ، ثُمَّ قَالَ عَزَّ وَجَلَّ: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ إِنْ أَنْتُمْ ضَرَبْتُمْ فِي الأَرْضِ} [المائدة: ١٠٦] فَهَذَا لِمَنْ مَاتَ وَلَيْسَ عِنْدَهُ أَحَدٌ مِنْ الْمُسْلِمِينَ، فَأَمَرَهُ اللَّهُ تَعَالَى أَنْ يُشْهِدَ عَلَى وَصِيَّتِهِ رَجُلَيْنِ مِنْ غَيْرِ الْمُسْلِمِينَ، فَإِنْ ارْتِيبَ بِشَهَادَتِهِمَا اسْتُحْلِفَا بَعْدَ الصَّلَاةِ بِاللَّهِ لَا نَشْتَرِي بِشَهَادَتِنَا ثَمَنًا قَلِيلًا فَإِذَا اطَّلَعَ الْأَوَّلِيَّانِ عَلَى الْكَافِرَيْنِ كَذِبًا حَلَفَا: بِاللَّهِ إِنَّ شَهَادَةَ الْكَافِرَيْنِ بَاطِلٌ، وَإِنَّا لَمْ نَغْدِرْ.

[9] **Qur'an references (L29532):** Qur'an 5:107 (Al-Ma'idah).

must swear: “By Allah, the testimony of these two disbelievers is invalid, and we have not acted treacherously.”[10]

L29537 And from the narration of Ibn Abbas also: regarding the statement of the Most High, “or two others from among those besides you” [Al-Mā’idah: 106], he said: “from non-Muslims among the People of the Book.”[11]

L29538 It has been reported to us through the chain of Saʿīd ibn Manṣūr and Ziyād ibn Ayyūb—both of whom said: Hushaym narrated to us—Zakariyyā ibn Abī Zā’idah narrated to us from al-Shaʿbī: A Muslim man was on his deathbed in Daqūqā and found no Muslims to witness his will. He therefore had two men from the People of the Book bear witness. They came to Abū Mūsā al-Ashʿarī, informed him, and brought the deceased’s estate and will. Abū Mūsā said: “This is a matter that has not occurred after what took place in the time of the Messenger of Allah—peace and blessings be upon him and his family.” He then made them swear after the ʿAṣr prayer: “By Allah, they did not betray, lie, alter, withhold, or obscure anything, and that this was indeed the man’s will and estate.” Abū Mūsā then upheld their testimony.

L29539–29541 And via the chain of ʿAbd al-Raḥmān ibn Mahdī from Sufyān al-Thawrī from Abū Isḥāq al-Sabīʿī from Abu Maysarah is ‘Amr ibn Shurahbil. He said: “Nothing from Surah Al-Mā’idah was abrogated.”

L29542 Via the chain of Waki‘ from Shu‘bah from Qatadah from Sa‘id ibn al-Musayyab concerning Allah’s statement, the Almighty and Majestic: “or two others from besides you” [Al-Ma’idah: 106] – he said: “From among the People of the Book.”[12]

L29543 And through the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us, Sulaymān al-Taymī narrated to us, from Saʿīd ibn al-Musayyab regarding the statement of the Exalted: {or two others from other than you} [Al-Mā’idah

وَمِنْ طَرِيقِ ابْنِ عَبَّاسٍ أَيْضًا: فِي قَوْلِه تَعَالَى: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنْ غَيْرِ الْمُسْلِمِينَ مِنْ أَهْلِ الْكِتَابِ.

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ، وَزِيَادِ بْنِ أَيُّوبَ، قَالَا جَمِيعًا: نا هُشَيْمٌ نا زَكَرِيَّا بْنُ أَبِي زَائِدَةَ عَنْ الشَّعْبِيِّ: أَنَّ رَجُلًا مِنْ الْمُسْلِمِينَ حَضَرَتْهُ الْوَفَاةُ " بِدَقُوقَا " فَلَمْ يَجِدْ أَحَدًا مِنْ الْمُسْلِمِينَ يَشْهَدُ عَلَى وَصِيَّتِه، فَأَشْهَدَ رَجُلَيْنِ مِنْ أَهْلِ الْكِتَابِ، فَأَتَيَا أَبَا مُوسَى الْأَشْعَرِيَّ فَأَخْبَرَاهُ وَقَدِمَا بِتَرِكَتِه وَوَصِيَّتِه فَقَالَ أَبُو مُوسَى: هَذَا أَمْرٌ لَمْ يَكُنْ بَعْدَ الَّذِي كَانَ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِه وَسَلَّمَ - فَأَحْلَفَهُمَا بَعْدَ الْعَصْرِ " بِاَللَّهِ مَا خَانَا وَلَا كَذَبَا وَلَا بَدَّلَا وَلَا كَتَمَا، وَلَا غَيَّبَا، وَأَنَّهَا لَوَصِيَّةُ الرَّجُلِ وَتَرِكَتُهُ " فَأَمْضَى أَبُو مُوسَى شَهَادَتَهُمَا.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ أَبِي مَيْسَرَةَ هُوَ عَمْرُو بْنُ شُرَحْبِيلَ - قَالَ: لَمْ يُنْسَخْ مِنْ سُورَةِ الْمَائِدَةِ - شَيْءٌ.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنْ أَهْلِ الْكِتَابِ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا سُلَيْمَانُ التَّيْمِيُّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي قَوْلِه تَعَالَى: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنْ غَيْرِ أَهْلِ مِلَّتِكُمْ.

[10] **Qur’an references (L29536):** Qur’an 5:106 (Al-Ma’idah).
[11] **Qur’an references (L29537):** Qur’an 5:106 (Al-Ma’idah).
[12] **Qur’an references (L29542):** Qur’an 5:106 (Al-Ma’idah).

5:106]. He [Ibn al-Musayyab] said: “[This means:] From those outside your creed.”[13]

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنِ ابْنِ سِيرِينَ عَنْ عَبِيدَةَ السَّلْمَانِيِّ فِي قَوْلِ اللَّهِ تَعَالَى: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنْ غَيْرِ أَهْلِ الْمِلَّةِ.

L29544 Via Wakiʿ from ʿAbdullāh ibn ʿAwn from Ibn Sīrīn from ʿUbaydah al-Salmānī concerning Allah’s statement, the Exalted: {or two others from other than yourselves} [al-Māʾidah 5:106], he said: “From other than the people of the millah.”[14]

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ شُرَيْحٍ قَالَ: لَا تَجُوزُ شَهَادَةُ الْمُشْرِكِينَ عَلَى الْمُسْلِمِينَ إِلَّا فِي وَصِيَّةٍ، وَلَا تَجُوزُ فِي وَصِيَّةٍ إِلَّا أَنْ يَكُونَ مُسَافِرًا.

L29545 From the narration of Sufyan al-Thawri from Mansur ibn al-Mu’tamir from Ibrahim al-Nakha’i from Shurayh, who said: The testimony of polytheists against Muslims is not permissible except in a will, nor is it permissible in a will except when he is a traveler.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنِ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ شُرَيْحٍ قَالَ: لَا تَجُوزُ شَهَادَةُ الْيَهُودِيِّ وَالنَّصْرَانِيِّ، إِلَّا فِي السَّفَرِ، وَلَا تَجُوزُ فِي السَّفَرِ إِلَّا فِي الْوَصِيَّةِ.

L29546 Via the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from al-Aʿmash, from Ibrāhīm al-Nakhaʿī, from Shurayḥ, who said: “The testimony of a Jew or Christian is inadmissible except during travel, and it is not permissible during travel except for a testamentary bequest.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا خَالِدُ بْنُ عَبْدِ اللَّهِ الطَّحَّانُ عَنْ دَاوُد الطَّائِيِّ عَنِ الشَّعْبِيِّ عَنْ شُرَيْحٍ قَالَ: إِذَا مَاتَ الرَّجُلُ فِي أَرْضٍ غُرْبَةٍ، وَلَمْ يَجِدْ مُسْلِمًا فَأَشْهَدَ مِنْ غَيْرِ الْمُسْلِمِينَ شَاهِدَيْنِ، فَشَهَادَتُهُمَا جَائِزَةٌ، فَإِنْ جَاءَ مُسْلِمَانِ فَشَهِدَا بِخِلَافِ ذَلِكَ أُخِذَ بِشَهَادَةِ الْمُسْلِمَيْنِ وَتُرِكَتْ شَهَادَتُهُمَا.

L29547 Through the chain of Saʿīd ibn Manṣūr: Khālid ibn ʿAbdullāh al-Ṭaḥḥān narrated to us from Dāwūd al-Ṭāʾī from al-Shaʿbī from Shuraih, who said: If a man dies in a foreign land and no Muslim is found [to witness], then two non-Muslim witnesses may be sought—their testimony is valid. But if two Muslims come forward and testify contrary to that, the testimony of the two Muslims is upheld, and the testimony of the non-Muslims is disregarded.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الْمُغِيرَةُ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي قَوْلِ اللَّهِ تَعَالَى: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنْ غَيْرِ أَهْلِ مِلَّتِكُمْ.

L29548 And via the chain of transmission: Saʿīd ibn Manṣūr → Hushaym → al-Mughīrah, from Ibrāhīm al-Nakhaʿī concerning Allah the Exalted’s verse: {or two others from those other than you} [al-Māʾidah: 106], he said: *From people not of your religious community*.[15]

وَمِنْ طَرِيقِ شُعْبَةَ نا أَبُو بِشْرٍ - هُوَ جَعْفَرُ بْنُ أَبِي وَحْشِيَّةَ - عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: إِذَا كَانَ بِأَرْضِ الشِّرْكِ فَأَوْصَى إِلَى

L29549 From the path of Shuʿbah: Abū Bishr—who is Jaʿfar ibn Abī Waḥshiyyah—narrated from Saʿīd ibn Jubayr, who said regarding the verse: *“or two others

[13] **Qur’an references (L29543):** Qur’an 5:106 (Al-Ma’idah).
[14] **Qur’an references (L29544):** Qur’an 5:106 (Al-Ma’idah).
[15] **Qur’an references (L29548):** Qur’an 5:106 (Al-Ma’idah).

from among those other than you”* [5:106]: If one is in a land of polytheism and bequeaths **to** a man from the People of the Book, then the two of them are to be sworn after the ʿAṣr prayer. If it is discovered after their oath that the two of them betrayed, the heirs of the deceased swear that it was such-and-such, thereby establishing their right.[16]

رَجُلٍ مِنْ أَهْلِ الْكِتَابِ فَإِنَّهُمَا يُحَلَّفَانِ بَعْدَ الْعَصْرِ، فَإِنْ أُطُّلِعَ بَعْدَ حَلِفِهِمَا عَلَى أَنَّهُمَا خَانَا حَلَفَ أَوْلِيَاءُ الْمَيِّتِ أَنَّهُ كَانَ كَذَا وَكَذَا وَاسْتَحَقُّوا.

L29550–29551 From the chain of transmission of Ismāʿīl ibn Isḥāq al-Qāḍī, who said: Muḥammad ibn Abī Bakr al-Muqaddamī narrated to us from ʿUmar ibn ʿAlī al-Muqaddamī, from al-Ashʿath, from al-Shaʿbī: {“Or two others from those other than you”} [Al-Mā’idah: 106]. He said: “From the Jews and the Christians.”[17]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي قَالَ: نا مُحَمَّدُ بْنُ أَبِي بَكْرٍ الْمُقَدَّمِيُّ نا عُمَرُ بْنُ عَلِيٍّ الْمُقَدَّمِيُّ عَنِ الْأَشْعَثِ عَنِ الشَّعْبِيِّ: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنَ الْيَهُودِ وَالنَّصَارَى.

L29552 And via the chain of Ismāʿīl: Sulaymān ibn Ḥarb narrated to us, Ḥammād ibn Zayd narrated to us from Ibn Abī Najīḥ from Mujāhid, who said regarding *“Two just men from among you”* [5:106]: “From the adherents of the faith,” and regarding *“or two others from other than you”* [5:106]: “From those outside the adherents of the faith.”[18]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ أَيْضًا نا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ زَيْدٍ عَنِ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: {اثْنَانِ ذَوَا عَدْلٍ مِنْكُمْ} [المائدة: ١٠٦] مِنْ أَهْلِ الْمِلَّةِ: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنْ غَيْرِ أَهْلِ الْمِلَّةِ.

L29553 And through the chain of Ismail: Mahmud ibn Khidash narrated to us, who narrated from Hushaym, who narrated from Sulayman al-Taymi, from Abu Mijlaz concerning Allah the Exalted’s statement: “or two others from among those not of you” [Al-Ma’idah: 106]. He said: “From those not belonging to the people of the religion.”[19]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نا مَحْمُودُ بْنُ خِدَاشٍ نا هُشَيْمٌ نا سُلَيْمَانُ التَّيْمِيُّ عَنْ أَبِي مِجْلَزٍ فِي قَوْلِ اللَّهِ تَعَالَى: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنْ غَيْرِ أَهْلِ الْمِلَّةِ.

L29554 And through the chain of Ismāʿīl, Ibrāhīm ibn al-Ḥajjāj narrated to us, ʿAbd al-Wārith ibn Saʿīd narrated to us, Isḥāq ibn Suwayd narrated to us from Yaḥyā ibn Yaʿmur concerning Allah the Exalted’s statement: {or two others from those besides you} [Al-Mā’idah: 106]. He said: “From those other than the people of the religion.”[20]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نا إِبْرَاهِيمُ بْنُ الْحَجَّاجِ نا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ نا إِسْحَاقُ بْنُ سُوَيْدٍ عَنْ يَحْيَى بْنِ يَعْمُرَ فِي قَوْلِ اللَّهِ تَعَالَى: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنْ غَيْرِ أَهْلِ الْمِلَّةِ.

L29555 From the chain of al-Ṭaḥāwī: Muḥammad ibn Khuzaymah narrated to us; Ḥajjāj ibn al-Minhāl and ʿUthmān ibn al-Haytham narrated to us. Ḥajjāj said:

وَمِنْ طَرِيقِ الطَّحَاوِيِّ نا مُحَمَّدُ بْنُ خُزَيْمَةَ نا حَجَّاجُ بْنُ الْمِنْهَالِ، وَعُثْمَانُ بْنُ الْهَيْثَمِ قَالَ الْحَجَّاجُ: نا أَبُو هِلَالٍ الرَّاسِبِيُّ، وَقَالَ عُثْمَانُ: نا عَوْفُ بْنُ أَبِي جَمِيلَةَ، كِلَاهُمَا عَنْ مُحَمَّدِ بْنِ سِيرِينَ فِي قَوْلِهِ تَعَالَى: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنْ غَيْرِ الْمُسْلِمِينَ.

[16] **Qur’an references (L29549):** Qur’an 5:106 (Al-Ma’idah).
[17] **Qur’an references (L29551):** Qur’an 5:106 (Al-Ma’idah).
[18] **Qur’an references (L29552):** Qur’an 5:106 (Al-Ma’idah).
[19] **Qur’an references (L29553):** Qur’an 5:106 (Al-Ma’idah).
[20] **Qur’an references (L29554):** Qur’an 5:106 (Al-Ma’idah).

Abū Hilāl al-Rāsibī narrated to us, and ʿUthmān said: ʿAwf ibn Abī Jamīlah narrated to us; both from Muḥammad ibn Sīrīn regarding the verse of Allah, the Exalted: *"or two others from besides you"* [5:106]. He said: "From those other than the Muslims."[21]

L29556 These individuals are: the Mother of the Believers, Abu Musa al-Ash'ari, Ibn Abbas—and a narration similar to that has also been reported from Ali (may Allah be pleased with them)—with no dissenter among the Companions (may Allah be pleased with them) opposing them.

L29557 Among the Followers are ʿAmr ibn Shurahbil, Shurayḥ, ʿUbaydah al-Salmānī, Ibrāhīm al-Nakhaʿī, al-Shaʿbī, Saʿīd ibn Jubayr, Saʿīd ibn al-Musayyib, Mujāhid, Abū Mijlaz, Ibn Sīrīn, Yaḥyā ibn Yaʿmur, and others such as Ibn Abī Laylā, Sufyān al-Thawrī, Yaḥyā ibn Ḥamzah, al-Awzāʿī, Abū ʿUbayd, Aḥmad ibn Ḥanbal, and the majority of the scholars of Hadith.

L29558 And with this, Abu Sulaymān and all our companions hold the same opinion, while others disagreed with them. It has been narrated to us from Al-Hasan that he said, "{or two others from among those not of you} [Al-Ma'idah: 106] from outside your tribe."[22]

L29559–29560 It was narrated from Az-Zuhri similarly to this, and that he said: "Among those entitled to inheritance," and that he refrained from a definitive stance on the matter - and it was also narrated from Ikrimah.

L29561 And it has been narrated to us from Zayd ibn Aslam that it is abrogated—and from Ibrāhīm also the same as that.

L29562 Abu Muhammad said: As for the claim of abrogation, it is invalid. It is not permissible to declare a verse abrogated—thereby rendering obedience to it and acting upon it impermissible—except based on an authentic text or a necessity that precludes [its application]. None of these exist here. Were such

فَهَؤُلَاءِ: أُمُّ الْمُؤْمِنِينَ، وَأَبُو مُوسَى الْأَشْعَرِيُّ، وَابْنُ عَبَّاسٍ - وَرُوِيَ أَيْضًا نَحْوُ ذَلِكَ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

وَمِنْ التَّابِعِينَ عَمْرُو بْنُ شُرَحْبِيلَ، وَشُرَيْحٌ، وَعَبِيدَةُ السَّلْمَانِيُّ، وَإِبْرَاهِيمُ النَّخَعِيُّ، وَالشَّعْبِيُّ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَمُجَاهِدٌ، وَأَبُو مِجْلَزٍ، وَابْنُ سِيرِينَ، وَيَحْيَى بْنُ يَعْمُرَ، وَغَيْرُهُمْ، كَابْنِ أَبِي لَيْلَى، وَسُفْيَانَ الثَّوْرِيِّ، وَيَحْيَى بْنِ حَمْزَةَ، وَالْأَوْزَاعِيِّ، وَأَبِي عُبَيْدٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَجُمْهُورِ أَصْحَابِ الْحَدِيثِ.

وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ وَجَمِيعُ أَصْحَابِنَا، وَخَالَفَهُمْ آخَرُونَ فَرُوِّينَا عَنْ الْحَسَنِ أَنَّهُ قَالَ، {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] مِنْ غَيْرِ قَبِيلَتِكُمْ.

وَرُوِيَ عَنْ الزُّهْرِيِّ نَحْوُ هَذَا، وَأَنَّهُ قَالَ: مِنْ أَهْلِ الْمِيرَاثِ، وَأَنَّهُ تَوَقَّفَ فِي ذَلِكَ - وَرُوِيَ أَيْضًا: عَنْ عِكْرِمَةَ.

وَرُوِّينَا عَنْ زَيْدِ بْنِ أَسْلَمَ أَنَّهَا مَنْسُوخَةٌ - وَعَنْ إبْرَاهِيمَ أَيْضًا مِثْلُ ذَلِكَ.

قَالَ أَبُو مُحَمَّد: أَمَّا دَعْوَى النَّسْخِ فَبَاطِلٌ، لَا يَحِلُّ أَنْ يُقَالَ فِي آيَةٍ إنَّهَا مَنْسُوخَةٌ لَا تَحِلُّ طَاعَتُهَا وَالْعَمَلُ بِهَا إلَّا بِنَصٍّ صَحِيحٍ، أَوْ ضَرُورَةٍ مَانِعَةٍ، وَلَيْسَ هَاهُنَا شَيْءٌ مِنْ ذَلِكَ، وَلَوْ جَازَ مِثْلُ هَذَا لَمَا عَجَزَ أَحَدٌ عَنْ أَنْ يَدَّعِيَ فِيمَا شَاءَ مِنْ الْقُرْآنِ أَنَّهُ مَنْسُوخٌ، وَهَذَا لَا يَحِلُّ.

[21] **Qur'an references (L29555):** Qur'an 5:106 (Al-Ma'idah).
[22] **Qur'an references (L29558):** Qur'an 5:106 (Al-Ma'idah).

a claim permissible, no one would be unable to assert abrogation regarding whatever part of the Quran they wished, and this is impermissible.

وَأَمَّا مَنْ قَالَ: مِنْ غَيْرِ قَبِيلَتِكُمْ فَقَوْلٌ ظَاهِرُ الْفَسَادِ، وَالْبُطْلَانِ، لِأَنَّهُ لَيْسَ فِي أَوَّلِ الْآيَةِ خِطَابٌ لِقَبِيلَةٍ دُونَ قَبِيلَةٍ إِنَّمَا أَوَّلُهَا: {يَا أَيُّهَا الَّذِينَ آمَنُوا} [المائدة: ١٠٦] وَلَا يَشُكُّ مُنْصِفٌ فِي أَنَّ غَيْرَ الَّذِينَ آمَنُوا هُمُ الَّذِينَ لَمْ يُؤْمِنُوا، وَلَكِنَّهَا مِنَ الْحَسَنِ زَلَّةُ عَالِمٍ لَمْ يَتَدَبَّرْهَا.

L29563 As for those who say "from other than your tribe," this is a statement of manifest invalidity and falsehood, for the opening of the verse does not address one tribe to the exclusion of another. Rather, its beginning states: {O you who have believed} [Al-Mā'idah: 106]. No fair-minded person would doubt that "other than those who have believed" are precisely those who did not believe. Yet this constitutes al-Ḥasan's lapse as a scholar who failed to reflect deeply upon it.[23]

وَقَالَ الْمُخَالِفُونَ: نَحْنُ نُهِينَا عَنْ قَبُولِ شَهَادَةِ الْفَاسِقِ، وَالْكَافِرُ أَفْسَقُ الْفُسَّاقِ؟ فَقُلْنَا: الَّذِي نَهَانَا عَنْ قَبُولِ شَهَادَةِ الْفَاسِقِ هُوَ الَّذِي أَمَرَنَا بِقَبُولِ شَهَادَةِ الْكَافِرِ فِي الْوَصِيَّةِ فِي السَّفَرِ فَنَقِفُ عِنْدَ أَمْرَيْهِ جَمِيعًا، وَلَيْسَ أَحَدُهُمَا بِأَوْلَى بِالطَّاعَةِ مِنَ الْآخَرِ.

L29564 The opponents said: "We have been prohibited from accepting the testimony of a morally corrupt person, and is the disbeliever not the most transgressing of transgressors?" We responded: "The One Who forbade us from accepting a corrupt person's testimony is the same Who commanded us to accept a disbeliever's testimony regarding a bequest made during travel. Thus we adhere to both of His commands, neither command holding greater claim to obedience than the other."

وَمِنْ عَجَائِبِ الدُّنْيَا الَّتِي لَا نَظِيرَ لَهَا: أَنَّ الْمُحْتَجِّينَ بِهَذَا هُمُ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ.

L29565 And among the unparalleled marvels of the world is that those who argue with this are the Ḥanafīs, the Mālikīs, and the Shāfiʿīs.

فَأَمَّا الْحَنَفِيُّونَ: فَأَجَازُوا شَهَادَةَ الْكُفَّارِ فِي كُلِّ شَيْءٍ بَعْضِهِمْ عَلَى بَعْضٍ بِغَيْرِ أَمْرٍ مِنَ اللَّهِ تَعَالَى بِذَلِكَ، بَلْ خَالَفُوا الْقُرْآنَ فِي نَهْيِهِ عَنْ قَبُولِ نَبَأِ الْفَاسِقِ ثُمَّ خَالَفُوهُ فِي قَبُولِ الْكُفَّارِ فِي السَّفَرِ؟ فَاعْجَبُوا لِهَذِهِ الْفَضَائِحِ، وَالْمُضَادَّةِ لِلَّهِ تَعَالَى.

L29566 As for the Ḥanafīs: They permitted the testimony of non-believers in all matters - even among themselves - without any divine command sanctioning this. Rather, they contradicted the Qur'ān's prohibition against accepting the account of the transgressor, then further contradicted it by accepting the testimony of non-believers during travel. So marvel at these scandals and their opposition to Allah the Exalted!

وَأَمَّا الْمَالِكِيُّونَ: فَأَجَازُوا شَهَادَةَ طَبِيبَيْنِ كَافِرَيْنِ حَيْثُ لَا يُوجَدُ طَبِيبٌ مُسْلِمٌ بِغَيْرِ أَمْرٍ مِنَ اللَّهِ تَعَالَى بِذَلِكَ، بَلْ خَالَفُوا الْقُرْآنَ فِي كِلَا الْوَجْهَيْنِ، كَمَا ذَكَرْنَا.

L29567 As for the Mālikīs: they permitted the testimony of two non-Muslim physicians when no Muslim physician is available, without any command from Allah the Exalted regarding that. Rather, they contradicted the Quran in both rulings, as we have previously mentioned.

L29568–29570 Some of them said: "The will may contain an acknowledgment of debt.

[23] **Qur'an references (L29563):** Qur'an 5:106 (Al-Ma'idah).

وَقَالَ بَعْضُهُمْ: الْوَصِيَّةُ يَكُونُ فِيهَا إقْرَارٌ بِدَيْنٍ فَلَمَّا نُسِخَ ذَلِكَ مِنْ الْآيَةِ دَلَّ عَلَى نَسْخِ سَائِرِ ذَلِكَ؟ فَقُلْنَا: كَذَبْتُمْ مَا سَمَّى اللَّهُ تَعَالَى - قَطُّ - الْإِقْرَارَ بِالدَّيْنِ وَصِيَّةً، لِأَنَّ الْوَصِيَّةَ مِنْ الثُّلُثِ، وَالْإِقْرَارَ بِالدَّيْنِ مِنْ رَأْسِ الْمَالِ، وَمَا دَخَلَ - قَطُّ - الْإِقْرَارُ بِالدَّيْنِ فِي الْوَصِيَّةِ، وَلَا نُسِخَ مِنْ الْآيَةِ شَيْءٌ - ثُمَّ لَهُمْ بَعْدَ هَذَا أَهْذَارٌ يُشْبِهُ تَخْلِيطَ الْمُبَرْسَمِينَ لَا مَعْنَى لَهَا، وَهَذَا مِمَّا خَالَفُوا فِيهِ جُمْهُورَ الْعُلَمَاءِ وَالصَّحَابَةِ، وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ، وَهُمْ يُعَظِّمُونَ ذَلِكَ إذَا وَافَقَ أَهْوَاءَهُمْ.

When that [provision] was abrogated from the verse, does it indicate the abrogation of the rest of that?" We replied: "You have lied! Allah the Exalted has never - at all - termed the acknowledgment of debt as a will, for the will is from..." The third [of the estate], the acknowledgment of debt from the principal amount, and the acknowledgment of debt has never been included in the will, nor has any part of the verse been abrogated. Then, after this, they have baseless assertions resembling the incoherent ramblings of those afflicted with barsam (a neurological ailment), which hold no meaning. This is among the matters in which they have opposed the majority of scholars and the Companions, with no dissenter from the Companions against them. Yet they magnify this when it aligns with their desires.

وَذَكَرُوا خَبَرًا: رُوِّينَاهُ مِنْ طَرِيقِ عُمَرَ بْنِ رَاشِدٍ الْيَمَامِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَجُوزُ شَهَادَةُ مِلَّةٍ عَلَى مِلَّةٍ إلَّا مِلَّةُ مُحَمَّدٍ فَإِنَّهَا تَجُوزُ عَلَى غَيْرِهِمْ» .

L29571 They mentioned a report which we have narrated via the chain of transmission of ʿUmar ibn Rāshid al-Yamāmī, from Yaḥyā ibn Abī Kathīr, from Abū Salama, from Abū Hurayrah, that the Prophet—peace be upon him—said: "The testimony of one community against another is not valid, except the community of Muḥammad, for their testimony is valid against others besides them."

قَالَ أَبُو مُحَمَّدٍ: عُمَرُ بْنُ رَاشِدٍ سَاقِطٌ، وَهَذَا خَبَرُ أَوَّلُ مَنْ خَالَفَهُ أَبُو حَنِيفَةَ لِأَنَّهُ يُجِيزُ شَهَادَةَ الْيَهُودِيِّ عَلَى النَّصْرَانِيِّ وَمَالِكٌ، فَإِنَّهُ يُجِيزُ شَهَادَةَ الْكُفَّارِ الْأَطِبَّاءِ عَلَى الْمُسْلِمِينَ - وَلَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ هَذَا التَّخْصِيصُ لِلْأَطِبَّاءِ دُونَ سَائِرِ مَنْ يُضْطَرُّ إلَيْهِ مِنْ الشَّهَادَاتِ مِنْ النِّكَاحِ، وَالطَّلَاقِ، وَالدِّمَاءِ وَالْأَمْوَالِ، وَالْعِتْقِ؟ وَمَا نَعْلَمُ هَذَا التَّفْرِيقَ عَنْ أَحَدٍ قَبْلَهُ.

L29572 Abu Muhammad said: Umar ibn Rashid is rejected. This is the account of Abu Hanifah being the first to oppose him, for he permits the testimony of a Jew against a Christian. As for Malik, he permits the testimony of infidel physicians against Muslims - though we do not know from where they obtained this specification for physicians, to the exclusion of others whose testimony is necessitated in matters of marriage, divorce, bloodshed, financial affairs, and manumission. We know of no one before him who made this distinction.

وَأَمَّا شَهَادَةُ الْكُفَّارِ فِي غَيْرِ ذَلِكَ، فَطَائِفَةٌ: مَنَعَتْ مِنْ ذَلِكَ جُمْلَةً - وَهُوَ قَوْلُنَا.

L29573 As for the testimony of disbelievers in matters other than those [previously mentioned], a group of scholars has categorically prohibited it—and this is our position.

وَطَائِفَةٌ أَجَازَتْهَا عَلَى الْكُفَّارِ، وَلَمْ يُرَاعُوا اخْتِلَافَ مِلَلِهِمْ.

L29574 And a group of scholars permitted it against the disbelievers without respecting the differences among their creeds.

وَطَائِفَةٌ أَجَازَتْ شَهَادَةَ كُلِّ مِلَّةٍ عَلَى مِثْلِهَا وَلَمْ تُجِزْهَا عَلَى غَيْرِ مِثْلِهَا.

L29575 A group permitted the testimony of every religious community concerning

their own members but did not permit it concerning those outside their community.

فَأَمَّا قَوْلُنَا فَقَدْ ذَكَرْنَاهُ عَنْ جَمَاعَةٍ مِنْ السَّلَفِ.

L29576 As for our statement, we have indeed mentioned it from a group of the Salaf.

وَأَمَّا الْقَوْلُ الثَّانِي: فَصَحَّ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمْرِو بْنِ مَيْمُونِ بْنِ مِهْرَانَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ أَجَازَ شَهَادَةَ نَصْرَانِيٍّ عَلَى مَجُوسِيٍّ، أَوْ مَجُوسِيٍّ عَلَى نَصْرَانِيٍّ.

L29577 As for the second opinion: It is authentically narrated through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān, from Sufyān al-Thawrī, from ʿAmr ibn Maymūn ibn Mihrān, from ʿUmar ibn ʿAbd al-ʿAzīz, that he deemed it permissible for a Christian to testify against a Zoroastrian, or a Zoroastrian against a Christian.

وَصَحَّ مِنْ طَرِيقِ شُعْبَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ أَنَّهُ قَالَ: تَجُوزُ شَهَادَةُ النَّصْرَانِيِّ عَلَى الْيَهُودِيِّ، وَالْيَهُودِيِّ عَلَى النَّصْرَانِيِّ - هُمْ كُلُّهُمْ أَهْلُ الشِّرْكِ.

L29578 It has been authentically reported through Shu'bah's narration from Ḥammād ibn Abī Sulaymān that he said: "The testimony of a Christian against a Jew is permissible, and the testimony of a Jew against a Christian is permissible—they are all people of polytheism."

وَصَحَّ أَيْضًا هَذَا عَنْ الشَّعْبِيِّ، وَشُرَيْحٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ.

L29579 And authenticated also is this on the authority of al-Sha'bī, Shurayh and Ibrāhīm al-Nakha'ī.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا زَيْدُ بْنُ الْحُبَابِ عَنْ عَوْنِ بْنِ مَعْمَرٍ عَنْ إبْرَاهِيمَ الصَّائِغِ قَالَ: سَأَلْت نَافِعًا هُوَ مَوْلَى بْنِ عُمَرَ - عَنْ شَهَادَةِ أَهْلِ الْكِتَابِ بَعْضِهِمْ عَلَى بَعْضٍ؟ فَقَالَ: تَجُوزُ.

L29580–29582 And via the path of Ibn Abī Shaybah: Zayd ibn al-Ḥubāb narrated to us from ʿAwn ibn Maʿmar from Ibrāhīma al-Ṣāʾigh. He said: I asked Nāfiʿ—the client of Ibn ʿUmar—about the testimony of the People of the Book against one another. He replied: "It is permissible."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: سَأَلْت الزُّهْرِيَّ عَنْ شَهَادَةِ أَهْلِ الْكِتَابِ بَعْضِهِمْ عَلَى بَعْضٍ؟ فَقَالَ: تَجُوزُ، وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَوَكِيعٍ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَعُثْمَانَ الْبَتِّيِّ.

L29583 And via the chain of ʿAbd al-Razzāq from Maʿmar, he said: I asked al-Zuhrī about the testimony of the People of the Book against one another. He replied: "It is permissible." This is the opinion of Sufyān al-Thawrī, Wakīʿ, Abū Ḥanīfah, his companions, and ʿUthmān al-Battī.

وَالثَّالِثُ: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ أَبِي الْأَسْوَدِ عَنْ ابْنِ لَهِيعَةَ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ قَتَادَةَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: تَجُوزُ شَهَادَةُ النَّصْرَانِيِّ عَلَى النَّصْرَانِيِّ.

L29584 The third: As was narrated to us through Abu 'Ubayd, from Abu al-Aswad, from Ibn Lahīʿah, from ʿAmr ibn al-Ḥārith, from Qatādah, that ʿAlī ibn Abī Ṭālib said: "The testimony of a Christian against a Christian is valid."

L29585 From the narration of Abu 'Ubayd from 'Abdullah ibn Salih from al-Layth from Yunus ibn Yazid from Ibn Shihab al-Zuhri, who said: The testimony of

a Christian is permissible regarding a Christian, and the testimony of a Jew is permissible regarding a Jew, and the testimony of either against the other is not permissible.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ عَبْدِ اللَّهِ بْنِ صَالِحٍ عَنْ اللَّيْثِ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ الزُّهْرِيِّ قَالَ: تَجُوزُ شَهَادَةُ النَّصْرَانِيِّ عَلَى النَّصْرَانِيِّ، وَالْيَهُودِيِّ عَلَى الْيَهُودِيِّ، وَلَا تَجُوزُ شَهَادَةُ أَحَدِهِمَا عَلَى الْآخَرِ.

L29586 On the authority of Ibn Wahb, from Mu'awiyah ibn Salih: that he heard Yahya ibn Sa'id al-Ansari say, "The testimony of a Christian against a Jew is not valid, nor is the testimony of a Jew against a Christian."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ: أَنَّهُ سَمِعَ يَحْيَى بْنَ سَعِيدٍ الْأَنْصَارِيَّ يَقُولُ: لَا تَجُوزُ شَهَادَةُ النَّصْرَانِيِّ عَلَى الْيَهُودِيِّ، وَلَا شَهَادَةُ الْيَهُودِيِّ عَلَى النَّصْرَانِيِّ.

L29587 From the transmission of Abd al-Razzaq, from Ma'mar, from Qatadah and Rabi'ah ibn Abi Abd al-Rahman - both of whom said: A Jew's testimony regarding a Jew is valid, but it is not valid regarding a Christian, nor is a Christian's testimony regarding a Jew valid.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، وَرَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ كِلَاهُمَا قَالَ: تَجُوزُ شَهَادَةُ الْيَهُودِيِّ عَلَى الْيَهُودِيِّ، وَلَا تَجُوزُ عَلَى النَّصْرَانِيِّ، وَلَا تَجُوزُ شَهَادَةُ النَّصْرَانِيِّ عَلَى الْيَهُودِيِّ.

L29588 From the chain of Shu'bah on the authority of Al-Hakam ibn 'Utaybah: The testimony of a Jew against a Christian is not valid, nor is the testimony of a Christian against a Jew.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ: لَا تَجُوزُ شَهَادَةُ الْيَهُودِيِّ عَلَى النَّصْرَانِيِّ، وَلَا النَّصْرَانِيِّ عَلَى الْيَهُودِيِّ.

L29589 From the transmission of Ibn Abī Shaybah: Ibn ʿUlayyah reported to us from Yūnus, from al-Ḥasan, who said: When religious communities differ, the testimony of some of them against others is not permissible.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ عُلَيَّةَ عَنْ يُونُسَ عَنْ الْحَسَنِ قَالَ: إذَا اخْتَلَفَتْ الْمِلَلُ لَمْ تَجُزْ شَهَادَةُ بَعْضِهِمْ عَلَى بَعْضٍ.

L29590 From the transmission of Ibn Abī Shaybah: Ibn Idrīs narrated from al-Layth from ʿAṭāʾ, who said: The testimony of a Jew against a Christian is not valid, nor is that of a Christian against a Zoroastrian valid, nor is the testimony of any religious community against another of a different faith valid, except when it concerns Muslims.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ إدْرِيسَ عَنْ اللَّيْثِ عَنْ عَطَاءٍ قَالَ: لَا تَجُوزُ شَهَادَةُ الْيَهُودِيِّ عَلَى النَّصْرَانِيِّ، وَلَا النَّصْرَانِيِّ عَلَى الْمَجُوسِيِّ، وَلَا مِلَّةٍ عَلَى غَيْرِ مِلَّتِهَا إلَّا الْمُسْلِمِينَ.

L29591–29592 The testimony of one religious community against another is not valid except that of Muslims.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ دَاوُد عَنْ الشَّعْبِيِّ لَا تَجُوزُ شَهَادَةُ مِلَّةٍ عَلَى مِلَّةٍ إلَّا الْمُسْلِمِينَ.

L29593 And via the chain of Ibn Abi Shaybah: He informed us from Ibn ʻUlayyah, from Maʻmar, from al-Zuhri, who said: The testimony of the People of the Book when they testify against each other is not permissible.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ عُلَيَّةَ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ قَالَ: لَا تَجُوزُ شَهَادَةُ أَهْلِ الْكِتَابِ بَعْضِهِمْ عَلَى بَعْضٍ.

L29594 From the chain of narration (isnād) of Ibn Abi Shaybah: Hafs reported to us from Ash'ath, who reported to us from Hammad, who reported to us from Ibrāhīm al-Nakhaʿī, who said: The testimony of people belonging to a religious community is not valid except against members of their own community: a Jew against a Jew, and a Christian against a Christian.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ عَنْ أَشْعَثَ نا حَمَّادٌ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَا تَجُوزُ شَهَادَةُ أَهْلِ مِلَّةٍ إِلَّا عَلَى أَهْلِ مِلَّتِهَا: الْيَهُودِيِّ عَلَى الْيَهُودِيِّ، وَالنَّصْرَانِيِّ عَلَى النَّصْرَانِيِّ.

L29595 And through the chain of Wakiʿ from ʿUmar ibn Rāshid from Yaḥyā ibn Abī Kathīr from Abū Salama ibn ʿAbd al-Raḥman ibn ʿAwf: The testimony of one religious community against another is not permissible, except Muslims — Wakiʿ said: This is the opinion of Ibn Abī Laylā.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عُمَرَ بْنِ رَاشِدٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: لَا تَجُوزُ شَهَادَةُ مِلَّةٍ عَلَى مِلَّةٍ إِلَّا الْمُسْلِمِينَ - قَالَ وَكِيعٌ: وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى.

L29596 Abū Muḥammad said: It is the opinion of al-Awzāʿī, al-Layth, and al-Ḥasan ibn Ḥayyin.

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَاللَّيْثِ، وَالْحَسَنِ بْنِ حَيٍّ.

L29597 ʿAlī said: Both opinions are reported, as we have mentioned from Ḥammād ibn Abī Sulaymān, al-Zuhrī, al-Shaʿbī, and al-Nakhaʿī. The first opinion is reported from Nāfiʿ.

قَالَ عَلِيٌّ: فَرُوِيَ كِلَا الْقَوْلَيْنِ كَمَا أَوْرَدْنَا عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَالزُّهْرِيِّ، وَالشَّعْبِيِّ، وَالنَّخَعِيِّ - وَرُوِيَ الْقَوْلُ الْأَوَّلُ: عَنْ نَافِعٍ.

L29598 The second narration is reported from Yaḥyā ibn Saʿīd al-Anṣārī, Abī Salamah ibn ʿAbd al-Raḥmān, Rabīʿah al-Raʾy, Qatādah, al-Ḥasan, and ʿAṭāʾ.

وَرُوِيَ الثَّانِي: عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ وَرَبِيعَةَ الرَّأْيِ، وَقَتَادَةَ، وَالْحَسَنِ، وَعَطَاءٍ.

L29599 Abū Muḥammad said: Nothing is authentically established from ʿAlī at all, for it is from Ibn Lahīʿah, and furthermore, the chain is disconnected. ʿAlī said: "As for Abū Ḥanīfah's statement—it has not been narrated, neither sound nor unsound, from any of the Companions—this contradicts all that has been reported on this issue from the Companions."

قَالَ أَبُو مُحَمَّدٍ: وَلَا يَصِحُّ عَنْ عَلِيٍّ أَصْلًا، لِأَنَّهُ عَنِ ابْنِ لَهِيعَةَ، ثُمَّ هُوَ أَيْضًا مُنْقَطِعٌ - قَالَ عَلِيٌّ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ: فَلَمْ يُرْوَ - لَا صَحِيحًا وَلَا سَقِيمًا - عَنْ أَحَدٍ مِنَ الصَّحَابَةِ، فَهُوَ خِلَافٌ لِكُلِّ مَا جَاءَ فِي هَذِهِ الْمَسْأَلَةِ عَنِ الصَّحَابَةِ.

L29600 As for Mālik, he opposed his Medinan shaykhs—Abū Salama ibn ʿAbd al-Raḥmān, Nāfiʿ, al-Zuhrī; Rabīʿa, and Yaḥyā ibn Saʿīd al-Anṣārī—though they revered this [stance] only when it aligned with their Imam's opinion.

وَأَمَّا مَالِكٌ: فَخَالَفَ شُيُوخَهُ الْمَدَنِيِّينَ: أَبَا سَلَمَةَ بْنَ عَبْدِ الرَّحْمَنِ، وَنَافِعًا، وَالزُّهْرِيَّ؛ وَرَبِيعَةَ، وَيَحْيَى بْنَ سَعِيدٍ الْأَنْصَارِيَّ - وَهُمْ يُعَظِّمُونَ هَذَا إِذَا وَافَقَ رَأْيَ صَاحِبِهِمْ.

وَاحْتَجَّ مَنْ أَجَازَ قَبُولَ شَهَادَةِ بَعْضِهِمْ عَلَى بَعْضٍ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الطَّحَاوِيِّ: نا رَوْحُ بْنُ الْفَرَجِ نا يَحْيَى بْنُ سُلَيْمَانَ الْجُعْفِيُّ نا عَبْدُ الرَّحِيمِ بْنُ سُلَيْمَانَ الرَّازِيّ نا مُجَالِدٌ عَنِ الشَّعْبِيِّ عَنْ جَابِرٍ قَالَ فِي حَدِيثِ «الْيَهُودِيَّيْنِ اللَّذَيْنِ زَنَيَا لِلْيَهُودِ: ائْتُونِي بِالشُّهُودِ؟ فَشَهِدَ أَرْبَعَةٌ مِنْهُمْ عَلَى ذَلِكَ، فَرَجَمَهُمَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

L29601–29603 Those who deemed it permissible to accept the testimony of some of them against others argued based on the narration we transmitted through the chain of al-Ṭaḥāwī: Narrated to us by Rūḥ ibn al-Faraj, narrated to us by Yaḥyā ibn Sulaymān al-Juʿfī, narrated to us by ʿAbd al-Raḥīm ibn Sulaymān al-Rāzī, narrated to us by Mujalid reported from Al-Shaʿbi from Jabir, who said in the narration about *the two Jews who committed adultery among the Jews*: “Bring me the witnesses.” So four of them testified to that, and the Prophet, peace be upon him, stoned them both.

قَالَ أَبُو مُحَمَّدٍ: مُجَالِدٌ هَالِكٌ، رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ أَنَّهُ قَالَ: لَوْ شِئْت أَنْ يَجْعَلَهَا لِي مُجَالِدٌ كُلَّهَا عَنِ الشَّعْبِيِّ عَنْ مَسْرُوقٍ عَنْ عَبْدِ اللَّهِ لَفَعَلَ.

L29604 Abu Muhammad said: “Mujalid is rejected. It was narrated to us via Yahya ibn Saʿid al-Qattān’s transmission that he said: ’If I had wished, Mujalid would have fabricated all of them for me - entirely through al-Shaʿbī → Masrūq → ʿAbdullāh - and he would have done it!’”

وَعَنْ شُعْبَةَ: أَسْتَخِيرُ اللَّهَ وَأُدَمِّرُ عَلَى مُجَالِدٍ.

L29605 And from Shuʿbah: I seek guidance from Allah and reject Mujālid’s position.

وَعَنْ أَحْمَدَ بْنِ حَنْبَلٍ: إنَّ مُجَالِدًا يَزِيدُ فِي الْإِسْنَادِ.

L29606 And from Aḥmad ibn Ḥanbal: Indeed, Mujālid adds in the Isnād.

وَعَنْ ابْنِ مَعِينٍ: مُجَالِدٌ لَا يُحْتَجُّ بِحَدِيثِهِ.

L29607 From Ibn Maʿīn: Mujālid’s narrations are not relied upon as evidence.

وَالْعَجَبُ كُلُّهُ مِنْ احْتِجَاجِهِمْ بِقَوْلِ اللَّهِ تَعَالَى: {إذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ حِينَ الْوَصِيَّةِ} [المائدة: ١٠٦] وَهُمْ أَوَّلُ مُخَالِفٍ لِهَذِهِ الْآيَةِ - وَقَالُوا ظَاهِرُهَا جَوَازُهَا عَلَى الْمُسْلِمِينَ وَالْكُفَّارِ فِي كُلِّ شَيْءٍ، ثُمَّ نُسِخَتْ عَنِ الْمُسْلِمِينَ، فَبَقِيَتْ عَلَى الْكُفَّارِ.

L29608 The height of astonishment is their citing of the words of Allah, the Most High: {When death approaches one of you at the time of making a will} [Al-Mā’idah: 106], while they themselves are the foremost in contradicting this verse. They claim its apparent meaning permits the will for both Muslims and disbelievers in all matters, then assert it was abrogated for Muslims, thus remaining applicable to disbelievers.[24]

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَجْلِيحٌ مِنْهُمْ بِالْكَذِبِ عَلَى اللَّهِ تَعَالَى جِهَارًا مِرَارًا. إحْدَاهَا - دَعْوَى النَّسْخِ بِلَا بُرْهَانٍ. وَالثَّانِيَةُ - قَوْلُهُمْ: إنَّ ظَاهِرَهَا جَوَازُ شَهَادَتِهِمْ فِي كُلِّ شَيْءٍ، وَلَيْسَ فِي الْآيَةِ إلَّا عِنْدَ حُضُورِ الْمَوْتِ حِينَ الْوَصِيَّةِ فَقَطْ، ثُمَّ تَحْلِيفُهُمَا، ثُمَّ تَحْلِيفُ الْمُسْلِمَيْنِ الشَّاهِدَيْنِ بِخِلَافِ شَهَادَتِهِمَا، فَمَا رَأَيْت أَقَلَّ حَيَاءً مِمَّنْ قَالَ مَا ذَكَرْنَا - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ وَالِاسْتِخْفَافِ بِالْكَذِبِ عَلَى الْقُرْآنِ.

L29609 Abu Muhammad said: This is slander from them—lying against Allah the Exalted repeatedly and openly. First: their claim of abrogation without proof. Second: their assertion that the verse’s apparent meaning permits their testimony in all matters, whereas the verse explicitly pertains only to testimony at the time of death, specifically during will-making, then administering oaths to them, followed by oaths administered to the two Muslim witnesses contrary to the testimony of the two [non-Muslim witnesses]. I have never

[24] **Qur’an references (L29608):** Qur’an 5:106 (Al-Ma’idah).

encountered anyone more shameless than those who make the claims we have described—and we seek refuge with Allah from being forsaken by Him and from trivializing the act of lying against the Quran.

L29610 The third [argument] is their statement: "It was abrogated for Muslims but remains obligatory for disbelievers." This is false because the entire religion is one upon us and upon disbelievers. No one may judge over them, nor may they [disbelievers] judge, except by the ruling of Islam applicable to us and binding on us, except where an explicit text establishes a distinction between us and them. And success is by Allah, the Most High.

L29611 ## On the Issue of Testimony by a Male Slave and a Bondwoman

L29612 1792. Issue: The testimony of a male slave and a female slave is accepted in all matters for their master and for another, like the testimony of a free man and a free woman, and there is no difference.

L29613 People have differed regarding this. It has been authentically reported through the chain of Ibn Wahb from Yunus from al-Zuhrī from Saʿīd ibn al-Musayyab that ʿUthmān ibn ʿAffān ruled concerning a minor who testifies after reaching adulthood, the Christian after embracing Islam, and the slave after emancipation: that such testimonies are valid provided they have not been rejected.

L29614 And it has been narrated to us through the chain of ʿAmr ibn Shuʿayb, and through the chain of ʿAṭāʾ from ʿUmar ibn al-Khaṭṭāb in a similar manner.

L29615–29616 It has been narrated to us regarding the testimony of an enslaved person via the transmission of ʿAbd al-Razzāq, from Abū Bakr, from ʿAmr ibn Sulaym, from Ibn al-Musayyab, from ʿUmar.

L29617 Narrated via the chain of al-Ḥajjāj ibn Arṭāʾah, from ʿAṭāʾ, from Ibn ʿAbbās: The testimony of a male slave is not valid.

L29618 And from the chain of Abū ʿUbayd from Ḥassān ibn Ibrāhīm al-Karmānī from Ibrāhīm al-Ṣāʾigh from Nāfiʿ from Ibn ʿUmar: The testimony of a mukātab is not permissible so long as he owes even a single dirham.

وَالثَّالِثَةُ - قَوْلُهُمْ: نُسِخَتْ عَنْ الْمُسْلِمِينَ وَبَقِيَتْ عَلَى الْكُفَّارِ - وَهَذَا بَاطِلٌ لِأَنَّ الدِّينَ كُلَّهُ وَاحِدٌ عَلَيْنَا وَعَلَى الْكُفَّارِ، وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَحْكُمَ عَلَيْهِمْ وَلَا لَهُمْ، إلَّا بِحُكْمِ الْإِسْلَامِ لَنَا وَعَلَيْنَا، إلَّا حَيْثُ جَاءَ النَّصُّ بِالْفَرْقِ بَيْنَنَا وَبَيْنَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة شَهَادَة الْعَبْد والأمة]

١٧٩٢ - مَسْأَلَةٌ: وَشَهَادَةُ الْعَبْدِ وَالْأَمَةِ مَقْبُولَةٌ فِي كُلِّ شَيْءٍ لِسَيِّدِهِمَا وَلِغَيْرِهِ كَشَهَادَةِ الْحُرِّ وَالْحُرَّةِ وَلَا فَرْقَ.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَصَحَّ مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ قَضَى فِي الصَّغِيرِ يَشْهَدُ بَعْدَ كِبَرِهِ، وَالنَّصْرَانِيِّ بَعْدَ إسْلَامِهِ، وَالْعَبْدِ بَعْدَ عِتْقِهِ: أَنَّهَا جَائِزَةٌ إنْ لَمْ تَكُنْ رُدَّتْ عَلَيْهِمْ -.

وَرُوِّينَا مِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ، وَعَطَاءٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ مِثْلَ ذَلِكَ.

وَرُوِّينَا ذَلِكَ فِي شَهَادَةِ الْعَبْدِ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي بَكْرٍ عَنْ عَمْرِو بْنِ سُلَيْمٍ عَنْ ابْنِ الْمُسَيِّبِ عَنْ عُمَرَ.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ: لَا تَجُوزُ شَهَادَةُ الْعَبْدِ.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ حَسَّانَ بْنِ إبْرَاهِيمَ الْكَرْمَانِيِّ عَنْ إبْرَاهِيمَ الصَّائِغِ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: لَا تَجُوزُ شَهَادَةُ الْمُكَاتَبِ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ.

L29619 It has been narrated to us through Ibn Abī Shaybah from Ibn al-Mubārak and Wakīʿ. Ibn al-Mubārak said: from Ibn Jurayj from ʿAṭāʾ. Wakīʿ said: from Zakariyyā ibn Abī Zāidah from al-Shaʿbī. Both of them said together: The testimony of a slave is not permissible.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ ابْنِ الْمُبَارَكِ، وَوَكِيعٍ قَالَ ابْنُ الْمُبَارَكِ: عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ، وَقَالَ وَكِيعٌ: عَنْ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ عَنْ الشَّعْبِيِّ قَالَا جَمِيعًا: لَا تَجُوزُ شَهَادَةُ الْعَبْدِ.

L29620 From the chain of Ibn Abī Shayba from Ibn al-Mubārak from Muḥammad ibn Rāshid from Makhūl: The testimony of a slave is not valid.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ ابْنِ الْمُبَارَكِ عَنْ مُحَمَّدِ بْنِ رَاشِدٍ عَنْ مَكْحُولٍ لَا تَجُوزُ شَهَادَةُ الْعَبْدِ.

L29621 From the transmission of Waki‘ from Sufyan al-Thawri, from Ibn Abi Najih, from Mujahid, who said regarding {two witnesses from your men} [Al-Baqarah: 282]: “From the free men.” Waki‘ said: “Sufyan does not accept the testimony of a slave.” This is also the view of Waki‘.[25]

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: {شَهِيدَيْنِ مِنْ رِجَالِكُمْ} [البقرة: ٢٨٢] قَالَ: مِنْ الْأَحْرَارِ - قَالَ وَكِيعٌ: وَلَا يُجِيزُ سُفْيَانُ شَهَادَةَ عَبْدٍ - وَهُوَ قَوْلُ وَكِيعٍ.

L29622 And through the chain of Ibn Abi Shaybah: Isa ibn Yunus, Waki’, Abd al-Rahman ibn Mahdi, and Mu’adh ibn Mu’adh narrated. Isa said: from al-Awza’i, from al-Zuhri. Waki’ said: from Shu’bah, from al-Hakam ibn Utaybah, from Ibrahim al-Nakha’i. Abd al-Rahman ibn Mahdi said: from Hammad ibn Salamah and Abu Awanah. Abu Awanah said: from Umar ibn Abi Salamah ibn Abd al-Rahman ibn Awf, from his father. Hammad ibn Salamah said: from Qatadah, from Shuraih. Mu’adh ibn Mu’adh said: from Ash’ath (Ibn Abd al-Malik al-Humrani) from al-Hasan al-Basri. All of them held regarding a slave who gives testimony which is rejected, then is emancipated and repeats the testimony: that it is invalid, except al-Hasan al-Basri and al-Hakam ibn Utaybah, for they said: it is valid.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عِيسَى بْنُ يُونُسَ، وَوَكِيعٌ، وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، وَمُعَاذُ بْنُ مُعَاذٍ، قَالَ عِيسَى: عَنْ الْأَوْزَاعِيِّ عَنْ الزُّهْرِيِّ، وَقَالَ وَكِيعٌ: عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَقَالَ عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: عَنْ حَمَّادِ بْنِ سَلَمَةَ، وَأَبِي عَوَانَةَ، قَالَ أَبُو عَوَانَةَ: عَنْ عُمَرَ بْنِ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِيهِ، وَقَالَ حَمَّادُ بْنُ سَلَمَةَ: عَنْ قَتَادَةَ عَنْ شُرَيْحٍ، وَقَالَ مُعَاذُ بْنُ مُعَاذٍ: عَنْ أَشْعَثَ هُوَ ابْنُ عَبْدِ الْمَلِكِ الْحُمْرَانِيِّ - عَنْ الْحَسَنِ الْبَصْرِيِّ، وَقَالُوا كُلُّهُمْ: فِي الْعَبْدِ يُؤَدِّي الشَّهَادَةَ فَتُرَدُّ ثُمَّ يُعْتَقُ فَيَشْهَدُ بِهَا: أَنَّهَا لَا تَجُوزُ، إلَّا الْحَسَنَ، وَالْحَكَمَ فَإِنَّهُمَا قَالَا: إنَّهَا تَجُوزُ.

L29623 Through the chain of transmission from Abu ‘Ubayd, via ‘Abd al-Rahman ibn Mahdi, via Isra’il ibn Yunus, via Mansur, via Mujahid, who said: The people of Mecca and the people of Medina do not accept the testimony of a slave.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ إسْرَائِيلَ بْنِ يُونُسَ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ قَالَ: أَهْلُ مَكَّةَ، وَأَهْلُ الْمَدِينَةِ: لَا يُجِيزُونَ شَهَادَةَ الْعَبْدِ.

[25] **Qur’an references (L29621):** Qur’an 2:282 (Al-Baqarah).

L29624–29626 The testimony of the mukātab is not permissible, nor does he inherit. Via the chain of Abd al-Razzaq from Ma'mar from Qatadah: If a slave bears witness and his testimony is rejected, then he is freed and testifies to it, it is not accepted—this has been reported from the Seven Fuqaha of Medina—and it is the view of Abi al-Zinad.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ مُغِيرَةَ عَنْ إِبْرَاهِيمَ قَالَ: لَا تَجُوزُ شَهَادَةُ الْمُكَاتَبِ، وَلَا يَرِثُ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ: إِذَا شَهِدَ الْعَبْدُ فَرُدَّتْ شَهَادَتُهُ، ثُمَّ أُعْتِقَ فَشَهِدَ بِهَا لَمْ تُقْبَلْ - وَرُوِيَ ذَلِكَ عَنْ فُقَهَاءِ الْمَدِينَةِ السَّبْعَةِ - وَهُوَ قَوْلُ أَبِي الزِّنَادِ.

L29627 This is also the opinion of Abū Ḥanīfah, Mālik, al-Shāfiʿī, Ibn Abī Laylā, al-Ḥasan ibn Ḥayyin, Abū ʿUbayd, and one of the two opinions held by Ibn Shubrumah.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ وَمَالِكٌ، وَالشَّافِعِيُّ، وَابْنُ أَبِي لَيْلَى، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو عُبَيْدٍ، وَأَحَدُ قَوْلَيْ ابْنِ شُبْرُمَةَ.

L29628 A group permitted the testimony of a slave in certain circumstances and rejected it in others - as we have reported through the chain of Ismail ibn Ishaq al-Qadi, reporting from Ali ibn al-Madini, Sulayman ibn Harb, and Ibrahim al-Harawi. Ali narrated from Jarir from Mansur from Ibrahim from Shuraih; Sulayman narrated from Abu Awanah from Mutarrif ibn Tarif from al-Shaʿbi; and al-Harawi narrated from Hisham: I, Mughirah, from Ibrahim. All three of them used to permit the testimony of a slave in minor matters.

وَأَجَازَتْ طَائِفَةٌ شَهَادَةَ الْعَبْدِ فِي بَعْضِ الْأَحْوَالِ، وَرَدَّتْهَا فِي بَعْضٍ -: كَمَا رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا عَلِيُّ بْنُ الْمَدِينِيِّ، وَسُلَيْمَانُ بْنُ حَرْبٍ، وَإِبْرَاهِيمُ الْهَرَوِيُّ، قَالَ عَلِيٌّ عَنْ جَرِيرٍ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ عَنْ شُرَيْحٍ، وَقَالَ سُلَيْمَانُ: عَنْ أَبِي عَوَانَةَ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ عَنِ الشَّعْبِيِّ وَقَالَ الْهَرَوِيُّ: عَنْ هِشَامٍ أَنَا مُغِيرَةُ عَنْ إِبْرَاهِيمَ: إِنَّهُمْ ثَلَاثَتُهُمْ كَانُوا يُجِيزُونَ شَهَادَةَ الْعَبْدِ فِي الشَّيْءِ الْيَسِيرِ.

L29629 From the transmission chain of ʿAbd al-Razzāq: Muḥammad ibn Yaḥyā al-Māzinī narrated to us from Sufyān al-Thawrī from Ibrāhīm al-Nakhaʿī, who said, "The testimony of an enslaved person for their master is not permissible, but it is permissible on behalf of others."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مُحَمَّدُ بْنُ يَحْيَى الْمَازِنِيُّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَا تَجُوزُ شَهَادَةُ الْعَبْدِ لِسَيِّدِهِ، وَتَجُوزُ لِغَيْرِهِ.

L29630 And via the chain of transmission of Jābir al-Juʿfī from al-Shaʿbī regarding a slave who is partially freed: his testimony is admissible.

وَمِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ عَنِ الشَّعْبِيِّ فِي الْعَبْدِ يُعْتَقُ بَعْضُهُ أَنَّ شَهَادَتَهُ جَائِزَةٌ.

L29631 A group permitted a slave's testimony in all matters like that of a free person: as we have narrated through the chain of Ibn Abī Shaybah—Hafs ibn Ghiyāth al-Nakhaʿī reported to us from Ashʿath from al-Shaʿbī, who said: Shurayḥ stated, "A slave's testimony is not valid." ʿAlī responded, "But we permit it." Thereafter, Shurayḥ would permit it except in matters involving his master.

وَأَجَازَتْ طَائِفَةٌ شَهَادَتَهُ فِي كُلِّ شَيْءٍ كَالْحُرِّ -: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ النَّخَعِيُّ عَنْ أَشْعَثَ عَنِ الشَّعْبِيِّ قَالَ: قَالَ شُرَيْحٌ: لَا تَجُوزُ شَهَادَةُ الْعَبْدِ، فَقَالَ عَلِيٌّ: لَكِنَّا نُجِيزُهَا، فَكَانَ شُرَيْحٌ بَعْدَ ذَلِكَ يُجِيزُهَا إِلَّا لِسَيِّدِهِ.

L29632 And through him to Ibn Abi Shaybah: Hafs ibn Ghiyath informed us from

Al-Mukhtar ibn Fulful, who said: I asked Anas ibn Malik about the testimony of a slave? He replied: It is valid.

وَبِهِ إِلَى ابْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ الْمُخْتَارِ بْنِ فُلْفُلٍ قَالَ: سَأَلْت أَنَسَ بْنَ مَالِكٍ عَنْ شَهَادَةِ الْعَبْدِ؟ فَقَالَ: جَائِزَةٌ.

L29633 From Waki', who narrated to us: Sufyān al-Thawrī reported from 'Ammār al-Duhnī, who said: I attended Shuraih's court when a slave testified before him concerning a house, and he accepted his testimony. It was said: "Is he not a slave?" Shuraih replied: "All of us are male and female slaves."

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَمَّارٍ الدُّهْنِيِّ قَالَ: شَهِدْت شُرَيْحًا شَهِدَ عِنْدَهُ عَبْدٌ عَلَى دَارٍ فَأَجَازَ شَهَادَتَهُ فَقِيلَ: إنَّهُ عَبْدٌ؟ فَقَالَ شُرَيْحٌ: كُلُّنَا عَبِيدٌ وَإِمَاءٌ.

L29634 And through the chain of Abdullah ibn Ahmad ibn Hanbal: My father [Ahmad ibn Hanbal] narrated to us from Abd al-Rahman ibn Mahdi from Hammad ibn Zayd from Yahya ibn Atiq from Muhammad ibn Sirin: "He did not deem the testimony of a slave problematic if they were upright."

وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا حَمَّادُ بْنُ زَيْدٍ عَنْ يَحْيَى بْنِ عَتِيقٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّهُ كَانَ لَا يَرَى بِشَهَادَةِ الْمَمْلُوكِ بَأْسًا إذَا كَانَ عَدْلًا

L29635–29637 And from the chain of Ibn al-Jahm, from Ismāʿīl ibn Isḥāq al-Qāḍī, who narrated to us via ʿĀrim ibn al-Faḍl, who narrated to us... Abdullah ibn al-Mubarak on the authority of Ya'qub, on the authority of 'Ata ibn Abi Rabah, who said: The testimony of the male slave and the woman is permissible in marriage and divorce.

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ عَنْ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي نا عَارِمُ بْنُ الْفَضْلِ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ يَعْقُوبَ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: شَهَادَةُ الْعَبْدِ، وَالْمَرْأَةِ جَائِزَةٌ فِي النِّكَاحِ، وَالطَّلَاقِ.

L29638 Abdullah ibn Abdul Wahid wrote to me, narrating from Al-Hasan ibn Abdul Wahid, who said: Abu Muslim the Scribe narrated to us, Abdullah ibn Ahmad ibn Al-Mughallis narrated to us, Abdullah ibn Ahmad ibn Hanbal narrated to us, my father narrated to us, Affan ibn Muslim narrated to us, who said: Hammad ibn Salamah narrated to us, saying: Iyas ibn Mu'awiyah was asked about the testimony of a slave. He replied: "I reject the testimony of Abdul Aziz ibn Suhayb due to the disavowal necessitating its rejection."

كَتَبَ إلَيَّ عَبْدُ اللَّهِ بْنُ عَبْدِ الْوَاحِدِ عَنْ الْحَسَنِ بْنِ عَبْدِ الْوَاحِدِ قَالَ: نا أَبُو مُسْلِمٍ الْكَاتِبُ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ الْمُغَلِّسِ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا عَفَّانُ بْنُ مُسْلِمٍ قَالَ: نا حَمَّادُ بْنُ سَلَمَةَ قَالَ: سُئِلَ إيَاسُ بْنُ مُعَاوِيَةَ عَنْ شَهَادَةِ الْعَبْدِ؟ قَالَ: أَنَا أَرُدُّ شَهَادَةَ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ عَلَى الْإِنْكَارِ لِرَدِّهَا.

L29639 Abu Muhammad said: "This is the opinion of Zurara ibn Awfa, Uthman al-Battī, Abu Thawr, Ahmad ibn Hanbal, Ishaq ibn Rāhuyah, Abu Sulayman, their companions, and one of Ibn Shubrumah's two opinions."

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ زُرَارَةَ بْنِ أَوْفَى، وَعُثْمَانَ الْبَتِّيِّ، وَأَبِي ثَوْرٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ، وَأَحَدُ قَوْلَيْ ابْنِ شُبْرُمَةَ.

L29640 Ali said: As for the statement of Umar and Uthman, which we introduced at the outset, it is incumbent upon the Hanafis, Malikis, and Shafi'is - not for their benefit - because they opposed both of them concerning the pre-

قَالَ عَلِيٌّ: أَمَّا قَوْلُ عُمَرَ، وَعُثْمَانَ الَّذِي صَدَّرْنَا بِهِ فَهُوَ عَلَى الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ لَا لَهُمْ؛ لِأَنَّهُمْ خَالَفُوهُمَا فِي الصَّبِيِّ يَشْهَدُ فَيُرَدُّ، ثُمَّ يَبْلُغُ فَيَشْهَدُ.

pubescent child who testifies and is rejected, then reaches puberty and testifies.

L29641 They said, "It is admissible."

فَقَالُوا: يُقْبَلُ.

L29642 It is invalid to consider some statements of ʿUmar and ʿUthmān as valid proof while rejecting others, for this constitutes trivializing the religion by those who take this approach. The attribution of this approach to Ibn ʿAbbās is unreliable, as it is transmitted through al-Ḥajjāj ibn Arṭāʾah. Thus, they are left with nothing but Ibn ʿUmar's position, though his disagreement with this method is authentically transmitted via Anas. Therefore, their reliance on transmitted reports is invalidated, and only the Quran and Sunnah remain as valid evidence.

وَمِنْ الْبَاطِلِ أَنْ يَكُونَ بَعْضُ قَوْلِ عُمَرَ وَعُثْمَانَ حُجَّةً، وَبَعْضُهُ غَيْرَ حُجَّةٍ، وَهَذَا تَلَاعُبٌ بِالدِّينِ مِمَّنْ سَلَكَ هَذَا الطَّرِيقَ - وَهُوَ عَنْ ابْنِ عَبَّاسٍ لَا يَصِحُّ؛ لِأَنَّهُ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ، فَلَمْ يَبْقَ لَهُمْ إلَّا ابْنَ عُمَرَ، وَقَدْ صَحَّ خِلَافُهُ عَنْ أَنَسٍ - فَبَطَلَ تَعَلُّقُهُمْ بِالْآثَارِ، وَبَقِيَ الِاحْتِجَاجُ بِالْقُرْآنِ وَالسُّنَّةِ.

L29643 Abu Muhammad said: As for the statement of Mujāhid and those who followed him that "two witnesses from among your men" [Al-Baqarah: 282] refers specifically to free men, this is invalid - a scholar's misstep - and an unjustified specification of Allah's exalted words without evidence. It is necessarily known to every person of sound perception that male slaves are men among our men, and female slaves are women among our women. Allah exalted states: "Your women are tillable land for you" [Al-Baqarah: 223], which indisputably includes both free women and female slaves. Thus the falsity of this opinion becomes evident. Rather, Allah exalted addressed the believers at the beginning of the verse - and slaves, without any disagreement among them, are included among those being instructed regarding financial transactions, procuring witnesses, and testifying.[26]

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مُجَاهِدٍ وَمَنْ اتَّبَعَهُ: {شَهِيدَيْنِ مِنْ رِجَالِكُمْ} [البقرة: ٢٨٢] مِنْ الْأَحْرَارِ، فَبَاطِلٌ وَزَلَّةُ عَالِمٍ، وَتَخْصِيصٌ لِكَلَامِ اللَّهِ تَعَالَى بِلَا بُرْهَانٍ، وَبِالضَّرُورَةِ يَدْرِي كُلُّ ذِي حِسٍّ سَلِيمٍ: أَنَّ الْعَبِيدَ رِجَالٌ مِنْ رِجَالِنَا، وَأَنَّ الْإِمَاءَ نِسَاءٌ مِنْ نِسَائِنَا، قَالَ تَعَالَى: {نِسَاؤُكُمْ حَرْثٌ لَكُمْ} [البقرة: ٢٢٣] فَدَخَلَ فِي ذَلِكَ - بِلَا خِلَافٍ - الْحَرَائِرُ وَالْإِمَاءُ - فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ، وَإِنَّمَا خَاطَبَ اللَّهُ تَعَالَى فِي أَوَّلِ الْآيَةِ الَّذِينَ آمَنُوا: وَالْعَبِيدُ، بِلَا خِلَافٍ مِنْهُمْ، فَهُمْ فِي جُمْلَةِ الْمُخَاطَبِينَ بِالْمُدَايَنَةِ، وَالْإِشْهَادِ وَالشَّهَادَةِ.

L29644 And some of them cited as evidence the statement of Allah, the Exalted: "an owned slave who has no power over anything" [Quran 16:75].[27]

وَاحْتَجَّ بَعْضُهُمْ بِقَوْلِ اللَّهِ تَعَالَى: {عَبْدًا مَمْلُوكًا لا يَقْدِرُ عَلَى شَيْءٍ} [النحل: ٧٥]

L29645–29647 Abu Muhammad said: Distorting the speech of Allah, the Exalted, from its proper positions leads to ruin in the worldly life and the Hereafter. And the Exalted did not say, "Indeed, every servant is incapable of anything." Rather, Allah the Exalted set forth the example of a servant from among His servants—such is his attribute—and this attribute is found in many free

قَالَ أَبُو مُحَمَّد: تَحْرِيفُ كَلَامِ اللَّهِ تَعَالَى عَنْ مَوَاضِعِهِ مُهْلِكٌ فِي الدُّنْيَا وَالْآخِرَةِ، وَلَمْ يَقُلْ تَعَالَى: إنَّ كُلَّ عَبْدٍ فَهُوَ لَا يَقْدِرُ عَلَى شَيْءٍ، إنَّمَا ضَرَبَ اللَّهُ تَعَالَى الْمَثَلَ بِعَبْدٍ مِنْ عِبَادِهِ هَذِهِ صِفَتُهُ، وَقَدْ تُوجَدُ هَذِهِ الصِّفَةُ فِي كَثِيرٍ مِنْ الْأَحْرَارِ، وَمَنْ نَسَبَ غَيْرَ هَذَا إلَى اللَّهِ

[26] **Qur'an references (L29643):** Qur'an 2:282 (Al-Baqarah); Qur'an 2:223 (Al-Baqarah).
[27] **Qur'an references (L29644):** Qur'an 16:75 (An-Nahl).

people. Whoever attributes anything other than this to Allah the Exalted has lied about Him openly and perpetrated the gravest of major sins, for Allah the Exalted says only the truth. Through direct evidence, we know that many servants are more capable than many free people.

L29648 And we say to them: Are slaves obligated to pray, fast, and perform ritual purification, and are they prohibited from all that is forbidden to free people—including foods, drinks, and illicit sexual acts? If anyone among them answers "Yes," they have contradicted themselves and testified to being capable of many things, thus invalidating their attachment to and obfuscation through this verse.

L29649 They said, "Let not the witnesses refuse whenever they are called" [Quran 2:282].[28]

L29650 They said: The slave cannot bear witness because he is legally responsible for his master's service.

L29651 Rather, he is capable of bearing witness, praying, and proceeding to someone from whom he can learn what is obligatory for him in religion.

L29652 If a slave is excused from bearing witness due to his preoccupation with serving his master, the free woman who has a husband is likewise excused, owing to her obligation to devote herself to attending to her husband.

L29653 Some of them said: "The slave is a commodity – how can a commodity bear witness?" We responded: "What then? A commodity bears witness, just as prayer, fasting, and speaking the truth are incumbent upon a commodity." We know of no basis for their stance in this matter – neither in the Quran, nor the Sunnah, nor a sound narration, nor a weak one, nor speculative reasoning, nor rational proof, nor analogy – except through chaotic arguments in the extreme of corruption and feeble absurdities. We have exhaustively examined this in *The Book of Conveyance*, and all praise belongs to Allah, Lord of the worlds.

L29654 Abu Muhammad said: Every text in the Quran or Sunnah regarding rulings

تَعَالَى فَقَدْ كَذَبَ عَلَيْهِ جِهَارًا، وَأَتَى بِأَكْبَرِ الْكَبَائِرِ، لِأَنَّ اللهَ تَعَالَى لَا يَقُولُ إِلَّا حَقًّا، وَبِالْمُشَاهَدَةِ نَعْرِفُ كَثِيرًا مِنْ الْعَبِيدِ أَقْدَرَ عَلَى الْأَشْيَاءِ مِنْ كَثِيرٍ مِنْ الْأَحْرَارِ.

وَنَقُولُ لَهُمْ: هَلْ يَلْزَمُ الْعَبِيدَ الصَّلَاةُ، وَالصِّيَامُ، وَالطَّهَارَةُ، وَيُحَرَّمُ عَلَيْهِمْ مِنْ الْمَآكِلِ، وَالْمَشَارِبِ، وَالْفُرُوجِ، كُلُّ مَا يُحَرَّمُ عَلَى الْأَحْرَارِ، فَمَنْ قَوْلُهُمْ: نَعَمْ، فَقَدْ أَكَذَبُوا أَنْفُسَهُمْ، وَشَهِدُوا بِأَنَّهُمْ يَقْدِرُونَ عَلَى أَشْيَاءَ كَثِيرَةٍ - فَبَطَلَ تَعَلُّقُهُمْ وَتَمْوِيهُهُمْ بِهَذِهِ الْآيَةِ.

وَقَالُوا: {وَلا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا} [البقرة: ٢٨٢] .

قَالُوا: وَالْعَبْدُ لَا يَقْدِرُ عَلَى أَدَاءِ الشَّهَادَةِ، لِأَنَّهُ مُكَلَّفٌ خِدْمَةَ سَيِّدِهِ.

فَقُلْنَا: كَذَبَ مَنْ قَالَ هَذَا، بَلْ هُوَ قَادِرٌ عَلَى أَدَاءِ الشَّهَادَةِ كَمَا يَقْدِرُ عَلَى الصَّلَاةِ، وَعَلَى النُّهُوضِ إِلَى مَنْ يَتَعَلَّمُ مِنْهُ مَا يَلْزَمُهُ مِنْ الدِّينِ.

وَلَوْ سَقَطَ عَنْ الْعَبْدِ الْقِيَامُ بِالشَّهَادَةِ لِشُغْلِهِ بِخِدْمَةِ سَيِّدِهِ لَسَقَطَ أَيْضًا عَنْ الْحُرَّةِ ذَاتِ الزَّوْجِ لِشُغْلِهَا بِمُلَازَمَةِ زَوْجِهَا.

وَقَالَ بَعْضُهُمْ: الْعَبْدُ سِلْعَةٌ وَكَيْفَ تَشْهَدُ سِلْعَةٌ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ تَشْهَدُ السِّلْعَةُ، كَمَا يَلْزَمُ السِّلْعَةَ الصَّلَاةُ، وَالصِّيَامُ، وَالْقَوْلُ بِالْحَقِّ - وَمَا نَعْلَمُ لَهُمْ فِي هَذِهِ الْمَسْأَلَةِ مُتَعَلَّقًا، لَا بِقُرْآنٍ، وَلَا بِسُنَّةٍ، وَلَا بِرِوَايَةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا نَظَرٍ وَلَا مَعْقُولٍ، وَلَا قِيَاسٍ، إِلَّا بِتَخَالِيطَ فِي غَايَةِ الْفَسَادِ، وَأَهْذَارٍ بَارِدَةٍ - وَقَدْ تَقَصَّيْنَا هَذَا فِي " كِتَابِ الْإِيصَالِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[28] **Qur'an references (L29649):** Qur'an 2:282 (Al-Baqarah).

قَالَ أَبُو مُحَمَّد: وَكُلُّ نَصٍّ فِي قُرْآنٍ أَوْ سُنَّةٍ فِي شَيْءٍ مِنْ أَحْكَامِ الشَّهَادَاتِ فَكُلُّهَا شَاهِدَةٌ بِصِحَّةِ قَوْلِنَا، إِذْ لَوْ أَرَادَ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - تَخْصِيصَ عَبْدٍ مِنْ حُرٍّ فِي ذَلِكَ لَكَانَ مَقْدُورًا عَلَيْهِ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

قَالَ تَعَالَى: {مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ} [البقرة: ٢٨٢] .

وَقَالَ تَعَالَى: {إِنَّ الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ أُولَئِكَ هُمْ خَيْرُ الْبَرِيَّةِ} [البينة: ٧] {جَزَاؤُهُمْ عِنْدَ رَبِّهِمْ جَنَّاتُ عَدْنٍ تَجْرِي مِنْ تَحْتِهَا الأَنْهَارُ خَالِدِينَ فِيهَا أَبَدًا رَضِيَ اللَّهُ عَنْهُمْ وَرَضُوا عَنْهُ} [البينة: ٨] .

فَلَمْ يَخْتَلِفْ مُسْلِمَانِ قَطُّ فِي أَنَّ هَذَا خَيْرٌ يَدْخُلُ فِيهِ الْعَبِيدُ وَالْإِمَاءُ كَدُخُولِ الْأَحْرَارِ وَالْحَرَائِرِ، وَحَرَامٌ عَلَى كُلِّ أَحَدٍ أَنْ لَا يَرْضَى عَمَّنْ أَخْبَرَ اللَّهُ تَعَالَى أَنَّهُ قَدْ رَضِيَ عَنْهُ، فَإِذْ قَدْ رَضِيَ اللَّهُ عَنْ الْعَبْدِ الْمُؤْمِنِ الْعَامِلِ بِالصَّالِحَاتِ، فَفُرِضَ عَلَيْنَا أَنْ نَرْضَى عَنْهُ، وَإِذْ فُرِضَ عَلَيْنَا أَنْ نَرْضَى عَنْهُ، فَفُرِضَ عَلَيْنَا قَبُولُ شَهَادَتِهِ.

وَأَمَّا مَنْ رَدَّهَا لِسَيِّدِهِ فَإِنَّهُ قَالَ: قَدْ يُجْبِرُهُ سَيِّدُهُ عَلَى الشَّهَادَةِ لَهُ.

قُلْنَا: لَوْ كَانَ هَذَا مَانِعًا مِنْ قَبُولِ الْعَبْدِ لِسَيِّدِهِ لَكَانَ مَانِعًا مِنْ قَبُولِ أَحَدٍ مِنْ الْمُسْلِمِينَ لِلْإِمَامِ إِذَا شَهِدَ لَهُ، لِأَنَّ الْإِمَامَ أَقْدَرُ عَلَى رَعِيَّتِهِ مِنْ السَّيِّدِ عَلَى عَبْدِهِ، لِأَنَّ الْعَبْدَ تُعْدِيهِ جَمِيعُ الْحُكَّامِ عَلَى سَيِّدِهِ إِذَا تَظَلَّمَ مِنْهُ وَيَحُولُونَ بَيْنَهُ وَبَيْنَ أَذَاهُ، وَلَا يَقْدِرُ أَحَدٌ عَلَى أَنْ يَحُولَ بَيْنَ الْإِمَامِ وَالرَّجُلِ مِنْ رَعِيَّتِهِ، فَظَهَرَ فَسَادُ قَوْلِ مُخَالِفِينَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

on testimonies testifies to the validity of our position. For if Allah the Exalted and His Messenger - peace and blessings be upon him - had intended to distinguish between a slave and a free person in this matter, they could have done so: {Your Lord is never forgetful} [Maryam: 64].[29]

L29655 He, the Exalted, said: "From those among the witnesses whom you approve of" (Al-Baqarah: 282).[30]

L29656 Allah the Exalted said: "Indeed, those who believe and do righteous deeds—it is they who are the best of mankind." [Al-Bayyinah: 7] "Their reward with their Lord is Gardens of Eden, beneath which rivers flow, abiding therein forever. Allah is pleased with them, and they are pleased with Him." [Al-Bayyinah: 8][31]

L29657–29658 No two Muslims have ever disagreed that this is a good thing encompassing both male and female servants just as it encompasses free men and women. It is forbidden for anyone to disapprove of one whom Allah the Exalted has declared He has been pleased with. Since Allah has been pleased with a faithful servant who performs righteous deeds, it was made obligatory upon us to approve of him. When it was made obligatory upon us to approve of him, it was made obligatory upon us to accept his testimony.

L29659 As for the one who returns the testimony to his master, he said: "His master may compel him to testify for him."

L29660 We said: If this were an impediment to the master's acceptance of his slave, it would also be an impediment to any Muslim's allegiance to the Imam when bearing witness for him. For the Imam has greater power over his subjects than a master over his slave, since all rulers would assist the slave against his master if he claimed oppression and intervene to protect him from harm. Yet none has the power to intervene between the Imam and any man among his

[29] **Qur'an references (L29654):** Qur'an 19:64 (Maryam).
[30] **Qur'an references (L29655):** Qur'an 2:282 (Al-Baqarah).
[31] **Qur'an references (L29656):** Qur'an 98:7 (Al-Bayyinah); Qur'an 98:8 (Al-Bayyinah).

subjects. Thus, the corruption of our opponents' assertion is made manifest - and all praise belongs to Allah, Lord of the worlds.

The Issue of Testimony of the Relatives

[مَسْأَلَة شَهَادَة الْأَقَارِب]

1793 - Issue: Every just witness is acceptable on behalf of everyone and against them, such as a father and mother for their two sons and for their father; a son and daughter for their parents and grandfathers; grandfathers and grandmothers for their grandsons; a husband for his wife, and a wife for her husband. Likewise, all relatives - each other - such as distant relatives, with no distinction.

١٧٩٣ - مَسْأَلَةٌ: وَكُلُّ عَدْلٍ فَهُوَ مَقْبُولٌ لِكُلِّ أَحَدٍ وَعَلَيْهِ، كَالْأَبِ وَالْأُمِّ لِابْنَيْهِمَا، وَلِأَبِيهِمَا وَالِابْنِ وَالِابْنَةِ لِلْأَبَوَيْنِ وَالْأَجْدَادِ، وَالْجَدَّاتِ، وَالْجَدِّ، وَالْجَدَّةِ لِبَنِي بَنِيهِمَا، وَالزَّوْجِ لِامْرَأَتِهِ، وَالْمَرْأَةِ لِزَوْجِهَا، وَكَذَلِكَ سَائِرُ الْأَقَارِبِ بَعْضِهِمْ لِبَعْضٍ، كَالْأَبَاعِدِ وَلَا فَرْقَ.

Likewise, the affectionate friend toward his companion, the worker toward his employer, the ward toward his guarantor, the employer toward his worker, the guarantor toward his ward, and the guardian toward his orphan.

وَكَذَلِكَ الصَّدِيقُ الْمُلَاطِفُ لِصَدِيقِهِ، وَالْأَجِيرُ لِمُسْتَأْجِرِهِ، وَالْمَكْفُولُ لِكَافِلِهِ، وَالْمُسْتَأْجِرُ لِأَجِيرِهِ، وَالْكَافِلُ لِمَكْفُولِهِ، وَالْوَصِيُّ لِيَتِيمِهِ.

There is disagreement in what we have mentioned. It has been reported to us through an unauthentic chain from Shuraih that the father is not accepted for his son, nor the son for his father, nor either spouse for the other.

وَفِيمَا ذَكَرْنَا خِلَافٌ -: فَرُوِّينَا مِنْ طَرِيقٍ لَا تَصِحُّ عَنْ شُرَيْحٍ أَنَّهُ لَا يُقْبَلُ الْأَبُ لِابْنِهِ، وَلَا الِابْنُ لِأَبِيهِ، وَلَا أَحَدُ الزَّوْجَيْنِ لِلْآخَرِ.

All of this has been authentically reported from Ibrāhīm al-Nakhaʿī, as well as from al-Ḥasan and al-Shaʿbī—in one of their two opinions regarding the father and the son.

وَصَحَّ هَذَا كُلُّهُ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَعَنْ الْحَسَنِ، وَالشَّعْبِيِّ فِي أَحَدِ قَوْلَيْهِمَا فِي الْأَبِ، وَالِابْنِ.

It is narrated from Al-Ḥasan and Al-Shaʿbī that there is another opinion: a child's testimony is accepted on behalf of his father, but the father's testimony is not accepted on behalf of his son, because the father may take his property whenever he wishes. Similarly, a husband's testimony is accepted on behalf of his wife, but she is not accepted on his behalf. This is the opinion of Ibn Abī Laylā and Sufyān al-Thawrī.

وَرُوِيَ عَنْ الْحَسَنِ، وَالشَّعْبِيِّ: قَوْلٌ آخَرُ، وَهُوَ أَنَّ الْوَلَدَ يُقْبَلُ لِأَبِيهِ، وَلَا يُقْبَلُ الْأَبُ لِابْنِهِ؛ لِأَنَّهُ يَأْخُذُ مَالَهُ مَتَى شَاءَ، وَأَنَّ الزَّوْجَ يُقْبَلُ لِامْرَأَتِهِ وَلَا تُقْبَلُ هِيَ لَهُ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَسُفْيَانَ الثَّوْرِيِّ.

Al-Awzāʿī, Al-Thawrī, Aḥmad ibn Ḥanbal, and Abū ʿUbayd did not permit the father concerning the son, nor the son concerning the father.

وَلَمْ يُجِزْ الْأَوْزَاعِيِّ، وَالثَّوْرِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَبُو عُبَيْدٍ الْأَبَ لِلِابْنِ، وَلَا الِابْنَ لِلْأَبِ.

They permitted the grandfather and grandmother to inherit from their

grandchildren, and the grandchildren to inherit from them.

وَأَجَازُوا الْجَدَّ وَالْجَدَّةَ لِأَوْلَادِ بَنِيهِمَا، وَأَوْلَادَ بَنِيهِمَا لَهُمَا.

L29670 Abu Hanifa, Malik, and al-Shafi'i did not permit any of these individuals, except that al-Shafi'i allowed each of the two spouses to the other.

وَلَمْ يُجِزْ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ أَحَدًا مِنْ هَؤُلَاءِ، إِلَّا أَنَّ الشَّافِعِيَّ أَجَازَ كُلَّ وَاحِدٍ مِنَ الزَّوْجَيْنِ لِلْآخَرِ.

L29671 As for the one from whom it has been reported that he affirmed the permissibility of all that, then as it was narrated to us through ʿAbd al-Razzāq from Abū Bakr ibn Abī Sabrah from Abū al-Zinād from ʿAbd Allāh ibn ʿĀmir ibn Rabīʿah, who said: ʿUmar ibn al-Khaṭṭāb declared: "The testimony of a parent for his child, a child for his parent, and a brother for his brother is admissible."

وَأَمَّا مَنْ رُوِيَ عَنْهُ إِجَازَةُ كُلِّ ذَلِكَ -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي بَكْرِ بْنِ أَبِي سَبْرَةَ عَنْ أَبِي الزِّنَادِ عَنْ عَبْدِ اللَّهِ بْنِ عَامِرِ بْنِ رَبِيعَةَ، قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: تَجُوزُ شَهَادَةُ الْوَالِدِ لِوَلَدِهِ، وَالْوَلَدِ لِوَالِدِهِ، وَالْأَخِ لِأَخِيهِ.

L29672 And from ʿAmr ibn Sulaym al-Zuraqī, from Saʿīd ibn al-Musayyib: a similar [report].

وَعَنْ عَمْرِو بْنِ سُلَيْمٍ الزُّرَقِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مِثْلُ هَذَا.

L29673 It has been narrated that Ali ibn Abi Talib—may Allah be pleased with him—testified for Fatimah—may Allah be pleased with her—before Abu Bakr as-Siddiq—may Allah be pleased with him—with Umm Ayman present alongside Ali. Abu Bakr said to him: "If a man or another woman in addition had testified with you, I would have ruled in her favor."

وَرُوِيَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - شَهِدَ - لِفَاطِمَةَ - رَضِيَ اللَّهُ عَنْهَا - عِنْدَ أَبِي بَكْرٍ الصِّدِّيقِ - رَضِيَ اللَّهُ عَنْهُ - وَمَعَهُ أُمُّ أَيْمَنَ فَقَالَ لَهُ أَبُو بَكْرٍ: لَوْ شَهِدَ مَعَكَ رَجُلٌ أَوْ امْرَأَةٌ أُخْرَى لَقَضَيْتُ لَهَا بِذَلِكَ.

L29674 From the path of Ibn Wahb, from Yunus ibn Yazid, from al-Zuhri, who said: The righteous predecessors among the Muslims did not reject the testimony of a parent for their child, nor a child for their parent, nor a brother for their brother, nor a husband for his wife. Then people entered thereafter, and matters emerged among them that compelled the authorities to suspect them. Thus the testimony of those suspected was abandoned when it came from relatives, and this came to include the child, the parent, the brother, the husband, and the wife. None were suspected except these in later times.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنِ الزُّهْرِيِّ قَالَ: لَمْ يَكُنْ يَتَّهِمُ سَلَفُ الْمُسْلِمِينَ الصَّالِحُ شَهَادَةَ الْوَالِدِ لِوَلَدِهِ، وَلَا الْوَلَدِ لِوَالِدِهِ، وَلَا الْأَخِ لِأَخِيهِ، وَلَا الزَّوْجِ لِامْرَأَتِهِ - ثُمَّ دَخَلَ النَّاسُ بَعْدَ ذَلِكَ، فَظَهَرَتْ مِنْهُمْ أُمُورٌ حَمَلَتِ الْوُلَاةَ عَلَى اتِّهَامِهِمْ، فَتُرِكَتْ شَهَادَةُ مَنْ يُتَّهَمُ إِذَا كَانَتْ مِنْ قَرَابَةٍ وَصَارَ ذَلِكَ مِنَ الْوَلَدِ، وَالْوَالِدِ، وَالْأَخِ، وَالزَّوْجِ، وَالْمَرْأَةِ، لَمْ يُتَّهَمْ إِلَّا هَؤُلَاءِ فِي آخِرِ الزَّمَانِ.

L29675 Through the chain of Abu ʿUbayd: Al-Hasan ibn ʿAzib narrated to us from his grandfather Shabib ibn Gharqadah, who said: I was sitting with Shuraih when ʿAli ibn Kahil came to him along with a woman and her opponent. ʿAli ibn Kahil—her husband—testified in her favor, and her father also testified in

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا الْحَسَنُ بْنُ عَازِبٍ عَنْ جَدِّهِ شَبِيبِ بْنِ غَرْقَدَةَ قَالَ: كُنْتُ جَالِسًا عِنْدَ شُرَيْحٍ، فَأَتَاهُ عَلِيُّ بْنُ كَاهِلٍ، وَامْرَأَةٌ وَخَصْمٌ لَهَا، فَشَهِدَ لَهَا عَلِيُّ بْنُ كَاهِلٍ -

her favor. Shuraih deemed their testimony permissible. The opponent said: "This is her father, and this is her husband." Shuraih replied: "Do you know anything that impugns their testimony? The testimony of every Muslim is permissible."

وَهُوَ زَوْجُهَا - وَشَهِدَ لَهَا أَبُوهَا، فَأَجَازَ شُرَيْحٌ شَهَادَتَهُمَا، فَقَالَ الْخَصْمُ: هَذَا أَبُوهَا، وَهَذَا زَوْجُهَا. فَقَالَ لَهُ شُرَيْحٌ: هَلْ تَعْلَمُ شَيْئًا تُجَرِّحُ بِهِ شَهَادَتَهُمَا؟ كُلُّ مُسْلِمٍ شَهَادَتُهُ جَائِزَةٌ.

L29676 From the chain of ʿAbd al-Razzāq: Sufyān ibn ʿUyaynah narrated to us from Shabīb ibn Gharqadah, who said: I heard Shurayḥ—he permitted the testimony of the woman's father and husband to stand on her behalf. The man said: "Indeed, he is her father and her husband!" Shurayḥ replied: "Who would testify for the woman except her father and her husband?"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ شَبِيبِ بْنِ غَرْقَدَةَ قَالَ: سَمِعْت شُرَيْحًا: أَجَازَ لِامْرَأَةٍ شَهَادَةَ أَبِيهَا وَزَوْجِهَا فَقَالَ الرَّجُلُ: إنَّهُ أَبُوهَا وَزَوْجُهَا. فَقَالَ شُرَيْحٌ: فَمَنْ يَشْهَدُ لِلْمَرْأَةِ إلَّا أَبُوهَا وَزَوْجُهَا.

L29677–29678 From Ibn Abi Shaybah, from Shababah, from Ibn Abi Dhi'b, from Sulayman ibn Abi Sulayman, who said: I testified for my mother before Abu Bakr ibn Muhammad ibn Amr ibn Hazm, and he ruled based on my testimony.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا شَبَابَةُ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ سُلَيْمَانَ بْنِ أَبِي سُلَيْمَانَ، قَالَ: شَهِدْت لِأُمِّي عِنْدَ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ، فَقَضَى بِشَهَادَتِي.

L29679 From the narration of ʿAbd al-Razzāq, from Maʿmar, from ʿAbd al-Raḥmān ibn ʿAbd Allāh al-Anṣārī, who said: "'Umar ibn ʿAbd al-ʿAzīz permitted the testimony of a son on behalf of his father, provided the son was just."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ الْأَنْصَارِيِّ قَالَ: أَجَازَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ شَهَادَةَ الِابْنِ لِأَبِيهِ إذَا كَانَ عَدْلًا.

L29680 So these are: ʿUmar ibn al-Khaṭṭāb, all the Companions, Shurayḥ, ʿUmar ibn ʿAbd al-ʿAzīz, and Abū Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm.

فَهَؤُلَاءِ: عُمَرُ بْنُ الْخَطَّابِ، وَجَمِيعُ الصَّحَابَةِ، وَشُرَيْحٌ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ وَأَبُو بَكْرِ بْنُ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ.

L29681 This is also the view of Iyās ibn Muʿāwiyah, ʿUthmān al-Battī, Isḥāq ibn Rāhwayh, Abū Thawr, al-Muzanī, Abū Sulaymān, and all the companions of our school.

وَبِهَذَا يَقُولُ إيَاسُ بْنُ مُعَاوِيَةَ، وَعُثْمَانُ الْبَتِّيُّ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ، وَأَبُو ثَوْرٍ، وَالْمُزَنِيُّ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا.

L29682 Al-Shāfiʿī and his companions held that the testimony of the two spouses—each testifying on behalf of the other—is admissible.

وَرَأَى الشَّافِعِيُّ: وَأَصْحَابُهُ: قَبُولَ شَهَادَةِ الزَّوْجَيْنِ: كُلِّ وَاحِدٍ مِنْهُمَا لِلْآخَرِ

L29683 Al-Awzaʿī held that a brother is not accepted for his brother.

وَرَأَى الْأَوْزَاعِيِّ: أَنْ لَا يُقْبَلُ الْأَخُ لِأَخِيهِ.

L29684 Al-Zuhri mentioned this regarding the later rulers who restored the father to his son, the son to his father, and one of the two spouses to the other.

وَذَكَرَ ذَلِكَ الزُّهْرِيُّ عَنْ الْمُتَأَخِّرِينَ مِنْ الْوُلَاةِ الَّذِينَ رَدُّوا الْأَبَ لِابْنِهِ وَالِابْنَ لِأَبِيهِ، وَأَحَدَ الزَّوْجَيْنِ لِصَاحِبِهِ.

L29685 Abu Hanifa and Al-Shafi'i permitted: the brother for his brother.

وَأَجَازَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: الْأَخَ لِأَخِيهِ.

L29686 Malik permitted it for his brother except specifically in matters of lineage.

وَأَجَازَ مَالِكٌ لِأَخِيهِ إِلَّا فِي النَّسَبِ خَاصَّةً.

L29687 Malik rejected the testimony of an affectionate friend for his friend.

وَرَدَّ مَالِكٌ شَهَادَةَ الصَّدِيقِ الْمُلَاطِفِ لِصَدِيقِهِ

L29688 Abu Muhammad said: Those who differ with us have cited as evidence the narration we reported through the chain of Abu Ubayd, from Marwan ibn Muawiyah, from Yazid al-Jazari, I think he is Yazid ibn Sinan, from al-Zuhri, from Urwah, from Aisha, from the Prophet, peace and blessings of Allah be upon him: "The testimony of a treacherous man or a treacherous woman is not valid, nor is the testimony of one suspected of partiality in clientage or kinship, nor is the testimony of one flogged for a *hadd* offense."

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ الْمُخَالِفُونَ لَنَا بِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا مَرْوَانُ بْنُ مُعَاوِيَةَ عَنْ يَزِيدَ الْجَزَرِيِّ، قَالَ: أَحْسَبُهُ يَزِيدَ بْنَ سِنَانٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تَجُوزُ شَهَادَةُ خَائِنٍ وَلَا خَائِنَةٍ، وَلَا ظَنِينٍ فِي وَلَاءٍ أَوْ قَرَابَةٍ، وَلَا مَجْلُودٍ فِي حَدٍّ» .

L29689 Abu Muhammad said: This is against them, not in their favor, for several reasons. First: It is invalid because it is narrated from Yazid—an unknown narrator. If this refers to Yazid ibn Sinan, he is known to be a liar. Even if the narration were authentic, they would be the first to contradict it in two matters. First: Their differentiation between brother and father, uncle and nephew, and father and son—all of whom are equal, as they are equally subject to suspicion of partiality due to kinship.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا عَلَيْهِمْ لَا لَهُمْ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّهُ لَا يَصِحُّ لِأَنَّهُ عَنْ يَزِيدَ - وَهُوَ مَجْهُولٌ - فَإِنْ كَانَ يَزِيدُ بْنُ سِنَانٍ فَهُوَ مَعْرُوفٌ بِالْكَذِبِ، ثُمَّ لَوْ صَحَّ لَكَانُوا أَوَّلَ مُخَالِفٍ لَهُ فِي مَوْضِعَيْنِ -: أَحَدُهُمَا - تَفْرِيقُهُمْ بَيْنَ الْأَخِ وَالْأَبِ، وَبَيْنَ الْعَمِّ وَابْنِ الْأَخِ، وَبَيْنَ الْأَبِ وَالِابْنِ - وَكُلُّهُمْ سَوَاءٌ - إذْ هُمْ مُتَقَارِبُونَ فِي التُّهْمَةِ بِالْقَرَابَةِ.

L29690–29691 All of them deem it permissible for the patron to rule over his client—and this contradicts the textual evidence—.

وَكُلُّهُمْ يُجِيزُ الْمَوْلَى لِمَوْلَاهُ - وَهَذَا خِلَافُ الْخَبَرِ -.

L29692 All of them permit the flogged person in a *hadd* punishment if he repents—contrary to this report—so who is more misguided in his path or corrupt in his reasoning than one who cites a report that serves as evidence against himself, despite contradicting it? They mentioned what we narrated from Wakīʿ, from ʿAbd Allāh ibn Abī Ḥumayd, who said: ʿUmar wrote to Abū Mūsā: "Muslims are admissible witnesses against one another except a flogged person in a *hadd* punishment, one against whom false testimony has been proven, one suspected in clientage, or in kinship." The statement regarding this is like the one before it, in that it has never been authentically established from ʿUmar. Moreover, they have opposed it just as we men-

وَكُلُّهُمْ يُجِيزُ الْمَجْلُودَ فِي الْحَدِّ إذَا تَابَ - وَهُوَ خِلَافُ هَذَا الْخَبَرِ - فَمَنْ أَضَلُّ سَبِيلًا، أَوْ أَفْسَدُ دَلِيلًا مِمَّنْ يَحْتَجُّ بِخَبَرٍ هُوَ حُجَّةٌ عَلَيْهِ، وَهُوَ مُخَالِفٌ لَهُ. وَذَكَرُوا: مَا رُوِّينَاهُ عَنْ وَكِيعٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي حُمَيْدٍ قَالَ: كَتَبَ عُمَرُ إلَى أَبِي مُوسَى: الْمُسْلِمُونَ عُدُولٌ بَعْضُهُمْ عَلَى بَعْضٍ إلَّا مَجْلُودًا فِي حَدٍّ، أَوْ مُجَرَّبًا عَلَيْهِ شَهَادَةُ زُورٍ، أَوْ ظَنِينًا فِي وَلَاءٍ، أَوْ فِي قَرَابَةٍ، وَالْقَوْلُ فِي هَذَا كَالَّذِي قَبْلَهُ مِنْ أَنَّهُ لَمْ يَصِحَّ قَطُّ عَنْ عُمَرَ، ثُمَّ قَدْ خَالَفُوهُ كَمَا ذَكَرْنَا سَوَاءً وَالْأَثْبَتُ عَنْ عُمَرَ: قَبُولُ الْأَبِ لِابْنِهِ.

tioned. The most established view from ʿUmar is the acceptance of a father regarding his son.

L29693 And among the marvels of the worldly life is their resorting to the sound hadith from the Prophet—peace be upon him—"You and your property belong to your father."

L29694 And among his commands is, "Hind is to claim her sustenance from her husband's wealth."

L29695 They are the foremost contradictor of these two narrations, and this constitutes an immense marvel.

L29696 As for us, we validate both and affirm: There is no prohibition in either case against accepting a son's testimony for his parents or the parents' testimony for him—even if he and his wealth belong to them—so what is the matter? All of us belong to Allah the Exalted, as do our possessions, and He has commanded us to testify for His sake. The Almighty said: *"Be upholders of justice, witnesses for Allah"* [4:135]. Every rightful claimant is commanded to take their right from whoever withholds it, whether a stranger or not, whenever capable. Whoever fails to do so has disobeyed Allah the Almighty, aided in sin and transgression, and possessed the ability to reform an evil yet refrained—thereby affirming wrongdoing, falsehood, and the forbidden without altering any of it. Among the strangest arguments presented by some in this matter is their citation of Allah's words as proof: *"Show gratitude to Me and to your parents"* [31:14].[32]

L29697 Abu Muhammad said: This constitutes the strongest argument against them, for gratitude toward them after gratitude to Allah the Most High entails bearing truthful witness for them. Gratitude toward them does not require bearing false witness on their behalf.

L29698–29700 Allah the Almighty has said: *"And show kindness to parents, close relatives, orphans, the needy, the neighboring kinsman, the distant neighbor, the companion by your side, the wayfarer, and those under your author-

[32]**Qur'an references (L29696):** Qur'an 4:135 (An-Nisa); Qur'an 31:14 (Luqman).

وَمِنْ عَجَائِبِ الدُّنْيَا: احْتِجَاجُهُمْ فِي هَذَا بِالْخَبَرِ الثَّابِتِ مِنْ قَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنْتَ وَمَالُكَ لِأَبِيكَ» .

وَمِنْ «أَمْرِهِ هِنْدًا بِأَخْذِ قُوتِهَا مِنْ مَالِ زَوْجِهَا» .

وَهُمْ أَوَّلُ مُخَالِفٍ لِهَذَيْنِ الْخَبَرَيْنِ وَهَذَا عَجَبٌ جِدًّا.

وَأَمَّا نَحْنُ فَنُصَحِّحُهُمَا، وَنَقُولُ: لَيْسَ فِيهِمَا مَنْعٌ مِنْ قَبُولِ شَهَادَةِ الِابْنِ لِأَبَوَيْهِ، وَلَا مِنْ قَبُولِ الْأَبَوَيْنِ لَهُ - وَإِنْ كَانَ هُوَ وَمَالُهُ لَهُمَا - فَكَانَ مَاذَا؟ وَنَحْنُ كُلُّنَا لِلَّهِ تَعَالَى وَأَمْوَالُنَا وَقَدْ أَمَرَنَا بِأَنْ نَشْهَدَ لَهُ عَزَّ وَجَلَّ، فَقَالَ عَزَّ وَجَلَّ: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥] وَكُلُّ ذِي حَقٍّ فَهُوَ مَأْمُورٌ بِأَخْذِ حَقِّهِ مِمَّنْ هُوَ لَهُ عِنْدَهُ مَتَى قَدَرَ عَلَى ذَلِكَ أَجْنَبِيًّا كَانَ أَوْ غَيْرَ أَجْنَبِيٍّ وَمَنْ لَمْ يَفْعَلْ ذَلِكَ فَقَدْ عَصَى اللَّهَ عَزَّ وَجَلَّ وَأَعَانَ عَلَى الْإِثْمِ وَالْعُدْوَانِ وَقَدَرَ عَلَى تَغْيِيرِ مُنْكَرٍ فَلَمْ يَفْعَلْ بَلْ أَقَرَّ الْمُنْكَرَ وَالْبَاطِلَ وَالْحَرَامَ وَلَمْ يُغَيِّرْ شَيْئًا مِنْ ذَلِكَ، وَمِنْ أَغْرَبِ مَا وَقَعَ: احْتِجَاجُ بَعْضِهِمْ فِي هَذَا بِقَوْلِ اللَّهِ تَعَالَى: {أَنِ اشْكُرْ لِي وَلِوَالِدَيْكَ} [لقمان: ١٤] .

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ أَعْظَمُ حُجَّةٍ عَلَيْهِمْ؛ لِأَنَّ مِنْ الشُّكْرِ لَهُمَا بَعْدَ شُكْرِ اللَّهِ تَعَالَى: أَنْ يَشْهَدَ لَهُمَا بِالْحَقِّ، وَلَيْسَ مِنْ الشُّكْرِ لَهُمَا أَنْ يَشْهَدَ لَهُمَا بِالْبَاطِلِ.

وَقَدْ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَالْجَارِ ذِي الْقُرْبَى وَالْجَارِ الْجُنُبِ وَالصَّاحِبِ بِالْجَنْبِ وَابْنِ السَّبِيلِ وَمَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٣٦] فَقَدْ سَوَّى اللَّهُ تَعَالَى بَيْنَ كُلِّ مَنْ ذَكَرْنَا فِي وُجُوبِ الْإِحْسَانِ إِلَيْهِمْ،

ity”* (An-Nisā’ 4:36). Thus Allah the Most High has equated all those we have mentioned in the obligation to show kindness to them. Therefore, it becomes binding upon one who is accused of failing in this duty toward parents, toward some close relatives and companions by one’s side, and what... Those whom his right hand possesses: that he (the authority) accuses any of them (the dependents) among the rest, so he does not accept the testimony of any of them on behalf of a relative entirely, nor for a neighbor, nor for a wayfarer, nor for an orphan, nor for a needy person. Otherwise, they have tainted themselves by mixing in falsehood as they pleased, leaving them retaining nothing but accusation, and accusation is inadmissible.[33]

فَيَلْزَمُ مَنْ اتَّهَمَهُ لِذَلِكَ فِي الْوَالِدَيْنِ، وَفِي بَعْضِ ذَوِي الْقُرْبَى وَالصَّاحِبِ بِالْجَنْبِ، وَمَا مَلَكَتْ يَمِينُهُ: أَنْ يَتَّهِمَهُ فِي سَائِرِهِمْ، فَلَا يَقْبَلُ شَهَادَةَ أَحَدِهِمْ لِقَرِيبٍ جُمْلَةً، وَلَا لِجَارٍ، وَلَا لِابْنِ سَبِيلٍ، وَلَا لِيَتِيمٍ، وَلَا لِمِسْكِينٍ، وَإِلَّا فَقَدْ تَلَوَّثُوا فِي التَّخْلِيطِ بِالْبَاطِلِ مَا شَاءُوا، فَلَمْ يَبْقَ فِي أَيْدِيهِمْ إِلَّا التُّهْمَةُ، وَالتُّهْمَةُ لَا تَحِلُّ.

L29701 By necessity, we know that whoever is compelled by the kinship of their parents, children, and spouse to bear false witness for them is categorically barred from testifying for those who bribe them—even those among distant relatives. There is no distinction.

وَبِالضَّرُورَةِ نَدْرِي أَنَّ مَنْ حَمَلَتْهُ قَرَابَةُ أَبَوَيْهِ وَبَنِيهِ وَامْرَأَتِهِ عَلَى أَنْ يَشْهَدَ لَهُمْ بِالْبَاطِلِ فَمَضْمُونٌ مَنْعُهُ قَطْعًا أَنْ يَشْهَدَ لِمَنْ يَرْشُوهُ مِنَ الْأَبَاعِدِ لَا فَرْقَ.

L29702 Accusation has no place in Islam—and we ask them about Abū Dharr and Umm Salamah, the Mother**s** of the Believers: If **the two of them** were to **truthfully claim** against a Jew **a dirham**, would you rule in their favor based on their claim? If they say, “Yes,” they would have **defied** Allah **and His Messenger—peace be upon him—**and the **indisputable** consensus of the Ummah, **abandoning their own legal principle**.

وَلَيْسَ لِلتُّهَمَةِ فِي الْإِسْلَامِ مَدْخَلٌ - وَنَحْنُ نَسْأَلُهُمْ عَنْ أَبِي ذَرٍّ، وَأُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ: لَوِ ادَّعَيَا عَلَى يَهُودِيٍّ بِدِرْهَمٍ بِحَقٍّ، أَتَقْضُونَ لَهُمَا بِدَعْوَاهُمَا؟ فَإِنْ قَالُوا: نَعَمْ، خَالَفُوا اللَّهَ وَرَسُولَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَإِجْمَاعَ الْأُمَّةِ الْمُتَيَقَّنَ وَتَرَكُوا قَوْلَهُمْ.

L29703 If they say: No, we say: Glory be to Allah. By Allah, there is no one on the face of the earth who, claiming to be Muslim, accuses Abū Dharr and Umm Salamah—may Allah be pleased with them both—of asserting falsehood in the entire world, so how then over a dirham against a Jew? Then we ask them: Do you absolve the lying Jew—notorious for immorality—of their claim by his oath? If they say: Yes, we say to them: Is the proper place for accusation and suspicion not with the disbelievers whose falsehood against Allah the Exalted and His Messenger—peace and blessings be upon him—is certain?

وَإِنْ قَالُوا: لَا، قُلْنَا: سُبْحَانَ اللَّهِ، وَاللَّهِ مَا عَلَى أَدِيمِ الْأَرْضِ مَنْ يَقُولُ: إِنَّهُ مُسْلِمٌ يَتَّهِمُ أَبَا ذَرٍّ، وَأُمَّ سَلَمَةَ - رَضِيَ اللَّهُ عَنْهُمَا - أَنَّهُمَا يَدَّعِيَانِ الْبَاطِلَ فِي الدُّنْيَا بِأَسْرِهَا، فَكَيْفَ فِي دِرْهَمٍ عَلَى يَهُودِيٍّ؟ ثُمَّ نَسْأَلُهُمْ أَتُبَرِّئُونَ الْيَهُودِيَّ الْكَذَّابَ الْمَشْهُورَ بِالْفِسْقِ بِيَمِينِهِ مِنْ دَعْوَاهُمَا؟ فَمَنْ قَوْلُهُمْ: نَعَمْ، قُلْنَا لَهُمْ: وَهَلْ مَقَرُّ التُّهَمَةِ، وَالظِّنَّةِ، إِلَّا فِي الْكُفَّارِ الْمُتَيَقَّنِ كَذِبُهُمْ عَلَى اللَّهِ تَعَالَى وَعَلَى رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -؟ .

L29704 The utter astonishment lies in Mālik and al-Shāfiʿī awarding immense wealth to a claimant merely through his claim and oath—even if he is more notori-

وَالْعَجَبُ كُلُّهُ: مِنْ إِعْطَاءِ مَالِكٍ، وَالشَّافِعِيِّ: الْمُدَّعِيَ الْمَالَ الْعَظِيمَ بِدَعْوَاهُ وَيَمِينِهِ، وَإِنْ كَانَ أَشْهَرَ فِي الْكَذِبِ وَالْمُجُونِ مِنْ حَاتِمٍ فِي الْجُودِ، إِذَا أَبَى الْمُدَّعَى عَلَيْهِ مِنَ الْيَمِينِ،

[33] **Qur’an references (L29698):** Qur’an 4:36 (An-Nisa).

ous for falsehood and immorality than Ḥātim was for generosity—when the defendant refuses to swear; and in Abū Ḥanīfah granting him that through his bare claim without evidence or oath, while they do not hold him accountable by their own opinion—neither by the Qur'ān nor the Sunnah—yet they accuse the devout, virtuous, righteous, and pious ascetic in his testimony for his son, his wife, or his father concerning a mere dirham. We declare our innocence before Allah the Exalted from these schools of thought—nothing is more corrupt than them.

وَإِعْطَاءِ أَبِي حَنِيفَةَ إِيَّاهُ ذَلِكَ بِدَعْوَاهُ الْمُجَرَّدَةِ بِلَا بَيِّنَةٍ وَلَا يَمِينٍ، وَلَا يَتَّهِمُونَهُ بِرَأْيِهِمْ: لَا بِقُرْآنٍ وَلَا بِسُنَّةٍ، ثُمَّ يَتَّهِمُونَ النَّاسِكَ الْفَاضِلَ الْبَرَّ التَّقِيَّ فِي شَهَادَتِهِ لِابْنِهِ، أَوْ لِامْرَأَتِهِ أَوْ لِأَبِيهِ بِدِرْهَمٍ - نَبْرَأُ إِلَى اللَّهِ تَعَالَى مِنْ هَذِهِ الْمَذَاهِبِ الَّتِي لَا شَيْءَ أَفْسَدُ مِنْهَا.

L29705 Abu Muhammad said: They censure others for diverging from the Companion's view—despite there being no recognized dissenter against him—yet they themselves oppose him on this very point, and no dissent from the Companions regarding his view is known.

قَالَ أَبُو مُحَمَّدٍ: وَهُمْ يُشَنِّعُونَ بِخِلَافِ الصَّاحِبِ لَا يُعْرَفُ لَهُ مُخَالِفٌ، وَقَدْ خَالَفُوهُ هَاهُنَا، وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ.

L29706–29708 Then Az-Zuhri reported that the early predecessors did not differ regarding a father's acceptance of testimony for his son, spouses accepting testimony for one another, and relatives accepting testimony from each other - until discord infiltrated the people. This is a report. Regarding the consensus of the Companions—may Allah be pleased with them—how did those from later generations deem it permissible to oppose them based on a corrupt assumption?

ثُمَّ قَدْ حَكَى الزُّهْرِيُّ: أَنَّهُ لَمْ يَخْتَلِفْ الصَّدْرُ الْأَوَّلُ فِي قَبُولِ الْأَبِ لِابْنِهِ وَالزَّوْجَيْنِ أَحَدِهِمَا لِلْآخَرِ، وَالْقَرَابَةِ بَعْضِهِمْ لِبَعْضٍ حَتَّى دَخَلَتْ فِي النَّاسِ الدَّاخِلَةُ - وَهَذَا إِخْبَارٌ عَنْ إِجْمَاعِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَكَيْفَ اسْتَجَازُوا خِلَافَهُمْ لِظَنٍّ فَاسِدٍ مِنْ الْمُتَأَخِّرِينَ.

L29709 Then I wish I knew: what new occurrence has manifested that was not present before? By Allah, during the time of Allah's Messenger (may Allah bless him and grant him peace), there existed hypocrites (who are the worst of Allah's creation—Exalted and Majestic is He), disbelievers, adulterers, thieves, and liars. Thus we cannot discern what new development has arisen. Far be it from Allah the Exalted that anything should occur outside the framework of the Sharia.

ثُمَّ لَيْتَ شِعْرِي: مَا الَّذِي حَدَثَ مِمَّا لَمْ يَكُنْ، وَاَللَّهِ لَقَدْ كَانَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُنَافِقُونَ - الَّذِينَ هُمْ شَرُّ خَلْقِ اللَّهِ عَزَّ وَجَلَّ - وَالْكُفَّارُ، وَالزُّنَاةُ، وَالسُّرَّاقُ، وَالْكَذَّابُونَ، فَمَا نَدْرِي مَا الَّذِي حَدَثَ، وَحَاشَ لِلَّهِ تَعَالَى أَنْ يَحْدُثَ شَيْءٌ بِغَيْرِ الشَّرِيعَةِ.

L29710 We bear witness by the testimony of Allah, the Mighty and Majestic: that He, the Exalted, had He willed that none of those we mentioned be accepted for those who bear witness for Him, He would have clarified it and not neglected it. Thus, the falsehood of the statement of our opponents has become evident with a certainty in which there is no doubt.

وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ: أَنَّهُ تَعَالَى لَوْ أَرَادَ أَنْ لَا يُقْبَلَ أَحَدٌ مِمَّنْ ذَكَرْنَا لِمَنْ شَهِدَ لَهُ لَبَيَّنَهُ وَمَا أَغْفَلَهُ - فَظَهَرَ فَسَادُ قَوْلِ مُخَالِفِينَا بِيَقِينٍ لَا مِرْيَةَ فِيهِ.

L29711 The most astonishing thing is that they deemed it permissible for a brother

to his brother, while Al-Zuhri narrates that later scholars accused him of this. Thus, they contradicted both those who preceded them and those who came after them, and this alone suffices as a disgrace. And success is from Allah, the Most High.

The Jurisprudential Question of Testimony Against the Enemy

1794. Issue: If someone testifies against their enemy, it is considered. If their enmity toward him drives them to act in a religiously impermissible manner, this constitutes a flaw invalidating their testimony for everyone and in every matter. But if their enmity does not drive them to act impermissibly, the witness is deemed a credible witness whose testimony is accepted against the enemy. This is the position of Abū Sulaymān and our companions.

Abu Hanifah said: The testimony of a hired worker in favor of the one who hired him is not permissible in any matter whatsoever—and this is the opinion of Al-Awza'i.

Mālik also said likewise, unless the individual is distinguished in uprightness, except when he is among the household dependents of the litigant, in which case his testimony in the latter's favor is invalid.

Al-Shafi'i said: The testimony of a hired worker concerning his employer is not admissible specifically in the matter for which he was hired, but it is admissible for the employer in other matters. This is the opinion of Sufyan al-Thawri and Abu Thawr.

Similarly, they stated concerning the legal agent: the same ruling applies equally in all cases.

Malik said: If a witness is affiliated with a party, his testimony is not accepted for them, and the testimony of an enemy against their enemy is impermissible.

Abu Hanifa and Malik stated: The testimony of the opposing party is inadmissible—neither for the principal who appointed him nor for the agent appointed on the condition that he litigate against the principal.

وَأَعْجَبُ شَيْءٍ أَنَّهُمْ أَجَازُوا الْأَخَ لِأَخِيهِ وَالزُّهْرِيُّ يَحْكِي عَنْ الْمُتَأَخِّرِينَ اتِّهَامَهُمْ لَهُ، فَقَدْ خَالَفُوا مَنْ تَقَدَّمَ وَمَنْ تَأَخَّرَ، وَكَفَى بِهَذَا شُنْعَةً -. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الشَّهَادَةِ عَلَى الْعَدُوِّ]

١٧٩٤ - مَسْأَلَةٌ: وَمَنْ شَهِدَ عَلَى عَدُوِّهِ نُظِرَ، فَإِنْ كَانَ تُخْرِجُهُ عَدَاوَتُهُ لَهُ إلَى مَا لَا يَحِلُّ فَهِيَ جُرْحَةٌ فِيهِ تَرُدُّ شَهَادَتَهُ لِكُلِّ أَحَدٍ، وَفِي كُلِّ شَيْءٍ - وَإِنْ كَانَ لَا تُخْرِجُهُ عَدَاوَتُهُ إلَى مَا لَا يَحِلُّ فَهُوَ عَدْلٌ يُقْبَلُ عَلَيْهِ - وَهَذَا قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

وَقَالَ أَبُو حَنِيفَةَ: لَا تَجُوزُ شَهَادَةُ الْأَجِيرِ لِمَنْ اسْتَأْجَرَهُ فِي شَيْءٍ أَصْلًا - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ.

وَقَالَ مَالِكٌ كَذَلِكَ، إلَّا أَنْ يَكُونَ عَدْلًا مُبَرَّزًا فِي الْعَدَالَةِ، إلَّا أَنْ يَكُونَ فِي عِيَالِهِ فَلَا تَجُوزُ شَهَادَتُهُ لَهُ.

وَقَالَ الشَّافِعِيُّ: لَا تَجُوزُ شَهَادَةُ الْأَجِيرِ لِمَنْ اسْتَأْجَرَهُ فِيمَا اسْتَأْجَرَهُ فِيهِ خَاصَّةً، وَتَجُوزُ لَهُ فِيمَا عَدَا ذَلِكَ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَأَبِي ثَوْرٍ.

وَكَذَلِكَ قَالُوا: فِي الْوَكِيلِ سَوَاءً سَوَاءً.

وَقَالَ مَالِكٌ: إنْ كَانَ مُنْضَافًا إلَيْهِ لَمْ يُقْبَلْ لَهُ، وَلَمْ تَجُزْ شَهَادَةُ الْعَدُوِّ عَلَى عَدُوِّهِ.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَا تُقْبَلُ شَهَادَةُ الْخَصْمِ، لَا لِلَّذِي وَكَّلَهُ، وَلَا لِلَّذِي وُكِّلَ عَلَى أَنْ يُخَاصِمَهُ.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: تَجُوزُ شَهَادَةُ الْفُقَرَاءِ وَالسُّؤَّالِ وَقَالَ مَالِكٌ: لَا تَجُوزُ إِلَّا فِي الشَّيْءِ الْيَسِيرِ.

L29720–29722 Abu Hanifa and Al-Shafi'i said: The testimony of the poor and beggars is permissible. Mālik said: It is permissible only in minor matters.

وَقَالَ ابْنُ أَبِي لَيْلَى: لَا تُقْبَلُ شَهَادَةُ فَقِيرٍ - وَأَشَارَ شَرِيكٌ إِلَى ذَلِكَ.

L29723 Ibn Abi Layla said: The testimony of a poor person is not accepted - and Shurayk indicated this.

قَالَ أَبُو مُحَمَّدٍ: كُلُّ مَنْ ذَكَرْنَا فِي هَؤُلَاءِ مَقْبُولُونَ لِكُلِّ مَنْ ذَكَرْنَا، كَالْأَجْنَبِيَّيْنِ وَلَا فَرْقَ.

L29724 Abu Muhammad said: All those we have mentioned here are accepted for everyone we have mentioned, just as with the two non-relatives, with no distinction.

وَاحْتَجَّ الْمُخَالِفُ بِمَا رُوِّينَا عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَنَّهُ «لَا تَجُوزُ شَهَادَةُ ذِي غِمْرٍ عَلَى أَخِيهِ، وَلَا تَجُوزُ شَهَادَةُ الظِّنَّةِ، وَلَا الْإِحْنَةِ وَلَا شَهَادَةُ خَصْمٍ، وَلَا ظَنِينٍ، وَلَا الْقَانِعِ مِنْ أَهْلِ الْبَيْتِ لَهُمْ» .

L29725 The dissenting scholar argued based on what has been narrated from the Prophet—may Allah's peace and blessings be upon him—that "the testimony of one harboring enmity against his brother is invalid; nor is the testimony of suspicion valid; nor the testimony of hatred; nor the testimony of a litigant; nor that of one of doubtful integrity; nor the testimony of a dependent from the household in their favor."

وَصَحَّ عَنْ شُرَيْحٍ: لَا تَجُوزُ عَلَيْكَ شَهَادَةُ الْخَصْمِ، وَلَا الشَّرِيكِ، وَلَا الْأَجِيرِ لِمَنْ اسْتَأْجَرَهُ.

L29726 It is authentically reported from Shurayḥ: The testimony of a litigant is not admissible against you, nor that of a partner, nor that of a hired worker for the one who hired him.

وَرُوِيَ عَنِ الشَّعْبِيِّ - وَلَمْ يَصِحَّ - لَا أُجِيزُ شَهَادَةَ وَصِيٍّ، وَلَا وَلِيٍّ، لِأَنَّهُمَا خَصْمَانِ.

L29727 It has been reported from Al-Sha'bī—though unauthenticated—"I do not validate the testimony of an executor or a legal guardian, as they are both litigants."

وَصَحَّ عَنْ إِبْرَاهِيمَ: لَا تَجُوزُ شَهَادَةُ الشَّرِيكِ لِشَرِيكِهِ فِيمَا بَيْنَهُمَا، وَتَجُوزُ لَهُ فِي غَيْرِ ذَلِكَ.

L29728 It is reliably established from Ibrahim: A partner's testimony for his partner is not permissible in disputes between them, but it is permissible for him in other cases.

وَعَنْ شُرَيْحٍ مَضَتْ السُّنَّةُ فِي الْإِسْلَامِ: أَنَّهُ لَا تَجُوزُ شَهَادَةُ خَصْمٍ.

L29729 It is narrated from Shuraih that the established Sunnah in Islam is that the testimony of a litigant is inadmissible.

وَمِنْ طَرِيقِ ابْنِ سَمْعَانَ - وَهُوَ كَذَّابٌ - لَمْ يَكُنْ السَّلَفُ يُجِيزُونَ شَهَادَةَ الْقَانِعِ

L29730 And from the transmission of Ibn Samʿān—a liar—the Salaf did not permit the testimony of a contented witness.

L29731 Abu Muhammad said: The contented one and the asker. It is authentically reported from Rabi'ah: The testimony of an adversary, and [that of] one suspected in his morals, appearance, or deviation from upright witnesses

in his conduct—even if no other fault is detected in him—is rejected. The testimony of an enemy against his enemy is also rejected.

قَالَ أَبُو مُحَمَّد: الْقَانِعُ السَّائِلُ، وَصَحَّ عَنْ رَبِيعَةَ: تُرَدُّ شَهَادَةُ الْخَصْمِ، وَالظَّنِينِ فِي خَلَائِقِهِ، وَشَكْلِهِ، وَمُخَالَفَتِهِ الْعُدُولَ فِي سِيرَتِهِ - وَإِنْ لَمْ يُوقَفْ مِنْهُ عَلَى غَيْرِ ذَلِكَ - وَتُرَدُّ شَهَادَةُ الْعَدُوِّ عَلَى عَدُوِّهِ.

L29732 And from Yaḥyā ibn Saʿīd al-Anṣārī: The testimony of the enemy against his enemy is rejected.

وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ: تُرَدُّ شَهَادَةُ الْعَدُوِّ عَلَى عَدُوِّهِ.

L29733 This is all that is mentioned in that matter from those who preceded.

هَذَا كُلُّ مَا يُذْكَرُ فِي ذَلِكَ عَمَّنْ سَلَفَ.

L29734 Abu Muhammad said: As for the narrations concerning that matter, all of them are invalid because some have disconnected chains, while others are transmitted from the chain of Isḥāq ibn Rāshid (who is not strong).

قَالَ أَبُو مُحَمَّد: أَمَّا الْآثَارُ فِي ذَلِكَ فَكُلُّهَا بَاطِلٌ؛ لِأَنَّ بَعْضَهَا مَرْوِيٌّ مُنْقَطِعٌ، وَمِنْ طَرِيقِ إِسْحَاقَ بْنَ رَاشِدٍ - وَلَيْسَ بِالْقَوِيِّ -.

L29735 Or via the narration of Ibrāhīm ibn Muḥammad ibn Abī Yaḥyā al-Aslamī—who was criticized for lying, as Mālik and others described him—...

أَوْ مِنْ طَرِيقِ إِبْرَاهِيمَ بْنِ مُحَمَّدِ بْنِ أَبِي يَحْيَى الْأَسْلَمِيِّ - وَهُوَ مَذْكُورٌ بِالْكَذِبِ - وَصَفَهُ بِذَلِكَ مَالِكٌ، وَغَيْرُهُ.

L29736 Or through the chain of ʿAmr ibn Shuʿayb, from his father, from his grandfather - and this is a written compilation (ṣaḥīfah).

أَوْ مِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ - وَهِيَ صَحِيفَةٌ.

L29737–29738 Or a *mursal* via the chain of ʿAbd al-Raḥmān ibn Farrūkha.

أَوْ مُرْسَلٌ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ فَرُّوخَ.

L29739 Or a mursal ḥadīth transmitted through the chain of Isḥāq ibn ʿAbd Allāh narrating from Yazīd ibn Ṭalḥah—and the identities of these two narrators are unknown among the people.

أَوْ مُرْسَلٌ مِنْ طَرِيقِ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ عَنْ يَزِيدَ بْنِ طَلْحَةَ - وَلَا يُدْرَى مَنْ هُمَا فِي النَّاسِ.

L29740 Or two *mursal* narrations transmitted through the chain of ʿAbd al-Raḥmān ibn Abī al-Zināḍ.

أَوْ مُرْسَلَانِ: مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ.

L29741 And from the chain of Ibn Samʿān - while Mālik and others besides him have rejected these two.

وَمِنْ طَرِيقِ ابْنِ سَمْعَانَ، وَقَدْ كَذَّبَهُمَا مَالِكٌ، وَغَيْرُهُ.

L29742 Or from the chain of Yazīd al-Jazari - and he is unknown - then if it refers to Ibn Sinan, he is noted for lying.

أَوْ مِنْ طَرِيقِ يَزِيدَ الْجَزَرِيِّ - وَهُوَ مَجْهُولٌ - فَإِنْ كَانَ ابْنُ سِنَانٍ - فَهُوَ مَذْكُورٌ بِالْكَذِبِ.

L29743 Or a Mursal narration reported by Abdullah ibn Salih—and he is weak.

أَوْ مُرْسَلٌ مِنْ رِوَايَةِ عَبْدِ اللَّهِ بْنِ صَالِحٍ - وَهُوَ ضَعِيفٌ.

L29744 All of this is not permissible to cite as evidence.

وَكُلُّ هَذَا لَا يَحِلُّ الِاحْتِجَاجُ بِهِ.

L29745 Moreover, if it were valid, it would contradict their position, for it entails that the testimony of a biased party against his brother is impermissible absolutely and universally—which is our view—whereas they only disallow its acceptance against his enemy and permit it in other cases. This contradicts those authoritative precedents.

ثُمَّ لَوْ صَحَّتْ لَكَانَتْ مُخَالِفَةً لَهُمْ، لِأَنَّ فِيهَا أَنْ لَا تَجُوزَ شَهَادَةُ ذِي الْغِمْرِ عَلَى أَخِيهِ مُطْلَقًا عَامًّا - وَهُوَ قَوْلُنَا - وَهُمْ يَمْنَعُونَهَا مِنْ الْقَبُولِ عَلَى عَدُوِّهِ فَقَطْ، وَيُجِيزُونَهَا عَلَى غَيْرِهِ - وَهَذَا خِلَافٌ لِتِلْكَ الْآثَارِ.

L29746 As for the testimony of a litigant: the claim of a claimant who is litigating on his own behalf is not accepted without evidence.

وَأَمَّا شَهَادَةُ الْخَصْمِ: فَإِنَّ الْمُدَّعِيَ لِنَفْسِهِ الْمُخَاصِمَ لَا تُقْبَلُ دَعْوَاهُ لِنَفْسِهِ بِلَا شَكٍّ.

L29747 Thus, their reliance on those traditions is invalidated even if they were authentic, so how when they are not authentic?

فَبَطَلَ تَعَلُّقُهُمْ بِتِلْكَ الْآثَارِ لَوْ صَحَّتْ، فَكَيْفَ وَهِيَ لَا تَصِحُّ.

L29748 Then We found that Allah, the Most High, has said: “Let not the enmity of a people lead you to abandon justice. Be just; that is nearer to piety” [Al-Mā’idah: 8]. Thus, Allah, the Exalted and Glorious, has commanded us to act justly toward our enemies.[34]

ثُمَّ وَجَدْنَا اللَّهَ تَعَالَى قَدْ قَالَ: {وَلا يَجْرِمَنَّكُمْ شَنَآنُ قَوْمٍ عَلَى أَلا تَعْدِلُوا اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَى} [المائدة: ٨] فَأَمَرَنَا اللَّهُ عَزَّ وَجَلَّ بِالْعَدْلِ عَلَى أَعْدَائِنَا.

L29749 It is valid that whoever judges justly—whether regarding an enemy, a friend, or both—or testifies—being a just person—regarding an enemy, a friend, or both, their testimony is accepted and their judgment is binding. Success is from Allah, the Exalted.

فَصَحَّ أَنَّ مَنْ حَكَمَ بِالْعَدْلِ عَلَى عَدُوِّهِ أَوْ صَدِيقِهِ أَوْ لَهُمَا، أَوْ شَهِدَ - وَهُوَ عَدْلٌ - عَلَى عَدُوِّهِ أَوْ صَدِيقِهِ أَوْ لَهُمَا، فَشَهَادَتُهُ مَقْبُولَةٌ وَحُكْمُهُ نَافِذٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29750 We do not know of anyone who preceded Mālik in asserting the view to reject the testimony of a benevolent friend.

وَمَا نَعْلَمُ أَحَدًا سَبَقَ مَالِكًا إلَى الْقَوْلِ بِرَدِّ شَهَادَةِ الصَّدِيقِ الْمُلَاطِفِ.

L29751 As for those who reject the testimony of the poor, this is a grave matter. Allah the Exalted said: “For the poor Emigrants who were driven from their homes and wealth, seeking bounty from Allah and His approval... It is they who are the truthful” [59:8]. Thus, whoever rejects the testimony of these people is surely at loss, and whoever singles them out to the exclusion of other poor people is self-contradictory. Success is with Allah the Exalted.[35]

وَأَمَّا مَنْ رَدَّ شَهَادَةَ الْفَقِيرِ فَعَظِيمَةٌ، قَالَ اللَّهُ تَعَالَى: {لِلْفُقَرَاءِ الْمُهَاجِرِينَ الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ وَأَمْوَالِهِمْ يَبْتَغُونَ فَضْلا مِنَ اللَّهِ وَرِضْوَانًا} [الحشر: ٨]- إلَى قَوْلِهِ -: {أُولَئِكَ هُمُ الصَّادِقُونَ} [الحشر: ٨] فَمَنْ رَدَّ شَهَادَةَ هَؤُلَاءِ لَخَاسِرٌ، وَإِنَّ مَنْ خَصَّهُمْ دُونَ سَائِرِ الْفُقَرَاءِ لَمُتَنَاقِضٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29752 We do not know of any precedent for these statements of theirs among the

وَمَا نَعْلَمُ لَهُمْ فِي هَذِهِ الْأَقْوَالِ سَلَفًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَصْلًا.

[34] **Qur’an references (L29748):** Qur’an 5:8 (Al-Ma’idah).
[35] **Qur’an references (L29751):** Qur’an 59:8 (Al-Hashr); Qur’an 49:15 (Al-Hujurat).

Companions—may Allah be pleased with them—at all.

L29753–29755 The strangest view is that of Rabi'ah: the testimony of one who contradicts upright individuals in his conduct is rejected, even if he has not been formally charged. From him, regarding matters beyond that—this is utterly astonishing; we do not know from where he derived its permissibility in the religion of Allah, the Exalted and Glorious.

وَأَطْرَفُ شَيْءٍ قَوْلُ رَبِيعَةَ: تُرَدُّ شَهَادَةُ مَنْ خَالَفَ الْعُدُولَ فِي سِيرَتِهِ وَإِنْ لَمْ يُوقَفْ مِنْهُ عَلَى غَيْرِ ذَلِكَ -: فَهَذَا عَجَبٌ جِدًّا، لَا نَدْرِي مِنْ أَيْنَ أَطْلَقَهُ فِي دِينِ اللَّهِ عَزَّ وَجَلَّ.

L29756 **The juridical question of the testimony of two boys who have not attained legal maturity.**

[مَسْأَلَة شَهَادَة مَنْ لَمْ يَبْلُغ مِنْ الصِّبْيَانِ]

L29757 1795 — Issue: The testimony of minors who have not attained legal maturity is not accepted—neither males nor females among them, nor some of them against one another, nor against others [non-minors]—whether in cases involving life, injury, or property. It is impermissible to pass judgment based on any such testimony, neither before their separation nor after their separation—though there is extensive disagreement on this matter. It is authentically reported that Ibn al-Zubayr said: If they are presented at the time of the incident in question, their testimony becomes valid.

١٧٩٥ - مَسْأَلَةٌ: وَلَا تُقْبَلُ شَهَادَةُ مَنْ لَمْ يَبْلُغْ مِنْ الصِّبْيَانِ، لَا ذُكُورِهِمْ وَلَا إنَاثِهِمْ، وَلَا بَعْضِهِمْ عَلَى بَعْضٍ، وَلَا عَلَى غَيْرِهِمْ، لَا فِي نَفْسٍ وَلَا جِرَاحَةٍ، وَلَا فِي مَالٍ، وَلَا يَحِلُّ الْحُكْمُ بِشَيْءٍ مِنْ ذَلِكَ، لَا قَبْلَ افْتِرَاقِهِمْ وَلَا بَعْدَ افْتِرَاقِهِمْ - وَفِي هَذَا خِلَافٌ كَثِيرٌ -: فَصَحَّ عَنْ ابْنِ الزُّبَيْرِ أَنَّهُ قَالَ: إذَا جِيءَ بِهِمْ عِنْدَ الْمُصِيبَةِ جَازَتْ شَهَادَتُهُمْ.

L29758 Ibn Abi Mulaykah said: The judges adopted the opinion of Ibn al-Zubayr—and some of them permitted the testimony of a boy or a slave in a specific matter, not in all things—as was narrated to us from Qatadah through al-Hasan, who reported that Ali ibn Abi Talib said: "A boy's testimony about another boy is permissible, and a slave's testimony about another slave is permissible."

قَالَ ابْنُ أَبِي مُلَيْكَةَ: فَأَخَذَ الْقُضَاةُ بِقَوْلِ ابْنِ الزُّبَيْرِ - وَأَجَازَ بَعْضُهُمْ شَهَادَتَهُمْ فِي خَاصٍّ مِنْ الْأَمْرِ، لَا فِي كُلِّ شَيْءٍ -: كَمَا رُوِّينَا عَنْ قَتَادَةَ عَنْ الْحَسَنِ، قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: شَهَادَةُ الصَّبِيِّ عَلَى الصَّبِيِّ جَائِزَةٌ، وَشَهَادَةُ الْعَبْدِ عَلَى الْعَبْدِ جَائِزَةٌ.

L29759 Al-Hasan said: Mu'awiyah said, "The testimony of prepubescent boys against prepubescent boys is permissible, provided they have not entered houses where they could be coached." A similar ruling is also reported from Ali.

قَالَ الْحَسَنُ: وَقَالَ مُعَاوِيَةُ: شَهَادَةُ الصِّبْيَانِ عَلَى الصِّبْيَانِ جَائِزَةٌ، مَا لَمْ يَدْخُلُوا الْبُيُوتَ فَيُعَلَّمُوا - وَعَنْ عَلِيٍّ مِثْلُ هَذَا أَيْضًا.

L29760 Through the narration of Ibn Abī Shaybah from Wakīʿ, who reported from ʿAbdullāh ibn Ḥabīb ibn Abī Thābit, from al-Shaʿbī, from Masrūq: Six youths went to swim, and one drowned. Three testified against two that they had drowned him, while two testified against three that they had drowned him. ʿAlī ibn Abī Ṭālib ruled that the three were liable for three-fifths of the diyah and the two for two-fifths of the diyah.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ نا عَبْدُ اللَّهِ بْنُ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ: أَنَّ سِتَّةَ غِلْمَانٍ ذَهَبُوا يَسْبَحُونَ، فَغَرِقَ أَحَدُهُمْ، فَشَهِدَ ثَلَاثَةٌ عَلَى اثْنَيْنِ

أَنَّهُمَا غَرَّقَاهُ، وَشَهِدَ اثْنَانِ عَلَى ثَلَاثَةٍ أَنَّهُمْ غَرَّقُوهُ -: فَقَضَى عَلِيُّ بْنُ أَبِي طَالِبٍ عَلَى الثَّلَاثَةِ خُمُسَيْ الدِّيَةِ، وَعَلَى الِاثْنَيْنِ ثَلَاثَةَ أَخْمَاسِ الدِّيَةِ.

L29761 It has also been narrated to us in a similar manner to this from Masruq.

وَرُوِّينَا أَيْضًا نَحْوَ هَذَا عَنْ مَسْرُوقٍ.

L29762 It was narrated to us from Yaḥyā ibn Saʿīd al-Qaṭṭān: Sufyān al-Thawrī narrated to us from Firās, from al-Shaʿbī, from Masrūq that three young male witnesses testified against four, and the four testified against the three. Masrūq thus assigned to the four three-sevenths of the *diyah*, and to the three four-sevenths of the *diyah*.

وَرُوِّينَا عَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نا سُفْيَانُ الثَّوْرِيُّ عَنْ فِرَاسٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ: أَنَّ ثَلَاثَةَ غِلْمَانٍ شَهِدُوا عَلَى أَرْبَعَةٍ، وَشَهِدَ الْأَرْبَعَةُ عَلَى الثَّلَاثَةِ، فَجَعَلَ مَسْرُوقٌ عَلَى الْأَرْبَعَةِ ثَلَاثَةَ أَسْبَاعِ الدِّيَةِ، وَعَلَى الثَّلَاثَةِ أَرْبَعَةَ أَسْبَاعِ الدِّيَةِ.

L29763 It has also been reported to us from Ibn al-Musayyab and al-Zuhri that the testimony of minors is permissible based on their statements - alongside the claimant's oaths - provided they have not yet separated, and that he ruled in accordance with the judgment issued by Ali ibn Abi Talib regarding the blood money for a molar tooth.

وَرُوِّينَا أَيْضًا عَنْ ابْنِ الْمُسَيِّبِ، وَالزُّهْرِيِّ: جَوَازَ شَهَادَةِ الصِّبْيَانِ بِقَوْلِهِمْ - مَعَ أَيْمَانِ الْمُدَّعِي - مَا لَمْ يَتَفَرَّقُوا، وَأَنَّهُ قَضَى بِمِثْلِ مَا قَضَى بِهِ عَلِيُّ بْنُ أَبِي طَالِبٍ فِي دِيَةِ ضِرْسٍ.

L29764 Abu al-Zinad stated: The sunnah is to accept the testimony of minors against one another in injury cases, alongside the oaths of the plaintiffs.

وَعَنْ أَبِي الزِّنَادِ: السُّنَّةُ أَنْ يُؤْخَذَ فِي شَهَادَةِ الصِّبْيَانِ بَعْضِهِمْ عَلَى بَعْضٍ فِي الْجِرَاحِ مَعَ أَيْمَانِ الْمُدَّعِينَ.

L29765–29766 From Umar ibn Abd al-Aziz: He permitted the testimony of minors against one another in cases of closely related injuries. When it involved capital cases, he ruled based on their testimony combined with the oaths of the claimants.

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ أَجَازَ شَهَادَةَ الصِّبْيَانِ بَعْضِهِمْ عَلَى بَعْضٍ فِي الْجِرَاحِ الْمُتَقَارِبَةِ، فَإِذَا بَلَغَتْ النُّفُوسَ قَضَى بِشَهَادَتِهِمْ مَعَ أَيْمَانِ الطَّالِبِينَ.

L29767 And from Rabiʿah: It is permissible for some prepubescent children to testify against others, provided they have not dispersed from the incident.

وَعَنْ رَبِيعَةَ: جَوَازُ شَهَادَةِ بَعْضِ الصِّبْيَانِ عَلَى بَعْضٍ مَا لَمْ يَتَفَرَّقُوا.

L29768 From Shuraih: The testimony of children is accepted if they agree and rejected if they disagree. He also permitted the testimony of children in a penetrating head wound.

وَعَنْ شُرَيْحٍ: أَنَّ شَهَادَةَ الصِّبْيَانِ تُقْبَلُ إذَا اتَّفَقُوا، وَلَا تُقْبَلُ إذَا اخْتَلَفُوا، وَأَنَّهُ أَجَازَ شَهَادَةَ صِبْيَانٍ فِي مَأْمُومَةٍ.

L29769 From Ibn Qusayṭ and Abū Bakr ibn Ḥazm: The testimony of children regarding their mutual affairs is admissible provided they have not yet dispersed [from the scene].

وَعَنْ ابْنِ قُسَيْطٍ، وَأَبِي بَكْرِ بْنِ حَزْمٍ: قَبُولُ شَهَادَةِ الصِّبْيَانِ فِيمَا بَيْنَهُمْ مَا لَمْ يَتَفَرَّقُوا.

وَعَنْ عَطَاءٍ، وَالْحَسَنِ: تَجُوزُ شَهَادَةُ الصِّبْيَانِ عَلَى الصِّبْيَانِ.

L29770 The testimony of prepubescent children against prepubescent children is valid.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ: تَجُوزُ شَهَادَةُ الصِّبْيَانِ بَعْضِهِمْ عَلَى بَعْضٍ، وَقَالَ: كَانُوا يُجِيزُونَهَا فِيمَا بَيْنَهُمْ.

L29771 From Ibrāhīm al-Nakhaʿī: The testimony of young boys among each other is permissible. He said: They would permit it among themselves.

وَقَالَ ابْنُ أَبِي لَيْلَى: تَجُوزُ شَهَادَةُ الصِّبْيَانِ بَعْضِهِمْ عَلَى بَعْضٍ فِي كُلِّ شَيْءٍ.

L29772 Ibn Abī Laylā said: The testimony of prepubescent boys against one another is permissible in all matters.

وَقَالَ مَالِكٌ: تَجُوزُ شَهَادَةُ الصِّبْيَانِ عَلَى الصِّبْيَانِ فَقَطْ، وَلَا تَجُوزُ شَهَادَتُهُمْ عَلَى صَغِيرٍ أَنَّهُ جَرَحَ كَبِيرًا، وَلَا عَلَى كَبِيرٍ أَنَّهُ جَرَحَ صَغِيرًا، وَلَا تَجُوزُ إلَّا فِي الْجِرَاحِ خَاصَّةً، وَلَا تَجُوزُ شَهَادَةُ الصَّبَايَا فِي شَيْءٍ مِنْ ذَلِكَ أَصْلًا، وَلَا تَجُوزُ فِي شَيْءٍ مِنْ ذَلِكَ شَهَادَةُ مَنْ كَانَ مِنْهُمْ عَبْدًا، فَإِنْ اخْتَلَفُوا لَمْ يُلْتَفَتْ شَيْءٌ مِنْ قَوْلِهِمْ وَقُضِيَ عَلَى جَمِيعِهِمْ بِالدِّيَةِ سَوَاءً.

L29773 Malik said: The testimony of male minors is permissible only regarding male minors. Their testimony is not permissible concerning a minor that he injured an adult, nor concerning an adult that he injured a minor. It is not permissible except in cases of injuries specifically. The testimony of female minors is entirely invalid in any such matters whatsoever, nor is the testimony of those among them who are slaves permissible in these cases. If their testimonies contradict, none of their statements are considered, and judgment is rendered against all of them collectively for the payment of the *diyah* equally.

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ عَنْ أَحَدٍ قَبْلَهُ فَرْقًا بَيْنَ صَبِيٍّ وَصَبِيَّةٍ وَلَا بَيْنَ عَبْدٍ مِنْهُمْ مِنْ حُرٍّ.

L29774 Abu Muhammad said: We do not know of anyone before him making a distinction between a boy and a girl, nor between a slave among them and a free person.

وَقَالَتْ طَائِفَةٌ: لَا تُقْبَلُ شَهَادَتُهُمْ فِي شَيْءٍ أَصْلًا، كَمَا ذَكَرْنَا قَبْلُ عَنْ عُمَرَ، وَعُثْمَانَ فِي الصَّغِيرِ يَشْهَدُ فَتُرَدُّ شَهَادَتُهُ، ثُمَّ يَبْلُغُ فَيَشْهَدُ بِتِلْكَ الشَّهَادَةِ أَنَّهَا لَا تُقْبَلُ.

L29775 A group has stated: their testimony is not accepted in any matter whatsoever, as we previously mentioned from Umar ibn al-Khattab and Uthman ibn Affan regarding the minor who testifies—his testimony is rejected. Then, when he reaches adulthood and testifies to that same testimony, it is not accepted.

وَصَحَّ عَنْ ابْنِ عَبَّاسٍ مِنْ طَرِيقِ ابْنِ أَبِي مُلَيْكَةَ: لَا تُقْبَلُ شَهَادَةُ الصِّبْيَانِ فِي شَيْءٍ.

L29776 It is authentically reported from Ibn Abbas via the chain of Ibn Abi Mulaykah: The testimony of pre-pubescent children is not accepted in any legal case.

وَعَنْ عَطَاءٍ: لَا تَجُوزُ شَهَادَةُ الْغِلْمَانِ حَتَّى يَكْبَرُوا - وَعَنْ قَاسِمِ بْنِ مُحَمَّدٍ، وَسَالِمٍ، وَالنَّخَعِيِّ مِثْلُ قَوْلِ عَطَاءٍ.

L29777 And from ‘Ata’: The testimony of boys is not permissible until they reach legal maturity. Qasim ibn Muhammad, Salim, and al-Nakha’i held the same opinion as ‘Ata’.

وَعَنْ الْحَسَنِ: لَا تُقْبَلُ شَهَادَةُ الْغِلْمَانِ عَلَى الْغِلْمَانِ.

L29778 And from al-Ḥasan: The testimony of minors against other minors is not accepted.

وَعَنْ ابْنِ سِيرِينَ: لَا تُقْبَلُ شَهَادَتُهُمْ حَتَّى يَبْلُغُوا.

L29779–29780 It is narrated from Ibn Sīrīn: Their testimony is not accepted until they reach maturity.

وَعَنْ الشَّعْبِيِّ، وَشُرَيْحٍ: أَنَّهُمَا كَانَا يَقْبَلَانِهَا إذَا ثَبَتُوا عَلَيْهَا حَتَّى يَبْلُغُوا.

L29781 It is narrated from Al-Sha'bī and Shurayḥ that they [the two jurists] would accept the testimony [of minors] if the witnesses persisted in their account until they reached puberty.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ الزُّهْرِيِّ فِي غِلْمَانٍ شَهِدَ بَعْضُهُمْ عَلَى بَعْضٍ بِكَسْرِ يَدِ صَبِيٍّ مِنْهُمْ؟ فَقَالَ: لَمْ تَكُنْ شَهَادَةُ الْغِلْمَانِ فِيمَا مَضَى مِنْ الزَّمَانِ تُقْبَلُ - وَأَوَّلُ مَنْ قَضَى بِذَلِكَ مَرْوَانُ.

L29782 From Abd al-Razzaq, from Ibn Jurayj, from al-Zuhri concerning a case where some boys testified against others about the fracture of a boy's hand among them. He was asked: "Was the testimony of boys not accepted in past times?" He replied: "It was not accepted—the first to judge by this ruling was Marwan."

قَالَ أَبُو مُحَمَّد: وَبِمِثْلِ قَوْلِنَا يَقُولُ مَكْحُولٌ، وَسُفْيَانُ الثَّوْرِيُّ، وَابْنُ شُبْرُمَةَ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ، وَأَبُو عُبَيْدَةَ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا.

L29783 Abu Muhammad said: The following hold an opinion similar to ours: Makḥūl, Sufyān al-Thawrī, Ibn Shubrumah, Isḥāq ibn Rāhawayh, Abū 'Ubayda, Abū Ḥanīfa, al-Shāfi'ī, Aḥmad ibn Ḥanbal, Abū Sulaymān, and all our companions.

قَالَ عَلِيٌّ: لَمْ نَجِدْ لِمَنْ أَجَازَ شَهَادَةَ الصِّبْيَانِ حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قِيَاسٍ، وَلَا نَظَرٍ، وَلَا احْتِيَاطٍ، بَلْ هُوَ قَوْلٌ مُتَنَاقِضٌ، لِأَنَّهُمْ فَرَّقُوا بَيْنَ شَهَادَتِهِمْ عَلَى كَبِيرٍ أَوْ لِكَبِيرٍ، وَبَيْنَ شَهَادَتِهِمْ عَلَى صَغِيرٍ أَوْ لِصَغِيرٍ.

L29784 Ali said: We have found no foundational proof whatsoever for those who validate the testimony of minors—neither from the Quran, nor the Sunnah, nor a weak narration, nor analogy, nor rational consideration, nor precautionary principle. Rather, it is a self-contradictory view, for they differentiated between their testimony against an adult or in favor of an adult, and their testimony against a minor or in favor of a minor.

وَفَرَّقَ مَالِكٌ بَيْنَ الْجِرَاحِ وَغَيْرِهَا، فَلَمْ يُجِزْهَا فِي تَخْرِيقِ ثَوْبٍ يُسَاوِي رُبُعَ دِرْهَمٍ، وَأَجَازَهَا فِي النَّفْسِ وَالْجِرَاحِ.

L29785 Malik distinguished between injuries and other offenses, disallowing retaliation for tearing a garment worth a quarter of a dirham, but permitting it in cases involving loss of life or injuries.

وَفَرَّقَ بَيْنَ الصَّبَايَا وَالصِّبْيَانِ - وَهَذَا كُلُّهُ تَحَكُّمٌ بِالْبَاطِلِ، وَخَطَأٌ لَا خَفَاءَ بِهِ، وَأَقْوَالٌ لَا يَحِلُّ قَبُولُهَا مِنْ غَيْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L29786 He differentiated between young girls and young boys—all of this represents arbitrary judgment based on falsehood, is a manifest error, and includes statements impermissible to accept from anyone besides the Messenger of Allah—may Allah bless him and grant him peace.

L29787 The Companions differed regarding that, and the evidence of those who held our opinion is the statement of Allah the Exalted: {And take as witnesses two

just men from among you} [At-Talaq: 2] and His saying: {from among those witnesses whom you approve} [Al-Baqarah: 282]. Boys are not considered two just men, nor are they approved. The Messenger of Allah - peace and blessings be upon him - said: “The pen is raised from three,” and among them he mentioned the boy until he reaches puberty.[36]

L29788 There is nothing more astonishing than rejecting the testimony of a virtuous, righteous, just, and approved enslaved person—while accepting the testimony of two minors who lack rationality and religion—for this alone suffices.

L29789 And success is from Allah, the Most High.

L29790–29791 The jurisprudential principle is that a judge’s ruling does not render unlawful things lawful nor declare lawful things unlawful.

L29792 Issue: The judgment of a judge does not render permissible what was unlawful prior to his ruling, nor does it render unlawful what was permissible prior to his ruling. The judge is merely an enforcer against the defiant party alone—he possesses no distinction beyond this.

L29793 Abu Hanifa said: If a man bribes two witnesses to testify falsely for him that so-and-so divorced his wife so-and-so and emancipated his slave girl so-and-so – while they are willfully lying – and the two women, after completing their waiting period, consent to marry so-and-so, and the judge rules in accordance with this testimony, then marital relations with those two women are lawful for the wrongdoer on whose behalf they testified falsely, and forbidden for the one against whom false testimony was given.

L29794 Similarly, if someone produced two false witnesses against so-and-so, testifying that he gave his daughter in marriage to him with her consent—though in reality she never consented to him at all, nor did her father give her in

[36] **Qur’an references (L29787):** Qur’an 65:2 (At-Talaq); Qur’an 2:282 (Al-Baqarah).

وَقَدْ اخْتَلَفَ الصَّحَابَةُ فِي ذَلِكَ، وَحُجَّةُ مَنْ قَالَ بِقَوْلِنَا هُوَ قَوْلُ اللَّهِ تَعَالَى {وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ} [الطلاق: ٢] وَقَالَ: {مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ} [البقرة: ٢٨٢] وَلَيْسَ الصِّبْيَانُ ذَوَيْ عَدْلٍ وَلَا يَرْضَاهُمْ. وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ، فَذَكَرَ الصَّبِيَّ حَتَّى يَبْلُغَ» .

وَلَيْسَ فِي الْعَجَبِ أَكْثَرُ مِنْ رَدِّ شَهَادَةِ عَبْدٍ فَاضِلٍ، صَالِحٍ عَدْلٍ، رَضِيٍّ - وَتُقْبَلُ شَهَادَةِ صَبِيَّيْنِ لَا عَقْلَ لَهُمَا، وَلَا دِينَ، وَفِي هَذَا كِفَايَةٌ -.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة حُكْم الْقَاضِي لَا يَحِلّ حراما وَلَا يحرم حلالا]

مَسْأَلَةٌ: وَحُكْمُ الْقَاضِي لَا يُحِلُّ مَا كَانَ حَرَامًا قَبْلَ قَضَائِهِ، وَلَا يُحَرِّمُ مَا كَانَ حَلَالًا قَبْلَ قَضَائِهِ، إنَّمَا الْقَاضِي مُنَفِّذٌ عَلَى الْمُمْتَنِعِ فَقَطْ - لَا مَزِيَّةَ لَهُ سِوَى هَذَا.

وَقَالَ أَبُو حَنِيفَةَ: لَوْ أَنَّ امْرَأً رَشَا شَاهِدَيْنِ فَشَهِدَا لَهُ بِزُورٍ أَنَّ فُلَانًا طَلَّقَ امْرَأَتَهُ فُلَانَةَ، وَأَعْتَقَ أَمَتَهُ فُلَانَةَ - وَهُمَا كَاذِبَانِ مُتَعَمِّدَانِ - وَأَنَّ الْمَرْأَتَيْنِ بَعْدَ الْعِدَّةِ رَضِيَتَا بِفُلَانٍ زَوْجًا، فَقَضَى الْقَاضِي بِهَذِهِ الشَّهَادَةِ، فَإِنَّ وَطْءَ تَيْنِكَ الْمَرْأَتَيْنِ: حَلَالٌ لِلْفَاسِقِ الَّذِي شَهِدُوا لَهُ بِالزُّورِ، وَحَرَامٌ عَلَى الْمَشْهُودِ عَلَيْهِ بِالْبَاطِلِ.

وَكَذَلِكَ مَنْ أَقَامَ شَاهِدَيْ زُورٍ عَلَى فُلَانٍ أَنَّهُ أَنْكَحَهُ ابْنَتَهُ بِرِضَاهَا - وَهِيَ فِي الْحَقِيقَةِ لَمْ تَرْضَهُ قَطُّ، وَلَا زَوَّجَهَا إيَّاهُ أَبُوهَا - فَقَضَى الْقَاضِي بِذَلِكَ، فَوَطْؤُهُ لَهَا حَلَالٌ.

marriage to him—and the judge ruled accordingly, then his intercourse with her is permissible.

L29795 Abu Muhammad said: We know of no Muslim before him who perpetrated such calamitous deviations, and we disassociate ourselves to Allah the Exalted from them. Would that I knew: What difference exists between this and one who produces two false witnesses to testify against his mother that she is an unrelated woman, that she has consented to marry him, or to testify against a free man that he is his slave - so the judge ruled in his favor based on that? No Muslim before Abu Hanifah was ever known to differentiate between any of these matters.

L29796 It has been authentically reported from the Messenger of Allah (peace be upon him) that he said: "Indeed, your blood, your wealth, your honor, and your skins are forbidden for you to violate."

L29797 From the chain of Ahmad ibn Shu'ayb: Ishaq ibn Ibrahim narrated to us, reporting from Abd al-Razzaq, who reported from Ma'mar, from al-Zuhri, from Urwah ibn al-Zubayr, from Zaynab bint Umm Salamah, from Umm Salamah, the Mother of the Believers—may Allah be pleased with her—that the Prophet—peace and blessings be upon him—said: "You bring your disputes to me, though I am only human. It may be that one of you presents his case more effectively than another, so I rule in his favor based on what I hear and deem him truthful. Whoever I grant a ruling that awards him something rightfully belonging to another—this is but a fragment of Hellfire. Let him take it or leave it." If the ruling and judgment of the Prophet—peace and blessings be upon him—do not render lawful for anyone what was forbidden to them, then what of the rulings issued by others after him? We seek refuge in Allah the Exalted from divine forsakenness.

The issue of deliberation in executing the judgment once it becomes clear.

L29798–29799

L29800 Issue: It is not permissible to delay the execution of a ruling once it becomes evident. This is the view of al-Shāfiʿī, Abū Sulaymān, and our associates.

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ مُسْلِمًا قَبْلَهُ أَتَى بِهَذِهِ الطَّوَامِّ، وَنَبْرَأُ إِلَى اللَّهِ تَعَالَى مِنْهَا وَلَيْتَ شِعْرِي مَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ مَنْ شَهِدَ لَهُ شَاهِدَا زُورٍ فِي أُمِّهِ أَنَّهَا أَجْنَبِيَّةٌ، وَأَنَّهَا قَدْ رَضِيَتْ بِهِ زَوْجًا، أَوْ عَلَى حُرٍّ أَنَّهُ عَبْدُهُ فَقَضَى لَهُ الْقَاضِي بِذَلِكَ؟ وَمَا عُلِمَ مُسْلِمٌ قَطُّ قَبْلَ أَبِي حَنِيفَةَ فَرَّقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ.

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ زَيْنَبَ بِنْتِ أُمِّ سَلَمَةَ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - أَنَّهُ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «إِنَّكُمْ تَخْتَصِمُونَ إِلَيَّ وَإِنَّمَا أَنَا بَشَرٌ فَلَعَلَّ أَحَدَكُمْ أَنْ يَكُونَ أَعْلَمَ بِحُجَّتِهِ مِنْ بَعْضٍ فَأَقْضِيَ لَهُ بِمَا أَسْمَعُ وَأَظُنُّهُ صَادِقًا فَمَنْ قَضَيْتُ لَهُ بِشَيْءٍ مِنْ حَقِّ صَاحِبِهِ فَإِنَّمَا هِيَ قِطْعَةٌ مِنْ النَّارِ فَلْيَأْخُذْهَا أَوْ لِيَدَعْهَا» فَإِذَا كَانَ حُكْمُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَقَضَاؤُهُ لَا يُحِلُّ لِأَحَدٍ مَا كَانَ عَلَيْهِ حَرَامًا فَكَيْفَ الْقَوْلُ فِي قَضَاءِ أَحَدٍ بَعْدَهُ - وَنَعُوذُ بِاَللَّهِ تَعَالَى مِنْ الْخِذْلَانِ.

[مَسْأَلَة التأني فِي أنفاذ الْحُكْم إِذا ظَهَرَ]

مَسْأَلَةٌ: وَلَا يَحِلُّ التَّأَنِّي فِي إنْفَاذِ الْحُكْمِ إذَا ظَهَرَ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L29801 Abu Hanifah said: If the judge hopes for the two disputants to reconcile, there is no harm in adjourning the case once or twice. But if he loses hope in that, he should pass judgment.

وَقَالَ أَبُو حَنِيفَةَ: إِذَا طَمِعَ الْقَاضِي أَنْ يَصْطَلِحَ الْخَصْمَانِ فَلَا بَأْسَ أَنْ يَرُدَّهُمَا الْمَرَّةَ وَالْمَرَّتَيْنِ، فَإِنْ لَمْ يَطْمَعْ فِي ذَلِكَ فَصَلَ الْقَضَاءَ.

L29802 Malik said: There is no harm in allowing litigants to prolong their dispute. He then opined that for the defendant against whom testimony is sought or the claimant with unavailable evidence, a deadline should be set: eight days, then another eight days, then another eight days, followed by three mandatory days - totaling thirty days. The judge's adjournment day is excluded from the count of the eight-day periods.

وَقَالَ مَالِكٌ: لَا بَأْسَ بِتَرْدِيدِ الْخُصُومِ، ثُمَّ رَأَى أَنْ يُجْعَلَ لِلْمَشْهُودِ عَلَيْهِ أَوْ الْمُدَّعِي بَيِّنَةً غَائِبَةً: أَجَلُ ثَمَانِيَةُ أَيَّامٍ، ثُمَّ ثَمَانِيَةُ أَيَّامٍ، ثُمَّ ثَمَانِيَةُ أَيَّامٍ، ثُمَّ تَلْزَمُ ثَلَاثَةُ أَيَّامٍ، فَذَلِكَ ثَلَاثُونَ يَوْمًا - لَا يُعَدُّ فِي الثَّمَانِيَةِ يَوْمُ تَأْجِيلِ الْحَاكِمِ.

L29803 Ali said: As for the opinion of Abū Ḥanīfah, it is invalid because there is no difference between repeating two times and repeating three times or four, and so on, increasing until the end of one's lifetime. Otherwise: "Produce your proof, if you are truthful" [Quran 2:111].[37]

قَالَ عَلِيٌّ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفَاسِدٌ، لِأَنَّهُ لَا فَرْقَ بَيْنَ تَرْدِيدِ مَرَّتَيْنِ وَتَرْدِيدِ ثَلَاثِ مِرَارٍ أَوْ أَرْبَعٍ، وَهَكَذَا مَا زَادَ إلَى انْقِضَاءِ الْعُمْرِ، وَإِلَّا فَ {هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] .

L29804 As for Mālik's statement—we know of none who asserted it before him given its inherent corruption, for there is no distinction between postponing thirty days and postponing two months, three months, four months, a year, two years, or four years. What difference is there between one who claims evidence within half a month and one who claims it in Khurāsān while being in al-Andalus, or claims it in al-Andalus while being in Khurāsān? Is this not mere arbitrary judgment based on falsehood? Abū Muḥammad said: Some of them argued using the report from 'Umar: "Repeatedly delay the litigants until they reconcile, for judicial rulings breed resentments."

وَأَمَّا قَوْلُ مَالِكٍ - فَمَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ مَعَ عَظِيمِ فَسَادِهِ، لِأَنَّهُ لَا فَرْقَ بَيْنَ تَأْجِيلِ ثَلَاثِينَ يَوْمًا، وَبَيْنَ تَأْجِيلِ شَهْرَيْنِ أَوْ ثَلَاثَةٍ أَوْ أَرْبَعَةٍ، أَوْ عَامٍ، أَوْ عَامَيْنِ، أَوْ أَرْبَعَةِ أَعْوَامٍ - وَمَا الْفَرْقُ بَيْنَ مَنْ ادَّعَى بَيِّنَةً عَلَى نِصْفِ شَهْرٍ وَبَيْنَ مَنْ ادَّعَاهَا بِخُرَاسَانَ، وَهُوَ بِالْأَنْدَلُسِ أَوْ ادَّعَاهَا بِالْأَنْدَلُسِ، وَهُوَ بِخُرَاسَانَ، وَهَلْ هُوَ إِلَّا التَّحَكُّمُ بِالْبَاطِلِ؟ قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ بَعْضُهُمْ بِالرِّوَايَةِ عَنْ عُمَرَ: رَدِّدُوا الْخُصُومَ حَتَّى يَصْطَلِحُوا فَإِنَّ فَصْلَ الْقَضَاءِ يُورِثُ الضَّغَائِنَ.

L29805 Ali said: This cannot be authentically attributed to Umar, for the strongest of its chains is through Muharib ibn Dithar – and Muharib did not meet Umar.

قَالَ عَلِيٌّ: هَذَا لَا يَصِحُّ عَنْ عُمَرَ، لِأَنَّ أَحْسَنَ طُرُقِهِ: مُحَارِبُ بْنُ دِثَارٍ أَنَّ عُمَرَ - وَمُحَارِبٌ لَمْ يُدْرِكْ عُمَرَ -.

L29806 Moreover, even if it were valid, it would contain no proof, for no valid proof exists in anyone other than the Messenger of Allah—may Allah bless him

ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ حُجَّةٌ، لِأَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَعَاذَ اللَّهِ أَنْ يَصِحَّ هَذَا عَنْ عُمَرَ، لِأَنَّ فِيهِ الْمَنْعَ جُمْلَةً مِنْ إنْفَاذِ الْحَقِّ، لِأَنَّ عِلَّةَ

[37] **Qur'an references (L29803):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

and grant him peace. Allah forbid that this could be authentically ascribed to Umar, for it completely obstructs the execution of justice, as the legal rationale for transmitting resentments is inherently perpetual within it. If observing it were obligatory, it would remain so forever, and if not obligatory, it would never be required even for an instant. In any case, they contradicted his position, for he did not specify a month or two months.

L29807–29809 In the forged letter attributed to ʿUmar: Set a deadline for anyone who claims an absent right or evidence, such that [the matter] must be concluded by that term. If he presents his evidence by that deadline, his right shall be secured; otherwise, fulfillment of the obligation is required, for this is more thorough in validating the excuse and clarifying ambiguity.

L29810 Abū Muḥammad said: This is not authentically reported from ʿUmar. In any case, Mālik opposed him because ʿUmar did not fix a month for that—neither a shorter nor a longer period. None of this has ever been reported from the Messenger of Allāh—peace and blessings be upon him—that he rejected litigants after the truth became evident. Rather, he ruled by evidence against the claimant, imposed the oath immediately upon the denier, and ordered the confessor to execute the judgment immediately.

L29811 And Allah, the Exalted, said: "Be upholders of justice." [An-Nisāʾ: 135][38]

L29812 Allah, the Exalted, said: "Cooperate with one another in furtherance of righteousness and piety" [Quran 5:2].[39]

L29813 And He, the Exalted, said: *"Hasten toward forgiveness from your Lord"* [Āl ʿImrān: 133].[40]

L29814 So whoever judges by the truth when it becomes apparent to him has indeed upheld justice, assisted in upholding righteousness and piety, and hastened toward forgiveness from his Lord. But whoever wavers in that: neither hastening toward forgiveness from his Lord, nor upholding justice, nor assisting in upholding righteousness and piety.

[38]**Qur'an references (L29811):** Qur'an 4:135 (An-Nisa).
[39]**Qur'an references (L29812):** Qur'an 5:2 (Al-Ma'idah).
[40]**Qur'an references (L29813):** Qur'an 3:133 (Ali 'Imran).

تَوْرِيثِ الضَّغَائِنِ مَوْجُودَةٌ فِي ذَلِكَ أَبَدًا، فَإِنْ وَجَبَ أَنْ يُرَاعَى وَجَبَ ذَلِكَ أَبَدًا، وَإِنْ لَمْ يَجِبْ أَنْ يُرَاعَى فَلَا يَجِبُ ذَلِكَ طَرْفَةَ عَيْنٍ، وَعَلَى كُلِّ حَالٍ فَقَدْ خَالَفُوهُ، لِأَنَّهُ لَمْ يَحُدَّ شَهْرًا وَلَا شَهْرَيْنِ.

وَفِي الرِّسَالَةِ الْمَكْذُوبَةِ عَنْ عُمَرَ: اجْعَلْ لِمَنْ ادَّعَى حَقًّا غَائِبًا أَوْ بَيِّنَةً أَمَدًا يَنْتَهِي إِلَيْهِ فَإِنْ أَحْضَرَ بَيِّنَتَهُ إِلَى ذَلِكَ الْأَمَدِ: أَخَذْت لَهُ بِحَقِّهِ، وَإِلَّا أَوْجَبْت عَلَيْهِ الْقَضَاءَ، فَإِنَّهُ أَبْلَغُ لِلْعُذْرِ وَأَجْلَى لِلْعَمَى.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا يَصِحُّ عَنْ عُمَرَ، وَعَلَى كُلِّ حَالٍ فَقَدْ خَالَفَهُ مَالِكٌ، لِأَنَّ عُمَرَ لَمْ يَحُدَّ فِي ذَلِكَ شَهْرًا - وَلَا أَقَلَّ وَلَا أَكْثَرَ - وَهَذَا كُلُّهُ لَمْ يَأْتِ قَطُّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ رَدَّ خُصُومًا بَعْدَ مَا ظَهَرَ الْحَقُّ بَلْ قَضَى بِالْبَيِّنَةِ عَلَى الطَّالِبِ، وَأَلْزَمَ الْمُنْكِرَ الْيَمِينَ فِي الْوَقْتِ وَأَمَرَ الْمُقِرَّ بِالْقَضَاءِ فِي الْوَقْتِ.

وَقَالَ اللَّهُ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥]

وَقَالَ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢] .

وَقَالَ تَعَالَى: {وَسَارِعُوا إِلَى مَغْفِرَةٍ مِنْ رَبِّكُمْ} [آل عمران: ١٣٣] .

فَمَنْ حَكَمَ بِالْحَقِّ حِينَ يَبْدُو إلَيْهِ فَقَدْ قَامَ بِالْقِسْطِ، وَأَعَانَ عَلَى الْبِرِّ وَالتَّقْوَى وَسَارَعَ إلَى مَغْفِرَةٍ مِنْ رَبِّهِ، وَمَنْ تَرَدَّدَ فِي ذَلِكَ، فَلَمْ يُسَارِعْ إلَى مَغْفِرَةٍ مِنْ رَبِّهِ وَلَا قَامَ بِالْقِسْطِ، وَلَا أَعَانَ عَلَى الْبِرِّ وَالتَّقْوَى.

[مَسْأَلَة إِذَا تداعى الزَّوْجَانِ فِي مَتَاع الْبَيْت]

١٧٩٨ - مَسْأَلَةٌ: وَإِذَا تَدَاعَى الزَّوْجَانِ فِي مَتَاعِ الْبَيْتِ بَعْدَ الطَّلَاقِ، أَوْ بِغَيْرِ طَلَاقٍ، أَوْ تَدَاعَى الْوَرَثَةُ بَعْدَ مَوْتِهِمَا أَوْ مَوْتِ أَحَدِهِمَا، فَهُوَ كُلُّهُ بَيْنَهُمَا بِنِصْفَيْنِ مَعَ الْأَيْمَانِ، سَوَاءٌ كَانَ مِمَّا لَا يَصْلُحُ إِلَّا لِلرِّجَالِ كَالسِّلَاحِ وَنَحْوِهِ، أَوْ مِمَّا لَا يَصْلُحُ إِلَّا لِلنِّسَاءِ كَالْحُلِيِّ وَنَحْوِهِ، أَوْ كَانَ مِمَّا يَصْلُحُ لِلْكُلِّ.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا كَثِيرًا -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ: الْبَيْتُ لِلْمَرْأَةِ إِلَّا مَا عُرِفَ لِلرَّجُلِ.

وَبِهِ إِلَى مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ مِثْلُ قَوْلِ الزُّهْرِيِّ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَبِيهِ عَنْ الْحَسَنِ قَالَ: إِذَا مَاتَ الزَّوْجُ فَلِلْمَرْأَةِ مَا أُغْلِقَ عَلَيْهِ بَابُهَا.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ قَالَ: لَيْسَ لِلرَّجُلِ إِلَّا سِلَاحُهُ وَثِيَابُ جِلْدِهِ.

وَقَالَ ابْنُ أَبِي لَيْلَى: كُلُّ مَا فِي الْبَيْتِ فَلِلرَّجُلِ إِلَّا مَا كَانَ عَلَى الْمَرْأَةِ مِنْ الثِّيَابِ، وَالدِّرْعِ، وَالْخِمَارِ.

وَقَالَ إِبْرَاهِيمُ النَّخَعِيُّ: مَا كَانَ مِنْ مَتَاعِ الرِّجَالِ فَلِلرَّجُلِ، وَمَا كَانَ مِنْ مَتَاعِ النِّسَاءِ فَلِلْمَرْأَةِ، وَمَا صَلَحَ لَهُمَا فَهُوَ لِلْحَيِّ مِنْهُمَا فِي مَوْتِ أَحَدِهِمَا، وَأَمَّا فِي الْفُرْقَةِ فَهُوَ لِلرَّجُلِ.

An Issue: When the Two Spouses Dispute Ownership of Household Goods.

Issue 1798: If the spouses dispute over household belongings after divorce or without divorce, or if the legal heirs dispute after the death of both spouses or one of them, all property is divided between them in two halves with oaths - whether it is of the kind exclusively suitable for men (such as weapons), the kind exclusively suitable for women (such as jewelry), or the kind suitable for both.

People have differed greatly regarding this: It has been narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī: "The house belongs to the woman, except what is recognized for the man."

And through him up to Maʿmar, from Ayyūb al-Sikhtiyānī, from Abī Qilābah: similar to the opinion of al-Zuhrī.

And through the chain of ʿAbd al-Razzāq from al-Muʿtamir ibn Sulaymān al-Taymī from his father from al-Ḥasan, who said: When a husband dies, the wife is entitled to the contents of her residence.

Through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Yūnus ibn ʿUbayd, from al-Ḥasan, who said: "A man owns nothing except his weapon and his leather garments."

Ibn Abi Layla said: Everything in the house belongs to the man except what is on the woman—her garments, outer garment, and head-veil.

Ibrahim al-Nakhaʿī said: What is of men's personal effects belongs to the man, and what is of women's personal effects belongs to the woman. What is suitable for both belongs to the surviving spouse upon the death of either, but in divorce, it belongs to the man.

This is the opinion of Abū Ḥanīfah regarding cases requiring oaths: If one

party is free and the other is enslaved, the entire property is awarded to the free person upon his oath.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ مَعَ الْأَيْمَانِ، فَإِنْ كَانَ أَحَدُهُمَا حُرًّا وَالْآخَرُ مَمْلُوكًا، فَالْمَالُ كُلُّهُ لِلْحُرِّ مَعَ يَمِينِهِ.

L29825 And Muhammad ibn al-Hasan said likewise, except in the case of death, for it belongs to the man or his heirs along with an oath.

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ كَذَلِكَ، إِلَّا فِي الْمَوْتِ فَإِنَّهُ لِلرَّجُلِ أَوْ لِوَرَثَتِهِ مَعَ الْيَمِينِ.

L29826 Abu Yusuf said: Regarding what is exclusively suitable for women, the woman is granted from it what is customarily prepared for her peers, except [what pertains to] her husband. The remainder—from this and other sources—is allocated to the man, along with his oath. Death and divorce are treated equally in this matter.

وَقَالَ أَبُو يُوسُفَ: مَا كَانَ لَا يَصْلُحُ إِلَّا لِلنِّسَاءِ فَإِنَّهُ يَقْضِي مِنْهُ لِلْمَرْأَةِ مَا يُجَهَّزُ بِهِ مِثْلُهَا، إِلَّا زَوْجَهَا وَالْبَاقِي مِنْهُ وَمِنْ غَيْرِهِ لِلرَّجُلِ مَعَ يَمِينِهِ - الْمَوْتُ وَالطَّلَاقُ سَوَاءٌ فِي ذَلِكَ.

L29827 Uthman al-Batti, Abdullah ibn al-Hasan, al-Hasan ibn Ḥiyy, and Zufar—in one of his two opinions—stated: What pertains to men belongs to the man upon his oath, what pertains to women belongs to the woman upon her oath, and what pertains to both is divided equally between them upon their oaths.

وَقَالَ عُثْمَانُ الْبَتِّيُّ وَعَبْدُ اللَّهِ بْنُ الْحَسَنِ، وَالْحَسَنُ بْنُ حَيٍّ، وَزُفَرُ فِي أَحَدِ قَوْلَيْهِ مَا صَلَحَ لِلرِّجَالِ فَهُوَ لِلرَّجُلِ مَعَ يَمِينِهِ، وَمَا صَلَحَ لِلنِّسَاءِ فَلِلْمَرْأَةِ مَعَ يَمِينِهَا وَمَا صَلَحَ لَهُمَا فَبَيْنَهُمَا بِنِصْفَيْنِ مَعَ أَيْمَانِهِمَا.

L29828 Mālik said: What is suitable for men belongs to the man with his oath; what is suitable for women belongs to the woman with her oath; and what is suitable for both belongs to the man with his oath. Death and divorce are the same.

وَقَالَ مَالِكٌ: مَا صَلَحَ لِلرِّجَالِ فَهُوَ لِلرَّجُلِ مَعَ يَمِينِهِ، وَمَا صَلَحَ لِلْمَرْأَةِ فَهُوَ لِلْمَرْأَةِ مَعَ يَمِينِهَا، وَمَا صَلَحَ لَهُمَا فَهُوَ لِلرَّجُلِ مَعَ يَمِينِهِ الْمَوْتُ وَالْفُرْقَةُ سَوَاءٌ.

L29829 Abū Muḥammad said: All these opinions—their mutual weakness alone suffices as evidence of their flaws. We know of no one preceding Mālik who advanced the aforementioned position.

وَقَالَ أَبُو مُحَمَّد: كُلُّ هَذِهِ آرَاءٌ يَكْفِي مِنْ فَسَادِهَا تَخَاذُلُهَا، وَمَا نَعْلَمُ لِمَالِكٍ أَحَدًا تَقَدَّمَهُ إِلَى قَوْلِهِ الْمَذْكُورِ.

L29830 Ali said: When a ruling is established according to them to apply what is exclusively suitable for men to a man, and what is exclusively suitable for women to a woman, what purpose do oaths serve in that matter? For it is established that the ruling belongs to the one for whom they ruled - even if it had not yet been established for him - and thus neither of the two has a greater entitlement to it than the other.

قَالَ عَلِيٌّ: إِذَا وَجَبَ عِنْدَهُمْ الْقَضَاءُ بِمَا لَا يَصْلُحُ إِلَّا لِلرِّجَالِ لِلرَّجُلِ، وَمَا لَا يَصْلُحُ إِلَّا لِلنِّسَاءِ لِلْمَرْأَةِ، فَأَيُّ مَعْنًى لِلْأَيْمَانِ فِي ذَلِكَ، إِذْ قَدْ ثَبَتَ أَنَّهُ لِمَنْ قَضَوْا لَهُ بِهِ، وَإِنْ كَانَ لَمْ يَثْبُتْ لَهُ بَعْدُ، فَمَا أَحَدُهُمَا أَوْلَى بِهِ مِنْ الْآخَرِ.

L29831 Ali said: And Sufyan al-Thawri said, and al-Qasim ibn Muʿadh ibn ʿAbd al-Rahman ibn ʿAbd Allah ibn Masʿud said, and Shariq said, and Zufar said -

قَالَ عَلِيٌّ: وَقَالَ سُفْيَانُ الثَّوْرِيُّ، وَالْقَاسِمُ بْنُ مُعَاذِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ، وَشَرِيكٌ، وَزُفَرُ فِي أَحَدِ قَوْلَيْهِ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ وَأَصْحَابُهُمَا، كَمَا قُلْنَا نَحْنُ.

in one of his two opinions - and al-Shafi'i said, and Abu Sulayman said, and the companions of these two said, as we ourselves have said.

قَالَ أَبُو مُحَمَّدٍ: الْبَيْتُ بِأَيْدِيهِمَا فَصَحَّ أَنَّهُمَا فِيهِ سَوَاءٌ، فَلِكُلِّ وَاحِدٍ مِنْهُمَا مَا بِيَدِهِ، وَلَهُ الْيَمِينُ عَلَى الْآخَرِ فِيمَا ادَّعَى مِمَّا بِيَدِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L29832 Abū Muḥammad said: The house is in their possession, thus it is confirmed that they share it equally. Therefore, each of them retains what is in his own possession, and he has the right to demand the other to swear an oath regarding what he claims is in the other's possession—and success comes only from Allah, the Exalted.

وَلَمْ يَخْتَلِفُوا فِي أَخٍ وَأُخْتٍ تَنَازَعَا فِي مَتَاعِ الْبَيْتِ، أَوْ أُمٍّ وَابْنِهَا: أَنَّ كُلَّ ذَلِكَ بَيْنَهُمَا بِأَيْمَانِهِمَا، وَلَا اخْتَلَفُوا فِي أَخَوَيْنِ سَاكِنَيْنِ فِي بَيْتٍ وَاحِدٍ، أَحَدُهُمَا: دَبَّاغٌ، وَالْآخَرُ: عَطَّارٌ، فَتَدَاعَيَا فِيمَا فِي الْبَيْتِ، وَالدَّارِ فَإِنَّهُ بَيْنَهُمَا بِأَيْمَانِهِمَا، وَلَمْ يَقْضُوا لِلدَّبَّاغِ بِآلَاتِ الدِّبَاغِ، وَلَا لِلْعَطَّارِ بِمَتَاعِ الْعِطْرِ، وَهَذَا تَنَاقُضٌ لَا خَفَاءَ فِيهِ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L29833–29835 They did not differ that in cases of a brother and sister who disputed over household belongings, or a mother and her son, all such matters are between them. They did not differ concerning two brothers residing in one house—one being a tanner and the other a perfumer—who disputed over what was in the house and courtyard. The ruling between them was based on their oaths, yet they did not grant the tanner the tanning tools nor the perfumer the perfume goods. This constitutes a clear contradiction with no ambiguity, and success comes from Allah, the Exalted.

[مَسْأَلَةٌ يَحْكُمُ عَلَى الْيَهُودِ وَالنَّصَارَى وَالْمَجُوسِ بِحُكْمِ أَهْلِ الْإِسْلَامِ]

Issue: Judging the Jews, Christians, and Zoroastrians according to the ruling of the people of Islam.

١٧٩٩ - مَسْأَلَةٌ: وَيُحْكَمُ عَلَى الْيَهُودِ وَالنَّصَارَى وَالْمَجُوسِ بِحُكْمِ أَهْلِ الْإِسْلَامِ فِي كُلِّ شَيْءٍ - رَضُوا أَمْ سَخِطُوا، أَتَوْنَا أَوْ لَمْ يَأْتُونَا - وَلَا يَحِلُّ رَدُّهُمْ إلَى حُكْمِ دِينِهِمْ، وَلَا إلَى حُكَّامِهِمْ أَصْلًا.

L29837 Issue 1799: Jews, Christians, and Zoroastrians are subject to Islamic rulings in all matters—whether they consent or refuse, whether they seek our judgment or abstain. It is impermissible to refer them back to the legal rulings of their religion nor to their own judges under any circumstances.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ قَالَ: سَمِعْت بَجَالَةَ التَّمِيمِيَّ قَالَ: أَتَانَا كِتَابُ عُمَرَ بْنِ الْخَطَّابِ قَبْلَ مَوْتِهِ بِسَنَةٍ: أَنْ اُقْتُلُوا كُلَّ سَاحِرٍ وَسَاحِرَةٍ، وَفَرِّقُوا بَيْنَ كُلِّ ذِي رَحِمٍ مَحْرَمٍ مِنْ الْمَجُوسِ، وَانْهَوْهُمْ عَنْ الزَّمْزَمَةِ.

L29838 It has been reported to us through the chain of Abd al-Razzaq from Ibn Jurayj: Amr ibn Dinar informed me, stating: I heard Bajalah al-Tamimi say: "A letter from Umar ibn al-Khattab reached us one year before his death, commanding: 'Execute every sorcerer and sorceress, sever ties between all Magians related by prohibited kinship, and forbid them from ritual muttering.'"

L29839 Ibn Jurayj said: When dhimmis reside within our community, their hadd is the same as that of Muslims.

قَالَ ابْنُ جُرَيْجٍ: أَهْلُ الذِّمَّةِ إِذَا كَانُوا فِينَا فَحَدُّهُمْ كَحَدِّ الْمُسْلِمِ.

L29840 From the path of Ismāʿīl ibn Isḥāq al-Qāḍī (the Judge): Naṣr ibn ʿAlī narrated to us, ʿAbd al-Aʿlā narrated to us from Saʿīd ibn Abī ʿArūbah from Qatādah from al-Ḥasan al-Baṣrī regarding inheritance laws among the Dhimmis. He said: "They are ruled by what is in our Book" – which is the opinion of Qatādah, Abū Sulaymān, and our companions.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا نَصْرُ بْنُ عَلِيٍّ نا عَبْدُ الْأَعْلَى عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ الْبَصْرِيِّ فِي الْمَوَارِيثِ فِي أَهْلِ الذِّمَّةِ قَالَ: يُحْكَمُ عَلَيْهِمْ بِمَا فِي كِتَابِنَا - وَهُوَ قَوْلُ قَتَادَةَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L29841 Another narration has been related to us apart from this one: through the chain of Simāk ibn Ḥarb from Qābūs ibn Mukhāriq ibn Sulaym from his father - that Muḥammad ibn Abī Bakr wrote to ʿAlī ibn Abī Ṭālib concerning a Muslim who committed adultery with a Christian woman? ʿAlī ibn Abī Ṭālib wrote back to him directing that the ḥadd punishment be implemented upon the Muslim, while the Christian woman be returned to her religious community. And this is the position of Abū Ḥanīfah and Mālik.

وَرُوِّينَا غَيْرَ هَذَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ سِمَاكِ بْنِ حَرْبٍ عَنْ قَابُوسَ بْنِ مُخَارِقِ بْنِ سُلَيْمٍ عَنْ أَبِيهِ أَنَّ مُحَمَّدَ بْنَ أَبِي بَكْرٍ كَتَبَ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فِي مُسْلِمٍ زَنَى بِنَصْرَانِيَّةٍ؟ فَكَتَبَ إِلَيْهِ عَلِيُّ بْنُ أَبِي طَالِبٍ: أَنْ يُقَامَ الْحَدُّ عَلَى الْمُسْلِمِ، وَتُرَدُّ النَّصْرَانِيَّةُ إِلَى أَهْلِ دِينِهَا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ.

L29842 Abū Muḥammad said: This is not authentically reported from ʿAlī, for it includes Simāk ibn Ḥarb—who is susceptible to coaching—and Qābūs ibn al-Mukhāriq and his father, both of whom are unreliable. Thus, its authenticity cannot be established as originating from the Companions—may Allah be pleased with them—on this matter, except for what has been transmitted to us from ʿUmar.

قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا يَصِحُّ عَنْ عَلِيٍّ؛ لِأَنَّ فِيهِ سِمَاكَ بْنَ حَرْبٍ - وَهُوَ يَقْبَلُ التَّلْقِينَ - وَقَابُوسُ بْنُ الْمُخَارِقِ وَأَبُوهُ - مَجْهُولَانِ - فَبَطَلَ أَنْ يَصِحَّ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي هَذَا الْبَابِ غَيْرُ مَا رُوِّينَا عَنْ عُمَرَ.

L29843 The dissenters said: Allah the Exalted has stated, "There is no compulsion in religion." Therefore, if they are judged by rulings other than those of their religion, they have been compelled to [follow] something contrary to their religion.[41]

وَقَالَ الْمُخَالِفُونَ: قَالَ اللَّهُ تَعَالَى: {لا إِكْرَاهَ فِي الدِّينِ} [البقرة: ٢٥٦] فَإِذَا حُكِمَ عَلَيْهِمْ بِغَيْرِ حُكْمِ دِينِهِمْ فَقَدْ أُكْرِهُوا عَلَى غَيْرِ دِينِهِمْ.

L29844–29846 So we said: If this verse necessitates that they be judged only by the rulings of their religion, then you are the first to violate it—thereby binding yourselves to what opposes the truth, and this is profoundly grave. For you amputate them in theft cases by the rulings of our religion, not theirs, and you impose the ḥadd punishment for false accusation of unchastity by the rulings of our religion, not by the rulings of their religion. You impose their religion upon them, yet prevent them from enforcing their own religious rulings against

فَقُلْنَا: إِنْ كَانَتْ هَذِهِ الْآيَةُ تُوجِبُ أَنْ لَا يُحْكَمَ عَلَيْهِمْ بِغَيْرِ حُكْمِ دِينِهِمْ فَأَنْتُمْ أَوَّلُ مَنْ خَالَفَهَا فَأَقْرَرْتُمْ عَلَى أَنْفُسِكُمْ بِخِلَافِ الْحَقِّ، وَهَذَا عَظِيمٌ جِدًّا؛ لِأَنَّكُمْ تَقْطَعُونَهُمْ فِي السَّرِقَةِ بِحُكْمِ دِينِنَا، لَا بِحُكْمِ دِينِهِمْ، وَتَحُدُّونَهُمْ فِي الْقَذْفِ بِحُكْمِ دِينِنَا لَا بِحُكْمِ دِينِهِمْ،

[41] **Qur'an references (L29843):** Qur'an 2:256 (Al-Baqarah).

one another in cases of murder, accidental killing, or the selling of free persons—you have indeed contradicted yourselves.

وَتَمْنَعُونَهُمْ مِنْ إنْفَاذِ حُكْمِ دِينِهِمْ بَعْضِهِمْ عَلَى بَعْضٍ فِي الْقَتْلِ وَالْخَطَأِ، وَبَيْعِ الْأَحْرَارِ، فَقَدْ تَنَاقَضْتُمْ.

L29847 If they say, "This is injustice," they are not upheld upon it.

فَإِنْ قَالُوا: هَذَا ظُلْمٌ لَا يُقَرُّونَ عَلَيْهِ.

L29848 So we said to them: Any matter in which they opposed the ruling of Islam is an injustice, and they are not to be permitted to persist in it.

فَقُلْنَا لَهُمْ: وَكُلُّ مَا خَالَفُوا فِيهِ حُكْمَ الْإِسْلَامِ فَهُوَ ظُلْمٌ لَا يُقَرُّونَ عَلَيْهِ.

L29849 They said: "Allah the Exalted has said: *So if they come to you, so judge between them or turn away from them* [Al-Ma'idah: 42]." We replied: "This verse is abrogated by His Exalted's words: *And judge between them by what Allah has revealed* [Al-Ma'idah: 49]."[42]

وَقَالُوا: قَالَ اللَّهُ تَعَالَى: {فَإِنْ جَاءُوكَ فَاحْكُمْ بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ} [المائدة: ٤٢] فَقُلْنَا: هَذِهِ مَنْسُوخَةٌ نَسَخَهَا قَوْله تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩]

L29850 Then they said, "Bring forth your proof in support of that."

فَقَالُوا: هَاتُوا بُرْهَانَكُمْ عَلَى ذَلِكَ.

L29851 We said: Yes, it has been narrated to us through the chain of Sufyān ibn Ḥusayn from al-Ḥakam ibn ʿUtaybah from Mujāhid from Ibn ʿAbbās, who said: "Two verses were abrogated from this surah: the verse of the garlands and the words of the Exalted: {If they come to you, judge between them or turn away from them} [Al-Mā'idah 5:42]. The Messenger of Allah—peace be upon him—was given the choice: if he wished, he could judge between them, and if he wished, he could turn away from them and return them to their own laws. Then the verse {And judge between them by what Allah has revealed} [Al-Mā'idah 5:49] was revealed, commanding the Messenger of Allah—peace be upon him—to judge between them according to what is in Our Book."[43]

قُلْنَا: نَعَمْ، رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ حُسَيْنٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: «نُسِخَتْ مِنْ هَذِهِ السُّورَةِ آيَتَانِ -: آيَةُ: الْقَلَائِدَ وقَوْله تَعَالَى: {فَإِنْ جَاءُوكَ فَاحْكُمْ بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ} [المائدة: ٤٢] فَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُخَيَّرًا إنْ شَاءَ حَكَمَ بَيْنَهُمْ، وَإِنْ شَاءَ أَعْرَضَ عَنْهُمْ فَرَدَّهُمْ إلَى أَحْكَامِهِمْ، فَنَزَلَتْ: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَحْكُمَ بَيْنَهُمْ بِمَا فِي كِتَابِنَا» .

L29852 Abū Muḥammad said: This is supported by a chain of narration; Ibn ʿAbbās reported the revelation of the verse concerning that matter. This is also the opinion of Mujāhid and ʿIkrimah.

قَالَ أَبُو مُحَمَّد: وَهَذَا مُسْنَدٌ، لِأَنَّ ابْنَ عَبَّاسٍ أَخْبَرَ بِنُزُولِ الْآيَةِ فِي ذَلِكَ - وَهُوَ قَوْلُ مُجَاهِدٍ، وَعِكْرِمَةَ.

L29853 Moreover, Allah the Exalted says: {And fight them until there is no persecution and all sovereignty belongs wholly to Allah} [Al-Anfāl: 39]. The term "dīn" in the Quran and the Arabic language denotes the Sharia, sovereign

وَأَيْضًا: فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] وَالدِّينُ فِي الْقُرْآنِ وَاللُّغَةِ يَكُونُ الشَّرِيعَةَ، وَيَكُونُ الْحُكْمَ، وَيَكُونُ الْجَزَاءَ، فَالْجَزَاءُ فِي الْآخِرَةِ إلَى اللَّهِ تَعَالَى لَا إلَيْنَا.

[42] **Qur'an references (L29849):** Qur'an 5:42 (Al-Ma'idah); Qur'an 5:49 (Al-Ma'idah).
[43] **Qur'an references (L29851):** Qur'an 5:42 (Al-Ma'idah); Qur'an 5:49 (Al-Ma'idah).

authority, or retribution. As for retribution in the Hereafter, it rests solely with Allah the Exalted, not with us.[44]

وَالشَّرِيعَةُ قَدْ صَحَّ أَنْ نُقِرَّهُمْ عَلَى مَا يَعْتَقِدُونَ إذَا كَانُوا أَهْلَ كِتَابٍ، فَبَقِيَ الْحُكْمُ، فَوَجَبَ أَنْ يَكُونَ كُلُّهُ حُكْمَ اللَّهِ كَمَا أَمَرَ.

L29854 Islamic law has established that we permit People of the Book to retain their beliefs. Thus, the ruling remains in force, and it is obligatory that the entire ruling be Allah's, as He has commanded.

فَإِنْ قَالُوا: فَاحْكُمُوا عَلَيْهِمْ بِالصَّلَاةِ، وَالصِّيَامِ، وَالْحَجِّ، وَالْجِهَادِ، وَالزَّكَاةِ.

L29855 If they say: "Then judge them by Prayer, Fasting, Pilgrimage, Jihad, and Zakat."

قُلْنَا: قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُلْزِمْهُمْ شَيْئًا مِنْ هَذَا فَخَرَجَ بِنَصِّهِ وَبَقِيَ سَائِرُ الْحُكْمِ عَلَيْهِمْ عَلَى حُكْمِ الْإِسْلَامِ وَلَا بُدَّ.

L29856–29858 We said: It has been authentically established that the Messenger of Allah—may Allah's peace and blessings be upon him—did not impose anything of this upon them. Thus, he based it on his explicit text, and all other rulings concerning them remained subject to Islamic law—as it is imperative.

وَصَحَّ «أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَتَلَ يَهُودِيًّا قَوَدًا بِصَبِيَّةٍ مُسْلِمَةٍ وَرَجَمَ يَهُودِيَّيْنِ زَنَيَا» وَلَمْ يَلْتَفِتْ إلَى حُكْمِ دِينِهِمْ.

L29859 It is authentically reported that he (peace be upon him) killed a Jew in retribution for a Muslim girl and stoned two Jews who committed adultery, without regard to the rulings of their religion.

فَقَالَ بَعْضُهُمْ بِآبِدَةٍ مُهْلِكَةٍ، وَهِيَ أَنْ قَالُوا: إنَّمَا أَنْفَذَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الرَّجْمَ بِحُكْمِ التَّوْرَاةِ، كَمَا قَالَ تَعَالَى: {يَحْكُمُ بِهَا النَّبِيُّونَ الَّذِينَ أَسْلَمُوا لِلَّذِينَ هَادُوا} [المائدة: ٤٤] .

L29860 Some of them asserted a destructive novelty, saying: "The Messenger of Allah—peace and blessings be upon him—only implemented stoning based on the ruling of the Torah, as the Exalted said: 'The prophets who submitted to Allah judge by it for those who are Jews'" [Al-Mā'idah 5:44].[45]

فَقُلْنَا: هَذَا كُفْرٌ مِمَّنْ قَالَهُ، إذْ جَعَلَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مُنَفِّذًا لِحُكْمِ الْيَهُودِ، تَارِكًا لِتَنْفِيذِ حُكْمِ اللَّهِ تَعَالَى، حَاشَا لَهُ مِنْ ذَلِكَ.

L29861 So we said: This is disbelief on the part of whoever said it, since the claimant made him—peace and blessings be upon him—an executor of the Jews' ruling and a forsaker of implementing the law of Allah, the Exalted. Far be it from him to do such a thing.

وَأَيْضًا فَهَبْكَ أَنَّهُ كَمَا قُلْتُمْ فَارْجُمُوهُمْ أَنْتُمْ أَيْضًا عَلَى ذَلِكَ الْوَجْهِ نَفْسِهِ، وَإِلَّا فَقَدْ جَوَّرْتُمْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L29862 Moreover, granted, as you say, that it is so, then you too must stone them in that very same manner; otherwise, you have wronged the Messenger of Allah, may Allah bless him and grant him peace.

وَأَمَّا الْآيَةُ: فَإِنَّمَا هِيَ خَبَرٌ عَنْ النَّبِيِّينَ السَّالِفِينَ فِيهِمْ، لِأَنَّهُمْ لَيْسُوا لَنَا نَبِيِّينَ، إنَّمَا لَنَا نَبِيٌّ وَاحِدٌ - فَصَحَّ أَنَّهُ غَيْرُ مَعْنِيٍّ بِهَذِهِ الْآيَةِ.

L29863 As for the verse, it is a report about the earlier prophets among them, for they are not prophets to us. We have only one prophet. Therefore, it is established that he is not the referent of this verse.

[44] **Qur'an references (L29853):** Qur'an 8:39 (Al-Anfal).
[45] **Qur'an references (L29860):** Qur'an 5:44 (Al-Ma'idah).

L29864 Then we say to them: “Inform us about the rulings of their religion—are they (to this day) true and firmly established, or false and abrogated? They must choose one of the two.” If they say, “They are true and firmly established,” they openly profess disbelief. But if they say, “Rather, they are false and abrogated...”

ثُمَّ نَقُولُ لَهُمْ: أَخْبِرُونَا عَنْ أَحْكَامِ دِينِهِمْ أَحَقٌّ - هِيَ إِلَى الْيَوْمِ - مُحْكَمٌ أَمْ بَاطِلٌ مَنْسُوخٌ؟ وَلَا بُدَّ مِنْ أَحَدِهِمَا -: فَإِنْ قَالُوا: حَقٌّ مُحْكَمٌ كَفَرُوا جِهَارًا، وَإِنْ قَالُوا بَلْ بَاطِلٌ مَنْسُوخٌ.

L29865 We said: You have spoken the truth, and you have confessed against yourselves that you have turned them back to the abrogated, forbidden falsehood. This suffices.

قُلْنَا: صَدَقْتُمْ، وَأَقْرَرْتُمْ عَلَى أَنْفُسِكُمْ أَنَّكُمْ رَدَدْتُمُوهُمْ إِلَى الْبَاطِلِ الْمَنْسُوخِ الْحَرَامِ، وَفِي هَذَا كِفَايَةٌ.

L29866 And He, the Exalted, said: “Be upholders of justice.” [An-Nisā’: 135] It is not part of justice to permit them to rule by altered disbelief, by a judgment Allah has nullified, or [to accept] what He has prohibited in speech and action regarding it.[46]

وَقَالَ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] وَلَيْسَ مِنَ الْقِسْطِ تَرْكُهُمْ يَحْكُمُونَ بِالْكُفْرِ الْمُبَدَّلِ أَوْ بِحُكْمٍ قَدْ أَبْطَلَهُ اللَّهُ تَعَالَى، أَوْ حَرَّمَ الْقَوْلَ بِهِ وَالْعَمَلَ بِهِ.

L29867 And He, the Exalted, said: “Cooperate in righteousness and piety, and do not cooperate in sin and aggression” [Al-Ma’idah 5:2].[47]

وَقَالَ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢]

L29868 And whoever turns them back to the rule of distorted disbelief and the command that has been abrogated and prohibited has not supported righteousness and piety, but rather aided sin and transgression—and we seek refuge in Allah from abandonment.

وَمَنْ رَدَّهُمْ إِلَى حُكْمِ الْكُفْرِ الْمُبَدَّلِ وَالْأَمْرِ الْمَنْسُوخِ الْمُحَرَّمِ، فَلَمْ يُعِنْ عَلَى الْبِرِّ وَالتَّقْوَى، بَلْ أَعَانَ عَلَى الْإِثْمِ وَالْعُدْوَانِ - وَنَعُوذُ بِاللَّهِ مِنَ الْخِذْلَانِ.

L29869–29870 Allah the Exalted said: “Until they pay the jizyah willingly while they are humiliated” [al-Tawbah: 29]. This humiliation entails the enforcement of our laws upon them. If they are left to govern by their disbelief, then we have not humiliated them—rather, they would be humiliating us, and we seek refuge in Allah from such a state![48]

وَقَالَ تَعَالَى: {حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] وَالصَّغَارُ هُوَ جَرْيُ أَحْكَامِنَا عَلَيْهِمْ، فَإِذَا مَا تُرِكُوا يَحْكُمُونَ بِكُفْرِهِمْ فَمَا أَصْغَرْنَاهُمْ بَلْ هُمْ أَصْغَرُونَا - وَمَعَاذَ اللَّهِ مِنْ ذَلِكَ.

[مَسْأَلَة عَلَى الْحَاكِمِ أَنْ يَحْكُم بعلمة]

L29871 **It is a jurisprudential principle that the judge must rule based on knowledge.**

L29872 1800 - Issue: It is incumbent upon the judge to rule based on his personal knowledge in matters involving blood, retribution, property, cases involving

١٨٠٠ - مَسْأَلَةٌ: وَفُرِضَ عَلَى الْحَاكِمِ أَنْ يَحْكُمَ بِعِلْمِهِ فِي الدِّمَاءِ، وَالْقِصَاصِ، وَالْأَمْوَالِ، وَالْفُرُوجِ، وَالْحُدُودِ، وَسَوَاءٌ عَلِمَ ذَلِكَ قَبْلَ وِلَايَتِهِ أَوْ بَعْدَ وِلَايَتِهِ، وَأَقْوَى مَا حَكَمَ بِعِلْمِهِ؛ لِأَنَّهُ يَقِينُ الْحَقِّ، ثُمَّ بِالْإِقْرَارِ، ثُمَّ بِالْبَيِّنَةِ.

[46] **Qur’an references (L29866):** Qur’an 4:135 (An-Nisa).
[47] **Qur’an references (L29867):** Qur’an 5:2 (Al-Ma’idah).
[48] **Qur’an references (L29870):** Qur’an 9:29 (At-Tawbah).

chastity, and ḥudūd punishments, whether he acquired that knowledge before or after assuming office. The strongest basis for his ruling is his personal knowledge, as it constitutes certainty of the truth; then by confession; then by witness testimony.

L29873 People have differed regarding this. It is narrated that Abū Bakr al-Ṣiddīq said: "If I saw a man liable for a ḥadd punishment, I would not call for him without another witness besides me." It is also reported that ʿUmar said to ʿAbd al-Raḥmān ibn ʿAwf: "What is your view if you saw a man who killed, consumed wine, or committed zinā?" He replied: "Your testimony counts as that of a Muslim man." ʿUmar then said to him: "You have spoken truthfully."

L29874 And that something similar to this was reported from Mu'awiyah and Ibn Abbas.

L29875 Through the narration of Al-Ḍaḥḥāk: that a dispute was brought to ʿUmar regarding a matter he knew. He responded to the claimant: "If you wish, I can testify without judging, or judge without testifying."

L29876 It has been authentically reported that two disputants came to Shuraih. One of them brought a witness and said to Shuraih: "And you are also my witness." Thereupon, Shuraih ruled in his favor based on his witness and the claimant's oath.

L29877 It has been reported from ʿUmar ibn ʿAbd al-ʿAzīz that a judge does not judge based on his own knowledge in matters of zina.

L29878 It is authentically reported from Al-Sha'bi: "I am not a witness and a judge."

L29879 And Mālik, Ibn Abī Laylā (in one of his two opinions), Aḥmad, Abū ʿUbaydah, and Muḥammad ibn al-Ḥasan (in one of his two opinions) said: A judge may not rule based on his personal knowledge in any matter at all.

L29880 Hammad ibn Abi Sulayman said: A judge may rule based on his verification of a confession in all matters, except exclusively in the case of ḥudūd.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِيَ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ قَالَ: لَوْ رَأَيْت رَجُلًا عَلَى حَدٍّ لَمْ أَدْعُ لَهُ غَيْرِي حَتَّى يَكُونَ مَعِي شَاهِدٌ غَيْرِي، وَأَنَّ عُمَرَ قَالَ لِعَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: أَرَأَيْت لَوْ رَأَيْت رَجُلًا قَتَلَ أَوْ شَرِبَ أَوْ زَنَى؟ قَالَ: شَهَادَتُك شَهَادَةُ رَجُلٍ مِنْ الْمُسْلِمِينَ فَقَالَ لَهُ عُمَرُ: صَدَقْت

- وَأَنَّهُ رُوِيَ نَحْوُ هَذَا عَنْ مُعَاوِيَةَ، وَابْنِ عَبَّاسٍ.

وَمِنْ طَرِيقِ الضَّحَّاكِ: أَنَّ عُمَرَ اُخْتُصِمَ إلَيْهِ فِي شَيْءٍ يَعْرِفُهُ فَقَالَ لِلطَّالِبِ: إنْ شِئْت شَهِدْت وَلَمْ أَقْضِ، وَإِنْ شِئْت قَضَيْت وَلَمْ أَشْهَدْ.

وَقَدْ صَحَّ عَنْ شُرَيْحٍ أَنَّهُ اخْتَصَمَ إلَيْهِ اثْنَانِ فَأَتَاهُ أَحَدُهُمَا بِشَاهِدٍ، فَقَالَ لِشُرَيْحٍ وَأَنْتَ شَاهِدِي أَيْضًا، فَقَضَى لَهُ شُرَيْحٌ مَعَ شَاهِدِهِ بِيَمِينِهِ.

وَرُوِيَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: لَا يَحْكُمُ الْحَاكِمُ بِعِلْمِهِ فِي الزِّنَى.

وَصَحَّ عَنْ الشَّعْبِيِّ: لَا أَكُونُ شَاهِدًا وَقَاضِيًا.

وَقَالَ مَالِكٌ، وَابْنُ أَبِي لَيْلَى - فِي أَحَدِ قَوْلَيْهِ - وَأَحْمَدُ، وَأَبُو عُبَيْدَةَ، وَمُحَمَّدُ بْنُ الْحَسَنِ - فِي أَحَدِ قَوْلَيْهِ: لَا يَحْكُمُ الْحَاكِمُ بِعِلْمِهِ فِي شَيْءٍ أَصْلًا.

وَقَالَ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ: يَحْكُمُ الْحَاكِمُ بِعِلْمِهِ بِالِاعْتِرَافِ فِي كُلِّ شَيْءٍ إلَّا فِي الْحُدُودِ خَاصَّةً -.

وَبِهِ قَالَ ابْنُ أَبِي لَيْلَى فِي أَحَدِ قَوْلَيْهِ.

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ - فِي أَوَّلِ قَوْلَيْهِ -: يَحْكُمُ بِعِلْمِهِ فِي كُلِّ شَيْءٍ مِنْ قِصَاصٍ وَغَيْرِهِ، إِلَّا فِي الْحُدُودِ، وَسَوَاءٌ عَلِمَهُ قَبْلَ الْقَضَاءِ أَوْ بَعْدَهُ.

وَقَالَ أَبُو حَنِيفَةَ: لَا يَحْكُمُ بِعِلْمِهِ قَبْلَ وِلَايَتِهِ الْقَضَاءَ أَصْلًا وَأَمَّا مَا عَلِمَهُ بَعْدَ وِلَايَتِهِ الْقَضَاءَ فَإِنَّهُ يَحْكُمُ بِهِ فِي كُلِّ شَيْءٍ، إِلَّا فِي الْحُدُودِ خَاصَّةً.

وَقَالَ اللَّيْثُ: لَا يَحْكُمُ بِعِلْمِهِ إِلَّا أَنْ يُقِيمَ الطَّالِبُ شَاهِدًا وَاحِدًا فِي حُقُوقِ النَّاسِ خَاصَّةً، فَيَحْكُمُ الْقَاضِي حِينَئِذٍ بِعِلْمِهِ مَعَ ذَلِكَ الشَّاهِدِ.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: كُلُّ مَا عَلِمَ قَبْلَ وِلَايَتِهِ لَمْ يَحْكُمْ فِيهِ بِعِلْمِهِ، وَمَا عَلِمَ بَعْدَ وِلَايَتِهِ حَكَمَ فِيهِ بِعِلْمِهِ بَعْدَ أَنْ يَسْتَحْلِفَهُ، وَذَلِكَ فِي حُقُوقِ النَّاسِ - وَأَمَّا الزِّنَا: فَإِنْ شَهِدَ بِهِ ثَلَاثَةٌ وَالْقَاضِي يَعْرِفُ صِحَّةَ ذَلِكَ حَكَمَ فِيهِ بِتِلْكَ الشَّهَادَةِ مَعَ عِلْمِهِ.

وَقَالَ الْأَوْزَاعِيِّ: إِنْ أَقَامَ الْمَقْذُوفُ شَاهِدًا وَاحِدًا عَدْلًا وَعَلِمَ الْقَاضِي بِذَلِكَ حَدَّ الْقَاذِفَ.

وَقَالَ الشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ كَمَا قُلْنَا.

قَالَ أَبُو مُحَمَّد: فَنَظَرْنَا فِيمَنْ فَرَّقَ بَيْنَ مَا عَلِمَ قَبْلَ الْقَضَاءِ وَمَا عَلِمَ بَعْدَ الْقَضَاءِ فَوَجَدْنَاهُ قَوْلًا لَا يُؤَيِّدُهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قِيَاسٌ، وَلَا أَحَدٌ قَالَهُ قَبْلَ أَبِي حَنِيفَةَ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ بِلَا شَكٍّ.

L29881 And according to it, Ibn Abī Laylā said in one of his two opinions.

L29882 Abū Yūsuf and Muḥammad ibn al-Ḥasan—in the first of their two opinions—held that a judge may rule based on his personal knowledge in all matters, including cases of retaliation and other matters, except in prescribed punishments, whether he acquired the knowledge before the judgment or after it.

L29883–29885 Abū Ḥanīfa said: He does not judge based on knowledge he possessed prior to assuming judicial authority at all. As for what he comes to know after assuming this authority... As for judgment, indeed he rules by it in all matters, except in the Ḥudūd specifically.

L29886 Al-Layth said: A judge does not rule based on his personal knowledge unless the claimant presents one witness specifically in matters of people's rights. At that point, the judge rules according to his knowledge alongside that witness.

L29887 Al-Ḥasan ibn Ḥayy said: Regarding all matters he knew before assuming judgeship, he did not judge based on his prior knowledge. As for what he learned after assuming judgeship, he ruled according to his knowledge after administering an oath to the party—and this applies to people's rights. As for zinā: If three testified to it and the judge recognized the truthfulness of that testimony, he ruled based on that testimony alongside his knowledge.

L29888 Al-Awzaʿī said: If the person falsely accused presents a single upright witness, and the judge acknowledges this, he shall impose the ḥadd punishment upon the false accuser.

L29889 Al-Shafiʿi, Abu Thawr, Abu Sulayman, and their followers have stated the same opinion as we have.

L29890 Abu Muhammad said: We considered those who make a distinction between what he knew before the judgment and what he knew after it, and we found this to be an opinion unsupported by the Quran, nor the Sunnah, nor a weak narration, nor analogical reasoning, nor any precedent from scholars before Abu Hanifah. Such a thing is undoubtedly invalid.

L29891 Then we examined the case of one who distinguishes between what was

acknowledged in his legal session and other matters he had ascertained, and we found it consistent with our earlier statement regarding Abū Ḥanīfah's legal position. Any ruling issued in this manner is void, though some scholars asserted: "He presided solely to judge between people based on what he deemed valid according to his understanding."

ثُمَّ نَظَرْنَا فِيمَنْ فَرَّقَ بَيْنَ مَا اُعْتُرِفَ بِهِ فِي مَجْلِسِهِ وَبَيْنَ غَيْرِ ذَلِكَ مِمَّا عَلِمَهُ، فَوَجَدْنَاهُ أَيْضًا كَمَا قُلْنَا فِي قَوْلِ أَبِي حَنِيفَةَ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ إِلَّا أَنَّ بَعْضَهُمْ قَالَ: إِنَّمَا جَلَسَ لِيَحْكُمَ بَيْنَ النَّاسِ بِمَا صَحَّ عِنْدَهُ.

L29892 We said: You have spoken the truth. All that he knew prior to his authority, outside his council, and afterward has indeed been confirmed by his judgment.

قُلْنَا: صَدَقْتُمْ، وَقَدْ صَحَّ عِنْدَهُ كُلُّ مَا عَلِمَ قَبْلَ وِلَايَتِهِ، وَفِي غَيْرِ مَجْلِسِهِ وَبَعْدَ ذَلِكَ.

L29893 Then we considered the case of one who differentiated between matters attested by a single witness before him and matters to which no one testified before him. We found that this, too, aligns with the two preceding opinions, for in all such instances he ruled solely based on his own knowledge—and this is our position—

ثُمَّ نَظَرْنَا فِيمَنْ فَرَّقَ بَيْنَ مَا شَهِدَ بِهِ عِنْدَهُ شَاهِدٌ وَاحِدٌ وَبَيْنَ مَا لَمْ يَشْهَدْ بِهِ عِنْدَهُ أَحَدٌ -: فَوَجَدْنَاهُ أَيْضًا كَالْقَوْلَيْنِ الْمُتَقَدِّمَيْنِ، لِأَنَّهُ فِي كُلِّ ذَلِكَ إِنَّمَا حَكَمَ بِعِلْمِهِ فَقَطْ - وَهُوَ قَوْلُنَا -.

L29894 As for a judge ruling based on a single witness or three witnesses in cases of unlawful sexual intercourse, this is not permissible -.

وَأَمَّا حَاكِمٌ بِشَاهِدٍ وَاحِدٍ أَوْ بِثَلَاثَةٍ فِي الزِّنَى، فَهَذَا لَا يَجُوزُ -.

L29895–29896 As for a witness and judge together, there is no textual proof or consensus that specifically upholds this aspect as correct.

وَأَمَّا شَاهِدٌ حَاكِمٌ مَعًا، وَلَمْ يَأْتِ نَصٌّ وَلَا إِجْمَاعٌ بِتَصْوِيبِ هَذَا الْوَجْهِ خَاصَّةً.

L29897 Then we scrutinized the opinion of those who differentiate between prescribed punishments and other legal rulings, and found it to be a view that lacks reinforcement from the Qur'an or the Sunnah. Any such position is invalid.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ فَرَّقَ بَيْنَ الْحُدُودِ وَغَيْرِهَا، فَوَجَدْنَاهُ قَوْلًا لَا يُعَضِّدُهُ قُرْآنٌ وَلَا سُنَّةٌ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ.

L29898 If they mention: "Ward off the ḥudud by means of doubts."

فَإِنْ ذَكَرُوا «ادْرَءُوا الْحُدُودَ بِالشُّبُهَاتِ» .

L29899 We said: This is invalid, for nothing authentic has ever been reported from the Prophet—peace and blessings of Allah be upon him—and there is no distinction between Ḥudūd and other matters in the obligation to judge truthfully in all cases. Thus, only the opinions remain: that of those who say, "A judge does not rule by his personal knowledge in anything," and that of those who say, "A judge rules by his personal knowledge in all matters." We found those who forbid judges from ruling by their personal knowledge asserting: "This is the position of Abū Bakr, ʿUmar, ʿAbd al-Raḥmān, Ibn ʿAbbās, and

قُلْنَا: هَذَا بَاطِلٌ مَا صَحَّ قَطُّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا فَرْقَ بَيْنَ الْحُدُودِ وَغَيْرِهَا فِي أَنْ يَحْكُمَ فِي كُلِّ ذَلِكَ بِالْحَقِّ، فَلَمْ يَبْقَ إِلَّا قَوْلُ مَنْ قَالَ: لَا يَحْكُمُ الْحَاكِمُ بِعِلْمِهِ فِي شَيْءٍ - وَقَوْلُ مَنْ قَالَ: يَحْكُمُ الْحَاكِمُ بِعِلْمِهِ فِي كُلِّ شَيْءٍ -: فَوَجَدْنَا مَنْ مَنَعَ مِنْ أَنْ يَحْكُمَ الْحَاكِمُ بِعِلْمِهِ يَقُولُ: هَذَا قَوْلُ أَبِي بَكْرٍ، وَعُمَرَ، وَعَبْدِ الرَّحْمَنِ، وَابْنِ عَبَّاسٍ، وَمُعَاوِيَةَ، وَلَا يُعْرَفُ لَهُمْ مُخَالِفٌ مِنْ الصَّحَابَةِ.

Muʿāwiyah, with no opposing authority among the Companions known to contradict them."

فَقُلْنَا: هُمْ مُخَالِفُونَ لَكُمْ فِي هَذِهِ الْقِصَّةِ، لِأَنَّهُ إِنَّمَا رُوِيَ أَنَّ أَبَا بَكْرٍ قَالَ: إِنَّهُ لَا يُثِيرُهُ حَتَّى يَكُونَ مَعَهُ شَاهِدٌ آخَرُ.

L29900 So we said: They oppose you in this matter because it was only narrated that Abū Bakr said: "He does not consider it unless there is another witness with him."

وَهُوَ قَوْلُ عُمَرَ، وَعَبْدِ الرَّحْمَنِ: أَنَّ شَهَادَتَهُ شَهَادَةُ رَجُلٍ مِنْ الْمُسْلِمِينَ، فَهَذَا يُوَافِقُ مَنْ رَأَى أَنْ يَحْكُمَ فِي الزِّنَى بِثَلَاثَةٍ هُوَ رَابِعُهُمْ، وَبِوَاحِدٍ مَعَ نَفْسِهِ فِي سَائِرِ الْحُقُوقِ.

L29901 This is the opinion of ʿUmar and ʿAbd al-Raḥmān: that his testimony equals the testimony of one man among the Muslims. This corresponds to those who hold that the ruling for adultery requires three - he being the fourth - and with one alongside himself in all other rights.

وَأَيْضًا - فَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L29902 Moreover - there is no authoritative evidence in the statement of anyone beneath the Messenger of Allah - peace be upon him -.

وَأَيْضًا - فَقَدْ خَالَفُوا أَبَا بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَخَالِدَ بْنَ الْوَلِيدِ، وَأَبَا مُوسَى الْأَشْعَرِيَّ، وَابْنَ الزُّبَيْرِ فِي الْقِصَاصِ مِنْ اللَّطْمَةِ، وَمِنْ ضَرْبَةِ السَّوْطِ، وَمِمَّا دُونَ الْمُوضِحَةِ - وَهُوَ عَنْهُمْ أَصَحُّ مِمَّا رَوَيْتُمْ عَنْهُمْ هَاهُنَا -.

L29903 Moreover, they have opposed Abū Bakr, ʿUmar, ʿUthmān, Khālid ibn al-Walīd, Abū Mūsā al-Ashʿarī, and Ibn al-Zubayr concerning retaliation for a slap, a strike with a whip, and injuries less severe than al-mūḍiḥah (a wound exposing the bone)—and it is more soundly attested from them than what you have reported from them here.

وَاحْتَجُّوا بِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «شَاهِدَاكَ أَوْ يَمِينُهُ لَيْسَ لَكَ إلَّا ذَلِكَ» .

L29904 They cited as evidence the statement of the Prophet—peace and blessings be upon him—: "Either your two witnesses or his oath. You have nothing except that."

قَالَ أَبُو مُحَمَّد: وَهَذَا قَدْ خَالَفَهُ الْمَالِكِيُّونَ الْمُحْتَجُّونَ بِهِ، فَجَعَلُوا لَهُ الْحُكْمَ بِالْيَمِينِ مَعَ الشَّاهِدِ، وَالْيَمِينِ مَعَ نُكُولِ خَصْمِهِ، وَلَيْسَ هَذَا مَذْكُورًا فِي الْخَبَرِ.

L29905 Abu Muhammad said: The Malikis who cite it as proof have opposed this, for they established rulings based on an oath alongside the witness, and an oath combined with his adversary's refusal to swear. Yet none of this is mentioned in the report.

وَجَعَلَ لَهُ الْحَنَفِيُّونَ الْحُكْمَ بِالنُّكُولِ وَلَيْسَ ذَلِكَ فِي الْخَبَرِ.

L29906 The Hanafis held that the ruling applies to one who refuses to swear an oath, but this is not found in the authenticated reports.

وَأَمَرُوهُ بِالْحُكْمِ بِعِلْمِهِ فِي الْأَمْوَالِ الَّتِي فِيهَا جَاءَ هَذَا الْخَبَرُ.

L29907 And they instructed him to adjudicate based on his knowledge in matters of wealth where this ḥadīth is found.

فَقَدْ خَالَفُوهُ جِهَارًا وَأَقْحَمُوا فِيهِ مَا لَيْسَ فِيهِ.

L29908 They have indeed openly opposed him and forcibly inserted into it what is not in it.

L29909–29910 Who is more misguided than one who cites a report as evidence yet is the

foremost in contradicting it based on his own opinion?

فَمَنْ أَضَلُّ مِمَّنْ يَحْتَجُّ بِخَبَرٍ هُوَ أَوَّلُ مُخَالِفٍ لَهُ بِرَأْيِهِ.

L29911 As for us, we say: It has been authentically reported from the Prophet—peace and blessings of Allah be upon him—that he said, "Your evidence or his oath." There is no evidence clearer than the soundness of the judge's knowledge regarding the validity of his right. Thus, this is encompassed by the scope of this hadith.

وَأَمَّا نَحْنُ فَنَقُولُ: إِنَّهُ قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «بَيِّنَتُكَ أَوْ يَمِينُهُ» وَمِنْ الْبَيِّنَةِ الَّتِي لَا بَيِّنَةَ أَبْيَنُ مِنْهَا صِحَّةُ عِلْمِ الْحَاكِمِ بِصِحَّةِ حَقِّهِ، فَهُوَ فِي جُمْلَةِ هَذَا الْخَبَرِ.

L29912 They cited as evidence the authentically established report from the Messenger of Allah (peace and blessings of Allah be upon him) that Jesus (peace be upon him) saw a man stealing and said to him: "Did you steal?" The man replied: "Certainly not! By Allah, the One besides whom there is no deity!" Jesus (peace be upon him) then said: "I believe in Allah and reject my own suspicion." They said: "Thus Jesus (peace be upon him) did not judge based on his knowledge."[49]

وَاحْتَجُّوا بِالثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّ عِيسَى - عَلَيْهِ السَّلَامُ - رَأَى رَجُلًا يَسْرِقُ فَقَالَ لَهُ عِيسَى: سَرَقْتَ؟ قَالَ: كَلَّا وَاَللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ، فَقَالَ عِيسَى - عَلَيْهِ السَّلَامُ -: آمَنْتُ بِاَللَّهِ وَكَذَّبْت نَفْسِي» - فَقَالُوا: فَعِيسَى - عَلَيْهِ السَّلَامُ - لَمْ يَحْكُمْ بِعِلْمِهِ.

L29913 Abū Muḥammad said: We are not bound by the divine law of Jesus (peace be upon him). This narrative could be interpreted as him having seen him steal - meaning taking the item covertly by taking it. When he questioned him, he swore an oath, and he might be truthful because he reclaimed his property from someone who had wronged him.

قَالَ أَبُو مُحَمَّد: لَيْسَ يَلْزَمُنَا شَرْعُ عِيسَى - عَلَيْهِ السَّلَامُ -، وَقَدْ يُخَرَّجُ هَذَا الْخَبَرُ عَلَى أَنَّهُ رَآهُ يَسْرِقُ أَيْ يَأْخُذُ الشَّيْءَ مُخْتَفِيًا بِأَخْذِهِ، فَلَمَّا قَرَّرَهُ حَلَفَ، وَقَدْ يَكُونُ صَادِقًا، لِأَنَّهُ أَخَذَ مَالَهُ مِنْ ظَالِمٍ لَهُ.

L29914 They mentioned the saying of the Messenger of Allah—may Allah's peace and blessings be upon him—"If I were to stone someone without evidence, I would stone her." This contains no proof for them, because the knowledge of the judge is the clearest evidence and the most just thereof. We have thoroughly examined this issue in *Kitāb al-Iṣāl*, and all praise is due to Allah, the Most High.

وَذَكَرُوا قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَوْ كُنْتُ رَاجِمًا أَحَدًا بِغَيْرِ بَيِّنَةٍ لَرَجَمْتُهَا» - وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ عِلْمَ الْحَاكِمِ أَبْيَنُ بَيِّنَةٍ وَأَعْدَلُهَا وَقَدْ تَقَصَّيْنَا هَذِهِ الْمَسْأَلَةَ فِي " كِتَابِ الْإِيصَالِ " وَلِلَّهِ تَعَالَى الْحَمْدُ.

L29915 And the proof of the validity of our statement is the saying of Allah the Exalted: "Be persistently steadfast in upholding justice as witnesses for Allah" [An-Nisā' 4:135].[50]

وَبُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥].

L29916 It is not justice to leave the oppressor in his wrongdoing without changing

وَلَيْسَ مِنْ الْقِسْطِ أَنْ يَتْرُكَ الظَّالِمَ عَلَى ظُلْمِهِ لَا يُغَيِّرُهُ.

[49] **Qur'an references (L29912):** Qur'an 20:98 (Taha); Qur'an 59:22 (Al-Hashr); Qur'an 59:23 (Al-Hashr).

[50] **Qur'an references (L29915):** Qur'an 4:135 (An-Nisa).

it.

L29917 that the transgressor openly declares disbelief in the presence of the ruler, confesses to oppression, and acknowledges divorce. Then the ruler proceeds to confirm the transgressor's standing with the woman, rules in her favor regarding the validity of the marital bond and inheritance, thereby wronging the heirs of their rightful share.

وَأَنْ يَكُونَ الْفَاسِقُ يُعْلِنُ الْكُفْرَ بِحَضْرَةِ الْحَاكِمِ، وَالْإِقْرَارَ بِالظُّلْمِ، وَالطَّلَاقِ، ثُمَّ يَكُونُ الْحَاكِمُ يُقِرُّهُ مَعَ الْمَرْأَةِ، وَيَحْكُمُ لَهَا بِالزَّوْجِيَّةِ وَالْمِيرَاثِ، فَيَظْلِمُ أَهْلَ الْمِيرَاثِ حَقَّهُمْ.

L29918 They have unanimously agreed that if the judge knows of impugnments against the witnesses—and others are unaware of it—or if he knows the falsehood of the impugners of them, he must rule based on his own knowledge in all such instances. Thus, they have contradicted their own principles.

وَقَدْ أَجْمَعُوا عَلَى أَنَّ الْحَاكِمَ إنْ عَلِمَ بِجُرْحَةِ الشُّهُودِ - وَلَمْ يَعْلَمْ ذَلِكَ غَيْرُهُ، أَوْ عَلِمَ كَذِبَ الْمُجَرِّحِينَ لَهُمْ - فَإِنَّهُ يَحْكُمُ فِي كُلِّ ذَلِكَ بِعِلْمِهِ - فَقَدْ تَنَاقَضُوا.

L29919 The Messenger of Allah - may Allah bless him and grant him peace - said: "Whoever among you observes a wrongdoing, let him correct it with his hand; if he is unable to do so, then with his tongue." If a ruler fails to rectify the wrongdoing he observes until evidence is presented concerning it, he has indeed disobeyed the Messenger of Allah - may Allah bless him and grant him peace.[51]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ» وَالْحَاكِمُ إنْ لَمْ يُغَيِّرْ مَا رَأَى مِنْ الْمُنْكَرِ حَتَّى تَأْتِيَ الْبَيِّنَةُ عَلَى ذَلِكَ فَقَدْ عَصَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L29920–29921 Thus, it is established that it is obligatory upon him to change, by his own hand, every reprehensible act he is aware of, and to give every entitled person their due; otherwise, he is unjust. And success is from Allah, the Exalted.

فَصَحَّ أَنَّ فَرْضًا عَلَيْهِ أَنْ يُغَيِّرَ كُلَّ مُنْكَرٍ عَلِمَهُ بِيَدِهِ، وَأَنْ يُعْطِيَ كُلَّ ذِي حَقٍّ حَقَّهُ، وَإِلَّا فَهُوَ ظَالِمٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29922 ## The Issue of the Witness's Retraction of his Testimony.

[مَسْأَلَةُ رُجُوعِ الشَّاهِدِ عَنْ شَهَادَتِهِ]

L29923 1801 - Issue: If a witness retracts their testimony after a judgment has been issued based on it or before the judgment is issued, what was judged based on it is revoked. However, if the witness dies, becomes insane, or changes—whether after testifying but before the judgment is issued based on their testimony or after the judgment has been issued—the judgment remains in effect in all cases and is not invalidated.

١٨٠١ - مَسْأَلَةٌ: وَإِذَا رَجَعَ الشَّاهِدُ عَنْ شَهَادَتِهِ بَعْدَ أَنْ حَكَمَ بِهَا، أَوْ قَبْلَ أَنْ يَحْكُمَ بِهَا فُسِخَ مَا حَكَمَ بِهَا فِيهِ، فَلَوْ مَاتَ، أَوْ جُنَّ، أَوْ تَغَيَّرَ - بَعْدَ أَنْ شَهِدَ قَبْلَ أَنْ يَحْكُمَ بِشَهَادَتِهِ، أَوْ بَعْدَ أَنْ حَكَمَ بِهَا - نَفَذَتْ عَلَى كُلِّ حَالٍ، وَلَمْ تُرَدَّ.

L29924 Ali said: "As for his death, insanity, and change, the testimony has been soundly established, and what occurred afterward did not require revoking it after its confirmation."

قَالَ عَلِيٌّ: أَمَّا مَوْتُهُ وَجُنُونُهُ وَتَغَيُّرُهُ فَقَدْ تَمَّتْ الشَّهَادَةُ صَحِيحَةً، وَلَمْ يُوجِبْ فَسْخَهَا بَعْدَ ثُبُوتِهَا مَا حَدَثَ بَعْدَ ذَلِكَ.

[51] **Hadith references (L29919):** Sahih Muslim 49a; Riyad as-Salihin 184.

As for retracting one's testimony: if two just witnesses impugn him at the time he testified, his testimony must be rejected. His own admission of lying or negligence holds more weight against him than another's testimony to that effect.

Our position is that it is the position of Ḥammād ibn Abī Sulaymān, and al-Ḥasan al-Baṣrī.

The Issue of the Jurisprudential Ruling on the Performance of Testimony

Issue 1802: Bearing testimony is a farḍ upon everyone who knows it, unless doing so would cause them difficulty due to excessive hardship, loss of wealth, or physical weakness. In such cases, they need only declare it.

Allah, the Most High, said: "Nor let the witnesses refuse when they are called." [Al-Baqarah: 282][52]

Therefore, this applies in its general sense when they are summoned to testify or to fulfill their duty.

It is impermissible to particularize anything of that without a scriptural text, thus whoever does so is asserting about Allah, the Exalted, what he has no knowledge of.

Case: If the judge does not know the witnesses.

Issue 1803: If the judge does not recognize the witnesses, he must ask about them, inform the person testified against about those who testified against him, and require the party in whose favor testimony is given to establish their uprightness.

He said to the one against whom testimony is given: "Seek means to refute their testimony against yourself." If their integrity is confirmed to him, he must judge based on their testimony without hesitation, as mentioned previously. If they are discredited before judgment, he shall not rule by

[52]**Qur'an references (L29929):** Qur'an 2:282 (Al-Baqarah).

وَأَمَّا رُجُوعُهُ عَنْ شَهَادَتِهِ: فَلَوْ أَنَّ عَدْلَيْنِ شَهِدَا بِجُرْحَتِهِ حِينَ شَهِدَ لَوَجَبَ رَدُّ مَا شَهِدَ بِهِ، وَإِقْرَارُهُ عَلَى نَفْسِهِ بِالْكَذِبِ أَوْ الْغَفْلَةِ أَثْبَتُ عَلَيْهِ مِنْ شَهَادَةِ غَيْرِهِ عَلَيْهِ بِذَلِكَ -.

وَقَوْلُنَا هُوَ قَوْلُ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَالْحَسَنِ الْبَصْرِيِّ.

[مَسْأَلَة حُكْم أَدَاء الشَّهَادَة]

١٨٠٢ - مَسْأَلَةٌ: وَأَدَاءُ الشَّهَادَةِ فَرْضٌ عَلَى كُلِّ مَنْ عَلِمَهَا، إلَّا أَنْ يَكُونَ عَلَيْهِ حَرَجٌ فِي ذَلِكَ لِبُعْدِ مَشَقَّةٍ، أَوْ لِتَضْيِيعِ مَالٍ، أَوْ لِضَعْفٍ فِي جِسْمِهِ، فَلْيُعْلِنْهَا فَقَطْ.

قَالَ تَعَالَى: {وَلا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا} [البقرة: ٢٨٢]

فَهَذَا عَلَى عُمُومِهِ إذَا دُعُوا لِلشَّهَادَةِ، أَوْ دُعُوا لِأَدَائِهَا.

وَلَا يَجُوزُ تَخْصِيصُ شَيْءٍ مِنْ ذَلِكَ بِغَيْرِ نَصٍّ، فَيَكُونُ مَنْ فَعَلَ ذَلِكَ قَائِلًا عَلَى اللَّهِ تَعَالَى مَا لَا عِلْمَ لَهُ بِهِ.

[مَسْأَلَة إذَا لَمْ يَعْرِف الْحَاكِم الشُّهُود]

١٨٠٣ - مَسْأَلَةٌ: فَإِنْ لَمْ يَعْرِفْ الْحَاكِمُ الشُّهُودَ سَأَلَ عَنْهُمْ، وَأَخْبَرَ الْمَشْهُودَ بِمَنْ شَهِدَ عَلَيْهِ، وَكَلَّفَ الْمَشْهُودَ لَهُ أَنْ يُعَرِّفَهُ بِعَدَالَتِهِمْ.

وَقَالَ لِلْمَشْهُودِ عَلَيْهِ: اُطْلُبْ مَا تَرُدُّ بِهِ شَهَادَتَهُمْ عَنْ نَفْسِك، فَإِنْ ثَبَتَ عِنْدَهُ عَدَالَتُهُمْ قَضَى بِهِمْ وَلَمْ يَتَرَدَّدْ لِمَا ذَكَرْنَا قَبْلُ وَإِنْ جُرِّحُوا قَبْلَ الْحُكْمِ لَمْ يَحْكُمْ بِشَهَادَتِهِمْ، وَإِنْ جُرِّحُوا عِنْدَهُ بَعْدَ الْحُكْمِ بِشَهَادَتِهِمْ فَسَخَ مَا حَكَمَ بِهِ بِشَهَادَتِهِمْ؛ لِأَنَّهُ مُفْتَرَضٌ عَلَيْهِ رَدُّ

their testimony. If they are discredited before him after judgment through their testimony, he must revoke what he judged by their testimony, for it is incumbent upon him to reject the account of the transgressor, enforce the testimony of the just, and verify what is uncertain until clarified. And success is from Allah, the Most High.

خَبَرِ الْفَاسِقِ، وَإِنْفَاذُ شَهَادَةِ الْعَدْلِ وَالتَّبَيُّنُ فِيمَا لَا يُدْرَى حَتَّى يُدْرَى - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The issue of a woman assuming governance.

[مَسْأَلَة تولي الْمَرْأَة الْحُكْم]

1804. Issue: It is permissible for a woman to hold judicial authority—this being the opinion of Abū Ḥanīfa. It is reported that ʿUmar ibn al-Khaṭṭāb appointed al-Shifāʾ, a woman from his tribe, to oversee the market.

١٨٠٤ - مَسْأَلَةٌ: وَجَائِزٌ أَنْ تَلِيَ الْمَرْأَةُ الْحُكْمَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ - وَقَدْ رُوِيَ عَنْ عُمَرَ بْنِ الْخَطَّابِ: أَنَّهُ وَلَّى الشِّفَاءَ امْرَأَةً مِنْ قَوْمِهِ السُّوقَ.

If it is said: The Messenger of Allah (peace be upon him) has stated, "A nation who entrusts their affairs to any single woman will never succeed."

فَإِنْ قِيلَ: قَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَنْ يُفْلِحَ قَوْمٌ أَسْنَدُوا أَمْرَهُمْ إِلَى امْرَأَةٍ» .

We said: The Messenger of Allah (peace and blessings be upon him) only said that regarding the general communal matter, namely the caliphate.

قُلْنَا: إِنَّمَا قَالَ ذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْأَمْرِ الْعَامِّ الَّذِي هُوَ الْخِلَافَةُ.

The evidence for that is his statement—peace and blessings be upon him—: "A woman is a guardian over her husband's wealth and is responsible for those entrusted to her care."

بُرْهَانُ ذَلِكَ -: قَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «الْمَرْأَةُ رَاعِيَةٌ عَلَى مَالِ زَوْجِهَا وَهِيَ مَسْئُولَةٌ عَنْ رَعِيَّتِهَا» .

The Malikis have permitted her to serve as an executor (waṣiyyah) and agent (wakīlah), and no textual evidence exists preventing her from undertaking certain matters. And with Allah, the Exalted, lies all success.

وَقَدْ أَجَازَ الْمَالِكِيُّونَ أَنْ تَكُونَ وَصِيَّةً وَوَكِيلَةً وَلَمْ يَأْتِ نَصٌّ مِنْ مَنْعِهَا أَنْ تَلِيَ بَعْضَ الْأُمُورِ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The issue of a male slave holding judicial authority.

[مَسْأَلَة تولي الْعَبْد الْقَضَاء]

It is permissible for a slave to assume the position of a judge, as he is commanded to enjoin good and forbid evil.

١٨٠٥ - مَسْأَلَةٌ: وَجَائِزٌ أَنْ يَلِيَ الْعَبْدُ الْقَضَاءَ؛ لِأَنَّهُ مُخَاطَبٌ بِالْأَمْرِ بِالْمَعْرُوفِ وَالنَّهْيِ عَنْ الْمُنْكَرِ.

And by the saying of Allah, the Most High: "Indeed, Allah commands you

to render the trusts to those entitled to them, and when you judge between people, judge with justice" [an-Nisāʾ 4:58].[53]

وَبِقَوْلِ اللَّهِ تَعَالَى: {إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الأَمَانَاتِ إِلَى أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ} [النساء: ٥٨] .

L29945 This ruling applies universally to men, women, free persons, and slaves, as the entirety of religious law remains unified—except when the scriptural text specifies a distinction between women and men, or between free persons and slaves, in which case such rulings are then exempted from the general principles of the law.

وَهَذَا مُتَوَجِّهٌ بِعُمُومِهِ إِلَى الرَّجُلِ، وَالْمَرْأَةِ، وَالْحُرِّ، وَالْعَبْدِ، وَالدِّينُ كُلُّهُ وَاحِدٌ، إِلَّا حَيْثُ جَاءَ النَّصُّ بِالْفَرْقِ بَيْنَ الْمَرْأَةِ، وَالرَّجُلِ، وَبَيْنَ الْحُرِّ، وَالْعَبْدِ فَيُسْتَثْنَى حِينَئِذٍ مِنْ عُمُومِ إِجْمَالِ الدِّينِ.

L29946 Malik and Abu Hanifah said: It is not permissible to appoint a slave as a judge, and we know of no valid basis whatsoever for the proponents of this view. An authenticated narration from the Messenger of Allah—peace and blessings be upon him—has been reported via Shuʻbah's chain, from Abu Imran al-Jawni, from ʻAbdullah ibn al-Samit, from Abu Dharr: He arrived at al-Rabadhah when the prayer had been established, and there was a slave leading them in prayer. Someone said: "This is Abu Dharr," so the slave started to step back. Abu Dharr said: "My beloved friend"—meaning the Messenger of Allah, peace and blessings be upon him—"advised me to hear and obey, even if he were a slave with amputated limbs."

وَقَالَ مَالِكٌ، وَأَبُو حَنِيفَةَ: لَا يَجُوزُ تَوْلِيَةُ الْعَبْدِ الْقَضَاءَ، وَمَا نَعْلَمُ لِأَهْلِ هَذَا الْقَوْلِ حُجَّةً أَصْلًا - وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ شُعْبَةَ نا أَبُو عِمْرَانَ الْجَوْنِيُّ عَنْ عَبْدِ اللَّهِ بْنِ الصَّامِتِ عَنْ «أَبِي ذَرٍّ أَنَّهُ انْتَهَى إِلَى الرَّبَذَةِ - وَقَدْ أُقِيمَتْ الصَّلَاةُ - فَإِذَا عَبْدٌ يَؤُمُّهُمْ، فَقِيلَ لَهُ: هَذَا أَبُو ذَرٍّ، فَذَهَبَ يَتَأَخَّرُ، فَقَالَ أَبُو ذَرٍّ: أَوْصَانِي خَلِيلِي - يَعْنِي رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ أَسْمَعَ وَأُطِيعَ وَإِنْ كَانَ عَبْدًا مُجَدَّعَ الْأَطْرَافِ» .

L29947 This is an explicit text affirming the guardianship of a slave, being an established ruling by Uthman in the presence of the Companions without any of them objecting to it.

فَهَذَا نَصٌّ جَلِيٌّ عَلَى وِلَايَةِ الْعَبْدِ، وَهُوَ فِعْلُ عُثْمَانَ بِحَضْرَةِ الصَّحَابَةِ لَا يُنْكِرُ ذَلِكَ مِنْهُمْ أَحَدٌ.

L29948 Through the chain of Sufyan al-Thawri, from Ibrāhīm ibn al-ʻAlāʾ, from Suwayd ibn Ghafalah, who said: "Umar ibn al-Khattāb said to me, 'Obey the imam even if he is a maimed slave.'"

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ إِبْرَاهِيمَ بْنِ الْعَلَاءِ عَنْ سُوَيْدِ بْنِ غَفَلَةَ قَالَ: قَالَ لِي عُمَرُ بْنُ الْخَطَّابِ: أَطِعْ الْإِمَامَ وَإِنْ كَانَ عَبْدًا مُجَدَّعًا.

L29949 Thus, this ʻUmar—no opponent from the Companions is known for him.

فَهَذَا عُمَرُ لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ.

L29950–29951 **The issue of the testimony of the child of fornication.**

[مَسْأَلَة شَهَادَة وَلَد الزِّنَا]

[53] **Qur'an references (L29944):** Qur'an 4:58 (An-Nisa).

مَسْأَلَةٌ: وَشَهَادَةُ وَلَدِ الزِّنَى جَائِزَةٌ فِي الزِّنَى وَغَيْرِهِ، وَيَلِي الْقَضَاءَ، وَهُوَ كَغَيْرِهِ مِنْ الْمُسْلِمِينَ.

L29952 Issue: The testimony of a child of adultery is permissible in cases of adultery and other issues. He is eligible for judgeship and is treated like other Muslims.

وَلَا يَخْلُو أَنْ يَكُونَ عَدْلًا فَيُقْبَلَ، فَيَكُونَ كَسَائِرِ الْعُدُولِ، أَوْ غَيْرَ عَدْلٍ فَلَا يُقْبَلَ فِي شَيْءٍ أَصْلًا.

L29953 He must either be just—in which case he is accepted, and thus becomes like all other just individuals—or non-just, in which case he is not accepted in any matter at all.

وَلَا نَصَّ فِي التَّفْرِيقِ بَيْنَهُ وَبَيْنَ غَيْرِهِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ - وَهُوَ قَوْلُ الْحَسَنِ، وَالشَّعْبِيِّ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ، وَالزُّهْرِيِّ - وَرُوِيَ عَنْ ابْنِ عَبَّاسٍ.

L29954 There is no explicit textual evidence regarding the legal differentiation between him and others—this being the opinion of Abū Ḥanīfah, al-Shāfiʿī, Aḥmad, Isḥāq, and Abū Sulaymān—and likewise the opinion of al-Ḥasan, al-Shaʿbī, ʿAṭāʾ ibn Abī Rabāḥ, and al-Zuhrī—and it is reported from Ibn ʿAbbās.

وَرُوِيَ عَنْ نَافِعٍ: لَا تَجُوزُ شَهَادَتُهُ، وَقَالَ مَالِكٌ، وَاللَّيْثُ: يُقْبَلُ فِي كُلِّ شَيْءٍ إلَّا فِي الزِّنَى - وَهَذَا فَرْقٌ لَا نَعْرِفُهُ عَنْ أَحَدٍ قَبْلَهُمَا - قَالَ اللَّهُ عَزَّ وَجَلَّ: {فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَإِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ} [الأحزاب: ٥] وَإِذَا كَانُوا إخْوَانَنَا فِي الدِّينِ فَلَهُمْ مَا لَنَا وَعَلَيْهِمْ مَا عَلَيْنَا.

L29955 It is narrated from Nāfiʿ: His testimony is inadmissible. Mālik and al-Layth said: It is accepted in all matters except unlawful sexual intercourse—this distinction was not known from anyone before them. Allah, the Exalted and Glorious, said: "If you do not know their fathers, then they are your brothers in faith and your clients" [Al-Aḥzāb: 5]. Since they are our brothers in faith, they are entitled to what we are entitled to and obligated by what we are obligated by.[54]

فَإِنْ قِيلَ: قَدْ جَاءَ " وَلَدُ الزِّنَا شَرُّ الثَّلَاثَةِ ".

L29956 If it is said, "It has been narrated that the child of adultery is the worst of the three [involved in the act],"

فَقُلْنَا: هَذَا عَلَيْكُمْ لِأَنَّكُمْ تَقْبَلُونَهُ فِيمَا عَدَا الزِّنَى، وَمَعْنَى هَذَا الْخَبَرِ عِنْدَنَا: أَنَّهُ فِي إنْسَانٍ بِعَيْنِهِ لِلْآيَةِ الَّتِي ذَكَرْنَا، وَلِأَنَّهُ قَدْ كَانَ فِيمَنْ لَا يُعْرَفُ أَبُوهُ، وَمَنْ لَا يَعْدِلُهُ جَمِيعُ أَهْلِ الْأَرْضِ، مِنْ حِينِ انْقِرَاضِ عَصْرِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إلَى يَوْمِ الْقِيَامَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29957 So we said: This is incumbent upon you because you accept it in matters other than adultery. The meaning of this narration according to us is that it concerns a specific individual due to the verse we mentioned, and because the ruling applies to those whose father is not known and those whom all people of the earth cannot match, from the end of the era of the Companions (may Allah be pleased with them) until the Day of Resurrection. And with Allah, the Most High, is success.

[مَسْأَلَة شَهَادَة مِنْ حُدَّ فِي زنا أَوْ قَذف أَوْ خَمْر أَوْ سَرِقَة ثُمَّ تاب]

The legal ruling on the testimony of a person who was subjected to ḥadd punishment for adultery (zinā), slander

L29958

[54] **Qur'an references (L29955):** Qur'an 33:5 (Al-Ahzab).

(qadhf), consuming intoxicants (khamr), or theft (sariqa) and subsequently repented.

L29959 1807 - Issue: If someone is subjected to a prescribed punishment for fornication, slanderous accusation (qadhf), alcohol consumption, or theft, then repents and reforms his condition, his testimony is permissible in all matters, including cases involving the same offense for which he was punished. This is because, as we previously explained, this scenario must be one of two possibilities: either he is upright (عدل)—in which case his testimony cannot be rejected for other matters and is valid in all things except where a specific text exists (and we only know of such a text regarding a Bedouin against a settled townsman exclusively)—or he is not upright, in which case his testimony is not accepted in anything. Any ruling beyond this is invalid and constitutes arbitrary judgment based on false conjecture without [support from] the Qur'an, the Sunnah, or sound rational evidence.

١٨٠٧ - مَسْأَلَةٌ: وَمَنْ حُدَّ فِي زِنًى، أَوْ قَذْفٍ، أَوْ خَمْرٍ، أَوْ سَرِقَةٍ، ثُمَّ تَابَ وَصَلَحَتْ حَالُهُ، فَشَهَادَتُهُ جَائِزَةٌ فِي كُلِّ شَيْءٍ، وَفِي مِثْلِ مَا حُدَّ فِيهِ لِمَا ذَكَرْنَا مِنْ أَنَّهُ لَا يَخْلُو هَذَا مِنْ أَنْ يَكُونَ عَدْلًا، فَلَا يَجُوزُ رَدُّ شَهَادَتِهِ لِغَيْرِهِ، وَفِي كُلِّ شَيْءٍ إلَّا حَيْثُ جَاءَ النَّصُّ وَلَا نَعْلَمُهُ إلَّا فِي الْبَدَوِيِّ عَلَى صَاحِبِ الْقَرْيَةِ فَقَطْ، أَوْ لَا يَكُونُ عَدْلًا فَلَا يُقْبَلُ فِي شَيْءٍ، وَمَا عَدَا هَذَا فَبَاطِلٌ وَتَحَكُّمٌ بِالظَّنِّ الْكَاذِبِ بِلَا قُرْآنٍ وَلَا سُنَّةٍ وَلَا مَعْقُولٍ.

L29960 A group held the opinion that concerning one subjected specifically to the ḥadd penalty for *qadhf* (defamatory accusation of unchastity), his testimony is never accepted—even if he repents—in any matter at all.

وَقَالَتْ طَائِفَةٌ فِي الْمَحْدُودِ فِي الْقَذْفِ خَاصَّةً: لَا تُقْبَلُ شَهَادَتُهُ أَبَدًا - وَإِنْ تَابَ - فِي شَيْءٍ أَصْلًا.

L29961 Others said that the testimony of someone subjected to hadd for drinking wine or other hadd offenses is not accepted at all.

وَقَالَ آخَرُونَ: لَا تُقْبَلُ شَهَادَةُ مَنْ حُدَّ فِي خَمْرٍ أَوْ غَيْرِ ذَلِكَ أَصْلًا.

L29962–29964 Thus, this statement was reported from ʿUmar in that forged letter: "Muslims are trustworthy." Some of them against others, except one who has been flogged as a prescribed ḥadd punishment, one against whom false testimony has been attempted, or one suspected due to clientage or kinship ties—and this is the statement of Al-Ḥasan ibn Ḥayy.

فَهَذَا الْقَوْلُ قَدْ جَاءَ عَنْ عُمَرَ فِي تِلْكَ الرِّسَالَةِ الْمَكْذُوبَةِ " الْمُسْلِمُونَ عُدُولٌ بَعْضُهُمْ عَلَى بَعْضٍ إلَّا مَجْلُودًا حَدًّا أَوْ مُجَرَّبًا عَلَيْهِ شَهَادَةُ زُورٍ أَوْ ظَنِينًا فِي وَلَاءٍ أَوْ قَرَابَةٍ " وَهُوَ قَوْلُ الْحَسَنِ بْنِ حَيٍّ.

L29965 We have previously stated: There is no valid proof in anyone apart from the Messenger of Allah (may Allah's peace and blessings be upon him), nor is there an explicit text invalidating the testimony of those we have mentioned.

وَقَدْ قُلْنَا: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا نَصَّ فِي رَدِّ شَهَادَةِ مَنْ ذَكَرْنَا.

L29966 As for the second opinion regarding the restriction applying to one who received the legal punishment for false accusation (qadhf), we have received a narration through Ibn Jurayj via Aṭāʾ al-Khurāsānī from Ibn ʿAbbās: "The testimony of the false accuser (qādhif) is not valid, even if he repents."

فَأَمَّا الْقَوْلُ الثَّانِي: فِي تَخْصِيصِ مَنْ حُدَّ فِي الْقَذْفِ، فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ الْخُرَاسَانِيِّ عَنْ ابْنِ عَبَّاسٍ: شَهَادَةُ الْقَاذِفِ لَا تَجُوزُ وَإِنْ تَابَ.

L29967 From the transmission of Ismāʿīl ibn Isḥāq: He said, “Abū al-Walīd al-Ṭayālisī narrated to us. Qays narrated to us from Sālim al-Aftas from Qays ibn ʿĀṣim: When a man would come to Abū Bakra seeking his testimony, he would say to him: ’Seek another witness besides me, for the Muslims have declared me a transgressor.”’

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا أَبُو الْوَلِيدِ - هُوَ الطَّيَالِسِيُّ - نا قَيْسٌ عَنْ سَالِمٍ - هُوَ الْأَفْطَسُ - عَنْ قَيْسِ بْنِ عَاصِمٍ: كَانَ أَبُو بَكْرَةَ إِذَا أَتَاهُ رَجُلٌ يُشْهِدُهُ قَالَ لَهُ: أَشْهِدْ غَيْرِي فَإِنَّ الْمُسْلِمِينَ قَدْ فَسَّقُونِي.

L29968 And it has been authentically reported from Al-Shaʿbi (in one of his two opinions), Al-Nakhaʿi, Ibn al-Musayyib (in one of his two opinions), Al-Hasan al-Basrī, Mujāhid (in one of his two opinions), Masrūq (in one of his two opinions), and Ikrimah (in one of his two opinions) that the testimony of a false accuser of unchastity is never accepted, even if he repents.

وَصَحَّ عَنْ الشَّعْبِيِّ فِي أَحَدِ قَوْلَيْهِ، وَالنَّخَعِيِّ، وَابْنِ الْمُسَيِّبِ - فِي أَحَدِ قَوْلَيْهِ - وَالْحَسَنِ الْبَصْرِيِّ، وَمُجَاهِدٍ - فِي أَحَدِ قَوْلَيْهِ - وَمَسْرُوقٍ - فِي أَحَدِ قَوْلَيْهِ - وَعِكْرِمَةَ - فِي أَحَدِ قَوْلَيْهِ -: أَنَّ الْقَاذِفَ لَا تُقْبَلُ شَهَادَتُهُ أَبَدًا وَإِنْ تَابَ.

L29969 It is reported from Shurayh that the testimony of one who has received the hadd punishment for false accusation of unchastity is never accepted.

وَعَنْ شُرَيْحٍ: الْمَحْدُودُ فِي الْقَذْفِ لَا تُقْبَلُ لَهُ شَهَادَةٌ أَبَدًا.

L29970 This is the opinion of Abū Ḥanīfah, his companions and Sufyān.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَسُفْيَانَ.

L29971 Others said: If one punished with the *hadd* for *qadhf* repents, his testimony becomes acceptable. This was transmitted to us from ʿUmar ibn al-Khaṭṭāb through Abū ʿUbayd’s chain: Saʿīd ibn Abī Maryam narrated to us from Muḥammad ibn Sālim from Ibrāhīm ibn Maysarah from Saʿīd ibn al-Musayyib that ʿUmar ibn al-Khaṭṭāb formally demanded their repentance—specifically Abū Bakrah and those who testified alongside him. Two repented while Abū Bakrah refused. The testimony of the two repentant witnesses was accepted, but Abū Bakrah’s testimony was not accepted.

وَقَالَ آخَرُونَ: إِنْ تَابَ الْمَحْدُودُ فِي الْقَذْفِ قُبِلَتْ شَهَادَتُهُ -: رُوِّينَا ذَلِكَ عَنْ عُمَرَ بْنِ الْخَطَّابِ مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا سَعِيدُ بْنُ أَبِي مَرْيَمَ عَنْ مُحَمَّدِ بْنِ سَالِمٍ عَنْ إِبْرَاهِيمَ بْنِ مَيْسَرَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ اسْتَتَابَهُمْ - يَعْنِي أَبَا بَكْرَةَ وَالَّذِينَ شَهِدُوا مَعَهُ - فَتَابَ اثْنَانِ وَأَبَى أَبُو بَكْرَةَ أَنْ يَتُوبَ، وَكَانَتْ شَهَادَتُهُمَا تُقْبَلُ وَكَانَ أَبُو بَكْرَةَ لَا تُقْبَلُ شَهَادَتُهُ.

L29972 And through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: Muḥammad ibn Kathīr narrated to us, Sulaymān ibn Kathīr narrated to us from al-Zuhrī from Saʿīd ibn al-Musayyab that ʿUmar ibn al-Khaṭṭāb flogged Abū Bakrah, Shibl ibn Maʿbad, and Nāfiʿ (Abū ʿAbdullāh) for their false accusation of unlawful sexual intercourse against al-Mughīrah ibn Shuʿbah, and he said to them: “Whoever among you repents, his testimony will be accepted.”

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا مُحَمَّدُ بْنُ كَثِيرٍ نا سُلَيْمَانُ بْنُ كَثِيرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَلَدَ أَبَا بَكْرَةَ، وَشِبْلَ بْنَ مَعْبَدٍ، وَنَافِعًا أَبَا عَبْدِ اللَّهِ، عَلَى قَذْفِهِمْ الْمُغِيرَةَ بْنَ شُعْبَةَ، وَقَالَ لَهُمْ: مَنْ تَابَ مِنْكُمْ قُبِلَتْ شَهَادَتُهُ

L29973 And through the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from Saʿīd ibn al-Musayyib, who said: Three men testified against al-Mughīrah ibn Shuʿbah for unlawful sexual intercourse (zinā), so ʿUmar flogged them and said to them: “Repent; then your testimony will be accepted.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، قَالَ: شَهِدَ عَلَى الْمُغِيرَةِ بْنِ شُعْبَةَ ثَلَاثَةٌ بِالزِّنَى فَجَلَدَهُمْ عُمَرُ وَقَالَ لَهُمْ: تُوبُوا تُقْبَلُ شَهَادَتُكُمْ.

L29974 From the narration of Ali ibn Abi Talhah, from Ibn Abbas: If a slanderer of unchastity repents, his testimony is accepted with Allah, the Almighty and Majestic, in His Book.

وَمِنْ طَرِيقِ عَلِيِّ بْنِ أَبِي طَلْحَةَ عَنْ ابْنِ عَبَّاسٍ: الْقَاذِفُ إذَا تَابَ فَشَهَادَتُهُ عِنْدَ اللَّهِ عَزَّ وَجَلَّ فِي كِتَابِهِ تُقْبَلُ.

L29975–29976 It has also been authentically reported from Umar ibn Abd al-Aziz, Abu Bakr ibn Muhammad ibn Amr ibn Hazm, Ubayd Allah ibn Abd Allah ibn Utbah ibn Mas'ud, Ata', Tawus, Mujahid, Ibn Abi Najih, al-Sha'bi, al-Zuhri, Habib ibn Abi Thabit, Umar ibn Abd Allah ibn Abi Talhah al-Ansari, Sa'id ibn al-Musayyib, Ikrimah, Sa'id ibn Jubayr, al-Qasim ibn Muhammad, Salim ibn Abd Allah, Sulayman ibn Yasar, Ibn Qusayt, Yahya ibn Sa'id al-Ansari, Rabi'ah, and Shurayh.

وَصَحَّ أَيْضًا: عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَأَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ وَعُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ، وَعَطَاءٍ، وَطَاوُسٍ، وَمُجَاهِدٍ، وَابْنِ أَبِي نَجِيحٍ، وَالشَّعْبِيِّ، وَالزُّهْرِيِّ، وَحَبِيبِ بْنِ أَبِي ثَابِتٍ، وَعُمَرَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ الْأَنْصَارِيِّ، وَسَعِيدِ بْنِ الْمُسَيَّبِ، وَعِكْرِمَةَ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ: وَسَالِمِ بْنِ عَبْدِ اللَّهِ، وَسُلَيْمَانِ بْنِ يَسَارٍ، وَابْنِ قُسَيْطٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَرَبِيعَةَ، وَشُرَيْحٍ.

L29977 And this is the opinion of ʿUthmān al-Battī.

وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ.

L29978 Ibn Abi Layla, Malik, al-Shafi'i, Abi Thawr, Abi Ubayd, Ahmad, Ishaq, and some of our companions. However, Malik said: His testimony is not accepted in cases analogous to those for which a hadd was imposed, and we do not know of this distinction from anyone before him.

وَابْنِ أَبِي لَيْلَى، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي عُبَيْدٍ، وَأَحْمَدَ، وَإِسْحَاقَ، وَبَعْضِ أَصْحَابِنَا، إلَّا أَنَّ مَالِكًا قَالَ: لَا تُقْبَلُ شَهَادَتُهُ فِي مِثْلِ مَا حُدَّ فِيهِ، وَلَا نَعْلَمُ هَذَا الْفَرْقَ عَنْ أَحَدٍ قَبْلَهُ.

L29979 As for Abū Ḥanīfa, we know of no predecessors in holding that opinion except Shuraiḥ alone. He differed from all others from whom anything regarding that matter was transmitted, because they did not distinguish between one subject to a ḥadd punishment and one not subject to it. Thus, he differed from the majority of scholars in that.

وَأَمَّا أَبُو حَنِيفَةَ - فَلَا نَعْلَمُ لَهُ سَلَفًا فِي قَوْلٍ إلَّا شُرَيْحًا وَحْدَهُ، وَخَالَفَ سَائِرَ مَنْ رُوِيَ عَنْهُ فِي ذَلِكَ شَيْءٌ؛ لِأَنَّهُمْ لَمْ يَخُصُّوا مَحْدُودًا مِنْ غَيْرِ مَحْدُودٍ، فَقَدْ خَالَفَ جُمْهُورَ الْعُلَمَاءِ فِي ذَلِكَ.

L29980 Abu Muhammad said: Those who prohibit the acceptance of testimony from a false accuser of adultery - even if he repents - have cited a report we transmitted as evidence, which states: "When Hilāl ibn Umayyah falsely accused his wife of adultery, the Ansār said: 'Now the Messenger of Allah—peace and blessings be upon him—will flog Hilāl ibn Umayyah and invalidate his testimony among the Muslims.'"

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ مَنَعَ مِنْ قَبُولِ شَهَادَةِ الْقَاذِفِ - وَإِنْ تَابَ -: بِخَبَرٍ رُوِّينَاهُ، فِيهِ «أَنَّ هِلَالَ بْنَ أُمَيَّةَ إذْ قَذَفَ امْرَأَتَهُ، قَالَتْ الْأَنْصَارُ: الْآنَ يَضْرِبُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هِلَالَ بْنَ أُمَيَّةَ، وَيُبْطِلُ شَهَادَتَهُ فِي الْمُسْلِمِينَ» .

L29981 This report is unsound because it was solely narrated by Abbad ibn Mansur,

and Yahya al-Qattan testified against him by stating that he did not memorize well and did not approve of him. Ibn Ma'in also said: "He is not reliable."

وَهَذَا خَبَرٌ لَا يَصِحُّ؛ لِأَنَّهُ انْفَرَدَ بِهِ عَبَّادُ بْنُ مَنْصُورٍ، وَقَدْ شَهِدَ عَلَيْهِ يَحْيَى الْقَطَّانُ: بِأَنَّهُ كَانَ لَا يَحْفَظُ وَلَمْ يَرْضَهُ - وَقَالَ ابْنُ مَعِينٍ: لَيْسَ بِذَلِكَ.

L29982 Furthermore, had it been sound, they would have no grounds to rely on in it, because it does not state that if he repents, his testimony is not accepted. We do not contest their view that the testimony of the false accuser of unchastity is inadmissible.

ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ مُتَعَلَّقٌ؛ لِأَنَّهُ لَيْسَ فِيهِ: أَنَّهُ إنْ تَابَ لَمْ تُقْبَلْ شَهَادَتُهُ، وَنَحْنُ لَا نُخَالِفُهُمْ فِي أَنَّ الْقَاذِفَ لَا تُقْبَلُ شَهَادَتُهُ.

L29983 Moreover, it is not from the speech of the Prophet—peace and blessings of Allah be upon him—nor is there any proof except in his speech—upon him be peace and blessings.

وَأَيْضًا: فَلَيْسَ مِنْ كَلَامِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا حُجَّةَ إلَّا فِي كَلَامِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L29984 Moreover, indeed their statement is an assumption that has not been substantiated. Thus, no crescent was sighted, nor has his testimony been rejected. This is sufficient.

وَأَيْضًا - فَإِنَّ ذَلِكَ الْقَوْلَ مِنْهُمْ ظَنٌّ لَمْ يَصِحَّ، فَمَا ضُرِبَ هِلَالٌ، وَلَا سَقَطَتْ شَهَادَتُهُ - وَفِي هَذَا كِفَايَةٌ.

L29985–29987 And they mentioned a corrupt report: We transmitted it through the transmission path of Ḥajjāj ibn Arṭā'a from ʿAmr ibn Shuʿayb from... From his father, from his grandfather: The Prophet—may Allah's peace and blessings be upon him—said, "Muslims are considered upright witnesses against one another, except one who has been penalized under Ḥadd for false accusation."

وَذَكَرُوا خَبَرًا فَاسِدًا: رُوِّينَاهُ مِنْ طَرِيقِ حَجَّاجِ بْنِ أَرْطَاةَ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْمُسْلِمُونَ عُدُولٌ بَعْضُهُمْ عَلَى بَعْضٍ إلَّا مَحْدُودًا فِي قَذْفٍ» .

L29988 Abu Muhammad said: This is a written document, and Al-Hajjaj is doomed. Moreover, they are the foremost in opposing it, for they do not accept the parents for their two sons, nor a son for his parents, nor either spouse for the other, nor the slave. This constitutes a sheer contradiction of this report.

قَالَ أَبُو مُحَمَّد: هَذِهِ صَحِيفَةٌ وَحَجَّاجٌ هَالِكٌ - ثُمَّ هُمْ أَوَّلُ مُخَالِفِينَ لَهُ؛ لِأَنَّهُمْ لَا يَقْبَلُونَ الْأَبَوَيْنِ لِابْنَيْهِمَا، وَلَا الِابْنَ لِأَبَوَيْهِ، وَلَا أَحَدَ الزَّوْجَيْنِ لِلْآخَرِ وَلَا الْعَبْدَ وَهَذَا خِلَافٌ مُجَرَّدٌ لِهَذَا الْخَبَرِ.

L29989 Furthermore — the phrase "except if he repents" may be added to this report with other textual sources.

وَأَيْضًا - فَقَدْ يُضَافُ إلَى هَذَا الْخَبَرِ " إلَّا إنْ تَابَ " بِنُصُوصٍ أُخَرَ.

L29990 They mentioned the words of Allah, the Exalted: {And do not accept their testimony ever, for they are the transgressors} [An-Nur: 4] {except those who

وَذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {وَلا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ} [النور: ٤] {إِلا الَّذِينَ تَابُوا} [النور: ٥] قَالُوا: فَإِنَّمَا اسْتَثْنَى تَعَالَى بِالتَّوْبَةِ مِنْ الْفِسْقِ فَقَطْ.

repent} [An-Nur: 5]. They said: The Exalted made an exception only through repentance from transgression.[55]

L29991 Abu Muhammad said: This is a specification of the verse without proof; rather, the exception relates to the prohibition of accepting their testimony due to their moral deviance, as well as the inherent nature of such deviance. This cannot be extended beyond the text without explicit textual authority.

L29992 Ali said: For everyone about whom it is narrated that their testimony is not accepted—even if they repent—it has also been narrated that their testimony is accepted, except in the case of al-Ḥasan and al-Nakhaʿī only.

L29993 As for the report from Ibn Abbas, it is weak, and the more evident opinion from him is contrary to that.

L29994 As for the narration from Abū Bakrah stating, "The Muslims declared me a transgressor"—Allah forbid that this be valid. We have not heard of any Muslim declaring Abū Bakrah a transgressor, nor did they refuse to accept his testimony regarding the Prophet—peace and blessings of Allah be upon him—in matters of religious rulings. And success is from Allah, the Exalted.

L29995 ## The Issue of the Testimony of a Blind Person

L29996 Issue 1808: The testimony of a blind person is acceptable, like that of a legally sound person.

L29997 People have differed regarding this matter, and a group has expressed the same view as ours.

L29998 This has been narrated from Ibn ʿAbbās and confirmed from al-Zuhrī, ʿAṭāʾ, al-Qāsim ibn Muḥammad, al-Shaʿbī, Shurayḥ, Ibn Sīrīn, al-Ḥakam ibn ʿUṭaybah, Rabīʿah, Yaḥyā ibn Saʿīd al-Anṣārī, Ibn Jurayj, one of two opinions of al-Ḥasan, one of two opinions of Iyās ibn Muʿāwiyah, and one of two opinions of Ibn Abī Laylā—which is also the opinion of Mālik, al-Layth, Aḥmad, Isḥāq, Abū Sulaymān, and our companions.

قَالَ أَبُو مُحَمَّد: هَذَا تَخْصِيصٌ لِلْآيَةِ بِلَا دَلِيلٍ بَلْ الِاسْتِثْنَاءُ رَاجِعٌ إلَى الْمَنْعِ مِنْ قَبُولِ شَهَادَتِهِمْ مِنْ أَجْلِ فِسْقِهِمْ، وَإِلَى الْفِسْقِ، وَهَذَا لَا يَجُوزُ تَعَدِّيهِ بِغَيْرِ نَصٍّ.

قَالَ عَلِيٌّ: كُلُّ مَنْ رُوِيَ عَنْهُ - أَنْ لَا تُقْبَلَ شَهَادَتُهُ وَإِنْ تَابَ - فَقَدْ رُوِيَ عَنْهُ قَبُولُهَا، إلَّا الْحَسَنُ، وَالنَّخَعِيُّ فَقَطْ.

وَأَمَّا الرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ فَضَعِيفَةٌ، وَالْأَظْهَرُ عَنْهُ خِلَافُ ذَلِكَ.

وَأَمَّا الرِّوَايَةُ عَنْ أَبِي بَكْرَةَ " إنَّ الْمُسْلِمِينَ فَسَّقُونِي " فَمَعَاذَ اللَّهِ أَنْ يَصِحَّ، مَا سَمِعْنَا أَنَّ مُسْلِمًا فَسَّقَ أَبَا بَكْرَةَ، وَلَا امْتَنَعَ مِنْ قَبُولِ شَهَادَتِهِ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَحْكَامِ الدِّينِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة شَهَادَة الْأَعْمَى]

١٨٠٨ - مَسْأَلَةٌ: وَشَهَادَةُ الْأَعْمَى مَقْبُولَةٌ كَالصَّحِيحِ.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَتْ طَائِفَةٌ كَمَا قُلْنَا.

وَرُوِيَ ذَلِكَ عَنْ ابْنِ عَبَّاسٍ، وَصَحَّ ذَلِكَ عَنْ الزُّهْرِيِّ، وَعَطَاءٍ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ، وَالشَّعْبِيِّ، وَشُرَيْحٍ، وَابْنِ سِيرِينَ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَرَبِيعَةَ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَابْنِ جُرَيْجٍ، وَأَحَدِ قَوْلَيْ الْحَسَنِ، وَأَحَدِ قَوْلَيْ إيَاسِ بْنِ مُعَاوِيَةَ، وَأَحَدِ قَوْلَيْ ابْنِ أَبِي لَيْلَى - وَهُوَ قَوْلُ مَالِكٍ، وَاللَّيْثِ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

[55] **Qur'an references (L29990):** Qur'an 24:4 (An-Nur); Qur'an 24:5 (An-Nur).

L29999 A group of scholars held that his testimony is valid for matters he knew before blindness but invalid for matters he knew after blindness—an opinion held by al-Ḥasan al-Baṣrī and one of the two positions of Ibn Abī Laylā.

وَقَالَتْ طَائِفَةٌ: تَجُوزُ شَهَادَتُهُ فِيمَا عَرَفَ قَبْلَ الْعَمَى، وَلَا تَجُوزُ فِيمَا عَرَفَ بَعْدَ الْعَمَى - وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَأَحَدُ قَوْلَيْ ابْنِ أَبِي لَيْلَى.

L30000–30001 It is the view of Abū Yūsuf, al-Shāfiʿī, and his companions.

وَهُوَ قَوْلُ أَبِي يُوسُفَ، وَالشَّافِعِيِّ، وَأَصْحَابِهِ.

L30002 A group said: His testimony is permissible in minor matters. This has been narrated to us via the transmission of Ibrāhīm al-Nakhaʿī, who said: They used to permit the testimony of a blind person in light matters.

وَقَالَتْ طَائِفَةٌ: تَجُوزُ شَهَادَتُهُ فِي الشَّيْءِ الْيَسِيرِ -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ: كَانُوا يُجِيزُونَ شَهَادَةَ الْأَعْمَى فِي الشَّيْءِ الْخَفِيفِ.

L30003 A group has said: It is not accepted in anything whatsoever, except in matters of lineage—this being the statement of Zufar. It has been narrated to us through the chain of ʻAbd al-Razzāq from Wakīʻ from Abū Ḥanīfah, and Abū Ḥanīfah's companions do not recognize this narration.

وَقَالَتْ طَائِفَةٌ: لَا تُقْبَلُ فِي شَيْءٍ أَصْلًا، إِلَّا فِي الْأَنْسَابِ - وَهُوَ قَوْلُ زُفَرَ، رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ وَكِيعٍ عَنْ أَبِي حَنِيفَةَ، وَلَا يَعْرِفُ أَصْحَابُهُ هَذِهِ الرِّوَايَةَ.

L30004 A group has said: It is not accepted in general—we have received narrations from Ali ibn Abi Talib, Iyas ibn Mu'awiyah, Al-Hasan, and Al-Nakha'i—that the latter two disapproved of the testimony of the blind.

وَقَالَتْ طَائِفَةٌ: لَا تُقْبَلُ جُمْلَةً - رُوِّينَا ذَلِكَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَعَنْ إِيَاسِ بْنِ مُعَاوِيَةَ، وَعَنْ الْحَسَنِ، وَالنَّخَعِيِّ: أَنَّهُمَا كَرِهَا شَهَادَةَ الْأَعْمَى.

L30005 Abu Hanifah said: Testimony is not admissible in any matter at all—neither regarding what one knew prior to blindness nor what was recognized after becoming blind.

وَقَالَ أَبُو حَنِيفَةَ: لَا تُقْبَلُ فِي شَيْءٍ أَصْلًا، لَا فِيمَا عَرَفَ قَبْلَ الْعَمَى، وَلَا فِيمَا عَرَفَ بَعْدَهُ.

L30006 Abu Muhammad said: As for those who permit it in small matters but forbid it in large ones, this is an utterly corrupt opinion because there is no evidence to support it, for Allah the Exalted has not prohibited large amounts except what He prohibited in small amounts.

قَالَ أَبُو مُحَمَّد: أَمَّا مَنْ أَجَازَهُ فِي الشَّيْءِ الْيَسِيرِ دُونَ الْكَثِيرِ، فَقَوْلٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ لَا بُرْهَانَ عَلَى صِحَّتِهِ، وَمَا حَرَّمَ اللَّهُ تَعَالَى مِنْ الْكَثِيرِ إِلَّا مَا حَرَّمَ مِنْ الْقَلِيلِ.

L30007 It has been authentically reported from the Prophet - peace and blessings of Allah be upon him -: "Whoever usurps a Muslim's property with his right hand, even if it is a tooth-stick from an arak tree, Allah will condemn him to Hellfire."

وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ اقْتَطَعَ بِيَمِينِهِ مَالَ مُسْلِمٍ وَلَوْ قَضِيبًا مِنْ أَرَاكٍ أَوْجَبَ اللَّهُ لَهُ النَّارَ» .

L30008 Furthermore, there is nothing in the world considered "much" except relative to what is less than it, and it is "little" relative to what is more than it—thus this statement is unreasonable and therefore invalid.

وَأَيْضًا فَإِنَّهُ لَيْسَ فِي الْعَالَمِ كَثِيرٌ إِلَّا بِالْإِضَافَةِ إلَى مَا هُوَ أَقَلُّ مِنْهُ، وَهُوَ قَلِيلٌ بِالْإِضَافَةِ إلَى مَا هُوَ أَكْثَرُ مِنْهُ - فَهُوَ قَوْلٌ لَا يُعْقَلُ فَسَقَطَ.

L30009 As for one who accepts this division solely in matters of lineage, it is invalid. For he only knows lineages insofar as he knows the informants who report on other matters and the witnesses sourced exclusively from those informants. Thus, this assertion too is invalidated.

وَأَمَّا مَنْ قَبِلَهُ فِي الْأَنْسَابِ فَقَطْ فَقِسْمَةٌ فَاسِدَةٌ، فَإِنَّهُ لَا يَعْرِفُ الْأَنْسَابَ إِلَّا مِنْ حَيْثُ يَعْرِفُ الْمُخْبِرِينَ بِغَيْرِ ذَلِكَ وَالْمُشْهِدِينَ لَهُ مِنْهُمْ فَقَطْ - فَبَطَلَ هَذَا الْقَوْلُ أَيْضًا.

L30010 As for the one who does not accept it - neither in what he knew before blindness nor after it - this constitutes an invalid statement with no proof whatsoever for its validity, and there is no distinction between what he knew during his soundness and what a sound person knew while his soundness and sight persisted.

وَأَمَّا مَنْ لَمْ يَقْبَلْهُ لَا فِيمَا عَرَفَ قَبْلَ الْعَمَى وَلَا بَعْدَهُ، فَقَوْلٌ فَاسِدٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ أَصْلًا، وَلَا فَرْقَ بَيْنَ مَا عَرَفَهُ فِي حَالِ صِحَّتِهِ، وَبَيْنَ مَا عَرَفَهُ الصَّحِيحُ وَتَمَادَتْ صِحَّتُهُ وَبَصَرُهُ.

L30011 If it is said: It is a statement narrated from ʿAlī ibn Abī Ṭālib.

فَإِنْ قِيلَ: هُوَ قَوْلٌ رُوِيَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ.

L30012 We said: This is a lie. It has never at all been reported from Ali that he said, "It is not accepted regarding what one knew before becoming blind"—nor was this known from anyone before Abu Hanifah.

قُلْنَا: هَذَا كَذِبٌ، مَا جَاءَ قَطُّ عَنْ عَلِيٍّ أَنَّهُ قَالَ: لَا يُقْبَلُ فِيمَا عَرَفَ قَبْلَ الْعَمَى - وَمَا عُرِفَ هَذَا عَنْ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ.

L30013–30014 Moreover, it is not authentically reported from Ali because it is transmitted through Al-Aswad ibn Qays's chain from shaykhs among his people or via Al-Hajjaj ibn Artat — and it has been narrated from Ibn Abbas contrary to that — thus this statement is dismissed.

وَأَيْضًا - فَإِنَّهُ لَا يَصِحُّ عَنْ عَلِيٍّ، لِأَنَّهُ مِنْ طَرِيقِ الْأَسْوَدِ بْنِ قَيْسٍ عَنْ أَشْيَاخٍ مِنْ قَوْمِهِ أَوْ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَقَدْ رُوِيَ عَنْ ابْنِ عَبَّاسٍ خِلَافُ ذَلِكَ - فَسَقَطَ هَذَا الْقَوْلُ.

L30015 As for those who permitted testimony regarding what one knew before blindness but did not permit it regarding what one knew after blindness, they cited as evidence the narration from the Prophet—peace and blessings be upon him—who was asked about testimony and replied: "Do you not see the sun in its position? Then testify or refrain."

وَأَمَّا مَنْ أَجَازَهُ فِيمَا عَلِمَ قَبْلَ الْعَمَى، وَلَمْ يُجِزْهُ فِيمَا عَلِمَ بَعْدَ الْعَمَى، فَإِنَّهُمْ احْتَجُّوا بِمَا رُوِيَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَّهُ سُئِلَ عَنْ الشَّهَادَةِ؟ فَقَالَ: أَلَا تَرَى الشَّمْسَ عَلَى مِثْلِهَا فَاشْهَدْ أَوْ دَعْ» .

L30016 Abu Muhammad said: This is a report whose chain of transmission is invalid, as it comes through Muhammad ibn Sulayman ibn Masmuul (who is rejected) from Ubayd Allah ibn Salamah ibn Wahram (who is weak). However, its meaning is sound. They stated: Voices may resemble each other, and the blind person is like one placed in darkness or behind a wall - we know of nothing else for them besides this.

قَالَ أَبُو مُحَمَّد: وَهَذَا خَبَرٌ لَا يَصِحُّ سَنَدُهُ، لِأَنَّهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ سُلَيْمَانَ بْنِ مَسْمُولٍ - وَهُوَ هَالِكٌ - عَنْ عُبَيْدِ اللَّهِ بْنِ سَلَمَةَ بْنِ وَهْرَامَ - وَهُوَ ضَعِيفٌ - لَكِنَّ مَعْنَاهُ صَحِيحٌ، وَقَالُوا: الْأَصْوَاتُ قَدْ تَشْتَبِهُ، وَالْأَعْمَى كَمَنْ أُشْهِدَ فِي ظُلْمَةٍ أَوْ خَلْفَ حَائِطٍ - مَا نَعْلَمُ لَهُمْ غَيْرَ هَذَا.

L30017 Abu Muhammad said: If voices can be similar, then forms can also be similar. It is not permissible for a sighted person nor a blind person to testify except regarding that which he is certain of and has no doubt about it.

قَالَ أَبُو مُحَمَّد: إنْ كَانَتْ الْأَصْوَاتُ تَشْتَبِهُ فَالصُّوَرُ أَيْضًا قَدْ تَشْتَبِهُ، وَمَا يَجُوزُ لِمُبْصِرٍ وَلَا أَعْمَى أَنْ يَشْهَدَ إلَّا بِمَا يُوقِنُ وَلَا يَشُكُّ فِيهِ.

وَمَنْ أُشْهِدَ خَلْفَ حَائِطٍ أَوْ فِي ظُلْمَةٍ فَأَيْقَنَ بِلَا شَكٍّ بِمَنْ أَشْهَدَهُ فَشَهَادَتُهُ مَقْبُولَةٌ فِي ذَلِكَ.

وَلَوْ لَمْ يَقْطَعْ الْأَعْمَى بِصِحَّةِ الْيَقِينِ عَلَى مَنْ يُكَلِّمُهُ لَمَا حَلَّ لَهُ أَنْ يَطَأَ امْرَأَتَهُ، إذْ لَعَلَّهَا أَجْنَبِيَّةٌ، وَلَا يُعْطِي أَحَدًا دَيْنًا عَلَيْهِ، إذْ لَعَلَّهُ غَيْرُهُ، وَلَا أَنْ يَبِيعَ مِنْ أَحَدٍ وَلَا أَنْ يَشْتَرِيَ.

وَقَدْ قَبِلَ النَّاسُ كَلَامَ أُمَّهَاتِ الْمُؤْمِنِينَ مِنْ خَلْفِ الْحِجَابِ.

فَإِنْ قَالُوا: إنَّمَا حَلَّ لَهُ وَطْءُ امْرَأَتِهِ بِغَلَبَةِ الظَّنِّ، كَمَا يَحِلُّ لَهُ ذَلِكَ فِي دُخُولِهَا عَلَيْهِ أَوَّلَ مَرَّةٍ وَلَعَلَّهَا غَيْرُهَا.

قُلْنَا: هَذَا بَاطِلٌ وَلَا يَجُوزُ لَهُ وَطْؤُهَا حَتَّى يُوقِنَ أَنَّهَا الَّتِي تَزَوَّجَ.

وَقَدْ أَمَرَ اللَّهُ تَعَالَى بِقَبُولِ الْبَيِّنَةِ، وَلَمْ يَشْتَرِطْ أَعْمَى مِنْ مُبْصِرٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَمَا نَعْلَمُ فِي الضَّلَالَةِ بَعْدَ الشِّرْكِ وَالْكَبَائِرِ أَكْبَرَ مِمَّنْ دَانَ اللَّهَ بِرَدِّ شَهَادَةِ جَابِرِ بْنِ عَبْدِ اللَّهِ، وَابْنِ أُمِّ كُلْثُومٍ، وَابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ -.

وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

[مَسْأَلَة لُزُوم الشَّهَادَة بلفظ أَشْهَد]

١٨٠٩ - مَسْأَلَةٌ: وَكُلُّ مَنْ سَمِعَ إنْسَانًا يُخْبِرُ بِحَقٍّ لِزَيْدٍ عَلَيْهِ إخْبَارًا صَحِيحًا تَامًّا لَمْ يَصِلْهُ بِمَا يُبْطِلُهُ، أَوْ بِأَنَّهُ قَدْ وَهَبَ أَمْرًا كَذَا لِفُلَانٍ، أَوْ أَنَّهُ أَنْكَحَ زَيْدًا، أَوْ أَيَّ شَيْءٍ

L30018 Whoever is made a witness behind a wall or in darkness and becomes certain without doubt of the one who called them to witness, their testimony is accepted in that case.

L30019 If the blind man were not confident in the validity of his conviction regarding the one he addresses, it would not be lawful for him to have intercourse with his wife, for she might be a woman not lawful for him. Nor should he repay a debt to anyone, for the recipient might be someone other than the actual creditor. Nor should he sell to anyone or purchase from anyone.

L30020 And the people accepted the words of the Mothers of the Believers from behind the veil.

L30021 If they say: It is only permissible for him to have intercourse with his wife based on a strong legal presumption, just as it is permissible for him to do so upon their first consummation, for she might be another woman.

L30022 We said: This is invalid, and it is not permissible for him to have intercourse with her until he ascertains that she is the one he married.

L30023 Allah, the Exalted, has commanded the acceptance of clear evidence, and He has not stipulated favoring a blind person over a sighted one: “And your Lord is not forgetful” (Maryam 19:64).[1]

L30024 And we do not know of any misguidance greater than—after [the sins of] polytheism and grave transgressions—that of one who ascribes to Allah the rejection of the testimony of Jābir ibn ʿAbdullāh, Ibn Umm Kulthūm, Ibn ʿAbbās, and Ibn ʿUmar.

L30025 We seek refuge in Allah from abandonment.

L30026 **The question of the necessity of the *Shahādah* including the explicit wording “I bear witness.”**

L30027–30029 1809 – Issue: Every person who hears someone make a valid and complete announcement of a right owed by Zaid to him—provided no contradictory information invalidating it has reached him—or [hears] that he has gifted

[1] **Qur’an references (L30023):** Qur’an 19:64 (Maryam).

such-and-such a matter to so-and-so, or that he has married Zaid off [to someone], or anything of that nature... Thus, whether he said to him: “Bear witness to this against me,” or “I take you as a witness,” or he did not say anything of that sort to him, or did not address him at all but addressed someone else, or said to him: “Do not bear witness against me, for I do not take you as a witness”—all of that is treated equally. It is obligatory upon him to testify regarding all of that.

كَانَ، فَسَوَاءٌ قَالَ لَهُ: اشْهَدْ بِهَذَا عَلَيَّ أَوْ أَنَا أُشْهِدُك أَوْ لَمْ يَقُلْ لَهُ شَيْئًا مِنْ ذَلِكَ، أَوْ لَمْ يُخَاطِبْهُ أَصْلًا، لَكِنْ خَاطَبَ غَيْرَهُ، أَوْ قَالَ لَهُ: لَا تَشْهَدْ عَلَيَّ فَلَسْت أُشْهِدُك - كُلُّ ذَلِكَ سَوَاءٌ - وَفُرِضَ عَلَيْهِ أَنْ يَشْهَدَ بِكُلِّ ذَلِكَ.

L30030 And it is obligatory for the judge to accept that testimony and rule by it, because there has come neither a Quran nor a Sunnah, nor a statement from any of the Companions—may Allah be pleased with them—nor any analogy based on the distinction between anything of that.

وَفُرِضَ عَلَى الْحَاكِمِ قَبُولُ تِلْكَ الشَّهَادَةِ وَالْحُكْمُ بِهَا؛ لِأَنَّهُ لَمْ يَأْتِ قُرْآنٌ وَلَا سُنَّةٌ، وَلَا قَوْلُ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا قِيَاسٌ بِالْفَرْقِ بَيْنَ شَيْءٍ مِنْ ذَلِكَ.

L30031 And Abu Hanifah said, “He does not bear witness unless he is told: ’Bear witness against us.”’

وَقَالَ أَبُو حَنِيفَةَ لَا يَشْهَدُ حَتَّى يُقَالَ لَهُ: اشْهَدْ عَلَيْنَا.

L30032 And similarly, if the witness said to the judge: “I inform you,” or “I tell you,” or “I make known to you,” or did not say: “I testify”—all of that is equivalent—and all of that constitutes valid testimony. The judge is obligated to rule based on it, because neither a Quranic verse, nor a Sunnah, nor a statement of a companion, nor analogy, nor sound reasoning has been established that distinguishes between any of these expressions.

قَالَ أَبُو مُحَمَّدٍ: وَكَذَلِكَ إنْ قَالَ الشَّاهِدُ لِلْقَاضِي: أَنَا أُخْبِرُك، أَوْ أَنَا أَقُولُ لَك، أَوْ أَنَا أُعْلِمُك، أَوْ لَمْ يَقُلْ: أَنَا أَشْهَدُ - فَكُلُّ ذَلِكَ سَوَاءٌ - وَكُلُّ ذَلِكَ شَهَادَةٌ تَامَّةٌ فُرِضَ عَلَى الْحَاكِمِ الْحُكْمُ بِهَا؛ لِأَنَّهُ لَمْ يَأْتِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَلَا مَعْقُولٌ: بِالْفَرْقِ بَيْنَ شَيْءٍ مِنْ ذَلِكَ -.

L30033 And with Allah, the Exalted, is success.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30034 If it is said: The Quran and the Sunnah have both mentioned the use of the term “testimony” for that.

فَإِنْ قِيلَ: إنَّ الْقُرْآنَ، وَالسُّنَّةَ وَرَدَا بِتَسْمِيَةِ ذَلِكَ شَهَادَةً.

L30035 We said: Yes, and this does not mean [the testimony] is not accepted unless he explicitly states, “I testify.” For we have established our basis—and you have established yours—concerning the rejection of the transgressor’s testimony, based on the statement of Allah, Exalted is He: *“If a wicked person comes to you with news, investigate...”* (Quran 49:6).[2]

قُلْنَا: نَعَمْ، وَلَيْسَ فِي ذَلِكَ أَنَّهُ لَا يُقْبَلُ حَتَّى يَقُولَ: أَنَا أَشْهَدُ فَقَدْ جَعَلْنَا مُعْتَمَدَنَا وَجَعَلْتُمْ مُعْتَمَدَكُمْ فِي رَدِّ شَهَادَةِ الْفَاسِقِ قَوْلَ اللَّهِ تَعَالَى: {إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَإٍ فَتَبَيَّنُوا} [الحجرات: ٦] .

L30036 Thus, it is established that every testimony is a report, and every report is a

[2]**Qur’an references (L30035):** Qur’an 49:6 (Al-Hujurat).

testimony—both being statements, both being assertions, and all such being a recounting. And with Allah, the Exalted, is success.

- فَصَحَّ أَنَّ كُلَّ شَهَادَةٍ نَبَأٌ، وَكُلَّ نَبَأٍ شَهَادَةٌ وَكِلَاهُمَا خَبَرٌ، وَكِلَاهَا قَوْلٌ، وَكُلُّ ذَلِكَ حِكَايَةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The jurisprudential issue of ruling through *qafah* in determining the child's lineage.

[مَسْأَلَة الْحُكْمِ بِالْقَافَةِ فِي لحاق الْوَلَد]

1810 – Issue: The ruling by the qāfah experts in attributing the child's parentage is obligatory for both free women and slave women—this is the opinion of Al-Shāfiʿī and Abī Sulaymān.

١٨١٠ - مَسْأَلَةٌ: وَالْحُكْمُ بِالْقَافَةِ فِي لِحَاقِ الْوَلَدِ وَاجِبٌ فِي الْحَرَائِرِ وَالْإِمَاءِ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

Malik said: Judgment is passed on the basis of their testimony concerning the child of a female slave, but not concerning the child of a free woman—and this is a categorization without legal proof.

وَقَالَ مَالِكٌ: يُحْكَمُ بِشَهَادَتِهِمْ فِي وَلَدِ الْأَمَةِ، وَلَا يُحْكَمُ بِهِ فِي وَلَدِ الْحُرَّةِ - وَهَذَا تَقْسِيمٌ بِلَا بُرْهَانٍ.

Abu Hanifah said: No ruling is made through them in any matter.

وَقَالَ أَبُو حَنِيفَةَ: لَا يُحْكَمُ بِهِمْ فِي شَيْءٍ.

The proof for the validity of our statement: «That the Messenger of Allah—prayers and peace be upon him—was pleased with the statement of Mujazziz al-Mudliji when he saw the feet of Zayd ibn Ḥāritha and his son Usāma, and said: 'These feet - some of them are from others'» - and he—prayers and peace be upon him—is not pleased with falsehood, nor is he pleased except with an incontrovertible truth.

بُرْهَانُ صِحَّةِ قَوْلِنَا: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُرَّ بِقَوْلِ مُجَزِّزٍ الْمُدْلِجِيِّ إذْ رَأَى أَقْدَامَ زَيْدِ بْنِ حَارِثَةَ، وَابْنِهُ أُسَامَةَ فَقَالَ: إنَّ هَذِهِ الْأَقْدَامَ بَعْضُهَا مِنْ بَعْضٍ» - وَهُوَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَا يُسَرُّ بِبَاطِلٍ، وَلَا يُسَرُّ إلَّا بِحَقٍّ مَقْطُوعٍ بِهِ.

It is astonishing that Abū Ḥanīfah contradicts the ruling of the Messenger of Allāh—peace be upon him—established from him, rejects sound knowledge with a clear basis, and then opines that a child should be attributed to two fathers—each claimed as his father—and two mothers—each claimed as his mother—thereby producing something irrational, neither grounded in reason nor ever mentioned in the Qur'ān or the Sunnah.

فَمِنْ الْعَجَبِ أَنَّ أَبَا حَنِيفَةَ يُخَالِفُ حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الثَّابِتَ عَنْهُ وَيُنْكِرُ عِلْمًا صَحِيحًا مَعْرُوفَ الْوَجْهِ، ثُمَّ يَرَى أَنْ يُلْحِقَ الْوَلَدَ بِأَبَوَيْنِ كُلُّ وَاحِدٍ مِنْهُمَا أَبُوهُ، وَبِامْرَأَتَيْنِ كُلُّ وَاحِدَةٍ مِنْهُمَا أُمُّهُ - فَيَأْتِي مِنْ ذَلِكَ بِمَا لَا يُعْقَلُ، وَلَا جَاءَ بِهِ قَطُّ قُرْآنٌ، وَلَا سُنَّةٌ.

It is surprising that Mālik cites the mentioned report of Mujazziz as evidence, then contradicts it, because Mujazziz only said that regarding the son of a free woman, not the son of a slave woman. And success comes only from Allah, the Exalted.

وَالْعَجَبُ مِنْ مَالِكٍ إذْ يَحْتَجُّ بِخَبَرِ مُجَزِّزٍ الْمَذْكُورِ، ثُمَّ يُخَالِفُهُ، لِأَنَّ مُجَزِّزًا إنَّمَا قَالَ ذَلِكَ فِي ابْنِ حُرَّةٍ لَا فِي ابْنِ أَمَةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30045 **The ruling is that no one may issue legal rulings except those whom the Qurashi Imam—whose obedience is obligatory—has personally appointed.**

L30046 C:AH,AQ 1811 - Issue: It is not allowed to give a ruling except who is approved for it by the Qurashi Imam whose obedience is obligatory. If that is not possible then it is valid for any Muslim of virtue to fulfill any right and anything false is rejected.

L30047 The proof of that is: what we have previously mentioned regarding the obligation to obey the ruler. If one is unable to do so, then Allah, the Exalted, says: "Stand firmly for justice." [An-Nisā' 135][3]

L30048 Allah the Exalted said: "Be just; it is nearer to piety" [Al-Ma'idah 5:8]. This is a generality for every Muslim.[4]

L30049 The opponents have agreed with us that not every judgment is enforceable. Thus, it is obligatory upon them not to enforce anyone's judgment except those whose enforcement the Quran and the Messenger of Allah (peace and blessings of Allah be upon him) have mandated. And success is from Allah, the Most High.

L30050 **The Issue of Earning a Livelihood From the Judicial Function.**

L30051 1812 - Issue: Receiving payment for judicial rulings is permissible, as established by his saying (peace be upon him), "Whoever is given wealth without asking or covetousness of the soul, let him take it." Success comes only from Allah, the Most High.

L30052 **Issue: Does the Imam have the right to dismiss the judge whenever he wishes?**

L30053 1813 – Issue: It is permissible for the Imam to relieve a judge from duty at any time, absent misconduct. This is demonstrated by the precedent that "the

[3] **Qur'an references (L30047):** Qur'an 4:135 (An-Nisa).
[4] **Qur'an references (L30048):** Qur'an 5:8 (Al-Ma'idah).

[مَسْأَلَةَ لَا يَجُوزُ الْحُكْمُ إِلَّا مِمَّنْ وَلَّاهُ الْإِمَامُ الْقُرَشِيُّ الْوَاجِبَةُ طَاعَتُهُ]

١٨١١ - مَسْأَلَةٌ: وَلَا يَجُوزُ الْحُكْمُ إِلَّا مِمَّنْ وَلَّاهُ الْإِمَامُ الْقُرَشِيُّ الْوَاجِبَةُ طَاعَتُهُ، فَإِنْ لَمْ يَقْدِرْ عَلَى ذَلِكَ فَكُلُّ مَنْ أَنْفَذَ حَقًّا فَهُوَ نَافِذٌ، وَمَنْ أَنْفَذَ بَاطِلًا فَهُوَ مَرْدُودٌ.

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَا مِنْ وُجُوبِ طَاعَةِ الْإِمَامِ قَبْلُ فَإِذَا لَمْ يَقْدِرْ عَلَى ذَلِكَ فَاَللَّهُ تَعَالَى يَقُولُ: {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥]

وَقَالَ تَعَالَى: {اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَى} [المائدة: ٨] وَهَذَا عُمُومٌ لِكُلِّ مُسْلِمٍ.

وَقَدْ وَافَقَنَا الْمُخَالِفُونَ عَلَى أَنَّهُ لَيْسَ كُلُّ مَنْ حَكَمَ فَهُوَ نَافِذٌ حُكْمُهُ، فَوَجَبَ عَلَيْهِمْ أَنْ لَا يُنْفِذُوا حُكْمَ أَحَدٍ إِلَّا مَنْ أَوْجَبَ الْقُرْآنُ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَفَاذَ حُكْمِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةَ الِارْتِزَاقُ عَلَى الْقَضَاءِ]

١٨١٢ - مَسْأَلَةٌ: وَالِارْتِزَاقُ عَلَى الْقَضَاءِ جَائِزٌ لِلثَّابِتِ مِنْ قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «مَنْ أَتَاهُ مَالٌ فِي غَيْرِ مَسْأَلَةٍ أَوْ إِشْرَافِ نَفْسٍ فَلْيَأْخُذْهُ» وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةَ هَلْ للإمام عَزْل الْقَاضِي مَتَى شَاءَ]

١٨١٣ - مَسْأَلَةٌ: وَجَائِزٌ لِلْإِمَامِ أَنْ يَعْزِلَ الْقَاضِيَ مَتَى شَاءَ عَنْ غَيْرِ خَرِبَةٍ، قَدْ «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلِيًّا إِلَى الْيَمَنِ قَاضِيًا، ثُمَّ صَرَفَهُ حِينَ حَجَّةِ الْوَدَاعِ وَلَمْ يَرْجِعْ إِلَى الْيَمَنِ بَعْدَهَا» .

Messenger of Allah—peace and blessings be upon him—sent ʿAlī to Yemen as a judge, then recalled him during the Farewell Pilgrimage, after which he did not resume his position in Yemen."

[مَسْأَلَة قَالَ لَهُ قَاضٍ قَدْ ثَبَتَ عَلَى هَذَا الصَّلْبُ أَوْ الْقَتْلُ وَغَيْر ذَلِكَ]

L30054 **Issue: A judge said to him, "Crucifixion, execution, or other such penalties have been established against this person."**

١٨١٤ - مَسْأَلَةٌ: وَمَنْ قَالَ لَهُ قَاضٍ: قَدْ ثَبَتَ عَلَى هَذَا: الصَّلْبُ، أَوْ الْقَتْلُ، أَوْ الْقَطْعُ، أَوْ الْجَلْدُ، أَوْ أَخْذُ مَالٍ مِقْدَارُهُ كَذَا مِنْهُ، فَأَنْفِذْ ذَلِكَ عَلَيْهِ -: فَإِنْ كَانَ الْمَأْمُورُ مِنْ أَهْلِ الْعِلْمِ بِالْقُرْآنِ وَالسُّنَنِ لَمْ يَحِلَّ لَهُ إنْفَاذُ شَيْءٍ مِنْ ذَلِكَ - إنْ كَانَ الْآمِرُ لَهُ جَاهِلًا، أَوْ غَيْرَ عَدْلٍ - إلَّا حَتَّى يُوقِنَ أَنَّهُ قَدْ وَجَبَ عَلَيْهِ مَا ذَكَرَ لَهُ فَيَلْزَمُهُ إنْفَاذُهُ حِينَئِذٍ وَإِلَّا فَلَا.

L30055 Issue 1814: If a judge instructs someone: "It has been established against this individual: crucifixion, execution, amputation, flogging, or the seizure of property amounting to such-and-such from him—then implement this against him," then if the instructed person is among the scholars of the Quran and the Sunnah, it is not permissible for him to carry out any of that if the one who commanded him is ignorant or unjust, unless he attains certainty that what has been mentioned is indeed obligatory upon him. In that case, he must implement it at that point; otherwise, he must not.

وَإِنْ كَانَ الْآمِرُ لَهُ عَالِمًا فَاضِلًا لَمْ يَحِلَّ لَهُ أَيْضًا إنْفَاذُ أَمْرِهِ إلَّا حَتَّى يَسْأَلَهُ مِنْ أَيِّ وَجْهٍ وَجَبَ ذَلِكَ عَلَيْهِ؟ فَإِذَا أَخْبَرَهُ، فَإِنْ كَانَ ذَلِكَ مُوجِبًا عَلَيْهِ مَا ذَكَرَ لَزِمَهُ إنْفَاذُ ذَلِكَ، وَعَلَيْهِ أَنْ يَكْتَفِيَ بِخَبَرِ الْحَاكِمِ الْعَدْلِ فِي ذَلِكَ، وَلَا يَجُوزُ لَهُ تَقْلِيدُهُ فِيمَا رَأَى أَنَّهُ فِيهِ مُخْطِئٌ.

L30056 If the authority is a knowledgeable and virtuous person, it is also impermissible for the subordinate to carry out his command until the subordinate asks him: "From what basis has this obligation been imposed **upon me**?" When he informs him, if that [explanation] establishes the obligation as the authority has asserted, then compliance becomes binding. The subordinate must confine himself to the statement of the just judge in this matter, and it is not permissible for him to blindly imitate the judge's opinion in what he believes the judge has erred.

وَأَمَّا الْجَاهِلُ فَلَا يَحِلُّ لَهُ إنْفَاذُ أَمْرِ مَنْ لَيْسَ عَالِمًا فَاضِلًا.

L30057 As for the unlearned person, it is not permissible for him to carry out the order of someone who is not both knowledgeable and virtuous.

فَإِنْ كَانَ الْآمِرُ لَهُ عَالِمًا فَاضِلًا سَأَلَهُ: أَوْجَبَ ذَلِكَ بِالْقُرْآنِ وَالسُّنَّةِ.

L30058 If the one in authority over him was a learned and virtuous scholar, he would ask: "Is this obligation established through the Quran and Sunnah?"

فَإِنْ قَالَ: نَعَمْ لَزِمَهُ إنْفَاذُ ذَلِكَ، وَإِلَّا فَلَا، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا الطَّاعَةُ فِي الْمَعْرُوفِ» وَلَا يَحِلُّ أَخْذُ قَوْلِ أَحَدٍ بِلَا بُرْهَانٍ.

L30059–30061 Then, if he says, "Yes." He must implement that; otherwise not, based on the statement of the Messenger of Allah (peace be upon him): "Obedience is only in the good," and it is impermissible to accept anyone's statement without proof.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

And all success lies with Allah, the Most High.

[مَسْأَلَة ادَّعَى شَيْئًا فِي يَدِ غَيْرِهِ]

A jurisprudential matter pertaining to a claim regarding something in the hand of another.

١٨١٥ - مَسْأَلَةٌ: وَمَنْ ادَّعَى شَيْئًا فِي يَدِ غَيْرِهِ فَإِنْ أَقَامَ فِيهِ الْبَيِّنَةَ، أَوْ أَقَامَ كِلَاهُمَا الْبَيِّنَةَ قُضِيَ بِهِ لِلَّذِي لَيْسَ الشَّيْءُ فِي يَدِهِ، إلَّا أَنْ يَكُونَ فِي بَيِّنَةِ مَنْ الشَّيْءُ فِي يَدِهِ بَيَانٌ زَائِدٌ بِانْتِقَالِ ذَلِكَ الشَّيْءِ إلَيْهِ، أَوْ يُلَوِّحُ بِتَكْذِيبِ بَيِّنَةِ الْآخَرِ - وَهُوَ قَوْلُ سُفْيَانَ، وَأَبِي حَنِيفَةَ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي سُلَيْمَانَ.

1815 - Legal Case: If someone claims ownership of something in another's possession and establishes evidence for it, or if both parties present evidence, the ruling is granted to the one not in possession unless the evidence of the possessor includes supplementary proof of the item's transfer to him, or points to discrediting the other party's evidence. And this is the opinion of Sufyān, Abū Ḥanīfah, Aḥmad ibn Ḥanbal, and Abū Sulaymān.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: يُقْضَى بِهِ لِلَّذِي هُوَ فِي يَدِهِ، وَحُجَّتُهُمْ أَنَّهُ قَدْ تَكَاذَبَتْ الْبَيِّنَتَانِ، فَوَجَبَ سُقُوطُهُمَا.

Mālik and al-Shāfiʿī said: Judgment is rendered in favor of the party in possession. Their proof is that the two testimonial proofs have conflicted irreconcilably, necessitating their dismissal.

قَالَ أَبُو مُحَمَّد: وَلَيْسَ كَمَا قَالُوا، بَلْ بَيِّنَةُ مَنْ الشَّيْءُ فِي يَدِهِ غَيْرُ مَسْمُوعَةٍ؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يُكَلِّفْهُمْ بِبَيِّنَةٍ، إنَّمَا حَكَمَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنَّ الْبَيِّنَةَ عَلَى الْمُدَّعِي وَالْيَمِينَ عَلَى الْمُدَّعَى عَلَيْهِ.

Abu Muhammad said: It is not as they claimed; rather, the proof lies with the one in possession of the item without requiring oral testimony, for Allah the Exalted did not impose on them the obligation to provide proof. Rather, Allah the Exalted decreed through His Messenger—upon him be blessings and peace—that the burden of proof rests upon the claimant, and the oath is upon the one against whom the claim is made.

قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «بَيِّنَتُكَ أَوْ يَمِينُهُ لَيْسَ لَكَ غَيْرُ ذَلِكَ» .

He (peace be upon him) said: "Your clear proof or his formal oath - you have no alternative beyond this."

فَصَحَّ أَنَّهُ لَا يُلْتَفَتُ إلَى بَيِّنَةِ الْمُدَّعَى عَلَيْهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

Thus, it is valid that no heed is paid to the evidence of the defendant. And success comes from Allah, the Exalted.

١٨١٦ - مَسْأَلَةٌ: فَلَوْ لَمْ يَكُنْ الشَّيْءُ فِي يَدِ أَحَدِهِمَا فَأَقَامَ كِلَاهُمَا الْبَيِّنَةَ قُضِيَ بِهِ بَيْنَهُمَا، فَلَوْ كَانَ فِي أَيْدِيهِمَا مَعًا، فَأَقَامَا فِيهِ بَيِّنَةً أَوْ لَمْ يُقِيمَا قُضِيَ بِهِ بَيْنَهُمَا.

1816 - Issue: If the item is not in the possession of either of them and both present conclusive evidence, it shall be adjudicated between them. If it is in the possession of both together, whether they present conclusive evidence regarding it or do not present it, it shall be adjudicated between them.

أَمَّا إذَا لَمْ يَكُنْ فِي أَيْدِيهِمَا فَإِنَّهُ قَدْ ثَبَتَتْ الْبَيِّنَتَانِ أَنَّهُ لَهُمَا فَهُوَ لَهُمَا.

If it is not in their possession, then the two pieces of evidence have established that it belongs to both of them, so it is theirs.

As for when it is in the possession of both of them, if no evidence is estab-

lished for them, then it belongs to them both, because it is in their possession along with their oaths.

وَأَمَّا إذَا كَانَ فِي أَيْدِيهِمَا فَإِنْ لَمْ تَقُمْ لَهُمَا بَيِّنَةٌ فَهُوَ لَهُمَا، لِأَنَّهُ بِأَيْدِيهِمَا مَعَ أَيْمَانِهِمَا.

L30072 As for when each of them presents evidence, his evidence is not heard regarding what is in his possession, as we have previously established, and since his evidence has testified to his right to what is under the other party's control, judgment is rendered in his favor accordingly.

وَأَمَّا إذَا أَقَامَ كُلُّ وَاحِدٍ مِنْهُمَا بَيِّنَةً فَإِنَّ بَيِّنَتَهُ لَا تُسْمَعُ فِيمَا فِي يَدِهِ كَمَا قَدَّمْنَا وَقَدْ شَهِدَتْ لَهُ بَيِّنَتُهُ بِمَا فِي يَدِ الْآخَرِ فَيُقْضَى لَهُ بِذَلِكَ.

L30073 And with Allah, the Exalted, is all success.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30074–30076 Issue 1817: If two parties dispute ownership of something not in their possession with no evidence, lots shall be drawn between them to determine the oath. Whosever lot is drawn shall swear, and the ruling is awarded to him. This applies to all matters they dispute over from cases where it is certainly known without doubt that neither party jointly owns the item - such as an animal certainly known to be the offspring of one of the two animals owned by the disputants. It was narrated to us via the chain of Abu Dawud: from Muhammad ibn Minhal, from Yazid ibn Zurai', from Sa'id ibn Abi 'Arubah. From Qatādah, from Saʿīd ibn Abī Burdah ibn Abī Mūsā al-Ashʿarī, from his father, from his grandfather Abū Mūsā: "Two men claimed a camel or a beast of burden and brought it to the Prophet (peace be upon him), and neither of them had evidence. The Messenger of Allah (peace be upon him) then assigned it jointly to them both."

١٨١٧ - مَسْأَلَةٌ: فَإِنْ تَدَاعَيَاهُ، وَلَيْسَ فِي أَيْدِيهِمَا، وَلَا بَيِّنَةَ لَهُمَا -: أُقْرِعَ بَيْنَهُمَا عَلَى الْيَمِينِ، فَأَيُّهُمَا خَرَجَ سَهْمُهُ حَلَفَ وَقُضِيَ لَهُ بِهِ - وَهَكَذَا كُلُّ مَا تَدَاعَيَا فِيهِ مِمَّا يُوقِنُ بِلَا شَكٍّ أَنَّهُ لَيْسَ لَهُمَا جَمِيعًا، كَدَابَّةٍ يُوقِنُ أَنَّهَا نِتَاجُ إحْدَى دَابَّتَيْهِمَا -: رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ مِنْهَالٍ نا يَزِيدُ بْنُ زُرَيْعٍ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ عَنْ جَدِّهِ أَبِي مُوسَى: «أَنَّ رَجُلَيْنِ ادَّعَيَا بَعِيرًا أَوْ دَابَّةً فَأَتَيَا بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَيْسَ لِوَاحِدٍ مِنْهُمَا بَيِّنَةٌ فَجَعَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمَا» .

L30077 And through him to Qatādah from Khilās ibn ʿAmr from Abū Rāfiʿ from Abū Hurayrah: "Two men disputed before the Messenger of Allah—peace and blessings of Allah be upon him—over goods for which neither had evidence. The Messenger of Allah—peace and blessings of Allah be upon him—said: 'Decide by lot with an oath,' whether they liked it or disliked it." Through the chain of Aḥmad ibn Shuʿayb: I, ʿAmr ibn ʿAlī, report: Khālid ibn al-Ḥārith reported to us: Saʿīd—that is, Ibn Abī ʿArūbah—reported from Qatādah from Khilās ibn ʿAmr from Abū Rāfiʿ from Abū Hurayrah: "Two men claimed ownership of an animal without evidence. The Messenger of Allah—peace and blessings of Allah be upon him—commanded them to decide by lot with an oath."

وَبِهِ إلَى قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو عَنْ أَبِي رَافِعٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اخْتَصَمَ إلَيْهِ رَجُلَانِ فِي مَتَاعٍ لَيْسَ لِوَاحِدٍ مِنْهُمَا بَيِّنَةٌ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: اسْتَهِمَا عَلَى الْيَمِينِ» مَا كَانَ - أَحَبَّا ذَلِكَ أَمْ كَرِهَا - وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نا خَالِدُ بْنُ الْحَارِثِ نا سَعِيدٌ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو عَنْ أَبِي رَافِعٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَجُلَيْنِ ادَّعَيَا دَابَّةً وَلَمْ تَكُنْ لَهُمَا بَيِّنَةٌ، فَأَمَرَهُمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَسْتَهِمَا عَلَى الْيَمِينِ» .

قَالَ أَبُو مُحَمَّد: فَالْقِسْمَةُ بَيْنَهُمَا حَيْثُ هُوَ فِي أَيْدِيهِمَا، لِأَنَّهُ لَهُمَا بِظَاهِرِ الْيَدِ، وَالْقُرْعَةِ حَيْثُ لَا حَقَّ لَهُمَا، وَلَا لِأَحَدِهِمَا، وَلَا لِغَيْرِهِمَا فِيهِ.

L30078 Abu Muhammad said: The division between them is where it is in their possession, as it belongs to them by presumptive possession. The drawing of lots applies where neither they, nor either of them individually, nor anyone else besides them has a right in it.

وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ بَشَّارٍ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ أَبِي بُرْدَةَ عَنْ أَبِيهِ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ: «أَنَّ رَجُلَيْنِ ادَّعَيَا بَعِيرًا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَعَثَ كُلُّ وَاحِدٍ مِنْهُمَا شَاهِدَيْنِ فَقَسَمَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمَا بِنِصْفَيْنِ» .

L30079 From the chain of narration of Abu Dawud: Muhammad ibn Bishar narrated to us, Al-Hajjaj ibn Al-Minhal narrated to us, Hammam ibn Yahya narrated from Qatadah from Sa'id ibn Abi Burdah from his father from Abu Musa Al-Ash'ari: "Two men disputed over a camel during the time of the Messenger of Allah (peace be upon him). Each of them produced two witnesses, so the Messenger of Allah (peace be upon him) divided it into two halves between them."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي عَلِيُّ بْنُ مُحَمَّدِ بْنِ عَلِيِّ بْنِ أَبِي الْمُضَاءِ قَاضِي الْمِصِّيصَةِ قَالَ: نا مُحَمَّدُ بْنُ كَثِيرٍ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنِ النَّضْرِ بْنِ أَنَسِ بْنِ مَالِكٍ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ «أَنَّ رَجُلَيْنِ ادَّعَيَا دَابَّةً وَجَدَاهَا عِنْدَ رَجُلٍ، فَأَقَامَ كُلُّ وَاحِدٍ مِنْهُمَا شَاهِدَيْنِ أَنَّهَا دَابَّتُهُ فَقَضَى بِهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمَا بِنِصْفَيْنِ» .

L30080 From the path of Aḥmad ibn Shuʿayb: ʿAlī ibn Muḥammad ibn ʿAlī ibn Abī al-Muḍāʾ, the judge of al-Maṣṣīṣah, informed me, saying: Muḥammad ibn Kathīr narrated to us from Ḥammād ibn Salamah from Qatādah from al-Naḍr ibn Anas ibn Mālik from Abū Burdah ibn Abī Mūsā al-Ashʿarī from his father that two men claimed a riding animal they found in the possession of a man, and each of them produced two witnesses testifying it was his animal. The Prophet (peace and blessings of Allah be upon him) ruled to divide it into halves between them.

فَهَذَا نَصٌّ عَلَى إقَامَةِ الْبَيِّنَةِ مِنْ كُلِّ وَاحِدٍ مِنْهُمَا - وَلَيْسَ فِي أَيْدِيهِمَا أَوْ وَهُوَ فِي أَيْدِيهِمَا - لِأَنَّهُ إذَا كَانَ فِي أَيْدِيهِمَا مَعًا فَهُوَ بِلَا شَكٍّ لَهُمْ بِظَاهِرِ الْأَمْرِ، وَإِذَا لَمْ يَكُنْ فِي أَيْدِيهِمَا أَقَامَ كُلُّ وَاحِدٍ مِنْهُمَا فِيهِ الْبَيِّنَةَ فَقَدْ شَهِدَ بِهِ لَهُمَا، وَلَيْسَتْ إحْدَى الْبَيِّنَتَيْنِ أَوْلَى مِنْ الْأُخْرَى، فَالْوَاجِبُ قِسْمَتُهُ فِي كُلِّ ذَلِكَ بَيْنَهُمَا.

L30081 This is a text stipulating the presentation of evidence by each of the two parties—whether the disputed property is in their possession or not. For if it is jointly in their possession, it unquestionably belongs to them by outward appearance. If it is not in their possession, and each of them presents evidence regarding it, the evidence testifies for both. Neither of the two pieces of evidence has more weight than the other. Therefore, the obligatory ruling in all such cases is to divide it between them.

وَأَمَّا إذَا لَمْ يَكُنْ فِي أَيْدِيهِمَا وَلَمْ يُقِمْ وَاحِدٌ مِنْهُمَا فِيهِ الْبَيِّنَةَ، وَلَا كِلَاهُمَا، فَهُمَا مُدَّعِيَانِ وَلَيْسَ لَهُمَا أَصْلًا وَلَا لِمُدَّعًى عَلَيْهِ سِوَاهُمَا.

L30082 If the property is not in their possession, and neither party has presented clear evidence for it—neither one nor both of them—then both are claimants with no basis whatsoever, nor is there anyone else claimed against besides them.

L30083–30085 Likewise, if the testimonial evidence is not permissible to apply to both

parties jointly, but [applies] to one of them or to others besides the two of them, except that... It is not in the possession of anyone other than them, nor in their joint possession. If it was in their shared possession, then in such cases the oath is determined by casting lots. Dividing it between them is impermissible, for this constitutes decisively established injustice and undoubted oppression. This is fundamentally impermissible. Allah the Exalted said: "And do not cooperate in sin and transgression" [Al-Mā'idah: 2]. Oppression conclusively known is sin and transgression without doubt. Success is granted by Allah, the Most High.[5]

وَكَذَلِكَ إِذَا كَانَ لَا تَجُوزُ الْبَيِّنَةُ أَنْ تَكُونَ لَهُمَا جَمِيعًا لَكِنْ لِأَحَدِهِمَا أَوْ لِغَيْرِهِمَا إِلَّا أَنَّهُ لَيْسَ فِي يَدِ أَحَدٍ غَيْرِهِمَا، وَلَا فِي أَيْدِيهِمَا، أَوْ كَانَ فِي أَيْدِيهِمَا جَمِيعًا، فَفِي هَذِهِ الْمَوَاضِعِ يُقْرَعُ عَلَى الْيَمِينِ، وَلَا تَجُوزُ قِسْمَتُهُ بَيْنَهُمَا فَيَكُونُ ذَلِكَ ظُلْمًا مَقْطُوعًا بِهِ، وَقَضِيَّةَ جَوْرٍ بِلَا شَكٍّ فِيهَا، وَهَذَا لَا يَحِلُّ أَصْلًا، قَالَ تَعَالَى: {وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَالْجَوْرُ الْمُتَيَقَّنُ إِثْمٌ وَعُدْوَانٌ لَا شَكَّ فِيهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L30086 The people have differed regarding this: Abū Ḥanīfah said: If each of them produces evidence—whether the item is in their joint possession or not in the possession of either—it is divided equally between them, along with their oaths.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَ أَبُو حَنِيفَةَ: إِذَا أَقَامَ كُلُّ وَاحِدٍ مِنْهُمَا الْبَيِّنَةَ - فَسَوَاءٌ كَانَ الشَّيْءُ فِي أَيْدِيهِمَا مَعًا، أَوْ لَمْ يَكُنْ فِي يَدِ وَاحِدٍ مِنْهُمَا: هُوَ بَيْنَهُمَا بِنِصْفَيْنِ مَعَ أَيْمَانِهِمَا.

L30087 Similarly, if neither of them presents evidence while the item is in their joint possession, and the item is not in their possession, with no claimant for it other than them, then judgment is awarded to the one who swears the oath as opposed to the one who refuses to take it.

وَكَذَلِكَ إِذَا لَمْ يُقِيمَا بَيِّنَةً وَالشَّيْءُ فِي أَيْدِيهِمَا مَعًا وَلَيْسَ فِي أَيْدِيهِمَا وَلَا مُدَّعِيَ لَهُ سِوَاهُمَا، فَأَيُّهُمَا نَكَلَ قُضِيَ بِهِ لِلَّذِي حَلَفَ.

L30088 If both pieces of evidence specify a time, the judgment is ruled in favor of the party with the first time.

فَإِنْ وَقَّتَتْ كِلْتَا الْبَيِّنَتَيْنِ قُضِيَ بِهِ لِصَاحِبِ الْوَقْتِ الْأَوَّلِ.

L30089 If one of the two evidences specifies a time and the other does not, the judgment is decided between the two of them based on it.

فَإِنْ وَقَّتَتْ إِحْدَى الْبَيِّنَتَيْنِ وَلَمْ تُوَقِّتْ الْأُخْرَى قُضِيَ بِهِ بَيْنَهُمَا.

L30090 And Abu Yusuf said: The judgment was issued in favor of the one whose evidence specified the time.

وَقَالَ أَبُو يُوسُفَ: قُضِيَ بِهِ لِلَّذِي وَقَّتَتْ بَيِّنَتُهُ.

L30091 Muhammad ibn al-Hasan said: "Rather, it belongs to the one whose legal proof did not specify a timeframe."

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: بَلْ لِلَّذِي لَمْ تُوَقِّتْ بَيِّنَتُهُ.

L30092 Abu Muhammad said: Every ruling that contradicts the ruling of the Messenger of Allah—peace and blessings of Allah be upon him—that we have cited is invalid, because it is a statement without proof. And Malik said:

قَالَ أَبُو مُحَمَّدٍ: كُلُّ مَا خَالَفَ مِمَّا ذَكَرْنَا حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي أَوْرَدْنَا فَهُوَ بَاطِلٌ؛ لِأَنَّهُ قَوْلٌ بِلَا بُرْهَانٍ - وَقَالَ مَالِكٌ: يُقْضَى بِأَعْدَلِ الْبَيِّنَتَيْنِ.

[5] **Qur'an references (L30083):** Qur'an 5:2 (Al-Ma'idah).

Judgment should be rendered according to the more just of the two evidences.

قَالَ عَلِيٌّ: وَهَذَا قَوْلٌ فَاسِدٌ، لِأَنَّهُ لَمْ يَأْتِ بِهِ بُرْهَانُ قُرْآنٍ وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ وَلَا يُؤَيِّدُهُ قِيَاسٌ، وَإِنَّمَا كُلِّفْنَا عَدَالَةَ الشُّهُودِ فَقَطْ، وَلَا فَضْلَ فِي ذَلِكَ لِأَعْدَلِ الْبَرِيَّةِ عَلَى عَدْلٍ، وَهُمْ مُقِرُّونَ بِأَنَّهُ لَوْ شَهِدَ الصِّدِّيقُ - رَضِيَ اللَّهُ عَنْهُ - بِطَلَاقٍ، فَإِنَّهُ لَا يُقْضَى بِذَلِكَ، فَلَوْ شَهِدَ بِهِ عَدْلَانِ مِنْ عُرْضِ النَّاسِ قُضِيَ بِهِ.

L30093 Ali said: This is an invalid opinion, for it is not supported by any evidence from the Qur'an or Sunnah, nor by any defective narration, nor by any of the Companions, nor is it upheld through analogy. We are only obligated to verify the integrity of the witnesses, and there exists no superiority in this matter for the Most Just of Creation over another just individual. They themselves concede that if Al-Ṣiddīq—may Allah be pleased with him—were to testify to a divorce, no ruling would be issued based on his testimony. Yet if two just persons from among ordinary people were to testify to it, a ruling would be enacted.

وَأَيْنَ تَرْجِيحُ أَعْدَلِ الْبَيِّنَتَيْنِ مِنْ هَذَا الْعَمَلِ؟ وَهَذَا قَوْلٌ خَالَفَ فِيهِ كُلُّ مَنْ رُوِيَ عَنْهُ فِي هَذِهِ الْمَسْأَلَةِ لَفْظَةٌ مِنْ الصَّحَابَةِ إنَّمَا رُوِيَ الْقَوْلُ بِأَعْدَلِ الْبَيِّنَتَيْنِ عَنْ الزُّهْرِيِّ وَقَالَ: فَإِنْ تَكَافَأَتْ فِي الْعَدَالَةِ أُقْرِعَ بَيْنَهُمَا وَهُمْ لَا يَقُولُونَ بِهَذَا.

L30094 And where is the preference of the more reliable of the two testimonies in this action? This is an opinion that contradicts every Companion from whom any utterance has been narrated regarding this matter. The ruling to prefer the more reliable testimony has only been reported from Al-Zuhri, who said: "If they are equal in integrity, a lottery is drawn between them"—but they do not hold this opinion.

وَجَاءَ عَنْ عَطَاءٍ، وَالْحَسَنِ - وَرُوِيَ أَيْضًا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ تَغْلِيبُ أَكْثَرِ الْبَيِّنَتَيْنِ عَدَدًا - وَقَالَ بِهِ الْأَوْزَاعِيِّ إذَا تَكَافَأَ عَدَدُهُمَا.

L30095 It has been reported from 'Aṭā' and al-Ḥasan—and also from 'Alī ibn Abī Ṭālib—that precedence should be given to the more numerous of the two testimonies. Al-Awzā'ī applied this principle even when their strength was deemed equal.

وَاضْطَرَبَ قَوْلُ الشَّافِعِيِّ فِي ذَلِكَ -: فَمَرَّةً قَالَ: يُوقَفُ الشَّيْءُ.

L30096–30097 Al-Shafi'i's statements on this matter are inconsistent: on one occasion he said, "The asset is endowed as a waqf."

وَمَرَّةً قَالَ: يُقْسَمُ بَيْنَهُمَا.

L30098 And once, he said: It is to be divided between the two of them.

وَمَرَّةً قَالَ: يُقْرَعُ بَيْنَهُمَا.

L30099 Lots should be cast between them.

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ، وَأَبُو عُبَيْدٍ: إذَا ادَّعَى اثْنَانِ شَيْئًا لَيْسَ فِي أَيْدِيهِمَا، وَأَقَامَ كُلُّ وَاحِدٍ مِنْهُمَا الْبَيِّنَةَ الْعَدْلَةَ: أُقْرِعَ بَيْنَهُمَا، وَقُضِيَ بِذَلِكَ الشَّيْءِ لِمَنْ خَرَجَتْ قُرْعَتُهُ، وَلَا مَعْنَى لِأَكْثَرِ الْبَيِّنَتَيْنِ، وَلَا لِأَعْدَلِهِمَا.

L30100 Ahmad ibn Hanbal, Ishaq ibn Rāhawayh, and Abu 'Ubayd said: If two claimants assert ownership of something not in their possession, and each produces just evidence, lots are drawn between them, and the item is awarded to the one whose lot is drawn. Neither the greater number of witnesses in the evidence nor the relative justice of the two is considered.

L30101 Abu Muhammad said: If someone mentions what we have narrated through the chain of Abd al-Razzaq from Ibrahim ibn Muhammad ibn Abi Yahya from Abd al-Rahman ibn al-Harith from Sa'id ibn al-Musayyab that the Messenger of Allah (peace be upon him) said, "When the witnesses are equal in standing, lots are drawn between the two disputing parties," then the ruling is incumbent upon them, for it involves drawing lots, yet they do not endorse this ruling.

قَالَ أَبُو مُحَمَّد: فَإِنْ ذَكَرَ ذَاكِرٌ مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إِبْرَاهِيمَ بْنِ مُحَمَّدِ بْنِ أَبِي يَحْيَى عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا اسْتَوَى الشُّهُودُ أُقْرِعَ بَيْنَ الْخَصْمَيْنِ» فَهُوَ عَلَيْهِمْ، لِأَنَّ فِيهِ الْإِقْرَاعَ، وَلَا يَقُولُونَ بِهِ.

The Issue of Testimony Based on Another Testimony

[مَسْأَلَةُ الشَّهَادَةُ عَلَى الشَّهَادَةِ]

L30102

L30103 1818 – Issue: Testimony based on [another] testimony is admissible in all matters, and in such cases, one [witness] is accepted upon another.

١٨١٨ - مَسْأَلَةٌ: الشَّهَادَةُ عَلَى الشَّهَادَةِ فِي كُلِّ شَيْءٍ، وَيُقْبَلُ فِي ذَلِكَ وَاحِدٌ عَلَى وَاحِدٍ.

L30104 Jurists have differed regarding this — Abū Yūsuf and Muḥammad ibn al-Ḥasan said: Testimony may be accepted based on the testimony of a witness present within the city, even if the witness is sound.

وَاخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: تُقْبَلُ الشَّهَادَةُ عَلَى شَهَادَةِ الْحَاضِرِ فِي الْمِصْرِ، وَإِنْ كَانَ صَحِيحًا.

L30105 Malik said: The testimony of a present witness is not accepted unless he is ill or has not traveled beyond the distance at which, if a witness were distant by that measure, their testimony would be accepted based on his testimony.

وَقَالَ مَالِكٌ: لَا تُقْبَلُ عَلَى شَهَادَةِ الْحَاضِرِ إِلَّا أَنْ يَكُونَ مَرِيضًا، وَلَمْ يَحُدَّ عَنْهُ مِقْدَارَ الْمَسَافَةِ الَّتِي إِذَا كَانَ الشَّاهِدُ بَعِيدًا عَلَى قَدْرِهَا قُبِلَتْ الشَّهَادَةُ عَلَى شَهَادَتِهِ.

L30106 Abu Hanifah, al-Ḥasan ibn Ḥayy, and Sufyan al-Thawri said: Testimony based on another testimony is not accepted unless it pertains to the travel distance necessitating the shortening of prayer.

وَقَالَ أَبُو حَنِيفَةَ، وَالْحَسَنُ بْنُ حَيٍّ، وَسُفْيَانُ الثَّوْرِيُّ: لَا تُقْبَلُ شَهَادَةٌ عَلَى شَهَادَةٍ إِلَّا إِذَا كَانَ عَلَى مِقْدَارٍ تُقْصَرُ إِلَيْهِ الصَّلَاةُ.

L30107 Ali said: We have not found any valid argument whatsoever for those who prohibit [others] from accepting testimony despite the testimony of a present witness—neither from the Qur'an, nor the Sunnah, nor the statements of any predecessors, nor analogy, nor rational reasoning—especially these invalid Hudud.

قَالَ عَلِيٌّ: لَمْ نَجِدْ لِمَنْ مَنَعَ مِنْ قَبُولِ الشَّهَادَةِ عَلَى شَهَادَةِ الْحَاضِرِ -: حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا قَوْلِ أَحَدٍ سَلَفَ، وَلَا قِيَاسٍ، وَلَا مَعْقُولٍ، لَا سِيَّمَا هَذِهِ الْحُدُودُ الْفَاسِدَةُ.

L30108 Allah, the Exalted, has commanded us to accept the testimony of just witnesses. Testimony upon testimony constitutes the testimony of just wit-

وَقَدْ أَمَرَنَا اللَّهُ تَعَالَى، بِقَبُولِ شَهَادَةِ الْعُدُولِ، وَالشَّهَادَةُ عَلَى الشَّهَادَةِ شَهَادَةُ عُدُولٍ، فَقَبُولُهَا وَاجِبٌ، وَكَذَلِكَ لَوْ بَعُدَتْ جِدًّا وَلَا فَرْقَ.

nesses; therefore accepting it is obligatory. This ruling applies similarly even if it is extremely remote in time, as there is no difference.

وَاخْتَلَفُوا أَيْضًا فِي كَمْ تُقْبَلُ عَلَى شَهَادَةِ الْعُدُولِ؟ فَرُوِّينَا عَنْ عَلِيٍّ مِنْ طَرِيقِ ابْنِ ضُمَيْرَةَ - وَهُوَ مُطَّرِحٌ - أَنَّهُ لَا يُقْبَلُ عَلَى شَهَادَةِ وَاحِدٍ إِلَّا اثْنَانِ، وَعَنْ رَبِيعَةَ مِثْلُهُ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، إِلَّا أَنَّهُمَا أَجَازَا شَهَادَةَ ذَيْنِكَ الِاثْنَيْنِ أَيْضًا عَلَى شَهَادَةِ الْعَدْلِ الْآخَرِ.

L30109–30111 They also differed regarding how many [testimonies] are accepted based on the testimony of upright individuals. It was reported to us from Ali via the chain of Ibn Ḍumayrah—who is a rejected narrator—that it is not accepted based on the testimony of a single witness. Except two, and the same is reported from Rabīʿah—which is the opinion of Abū Ḥanīfah and Mālik. However, they both also permitted the testimony of those two to be added to the testimony of another upright witness.

وَقَالَ الشَّافِعِيُّ: لَا بُدَّ مِنْ أُخْرَى عَلَى شَهَادَةِ الْآخَرِ، فَلَا يُقْبَلُ عَلَى شَهَادَةِ اثْنَيْنِ إِلَّا أَرْبَعَةٌ، وَلَا يُقْبَلُ عَلَى شَهَادَةِ أَرْبَعَةٍ فِي الزِّنَى إِلَّا سِتَّةَ عَشَرَ عَدْلًا.

L30112 Al-Shafi'i said: There must be another testimony upon the testimony of the other. Thus, a testimony of two is not accepted unless four [witnesses testify], and a testimony of four in cases of adultery is not accepted unless sixteen just individuals [testify].

وَقَالَتْ طَائِفَةٌ - مِثْلَ قَوْلِنَا -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ حَكِيمِ بْنِ رُزَيْقٍ قَالَ قَرَأْت فِي كِتَابِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ إلَى أَبِي: أَنْ أَجِزْ شَهَادَةَ رَجُلٍ عَلَى شَهَادَةِ رَجُلٍ آخَرَ وَذَلِكَ فِي كَسْرِ سِنٍّ.

L30113 A group said—similar to our statement—: "We were narrated through ʿAbd al-Raḥmān ibn Mahdī from ʿAbd Allāh ibn al-Mubārak, from Ḥakīm ibn Ruzayq, who said: 'I read in ʿUmar ibn ʿAbd al-ʿAzīz's letter to my father: "Accept the testimony of one man based on another man's testimony," and this was regarding the breaking of a tooth.'"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ، وَمَعْمَرٍ، قَالَ سُفْيَانُ: عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: إنَّهُ كَانَ يُجِيزُ شَهَادَةَ رَجُلٍ عَلَى شَهَادَةِ رَجُلٍ - وَقَالَ مَعْمَرٌ عَنْ أَيُّوبَ السَّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ شُرَيْحٍ: إنَّهُ كَانَ يُجِيزُ شَهَادَةَ رَجُلٍ عَلَى شَهَادَةِ رَجُلٍ، وَيَقُولُ لَهُ: أَشْهِدْنِي ذَوَيْ عَدْلٍ.

L30114 And via the chain of ʿAbd al-Razzāq: Sufyān reported from al-Mughīrah ibn Miqsam from Ibrāhīm al-Nakhaʿī that he permitted a man's testimony based on another man's testimony. Maʿmar reported from Ayyūb al-Sikhtiyānī from Muḥammad ibn Sīrīn from Shurayḥ that he permitted a man's testimony based on another man's testimony, and he would say to him: "Present to me two just witnesses."

وَرُوِّينَاهُ عَنْ الزُّهْرِيِّ، وَالْقُضَاةِ قَبْلَهُ، وَيَزِيدَ بْنِ أَبِي حَبِيبٍ - وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَابْنِ أَبِي لَيْلَى، وَسُفْيَانَ الثَّوْرِيِّ، وَاللَّيْثِ بْنِ سَعْدٍ، وَعُثْمَانَ الْبَتِّيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ.

L30115 It has been narrated to us from al-Zuhri, the judges before him, and Yazid ibn Abi Habib - and this is the opinion of al-Hasan al-Basri, Ibn Abi Layla, Sufyan al-Thawri, al-Layth ibn Saʿd, Uthman al-Batti, Ahmad ibn Hanbal, and Isḥāq ibn Rāhawayh.

L30116 Abu Muhammad said: The Messenger of Allah—peace and blessings be

upon him—declared, “Your evidence or his oath,” and there is no distinction between one person and two in clarifying the truth through this, for the same applies to both as applies to a single person. Whenever a scholar states that something constitutes evidence, it is evidence unless prohibited by a definitive text. It is simply a report, and a report is accepted from a single trustworthy individual.

قَالَ أَبُو مُحَمَّد: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «بَيِّنَتُكَ أَوْ يَمِينُهُ» وَلَا فَرْقَ بَيْنَ وَاحِدٍ وَبَيْنَ اثْنَيْنِ فِي تَبْيِينِ الْحَقِّ بِذَلِكَ، كِلَاهُمَا يَجُوزُ عَلَيْهِ مَا يَجُوزُ عَلَى الْوَاحِدِ، فَكُلَّمَا قَالَ قَائِلٌ مِنْ الْعُلَمَاءِ: إنَّهُ بَيِّنَةٌ فَهُوَ بَيِّنَةٌ، إلَّا أَنْ يَمْنَعَ مِنْ ذَلِكَ نَصٌّ - وَإِنَّمَا هُوَ خَبَرٌ، وَالْخَبَرُ يُؤْخَذُ مِنْ الْوَاحِدِ الثِّقَةِ.

L30117 They also differed concerning the matters in which a witness’s testimony based upon another witness’s testimony is accepted.

وَاخْتَلَفُوا أَيْضًا فِيمَا يُقْبَلُ فِيهِ شَهَادَةُ شَاهِدٍ عَلَى شَهَادَةِ شَاهِدٍ.

L30118–30120 It has been narrated to us via a chain that includes al-Ḥārith ibn Nabḥān (who is discredited) from al-Ḥasan ibn ʿUmārah (who is worthless) from Saʿīd ibn al-Musayyib: that ʿUmar ibn al-Khaṭṭāb did not hear anything from him except the announcement of his death. Al-Nu’man said: Secondary testimony is not permissible in cases involving prescribed punishments, blood money, divorce, marriage, or emancipation of slaves, except in property alone.

فَرُوِّينَا مِنْ طَرِيقٍ فِيهَا الْحَارِثُ بْنُ نَبْهَانَ - وَهُوَ هَالِكٌ - عَنْ الْحَسَنِ بْنِ عُمَارَةَ - وَهُوَ تَالِفٌ - عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ لَمْ يَسْمَعْ مِنْهُ غَيْرَ نَعْيِهِ النُّعْمَانُ، قَالَ: لَا تَجُوزُ شَهَادَةٌ عَلَى شَهَادَةٍ فِي حَدٍّ، وَلَا فِي دَمٍ وَلَا فِي طَلَاقٍ، وَلَا نِكَاحٍ، وَلَا عِتْقٍ، إلَّا فِي الْمَالِ وَحْدَهُ.

L30121 That was narrated to us from Ibrāhīm al-Nakhaʿī.

وَرُوِّينَا ذَلِكَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ.

L30122 It has been authentically reported from Al-Sha’bi, Qatadah, and Al-Nakha’i that testimony based on [another] testimony is not permissible in a hadd punishment - this is the opinion of Al-Awza’i.

وَصَحَّ عَنْ الشَّعْبِيِّ، وَقَتَادَةَ، وَالنَّخَعِيِّ: لَا تَجُوزُ شَهَادَةٌ عَلَى شَهَادَةٍ فِي حَدٍّ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ.

L30123 We have also narrated it from Shurayh, Masruq, al-Hasan, and Ibn Sirin.

وَرُوِّينَاهُ أَيْضًا عَنْ شُرَيْحٍ، وَمَسْرُوقٍ، وَالْحَسَنِ، وَابْنِ سِيرِينَ.

L30124 Abu Hanifah said: It is permissible in all matters except the *ḥudūd* (prescribed punishments) and *qiṣāṣ* (retaliation in kind).

وَقَالَ أَبُو حَنِيفَةَ: تَجُوزُ فِي كُلِّ شَيْءٍ إلَّا الْحُدُودَ وَالْقِصَاصَ.

L30125 Mālik, al-Layth, and al-Shāfiʿī said: It is permissible in all matters—the *ḥudūd* and others.

وَقَالَ مَالِكٌ، وَاللَّيْثُ، وَالشَّافِعِيُّ: يَجُوزُ فِي كُلِّ شَيْءٍ الْحُدُودِ وَغَيْرِهَا.

L30126 Abu Muhammad said: Specifying a ḥadd punishment or other than it is not permissible except by an explicit text, and there is no text regarding that. This is among the matters in which they opposed the narration from Umar; no dissenting view from the Companions is known concerning it. This is

قَالَ أَبُو مُحَمَّد: تَخْصِيصُ حَدّ أَوْ غَيْرِهِ لَا يَجُوزُ إلَّا بِنَصّ، وَلَا نَصَّ فِي ذَلِكَ - هَذَا مِمَّا خَالَفُوا فِيهِ الرِّوَايَةَ عَنْ عُمَرَ لَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ، وَهَذَا مِمَّا خَالَفَ فِيهِ مَالِكٌ جُمْهُورَ الْعُلَمَاءِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

also among the matters in which Mālik opposed the majority of scholars. And success comes only from Allah, the Most High.



AL-MUHALLA

كِتَابُ النِّكَاحِ

The Book of Marriage

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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The Book of Marriage

[كِتَابُ النِّكَاحِ]

L30127–30128

L30129 In the name of Allah, the Most Gracious, the Most Merciful. May Allah send blessings upon Muhammad and his family and grant him perfect peace. *The Book of Marriage* 1819 - **Issue**: It is obligatory upon every person capable of intercourse who finds the means to marry or take a concubine to fulfill one of these without fail. If he is unable to do so, he should fast abundantly.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ وَسَلَّمَ تَسْلِيمًا كِتَابُ النِّكَاحِ ١٨١٩ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى كُلِّ قَادِرٍ عَلَى الْوَطْءِ إنْ وَجَدَ مِنْ أَيْنَ يَتَزَوَّجُ أَوْ يَتَسَرَّى أَنْ يَفْعَلَ أَحَدَهُمَا وَلَا بُدَّ، فَإِنْ عَجَزَ عَنْ ذَلِكَ فَلْيُكْثِرْ مِنْ الصَّوْمِ.

L30130 The proof of this is what we have narrated through Bukhari's chain: ʻUmar ibn Hafs ibn Ghiyath reported to us, from his father, from Al-Aʻmash, from Ibrahim al-Nakhaʻi, from ʻAlqamah, who heard ʻAbdullah ibn Masʻud say: The Prophet, peace and blessings be upon him, said to us, "O young people, whoever among you can afford marriage, let him marry. Whoever cannot, let him take to fasting, for it is a restraint for him."[1]

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ نا أَبِي نا الْأَعْمَشُ نا إبْرَاهِيمُ النَّخَعِيُّ عَنْ عَلْقَمَةَ أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ مَسْعُودٍ يَقُولُ: لَقَدْ قَالَ لَنَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ مِنْكُمْ الْبَاءَةَ فَلْيَتَزَوَّجْ وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ وِجَاءٌ» .

L30131–30133 And from the chain of Muslim: Muḥammad ibn Rāfiʻ narrated to us, Ḥujayn narrated to us, Muḥammad ibn al-Muthannā narrated to us, Layth (he is Ibn Saʻd) narrated to us, from ʻUqayl (he is Ibn Khālid) from Ibn Shihāb, who informed me that Saʻīd ibn al-Musayyab heard... Sa'd ibn Abi Waqqas said: "Uthman ibn Maẓʻūn sought to devote himself entirely to worship by abstaining from marriage, but the Messenger of Allah (peace and blessings be upon him and his family) forbade him." This is also narrated from a group of the Salaf (pious predecessors).

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رَافِعٍ نا حُجَيْنٌ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا لَيْثٌ - هُوَ ابْنُ سَعْدٍ - عَنْ عُقَيْلٍ - هُوَ ابْنُ خَالِدٍ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيِّبِ أَنَّهُ سَمِعَ سَعْدَ بْنَ أَبِي وَقَّاصٍ يَقُولُ: «أَرَادَ عُثْمَانُ بْنُ مَظْعُونٍ أَنْ يَتَبَتَّلَ فَنَهَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -» وَهُوَ قَوْلُ جَمَاعَةٍ مِنْ السَّلَفِ.

L30134 It was narrated to us via the route of Aḥmad ibn Shuʻayb: Muḥammad ibn ʿAbdillāh al-Balkhī narrated to us, from Abū Saʻīd, the client of Banī Hāshim, who narrated to us from Ḥuṣayn ibn Nāfiʻ al-Māzinī, who said: From al-Ḥasan al-Baṣrī, who reported from Saʻīd ibn Hishām ibn ʿĀmir that he asked Umm al-Muʾminīn (Mother of the Believers) ʿĀ'ishah—may Allah be pleased with her—about celibacy. She replied, "Do not do it. Have you not heard the statement of Allah the Exalted: *'And We have certainly sent messen-

رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْبَلْخِيُّ نا أَبُو سَعِيدٍ مَوْلَى بَنِي هَاشِمٍ نا حُصَيْنُ بْنُ نَافِعٍ الْمَازِنِيُّ قَالَ: نِي الْحَسَنُ الْبَصْرِيُّ عَنْ سَعِيدِ بْنِ هِشَامِ بْنِ عَامِرٍ أَنَّهُ سَأَلَ أُمَّ الْمُؤْمِنِينَ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - عَنْ التَّبَتُّلِ؟ فَقَالَتْ: لَا تَفْعَلْ أَمَا سَمِعْت قَوْلَ اللَّهِ تَعَالَى: {وَلَقَدْ أَرْسَلْنَا رُسُلا مِنْ قَبْلِكَ وَجَعَلْنَا لَهُمْ أَزْوَاجًا وَذُرِّيَّةً} [الرعد: ٣٨] فَلَا تَتَبَتَّلْ.

[1] **Hadith references (L30130):** Sahih al-Bukhari 5065; Sunan an-Nasai 3208.

gers before you and appointed for them wives and descendants’* [13:38]? Therefore, do not practice celibacy.”[2]

L30135 From Waki‘—who narrated from Sufyan Al-Thawri and Ibrahim ibn Maysarah, both of whom reported via Abdullah ibn Tawus from his father—that he said to a man: “You must marry, or I will surely say to you what ‘Umar said to Abu Al-Zawā’id: ’Nothing prevents you from marriage except incapacity or lewdness.’”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَإِبْرَاهِيمَ بْنِ مَيْسَرَةَ، كِلَاهُمَا عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ قَالَ لِرَجُلٍ: لَتَتَزَوَّجَنَّ أَوْ لَأَقُولَنَّ لَك مَا قَالَ عُمَرُ لِأَبِي الزَّوَائِدِ: مَا يَمْنَعُك مِنْ النِّكَاحِ إلَّا عَجْزٌ أَوْ فُجُورٌ.

L30136 Some people have cited as evidence in this disagreement the statement of Allah, the Exalted: {“and a leader and chaste”} [Āl ʿImrān: 39]. Abū Muḥammad said: This is no proof, for we did not command the chaste to marry; rather, we enjoined this on those capable of intercourse.[3]

وَقَدْ احْتَجَّ قَوْمٌ فِي الْخِلَافِ هَذَا بِقَوْلِ اللَّهِ تَعَالَى: {وَسَيِّدًا وَحَصُورًا} [آل عمران: ٣٩] ؟ قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ فِيهِ؛ لِأَنَّنَا لَمْ نَأْمُرْ الْحَصُورَ بِاتِّخَاذِ النِّسَاءِ، إنَّمَا أَمَرْنَا بِذَلِكَ مَنْ لَهُ قُوَّةٌ عَلَى الْجِمَاعِ.

L30137 They also embellished their argument with two reports—one of them being from the Prophet, peace and blessings of Allah be upon him: “The best among you regarding the two hundred is the unencumbered, adept one who has neither family nor children.”

وَمَوَّهُوا أَيْضًا بِخَبَرَيْنِ -: أَحَدُهُمَا - عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «خَيْرُكُمْ فِي الْمِائَتَيْنِ الْخَفِيفُ الْحَاذِ الَّذِي لَا أَهْلَ لَهُ وَلَا وَلَدَ» .

L30138 The other: from the chain of Ḥudhayfah that he said, “If it is the year 105 AH, would it be better for one of you to raise a puppy than to raise a child?” Abū Muḥammad said: These two narrations are fabricated, as they are from the narration of Abū ʿIṣām Rawwād ibn al-Jarrāḥ al-ʿAsqalānī—and he is rejected in hadith—he is not cited as evidence.

وَالْآخَرُ: مِنْ طَرِيقِ حُذَيْفَةَ أَنَّهُ قَالَ «إذَا كَانَ سَنَةَ خَمْسٍ وَمِائَةٍ فَلَأَنْ يُرَبِّيَ أَحَدُكُمْ جَرْوَ كَلْبٍ خَيْرٌ مِنْ أَنْ يُرَبِّيَ وَلَدًا» ؟ قَالَ أَبُو مُحَمَّد: وَهَذَانِ خَبَرَانِ مَوْضُوعَانِ؛ لِأَنَّهُمَا مِنْ رِوَايَةِ أَبِي عِصَامٍ رَوَّادِ بْنِ الْجَرَّاحِ الْعَسْقَلَانِيِّ - وَهُوَ مُنْكَرُ الْحَدِيثِ - لَا يُحْتَجُّ بِهِ.

L30139 The clarification of their status is that if people were to adopt the aspects within them both that involve abandoning procreation, Islam, Jihad, and the Religion would be nullified, the people of disbelief would prevail—despite what these rulings entail of permitting the raising of dogs—thus the invalidity of the falsehood propagated by its proponents became undeniably evident. And success is from Allah, the Exalted.

وَبَيَانُ وَضْعِهِمَا: أَنَّهُ لَوْ اسْتَعْمَلَ النَّاسُ مَا فِيهِمَا مِنْ تَرْكِ النَّسْلِ لَبَطَلَ الْإِسْلَامُ، وَالْجِهَادُ، وَالدِّينُ، وَغَلَبَ أَهْلُ الْكُفْرِ مَعَ مَا فِيهِ مِنْ إبَاحَةِ تَرْبِيَةِ الْكِلَابِ، فَظَهَرَ فَسَادُ كَذِبِ رَوَّادٍ بِلَا شَكٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

L30140–30141 Ali said: “That is not an obligation for women, based on the statement of

قَالَ عَلِيٌّ: وَلَيْسَ ذَلِكَ فَرْضًا عَلَى النِّسَاءِ، لِقَوْلِ اللَّهِ تَعَالَى عَزَّ وَجَلَّ: {وَالْقَوَاعِدُ مِنَ النِّسَاءِ اللاتِي لا يَرْجُونَ نِكَاحًا} [النور: ٦٠] .

[2] **Qur’an references (L30134):** Qur’an 13:38 (Ar-Ra’d).
[3] **Qur’an references (L30136):** Qur’an 3:39 (Ali ’Imran).

Allah, the Most High, the Exalted and Majestic: 'As for elderly women who no longer hope for marriage...' [An-Nur 24:60]."[4]

L30142 And for the authentic report from the Messenger of Allah—peace and blessings be upon him and his family—through the chain of Malik, from Abdullah ibn Abdullah ibn Jabir ibn Atik, from Atik ibn al-Harith ibn Atik, that Jabir ibn Atik informed him that the Messenger of Allah—peace and blessings be upon him and his family—said: "Martyrdom has seven types other than being killed in the cause of Allah." The Prophet—peace and blessings be upon him—listed among them: "And the woman who dies during pregnancy or childbirth is a martyr."

L30143 Abu Muhammad said: She is the one who dies during her postpartum period, and the one who dies as a virgin, not having been touched/had intercourse.

L30144 ## The issue of marrying more than four women.

L30145 1820: Issue: It is not permissible for anyone to marry more than four women, whether they are female slaves, free women, or a combination of both free women and female slaves.

L30146 The slave and the free person may make up [their fasts] whenever possible. The free person and the slave are equal in this matter, whether with necessity or without necessity.

L30147 It is more virtuous for the free man to exercise patience in abstaining from marrying the female slave.

L30148 The proof of that is the statement of Allah, the Exalted and Majestic: "Marry those women who seem good to you - two or three or four" [An-Nisa: 3][5]

L30149 Humaam from Abbas ibn Asbagh from Muhammad ibn Abd al-Malik ibn Ayman from Bakr ibn Hammad from Musaddad from Yazid from Ma'mar from al-Zuhri from Salim ibn Abd Allah ibn Umar from his father that Ghay-

وَلِلْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ جَابِرِ بْنِ عَتِيكٍ عَنْ عَتِيكِ بْنِ الْحَارِثِ بْنِ عَتِيكٍ أَنَّ جَابِرَ بْنَ عَتِيكٍ أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «الشَّهَادَةُ سَبْعٌ سِوَى الْقَتْلِ فِي سَبِيلِ اللَّهِ فَذَكَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِيهَا: وَالْمَرْأَةُ تَمُوتُ بِجُمْعٍ شَهِيدَةٌ» .

قَالَ أَبُو مُحَمَّدٍ: وَهِيَ الَّتِي تَمُوتُ فِي نِفَاسِهَا، وَالَّتِي تَمُوتُ بِكْرًا لَمْ تُطْمَثْ.

[مَسْأَلَة التَّزَوُّج مِنْ أَكْثَر مِنْ أَرْبَعَة نِسْوَة]

١٨٢٠ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَتَزَوَّجَ أَكْثَرَ مِنْ أَرْبَعَةِ نِسْوَةٍ إمَاءٍ أَوْ حَرَائِرَ، أَوْ بَعْضُهُنَّ حَرَائِرُ وَبَعْضُهُنَّ إمَاءٌ.

وَيَتَسَرَّى الْعَبْدُ وَالْحُرُّ مَا أَمْكَنَهُمَا، الْحُرُّ وَالْعَبْدُ فِي ذَلِكَ سَوَاءٌ، بِضَرُورَةٍ وَبِغَيْرِ ضَرُورَةٍ.

وَالصَّبْرُ عَنْ تَزَوُّجِ الْأَمَةِ لِلْحُرِّ أَفْضَلُ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعَ} [النساء: ٣] .

نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا بَكْرُ بْنُ حَمَّادٍ نا مُسَدَّدٌ نا يَزِيدُ نا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ أَنَّ غَيْلَانَ بْنَ سَلَمَةَ

[4]**Qur'an references (L30141):** Qur'an 24:60 (An-Nur).
[5]**Qur'an references (L30148):** Qur'an 4:3 (An-Nisa).

lan ibn Salamah embraced Islam while he had ten wives. The Messenger of Allah (peace be upon him and his family) said to him: “Choose four from among them.”

أَسْلَمَ وَعِنْدَهُ عَشْرُ نِسْوَةٍ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «اخْتَرْ مِنْهُنَّ أَرْبَعًا» .

L30150–30151 If it is said: “Indeed, Ma‘mar erred in this ḥadīth and provided a chain of transmission for it?”

فَإِنْ قِيلَ: فَإِنَّ مَعْمَرًا أَخْطَأَ فِي هَذَا الْحَدِيثِ فَأَسْنَدَهُ؟

L30152 We said: Ma‘mar is trustworthy and reliable. Whoever claims he erred must furnish clear proof for that, and there is no way for him to do so.

قُلْنَا: مَعْمَرٌ ثِقَةٌ مَأْمُونٌ، فَمَنْ ادَّعَى عَلَيْهِ أَنَّهُ أَخْطَأَ فَعَلَيْهِ الْبُرْهَانُ بِذَلِكَ، وَلَا سَبِيلَ لَهُ إِلَيْهِ.

L30153 And also, there is no disagreement among the people of Islam that it is impermissible for anyone to marry more than four women. However, a group of the Rafidah—those for whom the contract of Islam is not valid—have opposed this ruling.

وَأَيْضًا -: فَلَمْ يَخْتَلِفْ فِي أَنَّهُ لَا يَحِلُّ لِأَحَدٍ زَوَاجُ أَكْثَرَ مِنْ أَرْبَعِ نِسْوَةٍ أَحَدٌ مِنْ أَهْلِ الْإِسْلَامِ، وَخَالَفَ فِي ذَلِكَ قَوْمٌ مِنْ الرَّوَافِضِ لَا يَصِحُّ لَهُمْ عَقْدُ الْإِسْلَامِ.

L30154 The remaining aspects of this issue are: the marriage of the free man to the slave woman, how many wives the slave may marry, and whether the slave may own a concubine.

وَبَقِيَ مِنْ هَذِهِ الْمَسْأَلَةِ: نِكَاحُ الْحُرِّ الْأَمَةَ، وَكَمْ يَنْكِحُ الْعَبْدُ، وَهَلْ يَتَسَرَّى الْعَبْدُ؟

L30155 As for the marriage of a free man to a female slave, people have differed regarding this matter. It has been narrated from Ali—though unauthenticated—that it is not appropriate for a free man to marry a female slave when he possesses sufficient means to marry a free woman. If he does so, their marriage must be annulled.

فَأَمَّا نِكَاحُ الْحُرِّ الْأَمَةَ فَاخْتَلَفَ النَّاسُ فِي ذَلِكَ -: فَرُوِّينَا عَنْ عَلِيٍّ - وَلَمْ يَصِحَّ -: لَا يَنْبَغِي لِحُرٍّ أَنْ يَتَزَوَّجَ أَمَةً وَهُوَ يَجِدُ طَوْلًا يَتَزَوَّجُ بِهِ حُرَّةً، فَإِنْ فَعَلَ فُرِّقَ بَيْنَهُمَا.

L30156 From Ibn Abbas: Whoever possesses three hundred dirhams, Hajj becomes incumbent upon him and he is prohibited from marrying a bondwoman.

عَنْ ابْنِ عَبَّاسٍ: مَنْ مَلَكَ ثَلَاثَمِائَةِ دِرْهَمٍ وَجَبَ عَلَيْهِ الْحَجُّ، وَحَرُمَ عَلَيْهِ نِكَاحُ الْأَمَةِ.

L30157–30158 From Abu Hurairah and Ibn Abbas—though it is not authentically attributed to them—: “None fear marrying a female slave compared to adultery except a few.”

وَعَنْ أَبِي هُرَيْرَةَ، وَابْنِ عَبَّاسٍ - وَلَمْ يَصِحَّ عَنْهُمَا -: مَا إِنْ يَخَفْ نِكَاحَ الْأَمَةِ عَلَى الزِّنَا إِلَّا قَلِيلًا.

L30159 It is authentically narrated from Jabir ibn Abdullah: Whoever is capable of providing the dower of a free woman must not marry a slave woman, nor may a slave woman be married in precedence to a free woman, whereas a free woman may be married in precedence to a slave woman.

وَصَحَّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ: مَنْ وَجَدَ صَدَاقَ حُرَّةٍ فَلَا يَنْكِحُ أَمَةً، وَلَا تُنْكَحُ الْأَمَةُ عَلَى الْحُرَّةِ، وَتُنْكَحُ الْحُرَّةُ عَلَى الْأَمَةِ.

L30160 From ‘Umar ibn al-Khaṭṭāb: Ya‘lā ibn Munabbih wrote to him inquiring

about a man married to two free wives and two female slaves. ‘Umar responded: “Divorce him from the two female slaves.”

وَعَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ كَتَبَ إِلَيْهِ يَعْلَى بْنُ مُنَبِّهٍ فِي رَجُلٍ تَحْتَهُ امْرَأَتَانِ حُرَّتَانِ، وَأَمَتَانِ مَمْلُوكَتَانِ؟ فَكَتَبَ إِلَيْهِ عُمَرُ: فَرِّقْ بَيْنَهُ وَبَيْنَ الْأَمَتَيْنِ.

L30161 From Ibn Abbas and Ibn Umar: They disliked a slave woman being married in addition to a free woman, thereby combining both as wives.

وَعَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ: أَنَّهُمَا كَرِهَا أَنْ تُنْكَحَ أَمَةٌ عَلَى حُرَّةٍ يَجْمَعُ بَيْنَهُمَا.

L30162 From Ibn Mas‘ud: A female slave is not to be married as a co-wife alongside a free woman, except [if the husband is] a male slave.

وَعَنْ ابْنِ مَسْعُودٍ: لَا تُنْكَحُ الْأَمَةُ عَلَى الْحُرَّةِ إِلَّا الْمَمْلُوكُ.

L30163 It is authentically reported that Ibn Abbas said: The marriage of a free woman while being married to a slave woman is the divorce of the slave woman. Al-Sha‘bi also states this view.

وَصَحَّ عَنْ ابْنِ عَبَّاسٍ قَالَ: تَزْوِيجُ الْحُرَّةِ عَلَى الْأَمَةِ الْمَمْلُوكَةِ طَلَاقُ الْمَمْلُوكَةِ - وَبِهِ يَقُولُ الشَّعْبِيُّ.

L30164 It has been narrated to us from Mujāhid that he said: Among the concessions Allah, the Exalted, has granted this community is marrying a slave woman and a Christian woman, even if he is wealthy.

وَرُوِّينَا عَنْ مُجَاهِدٍ أَنَّهُ قَالَ: مِمَّا وَسَّعَ اللَّهُ تَعَالَى بِهِ عَلَى هَذِهِ الْأُمَّةِ نِكَاحُ الْأَمَةِ وَالنَّصْرَانِيَّةِ وَإِنْ كَانَ مُوسِرًا -.

L30165 And it was narrated to us from ʿAbd al-Razzāq that he said: “I asked Sufyān al-Thawrī about marriage to a slave woman.” He replied, “‘Alī saw no harm in it.”

وَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ قَالَ: سَأَلْت سُفْيَانَ الثَّوْرِيَّ عَنْ نِكَاحِ الْأَمَةِ؟ فَقَالَ: لَمْ يَرَ عَلِيٌّ بِهِ بَأْسًا.

L30166 Abū Muḥammad said: And this is the opinion of ʿUthmān al-Battī.

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ.

L30167 Abu Hanifah said: It is permissible for a free Muslim with sufficient means and for a slave to marry a female slave, unless the free man has a free woman under his guardianship. He stated: If a free Muslim woman or a woman from the People of the Book is under his marital bond, it is entirely impermissible for him to marry a female slave—whether the free woman consents or not. If he does so, the marriage to the female slave is annulled. The same applies if he marries a female slave after having divorced his free wife three times, or fewer divorces, as long as she is in her waiting period.

وَقَالَ أَبُو حَنِيفَةَ: جَائِزٌ لِلْحُرِّ الْمُسْلِمِ وَاجِدِ الطَّوْلِ وَلِلْعَبْدِ أَنْ يَنْكِحَا الْأَمَةَ، إلَّا أَنْ يَكُونَ عِنْدَهُ حُرَّةٌ، قَالَ: فَإِنْ كَانَتْ فِي عِصْمَتِهِ حُرَّةٌ مُسْلِمَةٌ أَوْ كِتَابِيَّةٌ لَمْ يَجُزْ لَهُ نِكَاحُ الْأَمَةِ أَلْبَتَّةَ - لَا بِإِذْنِ الْحُرَّةِ وَلَا بِغَيْرِ إذْنِهَا - فَإِنْ فَعَلَ فُسِخَ نِكَاحُ الْأَمَةِ - وَكَذَلِكَ لَوْ تَزَوَّجَ أَمَةً وَقَدْ طَلَّقَ زَوْجَتَهُ الْحُرَّةَ ثَلَاثًا، أَوْ أَقَلَّ مَا دَامَتْ فِي عِدَّتِهَا.

L30168 It is permissible in his view to marry a free woman alongside a female slave, provided the total number of wives does not exceed four.

وَجَائِزٌ عِنْدَهُ نِكَاحُ الْحُرَّةِ عَلَى الْأَمَةِ مَا لَمْ يَتَجَاوَزْ بِالْجَمِيعِ أَرْبَعًا.

L30169 Malik said: It is not permissible for a free man to marry a slave woman

unless two conditions are simultaneously fulfilled: that he cannot afford the mahr of a free woman, and that he fears hardship [that may lead to sin]. If he marries the slave woman while already married to a free woman, the marriage to the slave woman is annulled.

وَقَالَ مَالِكٌ: لَا يَجُوزُ لِلْحُرِّ نِكَاحُ أَمَةٍ إِلَّا بِاجْتِمَاعِ الشَّرْطَيْنِ: أَنْ لَا يَجِدَ صَدَاقَ حُرَّةٍ، وَأَنْ يَخْشَى الْعَنَتَ، فَإِنْ تَزَوَّجَهَا عَلَى حُرَّةٍ فُسِخَ نِكَاحُ الْأَمَةِ.

L30170 Then he retracted from that and permitted marriage to a believing female slave, specifically for the poor man, the affluent free man, and the male slave.

ثُمَّ رَجَعَ عَنْ ذَلِكَ فَأَبَاحَ نِكَاحَ الْأَمَةِ الْمُؤْمِنَةِ خَاصَّةً لِلْفَقِيرِ وَلِلْمُوسِرِ الْحُرِّ وَالْعَبْدِ.

L30171–30172 If he is married to a free woman and then marries a slave woman while [still] married to her, the free woman is given the choice: she may remain with him or separate from him, as she decides.

قَالَ: فَإِنْ كَانَتْ عِنْدَهُ حُرَّةٌ فَتَزَوَّجَ أَمَةً عَلَيْهَا: خُيِّرَتْ الْحُرَّةُ، فَإِنْ شَاءَتْ أَقَامَتْ عِنْدَهُ، وَإِنْ شَاءَتْ فَارَقَتْهُ.

L30173 He said: If she consents to that, he may marry bondmaids to complete the total of four wives if he wishes, and the free woman has no choice to object thereafter.

قَالَ: فَإِنْ رَضِيَتْ بِذَلِكَ فَلَهُ أَنْ يَتَزَوَّجَ عَلَيْهَا تَمَامَ أَرْبَعٍ مِنْ الْإِمَاءِ إِنْ شَاءَ، وَلَا خِيَارَ لِلْحُرَّةِ بَعْدُ.

L30174 He said: A slave may marry a female slave in addition to a free woman.

قَالَ: وَيَتَزَوَّجُ الْعَبْدُ الْأَمَةَ عَلَى الْحُرَّةِ.

L30175 Al-Shafi'i said: It is not permissible for a free man who can afford the dowry for a free believing woman or a woman from the People of the Book to marry a slave woman. If he cannot afford a free woman and, along with that, fears dire difficulty, he may marry a single believing slave woman - no more than one.

قَالَ الشَّافِعِيُّ: لَا يَجُوزُ نِكَاحُ الْحُرِّ الْوَاجِدِ صَدَاقَ حُرَّةٍ مُؤْمِنَةٍ، أَوْ كِتَابِيَّةٍ لِأَمَةٍ، فَإِنْ لَمْ يَجِدْ طَوْلًا لِحُرَّةٍ - وَخَشِيَ مَعَ ذَلِكَ الْعَنَتَ - فَلَهُ نِكَاحُ أَمَةٍ مُؤْمِنَةٍ وَاحِدَةٍ، لَا أَكْثَرَ.

L30176 He once said: If a man cannot meet the dowry of a free Muslim woman but finds the dowry of a free Kitābī woman, he may marry a Muslim slave woman.

وَقَالَ مَرَّةً: إِنْ لَمْ يَجِدْ صَدَاقَ حُرَّةٍ مُسْلِمَةٍ وَوَجَدَ صَدَاقَ حُرَّةٍ كِتَابِيَّةٍ، فَلَهُ نِكَاحُ الْأَمَةِ الْمُسْلِمَةِ.

L30177 Abu Muhammad said: As for the opinion of Abu Hanifa, it wholly lacks evidence. Even if some of it agrees with certain early scholars, it contradicts the opinions of the rest. No one's opinion holds more validity than another's unless based on clear evidence from the Qur'an or Sunnah.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَهُوَ عَارٍ مِنْ الْأَدِلَّةِ جُمْلَةً، وَإِنْ كَانَ قَدْ وَافَقَ فِي بَعْضِهِ بَعْضَ السَّلَفِ فَقَدْ خَالَفَ قَوْلَ سَائِرِهِمْ، وَلَيْسَ قَوْلُ أَحَدٍ بِأَوْلَى مِنْ قَوْلِ غَيْرِهِ إِلَّا بِبَيَانِ قُرْآنٍ أَوْ سُنَّةٍ.

L30178 As for Mālik's first opinion and the other opinion of Al-Shāfiʿī, one might presume they derive from the Quran. However, their two well-known positions contradict the Quran. This is because Mālik's ruling forbidding a free

وَأَمَّا قَوْلُ مَالِكٍ الْأَوَّلُ، وَقَوْلُ الشَّافِعِيِّ الْآخَرُ، فَقَدْ يُظَنُّ أَنَّهُمَا تَعَلَّقَا بِالْقُرْآنِ، وَأَمَّا قَوْلَاهُمَا الْمَشْهُورَانِ عَنْهُمَا، فَخِلَافٌ لِلْقُرْآنِ؛ لِأَنَّ قَوْلَ مَالِكٍ فِي مَنْعِ الْحُرِّ نِكَاحَ الْأَمَةِ

man to marry a slave woman if he is already married to a free woman—while permitting it if he is not married to a free woman, even if he possesses sufficient means to marry a Muslim free woman with his resources—is neither mandated by the Quranic verse in any way nor supported by any established Sunnah. The exception would be if he [Mālik]—along with Abū Ḥanīfah—relied on what we have reported through Saʿīd ibn Manṣūr's chain: Ismāʿīl ibn Ibrāhīm narrated to us from someone who heard Al-Ḥasan say, "The Messenger of Allah—peace and blessings be upon him—forbade marrying a slave woman alongside a free woman." Yet this chain is severed at two points and is unsound.

بِأَنْ تَكُونَ عِنْدَهُ حُرَّةٌ، وَإِبَاحَتُهُ لَهُ نِكَاحَ الْأَمَةِ إِذَا لَمْ تَكُنْ عِنْدَهُ حُرَّةٌ، وَإِنْ كَانَ مُسْتَطِيعًا لِطَوْلٍ يَنْكِحُ بِهِ الْحُرَّةَ الْمُسْلِمَةَ لَيْسَ تَقْتَضِيهِ الْآيَةُ أَصْلًا، وَلَا جَاءَتْ بِهِ سُنَّةٌ قَطُّ، إِلَّا أَنْ يَتَعَلَّقَ هُوَ وَأَبُو حَنِيفَةَ بِمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ عَمَّنْ سَمِعَ الْحَسَنَ يَقُولُ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تُنْكَحَ الْأَمَةُ عَلَى الْحُرَّةِ» فَهَذَا مُنْقَطِعٌ فِي مَوْضِعَيْنِ هَالِكٌ.

L30179 Moreover, there is no choice of the free woman in it, as Mālik mentioned.

وَأَيْضًا - فَلَيْسَ فِيهِ تَخْيِيرُ الْحُرَّةِ كَمَا ذَكَرَ مَالِكٌ.

L30180 As for granting the free woman the choice to remain with her free husband or separate from him if he marries a slave woman in addition to her, this is an unsound opinion with no evidence supporting its validity, and we know of no one who held it before him.

وَأَمَّا تَخْيِيرُهُ الْحُرَّةَ فِي الْبَقَاءِ تَحْتَ زَوْجِهَا الْحُرِّ، أَوْ فِرَاقِهِ إِذَا تَزَوَّجَ عَلَيْهَا أَمَةً فَقَوْلٌ فَاسِدٌ لَا دَلِيلَ عَلَى صِحَّتِهِ وَلَا نَعْلَمُ أَحَدًا قَالَ بِهِ قَبْلَهُ.

L30181 As for al-Shāfiʿī's prohibition on one who possesses the capacity to marry a free woman from the People of the Book marrying a slave woman, this is an opinion not necessitated by the verse. Thus, all these opinions are dismissed, as they conform neither to the Qur'an nor to any of the Sunnahs.

وَأَمَّا مَنْعُ الشَّافِعِيِّ مَنْ وَجَدَ طَوْلًا لِنِكَاحِ حُرَّةٍ كِتَابِيَّةٍ مِنْ نِكَاحِ الْأَمَةِ، فَقَوْلٌ لَا تَقْتَضِيهِ الْآيَةُ - فَسَقَطَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا، إِذْ لَيْسَتْ مُوَافِقَةً لِلْقُرْآنِ، وَلَا لِشَيْءٍ مِنَ السُّنَنِ.

L30182–30184 Abu Muhammad said: When the Salaf (may Allah be pleased with them) differed, the Quran is the ultimate recourse. He, the Almighty and Majestic, said: *"And whoever among you cannot afford to marry free believing women, then [let him marry] from those whom your right hands possess of believing slave girls. Allah knows best about your faith. You are of one another. So marry them with their guardians' permission and give them their dowries in fairness, as chaste women, neither fornicating nor taking secret lovers. When they become chaste, if they commit indecency, they shall suffer half the punishment prescribed for free believing women. This is for those among you who fear hardship. But to persevere is better for you."* [An-Nisa: 25][6]

قَالَ أَبُو مُحَمَّد: فَالْمَرْجُوعُ إِلَيْهِ إِذَا اخْتَلَفَ السَّلَفُ - رَضِيَ اللَّهُ عَنْهُمْ - هُوَ الْقُرْآنُ، قَالَ عَزَّ وَجَلَّ: {وَمَنْ لَمْ يَسْتَطِعْ مِنْكُمْ طَوْلًا أَنْ يَنْكِحَ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ فَمِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ فَتَيَاتِكُمُ الْمُؤْمِنَاتِ وَاللَّهُ أَعْلَمُ بِإِيمَانِكُمْ بَعْضُكُمْ مِنْ بَعْضٍ فَانْكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ وَآتُوهُنَّ أُجُورَهُنَّ بِالْمَعْرُوفِ مُحْصَنَاتٍ غَيْرَ مُسَافِحَاتٍ وَلَا مُتَّخِذَاتِ أَخْدَانٍ فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ ذَلِكَ لِمَنْ خَشِيَ الْعَنَتَ مِنْكُمْ وَأَنْ تَصْبِرُوا خَيْرٌ لَكُمْ} [النساء: ٢٥] .

L30185 We examined the implications of this verse and found within it the ruling

[6] **Qur'an references (L30182):** Qur'an 4:25 (An-Nisa).

for one who lacks the means and fears hardship—permitting him to marry a believing slave woman—while affirming that patience remains better for us. Having established this, we then considered the ruling for one who possesses the means and does not fear hardship, as well as the marriage of a Muslim to a Kitabi slave woman. We found no foundational reference to this in the verse whatsoever—neither explicit permission, prohibition, nor discouragement. Rather, it is entirely unaddressed. Consequently, it was impermissible for us to apply to this case the ruling for one who lacks the means and fears hardship or the ruling pertaining to the believing slave woman, as this would constitute a legal analogy to the verse's content—and such analogy is null and void. Similarly, we could not validly apply a ruling contradicting that for one lacking means and fearing hardship or the ruling of the believing slave woman, since neither is mentioned in the verse. Both approaches would transgress the verse's scope by inserting what is absent from it. It thus became incumbent upon us to seek the ruling for one who possesses the means and does not fear hardship. We found that Allah Almighty states: "This day, all good things have been made lawful to you. The food of the People of the Scripture is lawful to you, and your food is lawful to them. And [lawful to you are] chaste women from the believers and chaste women from those given the Scripture before you, provided you give them their dowries" (Al-Ma'idah 5:5).[7]

فَنَظَرْنَا فِي مُقْتَضَى هَذِهِ الْآيَةِ، فَوَجَدْنَا فِيهَا حُكْمَ مَنْ لَمْ يَجِدْ الطَّوْلَ وَخَشِيَ الْعَنَتَ، فَأَبَاحَ نِكَاحَ الْأَمَةِ الْمُؤْمِنَةِ لَهُ، وَأَنَّ الصَّبْرَ خَيْرٌ لَنَا، فَقُلْنَا بِذَلِكَ كُلِّهِ فَنَظَرْنَا فِي حُكْمِ مَنْ يَجِدْ الطَّوْلَ وَلَمْ يَخْشَ الْعَنَتَ، وَفِي نِكَاحِ الْمُسْلِمِ الْأَمَةَ الْكِتَابِيَّةَ فَلَمْ نَجِدْهُ فِيهِ أَصْلًا، لَا بِإِبَاحَةٍ، وَلَا بِمَنْعٍ، وَلَا بِكَرَاهَةٍ، بَلْ هُوَ مَسْكُوتٌ عَنْهُ فِيهَا جُمْلَةً، فَلَمْ يَجُزْ لَنَا أَنْ نَحْكُمَ لَهُ مِنْهَا بِحُكْمِ مَنْ لَمْ يَجِدْ الطَّوْلَ وَخَشِيَ الْعَنَتَ، وَبِحُكْمِ الْأَمَةِ الْمُؤْمِنَةِ؛ لِأَنَّهُ قِيَاسٌ عَلَى مَا فِي الْآيَةِ، وَالْقِيَاسُ بَاطِلٌ، وَلَمْ يَجُزْ لَنَا أَنْ نَحْكُمَ لَهُ مِنْهَا بِحُكْمٍ مُخَالِفٍ لِحُكْمِ مَنْ لَا يَجِدُ الطَّوْلَ وَيَخْشَى الْعَنَتَ، وَبِحُكْمِ الْأَمَةِ الْمُؤْمِنَةِ؛ لِأَنَّهُ لَيْسَ ذَلِكَ فِي الْآيَةِ، وَكِلَاهُمَا تَعَدٍّ لِمَا فِي الْآيَةِ وَإِقْحَامٌ فِيهَا لِمَا لَيْسَ فِيهَا، فَوَجَبَ أَنْ نَطْلُبَ حُكْمَ مَنْ يَجِدُ الطَّوْلَ وَلَا يَخْشَى الْعَنَتَ -: فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {الْيَوْمَ أُحِلَّ لَكُمُ الطَّيِّبَاتُ وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ وَطَعَامُكُمْ حِلٌّ لَهُمْ وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ} [المائدة: ٥] .

L30186 We find Allah, the Exalted, stating: "Marry the single [widowed/divorced] among you, and the righteous among your male servants and female servants. If they should be poor, Allah will enrich them from His bounty." [an-Nur 24:32][8]

وَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {وَأَنْكِحُوا الْأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ} [النور: ٣٢] .

L30187 In this verse there is a clear explanation regarding the permissibility of marriage to women of the Book in general, for the Exalted did not single out a free woman over a slave woman.

فَكَانَ فِي هَذِهِ الْآيَةِ بَيَانٌ جَلِيٌّ فِي إبَاحَةِ نِكَاحِ الْكِتَابِيَّاتِ جُمْلَةً لَمْ يَخُصَّ تَعَالَى حُرَّةً مِنْ أَمَةٍ.

L30188 In the other verse, there is a general permission for male slaves among the believers to marry, since the Exalted has not distinguished between a free

وَفِي الْآيَةِ الْأُخْرَى إبَاحَةُ نِكَاحِ الْعَبِيدِ مِنْ الْمُؤْمِنِينَ عُمُومًا، لَمْ يَخُصَّ تَعَالَى حُرَّةً مِنْ أَمَةٍ، وَإِبَاحَةُ إنْكَاحِ الْإِمَاءِ الْمُسْلِمَاتِ لَمْ يَخُصَّ حُرًّا مِنْ عَبْدٍ.

[7] **Qur'an references (L30185):** Qur'an 5:5 (Al-Ma'idah).
[8] **Qur'an references (L30186):** Qur'an 24:32 (An-Nur).

woman and a slave woman; and a permission for Muslim female slaves to marry, since the Exalted has not distinguished between a free man and a slave.

فَكَانَ فِي هَاتَيْنِ الْآيَتَيْنِ بَيَانُ نِكَاحِ الْمُسْلِمِ الْغَنِيِّ وَالْفَقِيرِ، وَالْعَبْدِ وَالْحُرِّ عُمُومًا، بِكُلِّ حَالٍ لِلْحُرَّةِ الْمُسْلِمَةِ وَلِلْكِتَابِيَّةِ، وَلِلْأَمَةِ الْمُسْلِمَةِ وَالْكِتَابِيَّةِ، وَلَمْ يَأْتِ قَطُّ فِي سُنَّةٍ، وَلَا فِي قُرْآنٍ تَحْرِيمُ شَيْءٍ مِنْ ذَلِكَ، وَلَا كَرَاهَةٌ: - فَصَحَّ وَلَنَا بِيَقِينٍ لَا إِشْكَالَ فِيهِ.

L30189–30191 These two verses generally explain the marriage rulings for the Muslim—the wealthy and the poor, the slave and the free—in comprehensive terms. In all cases—for the free Muslim woman, the Kitabi woman, the Muslim female slave, and the Kitabi female slave—there has never appeared in the Sunnah or the Quran any prohibition of anything from this matter, nor any reprehension. Thus, it is valid, and we hold with certainty that there is no ambiguity in it.

وَمِنْ عَجَائِبِ الدُّنْيَا إِبَاحَةُ مَالِكٍ نِكَاحَ الْحُرِّ وَاجِدِ الطَّوْلِ غَيْرِ خَائِفِ الْعَنَتِ نِكَاحَ الْأَمَةِ الْمُسْلِمَةِ، وَمَنْعُهُ إِيَّاهُ نِكَاحَ الْأَمَةِ الْكِتَابِيَّةِ، وَهَذَا تَحَكُّمٌ فِي التَّعَلُّقِ بِالْآيَةِ لَا يَجُوزُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L30192 Among the marvels of the world is Mālik's permission for a free man who is financially capable and unafraid of hardship [leading to sin] to marry a Muslim slave woman, while prohibiting him from marrying a slave woman from the People of the Book. This constitutes an impermissible arbitrary interpretation of the verse—and with Allāh the Exalted lies success.

وَكَذَلِكَ إِبَاحَتُهُ نِكَاحَ الْأَمَةِ عَلَى الْحُرَّةِ لِلْعَبْدِ، وَمَنْعُهُ الْحُرَّ مِنْ ذَلِكَ - وَهَذَا وَإِنْ كَانَ قَدْ رُوِيَ عَنْ مَسْرُوقٍ عَنْ ابْنِ مَسْعُودٍ - وَلَمْ يَصِحَّ عَنْهُ - فَقَدْ أَتَى عَنْ غَيْرِهِمَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَالتَّابِعِينَ خِلَافُ ذَلِكَ، وَتَرَكَ الْفَرْقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ.

L30193 Similarly, he permitted the slave to marry a slave woman while married to a free woman, while prohibiting the free person from doing so. Though this has been narrated by Masruq from Ibn Mas'ud - and it is not authenticated from him - there are reports from other than these two among the Companions (may Allah be pleased with them) and the Followers contradicting this position. Moreover, he neglected to distinguish any element of the matter.

وَأَمَّا كَمْ يَنْكِحُ الْعَبْدُ -: فَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ مَوْلَى آلِ طَلْحَةَ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: يَنْكِحُ الْعَبْدُ اثْنَيْنِ.

L30194 As for how many a slave may marry: it has been narrated to us from 'Abd al-Razzāq from Sufyān ibn 'Uyaynah from Muḥammad ibn 'Abd al-Raḥmān, the client of the family of Ṭalḥah, from Sulaymān ibn Yasār from 'Abd Allāh ibn 'Utbah ibn Mas'ūd from 'Umar ibn al-Khaṭṭāb, who said: "A slave may marry two."

وَعَنْ ابْنِ جُرَيْجٍ: أُخْبِرْت أَنَّ عُمَرَ بْنَ الْخَطَّابِ سَأَلَ فِي النَّاسِ كَمْ يَنْكِحُ الْعَبْدُ؟ فَاتَّفَقُوا عَلَى أَنْ لَا يَزِيدَ عَلَى اثْنَيْنِ.

L30195 From Ibn Jurayj: I was informed that Umar ibn al-Khattab asked the people, "How many wives may a slave marry?" They agreed that he must not exceed two.

L30196 From 'Abd al-Razzāq, from Sufyān al-Thawrī and Ibn Jurayj, both of whom

said: Jaʿfar ibn Muḥammad narrated **to us** from his father that ʿAlī ibn Abī Ṭālib said: A slave may marry two women.

وَعَنْ عَبْدِ الرَّزَّاقِ: عَنْ سُفْيَانَ الثَّوْرِيِّ، وَابْنِ جُرَيْجٍ قَالَا: نا جَعْفَرُ بْنُ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: يَنْكِحُ الْعَبْدُ اثْنَتَيْنِ.

L30197 Muḥammad ibn Saʿīd ibn Nabāt narrated to us, Aḥmad ibn Aḥmad ibn ʿAbd al-Baṣīr narrated to us, Qāsim ibn Aṣbagh narrated to us, Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us, Muḥammad ibn al-Muthannā narrated to us, ʿAbd al-Raḥmān ibn Muḥammad al-Muḥāribī narrated from Layth ibn Abī Sulaym from ʿAṭāʾ, who said: The Companions of Muḥammad (peace be upon him) unanimously agreed that a slave may not have more than two wives simultaneously. This is the opinion of al-Ḥasan, ʿAṭāʾ, Abū Ḥanīfah, al-Shāfiʿī, Aḥmad, Sufyān al-Thawrī, al-Layth ibn Saʿd, and others.

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ أَحْمَدَ بْنِ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدٍ الْمُحَارِبِيُّ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ عَطَاءٍ، قَالَ: أَجْمَعَ أَصْحَابُ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ الْعَبْدَ لَا يَجْمَعُ مِنَ النِّسَاءِ فَوْقَ اثْنَتَيْنِ - وَهُوَ قَوْلُ الْحَسَنِ، وَعَطَاءٍ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَسُفْيَانَ الثَّوْرِيِّ، وَاللَّيْثِ بْنِ سَعْدٍ، وَغَيْرِهِمْ -.

L30198 It has been authentically reported from Mujāhid and Al-Zuhrī: that he may marry four women.

وَصَحَّ عَنْ مُجَاهِدٍ، وَالزُّهْرِيِّ: أَنَّهُ يَتَزَوَّجُ أَرْبَعًا.

L30199 It has been reported from Al-Sha'bi—though not reliably transmitted from him—and from 'Ata' that he withheld judgment on that matter, and this is the position held by Malik and Abu Sulayman.

وَرُوِيَ عَنِ الشَّعْبِيِّ - وَلَمْ يَصِحَّ عَنْهُ - وَعَنْ عَطَاءٍ: أَنَّهُ تَوَقَّفَ فِي ذَلِكَ - وَبِهَذَا يَقُولُ مَالِكٌ، وَأَبُو سُلَيْمَانَ.

L30200–30201 Abu Muhammad said: This is among the matters in which the Malikis opposed positions held by the Companions—Companions for whom no dissenter is known among the Companions. And is this not something they glorify when it aligns with their desires?

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا مِمَّا خَالَفَ فِيهِ الْمَالِكِيُّونَ صَحَابَةً لَا يُعْرَفُ لَهُمْ مِنَ الصَّحَابَةِ مُخَالِفٌ - وَهَذَا مِمَّا يُعَظِّمُونَهُ إذَا وَافَقَ أَهْوَاءَهُمْ؟

L30202 Ali said: There is no authoritative evidence in the speech of anyone other than the speech of Allah, the Most High, and His Messenger (peace and blessings of Allah be upon him).

قَالَ عَلِيٌّ: لَا حُجَّةَ فِي كَلَامِ أَحَدٍ دُونَ كَلَامِ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L30203 And Allah the Most High has said: "Marry women of your choice, two or three or four." [An-Nisa: 3] He did not distinguish between a male slave and a free man, so they are equal in this matter - and with Allah alone is success.[9]

وَقَدْ قَالَ اللَّهُ تَعَالَى: {فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعَ} [النساء: ٣] فَلَمْ يَخُصَّ عَبْدًا مِنْ حُرٍّ، فَهُمَا سَوَاءٌ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30204 As for male slaves taking concubines - there is disagreement among people. It has been reported via the chain of Ḥammād ibn Salamah and Maʿmar, both

[9] **Qur'an references (L30203):** Qur'an 4:3 (An-Nisa).

of whom narrated from Ayyūb al-Sikhtiyānī, from Nāfiʿ, from Ibn ʿUmar: that he would observe his male slaves taking concubines and he would not prohibit them.

وَأَمَّا تَسَرِّي الْعَبْدِ -: فَإِنَّ النَّاسَ اخْتَلَفُوا، فَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ، وَمَعْمَرٍ، كِلَاهُمَا عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ يَرَى مَمَالِيكَهُ يَتَسَرَّوْنَ وَلَا يَنْهَاهُمْ.

L30205 Narrated by Wakiʿ from Sufyān al-Thawrī from ʿAmr ibn Dīnār from Abū Maʿbad from Ibn ʿAbbās: He said to his male slave concerning a female slave he owned: "Make her lawful for yourself by right of ownership."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي مَعْبَدٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ لِعَبْدٍ لَهُ فِي جَارِيَةٍ لَهُ: اسْتَحِلَّهَا بِمِلْكِ الْيَمِينِ.

L30206 No disagreement is known from any of the Companions regarding these two positions. This is the opinion of Ash-Shaʿbi, Ibrahim an-Nakhaʿi, Al-Hasan al-Basri, and ʿAta'—and this is authentically established from them. It is also the opinion of Malik and Abu Sulayman. We know of no disagreement among the Successors on this matter, except for an obscure narration from Ibrahim and Al-Hakam ibn ʿUtaybah, and a sound narration from Ibn Sirin that they disapproved of a slave taking a concubine, deeming it disliked but not prohibited. Abu Hanifah and Ash-Shafiʿi did not permit this.

وَلَا يُعْرَفُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ خِلَافٌ لِهَذَيْنِ - وَهُوَ قَوْلُ الشَّعْبِيِّ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَالْحَسَنِ الْبَصْرِيِّ، وَعَطَاءٍ - وَصَحَّ ذَلِكَ عَنْهُمْ - وَهُوَ قَوْلُ مَالِكٍ، وَأَبِي سُلَيْمَانَ، وَمَا نَعْلَمُ خِلَافًا فِي ذَلِكَ مِنْ تَابِعٍ، إلَّا رِوَايَةً غَيْرَ مَشْهُورَةٍ عَنْ إبْرَاهِيمَ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَرِوَايَةً صَحِيحَةً عَنْ ابْنِ سِيرِينَ أَنَّهُمْ كَرِهُوا لِلْعَبْدِ أَنْ يَتَسَرَّى كَرَاهِيَةً، لَا مَنْعًا - وَلَمْ يُجِزْ ذَلِكَ أَبُو حَنِيفَةَ، وَلَا الشَّافِعِيُّ.

L30207 Abū Muḥammad said: They exaggerate the disagreement of a Companion for whom no opposing Companion is known, yet here they oppose Ibn ʿAbbās and Ibn ʿUmar—may Allah be pleased with them—with no opposing Companion known for either among the Companions. Thus, it became obligatory to refer back to the Qur'an and the Sunnah. We found Allah, the Mighty and Majestic, stating: *"And those who guard their private parts except from their spouses or those whom their right hands possess—for then they are free from blame"* [23:5-6]. He, the Exalted, made no distinction between free persons and slaves. We have discussed in preceding sections of our book the validity of a slave's ownership of property, making repetition superfluous. And success is from Allah, the Exalted.[10]

قَالَ أَبُو مُحَمَّد: وَهُمْ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، وَقَدْ خَالَفُوا هَاهُنَا ابْنَ عَبَّاسٍ، وَابْنَ عُمَرَ، وَلَا يُعْرَفُ لَهُمَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ فَوَجَبَ الرُّجُوعُ إلَى الْقُرْآنِ وَالسُّنَّةِ فَوَجَدْنَا اللَّهَ عَزَّ وَجَلَّ يَقُولُ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] فَلَمْ يَخُصَّ تَعَالَى حُرًّا مِنْ عَبْدٍ، وَقَدْ تَكَلَّمْنَا فِيمَا خَلَا مِنْ كِتَابِنَا عَلَى صِحَّةِ مِلْكِ الْعَبْدِ لِمَالِهِ فَأَغْنَى عَنْ تَرْدَادِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة نِكَاح الْكِتَابِيَّة]

L30208 **The Juridical Ruling on Marriage to a Kitābī Female.**

[10] **Qur'an references (L30207):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij).

L30209 Issue 1821: It is permissible for a Muslim to marry a Kitabi woman (i.e., a Jewish woman, a Christian woman, or a Zoroastrian woman) through marriage.

١٨٢١ - مَسْأَلَةٌ: وَجَائِزٌ لِلْمُسْلِمِ نِكَاحُ الْكِتَابِيَّةِ، وَهِيَ الْيَهُودِيَّةُ، وَالنَّصْرَانِيَّةُ، وَالْمَجُوسِيَّةُ، بِالزَّوَاجِ.

L30210 It is not permissible for him to have intercourse with a non-Muslim female slave by right of ownership, nor is it permissible at all to marry a disbelieving woman who is not from the People of the Book.

وَلَا يَحِلُّ لَهُ وَطْءُ أَمَةٍ غَيْرِ مُسْلِمَةٍ بِمِلْكِ الْيَمِينِ، وَلَا نِكَاحُ كَافِرَةٍ غَيْرِ كِتَابِيَّةٍ أَصْلًا.

L30211–30212 Ali said: It was narrated to us from Ibn Umar that the prohibition against marrying women of the People of the Book is stated in general.

قَالَ عَلِيٌّ: رُوِّينَا عَنِ ابْنِ عُمَرَ: تَحْرِيمَ نِكَاحِ نِسَاءِ أَهْلِ الْكِتَابِ جُمْلَةً.

L30213 It was narrated to us as recorded by Al-Bukhārī: Qutaybah ibn Saʿīd narrated to us; Al-Layth ibn Saʿd narrated to us, from Nāfiʿ, that Ibn ʿUmar was asked about marrying a Jewish woman or a Christian woman. He said: "Allah the Exalted has forbidden polytheistic women to the believers, and I know of no act of polytheism greater than a woman declaring, 'Her Lord is Jesus,' while he is but a servant among the servants of Allah, the Mighty and Majestic."

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ سُئِلَ عَنْ نِكَاحِ الْيَهُودِيَّةِ، وَالنَّصْرَانِيَّةِ؟ فَقَالَ: إِنَّ اللَّهَ تَعَالَى حَرَّمَ الْمُشْرِكَاتِ عَلَى الْمُؤْمِنِينَ، وَلَا أَعْلَمُ مِنَ الْإِشْرَاكِ شَيْئًا أَكْثَرَ مِنْ أَنْ تَقُولَ الْمَرْأَةُ " رَبُّهَا عِيسَى " وَهُوَ عَبْدٌ مِنْ عِبَادِ اللَّهِ عَزَّ وَجَلَّ.

L30214 Abu Hanifah, Malik, and Al-Shafi'i permitted marriage to Jewish and Christian women, and sexual intercourse with enslaved Jewish and Christian women by right of ownership.

وَأَبَاحَ أَبُو حَنِيفَةَ، وَمَالِكٌ وَالشَّافِعِيُّ: نِكَاحَ الْيَهُودِيَّةِ، وَالنَّصْرَانِيَّةِ، وَوَطْءَ الْأَمَةِ الْيَهُودِيَّةِ، وَالنَّصْرَانِيَّةِ بِمِلْكِ الْيَمِينِ.

L30215 They entirely prohibited marriage to a Zoroastrian woman and sexual relations with her as a concubine. However, Malik forbade marriage to a Jewish female slave and a Christian female slave.

وَحَرَّمُوا نِكَاحَ الْمَجُوسِيَّةِ جُمْلَةً، وَوَطْأَهَا بِمِلْكِ الْيَمِينِ، إِلَّا أَنَّ مَالِكًا حَرَّمَ زَوَاجَ الْأَمَةِ الْيَهُودِيَّةِ، وَالنَّصْرَانِيَّةِ.

L30216 He permitted sexual relations with a Magian woman through those whom your right hands possess, and permitted compelling her toward Islam.

وَأَبَاحَ نِكَاحَ الْمَجُوسِيَّةِ بِمِلْكِ الْيَمِينِ - وَأَبَاحَ إِجْبَارَهَا عَلَى الْإِسْلَامِ.

L30217 Abū Muḥammad said: It is obligatory to rely on the Quran and the Sunnah. We find Allah the Exalted saying: "Do not marry polytheistic women until they believe" [Al-Baqarah 2:221]. If only this verse had been revealed, the ruling would be Ibn ʿUmar's view. However, we find Allah the Exalted stating: "This day, all pure things are made lawful for you. The food of the People of the Scripture is lawful for you, and your food is lawful for them. And [lawful are] chaste women from the believers and chaste women from those who were given the Scripture before you, provided you give them their bridal

قَالَ أَبُو مُحَمَّدٍ: فَوَجَبَ الرُّجُوعُ إِلَى الْقُرْآنِ، وَالسُّنَّةِ، وَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {وَلا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَّ} [البقرة: ٢٢١] فَلَوْ لَمْ تَأْتِ إِلَّا هَذِهِ الْآيَةُ لَكَانَ الْقَوْلُ قَوْلَ ابْنِ عُمَرَ، لَكِنْ وَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {الْيَوْمَ أُحِلَّ لَكُمُ الطَّيِّبَاتُ وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ وَطَعَامُكُمْ حِلٌّ لَهُمْ وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ

dues" [Al-Mā'idah 5:5]. Thus, the obligation was to obey both verses and to ensure neither of them is abandoned for the other.[11]

الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ} [المائدة: ٥] فَكَانَ الْوَاجِبُ الطَّاعَةَ لِكِلْتَا الْآيَتَيْنِ، وَأَنْ لَا تُتْرَكَ إِحْدَاهُمَا لِلْأُخْرَى.

L30218 We found that those who adopted the opinion of Ibn 'Umar have contradicted this verse, and this is impermissible. There is no way to obey both except by making the lesser an exception to the greater. Thus, it becomes obligatory to make an exception to the general prohibition against polytheistic women by permitting marriage to chaste women from the People of the Book, while the rest remain prohibited by the other verse: "Other than this, nothing is permissible."

وَوَجَدْنَا مَنْ أَخَذَ بِقَوْلِ ابْنِ عُمَرَ قَدْ خَالَفَ هَذِهِ الْآيَةَ، وَهَذَا لَا يَجُوزُ وَلَا سَبِيلَ إِلَى الطَّاعَةِ لَهُمَا إِلَّا بِأَنْ يُسْتَثْنَى الْأَقَلُّ مِنَ الْأَكْثَرِ، فَوَجَبَ اسْتِثْنَاءُ إِبَاحَةِ الْمُحْصَنَاتِ مِنْ أَهْلِ الْكِتَابِ بِالزَّوَاجِ مِنْ جُمْلَةِ تَحْرِيمِ الْمُشْرِكَاتِ، وَيَبْقَى سَائِرُ ذَلِكَ عَلَى التَّحْرِيمِ بِالْآيَةِ الْأُخْرَى: لَا يَجُوزُ غَيْرُ هَذَا.

L30219–30221 We have found that Mālik and al-Shāfiʿī prohibited the marriage of an enslaved Kitābī woman through wedlock based on the Quranic verse, because she is from... The phrase {And free and chaste women from among the believers and free and chaste women from among those who were given the Scripture} [Al-Ma'idah: 5], because al-iḥṣān denotes both freedom and chastity. Allah the Exalted said: {And Mary, the daughter of 'Imrān, who preserved her private part} [At-Taḥrīm: 12], meaning she preserved her chastity.[12]

وَوَجَدْنَا تَحْرِيمَ مَالِكٍ، وَالشَّافِعِيِّ، نِكَاحَ الْأَمَةِ الْكِتَابِيَّةِ بِالزَّوَاجِ لِلْآيَةِ؛ لِأَنَّهَا مِنْ جُمْلَةِ {وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ} [المائدة: ٥] لِأَنَّ الْإِحْصَانَ: الْحُرِّيَّةُ، وَالْإِحْصَانَ: الْعِفَّةُ، قَالَ اللَّهُ تَعَالَى: {وَمَرْيَمَ ابْنَتَ عِمْرَانَ الَّتِي أَحْصَنَتْ فَرْجَهَا} [التحريم: ١٢] أَيْ عَفَّتْ فَرْجَهَا.

L30222 It is not permissible for anyone to restrict Allah's statement, the Exalted, "And [lawful in marriage are] chaste women from those who were given the Scripture before you" (al-Mā'idah 5:5) to free women while excluding chaste female slaves, for this would entail attributing to Allah, the Exalted, what one has no knowledge of, legislating in the religion what He has not permitted, and making claims without proof—and this is impermissible.[13]

وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَخُصَّ بِقَوْلِهِ تَعَالَى: {وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ} [المائدة: ٥] الْحَرَائِرَ دُونَ الْعَفَائِفِ مِنَ الْإِمَاءِ، لِأَنَّهُ يَكُونُ قَائِلًا عَلَى اللَّهِ تَعَالَى مَا لَا عِلْمَ لَهُ بِهِ، وَشَارِعًا فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى وَمُدَّعِيًا بِلَا بُرْهَانٍ، وَهَذَا لَا يَحِلُّ.

L30223 Allah, the Exalted, said: "Say, 'Produce your evidence if you are truthful.'" [Al-Baqarah: 111][14]

قَالَ اللَّهُ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] .

L30224 And He, the Exalted, said: *"And that you say against Allah what you do not

وَقَالَ تَعَالَى: {وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لا تَعْلَمُونَ} [البقرة: ١٦٩] .

[11] **Qur'an references (L30217):** Qur'an 2:221 (Al-Baqarah); Qur'an 5:5 (Al-Ma'idah).
[12] **Qur'an references (L30219):** Qur'an 5:5 (Al-Ma'idah); Qur'an 66:12 (At-Tahrim).
[13] **Qur'an references (L30222):** Qur'an 5:5 (Al-Ma'idah); Qur'an 42:21 (Ash-Shuraa).
[14] **Qur'an references (L30223):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

know”* [Al-Baqarah: 169].[15]

L30225 Therefore, whoever has no evidence to establish the soundness of his statement, there is no soundness to his statement.

L30226 We have previously established that their adherence to His Exalted statement *“from your believing young women”* [An-Nisā’: 25] merely indicates the permissibility of marrying believing young women exclusively. It contains neither a prohibition against marrying a young woman from the People of the Book nor a permission for her. Therefore, it is obligatory to seek this ruling from sources other than that verse—and it is imperative.[16]

L30227 We found their allowance of intercourse with a female slave from the People of the Book through rightful possession to be an insertion into the verse of what it does not contain, based on their opinions. For the Exalted only made an exception in the verse for the permissibility of marrying chaste women from the People of the Book specifically, as stated in His words: {when you have given them their bridal dues} [Al-Mā’idah 5:5], and maintained the prohibition on all other cases through His command to abstain from marrying polytheistic women until they believe. Neither the Quran nor any Sunnah of Allah’s Messenger—peace and blessings of Allah be upon him—ever permitted a female slave from the People of the Book through rightful possession. Thus, in this matter, they have wholly removed from the verse its permission for marriage with chaste women from the People of the Book—without distinguishing between free women and slaves—while inserting into it what is absent from both the verse and other sources: the permissibility of intercourse with a female slave from the People of the Book through rightful possession.[17]

L30228 Among those who held our view on this matter are a group of the Salaf—including Ibn ʿUmar, as we previously transmitted from him regarding the prohibition of disbelieving women and others in general. Thus, he excluded

فَمَنْ لَا بُرْهَانَ لَهُ عَلَى صِحَّةِ قَوْلِهِ فَلَا صِحَّةَ لِقَوْلِهِ.

وَقَدْ قَدَّمْنَا: أَنَّ تَعَلُّقَهُمْ بِقَوْلِهِ تَعَالَى: {مِنْ فَتَيَاتِكُمُ الْمُؤْمِنَاتِ} [النساء: ٢٥] إِنَّمَا فِيهِ إِبَاحَةُ نِكَاحِ الْفَتَيَاتِ الْمُؤْمِنَاتِ فَقَطْ، وَلَيْسَ فِيهِ مَنْعٌ مِنْ نِكَاحِ الْفَتَاةِ الْكِتَابِيَّةِ، وَلَا إِبَاحَةٌ لَهَا، فَوَجَبَ طَلَبُهُ مِنْ غَيْرِ تِلْكَ الْآيَةِ وَلَا بُدَّ.

وَوَجَدْنَا إِبَاحَتَهُمْ وَطْءَ الْأَمَةِ الْكِتَابِيَّةِ بِمِلْكِ الْيَمِينِ إِقْحَامًا فِي الْآيَةِ مَا لَيْسَ فِيهَا بِآرَائِهِمْ؛ لِأَنَّهُ إِنَّمَا اسْتَثْنَى تَعَالَى فِي الْآيَةِ إِبَاحَةَ الْكِتَابِيَّاتِ بِالزَّوَاجِ خَاصَّةً بِقَوْلِهِ تَعَالَى: {إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ} [المائدة: ٥] وَأَبْقَى مَا عَدَا ذَلِكَ عَلَى التَّحْرِيمِ بِنَهْيِهِ تَعَالَى عَنْ نِكَاحِ الْمُشْرِكَاتِ حَتَّى يُؤْمِنَّ، وَلَمْ يَأْتِ قَطُّ قُرْآنٌ، وَلَا سُنَّةٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِإِبَاحَةِ كِتَابِيَّةٍ بِمِلْكِ الْيَمِينِ، فَهُمْ فِي هَذِهِ الْقَضِيَّةِ مُخْرِجُونَ مِنْ هَذِهِ الْآيَةِ مَا فِيهَا مِنْ إِبَاحَةِ زَوَاجِ الْعَفَائِفِ مِنَ الْكِتَابِيَّاتِ جُمْلَةً لَمْ يَخُصَّ حُرَّةً مِنْ أَمَةٍ وَيُقْحِمُونَ فِيهَا مَا لَيْسَ فِيهَا، وَلَا فِي غَيْرِهَا مِنْ إِبَاحَةِ وَطْءِ الْأَمَةِ الْكِتَابِيَّةِ بِمِلْكِ الْيَمِينِ.

وَمِمَّنْ قَالَ بِقَوْلِنَا فِي ذَلِكَ جَمَاعَةٌ مِنَ السَّلَفِ -: مِنْهُمُ ابْنُ عُمَرَ، كَمَا رُوِّينَا قَبْلُ عَنْهُ مِنْ تَحْرِيمِ الْكَوَافِرِ وَغَيْرِهِنَّ جُمْلَةً، فَخَرَجَ مِنْ قَوْلِ مَا أَبَاحَهُ الْقُرْآنُ بِالزَّوَاجِ، وَبَقِيَ سَائِرُ قَوْلِهِ عَلَى الصِّحَّةِ.

[15] **Qur’an references (L30224):** Qur’an 2:169 (Al-Baqarah); Qur’an 7:33 (Al-A’raf).

[16] **Qur’an references (L30226):** Qur’an 4:25 (An-Nisa).

[17] **Qur’an references (L30227):** Qur’an 5:5 (Al-Ma’idah); Qur’an 60:10 (Al-Mumtahanah).

from his opinion what the Qur'an permitted through marriage, and the rest of his opinion remains valid.

L30229 And in it is the prohibition of a female slave without doubt among those whom their right hands possess. Reported to us by Muḥammad ibn Saʿīd ibn Nabāt from Aḥmad ibn ʿAbd al-Baṣīr from Qāsim ibn Aṣbagh from Muḥammad ibn ʿAbd al-Salām al-Khushanī from Muḥammad ibn al-Muthannā from ʿAbd al-Raḥmān ibn Mahdī from Sharīk from Abū Isḥāq al-Sabīʿī from Bakr ibn Māʿiz from al-Rabīʿ ibn Khaytham that he considered it reprehensible for a man to have intercourse with a polytheist woman until she embraces Islam.

وَفِيهِ تَحْرِيمُ الْأَمَةِ بِلَا شَكٍّ بِمِلْكِ الْيَمِينِ -: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا شَرِيكٌ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ بَكْرِ بْنِ مَاعِزٍ عَنْ الرَّبِيعِ بْنِ خَيْثَمَ أَنَّهُ كَانَ يَكْرَهُ أَنْ يَطَأَ الرَّجُلُ الْمُشْرِكَةَ حَتَّى تُسْلِمَ.

L30230–30231 Muhammad ibn Sa'id ibn Nabat narrated to us, Ahmad ibn 'Awn Allah narrated to us, Qasim ibn Asbagh narrated to us, Muhammad ibn 'Abd al-Salam al-Khushani narrated to us, Muhammad ibn Bishar Bundar narrated to us, Muhammad ibn Ja'far Ghundar narrated to us, Shu'bah from Musa ibn Abi 'A'ishah, who said: I asked Sa'id ibn Jubayr and Murrah al-Hamdani – he is Murrah the Physician, the companion of 'Abd Allah ibn Mas'ud – about having intercourse with a female slave from the captives. They both agreed: "Do not have intercourse with her until she performs the ritual bath and prays."

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ بُنْدَارٌ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ عَنْ مُوسَى بْنِ أَبِي عَائِشَةَ قَالَ: سَأَلْت سَعِيدَ بْنَ جُبَيْرٍ، وَمُرَّةَ الْهَمْدَانِيَّ هُوَ مُرَّةُ الطَّيِّبُ صَاحِبُ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ -: أَصَبْت الْأَمَةَ مِنْ السَّبْيِ فَقَالَا جَمِيعًا: لَا تَغْشَهَا حَتَّى تَغْتَسِلَ وَتُصَلِّيَ.

L30232 Muhammad ibn Sa'id ibn Nabat narrated to us, Abbas ibn Asbagh narrated to us, Muhammad ibn Qasim ibn Muhammad narrated to us, my grandfather Qasim ibn Asbagh narrated to us, Muhammad ibn Abd al-Salam al-Khushani narrated to us, Muhammad ibn al-Muthanna narrated to us, Abd al-A'la—who is Ibn Abd al-A'la—narrated to us, Sa'id ibn Abi Arubah narrated from Qatadah from Mu'awiyah ibn Qurrah from Ibn Mas'ud, who said: "Nine female slaves I dislike having relations with: your female slave along with her mother; your female slave along with her sister; your female slave whom your father has had intercourse with; your female slave whom your son has had intercourse with; your female slave who is your paternal aunt through breastfeeding; a female slave who is your maternal aunt through breastfeeding; your female slave who has committed fornication; your female slave who is a polytheist; and your female slave who is pregnant by someone else."

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ قَاسِمِ بْنِ مُحَمَّدٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الْأَعْلَى - هُوَ ابْنُ عَبْدِ الْأَعْلَى - نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ مُعَاوِيَةَ بْنِ قُرَّةَ عَنْ ابْنِ مَسْعُودٍ قَالَ: اثْنَتَا عَشْرَةَ مَمْلُوكَةً أَكْرَهُ غَشَيَانَهُنَّ: أَمَتُك وَأُمُّهَا، وَأَمَتُك وَأُخْتُهَا، وَأَمَتُك وَطِئَهَا أَبُوك، وَأَمَتُك وَطِئَهَا ابْنُك، وَأَمَتُك عَمَّتُك مِنْ الرَّضَاعَةِ، وَأَمَةٌ خَالَتُك مِنْ الرَّضَاعَةِ، وَأَمَتُك وَقَدْ زَنَتْ، وَأَمَتُك وَهِيَ مُشْرِكَةٌ، وَأَمَتُك وَهِيَ حُبْلَى مِنْ غَيْرِك.

L30233 From Hammam, from Ibn Mufarrij, from Ibn al-A'rabi, from al-Dabari, from Abd al-Razzaq, from Ja'far ibn Sulayman al-Duba'i, who informed me: Yunus ibn Ubayd reported that he heard al-Hasan al-Basri say: "We would fight alongside the Companions of the Messenger of Allah (peace and blessings be upon him and his family). When one of them acquired a female captive from booty obtained without battle and wished to have intercourse with her, he would instruct her to wash her garments, which she would do. Then he would teach her Islam, command her to pray, observe one menstrual cycle to ascertain her non-pregnancy, and then have intercourse with her."

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ جَعْفَرِ بْنِ سُلَيْمَانَ الضُّبَعِيِّ أَخْبَرَنِي يُونُسُ بْنُ عُبَيْدٍ أَنَّهُ سَمِعَ الْحَسَنَ الْبَصْرِيَّ يَقُولُ: كُنَّا نَغْزُو مَعَ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَإِذَا أَصَابَ الْجَارِيَةَ أَحَدُهُمْ مِنَ الْفَيْءِ فَأَرَادَ أَنْ يُصِيبَهَا أَمَرَهَا فَغَسَلَتْ ثِيَابَهَا، ثُمَّ عَلَّمَهَا الْإِسْلَامَ، وَأَمَرَهَا بِالصَّلَاةِ، وَاسْتَبْرَأَهَا بِحَيْضَةٍ، ثُمَّ أَصَابَهَا.

L30234 And via his chain to ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: It is not permissible for a man who has purchased a polytheist female slave to have intercourse with her until she has performed the ritual bath, prayed, and experienced one menstrual cycle while under his care.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ قَالَ: لَا يَحِلُّ لِرَجُلٍ اشْتَرَى جَارِيَةً مُشْرِكَةً أَنْ يَطَأَهَا حَتَّى تَغْتَسِلَ وَتُصَلِّيَ وَتَحِيضَ عِنْدَهُ حَيْضَةً.

L30235–30237 If they mention what we have narrated through Muslim's chain: 'Abdullāh ibn 'Umar al-Qawārīrī narrated to us, Yazīd ibn Zuray' narrated to us, Sa'īd ibn Abī 'Arūbah narrated to us from Qatādah, from Ṣāliḥ Abū al-Khalīl - excluding Abū 'Alqamah al-Hāshimī. From Abu Sa'id al-Khudri: "That the Messenger of Allah—may Allah bless him and his family and grant him peace—sent an army to Awtaas during the Battle of Hunayn. They encountered an enemy, fought them, prevailed over them, and captured for them captives acquired as spoils. Some companions of the Messenger of Allah hesitated to consort with them due to their husbands who were polytheists. Thereupon, Allah the Exalted revealed: 'And married women are forbidden to you except those whom your right hands possess' [An-Nisa': 24], meaning they are lawful for you after their waiting period concludes."[18]

فَإِنْ ذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا عَبْدُ اللَّهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ نا يَزِيدُ بْنُ زُرَيْعٍ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ صَالِحٍ أَبِي الْخَلِيلِ غَيْرِ أَبِي عَلْقَمَةَ الْهَاشِمِيِّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَوْمَ حُنَيْنٍ بَعَثَ جَيْشًا إِلَى أَوْطَاسٍ فَلَقِيَ عَدُوًّا فَقَاتَلُوهُمْ، فَظَهَرُوا عَلَيْهِمْ وَأَصَابُوا لَهُمْ سَبَايَا، فَكَانَ نَاسٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - تَحَرَّجُوا مِنْ غَشَيَانِهِنَّ مِنْ أَجْلِ أَزْوَاجِهِنَّ الْمُشْرِكِينَ، فَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ: {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] أَيْ فَهُنَّ لَكُمْ حَلَالٌ إِذَا انْقَضَتْ عِدَّتُهُنَّ» .

L30238 Thus, there is no valid argument for them in this matter due to two reasons - I am certain of both - that the captives of Awṭās were idolaters, not People of the Book, a point on which no two disagree. They do not dispute our position that relations with an idolatrous woman under lawful enslavement remain impermissible until she embraces Islam. For in this report - if their notification is valid - it merely indicates that their marital bond with

فَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِوَجْهَيْنِ -: أَقْطَعُهُمَا - أَنَّ سَبْيَ أَوْطَاسٍ كَانُوا وَثَنِيِّينَ لَا كِتَابِيِّينَ، لَا يَخْتَلِفُ فِي ذَلِكَ اثْنَانِ، وَهُمْ لَا يُخَالِفُونَنَا أَنَّ وَطْءَ الْوَثَنِيَّةِ بِمِلْكِ الْيَمِينِ لَا يَحِلُّ حَتَّى تُسْلِمَ - فَإِنَّمَا فِي هَذَا الْخَبَرِ - لَوْ صَحَّ إِعْلَامُهُمْ - أَنَّ عِصْمَتَهُنَّ مِنْ أَزْوَاجِهِنَّ قَدِ انْقَطَعَتْ إِذَا أَسْلَمْنَ - وَإِنْ كَانَ لَمْ يُذْكَرْ هَاهُنَا الْإِسْلَامُ - لَكِنْ ذَكَرَهُ تَعَالَى فِي قَوْلِهِ: {وَلا تَنْكِحُوا

[18] **Qur'an references (L30235):** Qur'an 4:24 (An-Nisa).

their husbands is severed if they embrace Islam, though embracing Islam is not explicitly mentioned here. Yet the Exalted has mentioned *it* in His statement: *{And do not marry polytheistic women until they believe}* [Al-Baqarah: 221], and it is obligatory to interpret Allah's statements in light of one another.[19]

L30239 The second aspect is that we have been narrated this report through the chain of Muslim as well. He said: Abu Bakr ibn Abi Shaybah, Muhammad ibn al-Muthanna, and Ibn Bashshar reported to us. They said: We narrate from 'Abd al-A'la - he is Ibn 'Abd al-A'la - from Sa'id - he is Ibn Abi 'Arubah - from Qatadah from Abu al-Khalil: that Abu 'Alqamah al-Hashimi narrated that Abu Sa'id al-Khudri reported to them that "the Messenger of Allah - may Allah bless him and his family and grant him peace - dispatched an expedition on the day of Hunayn," matching the meaning of the aforementioned hadith.

L30240 Thus, it has been established that Abū al-Khalīl did not hear it from Abū 'Alqamah, and therefore, the chain is interrupted.

L30241 They said: "Did we not find among women those whom it is permissible to marry but not permissible to have intercourse with through those whom your right hands possess?" We replied: "Suppose it were as you claim—what then? Did we find in the prescribed prayers three units other than Maghrib? Did we find in wealth anything subject to zakah except camels?" There is nothing baser than this absurd argument raised against the Qur'an and the Companions—may Allah be pleased with them. How can this be, when all free Muslim women are permissible to have intercourse with through marriage, but impermissible to have intercourse with through those whom your right hands possess?

L30242 Some of them said: Allah, the Exalted, said: {or those whom your right hands possess} [An-Nisa: 3], so He, the Exalted, spoke in general terms and did not specify, thus the kitabiyyah is included in that.[20]

L30243 So we said: They included under this general principle of permissibility

الْمُشْرِكَاتِ حَتَّى يُؤْمِنَّ} [البقرة: ٢٢١] وَوَاجِبٌ أَنْ يُضَمَّ كَلَامُ اللهِ تَعَالَى بَعْضُهُ إِلَى بَعْضٍ.

وَالْوَجْهُ الثَّانِي - أَنَّنَا رُوِّينَا هَذَا الْخَبَرَ مِنْ طَرِيقِ مُسْلِمٍ أَيْضًا، فَقَالَ -: نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ الْمُثَنَّى، وَابْنُ بَشَّارٍ، قَالُوا: أَنَا عَبْدُ الْأَعْلَى - هُوَ ابْنُ عَبْدِ الْأَعْلَى - عَنْ سَعِيدٍ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ أَبِي الْخَلِيلِ: أَنْ أَبَا عَلْقَمَةَ الْهَاشِمِيَّ حَدَّثَ أَنَّ أَبَا سَعِيدٍ الْخُدْرِيَّ حَدَّثَهُمْ «أَنَّ رَسُولَ اللهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بَعَثَ يَوْمَ حُنَيْنٍ سَرِيَّةً» بِمَعْنَى الْحَدِيثِ الْمَذْكُورِ.

فَصَحَّ أَنَّ أَبَا الْخَلِيلِ لَمْ يَسْمَعْهُ مِنْ أَبِي عَلْقَمَةَ فَهُوَ مُنْقَطِعٌ.

وَقَالُوا: لَمْ نَجِدْ فِي النِّسَاءِ مَنْ يَحِلُّ نِكَاحُهَا وَلَا يَحِلُّ وَطْؤُهَا بِمِلْكِ الْيَمِينِ؟ فَقُلْنَا: هَبْكَ كَانَ كَمَا تَزْعُمُونَ فَكَانَ مَاذَا؟ وَلَا وَجَدْنَا فِي الْفَرَائِضِ فِي الصَّلَاةِ ثَلَاثَ رَكَعَاتٍ غَيْرَ الْمَغْرِبِ، وَلَا وَجَدْنَا فِي الْأَمْوَالِ شَيْئًا يُزَكَّى مِنْ غَيْرِهِ إِلَّا الْإِبِلَ؟ فَلَا أَبْرَدَ مِنْ هَذَا الِاحْتِجَاجِ السَّخِيفِ الْمُعْتَرَضِ بِهِ عَلَى الْقُرْآنِ، وَالصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَكَيْفَ وَالْحَرَائِرُ كُلُّهُنَّ مِنَ الْمُسْلِمَاتِ يَحِلُّ وَطْؤُهُنَّ بِالزَّوَاجِ، وَلَا يَحِلُّ وَطْؤُهُنَّ بِمِلْكِ الْيَمِينِ؟

وَقَالَ بَعْضُهُمْ: قَالَ اللَّهُ تَعَالَى: {أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٣] فَعَمَّ تَعَالَى وَلَمْ يَخُصَّ، فَدَخَلَتْ فِي ذَلِكَ الْكِتَابِيَّةُ.

فَقُلْنَا: فَأَدْخَلُوا بِهَذَا الْعُمُومِ فِي الْإِبَاحَةِ بِمِلْكِ الْيَمِينِ وَطْءَ الْحَائِضِ وَالْأُخْتِ مِنَ الرَّضَاعِ، وَالْأُمِّ مِنَ الرَّضَاعِ، وَأُمِّ الزَّوْجَةِ، وَالَّتِي وَطِئَهَا الْأَبُ، وَالْأُخْتَيْنِ بِمِلْكِ الْيَمِينِ.

[19] **Qur'an references (L30238):** Qur'an 2:221 (Al-Baqarah).
[20] **Qur'an references (L30242):** Qur'an 4:3 (An-Nisa).

through right-hand possession the act of intercourse with a menstruating woman, a sister through milk kinship, a mother through milk kinship, the wife's mother, the woman whom the father had intercourse with, and two sisters under right-hand possession.

فَإِنْ قَالُوا: قَدْ خَصَّ ذَلِكَ آيَاتٌ أُخَرُ؟ قُلْنَا: وَقَدْ خَصَّ الْكِتَابِيَّةَ آيَةٌ أُخْرَى.

L30244–30245 If they said: "Other verses have specified that?" We said: "Another verse has specified [the permissibility regarding] a woman from the People of the Book."

فَإِنْ ادَّعَوْا إِجْمَاعًا أَكْذَبَهُمْ قَوْلُ طَائِفَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَمَنْ بَعْدَهُمْ فِي الْأُخْتَيْنِ بِمِلْكِ الْيَمِينِ - فَظَهَرَ فَسَادُ قَوْلِهِمْ - بِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30246 If they claim consensus, the statement of a group of the Companions (may Allah be pleased with them) and those after them regarding two sisters in the context of right-hand possession exposes their claim as false. Thus, the invalidity of their argument is revealed. And success is from Allah, the Most High.

أَمَّا نِكَاحُ الْكَافِرَةِ غَيْرِ الْكِتَابِيَّةِ: فَلَا يُخَالِفُنَا الْحَاضِرُونَ فِي أَنَّهُ لَا يَحِلُّ وَطْؤُهُنَّ بِزَوَاجٍ وَلَا بِمِلْكِ يَمِينٍ.

L30247 As for marriage to disbelieving women who are not People of the Book: those present do not differ with us in that it is impermissible to have intercourse with them, neither through marriage nor through right-hand possession.

وَأَمَّا الْمَجُوسِيَّةُ - فَقَدْ ذَكَرْنَا فِي " كِتَابِ الْجِهَادِ " وَ " كِتَابِ التَّذْكِيَةِ " مِنْ كِتَابِنَا هَذَا أَنَّ الْمَجُوسَ أَهْلُ كِتَابٍ، وَإِذَا كَانُوا أَهْلَ كِتَابٍ فَنِكَاحُ نِسَائِهِمْ بِالزَّوَاجِ حَلَالٌ.

L30248 As for the Magians—we have mentioned in "the Book of Jihad" and "the Book of Ritual Slaughter" in this book of ours that the Magians are People of the Book, and if they are People of the Book, then marriage to their women through lawful wedlock is permissible.

وَالْحُجَّةُ فِي أَنَّهُمْ أَهْلُ كِتَابٍ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {فَإِذَا انْسَلَخَ الأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصَدٍ فَإِنْ تَابُوا وَأَقَامُوا الصَّلاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ} [التوبة: ٥] فَلَمْ يُبِحْ لَنَا تَرْكَ قَتْلِهِمْ إِلَّا بِأَنْ يُسْلِمُوا فَقَطْ.

L30249 The evidence that they are People of the Book is the statement of Allah Almighty: {When the sacred months have passed, kill the polytheists wherever you find them, seize them, besiege them, and ambush them at every vantage point. But if they repent, establish prayer, and give zakat, then let them go free} [At-Tawbah: 5]. Thus, He did not permit us to refrain from killing them unless they embrace Islam alone.[21]

وَقَالَ تَعَالَى: {قَاتِلُوا الَّذِينَ لا يُؤْمِنُونَ بِاللَّهِ وَلا بِالْيَوْمِ الآخِرِ وَلا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] فَاسْتَثْنَى اللَّهُ عَزَّ وَجَلَّ أَهْلَ الْكِتَابِ خَاصَّةً بِإِعْفَائِهِمْ مِنْ

L30250 Allah the Exalted said: {Fight those who do not believe in Allah nor in the Last Day, nor prohibit what Allah and His Messenger have forbidden, nor adhere to the religion of truth—from among those given the Scripture—

[21] **Qur'an references (L30249):** Qur'an 9:5 (At-Tawbah).

until they pay the jizyah with their own hands while they are humbled.} [At-Tawbah: 29]. Thus, Allah Almighty specifically exempted the People of the Book—unlike the entirety of other mushrikūn, whom it is impermissible to spare unless they embrace Islam—by sparing them from execution through the obligation of jizyah along with humiliation.[22]

L30251 It is authentically reported that the Messenger of Allah (peace and blessings be upon him) took the jizyah from the Zoroastrians of Hajar.[23]

L30252 Among the absurd falsehoods is that the Messenger of Allah (peace be upon him and his family) would oppose his Lord's command unless he had clarified to us that they were not People of the Book, so that we would know at that time he acted by revelation. Should they cite the narration reported through Wakiʿ from Sufyan from Qays ibn Muslim from al-Hasan ibn Muhammad ibn ʿAlī ibn Abī Ṭālib who said: "The Messenger of Allah (peace be upon him and his family) wrote to the Magians of al-Hasa inviting them to Islam. Those who accepted Islam were accepted, while those who refused were subjected to jizyah on the condition that their slaughtered animals not be eaten and their women not be married."

L30253 Therefore, this is a mursal narration, and there is no authoritative evidence in it.

L30254–30255 The second point is that it does not contain [the assertion] that his statement "None of their slaughtered animals may be eaten, nor may a woman be married to them" is from the speech of the Messenger of Allah—peace and blessings be upon him and his family.

L30256 Among those who said that they are People of the Book are a group of the predecessors: Aḥmad ibn ʿUmar ibn Anas al-ʿUdhurī narrated to me, Abū Dharr al-Harawī narrated to us, ʿAbd ibn Aḥmad al-Anṣārī narrated to us, ʿAbd Allāh ibn Aḥmad ibn Ḥammawayh al-Sarakhsī narrated to us, Ibrāhīm ibn Khuraym narrated to us, ʿAbd ibn Ḥumayd narrated to us, al-Ḥasan ibn Mūsā narrated to us, Yaʿqūb ibn ʿAbd Allāh narrated to us, Jaʿfar ibn al-

الْقَتْلِ بِغُرْمِ الْجِزْيَةِ مَعَ الصِّغَارِ مِنْ جُمْلَةِ سَائِرِ الْمُشْرِكِينَ الَّذِينَ لَا يَحِلُّ إعْفَاؤُهُمْ إلَّا أَنْ يُسْلِمُوا.

وَقَدْ صَحَّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخَذَ الْجِزْيَةَ مِنْ مَجُوسِ هَجَرَ» .

وَمِنْ الْبَاطِلِ الْمُمْتَنِعِ أَنْ يُخَالِفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمْرَ رَبِّهِ إلَّا لَوْ بَيَّنَ لَنَا أَنَّهُمْ غَيْرُ أَهْلِ كِتَابٍ، فَكُنَّا نَدْرِي حِينَئِذٍ أَنَّهُ فَعَلَ ذَلِكَ بِوَحْيٍ. فَإِنْ احْتَجُّوا بِمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ الْحَسَنِ بْنِ مُحَمَّدِ بْنِ عَلِيٍّ قَالَ «كَتَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إلَى مَجُوسِ هَجَرَ يَعْرِضُ عَلَيْهِمْ الْإِسْلَامَ فَمَنْ أَسْلَمَ قُبِلَ وَمَنْ أَبَى ضُرِبَتْ عَلَيْهِ الْجِزْيَةُ عَلَى أَنْ لَا تُؤْكَلَ لَهُمْ ذَبِيحَةٌ وَلَا تُنْكَحَ لَهُمْ امْرَأَةٌ» .

فَهَذَا مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ.

وَثَانِيَةً أَنَّهُ لَيْسَ فِيهِ: أَنَّ قَوْلَهُ «لَا تُؤْكَلَ لَهُمْ ذَبِيحَةٌ وَلَا تُنْكَحَ لَهُمْ امْرَأَةٌ» هُوَ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

وَمِمَّنْ قَالَ: إنَّهُمْ أَهْلُ كِتَابٍ جَمَاعَةٌ مِنْ السَّلَفِ: حَدَّثَنِي أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا عَبْدُ بْنُ أَحْمَدَ الْأَنْصَارِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَّوَيْهِ السَّرَخْسِيُّ نا إبْرَاهِيمُ بْنُ خُرَيْمٍ نا عَبْدُ بْنُ حُمَيْدٍ نا الْحَسَنُ بْنُ مُوسَى نا يَعْقُوبُ بْنُ عَبْدِ اللَّهِ نا جَعْفَرُ بْنُ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ بْنِ أَبْزَى قَالَ: لَمَّا هَزَمَ اللَّهُ تَعَالَى أَهْلَ الْأَسْفِيذَارِ انْصَرَفُوا فَجَاءَهُمْ - يَعْنِي عُمَرَ بْنَ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - فَأَجْمَعُوا فَقَالُوا: بِأَيِّ شَيْءٍ تُجْرِي فِي الْمَجُوسِ

[22] **Qur'an references (L30250):** Qur'an 9:29 (At-Tawbah).
[23] **Hadith references (L30251):** Jami at-Tirmidhi 1586.

مِنْ الْأَحْكَامِ فَإِنَّهُمْ لَيْسُوا بِأَهْلِ كِتَابٍ، وَلَيْسُوا بِمُشْرِكِينَ مِنْ مُشْرِكِي الْعَرَبِ فَتُجْرِي فِيهِمْ الْأَحْكَامَ الَّتِي أَجْرَيْت فِي أَهْلِ الْكِتَابِ أَوْ الْمُشْرِكِينَ، فَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: بَلْ هُمْ أَهْلُ كِتَابٍ - وَذَكَرَ الْخَبَرَ بِطُولِهِ.

Mughīrah narrated to us from Ibrāhīm ibn Abzā, who said: When Allah the Exalted defeated the people of al-Asfidhār, they retreated. Then he—meaning ʿUmar ibn al-Khaṭṭāb, may Allah be pleased with him—came to them, and they gathered and said: "By what rulings do you apply to the Magians, for they are not People of the Book, nor are they polytheists from among the polytheists of the Arabs, so that you would apply to them the rulings you applied to the People of the Book or the polytheists?" ʿAlī ibn Abī Ṭālib said: "Rather, they are People of the Book"—and he mentioned the report in its entirety.

L30257 نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ قَاسِمِ بْنِ مُحَمَّدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الْأَعْلَى نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ عَبْدِ اللَّهِ الدَّانَاجِ قَالَ: سَمِعْت مَعْبَدًا الْجُهَنِيَّ يُحَدِّثُ الْحَسَنَ أَنَّ امْرَأَةَ حُذَيْفَةَ كَانَتْ مَجُوسِيَّةً، فَجَعَلَ الْحَسَنُ يَقُولُ: مَهْلًا، فَقَالَ: أَنَا وَاَللَّهِ دَخَلْت عَلَيْهَا حَتَّى كَلَّمْتهَا، فَقَالَ لَهَا: شابر دخت، قَالَ: فَحَدَّثَ بِهِ الْحَسَنُ بَعْدَ ذَلِكَ جَدَّهُ عَبْدَ اللَّهِ بْنَ رَبِيعٍ التَّيْمِيَّ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ الْأَسَدِيُّ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَبْدِ اللَّهِ الدَّانَاجِ، وَأَبِي حَرَّةَ، قَالَ عَبْدُ اللَّهِ الدَّانَاجِ عَنْ مَعْبَدٍ الْجُهَنِيِّ، وَقَالَ أَبُو حُرَّةَ: عَنْ الْحَسَنِ، قَالَا جَمِيعًا: كَانَتْ امْرَأَةُ حُذَيْفَةَ مَجُوسِيَّةً.

Muhammad ibn Sa'id ibn Nabat narrated to us, Abbas ibn Asbagh narrated to us, Muhammad ibn Qasim ibn Muhammad narrated to us, Muhammad ibn Abd al-Salam al-Khushani narrated to us, Muhammad ibn al-Muthanna narrated to us, Abd al-A'la narrated to us, Sa'id ibn Abi Arubah narrated from Abdullah al-Danaj, who said: I heard Ma'bad al-Juhani relate to al-Hasan that Hudhayfah's wife was a Zoroastrian. Al-Hasan persisted, saying, "Wait, wait!" So Ma'bad declared, "By Allah, I visited her and spoke to her directly." He said to her, "Shāber Dokht." Al-Danaj added that al-Hasan later conveyed this account to his grandfather, Abdullah ibn Rabi' al-Tamimi. Abdullah ibn Muhammad ibn Uthman al-Asadi narrated to us, Ahmad ibn Khalid narrated to us, Ali ibn Abd al-Aziz narrated to us, al-Hajjaj ibn al-Minhal narrated to us, Hammad ibn Salamah narrated from Abdullah al-Danaj and Abi Harrah. Abdullah al-Danaj reported from Ma'bad al-Juhani, while Abu Hurrah stated: From al-Hasan. They both affirmed: Hudhayfah's wife was a Zoroastrian.

L30258 نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ، قَالَ: يُعْرَضُ عَلَيْهَا الْإِسْلَامُ، فَإِنْ أَبَتْ، فَلْيُصِبْهَا إِنْ شَاءَ وَإِنْ كَانَتْ مَجُوسِيَّةً - وَلَكِنْ يُكْرِهُهَا عَلَى الْغُسْلِ مِنْ الْجَنَابَةِ.

Narrated by Ḥumām from Ibn Mufarrij from Ibn al-Aʿrābī from al-Dabarī from ʿAbd al-Razzāq, from Maʿmar, from ʿAbd Allāh ibn Ṭāwūs, from his father, who said: "She is presented with Islam. If she refuses, he may have intercourse with her if he wishes—even if she is a Zoroastrian—but he compels her to perform the ritual purification (ghusl) for major impurity."

L30259–30260 وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ إبْرَاهِيمَ بْنِ يَزِيدَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: لَا بَأْسَ أَنْ يَطَأَ الرَّجُلُ جَارِيَتَهُ الْمَجُوسِيَّةَ.

And through him to ʿAbd al-Razzāq, from Ibrāhīm ibn Yazīd, from ʿAmr ibn Dīnār, from Saʿīd ibn al-Musayyab, who said: There is no objection to a man having sexual intercourse with his Majūsī concubine.

L30261 Abu Muhammad said: We have mentioned in *The Book of Tadhkiyah*

Saʿīd ibn al-Musayyib's ruling permitting the consumption of what a Magian slaughters. As for us—though we differ with Saʿīd and Ṭāwus regarding intercourse with a Magian female slave by right-hand possession—we cited them solely due to their permitting marriage contracts with Magian women.

L30262 And among those who permitted marriage to a Zoroastrian woman is Abu Thawr.

L30263 Abu Muhammad said: Among the clearest errors is that Allah the Exalted has commanded that no jizyah be accepted from a polytheist except from the People of the Book; that no polytheist woman be married except a woman of the Book; and that the meat slaughtered by a polytheist not be eaten unless it is from a person of the Book, then a distinction is made between these aforementioned rulings, prohibiting some and permitting others. And success is from Allah, the Exalted.

L30264 **The issue of a Muslim woman marrying a non-Muslim.**

L30265 1822 - Question: It is not permissible for a Muslim woman to marry a non-Muslim at all. Nor is it permissible for a non-Muslim to own a Muslim male slave. Nor is it permissible for a non-Muslim to own a Muslim female slave under any circumstances.

L30266 The proof of that is the statement of Allah, the Almighty, the Majestic: "Do not give in marriage to the male polytheists until they believe" [Al-Baqarah 2:221].[24]

L30267 Allah, the Exalted and Majestic, has said: "And never will Allah give the disbelievers a way [to prevail] over the believers." [An-Nisāʾ 4:141][25]

L30268 Abu Muhammad said: Slavery is the gravest path, and Allah Almighty has abolished it entirely in general terms. As for those who oppose us by permitting their sale when they embrace Islam under a disbeliever's ownership, we say to them: Consider your prolonged exposure of the female slave and

[24]**Qur'an references (L30266):** Qur'an 2:221 (Al-Baqarah).
[25]**Qur'an references (L30267):** Qur'an 4:141 (An-Nisa).

قَالَ أَبُو مُحَمَّد: وَقَدْ ذَكَرْنَا فِي " كِتَابِ التَّذْكِيَةِ " إبَاحَةَ سَعِيدِ بْنِ الْمُسَيِّبِ أَكْلَ مَا ذَبَحَهُ الْمَجُوسِيُّ وَنَحْنُ - وَإِنْ كُنَّا نُخَالِفُ سَعِيدًا، وَطَاوُسًا فِي وَطْءِ الْأَمَةِ الْمَجُوسِيَّةِ بِمِلْكِ الْيَمِينِ -: فَإِنَّمَا أَتَيْنَا بِهِمَا لِإِبَاحَتِهِمَا نِكَاحَ الْمَجُوسِيَّاتِ.

وَمِمَّنْ أَبَاحَ نِكَاحَ الْمَجُوسِيَّةِ أَبُو ثَوْرٍ.

قَالَ أَبُو مُحَمَّد: وَمِنْ أَبْيَنِ الْخَطَأِ أَنْ يَكُونَ اللَّهُ تَعَالَى أَمَرَ أَنْ لَا تُقْبَلَ جِزْيَةٌ مِنْ مُشْرِكٍ إلَّا مِنْ أَهْلِ الْكِتَابِ، وَلَا أَنْ تُنْكَحَ مُشْرِكَةٌ إلَّا الْكِتَابِيَّةُ وَأَنْ لَا تُؤْكَلَ ذَبِيحَةُ مُشْرِكٍ إلَّا كِتَابِيٌّ، ثُمَّ يُفَرَّقُ بَيْنَ الْأَحْكَامِ الْمَذْكُورَةِ، فَيُمْنَعُ مِنْ بَعْضِهَا وَيُبِيحُ بَعْضَهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة نِكَاح المسلمة غَيْر الْمُسْلِم]

١٨٢٢ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِمُسْلِمَةٍ نِكَاحُ غَيْرِ مُسْلِمٍ أَصْلًا، وَلَا يَحِلُّ لِكَافِرٍ أَنْ يَمْلِكَ عَبْدًا مُسْلِمًا، وَلَا مُسْلِمَةً أَمَةً أَصْلًا.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا تُنْكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا} [البقرة: ٢٢١] .

وَقَالَ عَزَّ وَجَلَّ: {وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلا} [النساء: ١٤١] .

قَالَ أَبُو مُحَمَّد: وَالرِّقُّ أَعْظَمُ السَّبِيلِ وَقَدْ قَطَعَهَا اللَّهُ عَزَّ وَجَلَّ جُمْلَةً عَلَى الْعُمُومِ، وَمَنْ خَالَفَنَا فِي هَذَا بِبَيْعِهِمَا إذَا أَسْلَمَا فِي مِلْكِ الْكَافِرِ، فَنَقُولُ لَهُمْ: أَرَأَيْتُمْ طُولَ مُدَّةِ تَعْرِيضِكُمْ الْأَمَةَ وَالْعَبْدَ لِلْبَيْعِ إذَا أَسْلَمَا عِنْدَ الْكَافِرِ، وَقَدْ تَكُونُ تِلْكَ الْمُدَّةُ سَاعَةً، وَتَكُونُ سَنَةً، أَفِي

male slave to sale if they embrace Islam under a disbeliever – whether this period lasts an hour or a year. Are they within the disbeliever's ownership or not? There is no third possibility. If they are within his ownership, why do you prevent him from continuing his ownership over them when you have permitted it for a period? What proof do you have for this invalid distinction?

مِلْكِ الْكَافِرِ هُمَا أَمْ لَيْسَ فِي مِلْكِهِ؟ وَلَا سَبِيلَ إِلَى قِسْمٍ ثَالِثٍ -: فَإِنْ كَانَا فِي مِلْكِهِ، فَلِمَ تَمْنَعُونَهُ مِنْ اتِّصَالِ مِلْكِهِ عَلَيْهِمَا - وَقَدْ أَبَحْتُمُوهُ مُدَّةً - مَا - وَمَا بُرْهَانُكُمْ عَلَى هَذَا الْفَرْقِ الْفَاسِدِ؟

L30269 If you were to say: "The two are neither in that [state] nor in the ownership of another?" We would respond: "This is the attribute of freedom, and whoever bears this attribute may not be lawfully sold, nor may ownership be lawfully established over him."

وَإِنْ قُلْتُمْ: لَيْسَا فِي ذَلِكَ وَلَا فِي مِلْكِ غَيْرِهِ؟ قُلْنَا: هَذِهِ صِفَةُ الْحُرِّيَّةِ، وَمَنْ هَذِهِ صِفَتُهُ فَلَا يَحِلُّ بَيْعُهُ وَلَا إِحْدَاثُ مِلْكٍ عَلَيْهِ.

L30270–30272 If they say: Then we ask you about that which you sell to him due to harm that has afflicted him, or regarding a property right that has become obligatory upon him? We respond: It remains within the ownership of the purchaser, and his ownership of it is not prohibited, for if the harm affecting him were eliminated, he would not be barred from retaining it. His property is sold to settle the debt. If property other than a male or female slave is found in his possession, the two enslaved persons cannot be sold for his debt. This ruling does not apply to the disbeliever, because according to your school, a Muslim is prohibited from owning him.

فَإِنْ قَالُوا: فَإِنَّا نَسْأَلُكُمْ عَنْ الَّذِي تَبِيعُونَهُ لِضَرَرٍ أَضَرَّ بِهِ، أَوْ فِي حَقِّ مَالٍ وَجَبَ عَلَيْهِ؟ قُلْنَا: هُوَ فِي مِلْكِ الَّذِي يُبَاعُ عَلَيْهِ، وَلَيْسَ مِلْكُهُ لَهُ حَرَامًا لِأَنَّهُ لَوْ قُطِعَ ضَرَرُهُ عَنْهُ لَمْ يُبَعْ عَلَيْهِ، وَلَوْ وُجِدَ لَهُ مَالٌ غَيْرُ الْعَبْدِ أَوْ الْأَمَةِ لَمْ يُبَاعَا عَلَيْهِ، وَلَيْسَ كَذَلِكَ الْكَافِرُ؛ لِأَنَّهُ مَمْنُوعٌ عِنْدَكُمْ مِنْ تَمَلُّكِ الْمُسْلِمِ.

L30273 And with Allah, the Exalted, is the divine success.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30274 The Messenger of Allah—peace and blessings be upon him and his family—had freed every slave of the people of disbelief who emigrated to him as a Muslim. Thus, your restriction of this ruling to those who emigrated to us from them constitutes an arbitrary ruling without evidence, for the Messenger of Allah—peace and blessings be upon him and his family—did not say, "I only free you because of your emigration." Therefore, it is impermissible to attribute to him—peace and blessings be upon him and his family—what he did not say.

وَقَدْ أَعْتَقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَنْ خَرَجَ إلَيْهِ مُسْلِمًا مِنْ عَبِيدِ أَهْلِ الْكُفْرِ فَتَخْصِيصُكُمْ بِذَلِكَ مَنْ خَرَجَ إلَيْنَا مِنْهُمْ تَحَكُّمٌ بِلَا دَلِيلٍ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقُلْ: إنَّمَا أُعْتِقُكُمْ لِخُرُوجِكُمْ، فَلَا يَجُوزُ أَنْ يَقُولَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَا لَمْ يَقُلْ.

L30275 If it is said: Did Abu Bakr—may Allah be pleased with him—purchase Bilal—may Allah be pleased with him—from a disbeliever after his conversion to Islam? We say: That occurred in Makkah during the early period of Islam before the revelation of the aforementioned verse, just as the Prophet—peace

فَإِنْ قِيلَ: قَدْ اشْتَرَى أَبُو بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - بِلَالًا - رَضِيَ اللَّهُ عَنْهُ - مِنْ كَافِرٍ بَعْدَ إسْلَامِهِ؟ قُلْنَا: كَانَ ذَلِكَ بِمَكَّةَ فِي أَوَّلِ الْإِسْلَامِ قَبْلَ نُزُولِ الْآيَةِ الْمَذْكُورَةِ كَمَا أَنْكَحَ -

and blessings be upon him—married a daughter, may Allah be pleased with her, to Abi al-ʻAs ibn al-Rabiʻ, who was a disbeliever, and a daughter to ʻUqbah ibn Abi Lahab, before the revelation prohibiting such marriages.

L30276 It is confirmed that when a male and female slave embrace Islam while under the ownership of a non-Muslim, they become emancipated at the moment their Islam is perfected. Success comes solely from Allah, the Most High.

L30277 ## The Issue of the Walīmah (Wedding Feast) in Islamic Marriage

L30278 Issue 1823: It is obligatory for everyone who marries to host a wedding feast (walīmah) according to their means, whether modest or lavish.

L30279 The evidence for this is what we have narrated through the chain of Muslim from Yahya ibn Yahya, Qutaybah, and Abu al-Rabiʻ al-Ataki—all of whom reported from Hammad ibn Zayd, from Thabit al-Bunani, from Anas ibn Malik: "The Messenger of Allah—peace and blessings be upon him and his family—saw a trace of yellow on ʿAbd al-Rahman ibn ʿAwf and said, 'What is this?' He replied, 'O Messenger of Allah, I married a woman with a dowry of the weight of a date seed of gold.' The Messenger of Allah—peace and blessings be upon him and his family—then said to him, 'Hold a wedding feast, even if it is with a single sheep.'"

L30280–30281 From the transmission of Muslim: Abū Bakr ibn Shaybah narrated from ʻAffān ibn Muslim, who narrated from Ḥammād ibn Salamah, who narrated from Thābit al-Bunānī, who narrated from Anas ibn Mālik. He mentioned the marriage of the Messenger of Allāh, ṣallā Allāhu ʿalayhi wa-ālihi wa-sallam, to Ṣafiyyah, the Mother of the Believers. Anas said: "The Messenger of Allāh, ṣallā Allāhu ʿalayhi wa-ālihi wa-sallam, made her wedding feast consist of dates, dried curd, and clarified butter."

L30282 Through the chain of Al-Bukhari: Muḥammad ibn Yūnus narrated to us, Sufyān narrated to us from Manṣūr ibn Ṣafiyyah from the maidservant of Ṣafiyyah bint Shaybah, who said: "The Messenger of Allah (peace and blessings be upon him and his family) hosted a wedding feast (walīma) for one of his wives with two mudd measures of barley."

عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِنْتَهُ - رَضِيَ اللَّهُ عَنْهَا - مِنْ أَبِي الْعَاصِ بْنِ الرَّبِيعِ - وَهُوَ كَافِرٌ - وَمِنْ عُقْبَةَ بْنِ أَبِي لَهَبٍ قَبْلَ نُزُولِ تَحْرِيمِ ذَلِكَ.

فَصَحَّ أَنَّ الْعَبْدَ، وَالْأَمَةَ إذَا أَسْلَمَا - وَهُمَا فِي مِلْكِ كَافِرٍ - فَإِنَّهُمَا حُرَّانِ فِي حِينِ تَمَامِ إسْلَامِهِمَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْوَلِيمَةِ فِي النِّكَاحِ]

١٨٢٣ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى كُلِّ مَنْ تَزَوَّجَ أَنْ يُولِمَ بِمَا قَلَّ أَوْ كَثُرَ.

بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ عَنْ يَحْيَى بْنِ يَحْيَى، وَقُتَيْبَةَ، وَأَبِي الرَّبِيعِ الْعَتَكِيِّ، كُلُّهُمْ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَأَى عَلَى عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَثَرَ صُفْرَةٍ، فَقَالَ: مَا هَذَا؟ فَقَالَ: يَا رَسُولَ اللَّهِ إنِّي تَزَوَّجْتُ امْرَأَةً عَلَى وَزْنِ نَوَاةٍ مِنْ ذَهَبٍ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: أَوْلِمْ وَلَوْ بِشَاةٍ» .

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ شَيْبَةَ نا عَفَّانُ بْنُ مُسْلِمٍ نا حَمَّادُ بْنُ سَلَمَةَ نا ثَابِتٌ الْبُنَانِيُّ عَنْ أَنَسِ بْنِ مَالِكٍ فَذَكَرَ نِكَاحَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - صَفِيَّةَ أُمَّ الْمُؤْمِنِينَ، قَالَ أَنَسٌ: «فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلِيمَتَهَا التَّمْرَ وَالْأَقِطَ وَالسَّمْنَ» .

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدُ بْنُ يُونُسَ نا سُفْيَانُ عَنْ مَنْصُورِ بْنِ صَفِيَّةَ عَنْ أَمَةِ صَفِيَّةَ بِنْتِ شَيْبَةَ قَالَتْ: «أَوْلَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَلَى بَعْضِ نِسَائِهِ بِمُدَّيْنِ مِنْ شَعِيرٍ» .

This is the opinion of Abū Sulaymān and our companions [in the school].

وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

The case of someone invited to a wedding feast (walima) or a meal.

[مَسْأَلَة مَنْ دُعِيَ إِلَى وَلِيمَةٍ أَوْ طَعَامٍ]

1824. Legal ruling: It is obligatory upon everyone invited to a wedding feast or meal to accept, unless due to an excuse. If one is not fasting, it is obligatory for them to eat. If one is fasting, let them supplicate to Allah for the hosts. If silk is spread there, the house is unlawfully seized, the food is unlawfully seized, or visible wine is present, they should leave and not stay - as we have been narrated via the chain of Muslim ibn al-Hajjaj: Harun ibn Abdullah al-Ayli narrated to us, from Hajjaj ibn Muhammad, from Ibn Jurayj, from Musa ibn Uqbah, from Nafi, who said: I heard Abdullah ibn Umar say, "The Messenger of Allah - may Allah's blessings and peace be upon him and his family - said: 'Respond to the invitation when you are invited to it.'"

١٨٢٤ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى كُلِّ مَنْ دُعِيَ إِلَى وَلِيمَةٍ أَوْ طَعَامٍ أَنْ يُجِيبَ - إِلَّا مِنْ عُذْرٍ - فَإِنْ كَانَ مُفْطِرًا فَفَرْضٌ عَلَيْهِ أَنْ يَأْكُلَ، فَإِنْ كَانَ صَائِمًا فَلْيَدْعُ اللَّهَ لَهُمْ، فَإِنْ كَانَ هُنَالِكَ حَرِيرٌ مَبْسُوط، أَوْ كَانَتْ الدَّارُ مَغْصُوبَةً، أَوْ كَانَ الطَّعَامُ مَغْصُوبًا، أَوْ كَانَ هُنَاكَ خَمْرٌ ظَاهِرٌ: فَلْيَرْجِعْ وَلَا يَجْلِسْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا هَارُونُ بْنُ عَبْدِ اللَّهِ الْأَيْلِيُّ نا حَجَّاجُ بْنُ مُحَمَّدٍ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي مُوسَى بْنُ عُقْبَةَ عَنْ نَافِعٍ قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ عُمَرَ يَقُولُ: " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَجِيبُوا الدَّعْوَةَ إذَا دُعِيتُمْ لَهَا» .

Ibn Umar would accept invitations to wedding feasts and other occasions, and he would attend them while fasting.

وَكَانَ ابْنُ عُمَرَ يَأْتِي الدَّعْوَةَ فِي الْعُرْسِ وَغَيْرِهِ، وَكَانَ يَأْتِيهَا وَهُوَ صَائِمٌ.

From the chain of ʿAbd al-Razzāq: Maʿmar reported to us from Ayyūb al-Sikhtiyānī from Nāfiʿ that Ibn ʿUmar used to say from the Prophet—peace and blessings of Allah be upon him and his family—: "When one of you invites his brother, let him respond, whether it is a wedding or something similar."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ كَانَ يَقُولُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «إذَا دَعَا أَحَدُكُمْ أَخَاهُ فَلْيُجِبْهُ عُرْسًا كَانَ أَوْ نَحْوَهُ» .

Narrated by Muḥammad ibn Saʿīd ibn Nabāt, from Aḥmad ibn ʿAwn Allāh, from ʿAbd al-Raḥmān ibn Asad al-Kāzarūnī, from Abū Yaʿqūb al-Dabarī, from ʿAbd al-Razzāq, from Maʿmar, from Ayyūb al-Sikhtiyānī, from Mujāhid, who said: One day, Ibn ʿUmar was invited to a meal. A man from the group said, "As for me, will you exempt me?" Ibn ʿUmar replied, "There is no exemption for you in this! Get up!"

ثنا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا عَبْدُ الرَّحْمَنِ بْنُ أَسَدٍ الْكَازَرُونِيُّ نا أَبُو يَعْقُوبَ الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُجَاهِدٍ قَالَ: إنَّ ابْنَ عُمَرَ دُعِيَ يَوْمًا إلَى طَعَامٍ، فَقَالَ رَجُلٌ مِنْ الْقَوْمِ: أَمَّا أَنَا فَأَعْفِنِي؟ فَقَالَ لَهُ ابْنُ عُمَرَ: لَا عَافِيَةَ لَك مِنْ هَذَا، فَقُمْ.

And through the chain of Muslim, Abū Bakr ibn Abī Shaybah narrated to

us: Ḥafṣ ibn Ghīyāth narrated to us, from Hishām, from Ibn Sīrīn, from Abū Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him and his family) said: “When one of you is invited, he should accept. If he is fasting, let him pray, and if he is not fasting, let him eat.”[26]

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ هِشَامٍ عَنْ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «إِذَا دُعِيَ أَحَدُكُمْ فَلْيُجِبْ، فَإِنْ كَانَ صَائِمًا فَلْيُصَلِّ وَإِنْ كَانَ مُفْطِرًا فَلْيَطْعَمْ» .

L30292 It is authentically narrated from Abu Huraira that: “Whoever does not accept the invitation has indeed disobeyed Allah and His Messenger.”

وَصَحَّ عَنْ أَبِي هُرَيْرَةَ «مَنْ لَمْ يُجِبْ الدَّعْوَةَ فَقَدْ عَصَى اللَّهَ وَرَسُولَهُ» .

L30293 If it is said: “Some narrations state, ’When one of you is invited to a wedding feast, they must accept,’” we respond: Yes. However, the narrations we cited in them include elements other than the wedding itself alongside it, and the stipulation of justice—it is impermissible to disregard this principle.

فَإِنْ قِيلَ: قَدْ جَاءَ فِي بَعْضِ الْآثَارِ: «إِذَا دُعِيَ أَحَدُكُمْ إلَى وَلِيمَةِ عُرْسٍ فَلْيُجِبْ» ؟ قُلْنَا: نَعَمْ، لَكِنْ الْآثَارُ الَّتِي أَوْرَدْنَا فِيهَا زِيَادَةً غَيْرَ الْعُرْسِ مَعَ الْعُرْسِ، وَزِيَادَةَ الْعَدْلِ لَا يَحِلُّ تَرْكُهَا.

L30294–30296 If it is said: “You have indeed narrated via the chain of Sufyān from Abū al-Zubayr from Jābir from the Messenger...” Allah - may peace and blessings be upon him and his family - said: “When one of you is invited to a meal, he should respond. If he wishes, he may eat, and if he wishes, he may decline?”[27]

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ سُفْيَانَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إِذَا دُعِيَ أَحَدُكُمْ إلَى طَعَامٍ فَلْيُجِبْ، فَإِنْ شَاءَ طَعِمَ وَإِنْ شَاءَ تَرَكَ» .؟

L30297 We said: Yes, and Abu al-Zubayr did not mention in this narration that he heard it from Jabir, nor is it from al-Layth’s narration from him.

قُلْنَا: نَعَمْ، وَأَبُو الزُّبَيْرِ لَمْ يَذْكُرْ فِي هَذَا أَنَّهُ سَمِعَهُ مِنْ جَابِرٍ، وَلَا هُوَ مِنْ رِوَايَةِ اللَّيْثِ عَنْهُ.

L30298 We have been narrated from al-Layth that he exposed Abū al-Zubayr’s attribution of reports to Jābir that he had not actually heard from him. Al-Layth said: “I informed him about what I had taken from him—and this ḥadīth is not among what I informed him regarding it.” Thus, the validity of citing it as evidence was nullified.

وَقَدْ رُوِّينَا عَنْ اللَّيْثِ أَنَّهُ وَقَّفَ أَبَا الزُّبَيْرِ عَلَى مَا سَمِعَهُ مِنْ جَابِرٍ مِمَّا لَمْ يَسْمَعْهُ مِنْهُ، قَالَ اللَّيْثُ: فَأَعْلَمُ لِي عَلَى مَا أَخَذْته عَنْهُ - وَلَيْسَ هَذَا الْحَدِيثُ مِمَّا أَعْلَمُ لَهُ عَلَيْهِ، فَبَطَلَ الِاحْتِجَاجُ بِهِ.

L30299 Then, if it were valid, the report obligating eating would be an addition beyond this [ruling], and it is impermissible to abandon such an increase in justice—and success is from Allah, the Most High.

ثُمَّ لَوْ صَحَّ لَكَانَ الْخَبَرُ الَّذِي فِيهِ إيجَابُ الْأَكْلِ زَائِدًا عَلَى هَذَا، وَزِيَادَةُ الْعَدْلِ لَا يَحِلُّ تَرْكُهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَجُمْهُورُ الصَّحَابَةِ، وَالتَّابِعِينَ عَلَى مَا ذَكَرْنَا مِنْ إيجَابِ الدَّعْوَةِ.

[26] **Hadith references (L30291):** Sahih Muslim 1431; Hisn al-Muslim 185; Riyad as-Salihin 737.

[27] **Hadith references (L30294):** Sahih Muslim 1430a.

L30300 The majority of the Companions and the Followers affirm the obligation of the call, as we mentioned.

L30301 **Issue: A woman may not marry except with the permission of her guardian.**

L30302 1825 - Issue: It is not permissible for a woman—whether previously married or a virgin—to marry except with the permission of her guardian: the father, the brothers, the grandfather, the paternal uncles, or the paternal male cousins, even if they are distant, with priority granted successively to the nearest relative.

L30303 A woman's child is not her guardian unless he is her paternal cousin, provided there is no closer relative to her among her kin than him. This means the guardian may grant her permission to marry. If her guardians refuse to permit her marriage, the governing authority may marry her off.

L30304–30306 The proof of that is the statement of Allah, the Mighty and Majestic: "And marry the unmarried among you and the righteous among your male and female servants." [An-Nur: 32] And Allah's statement: "Do not marry off [women] to the polytheists until they believe" [Al-Baqarah: 221]. This is an address to the guardians, not to the women.[28]

L30307 It was narrated to us through the transmission of Ibn Wahb: Ibn Jurayj narrated to us from Sulayman ibn Musa from Ibn Shihab from Urwah ibn al-Zubayr from Aishah, the Mother of the Believers—may Allah be pleased with her—from the Prophet—peace and blessings of Allah be upon him and his family—who said: "A woman must not be married without her guardian. If she is married off [without her guardian], then her marriage is invalid"—repeating this three times—"If he has consummated the marriage, she is entitled to her dower for the intimacy he has had with her. If they dispute, then the ruling authority is the guardian for whoever has no guardian."

L30308–30310 And what was narrated to us by Aḥmad ibn Muḥammad al-Ṭalamankī narrated to us: Ibn Mufarrij narrated to us; Muḥammad ibn Ayyūb al-Ṣamūṭ

[28] **Qur'an references (L30304):** Qur'an 24:32 (An-Nur); Qur'an 2:221 (Al-Baqarah).

[مَسْأَلَة لَا يَحِلُّ لِلْمَرْأَةِ نِكَاحٌ إِلَّا بأذن وليها]

١٨٢٥ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْمَرْأَةِ نِكَاحٌ - ثَيِّبًا كَانَتْ أَوْ بِكْرًا - إِلَّا بِإِذْنِ وَلِيِّهَا الْأَبِ، أَوْ الْإِخْوَةِ، أَوْ الْجَدِّ، أَوْ الْأَعْمَامِ، أَوْ بَنِي الْأَعْمَامِ - وَإِنْ بَعُدُوا - وَالْأَقْرَبُ فَالْأَقْرَبُ أَوْلَى.

وَلَيْسَ وَلَدُ الْمَرْأَةِ وَلِيًّا لَهَا إِلَّا إِنْ كَانَ ابْنَ عَمِّهَا، لَا يَكُونُ فِي الْقَوْمِ أَقْرَبُ إِلَيْهَا مِنْهُ - وَمَعْنَى ذَلِكَ -: أَنْ يَأْذَنَ لَهَا فِي الزَّوَاجِ، فَإِنْ أَبَى أَوْلِيَاؤُهَا مِنْ الْإِذْنِ لَهَا: زَوَّجَهَا السُّلْطَانُ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ جَلَّ: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] وقَوْله تَعَالَى: {وَلا تُنْكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا} [البقرة: ٢٢١] وَهَذَا خِطَابٌ لِلْأَوْلِيَاءِ لَا لِلنِّسَاءِ.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ نا ابْنُ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «لَا تُنْكَحُ الْمَرْأَةُ بِغَيْرِ وَلِيِّهَا فَإِنْ نُكِحَتْ فَنِكَاحُهَا بَاطِلٌ - ثَلَاثَ مَرَّاتٍ - فَإِنْ أَصَابَهَا فَلَهَا مَهْرُهَا بِمَا أَصَابَ مِنْهَا، فَإِنْ اشْتَجَرُوا فَالسُّلْطَانُ وَلِيُّ مَنْ لَا وَلِيَّ لَهُ» .

وَمَا حَدَّثَنَا بِهِ أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ الرَّقِّيُّ نا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا أَبُو كَامِلٍ نا بِشْرُ بْنُ مَنْصُورٍ نا سُفْيَانُ الثَّوْرِيُّ

al-Raqqī narrated to us; Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār narrated to us; Abū Kāmil narrated to us; Bishr ibn Manṣūr narrated to us; Sufyān al-Thawrī narrated to us; from Abū Isḥāq al-Sabīʿī; from Abū Burdah ibn Abī Mūsā al-Ashʿarī; from his father; from... The Prophet (peace and blessings of Allah be upon him and his family) said: "There is no marriage except with a guardian."

عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «لَا نِكَاحَ إِلَّا بِوَلِيٍّ» .

L30311 And with it to al-Bazzāz: Muḥammad ibn Mūsā al-Ḥarashī narrated to us; from Yazīd ibn Zurayʿ; from Shuʿbah ibn al-Ḥajjāj; from Abū Isḥāq as-Sabīʿī; from Abū Burdah ibn Abī Mūsā al-Ashʿarī; from his father—Abū Mūsā—from the Prophet, peace and blessings be upon him and his family: "No marriage except with a guardian."

وَبِهِ إِلَى الْبَزَّازِ نا مُحَمَّدُ بْنُ مُوسَى الْحَرَشِيُّ نا يَزِيدُ بْنُ زُرَيْعٍ نا شُعْبَةُ بْنُ الْحَجَّاجِ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ - هُوَ أَبُو مُوسَى - عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لَا نِكَاحَ إِلَّا بِوَلِيٍّ» .

L30312–30313 A group of people objected to this ḥadīth of Umm al-Mu'minīn by noting that Ibn 'Ulayyah narrated from Ibn Jurayj: "Did he ask Al-Zuhrī about this ḥadīth?" But he did not recognize it. They said: Umm al-Mu'minīn—may Allah be pleased with her—this ḥadīth is narrated from her, though it is authentically established that she had married off the daughter of her brother 'Abd al-Raḥmān—while he was traveling in Syria near his return—without his permission. He did not validate it; rather, he rejected it when he learned of it. Yet 'Ā'ishah did not consider this to invalidate the marriage. Instead, she said to Al-Mundhir ibn Al-Zubayr—the one to whom she had married the daughter—"Place her matter in his hands," so he did. Then 'Abd al-Raḥmān ratified it.

فَاعْتَرَضَ قَوْمٌ عَلَى حَدِيثِ أُمِّ الْمُؤْمِنِينَ هَذَا بِأَنَّ ابْنَ عُلَيَّةَ رَوَى عَنْ ابْنِ جُرَيْجٍ أَنَّهُ سَأَلَ الزُّهْرِيَّ عَنْ هَذَا الْحَدِيثِ؟ فَلَمْ يَعْرِفْهُ - قَالُوا: وَأُمُّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - رُوِيَ هَذَا الْحَدِيثُ عَنْهَا - وَقَدْ صَحَّ عَنْهَا أَنَّهَا كَانَتْ أَنْكَحَتْ بِنْتَ أَخِيهَا - عَبْدِ الرَّحْمَنِ وَهِيَ بِكْرٌ وَهُوَ مُسَافِرٌ بِالشَّامِ قَرِيبُ الْأَوْبَةِ - بِغَيْرِ أَمْرِهِ، فَلَمْ يُمْضِهِ، بَلْ أَنْكَرَ ذَلِكَ إِذْ بَلَغَهُ، فَلَمْ تَرَ عَائِشَةُ ذَلِكَ مُبْطِلًا لِذَلِكَ النِّكَاحِ، بَلْ قَالَتْ لِلَّذِي زَوَّجَتْهَا مِنْهُ - وَهُوَ الْمُنْذِرُ بْنُ الزُّبَيْرِ -: اجْعَلْ أَمْرَهَا إِلَيْهِ، فَفَعَلَ، فَأَنْفَذَهُ عَبْدُ الرَّحْمَنِ -.

L30314 They said: And Az-Zuhri is the one to whom this report is attributed.

قَالُوا: وَالزُّهْرِيُّ هُوَ الَّذِي رُوِيَ عَنْهُ هَذَا الْخَبَرُ.

L30315–30316 You [plural] have narrated via the chain of transmission of ʿAbd al-Razzāq, from Maʿmar, that he said to him: "Did you [singular] ask al-Zuhrī about a man who marries without a guardian?" He replied: "If he is her equal, they should not be separated."

قَدْ رَوَيْتُمْ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ أَنَّهُ قَالَ لَهُ: سَأَلْت الزُّهْرِيَّ عَنْ الرَّجُلِ يَتَزَوَّجُ بِغَيْرِ وَلِيٍّ؟ فَقَالَ: إنْ كَانَ كُفُؤًا لَهَا لَمْ يُفَرَّقْ بَيْنَهُمَا.

L30317 They said: So if this report were authentic, would not the contrary position of Aisha—who narrated it—and Az-Zuhri—who likewise narrated it—indicate evidence from its content for its abrogation?

قَالُوا: فَلَوْ صَحَّ هَذَا الْخَبَرُ لَدَلَّ خِلَافُ عَائِشَةَ الَّتِي رَوَتْهُ، وَالزُّهْرِيُّ الَّذِي رَوَاهُ لِمَا فِيهِ دَلِيلًا عَلَى نَسْخِهِ؟

L30318 We said: As for your statement, "Ibn Jurayj asked al-Zuhri about it, so why

did he not recognize it?" – Abu Sulayman Dawud ibn Babshadh ibn Dawud ibn Sulayman wrote to me: Narrated by ʻAbd al-Ghani ibn Saʻid al-Azdi the Preserver, on the authority of Hisham ibn Muhammad ibn Qurrah al-Ruʻayni, who said: Abu Jaʻfar al-Tahawi narrated, on the authority of Ahmad ibn ʻImran Abi Dawud, who said: Yahya ibn Maʻin narrated from Ibn ʻUlayyah, from Ibn Jurayj, that he asked al-Zuhri about this hadith, and he did not recognize it.

فَقُلْنَا: أَمَّا قَوْلُكُمْ: إِنَّ الزُّهْرِيَّ سَأَلَهُ عَنْهُ ابْنُ جُرَيْجٍ فَلَمْ يَعْرِفْهُ؟ فَإِنَّ أَبَا سُلَيْمَانَ دَاوُد بْنَ بَابْشَاذَ بْنِ دَاوُد بْنِ سُلَيْمَانَ كَتَبَ إِلَيَّ: نا عَبْدُ الْغَنِيِّ بْنُ سَعِيدٍ الْأَزْدِيُّ الْحَافِظُ نا هِشَامُ بْنُ مُحَمَّدِ بْنِ قُرَّةَ الرُّعَيْنِيُّ، قَالَ: نا أَبُو جَعْفَرٍ الطَّحَاوِيُّ نا أَحْمَدُ بْنُ أَبِي دَاوُد عِمْرَانُ، قَالَ: نا يَحْيَى بْنُ مَعِينٍ عَنْ ابْنِ عُلَيَّةَ عَنْ ابْنِ جُرَيْجٍ: أَنَّهُ سَأَلَ الزُّهْرِيَّ عَنْ هَذَا الْحَدِيثِ؟ فَلَمْ يَعْرِفْهُ.

L30319 Abu Muhammad said: This is baseless due to two reasons. The first is what we narrated to al-Qāḍī Abū Bakr Ḥumām ibn Aḥmad, who said: ʿAbbās ibn Aṣbagh reported to us, Muḥammad ibn ʿAbd al-Malik ibn Ayman reported to us, Ghaylān reported to us, ʿAbbās reported to us, Yaḥyā ibn Maʿīn reported to us regarding this ḥadīth of Ibn Jarīr. ʿAbbās said: I asked him, "Indeed, Ibn ʿUlayyah says: 'Did Ibn Jurayj say to Sulaymān ibn Mūsā?'" He replied, "I forgot after him [Ibn Jurayj]." Then Ibn Maʿīn said: "None would say this except Ibn ʿUlayyah. Did Ibn ʿUlayyah present Ibn Jarīr's books to ʿAbd al-Majīd ibn ʿAbd al-ʿAzīz ibn Abī Rawwād, and he corrected them for him?"

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا شَيْءَ لِوَجْهَيْنِ -: أَحَدُهُمَا مَا حَدَّثَنَاهُ الْقَاضِي أَبُو بَكْرٍ حُمَامُ بْنُ أَحْمَدَ قَالَ: نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا غَيْلَانُ نا عَبَّاسٌ نا يَحْيَى بْنُ مَعِينٍ: حَدِيثُ ابْنِ جَرِيرٍ هَذَا - قَالَ عَبَّاسٌ: فَقُلْت لَهُ: إِنَّ ابْنَ عُلَيَّةَ يَقُولُ: قَالَ ابْنُ جُرَيْجٍ لِسُلَيْمَانَ بْنِ مُوسَى؟ فَقَالَ: نَسِيت بَعْدَهُ، فَقَالَ ابْنُ مَعِينٍ: لَيْسَ يَقُولُ هَذَا إِلَّا ابْنُ عُلَيَّةَ، وَابْنُ عُلَيَّةَ عَرَضَ كُتُبَ ابْنِ جَرِيرٍ عَلَى عَبْدِ الْمَجِيدِ بْنِ عَبْدِ الْعَزِيزِ بْنِ أَبِي رَوَّادٍ فَأَصْلَحَهَا لَهُ؟

L30320 Ibn Maʿīn said: There is nothing authentic in this matter except the *ḥadīth* of Sulaymān ibn Mūsā.

قَالَ ابْنُ مَعِينٍ: لَا يَصِحُّ فِي هَذَا إِلَّا حَدِيثُ سُلَيْمَانَ بْنِ مُوسَى.

L30321 Abu Muhammad said: It is established that the oral transmission of Ibn ʿUlayyah from Ibn Jurayj is compromised by insertion.

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ أَنَّ سَمَاعَ ابْنِ عُلَيَّةَ مِنْ ابْنِ جُرَيْجٍ مَدْخُولٌ.

L30322 Then, even if it were valid that al-Zuhrī rejected it and Sulaymān ibn Mūsā forgot it - we have been narrated through Muslim ibn al-Ḥajjāj: Ibn Numayr reported to us, saying: "'Abdah and Abū Muʿāwiyah [narrated] from Hishām ibn ʿUrwa from his father from ʿĀ'isha, the Mother of the Believers (may Allah be pleased with her), who said: 'The Prophet - peace and blessings of Allah be upon him and his family - heard a man reciting in the mosque and said: "May Allah have mercy on him. He has reminded me of a verse I had forgotten."'"

ثُمَّ لَوْ صَحَّ أَنَّ الزُّهْرِيَّ أَنْكَرَهُ، وَأَنَّ سُلَيْمَانَ بْنَ مُوسَى نَسِيَهُ -: فَقَدْ رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا ابْنُ نُمَيْرٍ قَالَ: قَالَ لِي عَبْدَةُ، وَأَبُو مُعَاوِيَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - قَالَتْ، «كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَسْمَعُ قِرَاءَةَ رَجُلٍ فِي الْمَسْجِدِ فَقَالَ: - رَحِمَهُ اللَّهُ - لَقَدْ أَذْكَرَنِي آيَةً كُنْتُ أُنْسِيتُهَا» .

L30323–30325 Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us from Wahb ibn Maysarah

from Ibn Waḍḍāḥ from Abū Bakr ibn Abī Shaybah from Wakīʿ from Sufyān from Salamah ibn Kuhayl from Dharr ibn ʿAbd Allāh al-Marhabī from Saʿīd ibn ʿAbd al-Raḥmān ibn Abzā from his father that the Prophet (may the peace and blessings of Allah be upon him and his family) prayed Fajr and omitted a verse. When he finished praying, he said: "Is Ubayy ibn Kaʿb among the people?" Ubayy ibn Kaʿb responded: "O Messenger of Allah, did you overlook such and such a verse, or was it abrogated?" The Prophet, peace and blessings be upon him, replied: "Rather, I was caused to forget it."

نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نَا وَهْبُ بْنُ مَيْسَرَةَ نا ابْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ سُفْيَانَ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ ذَرِّ بْنِ عَبْدِ اللَّهِ الْمَرْهَبِيِّ عَنْ سَعِيدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبْزَى عَنْ أَبِيهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - صَلَّى الْفَجْرَ فَأَغْفَلَ آيَةً، فَلَمَّا صَلَّى قَالَ: أَفِي الْقَوْمِ أُبَيُّ بْنُ كَعْبٍ؟ فَقَالَ لَهُ أُبَيُّ بْنُ كَعْبٍ: يَا رَسُولَ اللَّهِ أَغْفَلْتَ آيَةَ كَذَا، أَوَنُسِخَتْ؟ فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: بَلْ أُنْسِيتُهَا» .

Abu Muhammad said: If it is established that the Messenger of Allah—may Allah bless him and his family and grant him peace—forgot a verse of the Quran, then who are al-Zuhrī, Sulaymān, and Yaḥyā to claim they would not forget? For the Exalted and Majestic has said: {We had certainly taken a covenant from Adam before, but he forgot} [Ta-Ha: 115]?[29]

L30326

قَالَ أَبُو مُحَمَّد: فَإِذَا صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَسِيَ آيَةً مِنْ الْقُرْآنِ، فَمَنْ الزُّهْرِيُّ، وَمَنْ سُلَيْمَانُ، وَمَنْ يَحْيَى حَتَّى لَا يَنْسَى؟ وَقَدْ قَالَ عَزَّ وَجَلَّ: {وَلَقَدْ عَهِدْنَا إِلَى آدَمَ مِنْ قَبْلُ فَنَسِيَ} [طه: ١١٥] .

However, Ibn Jurayj is trustworthy. When he narrates to us from Sulaymān ibn Mūsā—who is trustworthy—that he informed him of a musnad report from al-Zuhrī, the proof is established through it, whether they forgot it after conveying it and narrating it, or did not forget it.

L30327

لَكِنْ ابْنُ جُرَيْجٍ ثِقَةٌ، فَإِذَا رَوَى لَنَا عَنْ سُلَيْمَانَ بْنِ مُوسَى - وَهُوَ ثِقَةٌ - أَنَّهُ أَخْبَرَهُ عَنْ الزُّهْرِيِّ بِخَبَرٍ مُسْنَدٍ، فَقَدْ قَامَتْ الْحُجَّةُ بِهِ، سَوَاءٌ نَسَوْهُ بَعْدَ أَنْ بَلَّغُوهُ وَحَدَّثُوا بِهِ، أَوْ لَمْ يَنْسَوْهُ.

And Abu Hurairah forgot a ḥadīth: There is no contagion.

L30328

وَقَدْ نَسِيَ أَبُو هُرَيْرَةَ حَدِيثَ لَا عَدْوَى.

Al-Hasan forgot the hadith about one who killed his own slave.

L30329

وَنَسِيَ الْحَسَنُ حَدِيثَ مَنْ قَتَلَ عَبْدَهُ.

Abū Muḥammad, the client of Ibn ʿAbbās, forgot the ḥadīth concerning the *takbīr* after the prayer after they had narrated it. What then? None objects to this except an ignorant person or one who defends falsehood against the truth. We do not know in which Qur'an, which Sunnahs, or which rulings of the intellects they found that if someone narrates a ḥadīth and then forgets it, the validity of that ḥadīth is nullified. Are they not but engaged in a baseless false claim?

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وَنَسِيَ أَبُو مُحَمَّدٍ مَوْلَى ابْنِ عَبَّاسٍ حَدِيثَ التَّكْبِيرِ بَعْدَ الصَّلَاةِ بَعْدَ أَنْ حَدَّثُوا بِهَا، فَكَانَ مَاذَا؟ لَا يَعْتَرِضُ بِهَذَا إلَّا جَاهِلٌ، أَوْ مُدَافِعٌ لِلْحَقِّ بِالْبَاطِلِ، وَلَا نَدْرِي فِي أَيِّ الْقُرْآنِ، أَمْ فِي أَيِّ السُّنَنِ، أَمْ فِي أَيِّ حُكْمِ الْعُقُولِ وَجَدُوا؟ أَنَّ مَنْ حَدَّثَ بِحَدِيثٍ ثُمَّ نَسِيَهُ: أَنَّ حُكْمَ ذَلِكَ الْخَبَرِ يَبْطُلُ، مَا هُمْ إلَّا فِي دَعْوَى كَاذِبَةٍ بِلَا بُرْهَانٍ؟

[29] **Qur'an references (L30326):** Qur'an 20:115 (Taha).

L30331 As for their objection that it is authentically established from ʻĀ'ishah and al-Zuhrī—may Allah be pleased with them both—that they contradicted what they narrated in this matter, then what of it? Indeed, Allah, Mighty and Majestic, and His Messenger—peace and blessings be upon him and his family—have commanded us, and the rational proof has been established, obligating acceptance of what is authentically verified with us from the Messenger of Allah—peace and blessings be upon him and his family—and invalidating adherence to any opinion other than his—peace and blessings be upon him.

وَأَمَّا اعْتِرَاضُهُمْ بِأَنَّهُ صَحَّ عَنْ عَائِشَةَ، وَعَنْ الزُّهْرِيِّ - رَضِيَ اللَّهُ عَنْهُمَا - أَنَّهُمَا خَالَفَا مَا رَوَيَا مِنْ ذَلِكَ، فَكَانَ مَاذَا؟ إنَّمَا أَمَرَنَا اللَّهُ عَزَّ وَجَلَّ، وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَامَتْ حُجَّةُ الْعَقْلِ بِوُجُوبِ قَبُولِ مَا صَحَّ عِنْدَنَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَبِسُقُوطِ اتِّبَاعِ قَوْلٍ مِنْ دُونِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L30332 We do not know where they found that one who opposes—through erroneous interpretation—what he narrated thereby invalidates what he narrated. We then invert their corrupt principle against them, stating: If it is confirmed that Umm al-Mu'minīn—may Allah be pleased with her—and al-Zuhrī—may Allah have mercy on him—narrated this report, and it was reported from them that they contradicted it, this would be evidence for the narration's invalidation due to their contradiction. Rather, the presumption regarding them is that they do not contradict what they narrated, and this is more valid. For abandoning their non-binding opinions in favor of adhering to their binding narrations is obligatory—not abandoning their binding narrations in favor of their non-binding opinions.

وَلَا نَدْرِي أَيْنَ وَجَدُوا: أَنَّ مَنْ خَالَفَ - بِاجْتِهَادِهِ مُخْطِئًا مُتَأَوِّلًا - مَا رَوَاهُ أَنَّهُ يَسْقُطُ بِذَلِكَ مَا رَوَاهُ، ثُمَّ نَعْكِسُ عَلَيْهِمْ أَصْلَهُمْ هَذَا الْفَاسِدَ، فَنَقُولُ: إذَا صَحَّ أَنَّ أُمَّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - وَالزُّهْرِيَّ - رَحِمَهُ اللَّهُ - رَوَيَا هَذَا الْخَبَرَ، وَرُوِيَ عَنْهُمَا أَنَّهُمَا خَالَفَاهُ، فَهَذَا دَلِيلٌ عَلَى سُقُوطِ الرِّوَايَةِ بِأَنَّهُمَا خَالَفَاهُ، بَلْ بَلْ الظَّنُّ بِهِمَا أَنَّهُمَا لَا يُخَالِفَانِ مَا رَوَيَاهُ، وَهَذَا أَوْلَى، لِأَنَّ تَرْكَنَا مَا لَا يَلْزَمُنَا مِنْ قَوْلِهِمَا لِمَا يَلْزَمُنَا مِنْ رِوَايَتِهِمَا هُوَ الْوَاجِبُ، لَا تَرْكُ مَا يَلْزَمُنَا مِمَّا رَوَيَاهُ لِمَا لَا يَلْزَمُنَا مِنْ رَأْيِهِمَا.

L30333–30334 How then, when Dāwūd ibn Bābshādh wrote to me, stating: ʿAbd al-Ghanī ibn Saʿīd narrated to us: Hishām ibn Muḥammad ibn Qurrah narrated to us: Abū Jaʿfar al-Ṭaḥāwī narrated to us: al-Ḥasan ibn Ghulayb narrated to us: Yaḥyā ibn Sulaymān al-Juʿfī narrated to us: ʿAbd Allāh ibn Idrīs al-Awdī narrated from Ibn Jurayj from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq from his father from ʿĀ'ishah, the Mother of the Believers, that she arranged the marriage of a man from her brother's sons to a young girl from her brother's sons. She placed a curtain between them, then she spoke until nothing remained except the *nikāh*, whereupon she instructed a man to contract the marriage. She then said: "The *nikāh* is not for women." This was confirmed with certainty as her retraction of her initial action to what she had pointed out—that women's *nikāh* is not permissible.

فَكَيْفَ وَقَدْ كَتَبَ إلَيَّ دَاوُد بْنُ بَابْشَاذَ قَالَ: حَدَّثَنِي عَبْدُ الْغَنِيِّ بْنُ سَعِيدٍ نا هِشَامُ بْنُ مُحَمَّدِ بْنِ قُرَّةَ نا أَبُو جَعْفَرٍ الطَّحَاوِيُّ نا الْحَسَنُ بْنُ غُلَيْبٍ نا يَحْيَى بْنُ سُلَيْمَانَ الْجُعْفِيُّ نا عَبْدُ اللَّهِ بْنُ إدْرِيسَ الْأَوْدِيُّ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا أَنْكَحَتْ رَجُلًا مِنْ بَنِي أَخِيهَا جَارِيَةً مِنْ بَنِي أَخِيهَا، فَضَرَبَتْ بَيْنَهُمْ سِتْرًا، ثُمَّ تَكَلَّمَتْ حَتَّى إذَا لَمْ يَبْقَ إلَّا النِّكَاحُ أَمَرَتْ رَجُلًا فَأَنْكَحَ، ثُمَّ قَالَتْ: لَيْسَ إلَى النِّسَاءِ النِّكَاحُ - فَصَحَّ يَقِينًا بِهَذَا رُجُوعُهَا عَنْ الْعَمَلِ الْأَوَّلِ إلَى مَا نَبَّهَتْ عَلَيْهِ مِنْ أَنَّ نِكَاحَ النِّسَاءِ لَا يَجُوزُ.

L30335 They objected regarding the narration of Abu Musa - "that some people sent

him?" We responded: What of that? If the report is authentically transmitted as traced back to the Messenger of Allah (peace and blessings be upon him and his family), it constitutes decisive proof that obligates us to accept it as an obligation. What does it matter whether someone sent him, or one who did not narrate it at all, or one who narrated it through another weak chain? All this is as if it never existed - and with Allah alone is success.

وَاعْتَرَضُوا فِي رِوَايَةِ أَبِي مُوسَى: أَنَّ قَوْمًا أَرْسَلُوهُ؟ فَقُلْنَا: فَكَانَ مَاذَا، إذَا صَحَّ الْخَبَرُ مُسْنَدًا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَدْ قَامَتْ الْحُجَّةُ بِهِ، وَلَزِمَنَا قَبُولُهُ فَرْضًا، وَلَا مَعْنَى لِمَنْ أَرْسَلَهُ، أَوْ لِمَنْ لَمْ يَرْوِهِ أَصْلًا، أَوْ لِمَنْ رَوَاهُ مِنْ طَرِيقٍ أُخْرَى ضَعِيفَةٍ؟ كُلُّ هَذَا كَأَنَّهُ لَمْ يَكُنْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30336 Abu Muhammad said: Among those who held a view similar to ours is a group of the Salaf—as has been narrated to us via the chain of Ibn Wahb: Amr ibn al-Harith narrated to me from Bukayr ibn al-Ashajj that he heard Sa'id ibn al-Musayyib say: 'Umar ibn al-Khattab said, "A woman may not be married except with the permission of her guardian, or the competent members of her family, or the ruler." And via the chain of Sufyan ibn 'Uyaynah from 'Amr ibn Dinar from 'Abd al-Rahman ibn Ma'bad: 'Umar ibn al-Khattab annulled the marriage of a woman who contracted a marriage without her guardian's permission.'

قَالَ أَبُو مُحَمَّد: وَمِمَّنْ قَالَ بِمِثْلِ قَوْلِنَا جَمَاعَةٌ مِنْ السَّلَفِ -: كَمَا رُوِّينَا: مِنْ طَرِيقِ ابْنِ وَهْبٍ حَدَّثَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ: أَنَّهُ سَمِعَ سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَا تُنْكَحُ الْمَرْأَةُ إلَّا بِإِذْنِ وَلِيِّهَا، أَوْ ذَوِي الرَّأْيِ مِنْ أَهْلِهَا، أَوْ السُّلْطَانِ. وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَعْبَدٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ رَدَّ نِكَاحَ امْرَأَةٍ نَكَحَتْ بِغَيْرِ إذْنِ وَلِيِّهَا.

L30337 From the narration of Abd al-Razzaq via Ibn Jurayj: Abd al-Rahman ibn Jubayr ibn Shaybah informed me that Ikrimah ibn Khalid reported to him that a traveling party formed a group. A previously married woman entrusted her marital matter to a man from the group—who was not her guardian—and he married her to another man. When this reached Umar ibn al-Khattab, he lashed the groom and the one who conducted the marriage, and annulled her union.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي عَبْدُ الرَّحْمَنِ بْنُ جُبَيْرِ بْنِ شَيْبَةَ أَنَّ عِكْرِمَةَ بْنَ خَالِدٍ أَخْبَرَهُ أَنَّ الطَّرِيقَ جَمَعَ رَكْبًا، فَجَعَلَتْ امْرَأَةٌ ثَيِّبٌ أَمْرَهَا إلَى رَجُلٍ مِنْ الْقَوْمِ غَيْرِ وَلِيٍّ فَأَنْكَحَهَا رَجُلًا، فَبَلَغَ ذَلِكَ عُمَرَ بْنَ الْخَطَّابِ، فَجَلَدَ النَّاكِحَ وَالْمُنْكِحَ وَرَدَّ نِكَاحَهَا.

L30338 Narrated through the chain of Muḥammad ibn Sīrīn from Abū Hurayrah: Women hold no authority in contracting marriage. There is no valid marriage except with a guardian. A woman cannot give herself in marriage, for it is the fornicatress who gives herself in marriage.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ: لَيْسَ لِلنِّسَاءِ مِنْ الْعَقْدِ شَيْءٌ، لَا نِكَاحَ إلَّا بِوَلِيٍّ، لَا تُنْكِحُ الْمَرْأَةُ نَفْسَهَا، فَإِنَّ الزَّانِيَةَ تُنْكِحُ نَفْسَهَا.

L30339 And via the chain of Ḥammād ibn Salamah from Ayyūb al-Sikhtiyānī from Muḥammad ibn Sīrīn: Ibn ʿAbbās said, "Prostitutes are women who marry themselves off without [the involvement of] guardians."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ ابْنَ عَبَّاسٍ قَالَ: الْبَغَايَا اللَّاتِي يَنْكِحْنَ أَنْفُسَهُنَّ بِغَيْرِ الْأَوْلِيَاءِ.

L30340–30341 And through the chain of ʿAbd al-Razzāq from ʿUbayd Allāh ibn ʿUmar from Nāfiʿ, he said: ʿUmar ibn al-Khaṭṭāb entrusted his daughter Ḥafṣa, the Mother

of the Believers (raḍiya Allāhu ʿanhā), with guardianship over his wealth, his daughters, and their marriage contracts. Thus, whenever Ḥafṣa wished to marry off a woman under her guardianship, she would instruct her brother ʿAbdullāh, and he would conduct the marriage.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ قَالَ: وَلَّى عُمَرُ بْنُ الْخَطَّابِ ابْنَتَهُ حَفْصَةَ أُمَّ الْمُؤْمِنِينَ مَالَهُ وَبَنَاتِهِ وَنِكَاحَهُنَّ فَكَانَتْ حَفْصَةُ أُمُّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - إِذَا أَرَادَتْ أَنْ تُزَوِّجَ امْرَأَةً أَمَرَتْ أَخَاهَا عَبْدَ اللَّهِ فَيُزَوِّجُ.

L30342 And similar to this has also been narrated to us from ʿĀ'ishah, the Mother of the Believers—may Allah be pleased with her—Ibn ʿUmar, ʿUmar ibn ʿAbd al-ʿAzīz, and Ibrāhīm al-Nakhaʿī.

وَرُوِّينَا نَحْوَ هَذَا أَيْضًا عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - وَابْنِ عُمَرَ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَإِبْرَاهِيمَ النَّخَعِيِّ.

L30343 It has been narrated to us from Al-Ḥajjāj ibn Al-Minhāl, from Abū Hilāl, who said: I asked Al-Ḥasan, "I asked Abū Saʿīd about a woman whose guardian is absent in Sijistān, while her guardian here has a guardian himself. Can the guardian of her guardian marry her off?" He replied: "No, but let them write to him." I said: "The suitor cannot wait." He responded: "He must wait." A man asked him: "For how long must he wait?" Al-Ḥasan said: "He must wait as long as the Companions of the Cave waited."

وَرُوِّينَا: عَنْ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا أَبُو هِلَالٍ، قَالَ: سَأَلْت الْحَسَنَ؟ فَقُلْت: سَأَلْت أَبَا سَعِيدٍ عَنْ امْرَأَةٍ خَطَبَهَا رَجُلٌ وَوَلِيُّهَا غَائِبٌ بِسِجِسْتَانَ، وَلِوَلِيِّهَا هَاهُنَا وَلِيٌّ، أَيُزَوِّجُهَا وَلِيُّ وَلِيِّهَا؟ قَالَ: لَا، وَلَكِنْ اُكْتُبُوا إلَيْهِ، قُلْت لَهُ: إنَّ الْخَاطِبَ لَا يَصْبِرُ؟ قَالَ: فَلْيَصْبِرْ، قَالَ لَهُ رَجُلٌ: إلَى مَتَى يَصْبِرُ؟ قَالَ الْحَسَنُ: يَصْبِرُ كَمَا صَبَرَ أَهْلُ الْكَهْفِ.

L30344 And it is the statement of Jābir ibn Zayd and Makḥūl-.

وَهُوَ قَوْلُ جَابِرِ بْنِ زَيْدٍ، وَمَكْحُولٍ -.

L30345 This is the view of Ibn Shubrumah, Ibn Abī Laylā, Sufyān al-Thawrī, al-Ḥasan ibn Ḥayyin, al-Shāfiʿī, Aḥmad, Isḥāqa, Abū ʿUbayd, and Ibn al-Mubārak.

وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ، وَابْنِ أَبِي لَيْلَى وَسُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي عُبَيْدٍ، وَابْنِ الْمُبَارَكِ.

L30346 There is an old and recent disagreement regarding this matter – as narrated by Muḥammad ibn Saʿīd ibn Nabāt → Aḥmad ibn ʿAwn Allāh → Qāsim ibn Aṣbagh → Muḥammad ibn ʿAbd al-Salām al-Khushanī → Muḥammad ibn Bashshār Bindār → Abū Dāwūd al-Ṭayālisī → Shuʿbah → Abū Isḥāq al-Shaybānī and Sufyān al-Thawrī. Abū Isḥāq said: "There was a woman among us called Baḥriyyah. Her mother married her off while her father was absent. When her father returned, he objected to this, so he referred the matter to ʿAlī, who validated it."

وَفِي ذَلِكَ خِلَافٌ قَدِيمٌ، وَحَدِيثٌ -: كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ بِنْدَارٌ نا أَبُو دَاوُد الطَّيَالِسِيُّ نا شُعْبَةُ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، قَالَ أَبُو إِسْحَاقَ: كَانَتْ فِينَا امْرَأَةٌ يُقَالُ لَهَا: بَحْرِيَّةُ، زَوَّجَتْهَا أُمُّهَا، وَكَانَ أَبُوهَا غَائِبًا، فَلَمَّا قَدِمَ أَبُوهَا أَنْكَرَ ذَلِكَ، فَرَفَعَ ذَلِكَ إلَى عَلِيٍّ فَأَجَازَ ذَلِكَ -.

L30347 Shuʿbah said, "Sufyān al-Thawrī informed me that he heard Abū Qays report-

ing from Hudhayl ibn Shuraḥbīl from ʻAlī ibn Abī Ṭālib a similar narration."

قَالَ شُعْبَةُ: وَأَخْبَرَنِي سُفْيَانُ الثَّوْرِيُّ أَنَّهُ سَمِعَ أَبَا قَيْسٍ يُحَدِّثُ عَنْ هُذَيْلِ بْنِ شُرَحْبِيلَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ بِمِثْلِهِ.

L30348 And through the chain of Al-Ḥajjāj ibn Al-Minhāl, narrated to us Shuʿbah ibn Al-Ḥajjāj, who said: I was informed by Sulaymān Al-Shaybānī (who is Abū Isḥāq), who said: I heard Al-Qaʿqāʿ say: A man married a woman from our community named Baḥriyyah; her mother had contracted her marriage to him. Then her father came and objected to this, so they brought their dispute to ʿAlī ibn Abī Ṭālib, and he upheld it.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا شُعْبَةُ بْنُ الْحَجَّاجِ قَالَ: أَخْبَرَنِي سُلَيْمَانُ الشَّيْبَانِيُّ - هُوَ أَبُو إِسْحَاقَ - قَالَ: سَمِعْت الْقَعْقَاعَ، قَالَ: إنَّهُ تَزَوَّجَ رَجُلٌ امْرَأَةً مِنَّا يُقَالُ لَهَا: بَحْرِيَّةُ، زَوَّجَتْهَا إيَّاهُ أُمُّهَا، فَجَاءَ أَبُوهَا فَأَنْكَرَ ذَلِكَ، فَاخْتَصَمَا إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ، فَأَجَازَهُ.

L30349–30351 The well-known ḥadīth is from ʿĀʾishah, the Mother of the Believers, that she arranged the marriage of her brother ʿAbd al-Raḥmān's daughter. From al-Mundhir ibn al-Zubayr: While ʻAbd al-Rahman was absent in Syria. When he arrived, he rejected that. Thereupon, al-Mundhir referred her matter to him, and he ratified it.

وَالْخَبَرُ الْمَشْهُورُ: عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّهَا زَوَّجَتْ بِنْتَ أَخِيهَا عَبْدِ الرَّحْمَنِ مِنْ الْمُنْذِرِ بْنِ الزُّبَيْرِ، وَعَبْدِ الرَّحْمَنِ غَائِبٌ بِالشَّامِ، فَلَمَّا قَدِمَ أَنْكَرَ ذَلِكَ، فَجَعَلَ الْمُنْذِرُ أَمْرَهَا إلَيْهِ فَأَجَازَهُ.

L30352 It has been narrated to us that Umamah bint Abi al-ʿĀṣ ibn Abi al-Rabiʿ—her mother being Zaynab, daughter of the Messenger of Allah (peace and blessings be upon him and his family)—was proposed to by Mu'awiyah after the killing of Ali (may Allah be pleased with him). She had been married to Ali. She summoned al-Mughīrah ibn Nawfal ibn al-Harith ibn Abd al-Muttalib and placed her affairs in his hands, whereupon he married her himself. Marwan became angered and wrote of this to Mu'awiyah, who wrote back to him: "Leave him and her alone."

وَرُوِّينَا أَنَّ أُمَامَةَ بِنْتَ أَبِي الْعَاصِ بْنِ أَبِي الرَّبِيعِ، وَأُمُّهَا زَيْنَبُ بِنْتُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - خَطَبَهَا مُعَاوِيَةُ بَعْدَ قَتْلِ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - وَكَانَتْ تَحْتَ عَلِيٍّ، فَدَعَتْ بِالْمُغِيرَةِ بْنِ نَوْفَلِ بْنِ الْحَارِثِ بْنِ عَبْدِ الْمُطَّلِبِ فَجَعَلَتْ أَمْرَهَا إلَيْهِ فَأَنْكَحَهَا نَفْسَهُ، فَغَضِبَ مَرْوَانُ، وَكَتَبَ ذَلِكَ إلَى مُعَاوِيَةَ، فَكَتَبَ إلَيْهِ مُعَاوِيَةُ: دَعْهُ وَإِيَّاهَا.

L30353 It is authentically reported from Ibn Sirīn regarding a woman who has no guardian: she delegated her matter to a man, and he contracted her marriage. Ibn Sirīn said: "There is no harm in that. The believers are guardians of one another."

وَصَحَّ عَنْ ابْنِ سِيرِينَ فِي امْرَأَةٍ لَا وَلِيَّ لَهَا، فَوَلَّتْ رَجُلًا أَمْرَهَا، فَزَوَّجَهَا، قَالَ ابْنُ سِيرِينَ: لَا بَأْسَ بِذَلِكَ، الْمُؤْمِنُونَ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ.

L30354 From ʿAbd al-Razzāq, from Ibn Jurayj: He asked ʿAṭāʾ about a woman who married without her legal guardians' permission while they were present. He replied, "As for a woman who is legally competent to manage her own affairs, if the marriage is contracted with witnesses, it is permissible without the legal guardians' permission."

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَنَّهُ سَأَلَ عَطَاءً عَنْ امْرَأَةٍ نَكَحَتْ بِغَيْرِ إذْنِ وُلَاتِهَا - وَهُمْ حَاضِرُونَ، فَقَالَ أَمَّا امْرَأَةٌ مَالِكَةٌ أَمْرَ نَفْسِهَا إذَا كَانَ بِشُهَدَاءَ، فَإِنَّهُ جَائِزٌ بِغَيْرِ أَمْرِ الْوُلَاةِ.

وَعَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ فِي امْرَأَةٍ زَوَّجَتْ ابْنَتَهَا بِغَيْرِ إذْنِ أَوْلِيَائِهَا، قَالَ: إنْ أَجَازَ الْوُلَاةُ ذَلِكَ إذَا عَلِمُوا، فَهَذَا جَائِزٌ - وَرُوِيَ نَحْوُ هَذَا عَنْ الْحَسَنِ أَيْضًا.

L30355 From Al-Qasim ibn Muhammad regarding a woman who contracted the marriage of her daughter without the permission of her legal guardians, he said: "If the legal guardians approve of that when they learn of it, then this is permissible." A similar report was also narrated from Al-Hasan.

قَالَ الْأَوْزَاعِيُّ إنْ كَانَ الزَّوْجُ كُفُؤًا وَلَهَا مِنْ أَمْرِهَا نَصِيبٌ، وَدَخَلَ بِهَا، لَمْ يَكُنْ لِلْوَلِيِّ أَنْ يُفَرِّقَ بَيْنَهُمَا.

L30356 Al-Awzāʿī said: If the husband is a suitable match, she has consented to the marriage, and it has been consummated, the guardian has no right to annul their union.

وَقَالَ أَبُو ثَوْرٍ: لَا يَجُوزُ أَنْ تُزَوِّجَ الْمَرْأَةُ نَفْسَهَا، وَلَا أَنْ تُزَوِّجَهَا امْرَأَةٌ وَلَكِنْ إنْ زَوَّجَهَا رَجُلٌ مُسْلِمٌ جَازَ، الْمُؤْمِنُونَ إخْوَةٌ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ.

L30357 Abu Thawr said: It is not permissible for a woman to marry herself off, nor for a woman to contract marriage on her behalf. However, if a Muslim man contracts the marriage for her, it is permissible. Believers are brothers; some of them are guardians for others.

قَالَ أَبُو سُلَيْمَانَ: أَمَّا الْبِكْرُ فَلَا يُزَوِّجُهَا إلَّا وَلِيُّهَا، وَأَمَّا الثَّيِّبُ فَتُوَلِّي أَمْرَهَا مَنْ شَاءَتْ مِنْ الْمُسْلِمِينَ وَيُزَوِّجُهَا، وَلَيْسَ لِلْوَلِيِّ فِي ذَلِكَ اعْتِرَاضٌ.

L30358 Abu Sulaiman said: As for the virgin, none may marry her off except her guardian. As for the previously married woman, she may entrust her matter to whomever she wishes among the Muslims, and he may marry her off. The guardian has no right to object to this.

وَقَالَ مَالِكٌ: أَمَّا الدَّنِيئَةُ، كَالسَّوْدَاءِ، أَوْ الَّتِي أَسْلَمَتْ، أَوْ الْفَقِيرَةُ، أَوْ النَّبَطِيَّةُ، أَوْ الْمُوَلَّاةُ، فَإِنْ زَوَّجَهَا الْجَارُ وَغَيْرُهُ - مِمَّنْ لَيْسَ هُوَ لَهَا بِوَلِيٍّ - فَهُوَ جَائِزٌ - وَأَمَّا الْمَرْأَةُ الَّتِي لَهَا الْمَوْضِعُ، فَإِنْ زَوَّجَهَا غَيْرُ وَلِيِّهَا فُرِّقَ بَيْنَهُمَا فَإِنْ أَجَازَ ذَلِكَ الْوَلِيُّ، أَوْ السُّلْطَانُ: جَازَ، فَإِنْ تَقَادَمَ أَمْرُهَا وَلَمْ يُفْسَخْ، وَوَلَدَتْ لَهُ الْأَوْلَادَ: لَمْ نَفْسَخْ.

L30359 Malik said: As for the low-status woman - such as a black woman, a female convert to Islam, a poor woman, a peasant woman, or a client woman - if a neighbor or others unqualified to act as her guardian marry her off, it is permissible. However, regarding the woman of established social standing, if someone other than her guardian arranges her marriage, they must be separated. If the guardian or legal authority approves it, the marriage becomes valid. If the matter becomes longstanding without annulment and she bears him children, we do not annul it.

وَقَالَ أَبُو حَنِيفَةَ، وَزُفَرُ، جَائِزٌ لِلْمَرْأَةِ أَنْ تُزَوِّجَ نَفْسَهَا كُفُؤًا، وَلَا اعْتِرَاضَ لِوَلِيِّهَا فِي ذَلِكَ، فَإِنْ زَوَّجَتْ نَفْسَهَا غَيْرَ كُفْءٍ، فَالنِّكَاحُ جَائِزٌ، وَلِلْأَوْلِيَاءِ أَنْ يُفَرِّقُوا بَيْنَهُمَا، وَكَذَلِكَ لِلْوَلِيِّ أَنْ يُخَاصِمَ فِيمَا حَطَّتْ مِنْ صَدَاقِ مِثْلِهَا.

L30360 Abu Hanifa and Zufar said: It is permissible for a woman to contract her own marriage to a socially equal match, and her guardian has no right to object to this. If she contracts her own marriage to a socially unequal match, the marriage remains valid, but the guardians have the right to annul the marriage. Similarly, the guardian may legally contest any reduction from the customary mahr for women of her social standing.

L30361–30362 Abū Yūsuf and Muḥammad ibn al-Ḥasan stated: "There is no marriage without a guardian." Then they held differing opinions. Abū Yūsuf said: "If a

woman marries without a guardian and the guardian validates it, it is valid. If the guardian refuses to validate it while the husband is of equivalent status, the judge validates it. The marriage is not valid until the judge validates it."

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: لَا نِكَاحَ إِلَّا بِوَلِيٍّ، ثُمَّ اخْتَلَفَا، فَقَالَ أَبُو يُوسُفَ: إِنْ تَزَوَّجَتْ بِغَيْرِ وَلِيٍّ فَأَجَازَهُ الْوَلِيُّ جَازَ، فَإِنْ أَبَى أَنْ يُجِيزَ وَالزَّوْجُ كُفُؤٌ أَجَازَهُ الْقَاضِي، وَلَا يَكُونُ جَائِزًا إِلَّا حَتَّى يُجِيزَهُ الْقَاضِي.

L30363 And Muḥammad ibn al-Ḥasan said: If the guardian does not ratify it, the judge shall initiate a new contract in the matter.

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: إِنْ لَمْ يُجِزْهُ الْوَلِيُّ اسْتَأْنَفَ الْقَاضِي فِيهِ عَقْدًا جَدِيدًا.

L30364 Abu Muhammad said: As for the statement of Muhammad ibn al-Hasan and Abu Yusuf, it is manifestly contradictory and invalid, for they contradicted their own assertion that "there is no marriage without a guardian" since they permitted the guardian to sanction what they themselves declared invalid.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مُحَمَّدِ بْنِ الْحَسَنِ، وَأَبِي يُوسُفَ: فَظَاهِرُ التَّنَاقُضِ وَالْفَسَادِ، لِأَنَّهُمَا نَقَضَا قَوْلَهُمَا " لَا نِكَاحَ إِلَّا بِوَلِيٍّ " إِذْ أَجَازَا لِلْوَلِيِّ إِجَازَةَ مَا أَخْبَرَا أَنَّهُ لَا يَجُوزُ.

L30365 Similarly, the position of Abū Ḥanīfah is likewise [rejected], for he permitted a woman to contract her own marriage to someone unqualified, then allowed the guardian to annul a valid contract. These are rulings having no connection to the Quran, nor to any Sunnah—whether authentic or weak—nor to a Companion's statement, nor to rational basis, analogy, or sound juristic reasoning. Such rulings are only acceptable if issued by the Messenger of Allah—peace and blessings be upon him—who speaks not from whim, but solely through revelation from the Creator, who "is not questioned about what He does" [21:23]. As for anyone other than him—peace be upon him—this constitutes a new religion, for which Allah will exact punishment on the Day of Resurrection.[30]

وَكَذَلِكَ قَوْلُ أَبِي حَنِيفَةَ، لِأَنَّهُ أَجَازَ لِلْمَرْأَةِ إِنْكَاحَ نَفْسِهَا مِنْ غَيْرِ كُفْءٍ ثُمَّ أَجَازَ لِلْوَلِيِّ فَسْخَ الْعَقْدِ الْجَائِزِ، فَهِيَ أَقْوَالٌ لَا مُتَعَلَّقَ لَهَا بِقُرْآنٍ، وَلَا بِسُنَّةٍ لَا صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا بِقَوْلِ صَاحِبٍ، وَلَا بِمَعْقُولٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ - وَهَذَا لَا يُقْبَلُ إِلَّا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الَّذِي لَا يَنْطِقُ عَنْ الْهَوَى، إِلَّا عَنْ الْوَحْيِ مِنْ الْخَالِقِ، الَّذِي {لا يُسْأَلُ عَمَّا يَفْعَلُ} [الأنبياء: ٢٣] وَأَمَّا مِنْ غَيْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَهُوَ دِينٌ جَدِيدٌ، يُعَذِّبُ اللَّهُ بِهِ فِي الْحَشْرِ.

L30366 As for the statement of Mālik: this is manifest corruption, for he differentiated between base [actions] and non-base [actions], and we have not known baseness except as acts of disobedience to Allah the Exalted.

وَأَمَّا قَوْلُ مَالِكٍ: فَظَاهِرُ الْفَسَادِ، لِأَنَّهُ فَرَّقَ بَيْنَ الدَّنِيَّةِ وَغَيْرِ الدَّنِيَّةِ، وَمَا عَلِمْنَا الدَّنَاءَةَ إِلَّا مَعَاصِيَ اللَّهِ تَعَالَى.

L30367 As for the black woman and the client-woman, Umm Ayman—may Allah be pleased with her—was indeed a black woman and a client-woman. By Allah, I swear that after his wives—peace and blessings be upon him—there is no woman in this nation held in higher esteem by Allah the Exalted and all the people of Islam than her.

وَأَمَّا السَّوْدَاءُ، وَالْمَوْلَاةُ: فَقَدْ كَانَتْ أُمُّ أَيْمَنَ - رَضِيَ اللَّهُ عَنْهَا - سَوْدَاءَ وَمَوْلَاةً، وَوَاللَّهِ مَا بَعْدَ أَزْوَاجِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي هَذِهِ الْأُمَّةِ امْرَأَةٌ أَعْلَى قَدْرًا عِنْدَ اللَّهِ تَعَالَى وَعِنْدَ أَهْلِ الْإِسْلَامِ كُلِّهِمْ مِنْهَا.

[30] **Qur'an references (L30365):** Qur'an 21:23 (Al-Anbya).

L30368 As for the poor woman: poverty is not baseness, for among the prophets (peace be upon them) were those destroyed by poverty—though they are truly the people of honor and exalted status—while Qarun, Pharaoh, and Haman possessed wealth so vast it became known—though they are truly the people of baseness and vileness.

وَأَمَّا الْفَقِيرَةُ: فَمَا الْفَقْرُ دَنَاءَةً، فَقَدْ كَانَ فِي الْأَنْبِيَاءِ - عَلَيْهِمْ الصَّلَاةُ وَالسَّلَامُ - الْفَقِيرُ الَّذِي أَهْلَكَهُ الْفَقْرُ - وَهُمْ أَهْلُ الشَّرَفِ وَالرِّفْعَةِ حَقًّا - وَقَدْ كَانَ قَارُونُ، وَفِرْعَوْنُ، وَهَامَانُ: مِنْ الْغِنَى بِحَيْثُ عُرِفَ - وَهُمْ أَهْلُ الدَّنَاءَةِ وَالرَّذَالَةِ حَقًّا -.

L30369 As for the peasant woman: many a peasant woman is not coveted by numerous Quraysh men due to her wealth and elevated worldly status, while many a leader's daughter has perished in poverty, hardship, and ruin.

وَأَمَّا النَّبَطِيَّةُ: فَرُبَّ نَبَطِيَّةٍ لَا يَطْمَعُ فِيهَا كَثِيرٌ مِنْ قُرَيْشٍ لِيَسَارِهَا، وَعُلُوِّ حَالِهَا فِي الدُّنْيَا، وَرُبَّ بِنْتِ خَلِيفَةٍ هَلَكَتْ فَاقَةً وَجَهْدًا وَضَيَاعًا.

L30370–30371 Then his statement, "They are to be separated, but if the matter is prolonged and she bears his children, they are not to be separated," is the epitome of error. The matter is either valid or invalid, with no third possibility. If it is valid, no one has the right to nullify what is valid — neither immediately after its establishment nor later. If it is invalid, it is perpetually rejected unless a text from the Qur'an or the Sunnah of the Messenger of Allah, peace and blessings be upon him and his family, is presented, in which case it must be adhered to.

ثُمَّ قَوْلُهُ " يُفَرَّقُ بَيْنَهُمَا فَإِنْ طَالَ الْأَمْرُ وَوَلَدَتْ مِنْهُ الْأَوْلَادَ لَمْ يُفَرَّقْ بَيْنَهُمَا " فَهَذَا عَيْنُ الْخَطَأِ، إنَّمَا هُوَ حَقٌّ أَوْ بَاطِلٌ، وَلَا سَبِيلَ إلَى ثَالِثٍ، فَإِنْ كَانَ حَقًّا فَلَيْسَ لِأَحَدٍ نَقْضُ الْحَقِّ إثْرَ عَقْدِهِ وَلَا بَعْدَ ذَلِكَ وَإِنْ كَانَ بَاطِلًا فَالْبَاطِلُ مَرْدُودٌ أَبَدًا، إلَّا أَنْ يَأْتِيَ نَصٌّ مِنْ قُرْآنٍ أَوْ سُنَّةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَيُوقَفُ عِنْدَهُ.

L30372 We do not know of anyone before Mālik or any other scholar who made this statement of his, except those who blindly followed him. It has no connection to the Quran, nor to an authentic Sunnah, nor to a weak narration, nor to the saying of a Companion, nor a Follower, nor to reason, nor analogy, nor to an opinion with a discernible rationale.

وَمَا نَعْلَمُ قَوْلَ مَالِكٍ هَذَا قَالَهُ أَحَدٌ قَبْلَهُ وَلَا غَيْرُهُ، إلَّا مَنْ قَلَّدَهُ، وَلَا مُتَعَلِّقَ لَهُ بِقُرْآنٍ، وَلَا بِسُنَّةٍ صَحِيحَةٍ، وَلَا بِأَثَرٍ سَاقِطٍ، وَلَا بِقَوْلِ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا مَعْقُولٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ يُعْرَفُ.

L30373 As for the statement of Abū Thawr: The saying of the Messenger of Allah (peace and blessings be upon him)—"If they compete in claims, then the governing authority becomes the guardian for those without one"—prevents the woman's guardian from being any ordinary Muslim. This is because resolving disputes among all who have embraced Islam is impossible. Far be it from him to command adherence to an impossibility. Thus, it is established that he—peace and blessings be upon him—referred to a specific group who

وَأَمَّا قَوْلُ أَبِي ثَوْرٍ: فَإِنَّ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «فَإِنْ اشْتَجَرُوا فَالسُّلْطَانُ وَلِيُّ مَنْ لَا وَلِيَّ لَهُ» مَانِعٌ مِنْ أَنْ يَكُونَ وَلِيُّ الْمَرْأَةِ كُلَّ مُسْلِمٍ، لِأَنَّ مُرَاعَاةَ اشْتِجَارِ جَمِيعِ مَنْ أَسْلَمَ مِنْ النَّاسِ مُحَالٌ، وَحَاشَ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنْ يَأْمُرَ بِمُرَاعَاةِ مُحَالٍ لَا يُمْكِنُ فَصَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَنَى قَوْمًا خَاصَّةً يُمْكِنُ أَنْ يَشْتَجِرُوا فِي نِكَاحِ الْمَرْأَةِ، لَا حَقَّ لِغَيْرِهِمْ فِي ذَلِكَ.

might conflict over authority regarding the woman's marriage, as others have no right whatsoever in that matter.[31]

L30374 The statement of the Prophet - peace and blessings be upon him - "The governing authority is the guardian of one who has no guardian" is a clear exposition of our position, for if he - peace and blessings be upon him - had intended every Muslim, his statement "one who has no guardian" would have been impossible and invalid. Far be it from him to do such a thing. Thus, it is established that they are the male agnates who exist as guardians for some women but do not exist for others.

L30375 As for the opinion of Abū Sulaymān, reliance was placed on the authenticated report from the Messenger of Allah—peace and blessings be upon him—from his saying: "The virgin's father seeks her permission, and the previously married woman has more authority over herself than her guardian."

L30376 Abu Muhammad said: Had nothing else besides this existed, it would be as Abu Sulaiman said. However, the statement of the Prophet – peace and blessings be upon him – "Any woman who marries without her guardian's permission, her marriage is null and void" is a general ruling encompassing every woman, whether previously married or a virgin.

L30377–30378 The clarification of this position is that the meaning of his declaration—peace and blessings be upon him—"A previously married woman has greater authority over herself than her guardian" signifies that the guardian's command concerning her is not executed without her consent, and she may only marry whom she chooses. If she wishes to marry, she may only do so with the permission of their guardian. Should he refuse, the Sultan will marry them despite the guardian's refusal.

L30379 As for those who do not recognize any validity for the guardian, they have cited Allah's words as evidence: "until she marries another husband" [Al-Baqarah 2:230] and His words: "When they have fulfilled their prescribed

[31] **Hadith references (L30373):** Sunan Ibn Majah 1879; Jami at-Tirmidhi 1102; Mishkat al-Masabih 3131.

قَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «فَالسُّلْطَانُ وَلِيُّ مَنْ لَا وَلِيَّ لَهُ» بَيَانٌ جَلِيٌّ بِمَا قُلْنَا إذْ لَوْ أَرَادَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كُلَّ مُسْلِمٍ لَكَانَ قَوْلُهُ: «مَنْ لَا وَلِيَّ لَهُ» مُحَالًا بَاطِلًا، وَحَاشَ لَهُ مِنْ فِعْلِ ذَلِكَ، فَصَحَّ: أَنَّهُمْ الْعَصَبَةُ الَّذِينَ يُوجَدُونَ لِبَعْضِ النِّسَاءِ وَلَا يُوجَدُونَ لِبَعْضِهِنَّ.

وَأَمَّا قَوْلُ أَبِي سُلَيْمَانَ فَإِنَّمَا عُوِّلَ عَلَى الْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ «الْبِكْرُ يَسْتَأْذِنُهَا أَبُوهَا وَالثَّيِّبُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا» .

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَوْ لَمْ يَأْتِ غَيْرُهُ لَكَانَ كَمَا قَالَ أَبُو سُلَيْمَانَ، لَكِنَّ قَوْلَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إذْنِ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ» عُمُومٌ لِكُلِّ امْرَأَةٍ ثَيِّبٍ أَوْ بِكْرٍ.

وَبَيَانُ هَذَا الْقَوْلِ: أَنَّ مَعْنَى قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «وَالثَّيِّبُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا» أَنَّهُ لَا يَنْفُذُ فِيهَا أَمْرُهُ بِغَيْرِ إذْنِهَا، وَلَا تَنْكِحُ إلَّا مَنْ شَاءَتْ، فَإِذَا أَرَادَتْ النِّكَاحَ لَمْ يَجُزْ لَهَا إلَّا بِإِذْنِ وَلِيِّهِمَا، فَإِنْ أَبَى أَنْكَحَهُمَا السُّلْطَانُ عَلَى رَغْمِ أَنْفِ الْوَلِيِّ الْآبِيِّ.

وَأَمَّا مَنْ لَمْ يَرَ لِلْوَلِيِّ مَعْنًى فَإِنَّهُمْ احْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ} [البقرة: ٢٣٠] وَبِقَوْلِ اللَّهِ تَعَالَى: {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَلا جُنَاحَ عَلَيْكُمْ فِيمَا فَعَلْنَ فِي أَنْفُسِهِنَّ} [البقرة: ٢٣٤] .

waiting period, there is no blame on you for what they do regarding themselves" [Al-Baqarah 2:234].[32]

وَقَدْ قُلْنَا: إنَّ قَوْله تَعَالَى: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ} [النور: ٣٢] بَيَانٌ فِي أَنَّ نِكَاحَهُنَّ لَا يَكُونُ إلَّا بِإِذْنِ الْوَلِيِّ.

L30380 We have stated that the words of the Most High, "And marry those who are widowed or divorced among you" [24:32], indicate that their marriage is only valid with the permission of the guardian.[33]

وَاحْتَجُّوا بِأَنَّ أُمَّ حَبِيبَةَ أُمَّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - زَوَّجَهَا النَّجَاشِيُّ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {النَّبِيُّ أَوْلَى بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ وَأَزْوَاجُهُ أُمَّهَاتُهُمْ} [الأحزاب: ٦] فَهَذَا خَارِجٌ مِنْ قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إذْنِ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ» .

L30381 They argued that Umm Habībah, the Mother of the Believers (may Allah be pleased with her), was given in marriage by the Najāshī to the Messenger of Allah (peace be upon him). This provides no valid proof for their position, for Allah the Exalted states: "The Prophet is closer to the believers than their own selves, and his wives are their mothers" [Al-Aḥzāb: 6]. This case constitutes an exception to his ruling (peace be upon him): "Any woman who marries without her guardian's permission, her marriage is void."[34][35]

وَوَجْهٌ آخَرُ: وَهُوَ أَنَّ هَذَا الْقَوْلَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ الزَّائِدُ عَلَى مَعْهُودِ الْأَصْلِ، لِأَنَّ الْأَصْلَ - بِلَا شَكٍّ - أَنْ تَنْكِحَ الْمَرْأَةُ مَنْ شَاءَتْ بِغَيْرِ وَلِيٍّ، فَالشَّرْعُ الزَّائِدُ هُوَ الَّذِي لَا يَجُوزُ تَرْكُهُ، لِأَنَّهُ شَرِيعَةٌ وَارِدَةٌ مِنْ اللَّهِ تَعَالَى، كَالصَّلَاةِ بَعْدَ أَنْ لَمْ تَكُنْ، وَالزَّكَاةِ بَعْدَ أَنْ لَمْ تَكُنْ وَسَائِرِ الشَّرَائِعِ، وَلَا فَرْقَ.

L30382 Another perspective is that this statement from the Messenger of Allah—peace and blessings be upon him—constitutes supplementary legislation beyond the established customary principle, for the original principle—without doubt—is that a woman may marry whomever she wishes without a guardian. The supplementary legislation is what must not be abandoned, because it is a divinely ordained legislation revealed by Allah, the Exalted, like prayer after it had not been prescribed, zakat after it had not been prescribed, and all other legislations, and there is no difference [between them].

وَاحْتَجُّوا بِخَبَرٍ فِيهِ: أَنَّ عُمَرَ بْنَ أَبِي سَلَمَةَ هُوَ زَوَّجَ أُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L30383 They cited as evidence a narration stating that ʿUmar ibn Abī Salamah himself married Umm Salamah, the Mother of the Believers, may Allah be pleased with her, to the Prophet, peace be upon him and his family.

وَهَذَا خَبَرٌ إنَّمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ عُمَرَ بْنِ أَبِي سَلَمَةَ وَهُوَ مَجْهُولٌ.

L30384 And this is a report we have only transmitted through the chain of Ibn ʿUmar ibn Abī Salamah, and he is unknown.

ثُمَّ لَوْ صَحَّ لَكَانَ الْقَوْلُ فِيهِ كَالْقَوْلِ فِي حَدِيثِ أُمِّ حَبِيبَةَ سَوَاءً سَوَاءً، مَعَ أَنَّ عُمَرَ بْنَ أَبِي سَلَمَةَ كَانَ يَوْمَئِذٍ صَغِيرًا لَمْ يَبْلُغْ، هَذَا لَا خِلَافَ فِيهِ بَيْنَ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ بِالْأَخْبَارِ، فَمِنْ الْبَاطِلِ أَنْ يَعْتَمِدَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى عَقْدِ مَنْ لَا يَجُوزُ عَقْدُهُ.

L30385 Then, even if it were valid, the ruling concerning it would be the same as the ruling in the ḥadīth of Umm Ḥabībah—identical, identical—despite the fact

[32] **Qur'an references (L30379):** Qur'an 2:230 (Al-Baqarah); Qur'an 2:234 (Al-Baqarah).
[33] **Qur'an references (L30380):** Qur'an 24:32 (An-Nur).
[34] **Hadith references (L30381):** Jami at-Tirmidhi 1102; Mishkat al-Masabih 3131.
[35] **Qur'an references (L30381):** Qur'an 33:6 (Al-Ahzab).

that ʿUmar ibn Abī Salamah was at that time a minor who had not attained puberty. This is a matter upon which there is no disagreement among any of the scholars of reports. It is therefore baseless to claim that the Messenger of Allāh—peace and blessings of Allāh be upon him—would rely on the marriage contract of one whose contract is impermissible.

وَيَكْفِي فِي رَدِّ هَذَا كُلِّهِ مَا حَدَّثَنَاهُ يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ نا أَحْمَدُ بْنُ دُحَيْمِ بْنِ خَلِيلٍ نا إِبْرَاهِيمُ بْنُ حَمَّادٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ نا عَارِمٌ - هُوَ مُحَمَّدُ بْنُ الْفَضْلِ - نا حَمَّادُ بْنُ زَيْدٍ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: لَمَّا نَزَلَتْ فِي زَيْنَبَ بِنْتِ جَحْشٍ {فَلَمَّا قَضَى زَيْدٌ مِنْهَا وَطَرًا زَوَّجْنَاكَهَا} [الأحزاب: ٣٧] قَالَ: فَكَانَتْ تَفْخَرُ عَلَى نِسَاءِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - تَقُولُ: زَوَّجَكُنَّ أَهْلُوكُنَّ وَزَوَّجَنِي اللَّهُ عَزَّ وَجَلَّ مِنْ فَوْقِ سَبْعِ سَمَوَاتٍ.

L30386–30387 To refute all this, it suffices to cite what Yahyā ibn ʿAbd al-Raḥmān ibn Masʿūd narrated to us: Aḥmad ibn Duhaym ibn Khalīl narrated to us, Ibrāhīm ibn Ḥammād narrated to us, Ismāʿīl ibn Isḥāq narrated to us, ʿĀrim - who is Muḥammad ibn al-Faḍl - narrated to us, Ḥammād ibn Zayd narrated to us from Thābit al-Bunānī from Anas ibn Mālik, who said: When the verse regarding Zaynab bint Jaḥsh was revealed - "When Zayd had no further desire for her, We married her to you" (33:37) - she would boast to the Prophet's wives (may Allah's blessings and peace be upon him and his family), saying: "Your families married you off, while Allah the Exalted and Majestic married me from above the seven heavens."[36]

فَهَذَا إِسْنَادٌ صَحِيحٌ مُبَيِّنٌ أَنَّ جَمِيعَ نِسَائِهِ - عَلَيْهِ السَّلَامُ - إِنَّمَا زَوَّجَهُنَّ أَوْلِيَاؤُهُنَّ حَاشَ زَيْنَبَ - رَضِيَ اللَّهُ تَعَالَى عَنْهَا - فَإِنَّ اللَّهَ تَعَالَى زَوَّجَهَا مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L30388 Thus, this is a sound, clear chain of transmission that all his wives—peace be upon him—were married to him by their guardians, except Zaynab—may Allah the Exalted be pleased with her—for Allah the Exalted married her to him—peace and blessings be upon him.

وَصَحَّ بِهَذَا مَعْنَى قَوْلِ أُمِّ حَبِيبَةَ - رَضِيَ اللَّهُ عَنْهَا - أَنَّ النَّجَاشِيَّ زَوَّجَهَا أَيْ تَوَلَّى أَمْرَهَا وَمَا تَحْتَاجُ إِلَيْهِ وَكَانَ الْعَقْدُ بِحَضْرَتِهِ، قَدْ كَانَ هُنَالِكَ أَقْرَبُ النَّاسِ إِلَيْهَا عُثْمَانُ بْنُ عَفَّانَ بْنِ أَبِي الْعَاصِ بْنِ أُمَيَّةَ، وَعَمْرٌو، وَخَالِدٌ، ابْنَا سَعْدِ بْنِ الْعَاصِ بْنِ أُمَيَّةَ، فَكَيْفَ يُزَوِّجُهَا النَّجَاشِيُّ - بِمَعْنَى يَتَوَلَّى عَقْدَ نِكَاحِهَا - وَهَؤُلَاءِ حُضُورٌ رَاضُونَ مَسْرُورُونَ آذِنُونَ فِي ذَلِكَ بِيَقِينٍ لَا شَكَّ فِيهِ؟ .

L30389 This validates the meaning of Umm Habibah's statement—may Allah be pleased with her—that the Negus officiated her marriage, meaning he undertook her affairs and what she required, with the marriage contract executed in his presence. At that time, her closest relatives present were Uthman ibn Affan ibn Abi al-As ibn Umayyah, and Amr and Khalid, the two sons of Sa'd ibn al-As ibn Umayyah. How could the Negus officiate her marriage—by conducting her marriage contract—when these individuals were present, consenting, joyful, and permitting it with certainty, free of any doubt?

وَأَمَّا تَزْوِيجُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْمَرْأَةَ بِتَعْلِيمِ سُورَةٍ مِنْ الْقُرْآنِ فَلَيْسَ فِي الْخَبَرِ أَنَّهُ كَانَ لَهَا وَلِيٌّ أَصْلًا فَلَا يُعْتَرَضُ عَلَى الْيَقِينِ بِالشُّكُوكِ.

L30390 As for his marriage—peace and blessings be upon him—to a woman with the teaching of a surah from the Quran as her dowry, the report does not

[36] **Qur'an references (L30387):** Qur'an 33:37 (Al-Ahzab).

indicate she had any wali at all; thus, certainty should not be contested with doubts.

وَهَكَذَا الْقَوْلُ فِي كُلِّ حَدِيثٍ ذَكَرُوهُ، كَخَبَرِ نِكَاحِ مَيْمُونَةَ أُمِّ الْمُؤْمِنِينَ وَإِنَّمَا جَعَلَتْ أَمْرَهَا إِلَى الْعَبَّاسِ فَزَوَّجَهَا مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L30391 Such is the ruling concerning every hadith they cited, like the report of the marriage of Maymunah, *the Mother of the Believers*, who entrusted her guardianship to al-Abbas, and he, as her guardian, married her to the Prophet, peace and blessings be upon him.

وَنِكَاحِ أَبِي طَلْحَةَ أُمَّ سُلَيْمٍ - رَضِيَ اللَّهُ عَنْهَا - عَلَى الْإِسْلَامِ فَقَطْ، أَنْكَحَهَا إِيَّاهُ أَنَسُ بْنُ مَالِكٍ، وَهُوَ صَغِيرٌ دُونَ عَشْرِ سِنِينَ.

L30392 The marriage of Abu Talhah to Umm Sulaym—may Allah be pleased with her—was contracted solely on the basis of her Islam. Anas ibn Malik gave her in marriage to him while he was still a child under ten years old.

فَهَذَا كُلُّهُ مَنْسُوخٌ بِإِبْطَالِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - النِّكَاحَ بِغَيْرِ وَلِيٍّ، وَسَائِرُ الْأَحَادِيثِ الَّتِي فِيهَا أَنَّ نِسَاءً أُنْكِحْنَ بِغَيْرِ إِذْنِ أَهْلِهِنَّ، فَرَدَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - نِكَاحَهُنَّ وَجَعَلَ إِلَيْهِنَّ إِجَازَةَ ذَلِكَ إِنْ شِئْنَ - فَكُلُّهَا أَخْبَارٌ لَا تَصِحُّ إِمَّا مُرْسَلَةٌ، وَإِمَّا مِنْ رِوَايَةِ عَلِيِّ بْنِ غُرَابٍ - وَهُوَ ضَعِيفٌ - فَظَهَرَ صِحَّةُ قَوْلِنَا.

L30393 All of this is abrogated by his invalidation—peace and blessings be upon him—of marriage without a guardian, along with all other hadiths stating that women were married without their guardians' consent, where he—peace and blessings be upon him—nullified their marriages and granted them ratification of that if they so chose. All these narrations are inauthentic, either mursal or transmitted through Ali ibn Ghurab—who is weak—thus demonstrating the validity of our position.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L30394 And by Allah, the Exalted, is the success.

وَأَمَّا قَوْلُنَا: إِنَّهُ لَا يَجُوزُ إِنْكَاحُ الْأَبْعَدِ مِنَ الْأَوْلِيَاءِ مَعَ وُجُودِ الْأَقْرَبِ، فَلِأَنَّ النَّاسَ كُلَّهُمْ يَلْتَقُونَ فِي أَبٍ بَعْدَ أَبٍ إِلَى آدَمَ - عَلَيْهِ السَّلَامُ - بِلَا شَكٍّ، فَلَوْ جَازَ إِنْكَاحُ الْأَبْعَدِ مَعَ وُجُودِ الْأَقْرَبِ لَجَازَ إِنْكَاحُ كُلِّ مَنْ عَلَى وَجْهِ الْأَرْضِ لِأَنَّهُ يَلْقَاهَا بِلَا شَكٍّ فِي بَعْضِ آبَائِهَا، فَإِنْ حَدُّوا فِي ذَلِكَ حَدًّا كُلِّفُوا الْبُرْهَانَ عَلَيْهِ، وَلَا سَبِيلَ إِلَيْهِ - فَصَحَّ يَقِينًا أَنَّهُ لَا حَقَّ مَعَ الْأَقْرَبِ لِلْأَبْعَدِ، ثُمَّ إِنْ عُدِمَ فَمَنْ فَوْقَهُ بَابٌ هَكَذَا أَبَدًا مَا دَامَ يُعْلَمُ لَهَا وَلِيٌّ عَاصِبٌ، كَالْمِيرَاثِ وَلَا فَرْقَ.

L30395–30397 As for our statement that the marriage effected by the more distant guardian among the guardians is not permissible while the closer guardian exists, this is because people... All of them trace back through successive fathers to Adam, peace be upon him, without doubt. If it were permissible for a more distant relative to give her in marriage while a closer relative exists, it would be permissible for anyone on earth to do so, since he would undoubtedly share a direct paternal ancestor with her among her forefathers. If they were to set a specific limit for this, they would be obligated to prove it, and there is no way to do so. Thus, it is definitively established that no right remains for the more distant relative in the presence of a closer one. Then, if the closer relative is absent, it passes to those above him—this principle continues indefinitely as long as she has a known agnatic guardian, as in inheritance, with no difference.

If the guardian is absent, it is obligatory to await him. If they say: “Does this harm her?” We reply: Necessity does not permit the exposure of private parts. The Malikis have concurred with us that if the absent husband possesses wealth from which maintenance is provided to the wife, she may not divorce him—even if his absence harms her due to the lack of intimacy and the loss of many of her affairs. The Hanafis have concurred with us that even if he has no wealth, she may not divorce him, for no harm is greater than the lack of maintenance.

وَأَمَّا إِنْ كَانَ الْوَلِيُّ غَائِبًا فَلَا بُدَّ مِنْ انْتِظَارِهِ، فَإِنْ قَالُوا: إِنَّ ذَلِكَ يَضُرُّ بِهَا؟ قُلْنَا: الضَّرُورَةُ لَا تُبِيحُ الْفُرُوجَ - وَقَدْ وَافَقَنَا الْمَالِكِيُّونَ عَلَى أَنَّهُ إِنْ كَانَ لِلزَّوْجِ الْغَائِبِ مَالٌ يُنْفَقُ مِنْهُ عَلَى الْمَرْأَةِ لَمْ تَطْلُقْ عَلَيْهِ - وَإِنْ أَضَرَّتْ غَيْبَتُهُ بِهَا فِي فَقْدِ الْجِمَاعِ وَضَيَاعِ كَثِيرٍ مِنْ أُمُورِهَا - وَوَافَقَنَا الْحَنَفِيُّونَ فِي أَنَّهُ وَإِنْ لَمْ يَكُنْ لَهُ مَالٌ فَإِنَّهَا لَا تَطْلُقُ عَلَيْهِ وَلَا ضَرَرَ أَضَرُّ مِنْ عَدَمِ النَّفَقَةِ.

Then we ask them about the definition of occultation in which they await the guardian, compared to the occultation where they do not await him. For they produce nothing but disgraceful statements and arguments devoid of comprehensible reasoning—and in Allah the Exalted we seek strength.

ثُمَّ نَسْأَلُهُمْ فِي حَدِّ الْغَيْبَةِ الَّتِي يَنْتَظِرُونَ الْوَلِيَّ فِيهَا مِنَ الْغَيْبَةِ الَّتِي لَا يَنْتَظِرُونَهُ فِيهَا، فَإِنَّهُمْ لَا يَأْتُونَ إِلَّا بِفَضِيحَةٍ، وَبِقَوْلٍ لَا يُعْقَلُ وَجْهُهُ - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

The ruling on the father marrying off his minor daughter.

[مَسْأَلَة إِنْكَاحُ الْأَبِ ابْنَتَهُ الصَّغِيرَةَ]

Issue 1826: A father may marry off his minor virgin daughter - before she reaches puberty - without her consent, and she has no right to annul the marriage upon reaching puberty. If she is a thayyib (a woman whose prior marriage ended through her husband’s death or divorce), neither the father nor any other guardian may marry her off until she reaches puberty, nor does either of them have the right to grant consent before then.

١٨٢٦ - مَسْأَلَةٌ: وَلِلْأَبِ أَنْ يُزَوِّجَ ابْنَتَهُ الصَّغِيرَةَ الْبِكْرَ - مَا لَمْ تَبْلُغْ - بِغَيْرِ إِذْنِهَا، وَلَا خِيَارَ لَهَا إِذَا بَلَغَتْ فَإِنْ كَانَتْ ثَيِّبًا مِنْ زَوْجٍ مَاتَ عَنْهَا أَوْ طَلَّقَهَا لَمْ يَجُزْ لِلْأَبِ وَلَا لِغَيْرِهِ أَنْ يُزَوِّجَهَا حَتَّى تَبْلُغَ، وَلَا إِذْنَ لَهُمَا قَبْلَ أَنْ تَبْلُغَ.

When a virgin or a previously married woman attains puberty, neither her father nor anyone else may arrange her marriage without her consent. If such a marriage occurs, it is annulled irrevocably.

وَإِذَا بَلَغَتْ الْبِكْرُ وَالثَّيِّبُ لَمْ يَجُزْ لِلْأَبِ وَلَا لِغَيْرِهِ أَنْ يُزَوِّجَهَا إِلَّا بِإِذْنِهَا، فَإِنْ وَقَعَ فَهُوَ مَفْسُوخٌ أَبَدًا.

As for the non-virgin woman, she may marry whomever she chooses, even if the father objects.

فَأَمَّا الثَّيِّبُ فَتَنْكِحُ مَنْ شَاءَتْ، وَإِنْ كَرِهَ الْأَبُ.

As for the virgin, marriage is not permissible for her except by the conjunction of her consent and her father’s consent.

وَأَمَّا الْبِكْرُ فَلَا يَجُوزُ لَهَا نِكَاحٌ إِلَّا بِاجْتِمَاعِ إِذْنِهَا وَإِذْنِ أَبِيهَا.

As for the minor female who has no father, no one has the right to marry her off—whether out of necessity or not—until she reaches puberty. Nor does anyone have the right to marry off an insane woman until she regains

sanity and consents, except the father solely in the case of the one who has not reached puberty and is insane.

وَأَمَّا الصَّغِيرَةُ الَّتِي لَا أَبَ لَهَا فَلَيْسَ لِأَحَدٍ أَنْ يُنْكِحَهَا لَا مِنْ ضَرُورَةٍ وَلَا مِنْ غَيْرِ ضَرُورَةٍ حَتَّى تَبْلُغَ، وَلَا لِأَحَدٍ أَنْ يُنْكِحَ مَجْنُونَةً حَتَّى تُفِيقَ وَتَأْذَنَ، إلَّا الْأَبَ فِي الَّتِي لَمْ تَبْلُغْ وَهِيَ مَجْنُونَةٌ فَقَطْ.

L30406–30408 And in some of what we have mentioned there is a difference of opinion: Ibn Shubrumah said: It is not permissible for a father to marry off his minor daughter unless she has reached puberty and consented, and he held the view on the matter. Aisha (may Allah be pleased with her) [discussed matters] specific to the Prophet (peace and blessings of Allah be upon him and his family), such as the mawhubah (a woman given in marriage without dowry) and marrying more than four wives.

وَفِي بَعْضِ مَا ذَكَرْنَا خِلَافٌ -: قَالَ ابْنُ شُبْرُمَةَ: لَا يَجُوزُ إنْكَاحُ الْأَبِ ابْنَتَهُ الصَّغِيرَةَ إلَّا حَتَّى تَبْلُغَ وَتَأْذَنَ، وَرَأَى أَمْرَ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - خُصُوصًا لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، كَالْمَوْهُوبَةِ، وَنِكَاحُ أَكْثَرَ مِنْ أَرْبَعٍ.

L30409 Al-Ḥasan and Ibrāhīm al-Nakhaʿī said: A father's act of marrying off his minor daughter, his adult previously married daughter, or his virgin daughter—even if they two dislike it—is permissible for them two.

وَقَالَ الْحَسَنُ، وَإِبْرَاهِيمُ النَّخَعِيُّ: إنْكَاحُ الْأَبِ ابْنَتَهُ الصَّغِيرَةَ وَالْكَبِيرَةَ الثَّيِّبَ، وَالْبِكْرَ - وَإِنْ كَرِهَتَا - جَائِزٌ عَلَيْهِمَا.

L30410 As narrated through the chain of Saʿīd ibn Manṣūr → Hushaym → Manṣūr ibn al-Muʿtamir and ʿUbaydah: Manṣūr reported from al-Ḥasan, while ʿUbaydah reported from Ibrāhīm. Both jointly stated: Verily, the father's act of contracting marriage for his daughter - whether she is a virgin or previously married - is valid.

كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا مَنْصُورُ بْنُ الْمُعْتَمِرِ، وَعُبَيْدَةُ، قَالَ مَنْصُورٌ: عَنْ الْحَسَنِ، وَقَالَ عُبَيْدَةُ: عَنْ إبْرَاهِيمَ، قَالَا جَمِيعًا: إنَّ نِكَاحَ الْأَبِ ابْنَتَهُ بِكْرًا أَوْ ثَيِّبًا جَائِزٌ.

L30411 We have received a narration from Ibrāhīm conveying another opinion, as transmitted by Muḥammad ibn Saʿīd ibn Nabāt via Aḥmad ibn ʿAbd al-Raḥīm, via Qāsim ibn Aṣbagh, via Muḥammad ibn ʿAbd al-Salām al-Khushanī, via Muḥammad ibn al-Muthannā, via ʿAbd al-Raḥmān ibn Mahdī, via Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm al-Nakhaʿī, who said: "A virgin's father does not seek her permission, whereas if a non-virgin woman has dependents, her father seeks her permission."

وَرُوِّينَا عَنْ إبْرَاهِيمَ قَوْلًا آخَرَ -: كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الرَّحِيمِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: الْبِكْرُ لَا يَسْتَأْمِرُهَا أَبُوهَا وَالثَّيِّبُ إنْ كَانَتْ فِي عِيَالٍ اسْتَأْمَرَهَا.

L30412 Mālik said: As for the virgin, her father does not seek her consent—whether she has attained puberty or not, whether she is a woman of mature age or not—and his act of marrying her off remains valid even if she objects. Similarly, if her husband has secluded with her without consummating the

وَقَالَ مَالِكٌ: أَمَّا الْبِكْرُ فَلَا يَسْتَأْمِرُهَا أَبُوهَا - بَلَغَتْ أَوْ لَمْ تَبْلُغْ، عَنَسَتْ أَوْ لَمْ تَعْنِسْ - وَيَنْفُذُ إنْكَاحُهُ لَهَا وَإِنْ كَرِهَتْ، وَكَذَلِكَ إنْ دَخَلَ بِهَا زَوْجُهَا إلَّا أَنَّهُ لَمْ يَطَأْهَا، فَإِنْ

marriage, then if she remains with him for a full year and has appeared in public gatherings, it is not permissible for the father to marry her off thereafter without her permission—even if her husband has not consummated the marriage.

بَقِيَتْ مَعَهُ سَنَةً وَشَهِدَتْ الْمَشَاهِدَ لَمْ تَجُزْ لِلْأَبِ أَنْ يُنْكِحَهَا بَعْدَ ذَلِكَ إلَّا بِإِذْنِهَا - وَإِنْ كَانَ زَوْجُهَا لَمْ يَطَأْهَا.

L30413 He said: As for a previously married woman, it is impermissible for her father or any other guardian to contract her marriage except with her explicit consent.

قَالَ: وَأَمَّا الثَّيِّبُ فَلَا يَجُوزُ إنْكَاحُ الْأَبِ وَلَا غَيْرِهِ عَلَيْهَا إلَّا بِإِذْنِهَا.

L30414 He said: The grandfather, unlike the father in the cases we have mentioned, must not marry off a virgin or any other woman without her consent, just like all other guardians.

قَالَ: وَالْجَدُّ بِخِلَافِ الْأَبِ فِيمَا ذَكَرْنَا، لَا يُزَوِّجُ الْبِكْرَ وَلَا غَيْرَهَا إلَّا بِإِذْنِهَا كَسَائِرِ الْأَوْلِيَاءِ.

L30415 His opinion differed concerning the minor virgin without a father: he permitted her brother to arrange her marriage on her behalf if acting in her best interest as her guardian according to Ibn Wahb's narration, whereas the narration of Ibn al-Qasim represents those who prohibited it.

وَاخْتَلَفَ قَوْلُهُ فِي الْبِكْرِ الصَّغِيرَةِ الَّتِي لَا أَبَ لَهَا فَأَجَازَ إنْكَاحَ الْأَخِ لَهَا إذَا كَانَ نَظَرًا لَهَا فِي رِوَايَةِ ابْنِ وَهْبٍ، وَمَنْ مَنَعَهُ رِوَايَةُ ابْنِ الْقَاسِمِ.

L30416 Abu Hanifa and Abu Sulaiman said: The father may contract the marriage of the minor girl as long as she has not reached puberty—whether she is a virgin or previously married. When she reaches puberty, she may marry whomever she wishes, and the father's permission is not required in that matter, as with all other guardians. He is not permitted to contract her marriage except with her consent—whether she is a virgin or previously married.

وَقَالَ أَبُو حَنِيفَةَ، وَأَبُو سُلَيْمَانَ يُنْكِحُ الْأَبُ الصَّغِيرَةَ مَا لَمْ تَبْلُغْ - بِكْرًا كَانَتْ أَوْ ثَيِّبًا - فَإِذَا بَلَغَتْ نَكَحَتْ مَنْ شَاءَتْ وَلَا إذْنَ لِلْأَبِ فِي ذَلِكَ كَسَائِرِ الْأَوْلِيَاءِ، وَلَا يَجُوزُ إنْكَاحُهُ لَهَا إلَّا بِإِذْنِهَا - بِكْرًا كَانَتْ أَوْ ثَيِّبًا.

L30417 Abu Hanifah said: "The grandfather is like the father in all of that."

وَقَالَ أَبُو حَنِيفَةَ: وَالْجَدُّ كَالْأَبِ فِي كُلِّ ذَلِكَ.

L30418–30419 Al-Shafi'i said: The father and the paternal grandfather—if the father has died—may marry off the minor virgin without her permission when she reaches puberty, and likewise the virgin of legal age.

وَقَالَ الشَّافِعِيُّ: يُزَوِّجُ الْأَبُ وَالْجَدُّ لِلْأَبِ إنْ كَانَ الْأَبُ قَدْ مَاتَ: الْبِكْرَ الصَّغِيرَةَ وَلَا إذْنَ لَهَا إذَا بَلَغَتْ، وَكَذَلِكَ الْبِكْرُ الْكَبِيرَةُ.

L30420 No one may marry off a non-virgin minor until she reaches puberty, regardless of whether her virginity was lost through coercion or consent, or whether the act was lawful or unlawful.

وَلَا يُزَوِّجُ الثَّيِّبَ الصَّغِيرَةَ أَحَدٌ حَتَّى تَبْلُغَ، سَوَاءٌ بِإِكْرَاهٍ ذَهَبَتْ عُذْرَتُهَا أَوْ بِرِضًا، بِحَرَامٍ أَوْ حَلَالٍ.

L30421 As for the mature woman who has been married before, neither her father, paternal grandfather, nor any other guardian may arrange her marriage

without her consent, and she has the right to marry whomever she wishes if she has reached puberty.

وَأَمَّا الثَّيِّبُ الْكَبِيرَةُ فَلَا يُزَوِّجُهَا الْأَبُ وَلَا الْجَدُّ وَلَا غَيْرُهُمَا إِلَّا بِإِذْنِهَا، وَلَهَا أَنْ تَنْكِحَ مَنْ شَاءَتْ إِذَا كَانَتْ بَالِغًا.

L30422 Abu Muhammad said: The proof for the permissibility of a father marrying off his young virgin daughter is Abu Bakr's (may Allah be pleased with him) giving Aisha (may Allah be pleased with her) in marriage to the Prophet (peace and blessings be upon him) when she was six years old. This is a well-known matter that dispenses with the need to cite chains of transmission (isnād). Whoever claims this is a special case, no heed is given to their claim, due to Allah's saying: {There has certainly been for you in the Messenger of Allah an excellent example for anyone whose hope is in Allah and the Last Day} [Al-Ahzab: 21]. Therefore, every action he (peace and blessings be upon him) performed is one we may emulate, unless a text explicitly states it is specific to him.[37]

قَالَ أَبُو مُحَمَّدٍ: الْحُجَّةُ فِي إِجَازَةِ إِنْكَاحِ الْأَبِ ابْنَتَهُ الصَّغِيرَةَ الْبِكْرَ إِنْكَاحُ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - وَهِيَ بِنْتُ سِتِّ سِنِينَ، وَهَذَا أَمْرٌ مَشْهُورٌ غَنِيٌّ عَنْ إِيرَادِ الْإِسْنَادِ فِيهِ، فَمَنْ ادَّعَى أَنَّهُ خُصُوصٌ لَمْ يُلْتَفَتْ لِقَوْلِهِ، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ لِمَنْ كَانَ يَرْجُو اللَّهَ وَالْيَوْمَ الآخِرَ} [الأحزاب: ٢١] فَكُلُّ مَا فَعَلَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَلَنَا أَنْ نَتَأَسَّى بِهِ فِيهِ، إِلَّا أَنْ يَأْتِيَ نَصٌّ بِأَنَّهُ لَهُ خُصُوصٌ.

L30423 If someone were to say: "This is an action from him (peace and blessings be upon him) and not a statement, so on what basis have you particularized the virgin as opposed to the previously married woman, and the minor as opposed to the adult woman, and this is not from your foundational principles?"

فَإِنْ قَالَ قَائِلٌ: فَإِنَّ هَذَا فِعْلٌ مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَلَيْسَ قَوْلًا، فَمِنْ أَيْنَ خَصَّصْتُمُ الْبِكْرَ دُونَ الثَّيِّبِ، وَالصَّغِيرَةَ دُونَ الْكَبِيرَةِ، وَلَيْسَ هَذَا مِنْ أُصُولِكُمْ؟

L30424 We said: Yes, we have confined ourselves to the minor virgin due to the report transmitted in Muslim's collection through the chain: Ibn Abi 'Umar narrated to us, Sufyan—Ibn 'Uyaynah—narrated to us from Ziyad ibn Sa'd from 'Abdullah ibn al-Fadl, who heard Nafi' ibn Jubayr report from Ibn 'Abbas that the Prophet—peace and blessings of Allah be upon him—said: "A previously married woman has greater authority over herself than her guardian, and a virgin's father seeks her permission concerning herself, and her consent is her silence."[38]

قُلْنَا: نَعَمْ، إِنَّمَا اقْتَصَرْنَا عَلَى الصَّغِيرَةِ الْبِكْرِ لِلْخَبَرِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا ابْنُ أَبِي عُمَرَ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ زِيَادِ بْنِ سَعْدٍ عَنْ عَبْدِ اللَّهِ بْنِ الْفَضْلِ سَمِعَ نَافِعَ بْنَ جُبَيْرٍ يُخْبِرُ عَنِ ابْنِ عَبَّاسٍ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الثَّيِّبُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا وَالْبِكْرُ يَسْتَأْذِنُهَا أَبُوهَا فِي نَفْسِهَا وَإِذْنُهَا صُمَاتُهَا» .

L30425 Thus, the non-virgin woman—whether young or old—was excluded by the general scope of this narration. The adult virgin was likewise excluded by it, for seeking permission applies only to a sane adult, based on the authen-

فَخَرَجَتِ الثَّيِّبُ صَغِيرَةً كَانَتْ أَوْ كَبِيرَةً بِعُمُومِ هَذَا الْخَبَرِ، وَخَرَجَتِ الْبِكْرُ الْبَالِغُ بِهِ أَيْضًا، لِأَنَّ الِاسْتِئْذَانَ لَا يَكُونُ إِلَّا لِلْبَالِغِ الْعَاقِلِ لِلْأَثَرِ الثَّابِتِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ

[37] **Qur'an references (L30422):** Qur'an 33:21 (Al-Ahzab).
[38] **Hadith references (L30424):** Sahih Muslim 1421c; Mishkat al-Masabih 3127.

tically transmitted narration from the Prophet (peace and blessings be upon him) who said, “The pen is lifted concerning three,” including among them “a minor until they reach puberty.” The virgin without a father was also excluded by the explicit text mentioned, leaving only the minor virgin who has a father.

L30426 If it is asked: Why do you not permit the grandfather to arrange her marriage as you do the father?

L30427–30428 We said: Because of Allah the Exalted’s statement: {No soul bears sin except against itself} [Al-An’am: 164], it is impermissible to exclude anything from this general principle except what is established solely through the narration—and that is the nearest father. This aforementioned narration invalidates the view of al-Ḥasan and Ibrāhīm which we mentioned earlier.[39]

L30429 As for Mālik’s statement regarding the woman who remained with her husband for less than a year (without consummation), that her father may marry her off without her permission: if she completes a year with her husband and had participated in the sacred rites, he no longer has the right to contract her marriage except with her permission.

L30430 So it is in the utmost corruption, because it is an arbitrary judgment unsupported by the Quran, the Sunnah, a weak narration, any statement from predecessors whatsoever, analogy, or even a soundly reasoned opinion.

L30431 As for al-Shāfiʿī’s equating the minor girl subjected to unlawful intercourse with the non-virgin, this is a clear error. We would ask them: If she reaches puberty and then engages in fornication, is she considered a virgin or a non-virgin regarding the *ḥadd* punishment? Since they would say she is a virgin, the flaw in their argument becomes evident, and it is confirmed that she is legally treated as a virgin.

L30432 As for those who grant a previously married woman and a virgin who has reached the age of eligibility for marriage the right to marry whomever she wishes—even if her father objects—and those who grant the father the

عَلَيْهِ وَسَلَّمَ - «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ» فَذَكَرَ فِيهِمْ «الصَّغِيرِ حَتَّى يَبْلُغَ» فَخَرَجَ الْبِكْرُ الَّتِي لَا أَبَ لَهَا بِالنَّصِّ الْمَذْكُورِ أَيْضًا، فَلَمْ تَبْقَ إِلَّا الصَّغِيرَةُ الْبِكْرُ ذَاتُ الْأَبِ فَقَطْ.

فَإِنْ قِيلَ: فَلِمَ لَمْ تُجِيزُوا إِنْكَاحَ الْجَدِّ لَهَا كَالْأَبِ؟

قُلْنَا: لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَلَمْ يَجُزْ أَنْ يَخْرُجَ مِنْ هَذَا الْعُمُومِ إِلَّا مَا جَاءَ بِهِ الْخَبَرُ فَقَطْ، وَهُوَ الْأَبُ الْأَدْنَى، وَبِالْخَبَرِ الْمَذْكُورِ يَبْطُلُ قَوْلُ الْحَسَنِ، وَإِبْرَاهِيمَ الَّذِي ذَكَرْنَا آنِفًا.

وَأَمَّا قَوْلُ مَالِكٍ فِي الَّتِي بَقِيَتْ مَعَ زَوْجِهَا أَقَلَّ مِنْ سَنَةٍ - وَلَمْ يَطَأْهَا - أَنَّ أَبَاهَا يُزَوِّجُهَا بِغَيْرِ إِذْنِهَا، فَإِنْ أَتَمَّتْ مَعَ زَوْجِهَا سَنَةً وَشَهِدَتْ الْمَشَاهِدَ لَمْ يَكُنْ لَهُ أَنْ يُزَوِّجَهَا إِلَّا بِإِذْنِهَا.

فَفِي غَايَةِ الْفَسَادِ، لِأَنَّهُ تَحَكُّمٌ لَا يَعْضُدُهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ ضَعِيفَةٌ، وَلَا قَوْلُ أَحَدٍ قَبْلَهُ جُمْلَةً، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ.

وَأَمَّا إِلْحَاقُ الشَّافِعِيِّ الصَّغِيرَةَ الْمَوْطُوءَةَ بِحَرَامٍ بِالثَّيِّبِ، فَخَطَأٌ ظَاهِرٌ، لِأَنَّا نَسْأَلُهُمْ إِنْ بَلَغَتْ فَزَنَتْ: أَبِكْرٌ هِيَ فِي الْحَدِّ أَمْ ثَيِّبٌ؟ فَمِنْ قَوْلِهِمْ: إِنَّهَا بِكْرٌ، فَظَهَرَ فَسَادُ قَوْلِهِمْ، وَصَحَّ أَنَّهَا فِي حُكْمِ الْبِكْرِ.

وَأَمَّا مَنْ جَعَلَ لِلثَّيِّبِ وَالْبِكْرِ إِذَا بَلَغَتْ أَنْ تَنْكِحَ مَنْ شَاءَتْ - وَإِنْ كَرِهَ أَبُوهَا - وَمَنْ جَعَلَ لِلْأَبِ أَنْ يُنْكِحَهَا - وَإِنْ كَرِهَتْ - فَكِلَاهُمَا خَطَأٌ بَيِّنٌ، لِلْأَثَرِ الثَّابِتِ الَّذِي ذَكَرْنَا

[39] **Qur’an references (L30428):** Qur’an 6:164 (Al-An’am).

آنِفًا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الثَّيِّبُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا وَالْبِكْرُ يَسْتَأْذِنُهَا أَبُوهَا» .

authority to contract her marriage—even if she objects—both of these views are clearly erroneous, due to the authentic report we previously cited from the Messenger of Allah—peace and blessings be upon him: "A previously married woman has more right over herself than her marriage guardian, and a virgin's father seeks her consent."[40]

فَفَرَّقَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَيْنَ الثَّيِّبِ وَالْبِكْرِ فَجَعَلَ لِلثَّيِّبِ أَنَّهَا أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا، فَوَجَبَ بِذَلِكَ أَنَّهُ لَا أَمْرَ لِلْأَبِ فِي إنْكَاحِهَا، وَأَنَّهَا أَحَقُّ بِنَفْسِهَا مِنْهُ وَمِنْ غَيْرِهِ، وَجَعَلَ الْبِكْرَ بِخِلَافِ ذَلِكَ، وَأَوْجَبَ عَلَى الْأَبِ أَنْ يَسْتَأْمِرَهَا، فَصَحَّ أَنَّهُ لَا بُدَّ مِنْ اجْتِمَاعِ الْأَمْرَيْنِ: إذْنُهَا، وَاسْتِئْذَانُ أَبِيهَا، وَلَا يَصِحُّ لَهَا نِكَاحٌ وَلَا عَلَيْهَا إلَّا بِهِمَا جَمِيعًا.

L30433 He—peace and blessings be upon him—distinguished between the previously married woman and the virgin, ruling that the previously married woman has more right over herself than her guardian. Consequently, the father holds no authority in contracting her marriage, as she has more right over herself than him or anyone else. He decreed the opposite for the virgin, obligating the father to seek her permission. This establishes that both conditions must be met: her permission and her father's seeking of permission. No marriage is valid for her or imposed upon her unless both conditions are fulfilled together.

وقَوْله تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] مُوجِبٌ أَنْ لَا يَجُوزَ عَلَى الْبَالِغَةِ الْبِكْرِ إنْكَاحُ أَبِيهَا بِغَيْرِ إذْنِهَا، وَقَدْ جَاءَتْ بِهَذَا آثَارٌ صِحَاحٌ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ الْمَرْوَزِيُّ نا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي مُعَاوِيَةُ بْنُ صَالِحٍ نا الْحَكَمُ بْنُ مُوسَى نا شُعَيْبُ بْنُ إِسْحَاقَ عَنْ الْأَوْزَاعِيِّ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ: «أَنَّ رَجُلًا زَوَّجَ ابْنَتَهُ وَهِيَ بِكْرٌ مِنْ غَيْرِ أَمْرِهَا، فَأَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَفَرَّقَ بَيْنَهُمَا» .

L30434 The statement of the Almighty: {No soul earns [a burden] except upon itself} [Al-Anʿam 6:164] establishes the impermissibility of a father marrying off his adult virgin daughter without her consent. Sound narrations have been transmitted regarding this: Abdullah ibn Rabiʿ reported from Muhammad ibn Muʿawiyah al-Marwazi (from Marw), who reported from Ahmad ibn Shuʿayb, who informed me through Muʿawiyah ibn Salih, from al-Hakam ibn Musa, who reported from Shuʿayb ibn Ishaq, from al-Awzaʿi, from ʿAta' ibn Abi Rabah, from Jabir ibn ʿAbdullah: "A man married off his daughter while she was a virgin without her consent. She came to the Prophet (peace and blessings be upon him and his family), and he annulled their marriage."[41]

قَالَ أَبُو مُحَمَّدٍ: مُعَاوِيَةُ بْنُ صَالِحٍ هَذَا هُوَ الْأَشْعَرِيُّ - ثِقَةٌ مَأْمُونٌ - لَيْسَ هُوَ الْأَنْدَلُسِيَّ الْحَضْرَمِيَّ، ذَلِكَ ضَعِيفٌ، وَهُوَ قَدِيمٌ.

L30435–30436 Abu Muhammad said: This Muawiyah ibn Salih is the Ash'ari - trustworthy and reliable - not the Andalusian Hadhrami, that one being weak, while he is the earlier figure.

وَبِهِ إلَى أَحْمَدَ بْنِ شُعَيْبٍ نَا مُحَمَّدُ بْنُ دَاوُد الْمِصِّيصِيُّ نا حُسَيْنُ بْنُ مُحَمَّدٍ نا جَرِيرُ بْنُ حَازِمٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ، «أَنَّ جَارِيَةً بِكْرًا أَتَتْ النَّبِيَّ - صَلَّى

L30437 And through him to Aḥmad ibn Shuʿayb; narrated to us Muḥammad ibn Dāwūd al-Miṣīṣī, narrated to us Ḥusayn ibn Muḥammad, narrated to us Jarīr

[40] **Hadith references (L30432):** Sahih Muslim 1421c; Mishkat al-Masabih 3127.
[41] **Qur'an references (L30434):** Qur'an 6:164 (Al-An'am).

ibn Ḥāzim, from Ayyūb al-Sakhtiyānī, from ʿIkrimah, from Ibn ʿAbbās: “An unmarried virgin came to the Prophet (may God’s blessings and peace be upon him and his family) and said, ’My father has married me off’ - while she was unwilling - so the Prophet (may God’s blessings and peace be upon him and his family) invalidated her marriage contract.”

اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَتْ: إِنَّ أَبِي زَوَّجَنِي - وَهِيَ كَارِهَةٌ - فَرَدَّ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نِكَاحَهَا» .

L30438 Abu ’Umar Ahmad ibn Qasim said: My father Qasim ibn Muhammad ibn Qasim narrated to me: My grandfather Qasim ibn Asbagh narrated to me: Muhammad ibn Ibrahim narrated to us: ’Imran narrated to us: Duhaym narrated to us: Ibn Abi Dhi’b narrated from Nafi’, who narrated from Ibn ’Umar, who said: “A man married off his never-married virgin daughter, and she disliked it, so she came to the Prophet (peace and blessings of Allah be upon him and his family), and he invalidated her marriage.”

نا أَبُو عُمَرَ أَحْمَدُ بْنُ قَاسِمٍ قَالَ: حَدَّثَنِي أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ قَالَ: حَدَّثَنِي جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ إِبْرَاهِيمَ نا عِمْرَانُ نا دُحَيْمٌ نا ابْنُ أَبِي ذِئْبٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ، قَالَ: «إِنَّ رَجُلًا زَوَّجَ ابْنَتَهُ بِكْرًا فَكَرِهَتْ فَأَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَرَدَّ نِكَاحَهَا» .

L30439–30441 Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us via Ibrahim ibn Ahmad al-Balkhi, via al-Farabri, via al-Bukhari, via Mu‘adh ibn Fadalah, via Hisham al-Dastuwa’i, via Yahya ibn Abi Kathir, via Abu Salama ibn Abd al-Rahman ibn Awf, that Abu Hurayra reported to them that the Prophet said: “A previously married woman is not to be wedded without her explicit consent.” A woman is not to be married until her consent is sought, and the virgin is not to be wed until her permission is explicitly asked. They said: “O Messenger of Allah, how is her permission expressed?” He replied: “Through her silence.”

نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيُّ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا مُعَاذُ بْنُ فَضَالَةَ نَا هِشَامٌ - هُوَ الدَّسْتُوَائِيُّ - عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَّ أَبَا هُرَيْرَةَ حَدَّثَهُمْ أَنَّ النَّبِيَّ قَالَ: «لَا تُنْكَحُ الْأَيِّمُ حَتَّى تُسْتَأْمَرَ، وَلَا تُنْكَحُ الْبِكْرُ حَتَّى تُسْتَأْذَنَ، قَالُوا: يَا رَسُولَ اللَّهِ فَكَيْفَ إِذْنُهَا؟ قَالَ: أَنْ تَسْكُتَ» .

L30442 Abū Muḥammad said: The narrations here are numerous, and we have sufficiently addressed the matter herein. There is the ḥadīth of Khansāʾ bint Khidām concerning the invalidation of a father marrying off his previously married daughter without her consent.

قَالَ أَبُو مُحَمَّدٍ: الْآثَارُ هَاهُنَا كَثِيرَةٌ، وَفِيهِ ذَكَرْنَا كِفَايَةً، وَقَدْ جَاءَ فِي رَدِّ نِكَاحِ الْأَبِ ابْنَتَهُ الثَّيِّبَ بِغَيْرِ إِذْنِهَا حَدِيثُ خَنْسَاءَ بِنْتِ خِدَامٍ.

L30443 Ali said: Some of them claimed, “The Prophet—peace and blessings be upon him—married off his daughters without seeking their permission.” We replied: This is not known in any of the reports at all—it is purely a false assertion. Rather, there are *Mursal* traditions stating that he—peace and blessings be upon him—would ask for their permission.

قَالَ عَلِيٌّ: وَقَالَ بَعْضُهُمْ: «زَوَّجَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَنَاتِهِ وَلَمْ يَسْتَأْذِنْهُنَّ» . فَقُلْنَا: هَذَا لَا يُعْرَفُ فِي شَيْءٍ مِنْ الْآثَارِ أَصْلًا، وَإِنَّمَا هِيَ دَعْوَى كَاذِبَةٌ، بَلْ قَدْ جَاءَتْ آثَارٌ مُرْسَلَةٌ بِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كَانَ يَسْتَأْمِرُهُنَّ.

L30444 In *al-Iṣāl*, we have exhaustively examined the objections raised by those who carelessly let loose their tongues regarding the narrations we cited—

objections devoid of substance, such as some people's transmission of these reports with wordings differing from what we transmitted, and similar matters. All of this is baseless, for variation in wording does not constitute a defect in the hadith. Rather, if all versions are transmitted by trustworthy narrators, it becomes obligatory to implement them all and rule according to what each wording necessitates. It is impermissible to abandon some in favor of others, since all constitute valid evidence, and obedience to every authentic report from the Prophet—peace and blessings be upon him—is an obligation incumbent upon all. To oppose any part of it constitutes disobedience to Allah, the Almighty. If some versions are transmitted by weak narrators, citing them as evidence against what trustworthy narrators have transmitted is outright misguidance.

وَقَدْ تَقَصَّيْنَا فِي " كِتَابِ الْإِيصَالِ " مَا اعْتَرَضَ بِهِ مَنْ لَا يُبَالِي مِمَّا أَطْلَقَ بِهِ لِسَانَهُ فِي الْآثَارِ الَّتِي أَوْرَدْنَاهَا، بِمَا لَا مَعْنَى لَهُ مِنْ رِوَايَةِ بَعْضِ النَّاسِ لَهَا بِلَفْظٍ مُخَالِفٍ لِلَّفْظِ الَّذِي رُوِّينَاهَا، وَنَحْوِ ذَلِكَ، وَكُلُّ ذَلِكَ لَا مَعْنَى لَهُ، لِأَنَّ اخْتِلَافَ الْأَلْفَاظِ لَيْسَ عِلَّةً فِي الْحَدِيثِ، بَلْ إِنْ كَانَ رَوَى جَمِيعَهَا الثِّقَاتُ وَجَبَ أَنْ تُسْتَعْمَلَ كُلُّهَا، وَيُحْكَمَ بِمَا اقْتَضَاهُ كُلُّ لَفْظٍ مِنْهَا، وَلَا يَجُوزُ تَرْكُ بَعْضِهَا لِبَعْضٍ، لِأَنَّ الْحُجَّةَ قَائِمَةٌ بِجَمِيعِهَا وَطَاعَةَ كُلِّ مَا صَحَّ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَرْضٌ عَلَى الْجَمِيعِ، وَمُخَالَفَةَ شَيْءٍ مِنْهُ مَعْصِيَةٌ لِلَّهِ عَزَّ وَجَلَّ، وَإِنْ كَانَ رَوَى بَعْضَهَا ضَعِيفٌ فَالِاحْتِجَاجُ بِهِ عَلَى مَا رَوَاهُ الثِّقَاتُ ضَلَالٌ.

L30445 A statement similar to ours has been transmitted from the Salaf: ʻAbdullāh ibn Rabīʻ narrated to us: ʻAbdullāh ibn Muḥammad ibn ʻUthmān narrated to us: Aḥmad ibn Khālid narrated to us: ʻAlī ibn ʻAbd al-ʻAzīz narrated to us: al-Ḥajjāj ibn al-Minhāl narrated to us: Ḥammād ibn Salamah narrated to us: Ayyūb al-Sikhtiyānī narrated from ʻIkrimah: When ʻUthmān ibn ʻAffān wished to arrange the marriage of one of his daughters, he would sit near her private chamber and inform her that so-and-so was seeking her hand in marriage.

وَقَدْ جَاءَ مِثْلُ قَوْلِنَا عَنْ السَّلَفِ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ عِكْرِمَةَ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ كَانَ إذَا أَرَادَ أَنْ يُنْكِحَ إحْدَى بَنَاتِهِ قَعَدَ إلَى خِدْرِهَا فَأَخْبَرَهَا أَنَّ فُلَانًا يَخْطُبُهَا.

L30446 From Humaam ibn Ahmad, from Ibn Mufarrij, from Ibn al-Aʻrābī, from al-Dabarī, from ʻAbd al-Razzāq, from Maʻmar, from Habib, from Nāfiʻ, who said: Ibn ʻUmar would consult his daughters concerning their marriage contracts.

نا حُمَامُ بْنُ أَحْمَدَ نَا ابْنُ مُفَرِّجٍ نَا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ حَبِيبٍ عَنْ نَافِعٍ قَالَ: كَانَ ابْنُ عُمَرَ يَسْتَأْمِرُ بَنَاتِهِ فِي نِكَاحِهِنَّ.

L30447–30448 And through him [in the chain] to ʻAbd al-Razzāq from Ibn Jurayj, who informed me that Ibn Ṭāwūs reported from his father, who said: Women must be consulted concerning their own marriages.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ طَاوُسٍ عَنْ أَبِيهِ قَالَ: تُسْتَأْمَرُ النِّسَاءُ فِي أَبْضَاعِهِنَّ -.

L30449 Ibn Tawus said: Men in this matter are equivalent to daughters; they are not compelled, though their situation is more severe.

قَالَ ابْنُ طَاوُسٍ: الرِّجَالُ فِي ذَلِكَ بِمَنْزِلَةِ الْبَنَاتِ لَا يُكْرَهُونَ وَأَشَدُّ شَأْنًا.

L30450 From him to ʻAbd al-Razzāq, from Sufyān al-Thawrī, from ʻĀṣim, from al-Shaʻbī, who said: The father must seek the consent of the never-married woman and the previously married woman.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَاصِمٍ عَنْ الشَّعْبِيِّ قَالَ: يَسْتَأْمِرُ الْأَبُ الْبِكْرَ وَالثَّيِّبَ.

وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي حَنِيفَةَ وَأَصْحَابِهِ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30451 This is the opinion of Sufyan al-Thawri, al-Awza'i, al-Ḥasan ibn Ḥayy, Abu Hanifah and his companions, Abu Sulayman, and our fellow scholars—and with Allah, the Exalted, is success.

وَمَا نَعْلَمُ لِمَنْ أَجَازَ عَلَى الْبِكْرِ الْبَالِغَةِ إنْكَاحَ أَبِيهَا لَهَا بِغَيْرِ إذْنِهَا مُتَعَلِّقًا أَصْلًا، إلَّا أَنْ قَالُوا: قَدْ ثَبَتَ جَوَازُ إنْكَاحِهِ لَهَا وَهِيَ صَغِيرَةٌ فَهِيَ عَلَى ذَلِكَ بَعْدَ الْكِبَرِ.

L30452 We do not know of any foundational principle invoked by those who permit a father to marry off his adult unmarried daughter without her consent, except their assertion: "It is established that he may marry her off while she is a minor, and this [marriage] remains valid after she reaches adulthood."

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا شَيْءَ لِوَجْهَيْنِ -: أَحَدُهُمَا - أَنَّ النَّصَّ فَرَّقَ بَيْنَ الصَّغِيرِ وَالْكَبِيرِ بِمَا ذَكَرْنَا مِنْ قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ - فَذَكَرَ: الصَّغِيرِ حَتَّى يَكْبَرَ» .

L30453 Abu Muhammad said: This is invalid on two aspects. One of them is that the scriptural text differentiated between the minor and the adult through the statement we cited from the Prophet's saying (peace and blessings be upon him): "The pen has been lifted from three:" then he mentioned, among them: "the minor until he reaches adulthood."

وَالثَّانِي - أَنَّ هَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ فَاسِدٌ، وَإِذْ صَحَّحُوا قِيَاسَ الْبَالِغَةِ عَلَى غَيْرِ الْبَالِغَةِ فَلْيَلْزَمْهُمْ أَنْ يَقِيسُوا الْجَدَّ فِي ذَلِكَ عَلَى الْأَبِ، وَسَائِرَ الْأَوْلِيَاءِ عَلَى الْأَبِ أَيْضًا، وَإِلَّا فَقَدْ تَنَاقَضُوا فِي قِيَاسِهِمْ، وَيَكْفِي مِنْ ذَلِكَ النُّصُوصُ الَّتِي أَوْرَدْنَا فِي رَدِّ إنْكَاحِ الْبِكْرِ بِغَيْرِ إذْنِهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30454 The second is that this constitutes analogy, and all analogy is invalid. Since they validate the analogy of the adult woman to the non-adult female, they must consequently apply the analogy of the grandfather in this matter to the father, and all other guardians to the father as well. Otherwise, they have contradicted themselves in their analogical reasoning. The textual proofs we presented in rejecting the marriage of a previously unmarried woman without her consent suffice for this purpose. Success comes only from Allah, the Exalted.

قَالَ أَبُو مُحَمَّد: وَإِذَا بَلَغَتْ الْمَجْنُونَةُ - وَهِيَ ذَاهِبَةُ الْعَقْلِ - فَلَا إذْنَ لَهَا وَلَا أَمْرَ، فَهِيَ عَلَى ذَلِكَ لَا يُنْكِحُهَا الْأَبُ وَلَا غَيْرُهُ حَتَّى يُمْكِنَ اسْتِئْذَانُهَا الَّذِي أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L30455 Abu Muhammad said: If a mentally incapacitated woman—one whose intellect is absent—reaches puberty, she has neither the ability to consent nor the legal authority [to act]. In that state, neither her father nor anyone else may marry her off until her permission can be validly sought, as the Messenger of Allah (peace be upon him) mandated.

[مَسْأَلَة أنكاح الْأَب أبنه الصَّغِير]

The issue of the father's contracting of marriage for his minor son.

L30457 1827 - Issue: It is not permissible for the father or anyone else to contract a marriage for a minor male until he reaches puberty. If one does so, the marriage is permanently invalid. A group of scholars permit it—they have no proof except by analogy to the minor female.

١٨٢٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ لِلْأَبِ وَلَا لِغَيْرِهِ إنْكَاحُ الصَّغِيرِ الذَّكَرِ حَتَّى يَبْلُغَ فَإِنْ فَعَلَ فَهُوَ مَفْسُوخٌ أَبَدًا، وَأَجَازَهُ قَوْمٌ - لَا حُجَّةَ لَهُمْ إلَّا قِيَاسُهُ عَلَى الصَّغِيرَةِ.

L30458 Ali said: All analogical reasoning is invalid, for if it were valid, there would exist another analogous reasoning of the same kind to contradict it. This is because they have unanimously agreed that when a male reaches puberty, neither his father nor anyone else has any right to intervene whatsoever in his marriage. In this matter, he differs from the female, for the father or others have a role in her case—either through consent, through arranging the marriage, or by considering equivalence (kafa'a) in the match. Thus, their legal rulings must likewise differ before puberty.

قَالَ عَلِيٌّ: وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، وَلَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ قَدْ عَارَضَ هَذَا الْقِيَاسَ قِيَاسٌ آخَرُ مِثْلُهُ، وَهُوَ أَنَّهُمْ قَدْ أَجْمَعُوا عَلَى أَنَّ الذَّكَرَ إذَا بَلَغَ لَا مَدْخَلَ لِأَبِيهِ وَلَا لِغَيْرِهِ فِي إنْكَاحِهِ أَصْلًا، وَأَنَّهُ فِي ذَلِكَ بِخِلَافِ الْأُنْثَى الَّتِي لَهُ فِيهَا مَدْخَلٌ: إمَّا بِإِذْنٍ، وَإِمَّا بِإِنْكَاحٍ، وَإِمَّا بِمُرَاعَاةِ الْكُفْءِ - فَكَذَلِكَ يَجِبُ أَنْ يَكُونَ حُكْمُهُمَا مُخْتَلِفَيْنِ قَبْلَ الْبُلُوغِ.

L30459–30460 Abu Muhammad said: The statement of Allah, the Mighty and Majestic: {No bearer of burdens shall bear the burden of another} [al-Anʿām 6:164] prohibits the validity of one person contracting on behalf of another unless a Quranic text or Sunnah requires its enforcement. There is no text or Sunnah regarding the permissibility of a father marrying off his minor son. A group of the Salaf held this opinion: It has been reported to us through the chain of ʿAbd al-Razzāq from Maʿmar from Ibn Ṭāwūs from his father, who said: If parents marry off their two minors, they have the option to choose when they reach maturity. They do not inherit from one another if they die before that.[42]

قَالَ أَبُو مُحَمَّدٍ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] مَانِعٌ مِنْ جَوَازِ عَقْدِ أَحَدٍ عَلَى أَحَدٍ إلَّا أَنْ يُوجِبَ إنْفَاذَ ذَلِكَ نَصُّ قُرْآنٍ، أَوْ سُنَّةٍ، وَلَا نَصَّ، وَلَا سُنَّةَ فِي جَوَازِ إنْكَاحِ الْأَبِ لِابْنِهِ الصَّغِيرِ - وَقَدْ قَالَ بِهَذَا طَائِفَةٌ مِنْ السَّلَفِ: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: إذَا أَنْكَحَ الصَّغِيرَيْنِ أَبَوَاهُمَا فَهُمَا بِالْخِيَارِ إذَا كَبِرَا، وَلَا يَتَوَارَثَانِ إنْ مَاتَا قَبْلَ ذَلِكَ.

L30461 Through him to Ma'mar from Qatadah, who said: If the parents marry off two minors and die before the minors reach puberty, there is no inheritance between them. Ma'mar said: It makes no difference whether the parents or others married them off—and this is the view of Sufyan al-Thawri. Success comes only from Allah, the Exalted.

وَبِهِ إلَى مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: إذَا أَنْكَحَ الصَّبِيَّيْنِ أَبَوَاهُمَا فَمَاتَا قَبْلَ أَنْ يُدْرِكَا فَلَا مِيرَاثَ بَيْنَهُمَا، قَالَ مَعْمَرٌ: سَوَاءٌ أَنْكَحَهُمَا أَبَوَاهُمَا أَوْ غَيْرُهُمَا - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ إذَا أَسْلَمَتْ الْبِكْرُ وَلَمْ يُسْلِمْ أَبُوهَا أَوْ كَانَ مَجْنُونًا]

Issue: If a virgin embraces Islam, and her father either has not embraced Islam or is insane...

L30463 1828 - Issue: If a virgin embraces Islam and her father does not embrace

[42] **Qur'an references (L30460):** Qur'an 6:164 (Al-An'am).

Islam or is mentally incompetent, she is treated like a woman who has no father. This is because Allah the Exalted has severed guardianship between disbelievers and believers. He the Exalted said: {O you who have believed, do not take as allies a people upon whom Allah has become angry} [Al-Mumtaḥanah 60:13].[43]

L30464 Allah the Most High says: "The believing men and believing women are allies to one another" (Quran, At-Tawbah 9:71).[44]

L30465 The statement of the Messenger of Allah—may Allah bless him and grant him peace—regarding the insane is authentically reported: "The pen is lifted from three," among whom he mentioned "the insane until he regains sanity."

L30466 It has been authentically established that he is not legally responsible for seeking her consent nor for arranging her marriage. Rather, the Exalted and Glorious has directed this obligation to those of sound understanding. Therefore, she may marry whomever she wishes with the permission of another guardian from her guardians besides him, or the ruler.

L30467 Similarly, the woman whose father has embraced Islam while she herself has not—if he reaffirms Islam, she embraces Islam, or he regains legal capacity—she reverts to the legal authority of her father due to his authority over the matter of her marriage and obligation to obtain her consent.

L30468 As for the minor female slave—whether a virgin or previously married—if she has no father, her master is not permitted to marry her off, for this [ruling] applies exclusively to the father. Even if her father is free, he cannot marry her off without her master's permission, because by doing so he infringes upon her master's rights, as she is property owned by him. Allah the Exalted has said: "No bearer of burdens will bear the burden of another" [Al-An'ām 6:164].[45]

L30469–30471 The proof for what we have stated—that it is permissible for a master to marry off his female slave who has not reached puberty—is the statement of

: ١٨٢٨ - مَسْأَلَةٌ: وَإِذَا أَسْلَمَتْ الْبِكْرُ وَلَمْ يُسْلِمْ أَبُوهَا، أَوْ كَانَ مَجْنُونًا فَهِيَ فِي حُكْمِ الَّتِي لَا أَبَ لَهَا، لِأَنَّ اللَّهَ تَعَالَى قَطَعَ الْوِلَايَةَ بَيْنَ الْكُفَّارِ وَالْمُؤْمِنِينَ قَالَ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تَتَوَلَّوْا قَوْمًا غَضِبَ اللَّهُ عَلَيْهِمْ} [الممتحنة: ١٣] .

وَقَالَ تَعَالَى: {وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [التوبة: ٧١] .

وَصَحَّ فِي الْمَجْنُونِ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ» فَذَكَرَ مِنْهُمْ «الْمَجْنُونِ حَتَّى يُفِيقَ» .

وَقَدْ صَحَّ أَنَّهُ غَيْرُ مُخَاطَبٍ بِاسْتِئْمَارِهَا وَلَا بِإِنْكَاحِهَا، وَإِنَّمَا خَاطَبَ عَزَّ وَجَلَّ أُولِي الْأَلْبَابِ، فَلَهَا أَنْ تَنْكِحَ مَنْ شَاءَتْ بِإِذْنِ غَيْرِهِ مِنْ أَوْلِيَائِهَا أَوْ السُّلْطَانِ.

وَكَذَلِكَ الَّتِي أَسْلَمَ أَبُوهَا وَلَمْ تُسْلِمْ هِيَ، فَإِنْ أَسْلَمَ أَوْ أَسْلَمَتْ أَوْ عَقَلَ: رَجَعَتْ إلَى حُكْمِ ذَاتِ الْأَبِ لِدُخُولِهِ فِي الْأَمْرِ بِإِنْكَاحِهَا وَاسْتِئْذَانِهَا.

وَالْأَمَةُ الصَّغِيرَةُ - بِكْرًا كَانَتْ أَوْ ثَيِّبًا - لَيْسَ لَهَا أَبٌ فَلَا يَجُوزُ لِسَيِّدِهَا إنْكَاحُهَا، لِأَنَّهُ لَمْ يَأْتِ ذَلِكَ إلَّا فِي الْأَبِ فَقَطْ، وَلَيْسَ لِأَبِيهَا وَإِنْ كَانَ حُرًّا إنْكَاحُهَا إلَّا بِإِذْنِ سَيِّدِهَا، لِأَنَّهُ بِذَلِكَ كَاسِبٌ عَلَى سَيِّدِهَا، إذْ هِيَ مَالٌ مِنْ مَالِهِ، وَقَدْ قَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

وَالْبُرْهَانُ عَلَى مَا قُلْنَا مِنْ أَنَّهُ يَجُوزُ لِلسَّيِّدِ إنْكَاحُ أَمَتِهِ الَّتِي لَمْ تَبْلُغْ قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] وَالصَّغِيرُ لَا

[43] **Qur'an references (L30463):** Qur'an 60:13 (Al-Mumtahanah).
[44] **Qur'an references (L30464):** Qur'an 9:71 (At-Tawbah).
[45] **Qur'an references (L30468):** Qur'an 6:164 (Al-An'am).

Allah, the Almighty. Exalted is He: “And marry the unmarried among you and the righteous among your male slaves and female slaves” [An-Nur: 32]. A minor cannot be described as righteous in religious conduct nor counted among the righteous. Every Muslim is included among the righteous by the declaration: “There is no deity but Allah; Muhammad is the Messenger of Allah, peace be upon him.”[46]

Issue: The Minder’s Consent in Marriage [of Orphans]

L30472 C:AQ

L30473 Issue 1829: A testamentary guardian has no authorization whatsoever to arrange marriages—neither for a male nor a female—whether the two are minors or adults. This is because, as we have previously stated, regarding the two minors among males and females: a male minor cannot be married off by his father or anyone else, while a female minor can only be married off by her father alone. As for the two adults, they must necessarily be either insane or of sound mind.

L30474 If both guardians are insane, we have clarified that no one may contract the marriage for her—neither a father nor any other guardian.

L30475 As for the two sane adults, it is impermissible to appoint a guardian over them, as we have clarified in the “Book of Legal Incapacity,” thereby rendering its repetition unnecessary.

L30476 Among those who asserted that the executor has no authority in marriage are Abū Ḥanīfah, al-Shāfiʿī, Abū Sulaymān, and their associates. If a skeptic seeks to cast doubt by citing the report we transmitted through the chain of Wakīʿ—from Yaḥyā ibn ʿAbd al-Raḥmān ibn Abī Labībah, from his grandfather—who said: The Messenger of Allah, peace and blessings be upon him, declared, “Whoever prevents an orphan under his guardianship from marrying, thereby causing him to fornicate, the sin is shared between them both,” we reply: This is a mursal report, and no authoritative evidence lies in a mursal report.

L30477 Moreover, it is narrated by Yaḥyā ibn ʿAbd al-Raḥmān ibn Abī Labībah, who

[46] **Qur’an references (L30469):** Qur’an 24:32 (An-Nur).

يُوصَفُ بِصَلَاحٍ فِي دِينِهِ وَلَا يَدْخُلُ فِي الصَّالِحِينَ، وَكُلُّ مُسْلِمٍ فَهُوَ مِنْ الصَّالِحِينَ بِقَوْلِ: لَا إلَهَ إلَّا اللَّهُ مُحَمَّدٌ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَة إذْن الْوَصِيّ فِي النِّكَاح]

١٨٢٩ - مَسْأَلَةٌ: وَلَا إذْنَ لِلْوَصِيِّ فِي إنْكَاحٍ أَصْلًا، لَا لِرَجُلٍ، وَلَا لِامْرَأَةٍ: صَغِيرَيْنِ كَانَا، أَوْ كَبِيرَيْنِ، لِأَنَّ الصَّغِيرَيْنِ مِنْ الرِّجَالِ وَالنِّسَاءِ قَدْ ذَكَرْنَا أَنَّ الذَّكَرَ مِنْهُمَا لَا يَجُوزُ أَنْ يُنْكِحَهُ أَبٌ وَلَا غَيْرُهُ وَأَنَّ الْأُنْثَى مِنْهُمَا لَا يَجُوزُ أَنْ يُنْكِحَهَا إلَّا الْأَبُ وَحْدَهُ، وَأَمَّا الْكَبِيرَانِ فَلَا يَخْلُوَانِ مِنْ أَنْ يَكُونَا مَجْنُونَيْنِ أَوْ عَاقِلَيْنِ.

فَإِنْ كَانَا مَجْنُونَيْنِ فَقَدْ بَيَّنَّا أَنَّهُ لَا يُنْكِحُهَا أَحَدٌ، لَا أَبٌ وَلَا غَيْرُهُ.

وَأَمَّا الْعَاقِلَانِ الْبَالِغَانِ فَلَا يَجُوزُ أَنْ يَكُونَ عَلَيْهِمَا وَصِيٌّ عَلَى مَا بَيَّنَّا فِي " كِتَابِ الْحَجْرِ " فَأَغْنَى عَنْ إعَادَتِهِ.

وَمِمَّنْ قَالَ: لَا مَدْخَلَ لِلْوَصِيِّ فِي الْإِنْكَاحِ: أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ - فَإِنْ مَوَّهَ مُمَوِّهٌ بِالْخَبَرِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَبِيبَةَ عَنْ جَدِّهِ، قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ مَنَعَ يَتِيمًا لَهُ النِّكَاحَ فَزَنَى فَالْإِثْمُ بَيْنَهُمَا» ؟ قُلْنَا: هَذَا مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ -.

وَأَيْضًا فَهُوَ مِنْ رِوَايَةِ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَبِيبَةَ وَهُوَ ضَعِيفٌ.

is weak.

L30478 Furthermore, there is no mention of the guardian in it—or it could mean the text intends the leader of the tribe unjustly preventing an orphan within his tribe from marrying.

L30479 **A legal issue: He stipulated that upon his death, his young virgin daughter or the adult one be married.**

L30480 1830 - Issue: If someone directs in his will that upon his death his unmarried minor daughter or adult daughter should be married, this constitutes an invalid bequest, and it is impermissible to enforce it.

L30481 The proof of this is: If a minor girl's father dies, she becomes an orphan, and the Quranic text stipulates that an orphan girl must not be married until her permission is sought. As for a woman who has reached puberty, her father has no right to marry her off during his lifetime without her consent—how then could he do so after his death?

L30482 It has been soundly established from the Messenger of Allah—peace and blessings be upon him—that he said: "When one of you dies, his deeds cease except for three." Such an act is not among those three—this is the opinion of Abu Hanifah, al-Shafi'i, Abu Sulayman, and their companions.

L30483–30484 **The issue of marriage with the wording hiba (gift) and other terms.**

L30485 Issue: Marriage is only permissible if contracted using the terms "marriage" (zawāj), "matrimony" (nikāḥ), "transfer of ownership" (tamlīk), or "enabling" (imkān).

L30486 It is impermissible to use the term *hibah*, any other term for the reason we have mentioned, or a term in a non-Arabic language that conveys the terms we have specified for one who speaks and is proficient in that language.

L30487 The proof of that is: the saying of Allah, the Exalted: "So marry what is

وَأَيْضًا: فَلَيْسَ فِيهِ لِلْوَصِيِّ ذِكْرٌ - وَقَدْ يَكُونُ أَرَادَ سَيِّدَ الْعَشِيرَةِ يَمْنَعُ يَتِيمًا مِنْ قَوْمِهِ النِّكَاحَ ظُلْمًا.

[مَسْأَلَة أَوْصَى إِذَا مَاتَ أَنْ تُزَوَّجَ ابْنَتُهُ الْبِكْرُ الصَّغِيرَةُ أَوْ الْبَالِـغُ]

١٨٣٠ - مَسْأَلَةٌ: وَمَنْ أَوْصَى إِذَا مَاتَ أَنْ تُزَوَّجَ ابْنَتُهُ الْبِكْرُ الصَّغِيرَةُ أَوْ الْبَالِـغُ فَهِيَ وَصِيَّةٌ فَاسِدَةٌ لَا يَجُوزُ إنْفَاذُهَا.

بُرْهَانُ ذَلِكَ -: أَنَّ الصَّغِيرَةَ إذَا مَاتَ أَبُوهَا صَارَتْ يَتِيمَةً وَقَدْ جَاءَ النَّصُّ بِأَنْ لَا تُنْكَحَ الْيَتِيمَةُ حَتَّى تُسْتَأْذَنَ، وَأَمَّا الْكَبِيرَةُ فَلَيْسَ لِأَبِيهَا أَنْ يُزَوِّجَهَا فِي حَيَاتِهِ بِغَيْرِ إذْنِهَا فَكَيْفَ بَعْدَ مَوْتِهِ.

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا مَاتَ أَحَدُكُمْ انْقَطَعَ عَمَلُهُ إلَّا مِنْ ثَلَاثٍ» وَلَيْسَ مِنْ تِلْكَ الثَّلَاثِ - وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

[مَسْأَلَة النِّكَاح بلفظ الْهِبَة وَغَيْرهَا]

مَسْأَلَةٌ: وَلَا يَجُوزُ النِّكَاحُ إلَّا بِاسْمِ الزَّوَاجِ أَوْ النِّكَاحِ، أَوْ التَّمْلِيكِ، أَوْ الْإِمْكَانِ.

وَلَا يَجُوزُ بِلَفْظِ الْهِبَةِ، وَبِلَفْظٍ غَيْرِهَا لِمَا ذَكَرْنَا، أَوْ بِلَفْظِ الْأَعْجَمِيَّةِ يُعَبَّرُ بِهِ عَنْ الْأَلْفَاظِ الَّتِي ذَكَرْنَا لِمَنْ يَتَكَلَّمُ بِتِلْكَ اللُّغَةِ وَيُحْسِنُهَا.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ} [النساء: ٣] .

good for you of women” [An-Nisa: 3].[47]

L30488 His statement, the Exalted, is: “Marry off the unmarried [i.e., single, divorced, or widowed] among you, as well as the righteous ones among your male and female slaves.” [An-Nur: 32][48]

L30489 And the Almighty said: “So when Zaid had dissolved his marriage with her, We gave her to you in marriage” [Al-Ahzab: 37].[49]

L30490 And it was narrated to us through the narration of Al-Bukhārī: Saʿīd ibn Abī Maryam narrated to us, Abū Ghassān—Muḥammad ibn Muṭarrif Al-Madanī—narrated to us, Abū Ḥāzim narrated to me from Sahl ibn Saʿd Al-Sāʿidī: “A woman presented herself [in marriage] to the Prophet—peace be upon him—” then he mentioned the ḥadīth and the man who proposed to her. The Messenger of Allāh—peace be upon him—said to him: “We have given her to you in marriage for what you have memorized of the Qurʾān.”[50]

L30491 And through the chain of ʿAbd al-Razzāq from Maʿmar and Sufyān al-Thawrī, both of whom narrated from Abū Ḥāzim from Sahl ibn Saʿd al-Sāʿidī, he narrated the ḥadīth that the Prophet—peace be upon him—said to the man: “I have granted you authority over her in exchange for what you possess of the Quran.”

L30492 It has also been narrated to us through the chain of ʿAbd al-ʿAzīz ibn Abī Ḥāzim, from his father, from Sahl ibn Saʿd, who said regarding it: “I have entrusted her to you in marriage in exchange for what you possess of the Quran.”

L30493 Abu Muhammad said: If it is said that Sufyan ibn ’Uyaynah indeed narrated this hadith from Abu Hazim from Sahl, and he said in it: “I have given her in marriage to you.”

L30494 It was narrated by Za’idah, Hammad ibn Zayd, and ‘Abd al-‘Aziz ibn Muhammad al-Darawardi—all of them from Abu Hazim from Sahl. They stated in

وقَوْله تَعَالَى: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] .

وَقَالَ عَزَّ وَجَلَّ: {فَلَمَّا قَضَى زَيْدٌ مِنْهَا وَطَرًا زَوَّجْنَاكَهَا} [الأحزاب: ٣٧] .

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا سَعِيدُ بْنُ أَبِي مَرْيَمَ نا أَبُو غَسَّانَ - هُوَ مُحَمَّدُ بْنُ مُطَرِّفٍ الْمَدَنِيُّ - حَدَّثَنِي أَبُو حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ السَّاعِدِيِّ «أَنَّ امْرَأَةً عَرَضَتْ نَفْسَهَا عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» فَذَكَرَ الْحَدِيثَ وَالرَّجُلَ الَّذِي خَطَبَهَا، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَقَدْ أَنْكَحْنَاكَهَا بِمَا مَعَكَ مِنْ الْقُرْآنِ» .

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَكِلَاهُمَا عَنْ أَبِي حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ السَّاعِدِيِّ، فَذَكَرَ الْحَدِيثَ وَأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِلرَّجُلِ: «قَدْ مَلَّكْتُكَهَا بِمَا مَعَكَ مِنْ الْقُرْآنِ» .

وَرُوِّينَا أَيْضًا: مِنْ طَرِيقِ عَبْدِ الْعَزِيزِ بْنِ أَبِي حَازِمٍ عَنْ أَبِيهِ عَنْ سَهْلِ بْنِ سَعْدٍ فَقَالَ فِيهِ «فَقَدْ مَلَّكْتُكَهَا بِمَا مَعَكَ مِنْ الْقُرْآنِ» .

قَالَ أَبُو مُحَمَّدٍ: فَإِنْ قِيلَ: فَقَدْ رَوَى هَذَا الْحَدِيثَ سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أَبِي حَازِمٍ عَنْ سَهْلٍ فَقَالَ فِيهِ «قَدْ أَنْكَحْتُكَهَا» .

وَرَوَاهُ: زَائِدَةُ، وَحَمَّادُ بْنُ زَيْدٍ، وَعَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ، كُلُّهُمْ عَنْ أَبِي حَازِمٍ عَنْ سَهْلٍ، فَقَالُوا فِيهِ «فَقَدْ زَوَّجْتُكَهَا فَعَلِّمْهَا مِنْ الْقُرْآنِ» وَهُوَ مَوْطِنٌ وَاحِدٌ، وَرَجُلٌ وَاحِدٌ، وَامْرَأَةٌ وَاحِدَةٌ؟ قَالَ: نَعَمْ، كُلُّ ذَلِكَ صَحِيحٌ.

[47] **Qur’an references (L30487):** Qur’an 4:3 (An-Nisa).
[48] **Qur’an references (L30488):** Qur’an 24:32 (An-Nur).
[49] **Qur’an references (L30489):** Qur’an 33:37 (Al-Ahzab).
[50] **Hadith references (L30490):** Sunan an-Nasai 3250.

it: “I have given her to you in marriage, so teach her some of the Quran.” Is this one instance, involving a single man and woman? He said: “Yes, all of that is authentic.”

L30495–30496 It has been narrated to us through the chain of al-Bukhārī: From ʻAbdah (Ibn Sulaymān al-Ṣaffār), from ʻAbd al-Ṣamad (Ibn ʻAbd al-Wārith), from ʻAbdullāh ibn al-Muthannā, from Thumāmah ibn Anas ibn Mālik, from Anas ibn Mālik, from the Prophet—peace and blessings of Allah be upon him—“that when he spoke a word, he would repeat it three times so it might be understood.” Thus, it is confirmed that all these words were spoken by him—peace and blessings be upon him—teaching us what establishes the marriage contract. All praise is due to Allah, Lord of the worlds.

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَبْدَةُ - هُوَ ابْنُ سُلَيْمَانَ الصَّفَّارُ - نا عَبْدُ الصَّمَدِ - هُوَ ابْنُ عَبْدِ الْوَارِثِ - نا عَبْدُ اللَّهِ بْنُ الْمُثَنَّى نَا ثُمَامَةُ بْنُ أَنَسِ بْنِ مَالِكٍ عَنْ أَنَسِ بْنِ مَالِكٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّهُ كَانَ إذَا تَكَلَّمَ بِالْكَلِمَةِ أَعَادَهَا ثَلَاثًا حَتَّى تُفْهَمَ عَنْهُ» فَصَحَّ أَنَّهَا أَلْفَاظٌ كُلُّهَا قَالَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مُعَلِّمًا لَنَا مَا يَنْعَقِدُ بِهِ النِّكَاحُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L30497 Among those who held this opinion are Al-Shāfiʻī and Abū Sulaymān.

وَمِمَّنْ قَالَ بِهَذَا: الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ.

L30498 Abu Hanifah and Malik said: Marriage is contracted using the term “hiba.” Abu Muhammad said: This is extremely grave, for Allah the Exalted says: {And a believing woman if she gifts herself to the Prophet, if the Prophet wishes to marry her – solely for you, not for the believers} [Al-Ahzab: 50]. Thus, it is established that marriage contracted using the term “hiba” is invalid for anyone other than the Prophet – peace and blessings of Allah be upon him.[51]

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: إنَّ النِّكَاحَ يَنْعَقِدُ بِلَفْظِ " الْهِبَةِ " -: قَالَ أَبُو مُحَمَّد: وَهَذَا عَظِيمٌ جِدًّا، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَامْرَأَةً مُؤْمِنَةً إنْ وَهَبَتْ نَفْسَهَا لِلنَّبِيِّ إنْ أَرَادَ النَّبِيُّ أَنْ يَسْتَنْكِحَهَا خَالِصَةً لَكَ مِنْ دُونِ الْمُؤْمِنِينَ} [الأحزاب: ٥٠] فَصَحَّ أَنَّ النِّكَاحَ بِلَفْظِ " الْهِبَةِ " بَاطِلٌ لِغَيْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L30499 What is astonishing is their statement: “A prohibited gift is only [valid] when it lacks a dowry.” This constitutes compounding misguidance, enforcing lies through domination, and making claims in matters of religion.

وَالْعَجَبُ قَوْلُهُمْ: إنَّ الْهِبَةَ الْمُحَرَّمَةَ إنَّمَا هِيَ إذَا كَانَتْ بِلَا صَدَاقٍ، فَكَانَ هَذَا زَائِدًا فِي الضَّلَالِ وَالتَّحَكُّمِ بِالْكَذِبِ، وَالدَّعَاوَى فِي الدِّينِ.

[51] **Qur’an references (L30498):** Qur’an 33:50 (Al-Ahzab).

L30500 It is astonishing that they applied general rulings to what was gifted, despite Allah the Exalted having stated it was for His Messenger—peace and blessings be upon him—to the exclusion of the believers. Yet when they came to what the Messenger of Allah—peace and blessings be upon him—ruled regarding permitting marriage with an iron ring as dower or teaching something from the Quran as dower, they restricted it as specific to him. Had they reversed their positions, they would have been correct. We ask Allah for protection.

L30501 **A marriage is not valid except through the witnessing of two or more just witnesses or by a general public announcement.**

L30502 Issue 1832: A marriage is not valid unless witnessed by two just witnesses or more, or through a public proclamation. If the two witnesses are kept secret, this does not invalidate the marriage.

L30503 Muhammad ibn Ismāʿīl al-ʿUdhri and Muhammad ibn ʿĪsā both said: Muhammad ibn ʿAlī al-Rāzī al-Muṭawwiʿī narrated to us on their authority, stating: Muhammad ibn ʿAbd Allāh al-Ḥākim al-Naysābūrī said: I heard Abū Bakr ibn Isḥāq al-Imām say: Abū ʿAlī al-Ḥāfiẓ narrated to me. Al-Ḥākim said: Then I asked Abū ʿAlī, and he narrated to me, stating: Isḥāq ibn Aḥmad ibn Isḥāq al-Raqqī narrated to us, from Abū Yūsuf Muhammad ibn Aḥmad ibn al-Ḥajjāj al-Raqqī, from ʿĪsā ibn Yūnus, from Ibn Jurayj, from Sulaymān ibn Mūsā, from al-Zuhrī, from ʿUrwah, from ʿĀ'ishah, who said: The Messenger of Allāh—peace be upon him—said, "If any woman marries without the permission of her guardian and two upright witnesses, then her marriage is invalid. If the husband has consummated the marriage, she is entitled to the mahr. If they dispute, the ruler is the guardian for one who has no guardian."

L30504–30505 Abu Muhammad said: "Nothing in this chapter is valid except this chain (sanad)"—referring to the mention of two upright legal witnesses—"and this is sufficient for its validity."

L30506 If it is asked: From where do you deem marriage permissible through widespread public announcement, with the testimony of one man and two

وَمِنْ الْعَجَبِ أَنْ أَتَوْا إلَى الْمَوْهُوبَةِ، وَقَدْ قَالَ اللَّهُ تَعَالَى إنَّهَا لِرَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِنْ دُونِ الْمُؤْمِنِينَ فَجَعَلُوهُ عُمُومًا لِغَيْرِهِ، ثُمَّ أَتَوْا إلَى مَا حَكَمَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ إبَاحَةِ النِّكَاحِ بِخَاتَمِ حَدِيدٍ، وَبِتَعْلِيمِ شَيْءٍ مِنْ الْقُرْآنِ فَجَعَلُوهُ خُصُوصًا لَهُ - فَلَوْ عَكَسُوا أَقْوَالَهُمْ لَأَصَابُوا - وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

[مَسْأَلَة لَا يَتِمُّ النِّكَاحُ إلَّا بِإِشْهَادِ عَدْلَيْنِ فَصَاعِدًا أَوْ بِإِعْلَانٍ عَامٍّ]

١٨٣٢ - مَسْأَلَةٌ: وَلَا يَتِمُّ النِّكَاحُ إلَّا بِإِشْهَادِ عَدْلَيْنِ فَصَاعِدًا، أَوْ بِإِعْلَانٍ عَامٍّ، فَإِنْ اسْتَكْتَمَ الشَّاهِدَانِ لَمْ يَضُرَّ ذَلِكَ شَيْئًا.

نا مُحَمَّدُ بْنُ إسْمَاعِيلَ الْعُذْرِيُّ، وَمُحَمَّدُ بْنُ عِيسَى قَالَا: نا مُحَمَّدُ بْنُ عَلِيٍّ الرَّازِيّ الْمُطَّوِّعِيُّ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْحَاكِمُ النَّيْسَابُورِيُّ قَالَ: سَمِعْت أَبَا بَكْرِ بْنَ إسْحَاقَ الْإِمَامَ يَقُولُ: حَدَّثَنِي أَبُو عَلِيٍّ الْحَافِظُ قَالَ الْحَاكِمُ: ثُمَّ سَأَلْت أَبَا عَلِيٍّ فَحَدَّثَنِي قَالَ: نا إسْحَاقُ بْنُ أَحْمَدَ بْنِ إسْحَاقَ الرَّقِّيُّ نا أَبُو يُوسُفَ مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْحَجَّاجِ الرَّقِّيُّ نا عِيسَى بْنُ يُونُسَ نا ابْنُ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إذْنِ وَلِيِّهَا وَشَاهِدَيْ عَدْلٍ فَنِكَاحُهَا بَاطِلٌ، وَإِنْ دَخَلَ بِهَا فَلَهَا الْمَهْرُ، وَإِنْ اشْتَجَرُوا فَالسُّلْطَانُ وَلِيُّ مَنْ لَا وَلِيَّ لَهُ» .

قَالَ أَبُو مُحَمَّدٍ: لَا يَصِحُّ فِي هَذَا الْبَابِ شَيْءٌ، غَيْرُ هَذَا السَّنَدِ - يَعْنِي ذِكْرَ شَاهِدَيْ عَدْلٍ - وَفِي هَذَا كِفَايَةٌ لِصِحَّتِهِ.

just women, or with the testimony of four just women? We respond: As for the announcement, it is because whoever is truthful in a report is – regarding that specific report – undoubtedly a just and truthful person. Thus, when the marriage is publicly announced, the two announcers are without doubt truthful and just in this matter and beyond. Similarly, in the case of the man and two women, within them are two just witnesses without doubt, because when a man and woman are reported about, the masculine form is used grammatically.

فَإِنْ قِيلَ: فَمِنْ أَيْنَ أَجَزْتُمْ النِّكَاحَ بِالْإِعْلَانِ الْفَاشِي، وَبِشَهَادَةِ رَجُلٍ وَامْرَأَتَيْنِ عُدُولٍ، وَبِشَهَادَةِ أَرْبَعِ نِسْوَةٍ عُدُولٍ؟ قُلْنَا: أَمَّا الْإِعْلَانُ: فَلِأَنَّ كُلَّ مَنْ صَدَقَ فِي خَبَرٍ فَهُوَ فِي ذَلِكَ الْخَبَرِ عَدْلٌ صَادِقٌ بِلَا شَكٍّ، فَإِذَا أُعْلِنَ النِّكَاحُ، فَالْمُعْلِنَانِ لَهُ بِهِ بِلَا شَكٍّ صَادِقَانِ عَدْلَانِ فِيهِ فَصَاعِدًا، وَكَذَلِكَ الرَّجُلُ وَالْمَرْأَتَانِ فِيهِمَا شَاهِدَا عَدْلٍ بِلَا شَكٍّ، لِأَنَّ الرَّجُلَ وَالْمَرْأَةَ إذَا أُخْبِرَ عَنْهُمَا غَلَبَ التَّذْكِيرُ.

L30507 As for the four women, the ruling is based on the statement of the Messenger of Allah—peace and blessings be upon him—"The testimony of a woman is half that of a man," and we have mentioned this in the Book of Testimonies.

وَأَمَّا الْأَرْبَعُ النِّسْوَةِ فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «شَهَادَةُ الْمَرْأَةِ بِنِصْفِ شَهَادَةِ الرَّجُلِ» وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الشَّهَادَاتِ ".

L30508 And the praise is due to Allah, Lord of the worlds.

وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L30509 A group of scholars maintained: If the two witnesses are compelled to secrecy, it is a secret marriage (nikāḥ al-sirr), and it is void.

وَقَالَ قَوْمٌ: إذَا اُسْتُكْتِمَ الشَّاهِدَانِ فَهُوَ نِكَاحُ سِرٍّ، وَهُوَ بَاطِلٌ.

L30510 Abū Muḥammad said: This is erroneous for two reasons: the first is that there has never been an authenticated prohibition against secret marriage when two upright witnesses bear witness to it.

قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ لِوَجْهَيْنِ -: أَحَدُهُمَا - أَنَّهُ لَمْ يَصِحَّ قَطُّ نَهْيٌ عَنْ نِكَاحِ السِّرِّ إذَا شَهِدَ عَلَيْهِ عَدْلَانِ.

L30511 The second is that it is not a secret what five people know: the groom, the guardian, the bride, and the two witnesses. The poet said:

وَالثَّانِي - أَنَّهُ لَيْسَ سِرًّا مَا عَلِمَهُ خَمْسَةٌ: النَّاكِحُ، وَالْمُنْكِحُ، وَالْمُنْكَحَةُ، وَالشَّاهِدَانِ - قَالَ الشَّاعِرُ:

L30512 Behold, every secret that passes beyond two is widespread.

أَلَا كُلُّ سِرٍّ جَاوَزَ اثْنَيْنِ شَائِعُ

L30513 Another said:

وَقَالَ غَيْرُهُ:

L30514–30516 A secret that two conceal between them... And every secret except the two's spreads. The scholars who permitted marriage in which the two witnesses are concealed include Abū Ḥanīfah, al-Shāfiʿī, Abū Sulaymān, and their companions.

السِّرُّ يَكْتُمُهُ الِاثْنَانِ بَيْنَهُمَا ... وَكُلُّ سِرٍّ عَدَا الِاثْنَيْنِ مُنْتَشِرُ وَمَنْ أَبَاحَ النِّكَاحَ الَّذِي يُسْتَكْتَمُ فِيهِ الشَّاهِدَانِ: أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

The issue of marriage without stipulating a dower.

Issue 1833: Marriage is valid without mentioning a dowry, provided there is complete silence on the matter. However, if a condition is stipulated that no dowry is due, the marriage is irrevocably annulled forever.

The proof of this is the statement of Allah, Exalted and Majestic: “There is no blame on you if you divorce women whom you have neither had sexual intercourse with nor assigned a mahr to.” [Al-Baqarah: 236][1]

Allah, the Exalted and Majestic, validated the marriage in which no stipulations were imposed for the woman, since He validated divorce in such a marriage. For divorce is only valid after the validity of the marriage itself.

As for if a condition is stipulated that there shall be no mahr, then the marriage is annulled, due to the saying of the Messenger of Allah (peace be upon him): “Every condition not in the Book of Allah Almighty is void.” This is a condition not in the Book of Allah Almighty, therefore it is void.

Rather, its nullification is in the Book of Allah, the Almighty and Majestic. He, the Exalted, said: *“And give women their dowries as a free gift.”* [An-Nisa: 4] Since this is invalid, the mentioned marriage’s validity was not concluded except through validating what is invalid. Thus, it is a marriage devoid of legal validity—and with Allah alone is success.[2]

A legal case concerning a wife for whom no dower (mahr) was specified when she demands it.

Issue 1834: If a marriage contract is concluded without stipulating a dowry and the wife demands it, a dowry shall be determined for her. If she and her husband mutually agree on something permissible to own, that becomes her dowry, with no other dowry owed to her. If they disagree, she is entitled to

[1] **Qur’an references (L30519):** Qur’an 2:236 (Al-Baqarah).

[2] **Qur’an references (L30522):** Qur’an 4:4 (An-Nisa).

[مَسْأَلَة النِّكَاح بِغَيْرِ ذِكْر صَدَاق]

١٨٣٣ - مَسْأَلَةٌ: وَالنِّكَاحُ جَائِزٌ بِغَيْرِ ذِكْرِ صَدَاقٍ، لَكِنْ بِأَنْ يَسْكُتَ جُمْلَةً فَإِنْ اشْتَرَطَ فِيهِ أَنْ لَا صَدَاقَ عَلَيْهِ فَهُوَ نِكَاحٌ مَفْسُوخٌ أَبَدًا.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {لا جُنَاحَ عَلَيْكُمْ إِنْ طَلَّقْتُمُ النِّسَاءَ مَا لَمْ تَمَسُّوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً} [البقرة: ٢٣٦] .

فَصَحَّحَ اللَّهُ عَزَّ وَجَلَّ النِّكَاحَ الَّذِي لَمْ يُفْرَضْ فِيهِ لِلْمَرْأَةِ شَيْءٌ، إِذْ صَحَّحَ فِيهِ الطَّلَاقَ، وَالطَّلَاقُ لَا يَصِحُّ إِلَّا بَعْدَ صِحَّةِ النِّكَاحِ.

وَأَمَّا لَوْ اشْتَرَطَ فِيهِ أَنْ لَا صَدَاقَ فَهُوَ مَفْسُوخٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ» وَهَذَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ.

بَلْ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ إِبْطَالُهُ، قَالَ تَعَالَى: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] فَإِذْ هُوَ بَاطِلٌ فَالنِّكَاحُ الْمَذْكُورُ لَمْ تَنْعَقِدْ صِحَّتُهُ إِلَّا عَلَى تَصْحِيحِ مَا لَا يَصِحُّ، فَهُوَ نِكَاحٌ لَا صِحَّةَ لَهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة إِذَا طَلَبَتْ الْمُنْكَحَةُ الَّتِي لَمْ يُفْرَضْ لَهَا صَدَاقٌ]

١٨٣٤ - مَسْأَلَةٌ: فَإِذَا طَلَبَتْ الْمُنْكَحَةُ الَّتِي لَمْ يُفْرَضْ لَهَا صَدَاقٌ قُضِيَ لَهَا بِهِ، فَإِنْ تَرَاضَتْ هِيَ وَزَوْجُهَا بِشَيْءٍ يَجُوزُ تَمَلُّكُهُ، فَهُوَ صَدَاقٌ، لَا صَدَاقَ لَهَا غَيْرُهُ، فَإِنْ اُخْتُلِفَ قُضِيَ لَهَا بِصَدَاقِ مِثْلِهَا - أَحَبَّ هُوَ أَوْ هِيَ، أَوْ كَرِهَتْ هِيَ أَوْ هُوَ.

the dowry equivalent to that of women of her status—regardless of whether the husband or wife approves or objects.

L30525 The proof of this is that there is no disagreement regarding the validity of what two parties mutually consent to from what is permissible to own. Rather, some have differed concerning specific quantities based on what we will clarify later—if Allah, the Exalted, wills—and their claim is invalid, which we will expound subsequently by the enabling power of Allah, the Exalted, and His strength.

L30526 As for the ruling obliging him [to pay] and her [to receive] a dower equivalent to her [social] standing, Allah—*ʿAzza wa Jall*—has indeed made the dower obligatory [upon him], and it is imperative to adjudicate its payment to her if she claims it.

L30527 It is not permissible for the husband to be bound by what the wife demands, for she may require of him what is beyond his capacity.

L30528–30530 Similarly, it is not permissible that she be obligated to return what he gave her, as he might give her a fals (a small coin), and there is no scriptural evidence obligating her. That being the case, nor by obliging him to provide what she demanded. Since these two arguments have been invalidated, nothing remains except a dowry equivalent to what is customary for women of her status. Therefore, this is the ruling that must be issued for her, and with Allah, the Exalted, lies all success.

L30531 **The issue of marriage with a dower less than the customary equivalent dower.**

L30532 Issue 1835: It is impermissible for a father to contract the marriage of his minor daughter for less than the dowry appropriate to her status. She is not legally bound by her father's ruling in this matter and must necessarily be granted the full dowry appropriate to her status.

L30533 The proof of that is, it is her right according to the words of Allah, the Almighty and Majestic: "And give women their bridal gifts freely" [An-Nisa: 4]. Therefore, since it is her right and part of her wealth, her father has no

بُرْهَانُ ذَلِكَ -: أَنَّهُ لَا خِلَافَ فِي صِحَّةِ مَا يَتَرَاضَيَانِ بِهِ مِمَّا يَجُوزُ تَمَلُّكُهُ، وَإِنَّمَا خَالَفَ قَوْمٌ فِي بَعْضِ الْأَعْدَادِ عَلَى مَا نُبَيِّنُ بَعْدَ هَذَا - إِنْ شَاءَ اللَّهُ تَعَالَى - وَقَوْلُهُمْ سَاقِطٌ نُبَيِّنُهُ بَعْدُ، بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ.

وَأَمَّا الْقَضَاءُ عَلَيْهِ وَعَلَيْهَا بِمَهْرِ مِثْلِهَا، فَإِنَّهُ قَدْ أَوْجَبَ اللَّهُ عَزَّ وَجَلَّ لَهَا الصَّدَاقَ، وَلَا بُدَّ مِنْ أَنْ يُقْضَى لَهَا بِهِ إِذَا طَلَبَتْهُ.

وَلَا يَجُوزُ أَنْ يَلْزَمَ مَا طَلَبَتْهُ هِيَ، إِذْ قَدْ تَطْلُبُ مِنْهُ مَا لَيْسَ فِي وُسْعِهِ.

وَكَذَلِكَ لَا يَجُوزُ أَنْ تُلْزَمَ هِيَ مَا أَعْطَاهَا، إِذْ قَدْ يُعْطِيهَا فَلْسًا، وَلَمْ يَأْتِ نَصٌّ بِإِلْزَامِهَا ذَلِكَ، وَلَا بِإِلْزَامِهِ مَا طَلَبَتْ، فَإِذْ قَدْ بَطَلَ هَذَانِ الْوَجْهَانِ فَلَمْ يَبْقَ إِلَّا صَدَاقُ مِثْلِهَا، فَهُوَ الَّذِي يُقْضَى لَهَا بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة التَّزْوِيج بِأَقَلّ مِنْ مَهْر الْمِثْل]

١٨٣٥ - مَسْأَلَةٌ: وَلَا يَجُوزُ لِلْأَبِ أَنْ يُزَوِّجَ ابْنَتَهُ الصَّغِيرَةَ بِأَقَلَّ مِنْ مَهْرِ مِثْلِهَا، وَلَا يَلْزَمُهَا حُكْمُ أَبِيهَا فِي ذَلِكَ وَتَبْلُغُ إِلَى مَهْرِ مِثْلِهَا وَلَا بُدَّ.

legal right over her wealth, in accordance with Allah's words: "No soul bears the burden of another" [Al-An'am: 164].[3]

L30534 It is not permissible to rule that the full dower of her peers be imposed upon her father unless he voluntarily undertakes it from his wealth, for Allah the Exalted says: "Do not devour your wealth among yourselves unjustly, except it be trade by mutual consent among you" [An-Nisa' 4:29].[4]

L30535 The dower—as per the explicit Quranic text—is an obligation upon the husband, not the father. Thus, a judicial ruling to enforce it against the father's wealth constitutes a ruling of injustice and oppression, and wrongfully consuming wealth is not permissible.

L30536 Our stance on that matter aligns with the position of al-Shāfiʿī, Abū Sulaymān, Abū Yūsuf, and Muḥammad ibn al-Ḥasan—while the following scholars held it permissible: Abū Ḥanīfah, Zufar, Mālik, and al-Layth.

L30537 **The ruling on a slave's marriage (male or female) without the master's permission.**

L30538 1836. It is not permissible for a male slave or female slave to marry except with their master's permission. Whichever of them marries without their master's consent while being aware of the established prohibition in this matter, the ḥadd punishment for zinā applies to the offender - he is a fornicator and she is a fornicatress. The child is not affiliated with the father in such a case.

L30539 The proof for that is what we have narrated through the chain of Abū Dāwūd—Aḥmad ibn Ḥanbal and ʿUthmān ibn Abī Shaybah (the wording being his) both narrating from Wakīʿ—who narrates from al-Ḥasan ibn Ṣāliḥ,

[3]**Qur'an references (L30533):** Qur'an 4:4 (An-Nisa); Qur'an 6:164 (Al-An'am).
[4]**Qur'an references (L30534):** Qur'an 4:29 (An-Nisa).

بُرْهَانُ ذَلِكَ -: أَنَّهُ حَقٌّ لَهَا بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] فَإِذْ هُوَ حَقٌّ لَهَا، وَمِنْ جُمْلَةِ مَالِهَا، فَلَا حُكْمَ لِأَبِيهَا فِي مَالِهَا، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

وَلَا يَجُوزُ أَنْ يُقْضَى بِتَمَامِ مَهْرِ مِثْلِهَا عَلَى أَبِيهَا إِلَّا أَنْ يَضْمَنَهُ مُخْتَارًا لِذَلِكَ فِي مَالِهِ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

وَالصَّدَاقُ - بِنَصِّ الْقُرْآنِ - عَلَى الزَّوْجِ لَا عَلَى الْأَبِ، فَالْقَضَاءُ بِهِ عَلَى الْأَبِ فِي مَالِهِ قَضَاءُ ظُلْمٍ وَجَوْرٍ، وَأَكْلُ مَالٍ بِالْبَاطِلِ لَا يَحِلُّ.

وَقَوْلُنَا فِي ذَلِكَ هُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ - وَأَجَازَ ذَلِكَ عَلَيْهَا: أَبُو حَنِيفَةَ، وَزُفَرُ، وَمَالِكٌ وَاللَّيْثُ.

[مَسْأَلَة نِكَاح الْعَبْد أَوْ الْأَمَة بِغَيْرِ إذْن السَّيِّد]

١٨٣٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْعَبْدِ وَلَا لِلْأَمَةِ أَنْ يَنْكِحَا إلَّا بِإِذْنِ سَيِّدِهِمَا، فَأَيُّهُمَا نَكَحَ بِغَيْرِ إذْنِ سَيِّدِهِ عَالِمًا بِالنَّهْيِ الْوَارِدِ فِي ذَلِكَ فَعَلَيْهِ حَدُّ الزِّنَا، وَهُوَ زَانٍ، وَهِيَ زَانِيَةٌ، وَلَا يَلْحَقُ الْوَلَدُ فِي ذَلِكَ.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ حَنْبَلٍ، وَعُثْمَانُ بْنُ أَبِي شَيْبَةَ - وَاللَّفْظُ لَهُ - كِلَاهُمَا عَنْ وَكِيعٍ نا الْحَسَنُ بْنُ صَالِحٍ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ

from ʿAbdullāh ibn Muḥammad ibn ʿAqīl, from Jābir, from ʿAbdullāh, who said: The Messenger of Allah—peace and blessings be upon him—stated, “Any slave who marries without his master’s permission is an adulterer.”

عَنْ جَابِرٍ عَنْ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَيُّمَا عَبْدٍ تَزَوَّجَ بِغَيْرِ إِذْنِ مَوْلَاهُ فَهُوَ عَاهِرٌ» .

L30540–30541 And via the chain of ʿAbd al-Razzāq: Narrated to us Ibn Jurayj from ʿAbd Allāh ibn Muḥammad ibn ʿAqīl, who said: I heard Jābir ibn ʿAbd Allāh say: The Messenger of Allāh (peace be upon him) said, “Any slave who marries without his master’s permission is an adulterer.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ قَالَ: سَمِعْت جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ " قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَيُّمَا عَبْدٍ نَكَحَ بِغَيْرِ إِذْنِ سَيِّدِهِ فَهُوَ عَاهِرٌ» .

L30542 The term *al-ʿabd* (literally “male slave”) applies as a general designation, encompassing both males and females among those in bondage (ar-raqīq).

وَاسْمُ " الْعَبْدِ " وَاقِعٌ عَلَى الْجِنْسِ، فَالذُّكُورُ وَالْإِنَاثُ مِنْ الرَّقِيقِ دَاخِلُونَ تَحْتَ هَذَا الِاسْمِ.

L30543 Furthermore, it has been authentically reported from the Messenger of Allah (peace and blessings be upon him) that he said: “Indeed, your blood and your wealth are sacred to you.” The female slave is the property of her master; thus, she is forbidden to others except by marrying her to him, in accordance with the explicit wording of his statement (peace and blessings be upon him). This is also the view of a group of the Salaf. It has been narrated to us from Umar ibn al-Khattab: “If a male slave marries without the permission of his owners, his marriage is invalid.”

وَأَيْضًا: فَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَالْأَمَةُ مَالٌ لِسَيِّدِهَا فَهِيَ حَرَامٌ عَلَيْهِ إلَّا بِإِنْكَاحِهَا إيَّاهُ بِنَصِّ كَلَامِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَهُوَ قَوْلُ طَائِفَةٍ مِنْ السَّلَفِ -: رُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ: إذَا نَكَحَ الْعَبْدُ بِغَيْرِ إذْنِ مَوَالِيهِ فَنِكَاحُهُ حَرَامٌ.

L30544 Via Abd al-Razzaq’s transmission: Ibn Jurayj narrated to us, stating that Musa ibn Uqbah informed him through Nafi: Ibn Umar regarded a slave’s marriage without his master’s permission as fornication. He held the slave liable to the hadd punishment, as well as the woman he married if he had intercourse with her and she knew he was a slave. Those who conducted her marriage contract would also be punished.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي مُوسَى بْنُ عُقْبَةَ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ كَانَ يَرَى إنْكَاحَ الْعَبْدِ بِغَيْرِ إذْنِ سَيِّدِهِ زِنًى، وَيَرَى عَلَيْهِ الْحَدَّ، وَعَلَى الَّتِي نَكَحَ إذَا أَصَابَهَا إذَا عَلِمَتْ أَنَّهُ عَبْدٌ، وَيُعَاقَبُ الَّذِينَ أَنْكَحُوهَا.

L30545–30546 Through the chain of ʿAbd al-Razzāq, from Maʿmar, from Ayyūb al-Sikhtiyānī, from Nāfiʿ: It is reported that Ibn ʿUmar confronted a slave of his who had married without his permission, separated the couple, invalidated the *mahr*, and imposed the *ḥadd* punishment upon him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ أَخَذَ عَبْدًا لَهُ نَكَحَ بِغَيْرِ إذْنِهِ فَفَرَّقَ بَيْنَهُمَا، وَأَبْطَلَ صَدَاقَهُ، وَضَرَبَهُ حَدًّا.

L30547 Through the narration of Ḥammād ibn Salamah from Ayyūb al-Sikhtiyānī

from Nāfiʿ from Ibn ʿUmar, who said: If a slave marries without his master's permission, he is flogged with the prescribed punishment (ḥadd), they are separated, the bridal gift (mahr) is returned to his master, and the witnesses who witnessed his marriage are subjected to discretionary punishment (taʿzīr). This is a rigorously authenticated report with a fully connected chain transmitted from Ibn ʿUmar—may Allah be pleased with them both.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: إِذَا تَزَوَّجَ الْعَبْدُ بِغَيْرِ إِذْنِ سَيِّدِهِ جُلِدَ الْحَدَّ، وَفُرِّقَ بَيْنَهُمَا، وَرُدَّ الْمَهْرُ إِلَى مَوْلَاهُ وَعُزِّرَ الشُّهُودُ الَّذِينَ زَوَّجُوهُ وَهَذَا مُسْنَدٌ فِي غَايَةِ الصِّحَّةِ عَنْ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا -.

L30548 Via Sa'id ibn Mansur, it was narrated to us by Hushaym, who narrated to us from Mughira and 'Ubayda, from Ibrahim al-Nakha'i. Mughira stated in his narration from him: "When the master separates the two of them, whatever tangible property of his male slave he finds with her remains his (the master's) property. Whatever the male slave has consumed, there is no liability upon her." 'Ubayda stated in his narration from him: "Whatever she has consumed becomes a debt upon her." Hushaym said: "That is the opinion."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نَا مُغِيرَةُ، وَعُبَيْدَةُ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ الْمُغِيرَةُ فِي رِوَايَتِهِ عَنْهُ: إِذَا فَرَّقَ الْمَوْلَى بَيْنَهُمَا فَمَا وَجَدَ عِنْدَهَا مِنْ عَيْنِ مَالِ غُلَامِهِ فَهُوَ لَهُ، وَمَا اسْتَهْلَكَهُ فَلَا شَيْءَ عَلَيْهَا، وَقَالَ عُبَيْدَةُ فِي رِوَايَتِهِ عَنْهُ؛ وَمَا اسْتَهْلَكَتْ فَهُوَ دَيْنٌ عَلَيْهَا، قَالَ هُشَيْمٌ: وَهُوَ الْقَوْلُ.

L30549 And via the chain of Shu'bah from al-Hakam ibn 'Utaybah and Hammad ibn Abi Sulayman: that they both ruled concerning a slave who marries without his master's permission: the marriage is annulled, the dowry is to be forfeited from her, and whatever portion she has consumed becomes a debt upon her.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ: أَنَّهُمَا قَالَا فِي الْعَبْدِ يَتَزَوَّجُ بِغَيْرِ إِذْنِ سَيِّدِهِ: أَنَّهُ يُفَرَّقُ بَيْنَهُمَا، وَيُنْتَزَعُ الصَّدَاقُ مِنْهَا، وَمَا اسْتَهْلَكَتْهُ كَانَ دَيْنًا عَلَيْهَا.

L30550 From the transmission of Waki', from Sufyān al-Thawrī, from Firās, from ʿĀmir al-Shaʿbī regarding a woman married by an enslaved person without his master's permission, he said: "What she has not consumed is taken from her, and for what she has consumed, there is no liability."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ فِرَاسٍ عَنْ عَامِرٍ الشَّعْبِيِّ فِي الَّتِي يَتَزَوَّجُهَا الْعَبْدُ بِغَيْرِ إِذْنِ سَيِّدِهِ قَالَ: يُؤْخَذُ مِنْهَا مَا لَمْ تَسْتَهْلِكْهُ وَمَا اسْتَهْلَكَتْ فَلَا شَيْءَ.

L30551 Among those who held that it is impermissible, and that the master has no authority to permit it even if he were to do so, are Al-Awzaʿī and Al-Shāfiʿī.

وَمِمَّنْ قَالَ: لَا يَجُوزُ، وَلَا إِجَازَةَ فِيهِ لِلسَّيِّدِ لَوْ أَجَازَهُ - الْأَوْزَاعِيُّ، وَالشَّافِعِيُّ.

L30552 Abu Hanifah and Malik held that a slave's marriage without his master's permission is not unlawful intercourse (zinā); rather, if the master approves it, the marriage is valid without renewing the contract.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: إِنَّ نِكَاحَ الْعَبْدِ بِغَيْرِ إِذْنِ سَيِّدِهِ لَيْسَ زِنًى، بَلْ إِنْ أَجَازَهُ السَّيِّدُ جَازَ بِغَيْرِ تَجْدِيدِ عَقْدٍ.

L30553 They attempted to obscure this by arguing: "The report you cited stating he is a lecher contains no mention of intercourse, yet you claim one who refrains from intercourse isn't a lecher?" We responded: This report from Allah's Messenger (peace and blessings be upon him) is authentically established with the wording "when he marries," as we previously cited. The term "marries"

وَمَوَّهُوا فِي ذَلِكَ بِأَنْ قَالُوا: إِنَّ الْخَبَرَ الَّذِي احْتَجَجْتُمْ بِهِ أَنَّهُ عَاهِرٌ لَيْسَ فِيهِ: إِذَا وَطِئَهَا، وَأَنْتُمْ تَقُولُونَ: إِذَا لَمْ يَطَأْهَا فَلَيْسَ عَاهِرًا؟ قُلْنَا: قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ

وَسَلَّمَ - هَذَا الْخَبَرُ بِلَفْظِ " إذَا نَكَحَ " كَمَا أَوْرَدْنَاهُ آنِفًا وَنَكَحَ فِي اللُّغَةِ الَّتِي خَاطَبَنَا اللَّهُ تَعَالَى بِهَا وَخَاطَبَنَا بِهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - " يَقَعُ عَلَى الْعَقْدِ وَيَقَعُ عَلَى الْوَطْءِ " فَلَا يَجُوزُ تَخْصِيصُ أَحَدِ الْمَعْنَيَيْنِ دُونَ الْآخَرِ - فَصَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّمَا جَعَلَهُ زَانِيًا إذَا تَزَوَّجَ وَنَكَحَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

(nakaha) in the divine language by which Allah the Exalted addressed us, and by which the Prophet (peace and blessings be upon him) – upon him be peace and blessings – addressed us, applies both to the marriage contract and the sexual act. It is therefore impermissible to restrict it to one meaning while excluding the other. Thus, it is confirmed that the Prophet (peace and blessings be upon him) only designated him a fornicator if he contracted marriage and engaged in intercourse. And success is from Allah, the Most High.

وَالْعَجَبُ أَنَّهُمْ جَعَلُوا تَفْرِيقَ السَّيِّدِ - إنْ فَرَّقَ - طَلَاقًا، وَهَذَا خَطَأٌ فَاحِشٌ مِنْ وُجُوهٍ -: أَحَدُهَا أَنَّهُ لَا يَخْلُو عَقْدُ الْعَبْدِ عَلَى نَفْسِهِ بِغَيْرِ إذْنِ سَيِّدِهِ ضَرُورَةً مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا -: إمَّا أَنْ يَكُونَ صَحِيحًا، وَإِمَّا أَنْ يَكُونَ بَاطِلًا.

L30554–30556 What is astonishing is that they deemed the husband's judicial separation – if he separates – as divorce, and this is a grave error from... Aspects: One of them is that a contract imposed on a slave without his master's permission is necessarily confined to one of two possibilities—there being no third—either it is valid or it is invalid.

فَإِنْ كَانَ صَحِيحًا فَلَا خِيَارَ لِلسَّيِّدِ فِي إبْطَالِ عَقْدٍ صَحِيحٍ.

L30557 If the contract is valid, the master has no right to annul a valid contract.

وَإِنْ كَانَ بَاطِلًا فَلَا يَجُوزُ لِلسَّيِّدِ تَصْحِيحُ الْبَاطِلِ.

L30558 If it is invalid, then it is not permissible for the owner to validate the invalid act.

وَمَا عَدَا هَذَا فَتَخْلِيطٌ، إلَّا أَنْ يَأْتِيَ بِهِ نَصٌّ فَيُوقَفَ عِنْدَهُ.

L30559 Anything beyond this is confusion, unless a text pertaining to it is brought forth, in which case one must adhere strictly to it.

وَيَكْفِي مِنْ هَذَا - أَنَّهُ قَوْلٌ لَمْ يُوجِبْ صِحَّتَهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ يُعْقَلُ، وَلَا تَصِحُّ فِي هَذَا رِوَايَةٌ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ غَيْرُ الَّتِي رُوِّينَا عَنْ ابْنِ عُمَرَ، وَجَاءَتْ رِوَايَةٌ لَا تَصِحُّ عَنْ عُمَرَ، وَعُثْمَانَ قَدْ خَالَفُوهَا أَيْضًا وَتَعَلَّقُوا بِرِوَايَةٍ وَاهِيَةٍ نُنَبِّهُ عَلَيْهَا - إنْ شَاءَ اللَّهُ تَعَالَى - لِئَلَّا يُمَوِّهَ بِهَا مُمَوِّهٌ، وَهِيَ -: مَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ الْعُمَرِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ، قَالَ: إذَا تَزَوَّجَ الْعَبْدُ بِغَيْرِ إذْنِ سَيِّدِهِ فَالطَّلَاقُ بِيَدِ السَّيِّدِ، وَإِذَا نَكَحَ بِإِذْنِ سَيِّدِهِ فَالطَّلَاقُ بِيَدِ الْعَبْدِ.

L30560 It suffices regarding this matter that it is an opinion whose validity is not necessitated by the Quran, nor the Sunnah, nor analogy, nor any opinion with a conceivable basis. No valid narration from any Companion exists on this matter except the one narrated from Ibn ʿUmar. An inauthentic narration has been reported from ʿUmar, and ʿUthman opposed it as well. Its proponents clung to a weak narration—which we will clarify, God Almighty willing—to prevent any deceiver from exploiting it. This refers to what was narrated to us through Waki‘ from al-ʿUmari from Nafi‘ from Ibn ʿUmar, who said: "If a slave marries without his master's permission, divorce rests with the master; if he marries with permission, divorce rests with the slave."

L30561 It was narrated to us through Sa‘īd ibn Manṣūr from Hushaym, who said: Ibn Abī Laylā narrated to us, along with al-Ḥajjāj - Ibn Arṭā'ah -, al-Mughīrah

- Ibn Miqsam -, Yūnus - Ibn ʿUbayd -, al-Ḥusayn - Ibn ʿAbd al-Raḥmān -, and Ismāʿīl ibn Abī Khālid. Ibn Abī Laylā and al-Ḥajjāj narrated from Nāfiʿ from Ibn ʿUmar. Al-Ḥajjāj additionally narrated from Ibrāhīm al-Nakhaʿī from Shurayḥ. Al-Mughīrah narrated from Ibrāhīm al-Nakhaʿī. Yūnus narrated from al-Ḥasan al-Baṣrī. Al-Ḥusayn and Ismāʿīl narrated from al-Shaʿbī. Thereafter, Ibn ʿUmar, Shurayḥ, Ibrāhīm, al-Ḥasan, and al-Shaʿbī agreed, stating: If a slave marries with his master's permission, the right of divorce belongs to him. But if he marries without his master's permission, the authority lies with the master—he may either keep the marriage or dissolve it.

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ قَالَ: نا ابْنُ أَبِي لَيْلَى، وَالْحَجَّاجُ - هُوَ ابْنُ أَرْطَاةَ - وَالْمُغِيرَةُ - هُوَ ابْنُ مِقْسَمٍ - وَيُونُسُ - هُوَ ابْنُ عُبَيْدٍ - وَالْحُصَيْنُ - هُوَ ابْنُ عَبْدِ الرَّحْمَنِ - وَإِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ، قَالَ ابْنُ أَبِي لَيْلَى، وَالْحَجَّاجُ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ، وَقَالَ الْحَجَّاجُ أَيْضًا: عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ شُرَيْحٍ، وَقَالَ الْمُغِيرَةُ: عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَقَالَ يُونُسُ: عَنِ الْحَسَنِ الْبَصْرِيِّ، وَقَالَ الْحُصَيْنُ، وَإِسْمَاعِيلُ: عَنِ الشَّعْبِيِّ، ثُمَّ اتَّفَقَ ابْنُ عُمَرَ، وَشُرَيْحٌ، وَإِبْرَاهِيمُ، وَالْحَسَنُ، وَالشَّعْبِيُّ، قَالُوا كُلُّهُمْ: إِذَا تَزَوَّجَ بِأَمْرِ مَوْلَاهُ فَالطَّلَاقُ بِيَدِهِ، وَإِذَا تَزَوَّجَ بِغَيْرِ أَمْرِهِ فَالْأَمْرُ إِلَى السَّيِّدِ إِنْ شَاءَ جَمَعَ وَإِنْ شَاءَ فَرَّقَ.

L30562 Abu Muhammad—: Al-Umari—he is Abdullah ibn Umar ibn Hafs—and he is weak in reliability.

قَالَ أَبُو مُحَمَّدٍ -: الْعُمَرِيُّ - هُوَ عَبْدُ اللَّهِ بْنُ عُمَرَ بْنِ حَفْصٍ - وَهُوَ ضَعِيفٌ.

L30563 Ibn Abi Laylā is of poor memory and weak [as a narrator]; Al-Ḥajjāj is doomed.

وَابْنُ أَبِي لَيْلَى سَيِّئُ الْحِفْظِ ضَعِيفٌ - وَالْحَجَّاجُ هَالِكٌ.

L30564 Among the invalidity and falsehood is opposing the narrations of these [transmitters] from Nāfiʿ with the narrations of the likes of Ayyūb al-Sikhtiyānī, Mūsā ibn ʿUqbah, and Yūnus ibn ʿUbayd—all of whom narrated from Nāfiʿ.

وَمِنَ السُّقُوطِ وَالْبَاطِلِ أَنْ تُعَارَضَ بِرِوَايَةِ هَؤُلَاءِ عَنْ نَافِعٍ رِوَايَةُ مِثْلِ أَيُّوبَ السِّخْتِيَانِيِّ، وَمُوسَى بْنِ عُقْبَةَ، وَيُونُسَ بْنِ عُبَيْدٍ عَنْ نَافِعٍ.

L30565 The narration narrated by Shurayh is discarded because it is transmitted through Al-Ḥajjāj ibn Arṭāʾah.

وَالرِّوَايَةُ عَنْ شُرَيْحٍ سَاقِطَةٌ، لِأَنَّهَا عَنِ الْحَجَّاجِ بْنِ أَرْطَاةَ.

L30566–30567 As for Ibrahim and Al-Shaʿbi, the narration from them is authentic. However, Abu Hanifah and Malik disagreed with them regarding their opinion on the dowry, and we are not aware that they relied on anyone except Al-Hasan alone.

وَأَمَّا إِبْرَاهِيمُ، وَالشَّعْبِيُّ، فَالرِّوَايَةُ عَنْهُمَا صَحِيحَةٌ، إِلَّا أَنَّ أَبَا حَنِيفَةَ وَمَالِكًا خَالَفَاهُمَا فِي قَوْلِهِمَا فِي الْمَهْرِ، فَمَا نَعْلَمُهُمْ تَعَلَّقُوا إِلَّا بِالْحَسَنِ وَحْدَهُ.

L30568 The ruling on a woman marrying her female enslaved person or male enslaved person.

[مَسْأَلَة نِكَاح الْمَرْأَة أمتها أَوْ عبدها]

L30569 Issue 1837: A woman cannot act as a guardian in marriage. If she wishes to marry off her female slave or male slave, she must direct the closest male relative from her paternal agnates to grant her permission to marry them

off. If she has no agnate, the governing authority grants her permission to marry them off.

١٨٣٧ - مَسْأَلَةٌ: وَلَا تَكُونُ الْمَرْأَةُ وَلِيًّا فِي النِّكَاحِ، فَإِنْ أَرَادَتْ إنْكَاحَ أَمَتِهَا أَوْ عَبْدِهَا أَمَرَتْ أَقْرَبَ الرِّجَالِ إلَيْهَا مِنْ عَصَبَتِهَا أَنْ يَأْذَنَ لَهَا فِي النِّكَاحِ، فَإِنْ لَمْ يَكُنْ لَهَا عَاصِبٌ فَالسُّلْطَانُ يَأْذَنُ لَهَا فِي النِّكَاحِ.

L30570 The proof of that is the statement of Allah, the Mighty and Majestic: "Marry those among you who are without spouses, and the righteous ones from your bondmen and bondwomen" [An-Nur: 32].[5]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] .

L30571 It is therefore conclusively established that those commanded to marry male and female slaves are the same as those commanded to marry the unmarried (including widowed and divorced), as the directive is singular. The verse explicitly requires that the men tasked with marrying the unmarried, male slaves, and female slaves are the ones responsible for this duty.

فَصَحَّ يَقِينًا أَنَّ الْمَأْمُورِينَ بِإِنْكَاحِ الْعَبِيدِ وَالْإِمَاءِ هُمْ الْمَأْمُورُونَ بِإِنْكَاحِ الْأَيَامَى، لِأَنَّ الْخِطَابَ وَاحِدٌ، وَنَصَّ الْآيَةِ يُوجِبُ أَنَّ الْمَأْمُورِينَ بِذَلِكَ الرِّجَالُ فِي إنْكَاحِ الْأَيَامَى وَالْعَبِيدِ وَالْإِمَاءِ.

L30572 This establishes that a woman cannot fundamentally act as a guardian in anyone's marriage. However, her consent in this matter is indispensable – otherwise, it is impermissible – due to Allah Almighty's statement: {As for those among you who cannot afford to marry free believing women, let them marry from the believing women whom your right hands possess. Allah knows best about your faith – you are of one another in faith. So marry them with their guardians' permission} [An-Nisā' 4:25].[6]

فَصَحَّ بِهَذَا أَنَّ الْمَرْأَةَ لَا تَكُونُ وَلِيًّا فِي إنْكَاحِ أَحَدٍ أَصْلًا، لَكِنْ لَا بُدَّ مِنْ إذْنِهَا فِي ذَلِكَ وَإِلَّا فَلَا يَجُوزُ، لِقَوْلِ اللَّهِ تَعَالَى: {وَمَنْ لَمْ يَسْتَطِعْ مِنْكُمْ طَوْلا أَنْ يَنْكِحَ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ فَمِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ فَتَيَاتِكُمُ الْمُؤْمِنَاتِ وَاللَّهُ أَعْلَمُ بِإِيمَانِكُمْ بَعْضُكُمْ مِنْ بَعْضٍ فَانْكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ} [النساء: ٢٥] .

L30573 **The issue of coercing a male slave or female slave into marriage.**

[مَسْأَلَة إجْبَار الْعَبْد أَوْ الْأَمَة عَلَى النِّكَاح]

L30574 Issue 1838: It is not permissible for a master to compel his female slave or male slave to marry—neither to a non-mahram man nor a non-mahram woman, nor to force either of them to marry the other. If he does so, it is not a valid marriage.

١٨٣٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلسَّيِّدِ إجْبَارُ أَمَتِهِ أَوْ عَبْدِهِ عَلَى النِّكَاحِ، لَا مِنْ أَجْنَبِيٍّ وَلَا مِنْ أَجْنَبِيَّةٍ، وَلَا أَحَدِهِمَا مِنْ الْآخَرِ - فَإِنْ فَعَلَ فَلَيْسَ نِكَاحًا.

L30575 The proof of that is the statement of Allah, the Mighty and Majestic: {No soul earns except against itself} [Al-Anʿām 6:164].[7]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

[5] **Qur'an references (L30570):** Qur'an 24:32 (An-Nur).
[6] **Qur'an references (L30572):** Qur'an 4:25 (An-Nisa).
[7] **Qur'an references (L30575):** Qur'an 6:164 (Al-An'am).

L30576 The statement of the Messenger of Allah—may Allah bless him and grant him peace—which we have previously mentioned with its chain of transmission: "A virgin must not be married until her permission is sought, nor a previously married woman until her consent is obtained." This is the opinion of Al-Shāfiʿī and Abū Sulaymān.

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي قَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ «لَا تُنْكَحُ الْبِكْرُ حَتَّى تُسْتَأْذَنَ وَلَا تُنْكَحُ الثَّيِّبُ حَتَّى تُسْتَأْمَرَ» وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L30577 Abu Hanifah stated in one of his two opinions: A master is not permitted to marry off his male slave except with the slave's consent, but he retains the right to marry off his female slave without her consent. This aligns with the opinion of al-Ḥasan ibn Ḥayyin.

وَقَالَ أَبُو حَنِيفَةَ فِي أَحَدِ قَوْلَيْهِ: لَا يُزَوِّجُ السَّيِّدُ عَبْدَهُ إِلَّا بِإِذْنِهِ، وَلَهُ أَنْ يُزَوِّجَ أَمَتَهُ بِغَيْرِ إِذْنِهَا - وَهُوَ قَوْلُ الْحَسَنِ بْنِ حَيٍّ.

L30578–30579 It is narrated from Sufyān al-Thawrī that he would give them in marriage without her permission.

وَرُوِيَ عَنْ سُفْيَانَ الثَّوْرِيِّ أَنَّهُ يُزَوِّجُهُمَا بِغَيْرِ إِذْنِهَا.

L30580 Abu Yusuf and Muhammad ibn al-Hasan said: He may marry off his female slave to his male slave even if both dislike it—and this has also been narrated from Abu Hanifa.

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: لَهُ أَنْ يُزَوِّجَ أَمَتَهُ مِنْ عَبْدِهِ وَإِنْ كَرِهَا جَمِيعًا - وَرُوِيَ هَذَا أَيْضًا عَنْ أَبِي حَنِيفَةَ.

L30581 Malik said: It is reprehensible for a man to compel his female slave or male slave into marriage. He should not marry off his female slave except with a dowry he delivers to her, thereby lawfully accessing her private part through it. He must not marry his distinguished female slave to his dark-skinned male slave who lacks appealing appearance unless it serves consideration of rectitude - intending thereby the youth's chastity, such as if he is his agent. If it is for the purpose of harming the female slave, it is impermissible.

وَقَالَ مَالِكٌ: يُكْرِهُ الرَّجُلُ أَمَتَهُ وَعَبْدَهُ عَلَى النِّكَاحِ، وَلَا يُنْكِحْ أَمَتَهُ إِلَّا بِمَهْرٍ يَدْفَعُهُ إِلَيْهَا فَيَسْتَحِلُّ بِهِ فَرْجَهَا، وَلَا يُزَوِّجْ أَمَتَهُ الْفَارِهَةَ مِنْ عَبْدِهِ الْأَسْوَدِ لَا مَنْظَرَ لَهُ إِلَّا أَنْ يَكُونَ عَلَى وَجْهِ النَّظَرِ وَالصَّلَاحِ يُرِيدُ بِهِ عِفَّةَ الْغُلَامِ، مِثْلُ أَنْ يَكُونَ وَكِيلَهُ، فَإِنْ كَانَ عَلَى وَجْهِ الضَّرَرِ بِالْجَارِيَةِ لَمْ يَجُزْ.

L30582 He said: A man is reprehensible for compelling his female slave manumitted over a term of years into marriage. Abū Muḥammad said: As for Mālik's statement, it is apparently contradictory, for he permitted a master to compel his female slave into marriage yet prohibited marrying her to a black man if harm would result for her, while permitting it if his agent intended to preserve her chastity through that. The first point is that these are claims without proof.

قَالَ: وَيُكْرِهُ الرَّجُلُ أَمَتَهُ الْمُعْتَقَةَ إِلَى سِنِينَ عَلَى النِّكَاحِ. قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مَالِكٍ فَظَاهِرُ التَّنَاقُضِ، لِأَنَّهُ أَجَازَ إِكْرَاهَ السَّيِّدِ لِأَمَتِهِ عَلَى النِّكَاحِ، وَمَنَعَ مِنْ إِنْكَاحِهَا الْأَسْوَدَ إِذَا كَانَ فِيهِ ضَرَرٌ عَلَيْهَا، وَأَجَازَهُ إِنْ كَانَ وَكِيلَهُ وَأَرَادَ عِفَّتَهُ بِذَلِكَ -: فَأَوَّلُ ذَلِكَ: أَنَّهَا دَعَاوَى بِلَا بُرْهَانٍ.

L30583 Then there is the contradiction in his prohibition of her marrying him if there is harm to her, as no harm is greater than aversion. Otherwise, why would he specify the Black individual if not due to aversion toward him? For if he had considered harm alone, her marriage to a white Qurayshi and

ثُمَّ الْمُنَاقَضَةُ فِي مَنْعِهِ إِنْكَاحَهَا إِيَّاهُ إِذَا كَانَ فِيهِ ضَرَرٌ عَلَيْهَا، وَلَا ضَرَرَ أَعْظَمُ مِنَ الْكَرَاهَةِ، وَإِلَّا فَلِمَ خَصَّ الْأَسْوَدَ لَوْلَا الْكَرَاهَةُ لَهُ، إِذْ لَوْ رَاعَى الضَّرَرَ فَقَطْ لَاسْتَوَى

a Black individual would be equivalent when involving harm such as beating or deprivation of food, apart from aversion.

إنْكَاحُهَا مِنْ قُرَشِيٍّ أَبْيَضَ وَمِنْ أَسْوَدَ إذَا كَانَ فِي ذَلِكَ ضَرَرٌ مِنْ ضَرْبٍ أَوْ إجَاعَةٍ غَيْرِ الْكَرَاهَةِ.

L30584 As for those who differentiated between coercing a female slave (permitting it) and coercing a male slave (prohibiting it), they justified this by arguing that since divorce is under the male slave's authority, marriage is consequently under his authority, and since the master reserves the female slave's sexual access for himself, he may transfer the right to her sexual access to another.

وَأَمَّا مَنْ فَرَّقَ بَيْنَ إكْرَاهِ الْأَمَةِ فَأَجَازَهُ، وَبَيْنَ إكْرَاهِ الْعَبْدِ فَلَمْ يُجِزْهُ فَإِنَّهُمْ احْتَجُّوا بِأَنَّهُ لَمَّا كَانَ الطَّلَاقُ إلَى الْعَبْدِ كَانَ النِّكَاحُ إلَيْهِ، وَلَمَّا كَانَ لِلسَّيِّدِ احْتِبَاسُ بُضْعِ الْأَمَةِ لِنَفْسِهِ كَانَ لَهُ أَنْ يُمَلِّكَ بُضْعَهَا غَيْرَهُ.

L30585 Abu Muhammad said: This is an analogy, and all forms of analogy are invalid. Moreover, even if any part of it were valid, this would be the most absurd analogy on earth, for they did not agree that divorce rests in the slave's authority. Rather, Jabir and Ibn Abbas - both of them, along with others besides them - affirm: Divorce rests in the master's authority, not the slave's.

قَالَ أَبُو مُحَمَّد: وَهَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ شَيْءٌ مِنْهُ لَكَانَ هَذَا أَسْخَفَ قِيَاسٍ فِي الْأَرْضِ، لِأَنَّهُمْ لَمْ يُوَافِقُوا عَلَى أَنَّ الطَّلَاقَ بِيَدِ الْعَبْدِ، بَلْ جَابِرٌ، وَابْنُ عَبَّاسٍ، وَغَيْرُهُمَا يَقُولَانِ: الطَّلَاقُ بِيَدِ السَّيِّدِ لَا بِيَدِ الْعَبْدِ.

L30586 As for their analogy of granting ownership of the female slave's intercourse rights to another, just as he may withhold it for himself, this constitutes doubly absurd reasoning. For there is no disagreement that a man may retain exclusive rights to his wife's intercourse—could they possibly draw an analogy from this to grant her intercourse rights to another? Truly, this is astonishing.

وَأَمَّا قِيَاسُهُمْ تَمْلِيكَ بُضْعِ الْأَمَةِ لِغَيْرِهِ كَمَا لَهُ أَنْ يَحْبِسَهَا لِنَفْسِهِ فَسُخْفٌ مُضَاعَفٌ، لِأَنَّهُ لَا خِلَافَ أَنَّ لِلرَّجُلِ احْتِبَاسَ بُضْعِ زَوْجَتِهِ لِنَفْسِهِ أَفَتَرَاهُمْ يَقِيسُونَ عَلَى ذَلِكَ تَمْلِيكَ بُضْعِهَا لِغَيْرِهِ؟ إنَّ هَذَا لَعَجَبٌ.

L30587–30588 As for those who permit coercing the male slave and the female slave alike into marriage, they argued that Allah the Exalted has commanded the marrying off of male slaves and female slaves and did not stipulate the necessity of consent.

وَأَمَّا مَنْ أَجَازَ إكْرَاهَ الْعَبْدِ وَالْأَمَةِ سَوَاءً عَلَى النِّكَاحِ، احْتَجُّوا بِأَنَّ اللَّهَ تَعَالَى أَمَرَ بِإِنْكَاحِ الْعَبِيدِ وَالْإِمَاءِ وَلَمْ يَشْتَرِطْ رِضًا.

L30589 They mentioned what was narrated to us through ʿAbd al-Razzāq from Ibn Jurayj from Abū al-Zubayr, who heard Jābir ibn ʿAbd Allāh say regarding female and male slaves: "Their master has the right to unite them in marriage or separate them."

وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ فِي الْأَمَةِ وَالْعَبْدِ: لِسَيِّدِهِمَا أَنْ يَجْمَعَ بَيْنَهُمَا وَيُفَرِّقَ بَيْنَهُمَا.

L30590 And according to what we have reported via the route of Saʿīd ibn Manṣūr: Jarīr reported to us from Manṣūr from Ibrāhīm, who said: They would

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ قَالَ: كَانُوا يُكْرِهُونَ الْمَمْلُوكَ عَلَى النِّكَاحِ وَيُدْخِلُونَهُ عَلَى امْرَأَتِهِ الْبَيْتَ، وَيُغْلِقُونَ عَلَيْهِمَا الْبَابَ.

compel the male slave to marry, bring him into the house to his wife, and lock the door on them.

L30591 Abu Muhammad said: As for the statement of the Exalted regarding the marriage of slaves and female servants, He—Majestic and Exalted—has appended to His command to marry the unmarried among us without stipulating their consent. Thus, they must logically accept the marriage of a free previously married woman even if she dislikes it, if they persist in their corrupt foundational principle. If they further argue using His Exalted statement: {Then marry from what your right hands possess of believing young women} [4:25] until His words {So marry them with the permission of their guardians} [4:25]—without stipulating their consent—we reply: The Exalted has indeed said: {Then marry women that please you, two, three, or four} [4:3] without stipulating their consent. All this has been clarified by the Messenger of Allah—peace and blessings be upon him—in his ruling that a virgin is not to be married until her permission is sought, nor a previously married woman until she is asked for her consent, without distinguishing between free women and enslaved women: {He does not speak from whim} [53:3], {It is nothing but revelation inspired} [53:4], {Your Lord is never forgetful} [19:64], and {To make clear to people what was sent down to them} [16:44]. This constitutes the definitive clarification requiring no alternative, unlike incoherent opinions and invalid claims.[8]

L30592 As for the report of Jabir, they have no basis in it, because the meaning of his statement—may Allah be pleased with him—to their master, that he may unite them and separate them, is correct. The sound ruling is that their master may unite them by gifting her to him, and their master may separate them by seizing her from him, just as he seizes all his property and earnings.

L30593 As for the statement of Ibrahim: There is no conclusive proof for anyone below the Messenger of Allah (peace be upon him).

L30594 **The Issue of the Woman's Consent in Nikah (Marriage Contract).**

[8] **Qur'an references (L30591):** Qur'an 4:25 (An-Nisa); Qur'an 4:3 (An-Nisa); Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 19:64 (Maryam); Qur'an 16:44 (An-Nahl).

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْله تَعَالَى: فِي إنْكَاحِ الْعَبِيدِ وَالْإِمَاءِ فَإِنَّهُ عَطَفَ عَزَّ وَجَلَّ عَلَى أَمْرِهِ بِالنِّكَاحِ الْأَيَامَى مِنَّا وَلَمْ يَشْتَرِطْ فِيهِنَّ رِضَاهُنَّ، فَلْيَلْزَمْهُمْ أَنْ يُجِيزُوا بِذَلِكَ إنْكَاحَ الْحُرَّةِ الثَّيِّبِ وَإِنْ كَرِهَتْ إنْ طَرَدُوا أَصْلَهُمْ الْفَاسِدَ. فَإِنْ شَغَبُوا أَيْضًا بِقَوْلِهِ تَعَالَى: {فَمِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ فَتَيَاتِكُمُ الْمُؤْمِنَاتِ} [النساء: ٢٥] إلَى قَوْله تَعَالَى {فَانْكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ} [النساء: ٢٥] وَلَمْ يَشْتَرِطْ رِضَاهُنَّ؟ قُلْنَا: وَقَدْ قَالَ تَعَالَى: {فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلاثَ وَرُبَاعَ} [النساء: ٣] وَلَمْ يَشْتَرِطْ رِضَاهُنَّ، وَكُلُّ هَذَا قَدْ بَيَّنَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَنْ لَا تُنْكَحَ بِكْرٌ حَتَّى تُسْتَأْذَنَ وَلَا ثَيِّبٌ حَتَّى تُسْتَأْمَرَ وَلَمْ يَخُصَّ حُرَّةً مِنْ مَمْلُوكَةٍ: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] ، {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَ {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] فَهَذَا هُوَ الْبَيَانُ الَّذِي لَا يُحْتَاجُ إلَى غَيْرِهِ، لَا كَالْآرَاءِ الْمُتَخَاذِلَةِ وَالدَّعَاوَى الْفَاسِدَةِ.

وَأَمَّا خَبَرُ جَابِرٍ: فَلَيْسَ لَهُمْ فِيهِ مُتَعَلَّقٌ، لِأَنَّ مَعْنَى قَوْلِهِ - رَضِيَ اللَّهُ عَنْهُ - لِسَيِّدِهِمَا أَنْ يَجْمَعَ بَيْنَهُمَا وَيُفَرِّقَ فَقَوْلٌ صَحِيحٌ لَهُ أَنْ يَجْمَعَ بَيْنَهُمَا بِأَنْ يَهَبَهَا لَهُ وَلَهُ أَنْ يُفَرِّقَ بَيْنَهُمَا بِأَنْ يَنْتَزِعَهَا مِنْهُ كَمَا يَنْتَزِعُ سَائِرَ مَالِهِ وَكَسْبِهِ.

وَأَمَّا قَوْلُ إبْرَاهِيمَ: فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَة إذْن الْمَرْأَة فِي النِّكَاح]

L30595 Issue 1839: A previously married woman's consent to marriage is only valid through her explicit statement indicating approval. A virgin's consent to marriage is only valid through her silence. If she remains silent, she has consented and the marriage becomes binding upon her. If she speaks to express consent, refusal, or anything at all, the marriage is not contracted upon her by this.

١٨٣٩ - مَسْأَلَةٌ: وَكُلُّ ثَيِّبٍ فَإِذْنُهَا فِي نِكَاحِهَا لَا يَكُونُ إِلَّا بِكَلَامِهَا بِمَا يُعْرَفُ بِهِ رِضَاهَا، وَكُلُّ بِكْرٍ فَلَا يَكُونُ إِذْنُهَا فِي نِكَاحِهَا إِلَّا بِسُكُوتِهَا، فَإِنْ سَكَتَتْ فَقَدْ أَذِنَتْ وَلَزِمَهَا النِّكَاحُ، فَإِنْ تَكَلَّمَتْ بِالرِّضَا أَوْ بِالْمَنْعِ أَوْ غَيْرِ ذَلِكَ، فَلَا يَنْعَقِدُ بِهَذَا نِكَاحٌ عَلَيْهَا.

L30596–30597 The evidence for this is what we previously mentioned from the statement of Allah's Messenger - peace be upon him - regarding the virgin: "Her permission is her silence," and what we transmitted through Muslim's narration: Ubaydullāh ibn Umar al-Qawārīrī narrated to me, from Khālid ibn al-Hārith, from Hishām [al-Dastuwā'ī], from Yahyā ibn Abī Kathīr, from Abū Salama [ibn Abd al-Rahmān ibn Awf], from Abū Hurayra that Allah's Messenger - peace be upon him - said: "A previously married woman is not to be wed until she is consulted, nor a virgin until her explicit permission is obtained." They asked: "O Messenger of Allah, how does she grant permission?" He replied: "Through her silence."[9]

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَاهُ قَبْلُ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْبِكْرِ «إِذْنُهَا صُمَاتُهَا» ، وَمَا رُوِّينَاهُ عَنْ مُسْلِمٍ: حَدَّثَنِي عُبَيْدُ اللَّهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ نَا خَالِدُ بْنُ الْحَارِثِ نا هِشَامٌ - هُوَ الدَّسْتُوَائِيُّ - عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ نَا أَبُو سَلَمَةَ - هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - نا أَبُو هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تُنْكَحُ الْأَيِّمُ حَتَّى تُسْتَأْمَرَ وَلَا تُنْكَحُ الْبِكْرُ حَتَّى تُسْتَأْذَنَ قَالُوا: يَا رَسُولَ اللَّهِ وَكَيْفَ إِذْنُهَا؟ قَالَ: أَنْ تَسْكُتَ» .

L30598 Abu Muhammad said: A group from the Khawalif held the view that if a virgin expresses consent verbally, the marriage becomes valid through this—contrary to the position of the Messenger of Allah (peace be upon him) and the Companions (may Allah be pleased with them). So glory be to the One who led them to assume their minds were sounder than those of the Companions of the Messenger of Allah (peace be upon him), and instilled in their hearts that they had attained an understanding and clarity which had escaped the Messenger of Allah (peace be upon him). We seek refuge in Allah from such a notion.

قَالَ أَبُو مُحَمَّدٍ: فَذَهَبَ قَوْمٌ مِنْ الْخَوَالِفِ إلَى أَنَّ الْبِكْرَ إنْ تَكَلَّمَتْ بِالرِّضَا فَإِنَّ النِّكَاحَ يَصِحُّ بِذَلِكَ خِلَافًا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَى الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَسُبْحَانَ الَّذِي أَوْهَمَهُمْ أَنَّهُمْ أَصَحُّ أَذْهَانًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَوْقَعَ فِي نُفُوسِهِمْ أَنَّهُمْ وَقَفُوا عَلَى فَهْمٍ وَبَيَانٍ غَابَ عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَعُوذُ بِاَللَّهِ عَنْ مِثْلِ هَذَا.

L30599 As for the Messenger of Allah (peace and blessings be upon him), he annulled the marriage, as you have heard, in the case of a virgin when consent was not sought and she remained silent, and permitted it when consent was sought and she remained silent, based on his statement (peace and blessings

فَأَمَّا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنَّهُ أَبْطَلَ النِّكَاحَ كَمَا تَسْمَعُونَ عَنْ الْبِكْرِ مَا لَمْ تُسْتَأْذَنْ فَتَسْكُتَ، وَأَجَازَهُ إذَا اُسْتُأْذِنَتْ فَسَكَتَتْ بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «لَا تُنْكَحُ الْبِكْرُ حَتَّى تُسْتَأْذَنَ وَإِذْنُهَا صُمَاتُهَا» .

[9] **Hadith references (L30597):** Sahih al-Bukhari 5136; Sahih Muslim 1419a; Mishkat al-Masabih 3126.

be upon him): "A virgin is not to be married until her consent is sought, and her consent is her silence."

L30600 As for the Companions, they—as we mentioned in the previously cited report—did not know what the virgin's permission was until they asked Allah's Messenger (peace and blessings be upon him) about it. Otherwise, their question would have been superfluous according to these people, and far be it from them to do such a thing. Thus, these people have noticed what the Companions of Allah's Messenger (peace and blessings be upon him) failed to notice, and what he himself (peace be upon him) did not alert about. This is as you can see.

L30601 We do not know of any of the Salaf from whom it was reported that a virgin's speech constitutes consent. Yet we have received narrations from Umar ibn al-Khattab, Ali, and others besides them both that her permission is silence.

L30602 Among the wonders of the world is Mālik's claim that a virgin spinster's consent is valid only through speech—despite contradicting the explicit wording of the Messenger of Allah's statement (peace be upon him)—for this is utterly corrupt, as he imposed an obligatory duty upon the spinster that he exempted others from. We would dearly like to be informed of the defined criterion at which a woman's obligatory duty transitions to the aforementioned obligation. And success comes only from Allah, the Exalted.

L30603–30604 The matters of the dower, maintenance, and clothing are decreed upon the husband for his wife.

L30605 Issue: The dowry, maintenance, and clothing are legally obligated for the woman upon her enslaved husband, just as they are obligated upon a free man, with no difference—it is the same whether she is free or enslaved. The dowry belongs to the enslaved woman, except that the master may claim it as with the rest of her property.

L30606 The proof of that is the statement of Allah, the Exalted and Majestic: {And give the women their bridal gifts as a gift} [An-Nisa: 4].[10]

وَأَمَّا الصَّحَابَةُ فَإِنَّهُمْ كَمَا أَوْرَدْنَا فِي الْخَبَرِ الْمَذْكُورِ آنِفًا لَمْ يَعْرِفُوا مَا إِذْنُ الْبِكْرِ حَتَّى سَأَلُوا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهُ، وَإِلَّا فَكَانَ سُؤَالُهُمْ عِنْدَ هَؤُلَاءِ فُضُولًا، وَحَاشَ لَهُمْ مِنْ ذَلِكَ، فَتَنَبَّهَ هَؤُلَاءِ لِمَا لَمْ يَتَنَبَّهْ لَهُ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا نَبَّهَ عَنْهُ - عَلَيْهِ السَّلَامُ -، وَهَذَا كَمَا تَرَوْنَ.

وَمَا عَلِمْنَا أَحَدًا مِنْ السَّلَفِ رُوِيَ عَنْهُ أَنَّ كَلَامَ الْبِكْرِ يَكُونُ رِضًا، وَقَدْ رُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيٍّ، وَغَيْرِهِمَا: أَنَّ إذْنَهَا هُوَ السُّكُوتُ.

وَمِنْ عَجَائِبِ الدُّنْيَا قَوْلُ مَالِكٍ: إنَّ الْعَانِسَ الْبِكْرَ لَا يَكُونُ إذْنُهَا إلَّا بِالْكَلَامِ - وَهَذَا مَعَ مُخَالَفَتِهِ لِنَصِّ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَفِي غَايَةِ الْفَسَادِ لِأَنَّهُ أَوْجَبَ فَرْضًا عَلَى الْعَانِسِ مَا أَسْقَطَهُ عَنْ غَيْرِهَا فَلَوَدِدْنَا أَنْ يُعَرِّفُونَا الْحَدَّ الَّذِي إذَا بَلَغَتْهُ الْمَرْأَةُ انْتَقَلَ فَرْضُهَا إلَى مَا ذُكِرَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الصَّدَاقُ وَالنَّفَقَةُ وَالْكِسْوَةُ مَقْضِيٌّ بِهَا لِلْمَرْأَةِ عَلَى زَوْجِهَا]

مَسْأَلَةٌ: وَالصَّدَاقُ، وَالنَّفَقَةُ، وَالْكِسْوَةُ مَقْضِيٌّ بِهَا لِلْمَرْأَةِ عَلَى زَوْجِهَا الْمَمْلُوكِ كَمَا يُقْضَى بِهَا عَلَى الْحُرِّ وَلَا فَرْقَ سَوَاءٌ كَانَتْ حُرَّةً أَوْ أَمَةً وَالصَّدَاقُ لِلْأَمَةِ إلَّا أَنَّ لِلسَّيِّدِ أَنْ يَنْتَزِعَهُ كَسَائِرِ مَالِهَا.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] .

[10] **Qur'an references (L30606):** Qur'an 4:4 (An-Nisa).

L30607 Allah the Exalted says regarding unmarried women: {So marry [such women] with the permission of their guardians and give them their due dowries} [An-Nisa: 25].[11]

وقَوْله تَعَالَى فِي الْأَيَامَى: {فَانْكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ وَآتُوهُنَّ أُجُورَهُنَّ} [النساء: ٢٥] .

L30608 The Exalted addressed spouses generally, making no distinction between free and enslaved, and obligated—by the text of His speech, which none opposes except the forsaken—to give the bridal gift specifically to the enslaved wife, not to others.

فَخَاطَبَ تَعَالَى الْأَزْوَاجَ عُمُومًا، لَمْ يَخُصَّ حُرًّا مِنْ عَبْدٍ، وَأَوْجَبَ بِنَصِّ كَلَامِهِ - الَّذِي لَا يُعَارِضُهُ إِلَّا مَخْذُولٌ - إِيتَاءَ الصَّدَاقِ لِلْأَمَةِ لَا لِغَيْرِهَا.

L30609 Similarly, Allah the Almighty has obligated husbands to provide maintenance, clothing, and housing for their wives. If a slave or a free man is unable to fulfill the mahr (dower) – whether entirely or partially – or to provide maintenance and clothing – whether entirely or partially – the mahr remains a debt binding upon him, while the maintenance and clothing obligations are waived. The debt is to be collected from each of the following: the revenue generated by the slave's labor (kharāj) and his other earnings. This is the opinion of al-Shaʿbī.

وَكَذَلِكَ أَوْجَبَ اللَّهُ عَزَّ وَجَلَّ النَّفَقَةَ، وَالْكِسْوَةَ، وَالْإِسْكَانَ عَلَى الْأَزْوَاجِ لِلزَّوْجَاتِ، فَإِنْ عَجَزَ الْعَبْدُ أَوْ الْحُرُّ عَنْ الصَّدَاقِ أَوْ بَعْضِهِ، وَعَنْ النَّفَقَةِ، وَالْكِسْوَةِ أَوْ بَعْضِهَا، فَالصَّدَاقُ دَيْنٌ عَلَيْهِ فِي ذِمَّتِهِ، وَالنَّفَقَةُ وَالْكِسْوَةُ سَاقِطَةٌ عَنْهُ، وَيُؤْخَذُ كُلٌّ مِنْ خَرَاجِ الْعَبْدِ وَمِنْ سَائِرِ كَسْبِهِ - وَهُوَ قَوْلُ الشَّعْبِيِّ.

L30610 It has been narrated to us through the chain of Saʿīd ibn Manṣūr, from Hushaym, from al-Shaybānī—who is Abū Isḥāq—from al-Shaʿbī, who said: A slave must prioritize his maintenance of his family over his obligations to his masters (meaning the maintenance of his wife).

كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الشَّيْبَانِيُّ - هُوَ أَبُو إِسْحَاقَ - عَنْ الشَّعْبِيِّ قَالَ: يَبْدَأُ الْعَبْدُ بِنَفَقَتِهِ عَلَى أَهْلِهِ قَبْلَ الَّذِي عَلَيْهِ لِمَوَالِيهِ - يَعْنِي نَفَقَةَ امْرَأَتِهِ -.

L30611 Abu Hanifa and his companions said: If a slave marries with his master's permission, the dowry is incumbent upon the slave. If he consummates the marriage, it becomes obligatory to sell him for the dowry and maintenance; if the master redeems him, that is his right. If he surrenders him to the woman, the slave's ownership becomes established as hers by right as legal property, and the marriage is annulled.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: إذَا تَزَوَّجَ الْعَبْدُ بِإِذْنِ مَوْلَاهُ فَالْمَهْرُ عَلَيْهِ فَإِنْ دَخَلَ بِهَا وَجَبَ بَيْعُهُ فِي الصَّدَاقِ وَفِي النَّفَقَةِ، فَإِنْ فَدَاهُ السَّيِّدُ فَذَلِكَ لَهُ، وَإِنْ أَسْلَمَهُ لِلْمَرْأَةِ وَجَبَتْ رَقَبَتُهُ لِلْمَرْأَةِ مِلْكًا وَانْفَسَخَ النِّكَاحُ.

L30612 They said: If he were to contract a marriage between his male slave and his female slave, there would be absolutely no requirement for a *mahr* in that case—neither before consummation nor after it.

قَالُوا: فَلَوْ أَنْكَحَ عَبْدَهُ أَمَتَهُ فَلَا يَحْتَاجُ فِي ذَلِكَ إلَى صَدَاقٍ أَصْلًا لَا قَبْلَ الدُّخُولِ وَلَا بَعْدَهُ.

L30613 Mālik said: The dowry is a liability of the slave, taken from his property if

وَقَالَ مَالِكٌ: الْمَهْرُ فِي ذِمَّةِ الْعَبْدِ وَيُؤْخَذُ مِنْ مَالِهِ إنْ وُهِبَ لَهُ وَلَا يُؤْخَذُ مِنْ خَرَاجِهِ، فَإِنْ لَمْ يُوجَدْ لَهُ مَالٌ وُهِبَ لَهُ، فَهُوَ دَيْنٌ فِي ذِمَّتِهِ إذَا أُعْتِقَ.

[11] **Qur'an references (L30607):** Qur'an 4:25 (An-Nisa).

gifted to him; it is not taken from his land revenue. If no gifted property is found for him, it remains a liability enforceable upon his emancipation.

وَقَالَ الْأَوْزَاعِيُّ: الْمَهْرُ فِي ذِمَّةِ الزَّوْجِ إِذَا أُعْتِقَ.

L30614 Al-Awzaʿī said: The dower is a debt upon the husband if he is manumitted.

وَقَالَ اللَّيْثُ: السَّيِّدُ ضَامِنٌ لِنَفَقَةِ الْمَرْأَةِ إِنْ لَمْ يَكُنْ لِلْعَبْدِ مَالٌ، فَإِنْ كَانَ لِلْعَبْدِ فَضْلُ مَالٍ أُخِذَتْ نَفَقَةُ امْرَأَتِهِ مِنْهُ، فَإِنْ لَمْ يَكُنْ لَهُ فَضْلُ مَالٍ عَنْ خَرَاجِهِ فُرِّقَ بَيْنَهُمَا.

L30615 Al-Layth said: The master is responsible for the maintenance of the slave's wife if the slave has no wealth. If the slave has surplus wealth, his wife's maintenance is drawn from it. If he has no surplus wealth beyond his land tax, they are separated.

وَقَالَ الشَّافِعِيُّ: الصَّدَاقُ فِي ذِمَّةِ الْعَبْدِ وَالنَّفَقَةُ عَلَيْهِ إِنْ كَانَ مَأْذُونًا لَهُ فِي التِّجَارَةِ.

L30616–30617 Al-Shafiʿi said: The mahr (bridal gift) is the responsibility of the slave, and maintenance is incumbent upon him if he is authorized to engage in trade.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: تَخْصِيصُ الشَّافِعِيِّ الْمَأْذُونَ لَهُ فِي التِّجَارَةِ لَا وَجْهَ لَهُ، وَقَدْ يَكْسِبُ الْمَالَ مِنْ غَيْرِ التِّجَارَةِ، لَكِنْ بِعَمَلٍ أَوْ مِنْ صَنِيعَةٍ.

L30618 Abu Muhammad—may Allah be pleased with him—said: Al-Shafiʿi's specification regarding the one authorized for trade has no valid basis, for the individual may acquire wealth through means other than trade, such as labor or a skilled profession.

وَأَمَّا قَوْلُ اللَّيْثِ: إِنْ لَمْ يَكُنْ لِلْعَبْدِ عَنْ خَرَاجِهِ فَضْلٌ فُرِّقَ بَيْنَهُ وَبَيْنَ امْرَأَتِهِ فَخَطَأٌ، لِأَنَّهُ لَا يَخْفَى مِنَ الْعَبِيدِ مَنْ لَهُ فَضْلٌ عَنْ خَرَاجِهِ مِمَّنْ لَا فَضْلَ لَهُ عَنْهُ، لِأَنَّهُ إِذَا جَعَلَ الْخَرَاجَ لِلسَّيِّدِ لَا يُخْرِجُ مِنْهُ نَفَقَةَ الزَّوْجَةِ فَقَدْ صَارَ النِّكَاحُ لَغْوًا إِذَا تَيَقَّنَ أَنَّ الْفَسْخَ يَتْلُوهُ.

L30619 As for al-Layth's statement "If the slave has no surplus beyond his kharaj, separation is imposed between him and his wife" - this is erroneous, because it is evident among slaves who have surplus beyond their kharaj from those who do not. When the kharaj is assigned to the master without deducting the wife's maintenance from it, the marriage becomes invalid since it becomes certain that annulment will follow.

وَأَمَّا تَخْصِيصُ مَالِكٍ أَنْ تُؤْخَذَ النَّفَقَةُ وَالصَّدَاقُ مِنْ غَيْرِ خَرَاجِهِ، فَقَوْلٌ بِلَا بُرْهَانٍ، لِأَنَّ الْخَرَاجَ كَسَائِرِ كَسْبِ الْعَبْدِ لَا يَكُونُ لِلسَّيِّدِ فِيهِ حَقٌّ أَصْلًا، إِلَّا حَتَّى يَصِحَّ مِلْكُ الْعَبْدِ لَهُ بِإِجَازَتِهِ أَوْ بِبَيْعِهِ فِيهِ، فَإِذَا صَحَّ مِلْكُ الْعَبْدِ لَهُ كَانَ لِلسَّيِّدِ حِينَئِذٍ أَنْ يَأْخُذَهُ مِنْهُ، وَلَا شَكَّ فِي أَنَّ السَّيِّدَ لَمْ يَمْلِكْ قَطُّ مِنْ خَرَاجِ الْعَبْدِ فَلْسًا قَبْلَ أَنْ يَجِبَ لِلْعَبْدِ بِعِلْمِهِ أَوْ بِبَيْعِهِ فِيهِ، فَإِذَا صَارَ لِلْعَبْدِ فَلَيْسَ السَّيِّدُ أَوْلَى بِهِ مِنْ سَائِرِ مَنْ لَهُ عِنْدَ الْعَبْدِ حَقٌّ، كَالزَّوْجَةِ وَالْغُرَمَاءِ.

L30620 As for Mālik's specification that maintenance and dower are to be taken from sources other than the slave's *kharaj*, this is an assertion without proof. For the *kharaj*, like all other earnings of the slave, does not inherently belong to the master at all, unless the slave's ownership of it is validated through the master's acknowledgment or by the slave's sale of it. Once the slave's ownership is validated, the master has the right to take it from him. There is no doubt that the master never owned a single *fals* from the slave's *kharaj* before the slave's entitlement to it was established through the master's acknowledgment or by the slave's sale of it. Once it becomes the slave's property, the master has no greater claim to it than others who hold rights against the slave, such as the wife or creditors.

L30621 As for the statement of Abū Ḥanīfa, it is utterly corrupt, because he permitted a marriage without a dower—and this contradicts the Quran as we have demonstrated. Moreover, he treated the marriage ordained by Allah the Exalted—requiring the master's consent—and the lawful intercourse with his wife permitted by Allah the Exalted as a crime and a debt, imposing liability upon him for which the slave is sold or his freedom is forfeited. Undoubtedly, the slave's person is the master's property. By what justification, then, has he permitted her the master's property, which Allah the Exalted has forbidden to her?

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفِي غَايَةِ الْفَسَادِ، لِأَنَّهُ أَجَازَ نِكَاحًا بِلَا صَدَاقٍ - وَهَذَا خِلَافُ الْقُرْآنِ كَمَا أَوْرَدْنَا ثُمَّ جَعَلَ نِكَاحَهُ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ بِرِضَا سَيِّدِهِ وَوَطْأَهُ لِامْرَأَتِهِ الَّتِي أَبَاحَ اللَّهُ تَعَالَى وَطْأَهُ لَهَا وَيَأْجُرُهُ عَلَيْهِ جِنَايَةً وَدَيْنًا يُبَاعُ فِيهِ أَوْ تُسَلَّمُ رَقَبَتُهُ - وَلَا شَكَّ فِي أَنَّ رَقَبَةَ الْعَبْدِ مِلْكٌ لِلسَّيِّدِ، فَبِأَيِّ شَيْءٍ أَبَاحَ لَهَا مَالَ السَّيِّدِ الَّذِي حَرَّمَهُ اللَّهُ تَعَالَى عَلَيْهَا؟

L30622 Merely hearing this statement makes the effort to refute it unnecessary, though it is an assertion no one is known to have made before them.

وَهَذَا كَلَامٌ يُغْنِي سَمَاعُهُ عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهِ مَعَ أَنَّهُ قَوْلٌ لَا يُعْلَمُ أَحَدٌ قَالَهُ قَبْلَهُمْ.

L30623 Some of them have mentioned in that regard what we have narrated through the chain of narration of Waki' from Sufyan al-Thawri from Ibn Jurayj from 'Ata' from Ibn 'Abbas, who said: There is no harm in a man giving his female slave in marriage to his male slave without a mahr.

وَقَدْ ذَكَرَ بَعْضُهُمْ فِي ذَلِكَ مَا رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا بَأْسَ أَنْ يُزَوِّجَ الرَّجُلُ أَمَتَهُ عَبْدَهُ بِغَيْرِ مَهْرٍ.

L30624 Abu Muhammad said: This is an obfuscation by the one who presented this report, for Ibn Abbas only meant "without mention of the mahr," and this is permissible for all parties involved until she demands it or her heirs demand it, then it is awarded to her or to them as Allah the Exalted has ordained concerning that matter.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَمْوِيهٌ مِنَ الَّذِي أَوْرَدَ هَذَا الْخَبَرَ، لِأَنَّ ابْنَ عَبَّاسٍ إِنَّمَا عَنَى بِغَيْرِ ذِكْرِ مَهْرٍ، وَهَذَا جَائِزٌ لِكُلِّ أَحَدٍ حَتَّى إِذَا طَلَبَتْهُ أَوْ طَلَبَهُ وَرَثَتُهَا قُضِيَ لَهَا أَوْ لَهُمْ كَمَا أَمَرَ اللَّهُ تَعَالَى بِذَلِكَ.

L30625 [مَسْأَلَة كون الْمُسْلِم وليا للكافرة والكافر وليا للمسلمة]

L30625 The juristic question of whether a Muslim may act as a guardian for a non-Muslim woman, and whether a non-Muslim may act as a guardian for a Muslim woman.

L30626 1841 - Issue: A non-Muslim cannot be a guardian for a Muslim woman, nor can a Muslim be a guardian for a non-Muslim woman—the father and others are the same. A non-Muslim is a guardian for the non-Muslim woman who is his female ward; he may marry her to a Muslim or a non-Muslim.

١٨٤١ - مَسْأَلَةٌ: وَلَا يَكُونُ الْكَافِرُ وَلِيًّا لِلْمُسْلِمَةِ، وَلَا الْمُسْلِمُ وَلِيًّا لِلْكَافِرَةِ، الْأَبُ وَغَيْرُهُ سَوَاءٌ، وَالْكَافِرُ وَلِيٌّ لِلْكَافِرَةِ الَّتِي هِيَ وَلِيَّتُهُ يُنْكِحُهَا مِنَ الْمُسْلِمِ وَالْكَافِرِ.

L30627–30629 The proof of this is the statement of Allah, the Exalted: *And the believing men and believing women are allies of one another* (Quran 9:71). And He,

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [التوبة: ٧١] وَقَالَ تَعَالَى: {وَالَّذِينَ كَفَرُوا بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [الأنفال: ٧٣] .

the Exalted, said: “And those who disbelieve are protectors of one another” [Al-Anfal 73].[12]

L30630 This is the opinion of those whose statements we have preserved, except for Ibn Wahb, the companion of Malik, who said: “A Muslim may act as the guardian of his disbelieving daughter in arranging her marriage to a Muslim or a disbeliever” (and this is incorrect due to what we have previously stated), and success comes from Allah, the Exalted.

L30631 **Issue: Is it permissible for a woman’s guardian to contract her marriage on his own initiative without her consent?**

L30632 1842 - Issue: It is valid for a woman’s guardian to contract her marriage by his own authority if she consents to him as a spouse, provided there exists no guardianship-right-bearing male relative closer to her than him; otherwise, it is invalid. This is the opinion of Mālik and Abū Ḥanīfah.

L30633 Ash-Shafi’i and Abu Sulayman held the opinion that he himself should not give her in marriage on his own initiative.

L30634 They asserted that marriage requires a marrying party and a guardian (wali), and thus it is not permissible for the one entering the marriage to be the guardian himself.

L30635 The proponents of qiyās among them stated: Just as one cannot contract a sale on his own without a guardian, so too one cannot contract a marriage on his own without a guardian.

L30636 Ali said: They also cited as evidence what we have narrated it through the chain reported by Saʿīd ibn Manṣūr, narrated from Ḥushaym, from Muḥammad ibn Sālim, from al-Shaʿbī: that al-Mughīrah ibn Shuʿbah proposed to the daughter of his paternal uncle, ʿUrwah ibn Masʿūd. He sent a message to ʿAbdullāh ibn Abī ʿAqīl and said: “Will you marry her to me?” He replied: “I would not do so. You are the governor of this town and her paternal cousin.” Al-Mughīrah then sent to ʿUthmān ibn Abī al-ʿĀṣ, and he arranged her marriage to him.

وَهُوَ قَوْلُ مَنْ حَفِظْنَا قَوْلَهُ، إِلَّا ابْنَ وَهْبٍ صَاحِبَ مَالِكٍ قَالَ: إِنَّ الْمُسْلِمَ يَكُونُ وَلِيًّا لِابْنَتِهِ الْكَافِرَةِ فِي إِنْكَاحِهَا مِنَ الْمُسْلِمِ أَوْ مِنَ الْكَافِرِ - وَهَذَا خَطَأٌ لِمَا ذَكَرْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة هَلْ لولي الْمَرْأَة أَنْ ينكحها مِنْ نَفْسه]

١٨٤٢ - مَسْأَلَةٌ: وَجَائِزٌ لِوَلِيِّ الْمَرْأَةِ أَنْ يُنْكِحَهَا مِنْ نَفْسِهِ إِذَا رَضِيَتْ بِهِ زَوْجًا وَلَمْ يَكُنْ أَحَدٌ أَقْرَبَ إِلَيْهَا مِنْهُ، وَإِلَّا فَلَا - وَهُوَ قَوْلُ مَالِكٍ، وَأَبِي حَنِيفَةَ.

وَذَهَبَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ إِلَى أَنْ لَا يُنْكِحَهَا هُوَ مِنْ نَفْسِهِ.

وَاحْتَجُّوا بِأَنَّ النِّكَاحَ يَحْتَاجُ إِلَى نَاكِحٍ وَمُنْكِحٍ، فَلَا يَجُوزُ أَنْ يَكُونَ النَّاكِحُ هُوَ الْمُنْكِحَ.

وَقَالَ أَصْحَابُ الْقِيَاسِ مِنْهُمْ: كَمَا لَا يَبِيعُ مِنْ نَفْسِهِ كَذَلِكَ لَا يُنْكِحُ مِنْ نَفْسِهِ.

قَالَ عَلِيٌّ: وَاحْتَجُّوا أَيْضًا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا مُحَمَّدُ بْنُ سَالِمٍ عَنِ الشَّعْبِيِّ: أَنَّ الْمُغِيرَةَ بْنَ شُعْبَةَ خَطَبَ بِنْتَ عَمِّهِ عُرْوَةَ بْنِ مَسْعُودٍ فَأَرْسَلَ إِلَى عَبْدِ اللَّهِ بْنِ أَبِي عَقِيلٍ فَقَالَ: زَوِّجْنِيهَا؟ فَقَالَ: مَا كُنْتُ لِأَفْعَلَ، أَنْتَ أَمِيرُ الْبَلَدِ، وَابْنُ عَمِّهَا؟ فَأَرْسَلَ الْمُغِيرَةُ إِلَى عُثْمَانَ بْنِ أَبِي الْعَاصِ فَزَوَّجَهَا مِنْهُ.

[12] **Qur’an references (L30627):** Qur’an 9:71 (At-Tawbah); Qur’an 8:73 (Al-Anfal).

قَالَ أَبُو مُحَمَّد: الْمُغِيرَةُ - هُوَ ابْنُ شُعْبَةَ بْنِ أَبِي عَامِرِ بْنِ مَسْعُودِ بْنِ مُغِيثِ بْنِ مَالِكِ بْنِ كَعْبِ بْنِ عَمْرِو بْنِ عَمْرِو بْنِ سَعْدِ بْنِ عَوْفِ بْنِ ثَقِيفٍ.

L30637 Abu Muhammad said: Al-Mughirah ibn Shu'bah ibn Abi Amir ibn Mas'ud ibn Mughith ibn Malik ibn Ka'b ibn 'Amr ibn 'Amr ibn Sa'd ibn 'Awf ibn Thaqif.

وَعُرْوَةُ بْنُ مَسْعُودِ بْنِ مُغِيثٍ الْمَذْكُورُ، وَعَبْدُ اللَّهِ بْنُ أَبِي عَقِيلِ بْنِ مَسْعُودِ بْنِ عَمْرِو بْنِ عَامِرِ بْنِ مُغِيثٍ الْمَذْكُورُ.

L30638 The aforementioned Urwah ibn Masʿūd ibn Mughīth, and ʿAbdullāh ibn Abī ʿAqīl ibn Masʿūd ibn ʿAmr ibn ʿĀmir ibn Mughīth (also aforementioned).

وَعُثْمَانُ بْنُ أَبِي الْعَاصِ - لَا يَجْتَمِعُ مَعَهُمْ إِلَّا فِي ثَقِيفٍ، لِأَنَّهُ مِنْ وَلَدِ جُشَمَ بْنِ ثَقِيفٍ.

L30639 Uthman ibn Abi al-As only meets with them among the Thaqif tribe, for he is from the offspring of Jusham of the Thaqif tribe.

ونا بِهَذَا أَيْضًا: مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ قَالَ: إِنَّ الْمُغِيرَةَ بْنَ شُعْبَةَ أَمَرَ رَجُلًا أَنْ يُزَوِّجَهُ امْرَأَةً - الْمُغِيرَةُ أَوْلَى بِهَا مِنْهُ.

L30640 And with this also: Muhammad ibn Sa'id ibn Nabat narrated to us: Ahmad ibn Abd al-Basir narrated to us, Qasim ibn Asbagh narrated to us, Muhammad ibn Abd al-Salam al-Khushani narrated to us, Muhammad ibn al-Muthanna narrated to us, Abd al-Rahman ibn Mahdi narrated to us, Sufyan al-Thawri narrated to us from Abd al-Malik ibn Umayr, who said: "Al-Mughirah ibn Shu'bah ordered a man to give him a woman in marriage - Al-Mughirah had a stronger right to her guardianship [in marriage] than he did."

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُهُمْ: إِنَّ النِّكَاحَ يَحْتَاجُ إِلَى نَاكِحٍ وَمُنْكِحٍ - فَنَعَمْ.

L30641–30642 Abu Muhammad said: As for their assertion that marriage necessitates a marrying party and a marriage guardian—this is correct.

وَأَمَّا قَوْلُهُمْ: إِنَّهُ لَا يَجُوزُ أَنْ يَكُونَ النَّاكِحُ هُوَ الْمُنْكِحَ - فَفِي هَذَا نَازَعْنَاهُمْ، بَلْ جَائِزٌ أَنْ يَكُونَ النَّاكِحُ هُوَ الْمُنْكِحَ، فَدَعْوَى كَدَعْوَى.

L30643 As for their claim that it is impermissible for the groom to be the guardian—we have contested them on this matter. Rather, it is permissible for the groom to act as the guardian. Thus, their claim is but a baseless assertion.

وَأَمَّا قَوْلُهُمْ: كَمَا لَا يَجُوزُ أَنْ يَبِيعَ مِنْ نَفْسِهِ، فَهِيَ جُمْلَةٌ لَا تَصِحُّ كَمَا ذَكَرُوا، بَلْ جَائِزٌ إِنْ وُكِّلَ بِبَيْعِ شَيْءٍ أَنْ يَبْتَاعَهُ لِنَفْسِهِ إِذَا لَمْ يُحَابِهَا بِشَيْءٍ.

L30644 As for their statement: "Just as it is impermissible for him to sell on his own behalf," this is an invalid statement as they claimed. Rather, it is permissible for an agent appointed to sell something to purchase it for himself, provided he does not show partiality to himself in any matter.

وَأَمَّا خَبَرُ الْمُغِيرَةِ فَلَا حُجَّةَ فِيمَنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L30645 As for the report of Al-Mughira, there is no authoritative evidence regarding anyone below the status of the Messenger of Allah—peace and blessings be upon him.

L30646 It remains for us to present proof supporting the validity of our assertion. We found what we have narrated through the chain recorded in Sahih al-Bukhari: Musaddad informed us from ʻAbd al-Wārith ibn Saʻīd from Shuʻayb ibn al-Ḥabḥāb from Anas ibn Mālik: "The Messenger of Allah—may Allah bless him and grant him peace—emancipated Ṣafiyyah, married her, made her emancipation her dower, and hosted a wedding feast for her with ḥays."

فَبَقِيَ عَلَيْنَا أَنْ نَأْتِيَ بِالْبُرْهَانِ عَلَى صِحَّةِ قَوْلِنَا، فَوَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسَدَّدٌ عَنْ عَبْدِ الْوَارِثِ بْنِ سَعِيدٍ عَنْ شُعَيْبِ بْنِ الْحَبْحَابِ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْتَقَ صَفِيَّةَ وَتَزَوَّجَهَا وَجَعَلَ عِتْقَهَا صَدَاقَهَا وَأَوْلَمَ عَلَيْهَا بِحَيْسٍ» .

L30647 Abu Muhammad said: The Messenger of Allah (peace and blessings be upon him) married his freed female slaves himself, and his action constitutes the binding legal proof against all others.

قَالَ أَبُو مُحَمَّد: فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَوَّجَ مَوْلَاتَهُ مِنْ نَفْسِهِ وَهُوَ الْحُجَّةُ عَلَى مَنْ سِوَاهُ.

L30648 Moreover, the Messenger of Allah—peace and blessings be upon him—said, "Any woman who marries without her guardian's permission—her marriage is invalid." Therefore, whoever personally gives a woman under his guardianship in marriage with her consent, then her marriage is valid, for it was with her guardian's permission. He—peace and blessings be upon him—did not stipulate that the guardian must necessarily be someone other than the groom. Since he—peace and blessings be upon him—did not prohibit it, it is permissible.

وَأَيْضًا: فَإِنَّمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إِذْنِ مَوْلَاهَا فَنِكَاحُهَا بَاطِلٌ» فَمَنْ أَنْكَحَ وَلِيَّتَهُ مِنْ نَفْسِهِ بِإِذْنِهَا فَقَدْ نُكِحَتْ بِإِذْنِ وَلِيِّهَا فَهُوَ نِكَاحٌ صَحِيحٌ، وَلَمْ يَشْتَرِطْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنْ يَكُونَ الْوَلِيُّ غَيْرَ النَّاكِحِ وَلَا بُدَّ، فَإِذْ لَمْ يَمْنَعْ مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَهُوَ جَائِزٌ.

L30649 Allah, the Exalted, said: "And He has already detailed for you what He has forbidden to you" [Al-Anʻām 6:119].[13]

قَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

L30650 Therefore, this is among those matters whose prohibition has not been specified to us.

فَهَذَا مِمَّا لَمْ يُفَصِّلْ عَلَيْنَا تَحْرِيمَهُ.

L30651 And He, the Exalted, said: {And marry the unmarried women among you and the morally upright among your male and female servants} [An-Nur: 32]. Whoever arranges the marriage of an unmarried woman from his own kin with her consent has fulfilled what Allah, the Exalted, commanded him. He, the Almighty, has not prohibited the marriage arranger from being the one who marries her himself. Thus, it is established that this is obligatory—and success is from Allah, the Exalted.[14]

وَقَالَ تَعَالَى: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] فَمَنْ أَنْكَحَ أَيِّمَةً مِنْ نَفْسِهِ بِرِضَاهَا فَقَدْ فَعَلَ مَا أَمَرَهُ اللَّهُ تَعَالَى بِهِ، وَلَمْ يَمْنَعْ عَزَّ وَجَلَّ مِنْ أَنْ يَكُونَ الْمُنْكِحُ لِأَيِّمَةٍ هُوَ النَّاكِحَ لَهَا - فَصَحَّ أَنَّهُ الْوَاجِبُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة نِكَاح الزَّانِيَة]

[13] **Qur'an references (L30649):** Qur'an 6:119 (Al-An'am).
[14] **Qur'an references (L30651):** Qur'an 24:32 (An-Nur).

The Issue of Marrying a Woman Who Has Committed *zina*

L30652–30653

L30654 Issue: It is not permissible for a fornicatress to marry anyone—neither a fornicator nor a chaste person—until she repents. If she repents, then it becomes permissible for her to marry a chaste person at that time.

L30655 It is not permissible for a Muslim who has committed fornication to marry a Muslim woman—neither one who has committed fornication nor a chaste one—until he repents. Once he repents, it becomes lawful for him to marry a chaste Muslim woman at that point.

L30656 A Muslim who has committed zinā may marry a chaste woman from the People of the Book even if he has not repented. If any of the aforementioned circumstances occurs, the marriage is permanently invalidated. If a chaste man marries a chaste woman and then one or both of them commit illicit intercourse, the marriage is not annulled on account of that action.

L30657 A group of the Salaf held this view, as it was narrated to us via the chain of narrators of Abū Bakr ibn Abī Shaybah: Wakīʿ reported from ʿAmr ibn Marwān from ʿAbd al-Raḥmān al-Ṣuddāʾī from ʿAlī ibn Abī Ṭālib that a man came to him and said: "I desire my cousin and have had sexual relations with her." ʿAlī responded: "If it was a concealed act (i.e., intercourse), then it is impermissible. But if it was an outward act (i.e., kissing), then there is no harm."

L30658 From the transmission of Ibn Abī Shaybah: ʿAbdullāh ibn Idrīs al-Awdī reported to us from Layth ibn Abī Sulaym from Ibn Sābiṭ: that a man who had been subjected to ḥadd was brought to ʿAlī ibn Abī Ṭālib—he had married a woman not subjected to ḥadd?—so he annulled their marriage.

L30659 From the chain of Ismāʿīl ibn Isḥāq the Judge: ʿAlī ibn ʿAbdullāh reported to us, who reported from Yaḥyā ibn Saʿīd al-Qaṭṭān, who reported from Shuʿbah, who reported from Qatādah and al-Ḥakam ibn ʿUtaybah—both of whom reported from Sālim ibn Abī al-Jaʿd, who reported from his father, who reported from Ibn Masʿūd regarding the man who marries a woman

مَسْأَلَةٌ: وَلَا يَحِلُّ لِلزَّانِيَةِ أَنْ تَنْكِحَ أَحَدًا، لَا زَانِيًا وَلَا عَفِيفًا حَتَّى تَتُوبَ، فَإِذَا تَابَتْ حَلَّ لَهَا الزَّوَاجُ مِنْ عَفِيفٍ حِينَئِذٍ.

وَلَا يَحِلُّ لِلزَّانِي الْمُسْلِمِ أَنْ يَتَزَوَّجَ مُسْلِمَةً لَا زَانِيَةً وَلَا عَفِيفَةً حَتَّى يَتُوبَ، فَإِذَا تَابَ حَلَّ لَهُ نِكَاحُ الْعَفِيفَةِ الْمُسْلِمَةِ حِينَئِذٍ.

وَلِلزَّانِي الْمُسْلِمِ أَنْ يَنْكِحَ كِتَابِيَّةً عَفِيفَةً وَإِنْ لَمْ يَتُبْ، فَإِنْ وَقَعَ شَيْءٌ مِمَّا ذَكَرْنَا فَهُوَ مَفْسُوخٌ أَبَدًا، فَإِنْ نَكَحَ عَفِيفٌ عَفِيفَةً ثُمَّ زَنَى أَحَدُهُمَا أَوْ كِلَاهُمَا لَمْ يُفْسَخْ النِّكَاحُ بِذَلِكَ.

وَقَدْ قَالَ بِهَذَا طَائِفَةٌ مِنْ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نَا وَكِيعٌ عَنْ عَمْرِو بْنِ مَرْوَانَ عَنْ عَبْدِ الرَّحْمَنِ الصُّدَائِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّ رَجُلًا أَتَى إلَيْهِ فَقَالَ: إنَّ لِي ابْنَةَ عَمٍّ أَهْوَاهَا، وَقَدْ كُنْت نِلْت مِنْهَا؟ فَقَالَ لَهُ عَلِيٌّ: إنْ كَانَ شَيْئًا بَاطِنًا - يَعْنِي الْجِمَاعَ - فَلَا، وَإِنْ كَانَ شَيْئًا ظَاهِرًا - يَعْنِي الْقُبْلَةَ - فَلَا بَأْسَ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ إدْرِيسَ الْأَوْدِيُّ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ ابْنِ سَابِطٍ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أُتِيَ بِمَحْدُودٍ تَزَوَّجَ غَيْرَ مَحْدُودَةٍ؟ فَفَرَّقَ بَيْنَهُمَا.

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا شُعْبَةُ نا قَتَادَةُ، وَالْحَكَمُ بْنُ عُتَيْبَةَ، كِلَاهُمَا عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ عَنْ أَبِيهِ عَنْ ابْنِ مَسْعُودٍ فِي الَّذِي يَتَزَوَّجُ الْمَرْأَةَ بَعْدَ أَنْ زَنَى بِهَا قَالَ ابْنُ مَسْعُودٍ: لَا يَزَالَانِ زَانِيَيْنِ.

after committing adultery with her. Ibn Masʿūd said: "They will perpetually remain two adulterers."

L30660 From him to ʿAlī ibn ʿAbd Allāh: Sufyān ibn ʿUyaynah and ʿAbd al-Razzāq narrated to us. ʿAbd al-Razzāq said: Maʿmar narrated to us. Then Sufyān and Maʿmar concurred in narration, both relating from al-Ḥakam ibn Abān that he asked Sālim ibn ʿAbd Allāh ibn ʿUmar about a man who fornicates with a woman then marries her. Sālim said: Ibn Masʿūd was asked about this, and he replied: "He is the One who accepts repentance from His servants" (Quran 42:25), citing the verse.[15]

L30661 Abu Muhammad said: His two opinions are in agreement, because he only permitted contracting marriage with her after repentance.

L30662 From Ibn Abī Shaybah, who narrated to us from Wakīʿ from Ismāʿīl ibn Abī Khālid from al-Shaʿbī, who said: ʿĀ'ishah, the Mother of the Believers—may Allah be pleased with her—said: "The two of them remain adulterers as long as they remain together," meaning: a man who marries a woman with whom he had committed adultery.

L30663–30664 Via the chain of Ibn Abi Shaybah: Asbat narrated from Mutarrif from Abu al-Jahm from al-Bara' ibn 'Azib regarding a man who fornicates with a woman then intends to contract marriage with her. He said: They will remain fornicators forever.

L30665 From the route of Ibn Abī Shaybah: ʿAbd al-Aʿlā reported to us from Saʿīd ibn Abī ʿArūbah from Qatādah from Jābir ibn ʿAbd Allāh, who said: "If they repent and reform, there is no harm" - meaning the man who commits zina with the woman and subsequently intends to marry her.

L30666 From the chain of Ismāʿīl ibn Isḥāq: ʿAbd al-Wāḥid ibn Ghiyāth narrated to us from Abū ʿAwānah, from Mūsā ibn al-Sā'ib, from Muʿāwiyah ibn Qurrah, from Ibn ʿUmar, that he was asked about a man who committed zinā with a woman: is it permissible for him to marry her? He said: If they repent and reform themselves.

L30667 Via the chain of Ismail, Hajjaj ibn al-Minhal and Sulayman ibn Harb both

وَبِهِ إِلَى عَلِيِّ بْنِ عَبْدِ اللَّهِ نا سُفْيَانُ بْنُ عُيَيْنَةَ وَعَبْدُ الرَّزَّاقِ، قَالَ عَبْدُ الرَّزَّاقِ: نا مَعْمَرٌ، ثُمَّ اتَّفَقَ سُفْيَانُ، ومَعْمَرٌ، قَالَا جَمِيعًا: نا الْحَكَمُ بْنُ أَبَانَ أَنَّهُ سَأَلَ سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ الرَّجُلِ يَزْنِي بِالْمَرْأَةِ ثُمَّ يَنْكِحُهَا؟ فَقَالَ سَالِمٌ: سُئِلَ عَنْ ذَلِكَ ابْنُ مَسْعُودٍ فَقَالَ: {وَهُوَ الَّذِي يَقْبَلُ التَّوْبَةَ عَنْ عِبَادِهِ} [الشورى: ٢٥] الْآيَةَ.

قَالَ أَبُو مُحَمَّدٍ: الْقَوْلَانِ مِنْهُ مُتَّفِقَانِ، لِأَنَّهُ إِنَّمَا أَبَاحَ نِكَاحَهَا بَعْدَ التَّوْبَةِ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: قَالَتْ عَائِشَةُ أُمُّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا -: لَا يَزَالَانِ زَانِيَيْنِ مَا اصْطَحَبَا - يَعْنِي: الرَّجُلَ يَتَزَوَّجُ امْرَأَةً زَنَى بِهَا.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَسْبَاطٌ عَنْ مُطَرِّفٍ عَنْ أَبِي الْجَهْمِ عَنْ الْبَرَاءِ بْنِ عَازِبٍ فِي الرَّجُلِ يَفْجُرُ بِالْمَرْأَةِ ثُمَّ يُرِيدُ نِكَاحَهَا قَالَ: لَا يَزَالَانِ زَانِيَيْنِ أَبَدًا.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الْأَعْلَى عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: إِذَا تَابَا وَأَصْلَحَا فَلَا بَأْسَ - يَعْنِي الرَّجُلَ يَزْنِي بِالْمَرْأَةِ ثُمَّ يُرِيدُ نِكَاحَهَا.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا عَبْدُ الْوَاحِدِ بْنُ غِيَاثٍ نا أَبُو عَوَانَةَ عَنْ مُوسَى بْنِ السَّائِبِ عَنْ مُعَاوِيَةَ بْنِ قُرَّةَ عَنْ ابْنِ عُمَرَ أَنَّهُ سُئِلَ عَنْ رَجُلٍ فَجَرَ بِامْرَأَةٍ أَيَتَزَوَّجُهَا؟ قَالَ: إِنْ تَابَا وَأَصْلَحَا.

[15] **Qur'an references (L30660):** Qur'an 42:25 (Ash-Shuraa).

narrated to us together. Hammad ibn Salamah narrated to us from Habib from Ata ibn Abi Rabah from Abu Hurairah, who said: A man who has been flogged must not marry anyone except a woman who has been flogged.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نا حَجَّاجُ بْنُ الْمِنْهَالِ، وَسُلَيْمَانُ بْنُ حَرْبٍ قَالَا جَمِيعًا: نا حَمَّادُ بْنُ سَلَمَةَ عَنْ حَبِيبٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: لَا يَنْكِحُ الْمَجْلُودُ إِلَّا مَجْلُودَةً.

L30668 And through the chain of Ismail: Sulayman ibn Harb narrated to us, from Abu Hilal, from Qatadah, from Al-Hasan, who said: Umar ibn Al-Khattab said: "Indeed, I resolved to prevent anyone who commits fornication in Islam from marrying a free, chaste woman." Ubayy ibn Kaʿb said to him: "O Commander of the Faithful, idolatry is graver than that, yet it is accepted from him if he repents."

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نَا سُلَيْمَانُ بْنُ حَرْبٍ نا أَبُو هِلَالٍ نا قَتَادَةُ عَنْ الْحَسَنِ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَقَدْ هَمَمْت أَنْ لَا أَدَعَ أَحَدًا أَصَابَ فَاحِشَةً فِي الْإِسْلَامِ يَتَزَوَّجُ مُحْصَنَةً، فَقَالَ لَهُ أُبَيّ بْنُ كَعْبٍ: يَا أَمِيرَ الْمُؤْمِنِينَ: الشِّرْكُ أَعْظَمُ مِنْ ذَلِكَ، فَقَدْ يُقْبَلُ مِنْهُ إذَا تَابَ.

L30669 And from the chain of Ismaʿil: ʿAli ibn ʿAbdullah narrated to us, Sufyan ibn ʿUyaynah narrated to us, saying: ʿUbaydullah ibn Abi Yazid said: I heard Ibn ʿAbbas say: **"An adulterer may only marry an adulteress"** [an-Nur: 3]. Ibn ʿAbbas said: This is a legal judgment concerning them. The same has been authentically reported from Ibrahim an-Nakhaʿi, Saʿid ibn al-Musayyib, Silah ibn Ashaym, ʿAtaʾ, Sulayman ibn Yasar, Makḥūl, az-Zuhri, Ibn Qusayt, Qatadah, and others. It has also been reported that the permissibility of their marriage was narrated from Abu Bakr, ʿUmar, Ibn ʿAbbas, and Ibn ʿUmar.[16]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نَا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا سُفْيَانُ بْنُ عُيَيْنَةَ قَالَ: قَالَ عُبَيْدُ اللَّهِ بْنُ أَبِي يَزِيدَ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ: {الزَّانِي لا يَنْكِحُ إِلا زَانِيَةً} [النور: ٣] قَالَ: هُوَ حُكْمٌ بَيْنَهُمَا. وَصَحَّ مِثْلُ هَذَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَصِلَةَ بْنِ أَشْيَمَ وَعَطَاءٍ، وَسُلَيْمَانَ بْنِ يَسَارٍ، وَمَكْحُولٍ، وَالزُّهْرِيِّ، وَابْنِ قُسَيْطٍ، وَقَتَادَةَ، وَغَيْرِهِمْ - وَقَدْ جَاءَ إبَاحَةُ نِكَاحِهِمَا عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ.

L30670 Abu Muhammad said: The proof for our position is the verse of Allah, the Exalted and Glorious: "A fornicator shall not marry except a fornicatress or a polytheist, and a fornicatress shall not be married except by a fornicator or a polytheist. That is forbidden to the believers" [Surah An-Nur 24:3].[17]

قَالَ أَبُو مُحَمَّد: وَالْحُجَّةُ لِقَوْلِنَا هُوَ قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {الزَّانِي لا يَنْكِحُ إِلا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ لا يَنْكِحُهَا إِلا زَانٍ أَوْ مُشْرِكٌ وَحُرِّمَ ذَلِكَ عَلَى الْمُؤْمِنِينَ} [النور: ٣] .

L30671–30673 Then some scholars said, "It was narrated from Sa'īd ibn al-Musayyab that he said: 'They allege that it was abrogated by the verse which...'" Marry off the unmarried among you, and the righteous among your male slaves and female slaves. [An-Nur: 32][18]

فَقَالَ قَوْمٌ: رُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: يَزْعُمُونَ أَنَّهَا نُسِخَتْ بِالْآيَةِ الَّتِي بَعْدَهَا {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] .

[16] **Qur'an references (L30669):** Qur'an 24:3 (An-Nur).
[17] **Qur'an references (L30670):** Qur'an 24:3 (An-Nur).
[18] **Qur'an references (L30671):** Qur'an 24:32 (An-Nur).

L30674 Abu Muhammad said: This is a claim without evidence. It is impermissible to declare regarding anything in the Qur'an or Sunnah, "This is abrogated," except with definitive certainty that leaves no doubt—not through unreliable conjecture. Rather, the obligation is to implement all scriptural texts in their entirety.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ دَعْوَى بِلَا بُرْهَانٍ، وَلَا يَجُوزُ أَنْ يُقَالَ فِي قُرْآنٍ، أَوْ سُنَّةٍ: هَذَا مَنْسُوخٌ إِلَّا بِيَقِينٍ يَقْطَعُ بِهِ، لَا بِظَنٍّ لَا يَصِحُّ وَإِنَّمَا الْفَرْضُ اسْتِعْمَالُ النُّصُوصِ كُلِّهَا.

L30675 The meaning of the words of Allah, the Exalted: "And marry the unmarried among you, whether widowed or divorced" [Surah an-Nur (24:32)].[19]

فَمَعْنَى قَوْله تَعَالَى: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ} [النور: ٣٢] .

L30676 And His statement, the Exalted: {Then marry what is lawful to you of the women, two} [An-Nisā': 3], except what has been forbidden to you of close relatives and others other than them—this is beyond doubt. The marriage of a fornicatress and the marriage of a fornicator to a believing woman is among what has been forbidden to us; thus, it is undoubtedly excluded from that general ruling, like the exception of the rest of what has been forbidden to us among the women.[20]

وقَوْله تَعَالَى: {فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى} [النساء: ٣] إِلَّا مَا حُرِّمَ عَلَيْكُمْ مِنَ الْأَقَارِبِ وَغَيْرِهِنَّ، هَذَا مَا لَا شَكَّ فِيهِ، وَنِكَاحُ الزَّانِيَةِ وَنِكَاحُ الزَّانِي لِمُؤْمِنَةٍ مِمَّا حُرِّمَ عَلَيْنَا، فَهُوَ مُسْتَثْنًى مِنْ ذَلِكَ الْعُمُومِ بِلَا شَكٍّ كَاسْتِثْنَاءِ سَائِرِ مَا حُرِّمَ عَلَيْنَا مِنَ النِّسَاءِ.

L30677 Others said that the meaning of "yankiḥu" in this context is "to engage in sexual relations," not "to marry."

وَقَالَ آخَرُونَ: مَعْنَى يَنْكِحُ هَهُنَا: يَطَأُ، لَيْسَ مَعْنَاهُ: يَتَزَوَّجُ.

L30678 Abu Muhammad said: This is another claim without proof, and a specification of the verse based on false conjecture. Were their assertion valid, it would be forbidden for a husband to consummate the marriage with his wife if she committed adultery—yet this is something they do not say.

قَالَ أَبُو مُحَمَّد وَهَذِهِ دَعْوَى أُخْرَى بِلَا بُرْهَانٍ، وَتَخْصِيصٌ لِلْآيَةِ بِالظَّنِّ الْكَاذِبِ، وَلَوْ كَانَ مَا قَالُوهُ لَحُرِّمَ عَلَى الزَّوْجِ وَطْءُ زَوْجَتِهِ إِذَا زَنَتْ وَهَذَا لَا يَقُولُونَهُ.

L30679 If they say: "Intercourse with her is prohibited solely by zinā," we respond: This is an unwarranted specification without proof, a claim false with certainty, as there is no evidence for it. Such a claim is impermissible in the religion of Allah, the Almighty, particularly since it is an interpretation proven false with certainty. For we might find a male adulterer who coerces a chaste Muslim woman, thus committing zinā without a female adulterer. Far be it from Allah that we should assert what manifest evidence refutes.

فَإِنْ قَالُوا: إِنَّمَا حُرِّمَ وَطْؤُهَا بِالزِّنَا فَقَطْ؟ قُلْنَا: وَهَذِهِ زِيَادَةٌ فِي التَّخْصِيصِ بِلَا بُرْهَانٍ، وَدَعْوَى كَاذِبَةٌ بِيَقِينٍ، إِذْ لَا دَلِيلَ عَلَيْهَا، وَهَذَا لَا يَحِلُّ فِي دِينِ اللَّهِ عَزَّ وَجَلَّ مَعَ أَنَّهُ تَفْسِيرٌ كَاذِبٌ بِيَقِينٍ، لِأَنَّنَا قَدْ نَجِدُ الزَّانِيَ يَسْتَكْرِهُ الْعَفِيفَةَ الْمُسْلِمَةَ فَيَكُونُ زَانِيًا بِغَيْرِ زَانِيَةٍ وَحَاشَ لِلَّهِ مِنْ أَنْ نَقُولَ مَا يَدْفَعُهُ الْعِيَانُ.

L30680 The narration from Abū Bakr and ʿUmar—may Allah be pleased with them—occurred in the presence of the Companions. As Yaḥyā ibn ʿAbd al-Raḥmān

وَإِنَّمَا الرِّوَايَةُ عَنْ أَبِي بَكْرٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - بِحَضْرَةِ الصَّحَابَةِ، فَكَمَا حَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ نا أَحْمَدُ بْنُ دُحَيْمٍ نا إِبْرَاهِيمُ بْنُ حَمَّادٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ

[19] **Qur'an references (L30675):** Qur'an 24:32 (An-Nur).
[20] **Qur'an references (L30676):** Qur'an 4:3 (An-Nisa).

ibn Masʿūd narrated to us: Aḥmad ibn Duhaym narrated to us; Ibrāhīm ibn Ḥammād narrated to us; Ismāʿīl ibn Isḥāq, the judge, narrated to us; ʿAlī ibn ʿAbd Allāh—who is Ibn al-Madīnī—narrated to us; Yaḥyā ibn Zakariyyā ibn Abī Zāʾida narrated to us; Muḥammad ibn Isḥāq narrated from Nāfiʿ from Ibn ʿUmar, who said: While Abū Bakr al-Ṣiddīq was in the mosque, a man came and bombarded him with incoherent words—the man being in a state of shock. Abū Bakr said to ʿUmar, "Rise and attend to his case, for it is urgent." ʿUmar approached him, and the man said, "A guest I hosted committed zinā with my daughter!" ʿUmar struck his chest and said, "May Allah censure you! Did you not conceal your daughter's affair?" Abū Bakr then ordered both of them to be subjected to the *ḥadd* punishment. He then married one of them to the other and commanded them to be exiled for a year.

الْقَاضِي نا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ ابْنُ الْمَدِينِيِّ - نا يَحْيَى بْنُ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ نَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: بَيْنَمَا أَبُو بَكْرٍ الصِّدِّيقُ فِي الْمَسْجِدِ إِذْ جَاءَ رَجُلٌ فَلَاثَ عَلَيْهِ لَوْثًا مِنْ كَلَامٍ - وَهُوَ دَهِشٌ - فَقَالَ أَبُو بَكْرٍ لِعُمَرَ: قُمْ فَانْظُرْ فِي شَأْنِهِ، فَإِنَّ لَهُ شَأْنًا. فَقَامَ إِلَيْهِ عُمَرُ، فَقَالَ لَهُ: إِنَّ ضَيْفًا ضَافَنِي فَزَنَى بِابْنَتِهِ؟ فَضَرَبَ عُمَرُ فِي صَدْرِهِ، وَقَالَ لَهُ: قَبَّحَكَ اللَّهُ، أَلَا سَتَرْتَ عَلَى ابْنَتِكَ، فَأَمَرَ بِهِمَا أَبُو بَكْرٍ فَضُرِبَا الْحَدَّ، ثُمَّ زَوَّجَ أَحَدَهُمَا الْآخَرَ، ثُمَّ أَمَرَ بِهِمَا أَنْ يُغَرَّبَا حَوْلًا.

L30681–30682 Abu Muhammad said: This contains no evidence for them, for the most apparent is that it was after their repentance, and it constitutes evidence against them, because in it is that Abu Bakr exiled them for a year, while the Hanafis do not recognize exile in adultery at all.

قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ الْأَظْهَرَ أَنَّهُ كَانَ بَعْدَ تَوْبَتِهِمَا وَهُوَ حُجَّةٌ عَلَيْهِمْ، لِأَنَّ فِيهِ أَنَّ أَبَا بَكْرٍ غَرَّبَهُمَا حَوْلًا، وَالْحَنَفِيُّونَ لَا يَرَوْنَ تَغْرِيبًا فِي الزِّنَا جُمْلَةً.

L30683 The Malikis do not hold the view of banishing a woman as a punishment for adultery.

وَالْمَالِكِيُّونَ لَا يَرَوْنَ تَغْرِيبَ الْمَرْأَةِ فِي الزِّنَا.

L30684 So this is the action of Abu Bakr and Umar, performed in the presence of the Companions (may Allah be pleased with them), differing from the rest of them.

فَهَذَا فِعْلُ أَبِي بَكْرٍ، وَعُمَرَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بِخِلَافِهِمْ.

L30685 It has been narrated to us through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī, from ʿAlī ibn al-Madīnī, from Yazīd ibn Zurayʿ, from Ḥabīb—the teacher—who said: A man from Kufah came to ʿAmr ibn Shuʿayb and said: "Are you not amazed that al-Ḥasan claims the flogged fornicator may only marry someone like himself, interpreting this verse in light of that claim: {A fornicator may only marry a fornicatress or an idolatress} [24:3]?" ʿAmr ibn Shuʿayb replied: "Why are you amazed?"[21]

وَرُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا عَلِيُّ بْنُ الْمَدِينِيِّ نَا يَزِيدُ بْنُ زُرَيْعٍ نا حَبِيبٌ - هُوَ الْمُعَلِّمُ - قَالَ: جَاءَ رَجُلٌ مِنْ أَهْلِ الْكُوفَةِ إِلَى عَمْرِو بْنِ شُعَيْبٍ، فَقَالَ لَهُ: أَلَا تَعْجَبُ مِنَ الْحَسَنِ يَزْعُمُ أَنَّ الْمَجْلُودَ الزَّانِيَ لَا يَنْكِحُ إِلَّا مِثْلَهُ، يَتَأَوَّلُ بِذَلِكَ هَذِهِ الْآيَةَ {الزَّانِي لا يَنْكِحُ إِلا زَانِيَةً أَوْ مُشْرِكَةً} [النور: ٣] فَقَالَ لَهُ عَمْرُو بْنُ شُعَيْبٍ: وَمَا تَعْجَبُ؟

[21] **Qur'an references (L30685):** Qur'an 24:3 (An-Nur).

L30686 Sa'eed ibn Abi Sa'eed al-Maqburi narrated from Abu Hurairah that the Messenger of Allah—may the peace and blessings of Allah be upon him—said: "A fornicator who has been flogged should not marry except someone like him."

نا سَعِيدُ بْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَنْكِحُ الزَّانِي الْمَجْلُودُ إِلَّا مِثْلَهُ» .

L30687 Abdullah ibn Amr reported that Hammam narrated from Abbas ibn Asbagh, from Muhammad ibn Abd al-Malik ibn Ayman, from Bakr—the son of Hammad—from Musaddad, from al-Mu'tamir (the son of Sulayman al-Taymi), who said: I heard my father say: Al-Hadhrami ibn Lahiq narrated to me from al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq, from Abdullah ibn Amr ibn al-As, that a man from the Muhajirun sought the permission of the Messenger of Allah (peace and blessings be upon him) regarding a woman named Umm Mahzul, or he brought her case to him. The Messenger of Allah (peace and blessings be upon him) said: "A fornicator may only marry a fornicatress or a polytheist." Then the verse was revealed: {The fornicatress may only be wed by a fornicator or a polytheist} [24:3].[22]

وَكَانَ عَبْدُ اللَّهِ بْنُ عَمْرٍو يُنَادِي بِهِ نِدَاءً -: نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا بَكْرٌ - هُوَ ابْنُ حَمَّادٍ - نا مُسَدَّدٌ نا الْمُعْتَمِرُ - هُوَ ابْنُ سُلَيْمَانَ التَّيْمِيُّ - قَالَ: سَمِعْت أَبِي يَقُولُ: حَدَّثَنِي الْحَضْرَمِيُّ بْنُ لَاحِقٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَأْذَنَهُ رَجُلٌ مِنْ الْمُهَاجِرِينَ فِي امْرَأَةٍ يُقَالُ لَهَا: أُمُّ مَهْزُولٍ أَوْ ذَكَرَ لَهُ أَمْرَهَا، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الزَّانِي لَا يَنْكِحُ إلَّا زَانِيَةً أَوْ مُشْرِكَةً، فَأُنْزِلَتْ {وَالزَّانِيَةُ لا يَنْكِحُهَا إلا زَانٍ أَوْ مُشْرِكٌ} [النور: ٣] » .

L30688 From the path of Abū Dāwūd: Mūsā ibn Ismāʿīl narrated to us, Abān narrated to us (Ibn Yazīd al-ʿAṭṭār) from Yaḥyā (Ibn Abī Kathīr), from Ibrāhīm ibn ʿAbd Allāh ibn Qāriẓ, from al-Sāʾib ibn Yazīd, from Rāfiʿ ibn Khadīj that the Messenger of Allah (peace and blessings of Allah be upon him) said in a ḥadīth: "The dower of a prostitute is impure."

وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُوسَى بْنُ إِسْمَاعِيلَ نا أَبَانُ - هُوَ ابْنُ يَزِيدَ الْعَطَّارُ - عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ إبْرَاهِيمَ بْنِ عَبْدِ اللَّهِ بْنِ قَارِظٍ عَنْ السَّائِبِ بْنِ يَزِيدَ عَنْ رَافِعِ بْنِ خَدِيجٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي حَدِيثٍ: «وَمَهْرُ الْبَغِيِّ خَبِيثٌ» .

L30689–30691 Abū Muḥammad said: In religious law or in language, the payment for fornication is not termed a dowry. The dowry applies exclusively to marriage. When the Messenger of God (peace and blessings be upon him) prohibited the dowry for such a woman, he thereby prohibited her marriage, since a dowry is an essential requirement in marriage. There is no dispute over this. If she repents, her dowry is not deemed unlawful like that of a prostitute—thus it becomes lawful. Whoever claims otherwise... This one has indeed claimed that for which there is no proof, so it is invalid—and with Allah, the Exalted, is success.

قَالَ أَبُو مُحَمَّد: لَا يُسَمَّى فِي الدِّيَانَةِ، وَلَا فِي اللُّغَةِ أُجْرَةُ الزِّنَا مَهْرًا، إنَّمَا الْمَهْرُ فِي الزَّوَاجِ، فَإِذَا حَرَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَهْرَهَا فَقَدْ حَرَّمَ زَوَاجَهَا، إذْ لَا بُدَّ فِي الزَّوَاجِ مِنْ مَهْرٍ ضَرُورَةً، هَذَا لَا إشْكَالَ فِيهِ، فَإِذَا تَابَتْ فَلَيْسَ مَهْرُهَا مَهْرَ بَغِيٍّ فَهُوَ حَلَالٌ، وَمَنْ ادَّعَى غَيْرَ هَذَا، فَقَدْ ادَّعَى مَا لَا بُرْهَانَ لَهُ بِهِ، فَهُوَ بَاطِلٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[22] **Qur'an references (L30687):** Qur'an 24:3 (An-Nur).

L30692 As for the case where a chaste man marries a chaste woman, and then one or both of them commit adultery, indeed we said: their marriage is not annulled. This is due to what we transmitted through the chain: Ahmad ibn Shuʿayb narrated to us from Isḥāq ibn Ibrāhīm – that is, Ibn Rāhwayh – who narrated from al-Naḍr ibn Shumayl, who narrated from Ḥammād ibn Salamah, who narrated from Hārūn ibn Riʾāb, from ʿAbd Allāh ibn ʿUbayd Allāh ibn ʿUmayr, from Ibn ʿAbbās: "A man said, 'O Messenger of God, I have a beautiful wife who does not repel the hand of any man who touches her.' He said, 'Divorce her.' The man said, 'I cannot endure being without her.' He said, 'Then keep her.'"

وَأَمَّا الَّتِي تَزَوَّجَهَا عَفِيفٌ وَهِيَ عَفِيفَةٌ ثُمَّ زَنَى أَحَدُهُمَا أَوْ كِلَاهُمَا، فَإِنَّمَا قُلْنَا: إِنَّهُ لَا يُفْسَخُ نِكَاحُهُمَا؟ لِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - نَا النَّضْرُ بْنُ شُمَيْلٍ نا حَمَّادُ بْنُ سَلَمَةَ نا هَارُونُ بْنُ رِئَابٍ عَنْ عَبْدِ اللَّهِ بْنِ عُبَيْدِ اللَّهِ بْنِ عُمَيْرٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَجُلًا قَالَ: يَا رَسُولَ اللَّهِ، إِنَّ تَحْتِي امْرَأَةً جَمِيلَةً لَا تَرُدُّ يَدَ لَامِسٍ؟ قَالَ طَلِّقْهَا، قَالَ: إِنِّي لَا أَصْبِرُ عَنْهَا؟ قَالَ: فَأَمْسِكْهَا» .

L30693 Maʿiz, who was a muḥṣan (a married, free, adult Muslim), confessed to adultery. The Messenger of Allah (peace be upon him) inquired about him: "Is he a virgin or previously married?" It was said to him: "Rather, he is previously married." Thus, he ordered him to be stoned but did not annul his marriage.

وَقَدْ أَقَرَّ مَاعِزٌ بِالزِّنَا - وَهُوَ مُحْصَنٌ - فَسَأَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهُ أَبِكْرٌ أَمْ ثَيِّبٌ؟ فَقِيلَ لَهُ: بَلْ ثَيِّبٌ، فَأَمَرَ بِرَجْمِهِ وَلَمْ يَفْسَخْ نِكَاحَهُ.

L30694 There has been an ancient disagreement regarding this matter. It was reported through the chain of Ismail ibn Ishaq al-Qadi, from Al-Hajjaj ibn Minhal, from Hammad ibn Salamah, from Qatadah, that Ali ibn Abi Talib said concerning a man who commits fornication before consummating the marriage with his wife: he receives the prescribed flogging, the marriage is dissolved between him and his wife, and she is entitled to half the bridal gift (mahr). If she commits fornication, she is flogged, the marriage is dissolved between them, and she receives no bridal gift.

وَقَدْ جَاءَ فِي هَذَا خِلَافٌ قَدِيمٌ: - رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الْبِكْرِ إِذَا زَنَى قَبْلَ أَنْ يَدْخُلَ بِأَهْلِهِ: جَلْدُ الْحَدِّ، فَيُفَرَّقُ بَيْنَهُ وَبَيْنَ أَهْلِهِ، وَلَهَا نِصْفُ الصَّدَاقِ، فَإِنْ زَنَتْ هِيَ جُلِدَتْ وَفُرِّقَ بَيْنَهُمَا وَلَا صَدَاقَ لَهَا.

L30695–30697 From the chain of Ibn Abi Shaybah: Abdullah ibn Idris al-Awdi—he is Abdullah—reported to us from Ash'ath from Abu al-Zubayr from Jabir ibn Abdullah, who said: "If a virgin commits fornication, she is to be lashed, separated from her husband, and deprived of all rights."

From the chain of Ibn Abi Shaybah: Abdah reported to us from Sa'id from Ali ibn Thabit from Nafi' from Ibn Umar, who said: "If any of you witnesses his wife or his umm walad committing fornication, he must never have sexual relations with her." This is the opinion of al-Hasan. And Ṭāwūs, al-Nakhaʿī,

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ إِدْرِيسَ الْأَوْدِيُّ - هُوَ عَبْدُ اللَّهِ - عَنْ أَشْعَثَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، قَالَ: الْبِكْرُ إِذَا زَنَتْ جُلِدَتْ وَفُرِّقَ بَيْنَهَا وَبَيْنَ زَوْجِهَا وَلَيْسَ لَهَا شَيْءٌ - وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدَةُ عَنْ سَعِيدٍ عَنْ عَلِيِّ بْنِ ثَابِتٍ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: إِذَا رَأَى أَحَدُكُمْ امْرَأَتَهُ عَلَى فَاحِشَةٍ أَوْ أُمَّ وَلَدِهِ فَلَا يَقْرَبَنَّهَا

Ḥammād ibn Abī Sulaymān, and others, but no one besides the Messenger of Allah (peace be upon him) holds conclusive authority.

- وَهُوَ قَوْلُ الْحَسَنِ، وَطَاوُسٍ، وَالنَّخَعِيِّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَغَيْرِهِمْ وَلَكِنْ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L30698 Here is a report that, if authenticated, we would have ruled by it: We have narrated it through the chain of Sa'īd ibn al-Musayyab from Basrah ibn Aktham: "A woman committed adultery, so the Messenger of Allah (peace and blessings be upon him) decreed her child to be a slave belonging to her husband." However, we do not know of Sa'īd having heard from Basrah, and some of them have said: "Naḍrah."

وَهَاهُنَا خَبَرٌ لَوْ صَحَّ لَقُلْنَا بِهِ -: رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ بَصْرَةَ بْنِ أَكْثَمَ «أَنَّ امْرَأَةً زَنَتْ، فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَدَهَا عَبْدًا لِزَوْجِهَا» وَلَا نَعْلَمُ لِسَعِيدٍ سَمَاعًا مِنْ بَصْرَةَ، وَقَدْ قَالَ بَعْضُهُمْ: نَضْرَةَ.

The Issue of Proposing Marriage to a Woman in ʿIddah

[مَسْأَلَة خِطْبَة الْمَرْأَة الْمُعْتَدَّة]

L30699

L30700 Issue 1844: It is impermissible for anyone to propose to a woman observing a waiting period following divorce or death. If he marries her before the completion of her waiting period, the marriage is permanently annulled—whether consummated or not, and regardless of the duration of the marriage. There is no mutual inheritance between them, no obligation for him to provide her maintenance, and no mahr due to her.

١٨٤٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَخْطُبَ امْرَأَةً مُعْتَدَّةً مِنْ طَلَاقٍ أَوْ وَفَاةٍ، فَإِنْ تَزَوَّجَهَا قَبْلَ تَمَامِ الْعِدَّةِ فُسِخَ أَبَدًا - دَخَلَ بِهَا أَوْ لَمْ يَدْخُلْ، طَالَتْ مُدَّتُهُ مَعَهَا أَوْ لَمْ تَطُلْ - وَلَا تَوَارُثَ بَيْنَهُمَا، وَلَا نَفَقَةَ لَهَا عَلَيْهِ، وَلَا صَدَاقَ وَلَا مَهْرَ لَهَا.

L30701 If one of the two [parties] is a legally responsible individual [muḥṣan], the prescribed punishment for adultery—stoning—applies to them. The same ruling applies if both are legally responsible individuals. The child is not legally recognized as his offspring if he [the man] holds this responsible status.

فَإِنْ كَانَ أَحَدُهُمَا عَالِمًا فَعَلَيْهِ حَدُّ الزِّنَا مِنَ الرَّجْمِ وَالْجَلْدِ، وَكَذَلِكَ إنْ عَلِمَا جَمِيعًا، وَلَا يُلْحَقُ الْوَلَدُ بِهِ إنْ كَانَ عَالِمًا.

L30702 If they are both unaware of the ruling, they incur no penalty. If one of them is unaware, there is no ḥadd punishment for the unaware party. If he is the one who was unaware, the child is legally ascribed to him. When the marriage is annulled and her waiting period concludes, he may marry her if she consents, as with any other person—unless the man divorced his wife, in which case he may take her back during her waiting period provided it was not a triple ṭalāq.

وَإِنْ كَانَا جَاهِلَيْنِ فَلَا شَيْءَ عَلَيْهِمَا، فَإِنْ كَانَ أَحَدُهُمَا جَاهِلًا، فَلَا حَدَّ عَلَى الْجَاهِلِ، فَإِنْ كَانَ هُوَ الْجَاهِلَ فَالْوَلَدُ بِهِ لَاحِقٌ، فَإِذَا فُسِخَ النِّكَاحُ وَتَمَّتْ عِدَّتُهَا فَلَهُ أَنْ يَتَزَوَّجَهَا إنْ أَرَادَتْ ذَلِكَ كَسَائِرِ النَّاسِ، إلَّا أَنْ يَكُونَ الرَّجُلُ طَلَّقَ امْرَأَتَهُ فَلَهُ أَنْ يَرْتَجِعَهَا فِي عِدَّتِهَا مِنْهُ مَا لَمْ يَكُنْ طَلَاقَ ثَلَاثٍ.

L30703 Similarly, if a man has a slave woman under him, consummates the marriage with her, and she is emancipated, she is given the choice to separate from him. If she chooses separation and the marriage is annulled, she must observe the waiting period ('iddah) based on pregnancy, purity periods be-

tween menstruation, or months. He alone—to the exclusion of all others—may propose to her during her waiting period from him. If she consents to him, he may marry her and have intercourse with her.

L30704 The proof of what we have asserted is the statement of Allah, the Almighty: "There is no blame upon you for what you allude to of proposing marriage to women or conceal within yourselves. Allah knows that you will mention them. But do not secretly arrange with them unless you speak a proper word. And do not resolve the marriage bond until the prescribed term has elapsed. And know that Allah knows what is within yourselves, so be mindful of Him." [Al-Baqarah: 235][23]

L30705 As for our statement that there is no inheritance, maintenance, clothing, or dowry under any circumstance—whether in ignorance or knowledge—this is because it is not her marriage. For Allah, the Exalted, has permitted marriage and has not permitted this contract without any disagreement. Since it is not a marriage, there is no inheritance, maintenance, or clothing, except in a marriage.

L30706–30707 As for attributing the child's lineage to the ignorant man, there is no disagreement regarding this matter.

L30708 As for the obligation of the prescribed punishment upon the scholar, it is because Allah the Exalted says: "And those who guard their private parts, except from their spouses or those whom their right hands possess - then indeed, they are not blameworthy. But whoever seeks beyond that, it is they who are the transgressors." [23:5], [23:6], [23:7][24]

L30709 This [woman] is neither a wife nor a slave woman he owns; therefore, he is a male fornicator.

L30710 The Messenger of Allah, peace and blessings be upon him, said: "The child

[23]**Qur'an references (L30704):** Qur'an 2:235 (Al-Baqarah).

[24]**Qur'an references (L30708):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun); Qur'an 70:31 (Al-Ma'arij).

وَكَذَلِكَ الرَّجُلُ تَكُونُ تَحْتَهُ الْأَمَةُ وَيَدْخُلُ بِهَا فَتَعْتِقُ فَتُخَيَّرُ فَتَخْتَارُ فِرَاقَهُ وَيُفْسَخُ نِكَاحُهُ فَتَعْتَدُّ بِحَمْلٍ أَوْ بِالْأَطْهَارِ أَوْ بِالشُّهُورِ، فَلَهُ - وَحْدَهُ دُونَ سَائِرِ النَّاسِ - أَنْ يَخْطُبَهَا فِي عِدَّتِهَا مِنْهُ فَإِنْ رَضِيَتْ بِهِ فَلَهُ نِكَاحُهَا وَوَطْؤُهَا.

بُرْهَانُ مَا قُلْنَا: قَوْلُ اللَّهِ عَزَّ وَجَلَّ {وَلا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خِطْبَةِ النِّسَاءِ أَوْ أَكْنَنْتُمْ فِي أَنْفُسِكُمْ عَلِمَ اللَّهُ أَنَّكُمْ سَتَذْكُرُونَهُنَّ وَلَكِنْ لا تُوَاعِدُوهُنَّ سِرًّا إِلا أَنْ تَقُولُوا قَوْلا مَعْرُوفًا وَلا تَعْزِمُوا عُقْدَةَ النِّكَاحِ حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ وَاعْلَمُوا أَنَّ اللَّهَ يَعْلَمُ مَا فِي أَنْفُسِكُمْ فَاحْذَرُوهُ} [البقرة: ٢٣٥] .

وَأَمَّا قَوْلُنَا: لَا تَوَارُثَ، وَلَا نَفَقَةَ، وَلَا كِسْوَةَ، وَلَا صَدَاقَ بِكُلِّ حَالٍ جَهْلًا أَوْ عِلْمًا، فَلِأَنَّهُ لَيْسَ نِكَاحَهَا، لِأَنَّ اللَّهَ تَعَالَى أَحَلَّ النِّكَاحَ وَلَمْ يُحِلَّ هَذَا الْعَقْدَ بِلَا خِلَافٍ مِنْ أَحَدٍ، فَإِذْ لَيْسَ نِكَاحًا فَلَا تَوَارُثَ، وَلَا كِسْوَةَ، وَلَا نَفَقَةَ، إِلَّا فِي نِكَاحٍ.

وَأَمَّا إِلْحَاقُ الْوَلَدِ بِالرَّجُلِ الْجَاهِلِ فَلَا خِلَافَ فِيهِ.

وَأَمَّا وُجُوبُ الْحَدِّ عَلَى الْعَالِمِ فَلِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إِلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] {فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧] .

وَهَذِهِ لَيْسَتْ زَوْجًا وَلَا مِلْكَ يَمِينٍ فَهُوَ عَاهِرٌ.

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ» .

belongs to the marriage bed, and for the adulterer is the stone."

L30711 He—peace and blessings be upon him—deemed it only as a lawful union or ʿihr. Since this is not a lawful union, it is ʿihr, and ʿihr is zina. The hadd punishment is incumbent upon the fornicator, while no hadd applies to the ignorant person who erred unintentionally, in accordance with Allah the Exalted's words: _"There is no blame upon you for that in which you have erred, but only for what your hearts have intended"_ [Al-Ahzab: 5].[25]

L30712 And due to the statement of the Exalted: {That I may warn you thereby and whoever it reaches} [Quran 6:19], and since this message has not reached him, there is nothing obligatory upon him.[26]

L30713 As for the freed female slave who is given the choice, it is because the Messenger of Allah, peace and blessings be upon him, said to her, "If you take him back [by revoking the divorce]," and we will mention this in its dedicated section, if Allah, the Exalted and Glorious, wills it.

L30714 As for our statement: "Indeed, the one who marries during the waiting period and consummates the marriage—whether ignorant of the ruling or aware of it—is to receive the prescribed punishment (ḥadd) and is not in a state of lawful wedlock (muḥṣan), whereas she is not subjected to the prescribed punishment due to her ignorance, or stoned if she was a virgin observing the waiting period after a death. He may lawfully marry her after the completion of the same waiting period during which he married her." This is because Allah, the Exalted, has enumerated all that He has forbidden to us regarding women in His verse: {Forbidden to you are your mothers, your daughters...} [Quran 4:23] through His statement: {But lawful to you is all beyond that...} [Quran 4:24]. He did not include the woman married during a waiting period with whom marriage was consummated—whether by initiating marriage during it or after its completion—among those initially prohibited. Since He, the Exalted, did not mention her—neither in this verse, nor elsewhere in the Quran, nor through the words of the Messenger of Allah (peace be upon him)—and Allah has explicitly permitted such

فَلَمْ يَجْعَلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إلَّا فِرَاشًا أَوْ عِهْرًا، وَهَذِهِ لَيْسَتْ فِرَاشًا فَهُوَ عِهْرٌ، وَالْعِهْرُ الزِّنَا، وَعَلَى الزَّانِي الْحَدُّ: وَلَا حَدَّ عَلَى الْجَاهِلِ الْمُخْطِئِ، لِقَوْلِ اللَّهِ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

وَلِقَوْلِهِ تَعَالَى: {لِأُنْذِرَكُمْ بِهِ وَمَنْ بَلَغَ} [الأنعام: ١٩] وَهَذَا لَمْ يَبْلُغْهُ، فَلَا شَيْءَ عَلَيْهِ.

وَأَمَّا الْمُعْتَقَةُ تُخَيَّرُ: فَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهَا «لَوْ رَاجَعْتِيهِ» وَسَنَذْكُرُهُ فِي بَابِهِ إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ.

وَأَمَّا قَوْلُنَا: إنَّ النَّاكِحَ فِي الْعِدَّةِ الْوَاطِئَ فِيهَا جَاهِلًا كَانَ أَوْ عَالِمًا فَحُدَّ وَكَانَ غَيْرَ مُحْصَنٍ وَلَمْ تُحَدَّ هِيَ لِجَهْلِهَا أَوْ لَمْ تُرْجَمْ، لِأَنَّهَا كَانَتْ بِكْرًا مُعْتَدَّةً مِنْ وَفَاةٍ فَلَهُ أَنْ يَتَزَوَّجَهَا بَعْدَ تَمَامِ عِدَّتِهَا الَّتِي تَزَوَّجَهَا فِيهَا، فَلِأَنَّ اللَّهَ عَزَّ وَجَلَّ ذَكَرَ لَنَا كُلَّ مَا حَرَّمَ عَلَيْنَا مِنْ النِّسَاءِ فِي قَوْله تَعَالَى: {حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ} [النساء: ٢٣] الْآيَةَ إلَى قَوْله تَعَالَى: {وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ} [النساء: ٢٤] فَلَمْ يَذْكُرْ لَنَا الْمَنْكُوحَةَ فِي الْعِدَّةِ الْمَدْخُولَ بِهَا فِيهَا فِي جُمْلَةِ مَا حَرَّمَ عَلَيْنَا ابْتِدَاءَ النِّكَاحِ فِيهَا بَعْدَ تَمَامِ عِدَّتِهَا، فَإِذْ لَمْ يَذْكُرْهَا تَعَالَى، لَا فِي هَذِهِ الْآيَةِ وَلَا فِي غَيْرِهَا، وَلَا عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ أَحَلَّهَا اللَّهُ تَعَالَى فِي الْقُرْآنِ نَصًّا بِقَوْلِهِ عَزَّ وَجَلَّ: {وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرَ مُسَافِحِينَ} [النساء: ٢٤] وَقَوْلُنَا هَذَا هُوَ قَوْلُ الْحَسَنِ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَأَبِي حَنِيفَةَ وَأَصْحَابِهِ، وَسُفْيَانَ الثَّوْرِيِّ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

[25] **Qur'an references (L30711):** Qur'an 33:5 (Al-Ahzab).
[26] **Qur'an references (L30712):** Qur'an 6:19 (Al-An'am).

unions in the Quran through His statement: {But lawful to you is all beyond that, [provided] you seek [marriage] with your wealth in lawful wedlock, not in fornication} [Quran 4:24]. This statement of ours aligns with the view of Al-Ḥasan, Ḥammād ibn Abī Sulaymān, Abū Ḥanīfah and his companions, Sufyān al-Thawrī, Al-Shāfiʿī, Abū Sulaymān, and their companions.[27]

وَقَالَ سَعِيدُ بْنُ الْمُسَيِّبِ وَرَبِيعَةُ، وَمَالِكٌ، وَاللَّيْثُ، وَالْأَوْزَاعِيُّ، لَا تَحِلُّ لَهُ أَبَدًا.

L30715 And Saʿīd ibn al-Musayyib, Rabīʿah, Mālik, al-Layth, and al-Awzāʿī have said: It is never permissible for him.

وَقَالَ مَالِكٌ، وَاللَّيْثُ: وَلَا بِمِلْكِ الْيَمِينِ، وَمَا لِمَنْ قَالَ هَذَا حُجَّةٌ أَصْلًا إِلَّا شَغْبَتَانِ -:

L30716–30717 Mālik and al-Layth said: "Nor by right-hand possession, and those who assert this have no proof at all except two contentious arguments—"

إِحْدَاهُمَا - أَنَّهُمْ قَالُوا: تَعَجَّلَ شَيْئًا قَبْلَ وَقْتِهِ فَوَاجِبٌ أَنْ يُحَرَّمَ عَلَيْهِ فِي الْأَبَدِ كَالْقَاتِلِ الْعَامِدِ يُمْنَعُ الْمِيرَاثَ.

L30718 One of the two [points] is that they said: "Whoever hastens something before its due time, it becomes obligatory to eternally forbid him from it—just as the intentional killer is barred from inheritance."

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا مِنْ أَسْخَفِ قَوْلٍ يُسْمَعُ، قَبْلَ كُلِّ شَيْءٍ: مِنْ أَيْنَ وَضَحَ لَهُمْ تَحْرِيمُ الْمِيرَاثِ عَلَى الْقَاتِلِ؟ وَلَا نَصَّ يَصِحُّ فِيهِ وَلَا إِجْمَاعَ - قَدْ أَوْجَبَ الْمِيرَاثَ لِقَاتِلِ الْعَمْدِ: الزُّهْرِيُّ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَغَيْرُهُمَا.

L30719 Abu Muhammad said: This is among the most preposterous statements ever heard. First and foremost: From where did it become clear to them that the killer is prohibited from inheritance? There exists no valid textual proof nor any consensus - yet al-Zuhrī, Saʿīd ibn Jubayr, and others besides them two have ruled that inheritance is obligatory for the premeditated killer.

ثُمَّ مِنْ أَيْنَ لَهُمْ أَنَّ مَنْ تَعَجَّلَ شَيْئًا قَبْلَ وَقْتِهِ وَجَبَ أَنْ يُحَرَّمَ عَلَيْهِ أَبَدًا؟ وَأَيُّ نَصٍّ جَاءَ بِهَذَا؟ أَوْ أَيُّ عَقْلٍ دَلَّ عَلَيْهِ؟

L30720 Moreover, what basis do they have that whoever performs an act prematurely before its appointed time must be permanently prohibited from it? Which textual evidence supports this? Or which rational argument points to it?

ثُمَّ لَوْ صَحَّ لَهُمْ أَنَّ الْقَاتِلَ يُمْنَعُ مِنْ الْمِيرَاثِ فَمِنْ أَيْنَ لَهُمْ أَنَّ ذَلِكَ لِتَعَجُّلِهِ إيَّاهُ قَبْلَ وَقْتِهِ؟

L30721 Then, even if it were valid for them to assert that the killer is barred from inheritance, what basis do they have for claiming that this [exclusion] is due to his hastening of the death before its appointed time?

وَكُلُّ هَذَا كَذِبٌ وَظَنٌّ فَاسِدٌ وَتَخَرُّصٌ بِالْبَاطِلِ، وَيَلْزَمُهُمْ إنْ طَرَدُوا هَذَا الدَّلِيلَ السَّخِيفَ أَنْ يَقُولُوا فِيمَنْ غَصَبَ مَالَ مُوَرِّثِهِ: أَنْ يُحَرَّمَ عَلَيْهِ فِي الْأَبَدِ، لِأَنَّهُ اسْتَعْجَلَهُ قَبْلَ وَقْتِهِ.

L30722 All of this is falsehood, corrupt conjecture, and baseless fabrication. Were they to apply this absurd argument consistently, they would be compelled to rule that whoever usurps the property of his predecessor must be forbidden from it in perpetuity, for he hastened to take it before its due time.

[27] **Qur'an references (L30714):** Qur'an 4:23 (An-Nisa); Qur'an 4:24 (An-Nisa).

وَأَنْ يَقُولُوا فِي امْرَأَةٍ سَافَرَتْ فِي عِدَّتِهَا: أَنْ يُحَرَّمَ عَلَيْهَا السَّفَرُ أَبَدًا.

L30723 It is stated regarding a woman who traveled during her waiting period that she is forbidden from traveling for the entire duration of her waiting period.

وَمَنْ تَطَيَّبَ فِي إِحْرَامِهِ: أَنْ يُحَرَّمَ عَلَيْهِ الطِّيبُ أَبَدًا.

L30724 Whoever applies perfume while in the state of Ihram is permanently forbidden from using perfume forever.

وَأَنْ يَقُولُوا فِيمَنْ اشْتَهَى شَيْئًا وَهُوَ صَائِمٌ فِي رَمَضَانَ فَأَكَلَهُ، أَوْ وَطِئَ جَارِيَتَهُ أَوْ أَمَتَهُ - وَهُوَ صَائِمٌ فِي رَمَضَانَ - أَوْ وَهِيَ حَائِضٌ: أَنْ يُحَرَّمَ عَلَيْهِ ذَلِكَ الطَّعَامُ فِي الْأَبَدِ، وَتُحَرَّمَ تِلْكَ الْأَمَةُ أَوْ امْرَأَتُهُ فِي الْأَبَدِ، لِأَنَّهُ تَعَجَّلَ كُلَّ ذَلِكَ قَبْلَ وَقْتِهِ، وَالَّذِي يَلْزَمُهُمْ أَكْثَرُ مِنْ هَذَا.

L30725 And that they say regarding one who craves something while fasting in Ramadan and then consumes it; or who has intercourse with his female slave or female servant while fasting in Ramadan—or with his wife while she is menstruating: that this specific food should be permanently forbidden to him, and that this servant or his wife should be permanently forbidden to him, because he hastened all such matters before their designated times—though what is legally required of them exceeds even this.

وَالثَّانِيَةُ - رِوَايَةٌ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - مُنْقَطِعَةٌ -: مِنْهَا: مَا حَدَّثَنَاهُ يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا صَالِحُ بْنُ مُسْلِمٍ قَالَ: قُلْت لِلشَّعْبِيِّ: رَجُلٌ طَلَّقَ امْرَأَتَهُ تَطْلِيقَةً فَجَاءَ آخَرُ فَتَزَوَّجَهَا فِي عِدَّتِهَا؟ فَقَالَ الشَّعْبِيُّ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: يُفَرَّقُ بَيْنَهَا وَبَيْنَ زَوْجِهَا، وَتُكْمِلُ عِدَّتَهَا الْأُولَى، وَتَأْتَنِفُ مِنْ هَذِهِ عِدَّةً جَدِيدَةً، وَيُجْعَلُ صَدَاقُهَا فِي بَيْتِ الْمَالِ، وَلَا يَتَزَوَّجُهَا أَبَدًا وَيَصِيرُ الْأَوَّلُ خَاطِبًا.

L30726–30728 The second—a discontinued narration from ʿUmar (may Allah be pleased with him)—includes the following: Among these narrations is what Yunus ibn ʿAbdullah reported to us, stating: Aḥmad ibn ʿAbdullah ibn ʿAbd al-Raḥīm reported to us, Aḥmad ibn Khālid reported to us, Muḥammad ibn ʿAbd al-Salām al-Khushanī reported to us, Muḥammad ibn Bashshār reported to us, Yaḥyā ibn Saʿīd al-Qaṭṭān reported to us, Ṣāliḥ ibn Muslim said: I asked al-Shaʿbī, "A man divorced his wife once, then another man came and married her during her waiting period?" Al-Shaʿbī replied: ʿUmar ibn al-Khaṭṭāb said: "They are to be separated, and she must complete her waiting period." The first woman must observe a new waiting period from this [declaration]; her bridal gift is assigned to the public treasury, the man may never marry her again, and the first husband regains his status as a suitor.

وَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: يُفَرَّقُ بَيْنَهُمَا، وَتُكْمِلُ عِدَّتَهَا الْأُولَى، وَتَسْتَقْبِلُ مِنْ هَذَا عِدَّةً جَدِيدَةً وَلَهَا الصَّدَاقُ بِمَا اسْتَحَلَّ مِنْ فَرْجِهَا، وَيَصِيرُ كِلَاهُمَا خَاطِبَيْنِ - قَدْ أَخْبَرْتُكَ بِقَوْلِ هَذَيْنِ، فَإِنْ أَخْبَرْتُكَ بِرَأْيٍ فَبُلْ عَلَيْهِ.

L30729 Ali ibn Abi Talib said: They are to be separated. She must complete her initial waiting period and then observe a new waiting period starting from this point. She is entitled to the mahr for the lawful intimacy he had with her, and both become suitors. I have informed you of the opinions of these two. But if I ever give you my own view, urinate on it.

وَجَاءَ هَذَا عَنْ عُمَرَ مِنْ طُرُقٍ لَيْسَ مِنْهَا شَيْءٌ يَتَّصِلُ، وَرُوِيَ خِلَافُهَا كَمَا ذَكَرْنَا عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ.

L30730 And this came from ʿUmar through chains—none of which are connected—while contrary reports have been narrated, as we mentioned, from ʿAlī and Ibn Masʿūd.

قَالَ أَبُو مُحَمَّدٍ: لَا عَجَبَ أَعْجَبُ مِنْ تَعَلُّقِ هَؤُلَاءِ الْقَوْمِ بِرِوَايَاتٍ مُنْقَطِعَةٍ عَنْ عُمَرَ قَدْ خَالَفَهُ عَلِيٌّ فِيهَا، فَمَنْ جَعَلَ قَوْلَ أَحَدِهِمَا أَوْلَى مِنْ الْآخَرِ بِلَا بُرْهَانٍ؟

L30731 Abu Muhammad said: There is no wonder more astonishing than the adherence of these people to interrupted narrations from Umar, which Ali contradicted in them. Who, then, would deem the statement of one of the two [Umar or Ali] more valid than the other's without evidence?

وَثَانِيَةٌ - أَنَّهُمْ قَدْ خَالَفُوا عُمَرَ فِيمَا صَحَّ عَنْهُ يَقِينًا مِنْ هَذِهِ الْقَضِيَّةِ إذْ جَعَلَ مَهْرَهَا فِي بَيْتِ الْمَالِ كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ، وَإِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ، كِلَاهُمَا عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّ امْرَأَةً نُكِحَتْ فِي عِدَّتِهَا فَفَرَّقَ بَيْنَهُمَا عُمَرُ، وَجَعَلَ مَهْرَهَا فِي بَيْتِ الْمَالِ، وَقَالَ: نِكَاحُهَا حَرَامٌ، وَمَهْرُهَا حَرَامٌ.

L30732 The second point is that they have opposed ʿUmar's definitive and authenticated ruling on this matter, for he placed her dowry in the public treasury. This is as narrated to us through Wakiʿ—from Zakariyyā ibn Abī Zāʾidah and Ismāʿīl ibn Abī Khālid, both of whom reported from al-Shaʿbī, from Masrūq—that a woman was married during her waiting period. ʿUmar consequently nullified the marriage, placed her dowry in the public treasury, and declared: "Her marriage is invalid, and her dowry is invalid."

نا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَبُو بَكْرِ بْنُ أَحْمَدَ بْنِ خَالِدٍ نا أُبَيٌّ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا أَبُو عُبَيْدٍ الْقَاسِمُ بْنُ سَلَّامٍ نا يَزِيدُ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ، أَوْ عَنْ عُبَيْدِ بْنِ نَضْلَةَ عَنْ مَسْرُوقٍ - شَكَّ دَاوُد فِي أَحَدِهِمَا - وَقَالَ: رُفِعَ إلَى عُمَرَ امْرَأَةٌ نُكِحَتْ فِي عِدَّتِهَا، فَقَالَ: لَوْ أَنَّكُمَا عَلِمْتُمَا لَرَجَمْتُكُمَا، فَضَرَبَهُمَا أَسْوَاطًا، وَفَرَّقَ بَيْنَهُمَا، وَجَعَلَ الْمَهْرَ فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ، وَقَالَ: لَا أُجِيزُ مَهْرًا لَا أُجِيزُ نِكَاحَهُ.

L30733 Yunus ibn Abdullah narrated: Abu Bakr ibn Ahmad ibn Khalid narrated: Ubayy narrated: Ali ibn Abd al-Aziz narrated: Abu Ubayd al-Qasim ibn Sallam narrated: Yazid narrated from Dawud ibn Abi Hind from al-Sha'bi from Masruq, or from Ubayd ibn Nadlah from Masruq—Dawud was uncertain about one of the two—and said: A woman who was married during her waiting period was brought to Umar. He said: "Had you two known, I would have stoned you both." He then flogged them, separated them, designated the dowry for the cause of Allah, the Mighty and Majestic, and said: "I do not accept the dowry of a marriage I do not validate."

قَالَ أَبُو مُحَمَّدٍ: عُبَيْدُ بْنُ نَضْلَةَ إمَامٌ ثِقَةٌ.

L30734 Abu Muhammad said: Ubayd ibn Naḍlah is a trustworthy authority.

وَمَسْرُوقٌ كَذَلِكَ، فَلَا نُبَالِي عَنْ أَيِّهِمَا رَوَاهُ - وَقَدْ ثَبَتَ دَاوُد بْنُ أَبِي هِنْدٍ عَلَى أَنَّهُ عَنْ أَحَدِهِمَا بِلَا شَكٍّ.

L30735 And Masruq is likewise. We do not care which of the two he narrated it from - for it has been established that Dawud ibn Abi Hind narrated it from one of them without any doubt.

قَالَ عَلِيٌّ: فَخَالَفُوهُ فِي جَعْلِ مَهْرِهَا فِي بَيْتِ الْمَالِ، وَهُوَ الثَّابِتُ عَنْ عُمَرَ، فَهَانَ عَلَيْهِمْ خِلَافُهُ فِي الْحَقِّ، وَاتَّبَعُوهُ فِيمَا لَا بُرْهَانَ عَلَى صِحَّتِهِ فِيمَا قَدْ خَالَفَهُ فِيهِ غَيْرُهُ مِنْ الصَّحَابَةِ كَمَا أَوْرَدْنَا.

L30736 Ali said: "They opposed Umar regarding placing her dowry in the treasury - a position firmly attributed to Umar. Thus, they belittled his dissent in matters of right, yet followed him in matters lacking proof of validity - ones in which other Companions had opposed him, as we previously mentioned."

L30737–30739 And the third point—which is that ʿUmar's retraction from that position

has been established—: as has been narrated to us via ʿAbd al-Razzāq, via Sufyān al-Thawrī, via Ismāʿīl ibn Abī Khālid from... Al-Sha'bi reported from Masruq from Umar, who said: "Her dower belongs to the public treasury, and the two [cases] cannot coexist—meaning the woman who was married during her waiting period and the man who married her consummated the marriage."

وَثَالِثَةً - وَهِيَ أَنَّهُ قَدْ صَحَّ رُجُوعُ عُمَرَ عَنْ ذَلِكَ -: كَمَا رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنِ الشَّعْبِيِّ عَنْ مَسْرُوقٍ عَنْ عُمَرَ قَالَ: مَهْرُهَا فِي بَيْتِ الْمَالِ وَلَا يَجْتَمِعَانِ - يَعْنِي الَّتِي نُكِحَتْ فِي الْعِدَّةِ وَدَخَلَ بِهَا الَّذِي نَكَحَهَا. -

L30740 Sufyan said: Ash'ath reported to me, on the authority of Ash-Sha'bi, on the authority of Masruq, that Umar retracted from that, assigned her her dowry, and restored their union.

وَقَالَ سُفْيَانُ: فَأَخْبَرَنِي أَشْعَثُ عَنِ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّ عُمَرَ رَجَعَ عَنْ ذَلِكَ، وَجَعَلَ لَهَا مَهْرَهَا، وَجَعَلَهُمَا يَجْتَمِعَانِ.

L30741 What is more astonishing than their persistence in contradicting Umar's established position—that he would place her dowry in the public treasury—and in adhering to the claim that Umar had retracted from it? Their error suffices for both of them.

فَأَيُّ شَيْءٍ أَعْجَبُ مِنْ تَمَادِيهِمَا عَلَى خِلَافِ عُمَرَ فِي الثَّابِتِ عَنْهُ مِنْ أَنْ يَجْعَلَ مَهْرَهَا فِي بَيْتِ الْمَالِ، وَعَلَى قَوْلِهِ قَدْ رَجَعَ عُمَرُ عَنْهَا - وَكَفَى بِهِمَا خَطَأً.

L30742 Fourthly - It has been authentically reported from 'Umar, as narrated by Hummam from Ibn Mufarrij from Ibn al-A'rabi from al-Dabari from 'Abd al-Razzaq from Ibn Jurayj, who informed me that Abu al-Zubayr reported hearing Jabir ibn 'Abd Allah say: A woman came to 'Umar ibn al-Khattab in al-Jabiyah after marrying her slave. 'Umar harshly rebuked her, intended to stone her, and said: "No Muslim is lawful for you after him."

وَرَابِعَةً - أَنَّهُ قَدْ صَحَّ عَنْ عُمَرَ مَا حَدَّثَنَاهُ حُمَامٌ نَا ابْنُ مُفَرِّجٍ نَا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ جَاءَتْ امْرَأَةٌ إِلَى عُمَرَ بْنِ الْخَطَّابِ بِالْجَابِيَةِ نَكَحَتْ عَبْدَهَا فَانْتَهَرَهَا عُمَرُ وَهَمَّ أَنْ يَرْجُمَهَا وَقَالَ لَهَا: لَا يَحِلُّ لَكِ مُسْلِمٌ بَعْدَهُ.

L30743 This is the most authentic chain of transmission from Umar in the presence of the Companions, yet they did not turn to it and persisted in the error out of blind adherence to Malik's mistake after Umar had retracted from that error—and we ask Allah for well-being.

فَهَذَا أَصَحُّ سَنَدٍ عَنْ عُمَرَ بِحَضْرَةِ الصَّحَابَةِ، وَلَمْ يَلْتَفِتُوا إِلَيْهِ وَلَجُّوا فِي الْخَطَأِ تَقْلِيدًا لِخَطَأِ مَالِكٍ بَعْدَ رُجُوعِ عُمَرَ عَنْهُ - وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

L30744 Among the marvels of the world is their statement: "Whoever buys a female slave and finds her pregnant from a husband she previously had, and the husband dies after the buyer had intercourse with her, then she is never lawful for him—not even through ownership by right of possession."

وَمِنْ عَجَائِبِ الدُّنْيَا قَوْلُهُمْ: مَنْ اشْتَرَى أَمَةً فَوَجَدَهَا حَامِلًا مِنْ زَوْجٍ كَانَ لَهَا فَمَاتَ بَعْدَ أَنْ وَطِئَهَا، فَإِنَّهُ لَا تَحِلُّ لَهُ أَبَدًا، وَلَا بِمِلْكِ الْيَمِينِ.

L30745 They said: If a man marries a woman who has no husband, has intercourse with her, and she is later found to be pregnant resulting from adultery or

وَقَالُوا: مَنْ تَزَوَّجَ امْرَأَةً لَا زَوْجَ لَهَا فَدَخَلَ بِهَا فَوَطِئَهَا، ثُمَّ ظَهَرَ بِهَا حَمْلٌ مِنْ زِنًى أَوْ مِنْ غَصْبٍ كَانَ بِهَا قَبْلَ نِكَاحِهِ، فَإِنَّهَا لَا تَحِلُّ لَهُ أَبَدًا، مَا نَدْرِي لِمَاذَا؟

rape that occurred with her before his marriage, she is never permissible for him eternally. We do not understand the rationale for this?

وَقَالُوا: مَنْ تَزَوَّجَ أَمَةً أُعْتِقَتْ قَبْلَ أَنْ تُتِمَّ حَيْضَةً بَعْدَ عِتْقِهَا فَدَخَلَ بِهَا حُرِّمَتْ عَلَيْهِ فِي الْأَبَدِ - فَلَجُّوا هَذَا اللَّجَاجَ الْفَاسِدَ.

L30746 They said: Whoever marries a slave woman emancipated before she completes one menstrual period after her emancipation and consummates the marriage, she becomes permanently prohibited to him. They persisted in this baseless obstinacy.

ثُمَّ لَمْ يَلْبَثُوا أَنْ قَالُوا: مَنْ تَزَوَّجَ امْرَأَةً لَهَا زَوْجٌ قَائِمٌ حَيٌّ حَاضِرٌ أَوْ غَائِبٌ يَظُنَّانِ أَنَّهُ قَدْ مَاتَ أَوْ يُوقِنَانِ بِحَيَاتِهِ، فَدَخَلَ بِهَا فَوَطِئَهَا: أَنَّهَا لَا تُحَرَّمُ عَلَيْهِ فِي الْأَبَدِ، بَلْ لَهُ أَنْ يَتَزَوَّجَهَا إِنْ طَلَّقَهَا الزَّوْجُ أَوْ مَاتَ.

L30747 Then they soon stated: If a man marries a woman whose validly married husband is alive—whether present or absent—while they suspect he has died or are certain he is alive, and consummates the marriage, she is not perpetually prohibited to him. Rather, he may marry her again if the husband divorces her or dies.

وَهَذَا هُوَ الْمُسْتَعْجِلُ قَبْلَ الْوَقْتِ بِلَا شَكٍّ.

L30748 This, unquestionably, is the one who hastens [an act] before its prescribed time.

وَقَالُوا: مَنْ زَنَى بِامْرَأَةٍ لَمْ تُحَرَّمْ عَلَيْهِ فِي الْأَبَدِ، فَرَأَوْا الزِّنَا أَخَفَّ مِنْ زَوَاجِ الْجَاهِلِ فِي الْعِدَّةِ - وَرَأَوْا مَا لَا حَدَّ فِيهِ وَلَا إِثْمَ لِلْجَهَالَةِ أَغْلَظَ مِنْ الْحَرَامِ الْمُتَيَقَّنِ - فَهَلْ فِي الْعَجَبِ أَكْثَرُ مِنْ هَذَا؟ وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

L30749–30751 And they said: Whoever engages in unlawful sexual intercourse with a woman not permanently forbidden to him—they considered unlawful sexual intercourse to be less severe than marrying her. Those ignorant concerning the waiting period—they considered what entails neither a prescribed punishment nor a sin due to ignorance stricter than certainly unlawful acts—is there anything more astonishing than this? And we ask Allah for preservation.

[مَسْأَلَة مِنْ أنفسخ نِكَاحهَا بَعْد صِحَّته بِمَا يُوجِبُ فسخه]

A legal issue concerning the dissolution of her marriage after its validity due to grounds necessitating its dissolution.

١٨٤٥ - مَسْأَلَةٌ: وَمَنْ انْفَسَخَ نِكَاحُهُ بَعْدَ صِحَّتِهِ بِمَا يُوجِبُ فَسْخَهُ فَلَهَا الْمَهْرُ الْمُسَمَّى كُلُّهُ، فَإِنْ لَمْ يُسَمِّ لَهَا صَدَاقًا فَلَهَا مَهْرُ مِثْلِهَا دَخَلَ بِهَا أَوْ لَمْ يَدْخُلْ.

L30752 **A legal issue concerning the dissolution of her marriage after its validity due to grounds necessitating its dissolution.**

L30753 Issue 1845: If a marriage is annulled after its valid contract due to a reason necessitating annulment, she is entitled to the entire specified dower. If no dower was stipulated for her, she receives a customary dower commensurate with her status, whether the marriage was consummated or not.

L30754 The proof of this—: the statement of Allah, the Exalted: {And give women their bridal gifts as an obligation} [An-Nisa: 4]. Thus, the mahr is obligatory for her due to the contract's validity—whether he has consummated the

marriage or not. If it is dissolved, her right to the mahr remains, just as if he had died, with no distinction.[28]

L30755 Whoever claims that she is not entitled to anything in annulment before consummation except half the ṣadāq has based this claim on analogy to divorce before consummation. All analogy is invalid, and even if analogy were valid, this instance would still be invalid, because divorce is an act of the divorcer, while annulment is not his act. Thus, there is no similarity between annulment and divorce. Rather, annulment is more similar to death, as both occur without the husband's choice, whereas divorce only occurs by his choice.

L30756 Similarly, if someone waives the entire dowry in some cases of annulment when the annulment originates from the woman's side, his statement is invalid. This is a waiver of what Allah, the Exalted, has obligated without evidence—and success is from Allah, the Exalted.

L30757 **Juridical case: If the wife divorces [her husband] before consummation.**

L30758 Issue 1846: If a man divorces before entering seclusion with her, she is entitled to half the specified dower. This likewise applies if he entered seclusion but did not consummate the marriage - whether their cohabitation was prolonged or brief. This ruling governs every dower defined through unspecified description, such as countable items, weight, measure, described objects, or [dower] in a specifically designated location provided it exists validly. It applies uniformly whether the dower was specified in the marriage contract itself, whether they mutually agreed upon it afterward, or if no mutual agreement occurred. In such cases, she is granted the equivalent dower of her peers.

L30759 The proof of that is the statement of Allah, the Exalted and Majestic: {And

[28] **Qur'an references (L30754):** Qur'an 4:4 (An-Nisa).

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] فَالصَّدَاقُ وَاجِبٌ لَهَا بِصِحَّةِ الْعَقْدِ - وَدَخَلَ بِهَا أَوْ لَمْ يَدْخُلْ - فَإِذَا انْفَسَخَ فَحُقُّهَا فِي الصَّدَاقِ بَاقٍ، كَمَا لَوْ مَاتَ وَلَا فَرْقَ.

وَمَنْ ادَّعَى أَنَّهُ لَيْسَ لَهَا فِي الْفَسْخِ قَبْلَ الدُّخُولِ إِلَّا نِصْفُ الصَّدَاقِ فَإِنَّمَا قَالَهُ قِيَاسًا عَلَى الطَّلَاقِ قَبْلَ الدُّخُولِ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، وَلَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّ الطَّلَاقَ فِعْلُ الْمُطَلِّقِ، وَالْفَسْخَ لَيْسَ فِعْلَهُ، فَلَا تَشَابُهَ بَيْنَ الْفَسْخِ وَالطَّلَاقِ، بَلْ الْفَسْخُ بِالْمَوْتِ أَشْبَهُ، لِأَنَّهُمَا يَقَعَانِ بِغَيْرِ اخْتِيَارِ الزَّوْجِ، وَلَا يَقَعُ الطَّلَاقُ إِلَّا بِاخْتِيَارِهِ.

وَكَذَلِكَ مَنْ أَسْقَطَ جَمِيعَ الصَّدَاقِ فِي بَعْضِ وُجُوهِ الْفَسْخِ إِذَا جَاءَ الْفَسْخُ مِنْ قِبَلِهَا - فَقَوْلُهُ بَاطِلٌ، لِأَنَّهُ إِسْقَاطٌ لِمَا أَوْجَبَهُ اللَّهُ تَعَالَى بِلَا بُرْهَانٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة إذَا طَلَّقَتْ الْمَرْأَة قَبْل الدُّخُول]

١٨٤٦ - مَسْأَلَةٌ: وَمَنْ طَلَّقَ قَبْلَ أَنْ يَدْخُلَ بِهَا فَلَهَا نِصْفُ الصَّدَاقِ الَّذِي سُمِّيَ لَهَا - وَكَذَلِكَ لَوْ دَخَلَ بِهَا وَلَمْ يَطَأْهَا - طَالَ مُقَامُهُ مَعَهَا أَوْ لَمْ يَطُلْ - هَذَا فِي كُلِّ مَهْرٍ كَانَ بِصِفَةٍ غَيْرِ مُعَيَّنٍ، كَعَدَدٍ، أَوْ وَزْنٍ، أَوْ كَيْلٍ، أَوْ شَيْءٍ مَوْصُوفٍ، أَوْ فِي مَكَانٍ بِعَيْنِهِ إنْ وُجِدَ صَحِيحًا، وَسَوَاءٌ كَانَ تَزَوَّجَهَا بِصَدَاقٍ مُسَمًّى فِي نَفْسِ الْعَقْدِ أَوْ تَرَاضَيَا عَلَيْهِ بَعْدَ ذَلِكَ أَوْ لَمْ يَتَرَاضَيَا، فَقُضِيَ لَهَا بِمَهْرِ مِثْلِهَا.

if you divorce them before you have touched them, having already specified for them a mahr, then half of what you have specified} [Al-Baqarah: 237] the verse.[29]

L30760 Among the matters we have mentioned, there exists both ancient and modern disagreement concerning his entering into the marriage contract with her without consummation, the forfeiture of the mahr, the distinction between the mahr being stipulated within the contract versus mutual agreement on it post-contract, or a judicial ruling obligating him to pay it to her, and the legal equivalence between all these cases.

L30761–30763 As for the juristic disagreement concerning the distinction between the mahr being stipulated in the marriage contract, their mutual consent after the contract's conclusion, or a judicial ruling in her favor obligating him to pay it. Indeed, Abū Ḥanīfa and his companions said: She is only awarded half of the bridal gift if the bridal gift was fixed for her in the contract itself. However, if they mutually agreed upon it afterward, or disputed it and a ruling was issued obliging him to pay the dower equivalent to that of her peers, then in such a case, if he divorces her before consummation, she is entitled to nothing except the mut'ah (consolatory gift).

L30764 Malik, al-Shafi'i, Abu Sulayman, and their companions held that she is entitled to half in all such cases.

L30765 Abu Muhammad said: We adopt this view because Allah the Most High's statement, {then half of what you have stipulated} [Al-Baqarah: 237], applies generally to every dowry in a valid marriage—whether stipulated by the husband at the time of the contract or afterward. The Exalted and Glorious did not say: "then half of what you have stipulated in the contract itself." And whoever adds to this ruling is mistaken, one who nullifies, and a transgressor of Allah's boundaries, the Most High.[30]

L30766 As for the one upon whom the judge has imposed the dowry equivalent to women of her standing, even if he refuses what is obligated upon him in this matter, the ruling of Allah the Exalted through His truthful statement:

[29] **Qur'an references (L30759):** Qur'an 2:237 (Al-Baqarah).
[30] **Qur'an references (L30765):** Qur'an 2:237 (Al-Baqarah).

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ} [البقرة: ٢٣٧] الْآيَةَ.

وَفِيمَا ذَكَرْنَا اخْتِلَافٌ قَدِيمٌ وَحَدِيثٌ فِي دُخُولِهِ بِهَا وَلَمْ يَطَأْهَا، وَفِي ضَيَاعِ الْمَهْرِ، وَفِي الْفَرْقِ بَيْنَ كَوْنِ الصَّدَاقِ مَفْرُوضًا فِي الْعَقْدِ وَبَيْنَ تَرَاضِيهِمَا عَلَيْهِ بَعْدَ الْعَقْدِ، أَوْ الْحُكْمِ لَهَا بِهِ عَلَيْهِ وَالتَّسْوِيَةِ بَيْنَ ذَلِكَ كُلِّهِ.

فَأَمَّا الِاخْتِلَافُ فِي الْفَرْقِ بَيْنَ كَوْنِ الصَّدَاقِ مَفْرُوضًا فِي الْعَقْدِ، وَبَيْنَ تَرَاضِيهِمَا بَعْدَ الْعَقْدِ، أَوْ الْحُكْمِ لَهَا بِهِ عَلَيْهِ فَإِنَّ أَبَا حَنِيفَةَ وَأَصْحَابَهُ قَالُوا: إنَّمَا يُقْضَى لَهَا بِنِصْفِ الصَّدَاقِ إذَا كَانَ الصَّدَاقُ مَفْرُوضًا لَهَا فِي نَفْسِ الْعَقْدِ - وَأَمَّا إنْ تَرَاضَيَا عَلَيْهِ بَعْدَ ذَلِكَ، أَوْ اخْتَلَفَا فِيهِ فَحُكِمَ عَلَيْهِ بِمَهْرِ مِثْلِهَا فَهَاهُنَا إنْ طَلَّقَهَا قَبْلَ الدُّخُولِ فَلَا شَيْءَ لَهَا إلَّا الْمُتْعَةُ.

وَقَالَ مَالِكٌ وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ: لَهَا النِّصْفُ فِي كُلِّ ذَلِكَ.

قَالَ أَبُو مُحَمَّدٍ: وَبِهَذَا نَأْخُذُ، لِأَنَّ قَوْلَ اللَّهِ تَعَالَى: {فَنِصْفُ مَا فَرَضْتُمْ} [البقرة: ٢٣٧] عُمُومٌ لِكُلِّ صَدَاقٍ فِي نِكَاحٍ صَحِيحٍ فَرَضَهُ النَّاكِحُ فِي الْعَقْدِ أَوْ بَعْدَهُ، وَلَمْ يَقُلْ عَزَّ وَجَلَّ: فَنِصْفُ مَا فَرَضْتُمْ فِي نَفْسِ الْعَقْدِ - وَالزَّائِدُ لِهَذَا الْحُكْمِ مُخْطِئٌ مُبْطِلٌ مُتَعَدٍّ لِحُدُودِ اللَّهِ تَعَالَى.

وَأَمَّا الَّذِي فَرَضَ عَلَيْهِ الْحَاكِمُ صَدَاقَ مِثْلِهَا، فَإِنَّهُ وَإِنْ كَانَ قَدْ أَبَى مِنْ الْوَاجِبِ عَلَيْهِ فِي ذَلِكَ فَحُكْمُ اللَّهِ تَعَالَى عَلَيْهِ بِقَوْلِهِ الصَّادِقِ: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] مُوجِبٌ عَلَيْهِ أَنْ يَفْرِضَ لَهَا أَحَدَ وَجْهَيْنِ، لَا بُدَّ لَهُ مِنْ أَحَدِهِمَا ضَرُورَةً: إمَّا مَا رَضِيَتْ،

{Give women their bridal gifts graciously} [An-Nisa: 4] necessitates that he must assign her one of two options. He is bound by necessity to one of them: either what she has consented to or the standard dowry for women of her standing. Whichever of the two becomes binding upon him—whether through his consent or a legally sound judgment—he has thereby assigned it to her. For by contracting the marriage, he has undoubtedly bound himself to it in the knowledge of Allah the Almighty, and the obligation toward her in his wealth is certain. We find no basis for any argument at all from those who oppose this ruling.[31]

وَإِمَّا مَهْرُ مِثْلِهَا، فَأَيُّهُمَا لَزِمَهُ بِرِضَاهُ أَوْ بِحُكْمٍ حَقٍّ فَقَدْ فَرَضَهُ لَهَا، إِذْ عَقَدَ نِكَاحَهَا يَقِينًا فِي عِلْمِ اللَّهِ عَزَّ وَجَلَّ، وَقَدْ وَجَبَ لَهَا فِي مَالِهِ - وَمَا نَعْلَمُ لِمَنْ خَالَفَ هَذَا حُجَّةً أَصْلًا.

L30767 And we bear witness by the testimony of Allah, the Most High: that had Allah intended His statement, "then half of what you have obligated" [Al-Baqarah 2:237], to pertain specifically to the marriage contract itself, He would have clarified it for us and not left it until Abu Hanifah elucidated it—and there is nothing of that sort.[32]

وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى: أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ بِقَوْلِهِ: {فَنِصْفُ مَا فَرَضْتُمْ} [البقرة: ٢٣٧] فِي نَفْسِ الْعَقْدِ خَاصَّةً لَبَيَّنَهُ لَنَا وَلَمْ يُهْمِلْهُ حَتَّى يُبَيِّنَهُ لَنَا أَبُو حَنِيفَةَ، وَمَا هُنَالِكَ.

L30768 So then, there is no doubt in this, we have become certain that Allah, the Exalted, has willed in every circumstance.

فَإِذًا لَا شَكَّ فِي هَذَا فَقَدْ أَيْقَنَّا أَنَّ اللَّهَ تَعَالَى أَرَادَ بِكُلِّ حَالٍ.

L30769 As for one who has entered into seclusion with his wife but has not consummated the marriage—whether their cohabitation is prolonged or brief—people have differed regarding this matter. It has been reported to us through Abū ʿUbayd's transmission chain: Ismāʿīl ibn Ibrāhīm narrated from ʿAwf ibn Abī Jamīlah, from Zurārah ibn Awfā, who said: "The Rightly Guided Caliphs ruled that if he secures privacy by closing the door and drawing the curtain, the full mahr becomes obligatory."

وَأَمَّا مَنْ دَخَلَ بِزَوْجَتِهِ وَلَمْ يَطَأْهَا - طَالَ - مُقَامُهُ مَعَهَا أَوْ لَمْ يَطُلْ - فَإِنَّ النَّاسَ قَدْ اخْتَلَفُوا فِيهِ -: فَرُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ عَنْ عَوْفِ بْنِ أَبِي جَمِيلَةَ عَنْ زُرَارَةَ بْنِ أَوْفَى قَالَ: قَضَى الْخُلَفَاءُ الرَّاشِدُونَ الْمَهْدِيُّونَ: أَنَّهُ إِذَا أَغْلَقَ الْبَابَ، وَأَرْخَى السِّتْرَ: فَقَدْ وَجَبَ الصَّدَاقُ.

L30770 And through the chain of Waki' from Musa ibn 'Ubaydah from Nafi' ibn Jubayr, who said: The Companions of the Messenger of Allah (peace and blessings be upon him) would say, "When he lowers the curtain or closes the door, the dower becomes obligatory."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ مُوسَى بْنِ عُبَيْدَةَ عَنْ نَافِعِ بْنِ جُبَيْرٍ قَالَ: كَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُونَ: إِذَا أَرْخَى السِّتْرَ، أَوْ أَغْلَقَ الْبَابَ: فَقَدْ وَجَبَ الصَّدَاقُ.

L30771–30772 From the chain of Abd al-Razzaq, through Yahya ibn Abi Kathir, from Salama ibn Abd al-Rahman ibn Awf, from Abu Hurayra, who said: Umar ibn al-

[31] **Qur'an references (L30766):** Qur'an 4:4 (An-Nisa).

[32] **Qur'an references (L30767):** Qur'an 2:237 (Al-Baqarah).

Khattab declared: “If you lower the curtain and bolt the doors, the dowry becomes obligatory.” This is an authentic narration from Umar.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: إِذَا أَرْخَيْت السِّتْرَ وَغَلَّقْت الْأَبْوَابَ فَقَدْ وَجَبَ الصَّدَاقُ - وَهَذَا صَحِيحٌ عَنْ عُمَرَ.

L30773 And through the chain of Abū ʻUbayd: From Yazīd—he is Ibn Hārūn—[who narrated] from Saʻīd ibn Abī ʻArūbah from Qatādah from Al-Ḥasan from Al-Aḥnaf ibn Qays from ʻUmar ibn Al-Khaṭṭāb and ʻAlī ibn Abī Ṭālib—may Allah be pleased with both of them—who both said: “When seclusion is established, the full dowry (mahr) is due.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نَا يَزِيدُ - هُوَ ابْنُ هَارُونَ - عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ الْأَحْنَفِ بْنِ قَيْسٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَا جَمِيعًا: إذَا أُرْخِيَتْ السُّتُورُ: فَقَدْ وَجَبَ الصَّدَاقُ.

L30774 Via the narration of Abi ʼUbayd: Saʼid ibn ʼAbd al-Rahman al-Jumahi informed us from ʼUbayd Allah ibn ʼUmar from Nafiʼ from Ibn ʼUmar, who said: When the door is closed and the curtain is lowered, the dower becomes obligatory.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا سَعِيدُ بْنُ عَبْدِ الرَّحْمَنِ الْجُمَحِيُّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: إذَا أُغْلِقَ الْبَابُ وَأُرْخِيَ السِّتْرُ: فَقَدْ وَجَبَ الصَّدَاقُ.

L30775 Via the chain of Abū ʻUbayd: ʻAbd al-Raḥmān ibn Mahdī narrated to us from Sufyān al-Thawrī from Sulaymān ibn Yasār that al-Ḥārith ibn al-Ḥakam married a woman, made a statement while with her, then departed and separated from her. Marwān sent to Zayd ibn Thābit and relayed the story to him. Zayd said: “She is entitled to the mahr.” Marwān said: “He is above suspicion.” Zayd ibn Thābit responded: “Tell me – if she were to become pregnant, would you stone her?” He replied: “No.” Zayd said: “Yes, rather!”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ أَنَّ الْحَارِثَ بْنَ الْحَكَمِ تَزَوَّجَ امْرَأَةً فَقَالَ عِنْدَهَا، ثُمَّ رَاحَ وَفَارَقَهَا، فَأَرْسَلَ مَرْوَانُ إلَى زَيْدِ بْنِ ثَابِتٍ فَقَصَّ عَلَيْهِ الْقِصَّةَ فَقَالَ زَيْدٌ: لَهَا الصَّدَاقُ، فَقَالَ مَرْوَانُ: إنَّهُ مِمَّنْ لَا يُتَّهَمُ، فَقَالَ زَيْدُ بْنُ ثَابِتٍ: أَرَأَيْت لَوْ حَمَلَتْ أَكُنْت تَرْجُمُهَا؟ قَالَ: لَا، فَقَالَ زَيْدٌ: بَلَى.

L30776 Abū ʻUbayd said: Abū al-Naḍr narrated to us from al-Layth ibn Saʻd, from Bukayr ibn ʻAbd Allāh ibn al-Ashajj, from Sulaymān ibn Yasār, from Zayd ibn Thābit in the same manner—and at its conclusion: “Therefore, charity is obligated from the woman in such a situation.”

قَالَ أَبُو عُبَيْدٍ: وَحَدَّثَنَاهُ أَبُو النَّضْرِ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ زَيْدِ بْنِ ثَابِتٍ مِثْلَهُ - وَفِي آخِرِهِ: فَلِذَلِكَ تُصَدَّقُ الْمَرْأَةُ فِي مِثْلِ هَذَا.

L30777 And through the chain of Abd al-Razzaq from Ibn Jurayj from Abd al-Karim from Ibn Masʼud, similar to the statement of Ali and Umar.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْكَرِيمِ عَنْ ابْنِ مَسْعُودٍ مِثْلُ قَوْلِ عَلِيٍّ، وَعُمَرَ.

L30778 From the chain of Hammad ibn Salamah, from al-Hajjaj ibn Artah, from

al-Rukayn ibn al-Rabi’, from Hanzalah: That al-Mughirah ibn Shu’bah ruled regarding the wife of an impotent man, separating them with the full mahr.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ الرُّكَيْنِ بْنِ الرَّبِيعِ عَنْ حَنْظَلَةَ: أَنَّ الْمُغِيرَةَ بْنَ شُعْبَةَ قَضَى فِي امْرَأَةِ عِنِّينٍ فَرَّقَ بَيْنَهُمَا بِجَمِيعِ الصَّدَاقِ.

L30779 From the transmission of Ibn Wahb and other scholars: Anas ibn Malik said regarding a woman whose husband married her but did not consummate the marriage: “The dowry (mahr) is hers, she must observe the waiting period (ʿiddah), and he has no right to reclaim her.”

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ وَعَنْ رِجَالٍ مِنْ أَهْلِ الْعِلْمِ: أَنَّ أَنَسَ بْنَ مَالِكٍ قَالَ فِي الَّتِي دَخَلَ بِهَا زَوْجُهَا وَلَمْ يَطَأْهَا: إنَّ الصَّدَاقَ لَهَا وَعَلَيْهَا الْعِدَّةُ، وَلَا رَجْعَةَ لَهُ عَلَيْهَا.

L30780–30781 This is the statement of Ali ibn al-Husayn, and it was narrated from Sa’id ibn al-Musayyib.

وَهُوَ قَوْلُ عَلِيِّ بْنِ الْحُسَيْنِ، وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ.

L30782 It has been authentically reported from Sulayman ibn Yasar and Urwah ibn al-Zubayr that he ruled concerning it (the matter) in the case of a chronically impotent man (ʿinin).

وَصَحَّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، وَعَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَضَى بِهِ فِي عِنِّينٍ.

L30783 And it is narrated from ʿAbd al-Karīm, and he added: “Even if she is menstruating.”

وَعَنْ عَبْدِ الْكَرِيمِ وَزَادَ: وَإِنْ كَانَتْ حَائِضًا.

L30784 And from ‘Aṭā’ corresponds to the view of ‘Abd al-Karīm—this is also the position of Ibn Abī Laylā, al-Awzāʿī, and Sufyān al-Thawrī—unless she has congenital vaginal closure, whereby she is entitled to only half the bridal gift.

وَعَنْ عَطَاءٍ مِثْلُ قَوْلِ عَبْدِ الْكَرِيمِ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَالْأَوْزَاعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، إلَّا أَنْ تَكُونَ " رَتْقَاءَ " فَلَا يَجِبُ لَهَا إلَّا نِصْفُ الصَّدَاقِ.

L30785 It has also been authentically reported from al-Layth ibn Saʿd, and this is the opinion of al-Zuhrī, Aḥmad, and Isḥāq.

وَصَحَّ أَيْضًا عَنْ اللَّيْثِ بْنِ سَعْدٍ - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ.

L30786 It was narrated to us from Umar another statement: We narrated it through the chain of Abd al-Razzaq, from Ma’mar, from Yahya ibn Abi Kathir: that Umar ibn al-Khattab issued a verdict regarding a man who secluded himself with a woman without having intercourse with her, while the full dowry remained obligatory. He stated: When he secludes himself with her without locking a door or lowering a curtain.

وَرُوِّينَا عَنْ عُمَرَ قَوْلًا آخَرَ: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي رَجُلٍ اخْتَلَى بِامْرَأَةٍ وَلَمْ يُخَالِطْهَا بِالصَّدَاقِ كَامِلًا، يَقُولُ: إذَا خَلَا بِهَا وَلَمْ يُغْلِقْ بَابًا وَلَا أَرْخَى سِتْرًا.

L30787 And from Ibrāhīm al-Nakhaʿī is another opinion: We have narrated it through the chain of Wakīʿ from Sufyān al-Thawrī from al-Mughīrah, who said: Ibrāhīm al-Nakhaʿī stated, “It was said: If he sees from her what is forbidden to others, she is entitled to the mahr.”

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَوْلٌ آخَرُ: رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ قَالَ: قَالَ إبْرَاهِيمُ النَّخَعِيُّ: كَانَ يُقَالُ: إذَا رَأَى مِنْهَا مَا يَحْرُمُ عَلَى غَيْرِهِ فَلَهَا الصَّدَاقُ.

L30788 Abū Ḥanīfah said: If he is secluded with her in her house—whether he has

intercourse or not—the entire mahr is owed to her, unless either of them is in a state of ritual consecration (iḥrām), either of them is ill, she is menstruating, or she is fasting during Ramaḍān. In all these cases, she is entitled only to half the mahr. If he is secluded with her while observing an obligatory fast as expiation for the oath of ẓihār, fulfilling a vow, or making up for a missed Ramaḍān fast, the full mahr is due, and she must observe the waiting period (ʿiddah). If he is secluded with her in a desert, a mosque, or on a roof without an enclosed room, she is entitled only to half the mahr.

وَقَالَ أَبُو حَنِيفَةَ: إِذَا خَلَا بِهَا فِي بَيْتِهَا - وَطِئَ أَوْ لَمْ يَطَأْ - فَالْمَهْرُ كُلُّهُ لَهَا إِلَّا أَنْ يَكُونَ أَحَدُهُمَا مُحْرِمًا، أَوْ أَحَدُهُمَا مَرِيضًا، أَوْ كَانَتْ هِيَ حَائِضًا، أَوْ صَائِمَةً فِي رَمَضَانَ، فَلَيْسَ لَهَا فِي كُلِّ ذَلِكَ إِلَّا نِصْفُ الْمَهْرِ - فَلَوْ خَلَا بِهَا وَهُوَ صَائِمٌ صِيَامَ فَرْضٍ فِي ظِهَارٍ، أَوْ نَذْرٍ، أَوْ قَضَاءِ رَمَضَانَ، فَعَلَيْهِ الصَّدَاقُ كُلُّهُ، وَعَلَيْهَا الْعِدَّةُ، فَلَوْ خَلَا بِهَا فِي صَحْرَاءَ، أَوْ فِي مَسْجِدٍ، أَوْ فِي سَطْحٍ لَا حُجْرَةَ عَلَيْهِ، فَلَيْسَ لَهَا إِلَّا نِصْفُ الصَّدَاقِ.

L30789 Abu Muhammad said: These are statements that have not once come from any of the Salaf, nor have they been conveyed by the Qur'an, the Sunnah, *qiyas*, or sound opinion.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ أَقْوَالٌ لَمْ تَأْتِ قَطُّ عَنْ أَحَدٍ مِنَ السَّلَفِ، وَلَا جَاءَ بِهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ سَدِيدٌ.

L30790 Malik said: If he secludes with her, kisses her, or uncovers her, then divorces her, and they agree that he did not consummate the marriage, she is entitled to only half the mahr if the time was brief. If it was prolonged until her garments became worn out, she is entitled to the full mahr.

وَقَالَ مَالِكٌ: إِذَا خَلَا بِهَا فَقَبَّلَهَا أَوْ كَشَفَهَا ثُمَّ طَلَّقَهَا وَاتَّفَقَا عَلَى أَنَّهُ لَمْ يَطَأْهَا، فَإِنْ كَانَ ذَلِكَ قَرِيبًا فَلَيْسَ لَهَا إِلَّا نِصْفُ الصَّدَاقِ، فَإِنْ تَطَاوَلَ ذَلِكَ حَتَّى أَخْلَقَ ثِيَابَهَا، فَلَهَا الْمَهْرُ كُلُّهُ.

L30791 Abu Muhammad said: This is a statement not attributed to anyone before him. If only I knew the extent of this presumptuous excess that deviates from the Quran's ruling, and the extent of wear and tear in these garments.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قَوْلٌ لَا يُحْفَظُ عَنْ أَحَدٍ قَبْلَهُ، وَلَيْتَ شِعْرِي كَمْ حَدُّ هَذَا التَّطَاوُلِ النَّاقِلِ عَنْ حُكْمِ الْقُرْآنِ، وَمَا حَدُّ الْإِخْلَاقِ لِهَذِهِ الثِّيَابِ.

L30792–30793 Here is another statement, as we have narrated through the chain of Wakiʿ from al-Ḥasan ibn Ṣāliḥ ibn Ḥayy from Firās from ʿĀmir al-Shaʿbī from Ibn Masʿūd, who said: "She is entitled to half, even if he sat between her legs."

وَهَاهُنَا قَوْلٌ آخَرُ كَمَا رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنِ الْحَسَنِ بْنِ صَالِحِ بْنِ حَيٍّ عَنْ فِرَاسٍ عَنْ عَامِرٍ الشَّعْبِيِّ عَنِ ابْنِ مَسْعُودٍ قَالَ: لَهَا النِّصْفُ وَإِنْ جَلَسَ بَيْنَ رِجْلَيْهَا.

L30794 From the narration of Saʿīd ibn Manṣūr: Hushaym narrated to us, Layth—Ibn Abī Sulaym—narrated from Ṭāwūs from Ibn ʿAbbās that he would rule regarding a man whose wife had entered upon him, then divorced her while alleging he had not touched her: He must pay half the dowry.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ ثنا هُشَيْمٌ نا لَيْثٌ - هُوَ ابْنُ أَبِي سُلَيْمٍ - عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ يَقُولُ فِي رَجُلٍ دَخَلَتْ عَلَيْهِ امْرَأَتُهُ ثُمَّ طَلَّقَهَا، فَزَعَمَ أَنَّهُ لَمْ يَمَسَّهَا: عَلَيْهِ نِصْفُ الصَّدَاقِ.

L30795 Through the chain of Abd al-Razzaq from Ibn Jurayj, who informed me

from Layth from Tawus from Ibn Abbas, he said: The full *mahr* is not owed until he consummates the marriage, and she is owed half of it.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي لَيْثٌ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا يَجِبُ الصَّدَاقُ وَافِيًا حَتَّى يُجَامِعَهَا وَلَهَا نِصْفُهُ.

L30796 Through the chain of Abu ʾUbayd, Hushaym narrated to us: Al-Mughirah ibn Miqsam reported from Al-Sha’bi from Shuraih, who said: “I have not heard Allah, the Almighty and Majestic, mention in His Book any door nor curtain [i.e., explicit rulings]—if the husband claims he did not touch her, she is entitled to half the dowry.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نَا هُشَيْمٌ أَنَا الْمُغِيرَةُ بْنُ مِقْسَمٍ عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ قَالَ: لَمْ أَسْمَعْ اللَّهَ عَزَّ وَجَلَّ ذَكَرَ فِي كِتَابِهِ بَابًا وَلَا سِتْرًا إذَا زَعَمَ أَنْ لَمْ يَمَسَّهَا فَلَهَا نِصْفُ الصَّدَاقِ.

L30797 From the chain of Sa‘īd ibn Manṣūr, who narrated to us: Ismā‘īl ibn Abī Khālid reported from al-Sha‘bī that ‘Amr ibn Nāfi‘ divorced his wife after she had been brought into his household. He claimed he had not approached her, while she asserted he had. She sued him before Shurayḥ, who ordered ‘Amr to swear: “By Allah, besides whom there is no god, I did not approach her.” Shurayḥ then ruled against him, obliging him to pay her half of the mahr.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا إسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ: أَنَّ عَمْرَو بْنَ نَافِعٍ طَلَّقَ امْرَأَتَهُ وَكَانَتْ قَدْ أُدْخِلَتْ عَلَيْهِ، فَزَعَمَ أَنَّهُ لَمْ يَقْرَبْهَا، وَزَعَمَتْ أَنَّهُ قَرِبَهَا، فَخَاصَمَتْهُ إلَى شُرَيْحٍ، فَقَضَى شُرَيْحٌ بِيَمِينِ عَمْرٍو " بِاَللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ مَا قَرِبْتُهَا " وَقَضَى عَلَيْهِ لَهَا بِنِصْفِ الصَّدَاقِ.

L30798 Abu Muhammad said: This divorced woman was the daughter of Yaḥyā ibn al-Jazzār.

قَالَ أَبُو مُحَمَّدٍ: كَانَتْ هَذِهِ الْمُطَلَّقَةُ بِنْتَ يَحْيَى بْنِ الْجَزَّارِ.

L30799 From the chain of Abu ʾUbayd: Mu’adh—he is Mu’adh al-ʾAnbari—narrated to us from ʾAbdullah ibn ʾAwn from Muhammad ibn Sirin that he did not consider closing doors or drawing curtains to hold any significance. From the chain of Waki’: from Zakariyya (Ibn Abi Za’idah) from al-Sha’bi that he said: “She receives half the mahr”—referring to the wife with whom he consummated the marriage—without stating that he had touched her.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا مُعَاذٌ - هُوَ مُعَاذٌ الْعَنْبَرِيُّ - عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ كَانَ لَا يَرَى إغْلَاقَ الْبَابِ وَلَا إرْخَاءَ السِّتْرِ شَيْئًا. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ الشَّعْبِيِّ أَنَّهُ قَالَ: لَهَا نِصْفُ الصَّدَاقِ - يَعْنِي الَّتِي دَخَلَ بِهَا - وَلَمْ يَقُلْ: أَنَّهُ مَسَّهَا.

L30800 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj from Ibn Ṭāwūs from his father, who said: “The full mahr is not obligatory until he has sexual intercourse with her, even if he secludes himself with her.” I said to him: “When the mahr becomes obligatory, does the ʿiddah [mandatory waiting period] also become obligatory?” He replied: “Would anyone dispute this?”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: لَا يَجِبُ الصَّدَاقُ وَافِيًا حَتَّى يُجَامِعَهَا، إنْ أَغْلَقَ عَلَيْهَا الْبَابَ، قُلْت لَهُ: فَإِذَا وَجَبَ الصَّدَاقُ وَجَبَتْ الْعِدَّةُ، قَالَ: أَوَ يَقُولُ أَحَدٌ غَيْرَ ذَلِكَ؟

L30801–30803 From the chain of Hammad ibn Salamah, via Muhammad ibn Ishaq, from Makhul, who said: The dower and waiting period only became obligatory through clear physical contact. A man married a maiden and intended to

travel. He came to her in her house while she was unattended and alone - none of his family members were present. He seized her and tried to have intercourse with her, but she resisted. He emitted semen without penetrating her. The semen flowed freely into her, and the pregnancy persisted within her until she became heavily pregnant with a male child. The matter was referred to ʿUmar ibn al-Khaṭṭāb, who sent for her husband and asked him? When he confirmed her account, ʿUmar declared: "If a man locks the door or lowers the curtain, the mahr becomes obligatory, and the ʿiddah is fully established."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ مَكْحُولٍ قَالَ: لَا يَجِبُ الصَّدَاقُ وَالْعِدَّةُ إِلَّا بِالْمُلَامَسَةِ الْبَيِّنَةِ: تَزَوَّجَ رَجُلٌ جَارِيَةً فَأَرَادَ سَفَرًا فَأَتَاهَا فِي بَيْتِهَا مُخْلِيَةً لَيْسَ عِنْدَهَا أَحَدٌ مِنْ أَهْلِهِ، فَأَخَذَهَا فَعَالَجَهَا، فَمَنَعَتْ نَفْسَهَا، فَصَبَّ الْمَاءَ وَلَمْ يَفْتَرِعْهَا، فَسَاغَ الْمَاءُ فِيهَا، فَاسْتَمَرَّ بِهَا الْحَمْلُ، فَثَقُلَتْ بِغُلَامٍ، فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ الْخَطَّابِ، فَبَعَثَ إلَى زَوْجِهَا فَسَأَلَهُ؟ فَصَدَّقَهَا، فَعِنْدَ ذَلِكَ قَالَ عُمَرُ: مَنْ أَغْلَقَ الْبَابَ أَوْ أَرْخَى السِّتْرَ فَقَدْ وَجَبَ الصَّدَاقُ، وَكَمُلَتْ الْعِدَّةُ.

L30804 Abū Muḥammad said: This is the doctrine of al-Shāfiʿī, Abū Thawr, Abū Sulaymān, and their followers.

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L30805 Abu Muhammad said: As for the statements of Abu Hanifa and Malik, they contradict all the Companions we have mentioned, and we know of no foundational evidence for them at all nor any predecessors in their opinion. Therefore, nothing remains except the opinion of those who said: "If he closes a door or lowers a curtain, the dowry becomes obligatory." We found those who adhere to this opinion citing as evidence the words of Allah the Exalted: {And give the women their dowries as a free gift} [Quran 4:4].[33]

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ: فَمُخَالِفَانِ لِكُلِّ مَنْ ذَكَرْنَا مِنْ الصَّحَابَةِ، وَلَا نَعْلَمُ لَهُمَا حُجَّةً أَصْلًا وَلَا سَلَفًا فِي قَوْلِهِمَا، فَلَمْ يَبْقَ إلَّا قَوْلُ مَنْ قَالَ: إنْ أَغْلَقَ بَابًا، أَوْ أَرْخَى سِتْرًا فَقَدْ وَجَبَ الصَّدَاقُ فَوَجَدْنَا مَنْ ذَهَبَ إلَى هَذَا الْقَوْلِ يَحْتَجُّونَ بِقَوْلِ اللَّهِ تَعَالَى: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] .

L30806 They said: The entire dowry is obligatory for her unless a consensus prevents her from receiving it.

قَالُوا: فَالصَّدَاقُ كُلُّهُ وَاجِبٌ لَهَا إلَّا أَنْ يَمْنَعَ مِنْهُ إجْمَاعٌ.

L30807 And as we have been narrated through the chain of Al-Bukhārī: ʻAmr ibn Zurārah narrated to us, Ismāʿīl—that is, Ibn ʻUlayyah—narrated to us from Ayyūb al-Sikhtiyānī from Saʿīd ibn Jubayr: that Ibn ʻUmar said to him, "The Messenger of Allāh—peace and blessings be upon him—separated the two brothers of Banū al-ʻAjlān," and he mentioned the ḥadīth. Ayyūb said: Then ʻAmr ibn Dīnār said to me, "There is something in the ḥadīth that I do not see you narrating." He said: The man said, "What about my property?" It was

وَكَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَمْرُو بْنُ زُرَارَةَ نا إسْمَاعِيلُ - هُوَ ابْنُ عُلَيَّةَ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ: أَنَّ ابْنَ عُمَرَ قَالَ لَهُ: «فَرَّقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ أَخَوَيْ بَنِي الْعَجْلَانِ» ، وَذَكَرَ الْحَدِيثَ، قَالَ أَيُّوبُ: فَقَالَ لِي عَمْرُو بْنُ دِينَارٍ: إنَّ فِي الْحَدِيثِ شَيْئًا لَا أَرَاك تُحَدِّثُهُ؟ قَالَ: قَالَ الرَّجُلُ: مَالِي؟ قَالَ: قِيلَ: لَا مَالَ لَك إنْ كُنْت صَادِقًا فَقَدْ دَخَلْت بِهَا.

[33] **Qur'an references (L30805):** Qur'an 4:4 (An-Nisa).

said: “You have no property if you are truthful, as you have consummated the marriage with her.”[34]

L30808 Abū Muḥammad said: There is no evidence in this, for ʻAmr ibn Dīnār did not mention who reported this to him, thus it becomes mursal; and there is no evidence in a mursal.

L30809 Moreover, it merely contains [someone] stating: “It was said,” but there is no mention that the Messenger of Allah—peace and blessings be upon him—uttered those words. Thus, it is invalidated in all aspects. However, ʻAmr ibn Dīnār narrated it with a chain of transmission, though he did not mention this wording. Rather, as transmitted from Hammām ibn Aḥmad, from ʻAbbās ibn Aṣbagh, from Muḥammad ibn ʻAbd al-Malik ibn Ayman, from Muḥammad ibn Ismāʻīl al-Tirmidhī, from al-Ḥumaydī, from Sufyān ibn ʻUyaynah, from ʻAmr ibn Dīnār, who said: I heard Saʻīd ibn Jubayr say: I heard Ibn ʻUmar say: I heard the Messenger of Allah—peace and blessings be upon him and his family—declare: “For the two parties in liʻān (mutual imprecation), your judgment lies with Allah. One of you is lying.” The man protested: “O Messenger of Allah, my wealth! My wealth!” The Prophet responded: “You have no right to her wealth. If you were truthful in your accusation against her, then it is by the lawful right you had to her intimacy.” And he related the ḥadīth.

L30810–30812 They said: “Does consummation legitimize access to her intimate part?” Abū Muḥammad responded: “This is confusion. Rather, at the time of the marriage contract, the legitimization of her intimate part becomes valid. Were it not [text breaks off]...” The Quranic text states that if he divorces her before consummating the marriage, only half of the dower is due; otherwise, the full dower would have been hers—just as the full dower is hers if either he or she dies. Thus, it is obligatory to abide by this ruling.

L30813 And likewise, the interpretation concerning the statement of the Exalted: {And give women their dowers as a free gift} [An-Nisa: 4] is that this other

قَالَ أَبُو مُحَمَّد: لَا حُجَّةَ فِي هَذَا لِأَنَّ عَمْرَو بْنَ دِينَارٍ لَمْ يَذْكُرْ مَنْ أَخْبَرَهُ بِهَذَا، فَحَصَلَ مُرْسَلًا، وَلَا حُجَّةَ فِي مُرْسَلٍ.

وَأَيْضًا: فَإِنَّمَا فِيهِ قَالَ: قِيلَ: وَلَيْسَ فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ ذَلِكَ - فَسَقَطَ مِنْ كُلِّ وَجْهٍ - وَقَدْ أَسْنَدَهُ عَمْرُو بْنُ دِينَارٍ وَلَمْ يَذْكُرْ فِيهِ هَذَا اللَّفْظَ لَكِنْ كَمَا نا حُمَامُ بْنُ أَحْمَدَ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ نا الْحُمَيْدِيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا عَمْرُو بْنُ دِينَارٍ قَالَ: سَمِعْت سَعِيدَ بْنَ جُبَيْرٍ يَقُولُ: سَمِعْت ابْنَ عُمَرَ يَقُولُ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ «لِلْمُتَلَاعِنَيْنِ حِسَابُكُمَا عَلَى اللَّهِ، أَحَدُكُمَا كَاذِبٌ، فَقَالَ: يَا رَسُولَ اللَّهِ مَالِي مَالِي، قَالَ: لَا مَالَ لَكَ، إنْ كُنْت صَادِقًا عَلَيْهَا فَهُوَ بِمَا اسْتَحْلَلْتَ مِنْ فَرْجِهَا» وَذَكَرَ الْحَدِيثَ.

قَالُوا: فَالدُّخُولُ بِهَا اسْتِحْلَالٌ لِفَرْجِهَا؟ قَالَ أَبُو مُحَمَّد: هَذَا تَمْوِيهٌ، بَلْ حِينَ الْعَقْدِ لِلنِّكَاحِ يَصِحُّ اسْتِحْلَالُهُ لِفَرْجِهَا فَلَوْلَا نَصُّ الْقُرْآنِ بِأَنَّهُ إنْ لَمْ يَمَسَّهَا حَتَّى طَلَّقَهَا فَنِصْفُ الصَّدَاقِ فَقَطْ لَكَانَ الْكُلُّ لَهَا، كَمَا هُوَ لَهَا إنْ مَاتَ أَوْ مَاتَتْ، فَوَجَبَ الْوُقُوفُ عِنْدَ ذَلِكَ.

وَهَكَذَا الْقَوْلُ فِي قَوْلِهِ تَعَالَى: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] أَنَّ هَذِهِ الْآيَةَ الْأُخْرَى خَصَّتْهَا، فَلَمْ يُوجِبْ الطَّلَاقُ قَبْلَ الْمَسِّ إلَّا نِصْفَ الصَّدَاقِ.

[34] **Hadith references (L30807):** Sahih Muslim 1493d; Sunan Abi Dawud 2258; Sunan an-Nasai 3474.

verse specified it, so divorce before consummation does not obligate [the husband] except half of the dower.[35]

L30814 They also raised objections with a weak report we narrated through the chain of Abu Ubayd, who narrated to us from Abu Mu'awiyah and al-Qasim ibn Malik, who narrated from Jamil ibn Yazid al-Ta'i, who narrated from Zayd ibn Ka'b al-Ansari, who said: "The Messenger of Allah (peace and blessings be upon him) married a woman from Banu Ghifar. When he entered upon her, he noticed whiteness on her flank and said: 'Put on your clothes and return to your family.'"

وَشَغَبُوا أَيْضًا بِخَبَرٍ سَاقِطٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا أَبُو مُعَاوِيَةَ وَالْقَاسِمُ بْنُ مَالِكٍ عَنْ جَمِيلِ بْنِ يَزِيدَ الطَّائِيِّ عَنْ زَيْدِ بْنِ كَعْبٍ الْأَنْصَارِيِّ قَالَ «تَزَوَّجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - امْرَأَةً مِنْ بَنِي غِفَارٍ فَلَمَّا دَخَلَ عَلَيْهَا رَأَى بِكَشْحِهَا بَيَاضًا فَقَالَ: الْبَسِي عَلَيْكِ ثِيَابَكَ وَالْحَقِي بِأَهْلِكِ» .

L30815 Al-Qasim ibn Malik added in his narration: "And he decreed that she receive the full *mahr*."

زَادَ الْقَاسِمُ بْنُ مَالِكٍ فِي رِوَايَتِهِ: وَأَمَرَ لَهَا بِالصَّدَاقِ كَامِلًا.

L30816 Abū Muḥammad said: Jamil ibn Zayd is discarded—his narrations are abandoned, and he is untrustworthy. Even if the narration were authentic, it would not serve as proof for them, for the Prophet (peace and blessings be upon him) did not state that this is an obligation for her. Rather, it is a voluntary gesture from him, as Allah the Exalted said: *"Unless they relinquish it, or the husband in whose hand is the marriage bond relinquishes it"* [Al-Baqarah: 237]. Similarly, if she were to act generously by waiving all her rightful claim against him, she would have done well.[36]

قَالَ أَبُو مُحَمَّد: جَمِيلُ بْنُ زَيْدٍ سَاقِطٌ مَتْرُوكُ الْحَدِيثِ غَيْرُ ثِقَةٍ - ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَمْ يَقُلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ لَهَا وَاجِبٌ، بَلْ هُوَ تَفَضُّلٌ مِنْهُ، كَمَا قَالَ عَزَّ وَجَلَّ {إِلا أَنْ يَعْفُونَ أَوْ يَعْفُوَ الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] كَمَا لَوْ تَفَضَّلَتْ هِيَ فَأَسْقَطَتْ عَنْهُ جَمِيعَ حَقِّهَا لَأَحْسَنَتْ.

L30817–30819 They also obscured with another rejected report: We narrated it as well through the chain of Abu 'Ubayd, narrated by Sa'id ibn Abi Maryam and 'Abd al-Ghaffar ibn Dawud. Sa'id said: From Yahya ibn Ayyub, and 'Abd al-Ghaffar said: From Ibn Lahi'ah. Then the chains of Yahya ibn Ayyub and Ibn Lahi'ah converged, both narrating from 'Ubayd Allah ibn Abi Ja'far, from... Safwan ibn Sulaym reported from Abdullah ibn Yazid, from Muhammad ibn Abd al-Rahman ibn Thawban, who said: The Messenger of Allah—peace and blessings be upon him—said, "Whoever uncovers a woman and gazes at her nakedness, the full mahr is owed."

وَمَوَّهُوا أَيْضًا بِخَبَرٍ آخَرَ سَاقِطٍ: رُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا سَعِيدُ بْنُ أَبِي مَرْيَمَ، وَعَبْدُ الْغَفَّارِ بْنُ دَاوُد، قَالَ سَعِيدٌ: عَنْ يَحْيَى بْنِ أَيُّوبَ وَقَالَ عَبْدُ الْغَفَّارِ: عَنْ ابْنِ لَهِيعَةَ، ثُمَّ اتَّفَقَ يَحْيَى بْنُ أَيُّوبَ، وَابْنُ لَهِيعَةَ، كِلَاهُمَا عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ عَنْ صَفْوَانَ بْنِ سُلَيْمٍ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ كَشَفَ امْرَأَةً فَنَظَرَ إلَى عَوْرَتِهَا فَقَدْ وَجَبَ الصَّدَاقُ» .

L30820 And this provides no legal evidence for several reasons:

وَهَذَا لَا حُجَّةَ فِيهِ لِوُجُوهٍ -:

أَوَّلُهَا - أَنَّهُ مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ.

[35] **Qur'an references (L30813):** Qur'an 4:4 (An-Nisa).
[36] **Qur'an references (L30816):** Qur'an 2:237 (Al-Baqarah).

L30821 The first is that it is a *mursal*, and a *mursal* cannot serve as proof.

وَالثَّانِي - أَنَّهُ مِنْ طَرِيقِ يَحْيَى بْنِ أَيُّوبَ، وَابْنِ لَهِيعَةَ وَهُمَا ضَعِيفَانِ.

L30822 The second: that it is transmitted through Yaḥyā ibn Ayyūb and Ibn Lahīʿah, both of whom are weak.

وَالثَّالِثُ - أَنَّهُ لَيْسَ فِيهِ لِلدُّخُولِ ذِكْرٌ وَلَا أَثَرٌ، وَإِنَّمَا فِيهِ كَشْفُهَا وَالنَّظَرُ إلَى عَوْرَتِهَا، وَقَدْ يَفْعَلُ هَذَا بِغَيْرِ مَدْخُولٍ بِهَا، وَقَدْ لَا يَفْعَلُهُ فِي مَدْخُولٍ بِهَا فَهُوَ مُخَالِفٌ لِقَوْلِ جَمِيعِهِمْ.

L30823 The third [point] is that there is no mention of sexual intercourse in it, nor any indication thereof. It only involves uncovering her and gazing at her private parts. This may apply to someone who has not had intercourse, while it might not apply in the case of someone who has had intercourse. Thus, it contradicts the position held by all of them.

ثُمَّ لَيْسَ فِيهِ أَيْضًا: بَيَانُ أَنَّهُ فِي الْمُتَزَوِّجَةِ فَقَطْ، بَلْ ظَاهِرُهُ عُمُومٌ فِي كُلِّ زَوْجَةٍ وَغَيْرِهَا، فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ جُمْلَةً.

L30824 Furthermore, the text does not specify that it applies exclusively to a wife; rather, its evident meaning is general, applying to every wife and others besides her. Thus, their having any basis [for the claim] is entirely invalidated.

وَأَمَّا مَنْ تَعَلَّقَ بِأَنَّهَا لَوْ حَمَلَتْ لَحِقَ الْوَلَدُ وَلَمْ تُحَدَّ فَلَا حُجَّةَ لَهُمْ فِي هَذَا؛ لِأَنَّهُ لَمْ يَدْخُلْ بِهَا أَصْلًا، وَلَا عُرِفَ أَنَّهُ خَلَا بِهَا، لَكِنْ كَانَ اجْتِمَاعُهُ بِهَا سِرًّا مُمْكِنًا، فَحَمَلَتْ، فَالْوَلَدُ لَاحِقٌ، وَلَا حَدَّ فِي ذَلِكَ أَصْلًا لِأَنَّهَا فِرَاشٌ لَهُ حَلَالًا مُذْ يَقَعُ الْعَقْدُ، لَا مَعْنَى لِلدُّخُولِ فِي ذَلِكَ أَصْلًا، وَقَدْ تَحْمِلُ مِنْ غَيْرِ إيلَاجٍ، لَكِنْ بِتَشْفِيرٍ بَيْنَ الشَّفْرَيْنِ فَقَطْ - وَكُلُّ هَذَا لَا يُسَمَّى مَسًّا.

L30825 As for those who argue that if she becomes pregnant, the child is legally affiliated and no ḥadd punishment applies, they have no valid argument here. This is because he did not penetrate her at all, nor was it established that he secluded himself with her. However, if their private interaction was potentially concealed and she became pregnant, the child is legally affiliated, and no ḥadd punishment applies whatsoever. This is because she constitutes his lawful marital bed immediately upon the marriage contract's validity. Penetration holds no legal significance in this matter at all, as pregnancy may occur without penetration - merely through seminal emission between the labia exclusively. None of these scenarios is termed 'contact' (mass) in juristic terms.

فَإِنْ تَعَلَّقُوا بِمَنْ جَاءَ ذَلِكَ عَنْهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L30826 If they cling to those among the Companions—may Allah be pleased with them—who reported such a ruling, there is no proof in anyone besides the Messenger of Allah—peace and blessings of Allah be upon him.

وَقَدْ اخْتَلَفُوا كَمَا ذَكَرْنَا فَوَجَبَ الرَّدُّ عِنْدَ التَّنَازُعِ إلَى الْقُرْآنِ وَالسُّنَّةِ، فَوَجَدْنَا الْقُرْآنَ لَمْ يُوجِبْ لَهَا بِعَدَمِ الْوَطْءِ إلَّا نِصْفَ الصَّدَاقِ.

L30827 They differed as we mentioned, so it is obligatory in cases of dispute to refer to the Quran and the Sunnah. We found that the Quran did not require for her, in the absence of intercourse, except half the dowry.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30828 And by Allah, the Most High, is divine success.

[مَسْأَلَة عدمت الْمَرْأَة الصَّدَاق بَعْد قبضها لَهُ]

١٨٤٧ - مَسْأَلَةٌ: فَإِنْ عُدِمَ الصَّدَاقُ بَعْدَ قَبْضِهَا لَهُ - بِأَيِّ وَجْهٍ - كَأَنْ تَلِفَ، أَوْ أَنْفَقَتْهُ: لَمْ يَرْجِعْ عَلَيْهَا بِشَيْءٍ، وَالْقَوْلُ قَوْلُهَا فِي ذَلِكَ مَعَ يَمِينِهَا، فَإِنْ وَطِئَهَا قَبْلَ الدُّخُولِ أَوْ بَعْدَهُ: فَلَهَا الْمَهْرُ كُلُّهُ.

قَالَ عَلِيٌّ: إِنْ كَانَ الْمَهْرُ شَيْئًا بِعَيْنِهِ فَتَلِفَ فِي يَدِ الزَّوْجِ، فَإِنْ كَانَتْ قَدْ طَلَبَتْهُ مِنْهُ فَمَنَعَهَا فَهُوَ غَاصِبٌ وَعَلَيْهِ ضَمَانُهُ كُلُّهُ لَهَا، أَوْ ضَمَانُ نِصْفِهِ إِنْ طَلَّقَهَا قَبْلَ الدُّخُولِ، فَإِنْ كَانَ لَمْ يَمْنَعْهَا إِيَّاهُ فَهُوَ تَالِفٌ مِنْ مَالِ الْمَرْأَةِ، وَلَا ضَمَانَ عَلَى الزَّوْجِ فِيهِ، وَلَا فِي نِصْفِهِ، وَطِئَهَا أَوْ طَلَّقَهَا قَبْلَ الْوَطْءِ.

وَإِنْ كَانَ شَيْئًا يَصِفُهُ فَهُوَ ضَامِنٌ لَهُ بِكُلِّ حَالٍ، أَوْ لِنِصْفِهِ إِنْ طَلَّقَهَا قَبْلَ الدُّخُولِ فَإِنْ كَانَتْ الْمَرْأَةُ قَدْ قَبَضَتْهُ، فَسَوَاءٌ كَانَ بِعَيْنِهِ أَوْ بِصِفَةٍ، فَإِنْ تَلِفَ عِنْدَهَا فَهُوَ مِنْ مُصِيبَةِ الزَّوْجِ إِنْ طَلَّقَهَا قَبْلَ الدُّخُولِ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {فَنِصْفُ مَا فَرَضْتُمْ} [البقرة: ٢٣٧] .

فَإِنَّمَا أَوْجَبَ لَهُ الرُّجُوعَ إِنْ كَانَ قَدْ دَفَعَهُ إِلَيْهَا بِنِصْفِ مَا دَفَعَ، لَا بِنِصْفِ شَيْءٍ غَيْرِهِ، وَالَّذِي دَفَعَ إِلَيْهَا هُوَ الَّذِي فَرَضَ لَهَا، سَوَاءٌ كَانَ شَيْئًا بِعَيْنِهِ أَوْ شَيْئًا بِصِفَةٍ.

وَلَوْ لَمْ يَكُنْ الَّذِي دَفَعَ إِلَيْهَا هُوَ الَّذِي فَرَضَ لَهَا لَكَانَ لَا يَبْرَأُ أَبَدًا مِمَّا عَلَيْهِ - فَصَحَّ يَقِينًا أَنَّهُ إِذَا دَفَعَ إِلَيْهَا غَيْرَ مَا فَرَضَ لَهَا، أَوْ عَلَى الصِّفَةِ الَّتِي عَقَدَ مَعَهَا فَقَدْ دَفَعَ إِلَيْهَا مَا فَرَضَ لَهَا بِلَا شَكٍّ.

L30829 **Legal Issue: The woman lacked the mahr after having received it from the husband.**

L30830–30832 Issue 1847: If the dower ceases to exist after it has been given to her—in any manner, such as being destroyed, or... If she has spent it, she is not required to return anything, and her statement is accepted in that matter provided she swears an oath. If he has had intercourse with her before or after consummation, she is entitled to the entire dower (mahr).

L30833 Ali said: If the dowry is a specific item that perishes in the husband's possession, then if she demanded it from him and he withheld it from her, he becomes a usurper and bears full liability for it to her - or liability for half of it if he divorced her before consummation. If he did not withhold it from her, the loss is from the woman's property, and no liability falls upon the husband for its entirety or half, whether he consummated the marriage or divorced her before consummation.

L30834 If it is something he has described, he is liable for it in all cases—or for half of it if he divorces her before consummation. If the woman has taken possession of it, whether in its tangible form or as described, and it perishes while in her custody, this is a loss borne by the husband if he divorces her before consummation, as Allah the Exalted says: "Then half of what you stipulated" [Al-Baqarah 2:237].[37]

L30835 He is only obligated to reclaim if he gave her half of what he had given, not half of another thing. What he gave her is what he stipulated for her, whether it was a specific item or one described by its attributes.

L30836 Had it not been that the one who gave her [the payment] is the one who stipulated for her [the amount], he would never be absolved of what is incumbent upon him. Thus, it is conclusively established that if he gives her something other than what was stipulated for her, or according to the terms contracted with her, he has indeed given her what was stipulated for her without doubt.

[37] **Qur'an references (L30834):** Qur'an 2:237 (Al-Baqarah).

وَإِذَا دَفَعَ إِلَيْهَا مَا فَرَضَ لَهَا فَقَدْ قَبَضَتْ حَقَّهَا، فَإِنْ تَلِفَ فَلَمْ تَتَعَدَّ وَلَا ظَلَمَتْ فَلَا ضَمَانَ عَلَيْهَا فَإِنْ أَكَلَتْهُ أَوْ بَاعَتْهُ أَوْ وَهَبَتْهُ أَوْ لَبِسَتْهُ فَأَفْنَتْ أَوْ أَعْتَقَتْهُ إِنْ كَانَ مَمْلُوكًا، فَلَمْ تَتَعَدَّ فِي كُلِّ ذَلِكَ بَلْ أَحْسَنَتْ.

L30837 When he gives her what he stipulated for her, she has taken possession of her rightful due. If it perishes while she neither exceeded bounds nor wronged, there is no liability upon her. If she consumes it, sells it, gifts it, wears it until fully used up, or emancipates him if he was an enslaved person - provided she did not transgress in any of that but rather acted appropriately.

وَقَالَ تَعَالَى: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] فَلَا ضَمَانَ عَلَيْهَا، لِأَنَّهَا حَكَمَتْ فِي مَالِهَا وَحَقِّهَا، وَإِنَّمَا الضَّمَانُ عَلَى مَنْ أَكَلَ بِالْبَاطِلِ.

L30838 Allah Almighty says: {There is no cause [for blame] upon the doers of good} [At-Tawbah: 91], so there is no liability upon her, for she exercised judgment over her property and her right. Liability lies only upon those who consume wrongfully.[38]

قَالَ أَبُو مُحَمَّد: فَإِنْ بَقِيَ عِنْدَهَا النِّصْفُ فَهُوَ لَهُ، وَكَذَلِكَ لَوْ بَقِيَ بِيَدِهِ النِّصْفُ فَهُوَ لَهَا، فَلَوْ تَعَدَّتْ أَوْ تَعَدَّى عَلَيْهِ ضَمِنَ أَوْ ضَمِنَتْ.

L30839 Abu Muhammad said: If half remains with her, then it is his. Similarly, if half remains in his possession, then it is hers. Then if she oversteps or he oversteps against him, he or she must compensate.

وَقَالَ أَبُو حَنِيفَةَ: وَالشَّافِعِيُّ، فِي كُلِّ مَا هَلَكَ بِيَدِهَا مِنَ الصَّدَاقِ بِفِعْلِهَا أَوْ بِغَيْرِ فِعْلِهَا فَهِيَ ضَامِنَةٌ لَهُ قِيمَةَ نِصْفِهِ إِنْ طَلَّقَهَا قَبْلَ الْوَطْءِ - وَهَذَا قَوْلٌ فَاسِدٌ، لِمَا وَصَفْنَا مِنْ أَنَّهُ يُقْضَى لَهَا بِنِصْفِ غَيْرِ الَّذِي فَرَضَ لَهَا، وَهَذَا خِلَافُ الْقُرْآنِ، وَقَدْ قُلْنَا: إِنَّهَا لَمْ تَعْتَدَّ فَلَا ضَمَانَ عَلَيْهَا.

L30840 Abu Hanifah and al-Shafi'i said: Regarding anything from the dower that perishes while in her possession - whether through her action or otherwise - she bears financial responsibility for half its value if he divorces her before consummation. This is an invalid opinion due to the rationale we previously explained: that she would be required to pay half the value of what differs from the dower specified for her, which contradicts the Quran. We have stated: Since she committed no transgression, no financial responsibility falls upon her.

وَقَالَ مَالِكٌ: مَا تَلِفَ بِيَدِهَا مِنْ غَيْرِ فِعْلِهَا ثُمَّ طَلَّقَهَا قَبْلَ الدُّخُولِ فَلَا شَيْءَ لَهُ عَلَيْهَا.

L30841–30842 Malik said: If something perishes in her custody through no fault of hers, and he then divorces her before consummation, he has no recourse against her.

قَالَ: فَلَوْ أَكَلَتْهُ أَوْ وَهَبَتْهُ، أَوْ كَانَ مَمْلُوكًا فَأَعْتَقَتْهُ أَوْ بَاعَتْهُ، ثُمَّ طَلَّقَهَا قَبْلَ الدُّخُولِ: ضَمِنَتْ لَهُ نِصْفَ مَا أَخَذَتْ إِنْ كَانَ لَهُ مِثْلٌ، أَوْ نِصْفَ قِيمَتِهِ إِنْ كَانَ مِمَّا لَا مِثْلَ لَهُ، فَإِنْ كَانَتِ ابْتَاعَتْ بِذَلِكَ شُورَةً فَلَيْسَ لَهُ إِلَّا نِصْفُ الشَّيْءِ الَّذِي اشْتَرَتْ.

L30843 He said: If she consumed it, gifted it, freed a male slave, or sold one, then he divorces her before consummation, she is liable to compensate him with half of what she received if it has an equivalent, or half its value if it has no equivalent. If she purchased a replacement with it, he is only entitled to half of the item she acquired.

L30844 Abū Muḥammad said: These are manifest contradictions, for he differentiated between what she consumed, gifted, or emancipated and [between]

[38] **Qur'an references (L30838):** Qur'an 9:91 (At-Tawbah).

what perished without her action. There is no distinction between any of these matters, as in all such cases she is neither overstepping [her rights] nor committing injustice, and thus nothing is incumbent upon her.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ مُنَاقَضَاتٌ ظَاهِرَةٌ، لِأَنَّهُ فَرَّقَ بَيْنَ مَا أَكَلَتْ وَوَهَبَتْ وَأَعْتَقَتْ، وَبَيْنَ مَا تَلِفَ بِغَيْرِ فِعْلِهَا، وَلَا فَرْقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ، لِأَنَّهَا فِي كُلِّ ذَلِكَ غَيْرُ مُتَعَدِّيَةٍ، وَلَا ظَالِمَةٍ، فَلَا شَيْءَ لَهُ عَلَيْهَا.

L30845 Then he distinguished between what she emancipated, consumed, and gifted, and what she purchased with it as a transaction. This is an opinion supported neither by proof from the Quran, nor an authentic Sunnah, nor a defective narration, nor the statement of a Companion, nor analogy.

ثُمَّ فَرَّقَ بَيْنَ مَا أَعْتَقَتْ وَأَكَلَتْ وَوَهَبَتْ، وَبَيْنَ مَا اشْتَرَتْ بِهِ شُورَةً - وَهَذَا قَوْلٌ لَا يُعَضِّدُهُ بُرْهَانٌ مِنْ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا مِنْ قِيَاسٍ.

L30846 They alleged therein the practice of the people of Medina, and this is a corrupt argument, because if that were the practice of the imams who were in Medina—may Allah be pleased with them—then Allah the Exalted would save them from failing to command their officials in Iraq, Syria, and all other regions to uphold the truth—and this is a falsehood irrefutably established against those who alleged it about them.

وَادَّعَوْا فِي ذَلِكَ عَمَلَ أَهْلِ الْمَدِينَةِ، وَهَذَا احْتِجَاجٌ فَاسِدٌ، لِأَنَّهُ إِنْ كَانَ ذَلِكَ عَمَلَ الْأَئِمَّةِ الَّذِينَ كَانُوا بِالْمَدِينَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَيُعِيذُهُمْ اللَّهُ تَعَالَى مِنْ أَنْ لَا يَأْمُرُوا بِالْحَقِّ عُمَّالَهُمْ بِالْعِرَاقِ وَالشَّامِ وَسَائِرِ الْبِلَادِ - وَهَذَا بَاطِلٌ مَقْطُوعٌ بِهِ مِمَّنْ ادَّعَاهُ عَلَيْهِمْ.

L30847 If they claim that they did so, then the people of the garrison towns altered that; this was an invalid claim, and the jurists of the garrison towns were no more entitled to alter than the Successors of Medina.

فَإِنْ ادَّعَوْا أَنَّهُمْ فَعَلُوا فَبَدَّلَ ذَلِكَ أَهْلُ الْأَمْصَارِ كَانَتْ دَعْوَى فَاسِدَةً، وَلَمْ يَكُنْ فُقَهَاءُ الْأَمْصَارِ أَوْلَى بِالتَّبْدِيلِ مِنْ تَابِعِي الْمَدِينَةِ.

L30848 All of this is invalid, for God has protected all of them from that. Thus, it is established that it is ijtihad by every group that intended good through it—and with God, the Exalted, is success.

وَكُلُّ هَذَا بَاطِلٌ قَدْ أَعَاذَ اللَّهُ جَمِيعَهُمْ مِنْ ذَلِكَ فَصَحَّ أَنَّهُ اجْتِهَادٌ مِنْ كُلِّ طَائِفَةٍ قَصَدَتْ بِهِ الْخَيْرَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30849 Issue: Does the husband have the right to cohabit with his wife before delivering her dower (ṣadāq)?

[مَسْأَلَة هَلْ لِلزَّوْجِ أَنْ يَدْخُل عَلَى الزَّوْجَة قَبْل أَنْ يرسل إلَيْهَا صَدَاقهَا]

L30850 Issue 1848: If a man marries whether he stipulates a mahr or not, he has the right to consummate the marriage with her - whether she consents or refuses - and she is awarded what he stipulated for her - whether he consents or refuses. He cannot be prevented from consummation for this reason. However, he is immediately granted the right to consummate, while

١٨٤٨ - مَسْأَلَةٌ: وَمَنْ تَزَوَّجَ فَسَمَّى صَدَاقًا أَوْ لَمْ يُسَمِّ: فَلَهُ الدُّخُولُ بِهَا - أَحَبَّتْ أَمْ كَرِهَتْ - وَيُقْضَى لَهَا بِمَا سَمَّى لَهَا - أَحَبَّ أَمْ كَرِهَ - وَلَا يُمْنَعُ مِنْ أَجْلِ ذَلِكَ مِنْ

she is awarded from him according to what is found available with him as mahr.

الدُّخُولِ بِهَا، لَكِنْ يُقْضَى لَهُ عَاجِلًا بِالدُّخُولِ، وَيُقْضَى لَهَا عَلَيْهِ حَسْبَمَا يُوجَدُ عِنْدَهُ بِالصَّدَاقِ.

L30851 If he did not specify anything for her, he is obligated to provide a dowry equivalent to women of her standing, unless they mutually agree on a greater or lesser amount — a point over which the predecessors differed. It has been narrated to us through ʿAbd al-Razzāq from Ibn Jurayj: Abū al-Zubayr informed me that he heard ʿIkrimah, the freedman of Ibn ʿAbbās, say: Ibn ʿAbbās said: When a man marries a woman and designates a dowry (mahr) for her, and he intends to consummate the marriage, he should cast to her his cloak or a ring if he has one.

فَإِنْ كَانَ لَمْ يُسَمِّ لَهَا شَيْئًا قُضِيَ عَلَيْهِ بِمَهْرِ مِثْلِهَا، إِلَّا أَنْ يَتَرَاضَيَا بِأَكْثَرَ أَوْ بِأَقَلَّ - وَهَذَا مَكَانٌ اخْتَلَفَ السَّلَفُ فِيهِ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ: أَنَّهُ سَمِعَ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ يَقُولُ: قَالَ ابْنُ عَبَّاسٍ: إِذَا نَكَحَ الْمَرْأَةَ وَسَمَّى لَهَا صَدَاقًا فَأَرَادَ أَنْ يَدْخُلَ عَلَيْهَا فَلْيُلْقِ إِلَيْهَا رِدَاءَهُ، أَوْ خَاتَمًا إِنْ كَانَ مَعَهُ.

L30852–30853 Via Ibn Wahb, it was narrated to me by Yunus ibn Yazid al-Ayli through Nafiʾ, on the authority of Ibn Umar, who said: It is not proper for a man to have sexual intercourse with his wife until he presents to her something from his wealth that she is pleased with, such as clothing or maintenance.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ حَدَّثَنِي يُونُسُ بْنُ يَزِيدَ الْأَيْلِيُّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: لَا يَصْلُحُ لِلرَّجُلِ أَنْ يَقَعَ عَلَى الْمَرْأَةِ زَوْجِهِ حَتَّى يُقَدِّمَ إِلَيْهَا شَيْئًا مِنْ مَالِهَا مَا رَضِيَتْ بِهِ مِنْ كِسْوَةٍ أَوْ عَطَاءٍ.

L30854 Ibn Jurayj said: "ʿAṭāʾ, Saʿīd ibn al-Musayyib, and ʿAmr—that is, Ibn Dīnār—stated: 'He may not have physical contact with her until he sends her the mahr or its obligatory amount.'"

قَالَ ابْنُ جُرَيْجٍ: وَقَالَ عَطَاءٌ، وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَعَمْرٌو هُوَ بْنُ دِينَارٍ - لَا يَمَسَّهَا حَتَّى يُرْسِلَ إِلَيْهَا بِصَدَاقٍ أَوْ فَرِيضَةٍ.

L30855 'Aṭā' and 'Amr said: If he sends her a token of honor not part of the dower, or to her family, that suffices him and renders her permissible for him.

قَالَ عَطَاءٌ، وَعَمْرٌو: إِنْ أَرْسَلَ إِلَيْهَا بِكَرَامَةٍ لَهَا لَيْسَتْ مِنَ الصَّدَاقِ أَوْ إِلَى أَهْلِهَا فَحَسْبُهُ هُوَ يُحِلُّهَا لَهُ.

L30856 Sa'id ibn Jubayr said: "Provide for her, even if only a khimār."

وَقَالَ سَعِيدُ بْنُ جُبَيْرٍ: أَعْطِهَا وَلَوْ خِمَارًا.

L30857 Al-Zuhri said: It has been conveyed to us in the Sunnah that one should not consummate the marriage with his wife until he provides maintenance or clothes her. This is among what the Muslims have acted upon.

وَقَالَ الزُّهْرِيُّ: بَلَغَنَا فِي السُّنَّةِ أَنْ لَا يَدْخُلَ بِامْرَأَةٍ حَتَّى يُقَدِّمَ نَفَقَةً أَوْ يَكْسُوَ كِسْوَةً، ذَلِكَ مِمَّا عَمِلَ بِهِ الْمُسْلِمُونَ.

L30858 Mālik said: He should not consummate the marriage with her until he gives

her the prompt portion of her dowry. If she relinquishes it to him, he is required to assign her another portion, without fail.

وَقَالَ مَالِكٌ: لَا يَدْخُلْ عَلَيْهَا حَتَّى يُعْطِيَهَا مَهْرَهَا الْحَالَّ، فَإِنْ وَهَبَتْهُ لَهُ أُجْبِرَ عَلَى أَنْ يَفْرِضَ لَهَا شَيْئًا آخَرَ وَلَا بُدَّ.

L30859 Others held the view that it is permissible for him to consummate the marriage even if he did not give her anything - as we have transmitted through the chain of Abū Dāwūd: Muḥammad ibn Yaḥyā ibn Fāris al-Dhuhlī narrated to us; ʿAbd al-ʿAzīz ibn Yaḥyā al-Ḥarrānī narrated to us; Muḥammad ibn Salamah narrated from Abū ʿAbd al-Raḥīm from Zayd ibn Abī Unaysah from Yazīd ibn Abī Ḥabīb from Marthad ibn ʿAbd Allāh al-Yazanī (who is Abū al-Khayr) from ʿUqbah ibn ʿĀmir: "The Prophet (peace and blessings of Allāh be upon him) married a man to a woman with their mutual consent. The man consummated the marriage without stipulating a mahr or giving her anything. He was among those who witnessed al-Ḥudaybiyah, and those who witnessed it had a share in Khaybar. When death approached him, he said: 'The Messenger of Allāh (peace and blessings of Allāh be upon him) married me to so-and-so without stipulating a mahr or giving her anything. But I make you witnesses that I have given her my share in Khaybar from her mahr.' She took it and sold it for one hundred thousand [units]."

وَذَهَبَ آخَرُونَ إِلَى إِبَاحَةِ دُخُولِهِ عَلَيْهَا وَإِنْ لَمْ يُعْطِهَا شَيْئًا -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ يَحْيَى بْنُ فَارِسٍ الذُّهْلِيُّ نا عَبْدُ الْعَزِيزِ بْنُ يَحْيَى الْحَرَّانِيُّ نا مُحَمَّدُ بْنُ سَلَمَةَ عَنْ أَبِي عَبْدِ الرَّحِيمِ عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ مَرْثَدِ بْنِ عَبْدِ اللَّهِ الْيَزَنِيِّ - هُوَ أَبُو الْخَيْرِ - عَنْ عُقْبَةَ بْنِ عَامِرٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَوَّجَ رَجُلًا امْرَأَةً بِرِضَاهُمَا فَدَخَلَ بِهَا الرَّجُلُ وَلَمْ يَفْرِضْ لَهَا صَدَاقًا، وَلَمْ يُعْطِهَا شَيْئًا، وَكَانَ مِمَّنْ شَهِدَ الْحُدَيْبِيَةَ، وَكَانَ مَنْ شَهِدَهَا لَهُ سَهْمٌ بِخَيْبَرَ، فَحَضَرَتْهُ الْوَفَاةُ فَقَالَ إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَوَّجَنِي فُلَانَةَ وَلَمْ أَفْرِضْ لَهَا صَدَاقًا، وَلَمْ أُعْطِهَا شَيْئًا، وَلَكِنِّي أُشْهِدُكُمْ أَنِّي أَعْطَيْتُهَا مِنْ صَدَاقِهَا سَهْمِي بِخَيْبَرَ، قَالَ: فَأَخَذَتْهُ فَبَاعَتْهُ بِمِائَةِ أَلْفٍ» .

L30860–30861 It has been narrated to us via the chain of Wakīʿ, from Hishām al-Dastawā'ī, from Saʿīd ibn al-Musayyib, who said: The people of Medina differed regarding this matter. Some permitted it and saw no harm in it, while others disapproved of it. Saʿīd said: Whichever course he takes, there is no harm in it - referring to a man consummating the marriage with a woman he married without giving her anything.

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ قَالَ: اخْتَلَفَ أَهْلُ الْمَدِينَةِ فِي ذَلِكَ، فَمِنْهُمْ مَنْ أَجَازَهُ وَلَمْ يَرَ بِهِ بَأْسًا، وَمِنْهُمْ مَنْ كَرِهَهُ، قَالَ سَعِيدٌ: وَأَيُّ ذَلِكَ فَعَلَ فَلَا بَأْسَ بِهِ - يَعْنِي دُخُولَ الرَّجُلِ بِالْمَرْأَةِ الَّتِي تَزَوَّجَ وَلَمْ يُعْطِهَا شَيْئًا.

L30862 Narrated by Waki' from Sufyan al-Thawri, from Mansur ibn al-Mu'tamir and Yunus ibn 'Ubayd: Mansur narrated from Ibrahim al-Nakha'i, and Yunus narrated from al-Hasan. They both concurred that there is no harm in a man consummating the marriage with his wife before giving her something.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ، وَيُونُسَ بْنِ عُبَيْدٍ قَالَ مَنْصُورٌ: عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَقَالَ يُونُسُ: عَنْ الْحَسَنِ، ثُمَّ اتَّفَقَا جَمِيعًا عَلَى أَنَّهُ لَا بَأْسَ بِأَنْ يَدْخُلَ الرَّجُلُ بِامْرَأَتِهِ قَبْلَ أَنْ يُعْطِيَهَا شَيْئًا.

L30863 And through the chain of Abd al-Razzaq from Ibn Jurayj from al-Zuhri regarding a man who marries a woman and specifies a dowry for her: Is it permissible for him to consummate the marriage without having given her

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ الزُّهْرِيِّ فِي الرَّجُلِ يَتَزَوَّجُ الْمَرْأَةَ وَيُسَمِّي لَهَا صَدَاقًا هَلْ يَدْخُلُ عَلَيْهَا وَلَمْ يُعْطِهَا شَيْئًا؟ فَقَالَ الزُّهْرِيُّ: قَالَ اللَّهُ عَزَّ وَجَلَّ {وَلا

anything? Al-Zuhri said: Allah, the Mighty and Majestic, has said, “There is no blame upon you for what you mutually agree to after the stipulated [obligation]” [An-Nisa: 24]. Thus, once the dowry is specified, there is no blame on him for consummating the marriage. The Sunnah has established that he should present her with some clothing or provisions beforehand.[39]

جُنَاحَ عَلَيْكُمْ فِيمَا تَرَاضَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ} [النساء: ٢٤] فَإِذَا فَرَضَ الصَّدَاقَ فَلَا جُنَاحَ عَلَيْهِ فِي الدُّخُولِ عَلَيْهَا، وَقَدْ مَضَتْ السُّنَّةُ أَنْ يُقَدَّمَ لَهَا شَيْءٌ مِنْ كِسْوَةٍ أَوْ نَفَقَةٍ.

L30864 From the chain of Saʿīd ibn Manṣūr: Hushaym reported to us, from Ḥajjāj, from Abū Isḥāq al-Sabīʿī, that Kurayb ibn Abī Muslim—who was among the students of Ibn Masʿūd—married a woman with a dowry of four thousand dirhams and consummated the marriage before giving her anything from her dowry. This is the position held by Sufyān al-Thawrī, al-Shāfiʿī, Abū Sulaymān, and their followers.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ ثنا حَجَّاجٌ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ أَنَّ كُرَيْبَ بْنَ أَبِي مُسْلِمٍ - وَكَانَ مِنْ أَصْحَابِ ابْنِ مَسْعُودٍ - تَزَوَّجَ امْرَأَةً عَلَى أَرْبَعَةِ آلَافِ دِرْهَمٍ وَدَخَلَ بِهَا قَبْلَ أَنْ يُعْطِيَهَا مِنْ صَدَاقِهَا شَيْئًا - وَبِهَذَا يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L30865 Al-Awzaʿī said: They considered it preferable that he not have intercourse with her until he gives her something.

وَقَالَ الْأَوْزَاعِيُّ: كَانُوا يَسْتَحْسِنُونَ أَنْ لَا يَدْخُلَ بِهَا حَتَّى يُقَدِّمَ لَهَا شَيْئًا.

L30866 Al-Layth said: If he specifies a mahr for her, it is more preferable to me that he present her something. If he does not do so, I see no harm in it.

وَقَالَ اللَّيْثُ: إنْ سَمَّى لَهَا مَهْرًا فَأَحَبُّ إلَيَّ أَنْ يُقَدِّمَ لَهَا شَيْئًا، وَإِنْ لَمْ يَفْعَلْ لَمْ أَرَ بِهِ بَأْسًا.

L30867 Abū Ḥanīfah said: If her dower is deferred, he may consummate the marriage with her—whether she is willing or unwilling, whether the deferred term has fallen due or not. But if the dower is prompt, he may not consummate the marriage with her until he pays it to her. If he does consummate the marriage, she may withhold herself from him until he fulfills the entirety of her dower.

وَقَالَ أَبُو حَنِيفَةَ: إنْ كَانَ مَهْرُهَا مُؤَجَّلًا فَلَهُ أَنْ يَدْخُلَ بِهَا - أَحَبَّتْ أَمْ كَرِهَتْ حَلَّ الْأَجَلُ أَوْ لَمْ يَحِلَّ - فَإِنْ كَانَ الصَّدَاقُ نَقْدًا لَمْ يَجُزْ لَهُ أَنْ يَدْخُلَ بِهَا حَتَّى يُؤَدِّيَهُ إلَيْهَا، فَلَوْ دَخَلَ بِهَا فَلَهَا أَنْ تَمْنَعَ نَفْسَهَا مِنْهُ حَتَّى يُوَفِّيَهَا جَمِيعَ صَدَاقِهَا.

L30868 Abū Muḥammad said: As for the division proposed by Abū Ḥanīfa and Mālik, it is an unsubstantiated claim—neither from the Qur’an, nor the Sunnah, nor analogical reasoning, nor the statement of any predecessor, nor a sound opinion. Thus, there remains only the view of those who permit him to enter upon her even if he does not give her anything, or those who prohibit this.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا تَقْسِيمُ أَبِي حَنِيفَةَ، وَمَالِكٍ، فَدَعْوَى بِلَا بُرْهَانٍ: لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا قِيَاسٍ، وَلَا قَوْلِ مُتَقَدِّمٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ فَلَمْ يَبْقَ إلَّا قَوْلُ مَنْ أَبَاحَ دُخُولَهُ عَلَيْهَا وَإِنْ لَمْ يُعْطِهَا شَيْئًا أَوْ مَنَعَ مِنْ ذَلِكَ.

L30869 We examined the argument of those who prohibited that and found them citing a Hadith in which “the Messenger of Allah (may Allah bless him and grant

[39] **Qur’an references (L30863):** Qur’an 4:24 (An-Nisa).

him peace) forbade Ali from entering with Fatimah (may Allah be pleased with them both) until he gives her something."

فَنَظَرْنَا فِي حُجَّةِ مَنْ مَنَعَ مِنْ ذَلِكَ فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِحَدِيثٍ فِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَلِيًّا أَنْ يَدْخُلَ بِفَاطِمَةَ - رَضِيَ اللَّهُ عَنْهُمَا - حَتَّى يُعْطِيَهَا شَيْئًا» .

L30870–30871 Abū Muḥammad said: This is a narration that is not valid, for it only came through interrupted chains, or contains unknown or weak narrators—and we have thoroughly examined its chains and defects in *Kitāb al-Iṣāl*—except that all its characteristics are as described here. Nothing is valid except a narration.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَبَرٌ لَا يَصِحُّ، لِأَنَّهُ إِنَّمَا جَاءَ مِنْ طَرِيقٍ مُرْسَلَةٍ، أَوْ فِيهَا مَجْهُولٌ، أَوْ ضَعِيفٌ - وَقَدْ تَقَصَّيْنَا طُرُقَهَا وَعِلَلَهَا فِي " كِتَابِ الْإِيصَالِ " إِلَّا أَنَّ صِفَتَهَا كُلَّهَا مَا ذَكَرْنَا هَاهُنَا، لَا يَصِحُّ شَيْءٌ إِلَّا خَبَرٌ -:

L30872 From the path of Ahmad ibn Shuʿayb, from ʿAmr ibn Manṣūr, from Hishām ibn ʿAbd al-Malik al-Ṭayālisī, from Ḥammād ibn Zayd, from Ayyūb al-Sikhtiyānī, from ʿIkrimah, from Ibn ʿAbbās: "'Alī said: I married Fāṭimah, so I said: O Messenger of God, grant me a son. He said: Give her something. I said: I have nothing. He said: Where is your Ḥuṭamiyyah armor? I said: It is with me. He said: Then give it to her."

مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ مَنْصُورٍ نا هِشَامُ بْنُ عَبْدِ الْمَلِكِ الطَّيَالِسِيُّ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ «أَنَّ عَلِيًّا قَالَ: تَزَوَّجْتُ فَاطِمَةَ فَقُلْتُ: يَا رَسُولَ اللَّهِ ابْنِ لِي؟ فَقَالَ: أَعْطِهَا شَيْئًا: فَقُلْتُ: مَا عِنْدِي شَيْءٌ، قَالَ: فَأَيْنَ دِرْعُكَ الْحُطَمِيَّةُ؟ قُلْتُ: هُوَ عِنْدِي، قَالَ: فَأَعْطِهَا إِيَّاهُ» .

L30873 Abu Muhammad said: This was only because it constituted her dowry, not to indicate that consummation is impermissible unless he gives her something. This matter has been explicitly clarified—as transmitted from Ahmad ibn Qasim, who said: From my father Qasim ibn Muhammad ibn Qasim, from my grandfather Qasim ibn Asbagh, from Ahmad ibn Zuhayr, from al-Hasan ibn Hammad, from Yahya ibn Ya'mur al-Aslami, from Sa'id ibn Abi 'Arubah, from Qatadah, from al-Hasan al-Basri, from Anas, who said: 'Ali ibn Abi Talib reported: "I came to the Messenger of Allah (peace and blessings be upon him) and said: 'O Messenger of Allah, you know my early embrace of Islam and sincere devotion—and I—I—?' He asked: 'What is it, O 'Ali?' I said: 'Will you marry me to Fatimah?' He inquired: 'What do you have?' I replied: 'My horse and my armor.' He said: 'As for your horse, you cannot do without it, but sell your armor.' I sold it for four hundred and eighty [dirhams] and brought the amount to him. I placed it in his lap, then he took a handful and said: 'O Bilal, buy us perfume with this.'" The remainder of the

قَالَ أَبُو مُحَمَّدٍ: إِنَّمَا كَانَ ذَلِكَ عَلَى أَنَّهُ صَدَاقُهَا، لَا عَلَى مَعْنَى أَنَّهُ لَا يَجُوزُ الدُّخُولُ إِلَّا حَتَّى يُعْطِيَهَا شَيْئًا، وَقَدْ جَاءَ هَذَا مُبَيَّنًا -: كَمَا نا أَحْمَدُ بْنُ قَاسِمٍ قَالَ: نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ قَالَ: حَدَّثَنِي جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا أَحْمَدُ بْنُ زُهَيْرٍ نا الْحَسَنُ بْنُ حَمَّادٍ نا يَحْيَى بْنُ يَعْمُرَ الْأَسْلَمِيُّ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنِ الْحَسَنِ الْبَصْرِيِّ عَنْ أَنَسٍ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ «أَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْتُ: يَا رَسُولَ اللَّهِ قَدْ عَلِمْتَ قِدَمِي فِي الْإِسْلَامِ وَمُنَاصَحَتِي وَإِنِّي وَإِنِّي؟ قَالَ: وَمَا ذَاكَ يَا عَلِيُّ؟ قَالَ: تُزَوِّجُنِي فَاطِمَةَ؟ قَالَ: مَا عِنْدَكَ؟ قُلْتُ: عِنْدِي فَرَسِي وَدِرْعِي، قَالَ: أَمَّا فَرَسُكَ فَلَا بُدَّ لَكَ مِنْهَا، وَأَمَّا دِرْعُكَ فَبِعْهَا، قَالَ: فَبِعْتُهَا بِأَرْبَعِمِائَةٍ وَثَمَانِينَ فَأَتَيْتُهُ بِهَا فَوَضَعْتُهَا

hadith was mentioned. This account clarifies that the armor was mentioned solely in relation to the dowry, not as a condition for consummation, for this is undoubtedly a single incident.

فِي حِجْرِهِ، ثُمَّ قَبَضَ مِنْهَا قَبْضَةً وَقَالَ: يَا بِلَالُ أَبْغِنَا بِهَا طِيبًا» وَذَكَرَ بَاقِيَ الْحَدِيثِ - فَهَذَا بَيَانٌ أَنَّ الدِّرْعَ إنَّمَا ذُكِرَتْ فِي الصَّدَاقِ لَا مِنْ أَجْلِ الدُّخُولِ، لِأَنَّهَا قِصَّةٌ وَاحِدَةٌ بِلَا شَكٍّ.

L30874 Abu Muhammad said: A narration has been reported concerning this matter—as we have narrated through the chain of Abū Ubayd, from ʿUmar ibn ʿAbd al-Raḥmān, from Manṣūr ibn al-Muʿtamir, from Ṭalḥah ibn Muṣarrif, from Khaythamah ibn ʿAbd al-Raḥmān, from some Companions of the Messenger of Allah (peace and blessings be upon him)—"that a man married a woman, and the Prophet (peace and blessings be upon him) arranged her transfer to him before he had paid anything."

قَالَ أَبُو مُحَمَّد: وَقَدْ جَاءَ فِي هَذَا أَثَرٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا عُمَرُ بْنُ عَبْدِ الرَّحْمَنِ نَا مَنْصُورُ بْنُ الْمُعْتَمِرِ عَنْ طَلْحَةَ بْنِ مُصَرِّفٍ عَنْ خَيْثَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ بَعْضِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّ رَجُلًا تَزَوَّجَ امْرَأَةً فَجَهَّزَهَا إلَيْهِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَبْلَ أَنْ يَنْقُدَ شَيْئًا» .

L30875–30877 Ali said: Khaythama was among the senior companions of Ibn Masʿūd and a companion of ʿUmar ibn al-Khaṭṭāb (may Allah be pleased with them). He added: Allah the Mighty and Majestic said, *"Except with their wives or those [slaves] whom their right hands rightfully possess, for indeed they are not to be blamed"* [al-Muʾminūn: 6]. There is no disagreement among any Muslim that from the time it is concluded [...] As for marriage, she is his wife. He is lawful for her, and she is lawful for him. Whoever prevents him from her until he gives her the mahr or other than it has indeed interposed a barrier between him and his wife without any explicit text from Allah the Exalted or His Messenger (peace and blessings be upon him). However, the truth is as we have stated: he must not be denied his right regarding her, nor must she be denied her right to her mahr. Rather, it is permitted to have conjugal relations with her—whether she consents or objects—and her mahr is to be taken from whatever is found of his possessions, whether he consents or objects.[40]

قَالَ عَلِيٌّ: خَيْثَمَةُ مِنْ أَكَابِرِ أَصْحَابِ ابْنِ مَسْعُودٍ وَصَحِبَ عُمَرَ بْنَ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُمْ - قَالَ عَلِيٌّ: قَالَ اللَّهُ عَزَّ وَجَلَّ: {إِلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْمُسْلِمِينَ فِي أَنَّهُ مِنْ حِينِ يُعْقَدُ الزَّوَاجُ فَإِنَّهَا زَوْجَةٌ لَهُ " فَهُوَ حَلَالٌ لَهَا وَهِيَ حَلَالٌ لَهُ، فَمَنْ مَنَعَهَا مِنْهُ حَتَّى يُعْطِيَهَا الصَّدَاقَ أَوْ غَيْرَهُ فَقَدْ حَالَ بَيْنَهُ وَبَيْنَ امْرَأَتِهِ بِلَا نَصٍّ مِنْ اللَّهِ تَعَالَى، وَلَا مِنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكِنَّ الْحَقَّ مَا قُلْنَا أَنْ لَا يُمْنَعَ حَقَّهُ مِنْهَا، وَلَا تُمْنَعَ هِيَ حَقَّهَا مِنْ صَدَاقِهَا، لَكِنْ يُطْلَقُ عَلَى الدُّخُولِ عَلَيْهَا - أَحَبَّتْ أَمْ كَرِهَتْ - وَيُؤْخَذُ مِمَّا يُوجَدُ لَهُ صَدَاقُهَا - أَحَبَّ أَمْ كَرِهَ.

L30878 It has been authentically reported from the Prophet (peace and blessings of Allah be upon him and his family) that he affirmed the correctness of the statement: "Grant every possessor of a right his rightful due." And success is from Allah, the Most High.

وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - تَصْوِيبُ قَوْلِ الْقَائِلِ «أَعْطِ كُلَّ ذِي حَقٍّ حَقَّهُ» وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[40] **Qur'an references (L30875):** Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij).

The issue of a marriage contract stipulating a voidable condition or a defective mahr.

1849. Issue: Every marriage contract established upon an invalid dowry or invalid condition - such as deferring the dowry to a specified or unspecified term, deferring part of it to such a term, stipulating wine, pork, what is lawfully ownable, a specific item owned by another, that he will not marry another besides her, that he will not take a concubine besides her, that he will not relocate her from her town or home, that he will not be absent beyond a duration such as such-and-such, that he must free his Umm Walad (enslaved woman who bore his child) so-and-so, that he must provide for her child, or similar conditions - is an irrevocably invalid and annulled marriage, even if she bears him children. They do not inherit from each other, and no maintenance, dowry, or ‘iddah is obligated.

Similarly, every invalid marriage—except the case of a woman who is ignorant [of the ruling] and marries without her guardian’s permission, and the husband consummates the marriage with her. If he specified a mahr for her, she is entitled to what he specified. If he did not specify a mahr for her, she is entitled to a mahr commensurate with her status. If he did not consummate the marriage, she has no right to anything.

If the invalid dowry and invalid conditions were mutually stipulated after the marriage contract—which was originally free of those invalid elements—had already been validly concluded, then the marriage remains valid and sound. The invalid dowry is annulled, and she is entitled to a mahr equivalent to that of her peers unless they mutually agree to a smaller or larger amount, in which case this is permissible. All stipulated conditions become void.

The proof of that is the statement of Allah’s Messenger—peace be upon him and his progeny—: “Every condition not in Allah’s Book is void.” None of these conditions are in the Book of Allah, the Almighty, the Majestic, thus they are void.[41]

[مَسْأَلَة نِكَاح عَقْدٍ عَلَى شَرْط فاسد أَوْ عَلَى صَدَاق فاسد]

١٨٤٩ - مَسْأَلَةٌ: وَكُلُّ نِكَاحٍ عُقِدَ عَلَى صَدَاقٍ فَاسِدٍ، أَوْ عَلَى شَرْطٍ فَاسِدٍ، مِثْلُ أَنْ يُؤَجَّلَ إِلَى أَجَلٍ مُسَمًّى أَوْ غَيْرِ مُسَمًّى، أَوْ بَعْضُهُ إِلَى أَجَلٍ كَذَلِكَ، أَوْ عَلَى خَمْرٍ، أَوْ عَلَى خِنْزِيرٍ، أَوْ عَلَى مَا يَحِلُّ مِلْكُهُ، أَوْ عَلَى شَيْءٍ بِعَيْنِهِ فِي مِلْكِ غَيْرِهِ، أَوْ عَلَى أَنْ لَا يَنْكِحَ عَلَيْهَا، أَوْ أَنْ لَا يَتَسَرَّى عَلَيْهَا، أَوْ أَنْ لَا يُرَحِّلَهَا عَنْ بَلَدِهَا، أَوْ عَنْ دَارِهَا، أَوْ أَنْ لَا يَغِيبَ مُدَّةً أَكْثَرَ مِنْ كَذَا، أَوْ عَلَى أَنْ يُعْتِقَ أُمَّ وَلَدِهِ فُلَانَةَ، أَوْ عَلَى أَنْ يُنْفِقَ عَلَى وَلَدِهَا، أَوْ نَحْوِ ذَلِكَ - فَهُوَ نِكَاحٌ فَاسِدٌ مَفْسُوخٌ أَبَدًا وَإِنْ وَلَدَتْ لَهُ الْأَوْلَادَ، وَلَا يَتَوَارَثَانِ وَلَا يَجِبُ فِيهِ نَفَقَةٌ، وَلَا صَدَاقٌ وَلَا عِدَّةٌ.

وَهَكَذَا كُلُّ نِكَاحٍ فَاسِدٍ، حَاشَا الَّتِي تَزَوَّجَتْ بِغَيْرِ إِذْنِ وَلِيِّهَا جَاهِلَةً فَوَطِئَهَا، فَإِنْ كَانَ سَمَّى لَهَا مَهْرًا فَلَهَا الَّذِي سُمِّيَ لَهَا، وَإِنْ كَانَ لَمْ يُسَمِّ لَهَا مَهْرًا فَلَهَا عَلَيْهِ مَهْرُ مِثْلِهَا، فَإِنْ لَمْ يَكُنْ وَطِئَهَا فَلَا شَيْءَ لَهَا.

فَإِنْ كَانَ الصَّدَاقُ الْفَاسِدُ، وَالشُّرُوطُ الْفَاسِدَةُ إِنَّمَا تَعَاقَدَاهَا بَعْدَ صِحَّةِ عَقْدِ النِّكَاحِ خَالِيًا مِنْ كُلِّ ذَلِكَ فَالنِّكَاحُ صَحِيحٌ تَامٌّ، وَيُفْسَخُ الصَّدَاقُ، وَيُقْضَى لَهَا بِمَهْرِ مِثْلِهَا، إِلَّا أَنْ يَتَرَاضَيَا بِأَقَلَّ أَوْ أَكْثَرَ، فَذَلِكَ جَائِزٌ، وَتَبْطُلُ الشُّرُوطُ كُلُّهَا.

بُرْهَانُ ذَلِكَ -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» وَهَذِهِ كُلُّهَا شُرُوطٌ لَيْسَتْ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهِيَ بَاطِلَةٌ.

[41] **Hadith references (L30883):** Sunan Ibn Majah 2521.

L30884 Similarly, deferring the dowry or part of it [is invalid], for Allah the Exalted says: “And give women their dowries as a free gift” [An-Nisa’: 4]. Thus, whoever stipulates not to give her the dowry or part of it for a certain period has stipulated contrary to what Allah the Exalted has commanded in the Quran.[42]

وَكَذَلِكَ تَأْجِيلُ الصَّدَاقِ أَوْ بَعْضِه، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] فَمَنْ شَرَطَ أَنْ لَا يُؤْتِيَهَا صَدَاقَهَا أَوْ بَعْضَهُ - مُدَّةً مَا - فَقَدْ اشْتَرَطَ خِلَافَ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ فِي الْقُرْآنِ.

L30885 And his statement—may the peace and blessings of Allah be upon him—“Whoever performs a deed not in accordance with our command, it is null and void.”[43]

وَقَوْلُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L30886–30887 Both reports are authentic and well-known, and we have previously cited them with their chains of transmission in earlier sections of this book. Whatever we have mentioned that does not conform to the command of the Messenger of Allah—peace and blessings be upon him—is invalid and rejected, by the explicit wording of his speech—peace and blessings be upon him—and by the necessity of reason. Every person of intellect knows that anything validated by an invalid premise is itself invalid. Therefore, any marriage contract conditioned upon the validity of the aforementioned stipulations has no validity. If the marriage has no validity, she is not a wife. If she is not a wife—then if the man was aware, the hadd punishment for fornication applies to him, and the child is not legally affiliated with him, for the Prophet—peace and blessings be upon him—said: “The child belongs to the marital bed, and stoning is for the fornicator.” There is only a marital bed or fornication. Since there is no marital bed here, it is fornication. In fornication, no child is legally affiliated [to the man], and the hadd punishment is obligatory.

وَالْخَبَرَانِ صَحِيحَانِ مَشْهُورَانِ وَقَدْ ذَكَرْنَاهُمَا بِأَسَانِيدِهِمَا فِيمَا سَلَفَ مِنْ كِتَابِنَا هَذَا - وَكُلُّ مَا ذَكَرْنَا فَلَيْسَ عَلَيْهِ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ بَاطِلٌ مَرْدُودٌ بِنَصِّ كَلَامِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَبِضَرُورَةِ الْعَقْلِ، يَدْرِي كُلُّ ذِي عَقْلٍ أَنَّ كُلَّ مَا عُقِدَتْ صِحَّتُهُ بِصِحَّةِ مَا لَا يَصِحُّ، فَإِنَّهُ لَا يَصِحُّ، فَكُلُّ نِكَاحٍ عُقِدَ عَلَى أَنْ لَا صِحَّةَ لَهُ إِلَّا بِصِحَّةِ الشُّرُوطِ الْمَذْكُورَةِ فَلَا صِحَّةَ لَهُ فَإِذْ لَا صِحَّةَ لَهُ فَلَيْسَتْ زَوْجَةً، وَإِذْ لَيْسَتْ زَوْجَةً -: فَإِنْ كَانَ عَالِمًا فَعَلَيْهِ حَدُّ الزِّنَا وَلَا يَلْحَقُ بِهِ الْوَلَدُ لِأَنَّ النَّبِيَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ: «الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ» فَلَيْسَ إِلَّا فِرَاشٌ أَوْ عِهْرٌ، فَإِذْ لَيْسَتْ فِرَاشًا فَهُوَ عِهْرٌ، وَالْعِهْرُ لَا يُلْحَقُ فِيهِ وَلَدٌ، وَالْحَدُّ فِيهِ وَاجِبٌ.

L30888 If he is ignorant, then no legal punishment (ḥadd) is imposed upon him, and the child is affiliated with him. This is because the Messenger of Allah (ﷺ) came with the truth, and people continued to embrace Islam while their marriages included both valid and invalid ones—such as marrying two sisters, contracting marriage with more than four, or marrying one’s father’s wife. Thus, the Prophet (ﷺ) annulled all such marriages, and the children were

فَإِنْ كَانَ جَاهِلًا فَلَا حَدَّ عَلَيْهِ وَالْوَلَدُ لَاحِقٌ بِهِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَتَى بِالْحَقِّ، وَلَمْ تَزَلْ النَّاسُ يُسْلِمُونَ وَفِي نِكَاحِهِمْ الصَّحِيحُ وَالْفَاسِدُ، كَالْجَمْعِ بَيْنَ الْأُخْتَيْنِ، وَنِكَاحِ أَكْثَرَ مِنْ أَرْبَعٍ، وَامْرَأَةِ الْأَبِ، فَفَسَخَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كُلَّ ذَلِكَ وَأَلْحَقَ فِيهِ الْأَوْلَادَ، فَالْوَلَدُ لَاحِقٌ بِالْجَاهِلِ لِمَا ذَكَرْنَا.

[42] **Qur’an references (L30884):** Qur’an 4:4 (An-Nisa).

[43] **Hadith references (L30885):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

affiliated with them. Therefore, the child is affiliated with the ignorant one for the reasons stated above.

L30889 As for our exception—that a woman who was married without her guardian's permission has a null and void marriage—this is based on the established report we previously cited with its chain of transmission, from the Prophet's statement—peace and blessings be upon him: "Any woman who marries without her guardian's permission—her marriage is null and void," up to his saying—peace and blessings be upon him: "Then she is entitled to her dowry for what he has consummated with her." Another authenticated version states: "She is entitled to her dowry for what he has consummated with her."[44]

L30890 His statement—peace and blessings be upon him—"the Mahr is hers" specifies definiteness through the Arabic letters Alif and Lam (the definite article 'al-').

L30891 The statement of the Prophet—peace be upon him—"then she is entitled to her dowry"—through the grammatical attribution of the dowry to her, establishes these two textual proofs as obligating for her the agreed-upon, explicitly named dowry and a dowry that is due to her if no specified dowry exists, which is the dowry of her peers. It is impermissible to apply this ruling to every invalid marriage, for this constitutes analogy, and the entirety of analogy is invalid.

L30892 And His saying—peace and blessings be upon him—: "Indeed, your blood, your wealth, your honor, and your skins are sacred to you"—therefore it is established with certainty: that his wealth is forbidden to her except by an explicit text of the Qur'an or the Sunnah, *'And your Lord is never forgetful'* (Maryam 64).[45]

L30893–30894 We bear witness by the testimony of Allah, the Almighty, the Majestic, that if Allah, Exalted is He, had willed to assign a dowry for intercourse in an invalid marriage, He would have clarified it in His Book or upon the tongue of His Messenger—peace and blessings be upon him—just as He clarified it

وَأَمَّا اسْتِثْنَاؤُنَا الَّتِي نُكِحَتْ بِغَيْرِ إِذْنِ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ، فَلِلْخَبَرِ الثَّابِتِ الَّذِي ذَكَرْنَا قَبْلُ بِإِسْنَادِهِ مِنْ قَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إِذْنِ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ» إِلَى قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «فَالْمَهْرُ لَهَا بِمَا أَصَابَ مِنْهَا» وَصَحَّ أَيْضًا «فَلَهَا مَهْرُهَا بِمَا أَصَابَ مِنْهَا» .

فَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «فَالْمَهْرُ لَهَا» تَعْرِيفٌ بِالْأَلِفِ وَاللَّامِ.

وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «فَلَهَا مَهْرُهَا» إِضَافَةُ الْمَهْرِ إِلَيْهَا، فَهَذَانِ اللَّفْظَانِ يُوجِبَانِ لَهَا الْمَهْرَ الْمَعْهُودَ الْمُسَمَّى وَمَهْرًا يَكُونُ لَهَا إِنْ لَمْ يَكُنْ هُنَالِكَ مَهْرٌ مُسَمًّى وَهُوَ مَهْرُ مِثْلِهَا، وَلَا يَجُوزُ أَنْ يَحْكُمَ بِهَذَا لِكُلِّ نِكَاحٍ فَاسِدٍ، لِأَنَّهُ قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» فَصَحَّ يَقِينًا: أَنَّ مَالَهُ حَرَامٌ عَلَيْهَا إِلَّا بِنَصِّ قُرْآنٍ، أَوْ سُنَّةٍ، {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ أَنْ يَجْعَلَ فِي الْوَطْءِ فِي النِّكَاحِ الْفَاسِدِ مَهْرًا لَبَيَّنَهُ فِي كِتَابِهِ، أَوْ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا بَيَّنَ ذَلِكَ فِي الَّتِي نُكِحَتْ بِغَيْرِ إِذْنِ وَلِيِّهَا، وَلَمَا اقْتَصَرَ عَلَى هَذِهِ وَحْدَهَا دُونَ غَيْرِهَا تَلَبُّسًا عَلَى عِبَادِهِ، وَحَاشَا لِلَّهِ مِنْ هَذَا.

[44] **Hadith references (L30889):** Jami at-Tirmidhi 1102; Mishkat al-Masabih 3131.
[45] **Qur'an references (L30892):** Qur'an 19:64 (Maryam).

regarding the woman who was married without her guardian's permission. He would not have restricted this ruling to her case alone while excluding others, thereby causing confusion among His servants. Far be it from Allah to do such a thing.

L30895 If they say: Allah the Almighty has stated, {So whoever transgressed against you, then transgress against him in like manner as he transgressed against you} [Al-Baqarah: 194], and He the Exalted said, {Violations of sacred obligations are subject to retribution} [Al-Baqarah: 194]. Since intercourse in an invalid marriage constitutes transgression and a desecrated sanctity, is it then obligatory that he be transgressed against in his wealth in like manner, and that equivalent retribution be exacted from his wealth?[46]

فَإِنْ قَالُوا: قَالَ اللَّهُ عَزَّ وَجَلَّ {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] وَقَالَ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] وَالْوَطْءُ فِي النِّكَاحِ الْفَاسِدِ اعْتِدَاءٌ وَحُرْمَةٌ مُنْتَهَكَةٌ، فَالْوَاجِبُ أَنْ يُعْتَدَى عَلَيْهِ فِي مَالِهِ بِمِثْلِ ذَلِكَ، وَأَنْ يَقْتَصَّ بِمِثْلِ ذَلِكَ فِي مَالِهِ؟

L30896 We said: The word of Allah, the Mighty and Majestic, is truth, while your deductions from it are the very essence of falsehood. For Allah, Exalted is He, has obligated that the aggressor be aggressed against, and that his inviolability be diminished in proportion to his violation of another's inviolability. Wealth is not equivalent to sexual honor unless a text is brought forth, at which point one must adhere strictly to it. Were this the case, it would obligate that whoever strikes or insults another must have their wealth diminished proportionally, and that their wealth itself be violated. It would also require one who commits adultery with a woman or sodomy with a boy to pay a dowry equivalent to hers or some penalty. These are the rulings of Satan, tyrannical officials, and immoral police—not the rulings of Allah, Exalted is He, nor those of His Messenger, may Allah's blessings and peace be upon him and his family. Indeed, the judgment of Allah, Exalted is He, and the judgment of His Messenger—may Allah's blessings and peace be upon him and his family—is that His prescribed limits shall not be transgressed. When He rules with a financial penalty, we rule by it; when He does not rule with it, we do not rule by it.

قُلْنَا: قَوْلُ اللَّهِ عَزَّ وَجَلَّ حَقٌّ، وَاسْتِنْتَاجُكُمْ مِنْهُ عَيْنُ الْبَاطِلِ؛ لِأَنَّ اللَّهَ تَعَالَى أَوْجَبَ أَنْ يُعْتَدَى عَلَى الْمُعْتَدِي، وَيُقَصَّ مِنْهُ حُرْمَتُهُ بِمِثْلِ مَا اعْتَدَى عَلَيْهِ فِي حُرْمَتِهِ، وَلَيْسَ الْمَالُ مِثْلًا لِلْفَرْجِ، إِلَّا أَنْ يَأْتِيَ بِهِ نَصٌّ فَيُوقَفُ عِنْدَهُ وَلَوْ كَانَ هَذَا لَوَجَبَ عَلَى مَنْ ضَرَبَ آخَرَ أَوْ شَتَمَهُ أَنْ يُقْتَصَّ مِنْ مَالِهِ مِثْلُ ذَلِكَ، وَأَنْ يُعْتَدَى عَلَيْهِ فِي مَالِهِ، وَلَوَجَبَ أَيْضًا عَلَى مَنْ زَنَى بِامْرَأَةٍ أَوْ لَاطَ بِغُلَامٍ مَهْرُ مِثْلِهَا أَوْ غَرَامَةٌ مَا، وَهَذِهِ أَحْكَامُ الشَّيْطَانِ، وَطُغَاةِ الْعُمَّالِ، وَفُسَّاقِ الشُّرَطِ، لَيْسَ أَحْكَامَ اللَّهِ تَعَالَى وَلَا أَحْكَامَ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا حُكْمُ اللَّهِ تَعَالَى وَحُكْمُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنْ لَا تُتَعَدَّى حُدُودُهُ، فَإِذَا حَكَمَ بِغَرَامَةِ مَالٍ حَكَمْنَا بِهَا، وَإِذَا لَمْ يَحْكُمْ بِهَا لَمْ نَحْكُمْ بِهَا.

L30897 And with Allah, the Exalted, lies the divine success.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L30898 We have mentioned the statement of ʿUmar ibn al-Khaṭṭāb (may Allah be pleased with him) as transmitted to us by Muḥammad ibn Saʿīd ibn Nabāt,

[46] **Qur'an references (L30895):** Qur'an 2:194 (Al-Baqarah).

who narrated from Ismāʿīl ibn Isḥāq al-Naṣrī, from ʿĪsā ibn Ḥabīb, from ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Yazīd al-Muqrī, from his grandfather Muḥammad ibn ʿAbd Allāh, who narrated to us from Sufyān ibn ʿUyaynah, from Ismāʿīl ibn Abī Khālid, from al-Shaʿbī, from Masrūq, that ʿUmar ibn al-Khaṭṭāb said: "If the marriage is unlawful, then the *mahr* is unlawful."

وَقَدْ ذَكَرْنَا قَوْلَ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - الَّذِي حَدَّثَنَاهُ مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ النَّصْرِيُّ نا عِيسَى بْنُ حَبِيبٍ نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي نا جَدِّي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ " إِنْ كَانَ النِّكَاحُ حَرَامًا فَالصَّدَاقُ حَرَامٌ ".

L30899 We mentioned Ibn Umar's action to nullify the dower of the woman his slave married without his consent.

وَذَكَرْنَا فِعْلَ ابْنِ عُمَرَ فِي إِبْطَالِهِ صَدَاقَ الَّتِي تَزَوَّجَهَا عَبْدُهُ بِغَيْرِ إِذْنِهِ.

L30900 As narrated to us by Muḥammad ibn Saʿīd ibn Nabāt, from Aḥmad ibn ʿAbd al-Baṣīr, from Qāsim ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from ʿAbd al-Raḥmān ibn Mahdī, from Hammām ibn Yaḥyā, from Maṭar al-Warrāq, from Nāfiʿ: That when Ibn ʿUmar's slave married without his permission, he would flog him, separate the two, and say: "Have you made your private parts lawful?" while refusing to assign her a bridal gift.

كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ هَمَّامِ بْنِ يَحْيَى عَنْ مَطَرٍ الْوَرَّاقِ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ كَانَ إِذَا تَزَوَّجَ عَبْدُهُ بِغَيْرِ إِذْنِهِ جَلَدَهُ وَفَرَّقَ بَيْنَهُمَا، وَقَالَ: أَبَحْتَ فَرْجَكَ؟ وَلَمْ يَجْعَلْ لَهَا صَدَاقًا.

L30901–30902 And through him to ʿAbd al-Raḥmān ibn Mahdī from Ḥammād ibn Zayd from ʿĀṣim al-Aḥwal, who said: I heard al-Ḥasan al-Baṣrī say regarding the free woman who marries a slave without his master's permission: She has made her private part lawful; she has no right to anything.

وَبِهِ إِلَى عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ عَاصِمٍ الْأَحْوَلِ قَالَ سَمِعْتُ الْحَسَنَ الْبَصْرِيَّ يَقُولُ فِي الْحُرَّةِ الَّتِي تَتَزَوَّجُ الْعَبْدَ بِغَيْرِ إِذْنِ سَيِّدِهِ: أَبَاحَتْ فَرْجَهَا، لَا شَيْءَ لَهَا.

L30903 And through him to Muhammad ibn al-Muthanna: From Abu Ahmad al-Zubayri, from Sufyan al-Thawri, from Dawud ibn Abi Hind, from al-Shaʿbi, who said: For any private part not made lawful, there is no bridal gift for it.

وَبِهِ إِلَى مُحَمَّدِ بْنِ الْمُثَنَّى نا أَبُو أَحْمَدَ الزُّبَيْرِيُّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ الشَّعْبِيِّ قَالَ: كُلُّ فَرْجٍ لَا يُحَلُّ فَلَا مَهْرَ لَهُ.

L30904 And through the narration of Abd al-Razzaq from Ibn Jurayj, who said: Ibn Abi Layla informed me on the authority of their jurists regarding the woman whom the slave marries without his master's permission? He said: Does the master take from her what his slave gave her as her bridal gift (mahr)? She hastened before knowing the matter.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي ابْنُ أَبِي لَيْلَى عَنْ فُقَهَائِهِمْ فِي الَّتِي يَنْكِحُهَا الْعَبْدُ بِغَيْرِ إِذْنِ سَيِّدِهِ؟ قَالَ: يَأْخُذُ السَّيِّدُ مِنْهَا مَا أَصْدَقَهَا غُلَامُهُ؟ عَجَّلَتْ قَبْلَ أَنْ تَعْلَمَ.

L30905 And with him to ʿAbd al-Razzāq from Maʿmar, from al-Zuhrī, from Su-

laymān ibn Yasār that he said: “Regarding the woman who marries during her waiting period: her bridal gift is allocated to the public treasury.”

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ أَنَّهُ قَالَ: فِي الَّتِي تَنْكِحُ فِي عِدَّتِهَا: مَهْرُهَا فِي بَيْتِ الْمَالِ.

L30906 Through the chain of transmission of Waki‘ from Shu‘bah ibn al-Ḥajjāj, who said: I asked al-Ḥakam ibn ‘Utaybah and Ḥammād ibn Abī Sulaymān about a slave who marries a free woman without his master’s permission. They both said that they must be separated, she is not entitled to the mahr, and what she took must be taken from her.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ بْنِ الْحَجَّاجِ قَالَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَنْ الْعَبْدِ يَتَزَوَّجُ الْحُرَّةَ بِغَيْرِ إذْنِ مَوْلَاهُ؟ فَقَالَا جَمِيعًا: يُفَرَّقُ بَيْنَهُمَا، وَلَا صَدَاقَ لَهَا، وَيُؤْخَذُ مِنْهَا مَا أَخَذَتْ.

L30907 And the like of this is from Ibrāhīm al-Nakha‘ī - and this is the opinion of Abū Sulaymān and our companions.

وَنَحْوُ هَذَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L30908 As for Mālik, he makes distinctions here that are unclear: such as marriages he deems invalid (fasid), which are annulled before consummation but attain legal effects after consummation.

وَأَمَّا مَالِكٌ: فَإِنَّهُ فَرَّقَ هَاهُنَا فُرُوقًا لَا تُفْهَمُ -: فَمِنْهَا: نِكَاحَاتٌ هِيَ عِنْدَهُ فَاسِدَةٌ تُفْسَخُ قَبْلَ الدُّخُولِ وَتَصِحُّ بَعْدَ الدُّخُولِ.

L30909 Among them are those that annul the marriage before consummation and also after consummation—such as cases involving close kinship. However, if they remain together for an extended period, the marriage is not annulled.

وَمِنْهَا: مَا يَفْسَخُهُ قَبْلَ الدُّخُولِ وَبَعْدَ الدُّخُولِ أَيْضًا مَا كَانَ مِنْ قُرْبٍ فَإِذَا طَالَ بَقَاؤُهُ مَعَهَا لَمْ يَفْسَخْهُ.

L30910 Among these are reasons that dissolve the marriage retroactively, whether before or after consummation—even if he remains with her for a prolonged period after consummation, as long as she has not borne him children. If she has borne him children, the marriage is not dissolved.

وَمِنْهَا: مَا يَفْسَخُهُ قَبْلَ الدُّخُولِ وَبَعْدَ الدُّخُولِ، وَإِنْ طَالَ بَقَاؤُهُ مَعَهَا مَا لَمْ تَلِدْ لَهُ أَوْلَادًا، فَإِنْ وَلَدَتْ لَهُ أَوْلَادًا لَمْ يَفْسَخْهُ.

L30911 Among the grounds for annulment are those that invalidate the marriage before and after consummation, even if his stay with her is prolonged and she has borne him male children.

وَمِنْهَا: مَا يَفْسَخُهُ قَبْلَ الدُّخُولِ وَبَعْدَهُ، وَإِنْ طَالَ بَقَاؤُهُ مَعَهَا وَوَلَدَتْ لَهُ الْأَوْلَادَ.

L30912 These are strange assertions whose origin no one knows, nor do we know anyone who made them before him or alongside him except those among his followers who imitated him. Every marriage in the world must necessarily be either valid or non-valid, with no third category possible. A valid marriage remains perpetually valid unless the Qur’an or Sunnah requires its dissolution, in which case it is dissolved after being valid once the condition specified in the textual ruling for dissolution arises.

وَهَذِهِ عَجَائِبُ لَا يَدْرِي أَحَدٌ مِنْ أَيْنَ قَالَهَا، وَلَا نَعْلَمُ أَحَدًا قَالَهَا قَبْلَهُ وَلَا مَعَهُ إلَّا مِنْ قَلَّدَهُ مَنْ الْمُنْتَمِينَ إلَيْهِ، وَلَا يَخْلُو كُلُّ نِكَاحٍ فِي الْعَالَمِ مِنْ أَنْ يَكُونَ صَحِيحًا أَوْ غَيْرَ صَحِيحٍ، وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ، فَالصَّحِيحُ صَحِيحٌ أَبَدًا إلَّا أَنْ يُوجِبَ فَسْخَهُ قُرْآنٌ أَوْ سُنَّةٌ، فَيُفْسَخُ بَعْدَ صِحَّتِهِ مَتَى وَقَعَتْ الْحَالُ الَّتِي جَاءَ النَّصُّ بِفَسْخِهِ مَعَهَا.

وَأَمَّا الَّذِي لَيْسَ صَحِيحًا فَلَا يَصِحُّ أَبَدًا، لِأَنَّ الْفَرْجَ الْحَرَامَ لَا يُحِلُّهُ الدُّخُولُ بِهِ وَطْؤُهُ، وَلَا طُولُ الْبَقَاءِ عَلَى اسْتِحْلَالِهِ بِالْبَاطِلِ، وَلَا وِلَادَةُ الْأَوْلَادِ مِنْهُ، بَلْ هُوَ حَرَامٌ أَبَدًا.

L30913–30914 As for what is invalid, it never becomes valid, because illicit intercourse is not made lawful through engaging in it, persisting in wrongfully considering it permissible, or bearing children from it. Rather, it remains forever forbidden.

فَإِنْ قَالُوا: لَيْسَ بِحَرَامٍ؟ قُلْنَا: فَلِمَ فَسَخْتُمُ الْعَقْدَ عَلَيْهِ قَبْلَ الدُّخُولِ إِذًا وَهُوَ صَحِيحٌ غَيْرُ حَرَامٍ؟ وَهَذِهِ أُمُورٌ لَا نَدْرِي كَيْفَ يَنْشَرِحُ قَلْبُ مَنْ نَصَحَ نَفْسَهُ لِاعْتِقَادِهَا، أَوْ كَيْفَ يَنْطَلِقُ لِسَانُهُ بِنَصْرِهَا؟ وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

L30915 If they say, "It is not forbidden?" We reply: Then why did you dissolve the contract concerning it before consummation, when it is valid and not forbidden? These are matters beyond our comprehension—how the heart of one who persuades himself to embrace such beliefs finds comfort, or how his tongue so readily champions them. We ask Allah for protection.

وَأَمَّا كُلُّ عَقْدٍ صَحَّ ثُمَّ لَمَّا صَحَّ تَعَاقَدَا شُرُوطًا فَاسِدَةً فَإِنَّ الْعَقْدَ صَحِيحٌ لَازِمٌ، وَإِذْ هُوَ صَحِيحٌ لَازِمٌ فَلَا يَجُوزُ أَنْ يُبْطَلَ بِغَيْرِ قُرْآنٍ، أَوْ سُنَّةٍ - وَمُحَرِّمُ الْحَلَالِ كَمُحَلِّلِ الْحَرَامِ، وَلَا فَرْقَ، لَكِنْ تَبْطُلُ تِلْكَ الشُّرُوطُ الْفَاسِدَةُ أَبَدًا وَيُفْسَخُ حُكْمُ مَنْ حَكَمَ بِإِمْضَائِهَا، وَالْحَقُّ حَقٌّ، وَالْبَاطِلُ بَاطِلٌ، قَالَ اللَّهُ تَعَالَى {لِيُحِقَّ الْحَقَّ وَيُبْطِلَ الْبَاطِلَ وَلَوْ كَرِهَ الْمُجْرِمُونَ} [الأنفال: ٨] وَقَالَ تَبَارَكَ وَتَعَالَى {وَيُحِقُّ اللَّهُ الْحَقَّ بِكَلِمَاتِهِ} [يونس: ٨٢] وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L30916 As for every valid contract where, after its validity, the parties stipulated invalid conditions, the contract remains valid and binding. Since it is valid and binding, it cannot be invalidated except by the Qur'an or the Sunnah—for one who prohibits what is lawful is like one who permits what is unlawful, with no distinction. However, those invalid conditions are perpetually void, and the ruling of anyone who judged by enforcing them is revoked. Truth remains truth, and falsehood remains falsehood. Allah, the Most High, said: "That He may establish the truth and abolish falsehood, even if the criminals detest it" (8:8). And He, Blessed and Exalted, said: "Allah establishes the truth through His words" (10:82). Success is through Allah, the Exalted.[47]

[مَسْأَلَة كُلُّ مَا جَازَ أَنْ يُتَمَلَّكَ بِالْهِبَةِ أَوْ بِالْمِيرَاثِ جَازَ أَنْ يَكُون صَدَاقًا]

L30917

The ruling is that anything permissible to be owned through gift or inheritance is valid as mahr.

١٨٥٠ - مَسْأَلَةٌ: وَكُلُّ مَا جَازَ أَنْ يُتَمَلَّكَ بِالْهِبَةِ أَوْ بِالْمِيرَاثِ فَجَائِزٌ أَنْ يَكُون صَدَاقًا وَأَنْ يُخَالَعَ بِهِ وَأَنْ يُؤَاجَرَ بِهِ سَوَاءٌ حَلَّ بَيْعُهُ أَوْ لَمْ يَحِلَّ كَالْمَاءِ، وَالْكَلْبِ، وَالسِّنَّوْرِ، وَالثَّمَرَةِ الَّتِي لَمْ يَبْدُ صَلَاحُهَا وَالسُّنْبُلِ قَبْلَ أَنْ يَشْتَدَّ، لِأَنَّ النِّكَاحَ لَيْسَ بَيْعًا، هَذَا مَا لَا يَشُكُّ فِيهِ ذُو حِسٍّ سَلِيمٍ.

L30918 1850. Issue: Anything that can be owned through gift or inheritance may validly serve as *mahr*, serve as compensation in a *khul'* divorce, or be leased—whether its sale is permissible or not. This includes water, dogs, cats, a fruit whose soundness has not yet become apparent, and ears of grain before they mature, for marriage is not a sale. This is something no rationally sound person would question.

وَقَدْ قَالَ بَعْضُ الْجَاهِلِينَ: لَا يَجُوزُ الصَّدَاقُ بِمَا لَا يَجُوزُ بَيْعُهُ، وَهَذَا حُكْمٌ فَاسِدٌ بِلَا بُرْهَانٍ، لَا مِنْ

L30919–30921 Some of the ignorant said: "A dowry is not permissible with what cannot be lawfully sold." This is a corrupt ruling without proof—neither from the

[47] **Qur'an references (L30916):** Qur'an 8:8 (Al-Anfal); Qur'an 10:82 (Yunus).

Qur'an, nor the Sunnah, nor an unsound narration, nor a Companion's statement, nor analogy, nor any rationally defensible opinion. What then did he sell? Or what did he purchase? Her very neck? But selling free persons is invalid. Or her private part? This is more evidently forbidden, yet he legitimized her private part through Allah's marriage contract—which was forbidden to him before wedlock—just as she legitimized his private part through Allah's marriage contract, which was forbidden to her before wedlock. Thus one private part for another, and human aspect for human aspect. Yet Allah obligated upon him alone the dowry for her, in addition to her legitimization of his private part. A sale is not thus—it is merely an object exchanged for another object, one being the price and the other the priced commodity, with no added obligation for either. Thus it becomes clear to every sound mind the corruption of those who equate marriage with sale. Moreover, a sale without price stipulation is invalid, while marriage without dowry stipulation remains valid and lawful. Strangely, they prohibit marriage with unripe fruit as dowry by analogy to sale, yet permit marriage with a male servant, house, or maid—even without specifying any attributes—while such sale is impermissible according to them... Nor [the sale of] summer, nor the sale of a house, nor the sale of an unspecified servant, nor [the sale of] an undescribed item—as you can see—and we seek refuge in Allah from negligence in error concerning matters of religion.

وَقَالَ بَعْضُ الْغَافِلِينَ: لَا يَحِلُّ الصَّدَاقُ بِمَا لَا يَجُوزُ بَيْعُهُ وَهَذَا حُكْمٌ فَاسِدٌ بِلَا بُرْهَانٍ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ يُعْقَلُ، وَلَيْتَ شِعْرِي مَاذَا بَاعَ أَوْ مَاذَا اشْتَرَى أَرَقَبَتَهَا؟ فَبَيْعُ الْحُرِّ لَا يَجُوزُ أَمْ فَرْجَهَا؟ فَهَذَا أَبْيَنُ فِي الْحَرَامِ وَهُوَ قَدْ اسْتَحَلَّ بِكَلِمَةِ اللَّهِ تَعَالَى فَرْجَهَا الَّذِي كَانَ حَرَامًا عَلَيْهِ قَبْلَ النِّكَاحِ كَمَا اسْتَحَلَّتْ بِكَلِمَةِ اللَّهِ تَعَالَى فَرْجَهُ الَّذِي كَانَ حَرَامًا عَلَيْهَا قَبْلَ النِّكَاحِ فَفَرْجٌ بِفَرْجٍ وَبَشَرَةٌ بِبَشَرَةٍ، وَأَوْجَبَ اللَّهُ تَعَالَى عَلَيْهِ وَحْدَهُ الصَّدَاقَ لَهَا زِيَادَةً عَلَى اسْتِحْلَالِهَا فَرْجَهُ، وَلَيْسَ الْبَيْعُ هَكَذَا إنَّمَا هُوَ جِسْمٌ يُبَادَلُ بِجِسْمٍ، أَحَدُهُمَا ثَمَنٌ وَالْآخَرُ مَبِيعٌ مَثْمُونٌ لَا زِيَادَةَ هَاهُنَا لِأَحَدِهِمَا عَلَى الْآخَرِ، فَوَضَحَ لِكُلِّ ذِي عَقْلٍ سَلِيمٍ فَسَادُ قَوْلِ مَنْ شَبَّهَ النِّكَاحَ بِالْبَيْعِ، وَأَيْضًا فَإِنَّ الْبَيْعَ بِغَيْرِ ذِكْرِ ثَمَنٍ لَا يَحِلُّ وَالنِّكَاحُ بِغَيْرِ ذِكْرِ صَدَاقٍ حَلَالٌ صَحِيحٌ، وَالْعَجَبُ أَنَّهُمْ يَمْنَعُونَ النِّكَاحَ بِصَدَاقِ ثَمَرَةٍ لَمْ يَبْدُ صَلَاحُهَا قِيَاسًا عَلَى الْبَيْعِ ثُمَّ أَجَازُوا النِّكَاحَ بِوَصِيفٍ وَبَيْتٍ وَخَادِمٍ، وَهَكَذَا غَيْرُ مَوْصُوفٍ بِشَيْءٍ مِنْ ذَلِكَ، وَلَا يَحِلُّ عِنْدَهُمْ بَيْعُ وَصِيفٍ وَلَا بَيْعُ بَيْتٍ وَلَا بَيْعُ خَادِمٍ غَيْرِ مُعَيَّنٍ بِشَيْءٍ مِنْ ذَلِكَ وَلَا مَوْصُوفٍ وَهَذَا كَمَا تَرَى - وَنَعُوذُ بِاَللَّهِ مِنْ التَّهَوُّكِ فِي الْخَطَأِ فِي الدِّينِ.

Issue: Anything that has a half—whether the half is small or large in quantity—is valid as a mahr (dower).

[مَسْأَلَةٌ كُلُّ مَا لَهُ نِصْفٌ قَلَّ أَوْ كَثُرَ جَازَ أَنْ يَكُونَ صَدَاقًا]

L30922

1851 - Issue: It is permissible for the bridal gift (mahr) to consist of anything that can be divided into halves, whether minimal or substantial—even a single grain of wheat, a grain of barley, or similar items. Likewise, any lawful, specified service—such as teaching a portion of the Quran, imparting religious knowledge, construction, sewing, or other such acts—is valid if both parties mutually consent. Differences of opinion exist regarding this matter.

L30923

١٨٥١ - مَسْأَلَةٌ: وَجَائِزٌ أَنْ يَكُونَ صَدَاقًا كُلُّ مَا لَهُ نِصْفٌ قَلَّ أَوْ كَثُرَ وَلَوْ أَنَّهُ حَبَّةُ بُرٍّ أَوْ حَبَّةُ شَعِيرٍ أَوْ غَيْرُ ذَلِكَ، وَكَذَلِكَ كُلُّ عَمَلٍ حَلَالٍ مَوْصُوفٍ، كَتَعْلِيمِ شَيْءٍ مِنْ الْقُرْآنِ أَوْ مِنْ الْعِلْمِ أَوْ الْبِنَاءِ أَوْ الْخِيَاطَةِ أَوْ غَيْرِ ذَلِكَ إذَا تَرَاضَيَا بِذَلِكَ - وَوَرَدَ فِي هَذَا اخْتِلَافٌ.

L30924 It has been narrated to us via Waki‘, from Dawud ibn Yazid al-Awdi, from al-Sha‘bi, from ‘Ali—may Allah be pleased with him—who said: “There can be no mahr (bridal gift) less than ten.”

كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ دَاوُد بْنِ يَزِيدَ الْأَوْدِيِّ عَنْ الشَّعْبِيِّ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: لَا يَكُونُ صَدَاقٌ أَقَلَّ مِنْ عَشَرَةٍ.

L30925 And through the chain of ʿAbd al-Razzāq, from Ḥasan—his companion—from Shurayk, from Dāwūd ibn Yazīd al-Awdī, from al-Shaʿbī, from ʿAlī ibn Abī Ṭālib (may Allah be pleased with him), who said: “The dowry must not be less than ten dirhams.” Through the same chain reaching back to the aforementioned Ḥasan, al-Mughīrah informed me from Ibrāhīm al-Nakhaʿī, who said: “I deem it reprehensible for the dowry to resemble the compensation of a prostitute; rather, ten and twenty dirhams.” This is the opinion of Abū Ḥanīfah and his companions.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ حَسَنٍ صَاحِبٍ لَهُ عَنْ شَرِيكٍ عَنْ دَاوُد بْنِ يَزِيدَ الْأَوْدِيِّ عَنْ الشَّعْبِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: لَا يَكُونُ الْمَهْرُ أَقَلَّ مِنْ عَشَرَةِ دَرَاهِمَ -: وَبِهِ إلَى حَسَنٍ الْمَذْكُورِ أَخْبَرَنِي الْمُغِيرَةُ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: " أَكْرَهُ أَنْ يَكُونَ الْمَهْرُ مِثْلَ أَجْرِ الْبَغِيِّ، وَلَكِنْ الْعَشَرَةُ دَرَاهِمَ وَالْعِشْرُونَ " وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ.

L30926 And from Ibrāhīm, there are two narrations—other than this one—both authentic:

وَعَنْ إبْرَاهِيمَ رِوَايَتَانِ غَيْرُ هَذِهِ صَحِيحَتَانِ -:

L30927 One of them: We narrated it through the chain of Shubah from al-Ḥakam ibn ʿUtaybah from Ibrāhīm al-Nakhaʿī, who said: A man should not marry on less than forty.

إحْدَاهُمَا: رُوِّينَاهَا مِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَا يَتَزَوَّجُ الرَّجُلُ عَلَى أَقَلَّ مِنْ أَرْبَعِينَ.

L30928 The second [narration]: We have narrated it via Al-Ḥajjāj ibn Al-Minhāl, who narrated to us from Abū ‘Awanah, from Al-Mughīrah ibn Miqsam, from Ibrāhīm al-Nakhaʿī, who said: “The Sunnah regarding marriage is a raṭl of silver.”

وَالْأُخْرَى: رُوِّينَاهَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا أَبُو عَوَانَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: السُّنَّةُ فِي النِّكَاحِ الرَّطْلُ مِنْ الْفِضَّةِ.

L30929 It was narrated to us through Shuʿbah from Abū Salamah al-Kūfī, who said: I heard al-Shaʿbī saying: They deemed it reprehensible for a man to marry [a woman] with a dowry of less than three uqiyahs.

وَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي سَلَمَةَ الْكُوفِيِّ قَالَ: سَمِعْت الشَّعْبِيَّ يَقُولُ: كَانُوا يَكْرَهُونَ أَنْ يَتَزَوَّجَ الرَّجُلُ عَلَى أَقَلَّ مِنْ ثَلَاثَةِ أَوَاقٍ.

L30930 And via the chain of Saʿīd ibn Manṣūr: Hushaym reported to us; Ḥusām ibn al-Miṣakk reported to us from Abū Maʿshar, from Saʿīd ibn Jubayr, that he used to prefer the dower to be fifty dirhams.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا حُسَامُ بْنُ الْمِصَكِّ عَنْ أَبِي مَعْشَرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ: أَنَّهُ كَانَ يُحِبُّ أَنْ يَكُونَ الصَّدَاقُ خَمْسِينَ دِرْهَمًا.

L30931 Abū Muḥammad said: As for the narration from al-Shaʿbī, it is discarded because it is transmitted from Abū Salama al-Kūfī—whose identity is unknown.

Even if it were authentic, it and the two reports from Ibrāhīm regarding the forty would state: either a dirham, an awqiyyah, or a dinar.

قَالَ أَبُو مُحَمَّد: أَمَّا الرِّوَايَةُ عَنْ الشَّعْبِيِّ فَسَاقِطَةٌ، لِأَنَّهَا عَنْ أَبِي سَلَمَةَ الْكُوفِيِّ - وَلَا يُدْرَى مَنْ هُوَ - وَلَوْ صَحَّتْ لَكَانَتْ هِيَ وَالرِّوَايَتَانِ عَنْ إبْرَاهِيمَ فِي الْأَرْبَعِينَ: إمَّا دِرْهَمًا، وَإِمَّا أُوقِيَّةً، وَإِمَّا دِينَارًا.

L30932 The narration attributed to Saʿīd ibn Jubayr constitutes a statement lacking substantiation, and anything of this kind is invalid.

وَالرِّوَايَةُ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَوْلٌ بِلَا بُرْهَانٍ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ.

L30933–30934 As for the narration from Ibrāhīm regarding the ten dirhams, it is rejected because it is from Ḥasan, the companion of ʿAbd al-Razzāq, and no one knows who he is.

وَأَمَّا الرِّوَايَةُ عَنْ إبْرَاهِيمَ بِالْعَشَرَةِ دَرَاهِمَ فَسَاقِطَةٌ، لِأَنَّهَا عَنْ حَسَنٍ صَاحِبِ عَبْدِ الرَّزَّاقِ - وَلَا يَدْرِي أَحَدٌ مَنْ هُوَ.

L30935 The narration from ʿAlī—may Allah be pleased with him—is invalid, as it is transmitted from Dāwūd ibn Yazīd al-Awdī—who is deemed extremely weak. Al-Shaʿbī used to say: “If one observes his [Dāwūd’s] confusion, you will not die until you have three cauterizations on your head.” The narrator stated: “Thus, he did not die until he was cauterized three times on his head.”

وَالرِّوَايَةُ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - بَاطِلٌ، لِأَنَّهَا عَنْ دَاوُد بْنِ يَزِيدَ الْأَوْدِيِّ - وَهُوَ فِي غَايَةِ السُّقُوطِ، كَانَ الشَّعْبِيُّ يَقُولُ: إذَا رَأَى اخْتِلَاطَهُ لَا تَمُوتُ حَتَّى تَكُونَ فِي رَأْسِك ثَلَاثُ كَيَّاتٍ، قَالَ الرَّاوِي: فَمَا مَاتَ حَتَّى كُوِيَ فِي رَأْسِهِ ثَلَاثَ كَيَّاتٍ.

L30936 Then, it is *mursalah* because Al-Shaʿbī did not hear any ḥadīth from ʿAlī at all.

ثُمَّ هِيَ مُرْسَلَةٌ، لِأَنَّ الشَّعْبِيَّ لَمْ يَسْمَعْ مِنْ عَلِيٍّ قَطُّ حَدِيثًا.

L30937 They defended their baseless claim by citing two fabricated reports:

وَاحْتَجُّوا لِقَوْلِهِمْ هَذَا الْفَاسِدِ بِخَبَرَيْنِ مَوْضُوعَيْنِ -:

L30938 One of the two narrators—Haram ibn Uthman, from my two sons of Jabir ibn Abdullah, who narrated from their father—reported that the Prophet (peace be upon him) said: “There is no bridal gift less than ten dirhams.”

أَحَدُهُمَا - عَنْ حَرَامِ بْنِ عُثْمَانَ عَنْ ابْنَيْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِمَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا صَدَاقَ أَقَلَّ مِنْ عَشَرَةِ دَرَاهِمَ» .

L30939 Another narration is transmitted via Baqiyyah from Mubashshir ibn ʿUbayd al-Ḥalabī from al-Ḥajjāj ibn Arṭāʾ from ʿAṭāʾ; and via ʿAmr ibn Dīnār from Jābir ibn ʿAbdullāh from the Messenger of Allah (peace be upon him): «There is no dowry less than ten dirhams.»

وَالْآخَرُ - عَنْ بَقِيَّةَ عَنْ مُبَشِّرِ بْنِ عُبَيْدٍ الْحَلَبِيِّ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ عَطَاءٍ، وَعَمْرِو بْنِ دِينَارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا مَهْرَ دُونَ عَشَرَةِ دَرَاهِمَ» .

L30940 They said: Marriage constitutes the legalization of the private part (being an organ of hers) - thus it must only be permissible through what mandates the

severing of the hand. The Mālikīs have also cited this invalid jurisprudential subcategory as proof.

وَقَالُوا: النِّكَاحُ اسْتِبَاحَةُ فَرْجٍ - وَهُوَ عُضْوٌ مِنْهَا - فَوَجَبَ أَنْ لَا يَجُوزَ إِلَّا بِمَا تُقْطَعُ فِيهِ الْيَدُ - وَقَدْ احْتَجَّ الْمَالِكِيُّونَ بِهَذِهِ التَّشْعِيبَةِ السَّاقِطَةِ أَيْضًا.

L30941 Abu Muhammad said: They have no proof except what we have mentioned. The two mentioned hadiths are undoubtedly fabricated—the first: transmitted through Harām ibn Uthmān—who is in the utmost degree of disrepute; narrating from him is impermissible—and the second: through Mubashshir ibn Ubaid al-Halabī—who is a notorious fabricator known for forging lies against the Messenger of Allah, may Allah the Exalted bless him and his household and grant him peace—transmitting from al-Ḥajjāj ibn Arṭāh—who is rejected. Even if they were authentic, they would have contradicted them, for they permit marriage with a dowry of a dinar that does not equal ten dirhams.

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ لَهُمْ غَيْرُ مَا ذَكَرْنَا، وَالْحَدِيثَانِ الْمَذْكُورَانِ مَكْذُوبَانِ بِلَا شَكٍّ - أَحَدُهُمَا: مِنْ طَرِيقِ حَرَامِ بْنِ عُثْمَانَ - وَهُوَ فِي غَايَةِ السُّقُوطِ - لَا تَحِلُّ الرِّوَايَةُ عَنْهُ - وَالْآخَرُ: مِنْ طَرِيقِ مُبَشِّرِ بْنِ عُبَيْدٍ الْحَلَبِيِّ - وَهُوَ كَذَّابٌ مَشْهُورٌ بِوَضْعِ الْكَذِبِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ سَاقِطٌ - وَلَوْ صَحَّ لَكَانُوا قَدْ خَالَفُوهُ، لِأَنَّهُمْ يُجِيزُونَ النِّكَاحَ عَلَى دِينَارٍ لَا يُسَاوِي عَشَرَةَ دَرَاهِمَ.

L30942 So all of that is rendered invalid - and praise be to Allah, Lord of the worlds.

فَبَطَلَ كُلُّ ذَلِكَ - وَالْحَمْدُ اللَّهِ رَبِّ الْعَالَمِينَ.

L30943–30945 As for their assertion—"It is an analogy to cutting off the thief's hand"—this is the most absurd analogy in the world, for there is no resemblance between marriage and theft. Furthermore, the hand is entirely severed while the genitalia are not severed. Marriage is obedience, theft is disobedience. Were they to draw an analogy between permitting the genitalia and permitting the back in the punishment for drinking wine, it would be ... He plunged into the disgraces of analogy and its absurdities, for both are concealed body parts not subject to amputation. In all cases, it has never been valid to mandate amputation for less than ten dirhams. Thus, it is certain falsehood built upon falsehood, and an error resembling an error - therefore, this corrupt assertion is invalidated.

وَأَمَّا قَوْلُهُمْ: إنَّهُ قِيَاسٌ عَلَى قَطْعِ يَدِ السَّارِقِ؟ فَهُوَ أَسْخَفُ قِيَاسٍ فِي الْعَالَمِ، لِأَنَّهُ لَا شَبَهَ بَيْنَ النِّكَاحِ وَالسَّرِقَةِ - وَأَيْضًا: فَإِنَّ الْيَدَ تُقْطَعُ أَلْبَتَّةَ وَالْفَرْجَ لَا يُقْطَعُ، وَالنِّكَاحَ طَاعَةٌ، وَالسَّرِقَةَ مَعْصِيَةٌ، وَلَوْ قَاسُوا إبَاحَةَ الْفَرْجِ عَلَى إبَاحَةِ الظَّهْرِ فِي حَدِّ الْخَمْرِ، لَكَانَ أَدْخَلَ فِي مَخَازِي الْقِيَاسِ وَسَخَافَاتِهِ، لِأَنَّ كِلَيْهِمَا عُضْوٌ مَسْتُورٌ لَا يُقْطَعُ، وَقَبْلُ وَبَعْدُ فَمَا صَحَّ قَطُّ أَنْ لَا قَطْعَ فِي أَقَلَّ مِنْ عَشَرَةِ دَرَاهِمَ، فَهُوَ بَاطِلٌ مُتَيَقَّنٌ عَلَى بَاطِلٍ، وَخَطَأٌ مُشَبَّهٌ بِخَطَأٍ - فَسَقَطَ هَذَا الْقَوْلُ الْفَاسِدُ.

L30946 Mālik said: It should not be less than three dirhams, and they analogized it to the amputation of the hand as a punishment for theft. The discussion regarding the invalidity of this opinion was discussed earlier.

وَقَالَ مَالِكٌ: لَا يَكُونُ أَقَلَّ مِنْ ثَلَاثَةِ دَرَاهِمَ، وَقَاسُوهُ عَلَى قَطْعِ الْيَدِ، وَقَدْ مَضَى الْكَلَامُ فِي سُقُوطِ هَذَا الْقَوْلِ آنِفًا.

L30947 There has never come any text stating that there is no amputation for less than three dirhams. The authenticated text is solely: "There is no amputation except for a quarter of a dinar or more." Yet they do not consider the value

equivalent to a quarter dinar at all, neither in amputation nor in dowry. Thus, the invalidity of all they have said is now undeniably clear without any ambiguity.

وَمَا جَاءَ نَصٌّ قَطُّ بِأَنْ لَا قَطْعَ فِي أَقَلَّ مِنْ ثَلَاثَةِ دَرَاهِمَ، إنَّمَا صَحَّ النَّصُّ «لَا قَطْعَ إلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا» ، وَهُمْ لَا يُرَاعُونَ فِي الْقَطْعِ وَلَا فِي الصَّدَاقِ رُبْعَ دِينَارٍ فِي الْقِيمَةِ أَصْلًا، فَلَاحَ بُطْلَانُ كُلِّ مَا قَالُوهُ بِيَقِينٍ لَا إشْكَالَ فِيهِ.

L30948 The Malikis also obfuscated their position by stating that Allah, the Almighty and Majestic, said: "Whoever among you cannot afford to marry chaste believing women, then [let him marry] from your young believing bondwomen under your guardianship" [An-Nisa: 25].[48]

وَمَوَّهَ الْمَالِكِيُّونَ أَيْضًا بِأَنْ قَالُوا: قَالَ اللَّهُ عَزَّ وَجَلَّ {وَمَنْ لَمْ يَسْتَطِعْ مِنْكُمْ طَوْلًا أَنْ يَنْكِحَ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ فَمِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ فَتَيَاتِكُمُ الْمُؤْمِنَاتِ} [النساء: ٢٥] .

L30949 They said: If the dowry were permissible whether small or large, would not every person possessing financial capacity marry a free, believing woman? Abū Muḥammad said: We do not know how to interpret this statement from its speaker, except that we have no doubt he was not accompanied by the presence of piety and fear of Allah Almighty in this matter. For they unanimously hold that the dowry of a married slave woman cannot be less than that of a free woman. How then can they distinguish after this between possessing financial capacity for marrying a free woman and possessing financial capacity for marrying a slave woman? We seek refuge in Allah from obfuscating His religion, the Mighty and Majestic, through what we know to be false while deliberately intending it.

قَالُوا: فَلَوْ جَازَ الصَّدَاقُ بِمَا قَلَّ أَوْ كَثُرَ لَكَانَ كُلُّ أَحَدٍ وَاجِدَ الطَّوْلِ لِحُرَّةٍ مُؤْمِنَةٍ؟ قَالَ أَبُو مُحَمَّدٍ: لَا نَدْرِي عَلَى مَا نَحْمِلُ هَذَا الْقَوْلَ مِنْ قَائِلِهِ، إلَّا أَنَّنَا لَا نَشُكُّ فِي أَنَّهُ لَمْ يَحْضُرْهُ فِيهِ مِنْ الْوَرَعِ وَتَقْوَى اللَّهِ تَعَالَى حَاضِرٌ، لِأَنَّهُمْ لَا يَخْتَلِفُونَ فِي أَنَّهُ لَا يَجُوزُ أَنْ يَكُونَ صَدَاقُ الْأَمَةِ الْمُتَزَوِّجَةِ أَقَلَّ مِنْ صَدَاقِ الْحُرَّةِ، فَكَيْفَ يُفَرِّقُونَ بَعْدَ هَذَا بَيْنَ وُجُودِ الطَّوْلِ لِنِكَاحِ حُرَّةٍ، وَبَيْنَ وُجُودِ الطَّوْلِ لِنِكَاحِ أَمَةٍ - وَنَعُوذُ بِاَللَّهِ مِنْ التَّمْوِيهِ فِي دِينِ اللَّهِ عَزَّ وَجَلَّ بِمَا نَدْرِي أَنَّهُ بَاطِلٌ قَاصِدِينَ إلَيْهِ عَمْدًا.

L30950 Some of them said: How can it be permissible for the dowry to be with whatever is little or much, while the mutʿah in divorce is only limited? We replied: Because Allah the Exalted did not set a limit for the dowry except what they mutually agree on, and He limited the mutʿah in divorce *according to the wealthy's capacity and the needy's capacity* (2:236). Thus, the distinction between the two matters is clearer than the sun in the view of those who do not transgress the limits set by Allah the Exalted.[49]

وَقَالَ بَعْضُهُمْ: كَيْفَ يَجُوزُ أَنْ يَكُونَ الصَّدَاقُ بِمَا قَلَّ أَوْ كَثُرَ وَلَا تَكُونُ الْمُتْعَةُ فِي الطَّلَاقِ إلَّا مَحْدُودَةً؟ قُلْنَا: لِأَنَّ اللَّهَ تَعَالَى لَمْ يَحُدَّ فِي الصَّدَاقِ حَدًّا إلَّا مَا تَرَاضَيَا بِهِ، وَحَدَّ فِي الْمُتْعَةِ فِي الطَّلَاقِ {عَلَى الْمُوسِعِ قَدَرُهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ} [البقرة: ٢٣٦] فَالْفَرْقُ بَيْنَ الْأَمْرَيْنِ أَوْضَحُ مِنْ الشَّمْسِ عِنْدَ مَنْ لَا يَتَعَدَّى حُدُودَ اللَّهِ تَعَالَى.

L30951 The most astonishing thing is the statement of some who say: "Allah, the Exalted and Majestic, has magnified the matter of dowry, so it is not permis-

وَأَعْجَبُ شَيْءٍ قَوْلُ بَعْضِهِمْ: إنَّ اللَّهَ عَزَّ وَجَلَّ عَظَّمَ أَمْرَ الصَّدَاقِ، فَلَا يَجُوزُ أَنْ يَكُونَ قَلِيلًا؟ قُلْنَا: هَذَا الْعَجَبُ حَقًّا إنَّمَا عَظَّمَ اللَّهُ تَعَالَى أَمْرَ الصَّدَاقِ فِي إيجَابِ أَدَائِهِ، وَتَحْرِيمِ

[48] **Qur'an references (L30948):** Qur'an 4:25 (An-Nisa).
[49] **Qur'an references (L30950):** Qur'an 2:236 (Al-Baqarah).

sible for it to be small." We responded: "This is truly astonishing! Indeed, Allah the Most High magnified the matter of dowry solely by obligating its payment and forbidding taking it without her consent - and this principle applies to every rightful claim. Allah the Exalted and Majesty said: {Whoever does an atom's weight of good will see it} [Az-Zalzalah:7], {and whoever does an atom's weight of evil will see it} [Az-Zalzalah:8]."[50]

L30952–30953 It has been authentically reported from him—prayers and peace be upon him—"Ward off the Fire even with half a date," and no act is greater than warding off the Fire.

L30954 It has been authentically reported from the Prophet (peace be upon him): "Whoever swears a false oath upon my pulpit, the Fire is guaranteed for him, even if it were a twig of an arak tree." Yet the strangest thing is: how did they come to regard three dirhams as excessive, while three dirhams minus a single grain is deemed insignificant?

L30955 The confusion among these sects is too numerous to count except by the One who enumerates their very breaths—the Almighty, the Most High.

L30956 Abū Muḥammad said: Since the invalidity of their opinions—particularly Mālik's opinion—has become evident, for we do not know of it being attributed to any scholar before him.

L30957 The opinion of Abū Ḥanīfah has not been authentically reported from any scholar among the people of knowledge before him. Let us present proof for the validity of our opinion: Allāh, the Mighty and Majestic, said: "And give women their bridal gifts as a gracious gift" [Quran 4:4].[51]

L30958 Allah, the Exalted, says: "And give them their dues (mahr) in a proper manner" [Surah An-Nisa 4:25].[52]

L30959 And the Almighty said: "If you divorce them before consummating the

أَخْذِهِ بِغَيْرِ رِضَاهَا، وَهَذَا مَوْجُودٌ فِي كُلِّ حَقٍّ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ} [الزلزلة: ٧] {وَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ} [الزلزلة: ٨] .

وَقَدْ صَحَّ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «اتَّقُوا النَّارَ وَلَوْ بِشِقِّ تَمْرَةٍ» وَلَا عَظِيمَ أَعْظَمُ مِنْ اتِّقَاءِ النَّارِ.

وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ حَلَفَ عَلَى مِنْبَرِي بِيَمِينٍ آثِمَةٍ وَجَبَتْ لَهُ النَّارُ وَإِنْ كَانَ قَضِيبًا مِنْ أَرَاكٍ» ثُمَّ أَغْرَبُ شَيْءٍ مِنْ أَيْنَ وَقَعَ لَهُمْ أَنَّ ثَلَاثَةَ دَرَاهِمَ كَثِيرٌ، وَأَنَّ ثَلَاثَةَ دَرَاهِمَ غَيْرُ حَبَّةٍ قَلِيلٌ؟

وَتَخْلِيطُ هَذِهِ الطَّوَائِفِ أَكْثَرُ مِنْ أَنْ يُحْصِيَهُ إلَّا مُحْصِي أَنْفَاسِهِمْ عَزَّ وَجَلَّ.

قَالَ أَبُو مُحَمَّد: فَإِذْ قَدْ ظَهَرَ بُطْلَانُ أَقْوَالِهِمْ لَا سِيَّمَا قَوْلُ مَالِكٍ، فَإِنَّهُ لَا نَعْرِفُهُ عَنْ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ قَبْلَهُ.

وَقَوْلُ أَبِي حَنِيفَةَ لَمْ يَصِحَّ عَنْ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ قَبْلَهُ، فَلْنُورِدْ الْبُرْهَانَ عَلَى صِحَّةِ قَوْلِنَا -: قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] .

وَقَالَ تَعَالَى: {وَآتُوهُنَّ أُجُورَهُنَّ بِالْمَعْرُوفِ} [النساء: ٢٥] .

وَقَالَ تَعَالَى: {وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ} [البقرة: ٢٣٧] .

[50] **Qur'an references (L30951):** Qur'an 99:7 (Az-Zalzalah); Qur'an 99:8 (Az-Zalzalah).
[51] **Qur'an references (L30957):** Qur'an 4:4 (An-Nisa).
[52] **Qur'an references (L30958):** Qur'an 4:25 (An-Nisa).

marriage when you have already stipulated a bridal gift for them, then half of what you stipulated is due" [Al-Baqarah: 237].[53]

L30960 Allah, the Almighty and Majestic, did not mention the mahr in any part of His Book with a specific limit; rather, He referred to it in general terms: "And your Lord is never forgetful" (19:64). We testify by the testimony of Allah, the Almighty and Majestic, "in the life of this world and on the Day when the witnesses arise" (40:51), that if Allah, the Almighty and Majestic, had willed to establish for the mahr a minimum limit, He would not have neglected or overlooked it, leaving it to be clarified by Abu Hanifah and Malik. Allah suffices us, and He is the Best Trustee.[54]

فَلَمْ يَذْكُرْ اللَّهُ عَزَّ وَجَلَّ فِي شَيْءٍ مِنْ كِتَابِهِ الصَّدَاقَ فَجَعَلَ فِيهِ حَدًّا بَلْ أَجْمَلَهُ إِجْمَالًا: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ {فِي الْحَيَاةِ الدُّنْيَا وَيَوْمَ يَقُومُ الْأَشْهَادُ} [غافر: ٥١] أَنَّ اللَّهَ عَزَّ وَجَلَّ لَوْ أَرَادَ أَنْ يَجْعَلَ لِلصَّدَاقِ حَدًّا لَا يَكُونُ أَقَلَّ مِنْهُ لَمَا أَهْمَلَهُ وَلَا أَغْفَلَهُ حَتَّى يُبَيِّنَهُ لَهُ أَبُو حَنِيفَةَ، وَمَالِكٌ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

L30961–30963 The established Sunnah from the Messenger of Allah (peace be upon him) as narrated to us through Al-Bukhari's chain: Abdullah ibn Yusuf narrated to us from Malik ibn Anas, and Abd al-Aziz ibn Abi Hazim narrated from his father from Sahl ibn Sa'd, who said: "A woman came to the Messenger of Allah (peace be upon him)" - then Sahl ibn Sa'd recounted the hadith, which includes: "A man stood up and said: 'Marry her to me if you have no intention to marry her.' The Prophet asked: 'Do you possess anything to give her as a dowry?' The man replied: 'I have nothing but my waistcloth.' The Prophet said: 'If you give her that, you will be left without a garment. Seek something else.' The man said: 'I find nothing.' The Prophet said: 'Seek even an iron ring.' He searched but found nothing. The Prophet then asked: 'Do you have anything from the Quran?'" He said: "Anything?" He replied: "Yes, Surah such-and-such and Surah such-and-such." He said: "We have married her to you with what you have of the Quran."

وَالسُّنَّةُ الثَّابِتَةُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ: نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا مَالِكُ بْنُ أَنَسٍ، وَعَبْدُ الْعَزِيزِ بْنُ أَبِي حَازِمٍ عَنْ أَبِيهِ عَنْ سَهْلِ بْنِ سَعْدٍ قَالَ: «جَاءَتْ امْرَأَةٌ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ الْحَدِيثَ، وَفِيهِ فَقَامَ الرَّجُلُ فَقَالَ: زَوِّجْنِيهَا إِنْ لَمْ يَكُنْ لَكَ بِهَا حَاجَةٌ؟ قَالَ: هَلْ عِنْدَكَ شَيْءٌ تُصْدِقُهَا؟ قَالَ: مَا عِنْدِي إِلَّا إِزَارِي، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنْ أَعْطَيْتَهَا إِيَّاهُ جَلَسْتَ لَا إِزَارَ لَكَ فَالْتَمِسْ شَيْئًا؟ قَالَ: مَا أَجِدُ شَيْئًا، قَالَ: الْتَمِسْ وَلَوْ خَاتَمًا مِنْ حَدِيدٍ؟ فَالْتَمَسَ فَلَمْ يَجِدْ شَيْئًا، فَقَالَ: أَمَعَكَ مِنْ الْقُرْآنِ شَيْءٌ؟ قَالَ: نَعَمْ سُورَةُ كَذَا وَسُورَةُ كَذَا، قَالَ: قَدْ زَوَّجْنَاكَهَا بِمَا مَعَكَ مِنْ الْقُرْآنِ» .

L30964 From the chain of al-Bukhārī: Yaḥyā narrated to us, from Wakīʿ, from Sufyān al-Thawrī, from Abū Ḥāzim, from Sahl ibn Saʿd, that the Messenger of Allāh (may Allāh bless him and grant him peace) said to a man: "Marry, even if [you give] a ring of iron."

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا يَحْيَى نا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِرَجُلٍ تَزَوَّجْ وَلَوْ بِخَاتَمٍ مِنْ حَدِيدٍ» .

L30965 From the chain of Muslim: Abu Bakr ibn Abi Shaybah narrated to us: Al-

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا الْحُسَيْنُ بْنُ عَلِيٍّ عَنْ زَائِدَةَ عَنْ أَبِي حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ قَالَ: «جَاءَتْ امْرَأَةٌ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ:

[53] **Qur'an references (L30959):** Qur'an 2:237 (Al-Baqarah).
[54] **Qur'an references (L30960):** Qur'an 19:64 (Maryam); Qur'an 40:51 (Ghafir).

Husayn ibn Ali from Zā'idah from Abu Hazim from Sahl ibn Sa'd, who said: "A woman came to the Messenger of Allah (peace and blessings be upon him) and said, 'O Messenger of Allah, I have offered myself to you - do with me as you wish.' A young man present said, 'O Messenger of Allah, if you have no need for her, marry her to me.' He asked, 'Do you possess anything to give her?' The man replied, 'I know of nothing.' He said, 'Go and seek - perhaps you will find something, even an iron ring.' The man returned and said, 'I found nothing except this lower garment of mine.' He said, 'If you give her this lower garment, you will have nothing left to wear. Do you recite the Opening Chapter of the Qur'an (Surah Al-Fatihah)?' The man said, 'Yes.' He said, 'Go, for I have married her to you. Teach her from the Qur'an.'"

يَا رَسُولَ اللَّهِ قَدْ وَهَبْتُ نَفْسِي لَكَ فَاصْنَعْ فِي مَا شِئْتَ؟ فَقَالَ لَهُ شَابٌّ عِنْدَهُ: يَا رَسُولَ اللَّهِ إِنْ لَمْ يَكُنْ لَكَ بِهَا حَاجَةٌ فَزَوِّجْنِيهَا؟ قَالَ: أَوَعِنْدَكَ شَيْءٌ تُعْطِيهَا إِيَّاهُ؟ قَالَ: مَا أَعْلَمُهُ، قَالَ: فَانْطَلِقْ فَاطْلُبْ فَلَعَلَّكَ تَجِدُ شَيْئًا، وَلَوْ خَاتَمًا مِنْ حَدِيدٍ؟ فَأَتَاهُ فَقَالَ: مَا وَجَدْتُ شَيْئًا إِلَّا إِزَارِي هَذَا، قَالَ: إِزَارُكَ هَذَا إِنْ أَعْطَيْتَهَا إِيَّاهُ لَمْ يَبْقَ عَلَيْكَ شَيْءٌ، قَالَ: أَتَقْرَأُ أُمَّ الْقُرْآنِ؟ قَالَ: نَعَمْ، قَالَ: فَانْطَلِقْ فَقَدْ زَوَّجْتُكَهَا فَعَلِّمْهَا مِنْ الْقُرْآنِ» .

L30966 Humaam ibn Ahmad al-Qaadhi → Abdullah ibn Muhammad ibn Ali al-Bājiyy → Abdullah ibn Yunus al-Muradi → Baqī ibn Makhlad → Abu Bakr ibn Abi Shaybah → al-Hasan ibn Ali (al-Ju'fi) → Za'idah → Abu Hazim → Sahl ibn Sa'd al-Sa'idi: "The Prophet (peace be upon him) arranged the marriage of a man to a woman on the condition that he teach her a surah from the Quran."

نا حُمَامُ بْنُ أَحْمَدَ الْقَاضِي نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ الْمُرَادِيُّ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا الْحَسَنُ بْنُ عَلِيٍّ - هُوَ الْجُعْفِيُّ - عَنْ زَائِدَةَ عَنْ أَبِي حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ السَّاعِدِيِّ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَوَّجَ رَجُلًا مِنْ امْرَأَةٍ عَلَى أَنْ يُعَلِّمَهَا سُورَةً مِنْ الْقُرْآنِ»

L30967 Abū Muḥammad said: The ḥadīth is well-known and transmitted through tawātur transmission from reliable chains of trustworthy narrators: We have also narrated it through the chains of Yaʿqūb ibn ʿAbd al-Raḥmān al-Qārī, ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī, Sufyān ibn ʿUyaynah, Ḥammād ibn Zayd, Maʿmar, Muḥammad ibn Muṭarrif, Fuḍayl ibn Sulaymān, and others—all of them from Abū Ḥāzim from Sahl ibn Saʿd from the Messenger of Allāh, peace and blessings be upon him.

قَالَ أَبُو مُحَمَّد: وَالْحَدِيثُ مَشْهُورٌ وَمَنْقُولٌ نَقْلَ التَّوَاتُرِ مِنْ طَرِيقِ الثِّقَاتِ -: رُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ يَعْقُوبَ بْنِ عَبْدِ الرَّحْمَنِ الْقَارِي، وَعَبْدِ الْعَزِيزِ بْنِ مُحَمَّدٍ الدَّرَاوَرْدِيِّ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، وَحَمَّادِ بْنِ زَيْدٍ، وَمَعْمَرٍ، وَمُحَمَّدِ بْنِ مُطَرِّفٍ، وَفُضَيْلِ بْنِ سُلَيْمَانَ، وَغَيْرِهِمْ، كُلُّهُمْ عَنْ أَبِي حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L30968–30969 Abu Muhammad said: Then someone who did not fear Allah the Almighty nor feel shame in lying objected, saying: "The Messenger of Allah—peace and blessings of Allah be upon him—only required him to have an adorned iron ring equivalent to ten silver dirhams or three pure silver dirhams." This is a statement that would make bereaved women laugh and casts suspicion on its speaker, for it openly declares what never occurred—what Allah the Almighty never created in the world: that an iron ring weighing two dirhams

قَالَ أَبُو مُحَمَّد: فَاعْتَرَضَ مَنْ لَمْ يَتَّقِ اللَّهَ عَزَّ وَجَلَّ وَلَا اسْتَحْيَا مِنْ الْكَذِبِ فِي هَذَا فَقَالَ: إِنَّمَا كَلَّفَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَاتَمًا مِنْ حَدِيدٍ مُزَيَّنًا يُسَاوِي عَشَرَةَ دَرَاهِمَ مِنْ فِضَّةٍ، أَوْ ثَلَاثَةَ دَرَاهِمَ مِنْ فِضَّةٍ خَالِصَةٍ - فَقَوْلٌ يُضْحِكُ الثَّكْلَى وَيُسِيءُ الظَّنَّ بِقَائِلِهِ؛ لِأَنَّهَا مُجَاهَرَةٌ بِمَا لَمْ يَكُنْ قَطُّ، وَلَا خَلَقَهُ اللَّهُ عَزَّ وَجَلَّ قَطُّ فِي

could equal their claim, particularly not in Medina. Every person of discernment knows their hoes and shovels for digging earth, blades and axes for cutting wood, sickles for tending palms and harvesting crops, ploughshares for tilling, mattocks for planting, and their armor and spears—all are made of iron. How then did they deem it permissible to attribute this absurd lie to the Prophet—peace and blessings of Allah be upon him? We seek Allah's protection.

الْعَالَمِ أَنْ تَكُونَ حَلْقَةً مِنْ حَدِيدٍ وَزْنُهَا دِرْهَمَانِ تُسَاوِي مَا ذَكَرُوا وَلَا سِيَّمَا فِي الْمَدِينَةِ " وَقَدْ عَلِمَ كُلُّ ذِي حَظٍّ مِنْ التَّمْيِيزِ أَنَّ مُرُورَهُمْ وَمَسَاحِيَهُمْ لِحَفِيرِ الْأَرْضِ، وَشَوَافِرَهُمْ وَفُؤُوسَهُمْ لِقَطْعِ الْحَطَبِ، وَمَنَاجِلَهُمْ لِعَمَلِ النَّخْلِ، وَحَصَادِ الزَّرْعِ، وَسِكَكَهُمْ لِلْحَرْثِ، وَمَزَابِرَهُمْ لِلزَّرْجُونِ، وَدُرُوعَهُمْ وَرِمَاحَهُمْ، كُلُّ ذَلِكَ مِنْ حَدِيدٍ فَمِنْ أَيْنَ اسْتَحَلُّوا أَنْ يُخْبِرُوا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهَذِهِ الْكِذْبَةِ السَّخِيفَةِ؟ وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

L30970 Indeed, whoever resorts to sheer impossibility in supporting his falsehood, his very action indicates evil traits concerning religion, modesty, and intellect.

وَإِنَّ مَنْ لَجَأَ إلَى الْمُحَالِ الْمُمْتَنِعِ فِي نَصْرِ بَاطِلِهِ، لَقَدْ يَدُلُّ فِعْلُهُ هَذَا عَلَى صِفَاتِ سُوءٍ فِي الدِّينِ، وَالْحَيَاءِ وَالْعَقْلِ.

L30971 They objected to the dowry being the teaching of the Quran based on a report: We transmitted it through the isnād of Ibn Abi Shaybah - Affān ibn Muslim narrated to us, Abān ibn Yazīd al-Aṭṭār narrated to us, Yaḥyā ibn Abī Kathīr narrated to me, from Zayd ibn Abī Salām, from Abū Rāshid al-Ḥubrānī, from Abd al-Raḥmān ibn Shibl al-Anṣārī, who said: I heard the Messenger of Allah (peace and blessings of Allah be upon him) say: "Recite the Quran, do not go to extremes regarding it, do not neglect it, do not exploit it for livelihood, and do not seek excessive gain through it."

وَاعْتَرَضُوا عَلَى أَنْ يَكُونَ الصَّدَاقُ تَعْلِيمَ الْقُرْآنِ بِخَبَرٍ: رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَفَّانُ بْنُ مُسْلِمٍ نا أَبَانُ بْنُ يَزِيدَ الْعَطَّارُ حَدَّثَنِي يَحْيَى بْنُ أَبِي كَثِيرٍ عَنْ زَيْدِ بْنِ أَبِي سَلَامٍ عَنْ أَبِي رَاشِدٍ الْحُبْرَانِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ شِبْلٍ الْأَنْصَارِيِّ سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «اقْرَءُوا الْقُرْآنَ وَلَا تَغْلُوا فِيهِ وَلَا تَجْفُوا عَنْهُ وَلَا تَأْكُلُوا بِهِ وَلَا تَسْتَكْثِرُوا بِهِ» .

L30972 And by the report we have narrated through the chain of Ubayy ibn Ka'b—that he taught a man the Qur'an, and the man gifted him a horse—the Messenger of Allah, may Allah bless him and grant him peace, said to Ubayy: "Do you wish to come to Allah on the Day of Resurrection with fire upon your neck?"

وَبِالْخَبَرِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ «أُبَيِّ بْنِ كَعْبٍ أَنَّهُ عَلَّمَ رَجُلًا الْقُرْآنَ فَأَهْدَى إلَيْهِ فَرَسًا، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَتُحِبُّ أَنْ تَأْتِيَ اللَّهَ فِي عُنُقِكَ يَوْمَ الْقِيَامَةِ نَارٌ» .

L30973 In some versions, "If you wish to be collared with a ring of fire, then go ahead and accept it," and in others, "A burning coal between your shoulders, to be hung around your neck or suspended [there]."

وَفِي بَعْضِ أَلْفَاظِهِ «إنْ كُنْتَ تُحِبُّ أَنْ تُطَوَّقَ طَوْقًا مِنْ نَارٍ فَاقْبَلْهَا» وَفِي بَعْضِهَا «جَمْرَةً بَيْنَ كَتِفَيْكَ تُقَلَّدُ بِهَا أَوْ تُعَلَّقُهَا» .

L30974–30976 Abū Muḥammad said: These are weak, inauthentic traditions. As for the ḥadīth "Do not eat with it," it is transmitted by Abū Rāshid al-Ḥubrānī – who

is unknown. Even if it were authentic, it would not serve as evidence for them, for eating is of two types: rightful eating and wrongful eating. Eating rightfully is praiseworthy, The Messenger of Allah (peace and blessings be upon him) and his companions—such as Musʿab Ibn ʻUmayr and others—went to Medina to teach the Ansar the Quran and Islam, and the Ansar spent on them.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ آثَارٌ وَاهِيَةٌ لَا تَصِحُّ -: أَمَّا حَدِيثُ «لَا تَأْكُلُوا بِهِ» فَرِوَايَةُ أَبِي رَاشِدٍ الْحُبْرَانِيِّ - وَهُوَ مَجْهُولٌ. ثُمَّ لَوْ صَحَّ لَمْ تَكُنْ لَهُمْ بِهِ حُجَّةٌ، لِأَنَّ الْأَكْلَ أَكْلَانِ: أَكْلٌ بِحَقٍّ، وَأَكْلٌ بِبَاطِلٍ، فَالْأَكْلُ بِحَقٍّ حَسَنٌ، وَقَدْ مَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَصْحَابُهُ إلَى الْمَدِينَةِ - كَمُصْعَبِ بْنِ عُمَيْرٍ وَغَيْرِهِ - يُعَلِّمُونَ الْأَنْصَارَ الْقُرْآنَ وَالدِّينَ، وَيُنْفِقُ الْأَنْصَارُ عَلَيْهِمْ.

L30977 Allah, the Exalted, said: {They are the ones who say, "Do not spend on those who are with the Messenger of Allah until they disperse"} [Al-Munafiqun: 7]. Thus, Allah, the Mighty and Majestic, reproached most severely those who prohibited them from spending on the companions of the Messenger of Allah (peace be upon him).[55]

قَالَ اللَّهُ تَعَالَى: {هُمُ الَّذِينَ يَقُولُونَ لا تُنْفِقُوا عَلَى مَنْ عِنْدَ رَسُولِ اللَّهِ حَتَّى يَنْفَضُّوا} [المنافقون: ٧] فَأَنْكَرَ اللَّهُ عَزَّ وَجَلَّ عَلَى مَنْ نَهَاهُمْ عَنْ النَّفَقَةِ عَلَى أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَشَدَّ النَّكِيرِ.

L30978 As for the ḥadīth of Ubayy ibn Kaʿb: one of its chains of narration includes Al-Aswad ibn Thaʿlabah—a *majhūl* narrator (one of indeterminate reliability) whose identity is unknown.

وَأَمَّا حَدِيثُ أُبَيِّ بْنِ كَعْبٍ: فَإِنَّ أَحَدَ طُرُقِهِ فِي رِوَايَتِهِ الْأَسْوَدُ بْنُ ثَعْلَبَةَ - وَهُوَ مَجْهُولٌ - لَا يُدْرَى مَنْ هُوَ.

L30979 The other [narration] is via the chain of Abu Zayd ʻAbdullah ibn al-ʻAla'—an unknown narrator whose identity is undetermined.

وَالْأُخْرَى: مِنْ طَرِيقِ أَبِي زَيْدٍ عَبْدِ اللَّهِ بْنِ الْعَلَاءِ - وَهُوَ مَجْهُولٌ - لَا يُدْرَى مَنْ هُوَ.

L30980 And the third [narration]: via Baqiyyah—who is weak—therefore, all of them are rejected.

وَالثَّالِثَةُ: مِنْ طَرِيقِ بَقِيَّةَ - وَهُوَ ضَعِيفٌ - فَسَقَطَتْ كُلُّهَا.

L30981 The correct view is the opposite of this, namely what we transmitted through Al-Bukhārī's chain: Saydān ibn Muḍārib al-Bāhilī narrated to us; Abū Maʿshar al-Barrā' – who is Yūsuf ibn Yazīd – narrated; ʿUbayd Allāh ibn al-Akhnas Abū Mālik reported to me from Ibn Abī Mulaykah from Ibn ʿAbbās: "A man asked: 'O Messenger of Allah, may I take payment for the Book of Allah?' The Messenger of Allah – peace and blessings be upon him – replied: 'The most deserving thing for which you may take payment is the Book of Allah Almighty.'"

وَالصَّحِيحُ مِنْ ذَلِكَ ضِدُّ هَذَا، وَهُوَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا سَيْدَانُ بْنُ مُضَارِبٍ الْبَاهِلِيُّ نا أَبُو مَعْشَرٍ الْبَرَاءُ - هُوَ يُوسُفُ بْنُ يَزِيدَ - حَدَّثَنِي عُبَيْدُ اللَّهِ بْنُ الْأَخْنَسِ أَبُو مَالِكٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَجُلًا قَالَ: يَا رَسُولَ اللَّهِ آخُذُ عَلَى كِتَابِ اللَّهِ أَجْرًا؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ أَحَقَّ مَا أَخَذْتُمْ عَلَيْهِ أَجْرًا كِتَابُ اللَّهِ عَزَّ وَجَلَّ» .

[55] **Qur'an references (L30977):** Qur'an 63:7 (Al-Munafiqun).

وَمِنْ طَرِيقِ أَبِي دَاوُد نا عَبْدُ اللَّهِ بْنُ مُعَاذٍ نا أَبِي نا شُعْبَةُ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ عَنْ الشَّعْبِيِّ عَنْ خَارِجَةَ بْنِ الصَّامِتِ عَنْ عَمِّهِ «أَنَّهُ رَقَى مَجْنُونًا بِأُمِّ الْقُرْآنِ فَأَعْطَاهُ أَهْلُهُ شَيْئًا، فَذَكَرَ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلْ، فَلَعَمْرِي مَنْ أَكَلَ بِرُقْيَةِ بَاطِلٍ، لَقَدْ أَكَلْتَ بِرُقْيَةِ حَقٍّ» .

L30982 From the chain of Abu Dawud, narrated by Abdullah ibn Mu'adh, from his father, from Shu'bah, from Abdullah ibn Abi al-Safar, from al-Sha'bi, from Kharijah ibn al-Samit, from his uncle: "He performed ruqyah with Umm al-Qur'an (the Opening of the Qur'an, Surah Al-Fatihah) over a mentally afflicted person, and the afflicted man's family gave him something in return. He mentioned this to the Messenger of Allah (peace be upon him), and the Messenger of Allah (peace be upon him) said to him: 'Eat. By my life, whoever eats through an invalid ruqyah – you have eaten through a valid ruqyah!'"

فَصَحَّ أَنَّ الْأَكْلَ بِالْقُرْآنِ فِي الْحَقِّ وَفِي تَعْلِيمِهِ حَقٌّ، وَأَنَّ الْحَرَامَ إنَّمَا هُوَ أَنْ يَأْكُلَ بِهِ رِيَاءً، أَوْ لِغَيْرِ اللَّهِ تَعَالَى.

L30983 Thus, it is established that benefiting from the Quran rightfully and teaching it are rightful acts, and what is forbidden is to benefit from it hypocritically or for other than Allah the Exalted.

وَمَوَّهُوا بِالْخَبَرِ السَّاقِطِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ نا أَبُو عَرْفَجَةَ الْفَاشِيُّ عَنْ أَبِي النُّعْمَانِ الْأَزْدِيُّ قَالَ «زَوَّجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - امْرَأَةً عَلَى سُورَةٍ مِنْ الْقُرْآنِ، ثُمَّ قَالَ: لَا يَكُونُ لِأَحَدٍ بَعْدَكَ مَهْرًا» .

L30984–30986 They obscured the invalid report transmitted via the chain of Saʿīd ibn Manṣūr: From Abū Muʿāwiyah, from Abū ʿArfajah al-Fāshī. Narrated by Abu Nuʿman al-Azdi, who said: "The Messenger of Allah (may Allah bless him and grant him peace) married a woman [to a man] for [teaching her] a surah from the Quran. Then he said: 'It shall not be a dowry for anyone after you.'"

فَهَذَا خَبَرٌ مَوْضُوعٌ، فِيهِ ثَلَاثُ عُيُوبٍ -:

L30987 Therefore, this is a fabricated report in which there are three defects:

أَوَّلُهَا - أَنَّهُ مُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ، إذْ رَوَاهُ شُعْبَةُ عَنْ أَيُّوبَ.

L30988 The first issue is that it is a *mursal*, and there is no authoritative proof in a *mursal*, since it was narrated by Shu'bah from Ayyūb.

وَالثَّانِي - أَنَّ أَبَا عَرْفَجَةَ الْفَاشِيَّ مَجْهُولٌ لَا يَدْرِي أَحَدٌ مَنْ هُوَ.

L30989 The second point is that Abū ʿArfajah al-Fāshī is unverified as a narrator; no one knows his biographical status.

وَالثَّالِثُ - أَنَّ أَبَا النُّعْمَانِ الْأَزْدِيُّ مَجْهُولٌ أَيْضًا لَا يَعْرِفُهُ أَحَدٌ.

L30990 The third: Abu al-Nu'man al-Azdi is also unknown; no one recognizes him.

وَمَوَّهَ بَعْضُهُمْ بِالْخَبَرِ الَّذِي فِيهِ: أَنَّ أَبَا طَلْحَةَ تَزَوَّجَ أُمَّ سُلَيْمٍ - رَضِيَ اللَّهُ عَنْهُمَا - عَلَى أَنْ يُسْلِمَ، فَلَمْ يَكُنْ لَهَا مَهْرٌ غَيْرُهُ، وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِوَجْهَيْنِ -:

L30991 Some of them used the narration as a pretext - the report stating that Abū Ṭalḥa married Umm Sulaym (may Allah be pleased with them both) on the condition of his Islam, and that she had no mahr other than this - and this provides no valid evidence for their position due to two considerations:

L30992 One of them is that this occurred a period before the migration of the Messenger of Allah—may Allah bless him and grant him peace—because Abu

Talhah was an early convert to Islam, among the first of the Ansar to embrace Islam, and the obligation to give women their dower (sadaq) had not yet been revealed.

أَحَدُهُمَا: أَنَّ ذَلِكَ كَانَ قَبْلَ هِجْرَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمُدَّةٍ، لِأَنَّ أَبَا طَلْحَةَ قَدِيمُ الْإِسْلَامِ، مِنْ أَوَّلِ الْأَنْصَارِ إسْلَامًا، وَلَمْ يَكُنْ نَزَلَ إيجَابُ إيتَاءِ النِّسَاءِ صَدُقَاتِهِنَّ بِهِ.

L30993 The second point: The narration does not indicate that the Messenger of Allah — may Allah bless him and grant him peace — knew that. Some said, "This is specific to the Messenger of Allah — may Allah bless him and grant him peace."

الثَّانِي: أَنَّهُ لَيْسَ فِي ذَلِكَ الْخَبَرِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلِمَ ذَلِكَ - وَقَالَ بَعْضُهُمْ: هَذَا خَاصٌّ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L30994 Abu Muhammad said: This is a lie—the proof thereof is the statement of Allah, the Mighty and Majestic: "There has certainly been for you in the Messenger of Allah an excellent example" [Al-Ahzab 33:21]. Thus, everything the Messenger of Allah—peace and blessings be upon him—did, the virtue, reward, and benevolence are ours when we emulate his actions. Whoever prevents this is mistaken, and whoever turns away from his Sunnah wrongs himself and is doomed—unless a Quranic text or an established Sunnah explicitly indicates that it is exclusive to the Messenger of Allah—peace and blessings be upon him—in which case it is impermissible to act upon it thereafter.[56]

قَالَ أَبُو مُحَمَّد: وَهَذَا كَذِبٌ - بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] فَكُلُّ مَا فَعَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَالْفَضْلُ لَنَا وَالْأَجْرُ وَالْإِحْسَانُ فِي أَنْ نَفْعَلَ كَمَا فَعَلَ ائْتِسَاءً بِهِ، وَالْمَانِعُ مِنْ ذَلِكَ مُخْطِئٌ، وَالرَّاغِبُ عَنْ سُنَّتِهِ ظَالِمٌ لِنَفْسِهِ هَالِكٌ، إلَّا أَنْ يَأْتِيَ نَصُّ قُرْآنٍ أَوْ سُنَّةٍ ثَابِتَةٍ بِأَنَّهُ خُصُوصِيٌّ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا يَحِلُّ أَنْ يُعْمَلَ بِهِ حِينَئِذٍ.

L30995 The entire wonder is that these people invoke his practice—peace and blessings be upon him—while he did not inform the believers it was specific to him, so they say, "It is specific to him." Then they come to the marriage of a gifted woman, though Allah the Almighty has explicitly stated it is exclusively for him—peace and blessings be upon him—to the exclusion of the believers, yet they say, "It is universally applicable to all." We seek refuge with Allah from what they have been afflicted with.

وَالْعَجَبُ كُلُّهُ أَنَّ هَؤُلَاءِ يَأْتُونَ إلَى مَا عَمِلَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَلَمْ يُخْبِرْ الْمُؤْمِنِينَ أَنَّهُ خَاصٌّ لَهُ فَيَقُولُونَ: هُوَ خَاصٌّ لَهُ ثُمَّ يَأْتُونَ إلَى نِكَاحِ الْمَوْهُوبَةِ، وَقَدْ نَصَّ اللَّهُ عَزَّ وَجَلَّ عَلَى أَنَّهَا خَالِصَةٌ لَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - دُونَ الْمُؤْمِنِينَ فَيَقُولُونَ: هُوَ عَامٌّ لِكُلِّ أَحَدٍ - نَعُوذُ بِاَللَّهِ مِمَّا ابْتُلُوا بِهِ.

L30996 Some of them said: "Have you considered if he divorces her before consummation?"

وَقَالَ بَعْضُهُمْ: أَرَأَيْت إنْ طَلَّقَهَا قَبْلَ الدُّخُولِ؟

L30997–30999 So we said: If he has taught her the surah he assigned as her dower by instructing her in it, she has received her full dower and has no recourse against him, for this constitutes a consideration that has been fulfilled. But

فَقُلْنَا: إنْ كَانَ قَدْ عَلَّمَهَا السُّورَةَ الَّتِي أَصْدَقَهَا تَعْلِيمَهَا فَقَدْ اسْتَوْفَتْ صَدَاقَهَا، وَلَا سَبِيلَ لَهَا إلَيْهِ، لِأَنَّهُ عَرَضٌ قَدْ انْقَضَى - وَإِنْ كَانَ لَمْ يُعَلِّمْهَا إيَّاهُ فَعَلَيْهِ أَنْ يُعَلِّمَهَا نِصْفَهَا

[56] **Qur'an references (L30994):** Qur'an 33:21 (Al-Ahzab).

if he has failed to teach her the surah itself, he must instruct her in half of it. This alone is not forbidden for anyone—referring to teaching an unrelated woman—as the Mothers of the Believers themselves spoke to people.

فَقَطْ، وَهَذَا لَا يُحَرَّمُ عَلَى أَحَدٍ - يَعْنِي تَعْلِيمَ امْرَأَةٍ أَجْنَبِيَّةٍ - وَقَدْ كَلَّمَ أُمَّهَاتُ الْمُؤْمِنِينَ النَّاسَ.

L31000 Abu Muhammad said: A group of the Salaf held our opinion – we have been narrated through the chain of Wakiʿ from Sufyan al-Thawri, from Ismaʿil, from ʿAmr ibn Dinar, from Ibn ʿAbbas, who said: "If she were content with a miswak from an Arak tree, it would be a dower."

قَالَ أَبُو مُحَمَّدٍ: وَقَالَ بِقَوْلِنَا طَائِفَةٌ مِنْ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إسْمَاعِيلَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَوْ رَضِيَتْ بِسِوَاكٍ مِنْ أَرَاكٍ لَكَانَ مَهْرًا.

L31001 Narrated by Waki', from Al-Hasan ibn Salih ibn Hayy, from Abu Harun al-Abdi, from Abu Sa'id al-Khudri, who said: "There is no blame on anyone to marry by giving a small or large portion of his wealth as dowry, provided they call witnesses and they mutually consent."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الْحَسَنِ بْنِ صَالِحِ بْنِ حَيٍّ عَنْ أَبِي هَارُونَ الْعَبْدِيِّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّهُ قَالَ: " لَيْسَ عَلَى أَحَدٍ جُنَاحٌ أَنْ يَتَزَوَّجَ بِقَلِيلِ مَالِهِ أَوْ كَثِيرِهِ إذَا اسْتَشْهَدُوا وَتَرَاضَوْا ".

L31002 It was narrated from 'Abdur-Rahman ibn Mahdi from Salih ibn Ruman from Abu az-Zubayr from Jabir ibn 'Abdullah who said: "Whoever gives as the dowry for a woman a full handful of parched barley flour or dates has rendered the marriage permissible."

وَرُوِيَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ صَالِحِ بْنِ رُومَانَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: " مَنْ أَعْطَى فِي صَدَاقِ امْرَأَةٍ مِلْءَ حَفْنَةٍ مِنْ سَوِيقٍ أَوْ تَمْرٍ فَقَدْ اسْتَحَلَّ ".

L31003 Narrated through the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Humaid, from Anas ibn Malik: Abd al-Rahman ibn Awf said to the Messenger of Allah (peace and blessings of Allah be upon him), "I have married a woman from the Ansar." The Messenger of Allah (peace and blessings of Allah be upon him) asked him, "How much dowry did you give her?" He replied, "The weight of a date pit in gold." The Messenger of Allah (peace and blessings of Allah be upon him) then said, "Host a wedding banquet, even if with a single sheep."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حُمَيْدٍ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنْ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَزَوَّجْتُ امْرَأَةً مِنْ الْأَنْصَارِ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمْ سُقْتَ إلَيْهَا؟ قَالَ: وَزْنَ نَوَاةٍ مِنْ ذَهَبٍ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْلِمْ وَلَوْ بِشَاةٍ» .

L31004 Abd al-Razzaq said: Then Ismāʿīl ibn ʿAbdullāh narrated to me from Ḥumayd, from Anas, who said: That was two daniqs of gold.

قَالَ عَبْدُ الرَّزَّاقِ: فَأَخْبَرَنِي إسْمَاعِيلُ بْنُ عَبْدِ اللَّهِ عَنْ حُمَيْدٍ عَنْ أَنَسٍ قَالَ: وَذَلِكَ دَانِقَانِ مِنْ ذَهَبٍ.

L31005 Abū Muḥammad said: The danīq is one-sixth of the Ṭabarī dirham—and it is the Andalusian dirham. Thus, two danīqs equal the weight of one-third of an Andalusian dirham, and the danīq is one-sixth of the mithqal of gold.

قَالَ أَبُو مُحَمَّدٍ: الدَّانِقُ: سُدْسُ الدِّرْهَمِ الطَّبَرِيِّ - وَهُوَ الْأَنْدَلُسِيُّ - فَالدَّانِقَانِ وَزْنُ ثُلُثِ دِرْهَمٍ أَنْدَلُسِيٍّ، وَهُوَ سُدْسُ الْمِثْقَالِ مِنْ الذَّهَبِ.

L31006 This is an authentic narration supported by a continuous chain.

وَهَذَا خَبَرٌ مُسْنَدٌ صَحِيحٌ.

L31007 If it is said: You have indeed narrated through the chain of Saʿīd ibn Manṣūr — narrated to us Abū Muʿāwiyah — narrated to us Ḥajjāj (who is Ibn Arṭāh) — narrated to us Qatādah — narrated to us Anas regarding the aforementioned date-seed that it was valued at three dirhams? We reply: Ḥajjāj is rejected, and the narration of ʿAbd al-Razzāq cannot be contradicted by Ḥajjāj's narration.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ نا حَجَّاجٌ - هُوَ ابْنُ أَرْطَاةَ - عَنْ قَتَادَةَ عَنْ أَنَسٍ فِي النَّوَاةِ الْمَذْكُورَةِ أَنَّهَا قُوِّمَتْ بِثَلَاثِ دَرَاهِمَ؟ قُلْنَا: حَجَّاجٌ سَاقِطٌ وَلَا يُعَارَضُ بِرِوَايَتِهِ رِوَايَةُ عَبْدِ الرَّزَّاقِ.

L31008 Narrated by Abd al-Razzaq from Ibn Jurayj from Ata: He said regarding the mahr (bridal gift), "The minimum acceptable amount is a ring or a garment he provides."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: أَنَّهُ قَالَ فِي الصَّدَاقِ: أَدْنَى مَا يَكْفِي: خَاتَمُهُ، أَوْ ثَوْبٌ يُرْسِلُهُ.

L31009–31010 Ibn Jurayj said: "Amr ibn Dīnār and ʿAbd al-Karīm said: The minimum *mahr* is whatever is mutually agreed upon."

قَالَ ابْنُ جُرَيْجٍ: وَقَالَ عَمْرُو بْنُ دِينَارٍ، وَعَبْدُ الْكَرِيمِ: أَدْنَى الصَّدَاقِ مَا تَرَاضَوْا بِهِ.

L31011 And from the chain of Abd al-Razzaq, from Sufyan ibn Uyaynah, from Ayyub ibn Musa, from Yazid ibn Qusaiṭ, who said: I heard Sa'id ibn al-Musayyib say: If he gave her a whip as dowry, it would become permissible for him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ يَزِيدَ بْنِ قُسَيْطٍ قَالَ: سَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ: لَوْ أَصْدَقَهَا سَوْطًا حَلَّتْ لَهُ.

L31012 Muhammad ibn Saʿīd ibn Nabāt narrated from Aḥmad ibn ʿAbd al-Baṣīr, who narrated from Qāsim ibn Aṣbagh, who narrated from Muḥammad ibn ʿAbd al-Salām al-Khushanī, who narrated from Muḥammad ibn al-Muthannā, who narrated from Abū Aḥmad al-Zubayrī, who narrated from ʿAbd al-ʿAzīz ibn Abī Dāwūd, on the authority of Saʿīd ibn al-Musayyab, that he gave his daughter in marriage to his nephew. He was asked, "Did he pay the mahr?" He replied, "Two dirhams."

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا أَبُو أَحْمَدَ الزُّبَيْرِيُّ نا عَبْدُ الْعَزِيزِ بْنُ أَبِي دَاوُد عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ زَوَّجَ ابْنَتَهُ ابْنَ أَخِيهِ، فَقِيلَ لَهُ: أَصْدَقَ؟ فَقَالَ: دِرْهَمَيْنِ.

L31013 From the chain of Sa'id ibn Mansur: Hushaym narrated to us that Yunus ibn 'Ubayd narrated from al-Hasan, who would say regarding the bridal gift: It is based on what the two parties mutually agree upon, whether small or large, and he does not fix any specific amount.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يُونُسُ بْنُ عُبَيْدٍ عَنِ الْحَسَنِ أَنَّهُ كَانَ يَقُولُ فِي الصَّدَاقِ: هُوَ عَلَى مَا تَرَاضَوْا عَلَيْهِ مِنْ قَلِيلٍ أَوْ كَثِيرٍ، وَلَا يُؤَقِّتُ شَيْئًا.

L31014 Sa'id said: Khalid ibn Abdallah—who is al-Tahhan—narrated to us from Yunus ibn Ubayd from al-Hasan, who said: Whatever they mutually consent to for him is the ṣadāq.

قَالَ سَعِيدٌ: نا خَالِدُ بْنُ عَبْدِ اللَّهِ - هُوَ الطَّحَّانُ - عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنِ الْحَسَنِ قَالَ: مَا تَرَاضَوْا بِهِ عَلَيْهِ فَهُوَ صَدَاقٌ.

L31015 And through the transmission of Sahnun from Abdullah ibn Wahb, Uthman ibn al-Hakam narrated to me from Yahya ibn Sa'id al-Ansari that he said: "The law permits a woman whatever she consents to, whether little or much."

وَمِنْ طَرِيقِ سَحْنُونَ عَنْ عَبْدِ اللَّهِ بْنِ وَهْبٍ أَخْبَرَنِي عُثْمَانُ بْنُ الْحَكَمِ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّهُ قَالَ: يُحِلُّ الْمَرْأَةَ مَا رَضِيَتْ بِهِ مِنْ قَلِيلٍ أَوْ كَثِيرٍ.

L31016 Ibn Wahb said: Scholars reported to me from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq, Ibn Qusayṭ, and Rabīʿah ibn Abī ʿAbd al-Raḥmān that a dirham [as dowry] is permissible.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي رِجَالٌ مِنْ أَهْلِ الْعِلْمِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ، وَابْنِ قُسَيْطٍ، وَرَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ: أَنَّهُ يَجُوزُ مِنْ الصَّدَاقِ دِرْهَمٌ.

L31017 Abu Muhammad said: This is the opinion of Sufyan al-Thawri, al-Awzaʿi, al-Hasan ibn Ḥayy, al-Layth ibn Saʿd, Ibn Abi Layla, Ibn Wahb, the companion of Malik, al-Shafiʿi, Ahmad ibn Hanbal, Ishaq, Abu Thawr, Abu Sulayman, their disciples, and the majority of hadith scholars from earlier and later generations. And with Allah, the Exalted, is success.

قَالَ أَبُو مُحَمَّد: وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ وَاللَّيْثِ بْنِ سَعْدٍ، وَابْنِ أَبِي لَيْلَى، وَابْنِ وَهْبٍ صَاحِبِ مَالِك، وَالشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ وَإِسْحَاقَ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ، وَجُمْلَةُ أَصْحَابِ الْحَدِيثِ مِمَّنْ سَلَفَ وَخَلَفَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ أَعْتَقَ أَمَتَهُ عَلَى أَنْ يَتَزَوَّجَهَا وَجَعَلَ عِتْقَهَا صَدَاقَهَا]

A legal issue: A man freed his female slave on the condition that he marry her, stipulating her manumission as her dower.

١٨٥٢ - مَسْأَلَةٌ: وَمَنْ أَعْتَقَ أَمَتَهُ عَلَى أَنْ يَتَزَوَّجَهَا وَجَعَلَ عِتْقَهَا صَدَاقَهَا - لَا صَدَاقَ لَهَا غَيْرُهُ -: فَهُوَ صَدَاقٌ صَحِيحٌ، وَنِكَاحٌ صَحِيحٌ، وَسُنَّةٌ فَاضِلَةٌ.

L31019 Issue 1852: If someone frees their female slave on the condition of marrying her and makes her emancipation her mahr - there being no other mahr for her besides it - this constitutes a valid mahr, a valid marriage, and a virtuous Sunnah.

فَإِنْ طَلَّقَهَا قَبْلَ الدُّخُولِ فَهِيَ حُرَّةٌ وَلَا يَرْجِعُ عَلَيْهَا بِشَيْءٍ، فَلَوْ أَبَتْ أَنْ تَتَزَوَّجَهُ بَطَلَ عِتْقُهَا وَهِيَ مَمْلُوكَةٌ كَمَا كَانَتْ.

L31020 If he divorces her before consummation, she is free, and he has no right to reclaim anything from her. If she refuses to marry him, her manumission is nullified, and she reverts to her former status as a slave.

وَفِي هَذَا خِلَافٌ مُتَأَخِّرٌ -: قَالَ أَبُو حَنِيفَةَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَزُفَرُ بْنُ الْهُذَيْلِ، وَمَالِكٌ، وَابْنُ شُبْرُمَةَ، وَاللَّيْثُ: لَا يَجُوزُ أَنْ يَكُونَ عِتْقُ الْأَمَةِ صَدَاقَهَا.

L31021–31022 There is a later-period disagreement regarding this matter: Abū Ḥanīfah, Muḥammad ibn al-Ḥasan, Zufar ibn al-Hudhayl, Mālik, Ibn Shubrumah, and al-Layth stated: It is impermissible for the emancipation of a female slave to constitute her mahr.

L31023 Abū Ḥanīfah, Zufar, Muḥammad, and Mālik said: If the husband consum-

mates the marriage, she is entitled to a dower equivalent to women of her standing, and she retains her status as a free woman.

L31024 Then they disagreed regarding the case where she refuses to marry him: Abū Ḥanīfah and Muḥammad [al-Shaybānī] said: "She must compensate him with her value."

L31025 Malik and Zufar said: He has no claim over her.

L31026 Ali said: The proof for the validity of our position and the invalidity of these people's claim is the widely-known established report we have transmitted through numerous varied chains—among them: the chain of al-Bukhari, the chain of Abd al-Razzaq, and the chain of Hammad ibn Salama. Al-Bukhari said: Qutaybah narrated to us, Hammad ibn Zayd narrated to us from Thabit al-Bunani; Abd al-Razzaq narrated from Ma'mar from Qatadah; Hammad ibn Salama narrated from Abd al-Aziz ibn Suhayb. Then Thabit, Qatadah, and Abd al-Aziz all agreed, all reporting from Anas ibn Malik that the Messenger of Allah—peace and blessings be upon him—"emancipated Safiyyah and made her manumission her dowry."

L31027 Qatadah said in his narration: "Then He made."

L31028 Abū Muḥammad said: Those who contradict the sound opinion have objected to this report by arguing: The situation must entail one of two scenarios—either he married her while she was enslaved, which is indisputably invalid, or he married her after he had manumitted her. Would this then constitute a matrimonial contract without a dower?

L31029 Ali said: This is the most utterly foolish speech ever heard, due to multiple aspects.

L31030 The first is that it constitutes an objection against the Messenger of Allah (peace and blessings be upon him and his family), and this is apostasy from Islam.

L31031–31033 The second is that this constitutes a fallacious and invalid objection, for

قَالَ أَبُو حَنِيفَةَ، وَزُفَرُ، وَمُحَمَّدٌ، وَمَالِكٌ: إِنْ فَعَلَ فَلَهَا عَلَيْهِ مَهْرُ مِثْلِهَا وَهِيَ حُرَّةٌ.

ثُمَّ اخْتَلَفُوا إِنْ أَبَتْ أَنْ تَتَزَوَّجَهُ -: فَقَالَ أَبُو حَنِيفَةَ، وَمُحَمَّدٌ: تَسْعَى لَهُ فِي قِيمَتِهَا.

وَقَالَ مَالِكٌ، وَزُفَرُ: لَا شَيْءَ لَهُ عَلَيْهَا.

قَالَ عَلِيٌّ: الْبُرْهَانُ عَلَى صِحَّةِ قَوْلِنَا وَبُطْلَانُ قَوْلِ هَؤُلَاءِ: الْخَبَرُ الْمَشْهُورُ الثَّابِتُ الَّذِي رُوِّينَاهُ مِنْ طُرُقٍ شَتَّى كَثِيرَةٍ -: مِنْهَا: مِنْ طَرِيقِ الْبُخَارِيِّ، وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ، وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ، قَالَ الْبُخَارِيُّ: ثنا قُتَيْبَةُ ثنا حَمَّادُ بْنُ زَيْدٍ عَنْ ثَابِتٍ الْبُنَانِيِّ، وَقَالَ عَبْدُ الرَّزَّاقِ: عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، وَقَالَ حَمَّادُ بْنُ سَلَمَةَ عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ، ثُمَّ اتَّفَقَ ثَابِتٌ، وَقَتَادَةُ، وَعَبْدُ الْعَزِيزِ كُلُّهُمْ عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَعْتَقَ صَفِيَّةَ وَجَعَلَ عِتْقَهَا صَدَاقَهَا»

قَالَ قَتَادَةُ فِي رِوَايَتِهِ: «ثُمَّ جَعَلَ» .

قَالَ أَبُو مُحَمَّدٍ: فَاعْتَرَضَ مَنْ خَالَفَ الْحَقَّ عَلَى هَذَا الْخَبَرِ بِأَنْ قَالَ: لَا يَخْلُو أَنْ يَكُونَ تَزَوَّجَهَا وَهِيَ مَمْلُوكَةٌ، فَهَذَا لَا يَجُوزُ بِلَا خِلَافٍ، أَوْ يَكُونَ تَزَوَّجَهَا بَعْدَ أَنْ أَعْتَقَهَا فَهَذَا نِكَاحٌ بِلَا صَدَاقٍ؟ .

قَالَ عَلِيٌّ: هَذَا أَحْمَقُ كَلَامٍ سُمِعَ لِوُجُوهٍ:

أَوَّلُهَا - أَنَّهُ اعْتِرَاضٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهَذَا انْسِلَاخٌ مِنْ الْإِسْلَامِ.

we say to them: He married her only when she had become a free woman after the legal validation of her emancipation. This emancipation - which was validated for her on the condition that he marry her thereby, and which constitutes her dower - had indeed been granted to her. The one from whom she has received full payment—and there is no distinction between this case and one who gives a woman dirhams, then proposes to her and marries her based on those dirhams owed to him by her, and the scholars do not deny this.

وَالثَّانِي - أَنَّهُ اعْتِرَاضٌ مُمَوَّهٌ سَاقِطٌ، لِأَنَّا نَقُولُ لَهُمْ: مَا تَزَوَّجَهَا إِلَّا وَهِيَ حُرَّةٌ بَعْدَ صِحَّةِ الْعِتْقِ لَهَا، وَذَلِكَ الْعِتْقُ الَّذِي صَحَّ لَهَا بِشَرْطِ أَنْ يَتَزَوَّجَهَا بِهِ وَهُوَ صَدَاقُهَا، قَدْ أَتَاهَا إِيَّاهُ، وَاسْتَوْفَتْهُ - وَلَا فَرْقَ بَيْنَ هَذَا وَبَيْنَ مَنْ أَعْطَى امْرَأَةً دَرَاهِمَ ثُمَّ خَطَبَهَا فَتَزَوَّجَهَا عَلَى تِلْكَ الدَّرَاهِمِ الَّتِي لَهُ عِنْدَهَا، وَهُمْ لَا يُنْكِرُونَ هَذَا.

L31034 The third point: Had they posed this question to themselves regarding their corrupt rulings, would they not have reached the correct conclusion? Such as their judgment entitling a thrice-divorced woman to inheritance during terminal illness? We respond: This must fall into one of two scenarios—either you entitled her to inheritance while she remained his wife, or when she was no longer his wife, with no third possibility. If she was his wife, his lawful enjoyment through intimacy with her and gazing upon her private parts would have persisted as long as he was alive. Yet you absolutely and categorically forbid this.

وَالثَّالِثُ - أَنَّهُمْ لَوْ سَأَلُوا أَنْفُسَهُمْ هَذَا السُّؤَالَ فِي أَقْوَالِهِمْ الْفَاسِدَةِ لَأَصَابُوا؟ مِثْلُ تَوْرِيثِهِمْ الْمُطَلَّقَةَ ثَلَاثًا فِي الْمَرَضِ؟ فَنَقُولُ لَهُمْ: لَا يَخْلُو مِنْ أَنْ تَكُونُوا وَرَّثْتُمُوهَا وَهِيَ زَوْجَةٌ لَهُ، أَوْ وَهِيَ لَيْسَتْ بِزَوْجَةٍ لَهُ، وَلَا سَبِيلَ إلَى قَسَمٍ ثَالِثٍ -: فَإِنْ كَانَتْ زَوْجَتَهُ فَقَدْ كَانَ تَلَذُّذُهُ بِمُبَاشَرَتِهَا، وَنَظَرُهُ إلَى فَرْجِهَا حَلَالٌ لَهُ مَا دَامَ يَجْرِي فِيهِ الرُّوحُ، وَأَنْتُمْ تُحَرِّمُونَ عَلَيْهِ ذَلِكَ بَتْلًا قَطْعًا.

L31035 And if she is not his wife, nor his mother, nor his daughter, nor his grandmother, nor his granddaughter (through his son), nor his sister, nor a freed female slave (with established familial ties), nor a blood relative, then this is sheer injustice and giving wealth wrongfully.

وَإِنْ كَانَتْ لَيْسَتْ زَوْجًا لَهُ، وَلَا أُمًّا لَهُ، وَلَا بِنْتًا لَهُ، وَلَا جَدَّةً لَهُ، وَلَا بِنْتَ ابْنٍ لَهُ، وَلَا أُخْتًا، وَلَا مُعْتَقَةً، وَلَا ذَاتَ رَحِمٍ، فَهَذَا عَيْنُ الظُّلْمِ، وَإِعْطَاءُ الْمَالِ بِالْبَاطِلِ.

L31036 If they claim to follow the Companions, we say: We are more deserving of correctness, clear justification, and avoidance of objections against us, for here we have followed the Prophet—peace and blessings of Allah be upon him and his family—along with the Companions and additionally the Successors. How can this be when you have lied in your claim of following the Companions regarding the inheritance of a woman divorced thrice during illness, as we shall clarify—Allah, the Exalted, willing—in its chapter? The closest clarification is that no authentic report exists from Umar, while the well-known position of Uthman is that he did not consider it a valid divorce. What then of their ruling concerning the children of the woman granted freedom: that they are free and their compensatory value is incumbent upon their father?

فَإِنْ ادَّعَوْا اتِّبَاعَ الصَّحَابَةِ؟ قُلْنَا: نَحْنُ أَوْلَى بِالصَّوَابِ، وَبِوُضُوحِ الْعُذْرِ، وَبِتَرْكِ الِاعْتِرَاضِ عَلَيْنَا، إذْ إنَّمَا اتَّبَعْنَا هَاهُنَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَالصَّحَابَةَ أَيْضًا، وَالتَّابِعِينَ زِيَادَةً، فَكَيْفَ وَقَدْ كَذَبْتُمْ فِي دَعْوَاكُمْ اتِّبَاعَ الصَّحَابَةِ فِي تَوْرِيثِ الْمُطَلَّقَةِ ثَلَاثًا فِي الْمَرَضِ، عَلَى مَا نُبَيِّنُهُ إنْ شَاءَ اللَّهُ تَعَالَى فِي بَابِهِ؟ وَأَقْرَبُ ذَلِكَ: أَنَّهُ لَمْ يَصِحَّ عَنْ عُمَرَ، وَالْمَشْهُورُ عَنْ عُثْمَانَ أَنَّهُ لَمْ يُعِدَّهُ طَلَاقًا، وَفِي قَوْلِهِمْ فِي وَلَدِ الْمُسْتَحَقَّةِ: إنَّهُمْ أَحْرَارٌ وَعَلَى أَبِيهِمْ قِيمَتُهُمْ؟

فَنَقُولُ لَهُمْ: لَا يَخْلُو مِنْ أَنْ يَكُونُوا أَحْرَارًا أَوْ عَبِيدًا، فَإِنْ كَانُوا أَحْرَارًا فَثَمَنُ الْحُرِّ حَرَامٌ كَالْمَيْتَةِ وَالدَّمِ، وَإِنْ كَانُوا عَبِيدًا فَبَيْعُ الْعَبِيدِ مِنْ غَيْرِ رِضَا سَيِّدِهِمْ حَرَامٌ إِلَّا بِنَصٍّ - وَمِثْلُ هَذَا لَهُمْ كَثِيرٌ جِدًّا؟ وَقَالَ بَعْضُهُمْ: الْعِتْقُ لَيْسَ مَالًا، فَهُوَ كَالطَّلَاقِ فِي أَنَّ الْعِتْقَ يَبْطُلُ بِهِ الرِّقُّ فَقَطْ، وَالطَّلَاقُ يَبْطُلُ بِهِ النِّكَاحُ فَقَطْ، فَلَوْ أَنَّهُ طَلَّقَهَا عَلَى أَنْ يَكُونَ طَلَاقُهَا مَهْرًا لَهَا بَعْدَ ذَلِكَ، فَكَذَلِكَ الْعِتْقُ.

L31037 We say to them: They must either be free individuals or slaves. If they are free, then the price of a free person is forbidden, like carrion and blood. If they are slaves, selling them without their master's consent is forbidden unless based on an explicit textual ruling—and are such cases not exceedingly common among them? Some of them said: Emancipation is not [considered] property, so it is akin to divorce in that emancipation nullifies slavery alone, just as divorce nullifies marriage alone. Thus, if he divorces her on the condition that the divorce itself serves as her dowry thereafter, the same applies to emancipation.

قَالَ أَبُو مُحَمَّد: وَهَذَا قَوْلٌ فِي غَايَةِ الْفَسَادِ وَالسَّخَافَةِ، لِأَنَّهُ قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ - ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ قِيَاسَ أَصْلٍ عَلَى أَصْلٍ آخَرَ لَا يَجُوزُ عِنْدَهُمْ، وَلَا شَبَهَ بَيْنَ الطَّلَاقِ وَالْعِتْقِ، لِأَنَّ الْعِتْقَ يُبْطِلُ الرِّقَّ كَمَا قَالُوا، وَأَمَّا الطَّلَاقُ فَقَدْ كَذَبُوا فِي قَوْلِهِمْ إِنَّهُ يُبْطِلُ النِّكَاحَ، بَلْ لِلْمُطَلِّقِ الَّذِي وَطِئَهَا دُونَ الثَّلَاثِ أَنْ يَرْتَجِعَهَا - فَصَحَّ أَنَّهُ لَمْ يَبْطُلْ نِكَاحُهُ، بِخِلَافِ الْعِتْقِ الَّذِي لَا يَجُوزُ لَهُ ارْتِجَاعُهُ فِي الرِّقِّ.

L31038–31040 Abu Muhammad said: This opinion is at the peak of corruption and frivolity, because it is analogy, and all analogy is invalid. Moreover, even if analogy were valid, this would be the very essence of its invalidity, as analogizing one foundational principle to another is impermissible. According to them, there is no resemblance between divorce and manumission, for manumission abolishes enslavement as they asserted. As for divorce, they have lied in their claim that it invalidates marriage. Rather, the divorcer who has divorced her fewer than three times and has had intercourse with her may take her back. Thus, it is established as valid that his marriage has not been invalidated, unlike manumission, which does not permit him to reclaim [the freed person] into slavery.

وَأَيْضًا: فَإِنَّ الْعِتْقَ إِخْرَاجٌ عَنْ مِلْكِهِ، وَلَيْسَ الطَّلَاقُ كَذَلِكَ؟ فَبَطَلَ تَمْوِيهُهُمْ الْبَارِدُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ. وَقَالَ بَعْضُهُمْ: هَذَا خَاصٌّ بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L31041 Furthermore, emancipation is the removal from his ownership, whereas divorce is not the same? Thus, their feeble obfuscation was invalidated—and all praise is due to Allah, Lord of the worlds. Some of them said: This is specific to the Messenger of Allah—may Allah's blessings and peace be upon him and his family.

قَالَ أَبُو مُحَمَّد: هَذَا كَذِبٌ، وَمُخَالَفَةٌ لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] فَكُلُّ فِعْلٍ فَعَلَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَنَا الْفَضْلُ فِي الِائْتِسَاءِ بِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَا لَمْ يَأْتِ نَصٌّ بِأَنَّهُ خُصُوصٌ فَنَقِفُ عِنْدَهُ،

L31042 Abu Muhammad said: This is a lie and a contradiction to the words of Allah, Exalted and Majestic: "There has certainly been for you in the Messenger of Allah an excellent example" [Al-Ahzab: 21]. Thus, every action he performed—peace and blessings be upon him—is a virtuous example for us to follow, provided no text establishes it as being specific, in which case we desist. Had they applied this reasoning to themselves regarding their per-

mitting of the gifted matter that is unlawful for others—peace and blessings be upon him—they would have been correct.[1]

وَلَوْ قَالُوا هَذَا لِأَنْفُسِهِمْ فِي إِجَازَتِهِمْ الْمَوْهُوبَةَ الَّتِي لَا تَحِلُّ لِغَيْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَوَفَّقُوا.

L31043 Some of them said: You have indeed narrated what Dawud ibn Babshadh wrote to you about that. He said: Abd al-Ghani ibn Sa'id al-Hafiz narrated to us; Hisham ibn Muhammad ibn Qurrah narrated to us; Abu Ja'far al-Tahawi narrated to us; Ahmad ibn Dawud narrated to us; Ya'qub ibn Humayd—who is Ibn Kasib—narrated to us. He said: Hammad ibn Zayd narrated to us from Abdullah ibn Awn, who said: Nafi' wrote to me: "The Prophet—peace and blessings be upon him and his family—captured Juwayriyah during the raid of Banu al-Mustaliq, freed her, married her, and made her emancipation her mahr. Abdullah ibn Umar, who was in that army, informed me of that."

وَقَالَ بَعْضُهُمْ: قَدْ رَوَيْتُمْ فِي ذَلِكَ مَا كَتَبَ بِهِ إِلَيْكُمْ دَاوُد بْنُ بَابْشَاذَ قَالَ: نا عَبْدُ الْغَنِيِّ بْنُ سَعِيدٍ الْحَافِظُ نا هِشَامُ بْنُ مُحَمَّدِ بْنِ قُرَّةَ نا أَبُو جَعْفَرٍ الطَّحَاوِيُّ نا أَحْمَدُ بْنُ دَاوُد، نا يَعْقُوبُ بْنُ حُمَيْدٍ - وَهُوَ ابْنُ كَاسِبٍ - قَالَ: نَا حَمَّادُ بْنُ زَيْدٍ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ قَالَ: كَتَبَ إِلَيَّ نَافِعٌ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَخَذَ جُوَيْرِيَةَ فِي غَزْوَةِ بَنِي الْمُصْطَلِقِ فَأَعْتَقَهَا وَتَزَوَّجَهَا وَجَعَلَ عِتْقَهَا صَدَاقَهَا أَخْبَرَنِي بِذَلِكَ عَبْدُ اللَّهِ بْنُ عُمَرَ كَانَ فِي ذَلِكَ الْجَيْشِ»

L31044 They said, "Ibn 'Umar does not hold that view"—so how could it be impossible for him to abandon what he narrated unless he possessed superior knowledge contradicting that [view]?

قَالُوا: وَابْنُ عُمَرَ لَا يَرَى ذَلِكَ، فَمُحَالٌ أَنْ يَتْرُكَ مَا رَوَى إِلَّا لِفَضْلِ عِلْمٍ عِنْدَهُ، بِخِلَافِ ذَلِكَ؟

L31045 Abu Muhammad said: If what they mentioned were valid—that Ibn Umar did not consider that view—it would not constitute a decisive proof (ḥujjah), for the authoritative proof Allah the Exalted has commanded us to follow is solely what they transmitted to us from the Messenger of Allah—peace and blessings be upon him and his family—not what any of them narrated as an opinion derived through personal juristic effort (ijtihad), even if correct. If such an opinion aligns with the definitive text (al-naṣṣ), the scholar receives two rewards; but if he erred in contradicting the text without intending opposition, he receives one reward.

قَالَ أَبُو مُحَمَّد: لَوْ صَحَّ مَا ذَكَرُوهُ: مِنْ أَنَّ ابْنَ عُمَرَ لَمْ يَرَ ذَلِكَ لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّ الْحُجَّةَ الَّتِي أَمَرَنَا اللَّهُ تَعَالَى بِهَا وَبِاتِّبَاعِهَا، إِنَّمَا هِيَ مَا رَوَوْهُ لَنَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَا مَا رَوَاهُ مَنْ رَآهُ مِنْهُمْ بِرَأْيٍ اجْتَهَدَ فِيهِ وَأَصَابَ: إِنْ وَافَقَ النَّصَّ فَلَهُ أَجْرَانِ، أَوْ أَخْطَأَ إِنْ خَالَفَ النَّصَّ غَيْرَ قَاصِدٍ إِلَى خِلَافِهِ فَلَهُ أَجْرٌ وَاحِدٌ.

L31046–31048 In our book titled "Inflection in Uncovering Ambiguity," we have dedicated a substantial chapter to every... One of the two factions regarding what they contradicted each other in this place adopted the Companion's narration and opposed his opinion, the opinion he had used to oppose what he himself narrated.

وَقَدْ أَفْرَدْنَا فِي كِتَابِنَا الْمَوْسُومِ بِـ " الْإِعْرَابُ فِي كَشْفِ الِالْتِبَاسِ " بَابًا ضَخْمًا لِكُلِّ وَاحِدَةٍ مِنْ الطَّائِفَتَيْنِ فِيمَا تَنَاقَضُوا فِيهِ فِي هَذَا الْمَكَانِ، فَأَخَذُوا بِرِوَايَةِ الصَّاحِبِ وَخَالَفُوا رَأْيَهُ الَّذِي خَالَفَ بِهِ مَا رَوَى.

[1] **Qur'an references (L31042):** Qur'an 33:21 (Al-Ahzab).

L31049 What we know from Ibn ʻUmar is what we have narrated through the chain of Saʻīd ibn Manṣūr who narrated to us from Hushaym and Jarīr, both of whom reported from al-Mughīrah ibn Miqsam, from Ibrāhīm al-Nakhaʻī, who said: "Ibn ʻUmar used to say regarding a man who manumits a female slave and then marries her: 'He is like one who rides his she-camel.'" Ibrāhīm said: This view was most pleasing to our companions - that her manumission should serve as her dowry. For Ibn ʻUmar only disliked a man marrying someone he had manumitted when the manumission had been declared solely for Allah's sake, the Mighty and Majestic.

وَالَّذِي نَعْرِفُهُ عَنْ ابْنِ عُمَرَ فَهُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ، وَجَرِيرٌ كِلَاهُمَا عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: " إِنَّ ابْنَ عُمَرَ كَانَ يَقُولُ فِي الرَّجُلِ يُعْتِقُ الْجَارِيَةَ ثُمَّ يَتَزَوَّجُهَا كَالرَّاكِبِ بَدَنَتَهُ " قَالَ إِبْرَاهِيمُ: وَكَانَ أَعْجَبُ ذَلِكَ إِلَى أَصْحَابِنَا أَنْ يَجْعَلُوا عِتْقَهَا صَدَاقَهَا فَإِنَّمَا كَرِهَ ابْنُ عُمَرَ زَوَاجَ الْمَرْءِ مَنْ أَعْتَقَهَا لِلَّهِ عَزَّ وَجَلَّ فَقَطْ -.

L31050 So their weak scheme in this legal issue was nullified.

فَبَطَلَ كَيْدُهُمُ الضَّعِيفُ فِي هَذِهِ الْمَسْأَلَةِ.

L31051 Abu Muhammad said: The aforementioned report from Ibn Umar—Ibn Umar wrote it to Dawud ibn Bābshādh. Abd al-Ghani ibn Saʻid narrated to us, from Hisham ibn Muhammad ibn Qurrah, from Abu Jaʻfar al-Tahawi; then he mentioned the hadith that we mentioned earlier.

قَالَ أَبُو مُحَمَّدٍ: وَالْخَبَرُ الْمَذْكُورُ عَنِ ابْنِ عُمَرَ كَتَبَ بِهِ إِلَى دَاوُد بْنِ بَابْشَاذَ قَالَ: نَا عَبْدُ الْغَنِيِّ بْنُ سَعِيدٍ ثَنَا هِشَامُ بْنُ مُحَمَّدِ بْنِ قُرَّةَ نا أَبُو جَعْفَرٍ الطَّحَاوِيُّ فَذَكَرَ الْحَدِيثَ الَّذِي ذَكَرْنَا آنِفًا.

L31052 Then he said: Indeed, Ibn ʻUmar has narrated this from the Messenger of Allah — peace be upon him — as we have mentioned.

ثُمَّ قَالَ: فَقَدْ رَوَى هَذَا ابْنُ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا ذَكَرْنَا.

L31053 Then he said: After him (the Prophet, peace and blessings be upon him) in a case like this: that he renews her dower. Sulaymān ibn Shuʻayb narrated to us regarding this, from Al-Khaṣīb (Ibn Nāṣiḥ), from Ḥammād ibn Salamah, from ʿUbayd Allāh, from Nāfiʿ, from Ibn ʿUmar - a similar report.

ثُمَّ قَالَ: هُوَ مِنْ بَعْدِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي مِثْلِ هَذَا: إِنَّهُ يُجَدِّدُ لَهَا صَدَاقًا -: نا بِذَلِكَ سُلَيْمَانُ بْنُ شُعَيْبٍ نا الْخَصِيبُ - هُوَ ابْنُ نَاصِحٍ - حَدَّثَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ مِثْلَ ذَلِكَ.

L31054 Abu Muhammad said: This is the exact wording of Al-Tahawi's statement, and he did not mention how Ibn Umar's statement was. Perhaps if he had cited it, it would have been contrary to Al-Tahawi's presumption. This hadith is not among those narrated by the trustworthy companions of Hammad ibn Salamah from him. Al-Khasib's status is unknown, and he is not prominent among the companions of Hammad ibn Salamah. Thus, it is a weak matter in every respect.

قَالَ أَبُو مُحَمَّدٍ: هَذَا نَصُّ كَلَامِ الطَّحَاوِيِّ، وَلَمْ يَذْكُرْ كَلَامَ ابْنِ عُمَرَ كَيْفَ كَانَ، وَلَعَلَّهُ لَوْ أَوْرَدَهُ لَكَانَ خِلَافًا لِظَنِّ الطَّحَاوِيِّ، وَهَذَا الْحَدِيثُ لَيْسَ مِمَّا رَوَاهُ أَصْحَابُ حَمَّادِ بْنِ سَلَمَةَ الثِّقَاتُ عَنْهُ، وَالْخَصِيبُ لَا يُدْرِي حَالُهُ وَلَيْسَ بِالْمَشْهُورِ فِي أَصْحَابِ حَمَّادِ بْنِ سَلَمَةَ، فَهُوَ أَمْرٌ ضَعِيفٌ مِنْ كُلِّ جِهَةٍ.

L31055 The first report is transmitted from Ibn ʿUmar, not from Juwayriyah; it is narrated by Yaʿqūb ibn Ḥumayd ibn Kāsib, and he is weak.

وَالْخَبَرُ الْأَوَّلُ مِنْ رِوَايَةِ ابْنِ عُمَرَ لَا مِنْ جُوَيْرِيَةَ هُوَ مِنْ رِوَايَةِ يَعْقُوبَ بْنِ حُمَيْدِ بْنِ كَاسِبٍ وَهُوَ ضَعِيفٌ.

L31056–31058 وَذَكَرُوا أَيْضًا: الْخَبَرَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ جَعْفَرِ بْنِ الزُّبَيْرِ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ جُوَيْرِيَةَ قَالَتْ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّهَا وَقَعَتْ فِي سَهْمِ ثَابِتِ بْنِ قَيْسِ بْنِ الشَّمَّاسِ أَوْ ابْنِ عَمٍّ لَهُ، وَإِنَّهَا كَاتَبَتْهُ وَأَتَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَسْتَعِينُهُ فِي كِتَابَتِهَا، وَإِنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ لَهَا: أَوْ خَيْرٌ مِنْ ذَلِكَ، أَقْضِي عَنْكِ كِتَابَتَكِ وَأَتَزَوَّجُكِ»

L31059 قَالُوا: وَلَيْسَ هَذَا لِأَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُؤَدِّيَ كِتَابَةَ مُكَاتَبَةٍ لِغَيْرِهِ وَيَتَزَوَّجَهَا بِذَلِكَ.

L31060 قَالَ أَبُو مُحَمَّدٍ: قَبْلَ كُلِّ شَيْءٍ فَإِنَّ هَذَا خَبَرٌ لَا تَقُومُ بِهِ حُجَّةٌ، إنَّمَا رُوِّينَاهُ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ مِنْ طَرِيقَيْنِ ضَعِيفَيْنِ -: أَحَدُهُمَا - مِنْ طَرِيقِ زِيَادِ بْنِ عَبْدِ اللَّهِ الْبَكَّائِيِّ. وَالْآخَرُ - مِنْ طَرِيقِ أَسَدِ بْنِ مُوسَى، وَكِلَاهُمَا ضَعِيفٌ.

L31061 ثُمَّ لَوْ صَحَّ لَكَانَ لَا يَخْلُو أَنَّ ثَابِتَ بْنَ قَيْسٍ وَهَبَهَا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ عَرَفَ رَغْبَتَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِيهَا، وَلَمْ تَكُنْ أَدَّتْ مِنْ كِتَابَتِهَا بَعْدُ شَيْئًا، فَبَطَلَتْ الْكِتَابَةُ وَصَارَتْ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ لَا يَجُوزُ أَنْ يُظَنَّ بِثَابِتٍ أَوْ بِصَاحِبٍ غَيْرِ هَذَا أَصْلًا.

They also mentioned: the report we have transmitted via the chain of Muḥammad ibn Isḥāq from Muḥammad ibn Jaʿfar ibn al-Zubayr from ʿUrwah from ʿĀʾishah, the Mother of the Believers, "that Juwayriyah said to the Messenger of Allah (may Allah bless him and grant him peace) that she..." She was assigned to the portion of Thabit ibn Qays ibn al-Shammas or his paternal cousin. She entered a *kitābah* agreement with him and came to the Messenger of Allah (peace and blessings be upon him) seeking his assistance regarding her *kitābah*. The Messenger of Allah (peace and blessings be upon him) said to her: "Or better than that: I will discharge your *kitābah* debt and marry you."

They said: This is not for anyone after the Messenger of Allah—may Allah bless him and grant him peace—to fulfill the *mukātabah* contract on behalf of another and thereby marry her by means of it.

Abu Muhammad said: First of all, this is a report that cannot stand as authoritative evidence. We have only transmitted it from Muhammad ibn Isḥāq through two weak chains—one through Ziyād ibn ʿAbdullāh al-Bakkāʾī and the other through Asad ibn Mūsā—both of whom are unreliable.

Then, if it were valid, it would necessarily mean that Thābit ibn Qays had gifted it to the Messenger of Allah—peace and blessings be upon him—since he knew of his eagerness for it, and the slave had not yet fulfilled any part of her kitābah obligation [to purchase her freedom]. Thus, the contract would be nullified, and it would become the property of the Messenger of Allah—peace and blessings be upon him—for it is impermissible to presume that Thābit or the owner acted contrary to this in the slightest.

Moreover, if that were not the case and she had persisted in her _kitābah_ (manumission contract) until she was freed by fulfilling it or by the Messenger of Allah (peace be upon him) fulfilling it on her behalf, she would have become

the client of Thābit. Yet no scholar has ever definitively asserted this, and there is no disagreement among the people of knowledge that she was never Thābit's client in the first place.

وَأَيْضًا - فَلَوْ لَمْ يَكُنْ ذَلِكَ وَتَمَادَتْ عَلَى كِتَابَتِهَا حَتَّى عَتَقَتْ بِأَدَائِهَا أَوْ بِأَدَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِيَّاهَا عَنْهَا لَكَانَتْ مَوْلَاةَ ثَابِتٍ، وَهَذَا لَمْ يَقُلْهُ أَحَدٌ قَطْعًا، وَلَا اخْتَلَفَ أَحَدٌ مِنْ أَهْلِ الْعِلْمِ فِي أَنَّهَا لَمْ تَكُنْ مَوْلَاةَ ثَابِتٍ أَصْلًا

L31063 The invalidity of what Asad and Ziyad narrated became evident, and their clinging to these fabricated narrations—which avail nothing toward the truth—was rendered futile.

فَوَضَحَ سُقُوطُ مَا رَوَاهُ أَسَدٌ، وَزِيَادٌ، وَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْمُلَفَّقَاتِ الَّتِي لَا تُغْنِي مِنْ الْحَقِّ شَيْئًا.

L31064 They also elaborated: Hammām ibn Aḥmad narrated from ʿAbbās ibn Aṣbagh, who narrated from Muḥammad ibn ʿAbd al-Malik ibn Ayman, who narrated from Ismāʿīl ibn Isḥāq, who narrated from Yaḥyā ibn ʿAbd al-Ḥamīd al-Ḥimānī, who narrated from Abū Bakr ibn ʿAyyāsh, who narrated from Abū Ḥuṣayn, who narrated from Abū Burdah, who narrated from Abū Mūsā, who narrated from the Prophet, peace and blessings of Allah be upon him, who said: "If any man emancipates his bondwoman and then marries her with a new bridal gift, he will be granted two rewards."

وَمَوَّهُوا أَيْضًا: بِمَا حَدَّثَنَا حُمَامُ بْنُ أَحْمَدَ نا عَبَّاسُ بْنُ أَصْبَغَ نَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ نا يَحْيَى بْنُ عَبْدِ الْحَمِيدِ الْحِمَّانِيُّ نا أَبُو بَكْرِ بْنُ عَيَّاشٍ نا أَبُو حُصَيْنٍ عَنْ أَبِي بُرْدَةَ عَنْ أَبِي مُوسَى عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «أَيُّمَا امْرِئٍ أَعْتَقَ أَمَتَهُ ثُمَّ تَزَوَّجَهَا بِمَهْرٍ جَدِيدٍ فَلَهُ أَجْرَانِ» .

L31065–31066 This is an unsound wording that Yahya al-Himmani (an extremely weak narrator) solely reported from Abu Bakr ibn 'Ayyash (a weak narrator).

فَهَذَا لَفْظُ سُوءٍ انْفَرَدَ بِهِ يَحْيَى الْحِمَّانِيُّ - وَهُوَ ضَعِيفٌ جِدًّا - عَنْ أَبِي بَكْرِ بْنِ عَيَّاشٍ - وَهُوَ ضَعِيفٌ.

L31067 The hadith is well-known from the narration of trustworthy narrators, and there is no new mahr in it at all.

وَالْخَبَرُ مَشْهُورٌ مِنْ رِوَايَةِ الثِّقَاتِ لَيْسَ فِيهِ بِمَهْرٍ جَدِيدٍ أَصْلًا.

L31068 Then, even if it were authentic, it would not constitute any evidence whatsoever, because it does not state that he may not marry her except with a new mahr. We do not prohibit him from stipulating another mahr for her; rather, all of that is permissible. This report - We have narrated it through various chains of transmission: among them a chain through Abd al-Razzaq from Sufyan al-Thawri from Salih ibn Hayyan from al-Sha'bi from Abu Burdah ibn Abi Musa al-Ash'ari from his father, who said: The Messenger of Allah (peace and blessings be upon him) said, "Whoever has a slave girl, teaches her excellent manners and educates her thoroughly, then frees her and subsequently marries her, will receive two rewards."

ثُمَّ لَوْ صَحَّ لَمْ تَكُنْ فِيهِ حُجَّةٌ أَصْلًا، لِأَنَّهُ لَيْسَ فِيهِ أَنَّهُ لَا يَجُوزُ لَهُ نِكَاحُهَا إِلَّا بِمَهْرٍ جَدِيدٍ، وَنَحْنُ لَا نَمْنَعُ مِنْ أَنْ يَجْعَلَ لَهَا مَهْرًا آخَرَ، بَلْ كُلُّ ذَلِكَ جَائِزٌ - وَهَذَا الْخَبَرُ رُوِّينَاهُ مِنْ طُرُقٍ -: مِنْهَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ صَالِحِ بْنِ حَيَّانَ عَنْ الشَّعْبِيِّ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ كَانَتْ لَهُ جَارِيَةٌ فَأَحْسَنَ أَدَبَهَا وَعَلَّمَهَا فَأَحْسَنَ تَعْلِيمَهَا ثُمَّ أَعْتَقَهَا فَتَزَوَّجَهَا فَلَهُ أَجْرَانِ اثْنَانِ» .

L31069 From the chain of Saʿīd ibn Manṣūr: Khālid ibn ʿAbdullāh narrated to us from Muṭarrif—who is Ibn Ṭarīf—from al-Shaʿbī, from Abū Burdah, from Abū Mūsā al-Ashʿarī: "The Messenger of Allah (peace be upon him and his family) said regarding one who emancipates his female slave and marries her: 'He will receive two rewards.' No new bridal gift (mahr) applies in any such case."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا خَالِدُ بْنُ عَبْدِ اللَّهِ نا مُطَرِّفٌ - هُوَ ابْنُ طَرِيفٍ - عَنْ الشَّعْبِيِّ عَنْ أَبِي بُرْدَةَ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ فِي الَّذِي يُعْتِقُ أَمَتَهُ ثُمَّ يَتَزَوَّجُهَا فَلَهُ أَجْرَانِ» لَيْسَ فِي شَيْءٍ مِنْ ذَلِكَ مَهْرٌ جَدِيدٌ.

L31070 Abu Umar informed us via the previously mentioned chain of narration leading to Muslim, who said: Yahya ibn Yahya narrated to us, Hushaym narrated to us from Salih ibn Salih al-Hamdani from al-Sha'bi, who said: I saw a man from Khurasan asking al-Sha'bi. He said: "O Abu Amr, those before us from the people of Khurasan say regarding a man who frees his female slave then marries her: 'He is like one who rides his sacrificial she-camel?'" Al-Sha'bi replied: "Abu Burdah—who is Amir ibn Abdullah ibn Qays, known as Abu Musa al-Ash'ari—narrated to us from his father that the Messenger of Allah—peace and blessings be upon him and his family—said: 'Three will receive a double reward: A man from the People of the Book who believed in his prophet, then lived to meet the Prophet—peace and blessings be upon him and his family—believed in him, followed him, and affirmed him; he receives a double reward. A slave who fulfills Allah's right over him and his master's right; he receives a double reward. And a man who had a female slave, nourished her and perfected her nourishment, taught her manners and perfected her discipline, then freed her and married her; he receives a double reward.'" Then al-Sha'bi said to the Khurasani man: "Take this report unreservedly, for people would travel for less than this to Medina." Muslim said: Abu Bakr ibn Abi Shaybah narrated to us from Abdah ibn Sulayman; Ibn Abi Umar narrated to us from Sufyan; and Abdullah ibn Muadh said: My father narrated to us from Shu'bah—all of them from Salih ibn Salih via this chain of narration in similar wording.

أَخْبَرَنَا أَبُو عُمَرَ بِالسَّنَدِ الْمُتَقَدِّمِ إِلَى مُسْلِمٍ قَالَ: نا يَحْيَى بْنُ يَحْيَى نا هُشَيْمٌ عَنْ صَالِحِ بْنِ صَالِحٍ الْهَمْدَانِيِّ عَنْ الشَّعْبِيِّ قَالَ: رَأَيْت رَجُلًا مِنْ خُرَاسَانَ يَسْأَلُ الشَّعْبِيَّ فَقَالَ: يَا أَبَا عَمْرٍو إنَّ مَنْ قَبْلَنَا مِنْ أَهْلِ خُرَاسَانَ يَقُولُونَ فِي الرَّجُلِ إذَا أَعْتَقَ أَمَتَهُ ثُمَّ تَزَوَّجَهَا: فَهُوَ كَالرَّاكِبِ بَدَنَتَهُ؟ فَقَالَ الشَّعْبِيُّ: حَدَّثَنَا أَبُو بُرْدَةَ - هُوَ عَامِرُ بْنُ عَبْدِ اللَّهِ بْنِ قَيْسٍ - هُوَ أَبُو مُوسَى الْأَشْعَرِيُّ عَنْ أَبِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «ثَلَاثَةٌ يُؤْتَوْنَ أَجْرَهُمْ مَرَّتَيْنِ: رَجُلٌ مِنْ أَهْلِ الْكِتَابِ آمَنَ بِنَبِيِّهِ وَأَدْرَكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَآمَنَ بِهِ وَاتَّبَعَهُ وَصَدَّقَ بِهِ فَلَهُ أَجْرَانِ، وَعَبْدٌ مَمْلُوكٌ أَدَّى حَقَّ اللَّهِ عَلَيْهِ وَحَقَّ سَيِّدِهِ فَلَهُ أَجْرَانِ، وَرَجُلٌ كَانَتْ لَهُ أَمَةٌ فَغَذَّاهَا فَأَحْسَنَ غِذَاءَهَا ثُمَّ أَدَّبَهَا فَأَحْسَنَ أَدَبَهَا ثُمَّ أَعْتَقَهَا فَتَزَوَّجَهَا فَلَهُ أَجْرَانِ» ثُمَّ قَالَ الشَّعْبِيُّ لِلْخُرَاسَانِيِّ: خُذْ هَذَا الْخَبَرَ بِغَيْرِ شَيْءٍ فَقَدْ كَانَ الرَّجُلُ يَرْحَلُ فِيمَا دُونَ هَذَا إلَى الْمَدِينَةِ قَالَ مُسْلِمٌ: وَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَبْدَةُ بْنُ سُلَيْمَانُ، وَنَا ابْنُ أَبِي عُمَرَ: حَدَّثَنَا سُفْيَانُ، وَنَا عَبْدُ اللَّهِ بْنُ مُعَاذٍ قَالَ: حَدَّثَنِي أَبِي قَالَ: نا شُعْبَةُ، كُلُّهُمْ عَنْ صَالِحِ بْنِ صَالِحٍ بِهَذَا الْإِسْنَادِ نَحْوَهُ.

L31071–31072 Abu Muhammad said: All that they have raised by way of objections is nothing but falsehoods. A group among the Salaf who held our opinion—as has been narrated to us through the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Abu Ishaq al-Sabi'i, from al-Harith, from Ali ibn Abi Talib—

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا شَغَبُوا بِهِ، إنَّمَا هُوَ أَبَاطِيلُ، وَمِمَّنْ قَالَ بِقَوْلِنَا مِنْ السَّلَفِ طَائِفَةٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ

who said regarding one who manumits his female slave then marries her, making her manumission her mahr: “He receives two rewards.” This has also been narrated from Ibn Mas’ud and Anas.

L31073 Through the chain of Saʿīd ibn Manṣūr: Hushaym informed us from Yaḥyā ibn al-Anṣārī, al-Mughīrah, Yūnus, who is Ibn ʿUbayd, and Jābir. Yaḥyā reported from Saʿīd ibn al-Musayyab, al-Mughīrah from Ibrāhīm, Yūnus from al-Ḥasan, and Jābir from al-Shaʿbī. All of them stated: It is permissible to make her manumission her bridal gift (mahr). Hushaym also narrated: ʿAbd al-Malik ibn Abī Sulaymān informed us from ʿAṭāʾ ibn Abī Rabāḥ, who would say: “If a man declares to his female slave, ‘I have freed you and thereby married you,’ she becomes his wife. But if he says, ‘I have freed you and will marry you,’ then he frees her: if she wishes, she may marry him, and if she prefers, she may decline.”

L31074 Al-Hasan disliked anything other than this, as it has been narrated to us through the chain of transmission of Abū Dāwūd al-Ṭayālisī, from Shuʿbah, from Manṣūr ibn Zādhān, from al-Ḥasan al-Baṣrī, that he disliked a man emancipating his female slave for the sake of Allah and then marrying her.

L31075 Abu Muhammad said: The like has been related from Anas ibn Malik, Ibn Masʿūd, Jābir ibn Zayd, and Ibrāhīm.

L31076 From the path of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm, who said: They disapproved of a man manumitting his female slave then marrying her, but they saw no harm in making her manumission her dowry. From the path of ʿAbd al-Razzāq, from Ibn Jurayj, from Yaḥyā ibn Saʿīd al-Anṣārī and ʿAbdullāh ibn Ṭāwūs. Yaḥyā reported from Saʿīd ibn al-Musayyib, while Ibn Ṭāwūs reported from his father. Both of them stated: There is no harm in making her manumission her dowry. Ṭāwūs said: That is good.

L31077 From the chain of Abd al-Razzaq, from Ma’mar, from Yahya ibn Abi Kathir, from Abu Salama ibn Abd al-Rahman ibn Awf, who said: “There is no objec-

عَنْ الْحَارِثِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ فِيمَنْ أَعْتَقَ أَمَتَهُ ثُمَّ تَزَوَّجَهَا وَجَعَلَ عِتْقَهَا صَدَاقَهَا؟ قَالَ: " لَهُ أَجْرَانِ " وَقَدْ رُوِيَ أَيْضًا عَنْ ابْنِ مَسْعُودٍ، وَأَنَسٍ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يَحْيَى بْنُ الْأَنْصَارِيِّ، وَالْمُغِيرَةُ وَيُونُسُ - هُوَ ابْنُ عُبَيْدٍ - وَجَابِرٌ، قَالَ يَحْيَى: عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ وَقَالَ الْمُغِيرَةُ: عَنْ إبْرَاهِيمَ، وَقَالَ يُونُسُ: عَنْ الْحَسَنِ، وَقَالَ جَابِرٌ: عَنْ الشَّعْبِيِّ، قَالُوا كُلُّهُمْ: لَا بَأْسَ بِأَنْ يَجْعَلَ عِتْقَهَا صَدَاقَهَا، قَالَ هُشَيْمٌ: وَنَا عَبْدُ الْمَلِكِ بْنُ أَبِي سُلَيْمَانَ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ أَنَّهُ كَانَ يَقُولُ " إذَا قَالَ الرَّجُلُ لِأَمَتِهِ قَدْ أَعْتَقْتُكِ وَتَزَوَّجْتُكِ فَهِيَ امْرَأَتُهُ، وَإِنْ قَالَ: أَعْتَقْتُكِ وَأَتَزَوَّجُكِ فَأَعْتَقَهَا: إنْ شَاءَتْ تَزَوَّجَتْهُ، وَإِنْ شَاءَتْ لَمْ تَتَزَوَّجْهُ ".

وَكَانَ الْحَسَنُ يَكْرَهُ غَيْرَ هَذَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد الطَّيَالِسِيِّ عَنْ شُعْبَةَ عَنْ مَنْصُورِ بْنِ زَاذَانَ عَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ كَرِهَ أَنْ يُعْتِقَ الرَّجُلُ أَمَتَهُ لِوَجْهِ اللَّهِ ثُمَّ يَتَزَوَّجُهَا.

قَالَ أَبُو مُحَمَّدٍ: وَرُوِيَ مِثْلُهُ عَنْ أَنَسِ بْنِ مَالِكٍ، وَابْنِ مَسْعُودٍ، وَجَابِرِ بْنِ زَيْدٍ، وَإِبْرَاهِيمَ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ قَالَ: كَانُوا يَكْرَهُونَ أَنْ يُعْتِقَ أَمَتَهُ ثُمَّ يَتَزَوَّجُهَا وَلَا يَرَوْنَ بَأْسًا أَنْ يَجْعَلَ عِتْقَهَا صَدَاقَهَا. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَعَبْدِ اللَّهِ بْنِ طَاوُسٍ قَالَ يَحْيَى: عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ وَقَالَ ابْنُ طَاوُسٍ: عَنْ أَبِيهِ، قَالَا جَمِيعًا: لَا بَأْسَ أَنْ يَجْعَلَ عِتْقَهَا صَدَاقَهَا، قَالَ طَاوُسٍ: ذَلِكَ حَسَنٌ.

tion to a man emancipating his female slave and then marrying her, making her emancipation her mahr."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ قَالَ: لَا بَأْسَ أَنْ يُعْتِقَ الرَّجُلُ أَمَتَهُ فَيَتَزَوَّجُهَا وَيَجْعَلُ عِتْقَهَا صَدَاقَهَا.

L31078–31080 And through him (the preceding narrator) to Maʿmar, from Qatādah, who said: If a man emancipates his female slave and makes her emancipation her dowry, then divorces her before consummating the marriage, she is entitled to nothing. Ibn Jurayj said: If he divorces her, she is entitled to half her value—this is the opinion of ʿAṭāʾ.

وَبِهِ إِلَى مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: إِذَا أَعْتَقَ الرَّجُلُ أَمَتَهُ وَجَعَلَ عِتْقَهَا مَهْرَهَا ثُمَّ طَلَّقَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا فَلَا شَيْءَ لَهَا - وَابْنُ جُرَيْجٍ يَقُولُ: إِنْ طَلَّقَهَا سَعَتْ لَهُ فِي نِصْفِ قِيمَتِهَا - وَهُوَ قَوْلُ عَطَاءٍ.

L31081 Abū Muḥammad said: These are ʿAlī, Anas, Ibn Masʿūd, Saʿīd ibn al-Musayyib, Ibrāhīm, those whom Ibrāhīm met among his teachers, al-Shaʿbī, ʿAṭāʾ ibn Abī Rabāḥ, Ṭāwus, Abū Salama ibn ʿAbd al-Raḥmān, Qatāda, and others – and this is the opinion of Sufyān al-Thawrī, al-Awzāʿī, al-Ḥasan ibn Ḥayy, Abū Yūsuf the judge (who opposed his companions in this matter and held the correct view), al-Shāfiʿī, Aḥmad, Abū Thawr, and some of our companions. We know of no predecessors for the dissenters except that weak narration from Ibn ʿUmar – in which he did not clarify: What was its precise wording? Nor how the wording of Nāfiʿ (who reported that from him) was phrased, or the occasional references they cited:

قَالَ أَبُو مُحَمَّدٍ: فَهَؤُلَاءِ: عَلِيٌّ، وَأَنَسٌ، وَابْنُ مَسْعُودٍ، وَسَعِيدُ بْنُ الْمُسَيِّبِ وَإِبْرَاهِيمُ، وَمَنْ لَقِيَهُ إِبْرَاهِيمُ مِنْ شُيُوخِهِ، وَالشَّعْبِيُّ، وَعَطَاءُ بْنُ أَبِي رَبَاحٍ، وَطَاوُسٌ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ، وَقَتَادَةُ، وَغَيْرُهُمْ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي يُوسُفَ الْقَاضِي - خَالَفَ فِي ذَلِكَ أَصْحَابَهُ وَوَفَّقَ - وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي ثَوْرٍ، وَبَعْضِ أَصْحَابِنَا، وَمَا نَعْلَمُ لِلْمُخَالِفِينَ، سَلَفًا إِلَّا تِلْكَ الرِّوَايَةَ السَّاقِطَةَ عَنْ ابْنِ عُمَرَ الَّتِي لَمْ يُبَيِّنْ فِيهَا كَيْفَ كَانَ لَفْظُهُ؟ وَلَا كَيْفَ كَانَ لَفْظُ نَافِعٍ الَّذِي ذَكَرَ ذَلِكَ عَنْهُ، وَشَيْئًا رُبَّمَا ذَكَرُوهُ -:

L31082 It was narrated to us via the chain of Saʿīd ibn Manṣūr, who said: Hushaym reported to us, from Yunus, from Ibn Sīrīn, that he [Ibn Sīrīn] preferred to include something when emancipating her—what was it?

رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ قَالَ: نا هُشَيْمٌ نا يُونُسُ عَنِ ابْنِ سِيرِينَ أَنَّهُ كَانَ يُحِبُّ أَنْ يَجْعَلَ مَعَ عِتْقِهَا شَيْئًا مَا كَانَ؟

L31083 Abū Muḥammad said: This is merely Ibn Sīrīn's recommendation. Otherwise, this statement indicates that he permitted her emancipation to be her dowry alone—and success comes from Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ: إِنَّمَا هَذَا اسْتِحْبَابٌ مِنِ ابْنِ سِيرِينَ، وَإِلَّا فَهَذَا الْقَوْلُ يَدُلُّ عَلَى أَنَّهُ كَانَ يُجِيزُ أَنْ يَجْعَلَ عِتْقَهَا صَدَاقَهَا فَقَطْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L31084 As for our statement: If he divorces her before consummation, she owes him nothing, because what was obligated for her is her freedom—and that is a completed obligation and cannot be reclaimed—while imposing a liability

would entail obligating her [to pay] other than half of what was obligated for her, which is not permissible.

وَأَمَّا قَوْلُنَا: إِنْ طَلَّقَهَا قَبْلَ الدُّخُولِ فَلَا شَيْءَ لَهُ عَلَيْهَا، لِأَنَّ الَّذِي فَرَضَ لَهَا هُوَ عِتْقُهَا - وَهُوَ شَيْءٌ قَدْ تَمَّ فَلَا يُسْتَدْرَكُ - وَتَكْلِيفُ الْغَرَامَةِ هُوَ إِيجَابُ غَيْرِ نِصْفِ مَا فَرَضَ لَهَا فَلَا يَجُوزُ.

L31085 If she does not marry him, then even if he is manumitted, the manumission remains incomplete—for it is valid only conditionally upon her marrying him, thereby constituting her dowry. If she does not marry him, there is no dowry for an unconcluded marriage, rendering the marriage void. But if she does marry him, the marriage becomes valid, and the manumission is thereby confirmed through the validity of the marriage upon which it was contingent—and success comes solely from Allah, the Most High.

وَأَمَّا إِنْ لَمْ تَتَزَوَّجْهُ فَإِنْ عَتَقَ لَمْ يَتِمَّ؛ إِنَّمَا هُوَ عِتْقٌ بِشَرْطِ أَنْ تَتَزَوَّجَهُ فَيَكُونُ صَدَاقُهَا، فَإِذَا لَمْ تَتَزَوَّجْهُ فَلَا صَدَاقَ لِنِكَاحٍ لَمْ يَتِمَّ فَهُوَ بَاطِلٌ، وَأَمَّا إِنْ تَزَوَّجَتْهُ فَقَدْ تَمَّ النِّكَاحُ، وَصَحَّ الْعِتْقُ لِصِحَّةِ النِّكَاحِ الَّذِي عَلَّقَ بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا تُجْبَرُ الْمَرْأَةُ عَلَى أَنْ تَتَجَهَّزَ لِلزَّوْجِ بِشَيْءٍ]

A jurisprudential issue: A woman cannot be compelled to prepare or furnish anything for her husband.

L31086

١٨٥٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ تُجْبَرَ الْمَرْأَةُ عَلَى أَنْ تَتَجَهَّزَ إِلَيْهِ بِشَيْءٍ أَصْلًا، لَا مِنْ صَدَاقِهَا الَّذِي أَصْدَقَهَا، وَلَا مِنْ غَيْرِهِ مِنْ سَائِرِ مَالِهَا، وَالصَّدَاقُ كُلُّهُ لَهَا تَفْعَلُ فِيهِ كُلَّ مَا شَاءَتْ، لَا إِذْنَ لِلزَّوْجِ فِي ذَلِكَ، وَلَا اعْتِرَاضَ.

1853. Issue: It is impermissible to compel a woman to prepare herself to join him using anything whatsoever: neither from the dowry he has given her nor from any other part of her wealth. The entire dowry belongs to her; she may do with it as she wishes. The husband has no authority in this matter, nor any right to object.

L31087

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ.

This is the opinion of Abū Ḥanīfah, Shāfiʿī, Abū Sulaymān, and others among them.

L31088

وَقَالَ مَالِكٌ: إِنْ أَصْدَقَهَا دَنَانِيرَ أَوْ دَرَاهِمَ أُجْبِرَتْ عَلَى أَنْ تَبْتَاعَ بِكُلِّ ذَلِكَ شُورَةً مِنْ ثِيَابٍ وَوِطَاءٍ وَحُلِيٍّ تَتَجَمَّلُ بِهِ لَهُ، وَلَا يَحِلُّ لَهُ أَنْ تَقْضِيَ مِنْهَا دَيْنًا عَلَيْهَا إِلَّا ثَلَاثَةَ دَنَانِيرَ فَأَقَلَّ، فَإِنْ أَصْدَقَهَا نِقَارَ ذَهَبٍ أَوْ نِقَارَ فِضَّةٍ فَهُوَ لَهَا، وَلَا تُجْبَرُ عَلَى أَنْ تَبْتَاعَ بِهَا شُورَةً أَصْلًا.

Malik said: If he gives her dinars or dirhams as her bridal gift, she is obligated to use all of it to purchase a selection of clothes, household furnishings, and jewelry to adorn herself with for him. It is not permissible for her to use any of it to pay off a debt she owes, except three dinars. If he reduces [the dowry] and gives her a measure of gold or a measure of silver as her dowry, it belongs to her, and she cannot be compelled to buy defective goods with it at all.

L31089–31091

فَإِنْ أَصْدَقَهَا حُلِيًّا أُجْبِرَتْ أَنْ تَتَحَلَّى بِهِ لَهُ، فَإِنْ أَصْدَقَهَا ثِيَابًا وَوِطَاءً أُجْبِرَتْ عَلَى أَنْ تَلْبَسَهَا بِحَضْرَتِهِ، وَلَمْ تَجِبْ لَهَا عَلَيْهِ كِسْوَةٌ حَتَّى تَمْضِيَ مُدَّةٌ تَخْلَقُ فِيهَا تِلْكَ الثِّيَابُ.

If he gives her jewelry as a dowry, she is compelled to adorn herself with it for him. If he gives her clothes and a mattress as a dowry, she is compelled

L31092

to wear the clothes in his presence. She is not entitled to clothing from him until a period has passed during which those clothes deteriorate from use.

فَإِنْ أَصْدَقَهَا خَادِمًا أُنْثَى أُجْبِرَتْ عَلَى أَنْ تَخْدُمَهَا وَلَمْ يَكُنْ لَهَا بَيْعُهَا.

L31093 If he gives her a female servant as a dowry, the servant is compelled to serve her, and the wife is not entitled to sell her.

وَإِنْ أَصْدَقَهَا عَبْدًا فَلَهَا أَنْ تَفْعَلَ فِيهِ مَا شَاءَتْ مِنْ بَيْعٍ أَوْ غَيْرِهِ. فَلَوْ أَصْدَقَهَا دَابَّةً، أَوْ مَاشِيَةً، أَوْ ضَيْعَةً، أَوْ دَارًا، أَوْ طَعَامًا لَمْ يَكُنْ لِلزَّوْجِ فِي كُلِّ ذَلِكَ رَأْيٌ، وَهُوَ لَهَا تَفْعَلُ فِيهِ مَا شَاءَتْ مِنْ بَيْعٍ أَوْ غَيْرِهِ وَلَيْسَ لِلزَّوْجِ أَنْ يَنْتَفِعَ بِشَيْءٍ مِنْ ذَلِكَ، وَلَا أَنْ يَنْظُرَ فِيهِ إِلَّا بِإِذْنِهَا إِنْ شَاءَتْ.

L31094 If he gives her an enslaved person as a dowry, she may do with it as she wishes through sale or otherwise. Should he give her a pack animal, livestock, an estate, a house, or food as a dowry, the husband has no say in any of these matters. It all belongs to her, and she may dispose of it through sale or otherwise as she chooses. The husband holds no right to derive benefit from any of these possessions, nor to interfere with them, unless she permits it if she so wishes.

قَالَ أَبُو مُحَمَّد: قَوْلُ مَالِكٍ هَذَا يَكْفِي مِنْ فَسَادِهِ عَظِيمُ تَنَاقُضِهِ، وَفَرَّقَهُ بَيْنَ مَا فَرَّقَ مِنْ ذَلِكَ بِلَا بُرْهَانٍ مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ نَعْلَمُهُ قَبْلَهُ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ.

L31095 Abu Muhammad said: This statement of Malik suffices to demonstrate its corruption due to its immense contradictions. He differentiated between matters without a single proof from the Quran, the Sunnah, a weak narration, the statement of anyone whom we know preceded him, analogy, or an opinion with a valid basis.

وَأَطْرَفُ شَيْءٍ إِبَاحَتُهُ لَهَا قَضَاءَ الثَّلَاثَةِ دَنَانِيرَ وَالدِّينَارَيْنِ فِي دَيْنِهَا فَقَطْ، لَا أَكْثَرَ مِنْ ذَلِكَ، فَلَيْتَ شِعْرِي إِنْ كَانَ صَدَاقُهَا أَلْفَيْ دِينَارٍ، أَوْ كَانَ صَدَاقُهَا دِينَارًا وَاحِدًا كَيْفَ الْعَمَلُ فِي ذَلِكَ إِنَّ هَذَا الْعَجَبُ؟

L31096 The most astonishing thing is permitting her to repay only three dinars and two dinars of her debt – nothing beyond that. I wonder: If her dowry were two thousand dinars or merely one dinar, how would one proceed in such a case? Truly, this is astonishing!

قَالَ أَبُو مُحَمَّد: وَبُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا} [النساء: ٤]

L31097 Abu Muhammad said: The proof for the correctness of our position is the statement of Allah Almighty: {Give women their dowries as a free gift. If they gladly give up any part of it to you of their own accord, then partake of it with good cheer and wholesomeness} [An-Nisa: 4].[2]

فَافْتَرَضَ اللَّهُ عَزَّ وَجَلَّ عَلَى الرِّجَالِ أَنْ يُعْطُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً، وَلَمْ يُبِحْ لِلرِّجَالِ مِنْهَا شَيْئًا إِلَّا بِطِيبِ أَنْفُسِ النِّسَاءِ، فَأَيُّ بَيَانٍ بَعْدَ هَذَا نَرْغَبُ؟ أَمْ كَيْفَ تَطِيبُ نَفْسُ مُسْلِمٍ عَلَى مُخَالَفَةِ هَذَا الْكَلَامِ لِرَأْيٍ فَاسِدٍ مُتَخَاذِلٍ مُتَنَافِرٍ لَا يُعْرَفُ لِقَائِلِهِ فِيهِ سَلَفٌ.

L31098 Allah, the Mighty and Majestic, has obligated men to give women their dowries as a gracious gift, and He has not permitted men to take anything from it except with the women's heartfelt consent. What further explanation could we seek after this? How could a Muslim's soul be content opposing

[2] **Qur'an references (L31097):** Qur'an 4:4 (An-Nisa).

this divine statement for a corrupt, feeble, incoherent opinion that has no precedent among the predecessors of the righteous early generations?

L31099 We have found that Allah, the Mighty and Majestic, has obligated for the wife rights in her husband's wealth—whether he likes it or dislikes it—which are the mahr, maintenance, clothing, and housing as long as the marriage lasts, and the mutʿah (compensation) if he divorces her. Yet He has granted the husband no right whatsoever in her wealth, neither a small amount nor a large one.

L31100–31101 There is nothing more absurd than their exempting the husband from providing clothing so long as she can clothe herself from her dowry, while not exempting him from maintenance so long as she can sustain herself from her dowry. Has anything more invalid than this corrupt distinction ever been heard? Some of them clamored by citing Allah's words, the Almighty: "Men are guardians of women by virtue of Allah's favoring some over others" [An-Nisāʾ 4:34]. We replied: Allah, the Almighty, has spoken truthfully. It is unlawful to distort words from their proper contexts, nor to attribute to Him, the Almighty, what He did not say, for this is among the greatest of major sins.[3]

L31102 This verse does not mention his responsibility over any of her wealth, nor his ruling according to his own opinion, nor his disposal of it.

L31103 The matter entails that he is responsible for her: he must house her where he resides, prevent her from leaving except for what is obligatory, and relocate her where he relocates.

L31104 Furthermore, had what you claimed been in the verse, you would have been the first to contradict it, for you have restricted some alms to the exclusion of others and the rest of its wealth. All of this is an arbitrary imposition of falsehood without proof.

L31105 They also objected, citing the authentic ḥadīth of the Messenger of Allah—may Allah bless him and his family and grant him peace—: "A woman is

[3] **Qur'an references (L31101):** Qur'an 4:34 (An-Nisa).

وَوَجَدْنَا اللَّهَ عَزَّ وَجَلَّ قَدْ أَوْجَبَ لِلْمَرْأَةِ حُقُوقًا فِي مَالِ زَوْجِهَا - أَحَبَّ أَمْ كَرِهَ - وَهِيَ الصَّدَاقُ، وَالنَّفَقَةُ، وَالْكِسْوَةُ، وَالْإِسْكَانُ، مَا دَامَتْ فِي عِصْمَتِهِ وَالْمُتْعَةُ إِنْ طَلَّقَهَا - وَلَمْ يَجْعَلْ لِلزَّوْجِ فِي مَالِهَا حَقًّا أَصْلًا، لَا مَا قَلَّ وَلَا مَا كَثُرَ.

وَلَا شَيْءَ أَطْرَفُ مِنْ إِسْقَاطِهِمْ عَنْ الزَّوْجِ الْكِسْوَةَ مَا دَامَ يُمْكِنُهَا أَنْ تَكْتَسِيَ مِنْ صَدَاقِهَا وَلَمْ يَسْقُطْ عَنْهُ النَّفَقَةُ مَا دَامَ يُمْكِنُهَا أَنْ تُنْفِقَ عَلَى نَفْسِهَا مِنْ صَدَاقِهَا؟ فَهَلْ سُمِعَ بِأَسْقَطَ مِنْ هَذَا الْفَرْقِ الْفَاسِدِ؟ وَشَغَبَ بَعْضُهُمْ بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ} [النساء: ٣٤] ؟ فَقُلْنَا: صَدَقَ اللَّهُ عَزَّ وَجَلَّ، وَلَا يَحِلُّ تَحْرِيفُ الْكَلِمِ عَنْ مَوَاضِعِهِ، وَلَا أَنْ نَقُولَ عَلَيْهِ عَزَّ وَجَلَّ مَا لَمْ يَقُلْ، فَهَذَا مِنْ أَكْبَرِ الْكَبَائِرِ.

وَلَيْسَ فِي هَذِهِ الْآيَةِ ذِكْرٌ لِقِيَامِهِ عَلَى شَيْءٍ مِنْ مَالِهَا، وَلَا لِلْحُكْمِ بِرَأْيِهِ، وَلَا لِلتَّصَرُّفِ فِيهِ.

وَإِنَّمَا فِيهَا أَنَّهُ قَائِمٌ عَلَيْهَا يُسْكِنُهَا حَيْثُ يَسْكُنُ وَيَمْنَعُهَا مِنْ الْخُرُوجِ إلَى غَيْرِ الْوَاجِبِ، وَيُرَحِّلُهَا حَيْثُ يَرْحَلُ.

ثُمَّ لَوْ كَانَ فِي الْآيَةِ لَمَا ادَّعَيْتُمْ لَكُنْتُمْ أَوَّلَ مُخَالِفِينَ لَهَا، لِأَنَّكُمْ خَصَّصْتُمْ بَعْضَ الصَّدَقَاتِ دُونَ بَعْضٍ، وَدُونَ سَائِرِ مَالِهَا، كُلُّ ذَلِكَ تَحَكُّمٌ بِالْبَاطِلِ بِلَا بُرْهَانٍ.

وَشَغَبُوا أَيْضًا بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «تُنْكَحُ الْمَرْأَةُ لِأَرْبَعٍ: لِحُسْنِهَا، وَمَالِهَا، وَجَمَالِهَا، وَدِينِهَا - فَاظْفَرْ بِذَاتِ الدِّينِ تَرِبَتْ يَدَاكَ» .

married for four reasons: her beauty, her wealth, her lineage, and her religion. So strive to secure the one with religion—may your hands succeed!"

وَهَذَا عَجَبٌ جِدًّا لَا نَظِيرَ لَهُ -: أَوَّلُ ذَلِكَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَأْمُرْ أَنْ تُنْكَحَ لِمَالِهَا، وَلَا نَدَبَ إلَى ذَلِكَ، وَلَا صَوَّبَهُ، بَلْ إنَّمَا أَوْرَدَ ذَلِكَ إخْبَارًا عَنْ فِعْلِ النَّاسِ فَقَطْ، وَهَذِهِ أَفْعَالُ الطَّمَّاعِينَ الْمَذْمُومِ فِعْلُهُمْ فِي ذَلِكَ بَلْ فِي الْخَبَرِ نَفْسِهِ الْإِنْكَارُ لِذَلِكَ بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «فَاظْفَرْ بِذَاتِ الدِّينِ» فَلَمْ يَأْمُرْ بِأَنْ تُنْكَحَ بِشَيْءٍ مِنْ ذَلِكَ إلَّا لِلدِّينِ خَاصَّةً، لَكِنَّ الْوَاجِبَ أَنْ تَنْكِحَ الْمَرْأَةُ الزَّوْجَ لِمَالِهِ، لِأَنَّ اللَّهَ تَعَالَى أَوْجَبَ لَهَا الصَّدَاقَ عَلَيْهِ وَالنَّفَقَةَ وَالْكِسْوَةَ.

L31106 This is a profoundly astonishing matter with no parallel. The first aspect of this is that the Messenger of Allah—peace and blessings be upon him—never commanded marriage for wealth, nor encouraged it, nor approved it. He merely cited this as a report of people's actions alone. These are the deeds of greedy individuals whose conduct in this regard is blameworthy. Indeed, the narration itself condemns this practice through his statement—peace and blessings be upon him—"Seek a devout woman." He did not sanction marriage for any reason except religion specifically. Yet some assert that a woman is married to a man for his wealth, claiming Allah the Exalted has obligated upon him her dowry, maintenance, and clothing.

وَقَدْ جَاءَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيَانُ النَّهْيِ عَنْ أَنْ تُنْكَحَ الْمَرْأَةُ لِمَالِهَا -: كَمَا حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ نَا ابْنُ مُفَرِّجٍ الْقَاضِي نا مُحَمَّدُ بْنُ أَيُّوبَ الرَّقِّيِّ نا الْبَزَّارُ نا سَلَمَةُ بْنُ شَبِيبٍ نا عَبْدُ اللَّهِ بْنُ يَزِيدَ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَنْكِحُوا النِّسَاءَ لِحُسْنِهِنَّ فَلَعَلَّ حُسْنَهُنَّ يُرْدِيهِنَّ، وَلَا تَنْكِحُوهُنَّ لِأَمْوَالِهِنَّ فَلَعَلَّ أَمْوَالَهُنَّ يُطْغِيهِنَّ، وَانْكِحُوهُنَّ لِلدِّينِ، وَلَأَمَةٌ سَوْدَاءُ خَرْمَاءُ ذَاتُ دِينٍ أَفْضَلُ» .

L31107–31108 It has been reported from the Messenger of Allah (peace be upon him) regarding the explanation of the prohibition against marrying a woman for her wealth, as narrated to us by Aḥmad ibn Muḥammad al-Ṭalamankī, who narrated to us: Ibn Mufarrij al-Qāḍī narrated to us, who narrated to us: Muḥammad ibn Ayyūb al-Raqqī narrated to us, who narrated to us: al-Bazzār narrated to us, who narrated to us: Salamah ibn Shabīb narrated to us, who narrated to us: ʿAbdullāh ibn Yazīd, from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ, who said: The Messenger of Allah (peace be upon him) said, "Do not marry women for their beauty, for perhaps their beauty may lead to their ruin. Do not marry them for their wealth, for perhaps their wealth may corrupt them. Marry them for their religion, and a devout black slave woman with a slit ear is better."

ثُمَّ إنَّهُمْ أَوَّلُ مُخَالِفِينَ لِمَا مَوَّهُوا بِهِ، لِأَنَّهُ لَيْسَ فِي نِكَاحِ الْمَرْأَةِ لِمَالِهَا - لَوْ أُبِيحَ ذَلِكَ أَوْ نُدِبَ إلَيْهِ - شَيْءٌ مِمَّا أَتَوْا بِهِ مِنْ التَّخْلِيطِ فِي الْفَرْقِ بَيْنَ صَدَاقٍ فِضَّةٍ مَضْرُوبَةٍ، وَذَهَبٍ مَضْرُوبٍ، وَبَيْنَ سَبَائِكِ فِضَّةٍ وَذَهَبٍ غَيْرِ مَضْرُوبَةٍ، وَالْفَرْقُ بَيْنَ إصْدَاقِ ثِيَابٍ، وَوِطَاءٍ، وَجَوْهَرٍ، وَخَادِمٍ، وَبَيْنَ إصْدَاقِ حَرِيرٍ، وَقُطْنٍ، وَكَتَّانٍ، وَصُوفٍ، وَدَابَّةٍ، وَمَاشِيَةٍ،

L31109 Moreover, they are the first to contradict the very pretenses they disguised, for even if a woman's marriage for her wealth were permitted or encouraged, none of the confusion they introduced pertains to it—such as distinguishing between a dowry of minted silver and minted gold and unminted silver and gold ingots; differentiating between a dowry of garments, bedding, jewels, and a servant and one of silk, cotton, linen, wool, livestock, a slave, or food; or distinguishing between settling three dinars or less of her debt and settling more than that. Thus, the grave corruption in conflating these statements becomes evident—and success is from Allah, the Most High.

وَعَبْدٍ، وَطَعَامٍ، وَالْفَرْقُ بَيْنَ قَضَاءِ ثَلَاثَةِ دَنَانِيرَ مِنْ دَيْنِهَا فَأَقَلَّ، وَبَيْنَ قَضَائِهَا أَكْثَرَ مِنْ ذَلِكَ - فَوَضَحَ عَظِيمُ فَسَادِ تَخْلِيطِ هَذِهِ الْأَقْوَالِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L31110 They may equivocate using what we mention from what we have narrated via the isnad of al-Ḥajjāj ibn al-Minhāl: from Hammām ibn Yaḥyá, from Qatādah, from Jalāl ibn Abī al-Jalāl al-ʿAtakī, from his father: A man proposed to another for the hand of his daughter by an Arab wife, who married her to him. He then substituted her with another daughter of his—whose mother was non-Arab. When the groom consummated the marriage, he later realized the deception. He approached Muʿāwiyah and relayed the matter. Muʿāwiyah said: "This is a knotty problem—and none can resolve it but Abū Ḥasan!"—for ʿAlī was a sworn enemy of Muʿāwiyah. The man requested: "Permit me to approach him?" Muʿāwiyah consented. The man went to ʿAlī ibn Abī Ṭālib and said: "Peace be upon you, O ʿAlī." ʿAlī returned the greeting, and the man recounted the story. ʿAlī ruled that the girl's father must equip his daughter—whom he had wedded to him—with a dowry equivalent to what he had given for her sister, due to having had intercourse with her. He further commanded him not to approach his wife until her sister's waiting period had ended.

وَرُبَّمَا يُمَوِّهُونَ بِمَا نَذْكُرُهُ مِمَّا رُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هَمَّامُ بْنُ يَحْيَى نا قَتَادَةُ عَنْ جَلَالِ بْنِ أَبِي الْجَلَالِ الْعَتَكِيِّ عَنْ أَبِيهِ أَنَّ رَجُلًا خَطَبَ إلَى رَجُلٍ ابْنَتَهُ مِنْ امْرَأَةٍ عَرَبِيَّةٍ فَأَنْكَحَهَا إيَّاهُ فَبَعَثَ إلَيْهِ بِابْنَةٍ لَهُ أُخْرَى أُمُّهَا أَعْجَمِيَّةٌ، فَلَمَّا دَخَلَ بِهَا عَلِمَ بَعْدَ ذَلِكَ فَأَتَى مُعَاوِيَةَ فَقَصَّ عَلَيْهِ؟ فَقَالَ: مُعْضِلَةٌ وَلَا أَبَا حَسَنٍ - وَكَانَ عَلِيٌّ حَرْبًا لِمُعَاوِيَةَ - فَقَالَ الرَّجُلُ لِمُعَاوِيَةَ فَأْذَنْ لِي أَنْ آتِيَهُ؟ فَأَذِنَ لَهُ مُعَاوِيَةُ، فَأَتَى الرَّجُلُ عَلِيَّ بْنَ أَبِي طَالِبٍ فَقَالَ: السَّلَامُ عَلَيْك يَا عَلِيُّ، فَرَدَّ عَلَيْهِ السَّلَامَ، فَقَصَّ عَلَيْهِ الْقِصَّةَ؟ فَقَضَى عَلِيٌّ عَلَى أَبِي الْجَارِيَةِ بِأَنْ يُجَهِّزَ ابْنَتَهُ الَّتِي أَنْكَحَهَا إيَّاهُ بِمِثْلِ الصَّدَاقِ الَّذِي سَاقَ مِنْهَا لِأُخْتِهَا بِمَا أَصَابَ مِنْ فَرْجِهَا، وَأَمَرَهُ أَنْ لَا يَمَسَّ امْرَأَتَهُ حَتَّى تَنْقَضِيَ عِدَّةُ أُخْتِهَا.

L31111 Al-Hajjaj ibn al-Minhal said: Hushaym informed me, stating: Al-Mughirah informed me from Ibrāhīm al-Nakhaʿī that a man married a young woman, but another was brought to him instead. Ibrāhīm said: "The mahr he stipulated is owed to the woman with whom he consummated the marriage, and the one who deceived him must present his rightful wife to him with a mahr equivalent to hers."

قَالَ الْحَجَّاجُ بْنُ الْمِنْهَالِ: وَأَخْبَرَنِي هُشَيْمٌ قَالَ: أَخْبَرَنِي الْمُغِيرَةُ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّ رَجُلًا تَزَوَّجَ جَارِيَةً فَأُدْخِلَ عَلَيْهِ غَيْرُهَا؟ فَقَالَ إبْرَاهِيمُ: لِلَّتِي دَخَلَ بِهَا الصَّدَاقُ الَّذِي سَاقَ، وَعَلَى الَّذِي غَرَّهُ أَنْ يَزِفَّ إلَيْهِ امْرَأَتَهُ بِمِثْلِ صَدَاقِهَا.

L31112–31113 Abu Muhammad said: All of this is upon them, not for them, for neither of these two reports indicates that the husband holds any right or interest in this matter. Rather, both texts establish that he must guarantee for the woman married to him—while another was escorted to him as a bride—her dowry, which he consumed for her, and which was given to another without right. Thus we say.

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّهُ عَلَيْهِمْ لَا لَهُمْ، لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْ هَذَيْنِ الْخَبَرَيْنِ أَنَّ لِلزَّوْجِ فِي ذَلِكَ حَقًّا وَلَا أَرَبًا، إنَّمَا فِيهِمَا أَنْ يَضْمَنَ لِلَّتِي زُوِّجَتْ مِنْهُ وَزُفَّ إلَيْهِ غَيْرُهَا صَدَاقَهَا الَّذِي اسْتَهْلَكَ لَهَا وَأُعْطِيَ لِغَيْرِهَا بِغَيْرِ حَقٍّ - وَهَكَذَا نَقُولُ.

L31114 Then, they differ from this narration reported from ʿAlī in two matters.

The first is that he assigned the woman who was escorted to him the dowry stipulated for her sister, whereas they do not hold this opinion. Instead, they rule that she is entitled to the dowry due to women of her equivalent status.

L31115 The second issue is Ali's instruction to him not to consummate the marriage with the woman with whom the marriage contract has been validly established until the waiting period of the other woman—who was formally married to him—has concluded. They do not endorse this view.

L31116 It is detestable, disgraceful, and sinful to engage in the deception of one who falsely suggests citing a narration as evidence while being the first to contradict it—and we seek refuge in Allah from disgrace—this is despite the fact that al-Jalāl ibn Abī al-Jalāl is not well-known.

L31117 And as informed to us by Ahmad ibn Qasim, from my father Qasim ibn Muhammad ibn Qasim, from my grandfather Qasim ibn Asbagh, from Ahmad ibn Zuhayr, from al-Hasan ibn Hammad, from Yahya ibn Ya'la, from Sa'id ibn Abi 'Arubah, from Qatadah, from al-Hasan, from Anas, who mentioned the story of Ali's proposal to Fatimah—may Allah be pleased with them both—and that Ali sold his armor for four hundred and eighty. He said: "I brought the money to the Messenger of Allah—peace and blessings of Allah be upon him—and placed it in his lap. He took a handful of it and said: 'O Bilal, buy us perfume with this,' and he commanded them to prepare her." He said: "A bed frame bound with palm-fiber ropes was made for us, a leather pillow stuffed with palm fiber, and the house was filled with sand."

L31118 Abu Muhammad said: This is a proof against them, for a handful of perfume, a bed fastened with a band, and a leather pillow stuffed with palm fiber do not collectively reach one-tenth of four hundred and eighty dirhams. Thus, the falsity of their claim becomes evident—and all praise is to Allah, Lord of the worlds.[4]

L31119 **The husband is obligated to clothe his wife.**

L31120–31122 1854 - Issue: The husband is obligated to provide clothing for the wife from

[4]**Qur'an references (L31118):** Qur'an 37:182 (As-Saffat).

ثُمَّ هُمْ يُخَالِفُونَ هَذِهِ الرِّوَايَةَ عَنْ عَلِيٍّ فِي مَوْضِعَيْنِ -: أَحَدُهُمَا - أَنَّهُ جَعَلَ لِلَّتِي زُفَّتْ إِلَيْهِ الصَّدَاقَ الَّذِي سُمِّيَ لِأُخْتِهَا، وَهُمْ لَا يَقُولُونَ بِهَذَا، بَلْ إِنَّمَا يَقْضُونَ لَهَا بِصَدَاقِ مِثْلِهَا.

وَالْمَوْضُوعُ الثَّانِي - أَمْرُ عَلِيٍّ لَهُ أَنْ لَا يَطَأَ الَّتِي صَحَّ نِكَاحُهُ مَعَهَا إِلَّا حَتَّى تَنْقَضِيَ عِدَّةُ الْأُخْرَى الَّتِي زُفَّتْ إِلَيْهِ، وَهُمْ لَا يَقُولُونَ بِهَذَا.

فَمِنْ الْمَقْتِ وَالْعَارِ وَالْإِثْمِ تَمْوِيهُ مَنْ يُوهِمُ أَنَّهُ يَحْتَجُّ بِأَثَرٍ هُوَ أَوَّلُ مَنْ يُخَالِفُهُ - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ - هَذَا مَعَ أَنَّ الْجَلَالَ بْنَ أَبِي الْجَلَالِ غَيْرُ مَشْهُورٍ.

وَبِمَا أَخْبَرَنَاهُ أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا أَحْمَدُ بْنُ زُهَيْرٍ نا الْحَسَنُ بْنُ حَمَّادٍ نا يَحْيَى بْنُ يَعْلَى عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ أَنَسٍ فَذَكَرَ خِطْبَةَ عَلِيٍّ فَاطِمَةَ - رَضِيَ اللَّهُ عَنْهُمَا - «وَأَنَّ عَلِيًّا بَاعَ دِرْعَهُ بِأَرْبَعِمِائَةٍ وَثَمَانِينَ قَالَ: فَأَتَيْتُ بِهَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَضَعْتُهَا فِي حِجْرِهِ فَقَبَضَ مِنْهَا قَبْضَةً فَقَالَ: يَا بِلَالُ أَبْغِنَا بِهَا طِيبًا، وَأَمَرَهُمْ أَنْ يُجَهِّزُوهَا» قَالَ: فَجُعِلَ لَنَا سَرِيرٌ مَشْرُوطٌ بِالشَّرْطِ وَوِسَادَةٌ مِنْ أُدْمٍ حَشْوُهَا لِيفٌ وَمِلْءُ الْبَيْتِ كَثِيبًا.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا حُجَّةٌ عَلَيْهِمْ، لِأَنَّهُ لَا تَبْلُغُ قَبْضَةٌ فِي طِيبٍ، وَسَرِيرٌ مَشْرُوطٌ بِالشَّرِيطِ، وَوِسَادَةٌ مِنْ أُدْمٍ حَشْوُهَا لِيفٌ: عُشْرَ أَرْبَعِمِائَةِ دِرْهَمٍ وَثَمَانِينَ دِرْهَمًا - فَظَهَرَ فَسَادُ قَوْلِهِمْ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ

[مَسْأَلَةٌ عَلَى الزَّوْجِ كِسْوَةُ الزَّوْجَةِ]

the time the marriage contract is concluded, along with her maintenance, what she uses to lie on, cover herself with, and spread out, and her housing as well—whether she is a minor or an adult, whether she has a father or... An orphan girl—whether wealthy or poor, whether invited to the establishment or not, whether she was disobedient or compliant, whether free or enslaved, whether assigned a dwelling with him or not.

L31123 The proof of this is what we have narrated through the chain of Abū Dāwūd: Mūsā ibn Ismāʿīl narrated to us, Ḥammād ibn Salamah narrated to us, Abū Qazaʿah al-Bāhilī narrated to us from Ḥakīm ibn Muʿāwiyah al-Qushayrī, who said: "I asked: 'O Messenger of God, what right does a wife have over her husband?' He replied: 'Feed her when you eat, clothe her when you clothe yourself, do not strike her face, do not revile her, and do not shun her except within the house.'"[5]

L31124 Abu Muhammad said: This Abu Qazaʿah (he is Suwayd ibn Hujayr) is reliable. Shuʿbah, Ibn Jurayj, Hammad ibn Salamah, his son is Qazaʿah, and others besides them transmitted from him.

L31125 From the chain of Muslim: Al-Hajjaj narrated to us, Ishaq ibn Ibrahim - who is Ibn Rahawayh - narrated to us from Hatim ibn Isma'il from Ja'far ibn Muhammad ibn Ali ibn al-Husayn from his father from Jabir ibn Abdullah: "The Messenger of Allah - peace and blessings of Allah be upon him - said in his sermon at Arafah on the Day of Arafah: 'Fear Allah concerning women, for you have taken them under Allah's trust and made their private parts lawful by the word of Allah, Exalted is He. You have the right over them that they do not permit anyone you dislike to tread your beds. If they do so, strike them without severity. They have the right over you to receive their provision and clothing in a fair manner.'"

L31126 The Messenger of Allah (peace be upon him) addressed all women, excluding none—not a rebellious woman, nor a young or old woman, nor a female slave

[5]**Hadith references (L31123):** Mishkat al-Masabih 3259.

١٨٥٤ - مَسْأَلَةٌ: وَعَلَى الزَّوْجِ كِسْوَةُ الزَّوْجَةِ - مُذْ يَعْقِدُ النِّكَاحَ - وَنَفَقَتُهَا، وَمَا تَتَوَطَّاهُ وَتَتَغَطَّاهُ وَتَفْتَرِشُهُ، وَإِسْكَانُهَا كَذَلِكَ أَيْضًا - صَغِيرَةً أَوْ كَبِيرَةً - ذَاتَ أَبٍ أَوْ يَتِيمَةً - غَنِيَّةً أَوْ فَقِيرَةً - دُعِيَ إلَى الْبِنَاءِ أَوْ لَمْ يُدْعَ نَشَزَتْ أَوْ لَمْ تَنْشِزْ - حُرَّةً كَانَتْ أَوْ أَمَةً - بُوِّئَتْ مَعَهُ بَيْتًا أَوْ لَمْ تُبَوَّأْ.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا مُوسَى بْنُ إسْمَاعِيلَ نا حَمَّادُ بْنُ سَلَمَةَ نا أَبُو قَزَعَةَ الْبَاهِلِيُّ " عَنْ حَكِيمِ بْنِ مُعَاوِيَةَ الْقُشَيْرِيِّ قَالَ «قُلْتُ: يَا رَسُولَ اللَّهِ مَا حَقُّ زَوْجَةِ أَحَدِنَا عَلَيْهِ؟ قَالَ: أَنْ تُطْعِمَهَا إذَا طَعِمْتُ وَتَكْسُوَهَا إذَا اكْتَسَيْتُ، وَلَا تَضْرِبْ الْوَجْهَ، وَلَا تُقَبِّحْ، وَلَا تَهْجُرْ إلَّا فِي الْبَيْتِ» .

قَالَ أَبُو مُحَمَّد: أَبُو قَزَعَةَ هَذَا - هُوَ سُوَيْدُ بْنُ حُجَيْرٍ - ثِقَةٌ، رَوَى عَنْهُ شُعْبَةُ، وَابْنُ جُرَيْجٍ، وَحَمَّادُ بْنُ سَلَمَةَ، وَابْنُهُ قَزَعَةُ، وَغَيْرُهُمْ.

وَمِنْ طَرِيقِ مُسْلِمٍ نا الْحَجَّاجُ نا إسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - عَنْ حَاتِمِ بْنِ إسْمَاعِيلَ عَنْ جَعْفَرِ بْنِ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ أَبِيهِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي خُطْبَتِهِ فِي عَرَفَةَ يَوْمَ عَرَفَةَ: فَاتَّقُوا اللَّهَ فِي النِّسَاءِ فَإِنَّكُمْ أَخَذْتُمُوهُنَّ بِأَمَانِ اللَّهِ وَاسْتَحْلَلْتُمْ فُرُوجَهُنَّ بِكَلِمَةِ اللَّهِ تَعَالَى وَلَكُمْ عَلَيْهِنَّ أَنْ لَا يُوطِئْنَ فُرُشَكُمْ أَحَدًا تَكْرَهُونَهُ، فَإِنْ فَعَلْنَ ذَلِكَ فَاضْرِبُوهُنَّ ضَرْبًا غَيْرَ مُبَرِّحٍ وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ» .

فَعَمَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلَّ النِّسَاءِ وَلَمْ يَخُصَّ نَاشِزًا مِنْ غَيْرِهَا، وَلَا صَغِيرَةً وَلَا كَبِيرَةً، وَلَا أَمَةً مُبَوَّأَةً بَيْتًا مِنْ غَيْرِهَا {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

settled in a home. “He does not speak from [his own] desire” (53:3). “It is but a revelation revealed” (53:4). “Your Lord is never forgetful” (19:64).[6]

L31127–31129 From Yunus ibn Abdullah, from Ahmad ibn Abdullah ibn Abd al-Rahman, from Ahmad ibn Khalid, from Muhammad ibn Abd al-Salam al-Khushani, from Muhammad ibn Bashshār, from Yahya ibn Sa’id al-Qattan, from Ubaydullah ibn Umar who informed me on the authority of Nafi’, on the authority of Ibn Umar, who said: Umar ibn al-Khattab wrote to the commanders of the armies: “Look to...” Whoever’s absence is prolonged, they must send maintenance or ensure their return—and he mentioned the remainder of the narration, for ‘Umar did not exempt any woman from another—: Narrated by Muḥammad ibn Saʿīd ibn Nabāt from Aḥmad ibn ʿAwn Allāh from Qāsim ibn Aṣbagh from Muḥammad ibn ʿAbd al-Salām al-Khushaniyy from Muḥammad ibn Bashshār from Muḥammad ibn Jaʿfar Ghundar from Shuʿbah, who said: I asked al-Ḥakam ibn ʿUtaybah about a woman who left her husband’s house in anger—does she have maintenance? He replied: Yes.

نا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ أَخْبَرَنِي نَافِعٌ عَنِ ابْنِ عُمَرَ قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إِلَى أُمَرَاءِ الْأَجْنَادِ: أَنْ انْظُرُوا إِلَى مَنْ طَالَتْ غَيْبَتُهُ أَنْ يَبْعَثُوا بِنَفَقَةٍ أَوْ يَرْجِعُوا - وَذَكَرَ بَاقِيَ الْخَبَرِ، فَلَمْ يَسْتَثْنِ عُمَرُ امْرَأَةً مِنِ امْرَأَةٍ -: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ قَالَ: سَأَلْتُ الْحَكَمَ بْنَ عُتَيْبَةَ عَنِ امْرَأَةٍ خَرَجَتْ مِنْ بَيْتِ زَوْجِهَا غَاضِبَةً هَلْ لَهَا نَفَقَةٌ؟ قَالَ: نَعَمْ.

L31130 Abū Muḥammad said: It has been narrated to us from about five of the Followers (Tābiʿīn) that there is no financial maintenance for a wife in a state of nushūz. This is a mistaken view—we are unaware of any valid evidence for its proponents.

قَالَ أَبُو مُحَمَّدٍ: وَرُوِّينَا عَنْ نَحْوِ خَمْسَةٍ مِنَ التَّابِعِينَ: لَا نَفَقَةَ لِنَاشِزٍ - وَهَذَا قَوْلٌ خَطَأٌ مَا نَعْلَمُ لِقَائِلِهِ حُجَّةً.

L31131 If it is said: “Is maintenance [owed] in exchange for intercourse and obedience?” We reply: No. Rather, this statement is a lie, and you yourselves are the first to refute it. As for the Ḥanafīs and Shāfiʿīs, they obligate maintenance on the minor husband for the older wife, while there is neither intercourse nor obedience there.

فَإِنْ قِيلَ: إِنَّ النَّفَقَةَ بِإِزَاءِ الْجِمَاعِ، وَالطَّاعَةِ؟ قُلْنَا: لَا، بَلْ هَذَا الْقَوْلُ كَذِبٌ، وَأَوَّلُ مَنْ يُبْطِلُهُ أَنْتُمْ، أَمَّا الْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ فَيُوجِبُونَ النَّفَقَةَ عَلَى الزَّوْجِ الصَّغِيرِ عَلَى الْكَبِيرَةِ، وَلَا جِمَاعَ هُنَالِكَ وَلَا طَاعَةَ.

L31132 The Hanafis, Malikis, and Shafiʿis obligate the eunuch and the impotent to provide maintenance. There is no disagreement regarding the obligation of maintenance for the sick woman with whom sexual intercourse is impossible. Allah, the Exalted, has clarified the ruling for the disobedient wife, stating: *“As for those women whose defiance you fear, admonish them, refrain from

وَالْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: يُوجِبُونَ النَّفَقَةَ عَلَى " الْمَجْبُوبِ وَالْعِنِّينِ " وَلَا خِلَافَ فِي وُجُوبِ النَّفَقَةِ عَلَى الْمَرِيضَةِ الَّتِي لَا يُمْكِنُ جِمَاعُهَا، وَقَدْ بَيَّنَ اللَّهُ عَزَّ وَجَلَّ مَا عَلَى النَّاشِزِ فَقَالَ: {وَاللاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلا تَبْغُوا عَلَيْهِنَّ سَبِيلا} [النساء: ٣٤] .

[6] **Qur’an references (L31126):** Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm); Qur’an 19:64 (Maryam).

sharing beds with them, and strike them. If they obey you, then do not seek to harm them"* [Quran 4:34].[7]

فَأَخْبَرَ عَزَّ وَجَلَّ أَنَّهُ لَيْسَ عَلَى النَّاشِزِ إِلَّا الْهَجْرُ وَالضَّرْبُ، وَلَمْ يُسْقِطْ عَزَّ وَجَلَّ نَفَقَتَهَا وَلَا كِسْوَتَهَا - فَعَاقَبْتُمُوهُنَّ أَنْتُمْ بِمَنْعِهَا حَقَّهَا، وَهَذَا شَرْعٌ فِي الدِّينِ لَمْ يَأْذَنْ بِهِ اللَّهُ، فَهُوَ بَاطِلٌ.

L31133 He, the Almighty and Majestic, declared that against the rebellious woman there is only abandonment and striking, and He did not nullify her maintenance nor her clothing. Yet you punish her by depriving her of her right, and this is a religious ruling which Allah has not permitted - thus it is invalid.

فَإِنْ قَالُوا: إِنَّهَا ظَالِمَةٌ بِنُشُوزِهَا؟ قُلْنَا: نَعَمْ، وَلَيْسَ كُلُّ ظَالِمٍ يَحِلُّ مَنْعُهُ مِنْ مَالِهِ إِلَّا أَنْ يَأْتِيَ بِذَلِكَ نَصٌّ، وَإِلَّا فَلَيْسَ هُوَ حُكْمُ اللَّهِ، هَذَا حُكْمُ الشَّيْطَانِ، وَظُلْمَةُ الْعُمَّالِ وَالشُّرْطِ.

L31134 If they say, "She is oppressive due to her marital disobedience?" We say: "Yes, but not every oppressor may be lawfully deprived of their wealth unless there is an explicit text regarding that. Otherwise, this is not the ruling of Allah; it is the ruling of Satan and the injustice of authorities and police."

وَالْعَجَبُ كُلُّهُ أَنَّهُمْ لَا يُسْقِطُونَ قَرْضًا أَقْرَضَتْهُ إِيَّاهُ مِنْ أَجْلِ نُشُوزِهَا؟ فَمَا ذَنْبُ نَفَقَتِهَا تَسْقُطُ دُونَ سَائِرِ حُقُوقِهَا إِنَّ هَذَا لَعَجَبٌ عَجِيبٌ؟

L31135 Is it not utterly astonishing that they do not cancel a loan she gave him because of her disobedience? What then is the fault of her maintenance that it alone is nullified without her other rights? Truly, this is a wonder most astounding!

وَقَالَ بِوُجُوبِ النَّفَقَةِ عَلَى الصَّغِيرَةِ: سُفْيَانُ الثَّوْرِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُنَا.

L31136 Sufyan al-Thawri, Abu Sulayman, and our companions held the opinion that financial maintenance is obligatory upon guardians for the female minor.

وَمَا نَعْلَمُ لِمَنْ أَسْقَطَهَا حُجَّةً أَصْلًا، فَهُوَ بَاطِلٌ بِلَا شَكٍّ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] فَصَحَّ أَنَّ مَنْ لَا بُرْهَانَ لَهُ عَلَى صِحَّةِ قَوْلِهِ فَقَوْلُهُ بَاطِلٌ.

L31137–31139 We know of no valid argument whatsoever for those who abolish it; therefore, it is unquestionably null and void. Allah, the Exalted and Majestic, has said: "Say, 'Produce your proof, if you are truthful.'" [Al-Baqarah: 111] Thus, it is established that whoever lacks proof to substantiate their claim, their statement is invalid.[8]

وَقَالَ مَالِكٌ: لَا نَفَقَةَ عَلَى الزَّوْجِ إِلَّا حَتَّى يُدْعَى إِلَى الْبِنَاءِ.

L31140 Malik said: There is no maintenance obligation on the husband until he is called to consummate the marriage.

قَالَ أَبُو مُحَمَّد: هَذَا الْحُكْمُ دَعْوَى مُجَرَّدَةٌ لَا بُرْهَانَ عَلَى صِحَّتِهَا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ صَحِيحٍ.

L31141 Abu Muhammad said: This ruling is a baseless claim with no proof for its validity—neither from the Qur'an, nor from the Sunnah, nor the statement of a Companion, nor analogy, nor valid personal judgment.

[7] **Qur'an references (L31132):** Qur'an 4:34 (An-Nisa).
[8] **Qur'an references (L31137):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

L31142 We have clarified that the authentically established Sunnah is contrary to it; therefore, it is invalid. And success is from Allah, the Most High.

L31143 **A case where a man divorces his wife before consummating the marriage, having specified a mahr (dowry) to which she consented.**

L31144 Issue 1855: It is not permissible for the father of a virgin—whether she is a minor or an adult—or of a previously married woman, nor for any other relative or non-relative, to dispose of any portion of the daughter's or female relative's dowry. None of those mentioned may gift it—whether in whole or in part—to the husband, whether he divorces her or retains her, nor to anyone else. If they perform any such action, it is null, void, and irrevocably invalid forever.

L31145 She has the right to gift her mahr (bridal gift owed to her) or a portion of it to whomever she wishes, and neither the father nor the husband may object to this - provided she is of legal age, sound mind, and retains financial security after it [the gifting]. If these conditions are unmet, it is impermissible.

L31146 The meaning of Allah's statement, the Almighty: {But if you divorce them before you have touched them and you have already specified for them a mahr which they accepted, then [give them] half of what you specified—unless they forgo it or the husband waives it} [Al-Baqarah: 237] is that if a man divorces his wife before consummating the marriage—after having specified a mahr she accepted—she is entitled to half of the mahr designated for her, unless she forgoes it, taking nothing from her husband and relinquishing her rightful half, or unless the husband waives his right and gives her the full amount. Whichever of them does this is closer to piety.[9]

L31147 This is a matter regarding which the early scholars differed: A group held that "the one in whose hand is the marriage contract" refers to the husband, as we have said. It was narrated to us via the chain of al-Ḥajjāj ibn al-Minhāl → Jarīr ibn Ḥāzim → ʿĪsā ibn ʿĀṣim → Shurayḥ, who said: "'Alī ibn Abī Ṭālib asked me about *"the one in whose hand is the marriage contract"*

[9] **Qur'an references (L31146):** Qur'an 2:237 (Al-Baqarah).

وَقَدْ بَيَّنَّا أَنَّ السُّنَّةَ الثَّابِتَةَ جَاءَتْ بِخِلَافِهِ فَهُوَ سَاقِطٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ طَلَّقَهَا قَبْلَ أَنْ يَطَأَ وَقَدْ سَمَّى لَهَا صَدَاقًا رَضِيَتْهُ]

١٨٥٥ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَبِ الْبِكْرِ - صَغِيرَةً كَانَتْ أَوْ كَبِيرَةً - أَوْ الثَّيِّبِ، وَلَا لِغَيْرِهِ مِنْ سَائِرِ الْقَرَابَةِ أَوْ غَيْرِهِمْ: حُكْمٌ فِي شَيْءٍ مِنْ صَدَاقِ الِابْنَةِ، أَوْ الْقَرِيبَةِ، وَلَا لِأَحَدٍ مِمَّنْ ذَكَرْنَا أَنْ يَهَبَهُ، وَلَا شَيْئًا مِنْهُ، لَا لِلزَّوْجِ - طَلَّقَ أَوْ أَمْسَكَ - وَلَا لِغَيْرِهِ، فَإِنْ فَعَلُوا شَيْئًا مِنْ ذَلِكَ فَهُوَ مَفْسُوخٌ بَاطِلٌ مَرْدُودٌ أَبَدًا.

وَلَهَا أَنْ تَهَبَ صَدَاقَهَا أَوْ بَعْضَهُ لِمَنْ شَاءَتْ، وَلَا اعْتِرَاضَ لِأَبٍ وَلَا لِزَوْجٍ فِي ذَلِكَ - هَذَا إذْ كَانَتْ بَالِغَةً عَاقِلَةً بَقِيَ لَهَا بَعْدَهُ غِنًى وَإِلَّا فَلَا.

وَمَعْنَى قَوْلِهِ عَزَّ وَجَلَّ: {فَنِصْفُ مَا فَرَضْتُمْ إلا أَنْ يَعْفُونَ أَوْ يَعْفُوَ الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] إنَّمَا هُوَ أَنَّ الْمَرْأَةَ إذَا طَلَّقَهَا زَوْجُهَا قَبْلَ أَنْ يَطَأَهَا - وَقَدْ كَانَ سَمَّى لَهَا صَدَاقًا رَضِيَتْهُ - فَلَهَا نِصْفُ صَدَاقِهَا الَّذِي سُمِّيَ لَهَا، إلَّا أَنْ تَعْفُوَ هِيَ فَلَا تَأْخُذُ مِنْ زَوْجِهَا شَيْئًا مِنْهُ وَتَهَبُ لَهُ النِّصْفَ الْوَاجِبَ لَهَا، أَوْ يَعْفُوَ الزَّوْجُ فَيُعْطِيَهَا الْجَمِيعَ، فَأَيُّهُمَا فَعَلَ ذَلِكَ فَهُوَ أَقْرَبُ لِلتَّقْوَى.

وَهَذَا مَكَانٌ اخْتَلَفَ فِيهِ السَّلَفُ -: فَقَالَتْ طَائِفَةٌ: الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ هُوَ الزَّوْجُ كَمَا قُلْنَا -: رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا جَرِيرُ بْنُ حَازِمٍ سَمِعْت عِيسَى بْنَ عَاصِمٍ

[Quran 2:237]? I replied: 'It is the guardian.' ʿAlī said: **'Rather, it is the husband.'"**[10]

يَقُولُ: سَمِعْت شُرَيْحًا يَقُولُ: سَأَلَنِي عَلِيُّ بْنُ أَبِي طَالِبٍ عَنْ {الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] ؟ فَقُلْت: هُوَ الْوَلِيُّ، فَقَالَ عَلِيٌّ: بَلْ هُوَ الزَّوْجُ.

L31148 On the authority of Ḥammād ibn Salamah, from ʿAlī ibn Zayd, from ʿAmmār ibn Abī ʿAmmār, from Ibn ʿAbbās, who said: "He is the husband."

مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَلِيِّ بْنِ زَيْدٍ عَنْ عَمَّارِ بْنِ أَبِي عَمَّارٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: هُوَ الزَّوْجُ.

L31149–31151 And from the narration of Abd al-Razzaq from Ma'mar from Salih ibn Kaysan: that Nafi' ibn Jubayr ibn Mut'im married a woman and divorced her before consummating the marriage with her, so he completed the dowry for her and interpreted the words of Allah, the Mighty and Majestic: "The one in whose hand lies the bond of marriage" [Al-Baqarah: 237], referring to the husband.[11]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ صَالِحِ بْنِ كَيْسَانَ: أَنَّ نَافِعَ بْنَ جُبَيْرِ بْنِ مُطْعِمٍ تَزَوَّجَ امْرَأَةً فَطَلَّقَهَا قَبْلَ أَنْ يَبْنِيَ بِهَا فَأَكْمَلَ لَهَا الصَّدَاقَ وَتَأَوَّلَ قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] يَعْنِي الزَّوْجَ.

L31152 And from the transmission of Abd al-Razzaq from Ma'mar from Ayyub al-Sikhtiyānī from Muhammad ibn Sirin from Shurayh, who said: 'He is the husband.'

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ شُرَيْحٍ قَالَ: هُوَ الزَّوْجُ.

L31153 From Aḥmad ibn ʿUmar al-ʿUdhri, from Makkī ibn ʿĪsūn, from Aḥmad ibn ʿAbd Allāh ibn Ruzayq, from Aḥmad ibn ʿAmr ibn Jābir, from Muḥammad ibn Ḥammād al-Ṭahrānī, from ʿAbd al-Razzāq – from Qatādah and Ibn Abī Najīḥ. Qatādah said: From Saʿīd ibn al-Musayyib, while Ibn Abī Najīḥ said: From Mujāhid. Both Qatādah and Ibn Abī Najīḥ jointly affirmed that Saʿīd ibn al-Musayyib and Mujāhid stated regarding the verse *The one in whose hand is the knot of marriage* [2:237]: He is the husband.[12]

نا أَحْمَدُ بْنُ عُمَرَ الْعُذْرِيُّ نا مَكِّيُّ بْنُ عِيسُونَ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ رُزَيْقٍ نا أَحْمَدُ بْنُ عَمْرِو بْنِ جَابِرٍ نا مُحَمَّدُ بْنُ حَمَّادٍ الطَّهْرَانِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ قَتَادَةَ، وَابْنِ أَبِي نَجِيحٍ، قَالَ قَتَادَةُ: عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، وَقَالَ ابْنُ أَبِي نَجِيحٍ: عَنْ مُجَاهِدٍ، قَالَا جَمِيعًا: سَعِيدُ بْنُ الْمُسَيَّبِ، وَمُجَاهِدٌ: {الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] هُوَ الزَّوْجُ.

L31154 Mujāhid, Ṭāwus, and the people of Medina said: "He is the guardian." He said: "Thereupon I informed them of the statement of Saʿīd ibn Jubayr, and they withdrew their earlier view."

وَقَالَ مُجَاهِدٌ، وَطَاوُسٌ، وَأَهْلُ الْمَدِينَةِ: هُوَ الْوَلِيُّ، قَالَ: فَأَخْبَرْتهمْ بِقَوْلِ سَعِيدِ بْنِ جُبَيْرٍ فَرَجَعُوا عَنْ قَوْلِهِمْ.

L31155 From the chain of Ibn Abī Shaybah, it was narrated to me by 'Abd al-Wahhāb

[10] **Qur'an references (L31147):** Qur'an 2:237 (Al-Baqarah).
[11] **Qur'an references (L31149):** Qur'an 2:237 (Al-Baqarah).
[12] **Qur'an references (L31153):** Qur'an 2:237 (Al-Baqarah).

ibn ʻAbd al-Majīd al-Thaqafī, who informed us from ʻUbayd Allāh ibn ʻUmar, from Nāfiʻ - the freed slave of Ibn ʻUmar - that he said: "'The one in whose hand lies the knot of marriage' [Al-Baqarah 2:237] is the husband."[13]

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ حَدَّثَنِي عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ نَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ أَنَّهُ قَالَ: {الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] الزَّوْجُ.

L31156 By the transmission of al-Ḥajjāj ibn al-Minhāl, on the authority of Abū ʿAwānah from Abū Bishr—he is Jaʿfar ibn Iyās ibn Abī Waḥshiyyah—from Saʿīd ibn Jubayr, who said: {The one in whose hand is the authority over the marriage bond} [Al-Baqarah: 237] refers to the husband.[14]

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ أَبِي بِشْرٍ - هُوَ جَعْفَرُ بْنُ إِيَاسِ بْنِ أَبِي وَحْشِيَّةَ - عَنْ سَعِيدِ بْنِ جُبَيْرٍ، قَالَ {الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] هُوَ الزَّوْجُ.

L31157 Through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī, Ibrāhīm ibn Ḥamzah, ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī, ʿUmayr – the client of Ghafrah – who heard Muḥammad ibn Kaʿb al-Quraẓī say: "The one in whose hand is the knot of marriage" [Al-Baqarah: 237] refers to the husband.[15]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا إِبْرَاهِيمُ بْنُ حَمْزَةَ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ عُمَيْرٍ مَوْلَى غَفْرَةَ أَنَّهُ سَمِعَ مُحَمَّدَ بْنَ كَعْبٍ الْقُرَظِيَّ يَقُولُ: {الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] هُوَ الزَّوْجُ.

L31158 Through the chain of Ismaʿīl: Muḥammad ibn Abī Bakr al-Muqaddamī narrated to us, Muʿtamir ibn Sulaymān al-Taymī narrated to us, from Layth, from ʿAṭāʾ ibn Abī Rabāḥ: "The one in whose hand is the marriage tie" [al-Baqarah 2:237]—he is the husband.[16]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نَا مُحَمَّدُ بْنُ أَبِي بَكْرٍ الْمُقَدَّمِيُّ نا مُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ لَيْثٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ {الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] هُوَ الزَّوْجُ.

L31159 From the chain of Qāsim ibn Aṣbagh: Muḥammad ibn ʿAbd al-Salām al-Khushanī reported to us, from Muḥammad ibn al-Muthannā, who reported to us, from ʿAbd al-Aʿlā, who reported to us, from Saʿīd ibn Abī ʿArūbah, from Qatādah, who said regarding "The one in whose hand is the knot of marriage" [Al-Baqarah 2:237]: "He is the husband."[17]

وَمِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الْأَعْلَى نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ قَالَ {الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] هُوَ الزَّوْجُ.

L31160 And through the chain of transmission of Ismāʿīl: ʿAlī ibn al-Madīnī narrated to us from Sufyān ibn ʿUyaynah, from Ibn Shubrumah, who said: It is the husband—and this is the position of al-Awzāʿī, Sufyān al-Thawrī, al-

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نَا عَلِيُّ بْنُ الْمَدِينِيِّ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ ابْنِ شُبْرُمَةَ قَالَ: هُوَ الزَّوْجُ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَاللَّيْثِ بْنِ سَعْدٍ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

[13] **Qur'an references (L31155):** Qur'an 2:237 (Al-Baqarah).
[14] **Qur'an references (L31156):** Qur'an 2:237 (Al-Baqarah).
[15] **Qur'an references (L31157):** Qur'an 2:237 (Al-Baqarah).
[16] **Qur'an references (L31158):** Qur'an 2:237 (Al-Baqarah).
[17] **Qur'an references (L31159):** Qur'an 2:237 (Al-Baqarah).

Layth ibn Saʿd, Abū Ḥanīfah, al-Shāfiʿī, Abū Thawr, Abū Sulaymān, and their companions.

وَقَالَتْ طَائِفَةٌ: هُوَ الْوَلِيُّ صَحَّ ذَلِكَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ إنْ عَفَا وَلِيُّهَا {الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] وَضَنَّتْ جَازَ، وَإِنْ أَبَتْ.

L31161–31162 A group of scholars said: He is the guardian. This is authentically reported from Ibn Abbas—that if her guardian, "the one who holds the authority of marriage" [Al-Baqarah: 237], pardons [the matter] and she withholds [consent], it is permissible. But if she refuses, [it applies].[18]

وَصَحَّ أَيْضًا عَنْ جَابِرِ بْنِ زَيْدٍ كَانَ يَقُولُ: أَوْ يَعْفُوَ أَبُوهَا أَوْ أَخُوهَا إنْ كَانَ وُصُولًا وَإِنْ كَرِهَتْ الْمَرْأَةُ.

L31163 It is also authentically reported from Jabir ibn Zayd that he would say: "Either her father or her brother may pardon if he has the authority, even if the woman detests it."

وَصَحَّ أَيْضًا عَنْ عَطَاءٍ، وَعَلْقَمَةَ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَالْحَسَنِ الْبَصْرِيِّ، وَأَبِي الزِّنَادِ، وَعِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ.

L31164 It has also been authentically established from ʿAṭāʾ, ʿAlqamah, Ibrāhīm al-Nakhaʿī, al-Shaʿbī, al-Ḥasan al-Baṣrī, Abū al-Zināḍ, and ʿIkrimah, the freed slave of Ibn ʿAbbās.

وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ قَوْلًا لَمْ يَصِحَّ عَنْهُ لِأَنَّهُ مِنْ طَرِيقِ الْكَلْبِيِّ أَنَّهُ وَلِيُّ الْبِكْرِ جُمْلَةً - وَصَحَّ عَنْ الزُّهْرِيِّ قَوْلٌ آخَرُ وَهُوَ أَنَّهُ الْأَبُ جُمْلَةً. وَقَوْلٌ خَامِسٌ: رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ رَبِيعَةَ، وَزَيْدِ بْنِ أَسْلَمَ أَنَّهُ السَّيِّدُ يَعْفُو عَنْ صَدَاقِ أَمَتِهِ، وَالْأَبُ خَاصَّةً فِي ابْنَتِهِ الْبِكْرِ خَاصَّةً: يَجُوزُ عَقْدُهُ عَنْ صَدَاقِهَا - وَهُوَ قَوْلُ مَالِكٍ.

L31165 It has been reported to us from Ibn Abbas a statement not authenticated from him, as it comes through al-Kalbi's chain, stating that guardianship over the virgin rests entirely [with the designated guardian]. An authenticated report from al-Zuhri presents another view: that guardianship belongs entirely to the father. A fifth opinion is narrated through Malik from Rabi'ah and Zayd ibn Aslam: the master may waive the dowry of his female slave, while the father specifically holds authority over his virgin daughter specifically - he may conclude the marriage contract pertaining to her dowry. This is the opinion of Malik.

قَالَ أَبُو مُحَمَّد: فَنَظَرْنَا فِي هَذِهِ الْأَقْوَالِ -: فَوَجَدْنَا قَوْلَ رَبِيعَةَ، وَزَيْدِ بْنِ أَسْلَمَ، وَمَالِك أَظْهَرَهَا فَسَادًا وَأَبْعَدَهَا عَنْ مُقْتَضَى الْآيَةِ جُمْلَةً وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ بِقَوْلِهِ: {أَوْ يَعْفُوَ الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] سَيِّدَ الْأَمَةِ وَوَالِدَ الْبِكْرِ خَاصَّةً لَمَا سَتَرَهُ وَلَا كَتَمَهُ فَلَمْ يُبَيِّنْهُ فِي كِتَابِهِ، وَلَا عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L31166 Abu Muhammad said: We examined these opinions—and found the view of Rabiʿah, Zayd ibn Aslam, and Malik to be the most manifestly flawed and entirely furthest from the dictate of the verse as a whole. We testify by the testimony of Allah, the Almighty, that had Allah the Exalted intended by His words {or the one in whose hand is the marriage tie} [Al-Baqarah 2:237] to mean specifically the master of the female slave and the father of the virgin, He would not have concealed it nor withheld it. He did not clarify this in His Book nor upon the tongue of His Messenger—peace be upon him.[19]

[18] **Qur'an references (L31162):** Qur'an 2:237 (Al-Baqarah).
[19] **Qur'an references (L31166):** Qur'an 2:237 (Al-Baqarah).

L31167 If it is said: “The marriage of the female slave and the virgin is not valid except through their contract?” We say: Yes, and it is also invalid except with the husband’s consent; otherwise, it is invalid. Thus, the husband holds the same authority regarding this matter as the master over a slave and the father over a virgin, equally. Therefore, whoever claims these two have greater entitlement to hold the marriage contract in their hands than the husband - despite the specification of the verse - without evidence from the Qur’an, nor a sound Sunnah, nor a weak narration, nor a Companion’s statement, nor analogy, nor an opinion with any valid basis - then this opinion is entirely invalidated. With its invalidation, al-Zuhrī’s opinion that “it is the father” also falls away completely. Similarly, the opinion authentically attributed to him that “he is the guardian of the virgin” is entirely invalidated.

فَإِنْ قِيلَ: هَذَانِ لَا يَصِحُّ نِكَاحُ الْأَمَةِ وَالْبِكْرِ إِلَّا بِعَقْدِهِمَا؟ قُلْنَا: نَعَمْ، وَلَا يَصِحُّ أَيْضًا إِلَّا بِرِضَا الزَّوْجِ وَإِلَّا فَلَا، فَلَهُ فِي ذَلِكَ كَالَّذِي لِلسَّيِّدِ، وَلِلْأَبِ سَوَاءً سَوَاءً، فَمَنْ جَعَلَهُمَا أَوْلَى بِأَنْ يَكُونَ بِأَيْدِيهِمَا عُقْدَةُ النِّكَاحِ مِنْ الزَّوْجِ مَعَ تَخْصِيصِ الْآيَةِ بِلَا بُرْهَانٍ مِنْ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ؟ فَسَقَطَ هَذَا الْقَوْلُ جُمْلَةً وَسَقَطَ بِسُقُوطِهِ قَوْلُ الزُّهْرِيِّ: إنَّهُ الْأَبُ أَيْضًا جُمْلَةً - وَكَذَلِكَ سَقَطَ أَيْضًا الْقَوْلُ الَّذِي صَحَّ عَنْهُ أَنَّهُ وَلِيُّ الْبِكْرِ جُمْلَةً.

L31168–31170 Then we examined the opinion of those who assert that he is the guardian, and we found guardians to be of two types: the first includes those we mentioned—the father of the virgin woman and the master of the female slave. The authority of these two in establishing the validity of the marriage contract... The marriage contract rests with both [the husband and guardian], akin to the husband’s exclusive right to hold the marriage contract in his hand – their authority being entirely equal. The father’s legal guardianship over an unmarried woman ceases if he is a disbeliever and she is a believer, or if he is a believer and she is a disbeliever, or if he is insane. Likewise, the master’s authority over his female slave ceases if he is a minor or insane.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: إنَّهُ الْوَلِيُّ -: فَوَجَدْنَا الْأَوْلِيَاءَ قِسْمَيْنِ -: أَحَدُهُمَا: مَنْ ذَكَرْنَا مِنْ أَبِ الْبِكْرِ، وَسَيِّدِ الْأَمَةِ، فَكَانَ حَظُّ هَذَيْنِ فِي كَوْنِ عُقْدَةِ النِّكَاحِ بِأَيْدِيهِمَا كَحَظِّ الزَّوْجِ فِي كَوْنِ عُقْدَةِ النِّكَاحِ بِيَدِهِ سَوَاءً سَوَاءً، وَقَدْ يَسْقُطُ حُكْمُ الْأَبِ فِي الْبِكْرِ بِأَنْ يَكُونَ كَافِرًا - وَهِيَ مُؤْمِنَةٌ أَوْ هُوَ مُؤْمِنٌ وَهِيَ كَافِرَةٌ - أَوْ بِأَنْ يَكُونَ مَجْنُونًا - وَيَسْقُطُ أَيْضًا حُكْمُ السَّيِّدِ فِي أَمَتِهِ بِأَنْ يَكُونَ صَغِيرًا أَوْ مَجْنُونًا.

L31171 The second category comprises the remaining guardians whose opinions are disregarded. However, if they object, the matter is removed from their jurisdiction, and the ruler concludes her marriage. In such cases, the husband’s entitlement to hold the authority of concluding the marriage contract is more complete than the share of the aforementioned guardians.

وَالْقِسْمُ الثَّانِي: سَائِرُ الْأَوْلِيَاءِ الَّذِينَ لَا يُلْتَفَتُ إلَيْهِمْ، لَكِنْ إنْ أَبَوْا أُخْرِجَ الْأَمْرُ عَنْ أَيْدِيهِمْ وَعَقَدَ السُّلْطَانُ نِكَاحَهَا، فَهَؤُلَاءِ حَظُّ الزَّوْجِ فِي كَوْنِ عُقْدَةِ النِّكَاحِ بِيَدِهِ أَكْمَلُ مِنْ حَظِّ الْأَوْلِيَاءِ الْمَذْكُورِينَ.

L31172 We found the duration of the legal guardians to be unsettled, as you observe. Then, it is solely the contract. Then, they possess nothing at all under their control regarding the entirety of the marital bond. Rather, it rests with the husband: if he wishes, he may ratify it, and if he wishes, he may dissolve it through divorce.

فَوَجَدْنَا أَمَدَ الْأَوْلِيَاءِ مُضْطَرِبًا كَمَا تَرَى، ثُمَّ إنَّمَا هُوَ الْعَقْدُ فَقَطْ، ثُمَّ لَا شَيْءَ بِأَيْدِيهِمْ جُمْلَةً مِنْ عُقْدَةِ النِّكَاحِ، بَلْ هِيَ إلَى الزَّوْجِ إنْ شَاءَ أَمْضَاهَا وَإِنْ شَاءَ حَلَّهَا بِالطَّلَاقِ.

وَوَجَدْنَا أَمْرَ الزَّوْجِ ثَابِتًا فِي أَنَّ عُقْدَةَ كُلِّ نِكَاحٍ بِيَدِهِ، وَلَا تَصِحُّ إِلَّا بِإِرَادَتِهِ بِكُلِّ حَالٍ، وَلَا تَحِلُّ إِلَّا بِإِرَادَتِهِ، فَكَانَ أَحَقَّ بِإِطْلَاقِ هَذِهِ الصِّفَةِ عَلَيْهِ بِلَا شَكٍّ.

We determined the husband's authority to be firmly established, as the conclusion of every marriage contract lies in his hands. It is neither valid nor lawful except by his volition in all circumstances. Thus, he is unquestionably most deserving of being ascribed this attribute.

ثُمَّ الْبُرْهَانُ الْقَاطِعُ قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤].

Furthermore, the conclusive proof is the saying of Allah, the Exalted and Majestic: "Every soul earns [sin] only against itself" (Quran 6:164).[20]

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَكَانَ عَفْوُ الْوَلِيِّ عَنْ مَالِ وَلِيِّهِ كَسْبًا عَلَى غَيْرِهِ فَهُوَ بَاطِلٌ، وَحُكْمًا فِي مَالِ غَيْرِهِ فَهُوَ حَرَامٌ - فَصَحَّ أَنَّهُ الزَّوْجُ الَّذِي يَفْعَلُ فِي مَالِ نَفْسِهِ مَا أَحَبَّ مِنْ عَفْوٍ أَوْ يَقْضِي بِحَقِّهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The statement of the Messenger of Allah—peace and blessings be upon him—"Indeed, your blood and your wealth are inviolable to you," establishes that a guardian's waiver of his ward's property is a gain over others' property—hence invalid—and a ruling over another's property—hence forbidden. Thus, it is confirmed that in contrast, the husband is the one who may act upon his own property as he wishes, whether by waiving a claim or asserting his right. And with Allah, the Exalted, is success.

[مَسْأَلَةُ نِكَاحُ الشِّغَارِ]

[The Issue of Shighār Marriage]

١٨٥٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ نِكَاحُ الشِّغَارِ: وَهُوَ أَنْ يَتَزَوَّجَ هَذَا وَلِيَّةَ هَذَا عَلَى أَنْ يُزَوِّجَهُ الْآخَرُ وَلِيَّتَهُ أَيْضًا، سَوَاءٌ ذَكَرَا فِي كُلِّ ذَلِكَ صَدَاقًا لِكُلِّ وَاحِدَةٍ مِنْهُمَا أَوْ لِإِحْدَاهُمَا دُونَ الْأُخْرَى، أَوْ لَمْ يَذْكُرَا فِي شَيْءٍ مِنْ ذَلِكَ صَدَاقًا، كُلُّ ذَلِكَ سَوَاءٌ يُفْسَخُ أَبَدًا، وَلَا نَفَقَةَ فِيهِ، وَلَا مِيرَاثَ، وَلَا صَدَاقَ وَلَا شَيْءَ مِنْ أَحْكَامِ الزَّوْجِيَّةِ، وَلَا عِدَّةَ.

Issue 1856: The *Shighār* marriage is impermissible. This refers to when one guardian marries his female ward to another guardian on the condition that the latter, in return, marries his female ward to the former. It makes no difference whether the two guardians stipulate a dowry for each of the two women, for only one of them, or do not stipulate a dowry in anything related to these cases. All these scenarios are equivalent: the marriage is permanently annulled. There is no financial obligation; no inheritance rights, no dowry, none of the rulings pertaining to marriage, and no waiting period.

فَإِنْ كَانَ عَالِمًا فَعَلَيْهِ الْحَدُّ كَامِلًا، وَلَا يَلْحَقُ بِهِ الْوَلَدُ، وَإِنْ كَانَ جَاهِلًا فَلَا حَدَّ عَلَيْهِ، وَالْوَلَدُ لَهُ لَاحِقٌ، وَإِنْ كَانَتْ هِيَ عَالِمَةً بِتَحْرِيمِ ذَلِكَ فَعَلَيْهَا الْحَدُّ، وَإِنْ كَانَتْ جَاهِلَةً فَلَا شَيْءَ عَلَيْهَا.

If he is knowledgeable, the full ḥadd applies to him, and the child is not attributed to him. If he is ignorant, no ḥadd applies to him, and the child is attributed to him. If she is knowledgeable of the prohibition of that act, the ḥadd applies to her. If she is ignorant, nothing is required of her.

Abu Muhammad said: The people have differed regarding this: Malik said:

[20] **Qur'an references (L31174):** Qur'an 6:164 (Al-An'am).

This marriage is not valid and is annulled, whether he has consummated it or not. Similarly, if he were to say, "I marry you to my daughter on the condition that you marry me to your daughter for one hundred dinars," there is no validity in that.

قَالَ أَبُو مُحَمَّد: وَاخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَ مَالِكٌ: لَا يَجُوزُ هَذَا النِّكَاحُ وَيُفْسَخُ دَخَلَ بِهَا أَوْ لَمْ يَدْخُلْ، وَكَذَلِكَ لَوْ قَالَ: أُزَوِّجُك ابْنَتِي عَلَى أَنْ تُزَوِّجَنِي ابْنَتَك بِمِائَةِ دِينَارٍ، فَلَا خَيْرَ فِي ذَلِكَ.

L31182 Ibn al-Qasim said: It is not dissolved—this applies if he has consummated the marriage with her.

وَقَالَ ابْنُ الْقَاسِمِ: لَا يُفْسَخُ، هَذَا إنْ دَخَلَ بِهَا.

L31183 Al-Shafi'i said: This marriage is annulled if no dowry is specified. If the contracting parties stipulated a dowry for each of the two women, or for one of them but not the other, both marriages remain valid, but the stipulated dowries are void. Each woman is entitled to the dowry equivalent to women of her standing if he dies, consummates the marriage, or to half of that dowry if he divorces her before consummation.

وَقَالَ الشَّافِعِيُّ: يُفْسَخُ هَذَا النِّكَاحُ إذَا لَمْ يُسَمَّ فِي ذَلِكَ مَهْرٌ، فَإِنْ سَمَّيَا لِكُلِّ وَاحِدَةٍ مِنْهُمَا مَهْرًا، أَوْ لِإِحْدَاهُمَا دُونَ الْأُخْرَى ثَبَتَ النِّكَاحَانِ مَعًا، وَبَطَلَ الْمَهْرُ الَّذِي سَمَّيَا، وَكَانَ لِكُلِّ وَاحِدَةٍ مِنْهُمَا مَهْرُ مِثْلِهَا إنْ مَاتَ، أَوْ وَطِئَهَا، أَوْ نِصْفُ مَهْرِ مِثْلِهَا إنْ طَلَّقَ قَبْلَ الدُّخُولِ.

L31184 Al-Layth, Abu Hanifa, and his companions said: It is a valid marriage whether the two contracting parties specify a dowry for the wife, specify it for one scenario but not the other, omit mentioning a dowry entirely, or stipulate a condition. We clarified that no dowry is established in such cases. They said: In this situation, the woman is entitled to the dowry equivalent to women of her status.

وَقَالَ اللَّيْثُ، وَأَبُو حَنِيفَةَ، وَأَصْحَابُهُ: هُوَ نِكَاحٌ صَحِيحٌ ذَكَرَا لِكُلِّ وَاحِدَةٍ صَدَاقًا، أَوْ لِإِحْدَاهُمَا دُونَ الْأُخْرَى، أَوْ لَمْ يَذْكُرَا صَدَاقًا أَصْلًا، أَوْ اشْتِرَاطًا وَبَيَّنَّا أَنَّهُ لَا صَدَاقَ فِي ذَلِكَ، قَالُوا: وَلِكُلِّ وَاحِدَةٍ فِي هَذَا مَهْرُ مِثْلِهَا.

L31185 The apparent meaning of their statement is that if the two parties specify a mahr, they have no right except to what was specified.

وَالظَّاهِرُ مِنْ قَوْلِهِمْ: أَنَّهُمَا إنْ سَمَّيَا صَدَاقًا أَنَّهُ لَيْسَ لَهُمَا إلَّا الْمُسَمَّى.

L31186 Abu Muhammad said: What we have stated is the position of our companions, making it necessary to examine the matters they disagreed on. We found regarding this - as we reported through Muslim's chain: Abu Bakr ibn Abi Shaybah reported to us, Ibn Numayr reported to us from 'Ubayd Allah ibn 'Umar from Abu al-Zinad from al-A'raj from Abu Hurayrah, who said: "The Messenger of Allah (peace be upon him) prohibited shighâr. Shighâr refers to when a man says to another: 'Marry your daughter to me and I will marry my daughter to you,' or 'Marry your sister to me and I will marry my sister to you.'"

قَالَ أَبُو مُحَمَّد: وَالَّذِي قُلْنَا بِهِ هُوَ قَوْلُ أَصْحَابِنَا، فَوَجَبَ النَّظَرُ فِيمَا اخْتَلَفُوا فِيهِ، فَوَجَدْنَا فِي ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا ابْنُ نُمَيْرٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الشِّغَارِ، وَالشِّغَارُ: أَنْ يَقُولَ الرَّجُلُ لِلرَّجُلِ: زَوِّجْنِي ابْنَتَك وَأُزَوِّجُك ابْنَتِي، أَوْ زَوِّجْنِي أُخْتَك وَأُزَوِّجُك أُخْتِي»

L31187 We have also transmitted it with a connected and authentic chain through

Jābir, Ibn ʿUmar, Anas, and others. This was a prohibition from the Messenger of Allah—may the peace and blessings of Allah be upon him—thus invalidating the statements of anyone other than him.

وَقَدْ رُوِّينَاهُ أَيْضًا مُسْنَدًا صَحِيحًا مِنْ طَرِيقِ جَابِرٍ، وَابْنِ عُمَرَ، وَأَنَسٍ، وَغَيْرِهِمْ، فَكَانَ هَذَا تَحْرِيمًا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَطَلَ قَوْلُ مَنْ سِوَاهُ.

L31188–31190 Thus we examined the statements of those who differed -: As for Ibn al-Qasim's assertion that it is valid after consummation - this is a statement whose invalidity we have previously demonstrated and its being entirely devoid of proof.

فَنَظَرْنَا فِي أَقْوَالِ مَنْ خَالَفَ -: فَأَمَّا قَوْلُ ابْنِ الْقَاسِمِ إنَّهُ يَصِحُّ بَعْدَ الدُّخُولِ، فَقَوْلٌ قَدْ تَقَدَّمَ تَبْيِينُنَا لِفَسَادِهِ وَتَعَرِّيهِ مِنْ الْبُرْهَانِ جُمْلَةً.

L31191 As for Abū Ḥanīfah, al-Shāfiʿī, and their companions, they maintained that this marriage is invalid solely due to the invalidity of its dowry—then they differed. Al-Shāfiʿī stated: The invalid dowry is annulled. Thus, each marriage contract serves as the dowry for the other, resulting in the annulment of both. He said: If the husband and the guardian stipulate a dowry for one of them, that marriage becomes valid, and the marriage of the other woman is valid because its dowry [for her] is valid.

وَأَمَّا أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمَا، فَإِنَّهُمْ قَالُوا: إنَّمَا فَسَدَ هَذَا النِّكَاحُ لِفَسَادِ صَدَاقِهِ فَقَطْ - ثُمَّ اخْتَلَفُوا -: فَقَالَ الشَّافِعِيُّ: وَالصَّدَاقُ الْفَاسِدُ يُفْسَخُ، فَكَانَ نِكَاحُ كُلِّ وَاحِدَةٍ مِنْهُمَا صَدَاقًا لِلْأُخْرَى، فَهُمَا مَفْسُوخَانِ - قَالَ: فَإِنْ سَمَّيَا لِإِحْدَاهُمَا صَدَاقًا صَحَّ ذَلِكَ النِّكَاحُ، وَصَحَّ نِكَاحُ الْأُخْرَى لِصِحَّةِ صَدَاقِهِ.

L31192 Abu Muhammad said: This was an invalid opinion, for if the contract stipulating the dower is valid, then the dower itself is valid. Therefore, there are no grounds to annul it and amend it with another dower.

قَالَ أَبُو مُحَمَّد: فَكَانَ هَذَا قَوْلًا فَاسِدًا، لِأَنَّهُ إنْ كَانَ هَذَا الْعَقْدُ الَّذِي سُمِّيَ فِيهِ الصَّدَاقُ صَحِيحًا فَهُوَ صَدَاقٌ صَحِيحٌ، فَلَا مَعْنَى لِفَسْخِهِ وَإِصْلَاحِهِ بِصَدَاقٍ آخَرَ إذًا.

L31193 If someone were to say, "Rather, it is invalid?" We respond: Then follow the opinion of Abū Ḥanīfah, who sanctions all of that and validates the dowry; otherwise, it is an evident contradiction.

فَإِنْ قَالَ قَائِلٌ: بَلْ هُوَ فَاسِدٌ؟ قُلْنَا: فَقُلْ بِقَوْلِ أَبِي حَنِيفَةَ الَّذِي يُجِيزُ كُلَّ ذَلِكَ وَيُصْلِحُ الصَّدَاقَ، وَإِلَّا فَهِيَ مُنَاقَضَةٌ ظَاهِرَةٌ.

L31194 Then we examined the statement of Abū Ḥanīfah and found it manifestly invalid due to its blatant contradiction of the ruling of the Messenger of Allah, may Allah bless him and grant him peace.

ثُمَّ نَظَرْنَا فِي قَوْلِ أَبِي حَنِيفَةَ، فَوَجَدْنَاهُ ظَاهِرَ الْفَسَادِ لِمُخَالَفَةِ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جِهَارًا.

L31195 Abu Muhammad said: The claim of al-Shafiʿi that the prohibition of shighar marriage was only due to the invalidity of the bridal gift (sadaq) in both [marriage contracts] is a false claim, for it attributes to the Messenger of Allah—peace be upon him—words he never spoke, and this is impermissible.

قَالَ أَبُو مُحَمَّد: وَدَعْوَى الشَّافِعِيِّ أَنَّهُ إنَّمَا نَهَى عَنْ الشِّغَارِ لِفَسَادِ الصَّدَاقِ فِي كِلَيْهِمَا دَعْوَى كَاذِبَةٌ، لِأَنَّهَا تَقْوِيلٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْ وَهَذَا لَا يَجُوزُ.

L31196 If they mention what we have narrated via the chain of Mālik from Nāfiʿ

from Ibn ʿUmar, who said: "Messenger of Allah (peace and blessings be upon him) prohibited *shighār*: *shighār* is when a man gives his daughter in marriage to another on condition that the latter gives his daughter in marriage to him, with no *mahr* stipulated for either marriage."

فَإِنْ ذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ الشِّغَارِ - وَالشِّغَارُ أَنْ يُزَوِّجَ الرَّجُلُ ابْنَتَهُ عَلَى أَنْ يُزَوِّجَهُ ابْنَتَهُ لَيْسَ بَيْنَهُمَا صَدَاقٌ» .

L31197 It was narrated via the chain of ʿAbd al-Razzāq from Maʿmar, from Thābit al-Bunānī and another with him—who is Yazīd al-Raqāshī—from Anas, who said: The Messenger of Allah—peace and blessings be upon him—said: "There is no *shighār* in Islam. *Shighār* is when a man exchanges his sister for another man's sister without stipulating a *mahr*." He then mentioned the remainder of the ḥadīth.

وَمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ثَابِتٍ الْبُنَانِيِّ وَآخَرَ مَعَهُ - هُوَ يَزِيدُ الرَّقَاشِيُّ - عَنْ أَنَسٍ، قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا شِغَارَ فِي الْإِسْلَامِ وَالشِّغَارُ أَنْ يُبَدِّلَ الرَّجُلُ الرَّجُلَ أُخْتَهُ بِأُخْتِهِ بِغَيْرِ ذِكْرِ صَدَاقٍ» وَذَكَرَ بَاقِيَ الْحَدِيثِ.

L31198–31199 We said: As for these two reports, they are contrary to the opinion of Abū Ḥanīfah and his companions, like that which we have previously explained, and there is no difference [in judgment].

قُلْنَا: أَمَّا هَذَانِ الْخَبَرَانِ فَهُمَا خِلَافُ قَوْلِ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ، كَالَّذِي قَدَّمْنَا وَلَا فَرْقَ.

L31200 As for Al-Shāfiʿī, he has no proof in these two narrations for two reasons:

وَأَمَّا الشَّافِعِيُّ فَلَا حُجَّةَ لَهُ فِي هَذَيْنِ الْخَبَرَيْنِ لِوَجْهَيْنِ -:

L31201 One of the two is that even if a dowry is mentioned for both or one of them, it completely nullifies that dowry under any circumstances. Since this is absent from these two reports, it contradicts their content.

أَحَدُهُمَا - أَنَّهُ وَإِنْ ذُكِرَ فِيهِمَا صَدَاقٌ أَوْ لِإِحْدَاهُمَا فَإِنَّهُ يُبْطِلُ ذَلِكَ الصَّدَاقَ جُمْلَةً بِكُلِّ حَالٍ، وَلَيْسَ هَذَا فِي هَذَيْنِ الْخَبَرَيْنِ فَقَدْ خَالَفَ مَا فِيهِمَا.

L31202 The other perspective—which we rely upon—is that these two narrations only entail the prohibition of Shighār (marriage exchange) in which the dowry is not mentioned at all. They do not address Shighār in which the dowry is mentioned—neither by prohibition nor by permission. Whoever asserts otherwise has indeed falsely claimed and ascribed to the Messenger of Allah—peace and blessings be upon him—what he never uttered. Consequently, it becomes obligatory to seek the ruling concerning Shighār in which the dowry is mentioned outside these two narrations. We found the narration of Abū Hurayrah and that of Jābir, both conveying the general principle of Shighār and clarifying that it denotes marriage in exchange for marriage. It was not stipulated in them—peace and blessings be upon him—that the dowry be mentioned nor omitted. Thus, Abū Hurayrah's narration supple-

وَالْوَجْهُ الْآخَرُ - وَهُوَ الَّذِي نَعْتَمِدُ عَلَيْهِ - وَهُوَ أَنَّ هَذَيْنِ الْخَبَرَيْنِ إِنَّمَا فِيهِمَا تَحْرِيمُ الشِّغَارِ الَّذِي لَمْ يُذْكَرْ فِيهَا الصَّدَاقُ فَقَطْ، وَلَيْسَ فِيهِ ذِكْرُ الشِّغَارِ الَّذِي ذُكِرَ فِيهِ الصَّدَاقُ - لَا بِتَحْرِيمٍ وَلَا بِإِجَازَةٍ - وَمَنْ ادَّعَى ذَلِكَ فَقَدْ ادَّعَى الْكَذِبَ وَقَوَّلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْهُ قَطُّ، فَوَجَبَ أَنْ نَطْلُبَ حُكْمَ الشِّغَارِ الَّذِي ذُكِرَ فِيهِ الصَّدَاقُ فِي غَيْرِ هَذَيْنِ الْخَبَرَيْنِ: فَوَجَدْنَا خَبَرَ أَبِي هُرَيْرَةَ، وَجَابِرٍ قَدْ وَرَدَا بِعُمُومِ الشِّغَارِ، وَبَيَانِ أَنَّهُ الزَّوَاجُ بِالزَّوَاجِ، وَلَمْ يُشْتَرَطْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِيهِمَا ذِكْرُ صَدَاقٍ وَلَا السُّكُوتُ

ments Ibn ʿUmar's narration, while Anas's narration constitutes an increase in generality—a generality it is not permissible to abandon.

L31203 Abu Muhammad said: It is indeed authentically reported from the Messenger of Allah (may the peace and blessings of Allah be upon him): «Every condition that is not in the Book of Allah is invalid.»[21]

L31204–31206 We found that in Shighar marriage - whether a dowry is mentioned therein or not - the two parties stipulated a condition not present in the Book of Allah the Almighty, thus it is invalid in all cases. It was narrated to us through the chain of Abu Dawud al-Sijistani: from Muhammad ibn Faris, from Ya'qub ibn Ibrahim ibn Sa'd ibn Ibrahim ibn 'Abd al-Rahman ibn 'Awf, from his father, from Muhammad ibn Ishaq, from 'Abd al-Rahman ibn Hurmuz al-A'raj, who said: "Al-'Abbas ibn al-'Abbas ibn 'Abd al-Muttalib gave his daughter in marriage to 'Abd al-Rahman ibn al-Hakam ibn Abi al-'As ibn Umayyah, and 'Abd al-Rahman gave [a female relative] in marriage to Al-'Abbas." His daughter [in marriage], and they had stipulated a dower (sadaq). Muʿāwiyah wrote to Marwān instructing him to separate them. Muʿāwiyah stated in his letter: "This is the *shighār* [marriage-by-exchange] that the Messenger of Allah—peace be upon him—forbade."

L31207 Abu Muhammad said: Thus, Mu'awiyah—in the presence of the Companions, with none among them known to oppose him—invalidated this marriage even if the two parties had mentioned the dowry in the contract, stating: "This is what the Messenger of Allah—peace be upon him—prohibited." Thus, the ambiguity is wholly resolved—and praise be to Allah, Lord of the worlds.[22]

L31208 The entire astonishment lies in the Hanafis' censure of the Companion's differing opinion—whom they assert had no known dissenter among the Companions, may Allah be pleased with them—as in their claim regarding the

عَنْهُ، فَكَانَ خَبَرُ أَبِي هُرَيْرَةَ زَائِدًا عَلَى خَبَرِ ابْنِ عُمَرَ، وَخَبَرُ أَنَسٍ زِيَادَةُ عُمُومٍ لَا يَحِلُّ تَرْكُهَا.

قَالَ أَبُو مُحَمَّد: وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» .

وَوَجَدْنَا الشِّغَارَ - ذُكِرَ فِيهِ صَدَاقٌ أَوْ لَمْ يُذْكَرْ - قَدْ اشْتَرَطَا فِيهِ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ بِكُلِّ حَالٍ. وَرُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نا مُحَمَّدُ بْنُ فَارِسٍ نا يَعْقُوبُ بْنُ إبْرَاهِيمَ بْنِ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ نا أَبِي عَنْ مُحَمَّدِ بْنِ إسْحَاقَ نا عَبْدُ الرَّحْمَنِ بْنُ هُرْمُزَ الْأَعْرَجُ قَالَ: «إنَّ الْعَبَّاسَ بْنَ الْعَبَّاسِ بْنِ عَبْدِ الْمُطَّلِبِ أَنْكَحَ ابْنَتَهُ عَبْدَ الرَّحْمَنِ بْنَ الْحَكَمِ بْنِ أَبِي الْعَاصِ بْنِ أُمَيَّةَ، وَأَنْكَحَهُ عَبْدُ الرَّحْمَنِ ابْنَتَهُ: وَكَانَا جَعَلَا صَدَاقًا، فَكَتَبَ مُعَاوِيَةُ إلَى مَرْوَانَ يَأْمُرُهُ بِالتَّفْرِيقِ بَيْنَهُمَا، وَقَالَ مُعَاوِيَةُ فِي كِتَابِهِ: هَذَا الشِّغَارُ الَّذِي نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

قَالَ أَبُو مُحَمَّد: فَهَذَا مُعَاوِيَةُ بِحَضْرَةِ الصَّحَابَةِ لَا يُعْرَفُ لَهُ مِنْهُمْ مُخَالِفٌ يَفْسَخُ هَذَا النِّكَاحَ - وَإِنْ ذَكَرَا فِيهِ الصَّدَاقَ - وَيَقُولُ: إنَّهُ الَّذِي نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَالْعَجَبُ كُلُّهُ مِنْ تَشْنِيعِ الْحَنَفِيِّينَ بِخِلَافِ الصَّاحِبِ الَّذِي يَدَّعُونَ أَنَّهُ لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - كَدَعْوَاهُمْ ذَلِكَ فِي نَزْجِ زَمْزَمَ مِنْ زِنْجِيٍّ مَاتَ فِيهَا فَنَزَحَهَا ابْنُ الزُّبَيْرِ، وَغَيْرُ ذَلِكَ.

[21] **Hadith references (L31203):** Sunan Ibn Majah 2521.
[22] **Qur'an references (L31207):** Qur'an 37:182 (As-Saffat).

emptying of the Zamzam well due to a Zanji who died within it, whereupon Ibn al-Zubayr had it drained, along with other such instances.

L31209 Then, here, they paid no heed to what they had revered and forbade there.

ثُمَّ لَمْ يَلْتَفِتُوا هَاهُنَا إِلَى مَا عَظَّمُوهُ وَحَرَّمُوهُ هُنَالِكَ.

L31210 This is an authentic report because ʿAbd al-Raḥmān ibn Hurmuz was among those who lived during the era of Muʿāwiyah, narrated from Abū Hurayrah and others, and witnessed the implementation of this ruling in Medina. And success is from Allah, the Exalted.

وَهَذَا خَبَرٌ صَحِيحٌ، لِأَنَّ عَبْدَ الرَّحْمَنِ بْنَ هُرْمُزَ مِمَّنْ أَدْرَكَ أَيَّامَ مُعَاوِيَةَ وَرَوَى عَنْ أَبِي هُرَيْرَةَ وَغَيْرِهِ، وَشَاهَدَ هَذَا الْحُكْمَ بِالْمَدِينَةِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L31211 Especially in such a well-known incident between two great men from the nobles of Banu Hashim and Banu Umayya, as the postal service brought it from Syria to Medina. This is something none of Medina's people's scholars could remain unaware of, and the Companions present in Syria and Medina at that time were unquestionably more numerous than those alive during Ibn al-Zubayr's era.

لَا سِيَّمَا فِي مِثْلِ هَذِهِ الْقِصَّةِ الْمَشْهُورَةِ بَيْنَ رَجُلَيْنِ عَظِيمَيْنِ مِنْ عُظَمَاءِ بَنِي هَاشِمٍ، وَبَنِي أُمَيَّةَ يَأْتِي بِهِ الْبَرِيدُ مِنْ الشَّامِ إِلَى الْمَدِينَةِ، هَذَا مَا لَا يَخْفَى عَلَى أَحَدٍ مِنْ عُلَمَاءِ أَهْلِهَا وَالصَّحَابَةُ يَوْمَئِذٍ بِالشَّامِ وَالْمَدِينَةِ أَكْثَرُ عَدَدًا مِنْ الَّذِينَ كَانُوا أَحْيَاءً أَيَّامَ ابْنِ الزُّبَيْرِ بِلَا شَكٍّ.

L31212 We have been narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: ʿAṭāʾ was asked about two men - each arranged the marriage of his sister to the other by providing a minimal dowry, though if he wished, he could have given her more than that. He replied: "No, for shighār has been prohibited." I said to him: "But both have assigned dowries to them?" He said: "No, for each granted a concession to his counterpart regarding the dowry for his own benefit." I asked ʿAṭāʾ: "If one marries his daughter for such-and-such, and the other marries his daughter for such-and-such - each specifying his dowry, with both granting concessions to their brothers for their own benefit?" He said: "If they specify the dowry, there is no harm. But if they say: 'You provide the dowry, and I will provide the dowry,' then that is shighār." I asked: "What if each stipulates a dowry?" He replied: "No."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: سُئِلَ عَطَاءٌ عَنْ رَجُلَيْنِ أَنْكَحَ كُلُّ وَاحِدٍ مِنْهُمَا أُخْتَهُ بِأَنْ يُجَهِّزَ كُلُّ وَاحِدٍ مِنْهُمَا بِجِهَازٍ يَسِيرٍ لَوْ شَاءَ أَخَذَ لَهَا أَكْثَرَ مِنْ ذَلِكَ؟ فَقَالَ: لَا، نُهِيَ عَنْ الشِّغَارِ: فَقُلْت لَهُ: إنَّهُ قَدْ أَصْدَقَهَا كِلَاهُمَا؟ قَالَ: لَا، قَدْ أَرْخَصَ كُلُّ وَاحِدٍ مِنْهُمَا عَلَى صَاحِبِهِ مِنْ أَجْلِ نَفْسِهِ؟ فَقُلْت لِعَطَاءٍ: يُنْكِحُ هَذَا ابْنَتَهُ بِكَذَا وَهَذَا ابْنَتَهُ بِكَذَا بِصَدَاقٍ كِلَاهُمَا يُسَمِّي صَدَاقَهُ، وَكِلَاهُمَا أَرْخَصَ عَلَى أَخِيهِ مِنْ أَجْلِ نَفْسِهِ؟ قَالَ: إذَا سَمَّيَا صَدَاقًا فَلَا بَأْسَ، فَإِنْ قَالَ: جَهِّزْ وَأُجَهِّزُ؟ فَلَا ذَلِكَ الشِّغَارُ، قُلْت: فَإِنْ فَرَضَ هَذَا وَفَرَضَ هَذَا؟ قَالَ: لَا.

L31213–31215 Abu Muhammad said: ʿAṭāʾ differentiated between the two marriages where one is contracted in relation to the other—they both mentioned a mahr or... The two [spouses] did not acknowledge it, so he invalidated it. Since the two marriages are not contracted in relation to one another, he permitted

قَالَ أَبُو مُحَمَّد: فَفَرَّقَ عَطَاءٌ بَيْنَ النِّكَاحَيْنِ يُعْقَدُ أَحَدُهُمَا بِالْآخَرِ - ذَكَرَا صَدَاقًا أَوْ لَمْ يَذْكُرَا - فَأَبْطَلَهُ، وَبَيْنَ النِّكَاحَيْنِ لَا يَعْقِدُ أَحَدُهُمَا بِالْآخَرِ، فَأَجَازَهُ، وَهَذَا قَوْلُنَا، وَمَا نَعْلَمُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ خِلَافًا لِمَا ذَكَرْنَا.

[the latter]. This is our opinion, and we know of no disagreement from any companion or follower regarding what we have stated.

قَالَ أَبُو مُحَمَّد: فَإِنْ خَطَبَ أَحَدُهُمَا إلَى الْآخَرِ فَزَوَّجَهُ، ثُمَّ خَطَبَ الْآخَرُ إلَيْهِ فَزَوَّجَهُ، فَذَلِكَ جَائِزٌ مَا لَمْ يُشْتَرَطْ أَنْ يُزَوِّجَ أَحَدُهُمَا الْآخَرَ - فَهَذَا هُوَ الْحَرَامُ الْبَاطِلُ.

L31216 Abū Muḥammad said: If one of them proposes marriage to the other and the latter consents to the marriage as his guardian, then the second proposes to the first and the first consents to the marriage as his guardian, this is permissible as long as no condition is stipulated requiring one party to give the other in marriage—for that very act is forbidden and invalid.

وَالْعَجَبُ أَنَّ بَعْضَهُمْ احْتَجَّ بِأَنْ قَالَ: إنَّ هَذَا بِمَنْزِلَةِ النِّكَاحِ يُعْقَدُ عَلَى أَنْ يَكُونَ صَدَاقُهُ خَمْرًا أَوْ خِنْزِيرًا؟ فَقُلْنَا: نَعَمْ، وَكُلُّ مَفْسُوخٍ بَاطِلٌ أَبَدًا، لِأَنَّهُ عَقَدَ عَلَى أَنْ لَا صِحَّةَ لِذَلِكَ الْعَقْدِ إلَّا بِذَلِكَ الْمَهْرِ، وَذَلِكَ الْمَهْرُ بَاطِلٌ، فَالَّذِي لَا يَصِحُّ إلَّا بِصِحَّةِ بَاطِلٍ بَاطِلٌ، بِلَا شَكٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L31217 What is astonishing is that some of them argued by saying: "Is this equivalent to a marriage contract established on the condition that its mahr be wine or pork?" We responded: Yes, and every void contract is invalid perpetually, because it was contracted on the stipulation that the validity of that contract depends exclusively on that mahr, while that mahr is invalid. Thus, that which cannot be valid except through the validity of something invalid is itself invalid, without doubt. And with Allah, the Most High, is success.

[مَسْأَلَةٌ نِكَاحٌ عَلَى شَرْطٍ]

An Issue of Marriage Upon a Condition

١٨٥٧ - مَسْأَلَةٌ: وَلَا يَصِحُّ نِكَاحٌ عَلَى شَرْطٍ أَصْلًا، حَاشَا الصَّدَاقَ الْمَوْصُوفَ فِي الذِّمَّةِ أَوْ الْمَدْفُوعَ، أَوْ الْمُعَيَّنَ، وَعَلَى أَنْ لَا يَضُرَّ بِهَا فِي نَفْسِهَا وَمَالِهَا: إمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ.

L31218

Issue 1857: No marriage contract is valid when contingent upon any condition whatsoever, except for stipulating the dowry - whether described as a debt, paid, or specified - and upon [the condition] that he does not harm her in her person or property: [this being] either keeping her with kindness or releasing her honorably.

L31219

وَأَمَّا بِشَرْطِ هِبَةٍ أَوْ بَيْعٍ أَوْ أَنْ لَا يَتَسَرَّى عَلَيْهَا، أَوْ أَنْ لَا يُرَحِّلَهَا، أَوْ غَيْرِ ذَلِكَ كُلِّهِ، فَإِنْ اشْتَرَطَ ذَلِكَ فِي نَفْسِ الْعَقْدِ فَهُوَ عَقْدٌ مَفْسُوخٌ، وَإِنْ اشْتَرَطَ ذَلِكَ بَعْدَ الْعَقْدِ فَالْعَقْدُ صَحِيحٌ وَالشُّرُوطُ كُلُّهَا بَاطِلٌ، سَوَاءٌ عَقَدَهَا بِعِتْقٍ أَوْ بِطَلَاقٍ أَوْ بِأَنْ أَمْرَهَا بِيَدِهَا، أَوْ أَنَّهَا بِالْخِيَارِ كُلُّ ذَلِكَ بَاطِلٌ.

L31220

As for stipulating a gift or sale, a condition that he will not take her as a concubine, that he will not relocate her, or any other such terms—if these are stipulated within the contract itself, the contract is annulled. If stipulated after the contract, the contract remains valid but all such conditions are invalid, whether he conditions them upon freeing a slave, divorce, granting her self-determination, or granting her a right of choice. All such stipulations are invalid.

وَكَذَلِكَ إنْ تَزَوَّجَهَا عَلَى حُكْمِهِ، أَوْ حُكْمِهَا، أَوْ حُكْمِ فُلَانٍ، فَكُلُّ هَذَا بَاطِلٌ - وَقَدْ أَجَازَ بَعْضُ النَّاسِ بَعْضَ هَذَا، وَرُوِّينَا عَنْ عَبْدِ

L31221

Similarly, if he marries her under his judgment, her judgment, or the judgment of so-and-so, all such contracts are invalid—though some scholars have permitted certain aspects of this. It was narrated to us via the chain of ʿAbd

وَكَذَلِكَ إِنْ تَزَوَّجَهَا عَلَى حُكْمِهِ، أَوْ عَلَى حُكْمِهَا، أَوْ عَلَى حُكْمِ فُلَانٍ، فَكُلُّ ذَلِكَ عَقْدٌ فَاسِدٌ - وَقَدْ أَجَازَ بَعْضَ ذَلِكَ قَوْمٌ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ ابْنِ سِيرِينَ: أَنَّ الْأَشْعَثَ تَزَوَّجَ امْرَأَةً عَلَى حُكْمِهَا ثُمَّ طَلَّقَهَا قَبْلَ أَنْ يَتَّفِقَا عَلَى صَدَاقٍ، فَجَعَلَ لَهَا عُمَرُ صَدَاقَ امْرَأَةٍ مِنْ نِسَائِهَا - وَهَذَا مُنْقَطِعٌ عَنْ عُمَرَ، لِأَنَّ ابْنَ سِيرِينَ لَمْ يُولَدْ إِلَّا بَعْدَ مَوْتِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ -.

L31222 From the narration of ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAṭāʾ, who said: Whoever marries according to his ruling, the wife is entitled only to what the husband has ruled.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ أَنَّهُ قَالَ: فَمَنْ تَزَوَّجَ عَلَى حُكْمِهِ: إِنَّهُ لَيْسَ لَهَا إِلَّا مَا حَكَمَ بِهِ الزَّوْجُ.

L31223 Abū Ḥanīfah, Mālik, and al-Awzāʿī said: If they agree on terms when marrying under her condition or his condition, the marriage is valid. If they disagree, Abū Ḥanīfah and al-Awzāʿī said: She is entitled to the dower of her peers.

وَقَالَ أَبُو حَنِيفَةَ وَمَالِكٌ، وَالْأَوْزَاعِيُّ: إِنْ اتَّفَقَا عَلَى شَيْءٍ إِذَا تَزَوَّجَهَا عَلَى حُكْمِهَا أَوْ حُكْمِهِ جَازَ، فَإِنْ لَمْ يَتَّفِقَا قَالَ أَبُو حَنِيفَةَ، وَالْأَوْزَاعِيُّ: فَلَهَا مَهْرُ مِثْلِهَا.

L31224–31225 Mālik said: The marriage is annulled before consummation, and she is entitled to a dowry equivalent to hers after consummation. Abū Muḥammad said: This is an invalid condition, as it is indeterminate. It is possible for her to demand absolutely anything, and it is possible for him to stipulate nothing. Any condition of this kind – which is not in the Book of Allah Almighty – is void, and the marriage contract based on it is invalid and annulled.

وَقَالَ مَالِكٌ: يُفْسَخُ قَبْلَ الدُّخُولِ وَلَهَا مَهْرُ مِثْلِهَا بَعْدَ الدُّخُولِ. قَالَ أَبُو مُحَمَّد: هَذَا شَرْطٌ فَاسِدٌ، لِأَنَّهُ مَجْهُولٌ، قَدْ يُمْكِنُ أَنْ تَحْتَكِمَ هِيَ بِجَمِيعِ مَا فِي الْعَالَمِ، وَقَدْ يُمْكِنُ أَنْ يَحْتَكِمَ هُوَ بِلَا شَيْءٍ، فَمَا كَانَ هَكَذَا فَهُوَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ، وَالنِّكَاحُ عَلَيْهِ بَاطِلٌ مَفْسُوخٌ.

L31226 As for if they stipulate this after concluding the marriage contract, the contract remains valid, and she is entitled to the dowry equivalent to that of women of her standing, unless they mutually agree to a lesser or greater amount. Mālik's opinion that the marriage is annulled if they fail to agree is erroneous, as it invalidates a sound marriage without any command from Allah, the Exalted, or His Messenger—may Allah's peace and blessings be upon him.

فَأَمَّا إِنْ اشْتَرَطَا ذَلِكَ بَعْدَ عَقْدِ النِّكَاحِ فَالْعَقْدُ صَحِيحٌ، وَلَهَا مَهْرُ مِثْلِهَا، إِلَّا أَنْ يَتَرَاضَيَا بِأَقَلَّ أَوْ أَكْثَرَ. وَقَوْلُ مَالِكٍ يُفْسَخُ النِّكَاحُ إِنْ لَمْ يَتَّفِقَا: خَطَأٌ، لِأَنَّهُ فَسْخُ نِكَاحٍ صَحِيحٍ بِغَيْرِ أَمْرٍ مِنَ اللَّهِ تَعَالَى بِذَلِكَ وَلَا مِنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L31227 It has been narrated to us through the chain of al-Bukhārī: He narrated to us: Ubayd Allāh ibn Mūsá, from Zakariyyā ibn Abī Zāʾidah, from Muḥammad ibn

Ibrāhīm ibn Abd al-Raḥmān ibn Awf, from Abī Salamah ibn Abd al-Raḥmān ibn Awf, from Abī Hurayrah, from the Prophet—peace and blessings of Allāh be upon him—who said: "It is not lawful for a woman to demand the divorce of her co-wife to take her share, for she has only what has been decreed for her." Whoever stipulates a condition that the Messenger of Allāh—peace and blessings of Allāh be upon him—has prohibited, such a condition is void. If a marriage is contracted based on it, the marriage is invalid.[23]

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عُبَيْدُ اللَّهِ بْنُ مُوسَى عَنْ زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَحِلُّ لِامْرَأَةٍ تَسْأَلُ طَلَاقَ أُخْتِهَا لِتَسْتَفْرِغَ صَحْفَتَهَا فَإِنَّمَا لَهَا مَا قُدِّرَ لَهَا» فَمَنْ اشْتَرَطَ مَا نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ شَرْطٌ بَاطِلٌ، وَإِنْ عُقِدَ عَلَيْهِ نِكَاحٌ فَالنِّكَاحُ بَاطِلٌ.

L31228 Among these rulings is that one does not stipulate for her that he will not relocate her, so people differed regarding this. We have been narrated through Sa'īd ibn Manṣūr's chain: Ḥammād ibn Zayd reported to us from Ayyūb al-Sikhtiyānī, from Ismāʿīl ibn ʿAbd Allāh ibn Abī al-Muhājir, from ʿAbd al-Raḥmān ibn Ghanm: A man came to ʿUmar and informed him that he had married a woman and stipulated her house for her. ʿUmar said to him: "Her stipulation is binding for her." A man present with him said: "Men are doomed since women can divorce their husbands whenever they wish!" ʿUmar replied: "Muslims are bound by their stipulations at the junctures of their rights."

وَمِنْ ذَلِكَ أَنْ لَا يَشْتَرِطَ لَهَا أَنْ لَا يُرَحِّلَهَا فَاخْتَلَفَ النَّاسُ فِي ذَلِكَ -: فَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ إِسْمَاعِيلَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي الْمُهَاجِرِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ غَنْمٍ: أَنَّهُ شَهِدَ عِنْدَ عُمَرَ رَجُلٌ أَتَاهُ فَأَخْبَرَهُ أَنَّهُ تَزَوَّجَ امْرَأَةً وَشَرَطَ لَهَا دَارَهَا؟ فَقَالَ لَهُ عُمَرُ: لَهَا شَرْطُهَا، فَقَالَ لَهُ رَجُلٌ عِنْدَهُ: هَلَكَتْ الرِّجَالُ إِذْ لَا تَشَاءُ امْرَأَةٌ تُطَلِّقُ زَوْجَهَا إِلَّا طَلَّقَتْهُ؟ فَقَالَ عُمَرُ: الْمُسْلِمُونَ عَلَى شُرُوطِهِمْ عِنْدَ مَقَاطِعِ حُقُوقِهِمْ.

L31229–31231 And with him to Saʿīd: Sufyān—he is Ibn ʿUyaynah—narrated to us; ʿAbd al-Karīm al-Jazarī narrated to us from Abū ʿUbayd. When Muawiyah was approached about the matter, he consulted Amr ibn al-As, who said: "Her stipulation applies to her" - this being the view of al-Qasim ibn Muhammad, Salim ibn Abdullah, and Jabir ibn Zayd - and it is narrated from Shurayh.

وَبِهِ إِلَى سَعِيدٍ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - نَا عَبْدُ الْكَرِيمِ الْجَزَرِيُّ عَنْ أَبِي عُبَيْدٍ: أَنَّ مُعَاوِيَةَ أُتِيَ فِي ذَلِكَ فَاسْتَشَارَ عَمْرَو بْنَ الْعَاصِ؟ فَقَالَ: لَهَا شَرْطُهَا - وَهُوَ قَوْلُ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ، وَجَابِرِ بْنِ زَيْدٍ - وَرُوِيَ عَنْ شُرَيْحٍ.

L31232 Others stated that such a stipulation is invalid - as transmitted to us through the chain of Saʿīd ibn Manṣūr: Ibn Wahb narrated to us, ʿAmr ibn al-Ḥārith narrated from Kathīr ibn Farqad from Saʿīd ibn ʿUbayd ibn al-Sabbāq - that a man married during the caliphate of ʿUmar ibn al-Khaṭṭāb, stipulating that he would not expel her. ʿUmar nullified the condition imposed by him and said: "A woman belongs with her husband."

وَقَالَ آخَرُونَ بِإِبْطَالِ ذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا ابْنُ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ كَثِيرِ بْنِ فَرْقَدٍ عَنْ سَعِيدِ بْنِ عُبَيْدِ بْنِ السَّبَّاقِ أَنَّ رَجُلًا تَزَوَّجَ عَلَى عَهْدِ عُمَرَ بْنِ الْخَطَّابِ، فَشَرَطَ لَهَا أَنْ لَا يُخْرِجَهَا، فَوَضَعَ عُمَرُ عَنْهُ الشَّرْطَ وَقَالَ: الْمَرْأَةُ مَعَ زَوْجِهَا.

[23] **Hadith references (L31227):** Sahih al-Bukhari 5152.

وَبِهِ إِلَى سُفْيَانَ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الْمِنْهَالِ بْنِ عَمْرٍو عَنْ عَبَّادٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ فِي الرَّجُلِ يَتَزَوَّجُ الْمَرْأَةَ يَشْتَرِطُ لَهَا دَارَهَا؟ فَقَالَ: شَرْطُ اللَّهِ قَبْلَ شَرْطِهَا.

L31233 And through him to Sufyan, from Ibn Abi Layla, from Al-Minhal ibn Amr, from Abbad, from Ali ibn Abi Talib regarding a man who marries a woman and stipulates her house for her? He said: "Allah's stipulation comes before her stipulation."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ، نا هُشَيْمٌ نا مُغِيرَةُ، وَيُونُسُ، قَالَ مُغِيرَةُ: عَنْ إِبْرَاهِيمَ، وَقَالَ يُونُسُ: عَنْ الْحَسَنِ، قَالَا جَمِيعًا: يَجُوزُ النِّكَاحُ وَيَبْطُلُ الشَّرْطُ. قَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: يَبْطُلُ الشَّرْطُ إِلَّا أَنْ يَكُونَ مُعَلَّقًا بِطَلَاقٍ أَوْ بِعِتَاقٍ، أَوْ بِأَنْ يَكُونَ أَمْرُهَا بِيَدِهَا أَوْ بِتَخْيِيرِهَا.

L31234 From the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us from Mughīrah and from Yūnus. Mughīrah reported from Ibrāhīm, and Yūnus reported from al-Ḥasan. They both said: "The marriage is valid, but the condition is nullified." Abū Ḥanīfah and Mālik said: "The condition is nullified unless it is conditional upon divorce or emancipation, unless the authority lies with her, or unless she is granted the option."

قَالَ عَلِيٌّ: هَذَا قَوْلٌ لَمْ يَأْتِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ، فَهُوَ خِلَافٌ لِكُلِّ مَا رُوِيَ عَنْهُمْ فِي ذَلِكَ.

L31235 Ali said: This is an opinion not attributed to any of the Companions, and it contradicts all that has been narrated from them regarding that matter.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ قَالَ بِإِلْزَامِ هَذِهِ الشُّرُوطِ -: بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عِيسَى بْنُ حَمَّادٍ زُغْبَةُ، أَخْبَرَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ أَبِي الْخَيْرِ عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِنَّ أَحَقَّ الشُّرُوطِ أَنْ تُوفُوا بِهِ مَا اسْتَحْلَلْتُمْ بِهِ الْفُرُوجَ» .

L31236 Abū Muḥammad said: Those who affirmed the obligation of these conditions argued with what we have reported through the chain of Aḥmad ibn Shuʿayb—from ʿĪsā ibn Ḥammād Zughba—who informed us: Al-Layth ibn Saʿd reported to us from Yazīd ibn Abī Ḥabīb from Abū al-Khayr from ʿUqbah ibn ʿĀmir al-Juhanī from the Messenger of Allah—peace be upon him—who said: "The conditions most deserving to be fulfilled are those by which you have made lawful marital relations."[24]

قَالَ أَبُو مُحَمَّدٍ: هَذَا خَبَرٌ صَحِيحٌ، وَلَا مُتَعَلَّقَ لَهُمْ بِهِ، لِأَنَّهُمْ لَا يَخْتَلِفُونَ مَعَنَا، وَلَا مُسْلِمَ عَلَى ظَهْرِ الْأَرْضِ: فِي أَنَّهُ إِنْ شَرَطَ لَهَا أَنْ تَشْرَبَ الْخَمْرَ، أَوْ أَنْ تَأْكُلَ لَحْمَ الْخِنْزِيرِ، أَوْ أَنْ تَدَعَ الصَّلَاةَ، أَوْ أَنْ تَدَعَ صَوْمَ رَمَضَانَ، أَوْ أَنْ يُغَنِّيَ لَهَا، أَوْ أَنْ يَزْفِنَ لَهَا، وَنَحْوَ ذَلِكَ: أَنَّ كُلَّ ذَلِكَ كُلِّهِ بَاطِلٌ لَا يَلْزَمُهُ.

L31237–31239 Abu Muhammad said: This is an authentic narration, and they have no basis for it, because they do not disagree with us, nor is there any Muslim on the face of the earth who disagrees, concerning the stipulation that she drink wine or eat meat. consuming pork, abandoning prayer or fasting during Ramadan, singing for her [in a prohibited manner], dancing for her [in a prohibited manner], and other analogous acts: all such matters are invalid and not legally binding upon him.

L31240 It has been authentically established that the Messenger of Allah—may the peace and blessings of Allah be upon him—never intended in this hadith any

[24] **Hadith references (L31236):** Sunan Abi Dawud 2139.

condition that involves declaring lawful matters unlawful, declaring unlawful matters lawful, abolishing an obligation, or imposing a non-obligation, for all of that contradicts the commands of Allah the Exalted and the commands of His Messenger—may the peace and blessings of Allah be upon him.

فَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُرِدْ قَطُّ فِي هَذَا الْخَبَرِ شَرْطًا فِيهِ تَحْرِيمُ حَلَالٍ، أَوْ تَحْلِيلُ حَرَامٍ، أَوْ إسْقَاطُ فَرْضٍ، أَوْ إيجَابُ غَيْرِ فَرْضٍ، لِأَنَّ كُلَّ ذَلِكَ خِلَافٌ لِأَوَامِرِ اللَّهِ تَعَالَى، وَلِأَوَامِرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L31241 The woman's stipulation that he shall not marry, shall not take a concubine, shall not be away from her, or shall not relocate her from her home—all such stipulations constitute forbidding what is lawful. This is equivalent to permitting carrion and pork, in that all of this is contrary to the ruling of Allah Almighty.

وَاشْتِرَاطُ الْمَرْأَةِ أَنْ لَا يَتَزَوَّجَ، أَوْ أَنْ لَا يَتَسَرَّى، أَوْ أَنْ لَا يَغِيبَ عَنْهَا أَوْ أَنْ لَا يُرَحِّلَهَا عَنْ دَارِهَا - كُلُّ ذَلِكَ تَحْرِيمُ حَلَالٍ، وَهُوَ وَتَحْلِيلُ الْخِنْزِيرِ وَالْمَيْتَةِ سَوَاءٌ، فِي أَنَّ كُلَّ ذَلِكَ خِلَافٌ لِحُكْمِ اللَّهِ عَزَّ وَجَلَّ.

L31242 Thus, it is established that he—peace and blessings be upon him—intended only the condition of the valid dowry which Allah the Exalted has commanded us [to uphold], and it is that by which intimacy is made lawful, excluding all else.

فَصَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّمَا أَرَادَ شَرْطَ الصَّدَاقِ الْجَائِزِ الَّذِي أَمَرَنَا اللَّهُ تَعَالَى بِهِ، وَهُوَ الَّذِي اسْتَحَلَّ بِهِ الْفَرْجَ لَا مَا سِوَاهُ.

L31243 As for making contingent upon any of that through divorce, manumission, giving her a choice, or empowering her to decide her affairs - all such stipulations are invalid, as explained in "The Book of Oaths" within this work regarding the statement of Allah's Messenger (peace and blessings be upon him): "Whoever takes an oath must swear only by Allah or remain silent."

وَأَمَّا تَعْلِيقُ ذَلِكَ كُلِّهِ بِطَلَاقٍ، أَوْ بِعِتَاقٍ، أَوْ تَخْيِيرِهَا، أَوْ تَمْلِيكِهَا أَمْرَهَا فَكُلُّ ذَلِكَ بَاطِلٌ لِمَا ذَكَرْنَا فِي " كِتَابِ الْأَيْمَانِ " مِنْ كِتَابِنَا هَذَا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ كَانَ حَالِفًا فَلَا يَحْلِفْ إلَّا بِاَللَّهِ» .

L31244 It is established that whoever swears by other than Allah the Exalted is not an oath-taker, nor is it an oath; it is null and void wherein there is nothing except seeking forgiveness from Allah the Exalted and repentance alone. And as for what we will mention after this—if Allah the Almighty and Majestic wills—regarding a man giving his wife the choice or granting her her affair: all of that is null and void, for Allah the Exalted has never obligated anything of that, nor has His Messenger obligated anything of that—peace and blessings be upon him.

فَصَحَّ أَنَّ مَنْ حَلَفَ بِغَيْرِ اللَّهِ تَعَالَى فَلَيْسَ حَالِفًا، وَلَا هِيَ يَمِينًا، وَهُوَ بَاطِلٌ لَيْسَ فِيهِ إلَّا اسْتِغْفَارُ اللَّهِ تَعَالَى وَالتَّوْبَةُ فَقَطْ، وَلِمَا نَذْكُرُهُ بَعْدَ هَذَا - إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ - مِنْ أَنَّ تَخْيِيرَ الرَّجُلِ امْرَأَتَهُ، أَوْ تَمْلِيكَهُ إيَّاهَا أَمْرَهَا: كُلُّ ذَلِكَ بَاطِلٌ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ قَطُّ شَيْئًا مِنْ ذَلِكَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L31245 It has been authentically reported from him—peace and blessings be upon him—that he said: "Whoever performs a deed not in accordance with our command, it is rejected." Thus, all of that is invalid. A woman does not have the choice to separate from her husband or remain with him except where Allah the Exalted has granted it in the case of an emancipated female slave.

وَصَحَّ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ قَالَ: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» فَكُلُّ ذَلِكَ بَاطِلٌ، وَلَا يَكُونُ لِلْمَرْأَةِ خِيَارٌ فِي فِرَاقِ زَوْجِهَا أَوْ الْبَقَاءِ مَعَهُ إلَّا حَيْثُ

جَعَلَهُ اللَّهُ تَعَالَى فِي الْمُعْتَقَةِ، وَلَا تَمْلِكُ الْمَرْأَةُ أَمْرَ نَفْسِهَا أَبَدًا - فَسَقَطَ كُلُّ مَا ذَكَرْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

A woman never possesses authority over her own affairs. Therefore, all that we have mentioned is nullified—and by Allah, the Exalted, is success.

L31246–31248 وَلَا يَجُوزُ النِّكَاحُ عَلَى أَنْ يَكُونَ الصَّدَاقُ وَصِيفًا غَيْرَ مَوْصُوفٍ، أَوْ خَادِمًا غَيْرَ مَوْصُوفَةٍ، أَوْ بَيْتًا غَيْرَ مَوْصُوفٍ وَلَا مَحْدُودٍ، وَكُلُّ ذَلِكَ يُبْطِلُ النِّكَاحَ إنْ عَقَدَ عَلَيْهِ، لِأَنَّهُ مَجْهُولٌ لَا يَعْرِفُ مَا هُوَ، فَلَمْ يَتَّفِقَا عَلَى صَدَاقٍ مَعْرُوفٍ، بَلْ عَلَى مَالَهَا أَنْ تَقُولَ: قِيمَةُ كُلِّ ذَلِكَ أَلْفُ دِينَارٍ، وَيَقُولَ هُوَ: بَلْ عَشَرَةُ دَنَانِيرَ، وَإِنْ تَعَاقَدَا ذَلِكَ بَعْدَ صِحَّةِ النِّكَاحِ، فَالنِّكَاحُ صَحِيحٌ، وَالصَّدَاقُ فَاسِدٌ، وَيَقْضِي لَهَا بِمَهْرِ مِثْلِهَا إنْ لَمْ يَتَرَاضَيَا عَلَى أَقَلَّ أَوْ أَكْثَرَ -: رُوِّينَا إجَازَةَ ذَلِكَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ.

It is not permissible to contract a marriage stipulating a dowry as an unspecified male servant, an unspecified female servant, or a house that is neither specified nor delimited. All such stipulations invalidate the marriage if the marriage is contracted based on such terms, because it constitutes an unknown dowry—they do not know what it is. Thus, the parties have not mutually agreed upon a customary dowry. Rather, she may claim: "The value of this is one thousand dinars," while he may say: "No, it is ten dinars." If they agree upon such terms after the marriage has been validly established, The marriage is valid and the dower is invalid. The judge must award her a dower commensurate with her status if they do not mutually agree on a lower or higher amount. It has been narrated to us from Ibrāhīm al-Nakhaʿī that the permissibility of this [ruling] is established.

L31249 وَصَحَّ عَنْ ابْنِ شُبْرُمَةَ أَنَّهُ قَالَ: مَنْ تَزَوَّجَ عَلَى وَصِيفٍ فَإِنَّهُ يُقَوَّمُ عَرَبِيٌّ وَهِنْدِيٌّ، وَحَبَشِيٌّ، وَتُجْمَعُ الْقِيَمُ وَيَقْضِي لَهَا بِمِثْلِهَا.

It is authentically reported from Ibn Shubrumah that he said: If someone marries while owning a male servant, an Arab, an Indian, and an Abyssinian are assessed; the values are totaled, and he must pay her their equivalent value.

L31250 قَالَ أَبُو حَنِيفَةَ: لَهَا فِي الْوَصِيفِ الْأَبْيَضِ خَمْسُونَ مِثْقَالًا، فَإِنْ أَعْطَاهَا وَصِيفًا يُسَاوِي خَمْسِينَ دِينَارًا مِنْ ذَهَبٍ لَمْ يَكُنْ لَهَا غَيْرُهُ، وَإِلَّا فَيَقْضِي عَلَيْهِ بِتَمَامِ خَمْسِينَ دِينَارًا مِنْ ذَهَبٍ، وَيَقْضِي لَهَا فِي الْبَيْتِ بِأَرْبَعِينَ دِينَارًا مِنْ ذَهَبٍ وَفِي الْخَادِمِ بِأَرْبَعِينَ دِينَارًا مِنْ ذَهَبٍ.

Abu Hanifah said: She is entitled to fifty mithqals of gold for the white male servant. If he provides her with a male servant valued at fifty gold dinars (and she has no other servant besides him), that suffices. Otherwise, the judge must order him to pay the full fifty gold dinars in gold. The judge must also award her forty gold dinars in gold for the house and forty gold dinars in gold for the servant.

L31251 قَالَ أَبُو مُحَمَّدٍ: فِي هَذَيْنِ الْقَوْلَيْنِ عَجَبٌ يُغْنِي إيرَادُهُ عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهِ، لِمَا فِيهِمَا مِنْ التَّحَكُّمِ الْبَارِدِ بِالرَّأْيِ الْفَاسِدِ فِي دِينِ اللَّهِ تَعَالَى.

Abū Muḥammad said: These two statements contain such astonishment that merely mentioning it renders laborious refutation unnecessary, due to the feeble arbitrariness and corrupt view inherent in them concerning the religion of Allah, the Exalted.

L31252 وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: لَهَا الْوَسَطُ مِنْ ذَلِكَ.

Mālik and al-Shāfiʿī said: She is entitled to the median value thereof.

Ali said: “This is another marvel! Would that I knew—what constitutes this fair value? For some items are valued at five hundred dinars, while others are not worth even twenty. Thus, the invalidity of these opinions becomes clear—and all praise is due to Allah, Lord of the worlds.”

قَالَ عَلِيٌّ: وَهَذَا عَجَبٌ آخَرُ، وَلَيْتَ شِعْرِي كَمْ هَذَا الْوَسَطُ؟ وَمِنْ الْوُصَفَاءِ مَا يُسَاوِي خَمْسَمِائَةِ دِينَارٍ، وَمِنْهُمْ مَنْ لَا يُسَاوِي عِشْرِينَ دِينَارًا، فَظَهَرَ فَسَادُ هَذِهِ الْآرَاءِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

The Issue of the Marriage of Mut’ah

[مَسْأَلَةُ نِكَاحُ الْمُتْعَةِ]

Issue 1858: Abu Muhammad said: Mut’ah marriage is not permissible. It refers to marriage for a specified term, which was lawful during the time of Allah’s Messenger (peace be upon him). Then Allah the Exalted abrogated it by the tongue of His Messenger (peace be upon him) with a definitive abrogation valid until the Day of Resurrection.

١٨٥٨ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: وَلَا يَجُوزُ نِكَاحُ الْمُتْعَةِ، وَهُوَ النِّكَاحُ إلَى أَجَلٍ، وَكَانَ حَلَالًا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ نَسَخَهَا اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَسْخًا بَاتًّا إلَى يَوْمِ الْقِيَامَةِ.

A group of the Salaf (early Muslim generations)—may Allah be pleased with them—upheld its permissibility after the Messenger of Allah (peace and blessings be upon him). Among them were Companions such as Asmāʾ bint Abī Bakr al-Ṣiddīq, Jābir ibn ʿAbd Allāh, and Ibn Masʿūd.

وَقَدْ ثَبَتَ عَلَى تَحْلِيلِهَا بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَمَاعَةٌ مِنْ السَّلَفِ - رَضِيَ اللَّهُ عَنْهُمْ - مِنْهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَسْمَاءُ بِنْتُ أَبِي بَكْرٍ الصِّدِّيقِ، وَجَابِرُ بْنُ عَبْدِ اللَّهِ، وَابْنُ مَسْعُودٍ.

Ibn Abbas, Mu’awiyah ibn Abi Sufyan, Amr ibn Ḥurayth, Abu Sa’id al-Khudri, Salamah and Ma’bad, the two sons of Umayya ibn Khalaf.

وَابْنُ عَبَّاسٍ، وَمُعَاوِيَةُ بْنُ أَبِي سُفْيَانَ، وَعَمْرُو بْنُ حُرَيْثٍ، وَأَبُو سَعِيدٍ الْخُدْرِيِّ، وَسَلَمَةُ، وَمَعْبَدٌ ابْنَا أُمَيَّةَ بْنِ خَلَفٍ

Jābir ibn ʿAbdullāh narrated it from all the Companions during the lifetime of the Messenger of Allah—may Allah bless him and grant him peace—the era of Abū Bakr, and the era of ʿUmar, until near the end of ʿUmar’s caliphate.

وَرَوَاهُ جَابِرُ بْنُ عَبْدِ اللَّهِ عَنْ جَمِيعِ الصَّحَابَةِ مُدَّةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمُدَّةَ أَبِي بَكْرٍ، وَعُمَرَ إلَى قُرْبِ آخِرِ خِلَافَةِ عُمَرَ.

There has been a difference of opinion regarding Ibn al-Zubayr’s position on its permissibility, while there was hesitation from Ali concerning it.

وَاخْتُلِفَ فِي إبَاحَتِهَا عَنْ ابْنِ الزُّبَيْرِ، وَعَنْ عَلِيٍّ فِيهَا تَوَقُّفٌ.

From Umar ibn al-Khattab: He only rejected it when solely two just witnesses were not summoned, but permitted it with the testimony of two just witnesses.

وَعَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ إنَّمَا أَنْكَرَهَا إذَا لَمْ يُشْهِدْ عَلَيْهَا عَدْلَانِ فَقَطْ، وَأَبَاحَهَا بِشَهَادَةِ عَدْلَيْنِ.

And among the Successors: Ṭāwūs, ʿAṭāʾ, Saʿīd ibn Jubayr, and the rest of

the jurists of Mecca, may Allah honor it.

وَمِنْ التَّابِعِينَ: طَاوُسٌ، وَعَطَاءٌ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَسَائِرُ فُقَهَاءِ مَكَّةَ أَعَزَّهَا اللَّهُ.

L31263 And indeed, we have traced the aforementioned narrations in our book titled “Al-Iṣāl”.

وَقَدْ تَقَصَّيْنَا الْآثَارَ الْمَذْكُورَةَ فِي كِتَابِنَا الْمَوْسُومِ بِ " الْإِيصَالُ "

L31264 The prohibition thereof has been authentically established from Ibn ʿUmar and from Ibn Abī ʿAmrata al-Anṣārī.

وَصَحَّ تَحْرِيمُهَا عَنْ ابْنِ عُمَرَ، وَعَنْ ابْنِ أَبِي عَمْرَةَ الْأَنْصَارِيِّ.

L31265 There were differing opinions reported from ʿAlī, ʿUmar, Ibn ʿAbbās, and Ibn al-Zubayr regarding it.

وَاخْتُلِفَ فِيهَا: عَنْ عَلِيٍّ، وَعُمَرَ، وَابْنِ عَبَّاسٍ، وَابْنِ الزُّبَيْرِ.

L31266 Among the later scholars who affirmed its prohibition and the invalidation of its contract are Abū Ḥanīfah, Mālik, al-Shāfiʿī, and Abū Sulaymān.

وَمِمَّنْ قَالَ بِتَحْرِيمِهَا وَفَسْخِ عَقْدِهَا مِنْ الْمُتَأَخِّرِينَ: أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ.

L31267–31268 And Zufar said: The contract remains valid while the stipulation is rendered void.

وَقَالَ زُفَرُ: يَصِحُّ الْعَقْدُ وَيَبْطُلُ الشَّرْطُ.

L31269 Abū Muḥammad said: The prohibition of *shighār* and *mawhūbah* has indeed been firmly established, yet they permit them—even though these are more evidently forbidden than *mutʿah*. But they pay no heed to the contradiction.

قَالَ أَبُو مُحَمَّد: لَقَدْ صَحَّ تَحْرِيمُ الشِّغَارِ، وَالْمَوْهُوبَةِ، فَأَبَاحُوهَا، وَهِيَ فِي التَّحْرِيمِ أَبْيَنُ مِنْ الْمُتْعَةِ وَلَكِنَّهُمْ لَا يُبَالُونَ بِالتَّنَاقُضِ.

L31270 And we confine ourselves from the evidence for its prohibition to the sound narration—which we have narrated through the chain of ʿAbd al-Razzāq from Maʿmar from ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz from al-Rabīʿ ibn Sabrah al-Juhanī from his father, who said: “We traveled with the Messenger of Allah—peace and blessings of Allah be upon him—” then he mentioned the ḥadīth, which includes the Prophet’s statement: “I heard the Messenger of Allah—peace and blessings of Allah be upon him—on the pulpit delivering a sermon, saying: ’Whoever marries a woman for a specified term must give her what he has stipulated for her, and he must not reclaim anything from what he has given her, and he must part with her, for Allah has indeed forbidden it for you until the Day of Resurrection.”’

وَنَقْتَصِرُ مِنْ الْحُجَّةِ فِي تَحْرِيمِهَا عَلَى خَبَرٍ ثَابِتٍ - وَهُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ الرَّبِيعِ بْنِ سَبْرَةَ الْجُهَنِيِّ عَنْ أَبِيهِ قَالَ: " خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " فَذَكَرَ الْحَدِيثَ وَفِيهِ فَقَالَ " سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمِنْبَرِ يَخْطُبُ وَيَقُولُ: «مَنْ كَانَ تَزَوَّجَ امْرَأَةً إلَى أَجَلٍ فَلْيُعْطِهَا مَا سَمَّى لَهَا، وَلَا يَسْتَرْجِعْ مِمَّا أَعْطَاهَا شَيْئًا، وَيُفَارِقْهَا، فَإِنَّ اللَّهَ قَدْ حَرَّمَهَا عَلَيْكُمْ إلَى يَوْمِ الْقِيَامَةِ» .

L31271 Abu Muhammad said: What He has prohibited until the Day of Resurrection—we are secure from its abrogation.

قَالَ أَبُو مُحَمَّدٍ: مَا حَرَّمَ إلَى يَوْمِ الْقِيَامَةِ فَقَدْ أَمِنَّا نَسْخَهُ.

L31272 As for Zufar’s statement, it is invalid because the contract was not validly

وَأَمَّا قَوْلُ زُفَرَ فَفَاسِدٌ، لِأَنَّ الْعَقْدَ لَمْ يَقَعْ إلَّا عَلَى أَجَلٍ مُسَمًّى.

concluded unless [it included] a specified term.

L31273 Whoever nullifies this condition and validates the contract thereby binds the two parties to a contract they never agreed to nor committed to at all, for every person of sound perception knows without doubt that a contract bound to a term is different from one without a term.

فَمَنْ أَبْطَلَ هَذَا الشَّرْطَ وَأَجَازَ الْعَقْدَ، فَإِنَّهُ أَلْزَمَهُمَا عَقْدًا لَمْ يَتَعَاقَدَاهُ قَطُّ، وَلَا الْتَزَمَاهُ قَطُّ، لِأَنَّ كُلَّ ذِي حِسٍّ سَلِيمٍ يَدْرِي بِلَا شَكٍّ أَنَّ الْعَقْدَ الْمَعْقُودَ إِلَى أَجَلٍ هُوَ غَيْرُ الْعَقْدِ الَّذِي هُوَ إِلَى غَيْرِ أَجَلٍ.

L31274 Thus, it is invalid to nullify a contract that the two parties have contracted and to obligate them to a contract they have not contracted. This is entirely impermissible unless commanded by the One who has enjoined upon us prayer, zakah, fasting, and Hajj—none besides Him. And success comes only from Allah, the Most High.

فَمِنْ الْبَاطِلِ إِبْطَالُ عَقْدٍ تَعَاقَدَاهُ وَإِلْزَامُهُمَا عَقْدًا لَمْ يَتَعَاقَدَاهُ، وَهَذَا لَا يَحِلُّ أَلْبَتَّةَ إِلَّا أَنْ يَأْمُرَنَا بِهِ الَّذِي أَمَرَنَا بِالصَّلَاةِ وَالزَّكَاةِ وَالصَّوْمِ وَالْحَجِّ، لَا أَحَدَ دُونَهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حُكْمُ نِكَاحِ الْأُمِّ وَالْجَدَّةِ]

An issue regarding the ruling on marriage to the mother and grandmother.

L31275 1859 - Issue: It is not permissible to marry one's mother. Nor is it permissible to marry a grandmother, whether on the father's or mother's side, even if they are far removed.

١٨٥٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ نِكَاحُ الْأُمِّ، وَلَا الْجَدَّةِ مِنْ قِبَلِ الْأَبِ، أَوْ مِنْ قِبَلِ الْأُمِّ، وَإِنْ بَعُدَتَا.

L31277 nor the daughter, nor a daughter from the line of the daughter or from the line of the son, even if the two are of lower rank.

وَلَا الْبِنْتِ، وَلَا بِنْتٍ مِنْ قِبَلِ الْبِنْتِ، أَوْ مِنْ قِبَلِ الِابْنِ وَإِنْ سَفُلَتَا.

L31278 The marriage to a sister is invalid in any form, nor is marriage to a brother's daughter or a sister's daughter, even if they are of low status.

وَلَا نِكَاحُ الْأُخْتِ كَيْفَ كَانَتْ، وَلَا نِكَاحُ بِنْتِ أَخٍ، أَوْ بِنْتِ أُخْتٍ، وَإِنْ سَفُلَتَا.

L31279 Marriage to one's paternal or maternal aunt is forbidden, even if they are further removed.

وَلَا نِكَاحُ الْعَمَّةِ وَالْخَالَةِ وَإِنْ بَعُدَتَا.

L31280 Marriage to the husband's mother is invalid, as is marriage to his grandmothers, whether paternal or maternal, even if they are far removed in lineage.

وَلَا نِكَاحُ أُمِّ الزَّوْجِ، وَلَا جَدَّتِهَا، وَإِنْ بَعُدَتْ.

L31281 Nor the mother of the female slave whom he is permitted to have intercourse with, nor [is valid] the marriage to her grandmother, even if she is distant in lineage.

وَلَا أُمِّ الْأَمَةِ الَّتِي حَلَّ لَهُ وَطْؤُهَا، وَلَا نِكَاحُ جَدَّتِهَا وَإِنْ بَعُدَتْ.

L31282–31284 Abu Muhammad said: Allah, the Almighty and Majestic, declared: "Forbidden to you are your mothers, your daughters, your sisters, your paternal aunts, your maternal aunts, your brother's daughters, and your sister's daugh-

ters" [An-Nisa: 23]. To His saying, Exalted is He: "and the mothers of your wives" [Quran 4:23, An-Nisa].[25]

قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ عَزَّ وَجَلَّ: {حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالاتُكُمْ وَبَنَاتُ الأَخِ وَبَنَاتُ الأُخْتِ} [النساء: ٢٣] إِلَى قَوْله تَعَالَى {وَأُمَّهَاتُ نِسَائِكُمْ} [النساء: ٢٣] .

L31285 Ali said: The grandmother, whether she is the mother of a father, the mother of a grandfather, the mother of a grandfather's grandfather, the mother of the mother of a grandfather, the maternal grandmother, or the mother of a mother.

قَالَ عَلِيٌّ: وَالْجَدَّةُ كَيْفَ كَانَتْ أُمَّ أَبٍ، أَوْ أُمَّ جَدٍّ، أَوْ أُمَّ جَدِّ جَدٍّ، أَوْ أُمَّ أُمِّ جَدٍّ، أَوْ جَدَّةَ أُمٍّ، أَوْ أُمَّ أُمٍّ.

L31286 All of these are "mother." The Exalted stated: {as He brought your parents out of Paradise} [Al-A'rāf: 27]. A sister may be a full sister, a paternal sister, or a maternal sister.[26]

كُلُّ هَؤُلَاءِ " أُمٌّ " قَالَ تَعَالَى: {كَمَا أَخْرَجَ أَبَوَيْكُمْ مِنَ الْجَنَّةِ} [الأعراف: ٢٧] وَالْأُخْتُ تَكُونُ شَقِيقَةً، وَتَكُونُ لِأَبٍ، وَتَكُونُ لِأُمٍّ.

L31287 The daughter's daughter, the son's daughter, the daughter of the son of the daughter, and the daughter of the son's daughter.

وَبِنْتُ الْبِنْتِ، وَبِنْتُ الِابْنِ، وَبِنْتُ ابْنِ الْبِنْتِ، وَبِنْتُ بِنْتِ الِابْنِ.

L31288 And thus, how it was—all these 'daughter'—He, the Exalted and Glorious, said: "O sons of Adam" [Al-A'raf: 27].[27]

وَهَكَذَا كَيْفَ كَانَتْ، كُلُّ هَؤُلَاءِ " بِنْتٌ " قَالَ عَزَّ وَجَلَّ: {يَا بَنِي آدَمَ} [الأعراف: ٢٧]

L31289 The Prophet - may Allah bless him and grant him peace - said concerning menstruation: "This is something Allah has prescribed upon the daughters of Adam."

«وَقَالَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْحَيْضِ هَذَا شَيْءٌ كَتَبَهُ اللَّهُ عَلَى بَنَاتِ آدَمَ» .

L31290 The daughter of the brother's daughter and the daughter of the brother's son—all of them are daughters of a brother.

وَبِنْتُ بِنْتِ الْأَخِ، وَبِنْتُ ابْنِ الْأَخِ، كُلُّهُنَّ بَنَاتُ أَخٍ.

L31291 The daughter of the sister's daughter, the daughter of the sister's son—all these are juristically considered sister's daughters.

وَبِنْتُ بِنْتِ الْأُخْتِ، وَبِنْتُ ابْنِ الْأُخْتِ، كُلُّ هَؤُلَاءِ بِنْتُ أُخْتٍ.

L31292 The sister of the paternal grandfather (paternal grandaunt) and the sister of the paternal grandfather's grandfather (paternal great-great-grandaunt) are

وَأُخْتُ الْجَدِّ مِنْ الْأَبِ، وَأُخْتُ جَدِّ الْجَدِّ مِنْ الْأَبِ، كُلُّهُنَّ عَمَّةٌ.

[25] **Qur'an references (L31282):** Qur'an 4:23 (An-Nisa).
[26] **Qur'an references (L31286):** Qur'an 7:27 (Al-A'raf).
[27] **Qur'an references (L31288):** Qur'an 7:27 (Al-A'raf).

all classified as ‘عَمَّةٌ’ (paternal aunt, encompassing grandaunts and ascending generations in juristic usage).

وَأُخْتُ الْجَدِّ مِنْ الْأُمِّ، وَأُخْتُ الْجَدَّةِ مِنْ قِبَلِ الْأَبِ وَالْأُمِّ، كُلُّهُنَّ خَالَةٌ.

L31293 The sister of the maternal grandfather, and the sister of the grandmother from both the father’s and mother’s sides—all of them are maternal aunts (khālah).

وَالزَّوْجَةُ، وَالْأَمَةُ الَّتِي حَلَّ وَطْؤُهَا لِلرَّجُلِ، كُلُّهُنَّ مِنْ نِسَائِهِ.

L31294 The wife and the female slave with whom sexual relations are lawful for the man, all such women are among his women.

وَكُلُّ هَذَا لَا خِلَافَ فِيهِ بَيْنَ أَحَدٍ مِنْ الْمُسْلِمِينَ، إلَّا الْأَمَةَ وَابْنَتَهَا بِمِلْكِ الْيَمِينِ فَإِنَّ قَوْمًا أَحَلُّوهُمَا.

L31295 All Muslims unanimously agree on this without exception, except the female slave and her daughter under ownership by the right hand, for some have permitted both of them.

[مَسْأَلَةٌ كُلُّ مَا حَرُمَ مِنْ الْأَنْسَابِ حرم مِنْ الرَّضَاع]

L31296 An issue: All that is prohibited due to blood relations is likewise prohibited due to Islamic legal breastfeeding.

١٨٦٠ - مَسْأَلَةٌ: وَكُلُّ مَا حَرُمَ مِنْ الْأَنْسَابِ، وَالْحُرُمُ الَّتِي ذَكَرْنَا فَإِنَّهُ يَحْرُمُ بِالرَّضَاعِ، كَالْمَرْأَةِ الَّتِي تُرْضِعُ الرَّجُلَ فَهِيَ أُمُّه، وَأُمُّهَا جَدَّتُهُ، وَجَدَّاتُهَا مِنْ قِبَلِ أَبِيهَا وَأُمِّهَا كُلُّهُنَّ أُمٌّ لَهُ.

L31297 1860 - Issue: All marital prohibitions that apply due to lineage, and those we have mentioned, are likewise prohibited through breastfeeding. For instance, a woman who breastfeeds a man becomes his mother, her mother becomes his grandmother, and all her grandmothers from both her paternal and maternal sides become grandmothers to him.

وَكُلُّ مَنْ أَرْضَعَتْهُ فَهُنَّ أَخَوَاتُهُ وَإِخْوَتُهُ.

L31298 And all those whom she has breastfed are his sisters and brothers.

وَمَنْ تَنَاسَلَ مِنْهُمْ فَهُنَّ بَنَاتُ إخْوَتِهِ وَبَنَاتُ أَخَوَاتِهِ.

L31299 And whoever has offspring from them—their offspring are the daughters of his brothers and the daughters of his sisters.

وَعَمَّاتُ الَّتِي أَرْضَعَتْهُ وَخَالَاتُهَا خَالَاتُهُ كَمَا ذَكَرْنَا.

L31300 The paternal aunts of the woman who suckled him are his maternal aunts, and her maternal aunts are his maternal aunts, as we have mentioned.

وَعَمَّاتُ أَبِيهِ مِنْ الرَّضَاعَةِ عَمَّاتُهُ - وَهَكَذَا فِي كُلِّ شَيْءٍ.

L31301 The paternal aunts of one’s father through wet-nursing are considered his paternal aunts, and this ruling applies universally.

L31302 It was narrated to us via the chain of Mālik ibn Dīnār from Sulaymān ibn Yasār from ʿUrwah ibn al-Zubayr from ʿĀ’ishah, the Mother of the Believers, that the Messenger of Allah—peace be upon him—said: “What is prohibited by birth is prohibited by suckling.”

رُوِّينَا مِنْ طَرِيقِ مَالِكِ بْنِ دِينَارٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَا حَرَّمَتْهُ الْوِلَادَةُ حَرَّمَهُ الرَّضَاعُ» .

[مَسْأَلَةُ الْجَمْعِ فِي اسْتِبَاحَةِ الْوَطْءِ بَيْنَ الْأُخْتَيْنِ]

A legal issue regarding the permissibility of combining sexual relations with both sisters.

مَسْأَلَةٌ: وَلَا يَحِلُّ الْجَمْعُ فِي اسْتِبَاحَةِ الْوَطْءِ بَيْنَ الْأُخْتَيْنِ مِنْ وِلَادَةٍ أَوْ مِنْ رَضَاعٍ كَمَا ذَكَرْنَا لَا بِزَوَاجٍ وَلَا بِمِلْكِ يَمِينٍ، وَلَا إحْدَاهُمَا بِزَوَاجٍ، وَالْأُخْرَى بِمِلْكِ يَمِينٍ، وَلَا بَيْنَ الْعَمَّةِ وَبِنْتِ أَخِيهَا، وَلَا بَيْنَ الْخَالَةِ وَبِنْتِ أُخْتِهَا، كَمَا قُلْنَا فِي الْأُخْتَيْنِ سَوَاءً سَوَاءً.

Issue: It is impermissible to combine the legal sanctioning of sexual intercourse with two sisters - whether by birth or breastfeeding - as we have stated, neither through marriage nor ownership by the right hand, nor one through marriage and the other through ownership by the right hand. Likewise, it is impermissible between a paternal aunt and her brother's daughter, or between a maternal aunt and her sister's daughter, just as we have stated regarding two sisters - they are all equally, equally prohibited.

فَمَنْ اجْتَمَعَ فِي مِلْكِهِ أُخْتَانِ، أَوْ عَمَّةٌ وَبِنْتُ أَخِيهَا، أَوْ خَالَةٌ وَبِنْتُ أُخْتِهَا، فَهُمَا جَمِيعًا عَلَيْهِ حَرَامٌ، حَتَّى يُخْرِجَ إحْدَاهُمَا عَنْ مِلْكِهِ بِمَوْتٍ أَوْ بَيْعٍ أَوْ هِبَةٍ أَوْ غَيْرِ ذَلِكَ مِنْ الْوُجُوهِ، أَوْ حَتَّى تَزَوَّجَ إحْدَاهُمَا بِأَيِّ هَذِهِ الْوُجُوهِ كَانَ: حَلَّ لَهُ وَطْءُ الْبَاقِيَةِ.

If two sisters, a paternal aunt and her brother's daughter, or a maternal aunt and her sister's daughter come under a man's ownership, both are forbidden to him as long as they remain in his ownership. This prohibition persists until he removes one from his ownership through death, sale, gift, or similar lawful means, or until he marries one of them after she is no longer under his ownership. Only then does it become lawful for him to have intercourse with the remaining woman.

فَإِنْ رَجَعَتْ إلَى مِلْكِهِ الْأُخْرَى رَجَعَتْ حَرَامًا كَمَا كَانَتْ، وَبَقِيَتْ الْأُولَى حَلَالًا كَمَا كَانَتْ، فَإِنْ أَخْرَجَهَا عَنْ مِلْكِهِ أَوْ زَوَّجَهَا أَوْ مَاتَتْ: حَلَّتْ لَهُ الَّتِي كَانَتْ حَرَامًا عَلَيْهِ.

If the other woman returns to his ownership, she reverts to being forbidden as she was before, and the first woman remains permissible as she was. If he releases her from his ownership, gives her in marriage, or she dies, the woman who was forbidden to him becomes permissible.

وَكَذَلِكَ إنْ مَاتَتْ الزَّوْجَةُ أَوْ طَلَّقَهَا ثَلَاثًا، أَوْ قَبْلَ الدُّخُولِ: حَلَّ لَهُ زَوَاجُ الْأُخْرَى.

Similarly, if the wife dies, he divorces her three times, or before consummation, he is permitted to marry another woman.

وَكَذَلِكَ إنْ طَلَّقَهَا طَلَاقًا رَجْعِيًّا فَتَمَّتْ عِدَّتُهَا مِنْهُ.

Likewise, if he divorces her with a revocable divorce, then her waiting period from him is completed.

The proof of that is the statement of Allah, the Exalted in Might, the Majestic:

"And to marry two sisters simultaneously, except what has already occurred" [an-Nisāʾ 4:23].[28]

L31311 Abu Muhammad said: Its meaning is that He, the Exalted, forgave them for what had preceded in that regard, because He, the Exalted, sustained them despite it.

L31312 Ali said: People did not differ regarding the prohibition of being married to two sisters simultaneously, but they differed concerning union with both through right-hand possession. One group permitted cohabitation with both, while another group hesitated on the matter.

L31313 A group held: He may have intercourse with whichever of the two he wishes, and once he has intercourse with one, the other becomes forbidden to him.

L31314 It is authentically reported from Ibn Abbas and Ikrimah – as we have narrated through Abd al-Razzaq – who reported to us – from Ibn Jurayj, who informed me from Amr ibn Dinar – that Ikrimah, the client of Ibn Abbas, saw no harm in taking as concubines two sisters or a woman and her daughter, meaning through the right hand's possession.

L31315 Ikrimah reported that Ibn ʿAbbās would say: "Their kinship among themselves does not render them unlawful upon you; only the kinship between you and them does."

L31316–31317 Amr ibn Dinar said: Ibn Abbas was amazed by Ali's statement, "A verse forbade the two and a verse permitted the two," and he would say: "The verse {Except what your right hands possess} [An-Nisa: 24] is unrestricted."[29]

L31318 Ali said: Abu Sulaiman and our companions also hold this opinion.

L31319 Abu Muhammad said: This is the opinion of those who permitted them both, and the opinion of ʿAlī regarding reserving judgment.

L31320 It has been authentically reported from Umar—as we have narrated through

[28] **Qur'an references (L31310):** Qur'an 4:23 (An-Nisa).
[29] **Qur'an references (L31317):** Qur'an 4:24 (An-Nisa).

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَأَنْ تَجْمَعُوا بَيْنَ الأُخْتَيْنِ إِلا مَا قَدْ سَلَفَ} [النساء: ٢٣].

قَالَ أَبُو مُحَمَّدٍ: مَعْنَاهُ أَنَّهُ تَعَالَى غَفَرَ لَهُمْ مَا قَدْ سَلَفَ مِنْ ذَلِكَ، لِأَنَّهُ تَعَالَى أَبْقَاهُمْ عَلَيْهِ.

قَالَ عَلِيٌّ: لَمْ يَخْتَلِفِ النَّاسُ فِي تَحْرِيمِ الْجَمْعِ بَيْنَ الْأُخْتَيْنِ بِالزَّوَاجِ، وَاخْتَلَفُوا فِي الْجَمْعِ بَيْنَهُمَا بِمِلْكِ الْيَمِينِ، فَطَائِفَةٌ أَحَلَّتْهُمَا، وَطَائِفَةٌ تَوَقَّفَتْ فِي ذَلِكَ.

وَطَائِفَةٌ قَالَتْ: يَطَأُ أَيَّتَهُمَا شَاءَ، فَإِذَا وَطِئَهَا حَرُمَتْ عَلَيْهِ الْأُخْرَى.

فَصَحَّ عَنِ ابْنِ عَبَّاسٍ، وَعِكْرِمَةَ مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ، أَنَّ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ كَانَ لَا يَرَى بَأْسًا أَنْ يَجْمَعَ بَيْنَ أُخْتَيْنِ، وَالْمَرْأَةِ وَابْنَتِهَا - يَعْنِي بِمِلْكِ الْيَمِينِ -.

وَأَخْبَرَهُ عِكْرِمَةُ أَنَّ ابْنَ عَبَّاسٍ كَانَ يَقُولُ: لَا تُحَرِّمُهُنَّ عَلَيْكَ قَرَابَةُ بَيْنَهُنَّ، إِنَّمَا يُحَرِّمُهُنَّ عَلَيْكَ الْقَرَابَةُ بَيْنَكَ وَبَيْنَهُنَّ.

قَالَ عَمْرُو بْنُ دِينَارٍ: وَكَانَ ابْنُ عَبَّاسٍ يَعْجَبُ مِنْ قَوْلِ عَلِيٍّ: حَرَّمَتْهُمَا آيَةٌ وَأَحَلَّتْهُمَا آيَةٌ، وَيَقُولُ: {إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] هِيَ مُرْسَلَةٌ.

قَالَ عَلِيٌّ: وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا.

وَقَالَ أَبُو مُحَمَّدٍ: فَهَذَا قَوْلُ مَنْ أَحَلَّهُمَا، وَقَوْلُ عَلِيٍّ فِي التَّوَقُّفِ.

the chain of Sa'eed ibn Mansoor who narrated to us from Sufyan (that is, Ibn 'Uyaynah)—who narrated from Az-Zuhri, from 'Ubaydullah ibn 'Abdullah ibn 'Utbah ibn Mas'ood, from his father, who said: "Umar was asked about the permissibility of simultaneous marriage to a mother and her daughter. He replied: 'I disapprove of permitting marriage to both of them at the same time.'"

وَصَحَّ عَنْ عُمَرَ - كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ أَبِيهِ قَالَ " سُئِلَ عُمَرُ عَنْ الْجَمْعِ بَيْنَ أُمٍّ وَابْنَتِهَا؟ فَقَالَ عُمَرُ: مَا أُحِبُّ أَنْ يُجِيزَهُمَا جَمِيعًا ".

L31321 Ibn 'Utbah said—and Abdullah ibn 'Utbah met 'Umar—: "I wish 'Umar had been stricter regarding that matter than he was." It is also narrated from 'Uthman—as transmitted through 'Abd al-Razzāq's chain from Ibn Jurayj, from Ibn Shihab, who reported: Qabisa ibn Dhu'ayb informed me [Ibn Shihab] that Niyār al-Aslamī sought 'Uthman's legal opinion concerning a woman and her sister being among those whom one's right hand possesses. 'Uthman replied: "One verse permitted marrying them [two sisters], and another verse forbade it. I would never condone such an act."

وَقَالَ ابْنُ عُتْبَةَ: فَوَدِدْتُ أَنَّ عُمَرَ كَانَ أَشَدَّ فِي ذَلِكَ مِمَّا هُوَ - عَبْدُ اللَّهِ بْنُ عُتْبَةَ أَدْرَكَ عُمَرَ - وَجَاءَ أَيْضًا عَنْ عُثْمَانَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي قَبِيصَةُ بْنُ ذُؤَيْبٍ أَنَّ نِيَارًا الْأَسْلَمِيَّ اسْتَفْتَى عُثْمَانَ فِي امْرَأَةٍ وَأُخْتِهَا بِمِلْكِ الْيَمِينِ؟ فَقَالَ عُثْمَانُ: أَحَلَّتْهُمَا آيَةٌ وَحَرَّمَتْهُمَا آيَةٌ أُخْرَى، وَلَمْ أَكُنْ لِأَفْعَلَ ذَلِكَ.

L31322 It has also been narrated to us that Ibn Abbas withheld judgment. Moreover, we have been narrated this [ruling] through Waki''s chain of narration—from Isra'il, from 'Abd al-'Aziz ibn Rafi'—who stated: "I asked Ibn al-Hanafiyyah about two enslaved sisters? He responded: 'A verse prohibited them, and another verse permitted them.'"

وَرُوِّينَا التَّوَقُّفَ أَيْضًا عَنْ ابْنِ عَبَّاسٍ، وَرُوِّيَنَاهُ أَيْضًا مِنْ طَرِيقِ وَكِيعٍ عَنْ إسْرَائِيلَ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ قَالَ " سَأَلْت ابْنَ الْحَنَفِيَّةِ عَنْ الْأُخْتَيْنِ الْمَمْلُوكَتَيْنِ؟ فَقَالَ: حَرَّمَتْهُمَا آيَةٌ وَأَحَلَّتْهُمَا آيَةٌ.

L31323 The third opinion – stated by Abū Ḥanīfah, Mālik, and al-Shāfi'ī.

وَالْقَوْلُ الثَّالِثُ - قَالَهُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ.

L31324 As for the opinion we hold: it is as narrated through the chain of 'Abd al-Razzāq from Sufyān al-Thawrī, from 'Abd al-Karīm al-Jazarī, from Maymūn ibn Mihrān, from Ibn 'Umar. He was asked about a female slave with whom her master engaged in sexual relations, then wished to engage in sexual relations with her sister. He replied: "It is not permissible until he removes her from his ownership."

وَأَمَّا الْقَوْلُ الَّذِي قُلْنَا بِهِ -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ مَيْمُونِ بْنِ مِهْرَانَ عَنْ ابْنِ عُمَرَ أَنَّهُ سُئِلَ عَنْ الْأَمَةِ يَطَؤُهَا سَيِّدُهَا ثُمَّ يُرِيدُ أَنْ يَطَأَ أُخْتَهَا؟ قَالَ لَا، حَتَّى يُخْرِجَهَا عَنْ مِلْكِهِ.

L31325 Sufyan reported from several of his companions that they said: "If he marries a woman, there is no blame in [marrying] her sister afterward." Yet Ibn Umar deemed this reprehensible even if the marriage occurred.

وَقَالَ سُفْيَانُ عَنْ غَيْرِ وَاحِدٍ مِنْ أَصْحَابِهِ: إنَّهُمْ قَالُوا: إذَا زَوَّجَهَا فَلَا بَأْسَ بِأُخْتِهَا - وَكَانَ ابْنُ عُمَرَ يَكْرَهُ ذَلِكَ وَإِنْ زَوَّجَهَا.

L31326 Muhammad ibn Sa'id ibn Nabat narrated from Ahmad ibn 'Awn Allah,

from Qasim ibn Asbagh, from Muhammad ibn ’Abd al-Salam al-Khushani, from Muhammad ibn Bashshar Bundar, from Muhammad ibn Ja’far Ghundar, from Shu’bah, from al-Mughirah ibn Miqsam, from al-Sha’bi, who said: Someone asked Abdullah ibn Mas’ud: “Ibn ’Amir says there is no harm in having both female slave sisters together.” Ibn Mas’ud responded: “He must not approach either of them.”

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ بُنْدَارٌ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ الشَّعْبِيِّ قَالَ: قِيلَ لِعَبْدِ اللَّهِ بْنِ مَسْعُودٍ: إنَّ ابْنَ عَامِرٍ قَالَ: لَا بَأْسَ أَنْ يَجْمَعَ بَيْنَ الْأُخْتَيْنِ الْمَمْلُوكَتَيْنِ؟ فَقَالَ ابْنُ مَسْعُودٍ: لَا يَقْرَبَنَّ وَاحِدَةً مِنْهُمَا.

L31327–31328 Through this chain to Al-Mughīrah, from Ibrāhīm al-Nakhaʿī, who said: If a man owns two sister slave girls, he must not have intercourse with one of them until he removes the other from his ownership.

وَبِهِ إلَى الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إذَا كَانَ عِنْدَ الرَّجُلِ مَمْلُوكَتَانِ أُخْتَانِ فَلَا يَغْشَيَنَّ وَاحِدَةً مِنْهُمَا حَتَّى يُخْرِجَ الْأُخْرَى عَنْ مِلْكِهِ.

L31329 Shuʿbah said: Al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān said: Whoever has two enslaved sisters must not have sexual intercourse with either of them nor ever approach them until he removes one of them from his ownership.

قَالَ شُعْبَةُ: وَقَالَ الْحَكَمُ بْنُ عُتَيْبَةَ، وَحَمَّادُ بْنُ أَبِي سُلَيْمَانَ: مَنْ عِنْدَهُ أُخْتَانِ مَمْلُوكَتَانِ لَا يَطَأُ وَاحِدَةً مِنْهُمَا، وَلَا يَقْرَبَنَّهَا حَتَّى يُخْرِجَ إحْدَاهُمَا عَنْ مِلْكِهِ.

L31330 And through the chain of Saʿīd ibn Manṣūr: Ḥammād ibn Zayd narrated to us from Ayyūb al-Sikhtiyānī from ʿAbdullāh ibn Abī Mulaykah that a man asked ʿĀ’ishah, the Mother of the Believers, about his elderly female slave whom he used to have intercourse with and who had a daughter. He inquired: “Is it lawful for me to have relations with her?” The Mother of the Believers responded: “I forbid you from having relations with her, and whoever obeys me.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي مُلَيْكَةَ أَنَّ رَجُلًا سَأَلَ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ عَنْ أَمَةٍ لَهُ قَدْ كَبُرَتْ وَكَانَ يَطَؤُهَا وَلَهَا ابْنَةٌ، أَيَحِلُّ لَهُ أَنْ يَغْشَاهَا؟ فَقَالَتْ لَهُ أُمُّ الْمُؤْمِنِينَ: أَنْهَاك عَنْهَا وَمَنْ أَطَاعَنِي.

L31331 Through the narration chain of Saʿīd ibn Manṣūr: I said to Sufyān ibn ʿUyaynah: Muṭarrif narrated to you from Abi al-Jahm from Abi al-Akhḍar from ʿAmmār, who said: “What is prohibited from free women is prohibited from slave women, except the number.” Sufyān said: “Yes.” We have also narrated it from ʿAlī.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ قُلْت لِسُفْيَانَ بْنِ عُيَيْنَةَ: حَدَّثَك مُطَرِّفٌ عَنْ أَبِي الْجَهْمِ عَنْ أَبِي الْأَخْضَرِ عَنْ عَمَّارٍ، قَالَ: يَحْرُمُ مِنْ الْإِمَاءِ مَا يَحْرُمُ مِنْ الْحَرَائِرِ إلَّا الْعَدَدَ؟ قَالَ سُفْيَانُ: نَعَمْ - وَرُوِّينَاهُ أَيْضًا عَنْ عَلِيٍّ.

L31332 Abu Muhammad said: As for one who suspends judgment because the clarification did not become apparent to him, his ruling is to suspend judgment. As for one who deemed both permissible, he gave precedence to Allah’s statement—the Exalted—“except what your right hands possess” [An-Nisa: 24] over His statement—“and to marry two sisters simultaneously” [An-Nisa:

قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ تَوَقَّفَ فَلَمْ يَلُحْ لَهُ الْبَيَانُ فَحُكْمُهُ التَّوَقُّفُ، وَأَمَّا مَنْ أَحَلَّهُمَا، فَإِنَّهُ غَلَّبَ قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {إلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] عَلَى قَوْله تَعَالَى: {وَأَنْ

23], thereby excepting what your right hands possess from this prohibition. They applied the same reasoning to His statement—"and your wives' mothers" [An-Nisa: 23].[30]

L31333 They have no argument other than this. We examined this matter and found that one of the two texts must necessarily be given precedence over the other by making an exception from it. As for what was said by those we mentioned, its meaning would be: "and to take two sisters in marriage simultaneously, and the mothers of your wives, except whom your right hands possess."

L31334 As for what we have stated, its meaning would be: except what your right hands possess, unless they are two sisters, or the mother of a woman lawful to you, or a paternal aunt and her brother's daughter, or a maternal aunt and her sister's daughter. Since one of the two exceptions must apply, and neither is more valid than the other except by necessary evidence—mere claim does not suffice—we inquired: Do those who prioritize the exception of ownership by the right hand regarding the prohibition of two sisters, a mother and her daughter, a paternal aunt and her brother's daughter, or a maternal aunt and her sister's daughter have any proof? We found none whatsoever, except that some of them said: We know that God Almighty has never forbidden us from simultaneously marrying two sisters, because this is impossible. It is impossible for God to address us with the impossible or forbid us from the impossible.

L31335–31336 Thus, it is established that the Almighty prohibited us only from a situation permitting the combination of both [in one framework]—and this is none other than marriage—since possessing both under right-hand ownership is permissible and lawful without disagreement.

L31337 We said: You are correct that He, the Exalted, forbids us from the impossible act of combining both in intercourse, but you erred in restricting His prohibition solely to marriage, for this is an unwarranted specification of the verse without proof. Rather, He forbade us from combining them through marriage, through legitimizing intercourse with whichever of them

[30] **Qur'an references (L31332):** Qur'an 4:24 (An-Nisa); Qur'an 4:23 (An-Nisa).

تَجْمَعُوا بَيْنَ الأُخْتَيْنِ} [النساء: ٢٣] فَخَصَّ مِلْكَ الْيَمِينِ مِنْ هَذَا النَّهْيِ، وَكَذَلِكَ فَعَلُوا فِي قَوْلِه تَعَالَى: {وَأُمَّهَاتُ نِسَائِكُمْ} [النساء: ٢٣] .

وَلَا حُجَّةَ لَهُمْ غَيْرُ هَذَا -: فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا النَّصَّيْنِ لَا بُدَّ مِنْ تَغْلِيبِ أَحَدِهِمَا عَلَى الْآخَرِ بِأَنْ يُسْتَثْنَى مِنْهُ -: أَمَّا كَمَا قَالَ مَنْ ذَكَرْنَا فَيَكُونُ مَعْنَاهُ: وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ، وَأُمَّهَاتُ نِسَائِكُمْ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ.

وَأَمَّا كَمَا قُلْنَا نَحْنُ فَيَكُونُ مَعْنَاهُ: إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ إِلَّا أَنْ تَكُونَا أُخْتَيْنِ، أَوْ أُمَّ امْرَأَةٍ حَلَّتْ لَكُمْ، أَوْ عَمَّةً وَبِنْتَ أَخِيهَا، أَوْ خَالَةً وَبِنْتَ أُخْتِهَا، فَإِذْ لَا بُدَّ مِنْ أَحَدِ الِاسْتِثْنَاءَيْنِ، وَلَيْسَ أَحَدُهُمَا أَوْلَى مِنَ الْآخَرِ إِلَّا بِبُرْهَانٍ ضَرُورِيٍّ، وَأَمَّا بِالدَّعْوَى فَلَا، فَطَلَبْنَا، هَلْ لِلْمُغَلِّبِينَ الْمُسْتَثْنِينَ مِلْكَ الْيَمِينِ مِنْ تَحْرِيمِ: الْأُخْتَيْنِ، وَالْأُمِّ وَابْنَتِهَا، وَالْعَمَّةِ وَبِنْتِ أَخِيهَا، وَالْخَالَةِ وَبِنْتِ أُخْتِهَا بُرْهَانٌ؟ فَلَمْ نَجِدْهُ أَصْلًا، إِلَّا أَنَّ بَعْضَهُمْ قَالَ: قَدْ عَلِمْنَا أَنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يَنْهَنَا قَطُّ عَنِ الْجَمْعِ بَيْنَ الْأُخْتَيْنِ فِي الْوَطْءِ، لِأَنَّهُ غَيْرُ مُمْكِنٍ، وَمُحَالٌ أَنْ يُخَاطِبَنَا اللَّهُ تَعَالَى بِالْمُحَالِ، أَوْ أَنْ يَنْهَانَا عَنِ الْمُحَالِ.

فَصَحَّ أَنَّهُ تَعَالَى إِنَّمَا نَهَانَا عَنْ مَعْنًى يُمْكِنُ جَمْعُهُمَا فِيهِ، وَلَيْسَ إِلَّا الزَّوَاجُ لِأَنَّ جَمْعَهُمَا فِي مِلْكِ الْيَمِينِ جَائِزٌ حَلَالٌ بِلَا خِلَافٍ؟

فَقُلْنَا: صَدَقْتُمْ أَنَّهُ تَعَالَى يَنْهَانَا عَنِ الْمُحَالِ مِنَ الْجَمْعِ بَيْنَهُمَا فِي الْوَطْءِ، وَأَخْطَأْتُمْ فِي تَخْصِيصِكُمْ بِنَهْيِهِ الزَّوَاجَ فَقَطْ، لِأَنَّهُ تَخْصِيصٌ لِلْآيَةِ بِلَا بُرْهَانٍ، بَلْ نَهَانَا عَنِ الْجَمْعِ بَيْنَهُمَا بِالزَّوَاجِ، وَبِاسْتِحْلَالِ وَطْءِ أَيَّتِهِمَا شَاءَ، وَبِالتَّلَذُّذِ مِنْهُمَا مَعًا، فَهَذَا مُمْكِنٌ، فَهَلُمُّوا دَلِيلًا عَلَى تَخْصِيصِكُمُ الزَّوَاجَ دُونَ مَا ذَكَرْنَا؟ فَلَمْ نَجِدْهُ عِنْدَهُمْ أَصْلًا، فَلَزِمَنَا أَنْ نَأْتِيَ

one wishes, and through taking pleasure from both together. This is possible, so present evidence for your restriction to marriage alone, excluding what we have mentioned. We found none whatsoever in their possession. Thus, we were compelled to provide proof for the validity of our exception; otherwise, it would be a claim and a claim. We then found the words of Allah, the Almighty: {except what your right hands possess} [Quran 4:24]. There is absolutely no disagreement among anyone in the entire community—with definitive certainty—that this exception does not apply to the general prohibition.[31]

بِبُرْهَانٍ عَلَى صِحَّةِ اسْتِثْنَائِنَا وَإِلَّا فَهِيَ دَعْوَى وَدَعْوَى -: فَوَجَدْنَا قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ كُلِّهَا - قَطْعًا مُتَيَقَّنًا فِي أَنَّهُ لَيْسَ عَلَى عُمُومِهِ.

L31338 Rather, all of them have unanimously and definitively agreed that this ruling is exclusively designated, for there is no disagreement or doubt that the male slave is from lawful captives, and his treatment is forbidden and unlawful.

بَلْ كُلُّهُمْ مُجْمِعٌ قَطْعًا عَلَى أَنَّهُ مَخْصُوصٌ، لِأَنَّهُ لَا خِلَافَ وَلَا شَكَّ فِي أَنَّ الْغُلَامَ مِنْ مِلْكِ الْيَمِينِ، وَهُوَ حَرَامٌ لَا يَحِلُّ.

L31339 And that the mother through breastfeeding from among those whom the right hand possesses, and the sister through breastfeeding from among those whom the right hand possesses—there is consensus on the prohibition of both. Or a female slave owned by a man, whom his father has married, had intercourse with, and fathered a child by her: she is prohibited for the son.

وَأَنَّ الْأُمَّ مِنْ الرَّضَاعَةِ مِنْ مِلْكِ الْيَمِينِ، وَالْأُخْتَ مِنْ الرَّضَاعَةِ مِنْ مِلْكِ الْيَمِينِ، وَكِلْتَاهُمَا مُتَّفَقٌ عَلَى تَحْرِيمِهِمَا، أَوْ الْأَمَةَ يَمْلِكُهَا الرَّجُلُ قَدْ تَزَوَّجَهَا أَبُوهُ وَوَطِئَهَا، وَوَلَدَ لَهُ مِنْهَا: حَرَامٌ عَلَى الِابْنِ.

L31340 Then we examined the words of Allah, the Most High: “And to be married to two sisters at the same time” [An-Nisa: 23]. “And your wives’ mothers, and your stepdaughters under your guardianship from those wives with whom you have consummated the marriage” [An-Nisa: 23].[32]

ثُمَّ نَظَرْنَا فِي قَوْله تَعَالَى: {وَأَنْ تَجْمَعُوا بَيْنَ الأُخْتَيْنِ} [النساء: ٢٣] . {وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِبُكُمُ اللاتِي فِي حُجُورِكُمْ مِنْ نِسَائِكُمُ اللاتِي دَخَلْتُمْ بِهِنَّ} [النساء: ٢٣] .

L31341 And do not marry women who associate partners with Allah until they believe. (Al-Baqarah 221).[33]

{وَلا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَّ} [البقرة: ٢٢١] .

L31342 No textual proof or consensus has come indicating that it is specified save for the marriage of Kitabi women alone. Therefore, it is not permissible to specify a text without evidence for its specification. Since it is necessary to specify what fits this description or to specify another text about which

لَمْ يَأْتِ نَصٌّ وَلَا إجْمَاعٌ عَلَى أَنَّهُ مَخْصُوصٌ حَاشَا زَوَاجَ الْكِتَابِيَّاتِ فَقَطْ، فَلَا يَحِلُّ تَخْصِيصُ نَصٍّ لَا بُرْهَانَ عَلَى تَخْصِيصِهِ، وَإِذْ لَا بُدَّ مِنْ تَخْصِيصِ مَا هَذِهِ صِفَتُهَا، أَوْ تَخْصِيصُ نَصٍّ آخَرَ لَا خِلَافَ فِي أَنَّهُ مَخْصُوصٌ، فَتَخْصِيصُ الْمَخْصُوصِ هُوَ الَّذِي لَا يَجُوزُ غَيْرُهُ.

[31] **Qur’an references (L31337):** Qur’an 4:24 (An-Nisa).
[32] **Qur’an references (L31340):** Qur’an 4:23 (An-Nisa).
[33] **Qur’an references (L31341):** Qur’an 2:221 (Al-Baqarah).

there is no disagreement that it is specified, then specifying what is already specified is the only permissible course, with no alternative allowed.

وَبِهَذِهِ الْحُجَّةِ احْتَجَّ ابْنُ مَسْعُودٍ فِي هَذِهِ الْمَسْأَلَةِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ نا سَلَمَةُ بْنُ عَلْقَمَةَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ عُتْبَةَ بْنِ مَسْعُودٍ يَقُولُ: لَمْ يَزَالُوا بِعَبْدِ اللَّهِ بْنِ مَسْعُودٍ حَتَّى أَغْضَبُوهُ - يَعْنِي فِي الْأُخْتَيْنِ بِمِلْكِ الْيَمِينِ - فَقَالَ ابْنُ مَسْعُودٍ: إِنَّ حَمْلَك مِمَّا مَلَكَتْ يَمِينُكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L31343–31345 With this evidence, Ibn Mas‘ūd substantiated his position in this matter—as narrated to us through the chain of Sa‘īd ibn Manṣūr who reported to us: Ismā‘īl ibn Ibrāhīm reported to us, from Salamah ibn ‘Alqamah, from Muḥammad ibn Sīrīn, that he heard ‘Abdullāh ibn ‘Utbah ibn Mas‘ūd say: “They persistently pressed ‘Abdullāh ibn Mas‘ūd continually.” “Until they angered him—referring to the two sisters among those whom the right hand possesses—then Ibn Mas’ud said: ’Indeed, your lawful matters are with those whom your right hand possesses.’ And by Allah, the Exalted, is success.”

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا مَنْ أَبَاحَ لَهُ أَنْ يَطَأَ أَيَّ الْأُخْتَيْنِ الْمَمْلُوكَتَيْنِ لَهُ شَاءَ، وَحِينَئِذٍ تَحْرُمُ عَلَيْهِ الَّتِي لَمْ يَطَأْ، فَقَوْلٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ لَا يَخْلُو قَائِلُ هَذَا الْقَوْلِ مِنْ أَنْ يَقُولَ: إِنَّهُمَا قَبْلَ أَنْ يَطَأَ إِحْدَاهُمَا حَرَامٌ جَمِيعًا - فَهَذَا قَوْلُنَا، أَوْ إِنَّهُمَا جَمِيعًا حِينَئِذٍ حَلَالٌ، فَهَذَا قَوْلُ ابْنِ عَبَّاسٍ، وَعِكْرِمَةَ، وَمَنْ وَافَقَهُمَا وَكِلَا الْقَوْلَيْنِ خِلَافُ قَوْلِ هَذَا الْقَائِلِ، أَوْ يَقُولُ: إِنَّ إِحْدَاهُمَا بِغَيْرِ عَيْنِهَا حَلَالٌ لَهُ وَالْأُخْرَى حَرَامٌ، فَهَذَا بَاطِلٌ قَطْعًا لِوَجْهَيْنِ -: أَحَدُهُمَا - قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ} [البقرة: ٢٥٦] فَمُحَالٌ أَنْ يُحَرِّمَ اللَّهُ تَعَالَى عَلَيْنَا مَا لَمْ يُبَيِّنْهُ لَنَا، وَكَذَلِكَ قَوْله تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] فَلَا شَكَّ فِي أَنَّ مَا حَرَّمَهُ اللَّهُ تَعَالَى عَلَيْنَا قَدْ فَصَّلَهُ لَنَا - وَهُمْ يَقُولُونَ: إِنَّ إِحْدَاهُمَا حَرَامٌ لَمْ يُفَصِّلْ لَنَا تَحْرِيمَهَا.

L31346 Abu Muhammad said: As for those who permit a man to have intercourse with whichever of the two enslaved sisters he owns that he wishes (thereby rendering the sister he did not have intercourse with forbidden to him), this is an utterly corrupt opinion. The proponent of this opinion cannot escape one of the following: either he must say that both sisters are entirely forbidden before he has intercourse with either of them—this being our position—or he must say that both remain permissible at that time (before intercourse occurs)—this being the position of Ibn Abbas, Ikrimah, and those who agree with them. Both of these positions contradict the claim of this proponent. Alternatively, he might say that one sister—without specifying which one—is permissible for him while the other is forbidden. This is absolutely invalid, decisively, for two reasons: First, Allah Almighty states: “The right path has become clearly distinct from error” (2:256). It is inconceivable that Allah would forbid us something He has not clarified. Similarly, His statement: “He has explicitly detailed for you what He has forbidden you” (6:119) leaves no doubt that whatever Allah has prohibited, He has fully specified. Yet these proponents claim one sister is forbidden without Allah having detailed this prohibition to us.[34]

وَالْوَجْهُ الثَّانِي - إِنَّ هَذَا التَّقْسِيمَ أَيْضًا بَاطِلٌ عَلَى مُقْتَضَى قَوْلِهِمْ، لِأَنَّهُمْ يُبِيحُونَ لَهُ وَطْءَ أَيَّتِهِمَا شَاءَ، وَهَذَا يَقْتَضِي تَحْلِيلَهُمَا جَمِيعًا، لَا تَحْرِيمَ إِحْدَاهُمَا، لِأَنَّهُ مِنَ الْمُحَالِ تَخْيِيرُ

L31347 The second aspect is that this division is also invalid according to the requirements of their own statements, because they permit him to have intercourse with whichever of the two he wishes. This necessitates declaring

[34] **Qur’an references (L31346):** Qur’an 2:256 (Al-Baqarah); Qur’an 6:119 (Al-An’am).

أَحَدٍ فِي حَرَامٍ وَحَلَالٍ، إِلَّا أَنْ يَأْتِيَ نَصُّ قُرْآنٍ أَوْ سُنَّةٍ بِذَلِكَ، فَيُوقَفُ عِنْدَهُ، وَأَمَّا بِالرَّأْيِ الْفَاسِدِ فَلَا.

فَصَحَّ قَوْلُنَا يَقِينًا وَبَطَلَ مَا سِوَاهُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَالْخَبَرُ الْمَشْهُورُ مِنْ طَرِيقِ أَبِي هُرَيْرَةَ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَنْ «لَا يَجْمَعَ بَيْنَ الْمَرْأَةِ وَعَمَّتِهَا، وَالْمَرْأَةِ وَخَالَتِهَا» ، وَعَلَى هَذَا جُمْهُورُ النَّاسِ، إِلَّا عُثْمَانُ الْبَتِّيُّ فَإِنَّهُ أَبَاحَهُ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُجَاهِدُ بْنُ مُوسَى نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تُنْكَحَ الْمَرْأَةُ عَلَى عَمَّتِهَا أَوْ عَلَى خَالَتِهَا» .

قَالَ أَحْمَدُ بْنُ شُعَيْبٍ: وَنَا قُتَيْبَةُ بْنُ سَعِيدٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عِرَاكِ بْنِ مَالِكٍ عَنْ أَبِي هُرَيْرَةَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُجْمَعَ بَيْنَ الْمَرْأَةِ وَعَمَّتِهَا، وَالْمَرْأَةِ وَخَالَتِهَا» .

[مَسْأَلَةٌ تَزَوَّجَ امْرَأَةَ أَخِيهِ الَّتِي مَاتَ أَخُوهُ عَنْهَا]

١٨٦٢ - مَسْأَلَةٌ: وَجَائِزٌ لِلْأَخِ أَنْ يَتَزَوَّجَ امْرَأَةَ أَخِيهِ الَّتِي مَاتَ أَخُوهُ عَنْهَا، أَوْ طَلَّقَهَا بَعْدَ انْقِضَاءِ عِدَّتِهَا، أَوْ إثْرَ طَلَاقِ الْأَخِ لَهَا إنْ لَمْ يَكُنْ وَطِئَهَا.

وَكَذَلِكَ لِلْعَمِّ وَلِلْخَالِ أَنْ يَتَزَوَّجَ أَيَّهُمَا كَانَ: امْرَأَةً مَاتَ عَنْهَا ابْنُ الْأَخِ أَوْ ابْنُ الْأُخْتِ، أَوْ طَلَّقَاهُمَا بَعْدَ تَمَامِ الْعِدَّةِ، أَوْ إثْرَ طَلَاقٍ لَمْ يَكُنْ قَبْلَهُ وَطْءٌ.

both entirely permissible, not prohibiting one of them, as it is impossible to present a choice between what is forbidden and permissible unless a text from the Qur'an or Sunnah exists concerning that matter, in which case one must adhere strictly to it. But as for relying on corrupt reasoning, this is impermissible.

L31348 Thus, our statement has been validated with certainty—and whatever is besides it has been nullified. All praise is to Allah, Lord of the worlds.

L31349 The well-known report transmitted via Abu Hurairah from the Prophet—peace be upon him—states: "Do not marry a woman together with her paternal aunt or maternal aunt." The majority of scholars uphold this ruling, except Uthman al-Batti who permitted it—narrated by Abdullah ibn Rabi' from Muhammad ibn Mu'awiyah from Ahmad ibn Shu'ayb from Mujahid ibn Musa from Sufyan ibn Uyaynah from Amr ibn Dinar from Abu Salamah ibn Abd al-Rahman from Abu Hurairah: "The Messenger of Allah—peace be upon him—forbade that a woman be taken in marriage along with her paternal aunt or maternal aunt."[35]

L31350–31351 Ahmad ibn Shuʿayb said: Qutaybah ibn Saʿīd narrated to us from al-Layth ibn Saʿd from Yazīd ibn Abī Ḥabīb from ʿIrāk ibn Mālik from Abū Hurayrah: "The Messenger of Allāh (may Allāh bless him and grant him peace) forbade simultaneously marrying a woman alongside her paternal aunt or maternal aunt."[36]

L31352 A juristic case concerning a man who married his brother's widow after the brother's death.

L31353 1862 - Issue: It is permissible for a brother to marry the wife of his brother if the brother died while married to her, or if he divorced her and her waiting period has been completed, or immediately after the brother divorces her provided the divorcing brother had not had sexual intercourse with her.

L31354 Similarly, it is permissible for the paternal uncle or the maternal uncle—whichever of them it may be—to marry a woman whose brother's son or

[35] **Hadith references (L31349):** Sunan an-Nasai 3299; Sunan an-Nasai 3293.
[36] **Hadith references (L31351):** Sunan an-Nasai 3289.

sister's son has died, whom either of them divorced after the completion of the ʿiddah, or whom they divorced following a separation that occurred without prior consummation.

وَكَذَلِكَ لِابْنِ الْأَخِ، وَلِابْنِ الْأُخْتِ أَنْ يَتَزَوَّجَا امْرَأَةَ الْعَمِّ، أَوْ الْخَالِ بَعْدَ مَوْتِهِمَا أَوْ طَلَاقِهِمَا بَعْدَ الْعِدَّةِ، أَوْ إثْرَ طَلَاقٍ لَمْ يَكُنْ قَبْلَهُ وَطْءٌ.

L31355 Similarly, the paternal nephew (son of a brother) and the maternal nephew (son of a sister) may marry the wife of their paternal uncle or maternal uncle after their death or their divorce (once the waiting period is observed) or after a divorce where no consummation preceded it.

هَذَا لَا نَصَّ فِي تَحْرِيمِهِ، وَكُلُّ مَا لَمْ يُفَصَّلْ لَنَا تَحْرِيمُهُ فَهُوَ حَلَالٌ.

L31356 There is no textual evidence prohibiting this, and anything whose prohibition has not been specified for us is permissible.

قَالَ عَزَّ وَجَلَّ: {وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ} [النساء: ٢٤] بَعْدَ ذِكْرِهِ تَعَالَى مَا حَرَّمَ عَلَيْنَا مِنْ النِّسَاءِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L31357 He, the Almighty and Majestic, said: {And He has made lawful for you all else besides that} [An-Nisa: 24] after the Exalted One enumerated the women He prohibited among us — and with Allah alone is success, the Exalted.[37]

[مَسْأَلَةٌ لَا يَجُوزُ لِلْوَلَدِ زَوَاجُ امْرَأَةِ أَبِيهِ]

Issue: It is not permissible for the son to marry the wife of his father.

١٨٦٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ لِلْوَلَدِ زَوَاجُ امْرَأَةِ أَبِيهِ، وَلَا مَنْ وَطِئَهَا بِمِلْكِ الْيَمِينِ أَبُوهُ وَحَلَّتْ لَهُ، وَلَا يَحِلُّ لَهُ وَطْؤُهَا، أَوْ التَّلَذُّذُ مِنْهَا بِزَوَاجٍ أَوْ بِمِلْكِ يَمِينٍ، وَلَهُ تَمَلُّكُهَا، إلَّا أَنَّهَا لَا تَحِلُّ لَهُ أَصْلًا.

L31358 Issue 1863: It is not permissible for a son to marry his father's wife, nor a woman his father lawfully had intercourse with through ownership. It is unlawful for him to engage in intercourse with her or derive pleasure from her via marital relations or ownership. While he may own her as a slave, she remains fundamentally prohibited to him in all respects.

وَكَذَلِكَ لَا يَحِلُّ لِلرَّجُلِ زَوَاجُ امْرَأَةٍ وَلَا وَطْؤُهَا بِمِلْكِ الْيَمِينِ إذَا كَانَتْ الْمَرْأَةُ مِمَّنْ حَلَّ لِوَلَدِهِ وَطْؤُهَا أَوْ التَّلَذُّذُ مِنْهَا بِزَوَاجٍ أَوْ بِمِلْكِ يَمِينٍ أَصْلًا.

L31359 "Similarly, it is not permissible for a man to marry a woman or to have intercourse with her through right-hand possession if the woman is among those whom his son is permitted to have intercourse with or derive sexual pleasure from—whether through marriage or right-hand possession—at all."

وَالْجَدُّ فِي كُلِّ مَا ذَكَرْنَا - وَإِنْ عَلَا مِنْ قِبَلِ الْأَبِ أَوْ الْأُمِّ - كَالْأَبِ وَلَا فَرْقَ.

L31360 The grandfather, in all the cases we have mentioned—whether on the father's or mother's side—is equivalent to the father, and no distinction is made.

وَابْنُ الِابْنِ وَابْنُ الِابْنَةِ - وَإِنْ سَفُلَا - كَالِابْنِ فِي كُلِّ مَا ذَكَرْنَا وَلَا فَرْقَ.

L31361 The son's son and the daughter's son—however far removed—are treated as the son in all that we have mentioned, without any distinction.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ عَقَدَ فِيهَا الرَّجُلُ زَوَاجًا فَلَا خِلَافَ فِي تَحْرِيمِهَا فِي الْأَبَدِ عَلَى أَبِيهِ وَأَجْدَادِهِ، وَعَلَى بَنِيهِ وَعَلَى مَنْ تَنَاسَلَ مِنْ بَنِيهِ وَبَنَاتِهِ أَبَدًا.

L31362 Abu Muhammad said: As for the woman with whom a man has contracted

[37] **Qur'an references (L31357):** Qur'an 4:24 (An-Nisa).

marriage, there is no disagreement regarding her permanent prohibition upon his father, grandfathers, sons, and the descendants of his sons and daughters forever.

وَأَمَّا مَنْ حَلَّتْ لِلرَّجُلِ بِمِلْكِ الْيَمِينِ، فَإِنْ وَطِئَهَا فَلَا نَعْلَمُ خِلَافًا فِي تَحْرِيمِهِ عَلَى مَنْ وَلَدَ، وَعَلَى مَنْ وَلَدَهُ - وَفِيمَا لَمْ يَطَأْهَا خِلَافٌ نَذْكُرُ مِنْهُ - إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ - مَا تَيَسَّرَ لَنَا ذِكْرُهُ مِنْ ذَلِكَ -: ذَكَرَتْ طَائِفَةٌ أَنَّهَا تَحْرُمُ عَلَى وَلَدِهِ وَآبَائِهِ بِتَجْرِيدِهِ لَهَا فَقَطْ.

L31364–31366 As for a woman made lawful to a man through those whom his right hand possesses, if he has intercourse with her, we know of no disagreement regarding the prohibition upon his child and upon his parent. Concerning cases where he has not had intercourse with her, there exists disagreement—we shall mention, if Allah the Exalted wills, what we can conveniently recount of that matter— A group has stated that the prohibition is forbidden upon his child and fathers solely because he restricts it to her.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ يَزِيدَ بْنِ يَزِيدَ بْنِ جَابِرٍ عَنْ مَكْحُولٍ قَالَ: جَرَّدَ عُمَرُ بْنُ الْخَطَّابِ جَارِيَةً فَنَظَرَ إِلَيْهَا ثُمَّ نَهَى بَعْضَ وَلَدِهِ أَنْ يَقْرَبَهَا.

L31367 As reported to us via the chain of transmission of Abd al-Razzaq from Sufyan ibn Uyaynah from Yazid ibn Yazid ibn Jabir from Makhul, who said: Umar ibn al-Khattab uncovered a girl and looked at her, then forbade some of his sons from going near her.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا الْحَجَّاجُ بْنُ أَرْطَاةَ عَنْ مَكْحُولٍ: أَنَّ عُمَرَ اشْتَرَى جَارِيَةً فَجَرَّدَهَا وَنَظَرَ إِلَيْهَا فَقَالَ لَهُ ابْنُهُ: أَعْطِنِيهَا، فَقَالَ: إِنَّهَا لَا تَحِلُّ لَكَ، إِنَّمَا يُحَرِّمُهَا عَلَيْكَ النَّظَرُ وَالتَّجْرِيدُ.

L31368 From the chain of Ḥammād ibn Salamah, al-Ḥajjāj ibn Arṭāʾ narrated to us from Makhūl: That ʿUmar purchased a slave girl, stripped her, and looked at her. His son said to him, “Give her to me.” He replied, “She is not lawful for you. Only the looking and stripping forbid her to you.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا فُضَيْلٌ عَنْ هِشَامٍ - هُوَ ابْنُ حَسَّانَ - عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: إِنْ جَرَّدَهَا الْأَبُ حَرَّمَهَا عَلَى الِابْنِ، وَإِنْ جَرَّدَهَا الِابْنُ حَرَّمَهَا عَلَى الْأَبِ.

L31369 From the narration of Saʿīd ibn Manṣūr: Fudayl narrated to us from Hishām—that is, ibn Ḥassān—from al-Ḥasan al-Baṣrī, who said: If the father divorces her irrevocably, he renders her forbidden to the son; and if the son divorces her irrevocably, he renders her forbidden to the father.

قَالَ أَبُو مُحَمَّدٍ: هَذَا صَحِيحٌ عَنْ الْحَسَنِ، وَلَا يَصِحُّ عَنْ عُمَرَ، لِأَنَّهُ مِنْ طَرِيقِ مَكْحُولٍ - وَهُوَ مُنْقَطِعٌ.

L31370 Abu Muhammad said: This is authentic from al-Hasan, but it is not authentic from Umar, because it comes through Makhul’s chain, and it is disconnected.

وَقَالَتْ طَائِفَةٌ: لَا يُحَرِّمُهَا إِلَّا اللَّمْسُ وَالنَّظَرُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ فُضَيْلٍ عَنْ هِشَامٍ عَنْ ابْنِ سِيرِينَ أَنَّ مَسْرُوقًا قَالَ فِي مَرَضِهِ الَّذِي مَاتَ فِيهِ: إِنَّ جَارِيَتِي هَذِهِ لَمْ يُحَرِّمْهَا عَلَيْكُمْ إِلَّا اللَّمْسُ وَالنَّظَرُ قَالَ سَعِيدٌ: وَنَا أَبُو عَوَانَةَ عَنْ إِبْرَاهِيمَ

L31371 A group said: “Nothing prohibits her except touching and looking”—as narrated to us through Sa’id ibn Mansur’s chain from Fudayl, from Hisham, from Ibn Sirin, that Masruq said during his fatal illness: “This slave girl of mine—nothing prohibited her for you except touching and looking.” Sa’id said: Narrated to us by Abu ʿAwanah, from Ibrahim ibn Muhammad ibn

al-Muntashir, from his father, that Masruq said upon his death regarding a slave girl he owned: "I did nothing with her except what prohibited her for my children—touching and looking."

بْنِ مُحَمَّدِ بْنِ الْمُنْتَشِرِ عَنْ أَبِيهِ أَنَّ مَسْرُوقًا قَالَ عِنْدَ مَوْتِهِ عَنْ جَارِيَةٍ لَهُ: لَمْ أُصِبْ مِنْهَا إِلَّا مَا حَرَّمَهَا عَلَى وَلَدِي اللَّمْسَ وَالنَّظَرَ.

L31372 From the transmission of Saʿīd ibn Manṣūr, who narrated to us from Sufyān, who reported from Ibn Abī Najīḥ from Mujāhid, who said: A parent prohibits their child, and a child prohibits their parent, from kissing her, placing a hand on her genital area, placing his genital area on hers, or having sexual intercourse with her.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: يُحَرِّمُ الْوَالِدُ عَلَى وَلَدِهِ، وَالْوَلَدُ عَلَى وَالِدِهِ أَنْ يُقَبِّلَهَا أَوْ يَضَعَ يَدَهُ عَلَى فَرْجِهَا، أَوْ فَرْجَهُ عَلَى فَرْجِهَا أَوْ يُبَاشِرَهَا.

L31373 And through the chain of Saʿīd ibn Manṣūr, narrated by Jarīr from al-Mughīrah from Ibrāhīm, who said: They held that lustful kissing or touching would prohibit marriage to the mother and daughter—and this is the opinion of Ibn Abī Laylā, al-Shāfiʿī, and his companions.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرٌ عَنْ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ قَالَ: كَانُوا يَرَوْنَ أَنَّ الْقُبْلَةَ وَاللَّمْسَ يُحَرِّمُ: الْأُمَّ وَالْبِنْتَ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَالشَّافِعِيِّ، وَأَصْحَابِهِ.

L31374 A group has said that it forbids children and parents from looking, as we have been narrated through the chain of Sa'id ibn Mansur: Abu Shihab narrated to us from Yahya ibn Sa'id—the Ansari—from al-Qasim ibn Muhammad, from 'Abdullah ibn Rabi'ah that his father Rabi'ah (who was a Badri companion) instructed in his will regarding a female slave of his that his sons should not approach her, saying: "I have not taken anything from her, except that I looked at her in a way I would dislike for them to look at her."

وَقَالَتْ طَائِفَةٌ: يُحَرِّمُهَا عَلَى الْوَلَدِ وَالْوَالِدِ النَّظَرُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا أَبُو شِهَابٍ عَنْ يَحْيَى بْنِ سَعِيدٍ - هُوَ الْأَنْصَارِيُّ - عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَبْدِ اللَّهِ بْنِ رَبِيعَةَ أَنَّ أَبَاهُ رَبِيعَةَ - وَكَانَ بَدْرِيًّا - أَوْصَى بِجَارِيَةٍ لَهُ أَنْ لَا يَقْرَبَهَا بَنُوهُ وَقَالَ: لَمْ أُصِبْ مِنْهَا شَيْئًا إِلَّا أَنِّي نَظَرْتُ مَنْظَرًا أَكْرَهُ أَنْ يَنْظُرُوهُ مِنْهَا.

L31375–31376 Abu Muhammad said: This is an error from Abu Shihab. It is actually 'Abdullāh ibn 'Āmir ibn Rabī'ah. Thus we have narrated it through various chains - among them: from the path of Sa'īd ibn Manṣūr who narrated to us from Sufyān - he is Ibn 'Uyaynah - from Yaḥyá ibn Sa'īd al-Anṣārī, from al-Qāsim ibn Muḥammad, from 'Abdullāh and 'Abd al-Raḥmān - the sons of 'Āmir ibn Rabī'ah (their father was a participant in the Battle of Badr) - that he instructed regarding his female slave that they should sell her and not approach her intimately. It was as though he had looked into her and seen something he disliked, and he disliked that they might discover from her the same thing he had discovered.

قَالَ أَبُو مُحَمَّدٍ: هَذَا وَهْمٌ مِنْ أَبِي شِهَابٍ، إِنَّمَا هُوَ عَبْدُ اللَّهِ بْنُ عَامِرِ بْنِ رَبِيعَةَ كَذَا رُوِّينَاهُ مِنْ طُرُقٍ شَتَّى -: مِنْهَا - مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَبْدِ اللَّهِ، وَعَبْدِ الرَّحْمَنِ - ابْنَيْ عَامِرِ بْنِ رَبِيعَةَ - وَكَانَ أَبُوهُمَا بَدْرِيًّا - أَنَّهُ أَوْصَى بِجَارِيَةٍ لَهُ أَنْ يَبِيعُوهَا وَلَا يَقْرَبُوهَا كَأَنَّهُ اطَّلَعَ مِنْهَا مُطَّلَعًا كَرِهَ أَنْ يَطَّلِعُوا مِنْهَا عَلَى مِثْلِ مَا اطَّلَعَ.

L31377 A group held the opinion that touching with desire or looking at her private part with desire makes her forbidden, as we have narrated through the chain

of ʿAbd al-Razzāq from Abū Ḥanīfah from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakhaʿī, who stated: “If a man kisses a woman out of desire, touches, or looks at her private part, she does not become lawful for his father or his son.”

وَذَهَبَتْ طَائِفَةٌ - إِلَى أَنَّ اللَّمْسَ لِشَهْوَةٍ، أَوْ النَّظَرَ إِلَى فَرْجِهَا لِشَهْوَةٍ يُحَرِّمُهَا، كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي حَنِيفَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: " إذَا قَبَّلَ الرَّجُلُ الْمَرْأَةَ مِنْ شَهْوَةٍ أَوْ مَسَّ أَوْ نَظَرَ إلَى فَرْجِهَا لَمْ تَحِلَّ لِأَبِيهِ، وَلَا لِابْنِهِ ".

L31378 And through the chain of ʿAbd al-Razzāq, from Maʿmar, from ʿAbd Allāh ibn Ṭāwūs, from his father, who said: If a man gazes at a woman’s genitalia with desire, she becomes unlawful for his father and his son - and this is the opinion of Abū Ḥanīfah.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: إذَا نَظَرَ الرَّجُلُ إلَى فَرْجِ امْرَأَةٍ مِنْ شَهْوَةٍ لَمْ تَحِلَّ لِأَبِيهِ، وَلَا لِابْنِهِ - وَبِهَذَا يَقُولُ أَبُو حَنِيفَةَ.

L31379 Malik said: If he gazes at any of her attractive features with desire—such as her leg, hair, chest, or other such parts—it becomes permanently forbidden for the child.

وَقَالَ مَالِكٌ: إذَا نَظَرَ إلَى شَيْءٍ مِنْ مَحَاسِنِهَا لِشَهْوَةٍ حَرُمَتْ فِي الْأَبَدِ عَلَى الْوَلَدِ، كَالسَّاقِ، وَالشَّعْرِ، وَالصَّدْرِ، وَغَيْرِ ذَلِكَ.

L31380 And Sufyan said: If he looks at her private part, she became forbidden in marriage to his son.

وَقَالَ سُفْيَانُ: إذَا نَظَرَ إلَى فَرْجِهَا حَرُمَتْ عَلَى وَلَدِهِ.

L31381 A scholarly faction—similar to our opinion—said, as was narrated to us through Abū ʿUbayd on the authority of Abū al-Yamān, from Abū Bakr ibn ʿAbd Allāh ibn Abī Maryam, from Makḥūl, who said: “Whichever of the two holds authority over her marriage contract, she becomes permanently forbidden to the other,” meaning the father and the son.

وَقَالَ طَائِفَةٌ: مِثْلُ قَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا أَبُو الْيَمَانِ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي مَرْيَمَ عَنْ مَكْحُولٍ قَالَ: أَيُّهُمَا مَلَكَ عُقْدَتَهَا فَقَدْ حَرُمَتْ عَلَى الْآخَرِ - يَعْنِي الْأَبَ وَالِابْنَ.

L31382 And through the chain of Abū ʿUbayd: ʿAbdullāh ibn Ṣāliḥ narrated to us from al-Layth ibn Saʿd from Yazīd ibn Abī Ḥabīb that Ibn Shihāb al-Zuhrī said: When a man contracts the marriage bond of a woman, she becomes forbidden to his father and son.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا عَبْدُ اللَّهِ بْنُ صَالِحٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ أَنَّ ابْنَ شِهَابٍ الزُّهْرِيَّ قَالَ: إذَا مَلَكَ الرَّجُلُ عُقْدَةَ الْمَرْأَةِ حَرُمَتْ عَلَى أَبِيهِ وَابْنِهِ.

L31383 Abu Muhammad said: Whoever owns the enslaved person thereby owns the contractual bond.

قَالَ أَبُو مُحَمَّدٍ: مَنْ مَلَكَ الرَّقَبَةَ فَقَدْ مَلَكَ الْعُقْدَةَ.

L31384–31386 Narrated to us Muḥammad ibn Saʿīd ibn Nabāt, Aḥmad ibn ʿAbd al-Baṣīr, Qāsim ibn Aṣbagh, Muḥammad ibn ʿAbd al-Salām al-Khushanī, Muḥammad ibn al-Muthannā, and ʿAbd al-Raḥmān ibn Muḥammad al-Muḥāribī, who said: I heard Laith ibn Abi Sulaym narrate from Al-Hakam ibn ’Utaybah, who said: **Whoever** owns a female slave who was owned by his father

وَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدٍ الْمُحَارِبِيُّ قَالَ: سَمِعْت لَيْثَ بْنَ

before him, **it has not been permissible** for him **to have access to her private part**.

أَبِي سُلَيْمٍ يَقُولُ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: مَنْ مَلَكَ جَارِيَةً مَلَكَهَا أَبُوهُ قَبْلَهُ لَمْ يَحِلَّ لَهُ فَرْجُهَا.

L31387 A group held that only intercourse renders them unlawful for the son—as we have narrated via ʿAbd al-Razzāq's transmission from Maʿmar, from al-Ḥasan al-Baṣrī and Qatādah, both of whom said: "Nothing prohibits them for the son except intercourse," meaning fathers' female slaves in relation to the sons.

وَقَالَتْ طَائِفَةٌ: لَا يُحَرِّمُهَا عَلَى الْوَلَدِ إلَّا الْوَطْءُ فَقَطْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الْحَسَنِ الْبَصْرِيِّ، وَقَتَادَةَ، قَالَا جَمِيعًا: لَا يُحَرِّمُهَا عَلَيْهِمْ إلَّا الْوَطْءُ - يَعْنِيَانِ إمَاءَ الْآبَاءِ عَلَى الْأَبْنَاءِ.

L31388 Abu Muhammad said: As for those who prohibit it due to touching with desire—excluding lesser acts—or due to looking exclusively at the genitalia—excluding lesser acts—or due to gazing at her appealing features with desire—excluding anything beyond that—these are baseless assertions; no evidence validates any of them. They are mere opinions unsupported by the Qur'an, the Sunnah, a weak narration, or Qiyas.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ حَرَّمَهَا بِالْمَسِّ لِلشَّهْوَةِ دُونَ مَا دُونَ ذَلِكَ، أَوْ بِالنَّظَرِ إلَى الْفَرْجِ خَاصَّةً دُونَ مَا دُونَ ذَلِكَ، أَوْ بِالنَّظَرِ إلَى مَحَاسِنِهَا لِشَهْوَةٍ دُونَ مَا عَدَا ذَلِكَ، فَأَقْوَالٌ لَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا، إنَّمَا هِيَ آرَاءٌ مُجَرَّدَةٌ لَا يُؤَيِّدُهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَاقِطَةٌ، وَلَا قِيَاسٌ.

L31389 As for the validity of our statement—it is established by the narration transmitted to us by Aḥmad ibn Qāsim, who said: Qāsim ibn Muḥammad ibn Qāsim narrated to us, saying: My grandfather Qāsim ibn Aṣbagh narrated to us, from Aḥmad ibn Zuhayr, from ʿAbdullāh ibn Jaʿfar, from ʿAbdullāh ibn ʿAmr al-Raqqī, from Zayd ibn Abī Unaysah, from ʿAdī ibn Thābit, from Yazīd ibn al-Barāʾ, from his father al-Barāʾ ibn ʿĀzib, who said: "My uncle met me while he had a banner with him. I asked: 'Where are you heading?' He replied: 'The Messenger of Allāh—peace and blessings of Allāh be upon him—sent me to a man who married his father's wife, commanding me to strike his neck.'"

وَأَمَّا صِحَّةُ قَوْلِنَا -: فَلِلْخَبَرِ الَّذِي حَدَّثَنَاهُ أَحْمَدُ بْنُ قَاسِمٍ نا قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ، قَالَ: نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا أَحْمَدُ بْنُ زُهَيْرٍ نا عَبْدُ اللَّهِ بْنُ جَعْفَرٍ نا عَبْدُ اللَّهِ بْنُ عَمْرٍو الرَّقِّيّ عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ عَنْ عَدِيِّ بْنِ ثَابِتٍ عَنْ يَزِيدَ بْنِ الْبَرَاءِ عَنْ أَبِيهِ «الْبَرَاءِ بْنِ عَازِبٍ قَالَ: لَقِيَنِي عَمِّي وَمَعَهُ رَايَةٌ، فَقُلْتُ: أَيْنَ تُرِيدُ؟ قَالَ: بَعَثَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى رَجُلٍ تَزَوَّجَ امْرَأَةَ أَبِيهِ فَأَمَرَنِي أَنْ أَضْرِبَ عُنُقَهُ» .

L31390 Abū Muḥammad said: A lawful female slave for a man is his wife - whether he has had sexual relations with her or not, whether he has looked at her or not. And Allah Almighty stated: "And the lawful spouses of your sons who are from your loins" [An-Nisāʾ: 23]. "Ḥalāʾil" is the plural of "ḥalīlah," and "ḥalīlah" follows the morphological pattern of faʿīlah (فَعِيلَة) derived from

قَالَ أَبُو مُحَمَّدٍ: الْأَمَةُ الْحَلَالُ لِلرَّجُلِ امْرَأَةٌ لَهُ وَطِئَهَا أَوْ لَمْ يَطَأْهَا، نَظَرَ إلَيْهَا، أَوْ لَمْ يَنْظُرْ إلَيْهَا، وَقَالَ اللَّهُ عَزَّ وَجَلَّ، {وَحَلائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلابِكُمْ} [النساء: ٢٣] وَالْحَلَائِلُ جَمْعُ حَلِيلَةٍ، وَالْحَلِيلَةُ فَعِيلَةٌ مِنْ الْحَلَالِ، فَكُلُّ امْرَأَةٍ حَلَّتْ لِرَجُلٍ فَهِيَ حَلِيلَةٌ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

"ḥalāl." Thus, every woman lawful for a man is his lawful spouse. Success comes only from Allah, the Exalted.[38]

A case where a man marries a woman who has a daughter or acquires her as a slave when she has a daughter.

1864. Issue: As for one who marries a woman who has a daughter or owns a female slave who has a daughter: If the daughter is under his care and he had seclusion with the mother—whether he had intercourse or not, provided he engaged in pleasurable seclusion—then her daughter is permanently forbidden to him. If he had seclusion with the mother while the daughter was not under his care, or if the daughter was under his care but he did not have seclusion with the mother, then marrying the daughter is permissible for him.

As for one who marries a woman who has a mother or owns a female slave lawful for him who has a mother, the mother is thereby forbidden to him forever and ever—whether he has had intercourse with the daughter in either scenario or not.

The proof of that is: the statement of Allah, the Most High: "And your stepdaughters in your care from your wives with whom you have had relations. But if you have not had relations with them, then there is no sin upon you." [An-Nisa: 23] Allah the Almighty and Majestic prohibits marriage to one's stepdaughter—whether the daughter of a wife or a female slave—only if there has been consummation with the stepdaughter herself and she is under his guardianship. Thus, she is forbidden only if both conditions are met, in accordance with His statement—Exalted is He—after enumerating the prohibited women: {And lawful to you are all besides that} [An-Nisāʾ: 24].[39]

And your Lord is never forgetful (Maryam 64).[40]

Her being in his custody divides into two parts: The first is her residing

[38] **Qur'an references (L31390):** Qur'an 4:23 (An-Nisa).
[39] **Qur'an references (L31394):** Qur'an 4:23 (An-Nisa); Qur'an 4:24 (An-Nisa).
[40] **Qur'an references (L31397):** Qur'an 19:64 (Maryam).

[مَسْأَلَةٌ تَزَوَّجَ امْرَأَةً وَلَهَا ابْنَةٌ أَوْ مَلَكَهَا وَلَهَا ابْنَةٌ]

١٨٦٤ - مَسْأَلَةٌ: وَأَمَّا مَنْ تَزَوَّجَ امْرَأَةً وَلَهَا ابْنَةٌ أَوْ مَلَكَهَا وَلَهَا ابْنَةٌ، فَإِنْ كَانَتْ الِابْنَةُ فِي حِجْرِهِ وَدَخَلَ بِالْأُمِّ مَعَ ذَلِكَ وَطِئَ أَوْ لَمْ يَطَأْ، لَكِنْ خَلَا بِهَا بِالتَّلَذُّذِ: لَمْ تَحِلَّ لَهُ ابْنَتُهَا أَبَدًا، فَإِنْ دَخَلَ بِالْأُمِّ وَلَمْ تَكُنِ الِابْنَةُ فِي حِجْرِهِ، أَوْ كَانَتْ الِابْنَةُ فِي حِجْرِهِ وَلَمْ يَدْخُلْ بِالْأُمِّ، فَزَوَاجُ الِابْنَةِ لَهُ حَلَالٌ.

وَأَمَّا مَنْ تَزَوَّجَ امْرَأَةً لَهَا أُمٌّ أَوْ مَلَكَ أَمَةً تَحِلُّ لَهُ وَلَهَا أُمٌّ فَالْأُمُّ حَرَامٌ عَلَيْهِ بِذَلِكَ أَبَدَ الْأَبَدِ - وَطِئَ فِي كُلِّ ذَلِكَ الِابْنَةَ أَوْ لَمْ يَطَأْهَا.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَرَبَائِبُكُمُ اللاتِي فِي حُجُورِكُمْ مِنْ نِسَائِكُمُ اللاتِي دَخَلْتُمْ بِهِنَّ فَإِنْ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلا جُنَاحَ عَلَيْكُمْ} [النساء: ٢٣] فَلَمْ يُحَرِّمْ اللَّهُ عَزَّ وَجَلَّ الرَّبِيبَةَ بِنْتَ الزَّوْجَةِ أَوْ الْأَمَةِ إلَّا بِالدُّخُولِ بِهَا، وَأَنْ تَكُونَ هِيَ فِي حِجْرِهِ، فَلَا تَحْرُمُ إلَّا بِالْأَمْرَيْنِ مَعًا، لِقَوْلِهِ تَعَالَى بَعْدَ أَنْ ذَكَرَ مَا حَرَّمَ مِنْ النِّسَاءِ: {وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ} [النساء: ٢٤] .

{وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَكَوْنُهَا فِي حِجْرِهِ يَنْقَسِمُ قِسْمَيْنِ -: أَحَدُهُمَا: سُكْنَاهَا مَعَهُ فِي مَنْزِلِهِ، وَكَوْنُهُ كَافِلًا لَهَا.

with him in his home, and the second is his being a provider for her.

L31399 And the second:

وَالثَّانِي:

L31400 His oversight of her affairs constitutes guardianship, not agency, as each of these two aspects entails her being within his protective guardianship.

نَظَرُهُ إِلَى أُمُورِهَا نَحْوَ الْوِلَايَةِ لَا بِمَعْنَى الْوَكَالَةِ، فَكُلُّ وَاحِدٍ مِنْ هَذَيْنِ الْوَجْهَيْنِ يَقَعُ بِهِ عَلَيْهَا كَوْنُهَا فِي حِجْرِهِ.

L31401 As for her mother, the act of marriage renders her forbidden to him entirely. The words of Allah, the Almighty: {And your wives' mothers} [An-Nisa: 23] — He, the Exalted, has stated this prohibition in a universal, all-encompassing form, so it is impermissible to restrict or qualify it.[41]

وَأَمَّا أُمُّهَا فَيُحَرِّمُهَا عَلَيْهِ بِالْعَقْدِ جُمْلَةً: قَوْلُ اللَّهِ تَعَالَى: {وَأُمَّهَاتُ نِسَائِكُمْ} [النساء: ٢٣] فَأَجْمَلَهَا عَزَّ وَجَلَّ فَلَا يَجُوزُ تَخْصِيصُهَا.

L31402 In all of this, there is both ancient and modern disagreement: A school of thought maintained that the mother does not become forbidden unless the marriage with the daughter is consummated. As we have narrated through the chain of transmission from Ḥammād ibn Salamah, from Qatādah, from Khilāṣ, from ʿAlī ibn Abī Ṭālib: He was asked about a man who divorced his wife before consummating the marriage—may he marry her mother? ʿAlī replied: "They hold equal status, following the same principle. If he divorces the daughter before consummation, he may marry her mother; if he marries the mother and divorces her before consummation, he may marry her daughter." This is authentic from ʿAlī—may Allah be pleased with him.

وَفِي كُلِّ ذَلِكَ اخْتِلَافٌ قَدِيمٌ وَحَدِيثٌ -: ذَهَبَتْ طَائِفَةٌ إِلَى أَنَّ الْأُمَّ لَا تَحْرُمُ إِلَّا بِالدُّخُولِ بِالِابْنَةِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ خِلَاسٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ سُئِلَ فِي رَجُلٍ طَلَّقَ امْرَأَتَهُ قَبْلَ أَنْ يَدْخُلَ بِهَا أَلَهُ أَنْ يَتَزَوَّجَ أُمَّهَا؟ فَقَالَ عَلِيٌّ: هُمَا بِمَنْزِلَةٍ وَاحِدَةٍ يَجْرِيَانِ مَجْرًى وَاحِدًا إِنْ طَلَّقَ الِابْنَةَ قَبْلَ الدُّخُولِ بِهَا تَزَوَّجَ أُمَّهَا، وَإِنْ تَزَوَّجَ أُمَّهَا طَلَّقَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا: تَزَوَّجَ ابْنَتَهَا، وَهَذَا صَحِيحٌ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ -.

L31403 Aḥmad ibn ʿUmar ibn Anas al-ʿUdhri narrated from Abū Dharr al-Harawī, from ʿAbdullāh ibn Aḥmad ibn Ḥamawayh al-Sarakhsī, from Ibrāhīm ibn Khuraym, from ʿAbd ibn Ḥumayd, from ʿAbd al-Razzāq, from Maʿmar, from Simāk ibn al-Faḍl - the judge of Ṣanʿā' - who said: Ibn al-Zubayr stated: "The stepdaughter and the mother are treated the same. There is no blame concerning them if he had not consummated the marriage with the woman."

نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَوَيْهِ السَّرَخْسِيُّ نا إِبْرَاهِيمُ بْنُ خُرَيْمٍ نا عَبْدُ بْنُ حُمَيْدٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ سِمَاكِ بْنِ الْفَضْلِ - هُوَ قَاضِي صَنْعَاءَ - قَالَ: قَالَ ابْنُ الزُّبَيْرِ: الرَّبِيبَةُ، وَالْأُمُّ سَوَاءٌ لَا بَأْسَ بِهِمَا إِذَا لَمْ يَكُنْ دَخَلَ بِالْمَرْأَةِ.

L31404 And from the narration of Abd al-Razzaq from Ibn Jurayj: Abu Bakr ibn Hafs—the son of Umar ibn Sa'd ibn Abi Waqqas—informed me, from Muslim

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو بَكْرِ بْنُ حَفْصٍ - هُوَ ابْنُ عُمَرَ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ - عَنْ مُسْلِمِ بْنِ عُوَيْمِرٍ مِنْ بَنِي بَكْرِ بْنِ عَبْدِ مَنَاةَ مِنْ كِنَانَةَ أَنَّهُ

[41] **Qur'an references (L31401):** Qur'an 4:23 (An-Nisa).

أَخْبَرَهُ أَنَّهُ أَنْكَحَهُ أَبُوهُ امْرَأَةً بِالطَّائِفِ، قَالَ فَلَمْ أَمَسَّهَا حَتَّى تُوُفِّيَ عَمِّي عَنْ أُمِّهَا - وَأُمُّهَا ذَاتُ مَالٍ كَثِيرٍ - فَقَالَ لِي أَبِي: هَلْ لَك فِي أُمِّهَا؟ قَالَ: فَسَأَلْت ابْنَ عَبَّاسٍ، وَأَخْبَرْته الْخَبَرَ؟ فَقَالَ: انْكِحْ أُمَّهَا - وَذَكَرَ بَاقِيَ الْخَبَرِ.

ibn Uwaymir of Banu Bakr ibn Abd Manat of Kinanah, that he reported his father had married him off to a woman in Ta'if. He said: "I did not consummate the marriage until my uncle [acting as guardian] regarding her mother died—her mother possessed significant wealth." His father then asked him: "Would you consider marrying her mother?" He said: "I consulted Ibn Abbas and informed him of the situation." He replied: "Marry her mother"—and he mentioned the rest of the report.

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ نا ابْنُ أَبِي أُوَيْسٍ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ أَبِي الْمَوَالِي عَنْ عَبْدِ الْحَكَمِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي فَرْوَةَ أَنَّ رَجُلًا مِنْ بَنِي لَيْثٍ يُقَالُ لَهُ: ابْنُ الْأَجْدَعِ تَزَوَّجَ جَارِيَةً شَابَّةً فَهَلَكَتْ قَبْلَ أَنْ يَدْخُلَ بِهَا، فَخَطَبَ أُمَّهَا؟ فَقَالَتْ لَهُ: نَعَمْ، إنْ كُنْتُ أَحِلُّ لَك، فَجَاءَ نَاسًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمِنْهُمْ مَنْ أَرْخَصَ لَهُ - وَذَكَرَ بَاقِيَ الْخَبَرِ.

L31405–31406 From the chain of Ismail ibn Ishaq: Ibn Abi Uways narrated to us, from Abd al-Rahman ibn Abi al-Mawali, from Abd al-Hakam ibn Abdullah ibn Abi Farwah, that a man from Banu Layth named Ibn al-Ajda' married a young girl who died before he consummated the marriage. He then proposed to her mother. She said to him: "Yes, if I am lawful for you." He approached some Companions of the Messenger of Allah (peace be upon him), and among them were those who permitted him a concession—and the remainder of the report is mentioned.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي فَرْوَةَ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ عَنْ ابْنِ مَسْعُودٍ: أَنَّ رَجُلًا مِنْ بَنِي شَمْخِ بْنِ فَزَارَةَ تَزَوَّجَ امْرَأَةً ثُمَّ رَأَى أُمَّهَا فَأَعْجَبَتْهُ فَاسْتَفْتَى ابْنَ مَسْعُودٍ فَأَفْتَاهُ أَنْ يُفَارِقَهَا ثُمَّ يَتَزَوَّجَ أُمَّهَا فَتَزَوَّجَهَا وَوَلَدَتْ لَهُ أَوْلَادًا - وَذَكَرَ بَاقِيَ الْخَبَرِ عَلَى مَا نُورِدُهُ بَعْدَ هَذَا - إنْ شَاءَ اللَّهُ تَعَالَى - وَبِهِ يَقُولُ مُجَاهِدٌ وَغَيْرُهُ.

L31407 From the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Abū Farwah, from Abū ʿAmr al-Shaybānī, from Ibn Masʿūd: A man from Banī Shamkh ibn Fazarah married a woman, then saw her mother and was captivated by her. He sought Ibn Masʿūd's legal ruling, who instructed him to divorce her and marry her mother. He married the mother, and she bore him children. The remainder of the report will be mentioned in accordance with what we shall relate subsequently (if Allah the Exalted wills)—and this is the opinion of Mujāhid and others.

وَطَائِفَةٌ قَالَتْ بِإِبَاحَةِ نِكَاحِ أُمِّ الزَّوْجَةِ الَّتِي لَمْ يَدْخُلْ بِهَا إذَا طَلَّقَ الِابْنَةَ وَلَمْ يُحِهْ إنْ مَاتَتْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي نا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ زَيْدَ بْنَ ثَابِتٍ قَالَ فِي رَجُلٍ طَلَّقَ امْرَأَتَهُ قَبْلَ أَنْ يَدْخُلَ بِهَا فَأَرَادَ أَنْ يَتَزَوَّجَ أُمَّهَا؟ قَالَ: إنْ طَلَّقَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا تَزَوَّجَ أُمَّهَا، وَإِنْ مَاتَتْ لَمْ يَتَزَوَّجْ أُمَّهَا.

L31408 A group held the view permitting marriage to the mother of a wife with whom he did not consummate the marriage if he divorces his daughter, but they did not permit marrying her mother in the case of the daughter's death - as narrated through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: Sulaymān ibn Ḥarb → Ḥammād ibn Salamah → Qatādah → Saʿīd ibn al-Musayyab that Zayd ibn Thābit said regarding a man who divorced his wife before consummation and wished to marry her mother: "If he divorces her before consummation, he may marry her mother. But if she dies, he may not marry her mother."

L31409 And through the chain of Al-Ḥajjāj ibn Al-Minḥāl: Ḥammād ibn Salamah narrated to us from Qaṭādah from Saʿīd ibn Al-Musayyab that Zayd ibn Thābit said: If he divorces the daughter before consummating the marriage with her, he may marry her mother. If she dies, he does not marry her mother.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ زَيْدَ بْنَ ثَابِتٍ قَالَ: إِنْ طَلَّقَ الِابْنَةَ قَبْلَ أَنْ يَدْخُلَ بِهَا تَزَوَّجَ أُمَّهَا، وَإِنْ مَاتَتْ لَمْ يَتَزَوَّجْ أُمَّهَا.

L31410 A group differentiated between the mother and the daughter—it has been reported to us from ʿUmar ibn al-Khaṭṭāb, Ibn ʿUmar, Zayd ibn Thābit, Ibn ʿAbbās, and a group of the Companions.

وَطَائِفَةٌ فَرَّقَتْ بَيْنَ الْأُمِّ وَالِابْنَةِ -: رُوِّينَا ذَلِكَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ عُمَرَ، وَزَيْدِ بْنِ ثَابِتٍ، وَابْنِ عَبَّاسٍ، وَطَائِفَةٍ مِنْ الصَّحَابَةِ.

L31411–31413 A group refrained from ruling on all of that, as reported in the narration transmitted through Ismāʿīl ibn Isḥāq al-Qāḍī—from Ibn Abī Uways, from ʿAbd al-Raḥmān ibn Abī al-Mawālī, from ʿAbd al-Ḥakam ibn ʿAbd Allāh ibn Abī Farwa: A man from Banū Layth named Ibn al-Ajdaʿ married a young woman who died before he consummated the marriage. He then proposed to her mother, and she said, "Yes, if I am lawful for you?" He asked some Companions of the Messenger of Allah—peace and blessings be upon him—among whom were those who permitted him and those who forbade him, saying: "Allah Almighty has firmly decreed regarding the mother and permitted regarding..." Regarding the stepdaughter, when they differed in opinion regarding his ruling, he wrote to Muʿāwiyah, informing him of the concessions granted by some scholars and the prohibitions upheld by others. Muʿāwiyah wrote back: "Your letter has reached me, and I have understood its content. I do not make lawful for you what Allah has forbidden to you, nor do I forbid you what Allah has made lawful for you. By my life, there are indeed many women"—and he did not add more than that. The man then brought Muʿāwiyah's letter and read it to the one who had consulted them. All of them said: "Muʿāwiyah has spoken the truth." Thereupon, he turned away from the woman and did not marry her.

وَطَائِفَةٌ تَوَقَّفَتْ فِي كُلِّ ذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا ابْنُ أَبِي أُوَيْسٍ نا عَبْدُ الرَّحْمَنِ بْنُ أَبِي الْمَوَالِي عَنْ عَبْدِ الْحَكَمِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي فَرْوَةَ: أَنَّ رَجُلًا مِنْ بَنِي لَيْثٍ يُقَالُ لَهُ: ابْنُ الْأَجْدَعِ تَزَوَّجَ جَارِيَةً فَهَلَكَتْ وَلَمْ يَدْخُلْ بِهَا، فَخَطَبَ أُمَّهَا فَقَالَتْ: نَعَمْ، إِنْ كُنْتُ أَحِلُّ لَك؟ فَسَأَلَ نَاسًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمِنْهُمْ مَنْ أَرْخَصَ لَهُ وَمِنْهُمْ مَنْ نَهَاهُ وَقَالَ: إنَّ اللَّهَ عَزَّ وَجَلَّ قَدْ عَزَمَ فِي الْأُمِّ وَأَرْخَصَ فِي الرَّبِيبَةِ، فَلَمَّا اخْتَلَفُوا عَلَيْهِ كَتَبَ إلَى مُعَاوِيَةَ فَأَخْبَرَهُ إرْخَاصَ مَنْ أَرْخَصَ لَهُ وَنَهْيَ مَنْ نَهَاهُ؟ فَكَتَبَ إلَيْهِ مُعَاوِيَةُ: قَدْ جَاءَنِي كِتَابُك وَفَهِمْت الَّذِي فِيهِ، وَإِنِّي لَا أُحِلُّ لَك مَا حَرَّمَ اللَّهُ عَلَيْك، وَلَا أُحَرِّمُ عَلَيْك مَا أَحَلَّ اللَّهُ لَك، وَلَعَمْرِي إنَّ النِّسَاءَ كَثِيرٌ - وَلَمْ يَزِدْهُ عَلَى ذَلِكَ؟ فَجَاءَ بِكِتَابِ مُعَاوِيَةَ فَقَرَأَهُ الَّذِي سَأَلَهُمْ؟ فَكُلُّهُمْ قَالَ: صَدَقَ مُعَاوِيَةُ، قَالَ: فَانْصَرَفَ عَنْ الْمَرْأَةِ وَلَمْ يَتَزَوَّجْهَا.

L31414 Abu Muhammad said: The statement of Allah, Exalted and Majestic: "and your stepdaughters" [Quran 4:23] is syntactically linked to the aforementioned prohibitions; this is beyond doubt. And His statement, Exalted and Majestic: "those raised in your households" [Quran 4:23] is a descriptive

قَالَ أَبُو مُحَمَّدٍ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَرَبَائِبُكُمُ} [النساء: ٢٣] مَعْطُوفٌ عَلَى مَا حَرَّمَ، هَذَا مَا لَا شَكَّ فِيهِ - وَقَوْلُهُ عَزَّ وَجَلَّ: {اللاتِي فِي حُجُورِكُمْ} [النساء: ٢٣] نَعْتٌ لِلرَّبَائِبِ لَا يُمْكِنُ غَيْرُ ذَلِكَ أَلْبَتَّةَ.

clause qualifying the stepdaughters—no other interpretation is possible whatsoever.[42]

L31415 And His statement, the Exalted: {from the women with whom you have consummated marriage} [An-Nisa: 23] relates specifically to stepdaughters connected through marriage. Nothing else is permissible at all, for had it referred to His words, the Exalted: {and your wives' mothers} [An-Nisa: 23], the phrasing would have been "your wives' mothers who are among the women with whom you have consummated marriage"—and this is absurd in the wording.[43]

L31416 It is thereby confirmed that the exception applies specifically to "stepdaughters through marriage," and it is impermissible for it to extend to "mothers of the wives." And success comes only from Allah, the Exalted.

L31417 They also differed regarding the "stepdaughter." A group said: If he consummates the marriage with her mother, the daughter becomes forbidden to him, whether she was under his guardianship or not. It has been narrated to us from Jābir ibn ʿAbd Allāh: "If the mother dies before he has had intercourse with her, he may marry her daughter if he wishes." From the narration of Ḥammād ibn Salama, from Qatāda, from al-Ḥasan: ʿImrān ibn al-Ḥuṣayn was asked about a man who married a woman and divorced her before consummating the marriage. ʿImrān said: "Her mother is not lawful for him, whether he consummated the marriage with her or not. But if he divorces the mother before consummating the marriage, he may marry her daughter." This is the opinion of Abū Ḥanīfa, Mālik, and al-Shāfiʿī.

L31418–31420 A group held an opinion similar to our view - as we narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj: Ibrāhīm ibn ʿUbayd ibn Rifāʿah informed me, who was informed by Mālik ibn Aws ibn al-Ḥadathān al-Naṣrī, who said: "I had a wife who bore me a child, then she died. I grieved over her, so I met ʿAlī ibn Abī Ṭālib. He asked me: 'What is the matter with you?' I replied: 'My wife has died.' He inquired: 'Did she leave a daughter?' I said: 'Yes.' He asked: 'Was she under your guardianship?' I answered: 'No, she

وقَوْله تَعَالَى: {مِنْ نِسَائِكُمُ اللاتِي دَخَلْتُمْ بِهِنَّ} [النساء: ٢٣] مِنْ صِلَةِ الرَّبَائِبِ لَا يَجُوزُ غَيْرُ ذَلِكَ أَلْبَتَّةَ، إذْ لَوْ كَانَ رَاجِعًا إلَى قَوْله تَعَالَى: {وَأُمَّهَاتُ نِسَائِكُمْ} [النساء: ٢٣] لَكَانَ مَوْضِعُهُ أُمَّهَاتِ نِسَائِكُمْ مِنْ نِسَائِكُمْ اللَّاتِي دَخَلْتُمْ بِهِنَّ - وَهَذَا مُحَالٌ فِي الْكَلَامِ.

فَصَحَّ أَنَّ الِاسْتِثْنَاءَ فِي " الرَّبَائِبِ " خَاصَّةً، وَامْتَنَعَ أَنْ يَكُونَ رَاجِعًا إلَى " أُمَّهَاتِ النِّسَاءِ " وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَاخْتَلَفُوا أَيْضًا فِي " الرَّبِيبَةِ " فَقَالَتْ طَائِفَةٌ: إذَا دَخَلَ بِأُمِّهَا فَقَدْ حَرُمَتْ الْبِنْتُ عَلَيْهِ سَوَاءٌ كَانَتْ فِي حِجْرِهِ أَوْ لَمْ تَكُنْ -: رُوِّينَا عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ إنْ مَاتَتْ قَبْلَ أَنْ يَمَسَّهَا نَكَحَ ابْنَتَهَا إنْ شَاءَ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ أَنَّ عِمْرَانَ بْنَ الْحُصَيْنِ سُئِلَ عَنْ رَجُلٍ تَزَوَّجَ امْرَأَةً فَطَلَّقَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا؟ فَقَالَ عِمْرَانُ: لَا تَحِلُّ لَهُ أُمُّهَا - دَخَلَ بِهَا أَوْ لَمْ يَدْخُلْ بِهَا - فَإِنْ طَلَّقَ الْأُمَّ قَبْلَ أَنْ يَدْخُلَ بِهَا تَزَوَّجَ ابْنَتَهَا - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ.

وَقَالَتْ طَائِفَةٌ بِمِثْلِ قَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي إبْرَاهِيمُ بْنُ عُبَيْدِ بْنِ رِفَاعَةَ أَخْبَرَنِي مَالِكُ بْنُ أَوْسِ بْنِ الْحَدَثَانِ النَّصْرِيُّ قَالَ: كَانَ عِنْدِي امْرَأَةٌ قَدْ وَلَدَتْ لِي فَتُوُفِّيَتْ، فَوَجَدْت عَلَيْهَا، فَلَقِيت عَلِيَّ بْنَ أَبِي طَالِبٍ؟ فَقَالَ لِي: مَالَك؟ قُلْت: تُوُفِّيَتْ الْمَرْأَةُ، قَالَ: أَلَهَا ابْنَةٌ؟ قُلْت: نَعَمْ، قَالَ: كَانَتْ فِي حِجْرِك؟ قُلْت: لَا، هِيَ فِي الطَّائِفِ، قَالَ: فَانْكِحْهَا؟ قُلْت: وَأَيْنَ قَوْله تَعَالَى: {وَرَبَائِبُكُمُ اللاتِي

[42] **Qur'an references (L31414):** Qur'an 4:23 (An-Nisa).
[43] **Qur'an references (L31415):** Qur'an 4:23 (An-Nisa).

is in Ṭā’if.’ He said: ’Then marry her!’ I asked: ’What about Allah’s words: *”And your stepdaughters under your guardianship from your wives with whom you have consummated relations“* [4:23]?”’ He said: Indeed, she was not under your guardianship; rather, that applies only when she is under your guardianship.[44]

فِي حُجُورِكُمْ مِنْ نِسَائِكُمُ اللاتِي دَخَلْتُمْ بِهِنَّ} [النساء: ٢٣] قَالَ: إِنَّهَا لَمْ تَكُنْ فِي حِجْرِك وَإِنَّمَا ذَلِكَ إِذَا كَانَتْ فِي حِجْرِك.

L31421 From the path of Abū ‘Ubayd, narrated by Ḥajjāj—he is Ibn Muḥammad—from Ibn Jurayj, who said: Ibrāhīm ibn Maysarah informed me that a man from Banū Saw’ah named ‘Ubaydullāh ibn Ma‘bad—who was praised favorably—informed him that his father discovered him married to a woman who had a child from another man. They remained together as long as Allah Almighty willed, then he married a young woman. One of the sons from the first wife said to him: “You have married another after our mother, and she has grown old. You have replaced her with a young woman—divorce her!” He replied: “No, by Allah, unless you give me your daughter in marriage.” He said: So he divorced her and gave his daughter in marriage to him, though she was not under his guardianship, nor was her father the son of the elderly divorced woman. He said: I went to Sufyān ibn ‘Abdullāh and said: “Seek a legal ruling for me from ‘Umar ibn al-Khaṭṭāb!” He replied: “Will you come with me?” Then he brought me to ‘Umar, and I recounted the story to him. ‘Umar said: “There is no harm in that. Go ask so-and-so, then return and inform me.” He said: I believe he meant ‘Alī. He said: So I asked him, and he said: “There is no harm in that.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا حَجَّاجٌ - هُوَ ابْنُ مُحَمَّدٍ - عَنْ ابْنِ جُرَيْجٍ، قَالَ: أَخْبَرَنِي إِبْرَاهِيمُ بْنُ مَيْسَرَةَ: أَنَّ رَجُلًا مِنْ بَنِي سَوْأَةَ يُقَالُ لَهُ: عُبَيْدُ اللَّهِ بْنُ مَعْبَدٍ - أَثْنَى عَلَيْهِ خَيْرًا - أَخْبَرَهُ أَنَّ أَبَاهُ أَوْجَدَهُ نَكَحَ امْرَأَةً ذَاتَ وَلَدٍ مِنْ غَيْرِهِ، فَاصْطَحَبَا مَا شَاءَ اللَّهُ عَزَّ وَجَلَّ، ثُمَّ نَكَحَ امْرَأَةً شَابَّةً، فَقَالَ لَهُ أَحَدُ بَنِيِّ الْأُولَى: قَدْ نَكَحْت عَلَى أُمِّنَا وَكَبُرَتْ فَاسْتَغْنَيْتُ عَنْهَا بِامْرَأَةٍ شَابَّةٍ فَطَلِّقْهَا؟ قَالَ: لَا وَاَللَّهِ إِلَّا أَنْ تُنْكِحَنِي ابْنَتَك؟ قَالَ: فَطَلَّقَهَا وَأَنْكَحَهُ ابْنَتَهُ، وَلَمْ تَكُنْ فِي حِجْرِهِ وَلَا أَبُوهَا ابْنَ الْعَجُوزِ الْمُطَلَّقَةِ، قَالَ: فَجِئْت سُفْيَانَ بْنَ عَبْدِ اللَّهِ فَقُلْت لَهُ: اسْتَفْتِ لِي عُمَرَ بْنَ الْخَطَّابِ؟ قَالَ: لِتَجِيءَ مَعِي؟ فَأَدْخَلَنِي عَلَى عُمَرَ، فَقَصَصْتُ عَلَيْهِ الْخَبَرَ؟ فَقَالَ عُمَرُ: لَا بَأْسَ بِذَلِكَ وَاذْهَبْ فَسَلْ فُلَانًا ثُمَّ تَعَالَ فَأَخْبِرْنِي؟ قَالَ: وَلَا أَرَاهُ إِلَّا عَلِيًّا - قَالَ: فَسَأَلْته؟ فَقَالَ: لَا بَأْسَ بِذَلِكَ.

L31422 Abū Muḥammad said: It is not permissible to specify the stipulation of Allah, Exalted and Majestic, without textual evidence.

قَالَ أَبُو مُحَمَّدٍ: لَا يَجُوزُ تَخْصِيصُ شَرْطِ اللَّهِ عَزَّ وَجَلَّ بِغَيْرِ نَصٍّ.

L31423 Abū Muḥammad said: Some have said that the statement of the Exalted, “those with whom you have had intercourse” [an-Nisāʾ: 23] refers specifically to sexual intercourse—this is authentically reported from Ibn ʿAbbās, Ṭāwūs, ʿAmr ibn Dīnār, and ʿAbd al-Karīm al-Jazarī.[45]

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ قَالَ قَوْمٌ: قَوْله تَعَالَى: {اللاتِي دَخَلْتُمْ بِهِنَّ} [النساء: ٢٣] إِنَّمَا عَنَى الْجِمَاعَ - صَحَّ ذَلِكَ عَنْ ابْنِ عَبَّاسٍ، وَطَاوُسٍ، وَعَمْرِو بْنِ دِينَارٍ، وَعَبْدِ الْكَرِيمِ الْجَزَرِيِّ.

L31424 It is reported from Ibn Masʿūd that a kiss given to a mother who is getting married prohibits her daughter for marriage to the one who kissed her.

وَرُوِيَ عَنْ ابْنِ مَسْعُودٍ أَنَّ الْقُبْلَةَ لِلْأُمِّ الَّتِي تَتَزَوَّجُ تُحَرِّمُ ابْنَتَهَا.

[44] **Qur’an references (L31418):** Qur’an 4:23 (An-Nisa).
[45] **Qur’an references (L31423):** Qur’an 4:23 (An-Nisa).

L31425 It is authentically reported from ʿAṭāʾ that sexual intercourse entails uncovering, examining, and sitting between her legs—whether in his house or her family's house. He said: If he pinched without uncovering, her daughter would not thereby become forbidden to him.

وَرُوِيَ عَنْ عَطَاءٍ - وَصَحَّ عَنْهُ - أَنَّ الدُّخُولَ: هُوَ أَنْ يَكْشِفَ، وَيُفَتِّشَ، وَيَجْلِسَ بَيْنَ رِجْلَيْهَا، فِي بَيْتِهِ أَوْ فِي بَيْتِ أَهْلِهَا؟ قَالَ: فَلَوْ غَمَزَ وَلَمْ يَكْشِفْ لَمْ تُحَرَّمْ ابْنَتُهَا عَلَيْهِ بِذَلِكَ.

L31426 It has also been narrated from ʿAṭāʾ that the ruling is validated solely by the act of entering, even if no ritual action is performed.

وَرُوِيَ عَنْ عَطَاءٍ أَيْضًا: أَنَّهُ الدُّخُولُ فَقَطْ وَإِنْ لَمْ يَفْعَلْ شَيْئًا.

L31427 Abu Muhammad said: The dissenters—who disregard the stepdaughter's guardianship under her mother's husband and the consummation with her, both with corrupt effects—clamored in objection.

قَالَ أَبُو مُحَمَّد: وَشَغَبَ الْمُخَالِفُونَ الَّذِينَ لَا يُرَاعُونَ كَوْنَ الرَّبِيبَةِ فِي حِجْرِ زَوْجِ أُمِّهَا مَعَ دُخُولٍ بِهَا بِآثَارٍ فَاسِدَةٍ.

L31428 Among them is an interrupted-chain report transmitted through the chain of Ibn Wahb from Yahya ibn Ayyub from Al-Muthanna ibn Al-Sabbah from Amr ibn Shuʿayb from his father, that the Messenger of Allah—peace and blessings be upon him—said: "If a man marries a woman and consummates the marriage with her, it is not lawful for him to marry her daughter. But if he has not consummated the marriage with her, then he may marry her daughter."

مِنْهَا: خَبَرٌ مُنْقَطِعٌ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنْ الْمُثَنَّى بْنِ الصَّبَّاحِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَيُّمَا رَجُلٍ نَكَحَ امْرَأَةً فَدَخَلَ بِهَا فَلَا يَحِلُّ لَهُ نِكَاحُ ابْنَتِهَا فَإِنْ لَمْ يَدْخُلْ بِهَا فَلْيَنْكِحْهَا» .

L31429–31430 This [narrator] is rejected with an interrupted chain. Yaḥyā ibn Ayyūb and al-Muthannā are both weak.

وَهَذَا هَالِكٌ مُنْقَطِعٌ، وَيَحْيَى بْنُ أَيُّوبَ، وَالْمُثَنَّى: ضَعِيفَانِ.

L31431 Based on a narration from Wahb ibn Munabbih: Indeed, in the Torah it is written: "Whoever exposes the genital area of a woman and her daughter, he is cursed," and this is very strange.

وَبِخَبَرٍ عَنْ وَهْبِ بْنِ مُنَبِّهٍ: أَنَّ فِي التَّوْرَاةِ مَكْتُوبًا " مَنْ كَشَفَ عَنْ فَرْجِ امْرَأَةٍ وَابْنَتِهَا فَهُوَ مَلْعُونٌ " وَهَذَا طَرِيفٌ جِدًّا.

L31432 And with a report from the chain of Ibn Jurayj: I reported from Abu Bakr ibn Abd al-Rahman ibn Umm al-Hakam, who said: "A man asked: 'O Messenger of God, I committed adultery with a woman during the pre-Islamic era. May I marry her daughter?' He replied: 'I do not consider that permissible, nor is it fitting for you to marry a woman through whose daughter you would discover what you discovered from her.'" This chain is disconnected at two points.

وَبِخَبَرٍ مِنْ طَرِيقِ ابْنِ جُرَيْجٍ: أَخْبَرَت عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أُمِّ الْحَكَمِ قَالَ: «قَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ زَنَيْت بِامْرَأَةٍ فِي الْجَاهِلِيَّةِ أَفَأَنْكِحُ ابْنَتَهَا؟ قَالَ: لَا أَرَى ذَلِكَ، وَلَا يَصْلُحُ لَك أَنْ تَنْكِحَ امْرَأَةً تَطَّلِعُ مِنْ ابْنَتِهَا عَلَى مَا تَطَّلِعُ عَلَيْهِ مِنْهَا» وَهَذَا مُنْقَطِعٌ فِي مَوْضِعَيْنِ.

L31433 Narrated through Ibn Wahb, from Yaḥyā ibn Ayyūb, from Ibn Jurayj: "The Prophet—peace and blessings of Allah be upon him—said concerning a man

who marries a woman and winks at her, not going beyond that: He must not marry her daughter." This chain is more interrupted.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنْ ابْنِ جُرَيْجٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: فِي الَّذِي يَتَزَوَّجُ الْمَرْأَةَ فَيَغْمِزُهَا لَا يَزِيدُ عَلَى ذَلِكَ: أَنْ لَا يَتَزَوَّجَ ابْنَتَهَا» وَهَذَا أَشَدُّ انْقِطَاعًا.

L31434 And with the authentic report transmitted through Umm Habibah, the Mother of the Believers—may Allah be pleased with her—that she said to the Messenger of Allah (peace be upon him): "It has reached me that you propose to Durrah, the daughter of Abu Salamah?" He replied to her (peace be upon him): "By Allah, had she not been my stepdaughter, she would not have been permissible for me. She is indeed the daughter of my brother in breastfeeding."

وَبِالْخَبَرِ الثَّابِتِ مِنْ طَرِيقِ «أُمِّ حَبِيبَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - أَنَّهَا قَالَتْ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: بَلَغَنِي أَنَّكَ تَخْطُبُ دُرَّةَ بِنْتَ أَبِي سَلَمَةَ؟ فَقَالَ لَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: وَاَللَّهِ لَوْ لَمْ تَكُنْ رَبِيبَتِي مَا حَلَّتْ لِي، إنَّهَا لَابْنَةُ أَخِي فِي الرَّضَاعَةِ» .

L31435 They said: "Then did he not mention her being under his custody?" We replied: "Nor did he mention his consummation of marriage with her. This report only mentions that she is his stepdaughter, and by virtue of the marriage contract she becomes his stepdaughter. They do not disagree that this does not prohibit him from marrying her. How can this be, when this report was transmitted in this manner by Sufyān ibn ʿUyaynah and others—Hishām ibn ʿUrwah?"

قَالُوا: فَلَمْ يَذْكُرْ كَوْنَهَا فِي حِجْرِهِ؟ فَقُلْنَا: وَلَا ذَكَرَ دُخُولَهُ بِهَا أَيْضًا، إنَّمَا فِي هَذَا الْخَبَرِ كَوْنُهَا رَبِيبَةً لَهُ فَقَطْ وَبِعَقْدِ النِّكَاحِ تَكُونُ رَبِيبَتَهُ، وَلَا يَخْتَلِفُونَ أَنَّ ذَلِكَ لَا يُحَرِّمُهَا عَلَيْهِ أَنْ يَتَزَوَّجَهَا، فَكَيْفَ وَهَذَا خَبَرٌ هَكَذَا رَوَاهُ سُفْيَانُ بْنُ عُيَيْنَةَ وَغَيْرُهُ هِشَامُ بْنُ عُرْوَةَ.

L31436 It was narrated by someone no less than Hishām with additional clarification—as we have transmitted it through the chain of Abū Dāwūd al-Sijistānī: ʿAbdullāh ibn Muḥammad al-Nufaylī narrated to us; Zuhayr ibn Muʿāwiyah narrated to us; from Hishām ibn ʿUrwah; from ʿUrwah; from Zaynab bint Abī Salamah—that Umm Ḥabībah said in a lengthy hadith: "O Messenger of Allah, I was informed that you intend to marry the daughter of Abī Salamah." He responded: "The daughter of Abī Salamah?" She replied: "Yes." He said: "By Allah, even if she were not my stepdaughter under my care, she would not be lawful for me. She is the daughter of my milk brother."

وَرَوَاهُ مَنْ لَيْسَ دُونَ هِشَامٍ فَزَادَ بَيَانًا -: كَمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ النُّفَيْلِيُّ نا زُهَيْرُ بْنُ مُعَاوِيَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ عُرْوَةَ عَنْ زَيْنَبَ بِنْتِ أَبِي سَلَمَةَ أَنَّ «أُمَّ حَبِيبَةَ قَالَتْ يَا رَسُولَ اللَّهِ - فِي حَدِيثٍ طَوِيلٍ - لَقَدْ أُخْبِرْتُ أَنَّكَ تَخْطُبُ بِنْتَ أَبِي سَلَمَةَ قَالَ: بِنْتَ أَبِي سَلَمَةَ؟ قُلْت: نَعَمْ، قَالَ: أَمَا وَاَللَّهِ لَوْ لَمْ تَكُنْ رَبِيبَتِي فِي حِجْرِي مَا حَلَّتْ لِي، إنَّهَا ابْنَةُ أَخِي مِنْ الرَّضَاعَةِ» .

L31437 Thus, it was narrated by Abu Usamah, Yahya ibn Zakariyya ibn Abi Za'idah, and Al-Layth ibn Sa'd—all of them transmitting from Hisham ibn 'Urwah. They affirmed therein the mention of the Prophet, peace and blessings be upon him, regarding her being under his guardianship.

وَهَكَذَا رَوَاهُ أَبُو أُسَامَةَ، وَيَحْيَى بْنُ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ، وَاللَّيْثُ بْنُ سَعْدٍ. كُلُّهُمْ عَنْ هِشَامِ بْنِ عُرْوَةَ، فَأَثْبَتُوا فِيهِ ذِكْرَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كَوْنَهَا فِي حِجْرِهِ.

وَهَكَذَا رُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو الْيَمَانِ الْحَكَمُ بْنُ نَافِعٍ أَخْبَرَنَا شُعَيْبٌ - هُوَ ابْنُ أَبِي حَمْزَةَ - عَنِ الزُّهْرِيِّ أَخْبَرَنِي عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ أَنَّ زَيْنَبَ بِنْتَ أُمِّ سَلَمَةَ أَخْبَرَتْهُ: أَنَّ أُمَّ حَبِيبَةَ بِنْتَ أَبِي سُفْيَانَ أَخْبَرَتْهَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهَذَا الْخَبَرِ، وَفِيهِ «لَوْ أَنَّهَا لَمْ تَكُنْ رَبِيبَتِي فِي حِجْرِي» وَلَا شَكَّ، وَلَا خِلَافَ فِي أَنَّهُ خَبَرٌ وَاحِدٌ فِي مَوْطِنٍ وَاحِدٍ عَنْ قِصَّةٍ وَاحِدَةٍ أَسْقَطَ بَعْضُ الرُّوَاةِ لَفْظَةً أَثْبَتَهَا غَيْرُهُ مِمَّنْ هُوَ مِثْلُهُ وَفَوْقَهُ فِي الْحِفْظِ، فَلَا يَحِلُّ الِاحْتِجَاجُ بِالْأَنْقَصِ عَلَى خِلَافِ مَا فِي الْقُرْآنِ.

L31438–31440 And similarly, we have also narrated it through the chain of Al-Bukhārī: from Abū Al-Yamān Al-Ḥakam ibn Nāfiʿ, who reported to us... Shuʿayb—he is Ibn Abī Ḥamzah—narrated from al-Zuhrī, who reported to me from ʿUrwah ibn al-Zubayr that Zaynab bint Umm Salamah informed him: Umm Ḥabībah bint Abī Sufyān informed her on the authority of the Messenger of Allah—peace and blessings be upon him—concerning this report, which includes the statement: "If she had not been my stepdaughter under my guardianship." There is no doubt and no disagreement that this is a single report within one context regarding a single incident, where some narrators omitted a word preserved by others—those equal to him or superior in memorization. Thus, it is impermissible to cite the less complete narration in contradiction to what is established in the Qur'an.

وَمَوَّهُوا بِجَمَاقَاتٍ -: مِثْلُ أَنْ قَالُوا: أَرَادَ اللَّهُ عَزَّ وَجَلَّ بِقَوْلِهِ: {فِي حُجُورِكُمْ} [النساء: ٢٣] عَلَى الْأَغْلَبِ.

L31441 They disguised [their errors] with absurdities: such as when they said, "Allah, the Mighty and Majestic, intended by His statement 'in your bosoms' [An-Nisāʾ 4:23] according to the majority opinion."[46]

قَالَ أَبُو مُحَمَّدٍ: هَذَا كَذِبٌ عَلَى اللَّهِ تَعَالَى، وَإِخْبَارٌ عَنْهُ عَزَّ وَجَلَّ بِالْبَاطِلِ وَمِثْلُ قَوْلِهِمْ هَذَا كَقَوْلِهِ تَعَالَى: {إِنَّا أَحْلَلْنَا لَكَ أَزْوَاجَكَ اللاتِي آتَيْتَ أُجُورَهُنَّ} [الأحزاب: ٥٠] وَلَيْسَ ذَلِكَ بِمُحَرِّمٍ عَلَيْهِ اللَّاتِي لَمْ يُؤْتِهِنَّ أُجُورَهُنَّ؟ .

L31442 Abu Muhammad said: This is a lie against Allah the Exalted and a false report about Him, the Almighty and Majestic. Their statement resembles His declaration: {We have made lawful for you your wives to whom you have given their bridal gifts (mahr)} [Al-Ahzab: 50]. Would it not then be forbidden for him [to marry] those women whom he did not give their bridal gifts (mahr)?[47]

فَقُلْنَا: لَوْ لَمْ يَأْتِ نَصٌّ آخَرُ بِإِحْلَالِ الْمَوْهُوبَةِ وَالَّتِي لَمْ يُفْرَضْ لَهَا فَرِيضَةٌ لَمَا حَلَّتْ إِلَّا اللَّاتِي يُؤْتِيهِنَّ أُجُورَهُنَّ، وَأَنْتُمْ لَا نَصَّ فِي أَيْدِيكُمْ يُحَرِّمُ الَّتِي لَمْ تَكُنْ فِي حِجْرِهِ مِنَ الرَّبَائِبِ.

L31443 So we said: Had there not been another explicit textual evidence permitting the woman given in marriage without a dowry and those for whom no dowry was stipulated, they would not have been lawful except for those to whom their dowries were given. And you possess no textual evidence that prohibits stepdaughters who were not under his guardianship.

وَمِثْلُ قَوْلِهِمْ: كُلُّ تَحْرِيمٍ لَهُ سَبَبَانِ، فَإِنَّ أَحَدَهُمَا إِذَا انْفَرَدَ كَانَ لَهُ تَأْثِيرٌ؟

L31444 "And similar to their statement: 'For every prohibition grounded in two legal reasons - if one reason exists independently, does it still produce legal consequences?'"

[46] **Qur'an references (L31441):** Qur'an 4:23 (An-Nisa).
[47] **Qur'an references (L31442):** Qur'an 33:50 (Al-Ahzab).

L31445 Ali said: "This is sheer falsehood. Rather, it has no effect unless its concurrence in the explicitly stipulated cause occurs alongside it."

قَالَ عَلِيٌّ: وَهَذَا كَذِبٌ مُجَرَّدٌ، بَلْ لَا تَأْثِيرَ لَهُ دُونَ اجْتِمَاعِهِ فِي السَّبَبِ الْمَنْصُوصِ عَلَيْهِ مَعَهُ.

L31446 They claimed that Ibrāhīm ibn ʿUbayd, who narrated from ʿAlī regarding the permissibility of that, is unknown? ʿAlī said: Rather, they have lied. He is well-known and trustworthy; Muslim and others narrated from him in *the Ṣaḥīḥ*.

وَادَّعَوْا أَنَّ إبْرَاهِيمَ بْنَ عُبَيْدٍ الَّذِي رَوَى عَنْ عَلِيٍّ إبَاحَةَ ذَلِكَ مَجْهُولٌ؟ قَالَ عَلِيٌّ: بَلْ كَذَبُوا، هُوَ مَشْهُورٌ ثِقَةٌ، رَوَى مُسْلِمٌ وَغَيْرُهُ عَنْهُ فِي الصَّحِيحِ.

L31447 Thus, the invalidity of their statement became undeniably clear — and all praise is due to Allah, Lord of the worlds.[48]

فَوَضَحَ فَسَادُ قَوْلِهِمْ بِيَقِينٍ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L31448 **A legal ruling on the impermissibility of simultaneously marrying a woman along with her father's wife, her son's wife, or her paternal uncle's daughter.**

[مَسْأَلَةٌ الْجَمْعُ بَيْنَ امْرَأَةٍ وَزَوْجَةِ أَبِيهَا وَزَوْجَةِ ابْنِهَا وَابْنَةِ عَمِّهَا]

L31449 1865 - Issue: It is permissible for a man to be concurrently married to a woman, her father's wife, her son's wife, and her paternal uncle's daughter through agnatic lineage, as there is no explicit text prohibiting any of that. This is the opinion of Abū Ḥanīfah, Mālik, al-Shāfiʿī, and Abū Sulaymān.

١٨٦٥ - مَسْأَلَةٌ: وَجَائِزٌ لِلرَّجُلِ أَنْ يَجْمَعَ بَيْنَ امْرَأَةٍ وَزَوْجَةِ أَبِيهَا، وَزَوْجَةِ ابْنِهَا وَابْنَةِ عَمِّهَا لَحًّا، لِأَنَّهُ لَمْ يَأْتِ نَصٌّ بِتَحْرِيمِ شَيْءٍ مِنْ ذَلِكَ - وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L31450 Similarly, the wife of his mother's husband is permissible for him to marry. In this matter, there is an ancient scholarly disagreement, but we know of no one who upholds this opinion today.

وَكَذَلِكَ تَحِلُّ لَهُ امْرَأَةُ زَوْجِ أُمِّهِ، وَفِي هَذَا خِلَافٌ قَدِيمٌ لَا نَعْلَمُ أَحَدًا يَقُولُ بِهِ الْآنَ.

L31451–31452 Similarly, the marriage of a eunuch (al-khaṣī), an infertile man (al-ʿaqīm), or a sterile man (al-ʿāqir) is permissible because there is no explicit textual prohibition against any of these cases. And with Allah alone is success.

وَكَذَلِكَ يَجُوزُ نِكَاحُ: الْخَصِيِّ، وَالْعَقِيمِ، وَالْعَاقِرِ، لِأَنَّهُ لَمْ يَأْتِ نَصٌّ بِنَهْيٍ عَنْ شَيْءٍ مِنْ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L31453 **A legal issue: Intercourse with a forbidden woman is not prohibited within a lawful marriage, except in one specific case.**

[مَسْأَلَةٌ لَا يُحَرِّمُ وَطْءُ حَرَامٍ نِكَاحًا حَلَالًا إلَّا فِي مَوْضِعٍ وَاحِدٍ]

L31454 1866. Issue: Unlawful intercourse does not prohibit a lawful marriage

[48] **Qur'an references (L31447):** Qur'an 37:182 (As-Saffat).

except in one instance: if a man commits unlawful intercourse with a woman, she is permanently forbidden to marry anyone descended from him.

١٨٦٦ - مَسْأَلَةٌ: وَلَا يُحَرَّمُ وَطْءُ حَرَامٍ نِكَاحًا حَلَالًا إلَّا فِي مَوْضِعٍ وَاحِدٍ: وَهُوَ أَنْ يَزْنِيَ الرَّجُلُ بِامْرَأَةٍ، فَلَا يَحِلُّ نِكَاحُهَا لِأَحَدٍ مِمَّنْ تَنَاسَلَ مِنْهُ أَبَدًا.

L31455 If the son commits fornication with her and she subsequently repents, marrying her is not prohibited for his father or grandfather as a result of that act.

وَأَمَّا لَوْ زَنَى الِابْنُ بِهَا ثُمَّ تَابَتْ لَمْ يَحْرُمْ بِذَلِكَ نِكَاحُهَا عَلَى أَبِيهِ وَجَدِّهِ.

L31456 Whoever commits illicit intercourse with a woman not permanently forbidden to him may, if he repents, marry her mother or her daughter. In all these matters, the invalid marriage (nikāḥ fāsid) and illicit intercourse (zina) are equivalent.

وَمَنْ زَنَى بِامْرَأَةٍ لَمْ يَحْرُمْ عَلَيْهِ إذَا تَابَ أَنْ يَتَزَوَّجَ أُمَّهَا، أَوْ ابْنَتَهَا - وَالنِّكَاحُ الْفَاسِدُ وَالزِّنَا فِي هَذَا كُلِّهِ سَوَاءٌ.

L31457 The proof of that is: the statement of Allah, the Exalted and Majestic: "And do not marry what your fathers married from among the women" (4:22).[49]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ} [النساء: ٢٢] .

L31458 Abū Muḥammad said: In the language through which the Quran was revealed, the term "nikah" applies to two matters—one being sexual intercourse, whether lawful or unlawful, and the other being the contract. It is impermissible to restrict the scope of the Quranic verse by a claim unsupported by scriptural evidence from Allah the Exalted or His Messenger (peace be upon him). Therefore, whichever sexual union a man has with a woman—whether she is free or enslaved, lawful or unlawful—she becomes forbidden to his son by the explicit text of the Quran.

قَالَ أَبُو مُحَمَّدٍ: النِّكَاحُ فِي اللُّغَةِ الَّتِي نَزَلَ بِهَا الْقُرْآنُ يَقَعُ عَلَى شَيْئَيْنِ -: أَحَدُهُمَا - الْوَطْءُ، كَيْفَ كَانَ بِحَرَامٍ أَوْ بِحَلَالٍ. وَالْآخَرُ - الْعَقْدُ، فَلَا يَجُوزُ تَخْصِيصُ الْآيَةِ بِدَعْوَى بِغَيْرِ نَصٍّ مِنْ اللَّهِ تَعَالَى، أَوْ مِنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَيُّ نِكَاحٍ نَكَحَ الرَّجُلُ الْمَرْأَةَ - حُرَّةً أَوْ أَمَةً بِحَلَالٍ أَوْ بِحَرَامٍ - فَهِيَ حَرَامٌ عَلَى وَلَدِهِ بِنَصِّ الْقُرْآنِ.

L31459 We have elucidated that the child of one's child is considered a child based on the words of Allah, the Exalted: "O children of Adam" [Sūrat al-Aʿrāf (7:27)].[50]

وَقَدْ بَيَّنَّا أَنَّ وَلَدَ الْوَلَدِ وَلَدٌ بِقَوْلِهِ تَعَالَى: {يَا بَنِي آدَمَ} [الأعراف: ٢٧] .

L31460 And this is the statement of Abū Ḥanīfah and a group from the Salaf.

وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَجَمَاعَةٍ مِنْ السَّلَفِ.

L31461 There is no text prohibiting a lawful marriage due to unlawful intercourse; therefore, asserting it as forbidden is impermissible, because this constitutes legislating what Allah, the Almighty and Majestic, has not authorized.

وَلَمْ يَأْتِ نَصٌّ بِتَحْرِيمِ نِكَاحٍ حَلَالٍ مِنْ أَجْلِ وَطْءٍ حَرَامٍ، فَالْقَوْلُ بِهِ لَا يَحِلُّ؛ لِأَنَّهُ شَرْعٌ لَمْ يَأْذَنْ بِهِ اللَّهُ عَزَّ وَجَلَّ.

[49] **Qur'an references (L31457):** Qur'an 4:22 (An-Nisa).
[50] **Qur'an references (L31459):** Qur'an 7:27 (Al-A'raf).

L31462 Among those from whom it has been narrated that unlawful intercourse invalidates the lawful marriage is Ibn Abbas, as it has been reported that he separated a man from his wife after she had borne him seven sons—all of whom reached adulthood and carried weapons—because the man had engaged in unlawful sexual intercourse with her mother.

وَمِمَّنْ رُوِّينَا عَنْهُ أَنَّ وَطْءَ الْحَرَامِ يُحَرِّمُ الْحَلَالَ -: رُوِّينَا ذَلِكَ عَنْ ابْنِ عَبَّاسٍ، وَأَنَّهُ فَرَّقَ بَيْنَ رَجُلٍ وَامْرَأَتِهِ بَعْدَ أَنْ وَلَدَتْ لَهُ سَبْعَةَ رِجَالٍ كُلُّهُمْ صَارَ رَجُلًا يَحْمِلُ السِّلَاحَ، لِأَنَّهُ كَانَ أَصَابَ مِنْ أُمِّهَا مَا لَا يَحِلُّ.

L31463 And from Mujāhid: A man who has committed fornication with a woman is not permitted to marry her mother.

وَعَنْ مُجَاهِدٍ: لَا يَصْلُحُ لِرَجُلٍ فَجَرَ بِامْرَأَةٍ أَنْ يَتَزَوَّجَ أُمَّهَا.

L31464 From the chain of Shuʿbah from al-Ḥakam ibn ʿUtaybah, who said: Ibrāhīm al-Nakhaʿī said: "If the lawful results in the unlawful, then the unlawful is more strictly forbidden."

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: قَالَ إبْرَاهِيمُ النَّخَعِيُّ: إذَا كَانَ الْحَلَالُ يُحَرِّمُ الْحَرَامَ فَالْحَرَامُ أَشَدُّ تَحْرِيمًا.

L31465–31467 and from Ibn Ma'qil said: This act is not permissible in the lawful, so how could it be permissible for him in the unlawful? Via the chain of Waki' on the authority of Jarīr ibn Ḥāzim from Qays ibn Sa'd from Mujāhid, who said: If he kisses her, touches her, or looks at her private part with desire, her mother and her daughter are prohibited to him.

وَعَنْ ابْنُ مَعْقِلٍ: هِيَ لَا تَحِلُّ فِي الْحَلَالِ فَكَيْفَ تَحِلُّ لَهُ فِي الْحَرَامِ وَمِنْ طَرِيقِ وَكِيع عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ مُجَاهِدٍ قَالَ: إذَا قَبَّلَهَا أَوْ لَامَسَهَا أَوْ نَظَرَ إلَى فَرْجِهَا مِنْ شَهْوَةٍ حُرِّمَتْ عَلَيْهِ أُمُّهَا وَابْنَتُهَا.

L31468 From the chain of Waki' via 'Abdullāh ibn Masīḥ, who said: I asked Ibrāhīm al-Nakhaʿī about a man who committed fornication with a woman and then wished to purchase her mother or marry her. He disliked that.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسِيحٍ قَالَ: سَأَلْتُ إبْرَاهِيمَ النَّخَعِيّ عَنْ رَجُلٍ فَجَرَ بِامْرَأَةٍ فَأَرَادَ أَنْ يَشْتَرِيَ أُمَّهَا أَوْ يَتَزَوَّجَهَا؟ فَكَرِهَ ذَلِكَ.

L31469 From Sufyan ibn Uyaynah from Amr ibn Dinar: He asked Ikrimah, the freed slave of Ibn Abbas, about a man who committed fornication with a woman. Is it valid for him to marry a female slave whom the woman breastfed after that act? He said: No.

وَعَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ: أَنَّهُ سَأَلَ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ عَنْ رَجُلٍ فَجَرَ بِامْرَأَةٍ أَيَصْلُحُ لَهُ أَنْ يَتَزَوَّجَ جَارِيَةً أَرْضَعَتْهَا هِيَ بَعْدَ ذَلِكَ؟ قَالَ: لَا.

L31470 Narrated from Al-Sha'bi: What is deemed prohibited (haram) within lawful (halal) matters remains prohibited (haram) within prohibited (haram) matters.

وَعَنْ الشَّعْبِيِّ مَا كَانَ فِي الْحَلَالِ حَرَامًا فَهُوَ فِي الْحَرَامِ حَرَامٌ.

L31471 From Saʿīd ibn al-Musayyib, Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf, and ʿUrwah ibn al-Zubayr concerning one who fornicates with a woman: it is never permissible for him to marry her daughter. Is this the opinion of Sufyān al-Thawrī?—Indeed. We have received a narration via al-Bukhārī's chain, which states: "It is reported from Yaḥyā al-Kindī via al-Shaʿbī and Abū

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ وَعُرْوَةَ بْنِ الزُّبَيْرِ فِيمَنْ زَنَى بِامْرَأَةٍ أَنَّهُ لَا يَصْلُحُ لَهُ أَنْ يَتَزَوَّجَ ابْنَتَهَا أَبَدًا - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ؟ نَعَمْ، وَلَقَدْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ قَالَ: يُرْوَى عَنْ يَحْيَى الْكِنْدِيِّ عَنْ الشَّعْبِيِّ، وَأَبِي جَعْفَرٍ

Jaʿfar Muḥammad ibn ʿAlī ibn al-Ḥusayn, both of whom concurred: ’Whoever commits sodomy with a boy may not marry the boy’s mother.”’ This is also the view of al-Awzāʿī, who further asserted: “Whoever sodomizes a boy, it is unlawful for the perpetrator to marry the daughter of the sodomized individual.”

مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ، قَالَا جَمِيعًا: مَنْ أَوْلَجَ فِي صَبِيٍّ فَلَا يَتَزَوَّجُ أُمَّهُ - وَبِهِ يَقُولُ الْأَوْزَاعِيُّ حَتَّى أَنَّهُ قَالَ: مَنْ لَاطَ بِغُلَامٍ لَمْ يَحِلَّ لِلْفَاعِلِ أَنْ يَتَزَوَّجَ ابْنَةَ الْمَفْعُولِ بِهِ.

L31472 Abu Hanifah and his companions stated: If a man touches with forbidden desire or gazes at her private part with desire, it becomes impermissible for him to marry her mother or daughter, and marrying her is forever forbidden to her father and her son. This represents one of Malik’s two positions, except that he only imposes prohibition through actual intercourse alone.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، إِذَا لَمَسَ لِشَهْوَةٍ حَرَامًا، أَوْ نَظَرَ إِلَى فَرْجِهَا لِشَهْوَةٍ لَمْ يَحِلَّ لَهُ نِكَاحُ أُمِّهَا وَلَا ابْنَتِهَا، وَحُرِّمَ نِكَاحُهَا عَلَى أَبِيهِ وَابْنِهِ أَبَدًا، وَهُوَ أَحَدُ قَوْلَيْ مَالِكٍ، إِلَّا أَنَّهُ لَا يُحَرِّمُ فِيهِ إِلَّا بِالْوَطْءِ فَقَطْ.

L31473 Others differed from them, as they did not invalidate a lawful marriage because of unlawful sexual intercourse—this has also been narrated to us on the authority of Ibn Abbas.

وَخَالَفَهُمْ آخَرُونَ: فَلَمْ يُحَرِّمُوا بِوَطْءٍ حَرَامٍ نِكَاحًا حَلَالًا - رُوِّينَا ذَلِكَ أَيْضًا عَنِ ابْنِ عَبَّاسٍ.

L31474 From the chain of Hammad ibn Salamah, Yahya ibn Ya’mur reported to us, saying: “The unlawful does not make the lawful unlawful.”

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا يَحْيَى بْنُ يَعْمُرَ قَالَ: لَا يُحَرِّمُ الْحَرَامُ الْحَلَالَ.

L31475 From the path of Abū ’Ubayd: Yaḥyā ibn Sa’īd (he is al-Qaṭṭān) narrated to us from Ibn Abī Dhi’b, who narrated to us from his maternal uncle al-Ḥārith ibn ’Abd al-Raḥmān, from Sa’īd ibn al-Musayyib and ’Urwah ibn al-Zubayr, who jointly stated: “The ḥarām does not render the ḥalāl forbidden.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَحْيَى بْنُ سَعِيدٍ - هُوَ الْقَطَّانُ - نا ابْنُ أَبِي ذِئْبٍ عَنْ خَالِهِ الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، قَالَا جَمِيعًا: الْحَرَامُ لَا يُحَرِّمُ الْحَلَالَ.

L31476 Narrated via ʿAbd al-Razzāq → Maʿmar → al-Zuhrī: He was asked about someone who fornicated with a woman. He replied: “The forbidden does not prohibit the permissible.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ: أَنَّهُ سُئِلَ عَمَّنْ فَجَرَ بِامْرَأَةٍ؟ فَقَالَ: لَا يُحَرِّمُ الْحَرَامُ الْحَلَالَ.

L31477–31479 And via the chain of transmission of Mujāhid and Saʿīd ibn Jubayr, both said collectively: “The unlawful does not render the lawful unlawful” - and this is [the ruling]. One of the two opinions of Mālik—and it is the opinion of Al-Layth ibn Saʿd, Al-Shāfiʿī, Abū Sulaymān, the followers of Al-Layth and Al-Shāfiʿī, and the scholars of our school.

وَمِنْ طَرِيقِ مُجَاهِدٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، قَالَا جَمِيعًا: لَا يُحَرِّمُ الْحَرَامُ الْحَلَالَ - وَهُوَ أَحَدُ قَوْلَيْ مَالِكٍ - وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا، وَأَصْحَابِنَا.

L31480 Abu Muhammad said: Those who prohibit that argued by analogy on the generality of His statement, the Almighty and Majestic: “And do not marry

those women whom your fathers married from among the women." [An-Nisa: 22].[51]

قَالَ أَبُو مُحَمَّد: احْتَجَّ الْمَانِعُونَ مِنْ ذَلِكَ بِالْقِيَاسِ عَلَى عُمُومِ قَوْلِهِ عَزَّ وَجَلَّ: {وَلا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ} [النساء: ٢٢] .

L31481 And with two mursal narrations—in one of them Ibn Jurayj reported from Ibn Bakr ibn ʿAbd al-Raḥmān ibn Umm al-Ḥakam: "A man asked the Messenger of Allah (peace and blessings be upon him) about a woman with whom he had committed fornication during the pre-Islamic era: 'May I now marry her daughter?' He (peace and blessings be upon him) replied: 'I do not see that as permissible, nor is it suitable for you to marry the daughter, for through her you might be reminded of what you once committed with her mother.'"

وَبِمُرْسَلَيْنِ -: فِي أَحَدِهِمَا ابْنُ جُرَيْجٍ: أَخْبَرْت عَنْ ابْنِ بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أُمِّ الْحَكَمِ: «أَنَّ رَجُلًا سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ امْرَأَةٍ كَانَ زَنَى بِهَا فِي الْجَاهِلِيَّةِ أَيَنْكِحُ الْآنَ ابْنَتَهَا؟ فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَا أَرَى ذَلِكَ وَلَا يَصْلُحُ لَكَ أَنْ تَنْكِحَ امْرَأَةً تَطَّلِعُ مِنْ ابْنَتِهَا عَلَى مَا اطَّلَعْتَ عَلَيْهِ مِنْهَا» .

L31482 The other narration is transmitted via al-Ḥajjāj ibn Arṭā'ah from Abū Hāni' who said: The Messenger of Allah (peace and blessings be upon him) said, "Whoever looks at the private part of a woman, her mother and daughter are not lawful to him."

وَالْآخَرُ - فِيهِ الْحَجَّاجُ بْنُ أَرْطَاةَ عَنْ أَبِي هَانِئٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ نَظَرَ إلَى فَرْجِ امْرَأَةٍ لَمْ تَحِلَّ لَهُ أُمُّهَا وَلَا ابْنَتُهَا» .

L31483 Abu Muhammad said: As for the analogy based on the verse, the analogy in its entirety is invalid.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْقِيَاسُ عَلَى الْآيَةِ فَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

L31484 As for the two reports—they are both mursal, and no valid proof exists in a mursal report, particularly since one contains another break in the chain. Moreover, Abū Bakr ibn ʿAbd al-Raḥmān ibn Umm al-Ḥakam is unknown. In the other report, al-Ḥajjāj ibn Arṭāh—a discredited narrator—narrates from Abū Hāni', who is also unknown.

وَأَمَّا الْخَبَرَانِ - فَمُرْسَلَانِ، وَلَا حُجَّةَ فِي مُرْسَلٍ، لَا سِيَّمَا وَفِي أَحَدِهِمَا: انْقِطَاعٌ آخَرُ، وَأَبُو بَكْرِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ أُمِّ الْحَكَمِ مَجْهُولٌ - وَفِي الْآخَرِ: الْحَجَّاجُ بْنُ أَرْطَاةَ - وَهُوَ هَالِكٌ - عَنْ أَبِي هَانِئٍ - وَهُوَ مَجْهُولٌ.

L31485 Another report contradicts both—not cited as proof, but to counter the flawed argument with a narration no less valid. This is the report transmitted through the chain of Abdullah ibn Nafi' from al-Mughirah ibn Isma'il from Uthman ibn Abd al-Rahman al-Zuhri from Ibn Shihab from Urwah from Aishah: "The Messenger of Allah—peace and blessings be upon him—was asked about a man who engaged in unlawful relations with a woman: may he marry her daughter or her mother? He replied: 'Unlawful acts do not establish prohibitions; only lawful marriages create such restrictions.'"

وَقَدْ عَارَضَهُمَا خَبَرٌ آخَرُ - لَا نُورِدُهُ احْتِجَاجًا بِهِ، لَكِنْ مُعَارَضَةً لِلْفَاسِدِ بِمَا إنْ لَمْ يَكُنْ أَحْسَنَ مِنْهُ لَمْ يَكُنْ دُونَهُ، وَهُوَ مَا رُوِيَ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ نَافِعٍ عَنْ الْمُغِيرَةِ بْنِ إسْمَاعِيلَ عَنْ عُثْمَانَ بْنِ عَبْدِ الرَّحْمَنِ الزُّهْرِيِّ عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ عَمَّنْ اتَّبَعَ امْرَأَةً حَرَامًا أَيَنْكِحُ ابْنَتَهَا أَوْ أُمَّهَا؟ فَقَالَ: لَا يُحَرِّمُ الْحَرَامُ، وَإِنَّمَا يُحَرِّمُ مَا كَانَ نِكَاحًا حَلَالًا» .

[51] **Qur'an references (L31480):** Qur'an 4:22 (An-Nisa).

L31486 They also obscured the matter by stating: "Whoever intentionally and knowingly has intercourse with his bondwoman or wife while she is menstruating, or when either the man or the woman is in a state of ritual consecration (iḥrām), in seclusion (iʿtikāf), during the daytime in Ramadan, or with his idolatrous or protected non-Muslim (dhimmī) bondwoman – this constitutes unlawful intercourse." There is no disagreement that such intercourse renders her mother and daughter forbidden to him for marriage and makes her unlawful for his father and sons to marry. Does this ruling apply similarly to every form of unlawful intercourse?

وَمَوَّهُوا أَيْضًا - بِأَنْ قَالُوا: مَنْ وَطِئَ أَمَتَهُ، أَوْ امْرَأَتَهُ حَائِضًا، أَوْ إحْدَاهُمَا: مُحْرِمٌ، أَوْ مُعْتَكِفٌ، أَوْ فِي نَهَارِ رَمَضَانَ، أَوْ أَمَتَهُ الْوَثَنِيَّةَ، أَوْ ذِمِّيَّةً، عَمْدًا، ذَاكِرًا، فَإِنَّهُ وَطِئَ حَرَامًا - وَلَا خِلَافَ فِي أَنَّهُ وَطْءٌ مُحَرِّمٌ لِأُمِّهَا وَابْنَتِهَا، وَمُحَرِّمٌ لَهَا عَلَى آبَائِهِ، وَبَنِيهِ، فَكَذَلِكَ كُلُّ وَطْءٍ حَرَامٍ؟

L31487–31489 Abu Muhammad said: It is not as they said; rather, he consummated a lawful marital bed, but it was prohibited due to an effective cause that, if… The prohibition was lifted, and there is no dispute that it is not lawful for him, for he has not engaged in intercourse except with his wife or a legally valid female slave. Thus, the difference between the two matters became evident - and success is from Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ: وَلَيْسَ كَمَا قَالُوا، بَلْ وَطِئَ فِرَاشًا حَلَالًا، وَإِنَّمَا حُرِّمَ لِعِلَّةٍ لَوْ ارْتَفَعَتْ حَلَّ، وَلَا خِلَافَ فِي أَنَّهُ لَا حِلَّ عَلَيْهِ، لِأَنَّهُ لَمْ يَطَأْ إلَّا زَوْجَتَهُ، أَوْ مِلْكَ يَمِينٍ صَحِيحٍ، فَلَاحَ الْفَرْقُ بَيْنَ الْأَمْرَيْنِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L31490 They also obscured [the matter] by stating: "Whoever engages in sexual intercourse under an invalid contract—whether out of ignorance or other circumstances—commits religiously prohibited intercourse. This act makes her mother and daughter forbidden for marriage to him, and forbids her for marriage to his father and son."

وَمَوَّهُوا أَيْضًا - بِأَنْ قَالُوا: مَنْ وَطِئَ فِي عَقْدٍ فَاسِدٍ - بِجَهْلٍ أَوْ بِغَيْرِهِ - فَهُوَ وَطْءٌ مُحَرَّمٌ، وَهُوَ يُحَرِّمُ أُمَّهَا وَابْنَتَهَا، وَيُحَرِّمُهَا عَلَى أَبِيهِ وَابْنِهِ.

L31491 Abū Muḥammad said: There is no valid proof for them regarding its validity—neither from the Qur'ān, nor from the Sunnah, nor is there any proof outside these two. We affirm: It is permissible for his son to marry her, and permissible for him to marry her mother and her daughter, for she is neither his wife nor his slave-concubine. Her mother and daughter are not forbidden to him, nor is she forbidden for his father to marry, as she is not among his son's spouses or his wives. Had she been such, then it would not be permissible for him to annul the marriage contract with her, and they would have mutual inheritance rights. Since no mutual inheritance rights exist between them, it is established that she is not among his wives. She is forbidden solely to the son, because she is among those whom the father married if he consummated it; otherwise, she is not forbidden to him.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا حُجَّةَ لَهُمْ فِي صِحَّتِهِ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا حُجَّةَ فِي سِوَاهُمَا - وَنَحْنُ نَقُولُ: إنَّهَا حَلَالٌ لِوَلَدِهِ أَنْ يَنْكِحَهَا، وَحَلَالٌ لَهُ نِكَاحُ أُمِّهَا وَابْنَتِهَا، لِأَنَّهَا لَيْسَتْ زَوْجَةً لَهُ، وَلَا مِلْكَ يَمِينٍ، وَلَا تُحَرَّمُ عَلَيْهِ أُمُّهَا، وَلَا ابْنَتُهَا، وَلَا تُحَرَّمُ عَلَى وَالِدِهِ، لِأَنَّهَا لَيْسَتْ مِنْ حَلَائِلِ ابْنِهِ، وَلَا مِنْ نِسَائِهِ، وَلَوْ كَانَتْ كَذَلِكَ لَمَا حَلَّ أَنْ يَفْسَخَ نِكَاحَهُ مِنْهَا، وَلَتَوَارَثَا، فَلَمَّا لَمْ يَكُنْ بَيْنَهُمَا مِيرَاثٌ صَحَّ أَنَّهَا لَيْسَتْ مِنْ نِسَائِهِ، وَإِنَّمَا تُحَرَّمُ عَلَى الِابْنِ فَقَطْ، لِأَنَّهَا مِمَّا نَكَحَ أَبُوهُ إنْ كَانَ وَطِئَهَا، وَإِلَّا فَلَا تُحَرَّمُ عَلَيْهِ.

L31492 They also obscured the matter by asserting: “Whoever has intercourse with a slave woman jointly owned by him and others, this constitutes ḥarām intercourse. As a result, she becomes forbidden to his father and son, and her mother and daughter become forbidden to him.”

وَمَوَّهُوا أَيْضًا - بِأَنْ قَالُوا: مَنْ وَطِئَ أَمَةً مُشْتَرَكَةً بَيْنَهُ وَبَيْنَ غَيْرِهِ، فَهُوَ وَطْءٌ حَرَامٌ، وَهِيَ تُحَرَّمُ بِذَلِكَ عَلَى أَبِيهِ وَابْنِهِ، وَتُحَرَّمُ عَلَيْهِ أُمُّهَا وَابْنَتُهَا.

L31493 Abu Muhammad said: This is invalid; rather, it is sheer unlawful intercourse. We have not found in the religion of Allah the Exalted that a woman could lawfully be shared consecutively between two men. These are the morals of dogs and the creed of Satan—not the morals of people or the religion of Allah Almighty. The woman’s mother and her daughter are not rendered unlawful to the man by this act, nor is she prohibited for the son of the man. She is only rendered unlawful to her father alone, as we have previously established...

قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ، بَلْ هُوَ زِنًى مَحْضٌ وَمَا وَجَدْنَا فِي دِينِ اللَّهِ تَعَالَى: امْرَأَةً تَحِلُّ أَنْ يَتَدَاوَلَهَا رَجُلَانِ، هَذِهِ أَخْلَاقُ الْكِلَابِ، وَمِلَّةُ الشَّيْطَانِ، لَا أَخْلَاقُ النَّاسِ، وَلَا دِينُ اللَّهِ عَزَّ وَجَلَّ، وَلَا تَحْرُمُ بِذَلِكَ عَلَيْهِ أُمُّهَا، وَلَا ابْنَتُهَا، وَلَا تُحَرَّمُ عَلَى ابْنِهِ إنَّمَا تُحَرَّمُ عَلَى الْأَبِ فَقَطْ، لِمَا قَدَّمْنَا -.

L31494 And success is from Allah, the Most High.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L31495 They disguised [the matter] by saying: “When the forbidden and the permissible combine, the forbidden is overcome.” This is an invalid statement—neither supported by any Quranic text nor by any Sunnah whatsoever. Moreover, whoever validates this claim would be compelled to assert: “One who commits adultery with a woman can never have permissibility to marry her, since forbidden and permissible principles have combined in her case.”

وَمَوَّهُوا بِأَنْ قَالُوا: إذَا اجْتَمَعَ الْحَرَامُ وَالْحَلَالُ غُلِبَ الْحَرَامُ، فَقَوْلٌ لَا يَصِحُّ، وَلَا جَاءَ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ قَطُّ - وَيَلْزَمُ مَنْ صَحَّحَ هَذَا الْقَوْلَ أَنْ يَقُولَ: إنَّ مَنْ زَنَى بِامْرَأَةٍ لَمْ يَحِلَّ لَهُ نِكَاحُهَا أَبَدًا، لِأَنَّهُ قَدْ اجْتَمَعَ فِيهَا حَرَامٌ وَحَلَالٌ.

L31496 Some of them distorted the ḥadīth regarding the son of Zam’ah’s slave woman—that the Messenger of Allah (may peace and blessings be upon him) assigned his lineage to Zam’ah and commanded Sawdah to veil herself from him.

وَمَوَّهَ بَعْضُهُمْ بِحَدِيثِ ابْنِ وَلِيدَةِ زَمْعَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَلْحَقَهُ بِزَمْعَةَ، وَأَمَرَ سَوْدَةَ بِأَنْ تَحْتَجِبَ عَنْهُ» .

L31497–31499 Abū Muḥammad said: We have been tasked to comprehend the basis of their argument using this report, but we could not attain it. It is a feeble, cold, and specious contention—though the report itself is authentic and clear in its apparent meaning. It demonstrates that the Prophet (peace be upon him) assigned him [the child] to Zamʿah based on the evident circumstance of his birth upon Zamʿah’s bed, and he advised his sister—the Mother of the Believers (may Allah be pleased with her)—that she should not be seen by him, fearing that... If he is not of her father’s lineage, a woman may observe modesty in front of her brother, her full brother, provided she does not

قَالَ أَبُو مُحَمَّد: قَدْ رُمْنَا أَنْ نَفْهَمَ وَجْهَ احْتِجَاجِهِمْ بِهَذَا الْخَبَرِ فَمَا قَدَرْنَا عَلَيْهِ، وَهِيَ شَغِيبَةٌ بَارِدَةٌ مُمَوَّهَةٌ - وَالْخَبَرُ صَحِيحٌ ظَاهِرُ الْوَجْهِ، وَهُوَ أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَلْحَقَهُ بِزَمْعَةَ بِظَاهِرِ وِلَادَتِهِ عَلَى فِرَاشِ زَمْعَةَ، وَأَفْتَى أُخْتَهُ أُمَّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - بِأَنْ لَا يَرَاهَا، خَوْفَ أَنْ يَكُونَ مِنْ غَيْرِ نُطْفَةِ أَبِيهَا، وَاحْتِجَابُ الْمَرْأَةِ عَنْ أَخِيهَا شَقِيقِهَا مُبَاحٌ إذَا لَمْ تَقْطَعْ رَحِمَهُ وَلَا مَنَعَتْهُ رِفْدَهَا لَمْ يَمْنَعْ مِنْ ذَلِكَ نَصٌّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

sever kinship ties nor withhold her support, as there is no explicit textual prohibition—and success comes only from Allah, the Exalted.

L31500 And since all that they have falsely disputed has been invalidated—and all praise is due to Allah, Lord of the worlds—let us present the proof for the correctness of our view: that Allah the Almighty has detailed for us the marriages He prohibited until He completed it, then He the Exalted said: {And lawful to you is all that is beyond that} [Surah An-Nisāʾ 4:24]. Thus whoever prohibits anything outside what He has specified as prohibited in the Quran has opposed the Quran, forbidden what Allah the Exalted has made lawful, and legislated in the religion what Allah the Exalted has not authorized—and this is an exceedingly grave matter. All success comes from Allah the Exalted alone.[1]

وَإِذْ قَدْ بَطَلَ كُلُّ مَا شَغَبُوا بِهِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - فَلْنَأْتِ بِالْبُرْهَانِ عَلَى صِحَّةِ قَوْلِنَا، وَهُوَ أَنَّ اللَّهَ عَزَّ وَجَلَّ فَصَّلَ لَنَا مَا حَرَّمَ عَلَيْنَا مِنَ الْمَنَاكِحِ إلَى أَنْ أَتَمَّ، ثُمَّ قَالَ تَعَالَى: {وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ} [النساء: ٢٤] فَمَنْ حَرَّمَ شَيْئًا مِنْ غَيْرِ مَا فَصَّلَ تَحْرِيمَهُ فِي الْقُرْآنِ فَقَدْ خَالَفَ الْقُرْآنَ، وَحَرَّمَ مَا أَحَلَّ اللَّهُ تَعَالَى، وَشَرَعَ فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى، وَهَذَا عَظِيمٌ جِدًّا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يُحَرَّمُ عَلَى ابْنٍ مِنْ زِنْجِيَّةٍ لِغِيَّةٍ نِكَاحُ ابْنَةِ الْخَلِيفَةِ الْهَاشِمِيِّ]

There is no prohibition against the son of a Zanj (East African) woman in a state of transient union marrying the daughter of the Hashemite Caliph.

L31501

L31502 1867 - (1875 in other copies) - Issue: All adherents of Islam are brothers. A son of a non-Arab Zanjī [East African] woman is not prohibited from marrying the daughter of the Hashimite Caliph. A Muslim sinner—who has reached the extremity of sin—remains a suitable match for a virtuous Muslim woman, provided he is not one who commits zina.

١٨٦٧ - (١٨٧٥ فِي النُّسَخِ الْأُخْرَى) - مَسْأَلَةٌ: وَأَهْلُ الْإِسْلَامِ كُلُّهُمْ إخْوَةٌ لَا يُحَرَّمُ عَلَى ابْنٍ مِنْ زِنْجِيَّةٍ لِغِيَّةٍ نِكَاحُ ابْنَةِ الْخَلِيفَةِ الْهَاشِمِيِّ. وَالْفَاسِقُ - الَّذِي بَلَغَ الْغَايَةَ مِنْ الْفِسْقِ - الْمُسْلِمُ - مَا لَمْ يَكُنْ زَانِيًا - كُفُؤٌ لِلْمُسْلِمَةِ الْفَاضِلَةِ.

L31503 Similarly, is a virtuous Muslim man a suitable match for an immoral Muslim woman provided she is not an adulteress? The opinion we prefer is that marriage between relatives is permissible.

وَكَذَلِكَ الْفَاضِلُ الْمُسْلِمُ كُفُؤٌ لِلْمُسْلِمَةِ الْفَاسِقَةِ مَا لَمْ تَكُنْ زَانِيَةً؟ وَالَّذِي نَخْتَارُهُ فَنِكَاحُ الْأَقَارِبِ بَعْضُهُمْ لِبَعْضٍ.

L31504 People have differed regarding this: Sufyan al-Thawri, Ibn Jurayj, al-Hasan ibn Ḥayy, Ibn Abi Layla, al-Mughirah ibn Abd al-Rahman al-Makhzumi (the student of Malik), and Ishaq ibn Rahawayh: the marriage of a mawla to an Arab woman is annulled.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَ سُفْيَانُ الثَّوْرِيُّ، وَابْنُ جُرَيْجٍ، وَالْحَسَنُ بْنُ حَيٍّ، وَابْنُ أَبِي لَيْلَى، وَالْمُغِيرَةُ بْنُ عَبْدِ الرَّحْمَنِ الْمَخْزُومِيُّ - صَاحِبُ مَالِكٍ - وَإِسْحَاقُ بْنُ رَاهْوَيْهِ: يُفْسَخُ نِكَاحُ الْمَوْلَى لِلْعَرَبِيَّةِ.

L31505 Abu Hanifah said: If a Qurayshi woman consents to a mawla and he pays her the full dowry appropriate to women of her status, the guardian should

وَقَالَ أَبُو حَنِيفَةَ: إنْ رَضِيَتْ الْقُرَشِيَّةُ بِالْمَوْلَى وَوَفَّاهَا صَدَاقَ مِثْلِهَا أَمَرَ الْوَلِيُّ أَنْ يُنْكِحَهَا فَإِنْ أَبَى أَنْكَحَهَا الْقَاضِي.

[1] **Qur'an references (L31500):** Qur'an 4:24 (An-Nisa); Qur'an 42:21 (Ash-Shuraa).

instruct him to marry her. If the guardian refuses, the judge may officiate the marriage.

وَقَالَ مَالِكٌ: وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ كَقَوْلِنَا.

L31506 And Mālik said: Al-Shāfiʿī and Abū Sulaymān are in accordance with our view.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ الْمُخَالِفُونَ بِآثَارٍ سَاقِطَةٍ، وَالْحُجَّةُ قَوْلُ اللَّهِ تَعَالَى: {إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ} [الحجرات: ١٠] .

L31507–31508 Abu Muhammad said: Those who disagree have cited weak traditions as evidence, and the proof is the statement of Allah, the Exalted: “Indeed, the believers are brothers” [Al-Hujurat: 10].[2]

وقَوْله تَعَالَى مُخَاطِبًا لِجَمِيعِ الْمُسْلِمِينَ: {فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ} [النساء: ٣] .

L31509 And His statement, the Most High, addressing all Muslims: {Marry what is pleasing to you among women} [An-Nisa’ 4:3].[3]

وَذَكَرَ عَزَّ وَجَلَّ مَا حَرَّمَ عَلَيْنَا مِنْ النِّسَاءِ.

L31510 And He, the Almighty and Majestic, mentioned what He has prohibited to us from among women.

ثُمَّ قَالَ تَعَالَى: {وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ} [النساء: ٢٤] .

L31511 Then Allah, the Exalted, said: “All else besides that has been made lawful for you” [An-Nisa: 24].[4]

وَقَدْ أَنْكَحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَيْنَبَ أُمَّ الْمُؤْمِنِينَ زَيْدًا مَوْلَاهُ.

L31512 The Messenger of Allah (may Allah bless him and grant him peace) arranged the marriage of Zaynab, the Mother of the Believers, to Zayd, his adopted son and formerly enslaved companion.

وَأَنْكَحَ الْمِقْدَادَ ضُبَاعَةَ بِنْتَ الزُّبَيْرِ بْنِ عَبْدِ الْمُطَّلِبِ.

L31513 He married off al-Miqdād to Ḍubāʿah bint al-Zubayr ibn ʿAbd al-Muṭṭalib.

وَإِنَّمَا تَخَيَّرْنَا نِكَاحَ الْأَقَارِبِ، لِأَنَّهُ فِعْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُنْكِحْ بَنَاتِهِ إِلَّا مِنْ بَنِي هَاشِمٍ وَبَنِي عَبْدِ شَمْسٍ.

L31514 We have specifically preferred marriage among relatives because it was the practice of the Messenger of Allah—may Allah bless him and grant him peace—who only gave his daughters in marriage to men from Banū Hāshim and Banū ʿAbd Shams.

وَقَالَ تَعَالَى: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] .

L31515 And He, the Exalted, said: {In the Messenger of Allah there is indeed an excellent example for you} [Al-Ahzab: 21].[5]

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L31516 And success is with Allah, the Exalted.

وَأَمَّا قَوْلُنَا فِي الْفَاسِقِ، وَالْفَاسِقَةِ، فَيَلْزَمُ مَنْ خَالَفَنَا أَنْ لَا يُجِيزَ لِلْفَاسِقِ أَنْ يَنْكِحَ إِلَّا فَاسِقَةً، وَأَنْ لَا يُجِيزَ لِلْفَاسِقَةِ أَنْ يَنْكِحَهَا إِلَّا فَاسِقٌ، وَهَذَا لَا يَقُولُهُ أَحَدٌ.

L31517 As for our position concerning the sinner (male) and the sinner (female),

[2] **Qur’an references (L31508):** Qur’an 49:10 (Al-Hujurat).
[3] **Qur’an references (L31509):** Qur’an 4:3 (An-Nisa).
[4] **Qur’an references (L31511):** Qur’an 4:24 (An-Nisa).
[5] **Qur’an references (L31515):** Qur’an 33:21 (Al-Ahzab).

it would necessitate that those who oppose us disallow a sinful man from marrying except a sinful woman, and disallow a sinful woman from being married except by a sinful man. Yet no one holds this view.

L31518 Allah the Exalted has said: "The believers are none other than brothers" Al-Hujurat 49:10.[6]

L31519 And He, the Exalted, said: "The believing men and believing women are allies and supporters of one another." [At-Tawbah: 71] Success comes only from Allah, the Exalted.[7]

L31520 **An issue regarding the marriage of a sick person who is certain of death or one who is not certain of it.**

L31521 Issue 1868: The marriage of a sick person - whether certain of death or not - to a woman similarly afflicted by illness or to a healthy woman is permissible. He inherits her and she inherits him, whether he dies from that specific illness or recovers and subsequently dies.

L31522 Similarly, a woman who is certain of her illness and one who is uncertain may marry a healthy or sick man: in all such cases, she is entitled to the stipulated mahr as if both spouses were healthy, with no distinction made.

L31523 Malik said: The marriage of a sick person is annulled, whether before or after consummation. If he did not consummate the marriage, she is entitled to nothing. If he did consummate it, she is entitled to a dower equivalent to that of women of her status, payable from one-third of his wealth, due to having lawfully accessed her private part. She has no right to inherit from him whatsoever.

L31524–31526 He said: If he dies before he annuls the marriage, she must observe the waiting period (iddah) and is not entitled to inheritance. He said: If he recovers from his illness—and he had already consummated the marriage with her—then I hold that he should divorce her. He also said on another occasion: If he recovers from his illness, the marriage contract is permissible.

[6] **Qur'an references (L31518):** Qur'an 49:10 (Al-Hujurat).
[7] **Qur'an references (L31519):** Qur'an 9:71 (At-Tawbah).

وَقَدْ قَالَ اللَّهُ تَعَالَى: {إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ} [الحجرات: ١٠] .

وَقَالَ تَعَالَى: {وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [التوبة: ٧١] . وَبِاللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ تَزْوِيجُ الْمَرِيضِ الْمُوقِنِ بِالْمَوْتِ أَوْ غَيْرِ الْمُوقِنِ]

١٨٦٨ - مَسْأَلَةٌ: وَتَزْوِيجُ الْمَرِيضِ الْمُوقِنِ بِالْمَوْتِ، أَوْ غَيْرِ الْمُوقِنِ: مَرِيضَةً كَذَلِكَ أَوْ صَحِيحَةً جَائِزٌ، وَيَرِثُهَا وَتَرِثُهُ: مَاتَ مِنْ ذَلِكَ الْمَرَضِ أَوْ صَحَّ ثُمَّ مَاتَ.

وَكَذَلِكَ لِلْمَرِيضَةِ الْمُوقِنَةِ وَغَيْرِ الْمُوقِنَةِ: أَنْ تَتَزَوَّجَ صَحِيحًا أَوْ مَرِيضًا، وَلَهَا فِي كُلِّ ذَلِكَ الصَّدَاقُ الْمُسَمَّى كَالصَّحِيحَيْنِ وَلَا فَرْقَ.

وَقَالَ مَالِكٌ: يُفْسَخُ نِكَاحُ الْمَرِيضِ قَبْلَ الدُّخُولِ وَبَعْدَ الدُّخُولِ، فَإِنْ لَمْ يَدْخُلْ بِهَا فَلَا شَيْءَ لَهَا، فَإِنْ دَخَلَ بِهَا فَلَهَا صَدَاقُ مِثْلِهَا فِي ثُلُثِ مَالِهِ، بِمَا اسْتَحَلَّ مِنْ فَرْجِهَا، وَلَا مِيرَاثَ لَهَا مِنْهُ أَلْبَتَّةَ.

قَالَ: فَإِنْ مَاتَ قَبْلَ أَنْ يَفْسَخَ نِكَاحَهَا فَعَلَيْهَا الْإِحْدَادُ وَلَا مِيرَاثَ لَهَا قَالَ: فَإِنْ صَحَّ مِنْ مَرَضِهِ - وَقَدْ كَانَ دَخَلَ بِهَا - فَأَرَى أَنْ يُفَارِقَهَا وَقَالَ مَرَّةً أُخْرَى: إِنْ صَحَّ مِنْ مَرَضِهِ جَازَ النِّكَاحُ.

قَالَ: وَكَذَلِكَ لَا يَجُوزُ لِلْمَرِيضَةِ أَنْ تَتَزَوَّجَ وَلَا يَرِثَهَا الَّذِي يَتَزَوَّجُهَا - دَخَلَ بِهَا أَوْ لَمْ يَدْخُلْ - وَلَهَا الصَّدَاقُ عَلَيْهِ إِنْ دَخَلَ بِهَا.

L31527 He said: Similarly, it is not permissible for a terminally ill woman to contract a marriage, nor does the man who marries her [in this state] inherit from her after her death - whether he has consummated the marriage or not - and she is entitled to the full dower from him if he has consummated the marriage.

قَالَ: وَمَنْ طَلَّقَ امْرَأَتَهُ - وَهِيَ حَامِلٌ طَلَاقًا بَائِنًا فَلَا يَجُوزُ لَهُمَا أَنْ يَتَرَاجَعَا إِذَا أَتَمَّتْ سِتَّةَ أَشْهُرٍ؟ وَهَذَا تَقْسِيمٌ لَا نَعْرِفُهُ عَنْ أَحَدٍ قَبْلَهُ.

L31528 He said: If someone issues an irrevocable divorce (ṭalāq bā'in) to his wife while she is pregnant, is it impermissible for them to reconcile after she completes six months? This is a ruling we do not know to have been asserted by anyone before him.

وَمِمَّنْ قَالَ: لَا يَجُوزُ نِكَاحُ الْمَرِيضِ -: عَطَاءُ بْنُ أَبِي رَبَاحٍ، إِلَّا أَنَّهُ قَالَ: إِنْ صَحَّ مِنْ مَرَضِهِ جَازَ ذَلِكَ النِّكَاحُ.

L31529 Among those who held that the marriage of a sick person is impermissible is ʿAṭāʾ ibn Abī Rabāḥ. However, he said that if the person recovers from his illness, the marriage becomes permissible.

وَيَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ قَالَ: صَدَاقُ الَّتِي تَتَزَوَّجُ الْمَرِيضَ فِي ثُلُثِهِ.

L31530 Yaḥyā ibn Saʿīd al-Anṣārī said: The dower for the woman who marries a sick man is taken from his third [of his estate].

وَاخْتَلَفَ عَنْ رَبِيعَةَ -: فَرُوِيَ عَنْهُ ابْنُ سَمْعَانَ - وَهُوَ ضَعِيفٌ - أَنَّ صَدَاقَهَا فِي ثُلُثِهِ، وَلَا مِيرَاثَ لَهَا - قَالَ ابْنُ سَمْعَانَ: وَقَضَى بِهَذَا أَبُو بَكْرِ بْنُ عُمَرَ بْنِ حَفْصٍ فِي نِكَاحِ بِنْتِ الْمُعْتَمِرِ بْنِ عِيَاضٍ الزُّهْرِيِّ.

L31531 There is a difference of opinion reported from Rabiʿah: Ibn Samʿan—who is weak—narrated from him that her dowry [is payable] from a third of his estate, and she inherits nothing. Ibn Samʿan said: Abu Bakr ibn ʿUmar ibn Hafs adjudicated this verdict in the marriage case involving the daughter of al-Muʿtamir ibn ʿIyad al-Zuhri.

وَرُوِيَ عَنْ رَبِيعَةَ مَعْمَرٍ - وَهُوَ ثِقَةٌ - أَنَّ صَدَاقَهَا وَمِيرَاثَهَا فِي ثُلُثِهِ.

L31532 It is narrated from Rabiʿah Maʿmar—a reliable narrator—that her dowry and her inheritance are within his third.

قَالَ مَعْمَرٌ: وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى.

L31533 Ma'mar said: This is the position of Ibn Abī Laylā.

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ، وَعُثْمَانَ الْبَتِّيِّ.

L31534 Abu Muhammad said: And it is the opinion of al-Layth ibn Saʿd and ʿUthman al-Battī.

وَرَاعَى آخَرُونَ الْمُضَارَّةَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا عُثْمَانُ بْنُ صَالِحٍ عَنِ ابْنِ لَهِيعَةَ عَنْ خَالِدِ بْنِ أَبِي عِمْرَانَ قَالَ: سَأَلْتُ الْقَاسِمَ بْنَ مُحَمَّدٍ، وَسَالِمَ بْنَ عَبْدِ اللَّهِ عَنْ تَزْوِيجِ الْمَرِيضِ؟ فَقَالَا جَمِيعًا: إِنْ لَمْ يَكُنْ مُضَارًّا جَازَ تَزْوِيجُهُ - وَإِنْ كَانَ مُضَارًّا لَمْ يَجُزْ، وَلَهَا نِصْفُ الصَّدَاقِ فِي ثُلُثِ مَالِهِ، قَالَا: فَإِنْ خَلَا بِهَا فَلَهَا الصَّدَاقُ مِنَ الثُّلُثِ.

L31535 Others considered harmful intent—as narrated through the chain of Abū ʿUbayd, from ʿUthmān ibn Ṣāliḥ, from Ibn Lahīʿah, from Khālid ibn Abī ʿImrān, who said: I asked al-Qāsim ibn Muḥammad and Sālim ibn ʿAbdullāh about the marriage of a sick person. They both said: "If there is no harmful intent, his marriage is permissible. But if there is harmful intent, it is not permissible, and she is entitled to half the dower allocated within the third

of his estate." They said: "If he enters into seclusion with her, she is entitled to the full dower from the third of his estate."

L31536 From the narration of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī regarding the marriage of a sick person: He said, "He has no right to impose harm upon the rightful heirs, and we hold that she should not inherit him if he did so with harmful intent."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي نِكَاحِ الْمَرِيضِ قَالَ: لَيْسَ لَهُ أَنْ يُدْخِلَ الْإِضْرَارُ عَلَى أَهْلِ الْمِيرَاثِ، وَلَا نَرَى أَنْ تَرِثَهُ إنْ فَعَلَ ذَلِكَ ضِرَارًا.

L31537 Ma'mar said: Qatadah said: If he married her because he needed her help in serving him or handling his affairs, she inherits him.

قَالَ مَعْمَرٌ: وَقَالَ قَتَادَةُ: إنْ كَانَ تَزَوَّجَهَا مِنْ حَاجَةٍ إلَيْهَا فِي خِدْمَتِهِ، أَوْ فِي قِيَامٍ بِأَمْرِهِ فَإِنَّهَا تَرِثُهُ.

L31538–31540 And others held an opinion similar to ours: as it was narrated to us through the chain of Saʿīd ibn Manṣūr - from Abū ʿAwānah, from... Al-Mughīrah ibn Miqsam reported from Ibrāhīm al-Nakhaʿī, from Ibn Masʿūd, who said: "If only ten days remained of my lifespan—and I were to die on the last of them—but I still had the capacity for marriage during those days, I would marry out of fear of temptation."

وَقَالَ آخَرُونَ بِمِثْلِ قَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو عَوَانَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ ابْنِ مَسْعُودٍ قَالَ: لَوْ لَمْ يَبْقَ مِنْ أَجَلِي إلَّا عَشْرَةُ أَيَّامٍ أَنْ أَمُوتَ فِي آخِرِهَا يَوْمًا لِي فِيهِنَّ طَوْلٌ لِلنِّكَاحِ لَتَزَوَّجْت مَخَافَةَ الْفِتْنَةِ.

L31541 From the chain of Ibn Abi Shaybah: Muhammad ibn Bishr narrated to us from Abu Raja' through al-Hakam ibn Zayd through al-Hasan, who said: Mu'adh ibn Jabal said during his fatal illness, "Marry me to someone, for I dislike meeting Allah - the Mighty and Majestic - while unmarried."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ بِشْرٍ عَنْ أَبِي رَجَاءٍ عَنْ الْحَكَمِ بْنِ زَيْدٍ عَنْ الْحَسَنِ قَالَ: قَالَ مُعَاذُ بْنُ جَبَلٍ فِي مَرَضِهِ الَّذِي مَاتَ فِيهِ: زَوِّجُونِي، إنِّي أَكْرَهُ أَنْ أَلْقَى اللَّهَ عَزَّ وَجَلَّ عَزَبًا.

L31542 From the transmission of Abū Ubayd and Saʿīd ibn Manṣūr, they both said together: Abū Muʿāwiyah—the blind—narrated to us from Hishām ibn ʿUrwah from his father, who said: Al-Zubayr entered upon Qudāmah ibn Maẓʿūn to visit him during his illness. Al-Zubayr announced the birth of a daughter while in his presence. Qudāmah said to him: "Marry her to me!" Al-Zubayr replied: "What would you do with a young girl in your state?" Qudāmah said: "If I live, she is Al-Zubayr's daughter, and if I die, she is the most entitled to inherit from me." ʿUrwah said: "So he gave her in marriage to him."

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ، وَسَعِيدِ بْنِ مَنْصُورٍ، قَالَا جَمِيعًا: نَا أَبُو مُعَاوِيَةَ - هُوَ الضَّرِيرُ - عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: دَخَلَ الزُّبَيْرُ عَلَى قُدَامَةَ بْنِ مَظْعُونٍ يَعُودُهُ فَبَشَّرَ الزُّبَيْرُ بِجَارِيَةٍ وَهُوَ عِنْدَهُ؟ فَقَالَ لَهُ قُدَامَةُ: زَوِّجْنِيهَا؟ فَقَالَ لَهُ الزُّبَيْرُ: وَمَا تَصْنَعُ بِجَارِيَةٍ صَغِيرَةٍ وَأَنْتَ عَلَى هَذِهِ الْحَالِ؟ فَقَالَ لَهُ قُدَامَةُ: إنْ أَنَا عِشْت فَابْنَةُ الزُّبَيْرِ، وَإِنْ مِتُّ فَأَحَقُّ مَنْ وَرِثَنِي، قَالَ عُرْوَةُ: فَزَوَّجَهَا إيَّاهُ.

L31543 And from the chain of Sa'id ibn Mansur: Abd al-Aziz ibn Muhammad al-Darawardi narrated to us, who narrated to me from Musa ibn Uqbah, from

Nafi', the client of Ibn Umar, who said: Abd al-Rahman ibn Abi Rabi'ah married his paternal uncle's daughter during his illness so that she would inherit him. He died, and she inherited him. That occurred during the time of Uthman ibn Affan.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ أَخْبَرَنِي مُوسَى بْنُ عُقْبَةَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ قَالَ: تَزَوَّجَ عَبْدُ الرَّحْمَنِ بْنُ أَبِي رَبِيعَةَ بِنْتَ عَمٍّ لَهُ فِي مَرَضِهِ لِتَرِثَهُ، فَمَاتَ فَوَرِثَتْهُ، وَذَلِكَ فِي زَمَنِ عُثْمَانَ بْنِ عَفَّانَ.

L31544 And through the chain of Abd al-Razzaq from Ibn Jurayj, who said: Musa ibn Uqbah reported to me from Nafi', the freed slave of Ibn Umar, who said: Abdullah ibn Abi Rabi'ah ibn al-Mughirah al-Makhzumi married the daughter of Hafs ibn al-Mughirah, his uncle, while he was ill. His intention was for her to include his wives in the inheritance.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ ثَنِيّ ابْنُ جُرَيْجٍ، قَالَ أَخْبَرَنِي مُوسَى بْنُ عُقْبَةَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ قَالَ: تَزَوَّجَ عَبْدُ اللَّهِ بْنُ أَبِي رَبِيعَةَ بْنِ الْمُغِيرَةِ الْمَخْزُومِيُّ بِنْتَ حَفْصِ بْنِ الْمُغِيرَةِ عَمِّهِ - وَهُوَ مَرِيضٌ - لِتُشْرِكَ نِسَاءَهُ فِي الْمِيرَاثِ.

L31545 Abu Muhammad said: Abdullah has an authentic companionship.

قَالَ أَبُو مُحَمَّدٍ: عَبْدُ اللَّهِ لَهُ صُحْبَةٌ صَحِيحَةٌ.

L31546 Through the chain of Abu 'Ubayd and Sa'id ibn Mansur, both of whom said: Hushaym narrated to us, on the authority of Abu Ishaq al-Shaybani, on the authority of al-Sha'bi. Sa'id stated in his narration: I heard al-Sha'bi say: The marriage of a sick person is permissible, as are his buying and selling.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ، وَسَعِيدِ بْنِ مَنْصُورٍ قَالَا جَمِيعًا: نا هُشَيْمٌ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنِ الشَّعْبِيِّ، قَالَ سَعِيدٌ فِي رِوَايَتِهِ: سَمِعْتُ الشَّعْبِيَّ يَقُولُ: تَزْوِيجُ الْمَرِيضِ جَائِزٌ، وَشِرَاؤُهُ وَبَيْعُهُ.

L31547 From the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us: Yūnus ibn ʿUbayd narrated to us from al-Ḥasan al-Baṣrī, who would say: It is permissible to marry off a sick person during his illness.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يُونُسُ بْنُ عُبَيْدٍ عَنِ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ كَانَ يَقُولُ: يَجُوزُ تَزْوِيجُ الْمَرِيضِ فِي مَرَضِهِ.

L31548 From Yaḥyā ibn Saʿīd al-Qaṭṭān, from Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm al-Nakhaʿī, who said: The marriage of a sick person is permissible, and it is not counted as part of the bequeathable third.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: نِكَاحُ الْمَرِيضِ جَائِزٌ، وَلَا يُحْسَبُ مِنَ الثُّلُثِ.

L31549–31550 From the narration of ʿAbd al-Razzāq, from Sufyān al-Thawrī, who said: The marriage of a sick person is permissible with a dowry equivalent to that of her peers. This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, their adherents, and all of them hold that the dowry is to be paid from the husband's capital. It is also the opinion of Ibn Shubrumah, al-Awzāʿī, al-Ḥasan ibn Ḥayy, Abū Sulaymān, and all our companions.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ قَالَ: نِكَاحُ الْمَرِيضِ جَائِزٌ عَلَى مَهْرِ مِثْلِهَا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمَا وَكُلُّهُمْ يَرَى الصَّدَاقَ مِنْ رَأْسِ مَالِهِ - وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا.

L31551 Al-Ḥasan ibn Ḥayy and Abū Sulaymān held the opinion that she is entitled

to the specified dowry from his own funds.

وَرَأَى الْحَسَنُ بْنُ حَيٍّ، وَأَبُو سُلَيْمَانَ: أَنَّ لَهَا الصَّدَاقَ الْمُسَمَّى لَهَا مِنْ رَأْسِ مَالِهِ.

L31552 Ali said: Our Sheikh Abu al-Khayar Mas'ud ibn Sulayman—may Allah be pleased with him—married seven nights before his death while sick and despairing of life. He consummated the marriage to revive the Sunnah.

قَالَ عَلِيٌّ: وَتَزَوَّجَ شَيْخُنَا أَبُو الْخَيَارِ مَسْعُودُ بْنُ سُلَيْمَانَ - رَضِيَ اللَّهُ عَنْهُ - قَبْلَ مَوْتِهِ بِسَبْعِ لَيَالٍ، وَهُوَ مَرِيضٌ يَائِسٌ مِنْ الْحَيَاةِ وَدَخَلَ بِهَا إحْيَاءً لِلسُّنَّةِ.

L31553 Abu Muhammad said: Our knowledge of the Malikis is that they magnify disagreement with a Companion for whom no opposing Companion—may Allah be pleased with them—is known. Yet this is among the matters in which they opposed Ibn Mas'ud, Mu'adh ibn Jabal, al-Zubayr, Qudamah ibn Maẓ'un, and 'Abdullah ibn Abi Rabi'ah, in the presence of all the living Companions—none objecting—during the caliphate of 'Uthman.

قَالَ أَبُو مُحَمَّدٍ: عَهْدُنَا بِالْمَالِكِيِّينَ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: مُخَالِفٌ وَهَذَا مِمَّا خَالَفُوا فِيهِ ابْنَ مَسْعُودٍ، وَمُعَاذَ بْنَ جَبَلٍ، وَالزُّبَيْرَ، وَقُدَامَةَ بْنَ مَظْعُونٍ، وَعَبْدَ اللَّهِ بْنَ أَبِي رَبِيعَةَ، بِحَضْرَةِ جَمِيعِ الْأَحْيَاءِ مِنْ الصَّحَابَةِ، لَا يُنْكِرُ ذَلِكَ أَحَدٌ، وَفِي خِلَافَةِ عُثْمَانَ.

L31554 Abu Muhammad said: Allah the Exalted and His Messenger—may the peace and blessings of Allah be upon him—made marriage permissible. Neither the Qur'an nor the Sunnah specified healthy individuals (male or female) to the exclusion of sick ones, for "Your Lord is never forgetful" [Quran 19:64].[8]

قَالَ أَبُو مُحَمَّدٍ: أَبَاحَ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النِّكَاحَ، وَلَمْ يَخُصَّ فِي الْقُرْآنِ، وَلَا فِي السُّنَّةِ: صَحِيحًا وَصَحِيحَةً مِنْ مَرِيضٍ وَمَرِيضَةٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

L31555 We do not know any foundational proof for the opposing view whatsoever—neither from the Quran, nor the Sunnah, nor a Companion's statement, nor rationally sound opinion. However, some argued that he does not have the right to introduce among the heirs someone who would share with them in the inheritance. Abu Muhammad said: Proponents of this view assert that if a man—on his deathbed while certain of death—acknowledges a son born to his female slave whom he persistently called his slave, then acknowledges at death that he is his son, this acknowledgment becomes valid, and the son inherits his wealth. Thus, they permitted introducing among the heirs someone who deprives them entirely, yet prohibited him from introducing someone who diminishes their share slightly. This represents the utmost confusion.

وَمَا نَعْلَمُ لِلْمُخَالِفِ حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا مِنْ رَأْيٍ يُعْقَلُ، غَيْرَ أَنَّ بَعْضَهُمْ احْتَجَّ بِأَنَّهُ لَيْسَ لَهُ أَنْ يُدْخِلَ عَلَى أَهْلِ الْمِيرَاثِ مَنْ يُشْرِكُهُمْ فِيهِ؟ قَالَ أَبُو مُحَمَّدٍ: وَأَهْلُ هَذَا الْقَوْلِ يَقُولُونَ: إنْ أَقَرَّ فِي مَرَضِ مَوْتِهِ - وَهُوَ مُوقِنٌ بِالْمَوْتِ - بِابْنِ أَمَةٍ لَهُ لَمْ يَزَلْ يَقُولُ: إنَّهُ عَبْدُهُ - فَأَقَرَّ عِنْدَ مَوْتِهِ أَنَّهُ ابْنُهُ، فَإِنَّ إقْرَارَهُ نَافِذٌ، وَيَرِثُ مَالَهُ - فَأَجَازُوا أَنْ يُدْخِلَ عَلَى أَهْلِ الْمِيرَاثِ مَنْ يَحْرِمُهُمْ الْكُلَّ، وَمَنَعُوهُ أَنْ يُدْخِلَ عَلَيْهِمْ مَنْ يَحُطُّهُمْ الْيَسِيرَ، وَهَذَا غَايَةُ التَّخْلِيطِ.

L31556 They did not differ that a man gravely ill, despairing of poverty and liveli-

[8] **Qur'an references (L31554):** Qur'an 19:64 (Maryam).

hood, who purchased a female slave and had people witness his declaration that he bought her solely to seek offspring through her - intending thereby to prevent his heirs from inheriting - then had intercourse with her and impregnated her: that this is permissible and lawful.

وَلَمْ يَخْتَلِفُوا أَنَّ رَجُلًا مَرِيضًا يَائِسًا مِنْ الْفَاقَةِ وَالْعَيْشِ ابْتَاعَ جَارِيَةً وَأَشْهَدَ النَّاسَ عَلَى نَفْسِهِ أَنَّهُ إنَّمَا يَبْتَاعُهَا لِيَطْلُبَ مِنْهَا الْوَلَدَ، لِيَمْنَعَ بِذَلِكَ وَرَثَتَهُ الْمِيرَاثَ، فَوَطِئَهَا فَحَمَلَتْ: أَنَّ ذَلِكَ جَائِزٌ مُبَاحٌ.

L31557 If they say, “She may conceive or she may not [conceive]?”

فَإِنْ قَالُوا: إنَّهَا قَدْ تَحْمِلُ وَقَدْ لَا تَحْمِلُ؟

L31558–31559 We said: The woman whom he married during his illness might die before him, whereby he inherits her, thereby increasing the heirs’ share in their inheritance. Would that I knew - do they prevent a Muslim who is ill from marrying a slave woman or a dhimmi woman, neither of whom inherit from him, or not? Do they prevent a sick man who has nothing from marrying? They must necessarily abandon their corrupt foundational principle or contradiction.

قُلْنَا: وَالَّتِي تَزَوَّجَ فِي مَرَضِهِ قَدْ تَمُوتُ هِيَ قَبْلَهُ فَيَرِثُهَا فَيَزِيدُ بِذَلِكَ الْوَرَثَةُ فِي مِيرَاثِهِمْ، وَلَيْتَ شِعْرِي أَيَمْنَعُونَ الْمُسْلِمَ الْمَرِيضَ مِنْ زَوَاجِ مَمْلُوكَةٍ أَوْ ذِمِّيَّةٍ لَا يَرِثَانِهِ أَمْ لَا؟ وَهَلْ يَمْنَعُونَ الْمَرِيضَ الَّذِي لَا شَيْءَ لَهُ مِنْ الزَّوَاجِ؟ وَلَا بُدَّ لَهُمْ مِنْ تَرْكِ أَصْلِهِمْ الْفَاسِدِ ضَرُورَةً أَوْ التَّنَاقُضُ.

L31560 They said: “We have analogized the marriage of a sick person to his divorce.” We responded: “You have analogized one error to another error, then erred in the analogy itself, for you permitted the sick person’s divorce and granted him inheritance afterward. If you seek to apply analogy correctly, permit his marriage while also denying him inheritance along with that.” This is among the instances in which the Hanafis abandoned analogy—a principle they deem foundational and impermissible to disregard.

وَقَالُوا: قِسْنَا نِكَاحَ الْمَرِيضِ عَلَى طَلَاقِهِ؟ فَقُلْنَا: قِسْتُمْ الْخَطَأَ عَلَى الْخَطَأِ، ثُمَّ أَخْطَأْتُمْ فِي الْقِيَاسِ، لِأَنَّكُمْ أَجَزْتُمْ طَلَاقَ الْمَرِيضِ وَوَرَّثْتُمُوهُ بَعْدَ ذَلِكَ، فَإِنْ أَرَدْتُمْ إصَابَةَ الْقِيَاسِ فَأَجِيزُوا نِكَاحَهُ، وَامْنَعُوهُ الْمِيرَاثَ مَعَ ذَلِكَ - وَهَذَا مِمَّا تَرَكَ فِيهِ الْحَنَفِيُّونَ الْقِيَاسَ الَّذِي هُوَ عِنْدَهُمْ أَصْلٌ لَا يَجُوزُ تَرْكُهُ.

L31561 Among the wonders is that Mālik annuls the marriage of the runaway slave woman, just as he annuls the marriage contracted for the sick man’s benefit, yet he leaves for the runaway woman only three dirhams from what was specified for her, while he grants the woman who married the sick man the full dowry appropriate to her status. Has anything more astonishing than this arbitrary ruling without proof ever been heard of?

وَمِنْ الْعَجَائِبِ أَنَّ مَالِكًا يَفْسَخُ نِكَاحَ الْأَمَةِ الْفَارَّةِ، كَمَا يَفْسَخُ نِكَاحَ الصَّحِيحَةِ لِلْمَرِيضِ، وَلَا يَدَعُ لِلْفَارَّةِ مِمَّا سُمِّيَ لَهَا إلَّا ثَلَاثَةَ دَرَاهِمَ، وَيَجْعَلُ لِلَّتِي تَزَوَّجَتْ الْمَرِيضَ جَمِيعَ مَهْرِ مِثْلِهَا - فَهَلْ يُسْمَعُ بِأَعْجَبَ مِنْ هَذَا التَّحَكُّمِ بِلَا بُرْهَانٍ

L31562 Legal Issue: A woman became pregnant through adultery, an invalid marriage, or an annulled marriage.

[مَسْأَلَةٌ حَمَلَتْ الْمَرْأَةُ مِنْ زِنًى أَوْ مِنْ نِكَاحٍ فَاسِدٍ مَفْسُوخٍ]

L31563 **Question 1869**: If a woman becomes pregnant through adultery, through an invalid and annulled marriage, through a valid marriage annulled to fulfill an obligatory right, or if she is a slave who conceives from her master

and he then frees her or dies—each of these women may marry before giving birth to her child. However, it is impermissible for the husband to consummate the marriage until she gives birth to her child. This ruling differs from that of a divorced woman or a widow who is pregnant, for these two are categorically forbidden to marry until they give birth to their children. The exception is a freed pregnant slave woman who chooses for herself, for her marriage is annulled, and it is impermissible for her to marry until she gives birth to her child.

؟ ١٨٦٩ - مَسْأَلَةٌ: وَإِنْ حَمَلَتْ الْمَرْأَةُ مِنْ زِنًى، أَوْ مِنْ نِكَاحٍ فَاسِدٍ مَفْسُوخٍ، أَوْ كَانَ نِكَاحًا صَحِيحًا فَفَسْخٌ لِحَقٍّ وَاجِبٍ، أَوْ كَانَتْ أَمَةً فَحَمَلَتْ مِنْ سَيِّدِهَا ثُمَّ أَعْتَقَهَا، أَوْ مَاتَ عَنْهَا، فَلِكُلِّ مَنْ ذَكَرْنَا أَنْ تَتَزَوَّجَ قَبْلَ أَنْ تَضَعَ حَمْلَهَا، إلَّا أَنَّهُ لَا يَحِلُّ لِلزَّوْجِ أَنْ يَطَأَهَا حَتَّى تَضَعَ حَمْلَهَا، كُلُّ ذَلِكَ بِخِلَافِ الْمُطَلَّقَةِ، أَوْ الْمُتَوَفَّى عَنْهَا وَهِيَ حَامِلٌ، فَهَاتَانِ لَا يَحِلُّ لَهُمَا الزَّوَاجُ أَلْبَتَّةَ حَتَّى يَضَعَا حَمْلَهُمَا، وَحَاشَا الْمُعْتَقَةَ الْحَامِلَةَ تَخْتَارُ نَفْسَهَا، فَإِنَّ نِكَاحَ هَذِهِ مَفْسُوخٌ، وَلَا يَحِلُّ لَهَا أَنْ تَنْكِحَ حَتَّى تَضَعَ حَمْلَهَا.

The proof of this is that the pregnant divorced woman or the woman whose husband has died is in the waiting period by the Quran's explicit ruling, and Allah, the Almighty and Majestic, has wholly prohibited marriage with a woman in her waiting period until it is completed.

L31564

بُرْهَانُ ذَلِكَ -: أَنَّ الْحَامِلَ الْمُطَلَّقَةَ، أَوْ الْمُتَوَفَّى عَنْهَا: هِيَ مُعْتَدَّةٌ بِنَصِّ الْقُرْآنِ، وَقَدْ حَرَّمَ اللَّهُ عَزَّ وَجَلَّ نِكَاحَ الْمُعْتَدَّةِ جُمْلَةً حَتَّى تَتِمَّ عِدَّتُهَا.

As for the rest of those we mentioned, neither the Quran nor the Sunnah imposes a waiting period upon them, nor upon any of them, except in the case of the emancipated woman who chooses for herself only. If a woman is neither observing a waiting period nor married, she may marry unless a textual ruling prohibits it, and no textual ruling prohibits marriage here. Moreover, it is impermissible by explicit text to have intercourse with a pregnant woman unless the pregnancy is from him.

L31565

وَأَمَّا سَائِرُ مَنْ ذَكَرْنَا فَلَمْ يَأْتِ فِي الْقُرْآنِ وَلَا فِي السُّنَّةِ إيجَابُ عِدَّةٍ عَلَيْهِنَّ، وَلَا عَلَى أَحَدٍ مِنْهُنَّ، إلَّا عَلَى الْمُعْتَقَةِ تَخْتَارُ نَفْسَهَا فَقَطْ، وَإِذَا لَمْ تَكُنْ الْمَرْأَةُ مِنْ عِدَّةٍ، وَلَا ذَاتِ زَوْجٍ، فَلَهَا أَنْ تَتَزَوَّجَ، إلَّا أَنْ يَمْنَعَ مِنْ ذَلِكَ نَصٌّ، وَلَا نَصَّ يَمْنَعُ هَهُنَا مِنْ الزَّوَاجِ، وَلَا يَحِلُّ بِالنَّصِّ وَطْءُ حَامِلٍ إلَّا أَنْ يَكُونَ الْحَمْلُ مِنْهُ.

People have differed concerning her case. Abu Hanifah, Al-Shafi'i, Muhammad ibn Al-Hasan, and Abu Yusuf (in one of his two opinions) said: A woman who became pregnant through fornication may marry, but the new husband may not have intercourse with her until she gives birth.

L31566

وَقَدْ اخْتَلَفَ النَّاسُ فِيهَا -: فَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَمُحَمَّدُ بْنُ الْحَسَنِ وَأَبُو يُوسُفَ - فِي أَحَدِ قَوْلَيْهِ -: لِلْحَامِلِ مِنْ زِنًى أَنْ تَتَزَوَّجَ، وَلَا يَطَؤُهَا حَتَّى تَضَعَ حَمْلَهَا.

Abu Hanifah said: If a woman from non-Muslim territory comes to us as a Muslim while being pregnant by her husband, she may marry, but it is not permissible for him to consummate the marriage until she delivers her child. Abu Muhammad said: This is the opinion of our companions. Zufar said: The ʿiddah (waiting period) for the adulteress is complete.

L31567–31568

وَقَالَ أَبُو حَنِيفَةَ: وَإِنْ خَرَجَتْ إلَيْنَا الْحَرْبِيَّةُ مُسْلِمَةً - وَهِيَ حَامِلٌ مِنْ زَوْجِهَا - فَلَهَا أَنْ تَتَزَوَّجَ، وَلَكِنْ لَا يَحِلُّ لَهُ وَطْؤُهَا حَتَّى تَضَعَ حَمْلَهَا؟ قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ أَصْحَابِنَا - وَقَالَ زُفَرُ عَلَى الزَّانِيَةِ الْعِدَّةُ كَامِلَةً.

Malik said: "Does a woman pregnant from adultery not marry until she

L31569

delivers her child? And if she is not pregnant, does she not marry unless she completes three menstrual cycles?" Ali said: Among those from whom a ruling similar to our view is narrated is ʿUmar ibn al-Khaṭṭāb—as narrated to us through Mālik's chain of transmission from Abū al-Zubayr, who said: "I proposed to a man for his sister's hand, and he mentioned that she had committed a sin—meaning adultery. When this reached ʿUmar, he struck him or was about to strike him."

وَقَالَ مَالِكٌ: لَا تَتَزَوَّجُ الْحَامِلُ مِنْ زِنًى حَتَّى تَضَعَ حَمْلَهَا، وَلَا إِنْ كَانَتْ غَيْرَ حَامِلٍ، إِلَّا حَتَّى تَعْتَدَّ ثَلَاثَةَ قُرُوءٍ؟ قَالَ عَلِيٌّ: وَمِمَّنْ رُوِيَ عَنْهُ مِثْلُ قَوْلِنَا عُمَرُ بْنُ الْخَطَّابِ -: رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ أَبِي الزُّبَيْرِ قَالَ: خَطَبْت إلَى رَجُلٍ أُخْتَهُ، فَذَكَرَ أَنَّهَا أَحْدَثَتْ - يَعْنِي زَنَتْ - فَبَلَغَ ذَلِكَ عُمَرَ فَضَرَبَهُ أَوْ كَادَ يَضْرِبُهُ.

L31570 Mālik said: Regarding the narration, Ibn Wahb said: ʿAmr ibn al-Ḥārith informed me of this narration from Abū al-Zubayr, which states that ʿUmar said to him: "Marry and remain silent?" Abū Muḥammad said: This ʿUmar commanded her to marry, and he did not make an exception for her to complete her waiting period, nor even if she was pregnant. From the chain of Ismāʿīl ibn Isḥāq: ʿAlī ibn ʿAbd Allāh narrated to us, Sufyān ibn ʿUyaynah narrated to us, ʿUbayd Allāh ibn Abī Yazīd narrated to us from his father, who said: Sibāʿ ibn Thābit married the daughter of Mawhab ibn Rabāḥ while having a son from another woman, and she had a daughter from another man. The youth committed illicit intercourse with the girl, resulting in her pregnancy. She was questioned and confessed. The matter was referred to ʿUmar ibn al-Khaṭṭāb, and they both confessed. He thus imposed the ḥadd punishment upon them and urged them to marry, but the youth refused.

وَقَالَ مَالِكٌ: وَلِلْخَبَرِ قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ بِهَذَا الْخَبَرِ عَنْ أَبِي الزُّبَيْرِ، وَفِيهِ: أَنَّ عُمَرَ قَالَ لَهُ: انْكِحْ وَاسْكُتْ؟ قَالَ أَبُو مُحَمَّدٍ: فَهَذَا عُمَرُ أَمَرَهَا بِالنِّكَاحِ، وَلَمْ يَسْتَثْنِ حَتَّى تُتِمَّ عِدَّةً، وَلَا إِنْ كَانَتْ حَامِلًا -: وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا عُبَيْدُ اللَّهِ بْنُ أَبِي يَزِيدَ عَنْ أَبِيهِ قَالَ: تَزَوَّجَ سِبَاعُ بْنُ ثَابِتٍ بِنْتَ مَوْهَبِ بْنِ رَبَاحٍ وَلَهُ ابْنٌ مِنْ غَيْرِهَا، وَلَهَا بِنْتٌ مِنْ غَيْرِهِ، فَفَجَرَ الْغُلَامُ بِالْجَارِيَةِ، فَظَهَرَ بِهَا حَمْلٌ فَسُئِلَتْ فَاعْتَرَفَتْ، فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ الْخَطَّابِ فَاعْتَرَفَا، فَحَدَّهُمَا وَحَرَّضَ عَلَى أَنْ يُجْمَعَ بَيْنَهُمَا، فَأَبَى الْغُلَامُ.

L31571 So this is Umar permitting marriage for a woman pregnant as a result of fornication in the presence of the Companions—may Allah be pleased with them—with no known opposition from them, even though they would have regarded such a case as serious if they had encountered it.

فَهَذَا عُمَرُ يُبِيحُ لِلْحَامِلِ مِنْ زِنًى الزَّوَاجَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْهُمْ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا لَوْ ظَفِرُوا بِهِ.

L31572 The dissenters clamored, stating: "Allah, the Exalted and Glorified, has said: 'And for those who are pregnant, their waiting period is until they deliver their offspring'" [at-Talaq 4].[9]

وَشَغَبَ الْمُخَالِفُونَ بِأَنْ قَالُوا: قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤]

L31573 It is narrated from Sa'id ibn al-Musayyab that a man named Nadrah ibn Aktham married a woman. When he consummated the marriage, he found her pregnant. He brought the matter to the Prophet—peace and blessings of Allah be upon him—and the Messenger of Allah—peace and blessings of

وَبِخَبَرٍ رُوِّينَاهُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ «أَنَّ رَجُلًا يُقَالُ لَهُ نَضْرَةُ بْنُ أَكْثَمَ تَزَوَّجَ امْرَأَةً فَلَمَّا غَشِيَهَا وَجَدَهَا حُبْلَى، فَرَفَعَ ذَلِكَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَضَى رَسُولُ

[9] **Qur'an references (L31572):** Qur'an 65:4 (At-Talaq).

Allah be upon him—ruled that the dowry remained with her husband, that the child in her womb was his slave, ordered her to be flogged with one hundred lashes, and separated them.

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ صَدَاقَهَا لِزَوْجِهَا، وَأَنَّ مَا فِي بَطْنِهَا عَبْدٌ لَهُ، وَأَمَرَ بِهَا فَجُلِدَتْ مِائَةً، وَفَرَّقَ بَيْنَهُمَا» .

L31574–31576 Abu Muhammad said: No marvel is more astonishing than that the one who cites this report as evidence is the first to oppose. For everything in it? As for us, if the chain were continuous, we would have ruled by it. However, it is interrupted between Saʿīd and Naḍrah, and there is no proof in an interrupted chain.

قَالَ أَبُو مُحَمَّد: لَا عَجَبَ أَعْجَبُ مِنْ أَنْ يَكُونَ الْمُحْتَجُّ بِهَذَا الْخَبَرِ أَوَّلَ مُخَالِفٍ لِكُلِّ مَا فِيهِ؟ وَأَمَّا نَحْنُ فَلَوْ انْسَنَدَ لَقُلْنَا بِهِ، وَلَكِنَّهُ مُنْقَطِعٌ بَيْنَ سَعِيدٍ وَنَضْرَةَ، وَلَا حُجَّةَ فِي مُنْقَطِعٍ.

L31577 We have been narrated through the chain of Abū Dāwūd: Ibn Abī al-Sarī narrated to us, ʿAbd al-Razzāq informed us, Ibn Jurayj reported from Ṣafwān ibn Sulaym from Saʿīd ibn al-Musayyib from a man among the Companions of the Messenger of Allah—peace and blessings be upon him—named Naḍrah, who said: "I married a virgin woman in her seclusion. When I entered upon her, she was pregnant. The Prophet—upon him be peace and blessings—said: 'She is entitled to the dowry for what you lawfully consummated of her intimacy, the child is your slave, and when she gives birth, flog her?'" Abū Muḥammad said: He did not mention separation here, and this chain's transmission comes closer to masking its defects, except that it is not known whether Saʿīd ibn al-Musayyib heard from Naṣrah or Naḍrah. Thus, citing it as evidence is invalid, though if it were authentic, we would have upheld it.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا ابْنُ أَبِي السَّرِيِّ نا عَبْدُ الرَّزَّاقِ أَخْبَرَنَا ابْنُ جُرَيْجٍ عَنْ صَفْوَانَ بْنِ سُلَيْمٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ «عَنْ رَجُلٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُقَالُ لَهُ: نَضْرَةُ قَالَ: تَزَوَّجْتُ امْرَأَةً بِكْرًا فِي سِتْرِهَا، فَدَخَلْتُ عَلَيْهَا، فَإِذَا هِيَ حُبْلَى، فَقَالَ النَّبِيُّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: لَهَا الصَّدَاقُ بِمَا اسْتَحْلَلْتَ مِنْ فَرْجِهَا، وَالْوَلَدُ عَبْدٌ لَكَ، وَإِذَا وَلَدَتْ فَاجْلِدُوهَا» ؟ قَالَ أَبُو مُحَمَّد: وَلَمْ يَذْكُرْ هَهُنَا تَفْرِيقًا، وَهُوَ أَقْرَبُ إلَى أَنْ يُمَوِّهَ بِإِسْنَادِهِ إلَّا أَنَّهُ لَا يُعْلَمُ لِسَعِيدِ بْنِ الْمُسَيِّبِ سَمَاعٌ مِنْ نَصْرَةَ أَوْ نَضْرَةَ، فَبَطَلَ الِاحْتِجَاجُ بِهِ، وَلَوْ صَحَّ لَقُلْنَا بِهِ.

L31578 As for the statement of Allah the Almighty: {And those who are pregnant, their waiting period is until they deliver} [At-Talaq: 4], this was revealed concerning the divorced woman. Allah the Almighty said: {As for those women who have ceased menstruation among your women, if you are in doubt, their waiting period is three months—and those who have not yet menstruated; and those who are pregnant, their waiting period is until they deliver} [At-Talaq: 4]. This is referred back to the beginning of the surah concerning divorced women, and what follows it from the statement of the Exalted: {House them where you reside, according to your means} [At-Talaq: 6]—all the verses.[10]

وَأَمَّا قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤] فَإِنَّمَا جَاءَ فِي الْمُطَلَّقَةِ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَاللائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ وَاللائِي لَمْ يَحِضْنَ وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤] وَهَذَا مَرْدُودٌ عَلَى أَوَّلِ السُّورَةِ فِي الْمُطَلَّقَاتِ وَمَحْمُولٌ عَلَيْهِ مَا بَعْدَهُ مِنْ قَوْلِهِ تَعَالَى: {أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ} [الطلاق: ٦] الْآيَاتِ كُلِّهَا.

[10] **Qur'an references (L31578):** Qur'an 65:4 (At-Talaq); Qur'an 65:6 (At-Talaq).

وَإِنَّمَا وَجَبَ ذَلِكَ فِي الْمُتَوَفَّى عَنْهَا بِخَبَرِ سُبَيْعَةَ الْأَسْلَمِيَّةِ.

وَقَالُوا: قِسْنَا الْمُنْفَسِخَةَ النِّكَاحَ بَعْدَ صِحَّتِهِ أَوْ لِفَسَادِهِ فِي ذَلِكَ عَلَى الْمُطَلَّقَةِ؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ الْقِيَاسَ عِنْدَ الْقَائِلِينَ بِهِ إِنَّمَا هُوَ أَنْ يَحْكُمَ لِلشَّيْءِ بِحُكْمِ نَظِيرِهِ، وَلَيْسَ النِّكَاحُ الصَّحِيحُ الْحَلَالُ نَظِيرًا لِلْفَاسِدِ الْحَرَامِ، الَّذِي لَا يَحِلُّ عَقْدُهُ، وَلَا إِقْرَارُهُ، بَلْ هُوَ ضِدُّهُ، فَهُوَ بَاطِلٌ لَا نِسْبَةَ بَيْنَهُ وَبَيْنَ الطَّلَاقِ عَلَى أُصُولِ أَصْحَابِ الْقِيَاسِ.

وَأَمَّا الَّتِي انْفَسَخَ نِكَاحُهَا بَعْدَ صِحَّتِهِ، فَإِنَّ الْفَسْخَ لَا نِسْبَةَ بَيْنَهُ وَبَيْنَ الطَّلَاقِ، لِأَنَّ الطَّلَاقَ لَا يَكُونُ إِلَّا بِاخْتِيَارِ الزَّوْجِ، وَأَمَّا الْفَسْخُ فَلَا يُرَاعَى اخْتِيَارُهُ فِي ذَلِكَ.

قَالَ أَبُو مُحَمَّدٍ: وَكَذَلِكَ الْأَمَةُ الْحَامِلُ مِنْ سَيِّدِهَا: يَمُوتُ عَنْهَا، أَوْ يَعْتِقُهَا أَوْ تَحْمِلُ مِنْ زِنًى لَا عِدَّةَ عَلَيْهَا، وَقَدْ ثَبَتَ أَنَّ الْمَرْأَةَ الَّتِي لَا زَوْجَ لَهَا، وَلَا هِيَ فِي عِدَّةٍ، وَلَا هِيَ أُمُّ وَلَدٍ، فَإِنَّ إِنْكَاحَهَا حَلَالٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ عِنْدَهُ أَرْبَعُ زَوْجَاتٍ فَطَلَّقَ إِحْدَاهُنَّ ثَلَاثًا]

١٨٧٠ - مَسْأَلَةٌ: وَمَنْ كَانَ عِنْدَهُ أَرْبَعُ زَوْجَاتٍ فَطَلَّقَ إِحْدَاهُنَّ ثَلَاثًا - وَهِيَ حَامِلٌ مِنْهُ أَوْ غَيْرُ حَامِلٍ، وَقَدْ وَطِئَهَا - إِذْ كَانَتْ فِي عِصْمَتِهِ - أَوْ انْفَسَخَ نِكَاحُهَا مِنْهُ - فَلَهُ أَنْ يَتَزَوَّجَ إِثْرَ طَلَاقِهِ لَهَا رَابِعَةً، أَوْ أُخْتَهَا، أَوْ عَمَّتَهَا، أَوْ خَالَتَهَا، أَوْ بِنْتَ أَخِيهَا، أَوْ بِنْتَ أُخْتِهَا، وَيَدْخُلَ بِهَا.

فَأَمَّا فِي الطَّلَاقِ الرَّجْعِيِّ فَلَا يَحِلُّ لَهُ ذَلِكَ مَا دَامَتْ فِي عِدَّتِهَا.

This obligation is specifically established for the widow based on the narration concerning Subay'ah al-Aslamiyyah.

They said: "We analogized the dissolved marriage—whether after its validity or invalidity—to the divorced woman in this matter." We responded: "All analogical reasoning is invalid. Even if it were valid, this case would represent the very essence of invalidity, for analogical reasoning according to its proponents involves applying a ruling to something based on its counterpart. A valid, lawful marriage is not the counterpart of an invalid, unlawful one whose contract is impermissible to establish or affirm. Rather, it is its opposite. Thus, it is invalid, and no correlation exists between it and divorce according to the principles of the proponents of analogical reasoning."

As for the marriage annulled after being valid, there is no doctrinal correlation between annulment and divorce, for divorce occurs solely by the husband's choice, whereas annulment does not take his choice into account in that matter.

Abu Muhammad said: Similarly, the enslaved woman impregnated by her master: he dies concerning her, manumits her, or she gives birth. Due to adultery, there is no waiting period incumbent upon her. It has been established that if a woman has no husband, is not in a waiting period, and is not a slave mother who bore her master's child, then her marriage is permissible. And success is from Allah, the Most High.

A legal case in which a man has four wives and divorces one of them three times.

1870 - Issue: If a man has four wives and divorces one of them irrevocably (three times)—whether she is pregnant by him or not—he may immediately afterward marry a fourth wife, her sister, paternal aunt, maternal aunt, brother's daughter, or sister's daughter, provided either he had consummated the marriage during the marriage or it was annulled, and may consummate it.

As for the revocable divorce, it is not permissible for him to do so as long

as she is in her waiting period.

L31588 Our position on this matter corresponds to the opinion narrated from ʿUthmān ibn ʿAffān and Zayd ibn Thābit.

وَقَوْلُنَا فِي هَذَا هُوَ قَوْلٌ رُوِيَ عَنْ عُثْمَانَ بْنِ عَفَّانَ، وَزَيْدِ بْنِ ثَابِتٍ.

L31589 It has been authentically reported from al-Ḥasan, Saʿīd ibn al-Musayyib, Khilāṣ ibn ʿAmr, ʿUrwah ibn al-Zubayr, al-Qāsim ibn Muḥammad, ʿAṭāʾ, al-Zuhrī, Yazīd ibn ʿAbd Allāh ibn Qusayṭ, ʿAbd Allāh ibn Abī Salamah, Rabīʿah, Ibn Abī Laylā, ʿUthmān al-Battī, al-Layth ibn Saʿd, Mālik, al-Shāfiʿī, the companions of both of them, Abū Thawr, Abū ʿUbayd, Abū Sulaymān, and his companions (and it is the most famous opinion of al-Awzāʿī), though a group of the Salaf did not permit this.

وَصَحَّ عَنْ الْحَسَنِ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَخِلَاسِ بْنِ عَمْرٍو، وَعُرْوَةَ بْنِ الزُّبَيْرِ، - وَالْقَاسِمِ بْنِ مُحَمَّدٍ، وَعَطَاءٍ، وَالزُّهْرِيِّ، وَيَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ، وَعَبْدِ اللَّهِ بْنِ أَبِي سَلَمَةَ، وَرَبِيعَةَ، وَابْنِ أَبِي لَيْلَى، وَعُثْمَانَ الْبَتِّيِّ وَاللَّيْثِ بْنِ سَعْدٍ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمَا، وَأَبِي ثَوْرٍ، وَأَبِي عُبَيْدٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِ - وَهُوَ الْأَشْهَرُ مِنْ قَوْلِ الْأَوْزَاعِيِّ - وَلَمْ يُجِزْ ذَلِكَ جَمَاعَةٌ مِنْ السَّلَفِ.

L31590 It has been narrated from ʿAlī ibn Abī Ṭālib, and authenticated reports exist from Ibn ʿAbbās and Saʿīd ibn al-Musayyib as well. One of the two opinions of Abū ʿUbaydah ibn Nuḍaylah and ʿUbaydah al-Salmānī is established, along with authenticated reports from al-Shaʿbī, al-Nakhaʿī, and others.

وَرُوِيَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَصَحَّ عَنْ ابْنِ عَبَّاسٍ، وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَيْضًا، وَأَحَدُ قَوْلَيْ أَبِي عُبَيْدَةَ بْنِ نُضَيْلَةَ، وَعَبِيدَةَ السَّلْمَانِيِّ، وَصَحَّ عَنْ الشَّعْبِيِّ، وَالنَّخَعِيِّ، وَغَيْرِهِمْ.

L31591 This is the view of Abu Hanifah, his companions, Sufyan al-Thawri, al-Hasan ibn Hayy, Ahmad ibn Hanbal, and one of the two opinions of al-Awza'i. It is authentically reported from al-Hasan that he deemed it permissible, except if the woman he divorced is pregnant.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَسُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَحَدُ قَوْلَيْ الْأَوْزَاعِيِّ - وَصَحَّ عَنْ الْحَسَنِ إبَاحَةُ ذَلِكَ، إلَّا أَنْ تَكُونَ الَّتِي طَلَّقَ حُبْلَى.

L31592 Abu Muhammad said: We do not know any valid argument for those who prohibit this, except that they obscured [the matter] by citing Allah's words, may He be exalted: _"And [forbidden to you is] to marry two sisters simultaneously"_ [4:23]. They argued: This combines both in the attribution of their offspring's lineage to him, the obligation to maintain them, and the requirement to provide residence for them.[11]

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ لِمَنْ مَنَعَ مِنْ ذَلِكَ حُجَّةً إلَّا أَنَّهُمْ مَوَّهُوا بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَأَنْ تَجْمَعُوا بَيْنَ الأُخْتَيْنِ} [النساء: ٢٣] قَالُوا: وَهَذَا جَامِعٌ بَيْنَهُمَا فِي لِحَاقِ حَمْلِهِمَا بِهِ، وَفِي وُجُوبِ نَفَقَتِهِمَا، وَإِسْكَانِهِمَا عَلَيْهِ.

L31593–31594 They said: It is not permissible for his semen to impregnate five women, nor two sisters. Do we know of anything else for them besides this? Ali said: As for their claim that both are entitled to his maintenance and his housing

وَقَالُوا: لَا يَجُوزُ أَنْ يَجْتَمِعَ مَاؤُهُ فِي خَمْسِ نِسْوَةٍ، وَلَا فِي أُخْتَيْنِ، مَا نَعْلَمُ لَهُمْ غَيْرَ هَذَا؟ قَالَ عَلِيٌّ: أَمَّا قَوْلُهُمْ: إنَّهُمَا يَجْتَمِعَانِ فِي نَفَقَتِهِ عَلَيْهِمَا، وَإِسْكَانِهِ لَهُمَا، فَلَسْنَا نُسَاعِدُهُمْ عَلَى

[11] **Qur'an references (L31592):** Qur'an 4:23 (An-Nisa).

them, we do not support them in that. Had it been as they said, it would not matter, for Allah the Exalted did not prohibit gathering them together in anything except making sexual intercourse permissible alone.

ذَلِكَ، هُمْ لَوْ كَانَ كَمَا قَالُوا مَا ضَرَّ ذَلِكَ شَيْئًا، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَمْنَعْ مِنْ الْجَمْعِ بَيْنَهُمَا فِي شَيْءٍ إلَّا فِي اسْتِحْلَالِ الْوَطْءِ فَقَطْ.

L31595 There is no distinction between the parents' union leading to the establishment of their conceived child's lineage to him and their union leading to the establishment of their two sons' lineage to him.

وَلَا فَرْقَ بَيْنَ اجْتِمَاعِهِمَا فِي لِحَاقِ حَمْلِهِمَا بِهِ، وَبَيْنَ اجْتِمَاعِهِمَا فِي لِحَاقِ ابْنَيْهِمَا بِهِ.

L31596 As for being married to five women, eight women, or two sisters simultaneously, we know of no explicit prohibition in the Quran or Sunnah that forbids this. Allah the Exalted only prohibited marrying more than four women and forbade combining two sisters within the framework of a marriage contract or legitimizing intercourse outside valid marriage. Allah has clearly delineated for us the women He has forbidden to us, then stated: *"Lawful to you are [all women] beyond these, provided you seek them in marriage with your wealth"* [An-Nisa: 24].[12]

وَأَمَّا اجْتِمَاعُ مِائَةٍ فِي خَمْسِ نِسْوَةٍ، أَوْ فِي ثَمَانٍ، أَوْ فِي أُخْتَيْنِ، فَلَا نَعْلَمُ نَصًّا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ: مَنَعَا مِنْ ذَلِكَ، إنَّمَا مَنَعَ اللَّهُ تَعَالَى مِنْ نِكَاحِ أَكْثَرَ مِنْ أَرْبَعِ نِسْوَةٍ، وَمِنْ الْجَمْعِ بَيْنَ الْأُخْتَيْنِ فِي عَقْدِ نِكَاحٍ، أَوْ اسْتِحْلَالِ وَطْءٍ فَقَطْ، وَقَدْ فَصَّلَ اللَّهُ تَعَالَى لَنَا مَا حَرَّمَ عَلَيْنَا مِنْ النِّسَاءِ ثُمَّ قَالَ: {وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ} [النساء: ٢٤].

L31597 Among the peculiar contradictions of the Hanafis here is that Abū Ḥanīfah said: Whoever emancipates an umm walad (a slave woman who bore her master a child) may not marry her sister, her paternal aunt, her maternal aunt, her brother's daughter, or her sister's daughter until the emancipated umm walad completes her waiting period of three menstrual cycles.

وَمِنْ طَرِيفِ تَنَاقُضِ الْحَنَفِيِّينَ هَهُنَا: أَنَّ أَبَا حَنِيفَةَ قَالَ: مَنْ أَعْتَقَ أُمَّ وَلَدٍ لَمْ يَحِلَّ لَهُ أَنْ يَتَزَوَّجَ أُخْتَهَا، وَلَا عَمَّتَهَا، وَلَا خَالَتَهَا، وَلَا بِنْتَ أَخِيهَا، وَلَا بِنْتَ أُخْتِهَا، حَتَّى تُتِمَّ الْمُعْتَقَةُ عِدَّتَهَا ثَلَاثَ حِيَضٍ.

L31598 He said: He may marry four [women] before the waiting period of one of them has concluded, thereby permitting his semen to be present in four wives and a fifth [woman] in her waiting period—and Zufar prohibited all of this.

قَالَ: وَلَهُ أَنْ يَتَزَوَّجَ أَرْبَعًا قَبْلَ انْقِضَاءِ عِدَّتِهَا، فَأَجَازَ أَنْ يَجْتَمِعَ مَاؤُهُ فِي أَرْبَعِ زَوْجَاتٍ وَخَامِسَةٍ مُعْتَدَّةٍ مِنْهُ - وَمَنَعَ مِنْ كُلِّ ذَلِكَ زُفَرُ.

L31599 Issue: It is not permissible for anyone to marry his bondwoman before he frees her.

[مَسْأَلَةٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يَتَزَوَّجَ مَمْلُوكَتَهُ قَبْلَ أَنْ يُعْتِقَهَا]

L31600 1871 - Issue: It is not lawful for anyone to marry his female slave before emancipating her, nor for a woman to marry her male slave before emancipating him. If she emancipates him, marriage becomes permissible for them—provided they mutually consent—as if they were strangers. There is

١٨٧١ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَتَزَوَّجَ مَمْلُوكَتَهُ قَبْلَ أَنْ يُعْتِقَهَا، وَلَا لِامْرَأَةٍ أَنْ تَتَزَوَّجَ مَمْلُوكَهَا قَبْلَ أَنْ تُعْتِقَهُ، فَإِنْ أَعْتَقَتْهُ جَازَ لَهُمَا التَّنَاكُحُ إنْ تَرَاضَيَا كَالْأَجْنَبِيِّ، وَلَا فَرْقَ - وَهَذَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {إلَّا عَلَى أَزْوَاجِهِمْ أَوْ مَا

[12] **Qur'an references (L31596):** Qur'an 4:24 (An-Nisa).

no difference [in the ruling]—and there is no disagreement among scholars on this matter—for Allah the Exalted stated: {Except with their spouses or those their right hands possess} [Al-Mu'minun: 6]. Thus, He distinguished between the two categories, and it is impermissible to combine two categories that Allah the Exalted has explicitly separated.[13]

L31601 **A legal issue concerning whether a man may marry his father's female slave, given that she is not lawful for the father to marry under Sharīʿah.**

L31602 1872 - Issue: It is permissible for a man to marry his father's slave woman whom his father is prohibited from marrying, his son's slave woman whom his son is prohibited from marrying, his mother's slave woman, and his daughter's slave woman.

L31603 It is permissible for a slave to marry the mother of his master, the daughter of his master, and the sister of his master, provided all such marriages are with his master's permission—and we know of no valid proof whatsoever for those who prohibit this.

L31604–31605 However, some of them said: "He might inherit her and she might inherit him, which would annul the marriage?" We replied: "Yes – so what would happen? Or she might acquire him and he might acquire her, with no difference."

L31606 The proof of the validity of this is the statement of Allah, the Mighty and Majestic: "Marry the unmarried among you and the righteous from your male and female servants" [24:32]. Allah, the Exalted, excluded none of those we mentioned, "And your Lord is never forgetful" [19:64]. We seek refuge in Allah from the belief of those who imagine they can introduce through their intellect something your Lord, the Exalted, has not legislated.[14]

L31607 **Issue: If he intends to marry a free woman or a bondwoman.**

[13] **Qur'an references (L31600):** Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij).
[14] **Qur'an references (L31606):** Qur'an 24:32 (An-Nur); Qur'an 19:64 (Maryam).

مَلَكَتْ أَيْمَانُهُمْ} [المؤمنون: ٦] فَفَرَّقَ تَعَالَى بَيْنَ الصِّنْفَيْنِ فَلَا يَجُوزُ اجْتِمَاعُ صِنْفَيْنِ فَرَّقَ اللَّهُ تَعَالَى بَيْنَهُمَا

[مَسْأَلَةٌ لِلرَّجُلِ أَنْ يَتَزَوَّجَ أَمَةَ وَالِدِهِ الَّتِي لَا تَحِلُّ لِوَالِدِهِ]

١٨٧٢ - مَسْأَلَةٌ: وَجَائِزٌ لِلرَّجُلِ أَنْ يَتَزَوَّجَ أَمَةَ وَالِدِهِ الَّتِي لَا تَحِلُّ لِوَالِدِهِ، وَأَمَةَ وَلَدِهِ الَّتِي لَا تَحِلُّ لِوَلَدِهِ، وَأَمَةَ أُمِّهِ، وَأَمَةَ ابْنَتِهِ.

وَجَائِزٌ لِلْعَبْدِ نِكَاحُ أُمِّ سَيِّدِهِ، وَبِنْتِ سَيِّدِهِ، وَأُخْتِ سَيِّدِهِ، إذَا كَانَ كُلُّ ذَلِكَ بِإِذْنِ سَيِّدِهِ - وَمَا نَعْلَمُ لِمَنْ مَنَعَ مِنْ ذَلِكَ حُجَّةً أَصْلًا.

إلَّا أَنَّ بَعْضَهُمْ قَالَ: قَدْ يَرِثُهَا وَتَرِثُهُ فَيَنْفَسِخُ النِّكَاحُ؟ فَقُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ أَوْ قَدْ تَشْتَرِيهِ وَيَشْتَرِيهَا وَلَا فَرْقَ.

بُرْهَانُ صِحَّةِ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] فَلَمْ يَسْتَثْنِ اللَّهُ تَعَالَى أَحَدًا مِمَّنْ ذَكَرْنَا {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَنَعُوذُ بِاَللَّهِ مِنْ اعْتِقَادِ مَنْ يَظُنُّ أَنَّهُ يَسْتَدْرِكُ بِعَقْلِهِ شَيْئًا لَمْ يُشَرِّعْهُ رَبُّهُ تَعَالَى

[مَسْأَلَةٌ أَرَادَ أَنْ يَتَزَوَّجَ امْرَأَةً حُرَّةً أَوْ أَمَةً]

L31608 1873 - Issue: Whoever intends to marry a free woman or a slave woman may look at her—stealthily without her knowledge and openly with her knowledge—at both her private and public parts. However, this is not permissible if he intends to purchase a slave woman.

١٨٧٣ - مَسْأَلَةٌ: وَمَنْ أَرَادَ أَنْ يَتَزَوَّجَ امْرَأَةً حُرَّةً أَوْ أَمَةً، فَلَهُ أَنْ يَنْظُرَ مِنْهَا - مُتَغَفِّلًا لَهَا وَغَيْرَ مُتَغَفِّلٍ - إلَى مَا بَطَنَ مِنْهَا وَظَهَرَ - وَلَا يَجُوزُ ذَلِكَ فِي أَمَةٍ يُرِيدُ شِرَاءَهَا.

L31609 He is not permitted to look at her except at the face and the two hands only, but he should order a woman to look at her entire body and inform him.

وَلَا يَجُوزُ لَهُ أَنْ يَنْظُرَ مِنْهَا إلَّا إلَى الْوَجْهِ وَالْكَفَّيْنِ فَقَطْ، لَكِنْ يَأْمُرُ امْرَأَةً تَنْظُرُ إلَى جَمِيعِ جِسْمِهَا وَتُخْبِرُهُ.

L31610 The proof of this is Allah Almighty's statement: {Tell the believing men to lower their gaze and guard their private parts} [An-Nur: 30]. Thus, Allah Almighty has obligated lowering the gaze as a whole, just as He obligated guarding the private parts. This is a general ruling that cannot be restricted except by an exception established in an authentic text, and the text has specifically permitted the gaze of those intending marriage as the only exception.[15]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ} [النور: ٣٠] فَافْتَرَضَ اللَّهُ عَزَّ وَجَلَّ غَضَّ الْبَصَرِ جُمْلَةً، كَمَا افْتَرَضَ حِفْظَ الْفَرْجِ، فَهُوَ عُمُومٌ لَا يَجُوزُ أَنْ يُخَصَّ مِنْهُ إلَّا مَا خَصَّهُ نَصٌّ صَحِيحٌ، وَقَدْ خَصَّ النَّصُّ نَظَرَ مَنْ أَرَادَ الزَّوَاجَ فَقَطْ.

L31611 As we have been narrated through the chain of Abī Dāwūd: Musaddad narrated to us, ʿAbd al-Wāḥid ibn Ziyād narrated to us, Muḥammad ibn Isḥāq narrated to us from Dāwūd ibn al-Ḥuṣayn from Wāqid ibn ʿAbd al-Raḥmān—who is the son of Saʿd ibn Muʿādh—from Jābir ibn ʿAbd Allāh, who said: The Messenger of Allāh—peace and blessings be upon him—said: "When one of you proposes to a woman, if he is able to look at that which invites him to marry her, then let him do so." Jābir said: "I proposed to a woman from Banū Salimah, so I used to hide beneath the date palm stalks until I saw some of what invited me to her."[16]

كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُسَدَّدٌ نا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ وَاقِدِ بْنِ عَبْدِ الرَّحْمَنِ - هُوَ ابْنُ سَعْدِ بْنِ مُعَاذٍ - عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا خَطَبَ أَحَدُكُمْ الْمَرْأَةَ فَإِنْ اسْتَطَاعَ أَنْ يَنْظُرَ إلَى مَا يَدْعُوهُ إلَى نِكَاحِهَا فَلْيَفْعَلْ قَالَ جَابِرٌ فَخَطَبْتُ امْرَأَةً مِنْ بَنِي سَلِمَةَ فَكُنْتُ أَتَخَبَّأُ تَحْتَ الْكَرَبِ حَتَّى رَأَيْتُ مِنْهَا بَعْضَ مَا دَعَانِي إلَيْهَا» .

L31612 We have also narrated it through authentic chains: via Abū Hurayrah and al-Mughīrah ibn Shuʿbah. Thus, this serves as a general exemption for such cases from the totality of what is prohibited regarding unrestrained gazing.

وَقَدْ رُوِّينَاهُ - أَيْضًا - مِنْ طُرُقٍ صِحَاحٍ: مِنْ طَرِيقِ أَبِي هُرَيْرَةَ، وَالْمُغِيرَةِ بْنِ شُعْبَةَ، فَكَانَ هَذَا عُمُومًا مَخْرَجًا لِهَذِهِ الْحَالِ مِنْ جُمْلَةِ مَا حُرِّمَ مِنْ غَضِّ الْبَصَرِ.

L31613–31614 As for looking at a young woman with the intention of purchasing her, there is no explicit text from the Messenger of Allah—peace and blessings of

وَأَمَّا النَّظَرُ إلَى الْجَارِيَةِ يُرِيدُ ابْتِيَاعَهَا فَلَا نَصَّ فِي ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا حُجَّةَ فِيمَا جَاءَ عَنْ سِوَاهُ.

[15] **Qur'an references (L31610):** Qur'an 24:30 (An-Nur).
[16] **Hadith references (L31611):** Sunan Abi Dawud 2082; Mishkat al-Masabih 3106.

Allah be upon him—regarding that, nor is there any proof in what has been reported from others besides him.

وَقَدْ اخْتَلَفَ النَّاسُ فِي ذَلِكَ -: فَصَحَّ عَنْ ابْنِ عُمَرَ إبَاحَةُ النَّظَرِ إلَى سَاقِهَا وَبَطْنِهَا وَظَهْرِهَا، وَيَضَعُ يَدَهُ عَلَى عَجُزِهَا وَصَدْرِهَا - وَنَحْوِ ذَلِكَ عَنْ عَلِيٍّ، وَلَمْ يَصِحَّ عَنْهُ.

L31615 Scholars have differed regarding this matter. It has been authentically reported from Ibn ʿUmar that it is permissible to look at her lower leg, stomach, and back, and to place one's hand on her buttocks and chest. Similar actions are narrated from ʿAlī, but they lack authentic documentation.

وَصَحَّ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ إبَاحَةُ النَّظَرِ إلَى مَا فَوْقَ السُّرَّةِ وَدُونَ الرُّكْبَةِ.

L31616 It has been authentically reported from Abū Mūsā al-Ashʿarī that the permissibility of looking at what is above the navel and up to the knee.

وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ.

L31617 It has been reported from Saʿīd ibn al-Musayyib.

وَرُوِّينَا عَنْ الْأَسْوَدِ بْنِ يَزِيدَ: أَنَّهُ لَمْ يَسْتَجِزْ النَّظَرَ إلَى سَاقِهَا.

L31618 It was narrated to us from al-Aswad ibn Yazīd that he deemed it impermissible to look at her lower leg.

قَالَ أَبُو مُحَمَّدٍ: فَبَقِيَ أَمْرُ الِابْتِيَاعِ عَلَى وُجُوبِ غَضِّ الْبَصَرِ.

L31619 Abu Muhammad said: The matter of commercial transactions remained based on the obligation to lower the gaze.

وَأَمَّا الْوَجْهُ وَالْكَفَّانِ: فَقَدْ جَاءَ فِيهِمَا الْخَبَرُ الْمَشْهُورُ الَّذِي أَوْرَدْنَاهُ فِي غَيْرِ هَذَا الْمَكَانِ مِنْ أَمْرِ «الْخَثْعَمِيَّةَ الَّتِي سَأَلَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْحَجِّ عَنْ أَبِيهَا؟ وَأَنَّ الْفَضْلَ بْنَ الْعَبَّاسِ جَعَلَ يَنْظُرُ إلَى وَجْهِهَا، فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَصْرِفُ وَجْهَ الْفَضْلِ عَنْهَا، وَلَمْ يَأْمُرْهَا بِسِتْرِ وَجْهِهَا» فَفِي هَذَا إبَاحَةُ النَّظَرِ إلَى وَجْهِ الْمَرْأَةِ لِغَيْرِ اللَّذَّةِ.

L31620 As for the face and both hands: the well-known report concerning them, which we have cited elsewhere, is the account of the Al-Khath'amiyyah woman who asked the Messenger of Allah—peace and blessings be upon him—about performing Hajj on behalf of her father. Al-Fadl ibn al-Abbas kept looking at her face, so the Messenger of Allah—peace and blessings be upon him—kept turning al-Fadl's face away from her, yet he did not command her to cover her face. This indicates the permissibility of looking at a woman's face without lust.

وَأَمَّا الْكَفَّانِ: فَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا عَبْدُ اللَّهِ بْنُ مُعَاذٍ الْعَنْبَرِيُّ نا أَبِي نا شُعْبَةُ عَنْ عَدِيٍّ - هُوَ ابْنُ ثَابِتٍ - عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَرَجَ يَوْمَ أَضْحَى أَوْ فِطْرٍ، فَصَلَّى رَكْعَتَيْنِ ثُمَّ أَتَى النِّسَاءَ - وَمَعَهُ بِلَالٌ - فَأَمَرَهُنَّ بِالصَّدَقَةِ فَجَعَلَتْ الْمَرْأَةُ تُلْقِي خُرْصَهَا وَتُلْقِي سِخَابَهَا» .

L31621 As for the two hands: We were narrated via the chain in Ṣaḥīḥ Muslim—Abdullāh ibn Muʿādh al-ʿAnbarī narrated to us, his father narrated to us, Shuʿbah narrated to us from ʿAdī—that is, ibn Thābit—from Saʿīd ibn Jubayr from Ibn ʿAbbās: "Allah's Messenger—peace and blessings be upon him—went out on Eid al-Aḍḥā or Eid al-Fiṭr, prayed two units, then came to the women—with Bilāl accompanying him—and commanded them to give charity. Each woman began casting her earring and tossing her necklace."

L31622 From the chain of Abū Dāwūd: Aḥmad ibn Ḥanbal narrated to us, from ʿAbd al-Razzāq and Muḥammad ibn Bakr, both of whom said: Ibn Jurayj narrated

to us, informing me that ʿAṭāʾ said: "I heard Jābir ibn ʿAbd Allāh say: 'The Messenger of Allāh—peace and blessings of Allāh be upon him—went out on the Day of Eid al-Fiṭr and began with the Eid prayer before the sermon. Then he delivered the sermon, descended, and approached the women to remind them, while Bilāl was spreading his garment, and the women cast their charity into it. Each woman would cast her earring.'"

وَمِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ حَنْبَلٍ نا عَبْدُ الرَّزَّاقِ، وَمُحَمَّدُ بْنُ بَكْرٍ، قَالَا جَمِيعًا: نَا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَطَاءٌ قَالَ: " سَمِعْت جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَرَجَ يَوْمَ الْفِطْرِ فَبَدَأَ بِالصَّلَاةِ قَبْلَ الْخُطْبَةِ، ثُمَّ خَطَبَ ثُمَّ نَزَلَ فَأَتَى النِّسَاءَ فَذَكَّرَهُنَّ وَبِلَالٌ بَاسِطٌ ثَوْبَهُ يُلْقِينَ فِيهِ النِّسَاءُ صَدَقَةً، تُلْقِي الْمَرْأَةُ فَتَخَهَا» .

L31623 Abu Muhammad said: Al-fathkh are large rings that women fastened tightly on their fingers. Were their palms not exposed, they would not have been able to cast off the al-fathkh.

وَقَالَ أَبُو مُحَمَّدٍ: الْفَتَخُ خَوَاتِمُ كِبَارٌ كُنَّ يَحْبِسْنَهَا فِي أَصَابِعِهِنَّ، فَلَوْلَا ظُهُورُ أَكُفِّهِنَّ مَا أَمْكَنَهُنَّ إلْقَاءُ الْفَتَخِ.

L31624 It is not permissible for anyone to look at a non-mahram woman unless he intends to marry her or purchase her.

[مَسْأَلَةٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يَنْظُرَ مِنْ أَجْنَبِيَّةٍ لَا يُرِيدُ زَوَاجَهَا أَوْ شِرَاءَهَا]

L31625–31627 1874 - Issue: It is not permissible for anyone to look at a non-mahram woman whom he does not intend to marry or—if she is a slave—purchase for carnal pleasure, except out of necessity. If one looks at both private parts during the act of adultery to testify about it, this is permissible, as he is commanded to testify. Almighty God said: "Be upholders of justice, bearing witness for God" [An-Nisā': 135]. They have no means to bear testimony in cases of adultery except through valid observation of the genitalia and verification therein.[17]

١٨٧٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَنْظُرَ مِنْ أَجْنَبِيَّةٍ لَا يُرِيدُ زَوَاجَهَا أَوْ شِرَاءَهَا إنْ كَانَتْ أَمَةً لِتَلَذُّذٍ إلَّا لِضَرُورَةٍ، فَإِنْ نَظَرَ فِي الزِّنَا إلَى الْفَرْجَيْنِ لِيَشْهَدَ بِذَلِكَ فَمُبَاحٌ لَهُ، لِأَنَّهُ مَأْمُورٌ بِأَدَاءِ الشَّهَادَةِ، قَالَ عَزَّ وَجَلَّ: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥] وَلَا سَبِيلَ لَهُمْ إلَى أَدَاءِ الشَّهَادَةِ فِي الزِّنَا إلَّا بِصِحَّةِ النَّظَرِ إلَى الْفَرْجَيْنِ وَالتَّثَبُّتِ فِي ذَلِكَ.

L31628 In other cases, the face and the two hands [are treated] as we have mentioned earlier, at the time of testimony against her, for her, or from her.

وَأَمَّا فِي غَيْرِ ذَلِكَ، فَالْوَجْهُ وَالْكَفَّانِ كَمَا قَدَّمْنَا آنِفًا عِنْدَ الشَّهَادَةِ عَلَيْهَا أَوْ لَهَا أَوْ مِنْهَا.

L31629 It is permissible for a mahram to see the entire body of his female mahram, such as the mother, grandmother, daughter, granddaughter, maternal aunt, paternal aunt, niece from the brother's side, niece from the sister's side, stepmother, and daughter-in-law, except for the anus and private parts only.

وَجَائِزٌ لِذِي الْمَحْرَمِ أَنْ يَرَى جَمِيعَ جِسْمِ حَرِيمَتِهِ، كَالْأُمِّ، وَالْجَدَّةِ، وَالْبِنْتِ، وَابْنَةِ الِابْنِ، وَالْخَالَةِ، وَالْعَمَّةِ، وَبِنْتِ الْأَخِ، وَبِنْتِ الْأُخْتِ، وَامْرَأَةِ الْأَبِ، وَامْرَأَةِ الِابْنِ، حَاشَا الدُّبُرَ وَالْفَرْجَ فَقَطْ.

L31630 And likewise, women are sisters to one another.

وَكَذَلِكَ النِّسَاءُ بَعْضُهُنَّ مِنْ بَعْضٍ.

[17] **Qur'an references (L31625):** Qur'an 4:135 (An-Nisa).

L31631 And likewise, men are bound to one another in mutual responsibility.

وَكَذَلِكَ الرِّجَالُ بَعْضُهُمْ مِنْ بَعْضٍ.

L31632 The evidence for this is the statement of Allah, the Most High: {And let them not display their adornment except what is outwardly visible. And let them draw their head-coverings over their bosoms. And let them not display their adornment except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers, their brothers' sons, their sisters' sons, their women, those whom their right hands possess, male attendants devoid of desire, or children who have not yet attained awareness of women's private parts. And let them not stamp their feet to reveal what they conceal of their adornment.} [An-Nur: 31].[18]

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى: {وَلا يُبْدِينَ زِينَتَهُنَّ إِلا مَا ظَهَرَ مِنْهَا وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَى جُيُوبِهِنَّ وَلا يُبْدِينَ زِينَتَهُنَّ إِلا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ آبَاءِ بُعُولَتِهِنَّ أَوْ أَبْنَائِهِنَّ أَوْ أَبْنَاءِ بُعُولَتِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ بَنِي أَخَوَاتِهِنَّ أَوْ نِسَائِهِنَّ أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ أَوِ التَّابِعِينَ غَيْرِ أُولِي الإِرْبَةِ مِنَ الرِّجَالِ أَوِ الطِّفْلِ الَّذِينَ لَمْ يَظْهَرُوا عَلَى عَوْرَاتِ النِّسَاءِ وَلا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ} [النور: ٣١] الْآيَةَ.

L31633 Then Allah, the Mighty and Majestic, mentioned in this verse: their adornment—a visible adornment displayed to everyone, which is the face and hands, as we have explained only. And a concealed adornment, which Allah, the Mighty and Majestic, has forbidden to display except to those mentioned in the verse.

فَذَكَرَ اللَّهُ عَزَّ وَجَلَّ فِي هَذِهِ الْآيَةِ: زِينَتَهُنَّ زِينَةً ظَاهِرَةً تُبْدَى لِكُلِّ أَحَدٍ وَهِيَ الْوَجْهُ وَالْكَفَّانِ عَلَى مَا بَيَّنَّا فَقَطْ، وَزِينَةً بَاطِنَةً حَرَّمَ عَزَّ وَجَلَّ إِبْدَاءَهَا إِلَّا لِمَنْ ذَكَرَ فِي الْآيَةِ.

L31634 We find that He, the Exalted, has made equal in this regard spouses, women, children, and all others we have mentioned in the verse.

وَوَجَدْنَاهُ تَعَالَى قَدْ سَاوَى فِي ذَلِكَ بَيْنَ الْبُعُولَةِ، وَالنِّسَاءِ، وَالْأَطْفَالِ، وَسَائِرِ مَنْ ذَكَرْنَا فِي الْآيَةِ.

L31635 We have clarified in *The Book of Prayer* that a woman's entire body is *ʿawrah* except her face and palms (including the hands up to the wrists). The ruling for the *ʿawrah* applies uniformly as we mentioned, except for what is unanimously agreed upon: that it is impermissible for anyone other than the husband to look at the female genitalia and anus.

وَقَدْ أَوْضَحْنَا فِي " كِتَابِ الصَّلَاةِ " أَنَّ الْمَرْأَةَ كُلَّهَا عَوْرَةٌ إِلَّا الْوَجْهَ وَالْكَفَّيْنِ، فَحُكْمُ الْعَوْرَةِ سَوَاءٌ فِيمَا ذَكَرْنَا، إِلَّا مَا لَا خِلَافَ فِيهِ مِنْ أَنَّهُ لَا يَحِلُّ لِغَيْرِ الزَّوْجِ النَّظَرُ إِلَيْهِ مِنْ الْفَرْجِ وَالدُّبُرِ.

L31636 We have not found in the Qur'an, nor in the Sunnah, nor in rational reasoning any distinction between the hair, neck, forearm, leg, and chest on one hand, and the belly, back, and thigh on the other, except that it is impermissible for anyone to intentionally look at any part of a woman who is unlawful for him—neither her face nor anything else—unless there arises a reason that necessitates such looking, where no wrongdoing is intended in the heart or with the eye.

وَلَمْ نَجِدْ لَا فِي قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا مَعْقُولٍ: فَرْقًا بَيْنَ الشَّعْرِ، وَالْعُنُقِ، وَالذِّرَاعِ، وَالسَّاقِ، وَالصَّدْرِ، وَبَيْنَ الْبَطْنِ، وَالظَّهْرِ، وَالْفَخِذِ إِلَّا أَنَّهُ لَا يَحِلُّ لِأَحَدٍ أَنْ يَتَعَمَّدَ النَّظَرَ إِلَى شَيْءٍ مِنْ امْرَأَةٍ لَا يَحِلُّ لَهُ: لَا الْوَجْهَ، وَلَا غَيْرَهُ، إِلَّا لِقِصَّةٍ تَدْعُو إِلَى ذَلِكَ لَا يُقْصَدُ مِنْهَا مُنْكَرٌ بِقَلْبٍ أَوْ بِعَيْنٍ.

[18] **Qur'an references (L31632):** Qur'an 24:31 (An-Nur).

وَقَدْ رُوِّينَا عَنْ طَاوُسٍ كَرَاهَةَ نَظَرِ الرَّجُلِ إلَى شَعْرِ ابْنَتِهِ، وَأُمِّهِ، وَأُخْتِهِ - وَلَا يَصِحُّ عَنْ طَاوُسٍ، وَصَحَّ عَنْ إبْرَاهِيمَ: أَنْ لَا يُنْظَرَ مِنْ ذَاتِ الْمَحْرَمِ إلَّا إلَى مَا فَوْقَ الصَّدْرِ - وَهَذَا تَحْدِيدٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ، وَلَيْسَ هَذَا مَكَانُ رَأْيٍ، وَلَا اسْتِحْسَانٍ، لِأَنَّ الْمُخَالِفِينَ لَنَا هَهُنَا بِأَهْوَائِهِمْ لَا يَخْتَلِفُونَ فِي أَنَّهُ لَا يَحِلُّ النَّظَرُ إلَى زِينَةِ شَعْرِ الْعَجُوزِ السَّوْدَاءِ الْحُرَّةِ، وَلَعَلَّ النَّظَرَ إلَيْهَا يَقْذِي الْعَيْنَ، وَيُمِيتُ تَهْيِيجَ النَّفْسِ.

L31637–31639 It has been narrated to us that Ṭāwus disliked a man looking at the hair of his daughter, mother, or sister—though this attribution to Ṭāwus is unreliable, while it is authentically reported from Ibrāhīm that one should not look at a mahram woman except at what is above. The beginning—and this is a specification without proof of its validity, for this is not the place for opinion or juristic preference, since those who oppose us here—led by their desires—do not differ on the impermissibility of gazing at the adorned hair of an old black free woman. Indeed, looking at her might harm the eye and extinguish the soul's arousal.

وَيُجِيزُونَ النَّظَرَ لِغَيْرِ لَذَّةٍ إلَى وَجْهِ الْجَارِيَةِ الْجَمِيلَةِ الْفَتَاةِ وَيَدَيْهَا وَقَدْ صَحَّ فِي ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «إنَّ أُمَّ عَطِيَّةَ أُمَّ الْمُؤْمِنِينَ اسْتَأْذَنَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْحِجَامَةِ، فَأَذِنَ لَهَا، فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبَا طَيْبَةَ أَنْ يُحَجِّمَهَا - قَالَ: حَسِبْتُ أَنَّهُ كَانَ أَخَاهَا مِنْ الرَّضَاعَةِ، أَوْ غُلَامًا لَمْ يَحْتَلِمْ» .

L31640 They permit looking without desire at the face of a beautiful young slave girl and her hands. It is authentically established regarding this in what we have reported through the chain of Muslim ibn al-Ḥajjāj: Qutaybah ibn Saʿīd narrated to us, al-Layth - that is, Ibn Saʿd - narrated to us from Abū al-Zubayr from Jābir ibn ʿAbdullāh, who said: "Umm ʿAṭiyyah, the Mother of the Believers, sought permission from the Messenger of Allah, peace and blessings be upon him, to perform cupping. He permitted her, and the Messenger of Allah, peace and blessings be upon him, commanded Abū Ṭaybah to perform cupping on her." Jābir said: "I presumed he was either her milk brother or a boy who had not reached puberty."

قَالَ أَبُو مُحَمَّدٍ: هَذَا خَبَرٌ فِي غَايَةِ الصِّحَّةِ، لِأَنَّهُ مِنْ رِوَايَةِ اللَّيْثِ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ.

L31641 Abu Muhammad said: This is a report of the utmost authenticity, because it is transmitted through al-Layth from Abu al-Zubayr from Jabir.

وَقَدْ رُوِّينَا بِأَصَحِّ طَرِيقٍ: أَنَّ كُلَّ مَا رَوَاهُ اللَّيْثُ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ، فَإِنَّ أَبَا الزُّبَيْرِ أَخْبَرَهُ أَنَّهُ سَمِعَهُ عَنْ جَابِرٍ.

L31642 And it has been narrated to us via the strongest chain that all Al-Layth reported from Abū al-Zubayr from Jābir: Abū al-Zubayr informed him that he heard it from Jābir.

وَأَمَّا قَوْلُ الرَّاوِي: «حَسِبْتُ أَنَّهُ كَانَ أَخَاهَا مِنْ الرَّضَاعَةِ أَوْ غُلَامًا لَمْ يَحْتَلِمْ» فَإِنَّمَا هُوَ ظَنٌّ مِنْ بَعْضِ رُوَاةِ الْخَبَرِ مِمَّنْ دُونَ جَابِرٍ. ثُمَّ هُوَ أَيْضًا ظَنٌّ غَيْرُ صَادِقٍ، لِأَنَّ أُمَّ سَلَمَةَ - رَضِيَ اللَّهُ عَنْهَا - وُلِدَتْ بِمَكَّةَ، وَبِهَا وَلَدَتْ أَكْثَرَ أَوْلَادِهَا.

L31643 As for the narrator's statement: "I presumed he was her milk brother or a prepubescent boy," this is merely a conjecture by some narrators of the report from those below Jabir in the chain. Moreover, it is an untrue conjecture, for Umm Salamah—may Allah be pleased with her—was born in Mecca, and there she gave birth to most of her children.

L31644 Abu Taybah was a slave owned by one of the Ansar in Medina, thus it is impossible for him to have been her brother through breastfeeding, as he

was a slave upon whom the kharaj was levied – as has been narrated to us through Malik's chain from Humayd at-Tawil from Anas ibn Malik, who said: "Abu Taybah performed cupping on Allah's Messenger – peace and blessings be upon him – whereupon he ordered that he be given a saa' of dates and instructed his household to reduce his kharaj." It is not permissible to perform cupping on her unless he sees her neck and the upper portion of her back corresponding to the top of her shoulders.

وَأَبُو طَيْبَةَ: غُلَامٌ لِبَعْضِ الْأَنْصَارِ بِالْمَدِينَةِ، فَمُحَالٌ أَنْ يَكُونَ أَخَاهَا مِنَ الرَّضَاعَةِ، وَكَانَ عَبْدًا مَضْرُوبًا عَلَيْهِ الْخَرَاجُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «حَجَمَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبُو طَيْبَةَ فَأَمَرَ لَهُ بِصَاعٍ مِنْ تَمْرٍ، وَأَمَرَ أَهْلَهُ أَنْ يُخَفِّفُوا مِنْ خَرَاجِهِ» وَلَا يُمْكِنُ أَنْ يُحَجِّمَهَا إِلَّا حَتَّى يَرَى عُنُقَهَا، وَأَعْلَى ظَهْرِهَا مِمَّا يُوَازِي أَعْلَى كَتِفَيْهَا.

[مَسْأَلَةُ نَظَرُ الرَّجُلِ إِلَى فَرْجِ امْرَأَتِهِ الَّتِي يَحِلُّ لَهُ وَطْؤُهَا]

L31645

Issue: Whether a man may look at the private parts of his wife whom it is lawful for him to have intercourse with.

L31646

1875 - Issue: It is permissible for a man to look at the private parts of his wife (spouse) and his female slave whom it is lawful for him to have intercourse with. Similarly, they both may look at his private parts. There is absolutely no dislike in that whatsoever.

١٨٧٥ - مَسْأَلَةٌ: وَحَلَالٌ لِلرَّجُلِ أَنْ يَنْظُرَ إِلَى فَرْجِ امْرَأَتِهِ زَوْجَتِهِ وَأَمَتِهِ الَّتِي يَحِلُّ لَهُ وَطْؤُهَا، وَكَذَلِكَ لَهُمَا أَنْ يَنْظُرَا إِلَى فَرْجِهِ، لَا كَرَاهِيَةَ فِي ذَلِكَ أَصْلًا.

L31647–31648

The proof of this is the well-known narrations transmitted via 'Ā'ishah, Umm Salamah, and Maymūnah—the Mothers of the Believers (may Allah be pleased with them)—that they would perform the ritual bath for janābah (major ritual impurity) with the Messenger of Allah (peace and blessings be upon him) from a single vessel.

بُرْهَانُ ذَلِكَ -: الْأَخْبَارُ الْمَشْهُورَةُ مِنْ طَرِيقِ «عَائِشَةَ، وَأُمِّ سَلَمَةَ، وَمَيْمُونَةَ: أُمَّهَاتِ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهُنَّ - أَنَّهُنَّ كُنَّ يَغْتَسِلْنَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنَ الْجَنَابَةِ مِنْ إِنَاءٍ وَاحِدٍ» .

L31649

In the report of Maymunah, it is clarified that the Prophet (peace and blessings be upon him) was without a loincloth, as her narration states: "He (peace and blessings be upon him) inserted his hand into the vessel, then poured water over his genital area and washed it with his left hand." Therefore, after this evidence, it is rendered invalid to consider any contrary juristic opinion.

وَفِي خَبَرِ مَيْمُونَةَ بَيَانُ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كَانَ بِغَيْرِ مِئْزَرٍ، لِأَنَّ فِي خَبَرِهَا «أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَدْخَلَ يَدَهُ فِي الْإِنَاءِ ثُمَّ أَفْرَغَ عَلَى فَرْجِهِ وَغَسَلَهُ بِشِمَالِهِ» فَبَطَلَ بَعْدَ هَذَا أَنْ يُلْتَفَتَ إِلَى رَأْيِ أَحَدٍ.

L31650

It is astonishing that some overly strict individuals among the ignorant permit intercourse with the private parts yet prohibit looking at them. Sufficient in refuting this is the statement of Allah, the Almighty: "And those who guard their private parts—except with their wives or those whom their right hands possess, for then they are free from blame" (23:5–6). Thus, the Almighty commanded the guarding of the private parts except with one's wife or those whom their right hands possess, so there is no blame in that.

وَمِنَ الْعَجَبِ أَنْ يُبِيحَ بَعْضُ الْمُتَكَلِّفِينَ مِنْ أَهْلِ الْجَهْلِ وَطْءَ الْفَرْجِ وَيَمْنَعَ مِنَ النَّظَرِ إِلَيْهِ، وَيَكْفِي مِنْ هَذَا قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إِلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] . فَأَمَرَ

This is a general ruling encompassing looking at them, touching them, and sexual intercourse.[19]

L31651 We know of no basis for the opposing opinion except a weak report from an unknown woman: "From the Mother of the Believers: 'I never saw the genitalia of the Messenger of Allah (may Allah bless him and grant him peace)'."

L31652 And another—at the utmost level of rejection—from Abū Bakr ibn ʿAyyāsh and Zuhayr ibn Muḥammad, both narrating from ʿAbd al-Malik ibn Abī Sulaymān al-ʿArzamī. These are likened to three supporting stones and deserted ruins: one of them sufficed to invalidate the ḥadīth.

L31653 **It is impermissible for a Muslim to propose marriage over another Muslim's existing proposal.**

L31654 1876 – Issue: It is not permissible for a Muslim to propose over [interfere with] another Muslim's proposal, whether it is settled, nearing acceptance, or otherwise—unless he is superior in religious practice and good conduct. In such a case, he may propose over the proposal of one from those inferior to him in religious practice and good treatment.

L31655 Or unless the first suitor permits him to propose to her, then it becomes permissible for him to propose to her at that point.

L31656 Or unless the first suitor relinquishes the marriage proposal, then it becomes permissible for another to propose to her at that point.

L31657 Or unless the woman who has been proposed to rejects him; at that time, another may propose to her. Otherwise, it is impermissible.

L31658–31660 The proof of that is: what we have narrated through the chain reported by Muslim—Abu al-Tahir narrated to me from ʿAbdullah ibn Wahb, who narrated to us from al-Layth ibn Saʿd, from Yazid ibn Abi Habib, from ʿAbd

[19] **Qur'an references (L31650):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij).

عَزَّ وَجَلَّ بِحِفْظِ الْفَرْجِ إِلَّا عَلَى الزَّوْجَةِ، وَمِلْكِ الْيَمِينِ، فَلَا مَلَامَةَ فِي ذَلِكَ، وَهَذَا عُمُومٌ فِي رُؤْيَتِهِ وَلَمْسِهِ وَمُخَالَطَتِهِ.

وَمَا نَعْلَمُ لِلْمُخَالِفِ تَعَلُّقًا إِلَّا بِأَثَرٍ سَخِيفٍ عَنْ امْرَأَةٍ مَجْهُولَةٍ «عَنْ أُمِّ الْمُؤْمِنِينَ مَا رَأَيْتُ فَرْجَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ» .

وَآخَرَ - فِي غَايَةِ السُّقُوطِ عَنْ أَبِي بَكْرِ بْنِ عَيَّاشٍ، وَزُهَيْرِ بْنِ مُحَمَّدٍ، كِلَاهُمَا عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي سُلَيْمَانَ الْعَرْزَمِيِّ - وَهَؤُلَاءِ: ثَلَاثُ الْأَثَافِي وَالدِّيَارُ الْبَلَاقِعِ، أَحَدُهُمْ كَانَ يَكْفِي فِي سُقُوطِ الْحَدِيثِ.

[مَسْأَلَةٌ لَا يَحِلُّ لِمُسْلِمٍ أَنْ يَخْطِبَ عَلَى خِطْبَةِ مُسْلِمٍ]

١٨٧٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِمُسْلِمٍ أَنْ يَخْطِبَ عَلَى خِطْبَةِ مُسْلِمٍ سَوَاءٌ رُكِنَا وَتَقَارَبَا أَوْ لَمْ يَكُنْ شَيْءٌ مِنْ ذَلِكَ، إِلَّا أَنْ يَكُونَ أَفْضَلَ لَهَا فِي دِينِهِ وَحُسْنِ صُحْبَتِهِ، فَلَهُ حِينَئِذٍ أَنْ يَخْطِبَ عَلَى خِطْبَةِ غَيْرِهِ مِمَّنْ هُوَ دُونَهُ فِي الدِّينِ وَجَمِيلِ الصُّحْبَةِ.

أَوْ إِلَّا أَنْ يَأْذَنَ لَهُ الْخَاطِبُ الْأَوَّلُ فِي أَنْ يَخْطُبَهَا فَيَجُوزُ لَهُ أَنْ يَخْطُبَهَا حِينَئِذٍ.

أَوْ إِلَّا أَنْ يَدَعَ الْخَاطِبُ الْأَوَّلُ الْخِطْبَةَ فَيَكُونُ لِغَيْرِهِ أَنْ يَخْطُبَهَا حِينَئِذٍ.

أَوْ إِلَّا أَنْ تَرُدَّهُ الْمَخْطُوبَةُ فَلِغَيْرِهِ أَنْ يَخْطُبَهَا حِينَئِذٍ وَإِلَّا فَلَا.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي أَبُو الطَّاهِرِ نا عَبْدُ اللَّهِ بْنُ وَهْبٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ شِمَاسَةَ أَنَّهُ سَمِعَ عُقْبَةَ بْنَ عَامِرٍ عَلَى الْمِنْبَرِ يَقُولُ: " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُؤْمِنُ أَخُو الْمُؤْمِنِ

al-Rahman ibn Shimasah, that he heard ʻUqbah ibn ʻAmir. On the pulpit, he said: "The Messenger of Allah—peace and blessings of Allah be upon him—said, 'A believer is the brother of a believer. Therefore, it is not lawful for a believer to purchase over his brother's sale, nor to propose marriage over his brother's proposal, until he abandons it.'" This narration prohibits proposing marriage over a Muslim's proposal until he abandons it.[20]

فَلَا يَحِلُّ لِلْمُؤْمِنِ أَنْ يَبْتَاعَ عَلَى بَيْعِ أَخِيهِ وَلَا يَخْطُبَ عَلَى خِطْبَةِ أَخِيهِ حَتَّى يَذَرَ» فَفِي هَذَا الْخَبَرِ تَحْرِيمُ الْخِطْبَةِ عَلَى خِطْبَةِ الْمُسْلِمِ حَتَّى يَذَرَ.

L31661 And through the chain of Aḥmad ibn Shuʻayb: Narrated to us Ibrāhīm ibn al-Ḥasan al-Miṣṣīṣī; from Ḥajjāj (he is Ibn Muḥammad), who said: Ibn Jurayj said: I heard Nāfiʻ narrating that Ibn ʻUmar used to say: "The Messenger of Allāh—peace and blessings be upon him and his family—forbade that any of you should outbid another's sale, nor should a man propose to a woman already sought in marriage by another man until the proposer withdraws his offer or permits it."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا إِبْرَاهِيمُ بْنُ الْحَسَنِ الْمِصِّيصِيُّ نا حَجَّاجٌ - هُوَ ابْنُ مُحَمَّدٍ - قَالَ: قَالَ ابْنُ جُرَيْجٍ: سَمِعْت نَافِعًا يُحَدِّثُ أَنَّ ابْنَ عُمَرَ كَانَ يَقُولُ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنْ يَبِيعَ بَعْضُكُمْ عَلَى بَيْعِ بَعْضٍ وَلَا يَخْطُبَ الرَّجُلُ عَلَى خِطْبَةِ الرَّجُلِ حَتَّى يَتْرُكَ الْخَاطِبُ قَبْلَهُ أَوْ يَأْذَنَ لَهُ الْخَاطِبُ» .

L31662 Abu Muhammad said: If the betrothed woman rejects him, he is obligated to terminate the courtship, for his persistence causes deliberate harm to her and wrongs her by preventing other suitors from proposing to her. Thus, any courtship that involves a sinful act has no legal validity.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا إذَا رَدَّتْهُ الْمَخْطُوبَةُ فَقَدْ وَجَبَ عَلَيْهِ قَطْعُ الْخِطْبَةِ، لِأَنَّ فِي تَمَادِيهِ الْإِضْرَارَ بِهَا وَالظُّلْمَ لَهَا فِي مَنْعِهِ بِذَلِكَ غَيْرَهُ مِنْ خِطْبَتِهَا، فَكُلُّ خِطْبَةٍ تَكُونُ مَعْصِيَةً فَلَا حُكْمَ لَهَا.

L31663 As for when one is superior in religion and good companionship, this is based on the famous ḥadīth narrated by Fāṭimah bint Qays: The Messenger of Allah (peace and blessings be upon him) said to her, "Who has proposed to you?" She replied, "Muʻāwiyah and another man from Quraysh." The Messenger of Allah (peace and blessings be upon him) said, "As for Muʻāwiyah, he is a youth from among the youths of Quraysh with no wealth. As for the other, he is an evil man with no goodness in him. Marry Usāmah." She said, "I was averse to it [marrying him]." He repeated this to her three times, so she married him.

وَأَمَّا إذَا كَانَ فَوْقَهُ فِي دِينِهِ وَحُسْنِ صُحْبَتِهِ فَلِحَدِيثِ «فَاطِمَةَ بِنْتِ قَيْسٍ الْمَشْهُورِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهَا: مَنْ خَطَبَكِ؟ قَالَتْ: مُعَاوِيَةُ وَرَجُلٌ مِنْ قُرَيْشٍ آخَرُ فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَّا مُعَاوِيَةُ فَإِنَّهُ غُلَامٌ مِنْ غِلْمَانِ قُرَيْشٍ لَا شَيْءَ لَهُ، وَأَمَّا الْآخَرُ فَإِنَّهُ صَاحِبُ شَرٍّ لَا خَيْرَ فِيهِ، انْكِحِي أُسَامَةَ؟ قَالَتْ: فَكَرِهْتُهُ، فَقَالَ لَهَا ذَلِكَ ثَلَاثَ مَرَّاتٍ: فَنَكَحَتْهُ» .

L31664 It was narrated to us through the chain of Mālik from ʻAbdullāh ibn Yazīd, the freed slave of Al-Aswad ibn Sufyān, from Abū Salamah ibn ʻAbd al-Raḥmān, from Fāṭimah bint Qays, who mentioned her narration. In it, she said: "The Messenger of Allah (peace be upon him) said to her: 'When your

وَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ مَوْلَى الْأَسْوَدِ بْنِ سُفْيَانَ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ فَذَكَرَتْ حَدِيثَهَا، وَفِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهَا: فَإِذَا حَلَلْتِ فَآذِنِينِي؟ قَالَتْ: فَلَمَّا حَلَلْتُ ذَكَرْتُ لَهُ أَنَّ مُعَاوِيَةَ

[20] **Hadith references (L31658):** Sahih Muslim 1414.

waiting period ends, notify me.' She said: When my waiting period ended, I informed him that Muʿāwiyah ibn Abī Sufyān and Abū Jahm had proposed to me. The Messenger of Allah (peace and blessings be upon him and his family) said: 'As for Abū Jahm, he does not lay down his staff from his shoulder, and as for Muʿāwiyah, he is a destitute man with no wealth. Marry Usāmah ibn Zayd.' She said: I disliked him. Then he said again: 'Marry Usāmah,' so I married him. Allah placed good in him, and I was blessed."[21]

بْنَ أَبِي سُفْيَانَ وَأَبَا جَهْمٍ خَطَبَانِي؟ فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: أَمَّا أَبُو جَهْمٍ فَلَا يَضَعُ عَصَاهُ عَنْ عَاتِقِهِ وَأَمَّا مُعَاوِيَةُ فَصُعْلُوكٌ لَا مَالَ لَهُ، انْكِحِي أُسَامَةَ بْنَ زَيْدٍ قَالَتْ: فَكَرِهْتُهُ، ثُمَّ قَالَ: انْكِحِي أُسَامَةَ، فَنَكَحْتُهُ، فَجَعَلَ اللَّهُ فِيهِ خَيْرًا وَاغْتَبَطْتُ» .

L31665 Abu Muhammad said: Thus, the Messenger of Allah—may Allah bless him and grant him peace—directed her toward the one more excellent in companionship for her than Abu Jahim, who frequently strikes women, and that Usama is superior to Mu'awiyah.

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَشَارَ عَلَيْهَا بِالَّذِي هُوَ أَجْمَلُ صُحْبَةً لَهَا مِنْ أَبِي جَهْمٍ الْكَثِيرِ الضَّرْبِ لِلنِّسَاءِ، وَأُسَامَةُ أَفْضَلُ مِنْ مُعَاوِيَةَ.

L31666 If it is said: How do you know that this narration preceded the narration prohibiting a man from proposing during his brother's proposal?

فَإِنْ قِيلَ: وَمَا يُدْرِيك أَنَّ هَذَا الْخَبَرَ كَانَ قَبْلَ خَبَرِ النَّهْيِ عَنْ أَنْ يَخْطُبَ أَحَدٌ عَلَى خِطْبَةِ أَخِيهِ؟ .

L31667–31668 We said: It has been authentically established from the Messenger of Allah (peace be upon him) that he stated, "Religion is sincere advice, religion is sincere advice, religion is sincere advice," and this ruling remains in effect until the Day of Resurrection.

قُلْنَا: قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الدِّينُ النَّصِيحَةُ الدِّينُ النَّصِيحَةُ الدِّينُ النَّصِيحَةُ» وَهَذَا حُكْمٌ بَاقٍ إلَى يَوْمِ الْقِيَامَةِ.

L31669 Among the best pieces of advice is this: If a suitor wishes to propose to a woman who has already been sought by someone better in companionship and more devout in religion than the one who proposed to her before him, he should propose to her.

وَمِنْ أَنْصَحِ النَّصَائِحِ: أَنْ يَكُونَ مَرِيدٌ يُرِيدُ خِطْبَةَ امْرَأَةٍ قَدْ خَطَبَهَا مَنْ هُوَ أَحْسَنُ صُحْبَةً، وَأَفْضَلُ دِينًا، مِنْ الَّذِي خَطَبَهَا قَبْلَهُ فَيَخْطُبُهَا هُوَ.

L31670 As for abandoning his proposal to her solely because of the suitor who preceded him, he has not given honest advice to the Muslim woman. He has indeed deceived her, and this is not permissible.

وَأَمَّا إنْ تَرَكَ خِطْبَتَهَا مِنْ أَجْلِ الْخَاطِبِ قَبْلَهُ فَقَطْ فَمَا نَصَحَ الْمُسْلِمَةَ وَلَقَدْ غَشَّهَا وَهَذَا لَا يَجُوزُ.

L31671 We have certainly known that Mu'awiyah is a young man from Banu Abd Manaf, at the peak of beauty and magnanimity.

وَقَدْ عَلِمْنَا أَنَّ مُعَاوِيَةَ فَتًى مِنْ بَنِي عَبْدِ مَنَافٍ فِي غَايَةِ الْجَمَالِ وَالْحِلْمِ.

L31672 And Usāmah—a freed slave of the Kalb tribe, black as pitch—we necessarily know without doubt that he has no superiority over him except through religion, which, in its utmost sincerity toward all Muslims, is the pinnacle of

[21] **Hadith references (L31664):** Sunan Abi Dawud 2284; Sahih Muslim 1480a.

excellence in the sight of Allah, the Exalted, and His Messenger—may Allah's blessings and peace be upon him.

وَأُسَامَةُ - مَوْلَى كَلْبِيٍّ أَسْوَدُ كَالْقَارِ - فَبِالضَّرُورَةِ نَدْرِي أَنَّهُ لَا فَضْلَ لَهُ عَلَيْهِ إلَّا بِالدِّينِ الَّذِي هُوَ نِهَايَةُ الْفَضْلِ عِنْدَ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي غَايَةِ النُّصْحِيَّةِ لِجَمِيعِ الْمُسْلِمِينَ بِلَا شَكٍّ.

L31673 As for the one who claims that this constitutes a pillar and an act of devotion, such a claim is corrupt and null, for it lacks support from the Quran, the Sunnah, consensus, any Companion's opinion, or sound juridical reasoning. It is merely a rejected opinion.

وَأَمَّا مَنْ قَالَ: إنَّ ذَلِكَ إذَا رُكْنًا وَتَقَارُبًا فَدَعْوَى فَاسِدَةٌ بَاطِلٌ، لِأَنَّهُ لَمْ يُعَضِّدْهَا قُرْآنٌ وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا نَظَرٌ صَحِيحٌ إنَّمَا هُوَ رَأْيٌ سَاقِطٌ فَقَطْ.

[مَسْأَلَةٌ لَا يَحِلُّ التَّصْرِيحُ بِخِطْبَةِ امْرَأَةٍ فِي عِدَّتِهَا]

L31674 **Jurisprudential Issue: It is impermissible to explicitly declare a marriage proposal to a woman during her ʿiddah (waiting period).**

١٨٧٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ التَّصْرِيحُ بِخِطْبَةِ امْرَأَةٍ فِي عِدَّتِهَا.

L31675 Issue 1877: It is not permissible to explicitly propose marriage to a woman during her waiting period.

وَجَائِزٌ أَنْ يُعَرِّضَ لَهَا بِمَا تَفْهَمُ مِنْهُ أَنَّهُ يُرِيدُ نِكَاحَهَا.

L31676 And it is permissible for him to imply to her through that which she understands from his implication his intent to marry her.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خِطْبَةِ النِّسَاءِ أَوْ أَكْنَنْتُمْ فِي أَنْفُسِكُمْ عَلِمَ اللَّهُ أَنَّكُمْ سَتَذْكُرُونَهُنَّ وَلَكِنْ لا تُوَاعِدُوهُنَّ سِرًّا إِلا أَنْ تَقُولُوا قَوْلا مَعْرُوفًا وَلا تَعْزِمُوا عُقْدَةَ النِّكَاحِ حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ} [البقرة: ٢٣٥] إلَى قَوْلِهِ: {فَاحْذَرُوهُ} [البقرة: ٢٣٥] فَأَبَاحَ تَعَالَى التَّعْرِيضَ وَمَنَعَ مِنْ الْمُوَاعَدَةِ سِرًّا.

L31677 The evidence for this is the statement of Allah, the Exalted: {There is no blame upon you for what you imply in proposing to women or what you conceal within yourselves. Allah knows that you will mention them [for marriage], but do not secretly arrange with them—unless you speak honorably—and do not resolve to conclude marriage until the prescribed term expires.} [Al-Baqarah: 235] until His words: {So beware of Him.} [Al-Baqarah: 235]. Thus, He permitted indirect proposals and forbade secret arrangements.[22]

قَالَ أَبُو مُحَمَّدٍ: وَمِنْ التَّعْرِيضِ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الَّذِي ذَكَرْنَاهُ آنِفًا لِفَاطِمَةَ بِنْتِ قَيْسٍ: «إذَا حَلَلْتِ فَآذِنِينِي» .

L31678 Abu Muhammad said: Among the instances of indirect expression is the statement of the Messenger of Allah—may Allah bless him and his family and grant him peace—which we mentioned earlier to Fatimah bint Qays: "When you have completed your waiting period, inform me."

وَقَدْ صَحَّ أَيْضًا - أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ: «لَا تُفَوِّتِينِي بِنَفْسِكِ» : رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا قُتَيْبَةُ بْنُ سَعِيدٍ: أَنَّ مُحَمَّدَ بْنَ جَعْفَرٍ حَدَّثَهُمْ قَالَ: نا مُحَمَّدُ بْنُ عَمْرٍو عَنْ

L31679 And it has also been authentically established that he—peace and blessings be upon him—said: "Do not deprive me of yourself." It has been narrated to us

[22] **Qur'an references (L31677):** Qur'an 2:235 (Al-Baqarah).

via Abū Dāwūd's chain: Qutaybah ibn Saʿīd reported to us that Muḥammad ibn Jaʿfar narrated to them, stating: Muḥammad ibn ʿAmr reported to us from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf from Fāṭimah bint Qays that the Messenger of Allāh—peace and blessings of Allāh be upon him and his family—said: [...]

أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L31680–31681 Among the forms of implicit proposal is what has been narrated from Ibn Abbas—to say, "I desire marriage, and I would love that Allah the Exalted would facilitate for me a righteous wife," and similar expressions.

وَمِنْ التَّعْرِيضِ مَا رُوِّينَاهُ عَنْ ابْنِ عَبَّاسٍ أَنْ يَقُولَ: إنِّي أُرِيدُ الزَّوَاجَ، وَلَوَدِدْت أَنَّ اللَّهَ تَعَالَى يَسَّرَ لِي امْرَأَةً صَالِحَةً، وَنَحْوَ هَذَا.

L31682 **A ruling: The marriage contract of a person not yet born is not permissible.**

[مَسْأَلَةٌ لَا يَحِلُّ نِكَاحُ مَنْ لَمْ يُولَدْ بَعْدُ]

L31683 1878 - Issue: It is not permissible to marry someone who has not yet been born. If someone does so, the marriage is not binding, because it is unknown whether a daughter, a son, or a stillborn female will be born to him.

١٨٧٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ نِكَاحُ مَنْ لَمْ يُولَدْ بَعْدُ، فَمَنْ فَعَلَ ذَلِكَ لَمْ يَلْزَمْهُ، لِأَنَّهُ لَا يَدْرِي أَيُولَدُ لَهُ ابْنَةٌ، أَمْ ابْنٌ، أَمْ مَيْتَةٌ.

L31684 **It is unlawful for the marriage of an absent woman to be conducted except by her proxy thereof.**

[مَسْأَلَةٌ لَا يَحِلُّ نِكَاحُ غَائِبَةٍ إلَّا بِتَوْكِيلٍ مِنْهَا عَلَى ذَلِكَ]

L31685 Issue 1879: It is not permissible to contract a marriage for an absent woman except through her proxy authorization for that purpose; nor is it permissible to contract a marriage for an absent man except through his proxy authorization and consent.

١٨٧٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ نِكَاحُ غَائِبَةٍ إلَّا بِتَوْكِيلٍ مِنْهَا عَلَى ذَلِكَ؛ وَلَا يَحِلُّ إنْكَاحُ غَائِبٍ إلَّا بِتَوْكِيلٍ مِنْهُ وَرِضَا.

L31686 Allah, the Exalted and Glorious, says: {No soul bears sin except upon itself} [Al-An'ām 6:164].[23]

لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

L31687 The Messenger of Allah (may Allah bless him and grant him peace) married Umm Ḥabībah, the Mother of the Believers (may Allah be pleased with her), while she was in Abyssinia and he was in Medina, by the consent of both.

وَقَدْ «تَزَوَّجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أُمَّ حَبِيبَةَ أُمَّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - وَهِيَ بِأَرْضِ الْحَبَشَةِ وَهُوَ بِالْمَدِينَةِ بِرِضَاهُمَا مَعًا» .

L31688 **A legal issue: [The case of] a man marrying a female slave owned by another, either with or without her owner's permission.**

[مَسْأَلَةٌ تَزَوَّجَ مَمْلُوكَةً لِغَيْرِهِ بِإِذْنِ السَّيِّدِ أَوْ بِغَيْرِ إذْنِهِ]

[23] **Qur'an references (L31686):** Qur'an 6:164 (Al-An'am).

L31689 1880 - Issue: If someone marries a female slave owned by another—whether with the master's permission or without it, regardless of whether she claims freedom or not—all children she bears from him are slaves belonging to her master. The master is not compelled to accept ransom for them. However, if this occurs without her master's permission, she incurs the ḥadd punishment for zinā, and it is not a marriage. The children are legally affiliated with the man if he is ignorant.

١٨٨٠ - مَسْأَلَةٌ: وَمَنْ تَزَوَّجَ مَمْلُوكَةً لِغَيْرِهِ - بِإِذْنِ السَّيِّدِ أَوْ بِغَيْرِ إِذْنِهِ - سَوَاءٌ ادَّعَتْ أَنَّهَا حُرَّةٌ أَوْ لَمْ تَدَّعِ، فَكُلُّ مَا وَلَدَتْ مِنْهُ فَهُمْ عَبِيدٌ لِسَيِّدِهَا لَا يُجْبَرُ عَلَى قَبُولِ فِدَاءٍ فِيهِمْ، إلَّا أَنَّ مَا كَانَ مِنْ ذَلِكَ بِغَيْرِ إذْنِ سَيِّدِهَا، فَعَلَيْهَا حَدُّ الزِّنَا وَلَيْسَ نِكَاحًا وَالْوَلَدُ لَاحِقُونَ بِالرَّجُلِ إنْ كَانَ جَاهِلًا.

L31690 Abu Hanifa said: If a man marries a woman believing her to be free, then discovers she is enslaved and she has borne him children, their children from her are free. He must pay the market value of those alive among them as assessed on the day of the legal ruling, and he may recover the amount he paid as this value from whoever deceived him—if someone other than the two parties deceived him—or from her if she herself deceived him. He owes her dowry to her master, but cannot reclaim this from the deceiver or from her. He bears no liability for those of them who died unless it was killing, in which case the husband receives the diyah for the deceased. If the husband is insolvent, neither he nor his children are liable for anything.

وَقَالَ أَبُو حَنِيفَةَ: مَنْ تَزَوَّجَ امْرَأَةً عَلَى أَنَّهَا حُرَّةٌ فَوُجِدَتْ مَمْلُوكَةً وَقَدْ وَلَدَتْ مِنْهُ أَوْلَادًا فَأَوْلَادُهُ مِنْهَا أَحْرَارٌ، وَعَلَيْهِ قِيمَةُ الْأَحْيَاءِ مِنْهُمْ يَوْمَ الْحُكْمِ وَيَرْجِعُ بِمَا غَرِمَ مِنْ ذَلِكَ عَلَى مَنْ غَرَّهُ، إنْ كَانَ غَرَّهُ غَيْرُهُمَا، أَوْ عَلَيْهَا إنْ كَانَتْ هِيَ غَرَّتْهُ، وَعَلَيْهِ صَدَاقُهَا لِسَيِّدِهَا، وَلَا يَرْجِعُ بِهِ عَلَى مَنْ غَرَّهُ، وَلَا عَلَيْهَا، وَلَا شَيْءَ عَلَيْهِ فِيمَنْ مَاتَ مِنْهُمْ، إلَّا أَنْ يَكُونَ قَتْلٌ فَأَخَذَ الْأَبُ دِيَتَهُ، فَإِنْ كَانَ الْأَبُ مُعْسِرًا فَلَا شَيْءَ عَلَيْهِ وَلَا عَلَى أَوْلَادِهِ.

L31691 Mālik said: They are free, and their father is obligated to pay the value of those among them who are alive on the day of the ruling. He is not liable for those who died before that. If the father dies before the ruling, the children are not liable, and they are free. In another statement, he said: They are liable for their own value, and likewise if their father is destitute.

وَقَالَ مَالِكٌ: هُمْ أَحْرَارٌ وَعَلَى أَبِيهِمْ قِيمَةُ الْأَحْيَاءِ مِنْهُمْ يَوْمَ الْحُكْمِ، وَلَا شَيْءَ عَلَيْهِ فِيمَنْ مَاتَ مِنْهُمْ قَبْلَ ذَلِكَ، فَإِنْ مَاتَ الْأَبُ قَبْلَ الْحُكْمِ فَلَا شَيْءَ عَلَى الْأَوْلَادِ وَهُمْ أَحْرَارٌ - وَقَالَ مَرَّةً أُخْرَى: عَلَيْهِمْ قِيمَةُ أَنْفُسِهِمْ، وَكَذَلِكَ إنْ كَانَ أَبُوهُمْ عَدِيمًا.

L31692 Al-Shafi'i said: They are free, and their father is responsible for their value on the day they were born, whether those among them died or survived.

وَقَالَ الشَّافِعِيُّ: هُمْ أَحْرَارٌ وَعَلَى أَبِيهِمْ قِيمَتُهُمْ يَوْمَ وُلِدُوا، سَوَاءٌ مَنْ مَاتَ مِنْهُمْ وَمَنْ عَاشَ.

L31693–31695 Abu Muhammad said: Marvel at what these statements contain—scandals! It is utterly impossible for them to exist. The children can only be free individuals or slaves; there is no third category. By my life, if they were free from birth, it is impermissible for their mother's master to take the value of a free person, nor is it permissible for their father to be compelled to pay a monetary price for their value under any circumstance.

قَالَ أَبُو مُحَمَّد: اعْجَبُوا لِمَا فِي هَذِهِ الْأَقْوَالِ مِنْ الْفَضَائِحِ لَا يُمْكِنُ أَلْبَتَّةَ أَنْ تَكُونَ الْأَوْلَادُ إلَّا أَحْرَارًا أَوْ مَمَالِيكَ، وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ، فَلَعَمْرِي لَئِنْ كَانُوا أَحْرَارًا مُذْ وُلِدُوا فَمَا يَحِلُّ لِسَيِّدِ أُمِّهِمْ أَخْذُ قِيمَةِ حُرٍّ، وَلَا يَحِلُّ أَنْ يَغْرَمَ أَبُوهُمْ فِي قِيمَتِهِمْ ثَمَنًا أَصْلًا.

L31696 It was narrated to us via Al-Bukhārī's chain: Bishr ibn Marḥūm → Yahyā ibn Sulaym → Ismāʿīl ibn Umayyah → Saʿīd ibn Abī Saʿīd al-Maqburī → Abū Hurayrah → the Prophet—may Allah's blessings and peace be upon him and his family—who said: "Three I will be their adversary on the Day of Judgment—and he mentioned among them—: a man who sold a free person and consumed its price."

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا بِشْرُ بْنُ مَرْحُومٍ نا يَحْيَى بْنُ سُلَيْمٍ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ: «ثَلَاثَةٌ أَنَا خَصْمُهُمْ يَوْمَ الْقِيَامَةِ - فَذَكَرَ فِيهِمْ -: وَرَجُلٌ بَاعَ حُرًّا فَأَكَلَ ثَمَنَهُ» .

L31697 And if they are slaves, no one may compel a person to sell his slaves without an explicit text from the Quran or the Sunnah of the Messenger of Allah (peace be upon him).

وَإِنْ كَانُوا مَمَالِيكَ فَمَا يَحِلُّ لِأَحَدٍ إجْبَارُ إنْسَانٍ عَلَى بَيْعِ مَمَالِيكِهِ بِغَيْرِ نَصٍّ مِنْ قُرْآنٍ، أَوْ سُنَّةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

L31698 Then comes another peculiar ruling—obliging him to pay the value of the living among them but not those who died, followed by his reclaiming from the deceiver the compensation he paid based on the children's value, though they do not require him to return the dowry he paid. Thereupon, they proposed a novel opinion, saying: "Because he substituted part of it?" We countered: "Yet he substituted free children! So do not compel him to return it to the deceiver on that basis."

ثُمَّ عَجَبٌ آخَرُ - وَهُوَ إلْزَامُهُ قِيمَةَ الْأَحْيَاءِ مِنْهُمْ دُونَ مَنْ مَاتَ مِنْهُمْ، ثُمَّ ارْتِجَاعُهُ بِمَا غَرِمَ عَلَى مَنْ غَرَّهُ مِنْ قِيمَةِ الْأَوْلَادِ وَلَا يَرُدُّونَهُ بِمَا غَرِمَ مِنْ الصَّدَاقِ - فَأَتَوْا بِغَرِيبَةٍ، قَالُوا: لِأَنَّهُ قَدْ اسْتَعَاضَ بَعْضَهَا؟ فَقُلْنَا: وَقَدْ اسْتَعَاضَ أَوْلَادًا أَحْرَارًا، فَلَا تَرُدُّوهُ عَلَى مَنْ غَرَّهُ بِذَلِكَ.

L31699 Abu Muhammad said: There have come reports from the predecessors regarding this matter—It was narrated to us through Hammad ibn Salama from Humaid, who said: A man sold a slave girl belonging to his father. The buyer made her his concubine, and she bore him a child. The father then came and brought the dispute to Umar ibn al-Khattab, who ruled to return her and her child to him. The buyer said: "Let me keep my child." He replied: "Let him keep his child."

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ جَاءَتْ عَنْ السَّلَفِ فِي هَذَا آثَارٌ -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ قَالَ: بَاعَ رَجُلٌ جَارِيَةً لِأَبِيهِ فَتَسَرَّاهَا الْمُشْتَرِي فَوَلَدَتْ لَهُ أَوْلَادًا فَجَاءَ أَبُوهُ فَخَاصَمَهُ إلَى عُمَرَ بْنِ الْخَطَّابِ فَرَدَّهَا وَوَلَدَهَا إلَيْهِ، فَقَالَ الْمُشْتَرِي: دَعْ لِي وَلَدِي؟ فَقَالَ: دَعْ لَهُ وَلَدَهُ.

L31700 It has been narrated to us with wording indicating that ʿUmar ruled redemption to be binding upon the seller.

وَرُوِّينَاهُ بِلَفْظٍ يَدُلُّ عَلَى أَنَّ عُمَرَ قَضَى بِالْخَلَاصِ عَلَى الْبَائِعِ.

L31701 As narrated to us by Saʿīd ibn Manṣūr, from Hushaym, who said: Humayd al-Ṭawīl informed me, from al-Ḥasan, that a man sold his father's slave girl while the father was absent. When the father returned, he refused to ratify his son's sale—and she had borne a child by the purchaser. They brought their dispute to ʿUmar ibn al-Khaṭṭāb, who ruled that the slave girl belonged to the man. He ordered the purchaser to rescind the sale through annulment,

كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ قَالَ أَنَا حُمَيْدٌ الطَّوِيلُ عَنْ الْحَسَنِ أَنَّ رَجُلًا بَاعَ جَارِيَةً لِأَبِيهِ وَأَبُوهُ غَائِبٌ، فَلَمَّا قَدِمَ أَبَى أَنْ يُجِيزَ بَيْعَ ابْنِهِ وَقَدْ وَلَدَتْ مِنْ الْمُشْتَرِي فَاخْتَصَمُوا إلَى عُمَرَ بْنِ الْخَطَّابِ؟ فَقَضَى لِلرَّجُلِ بِجَارِيَتِهِ وَأَمَرَ الْمُشْتَرِيَ أَنْ

thereby binding him. The seller's father said: "Order him to release my son!" 'Umar replied: "And you—release his son!"

يَأْخُذَ بَيْعَهُ بِالْخَلَاصِ فَلَزِمَهُ؟ فَقَالَ أَبُو الْبَائِعِ: مُرْهُ فَلْيُخَلِّ عَنْ ابْنِي؟ فَقَالَ عُمَرُ: وَأَنْتَ فَخَلِّ عَنْ ابْنِهِ.

L31702 Abu Muhammad said: This is an intercession by Umar—may Allah be pleased with him—because he had ruled in his favor concerning their ownership or decreed therefrom their emancipation.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ شَفَاعَةٌ مِنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - لِأَنَّهُ قَدْ قَضَى لَهُ بِمِلْكِهِمْ أَوْ قَضَى مِنْهُ بِالْخَلَاصِ.

L31703–31705 I, Muḥammad ibn Saʿīd ibn Nabāt, report: ʿAbbās ibn Aṣbagh narrated to us, who narrated from Muḥammad ibn Qāsim ibn Muḥammad ibn ʿAbd al-Salām al-Khushanī. Muhammad ibn al-Muthanna narrated to us: Abd al-A'la (who is Ibn Abd al-A'la al-Taghlibi) narrated to us: Sa'id (who is Ibn Abi Arubah) narrated to us from Qatadah from Khilas ibn Amr, who said: A female slave came to Tayy claiming she was free. A man among them married her, and she bore him children. Then her master came forward to claim her. Uthman ibn Affan ruled that she and her children belonged to her master, and that her husband was entitled to whatever possessions of his he could recover. He established among them the tradition or the Sunnah: "A head for two heads." Qatadah said: Al-Hasan used to say: "One head for every head."

وَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ قَاسِمِ بْنِ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا عَبْدُ الْأَعْلَى - هُوَ ابْنُ عَبْدِ الْأَعْلَى التَّغْلِبِيَّ - نَا سَعِيدٌ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو قَالَ: إِنَّ أَمَةً أَتَتْ طَيِّئًا فَزَعَمَتْ أَنَّهَا حُرَّةٌ، فَتَزَوَّجَهَا رَجُلٌ مِنْهُمْ، فَوَلَدَتْ لَهُ أَوْلَادًا، ثُمَّ إِنَّ سَيِّدَهَا ظَهَرَ عَلَيْهَا، فَقَضَى لَهَا عُثْمَانُ بْنُ عَفَّانَ أَنَّهَا وَأَوْلَادُهَا لِسَيِّدِهَا، وَأَنَّ لِزَوْجِهَا مَا أَدْرَكَ مِنْ مَتَاعِهِ، وَجَعَلَ فِيهِمْ الْمِلَّةَ أَوْ السُّنَّةَ كُلُّ رَأْسٍ بِرَأْسَيْنِ - قَالَ قَتَادَةَ: وَكَانَ الْحَسَنُ يَقُولُ: فِي كُلِّ رَأْسٍ رَأْسٌ.

L31706 From the path of Abd al-Razzaq: Ma'mar narrated from Mansur ibn al-Mu'tamir from al-Hakam ibn Utaybah that a woman and her son sold a slave girl belonging to her husband. The slave girl then bore a child for the purchaser. Later, her husband came and brought the dispute to Ali ibn Abi Talib, saying, "I did not sell nor gift her." Ali said to him, "Your son and your wife sold her." The husband replied, "If you deem that I have a rightful claim, then grant it to me." Ali said, "Take your slave girl and the child she bore," then he imprisoned the woman and her son until they settled his claim. When the husband saw this, he conceded the sale. Thus, these Imams of guidance—Umar, Uthman, and Ali—ruled that the children of the slave girl whose ownership was rightfully established are enslaved to their mother's master (the husband), and no opposing opinion to their ruling from the Companions—may Allah be pleased with them—is known regarding this.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّ امْرَأَةً بَاعَتْ هِيَ وَابْنٌ لَهَا جَارِيَةً لِزَوْجِهَا، فَوَلَدَتْ الْجَارِيَةُ لِلَّذِي ابْتَاعَهَا، ثُمَّ جَاءَ زَوْجُهَا فَخَاصَمَ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ وَقَالَ: لَمْ أَبِعْ وَلَمْ أَهَبْ، فَقَالَ لَهُ عَلِيٌّ: قَدْ بَاعَ ابْنُك وَامْرَأَتُك؟ فَقَالَ: إنْ كُنْت تَرَى لِي حَقًّا فَأَعْطِنِي؟ قَالَ عَلِيٌّ: فَخُذْ جَارِيَتَك وَابْنَهَا، ثُمَّ سَجَنَ الْمَرْأَةَ وَابْنَهَا حَتَّى تَخَلَّصَا لَهُ، فَلَمَّا رَأَى ذَلِكَ الزَّوْجُ سَلَّمَ الْبَيْعَ -: فَهَؤُلَاءِ عُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ - أَئِمَّةُ الْهُدَى - قَدْ قَضَوْا بِأَوْلَادِ الْمُسْتَحِقَّةِ رَقِيقًا لِسَيِّدِ أُمِّهِمْ، وَلَا يُعْرَفُ لَهُمْ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L31707 Except for a weak narration from ʿAlī—which we transmitted through the

chain of Ibn Abī Shaybah from Abū Bakr ibn ʿAyyāsh from Muṭarrif from al-Shaʿbī from ʿAlī—regarding a man who purchased a slave woman who bore him children, then another man produced valid proof that she belonged to him. He ruled: "She is returned to him, and he is responsible for providing for her children. The seller must compensate him according to their value, whether high or low." (Ibn ʿAyyāsh is a weak narrator.) They vilify those who oppose such rulings when it conforms to their caprices, yet they themselves oppose such rulings here.

إِلَّا رِوَايَةً سَاقِطَةً عَنْ عَلِيٍّ رُوِّيناهَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي بَكْرِ بْنِ عَيَّاشٍ عَنْ مُطَرِّفٍ عَنْ الشَّعْبِيِّ عَنْ عَلِيٍّ فِي رَجُلٍ اشْتَرَى جَارِيَةً فَوَلَدَتْ مِنْهُ أَوْلَادًا ثُمَّ أَقَامَ رَجُلٌ الْبَيِّنَةَ أَنَّهَا لَهُ، قَالَ: تُرَدُّ عَلَيْهِ، وَيَقُومُ عَلَيْهِ وَلَدُهَا فَيَغْرَمُ الَّذِي بَاعَهُ بِمَا عَزَّ وَهَانَ - وَابْنُ عَيَّاشٍ ضَعِيفٌ - وَهُمْ يُشَنِّعُونَ خِلَافَ مِثْلِ هَذَا إذَا وَافَقَ أَهْوَاءَهُمْ، وَقَدْ خَالَفُوهُمْ هَهُنَا.

L31708 As for us, we do not rely here or in any other place in any way except upon the Quran or the Sunnah of the Messenger of Allah—peace and blessings be upon him. We only cite such matters to rebuke those who invoke them when it aligns with their desire, yet disregard them when it contradicts them—and this is trifling with the Religion.

وَأَمَّا نَحْنُ فَلَا نَحْتَجُّ هَهُنَا، وَلَا فِي غَيْرِ هَذَا الْمَكَانِ جُمْلَةً إلَّا بِقُرْآنٍ، أَوْ سُنَّةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا نُورِدُ مَا نُورِدُ مِنْ ذَلِكَ تَبْكِيتًا لِمَنْ يَحْتَجُّ بِهِ إذَا وَافَقَ هَوَاهُ، وَلَا يَحْتَجُّ بِهِ إذَا خَالَفَهُ، وَهَذَا هُوَ التَّلَاعُبُ بِالدِّينِ.

L31709 And the Almighty, the Majestic said: {And those who guard their private parts} [The Believers 23:5] {Except with their spouses or those whom their right hands possess, for indeed they are not blameworthy} [The Believers 23:6] {But whoever seeks beyond that, they are the transgressors} [The Believers 23:7].[24]

وَقَالَ عَزَّ وَجَلَّ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إِلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] {فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧] .

L31710 The Messenger of Allah—may Allah's blessings and peace be upon him—said: "Indeed, your blood and your wealth are inviolable to you." The ruling of the Messenger of Allah—may Allah's blessings and peace be upon him and his family—and all who came after him has been upheld without disagreement by any Muslim, affirming that the offspring of one's property—whether from female slaves and all other animals—belongs to the owner of its mother.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَجَاءَ حُكْمُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَكُلُّ مَنْ بَعْدَهُ بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ بِأَنَّ وَلَدَ مَا يَمْلِكُهُ الْمَرْءُ مِنْ إنَاثِ الْإِمَاءِ وَسَائِرِ الْحَيَوَانِ فَإِنَّهُ مِلْكٌ لِمَالِكِ أُمِّهِ.

L31711–31712 We ask those who disagree regarding this female captive or the one sold without her owner's permission: Is she a wife to the man for whom she bore

فَنَسْأَلُ الْمُخَالِفِينَ عَنْ هَذِهِ الْغَارَّةِ أَوْ الْمُبِيعَةِ بِغَيْرِ إذْنِ مَالِكِهَا: أَهِيَ زَوْجَةٌ لِلَّذِي وَلَدَتْ لَهُ، أَوْ مِلْكُ يَمِينٍ لَهُ، أَمْ لَيْسَتْ لَهُ زَوْجَةً، وَلَا مِلْكَ يَمِينٍ، وَلَا بُدَّ لَهُ مِنْ أَحَدِهِمَا؟ .

[24] **Qur'an references (L31709):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun); Qur'an 70:31 (Al-Ma'arij).

a child, a concubine he rightfully possesses, or is she neither his wife nor his concubine—and must he necessarily have her in one of these two statuses?

L31713 They do not differ that she is neither his wife nor his female slave, and that she is solely the property of her owner who has not sold her, nor removed her from his ownership, nor permitted her to marry, and that she is property among his property. Since there is no doubt about this, it is not permissible for anyone to rule that his female slave or his slaves be removed from his possession because of offspring she bore under his ownership without a basis in the Quran or Sunnah, and this is the utmost clarity.

L31714 And all divine success is from Allah, the Exalted.

L31715 Abu Muhammad said: There have been narrations reported from the Companions—may Allah be pleased with them—and the Successors. We will mention from these, if Allah—the Almighty and Majestic—wills, what is suitable for this place.

L31716 It was narrated to us through the chain of ʻAbd al-Razzaq from Maʻmar from ʻAbdullah ibn Tawus from his father from Ibn ʻAbbas, who said: ʻUmar ibn al-Khattab said to me: "Retain from me three matters: leadership is by consultation; for every slave in an Arab delegation, another slave is substituted; and the son of a slave woman counts as two slaves."

L31717 Abu Muhammad said: This [ruling] regarding validity transmitted from Umar—may Allah be pleased with him—holds the same status as if we had heard it directly from him without distinction. By Allah, were our opponents to obtain anything resembling this, they would not hesitate and would seek Allah's guidance through *Istikhara* (ritual prayer for divine guidance) if it aligned with their *taqlid* (legal adherence), declaring: "Such a matter cannot be based on personal opinion." There is no doubt this is textually established, as they asserted regarding the statement of Aisha, Mother of the Believers—may Allah be pleased with her—about Zaid ibn Arqam's purchasing the slave and his selling him.

L31718 From the narration of Abd al-Razzaq, via Sufyan al-Thawri, from Abdullah ibn Awn, from Ghadirah al-Anbari, who said: We came to Umar ibn

فَلَا يَخْتَلِفُونَ أَنَّهَا لَيْسَتْ لَهُ زَوْجَةً وَلَا مِلْكَ يَمِينٍ، وَأَنَّهَا إنَّمَا هِيَ مِلْكُ يَمِينِ مَالِكِهَا الَّذِي لَمْ يَبِعْهَا، وَلَا أَخْرَجَهَا عَنْ مِلْكِهِ، وَلَا أَذِنَ لَهَا فِي النِّكَاحِ، وَأَنَّهَا مَالٌ مِنْ مَالِهِ فَإِذْ لَا شَكَّ فِي هَذَا، فَلَا يَجُوزُ لِأَحَدٍ الْحُكْمُ بِإِخْرَاجِ أَمَتِهِ أَوْ مَمَالِيكِهِ بِمَا وَلَدَتْ عَنْ يَدِهِ بِغَيْرِ قُرْآنٍ أَوْ سُنَّةٍ، وَهَذَا غَايَةُ الْبَيَانِ.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ جَاءَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَالتَّابِعِينَ أَشْيَاءُ نَذْكُرُ مِنْهَا إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ مَا يَصْلُحُ لِهَذَا الْمَكَانِ -:

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ لِي عُمَرُ بْنُ الْخَطَّابِ: اعْقِلْ عَنِّي ثَلَاثًا: الْإِمَارَةُ شُورَى، وَفِي وَفْدِ الْعَرَبِ مَكَانَ كُلِّ عَبْدٍ عَبْدٌ، وَفِي ابْنِ الْأَمَةِ عَبْدَانِ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا فِي الصِّحَّةِ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - بِمَنْزِلَةِ مَا لَوْ سَمِعْنَاهُ مِنْهُ وَلَا فَرْقَ - وَبِاَللَّهِ لَوْ ظَفِرُوا خُصُومُنَا بِمِثْلِ هَذَا مَا تَرَدَّدُوا، وَلَاسْتَخَارُوا اللَّهَ تَعَالَى لَوْ وَافَقَ تَقْلِيدَهُمْ أَنْ يَقُولُوا: مِثْلَ هَذَا لَا يُقَالُ بِالرَّأْيِ، فَلَا شَكَّ فِي أَنَّهُ تَوْقِيفٌ، كَمَا قَالُوا فِي قَوْلِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - فِي ابْتِيَاعِ زَيْدِ بْنِ أَرْقَمَ الْعَبْدَ وَبَيْعِهِ.

al-Khattab concerning women who had fornicated in the pre-Islamic era. He ruled that their children should be ascribed to their fathers and not enslaved—referring to female slaves who had fornicated in the pre-Islamic era—and who had borne children from illicit intercourse.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ غَاضِرَةَ الْعَنْبَرِيِّ قَالَ: أَتَيْنَا عُمَرَ بْنَ الْخَطَّابِ فِي نِسَاءٍ سَعَيْنَ فِي الْجَاهِلِيَّةِ، فَأَمَرَ أَنْ يَقُومَ أَوْلَادُهُنَّ عَلَى آبَائِهِمْ وَلَا يُسْتَرَقُّوا - يَعْنِي إِمَاءً زَنَيْنَ فِي الْجَاهِلِيَّةِ - فَوَلَدْنَ مِنْ الزِّنَا.

L31719 And through the chain of Ibn Wahb, Yunus ibn Yazid reported to me from Ibn Shihab, who said: Umar ibn al-Khattab ruled regarding the compensation for a man's child from his female slave - he assessed the compensation as one female slave for each female slave and one male slave for each male slave.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ ابْنِ شِهَابٍ قَالَ: قَضَى عُمَرُ بْنُ الْخَطَّابِ فِي فِدَاءِ وَلَدِ الرَّجُلِ مِنْ أَمَتِهِ قَوَّمَ مَكَانَ كُلِّ جَارِيَةٍ جَارِيَةً، وَمَكَانَ كُلِّ غُلَامٍ غُلَامًا.

L31720–31722 Ibn Wahb said: Mālik informed me that this ruling had been transmitted to him from ʿUmar or ʿUthmān. Through the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: ʿUmar ibn al-Khaṭṭāb ruled regarding the ransom of Arab captives with six prescribed shares. Umar ibn Abd al-Aziz decreed in that matter that four hundred dirhams are to be paid per person.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي مَالِكٌ أَنَّهُ بَلَغَهُ ذَلِكَ عَنْ عُمَرَ أَوْ عَنْ عُثْمَانَ، وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: قَضَى عُمَرُ بْنُ الْخَطَّابِ فِي فِدَاءِ سَبْيِ الْعَرَبِ بِسِتَّةِ فَرَائِضَ وَقَضَى عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي ذَلِكَ فِي كُلِّ رَأْسٍ أَرْبَعمِائَةِ دِرْهَمٍ.

L31723 And via the narration of Abd al-Razzaq from Sufyan ibn Uyaynah from Yahya ibn Yahya al-Ghassani, who said: Caliph Umar ibn Abd al-Aziz issued a decree that Caliph Umar ibn al-Khattab had ruled regarding the ransom for Arab war captives, establishing it as four hundred dirhams per person.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ يَحْيَى بْنِ يَحْيَى الْغَسَّانِيِّ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي فِدَاءِ سَبْيِ الْعَرَبِ فِي كُلِّ رَأْسٍ أَرْبَعمِائَةِ دِرْهَمٍ

L31724 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: I heard Sulaymān ibn Mūsā relate that ʿUmar ibn al-Khaṭṭāb ruled regarding the child of a female slave who claims she is free—if one of them [the owners] marries her and she bears him a child—that the fathers must provide the equivalent value of every child they father with enslaved women, assessed by span and cubit measurements. Ibn Jurayj said: I asked him, "What if his children are handsome?" He replied: "They are not liable for their equivalent in handsomeness; they are only charged according to cubit measurement."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: سَمِعْت سُلَيْمَانَ بْنَ مُوسَى يَذْكُرُ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي وَلَدِ الْأَمَةِ تُخْبِرُ أَنَّهَا حُرَّةٌ فَيَنْكِحُهَا أَحَدُهُمْ فَتَلِدُ لَهُ: أَنَّ عَلَى آبَائِهِمْ مِثْلَ كُلِّ وَلَدٍ لَهُ مِنْ الرَّقِيقِ فِي الشِّبْرِ وَالذِّرْعِ، قَالَ ابْنُ جُرَيْجٍ: فَقُلْت لَهُ: فَإِنْ كَانَ أَوْلَادُهُ حِسَانًا؟ قَالَ: لَا يُكَلَّفُ مِثْلُهُمْ فِي الْحُسْنِ، إنَّمَا يُكَلَّفُ فِي الذَّرْعِ.

L31725 From Humaam, from Ibn Mufarrij, from Ibn al-Aʿrabi, from al-Dabari, from ʿAbd al-Razzaq, from Muhammad ibn Muslim al-Ta'ifi, from Ibrahim ibn Maysarah, who said: A man married a female slave and she bore him a child.

He wrote to ʻUmar ibn ʻAbd al-ʻAziz inquiring about this matter, and ʻUmar wrote in response: He must free his child.

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ مُسْلِمٍ الطَّائِفِيِّ عَنْ إِبْرَاهِيمَ بْنِ مَيْسَرَةَ قَالَ: نَكَحَ رَجُلٌ أَمَةً فَوَلَدَتْ لَهُ، فَكَتَبَ فِي ذَلِكَ إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ؟ فَكَتَبَ: أَنْ يُفَادِيَ أَوْلَادَهُ -.

L31726 Ibn Mufarrij stated outside the book of Ibn al-A'rabi: with two red attendants, each bearing two.

قَالَ ابْنُ مُفَرِّجٍ فِي غَيْرِ كِتَابِ ابْنِ الْأَعْرَابِيِّ: بِوَصِيفَيْنِ أَحْمَرَيْنِ، كُلُّ وَاحِدٍ بِاثْنَيْنِ.

L31727 None of them consider ransom valid except either with a male slave in place of a male, a female slave in place of a female, or two male slaves in place of a male slave.

فَهَؤُلَاءِ كُلُّهُمْ لَا يَرَوْنَ الْفِدَاءَ، إِلَّا إِمَّا بِغُلَامٍ مَكَانَ الذَّكَرِ، أَوْ بِجَارِيَةٍ مَكَانَ الْأُنْثَى، وَإِمَّا بِغُلَامَيْنِ مَكَانَ غُلَامٍ ذَكَرٍ.

L31728 It has been reported to us from ʻAbd al-Razzāq, from Ibn Jurayj, from ʻAṭāʼ regarding the child of ambiguous lineage (al-ghārah): their father is presumed to have close kinship ties to them.

وَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِي وَلَدِ الْغَارَّةِ يُقَارَبُ أَبُوهُمْ فِيهِمْ.

L31729 And via the chain of ʿAbd al-Razzāq from ʿAbd Allāh ibn Kathīr from Shuʿbah from al-Mughīrah ibn Miqsam from Ibrāhīm regarding al-ghārrāh (misleading in marriage): He said, "Her dowry is incumbent upon the one who committed the deception."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عَبْدِ اللَّهِ بْنِ كَثِيرٍ عَنْ شُعْبَةَ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ فِي الْغَارَّةِ قَالَ: صَدَاقُهَا عَلَى الَّذِي غَرَّهُ.

L31730 And Ḥumām ibn Abī Sulaymān held the same opinion.

وَقَالَ حُمَامُ بْنُ أَبِي سُلَيْمَانَ مِثْلَ ذَلِكَ.

L31731 Al-Hakam ruled that redeeming her child is the responsibility of the father - and we know of no opinion from any Companion or Follower except what we have mentioned. Yet the Hanafis, Malikis, and Shafi'is, all of them, opposed this due to their invalid innovation; they did so by obligating the value that had not been established by anyone we know before Abu Hanifah. Then Malik and Al-Shafi'i followed him.

وَقَالَ الْحَكَمُ فِكَاكُ وَلَدِهَا عَلَى الْأَبِ - وَلَا نَعْلَمُ عَنْ صَاحِبٍ، وَلَا تَابِعٍ غَيْرَ مَا أَوْرَدْنَا - فَخَالَفَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، كُلَّ هَؤُلَاءِ، لِاخْتِرَاعٍ لَهُمْ فَاسِدٍ، وَبِإِيجَابِ الْقِيمَةِ الَّتِي لَمْ تَأْتِ مِنْ أَحَدٍ نَعْلَمُهُ قَبْلَ أَبِي حَنِيفَةَ، ثُمَّ اتَّبَعَهُ مَالِكٌ، وَالشَّافِعِيُّ.

L31732–31734 Indeed, two narrations have been transmitted in this regard, which we will now cite: It was narrated to us through the chain of Abd al-Razzaq from Sufyan ibn Uyaynah from Zakariyya—who is the son of Abi Za'idah—from al-Sha'bi, who said: "The Messenger of Allah—may Allah bless him and his family and grant him peace—ruled regarding the captives of the Arabs during the pre-Islamic era that the ransom for a man is eight camels, and for

وَقَدْ جَاءَ فِي ذَلِكَ أَثَرَانِ نَذْكُرُهُمَا -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - عَنِ الشَّعْبِيِّ قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي سَبْيِ الْعَرَبِ فِي الْجَاهِلِيَّةِ أَنَّ فِدَاءَ الرَّجُلِ ثَمَانٌ مِنَ الْإِبِلِ، وَأَنَّ

فِي الْأُنْثَى عَشْرًا، قَالَ سُفْيَانُ: فَأَخْبَرَنِي مُجَالِدٌ عَنْ الشَّعْبِيِّ أَنَّ ذَلِكَ شَكَا إلَى عُمَرَ بْنِ الْخَطَّابِ، فَجَعَلَ فِدَاءَ الرَّجُلِ أَرْبَعَمِائَةِ دِرْهَمٍ» .

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ قَالَ: «قَضَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي فِدَاءِ رَقِيقِ الْعَرَبِ مِنْ أَنْفُسِهِمْ فِي الرَّجُلِ إذَا سُبِيَ فِي الْجَاهِلِيَّةِ بِثَمَانٍ مِنْ الْإِبِلِ، وَفِي ابْنِ الْأَمَةِ بِوَصِيفَيْنِ وَصَيْفَيْنِ، لِكُلِّ إنْسَانٍ مِنْهُمْ - ذَكَرٍ وَأُنْثَى -. وَقَضَى فِي سَبِيَّةِ الْجَاهِلِيَّةِ بِعَشْرٍ مِنْ الْإِبِلِ، وَفِي وَلَدِهَا مِنْ الْعَبْدِ بِوَصِيفَيْنِ يَفْدِيهِ مَوَالِي أُمِّهِ - وَهُمْ عُصْبَتُهَا - لَهُمْ مِيرَاثُهَا وَمِيرَاثُهُ، مَا لَمْ يَعْتِقْ أَبُوهُ. وَقَضَى فِي سَبْيِ الْإِسْلَامِ بِسِتَّةٍ مِنْ الْإِبِلِ فِي الرَّجُلِ وَالْمَرْأَةِ وَالصَّبِيِّ - فَذَلِكَ فِدَاءُ الْعَرَبِ» .

فَإِنْ تَعَلَّقُوا بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي بَكْرٍ عَيَّاشٍ قَالَ: أَبُو حُصَيْنٍ عَنْ الشَّعْبِيِّ لَمَّا اُسْتُخْلِفَ عُمَرُ بْنُ الْخَطَّابِ قَالَ: لَيْسَ عَلَى عَرَبِيٍّ مِلْكٌ، وَلَسْنَا بِنَازِعِينَ مِنْ يَدِ أَحَدٍ شَيْئًا أَسْلَمَ عَلَيْهِ، وَلَا كُنَّا نُقَوِّمُهُمْ الْمِلَّةَ؟ قُلْنَا: أَنْتُمْ أَوَّلُ مُخَالِفٍ لِهَذَا، فَتُوجِبُونَ الْمِلْكَ لِلْعِلْجِ عَلَى أَوْلَادِ الْعَرَبِيِّ، وَالْقُرَشِيِّ، إذَا تَزَوَّجَ أَمَتَهُ بِإِذْنِهِ، وَلَا يُمْكِنُكُمْ دَعْوَى إجْمَاعٍ هَهُنَا، لِأَنَّ سَعِيدَ بْنَ الْمُسَيِّبِ وَالْأَوْزَاعِيَّ، وَسُفْيَانَ الثَّوْرِيَّ، وَأَبَا ثَوْرٍ، وَإِسْحَاقَ بْنَ رَاهْوَيْهِ، كُلَّهُمْ يَقُولُ عَنْ عُمَرَ: فِي الْعَبْدِ يَتَزَوَّجُ أَمَةَ رَجُلٍ بِإِذْنِ سَيِّدِهَا: أَنَّ أَوْلَادَهُ مِنْهَا أَحْرَارٌ لَا رِقَّ عَلَيْهِمْ، وَلَا عَلَى أَبِيهِمْ فِدَاؤُهُمْ -.

وَهُوَ قَوْلُ الشَّافِعِيِّ بِالْعِرَاقِ.

a female, ten [camels]." Sufyan said: "Mujalid informed me from al-Shaʿbi that this matter was brought to Umar ibn al-Khattab's attention, and he set the ransom for a man at four hundred dirham."

L31735 From the chain of ʿAbd al-Razzāq, from Maʿmar, from a man, from ʿIkrimah—the freed slave of Ibn ʿAbbās—who said: "The Prophet—peace and blessings of Allah be upon him and his family—ruled regarding the redemption of Arab captives among their own people: for a man captured in the Age of Ignorance, eight camels; for the son of a female slave, two male and two female slaves in total, applicable to both males and females among them. He ruled that a female captive from the Age of Ignorance is redeemed with ten camels, and for her child from a slave, two male slaves. His mother's patrilineal heirs—who are her agnates—redeem him. They inherit her estate and his estate as long as his father remains unfreed. He ruled that captives taken after the advent of Islam are redeemed with six camels for a man, woman, or child—and that is the redemption ruling for Arabs."

L31736 If they rely on what we narrated through the chain of ʿAbd al-Razzāq from Abū Bakr ʿAyyāsh, who said: Abū Ḥuṣayn reported from al-Shaʿbī that when ʿUmar ibn al-Khaṭṭāb was appointed caliph, he declared: "No tax is imposed on an Arab, nor do we seize anything from anyone's possession that they held upon embracing Islam, nor were we imposing the religious practice on them?" We responded: "You are the first ones to violate this principle, for you grant ownership to the non-Arab (pejoratively) over the children of the Arab or Qurayshī man if a slave marries his maidservant with her master's permission. You cannot claim consensus here, as Saʿīd ibn al-Musayyab, al-Awzāʿī, Sufyān al-Thawrī, Abū Thawr, and Isḥāq ibn Rāhwayh all relate from ʿUmar regarding a slave who marries a man's maidservant with her master's permission: 'Their children from her are free—enslavement does not apply to them, nor is their father liable for their ransom.'"

L31737 And this is the opinion of Al-Shāfiʿī during his time in Iraq.

L31738 Abu Muhammad said: Indeed, whoever relies on rejecting the established Sunnah through the narration transmitted by a shaykh from Banī Kināna from ʿUmar: "The sale concerns a transaction or an option."

قَالَ أَبُو مُحَمَّدٍ: إِنَّ مَنْ - تَعَلَّقَ فِي رَدِّ السُّنَّةِ الثَّابِتَةِ - بِرِوَايَةِ شَيْخٍ مِنْ بَنِي كِنَانَةَ عَنْ عُمَرَ: الْبَيْعُ عَنْ صَفْقَةٍ أَوْ خِيَارٍ.

وَبِرِوَايَةِ مُجَالِدٍ عَنِ الشَّعْبِيِّ لَا يُؤَمَّنُ أَحَدٌ بَعْدِي جَالِسًا.

ثُمَّ خَالَفَ رِوَايَةَ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ زَكَرِيَّا عَنِ الشَّعْبِيِّ الَّتِي ذَكَرْنَا، وَرِوَايَةَ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنِ ابْنِ عَبَّاسٍ عَنْ عُمَرَ - وَمُرْسَلَ عِكْرِمَةَ -: لِمَنْحُوسِ الْحَظِّ مِنَ الصَّوَابِ - وَنَعُوذُ بِاللَّهِ مِنَ الضَّلَالِ.

وَمِنْ طَرَائِفِ مَا يَأْتُونَ بِهِ: احْتِجَاجُهُمْ فِي هَذِهِ الْمَسْأَلَةِ: بِأَنَّهُ إِنَّمَا أَعْتَقَ " وَلَدَ الْغَارَّةِ، وَالْمُسْتَحَقَّةِ " لِأَنَّ أَبَاهُمْ عَلَى ذَلِكَ دَخَلَ؟ فَقُلْنَا: إِنَّ هَذَا لَعَجَبٌ فَكَانَ مَاذَا؟ وَفِي أَيِّ كِتَابِ اللَّهِ عَزَّ وَجَلَّ وَجَدْتُمْ؟ أَمْ فِي أَيِّ سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنْ يَخْرُجَ مِلْكُ فَرْجٍ، وَمَا وَلَدَ، عَنْ مِلْكِ مَالِكِهِمْ قَهْرًا مِنْ أَجْلِ أَنَّ الْوَاطِئَ لَهُ بِغَيْرِ حَقٍّ عَلَى ذَلِكَ دَخَلَ، فَحَسْبُكَ بِهَذَا الْقَوْلِ هُجْنَةً - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

L31739 And according to the narration of Mujālid from Al-Shaʿbī: After me, no one should lead the prayer while sitting.

L31740–31742 Then he contradicted the narration of Sufyān ibn ʿUyaynah from Zakariyyā from al-Shaʿbī that we mentioned, and the narration of Ibn Ṭāwūs. From his father, from Ibn Abbas, from Umar—and the mursal report from Ikrimah—: "For those cursed with perpetual ill luck, estranged from sound judgment—and we seek refuge in Allah from misguidance."

L31743 Among the curious arguments they advance in this matter is their claim that "the child of the violated woman and the one entitled to emancipation" is freed solely because their father engaged in that act. We responded: How astonishing! What kind of argument is this? In which Book of Allah the Almighty have you found this, or in which Sunnah of the Messenger of Allah—peace and blessings of Allah be upon him and his family—is it established that ownership of intimate rights and offspring is forcibly severed from their owner through compulsion merely because the one who engaged in unlawful intercourse partook in that act? This statement alone suffices to expose its weakness—and in Allah the Exalted we seek strength.

[مَسْأَلَةٌ لَا يَحِلُّ لِلْمَرْأَةِ التَّبَرُّجُ وَلَا التَّزَيُّنُ لِلْخُرُوجِ]

It is a juristic ruling that a woman may not engage in indecent display of beauty nor adorn herself for the purpose of going out.

١٨٨١ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْمَرْأَةِ التَّبَرُّجُ وَلَا التَّزَيُّنُ لِلْخُرُوجِ إِذَا خَرَجْنَ لِحَاجَةٍ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَلا تَبَرَّجْنَ تَبَرُّجَ الْجَاهِلِيَّةِ الأُولَى} [الأحزاب: ٣٣] .

وَقَدْ ذَكَرْنَا فِي " كِتَابِ الصَّلَاةِ " أَمْرَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِذَا خَرَجَ النِّسَاءُ إِلَى الصَّلَاةِ أَنْ يَخْرُجْنَ تَفِلَاتٍ.

L31745 1881. Issue: It is not lawful for women to display adornments or beautify themselves when going out for a necessity. Allah, the Almighty, said: "And do not display your adornments as was done in the pre-Islamic era of ignorance" [Al-Ahzab 33:33].[25]

L31746 We have mentioned in the "Book of Prayer" the command of the Prophet—

[25] **Qur'an references (L31745):** Qur'an 33:33 (Al-Ahzab).

peace be upon him and his family—that when women go out to prayer, they should do so without wearing perfume.

L31747 **It is an obligation for a man to have intercourse with his wife who is lawfully married to him.**

L31748 Issue 1882: It is obligatory upon a man to have intercourse with his wife, and the minimum required is once during each purity period—if he is capable of doing so—otherwise he is sinful before Allah the Exalted.

L31749 The evidence for that is the statement of Allah, the Exalted and Majestic: {When they have become pure [from menstruation], then go to them from where Allah has commanded you} [Al-Baqarah: 222].[26]

L31750 We were traveling with ʻUmar ibn al-Khattab at al-Raff of Jamdan when a young woman from Khuzāʻah approached him and said: "O Commander of the Faithful, I am a woman who desires what women desire—children and other desires—yet my husband is an old man. By Allah, we remained together until we saw him decline into a feeble old man." Her husband said to ʻUmar: "O Commander of the Faithful, I treat her well and do not neglect her." ʻUmar asked him: "Do you observe her waiting period of purity?" He replied: "Yes." ʻUmar then said to her: "Go with your husband, for by Allah, he indeed possesses what suffices"—or he said: "what enriches a Muslim woman."

L31751 Abu Muhammad said: One who obstinately refuses is compelled to do so through admonishment, for he has committed a reprehensible act.

L31752–31753 From the transmission of al-Bazzār: Muḥammad ibn Bishshār Bundār narrated to us, Jaʻfar ibn ʿAwn narrated to us, Abū al-ʻUmayṣ (who is ʿUtbah ibn ʿAbd Allāh ibn ʿUtbah ibn Masʿūd) narrated to us from ʿAwn ibn Abī Juḥayfah from his father: "Salman al-Fārisī said to Abū al-Dardāʾ: ʾYour body has a right over you, and your family has a right over you. Give every right-holder

[26] **Qur'an references (L31749):** Qur'an 2:222 (Al-Baqarah).

[مَسْأَلَةٌ فَرْضٌ عَلَى الرَّجُلِ أَنْ يُجَامِعَ امْرَأَتَهُ الَّتِي هِيَ زَوْجَتُهُ]

١٨٨٢ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى الرَّجُلِ أَنْ يُجَامِعَ امْرَأَتَهُ الَّتِي هِيَ زَوْجَتُهُ وَأَدْنَى ذَلِكَ مَرَّةٌ فِي كُلِّ طُهْرٍ - إنْ قَدَرَ عَلَى ذَلِكَ - وَإِلَّا فَهُوَ عَاصٍ لِلَّهِ تَعَالَى.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {فَإِذَا تَطَهَّرْنَ فَأْتُوهُنَّ مِنْ حَيْثُ أَمَرَكُمُ اللَّهُ} [البقرة: ٢٢٢] .

وَرُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَزِيدُ بْنُ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ يَعْقُوبَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ عَبْدِ اللَّهِ بْنِ عَامِرِ بْنِ رَبِيعَةَ قَالَ: إنَّا لَنَسِيرُ مَعَ عُمَرَ بْنِ الْخَطَّابِ بِالرَّفِّ مِنْ جَمْدَانَ إذْ عَرَضَتْ لَهُ امْرَأَةٌ مِنْ خُزَاعَةَ شَابَّةٌ فَقَالَتْ: يَا أَمِيرَ الْمُؤْمِنِينَ إنِّي امْرَأَةٌ أُحِبُّ مَا تُحِبُّ النِّسَاءُ مِنْ الْوَلَدِ، وَغَيْرِهِ، وَلِي زَوْجٌ شَيْخٌ، وَوَاَللَّهِ مَا بَرِحْنَا حَتَّى نَظَرْنَا إلَيْهِ يَهْوِي شَيْخٌ كَبِيرٌ، فَقَالَ لِعُمَرَ: يَا أَمِيرَ الْمُؤْمِنِينَ إنِّي لَمُحْسِنٌ إلَيْهَا وَمَا آلُوهَا؟ فَقَالَ لَهُ عُمَرُ: أَتُقِيمُ لَهَا طُهْرَهَا؟ فَقَالَ: نَعَمْ، فَقَالَ لَهَا عُمَرُ: انْطَلِقِي مَعَ زَوْجِك، وَاَللَّهِ إنَّ فِيهِ لَمَا يَجْزِي، أَوْ قَالَ: يُغْنِي الْمَرْأَةَ الْمُسْلِمَةَ.

قَالَ أَبُو مُحَمَّدٍ: وَيُجْبَرُ عَلَى ذَلِكَ مَنْ أَبَى بِالْأَدَبِ، لِأَنَّهُ أَتَى مُنْكَرًا مِنْ الْعَمَلِ؟

وَمِنْ طَرِيقِ الْبَزَّارِ نا مُحَمَّدُ بْنُ بَشَّارٍ بُنْدَارٌ نا جَعْفَرُ بْنُ عَوْنٍ نا أَبُو الْعُمَيْسِ - هُوَ عُتْبَةُ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ - عَنْ عَوْنِ بْنِ أَبِي جُحَيْفَةَ عَنْ أَبِيهِ: «أَنَّ سَلْمَانَ الْفَارِسِيَّ قَالَ لِأَبِي الدَّرْدَاءِ إنْ لِجَسَدِكَ عَلَيْكَ حَقًّا، وَإِنَّ لِأَهْلِكَ عَلَيْك حَقًّا، أَعْطِ كُلَّ ذِي حَقٍّ حَقَّهُ: صُمْ، وَأَفْطِرْ، وَقُمْ، وَنَمْ، وَأْتِ أَهْلَكَ فَأَخْبَرَ أَبُو الدَّرْدَاءِ بِذَلِكَ رَسُولَ اللَّهِ -

their right: fast, break your fast, stand (in prayer), sleep, and attend to your family.'" Abū al-Dardāʾ informed the Messenger of Allah—peace and blessings be upon him—of that, and the Messenger of Allah—peace and blessings be upon him—replied to him with the same words as Salmān's statement.

L31754 **It is an obligation upon both the female slave and the free woman not to prevent their respective master or husband from relations whenever summoned by him.**

L31755 Issue 1883: It is incumbent upon both the female slave and the free woman not to prevent the master [in the case of the female slave] or the husband [in the case of the free woman] from intercourse whenever he summons either of them, unless the summoned one is menstruating, suffering illness that would be aggravated by intercourse, or observing an obligatory fast. If she refuses without valid excuse, she becomes accursed. We have received through Muslim's transmission: Ibn Abī ʿUmar narrated to us; Marwān - that is Ibn Muʿāwiyah al-Fazārī - narrated to us from Yazīd ibn Kaysān from Abū Ḥāzim from Abū Hurayrah, who said: The Messenger of God - may God's blessings and peace be upon him and his household - said: "By Him in whose hand lies my soul! No man calls his wife to her bed while she refuses him, except that the One in the heavens becomes wrathful toward her until He is pleased with her."[27]

L31756 Humaam reported from Abbas ibn Asbagh, who reported from Muhammad ibn Abdul-Malik ibn Ayman, who reported from Bakr ibn Hammad, who reported from Musaddad, who reported from Yahya—Ibn Saʿid al-Qattan—who reported from Shuʿbah, from Qatadah, from Zurarah ibn Awfa, from Abu Hurairah (may Allah be pleased with him), that the Prophet (peace be upon him and his family) said: "If a woman spends the night abandoning her husband or his bed, the angels curse her until she returns."

L31757 And through the chain of Ahmad ibn Shu'ayb: Hannad ibn al-Sarri narrated to us from Mulazim ibn 'Amr, who narrated from 'Abdullah ibn Badr, from Qays ibn Talq, from his father Talq ibn 'Ali, who said: I heard the Messenger

[27] **Hadith references (L31755):** Sahih Muslim 1436c.

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلَ قَوْلِ سَلْمَانَ» .

[مَسْأَلَةٌ فَرْضُ الْأَمَةِ وَالْحُرَّةِ أَنْ لَا يَمْنَعَا السَّيِّدَ وَالزَّوْجَ الْجِمَاعَ مَتَى دَعَاهُمَا]

١٨٨٣ - مَسْأَلَةٌ: وَفَرْضُ الْأَمَةِ وَالْحُرَّةِ أَنْ لَا يَمْنَعَا السَّيِّدَ وَالزَّوْجَ الْجِمَاعَ مَتَى دَعَاهُمَا، مَا لَمْ تَكُنْ الْمَدْعُوَّةُ حَائِضًا، أَوْ مَرِيضَةً تَتَأَذَّى بِالْجِمَاعِ، أَوْ صَائِمَةَ فَرْضٍ، فَإِنْ امْتَنَعَتْ لِغَيْرِ عُذْرٍ، فَهِيَ مَلْعُونَةٌ. رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا ابْنُ أَبِي عُمَرَ نا مَرْوَانُ - هُوَ ابْنُ مُعَاوِيَةَ الْفَزَارِيّ - عَنْ يَزِيدَ بْنِ كَيْسَانَ عَنْ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «وَالَّذِي نَفْسِي بِيَدِهِ مَا مِنْ رَجُلٍ يَدْعُو امْرَأَتَهُ إلَى فِرَاشِهَا فَتَأْبَى عَلَيْهِ إلَّا كَانَ الَّذِي فِي السَّمَاءِ سَاخِطًا عَلَيْهَا حَتَّى يَرْضَى عَنْهَا» .

نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا بَكْرُ بْنُ حَمَّادٍ نا مُسَدَّدٌ نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - نا شُعْبَةُ عَنْ قَتَادَةَ عَنْ زُرَارَةَ بْنِ أَوْفَى عَنْ أَبِي هُرَيْرَةَ - رَضِيَ اللَّهُ عَنْهُ - عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «إذَا بَاتَتْ الْمَرْأَةُ مُهَاجِرَةً إلَى زَوْجِهَا أَوْ فِرَاشِ زَوْجِهَا لَعَنَتْهَا الْمَلَائِكَةُ حَتَّى تَرْجِعَ» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا هَنَّادُ بْنُ السَّرِيِّ عَنْ مُلَازِمِ بْنِ عَمْرٍو نا عَبْدُ اللَّهِ بْنُ بَدْرٍ عَنْ قَيْسِ بْنِ طَلْقٍ عَنْ أَبِيهِ طَلْقِ بْنِ عَلِيٍّ قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ: «إذَا دَعَا الرَّجُلُ زَوْجَتَهُ لِحَاجَتِهِ فَلْتَأْتِهِ وَإِنْ كَانَتْ عَلَى التَّنُّورِ» .

of Allah - peace and blessings of Allah be upon him and his family - say: "When a man calls his wife for his need, she must come to him even if she is at the tannur (clay oven)."[28]

An issue of justice between the wives.

Issue 1884: Justice between wives is obligatory, and the majority of that obligation lies in the division of nights. It is not permissible to favor a free woman over an enslaved married woman or a Muslim woman over a *Dhimmi* woman in the division of nights. If she disobeys him, it becomes lawful for him to abandon her until she complies, and to strike her in a manner that causes no pain, wounds, broken bones, or festering injuries. If he strikes her without fault, she may claim retaliation (qisas) from him.

It is not permissible for him to spend the night at his female slave's place, nor at his *umm walad*'s [mother of his child] place, nor in another's house except with an excuse.

The evidence for that is the statement of Allah the Exalted: "Marry those that please you of women, two, three, or four. But if you fear you cannot be just, then marry only one or those whom your right hands possess" [An-Nisa': 3].[29]

"And the saying of Allah, the Mighty and Majestic: 'You will never be able to do full justice between women, even if you strive earnestly. So do not incline wholly [to one], leaving the other as if suspended' [An-Nisa: 129]."[30]

And He, the Exalted, said: "As for those women from whom you fear ill-conduct, admonish them, forsake them in bed, and strike them. If they obey you, then do not seek a way against them." [Quran 4:34].[31]

Allah, the Mighty and Majestic, did not permit forsaking her in bed ex-

[28] **Hadith references (L31757):** Riyad as-Salihin 284.
[29] **Qur'an references (L31762):** Qur'an 4:3 (An-Nisa).
[30] **Qur'an references (L31763):** Qur'an 4:129 (An-Nisa).
[31] **Qur'an references (L31764):** Qur'an 4:34 (An-Nisa).

[مَسْأَلَةٌ الْعَدْلُ بَيْنَ الزَّوْجَاتِ]

١٨٨٤ - مَسْأَلَةٌ: وَالْعَدْلُ بَيْنَ الزَّوْجَاتِ فَرْضٌ، وَأَكْثَرُ ذَلِكَ فِي قِسْمَةِ اللَّيَالِي - وَلَا يَجُوزُ أَنْ يُفَضِّلَ فِي قِسْمَةِ اللَّيَالِي حُرَّةً عَلَى أَمَةٍ مُتَزَوِّجَةٍ، وَلَا مُسْلِمَةً عَلَى ذِمِّيَّةٍ، فَإِنْ عَصَتْهُ حَلَّ لَهُ هِجْرَانُهَا حَتَّى تُطِيعَهُ، وَضَرْبُهَا بِمَا لَمْ يُؤْلِمْ، وَلَا يَجْرَحْ، وَلَا يَكْسِرْ، وَلَا يَعْفِنْ - فَإِنْ ضَرَبَهَا بِغَيْرِ ذَنْبٍ أُقِيدَتْ مِنْهُ.

وَلَا يَجُوزُ لَهُ الْمَبِيتُ عِنْدَ أَمَتِهِ، وَلَا عِنْدَ أُمِّ وَلَدِهِ، وَلَا فِي دَارِ غَيْرِهِ إِلَّا بِعُذْرٍ.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى: {فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٣] .

وَقَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلا تَمِيلُوا كُلَّ الْمَيْلِ فَتَذَرُوهَا كَالْمُعَلَّقَةِ} [النساء: ١٢٩] .

وَقَالَ تَعَالَى: {وَاللاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلا تَبْغُوا عَلَيْهِنَّ سَبِيلا} [النساء: ٣٤] .

فَلَمْ يُبِحْ اللَّهُ عَزَّ وَجَلَّ هِجْرَانَهَا فِي الْمَضْجَعِ إِلَّا إِذَا خَافَ نُشُوزَهَا، وَإِنَّمَا أَبَاحَ مَضْرِبًا، وَلَمْ يُبِحْ الْجِرَاحَ، وَلَا كَسْرَ الْعِظَامِ، وَلَا تَعْفِينَ اللَّحْمِ.

cept when anticipating her rebellion. He only permitted beating but did not permit wounding, breaking bones, or causing the flesh to rot.

L31766 And He, the Exalted, said: “The sacred months are a time for just recompense.” [Al-Baqarah: 194][32]

وَقَالَ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] .

L31767 It is established that if he transgresses against her without right, then qisas is incumbent upon him.

فَصَحَّ أَنَّهُ إِنْ اعْتَدَى عَلَيْهَا بِغَيْرِ حَقٍّ فَالْقِصَاصُ عَلَيْهِ.

L31768 It was narrated to us through the chain of Ahmad ibn Shu’ayb → ’Amr ibn ’Ali → ’Abd al-Rahman (Ibn Mahdi) → Hammam (Ibn Yahya) → Qatadah → al-Nadr ibn Anas ibn Malik → Bashir ibn Nahik → Abu Hurayrah → the Prophet (peace be upon him and his family), who said: “Whoever has two wives and inclines toward one over the other will come on the Day of Resurrection with one half of his body tilted.”[33]

وَرُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نا عَبْدُ الرَّحْمَنِ - هُوَ ابْنُ مَهْدِيٍّ - نا هَمَّامٌ - هُوَ ابْنُ يَحْيَى - عَنْ قَتَادَةَ عَنْ النَّضْرِ بْنِ أَنَسِ بْنِ مَالِكٍ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «مَنْ كَانَ لَهُ امْرَأَتَانِ يَمِيلُ لِإِحْدَاهُمَا عَلَى الْأُخْرَى جَاءَ يَوْمَ الْقِيَامَةِ أَحَدُ شِقَّيْهِ مَائِلٌ» .

L31769 He—peace be upon him—did not distinguish between a free married woman and a married enslaved woman, nor a Muslim woman from a *dhimmi* woman. Almighty God commanded those who fear they might fail to maintain justice to restrict themselves to one wife or restrict themselves to what their right hands possess.

فَلَمْ يَخُصَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - حُرَّةً مُتَزَوِّجَةً، مِنْ أَمَةٍ مُتَزَوِّجَةٍ، وَلَا مُسْلِمَةً مِنْ ذِمِّيَّةٍ - وَأَمَرَ عَزَّ وَجَلَّ مَنْ خَافَ أَنْ لَا يَعْدِلَ أَنْ يَقْتَصِرَ عَلَى وَاحِدَةٍ مِنْ الزَّوْجَاتِ، أَوْ أَنْ يَقْتَصِرَ عَلَى مَا مَلَكَتْ يَمِينُهُ.

L31770 Thus, it is established that he is not obliged to treat his female slaves with equal fairness.

فَصَحَّ أَنَّهُ لَيْسَ عَلَيْهِ أَنْ يَعْدِلَ بَيْنَ إمَائِهِ.

L31771 And everything we have said is the opinion of Abū Sulaymān and our companions.

وَكُلُّ مَا قُلْنَا فَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L31772 Ibrahim al-Nakha’i said: No preference is given to Muslim wives over Kitabi women in the division of time, and this is the opinion of Malik, al-Layth, Abu Hanifa, and al-Shafi’i.

وَقَالَ إبْرَاهِيمُ النَّخَعِيُّ: لَا فَضْلَ لِلزَّوْجَةِ الْمُسْلِمَةِ عَلَى الْكِتَابِيَّةِ فِي الْقِسْمَةِ، وَهُوَ قَوْلُ مَالِكٍ، وَاللَّيْثِ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ.

L31773 Abu Hanifah said: Whoever has a free wife and an enslaved wife, the free wife is due two nights, and the enslaved wife one night.

وَقَالَ أَبُو حَنِيفَةَ: مَنْ كَانَتْ لَهُ زَوْجَةٌ حُرَّةٌ وَزَوْجَةٌ مَمْلُوكَةٌ فَلِلْحُرَّةِ لَيْلَتَانِ وَلِلْمَمْلُوكَةِ لَيْلَةٌ.

L31774 It has been narrated to us from Ali, Masruq, Muhammad ibn Ali ibn al-

وَرُوِّينَا ذَلِكَ عَنْ عَلِيٍّ، وَمَسْرُوقٍ، وَمُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ، وَالشَّعْبِيِّ، وَالْحَسَنِ، وَعَطَاءٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَعُثْمَانَ الْبَتِّيِّ، وَالشَّافِعِيِّ.

[32] **Qur’an references (L31766):** Qur’an 2:194 (Al-Baqarah).
[33] **Hadith references (L31768):** Sunan an-Nasai 3942.

Husayn, al-Shaʿbi, al-Hasan, Ata', Saʿid ibn Jubayr, Saʿid ibn al-Musayyab, Uthman al-Batti, and al-Shafiʿi.

وَقَالَ مَالِكٌ، وَاللَّيْثُ، وَأَبُو سُلَيْمَانَ: الْقِسْمَةُ لَهُمَا سَوَاءٌ.

L31775–31776 Mālik, al-Layth, and Abū Sulaymān said: The apportionment is equal for the two of them.

وَاحْتَجَّ مَنْ رَأَى لِلْحُرَّةِ يَوْمَيْنِ وَلِلْأَمَةِ يَوْمًا بِأَنَّهُ رُوِيَ فِي ذَلِكَ حَدِيثٌ مُرْسَلٌ، وَأَنَّهُ عَنْ عَلِيٍّ - وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَأَنَّهُ قَوْلُ جُمْهُورِ السَّلَفِ.

L31777 Those who held the view that a free woman observes two days and a slave woman one day argued by citing three evidences: a mursal hadith reported on this matter, that it is the opinion of ʿAlī - with no known opposition to him from the Companions (may Allah be pleased with them) - and that it is the view of the majority of the early scholars.

وَقَالُوا: لَمَّا كَانَتْ عِدَّةُ الْأَمَةِ وَحْدَهَا نِصْفَ عِدَّةِ الْحُرَّةِ وَحْدَهَا وَجَبَ أَنْ تَكُونَ قِسْمَتُهَا نِصْفَ قِسْمَةِ الْحُرَّةِ.

L31778 They said: Since the waiting period of a female slave acting alone is half that of a free woman acting alone, it is obligatory that her apportionment be half the apportionment of the free woman.

قَالَ أَبُو مُحَمَّدٍ: الْمُرْسَلُ لَا حُجَّةَ لَهُمْ فِيهِ، وَعَهِدْنَا بِهِمْ يَرُدُّونَ السُّنَنَ الثَّابِتَةَ فِي الْمَسْحِ عَلَى الْعِمَامَةِ وَمَا يَحْرُمُ مِنْ الرَّضَاعَاتِ بِأَنَّهَا زَائِدَةٌ عَلَى مَا فِي الْقُرْآنِ وَتَرَكُوا هَهُنَا عُمُومَ أَمْرِ اللَّهِ تَعَالَى بِالْعَدْلِ بَيْنَ النِّسَاءِ عُمُومًا بِخَبَرٍ سَاقِطٍ مُرْسَلٍ، مُخَالِفٍ لِعُمُومِ الْقُرْآنِ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L31779 Abu Muhammad said: The mursal report provides no valid evidence for them in this matter. We have observed them rejecting established Sunnahs—such as wiping over the turban and rulings on what becomes prohibited through breastfeeding—by claiming these exceed the Quran's stipulations. Yet here, they disregard the generality of Allah the Exalted's command to maintain equity among wives in its comprehensive scope, relying instead on a defective, mursal narration that contradicts the Quran's general principles. Authoritative evidence lies with none except the Messenger of Allah—peace and blessings of Allah be upon him.

وَقَدْ خَالَفُوا طَائِفَةً مِنْ الصَّحَابَةِ مِنْهُمْ عَلِيٌّ فِيمَا لَا يُعْرَفُ لَهُمْ فِيهِ مُخَالِفٌ مِنْهُمْ فِي الْقَضَاءِ بِوَلَدِ الْأَمَةِ الْمُسْتَحَقَّةِ لِسَيِّدِ أُمِّهِ، أَوْ فِدَائِهِ بِرَأْسٍ أَوْ رَأْسَيْنِ، وَإِلْزَامِ الْبَائِعِ الْخَلَاصَ.

L31780 They differed from a group of the Companions—including ʿAlī—in matters where no dissenting opinion from among them is recorded, such as the ruling regarding the child of an enslaved woman lawfully owned by her master, his ransom for one or two captives, and compelling the seller to effect redemption.

وَخَالَفُوهُمْ وَجُمْهُورُ السَّلَفِ فِي ذَلِكَ أَيْضًا.

L31781 They opposed them, and the majority of the Salaf in that matter also opposed them.

L31782 As for the analogy between division and the waiting period, it is invalid because all analogy is invalid. Their counter-argument through analogy is more misleading than their original analogy—which claims that since they

are equal in maintenance, they must be equal in division—. And success comes from Allah, the Exalted; He suffices us, and He is the best trustee.

وَأَمَّا قِيَاسُ الْقِسْمَةِ عَلَى الْعِدَّةِ فَبَاطِلٌ، لِأَنَّ الْقِيَاسَ كُلَّهُ بَاطِلٌ، وَتَعَارُضُهُمْ بِقِيَاسٍ أَدْخَلَ فِي الْإِيهَامِ مِنْ قِيَاسِهِمْ، وَهُوَ أَنَّهُ لَمَّا كَانَتَا فِي النَّفَقَةِ سَوَاءً وَجَبَ أَنْ يَكُونَا فِي الْقِسْمَةِ سَوَاءً -. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ، وَهُوَ حَسْبُنَا وَنِعْمَ الْوَكِيلُ.

[أَحْكَامُ الْإِيلَاءِ] [مَسْأَلَةٌ حَلَفَ بِاللَّهِ عَزَّ وَجَلَّ أَنْ لَا يَطَأَ امْرَأَتَهُ]

L31783–31784 **The Rulings of *Ila* A legal case wherein a man swears by Allah, the Exalted and Majestic, that he not have sexual intercourse with his wife.**

١٨٨٥ - مَسْأَلَةٌ: وَمَنْ حَلَفَ بِاللَّهِ عَزَّ وَجَلَّ، أَوْ بِاسْمٍ مِنْ أَسْمَائِهِ تَعَالَى: أَنْ لَا يَطَأَ امْرَأَتَهُ، أَوْ أَنْ يَسُوءَهَا، أَوْ أَنْ لَا يَجْمَعَهُ، وَإِيَّاهَا فِرَاشٌ، أَوْ بَيْتٌ، سَوَاءً قَالَ ذَلِكَ فِي غَضَبٍ أَوْ فِي رِضًا لِصَلَاحِ رَضِيعِهَا، أَوْ لِغَيْرِ ذَلِكَ - اسْتَثْنَى فِي يَمِينِهِ أَوْ لَمْ يَسْتَثْنِ - فَسَوَاءٌ وَقَّتَ وَقْتًا - سَاعَةً فَأَكْثَرَ إلَى جَمِيعِ عُمْرِهِ - أَوْ لَمْ يُوَقِّتْ: الْحُكْمُ فِي ذَلِكَ وَاحِدٌ.

L31785 1885 - Issue: Whoever swears by Allah, the Almighty and Majestic, or by one of His exalted names, that he will not have intercourse with his wife, harm her, or that he will not share a bed or house with her—whether he uttered this in anger or contentment, for the benefit of her nursing child or otherwise, whether he included an exception in his oath or not, whether he specified a time (at least an hour or longer, up to his entire lifetime) or did not specify a time—the ruling in all these cases is the same.

وَهُوَ أَنَّ الْحَاكِمَ يَلْزَمُهُ أَنْ يُوقِفَهُ، وَيَأْمُرَهُ بِوَطْئِهَا، وَيُؤَجِّلَ لَهُ فِي ذَلِكَ أَرْبَعَةَ أَشْهُرٍ مِنْ حِينِ يَحْلِفُ، سَوَاءً طَلَبَتْ الْمَرْأَةُ ذَلِكَ أَوْ لَمْ تَطْلُبْ، رَضِيَتْ ذَلِكَ أَوْ لَمْ تَرْضَ.

L31786 The judge must oblige him to suspend [the oath], order him to have intercourse with her, and postpone for him [the matter] by four months from the time he swears the oath - regardless of whether the woman requested this or not, or consented to it or not.

فَإِنْ فَاءَ فِي دَاخِلِ الْأَرْبَعَةِ الْأَشْهُرِ فَلَا سَبِيلَ عَلَيْهِ، وَإِنْ أَبَى لَمْ يَعْتَرِضْ حَتَّى تَنْقَضِيَ الْأَرْبَعَةُ الْأَشْهُرُ، فَإِذَا تَمَّتْ أَجْبَرَهُ الْحَاكِمُ بِالسَّوْطِ عَلَى أَنْ يَفِيءَ فَيُجَامِعَ أَوْ يُطَلِّقَ، حَتَّى يَفْعَلَ أَحَدَهُمَا، كَمَا أَمَرَهُ اللَّهُ عَزَّ وَجَلَّ أَوْ يَمُوتَ قَتِيلَ الْحَقِّ إلَى مَقْتِ اللَّهِ تَعَالَى، إلَّا أَنْ يَكُونَ عَاجِزًا عَنْ الْجِمَاعِ لَا يَقْدِرُ عَلَيْهِ أَصْلًا، فَلَا يَجُوزُ تَكْلِيفُهُ مَا لَا يُطِيقُ، لَكِنْ يُكَلَّفُ أَنْ يَفِيءَ بِلِسَانِهِ، وَيُحْسِنَ الصُّحْبَةَ، وَالْمَبِيتَ عِنْدَهَا، أَوْ يُطَلِّقَ، وَلَا بُدَّ مِنْ أَحَدِهِمَا.

L31787 If he returns within the four months, no legal claim can be made against him. If he refuses, no action is taken until the four months have elapsed. Upon their completion, the judge compels him by lashing to either return and have intercourse or divorce - obliging him to act upon one of these as Allah Almighty has commanded, or to face lawful execution until he incurs Allah's wrath - unless he is physically incapable of intercourse, being wholly unable to perform it. In such a case, he cannot be burdened with what is beyond his capacity. Instead, he must either verbally declare his return, treat her kindly, and spend the night with her, or divorce. He must choose one of the two.

L31788 It is not permissible for the judge to pronounce divorce on his behalf. If the

judge does so, a divorce pronounced by another judge is not binding upon him, and it is the same whether he included an exception in his oath or not.

وَلَا يَجُوزُ أَنْ يُطَلِّقَ عَلَيْهِ الْحَاكِمُ، فَإِنْ فَعَلَ لَمْ يَلْزَمْهُ طَلَاقُ غَيْرِهِ، وَسَوَاءٌ اسْتَثْنَى فِي يَمِينِهِ أَوْ لَمْ يَسْتَثْنِ.

L31789 And whoever swears to abstain from a woman he is not married to then marries her, the ruling of *ilā'* does not apply to him. However, he is compelled to consummate the marriage, as we have previously stated.

وَمَنْ آلَى مِنْ أَجْنَبِيَّةٍ ثُمَّ تَزَوَّجَهَا لَمْ يَلْزَمْهُ حُكْمُ الْإِيلَاءِ، لَكِنْ يُجْبَرُ عَلَى وَطْئِهَا كَمَا قَدَّمْنَا قَبْلُ.

L31790 And whoever swears in that matter by divorce, manumission, charity, walking, or anything else is not a mu'li (one who has sworn ila'), and he incurs disciplinary action, for he has sworn by that which is not permissible to swear by.

وَمَنْ حَلَفَ فِي ذَلِكَ بِطَلَاقٍ، أَوْ عِتْقٍ، أَوْ صَدَقَةٍ، أَوْ مَشْيٍ، أَوْ غَيْرِ ذَلِكَ فَلَيْسَ مُؤْلِيًا، وَعَلَيْهِ الْأَدَبُ، لِأَنَّهُ حَلَفَ بِمَا لَا يَجُوزُ الْحَلِفُ بِهِ.

L31791–31792 The proof of that is the statement of Allah, the Mighty and Majestic: "For those who take an oath to abstain from their wives, there is a waiting period of four months. If they retract [their oath], then indeed Allah is Forgiving, Merciful" [Al-Baqarah 2:226]. "And if they resolve on divorce, then indeed Allah is All-Hearing, All-Knowing" [Al-Baqarah 2:227].[34]

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {لِلَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ فَإِنْ فَاءُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ} [البقرة: ٢٢٦] {وَإِنْ عَزَمُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ} [البقرة: ٢٢٧] .

L31793 This verse entails all that we have stated, because *īlā'* (an oath of abstention) is a type of oath (*yamīn*), and it has been authentically established from the Messenger of Allah (peace be upon him): "Whoever takes an oath must swear only by Allah."

فَهَذِهِ الْآيَةُ تَقْتَضِي كُلَّ مَا قُلْنَا، لِأَنَّ الْأَلِيَّةَ هِيَ الْيَمِينُ، وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ كَانَ حَالِفًا فَلَا يَحْلِفْ إِلَّا بِاللَّهِ» .

L31794 Thus, it is established that whoever swears by other than Allah, the Exalted, has not sworn by what Allah, the Mighty and Majestic, commanded him, and thus his oath is invalid. The Messenger of Allah (peace be upon him) said: "Whoever performs a deed not in accordance with our command, it is rejected."[35]

فَصَحَّ أَنَّ مَنْ حَلَفَ بِغَيْرِ اللَّهِ تَعَالَى فَلَمْ يَحْلِفْ بِمَا أَمَرَهُ اللَّهُ عَزَّ وَجَلَّ بِهِ، فَلَيْسَ حَالِفًا، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L31795 Allah the Exalted did not single out in the aforementioned judgment one who stipulated a time from one who did not, nor one who made an exception from one who did not, nor one whose wife demanded it of him from one

وَلَمْ يَخُصَّ اللَّهُ تَعَالَى بِالْحُكْمِ الْمَذْكُورِ مَنْ وَقَّتَ مِمَّنْ لَمْ يُوَقِّتْ، وَلَا مَنْ اسْتَثْنَى مِمَّنْ لَمْ يَسْتَثْنِ، وَلَا مَنْ طَلَبَتْهُ امْرَأَتُهُ مِمَّنْ لَمْ تَطْلُبْهُ، وَهُوَ حَقُّ اللَّهِ عَزَّ وَجَلَّ فِي عَبْدِهِ لَا لَهَا.

[34] **Qur'an references (L31792):** Qur'an 2:226 (Al-Baqarah); Qur'an 2:227 (Al-Baqarah).

[35] **Hadith references (L31794):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

whose wife did not. For this is a right of Allah Almighty over His servant, not a right for her.

L31796 The Messenger of Allah—may Allah bless him and his family and grant him peace—said, "Whoever among you witnesses wrongdoing, let him change it with his hand." As for one who refuses to retract [the revocation] or proceed with divorce after the four-month waiting period (ʿiddah)—being one who openly perpetuates wrongdoing—it becomes obligatory to change this through direct action so long as he publicly manifests the wrongdoing. No counteraction may be taken against him before the conclusion of the four months, for this constitutes the explicit text of the Quranic verse.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ» وَالْآبِي مِنْ الْفَيْئَةِ أَوْ الطَّلَاقِ بَعْدَ الْأَرْبَعَةِ الْأَشْهُرِ: مُعْلِنٌ بِالْمُنْكَرِ، فَوَاجِبٌ تَغْيِيرُهُ بِالْيَدِ مَا دَامَ مُظْهِرًا لِلْمُنْكَرِ - وَلَا يَجُوزُ أَنْ يُعَارَضَ بِشَيْءٍ قَبْلَ انْقِضَاءِ الْأَرْبَعَةِ الْأَشْهُرِ، لِأَنَّهُ نَصُّ الْآيَةِ.

L31797 It has been authentically established that the Messenger of Allah—peace be upon him and his family—took an oath to abstain from his wives for a month, so he abstained from all of them for a month, then resumed relations with them. Thus, whoever does likewise incurs no liability if he returns to them before the completion of four months.

وَقَدْ صَحَّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - آلَى مِنْ نِسَائِهِ شَهْرًا فَهَجَرَهُنَّ كُلَّهُنَّ شَهْرًا ثُمَّ رَاجَعَهُنَّ» ، فَمَنْ فَعَلَ كَذَلِكَ فَلَا شَيْءَ عَلَيْهِ إذَا فَاءَ قَبْلَ انْقِضَاءِ الْأَرْبَعَةِ الْأَشْهُرِ -.

L31798 The one who is unable to engage in intercourse—if he swears an īlā' oath to abstain from his wife—must perform expiation according to his capacity, because Allah the Exalted did not confine this ruling solely to intercourse while excluding other obligations. He fulfills the expiation through verbal declaration, and he must resume sharing her bed and maintain honorable companionship with her.

وَالْعَاجِزُ عَنْ الْجِمَاعِ إذَا حَلَفَ مُؤْلٍ مِنْ امْرَأَتِهِ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَخُصَّ بِذَلِكَ جِمَاعًا مِنْ غَيْرِهِ فَوَاجِبٌ أَنْ يُكَلَّفَ مِنْ الْفَيْئَةِ مَا يُطِيقُ، وَهُوَ مُطِيقٌ عَلَى الْفَيْئَةِ بِلِسَانِهِ، وَمُرَاجَعَتُهُ مَضْجَعَهَا، وَحُسْنُ صُحْبَتِهَا.

L31799 And He, the Exalted, said: "No soul earns [sin] except upon itself, nor does any bearer of burdens bear another's burden" (An'am 6:164).[36]

وَقَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

L31800 And the Mighty and Majestic said: {And if they resolve to divorce, then indeed Allah is All-Hearing, All-Knowing} [Al-Baqarah 2:227].[37]

وَقَالَ عَزَّ وَجَلَّ: {وَإِنْ عَزَمُوا الطَّلاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ} [البقرة: ٢٢٧] .

L31801 The Almighty and Majestic has prohibited all things except His decree of divorce (al-ṭalāq al-azīmah).

فَمَنَعَ عَزَّ وَجَلَّ مِنْ كُلِّ شَيْءٍ إلَّا عَزِيمَتَهُ الطَّلَاقَ.

L31802–31803 Thus, it is established that the judge's divorce ruling against him is an excess

فَصَحَّ أَنَّ طَلَاقَ الْحَاكِمِ عَلَيْهِ فُضُولٌ، وَبَاطِلٌ، وَتَعَدٍّ لِحُدُودِ اللَّهِ عَزَّ وَجَلَّ.

[36] **Qur'an references (L31799):** Qur'an 6:164 (Al-An'am).
[37] **Qur'an references (L31800):** Qur'an 2:227 (Al-Baqarah).

of authority, void, and a transgression of the boundaries of Allah, the Exalted and Glorious.

وَمِنْ الْبَاطِلِ أَنْ يُطَلِّقَ عَلَيْهِ غَيْرُهُ، أَوْ أَنْ يَفِيءَ عَنْهُ غَيْرُهُ، وَإِنَّمَا أَوْجَبَ اللَّهُ عَزَّ وَجَلَّ الْحُكْمَ الْمَذْكُورَ عَلَى مَنْ آلَى مِنْ امْرَأَتِهِ، لَا عَلَى مَنْ آلَى مِمَّنْ لَيْسَتْ مِنْ نِسَائِهِ، وَإِذَا لَمْ يَلْزَمْ الْحُكْمُ حِينَ كَوْنِ مَا يُوجِبُهُ لَمْ يَلْزَمْهُ بَعْدَ ذَلِكَ، إلَّا بِنَصٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L31804 It is invalid for another to divorce on his behalf or for another to rescind [his oath] by resuming relations on his behalf. Indeed, Allah, the Almighty, has obligated the mentioned ruling only upon one who swears to abstain from his wife, not upon one who swears regarding someone not among his wives. If the ruling is not binding when the cause necessitating it exists, it is not binding afterward except by explicit textual evidence—and with Allah alone is success, the Exalted.

فَإِنْ طَلَّقَهَا ثُمَّ رَاجَعَهَا فَقَدْ سَقَطَ عَنْهُ حُكْمُ الْإِيلَاءِ، لِأَنَّهُ قَدْ فَعَلَ مَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ، وَمَنْ فَعَلَ مَا أَمَرَهُ اللَّهُ تَعَالَى فَقَدْ أَحْسَنَ، قَالَ اللَّهُ تَعَالَى: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] .

L31805 If he divorces her and then takes her back, the ruling of *ilā'* no longer applies to him, for he has fulfilled what Allah, the Mighty and Majestic, commanded. Whoever acts upon what Allah, the Exalted, has enjoined has acted righteously. Allah, the Exalted, said: "There is no blame upon the doers of good." [At-Tawbah: 91].[38]

وَفِي كَثِيرٍ مِمَّا ذَكَرْنَا خِلَافٌ، قَدْ رَأَى قَوْمٌ أَنَّ الْهِجْرَةَ بِلَا يَمِينٍ لَهُ حُكْمُ الْإِيلَاءِ.

L31806 In much of what we have mentioned, there are differences of opinion; some hold that abandonment without an oath is subject to the ruling of *ila'*.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ جَعْفَرِ بْنِ بُرْقَانَ عَنْ يَزِيدَ بْنِ الْأَصَمِّ: أَنَّ ابْنَ عَبَّاسٍ قَالَ لَهُ: مَا فَعَلَتْ أَهْلُكَ عَهِدْتُ بِهَا لَسُنَّةٌ سَيِّئَةُ الْخُلُقِ؟ قَالَ: أَجَلْ وَاَللَّهِ لَقَدْ خَرَجَتْ وَمَا أُكَلِّمُهَا، فَقَالَ لَهُ ابْنُ عَبَّاسٍ: عَجِّلْ السَّيْرَ، أَدْرِكْهَا قَبْلَ أَنْ تَمْضِيَ أَرْبَعَةُ أَشْهُرٍ، فَإِنْ مَضَتْ فَهِيَ تَطْلِيقَةٌ.

L31807 It was narrated to us through ʿAbd al-Razzāq from Maʿmar, from Jaʿfar ibn Burqān, from Yazīd ibn al-Aṣamm that Ibn ʿAbbās said to him: "What has your wife done? From what I know of her, she has a habitual flaw in character." The man replied: "Yes, by Allah, she has departed and I no longer converse with her." Ibn ʿAbbās then instructed him: "Expedite your travel: reach her before four months elapse. Should this period expire, it shall count as one divorce."

وَصَحَّ عَنْ ابْنِ عَبَّاسٍ مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ سَعِيدَ بْنَ جُبَيْرٍ يُحَدِّثُ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: الْإِيلَاءُ هُوَ أَنْ يَحْلِفَ أَنْ لَا يَأْتِيَهَا أَبَدًا.

L31808 It has been authentically reported from Ibn Abbas—as we have narrated through the chain of Abd al-Razzaq from Ibn Jurayj from Abu al-Zubayr, who heard Sa'id ibn Jubayr relate from Ibn Abbas—that he said: "Ila is when a man swears to abstain indefinitely from having sexual relations with his wife."

وَصَحَّ عَنْ عَطَاءٍ أَنَّ الْإِيلَاءَ إنَّمَا هُوَ أَنْ يَحْلِفَ بِاَللَّهِ عَلَى الْجِمَاعِ أَرْبَعَةَ أَشْهُرٍ فَأَكْثَرَ، فَإِنْ لَمْ يَحْلِفْ فَلَيْسَ إيلَاءً. وَمِمَّنْ قَالَ مِثْلَ قَوْلِنَا بَعْضُ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ

L31809 It is authentically reported from ʿAṭāʾ that īlāʾ is specifically when a man swears by Allah to abstain from intercourse for four months or more; if he

[38] **Qur'an references (L31805):** Qur'an 9:91 (At-Tawbah).

الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ: إِذَا حَلَفَ بِاللَّهِ لَيَغِيظَنَّهَا، أَوْ لَيَسُؤَنَّهَا، أَوْ لَيَحْرِمَنَّهَا، أَوْ لَا يَجْمَعُ رَأْسَهُ وَرَأْسَهَا: فَهُوَ إِيلَاءٌ.

does not swear, it is not īlāʾ. Among those who held the same view as ours are some of the Salaf—as transmitted through ʿAbd al-Razzāq's chain from Sufyān al-Thawrī from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakhaʿī, who said: If he swears by Allah that he will indeed provoke her, harm her, deprive her, or not share a bed with her, then it is īlāʾ.

L31810 وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ خُصَيْفٍ عَنْ الشَّعْبِيِّ قَالَ: كُلُّ يَمِينٍ حَالَتْ بَيْنَ الرَّجُلِ وَبَيْنَ امْرَأَتِهِ فَهِيَ إِيلَاءٌ.

And via the chain of ʿAbd al-Razzāq from Khuṣayf from al-Shaʿbī, who said: Every oath that prevents a man from his wife is *ilāʾ*.

L31811 وَمِمَّنْ قَالَ بِقَوْلِنَا فِي الْأَيْمَانِ بَعْضُ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ عَبْدِ الْخَالِقِ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ فِي رَجُلٍ قَالَ لِامْرَأَتِهِ: أَنْتِ عَلَيَّ كَظَهْرِ أُمِّي أَنْ قَرُبْتُكِ؟ قَالَ لَيْسَ بِشَيْءٍ.

Among those of the Salaf who held our opinion regarding oaths is [the following] - as reported to us through Shuʾbah's narration from ʾAbd al-Khāliq from Ḥammād ibn Abī Sulaymān concerning a man who said to his wife: "You are to me like my mother's back if I have intercourse with you?" He ruled: "It is of no effect."

L31812–31813 وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِي رَجُلٍ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إِنْ مَسِسْتُكِ أَرْبَعَةَ أَشْهُرٍ؟ قَالَ عَطَاءٌ: لَيْسَ ذَلِكَ بِإِيلَاءٍ، لَيْسَ الطَّلَاقُ بِيَمِينٍ فَيَكُونُ إِيلَاءً.

And via the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ regarding a man who said to his wife: "You are divorced if I touch you during four months." ʿAṭāʾ said: "This is not *ila'*, for divorce is not an oath [of abstention], and thus it becomes *ila'*."

L31814 وَخَالَفَ فِي ذَلِكَ آخَرُونَ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ أَبِي الشَّعْثَاءِ قَالَ: إِنْ قَالَ: أَنْتِ عَلَيَّ حَرَامٌ، أَوْ أَنْتِ كَأُمِّي، أَوْ أَنْتِ طَالِقٌ إِنْ قَرُبْتُكِ: فَهُوَ إِيلَاءٌ.

Others held a differing opinion in this matter, as we have been narrated through the chain of ʿAbd al-Razzāq from Maʿmar from Qatādah from Abū al-Shaʿthāʾ, who said: If he says, "You are unlawful to me," or "You are like my mother," or "You are divorced if I come near you"—then it constitutes *ilāʾ*.

L31815 وَقَالَ أَبُو حَنِيفَةَ: إِنْ حَلَفَ بِطَلَاقٍ أَوْ عَتَاقٍ أَوْ حَجٍّ أَوْ عُمْرَةٍ أَوْ صِيَامٍ فَهُوَ إِيلَاءٌ، فَإِنْ حَلَفَ بِنَذْرِ صَلَاةٍ، أَوْ بِأَنْ يَطُوفَ أُسْبُوعًا، أَوْ بِأَنْ يُسَبِّحَ مِائَةَ مَرَّةٍ فَلَيْسَ مُؤْلِيًا.

Abū Ḥanīfah said: If one swears by divorce, manumission, *ḥajj*, *ʿumrah*, or fasting, it constitutes *īlāʾ*. But if he swears by a vow of prayer, by performing seven circumambulations, or by uttering glorifications a hundred times, he is not considered to have made *īlāʾ*.

L31816 وَهَذَا كَلَامٌ يُغْنِي سَمَاعُهُ عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهِ؟ وَمِمَّنْ قَالَ مِثْلَ قَوْلِنَا فِي الْمُدَّةِ طَائِفَةٌ -: كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ

This statement—does hearing it not render a contrived rebuttal unnecessary? Among those who held an opinion similar to ours regarding the prescribed period is a group, as narrated by Muḥammad ibn Saʿīd ibn Nabāt; Aḥmad ibn ʿAbd al-Baṣīr; Qāsim ibn Aṣbagh; Muḥammad ibn ʿAbd al-Salām

عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ كَثِيرٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ وَبَرَةَ فِيمَنْ حَلَفَ أَنْ لَا يَقْرَبَ امْرَأَتَهُ عَشْرَةَ أَيَّامٍ، فَلَمْ يَقْرَبْهَا حَتَّى مَضَتْ ثَلَاثَةُ أَشْهُرٍ؟ فَأَتَوْا فِي ذَلِكَ ابْنَ مَسْعُودٍ، فَجَعَلَهُ إِيلَاءً.

al-Khushanī; Muḥammad ibn al-Muthannā; Muḥammad ibn Kathīr from Sufyān al-Thawrī; Layth ibn Abī Sulaym from Wabarah—regarding a man who swore not to approach his wife for ten days, yet refrained from approaching her until three months had passed. They brought this matter to Ibn Masʿūd, and he ruled it to be īlāʾ.

L31817 قَالَ سُفْيَانُ، وَقَالَ ابْنُ أَبِي لَيْلَى، وَغَيْرُهُ: إِذَا آلَى يَوْمًا أَوْ لَيْلَةً فَهُوَ إِيلَاءٌ.

L31817 Sufyan, Ibn Abi Layla, and others said: If he swears to abstain from marital relations for a day or a night, then it constitutes Ilā'.

L31818 وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: أَنَّهُ سُئِلَ عَمَّنْ حَلَفَ أَنْ لَا يَقْرَبَ امْرَأَتَهُ شَهْرًا، فَمَكَثَ عَنْهَا خَمْسَةَ أَشْهُرٍ؟ فَقَالَ عَطَاءٌ: ذَلِكَ إِيلَاءٌ - سَمَّى أَجَلًا أَوْ لَمْ يُسَمِّهِ - فَإِذَا مَضَتْ أَرْبَعَةُ أَشْهُرٍ - كَمَا قَالَ عَزَّ وَجَلَّ - فَهِيَ وَاحِدَةٌ - يُرِيدُ هِيَ تَطْلِيقَةٌ.

L31818 From the chain of ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAṭāʾ: He was asked about a man who swore not to approach his wife for a month, then abstained from her for five months. ʿAṭāʾ replied: "That is Ila' (whether he specified a term or not). When four months have passed, as Allah, the Almighty and Majestic, states in the Quran, it counts as one—meaning it constitutes a single divorce (ṭalāq) pronouncement."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِيمَنْ حَلَفَ أَنْ لَا يَقْرَبَ امْرَأَتَهُ عَشَرَةَ أَيَّامٍ فَتَرَكَهَا أَرْبَعَةَ أَشْهُرٍ؟ فَهُوَ إِيلَاءٌ.

L31819 Through the chain of ʿAbd al-Razzāq from Maʿmar, from Qatādah regarding one who swore not to have sexual relations with his wife for ten days but then abandoned her for four months: Is this considered īlāʾ? This constitutes īlāʾ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يُونُسُ بْنُ عُبَيْدٍ عَنِ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ كَانَ يَقُولُ: إِذَا قَالَ الرَّجُلُ لِامْرَأَتِهِ: وَاللَّهِ لَا أَقْرَبُهَا اللَّيْلَةَ، فَتَرَكَهَا أَرْبَعَةَ أَشْهُرٍ؟ فَإِنْ كَانَ تَرَكَهَا لِيَمِينِهِ فَهُوَ إِيلَاءٌ.

L31820 From the narration of Saʿīd ibn Manṣūr: Hushaym reported to us; Yunus ibn ʿUbayd reported to us from al-Ḥasan al-Baṣrī that he would say: If a man says to his wife, "By Allah, I will not approach her tonight," and then withholds conjugal relations for four months? If his abstention was due to his oath, then it constitutes *īlāʾ* (a legally binding oath of abstention from conjugal relations).

وَرُوِّينَاهُ أَيْضًا عَنْ إِبْرَاهِيمَ النَّخَعِيِّ.

L31821 It has also been narrated to us from Ibrāhīm al-Nakhaʿī.

وَبِهِ يَقُولُ إِسْحَاقُ بْنُ إِبْرَاهِيمَ بْنِ رَاهْوَيْهِ.

L31822 And by it says Isḥāq ibn Ibrāhīm ibn Rāhawayhi.

وَصَحَّ خِلَافُ هَذَا عَنِ ابْنِ عَبَّاسٍ كَمَا ذَكَرْنَا، وَعَنْ طَاوُسٍ: إِذَا حَلَفَ دُونَ أَرْبَعَةِ أَشْهُرٍ؟ فَلَيْسَ إِيلَاءً - وَهُوَ قَوْلُ سَعِيدِ بْنِ جُبَيْرٍ، وَأَحَدُ قَوْلَيْ عَطَاءٍ.

L31823–31824 A valid juristic disagreement regarding this is transmitted from Ibn Abbas as previously mentioned, and from Tāwus: "If one swears to abstain for less than four months, is it not considered *ilāʾ*?" It is not considered *ilāʾ* - this being the opinion of Saʿīd ibn Jubayr and one of the two positions held by ʿAṭāʾ.

L31825 This is the view of Sufyan al-Thawri, Abu Hanifah, and the companions of Abu Hanifah.

وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ.

L31826 Malik, al-Shafi'i, Abu Thawr, Ahmad ibn Hanbal, and their companions said: A husband is not considered to have sworn an oath of abstention (*īlāʾ*) if he vows not to approach her [conjugally] for four months or less. Only the husband who swears to abstain for more than four months is regarded as having taken an oath of abstention.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَصْحَابُهُمْ: لَا يَكُونُ مُؤْلِيًا حَلَفَ أَنْ لَا يَقْرَبَهَا أَرْبَعَةَ أَشْهُرٍ فَأَقَلَّ، إِنَّمَا الْمُؤْلِي مَنْ حَلَفَ عَلَى أَكْثَرَ مِنْ أَرْبَعَةِ أَشْهُرٍ.

L31827 Abu Muhammad said: Both opinions contradict the text of the verse. Allah the Exalted mentioned the oath of abstention concerning their wives without a specified cessation. Then He decreed a specified cessation and a waiting period of four months. After the four months have elapsed, He mandated either retracting the oath or divorce.

قَالَ أَبُو مُحَمَّدٍ: كِلَا الْقَوْلَيْنِ خِلَافٌ لِنَصِّ الْآيَةِ، إِنَّمَا ذَكَرَ اللَّهُ تَعَالَى الْإِيلَاءَ مِنْ نِسَائِهِمْ دُونَ تَوْقِيفٍ، ثُمَّ حَكَمَ بِالتَّوْقِيفِ وَالتَّرَبُّصِ أَرْبَعَةَ أَشْهُرٍ، ثُمَّ حَكَمَ بَعْدَ انْقِضَاءِ الْأَرْبَعَةِ الْأَشْهُرِ بِإِلْزَامِ الْفَيْئَةِ أَوْ الطَّلَاقِ.

L31828 As for the one who says, "There is no ilā' except that which occurs in anger," that has been narrated to us from Ali.

وَأَمَّا مَنْ قَالَ: لَا إِيلَاءَ إِلَّا مَا كَانَ فِي غَضَبٍ: فَرُوِّينَا ذَلِكَ عَنْ عَلِيٍّ.

L31829 As narrated via Saʿīd ibn Manṣūr → Hushaym → Dāwūd ibn Abī Hind → Simāk ibn Ḥarb → Abū ʿAṭiyyah al-Asadī, who said: I said to ʿAlī ibn Abī Ṭālib, "I married my brother's wife while she was breastfeeding my nephew. I said: 'She is divorced if I approach her until she weans him.'" ʿAlī replied: "You only intended to set things right for yourself and your nephew. You are not bound by *ilā'*, for *ilā'* applies only to oaths sworn in anger."

كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ أَبِي عَطِيَّةَ الْأَسَدِيِّ قَالَ: قُلْت لِعَلِيِّ بْنِ أَبِي طَالِبٍ: تَزَوَّجْتُ امْرَأَةَ أَخِي وَهِيَ تُرْضِعُ ابْنَ أَخِي فَقُلْت: هِيَ طَالِقٌ إنْ قَرِبْتهَا حَتَّى تَفْطِمَهُ؟ قَالَ عَلِيٌّ: إنَّمَا أَرَدْت الْإِصْلَاحَ لَك وَلِابْنِ أَخِيك، فَلَا إيلَاءَ عَلَيْك، إنَّمَا الْإِيلَاءُ مَا كَانَ فِي الْغَضَبِ.

L31830 Abu Muhammad said: Yunus ibn 'Ubayd narrated to us from al-Hasan that he used to say the same thing. Hushaym said: Abu Waki' narrated to us from Abu Fazārah from Ibn 'Abbas, who said: The oath of continence was prescribed in anger.

قَالَ أَبُو مُحَمَّدٍ: وَنَا يُونُسُ بْنُ عُبَيْدٍ عَنْ الْحَسَنِ أَنَّهُ كَانَ يَقُولُ مِثْلَ ذَلِكَ - قَالَ هُشَيْمٌ: وَنَا أَبُو وَكِيعٍ عَنْ أَبِي فَزَارَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: إنَّمَا جُعِلَ الْإِيلَاءُ فِي الْغَضَبِ.

L31831 Among those who did not observe this were Ibrāhīm al-Nakhaʿī and Ibn Sīrīn. It was narrated to us via the chain of Saʿīd ibn Manṣūr: Hushaym reported to us, al-Qaʿqaʿ ibn Yazīd al-Ḍabbī reported to us that he said to Muḥammad ibn Sīrīn regarding the statement of those who assert, "Is īlā' (oath of abstention) valid only when sworn in anger?" He replied: "I do not comprehend what they mean. Allāh, the Most Blessed and Exalted, states:

وَمِمَّنْ لَمْ يُرَاعِ ذَلِكَ: إبْرَاهِيمُ النَّخَعِيُّ، وَابْنُ سِيرِينَ -: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الْقَعْقَاعُ بْنُ يَزِيدَ الضَّبِّيُّ أَنَّهُ قَالَ لِمُحَمَّدِ بْنِ سِيرِينَ فِي قَوْلِ مَنْ يَقُولُ: إنَّمَا الْإِيلَاءُ فِي الْغَضَبِ؟ فَقَالَ: لَا أَدْرِي مَا يَقُولُونَ، قَالَ اللَّهُ تَبَارَكَ وَتَعَالَى: ﴿لِلَّذِينَ يُؤْلُونَ

مِنْ نِسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ فَإِنْ فَاءُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ} [البقرة: ٢٢٦] {وَإِنْ عَزَمُوا الطَّلاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ} [البقرة: ٢٢٧]

For those who swear oaths of abstention from their wives, there is a waiting period of four months. If they resume [relations], then truly Allāh is All-Forgiving, Most Merciful (al-Baqarah 2:226). *And if they resolve upon divorce, then Allāh is All-Hearing, All-Knowing* (al-Baqarah 2:227)."[39]

L31832 قَالَ أَبُو مُحَمَّدٍ صَدَقَ أَبُو بَكْرٍ - رَحِمَهُ اللَّهُ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

Abū Muḥammad said: Abū Bakr was correct—may Allah have mercy on him—and this is the position of Abū Ḥanīfah, Mālik, al-Shāfiʿī, Abū Sulaymān, and their companions.

L31833–31835 وَأَمَّا الِاخْتِلَافُ فِي هَلْ يَقَعُ طَلَاقٌ بِمُضِيِّ الْأَرْبَعَةِ الْأَشْهُرِ أَمْ لَا يَقَعُ بِذَلِكَ طَلَاقٌ؟ فَالَّذِينَ قَالُوا بِمُضِيِّ الْأَرْبَعَةِ الْأَشْهُرِ يَقَعُ الطَّلَاقُ -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ مَعْمَرٍ عَنْ عَطَاءٍ الْخُرَاسَانِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ، وَزَيْدَ بْنَ ثَابِتٍ، قَالَا فِي الْإِيلَاءِ: إِذَا مَضَتْ أَرْبَعَةُ أَشْهُرٍ فَهِيَ تَطْلِيقَةٌ، وَهِيَ أَمْلَكُ بِنَفْسِهَا.

As for the disagreement concerning whether divorce takes effect upon the completion of four months or does not occur thereby: those who maintained that it takes effect— And just as it was transmitted to us through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: Abū Bakr ibn Abī Shaybah narrated to us; ʿAbdullāh ibn al-Mubārak narrated to us from Maʿmar, from ʿAṭāʾ al-Khurāsānī, from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf, that ʿUthmān ibn ʿAffān and Zayd ibn Thābit said regarding the oath of abstention (ilāʾ): When four months have elapsed, then it is a divorce, and she gains full control over herself.

L31836 وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: إِذَا آلَى مِنْهَا فَمَضَتْ الْأَرْبَعَةُ الْأَشْهُرُ فَقَدْ بَانَتْ مِنْهُ، وَلَا يَخْطُبُهَا غَيْرُهُ.

Through the chain of Hammad ibn Salamah, from Qatadah, from Khilas ibn Amr, that Ali ibn Abi Talib said: If a man takes an oath of abstinence (Ilaʾ) from his wife and the four months elapse, she is divorced from him, and no other may seek her hand in marriage during her waiting period.

L31837 وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا أَبُو مُعَاوِيَةَ - هُوَ الضَّرِيرُ - عَنْ الْأَعْمَشِ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ، قَالَا جَمِيعًا إِذَا آلَى فَلَمْ يَفِئْ حَتَّى تَمْضِيَ الْأَرْبَعَةُ الْأَشْهُرُ فَهِيَ تَطْلِيقَةٌ بَائِنَةٌ - قَالَ إِسْمَاعِيلُ: وَنَا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ قُلْت لِسَعِيدِ بْنِ جُبَيْرٍ أَكَانَ ابْنُ عَبَّاسٍ يَقُولُ فِي الْإِيلَاءِ إِذَا مَضَتْ أَرْبَعَةُ أَشْهُرٍ فَهِيَ تَطْلِيقَةٌ بَائِنَةٌ وَتَتَزَوَّجُ وَلَا عِدَّةَ عَلَيْهَا؟ قَالَ: نَعَمْ.

From the chain of Ismāʿīl ibn Isḥāq: Abū Bakr ibn Abī Shaybah narrated to us, Abū Muʿāwiyah—the blind—narrated to us from al-Aʿmash, from Ḥabīb ibn Abī Thābit, from Saʿīd ibn Jubayr, from Ibn ʿUmar and Ibn ʿAbbās, who jointly stated: "If a man pronounces ilāʾ (oath of abstaining from marital relations) and does not retract (the oath) until four months have elapsed, it is a bāʾinah (conclusive, non-revocable divorce)." Ismāʿīl said: And Sulaymān ibn Ḥarb narrated to us from Ḥammād ibn Zayd, from Ayyūb al-Sakhtiyānī: I asked Saʿīd ibn Jubayr, "Did Ibn ʿAbbās rule regarding ilāʾ that when four months pass, it becomes a bāʾinah (conclusive, non-revocable divorce), she may marry, and no ʿiddah (waiting period) is required of her?" He replied, "Yes."

[39] **Qur'an references (L31831):** Qur'an 2:226 (Al-Baqarah); Qur'an 2:227 (Al-Baqarah).

L31838 From the chain of Waki‘, from Al-Mas‘ūdī, from ‘Alī ibn Badhīmah, from Abū ‘Ubaydah ibn ‘Abdullāh ibn Mas‘ūd, from Masrūq, from ‘Abdullāh ibn Mas‘ūd, who said: If a man vows to abstain from his wife and four months elapse, it constitutes a final and irrevocable divorce. He may propose marriage to her during her waiting period, and no other man may propose to her.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الْمَسْعُودِيِّ عَنْ عَلِيِّ بْنِ بَذِيمَةَ عَنْ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ مَسْرُوقٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: إذَا آلَى مِنْهَا فَمَضَتْ أَرْبَعَةُ أَشْهُرٍ فَهِيَ تَطْلِيقَةٌ بَائِنَةٌ وَيَخْطُبُهَا فِي عِدَّتِهَا وَلَا يَخْطُبُهَا غَيْرُهُ.

L31839 Abu Muhammad said: This contradicts the opinion of Ibn Abbas, for Ibn Abbas maintained that the waiting period ends with the completion of the four months.

قَالَ أَبُو مُحَمَّد: هَذَا خِلَافُ قَوْلِ ابْنِ عَبَّاسٍ، لِأَنَّ ابْنَ عَبَّاسٍ رَأَى انْقِضَاءَ الْعِدَّةِ مَعَ انْقِضَاءِ الْأَرْبَعَةِ الْأَشْهُرِ.

L31840 Ibn Mas’ud held that she begins the waiting period after the expiration of the four months.

وَرَأَى ابْنِ مَسْعُودٍ أَنَّهَا تَبْتَدِئُ الْعِدَّةَ بَعْدَ انْقِضَاءِ الْأَرْبَعَةِ الْأَشْهُرِ.

L31841 And by the saying of Ibn Abbas, Jabir ibn Zayd says—as we reported through the chain of Sa‘id ibn Mansur: Sufyan ibn ‘Uyaynah narrated to us from ‘Amr ibn Dinar from Jabir ibn Zayd, who said: If a man swears an oath of *ila’* and four months pass, she is not required to observe the *‘iddah*.

وَبِقَوْلِ ابْنِ عَبَّاسٍ يَقُولُ جَابِرُ بْنُ زَيْدٍ -: وَرُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ جَابِرِ بْنِ زَيْدٍ قَالَ: إذَا آلَى الرَّجُلُ فَمَضَتْ أَرْبَعَةُ أَشْهُرٍ فَلَيْسَ عَلَيْهَا عِدَّةٌ.

L31842 And according to the statement of Ibn Mas’ud, Masruq said - as we have narrated through the chain of Sa’id ibn Mansur: Hushaym reported to us, al-Mughirah reported to us from al-Sha’bi, from Masruq - that a man sought his legal opinion regarding his Ilaʾ (oath of abstention) from his wife. Masruq told him: “When four months have passed, she is separated from you by one pronouncement of divorce. She observes a waiting period of three menstrual cycles. Then you may seek her hand in marriage if you wish and she consents. No one other than you may seek her hand.”

وَبِقَوْلِ ابْنِ مَسْعُودٍ يَقُولُ مَسْرُوقٌ كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الْمُغِيرَةُ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّ رَجُلًا اسْتَفْتَاهُ فِي إيلَائِهِ مِنْ امْرَأَتِهِ؟ فَقَالَ لَهُ مَسْرُوقٌ: إذَا مَضَتْ الْأَرْبَعَةُ الْأَشْهُرُ بَانَتْ مِنْك بِتَطْلِيقَةٍ وَتَعْتَدُّ بِثَلَاثِ حِيَضٍ فَتَخْطُبُهَا إنْ شِئْت وَشَاءَتْ، وَلَا يَخْطُبُهَا غَيْرُك.

L31843–31844 We have also narrated it from Shuraih—and this is the opinion maintained by Ata.

وَرُوِّينَاهُ أَيْضًا عَنْ شُرَيْحٍ - وَبِهِ يَقُولُ عَطَاءٌ.

L31845 Among those from whom it is authentically reported that it is an irrevocable divorce are al-Ḥasan al-Baṣrī, Ibrāhīm al-Nakhaʿī, Qabīṣa ibn Dhuʾayb, ʿIkrimah—the mawlā of Ibn ʿAbbās—ʿAlqama, and al-Shaʿbī.

وَمِمَّنْ صَحَّ عَنْهُ أَنَّهَا تَطْلِيقَةٌ بَائِنَةٌ، الْحَسَنُ الْبَصْرِيُّ، وَإِبْرَاهِيمُ النَّخَعِيُّ، وَقَبِيصَةُ بْنُ ذُؤَيْبٍ، وَعِكْرِمَةُ مَوْلَى ابْنِ عَبَّاسٍ، وَعَلْقَمَةُ، وَالشَّعْبِيُّ.

L31846 This is also the opinion held by Abū Ḥanīfah, his companions, Ibn Jurayj, Sufyān al-Thawrī, Ibn Abī Laylā, and al-Awzāʿī. Abū Ḥanīfah holds that she

must observe the ʻiddah (waiting period) after the expiry of the four-month period.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، وَابْنُ جُرَيْجٍ، وَسُفْيَانُ الثَّوْرِيُّ، وَابْنُ أَبِي لَيْلَى، وَالْأَوْزَاعِيُّ - وَيَرَى أَبُو حَنِيفَةَ: أَنْ تَعْتَدَّ بَعْدَ انْقِضَاءِ الْأَرْبَعَةِ الْأَشْهُرِ.

L31847 A group among them held that upon the completion of four months, a revocable divorce takes effect upon her. This is as narrated through the chain of ʻAbd al-Razzāq from Maʻmar from al-Zuhrī, who said: Abū Bakr ibn ʻAbd al-Raḥmān ibn al-Ḥārith ibn Hishām stated regarding the ruling on the oath of abstention: "When four months have passed, it constitutes one divorce, and he is more entitled to her"—and this is what al-Zuhrī and Makḥūl say.

وَقَالَتْ طَائِفَةٌ مِنْهُمْ بِمُضِيِّ الْأَرْبَعَةِ الْأَشْهُرِ تَقَعُ عَلَيْهَا تَطْلِيقَةٌ رَجْعِيَّةٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: قَالَ أَبُو بَكْرِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ فِي الْإِيلَاءِ: إذَا مَضَتْ أَرْبَعَةُ أَشْهُرٍ، فَهِيَ تَطْلِيقَةٌ، وَهُوَ أَحَقُّ بِهَا - وَبِهِ يَقُولُ الزُّهْرِيُّ، وَمَكْحُولٌ.

L31848 It was narrated from Sa'īd ibn al-Musayyib, but it was not authenticated from him.

وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ وَلَمْ يَصِحَّ عَنْهُ.

L31849 As for the one who said: He is to be compelled to decide after four months—as informed to us through the chain of Saʻīd ibn Manṣūr, who informed us from ʻAbd al-ʻAzīz ibn Muḥammad al-Darāwardī, who informed us from Yaḥyā ibn Saʻīd al-Anṣārī, from ʻAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad, from his father, from ʻĀ'ishah, the Mother of the Believers: she did not recognize the īlā' as legally binding until he is compelled to decide.

وَأَمَّا مَنْ قَالَ: يُوقَفُ بَعْدَ الْأَرْبَعَةِ الْأَشْهُرِ -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ نا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا كَانَتْ لَا تَرَى الْإِيلَاءَ شَيْئًا حَتَّى يُوقَفَ.

L31850 From the chain of Ismāʿīl ibn Isḥāq: Naṣr ibn ʿAlī al-Jahḍamī narrated to us, Sahl ibn Yūsuf and Muḥammad ibn Jaʿfar Ghundar—both transmitting from Shuʿbah, from Simāk ibn Ḥarb, from Saʿīd ibn Jubayr—who said: "'Umar ibn al-Khaṭṭāb said concerning *īlā'*: 'When four months have passed, she remains his wife.'"

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ نا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ نا سَهْلُ بْنُ يُوسُفَ وَمُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ، كِلَاهُمَا عَنْ شُعْبَةَ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: إنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي الْإِيلَاءِ: إذَا مَضَتْ أَرْبَعَةُ أَشْهُرٍ فَهِيَ امْرَأَتُهُ.

L31851 From the narration chain of ʿAbd al-Razzāq, from Sufyān ibn ʿUyaynah, from Misʿar ibn Kidām, from Ḥabīb ibn Abī Thābit, from Ṭāwūs, from ʿUthmān ibn ʿAffān, who said: The husband who takes an ilā' (oath of abstention) is compelled: he must either resume conjugal relations or divorce.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ طَاوُسٍ عَنْ عُثْمَانَ بْنِ عَفَّانَ قَالَ: يُوقَفُ الْمُؤْلِي فَإِمَّا أَنْ يَفِيءَ وَإِمَّا أَنْ يُطَلِّقَ.

L31852 From the chain of Isma'il ibn Ishaq: Abdullah ibn Maslamah—al-Qa'nabi—narrated to us: Sulaiman ibn Bilal reported from Umar ibn Husayn that Uthman ibn Affan did not consider *ila'* (sworn abstention from marital

relations) to hold any effect—even if four months had elapsed—until the abstainer desisted.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ - هُوَ الْقَعْنَبِيُّ - نَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ عُمَرَ بْنِ حُسَيْنٍ أَنَّ عُثْمَانَ بْنَ عَفَّانَ كَانَ لَا يَرَى الْإِيلَاءَ شَيْئًا - وَإِنْ مَضَى أَرْبَعَةُ أَشْهُرٍ - حَتَّى يُوقَفَ.

L31853 It is authentically reported from ʿAlī—as we have transmitted through Saʿīd ibn Manṣūr, from Hushaym, from al-Shaybānī (who is Abū Isḥāq), from Bukayr ibn al-Akhnas, from Mujāhid, from ʿAbd al-Raḥmān ibn Abī Laylā—who said: "I witnessed ʿAlī ibn Abī Ṭālib summon a man publicly in the square at the expiration of four months [stipulating]: 'Either return to cohabitation or divorce.'"

وَصَحَّ عَنْ عَلِيٍّ كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الشَّيْبَانِيُّ - هُوَ أَبُو إِسْحَاقَ - عَنْ بُكَيْرِ بْنِ الْأَخْنَسِ عَنْ مُجَاهِدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى قَالَ: شَهِدْتُ عَلِيَّ بْنَ أَبِي طَالِبٍ أَوْقَفَ رَجُلًا عِنْدَ الْأَرْبَعَةِ الْأَشْهُرِ بِالرَّحْبَةِ: إِمَّا أَنْ يَفِيءَ وَإِمَّا أَنْ يُطَلِّقَ.

L31854–31855 When a man vows to abstain from his wife, he is halted at the completion of four months. It is declared to him: "Either return to marital relations or resolve to divorce." He is compelled to comply.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ بْنِ الْمَدِينِيِّ نا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي الْبَخْتَرِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إِذَا آلَى الرَّجُلُ مِنْ امْرَأَتِهِ وُقِفَ عِنْدَ تَمَامِ الْأَرْبَعَةِ الْأَشْهُرِ، وَقِيلَ لَهُ: إِمَّا تَفِيءُ، وَإِمَّا تَعْزِمُ الطَّلَاقَ؟ وَيُجْبَرُ عَلَى ذَلِكَ.

L31856 Via Abd al-Razzaq, from Ma'mar, from Ayyub, from Nafi', from Ibn Umar, who said: The mu'li (one who has sworn Ila') is held accountable upon the expiry of four months; he must choose either to revoke [his oath] or divorce.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: يُوقَفُ الْمُؤْلِي عِنْدَ انْقِضَاءِ الْأَرْبَعَةِ الْأَشْهُرِ، فَإِمَّا أَنْ يَفِيءَ، وَإِمَّا أَنْ يُطَلِّقَ.

L31857 From the transmission of Ḥammād ibn Salamah, who narrated to us from Qatādah, reporting from Saʿīd ibn al-Musayyib, al-Qāsim ibn Muḥammad ibn Abī Bakr, Ṭāwūs, and Mujāhid—all of whom reported that Abū al-Dardāʾ said: In the case of īlāʾ, the husband is compelled upon the expiration of the four months, then he must either divorce or revoke his oath.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا قَتَادَةُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَالْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ، وَطَاوُسٍ، وَمُجَاهِدٍ، كُلِّهِمْ: أَنَّ أَبَا الدَّرْدَاءِ قَالَ: يُوقَفُ فِي الْإِيلَاءِ عِنْدَ انْقِضَاءِ الْأَرْبَعَةِ الْأَشْهُرِ، فَإِمَّا أَنْ يُطَلِّقَ وَإِمَّا أَنْ يَفِيءَ.

L31858 And through the chain of Sufyān ibn ʿUyaynah from Yaḥyā ibn Saʿīd al-Anṣārī from Sulaymān ibn Yasār, who said: I encountered more than ten men from the Companions of the Messenger of Allah (peace and blessings of Allah be upon him), all of whom stated regarding the oath of abstention (īlāʾ) that the husband must be compelled to choose: either to resume marital

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: أَدْرَكْتُ بِضْعَةَ عَشَرَ رَجُلًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلُّهُمْ

relations or to divorce. This is also the opinion of Saʿīd ibn al-Musayyab, Ṭāwūs, Mujāhid, and al-Qāsim ibn Muḥammad ibn Abī Bakr. It is firmly established from all of them that the husband who takes such an oath is compelled: either to resume marital relations or to divorce.

يَقُولُ فِي الْإِيلَاءِ: يُوقَفُ - وَهُوَ قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ، وَطَاوُسٍ، وَمُجَاهِد وَالْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ، كُلِّهِمْ صَحَّ عَنْهُ أَنَّ الْمُؤْلِي يُوقَفُ: فَإِمَّا أَنْ يَفِيءَ وَإِمَّا أَنْ يُطَلِّقَ.

L31859 This has been authentically established from ʿUmar ibn ʿAbd al-ʿAzīz, ʿUrwah ibn al-Zubayr, Abū Mijlaz, and Muḥammad ibn Kaʿb, all of whom stated: It is to be withheld.

وَصَحَّ ذَلِكَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَأَبِي مِجْلَزٍ، وَمُحَمَّدِ بْنِ كَعْبٍ، كُلِّهِمْ يَقُولُ: يُوقَفُ.

L31860 From the chain of Ismāʿīl ibn Isḥāq, who received from Sulaymān ibn Ḥarb, who narrated to us from Ḥammād ibn Zayd, from Yaḥyā ibn Saʿīd al-Anṣārī, from Sulaymān ibn Yasār, who said: I witnessed people compelling the one who had sworn the abstention (īlāʾ) after four months had passed—either to resume relations or to divorce. This is the statement of Sulaymān ibn Yasār.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: أَدْرَكْت النَّاسَ يَقِفُونَ صَاحِبَ الْإِيلَاءِ إذَا مَضَتْ أَرْبَعَةُ أَشْهُرٍ: فَإِمَّا أَنْ يَفِيءَ وَإِمَّا أَنْ يُطَلِّقَ - وَهُوَ قَوْلُ سُلَيْمَانَ بْنِ يَسَارٍ.

L31861 This is the opinion of Mālik, al-Shāfiʿī, Abū Thawr, Abū ʿUbayd, Aḥmad, Isḥāq, Abū Sulaymān, and their companions, except that Mālik and al-Shāfiʿī—in one of their two opinions—say: The judge pronounces the divorce on his behalf if he refuses.

وَهُوَ قَوْلُ مَالِك، وَالشَّافِعِيِّ " وَأَبِي ثَوْرٍ، وَأَبِي عُبَيْدٍ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ، إلَّا أَنَّ مَالِكًا، وَالشَّافِعِيِّ - فِي أَحَدِ قَوْلَيْهِ - يَقُولَانِ: يُطَلِّقُ الْحَاكِمُ عَلَيْهِ إنْ أَبَى.

L31862 Then they differed. Al-Shafiʿi said: He may retract [the oath] while she remains in her waiting period. If he resumes intercourse with her, this nullifies the oath of abstinence. If he does not, the stipulated suspension reverts to the initial four-month period. If he fulfills [his duty]; otherwise, the judge will compel divorce upon him. He may then revoke the divorce. If he resumes intercourse, the oath is nullified. Otherwise, the stipulated suspension resumes for four months, after which the judge will compel divorce upon him, and she becomes permanently forbidden to him unless she marries another husband and the marriage is dissolved.

ثُمَّ اخْتَلَفَا - فَقَالَ الشَّافِعِيُّ: لَهُ أَنْ يُرَاجِعَهَا مَا دَامَتْ فِي عِدَّتِهَا، فَإِنْ وَطِئَهَا فَذَلِكَ سُقُوطُ الْإِيلَاءِ، وَإِنْ لَمْ يَطَأْهَا عَادَ عَلَيْهِ التَّوْقِيفُ أَرْبَعَةَ أَشْهُرٍ مِنْ ذِي قَبْلٍ، فَإِنْ فَاءَ وَإِلَّا طَلَّقَ عَلَيْهِ الْحَاكِمُ، ثُمَّ لَهُ أَنْ يُرَاجِعَهَا فَإِنْ وَطِئَهَا سَقَطَ الْإِيلَاءُ، وَإِلَّا عَادَ عَلَيْهِ التَّوْقِيفُ أَرْبَعَةَ أَشْهُرٍ، ثُمَّ يُطَلِّقُ عَلَيْهِ الْحَاكِمُ، وَتَحْرُمُ عَلَيْهِ إلَّا بَعْدَ زَوْجٍ.

L31863–31864 Ali said: This is an invalid opinion, for it renders the prescribed period for marital abstention unquestionably a full year, contradicting the Quran. When the prescribed period becomes invalid, the oath of abstention the husband unquestionably obligated is likewise invalidated.

قَالَ عَلِيٌّ: وَهَذَا قَوْلٌ فَاسِدٌ، لِأَنَّهُ يُصَيِّرُ التَّوْقِيفَ فِي الْإِيلَاءِ بِلَا شَكٍّ عَامًا كَامِلًا، وَهَذَا خِلَافُ الْقُرْآنِ، وَإِذَا بَطَلَ التَّوْقِيفُ بَطَلَ الْإِيلَاءُ الَّذِي أَوْجَبَهُ بِلَا شَكٍّ.

L31865 Malik said: He may revoke the ila’ (oath of abstinence) regarding her. If he

has intercourse with her, the ila' is nullified. If he does not have intercourse with her, she becomes irrevocably divorced from him upon the completion of her waiting period due to the judge's divorce ruling.

L31866 Abu Muhammad said: This is a statement—how could its proponent have uttered it? For no falsehood surpasses permitting a woman to remain under the guardianship of a husband in a valid marriage while she is in the waiting period imposed [on her] due to a divorce by another man. In which of God's religions—exalted is He—has this ever been found?

L31867 Know that Mālik's statement was not uttered by anyone before him, nor by anyone other than him except those afflicted with adhering to his rulings. Furthermore, his statement which al-Shāfiʿī adopted—that someone else can pronounce divorce on his behalf—has never been recorded from anyone before Mālik. This is a statement that contradicts the Qur'an, all the Sunnahs, analogy, and reason. As for the Qur'an, Almighty God says: {And if they resolve to divorce} [Al-Baqarah: 227], thus assigning the resolve to divorce to the husband who has sworn to abstain, not to anyone else.[40]

L31868 And the Exalted and Majestic said: "No soul earns except upon itself" [Al-An'am 164].[41]

L31869 It is invalid for anyone to enforce a divorce upon another, neither a judge nor anyone else.

L31870 As for the Sunnah rulings, they have only been established in specific contexts concerning the annulment of marriage or one party divorcing the other—for this has no foundational basis. Every scholar reported to have expressed a position on this matter has only echoed our stance: either the party must retract [the oath] or pronounce a divorce. It is therefore obligatory to compel him to choose whichever of the two he prefers, with no exception.

L31871 As for *qiyas* (analogical reasoning)—I do not understand on what basis

وَقَالَ مَالِكٌ: لَهُ أَنْ يُرَاجِعَهَا، فَإِنْ وَطِئَهَا سَقَطَ عَنْهُ الْإِيلَاءُ، وَإِنْ لَمْ يَطَأْهَا بَانَتْ عَنْهُ عِنْدَ تَمَامِ عِدَّتِهَا مِنْ طَلَاقِ الْحَاكِمِ.

قَالَ أَبُو مُحَمَّد: وَهَذَا كَلَامٌ لَا نَدْرِي كَيْفَ قَالَهُ قَائِلُهُ؟ إذْ لَيْسَ فِي الْبَاطِلِ أَكْثَرُ مِنْ إجَازَةِ كَوْنِ امْرَأَةٍ فِي عِصْمَةِ زَوْجٍ صَحِيحِ الزَّوْجِيَّةِ، وَهِيَ فِي عِدَّةٍ مِنْ طَلَاقِ غَيْرِهِ عَلَيْهِ، وَمَا نَعْلَمُ فِي أَيِّ دِينِ اللَّهِ تَعَالَى وُجِدَ هَذَا؟

وَاعْلَمُوا أَنَّ قَوْلَ مَالِكٍ لَمْ يَقُلْهُ أَحَدٌ قَبْلَهُ، وَلَا قَالَهُ أَحَدٌ غَيْرُهُ إلَّا مَنْ ابْتُلِيَ بِتَقْلِيدِهِ، ثُمَّ إنَّ قَوْلَهُ الَّذِي اتَّبَعَهُ عَلَيْهِ الشَّافِعِيُّ: مِنْ أَنْ يُطَلِّقَ عَلَيْهِ غَيْرُهُ، لَمْ يُحْفَظْ قَطُّ عَنْ أَحَدٍ قَبْلَ مَالِكٍ - وَهُوَ قَوْلٌ مُخَالِفٌ لِلْقُرْآنِ، وَلِلسُّنَنِ كُلِّهَا، وَلِلْقِيَاسِ وَالْمَعْقُولِ -: أَمَّا الْقُرْآنُ - فَإِنَّ اللَّهَ عَزَّ وَجَلَّ يَقُولُ: {وَإِنْ عَزَمُوا الطَّلَاقَ} [البقرة: ٢٢٧] فَجَعَلَ عَزِيمَةَ الطَّلَاقِ إلَى الزَّوْجِ الْمُؤْلِي لَا إلَى غَيْرِهِ.

وَقَالَ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

فَمِنْ الْبَاطِلِ أَنْ يُطَلِّقَ أَحَدٌ عَلَى غَيْرِهِ، لَا حَاكِمٌ وَلَا غَيْرُ حَاكِمٍ.

وَأَمَّا السُّنَنُ - فَإِنَّهَا إنَّمَا جَاءَتْ فِي مَوَاضِعَ مَعْرُوفَةٍ بِفَسْخِ النِّكَاحِ، وَإِمَّا بِطَلَاقِ أَحَدٍ عَنْ غَيْرِهِ فَلَا أَصْلًا، وَكُلُّ مَنْ رُوِيَ عَنْهُ فِي هَذَا كَلِمَةٌ، فَإِنَّمَا قَالَ بِقَوْلِنَا: إمَّا أَنْ يَفِيءَ، وَإِمَّا أَنْ يُطَلِّقَ؟ فَالْوَاجِبُ أَنْ يُجْبَرَ عَلَى أَيِّهِمَا شَاءَ وَلَا بُدَّ.

وَأَمَّا الْقِيَاسُ - فَلَا أَدْرِي مِنْ أَيْنَ أَجَازُوا أَنْ يُطَلِّقَ الْحَاكِمُ عَلَى الْمُؤْلِي؟ وَلَمْ يُجِيزُوا أَنْ يَفِيءَ عَنْهُ - وَلَا فَرْقَ بَيْنَ الْأَمْرَيْنِ.

[40] **Qur'an references (L31867):** Qur'an 2:227 (Al-Baqarah).
[41] **Qur'an references (L31868):** Qur'an 6:164 (Al-An'am).

they permitted the judge to impose divorce on the *mu'li* (one who swore an oath of abstention), yet did not permit him to retract it—for there is no distinction between the two rulings.

L31872 If they say: It is not permissible for the judge to declare lawful the chastity of a woman other than himself, thus it would be unlawful intercourse? We would respond to him: Nor is it permissible for him to permit the chastity of a woman other than himself to anyone besides her husband by divorcing her for his sake, which would amount to permitting unlawful intercourse, with no distinction between the two scenarios.

L31873 If they say: What difference is there between him annulling his marriage and divorcing her against him? We say: There is no difference. We have never permitted a judge to annul the marriage of any woman in the world from her husband. Allah forbid that we should do such a thing!

L31874–31875 We have only stated that every marriage for which Allah the Exalted has obligated annulment in the Qur'an or through the words of His Messenger—peace and blessings be upon him and his family—is indeed annulled, whether the judge likes or dislikes it. The judge has no role in this matter, nor any discretion in it. The judge merely enforces, by the power of his authority, all that Allah the Exalted and His Messenger have commanded, and prohibits acting upon anything not commanded by Allah or His Messenger at all. Any judgment the judge issues contrary to what we have mentioned is invalid, rejected, and perpetually nullified.

L31876 **Issue: The slave and the free person are equivalent in rulings pertaining to *īlāʾ*.**

L31877 Issue 1886: A slave and a free man are equal in all that we have mentioned regarding Ila (oath of abstention) each from his wife—whether she is free, a Muslim slave woman, or a Dhimmi woman, adult or minor. This is because Allah, the Almighty, has generalized the ruling and not restricted it, {and your Lord is not forgetful} [Maryam 19:64].[42]

[42] **Qur'an references (L31877):** Qur'an 19:64 (Maryam).

فَإِنْ قَالُوا: لَا يَحِلُّ لِلْحَاكِمِ أَنْ يَسْتَحِلَّ فَرْجَ امْرَأَةٍ سِوَاهُ فَيَكُونُ زِنًى؟ قُلْنَا لَهُ: وَلَا يَحِلُّ لَهُ أَنْ يُبِيحَ فَرْجَ امْرَأَةٍ سِوَاهُ لِغَيْرِ زَوْجِهَا بِأَنْ يُطَلِّقَهَا عَلَيْهِ فَيَكُونُ إِبَاحَةً لِلزِّنَا وَلَا فَرْقَ.

فَإِنْ قَالُوا: أَيُّ فَرْقٍ بَيْنَ أَنْ يَفْسَخَ نِكَاحَهُ وَبَيْنَ أَنْ يُطَلِّقَهَا عَلَيْهِ؟ قُلْنَا: وَلَا فَرْقَ، وَمَا أَجَزْنَا قَطُّ أَنْ يَفْسَخَ الْحَاكِمُ نِكَاحَ امْرَأَةٍ فِي الْعَالَمِ عَنْ زَوْجِهَا، وَمَعَاذَ اللَّهِ مِنْ ذَلِكَ؟

إِنَّمَا قُلْنَا: كُلُّ نِكَاحٍ أَوْجَبَ اللَّهُ تَعَالَى فِي الْقُرْآنِ، أَوْ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَسْخَهُ: فَهُوَ مَفْسُوخٌ، سَوَاءٌ أَحَبَّ الْحَاكِمُ ذَلِكَ أَوْ كَرِهَهُ، وَلَا مَدْخَلَ لِلْحَاكِمِ فِي ذَلِكَ، وَلَا رَأْيَ لَهُ فِيهِ، إِنَّمَا الْحَاكِمُ مُنَفِّذٌ بِقُوَّةِ سُلْطَانِهِ كُلَّ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَانِعٌ مِنَ الْعَمَلِ بِمَا لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِهِ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، وَكُلُّ مَا حَكَمَ بِهِ الْحَاكِمُ مِمَّا عَدَا مَا ذَكَرْنَا فَهُوَ بَاطِلٌ مَرْدُودٌ مَفْسُوخٌ أَبَدًا.

[مَسْأَلَةٌ الْعَبْدُ وَالْحُرُّ فِي الْإِيلَاءِ سَوَاءٌ]

١٨٨٦ - مَسْأَلَةٌ: وَالْعَبْدُ وَالْحُرُّ فِي الْإِيلَاءِ كُلُّ وَاحِدٍ مِنْهُمَا مِنْ زَوْجَتِهِ الْحُرَّةِ، أَوْ الْأَمَةِ الْمُسْلِمَةِ، أَوْ الذِّمِّيَّةِ - الْكَبِيرَةِ أَوْ الصَّغِيرَةِ - سَوَاءٌ فِي كُلِّ مَا ذَكَرْنَا، لِأَنَّ اللَّهَ عَزَّ وَجَلَّ عَمَّ وَلَمْ يَخُصَّ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَرُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ - وَلَمْ يَصِحَّ عَنْهُ - لِأَنَّهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إِبْرَاهِيمَ بْنِ مُحَمَّدِ بْنِ أَبِي يَحْيَى عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ مَوْلَى آلِ أَبِي طَلْحَةَ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ إِيلَاءُ الْعَبْدِ شَهْرَانِ.

L31878 It has been reported to us from ʿUmar ibn al-Khaṭṭāb (though it is not authenticated from him) because it is through the chain of ʿAbd al-Razzāq from Ibrāhīm ibn Muḥammad ibn Abī Yaḥyā from Muḥammad ibn ʿAbd al-Raḥmān, freed client of the family of Abī Ṭalḥah, from Sulaymān ibn Yasār from ʿAbd Allāh ibn ʿUtbah ibn Masʿūd, who said: "'Umar ibn al-Khaṭṭāb stated: 'The sworn abstention (īlāʾ) period for a slave lasts two months.'"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: بَلَغَنِي عَنْ عُمَرَ إِيلَاءُ الْعَبْدِ شَهْرَانِ وَرُوِّينَا عَنْهُ أَيْضًا - إِيلَاءُ الْأَمَةِ شَهْرَانِ، وَلَا يَصِحُّ أَيْضًا، لِأَنَّهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ حِبَّانَ بْنِ عَلِيٍّ عَنْ ابْنِ أَبِي لَيْلَى عَنْ عَبْدِ الْكَرِيمِ عَنْ ابْنِ سِيرِينَ: أَنَّ عُمَرَ قَالَ: طَلَاقُ الْأَمَةِ تَطْلِيقَتَانِ، وَإِيلَاؤُهَا شَهْرَانِ، وَصَحَّ عَنْ عَطَاءٍ أَنْ لَا إِيلَاءَ لِلْعَبْدِ دُونَ سَيِّدِهِ، وَهُوَ شَهْرَانِ.

L31879 From the chain of transmission of ʿAbd al-Razzāq via Ibn Jurayj: It reached me from ʿUmar that the *īlāʾ* (oath of abstinence) of a male slave is two months. It has also been narrated through him [that] the *īlāʾ* of a female slave is two months – but this is likewise unsound. This is because it is transmitted through the chain of Saʿīd ibn Manṣūr via Ḥibbān ibn ʿAlī via Ibn Abī Laylā via ʿAbd al-Karīm via Ibn Sīrīn: that ʿUmar said, "The divorce of a female slave requires two pronouncements of divorce, and her *īlāʾ* is two months." It is authentically established from ʿAṭāʾ that there is no *īlāʾ* for a slave without the involvement of his master, and this [period] is two months.

وَبِهِ يَقُولُ الْأَوْزَاعِيُّ، وَاللَّيْثُ، وَمَالِكٌ، وَإِسْحَاقُ.

L31880 This is also the position upheld by Al-Awzāʿī, Al-Layth, Mālik, and Isḥāq.

فَإِنْ مَوَّهُوا بِعُمَرَ؟ قُلْنَا: وَقَدْ جَاءَ عَنْ عُمَرَ الْإِيلَاءُ مِنَ الْأَمَةِ شَهْرَانِ - وَجَاءَ عَنْهُ: لَا يَنْكِحُ الْعَبْدُ إِلَّا اثْنَتَيْنِ، فَخَالَفْتُمُوهُ، وَهَذَا تَلَاعُبٌ.

L31881 If they have deceptively cited ʿUmar, we say: It has been reported from ʿUmar that the oath of abstention (īlāʾ) concerning a female slave is two months, and it has been reported from him that a male slave may only marry two wives. Yet you have opposed him, and this is mere mockery.

وَقَالَتْ طَائِفَةٌ: الْحُكْمُ فِي ذَلِكَ لِلنِّسَاءِ، فَإِنْ كَانَتْ حُرَّةً فَإِيلَاءُ زَوْجِهَا الْحُرِّ وَالْعَبْدِ عَنْهَا أَرْبَعَةُ أَشْهُرٍ، وَإِنْ كَانَتْ أَمَةً فَإِيلَاءُ زَوْجِهَا الْحُرِّ وَالْعَبْدِ عَنْهَا شَهْرَانِ - وَهُوَ قَوْلُ إِبْرَاهِيمَ النَّخَعِيِّ، وَقَتَادَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ.

L31882 A group of scholars held that the ruling depends on the status of women: if she is free, the oath-bound abstention (Ila') of her husband, whether he is the free or the enslaved, from her lasts four months; if she is a female slave, the oath-bound abstention of her husband, whether he is the free or the enslaved, from her lasts two months. This is the opinion of Ibrahim al-Nakhaʿi, Qatadah, Sufyan al-Thawri, Abu Hanifah, and his companions.

وَقَالَتْ طَائِفَةٌ: إِيلَاءُ الْحُرِّ وَالْعَبْدِ مِنَ الزَّوْجَةِ الْحُرَّةِ وَالْأَمَةِ سَوَاءٌ، وَهُوَ أَرْبَعَةُ أَشْهُرٍ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L31883–31885 A juristic school maintained: The oath of abstention (Ilaa') applies equally to free men and enslaved men in cases involving free wives or enslaved wives, and its duration is four months. "months — and this is the opinion of Al-Shāfiʿī, Aḥmad ibn Ḥanbal, Abū Thawr, Abū Sulaymān, and their companions."

Abu Muhammad said: There is no argument from the Quran for anyone.

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ لِأَحَدٍ مِنْ الْقُرْآنِ.

A legal issue wherein a man swore by a single oath of *ilā'* to abstain from his four wives.

Issue 1887: If a man takes a single oath of abstinence (ilāʾ) regarding four of his wives, marital relations are suspended for all of them from the moment he swears. If he resumes relations with one wife, the ruling concerning her ceases while the rulings for the remaining wives remain effective. The suspension continues for wives with whom he does not resume relations until he either resumes relations or divorces them. Only one expiation is required for the entire matter, as it constitutes a single oath pertaining to distinct matters - each wife being subject to her own ruling. He remains in a state of ilāʾ against each wife individually, for "No soul bears the burden of another" (Quran 6:164).[43]

[مَسْأَلَةٌ آلَى مِنْ أَرْبَعِ نِسْوَةٍ لَهُ بِيَمِينٍ وَاحِدَةٍ]

١٨٨٧ - مَسْأَلَةٌ: وَمَنْ آلَى مِنْ أَرْبَعِ نِسْوَةٍ لَهُ بِيَمِينٍ وَاحِدَةٍ: وُقِفَ لَهُنَّ كُلِّهِنَّ مِنْ حِينِ يَحْلِفُ، فَإِنْ فَاءَ إلَى وَاحِدَةٍ سَقَطَ حُكْمُهَا، وَبَقِيَ حُكْمُ الْبَوَاقِي، فَلَا يَزَالُ يُوقَفُ لِمَنْ لَمْ يَفِئْ إلَيْهَا حَتَّى يَفِيءَ أَوْ يُطَلِّقَ، وَلَيْسَ عَلَيْهِ فِي كُلِّ ذَلِكَ إلَّا كَفَّارَةٌ وَاحِدَةٌ؛ لِأَنَّهَا يَمِينٌ وَاحِدَةٌ عَلَى أَشْيَاءَ مُتَغَايِرَةٍ، وَلِكُلِّ وَاحِدَةٍ حُكْمُهَا، وَهُوَ مُؤْلٍ مِنْ كُلِّ وَاحِدَةٍ مِنْهُنَّ {وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

An issue concerning one who has sworn an oath of *ila'* (to abstain from conjugal relations) with his female slave.

Issue 1888: If a man swears an oath of abstention (īlāʾ) regarding his female slave, no legal obligation is imposed on him, for Allah the Almighty says: "And if they resolve on divorce, then Allah is All-Hearing, All-Knowing" [Al-Baqarah 2:227]. Thus, it is established that the ruling of īlāʾ applies only to those legally obligated to either return to conjugal relations or divorce. Since formal divorce (ṭalāq) does not apply to a female slave at all, it is established that this ruling applies exclusively to wives. And success comes from Allah the Exalted.[44]

[مَسْأَلَةٌ آلَى مِنْ أَمَتِهِ]

١٨٨٨ - مَسْأَلَةٌ: وَمَنْ آلَى مِنْ أَمَتِهِ فَلَا تَوْقِيفَ عَلَيْهِ، لِأَنَّ اللَّهَ عَزَّ وَجَلَّ قَالَ: {وَإِنْ عَزَمُوا الطَّلاقَ} [البقرة: ٢٢٧] فَصَحَّ أَنَّ حُكْمَ الْإِيلَاءِ إنَّمَا هُوَ فِيمَنْ تَلْزَمُهُ فِيهَا الْفَيْئَةُ أَوْ الطَّلَاقُ، وَلَيْسَ فِي الْمَمْلُوكَةِ طَلَاقٌ أَصْلًا - فَصَحَّ أَنَّهُ فِي الْمُتَزَوِّجَاتِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Juridical Case: He swore to abstain from a non-mahram woman, then married her.

1889. Issue: As for our statement regarding one who swore abstinence from an unrelated woman and subsequently married her—is the ruling of īlāʾ not

[مَسْأَلَةٌ آلَى مِنْ أَجْنَبِيَّةٍ ثُمَّ تَزَوَّجَهَا]

١٨٨٩ - مَسْأَلَةٌ: وَأَمَّا قَوْلُنَا فِيمَنْ آلَى مِنْ أَجْنَبِيَّةٍ ثُمَّ تَزَوَّجَهَا: أَنَّهُ لَيْسَ عَلَيْهِ حُكْمُ الْإِيلَاءِ؟ فَلِأَنَّ اللَّهَ عَزَّ وَجَلَّ إنَّمَا قَالَ: {لِلَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ} [البقرة: ٢٢٦] فَمَنْ آلَى مِنْ أَجْنَبِيَّةٍ فَلَمْ يُؤْلِ مِنْ أَحَدٍ مِنْ نِسَائِهِ، فَلَا إيلَاءَ عَلَيْهِ.

[43] **Qur'an references (L31888):** Qur'an 6:164 (Al-An'am); Qur'an 17:15 (Al-Isra); Qur'an 35:18 (Fatir); Qur'an 39:7 (Az-Zumar).

[44] **Qur'an references (L31890):** Qur'an 2:227 (Al-Baqarah).

applicable to him? This is because Allah, the Mighty and Sublime, stated: For those who swear off their wives [Al-Baqarah 2:226]. Thus, whoever swore abstinence from an unrelated woman did not swear off any of his wives; therefore, the ruling of īlā' does not apply to him.[45]

L31893 If it is said: "Has she indeed become one of his wives?" We respond: It is inconceivable for a ruling to lapse when it is made obligatory, and then become obligatory at a time when it was not required. No authoritative explicit text has stipulated this, nor has the Sunnah conveyed it. Furthermore, the waiting period only applies where there is a need for determining pregnancy, and this is not permissible for a woman unrelated by marriage. And success is from Allah, the Most High.

L31894 The "Book of Ila'" has been completed with the praise of Allah, the Exalted, and His excellent assistance. May Allah send blessings upon our master Muhammad and upon his family, and grant him peace.

فَإِنْ قِيلَ: قَدْ صَارَتْ مِنْ نِسَائِهِ؟ قُلْنَا: مِنْ الْمُحَالِ أَنْ يَسْقُطَ الْحُكْمُ حِينَ إيجَابِهِ، وَيَجِبَ حِينَ لَمْ يَجِبْ، وَلَمْ يُوجِبْ ذَلِكَ نَصٌّ وَارِدٌ، وَلَا جَاءَتْ بِهِ سُنَّةٌ، وَلِأَنَّ التَّرَبُّصَ لَا يَكُونُ إلَّا حَيْثُ يُؤْخَذُ بِالْفَيْئَةِ، وَلَا يَجُوزُ ذَلِكَ فِي أَجْنَبِيَّةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

تَمَّ " كِتَابُ الْإِيلَاءِ " بِحَمْدِ اللَّهِ تَعَالَى وَحُسْنِ عَوْنِهِ وَصَلَّى اللَّهُ عَلَى سَيِّدِنَا مُحَمَّدٍ وَعَلَى آلِهِ وَسَلَّمَ

[45] **Qur'an references (L31892):** Qur'an 2:226 (Al-Baqarah).



AL-MUHALLA

كِتَابُ الظِّهَارِ

The Book of Zihar

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الظِّهَارِ] [مَسْأَلَةٌ قَالَ لِامْرَأَتِهِ أَنْتِ عَلَيَّ كَظَهْرِ أُمِّي]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ - مَسْأَلَةٌ: وَمَنْ قَالَ مِنْ حُرٍّ، أَوْ عَبْدٍ لِامْرَأَتِهِ، أَوْ لِأَمَتِهِ الَّتِي يَحِلُّ لَهُ وَطْؤُهَا: أَنْتِ عَلَيَّ كَظَهْرِ أُمِّي، أَوْ قَالَ لَهَا: أَنْتِ مِنِّي بِظَهْرِ أُمِّي، أَوْ كَظَهْرِ أُمِّي، أَوْ مِثْلُ ظَهْرِ أُمِّي؟ فَلَا شَيْءَ عَلَيْهِ، وَلَا يُحَرَّمُ بِذَلِكَ وَطْؤُهَا عَلَيْهِ، حَتَّى يُكَرِّرَ الْقَوْلَ بِذَلِكَ مَرَّةً أُخْرَى، فَإِذَا قَالَهَا مَرَّةً ثَانِيَةً وَجَبَتْ عَلَيْهِ كَفَّارَةُ الظِّهَارِ، وَهِيَ عِتْقُ رَقَبَةٍ.

L31895–31896 **The Book of Ẓihār. A case where a man said to his wife: "You are to me like the back of my mother."**

L31897 In the name of Allah, the Most Gracious, the Most Merciful. Issue: If a free man or a slave says to his wife or to his female slave whom it is lawful for him to have intercourse with, "You are to me like my mother's back," or says to her, "You are to me as my mother's back," or "like my mother's back," or "similar to my mother's back," then nothing is required of him, and intercourse with her is not forbidden to him unless he repeats such a statement a second time. If he says it a second time, the expiation for ẓihār becomes obligatory upon him, which is the freeing of a slave.

وَيُجْزِئُ فِي ذَلِكَ: الْمُؤْمِنُ، وَالْكَافِرُ، وَالذَّكَرُ وَالْأُنْثَى، وَالْمَعِيبُ وَالسَّالِمُ، فَمَنْ لَمْ يَقْدِرْ عَلَى رَقَبَةٍ فَعَلَيْهِ صِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ، وَلَا يَحِلُّ لَهُ أَنْ يَطَأَهَا، وَلَا أَنْ يَمَسَّهَا بِشَيْءٍ مِنْ بَدَنِهِ - فَضْلًا عَنْ الْوَطْءِ - إلَّا حَتَّى يُكَفِّرَ بِالْعِتْقِ، أَوْ بِالصِّيَامِ، فَإِنْ أَقْدَمَ أَوْ نَسِيَ فَوَطِئَ قَبْلَ أَنْ يُكَفِّرَ بِالْعِتْقِ أَوْ بِالصِّيَامِ: أَمْسَكَ عَنْ الْوَطْءِ حَتَّى يُكَفِّرَ، وَلَا بُدَّ.

L31898 The following are considered sufficient for that: a believer, a disbeliever, a male, a female, the blemished, and the unblemished. Whoever cannot afford a slave must fast two consecutive months. It is impermissible for him to touch her with any part of his body—let alone have intercourse—until he atones by manumission or fasting. If he intentionally proceeds or forgets and has intercourse before atoning through manumission or fasting, he must refrain from intercourse until he atones without exception.

فَإِنْ عَجَزَ عَنْ الصِّيَامِ فَعَلَيْهِ أَنْ يُطْعِمَ سِتِّينَ مِسْكِينًا مُتَغَايِرِينَ شَبَّعَهُمْ.

L31899 If he is unable to fast, he must feed sixty distinct needy individuals, satiating them.

وَلَا يُحَرَّمُ عَلَيْهِ وَطْؤُهَا قَبْلَ الْإِطْعَامِ، وَلَا يَجِبُ شَيْءٌ مِمَّا ذَكَرْنَا إلَّا بِذِكْرِ " ظَهْرِ الْأُمِّ " وَلَا يَجِبُ بِذِكْرِ فَرْجِ الْأُمِّ، وَلَا بِعُضْوٍ غَيْرِ الظَّهْرِ، وَلَا بِذِكْرِ الظَّهْرِ أَوْ غَيْرِهِ مِنْ غَيْرِ الْأُمِّ، لَا مِنْ ابْنَةٍ، وَلَا مِنْ أَبٍ، وَلَا مِنْ أُخْتٍ، وَلَا مِنْ أَجْنَبِيَّةٍ، وَالْجَدَّةُ أُمٌّ.

L31900 It is not prohibited for him to have intercourse with her before providing food. None of the obligations we mentioned are binding unless one explicitly mentions "the mother's private part." No obligation arises from mentioning the mother's vagina, nor any body part other than the private part, nor from mentioning the private part or other body parts of anyone other than the mother—whether a daughter, father, sister, or unrelated woman. The grandmother is considered a mother.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {الَّذِينَ يُظَاهِرُونَ مِنْكُمْ مِنْ نِسَائِهِمْ مَا هُنَّ أُمَّاتِهِمْ إِنْ أُمَّاتُهُمْ} [المجادلة: ٢] الْآيَةَ إلَى قَوْله تَعَالَى: {وَالَّذِينَ يُظَاهِرُونَ مِنْ نِسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرُ رَقَبَةٍ مِنْ قَبْلِ أَنْ يَتَمَاسَّا ذَلِكُمْ تُوعَظُونَ بِهِ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ} [المجادلة:

L31901–31903 The proof of that is the statement of Allah, the Glorified and Exalted: "Those among you who declare *ẓihār* against their wives—they are not their mothers; indeed, their mothers..." (Al-Mujādilah 58:2). The verse up to the statement of His Exalted: *"And those who declare dhihar (a form of divorce by likening one's wife to a forbidden relative) against their wives then retract what they said must free a slave before the couple resumes marital relations

- this is what you are instructed, and Allah is fully aware of what you do”* [Al-Mujadila: 3]. *“Whoever cannot afford to free a slave must fast two consecutive months before they resume marital relations. Whoever is unable must feed sixty needy people”* [Al-Mujadila: 4].[1]

٣] {فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ مِنْ قَبْلِ أَنْ يَتَمَاسَّا فَمَنْ لَمْ يَسْتَطِعْ فَإِطْعَامُ سِتِّينَ مِسْكِينًا} [المجادلة: ٤] .

L31904 This verse encompasses all we have stated, for Allah, the Mighty and Sublime, mentioned only the oath of ẓihār (comparing a wife to one’s mother). He did not mandate expiation for it except upon repetition, as He had ordained. He mandated the freeing of a slave without differentiating between a female disbeliever and a female believer, a defective and sound one, a male and a female, or an adult and a minor. {Nor is your Lord ever forgetful} [Maryam: 64].[2]

فَهَذِهِ الْآيَةُ تَنْتَظِمُ كُلَّ مَا قُلْنَاهُ، لِأَنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يَذْكُرْ إلَّا الظِّهَارَ مِنْ الْأُمِّ، وَلَمْ يُوجِبْ تَعَالَى الْكَفَّارَةَ فِي ذَلِكَ إلَّا بِالْعَوْدِ لِمَا قَالَ، وَأَوْجَبَ عِتْقَ الرَّقَبَةِ، وَلَمْ يَخُصَّ كَافِرَةً مِنْ مُؤْمِنَةٍ، وَلَا مَعِيبَةً مِنْ صَحِيحَةٍ، وَلَا ذَكَرًا مِنْ أُنْثَى، وَلَا كَبِيرًا مِنْ صَغِيرٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L31905 Allah, the Mighty and Majestic, stipulated that manumission and fasting must occur before sexual intercourse.

وَشَرَطَ اللَّهُ عَزَّ وَجَلَّ فِي الْعِتْقِ وَالصِّيَامِ قَبْلَ التَّمَاسِّ.

L31906 He did not stipulate that in the *kaffārah* by feeding—{My Lord does not err nor forget} (Taha 20:52)—as an explanation of all things.[3]

وَلَمْ يَشْتَرِطْ ذَلِكَ فِي الْكَفَّارَةِ بِالْإِطْعَامِ {لا يَضِلُّ رَبِّي وَلا يَنْسَى} [طه: ٥٢] تِبْيَانًا لِكُلِّ شَيْءٍ.

L31907 Repeating does not suffice if distributed to fewer than sixty poor persons, because they are not sixty poor persons. There is no disagreement regarding satiety.

وَلَا يُجْزِئُ التَّكْرَارُ عَلَى أَقَلَّ مِنْ سِتِّينَ مِسْكِينًا، لِأَنَّهُمْ لَيْسُوا سِتِّينَ مِسْكِينًا، وَلَا خِلَافَ فِي الْإِشْبَاعِ.

L31908 The Most High has not stipulated food to the exclusion of food.

وَلَمْ يَشْتَرِطْ تَعَالَى طَعَامًا دُونَ طَعَامٍ.

L31909 The Exalted did not favor a free person above an enslaved man, nor a free woman above an enslaved woman.

وَلَمْ يَخُصَّ تَعَالَى حُرًّا مِنْ عَبْدٍ، وَلَا زَوْجَةٍ مِنْ أَمَةٍ.

L31910 In what we have mentioned there is a disagreement: some hold that no expiation is required in it [i.e., for ẓihār] in the case of a female slave? This was narrated from al-Sha‘bī – in one of his opinions – and ‘Ikrimah, though

وَفِيمَا ذَكَرْنَا خِلَافٌ -: ذَهَبَ قَوْمٌ إلَى أَنَّ الظِّهَارَ مِنْ الْأَمَةِ لَا تَجِبُ فِيهِ كَفَّارَةٌ؟ رُوِيَ ذَلِكَ عَنْ الشَّعْبِيِّ - فِي قَوْلٍ لَهُ - وَعِكْرِمَةُ - وَلَمْ يَصِحَّ عَنْهُمَا - وَصَحَّ عَنْ مُجَاهِدٍ - فِي أَحَدِ قَوْلَيْهِ - وَابْنِ أَبِي مُلَيْكَةَ.

[1] **Qur’an references (L31901):** Qur’an 58:2 (Al-Mujadila); Qur’an 58:3 (Al-Mujadila); Qur’an 58:4 (Al-Mujadila).

[2] **Qur’an references (L31904):** Qur’an 19:64 (Maryam).

[3] **Qur’an references (L31906):** Qur’an 20:52 (Taha).

it is not authentically narrated from them. It is authentically narrated from Mujāhid – in one of his two opinions – and Ibn Abī Mulaykah.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَصْحَابِهِمْ، إِلَّا أَنَّ أَحْمَدَ قَالَ فِي الظِّهَارِ مِنْ مِلْكِ الْيَمِينِ: كَفَّارَةُ يَمِينٍ.

L31911 This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, Aḥmad, Isḥāq, and their followers, except that Aḥmad stated regarding *ẓihār* involving those whom one's right hand possesses: "It requires the expiation for an oath."

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَ يَطَأُ الْأَمَةَ فَعَلَيْهِ كَفَّارَةُ الظِّهَارِ، وَإِنْ كَانَ لَا يَطَؤُهَا فَلَا كَفَّارَةَ ظِهَارٍ عَلَيْهِ -: صَحَّ هَذَا الْقَوْلُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ وَالْحَسَنِ الْبَصْرِيِّ فِي أَحَدِ قَوْلَيْهِمَا.

L31912 A group of scholars said: If he has intercourse with the female slave, he must perform the expiation for *ẓihār*. If he does not have intercourse with her, no expiation for *ẓihār* is required of him. This opinion is authentically reported from Saʿīd ibn al-Musayyab and al-Ḥasan al-Baṣrī in one of their two positions.

وَقَالَتْ طَائِفَةٌ: الظِّهَارُ مِنْ الْأَمَةِ كَالظِّهَارِ مِنْ الْحُرَّةِ -: صَحَّ ذَلِكَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَالْحَسَنِ، وَسُلَيْمَانَ بْنِ يَسَارٍ، وَمُرَّةَ الْهَمْدَانِيِّ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَالشَّعْبِيِّ، وَعِكْرِمَةَ، وَطَاوُسٍ، وَالزُّهْرِيِّ، وَقَتَادَةَ، وَعَمْرِو بْنِ دِينَارٍ، وَمَنْصُورِ بْنِ الْمُعْتَمِرِ - وَهُوَ قَوْلُ مَالِكٍ، وَاللَّيْثِ وَالْحَسَنِ بْنِ حَيٍّ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِهِمْ.

L31913–31915 A group of scholars said: The *ẓihār* from a slave woman is like the *ẓihār* from a free woman — this is established from Saʿīd ibn al-Musayyib, al-Ḥasan, Sulaymān ibn Yasār, Murrah al-Hamdānī, Ibrāhīm al-Nakhaʿī, Saʿīd ibn Jubayr, al-Shaʿbī, ʿIkrimah, Ṭāwūs, al-Zuhrī, Qatādah, and ʿAmr ibn Dīnār. And Manṣūr ibn al-Muʿtamir—this opinion is also held by Mālik, al-Layth, al-Ḥasan ibn Ḥayy, Sufyān al-Thawrī, Abū Sulaymān, and all their companions.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ الْقَائِلُونَ بِأَنَّهُ لَيْسَ ظِهَارًا بِأَنْ قَالُوا: قِسْنَاهُ عَلَى الْإِيلَاءِ؟ قَالَ عَلِيٌّ: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ وَالتَّحَكُّمِ، لِأَنَّهُ لَيْسَ قِيَاسُ ذِكْرِ النِّسَاءِ فِي الظِّهَارِ عَلَى ذِكْرِ النِّسَاءِ فِي الْإِيلَاءِ بِأَوْلَى مِنْ قِيَاسِ ذِكْرِ النِّسَاءِ فِي الظِّهَارِ عَلَى ذِكْرِ النِّسَاءِ فِيمَا حَرَّمَ اللَّهُ عَزَّ وَجَلَّ عَلَيْنَا، إذْ يَقُولُ {وَأُمَّهَاتُ نِسَائِكُمْ} [النساء: ٢٣] فَدَخَلَ فِي ذَلِكَ بِإِجْمَاعٍ مِنَّا وَمِنْهُمْ الْإِمَاءُ مَعَ الْحَرَائِرِ.

L31916 Abū Muḥammad said: Those who claim it does not constitute ẓihār argued by stating: "Did we not measure it against īlāʾ?" ʿAlī responded: "All qiyās is inherently invalid. Even if qiyās were valid, this specific case would represent the essence of invalidity and arbitrariness. For analogizing the mention of women in ẓihār to their mention in īlāʾ holds no greater validity than analogizing it to their mention in what Allah Almighty has prohibited us, as He states: 'and the mothers of your wives' (Quran 4:23). By consensus from both us and them, this ruling encompasses enslaved women alongside free women."[4]

L31917 It is astonishing that they assert the weakest texts take precedence over *qiyas*, yet in this matter they abandoned the Qur'an's universal ruling for an invalid *qiyas*. There exists no legal rationale in *dhihār* that links it

[4] **Qur'an references (L31916):** Qur'an 4:23 (An-Nisa).

to *ilā'* to permit analogical derivation according to proponents of *qiyas*. They then produced absurdities after all this that were meaningless to mention, for they are mere absurdities and idiocies.

وَالْعَجَبُ أَنَّهُمْ يَقُولُونَ: إنَّ أَضْعَفَ النُّصُوصِ أَوْلَى مِنْ الْقِيَاسِ، وَهَذَا مَكَانٌ تَرَكُوا فِيهِ عُمُومَ الْقُرْآنِ لِقِيَاسٍ فَاسِدٍ، وَلَيْسَ فِي الظِّهَارِ عِلَّةٌ تَجْمَعُهُ بِالْإِيلَاءِ فَيَجُوزُ الْقِيَاسُ عَلَيْهَا عِنْدَ أَصْحَابِ الْقِيَاسِ، وَأَتَوْا بِأَهْذَارٍ بَعْدَ هَذَا لَا مَعْنَى لِذِكْرِهَا، لِأَنَّهَا سَخَافَاتٌ وَحَمَاقَاتٌ.

L31918 A group held: Dhihar becomes obligatory through a single utterance.

وَقَالَتْ طَائِفَةٌ: الظِّهَارُ يَجِبُ بِقَوْلٍ مَرَّةً.

L31919 They differed regarding the meaning of "returning to what they said." A group once held the view that "returning to what they said" refers to the act of intercourse itself. Thus, the expiation for ẓihār is not obligatory upon him until he has intercourse with her. If he does so, the expiation becomes binding, and abstaining from intercourse with her at that point is legally permissible, as confirmed by Ṭāwūs, Qatādah, al-Ḥasan, and az-Zuhrī.

وَاخْتَلَفُوا فِي مَعْنَى " الْعَوْدِ لِمَا قَالُوا ". فَقَالَتْ طَائِفَةٌ مَرَّةً " الْعَوْدُ لِمَا قَالُوا " هُوَ الْوَطْءُ نَفْسُهُ، فَلَا تَجِبُ عَلَيْهِ كَفَّارَةُ الظِّهَارِ حَتَّى يَطَأَهَا، فَإِذَا وَطِئَهَا لَزِمَتْهُ الْكَفَّارَةُ، وَالْإِمْسَاكُ عَنْ وَطْئِهَا حِينَئِذٍ - صَحَّ ذَلِكَ عَنْ طَاوُسٍ، وَقَتَادَةَ، وَالْحَسَنِ، وَالزُّهْرِيِّ.

L31920 It was narrated to us via the chain of ʿAbd al-Razzāq from Maʿmar from Qatādah concerning Allah Almighty's statement: {Then they return to what they said} [Al-Mujādilah: 3]. He said: He declares her unlawful via *dhihar* by equating her to his mother's back, then proceeds to have intercourse with her again, thus necessitating the freeing of an enslaved person.[5]

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ {ثُمَّ يَعُودُونَ لِمَا قَالُوا} [المجادلة: ٣] . قَالَ: جَعَلَهَا عَلَيْهِ كَظَهْرِ أُمِّهِ ثُمَّ يَعُودُ فَيَطَؤُهَا فَتَحْرِيرُ رَقَبَةٍ.

L31921 And through the chain of Ibn Wahb, Yunus reported to me from Ibn Shihāb, who said regarding the words of Allah, the Almighty and Majestic, *Then they return to what they said* [Al-Mujādilah: 3]: "He returns to touching her [i.e., resuming marital relations]."[6]

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ قَالَ فِي قَوْلِهِ عَزَّ وَجَلَّ، {ثُمَّ يَعُودُونَ لِمَا قَالُوا} [المجادلة: ٣] قَالَ: يَعُودُ لِمَسِّهَا.

L31922 And through the chain of ʿAbd al-Razzāq from Maʿmar from Ibn Ṭāwus from his father concerning Allah's statement, Exalted and Majestic is He: {Then they return to what they said} [al-Mujādilah: 3]. He said: He made her unlawful to him by ẓihār (as his mother's back), then he resumes intercourse with her, obligating him to free a slave. A group said: When one utters ẓihār, the kaffārah becomes binding upon him.[7]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ فِي قَوْلِهِ عَزَّ وَجَلَّ {ثُمَّ يَعُودُونَ لِمَا قَالُوا} [المجادلة: ٣] . قَالَ: جَعَلَهَا عَلَيْهِ كَظَهْرِ أُمِّهِ، ثُمَّ يَعُودُ فَيَطَؤُهَا فَتَحْرِيرُ رَقَبَةٍ. وَقَالَتْ طَائِفَةٌ: إذَا تَكَلَّمَ بِالظِّهَارِ فَقَدْ لَزِمَهُ كَفَّارَةٌ -

[5] **Qur'an references (L31920):** Qur'an 58:3 (Al-Mujadila).
[6] **Qur'an references (L31921):** Qur'an 58:3 (Al-Mujadila).
[7] **Qur'an references (L31922):** Qur'an 58:3 (Al-Mujadila).

L31923–31925 : كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ طَاوُسٍ قَالَ: إذَا تَكَلَّمَ بِالظِّهَارِ فَقَدْ لَزِمَهُ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَعُثْمَانَ الْبَتِّيِّ - قَالَ الْبَتِّيُّ: إنْ مَاتَتْ لَمْ يَصِلْ إلَى مِيرَاثِهَا حَتَّى يُكَفِّرَ، وَإِنْ وَطِئَهَا كَفَرَ.

L31926 وَقَالَتْ طَائِفَةٌ: الْعَوْدُ هَهُنَا إرَادَةُ الْوَطْءِ، فَمَنْ ظَاهَرَ مِنْ امْرَأَتِهِ لَمْ يَلْزَمْهُ كَفَّارَةُ الْوَطْءِ حَتَّى يُرِيدَ وَطْأَهَا، فَإِذَا أَرَادَ وَطْأَهَا فَحِينَئِذٍ لَزِمَتْهُ الْكَفَّارَةُ، فَإِنْ بَدَا لَهُ عَنْ وَطْئِهَا سَقَطَتْ عَنْهُ الْكَفَّارَةُ، فَإِنْ أَرَادَ وَطْأَهَا عَادَتْ عَلَيْهِ الْكَفَّارَةُ، فَإِنْ بَدَا لَهُ سَقَطَتْ عَنْهُ، وَهَكَذَا أَبَدًا.

L31927 وَهُوَ قَوْلُ مَالِكٍ - فِي أَشْهَرِ قَوْلَيْهِ - وَرُوِيَ عَنْ عَبْدِ الْعَزِيزِ الْمَاجِشُونِ، وَمَا نَعْلَمُ هَذَا عَنْ أَحَدٍ قَبْلَهُمَا - وَهُوَ أَسْقَطُ الْأَقْوَالِ لِتَعَرِّيهِ عَنْ الْأَدِلَّةِ، وَلِأَنَّهُ إيجَابٌ وَإِبْطَالٌ لِلدَّعْوَى بِلَا مَعْنًى.

L31928 وَقَالَتْ طَائِفَةٌ: مَعْنَى " الْعَوْدِ " أَنَّ الظِّهَارَ يُوجِبُ تَحْرِيمًا لَا تَرْفَعُهُ إلَّا الْكَفَّارَةُ، إلَّا أَنَّهُ إنْ لَمْ يَطَأْهَا مُدَّةً طَوِيلَةً حَتَّى مَاتَتْ فَلَا كَفَّارَةَ عَلَيْهِ سَوَاءٌ أَرَادَ فِي خِلَالِ ذَلِكَ وَطْأَهَا أَوْ لَمْ يُرِدْ، فَإِنْ طَلَّقَهَا ثَلَاثًا فَلَا كَفَّارَةَ عَلَيْهِ، فَإِنْ تَزَوَّجَهَا بَعْدَ زَوْجٍ عَادَ عَلَيْهِ حُكْمُ الظِّهَارِ، وَلَا يَطَؤُهَا حَتَّى يُكَفِّرَ، وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، قَالَ: وَالظِّهَارُ قَوْلٌ كَانُوا يَقُولُونَهُ فِي الْجَاهِلِيَّةِ فَنُهُوا عَنْهُ، فَكُلُّ مَنْ قَالَهُ فَقَدْ عَادَ لِمَا قَالَ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قَرِيبٌ فِي الْفَسَادِ مِنْ قَوْلِ مَالِكٍ، لِأَنَّهُ تَحَكُّمٌ بِالْبَاطِلِ وَلَعِبٌ وَكَذِبٌ ظَاهِرٌ، لِأَنَّ الَّذِينَ يَقُولُونَهُ فِي الْإِسْلَامِ لَمْ يَقُولُوهُ قَطُّ فِي الْجَاهِلِيَّةِ، وَإِنَّمَا قَالَ عَزَّ وَجَلَّ: {ثُمَّ يَعُودُونَ لِمَا قَالُوا} [المجادلة: ٣] وَلَمْ يَقُلْ: لِمَا قَالَ غَيْرُهُمْ.

Almighty stated: “Then they return to what they themselves said” [58:3], not “to what others said.”[8]

وَذِكْرُ هَذَيْنِ الْقَوْلَيْنِ يُغْنِي عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهِمَا لِظُهُورِ فَسَادِهِمَا، وَأَنَّهُمَا شَرْعٌ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى، وَأَنَّهُمَا لَا يُحْفَظَانِ عَنْ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ، وَمَالِكٍ.

L31929 The mention of these two opinions suffices without laborious refutation due to their evident invalidity, and that they are legislation Allah the Exalted has not authorized, and that they are not reliably attributed to anyone before Abū Ḥanīfah and Mālik.

وَقَالَتْ طَائِفَةٌ: الْعَوْدُ هُوَ أَنْ يُظَاهِرَ مِنْهَا ثُمَّ يُمْسِكَهَا مُدَّةً بِقَدْرِ أَنْ يَقُولَ فِيهَا: أَنْتِ طَالِقٌ، فَلَا يُطَلِّقُهَا فِي تِلْكَ الْمُدَّةِ، فَإِذَا فَعَلَ ذَلِكَ فَقَدْ عَادَ لِمَا قَالَ.

L31930 A juristic school held: “The reversion (al-ʿawd) occurs when a man declares dhihar against his wife, then refrains from divorcing her for a duration equivalent to the time required to utter ’You are divorced.’ If he acts thus without divorcing her during that period, he has thereby reverted to his initial declaration.”

وَلَزِمَتْهُ الْكَفَّارَةُ - مَاتَتْ أَوعَاشَتْ، طَلَّقَهَا بَعْدَ ذَلِكَ أَوْ لَمْ يُطَلِّقْهَا - فَإِنْ طَلَّقَهَا إثْرَ ظِهَارِهِ مِنْهَا فَلَا كَفَّارَةَ ظِهَارٍ عَلَيْهِ - وَهَذَا قَوْلُ الشَّافِعِيِّ، وَبَعْضِ أَصْحَابِنَا.

L31931 The expiation becomes obligatory upon him—whether she dies or lives, whether he divorces her after that or does not divorce her—. If he divorces her immediately after his ẓihār against her, then no expiation for ẓihār is incumbent upon him. This is the opinion of al-Shāfiʿī and some of our companions.

وَرَوَى أَشْهَبُ عَنْ مَالِكٍ أَنَّهُ قَالَ: إذَا ظَاهَرَ مِنْ امْرَأَتِهِ ثُمَّ أَمْسَكَهَا وَعَزَمَ عَلَى وَطْئِهَا فَقَدْ لَزِمَتْهُ الْكَفَّارَةُ، وَلَا تَسْقُطُ عَنْهُ بَعْدُ - مَاتَتْ أَوْ عَاشَتْ.

L31932–31933 Ashhab reported from Mālik that he said: If a man pronounces *dhihar* upon his wife, then retains her as his wife and resolves to have intercourse with her, the expiation becomes obligatory upon him. This obligation remains binding on him thereafter—whether she dies or lives.

وَقَالَتْ طَائِفَةٌ كَقَوْلِنَا - رُوِيَ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ، وَيَحْيَى بْنِ زِيَادٍ الْفَرَّاءِ - وَقَدْ رُوِيَ نَحْوُهُ عَنْ عَطَاءٍ.

L31934 A group adhered to the same view as ours—as reported by Bukair ibn al-Ashajj and Yaḥyā ibn Ziyād al-Farrā’—and a similar position was transmitted from ʿAṭāʾ.

قَالَ أَبُو مُحَمَّدٍ: جَمِيعُ الْأَقْوَالِ الَّتِي قَدَّمْنَا إنَّمَا هِيَ دَعَاوَى لَا تُوَافِقُ فِي اللُّغَةِ - الَّتِي بِهَا خَاطَبَنَا اللَّهُ عَزَّ وَجَلَّ، وَبِهَا نَزَلَ الْقُرْآنُ - مَا يَقَعُ عَلَيْهِ لَفْظَةُ " الْعَوْدِ لِمَا قَالَ " وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ بِيَقِينٍ، نَعْنِي مَنْ فَسَّرَ " الْعَوْدَ " بِالْوَطْءِ، أَوْ بِإِرَادَةِ الْوَطْءِ، أَوْ بِالْإِمْسَاكِ، إذْ لَيْسَ شَيْءٌ مِنْ هَذَا عَوْدًا لِمَا قَالَ.

L31935 Abu Muhammad said: All the statements we have presented are mere assertions that conflict with the language by which Allah the Almighty addressed us and in which the Quran was sent down - specifically regarding the meaning of the term “returning to what he said.” Any interpretation contradicting this linguistic standard is unequivocally invalid. We mean those who interpreted “returning” as intercourse, the intention of intercourse, or retaining the wife, for none of these constitutes a return to what he said.

[8] **Qur’an references (L31928):** Qur’an 58:3 (Al-Mujadila).

وَكَذَلِكَ مَنْ قَالَ: إِنَّهُ يُوجِبُ تَحْرِيمًا لَا يَرْفَعُهُ إِلَّا الْكَفَّارَةُ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ الْكَفَّارَةَ بِالظِّهَارِ وَحْدَهُ، لَكِنْ بِهِ وَبِ " الْعَوْدِ لِمَا قَالَ هَذَا نَصُّ الْقُرْآنِ.

L31936 Similarly, whoever claims that it entails a prohibition liftable only by expiation—because Allah the Exalted did not mandate expiation for ẓihār alone, but for both ẓihār and retracting the statement and resuming relations—this is the explicit text of the Quran.

قَالَ أَبُو مُحَمَّد: وَلَمْ يَبْقَ إِلَّا قَوْلُنَا وَهُوَ " أَنْ يَعُودَ لِمَا قَالَ ثَانِيَةً " وَلَا يَكُونُ الْعَوْدُ لِلْقَوْلِ إِلَّا بِتَكْرِيرِهِ، لَا يُعْقَلُ فِي اللُّغَةِ غَيْرُ هَذَا، وَبِهَذَا جَاءَتْ السُّنَّةُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سُلَيْمَانَ بْنِ حَرْبٍ، وَمُحَمَّدِ بْنِ الْفَضْلِ عَارِمٍ، كِلَاهُمَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّ جَمِيلَةَ بِنْتَ ثَعْلَبَةَ امْرَأَةَ أَوْسِ بْنِ الصَّامِتِ وَكَانَ بِهِ لَمَمٌ فَكَانَ إذَا اشْتَدَّ لَمَمُهُ ظَاهَرَ مِنْهَا، فَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ فِيهِ كَفَّارَةَ الظِّهَارِ.

L31937 Abu Muhammad said: There remains only our opinion, which is "that he must return to his statement a second time," for retracting a statement is only valid through its repetition. No other interpretation is linguistically conceivable, and this is established in the Sunnah: as transmitted to us through the chain of Sulaymān ibn Ḥarb and Muḥammad ibn al-Faḍl ʿĀrim, both from Ḥammād ibn Salamah from Hishām ibn ʿUrwah from his father from ʿĀ'ishah, the Mother of the Believers: That Jamīlah bint Thaʿlabah, the wife of Awṣ ibn al-Ṣāmit (who suffered from occasional madness), would, whenever his condition worsened, declare ẓihar against her. Thereupon, Allah Almighty revealed the expiation for ẓihar regarding him.

قَالَ أَبُو مُحَمَّد: هَذَا يَقْتَضِي التَّكْرَارَ وَلَا بُدَّ، وَلَا يَصِحُّ فِي الظِّهَارِ إلَّا هَذَا الْخَبَرُ وَحْدَهُ، إلَّا خَبَرًا نَذْكُرُهُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ، وَكُلُّ مَا عَدَا ذَلِكَ فَسَاقِطٌ: إمَّا مُرْسَلٌ، وَإِمَّا مِنْ رِوَايَةِ مَنْ لَا خَيْرَ فِيهِ، كَمَا بَيَّنَّا فِي " كِتَابِ الْإِيصَالِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L31938 Abū Muḥammad said: This necessitates repetition, which is unavoidable. Nothing is valid in *ẓihār* except this report alone, except a report we will mention hereafter, if Allah, the Exalted and Glorified, wills. All else is invalid: either a *mursal* report or narrated by an unreliable narrator, as we clarified in *Kitāb al-Iṣāl*. All praise is due to Allah, Lord of the worlds.

وَاخْتَلَفُوا فِيمَا يُجْزِئُ فِي ذَلِكَ مِنْ الرِّقَابِ -: فَقَالَتْ طَائِفَةٌ: لَا يُجْزِئُ فِي ذَلِكَ عِتْقُ الْكِتَابِيِّ - وَهُوَ قَوْلُ مَالِكٍ.

L31939 They differed regarding what suffices in terms of slaves for this ruling. A group held that manumitting a Person of the Book does not suffice for this purpose—and that is the opinion of Mālik.

وَقَالَ أَصْحَابُنَا، وَأَبُو حَنِيفَةَ: يَجْزِي - وَإِنَّمَا قَالَ الْمَالِكِيُّونَ ذَلِكَ قِيَاسًا عَلَى رَقَبَةِ كَفَّارَةِ قَتْلِ الْخَطَأِ؟ .

L31940–31941 Our companions and Abū Ḥanīfah said: It suffices. The Mālikīs, however, said this exclusively on the basis of analogy to manumitting a slave as expiation for unintentional killing.

قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ، لِأَنَّ الْقِيَاسَ بَاطِلٌ، وَلَوْ كَانَ حَقًّا لَكَانَ هَذَا بَاطِلًا، لِأَنَّهُمْ جَمَعُوا بَيْنَ الْكَفَّارَتَيْنِ فِي أَنْ لَا يَجْزِيَ فِيهِمَا كَافِرٌ، وَلَمْ يَجْمَعُوا بَيْنَهُمَا، وَلَا قَاسُوا إحْدَاهُمَا

L31942 Abu Muhammad said: This is erroneous, for the analogy is invalid. Even if it were valid, this would still be invalid, as they combined the two expiations on the basis that a disbeliever does not suffice for both, yet they neither truly combined them nor drew an analogy between them regarding substituting feeding from fasting for those incapable of fasting. This constitutes arbitrary judgment that no one may validly endorse.

عَلَى الْأُخْرَى فِي تَعْوِيضِ الْإِطْعَامِ مِنْ الصِّيَامِ لِمَنْ عَجَزَ عَنْ الصِّيَامِ - وَهَذَا تَحَكُّمٌ لَا يَسُوغُ لِأَحَدٍ.

L31943 فَإِنْ قَالُوا: لَمْ يُذْكَرْ تَعْوِيضُ الصِّيَامِ فِي كَفَّارَةِ الْقَتْلِ، إنَّمَا ذُكِرَ فِي الظِّهَارِ؟ فَقُلْنَا: وَلَا ذُكِرَتْ الْمُؤْمِنَةُ إلَّا فِي كَفَّارَةِ الْقَتْلِ، وَلَمْ تُذْكَرْ فِي الظِّهَارِ، فَإِمَّا قِيسُوا كُلَّ وَاحِدَةٍ عَلَى الْأُخْرَى، وَإِمَّا أَنْ لَا تَقِيسُوا وَاحِدَةً مِنْهُمَا عَلَى الْأُخْرَى.

L31944 وَأَمَّا قِيَاسُكُمْ إحْدَاهُمَا عَلَى الْأُخْرَى فِي بَعْضِ مَا فِيهَا دُونَ سَائِرِ مَا فِيهَا - فَتَحَكُّمٌ فَاسِدٌ، وَمُنَاقَضَةٌ ظَاهِرَةٌ - وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ فِي الرَّقَبَةِ الْمَعِيبَةِ أَقْوَالًا فِي غَايَةِ الْفَسَادِ. وَلَا نَدْرِي مَا ذَنْبُ الْمَعِيبِ عِنْدَهُمْ، فَلَمْ يُجِيزُوا عِتْقَهُ فِي وَاجِبٍ.

L31945 فَإِنْ قَالُوا: السَّالِمُ أَكْثَرُ ثَمَنًا؟ قُلْنَا: وَالْبَيْضَاءُ الْجَمِيلَةُ أَكْثَرُ ثَمَنًا مِنْ السَّوْدَاءِ الذَّمِيمَةِ، فَلَا تُجِيزُوا فِي ذَلِكَ السَّوْدَاءَ الذَّمِيمَةَ - وَجُمْلَةُ الْأَمْرِ فَإِنَّمَا هِيَ آرَاءٌ فَاسِدَةٌ - وَنَعُوذُ بِاَللَّهِ مِنْ التَّحَكُّمِ فِي الدِّينِ بِمِثْلِهَا.

L31946 وَقَدْ رُوِّينَا عَنْ النَّخَعِيِّ، وَالشَّعْبِيِّ: أَنَّ عِتْقَ الْأَعْمَى يَجْزِي فِي ذَلِكَ، وَعَنْ ابْنِ جُرَيْجٍ أَنَّ الْأَشَلَّ يَجْزِي.

L31947 وَقَالَتْ طَائِفَةٌ: إنْ ظَاهَرَ بِذَاتِ مَحْرَمٍ فَهُوَ ظِهَارٌ، وَإِنْ ظَاهَرَ بِغَيْرِ ذَاتِ مَحْرَمٍ فَلَيْسَ ظِهَارًا -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: مَنْ ظَاهَرَ مِنْ ذَاتِ مَحْرَمٍ فَهُوَ ظِهَارٌ.

L31948 From the narration of ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAṭāʾ: Whoever pronounces dhihar against a mahram relative or a milk-sister, all such women are considered like his mother; she is unlawful to him until he expiates. But

if he pronounces dhihar regarding the daughter of his maternal uncle, it is not considered valid dhihar.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: مَنْ ظَاهَرَ بِذَاتِ مَحْرَمٍ أَوْ بِأُخْتٍ مِنْ الرَّضَاعَةِ، فَكُلُّ ذَلِكَ كَأُمِّهِ لَا تَحِلُّ لَهُ حَتَّى يُكَفِّرَ، فَإِنْ ظَاهَرَ بِبِنْتِ خَالِهِ فَلَيْسَ ظِهَارًا.

L31949–31950 It has been narrated to us from al-Sha'bī—this being the view of Abū Ḥanīfah—and one of the two positions of al-Shāfi'ī. Al-Shāfi'ī holds another opinion—the most renowned of his positions—which states that if a man pronounces *dhihār* against a woman he could lawfully marry for a single day in his lifetime, this does not constitute *dhihār*. But if he pronounces *dhihār* against a woman he could never lawfully marry, then it constitutes *dhihār*.

وَرُوِّينَاهُ عَنْ الشَّعْبِيِّ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ - وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ، وَلِلشَّافِعِيِّ قَوْلٌ آخَرُ - هُوَ أَشْهَرُ أَقْوَالِهِ - وَهُوَ أَنَّ كُلَّ مَنْ ظَاهَرَ بِامْرَأَةٍ حَلَّ لَهُ نِكَاحُهَا يَوْمًا وَمِنْ الدَّهْرِ فَلَيْسَ ظِهَارًا، مَنْ ظَاهَرَ بِامْرَأَةٍ لَمْ يَحِلَّ لَهُ نِكَاحُهَا قَطُّ فَهُوَ ظِهَارٌ.

L31951 Mālik said: Whoever pronounces ẓihār against a mahram woman, a non-mahram woman, or a daughter—the entire act constitutes ẓihār.

وَقَالَ مَالِكٌ: مَنْ ظَاهَرَ بِذَاتِ مَحْرَمٍ أَوْ بِأَجْنَبِيَّةٍ أَوْ بِابْنَةٍ فَهُوَ كُلُّهُ ظِهَارٌ.

L31952 And it has been narrated to us from Al-Sha'bi: "There is no ẓihār except with a mother or grandmother" - a statement also narrated by Abu Thawr from Al-Shafi'i.

وَرُوِّينَا عَنْ الشَّعْبِيِّ: لَا ظِهَارَ إلَّا بِأُمٍّ أَوْ جَدَّةٍ - وَهُوَ قَوْلٌ رَوَاهُ أَيْضًا - أَبُو ثَوْرٍ عَنْ الشَّافِعِيِّ.

L31953 Abu Muhammad said: To those who claim, "There is no ẓihār except from a woman prohibited by familial ties (mahram)," it is asked: From where did you restrict this ruling specifically to mahram women? If they respond: "Because they are prohibited [as mahram] like the mother," we say: The father too is prohibited like the mother, and all men are likewise prohibited.

وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا. قَالَ أَبُو مُحَمَّدٍ: يُقَالُ لِمَنْ قَالَ: لَا ظِهَارَ إلَّا مِنْ ذَاتِ مَحْرَمٍ: مِنْ أَيْنَ خَصَّصْتُمْ ذَوَاتِ الْمَحَارِمِ؟ فَإِنْ قَالُوا: لِأَنَّهُنَّ مُحْرِمَاتٌ كَالْأُمِّ؟ قُلْنَا: وَالْأَبُ أَيْضًا مُحَرَّمٌ كَالْأُمِّ، وَجَمِيعُ الرِّجَالِ كَذَلِكَ.

L31954 If they say, "They are not among the women," and is the mother among the women?

فَإِنْ قَالُوا: لَيْسُوا مِنْ النِّسَاءِ، وَالْأُمُّ مِنْ النِّسَاءِ؟

L31955 We said: Nor are those within prohibited degrees of marriage considered mothers, for the mother is she who bore him. So what distinguishes one *qiyas* from another? He challenged those who ruled *dhihar* applicable to every unrelated woman and even to the father: "From where did you analogize *dhihar* by the father to *dhihar* by the mother? Why do you not analogize a woman's *dhihar* toward a man to a man's *dhihar* toward a woman?" A group of scholars—all more eminent than Malik and Abu

قُلْنَا: وَلَا ذَوَاتُ الْمَحَارِمِ أُمَّهَاتٌ، وَالْأُمُّ هِيَ الَّتِي وَلَدَتْهُ، فَمَا الْفَرْقُ بَيْنَ قِيَاسٍ وَقِيَاسٍ - وَقَالَ لِمَنْ قَالَ بِالظِّهَارِ مِنْ كُلِّ أَجْنَبِيَّةٍ، وَمِنْ الْأَبِ أَيْضًا: مِنْ أَيْنَ قِسْتُمْ الظِّهَارَ بِالْأَبِ عَلَى الظِّهَارِ بِالْأُمِّ، وَلَمْ تَقِيسُوا ظِهَارَ الْمَرْأَةِ مِنْ الرَّجُلِ عَلَى ظِهَارِ الرَّجُلِ مِنْ الْمَرْأَةِ؟

Hanifah—held this view. As we narrate through Ahmad ibn Hanbal's chain: Hushaym reported to us, saying: Mughirah, the son of Miqsam, narrated from Ibrahim al-Nakha'i that 'Aisha bint Talhah ibn 'Ubayd Allah said: "If I marry Mus'ab ibn al-Zubayr, he is to me like my mother's back." She consulted the people of Medina, and they ruled that atonement was incumbent upon her. Al-Athram said: I asked Ahmad ibn Hanbal, "Must she perform atonement?" He replied, "Yes, she must perform it." This reflects the view held by the people of Medina during Mus'ab's era—this is an old ruling.

وَقَدْ قَالَ بِهَذَا جَمَاعَةٌ، كُلُّهُمْ أَجَلُ مِنْ مَالِكٍ، وَأَبِي حَنِيفَةَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ نَا هُشَيْمٌ أَنَا مُغِيرَةُ هُوَ ابْنُ مِقْسَمٍ - عَنْ إِبْرَاهِيمَ النَّخَعِيِّ: أَنَّ عَائِشَةَ بِنْتَ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ قَالَتْ: إِنْ تَزَوَّجْت مُصْعَبَ بْنَ الزُّبَيْرِ فَهُوَ عَلَيَّ كَظَهْرِ أُمِّي؟ فَسَأَلَتْ أَهْلَ الْمَدِينَةِ، فَرَأَوْا أَنَّ عَلَيْهَا الْكَفَّارَةَ - قَالَ الْأَثْرَمُ: فَقُلْت لِأَحْمَدَ بْنِ حَنْبَلٍ: أَتُكَفِّرُ؟ قَالَ: نَعَمْ تُكَفِّرُ - فَهَذَا كَمَا يَرَى أَهْلُ الْمَدِينَةِ فِي زَمَنِ مُصْعَبٍ - هَذَا قَدِيمٌ.

L31956 And through the chain of Waki' from Sufyān al-Thawrī from al-Mughīra from Ibrāhīm al-Nakha'ī: that 'Ā'isha bint Ṭalḥa pronounced ẓihār upon al-Muṣ'ab ibn al-Zubayr if she married him. She then married him, so she asked the jurists—while they were gathered—a question, and she was instructed to perform expiation.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّ عَائِشَةَ بِنْتَ طَلْحَةَ ظَاهَرَتْ مِنْ الْمُصْعَبِ بْنِ الزُّبَيْرِ إنْ تَزَوَّجَتْهُ، فَتَزَوَّجَتْهُ فَسَأَلَتْ الْفُقَهَاءَ وَهُمْ مُتَوَافِرُونَ؟ فَأُمِرَتْ بِكَفَّارَةٍ.

L31957–31958 We have also narrated it through the chain of 'Abd al-Razzāq, from Sufyān al-Thawrī, from Abū Isḥāq al-Shaybānī and Ash'ath ibn 'Abd al-Malik al-Ḥumrānī. Abū Isḥāq narrated from al-Sha'bī, and al-Ḥumrānī narrated from Muḥammad ibn Sīrīn, both of them having narrated a ḥadīth similar to that of Ibrāhīm.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ، وَأَشْعَثَ بْنِ عَبْدِ الْمَلِكِ الْحُمْرَانِيِّ، قَالَ أَبُو إِسْحَاقَ عَنْ الشَّعْبِيِّ، وَقَالَ الْحُمْرَانِيُّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ، كِلَاهُمَا بِمِثْلِ حَدِيثِ إبْرَاهِيمَ.

L31959 From the narration of 'Abd al-Razzāq via Ma'mar via Ibn Shubrumah, who said: The daughter of Ṭalḥah declared: "If I were to marry Muṣ'ab ibn al-Zubayr, he would be as forbidden to me as her father due to fosterage." She then married him and inquired about this matter with the companions of Ibn Mas'ūd. They replied: "She must perform kaffārah (expiation)."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ شُبْرُمَةَ قَالَ: قَالَتْ بِنْتُ طَلْحَةَ: مُصْعَبُ بْنُ الزُّبَيْرِ إنْ نَكَحْته فَهُوَ عَلَيَّ كَظَهْرِ أَبِيهَا، ثُمَّ نَكَحَتْهُ، فَسَأَلَتْ عَنْ ذَلِكَ أَصْحَابَ ابْنِ مَسْعُودٍ؟ فَقَالُوا: تُكَفِّرُ.

L31960 And through him to Ma'mar, from Al-Zuhri, regarding a woman who said to her husband: "He is to her as her father." Al-Zuhri said: "She has uttered reprehensible speech and falsehood. We hold that she must atone by freeing a slave, fasting two consecutive months, or feeding sixty needy people—and this does not prevent her husband from having intercourse with her."

وَبِهِ إلَى مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي امْرَأَةٍ قَالَتْ لِزَوْجِهَا: هُوَ عَلَيْهَا كَأَبِيهَا؟ فَقَالَ الزُّهْرِيُّ: قَالَتْ مُنْكَرًا مِنْ الْقَوْلِ وَزُورًا، فَنَرَى أَنْ تُكَفِّرَ بِعِتْقِ رَقَبَةٍ، أَوْ بِصَوْمِ شَهْرَيْنِ مُتَتَابِعَيْنِ، أَوْ تُطْعِمَ سِتِّينَ مِسْكِينًا - وَلَا يَحُولُ بَيْنَهَا وَبَيْنَ زَوْجِهَا أَنْ يَطَأَهَا.

L31961 It has been reported to us through the chain of Sufyān al-Thawrī from

ʿAmr ibn ʿĀmir al-Nahdī from al-Ḥasan al-Baṣrī that he held the view that a woman can pronounce ẓihār against the man as ẓihār—and this is the opinion of al-Awzāʿī, al-Ḥasan ibn Ḥayyin, and al-Ḥasan ibn Ziyād al-Luʾluʾī.

وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمْرِو بْنِ عَامِرٍ النَّهْدِيِّ عَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ كَانَ يَرَى: تُظَاهِرُ الْمَرْأَةُ مِنْ الرَّجُلِ ظِهَارًا - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَالْحَسَنِ بْنِ زِيَادٍ اللُّؤْلُؤِيِّ.

L31962 If they say: "Ẓihār was the divorce of the pre-Islamic era, and divorce belongs to men," we say: "How has it been validated according to you that ẓihār was the divorce of the pre-Islamic era? How can this be when you permit divorce to be in the woman's control if the man places it in her hand? Then say the same regarding ẓihār." All of this demonstrates the corruption of qiyās and its contradictions.

فَإِنْ قَالُوا: كَانَ الظِّهَارُ طَلَاقَ الْجَاهِلِيَّةِ وَالطَّلَاقُ إلَى الرِّجَالِ؟ قُلْنَا: وَمِنْ أَيْنَ صَحَّ عِنْدَكُمْ أَنَّ الظِّهَارَ كَانَ طَلَاقَ الْجَاهِلِيَّةِ؟ فَكَيْفَ وَأَنْتُمْ تُجِيزُونَ أَنْ يَكُونَ الطَّلَاقُ بِيَدِ الْمَرْأَةِ إذَا جَعَلَهُ الرَّجُلُ بِيَدِهَا؟ فَقُولُوا كَذَلِكَ فِي الظِّهَارِ، وَهَذَا كُلُّهُ يُبَيِّنُ فَسَادَ الْقِيَاسِ وَتَنَاقُضَهُ.

L31963 A group, among them Sufyan al-Thawri and al-Shafiʿi, said: If he declares ẓihār by his mother's head or her hand, it is ẓihār.

وَقَالَتْ طَائِفَةٌ، مِنْهُمْ سُفْيَانُ الثَّوْرِيُّ، وَالشَّافِعِيُّ: إنْ ظَاهَرَ بِرَأْسِ أُمِّهِ أَوْ يَدِهَا؟ فَهُوَ ظِهَارٌ.

L31964 Abu Hanifah said: If one makes ẓihār by [referring to] something of his mother that he is forbidden to look upon, it constitutes valid ẓihār. But if he makes ẓihār by [referring to] something of his mother that he is permitted to look upon, it does not constitute ẓihār.

وَقَالَ أَبُو حَنِيفَةَ: إنْ ظَاهَرَ بِشَيْءٍ لَا يَحِلُّ لَهُ أَنْ يَنْظُرَ إلَيْهِ مِنْ أُمِّهِ؟ فَهُوَ ظِهَارٌ، وَإِنْ ظَاهَرَ بِشَيْءٍ يَحِلُّ لَهُ أَنْ يَنْظُرَ إلَيْهِ مِنْ أُمِّهِ؟ فَلَيْسَ ظِهَارًا.

L31965 Abu Muhammad said: All these are corrupt standards, and none of them is preferable to the others.

قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ هَذِهِ مَقَايِيسُ فَاسِدَةٌ، لَيْسَ بَعْضُهَا أَوْلَى مِنْ بَعْضٍ.

L31966 Similarly, the analogy of Mālik's opinion as mentioned by Ibn al-Qāsim holds that declaring any of his mother's limbs [as unlawful] constitutes ẓihār. The truth regarding this is what we have stated: that we do not transgress the text defined by Allah the Exalted. Allah the Exalted said: "And whoever transgresses the limits of Allah has certainly wronged himself" (Quran 65:1).[9]

وَكَذَلِكَ قِيَاسُ قَوْلِ مَالِكٍ ذَكَرَهُ ابْنُ الْقَاسِمِ: أَنَّ مَا ظَاهَرَ بِهِ مِنْ أَعْضَاءِ أُمِّهِ فَهُوَ ظِهَارٌ وَالْحَقُّ مِنْ ذَلِكَ مَا ذَكَرْنَا: مِنْ أَنْ لَا نَتَعَدَّى النَّصَّ الَّذِي حَدَّهُ اللَّهُ تَعَالَى، قَالَ اللَّهُ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

L31967 Abu Hanifah said: If one feeds the same needy person each day for sixty days, it suffices.

وَقَالَ أَبُو حَنِيفَةَ: إنْ كَرَّرَ الْإِطْعَامَ عَلَى مِسْكِينٍ وَاحِدٍ سِتِّينَ يَوْمًا أَجْزَأَهُ.

L31968–31969 Abu Muhammad said: This contradicts Allah the Exalted's obligation of feeding sixty needy persons. As for one who begins fasting and then engages

[9] **Qur'an references (L31966):** Qur'an 65:1 (At-Talaq).

in intercourse at night before completing them, or engages in intercourse before performing expiation via manumission of a slave or fasting - it has been narrated from Abu Yusuf that he does not perform expiation, because he cannot fulfill the expiation.

قَالَ أَبُو مُحَمَّد: هَذَا خِلَافُ إيجَابِ اللَّهِ تَعَالَى سِتِّينَ مِسْكِينًا - وَأَمَّا مَنْ شَرَعَ فِي الصَّوْمِ فَوَطِئَ لَيْلًا قَبْلَ أَنْ يُتِمَّهُنَّ أَوْ وَطِئَ قَبْلَ أَنْ يُكَفِّرَ بِعِتْقٍ أَوْ بِصَوْمٍ؟ فَرُوِيَ عَنْ أَبِي يُوسُفَ أَنَّهُ لَا يُكَفِّرُ، لِأَنَّهُ لَا يَسْتَطِيعُ عَلَى الْكَفَّارَةِ.

L31970 Others said: "He is only obligated to perform a single expiation" — as we have narrated from Wakiʿ, from Hishām al-Dastuwāʾī, from Qatādah, from Saʿīd ibn al-Musayyab regarding the one who pronounces ẓihār and then has intercourse before performing expiation. He said: "He must abstain until he performs expiation."

وَقَالَ آخَرُونَ: لَيْسَ عَلَيْهِ إلَّا كَفَّارَةٌ وَاحِدَةٌ -: كَمَا رُوِّينَا عَنْ وَكِيعٍ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي الْمَظَاهِرِ يُجَامِعُ قَبْلَ أَنْ يُكَفِّرَ قَالَ: يُمْسِكُ حَتَّى يُكَفِّرَ.

L31971 Also via the chain of Waki', from al-Ṣalt ibn Dīnār, who said: I asked ten jurists about a man who pronounced ẓihār and then had intercourse before performing atonement. They replied, "Only one atonement is required."

وَمِنْ طَرِيقِ وَكِيعٍ أَيْضًا عَنْ الصَّلْتِ بْنِ دِينَارٍ قَالَ: سَأَلْت عَشَرَةً مِنْ الْفُقَهَاءِ عَنْ الْمُظَاهِرِ يُجَامِعُ قَبْلَ أَنْ يُكَفِّرَ؟ فَقَالُوا: كَفَّارَةٌ وَاحِدَةٌ.

L31972 Waki' said: And they are—al-Ḥasan, Ibn Sīrīn, Muwarriq al-'Ijlī, Bakr Ibn 'Abd Allāh al-Muzanī, Qatādah, 'Aṭā', Ṭāwus, Mujāhid, and 'Ikrimah.

وَقَالَ وَكِيعٌ: وَهُمْ -: الْحَسَنُ، وَابْنُ سِيرِينَ، وَمُوَرِّقٌ الْعِجْلِيُّ، وَبَكْرُ بْنُ عَبْدِ اللَّهِ الْمُزَنِيّ، وَقَتَادَةُ، وَعَطَاءٌ، وَطَاوُسٌ وَمُجَاهِدٌ، وَعِكْرِمَةُ.

L31973 Waki' said: "As for the tenth, I deem it valid"—the position held by Ibrāhīm al-Nakhaʿī and al-Shaʿbī.

قَالَ وَكِيعٌ: وَالْعَاشِرُ أَرَاهُ نَافِعًا - وَهُوَ قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ.

L31974 A group said: He must perform two acts of expiation. As transmitted to us through the chain of Ibn Abī Shaybah – from 'Abd al-Aʿlā, and Yazīd ibn Hārūn. 'Abd al-Aʿlā reported from Saʿīd ibn Abī 'Arūbah, from Qatādah, from Rajā' ibn Ḥaywah, from Qabīṣah ibn Dhu'ayb, from 'Amr ibn al-'Āṣ. Yazīd ibn Hārūn reported via al-Taymī, who narrated from Ibn 'Umar. Then 'Amr ibn al-'Āṣ and Ibn 'Umar agreed regarding one who pronounced *ẓihār* [a form of divorce by likening one's wife to a mother] and had intercourse with her before performing expiation. They both said: He must perform two acts of expiation.

وَقَالَتْ طَائِفَةٌ: عَلَيْهِ كَفَّارَتَانِ: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الْأَعْلَى، وَيَزِيدُ بْنُ هَارُونَ، قَالَ عَبْدُ الْأَعْلَى عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ رَجَاءِ بْنِ حَيْوَةَ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ عَنْ عَمْرِو بْنِ الْعَاصِ، وَقَالَ يَزِيدُ بْنُ هَارُونَ: عَنْ التَّيْمِيِّ بَلَغَنِي عَنْ ابْنِ عُمَرَ، ثُمَّ اتَّفَقَ عَمْرُو بْنُ الْعَاصِ وَابْنُ عُمَرَ فِي الْمَظَاهِرِ يَطَؤُهَا قَبْلَ أَنْ يُكَفِّرَ؟ قَالَا جَمِيعًا: عَلَيْهِ كَفَّارَتَانِ.

L31975 And via the chain of ʿAbd al-Razzāq, from ʿUmar, from Qatādah, from Qabīṣah ibn Dhuʾayb regarding one who pronounced ẓihār [a divorce declaration]: If he has intercourse with her before performing expiation? He said: He is obligated to two acts of expiation.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُمَرَ عَنْ قَتَادَةَ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ فِي الْمَظَاهِرِ يَطَؤُهَا قَبْلَ أَنْ يُكَفِّرَ؟ قَالَ عَلَيْهِ كَفَّارَتَانِ.

L31976 Ma’mar said: This is also the view of Qatadah—and it is the view of Sa’īd ibn Jubayr, al-Ḥakam ibn ʿUtaybah, and ʿUbayd Allāh ibn al-Ḥasan the judge.

قَالَ مَعْمَرٌ: وَهُوَ قَوْلُ قَتَادَةَ أَيْضًا - وَهُوَ قَوْلُ سَعِيدِ بْنِ جُبَيْرٍ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ الْقَاضِي.

L31977–31979 A group said: Upon him are three expiations: as we have transmitted through the chain of transmission of Saʿīd ibn Manṣūr, who reported to us from Hushaym, from Yūnus ibn ʿUbayd and ʿUbaydah. Yūnus reported from al-Ḥasan, while ʿUbaydah reported from Ibrāhīm. Both collectively said regarding one who pronounces *dhihār* and then has intercourse with her before expiating: “Are three expiations incumbent upon him?” Abū Muḥammad said: The opinion would have followed Abū Yūsuf’s position were it not for the report we transmitted through the chain of transmission of Aḥmad ibn Shuʿayb—al-Ḥasan ibn Ḥurayth reported to us from al-Faḍl ibn Mūsā, from Maʿmar, from al-Ḥakam ibn Abān, from... Ikrimah reported from Ibn Abbas that a man came to the Prophet (peace be upon him) and said: “O Messenger of Allah, I declared my wife unlawful through dhihar, then I had intercourse with her before I expiated.” The Messenger of Allah (peace be upon him) said to him: “Do not approach her until you fulfill what Allah, the Almighty and Majestic, has commanded.”

وَقَالَتْ طَائِفَةٌ: عَلَيْهِ ثَلَاثُ كَفَّارَاتٍ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يُونُسُ بْنُ عُبَيْدٍ، وَعُبَيْدَةُ، قَالَ يُونُسُ: عَنْ الْحَسَنِ، وَقَالَ عُبَيْدَةُ: عَنْ إبْرَاهِيمَ، قَالَا جَمِيعًا فِي الَّذِي يُظَاهِرُ ثُمَّ يَطَؤُهَا قَبْلَ أَنْ يُكَفِّرَ: عَلَيْهِ ثَلَاثُ كَفَّارَاتٍ؟ قَالَ أَبُو مُحَمَّدٍ: كَانَ الْقَوْلُ قَوْلَ أَبِي يُوسُفَ لَوْلَا الْخَبَرُ الَّذِي رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا الْحَسَنُ بْنُ حُرَيْثٍ نا الْفَضْلُ بْنُ مُوسَى عَنْ مَعْمَرٍ عَنْ الْحَكَمِ بْنِ أَبَانَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَجُلًا أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إنِّي ظَاهَرْتُ مِنْ امْرَأَتِي فَوَقَعْتُ عَلَيْهَا قَبْلَ أَنْ أُكَفِّرَ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَا تَقْرَبْهَا حَتَّى تَفْعَلَ مَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ»

L31980 Abu Muhammad said: Therefore, it became obligatory to adhere to his command (May Allah bless him and grant him peace).

قَالَ أَبُو مُحَمَّدٍ: فَوَجَبَ الْوُقُوفُ عِنْدَ أَمْرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L31981 Ali said: “This is an authentic report from the narrations of trustworthy authorities; its transmission as a *mursal* report by those who transmitted it does not detract from its validity.”

قَالَ عَلِيٌّ: وَهَذَا خَبَرٌ صَحِيحٌ مِنْ رِوَايَاتِ الثِّقَاتِ لَا يَضُرُّهُ إرْسَالُ مَنْ أَرْسَلَهُ.

L31982 Abu Muhammad said: As for one who begins the fast and then has vaginal intercourse with the woman upon whom he pronounced *dhihar* at night before completing the two months? Mālik said: He must start the two months anew. Abū Ḥanīfah and al-Shāfiʿī said: He must complete them by resuming what he has already fasted of them.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا مَنْ شَرَعَ فِي الصَّوْمِ فَوَطِئَ قُبُلَ الَّتِي ظَاهَرَ عَلَيْهَا لَيْلًا، قَبْلَ أَنْ يُتِمَّ الشَّهْرَيْنِ؟ فَإِنَّ مَالِكًا قَالَ: يَبْتَدِئُ الشَّهْرَيْنِ مِنْ ذِي قَبْلٍ، وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: يُتِمُّهُمَا بَانِيًا عَلَى مَا صَامَ مِنْهُمَا.

L31983 This is valid, as the obligation was that the two months be fully completed before intercourse. Since this can no longer be achieved afterward, whatever remains of them after intercourse does not count, and the portion already

completed before intercourse is better than intending for them to be fully completed after intercourse.

وَهَذَا هُوَ صَحِيحٌ، إذْ إنَّمَا كَانَ الْوَاجِبُ أَنْ يَكُونَ الشَّهْرَانِ يَتِمَّانِ قَبْلَ الْوَطْءِ فَإِذْ لَا سَبِيلَ إلَى ذَلِكَ بَعْدُ فَلَا يَكُونُ مَا بَقِيَ مِنْهُمَا بَعْدَ الْوَطْءِ، وَمَا مَضَى مِنْهُمَا قَبْلَ الْوَطْءِ خَيْرٌ مِنْ أَنْ يَقْصِدَ إلَى أَنْ يَكُونَا بِكَمَالِهِمَا بَعْدَ الْوَطْءِ.

L31984 As for the ẓihār of the slave: there is disagreement therein.

وَأَمَّا ظِهَارُ الْعَبْدِ - فَفِيهِ اخْتِلَافٌ.

L31985 It has been narrated to us via Abd al-Razzaq, from Ma'mar, from Qatadah, from Ibrahim al-Nakha'i, who said regarding a slave who pronounces *dhihar* upon his wife: "If he fasts for a month, it suffices for him."

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ فِي الْعَبْدِ يُظَاهِرُ مِنْ امْرَأَتِهِ أَنَّهُ إنْ صَامَ شَهْرًا أَجْزَأَ عَنْهُ.

L31986 Narrated by ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAṭāʾ regarding a slave who pronounced zhihar against a woman: He said, "He must undertake fasting [as expiation], and a slave cannot validly pronounce zhihar independent of his master."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِي عَبْدٍ ظَاهَرَ مِنْ امْرَأَةٍ؟ قَالَ: يَنْتَظِرُ الصَّوْمَ، وَلَا ظِهَارَ لِعَبْدٍ دُونَ سَيِّدِهِ.

L31987–31989 And others said: As narrated via the transmission of Abd al-Razzaq, from Sufyan al-Thawri, from Yunus ibn Ubayd. From Al-Ḥasan al-Baṣrī regarding the slave who pronounced ẓihār: he must fast for two months. If they permit him to be manumitted, it suffices, and he may feed.

وَقَالَ آخَرُونَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ فِي الْعَبْدِ الْمُظَاهِرِ يَصُومُ شَهْرَيْنِ وَإِنْ أَذِنُوا لَهُ فِي الْعِتْقِ جَازَ، وَلَهُ أَنْ يُطْعِمَ.

L31990 We have received reports through the chain narrated by ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Layth ibn Abī Sulaym, from Mujāhid regarding the expiation of the servant. He said: "Nothing is obligatory upon the servant except fasting and the prescribed prayers (Ṣalāt)."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ مُجَاهِدٍ فِي تَكْفِيرِ الْعَبْدِ؟ قَالَ: لَيْسَ عَلَى الْعَبْدِ إلَّا الصَّوْمُ وَالصَّلَاةُ.

L31991 And Ṭāwus held the same view as we hold – as transmitted through the chain of Saʿīd ibn Manṣūr who reported to us from Sufyān ibn ʿUyaynah. He said: I asked ʿAbd Allāh ibn Ṭāwus, "What did your father say regarding a slave's ẓihār?" He replied: "He held that upon him is an expiation like that of a free man."

وَقَالَ طَاوُسٌ كَقَوْلِنَا - كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ قَالَ: قُلْت لِعَبْدِ اللَّهِ بْنِ طَاوُسٍ: مَا كَانَ أَبُوك يَقُولُ فِي ظِهَارِ الْعَبْدِ؟ قَالَ: كَانَ يَقُولُ عَلَيْهِ مِثْلُ كَفَّارَةِ الْحُرِّ.

L31992 And Abu Hanifah, Malik, and al-Shafi'i said: He must fast for two months, and manumission does not suffice for him.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: يَصُومُ شَهْرَيْنِ وَلَا يَجْزِيهِ الْعِتْقُ.

L31993 Ali said: Allah the Almighty and Majestic has not singled out a free person

to the exclusion of a slave: {Nor is your Lord forgetful} [Maryam: 64].[10]

قَالَ عَلِيٌّ: لَمْ يَخُصَّ اللَّهُ عَزَّ وَجَلَّ حُرًّا مِنْ عَبْدٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

A legal issue: a man pronounced ẓihār upon his wife, then repeated it, then remarried her after completing expiation.

[مَسْأَلَةٌ ظَاهَرَ مِنْ أَجْنَبِيَّةٍ ثُمَّ كَرَّرَهُ ثُمَّ تَزَوَّجَهَا]

1891 - Issue: Whoever pronounces ẓihār against a woman not his wife, repeats it, then marries her, no ẓihār is held against him, nor is expiation required.

١٨٩١ - مَسْأَلَةٌ: وَمَنْ ظَاهَرَ مِنْ أَجْنَبِيَّةٍ ثُمَّ كَرَّرَهُ، ثُمَّ تَزَوَّجَهَا فَلَيْسَ عَلَيْهِ ظِهَارٌ، وَلَا كَفَّارَةٌ.

People have differed regarding this matter. It has been narrated to us through Mālik's chain from Saʿīd ibn ʿAmr ibn Sulaym al-Zuraqī from al-Qāsim ibn Muḥammad, who said: A man declared a woman to be as unlawful as his mother's back (by ẓihār) if he were to marry her. ʿUmar ibn al-Khaṭṭāb said to him: "If you marry her, do not approach her until you perform the *kaffārah*."

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ سَعِيدِ بْنِ عَمْرِو بْنِ سُلَيْمٍ الزُّرَقِيِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، قَالَ: جَعَلَ رَجُلٌ امْرَأَةً كَظَهْرِ أُمِّهِ إنْ تَزَوَّجَهَا؟ فَقَالَ لَهُ عُمَرُ بْنُ الْخَطَّابِ: إنْ تَزَوَّجْتَهَا فَلَا تَقْرَبْهَا حَتَّى تُكَفِّرَ.

This is the view of ʿAṭāʾ, Saʿīd ibn al-Musayyib, al-Ḥasan, and ʿUrwah ibn al-Zubayr; this has been authenticated as sound from them.

وَهُوَ قَوْلُ عَطَاءٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَالْحَسَنِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، صَحَّ ذَلِكَ عَنْهُمْ.

This is the opinion of Abū Ḥanīfah, Mālik, Aḥmad ibn Ḥanbal, their companions, Sufyān al-Thawrī, and Isḥāq.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَصْحَابِهِمْ، وَسُفْيَانَ الثَّوْرِيِّ، وَإِسْحَاقَ.

A group held the same opinion as we have stated: It has been narrated to us through the chain of ʿAbd al-Razzāq, from Sufyān ibn ʿUyaynah, from Muḥammad ibn ʿAjlān, from ʿIkrimah, from Ibn ʿAbbās, that he did not regard *ẓihār* before marriage as having any effect, nor did he regard divorce before marriage as having any effect—and this narration is of the highest authenticity in its transmission from Ibn ʿAbbās.

وَقَالَتْ طَائِفَةٌ كَمَا قُلْنَا: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مُحَمَّدِ بْنِ عَجْلَانَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ لَا يَرَى الظِّهَارَ قَبْلَ النِّكَاحِ شَيْئًا، وَلَا يَرَى أَيْضًا الطَّلَاقَ قَبْلَ النِّكَاحِ شَيْئًا - وَهَذَا فِي غَايَةِ الصِّحَّةِ عَنْ ابْنِ عَبَّاسٍ.

[10] **Qur'an references (L31993):** Qur'an 19:64 (Maryam).

L32000 Narrated via the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Ḥasan and Qatādah, who both said: If he declares ẓihār before consummating the marriage, it has no legal effect—and this is the opinion of al-Shāfiʿī and Abū Sulaymān.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الْحَسَنِ، وَقَتَادَةَ، قَالَا جَمِيعًا: إنْ ظَاهَرَ قَبْلَ أَنْ يَنْكِحَ فَلَيْسَ بِشَيْءٍ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L32001–32002 Abu Muhammad said: Allah the Exalted stated: {And those who declare dhihar against their wives} [Al-Mujadilah: 3]. The Exalted has decreed expiation only for one who declares dhihar against his wife and then retracts his statement. He has not imposed this [expiation] on one who declares dhihar against someone other than his wife.[1]

قَالَ أَبُو مُحَمَّد: قَالَ اللَّهُ تَعَالَى: {وَالَّذِينَ يُظَاهِرُونَ مِنْ نِسَائِهِمْ} [المجادلة: ٣] فَإِنَّمَا جَعَلَ الْكَفَّارَةَ عَلَى مَنْ ظَاهَرَ مِنْ امْرَأَتِهِ، ثُمَّ عَادَ لِمَا قَالَ، وَلَمْ يَجْعَلْ تَعَالَى ذَلِكَ عَلَى مَنْ ظَاهَرَ مِنْ غَيْرِ امْرَأَتِهِ.

L32003 If it is said: "If he marries her, does that make him a muẓāhir (one who has pronounced ẓihār) toward her, while she is his wife?" We respond: Ẓihār is only legally established at the moment of its utterance, not afterward. It is invalid for the ruling not to take effect when the statement is uttered, then to take effect when it is no longer uttered.

فَإِنْ قِيلَ: فَإِنَّهُ إذَا تَزَوَّجَهَا فَهُوَ مُظَاهِرٌ مِنْهَا، وَهِيَ امْرَأَتُهُ؟ قُلْنَا: إنَّمَا الظِّهَارُ حِينَ النُّطْقِ بِهِ لَا بَعْدَ ذَلِكَ، وَمِنْ الْبَاطِلِ أَنْ لَا يَلْزَمَ الْحُكْمُ لِلْقَوْلِ حِينَ يُقَالُ ثُمَّ يَلْزَمَ حِينَ لَا يُقَالُ.

L32004 And whoever conditions his ẓihār upon an action he may perform—such as saying, "You are like my mother's back if I have intercourse with you," or saying, "If you spoke to Zayd"—and repeats this statement, it does not constitute ẓihār, whether he performs that action or not. This is because he neither enacted the ẓihār nor bound himself to it when he uttered it. Whatever is not binding at the moment of his commitment does not become binding outside the state of commitment unless a textual ruling obligates it, and there is no such text in this case.

وَمَنْ عَلَّقَ ظِهَارَهُ بِشَيْءٍ يَفْعَلُهُ مِثْلَ أَنْ يَقُولَ: أَنْتِ كَظَهْرِ أُمِّي إنْ وَطِئْتُك، أَوْ قَالَ: إنْ كَلَّمْتِ زَيْدًا - وَكَرَّرَ ذَلِكَ - فَلَيْسَ ظِهَارًا - فَعَلَ ذَلِكَ الشَّيْءَ أَوْ لَمْ يَفْعَلْهُ - لِأَنَّهُ لَمْ يُمْضِ الظِّهَارَ وَلَا الْتَزَمَهُ حِينَ نَطَقَ بِهِ، وَكُلُّ مَا لَمْ يَلْزَمْ حِينَ الْتِزَامِهِ لَمْ يَلْزَمْ فِي غَيْرِ حَالِ الْتِزَامِهِ، إلَّا أَنْ يُوجِبَ ذَلِكَ نَصٌّ، وَلَا نَصَّ هَهُنَا.

A case where he declared dhihar, then repeated it a second time, then a third time.

[مَسْأَلَةٌ ظَاهَرَ ثُمَّ كَرَّرَ ثَانِيَةً ثُمَّ ثَالِثَةً]

L32006 1892 - Question: If someone pronounces dhihar and then repeats it a second time, followed by a third, only one expiation is required. This is because the second instance obligates the expiation, as we have previously established, while the third occurs independently and does not incur any obligation. If he repeats it a fourth time, another expiation becomes due. The same ruling applies to every repetition of dhihar, because the second repetition obligates

١٨٩٢ - مَسْأَلَةٌ: وَمَنْ ظَاهَرَ ثُمَّ كَرَّرَ ثَانِيَةً، ثُمَّ ثَالِثَةً، فَلَيْسَ عَلَيْهِ إلَّا كَفَّارَةٌ وَاحِدَةٌ، لِأَنَّ الثَّانِيَةَ بِهَا وَجَبَتْ الْكَفَّارَةُ كَمَا قَدَّمْنَا وَحَصَلَتْ الثَّالِثَةُ مُنْفَرِدَةً لَا تُوجِبُ شَيْئًا، فَإِنْ كَرَّرَ رَابِعَةً فَعَلَيْهِ كَفَّارَةٌ أُخْرَى، وَهَكَذَا الْقَوْلُ فِي كُلِّ مَا أَعَادَ مِنْ الظِّهَارِ لِأَنَّ بِتَكْرَارِهِ

[1] **Qur'an references (L32002):** Qur'an 58:3 (Al-Mujadila).

and confirms the expiation. Subsequent repetitions constitute a new initiation of dhihar - if he repeats it, another expiation becomes due. Success is from Allah, the Most High.

ثَانِيَةً تَجِبُ الْكَفَّارَةُ وَتَلْزَمُ، فَيَكُونُ فِيمَا بَعْدَهَا مُبْتَدِئًا لِلظِّهَارِ، فَإِنْ كَرَّرَهُ وَجَبَتْ كَفَّارَةٌ أَيْضًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L32007 Narrations have been reported regarding this: We were narrated via ʿAbd al-Razzāq from Muṭarrif from Saʿīd from Qatādah from Khilāṣ from ʿAlī ibn Abī Ṭālib, who said: "If one pronounces ẓihār repeatedly in a single gathering, one expiation suffices. But if he pronounces it in different sessions, multiple expiations are obligatory. The ruling for oaths is the same." This is the opinion of Qatādah and ʿAmr ibn Dīnār, and this has been reliably transmitted from both of them.

وَقَدْ جَاءَتْ فِي هَذَا آثَارٌ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مُطَرِّفٍ عَنْ سَعِيدٍ عَنْ قَتَادَةَ عَنْ خِلَاسٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إذَا ظَاهَرَ فِي مَجْلِسٍ وَاحِدٍ مِرَارًا فَكَفَّارَةٌ وَاحِدَةٌ، وَإِنْ ظَاهَرَ فِي مَقَاعِدَ شَتَّى فَعَلَيْهِ كَفَّارَاتٌ شَتَّى، وَالْإِيمَانُ كَذَلِكَ - وَهُوَ قَوْلُ قَتَادَةَ، وَعَمْرِو بْنِ دِينَارٍ صَحَّ ذَلِكَ عَنْهُمَا.

L32008 And others said, in all of that, there is nothing except a single expiation.

وَقَالَ آخَرُونَ: لَيْسَ فِي كُلِّ ذَلِكَ إلَّا كَفَّارَةٌ وَاحِدَةٌ.

L32009 It has been narrated to us from Ṭāwus, ʿAṭāʾ, and al-Shaʿbī: If a man pronounces ẓihār regarding his wife fifty times, only a single expiation is required of him.

رُوِّينَا عَنْ طَاوُسٍ، وَعَطَاءٍ، وَالشَّعْبِيِّ قَالُوا: إذَا ظَاهَرَ الرَّجُلُ مِنْ امْرَأَتِهِ خَمْسِينَ مَرَّةً فَإِنَّمَا عَلَيْهِ كَفَّارَةٌ وَاحِدَةٌ.

L32010 A similar [ruling] has been authenticated from al-Ḥasan and ʿAṭāʾ—and this is the opinion of al-Awzāʿī.

وَصَحَّ مِثْلُهُ عَنْ الْحَسَنِ، وَعَطَاءٍ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ.

L32011 A group holds that there is a single *kaffarah*, whether the *ẓihār* was performed in a single sitting or multiple sittings, provided he does not offer expiation. If he offers expiation and then commits *ẓihār* again, another *kaffarah* is required.

وَقَالَتْ طَائِفَةٌ: كَفَّارَةٌ وَاحِدَةٌ، سَوَاءٌ كَانَ ذَلِكَ فِي مَجْلِسٍ وَاحِدٍ أَوْ فِي مَجَالِسَ شَتَّى مَا لَمْ يُكَفِّرْ، فَإِنْ كَفَّرَ ثُمَّ ظَاهَرَ فَكَفَّارَةٌ أُخْرَى.

L32012–32013 We have been narrated through the chain of ʿAbd al-Razzāq from Maʿmar, from [an unnamed man], from al-Ḥasan, who said: "If one pronounces ẓihār repeatedly—even across different sittings—only one expiation is required as long as he has not performed it, and the same ruling applies to oaths." Maʿmar said: "This is the opinion of al-Zuhrī."

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ الْحَسَنِ قَالَ: إذَا ظَاهَرَ مِرَارًا وَإِنْ كَانَ فِي مَجَالِسَ شَتَّى - فَكَفَّارَةٌ وَاحِدَةٌ مَا لَمْ يُكَفِّرْ، وَالْأَيْمَانُ كَذَلِكَ - قَالَ مَعْمَرٌ: وَهُوَ قَوْلُ الزُّهْرِيِّ.

L32014 Abu Muhammad said: And this is the opinion of Malik. Abu Hanifah said: If one repeated the ẓihār in a single session while intending the repetition, then one expiation is required. If he had no intention, each ẓihār requires its own expiation, whether the ẓihār occurred in a single session or in multiple sessions.

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ مَالِكٍ - وَقَالَ أَبُو حَنِيفَةَ: إِنْ كَانَ كَرَّرَ الظِّهَارَ فِي مَجْلِسٍ وَاحِدٍ وَنَوَى التَّكْرَارَ فَكَفَّارَةٌ وَاحِدَةٌ، وَإِنْ لَمْ تَكُنْ لَهُ نِيَّةٌ فَلِكُلِّ ظِهَارٍ كَفَّارَةٌ، وَسَوَاءٌ كَانَ ذَلِكَ فِي مَجْلِسٍ وَاحِدٍ أَوْ فِي مَجَالِسَ شَتَّى.

L32015 Ali said, "We have not known this from anyone before Abū Ḥanīfa—and success is only by Allah, the Exalted—for these are statements with no proof of their soundness, neither from the Quran, nor the Sunnah, nor analogy—and with Allah, the Exalted, alone lies success."

قَالَ عَلِيٌّ: لَا نَعْلَمُ هَذَا عَنْ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ - وَهَذِهِ أَقْوَالٌ لَا بُرْهَانَ عَلَى صِحَّتِهَا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا مِنْ قِيَاسٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَنْ لَزِمَتْهُ كَفَّارَةُ الظِّهَارِ لَمْ يُسْقِطْهَا عَنْهُ مَوْتُهُ وَلَا مَوْتُهَا]

L32016 **Issue: If someone is obligated to perform the kafārah for ẓihār, neither his death nor her death nullifies this obligation.**

١٨٩٣ - مَسْأَلَةٌ: وَمَنْ لَزِمَتْهُ كَفَّارَةُ الظِّهَارِ لَمْ يُسْقِطْهَا عَنْهُ مَوْتُهُ، وَلَا مَوْتُهَا، وَلَا طَلَاقُهُ لَهَا، وَهِيَ مِنْ رَأْسِ مَالِهِ إِنْ مَاتَ - أَوْصَى بِهَا أَوْ لَمْ يُوصِ - لِأَنَّهَا مِنْ دُيُونِ اللَّهِ عَزَّ وَجَلَّ فَهِيَ مُقَدَّمَةٌ عَلَى دُيُونِ النَّاسِ.

L32017 Issue 1893: If someone is obligated to perform the expiation for ẓihār, neither his death, nor her death, nor his divorcing her nullifies it. And it is payable from his estate if he dies—whether he has bequeathed it or not—because it is among the obligations owed to Allah, the Exalted, and thus takes precedence over debts owed to people.

[مَسْأَلَةٌ عَجَزَ الْمُظَاهِرُ عَنْ جَمِيعِ الْكَفَّارَاتِ]

L32018 **[A case where the muẓāhir was incapable of all expiations.]**

١٨٩٤ - مَسْأَلَةٌ: فَمَنْ عَجَزَ عَنْ جَمِيعِ الْكَفَّارَاتِ: فَحُكْمُهُ الْإِطْعَامُ أَبَدًا - أَيْسَرَ بَعْدَ ذَلِكَ أَمْ لَمْ يُوسِرْ، قَوِيَ عَلَى الصِّيَامِ أَوْ لَمْ يَقْوَ - وَذَلِكَ لِأَنَّهُ إِذَا عَجَزَ عَنْ الْعِتْقِ وَالصِّيَامِ فَقَدْ اسْتَقَرَّ عَلَيْهِ الْإِطْعَامُ بِنَصِّ الْقُرْآنِ، وَلَمْ يُعَوِّضْ اللَّهُ - عَزَّ وَجَلَّ - مِنْهُ شَيْئًا أَصْلًا، فَهُوَ حُكْمُ مَنْ عَجَزَ عَنْ الْعِتْقِ وَالصَّوْمِ، وَمَنْ عَجَزَ عَنْ شَيْءٍ لَمْ يُوَقِّتْ اللَّهُ - عَزَّ وَجَلَّ - لَهُ آخَرَ فَهُوَ لَازِمٌ أَبَدًا، لِأَنَّ أَمْرَهُ تَعَالَى وَاجِبٌ لَا يُسْقِطُهُ شَيْءٌ.

L32019 1894 - Issue: As for one who is unable to perform all the expiations, his ruling is to feed the poor perpetually—whether he later gains means or not, whether he can fast or not. This is because if he is unable to free a slave or fast, then feeding the poor becomes binding upon him by the explicit text of the Qur'an, and Allah, the Exalted, has not substituted anything from it whatsoever. This is the ruling for one who is unable to free a slave or fast. Whoever is unable to fulfill an obligation for which Allah, the Exalted, has not appointed another [obligation or time] must uphold it perpetually, because the command of Him, the Most High, is binding and nothing can annul it.

L32020 And whoever, when the obligation of expiation for ẓihār becomes binding upon him, is capable of freeing a slave, no other expiation will ever be per-

missible for him. If he becomes impoverished, his matter is left to Allah, Exalted and Majestic is He, because the obligation imposed by Allah the Exalted upon him to free a slave has been firmly established, and nothing can nullify it.

وَمَنْ كَانَ حِينَ لُزُومِهِ كَفَّارَةُ ظِهَارٍ لَهُ قَادِرًا عَلَى عِتْقِ رَقَبَةٍ لَمْ يَجْزِهِ غَيْرُهَا أَبَدًا، وَإِنْ افْتَقَرَ فَأَمْرُهُ إِلَى اللَّهِ - عَزَّ وَجَلَّ - لِأَنَّ فَرْضَ اللَّهِ تَعَالَى عَلَيْهِ بِالْعِتْقِ قَدْ اسْتَقَرَّ، فَلَا يُحِيلُهُ شَيْءٌ.

L32021 And whoever is incapable of freeing a slave but capable of fasting two consecutive months—without Ramadan occurring between them, nor any day when fasting is invalid—and his strength persists until the conclusion of the specified period, yet he does not fast them, then becomes unable to fast until death—neither feeding nor manumission will ever suffice. If he recovers, he must fast them. If he dies, his guardian fasts them on his behalf, according to the saying of Allah's Messenger (peace and blessings of Allah be upon him): "Whoever dies while owing fasts, his guardian should fast on his behalf." If his health and capacity to fast do not persist throughout the entire mentioned period, and manumission becomes the easiest obligation during that interval, then manumission remains his perpetual duty. If he lacks the means, then feeding becomes his perpetual obligation—and success is attained through Allah alone.

وَمَنْ كَانَ عَاجِزًا عَنْ الرَّقَبَةِ قَادِرًا عَلَى صَوْمِ شَهْرَيْنِ مُتَّصِلَيْنِ، وَلَا يَحُولُ بَيْنَهُمَا رَمَضَانُ، وَلَا بِيَوْمٍ لَا يَحِلُّ صِيَامُهُ، وَاتَّصَلَتْ قُوَّتُهُ كَذَلِكَ إلَى انْقِضَاءِ الْمُدَّةِ الْمَذْكُورَةِ فَلَمْ يَصُمْهَا، ثُمَّ عَجَزَ عَنْ الصَّوْمِ - إلَى أَنْ مَاتَ - لَمْ يَجْزِهِ إطْعَامٌ وَلَا عِتْقٌ أَبَدًا، فَإِنْ صَحَّ صَامَهُمَا، وَإِنْ مَاتَ صَامَهُمَا عَنْهُ وَلِيُّهُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ مَاتَ وَعَلَيْهِ صِيَامٌ صَامَ عَنْهُ وَلِيُّهُ» فَلَوْ لَمْ تَتَّصِلْ صِحَّتُهُ وَقُوَّتُهُ عَلَى الصِّيَامِ جَمِيعَ الْمُدَّةِ الَّتِي ذَكَرْنَا، فَإِنَّ أَيْسَرَ فِي خِلَالِهَا فَالْعِتْقُ فَرْضُهُ أَبَدًا، فَإِنْ لَمْ يُوسِرْ فَالْإِطْعَامُ فَرْضُهُ أَبَدًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The rulings concerning the impotent man [include the following case]: A man who married a woman but was unable to consummate the marriage with her.

[أَحْكَامُ الْعِنِّينِ] [مَسْأَلَةٌ تَزَوَّجَ امْرَأَةً فَلَمْ يَقْدِرْ عَلَى وَطْئِهَا]

L32022–32023

L32024 Issue 1895 - Whoever marries a woman and is unable to consummate the marriage - regardless of whether he had intercourse with her once, repeatedly, or never at all - it is categorically impermissible for the judge or any other party to separate them under any circumstance, nor to designate a timeframe for him. She remains his wife; he may divorce her if he wills or keep her if he wills.

١٨٩٥ - مَسْأَلَةٌ: وَمَنْ تَزَوَّجَ امْرَأَةً فَلَمْ يَقْدِرْ عَلَى وَطْئِهَا - سَوَاءٌ كَانَ وَطِئَهَا مَرَّةً أَوْ مِرَارًا أَوْ لَمْ يَطَأْهَا قَطُّ - فَلَا يَجُوزُ لِلْحَاكِمِ وَلَا لِغَيْرِهِ أَنْ يُفَرِّقَ بَيْنَهُمَا أَصْلًا، وَلَا أَنْ يُؤَجِّلَ لَهُ أَجَلًا، وَهِيَ امْرَأَتُهُ - إنْ شَاءَ طَلَّقَ وَإِنْ شَاءَ أَمْسَكَ.

L32025 In this matter, there is an old and recent disagreement. It has been narrated to us that Uthman ibn Affan ordered him to separate from her without stipulation or delay—and the chain is disconnected: Sulaiman ibn Yasar narrates that Uthman.

وَفِي هَذَا خِلَافٌ قَدِيمٌ وَحَدِيثٌ -: وَرُوِّينَا عَنْ عُثْمَانَ بْنِ عَفَّانَ أَنَّهُ أَمَرَهُ بِفِرَاقِهَا دُونَ تَوْقِيفٍ وَلَا تَأْجِيلٍ - وَهُوَ مُنْقَطِعٌ: سُلَيْمَانُ بْنُ يَسَارٍ أَنَّ عُثْمَانَ.

وَرُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَزِيدُ بْنُ عُيَيْنَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ أَنَّهُ حَضَرَ سَمُرَةُ بْنُ جُنْدُبٍ قَدْ شَكَتْ إِلَيْهِ امْرَأَةٌ أَنَّ زَوْجَهَا لَا يَصِلُ إِلَيْهَا: فَكَتَبَ فِي ذَلِكَ سَمُرَةُ إِلَى مُعَاوِيَةَ، فَكَتَبَ إِلَيْهِ مُعَاوِيَةُ: أَنْ يُزَوِّجَهُ امْرَأَةً ذَاتَ جَمَالٍ وَدِينٍ وَيُدْخِلَهُ عَلَيْهَا، ثُمَّ يَسْأَلَهَا؟ فَإِنْ ذَكَرَتْ أَنَّهُ لَا يَطَؤُهَا أَمَرَهُ بِفِرَاقِ الَّتِي شَكَتْ بِهِ، فَفَعَلَ؟ فَحَكَتْ: أَنَّهُ لَا يُجَامِعُ، فَأَمَرَهُ بِفِرَاقِهَا

L32026 It was narrated to us through the chain of Abū Ubayd—Yazīd ibn Uyaynah ibn Abd al-Raḥmān—from his father, that he witnessed Samurah ibn Jundub when a woman complained to him that her husband did not have sexual relations with her. Samurah wrote to Muʿāwiyah regarding this matter, and Muʿāwiyah responded by instructing him to marry the man to a woman of beauty and religious devotion, have him consummate the marriage, then ask her about it. If she stated that he did not engage in intercourse, he should order him to divorce the complaining wife. This was carried out, and the new wife testified that he did not perform intercourse. Consequently, he ordered him to divorce the complaining wife.

وَقَوْلٌ ثَالِثٌ - صَحَّ مِنْ طَرِيقِ شُعْبَةَ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، قَالَ فِي الْعِنِّينِ يُؤَجَّلُ، قُلْت: كَمْ يُؤَجَّلُ؟ قَالَ: يُؤَجَّلُ، فَكُلَّمَا كَرَّرَ عَلَيْهِ: كَمْ يُؤَجَّلُ؟ لَمْ يَزِدْهُ عَلَى: يُؤَجَّلُ

L32027 A third opinion—reported via the chain of Shuʿbah from al-Mughīrah from Ibrāhīm al-Nakhaʿī—states concerning the impotent man: “He is to be granted a delay.” I asked: “For how long is he granted a delay?” He responded: “He is to be granted a delay.” Whenever someone repeated to him: “For how long is he granted a delay?” he did not add beyond: “He is to be granted a delay.”

وَقَوْلٌ رَابِعٌ - رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ شُعْبَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ الشَّعْبِيِّ أَنَّ الْحَارِثَ بْنَ عَبْدِ اللَّهِ بْنِ أَبِي رَبِيعَةَ أَجَّلَ رَجُلًا لَمْ يَسْتَطِعْ أَنْ يَأْتِيَ امْرَأَتَهُ عَشَرَةَ أَشْهُرٍ وَقَوْلٌ خَامِسٌ - رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَعَلَ لِلْعِنِّينِ أَجَلَ سَنَةٍ، وَأَعْطَاهَا صَدَاقَهَا وَافِيًا

L32028–32030 A fourth opinion—narrated through the chain of ʿAbd al-Raḥmān ibn Mahdī, from Shuʿbah, from al-Mughīrah ibn Miqsam, from al-Shaʿbī—states that al-Ḥārith ibn ʿAbd Allāh ibn Abī Rabīʿah imposed a ten-month waiting period upon a man who was unable to have intercourse with his wife. And a fifth opinion—we have narrated it via the transmission of ʿAbd al-Razzāq from Ibn Jurayj from Yaḥyā ibn Saʿīd al-Anṣārī from Saʿīd ibn al-Musayyib: that ʿUmar ibn al-Khaṭṭāb set a one-year period for the impotent man and gave her the full mahr in full.

وَرُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ: إنْ لَمْ يُصِبْهَا فِي السَّنَةِ فُرِّقَ بَيْنَهُمَا - وَلَا يَصِحُّ عَنْ عُمَرَ هَذَا أَصْلًا، لِأَنَّهَا إمَّا عَنْ ضُعَفَاءَ، وَإِمَّا مُنْقَطِعَةً وَمِنْ جُمْلَتِهَا - أَنَّ عُمَرَ بْنَ الْخَطَّابِ، وَعَبْدَ اللَّهِ بْنَ مَسْعُودٍ قَضَيَا فِي الْعِنِّينِ: أَنْ يَنْتَظِرَ بِهِ سَنَةً - ثُمَّ تَعْتَدَّ بَعْد السَّنَةِ

L32031 It has been reported to us from Umar ibn al-Khattab that he said: “If he does not consummate the marriage within the year, they are to be separated.” This is not authentically established from Umar whatsoever, as its chains are either from weak narrators or interrupted, among them being that Umar ibn al-Khattab and Abdullah ibn Mas’ud ruled regarding the chronically impotent man: that he is given a year’s grace period, after which she observes the waiting period of a divorced woman. He retains priority over her affairs during her waiting period. From Ibn Mas’ud also: “It is postponed for a

year. If he consummates the marriage; otherwise, he is separated from his wife." None of this is authentic.

L32032 It has also been narrated to us from Al-Mughīrah ibn Shuʿbah: that the separation is postponed for a year, after which they are separated. She is entitled to the mahr, and she must observe the iddah—but this ruling is not valid.

L32033 It is also narrated from Ali that he granted a one-year postponement and then issued a judicial separation between them—but that is invalid.

L32034 It is authentically reported from al-Ḥasan al-Baṣrī and Ibrāhīm al-Nakhaʿī that a deferment of one year is applied, and she is entitled to the full ṣadāq.

L32035 It is authentically reported from Sa'id ibn al-Musayyib that a delay of one year is granted. If he consummates the marriage, it remains valid; otherwise, the judge must annul the marriage.

L32036–32038 This has been narrated as a whole in this manner from the judges—Rabiʿah, Shurayh (the Judge), ʿAmr ibn Dīnār, and Ḥammād ibn Abī Sulaymān. This is the opinion of Al-Awzāʿī, Al-Layth, Al-Ḥasan ibn Ḥayy, Abū Ḥanīfah, Mālik, Al-Shāfiʿī, and their companions.

L32039 Then they differed. Abu Hanifah said: This is if he believes her, but if he contradicts her, then if she is a virgin, women should examine her. If she is previously married, the husband's statement is upheld; no delay is granted to her, and they are not separated.

L32040 The Malikis said: His statement is accepted when accompanied by his oath, provided he claims that he has intercourse with her.

L32041 Al-Shāfiʿī said: The husband's statement is accepted with his oath. If he refuses to swear, she swears, and they are separated. If the women [e.g., examiners] say she is a virgin, she swears accordingly, and they are separated. If she refuses to swear, he swears, and the marriage remains valid.

عِدَّةَ الْمُطَلَّقَةِ، وَهُوَ أَحَقُّ بِأَمْرِهَا فِي عِدَّتِهَا وَعَنْ ابْنِ مَسْعُودٍ أَيْضًا - تُؤَجَّلُ سَنَةً، فَإِنْ وَصَلَ إِلَيْهَا وَإِلَّا فُرِّقَ بَيْنَهُ وَبَيْنَ امْرَأَتِهِ - وَلَا يَصِحُّ

وَرُوِّينَا أَيْضًا - عَنْ الْمُغِيرَةِ بْنِ شُعْبَةَ: أَنَّهُ يُؤَجَّلُ سَنَةً ثُمَّ يُفَرَّقُ بَيْنَهُمَا، وَلَهَا الصَّدَاقُ، وَعَلَيْهَا الْعِدَّةُ - وَلَا يَصِحُّ ذَلِكَ

وَعَنْ عَلِيٍّ أَيْضًا - أَنَّهُ أَجَّلَهُ سَنَةً ثُمَّ فَرَّقَ بَيْنَهُمَا - وَلَا يَصِحُّ ذَلِكَ

وَصَحَّ عَنْ الْحَسَنِ الْبَصْرِيِّ، وَإِبْرَاهِيمَ النَّخَعِيِّ: يُؤَجَّلُ سَنَةً، وَلَهَا الصَّدَاقُ كَامِلًا

وَصَحَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ يُؤَجَّلُ سَنَةً، فَإِنْ مَسَّهَا وَإِلَّا فَرَّقَ بَيْنَهُمَا.

وَرُوِيَ هَذَا عَنْ الْقُضَاةِ هَكَذَا جُمْلَةً، وَرَبِيعَةَ، وَشُرَيْحٍ الْقَاضِي، وَعَمْرِو بْنِ دِينَارٍ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَاللَّيْثِ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي حَنِيفَةَ وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمْ

ثُمَّ اخْتَلَفُوا، فَقَالَ أَبُو حَنِيفَةَ: هَذَا إنْ صَدَقَهَا، وَأَمَّا إذَا خَالَفَهَا، فَإِنْ كَانَتْ بِكْرًا نَظَرَ إلَيْهَا النِّسَاءُ، وَإِنْ كَانَتْ ثَيِّبًا، فَالْقَوْلُ قَوْلُ الزَّوْجِ، وَلَا يُؤَجَّلُ لَهَا، وَلَا يُفَرَّقُ بَيْنَهُمَا.

وَقَالَ الْمَالِكِيُّونَ: الْقَوْلُ قَوْلُهُ مَعَ يَمِينِهِ إنْ ادَّعَى أَنَّهُ يَطَؤُهَا

وَقَالَ الشَّافِعِيُّ: الْقَوْلُ قَوْلُ الزَّوْجِ مَعَ يَمِينِهِ، فَإِنْ نَكَلَ حَلَفَتْ هِيَ، وَفُرِّقَ بَيْنَهُمَا، وَإِنْ قَالَ النِّسَاءُ: هِيَ بِكْرٌ حَلَفَتْ - مَعَ ذَلِكَ - وَفُرِّقَ بَيْنَهُمَا، فَإِنْ نَكَلَتْ حَلَفَ هُوَ وَبَقِيَتْ مَعَهُ

L32042 Then they differed; this group said, “If he consummated the marriage—even once—she has no right to annulment, nor is she obligated to observe a waiting period.”

ثُمَّ اخْتَلَفُوا: فَقَالَ هَؤُلَاءِ: إِنْ كَانَ قَدْ وَطِئَهَا - وَلَوْ مَرَّةً - فَلَا كَلَامَ لَهَا وَلَا يُؤَجَّلُ لَهَا

L32043 Abu Thawr said: If he turns away from her, he is granted a postponement of one year, then they are separated—even if he had previously consummated the marriage.

وَقَالَ أَبُو ثَوْرٍ: مَتَى عَنَّ عَنْهَا أُجِّلَ سَنَةً ثُمَّ فُرِّقَ بَيْنَهُمَا - وَإِنْ كَانَ قَدْ وَطِئَهَا قَبْلَ ذَلِكَ

L32044 It has been reported from a group sharing our view, as narrated through the chain of Ḥammād ibn Salamah from Yaḥyā ibn Saʿīd al-Anṣārī: A man married his daughter to his nephew who was impotent. ʿUmar said to him, “May Allah reward you and has saved your daughter for you.”

وَرُوِيَ عَنْ طَائِفَةٍ مِثْلُ قَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ: أَنَّ رَجُلًا زَوَّجَ ابْنَتَهُ مِنْ ابْنِ أَخٍ لَهُ وَكَانَ عِنِّينًا، فَقَالَ لَهُ عُمَرُ: قَدْ آجَرَكَ اللَّهُ وَوَفَّرَ لَكَ ابْنَتَكَ

L32045 From the narration of Al-Ḥajjāj ibn Al-Minhāl: Shuʿbah narrated to us from Abū Isḥāq Al-Sabīʿī, who said: I heard Hāniʾ ibn Hāniʾ say: I saw a woman come to ʿAlī ibn Abī Ṭālib. She said, “Is there a ruling concerning a woman who is neither a widow nor married?” He asked, “Has her husband returned?” She replied, “No.” He said, “Do not ask about her except regarding where she stays.” ʿAlī then said to her, “Are you unable to do anything?” She answered, “No.” He asked, “Not even through sorcery?” She said, “No.” ʿAlī told her, “You are ruined and have ruined others. As for me, I will not separate you two. Fear Allah and remain patient.”

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا شُعْبَةُ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ، قَالَ: سَمِعْت هَانِئَ بْنَ هَانِئٍ قَالَ: رَأَيْت امْرَأَةً جَاءَتْ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَقَالَتْ: هَلْ لَك فِي امْرَأَةٍ لَيْسَتْ بِأَيِّمٍ وَلَا بِذَاتِ بَعْلٍ؟ قَالَ: وَجَاءَ زَوْجُهَا؟ فَقَالَ: لَا تَسْأَلْ عَنْهَا إلَّا مَبِيتَهَا؟ فَقَالَ لَهُ عَلِيٌّ: أَلَا تَسْتَطِيعُ أَنْ تَصْنَعَ شَيْئًا؟ قَالَ: لَا، قَالَ: وَلَا مِنْ السِّحْرِ قَالَ: لَا، قَالَ لَهُ عَلِيٌّ: هَلَكْتَ وَأَهْلَكْتَ أَمَّا أَنَا فَلَسْت مُفَرِّقًا بَيْنَكُمَا؟ اتَّقِي اللَّهَ وَاصْبِرِي

L32046–32048 And through the chain of Saʿīd ibn Manṣūr: Sufyān narrated to us, Abū Isḥāq narrated to us from Hāniʾ ibn Hāniʾ, who said: I was with Ali ibn Abi Talib when a woman approached him and said: “Would you consider a woman who is neither unmarried nor married?” He asked: “Where is your husband?” She replied: “He is among the people.” A stooped old man rose and said: “What is this woman saying?” Ali said: “Ask her if she has complaints about food or clothing.” When she answered “No,” Ali said: “Is there nothing?” She said: “No.” He asked: “Not even magic?” She said: “No.” He said: “Have you destroyed yourself and others?” She pleaded: “Separate me from him!” He replied: “Be patient, for had Allah willed, He would have tested you with something more severe than this.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ: نا سُفْيَانُ نا أَبُو إِسْحَاقَ عَنْ هَانِئِ بْنِ هَانِئٍ قَالَ: كُنْت عِنْدَ عَلِيِّ بْنِ أَبِي طَالِبٍ، فَقَامَتْ إلَيْهِ امْرَأَةٌ فَقَالَتْ: لَهُ: هَلْ لَك إلَى امْرَأَةٍ وَلَا أَيِّمٍ وَلَا ذَاتِ بَعْلٍ؟ قَالَ: وَأَيْنَ زَوْجُك؟ فَقَالَتْ: هُوَ فِي الْقَوْمِ فَقَامَ شَيْخٌ يَجْنَحُ فَقَالَ: مَا تَقُولُ هَذِهِ الْمَرْأَةُ؟ قَالَ: سَلْهَا هَلْ تَنْقِمُ فِي مَطْعَمٍ أَوْ ثِيَابٍ؟ فَقَالَ عَلِيٌّ: فَمَا مِنْ شَيْءٍ؟ قَالَ: لَا، قَالَ: وَلَا مِنْ السِّحْرِ؟ قَالَ: لَا، قَالَ: هَلَكْتَ وَأَهْلَكْتَ؟ قَالَتْ فَرِّقْ بَيْنِي وَبَيْنَهُ؟ قَالَ اصْبِرِي، فَإِنَّ اللَّهَ تَعَالَى لَوْ شَاءَ لَابْتَلَاك بِأَشَدَّ مِنْ ذَلِكَ

L32049 From the chain of Abī ʿUbayd: ʿAbdullāh ibn al-Mubārak narrated to us from Maʿmar ibn Abī Najīḥ from Mujāhid, that he said regarding a man who

marries a woman then is afflicted by a disease: “She remains his wife. She is not to be taken away from him.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ مَعْمَرِ بْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ: أَنَّهُ قَالَ فِي الرَّجُلِ يَتَزَوَّجُ الْمَرْأَةَ، ثُمَّ يَعْرِضُ لَهُ الدَّاءُ؟ قَالَ: هِيَ امْرَأَتُهُ لَا تُنْزَعُ مِنْهُ

L32050 It is narrated from Al-Hakam ibn ‘Utaybah that she is his wife; neither a waiting period is appointed for him nor for her, and they are not separated. This is the opinion of Abu Sulayman and our companions. Abu Muhammad said: Those who adhere to a view similar to ‘Uthman’s argument cited as proof that he commanded him to separate from her without being bound by a transmitted report - we narrated it through the transmission path of Abu Dawud: Ahmad ibn Salih reported to us, ‘Abd al-Razzaq reported to us, Ibn Jurayj reported to us, some descendants of Abu Rafi‘ - the freed slave of the Prophet (PBUH) - informed me from ‘Ikrimah, from Ibn ‘Abbas, who said: “Abd Yazid - Abu Rukanah - and his brothers divorced Umm Rukanah and her sisters. He then married a woman from Muzaynah. She came to the Prophet (PBUH) and said: ‘Does anything benefit me except what this single hair benefits another hair from her head? Separate me from him!’ Thereupon protective zeal seized the Messenger of Allah (PBUH),” and he mentioned the rest of the hadith.

وَرُوِيَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ: أَنَّهَا امْرَأَتُهُ، لَا تُؤَجَّلُ لَهُ، وَلَا يُؤَجَّلُ لَهَا، وَلَا يُفَرَّقُ بَيْنَهُمَا -، وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا؟ قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ ذَهَبَ إلَى مِثْلِ قَوْلِ عُثْمَانَ: أَنَّهُ أَمَرَهُ بِفِرَاقِهَا دُونَ تَوْقِيفٍ بِخَبَرٍ - رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ صَالِحٍ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي بَعْضُ بَنِي أَبِي رَافِعٍ مَوْلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ «طَلَّقَ عَبْدُ يَزِيدَ أَبُو رُكَانَةَ وَإِخْوَتِهِ أُمَّ رُكَانَةَ وَإِخْوَتِهِ، وَنَكَحَ امْرَأَةً مِنْ مُزَيْنَةَ، فَجَاءَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: مَا يُغْنِي عَنِّي إلَّا كَمَا تُغْنِي هَذِهِ الشَّعْرَةُ لِشَعْرَةٍ أَخَذَتْهَا مِنْ رَأْسِهَا؟ فَفَرِّقْ بَيْنِي وَبَيْنَهُ؟ فَأَخَذَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَمِيَّةٌ: فَذَكَرَ الْحَدِيثَ»

L32051–32053 It also states that the Prophet (peace and blessings be upon him) said to him: “Divorce her.” So he did. The Prophet then said: “Retain your wife Umm Rukānah during their waiting periods.” The man responded: “But I have divorced her three times, O Messenger of Allah!” He replied: “I am aware. Retain her,” and he recited: {O Prophet, when you divorce women, divorce them for their prescribed waiting period} [Surah aṭ-Ṭalāq 65:1]. They cited the action of ʿUthmān as evidence, saying: “I married him solely for conjugal relations, so if she is deprived of it, it is harm to her, and harm is prohibited.” Do they have any argument other than what we have mentioned?[2]

وَفِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «قَالَ لَهُ: طَلِّقْهَا؟ فَفَعَلَ، قَالَ: رَاجِعْ امْرَأَتَكَ أُمَّ رُكَانَةَ وَإِخْوَتِهِ؟ فَقَالَ: إنْ طَلَّقْتُهَا ثَلَاثًا يَا رَسُولَ اللَّهِ، قَالَ: قَدْ عَلِمْتُ، أَرْجِعْهَا وَتَلَا {يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] » وَاحْتَجُّوا بِفِعْلِ عُثْمَانَ، وَقَالُوا: إنَّمَا تَزَوَّجته لِلْوَطْءِ، فَإِذَا عَدِمَتْهُ فَهُوَ ضَرَرٌ بِهَا، وَالضَّرَرُ مَمْنُوعٌ - لَا حُجَّةَ لَهُمْ غَيْرُ مَا ذَكَرْنَا؟

L32054 Abu Muhammad said: As for the narration, it is weak because it is attributed to an unnamed individual who is not known among the sons of Abu Rafi‘—thus it is unsound. Moreover, ‘Abd al-Yazid never possessed any certainty

قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْخَبَرُ فَضَعِيفٌ، لِأَنَّهُ عَمَّنْ لَمْ يُسَمَّ، وَلَا عُرِفَ مِنْ بَنِي أَبِي رَافِعٍ - فَهُوَ لَا يَصِحُّ، وَأَيْضًا فَإِنَّ عَبْدَ يَزِيدَ لَمْ تَكُنْ لَهُ قَطُّ مُتَيَقَّنٌ، وَلَا إسْلَامٌ، وَإِنَّمَا الصُّحْبَةُ لِرُكَانَةَ ابْنِهِ فَسَقَطَ التَّمْوِيهُ بِهِ

[2] **Qur’an references (L32051):** Qur’an 65:1 (At-Talaq).

whatsoever nor Islam; rather, the companionship was with Rukanah, his son. Therefore, the obfuscation involving him is invalidated.

L32055 As for ʿUthmān's action? We have stated that it is not valid on his part, whereas contrary positions have been reported from other Companions – may Allah be pleased with them. Therefore, invoking some of them as proof holds no greater weight than invoking others among them.

L32056–32058 As for their statement: "We only contracted marriage with him for intercourse, so does his refusal harm her?" Yes, the one who refuses it [causes harm]— If he is capable of it—Allah, the Exalted—then it is obligatory to prevent him from that action. As for the one who is unable, Allah the Exalted has said: "Allah does not burden a soul beyond its capacity" [Al-Baqarah: 286].[3]

L32059 Therefore, it is obligatory not to burden the sexually impotent man with what he is incapable of.

L32060 As for the opinion of Abū Ḥanīfah, Mālik, and al-Shāfiʿī regarding postponing [the matter] for a year then effecting judicial annulment between the spouses, it is an unsound opinion with no evidence supporting its validity—neither from the Quran, nor from an authentic or weak (daʿīf) Sunnah, nor from any reliably transmitted report of the Companions, nor from analogical reasoning (qiyās), nor from an opinion supported by rationally defensible grounds.

L32061 As for the narration attributed to ʿUmar, it is not valid because it is a Mursal narration - either transmitted through the path of Saʿīd ibn al-Musayyib from ʿUmar - and Saʿīd did not hear anything from ʿUmar except his [Saʿīd's] announcement of the death of al-Nuʿmān ibn Muqrin.

L32062 From Al-Sha'bi and Al-Hasan, from Umar — but Al-Sha'bi was not born except after Umar's death, and Al-Hasan was not born except during the two remaining years of Umar's life.

L32063 From ʿAbd al-Karīm and ʿAṭāʾ [narrating] from ʿUmar—though ʿAṭāʾ was not

[3] **Qur'an references (L32056):** Qur'an 2:286 (Al-Baqarah).

وَأَمَّا فِعْلُ عُثْمَانَ؟ فَقَدْ قُلْنَا: إنَّهُ لَا يَصِحُّ عَنْهُ، وَقَدْ جَاءَ عَنْ غَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافُ ذَلِكَ، فَلَيْسَ الِاحْتِجَاجُ بِبَعْضِهِمْ أَوْلَى مِنْ الِاحْتِجَاجِ بِآخَرَ مِنْهُمْ

وَأَمَّا قَوْلُهُمْ: إنَّمَا نَكَحْته لِلْوَطْءِ فَعَدَمُهُ ضَرَرٌ عَلَيْهَا؟ فَنَعَمْ، إنَّ الْمُمْتَنِعَ مِنْ ذَلِكَ - وَهُوَ قَادِرٌ عَلَيْهِ - وَجَلَّ فَوَاجِبٌ مَنْعُهُ مِنْ ذَلِكَ، وَأَمَّا الْعَاجِزُ - فَقَدْ قَالَ اللَّهُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦]

فَوَجَبَ أَنْ لَا يُكَلَّفَ الْعِنِّينُ مَا لَا يَقْدِرُ عَلَيْهِ

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، فِي تَأْجِيلِ السَّنَةِ، ثُمَّ التَّفْرِيقُ بَيْنَهُمَا، فَقَوْلٌ فَاسِدٌ، لَا دَلِيلَ عَلَى صِحَّتِهِ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا مِنْ شَيْءٍ يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ يُعْقَلُ

أَمَّا الرِّوَايَةُ عَنْ عُمَرَ فَلَا تَصِحُّ، لِأَنَّهَا مُرْسَلَةٌ إمَّا مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُمَرَ، وَلَا سَمَاعَ لَهُ مِنْ عُمَرَ إلَّا نَعْيُهُ النُّعْمَانَ بْنَ مُقْرِنٍ

وَعَنْ الشَّعْبِيِّ، وَالْحَسَنِ عَنْ عُمَرَ - وَلَمْ يُولَدْ الشَّعْبِيُّ إلَّا بَعْدَ مَوْتِ عُمَرَ، وَلَا وُلِدَ الْحَسَنُ إلَّا لِعَامَيْنِ بَقِيَا مِنْ حَيَاةِ عُمَرَ

وَعَنْ عَبْدِ الْكَرِيمِ، وَعَطَاءٍ عَنْ عُمَرَ - وَلَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ عُمَرَ - وَعَنْ يَحْيَى بْنِ سَعِيدٍ - وَلَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ عُمَرَ بِنَحْوِ خَمْسٍ وَعِشْرِينَ سَنَةً

born until after ʿUmar's death—and from Yaḥyā ibn Saʿīd—who was not born until approximately twenty-five years after ʿUmar's death.

وَعَنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ الْأَنْصَارِيِّ، وَهُوَ مَجْهُولٌ

L32064 From Yahya ibn Abd al-Rahman al-Ansari, an unknown narrator (majhūl).

وَقَدْ رُوِّينَا عَنْ عُمَرَ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا عَبْدُ اللَّهِ بْنُ عَوْنٍ عَنِ ابْنِ سِيرِينَ عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ بَعَثَ رَجُلًا عَلَى السِّقَايَةِ فَتَزَوَّجَ امْرَأَةً - وَكَانَ عَقِيمًا - فَقَالَ لَهُ عُمَرُ: أَعْلَمْتَهَا أَنَّك عَقِيمٌ؟ قَالَ: لَا، قَالَ: فَانْطَلِقْ فَأَعْلِمْهَا ثُمَّ خَيِّرْهَا

L32065 It has been narrated to us from ʿUmar via the transmission route of Saʿīd ibn Manṣūr - Hushaym narrated to us from ʿAbdullāh ibn ʿAwn, from Ibn Sīrīn, from Anas ibn Mālik: ʿUmar ibn al-Khaṭṭāb appointed a man in charge of the water supply. He married a woman (while being infertile), so ʿUmar said to him: "Did you inform her that you were infertile?" He replied: "No." He said: "Go and inform her, then give her the option."

وَرُوِيَ أَيْضًا أَنَّهُ - رَضِيَ اللَّهُ عَنْهُ - أَجَّلَ مَجْنُونًا سَنَةً، فَإِنْ أَفَاقَ وَإِلَّا فَرَّقَ بَيْنَهُ وَبَيْنَ امْرَأَتِهِ - وَهُمْ يُخَالِفُونَ عُمَرَ فِي ذَلِكَ، فَمِنْ أَيْنَ وَجَبَ تَقْلِيدُهُ فِي الْعِنِّينِ دُونَ الْعَقِيمِ وَالْمَجْنُونِ؟ وَأَمَّا الرِّوَايَةُ عَنْ ابْنِ مَسْعُودٍ فَإِنَّمَا جَاءَتْ مِنْ طَرِيقِ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ - وَلَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ ابْنِ مَسْعُودٍ أَوْ مِنْ طَرِيقِ حُصَيْنِ بْنِ قَبِيصَةَ وَهُوَ مَجْهُولٌ

L32066 It was also narrated that ʿUmar—may Allah be pleased with him—delayed the ruling on a mentally incompetent person's case for a year: if he regained sanity, the marriage continued; otherwise, ʿUmar would annul the marriage between him and his wife. Scholars disagreed with ʿUmar on this ruling, so on what basis is it obligatory to follow his ruling regarding the impotent man but not the infertile or mentally incompetent? As for the narration from Ibn Masʿūd, it was only transmitted via ʿAbd al-Karīm al-Jazarī—who was not born until after Ibn Masʿūd's death—or via Ḥuṣayn ibn Qabīṣa, who is an unknown narrator.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ فَمِنْ طَرِيقِ يَزِيدَ بْنِ عِيَاضِ بْنِ جعدبة، وَهُوَ مَذْكُورٌ بِالْكَذِبِ وَوَضْعِ الْحَدِيثِ وَمِنْ طَرِيقِ الْحَسَنِ بْنِ عُمَارَةَ وَهُوَ مَتْرُوكُ الْحَدِيثِ جُمْلَةً هَالِكٌ

L32067–32069 As for the narration from ʿAlī, it is transmitted through Yazīd ibn ʿIyāḍ ibn Juʿdaba, who is accused of lying and known to have fabricated ḥadīths. And through the chain of al-Ḥasan ibn ʿUmārah, who is entirely abandoned in ḥadīth transmission, utterly rejected.

وَمِنْ طَرِيقِ الضَّحَّاكِ بْنِ مُزَاحِمٍ وَهُوَ لَا شَيْءَ

L32070 And through the chain of Al-Dahhak ibn Muzahim, and he is weak.

وَأَمَّا الرِّوَايَةُ عَنِ الصَّحَابَةِ جُمْلَةً فَمِنْ طَرِيقِ شَرِيكٍ - وَهُوَ مُدَلِّسٌ - عَنْ جَابِرٍ الْجُعْفِيِّ - وَهُوَ كَذَّابٌ مَشْهُورٌ بِذَلِكَ، فَاسِدُ الدِّينِ، يَقُولُ بِالرَّجْعَةِ

L32071 As for the narration collectively attributed to the Companions, it is transmitted through the chain of Sharīk – a narrator guilty of tadlīs (concealing defects in transmission) – from Jābir al-Juʿfī, a notorious liar, religiously corrupt, and an advocate of the doctrine of rajʿah.

L32072 As for the narration from al-Mughīrah ibn Shuʿbah, it is transmitted through

the chain of Abū Ṭalq al-ʿĀʾidī and Abū al-Nuʿmān—both of whom are unverified narrators, their status unknown to anyone.

وَأَمَّا الرِّوَايَةُ عَنْ الْمُغِيرَةِ بْنِ شُعْبَةَ فَمِنْ طَرِيقِ أَبِي طَلْقٍ الْعَائِدِيِّ، وَأَبِي النُّعْمَانِ - وَهُمَا مَجْهُولَانِ لَا يَدْرِيهِمَا أَحَدٌ

L32073 From Al-Ḥajjāj ibn Arṭāh—who is rejected and weak—from a man whose name is unknown and whose identity is not recognized—from Ḥanẓalah ibn Nuʿaym, who is unknown—thus all that they relied upon has fallen away.

وَعَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ سَاقِطٌ وَجِلٌ - عَنْ رَجُلٍ - لَا يُعْرَفُ اسْمُهُ وَلَا يَدْرِي مَنْ هُوَ - عَنْ حَنْظَلَةَ بْنِ نُعَيْمٍ - وَهُوَ مَجْهُولٌ فَسَقَطَ كُلُّ مَا تَعَلَّقُوا بِهِ

L32074 Then, if all of that were valid, it would have been narrated from Uthman, Ali, Samurah, and Muawiyah holding contrary opinions to that; and none of them is more entitled to have their view adopted than the others.

ثُمَّ لَوْ صَحَّ كُلُّ ذَلِكَ لَكَانَ قَدْ رُوِيَ عَنْ عُثْمَانَ، وَعَلِيٍّ، وَسَمُرَةَ وَمُعَاوِيَةَ: خِلَافُ ذَلِكَ، وَلَيْسَ بَعْضُهُمْ أَوْلَى بِأَخْذِ قَوْلِهِ مِنْ بَعْضٍ

L32075 Indeed, in the narration from ʿUmar and Ibn Masʿūd, it is stated that she must observe the ʿiddah, and he is more entitled to her as long as she remains in her ʿiddah, and they do not hold that view.

وَأَيْضًا - فَإِنَّ فِي الرِّوَايَةِ عَنْ عُمَرَ، وَابْنِ مَسْعُودٍ: أَنَّ عَلَيْهَا الْعِدَّةَ وَهُوَ أَمْلَكُ بِهَا مَا دَامَتْ فِي عِدَّتِهَا وَهُمْ لَا يَقُولُونَ بِذَلِكَ

L32076 Moreover, none of the aforementioned scholars held the view that if he had intercourse with her once, she would have no valid claim nor any textually mandated prohibition. It is established that they contradict all the Companions—may Allah be pleased with them—from whom any ruling on this matter is reported.

وَأَيْضًا - فَلَيْسَ عَنْ أَحَدٍ مِنْ الْمَذْكُورِينَ: أَنَّهُ إنْ وَطِئَهَا مَرَّةً وَاحِدَةً، فَلَا كَلَامَ لَهَا وَلَا تَوْقِيفَ - وَصَحَّ أَنَّهُمْ مُخَالِفُونَ لِكُلِّ مَنْ رُوِيَ عَنْهُ فِي ذَلِكَ كَلِمَةٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -

L32077 They have no grounds to claim harm due to the absence of sexual intercourse, for if they oblige her to endure abstinence for a year, there is no distinction between abstaining for one year and two years, and the same applies to any longer duration.

وَلَا مُتَعَلَّقَ لَهُمْ بِضَرَرٍ فَقْدِ الْجِمَاعِ، لِأَنَّهَا إذَا كَلَّفُوهَا صَبْرَ سَنَةٍ، فَلَا فَرْقَ بَيْنَ صَبْرِ سَنَةٍ وَبَيْنَ صَبْرِ سَنَتَيْنِ، وَهَكَذَا مَا زَادَ

L32078 The most extreme of these assertions is their claim: "If he has intercourse with her even once in time, she has no grounds to claim." The harm in this ruling is graver than in the case of a woman he has never had intercourse with. Whoever asserts otherwise has openly defied and stubbornly resisted legal necessity and sensory evidence.

ثُمَّ أَشَدُّ ذَلِكَ قَوْلُهُمْ: إنْ وَطِئَهَا مَرَّةً فِي الدَّهْرِ فَلَا كَلَامَ لَهَا - وَالضَّرَرُ فِي ذَلِكَ أَشَدُّ مِنْهُ فِي الَّتِي لَمْ يَطَأْهَا قَطُّ، مَنْ قَالَ غَيْرَ هَذَا فَقَدْ جَاهَرَ وَكَابَرَ الضَّرُورَةَ وَالْحِسَّ

L32079–32081 Abu Muhammad said: The proof for the soundness of our view is that every marriage validated by the word of Allah (the Mighty and Sublime) and the Sunnah of His Messenger (may Allah's peace and blessings be upon him)

قَالَ أَبُو مُحَمَّد: وَبُرْهَانُ صِحَّةِ قَوْلِنَا -: هُوَ أَنَّ كُلَّ نِكَاحٍ صَحَّ بِكَلِمَةِ اللَّهِ عَزَّ وَجَلَّ وَسُنَّةِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ حَرَّمَ اللَّهُ تَعَالَى بَشَرَتَهَا وَفَرْجَهَا عَلَى كُلِّ مَنْ سِوَاهُ،

has rendered her skin and private parts forbidden by Allah the Exalted to all except her husband. Whoever severs their bond without Quran or an established Sunnah has entered into the description of those whom Allah the Exalted censured in His words: "They learn from them that by which they separate a man from his wife" [Al-Baqarah:102]. We seek refuge in Allah from this. It has been authentically established from the Messenger of Allah (peace and blessings of Allah be upon him) a narration similar to our statement, as transmitted to us through Muslim's chain: Abu al-Tahir and Harmalah ibn Yahya (the wording belongs to him) reported: I am Ibn Wahb; Yunus—that is, Ibn Yazid—informed me from al-Zuhri, from Urwah ibn al-Zubayr: "Aisha, the Prophet's wife (peace and blessings of Allah be upon him), informed him that Rifa'ah al-Qurazi divorced his wife, who then married 'Abd al-Rahman ibn al-Zubayr afterward. She came to the Prophet (peace and blessings of Allah be upon him) and said: 'O Messenger of Allah, she was married to Rifa'ah, who divorced her with the last of three divorces. Then she married 'Abd al-Rahman ibn al-Zubayr, but by Allah, he has nothing except something like this hem'—grasping a hem from her garment. The Messenger of Allah (peace and blessings of Allah be upon him) smiled laughingly and said: 'Do you perhaps wish to return to Rifa'ah? No, not until you taste his honey and he tastes yours.'" He mentioned the hadith. Abu Muhammad said: This narration indicates that her husband had not consummated the marriage, that his member resembled the hem—unable to extend toward her—and that she complained to the Messenger of Allah (peace and blessings of Allah be upon him) seeking separation. Yet he neither annulled the marriage, prescribed a waiting period, nor dissolved their union. In this lies sufficient clarity for those who understand.[45]

فَمَنْ فَرَّقَ بَيْنَهُمَا بِغَيْرِ قُرْآنٍ أَوْ سُنَّةٍ ثَابِتَةٍ فَقَدْ دَخَلَ فِي صِفَةِ الَّذِينَ ذَمَّهُمْ اللَّهُ تَعَالَى بِقَوْلِهِ {فَيَتَعَلَّمُونَ مِنْهُمَا مَا يُفَرِّقُونَ بِهِ بَيْنَ الْمَرْءِ وَزَوْجِهِ} [البقرة: ١٠٢] وَنَعُوذُ بِاَللَّهِ مِنْ هَذَا وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلُ قَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو الطَّاهِرِ، وَحَرْمَلَةُ بْنُ يَحْيَى - وَاللَّفْظُ لَهُ - قَالَ: أَنَا ابْنُ وَهْبٍ: أَخْبَرَنِي يُونُسُ - هُوَ ابْنُ يَزِيدَ - عَنْ الزُّهْرِيِّ نِي عُرْوَةُ بْنُ الزُّبَيْرِ: «أَنَّ عَائِشَةَ زَوْجَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخْبَرَتْهُ: أَنَّ رِفَاعَةَ الْقُرَظِيَّ طَلَّقَ امْرَأَتَهُ فَتَزَوَّجَتْ بَعْدَهُ عَبْدَ الرَّحْمَنِ بْنَ الزُّبَيْرِ، فَجَاءَتْ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: يَا رَسُولَ اللَّهِ، إنَّهَا كَانَتْ تَحْتَ رِفَاعَةَ فَطَلَّقَهَا آخِرَ ثَلَاثِ تَطْلِيقَاتٍ، فَتَزَوَّجَتْ بَعْدَهُ عَبْدَ الرَّحْمَنِ بْنَ الزُّبَيْرِ، وَإِنَّهُ وَاَللَّهِ مَا مَعَهُ إلَّا مِثْلُ هَذِهِ الْهُدْبَةِ - وَأَخَذَتْ بِهُدْبَةٍ مِنْ جِلْبَابِهَا - فَتَبَسَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ضَاحِكًا، وَقَالَ: لَعَلَّك تُرِيدِينَ أَنْ تَرْجِعِي إلَى رِفَاعَةَ؟ لَا حَتَّى تَذُوقِي عُسَيْلَتَهُ وَيَذُوقَ عُسَيْلَتَك» وَذَكَرَ الْحَدِيثَ قَالَ أَبُو مُحَمَّد: فَهَذِهِ تَذْكُرُ: أَنَّ زَوْجَهَا لَمْ يَطَأْهَا، وَأَنَّ إحْلِيلَهُ كَالْهُدْبَةِ، لَا يَنْتَشِرُ إلَيْهَا وَتَشْكُو ذَلِكَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتُرِيدُ مُفَارَقَتَهُ؟ فَلَمْ يَشْكُهَا، وَلَا أَجَّلَ لَهَا شَيْئًا، وَلَا فَرَّقَ بَيْنَهُمَا - وَفِي هَذَا كِفَايَةٌ لِمَنْ عَقَلَ

L32082–32084 Some dissenters have objected to this authentic report with weak traditions—one of them transmitted through Ibn Nāfiʿ from Mālik from al-Mustawrid ibn Rifāʿah from al-Zubayr ibn ʿAbd al-Raḥmān ibn al-Zubayr: "Rifāʿah ibn Samawʾal divorced his wife thrice during the era of the Messenger of Allah (peace and blessings be upon him). ʿAbd al-Raḥmān ibn

فَاعْتَرَضَ بَعْضُ الْمُخَالِفِينَ فِي هَذَا الْأَثَرِ الصَّحِيحِ بِآثَارٍ وَاهِيَةٍ -: أَحَدِهَا - مِنْ طَرِيقِ ابْنِ نَافِعٍ عَنْ مَالِكٍ عَنْ الْمُسْتَوْرِدِ بْنِ رِفَاعَةَ عَنْ الزُّبَيْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الزُّبَيْرِ «أَنَّ رِفَاعَةَ بْنَ سَمَوْأَلَ طَلَّقَ امْرَأَتَهُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَلَاثًا فَنَكَحَهَا عَبْدُ الرَّحْمَنِ بْنُ الزُّبَيْرِ فَاعْتَرَضَ عَنْهَا فَلَمْ يَسْتَطِعْ أَنْ يَغْشَاهَا، فَفَارَقَهَا، فَأَرَادَ

[4]**Hadith references (L32079):** Sahih al-Bukhari 6084.
[5]**Qur'an references (L32079):** Qur'an 2:102 (Al-Baqarah).

al-Zubayr then married her, but he faced an obstacle with her and was unable to consummate the marriage, so he divorced her. He then intended to [...] [text cut off]." Rifa'ah sought to remarry her—he was her first husband—so the Prophet (peace be upon him) said, "It is not lawful for you until you consummate the marriage with him."

رِفَاعَةُ أَنْ يَنْكِحَهَا - وَهُوَ زَوْجُهَا الْأَوَّلُ - فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَحِلُّ لَكِ حَتَّى تَذُوقِي عُسَيْلَتَهُ؟»

L32085 Abū Muḥammad said: This is a disconnected chain containing no valid proof. It is narrated from Al-Mustawrid ibn Rifāʿah, from Al-Zubayr ibn ʿAbd al-Raḥmān—both being unknown narrators—from Mālik, constituting an unknown report. Even if authentic, it would not challenge the report we cite as evidence, for we do not deny that a certain ʿAbd al-Raḥmān could divorce her voluntarily. Thus, their obfuscation through it is entirely invalid.

قَالَ أَبُو مُحَمَّد: وَهَذَا مُنْقَطِعٌ لَا حُجَّةَ فِيهِ، ثُمَّ عَنْ الْمُسْتَوْرِدِ بْنِ رِفَاعَةَ عَنْ الزُّبَيْرِ بْنِ عَبْدِ الرَّحْمَنِ - وَهُمَا مَجْهُولَانِ - وَهُوَ خَبَرٌ غَيْرُ مَعْرُوفٍ - عَنْ مَالِكٍ، ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ اعْتِرَاضٌ عَلَى الْخَبَرِ الَّذِي احْتَجَجْنَا بِهِ، لِأَنَّنَا لَا نُنْكِرُ أَنْ يُطَلِّقَهَا عَبْدُ الرَّحْمَنِ مُخْتَارًا، فَبَطَلَ تَمْوِيهُهُمْ بِهِ جُمْلَةً

L32086 The second report—narrated by Ibn Qāniʿ, the narrator of every calamity—from Yahyā ibn Muḥammad al-Bakhtarī, whose identity is unknown, from Hudbah ibn Khālid from Wuhaib from Hishām ibn ʿUrwah from his father from ʿĀ'ishah: "The wife of Rifāʿah came to the Prophet, peace and blessings be upon him," and he mentioned the hadith up to the Prophet's statement: "You may not become lawful for him until he tastes a drop of your honey and you taste a drop of his honey." She said: "O Messenger of God, he has already come to me once as a gift."

وَالْخَبَرُ الثَّانِي - رَوَاهُ ابْنُ قَانِعٍ - رَاوِي كُلِّ بَلِيَّةٍ - عَنْ يَحْيَى بْنِ مُحَمَّدٍ الْبَخْتَرِيِّ - الَّذِي لَا يُعْرَفُ مَنْ هُوَ - عَنْ هُدْبَةَ بْنِ خَالِدٍ عَنْ وُهَيْبٍ - عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ " أَنَّ امْرَأَةَ رِفَاعَةَ جَاءَتْ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَذَكَرَ الْحَدِيثَ، إلَى قَوْلِهِ «فَلَا تَحِلِّينَ لَهُ حَتَّى يَذُوقَ عُسَيْلَتَكِ وَتَذُوقِي عُسَيْلَتَهُ فَقَالَتْ: يَا رَسُولَ اللَّهِ إنَّهُ قَدْ جَاءَنِي هِبَةً وَاحِدَةً»

L32087 We have also narrated it through the chain of Ibn Wahb: ʿAbd al-Raḥmān ibn Abī al-Zinād narrated to me from Hishām ibn ʿUrwah from his father from ʿĀ'ishah regarding the ḥadīth of the wife of Rifāʿah al-Quraẓī. She mentioned therein that she said: "For indeed, O Messenger of Allah, he came to me as a grant?"

وَرُوِّينَاهُ أَيْضًا - مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ بِحَدِيثِ امْرَأَةِ رِفَاعَةَ الْقُرَظِيِّ، فَذَكَرَتْ فِيهِ أَنَّهَا قَالَتْ: فَإِنَّهُ يَا رَسُولَ اللَّهِ قَدْ جَاءَنِي هِبَةً "؟

L32088 Abu Muhammad said: Abd al-Rahman ibn Abi al-Zinad is considered profoundly unreliable. Even if all of this were authentic, it would still provide them no valid legal ground, because neither of these two discarded narrations contains any statement that the Messenger of Allah—peace and blessings be upon him—said he waived the postponement or judicial separation due to that gift, nor that Aisha said such a thing.

قَالَ أَبُو مُحَمَّد: عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ فِي غَايَةِ الضَّعْفِ، ثُمَّ لَوْ صَحَّ كُلُّ هَذَا لَكَانَ لَا مُتَعَلَّقَ لَهُمْ فِيهِ، لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْ هَذَيْنِ الْخَبَرَيْنِ السَّاقِطَيْنِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: إنَّهُ إنَّمَا أَسْقَطَ التَّأْجِيلَ، أَوْ التَّفْرِيقَ مِنْ أَجْلِ تِلْكَ الْهِبَةِ، وَلَا أَنَّ عَائِشَةَ قَالَتْ ذَلِكَ "

L32089 Thus, it was confirmed that she was a lying female soothsayer against the Messenger of Allah—may Allah bless him and grant him peace.

فَصَحَّ أَنَّهَا كَهَانَةٌ كَاذِبَةٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L32090–32092 The term "hibah" (gift) is authentically mentioned in a hadith we have narrated through the chain narrated by Al-Bukhari: from Muḥammad, from Abū Muʿāwiyah—the blind one—from Hishām ibn ʿUrwah, from his father, from ʿĀ'ishah, the Mother of the Believers, who said: "A man divorced his wife. She married another husband who later divorced her. She had received from him something as insignificant as a trifle, which did not suffice for anything she desired. She had hardly stayed with him before he divorced her. She came to the Prophet—peace and blessings of Allah be upon him—and said: 'O Messenger of Allah, my husband...'" He divorced me, and I married another husband besides him. He consummated the marriage with me, yet he possessed nothing but a mere fringe. He only approached me once as a gift and failed to reach anything within me. Am I now lawful for my first husband? The Messenger of Allah—peace and blessings of Allah be upon him—said, "You are not lawful for your first husband until the other husband tastes your intimate sweetness and you taste his intimate sweetness." Abu Muhammad said: We do not prevent an impotent man from divorcing her if he wishes. We categorically forbid and condemn separating them against their will or postponing separation for a year. This is the falsehood that has never been authentically reported from any of the Companions—may Allah be pleased with them—nor has it ever been found in the Quran, the Sunnah, a corrupt narration, nor is it necessitated by analogy or sound reasoning.

وَإِنَّمَا جَاءَ لَفْظُ الْهِبَةِ صَحِيحًا فِي حَدِيثٍ -: رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدٌ نا أَبُو مُعَاوِيَةَ - هُوَ الضَّرِيرُ - نا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «طَلَّقَ رَجُلٌ امْرَأَتَهُ فَتَزَوَّجَتْ زَوْجًا غَيْرَهُ فَطَلَّقَهَا، وَكَانَتْ مَعَهُ مِثْلَ الْهُدْبَةِ، فَلَمْ تَصِلْ مِنْهُ إلَى شَيْءٍ تُرِيدُهُ، فَلَمْ تَلْبَثْ أَنْ طَلَّقَهَا، فَأَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: يَا رَسُولَ اللَّهِ إنَّ زَوْجِي طَلَّقَنِي، وَإِنِّي تَزَوَّجْت زَوْجًا غَيْرَهُ فَدَخَلَ بِي وَلَمْ يَكُنْ مَعَهُ إلَّا مِثْلُ الْهُدْبَةِ، فَلَمْ يَقْرَبْنِي إلَّا هِبَةً وَاحِدَةً، وَلَمْ يَصِلْ مِنِّي إلَى شَيْءٍ، أَفَأَحِلُّ لِزَوْجِي الْأَوَّلِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا تَحِلِّينَ لِزَوْجِك الْأَوَّلِ حَتَّى يَذُوقَ الْآخَرُ عُسَيْلَتَك وَتَذُوقِي عُسَيْلَتَهُ» ؟ قَالَ أَبُو مُحَمَّدٍ: وَنَحْنُ لَا نَمْنَعُ أَنْ يُطَلِّقَهَا الْعِنِّينُ إنْ شَاءَ، إنَّمَا نَمْنَعُ وَنُنْكِرُ أَنْ يُفَرَّقَ بَيْنَهُمَا عَلَى كُرْهٍ، أَوْ أَنْ يُؤَجَّلَ عَامًا، ثُمَّ يُفَرَّقَ بَيْنَهُمَا، فَهَذَا هُوَ الْبَاطِلُ الَّذِي لَمْ يَصِحَّ قَطُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، لَا، وَلَا جَاءَ قَطُّ فِي قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا فِي رِوَايَةٍ فَاسِدَةٍ، وَلَا أَوْجَبَهُ قِيَاسٌ، وَلَا مَعْقُولٌ

L32093 If they say: "Allah Almighty has commanded in ilāʾ a suspension period, then enforcement of either resumption or divorce," we reply: "Yes, four months—but where is the Sunnah, and where is the court-ordered separation? Moreover, you yourselves are the foremost in refusing to apply analogy to the mu'lī for one who intentionally withholds intercourse with his wife without swearing ilāʾ by oath, for you neither impose a suspension period on him nor grant him a deferral."

فَإِنْ قَالُوا: قَدْ أَمَرَ اللَّهُ عَزَّ وَجَلَّ فِي الْإِيلَاءِ بِالتَّوْقِيفِ ثُمَّ الْإِجْبَارِ عَلَى الْفَيْئَةِ أَوْ الطَّلَاقِ؟ قُلْنَا: نَعَمْ، أَرْبَعَةَ أَشْهُرٍ، فَأَيْنَ السُّنَّةُ وَأَيْنَ التَّفْرِيقُ؟ ثُمَّ أَنْتُمْ أَوَّلُ مَنْ لَا يَقِيسُ عَلَى الْمُؤْلِي مَنْ امْتَنَعَ مِنْ وَطْءِ امْرَأَتِهِ عَامِدًا مِنْ غَيْرِ إيلَاءٍ بِيَمِينٍ فَلَا تُوقِفُونَهُ، وَلَا تُؤَجِّلُونَهُ

L32094 The corruption of all they clung to became evident, as did the corruption of their entire statement. We have mentioned those from whom narrations have

been narrated among the Companions—may Allah be pleased with them—and the Successors. And all praise is due to Allah, the Lord of the worlds.[6]

فَظَهَرَ فَسَادُ كُلِّ مَا تَعَلَّقُوا بِهِ، وَفَسَادُ قَوْلِهِمْ جُمْلَةً، وَقَدْ ذَكَرْنَا مَنْ رُوِيَ عَنْهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَالتَّابِعِينَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ

L32095 ## The Rulings on the Division of Wives

[أَحْكَامُ قَسْمِ الزَّوْجَاتِ]

L32096 ## A legal issue: A man married a virgin and has another wife.

[مَسْأَلَةٌ تَزَوَّجَ الرَّجُلُ بِكْرًا وَلَهُ زَوْجَةٌ أُخْرَى]

L32097 The rulings on apportioning time between wives 1896 - Issue: If a man marries a virgin—whether a free woman, a Muslim slave woman, or a woman from the People of the Book under enslavement—while having another wife who is free or a slave, he must allocate seven nights to reside with the virgin at her dwelling. Thereafter he must divide his time among his wives and return to the division [of nights], without counting those seven nights against her share or any part of them.

أَحْكَامُ قَسْمِ الزَّوْجَاتِ ١٨٩٦ - مَسْأَلَةٌ: وَإِذَا تَزَوَّجَ الرَّجُلُ بِكْرًا حُرَّةً أَوْ أَمَةً مُسْلِمَةً أَوْ كِتَابِيَّةً، وَلَهُ زَوْجَةٌ أُخْرَى حُرَّةٌ أَوْ أَمَةٌ فَعَلَيْهِ أَنْ يَخُصَّ الْبِكْرَ بِمَبِيتِ سَبْعِ لَيَالٍ عِنْدَهَا، ثُمَّ يُقَسِّمَ فَيَعُودَ وَلَا يُحَاسِبَهَا بِتِلْكَ السَّبْعِ، وَلَا بِشَيْءٍ مِنْهَا

L32098–32100 If he marries a previously married woman (free or slave) while already having another wife (who may be free or slave, Muslim or from the People of the Book)—he is permitted. that he allocates three nights specifically to her, then divides his time and ensures fairness without counting those three nights against her. If he stays beyond those three nights, he must stay with another wife exactly as he stayed with her, in strictly equal measure, and the ruling granting her preference thereby ceases to apply.

فَإِنْ تَزَوَّجَ ثَيِّبًا حُرَّةً أَوْ أَمَةً وَعِنْدَهُ زَوْجَةٌ أُخْرَى حُرَّةٌ أَوْ أَمَةٌ - مُسْلِمَةٌ أَوْ كِتَابِيَّةٌ - فَلَهُ أَنْ يَخُصَّهَا بِمَبِيتِ ثَلَاثِ لَيَالٍ، ثُمَّ يُقَسِّمُ وَيَعْدِلُ، وَلَا يُحَاسِبُهَا بِتِلْكَ الثَّلَاثِ، فَإِنْ زَادَ عَلَى الثَّلَاثِ أَقَامَ عِنْدَ غَيْرِهَا كَمَا أَقَامَ عِنْدَهَا سَوَاءً سَوَاءً، وَيَسْقُطُ حُكْمُهَا فِي التَّفْضِيلِ

L32101 It is impermissible for him in any of the cases we have mentioned—whether he has another wife or not—to neglect attending congregational prayers in the mosque or the Friday prayer. If he does so, it is a sin and a transgression against him, as with all people, and there is no distinction.

وَلَا يَحِلُّ لَهُ فِي كُلِّ مَا ذَكَرْنَا - كَانَتْ عِنْدَهُ زَوْجَةٌ غَيْرُهَا أَوْ لَمْ يَكُنْ - أَنْ يَتَخَلَّفَ عَنْ صَلَاةِ الْجَمَاعَةِ فِي الْمَسْجِدِ، وَلَا عَنْ صَلَاةِ الْجُمُعَةِ، فَإِنْ فَعَلَ فَهِيَ مَعْصِيَةٌ وَجُرْحَةٌ فِيهِ، كَسَائِرِ النَّاسِ وَلَا فَرْقَ

L32102 It is impermissible for him to specifically designate one of his wives for traveling with him except through the drawing of lots.

وَلَا يَجُوزُ لَهُ أَنْ يَخُصَّ امْرَأَةً مِنْ نِسَائِهِ بِأَنْ تُسَافِرَ مَعَهُ إِلَّا بِقُرْعَةٍ

L32103 The proof of that is what we have reported through the chain of transmission

[6] **Qur'an references (L32094):** Qur'an 37:182 (As-Saffat).

of al-Bazzār: narrated by Muḥammad ibn Maʿmar, narrated by Yaʿlā ibn ʿUbayd, narrated by Muḥammad ibn Isḥāq, from Ayyūb al-Sakhtiyānī, from Abū Qilābah, from Anas ibn Mālik, that "the Prophet (peace and blessings be upon him) assigned seven days for the virgin and three days for the previously married woman."

L32104 I, Ahmad ibn Qāsim, said: Qāsim ibn Muḥammad ibn Qāsim informed me from my grandfather Qāsim ibn Aṣbagh, who narrated from Abū Qilābah—he is ʿAbd al-Malik ibn Yazīd al-Raqāshī—who narrated from Abū ʿĀṣim—he is al-Ḍaḥḥāk ibn Makhlad—who narrated from Sufyān al-Thawrī, from Ayyūb al-Sikhtiyānī and Khālid al-Ḥadhdhāʾ, both of whom narrated from Abū Qilābah—he is ʿAbdullāh ibn Zayd al-Jarmī—from Anas ibn Mālik, that the Messenger of Allah—peace and blessings be upon him—said: "When a man marries a virgin, he should stay with her seven days, and when he marries a previously married woman, he should stay with her three days."

L32105 We have narrated that Anas said: "It is the Sunnah"—and all of that is unquestionably valid; what we have mentioned provides a clear clarification of its chain of transmission.

L32106 And through the chain of Muslim: Abdullah ibn Maslamah—Al-Qa'nabi—narrated to us, from Sulayman—**meaning** Ibn Bilal—from Abd al-Rahman ibn Humayd, from Abd al-Malik ibn Abi Bakr ibn Abd al-Rahman ibn al-Harith ibn Hisham: "When the Messenger of Allah—peace be upon him—married Umm Salamah and came to her, and when he wished to depart, she seized his garment? The Messenger of Allah—peace be upon him—said: 'If **I** will, I shall extend [the period] for you and settle it with you **for that**—for a virgin bride seven days are due, and for a **previously married woman** three days.'"

L32107–32109 And through the chain of Mālik from ʿAbdullāh ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm from… Abd al-Malik ibn Abī Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith reported from his father that when the Messenger of Allah—peace and blessings be upon him—married Umm Salamah and she stayed with him overnight, he said to her: "There is no disgrace upon you in the eyes of your family. If you wish, I will spend seven nights with you, and

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبَزَّارِ نا مُحَمَّدُ بْنُ مَعْمَرٍ نا يَعْلَى بْنُ عُبَيْدٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ لِلْبِكْرِ سَبْعًا وَلِلثَّيِّبِ ثَلَاثًا»

وَنَا أَحْمَدُ بْنُ قَاسِمٍ قَالَ: أَخْبَرَنِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا أَبُو قِلَابَةَ - هُوَ عَبْدُ الْمَلِكِ بْنُ يَزِيدَ الرَّقَاشِيُّ - نا أَبُو عَاصِمٍ - هُوَ الضَّحَّاكُ بْنُ مَخْلَدٍ - نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، وَخَالِدٍ الْحَذَّاءِ كِلَاهُمَا عَنْ أَبِي قِلَابَةَ - هُوَ عَبْدُ اللَّهِ بْنُ زَيْدٍ الْجَرْمِيُّ - عَنْ أَنَسِ بْنِ مَالِكٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا تَزَوَّجَ الْبِكْرَ أَقَامَ عِنْدَهَا سَبْعًا، وَإِذَا تَزَوَّجَ الثَّيِّبَ أَقَامَ عِنْدَهَا ثَلَاثًا»

وَقَدْ رُوِّينَاهُ بِأَنَّ أَنَسًا قَالَ: هِيَ السُّنَّةُ - وَكُلُّ ذَلِكَ حَقٌّ، وَالَّذِي ذَكَرْنَا بَيَانٌ وَاضِحٌ فِي إِسْنَادِهِ

وَمِنْ طَرِيقِ مُسْلِمٍ نا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ - هُوَ الْقَعْنَبِيُّ - نا سُلَيْمَانُ - يَعْنِي ابْنَ بِلَالٍ - عَنْ عَبْدِ الرَّحْمَنِ بْنِ حُمَيْدٍ عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ «أَنَّ أُمَّ سَلَمَةَ حِينَ تَزَوَّجَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَدَخَلَ عَلَيْهَا فَأَرَادَ أَنْ يَخْرُجَ أَخَذَتْ بِثَوْبِهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِنْ شِئْتُ زِدْتُكِ وَحَاسَبْتُكِ بِهِ لِلْبِكْرِ سَبْعٌ وَلِلثَّيِّبِ ثَلَاثٌ»

وَمِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

if you wish, I will spend three nights, then I will take turns with my other wives." She replied: "Three."[7]

- حِينَ تَزَوَّجَ أُمَّ سَلَمَةَ وَأَصْبَحَتْ عِنْدَهُ قَالَ لَهَا: لَيْسَ بِكِ عَلَى أَهْلِكِ هَوَانٌ، إِنْ شِئْتِ سَبَّعْتُ عِنْدَكِ، وَإِنْ شِئْتِ ثَلَّثْتُ ثُمَّ دُرْتُ؟ قَالَتْ: ثَلِّثْ»

L32110 This report was narrated to us within the chains of transmission through the path of Ahmad ibn Shu'ayb: Ya'qub ibn Ibrāhīm and Muḥammad ibn Bashshār both narrated to us: Yaḥyā—who is Ibn Sa'īd al-Qaṭṭān—narrated to us from Sufyān al-Thawrī. Aḥmad ibn Abī Bakr—who is Ibn Muḥammad ibn 'Amr ibn Ḥazm—narrated to me from 'Abd al-Malik ibn Abī Bakr ibn 'Abd al-Raḥmān ibn al-Ḥārith ibn Hishām, from his father, from Umm Salamah, the Mother of the Believers, that when the Prophet—peace and blessings of Allah be upon him—married her, he stayed with her for three days and said: "There is no humiliation upon your family because of you. If you wish, I will stay seven days for you. If I stay seven days for you, I will do the same for my other wives."[8]

وَرُوِّينَا هَذَا الْخَبَرَ بَيْنَ الْإِسْنَادِ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا يَعْقُوبُ بْنُ إِبْرَاهِيمَ، وَمُحَمَّدُ بْنُ بَشَّارٍ، قَالَا جَمِيعًا: نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ سُفْيَانَ الثَّوْرِيِّ حَدَّثَنِي أَحْمَدُ بْنُ أَبِي بَكْرٍ - هُوَ ابْنُ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ - عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ عَنْ أَبِيهِ «عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا تَزَوَّجَهَا أَقَامَ عِنْدَهَا ثَلَاثًا، وَقَالَ: لَيْسَ بِكِ عَلَى أَهْلِكِ هَوَانٌ، إِنْ شِئْتِ سَبَّعْتُ لَكِ، وَإِنْ سَبَّعْتُ لَكِ سَبَّعْتُ لِنِسَائِي»

L32111 And with this, Anas ibn Mālik, Ibrāhīm al-Nakha'ī, al-Sha'bī, Mālik, al-Shāfi'ī, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhawayh, Abū Thawr, Abū 'Ubayd, Abū Sulaymān, and all their companions held the same opinion.

وَبِهِ يَقُولُ أَنَسُ بْنُ مَالِكٍ وَإِبْرَاهِيمُ النَّخَعِيُّ، وَالشَّعْبِيُّ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ، وَأَبُو ثَوْرٍ، وَأَبُو عُبَيْدٍ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِهِمْ

L32112 A group held a differing opinion—that a virgin receives three nights, and a previously married woman two nights. We have been narrated this through 'Abd al-Razzāq from Ibn Jurayj, that he asked 'Aṭā' about this matter. 'Aṭā' said: "They transmit from Anas ibn Mālik that he stated: 'A virgin receives three nights, and a previously married woman receives two nights.'"

وَذَهَبَتْ طَائِفَةٌ إِلَى غَيْرِ ذَلِكَ -: وَهُوَ أَنَّ لِلْبِكْرِ ثَلَاثَ لَيَالٍ، وَلِلثَّيِّبِ لَيْلَتَانِ -: رُوِّينَا ذَلِكَ عَنْ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَنَّهُ سَأَلَ عَطَاءً عَنْ ذَلِكَ فَقَالَ عَطَاءٌ: يُؤْثِرُونَ عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّهُ قَالَ: لِلْبِكْرِ ثَلَاثٌ، وَلِلثَّيِّبِ لَيْلَتَانِ

L32113 And through the chain of Abd al-Razzaq from Sufyan al-Thawri from Yunus ibn Ubayd from al-Hasan, who said: A virgin [observes] three menstrual cycles, and a previously married woman [observes] two menstrual cycles.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنِ الْحَسَنِ قَالَ: لِلْبِكْرِ ثَلَاثٌ، وَلِلثَّيِّبِ لَيْلَتَانِ

L32114 From the narration of Abd al-Razzaq, from Ma'mar, from Qatadah, from Sa'id ibn al-Musayyab, who said: He stays with a virgin bride for three days

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ قَالَ: يَمْكُثُ عِنْدَ الْبِكْرِ ثَلَاثًا ثُمَّ يُقَسِّمُ، وَعِنْدَ الثَّيِّبِ يَوْمَيْنِ ثُمَّ يُقَسِّمُ

[7] **Hadith references (L32107):** Sahih Muslim 1460b.
[8] **Hadith references (L32110):** Sunan Abi Dawud 2122; Sunan Ibn Majah 1917.

then he divides [his time], and with a previously married woman two days then he divides [his time].

L32115 This is the opinion of Khilās ibn ʿAmr, Sufyān al-Thawrī, and al-Awzāʿī.

وَهُوَ قَوْلُ خِلَاسِ بْنِ عَمْرٍو، وَسُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ.

L32116–32118 A group of scholars opined: He is not required to provide maintenance for a previously married woman or a virgin except what he provides for others under his care—this being the view of al-Ḥakam ibn ʿUtaybah, Ḥammād ibn Abī Sulaymān, Abū Ḥanīfah, and his companions. Those who adopted the view of al-Ḥasan and Ibn al-Musayyib argued using a report we have narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAmr ibn Shuʿayb and Muḥammad ibn Isḥāq, both of whom said: The Messenger of Allāh—peace and blessings be upon him—stated, "A virgin [is entitled to] three?" Abū Muḥammad remarked: This is a *mursal* report (with an interrupted chain), and it contains no valid evidence—thus this opinion is invalidated.

وَقَالَتْ طَائِفَةٌ: لَا يُقِيمُ عِنْدَ ثَيِّبٍ وَلَا بِكْرٍ إلَّا مَا يُقِيمُ عِنْدَ غَيْرِهِمَا مِمَّنْ عِنْدَهُ - وَهُوَ قَوْلُ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ وَاحْتَجَّ مَنْ ذَهَبَ إلَى قَوْلِ الْحَسَنِ، وَابْنِ الْمُسَيِّبِ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ، وَمُحَمَّدِ بْنِ إسْحَاقَ قَالَا جَمِيعًا: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لِلْبِكْرِ ثَلَاثٌ» ؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا مُرْسَلٌ وَلَا حُجَّةَ فِيهِ - فَسَقَطَ هَذَا الْقَوْلُ

L32119 We have found those who adhere to Abū Ḥanīfah's opinion arguing based on the obligation of fairness among wives.

وَوَجَدْنَا مَنْ ذَهَبَ إلَى قَوْلِ أَبِي حَنِيفَةَ يَحْتَجُّونَ بِمَا يَجِبُ مِنْ الْعَدْلِ بَيْنَ النِّسَاءِ

L32120 And by the authentic report in which the Messenger of Allah (peace be upon him) said: "Whoever has two wives at the same time and inclines unjustly toward one of them will come on the Day of Resurrection with half his body drooping."[9]

وَبِالْخَبَرِ الثَّابِتِ الَّذِي فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ كَانَتْ لَهُ امْرَأَتَانِ فَمَالَ إلَى إحْدَاهُمَا جَاءَ يَوْمَ الْقِيَامَةِ وَشِقُّهُ مَائِلٌ»

L32121 Abu Muhammad said: The one who asserted this position is the same one who ruled an additional seven days for the virgin and an additional three days for the previously married woman. It is not permissible for anyone to abandon any statement of the Prophet—peace be upon him—in favor of another statement of his, as long as it is possible to apply them all, whether by combining some statements with others or by excepting some from others. Whoever transgresses this disobeys Allah, the Almighty and Majestic, and His Messenger—peace be upon him.

قَالَ أَبُو مُحَمَّدٍ: الَّذِي قَالَ هَذَا الْقَوْلَ هُوَ الَّذِي حَكَمَ لِلْبِكْرِ بِسَبْعٍ زَائِدَةٍ، وَلِلثَّيِّبِ بِثَلَاثٍ زَائِدَةٍ، وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَتْرُكَ قَوْلًا لَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لِقَوْلٍ لَهُ آخَرَ مَا دَامَ يُمْكِنُ اسْتِعْمَالُهَا جَمِيعًا، بِأَنْ يَضُمَّ بَعْضَهَا إلَى بَعْضٍ، أَوْ بِأَنْ يَسْتَثْنِيَ بَعْضَهَا مِنْ بَعْضٍ، وَمَنْ تَعَدَّى هَذَا فَهُوَ عَاصٍ لِلَّهِ عَزَّ وَجَلَّ وَلِرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L32122 Among the wonders of the world is that the Hanafis—who oppose the Messenger of Allah, may Allah bless him and grant him peace, with their corrupt desires—in this ruling obligate two nights for the free wife in the division.

وَمِنْ عَجَائِبِ الدُّنْيَا أَنَّ الْحَنَفِيِّينَ الْمُخَالِفِينَ بِأَهْوَائِهِمْ الْفَاسِدَةِ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَهُنَا يُوجِبُونَ فِي الْقِسْمَةِ لِلزَّوْجَةِ الْحُرَّةِ لَيْلَتَيْنِ

[9] **Hadith references (L32120):** Sunan Abi Dawud 2133.

وَلِلزَّوْجَةِ الْأَمَةِ لَيْلَةً، وَهَذَا هُوَ الْمَيْلُ حَقًّا، وَالْجَوْرُ صِرَاحًا، لَا سِيَّمَا مَعَ قَوْلِهِمْ: إِنَّ لِلْحُرَّةِ الْيَهُودِيَّةِ وَالنَّصْرَانِيَّةِ لَيْلَتَيْنِ، وَلِلْأَمَةِ الْمُسْلِمَةِ لَيْلَةً، وَلَا يَسْتَحْيُونَ مِنْ هَذَا التَّفْضِيلِ بِالْبَاطِلِ

L32123 And for the enslaved woman is one night. This is true bias and blatant injustice, especially given their claim: "Indeed, free Jewish and Christian women have two nights, while an enslaved Muslim woman has one night." Yet they do not even feel shame over this unjust preferential treatment.

وَقَالَ بَعْضُهُمْ: قَدْ جَاءَ فِي ذَلِكَ أَثَرٌ عَنْ الْحَسَنِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا لَا يُعْرَفُ - ثُمَّ لَوْ صَحَّ لَكَانَ لَا يَجُوزُ الْأَخْذُ بِهِ، لِأَنَّهُ مُرْسَلٌ

L32124 And some of them said: There exists a narration concerning that from Al-Hasan from the Messenger of Allah—may Allah bless him and grant him peace—but this is not reliably attested. Furthermore, even if it were authentic, it would not be permissible to act upon it, as it is mursal.

وَعَجَبٌ آخَرُ - وَهُوَ أَنَّهُمْ يُجِيزُونَ لِمَنْ لَهُ زَوْجَةٌ حُرَّةٌ مُسْلِمَةٌ، وَأَمَةٌ نَصْرَانِيَّةٌ، أَنْ يُقَسِّمَ لِلْحُرَّةِ لَيْلَةً، وَلِلْمَمْلُوكَةِ الْيَهُودِيَّةِ ثَلَاثَ لَيَالٍ، فَاعْجَبُوا لِهَذِهِ الْفَضَائِحِ.

L32125 Another cause for astonishment—they permit a man who has a free Muslim wife and a Christian slave woman to allocate one night to the free woman and three nights to the Jewish slave woman. Be astonished at these scandals!

وَلَهُمْ هَهُنَا اعْتِرَاضَاتٌ تَشْهَدُ بِقِلَّةِ حَيَاءِ الْمُعْتَرِضِ بِهَا، وَرِقَّةِ دِينِهِ كَتَعَلُّقِهِمْ بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «إِنْ سَبَّعْتُ لَكِ سَبَّعْتُ لِنِسَائِي» فَقَالُوا: هَذَا حَدِيثٌ يُوجِبُ التَّسْوِيَةَ، وَنَسُوا أَنْفُسَهُمْ فِي قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي هَذَا الْخَبَرِ نَفْسِهِ: «وَإِنْ شِئْتِ ثَلَّثْتُ وَدُرْتُ»

L32126–32128 And here they have objections that demonstrate the shamelessness of those who raise them and the shallowness of their faith, such as their clinging to his saying—peace and blessings be upon him—"If I were to allocate seven to you, I would have to allocate seven to each of my wives." They said: "This hadith necessitates equalization," yet they forgot themselves in his statement (prayers and peace be upon him) within this very report: "If you [feminine] wish, I will divide it into thirds and rotate [the portions]."

فَاعْتَرَضُوا بِعُقُولِهِمْ الرَّكِيكَةِ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَّمُوهُ الْعَدْلَ وَالْحِسَابَ

L32129 They opposed the Prophet—peace be upon him—with their feeble intellects, presuming to instruct him in justice and mundane calculation.

وَقَالُوا: إِنَّمَا كَانَ يَنْبَغِي لَوْ سَبَّعَ عِنْدَهَا أَنْ يُحَاسِبَهَا بِالْأَرْبَعِ لَيَالٍ الزَّائِدَةِ عَلَى الثَّلَاثِ الَّتِي هِيَ حَقُّهَا

L32130 They said: It would have been necessary, were he to make seven nights with her, to adjust with her for the four additional nights beyond the three that are her right.

قَالَ أَبُو مُحَمَّد: وَهَذَا مِنْ الْحُمْقِ وَرِقَّةِ الدِّينِ فِي النِّهَايَةِ الْقُصْوَى، لِأَنَّهُ لَا يَجِبُ حَقٌّ لِأَحَدٍ إلَّا أَنْ يُوجِبَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L32131 Abu Muhammad said: This is among the utmost foolishness and weakness in religion, for no right is due to anyone unless Allah, Exalted, has ordained it through the tongue of His Messenger - peace be upon him.

فَالَّذِي أَوْجَبَ لَهَا ثَلَاثَ لَيَالٍ أَلَمَّ بِهَا دُونَ ضَرَّتِهَا، هُوَ الَّذِي أَسْقَطَهَا إنْ سَبَّعَ عِنْدَهَا - لَا يَعْتَرِضُ عَلَيْهِ إلَّا كَافِرٌ - نَعُوذُ بِاَللَّهِ مِنْ الضَّلَالِ.

L32132 The One who obligated three nights for her—during which one must stay with her without harm—is the One who nullifies it if seven are completed

with her. None contests this except a disbeliever. We seek refuge in Allah from misguidance.

L32133 Abu Muhammad said: If they say: What is your opinion if he stays with a non-virgin woman for more than three but less than seven days, or more than seven days, or stays with a virgin or non-virgin woman for more than seven days—and she has a co-wife or co-wives?

قَالَ أَبُو مُحَمَّدٍ: فَإِنْ قَالُوا: فَمَا قَوْلُكُمْ إِنْ أَقَامَ عِنْدَ الثَّيِّبِ أَكْثَرَ مِنْ ثَلَاثٍ وَأَقَلَّ مِنْ سَبْعٍ، أَوْ أَكْثَرَ مِنْ سَبْعٍ، أَوْ أَقَامَ عِنْدَ الْبِكْرِ أَوْ الثَّيِّبِ أَكْثَرَ مِنْ سَبْعٍ - وَلَهَا ضَرَّةٌ، أَوْ ضَرَائِرُ زَوْجَاتٌ؟

L32134 We said: Yes. If he stays with the previously married woman more than three but fewer than seven days, he is only held accountable for what exceeds three days. If he stays with her or with the virgin more than seven days, he is held accountable to the previously married woman for the entire duration he stayed with her, and must compensate her co-wife or co-wives with the full equivalent of that entire period. He is only held accountable to the virgin for what exceeds seven days.

قُلْنَا: نَعَمْ، أَمَّا إنْ أَقَامَ عِنْدَ الثَّيِّبِ أَكْثَرَ مِنْ ثَلَاثٍ وَأَقَلَّ مِنْ سَبْعٍ، فَلَا يُحَاسِبُهَا إلَّا بِمَا زَادَ عَلَى الثَّلَاثِ، وَأَمَّا إنْ أَقَامَ عِنْدَهَا أَوْ عِنْدَ الْبِكْرِ أَكْثَرَ مِنْ سَبْعٍ، فَإِنَّهُ يُحَاسِبُ الثَّيِّبَ بِجَمِيعِ مَا أَقَامَ عِنْدَهَا، وَيُوفِي ضَرَّتَهَا أَوْ ضَرَائِرَهَا مِثْلَ ذَلِكَ كُلِّهِ وَلَا يُحَاسِبُ الْبِكْرَ إلَّا بِمَا زَادَ عَلَى السَّبْعِ فَقَطْ

L32135 The proof of that is that three days are the right of the previously married woman, and seven days are the right of the virgin. Whatever exceeds these two constitutes an injustice for which she will be held accountable. The right of the previously married woman to three days is not nullified unless God—the Mighty and Majestic—has nullified it solely through the words of His Messenger (peace be upon him). This occurs only when her period is set to seven days with an addition beyond them, for exceeding seven combines establishing seven and adding to it. Her entitlement to three days is nullified by setting it to seven, and once nullified, it does not return by adding beyond seven.

بُرْهَانُ ذَلِكَ -: أَنَّ الثَّلَاثَ حَقُّ الثَّيِّبِ، وَالسَّبْعَ حَقُّ الْبِكْرِ، فَمَا زَادَ عَلَى هَذَيْنِ فَهُوَ ظُلْمٌ يُحَاسِبُهَا بِهِ، وَلَا يَسْقُطُ حَقُّ الثَّيِّبِ فِي أَنْ أَلَمَّ بِالثَّلَاثِ إلَّا حَيْثُ أَسْقَطَهُ اللَّهُ عَزَّ وَجَلَّ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، وَلَيْسَ ذَلِكَ إلَّا أَنْ يُسَبِّعَ لَهَا وَزَادَ عَلَى السَّبْعِ، لِأَنَّ الزِّيَادَةَ عَلَى السَّبْعِ تَسْبِيعٌ وَزِيَادَةٌ، وَقَدْ سَقَطَ حَقُّهَا فِي الثَّلَاثِ بِالتَّسْبِيعِ، فَإِذَا سَقَطَ لَمْ يَعُدْ بِالزِّيَادَةِ عَلَى السَّبْعِ

L32136 And success is by Allah, the Exalted.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L32137–32139 Abū Muḥammad said: They argued for their opinion—that he assigns two nights to the free woman and one night to the enslaved wife—by a narration we transmitted via the chain: Saʿīd ibn Manṣūr → Hushaym [who] reported to us → Ibn Abī Laylā → al-Minhāl ibn ʿAmr → Dharr—or ʿAbbād ibn ʿAbdullāh al-Asadī—from ʿAlī, that he would say: When... If a man marries a free woman while already married to a slave woman, one-third is allocated to the slave woman and two-thirds are allocated to the free woman.

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجُّوا لِقَوْلِهِمْ: يُقَسِّمُ لِلْحُرَّةِ لَيْلَتَيْنِ، وَلِلزَّوْجَةِ الْمَمْلُوكَةِ لَيْلَةً بِرِوَايَةٍ رُوِّينَاهَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أرنا ابْنُ أَبِي لَيْلَى عَنْ الْمِنْهَالِ بْنِ عَمْرٍو عَنْ ذَرٍّ -

أَوْ عَبَّادِ بْنِ عَبْدِ اللَّهِ الْأَسَدِيِّ - عَنْ عَلِيٍّ أَنَّهُ كَانَ يَقُولُ: إذَا تَزَوَّجَ الْحُرَّةَ عَلَى الْأَمَةِ قَسَّمَ لِلْأَمَةِ الثُّلُثُ، وَلِلْحُرَّةِ الثُّلُثَانِ

L32140 This is invalid because Ibn Abī Laylā is deficient in retention; Al-Minhāl is weak.

وَهَذَا لَا يَصِحُّ، لِأَنَّ ابْنَ أَبِي لَيْلَى سَيِّئُ الْحِفْظِ، وَالْمِنْهَالُ ضَعِيفٌ

L32141 It was narrated from Al-Mughīrah ibn Miqsam that he said: "Al-Minhal's testimonial reliability has not been affirmed in Islam. However, the report is authentic based on the rulings of Ibrāhīm, Saʿīd ibn al-Musayyib, Masrūq, Al-Shaʿbī, and Al-Ḥasan al-Baṣrī."

وَرُوِيَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ أَنَّهُ قَالَ: لَمْ يَثْبُتْ لِلْمِنْهَالِ شَهَادَةٌ فِي الْإِسْلَامِ وَلَكِنَّهُ صَحِيحٌ مِنْ قَوْلِ إبْرَاهِيمَ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَمَسْرُوقٍ، وَالشَّعْبِيِّ، وَالْحَسَنِ الْبَصْرِيِّ

L32142 And it was reported from ʿAṭāʾ, Saʿīd ibn Jubīr, and Muḥammad ibn ʿAlī ibn al-Ḥusayn.

وَرُوِيَ عَنْ عَطَاءٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَمُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ

L32143 And it is the position of ʿUthmān al-Battī, and al-Shāfiʿī.

وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ، وَالشَّافِعِيِّ

L32144 Imām Mālik, al-Layth, and Abū Sulaymān said: The division between them is equal.

وَقَالَ مَالِكٌ، وَاللَّيْثُ، وَأَبُو سُلَيْمَانَ: الْقَسْمُ بَيْنَهُمَا سَوَاءٌ.

L32145 Abu Muhammad said: There is no authority in anyone other than the Messenger of Allah—peace and blessings be upon him—and he—peace and blessings be upon him—warned, as we previously mentioned, against inclining toward one wife over another. He did not distinguish between a free woman and an enslaved woman, nor between a Muslim woman and a woman of the People of the Book.

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ تَوَعَّدَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كَمَا أَوْرَدْنَا قَبْلُ عَلَى الْمَيْلِ إلَى زَوْجَةٍ دُونَ أُخْرَى وَلَمْ يَخُصَّ حُرَّةً مِنْ أَمَةٍ وَلَا مُسْلِمَةً مِنْ كِتَابِيَّةٍ

L32146 They argued using their invalid analogy by stating: Since the waiting period of a female slave is half that of a free woman, it is obligatory that the same apply to both in the division.

وَاحْتَجُّوا مِنْ قِيَاسِهِمْ الْفَاسِدِ بِأَنْ قَالُوا: لَمَّا كَانَتْ عِدَّةُ الْأَمَةِ نِصْفَ عِدَّةِ الْحُرَّةِ: وَجَبَ أَنْ يَكُونَا فِي الْقَسْمِ كَذَلِكَ

L32147 Abu Muhammad said: This is utterly flawed—firstly, we do not agree with them that a female slave's waiting period is half that of a free woman. Yet despite their contradictory stance, they do not dispute that the waiting period of a pregnant female slave equals that of a pregnant free woman. Why then do they not establish an equal division for both, given their parity in the specified waiting period?

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا فِي غَايَةِ الْفَسَادِ -: أَوَّلُ ذَلِكَ أَنَّا لَا نُوَافِقُهُمْ عَلَى أَنَّ عِدَّةَ الْأَمَةِ نِصْفُ عِدَّةِ الْحُرَّةِ، ثُمَّ عَلَى قَوْلِهِمْ الْمُخْتَلِطِ لَا يَخْتَلِفُونَ أَنَّ عِدَّةَ الْأَمَةِ الْحَامِلِ كَعِدَّةِ الْحُرَّةِ الْحَامِلِ فَهَلَّا جَعَلُوا الْقِسْمَةَ لَهُمَا سَوَاءً؟ مِنْ أَجْلِ تَسَاوِيهِمَا فِي الْعِدَّةِ الْمَذْكُورَةِ.

L32148 They say: The waiting period for a female slave is three quru' (menstrual/pu-

rity periods), equivalent to that of a free woman. Then why do they not apportion two-thirds of a free woman's share for her, due to what we have stated? There is no disagreement that a female slave does not inherit, while a free woman does inherit. Why then do they not deny her any apportioned share, just as she has no inheritance, and no legal testimony according to them? Yet in their ramblings, they resemble a drowning person clinging to whatever they perceive.

وَيَقُولُونَ: إنَّ عِدَّةَ الْأَمَةِ بِالْأَقْرَاءِ ثَلَاثًا عِدَّةَ الْحُرَّةِ، فَهَلَّا قَسَمُوا لَهَا الثُّلُثَيْنِ مِنْ قَسَمِ الْحُرَّةِ لِمَا ذَكَرْنَا؟ وَلَا خِلَافَ فِي أَنَّ الْأَمَةَ لَا تَرِثُ، وَأَنَّ الْحُرَّةَ تَرِثُ، فَهَلَّا جَعَلُوا الْأَمَةَ لَا قِسْمَةَ لَهَا، كَمَا لَا مِيرَاثَ لَهَا، وَكَمَا لَا شَهَادَةَ لَهَا عِنْدَهُمْ، وَلَكِنَّهُمْ فِي أَهْذَارِهِمْ مِثْلُ الْغَرِيقِ بِمَا أَحَسَّ تَعَلَّقَ.

L32149 They argued in their corrupt claim that the husband may allocate one night to the free woman, then spend three nights wherever he wishes, citing rejected narrations from Kaʿb ibn Sawwār: that he ruled thus in the presence of ʿUmar ibn al-Khaṭṭāb, and ʿUmar was impressed by it.

وَاحْتَجُّوا فِي قَوْلِهِمْ الْفَاسِدِ: إنَّ لِلزَّوْجِ أَنْ يَقْسِمَ لِلْحُرَّةِ لَيْلَةً، ثُمَّ يَبِيتَ ثَلَاثَ لَيَالٍ حَيْثُ شَاءَ، بِرِوَايَاتٍ سَاقِطَةٍ عَنْ كَعْبِ بْنِ سَوَّارٍ: أَنَّهُ حَكَمَ بِذَلِكَ بِحَضْرَةِ عُمَرَ بْنِ الْخَطَّابِ، فَأُعْجِبَ عُمَرُ بِذَلِكَ

L32150–32152 This is not valid because only Al-Shaʿbī, Qatadah, and Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf narrated it from ʿUmar, and all of them were born after ʿUmar's death— Moreover, if it were sound, no one besides the Messenger of Allah—peace and blessings be upon him—would hold conclusive proof.

وَهَذَا لَا يَصِحُّ؛ لِأَنَّهُ إنَّمَا رَوَاهُ عَنْ عُمَرَ: الشَّعْبِيُّ، وَقَتَادَةُ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَكُلُّهُمْ لَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ عُمَرَ - ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِي أَحَدٍ حُجَّةٌ غَيْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L32153 As for neglecting congregational prayer—we have mentioned in "The Book of Prayer" from this compilation of ours and other [works] that the Messenger of Allah—peace and blessings be upon him—imposed this obligation, and his threat to burn the houses of those who neglect it without valid excuse.

وَأَمَّا التَّخَلُّفُ عَنْ صَلَاةِ الْجَمَاعَةِ - فَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الصَّلَاةِ " مِنْ دِيوَانِنَا هَذَا وَغَيْرِهِ إيجَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ، وَتَوَعُّدَهُ بِحَرْقِ بُيُوتِ الْمُتَخَلِّفِينَ عَنْهَا لِغَيْرِ عُذْرٍ

L32154 He—peace and blessings be upon him—married, as did his companions. None among them neglected the sevenfold glorification [of Allah] or threefold repetition [of dhikr] in relation to attending congregational and Friday prayers. Rather, this [neglect] is a deviation innovated by Satan.

وَقَدْ تَزَوَّجَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَأَصْحَابُهُ فَمَا مِنْهُمْ مِنْ أَحَدٍ تَخَلَّفَ فِي التَّسْبِيعِ وَالتَّثْلِيثِ عَنْ صَلَاةِ الْجَمَاعَةِ وَالْجُمُعَةِ، وَإِنَّمَا هِيَ ضَلَالَةٌ أَحْدَثَهَا الشَّيْطَانُ.

L32155 As for traveling with one of his wives, two wives, or three wives, it is permissible only through drawing lots, as established from the Messenger of Allah—peace and blessings be upon him—as we have been narrated through the chain in Muslim's compilation: Narrated to us by Isḥāq ibn Ibrāhīm—who is Ibn Rāhawayh—from Abū Nuʿaym al-Faḍl ibn Dukayn, from ʿAbd

وَأَمَّا السَّفَرُ بِامْرَأَةٍ مِنْ زَوْجَاتِهِ أَوْ بِامْرَأَتَيْنِ أَوْ بِثَلَاثٍ فَلَا يَكُونُ إلَّا بِالْقُرْعَةِ لِأَنَّهُ ثَبَتَ ذَلِكَ عَنْ رَسُولِ اللَّهِ كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - عَنْ أَبِي نُعَيْمٍ الْفَضْلِ بْنِ دُكَيْنٍ نا عَبْدُ الْوَاحِدِ بْنُ أَيْمَنَ حَدَّثَنِي ابْنُ أَبِي مُلَيْكَةَ عَنْ

al-Wāḥid ibn Ayman, who narrated to me from Ibn Abī Mulaykah, from al-Qāsim ibn Muḥammad, from ʿĀ'ishah, the Mother of the Believers. She said: "Whenever the Messenger of Allah—peace and blessings be upon him—intended to travel, he would draw lots among his wives. The lot fell upon ʿĀ'ishah and Ḥafṣah, so the two of them accompanied him."[10]

L32156 Abu Muhammad said: If he departs with her as we mentioned by lottery, he is not required to account to them for their nights with him during the journey, for he departed with them by rightful means—not through inclination or injustice. But if he departs with her without a lottery, he must account to them for those nights, and he is obligated by duty to make up to the one he did not travel with the number of those nights.

L32157 This is the opinion of Al-Shāfiʿī and Abū Sulaymān.

L32158 Abu Hanifah, Malik, and their followers said: The ruling is derived through it without resorting to drawing lots.

L32159 Abū Muḥammad said: This is invalid, because equitable treatment among wives is an obligation, as we have mentioned. Therefore, it is impermissible to specify any part of this obligation except what a scriptural text has explicitly designated. The text designates only the use of drawing lots for travel. Whatever is other than this constitutes injustice – and success comes from Allah, the Exalted.

L32160 If it is said: "Does he have the right not to travel with one of them?" We say: Yes, and he is fair in equitably preventing [them from traveling], thereby not favoring any one of them.

L32161 If he travels without drawing lots and takes one of them with him, he has indeed shown bias in her favor, and this is an injustice that is not permissible.

L32162 And success is with Allah, the Exalted.

L32163 **Issue: A man is not permitted to apportion time to his**

[10]**Hadith references (L32155):** Sahih Muslim 2445.

الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا خَرَجَ أَقْرَعَ بَيْنَ نِسَائِهِ فَطَارَتْ الْقُرْعَةُ عَلَى عَائِشَةَ، وَحَفْصَةَ، فَخَرَجَتَا مَعَهُ»

قَالَ أَبُو مُحَمَّدٍ: فَإِنْ خَرَجَ بِهَا كَمَا ذَكَرْنَا بِقُرْعَةٍ لَمْ يُحَاسِبْهُنَّ بِلَيَالِيهِنَّ مَعَهُ فِي السَّفَرِ، لِأَنَّهُ خَرَجَ بِهِنَّ بِحَقٍّ لَا بِمَيْلٍ وَلَا بِحَيْفٍ، فَإِنْ خَرَجَ بِهَا بِغَيْرِ قُرْعَةٍ حَاسَبَهُنَّ بِتِلْكَ اللَّيَالِي، وَلَزِمَهُ فَرْضًا أَنْ يُوفِيَ الَّتِي لَمْ يُسَافِرْ بِهَا عَدَدَ تِلْكَ اللَّيَالِي

وَهَذَا قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ

وَقَالَ أَبُو حَنِيفَةَ: وَمَالِكٌ وَأَصْحَابُهُمَا: يَخْرُجُ بِهَا بِغَيْرِ قُرْعَةٍ

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ، لِأَنَّ الْعَدْلَ بَيْنَ الزَّوْجَاتِ فَرْضٌ، كَمَا أَوْرَدْنَا، فَلَا يَجُوزُ تَخْصِيصُ شَيْءٍ مِنْ ذَلِكَ إلَّا مَا خَصَّهُ نَصٌّ، وَلَمْ يَخُصَّ النَّصُّ إلَّا السَّفَرَ بِالْقُرْعَةِ فَقَطْ، فَمَا عَدَا ذَلِكَ فَهُوَ ظُلْمٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَإِنْ قِيلَ: إنْ لَهُ أَنْ لَا يُسَافِرَ بِوَاحِدَةٍ مِنْهُنَّ؟ قُلْنَا: نَعَمْ، وَهُوَ عَدْلٌ بَيْنَهُنَّ فِي الْمَنْعِ، فَلَيْسَ بِذَلِكَ مَائِلًا إلَى إحْدَاهُنَّ.

وَأَمَّا إذَا سَافَرَ بِغَيْرِ قُرْعَةٍ بِوَاحِدَةٍ مِنْهُنَّ، فَقَدْ مَالَ إلَيْهَا، وَهَذَا ظُلْمٌ لَا يَحِلُّ -.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ لَا يَجُوزُ لِلرَّجُلِ أَنْ يَقْسِمَ لِأُمٍّ وَلَدِهِ وَلَا لِأَمَتِهِ مَعَ زَوْجَةٍ]

***umm walad* (enslaved mother of his child) or his female slave (*ama*) alongside a wife.**

L32164–32166 Issue 1897: It is not permissible for a man to apportion nights to his *umm walad* or to his female slave if he has a wife, and there is no disagreement on this matter. The evidence for this is the statement of Allah, the Most High: *"But if you fear you will not be just, then marry one or those whom your right hands possess"* [An-Nisa': 3]. He did not establish for those whom your right hands possess a right requiring justice in their case. Since they have no right to division, it is impermissible to include in the obligation those who have no right in it alongside those who do. If the wife herself is content with this, the husband may then allocate a share to his female slave, since it is the wife's right, which she has willingly relinquished. However, he may have intercourse with his female slave whenever he wishes, as the Prophet (peace be upon him) did with Mariyah on a day when he chose any of his wives, without division. And success is from Allah, the Most High.[11]

١٨٩٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ لِلرَّجُلِ أَنْ يَقْسِمَ لِأُمِّ وَلَدِهِ، وَلَا لِأَمَتِهِ مَعَ زَوْجَةٍ - إنْ كَانَتْ - وَهَذَا لَا خِلَافَ فِيهِ وَبُرْهَانُهُ: قَوْلُ اللَّهِ تَعَالَى: {فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٣] فَلَمْ يَجْعَلْ لِمِلْكِ الْيَمِينِ حَقًّا يَجِبُ فِيهِ الْعَدْلُ، فَإِذْ لَا حَقَّ لَهُنَّ فِي الْقِسْمَةِ فَلَا يَجُوزُ أَنْ يُشَارِكَ فِي الْوَاجِبِ مَنْ لَا حَقَّ لَهُ فِيهِ مَعَ مَنْ لَهُ فِيهِ حَقٌّ، فَلَوْ طَابَتْ نَفْسُ الزَّوْجَةِ بِذَلِكَ فَلَهُ حِينَئِذٍ أَنْ يَقْسِمَ لِأَمَتِهِ، لِأَنَّهُ حَقُّ الزَّوْجَةِ طَابَتْ بِتَرْكِهِ نَفْسًا، لَكِنْ لَهُ أَنْ يَطَأَ أَمَتَهُ مَتَى شَاءَ كَمَا فَعَلَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِمَارِيَةَ فِي يَوْمِ أَيِّ نِسَائِهِ شَاءَ دُونَ قِسْمَةٍ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

An Issue Concerning the Limit of Allocation for Wives

[مَسْأَلَةٌ حَدُّ الْقِسْمَةِ لِلزَّوْجَاتِ]

L32167 The stipulated ruling for allocating time among wives begins with one night and may extend up to seven nights for each one, and he may not allocate more than seven nights to any single wife.

١٨٩٨ - مَسْأَلَةٌ: وَحَدُّ الْقِسْمَةِ لِلزَّوْجَاتِ: مِنْ لَيْلَةٍ فَمَا زَادَ إلَى سَبْعٍ لِكُلِّ وَاحِدَةٍ، وَلَا يَجُوزُ لَهُ أَنْ يَزِيدَ عَلَى سَبْعٍ

L32169 A group said: It must not exceed three for each one.

وَقَالَ قَوْمٌ: لَا يَزِيدُ عَلَى ثَلَاثٍ لِكُلِّ وَاحِدَةٍ

L32170 A group has said: It does not exceed one night for each woman - It has been narrated to us from Muḥammad ibn al-Mundhir al-Naysābūrī: Aḥmad ibn Muḥammad ibn al-Jasūr reported to us from him, from Mundhir ibn Sa'īd the Judge, from Muḥammad ibn Ibrāhīm ibn al-Mundhir.

وَقَالَتْ طَائِفَةٌ: لَا يَزِيدُ عَلَى لَيْلَةٍ لِكُلِّ وَاحِدَةٍ -: رُوِّينَا ذَلِكَ عَنْ مُحَمَّدِ بْنِ الْمُنْذِرِ النَّيْسَابُورِيِّ: نَا بِذَلِكَ عَنْهُ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ عَنْ مُنْذِرِ بْنِ سَعِيدٍ الْقَاضِي عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ بْنِ الْمُنْذِرِ

L32171 Abū Muḥammad said: The proof validating our position is what we cited in the previous chapter from the statement of Allah's Messenger—peace and

قَالَ أَبُو مُحَمَّدٍ: بُرْهَانُ صِحَّةِ قَوْلِنَا -: مَا ذَكَرْنَاهُ فِي الْبَابِ الَّذِي قَبْلَ هَذَا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأُمِّ سَلَمَةَ - رَضِيَ اللَّهُ عَنْهَا -: «إنْ سَبَّعْتُ لَكِ سَبَّعْتُ

[11] **Qur'an references (L32164):** Qur'an 4:3 (An-Nisa).

blessings be upon him—to Umm Salamah—may Allah be pleased with her: "If I were to apportion seven **nights** for you, I would apportion seven **nights** for my wives." This establishes that a husband may apportion seven **nights**, and less than seven is permissible **because seven is permissible**, since **less than seven** is a portion of seven. As for exceeding seven, it is prohibited due to our prior mention of the obligation to maintain justice between them. Were exceeding seven permissible, it would permit him to spend nights with one wife as long as he wishes—**even if it were years**—while claiming, "I will **allocate** the same for the others." This is **null and void** and unjust.

L32172 It has thus been established that from the number of nights, only what the scriptural text has permitted is permissible. Were it not for this narration, we would not have allowed more than one night—and success is with Allah, the Most High.

L32173 And a night we prefer, because it is in this way that the established narrations indicate the division of the Messenger of Allah – may Allah bless him and grant him peace – for the Mothers of the Believers – may Allah be pleased with them.

L32174 **A case where the woman allocated her night to her co-wife.**

L32175–32177 Issue 1899: If a woman gifts her night to her co-wife, this is permissible. If she later wishes to retract her decision in this matter, she may do so. The proof of this is what was narrated to us through the chain of Ahmad ibn Shu'ayb, who narrated to us from Ishaq (that is, Ibn Rahawayh), who narrated from Jarir (that is, Ibn Abd al-Hamid), who narrated from Hisham ibn Urwah, from his father, from Aisha, the Mother of the Believers: "When Sawdah bint Zam'ah grew old, she said: 'O Messenger of Allah, I have given my day with you to Aisha.' So he—peace and blessings be upon him—would apportion two days to Aisha: her day and Sawdah's day."

L32178 It has been authentically reported that the Prophet—peace and blessings be upon him—sought permission from his wives during his final illness, in

لِنِسَائِي» فَصَحَّ أَنَّ لِلزَّوْجِ أَنْ يُسَبِّعَ وَمَا دُونَ السَّبْعِ جَائِزٌ بِجَوَازِ السَّبْعِ، لِأَنَّهُ بَعْضُ السَّبْعِ، وَأَمَّا الزِّيَادَةُ عَلَى السَّبْعِ فَمَمْنُوعٌ لِمَا ذَكَرْنَا قَبْلُ مِنْ وُجُوبِ الْعَدْلِ بَيْنَهُنَّ فَلَوْ جَازَ أَكْثَرُ مِنْ سَبْعٍ لَكَانَ لَهُ أَنْ يَبِيتَ عِنْدَ الْوَاحِدَةِ مَا شَاءَ - وَلَوْ أَعْوَامًا - وَيَقُولُ: سَأَقْسِمُ لِلْأُخْرَى مِثْلَ ذَلِكَ - وَهَذَا بَاطِلٌ وَظُلْمٌ.

فَصَحَّ أَنَّهُ لَا يَجُوزُ مِنْ عَدَدِ اللَّيَالِي إلَّا مَا أَجَازَهُ النَّصُّ فَقَطْ، وَلَوْلَا هَذَا الْأَثَرُ مَا أَجَزْنَا أَكْثَرَ مِنْ لَيْلَةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَلَيْلَةً أَحَبُّ إلَيْنَا، لِأَنَّهُ كَذَلِكَ جَاءَتْ الْآثَارُ الثَّابِتَةُ مِنْ قَسْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأُمَّهَاتِ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهُنَّ -

[مَسْأَلَةٌ وَهَبَتْ الْمَرْأَةُ لَيْلَتَهَا لِضَرَّتِهَا]

١٨٩٩ - مَسْأَلَةٌ: وَإِنْ وَهَبَتْ الْمَرْأَةُ لَيْلَتَهَا لِضَرَّتِهَا جَازَ ذَلِكَ، فَإِنْ بَدَا لَهَا فَرَجَعَتْ فِي ذَلِكَ، فَلَهَا ذَلِكَ بُرْهَانُ ذَلِكَ -: مَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا إِسْحَاقُ - هُوَ ابْنُ رَاهْوَيْهِ - أَنَا جَرِيرٌ - هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: «أَنَّ سَوْدَةَ بِنْتَ زَمْعَةَ لَمَّا كَبِرَتْ قَالَتْ: يَا رَسُولَ اللَّهِ، جَعَلْتُ يَوْمِي مِنْكَ لِعَائِشَةَ؟ فَكَانَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - يَقْسِمُ لِعَائِشَةَ يَوْمَيْنِ، يَوْمَهَا وَيَوْمَ سَوْدَةَ»

وَقَدْ صَحَّ «أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - اسْتَأْذَنَ نِسَاءَهُ فِي مَرَضِهِ - الَّذِي مَاتَ فِيهِ - أَنْ يُمَرَّضَ فِي بَيْتِ عَائِشَةَ؟ فَأَذِنَّ لَهُ فِي ذَلِكَ»

which he passed away, to be ill in the house of ʿĀ'ishah, and they granted him permission to do so.

L32179 As for our statement that she retains the right to retract in this matter, it is because each day is distinct from the preceding day without doubt, and gifting an unknown is impermissible. Rather, it constitutes a newly arising permissibility specific to that day when it arrives. Thus, she has the right not to initiate that permissibility and to uphold her right which Allah—Exalted and Almighty—has ordained for her, and through Him—Glorified and Exalted—we are strengthened.

L32180 ## The Rulings of Lawful Sexual Intercourse and its Etiquette

L32181 ## A question: Is it permissible for a man to have intercourse with all his wives and female slaves in a single session?

L32182 The Rulings of Sexual Intercourse and Its Etiquettes 1900 - Issue: It is permissible for a man to have intercourse with all his wives and female slaves in a single instance. If he performs the ritual bath between every two women, this is preferable. If he performs the ritual bath only after the last of them, it remains acceptable, with no disapproval in this.

L32183–32185 It was narrated to us through the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn Manṣūr narrated to us: Sufyān—Ibn ʿUyaynah—narrated from Maʿmar, from Thābit al-Banānī, from Anas ibn Mālik: "Allah's Messenger—peace and blessings of Allah be upon him—would go around to all his wives in one night, then perform a single ritual bath." Abū Muḥammad said: Female slaves are among a man's women, as Allah the Exalted said: {Lawful for you during the night of fasting is sexual intercourse with your women} [Al-Baqarah 2:187]. Aḥmad ibn Muḥammad ibn al-Jasūr informed us: Wahb ibn Musirrah narrated to us: Muḥammad ibn Waḍḍāḥ narrated to us: Abū Bakr ibn Abī Shaybah narrated from Yazīd ibn Hārūn, from Ḥammād ibn Salamah, from ʿAbd al-Raḥmān ibn Fulān ibn Abī Rāfiʿ, from his paternal aunt Salmā bint Abī Rāfiʿ, from Abū Rāfiʿ: "Allah's Messenger—peace and blessings of Allah be upon him—went around to his wives in one night, then performed a single ritual bath." In one night, he performed a ritual bath after

وَأَمَّا قَوْلُنَا: إِنَّ لَهَا الرُّجُوعَ فِي ذَلِكَ، فَلِأَنَّ كُلَّ يَوْمٍ هُوَ غَيْرُ الْيَوْمِ الَّذِي قَبْلَهُ بِلَا شَكٍّ، وَلَا تَجُوزُ هِبَةُ مَجْهُولٍ، فَإِنَّمَا هُوَ إِبَاحَةُ حَادِثَةٍ فِي ذَلِكَ الْيَوْمِ إِذَا جَاءَ، فَلَهَا أَنْ لَا تُحْدِثَ تِلْكَ الْإِبَاحَةَ وَأَنْ تَتَمَسَّكَ بِحَقِّهَا الَّذِي جَعَلَهُ اللَّهُ تَعَالَى لَهَا - وَبِهِ جَلَّ وَعَزَّ نَتَأَيَّدُ

[أَحْكَامُ الْوَطْءِ وَآدَابُهُ]

[مَسْأَلَةٌ لِلرَّجُلِ أَنْ يَطَأَ جَمِيعَ زَوْجَاتِهِ وَإِمَائِهِ فِي فَوْرٍ وَاحِدٍ]

أَحْكَامُ الْوَطْءِ وَآدَابُهُ ١٩٠٠ - مَسْأَلَةٌ: وَجَائِزٌ لِلرَّجُلِ أَنْ يَطَأَ جَمِيعَ زَوْجَاتِهِ وَإِمَائِهِ فِي فَوْرٍ وَاحِدٍ، فَإِنْ تَطَهَّرَ بَيْنَ كُلِّ اثْنَتَيْنِ فَهُوَ أَحْسَنُ، وَإِنْ لَمْ يَغْتَسِلْ إِلَّا فِي آخِرِهِنَّ فَحَسَنٌ، لَا كَرَاهَةَ فِي ذَلِكَ

رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ مَنْصُورٍ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ مَعْمَرٍ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: كَانَ يَطُوفُ عَلَى نِسَائِهِ فِي اللَّيْلَةِ الْوَاحِدَةِ ثُمَّ يَغْتَسِلُ مَرَّةً» . قَالَ أَبُو مُحَمَّدٍ: الْإِمَاءُ مِنْ نِسَاءِ الرَّجُلِ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {أُحِلَّ لَكُمْ لَيْلَةَ الصِّيَامِ الرَّفَثُ إِلَى نِسَائِكُمْ} [البقرة: ١٨٧] . أَخْبَرَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا وَهْبُ بْنُ مُسِرَّةَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ يَزِيدَ بْنِ هَارُونَ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ فُلَانِ بْنِ أَبِي رَافِعٍ عَنْ عَمَّتِهِ سَلْمَى بِنْتِ أَبِي رَافِعٍ عَنْ أَبِي رَافِعٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَافَ عَلَى نِسَائِهِ فِي لَيْلَةٍ وَاحِدَةٍ فَاغْتَسَلَ عِنْدَ كُلِّ امْرَأَةٍ مِنْهُنَّ غُسْلًا،

being with each of his wives. I said to him: “O Messenger of Allah, why not perform a single bath?” He replied: “This is purer and better,” or said: “and cleaner.” Ali said: “Had this narration not come, performing a bath after each wife would have been acceptable, for no prohibition regarding that has been reported—and success comes only from Allah, the Most High.”[12]

Issue: Intercourse in the Anus

L32186

L32187–32189 Issue 1901: Anal intercourse is fundamentally impermissible in all cases, whether with women or others. Regarding those beyond women, this constitutes a certain consensus. As for women, disagreement exists. Contradictory reports are transmitted from Ibn Umar and Nafi’, as we narrated through Ahmad ibn Shu’ayb’s chain: Ar-Rabi’ ibn Sulayman ibn Dawud narrated to us - Asbagh ibn Al-Faraj narrated to us - Abdur-Rahman ibn Al-Qasim narrated to us. He said: I asked Malik: “We have in Egypt Al-Layth ibn Sa’d, who relates from Al-Harith ibn Ya’qub from Sa’id ibn Yasar, who said: I asked Ibn Umar: ’We purchase slave girls and practice tahmiḍ (anal intercourse) on them.’ He inquired: ’What is tahmiḍ?’ I explained: ’We have intercourse with them in their anuses.’ Ibn Umar exclaimed: ’Ugh! Ugh! Ugh! Would a Muslim even do such a thing?’” Malik then told me: “I testify that Rabi’ah narrated to me from Sa’id ibn Yasar that he asked Ibn Umar, who responded: ’There is no harm in it.’” Through another chain from Ahmad ibn Shu’ayb: Ali ibn Uthman ibn Muhammad ibn Sa’id ibn Abdullah ibn Nufayl informed me - Sa’id ibn Isa narrated to us - Al-Mufaddal narrated to me - Abdullah ibn Sulayman from Ka’b ibn Alqamah from Abu An-Nadr, who reported saying to Nafi’, Ibn Umar’s freedman: “There has been much said about you claiming you transmit from Ibn Umar his legal opinion permitting anal intercourse with women.” Nafi’ responded: “They have lied against me.” They cited narrations concerning this matter, though had these been authentic, there would have come to us abrogating evidence - as we shall mention, God, the Almighty and Majestic, willing. They argued using Allah’s verse: {Your wives are a tilth for you, so come to your tilth from where you will} [Al-Baqarah

[12] **Qur’an references (L32183):** Qur’an 2:187 (Al-Baqarah).

قَالَ فَقُلْت لَهُ: يَا رَسُولَ اللَّهِ، لَوْ اغْتَسَلْت غُسْلًا وَاحِدًا؟ قَالَ: هَذَا أَطْهَرُ وَأَطْيَبُ» ، أَوْ قَالَ: وَأَنْظَفُ ". قَالَ عَلِيٌّ: وَلَوْ لَمْ يَأْتِ هَذَا الْخَبَرُ لَكَانَ الْغُسْلُ بَيْنَ كُلِّ اثْنَتَيْنِ مِنْهُنَّ حَسَنًا، لِأَنَّهُ لَمْ يَأْتِ عَنْ ذَلِكَ نَهْيٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْوَطْءِ فِي الدُّبُرِ]

١٩٠١ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْوَطْءُ فِي الدُّبُرِ أَصْلًا، لَا فِي امْرَأَةٍ وَلَا فِي غَيْرِهَا - أَمَّا مَا عَدَا النِّسَاءَ، فَإِجْمَاعٌ مُتَيَقَّنٌ. وَأَمَّا فِي النِّسَاءِ فَفِيهِ اخْتِلَافٌ - اُخْتُلِفَ فِيهِ عَنْ ابْنِ عُمَرَ، وَعَنْ نَافِعٍ كَمَا رَوَيْنَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَرنا الرَّبِيعُ بْنُ سُلَيْمَانَ بْنِ دَاوُد نا أُصْبَغُ بْنُ الْفَرَجِ ثنا عَبْدُ الرَّحْمَنِ بْنِ الْقَاسِمِ، قَالَ: قُلْت لِمَالِكٍ: إنَّ عِنْدَنَا بِمِصْرَ اللَّيْثَ بْنَ سَعْدٍ يُحَدِّثُ عَنْ الْحَارِثِ بْنِ يَعْقُوبَ عَنْ سَعِيدِ بْنِ يَسَارٍ قَالَ: قُلْت لِابْنِ عُمَرَ: إنَّا نَشْتَرِي الْجَوَارِيَ فَنُحَمِّضُ لَهُنَّ، قَالَ: وَمَا التَّحْمِيضُ؟ قَالَ: نَأْتِيهِنَّ فِي أَدْبَارِهِنَّ؟ قَالَ ابْنُ عُمَرَ: أُفٍّ أُفٍّ أُفٍّ، أَوَ يَعْمَلُ هَذَا مُسْلِمٌ؟ فَقَالَ لِي مَالِكٌ: فَأَشْهَدُ عَلَى رَبِيعَةَ لَحَدَّثَنِي عَنْ سَعِيدِ بْنِ يَسَارٍ أَنَّهُ سَأَلَ ابْنَ عُمَرَ فَقَالَ: لَا بَأْسَ بِهِ. وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي عَلِيُّ بْنُ عُثْمَانَ بْنِ مُحَمَّدِ بْنِ سَعِيدِ بْنِ عَبْدِ اللَّهِ بْنِ نُفَيْلٍ نا سَعِيدُ بْنُ عِيسَى حَدَّثَنِي الْمُفَضَّلُ نا عَبْدُ اللَّهِ بْنُ سُلَيْمَانَ عَنْ كَعْبِ بْنِ عَلْقَمَةَ عَنْ أَبِي النَّضْرِ أَنَّهُ أَخْبَرَهُ: أَنَّهُ قَالَ لِنَافِعٍ مَوْلَى ابْنِ عُمَرَ: قَدْ أَكْثَرَ عَلَيْك الْقَوْلَ أَنَّك تَقُولُ عَنْ ابْنِ عُمَرَ أَنَّهُ أَفْتَى بِأَنَّ تُؤْتَى النِّسَاءُ فِي أَدْبَارِهِنَّ؟ فَقَالَ نَافِعٌ: لَقَدْ كَذَبُوا عَلَيَّ - وَذَكَرُوا فِي ذَلِكَ أَحَادِيثَ لَوْ صَحَّتْ لَجَاءَنَا مَا يَنْسَخُهَا - عَلَى مَا نَذْكُرُهُ إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ - وَاحْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {نِسَاؤُكُمْ حَرْثٌ لَكُمْ فَأْتُوا حَرْثَكُمْ أَنَّى شِئْتُمْ} [البقرة: ٢٢٣] . قَالَ أَبُو مُحَمَّدٍ:

2:223]. Abu Muhammad remarked: This provides no proof for them, for "from where you will" in the Arabic tongue of the Quran's revelation signifies "from which direction" rather than "where." Since this is established, the meaning refers exclusively to "from which direction." "Where do you wish?" Allah, the Almighty and Majestic, said: {O Mary, how is this granted to you?} [Āl ʿImrān: 37].[13]

وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّ " أَنَّى " فِي لُغَةِ الْعَرَبِ الَّتِي نَزَلَ بِهَا الْقُرْآنُ إنَّمَا هِيَ بِمَعْنَى " مِنْ أَيْنَ " لَا بِمَعْنَى: أَيْنَ، فَإِذْ ذَلِكَ كَذَلِكَ - فَإِنَّمَا مَعْنَاهُ مِنْ أَيْنَ شِئْتُمْ " قَالَ اللَّهُ عَزَّ وَجَلَّ: {يَا مَرْيَمُ أَنَّى لَكِ هَذَا} [آل عمران: ٣٧]

L32190 In other words: How did this come to you?

بِمَعْنَى: مِنْ أَيْنَ لَك هَذَا

L32191 They said: "If any part of a woman were forbidden, would her entire being be forbidden?" Abu Muhammad responded: "This is analogous to their statement: 'Had no explicit text come prohibiting it.'"

وَقَالُوا: لَوْ حُرِّمَ مِنْ الْمَرْأَةِ شَيْءٌ لَحُرِّمَ جَمِيعُهَا؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا كَمَا قَالُوا لَوْ لَمْ يَأْتِ نَصٌّ بِتَحْرِيمِهِ

L32192 They said: Intercourse within a polygamous arrangement is permissible, and at times the male organ might incline toward the anus?

وَقَالُوا: وَطْءُ الْمَجْمُوعَةِ جَائِزٌ وَرُبَّمَا مَالَ الذَّكَرُ إلَى الدُّبُرِ؟

L32193 Ali said: If one cannot engage in intercourse with his wife except through anal penetration, then intercourse with her is prohibited.

قَالَ عَلِيٌّ: إذَا لَمْ يَتَمَكَّنْ مِنْ وَطْءِ الْمَجْمُوعَةِ إلَّا بِالْإِيلَاجِ فِي الدُّبُرِ فَوَطْؤُهَا حَرَامٌ

L32194 Abū Muḥammad said: We looked into that? So we found what Aḥmad ibn Muḥammad ibn al-Jasūr and ʿAbd Allāh ibn Rabīʿ narrated to us. Aḥmad stated: Wahb ibn Masarrata narrated to us, who narrated from Ibn Waḍḍāḥ, who narrated from Abū Bakr ibn Abī Shaybah. ʿAbd Allāh stated: Muḥammad ibn Muʿāwiyah narrated to us, who narrated from Aḥmad ibn Shuʿayb, who narrated from ʿAbd Allāh ibn Saʿīd Abū Saʿīd al-Ashajj. Then al-Ashajj and Ibn Abī Shaybah's chains converged. Both said together: Abū Khālid al-Aḥmar narrated to us from al-Ḍaḥḥāk ibn ʿUthmān from Makhramah ibn Sulaymān from Kurayb from Ibn ʿAbbās, who said: The Messenger of Allah—peace and blessings be upon him—said, "Allah will not look at a man who approaches a man or a woman in the anus." This is the wording of ʿAbd Allāh ibn Rabīʿ's narration, while Aḥmad's narration states "in her anus." They did not differ in anything besides this.

قَالَ أَبُو مُحَمَّدٍ: فَنَظَرْنَا فِي ذَلِكَ؟ فَوَجَدْنَا مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ، وَعَبْدُ اللَّهِ بْنُ رَبِيعٍ، قَالَ أَحْمَدُ: نَا وَهْبُ بْنُ مَسَرَّةَ نا ابْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَقَالَ عَبْدُ اللَّهِ: نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا عَبْدُ اللَّهِ بْنُ سَعِيدٍ أَبُو سَعِيدٍ الْأَشَجُّ، ثُمَّ اتَّفَقَ الْأَشَجُّ، وَابْنُ أَبِي شَيْبَةَ، قَالَا جَمِيعًا: نا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ الضَّحَّاكِ بْنِ عُثْمَانَ عَنْ مَخْرَمَةَ بْنِ سُلَيْمَانَ عَنْ كُرَيْبٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَنْظُرُ اللَّهُ إلَى رَجُلٍ أَتَى رَجُلًا أَوْ امْرَأَةً فِي دُبُرٍ» هَذَا لَفْظُ وَرِوَايَةُ عَبْدِ اللَّهِ بْنِ رَبِيعٍ، وَرِوَايَةُ أَحْمَدَ " فِي دُبُرِهَا " لَمْ يَخْتَلِفَا فِي غَيْرِ ذَلِكَ

L32195 By the same chain to Aḥmad ibn Shuʿayb: I am Muḥammad ibn Manṣūr: Sufyān—he is al-Thawrī—narrated to us, saying: Yazīd ibn ʿAbd Allāh ibn

[13] **Qur'an references (L32187):** Qur'an 2:223 (Al-Baqarah); Qur'an 3:37 (Ali 'Imran).

وَبِهِ إِلَى أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَنْصُورٍ نا سُفْيَانُ - هُوَ الثَّوْرِيُّ - حَدَّثَنِي يَزِيدُ بْنُ عَبْدِ اللَّهِ بْنِ أُسَامَةَ بْنِ الْهَادِ عَنْ عُمَارَةَ بْنِ خُزَيْمَةَ بْنِ ثَابِتٍ عَنْ أَبِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِنَّ اللَّهَ لَا يَسْتَحْيِي مِنْ الْحَقِّ، لَا تَأْتُوا النِّسَاءَ فِي أَدْبَارِهِنَّ»

Usāmah ibn al-Hād narrated to me, from ʿUmārah ibn Khuzaymah ibn Thābit, from his father, from the Prophet—peace and blessings of Allah be upon him—who said: «Indeed, Allah does not shy away from the truth. Do not approach women in their anuses.»

قَالَ أَبُو مُحَمَّدٍ: وَهَذَانِ خَبَرَانِ صَحِيحَانِ تَقُومُ الْحُجَّةُ بِهِمَا، وَلَوْ صَحَّ خَبَرٌ فِي إبَاحَةِ ذَلِكَ لَكَانَ هَذَانِ نَاسِخَيْنِ لَهُ، لِأَنَّ الْأَصْلَ أَنَّ كُلَّ شَيْءٍ مُبَاحٌ حَتَّى يَأْتِيَ تَحْرِيمُهُ، فَهَذَانِ الْخَبَرَانِ وَرَدَا بِمَا فَصَّلَ اللَّهُ تَحْرِيمَهُ لَنَا

Abū Muḥammad said: These are two authentic reports that constitute definitive evidence. If a valid report permitting such an act existed, these two would abrogate it, for the default principle is that all matters are permissible until their prohibition is established. These two reports elucidate the prohibitions Allah has explicitly delineated for us.

وَقَدْ جَاءَ تَحْرِيمُ ذَلِكَ عَنْ أَبِي هُرَيْرَةَ وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَأَبِي الدَّرْدَاءِ وَابْنِ عَبَّاسٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَطَاوُسٍ، وَمُجَاهِدٍ وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَغَيْرِهِمْ

The prohibition of this has been transmitted from Abu Hurairah, Ali ibn Abi Talib, Abu al-Darda, Ibn Abbas, Saʿid ibn al-Musayyib, Abu Salamah ibn Abd al-Rahman ibn Awf, Tawus, and Mujahid. And it is the view of Abū Ḥanīfah, al-Shāfiʿī, Sufyān al-Thawrī, and others besides them.

وَمَا رَوَيْت إبَاحَةَ ذَلِكَ عَنْ أَحَدٍ إلَّا عَنْ ابْنِ عُمَرَ وَحْدَهُ بِاخْتِلَافٍ عَنْهُ، وَعَنْ نَافِعٍ بِاخْتِلَافٍ عَنْهُ، وَعَنْ مَالِكٍ بِاخْتِلَافٍ عَنْهُ فَقَطْ.

I have not narrated the permissibility of that from anyone except Ibn Umar alone with differing narrations from him, and from Nāfiʿ with differing narrations from him, and from Mālik only with differing narrations from him.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

And by Allah, the Exalted, is the divine success.

[مَسْأَلَةٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يَطَأَ امْرَأَةً حُبْلَى مِنْ غَيْرِهِ]

A legal ruling: It is impermissible for anyone to lie with a woman pregnant by someone other than him.

١٩٠٢ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَطَأَ امْرَأَةً حُبْلَى مِنْ غَيْرِهِ، فَإِنْ فَعَلَ أُدِّبَ، فَإِنْ كَانَتْ أَمَةً لَهُ أَعْتَقَ عَلَيْهِ مَا وَلَدَتْ مِنْ ذَلِكَ الْحَمْلِ وَلَا بُدَّ - وَلَا تَعْتِقُ هِيَ بِذَلِكَ

1902 - Issue: It is not permissible for anyone to have intercourse with a woman pregnant by another. If he does so, he is to be disciplined. If she is his female slave, he must emancipate the child she bears from that pregnancy without fail, but she herself does not become free by that.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرُ نا شُعْبَةُ عَنْ يَزِيدَ بْنِ حُمَيْدٍ قَالَ: سَمِعْت عَبْدَ الرَّحْمَنِ بْنَ جُبَيْرٍ يُحَدِّثُ عَنْ أَبِيهِ جُبَيْرِ بْنِ

The evidence for this is what we have transmitted through the chain of Muslim: Muḥammad ibn al-Muthannā narrated to us, Muḥammad ibn Jaʿfar Ghundar narrated to us, Shuʿbah narrated to us, from Yazīd ibn Ḥumayd, who said: I heard ʿAbd al-Raḥmān ibn Jubayr narrating from his father Jubayr ibn

Nufayr, from Abū al-Dardāʾ: “A woman in a state of Ihrām was brought to the Prophet (peace be upon him) at the entrance of a tent. He said: ’Does he intend to have intercourse with her?’ They replied: ’Yes.’ Thereupon the Messenger of Allah (peace be upon him) said: ’I nearly cursed him with a curse that would enter the grave with him. How can he make the child inherit when it is unlawful for him? How can he use the child as a servant when it is unlawful for him?’”[14]

L32205 Abu Muhammad said: There is no authentic report concerning the prohibition of intercourse with a pregnant woman except this one. Thus, if it is not permissible for him, his ownership of her becomes prohibited. Since his ownership of her is prohibited, it is forbidden, for there is none except a slave or a free person.

L32206 As for disciplining the one who did that, it is because he committed an evil act. All divine enablement comes from Allah, the Exalted.

L32207 ## The Rulings on *Coitus Interruptus*

L32208 ## **Issue:** Withdrawal is not permissible from a free woman nor from a female slave.

L32209 Rulings on Withdrawal (al-ʿAzl)

L32210 Issue 1903: Coitus interruptus is not permissible from a free woman or from a slave woman.

L32211–32213 The proof of that is what we have narrated through the chain of Muslim: Ubaydullah ibn Sa‘id reported to us, via al-Maqburī (Abdullah ibn Yazid), who reported to us via Sa‘id ibn Abi Ayyub, who said: Abu al-Aswad (who is Urwah’s orphan) narrated to me from Urwah ibn al-Zubayr, from Aisha, the Mother of the Believers, from Judamah bint Wahb, the sister of ʿUkāshah, who said: “I was present with the Messenger of Allah (peace and blessings be upon him) among a group of people when they asked him about coitus interruptus. He said: ’That is the covert form of infanticide,’ and he recited:

[14] **Hadith references (L32204):** Sahih Muslim 1441a.

نُفَيْرٍ عَنْ أَبِي الدَّرْدَاءِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِامْرَأَةٍ مُجِحٍّ عَلَى بَابِ فُسْطَاطٍ فَقَالَ لَهُ: يُرِيدُ أَنْ يُلِمَّ بِهَا؟ فَقَالُوا: نَعَمْ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَقَدْ هَمَمْتُ أَنْ أَلْعَنَهُ لَعْنًا يَدْخُلُ مَعَهُ قَبْرَهُ، كَيْفَ يُوَرِّثُهُ وَهُوَ لَا يَحِلُّ لَهُ؟ كَيْفَ يَسْتَخْدِمُهُ وَهُوَ لَا يَحِلُّ لَهُ؟»

قَالَ أَبُو مُحَمَّدٍ: لَا يَصِحُّ فِي تَحْرِيمِ وَطْءِ الْحَامِلِ خَبَرٌ غَيْرَ هَذَا، فَإِذَا لَمْ يَحِلَّ لَهُ فَقَدْ حُرِّمَ عَلَيْهِ مِلْكُهُ، وَإِذْ حُرِّمَ عَلَيْهِ مِلْكُهُ، فَهُوَ حَرَامٌ، إِذْ لَيْسَ إِلَّا مَمْلُوكٌ أَوْ حُرٌّ.

وَأَمَّا تَأْدِيبُ مَنْ فَعَلَ ذَلِكَ فَلِأَنَّهُ أَتَى مُنْكَرًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[أَحْكَامُ الْعَزْلِ]

[مَسْأَلَةٌ لَا يَحِلُّ الْعَزْلُ عَنْ حُرَّةٍ وَلَا عَنْ أَمَةٍ]

أَحْكَامُ الْعَزْلِ

١٩٠٣ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْعَزْلُ عَنْ حُرَّةٍ وَلَا عَنْ أَمَةٍ

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا عُبَيْدُ اللَّهِ بْنُ سَعِيدٍ نا الْمَقْبُرِيُّ - هُوَ عَبْدُ اللَّهِ بْنُ يَزِيدَ - نا سَعِيدُ بْنُ أَبِي أَيُّوبَ حَدَّثَنِي أَبُو الْأَسْوَدِ - هُوَ يَتِيمُ عُرْوَةَ - عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنْ جُدَامَةَ بِنْتِ وَهْبٍ أُخْتِ عُكَّاشَةَ قَالَتْ «حَضَرْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أُنَاسٍ فَسَأَلُوهُ عَنْ الْعَزْلِ فَقَالَ رَسُولُ اللَّهِ -

{And when the buried infant girl is asked} [At-Takwir 81:8]." Abu Muhammad said: This is a report of the utmost authenticity.[15]

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: ذَلِكَ الْوَأْدُ الْخَفِيُّ، وَقَرَأَ: {وَإِذَا الْمَوْءُودَةُ سُئِلَتْ} [التكوير: ٨] » قَالَ أَبُو مُحَمَّدٍ: هَذَا خَبَرٌ فِي غَايَةِ الصِّحَّةِ

L32214 Those who permitted contraceptive withdrawal cited as evidence the narration of Abū Saʿīd, in which it is stated: "There is no blame upon you if you do not do it."

وَاحْتَجَّ مَنْ أَبَاحَ الْعَزْلَ بِخَبَرِ أَبِي سَعِيدٍ الَّذِي فِيهِ «لَا عَلَيْكُمْ أَنْ لَا تَفْعَلُوا»

L32215 Ali said: This report is closer to indicating prohibition. Similarly, Ibn Sirin stated the same. They argued by citing the Prophet's (peace be upon him) rejection of the Jews' claim that she was the younger buried infant girl, and also cited other unauthentic reports.

قَالَ عَلِيٌّ: هَذَا خَبَرٌ إلَى النَّهْيِ أَقْرَبُ، وَكَذَلِكَ قَالَ ابْنُ سِيرِينَ - وَاحْتَجُّوا بِتَكْذِيبِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَوْلَ يَهُودَ: هُوَ الْمَوْءُودَةُ الصُّغْرَى وَبِأَخْبَارٍ أُخَرَ لَا تَصِحُّ

L32216 Abu Muhammad said: The narration of Judamah that we cited contradicts it, and we know with certainty that the fundamental principle for all things is permissibility by virtue of Allah the Exalted's statement: "Who created for you all that is on the earth" [Al-Baqarah: 29]. Thus, everything was lawful until the prohibition was revealed, as He the Exalted said: "And He has already detailed for you what He has forbidden to you" [Al-An'am: 119].[16]

قَالَ أَبُو مُحَمَّدٍ: يُعَارِضُهَا خَبَرُ جُدَامَةَ الَّذِي أَوْرَدْنَا، وَقَدْ عَلِمْنَا بِيَقِينٍ أَنَّ كُلَّ شَيْءٍ فَأَصْلُهُ الْإِبَاحَةُ لِقَوْلِ اللَّهِ تَعَالَى: {الَّذِي خَلَقَ لَكُمْ مَا فِي الأَرْضِ جَمِيعًا} [البقرة: ٢٩] وَعَلَى هَذَا كَانَ كُلُّ شَيْءٍ حَلَالًا حَتَّى نَزَلَ التَّحْرِيمُ قَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩]

L32217 It has been established that the narration of Judāma concerning the prohibition constitutes the abrogator of all prior permissions which undoubtedly were in effect both before and after the advent of the prophetic mission. This is a matter of certainty, for he—peace and blessings be upon him—declared that it is the hidden act of burying infants alive, and burying infants alive is forbidden. Thus, it has abrogated the prior permissibility with definitive certainty.

فَصَحَّ أَنَّ خَبَرَ جُدَامَةَ بِالتَّحْرِيمِ هُوَ النَّاسِخُ لِجَمِيعِ الْإِبَاحَاتِ الْمُتَقَدِّمَةِ الَّتِي لَا شَكَّ فِي أَنَّهَا قَبْلَ الْبَعْثِ وَبَعْدَ الْبَعْثِ، وَهَذَا أَمْرٌ مُتَيَقَّنٌ، لِأَنَّهُ أَخْبَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ الْوَأْدُ الْخَفِيُّ، وَالْوَأْدُ مُحَرَّمٌ، فَقَدْ نَسَخَ الْإِبَاحَةَ الْمُتَقَدِّمَةَ بِيَقِينٍ.

L32218 Whoever claims that this abrogated permissibility has been restored and that the definitively established abrogation has been invalidated has indeed asserted falsehood, blindly followed matters beyond his knowledge, and brought forth claims without evidence. The Exalted says: *"Produce your proof if you are truthful"* [Al-Baqarah 2:111].[17]

فَمَنْ ادَّعَى أَنَّ تِلْكَ الْإِبَاحَةَ الْمَنْسُوخَةَ قَدْ عَادَتْ، وَأَنَّ النَّسْخَ الْمُتَيَقَّنَ قَدْ بَطَلَ فَقَدْ ادَّعَى الْبَاطِلَ، وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَأَتَى بِمَا لَا دَلِيلَ لَهُ عَلَيْهِ، قَالَ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١]

[15] **Qur'an references (L32211):** Qur'an 81:8 (At-Takwir).
[16] **Qur'an references (L32216):** Qur'an 2:29 (Al-Baqarah); Qur'an 6:119 (Al-An'am).
[17] **Qur'an references (L32218):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

L32219–32221 The permissibility of withdrawal is authentically established from Jābir ibn ʿAbdullāh, Ibn ʿAbbās, Saʿd ibn Abī Waqqāṣ, Zayd ibn Thābit, and Ibn Masʿūd. The prohibition [of coitus interruptus] was validated through a group's transmission: as narrated by Ḥammād ibn Salamah via ʿUbayd Allāh ibn ʿUmar from Nāfiʿ, that Ibn ʿUmar did not practice withdrawal, stating: "Were I to know any of my offspring practicing withdrawal, I would impose exemplary punishment upon him."

وَقَدْ جَاءَتْ الْإِبَاحَةُ لِلْعَزْلِ صَحِيحَةً عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، وَابْنِ عَبَّاسٍ، وَسَعْدِ بْنِ أَبِي وَقَّاصٍ، وَزَيْدِ بْنِ ثَابِتٍ وَابْنِ مَسْعُودٍ وَصَحَّ الْمَنْعُ مِنْهُ عَنْ جَمَاعَةٍ -: كَمَا رُوِّينَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ كَانَ لَا يَعْزِلُ، وَقَالَ: لَوْ عَلِمْت أَحَدًا مِنْ وَلَدِي يَعْزِلُ لَنَكَّلْته

L32222 Abu Muhammad said: It is not permissible to impose deterrent punishment for something he deems permissible.

قَالَ أَبُو مُحَمَّدٍ: لَا يَجُوزُ أَنْ يُنَكِّلَ عَلَى شَيْءٍ مُبَاحٍ عِنْدَهُ.

L32223 And from the chain of Al-Hajjaj ibn Al-Minhal, Abu ʿAwanah narrated to us from ʿAsim ibn Bahdalah from Zirr ibn Hubaysh that ʿAli ibn Abi Talib disapproved of coitus interruptus.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ عَاصِمِ بْنِ بَهْدَلَةَ عَنْ زِرِّ بْنِ حُبَيْشٍ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يَكْرَهُ الْعَزْلَ

L32224 We have also narrated it via Shuʿbah, narrated by ʿĀṣim, narrated by Zirr, narrated by ʿAlī, who informed us: Yunus ibn ʿAbdullāh, who informed us: Aḥmad ibn ʿAbdullāh ibn ʿAbd al-Baṣīr, who informed us: Aḥmad ibn Khālid, who informed us: Muḥammad ibn ʿAbd al-Salām al-Khushanī, who informed us: Muḥammad ibn Bashshār, who informed us: Yaḥyā ibn Saʿīd al-Qaṭṭān, who informed us: Sulaymān al-Taymī, narrated by Abū ʿAmr al-Shaybānī, narrated by ʿAbdullāh ibn Masʿūd that he said regarding _ʿazl_ (coitus interruptus): "It is the covert burial of a female infant alive."

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ شُعْبَةَ عَنْ عَاصِمٍ عَنْ زِرٍّ عَنْ عَلِيٍّ نا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَصِيرِ نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا سُلَيْمَانَ التَّيْمِيُّ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّهُ قَالَ فِي الْعَزْلِ: هِيَ الْمَوْءُودَةُ الْخَفِيَّةُ

L32225 This report was transmitted to us through the chain of Saʿīd ibn Manṣūr, who said: Muʿtamir ibn Sulaymān al-Taymī narrated to us, saying: Abū ʿAmr al-Shaybānī narrated to me from Ibn Masʿūd that he said regarding withdrawal: "It is the minor buried female infant."

وَرُوِّينَا هَذَا الْخَبَرَ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ قَالَ: نا مُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ حَدَّثَنِي أَبُو عَمْرٍو الشَّيْبَانِيُّ عَنْ ابْنِ مَسْعُودٍ أَنَّهُ قَالَ فِي الْعَزْلِ: هِيَ الْمَوْءُودَةُ الصُّغْرَى

L32226 And via him to Muḥammad ibn Bashshār: from ʿAbd al-Raḥmān ibn Mahdī, from Shuʿbah, from Zayd ibn Khumayr, from Sulaymān ibn ʿĀmir, who said: I heard Abū Umāmah al-Bāhilī say when he was asked about withdrawal (al-ʿazl)?, "I did not used to think a Muslim would do such a thing."

وَبِهِ إلَى مُحَمَّدِ بْنِ بَشَّارٍ نَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا شُعْبَةُ نا زَيْدُ بْنُ خُمَيْرٍ عَنْ سُلَيْمَانَ بْنِ عَامِرٍ قَالَ: سَمِعْت أَبَا أُمَامَةَ الْبَاهِلِيَّ يَقُولُ وَقَدْ سُئِلَ عَنْ الْعَزْلِ؟ فَقَالَ: مَا كُنْت أَرَى مُسْلِمًا يَفْعَلُهُ

L32227 And from the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us, Ibn ʿAwn narrated to us, saying: Nāfiʿ reported from Ibn ʿUmar that he said:

"Umar administered a beating to some of his sons for practicing ʿazl (coitus interruptus)."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أرنا ابْنُ عَوْنٍ قَالَ حَدَّثَنِي نَافِعٌ عَنْ ابْنِ عُمَرَ قَالَ: ضَرَبَ عُمَرُ عَلَى الْعَزْلِ بَعْضَ بَنِيهِ

L32228 Via the chain of Saʿīd ibn Manṣūr: He narrated to us Hushaym, who narrated to us Yaḥyā ibn Saʿīd al-Anṣārī, from Saʿīd ibn al-Musayyib, who said: "'Umar ibn al-Khaṭṭāb and ʿUthmān ibn ʿAffān used to forbid ʿazl (withdrawal during intercourse)."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ، وَعُثْمَانُ بْنُ عَفَّانَ يُنْكِرَانِ الْعَزْلَ

L32229 Abu Muhammad said: Sa'id's narration from Uthman is authentic (ṣaḥīḥ).

قَالَ أَبُو مُحَمَّدٍ: سَمَاعُ سَعِيدٍ عَنْ عُثْمَانَ صَحِيحٌ

L32230 And it has also been authentically narrated from al-Aswad ibn Yazīd and Tāwus.

وَصَحَّ أَيْضًا عَنْ الْأَسْوَدِ بْنِ يَزِيدَ، وَطَاوُسٍ

L32231 **The Rulings Pertaining to the Rights of Both Spouses**

[أَحْكَامُ حُقُوقُ الزَّوْجَيْنِ]

L32232 **Issue: Kindness toward women is obligatory.**

[مَسْأَلَةٌ الْإِحْسَانُ إلَى النِّسَاءِ فَرْضٌ]

L32233–32235 Rulings on the Rights of the Two Spouses 1904 – Issue: Treating women with excellence (iḥsān) is a religious obligation (farḍ), and it is impermissible to seek out their faults. Whoever returns from a journey at night must not enter his home until daytime, and whoever returns during the day must not enter until nighttime, unless prevented by a legitimate impediment. The proof of this is the statement of Allah, the Exalted and Majestic: "Live with them in kindness" [An-Nisa: 19], and His statement: "Do not harm them to make their lives difficult" [At-Talaq: 6].[18]

أَحْكَامُ حُقُوقُ الزَّوْجَيْنِ ١٩٠٤ - مَسْأَلَةٌ: وَالْإِحْسَانُ إلَى النِّسَاءِ فَرْضٌ وَلَا يَحِلُّ تَتَبُّعُ عَثَرَاتِهِنَّ وَمَنْ قَدِمَ مِنْ سَفَرِهِ لَيْلًا فَلَا يَدْخُلُ بَيْتَهُ إلَّا نَهَارًا، وَمَنْ قَدِمَ نَهَارًا فَلَا يَدْخُلُ إلَّا لَيْلًا، إلَّا أَنْ يَمْنَعَهُ مَانِعٌ عُذْرٌ بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ} [النساء: ١٩] وَقَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ} [الطلاق: ٦]

L32236 Abu Muhammad said: Since imposing restrictions upon them was prohibited, the Exalted has thereby obligated expansion for them and mandated abandoning harm toward them—

قَالَ أَبُو مُحَمَّدٍ: إذْ حُرِّمَ التَّضْيِيقُ عَلَيْهِنَّ فَقَدْ أَوْجَبَ تَعَالَى التَّوْسِيعَ عَلَيْهِنَّ وَافْتَرَضَ تَرْكَ ضَرِّهِنَّ -:

L32237 We have been narrated via the chain transmitted by Imam Muslim: Isḥāq ibn Ibrāhīm narrated to us from Ḥātim ibn Ismāʿīl from Jaʿfar ibn Muḥammad from his father from Jābir ibn ʿAbdillāh: "The Messenger of Allah—peace and

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ إبْرَاهِيمَ عَنْ حَاتِمِ بْنِ إسْمَاعِيلَ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَطَبَ النَّاسَ - فَذَكَرَ كَلَامًا كَثِيرًا وَفِيهِ -: فَاتَّقُوا اللَّهَ فِي النِّسَاءِ فَإِنَّكُمْ أَخَذْتُمُوهُنَّ بِأَمَانِ اللَّهِ، وَاسْتَحْلَلْتُمْ

[18] **Qur'an references (L32233):** Qur'an 65:6 (At-Talaq); Qur'an 4:19 (An-Nisa).

فُرُوجَهُنَّ بِكَلِمَةِ اللَّهِ، وَلَكُمْ عَلَيْهِنَّ أَنْ لَا يُوطِئْنَ فِرَاشَكُمْ أَحَدًا تَكْرَهُونَهُ، فَإِنْ فَعَلْنَ ذَلِكَ فَاضْرِبُوهُنَّ ضَرْبًا غَيْرَ مُبَرِّحٍ، وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ»

blessings of Allah be upon him—addressed the people and spoke at length, saying: 'Fear Allah concerning women, for you have taken them by Allah's trust and made lawful their private parts through Allah's word. Your right over them is that they do not permit anyone you dislike to enter your bed. If they do so, strike them with a blow that causes no injury. Their right over you is their provision and clothing in accordance with what is recognized.'"

قَالَ أَبُو مُحَمَّد: لَمْ يَعْنِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِرَاشَ الْمَضْجَعِ، ذَلِكَ أَمْرٌ يَجِبُ فِيهِ الرَّجْمُ عَلَى الْمُحْصَنَةِ، فَلَا يُؤْمَرُ فِيهِ بِضَرْبٍ غَيْرِ مُبَرِّحٍ، وَإِنَّمَا عَنَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِلَا شَكٍّ كُلَّ مَا افْتُرِشَ فِي الْبُيُوتِ، وَهَذَا نَهْيٌ عَنْ أَنْ يَدْخُلَ فِي مَسْكَنِهِ أَوْ فِي بَيْتِهِ مَنْ لَا يُرِيدُ دُخُولَهُ مَنْزِلَهُ مِنْ رَجُلٍ أَوْ امْرَأَةٍ فَقَطْ - وَهَذَا يَأْتِي مُبَيَّنًا فِي الْمَسْأَلَةِ الَّتِي تَأْتِي بَعْدَ هَذِهِ

L32238 Abu Muhammad said: The Messenger of Allah (peace and blessings be upon him) did not intend the bed of the resting place, for that is a matter requiring stoning for a married woman, where non-severe beating would not be commanded. Rather, he (PBUH) undoubtedly meant anything spread out within houses. This prohibits anyone—whether a man or a woman—from entering his dwelling/home if he does not desire their entry. This will be clarified in the subsequent issue following this one.

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نَا حُسَيْنُ بْنُ عَلِيٍّ عَنْ زَائِدَةَ عَنْ مَسَرَّةَ عَنْ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ كَلَامًا، وَفِيهِ «فَاسْتَوْصُوا بِالنِّسَاءِ خَيْرًا»

L32239 From the chain of Muslim: Abū Bakr ibn Abī Shaybah narrated to us from Ḥusayn ibn ʿAlī, who narrated from Zā'idah, who narrated from Masarrat, who narrated from Abū Ḥāzim, who narrated from Abū Hurayrah, who narrated from the Prophet—peace and blessings be upon him—and he mentioned some words, in which was: "I enjoin you to treat women with kindness."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ مَنْصُورٍ نا أَبُو نُعَيْمٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُحَارِبِ بْنِ دِثَارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ

L32240 And via the chain of Ahmad ibn Shuʿayb: ʿAmr ibn Manṣūr narrated to us; Abū Nuʿaym narrated to us from Sufyān al-Thawrī, from Muḥārib ibn Dithār, from Jābir ibn ʿAbd Allāh, who said:

«نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنْ يَطْرُقَ الرَّجُلُ أَهْلَهُ لَيْلًا أَنْ يَتَخَوَّنَهُمْ أَوْ يَلْتَمِسَ عَثَرَاتِهِمْ»

L32241 "The Messenger of Allah (may Allah's peace and blessings be upon him and his family) prohibited a man from arriving suddenly at night, lest he suspect his household of betrayal or seek out their shortcomings."

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو النُّعْمَانِ - هُوَ مُحَمَّدُ بْنُ الْفَضْلِ عَارِمٌ - نا هُشَيْمٌ نا سَيَّارٌ عَنْ الشَّعْبِيِّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «قَفَلْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

L32242 Through the chain of al-Bukhārī: Abū al-Nuʿmān—who is Muḥammad ibn al-Faḍl ʿĀrim—narrated to us: Hushaym narrated to us: Sayyār narrated to us: from al-Shaʿbī: from Jābir ibn ʿAbd Allāh, who said: "We returned with the Messenger of God—peace be upon him and his family—from a military expedition. When we were about to enter, he said: 'Wait until you enter at

night, so that the disheveled woman may comb her hair and the woman who stayed behind may remove her pubic hair.'"

L32243–32245 If it is said: "Is this a contradiction?" We say: By no means! Rather, he - peace and blessings be upon him - has clarified in both... The intended meaning of the two reports is as follows: He mentioned in the first report that one should not enter at night, thereby leading to a misstep—whether there is one or not. Thus, it is established that this pertains specifically to one who arrives at night.

L32246 And he—peace and blessings be upon him—clarified in the other case: that one who arrives by day should be granted respite until nighttime has fully set in after the news of his arrival reaches his household, so that she may shave her pubic hair and comb her hair.

L32247 No one attributes contradiction to the speech of Allah's Messenger—may Allah bless him and his family and grant him peace—except a disbeliever, nor attributes it to the Companions except a heretic, nor attributes it to the Imams—or those below them—except one whose heart has deviated from the Sunnah. We seek refuge with Allah from all of that.

L32248 **A question concerning a woman donating from her husband's wealth without causing detriment.**

L32249 Issue 1905: A woman may give charity from her husband's wealth without causing detriment, provided it does not harm his wealth, whether he permits or forbids, approves or disapproves.

L32250 The evidence for that is what we have narrated through the chain of Muslim: Muḥammad ibn Rāfiʿ narrated to us, ʿAbd al-Razzāq narrated to us, Maʿmar narrated to us from Hammām ibn Munabbih from Abū Hurayrah, who said: The Messenger of Allah - peace and blessings be upon him and his family - said: "A woman must not fast while her husband is present except with his permission, nor may she allow [someone] in his house while he is present

مِنْ غَزْوَةٍ فَلَمَّا ذَهَبْنَا لِنَدْخُلَ قَالَ أَمْهِلُوا حَتَّى تَدْخُلُوا لَيْلًا لِكَيْ تَمْتَشِطَ الشَّعِثَةُ وَتَسْتَحِدَّ الْمُغِيبَةُ»

فَإِنْ قِيلَ: هَذَا تَعَارُضٌ؟ قُلْنَا: كَلَّا، بَلْ قَدْ بَيَّنَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي كِلَا الْخَبَرَيْنِ مُرَادَهُ، ذَكَرَ فِي الْخَبَرِ الْأَوَّلِ: أَنْ لَا يَدْخُلَ لَيْلًا فَيَتَّبِعَ بِذَلِكَ عَثْرَةً إِنْ كَانَتْ أَوْ لَمْ تَكُنْ فَصَحَّ أَنَّ ذَلِكَ فِي الَّذِي جَاءَ لَيْلًا

وَبَيَّنَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي الْآخَرِ: أَنْ يُمْهِلَ مَنْ أَتَى نَهَارًا حَتَّى يَدْخُلَ لَيْلًا بَعْدَ أَنْ يَتَّصِلَ خَبَرُهُ بِأَهْلِهِ، فَتَسْتَحِدَّ وَتَمْتَشِطَ

وَلَا يَنْسُبُ التَّعَارُضَ إِلَى كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِلَّا كَافِرٌ وَلَا يَنْسُبُهُ إِلَى الصَّحَابَةِ إِلَّا مُبْتَدِعٌ، وَلَا يَنْسُبُهُ إِلَى الْأَئِمَّةِ - وَمَنْ دُونَهُمْ - إِلَّا مُنْحَرِفُ الْقَلْبِ عَنْ السُّنَنِ - وَنَعُوذُ بِاَللَّهِ مِنْ كُلِّ ذَلِكَ

[مَسْأَلَةٌ لِلْمَرْأَةِ أَنْ تَتَصَدَّقَ مِنْ مَالِ زَوْجِهَا غَيْرَ مُفْسِدَةٍ]

١٩٠٥ - مَسْأَلَةٌ: وَلِلْمَرْأَةِ أَنْ تَتَصَدَّقَ مِنْ مَالِ زَوْجِهَا غَيْرَ مُفْسِدَةٍ، لَكِنْ بِمَا لَا يُؤَثِّرُ فِي مَالِهِ سَوَاءٌ أَذِنَ فِي ذَلِكَ أَمْ نَهَى أَحَبَّ أَمْ كَرِهَ

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رَافِعٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لَا تَصُمْ الْمَرْأَةُ وَبَعْلُهَا شَاهِدٌ إِلَّا بِإِذْنِهِ وَلَا تَأْذَنْ فِي بَيْتِهِ وَهُوَ شَاهِدٌ إِلَّا بِإِذْنِهِ وَمَا أَنْفَقَتْ مِنْ كَسْبِهِ مِنْ غَيْرِ أَمْرِهِ فَإِنَّ نِصْفَ أَجْرِهِ لَهُ»

except with his permission. Whatever she spends from his earnings without his permission, then half the reward of that spending is for him."[19]

L32251 Through the chain of Ahmad ibn Shu'ayb: Ahmad ibn Harb informed me, Abu Mu'awiyah narrated from al-A'mash from Shaqiq from Masruq from Aisha, the Mother of the Believers, who said: The Messenger of Allah—peace be upon him and his family—said: "When a woman spends from her husband's household without causing corruption, she has her reward, he has the like thereof for what he provided, she is rewarded for what she spent, and the one who provides it has the same. None of their rewards is diminished in the slightest."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي أَحْمَدُ بْنُ حَرْبٍ نا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ شَقِيقٍ عَنْ مَسْرُوقٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إذَا أَنْفَقَتْ الْمَرْأَةُ مِنْ بَيْتِ زَوْجِهَا غَيْرَ مُفْسِدَةٍ كَانَ لَهَا أَجْرُهَا وَلَهُ مِثْلُهُ بِمَا كَسَبَ وَلَهَا بِمَا أَنْفَقَتْ وَلِلْخَازِنِ مِثْلُ ذَلِكَ، مِنْ غَيْرِ أَنْ يَنْقُصَ مِنْ أُجُورِهِمْ شَيْءٌ»

L32252 Abu Muhammad said: This wording is an addition to what we have narrated via Mansur's chain from Shaqiq in this report, wherein it states: "from the food of her house."

قَالَ أَبُو مُحَمَّد: هَذَا اللَّفْظُ زَائِدٌ عَلَى مَا رُوِّينَاهُ مِنْ طَرِيقِ مَنْصُورٍ عَنْ شَقِيقٍ فِي هَذَا الْخَبَرِ، فَقَالَ فِيهِ " مِنْ طَعَامِ بَيْتِهَا "

L32253 Abu Muhammad said: Some audacious people who oppose the Sunnah raised an objection, saying: This is from the narration of Abu Hurairah. Abu Hurairah was asked, "Can a woman give charity from her husband's household?" He replied: "No, except something from her own sustenance. The reward is divided between them, and it is not permissible for her to give charity from her husband's household except with his permission?"

قَالَ أَبُو مُحَمَّد: فَاعْتَرَضَ بَعْضُ أَهْلِ الْجُرْأَةِ عَلَى مُخَالَفَةِ السُّنَنِ بِأَنْ قَالُوا: هَذَا مِنْ رِوَايَةِ أَبِي هُرَيْرَةَ، وَقَدْ سُئِلَ أَبُو هُرَيْرَةَ هَلْ تَصَّدَّقُ الْمَرْأَةُ مِنْ بَيْتِ زَوْجِهَا؟ فَقَالَ: لَا، إلَّا شَيْئًا مِنْ قُوتِهَا، فَالْأَجْرُ بَيْنَهُمَا، وَلَا يَحِلُّ لَهَا أَنْ تَصَّدَّقَ مِنْ بَيْتِ زَوْجِهَا إلَّا بِإِذْنِهِ؟

L32254–32255 Abū Muḥammad said: This legal opinion from Abū Hurayrah was only transmitted to us through the chain of ʿAbd al-Malik ibn Abī Sulaymān al-ʿArzamī—who is rejected (as unreliable)—from ʿAṭāʾ, from Abū Hurayrah. Therefore, it is invalid; it cannot be used to oppose the narration of Hammām ibn Munabbih from him except by an ignorant person or a transgressor who brazenly upholds falsehood despite knowing it.

قَالَ أَبُو مُحَمَّد: هَذِهِ الْفُتْيَا مِنْ أَبِي هُرَيْرَةَ، إنَّمَا رُوِّينَاهَا مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ أَبِي سُلَيْمَانَ الْعَرْزَمِيِّ - وَهُوَ مَتْرُوكٌ - عَنْ عَطَاءٍ عَنْ أَبِي هُرَيْرَةَ، فَهِيَ سَاقِطَةٌ، فَلَا يُعَارِضُ بِهَا رِوَايَةَ هَمَّامِ بْنِ مُنَبِّهٍ عَنْهُ إلَّا جَاهِلٌ، أَوْ فَاسِقٌ مُجَاهِرٌ بِالْبَاطِلِ وَهُوَ يَعْلَمُهُ.

L32256 From the chain of Muslim: Muslim ibn Hatim and Harun ibn Abdullah both narrated to us together: Hajjaj ibn Muhammad narrated to us, saying: Ibn Jurayj said: Ibn Abi Mulaikah informed me that Abbad ibn Abdullah ibn al-Zubayr informed him, from Asma bint Abi Bakr al-Siddiq, that she said: "O Messenger of Allah, I possess nothing except what al-Zubayr provides me. Is

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي مُسْلِمُ بْنُ حَاتِمٍ، وَهَارُونُ بْنُ عَبْدِ اللَّهِ، قَالَا جَمِيعًا: نا حَجَّاجُ بْنُ مُحَمَّد قَالَ: قَالَ ابْنُ جُرَيْجٍ أَخْبَرَنِي ابْنُ أَبِي مُلَيْكَةَ أَنَّ عَبَّادَ بْنَ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ أَخْبَرَهُ «عَنْ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ أَنَّهَا قَالَتْ: يَا رَسُولَ اللَّهِ لَيْسَ لِي شَيْءٌ إلَّا مَا أَدْخَلَ

[19] **Hadith references (L32250):** Sahih Muslim 1026.

it sinful for me to give in charity from what he gives me?" He replied: "Give as much as you can, and do not withhold, lest Allah withhold from you."

L32257 Abu Muhammad said: Hajjaj's narration from Ibn Jurayj is established, but he relates it as follows: Ibn Jurayj said. And among those who held this opinion is the Mother of the Believers (may Allah be pleased with her).

L32258 As it has been narrated to us through the chain of Muḥammad ibn ʿAbd Allāh ibn Yazīd al-Muqrī, from Sufyān ibn ʿUyaynah, from Ismāʿīl ibn Abī Khālid, from Qays ibn Abī Ḥāzim, from his wife that she heard ʿĀ'ishah, the Mother of the Believers—may Allāh be pleased with her—when a woman asked her: "May I feed from my husband's house?" The Mother of the Believers replied: "So long as you do not safeguard your wealth with his wealth."

L32259 Allah, the Almighty, the Majestic, said: {The Prophet has more right over the believers than they have over themselves} [Surah Al-Ahzab 33:6].[20]

L32260 And He, the Exalted, said: "It is not for a believing man or a believing woman, when Allah and His Messenger have decreed a matter, that they should have the choice in their matter." [Al-Ahzab: 36][21]

L32261 Therefore, when the Prophet—may God bless him and grant him peace—declared it permissible, the husband has no right whatsoever to prevent it.

L32262 **A ruling: A woman is not fundamentally obligated to serve her husband in any matter whatsoever.**

L32263–32265 1906: Question: A woman is not obligated to serve her husband in any way whatsoever—not in kneading dough, cooking, spreading bedding, sweeping, spinning, weaving, nor anything else. If she does so, it would be more virtuous for her. The husband must provide her with properly tailored clothing and fully prepared food. Her obligation is to treat him kindly, not to perform voluntary fasting while he is present without his permission, and not to

[20] **Qur'an references (L32259):** Qur'an 33:6 (Al-Ahzab).
[21] **Qur'an references (L32260):** Qur'an 33:36 (Al-Ahzab).

عَلَيَّ الزُّبَيْرُ فَهَلْ عَلَيَّ جُنَاحٌ أَنْ أَرْضَخَ بِمَا يُدْخِلُ عَلَيَّ؟ فَقَالَ: ارْضَخِي مَا اسْتَطَعْتِ وَلَا تُوكِي فَيُوكِيَ اللَّهُ عَلَيْكِ»

قَالَ أَبُو مُحَمَّد: سَمَاعُ حَجَّاجٍ مِنْ ابْنِ جُرَيْجٍ ثَابِتٌ، وَلَكِنَّهُ هَكَذَا يَقُولُ: قَالَ ابْنُ جُرَيْجٍ، وَمِمَّنْ قَالَ بِهَذَا أُمُّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا -

كَمَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ امْرَأَتِهِ أَنَّهَا سَمِعَتْ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - وَسَأَلَتْهَا امْرَأَةٌ فَقَالَتْ: أُطْعِمُ مِنْ بَيْتِ زَوْجِي؟ فَقَالَتْ أُمُّ الْمُؤْمِنِينَ: مَا لَمْ تَقِي مَالَكِ بِمَالِهِ

قَالَ اللَّهُ عَزَّ وَجَلَّ: {النَّبِيُّ أَوْلَى بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ} [الأحزاب: ٦]

وَقَالَ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦]

فَإِذَا أَبَاحَ ذَلِكَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا رَأْيَ لِلزَّوْجِ فِي الْمَنْعِ مِنْهُ أَصْلًا

[مَسْأَلَةٌ لَا يَلْزَمُ الْمَرْأَةَ أَنْ تَخْدِمَ زَوْجَهَا فِي شَيْءٍ أَصْلًا]

١٩٠٦ - مَسْأَلَةٌ: وَلَا يَلْزَمُ الْمَرْأَةَ أَنْ تَخْدِمَ زَوْجَهَا فِي شَيْءٍ أَصْلًا، لَا فِي عَجْنٍ، وَلَا طَبْخٍ، وَلَا فَرْشٍ، وَلَا كَنْسٍ، وَلَا غَزْلٍ، وَلَا نَسْجٍ، وَلَا غَيْرِ ذَلِكَ أَصْلًا - وَلَوْ أَنَّهَا فَعَلَتْ لَكَانَ أَفْضَلَ لَهَا وَعَلَى الزَّوْجِ أَنْ يَأْتِيَهَا بِكِسْوَتِهَا مَخِيطَةً تَامَّةً، وَبِالطَّعَامِ مَطْبُوخًا

allow... She must not allow into his home anyone he dislikes, nor withhold herself from him whenever he desires, nor fail to safeguard whatever of his wealth he has placed with her.

L32266 Abu Thawr said: It is incumbent upon the woman to serve her husband in all matters. This may be substantiated by the authentic report from Ali ibn Abi Talib, who narrated: "Fatimah complained about her hands becoming calloused from grinding flour, and Ali informed the Messenger of Allah—may Allah bless him and his family and grant him peace—of this when she asked him (the Prophet) for a servant."

L32267 And by the authentically transmitted report—through the narration of Asmāʾ bint Abī Bakr, who said: "I used to serve al-Zubayr in household duties. He had a horse, and I would tend to it. I would cut fodder for it and oversee its care."

L32268 By the authentic report—through the narration of Asma as well—that she used to feed Az-Zubair's horse, fetch water, repair his water-skin, knead dough, and carry date stones on her head from his land situated two-thirds of a farsakh away, and that the Messenger of Allah—upon him be prayers and peace—met her while she was carrying them. He said: "If these two distinguished women have undertaken such burdensome service, then which women after them would consider themselves too dignified for that?" Abu Muhammad said: There is no valid proof for the proponents of this opinion in any of these reports, for neither these nor other narrations state that the Prophet—upon him be prayers and peace—commanded them to do so. Rather, they voluntarily performed these acts, being women of merit and dutifulness—may Allah be pleased with them. We do not forbid this if a woman voluntarily undertakes it. Our discourse concerns the essence of the divine truth that obligates enforcement through legal rulings and judicial verdicts.

L32269 If it is said: "Allah, Exalted is He, has said: {If they [women] obey you, do not seek a way against them} [An-Nisāʾ 4:34]."[22]

تَامًّا وَإِنَّمَا عَلَيْهَا أَنْ تُحْسِنَ عِشْرَتَهُ، وَلَا تَصُومَ تَطَوُّعًا وَهُوَ حَاضِرٌ إِلَّا بِإِذْنِهِ، وَلَا تُدْخِلَ بَيْتَهُ مَنْ يَكْرَهُ، وَأَنْ لَا تَمْنَعَهُ نَفْسَهَا مَتَى أَرَادَ، وَأَنْ تَحْفَظَ مَا جَعَلَ عِنْدَهَا مِنْ مَالِهِ

وَقَالَ أَبُو ثَوْرٍ: عَلَى الْمَرْأَةِ أَنْ تَخْدِمَ زَوْجَهَا فِي كُلِّ شَيْءٍ، وَيُمْكِنُ أَنْ يُحْتَجَّ لِذَلِكَ بِالْأَثَرِ الثَّابِتِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ «شَكَتْ فَاطِمَةُ مَجْلَ يَدَيْهَا مِنْ الطَّحِينِ، وَأَنَّهُ أَعْلَمَ بِذَلِكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إذْ سَأَلَهُ خَادِمًا»

وَبِالْخَبَرِ الثَّابِتِ - مِنْ طَرِيقِ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ قَالَتْ: كُنْت أَخْدِمُ الزُّبَيْرَ خِدْمَةَ الْبَيْتِ وَكَانَ لَهُ فَرَسٌ وَكُنْت أَسُوسُهُ كُنْت أَحْتَشُّ لَهُ وَأَقُومُ عَلَيْهِ

وَبِالْخَبَرِ الثَّابِتِ - مِنْ طَرِيقِ «أَسْمَاءَ أَيْضًا، أَنَّهَا كَانَتْ تَعْلِفُ فَرَسَ الزُّبَيْرِ وَتَسْقِي الْمَاءَ، وَتَجْزِمُ غَرْبَهُ، وَتَعْجِنُ، وَتَنْقُلُ النَّوَى عَلَى رَأْسِهَا مِنْ أَرْضٍ لَهُ عَلَى ثُلُثَيْ فَرْسَخٍ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَقِيَهَا وَهِيَ تَنْقُلُهُ - قَالَ: فَإِذَا خَدَمَتْ هَاتَانِ الْفَاضِلَتَانِ هَذِهِ الْخِدْمَةَ الثَّقِيلَةَ فَمَنْ بَعْدَهُمَا يَتَرَفَّعُ عَنْ ذَلِكَ مِنْ النِّسَاءِ» ؟ قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ لِأَهْلِ هَذَا الْقَوْلِ فِي شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ، لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْهَا، وَلَا مِنْ غَيْرِهَا: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَمَرَهُمَا بِذَلِكَ إنَّمَا كَانَتَا مُتَبَرِّعَتَيْنِ بِذَلِكَ، وَهُمَا أَهْلُ الْفَضْلِ وَالْمَبَرَّةِ - رَضِيَ اللَّهُ عَنْهُمَا - وَنَحْنُ لَا نَمْنَعُ مِنْ ذَلِكَ إنْ تَطَوَّعَتْ الْمَرْأَةُ بِهِ، إنَّمَا نَتَكَلَّمُ عَلَى سِرِّ الْحَقِّ الَّذِي تَجِبُ بِهِ الْفُتْيَا وَالْقَضَاءُ بِإِلْزَامِهِ

فَإِنْ قِيلَ: قَدْ قَالَ اللَّهُ تَعَالَى: {فَإِنْ أَطَعْنَكُمْ فَلا تَبْغُوا عَلَيْهِنَّ سَبِيلا} [النساء: ٣٤]

[22] **Qur'an references (L32269):** Qur'an 4:34 (An-Nisa).

قُلْنَا: أَوَّلُ الْآيَةِ بَيَّنَ فِيمَا هِيَ هَذِهِ الطَّاعَةُ، قَالَ تَعَالَى: {وَاللاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلا تَبْغُوا عَلَيْهِنَّ سَبِيلا} [النساء: ٣٤]

L32270 We said: The beginning of the verse clarifies regarding what this obedience entails. Allah, the Exalted, said: "As for those women from whom you fear disobedience, admonish them, separate from them in bed, and strike them. If they obey you, do not seek any means against them." [Quran 4:34][23]

فَصَحَّ أَنَّهَا الطَّاعَةُ إِذَا دَعَاهَا لِلْجِمَاعِ فَقَطْ.

L32271 Thus, it was established that her obedience is only when he summons her to intercourse.

وَقَدْ بَيَّنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا يَجِبُ عَلَى الرَّجُلِ لِلْمَرْأَةِ وَقَدْ ذَكَرْنَاهُ قَبْلَ هَذِهِ الْمَسْأَلَةِ بِمَسْأَلَتَيْنِ

L32272 The Messenger of Allah—may Allah bless him and grant him peace—has clarified what is obligatory upon a man regarding a woman, and we have discussed it two questions prior to this one.

وَمَنْ أَلْزَمَ الْمَرْأَةَ خِدْمَةً دُونَ خِدْمَةٍ فَقَدْ شَرَّعَ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى، وَقَالَ مَا لَا يَصِحُّ، وَمَا لَا نَصَّ فِيهِ، وَكَذَلِكَ بَيَّنَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: أَنَّ لَهُنَّ عَلَيْنَا رِزْقَهُنَّ وَكِسْوَتَهُنَّ بِالْمَعْرُوفِ فَصَحَّ مَا قُلْنَاهُ: مِنْ أَنْ عَلَى الزَّوْجِ أَنْ يَأْتِيَهَا بِرِزْقِهَا مُمَكِّنًا لَهَا أَكْلَهُ، وَالْكِسْوَةَ مُمَكِّنًا لَهَا لِبَاسَهَا، لِأَنَّ مَا لَا يُوصَلُ إلَى أَكْلِهِ وَلِبَاسِهِ إلَّا بِعَجْنٍ وَطَبْخٍ، وَغَزْلٍ، وَنَسْجٍ، وَقِصَارَةٍ، وَصِبَاغٍ، وَخِيَاطَةٍ، فَلَيْسَ هُوَ رِزْقًا، وَلَا كِسْوَةً - هَذَا مَا لَا خِلَافَ فِيهِ فِي اللُّغَةِ وَالْمُشَاهَدَةِ - وَأَمَّا حِفْظُ مَا جُعِلَ عِنْدَهَا فَفَرْضٌ بِلَا خِلَافٍ

L32273–32275 Whoever imposes upon a woman one service instead of another has prescribed what Allah the Exalted has not permitted, and has spoken what is invalid and what lacks textual basis. Similarly, the Prophet—peace and blessings be upon him—clarified that they have a right against us to their maintenance and clothing in a reasonable manner. Thus, our established position remains correct: the husband must provide her with provisions enabling her to consume them and clothing enabling her to wear them. For whatever cannot be eaten or worn except through kneading, cooking, spinning, weaving, fulling, dyeing, or sewing does not qualify as provisions or clothing—a matter undisputed in linguistic usage and observable reality. As for safeguarding what is placed in her custody, this is unquestionably obligatory.

[مَسْأَلَةٌ لَا يَحِلُّ لِلْمَرْأَةِ أَنْ تَحْلِقَ رَأْسَهَا إلَّا مِنْ ضَرُورَةٍ]

L32276 **Legal Ruling: It is impermissible for a woman to shave her head except out of necessity.**

١٩٠٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْمَرْأَةِ أَنْ تَحْلِقَ رَأْسَهَا إلَّا مِنْ ضَرُورَةٍ لَا مَحِيدَ مِنْهَا، وَلَا أَنْ تَصِلَ فِي شَعْرِهَا شَيْئًا أَصْلًا، لَا مِنْ شَعْرِهَا وَلَا مِنْ شَعْرِ إنْسَانٍ غَيْرِهَا، أَوْ مِنْ شَعْرِ حَيَوَانٍ، أَوْ صُوفٍ، أَوْ غَيْرِ ذَلِكَ - وَهُوَ مِنْ الْكَبَائِرِ

L32277 Issue 1907: It is not permissible for a woman to shave her head except out of unavoidable necessity, nor may she add extensions to her hair absolutely - neither from her own hair, nor from the hair of another person, nor from animal hair, wool, or anything else, and this is among the major sins.

وَلَا يَحِلُّ لَهَا أَنْ تُفَلِّجَ أَسْنَانَهَا، وَلَا أَنْ تَنْتِفَ الشَّعْرَ مِنْ وَجْهِهَا، وَلَا أَنْ تَشُمَّ بِالنَّقْشِ وَالْكُحْلِ أَوْ غَيْرِهِ شَيْئًا مِنْ جَسَدِهَا، فَإِنْ فَعَلَتْ فَهِيَ مَلْعُونَةٌ هِيَ وَالَّتِي تَفْعَلُ بِهَا ذَلِكَ

L32278 It is not permissible for her to create gaps between her teeth, pluck hair from her face, tattoo, apply kohl, or use anything else on her body. If she does so, she is cursed—both she and the one who does this to her.

[23] **Qur'an references (L32270):** Qur'an 4:34 (An-Nisa).

L32279 The proof of that is what we have narrated through the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn Mūsā al-Ḥarashī narrated to us, Abū Dāwūd [he is al-Ṭayālisī] narrated to us, Hammām [he is ibn Yaḥyā] from Qatādah from Khilās from ʿAlī, who said: "The Messenger of Allah—peace and blessings be upon him—prohibited a woman from shaving her head." If compelled to do so, Allah the Exalted has said: {He has made clear to you what He has forbidden you, except what you are compelled to} [al-Anʿām 6:119].[2425]

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ مُوسَى الْحَرَشِيُّ نا أَبُو دَاوُد - هُوَ الطَّيَالِسِيُّ - نا هَمَّامٌ - هُوَ ابْنُ يَحْيَى - عَنْ قَتَادَةَ عَنْ خِلَاسٍ عَنْ عَلِيٍّ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تَحْلِقَ الْمَرْأَةُ رَأْسَهَا» فَإِنْ اُضْطُرَّتْ إِلَى ذَلِكَ فَقَدْ قَالَ اللَّهُ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩]

L32280 And via the chain of Ahmad ibn Shu'ayb: Narrated to us Muhammad ibn al-Muthanna, from Yahya—he is Ibn Sa'id al-Qattan—from Hisham ibn 'Urwah, who said: Fatimah bint al-Mundhir narrated to me from Asma' bint Abi Bakr al-Siddiq, who said: "A woman came to the Messenger of Allah—peace and blessings of Allah be upon him—and said: 'O Messenger of Allah, indeed I have a daughter who is a bride, and she was afflicted, so her hair tore. Is there any sin on me if I attach hair extensions to it for her?' The Messenger of Allah—peace be upon him—said to her: 'May Allah curse the one who attaches hair extensions and the one who seeks them.'"

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ هِشَامِ بْنِ عُرْوَةَ قَالَ: حَدَّثَتْنِي فَاطِمَةُ بِنْتُ الْمُنْذِرِ عَنْ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ قَالَتْ: «جَاءَتْ امْرَأَةٌ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: يَا رَسُولَ اللَّهِ إِنَّ لِي ابْنَةً عَرُوسًا وَأَنَّهَا اشْتَكَتْ فَتَمَزَّقَ شَعْرُهَا، فَهَلْ عَلَيَّ جُنَاحٌ إِنْ وَصَلْتُ لَهَا فِيهِ، فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَعَنَ اللَّهُ الْوَاصِلَةَ وَالْمُسْتَوْصِلَةَ» .

L32281 From the chain of Ahmad ibn Shu'ayb: 'Abd al-Rahman ibn Muhammad ibn Salam narrated to us from Abu Dawud (al-Tayalisi) from Sufyan al-Thawri, from Mansur, from Ibrahim al-Nakha'i, from 'Alqamah, from 'Abdullah ibn Mas'ud, who said: "The Messenger of Allah—peace be upon him—cursed the women who apply tattoos, those who seek tattoos, those who pluck eyebrows, and those who create gaps between teeth for beauty, thereby altering Allah's creation."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ سَلَامٍ نا أَبُو دَاوُد - هُوَ الطَّيَالِسِيُّ - عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ «لَعَنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْوَاشِمَاتِ وَالْمُسْتَوْشِمَاتِ وَالْمُتَنَمِّصَاتِ وَالْمُتَفَلِّجَاتِ لِلْحُسْنِ الْمُغَيِّرَاتِ خَلْقَ اللَّهِ»

L32282 **A case concerning one spouse lying to the other in matters through which one seeks to elicit affection.**

[مَسْأَلَةٌ كَذِبِ أَحَدِ الزَّوْجَيْنِ لِلْآخَرِ فِيمَا يَسْتَجْلِبُ بِهِ الْمَوَدَّةَ]

L32283–32285 1908 - Issue: There is no harm in one spouse lying to the other in matters that foster affection. As narrated to us via the chain of transmission (ṭarīq) of Aḥmad ibn Shuʿayb: Abū Ṣāliḥ Muḥammad ibn Zunbūr al-Makkī narrated to

١٩٠٨ - مَسْأَلَةٌ: وَلَا بَأْسَ بِكَذِبِ أَحَدِ الزَّوْجَيْنِ لِلْآخَرِ فِيمَا يَسْتَجْلِبُ بِهِ الْمَوَدَّةَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا أَبُو صَالِحٍ مُحَمَّدُ بْنُ زُنْبُورٍ الْمَكِّيُّ نا ابْنُ أَبِي حَازِمٍ - هُوَ عَبْدُ الْعَزِيزِ بْنُ عَبْدِ الْوَهَّابِ بْنِ أَبِي بَكْرٍ - عَنِ ابْنِ شِهَابٍ عَنْ حُمَيْدِ بْنِ عَبْدِ

[24] **Hadith references (L32279):** Sunan an-Nasai 5049; Jami at-Tirmidhi 914; Mishkat al-Masabih 4485.

[25] **Qur'an references (L32279):** Qur'an 6:119 (Al-An'am).

us, Ibn Abī Ḥāzim (ʿAbd al-ʿAzīz ibn ʿAbd al-Wahhāb ibn Abī Bakr) narrated to us from Ibn Shihāb from... Humaid ibn Abd al-Rahman ibn Awf reported from his mother Umm Kulthum bint Uqba ibn Abi Muʻayt that she heard Allah's Messenger (peace and blessings of Allah be upon him) say: "I do not consider the following as lying: a man who reconciles between people by saying something to promote harmony; a man who says something during war; a man who converses with his wife; and a woman who converses with her husband."

L32286 **Issue: It is unlawful to bestow a gift on baseless grounds.**

L32287 1909 - Issue: It is not permissible to pretend falsely. As we have reported through the chain of al-Bukhari: Sulayman ibn Harb narrated to us, Hammad ibn Zayd narrated to us from Hisham ibn Urwah from Fatimah bint al-Mundhir from Asma bint Abi Bakr al-Siddiq that a woman said: "O Messenger of Allah, I have a co-wife. Is there any sin upon me if I pretend to have received from my husband more than he gives?" The Prophet—peace and blessings be upon him—said: "One who pretends to possess what they were not given is like the wearer of two garments of falsehood."

L32288 **A juristic question on the permissibility of young girls specifically playing with images.**

L32289 1910 - Issue: It is permissible for young girls specifically to play with images, and it is not lawful for others. Images are prohibited except for this and except for what constitutes a pattern on a garment.

L32290 It was narrated to us through the chain of Muslim ibn al-Ḥajjāj: Abū Bakr ibn Abī Shaybah and ʿAmr an-Nāqid narrated to us—they both said: Sufyān ibn ʿUyaynah narrated to us from az-Zuhrī from ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah from Ibn ʿAbbās from Abū Ṭalḥah from the Prophet—peace

الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أُمِّهِ أُمِّ كُلْثُومٍ بِنْتِ عُقْبَةَ بْنِ أَبِي مُعَيْطٍ أَنَّهَا سَمِعَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «لَا أَعُدُّهُ كَذِبًا: الرَّجُلُ يُصْلِحُ بَيْنَ النَّاسِ يَقُولُ الْقَوْلَ يُرِيدُ الصَّلَاحَ، وَالرَّجُلُ يَقُولُ الْقَوْلَ فِي الْحَرْبِ وَالرَّجُلُ يُحَدِّثُ امْرَأَتَهُ، وَالْمَرْأَةُ تُحَدِّثُ زَوْجَهَا»

[مَسْأَلَةٌ لَا يَحِلُّ النَّفْحُ بِالْبَاطِلِ]

١٩٠٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ النَّفْحُ بِالْبَاطِلِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ ثنا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ فَاطِمَةَ بِنْتِ الْمُنْذِرِ عَنْ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ «أَنَّ امْرَأَةً قَالَتْ: يَا رَسُولَ اللَّهِ إنَّ لِي ضَرَّةً فَهَلْ عَلَيَّ جُنَاحٌ إنْ تَشَبَّعْتُ مِنْ زَوْجِي غَيْرَ الَّذِي يُعْطِي؟ فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: الْمُتَشَبِّعُ بِمَا لَمْ يُعْطَ كَلَابِسِ ثَوْبَيْ زُورٍ»

[مَسْأَلَةٌ جَوَازُ اللَّعِبِ بِالصُّوَرِ لِلصَّبَايَا خَاصَّةً]

١٩١٠ - مَسْأَلَةٌ: وَجَائِزٌ لِلصَّبَايَا خَاصَّةً اللَّعِبُ بِالصُّوَرِ، وَلَا يَحِلُّ لِغَيْرِهِنَّ، وَالصُّوَرُ مُحَرَّمَةٌ إلَّا هَذَا، وَإِلَّا مَا كَانَ رَقْمًا فِي ثَوْبٍ

رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَعَمْرٌو النَّاقِدُ، قَالَا جَمِيعًا: نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ أَبِي طَلْحَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَدْخُلُ الْمَلَائِكَةُ بَيْتًا فِيهِ كَلْبٌ وَلَا صُورَةٌ» .

and blessings be upon him—who said: “The angels do not enter a house containing a dog or an image [of a living being].”[26]

L32291 From the narration of Muslim: Qutaybah narrated to us, al-Layth—who is Ibn Sa‘d—narrated to us from Bukayr—who is Ibn al-Ashajj—from Busr ibn Sa‘īd from Zayd ibn Khālid from Abū Ṭalḥah al-Anṣārī that the Messenger of Allah—peace and blessings of Allah be upon him—said: “Angels do not enter a house in which there is an image.” Later, Zayd ibn Khālid fell ill, so we visited him, and there, at his door, was a curtain with an image. I said to ‘Ubaydullāh al-Khawlānī—the stepson of Maymūnah, the Mother of the Believers—“Did Zayd not inform us about images?” ‘Ubaydullāh replied: “Did you not hear him when he said, ‘except for a design on a garment’?”

L32292–32294 And via the transmission of Aḥmad ibn Shu‘ayb: Muḥammad ibn Rāfi‘ al-Naysābūrī informed us from Ḥujayn — who is Ibn al-Muthannā. From Abdul Aziz ibn Abi Salamah Al-Majishun, from Hisham ibn Urwah, from his father, from Aisha, the Mother of the Believers, who said: “The Messenger of Allah (peace be upon him) would discreetly allow my companions to come to me so they could play with me using young girl dolls.”

L32295 ## Rulings on Intercourse

L32296 ### Issue: Concealment during sexual intercourse is obligatory.

L32297 The Rulings of Marital Relations 1911 – Issue: It is obligatory to maintain privacy during marital relations, based on the statement of Allah, the Mighty and Majestic: “O you who believe, let those under your authority and those who have not reached puberty among you ask your permission at three times: before the dawn prayer, when you remove your clothing at noon, and after

[26] **Hadith references (L32290):** Sahih al-Bukhari 3322; Sahih al-Bukhari 4002; Sahih al-Bukhari 3225.

وَمِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ بُكَيْرٍ - هُوَ ابْنُ الْأَشَجِّ - عَنْ بُسْرِ بْنِ سَعِيدٍ عَنْ زَيْدِ بْنِ خَالِدٍ عَنْ أَبِي طَلْحَةَ الْأَنْصَارِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِنَّ الْمَلَائِكَةَ لَا تَدْخُلُ بَيْتًا فِيهِ صُورَةٌ ثُمَّ اشْتَكَى زَيْدُ بْنُ خَالِدٍ فَعُدْنَاهُ، فَإِذَا عَلَى بَابِهِ سِتْرٌ فِيهِ صُورَةٌ، فَقُلْتُ لِعُبَيْدِ اللَّهِ الْخَوْلَانِيِّ - رَبِيبِ مَيْمُونَةَ أُمِّ الْمُؤْمِنِينَ - أَلَمْ يُخْبِرْنَا زَيْدٌ عَنْ الصُّورَةِ؟ فَقَالَ عُبَيْدُ اللَّهِ: أَلَمْ تَسْمَعْهُ حِينَ قَالَ إِلَّا رَقْمًا فِي ثَوْبٍ»

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَرِنَا مُحَمَّدُ بْنُ رَافِعٍ النَّيْسَابُورِيُّ نَا حُجَيْنٌ - هُوَ ابْنُ الْمُثَنَّى - نا عَبْدُ الْعَزِيزِ بْنُ أَبِي سَلَمَةَ الْمَاجِشُونِ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُسَرِّبُ إِلَيَّ صَوَاحِبِي يَلْعَبْنَ مَعِي بِاللُّعَبِ الْبَنَاتِ الصِّغَارِ»

[أَحْكَامُ الْوَطْء]

[مَسْأَلَةُ الِاسْتِتَارُ بِالْجِمَاعِ فَرْضٌ]

أَحْكَامُ الْوَطْء ١٩١١ - مَسْأَلَةٌ: وَالِاسْتِتَارُ بِالْجِمَاعِ فَرْضٌ، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {يَا أَيُّهَا الَّذِينَ آمَنُوا لِيَسْتَأْذِنْكُمُ الَّذِينَ مَلَكَتْ أَيْمَانُكُمْ وَالَّذِينَ لَمْ يَبْلُغُوا الْحُلُمَ مِنْكُمْ ثَلَاثَ مَرَّاتٍ مِنْ قَبْلِ صَلَاةِ الْفَجْرِ وَحِينَ تَضَعُونَ ثِيَابَكُمْ مِنَ الظَّهِيرَةِ وَمِنْ بَعْدِ صَلَاةِ الْعِشَاءِ ثَلَاثُ عَوْرَاتٍ لَكُمْ} [النور: ٥٨] وَالْحَدِيثُ بِذَلِكَ لَا يَجُوزُ

the night prayer. These are three times of privacy for you" [An-Nur: 58]. It is impermissible to discuss these times.[27]

L32298 **A legal issue: For a man with his menstruating wife, all things are permissible except penetration alone.**

L32299 1912. Issue: It is permissible for a man to engage in all acts with his menstruating wife except penetration. This matter has been a subject of disagreement among people. It was narrated to us through the chain of Ismāʿīl ibn Isḥāq, from Muḥammad ibn Abī Khidāsh, from Marwān ibn Muʿāwiyah, from Jaʿfar ibn al-Zubayr, from al-Qāsim ibn ʿAbd al-Raḥmān, from Abū Umāmah al-Bāhilī—the Companion of Allah's Messenger (peace and blessings be upon him)—who said: ʿUmar ibn al-Khaṭṭāb declared, "We used to engage in intimacy with women during menstruation on bedding and under covers due to scarcity. But since Allah has now provided ample bedding and covers, refrain from them as Allah the Exalted has commanded."

Ḥammām narrated to us: ʿAbbās ibn Aṣbagh narrated to us: Muḥammad ibn ʿAbd al-Malik ibn Ayman narrated to us: Abū Ismāʿīl Muḥammad ibn Ismāʿīl al-Tirmidhī narrated to us: Sufyān ibn ʿUyaynah narrated to us: Manbūdh al-Makkī narrated from his mother, who said: "We were with Maymūnah when Ibn ʿAbbās entered. Maymūnah said to him, 'My son, why do I see your hair disheveled?' He replied, 'My groomer is menstruating,'" and he mentioned the hadith…

L32300–32302 Those who held this opinion cited as evidence the words of Allah, the Almighty and Majestic: "Say, 'It is harm, so keep away from women during menstruation. And do not approach them until they have purified themselves.'" [Al-Baqarah: 222] and with a narration we have transmitted through the chain of Abū Dāwūd: Muḥammad ibn Saʿīd narrated to us, Saʿīd ibn ʿAbd al-Jabbār narrated to us, ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī narrated to us from Abū al-Yamān from Umm Durrah from ʿĀ'ishah, the Mother of the Believers, who said: Whenever I menstruated, I would come down from the elevated bedding to the mat, and we would neither approach the Mes-

[27] **Qur'an references (L32297):** Qur'an 24:58 (An-Nur).

[مَسْأَلَةٌ لِلرَّجُلِ مِنْ امْرَأَتِهِ الْحَائِضِ كُلُّ شَيْءٍ حَاشَ الْإِيلَاجَ فَقَطْ]

١٩١٢ - مَسْأَلَةٌ: وَحَلَالٌ لِلرَّجُلِ مِنْ امْرَأَتِهِ الْحَائِضِ كُلُّ شَيْءٍ حَاشَ الْإِيلَاجَ فَقَطْ، وَهَذَا أَمْرٌ قَدْ اخْتَلَفَ النَّاسُ فِيهِ -: رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا مُحَمَّدُ بْنُ أَبِي خِدَاشٍ نا مَرْوَانُ بْنُ مُعَاوِيَةَ نا جَعْفَرُ بْنُ الزُّبَيْرِ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي أُمَامَةَ - وَهُوَ الْبَاهِلِيُّ - صَاحِبُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: كُنَّا نُضَاجِعُ النِّسَاءَ فِي الْمَحِيضِ وَفِي الْفُرُشِ وَاللُّحُفِ مِنْ قِلَّةٍ، فَأَمَّا إذْ وَسَّعَ اللَّهَ الْفُرُشَ وَاللُّحُفَ فَاعْتَزِلُوهُنَّ كَمَا أَمَرَ اللَّهُ تَعَالَى نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَبُو إِسْمَاعِيلَ مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا مَنْبُوذٌ الْمَكِّيُّ عَنْ أُمِّهِ قَالَتْ: كُنَّا عِنْدَ مَيْمُونَةَ فَدَخَلَ عَلَيْهَا ابْنُ عَبَّاسٍ، فَقَالَتْ لَهُ مَيْمُونَةُ: أَيْ بُنَيَّ مَا لِي أَرَاكَ شَعِثَ الرَّأْسِ؟ فَقَالَ: إنَّ مُرَجِّلَتِي حَائِضٌ - وَذَكَرَ الْحَدِيثَ.

وَاحْتَجَّ مَنْ ذَهَبَ إلَى هَذَا بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {قُلْ هُوَ أَذًى فَاعْتَزِلُوا النِّسَاءَ فِي الْمَحِيضِ وَلَا تَقْرَبُوهُنَّ حَتَّى يَطْهُرْنَ} [البقرة: ٢٢٢] وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد ثنا مُحَمَّدُ بْنُ سَعِيدٍ نا سَعِيدُ بْنُ عَبْدِ الْجَبَّارِ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ أَبِي الْيَمَانِ عَنْ أُمِّ دُرَّةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: كُنْت إذَا حِضْت نَزَلْت عَنْ الْمِثَالِ إلَى الْحَصِيرِ فَلَمْ نَقْرَبْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ نَدْنُ مِنْهُ حَتَّى نَطْهُرَ

senger of Allah—peace be upon him—nor draw close to him until we had become pure.[28]

وَهَذَا لَا شَيْءَ، لِأَنَّهُ مِنْ طَرِيقِ أُمِّ دُرَّةَ وَهِيَ مَجْهُولَةٌ لَا تُدْرَى

L32303 This is baseless, for it is narrated by Umm Durrah, who is unreliable as her status is not known.

وَذَهَبَتْ طَائِفَةٌ - إِلَى أَنَّ لَهُ مِنْ السُّرَّةِ فَصَاعِدًا فَقَطْ، وَلَيْسَ لَهُ مَا دُونَ ذَلِكَ.

L32304 A group of scholars holds the opinion that the ruling pertains exclusively to the area from the navel upward and does not apply to anything below that.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمٍ الْبَجَلِيِّ أَنَّ نَفَرًا سَأَلُوا عُمَرَ بْنَ الْخَطَّابِ عَمَّا يَحِلُّ لِلرَّجُلِ مِنْ امْرَأَتِهِ حَائِضًا؟ فَقَالَ عُمَرُ: لَك مَا فَوْقَ الْإِزَارِ، لَا تَطَّلِعَنَّ عَلَى مَا تَحْتَهُ حَتَّى تَطْهُرَ.

L32305 It was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from Abū Isḥāq al-Sabīʿī from ʿĀṣim al-Bajalī that a group of people asked ʿUmar ibn al-Khaṭṭāb about what is permissible for a man from his wife during her menstruation. ʿUmar said: “What is above the lower garment (izār) is lawful for you. Do not look at what lies beneath it until she attains ritual purity.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ مُوسَى عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ أَرْسَلَ إِلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ يَسْتَفْتِيهَا فِي الْحَائِضِ يُبَاشِرُهَا؟ فَقَالَتْ عَائِشَةُ: نَعَمْ، تَجْعَلُ عَلَى سِفْلَتِهَا ثَوْبًا.

L32306 Narrated through the chain of Abd al-Razzaq, from Ibn Jurayj, from Musa, from Nafi: That Ibn Umar sent to Aisha, the Mother of the Believers, seeking her legal opinion regarding having intimate contact with a menstruating woman. Aisha replied: “Yes, let him place a garment over her private area.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ سِيرِينَ عَنْ شُرَيْحٍ قَوْلُ: لَك مَا فَوْقَ السُّرَّةِ -.

L32307 And from the chain of Abd al-Razzaq, from Maʿmar, from Ayyub al-Sikhtiyani, from Ibn Sirin, from Shurayh - the opinion: “What is above the navel belongs to you” -

قَالَ مَعْمَرٌ: وَسَمِعْت قَتَادَةَ يَقُولُ: لَك مَا فَوْقَ الْإِزَارِ.

L32308 Ma’mar said, “And I heard Qatadah say, ’What is above the lower garment belongs to you.”’

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى قَالَ: مَا تَحْتَ الْإِزَارِ حَرَامٌ.

L32309 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj from Sulaymān ibn Mūsā, who said: What lies beneath the *izar* must remain covered.

وَبِهِ إِلَى ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: تُبَاشِرُ الْحَائِضُ زَوْجَهَا إِذَا كَانَ عَلَى جَزْلَتِهَا السُّفْلَى إِزَارٌ، سَمِعْنَا ذَلِكَ.

L32310 And through him to Ibn Jurayj from ‘Ata’, who said: A menstruating woman can have direct physical contact with her husband if her lower abdomen is covered with a lower garment (izar); we have heard this.

L32311 The proponents of this opinion cited as evidence a narration [we have trans-

[28] **Qur’an references (L32300):** Qur’an 2:222 (Al-Baqarah).

mitted it from the Messenger of Allah, peace be upon him and his family] in which he said: "As for what is permissible for a man with his wife while she is menstruating, it is [limited to] what is above the loincloth."

وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِخَبَرٍ - رُوِّينَاهُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ: «وَأَمَّا مَا لِلرَّجُلِ مِنْ امْرَأَتِهِ وَهِيَ حَائِضٌ فَمَا فَوْقَ الْإِزَارِ» .

L32312–32314 Abu Muhammad said: This is a report we have narrated through sound chains to a man named 'Asim ibn 'Amr al-Bajali al-Kufi, from 'Umar ibn al-Khattab, from the Messenger of Allah—peace and blessings of Allah be upon him. This 'Asim did not hear it from 'Umar, for we have narrated it through the chain of Abu Ishaq al-Sabi'i, from 'Asim ibn 'Amr, from 'Umayr—the client of 'Umar—and this 'Umayr is obscure. We have also narrated it through the chain of Shu'bah, from the aforementioned 'Asim, from a man from the group who asked 'Umar about that matter. And with another report—through the chain of Abu Dawud, who narrated from Harun ibn Muhammad ibn Bakkar, who narrated from Marwan (i.e., ibn Muhammad), who narrated from al-Haytham ibn Humaid, who narrated from al-Ala ibn al-Harith, who narrated from Hizam ibn Hakim, from his uncle—that he asked the Messenger of Allah (peace and blessings be upon him and his family), "What is permissible for me from my wife while she is menstruating?" He said: "You may have what is above the waist-wrapper."

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَبَرٌ رُوِّينَاهُ مِنْ طُرُقٍ صِحَاحٍ إلَى رَجُلٍ يُسَمَّى عَاصِمَ بْنَ عَمْرٍو الْبَجَلِيَّ الْكُوفِيَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَاصِمٌ هَذَا لَمْ يَسْمَعْهُ مِنْ عُمَرَ، لِأَنَّنَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ عَمْرٍو عَنْ عُمَيْرٍ - مَوْلَى عُمَرَ - وَعُمَيْرٌ هَذَا مَجْهُولٌ وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ شُعْبَةَ عَنْ عَاصِمٍ الْمَذْكُورِ عَنْ رَجُلٍ عَنْ الْقَوْمِ الَّذِينَ سَأَلُوا عُمَرَ عَنْ ذَلِكَ وَبِخَبَرٍ آخَرَ - مِنْ طَرِيقِ أَبِي دَاوُد نا هَارُونُ بْنُ مُحَمَّدِ بْنِ بَكَّارٍ نا مَرْوَانُ - يَعْنِي ابْنَ مُحَمَّدٍ - نا الْهَيْثَمُ بْنُ حُمَيْدٍ نا الْعَلَاءُ بْنُ الْحَارِثِ عَنْ حِزَامِ بْنِ حَكِيمٍ عَنْ عَمِّهِ: أَنَّهُ «سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا يَحِلُّ لِي مِنْ امْرَأَتِي وَهِيَ حَائِضٌ؟ قَالَ: لَكَ مَا فَوْقَ الْإِزَارِ» .

L32315 This is invalid because Ḥizām ibn Ḥakīm is a weak narrator, as he is the one who reported the ruling requiring washing the female genitalia [labia] for cases involving madhy (pre-seminal fluid). Marwān ibn Muḥammad, from whom Ḥizām transmitted the narration, is also a weak narrator.

وَهَذَا لَا يَصِحُّ، لِأَنَّ حِزَامَ بْنَ حَكِيمٍ ضَعِيفٌ، وَهُوَ الَّذِي رَوَى غَسْلَ الْأُنْثَيَيْنِ مِنْ الْمَذْيِ، وَمَرْوَانُ بْنُ مُحَمَّدٍ الَّذِي رَوَى عَنْهُ ضَعِيفٌ أَيْضًا.

L32316 And with a report—we have narrated it through the chain of Abū Dāwūd: Hishām ibn ʿAbd al-Malik al-Yazanī informed us, Baqiyyah ibn ʿAbd al-Walīd narrated to me from Saʿīd (Ibn ʿAbd Allāh al-Aghṭash) from ʿAbd al-Raḥmān ibn ʿĀ'idh al-Azdī. Hishām ibn Qirṭ al-Azdī (the governor of Ḥimṣ) reported from Muʿādh ibn Jabal, who said: "I asked the Messenger of God—may God bless him and his family and grant him peace—about what is permissible for a man to do with his wife while she is menstruating. He said: 'What is above the lower garment. Restraint from that is more virtuous.'"

وَبِخَبَرٍ - رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا هِشَامُ بْنُ عَبْدِ الْمَلِكِ الْيَزَنِيُّ حَدَّثَنِي بَقِيَّةُ بْنُ عَبْدِ الْوَلِيدِ عَنْ سَعِيدٍ - هُوَ ابْنُ عَبْدِ اللَّهِ الْأَغْطَشُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَائِذٍ الْأَزْدِيِّ قَالَ هِشَامٌ - وَهُوَ ابْنُ قِرْطٍ الْأَزْدِيُّ أَمِيرُ حِمْصَ - عَنْ مُعَاذِ بْنِ جَبَلٍ، قَالَ: «سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَمَّا يَحِلُّ لِلرَّجُلِ مِنْ امْرَأَتِهِ وَهِيَ حَائِضٌ؟ فَقَالَ: مَا هُوَ فَوْقَ الْإِزَارِ، وَالتَّعَفُّفُ عَنْ ذَلِكَ أَفْضَلُ»

L32317 This is an inauthentic report because it is narrated through Baqiyyah - who is

ḍaʿīf (weak) - from Saʿīd ibn ʿAbdullāh al-Aghṭash - who is majhūl (unknown) and unrecognized.

وَهَذَا خَبَرٌ لَا يَصِحُّ، لِأَنَّهُ مِنْ طَرِيقِ بَقِيَّةَ - وَهُوَ ضَعِيفٌ - عَنْ سَعِيدِ بْنِ عَبْدِ اللَّهِ الْأَغْطَشِ - وَهُوَ مَجْهُولٌ لَا يُعْرَفُ.

L32318 And with a report—from the chain of Ibn Abī Shaybah: ʿAbd al-Raḥīm narrated to us, Muḥammad ibn Kurayb narrated to us from Kurayb from Ibn ʿAbbās—that he was asked about the menstruating woman: "What is permissible for her husband?" He said: "We heard—and Allah knows best if the Messenger of Allah—peace and blessings be upon him and his family—said it—then it is so: 'Nothing above the izār is permissible for him.'" This ḥadīth, as you see, is not musnad.

وَبِخَبَرٍ - مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الرَّحِيمِ نا مُحَمَّدُ بْنُ كُرَيْبٍ عَنْ كُرَيْبٍ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ سُئِلَ عَنْ الْمَرْأَةِ الْحَائِضِ مَاذَا يَحِلُّ لِزَوْجِهَا؟ قَالَ: سَمِعْنَا - وَاَللَّهُ أَعْلَمُ إنْ كَانَ قَالَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَهُوَ كَذَلِكَ: «لَا يَحِلُّ لَهُ مَا فَوْقَ الْإِزَارِ» وَهَذَا حَدِيثٌ كَمَا تَرَى غَيْرُ مُسْنَدٍ.

L32319 From the chain of Abū al-Jahm: Muḥammad ibn al-Faraj narrated to us from ʿAbdullāh ibn ʿUmar, from Abū al-Naḍr, from Abū Salama, from ʿĀ'isha: "The Messenger of Allah—may Allah bless him and his family and grant him peace—was asked: 'What is permissible for a man regarding his wife—meaning the menstruating one?' He replied: 'What is above the lower garment.'"

وَمِنْ طَرِيقِ أَبِي الْجَهْمِ نا مُحَمَّدُ بْنُ الْفَرَجِ نا عَبْدُ اللَّهِ بْنُ عُمَرَ عَنْ أَبِي النَّضْرِ عَنْ أَبِي سَلَمَةَ عَنْ عَائِشَةَ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا يَحِلُّ لِلرَّجُلِ مِنْ امْرَأَتِهِ - يَعْنِي الْحَائِضَ - قَالَ: مَا فَوْقَ الْإِزَارِ» .

L32320–32322 And this is not valid, because it is narrated via the chain of al-ʿUmari al-Saghir—who is a weak narrator—. Thus, this report is invalidated, and all praise is due to Allah, Lord of the worlds.

وَهَذَا لَا يَصِحُّ، لِأَنَّهُ مِنْ طَرِيقِ الْعُمَرِيِّ الصَّغِيرِ - وَهُوَ ضَعِيفٌ - فَسَقَطَ هَذَا الْخَبَرُ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L32323 It is reported through the chain of Al-Layth ibn Saʿd, from Ibn Shihāb, from Ḥabīb, a freed slave of ʿUrwah, from Nudbah, a freed slave of Maymūnah, from Maymūnah (may Allah be pleased with her), that the Messenger of Allah (peace and blessings be upon him and his family) would have sexual intercourse with his menstruating wives when she wore a lower garment reaching mid-thigh or the knees, securely fastened around her waist.

وَقَدْ جَاءَ خَبَرٌ - مِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ ابْنِ شِهَابٍ عَنْ حَبِيبٍ مَوْلَى عُرْوَةَ عَنْ نُدْبَةَ - مَوْلَاةِ مَيْمُونَةَ - عَنْ مَيْمُونَةَ - رَضِيَ اللَّهُ عَنْهَا - «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ يُبَاشِرُ الْحَائِضَ مِنْ نِسَائِهِ إذَا كَانَ عَلَيْهَا إزَارٌ يَبْلُغُ أَنْصَافَ الْفَخْذَيْنِ أَوْ الرُّكْبَتَيْنِ مُحْتَجِزَةً» .

L32324 From Ibn Wahb: It has been reported to me from 'Ā'isha and Umm Salama—the two Mothers of the Believers—something similar to this. And this chain is interrupted. From Nudba—who is unknown—even if it were authentic, there would be no definitive evidence in it nor any basis for reliance by anyone, for it is an action, not a command.

وَعَنْ ابْنِ وَهْبٍ: بَلَغَنِي عَنْ عَائِشَةَ، وَأُمِّ سَلَمَةَ - أُمَّيْ الْمُؤْمِنِينَ - مِثْلُ هَذَا، وَهَذَا مُنْقَطِعٌ، وَعَنْ نُدْبَةَ - وَهِيَ مَجْهُولَةٌ - وَلَوْ صَحَّ لَمْ تَكُنْ فِيهِ حُجَّةٌ وَلَا مُتَعَلَّقَ لِأَحَدٍ، لِأَنَّهُ فِعْلٌ لَا أَمْرٌ.

L32325 A group maintained the opinion that he must not have direct skin contact with her unless there is a concealing garment between them.

وَذَهَبَتْ طَائِفَةٌ: إِلَى أَنَّهُ لَا يُبَاشِرُهَا إِلَّا وَبَيْنَهُمَا ثَوْبٌ.

L32326 It has been narrated to us from Wakīʿ from ʿAbdullāh ibn ʿAwn from Muḥammad ibn Sīrīn, who said: "I asked ʿUbaydah al-Salmānī, 'What is permissible for a man with his menstruating wife?' He replied, 'The bed is shared, but the blankets are separate. If he cannot avoid it, he may cover her with the edge of his garment?'" The adherents of this view cited as evidence what has been narrated to us through the chain in Imam Muslim's compilation: Hārūn ibn Saʿīd narrated to us, Ibn Wahb narrated to us, Makhramah—who is Ibn Bukayr—narrated to us from his father from Kurayb, the freed slave of Ibn ʿAbbās, who said: "I heard Maymūnah, the wife of the Prophet—may Allah bless him and grant him peace—say: 'The Messenger of Allah—may Allah bless him and grant him peace—would lie down beside me while I was menstruating, with a garment between us.'"[29]

رُوِّينَا عَنْ وَكِيعٍ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: سَأَلْت عَبِيدَةَ السَّلْمَانِيَّ مَا لِلرَّجُلِ مِنْ امْرَأَتِهِ الْحَائِضِ؟ فَقَالَ: الْفِرَاشُ وَاحِدٌ وَاللِّحَافُ شَتَّى، وَإِنْ لَمْ يَجِدْ بُدًّا مِنْ أَنْ يَرُدَّ عَلَيْهَا مِنْ طَرَفِ ثَوْبِهِ رَدَّ عَلَيْهَا؟ وَاحْتَجَّ أَهْلُ هَذَا الْقَوْلِ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا هَارُونُ بْنُ سَعِيدٍ نا ابْنُ وَهْبٍ نا مَخْرَمَةُ - هُوَ ابْنُ بُكَيْرٍ - عَنْ أَبِيهِ عَنْ كُرَيْبٍ مَوْلَى ابْنِ عَبَّاسٍ قَالَ: «سَمِعْتُ مَيْمُونَةَ زَوْجَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَتْ: كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَضْطَجِعُ مَعِي وَأَنَا حَائِضٌ، وَبَيْنِي وَبَيْنَهُ ثَوْبٌ» .

L32327 Narrated to us ʿAbdullāh ibn Rabīʿ, narrated to us Muḥammad ibn Muʿāwiyah, narrated to us Aḥmad ibn Shuʿayb, narrated to us Abū Khalīfah al-Faḍl ibn al-Ḥubāb—a client of the Banū Jumaḥ—narrated to us Musaddad, narrated to us Abū ʿAwānah, from ʿUmar ibn Abī Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, from his father, from ʿĀ'ishah, the Mother of the Believers, that she used to sleep beside the Messenger of Allah—peace and blessings be upon him—while she was menstruating, with a garment between them.

وَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا أَبُو خَلِيفَةَ الْفَضْلُ بْنُ الْحُبَابِ - هُوَ مَوْلَى بَنِي جُمَحَ - نَا مُسَدَّدٌ نا أَبُو عَوَانَةَ عَنْ عُمَرَ بْنِ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِيهِ «عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا كَانَتْ تَنَامُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهِيَ حَائِضٌ وَبَيْنَهُمَا ثَوْبٌ» .

L32328–32330 Abū Muḥammad said: Makhramah ibn Bukayr's transmission from his father is unreliable—just as Yūsuf ibn ʿAbd Allāh al-Namarī narrated from ʿAbd Allāh ibn Muḥammad ibn Yūsuf al-Azdī; who narrated from Muḥammad ibn Isḥāq al-Ṣaydalānī; who narrated from al-ʿUqaylī; who narrated from ʿAbd Allāh ibn Aḥmad ibn Ḥanbal, who said: My father narrated from Ḥammād ibn Khālid al-Khayyāṭ, who said: Makhramah ibn Bukayr produced a book before me and said: "These are my father's writings; I did not hear anything directly from these [books]." As for the report of Aisha, the Mother of the Believers, in it is Umar ibn Abi Salamah—a narrator deemed weak in Hadith; no one has authenticated him.

قَالَ أَبُو مُحَمَّد: سَمَاعُ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ لَا يَصِحُّ -: كَمَا نا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ يُوسُفَ الْأَزْدِيُّ نا مُحَمَّدُ بْنُ إِسْحَاقَ الصَّيْدَلَانِيُّ نا الْعُقَيْلِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا حَمَّادُ بْنُ خَالِدٍ الْخَيَّاطُ قَالَ: أَخْرَجَ إِلَيَّ مَخْرَمَةُ بْنُ بُكَيْرٍ كِتَابًا وَقَالَ لِي: هَذِهِ كُتُبُ أَبِي لَمْ أَسْمَعْ مِنْهَا شَيْئًا وَأَمَّا خَبَرُ عَائِشَةَ - أُمِّ الْمُؤْمِنِينَ - فَفِيهِ عُمَرُ بْنُ أَبِي سَلَمَةَ - وَهُوَ ضَعِيفٌ لَمْ يُوَثِّقْهُ أَحَدٌ.

[29] **Hadith references (L32326):** Sahih Muslim 295.

L32331 Abu Hanifah, Abu Yusuf, Malik, and those who emulated them held that it is permissible for him [to expose] what is above the navel and below the knee, while forbidden for him [to expose] what is between the navel and the knee. We know of no foundational basis for this opinion in the primary sources, thus it is obligatory to abandon it.

وَذَهَبَ أَبُو حَنِيفَةَ، وَأَبُو يُوسُفَ، وَمَالِكٌ، وَمَنْ قَلَّدَهُ إِلَى أَنَّهُ مُبَاحٌ لَهُ مَا فَوْقَ السُّرَّةِ، وَمَا تَحْتَ الرُّكْبَةِ، وَيَحْرُمُ عَلَيْهِ مَا بَيْنَ السُّرَّةِ وَالرُّكْبَةِ وَمَا نَعْلَمُ لِهَذَا الْقَوْلِ مُتَعَلَّقًا أَصْلًا، فَوَجَبَ تَرْكُهُ.

L32332 No one should confuse the matter by citing reports stating that the Prophet—peace and blessings of Allah be upon him—commanded menstruating women among his wives to wear an izar (waist-wrapper) and then have physical contact with them. For the izar may extend to the ankles or reach mid-thigh.

وَلَا يُمَوِّهَنَّ مُمَوِّهٌ بِالْأَخْبَارِ الَّتِي فِيهَا كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُ الْحَائِضَ مِنْ نِسَائِهِ أَنْ تَتَّزِرَ ثُمَّ يُبَاشِرَهَا، فَإِنَّ الْإِزَارَ قَدْ يَبْلُغُ إِلَى الْكَعْبَيْنِ، وَقَدْ يَبْلُغُ إِلَى أَنْصَافِ الْفَخِذَيْنِ.

L32333 A group held a view similar to our opinion: As narrated to us by ʻAbdullāh ibn Rabīʻ, from Muḥammad ibn Muʻāwiyah, from Abū Khalīfah al-Faḍl ibn al-Ḥubāb al-Jumaḥī, from Abū al-Walīd al-Ṭayālisī, from al-Layth ibn Saʻd, from Bukayr ibn ʻAbdillāh ibn al-Ashajj, from Abū Marrah - the freed slave of ʻAqīl ibn Abī Ṭālib - from Ḥakīm ibn ʻIqāl: I asked Umm al-Muʾminīn ʻĀʾishah, "What is forbidden for a man regarding his wife if he is fasting?" She said, "Her private part." I asked, "And what is forbidden for him regarding her if she is menstruating?" She said, "Her private part," and this is the statement of Umm Salamah, the Mother of the Believers.

وَذَهَبَتْ طَائِفَةٌ - إِلَى مِثْلِ قَوْلِنَا -: كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَبُو خَلِيفَةَ الْفَضْلُ بْنُ الْحُبَابِ الْجُمَحِيُّ نا أَبُو الْوَلِيدِ الطَّيَالِسِيُّ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ أَبِي مُرَّةَ مَوْلَى عَقِيلِ بْنِ أَبِي طَالِبٍ عَنْ حَكِيمِ بْنِ عِقَالٍ سَأَلْت أُمَّ الْمُؤْمِنِينَ عَائِشَةَ مَا يَحْرُمُ عَلَى الرَّجُلِ مِنْ امْرَأَتِهِ إِذَا كَانَ صَائِمًا؟ قَالَتْ: فَرْجُهَا؟ قُلْت: فَمَا يَحْرُمُ عَلَيْهِ مِنْهَا إِذَا كَانَتْ حَائِضًا؟ قَالَتْ: فَرْجُهَا - وَهُوَ قَوْلُ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ.

L32334 Through the chain of Hammad ibn Salamah, from ʾUbayd Allah ibn Muhammad ibn ʾAqil, from Ibn ʾAbbas, who said: A man may do everything with his menstruating wife except the place where blood exits.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لِلرَّجُلِ مِنْ امْرَأَتِهِ وَهِيَ حَائِضٌ كُلُّ شَيْءٍ، إِلَّا مَخْرَجَ الدَّمِ.

L32335 Through the chain of Wakiʻ, from Ismāʻīl ibn Abī Khālid, from Al-Shaʻbī, who said: "A man may have intimate contact with a menstruating woman if he refrains from causing harm."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: يُبَاشِرُ الرَّجُلُ الْحَائِضَ إِذَا كَفَّ عَنْهَا الْأَذَى.

L32336 And through the chain of Wakiʻ from Mālik ibn Mighwal from ʻAṭāʾ ibn Abī Rabāḥ: He stated concerning a menstruating woman: There is no harm in her husband having intercourse with her in what is below the blood.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ مَالِكِ بْنِ مِغْوَلٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ: أَنَّهُ قَالَ فِي الْحَائِضِ: لَا بَأْسَ أَنْ يَأْتِيَهَا زَوْجُهَا فِيمَا دُونَ الدَّمِ.

L32337 Through the narration of Wakīʻ from ʻAṭāʾ ibn Abī Rabāḥ from al-Ḥakam ibn ʻUtaybah that he said regarding the menstruating woman: There is no

harm in a man placing his genitalia against hers as long as he does not insert it – that is, her genitalia.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّهُ قَالَ فِي الْحَائِضِ: لَا بَأْسَ أَنْ يَضَعَ الرَّجُلُ فَرْجَهُ عَلَيْهِ مَا لَمْ يُدْخِلْهُ - يَعْنِي عَلَى فَرْجِهَا -.

L32338 And through him to Waki‘ from Ar-Rabi‘ from Al-Hasan Al-Basri: that he did not deem it problematic to move between the two thighs of a menstruating woman—a view shared by Masruq, Ibrahim An-Nakha‘i, Sufyan Ath-Thawri, Muhammad ibn Al-Hasan, the associate of Abu Hanifah, Abu Sulayman, and all our companions—and it is the well-known opinion of Ash-Shafi‘i.

وَبِهِ إلَى وَكِيعٍ عَنْ الرَّبِيعِ عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يُقَلِّبَ بَيْنَ فَخِذَيْ الْحَائِضِ - وَهُوَ قَوْلُ مَسْرُوقٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَمُحَمَّدِ بْنِ الْحَسَنِ صَاحِبِ أَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ وَجَمِيعِ أَصْحَابِنَا - وَهُوَ الْمَشْهُورُ عَنْ الشَّافِعِيِّ.

L32339–32341 Abū Muḥammad said: We have clarified the invalidity of all the opinions we previously presented except this opinion and the opinion of those who... He relied upon the verse, so we examined this opinion and found what was transmitted to us via the chain transmitted in Ṣaḥīḥ Muslim: Zuhayr ibn Harb narrated to us, from ʿAbd al-Raḥmān ibn Mahdī, from Ḥammād ibn Salamah, from Thābit—that is, al-Bunānī—from Anas ibn Mālik, who mentioned a ḥadīth, in which it states: “Then Allah the Exalted revealed: {They ask you about menstruation. Say, ’It is harm, so keep away from women during menstruation’} [Al-Baqarah: 222] to the end of the verse?” The Messenger of Allah—peace and blessings of Allah be upon him—said: “Do everything except intercourse.”[30]

قَالَ أَبُو مُحَمَّدٍ: قَدْ بَيَّنَّا سُقُوطَ جَمِيعِ الْأَقْوَالِ الَّتِي قَدَّمْنَا إلَّا هَذَا الْقَوْلَ، وَقَوْلَ مَنْ تَعَلَّقَ بِالْآيَةِ فَنَظَرْنَا فِي هَذَا الْقَوْلِ فَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا حَمَّادُ بْنُ سَلَمَةَ نَا ثَابِتٌ - هُوَ الْبُنَانِيُّ - عَنْ أَنَسِ بْنِ مَالِكٍ، فَذَكَرَ حَدِيثًا، وَفِيهِ: فَأَنْزَلَ اللَّهُ تَعَالَى: {وَيَسْأَلُونَكَ عَنِ الْمَحِيضِ قُلْ هُوَ أَذًى فَاعْتَزِلُوا النِّسَاءَ فِي الْمَحِيضِ} [البقرة: ٢٢٢] إلَى آخِرِ الْآيَةِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «اصْنَعُوا كُلَّ شَيْءٍ إلَّا النِّكَاحَ» .

L32342 Abu Muhammad said: This is a narration of utmost authenticity, and it constitutes an elucidation of the verse. He, peace and blessings be upon him, clarified the intent of his Lord, the Most High, in it immediately after its revelation.

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا خَبَرٌ فِي غَايَةِ الصِّحَّةِ، وَهُوَ بَيَانٌ لِلْآيَةِ، بَيَّنَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إثْرَ نُزُولِهَا مُرَادَ رَبِّهِ تَعَالَى فِيهَا.

L32343 This confirms the validity of the statement by scholars who asserted that the meaning of Allah the Exalted and Majestic’s words {فِي الْمَحِيضِ} [Al-Baqarah: 222] refers specifically to the place of menstruation - and this is beyond doubt - because the Prophet (peace and blessings be upon him) elucidated the intent of his Lord the Most High in the verse without abrogating it.

وَصَحَّ بِهَذَا قَوْلُ مَنْ قَالَ مِنْ الْعُلَمَاءِ: إنَّ مَعْنَى قَوْلِهِ عَزَّ وَجَلَّ: {فِي الْمَحِيضِ} [البقرة: ٢٢٢] إنَّمَا هُوَ مَوْضِعُ الْحَيْضِ - وَلَا شَكَّ فِي هَذَا - لِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَيَّنَ مُرَادَ رَبِّهِ تَعَالَى فِي الْآيَةِ، وَلَمْ يَنْسَخْهَا، قَالَ اللَّهُ عَزَّ وَجَلَّ: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إلَيْهِمْ} [النحل: ٤٤] وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[30] **Qur’an references (L32339):** Qur’an 2:222 (Al-Baqarah).

Allah the Exalted and Majestic said: “to clarify to people what was revealed to them” [An-Naḥl: 44]. And success is from Allah the Most High alone.[31]

A legal case: Intercourse with a menstruating woman, whether intentional or ignorant.

1913 - Issue: Whoever has intercourse with a menstruating woman, intentionally or out of ignorance, has disobeyed Allah the Exalted in the case of intentionality. There is nothing required of him as a consequence—neither charity nor anything else—except repentance and seeking forgiveness.

Some have stated regarding that matter that there is an expiation - as we have reported from Ibn Abbas: If he has intercourse with her during the blood, then a dinar; and if he has intercourse with her during the cessation of the blood, then half a dinar.

It is narrated from Qatādah: If he is financially able, then one dinar; but if he cannot afford it, then half a dinar.

And from Ata, whoever has intercourse with a menstruating woman should give a dinar in charity. It has been narrated from Muhammad ibn al-Hasan, the companion of Abu Hanifah. Ahmad ibn Hanbal held the view that one may choose between giving a dinar or half a dinar. We observed the adherents of this opinion citing as evidence a narration we transmitted through the chain of Miqsam from Ibn Abbas, attributed via a continuous chain to the Messenger of Allah (peace and blessings be upon him and his family), though Miqsam is a weak narrator.

It has also been narrated to us through the chain of Sharīq from Khuṣayf from ‘Ikrimah from Ibn ‘Abbās from the Messenger of Allāh—may Allāh bless him and his family and grant him peace—. Both Sharīq and Khuṣayf are weak narrators. And through a chain containing Abd al-Malik ibn Habib from al-Makfūf from Ayyub ibn Khawt from Qatadah from Ibn Abbas as a musnad narration attributed to the Prophet—Abd al-Malik and Ayyub are rejected narrators, and al-Makfūf is unknown.

[31] **Qur’an references (L32343):** Qur’an 16:44 (An-Nahl); Qur’an 2:222 (Al-Baqarah).

[مَسْأَلَةٌ وَطِئَ حَائِضًا عَامِدًا أَوْ جَاهِلًا]

١٩١٣ - مَسْأَلَةٌ: وَمَنْ وَطِئَ حَائِضًا عَامِدًا أَوْ جَاهِلًا: فَقَدْ عَصَى اللَّهَ تَعَالَى فِي الْعَمْدِ، وَلَيْسَ عَلَيْهِ فِي ذَلِكَ شَيْءٌ لَا صَدَقَةٌ وَلَا غَيْرُهَا، إلَّا التَّوْبَةُ وَالِاسْتِغْفَارُ.

وَقَدْ قَالَ قَائِلُونَ فِي ذَلِكَ بِكَفَّارَةٍ -: كَمَا رُوِّينَا عَنْ ابْنِ عَبَّاسٍ إنْ وَطِئَهَا فِي الدَّمِ فَدِينَارٌ، وَإِنْ وَطِئَهَا فِي انْقِطَاعِ الدَّمِ فَنِصْفُ دِينَارٍ.

وَعَنْ قَتَادَةَ: إنْ كَانَ وَاجِدًا فَدِينَارٌ، وَإِنْ لَمْ يَجِدْ فَنِصْفُ دِينَارٍ.

وَعَنْ عَطَاءٍ مَنْ وَطِئَ حَائِضًا يَتَصَدَّقُ بِدِينَارٍ -: وَقَدْ رُوِيَ عَنْ مُحَمَّدِ بْنِ الْحَسَنِ صَاحِبِ أَبِي حَنِيفَةَ -: وَرَأَى أَحْمَدُ بْنُ حَنْبَلٍ أَنَّهُ مُخَيَّرٌ بَيْنَ دِينَارٍ أَوْ نِصْفِ دِينَارٍ وَوَجَدْنَا أَهْلَ هَذِهِ الْمَقَالَةِ يَحْتَجُّونَ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ مِقْسَمٍ عَنْ ابْنِ عَبَّاسٍ مُسْنَدًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَمِقْسَمٌ ضَعِيفٌ

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ شَرِيكٍ عَنْ خُصَيْفٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَشَرِيكٌ، وَخُصَيْفٌ ضَعِيفَانِ - وَمِنْ طَرِيقٍ فِيهَا عَبْدُ الْمَلِكِ بْنُ حَبِيبٍ عَنْ الْمَكْفُوفِ عَنْ أَيُّوبَ بْنِ خَوْطٍ عَنْ قَتَادَةَ عَنْ ابْنِ عَبَّاسٍ مُسْنَدًا، وَعَبْدِ الْمَلِكِ، وَأَيُّوبَ - هَالِكَانِ - وَالْمَكْفُوفُ مَجْهُولٌ.

L32352 And through the chain of Abd al-Malik ibn Habib from Asbagh ibn al-Faraj from al-Sabiʿī from Zayd ibn ʿAbd al-Ḥamīd: “Umar asked the Messenger of Allah—peace be upon him and his family—about that, and he said: ’Give a dinar in charity.”’ However, Abd al-Malik is discredited, al-Sabiʿī is unknown, and no ignorant person would assume this refers to Abu Ishaq—Abu Ishaq died long before Asbagh was born. Moreover, the narration is mursal. Al-Awzaʿī also narrated it as mursal, stating: “Give two-fifths of a dinar in charity.”

وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ عَنْ أَصْبَغَ بْنِ الْفَرَجِ عَنْ السَّبِيعِيِّ عَنْ زَيْدِ بْنِ عَبْدِ الْحَمِيدِ «أَنَّ عُمَرَ سَأَلَ عَنْ ذَلِكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ لَهُ: تَصَدَّقْ بِدِينَارٍ» ، وَعَبْدُ الْمَلِكِ - هَالِكٌ - وَالسَّبِيعِيُّ - مَجْهُولٌ - وَلَا يَظُنُّ جَاهِلٌ أَنَّهُ أَبُو إِسْحَاقَ - مَاتَ أَبُو إِسْحَاقَ قَبْلَ أَنْ يُولَدَ أَصْبَغُ بِدَهْرٍ - وَهُوَ أَيْضًا مُرْسَلٌ - وَقَدْ رَوَاهُ الْأَوْزَاعِيُّ أَيْضًا مُرْسَلًا، وَفِيهِ: «تَصَدَّقْ بِخُمْسَيْ دِينَارٍ» .

L32353 A group held the view that one must perform expiation equivalent to that required for sexual intercourse during Ramadan—as we have transmitted through the chain of Ahmad ibn Shu’ayb: I am Muhammad ibn ’Abd al-A’la [narrating] from al-Mu’tamir, who is Ibn Sulayman al-Taymi. He said: I recited to Fadl from Abu Hariz that Ayyaf reported to him, relating that Sa’id ibn Jubayr informed him from Ibn ’Abbas, who said: “Whoever breaks the fast in Ramadan must manumit a slave, fast for two consecutive months, or feed sixty poor persons.” I inquired: “What of one who has intercourse with his wife while she is menstruating—or hears the Friday call but fails to resolve to attend without valid excuse?” He responded: “Likewise—manumission of a slave.”

وَذَهَبَتْ طَائِفَةٌ: أَنَّ عَلَيْهِ مِثْلَ كَفَّارَةِ مَنْ وَطِئَ فِي رَمَضَانَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى نَا الْمُعْتَمِرُ - هُوَ ابْنُ سُلَيْمَانَ التَّيْمِيُّ - قَالَ: قَرَأْت عَلَى فَضْلٍ عَنْ أَبِي حَرِيزٍ: أَنَّ أَيْفَعَ حَدَّثَهُ أَنَّ سَعِيدَ بْنَ جُبَيْرٍ أَخْبَرَهُ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: مَنْ أَفْطَرَ فِي رَمَضَانَ فَعَلَيْهِ عِتْقُ رَقَبَةٍ، أَوْ صَوْمُ شَهْرٍ، أَوْ إطْعَامُ ثَلَاثِينَ مِسْكِينًا: قُلْت: وَمَنْ وَقَعَ عَلَى امْرَأَتِهِ وَهِيَ حَائِضٌ - أَوْ سَمِعَ أَذَانَ الْجُمُعَةِ، وَلَمْ يُجْمِعْ لَيْسَ لَهُ عُذْرٌ؟ قَالَ: كَذَلِكَ عِتْقُ رَقَبَةٍ.

L32354 From the chain of ʿAbd al-Razzāq, narrated to us by Hishām—he is Ibn Ḥassān—from al-Ḥasan al-Baṣrī: that he used to analogize (*qiyas*) the case of one who has intercourse with a menstruating woman to the case of one who has intercourse with his wife during Ramadan.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا هِشَامٌ - هُوَ ابْنُ حَسَّانٍ - عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّهُ كَانَ يَقِيسُ الَّذِي يَقَعُ عَلَى الْحَائِضِ بِالَّذِي يَقَعُ عَلَى امْرَأَتِهِ فِي رَمَضَانَ.

L32355 The proponents of this view cited as evidence a narration we narrated through the chain of Ahmad ibn Shuʿayb, who informed me that Mahmud ibn Khalid informed us: al-Walid ibn Muslim reported from ʿAbd al-Rahman ibn Yazid ibn Tamim al-Sulami, who said: I heard ʿAli ibn Bidhīmah say: I heard Saʿīd ibn Jubayr say: I heard Ibn ʿAbbās say: “A man said: ’O Messenger of God, I had intercourse with my wife while she was menstruating.’ The Messenger of God, peace and blessings be upon him and his family, commanded him to emancipate a slave.” Ibn ʿAbbās said: “The value of a slave at that time was a dinar.” We also narrated it via the chain of Mūsā ibn

وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي مَحْمُودُ بْنُ خَالِدٍ نا الْوَلِيدُ بْنُ مُسْلِمٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ بْنِ تَمِيمٍ السُّلَمِيِّ قَالَ: سَمِعْت عَلِيَّ بْنَ بَذِيمَةَ يَقُولُ: سَمِعْت سَعِيدَ بْنَ جُبَيْرٍ يَقُولُ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ «قَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ إنِّي أَصَبْتُ امْرَأَتِي - وَهِيَ حَائِضٌ - فَأَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

Ayyūb, from al-Walīd ibn Muslim, from Jābir, from ʿAlī ibn Bidhīmah, with his chain of narrators.

L32356–32358 Abu Muhammad said: Musa ibn Ayyub and Abd al-Rahman ibn Yazid ibn Tamim are weak narrators – therefore, all narrations in this chapter are dismissed. Indeed, it was incumbent upon those who uphold analogy to apply it to the case of intercourse with a menstruating woman. Regarding the one who has intercourse during Ramadan - since both engaged in [intercourse involving] a lawful private part, which is not prohibited except during the state of fasting or the state of menstruation only - this demonstrates their contradictions regarding it, particularly while they rely on evidence weaker than this report.

L32359 As for us, had anything from all of this been authentically established from the Messenger of Allah—may Allah bless him and his family and grant him peace—we would have adhered to it. However, since nothing in it has been authentically established, nothing of it is obligatory, because it is a divine law that Allah, the Most High, has not ordained.

L32360 Among those who held our view is Ibn Sīrīn—it is authentically reported that he said: "One seeks forgiveness from Allah, and nothing is incumbent upon him." A similar statement is authentically reported from Ibrāhīm al-Nakhaʿī, ʿAṭāʾ, and Makhūl. This is the opinion of Mālik, Abū Ḥanīfa, al-Shāfiʿī, Abū Sulaymān, and their companions.

L32361 **Issue: The Menstruating Woman Saw the Ritual Purity**

L32362 1914. Issue: If a menstruating woman observes the cessation [of menstruation], then if she washes only her private parts, performs ablution only, or performs a full ritual bath of her entire body—whichever of these she does, her husband may lawfully have intercourse with her. However, she must not pray until she performs a full ritual bath of her entire body with water. And indeed, people have differed regarding this matter: a group said, "It is not permissible for him to have intercourse with her until she performs the

أَنْ يعْتِقَ رَقَبَةً» ، قَالَ ابْنُ عَبَّاسٍ: وَقِيمَةُ الرَّقَبَةِ يوْمَئِذٍ دِينَارٌ - وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ مُوسَى بْنِ أَيُّوبَ عَنْ الْوَلِيدِ بْنِ مُسْلِمٍ عَنْ جَابِرٍ عَنْ عَلِيِّ بْنِ بَذِيمَةَ بِإِسْنَادِهِ

قَالَ أَبُو مُحَمَّد: مُوسَى بْنُ أَيُّوبَ وَعَبْدُ الرَّحْمَنِ بْنُ يَزِيدَ بْنِ تَمِيمٍ ضَعِيفَانِ - فَسَقَطَ كُلُّ مَا فِي هَذَا الْبَابِ - وَلَقَدْ كَانَ يَلْزَمُ الْقَائِلِينَ بِالْقِيَاسِ أَنْ يَقِيسُوا وَاطِئَ الْحَائِضِ عَلَى الْوَاطِئِ فِي رَمَضَانَ، لِأَنَّهُمَا مَعًا وَطِئَا فَرْجًا حَلَالَ الْعَيْنِ، لَمْ يَحْرُمْ إلَّا بِحَالِ الصَّوْمِ، أَوْ حَالِ الْحَيْضِ فَقَطْ، وَلَكِنْ هَذَا مِمَّا تَنَاقَضُوا فِيهِ، لَا سِيَّمَا وَهُمْ يَحْتَجُّونَ بِأَضْعَفَ مِنْ هَذَا الْخَبَرِ.

وَأَمَّا نَحْنُ فَلَوْ صَحَّ شَيْءٌ مِنْ كُلِّ هَذَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَقُلْنَا بِهِ، فَلَمَّا لَمْ يَصِحَّ فِيهِ شَيْءٌ لَمْ يَجِبْ مِنْهُ شَيْءٌ، لِأَنَّهُ شَرْعٌ لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِهِ.

وَمِمَّنْ قَالَ بِقَوْلِنَا ابْنُ سِيرِينَ صَحَّ عَنْهُ أَنَّهُ قَالَ: يَسْتَغْفِرُ اللَّهَ، وَلَيْسَ عَلَيْهِ شَيْءٌ - وَصَحَّ أَيْضًا مِثْلُ ذَلِكَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَعَطَاءٍ، وَمَكْحُولٍ - وَهُوَ قَوْلُ مَالِكٍ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ وَأَصْحَابِهِمْ

[مَسْأَلَةٌ رَأَتْ الْحَائِضُ الطُّهْرَ]

١٩١٤ - مَسْأَلَةٌ: وَإِذَا رَأَتْ الْحَائِضُ الطُّهْرَ فَإِنْ غَسَلَتْ فَرْجَهَا فَقَطْ، أَوْ تَوَضَّأَتْ فَقَطْ، أَوْ اغْتَسَلَتْ كُلَّهَا، فَأَيَّ ذَلِكَ فَعَلَتْ حَلَّ وَطْؤُهَا لِزَوْجِهَا، إلَّا أَنَّهَا لَا تُصَلِّي حَتَّى تَغْتَسِلَ كُلَّهَا بِالْمَاءِ وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَتْ طَائِفَةٌ: لَا يَحِلُّ لَهُ وَطْؤُهَا

ritual bath for her entire body." This has been narrated to us from Mujāhid, Ibrāhīm an-Nakhaʿī, al-Qāsim ibn Muḥammad, Sālim ibn ʿAbdullāh, Makhūl, al-Ḥasan, Sulaymān ibn Yasār, az-Zuhrī, and Rabīʿah.

إِلَّا حَتَّى تَغْسِلَ جَمِيعَ جَسَدِهَا - رُوِّينَا ذَلِكَ عَنْ مُجَاهِدٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ وَمَكْحُولٍ، وَالْحَسَنِ، وَسُلَيْمَانَ بْنِ يَسَارٍ، وَالزُّهْرِيِّ، وَرَبِيعَةَ.

L32363 We have narrated it from Ata and Maymun ibn Mihran—and this is the view of Malik, al-Shafi'i, and their companions. Abu Hanifa and his companions maintained that if a menstruating woman's period lasts ten days, then upon the conclusion of the ten days, it becomes permissible for her husband to engage in conjugal relations with her—even if she does not wash her private parts, nor perform ablution, nor take a ritual bath. If her menstrual days are fewer than ten, then when she observes purity, it is not permissible for her husband to engage in conjugal relations with her except through one of two ways: either she performs the complete ritual bath, or the time of a prayer passes over her. If the time of a prayer has passed [since her purity], it becomes permissible for him to engage in conjugal relations with her—even if she does not take a ritual bath, nor wash her private parts, nor perform ablution.

وَرُوِّينَاهُ عَنْ عَطَاءٍ، وَمَيْمُونِ بْنِ مِهْرَانَ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمَا وَذَهَبَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، إِلَى أَنَّ الْحَائِضَ إِنْ كَانَتْ أَيَّامُهَا عَشْرَةً، فَإِنَّهَا بِانْقِضَاءِ الْعَشَرَةِ يَحِلُّ لِزَوْجِهَا وَطْؤُهَا - وَإِنْ لَمْ تَغْسِلْ فَرْجَهَا وَلَا تَوَضَّأَتْ وَلَا اغْتَسَلَتْ - فَإِنْ كَانَتْ أَيَّامُهَا أَقَلَّ مِنْ عَشَرَةٍ، فَإِنَّهَا إِذَا رَأَتْ الطُّهْرَ لَمْ يَحِلَّ لِزَوْجِهَا وَطْؤُهَا إِلَّا بِأَحَدِ وَجْهَيْنِ -: إِمَّا أَنْ تَغْتَسِلَ كُلُّهَا، وَإِمَّا أَنْ يَمْضِيَ عَلَيْهَا وَقْتُ صَلَاةٍ فَإِنْ مَضَى لَهَا وَقْتُ صَلَاةٍ حَلَّ لَهُ وَطْؤُهَا - وَإِنْ لَمْ تَغْتَسِلْ وَلَا غَسَلَتْ فَرْجَهَا وَلَا تَوَضَّأَتْ -

L32364 Abu Muhammad said: There is no statement more baseless than this, for it is an arbitrary assertion of falsehood without any evidence whatsoever. We know of no one who held this view before Abū Ḥanīfah or after him, except those who followed him.

قَالَ أَبُو مُحَمَّد: لَا قَوْلَ أَسْقَطُ مِنْ هَذَا، لِأَنَّهُ تَحَكُّمٌ بِالْبَاطِلِ بِلَا دَلِيلٍ أَصْلًا، وَلَا نَعْلَمُ أَحَدًا قَالَ قَبْلَ أَبِي حَنِيفَةَ وَلَا بَعْدَهُ، إِلَّا مَنْ قَلَّدَهُ.

L32365–32367 And a group has held an opinion similar to our view—as has been narrated to us through the chain of ʿAbd al-Razzāq: Ibn Jurayj narrated. Ma'mar said: Ibn Jurayj reported from 'Ata', and Ma'mar reported from Qatadah. Then 'Ata' and Qatadah concurred, both stating regarding the menstruating woman: When she observes [signs of] purity, she must wash her private parts, and her husband may have marital relations with her.

وَذَهَبَ قَوْمٌ إِلَى مِثْلِ قَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ رَنَا ابْنُ جُرَيْجٍ، وَمَعْمَرٌ قَالَ ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ وَقَالَ مَعْمَرٌ عَنْ قَتَادَةَ، ثُمَّ اتَّفَقَ عَطَاءٌ، وَقَتَادَةُ، فَقَالَا جَمِيعًا فِي الْحَائِضِ إِذَا رَأَتْ الطُّهْرَ فَإِنَّهَا تَغْسِلُ فَرْجَهَا وَيُصِيبُهَا زَوْجُهَا.

L32368 It has been narrated to us from ʿAṭāʾ that when she observes the cessation [of menstruation] and performs *wudu*, her husband may lawfully have intercourse with her. This is the opinion of Abū Sulaymān and all our companions.

وَرُوِّينَا عَنْ عَطَاءٍ أَنَّهَا إِذَا رَأَتْ الطُّهْرَ فَتَوَضَّأَتْ حَلَّ وَطْؤُهَا لِزَوْجِهَا - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا.

L32369 Abū Muḥammad said: Perhaps some obfuscator might confuse matters with the report we narrated through ʿAbd al-Karīm's chain from Miqsam from

Ibn ʿAbbās from the Prophet—peace and blessings of Allah be upon him and his family—"If he has intercourse with her—meaning the menstruating woman—after her blood has ceased and he has not performed ghusl, then half a dinar?" We have clarified: Miqsam is weak, and ʿAbd al-Karīm never met Miqsam, rendering this report worthless. This is further reinforced by the fact that the Mālikīs and Shāfiʿīs do not uphold this report.

L32370 Among invalid matters is for a person to cite a report that he himself first nullified. It might be argued: "He may not lawfully have intercourse with her unless she is in a state of ritual purity [where prayer is valid]."

L32371 Abū Muḥammad said: This is an error, for intercourse is not contingent upon prayer. A woman might be in a state of major ritual impurity (janabah), where intercourse with her is permissible though prayer is forbidden to her. Conversely, she might be observing iʿtikāf, in the state of iḥrām, or fasting, where prayer is permissible to her but intercourse is forbidden.

L32372–32374 Abu Muhammad said: Since there is no clarification in any of this except in the verse, it is obligatory to refer back to it. Allah the Exalted said: {And do not approach them until they attain purity. When they have purified themselves, then approach them from where Allah has commanded you} [Al-Baqarah: 222]. We find that He—Majestic and Exalted—did not permit intercourse with menstruating women except through two aspects: that menstruation ceases and that they perform purification. For the pronoun in "they purify themselves" indisputably refers—according to all proficient in Arabic—to the pronoun in "they attain purity," while the pronoun in "they attain purity" refers to menstruation. Thus, the meaning of "they attain purity" is the cessation of menstruation and the emergence of ritual purity, since the action is not ascribed to them. The meaning of "they purify themselves" denotes an act they perform, as the action is ascribed to them. Therefore, the verse must be understood according to its comprehensive implications and universal application. It is impermissible to contradict this, impermissible to restrict its scope, or limit it to only part of what its wording encompasses—excluding the whole—through false claims, thereby presenting mere asser-

قَالَ أَبُو مُحَمَّد: رُبَّمَا يُمَوِّهُ مُمَوِّهٌ بِالْخَبَرِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الْكَرِيمِ عَنْ مِقْسَمٍ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «وَإِنْ أَتَاهَا - يَعْنِي الْحَائِضَ - وَقَدْ أَدْبَرَ الدَّمُ عَنْهَا وَلَمْ يَغْتَسِلْ فَنِصْفُ دِينَارٍ» ؟ فَقَدْ قُلْنَا: إنْ مِقْسَمًا ضَعِيفٌ وَلَمْ يَلْقَ عَبْدُ الْكَرِيمِ مِقْسَمًا، فَهُوَ لَا شَيْءَ، وَلَا سِيَّمَا وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ لَا يَقُولُونَ بِهَذَا الْخَبَرِ.

وَمِنْ الْبَاطِلِ أَنْ يَحْتَجَّ الْمَرْءُ بِخَبَرٍ هُوَ أَوَّلُ مُبْطِلٍ لَهُ، وَلَعَلَّهُمْ أَنْ يَقُولُوا: لَا يَجُوزُ لَهُ وَطْؤُهَا إلَّا أَنْ تَجُوزَ لَهَا الصَّلَاةُ.

قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ، لِأَنَّ الْوَطْءَ لَيْسَ مُعَلَّقًا بِالصَّلَاةِ، فَقَدْ تَكُونُ الْمَرْأَةُ جُنُبًا فَيَحِلُّ وَطْؤُهَا، وَلَا تَحِلُّ لَهَا الصَّلَاةُ، وَتَكُونُ مُعْتَكِفَةً، وَمُحْرِمَةً وَصَائِمَةً فَتُصَلِّي وَلَا يَحِلُّ وَطْؤُهَا.

قَالَ أَبُو مُحَمَّد: فَإِذْ لَا بَيَانَ فِي شَيْءٍ مِنْ هَذَا إلَّا فِي الْآيَةِ، فَالْوَاجِبُ الرُّجُوعُ إلَيْهَا قَالَ اللَّهُ تَعَالَى: {وَلا تَقْرَبُوهُنَّ حَتَّى يَطْهُرْنَ فَإِذَا تَطَهَّرْنَ فَأْتُوهُنَّ مِنْ حَيْثُ أَمَرَكُمُ اللَّهُ} [البقرة: ٢٢٢] فَوَجَدْنَاهُ عَزَّ وَجَلَّ لَمْ يُبِحْ وَطْءَ الْحَائِضِ إلَّا بِوَجْهَيْنِ اثْنَيْنِ -: وَهِيَ أَنْ تَطْهُرَ، وَأَنْ تَطْهُرَ، لِأَنَّ الضَّمِيرَ الَّذِي فِي " تَطَهَّرْنَ " رَاجِعٌ بِلَا خِلَافٍ مِنْ أَحَدٍ مِمَّنْ يُحْسِنُ الْعَرَبِيَّةَ إلَى الضَّمِيرِ الَّذِي فِي " يَطْهُرْنَ " وَالضَّمِيرُ الَّذِي فِي " يَطْهُرْنَ " رَاجِعٌ إلَى الْحَيْضِ، فَكَانَ مَعْنَى " يَطْهُرْنَ " هُوَ انْقِطَاعُ الْحَيْضِ وَظُهُورُ الطُّهْرِ، لِأَنَّهُ لَمْ يُضِفْ الْفِعْلَ إلَيْهِنَّ، وَكَانَ مَعْنَى " يَطْهُرْنَ " فِعْلًا يَفْعَلْنَهُ، لِأَنَّهُ رَدَّ الْفِعْلَ إلَيْهِنَّ، فَوَجَبَ حَمْلُ الْآيَةِ عَلَى مُقْتَضَاهَا وَعُمُومِهَا، لَا يَجُوزُ غَيْرُ ذَلِكَ، وَلَا يَجُوزُ تَخْصِيصُهَا، وَلَا الِاخْتِصَارُ عَلَى بَعْضِ مَا يَقَعُ عَلَيْهِ لَفْظُهَا دُونَ كُلِّ مَا يَقَعُ عَلَيْهِ بِالدَّعْوَى الْكَاذِبَةِ، فَيَكُونُ إخْبَارًا عَنْ مُرَادِ اللَّهِ تَعَالَى بِمَا لَمْ يُخْبِرْ بِهِ عَزَّ وَجَلَّ عَنْ مُرَادِهِ، وَهَذَا حَرَامٌ - وَنَحْنُ نَشْهَدُ

tions as declarations of Allah the Exalted's intent. Allah, the Almighty and Majestic, did not inform us about it regarding His intent, and this is forbidden. We bear witness by the testimony of Allah, the Almighty and Majestic, that if He, Exalted, had willed any specific instance of what the term "you [feminine plural] purify yourselves" applies to, excluding the rest of what it applies to, He would have informed us about it, clarified it to us, and would not have left us to speculation and conjecture.[32]

L32375 The Almighty said: {And He has detailed for you what He has forbidden upon you} [al-Anʿām 6:119]. Thus, He, the Exalted and Majestic, has detailed for us what He prohibited, including intercourse with menstruating women: that it remains forbidden as long as they have not attained purity, until they complete their purification.[33]

L32376 It has thus been established that whatever bears the name of "purification" after they have become pure thereby, they have become lawful by it. Ablution is a purification without dispute, washing the private parts with water is likewise a purification, and washing the entire body is a purification. Therefore, by whichever of these means the woman who has observed the cessation of menstrual bleeding has purified herself, it has thereby become lawful for us to have intercourse with her - and with Allah, the Exalted, is all success.

L32377 ## The Rulings on the Wearing of the Silk and the Gold

L32378 ## A question regarding a woman's clothing of silk and gold in prayer and otherwise.

L32379 The rulings on wearing silk and gold (1915) - Issue: A woman's wearing of silk and gold during prayer and otherwise is permissible (ḥalāl), though there is disagreement on this matter. Some scholars did not permit it for women - as we have reported via the transmission chain of Aḥmad ibn Shuʿayb: Abū Bakr ibn ʿAlī al-Marwazī narrated to us, Shurayḥ ibn Yūnus narrated to us, Hushaym narrated to us, from Abī Bishr, from Yūsuf ibn Māhak: "A woman

بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ أَنَّهُ تَعَالَى لَوْ أَرَادَ بَعْضَ مَا يَقَعُ عَلَيْهِ اسْمُ " تَطَهَّرْنَ " دُونَ سَائِرِ مَا يَقَعُ عَلَيْهِ لَأَخْبَرَنَا بِهِ، وَلَبَيَّنَهُ عَلَيْنَا، وَلَمَا وَكَلَنَا إِلَى التَّكَهُّنِ وَالظُّنُونِ.

وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] فَقَدْ فَصَّلَ لَنَا عَزَّ وَجَلَّ مَا حَرَّمَ عَلَيْنَا مِنْ وَطْءِ الْحَائِضِ وَأَنَّهُ حَرَامٌ مَا لَمْ يَطْهُرْنَ فَيَطَّهَّرْنَ.

فَصَحَّ أَنَّ كُلَّ مَا يَقَعُ عَلَيْهِ اسْمُ " الطُّهْرِ " بَعْدَ أَنْ " يَطْهُرْنَ " فَقَدْ حَلَلْنَ بِهِ، وَالْوُضُوءُ تَطَهُّرٌ بِلَا خِلَافٍ، وَغَسْلُ الْفَرْجِ بِالْمَاءِ تَطَهُّرٌ كَذَلِكَ، وَغَسْلُ جَمِيعِ الْجَسَدِ تَطَهُّرٌ، فَبِأَيِّ هَذِهِ الْوُجُوهِ تَطَهَّرَتْ الَّتِي رَأَتْ الطُّهْرَ مِنْ الْحَيْضِ فَقَدْ حَلَّ بِهِ لَنَا إتْيَانُهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[أَحْكَامُ لِبْسُ الْحَرِيرِ وَالذَّهَبِ]

[مَسْأَلَةٌ لِبَاسُ الْمَرْأَةِ الْحَرِيرَ وَالذَّهَبَ فِي الصَّلَاةِ وَغَيْرِهَا]

أَحْكَامُ لِبْسُ الْحَرِيرِ وَالذَّهَبِ ١٩١٥ - مَسْأَلَةٌ: وَلِبَاسُ الْمَرْأَةِ الْحَرِيرَ وَالذَّهَبَ فِي الصَّلَاةِ وَغَيْرِهَا: حَلَالٌ، عَلَى أَنَّهُ قَدْ اُخْتُلِفَ فِي ذَلِكَ، فَلَمْ يُجِزْ ذَلِكَ قَوْمٌ لَهُنَّ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ حَدَّثَنَا أَبُو بَكْرِ بْنُ عَلِيٍّ الْمَرْوَزِيِّ نا شُرَيْحُ بْنُ يُونُسَ نا هُشَيْمٌ عَنْ أَبِي بِشْرٍ عَنْ يُوسُفَ بْنِ مَاهَكَ " أَنَّ امْرَأَةً سَأَلَتْ ابْنَ عُمَرَ عَنْ الْحَرِيرِ فَقَالَ لَهَا ابْنُ عُمَرَ: مَنْ لَبِسَهُ فِي الدُّنْيَا لَمْ يَلْبَسْهُ فِي الْآخِرَةِ ".

[32] **Qur'an references (L32372):** Qur'an 2:222 (Al-Baqarah).
[33] **Qur'an references (L32375):** Qur'an 6:119 (Al-An'am).

asked Ibn ʿUmar about silk, whereupon Ibn ʿUmar said to her: Whoever wears it in this world will not wear it in the Hereafter."

L32380 From the chain of Muslim: Ibn Abi Shaybah narrated to us: Ubayd ibn Saʿid from Shuʿbah from Khalifah ibn Kaʿb Abu Dhubyan, who said: I heard ʿAbdullah ibn al-Zubayr delivering a sermon, saying: "Behold! Do not dress your women in silk, for whoever wears silk in this world will not wear it in the Hereafter."

وَمِنْ طَرِيقِ مُسْلِمٍ نا ابْنُ أَبِي شَيْبَةَ نا عُبَيْدُ بْنُ سَعِيدٍ عَنْ شُعْبَةَ عَنْ خَلِيفَةَ بْنِ كَعْبٍ أَبِي ذُبْيَانَ قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ يَخْطُبُ يَقُولُ " أَلَا لَا تُلْبِسُوا نِسَاءَكُمْ الْحَرِيرَ فَإِنَّ مَنْ لَبِسَ الْحَرِيرَ فِي الدُّنْيَا لَمْ يَلْبَسْهُ فِي الْآخِرَةِ ".

L32381 From the path of Abd al-Razzaq, Maʾmar narrated to us from Ayyub al-Sikhtiyānī, from Ibn Sirin, that Abu Hurairah used to say to his daughter: "Do not wear gold, for I fear for you the heat of the flame."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ السَّخْتِيَانِيِّ عَنْ ابْنِ سِيرِينَ أَنَّ أَبَا هُرَيْرَةَ كَانَ يَقُولُ لِابْنَتِهِ " لَا تَلْبَسِي الذَّهَبَ فَإِنِّي أَخَافُ عَلَيْكِ حَرَّ اللَّهَبِ ".

L32382–32384 And through the narration of Waki‘ from Mubarak—who is the son of Fadilah—from al-Hasan that he deemed gold reprehensible for women. The proponents of this opinion cited a narration through al-Hasan: "The Messenger of Allah—may Allah bless him and his family and grant him peace—said, referring to women: 'The two red substances—gold and saffron—will ruin them.'" This is a mursal narration which cannot be used as proof. And with a report we have transmitted through the chain of ʿAbd al-Razzāq ibn Maʿmar from al-Zuhrī: "The Messenger of Allah—peace and blessings be upon him and his family—saw on ʿĀ'isha two silver bracelets gilded with gold, so he commanded her to discard them and make two silver bracelets, coloring them yellow with saffron." This is a mursal report, and there is no valid proof in a mursal report.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ مُبَارَكٍ - هُوَ ابْنُ فَاضِلَةَ - عَنْ الْحَسَنِ أَنَّهُ كَرِهَ الذَّهَبَ لِلنِّسَاءِ - وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِخَبَرٍ مِنْ طَرِيقِ الْحَسَنِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: يَعْنِي النِّسَاءَ - أَهْلَكَهُنَّ الْأَحْمَرَانِ الذَّهَبُ وَالزَّعْفَرَانُ» وَهَذَا مُرْسَلٌ لَا حُجَّةَ فِيهِ وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ بْنِ مَعْمَرٍ عَنْ الزُّهْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَأَى عَلَى عَائِشَةَ قُلَابَيْنِ مِنْ فِضَّةٍ مُلَوَّنَيْنِ بِذَهَبٍ فَأَمَرَهَا أَنْ تُلْقِيَهُمَا وَتَجْعَلَ قُلَابَيْنِ مِنْ فِضَّةٍ وَتُصَفِّرَهُمَا بِالزَّعْفَرَانِ» وَهَذَا مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ.

L32385 And with a narration we have narrated through Shuʿbah, Sufyān, al-Muʿtamir ibn Sulaymān, and Jarīr: all of them from Manṣūr ibn al-Muʿtamir from Ribʿī ibn Khirāsh from his wife from the sister of Ḥudhayfah. She said: "The Messenger of Allah (peace and blessings be upon him and his family) addressed us and said: 'O women! Do you not have silver to adorn yourselves with? Indeed, there is no woman who wears gold and flaunts it openly except that she is punished for it.'" This is narrated from the wife of Ribʿī—and she is an unknown narrator.

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ شُعْبَةَ، وَسُفْيَانَ، وَالْمُعْتَمِرِ بْنِ سُلَيْمَانَ، وَجَرِيرٍ كُلِّهِمْ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ رِبْعِيِّ بْنِ خِرَاشٍ عَنْ امْرَأَتِهِ عَنْ أُخْتِ حُذَيْفَةَ قَالَتْ: «خَطَبَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ يَا مَعْشَرَ النِّسَاءِ أَمَا لَكُنَّ فِي الْفِضَّةِ مَا تَحَلَّيْنَ، أَمَا إنَّهُ لَيْسَ مِنْ امْرَأَةٍ تَلْبَسُ ذَهَبًا تُظْهِرُهُ إلَّا عُذِّبَتْ بِهِ» وَهَذَا عَنْ امْرَأَةِ رِبْعِيٍّ - وَهِيَ مَجْهُولَةٌ.

L32386 Indeed, it was incumbent upon the Mālikīs and Ḥanafīs—those who adopted the narration of the wife of Abū Isḥāq regarding Umm Walad of Zayd ibn Arqam—to prohibit lawful matters through this report; otherwise, they would be contradictory.

وَلَقَدْ كَانَ يَلْزَمُ الْمَالِكِيِّينَ وَالْحَنَفِيِّينَ الْآخِذِينَ بِرِوَايَةِ امْرَأَةِ أَبِي إِسْحَاقَ عِنْدَ أُمِّ وَلَدِ زَيْدِ بْنِ أَرْقَمَ، فَحَرَّمُوا بِهِ الْحَلَالَ أَنْ يَقُولَ بِهَذَا الْخَبَرِ، وَإِلَّا فَهُمْ مُتَنَاقِضُونَ.

L32387 And with a narration containing Laith ibn Abi Sulaim—who is weak—from Shahr ibn Hawshab—who is similarly weak or deemed unreliable—from Asma bint Yazid ibn as-Sakan, who said: "The Messenger of Allah (peace and blessings be upon him) saw me wearing two gold bracelets and gold rings. He said to me (peace and blessings be upon him): 'Do you wish that Allah should encircle you with two bracelets of fire and rings of fire?' I replied: 'No.' He said: 'Then remove these two. Is it too difficult for any of you women to wear two silver rings or earrings, then coat them with perfume, wars, or saffron?'"

وَبِخَبَرٍ فِيهِ لَيْثُ بْنُ أَبِي سُلَيْمٍ - وَهُوَ ضَعِيفٌ - عَنْ شَهْرِ بْنِ حَوْشَبٍ - وَهُوَ مِثْلُهُ أَوْ أَسْقَطُ مِنْهُ عَنْ «أَسْمَاءَ بِنْتِ يَزِيدَ بْنِ السَّكَنِ قَالَتْ: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَأَى عَلَيَّ سِوَارَيْنِ مِنْ ذَهَبٍ وَخَوَاتِمَ مِنْ ذَهَبٍ فَقَالَ لِي - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: أَتُحِبِّينَ أَنْ يُسَوِّرَكِ اللَّهُ بِسِوَارَيْنِ مِنْ نَارٍ وَخَوَاتِمَ مِنْ نَارٍ؟ قَالَتْ: لَا، قَالَ: فَانْزَعِي هَذَيْنِ، أَتَعْجَزُ إِحْدَاكُنَّ أَنْ تَتَّخِذَ حَلْقَتَيْنِ أَوْ تُومَتَيْنِ مِنْ فِضَّةٍ، ثُمَّ تُلَطِّخُهُمَا بِعَبِيرٍ، أَوْ وَرْسٍ أَوْ زَعْفَرَانٍ» .

L32388 And another report—in it: Mahmud ibn 'Amr al-Ansari from Shahr: that Asma' bint Yazid ibn al-Sakan narrated to him from the Messenger of Allah—peace and blessings be upon him—who said: "Any woman who wears a necklace of gold will be given a necklace of fire like it around her neck on the Day of Resurrection. And any woman who places in her ear a piece of gold, Allah will place in her ear a piece of fire like it on the Day of Resurrection."

وَخَبَرٍ آخَرَ - فِيهِ: مَحْمُودُ بْنُ عَمْرٍو الْأَنْصَارِيُّ عَنْ شَهْرٍ: أَنَّ أَسْمَاءَ بِنْتَ يَزِيدَ بْنِ السَّكَنِ حَدَّثَتْهُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «أَيُّمَا امْرَأَةٍ تَقَلَّدَتْ قِلَادَةً مِنْ ذَهَبٍ قُلِّدَتْ فِي عُنُقِهَا مِثْلُهَا مِنْ النَّارِ يَوْمَ الْقِيَامَةِ، وَأَيُّمَا امْرَأَةٍ جَعَلَتْ فِي أُذُنِهَا خَرْصًا مِنْ ذَهَبٍ جَعَلَهُ اللَّهُ فِي أُذُنِهَا مِنْ النَّارِ يَوْمَ الْقِيَامَةِ» .

L32389–32391 Mahmud ibn Amr is weak, and another—through the chain of Abu Zayd from Abu Hurayrah—that Abu Hurayrah was with the Messenger of Allah, peace and blessings be upon him and his family, when a woman wearing two gold bracelets came to him. The Prophet, peace and blessings be upon him and his family, said: "Two bracelets of fire?" She asked: "What do you think of a gold necklace?" He replied: "A necklace of fire?" She said: "What do you think of two gold earrings?" He answered: "Two earrings of fire?" Abu Zayd is unknown. And with a sound narration—we have transmitted it through the chain of Ahmad ibn Shuʿayb: al-Rabīʿ ibn Sulaymān ibn Dāwūd narrated to me, Isḥāq ibn Bakr narrated to us from his father, from ʿAmr ibn al-Ḥārith, from Ibn Shihāb, from ʿUrwah ibn al-Zubayr, from ʿĀ'ishah, the

وَمَحْمُودُ بْنُ عَمْرٍو ضَعِيفٌ وَآخَرَ - مِنْ طَرِيقِ أَبِي زَيْدٍ عَنْ «أَبِي هُرَيْرَةَ أَنَّهُ كَانَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَجَاءَتْهُ امْرَأَةٌ عَلَيْهَا سِوَارَانِ مِنْ ذَهَبٍ؟ فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: سِوَارَانِ مِنْ نَارٍ؟ فَقَالَتْ: مَا تَرَى فِي طَوْقٍ مِنْ ذَهَبٍ، قَالَ: طَوْقٌ مِنْ نَارٍ؟ قَالَتْ: فَمَا تَرَى فِي قُرْطَيْنِ مِنْ ذَهَبٍ؟ قَالَ: قُرْطَانِ مِنْ نَارٍ» وَأَبُو زَيْدٍ مَجْهُولٌ وَبِخَبَرٍ صَحِيحٍ - رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي الرَّبِيعُ بْنُ سُلَيْمَانَ بْنِ دَاوُد نا إِسْحَاقُ بْنُ بَكْرٍ حَدَّثَنِي أَبِي عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ

Mother of the Believers, that the Messenger of God—may God's blessings and peace be upon him and his family—saw her wearing two gold bracelets. The Messenger of God—may God's blessings and peace be upon him and his family—said to her: "Shall I not inform you of what is more beautiful than this? If you remove these and replace them with two silver bracelets, then dye them yellow with saffron, they would be beautiful."[34]

بْنِ الزُّبَيْرِ «عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَأَى عَلَيْهَا مَسَكَتَيْ ذَهَبٍ، فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: أَلَا أُخْبِرُك بِمَا هُوَ أَحْسَنُ مِنْ هَذَا لَوْ نَزَعْتِ هَذَا وَجَعَلْتِ مَسَكَتَيْنِ مِنْ وَرِقٍ، ثُمَّ صَفَّرْتِهِمَا بِزَعْفَرَانٍ كَانَتَا حَسَنَتَيْنِ» .

L32392 This report is evidence for us, because there is nothing in this report stating that the Prophet—may the peace and blessings of Allah be upon him—prohibited her from the two gold bracelets. Rather, it only states that he—may the peace and blessings of Allah be upon him—chose for her other than them, and this is what we uphold.

وَهَذَا الْخَبَرُ حُجَّةٌ لَنَا، لِأَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ: أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَاهَا عَنْ مَسَكَتَيْ الذَّهَبِ، إنَّمَا فِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - اخْتَارَ لَهَا غَيْرَهُ - وَنَحْنُ نَقُولُ بِهَذَا.

L32393 They argued with a report we narrated through the chain of Abū Dāwūd: ʿAbdullāh ibn Maslamah—he is al-Qaʿnabī—narrated to us: ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī narrated to us from Usayd ibn Abī Usayd al-Barrād from Nāfiʿ from Ibn ʿAbbās from Abū Hurayrah that the Messenger of Allah—peace and blessings be upon him—said: "Whoever wishes to make a ring of fire on his forehead, let him make a ring of gold upon it. Whoever wishes to collar his forehead with a collar of fire, let him collar it with a collar of gold. Whoever wishes to bracelet his forehead with a bracelet of fire, let him bracelet it with a bracelet of gold. But you should adhere to silver—use it freely."

وَاحْتَجُّوا بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ - هُوَ الْقَعْنَبِيُّ - نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ أُسَيْدِ بْنِ أَبِي أُسَيْدٍ الْبَرَّادِ عَنْ نَافِعٍ عَنْ ابْنِ عَبَّاسٍ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ أَحَبَّ أَنْ يُحَلِّقَ جَبِينَهُ حَلْقَةً مِنْ نَارٍ فَلْيُحَلِّقْهُ حَلْقَةً مِنْ ذَهَبٍ، وَمَنْ أَحَبَّ أَنْ يُطَوِّقَ جَبِينَهُ طَوْقًا مِنْ نَارٍ فَلْيُطَوِّقْهُ طَوْقًا مِنْ ذَهَبٍ، وَمَنْ أَحَبَّ أَنْ يُسَوِّرَ جَبِينَهُ بِسِوَارٍ مِنْ نَارٍ فَلْيُسَوِّرْهُ سِوَارًا مِنْ ذَهَبٍ وَلَكِنْ عَلَيْكُمْ بِالْفِضَّةِ فَالْعَبُوا بِهَا» .

L32394 Abu Muhammad said: This is a general statement from which an exception must be made for the saying of the Messenger of Allah (ṣallallāhu ʿalayhi wa-ālihi wa-sallam): "Indeed, gold is forbidden for the males of my Ummah and permitted for its females."

قَالَ أَبُو مُحَمَّدٍ: هَذَا مُجْمَلٌ يَجِبُ أَنْ يُخَصَّ مِنْهُ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّ الذَّهَبَ حَرَامٌ عَلَى ذُكُورِ أُمَّتِي حَلَالٌ لِإِنَاثِهَا» .

L32395 Because it is the least significant of its implications, and some parts of it are excluded. They mentioned what we have narrated through the chain of transmission of Ahmad ibn Shuʿayb, from Wahb ibn Bayān, from Ibn Wahb, from ʿAmr ibn al-Ḥārith, that Abū ʿUshānah reported to him, having heard

لِأَنَّهُ أَقَلُّ مَعَانِ مِنْهُ وَمُسْتَثْنًى بَعْضُ مَا فِيهِ وَذَكَرُوا - مَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا وَهْبُ بْنُ بَيَانٍ نا ابْنُ وَهْبٍ نا عَمْرُو بْنُ الْحَارِثِ أَنَّ أَبَا عُشَانَةَ حَدَّثَهُ أَنَّهُ سَمِعَ

[34] **Hadith references (L32389):** Sunan an-Nasai 5143.

ʿUqbah ibn ʿĀmir relate: “The Messenger of Allah (peace and blessings be upon him and his family) would forbid his family from wearing adornments and silk, saying: ’If you love the adornments and silk of Paradise, then do not wear either of them in this world.”’

L32396 Abū Muḥammad said: Abū ʻUshānah is not renowned in transmission—then, even if it were authentic, it would be universally applicable to men and women, but it is restricted by the report stating: “Gold and silk are forbidden for the males of my community but permissible for their females.”

L32397–32399 And another narration—through the chain of Aḥmad ibn Shuʿayb: ʿUbaydullāh ibn Saʿīd informed us; Muʿādh ibn Hishām al-Dastawā’ī informed us; Ubayy narrated from Yaḥyā ibn Abī Kathīr, who said: Zayd—who is the son of Salām—related to me from... Abi Salam—who is Mamṭur al-Habashi—from Abi Asma al-Rahabi—who is Amr ibn Marthad—said: Thawban, the freed slave of the Messenger of Allah (peace and blessings of Allah be upon him), reported: “The daughter of Hubayrah came to the Messenger of Allah (peace and blessings of Allah be upon him and his family) with a fatakh in her hand.” Mu’adh said: “As written in my father’s book”—meaning large rings. The Messenger of Allah (peace and blessings of Allah be upon him and his family) began striking her hands. She then went to Fatimah to complain, whereupon Fatimah removed a gold chain from her neck and said: “This was gifted to me by Abu Hasan.” When the Messenger of Allah (peace and blessings of Allah be upon him and his family) entered while the chain was in her hand, he said: “Would it please you that people say, ’The daughter of the Messenger of Allah has a chain of fire in your hand?”’ He then departed without sitting. Fatimah sent the chain to the market, sold it, and purchased a slave with its price—and he mentioned a word indicating she emancipated him. When this was relayed to the Prophet (peace and blessings of Allah be upon him), he said: “Praise be to Allah who saved Fatimah from the Fire.”

L32400 Abu Muhammad said: As for the Messenger of Allah (may the peace and blessings of Allah be upon him and his family) striking Bint Hubayrah’s hands, it does not state that he (may the peace and blessings of Allah be upon him

عُقْبَةَ بْنَ عَامِرٍ يُخْبِرُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ يَمْنَعُ أَهْلَهُ الْحِلْيَةَ وَالْحَرِيرَ، وَيَقُولُ: إِنْ كُنْتُمْ تُحِبُّونَ حِلْيَةَ الْجَنَّةِ وَحَرِيرَهَا فَلَا تَلْبَسُوهُمَا فِي الدُّنْيَا» .

قَالَ أَبُو مُحَمَّدٍ: أَبُو عُشَانَةَ غَيْرُ مَشْهُورٍ بِالنَّقْلِ - ثُمَّ لَوْ صَحَّ لَكَانَ عَامًّا لِلرِّجَالِ وَالنِّسَاءِ يَخُصُّهُ الْخَبَرُ الَّذِي فِيهِ «أَنَّ الذَّهَبَ وَالْحَرِيرَ حَرَامٌ عَلَى ذُكُورِ أُمَّتِي حَلَالٌ لِإِنَاثِهَا» .

وَحَدِيثٌ آخَرُ - مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عُبَيْدُ اللَّهِ بْنُ سَعِيدٍ نَا مُعَاذُ بْنُ هِشَامٍ - هُوَ الدَّسْتُوَائِيُّ - نَا أُبَيٌّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ حَدَّثَنِي زَيْدٌ - هُوَ ابْنُ سَلَامٍ - عَنْ أَبِي سَلَامٍ - هُوَ مَمْطُورٌ الْحَبَشِيُّ - عَنْ أَبِي أَسْمَاءَ الرَّحَبِيِّ - هُوَ عَمْرُو بْنُ مَرْثَدٍ - قَالَ: إِنَّ ثَوْبَانَ مَوْلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «جَاءَتْ ابْنَةُ هُبَيْرَةَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي يَدِهَا فَتَخٌ - قَالَ مُعَاذٌ: كَذَا فِي كِتَابِ أَبِي - أَيْ خَوَاتِمُ كِبَارٌ - فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَضْرِبُ يَدَيْهَا فَدَخَلَتْ عَلَى فَاطِمَةَ تَشْكُو ذَلِكَ إِلَيْهَا، فَنَزَعَتْ فَاطِمَةُ سِلْسِلَةً مِنْ ذَهَبٍ فِي عُنُقِهَا، فَقَالَتْ: هَذِهِ أَهْدَاهَا أَبُو حَسَنٍ، فَدَخَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَالسِّلْسِلَةُ فِي يَدِهَا، فَقَالَ: أَيَسُرُّكِ أَنْ تَقُولَ النَّاسُ ابْنَةُ رَسُولِ اللَّهِ وَفِي يَدِكِ سِلْسِلَةٌ مِنْ نَارٍ - ثُمَّ خَرَجَ وَلَمْ يَقْعُدْ، فَأَرْسَلَتْ فَاطِمَةُ بِالسِّلْسِلَةِ إِلَى السُّوقِ فَبَاعَتْهَا وَاشْتَرَتْ بِثَمَنِهَا غُلَامًا - وَذَكَرَ كَلِمَةً مَعْنَاهَا: فَأَعْتَقَتْهُ - فَحُدِّثَ بِذَلِكَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: الْحَمْدُ لِلَّهِ الَّذِي نَجَّى فَاطِمَةَ مِنَ النَّارِ» .

and his family) struck her specifically due to the rings, nor does it indicate that those rings were made of gold.

قَالَ أَبُو مُحَمَّد: أَمَّا ضَرْبُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَدَيْ بِنْتِ هُبَيْرَةَ فَلَيْسَ فِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّمَا ضَرَبَهَا مِنْ أَجْلِ الْخَوَاتِمِ، وَلَا فِيهِ أَيْضًا: أَنَّ تِلْكَ الْخَوَاتِمَ كَانَتْ مِنْ ذَهَبٍ.

L32401 Whoever adds these two meanings to the report has undoubtedly lied, following what he has no knowledge of and what the narrator of the report did not convey. This is purely forbidden. It is possible that the reason he—peace and blessings be upon him—struck both her hands was because she exposed parts of her arms she was not permitted to reveal, or for other reasons about which he—peace and blessings be upon him—has greater knowledge.

وَمَنْ زَادَ هَذَيْنِ الْمَعْنَيَيْنِ فِي الْخَبَرِ فَقَدْ كَذَبَ بِلَا شَكٍّ، وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَمَا لَمْ يُخْبِرْ بِهِ رَاوِي الْخَبَرِ، وَهَذَا حَرَامٌ بَحْتٌ، وَقَدْ يُمْكِنُ أَنْ يَكُونَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - ضَرْبُ يَدَيْهَا لِأَنَّهَا أَبْرَزَتْ عَنْ ذِرَاعَيْهَا مَا لَا يَحِلُّ لَهَا إبْرَازُهُ، أَوْ لِغَيْرِ ذَلِكَ مِمَّا هُوَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَعْلَمُ بِهِ

L32402 As for his statement, “Would it please you that people say, ‘The daughter of the Messenger of God,’ while you hold a chain of fire in your hand?”—the apparent meaning of the wording, which cannot be understood otherwise, is that he (peace be upon him) only objected to her holding it in her hand. The wording of the report contains no explicit text beyond this, nor is there any evidence for such a prohibition. There is nothing in it stating that he (peace be upon him) forbade her from wearing it or owning it. This is beyond doubt.

وَأَمَّا قَوْلُهُ «أَيَسُرُّكِ أَنْ يَقُولَ النَّاسُ ابْنَةُ رَسُولِ اللَّهِ وَفِي يَدِكِ سِلْسِلَةٌ مِنْ نَارٍ» فَظَاهِرُ اللَّفْظِ الَّذِي لَيْسَ يُفْهَمُ مِنْهُ سِوَاهُ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّمَا أَنْكَرَ إمْسَاكَهَا إيَّاهَا بِيَدِهَا، لَيْسَ فِي لَفْظِ الْخَبَرِ نَصٌّ بِغَيْرِ هَذَا، وَلَا دَلِيلٌ عَلَيْهِ، وَلَيْسَ فِيهِ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - نَهَاهَا عَنْ لِبَاسِهَا وَلَا عَنْ تَمَلُّكِهَا، هَذَا لَا شَكَّ فِيهِ.

L32403 And it is indeed possible that he—peace and blessings be upon him—knew she had not purified it through zakat, though it was among what is subject to obligatory zakat, as the Mighty and Majestic says: “And those who hoard gold and silver and spend it not in Allah’s way—give them tidings of a painful punishment” [At-Tawbah: 34], “on the Day when it will be heated in Hellfire, then their foreheads, sides, and backs will be branded with it: ‘This is what you hoarded for yourselves. Now taste what you stored!’” [At-Tawbah: 35].[35]

وَقَدْ يُمْكِنُ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلِمَ أَنَّهَا لَمْ تُزَكِّهَا وَكَانَتْ مِمَّا تَجِبُ فِيهِ الزَّكَاةُ كَمَا قَالَ عَزَّ وَجَلَّ: {وَالَّذِينَ يَكْنِزُونَ الذَّهَبَ وَالْفِضَّةَ وَلا يُنْفِقُونَهَا فِي سَبِيلِ اللَّهِ فَبَشِّرْهُمْ بِعَذَابٍ أَلِيمٍ} [التوبة: ٣٤] {يَوْمَ يُحْمَى عَلَيْهَا فِي نَارِ جَهَنَّمَ فَتُكْوَى بِهَا جِبَاهُهُمْ وَجُنُوبُهُمْ وَظُهُورُهُمْ هَذَا مَا كَنَزْتُمْ لأَنْفُسِكُمْ فَذُوقُوا مَا كُنْتُمْ تَكْنِزُونَ} [التوبة: ٣٥] .

L32404–32406 And Allah knows best on what basis she denied that the chain was in her hand—may Allah be pleased with her—except that there is nothing in it. The absolute prohibition of her wearing it for herself is established; rather, there is an explicit text: that he (peace and blessings be upon him) permitted her

وَاَللَّهُ أَعْلَمُ لِأَيِّ وَجْهٍ أَنْكَرَ كَوْنَ السِّلْسِلَةِ فِي يَدِهَا - رَضِيَ اللَّهُ عَنْهَا - إلَّا أَنَّهُ لَيْسَ فِيهِ أَلْبَتَّةَ تَحْرِيمُ لِبَاسِهَا لَهَا، بَلْ فِيهِ نَصًّا: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَبَاحَ لَهَا مِلْكَهَا يَقِينًا لَا شَكَّ فِيهِ، لِأَنَّهُ جَوَّزَ بَيْعَهَا لِلسِّلْسِلَةِ، وَجَوَّزَ لِلْمُشْتَرِي لَهَا مِنْهَا شِرَاؤُهَا، وَأَمَّا إمْسَاكُهَا

[35] **Qur’an references (L32403):** Qur’an 9:34 (At-Tawbah); Qur’an 9:35 (At-Tawbah).

بِالْيَدِ الَّذِي فِي هَذَا الْخَبَرِ إِنْكَارُهُ فَقَدْ نُسِخَ بِيَقِينٍ لَا شَكَّ فِيهِ، لِإِيجَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الزَّكَاةَ فِي الذَّهَبِ وَإِبَاحَتِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَيْعَ الذَّهَبِ بِالذَّهَبِ مِثْلًا بِمِثْلٍ، وَزْنًا بِوَزْنٍ، وَإِبَاحَتِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَيْعَ قِلَادَةِ الذَّهَبِ الَّتِي أُصِيبَتْ بِخَيْبَرَ بَعْدَ أَنْ أَمَرَ بِنَزْعِ الْخَرَزِ عَنْهَا، وَبَيْعَ الذَّهَبِ بِالذَّهَبِ مِثْلًا بِمِثْلٍ، وَلَمْ يُحَرِّمْ بَيْعَ الْقِلَادَةِ الَّتِي فِيهَا الذَّهَبُ، وَلَا ابْتِيَاعَهَا وَلَا أَمَرَ بِكَسْرِهَا.

ownership of it with certainty, without any doubt, because he allowed her to sell it as a chain and permitted the buyer to purchase it from her. As for the denial of her holding it by hand mentioned in this report, it has been abrogated with certainty, without any doubt, due to the Messenger of Allah (peace and blessings be upon him) obligating zakāh on gold, his permission (peace and blessings be upon him) to sell gold for gold, like for like, weight for weight, his permission (peace and blessings be upon him) to sell the gold necklace acquired at Khaybar after ordering the beads to be removed from it, and to sell gold for gold, like for like, weight for weight. He did not prohibit selling the necklace containing gold, nor purchasing it, nor did he command its destruction.

وَلَا خِلَافَ فِي أَنَّ إِيجَابَ الزَّكَاةِ فِي الذَّهَبِ وَإِبَاحَةَ بَيْعِهِ بِالذَّهَبِ مِثْلًا بِمِثْلٍ بَاقٍ إِلَى يَوْمِ الْقِيَامَةِ لَمْ يُنْسَخْ.

L32407 There is no dispute that the obligation of zakat concerning gold and the permissibility of selling it in exchange for gold, like for like, remains until the Day of Resurrection and has not been abrogated.

وَأَمَّا قَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إِذْ بَلَغَهُ بَيْعُ فَاطِمَةَ - رَضِيَ اللَّهُ عَنْهَا - السِّلْسِلَةَ الذَّهَبَ وَابْتِيَاعَهَا بِثَمَنِهَا غُلَامًا فَأَعْتَقَتْهُ «الْحَمْدُ لِلَّهِ الَّذِي أَنْقَذَ فَاطِمَةَ مِنْ النَّارِ» .

L32408 As for his statement—peace and blessings be upon him—when he was informed of Fāṭimah's (may Allah be pleased with her) sale of the golden chain and her purchasing a slave with its price, then she emancipated him: "Praise be to Allah Who rescued Fāṭimah from the Fire."

فَالَّذِي لَا شَكَّ فِيهِ، فَهُوَ أَنَّهُ قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا قُتَيْبَةُ بْنُ سَعْدٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ الْهَادِ عَنْ عُمَرَ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ سَعِيدِ بْنِ مَرْجَانَةَ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «مَنْ أَعْتَقَ رَقَبَةً أَعْتَقَ اللَّهُ بِكُلِّ عُضْوٍ مِنْهَا عُضْوًا مِنْ النَّارِ حَتَّى فَرْجِهِ بِفَرْجِهِ» .

L32409 As for that which is beyond doubt, it is that there has been authentically reported from the Messenger of Allah—peace and blessings be upon him and his family—what we have narrated through the chain of Muslim: Qutaybah ibn Sa'd narrated to us, al-Layth—he is Ibn Sa'd—narrated to us, on the authority of Ibn al-Hād, from 'Umar ibn 'Alī ibn al-Ḥusayn, from Sa'īd ibn Marjānah, from Abū Hurayrah, from the Messenger of Allah—peace and blessings be upon him and his family—who said: "Whoever frees a slave, for every limb of the slave Allah will free a limb of his from the Fire, even his private part for his private part."

فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ اللَّهَ تَعَالَى أَنْقَذَهَا مِنْ النَّارِ بِعِتْقِهَا لِلْغُلَامِ

L32410 So we are certain that Allah, the Exalted, saved her from the Fire through her emancipation for the slave boy.

L32411 And whoever claims that he saved her from the Fire by her selling the chain has presumed what he has no knowledge of, has uttered what he has no evidence for, and possesses no demonstrative proof of its validity. There

is no explicit text in the tradition regarding it, nor any indication except conjecture, which is the most deceitful of speech.

وَمَنْ ادَّعَى أَنَّهُ إِنَّمَا أَنْقَذَهَا مِنْ النَّارِ بِبَيْعِهَا السِّلْسِلَةَ فَقَدْ قَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَقَالَ مَا لَا دَلِيلَ لَهُ عَلَيْهِ، وَلَا بُرْهَانَ عِنْدَهُ بِصِحَّتِهِ، وَمَا لَيْسَ فِي الْخَبَرِ مِنْهُ نَصٌّ، وَلَا دَلِيلٌ إِلَّا بِالظَّنِّ الَّذِي هُوَ أَكْذَبُ الْحَدِيثِ.

L32412–32414 An authentic narration has been transmitted regarding the reprehensibility of touching gold ornaments—as we have been narrated through the chain of Abū Dāwūd: narrated to us by Ibn Nufayl, who was ʿAbdullāh ibn Muḥammad ibn Nufayl, narrated to us by Muḥammad ibn Salamah from Muḥammad ibn Isḥāq, who said: "Yaḥyā ibn ʿAbbād ibn ʿAbdullāh ibn al-Zubayr narrated to me from ʿĀ'ishah, the Mother of the Believers, who said: 'A piece of jewelry was brought to the Messenger of Allah (peace and blessings be upon him and his family) from the Negus, which the Negus had gifted to him. It contained a gold ring with an Ethiopian-stone bezel.' She said: 'The Messenger of Allah (peace and blessings be upon him and his family) took it using a stick while turning away, or [...]'" With some of his fingers, then he called Umamah bint Abi al-ʿĀṣ, the daughter of Zaynab, and said: "Wear this ornament, my daughter."

وَقَدْ جَاءَ فِي كَرَاهَةِ مَسِّ حُلِيِّ الذَّهَبِ أَثَرٌ صَحِيحٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا ابْنُ نُفَيْلٍ - هُوَ عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ نُفَيْلٍ - نا مُحَمَّدُ بْنُ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ حَدَّثَنِي يَحْيَى بْنُ عَبَّادِ بْنِ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ عَنْ «عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ قَدِمَتْ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حِلْيَةٌ مِنْ عِنْدِ النَّجَاشِيِّ أَهْدَاهَا لَهُ فِيهَا خَاتَمٌ مِنْ ذَهَبٍ فِيهِ فَصٌّ حَبَشِيٌّ قَالَتْ: فَأَخَذَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِعُودٍ مُعْرِضًا أَوْ بِبَعْضِ أَصَابِعِهِ، ثُمَّ دَعَا أُمَامَةَ بِنْتَ أَبِي الْعَاصِ ابْنَةَ زَيْنَبَ فَقَالَ: تَحَلَّيْ بِهَذَا يَا بُنَيَّةُ» .

L32415 The Messenger of Allah—peace be upon him and his family—disliked touching a gold ring, and perhaps he disliked it for Fatimah as well. Yet despite that, he put it on Umamah bint Abi al-ʿAs.

فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدْ كَرِهَ مَسَّ خَاتَمِ الذَّهَبِ فَلَعَلَّهُ كَرِهَهُ لِفَاطِمَةَ أَيْضًا، وَمَعَ ذَلِكَ حَلَّاهُ أُمَامَةَ بِنْتَ أَبِي الْعَاصِ.

L32416 Abu Muhammad said: The ruling on all of that is what we have transmitted through the chain of Ahmad ibn Shuʿayb: ʿAmr ibn ʿAlī narrated to us from Yaḥyā (he is Ibn Saʿīd al-Qaṭṭān), Yazīd (he is Ibn Zuraiʿ), Muʿtamir (he is Ibn Sulaymān al-Taymī), and Bishr ibn al-Mufaḍḍal. All of them narrated from ʿUbayd Allāh ibn ʿUmar, from Nāfiʿ, the freed slave of Ibn ʿUmar, from Saʿīd ibn Abī Hind, from Abū Mūsā al-Ashʿarī: "The Messenger of Allāh—may Allāh bless him and his family and grant him peace—said: 'Allāh has made silk and gold lawful for the females of my nation and forbidden them for their males.'"

قَالَ أَبُو مُحَمَّدٍ: وَالْحَاكِمُ عَلَى كُلِّ ذَلِكَ هُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - وَيَزِيدُ - هُوَ ابْنُ زُرَيْعٍ - وَمُعْتَمِرٌ - هُوَ ابْنُ سُلَيْمَانَ التَّيْمِيُّ - وَبِشْرُ بْنُ الْمُفَضَّلِ قَالُوا كُلُّهُمْ: نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ عَنْ سَعِيدِ بْنِ أَبِي هِنْدٍ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «إِنَّ اللَّهَ أَحَلَّ لِإِنَاثِ أُمَّتِي الْحَرِيرَ وَالذَّهَبَ وَحَرَّمَهُ عَلَى ذُكُورِهَا» .

L32417 It has also been narrated by us through the chain of Ḥammād ibn Salamah, ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī, Abū Muʿāwiyah al-Ḍarīr, and

Ḥammād ibn Masʿadah—all of them from ʿUbayd Allāh ibn ʿUmar with his chain. However, they restricted their accounts to mentioning silk alone, except Ḥammād ibn Salamah, whereas he included both silk and gold.

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ، وَعَبْدِ الْوَهَّابِ بْنِ عَبْدِ الْمَجِيدِ الثَّقَفِيِّ، وَأَبِي مُعَاوِيَةَ الضَّرِيرِ، وَحَمَّادِ بْنِ مَسْعَدَةَ كُلِّهِمْ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ بِإِسْنَادِهِ، إِلَّا أَنَّهُمْ اقْتَصَرُوا عَلَى ذِكْرِ الْحَرِيرِ فَقَطْ إِلَّا حَمَّادَ بْنَ سَلَمَةَ فَإِنَّهُ ذَكَرَ: الْحَرِيرَ وَالذَّهَبَ.

L32418 We have also narrated it through the chain of Sa'id ibn Abi 'Arubah and Ma'mar, both of whom reported from Ayyub al-Sikhtiyani from Nafi' via his chain of transmission, and the narrator mentioned silk and gold. This is an authentic report because Sa'id ibn Abi Hind is a trustworthy and renowned authority from whom Nafi' and Musa ibn Maysarah narrated.

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، وَمَعْمَرٍ، وَكِلَاهُمَا عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ بِإِسْنَادِهِ وَذَكَرَ الْحَرِيرَ وَالذَّهَبَ وَهُوَ أَثَرٌ صَحِيحٌ؛ لِأَنَّ سَعِيدَ بْنَ أَبِي هِنْدٍ ثِقَةٌ مَشْهُورٌ رَوَى عَنْهُ نَافِعٌ وَمُوسَى بْنُ مَيْسَرَةَ.

L32419 Through the chain of Abū Dāwūd: Aḥmad ibn Ḥanbal narrated to us, Yaʿqūb—the son of Ibrāhīm ibn Saʿd ibn Ibrāhīm ibn ʿAbd al-Raḥmān ibn ʿAwf—narrated to us from his father, from Ibn Isḥāq, who said: Nāfiʿ, the freed slave of Ibn ʿUmar, narrated to me from ʿAbdullāh ibn ʿUmar, who said: He heard the Messenger of Allah—peace and blessings be upon him and his family—forbid women in their state of iḥrām from wearing gloves and the niqāb, and from clothes dyed with wars (wars dye) or saffron. However, after that, they may wear whatever they desire of safflower-dyed garments, shoes, jewelry, trousers, shirts, or khuffs. The Messenger of Allah—upon him be prayers and peace—applied a general ruling to all jewelry for them, and if gold had been forbidden for them, he—peace and blessings be upon him and his family—would have undoubtedly clarified it. Since he did not explicitly prohibit it, this is permissible for them.

وَمِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ حَنْبَلٍ نَا يَعْقُوبُ هُوَ ابْنُ إِبْرَاهِيمَ بْنِ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - نا أَبِي عَنْ ابْنِ إِسْحَاقَ قَالَ: إنَّ نَافِعًا مَوْلَى ابْنِ عُمَرَ حَدَّثَنِي عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: إنَّهُ «سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَهَى النِّسَاءَ فِي إحْرَامِهِنَّ عَنْ الْقُفَّازَيْنِ وَالنِّقَابِ، وَمَا مَسَّ الْوَرْسُ، أَوْ الزَّعْفَرَانُ، مِنْ الثِّيَابِ، وَلْتَلْبَسْ بَعْدَ ذَلِكَ مَا أَحَبَّتْ مِنْ مُعَصْفَرٍ، أَوْ حِذَاءٍ، أَوْ حُلِيٍّ، أَوْ سَرَاوِيلَ، أَوْ قَمِيصٍ، أَوْ خُفٍّ» فَعَمَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهَا جَمِيعَ الْحُلِيِّ، وَلَوْ كَانَ الذَّهَبُ حَرَامًا عَلَيْهِنَّ لَبَيَّنَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِلَا شَكٍّ، فَإِذْ لَمْ يُنَصَّ عَلَى مَنْعِهِ، فَهَذَا حَلَالٌ لَهُنَّ -.

L32420–32422 And with Allah, the Exalted, is success—and this is what a group of the *Salaf* state. It has been narrated to us through the chains of Ḥammād ibn Salamah and Qaṭādah. Qaṭādah reported from ʿAlī ibn ʿAbdillāh al-Bāriqī, and Ḥammād reported from ʿUqbah ibn Wassāj—both of whom narrated from Ibn ʿUmar that they asked him about silk and gold? He replied: "They are disliked for men and not disliked for women." From the narration of Shu'bah through Sulaymān ibn Abī al-Mughīrah al-Bazzār through Sa'īd ibn Jubayr, who said: Ḥudhayfah saw boys wearing silk shirts, so he removed the

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - وَبِهَذَا تَقُولُ جَمَاعَةٌ مِنْ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ، وَقَتَادَةَ، قَالَ قَتَادَةُ عَنْ عَلِيِّ بْنِ عَبْدِ اللَّهِ الْبَارِقِيِّ، وَقَالَ حَمَّادٌ عَنْ عُقْبَةَ بْنِ وَسَّاجٍ، كِلَاهُمَا عَنْ ابْنِ عُمَرَ أَنَّهُمَا سَأَلَاهُ عَنْ الْحَرِيرِ وَالذَّهَبِ؟ فَقَالَ: يُكْرَهَانِ لِلرِّجَالِ وَلَا يُكْرَهَانِ لِلنِّسَاءِ وَمِنْ طَرِيقِ شُعْبَةَ عَنْ سُلَيْمَانَ بْنِ أَبِي الْمُغِيرَةِ الْبَزَّارِ عَنْ سَعِيدِ بْنِ

silk from the boys, ordered its removal from them, and left it on the female servants.

L32423 This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, Mālik, Abū Sulaymān, and their companions.

L32424 **The ruling on adorning oneself with silver, pearls, rubies, and emeralds.**

L32425 1916 - Issue: Adornment with silver, pearls, rubies, and emeralds is permissible in all things for both men and women. We do not make an exception for anything except silver vessels alone, for they are forbidden for both men and women, based on the ḥadīth of Al-Barāʾ ibn ʿĀẓib — which we previously mentioned in the "Book of Prayer" — because Allāh, the Exalted and Majestic, says: "He created for you all that is in the earth" (Al-Baqarah 2:29).[36]

L32426 And He, the Exalted, says: "And He has explained in detail to you what He has forbidden to you" [Al-Anʿām: 119].[37]

L32427 Since Allah, the Exalted and Majestic, did not explicitly specify the prohibition of adorning with silver in that context, it therefore remains ḥalāl.

L32428 Some people specified the permissibility of adornment for swords, belts, rings, and the *Mus'haf*. This specification lacks any evidence for its validity and is thus a baseless assertion.

L32429 As for pearls, Allah, the Almighty and Majestic, has said: {And from each of them you eat fresh meat and extract ornaments that you wear, and you see the ships cleaving through it} [35:12].[38]

L32430 Ali said: "Nothing emerges from the sea except pearls. In accordance with the explicit text of the Quran, they are ḥalāl for both men and women. And with Allah, the Exalted, is success."

[36] **Qur'an references (L32425):** Qur'an 2:29 (Al-Baqarah).
[37] **Qur'an references (L32426):** Qur'an 6:119 (Al-An'am).
[38] **Qur'an references (L32429):** Qur'an 35:12 (Fatir).

جُبَيْرٍ قَالَ: رَأَى حُذَيْفَةُ صِبْيَانًا عَلَيْهِمْ قُمُصُ حَرِيرٍ فَنَزَعَهُ عَنْ الْغِلْمَانِ، وَأَمَرَ بِنَزْعِهِ عَنْهُمْ، وَتَرَكَهُ عَلَى الْجَوَارِي.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَمَالِكٍ، وَأَبِي سُلَيْمَانَ وَأَصْحَابِهِ

[مَسْأَلَةُ التَّحَلِّي بِالْفِضَّةِ وَاللُّؤْلُؤِ وَالْيَاقُوتِ وَالزُّمُرُّدِ]

١٩١٦ - مَسْأَلَةٌ: وَالتَّحَلِّي بِالْفِضَّةِ، وَاللُّؤْلُؤِ، وَالْيَاقُوتِ، وَالزُّمُرُّدِ: حَلَالٌ فِي كُلِّ شَيْءٍ لِلرِّجَالِ وَالنِّسَاءِ، وَلَا نَخُصُّ شَيْئًا إلَّا آنِيَةُ الْفِضَّةِ فَقَطْ، فَهِيَ حَرَامٌ عَلَى الرِّجَالِ وَالنِّسَاءِ، عَلَى خَبَرِ الْبَرَاءِ بْنِ عَازِبٍ وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الصَّلَاةِ " لِأَنَّ اللَّهَ عَزَّ وَجَلَّ يَقُولُ: {خَلَقَ لَكُمْ مَا فِي الأَرْضِ جَمِيعًا} [البقرة: ٢٩] .

وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

فَلَمْ يُفَصِّلْ عَزَّ وَجَلَّ تَحْرِيمَ التَّحَلِّي بِالْفِضَّةِ فِي ذَلِكَ، فَهِيَ حَلَالٌ.

وَقَدْ خَصَّ قَوْمٌ بِالْإِبَاحَةِ حِلْيَةَ السَّيْفِ، وَالْمِنْطَقَةِ، وَالْخَاتَمِ، وَالْمُصْحَفِ وَهَذَا تَخْصِيصٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ فَهُوَ دَعْوَى مُجَرَّدَةٌ.

وَأَمَّا اللُّؤْلُؤُ فَقَدْ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَمِنْ كُلٍّ تَأْكُلُونَ لَحْمًا طَرِيًّا وَتَسْتَخْرِجُونَ حِلْيَةً تَلْبَسُونَهَا وَتَرَى الْفُلْكَ فِيهِ مَوَاخِرَ} [فاطر: ١٢] .

قَالَ عَلِيٌّ: وَلَا يَخْرُجُ مِنْ الْبَحْرِ إلَّا اللُّؤْلُؤُ، فَهُوَ بِنَصِّ الْقُرْآنِ حَلَالٌ لِلرِّجَالِ وَالنِّسَاءِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

Provisions of Reconciliation Between the Spouses

Issue: When a dispute arises between a man and his wife.

The Rulings on Reconciliation Between Spouses - Issue 1917: When a dispute arises between a man and his wife, the judge shall dispatch an arbitrator from the husband's family and one from the wife's family to determine the circumstances of the wrongdoer among them. They shall report their findings to the judge so that he may take the rightful claim from the party identified before him and restrain the transgressor. The arbitrators have no authority to dissolve the marriage bond between the spouses, neither through khulʿ nor any other means.

The proof of that is the statement of Allah, the Mighty and Majestic: {And if you fear dissension between them, then send an arbiter from his family and an arbiter from her family. If they desire reconciliation, Allah will bring about reconciliation between them} [An-Nisa 4:35].[39]

Abu Muhammad said: The family of kinship are those related through the father and the mother. The term family also refers to mawālī, as [...] [text incomplete]. It has been narrated to us in the hadith of Abi Taybah that the Messenger of Allah—may Allah bless him and grant him peace—commanded his family to lighten from him of his kharaj.

And the Exalted said: {If the two desire reconciliation, Allah will reconcile between them} [An-Nisa: 35]. The pronoun in "between them" necessarily refers either to the two spouses (as we maintain) or to the two arbiters. The verse's explicit text states that Allah the Exalted only reconciles between them if they intend reconciliation, and reconciliation means ending discord between the two spouses.[40]

If it is said: Indeed, Allah Almighty has stated: {And if a woman fears from

[39] **Qur'an references (L32434):** Qur'an 4:35 (An-Nisa).
[40] **Qur'an references (L32438):** Qur'an 4:35 (An-Nisa).

[أَحْكَامُ الصُّلْحِ بَيْنَ الزَّوْجَيْنِ]

[مَسْأَلَةٌ إِذَا شَجَرَ بَيْنَ الرَّجُلِ وَامْرَأَتِهِ]

أَحْكَامُ الصُّلْحِ بَيْنَ الزَّوْجَيْنِ ١٩١٧ - مَسْأَلَةٌ: وَإِذَا شَجَرَ بَيْنَ الرَّجُلِ وَامْرَأَتِه: بَعَثَ الْحَاكِمُ حَكَمًا مِنْ أَهْلِه، وَحَكَمًا مِنْ أَهْلِهَا عَنْ حَالِ الظَّالِمِ مِنْهُمَا، وَيَنْهَيَا إِلَى الْحَاكِمِ مَا وَقَفَا عَلَيْهِ مِنْ ذَلِكَ، لِيَأْخُذَ الْحَقَّ مِمَّنْ هُوَ قِبَلَهُ، وَيَأْخُذَ عَلَى يَدَيْ الظَّالِمِ، وَلَيْسَ لَهُمَا أَنْ يُفَرِّقَا بَيْنَ الزَّوْجَيْنِ، لَا بِخُلْعٍ، وَلَا بِغَيْرِهِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا} [النساء: ٣٥] .

قَالَ أَبُو مُحَمَّد: الْأَهْلُ الْقَرَابَةُ: هُمْ مِنْ الْأَبِ وَالْأُمِّ - وَالْأَهْلُ أَيْضًا: الْمَوَالِي، كَمَا رُوِّينَا فِي حَدِيثِ أَبِي طَيْبَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ أَهْلَهُ أَنْ يُخَفِّفُوا عَنْهُ مِنْ خَرَاجِهِ» .

وَقَالَ عَزَّ وَجَلَّ: {إِنْ يُرِيدَا إِصْلاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا} [النساء: ٣٥] فَلَا يَخْلُو ضَرُورَةً الضَّمِيرُ الَّذِي فِي " بَيْنِهِمَا " مِنْ أَنْ يَكُونَ رَاجِعًا إلَى الزَّوْجَيْنِ وَهَكَذَا نَقُولُ أَوْ يَكُونَ رَاجِعًا إلَى الْحَكَمَيْنِ، فَنَصُّ الْآيَةِ: أَنَّهُ إنَّمَا يُوَفِّقُ اللَّهُ تَعَالَى بَيْنَهُمَا إنْ أَرَادَا إصْلَاحًا، وَالْإِصْلَاحُ هُوَ قَطْعُ الشَّرِّ بَيْنَ الزَّوْجَيْنِ.

her husband rebellion (نُشُوزًا) or aversion (إِعْرَاضًا), there is no blame on them if they reconcile between themselves, and reconciliation is better} [An-Nisa: 128], meaning divorce, and it has been recited in a variant reading as "that they reconcile"?[41]

فَإِنْ قِيلَ: قَدْ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَإِنِ امْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ} [النساء: ١٢٨] يَعْنِي الطَّلَاقَ، وَقَدْ قُرِئَ " أَنْ يُصْلِحَا "؟ .

L32440 We said: Yes, for the Exalted and Glorious has referred this reconciliation solely to the discretion of the two spouses—not to others—and it is their responsibility. Neither linguistically nor in the Sharīʿah is the phrase "I reconciled between the spouses" (interpreted as "I divorced her upon him") recognized. The early scholars held divergent views on this matter. One group maintained that the two arbiters may separate [the couple]—as narrated in the account where ʿUthmān appointed Ibn ʿAbbās and Muʿāwiyah as two arbiters between ʿAqīl ibn Abī Ṭālib and his wife Fāṭimah bint ʿUtbah ibn Rabīʿah. They were told: "If the two of you deem separation appropriate, then separate them."

قُلْنَا: نَعَمْ، وَإِنَّمَا رَدَّ عَزَّ وَجَلَّ هَذَا الصُّلْحَ إِلَى اخْتِيَارِ الزَّوْجَيْنِ، لَا إِلَى غَيْرِهِمَا، وَعَلَيْهِمَا، وَلَا يُعْرَفُ فِي اللُّغَةِ، وَلَا فِي الشَّرِيعَةِ: أَصْلَحْت بَيْنَ الزَّوْجَيْنِ - أَيْ طَلَّقْتهَا عَلَيْهِ - وَقَدْ اخْتَلَفَ السَّلَفُ فِي هَذَا -: فَقَالَتْ طَائِفَةٌ: لَهُمَا أَنْ يُفَرِّقَا -: كَمَا رُوِّينَا - أَنَّ عُثْمَانَ بَعَثَ ابْنَ عَبَّاسٍ وَمُعَاوِيَةَ حَكَمَيْنِ بَيْنَ عَقِيلِ بْنِ أَبِي طَالِبٍ وَامْرَأَتِهِ فَاطِمَةَ بِنْتِ عُتْبَةَ بْنِ رَبِيعَةَ فَقِيلَ لَهُمَا: إِنْ رَأَيْتُمَا أَنْ تُفَرِّقَا فَرَّقْتُمَا.

L32441 This narration is not authentic because it has only been transmitted with a disconnected chain.

وَهَذَا خَبَرٌ لَا يَصِحُّ، لِأَنَّهُ لَمْ يَأْتِ إِلَّا مُنْقَطِعًا.

L32442 We have narrated it from Ibn Abbas as well: through Yahya ibn Abd al-Hamid al-Himmani—who is weak—and it is authentically established from Ali ibn Abi Talib that he said to the two arbiters between the spouses: "Upon you both—if you deem separation appropriate, separate them; and if you deem reconciliation appropriate, reconcile them."

رُوِّينَاهُ عَنْ ابْنِ عَبَّاسٍ أَيْضًا: مِنْ طَرِيقِ يَحْيَى بْنِ عَبْدِ الْحَمِيدِ الْحِمَّانِيُّ - وَهُوَ ضَعِيفٌ - وَصَحَّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ لِلْحَكَمَيْنِ بَيْنَ الزَّوْجَيْنِ: عَلَيْكُمَا إِنْ رَأَيْتُمَا أَنْ تُفَرِّقَا فَرَّقْتُمَا، وَإِنْ رَأَيْتُمَا أَنْ تَجْمَعَا جَمَعْتُمَا.

L32443 It has been authentically reported from Abu Salamah ibn Abd al-Rahman ibn Awf, al-Shaʿbi, Saʿid ibn Jubayr, and al-Hakam ibn ʿUtaybah, and from Rabiʿah and Shurayh; and it has been narrated from Tawus and al-Nakhaʿī.

وَصَحَّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَالشَّعْبِيِّ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَعَنْ رَبِيعَةَ وَشُرَيْحٍ، وَرُوِيَ عَنْ طَاوُسٍ وَالنَّخَعِيِّ.

L32444 This is the opinion of Malik, Al-Awzaʿi, Abu Sulayman, and the scholars of our school, with the exception of Ibn al-Mughallis.

وَهُوَ قَوْلُ مَالِكٍ، وَالْأَوْزَاعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا، إِلَّا ابْنَ الْمُغَلِّسِ.

L32445–32447 Others said: The two arbitrators do not have the authority to separate [the spouses]. From Aḥmad ibn ʿUmar ibn Anas al-ʿUdhurī, from Abū Dharr al-Harawī, from ʿAbd Allāh ibn Aḥmad ibn Ḥammawayh al-Sarakhsī, from

وَقَالَ آخَرُونَ: لَيْسَ لِلْحَكَمَيْنِ أَنْ يُفَرِّقَا - نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَّوَيْهِ السَّرَخْسِيُّ نا إِبْرَاهِيمُ بْنُ خُرَيْمٍ نا عَبْدُ بْنُ حُمَيْدٍ

[41] **Qur'an references (L32439):** Qur'an 4:128 (An-Nisa).

الْكَشِّيُّ نا يَزِيدُ بْنُ هَارُونَ نا هِشَامٌ - هُوَ ابْنُ حَسَّانَ - عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: لَهُمَا - يَعْنِي الْحَكَمَيْنِ - أَنْ يُصْلِحَا، وَلَيْسَ لَهُمَا أَنْ يُفَرِّقَا وَبِهِ إلَى عَبْدِ بْنِ حُمَيْدٍ نا يُونُسُ عَنْ شَيْبَانَ - هُوَ ابْنُ فَرُّوخَ - عَنْ قَتَادَةَ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا} [النساء: ٣٥] .

Ibrāhīm ibn Khuraym, from ʿAbd ibn Ḥumayd al-Kashshī, from Yazīd ibn Hārūn, from Hishām (son of Ḥassān), from al-Ḥasan al-Baṣrī, who said: They—meaning the two arbitrators—have the authority to reconcile, but they do not have the authority to separate [the spouses]. From him [through] Abd ibn Humaid: Yunus narrated to us from Shayban (he is Ibn Farrukh) from Qatadah regarding the statement of Allah, Exalted and Majestic: {And if you fear dissension between them} [An-Nisa': 35].[42]

قَالَ قَتَادَةُ: إنَّمَا بُعِثَ الْحَكَمَانِ لِيُصْلِحَا، فَإِنْ أَعْيَاهُمَا ذَلِكَ شَهِدَا عَلَى الظَّالِمِ بِظُلْمِهِ، وَلَيْسَ بِأَيْدِيهِمَا الْفُرْقَةُ، وَلَا يَمْلِكَانِ ذَلِكَ.

L32448 Qatadah said: The two arbitrators were appointed solely to reconcile. If they are unable to do so, they testify against the oppressor regarding his oppression, but they do not have the authority to effect separation, nor do they possess control over it.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: أَنَّ إنْسَانًا قَالَ لَهُ: أَيُفَرِّقُ الْحَكَمَانِ؟ قَالَ عَطَاءٌ: لَا، إلَّا أَنْ يَجْعَلَ الزَّوْجَانِ ذَلِكَ بِأَيْدِيهِمَا.

L32449 Narrated through Abd al-Razzaq, from Ibn Jurayj, from Ata: A person inquired, "Do the two arbitrators have the authority to effect a divorce?" Ata responded, "No, unless the husband and wife explicitly delegate that authority to them."

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي الْحَسَنِ بْنِ الْمُغَلِّسِ.

L32450 This is the view of Abū Ḥanīfah, al-Shāfiʿī, and Abū al-Ḥasan ibn al-Mughallis.

وَصَحَّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ: أَنَّ التَّفْرِيقَ إلَى الْحَاكِمِ بِمَا يُنْهِيهِ إلَيْهِ الْحَكَمَانِ

L32451 It has been authentically reported from Saʿīd ibn Jubayr that judicial separation is referred to the judge based on what the two arbiters submit to him.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ فِي الْآيَةِ، وَلَا فِي شَيْءٍ مِنْ السُّنَنِ: أَنَّ لِلْحَكَمَيْنِ أَنْ يُفَرِّقَا، وَلَا أَنَّ ذَلِكَ لِلْحَاكِمِ.

L32452 Abu Muhammad said: There is nothing in the verse, nor in any of the traditions, indicating that the two arbitrators may effect a divorce, nor that this applies to the judge.

وَقَالَ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤] .

L32453 And He, Allah, the Almighty, the Majestic, said: "No soul earns except against itself" [6:164].[43]

فَصَحَّ أَنَّهُ لَا يَجُوزُ أَنْ يُطَلِّقَ أَحَدٌ عَلَى أَحَدٍ، وَلَا أَنْ يُفَرِّقَ بَيْنَ رَجُلٍ وَامْرَأَتِهِ، إلَّا حَيْثُ جَاءَ النَّصُّ بِوُجُوبِ فَسْخِ النِّكَاحِ فَقَطْ، وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L32454 It is established that it is not permissible for anyone to divorce another, nor to separate a man from his wife, except where the religious text mandates only the annulment of the marriage. No valid authority exists in the statement of anyone other than the Messenger of Allah - peace be upon him.

[42] **Qur'an references (L32445):** Qur'an 4:35 (An-Nisa).
[43] **Qur'an references (L32453):** Qur'an 6:164 (Al-An'am).

[أَحْكَامُ النَّفَقَات] [مَسْأَلَةٌ يُنْفِقُ الرَّجُلُ عَلَى امْرَأَتِهِ مِنْ حِينِ يَعْقِدُ نِكَاحَهَا]

Rulings on Maintenance [Issue: A man is obligated to provide maintenance for his wife from the moment he formalizes the marriage contract with her.]

١٩١٨ - مَسْأَلَةٌ: وَيُنْفِقُ الرَّجُلُ عَلَى امْرَأَتِهِ مِنْ حِينِ يَعْقِدُ نِكَاحَهَا دُعِيَ إِلَى الْبِنَاءِ أَوْ لَمْ يُدْعَ - وَلَوْ أَنَّهَا فِي الْمَهْدِ - نَاشِزًا كَانَتْ أَوْ غَيْرَ نَاشِزٍ، غَنِيَّةً كَانَتْ أَوْ فَقِيرَةً، ذَاتَ أَبٍ كَانَتْ أَوْ يَتِيمَةً، بِكْرًا أَوْ ثَيِّبًا، حُرَّةً كَانَتْ أَوْ أَمَةً - عَلَى قَدْرِ مَالِهِ -.

1918 - Issue: A man must financially support his wife from the moment of concluding the marriage contract - whether he is called to consummate the marriage or not, even if she is in the cradle, whether she is defiant or compliant, wealthy or poor, having a father or orphaned, a virgin or non-virgin, free or enslaved - according to his financial capacity.

فَالْمُوسِرُ: خُبْزُ الْحَوَارِيِّ، وَاللَّحْمُ، وَفَاكِهَةُ الْوَقْتِ - عَلَى حَسَبِ مِقْدَارِهِ - وَالْمُتَوَسِّطُ عَلَى قَدْرِ طَاقَتِهِ، وَالْمُقِلُّ أَيْضًا عَلَى حَسَبِ طَاقَتِهِ.

For the affluent: white bread, meat, and seasonal fruit—each according to his measure; the moderate according to his capacity; and the needy likewise according to his capacity.

بُرْهَانُ ذَلِكَ -: مَا قَدْ ذَكَرْنَا بِإِسْنَادِهِ قَبْلُ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي النِّسَاءِ: «وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ» .

The proof of this is what we have previously cited with its chain of transmission from the statement of the Messenger of Allah—may Allah's peace and blessings be upon him—regarding women: "They have the right to your provision of their maintenance and clothing according to what is customary."

وَهَذَا يُوجِبُ لَهُنَّ النَّفَقَةَ مِنْ حِينِ الْعَقْدِ.

The marriage contract obligates the husband to provide financial support for the wives from the time the contract is concluded.

وَقَالَ قَوْمٌ: لَا نَفَقَةَ لِلْمَرْأَةِ إِلَّا حَيْثُ تُدْعَى إِلَى الْبِنَاءِ بِهَا وَهَذَا قَوْلٌ لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ، وَلَا شَكَّ فِي أَنَّ اللَّهَ عَزَّ وَجَلَّ لَوْ أَرَادَ اسْتِثْنَاءَ الصَّغِيرَةِ وَالنَّاشِزِ لَمَا أَغْفَلَ ذَلِكَ حَتَّى يُبَيِّنَهُ لَهُ غَيْرُهُ، حَاشَ لِلَّهِ مِنْ ذَلِكَ.

A group of people said: "There is no maintenance obligation for the wife except when she is called to cohabit." This is a statement unsupported by the Qur'an, the Sunnah, the saying of a Companion, analogical reasoning, or any opinion with a sound basis. There is no doubt that if Allah, the Almighty, had intended to exempt the prepubescent girl or the rebellious wife, He would not have overlooked it until someone else clarified it for Him. Allah is far above such a thing.

وَقَدْ نا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ نَا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ أَخْبَرَنِي نَافِعٌ عَنْ ابْنِ عُمَرَ قَالَ " كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إِلَى أُمَرَاءِ الْأَجْنَادِ أَنْ انْظُرُوا

Yunus ibn Abdullah narrated to us: Ahmad ibn Abdullah ibn Abd al-Rahim narrated to us: Ahmad ibn Khalid narrated to us: Muhammad ibn Abd al-Salam al-Khushani narrated to us: Muhammad ibn Bashshar narrated to us: Yahya ibn Saʿīd al-Qattan narrated to us: Ubaydullah ibn Umar informed us, from Nafiʿ, from Ibn Umar, who said: "Umar ibn al-Khattab wrote to the commanders of the armies: 'Investigate those whose absence has prolonged—

they must either send maintenance, return, or depart. If he departs, then upon him is the maintenance for what he has departed from, starting from the day he was absent.'" Abu Muhammad said: Umar did not treat a disobedient wife differently from others.

مَنْ طَالَتْ غِيبَتُهُ أَنْ يَبْعَثُوا نَفَقَةً أَوْ يَرْجِعُوا أَوْ يُفَارِقُوا فَإِنْ فَارَقَ فَإِنَّ عَلَيْهِ نَفَقَةَ مَا فَارَقَ مِنْ يَوْمٍ غَابَ " قَالَ أَبُو مُحَمَّدٍ: وَلَمْ يَخُصَّ عُمَرُ نَاشِزًا مِنْ غَيْرِهَا.

L32465 Through the chain of Shuʿbah: He asked al-Ḥakam ibn ʿUtaybah about a woman who left her husband's house in anger - does she have the right to maintenance? He replied: Yes. Abū Sulaymān, his companions, and Sufyān al-Thawrī said: Is maintenance obligatory for the minor girl from the moment the marriage contract is concluded on her behalf?

وَمِنْ طَرِيقِ شُعْبَةَ سَأَلْت الْحَكَمَ بْنِ عُتَيْبَةَ عَنْ امْرَأَةٍ خَرَجَتْ مِنْ بَيْتِ زَوْجِهَا غَاضِبَةً هَلْ لَهَا نَفَقَةٌ؟ قَالَ: نَعَمْ - وَقَالَ أَبُو سُلَيْمَانَ، وَأَصْحَابُهُ، وَسُفْيَانُ الثَّوْرِيُّ: النَّفَقَةُ وَاجِبَةٌ لِلصَّغِيرَةِ مِنْ حِينِ الْعَقْدِ عَلَيْهَا؟

L32466 Abu Muhammad said: We do not know of any of the Companions - may Allah be pleased with them - who opposed Umar in this matter. Nor is it recorded that any of the Companions withheld maintenance from a rebellious wife. This is merely something reported from Al-Nakha'i, Al-Sha'bi, Hammad ibn Abi Sulayman, Al-Hasan, and Al-Zuhri. We do not know of any argument for them except their statement: Maintenance is given in exchange for sexual access. Should maintenance then be withheld if she withholds intercourse?

قَالَ أَبُو مُحَمَّدٍ: وَمَا نَعْلَمُ لِعُمَرَ فِي هَذَا مُخَالِفًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا يُحْفَظُ مَنْعُ النَّاشِزِ مِنْ النَّفَقَةِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ، إنَّمَا هُوَ شَيْءٌ رُوِيَ عَنْ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَالْحَسَنِ، وَالزُّهْرِيِّ، وَمَا نَعْلَمُ لَهُمْ حُجَّةً إلَّا أَنَّهُمْ قَالُوا: النَّفَقَةُ بِإِزَاءِ الْجِمَاعِ، فَإِذَا مَنَعَتْ الْجِمَاعَ مُنِعَتْ النَّفَقَةُ؟ .

L32467 Abu Muhammad said: This argument is poorer in what could validate it than the means they used to validate it, and they spoke falsely in that. Is it not that maintenance and clothing are only in exchange for the marital relationship? When the marital relationship exists, then are maintenance and clothing not both obligatory?

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ حُجَّةٌ أَفْقَرُ إلَى مَا يُصَحِّحُهَا مِمَّا رَامُوا تَصْحِيحَهَا بِهِ، وَقَدْ كَذَبُوا فِي ذَلِكَ، مَا النَّفَقَةُ وَالْكِسْوَةُ إلَّا بِإِزَاءِ الزَّوْجِيَّةِ، فَإِذَا وُجِدَتْ الزَّوْجِيَّةُ فَالنَّفَقَةُ وَالْكِسْوَةُ وَاجِبَتَانِ؟

L32468 Abū Muḥammad said: What is utterly astonishing is their deeming it permissible to oppress the recalcitrant wife in depriving her of her rightful due on account of her wronging the husband through denying him his rightful due. This is injustice itself and sheer falsehood.

قَالَ أَبُو مُحَمَّدٍ: وَالْعَجَبُ كُلُّهُ اسْتِحْلَالُهُمْ ظُلْمَ النَّاشِزِ فِي مَنْعِهَا حَقَّهَا مِنْ أَجْلِ ظُلْمِهَا لِلزَّوْجِ فِي مَنْعِ حَقِّهِ، وَهَذَا هُوَ الظُّلْمُ بِعَيْنِهِ، وَالْبَاطِلُ صُرَاحًا.

L32469 Most astonishing of all is that the Hanafis do not permit a wronged person who seized property due to him from his oppressor—even though he is capable of seeking redress by taking property belonging to his oppressor—to actually claim redress. They permit withholding maintenance and clothing from a disobedient wife, though it is unclear why—moreover, they contradicted their own aforementioned argument by ruling that a sick wife

وَالْعَجَبُ كُلُّهُ أَنَّ الْحَنَفِيِّينَ لَا يُجِيزُونَ لِمَنْ ظَلَمَهُ إنْسَانٌ فَأَخَذَ لَهُ مَالًا فَقَدَرَ عَلَى الِانْتِصَافِ مِنْ مَالِ يَجِدُهُ لِظَالِمِهِ أَنْ يَنْتَصِفَ، وَرَأَوْا مَنْعَ النَّاشِزِ النَّفَقَةَ، وَالْكِسْوَةَ، وَلَا يُدْرَى لِمَاذَا؟ وَقَدْ تَنَاقَضُوا فِي حُجَّتِهِمْ الْمَذْكُورَةِ فَرَأَوْا النَّفَقَةَ لِلْمَرِيضَةِ الَّتِي لَا يُمْكِنُ

whom one cannot have sexual intercourse with is entitled to maintenance, thereby abandoning their claim that maintenance is in exchange for sexual intercourse. Abū Muḥammad said: A man must clothe his wife according to his means—thus the wealthy are obligated to clothe her in khazz silk and fabrics of similar quality.

وَطْؤُهَا، فَتَرَكُوا قَوْلَهُمْ: إنَّ النَّفَقَةَ بِإِزَاءِ الْجِمَاعِ؟ قَالَ أَبُو مُحَمَّدٍ: وَيَكْسُو الرَّجُلُ امْرَأَتَهُ عَلَى قَدْرِ مَالِهِ: فَالْمُوسِرُ يُؤْمَرُ بِأَنْ يَكْسُوهَا الْخَزَّ وَمَا أَشْبَهَهُ.

L32470 The intermediate category is good linen and cotton.

وَالْمُتَوَسِّطُ: جَيِّدَ الْكَتَّانِ وَالْقُطْنِ

L32471 And the one with limited means [is obligated] according to his capacity, based on the statement of Allah's Messenger (peace be upon him): "They (wives) are entitled to their sustenance and clothing according to customary norms." This refers to what is customarily recognized as appropriate pertaining to people's food and garments.

وَالْمُقِلُّ عَلَى قَدْرِهِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَهُنَّ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ» وَهَذَا هُوَ الْمَعْرُوفُ مِنْ مَأْكَلِ النَّاسِ وَمَلَابِسِهِمْ.

L32472–32474 And it has been narrated to us through the chain of Aḥmad ibn Shuʿayb—from ʿImrān ibn Bakkār al-Ḥimṣī, who informed us to us. Abu al-Yaman—who is al-Hakam ibn Nafiʿ—narrated to us from Shuʿayb ibn Abi Hamzah, who said: Al-Zuhri was asked about women wearing silk. He said, "Anas ibn Malik reported to me that he saw Umm Kulthum, the daughter of the Messenger of Allah—peace and blessings of Allah be upon him and his family—wearing a striped silk mantle."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أرنا عِمْرَانُ بْنُ بَكَّارٍ الْحِمْصِيُّ نا أَبُو الْيَمَانِ - هُوَ الْحَكَمُ بْنُ نَافِعٍ - أرنا شُعَيْبُ بْنُ أَبِي حَمْزَةَ قَالَ: سُئِلَ الزُّهْرِيُّ عَنْ لِبَاسِ النِّسَاءِ الْحَرِيرَ؟ فَقَالَ: أَخْبَرَنِي أَنَسُ بْنُ مَالِكٍ " أَنَّهُ رَأَى عَلَى أُمِّ كُلْثُومٍ بِنْتِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بُرْدَ حَرِيرٍ ".

L32475 Allah, the Almighty, said: "Let the affluent spend from their abundance, and let those whose provision is constrained spend from what Allah has granted them. Allah does not burden any soul beyond what He has given." [At-Talāq: 7] If she resides in a land where people eat only dates, figs, specific fruits, milk, or fish, her maintenance is determined by what sustains the people of her land, as we have stated—and the standard maximum maintenance in our view is two Baghdadi ratls.[44]

وَقَالَ اللَّهُ عَزَّ وَجَلَّ: {لِيُنْفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا مَا آتَاهَا} [الطلاق: ٧] فَإِنْ كَانَ فِي بَلَدٍ لَا يَأْكُلُونَ فِيهِ إِلَّا التَّمْرَ، أَوْ التِّينَ، أَوْ بَعْضَ الثِّمَارِ، أَوْ اللَّبَنَ، أَوْ السَّمَكَ: قُضِيَ لَهَا بِمَا يَقْتَاتُهُ أَهْلُ بَلَدِهَا كَمَا ذَكَرْنَا - وَأَكْثَرُ النَّفَقَةِ عِنْدَنَا رَطْلَانِ بِالْبَغْدَادِيِّ.

L32476 Ahmad ibn Muḥammad ibn al-Jasūr narrated to us; Wahab ibn Miswarah narrated to us; Ibn Waddāḥ narrated to us; Abū Bakr ibn Abī Shaybah narrated to us; Abū al-Aḥwaṣ—he is Salām ibn Sulaym al-Kūfī—from Abū Isḥāq al-Sabīʿī, from Abū al-Aḥwaṣ ʿAwf ibn Mālik ibn Faḍālah al-Jushamī, who said: "My father entered the presence of Allah's Messenger—peace be upon

ثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا وَهْبُ بْنُ مِسْوَرَةَ نا ابْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا أَبُو الْأَحْوَصِ - هُوَ سَلَامُ بْنُ سُلَيْمٍ الْكُوفِيُّ - عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ «أَبِي الْأَحْوَصِ عَوْفِ بْنِ مَالِكِ بْنِ فَضَالَةَ الْجُشَمِيِّ قَالَ دَخَلَ أَبِي عَلَى رَسُولِ اللَّهِ - صَلَّى

[44] **Qur'an references (L32475):** Qur'an 65:7 (At-Talaq).

him—wearing patched garments. The Prophet—peace be upon him—said to him: 'Do you not possess wealth?' He replied: 'Rather, I have every kind of wealth—Allah has granted me camels, cattle, and sheep.' The Prophet—peace be upon him—then said: 'Let what Allah has given you be manifest upon you.'"

In this narration is that one should dress according to his wealth and the favor of Allah, the Exalted, upon him.

Legal Issue: The husband is not obligated to provide for a servant for his wife.

Issue 1919: A husband is not obligated to provide a servant for his wife, even if he is the son of the Caliph and she is the daughter of a Caliph.

It is only incumbent upon him to arrange for someone to bring her food and water—prepared and accessible for consumption—morning and evening.

And by whom all the work of sweeping and arranging is sufficiently provided for her.

And it is incumbent upon him to provide her with clothing as well, because this defines the nature of sustenance and clothing.

There is no text that has ever obligated him to provide maintenance for her servant; thus, it constitutes oppression and injustice.

As for the one who obligates her to knead dough and cook, yet does not obligate her to weave her garments and sew them, he has contradicted himself, and his error is manifest, and with Allah, the Most High, is success.

A jurisprudential issue: Maintenance for the wife is obligatory daily.

Issue 1920: Maintenance for her daily sustenance is obligatory upon him daily. If he transgresses by delaying her lunch or dinner for this reason, he is subject to disciplinary punishment for it.

اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَيْهِ ثِيَابٌ أَسْمَالٌ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَمَا لَكَ مِنْ مَالٍ؟ فَقَالَ: بَلْ مِنْ كُلِّ الْمَالِ، قَدْ أَتَانِي اللَّهُ مِنْ الْإِبِلِ، وَالْبَقَرِ، وَالْغَنَمِ، فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلْيُرَ عَلَيْكَ مِمَّا أَتَاكَ اللَّهُ» .

فَفِي هَذَا الْخَبَرِ أَنْ يَلْبَسَ الْإِنْسَانُ عَلَى حَسَبِ مَالِهِ، وَنِعْمَةِ اللَّهِ تَعَالَى عَلَيْهِ

[مَسْأَلَةٌ لَيْسَ عَلَى الزَّوْجِ أَنْ يُنْفِقَ عَلَى خَادِمٍ لِزَوْجَتِهِ]

١٩١٩ - مَسْأَلَةٌ: وَلَيْسَ عَلَى الزَّوْجِ أَنْ يُنْفِقَ عَلَى خَادِمٍ لِزَوْجَتِهِ - وَلَوْ أَنَّهُ ابْنُ الْخَلِيفَةِ وَهِيَ بِنْتُ خَلِيفَةٍ.

إنَّمَا عَلَيْهِ أَنْ يَقُومَ لَهَا بِمَنْ يَأْتِيهَا بِالطَّعَامِ وَالْمَاءِ، مُهَيَّأً مُمْكِنًا لِلْأَكْلِ - غَدْوَةً وَعَشِيَّةً -.

وَبِمَنْ يَكْفِيهَا جَمِيعَ الْعَمَلِ مِنْ الْكَنْسِ وَالْفَرْشِ.

وَعَلَيْهِ أَنْ يَأْتِيَهَا بِكِسْوَتِهَا كَذَلِكَ، لِأَنَّ هَذِهِ صِفَةُ الرِّزْقِ وَالْكِسْوَةِ.

وَلَمْ يَأْتِ نَصٌّ قَطُّ بِإِيجَابِ نَفَقَةِ خَادِمِهَا عَلَيْهِ، فَهُوَ ظُلْمٌ وَجَوْرٌ.

وَأَمَّا مَنْ كَلَّفَهَا الْعَجِينَ وَالطَّبْخَ، وَلَمْ يُكَلِّفْهَا حِيَاكَةَ كِسْوَتِهَا وَخِيَاطَتِهَا فَقَدْ تَنَاقَضَ، وَظَهَرَ خَطَؤُهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَجِبُ النَّفَقَةُ لِلزَّوْجَةِ مُيَاوَمَةً]

١٩٢٠ - مَسْأَلَةٌ: وَإِنَّمَا تَجِبُ لَهَا النَّفَقَةُ مُيَاوَمَةً، لِأَنَّهُ هُوَ رِزْقُهَا، فَإِنْ تَعَدَّى مِنْ أَجْلِ ذَلِكَ وَأَخَّرَ عَنْهَا الْغَدَاءَ، أَوْ الْعَشَاءَ أُدِّبَ عَلَى ذَلِكَ.

فَإِنْ أَعْطَاهَا أَكْثَرَ، فَإِنْ مَاتَتْ، أَوْ طَلَّقَهَا ثَلَاثًا، أَوْ طَلَّقَهَا قَبْلَ أَنْ يَطَأَهَا، أَوْ أَتَمَّتْ عِدَّتَهَا وَعِنْدَهَا فَضْلُ يَوْمٍ أَوْ غَدَاءٍ أَوْ عَشَاءٌ: قُضِيَ عَلَيْهَا بِرَدِّهِ إِلَيْهِ. وَهُوَ فِي الْمَيْتَةِ مِنْ رَأْسِ مَالِهَا؛ لِأَنَّهُ لَيْسَ مِنْ حَقِّهَا قَبْلَهُ، وَإِنَّمَا جَعَلَهُ عِنْدَهَا عِدَّةً لِوَقْتِ مَجِيءِ اسْتِحْقَاقِهَا إِيَّاهُ، فَإِذَا لَمْ يَأْتِ ذَلِكَ الْوَقْتِ وَلَهَا عَلَيْهِ نَفَقَةٌ فَهُوَ عِنْدَهَا أَمَانَةٌ وَاَللَّهُ تَعَالَى يَقُولُ: {إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الأَمَانَاتِ إِلَى أَهْلِهَا} [النساء: ٥٨] وَلَا ظُلْمَ أَكْثَرَ مِنْ أَنْ لَا يُقْضَى عَلَيْهَا بِرَدِّ مَا لَمْ تَسْتَحِقَّهُ قَبْلَهُ. وَأَمَّا الْكِسْوَةُ - فَإِنَّهَا إِذَا وَجَبَتْ لَهَا فَهِيَ حَقُّهَا، وَإِذْ هُوَ حَقُّهَا فَهُوَ لَهَا، فَسَوَاءٌ مَاتَتْ إِثْرَ ذَلِكَ أَوْ طَلَّقَهَا ثَلَاثًا، أَوْ أَتَمَّتْ عِدَّتَهَا، أَوْ طَلَّقَهَا قَبْلَ أَنْ يَطَأَهَا: لَيْسَ عَلَيْهَا رَدُّهَا، لِأَنَّهُ لَوْ وَجَبَ عَلَيْهَا رَدُّهَا لَكَانَتْ غَيْرَ مَالِكَةٍ لَهَا حِينَ تَجِبُ لَهَا - وَهَذَا بَاطِلٌ. وَكَذَلِكَ لَوْ أَخْلَقَتْ ثِيَابَهَا أَوْ أَصَابَتْهَا وَلَيْسَتْ مِنْ مَالِهَا فَهِيَ لَهَا، فَإِذَا جَاءَ الْوَقْتُ الَّذِي يُعْهَدُ فِي مِثْلِهِ إِخْلَاقُ تِلْكَ الْكِسْوَةِ فَهِيَ لَهَا، وَيُقْضَى لَهَا عَلَيْهِ بِأُخْرَى - فَلَوْ امْتَهَنَتْهَا ضِرَارًا أَوْ فَسَادًا حَتَّى أُخْلِقَتْ قَبْلَ الْوَقْتِ الَّذِي يُعْهَدُ فِيهِ إِخْلَاقُ مِثْلِهَا فَلَا شَيْءَ لَهَا عَلَيْهِ، إِنَّمَا عَلَيْهِ رِزْقُهَا وَكِسْوَتُهَا بِالْمَعْرُوفِ وَالْمَعْرُوفُ هُوَ الَّذِي قُلْنَا.

L32487–32488 If he gives her more, then if she dies, he divorces her three times, divorces her before consummation, she completes her waiting period while having an extra day, a noon meal, or an evening meal, it is ruled that she must return it to him. This is taken from the principal of her wealth in the event of her death, as it was not her right prior to that. It is placed with her as maintenance until the time of her entitlement to it arrives. If that time does not come while she is owed maintenance from him, it remains a trust with her, for Allah the Exalted says: "Indeed, Allah commands you to return trusts to their rightful recipients" (4:58). There is no greater injustice than not requiring her to return what she had no rightful claim to beforehand.

As for clothing—when it becomes due to her, it is her right. And since it is her right, it belongs to her. Therefore, whether she dies afterward, he divorces her three times, she completes her waiting period, or he divorces her before consummation, she is not obligated to return it. If she were required to return it, this would mean she did not own it when it became due to her—and this is null and void. Similarly, if her clothes wear out naturally or she uses them while they are not from her own wealth, they remain hers. When the customary time for such clothing to wear out arrives, they are hers, and he is obligated to provide her with another set. But if she deliberately damages them out of harm or misuse, causing them to wear out before the customary time, she has no claim against him. He is only required to provide her sustenance and clothing in accordance with customary norms—and "customary norms" are as we have explained.[45]

وَأَمَّا الْوِطَاءُ وَالْغِطَاءُ - فَبِخِلَافِ ذَلِكَ، لِأَنَّ عَلَيْهِ إِسْكَانَهَا، فَإِذْ عَلَيْهِ إِسْكَانُهَا فَعَلَيْهِ مِنْ الْفُرُشِ وَالْغِطَاءِ مَا يَكُونُ دَافِعًا لِضَرَرِ الْأَرْضِ عَنْ السَّاكِنِ فَهُوَ لَهُ، لِأَنَّ ذَلِكَ لَا يُسَمَّى كِسْوَتَهَا - وَبَيَّنَ ذَلِكَ الْخَبَرَ الَّذِي أَوْرَدْنَاهُ قَبْلُ مُسْنَدًا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَلَكُمْ عَلَيْهِنَّ أَلَّا يُوطِئْنَ فُرُشَكُمْ مَنْ تَكْرَهُونَهُ» . فَنَسَبَ - عَلَيْهِ السَّلَامُ - الْفُرُشَ إِلَى الزَّوْجِ فَوَاجِبٌ عَلَيْهِ أَنْ يَقُومَ لَهَا بِهِ، وَهُوَ لِلزَّوْجِ لَا تَمْلِكُهُ هِيَ، وَمَنْ قَضَى لَهَا بِأَكْثَرَ مِنْ نَفَقَةِ الْمُيَاوَمَةِ فَقَدْ قَضَى بِالظُّلْمِ الَّذِي لَمْ يُوجِبْهُ اللَّهُ عَزَّ

L32489 As for treading and covering—this differs, because he is responsible for her residence. Since he is responsible for her residence, he must provide from the bedding and covering what will protect her from the harm of the ground, and it belongs to him, as that is not termed her clothing. This is clarified by the report we previously cited with an authenticated chain from the Messenger of Allah—peace and blessings be upon him: "You have the right that they do not allow anyone whom you dislike to tread on your bedding." Thus, the Prophet (peace be upon him) ascribed the bedding to the husband, obligating him to furnish it for her, though it remains his property—

[45] **Qur'an references (L32488):** Qur'an 4:58 (An-Nisa).

she holds no ownership. Whoever rules that she is entitled to more than daily maintenance has ruled by an injustice Allah the Almighty never ordained. We demand that he establish a precise limit for this—so whatever limit is imposed, be it a week, month, or year—one is obligated to provide proof from the Quran or the Sunnah of the Messenger of Allah—peace and blessings be upon him—yet none is found. Should someone cite what we narrated through Bukhari's chain: From Muhammad, from Waki', from Sufyān ibn 'Uyaynah, who said: Ma'mar informed me, from Ibn Shihāb, from Mālik ibn Aws al-Hadathan, from 'Umar ibn al-Khaṭṭāb: "The Messenger of Allah—peace and blessings be upon him—would sell the date palms of Banū al-Naḍīr and reserve provisions for his family's annual sustenance."

وَجَلَّ، وَنَسْأَلُهُ عَنْ أَنْ يَحُدَّ فِي ذَلِكَ حَدًّا، فَأَيُّ حَدٍّ حُدَّ - مِنْ جُمُعَةٍ أَوْ شَهْرٍ أَوْ سَنَةٍ -: كُلِّفَ الْبُرْهَانَ عَلَى ذَلِكَ مِنْ الْقُرْآنِ، أَوْ مِنْ سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا يَجِدُهُ. فَإِنْ ذَكَرَ ذَاكِرٌ مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدٌ نا وَكِيعٌ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ قَالَ: أَخْبَرَنِي مَعْمَرٌ نا ابْنُ شِهَابٍ عَنْ مَالِكِ بْنِ أَوْسٍ الْحَدَثَانِ عَنْ عُمَرَ بْنِ الْخَطَّابِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَبِيعُ نَخْلَ بَنِي النَّضِيرِ وَيَحْبِسُ لِأَهْلِهِ قُوتَ سَنَتِهِمْ» .

L32490–32491 We were narrated it also from the path of Abū Dāwūd, narrated by Aḥmad ibn ʿAbdah, narrated by Sufyān ibn ʿUyaynah, narrated by ʿAmr ibn Dīnār, narrated by al-Zuhrī through his chain.

رُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ أَبِي دَاوُد نَا أَحْمَدُ بْنُ عَبْدَةَ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ الزُّهْرِيِّ بِإِسْنَادِهِ.

L32492 And through the chain of Muslim: Ali ibn Mushir reported to us from Ubaydullah ibn Umar, from Nafi', from Ibn Umar, who said: "The Messenger of Allah—peace be upon him—would give his wives eighty wasqs of dates and twenty wasqs of barley annually." We said: This does not specify whether he delivered it to them in advance, thus it is permissible. It is likewise permissible to give it to them daily or monthly—and we do not forbid this if he consents willingly. If the judge acted thus and the provision perished—whether without her misconduct or due to her misconduct.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عَلِيُّ بْنُ مُسْهِرٍ نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُعْطِي أَزْوَاجَهُ كُلَّ سَنَةٍ ثَمَانِينَ وَسْقًا مِنْ تَمْرٍ وَعِشْرِينَ وَسْقًا مِنْ شَعِيرٍ» ؟ قُلْنَا: لَيْسَ فِي هَذَا بَيَانٌ أَنَّهُ كَانَ يَدْفَعُهُ إلَيْهِنَّ مُقَدَّمًا فَهُوَ جَائِزٌ، وَجَائِزٌ أَيْضًا أَنْ يُعْطِيَهُ إيَّاهُنَّ مُيَاوَمَةً، أَوْ مُشَاهَرَةً - وَنَحْنُ لَمْ نَمْنَعْ مِنْ ذَلِكَ إنْ طَابَتْ نَفْسُهُ بِهِ، فَإِنْ فَعَلَ الْحَاكِمُ ذَلِكَ فَتَلِفَ بِغَيْرِ عُدْوَانٍ مِنْهَا، أَوْ بِعُدْوَانٍ.

L32493 She is liable to him because she took what was not rightfully hers, and a judge's ruling does not render lawful someone's property for another nor nullify the right of a rightful claimant. If he voluntarily provided for her without a judge's decree and those provisions perished without transgression on her part, he must provide her maintenance a second time and her clothing a second time likewise, as she did not overstep. Therefore, she bears no liability, and her right remains valid against him since he has not yet given her those provisions.

فَهِيَ ضَامِنَةٌ لَهُ، لِأَنَّهَا أَخَذَتْ مَا لَيْسَ حَقًّا لَهَا، وَحُكْمُ الْحَاكِمِ لَا يُحِلُّ مَالَ أَحَدٍ لِغَيْرِهِ، وَلَا يُسْقِطُ حَقَّ ذِي حَقٍّ، فَلَوْ تَطَوَّعَ هُوَ بِذَلِكَ دُونَ قَضَاءِ قَاضٍ فَتَلِفَ بِغَيْرِ عُدْوَانٍ مِنْهَا فَعَلَيْهِ نَفَقَتُهَا ثَانِيَةً، وَكِسْوَتُهَا ثَانِيَةً كَذَلِكَ، لِأَنَّهَا لَمْ تَتَعَدَّ، فَلَا شَيْءَ عَلَيْهَا وَحَقُّهَا بَاقٍ قَبْلَهُ، إذْ لَمْ يُعْطِهِ إيَّاهَا بَعْدُ.

L32494 **Issue: providing residence for the wife according to the**

husband's capability.

L32495 Issue 1921: He is required to provide residence for her according to his capacity, as Allah, the Exalted, says: "Provide residence for them where you reside within your capacity" [Quran 65:6] .[46]

[مَسْأَلَةٌ إِسْكَانُ الزَّوْجَة عَلَى قَدْرِ طَاقَتِه]

١٩٢١ - مَسْأَلَةٌ: وَيَلْزَمُهُ إِسْكَانُهَا عَلَى قَدْرِ طَاقَتِهِ، لِقَوْلِ اللَّهِ تَعَالَى: {أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ} [الطلاق: ٦] .

L32496 **Issue: The husband has no obligation regarding jewelry or perfume.**

[مَسْأَلَةٌ لَا يَلْزَمُ الزَّوْج حُلِيٌّ وَلَا طِيبٌ]

L32497 1922 - Issue: He is not obligated to provide her with jewelry or perfume, for Allah the Mighty and Majestic has not made these obligatory upon him, nor has His Messenger - peace and blessings of Allah be upon him and his family - mandated them.

١٩٢٢ - مَسْأَلَةٌ: وَلَا يَلْزَمُهُ لَهَا حُلِيٌّ وَلَا طِيبٌ، لِأَنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يُوجِبْهُمَا عَلَيْهِ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

L32498 **A legal issue: The husband withheld maintenance and clothing despite being capable of providing them.**

[مَسْأَلَةٌ مَنَعَ الزَّوْج النَّفَقَةَ وَالْكِسْوَةَ وَهُوَ قَادِرٌ عَلَيْهَا]

L32499 1923 - Issue: Whoever withholds maintenance and clothing despite being capable of providing them, it is the same whether he is absent [or not].

١٩٢٣ - مَسْأَلَةٌ: وَمَنْ مَنَعَ النَّفَقَةَ وَالْكِسْوَةَ - وَهُوَ قَادِرٌ عَلَيْهَا - فَسَوَاءٌ كَانَ غَائِبًا.

[46] **Qur'an references (L32495):** Qur'an 65:6 (At-Talaq).

L32500 Or it is a present debt incumbent upon him, to be taken from him perpetually and discharged for her during his lifetime and after his death. It is distributed from his estate alongside other creditors, as it constitutes her rightful claim, thus being a debt owed by him.

L32501 **A legal ruling on [a husband] being able to provide only a portion of the wife's required financial support and clothing.**

L32502 1924 - Issue: If someone is capable of affording some of the maintenance and clothing—whether what he can afford is little or much—it is obligatory to rule against him to pay what he can afford, and what he cannot afford is waived. If he cannot afford any of it, the obligation is waived, and he is not required to pay anything. If he later becomes able, he is required to pay from the time he becomes able. He is not obligated to compensate her for what she spent on herself for maintenance or clothing during his period of hardship, based on Allah's words, Exalted and Majestic: {Allah does not burden a soul beyond its capacity} [Al-Baqarah: 286].[1]

L32503–32505 Allah the Exalted says: "Allah does not burden a soul except with what He has given it" [Surah At-Talaq 65:7]. Thus, it is established with certainty that whatever lies beyond its capability, and Allah the Exalted has not granted such capacity to the soul, then Allah, the Exalted and Majestic, has not burdened it with that. And whatever Allah the Exalted has not imposed as an obligation, He has not burdened the soul with it. Therefore, it is not obligatory upon him, and since it is not obligatory, it is impermissible to enforce it against him at any time—whether he attains financial capability or not.[2]

L32506 This is contrary to the sustenance or clothing owed to her, which he withholds from her while being capable of providing them. This obligation remains perpetually binding on him whether he later becomes insolvent or not, for Allah the Almighty has imposed it upon him as his duty. Thus, his insolvency does not absolve him of the obligation, but merely necessitates

أَوْ حَاضِرًا هُوَ دَيْنٌ فِي ذِمَّتِهِ، يُؤْخَذُ مِنْهُ أَبَدًا وَيُقْضِي لَهَا بِهِ فِي حَيَاتِهِ وَبَعْدَ مَوْتِهِ، وَمِنْ رَأْسِ مَالِهِ يُضْرَبُ بِهِ مَعَ الْغُرَمَاءِ، لِأَنَّهُ حَقٌّ لَهَا فَهُوَ دَيْنٌ قِبَلَهُ.

[مَسْأَلَةٌ قَدَرَ عَلَى بَعْضِ نَفَقَةِ الزَّوْجَةِ وَالْكِسْوَةِ]

١٩٢٤ - مَسْأَلَةٌ: فَمَنْ قَدَرَ عَلَى بَعْضِ النَّفَقَةِ وَالْكِسْوَةِ، فَسَوَاءٌ قَلَّ مَا يَقْدِرُ عَلَيْهِ أَوْ كَثُرَ: الْوَاجِبُ أَنْ يُقْضَى عَلَيْهِ بِمَا قَدَرَ، وَيُسْقَطُ عَنْهُ مَا لَا يَقْدِرُ، فَإِنْ لَمْ يَقْدِرْ عَلَى شَيْءٍ مِنْ ذَلِكَ سَقَطَ عَنْهُ، وَلَمْ يَجِبْ أَنْ يُقْضَى عَلَيْهِ بِشَيْءٍ، فَإِنْ أَيْسَرَ بَعْدَ ذَلِكَ قُضِيَ عَلَيْهِ مِنْ حِينِ يُوسَرُ، وَلَا يُقْضَى عَلَيْهِ بِشَيْءٍ أَنْفَقَتْهُ عَلَى نَفْسِهَا مِنْ نَفَقَةٍ أَوْ كِسْوَةٍ مُدَّةَ عُسْرِهِ، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

وَقَوْله تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا مَا آتَاهَا} [الطلاق: ٧] فَصَحَّ يَقِينًا أَنَّ مَا لَيْسَ فِي وُسْعِه، وَلَا آتَاهُ اللَّهُ تَعَالَى إيَّاهُ، فَلَمْ يُكَلِّفْهُ اللَّهُ عَزَّ وَجَلَّ إيَّاهُ، وَمَا لَمْ يُكَلِّفْهُ اللَّهُ تَعَالَى فَهُوَ غَيْرُ وَاجِبٍ عَلَيْهِ، وَمَا لَمْ يَجِبْ عَلَيْهِ فَلَا يَجُوزُ أَنْ يُقْضَى عَلَيْهِ بِهِ أَبَدًا أَيْسَرَ أَوْ لَمْ يُوسِرْ.

وَهَذَا بِخِلَافِ مَا وَجَبَ لَهَا مِنْ نَفَقَةٍ أَوْ كِسْوَةٍ فَمَنَعَهَا إيَّاهَا - وَهُوَ قَادِرٌ عَلَيْهَا - فَهَذَا يُؤْخَذُ بِهِ أَبَدًا أَعْسَرَ بَعْدَ ذَلِكَ أَوْ لَمْ يُعْسِرْ، لِأَنَّهُ قَدْ كَلَّفَهُ اللَّهُ تَعَالَى إيَّاهُ، فَهُوَ وَاجِبٌ عَلَيْهِ، فَلَا يُسْقِطُهُ عَنْهُ إعْسَارُهُ، لَكِنْ يُوجِبُ الْإِعْسَارُ أَنْ يُنْظَرَ بِهِ إلَى الْمَيْسَرَةِ فَقَطْ، لِقَوْلِهِ عَزَّ وَجَلَّ: {وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَى مَيْسَرَةٍ} [البقرة: ٢٨٠] .

[1] **Qur'an references (L32502):** Qur'an 2:286 (Al-Baqarah).
[2] **Qur'an references (L32503):** Qur'an 65:7 (At-Talaq).

delaying its fulfillment until he attains financial capacity, in accordance with the Almighty's decree: "And if someone is in hardship, grant them respite until ease" [Al-Baqarah 2:280].[3]

L32507 **A case where the husband withholds maintenance, clothing, or *mahr*.**

L32508 1925. Issue: If the husband unjustly withholds her maintenance, clothing, or dower, or because he is poor and unable to provide, it is not permissible for her to refuse conjugal relations with him on account of this. For even if he wrongs her, she may not deny him a right that takes precedence over hers. She may only take from his wealth - if he has the means - an amount equivalent to her rightful due, "as the Messenger of Allah (peace be upon him) instructed Hind bint Utbah when she said: 'O Messenger of Allah, Abū Sufyān is a stingy man who does not give me what suffices me. May I take from his wealth without his knowledge?' The Messenger of Allah (peace be upon him) replied: 'Take what suffices you and your children in a fitting manner.'"

L32509 We have transmitted it as such verbatim from the Messenger of Allah (Peace and blessings of Allah be upon him and his family) through the chain of Al-Bukhārī. He reported: Muḥammad ibn Al-Muthannā reported to us, saying: Yaḥyā [Ibn Saʿīd Al-Qaṭṭān] reported to us from Hishām ibn ʿUrwah, who said: My father informed me from ʿĀ'ishah, the Mother of the Believers, from the Messenger of Allah (Peace and blessings of Allah be upon him and his family).

L32510 **Issue: The husband was unable to provide for his own maintenance, and his wife is financially capable.**

L32511 Issue 1926: If the husband is unable to provide for his own maintenance while his wife is wealthy, she must bear his maintenance expenses. She has no right to seek reimbursement from him if he later gains means, unless he is a slave—in which case his maintenance falls upon his master rather than his wife. Similarly, if a free man has a child or a father, his maintenance becomes

[3]**Qur'an references (L32506):** Qur'an 2:280 (Al-Baqarah).

[مَسْأَلَةٌ مَنَعَهَا الزَّوْج النَّفَقَةَ أَوْ الْكِسْوَةَ أَوْ الصَّدَاقَ]

١٩٢٥ - مَسْأَلَةٌ: وَلَوْ أَنَّ الزَّوْجَ يَمْنَعُهَا النَّفَقَةَ أَوْ الْكِسْوَةَ أَوْ الصَّدَاقَ ظُلْمًا، أَوْ لِأَنَّهُ فَقِيرٌ لَا يَقْدِرُ لَمْ يَجُزْ لَهَا مَنْعُ نَفْسِهَا مِنْهُ مِنْ أَجْلِ ذَلِكَ، لِأَنَّهُ وَإِنْ ظَلَمَ فَلَا يَجُوزُ لَهَا أَنْ تَمْنَعَهُ حَقًّا لَهُ قَبْلَهَا، إنَّمَا لَهَا أَنْ تَنْتَصِفَ مِنْ مَالِهِ - إنْ وَجَدَتْهُ لَهُ - بِمِقْدَارِ حَقِّهَا: «كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هِنْدَ بِنْتَ عُتْبَةَ إذْ قَالَتْ: يَا رَسُولَ اللَّهِ إنَّ أَبَا سُفْيَانَ رَجُلٌ مُمْسِكٌ لَا يُعْطِينِي مَا يَكْفِينِي أَفَآخُذُ مِنْ مَالِهِ بِغَيْرِ عِلْمِهِ؟ فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: خُذِي مَا يَكْفِيكِ وَوَلَدَكِ بِالْمَعْرُوفِ» .

رُوِّينَاهُ هَكَذَا مِنْ لَفْظِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ طَرِيقِ الْبُخَارِيِّ، قَالَ: نا مُحَمَّدُ بْنُ الْمُثَنَّى، قَالَ: نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ هِشَامِ بْنِ عُرْوَةَ، قَالَ: أَخْبَرَنِي أَبِي عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

[مَسْأَلَةٌ عَجَزَ الزَّوْجُ عَنْ نَفَقَةِ نَفْسِهِ وَامْرَأَتُهُ غَنِيَّةٌ]

١٩٢٦ - مَسْأَلَةٌ: فَإِنْ عَجَزَ الزَّوْجُ عَنْ نَفَقَةِ نَفْسِهِ وَامْرَأَتُهُ غَنِيَّةٌ كُلِّفَتْ النَّفَقَةَ عَلَيْهِ، وَلَا تَرْجِعُ عَلَيْهِ بِشَيْءٍ مِنْ ذَلِكَ إنْ أَيْسَرَ، إلَّا أَنْ يَكُونَ عَبْدًا فَنَفَقَتُهُ عَلَى سَيِّدِهِ لَا عَلَى امْرَأَتِهِ - وَكَذَلِكَ إنْ كَانَ لِلْحُرِّ وَلَدٌ أَوْ وَالِدٌ فَنَفَقَتُهُ عَلَى وَلَدِهِ، أَوْ وَالِدِهِ إلَّا أَنْ يَكُونَا فَقِيرَيْنِ.

the obligation of his child or father, except if the responsible relative (child or father) is poor.

L32512 The proof of that is the statement of Allah, the Exalted and Majestic: *"And upon the father is their provision and clothing in an acceptable manner. No soul is burdened beyond its capacity. No mother should be harmed because of her child, nor should the father be harmed because of his child. And the same duty rests upon the heir"* [Al-Baqarah: 233].[4]

L32513 Ali said: The wife is a legal heir, and his maintenance [in cases of his indigence] becomes her obligation, as derived from Quranic injunctions.

L32514–32516 Abū Muḥammad said: The maintenance of the wife is incumbent upon the slave, just as it is upon the free man, because Allah, the Exalted, when... He decreed through His Messenger—peace and blessings of Allah be upon him and his family—that women's maintenance and clothing are obligatory for their husbands, drawing no distinction between a free man and a slave.

L32517 And when Allah, the Exalted, said: "And give the women their bridal gifts as a free gift" [An-Nisa: 4].[5]

L32518 And the Exalted has not distinguished a free person from a bondservant: *{And your Lord is never forgetful}* [Maryam: 64]. Regarding this matter, there are differing opinions. We shall mention what is most pertinent to clarify, Allah willing.[6]

L32519 Among these rulings is that Abū Yūsuf stated regarding a mature, ill woman—whose husband has not consummated the marriage—that no maintenance is due from him if her illness prevents intercourse with her. If he consummates it with her while she remains in this state, he may divorce her and is not obligated to maintain her until he is able to have intercourse with her. If he chooses to retain her, he becomes liable for her maintenance.

L32520 He said: If she falls ill under his care after the marriage was consummated

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لا تُكَلَّفُ نَفْسٌ إِلا وُسْعَهَا لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلا مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] .

قَالَ عَلِيٌّ: الزَّوْجَةُ وَارِثَةٌ فَعَلَيْهَا نَفَقَتُهُ بِنَصِّ الْقُرْآنِ.

قَالَ أَبُو مُحَمَّدٍ: وَنَفَقَةُ الزَّوْجَةِ عَلَى الْعَبْدِ كَمَا هِيَ عَلَى الْحُرِّ، لِأَنَّ اللَّهَ تَعَالَى إِذْ أَوْجَبَ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَفَقَةَ النِّسَاءِ وَكِسْوَتَهُنَّ عَلَى أَزْوَاجِهِنَّ، لَمْ يَخُصَّ حُرًّا مِنْ عَبْدٍ.

وَإِذْ قَالَ اللَّهُ تَعَالَى: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] .

وَلَمْ يَخُصَّ تَعَالَى حُرًّا مِنْ عَبْدٍ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] . وَفِيمَا ذَكَرْنَا خِلَافٌ نَذْكُرُ مِنْهُ مَا تَيَسَّرَ إِنْ شَاءَ اللَّهُ تَعَالَى -:

فَمِنْ ذَلِكَ أَنَّ أَبَا يُوسُفَ قَالَ: فِي الْمَرْأَةِ الْبَالِغَةِ الْمَرِيضَةِ - الَّتِي لَمْ يَدْخُلْ بِهَا زَوْجُهَا - أَنَّهُ لَا نَفَقَةَ لَهَا عَلَيْهِ إِذَا كَانَ مَرَضُهَا يَمْنَعُ مِنْ وَطْئِهَا - فَإِنْ بَنَى بِهَا وَهِيَ كَذَلِكَ فَلَهُ أَنْ يَرُدَّهَا وَلَا يُنْفِقَ عَلَيْهَا حَتَّى يَقْدِرَ عَلَى جِمَاعِهَا فَإِنْ أَمْسَكَهَا فَعَلَيْهِ نَفَقَتُهَا.

قَالَ: فَإِنْ مَرِضَتْ عِنْدَهُ بَعْدَ أَنْ دَخَلَ بِهَا صَحِيحَةً - فَعَلَيْهِ نَفَقَتُهَا وَلَيْسَ لَهُ رَدُّهَا.

[4] **Qur'an references (L32512):** Qur'an 2:233 (Al-Baqarah).
[5] **Qur'an references (L32517):** Qur'an 4:4 (An-Nisa).
[6] **Qur'an references (L32518):** Qur'an 19:64 (Maryam).

while she was healthy, he remains obligated to provide her maintenance and may not repudiate her.

قَالَ: فَإِنْ بَنَى بِالرَّتْقَاءِ فَعَلَيْهِ نَفَقَتُهَا وَلَيْسَ لَهُ رَدُّهَا.

L32521 He said: If he consummates the marriage with a woman who has vaginal occlusion, he is obligated to provide her maintenance, but he does not have the right to annul the marriage.

وَهَذِهِ مُنَاقَضَاتٌ طَرِيفَةٌ فِي السَّخَافَةِ جِدًّا.

L32522 And these are peculiar contradictions in extreme absurdity.

وَقَالَ: إِنْ سُجِنَتْ الْمَرْأَةُ أَوْ حِيلَ بَيْنَهَا وَبَيْنَ زَوْجِهَا كَرْهًا فَلَا نَفَقَةَ لَهَا عَلَيْهِ.

L32523 He said: If a woman is imprisoned or prevented from being with her husband against her will, there is no maintenance obligation upon him for her.

وَقَدْ ذَكَرْنَا قَوْلَ عُمَرَ فِي وُجُوبِ النَّفَقَةِ عَلَى الْغَائِبِ مُدَّةَ مَغِيبِهِ وَإِنْ طَلَّقَ.

L32524 We have mentioned ʿUmar's statement regarding the obligation of maintenance on the absent one for the duration of his absence, even if he has divorced.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ، قَالَ: سُئِلَ ابْنُ شِهَابٍ عَنْ الْمَرْأَةِ تُنْفِقُ عَلَى نَفْسِهَا مِنْ الَّذِي لَهَا وَتَتَسَلَّفُ؟ قَالَ: نَرَى أَنْ يُؤْخَذَ بِهِ زَوْجُهَا بِالسَّدَادِ إِلَّا أَنْ يَكُونَ لَهُ بَيِّنَةٌ أَنَّهُ وَضَعَ لَهَا مَا يُصْلِحُهَا. قَالَ يُونُسُ: وَهُوَ قَوْلُ رَبِيعَةَ.

L32525 It has been narrated to us through the chain of Ibn Wahb from Yunus ibn Yazid, who said: Ibn Shihab was asked about a woman who spends on herself from her own wealth and borrows. He said: "We hold that her husband is responsible for repayment unless he produces clear evidence that he allocated for her what suffices her." Yunus said: "This is the position of Rabi'ah."

قَالَ أَبُو مُحَمَّدٍ: هَذَا الْحَقُّ، لِأَنَّهُ إِنْ ادَّعَى أَنَّهُ أَنْفَقَ فَهُوَ مُدَّعٍ لِسُقُوطِ حَقٍّ لَهَا ثَبَتَ قَبْلَهُ، فَالْبَيِّنَةُ عَلَيْهِ، وَالْيَمِينُ عَلَيْهَا.

L32526 Abu Muhammad said: This is the correct ruling, because if he claims to have spent, he is asserting the cessation of a preexisting right of hers. Thus, the burden of proof lies upon him, and the oath is incumbent upon her.

وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L32527 This is the opinion of al-Ḥasan al-Baṣrī, al-Shāfiʿī, and Abū Sulaymān.

رُوِّينَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ: مَا أَنْفَقَتْ مِنْ مَالِهَا فَلَا شَيْءَ لَهَا فِيهِ، وَمَا اسْتَدَانَتْ فَهُوَ عَلَى الزَّوْجِ - وَهَذَا تَقْسِيمٌ لَا يَقُومُ بِصِحَّتِهِ بُرْهَانٌ.

L32528 It has been narrated to us from Ibrāhīm al-Nakhaʿī: Whatever she spends from her wealth, she retains no claim to it, and whatever debt she incurs falls upon the husband - and this division is unsupported by valid proof.

وَقَالَ ابْنُ شُبْرُمَةَ: لَا نَفَقَةَ لِلْمَرْأَةِ إلَّا إذَا شَكَتْ إلَى الْجِيرَانِ، فَمِنْ حِينِ تَشْكُو تَجِبُ لَهَا النَّفَقَةُ، وَيُؤْخَذُ بِهَا الزَّوْجُ - وَهَذَا تَحْدِيدٌ فَاسِدٌ.

L32529 Ibn Shubrumah said: A wife is not entitled to maintenance unless she complains to the neighbors. From the moment she complains, maintenance becomes due to her, and the husband is obligated to provide it - and this is an invalid stipulation.

L32530–32531 It is authentically reported from Shurayh that a woman said to him: "My

husband has been absent, and I borrowed a dinar which I spent on myself." Shurayh said to her: "Did he command that?" She replied: "No." He said: "Then settle your debt."

وَصَحَّ عَنْ شُرَيْحٍ أَنَّ امْرَأَةً قَالَتْ لَهُ: إنَّ زَوْجِي غَابَ، وَإِنِّي اسْتَدَنْت دِينَارًا فَأَنْفَقْتُهَا عَلَى نَفْسِي؟ فَقَالَ لَهَا شُرَيْحٌ: أَكَانَ أَمَرَ بِذَلِكَ؟ قَالَتْ: لَا، قَالَ: فَاقْضِي دَيْنَك.

L32532 Abu Hanifah said: There is no maintenance for the woman unless the authority imposes it for her.

وَقَالَ أَبُو حَنِيفَةَ: لَا نَفَقَةَ لِلْمَرْأَةِ إلَّا أَنْ يَفْرِضَهَا لَهَا السُّلْطَانُ.

L32533 Abu Muhammad said: The Sovereign of Sovereigns—and He is Allah, the Exalted—has ordained it for her on the tongue of His Messenger, may Allah bless him and grant him peace, thereby invalidating the opinion of Abu Hanifah.

قَالَ أَبُو مُحَمَّد: قَدْ فَرَضَهَا لَهَا سُلْطَانُ السَّلَاطِينِ وَهُوَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَطَلَ رَأْيُ أَبِي حَنِيفَةَ.

L32534 Mālik said: If a man is absent and then returns, and his wife demands maintenance from him, then if she produces evidence that he admitted to her that he had not sent her anything, the judge must rule in her favor. Otherwise, she is not entitled to maintenance except from the day she lodges the claim.

وَقَالَ مَالِكٌ: مَنْ غَابَ ثُمَّ قَدُمَ فَطَلَبَتْهُ امْرَأَةٌ بِالنَّفَقَةِ، فَإِنْ أَقَامَتْ لَهَا بَيِّنَةً بِأَنَّهَا أَقَرَّ لَهَا بِأَنَّهُ لَمْ يَبْعَثْ إلَيْهَا بِشَيْءٍ قَضَى لَهَا، وَإِلَّا فَلَا نَفَقَةَ لَهَا إلَّا مِنْ يَوْمِ تَرْفَعُهُ.

L32535 Abu Muhammad said: This is also a legal matter for which there is no evidence of its validity, nor is it known how the obligatory right owed to it was forfeited by his claim.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ أَيْضًا قَضِيَّةٌ لَا دَلِيلَ عَلَى صِحَّتِهَا، وَلَا يُدْرَى بِمَاذَا سَقَطَ حَقُّهَا الْوَاجِبُ لَهَا بِدَعْوَاهُ.

L32536 As for one who is unable to provide financial maintenance, scholars have differed regarding the ruling applicable to him. A group of scholars has opined that he is imprisoned, and thus cannot divorce nor is he obligated to do so. This is the position of Ubayd Allāh ibn al-Ḥasan al-ʿAnbarī, the judge of Basra.

وَأَمَّا مَنْ لَمْ يَقْدِرْ عَلَى النَّفَقَةِ فَقَدْ اخْتَلَفَ النَّاسُ فِي حُكْمِهِ -: فَقَالَتْ طَائِفَةٌ: يُسْجَنُ فَلَا يُطَلِّقُ وَلَا يُكَلَّفُ طَلَاقًا. وَهَذَا قَوْلُ عُبَيْدِ اللَّهِ بْنِ الْحَسَنِ الْعَنْبَرِيِّ قَاضِي الْبَصْرَةِ.

L32537 Abu Muhammad said: Would that I knew why he is imprisoned? A group said: He is compelled to either provide maintenance or divorce. As was narrated to us from Abd al-Razzaq, from Ubayd Allah ibn Umar, from Nafi', from Ibn Umar, who said: "Umar wrote to the commanders of the armies: Call upon so-and-so and so-and-so – people who severed ties with Medina and departed from it – either to return to their wives, or to send maintenance to them, or to divorce and send the maintenance for the elapsed period."

قَالَ أَبُو مُحَمَّد: لَيْتَ شِعْرِي لِمَاذَا يُسْجَنُ؟ وَقَالَتْ طَائِفَةٌ: يُجْبَرُ عَلَى أَنْ يُنْفِقَ أَوْ يُطَلِّقَ -: كَمَا رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: " كَتَبَ عُمَرُ إلَى أُمَرَاءِ الْأَجْنَادِ ادْعُوْا - فُلَانًا وَفُلَانًا - نَاسًا قَدْ انْقَطَعُوا عَنْ الْمَدِينَةِ وَرَحَلُوا عَنْهَا: إمَّا أَنْ يَرْجِعُوا إلَى نِسَائِهِمْ، وَإِمَّا أَنْ يَبْعَثُوا بِنَفَقَةٍ إلَيْهِنَّ، وَإِمَّا أَنْ يُطَلِّقُوا وَيَبْعَثُوا بِنَفَقَةِ مَا مَضَى ".

L32538 And from the narration of ʿAbd al-Razzāq from Sufyān al-Thawrī from Yaḥyā

ibn Saʿīd al-Anṣārī from Saʿīd ibn al-Musayyab, who said: If a man cannot find the means to provide for his wife, he is compelled to divorce her.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: إذَا لَمْ يَجِدْ الرَّجُلُ مَا يُنْفِقُ عَلَى امْرَأَتِهِ أُجْبِرَ عَلَى طَلَاقِهَا.

L32539 Abu Muhammad said: We examined the evidence presented by the proponents of this view, based on what was narrated to us via the route of al-Bazzar: Amr ibn Ali from Abu Muawiyah al-Darir from al-A'mash from Abu Salih from Abu Hurairah, who said: The Messenger of Allah (peace and blessings be upon him) said: "The best charity is that which leaves sufficiency, and the upper hand is better than the lower hand. Your wife says: 'Spend on me or divorce me.'"

قَالَ أَبُو مُحَمَّد: فَنَظَرْنَا فِيمَا يَحْتَجُّ بِهِ أَهْلُ هَذِهِ الْمَقَالَةِ بِمَا رُوِّينَا مِنْ طَرِيقِ الْبَزَّارِ نا عَمْرُو بْنُ عَلِيٍّ نا أَبُو مُعَاوِيَةَ الضَّرِيرُ نا الْأَعْمَشُ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ، قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَفْضَلُ الصَّدَقَةِ مَا أَبْقَتْ غِنًى، وَالْيَدُ الْعُلْيَا خَيْرٌ مِنْ الْيَدِ السُّفْلَى» ، تَقُولُ امْرَأَتُكَ: أَنْفِقْ عَلَيَّ أَوْ طَلِّقْنِي.

L32540 Abu Muhammad said: We examined this narration and found that this addition does not originate from the Messenger of Allah (peace be upon him and his family).

قَالَ أَبُو مُحَمَّد: فَنَظَرْنَا فِي هَذَا الْخَبَرِ - فَوَجَدْنَا هَذِهِ الزِّيَادَةَ لَيْسَتْ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L32541–32542 The evidence for that is what we have narrated through the chain of Al-Bukhārī: 'Umar ibn Ḥafṣ ibn Ghiyāth narrated to us, my father narrated to us, Al-A'mash narrated to us, Abū Ṣāliḥ narrated to us, Abū Hurayrah narrated to me: The Messenger of Allah—peace and blessings be upon him and his family—said, "The best charity is that which leaves one free from want. The upper hand is better than the lower hand, and begin with those under your care." The woman says: "Either you feed me."[7]

بُرْهَانُ ذَلِكَ: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ نَا أَبِي ثنا الْأَعْمَشُ نا أَبُو صَالِحٍ حَدَّثَنِي أَبُو هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «أَفْضَلُ الصَّدَقَةِ مَا تَرَكَ غِنًى وَالْيَدُ الْعُلْيَا خَيْرٌ مِنْ الْيَدِ السُّفْلَى وَابْدَأْ بِمَنْ تَعُولُ» ، تَقُولُ الْمَرْأَةُ: إمَّا أَنْ تُطْعِمَنِي.

L32543 "Or that you divorce me," and he mentioned the rest of the report. They said: "O Abu Hurairah, did you hear this from the Messenger of Allah (peace be upon him and his family)?" He said: "No, this is from Abu Hurairah's cleverness."

وَإِمَّا أَنْ تُطَلِّقَنِي " وَذَكَرَ بَاقِيَ الْخَبَرِ - قَالُوا: يَا أَبَا هُرَيْرَةَ سَمِعْت هَذَا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: لَا، هَذَا مِنْ كَيْسِ أَبِي هُرَيْرَةَ.

L32544 Thus, the argument based on this report became invalid.

فَبَطَلَ الِاحْتِجَاجُ بِهَذَا الْخَبَرِ.

L32545 If they say it is from the statement of Abū Hurayrah, then it is the statement of both Companions: 'Umar and Abū Hurayrah.

فَإِنْ قَالُوا: هُوَ مِنْ قَوْلِ أَبِي هُرَيْرَةَ، فَهُوَ قَوْلُ صَاحِبَيْنِ، عُمَرَ، وَأَبِي هُرَيْرَةَ.

L32546 We said: As for Abu Hurairah, he merely narrated the woman's statement and did not say that this is the obligatory in the ruling.

قُلْنَا: أَمَّا أَبُو هُرَيْرَةَ، فَإِنَّهُ إنَّمَا حَكَى قَوْلَ الْمَرْأَةِ، وَلَمْ يَقُلْ: إنَّ هَذَا هُوَ الْوَاجِبُ فِي الْحُكْمِ.

[7] **Hadith references (L32542):** Sahih al-Bukhari 5355.

وَأَمَّا عُمَرُ، فَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَمْ يُخَاطِبْ بِذَلِكَ إِلَّا أَغْنِيَاءَ قَادِرِينَ عَلَى النَّفَقَةِ، وَلَيْسَ فِي خَبَرِ عُمَرَ ذِكْرُ حُكْمِ الْمُعْسِرِ؟ بَلْ قَدْ صَحَّ عَنْهُ إِسْقَاطُ طَلَبِ الْمَرْأَةِ لِلنَّفَقَةِ إِذَا أُعْسِرَ بِهَا الزَّوْجُ - عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى.

L32547 As for ʿUmar, they have no valid argument concerning him, because he only addressed wealthy individuals capable of providing maintenance. Does the report about ʿUmar not mention the ruling regarding the insolvent? Rather, it is authentically established from him that he waived the wife's claim for maintenance if the husband becomes insolvent regarding her, as we will mention after this, God the Exalted willing.

وَقَالَتْ طَائِفَةٌ: يُطَلِّقُهَا عَلَيْهِ الْحَاكِمُ.

L32548 A group said: The judge pronounces the divorce on his behalf.

ثُمَّ اخْتَلَفُوا -: فَقَالَ مَالِكٌ: يُؤَجَّلُ فِي عَدَمِ النَّفَقَةِ شَهْرًا أَوْ نَحْوَهُ، فَإِنْ انْقَضَى الْأَجَلُ - وَهِيَ حَائِضٌ أُخِّرَ حَتَّى تَطْهُرَ، وَفِي الصَّدَاقِ عَامَيْنِ، ثُمَّ يُطَلِّقُهَا عَلَيْهِ الْحَاكِمُ طَلْقَةً رَجْعِيَّةً، فَإِنْ أَيْسَرَ فِي الْعِدَّةِ فَلَهُ ارْتِجَاعُهَا.

L32549 Then they differed: Mālik said, "He is granted a month's delay (or similar) due to lack of maintenance. If the period expires while she is menstruating, it is postponed until she becomes ritually pure. For the dowry, two years are allotted. Then the judge pronounces a revocable divorce against him. If he regains financial means during the waiting period, he retains the right to take her back."

وَقَالَتْ طَائِفَةٌ: لَا يُؤَجَّلُ إِلَّا يَوْمًا وَاحِدًا ثُمَّ يُطَلِّقُهَا الْحَاكِمُ عَلَيْهِ -: وَمِمَّنْ رُوِّينَا عَنْهُ نَحْوَ هَذَا جَمَاعَةً -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ أَبِي الزِّنَادِ قَالَ: سَأَلْتُ سَعِيدَ بْنَ الْمُسَيِّبِ عَنِ الرَّجُلِ لَا يَجِدُ مَا يُنْفِقُ عَلَى امْرَأَتِهِ؟ قَالَ: يُفَرَّقُ بَيْنَهُمَا، قُلْتُ: سَنَةٌ؟ قَالَ: نَعَمْ، سَنَةٌ.

L32550 A group said: The delay is only one day, then the judge divorces her against him. Among those from whom we have received narrations of this kind are a multitude of scholars: as narrated by Abd al-Razzaq from Sufyan ibn Uyaynah from Abu al-Zinad, who said: I asked Sa'id ibn al-Musayyab about a man who cannot afford to provide for his wife. He said: They must be compulsorily separated. I asked: For a year? He replied: Yes, a year.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ وَعَبْدِ الْجَبَّارِ بْنِ عُمَرَ عَنْ أَبِي الزِّنَادِ قَالَ: شَهِدْتُ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ يَقُولُ لِزَوْجِ امْرَأَةٍ شَكَتْ إِلَيْهِ أَنَّهُ لَا يُنْفِقُ عَلَيْهَا: اضْرِبُوا لَهُ أَجَلَ شَهْرٍ أَوْ شَهْرَيْنِ، فَإِنْ لَمْ يُنْفِقْ عَلَيْهَا إِلَى ذَلِكَ الْأَجَلِ فَرِّقُوا بَيْنَهُ وَبَيْنَهَا - قَالَ: أَبُو الزِّنَادِ فَسَأَلْتُ عَنْهُ سَعِيدَ بْنَ الْمُسَيِّبِ؟ فَقَالَ فِي الْأَجَلِ وَالتَّفْرِيقِ مِثْلَ قَوْلِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

L32551 From the narration of Ibn Wahb, from ʿAbd al-Raḥmān ibn Abī al-Zinād and ʿAbd al-Jabbār ibn ʿUmar, from Abū al-Zinād, who said: I witnessed ʿUmar ibn ʿAbd al-ʿAzīz say to the husband of a woman who complained to him that he failed to provide for her: "Set him a term of one month or two months. If he does not provide for her by that term, separate him from her." Abū al-Zinād said: I asked Saʿīd ibn al-Musayyib about it, and he gave the same ruling as ʿUmar ibn ʿAbd al-ʿAzīz regarding the term and separation.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنِ ابْنِ لَهِيعَةَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ أَنَّ رَجُلًا شَكَا إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ أَنْكَحَ ابْنَتَهُ رَجُلًا لَا يُنْفِقُ عَلَيْهَا، فَأَرْسَلَ إِلَى الزَّوْجِ فَأَتَى فَقَالَ:

L32552–32553 Narrated via the chain of Ibn Wahb, from Ibn Lahiʿah, from Muḥammad ibn ʿAbd al-Raḥmān: A man complained to ʿUmar ibn ʿAbd al-ʿAzīz that he had given his daughter in marriage to a man who did not provide for her. He

summoned the husband, who came and said: “Did he give her in marriage to me knowing I have nothing?” ʿUmar ibn ʿAbd al-ʿAzīz responded: “You married her to him knowing—what am I to do? Go with your household.”

أَنْكَحَنِي وَهُوَ يَعْلَمُ أَنَّهُ لَيْسَ لِي شَيْءٌ؟ فَقَالَ لَهُ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَنْكَحْتَهُ وَأَنْتَ تَعْرِفُ، فَمَا الَّذِي أَصْنَعُ، اذْهَبْ بِأَهْلِك.

L32554 From the chain of Ibn Wahb, from Al-Layth ibn Sa’d, from Yahya ibn Sa’id al-Ansari, who said: “Whoever marries while wealthy, then falls into need and cannot find the means to provide for his wife, they are to be separated.”

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ قَالَ: " مَنْ تَزَوَّجَ - وَهُوَ غَنِيٌّ - ثُمَّ احْتَاجَ فَلَمْ يَجِدْ مَا يُنْفِقُ عَلَى امْرَأَتِهِ فُرِّقَ بَيْنَهُمَا "

L32555 From the chain of Ibn Wahb from Malik, he said: “Those scholars I encountered would say: ’If a man does not spend on his wife, they are separated.’” Malik was asked: “But the Companions experienced poverty and need?” Malik replied: “People today are not like that. She only married him in expectation of that.”

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَالِكٍ، قَالَ: إنَّ مَنْ أَدْرَكْتُ كَانُوا يَقُولُونَ: إذَا لَمْ يُنْفِقْ الرَّجُلُ عَلَى امْرَأَتِهِ فُرِّقَ بَيْنَهُمَا، قِيلَ لِمَالِكٍ: قَدْ كَانَتْ الصَّحَابَةُ يُعْسِرُونَ وَيَحْتَاجُونَ؟ قَالَ مَالِكٌ: لَيْسَ النَّاسُ الْيَوْمَ كَذَلِكَ، إنَّمَا تَزَوَّجَتْهُ رَجَاءَ.

L32556 Via the chain of ʿAbd al-Razzāq from Maʿmar, from Qatādah and Ḥammād ibn Abī Sulaymān, both said: If he cannot afford to provide for his wife, judicial divorce is decreed between them.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، قَالَا جَمِيعًا: إذَا لَمْ يَجِدْ مَا يُنْفِقُ عَلَى امْرَأَتِهِ فُرِّقَ بَيْنَهُمَا.

L32557 Abu Muhammad said: We have found no foundational argument for the adherents of this doctrine whatsoever, except their clinging to the statement of Sa’id ibn al-Musayyib that it constitutes a Sunnah practice.

قَالَ أَبُو مُحَمَّدٍ: لَمْ نَجِدْ لِأَهْلِ هَذِهِ الْمَقَالَةِ حُجَّةً أَصْلًا، إلَّا تَعَلُّقَهُمْ بِقَوْلِ سَعِيدِ بْنِ الْمُسَيِّبِ: إنَّهُ سُنَّةٌ.

L32558 Abu Muhammad said: Two statements have been authentically reported from Saʿīd ibn al-Musayyib, as we mentioned one of them: that he is legally compelled to separate from her, and the other: that separation is imposed between them. These two are conflicting. Which of them was the Sunnah? Whichever was the Sunnah, the other would undoubtedly be contrary to the Sunnah. Saʿīd did not state that it was the Sunnah of the Messenger of Allah (peace and prayers be upon him and his family). Even if he had said so, it would have been a mursal narration, holding no authority. How could this be the case when he undoubtedly meant that it was a Sunnah other than his—peace and prayers be upon him?

قَالَ أَبُو مُحَمَّدٍ: قَدْ صَحَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَوْلَانِ، كَمَا أَوْرَدْنَا أَحَدُهُمَا - يُجْبَرُ عَلَى مُفَارَقَتِهَا، وَالْآخَرُ - يُفَرَّقُ بَيْنَهُمَا، وَهُمَا مُخْتَلِفَانِ، فَأَيُّهُمَا السُّنَّةُ، وَأَيُّهُمَا كَانَ السُّنَّةُ، فَالْآخَرُ خِلَافُ السُّنَّةِ، بِلَا شَكٍّ، وَلَمْ يَقُلْ سَعِيدٌ: إنَّهَا سُنَّةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَحَتَّى لَوْ قَالَهُ لَكَانَ مُرْسَلًا لَا حُجَّةَ فِيهِ، فَكَيْفَ وَإِنَّمَا أَرَادَ - بِلَا شَكٍّ - أَنَّهُ سُنَّةٌ مِنْ دُونِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L32559 Perhaps he intended what has been narrated to us regarding the action of Umar ibn al-Khattab - which contradicts the position of those who cite Sa’id’s opinion as evidence. The height of astonishment lies in those who

invoke Sa’id’s statement as proof in matters of spousal separation by claiming it is Sunnah, while they utterly disregard what was narrated to us by Muhammad ibn Sa’id ibn Umar ibn Nabat; narrated via Abbas ibn Asbagh; Muhammad ibn Qasim ibn Muhammad; Muhammad ibn Abd al-Salam al-Khushani; Muhammad ibn al-Muthanna; Abd al-A’la; Sa’id ibn Abi Arubah; from Qatadah; from Khilas ibn Amr: that Uthman ibn Affan ruled regarding the redemption for the child of the abducted slave woman (taken as booty) that she is religiously emancipated, or that the Sunnah (established precedent) dictates two persons [as compensation] for every person.

وَلَعَلَّهُ أَرَادَ مَا رُوِّينَا مِنْ فِعْلِ عُمَرَ بْنِ الْخَطَّابِ الَّذِي هُوَ مُخَالِفٌ لِقَوْلِ مَنْ يَحْتَجُّ بِقَوْلِ سَعِيدٍ هَذَا - وَالْعَجَبُ كُلُّهُ مِمَّنْ يَحْتَجُّ فِيمَا يُفَرِّقُ بِهِ بَيْنَ الزَّوْجَيْنِ بِقَوْلِ سَعِيدٍ: إنَّهُ سُنَّةٌ، وَهُمْ لَا يَلْتَفِتُونَ - مَا حَدَّثَنَا بِهِ مُحَمَّدُ بْنُ سَعِيدِ بْنِ عُمَرَ بْنِ نَبَاتٍ نا عَبَّاسُ بْنُ أَصْبَغَ نَا مُحَمَّدُ بْنُ قَاسِمِ بْنِ مُحَمَّدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الْأَعْلَى نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو " أَنَّ عُثْمَانَ بْنَ عَفَّانَ قَضَى فِي فِدَاءِ وَلَدِ الْأَمَةِ الْغَارَّةِ بِأَنَّهَا حُرَّةُ الْمِلَّةِ، أَوْ السُّنَّةُ كُلُّ رَأْسٍ رَأْسَيْنِ ".

L32560–32562 And they do not turn around—what was narrated to us by Aḥmad ibn Muḥammad ibn al-Jasūr, from Wahb ibn Masarrata, from Muḥammad ibn Waddāḥ. Abu Bakr ibn Abi Shaybah narrated to us, from Abd al-A’la, from Sa’id—he is Ibn Abi Arubah—from Matar al-Warraq, from Raja’ ibn Haywah, from Qabisah ibn Dhu’ayb, from Amr ibn al-As, who said: “Do not confuse for us the Sunnah of our Prophet—may Allah bless him and his family and grant him peace—: the ʿiddah of an umm al-walad is that of a widow.”

وَلَا يَلْتَفِتُونَ - مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا وَهْبُ بْنُ مَسَرَّةَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَبْدُ الْأَعْلَى عَنْ سَعِيدٍ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ مَطَرٍ الْوَرَّاقِ عَنْ رَجَاءِ بْنِ حَيْوَةَ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ عَنْ عَمْرِو بْنِ الْعَاصِ قَالَ: " لَا تَلْبِسُوا عَلَيْنَا سُنَّةَ نَبِيِّنَا - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عِدَّةُ أُمِّ الْوَلَدِ عِدَّةُ الْمُتَوَفَّى عَنْهَا ".

L32563 The authentic and established narration through the chain of al-Bukhārī: Muḥammad ibn Kathīr narrated to us, Sufyān narrated to us from Saʿd—he is Ibn Ibrāhīm ibn ʿAbd al-Raḥmān ibn ʿAwf—from Ṭalḥah ibn ʿUbayd Allāh ibn ʿAwf, who said: “I prayed behind Ibn ʿAbbās at a funeral prayer, and he recited the Fātiḥah of the Book. He then said: ’That you may know it is a Sunnah.’” Another narration through the chain of Aḥmad ibn Shuʿayb: Quṭaybah ibn Saʿīd narrated to us, al-Layth ibn Saʿd narrated to us from Ibn Shihāb from Abū Umāmah ibn Sahl ibn Ḥunayf, who said: “The Sunnah concerning the funeral prayer is to recite silently during the first Takbīr, then to say the Takbīr, and the Taslīm is given after the last Takbīr.”

وَالصَّحِيحُ الثَّابِتُ مِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدُ بْنُ كَثِيرٍ نا سُفْيَانُ عَنْ سَعْدٍ - هُوَ ابْنُ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - عَنْ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ بْنِ عَوْفٍ قَالَ " صَلَّيْتُ خَلْفَ ابْنِ عَبَّاسٍ عَلَى جِنَازَةٍ فَقَرَأَ بِفَاتِحَةِ الْكِتَابِ، فَقَالَ: لِتَعْلَمُوا أَنَّهَا سُنَّةٌ ". وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أرنا قُتَيْبَةُ بْنُ سَعِيدٍ أرنا اللَّيْثُ بْنُ سَعْدٍ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي أُمَامَةَ بْنِ سَهْلِ بْنِ حُنَيْفٍ أَنَّهُ قَالَ «السُّنَّةُ فِي الصَّلَاةِ عَلَى الْجِنَازَةِ أَنْ يُقْرَأَ فِي التَّكْبِيرَةِ الْأُولَى مُخَافَتَةً ثُمَّ يُكَبِّرُ وَالتَّسْلِيمُ عِنْدَ الْآخِرَةِ» .

L32564 Who is more astonishing than one who deems the opinion of Sa‘id ibn al-Musayyib in a matter about which conflicting opinions are reported from him as a Sunnah that constitutes proof, yet does not regard the opinion of Abi Umamah ibn Sahl as a Sunnah that constitutes proof? Such a person is

فَمَنْ أَعْجَبُ مِمَّنْ يَرَى قَوْلَ سَعِيدِ بْنِ الْمُسَيَّبِ فِي قَضِيَّةٍ اُخْتُلِفَ عَنْهُ فِيهَا هِيَ سُنَّةٌ حُجَّةٌ، وَلَا يَرَى قَوْلَ أَبِي أُمَامَةَ بْنِ سَهْلٍ هِيَ السُّنَّةُ حُجَّةٌ؟ وَهُوَ مِثْلُ سَعِيدٍ فِي إدْرَاكِ الصَّحَابَةِ -

comparable to Sa‘id in having met the Companions—may Allah be pleased with them. How then can one compare this to ‘Uthmān, ‘Amr ibn al-‘Āṣ, and Ibn ‘Abbās? Sa‘id never experienced a single day of their lifetimes, yet all of them are undoubtedly more knowledgeable about the Sunnah than Sa‘id without doubt. This is an arbitrary imposition of falsehood in matters of religion.

رَضِيَ اللَّهُ عَنْهُمْ - فَكَيْفَ بِعُثْمَانَ، وَعَمْرِو بْنِ الْعَاصِ، وَابْنِ عَبَّاسٍ، وَكُلُّ وَاحِدٍ مِنْهُمْ لَا يُدْرِكُ سَعِيدٌ يَوْمًا مِنْ أَيَّامِهِمْ أَبَدًا، وَكُلُّهُمْ أَعْلَمُ بِالسُّنَّةِ مِنْ سَعِيدٍ بِلَا شَكٍّ - وَهَذَا تَحَكُّمٌ فِي الدِّينِ بِالْبَاطِلِ.

L32565 As for the narration from ’Umar ibn ’Abd al-’Aziz and Sa’īd ibn al-Musayyib regarding deferment for one or two months, it is completely dismissed. This is because its chain comes through ’Abd al-Raḥmān ibn Abī al-Zinād and ’Abd al-Jabbār ibn ’Umar—both of whom are deemed unreliable.

وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَسَعِيدِ بْنِ الْمُسَيِّبِ فِي تَأْجِيلِ شَهْرٍ أَوْ شَهْرَيْنِ، فَسَاقِطَةٌ جِدًّا، لِأَنَّهَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ، وَعَبْدِ الْجَبَّارِ بْنِ عُمَرَ، وَكِلَاهُمَا لَا شَيْءَ.

L32566 Among the most wondrous of wonders is Mālik’s reply to the one who cited the Companions’ experience of need and hardship as evidence against him in this matter, when he said: “People today are not like that; she only married him out of hope.” This statement combines multiple aspects of error: among them is opposing the directives of the Companions and their established practice through his admission that people are not like that today. How then can he permit a ruling that acknowledges people are acting contrary to what the Companions upheld? Who permitted him that? From where did he discern a change in people regarding this matter? No one knows in this matter that people today differ from their state during the Companions’ era, for whenever a Companion married, the woman unquestionably married him for intimacy and provision. People today are none other than the same.

وَمِنْ أَعْجَبِ الْعَجَبِ قَوْلُ مَالِكٍ لِلَّذِي احْتَجَّ عَلَيْهِ فِي هَذِهِ الْمَسْأَلَةِ بِأَنَّ الصَّحَابَةَ كَانُوا يَحْتَاجُونَ وَيُعَسِّرُونَ بِقَوْلِهِ: لَيْسَ النَّاسُ الْيَوْمَ كَذَلِكَ، إِنَّمَا تَزَوَّجَتْهُ رَجَاءً " فَجَمَعَ هَذَا الْقَوْلُ وُجُوهًا مِنْ الْخَطَأِ -: مِنْهَا - مُخَالَفَةُ أَمْرِ الصَّحَابَةِ وَمَا مَضَوْا عَلَيْهِ بِإِقْرَارِهِ الِاعْتِرَافَ بِأَنَّ النَّاسَ لَيْسُوا كَذَلِكَ الْيَوْمِ، فَكَيْفَ يَجُوزُ لَهُ أَنْ يُجِيزَ حُكْمًا يُقِرُّ بِأَنَّ النَّاسَ فِيهِ عَلَى خِلَافِ مَا مَضَى عَلَيْهِ الصَّحَابَةُ، ثُمَّ مَنْ لَهُ بِذَلِكَ، وَمِنْ أَيْنَ عَرَفَ تَبَدُّلَ النَّاسِ فِي هَذِهِ الْقَصَّةِ وَمَا يَعْلَمُ أَحَدٌ فِيهَا أَنَّ النَّاسَ عَلَى خِلَافِ مَا كَانُوا عَلَيْهِ عَصْرَ الصَّحَابَةِ، لِأَنَّ كُلَّ مَنْ تَزَوَّجَ مِنْ الصَّحَابَةِ، فَإِنَّمَا تَزَوَّجَتْهُ الْمَرْأَةُ لِلْجِمَاعِ وَالنَّفَقَةِ بِلَا شَكٍّ، فَمَا النَّاسُ الْيَوْمَ إِلَّا كَذَلِكَ.

L32567–32568 Then his statement, “She only married him in hope of maintenance,” so it is said to him: What then? How does this [argument] invalidate the ruling that the Companions - may Allah be pleased with them - had previously established? The Shafi’is presented a clear argument against them - namely, their argument: “If you oblige her to endure [without maintenance] for a month, there is no way to live for a month without eating. What distinction exists between this and requiring her to endure [without maintenance] perpetually?”

ثُمَّ قَوْلُهُ " إِنَّمَا تَزَوَّجَتْهُ رَجَاءً " فَيُقَالُ لَهُ: فَكَانَ مَاذَا؟ وَأَيُّ شَيْءٍ فِي هَذَا مِمَّا يُحِيلُ حُكْمَ مَا مَضَى عَلَيْهِ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ -؟ وَاحْتَجَّ الشَّافِعِيُّونَ عَلَيْهِمْ بِحُجَّةٍ ظَاهِرَةٍ - وَهِيَ أَنْ قَالُوا: إِذَا كَلَّفْتُمُوهَا صَبْرَ شَهْرٍ، فَلَا سَبِيلَ إِلَى عَيْشِ شَهْرٍ بِلَا أَكْلٍ، فَأَيُّ فَرْقٍ بَيْنَ ذَلِكَ وَبَيْنَ تَكْلِيفِهَا الصَّبْرَ أَبَدًا.

L32569 Abū Muḥammad said: This is a valid objection, but it may also be said to al-Shāfiʿī: If you divorce her upon him, there is no endurance without eating. By obligating her to observe the waiting period—which may sometimes span months—you have imposed upon her to endure without maintenance for a duration wherein one cannot live without food, with no exception. Thus the invalidity of this opinion becomes entirely evident.

قَالَ أَبُو مُحَمَّد: وَهَذَا اعْتِرَاضٌ صَحِيحٌ، إلَّا أَنَّهُ يُقَالُ أَيْضًا لِلشَّافِعِيِّ: إذَا طَلَّقْتُمُوهَا عَلَيْهِ فَإِنَّهُ لَا صَبْرَ عَنْ الْأَكْلِ، فَأَنْتُمْ تُكَلِّفُونَهَا الْعِدَّةَ - وَهِيَ رُبَّمَا كَانَتْ أَشْهُرًا - فَقَدْ كَلَّفْتُمُوهَا الصَّبْرَ بِلَا نَفَقَةٍ مُدَّةً لَا يُعَاشُ فِيهَا بِلَا أَكْلٍ وَلَا فَرْقَ - فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ جُمْلَةً.

L32570 They also argued against the followers of Abū Ḥanīfa—not against us—by stating: "We have agreed upon mandating judicial separation between one who withholds marital relations from his wife and separates from her due to the harm of depriving her of intercourse. Is the harm of depriving her of maintenance not more severe?" The followers of Abū Ḥanīfa retorted: "We and you have already concurred that if a man engages in intercourse once then withholds relations, separation is not decreed. Thus, it becomes incumbent upon you to refrain from separating a couple when the husband provided maintenance once or multiple times then became unable to afford it? You are thereby bound not to separate them."

وَاحْتَجُّوا أَيْضًا عَلَى أَصْحَابِ أَبِي حَنِيفَةَ، لَا عَلَيْنَا بِأَنْ قَالُوا: قَدْ اتَّفَقْنَا عَلَى التَّفْرِيقِ بَيْنَ مَنْ عَنَّ عَنْ امْرَأَتِهِ وَبَيْنَهَا بِضَرَرِ فَقْدِ الْجِمَاعِ، فَضَرَرُ فَقْدِ النَّفَقَةِ أَشَدُّ؟ فَقَالَ لَهُمْ أَصْحَابُ أَبِي حَنِيفَةَ: قَدْ اتَّفَقْنَا نَحْنُ وَأَنْتُمْ عَلَى أَنَّهُ إنْ وَطِئَهَا مَرَّةً ثُمَّ عَنَّ عَنْهَا أَنَّهُ لَا يُفَرَّقُ بَيْنَهُمَا فَيَلْزَمُكُمْ أَنْ لَا تُفَرِّقُوا بَيْنَ مَنْ أَنْفَقَ عَلَيْهَا مَرَّةً وَاحِدَةً فَأَكْثَرَ ثُمَّ أُعْسِرَ بِنَفَقَتِهَا؟ فَيَلْزَمُكُمْ أَنْ لَا تُفَرِّقُوا بَيْنَهُمَا.

L32571 Abu Muhammad said: Both groups abandoned their corrupt analogy in this matter.

قَالَ أَبُو مُحَمَّد: كِلَا الطَّائِفَتَيْنِ تَرَكَتْ قِيَاسَهَا الْفَاسِدَ فِي هَذِهِ الْمَسْأَلَةِ.

L32572 Abu Muhammad said: A group held the same opinion as ours—as transmitted to us through Muslim's chain: From Zuhayr ibn Harb, from Ruh ibn Ubada, from Zakariyya ibn Ishaq, from Abu al-Zubayr, from Jabir ibn Abdullah, who said: "Abu Bakr and Umar entered upon the Messenger of Allah—peace and blessings be upon him—and found him sitting with his wives around him, silent and somber. Abu Bakr said: 'O Messenger of Allah, if only you saw Kharijah's daughter; she asked me for expenses, so I approached her and grabbed her neck!' The Messenger of Allah—peace and blessings be upon him—smiled and said: 'They are around me as you see, asking me for expenses.' Abu Bakr then rose to Aisha, pressing her neck, and Umar rose to Hafsa, pressing her neck, both saying: 'Do you ask the Messenger of Allah—peace and blessings be upon him—for what he does not possess?' They replied: 'By Allah, we will never ask the Messenger of Allah—peace and blessings be upon him—for anything he does not possess.'

قَالَ أَبُو مُحَمَّد: وَقَالَتْ طَائِفَةٌ كَقَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ نا رَوْحُ بْنُ عُبَادَةَ نا زَكَرِيَّا بْنُ إِسْحَاقَ نا أَبُو الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «دَخَلَ أَبُو بَكْرٍ، وَعُمَرُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَجَدَاهُ جَالِسًا حَوْلَهُ نِسَاؤُهُ وَاجِمًا سَاكِتًا؟ فَقَالَ أَبُو بَكْرٍ: يَا رَسُولَ اللَّهِ، لَوْ رَأَيْتَ بِنْتَ خَارِجَةَ سَأَلَتْنِي النَّفَقَةَ فَقُمْتُ إلَيْهَا فَوَجَأْتُ عُنُقَهَا؟ فَضَحِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ: هُنَّ حَوْلِي كَمَا تَرَى يَسْأَلْنَنِي النَّفَقَةَ، فَقَامَ أَبُو بَكْرٍ عَلَى عَائِشَةَ يَجَأُ عُنُقَهَا وَقَامَ عُمَرُ إلَى حَفْصَةَ يَجَأُ عُنُقَهَا، كِلَاهُمَا يَقُولُ: تَسْأَلْنَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَيْسَ عِنْدَهُ؟ فَقُلْنَ: وَاَللَّهِ

Then he secluded himself from them—peace and blessings be upon him—for a month." And he related the rest of the hadith.

لَا نَسْأَلُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - شَيْئًا أَبَدًا مَا لَيْسَ عِنْدَهُ، ثُمَّ اعْتَزَلَهُنَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - شَهْرًا» وَذَكَرَ الْحَدِيثَ.

L32573 Abu Muhammad said: We have cited this solely because of what is reported from Abu Bakr and Umar, may Allah be pleased with them both, concerning their striking of their respective daughters when the two daughters asked the Prophet, peace and blessings of Allah be upon him and his family, for maintenance he could not find, and when Abu Bakr struck his wife after she asked him for maintenance he could not find.

قَالَ أَبُو مُحَمَّد: إنَّمَا أَوْرَدْنَا هَذَا لِمَا فِيهِ عَنْ أَبِي بَكْرٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - مِنْ ضَرْبِهِمَا ابْنَتَيْهِمَا، إذْ سَأَلَتَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَفَقَةً لَا يَجِدُهَا، وَإِذْ ضَرَبَ أَبُو بَكْرٍ امْرَأَتَهُ، إذْ سَأَلَتْهُ نَفَقَةً لَا يَجِدُهَا.

L32574–32575 It is an absolute and certain impossibility that the two would strike a woman claiming her rightful due. Had our opponents discovered such a claim, they would have exploited it to the utmost—given how aggressively they wield such means to assert control. As for us, we do not adopt as evidence what is attributed to the Messenger of Allah—peace be upon him and his family—regarding Abū al-Zubayr's narration from Jābir, since he did not explicitly affirm having directly heard it from him.

وَمِنْ الْمُحَالِ الْمُتَيَقَّنِ أَنْ يَضْرِبَا طَالِبَةَ حَقٍّ، وَمِثْلُ هَذَا لَوْ وَجَدَهُ الْمُخَالِفُونَ لَنَا لِعِظَمِ تَسَلُّطِهِمْ بِهِ - وَأَمَّا نَحْنُ فَلَا نَحْتَجُّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِمَا رَوَاهُ أَبُو الزُّبَيْرِ عَنْ جَابِرٍ، لَمْ يَقُلْ فِيهِ: أَنَّهُ سَمِعَهُ مِنْهُ.

L32576 Through the transmission of Abd al-Razzaq.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ.

L32577 From Ibn Jurayj: I asked ʿAṭāʾ about someone who cannot find what suffices his wife for maintenance. He said: "She has no right except to what you can provide, she has no right except to what you can provide. She has no right to have him divorce her."

عَنْ ابْنِ جُرَيْجٍ سَأَلْتُ عَطَاءً عَمَّنْ لَمْ يَجِدْ مَا يَصْلُحُ امْرَأَتَهُ مِنْ النَّفَقَةِ؟ فَقَالَ: لَيْسَ لَهَا إلَّا مَا وَجَدْتَ، لَيْسَ لَهَا إلَّا مَا وَجَدْتَ، لَيْسَ لَهَا أَنْ يُطَلِّقَهَا.

L32578 From the chain of Ḥammād ibn Salamah, via multiple narrators, from al-Ḥasan al-Baṣrī, who was asked about a man unable to provide for his wife's maintenance. He said: "She should support him, fear Allah, remain patient, and he should provide for her according to his ability."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ غَيْرِ وَاحِدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ " أَنَّهُ قَالَ فِي الرَّجُلِ يَعْجَزُ عَنْ نَفَقَةِ امْرَأَتِهِ؟ قَالَ: تُوَاسِيه تَتَّقِي اللَّهَ عَزَّ وَجَلَّ وَتَصْبِرُ وَيُنْفِقُ عَلَيْهَا مَا اسْتَطَاعَ ".

L32579 From the narration of Abd al-Razzaq, from Maʿmar, who said: I asked al-Zuhri about a man who cannot provide for his wife—should they be separated? He replied: "The man should be given respite, and they should not be divorced." Then he recited: _"Allah does not burden a soul beyond its capacity. Allah will bring ease after hardship"_ [al-Talaq 7]. Maʿmar said: It

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: سَأَلْت الزُّهْرِيَّ عَنْ رَجُلٍ لَا يَجِدُ مَا يُنْفِقُ عَلَى امْرَأَتِهِ، يُفَرَّقُ بَيْنَهُمَا؟ قَالَ: يَسْتَأْنِي بِهِ وَلَا يُفَرَّقُ بَيْنَهُمَا وَتَلَا {لا يُكَلِّفُ اللَّهُ نَفْسًا

has reached me from Umar ibn Abd al-Aziz a statement similar to that of al-Zuhri, other than it.[8]

إِلا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا} [الطلاق: ٧] . قَالَ مَعْمَرٌ: وَبَلَغَنِي عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ مِثْلَ قَوْلِ الزُّهْرِيِّ سِوَاهُ.

L32580 And from the narration of Abd al-Razzaq from Sufyan al-Thawri concerning the woman whose husband is insolvent in providing her maintenance: He said, "She is a woman who has been tested, so let her be patient, and she should not adopt the opinion of those who rule for separation between them"—this being the position of Ibn Shubrumah, Abu Hanifa, Abu Sulayman, and the companions of both.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ فِي الْمَرْأَةِ يُعْسِرُ زَوْجُهَا بِنَفَقَتِهَا؟ قَالَ: هِيَ امْرَأَةٌ ابْتُلِيَتْ فَلْتَصْبِرْ، وَلَا تَأْخُذُ بِقَوْلِ مَنْ فَرَّقَ بَيْنَهُمَا - وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ، وَأَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

L32581 Abu Muhammad said: The proof of the validity of our opinion is the statement of Allah, the Mighty and Majestic: "Let the affluent spend from his affluence, and whoever has his provision restricted, let him spend from what Allah has given him. Allah does not burden any soul except with what He has given it." [At-Talaq: 7][9]

قَالَ أَبُو مُحَمَّد: بُرْهَانُ صِحَّةِ قَوْلِنَا: قَوْلُ اللَّهِ عَزَّ وَجَلَّ {لِيُنْفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا مَا آتَاهَا} [الطلاق: ٧] .

L32582 And He, the Exalted, said: "Allah does not burden a soul beyond its capacity" [Al-Baqarah 2:286]. And with Allah, the Most High, lies all success.[10]

وَقَالَ تَعَالَى {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L32583 **A legal issue: A man and woman provide for their slaves, both male and female.**

[مَسْأَلَةٌ يُنْفِقُ الرَّجُلُ وَالْمَرْأَةُ عَلَى مَمَالِيكِهِمَا مِنْ الْعَبِيدِ وَالْإِمَاءِ]

L32584 1927 - Issue: A man and a woman must provide for their slaves (male and female) by feeding them to satiety with what the people of their locality eat, clothing them with garments that ward off heat and cold from them, and ensuring no disfigurement is apparent on them among people. However, [the clothing must be] from what is worn in that locality—akin to what is commonly worn there—from garments in which prayer is permissible and that cover the private parts.

١٩٢٧ - مَسْأَلَةٌ: وَيُنْفِقُ الرَّجُلُ وَالْمَرْأَةُ عَلَى مَمَالِيكِهِمَا مِنْ الْعَبِيدِ وَالْإِمَاءِ، أَنْ يُطْعِمَهُ شِبَعَهُ مِمَّا يَأْكُلُهُ أَهْلُ بَلَدِهِ وَيَكْسُوهُ مِمَّا يَطْرُدُ عَنْهُ الْحَرَّ وَالْبَرْدَ، وَلَا يَكُونُ بِهِ مُثْلَةٌ بَيْنَ النَّاسِ، لَكِنْ مِمَّا يُلْبَسُ مِثْلَ ذَلِكَ الْمَكْسُوِّ فِي ذَلِكَ الْبَلَدِ مِمَّا تَجُوزُ فِيهِ الصَّلَاةُ، وَيَسْتُرُ الْعَوْرَةَ.

L32585–32587 And it is incumbent upon him—in addition to that—to feed the slave from what he himself eats, even a morsel, and to clothe him from what he himself wears, even on Eid. The master is compelled to do so. If he refuses or lacks

وَفُرِضَ عَلَيْهِ - مَعَ ذَلِكَ - أَنْ يُطْعِمَهُ مِمَّا يَأْكُلُ - وَلَوْ لُقْمَةً - وَأَنْ يَكْسُوَهُ مِمَّا يَلْبَسُ - وَلَوْ فِي الْعِيدِ - وَيُجْبِرُ السَّيِّدُ عَلَى ذَلِكَ، فَإِنْ أَبَى، أَوْ أَعْسَرَ: بِيعَ مِنْ مَالِهِ مَا يُنْفِقُ بِهِ عَلَى مَنْ ذَكَرْنَا فِي الْإِبَايَةِ - وَأَمَّا فِي الْعُسْرِ: فَيُبَاعُ عَلَيْهِ الْعَبْدُ وَالْأَمَةُ إنْ لَمْ يَكُنْ بِأَيْدِيهِمَا

[8] **Qur'an references (L32579):** Qur'an 65:7 (At-Talaq).
[9] **Qur'an references (L32581):** Qur'an 65:7 (At-Talaq).
[10] **Qur'an references (L32582):** Qur'an 2:286 (Al-Baqarah).

the means, they sell from his wealth enough to spend on him. As for those we mentioned regarding the inability to provide maintenance—in cases of financial hardship: the male and female slaves must be sold if they are not engaged in work that provides wages sufficient for their upkeep. In that case, they are to be rented out rather than sold. The *umm al-walad* is not emancipated due to lack of maintenance, but he is compelled as we stated if he possesses wealth. If he has no wealth, she is obligated in the same manner as poor Muslims are obligated.

عَمَلٌ يَكُونُ لَهُ أُجْرَةٌ يَقُومُ مِنْهَا مُؤْنَتُهُ، فَإِنَّهُ يُؤَاجِرُ حِينَئِذٍ وَلَا يُبَاعُ - وَلَا تُعْتَقُ أُمُّ الْوَلَدِ مِنْ عَدَمِ النَّفَقَةِ، لَكِنْ يُجْبَرُ كَمَا قُلْنَا إِنْ كَانَ لَهُ مَالٌ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ كُلِّفَتْ مَا يُكَلَّفُ فُقَرَاءُ الْمُسْلِمِينَ.

L32588 The evidence for that is: what we have narrated through Muslim's chain of transmission—Muhammad ibn al-Muthannā narrated to us, Muhammad ibn Jaʿfar narrated to us, Shuʿbah narrated to us from Wāṣil the Hunchbacked from al-Maʿrūr ibn Suwayd: that Abū Dharr informed him the Messenger of Allah (peace be upon him) said: "Your brothers are your servants whom Allah has placed under your authority. Whoever has a brother under his authority, let him feed him from what he himself eats, clothe him from what he himself wears, and do not burden them with what overwhelms them. If you burden them, then assist them in it."[11]

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ عَنْ وَاصِلٍ الْأَحْدَبِ عَنْ الْمَعْرُورِ بْنِ سُوَيْدٍ: أَنَّ أَبَا ذَرٍّ أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إخْوَانُكُمْ خَوَلُكُمْ جَعَلَهُمْ اللَّهُ تَحْتَ أَيْدِيكُمْ، فَمَنْ كَانَ أَخُوهُ تَحْتَ يَدِهِ فَلْيُطْعِمْهُ مِمَّا يَأْكُلُ، وَلْيُلْبِسْهُ مِمَّا يَلْبَسُ، وَلَا تُكَلِّفُوهُمْ مَا يَغْلِبُهُمْ فَإِنْ كَلَّفْتُمُوهُمْ فَأَعِينُوهُمْ عَلَيْهِ» .

L32589 And through the chain of Muslim: Hārūn ibn Maʿrūf narrated to us; Ḥātim ibn Ismāʿīl narrated to us from Yaʿqūb ibn Mujāhid from Abū Ḥazrah al-Qāṣṣ from ʿUbādah ibn al-Walīd ibn ʿUbādah ibn al-Ṣāmit: that Abū al-Yusr said to him, "I heard the Messenger of Allah (peace be upon him and his family) say concerning slaves: 'Feed them from your own food and clothe them from your own garments.'"

وَمِنْ طَرِيقِ مُسْلِمٍ نا هَارُونُ بْنُ مَعْرُوفٍ نا حَاتِمُ بْنُ إسْمَاعِيلَ عَنْ يَعْقُوبَ بْنِ مُجَاهِدٍ عَنْ أَبِي حَزْرَةَ الْقَاصِّ عَنْ عُبَادَةَ بْنِ الْوَلِيدِ بْنِ عُبَادَةَ بْنِ الصَّامِتِ: أَنَّ أَبَا الْيُسْرِ قَالَ لَهُ: إنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ فِي الرَّقِيقِ «أَطْعِمُوهُمْ مِمَّا تَأْكُلُونَ وَأَلْبِسُوهُمْ مِمَّا تَلْبَسُونَ» .

L32590 Abu al-Yusr said, "It would have been easier for me that I gave him worldly possessions than for him to take from my good deeds on the Day of Resurrection." Thus, Abu al-Yusr viewed this matter as an obligatory duty.

قَالَ: أَبُو الْيُسْرِ " فَكَانَ أَنْ أَعْطَيْتُهُ مِنْ مَتَاعِ الدُّنْيَا أَهْوَنَ عَلَيَّ مِنْ أَنْ يَأْخُذَ مِنْ حَسَنَاتِي يَوْمَ الْقِيَامَةِ " فَهَذَا أَبُو الْيُسْرِ يَرَى هَذَا الْأَمْرَ فَرْضًا.

L32591 From the chain of Muslim: Abu al-Tahir Ahmad ibn Amr ibn al-Sarh narrated to me, from Ibn Wahb, who reported to us from Amr ibn al-Harith that Bukayr ibn al-Ashajj narrated to him from al-Ajlan, the client of Fatimah, the daughter of the Prophet, from Abu Hurayrah, from the Messenger of Allah—

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي أَبُو الطَّاهِرِ أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ نا ابْنُ وَهْبٍ أرنا عَمْرُو بْنُ الْحَارِثِ أَنَّ بُكَيْرَ بْنَ الْأَشَجِّ حَدَّثَهُ عَنْ الْعَجْلَانِ مَوْلَى فَاطِمَةَ عَنْ أَبِي هُرَيْرَةَ عَنْ

[11] **Hadith references (L32588):** Sahih al-Bukhari 30.

peace be upon him and his family—that he said: "A slave is entitled to his food and clothing, and he should not be tasked with work beyond his capacity."[12]

رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ «لِلْمَمْلُوكِ طَعَامُهُ وَكِسْوَتُهُ وَلَا يُكَلَّفُ مِنْ الْعَمَلِ إلَّا مَا يُطِيقُ» .

L32592 And through the chain of Al-Bukhārī: Ḥafṣ ibn ʿUmar—he is Al-Ḥawḍī—narrated to us: Shuʿbah narrated from Muḥammad ibn Ziyād, who said: I heard Abū Hurayrah report from the Prophet—peace and blessings of Allah be upon him and his household—saying: "When a servant brings food to one of you, let him feed him one or two portions, or one or two morsels, for he has borne its heat and the labor of preparing it."

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا حَفْصُ بْنُ عُمَرَ - هُوَ الْحَوْضِيُّ - نَا شُعْبَةُ عَنْ مُحَمَّدِ بْنِ زِيَادٍ قَالَ: سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ: «إذَا أَتَى أَحَدَكُمْ خَادِمُهُ بِطَعَامِهِ فَلْيُؤَاكِلْهُ أُكْلَةً أَوْ أُكْلَتَيْنِ، أَوْ لُقْمَةً أَوْ لُقْمَتَيْنِ، فَإِنَّهُ وَلِيَ حَرَّهُ وَعِلَاجَهُ» .

L32593–32595 Abu Muhammad said: These hadiths encompass what we have stated, and the prohibition by the Messenger of Allah—may Allah bless him and his family and grant him peace—against mutilation has been established. As for our statement that if he is absent or refuses, it is to be sold against his property, this is due to the words of Allah, the Almighty and Majestic: "Be upholders of justice" [Quran 4:135]. Every maintenance obligation incumbent upon a Muslim entails a rightful claim in his property. Thus, it is obligatory for us to deliver it to him and fulfill it completely for him. If one cannot achieve this except by selling... If it is movable property or real estate, that property should be sold, in accordance with Allah Almighty's decree: {Allah has permitted trade} [Al-Baqarah 2:275]. Whoever withholds from selling—from the property of the one obligated by a right—what enables the individual or others to secure their rightful claim has disobeyed Allah Almighty's command in His words: {Cooperate in righteousness and piety, and do not cooperate in sin and aggression} [Al-Mā'idah 5:2]. Among the most manifest righteousness is fulfilling the rightful claimant's due, and among the acts of sin and aggression is withholding the right of its claimant.[13]

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ الْأَحَادِيثُ تَجْمَعُ مَا قُلْنَا، وَقَدْ صَحَّ نَهْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ الْمُثْلَةِ - وَأَمَّا قَوْلُنَا: إنَّهُ إنْ غَابَ أَوْ أَبَى بِيعَ عَلَيْهِ مِنْ مَالِهِ، فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] وَكُلُّ مَا لَزِمَتْ الْمُسْلِمَ نَفَقَتُهُ فَقَدْ وَجَبَ لَهُ حَقٌّ فِي مَالِهِ، فَفَرْضٌ عَلَيْنَا إيصَالُهُ إلَيْهِ، وَتَوْفِيَتُهُ إيَّاهُ، فَإِذَا لَمْ يَقْدِرْ عَلَى ذَلِكَ إلَّا بِبَيْعِ عَرْضٍ أَوْ عَقَارٍ: بِيعَ ذَلِكَ، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] فَمَنْ لَمْ يَبِعْ مِنْ مَالِ مَنْ عَلَيْهِ حَقٌّ مَا يُوَصِّلُهُ بِهِ الْعَبْدُ أَوْ غَيْرُهُ إلَى حَقِّهِ، فَقَدْ عَصَى اللَّهَ تَعَالَى فِي قَوْلِهِ عَزَّ وَجَلَّ {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَمِنْ أَبَرِّ الْبِرِّ إيفَاءُ ذِي الْحَقِّ حَقَّهُ، وَمِنْ الْإِثْمِ وَالْعُدْوَانِ مَنْعُ ذِي الْحَقِّ حَقَّهُ.

L32596 As for the sale of a bondservant if his master possesses no wealth to spend on him, nor does the bondservant have work through which he could be hired, or the hiring of the bondservant if he has work that suffices for his upkeep

وَأَمَّا بَيْعُ الْمَمْلُوكِ إنْ لَمْ يَكُنْ لِسَيِّدِهِ مَالٌ يُنْفِقُ مِنْهُ عَلَيْهِ، وَلَا كَانَ بِيَدِ الْعَبْدِ عَمَلٌ يُؤَاجَرُ بِهِ، أَوْ مُؤَاجَرَةُ الْمَمْلُوكِ إنْ كَانَ بِيَدِهِ عَمَلٌ تَقُومُ مِنْهُ نَفَقَتُهُ وَكِسْوَتُهُ، فَلَمَّا قَدْ ذَكَرْنَا قَبْلُ

[12] **Hadith references (L32591):** Sahih Muslim 1662; Mishkat al-Masabih 3344.

[13] **Qur'an references (L32593):** Qur'an 4:135 (An-Nisa); Qur'an 2:275 (Al-Baqarah); Qur'an 5:2 (Al-Ma'idah).

and clothing – then, since we have previously mentioned that Abū Ṭaybah owed a kharāj to his masters with the knowledge of Allah's Messenger (peace be upon him), and that he commanded them to conceal from him a portion of his kharāj.

مِنْ أَنَّ أَبَا طَيْبَةَ كَانَ لِمَوَالِيهِ عَلَيْهِ خَرَاجٌ بِعِلْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّهُ أَمَرَهُمْ أَنْ يُخْفُوا عَنْهُ مِنْ خَرَاجِهِ.

L32597 We have narrated it through the chain of Muslim: Qutaybah ibn Sa'īd reported to us, Layth—that is, Ibn Sa'd—reported to us from Abū al-Zubayr from Jābir ibn 'Abdullāh, who said: "A man from Banū 'Udhrah manumitted a slave of his through *tadbeer* (posthumous emancipation). When this reached the Messenger of Allah—may Allah bless him and his family and grant him peace—he asked, 'Do you possess any wealth other than him?' The man replied, 'No.' The Prophet said, 'Who will purchase him from me?' Nu'aym ibn al-Naḥḥām bought him for eight hundred dirhams. The Messenger of Allah—may Allah bless him and his family and grant him peace—gave the money to the man and said, 'Begin by providing for yourself first. If anything remains, allocate it to your family. If anything remains after your family, allocate it to your relatives. If anything remains after your relatives, then do thus and thus,' gesturing to those in front of you, to your right, and to your left."[14]

وَرُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا لَيْثٌ - هُوَ ابْنُ سَعْدٍ - عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «أَعْتَقَ رَجُلٌ مِنْ بَنِي عُذْرَةَ عَبْدًا لَهُ عَنْ دُبُرٍ، فَبَلَغَ ذَلِكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: أَلَكَ مَالٌ غَيْرُهُ؟ قَالَ: لَا، قَالَ: مَنْ يَشْتَرِيهِ مِنِّي؟ فَاشْتَرَاهُ نُعَيْمُ بْنُ النَّحَّامِ بِثَمَانِمِائَةِ دِرْهَمٍ فَدَفَعَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِلَيْهِ وَقَالَ لَهُ: ابْدَأْ بِنَفْسِكَ فَتَصَدَّقْ عَلَيْهَا فَإِنْ فَضَلَ شَيْءٌ فَلِأَهْلِكَ فَإِنْ فَضَلَ عَنْ أَهْلِكَ شَيْءٌ فَلِذِي قَرَابَتِكَ فَإِنْ فَضَلَ عَنْ ذِي قَرَابَتِكَ شَيْءٌ فَهَكَذَا وَهَكَذَا يَقُولُ فَبَيْنَ يَدَيْكَ وَعَنْ يَمِينِكَ وَعَنْ شِمَالِكَ» .

L32598 Abu Muhammad said: All that al-Layth ibn Sa'd narrated from Abu al-Zubayr from Jabir was indeed heard by Abu al-Zubayr from Jabir, as narrated to us by Yusuf ibn ʿAbd Allah al-Namari who narrated from ʿAbd Allah ibn Muhammad ibn Yusuf who narrated from Ishaq ibn Muhammad who narrated from al-ʿUqayli who narrated from Muhammad ibn Ismaʿil who narrated from al-Hasan ibn ʿAli al-Hulwani who narrated from Saʿid ibn Abi Maryam who narrated from al-Layth ibn Saʿd, who said: "I visited Abu al-Zubayr and he handed me two books. I asked him: 'Did you hear all of this from Jabir ibn ʿAbd Allah?' He replied: 'Some of it I heard, and some of it was narrated to me.' I said: 'Mark for me everything you heard from him.' So he marked for me on this that I had with me."

قَالَ أَبُو مُحَمَّدٍ: كُلُّ مَا رَوَاهُ اللَّيْثُ بْنُ سَعْدٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ فَقَدْ سَمِعَهُ أَبُو الزُّبَيْرِ مِنْ جَابِرٍ كَمَا نا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ يُوسُفَ نا إِسْحَاقُ بْنُ مُحَمَّدٍ نا الْعُقَيْلِيُّ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ نا الْحَسَنُ بْنُ عَلِيٍّ الْحُلْوَانِيُّ نا سَعِيدُ بْنُ أَبِي مَرْيَمَ نا اللَّيْثُ بْنُ سَعْدٍ قَالَ: " قَدِمْتُ عَلَى أَبِي الزُّبَيْرِ فَدَفَعَ إِلَيَّ كِتَابَيْنِ فَسَأَلْتُهُ كُلَّ هَذَا سَمِعْتَه مِنْ جَابِرِ بْنِ عَبْدِ اللَّهِ؟ فَقَالَ: مِنْهُ مَا سَمِعْتُ، وَمِنْهُ مَا حُدِّثْتُ، فَقُلْتُ: أَعْلِمْ لِي عَلَى كُلِّ مَا سَمِعْتَ مِنْهُ؟ فَأَعْلِمْ لِي عَلَى هَذَا الَّذِي عِنْدِي ".

L32599–32601 And a group of people said: "Why do you sell the slave when the master cannot afford his own maintenance, the maintenance of his family, or his

وَقَدْ قَالَ قَوْمٌ: لِمَ بِعْتُمْ الْعَبْدَ إذَا أَعْسَرَ السَّيِّدُ بِنَفَقَتِهِ، أَوْ بِنَفَقَةِ أَهْلِهِ، أَوْ بِنَفَقَةِ نَفْسِهِ - وَلَمْ تُطَلِّقُوا الزَّوْجَةَ، وَلَمْ تَعْتِقُوا أُمَّ الْوَلَدِ بِعَدَمِ النَّفَقَةِ؟ قُلْنَا: حَقُّ مَنْ لَهُ النَّفَقَةُ عَلَيْهِ

[14]**Hadith references (L32597):** Sahih Muslim 997a; Mishkat al-Masabih 3392.

personal expenses—yet you do not divorce the wife or free the *umm walad* due to the lack of maintenance?" We replied: "The right of those entitled to maintenance is an obligation upon him to fulfill from his wealth. His male and female slaves are part of his property; therefore, they are sold to settle every rightful claim against him, so that each entitled party receives their due, as the Messenger of Allah—peace and blessings be upon him and his family—commanded." And as the Almighty has said, {Do not deprive people of their due} [Al-A'raf 7:85]. Whoever denies someone their obligatory maintenance has indeed withheld what is rightfully theirs. As for the wife and the umm al-walad, they are not property from his wealth, but their right is upon his wealth. If he has no wealth, their right lies in their own wealth. If they have no wealth, their right is in the share of the poor and needy from charitable funds (ṣadaqāt), by explicit Quranic decree, for they then become among the poor or needy—as discerned through observation. What justification exists here for divorce or manumission? Would those who stubbornly oppose not be fair to themselves?[15]

A legal question regarding the full upkeep for his animal or allowing it to graze.

Issue 1928: He is also compelled to either bear the entire maintenance cost of his animal or release it for grazing if it can subsist on pasture. If he refuses, all of that is sold against his will.

The proof of that is what we have narrated through the chain of al-Bukhārī: Mūsā narrated to us, Abū 'Awānah narrated to us, 'Abd al-Malik narrated to us from Warrād - the scribe of al-Mughīrah ibn Shu'bah - who said: Al-Mughīrah ibn Shu'bah wrote to Mu'āwiyah, "The Prophet of Allah - may Allah bless him and his family and grant him peace - used to forbid vain talk, excessive questioning, and squandering wealth," and Warrād mentioned the ḥadīth.

Abū Muḥammad said: Squandering wealth is unanimously prohibited, sinful, and an act of aggression. Preventing a person from their livelihood - whether

[15] **Qur'an references (L32599):** Qur'an 7:85 (Al-A'raf); Qur'an 11:85 (Hud); Qur'an 26:183 (Ash-Shu'ara).

وَاجِبٌ فِي مَالِهِ وَعَبْدُهُ، وَأَمَتُهُ، مَالٌ مِنْ مَالِهِ فَيُبَاعَانِ فِي كُلِّ حَقٍّ عَلَيْهِ لِيُعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَكَمَا قَالَ عَزَّ وَجَلَّ {وَلا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ} [الأعراف: ٨٥] وَمَنْ مَنَعَ أَحَدًا نَفَقَتَهُ الْوَاجِبَةَ لَهُ فَقَدْ بَخَسَ شَيْئًا هُوَ لَهُ - وَأَمَّا الزَّوْجَةُ وَأُمُّ الْوَلَدِ فَلَيْسَتَا مَالًا مِنْ مَالِهِ لَكِنَّ حَقَّهُمَا فِي مَالِهِ فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ فَحَقُّهُمَا فِي مَالِ أَنْفُسِهِمَا فَإِنْ لَمْ يَكُنْ لَهُمَا مَالٌ فَحَقُّهُمَا فِي سَهْمِ الْمَسَاكِينِ وَالْفُقَرَاءِ مِنْ الصَّدَقَاتِ بِنَصِّ الْقُرْآنِ لِأَنَّهُمَا حِينَئِذٍ مِنْ جُمْلَةِ الْمَسَاكِينِ أَوْ الْفُقَرَاءِ، يُعْلَمُ ذَلِكَ بِالْمُشَاهَدَةِ، فَأَيُّ وَجْهٍ لِلطَّلَاقِ وَالْعِتْقِ هَاهُنَا؟ لَوْ أَنْصَفَ الْمُعَانِدُونَ أَنْفُسَهُمْ؟ .

[مَسْأَلَةٌ نَفَقَة حَيَوَانِهِ كُلِّهِ أَوْ تَسْرِيحِهِ لِلرَّعْيِ]

١٩٢٨ - مَسْأَلَةٌ: وَيُجْبَرُ أَيْضًا عَلَى نَفَقَةِ حَيَوَانِهِ كُلِّهِ أَوْ تَسْرِيحِهِ لِلرَّعْيِ إنْ كَانَ يَعِيشُ مِنْ الْمَرْعَى إنْ أَبَى بِيعَ عَلَيْهِ كُلُّ ذَلِكَ.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا مُوسَى نا أَبُو عَوَانَةَ نا عَبْدُ الْمَلِكِ عَنْ وَرَّادٍ - كَاتِبِ الْمُغِيرَةِ بْنِ شُعْبَةَ - قَالَ: كَتَبَ الْمُغِيرَةُ بْنُ شُعْبَةَ إلَى مُعَاوِيَةَ «أَنَّ نَبِيَّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ يَنْهَى عَنْ قِيلَ وَقَالَ، وَكَثْرَةِ السُّؤَالِ، وَإِضَاعَةِ الْمَالِ» وَذَكَرَ الْحَدِيثَ.

through denying their means of subsistence or obstructing its rectification - constitutes waste of their wealth. Therefore, it is obligatory to prevent them from such actions, in accordance with Allah's statement: "Cooperate in righteousness and piety, and do not cooperate in sin and aggression" [al-Mā'idah: 2].[16]

قَالَ أَبُو مُحَمَّد: فَإِضَاعَةُ الْمَالِ حَرَامٌ وَإِثْمٌ، وَعُدْوَانٌ، بِلَا خِلَافٍ، وَمَنْعُ الْمَرْءِ حَيَوَانَهُ مِمَّا فِيهِ مَعَاشُهُ، أَوْ إِصْلَاحُهُ إِضَاعَةٌ لِمَالِهِ، فَالْوَاجِبُ مَنْعُهُ مِنْ ذَلِكَ، لِقَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L32606 Kindness to animals is righteousness and piety. Whoever fails to contribute to their proper care has indeed aided in sin and aggression, and has disobeyed God Almighty.

وَالْإِحْسَانُ إِلَى الْحَيَوَانِ بِرٌّ وَتَقْوَى، فَمَنْ لَمْ يُعِنْ عَلَى إِصْلَاحِهِ فَقَدْ أَعَانَ عَلَى الْإِثْمِ وَالْعُدْوَانِ، وَعَصَى اللَّهَ تَعَالَى.

L32607 And Abu Hanifah said: His animal may not be sold against his will. However—peace and blessings be upon the Prophet—the owner is merely instructed to treat it kindly and cannot be compelled to do so.

وَقَالَ أَبُو حَنِيفَةَ: لَا يُبَاعُ عَلَيْهِ حَيَوَانُهُ، لَكِنْ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُؤْمَرُ بِالْإِحْسَانِ إِلَيْهِ فَقَطْ، وَلَا يُجْبَرُ عَلَى ذَلِكَ.

L32608 Abū Muḥammad said: This is manifest error—as we have mentioned—and some of his followers defended it with another error, stating: "He is not compelled to safeguard his wealth if he intends to squander it, just as he is not compelled to water his palm trees?" Abū Muḥammad said: This is another instance of absurdity. Rather, he is compelled to water the palm trees if neglecting to water them would result in their destruction, and the same applies to crops.

قَالَ أَبُو مُحَمَّد: وَهَذَا ضَلَالٌ ظَاهِرٌ - كَمَا ذَكَرْنَا - وَاحْتَجَّ لَهُ بَعْضُ مُقَلِّدِيهِ بِضَلَالٍ آخَرَ قَالَ: لَا يُجْبَرُ عَلَى حِفْظِ مَالِهِ إِذَا أَرَادَ إِضَاعَتَهُ، كَمَا لَا يُجْبَرُ عَلَى سَقْيِ نَخْلِهِ؟ قَالَ أَبُو مُحَمَّد: وَهَذَا عَجَبٌ آخَرُ، بَلْ يُجْبَرُ عَلَى سَقْيِ النَّخْلِ إِنْ كَانَ فِي تَرْكِ سَقْيِهِ هَلَاكُ النَّخْلِ، وَكَذَلِكَ فِي الزَّرْعِ.

L32609 The proof of that is the statement of Allah, the Exalted and Majestic: "And when he turns away, he goes about the earth to cause corruption therein and destroy crops and progeny. Allah does not love corruption" (Surah Al-Baqarah 2:205).[17]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَإِذَا تَوَلَّى سَعَى فِي الأَرْضِ لِيُفْسِدَ فِيهَا وَيُهْلِكَ الْحَرْثَ وَالنَّسْلَ وَاللَّهُ لا يُحِبُّ الْفَسَادَ} [البقرة: ٢٠٥] .

L32610–32611 Abū Muḥammad said: Depriving animals of what they cannot survive without—whether fodder or grazing—and abandoning the irrigation of fruit trees and crops until they perish, by Allah's explicit textual injunction, is corruption on earth, destruction of tillage, and ruin of progeny. Allah the Exalted does not love this deed. Who is more astray than one who upholds these corrupt assertions that result in the corruption Allah the Exalted does not love?

قَالَ أَبُو مُحَمَّد: فَمَنْعُ الْحَيَوَانِ مَا لَا مَعَاشَ لَهُ إِلَّا بِهِ مِنْ عَلَفٍ أَوْ رَعْيٍ، وَتَرْكُ سَقْيِ شَجَرِ الثَّمَرِ وَالزَّرْعِ حَتَّى يَهْلَكَا - بِنَصِّ اللَّهِ تَعَالَى - فَسَادٌ فِي الْأَرْضِ وَإِهْلَاكٌ لِلْحَرْثِ وَالنَّسْلِ، وَاللَّهُ تَعَالَى لَا يُحِبُّ هَذَا الْعَمَلَ، فَمَنْ أَضَلُّ مِمَّنْ يَنْصُرُ هَذِهِ الْأَقْوَالَ الْفَاسِدَةَ الْعَائِدَةَ بِالْفَسَادِ الَّذِي لَا يُحِبُّهُ اللَّهُ تَعَالَى.

[16] **Qur'an references (L32605):** Qur'an 5:2 (Al-Ma'idah).
[17] **Qur'an references (L32609):** Qur'an 2:205 (Al-Baqarah).

L32612 If it is said: “Do you not compel anyone to cultivate his land if he does not wish to?” We respond: **We only refrain from compelling him, and that is** if he has another source of livelihood sufficient to replace cultivating it—and this is undoubtedly an **improvement** for the land and a **preservation** of it.

فَإِنْ قِيلَ: فَأَنْتُمْ لَا تُجْبِرُونَ أَحَدًا عَلَى زَرْعِ أَرْضِهِ إِذَا لَمْ يُرِدْ ذَلِكَ؟ قُلْنَا: إِنَّمَا نَتْرُكُهُ، وَذَلِكَ إِذَا كَانَ لَهُ مَعَاشٌ غَيْرُهُ يُغْنِي عَنْ زَرْعِهَا - وَهَذَا بِلَا شَكٍّ صَلَاحٌ لِلْأَرْضِ وَإِحْمَامٌ لَهَا.

L32613 If he is not self-sufficient without cultivating it, he is compelled to cultivate it if he is capable, or to give it in return for a portion of its yield. We do not leave him to remain a burden upon the Muslims by squandering his wealth and disobeying Allah, the Mighty and Majestic, through such actions—and in Allah, the Exalted, we seek assistance.

وَأَمَّا إِذَا لَمْ يَكُنْ لَهُ غِنًى عَنْ زَرْعِهَا، فَإِنَّمَا يُجْبِرُهُ عَلَى زَرْعِهَا إِنْ قَدَرَ عَلَى ذَلِكَ، أَوْ عَلَى إِعْطَائِهَا بِجُزْءٍ مِمَّا يَخْرُجُ مِنْهَا، وَلَا نَتْرُكُهُ يَبْقَى عَالَةً عَلَى الْمُسْلِمِينَ بِإِضَاعَتِهِ لِمَالِهِ، وَمَعْصِيَتِهِ لِلَّهِ عَزَّ وَجَلَّ بِذَلِكَ - وَبِاللَّهِ تَعَالَى نَسْتَعِينُ.

[النَّفَقَاتُ عَلَى الْأَقَارِبِ] [مَسْأَلَةٌ الْبَدْءُ بِمَا لَا بُدَّ لَهُ مِنْهُ وَلَا غِنًى عَنْهُ بِهِ مِنْ نَفَقَةٍ وَكِسْوَةٍ]

L32614–32615 **Maintenance of Relatives: The matter entails beginning with what is indispensable and unavoidable for their basic needs—such as [financial] maintenance and clothing.**

L32616 Issue 1929: It is obligatory upon every person - men and women, adults and minors - to first fulfill what is indispensable for themselves: expenses and clothing according to their circumstances and wealth. Thereafter, each person is compelled to provide for those possessing neither wealth nor manual labor to sustain themselves - including parents, grandparents, grandmothers (even if higher in lineage), sons, daughters, their children (even if lower in lineage), brothers, sisters, and wives. All these are equal in the obligation to be maintained, with none prioritized over another - whether the obligated person possesses little or much. Rather, they must share proportionally. If nothing remains beyond his own expenses, he bears no obligation to share with those we have mentioned. If surplus remains after their clothing and expenses, he is compelled to provide for his mahram relatives and inheritors - provided those previously mentioned lack means - including paternal uncles, paternal aunts (even if higher in lineage), maternal uncles, maternal aunts (even if higher in lineage), and brothers’ children (even if lower in lineage).

١٩٢٩ - مَسْأَلَةٌ: فَرْضٌ عَلَى كُلِّ أَحَدٍ مِنْ الرِّجَالِ وَالنِّسَاءِ الْكِبَارِ وَالصِّغَارِ أَنْ يَبْدَأَ بِمَا لَا بُدَّ لَهُ مِنْهُ، وَلَا غِنًى عَنْهُ بِهِ: مِنْ نَفَقَةٍ وَكِسْوَةٍ، عَلَى حَسَبِ حَالِهِ وَمَالِهِ، ثُمَّ بَعْدَ ذَلِكَ يُجْبَرُ كُلُّ أَحَدٍ عَلَى النَّفَقَةِ عَلَى مَنْ لَا مَالَ لَهُ وَلَا عَمَلَ بِيَدِهِ مِمَّا يَقُومُ مِنْهُ عَلَى نَفْسِهِ: مِنْ أَبَوَيْهِ، وَأَجْدَادِهِ، وَجَدَّاتِهِ، وَإِنْ عَلَوْا - وَعَلَى الْبَنِينَ وَالْبَنَاتِ وَبَنِيهِمْ - وَإِنْ سَفَلُوا - وَالْإِخْوَةِ وَالْأَخَوَاتِ وَالزَّوْجَاتِ -: كُلُّ هَؤُلَاءِ يُسَوَّى بَيْنَهُمْ فِي إِيجَابِ النَّفَقَةِ عَلَيْهِمْ، وَلَا يُقَدَّمُ مِنْهُمْ أَحَدٌ عَلَى أَحَدٍ - قَلَّ مَا بِيَدِهِ بَعْدَ مَوْتِهِ أَوْ كَثُرَ - لَكِنْ يَتَوَاسَوْنَ فِيهِ، فَإِنْ لَمْ يَفْضُلْ لَهُ عَنْ نَفَقَةِ نَفْسِهِ شَيْءٌ: لَمْ يُكَلَّفْ أَنْ يُشْرِكَهُ فِي ذَلِكَ أَحَدٌ مِمَّنْ ذَكَرْنَا، فَإِنْ فَضَلَ عَنْ هَؤُلَاءِ - بَعْدَ كِسْوَتِهِمْ وَنَفَقَتِهِمْ - شَيْءٌ أُجْبِرَ عَلَى النَّفَقَةِ عَلَى ذَوِي رَحِمِهِ الْمَحْرَمَةِ وَمَوْرُوثِيهِ، إِنْ كَانَ مَنْ ذَكَرْنَا لَا شَيْءَ لَهُمْ، وَلَا عَمَلَ بِأَيْدِيهِمْ تَقُومُ مُؤْنَتُهُمْ

مِنْهُ، وَهُمْ الْأَعْمَامُ، وَالْعَمَّاتُ - وَإِنْ عَلَوْا - وَالْأَخْوَالُ وَالْخَالَاتُ - وَإِنْ عَلَوْا - وَبَنُو الْإِخْوَةِ - وَإِنْ سَفَلُوا.

L32617 Heirs are those whom no one bars from their inheritance upon the death [of the deceased], whether they are male agnates or a lower-ranking client. If an heir is excluded from inheritance due to another heir, the excluded heir bears no obligation for their [the other heirs'] expenses.

وَالْمَوْرُوثُونَ - هُمْ: مَنْ لَا يُحَجِّبُهُ أَحَدٌ عَنْ مِيرَاثِهِ إنْ مَاتَ، مِنْ عُصْبَةٍ أَوْ مَوْلًى مِنْ أَسْفَلَ، فَإِنْ حُجِبَ عَنْ مِيرَاثِهِ لِوَارِثٍ فَلَا شَيْءَ عَلَيْهِ مِنْ نَفَقَاتِهِمْ.

L32618 Whoever falls ill among the dependents we have mentioned must be provided for, along with those who serve them. None of these individuals are entitled to obligatory maintenance if they can earn a livelihood—even inadequately—through work, except parents, grandfathers, grandmothers, and wives. In such cases, the responsible individual is obligated to protect them from engaging in demeaning work, provided he has the means to do so.

وَمَنْ مَرِضَ مِمَّنْ ذَكَرْنَا كُلِّفَ أَنْ يَقُومَ بِهِمْ وَبِمَنْ يَخْدُمُهُمْ، وَكُلِّ هَؤُلَاءِ فَمَنْ قَدَرَ مِنْهُمْ عَلَى مَعَاشٍ وَتَكَسُّبٍ، - وَإِنْ خَسَّ - فَلَا نَفَقَةَ لَهُمْ، إلَّا الْأَبَوَيْنِ وَالْأَجْدَادِ، وَالْجَدَّاتِ، وَالزَّوْجَاتِ " فَإِنَّهُ يُكَلَّفُ أَنْ يَصُونَهُمْ عَنْ خَسِيسِ الْكَسْبِ - إنْ قَدَرَ عَلَى ذَلِكَ.

L32619–32620 Assets may be sold against him to fulfill all the obligations we mentioned - from what he can do without among his real estate, merchandise, and livestock. None of these may be sold if their sale would cause destruction or loss. Such items are only sold when facing intrinsic necessity where failure to sell them would result in perishing. No one shares with a parent the obligation to provide for their closest children - this duty rests solely on the parent.

وَيُبَاعُ عَلَيْهِ فِي كُلِّ مَا ذَكَرْنَا مَا بِهِ عَنْهُ غِنًى مِنْ عَقَارِهِ وَعُرُوضِهِ وَحَيَوَانِهِ وَلَا يُبَاعُ عَلَيْهِ مِنْ ذَلِكَ مَا إنْ بِيعَ عَلَيْهِ هَلَكَ وَضَاعَ، فَمَا كَانَ هَكَذَا لَمْ يُبَعْ إلَّا فِيمَا فِي نَفْسِهِ إلَيْهِ ضَرُورَةً إنْ، لَمْ يَتَدَارَكْهَا بِذَلِكَ هَلَكَ، وَلَا يُشَارِكُ الْوَالِدَ أَحَدٌ فِي النَّفَقَةِ عَلَى وَلَدِهِ الْأَدْنَيْنَ فَقَطْ.

L32621 This is a matter of disagreement: A group held that no one may be compelled to provide maintenance for another, as narrated by Aḥmad ibn ʿUmar ibn Anas al-ʿUdhurī from Abū al-Harawī from ʿAbd Allāh ibn Aḥmad ibn Ḥammawayh al-Sarakhsī from Ibrāhīm ibn Khuraym from ʿAbd ibn Ḥumayd al-Kāshshī from Qabīṣah from Sufyān al-Thawrī from Ashʿath from al-Shaʿbī, who said: "I have never seen anyone compelled to provide maintenance for another person."

وَهَذَا مَكَانُ اُخْتُلِفَ فِيهِ: فَقَالَتْ طَائِفَةٌ: لَا يُجْبَرُ أَحَدٌ عَلَى نَفَقَةِ أَحَدٍ، كَمَا حَدَّثَنَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ نَا أَبُو الْهَرَوِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَّوَيْهِ السَّرَخْسِيُّ نا إبْرَاهِيمُ بْنُ خُرَيْمٍ نا عَبْدُ بْنُ حُمَيْدٍ الْكَشِّيُّ نا قَبِيصَةُ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَشْعَثَ عَنْ الشَّعْبِيِّ، قَالَ: مَا رَأَيْتُ أَحَدًا أَجْبَرَ أَحَدًا عَلَى أَحَدٍ - يَعْنِي عَلَى نَفَقَتِهِ.

L32622 A group of scholars has stated: No one is obligated to provide maintenance except for the father as the closest relative and the mother who bore him from her womb—meaning both parents. Both male and female children are compelled to provide maintenance for them if they are poor. A man, but not a woman, is compelled to provide maintenance for his own male child only

وَقَالَتْ طَائِفَةٌ: لَا يُنْفِقُ أَحَدٌ إلَّا عَلَى الْوَالِدِ الْأَدْنَى، وَالْأُمِّ الَّتِي وَلَدَتْهُ مِنْ بَطْنِهَا هَذَيْنِ - يَعْنِي الْأَبَوَيْنِ - يُجْبَرُ الذَّكَرُ وَالْأُنْثَى مِنْ الْوَلَدِ عَلَى النَّفَقَةِ عَلَيْهِمَا إذَا كَانَا فَقِيرَيْنِ، وَيُجْبَرُ

الرَّجُلُ دُونَ الْمَرْأَةِ عَلَى النَّفَقَةِ عَلَى الْوَلَدِ الْأَدْنَى الذَّكَرِ حَتَّى يَبْلُغَ فَقَطْ، وَعَلَى الْبِنْتِ الدُّنْيَا - وَإِنْ بَلَغَتْ - حَتَّى يُزَوِّجَهَا فَقَطْ.

until he reaches puberty, and for the daughter under his guardianship—even if she has attained puberty—only until her father marries her off.

وَلَا تُجْبَرُ الْأُمُّ عَلَى نَفَقَةِ وَلَدِهَا - وَإِنْ مَاتَ جُوعًا - وَهِيَ فِي غَايَةِ الْغِنَى.

L32623 The mother is not compelled to provide maintenance for her child, even if the child died of hunger, while she is at the height of wealth.

قَالَ: وَلَا يُنْفِقُ عَلَى أَبَوَيْهِ إِلَّا مَا فَضَلَ عَنْ نَفَقَتِهِ وَنَفَقَةِ زَوْجَتِهِ - وَهَذَا قَوْلُ مَالِكٍ وَمَنْ قَلَّدَهُ.

L32624 He said: One should not spend on his parents except from what remains after covering his own expenses and those of his wife—this is the view of Mālik and those who emulate him.

وَقَالَتْ طَائِفَةٌ: يُجْبَرُ عَلَى النَّفَقَةِ عَلَى الْأَبَوَيْنِ وَالْأَجْدَادِ وَالْجَدَّاتِ - وَإِنْ بَعُدُوا - وَعَلَى بَنِيهِ وَبَنَاتِهِ وَمَنْ تَنَاسَلَ مِنْهُمْ - وَإِنْ سَفَلَ - وَلَا يُجْبَرُ عَلَى نَفَقَةِ أَحَدٍ غَيْرِ مَنْ ذَكَرْنَا - وَهُوَ قَوْلُ الشَّافِعِيِّ وَمَنْ قَلَّدَهُ - وَقَدْ أَشَارَ فِي بَعْضِ كَلَامِهِ إِلَى أَنَّ الْمَرْأَةَ لَا تُجْبَرُ عَلَى نَفَقَةِ أَبٍ، وَلَا أُمٍّ، وَلَا غَيْرِهِمَا.

L32625 A group has stated that one is compelled to provide financial support for parents, grandfathers, and grandmothers—even if distantly related—as well as for his sons, daughters, and their descendants, even if remote in lineage. However, one is not compelled to support anyone other than those we have mentioned. This is the opinion of al-Shāfiʿī and his adherents. In some of his writings, he indicated that a woman is not compelled to provide financial support for her father, mother, or anyone besides them.

وَقَالَتْ طَائِفَةٌ: لَا يُجْبَرُ أَحَدٌ إِلَّا عَلَى كُلِّ ذِي رَحِمٍ مَحْرَمَةٍ وَهُوَ قَوْلُ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ إِلَّا أَنَّهُ تَنَاقَضَ تَنَاقُضًا شَنِيعًا، قَالَ: يُجْبَرُ الرَّجُلُ عَلَى النَّفَقَةِ عَلَى أَوْلَادِهِ الصِّغَارِ الْمُحْتَاجِينَ خَاصَّةً - ذُكُورًا كَانُوا أَوْ إِنَاثًا - فَإِنْ كَانُوا كِبَارًا مُحْتَاجِينَ أُجْبِرَ عَلَى نَفَقَةِ الْإِنَاثِ مِنْهُمْ وَلَمْ يُجْبَرْ عَلَى نَفَقَةِ الذُّكُورِ إِلَّا أَنْ يَكُونُوا زَمْنَى.

L32626 A group held the opinion: No one is compelled [to provide maintenance] except for close blood relatives. This is the view of Ḥammād ibn Abī Sulaymān, and Abū Ḥanīfah also adopts it—though he contradicted himself in a glaring contradiction. He asserted: A man is compelled to financially support his minor children in need specifically, regardless of gender. However, if they are adult and in need, he is compelled to support the females among them but not the males unless they are incapacitated.

فَإِنْ كَانُوا زَمْنَى مُحْتَاجِينَ أُجْبِرَ عَلَى النَّفَقَةِ عَلَيْهِمْ، وَكَذَلِكَ يُجْبَرُ عَلَى نَفَقَةِ الصِّغَارِ الْمُحْتَاجِينَ مِنْ الذُّكُورِ وَالْإِنَاثِ وَالْكِبَارِ وَالْفَقِيرَاتِ مِنْ النِّسَاءِ خَاصَّةً - وَإِنْ لَمْ يَكُنَّ زَمِنَاتٍ - وَالْكِبَارِ الْمُحْتَاجِينَ إذَا كَانُوا زَمْنَى، وَإِلَّا فَلَا - كُلُّ ذَلِكَ مِنْ ذَوِي رَحِمِهِ الْمَحْرَمَةِ إذَا كَانَ وَارِثًا لَهُمْ خَاصَّةً.

L32627–32629 If they are chronically ill or needy, he is compelled to financially support them. Similarly, he is compelled to support needy minors among males and females, the elderly, and specifically poor women—even if they are not... Chronically ill women and the elderly in need (if they are chronically ill; otherwise not)—these rulings apply to his mahram blood relatives if he is specifically their heir.

وَلَا يُجْبَرُ عَلَى نَفَقَةِ ذِي رَحِمٍ مَحْرَمَةٍ إذَا لَمْ يَكُنْ وَارِثًا لَهُ، وَلَا يُجْبَرُ عَلَى نَفَقَةِ

L32630 He is not compelled to provide maintenance for a mahram relative if he is not an heir of that relative, nor is he compelled to provide maintenance for

the one from whom he inherits if the deceased is not a mahram relative of his.

وَلَا يُجْبَرُ عَلَى نَفَقَةِ ذِي رَحِمٍ مَحْرَمَةٍ إذَا لَمْ يَكُنْ هُوَ وَارِثًا لَهُ، وَلَا عَلَى نَفَقَةِ مَوْرُوثِهِ إذَا لَمْ يَكُنْ ذَا رَحِمٍ مَحْرَمَةٍ مِنْهُ.

L32631 He said: No one shares the parent's obligation to provide maintenance for their child, and no one shares the child's obligation to provide maintenance for their parents. If there is a group of legal heirs who are mahram relatives by blood among those we previously stated are compelled to provide maintenance, they are all compelled to provide maintenance for him in proportion to their inheritance shares from him.

قَالَ: وَلَا يُشَارِكُ الْوَالِدَ فِي النَّفَقَةِ عَلَى وَلَدِهِ أَحَدٌ، وَلَا يُشَارِكُ الْوَلَدَ فِي النَّفَقَةِ عَلَى وَالِدَيْهِ أَحَدٌ، فَإِنْ كَانَ جَمَاعَةٌ وَارِثُونَ ذَوُو رَحِمٍ مَحْرَمَةٍ مِمَّنْ ذَكَرْنَا أَنَّهُ يُجْبَرُ عَلَى النَّفَقَةِ أُجْبِرُوا كُلُّهُمْ عَلَى النَّفَقَةِ عَلَيْهِ عَلَى قَدْرِ مَوَارِيثِهِمْ مِنْهُ.

L32632 They said: If their religions differ, none of them is obligated to provide financial maintenance for someone whose religion conflicts with theirs, except for the child having a right upon his parents who differ from him in religion, and except for the non-Muslim father being obligated to provide for his young children specifically, those who became Muslim through their mother's conversion to Islam.

قَالُوا: فَإِنْ اخْتَلَفَتْ أَدْيَانُهُمْ لَمْ يَلْزَمْ أَحَدًا مِنْهُمْ نَفَقَةٌ عَلَى مَنْ دِينُهُ خِلَافُ دِينِهِ إلَّا الْوَلَدَ عَلَى أَبَوَيْهِ الْمُخَالِفِينَ لَهُ فِي دِينِهِ، وَإِلَّا الْوَالِدَ الْكَافِرَ عَلَى نَفَقَةِ أَوْلَادِهِ الصِّغَارِ خَاصَّةً الَّذِينَ صَارُوا مُسْلِمِينَ بِإِسْلَامِ أُمِّهِمْ.

L32633 He said: A poor person is not compelled to provide maintenance for anyone except that a father is compelled to maintain his minor children, and except that a husband is compelled to maintain his wife, and except that a poor man and a poor woman are compelled to maintain their poor mother. He said: A poor son is not compelled to maintain his poor father unless the father is disabled, in which case he is then compelled to provide maintenance for him.

قَالَ: وَلَا يُجْبَرُ فَقِيرٌ عَلَى أَحَدٍ إلَّا الْوَالِدُ عَلَى أَوْلَادِهِ الصِّغَارِ، وَإِلَّا الزَّوْجُ عَلَى نَفَقَةِ زَوْجَتِهِ، وَإِلَّا الرَّجُلُ الْفَقِيرُ، وَالْمَرْأَةُ الْفَقِيرَةُ عَلَى نَفَقَةِ أُمِّهِمَا الْفَقِيرَةِ - قَالَ: وَلَا يُجْبَرُ الِابْنُ الْفَقِيرُ عَلَى نَفَقَةِ أَبِيهِ الْفَقِيرِ إلَّا أَنْ يَكُونَ الْأَبُ زَمِنًا فَيُجْبَرُ حِينَئِذٍ عَلَى النَّفَقَةِ عَلَيْهِ.

L32634 Abū Muḥammad said: I wish I knew how compelling a poor person to provide for another's maintenance is possible—truly, this is astonishing! Then we would have wished to learn the threshold they establish for poverty relative to the wealth that obligates maintenance for those they previously mentioned. Then they forgot their own statements and declared: If he has a wealthy maternal uncle and a wealthy paternal cousin, while being a chronically ill poor person or a healthy minor in poverty—then his maintenance falls upon his maternal uncle rather than his paternal cousin.

قَالَ أَبُو مُحَمَّد: لَيْتَ شِعْرِي كَيْفَ يُمْكِنُ إجْبَارُ فَقِيرٍ عَلَى نَفَقَةِ أَحَدٍ، إنَّ هَذَا لَعَجَبٌ؟ ثُمَّ لَوَدِدْنَا أَنْ نَعْرِفَ حَدَّ هَذَا الْفَقْرِ عِنْدَهُمْ مِنْ الْغِنَى الَّذِي يُوجِبُونَ بِهِ النَّفَقَةَ عَلَى مَنْ ذَكَرُوا قَبْلُ، ثُمَّ نَسُوا مَا قَالُوا، فَقَالُوا: إنْ كَانَ لَهُ خَالٌ، وَابْنُ عَمٍّ مُوسِرَانِ، وَهُوَ فَقِيرٌ زَمِنٌ، أَوْ صَغِيرٌ صَحِيحٌ فَقِيرٌ: فَنَفَقَتُهُ عَلَى خَالِهِ دُونَ ابْنِ عَمِّهِ.

L32635 They said: If there is a man who is indigent and permanently disabled, having an indigent daughter, along with a full brother, a paternal half-brother, and a

maternal half-brother—all of whom are affluent—then his maintenance and his daughter's maintenance are the responsibility of the full brother alone.

قَالُوا: فَإِنْ كَانَ رَجُلٌ مُعْسِرٌ زَمِنٌ وَلَهُ ابْنَةٌ مُعْسِرَةٌ، وَلَهُ أَخٌ شَقِيقٌ، وَأَخٌ لِأَبٍ، وَأَخٌ لِأُمٍّ مُوسِرُونَ: فَنَفَقَتُهُ وَنَفَقَةُ ابْنَتِهِ عَلَى الشَّقِيقِ فَقَطْ.

L32636 They said: If in place of the daughter there were an insolvent, chronically ill, elderly son, the father's maintenance expense would entail five-sixths of it on his full brother, and one-sixth of it on his maternal half-brother, with none of this obligation falling upon his paternal half-brother. The son's maintenance expense would rest solely on his paternal uncle (the father's full brother).

قَالُوا: فَلَوْ كَانَ مَكَانَ الِابْنَةِ ابْنٌ مُعْسِرٌ زَمِنٌ كَبِيرٌ كَانَتْ نَفَقَةُ الْأَبِ خَمْسَةَ أَسْدَاسِهَا عَلَى شَقِيقِهِ، وَسُدُسُهَا عَلَى أَخِيهِ لِلْأُمِّ وَلَا شَيْءَ مِنْ ذَلِكَ عَلَى أَخِيهِ لِلْأَبِ وَكَانَتْ نَفَقَةُ الِابْنِ عَلَى عَمِّهِ شَقِيقِ أَبِيهِ فَقَطْ.

L32637 Marvel at this folly! They grant no inheritance to the father, the son, or any mahram relative. They claim: If a chronically ill pauper has a wealthy father and a wealthy son, his financial maintenance is the son's obligation, not the father's—yet their arguments are lengthy, incoherent, and muddled; what we have mentioned suffices to clarify the invalidity of their position. We ask God, the Exalted, for protection [from error].

فَاعْجَبُوا لِهَذَا الْهَوَسِ؟ وَهُمْ لَا يُوَرِّثُونَ الْأَبَ، وَلَا الِابْنَ وَكُلَّ ذِي رَحِمٍ مَحْرَمَةٍ، قَالُوا: وَمَنْ كَانَ فَقِيرًا زَمِنًا وَلَهُ أَبٌ مُوسِرٌ، وَابْنٌ مُوسِرٌ، فَنَفَقَتُهُ عَلَى الِابْنِ دُونَ الْأَبِ - وَلَهُمْ تَخْلِيطٌ كَثِيرٌ طَوِيلٌ غَثٌّ، يَكْفِي مِنْ بَيَانِ سُقُوطِهِ مَا ذَكَرْنَا - وَنَسْأَلُ اللَّهَ تَعَالَى الْعَافِيَةَ.

L32638–32639 A group held an opinion similar to ours, as narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who reported: ʿAmr ibn Shuʿayb informed me that Saʿīd ibn al-Musayyab informed him that ʿUmar ibn al-Khaṭṭāb assigned the paternal cousins of Manfūs as kalālah, stipulating maintenance for him.

وَقَالَتْ طَائِفَةٌ: بِمِثْلِ قَوْلِنَا - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَمْرُو بْنُ شُعَيْبٍ أَنَّ سَعِيدَ بْنَ الْمُسَيِّبِ أَخْبَرَهُ أَنَّ عُمَرَ بْنَ الْخَطَّابِ وَقَفَ بَنِي عَمِّ مَنْفُوسٍ كَلَالَةً بِالنَّفَقَةِ عَلَيْهِ.

L32640 From the chain of Ismāʿīl ibn Isḥāq: ʿAlī—that is, the son of al-Madīnī—reported to us, Sufyān ibn ʿUyaynah reported to us, from Ibn Jurayj, from ʿAmr ibn Shuʿayb, from Saʿīd ibn al-Musayyib: that ʿUmar ibn al-Khaṭṭāb obligated the male agnates responsible for a minor to provide for him, specifying that this duty fell upon the men, not the women.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا عَلِيٌّ - هُوَ ابْنُ الْمَدِينِيِّ - نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ حَبَسَ عُصْبَةَ صَبِيٍّ أَنْ يُنْفِقُوا عَلَيْهِ الرِّجَالُ دُونَ النِّسَاءِ.

L32641 From the path of Ismāʿīl ibn Isḥāq al-Qāḍī: Abū Bakr ibn Abī Shaybah narrated to us, Ḥumayd ibn ʿAbd al-Raḥmān (he is al-Ruʾāsī) narrated to us, from al-Ḥasan (the son of Ḥayy) from Muṭarrif (the son of Ṭarīf) from Ismāʿīl (the son of ʿUlayyah) from al-Ḥasan al-Baṣrī, from Zayd ibn Thābit, who said: "In the case of an uncle and a mother [as heirs], the uncle receives

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ هُوَ الرُّؤَاسِيُّ عَنِ الْحَسَنِ - هُوَ ابْنُ حَيٍّ - عَنْ مُطَرِّفٍ - هُوَ ابْنُ طَرِيفٍ - عَنْ إِسْمَاعِيلَ

according to his inheritance share, and the mother receives according to her inheritance share."

- هُوَ ابْنُ عُلَيَّةَ - عَنْ الْحَسَنِ الْبَصْرِيِّ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: إذَا كَانَ عَمٌّ وَأُمٌّ؟ فَعَلَى الْعَمِّ بِقَدْرِ مِيرَاثِهِ وَعَلَى الْأُمِّ بِقَدْرِ مِيرَاثِهَا.

L32642 From the chain of ʿAbd al-Razzāq, from Maʿmar, from Ayyūb al-Sikhtiyānī, from Muḥammad ibn Sīrīn: ʿAbd Allāh ibn ʿUtbah ibn Masʿūd decreed that a child's maintenance should be drawn from their own wealth. He said to the heir: "If they had no wealth, we would take from you the maintenance—do you not observe that He, the Exalted, says: {And upon the heir is a duty like that} [Al-Baqarah: 233]?"[18]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ عَبْدَ اللَّهِ بْنَ عُتْبَةَ بْنِ مَسْعُودٍ جَعَلَ نَفَقَةَ الصَّبِيِّ مِنْ مَالِهِ، وَقَالَ لِوَارِثِهِ: أَمَّا إنَّهُ لَوْ لَمْ يَكُنْ لَهُ مَالٌ أَخَذْنَاك بِنَفَقَةٍ - أَلَا تَرَى أَنَّهُ تَعَالَى يَقُولُ: {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] .

L32643 From the path of Ismāʿīl: From Musaddad, from ʿAbdullāh ibn Yazīd - he is the Muqri (the Quran reciter) - from Ḥaywah ibn Shurayḥ, from Jaʿfar ibn Rabīʿah, that Qabīṣah ibn Dhuʾayb said regarding the statement of Allah, the Mighty and Majestic, {And upon the heir is the like of that} [Al-Baqarah: 233]: "The breastfeeding of the child"—From Aḥmad ibn ʿUmar ibn Anas, from Abū Dharr al-Harawī, from ʿAbdullāh ibn Aḥmad ibn Ḥamawayh, from Ibrāhīm ibn Khuraym, from ʿAbd ibn Ḥumayd, from Rawḥ - he is Ibn ʿUbādah - from Hishām ibn Ḥassān, from al-Ḥasan al-Baṣrī, who said: "If the child has no wealth, his heir is responsible for his upkeep. Allah, the Mighty and Majestic, said {And upon the heir is the like of that} [Al-Baqarah: 233]."[19]

وَمِنْ طَرِيقِ إسْمَاعِيلَ نا مُسَدَّدٌ نا عَبْدُ اللَّهِ بْنُ يَزِيدَ - هُوَ الْمُقْرِي - نا حَيْوَةُ بْنُ شُرَيْحٍ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ أَنَّ قَبِيصَةَ بْنَ ذُؤَيْبٍ قَالَ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] قَالَ: رَضَاعُ الصَّبِيِّ -: نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَوَيْهِ نا إبْرَاهِيمُ بْنُ خُرَيْمٍ نا عَبْدُ بْنُ حُمَيْدٍ نا رَوْحٌ - هُوَ ابْنُ عُبَادَةَ - عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ الْحَسَنِ الْبَصْرِيِّ، قَالَ: نَفَقَةُ الصَّبِيِّ إذَا لَمْ يَكُنْ لَهُ مَالٌ عَلَى وَارِثِهِ، قَالَ اللَّهُ عَزَّ وَجَلَّ {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] .

L32644 And through him (the narrator), it reaches Rawh ibn Ubada, from Ibn Jurayj: I said to Aṭāʾ, "Is the heir of the child compelled—even if he refuses—to pay the wage of his wet nurse when the child has no wealth?" He replied, "Would you abandon him to perish?"

وَبِهِ إلَى رَوْحِ بْنِ عُبَادَةَ عَنْ ابْنِ جُرَيْجٍ قُلْت: لِعَطَاءٍ أَيُجْبَرُ وَارِثُ الصَّبِيِّ - وَإِنْ كَرِهَ - بِأَجْرِ مُرْضِعَتِهِ إذَا لَمْ يَكُنْ لِلصَّبِيِّ مَالٌ؟ فَقَالَ: أَفَتَدَعُهُ يَمُوتُ.

L32645 And via the chain of Abd al-Razzaq from Ibn Jurayj: I asked Ata about "{And upon the heir is a duty like that [of the father]}" [Al-Baqarah: 233]. He replied: "It refers to the heir of the newborn; the same applies to him, meaning what has been mentioned."[20]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْتُ لِعَطَاءٍ {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] فَقَالَ عَطَاءٌ: هُوَ وَارِثُ الْمَوْلُودِ، عَلَيْهِ مِثْلُ ذَلِكَ، أَيْ مِثْلُ مَا ذُكِرَ.

[18] **Qur'an references (L32642):** Qur'an 2:233 (Al-Baqarah).
[19] **Qur'an references (L32643):** Qur'an 2:233 (Al-Baqarah).
[20] **Qur'an references (L32645):** Qur'an 2:233 (Al-Baqarah).

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نَا مُسَدَّدٌ نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانِ - عَنْ أَشْعَثَ - هُوَ ابْنُ عَبْدِ الْمَلِكِ الْحُمْرَانِيِّ - عَنِ الْحَسَنِ الْبَصْرِيِّ فِي قَوْلِهِ تَعَالَى: {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] قَالَ: النَّفَقَةُ

L32646–32647 Through the chain of Ismāʿīl: Musaddad narrated to us; Yahyā narrated to us—he is Ibn Saʿīd al-Qaṭṭān—from Ashʿath—he is Ibn ʿAbd al-Malik al-Ḥumrānī—from al-Ḥasan al-Baṣrī regarding the Exalted's saying: {And upon the heir is the same obligation} [Al-Baqarah: 233]. He said, "The maintenance."[21]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا مُحَمَّدُ بْنُ أَبِي بَكْرٍ - هُوَ الْمُقَدَّمِيُّ - ثنا حَسَّانُ بْنُ إِبْرَاهِيمَ عَنْ إِبْرَاهِيمَ الصَّائِغِ أَنَّهُ سَأَلَ عَطَاءً عَنْ يَتِيمٍ لَهُ عُصْبَةٌ أَغْنِيَاءُ أَيُجْبَرُونَ عَلَى أَنْ يُنْفِقُوا عَلَيْهِ؟ قَالَ عَطَاءٌ: نَعَمْ، يُنْفِقُونَ عَلَيْهِ بِقَدْرِ مَا كَانُوا يَرِثُونَهُ لَوْ مَاتَ وَتَرَكَ مَالًا.

L32648 From the chain of Ismāʿīl ibn Isḥāq: Muḥammad ibn Abī Bakr (Al-Muqaddamī) narrated to us via Ḥassān ibn Ibrāhīm, from Ibrāhīm al-Ṣā'igh (the Goldsmith), that he asked ʿAṭā' about an orphan who has wealthy male agnates: "Are they compelled to provide for him?" ʿAṭā' said: "Yes—they must spend on him according to the share they would inherit from him if the orphan had died leaving wealth."

وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ أرنا سَعِيدُ بْنُ عَامِرٍ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: يُجْبَرُ الرَّجُلُ إِذَا كَانَ مُوسِرًا عَلَى نَفَقَةِ أَخِيهِ إِذَا كَانَ مُعْسِرًا -: وَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ أَصْحَابُنَا يَقُولُونَ: إِذَا كَانَ الْمَالُ كَثِيرًا فَيُنْفَقُ عَلَى الصَّغِيرِ مِنْ نَصِيبِهِ - يَعْنِي مِنَ الْمِيرَاثِ - إِنْ كَانَ الْمَالُ قَلِيلًا أُنْفِقَ عَلَى الصَّغِيرِ مِنْ جَمِيعِ الْمَالِ.

L32649 And via ʿAbd ibn Ḥumayd: Saʿīd ibn ʿĀmir narrated to us from Hishām al-Dastawā'ī from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakhaʿī, who said: A man is obligated, if he is wealthy, to provide maintenance for his brother if he is impoverished. And ʿAbdullāh ibn Rabīʿ narrated to us: ʿAbdullāh ibn Muḥammad ibn ʿUthmān narrated to us, Aḥmad ibn Khālid narrated to us, ʿAlī ibn ʿAbd al-ʿAzīz narrated to us, al-Ḥajjāj ibn al-Minhāl narrated to us, Abū ʿAwānah narrated to us from Manṣūr ibn al-Muʿtamir from Ibrāhīm al-Nakhaʿī, who said: Our companions used to say: If the wealth is abundant, maintenance for the minor is to be provided from his share—meaning from the inheritance—but if the wealth is scarce, maintenance for the minor is to be provided from the entirety of the wealth.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا مُسَدَّدٌ نا هُشَيْمٌ نا مَنْصُورٌ عَنْ قَتَادَةَ، قَالَ: يُجْبَرُ كُلُّ إِنْسَانٍ مِنْهُمْ بِقَدْرِ مَا يَرِثُ - يَعْنِي فِي النَّفَقَةِ عَلَى الْمَوْرُوثِ -.

L32650 From the chain of Ismāʿīl ibn Isḥāq: Musaddad narrated to us, Hushaym narrated to us, Mansūr narrated from Qatādah, who said: Each heir is financially obligated in proportion to their inheritance share—meaning regarding expenditures for the deceased.

وَبِهِ إِلَى إِسْمَاعِيلَ نا عَبْدُ الْوَاحِدِ بْنُ غِيَاثٍ نَا أَبُو عَوَانَةَ عَنْ إِسْمَاعِيلَ بْنِ سَالِمٍ عَنِ الشَّعْبِيِّ قَالَ: {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] قَالَ: رَضَاعُ الصَّغِيرِ.

L32651 Through him, the chain continues to Ismāʿīl: ʿAbd al-Wāḥid ibn Ghiyāth narrated to us: Abū ʿAwānah narrated to us from Ismāʿīl ibn Sālim from al-Shaʿbī, who said: *{"And upon the heir is a duty like that"}* [Al-Baqarah:233]. Al-Shaʿbī said: "This refers to the breastfeeding of the young child."[22]

[21] **Qur'an references (L32647):** Qur'an 2:233 (Al-Baqarah).
[22] **Qur'an references (L32651):** Qur'an 2:233 (Al-Baqarah).

L32652 From the chain of Ismāʿīl ibn Isḥāq: ʿAlī ibn ʿAbdullāh and Ibn al-Madīnī narrated to us from Sufyān ibn ʿUyaynah, from Ibn Abī Najīḥ, from Mujāhid concerning the verse {And upon the heir is the like of that} [Al-Baqarah: 233]: "The heir bears the same obligation as was upon his father—to arrange for a wet nurse for the child."[23]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ، وَابْنُ الْمَدِينِيِّ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ: {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] ، عَلَى الْوَارِثِ مِثْلُ مَا عَلَى أَبِيهِ أَنْ يَسْتَرْضِعَ لَهُ.

L32653 And through the chain of Al-Hajjaj ibn Al-Minhal, Abu 'Awanah narrated from Mansur ibn Al-Mu'tamir from Ibrahim An-Nakha'i from Judge Shurayh: that he ruled the breastfeeding of a child whose father dies must be taken from all his wealth.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ شُرَيْحٍ الْقَاضِي: أَنَّهُ قَالَ فِي رَضَاعِ الصَّبِيِّ يَمُوتُ أَبُوهُ أَنَّهُ مِنْ جَمِيعِ الْمَالِ.

L32654 And via the chain of Ibn Wahb from Al-Layth ibn Saʿd from Khalīd ibn Yazīd, that Zayd ibn Aslam said regarding the statement of Allah, the Almighty: {And upon the heir is the like of that} [Al-Baqarah: 233], he said: "It is the guardian of the deceased."[24]

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنِ اللَّيْثِ بْنِ سَعْدٍ عَنْ خَالِدِ بْنِ يَزِيدَ أَنَّ زَيْدَ بْنَ أَسْلَمَ قَالَ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] قَالَ: هُوَ وَلِيُّ الْمَيِّتِ.

L32655–32656 Abu Muhammad said: So these are Umar ibn al-Khattab and Zayd ibn Thabit. No dissenter among the Companions (may Allah be pleased with them) is known regarding them.

قَالَ أَبُو مُحَمَّدٍ فَهَؤُلَاءِ عُمَرُ بْنُ الْخَطَّابِ، وَزَيْدُ بْنُ ثَابِتٍ لَا يُعْرَفُ لَهُمَا مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ.

L32657 And among the Followers: Abdullah ibn Utbah ibn Mas'ud, Qabisa ibn Dhu'ayb, al-Hasan al-Basri, Ata ibn Abi Rabah, Ibrahim al-Nakha'i, the companions of Ibn Mas'ud, Qatadah, al-Sha'bi, Mujahid, Shurayh and Zayd ibn Aslama.

وَمِنَ التَّابِعِينَ - عَبْدُ اللَّهِ بْنُ عُتْبَةَ بْنِ مَسْعُودٍ، وَقَبِيصَةُ بْنُ ذُؤَيْبٍ، وَالْحَسَنُ الْبَصْرِيُّ، وَعَطَاءُ بْنُ أَبِي رَبَاحٍ، وَإِبْرَاهِيمُ النَّخَعِيُّ، وَأَصْحَابُ ابْنِ مَسْعُودٍ، وَقَتَادَةُ، وَالشَّعْبِيُّ، وَمُجَاهِدٌ، وَشُرَيْحٌ وَزَيْدُ بْنُ أَسْلَمَ.

L32658 And it is the view of al-Ḍaḥḥāk ibn Muzāḥim, Sufyān al-Thawrī, and ʿAbd al-Razzāq.

وَهُوَ قَوْلُ الضَّحَّاكِ بْنِ مُزَاحِمٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَعَبْدِ الرَّزَّاقِ.

L32659 Abu Muhammad said: As for Abu Hanifa's statement, it is utterly corrupt, for they are numerous frivolous classifications not mandated by the Quran, Sunnah, any weak narration, analogy, precautionary principle, sound rational consideration, nor did anyone before him assert it.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفِي غَايَةِ الْفَسَادِ، لِأَنَّهَا تَقَاسِيمُ كَثِيرَةٌ سَخِيفَةٌ لَمْ يُوجِبْهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قِيَاسٌ، وَلَا احْتِيَاطٌ، وَلَا مَعْقُولٌ، وَلَا قَالَ بِهَا أَحَدٌ قَبْلَهُ.

[23] **Qur'an references (L32652):** Qur'an 2:233 (Al-Baqarah).
[24] **Qur'an references (L32654):** Qur'an 2:233 (Al-Baqarah).

L32660 As for the opinion of Mālik—we do not know of it from anyone before him either, nor do we know of any evidence being cited for it from what we have mentioned, except that an obfuscator might argue by claiming: "Consensus has been established regarding the obligation of nafaqah for parents and minor dependent children, while disagreement exists concerning other cases."

وَأَمَّا قَوْلُ مَالِكٍ - فَمَا نَعْلَمُهُ أَيْضًا عَنْ أَحَدٍ قَبْلَهُ، وَلَا نَعْلَمُهُ يُحْتَجُّ لَهُ بِشَيْءٍ مِمَّا ذَكَرْنَا إِلَّا أَنْ يُمَوِّهَ مُمَوِّهٌ بِأَنْ يَقُولَ: قَدْ أُجْمِعَ عَلَى وُجُوبِ النَّفَقَةِ عَلَى الْأَبَوَيْنِ وَالْوَلَدِ الصِّغَارِ وَاخْتُلِفَ فِيمَا عَدَا ذَلِكَ.

L32661 Abū Muḥammad said: This is invalid, for we have already cited the narration from al-Shaʿbī that no one can be compelled to financially sustain another. Moreover, anyone who claims to have definitively established consensus is lying about the entire Ummah. Furthermore, this is an opinion unsupported by the Qurʾān or the Sunnah – and there is no difference regarding al-Shāfiʿī's opinion.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ، لِأَنَّا قَدْ ذَكَرْنَا الرِّوَايَةَ عَنْ الشَّعْبِيِّ: أَنَّهُ لَا يُجْبَرُ أَحَدٌ عَلَى نَفَقَةِ أَحَدٍ، مَعَ أَنَّهُ لَا يَدَّعِي ضَبْطَ الْإِجْمَاعِ إِلَّا كَاذِبٌ عَلَى الْأُمَّةِ كُلِّهَا، مَعَ أَنَّهُ قَوْلٌ لَا يُؤَيِّدُهُ قُرْآنٌ، وَلَا سُنَّةٌ - وَكَذَلِكَ قَوْلُ الشَّافِعِيِّ وَلَا فَرْقَ.

L32662 As for the statement of Ḥammād, he restricted [the ruling] to mahram relatives while excluding non-mahram heirs without any evidence.

وَأَمَّا قَوْلُ حَمَّادٍ فَإِنَّهُ خَصَّ ذَوِي الرَّحِمِ الْمَحْرَمَةِ دُونَ الْمَوْرُوثِ بِلَا دَلِيلٍ.

L32663 There remains nothing but our opinion—which is the opinion of the majority of the Salaf—for we have found Allah, the Exalted, saying: *"And give the kinsman his due, and the needy, and the wayfarer"* [Al-Isrāʾ: 26].[25]

فَلَمْ يَبْقَ إِلَّا قَوْلُنَا، وَهُوَ قَوْلُ جُمْهُورِ السَّلَفِ، فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَآتِ ذَا الْقُرْبَى حَقَّهُ وَالْمِسْكِينَ وَابْنَ السَّبِيلِ} [الإسراء: ٢٦] .

L32664 The report we narrated earlier via Aḥmad ibn Shuʿayb, from Quṭaybah, from al-Layth ibn Saʿd, from Abū al-Zubayr, from Jābir, who said: The Messenger of Allāh—peace be upon him—said: "Begin by providing for your own needs. If anything remains, give to your family. If anything remains after your family, give to your relatives. If anything remains after your relatives, then to others in need successively."[26]

وَالْخَبَرُ الَّذِي رُوِّينَاهُ قَبْلُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ عَنْ قُتَيْبَةَ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «ابْدَأْ بِنَفْسِكَ فَتَصَدَّقْ عَلَيْهَا فَإِنْ فَضَلَ شَيْءٌ فَلِأَهْلِكَ، فَإِنْ فَضَلَ عَنْ أَهْلِكَ شَيْءٌ فَلِذِي قَرَابَتِكَ فَإِنْ فَضَلَ عَنْ ذِي قَرَابَتِكَ شَيْءٌ فَهَكَذَا وَهَكَذَا» .

L32665 Allah, the Almighty, the Majestic, ordained a due for close kin, the needy, and the wayfarer, and the Messenger of Allah (peace and blessings of Allah be upon him and his household) obligated the giving of gifts to relatives.

فَأَوْجَبَ اللَّهُ عَزَّ وَجَلَّ حَقًّا لِذِي الْقُرْبَى وَلِلْمَسَاكِينِ، وَابْنِ السَّبِيلِ - وَأَوْجَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الْعَطِيَّةَ لِلْأَقَارِبِ.

L32666 If the opponent says, "Is the duty owed to him to uphold kinship ties and avoid cutting them off?"

فَإِنْ قَالَ الْمُخَالِفُ: حَقُّهُ الصِّلَةُ وَتَرْكُ الْقَطِيعَةِ؟

[25] **Qur'an references (L32663):** Qur'an 17:26 (Al-Isra).
[26] **Hadith references (L32664):** Sahih Muslim 997a; Mishkat al-Masabih 3392.

قُلْنَا: نَعَمْ، هَذَا حَقُّهُ، وَالصِّلَةُ: هِيَ أَنْ لَا يَدَعَهُ يَسْأَلَ وَيَتَكَفَّفَ، أَوْ يَمُوتَ جَوْعًا أَوْ بَرْدًا، أَوْ ضَيَاعًا، أَوْ يُضْحِي لِلشَّمْسِ وَالْمَطَرِ وَالرِّيحِ وَالْبَرْدِ، وَهُوَ ذُو فَضْلَةٍ مِنْ مَالٍ هُوَ عَنْهَا فِي غِنًى، وَلَيْسَ فِي الْقَطِيعَةِ شَيْءٌ أَكْثَرَ مِنْ أَنْ يَدَعَهُ كَمَا ذَكَرْنَا.

We said: Yes, this is his rightful due, and upholding kinship ties requires preventing him from begging and seeking alms, letting him die from hunger or cold, perish from destitution, or be exposed to sun, rain, wind, or cold - while he possesses surplus wealth he does not need. There is no greater severance of ties than abandoning him in the manner we have described.

فَإِنْ قَالُوا: إِنَّهُ قَدْ قَرَنَ ذَوِي الْقُرْبَى بِالْمَسَاكِينِ، وَابْنِ السَّبِيلِ؟ قُلْنَا: نَعَمْ، وَحَقُّ الْمَسَاكِينِ عَلَى كُلِّ مَنْ بِحَضْرَتِهِمْ أَنْ يَقُومُوا بِهِمْ فَرْضًا يُجْبَرُونَ عَلَى ذَلِكَ، وَيَقْضِي الْحَاكِمُ عَلَيْهِمْ بِهِ، وَكَذَلِكَ حَقُّ ابْنِ السَّبِيلِ ضِيَافَتُهُ، فَإِنْ قِيلَ: مَنْ هُمْ ذَوُو الْقُرْبَى هَؤُلَاءِ؟ قُلْنَا: كُلُّ مَنْ عَلَى ظَهْرِ الْأَرْضِ مُنْتَسِلُونَ مِنْ آدَمَ - عَلَيْهِ السَّلَامُ - وَامْرَأَتِهِ، وَابْنًا بَعْدَ ابْنٍ، وَوِلَادَةً بَعْدَ وِلَادَةٍ، إِلَى أَبِ الْإِنْسَانِ الْأَدْنَى وَأُمِّهِ، فَلَا بُدَّ مِنْ حَدٍّ يُبَيِّنُ مَنْ هُمْ ذَوُو الْقُرْبَى الَّذِينَ أَوْجَبَ اللَّهُ عَزَّ وَجَلَّ لَهُمُ الْحَقَّ مِنْ غَيْرِهِمْ؟ فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا -: مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ كَثِيرٍ أرنا سُفْيَانُ عَنْ مُحَمَّدِ بْنِ عَجْلَانَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ قَالَ: «أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِالصَّدَقَةِ؟ فَقَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ عِنْدِي دِينَارٌ؟ فَقَالَ: تَصَدَّقْ بِهِ عَلَى نَفْسِكَ، قَالَ: عِنْدِي آخَرُ؟ قَالَ: تَصَدَّقْ بِهِ عَلَى وَلَدِكَ، قَالَ: عِنْدِي آخَرُ؟ قَالَ: تَصَدَّقْ بِهِ عَلَى زَوْجَتِكَ، أَوْ قَالَ: عَلَى زَوْجِكَ، قَالَ عِنْدِي آخَرُ، قَالَ: تَصَدَّقْ بِهِ عَلَى خَادِمِكَ، قَالَ: عِنْدِي آخَرُ؟ قَالَ: أَنْتَ أَعْلَمُ» .

If they say: "He has associated close relatives with the poor and the wayfarer," we respond: "Yes, for the right of the poor is incumbent upon all those within their presence to fulfill as an obligation—they may be compelled to this, and the ruler may enforce it upon them. Likewise, the right of the wayfarer is to offer him hospitality." If asked: "Who are these close relatives?" we say: "All who exist on earth, tracing lineage to Adam—peace be upon him—and his wife, through generation after generation, up to one's immediate father and mother. Thus, a defining limit is necessary to clarify who these close relatives are to whom Allah—Exalted and Majestic—has granted rights above others." We investigated this matter and found the following narration transmitted via Abū Dāwūd: Muḥammad ibn Kathīr informed us, Sufyān informed us from Muḥammad ibn ʿAjlān from Saʿīd ibn Abī Saʿīd al-Maqburī from Abū Hurayrah, who said: "Allah's Messenger—peace and blessings be upon him and his family—commanded charity. A man asked: 'O Messenger of Allah, I have a dinar.' He replied: 'Give it as charity to yourself.' The man said: 'I have another.' He said: 'Give it as charity to your child.' The man said: 'I have another.' He said: 'Give it as charity to your wife'—or he said, 'to your husband.' The man said: 'I have another.' He said: 'Give it as charity to your servant.' The man said: 'I have another.' He replied: 'You know best [what to do with it].'"

وَرُوِّينَا هَذَا الْخَبَرُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أرنا عُمَرُ بْنُ عَلِيٍّ نا مُحَمَّدُ بْنُ الْمُثَنَّى قَالَا جَمِيعًا: نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنِ ابْنِ عَجْلَانَ قَالَ: نا سَعِيدُ بْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «تَصَدَّقُوا فَقَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ عِنْدِي دِينَارٌ؟ قَالَ: تَصَدَّقْ بِهِ عَلَى نَفْسِكَ، قَالَ: عِنْدِي آخَرُ؟ قَالَ: تَصَدَّقْ

This report has been conveyed to us through the chain of Aḥmad ibn Shuʿayb: ʿUmar ibn ʿAlī informed us, Muḥammad ibn al-Muthannā informed us—both narrated together: Yaḥyā ibn Saʿīd al-Qaṭṭān informed us from Ibn ʿAjlān, who said: Saʿīd ibn Abī Saʿīd al-Maqburī informed us from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said: "Give charity." A man asked: "O Messenger of Allah, I have a dinar?" He said: "Give it as charity to yourself." The man said: "I have another?" He

said: “Give it as charity to your wife.” The man said: “I have another?” He said: “Give it as charity to your child.” The man said: “I have another?” He said: “Give it as charity to your servant.” The man said: “I have another?” He said: “You know best.”[27]

L32671–32673 Abu Muhammad said: Sufyan and Yahya differed in opinion. Sufyan prioritized the child over the wife, while al-Qattan prioritized the wife over the child. Both Sufyan and Yahya are reliable authorities. Thus, it is obligatory not to prioritize the child over the wife nor the wife over the child, but rather to treat them equally, for it has been authentically established that the Messenger of Allah, peace and blessings be upon him, would repeat his words. Three times; thus, it is possible that he (peace be upon him) reiterated his juridical opinions here similarly. Once he prioritized the child, and once he prioritized the wife, thereby making them equal in accordance with his statement (peace be upon him) to Hind bint Utbah when she sought his permission to take from the wealth of her husband Abu Sufyan without his knowledge. The Prophet (peace be upon him) said, “Take what suffices you and your child in a reasonable and accepted manner,” thus equating her and the child equally.

L32674 Then we found what we transmitted through the chain of Abū Bakr ibn Abī Shaybah, who narrated: ʿAbdullāh ibn Numayr narrated to us, who narrated: Yazīd ibn Ziyād ibn Abī al-Jaʿd narrated to us, who narrated: Abū Ṣakhra Jāmiʿ ibn Shaddād narrated to us from Ṭāriq ibn ʿAbdillāh al-Muḥāribī, who said: “We entered Madīnah, and there was the Messenger of Allāh—may Allāh bless him and his family and grant him peace—standing on the pulpit, addressing the people. He was saying: ’O people! The hand of the giver is the superior one. Begin with those under your care: your mother, your father, your sister, then the closest ones, then the next closest.”’

L32675 These are authentic reports from the narration of trustworthy narrators. The Prophet (peace and blessings be upon him) informed, as a command, that one should begin with those they support—namely the parents and siblings. Thus, it is established with certainty that these are prioritized along with the child and wife.

[27] **Hadith references (L32670):** Sunan an-Nasai 2535.

بِهِ عَلَى زَوْجَتِكَ، قَالَ: عِنْدِي آخَرُ قَالَ: تَصَدَّقْ بِهِ عَلَى وَلَدِكَ، قَالَ: عِنْدِي آخَرُ؟ قَالَ: تَصَدَّقْ بِهِ عَلَى خَادِمِكَ قَالَ: عِنْدِي آخَرُ؟ قَالَ: أَنْتَ أَبْصَرُ» .

قَالَ أَبُو مُحَمَّدٍ: فَاخْتَلَفَ سُفْيَانُ، وَيَحْيَى، فَقَدَّمَ سُفْيَانُ الْوَلَدَ عَلَى الزَّوْجَةِ، وَقَدَّمَ الْقَطَّانُ الزَّوْجَةَ عَلَى الْوَلَدِ، وَكِلَاهُمَا ثِقَةٌ، فَالْوَاجِبُ أَنْ لَا يُقَدَّمَ الْوَلَدُ عَلَى الزَّوْجَةِ، وَلَا الزَّوْجَةُ عَلَى الْوَلَدِ، بَلْ يَكُونَانِ سَوَاءً، لِأَنَّهُ قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُكَرِّرُ كَلَامَهُ ثَلَاثَ مَرَّاتٍ، فَمُمْكِنٌ أَنْ يُكَرِّرَ فُتْيَاهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - هَاهُنَا كَذَلِكَ، فَمَرَّةً قَدَّمَ الْوَلَدَ، وَمَرَّةً قَدَّمَ الزَّوْجَةَ، فَصَارَ سَوَاءً مَعَ قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لِهِنْدَ بِنْتِ عُتْبَةَ إِذْ سَأَلَتْهُ إِبَاحَةً مِنْ مَالِ أَبِي سُفْيَانَ زَوْجِهَا بِغَيْرِ عِلْمِهِ؟ فَقَالَ النَّبِيُّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «خُذِي مَا يَكْفِيكِ وَوَلَدَكِ بِالْمَعْرُوفِ» فَقَرَنَ بَيْنَهَا وَبَيْنَ الْوَلَدِ سَوَاءً.

ثُمَّ وَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ ثنا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ نا يَزِيدُ بْنُ زِيَادِ بْنِ أَبِي الْجَعْدِ نا أَبُو صَخْرَةَ جَامِعُ بْنُ شَدَّادٍ عَنْ طَارِقِ بْنِ عَبْدِ اللَّهِ الْمُحَارِبِيِّ قَالَ قَالَ: «دَخَلْنَا الْمَدِينَةَ فَإِذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَائِمٌ عَلَى الْمِنْبَرِ يَخْطُبُ النَّاسَ وَهُوَ يَقُولُ: يَا أَيُّهَا النَّاسُ يَدُ الْمُعْطِي الْعُلْيَا، وَابْدَأْ بِمَنْ تَعُولُ: أُمَّكَ، وَأَبَاكَ، وَأُخْتَكَ، ثُمَّ أَدْنَاكَ أَدْنَاكَ» .

وَهَذِهِ أَخْبَارٌ صِحَاحٌ مِنْ رِوَايَةِ الثِّقَاتِ، فَأَخْبَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - آمِرًا بِأَنْ يَبْدَأَ بِمَنْ يَعُولُ، وَهُمْ: الْأَبَوَانِ، وَالْإِخْوَةُ، فَصَحَّ يَقِينًا أَنَّ هَؤُلَاءِ مُبْدُونَ مَعَ الْوَلَدِ وَالزَّوْجَةِ.

وَقَدْ بَيَّنَّا قَبْلُ أَنَّ كُلَّ جَدَّةٍ " أُمٌّ " وَكُلَّ جَدٍّ " أَبٌ " وَكُلَّ ابْنِ ابْنَةٍ وَابْنٍ " ابْنٌ " وَابْنَةِ ابْنٍ وَابْنَةٍ " ابْنَةٌ " كُلُّهُمْ ابْنٌ وَابْنَةٌ - فَصَحَّ نَصًّا مَا قُلْنَا.

L32676 We have previously clarified that every grandmother is a "mother," every grandfather is a "father," every son whether of a daughter or a son is a "son," and every daughter whether of a son or a daughter is a "daughter"—all are categorized as sons or daughters. Thus, what we have stated is textually sound.

وَأَنَّ بَعْدَ هَؤُلَاءِ: الْأَدْنَى الْأَدْنَى، وَفِي هَؤُلَاءِ يَدْخُلُ كُلُّ ذِي رَحِمٍ مَحْرَمَةٍ، مِنْ: عَمٍّ وَعَمَّةٍ، وَخَالٍ وَخَالَةٍ، وَابْنِ أُخْتٍ وَبِنْتِ أُخْتٍ، وَابْنِ أَخٍ وَابْنَةِ أَخٍ: يَقِينًا.

L32677 After these [heirs], the closest in order, then the next closest relatives are included—those within prohibited degrees of kinship: paternal uncles, paternal aunts, maternal uncles, maternal aunts, sister's sons, sister's daughters, brother's sons, and brother's daughters—certainly.

ثُمَّ وَجَدْنَا قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لا تُكَلَّفُ نَفْسٌ إِلا وُسْعَهَا لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلا مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] .

L32678 Then we found the words of Allah, the Mighty and Sublime: *"Upon the father lies the mothers' sustenance and clothing in accordance with what is reasonable. No soul is burdened beyond its capacity. No mother shall be harmed through her child, nor any father through his child. And the same obligation applies to the heir."* [Al-Baqarah: 233].[28]

فَصَحَّ بِهَذَا أَنَّ النَّفَقَةَ عَلَى الْوَارِثِ مَعَ ذَوِي الرَّحِمِ الْمَحْرَمَةِ، وَخَرَجَ مَنْ لَيْسَ ذَا رَحِمٍ مَحْرَمَةٍ، وَلَا وَارِثًا مِنْ هَذَا الْحُكْمِ، وَمِنْ تَخْصِيصِهِ بِالنَّفَقَةِ - مِنْهُ أَوْ عَلَيْهِ - لِأَنَّهُ كَسَائِرِ مَنْ أَدْلَتْهُ الْوِلَادَاتُ - وِلَادَةً بَعْدَ وِلَادَةٍ - إِلَى آدَمَ - عَلَيْهِ السَّلَامُ -، لَيْسَتْ وِلَادَةٌ بِأَوْلَى مِنْ الَّتِي فَوْقَهَا بِأَبٍ، فَلَمْ يَجُزْ إِيجَابُ فَرْضِ إِخْرَاجِ الْمَالِ عَنْ يَدِ مَالِكِهِ إِلَى آخَرَ إِلَّا بِنَصٍّ جَلِيٍّ، وَلَا نَصَّ إِلَّا فِيمَنْ ذَكَرْنَا.

L32679 Through this, it is established that financial maintenance is incumbent upon the heir who belongs to the mahram relatives. Excluded from this ruling are those neither related by mahram kinship nor entitled to inheritance. This specification of maintenance—whether provided by him or incumbent upon him—is because he resembles all others connected through lineal descent, traced birth after birth back to Adam (peace be upon him). No lineage through a father is inherently more entitled than the one preceding it. Therefore, it is impermissible to impose the obligation of transferring wealth from its owner's possession to another except through explicit textual evidence, and no such evidence exists except for those we have mentioned.

وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَخُصَّ وِلَادَةً أَكْثَرَ مِمَّنْ ذَكَرْنَا بِغَيْرِ نَصٍّ، فَإِنْ عَمَّ أَوْجَبَ النَّفَقَةَ عَلَى جَمِيعِ وَلَدِ آدَمَ، وَالنُّصُوصُ كُلُّهَا لَا تُوجِبُ ذَلِكَ، إِلَّا فِي خَاصٍّ مِنْهَا، لِتَفْرِيقِهِ عَزَّ وَجَلَّ بَيْنَ ذَوِي الْقُرْبَى وَبَيْنَ الْمَسَاكِينِ وَالْمَسَاكِينُ مِنْ وَلَدِ آدَمَ بِلَا شَكٍّ.

L32680–32682 It is not permissible for anyone to specify a childbirth more than those we have mentioned without textual evidence. If one generalizes [the ruling], it obligates financial maintenance. It is obligatory upon all the children of Adam, yet all scriptural texts do not impose this obligation except in specific ones among them, due to the distinction made by Him, the Exalted and Majestic, between relatives and the poor—for the poor are unquestionably from the children of Adam.

[28] **Qur'an references (L32678):** Qur'an 2:233 (Al-Baqarah).

L32683 Thus, it is established that the obligatory right is due only to certain close kindred among the lineages of specific fathers and grandfathers, excluding others. Thus, our position is confirmed, and all praise belongs to Allah.

فَصَحَّ أَنَّ الْحَقَّ الْوَاجِبَ إِنَّمَا هُوَ لِبَعْضِ ذَوِي الْقُرْبَى مِنْ وِلَادَاتِ بَعْضِ الْآبَاءِ وَالْأَجْدَادِ دُونَ بَعْضٍ - فَصَحَّ مَا قُلْنَا، وَلِلَّهِ الْحَمْدُ.

L32684 Some dissenters have objected concerning Allah's statement {And upon the heir is a duty like that} [Al-Baqarah: 233], arguing that its meaning obliges the heir to avoid causing harm. They cited this through a chain unauthentically attributed to Ibn Abbas, being either mursal (disconnected) or transmitted via Ash'ath ibn Sawwar—a weak narrator. It has been authentically established from Al-Sha'bi that the verse's meaning is: "No harm is to be inflicted, nor any financial liability imposed upon him."[29]

وَقَدْ اعْتَرَضَ بَعْضُ الْمُخَالِفِينَ فِي قَوْلِهِ تَعَالَى: {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] فَقَالُوا: مَعْنَى ذَلِكَ أَنَّ عَلَيْهِ أَنْ لَا يُضَارَّ، وَذَكَرُوا ذَلِكَ مِنْ طَرِيقٍ لَا تَصِحُّ عَنْ ابْنِ عَبَّاسٍ، لِأَنَّهَا إِمَّا مُرْسَلَةٌ، وَإِمَّا مِنْ طَرِيقٍ فِيهَا أَشْعَثُ بْنُ سَوَّارٍ - وَهُوَ ضَعِيفٌ - وَصَحَّ عَنْ الشَّعْبِيِّ: أَنَّ مَعْنَاهُ - لَا يُضَارُّ وَلَا غُرْمَ عَلَيْهِ.

L32685 It is reported from Abdullah ibn Mughaffal, Al-Zuhri, Rabi'ah, and Abu al-Zinad that the nursing of the minor is within his share of his father's estate.

وَرُوِّينَا عَنْ عَبْدِ اللَّهِ بْنِ مُغَفَّلٍ، وَالزُّهْرِيِّ، وَرَبِيعَةَ، وَأَبِي الزِّنَادِ: أَنَّ رَضَاعَ الصَّغِيرِ فِي حِصَّتِهِ مِنْ مَالِ أَبِيهِ.

L32686 Narrated from Sa'id ibn al-Musayyib: The inheritance reverts to the rightful heirs.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ يُرَدُّ الْمِيرَاثُ لِأَهْلِهِ.

L32687 Abū Muḥammad said: All of this is obfuscation by the dissenter, yet it is entirely true and constitutes our position—directly opposing the dissenting view. For the statement "The heir must refrain from detrimental harm" is valid. There is no greater harm than allowing the one from whom he inherits to die of hunger and cold—while the heir is wealthy—by withholding food or any covering to protect him from cold-induced death. This is undeniably the quintessential example of detrimental harm, as agreed by all without doubt.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّهُ تَمْوِيهٌ مِنْ الْمُخَالِفِ، وَكُلُّ هَذَا حَقٌّ، وَبِهِ نَقُولُ، وَهُوَ خِلَافُ قَوْلِ الْمُخَالِفِ، لِأَنَّ قَوْلَ الْقَائِلِ (عَلَى الْوَارِثِ أَنْ لَا يُضَارَّ) قَوْلٌ صَحِيحٌ، وَلَيْسَ فِي الْمُضَارَّةِ أَكْثَرُ مِنْ أَنْ يَمُوتَ مَوْرُوثُهُ جَوْعًا وَبَرْدًا - وَهُوَ غَنِيٌّ - فَلَا يَرْحَمُهُ بِأَكْلَةٍ، وَلَا بِشَيْءٍ يَسْتُرُهُ بِهِ وَيَمْنَعُ مِنْهُ الْمَوْتَ مِنْ الْبَرْدِ، وَهَذَا عَيْنُ الْمُضَارَّةِ، بِلَا شَكٍّ عِنْدَ أَحَدٍ.

L32688 As for the statement of those who say, "The nursing expenses of the minor are to be covered from his share," this is a correct statement if he has a share of inherited wealth. We have not obligated his upkeep costs upon his heir unless he has no wealth at all.

أَمَّا قَوْلُ مَنْ قَالَ " إنَّ رَضَاعَ الصَّغِيرِ فِي نَصِيبِهِ " فَقَوْلٌ صَحِيحٌ إذَا كَانَ لَهُ مِيرَاثٌ مِنْ مَالٍ، وَنَحْنُ لَمْ نُوجِبْ مُؤْنَتَهُ عَلَى وَارِثِهِ إلَّا إذَا لَمْ يَكُنْ لَهُ مَالٌ أَصْلًا.

L32689 Abu Muhammad said: Some have opined that a woman may attribute her child's paternity to the father—if she is divorced—and to his agnatic rela-

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ قَالَ قَوْمٌ: إنَّ لِلْمَرْأَةِ أَنْ تَرْمِيَ وَلَدَهَا إلَى أَبِيهِ - إنْ كَانَتْ مُطَلَّقَةً - وَإِلَى عُصْبَتِهِ - إنْ كَانَتْ مُتَوَفًّى عَنْهَا - وَأَنَّ لِزَوْجِهَا أَنْ يَمْنَعَهَا رَضَاعَ وَلَدِهَا مِنْ غَيْرِهِ؟

[29] **Qur'an references (L32684):** Qur'an 2:233 (Al-Baqarah).

tives—if he is deceased—and that her husband has the right to prevent her from having her child breastfed by someone other than him.

L32690 Abu Muhammad said: All of this is invalid and contradictory to the Quran. Allah Almighty said: "Mothers shall breastfeed their children for two complete years for those who wish to complete breastfeeding. It is incumbent upon the child's father to provide their sustenance and clothing according to customary norms. No soul is burdened beyond its capacity. Let no mother be harmed because of her child, nor a father because of his child. And upon the heir is a like obligation." [Al-Baqarah: 233][30]

L32691–32693 It is obligatory to compel the mother—whether she is willing or reluctant—to breastfeed her child for two complete years, as Allah commanded. Allah, the Almighty and Majestic—whether her husband approves or disapproves—commands that she be compelled against suffering harm regarding her child, for no harm is greater than preventing her from breastfeeding. No woman is permitted this—even if she were the ruler's daughter—except the divorced woman. If she and the infant's father reach an impasse by failing to agree on mutually acceptable compensation—and provided the child will nurse from another woman—then the divorcing husband must secure another wet nurse, in accordance with the words of the Most High: "If they breastfeed for you, give them their due compensation, and consult together in kindness. But if you are at an impasse, another woman will breastfeed for him. Let the affluent spend from his abundance, and let him whose provision is restricted spend from what Allah has given him. Allah does not burden any soul beyond its capacity. Allah will bring ease after hardship." (At-Talāq 65:6-7).[31]

L32694 And all of this is the speech of Allah, the Almighty and the Majestic, so there shall be neither heeding nor obedience for whoever stubbornly opposes Him.

L32695 It was narrated to us through the chain of Ḥammād ibn Salamah, who said: "Yaḥyā ibn Muḥammad ibn Thābit ibn Qays ibn al-Shammās informed me, through his grandfather Thābit ibn Qays al-Shammās, about the woman who had sought khulʿ—that she was Jamīlah bint Ubayy ibn Salūl. She gave birth

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّهُ بَاطِلٌ مُخَالِفٌ لِلْقُرْآنِ، قَالَ اللَّهُ عَزَّ وَجَلَّ {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لا تُكَلَّفُ نَفْسٌ إِلا وُسْعَهَا لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلا مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] .

فَوَجَبَ إِجْبَارُ الْأُمِّ - أَحَبَّتْ أَمْ كَرِهَتْ - عَلَى إِرْضَاعِ وَلَدِهَا حَوْلَيْنِ كَامِلَيْنِ، كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ - أَحَبَّ زَوْجُهَا أَمْ كَرِهَ - وَأَنْ تُجْبَرَ عَلَى أَنْ لَا تُضَارَّ بِوَلَدِهَا وَلَا ضِرَارَ أَكْثَرَ مِنْ مَنْعِهِ رَضَاعَهَا، وَلَا يُبَاحُ لِامْرَأَةٍ - وَلَوْ أَنَّهَا بِنْتُ الْخَلِيفَةِ - غَيْرَ هَذَا، إِلَّا الْمُطَلَّقَةَ، فَإِنَّهَا إِنْ تَعَاسَرَتْ هِيَ وَأَبُو الصَّغِيرِ بِأَنْ لَا يَتَّفِقَا عَلَى أُجْرَةٍ يَتَرَاضَيَانِ بِهَا - وَكَانَ مَعَ ذَلِكَ يَقْبَلُ ثَدْيَ غَيْرِهَا - فَهَذِهِ يَسْتَرْضِعُ الْمُطَلِّقُ لَهَا أُخْرَى أَخْذًا بِقَوْلِهِ تَعَالَى: {فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأْتَمِرُوا بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاسَرْتُمْ فَسَتُرْضِعُ لَهُ أُخْرَى - لِيُنْفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا} [الطلاق: ٦ - ٧] .

وَهَذَا كُلُّهُ كَلَامُ اللَّهِ عَزَّ وَجَلَّ، فَلَا سَمْعًا وَلَا طَاعَةً لِمَنْ عَنَدَ عَنْهُ.

وَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ قَالَ: «أَخْبَرَنِي يَحْيَى بْنُ مُحَمَّدِ بْنِ ثَابِتِ بْنِ قَيْسِ بْنِ الشَّمَّاسِ فِي الْمُخْتَلَعَةِ مِنْ جَدِّهِ ثَابِتِ بْنِ قَيْسٍ الشَّمَّاسِ أَنَّهَا كَانَتْ جَمِيلَةَ بِنْتَ أُبَيِّ ابْنِ سَلُولَ، وَأَنَّهَا وَلَدَتْ غُلَامًا فَجَعَلَتْهُ فِي لِيفٍ وَأَرْسَلَتْ بِهِ إِلَى ثَابِتِ بْنِ قَيْسٍ أَنْ خُذْ

[30] **Qur'an references (L32690):** Qur'an 2:233 (Al-Baqarah).
[31] **Qur'an references (L32691):** Qur'an 65:6 (At-Talaq); Qur'an 65:7 (At-Talaq).

to a boy, placed him in a palm-fiber basket, and sent him to Thābit ibn Qays, saying: 'Take your child from me?' He brought the child to the Prophet (peace and blessings of Allāh be upon him), who performed taḥnīk, arranged breastfeeding for him, and named him Muḥammad."

L32696 Abu Muhammad said: This is the precise wording of what we stated—she was a *khul'*-divorcee, divorced, since people considered cohabitation with him in his case the most detestable.

L32697 Abu Muhammad said: If the heirs are numerous, it is not permissible for them to spend on the dependant except according to their individual shares, not in proportion to their inheritance portions, for the scriptural ruling establishes equality among them by imposing this obligation uniformly. Therefore, preferential treatment between them is invalid. Some scholars asked: "Which heir is intended here - the heir of the deceased father, or the heir of the person entitled to maintenance?" We responded: This constitutes arbitrary and strained reasoning for which the questioner bears sin, as the verse makes no mention of the deceased parent of the maintained dependant. Almighty Allah states: {No mother shall be harmed through her child, nor any father through his child. The same obligation applies to the legal heir} [Al-Baqarah: 233].[32]

L32698 In {the heir} [Al-Baqarah: 233], the pronoun "he" necessitates the existence of inherited property. The pronoun refers to the one who holds the legal right, and the child is unquestionably the one who restrains his parents from harming him. The difference between the two religions holds no meaning when specifically applied to close blood relatives.[33]

L32699 As for inheritance, there is no inheritance when the religions [of the parties] differ, because no scriptural text exists addressing this matter.

L32700–32701 As for our statement: If each of those we mentioned has a lowly means of earning that they can manage by themselves, then it is not incumbent upon a person to provide for their maintenance except fathers, mothers, and wives. For indeed, he is obligated to protect them from such means, according to

عَنِّي صَبِيَّكَ؟ فَأَتَى بِهِ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَحَنَّكَهُ، وَاسْتَرْضَعَ لَهُ، وَسَمَّاهُ مُحَمَّدًا» .

قَالَ أَبُو مُحَمَّدٍ: هَذَا نَصُّ مَا قُلْنَا كَانَتْ مُخْتَلِعَةً مُطَلَّقَةً أَبْغَضَ النَّاسُ فِيهِ مُعَاشَرَةً لَهُ.

قَالَ أَبُو مُحَمَّدٍ: وَلَا يَجُوزُ - إنْ كَانَ الْوَرَثَةُ كَثِيرًا - أَنْ يُنْفِقُوا عَلَى الْمُحْتَاجِ إلَّا عَلَى دُورِهِمْ، لَا عَلَى قَدْرِ مَوَارِيثِهِمْ، لِأَنَّ النَّصَّ سَوِيٌّ بَيْنَهُمْ بِإِيجَابِ ذَلِكَ عَلَيْهِمْ، فَلَا تَجُوزُ الْمُفَاضَلَةُ بَيْنَهُمْ، وَقَالَ بَعْضُهُمْ: مَنْ هُوَ هَذَا الْوَارِثُ؟ أَهُوَ وَارِثُ الْأَبِ الْمَيِّتِ، أَمْ وَارِثُ الَّذِي تَجِبُ لَهُ النَّفَقَةُ؟ قُلْنَا: هَذَا تَعَسُّفٌ وَتَكَلُّفٌ يَأْثَمُ السَّائِلُ، لِأَنَّهُ لَا ذِكْرَ لِوَالِدِ الْمُنْفَقِ عَلَيْهِ فِي الْآيَةِ إنَّمَا قَالَ عَزَّ وَجَلَّ {لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلا مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] .

فَفِي {الْوَارِثِ} [البقرة: ٢٣٣] ضَمِيرُ هُوَ أَنَّهُ يَقْتَضِي مَوْرُوثًا وَلَا بُدَّ، وَالضَّمِيرُ رَاجِعٌ إلَى الَّذِي لَهُ الْحُكْمُ وَالَّذِي مَنَعَ أَبَوَاهُ مِنْ الْمُضَارَّةِ بِهِ هُوَ الْوَلَدُ بِلَا شَكٍّ، وَلَا مَعْنَى لِاخْتِلَافِ الدِّينَيْنِ فِي ذَوِي الرَّحِمِ خَاصَّةً.

وَأَمَّا فِي الْوِرَاثَةِ - فَلَا مِيرَاثَ مَعَ اخْتِلَافِ الدِّينَيْنِ، لِأَنَّهُ لَمْ يَأْتِ بِذَلِكَ نَصٌّ.

وَأَمَّا قَوْلُنَا: إنَّهُ إنْ كَانَ لِكُلِّ مَنْ ذَكَرْنَا كَسْبٌ يَقُومُ بِهِ بِنَفْسِهِ - وَإِنْ كَانَ خَسِيسًا مِنْ الْكَسْبِ - فَلَيْسَ عَلَى الْإِنْسَانِ أَنْ يَقُومَ بِنَفَقَتِهِمْ حِينَئِذٍ إلَّا الْآبَاءُ، وَالْأُمَّهَاتُ، وَالزَّوْجَاتُ، فَقَطْ، فَإِنَّ هَؤُلَاءِ فَرْضٌ عَلَيْهِ أَنْ يَصُونَهُمْ عَنْ ذَلِكَ، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ

[32] **Qur'an references (L32697):** Qur'an 2:233 (Al-Baqarah).
[33] **Qur'an references (L32698):** Qur'an 2:233 (Al-Baqarah).

the words of Allah, the Almighty, where He says: “If one or both of them reach old age with you, do not say to them a word of annoyance, nor scold them, but speak to them a noble word. And act with humble tenderness out of mercy and say, ‘My Lord, have mercy upon them as they raised me when I was small’” (Al-Isra 17:23–24).[34]

L32702 Abu Muhammad said: It is authentically established from the Prophet—peace and blessings of Allah be upon him—that disobedience to parents is among the major sins. There is no greater form of disobedience than when a son is wealthy and well-off, yet abandons his father or grandfather to sweep latrines, or tend livestock, or remove dung, or perform cupping, or wash people’s garments, or stoke furnaces in bathhouses—or leaves his mother or grandmother to serve people and draw water for others in the streets. Whoever does this has undoubtedly failed to lower the wing of humble mercy for them through compassion.

L32703 And He, the Exalted, said: “And show kindness to parents, and to relatives, and to orphans, and to the needy, and to the neighbor who is a relative, and to the distant neighbor, and to the companion by your side, and to the wayfarer, and to those under your authority” [An-Nisa: 36].[35]

L32704 Abu Muhammad said: Allah, the Mighty and Majestic, has affirmed within all people the differing aspects of benevolence for those mentioned in this verse, and the texts clarify that.

L32705 Kindness to parents requires enduring their harshness, showing reverence for them, exalting them, and obeying them unless they command sin. Allah the Exalted said: “Give thanks to Me and to your parents. To Me is the final destination” [Luqman 31:14], and “If they pressure you to associate with Me what you have no knowledge of, do not obey them, yet maintain kind companionship with them in the world” [Luqman 31:15]. Thus even if they command *shirk*, it remains obligatory to maintain kind companionship with them. This entails everything we have stated.[36]

حَيْثُ يَقُولُ: {إِمَّا يَبْلُغَنَّ عِنْدَكَ الْكِبَرَ أَحَدُهُمَا أَوْ كِلاهُمَا فَلا تَقُلْ لَهُمَا أُفٍّ وَلا تَنْهَرْهُمَا وَقُلْ لَهُمَا قَوْلا كَرِيمًا - وَاخْفِضْ لَهُمَا جَنَاحَ الذُّلِّ مِنَ الرَّحْمَةِ وَقُلْ رَبِّ ارْحَمْهُمَا كَمَا رَبَّيَانِي صَغِيرًا} [الإسراء: ٢٣ - ٢٤] .

قَالَ أَبُو مُحَمَّد: وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عُقُوقُ الْوَالِدَيْنِ مِنْ الْكَبَائِرِ، وَلَيْسَ فِي الْعُقُوقِ أَكْثَرُ مِنْ أَنْ يَكُونَ الِابْنُ غَنِيًّا ذَا حَالٍ وَيَتْرُكُ أَبَاهُ، أَوْ جَدَّهُ يَكْنُسُ الْكَنَفَ، أَوْ يَسُوسُ الدَّوَابَّ، وَيَكْنُسُ الزِّبْلَ، أَوْ يَحْجُمُ، أَوْ يَغْسِلُ الثِّيَابَ لِلنَّاسِ، أَوْ يُوقِدُ فِي الْحَمَّامِ - وَيَدَعُ أُمَّهُ أَوْ جَدَّتَهُ تَخْدِمُ النَّاسَ، وَتَسْقِي الْمَاءَ فِي الطُّرُقِ - فَمَا خَفَضَ لَهُمَا جُنَاحَ الذُّلِّ مِنْ الرَّحْمَةِ مَنْ فَعَلَ ذَلِكَ بِلَا شَكٍّ.

وَقَالَ تَعَالَى: {وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَالْجَارِ ذِي الْقُرْبَى وَالْجَارِ الْجُنُبِ وَالصَّاحِبِ بِالْجَنْبِ وَابْنِ السَّبِيلِ وَمَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٣٦] .

قَالَ أَبُو مُحَمَّد: وَقَدْ أَثْبَتَ اللَّهُ عَزَّ وَجَلَّ فِي النُّفُوسِ كُلِّهَا اخْتِلَافَ وُجُوهِ الْإِحْسَانِ إلَى مَنْ ذَكَرَ فِي هَذِهِ الْآيَةِ، وَجَاءَتْ النُّصُوصُ بِبَيَانِ ذَلِكَ.

فَالْإِحْسَانُ إلَى الْأَبَوَيْنِ: الصَّبْرُ لِجَفَائِهِمَا، وَتَوْقِيرُهُمَا، وَتَعْظِيمُهُمَا، وَطَاعَتُهُمَا مَا لَمْ يَأْمُرَا بِمَعْصِيَةٍ، قَالَ تَعَالَى: {أَنِ اشْكُرْ لِي وَلِوَالِدَيْكَ إِلَيَّ الْمَصِيرُ} [لقمان: ١٤] {وَإِنْ جَاهَدَاكَ عَلَى أَنْ تُشْرِكَ بِي مَا لَيْسَ لَكَ بِهِ عِلْمٌ فَلا تُطِعْهُمَا وَصَاحِبْهُمَا فِي الدُّنْيَا مَعْرُوفًا} [لقمان: ١٥] فَهُمَا وَإِنْ أَمَرَا بِالشِّرْكِ فَوَاجِبٌ مَعَ ذَلِكَ أَنْ يُصْحَبَا بِالْمَعْرُوفِ، وَهَذَا يَقْتَضِي كُلَّ مَا قُلْنَا.

[34] **Qur’an references (L32701):** Qur’an 17:23 (Al-Isra); Qur’an 17:24 (Al-Isra).
[35] **Qur’an references (L32703):** Qur’an 4:36 (An-Nisa).

وَالْإِحْسَانُ إِلَى ذِي الْقُرْبَى: أَنْ يَدْفَعَ عَنْهُمُ الْأَذَى، وَأَنْ يُكْرِمَهُمْ وَيَحُوطَهُمْ، وَيَقُومَ فِي أُمُورِهِمْ، وَأَنْ لَا يُسْلِمَهُمْ إِلَى ضَرَرٍ.

L32706 Benevolence toward relatives is to ward off harm from them, honor them, safeguard them, diligently manage their affairs, and not surrender them to harm.

وَالْإِحْسَانُ إِلَى الْمَسَاكِينِ: الصَّدَقَةُ بِالْفَضْلِ حَتَّى يَشْبَعُوا أَوْ يَكْتَسِبُوا، وَيَكُونَ لَهُمْ مَرْقَدٌ يَأْوُونَ إِلَيْهِ، وَمَنْ يَقُومُ بِمَرْضَاهُمْ.

L32707–32708 Kindness to the poor entails giving charity from one's surplus until they are full or can earn a living, providing them a place to sleep where they can take shelter, and having someone who cares for their sick.

وَالْإِحْسَانُ إِلَى الْيَتَامَى، وَرَحْمَتُهُمْ، وَتَعْلِيمُهُمْ، وَالْقِيَامُ بِهِمْ حَتَّى لَا يَضِيعُوا.

L32709 Kindness to orphans, showing mercy to them, teaching them, and caring for them so they are not lost.

وَالْإِحْسَانُ إِلَى الْجَارِ: كَفُّ الْأَذَى، وَالْبِرُّ، وَاللِّقَاءُ بِالْبِشْرِ، وَالْإِكْرَامُ وَحِمَايَتُهُمْ مِنْ الظُّلْمِ - وَكَذَلِكَ الْإِحْسَانُ إِلَى الصَّاحِبِ بِالْجَنْبِ نَحْوُ ذَلِكَ.

L32710 Kindness to the neighbor entails refraining from harm, acts of righteousness, greeting them with a cheerful face, honoring them, and protecting them from oppression. Likewise, kindness to the close companion should be shown in the same manner.

وَالْإِحْسَانُ إِلَى مَا مَلَكَتْ أَيْمَانُنَا: إطْعَامُهُمْ مِمَّا نَأْكُلُ، وَكِسْوَتُهُمْ مِمَّا نَلْبَسُ، وَكُلُّ ذَلِكَ بِالْمَعْرُوفِ، وَأَنْ لَا نُكَلِّفَهُمْ مَا لَا يُطِيقُونَ، وَأَنْ لَا يُسَبُّوا فِي غَيْرِ وَاجِبٍ، وَأَنْ لَا يُضْرَبُوا فِي غَيْرِ حَقٍّ - فَهَذَا كُلُّهُ وَاجِبٌ يَعْصِي اللَّهَ تَعَالَى مَنْ تَرَكَ شَيْئًا مِنْ ذَلِكَ.

L32711 Kindness to those whom your right hands possess entails feeding them from what we eat, clothing them from what we wear, all of this in accordance with what is good. It requires that you not burden them beyond their capacity, not revile them without legitimate cause, and not strike them unjustly. All of this constitutes an obligation, and whoever abandons any part of it disobeys Allah the Exalted.

وَأَمَّا صِيَانَةُ الزَّوْجَةِ - فَلِأَنَّهُ قَدْ أَوْجَبَ اللَّهُ تَعَالَى نَفَقَتَهَا، وَكِسْوَتَهَا، وَإِسْكَانَهَا، وَالْقِيَامَ عَلَيْهَا - وَإِنْ كَانَتْ أَغْنَى مِنْ الزَّوْجِ - وَهَذَا يَقْتَضِي صِيَانَتَهَا عَنْ كُلِّ خِدْمَةٍ، وَكُلِّ عَمَلٍ لَهُ أَوْ لِغَيْرِهِ.

L32712 As for preserving the wife's status, it is because Allah the Exalted has obligated her maintenance, clothing, housing, and comprehensive care - even if she is wealthier than her husband - and this entails protecting her from undertaking any service or labor, whether for him or others.

وَأَمَّا كُلُّ مَنْ عَدَا الزَّوْجَةِ - فَلَا نَفَقَةَ لَهُمْ، وَلَا كِسْوَةَ، وَلَا إسْكَانَ إلَّا أَنْ لَا يَكُونَ لَهُمْ مِنْ الْمَالِ، أَوْ الصَّنْعَةِ مَا يَقُومُونَ مِنْهُ عَلَى أَنْفُسِهِمْ.

L32713 As for all others besides the wife, there is no maintenance, clothing, or lodging for them unless they lack sufficient means from wealth or a trade from which to sustain themselves.

وَلَا مَعْنَى لِمُرَاعَاةِ الزَّمَانَةِ فِي ذَلِكَ إذْ لَمْ يَأْتِ بِهِ قُرْآنٌ وَلَا سُنَّةٌ.

L32714 There is no basis for considering temporal context in that matter, as neither the Qur'an nor the Sunnah has sanctioned it.

[36] **Qur'an references (L32705):** Qur'an 31:14 (Luqman); Qur'an 31:15 (Luqman).

L32715 If they carried out some of that and were unable to perform the remainder, it becomes obligatory upon those we specified to undertake precisely what they failed to accomplish.

فَإِنْ قَامُوا بِبَعْضِ ذَلِكَ وَعَجَزُوا عَنْ الْبَعْضِ: وَجَبَ عَلَى مَنْ ذَكَرْنَا أَنْ يَقُومَ بِمَا عَجَزُوا عَنْهُ فَقَطْ.

L32716 All that we have mentioned is obligatory upon the woman just as it is obligatory upon the man, except the maintenance of the child. As long as the father is capable of providing it, there is nothing obligatory upon the woman in that regard. This has been the established practice of all Muslims, past and present. If the father becomes unable to do so or dies, and they have no wealth, then it becomes incumbent upon the mother to provide their maintenance and clothing, based on the verse of Allah, the Mighty and Majestic: "No mother shall be harmed through her child, and no parent [to whom a child is born] shall be harmed through their child" [Al-Baqarah: 233].[37]

وَيَلْزَمُ الْمَرْأَةَ كُلُّ مَا ذَكَرْنَا كَمَا يَلْزَمُ الرَّجُلَ، إلَّا نَفَقَةَ الْوَلَدِ، فَمَا دَامَ الْأَبُ قَادِرًا عَلَيْهَا فَلَيْسَ عَلَى الْمَرْأَةِ مِنْ ذَلِكَ شَيْءٌ - هَذَا عَمَلُ جَمِيعِ أَهْلِ الْإِسْلَامِ قَدِيمًا وَحَدِيثًا، فَإِنْ عَجَزَ الْأَبُ عَنْ ذَلِكَ أَوْ مَاتَ، وَلَا مَالَ لَهُمْ، فَحِينَئِذٍ يُقْضَى بِنَفَقَتِهِمْ وَكِسْوَتِهِمْ عَلَى أُمِّهِمْ، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلا مَوْلُودٌ لَهُ بِوَلَدِهِ} [البقرة: ٢٣٣] .

L32717 "There is nothing more harmful than a woman being wealthy while others are begging at the gates, and because the aforementioned commands—which were revealed in a single instance—were not made exclusive to men over women."

وَلَيْسَ فِي الْمُضَارَّةِ شَيْءٌ أَكْثَرَ مِنْ أَنْ تَكُونَ غَنِيَّةً وَهُمْ يَسْأَلُونَ عَلَى الْأَبْوَابِ، وَلِأَنَّ الْأَوَامِرَ الْمَذْكُورَةَ الَّتِي جَاءَتْ مَجِيئًا وَاحِدًا لَمْ يُخَصَّ بِهَا رَجُلٌ مِنْ امْرَأَةٍ.

L32718–32720 And it was narrated to us via the transmission route of Al-Bukhari: from Mūsā ibn Ismāʿīl, from Wahb—who is Ibn Khālid—, from Hishām—who is Ibn ʿUrwah—, from his father, from Zaynab bint Umm Salamah (daughter of Umm Salamah, the Mother of the Believers), from her mother Umm Salamah. She said: "O Messenger of God, is there reward for me concerning the sons of Abu Salamah if I spend on them - though I would never abandon them - in this way and that? Are they not my sons?" He said: "Yes, you have the reward for what you have spent on them."

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُوسَى بْنُ إسْمَاعِيلَ نا وَهْبٌ - وَهُوَ ابْنُ خَالِدٍ - نَا هِشَامٌ - هُوَ ابْنُ عُرْوَةَ - عَنْ أَبِيهِ عَنْ زَيْنَبَ بِنْتِ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ عَنْ أُمِّهَا «أُمِّ سَلَمَةَ قَالَتْ: يَا رَسُولَ اللَّهِ، هَلْ لِي مِنْ أَجْرٍ فِي بَنِي أَبِي سَلَمَةَ إنْ أَنْفَقْتُ عَلَيْهِمْ - وَلَسْتُ بِتَارِكَتِهِمْ - هَكَذَا وَهَكَذَا، إنَّمَا هُمْ بَنِيَّ؟ قَالَ: نَعَمْ، لَكِ أَجْرُ مَا أَنْفَقْتِ عَلَيْهِمْ» .

L32721 So this Mother of the Believers informs [us] that she spends on her sons and does not abandon them to perish, since they are indeed her sons. The Prophet (peace and blessings be upon him) did not disapprove of this, nor did he inform her that this was not obligatory upon her. And with Allah, the Most High, is success.

فَهَذِهِ أُمُّ الْمُؤْمِنِينَ تُخْبِرُ أَنَّهَا تُنْفِقُ عَلَى بَنِيهَا وَلَيْسَتْ بِتَارِكَتِهِمْ يَضِيعُونَ إنَّمَا هُمْ بَنُوهَا، وَلَمْ يُنْكِرْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - ذَلِكَ، وَلَا أَخْبَرَهَا أَنَّ ذَلِكَ لَيْسَ وَاجِبًا عَلَيْهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L32722 It is not incumbent upon the son to provide for his father's wife or for

[37] **Qur'an references (L32716):** Qur'an 2:233 (Al-Baqarah).

the mother of his child (umm walad), as neither the Quran nor the Sunnah has obligated this. Rather, his duty is exclusively to provide his father's nourishment, clothing, and expenses for his service. And with Allah, the Exalted, is success.

وَلَيْسَ عَلَى الْوَلَدِ أَنْ يُنْفِقَ عَلَى زَوْجَةِ أَبِيهِ، وَلَا عَلَى أُمِّ وَلَدِهِ، إِذْ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، إِنَّمَا عَلَيْهِ أَنْ يَقُومَ بِمَطْعَمِ أَبِيهِ، وَمَلْبَسِهِ، وَمُؤْنَةِ خِدْمَتِهِ فَقَطْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[What Annuls a Marriage After Its Validity and What Does Not] [Legal Issue: A marriage is not annulled after its validity is established by leprosy that occurs thereafter, leukoderma, or insanity.]

[مَا يُفْسَخُ بِهِ النِّكَاحُ بَعْدَ صِحَّتِهِ وَمَا لَا يُفْسَخُ بِهِ] [مَسْأَلَةٌ لَا يُفْسَخُ النِّكَاحُ بَعْدَ صِحَّتِهِ بِجُذَامٍ حَادِثٍ وَلَا بِبَرَصٍ وَلَا بِجُنُونٍ]

L32723–32724

L32725 Issue 1930: A marriage is not annulled after its validation due to leprosy arising after the marriage, nor vitiligo arising after the marriage, nor insanity arising after the marriage, nor due to the husband finding in her any of these defects, nor due to her finding the same in him.

١٩٣٠ - مَسْأَلَةٌ: لَا يُفْسَخُ النِّكَاحُ بَعْدَ صِحَّتِهِ بِجُذَامٍ حَادِثٍ، وَلَا بِبَرَصٍ كَذَلِكَ، وَلَا بِجُنُونٍ كَذَلِكَ، وَلَا بِأَنْ يَجِدَ بِهَا شَيْئًا مِنْ هَذِهِ الْعُيُوبِ، وَلَا بِأَنْ تَجِدَهُ هِيَ كَذَلِكَ.

L32726 Nor due to male impotence, nor due to a disease of the female genitalia, nor due to any of the defects.

وَلَا بِعِنَانَةٍ، وَلَا بِدَاءِ فَرْجٍ، وَلَا بِشَيْءٍ مِنْ الْعُيُوبِ.

L32727 Nor due to the lack of maintenance, nor due to the lack of clothing, nor due to the lack of dowry, nor due to the lapse of the four months in the oath of abstention (*īlā'*), nor due to marrying a slave woman over a free woman, nor due to marrying a free woman over a slave woman.

وَلَا بِعَدَمِ نَفَقَةٍ، وَلَا بِعَدَمِ كِسْوَةٍ، وَلَا بِعَدَمِ صَدَاقٍ، وَلَا بِانْقِضَاءِ الْأَرْبَعَةِ الْأَشْهُرِ فِي الْإِيلَاءِ، وَلَا بِزَوَاجِ أَمَةٍ عَلَى حُرَّةٍ، وَلَا بِزَوَاجِ حُرَّةٍ عَلَى أَمَةٍ.

L32728 Nor by adultery committed by either of them, nor by his adultery with her mahram [prohibited relative], such as her mother, grandmother, daughter, son's daughter, daughter's daughter, sister, maternal aunt, paternal aunt, nor by her adultery with his son.

وَلَا بِزِنًى يَحْدُثُ مِنْ أَحَدِهِمَا، وَلَا بِزِنَاهُ بِحَرِيمَتِهَا، كَأُمِّهَا، أَوْ جَدَّتِهَا، أَوْ بِنْتِهَا، أَوْ بِنْتِ ابْنِهَا، أَوْ بِنْتِ ابْنَتِهَا، أَوْ أُخْتِهَا، أَوْ خَالَتِهَا، أَوْ عَمَّتِهَا، وَلَا بِزِنَاهَا بِابْنِهِ.

L32729 Nor by the separation by the two arbiters, nor by his granting her the choice—whether she chooses for herself or did not choose.

وَلَا بِتَفْرِيقِ الْحَكَمَيْنِ، وَبِتَخْيِيرِهِ إِيَّاهَا - اخْتَارَتْ نَفْسَهَا أَوْلَمْ تَخْتَرْ.

L32730 Nor is it valid for him to declare to her: "You are unlawful," or say: "You are to me like a corpse, a pig, and blood."

وَلَا بِأَنْ يَقُولَ لَهَا: أَنْتِ حَرَامٌ، أَوْ قَالَ: أَنْتِ عَلَيَّ كَالْمَيْتَةِ، وَالْخِنْزِيرِ، وَالدَّمِ.

L32731 Nor by his grant of her to her people (whether they accept her or not), nor by her departure from the land of war while being non-Muslim.

وَلَا بِهِبَتِهِ إِيَّاهَا لِأَهْلِهَا - قَبِلُوهَا أَوْ لَمْ يَقْبَلُوهَا - وَلَا بِخُرُوجِهَا مِنْ أَرْضِ الْحَرْبِ غَيْرَ مُسْلِمَةٍ.

L32732 Nor is it permissible to sell a married female slave or a married male slave.

وَلَا بِبَيْعِ الْأَمَةِ ذَاتِ الزَّوْجِ، وَلَا بِبَيْعِ الْعَبْدِ ذِي الزَّوْجَةِ.

L32733 Nor by the loss of the husband, because it is not known where he is. They both remain in the state of marriage throughout all this, as it was.

وَلَا بِفَقْدِ الزَّوْجِ، لِأَنَّهُ لَا يَدْرِي أَيْنَ هُوَ؟ وَهُمَا فِي كُلِّ ذَلِكَ بَاقِيَانِ عَلَى الزَّوْجِيَّةِ كَمَا كَانَ.

L32734–32735 In all that we have mentioned, there are differing opinions. We have mentioned from it what Allah the Exalted has willed us to mention, and we shall—Allah willing—also mention what we have not previously mentioned. Among these are...

وَفِي كُلِّ مَا ذَكَرْنَا خِلَافٌ قَدْ ذَكَرْنَا مِنْهُ مَا شَاءَ اللَّهُ تَعَالَى أَنْ نَذْكُرَهُ، وَنَذْكُرُ أَيْضًا إِنْ شَاءَ اللَّهُ تَعَالَى مَا لَمْ نَذْكُرْهُ قَبْلُ - فَمِنْ ذَلِكَ

[مَسْأَلَةٌ امْرَأَةٌ تَزَوَّجَتْ بِهَا جُنُونٌ أَوْ جُذَامٌ أَوْ بَرَصٌ]

L32736 **A legal issue: a woman with whom insanity, leprosy, or vitiligo was present at the time of marriage.**

-: ١٩٣١ - مَسْأَلَةٌ: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ سَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: أَيُّمَا امْرَأَةٍ تَزَوَّجَتْ بِهَا جُنُونٌ أَوْ جُذَامٌ أَوْ بَرَصٌ فَدَخَلَ بِهَا فَاطَّلَعَ عَلَى ذَلِكَ، فَلَهَا مَهْرُهَا بِمَسِيسِهِ إيَّاهَا، وَعَلَى الْوَلِيِّ الصَّدَاقُ بِمَا دَلَّسَ كَمَا غَرَّهُ.

L32737 Issue 1931: It has been narrated to us through the chain of ʻAbd al-Razzāq from Ibn Jurayj from Yaḥyā ibn Saʻīd al-Anṣārī: I heard Saʻīd ibn al-Musayyab say: ʻUmar ibn al-Khaṭṭāb stated: "Any woman married to a man afflicted with madness, leprosy, or leucoderma – if he consummates the marriage and the defect is then discovered – she retains her full dowry for the consummation. The guardian must bear the compensatory payment for his concealment, just as he deceived her through his fraud."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ أرنا يَحْيَى بْنُ سَعِيدٍ نَا سَعِيدُ بْنُ الْمُسَيِّبِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: أَيُّمَا رَجُلٍ تَزَوَّجَ امْرَأَةً فَدَخَلَ بِهَا فَوَجَدَهَا بَرْصَاءَ، أَوْ مَجْنُونَةً، أَوْ مَجْذُومَةً، فَلَهَا الصَّدَاقُ بِمَسِّهِ إيَّاهَا - وَيَرْجِعُ عَلَى مَنْ غَرَّهُ بِهَا فَذَهَبَ إلَى هَذَا الْأَوْزَاعِيُّ، وَأَبُو عُبَيْدٍ، فَرَأَيَا جَوَازَ النِّكَاحِ وَأَنَّ الزَّوْجَ يَرْجِعُ مَعَ ذَلِكَ بِالصَّدَاقِ عَلَى مَنْ غَرَّهُ.

L32738 From the path of Sa'id ibn Mansur: Hushaym narrated to us, Yahya ibn Sa'id narrated to us, Sa'id ibn al-Musayyib narrated that Umar ibn al-Khattab said: Any man who marries a woman and consummates the marriage, then finds her to be leprous, insane, or afflicted with leprosy, she is entitled to the dower due to his intimacy with her—and he may claim compensation from whoever deceived him about her. Al-Awzaʻī and Abu Ubayd upheld this view, affirming the permissibility of the marriage while ruling that the husband may nevertheless reclaim the dower from whoever deceived him.

وَذَهَبَ قَوْمٌ إلَى فَسَادِهِ قَبْلَ الدُّخُولِ وَجَوَازِهِ بَعْدَ الدُّخُولِ، لِمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا سُفْيَانُ عَنْ مُطَرِّفٍ عَنْ الشَّعْبِيِّ عَنْ عَلِيٍّ: أَيُّمَا امْرَأَةٍ نُكِحَتْ وَبِهَا بَرَصٌ،

L32739 A group of scholars held that the marriage is invalid before consummation and valid after consummation, based on what was transmitted to us through Saʻīd ibn Manṣūr's chain: Sufyān reported from Muṭarrif from al-Shaʻbī from ʻAlī: "Whichever woman is married while afflicted with vitiligo, insanity, leprosy, or a vaginal defect, her husband has the choice—provided he has not

consummated the marriage—to retain her or divorce her. If he consummates the marriage, she is entitled to the mahr for having lawfully consummated it."

أَوَجُنُونٌ، أَوْ جُذَامٌ، أَوْ قَرَنٌ، فَزَوْجُهَا بِالْخِيَارِ - مَا لَمْ يَمَسَّهَا - إِنْ شَاءَ أَمْسَكَ، وَإِنْ شَاءَ طَلَّقَ، وَإِنْ مَسَّهَا فَلَهَا الْمَهْرُ بِمَا اسْتَحَلَّ مِنْ فَرْجِهَا.

L32740 Through the narration of Shuʿbah from al-Ḥakam ibn ʿUtaybah: ʿAlī ibn Abī Ṭālib ruled concerning the insane woman (al-majnūnah), the leprous woman (al-majdhūmah), the woman with leprosy (al-barṣāʾ), and the woman with a horn-like growth (dhāt al-qarn): If he consummates the marriage with her, she remains his wife, but if he discovers her condition before consummation, the marriage is annulled.

وَمِنْ طَرِيقِ شُعْبَةَ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الْمَجْنُونَةِ، وَالْمَجْذُومَةِ، وَالْبَرْصَاءِ، وَذَاتِ الْقَرَنِ -: إِنْ دَخَلَ بِهَا فَهِيَ امْرَأَتُهُ وَإِنْ عَلِمَ بِهَا قَبْلَ أَنْ يَدْخُلَ فُرِّقَ بَيْنَهُمَا.

L32741–32743 Through the chain of ʿAbd al-Malik ibn Ḥabīb, the following narrated to me: al-Ḥizāmī, Ismāʿīl ibn Abī Uways, and Aṣbagh ibn al-Faraj. Ismāʿīl narrated from Ḥusayn ibn ʿAbd Allāh ibn Ḍhumayrah, from his father, from his grandfather, from ʿAlī ibn Abī Ṭālib. Al-Ḥizāmī narrated from Sufyān, from ʿAmr ibn Dīnār, from Ibn ʿAbbās. Aṣbagh narrated from Ibn Wahb, from ʿUmar, ʿAlī, Ibn ʿAbbās, Saʿīd ibn al-Musayyib, and Ibn Shihāb. And of Rabīʿah, they all said: Do not reject a woman in marriage except on account of the four defects: insanity, leprosy, vitiligo, and genital disease.

وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ حَدَّثَنِي الْحِزَامِيُّ وَإِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ وَأَصْبَغُ بْنُ الْفَرَجِ، قَالَ إِسْمَاعِيلُ عَنْ حُسَيْنِ بْنِ عَبْدِ اللَّهِ بْنِ ضُمَيْرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - وَقَالَ الْحِزَامِيُّ عَنْ سُفْيَانَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنِ ابْنِ عَبَّاسٍ - وَقَالَ أَصْبَغُ عَنِ ابْنِ وَهْبٍ، عَنْ عُمَرَ، وَعَلِيٍّ، وَابْنِ عَبَّاسٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَابْنِ شِهَابٍ وَرَبِيعَةَ، قَالُوا كُلُّهُمْ: لَا تَرُدُّ النِّسَاءُ إِلَّا مِنَ الْعُيُوبِ الْأَرْبَعَةِ، الْجُنُونُ، وَالْجُذَامُ، وَالْبَرَصُ، وَالدَّاءُ فِي الْفَرْجِ.

L32744 From the narration of Saʾīd ibn Manṣūr: Hushaym narrated to us, Muḥammad ibn Sālim narrated to us from al-Shaʿbī regarding a man who discovers his wife to be afflicted with leucoderma, insane, leprous, or having a vaginal defect: If he has consummated the marriage, she retains her full dowry. If he discovers [the defect] before consummation, he may choose to retain her or annul the marriage without divorce—these are two juristic positions. The first holds that if he consummates the marriage, she receives her dowry, and he may reclaim it from whoever deceived him—a view narrated from ʿUmar. In another narration from ʿUmar, he may reclaim [the dowry] from her guardian. The second position states that he may annul the marriage before consummation if he wishes, but after consummation, she remains his wife; he may then divorce her or keep her. This is narrated from ʿAlī and al-Shaʿbī as we conveyed, and in a narration from ʿUmar, ʿAlī, Ibn ʿAbbās,

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا مُحَمَّدُ بْنُ سَالِمٍ عَنِ الشَّعْبِيِّ فِي الَّذِي يَجِدُ امْرَأَتَهُ بَرْصَاءَ، أَوْ مَجْنُونَةً، أَوْ مَجْذُومَةً، أَوْ ذَاتَ قَرَنٍ: إِنْ دَخَلَ بِهَا فَلَهَا مَهْرُهَا، وَإِنْ عَلِمَ قَبْلَ الدُّخُولِ إِنْ شَاءَ أَمْسَكَ، وَإِنْ شَاءَ فَارَقَ بِغَيْرِ طَلَاقٍ - فَهَذَانِ قَوْلَانِ -: أَحَدُهُمَا - أَنَّهُ إِنْ دَخَلَ بِهَا فَلَهَا مَهْرُهَا، وَيَرْجِعُ بِهِ عَلَى مَنْ غَرَّهُ - وَهُوَ قَوْلٌ رُوِيَ عَنْ عُمَرَ، وَمَرَّةً رُوِيَ عَنْهُ: يَرْجِعُ عَلَى وَلِيِّهَا. وَقَوْلٌ آخَرُ - أَنَّهُ يَفْسَخُ إِنْ شَاءَ قَبْلَ الدُّخُولِ، وَأَمَّا بَعْدَ الدُّخُولِ فَهِيَ امْرَأَتُهُ، إِنْ شَاءَ طَلَّقَ، وَإِنْ شَاءَ أَمْسَكَ - وَهُوَ قَوْلٌ رُوِيَ عَنْ عَلِيٍّ، وَالشَّعْبِيِّ كَمَا أَوْرَدْنَا، وَرِوَايَةٌ عَنْ عُمَرَ وَعَلِيٍّ، وَابْنِ عَبَّاسٍ، وَابْنِ الْمُسَيِّبِ، وَالزُّهْرِيِّ،

Ibn al-Musayyib, al-Zuhrī, and Rabīʿah: the marriage is only annulled due to four defects—madness, leprosy, leucoderma, or genital disease.

وَرَبِيعَةَ: أَنَّهُ لَا يُرَدُّ النِّكَاحُ إِلَّا مِنْ الْعُيُوبِ الْأَرْبَعَةِ مِنْ: الْجُنُونِ، وَالْجُذَامِ، وَالْبَرَصِ، وَدَاءِ الْفَرْجِ

L32745 And it was not mentioned in this narration, neither before her consummation, nor after it, nor the legal ruling concerning the dowry.

- وَلَمْ يُذْكَرْ فِي هَذِهِ الرِّوَايَةِ قَبْلَ دُخُولِهَا، وَلَا بَعْدَهُ، وَلَا حُكْمُ الصَّدَاقِ.

L32746 A group held the view that a portion of her dowry should be relinquished for her. It has been narrated to us through the chain of ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAṭāʾ: It has reached us that neither a sale nor a marriage is valid [if involving] an insane woman, a woman afflicted with leprosy, a woman with vitiligo, or a barren woman. Ibn Jurayj said: I asked him, "What if he had intercourse with her while she had one of these four conditions, and her guardian—the one responsible for her—knew of her condition yet concealed it?" He replied, "In my view, he must compensate by reducing part of her dowry for what he took from her, except for a negligible amount." I said, "What if someone other than her guardian married her off?" He said, "She is entitled to the dowry customary for women of her status."

وَذَهَبَ قَوْمٌ - إِلَى أَنَّهُ يُخْلَى لَهَا شَيْءٌ مِنْ صَدَاقِهَا -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: بَلَغَنَا أَنَّهُ لَا يَجُوزُ فِي بَيْعٍ، وَلَا نِكَاحٍ: الْمَجْنُونَةُ، وَالْمَجْذُومَةُ، وَالْبَرْصَاءُ، وَالْعَفْلَاءُ. قَالَ ابْنُ جُرَيْجٍ: فَقُلْت لَهُ: فَوَاقَعَهَا وَبِهَا بَعْضُ الْأَرْبَعِ، وَقَدْ عَلِمَ الَّذِي بِهَا فَكَتَمَهُ - يَعْنِي وَلِيَّهَا - قَالَ: مَا أَرَاهُ إِلَّا قَدْ غَرِمَ مِنْ صَدَاقِهَا بِمَا أَصَابَ مِنْهَا، إِلَّا شَيْئًا يَسِيرًا؟ قُلْت: فَأَنْكَحَهَا غَيْرُ وَلِيِّهَا؟ قَالَ: تُرَدُّ إِلَى صَدَاقِ مِثْلِهَا.

L32747 Through the chain of Abū ʿUbayd—Yazīd reported to us from Ismāʿīl ibn Abī Khālid, from al-Shaʿbī, from Shurayh—that he would compensate the leprous woman with something.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نَا يَزِيدُ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ: أَنَّهُ كَانَ يُعَوِّضُ الْبَرْصَاءَ شَيْئًا.

L32748 And a group of scholars—maintained that marriage to any woman who has any of that is not permissible.

وَذَهَبَ قَوْمٌ - إِلَى أَنَّهُ لَا يَجُوزُ نِكَاحُ مَنْ بِهَا شَيْءٌ مِنْ ذَلِكَ.

L32749 Narrated by Saʿīd ibn Manṣūr, from Ḥammād, from ʿAmr ibn Dīnār, from Jābir ibn Yazīd, who said: Four defects are impermissible in sale and marriage: a leprous woman, an insane woman, a woman with vitiligo, and a sterile woman.

كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا حَمَّادٌ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ جَابِرِ بْنِ يَزِيدَ قَالَ: أَرْبَعٌ لَا يَجُوزُ فِي بَيْعٍ، وَلَا نِكَاحٍ: الْمَجْذُومَةُ، وَالْمَجْنُونَةُ، وَالْبَرْصَاءُ، وَالْعَفْلَاءُ.

L32750–32751 From the narration of Abū ʾUbayd: Ibn Maryam narrated to us via Ibn Lahīʿah from Yazīd ibn Abī Ḥabīb, who said: Ibn Shihāb said: It is not permissible among Muslims to marry a woman afflicted with leprosy, nor an insane woman, nor a woman with an imperforate vagina.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا ابْنُ مَرْيَمَ عَنْ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ قَالَ: قَالَ ابْنُ شِهَابٍ: لَا يَجُوزُ بَيْنَ الْمُسْلِمِينَ نِكَاحُ بَرْصَاءَ، وَلَا مَجْنُونَةٍ، وَلَا عَفْلَاءَ.

L32752 A group has held the opinion that it is impermissible to marry such a woman, but if he consummates the marriage with her, it becomes valid. This is as we

have reported through the chain of Abd al-Razzaq from Ma‘mar from Ayyub al-Sikhtiyani from Abu al-Sha‘tha’ Jabir ibn Yazid, who said: Four women do not invalidate a marriage or a sale unless the defect is named. If the defect is named, the marriage remains valid: the insane woman, the leprous woman, the woman with vitiligo, and the woman with a congenital genital defect. If he has intercourse with her, the marriage becomes valid even if he was deceived.

وَذَهَبَتْ طَائِفَةٌ - إِلَى أَنَّهُ لَا يَجُوزُ نِكَاحُهَا، فَإِنْ دَخَلَ بِهَا وَوَطِئَهَا جَازَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي الشَّعْثَاءِ جَابِرِ بْنِ يَزِيدَ قَالَ: أَرْبَعٌ لَا يَجْزِينَ فِي نِكَاحٍ وَلَا بَيْعٍ، إِلَّا أَنْ يُسَمَّى، فَإِنْ سُمِّيَ فَهِيَ مِنْهُ: الْمَجْنُونَةُ، وَالْمَجْذُومَةُ، وَالْبَرْصَاءُ، وَالْعَفْلَاءُ، فَإِنْ مَسَّهَا جَازَتْ، وَإِنْ غُرَّ.

L32753 A group held the opinion that if the guardian denies having known about it, he must be made to swear an oath, be absolved, and the marriage remains valid - as narrated through the transmission chain of Abd al-Razzaq from Ma’mar from al-Zuhri, who said: If the guardian knew, he is liable; otherwise, he is made to swear by Allah that he did not know, and then the obligation rests upon the husband - meaning the dowry.

وَذَهَبَتْ طَائِفَةٌ - إِلَى أَنَّ الْوَلِيَّ إِنْ أَنْكَرَ أَنْ يَكُونَ عَرَفَ ذَلِكَ أُحْلِفَ وَبُرِّئَ وَصَحَّ النِّكَاحُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: إِنْ كَانَ الْوَلِيُّ عَلِمَ غَرِمَ، وَإِلَّا اُسْتُحْلِفَ بِاَللَّهِ: مَا عَلِمَ، ثُمَّ هُوَ عَلَى الزَّوْجِ - يَعْنِي الصَّدَاقَ.

L32754 Through the route of Abū ‘Ubayd: Hushaym reported to us; Yūnus b. ‘Ubayd reported to us, from al-Ḥasan, who said: “If the guardian had known of the defect, the bridal gift (mahr) would fall upon him, just as he deceived her through her. But if he did not know, she remains his wife—he may either divorce her or retain her, as he wishes.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا هُشَيْمٌ أرنا يُونُسُ بْنُ عُبَيْدٍ عَنْ الْحَسَنِ قَالَ: إِنْ عَلِمَ الْوَلِيُّ الْعَيْبَ فَالصَّدَاقُ عَلَيْهِ، كَمَا غَرَّهُ مِنْهَا، وَإِنْ لَمْ يَعْلَمْ فَهِيَ امْرَأَتُهُ إِنْ شَاءَ طَلَّقَ، وَإِنْ شَاءَ أَمْسَكَ.

L32755 From the narration of Abū ‘Ubayd: ‘Abd Allāh ibn Ṣāliḥ narrated to us from Yaḥyā ibn Ayyūb from ‘Amr ibn Qays from ‘Adī ibn ‘Adī: that ‘Umar ibn ‘Abd al-‘Azīz wrote to him concerning a woman afflicted with a vaginal bone—a condition known as ḥalqā’ (she is the one in whose genitalia there is a bone)—whom a man married, stating, “He is only entitled to the equivalent of the insertion point of a thin probe—from which she urinates.” He wrote in response: “If those who married her off knew of her condition, compel them to reimburse her husband the dowry [he paid]. But if they were unaware of it, they must only swear by Allah: ’We did not know of that.’”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ ثنا عَبْدُ اللَّهِ بْنُ صَالِحٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنْ عَمْرِو بْنِ قَيْسٍ عَنْ عَدِيِّ بْنِ عَدِيٍّ: أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ كَتَبَ إِلَيْهِ فِي امْرَأَةٍ حَلْقَاءَ تَزَوَّجَهَا رَجُلٌ - وَهِيَ الَّتِي فِي فَرْجِهَا عَظْمٌ -: إِنَّمَا لَهُ مِثْلُ مَدْخَلِ الْمِرْوَدِ تَبُولُ مِنْهُ - فَكَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: إِنْ كَانَ الَّذِينَ زَوَّجُوهُ عَلِمُوا الَّذِي بِهَا فَأَغْرِمْهُمْ صَدَاقَهَا لِزَوْجِهَا، وَإِنْ كَانُوا لَمْ يَعْلَمُوهُ فَلَيْسَ عَلَيْهِمْ إِلَّا أَنْ يَحْلِفُوا: بِاَللَّهِ مَا عَلِمْنَا ذَلِكَ.

L32756 From the narration of Abd al-Razzaq via Abd al-Rahman via al-Muthanna ibn al-Sabbah: That Adi ibn Adi said: I wrote to Umar ibn Abd al-Aziz concerning a woman with an imperforate hymen that prevents men from consummating the marriage. He responded: “Have the guardian swear to his knowledge. If he swears, uphold the marriage. If he does not swear, hold him liable for the mahr.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عَبْدِ الرَّحْمَنِ عَنْ الْمُثَنَّى بْنِ الصَّبَّاحِ: أَنَّ عَدِيَّ بْنَ عَدِيٍّ قَالَ: كَتَبْت إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي امْرَأَةٍ مُرْتَتِقَةٍ لَا يَقْدِرُ عَلَيْهَا الرِّجَالُ؟ فَكَتَبَ

إِلَيَّ: أَنْ اسْتَحْلِفْ الْوَلِيَّ مَا عَلِمَ، فَإِنْ حَلَفَ فَأَجِزْ النِّكَاحَ، وَإِنْ لَمْ يَحْلِفْ فَاحْمِلْ عَلَيْهِ الصَّدَاقَ

L32757 Via the chain of Ibn Wahb, from ʿĀmir ibn Murrah, from Rabīʿah ibn Abī ʿAbd al-Raḥmān, who mentioned a ruling meaning: If someone marries a person afflicted with leprosy, leukoderma, or a genital disease, and the guardian swears he had no knowledge of this condition, he incurs no liability. The husband is entitled to reclaim his bridal gift (mahr), unless the afflicted party provides something in exchange for it.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَامِرِ بْنِ مُرَّةَ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ، فَذَكَرَ كَلَامًا مَعْنَاهُ: فِيمَنْ تَزَوَّجَ مَنْ بِهَا جُذَامٌ، أَوْ بَرَصٌ، أَوْ دَاءُ فَرْجٍ: أَنَّ الْوَلِيَّ إنْ حَلَفَ أَنَّهُ مَا عَلِمَ بِذَلِكَ فَلَا غَرَامَةَ عَلَيْهِ، وَيُرَدُّ عَلَى الزَّوْجِ صَدَاقُهُ، إلَّا أَنْ تُعَاضَ هِيَ مِنْ ذَلِكَ بِشَيْءٍ.

L32758–32759 From the path of Ibn Wahb, ʻAbd al-Aʻlā ibn Saʻīd al-Jayshānī narrated to me: that Muḥammad ibn ʻIkrimah al-Mahrī reported to him: that he married a woman and consummated the marriage, then observed a patch of whiteness at the root of her thighs. He said to her, "Take your covering upon yourself," then spoke to ʻAbdullāh ibn Yazīd ibn Khidhām, who wrote to ʻUmar ibn ʻAbd al-ʻAzīz on his behalf. ʻUmar issued a ruling in the matter: the husband must swear in the mosque by Allah that he has not derived any sexual enjoyment from her since seeing that mark. Her brothers must also swear that they did not know of her condition before she was married. If they swear, they are to give the woman a quarter of the mahr.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ حَدَّثَنِي عَبْدُ الْأَعْلَى بْنُ سَعِيدٍ الْجَيَشَانِيُّ: أَنَّ مُحَمَّدَ بْنَ عِكْرِمَةَ الْمَهْرِيَّ حَدَّثَهُ: أَنَّهُ تَزَوَّجَ امْرَأَةً فَدَخَلَ بِهَا فَرَأَى بِأَصْلِ فَخْذَيْهَا وَضَحًا مِنْ بَيَاضٍ؟ فَقَالَ لَهَا: خُذِي عَلَيْك مِلْحَفَتَك ثُمَّ كَلَّمَ عَبْدَ اللَّهِ بْنَ يَزِيدَ بْنِ خِذَامٍ، فَكَتَبَ لَهُ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، فَكَتَبَ عُمَرُ فِي ذَلِكَ: أَنْ يَسْتَحْلِفَ الزَّوْجَ فِي الْمَسْجِدِ: بِاَللَّهِ مَا تَلَذَّذَ مِنْهَا بِشَيْءٍ مُذْ رَأَى ذَلِكَ؟ وَيَحْلِفُ إخْوَتُهَا أَنَّهُمْ لَمْ يَعْلَمُوا بِالَّذِي بِهَا قَبْلَ أَنْ يُزَوَّجَهَا، فَإِنْ حَلَفُوا فَأَعْطَوْا الْمَرْأَةَ رُبْعَ الصَّدَاقِ.

L32760 A group held that blindness and other such defects among imperfections are treated analogously—as we have reported through the chain of Wakiʿ from Sufyān al-Thawrī from Yaḥyā ibn Saʿīd al-Anṣārī from Saʿīd ibn al-Musayyab from ʿUmar ibn al-Khaṭṭāb, who said: If he marries a leprous or blind woman and consummates the marriage, she is entitled to the dower, and he has recourse against whoever deceived him.

وَذَهَبَتْ طَائِفَةٌ: إلَى أَنَّ الْعَمَى، وَغَيْرَ ذَلِكَ، مِنْ الْعُيُوبِ كَذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: إذَا تَزَوَّجَهَا بَرْصَاءَ أَوْ عَمْيَاءَ فَدَخَلَ بِهَا، فَلَهَا الصَّدَاقُ وَيَرْجِعُ عَلَى مَنْ غَرَّهُ.

L32761 From the chain of Abd al-Razzaq via Ma'mar, from Ayyub al-Sikhtiyani, from Muhammad ibn Sirin, who said: A man brought a lawsuit to Shuraih, complaining, "These people said to me, 'We will marry you to the most beautiful of people,' yet they brought me a bleary-eyed woman?" Shuraih

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: خَاصَمَ رَجُلٌ إلَى شُرَيْحٍ فَقَالَ: إنَّ هَؤُلَاءِ قَالُوا لِي: إنَّا نُزَوِّجُكَ أَحْسَنَ النَّاسِ، فَجَاءُونِي بِامْرَأَةٍ عَمْشَاءَ؟ فَقَالَ شُرَيْحٌ إنْ كَانَ دُلِّسَ لَك بِعَيْبٍ لَمْ يَجُزْ.

ruled: “If a defect was fraudulently concealed from you, the marriage is not valid.”

وَرُوِيَ عَنْ الزُّهْرِيِّ: أَنَّهُ يُرَدُّ النِّكَاحُ مِنْ كُلِّ دَاءٍ عُضَالٍ، وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ فِي هَذِهِ الْعُيُوبِ فِي النِّكَاحِ: مَا كَانَ يُشْبِهُهَا. وَهُوَ قَوْلُ أَبِي ثَوْرٍ.

L32762 It has been narrated from al-Zuhri that a marriage may be revoked due to any incurable ailment. Through the chain of Abd al-Razzaq from Ma’mar, he stated regarding these defects in marriage: “Those that are similar to them.” This is the opinion of Abu Thawr.

وَذَهَبَتْ طَائِفَةٌ - إلَى أَنَّ الْمَرْأَةَ يُرَدُّ بِذَلِكَ نِكَاحُهَا إذَا وَجَدَتْ فِي زَوْجِهَا -: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: وَجَدْتُ فِي كِتَابِ عَبْدِ اللَّهِ بْنِ عُمَرَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إذَا عَبِثَ الْمَعْتُوهُ بِامْرَأَتِهِ طَلَّقَ عَلَيْهِ وَلِيُّهُ

L32763 A group held the opinion that a woman’s marriage is annulled for that reason if she finds in her husband. Narrated by Muḥammad ibn Saʿīd ibn Nabāt from Aḥmad ibn ʿAbd al-Baṣīr from Qāsim ibn Aṣbagh from Muḥammad ibn ʿAbd al-Salām al-Khushanī from Muḥammad ibn al-Muthannā from ʿAbd al-Raḥmān ibn Mahdī from Sufyān al-Thawrī from Ḥabīb ibn Abī Thābit from ʿAmr ibn Shuʿayb, who said: I found in the book of ʿAbd Allāh ibn ʿUmar that ʿUmar ibn al-Khaṭṭāb said: If a mentally deficient man consummates the marriage with his wife, his guardian must divorce on his behalf.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي مَالِكٌ: أَنَّهُ بَلَغَهُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: أَيُّمَا امْرَأَةٍ تَزَوَّجَتْ رَجُلًا بِهِ جُنُونٌ أَوْ ضَرَرٌ، فَإِنَّهَا تُخَيَّرُ، فَإِنْ شَاءَتْ قَرَّتْ، وَإِنْ شَاءَتْ فَارَقَتْ.

L32764 From the transmission of Ibn Wahb, Malik informed me that it reached him from Saʿīd ibn al-Musayyab, who said: “Any woman who marries a man afflicted with insanity or harm, she is given the choice: if she wishes, she may remain, and if she wishes, she may separate.”

وَقَالَ مَالِكٌ: تُرَدُّ الْمَرْأَةُ مِنْ الْجُنُونِ، وَالْجُذَامِ، وَالْبَرَصِ، وَدَاءِ الْفَرْجِ - إذَا تَزَوَّجَهَا وَلَمْ يَعْلَمْ بِذَلِكَ - فَإِنْ دَخَلَ بِهَا فَلَهَا الصَّدَاقُ وَيَرْجِعُ بِهِ عَلَى وَلِيِّهَا إنْ كَانَ أَخًا أَوْ أَبًا بِمَا دَلَّسَا عَلَيْهِ، فَإِنْ كَانَ الَّذِي زَوَّجَهَا ابْنُ عَمِّهَا، أَوْ مَوْلًى - لَا عِلْمَ لَهُمْ بِشَيْءٍ مِنْ أَمْرِهَا - فَلَا غُرْمَ عَلَيْهِمْ وَيُرَدُّ الصَّدَاقُ، إلَّا قَدْرَ مَا يُسْتَحَلُّ بِهِ مِثْلُهَا، وَهُوَ رُبْعُ دِينَارٍ، فَقَطْ.

L32765–32767 Mālik said: The marriage may be annulled [due to] insanity, leprosy, leukoderma, or vulvar disease - if He married her without knowing that—if he consummates the marriage, she is entitled to the dowry, and he may reclaim it from her guardian if the guardian was a brother or father due to their fraudulent concealment from him. If the one who gave her in marriage was her paternal cousin or a freed slave—while he himself had no knowledge of any aspect of her situation—they bear no liability, and the dowry is returned except the amount necessary to validate the marriage for someone of her status, which is only a quarter of a dinar.

قَالَ: وَلِلْمَرْأَةِ مِثْلُ ذَلِكَ إذَا تَزَوَّجَهَا وَبِهِ هَذِهِ الْأَشْيَاءُ، إذَا كَانَ الْجُذَامُ الَّذِي بِهِ بَيِّنًا وَلَا يُفَرَّقُ بَيْنَهَا وَبَيْنَ الْأَبْرَصِ.

L32768 He said: The same applies to the woman if he marries her while afflicted with these defects, provided the leprosy he has is manifest, and no distinction is made between her case [of marrying a leper] and [the case of marrying] one with leukoderma.

L32769 Mālik said: A marriage may only be annulled due to the four defects. It cannot be annulled for blindness or blackness unless her soundness was stipulated, in which case it may be annulled. If the marriage is annulled before consummation, no part of the dowry is due from the husband.

قَالَ مَالِكٌ: وَلَا تُرَدُّ إِلَّا مِنْ الْعُيُوبِ الْأَرْبَعَةِ، لَا تُرَدُّ مِنْ الْعَمَى، وَلَا مِنْ السَّوَادِ، إِلَّا أَنْ يُشْتَرَطَ صِحَّتُهَا فَتُرَدُّ، وَلَا شَيْءَ عَلَيْهِ مِنْ الصَّدَاقِ قَبْلَ الدُّخُولِ.

L32770 As for after consummation, she is entitled to the dowry, and he may recover it from the guardian who married her off. Likewise, if he married her based on lineage and found her lacking legal competence (rushdah).

وَأَمَّا بَعْدَ الدُّخُولِ فَلَهَا الصَّدَاقُ، وَيَرْجِعُ بِهِ عَلَى الْوَلِيِّ الَّذِي أَنْكَحَهَا، وَكَذَلِكَ إِنْ تَزَوَّجَهَا عَلَى نَسَبٍ فَوَجَدَهَا لِغَيْرِ رِشْدَةٍ.

L32771 Al-Layth held the same opinion as Malik regarding insanity, leprosy, vitiligo, and disease of the female genitalia. Al-Layth said: “Al-ākila is like leprosy.”

وَقَالَ اللَّيْثُ: فِي الْجُنُونِ، وَالْجُذَامِ، وَالْبَرَصِ، وَدَاءِ الْفَرْجِ، مِثْلَ قَوْلِ مَالِكٍ - قَالَ اللَّيْثُ: وَالْأَكَلَةُ كَالْجُذَامِ.

L32772 Al-Shafi‘i said: The marriage is annulled due to insanity, leprosy, vitiligo, or chronic skin disease. If the annulment occurs before consummation, she is entitled to nothing; but if it occurs after consummation, she is entitled to the customary dowry for women of her status.

وَقَالَ الشَّافِعِيُّ: تُرَدُّ مِنْ الْجُنُونِ، وَالْجُذَامِ، وَالْبَرَصِ، وَالْقَرَنِ، فَأَمَّا قَبْلَ الدُّخُولِ فَلَا شَيْءَ لَهَا، وَأَمَّا بَعْدَ الدُّخُولِ فَلَهَا مَهْرُ مِثْلِهَا.

L32773 And Al-Ḥasan ibn Ḥayy held the same view based on it, except he stated: “She is entitled to the specified bridal gift.”

وَبِهِ قَالَ الْحَسَنُ بْنُ حَيٍّ، إِلَّا أَنَّهُ قَالَ: لَهَا الْمَهْرُ الْمُسَمَّى.

L32774 A group holds that there is no annulment for him in her case, nor annulment for her in his case—due to any of these defects or other than these defects—neither before nor after consummation.

وَذَهَبَتْ طَائِفَةٌ - إِلَى أَنَّهُ لَا رَدَّ لَهُ فِيهَا، وَلَا رَدَّ لَهَا فِيهِ بِشَيْءٍ مِنْ هَذِهِ الْعُيُوبِ، وَلَا مِنْ غَيْرِهَا - لَا قَبْلَ الدُّخُولِ وَلَا بَعْدَهُ.

L32775 And that if he divorces before consummation, she is entitled to half the dower, and after intercourse, she is entitled to the full dower, as we have reported through the narration of Waki‘ from Ismā‘īl ibn Abī Khālid from al-Sha‘bī, who said: ‘Alī ibn Abī Ṭālib stated, “Any man who marries a woman who is insane, afflicted with leprosy, vitiligo, or a horn, she is his wife. He may either divorce her or keep her as his wife, as he wishes.”

وَأَنَّهُ إِنْ طَلَّقَ قَبْلَ الدُّخُولِ فَلَهَا نِصْفُ الصَّدَاقِ وَلَهَا بَعْدَ الْوَطْءِ جَمِيعُهُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ " أَيُّمَا رَجُلٍ تَزَوَّجَ امْرَأَةً مَجْنُونَةً أَوْ جَذْمَاءَ أَوْ بَرْصَاءَ أَوْ بِهَا قَرَنٌ فَهِيَ امْرَأَتُهُ، إِنْ شَاءَ طَلَّقَ وَإِنْ شَاءَ أَمْسَكَ ".

L32776 And through him to Waki‘ from Sufyan al-Thawri from Hammad ibn Abi Sulayman from Ibrahim al-Nakha‘i, who said: A free woman is not rejected due to a defect.

وَبِهِ إِلَى وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ: الْحُرَّةُ لَا تُرَدُّ مِنْ عَيْبٍ.

L32777–32779 From the chain of transmission of Sa’id ibn Mansur: Hushaym reported to us, from Al-Mughirah, from Ibrahim, that he would say: It is. His wife—if he wishes, he may retain her, and if he wishes, he may divorce her, whether he has consummated the marriage or not—free women are not like enslaved women; a free woman cannot be rejected due to a disease.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ أرنا الْمُغِيرَةُ عَنْ إِبْرَاهِيمَ أَنَّهُ كَانَ يَقُولُ: هِيَ امْرَأَتُهُ - إِنْ شَاءَ أَمْسَكَ وَإِنْ شَاءَ طَلَّقَ، دَخَلَ بِهَا أَوْ لَمْ يَدْخُلْ بِهَا - لَيْسَ الْحَرَائِرُ كَالْإِمَاءِ، الْحُرَّةُ لَا تُرَدُّ مِنْ دَاءٍ.

L32780 From the narration of Waki‘ through Sufyan, from ‘Amr ibn Maymun, from ‘Umar ibn Abd al-Aziz regarding a man who married a woman and was deceived by a defect concealed within her, he said: “You have no recourse except to hold your in-laws accountable for their integrity.”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ عَمْرِو بْنِ مَيْمُونٍ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِيمَنْ تَزَوَّجَ فَدُلِّسَ لَهُ فِيهَا بِعَيْبٍ قَالَ: لَيْسَ لَك إلَّا أَمَانَةُ أَصْهَارِك.

L32781 From the transmission of al-Ḥajjāj ibn al-Minhāl via Ḥammād ibn Zayd via Ayyūb al-Sikhtiyānī, who said: I wrote to Abū Qilābah inquiring about a man who married a woman, then she became afflicted with [what appeared as] medical treatment or madness. He responded: This woman has been tested with a trial, so let her persevere in patience.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ زَيْدٍ نا أَيُّوبُ السِّخْتِيَانِيُّ قَالَ: كَتَبْت إلَى أَبِي قِلَابَةَ أَسْأَلُهُ عَنْ رَجُلٍ تَزَوَّجَ امْرَأَةً فَعَرَضَ لَهَا طِبٌّ أَوْ جُنُونٌ؟ قَالَ: هَذِهِ امْرَأَةٌ ابْتُلِيَتْ فَلْتَصْبِرْ

L32782 From the narration chain of Saʿīd ibn Manṣūr: Ismāʿīl ibn ʿAyyāsh reported to us from Ibn Jurayj, who reported from ʿAṭāʾ, that he said regarding one who married: when he consummated the marriage, she discovered he had vitiligo or leprosy. ʿAṭāʾ said: “She cannot withdraw from him”—and this is the opinion of Abū al-Zinād, Abū Ḥanīfah, Abū Yūsuf, Ibn Abī Laylā, Sufyān al-Thawrī, Abū Sulaymān, and our companions.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا إسْمَاعِيلُ بْنُ عَيَّاشٍ نا ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ: أَنَّهُ قَالَ فِيمَنْ تَزَوَّجَ فَلَمَّا دَخَلَ بِهَا بَدَا لَهَا مِنْهُ بَرَصٌ أَوْ جُذَامٌ؟ قَالَ عَطَاءٌ: لَا تَنْزِعُ عَنْهُ - وَهُوَ قَوْلُ أَبِي الزِّنَادِ، وَأَبِي حَنِيفَةَ، وَأَبِي يُوسُفَ وَابْنِ أَبِي لَيْلَى، وَسُفْيَانَ الثَّوْرِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L32783 Abu Muhammad said: As for the Malikis and Shafi’is, they opposed all that was narrated on this issue from the Companions - may Allah be pleased with them. Regarding Umar, they contradicted him in five matters: The first was Umar’s ruling permitting recovery of her dowry from her legal guardian. He stated: “The guardian cannot recover the dowry unless he is the father or brother. If the guardian is a cousin or freedman, nothing may be recovered from him.” Al-Shafi’i said: “Nothing may be recovered from her legal guardian—whether he is a father or other relative.”

قَالَ أَبُو مُحَمَّد: أَمَّا الْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، فَقَدْ خَالَفُوا كُلَّ مَا رُوِيَ فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: أَمَّا عُمَرُ فَخَالَفُوهُ فِي خَمْسَةِ مَوَاضِعَ: أَوَّلُهَا - حُكْمُ عُمَرَ أَنْ يَرْجِعَ بِصَدَاقِهَا عَلَى وَلِيِّهَا - فَقَالَ لَك: لَا يَرْجِعُ عَلَى وَلِيِّهَا إلَّا أَنْ يَكُونَ أَبًا أَوْ أَخًا، فَإِنْ كَانَ ابْنَ عَمٍّ أَوْ مَوْلًى لَمْ يَرْجِعْ عَلَيْهِ بِشَيْءٍ - وَقَالَ الشَّافِعِيُّ: لَا يَرْجِعُ عَلَى وَلِيِّهَا بِشَيْءٍ - أَبًا كَانَ أَوْ غَيْرَهُ.

L32784 The second issue—the opinion of Mālik: If he has consummated the marriage with her, and her marriage was concluded by someone other than her

وَثَانِيهَا - قَوْلُ مَالِكٍ: لَيْسَ لَهَا إنْ دَخَلَ بِهَا وَكَانَ الْمُزَوِّجُ لَهَا غَيْرَ أَبِيهَا وَأَخِيهَا إلَّا رُبُعُ دِينَارٍ، فَقَطْ.

وَقَالَ الشَّافِعِيُّ: تُرَدُّ إلَى صَدَاقِ مِثْلِهَا - وَعُمَرُ يُمْضِيهِ كُلَّهُ لَهَا -.

وَثَالِثُهَا - أَنَّهُمْ لَا يَرُدُّونَ مِنْ الْعَمَى - وَعُمَرُ قَدْ سَوَّى بَيْنَهُ وَبَيْنَ الْبَرَصِ بِالرِّوَايَةِ الَّتِي جَاءَتْ عَنْهُ: أَنَّهُ رَدَّ بِالْجُذَامِ، وَبِالْجُنُونِ، وَالْبَرَصِ، فَإِنْ كَانَتْ تِلْكَ حُجَّةً فَهَذِهِ حُجَّةٌ، وَإِنْ لَمْ تَكُنْ هَذِهِ حُجَّةً فَتِلْكَ لَيْسَتْ حُجَّةً، وَإِلَّا فَهُوَ تَلَاعُبٌ بِالدِّينِ.

فَإِنْ قَالُوا: لَمْ تَبْلُغْ تِلْكَ الرِّوَايَةُ مَالِكًا، وَالشَّافِعِيَّ؟ قُلْنَا: فَقَدْ بَلَغَتْكُمْ فَقُولُوا بِهَا وَارْجِعُوا عَنْ تِلْكَ، وَإِلَّا فَاحْتِجَاجُكُمْ بِعُمَرَ تَلَاعُبٌ {كَبُرَ مَقْتًا عِنْدَ اللَّهِ أَنْ تَقُولُوا مَا لا تَفْعَلُونَ} [الصف: ٣] .

وَرَابِعُهَا - أَنَّهُمْ يَرُدُّونَ النِّكَاحَ بِذَلِكَ قَبْلَ الدُّخُولِ وَلَمْ يَأْتِ بِذَلِكَ عَنْ عُمَرَ فِي شَيْءٍ مِنْ الرِّوَايَاتِ إلَّا رِوَايَةً مَكْذُوبَةً مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ - وَهُوَ هَالِكٌ - عَنْ أَصْبَغَ بْنِ الْفَرَجِ عَنْ ابْنِ وَهْبٍ عَنْ عُمَرَ -.

وَإِنَّمَا جَاءَتْ سَائِرُ الرِّوَايَاتِ بِرُجُوعِهِ بِالصَّدَاقِ عَلَى وَلِيِّهَا فَقَطْ - كَمَا يَقُولُ الْأَوْزَاعِيُّ، وَأَبُو عُبَيْدَةَ.

وَخَامِسُهَا - أَنَّهُ رُوِيَ عَنْ عُمَرَ، كَمَا أَوْرَدْنَا فِي الْمَعْتُوهِ يَعْبَثُ بِامْرَأَتِهِ أَنَّهُ يُطَلِّقُهَا مِنْهُ وَلِيُّهُ وَهُمْ لَا يَقُولُونَ بِهَذَا.

father or brother, she is not entitled to anything except a quarter of a dinar, and nothing more.

L32785 Al-Shafi'i said: It is to be referred back to the standard dowry for women of her status, whereas 'Umar ratifies the entire amount for her.

L32786 The third is that they do not reject for blindness, while 'Umar equated it with leprosy according to the narration reported from him: that he annulled marriages due to leprosy, insanity, and vitiligo. If that constitutes valid proof, then this constitutes valid proof. If this does not constitute valid proof, then neither does that. Otherwise, it would amount to mockery of the religion.

L32787 If they say: "Did that narration not reach Mālik and al-Shāfi'ī?" We reply: "It has indeed reached you, so follow it and abandon that position. Otherwise, your citation of 'Umar's stance as evidence is frivolous. _'Most hateful it is to Allah that you say what you do not do'_ [al-Ṣaff 61:3]."[38]

L32788–32789 The fourth point is that they invalidate the marriage on that basis before consummation. No narration from 'Umar exists regarding this matter in any of the reports except a fabricated one via 'Abd al-Malik ibn Habib—who is discredited—from Asbagh ibn al-Faraj, from Ibn Wahb, from 'Umar.

L32790 All other narrations report the return of the dowry being upon her guardian alone, as stated by Al-Awzā'ī and Abū 'Ubaydah.

L32791 The fifth is that it was narrated from 'Umar—as we mentioned regarding the mentally incompetent person who acts improperly with his wife—that his guardian effectuates the divorce from him, and they do not uphold this opinion.

L32792 So whoever proceeds to differ from Umar in five rulings, can he follow

[38] **Qur'an references (L32787):** Qur'an 61:3 (As-Saf).

Umar in one ruling reported from him - specifically the retraction against some guardians? As for Al-Shāfiʿī: no, not even in a single ruling.

فَمَنْ أَقْدَمَ عَلَى خِلَافِ عُمَرَ فِي خَمْسَةِ مَوَاضِعَ أَيَجُوزُ لَهُ أَنْ يُقَلِّدَ عُمَرَ فِي مَوْضِعٍ وَاحِدٍ مِمَّا جَاءَ عَنْهُ، وَهُوَ الرُّجُوعُ عَلَى بَعْضِ الْأَوْلِيَاءِ؟ وَأَمَّا الشَّافِعِيُّ - فَلَا، وَلَا فِي مَوْضِعٍ وَاحِدٍ.

L32793 As for Ali (may Allah be pleased with him), only three narrations are reported from him: One states that he did not reject any of that, and this is our opinion.

وَأَمَّا عَلِيٌّ - رَضِيَ اللَّهُ عَنْهُ - فَإِنَّمَا جَاءَتْ عَنْهُ ثَلَاثُ رِوَايَاتٍ -: إِحْدَاهَا - أَنَّهُ لَا رَدَّ لَهُ فِي شَيْءٍ مِنْ ذَلِكَ - وَهُوَ قَوْلُنَا.

L32794 The second ruling derived from this method is that before consummation, the husband retains the right to choose between annulment or ratification of the marriage. After consummation, this option ceases—she remains irrevocably his wife, to be divorced or retained at his discretion.

وَالثَّانِيَةُ - مِنْ تِلْكَ الطَّرِيقِ: أَنَّهُ مُخَيَّرٌ قَبْلَ الدُّخُولِ بَيْنَ فَسْخٍ أَوْ إِمْضَاءٍ، وَأَنَّهُ لَا خِيَارَ لَهُ بَعْدَ الدُّخُولِ، وَهِيَ امْرَأَتُهُ - إِنْ شَاءَ طَلَّقَ وَإِنْ شَاءَ أَمْسَكَ -.

L32795 And this is the opinion of Al-Awzāʿī transmitted from Al-Shaʿbī.

وَهُوَ قَوْلُ الْأَوْزَاعِيِّ عَنْ الشَّعْبِيِّ.

L32796 A third narration—utterly invalid, as it is narrated from al-Ḥusayn ibn ʿAbdillāh ibn Ḍumayrah (from whom narration is not permissible)—states that marriage is wholly rejected.

وَرِوَايَةٌ ثَالِثَةٌ - فِي غَايَةِ السُّقُوطِ، لِأَنَّهَا عَنْ الْحُسَيْنِ بْنِ عَبْدِ اللَّهِ بْنِ ضُمَيْرَةَ - وَلَا تَجُوزُ الرِّوَايَةُ عَنْهُ - أَنَّ النِّكَاحَ مَرْدُودٌ جُمْلَةً.

L32797 The Mālikīs and the Shāfiʿīs—differ from all these opinions.

وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ - مُخَالِفُونَ لِجَمِيعِ هَذِهِ الْأَقْوَالِ.

L32798 As for Ibn Abbas—this is from the narration of ʿAbd al-Malik ibn Ḥabīb, who is a discredited narrator—and it explicitly states the total annulment of the marriage without mentioning a mahr or any portion thereof.

وَأَمَّا ابْنُ عَبَّاسٍ - فَهِيَ مِنْ رِوَايَةِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ - وَهُوَ هَالِكٌ - وَإِنَّمَا فِيهِ أَيْضًا: رَدُّ النِّكَاحِ جُمْلَةً دُونَ ذِكْرِ صَدَاقٍ أَوْ شَيْءٍ مِنْهُ.

L32799 The attachment of these two groups to anything narrated from any of the Companions regarding that matter is invalidated, and their divergence from his position has now become fully evident in its entirety. We have cited from the rulings of Mālik and al-Shāfiʿī on this matter what was not recorded from any authority before them. Among these rulings are Mālik's opinion that it is reduced to a quarter dinar, and al-Shāfiʿī's opinion that it is adjusted to the dowry equivalent to hers.

فَبَطَلَ تَعَلُّقُ هَاتَيْنِ الطَّائِفَتَيْنِ بِشَيْءٍ مِمَّا رُوِيَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ فِي ذَلِكَ وَلَاحَ خِلَافُهُمْ لَهُ جُمْلَةً - وَقَدْ أَتَيْنَا مِنْ قَوْلِ مَالِكٍ، وَالشَّافِعِيِّ فِي ذَلِكَ بِمَا لَا يُحْفَظُ عَنْ أَحَدٍ قَبْلَهُمَا، فَمِنْ ذَلِكَ -: قَوْلُ مَالِكٍ تُرَدُّ إِلَى رُبُعِ دِينَارٍ، وَقَوْلُ الشَّافِعِيِّ تُرَدُّ إِلَى صَدَاقِ مِثْلِهَا.

L32800–32801 The discussion remains concerning those who may base their argument on

what is narrated from the Companions we mentioned—may Allah be pleased with them. The first point is that no authentic report exists from any of the Companions on this matter. As for the narrations from Umar and Ali, their chains are interrupted. The narration from Ibn Abbas comes through an unreliable chain. Then, even if they were authentic, they would not constitute proof, for no one's statement apart from the Messenger of Allah—peace and blessings be upon him—holds authority, especially given the contradictions in these narrations despite their interruption. Indeed, what is reported from Ali aligns with our position. Thus, the contrary narrations are not proof; they are merely another statement.

وَبَقِيَ الْكَلَامُ مَعَ مَنْ لَعَلَّهُ يَتَعَلَّقُ فِي ذَلِكَ بِمَا رُوِيَ عَمَّنْ ذَكَرْنَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَأَوَّلُ ذَلِكَ: أَنَّهُ لَا يَصِحُّ فِي ذَلِكَ شَيْءٌ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ، وَعَلِيٍّ فَمُنْقَطِعَةٌ، وَعَنْ ابْنِ عَبَّاسٍ مِنْ طَرِيقٍ لَا خَيْرَ فِيهِ - ثُمَّ لَوْ صَحَّ لَكَانَ لَا حُجَّةَ فِيهِ، لِأَنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعَ اخْتِلَافِ تِلْكَ الرِّوَايَاتِ - عَلَى انْقِطَاعِهَا - فَقَدْ جَاءَ عَنْ عَلِيٍّ مَا يُوَافِقُ قَوْلَنَا، فَلَيْسَ مَا رُوِيَ مِنْ خِلَافِ ذَلِكَ حُجَّةً، إنَّمَا هُوَ قَوْلٌ كَقَوْلٍ.

L32802 We found that some later scholars among them cited as evidence in this matter that marriage resembles sales transactions, and sales transactions can be annulled due to defects; thus, marriage must be annulled for the same reason? Abū Muḥammad said: This is an opinion that cannot be obfuscated except by those who follow the view of Abū Thawr, al-Zuhrī, and Shurayḥ. As for the Mālikīs and the Shāfiʿīs, they do not, because they limited to four defects, excluding all others. This constitutes a complete abandonment of the aforementioned legal analogy.

وَوَجَدْنَا بَعْضَ الْمُتَأَخِّرِينَ مِنْهُمْ قَدْ احْتَجَّ فِي ذَلِكَ بِأَنَّ النِّكَاحَ يُشْبِهُ الْبُيُوعَ، وَالْبُيُوعُ تُرَدُّ بِالْعُيُوبِ، فَوَجَبَ رَدُّ النِّكَاحِ بِذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قَوْلٌ لَا يَسُوغُ التَّمْوِيهُ بِهِ إلَّا لِمَنْ قَالَ بِقَوْلِ أَبِي ثَوْرٍ وَالزُّهْرِيِّ، وَشُرَيْحٍ - وَأَمَّا الْمَالِكِيُّونَ وَالشَّافِعِيُّونَ فَلَا، لِأَنَّهُمْ خَصُّوا أَرْبَعَةَ عُيُوبٍ دُونَ سَائِرِ الْعُيُوبِ، وَهَذَا تَرْكٌ لِلْقِيَاسِ الْمَذْكُورِ جُمْلَةً.

L32803 Then we say to those who uphold the opinion of Abū Thawr: "We do not know in what aspect marriage resembles sales; rather, it is entirely contrary to them. This is because a sale is the transfer of ownership, whereas in marriage there is no ownership whatsoever."

ثُمَّ نَقُولُ لِمَنْ قَالَ بِقَوْلِ أَبِي ثَوْرٍ: مَا نَدْرِي فِي أَيِّ وَجْهٍ يُشْبِهُ النِّكَاحُ الْبُيُوعَ بَلْ هُوَ خِلَافُهُ جُمْلَةً -: لِأَنَّ الْبَيْعَ نَقْلُ مِلْكٍ، وَلَيْسَ فِي النِّكَاحِ مِلْكٌ أَصْلًا.

L32804 Marriage is permissible without mentioning a mahr in its contract, but a sale is impermissible without mentioning a price.

وَالنِّكَاحُ جَائِزٌ بِغَيْرِ ذِكْرِ صَدَاقٍ فِي عَقْدِهِ، وَلَا يَجُوزُ الْبَيْعُ بِغَيْرِ ذِكْرِ ثَمَنٍ.

L32805 According to them, the khiyar (contractual option) is permissible in the sale for a specified period, but not in marriage.

وَالْخِيَارُ جَائِزٌ عِنْدَهُمْ فِي الْبَيْعِ مُدَّةً مُسَمَّاةً، وَلَا يَجُوزُ فِي النِّكَاحِ.

L32806 The sale without viewing the item sold or describing it is void and fundamentally impermissible.

وَالْبَيْعُ بِتَرْكِ رُؤْيَةِ الْمَبِيعِ، وَتَرْكِ وَصْفِهِ بَاطِلٌ لَا يَجُوزُ أَصْلًا.

L32807 It is permissible to contract a marriage without viewing the woman to be married and without specifying her attributes.

وَالنِّكَاحُ بِتَرْكِ رُؤْيَةِ الْمَنْكُوحَةِ وَتَرْكُ وَصْفِهَا جَائِزٌ.

L32808 According to the Malikis, marriage is valid if stipulated to include a house,

a servant, or unspecified attributes, whereas such stipulations are invalid in sales—thus, the analogy equating marriage to a sale has been entirely invalidated.

وَالنِّكَاحُ عِنْدَ الْمَالِكِيِّينَ جَائِزٌ عَلَى بَيْتٍ وَخَادِمٍ وَوُصَفَاءَ غَيْرِ مَوْصُوفِينَ وَلَا يَجُوزُ ذَلِكَ فِي الْبُيُوعِ - فَبَطَلَ تَشْبِيهُ النِّكَاحِ بِالْبَيْعِ جُمْلَةً.

L32809 Some of them said: It is not permissible to fulfill the rights of marriage in cases of insanity, nor does one's conscience find it acceptable to engage in intercourse with a leprous woman or one afflicted with *jadhām*, nor can a man perform intercourse with a woman having a clitoral abnormality—since he married her solely for intercourse? We replied: Nor is it permissible to fulfill the rights of marriage in cases of transgression, marital disobedience, bad character, muteness, deafness, or intellectual deficiency—did they reject these [conditions]?

قَالَ بَعْضُهُمْ: لَا يَجُوزُ تَوْفِيَةُ حُقُوقِ النِّكَاحِ مَعَ الْجُنُونِ، وَلَا تَطِيبُ النَّفْسُ عَلَى مُجَامَعَةِ بَرْصَاءَ، أَوْ مَجْذُومَةٍ، وَلَا يَقْدِرُ عَلَى جِمَاعِ قَرْنَاءَ، إِنَّمَا تَزَوَّجَهَا لِلْجِمَاعِ؟ فَقُلْنَا: وَلَا تَجُوزُ تَوْفِيَةُ حُقُوقِ النِّكَاحِ مَعَ الْفِسْقِ وَالنُّشُزِ وَسُوءِ الْخُلُقِ، وَمَعَ الْبُكْمِ وَالصَّمِّ، وَمَعَ ضَعْفِ الْعَقْلِ، فَرَدُّوا مِنْهَا؟

L32810–32811 If they say: "Can one repent from immorality?" We reply: "Can one recover from madness?" As for contentment in intercourse—by Allah, no soul is truly content with one who harbors a hidden leprous patch in their body, nor with one afflicted by monthly seizures. This applies equally to defects such as: the adulteress, the ugly black old woman, one bearing a facial sore, a prominent wart, a hunched chest or back, or muteness. This is undoubted in anyone's view.

فَإِنْ قَالُوا: قَدْ يَتُوبُ مِنَ الْفِسْقِ؟ قُلْنَا: وَقَدْ يَبْرَأُ مِنَ الْجُنُونِ. وَأَمَّا طِيبُ النَّفْسِ عَلَى الْجِمَاعِ، فَوَاللَّهِ إِنَّ نَفْسَ كُلِّ أَحَدٍ لَا تَطِيبُ عَلَى مَنْ بِهَا فِي خَافِي جَسَدِهَا لَمْعَةٌ مِنْ بَرَصٍ، وَمَنْ يَمَسُّهَا صَرْعٌ فِي الشَّهْرِ مَرَّةً، مِنْهَا عَلَى الزَّانِيَةِ، وَعَلَى الْعَجُوزِ السَّوْدَاءِ الشَّوْهَاءِ، وَعَلَى مَنْ بِهَا أَكَلَةٌ فِي وَجْهِهَا، أَوْ أُثْلُولٌ ضَخْمٌ، أَوْ حُدْبٌ فِي الصَّدْرِ، أَوِ الظَّهْرِ، أَوْ بَكَمٌ - هَذَا مَا لَا شَكَّ فِيهِ عِنْدَ أَحَدٍ.

L32812 All these opinions are corrupt. Marriage is solely as Allah, the Exalted and Majestic, has ordained. It is then either retaining [the spouse] with kindness or parting with excellence—unless an authentic textual evidence arises, in which case adherence to it is obligatory.

وَكُلُّ هَذِهِ آرَاءٌ فَاسِدَةٌ، إِنَّمَا هُوَ النِّكَاحُ كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ، ثُمَّ إِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ، إِلَّا أَنْ يَأْتِيَ نَصٌّ صَحِيحٌ فَيُوقَفُ عِنْدَهُ -.

L32813 Some of them mentioned the report which states, "Flee from the leper as you would flee from a lion." We said: This does not necessitate fleeing. Then even if it did imply that, annul the marriage due to its occurrence after both of them after years - while they do not comprehend this.

وَقَدْ ذَكَرَ بَعْضُهُمُ الْخَبَرَ الَّذِي فِيهِ «وَفِرَّ مِنَ الْمَجْذُومِ فِرَارَكَ مِنَ الْأَسَدِ» قُلْنَا: لَيْسَ عَلَى الْأَمْرِ بِالْفِرَارِ، ثُمَّ لَوْ كَانَ كَذَلِكَ فَافْسَخُوا النِّكَاحَ بِحُدُوثِهِ بَعْدَهُمَا بَعْدَ سِنِينَ - وَهُمْ لَا يَعْقِلُونَ هَذَا.

L32814 Moreover, on what grounds do you ascribe leprosy to him? Some of them said: "There is no assurance that a madman will refrain from killing his companion." We replied: This is undoubtedly more feared in the case of the

transgressor—so dissolve the marriage due to moral corruption! Thus, the invalidity of their argument became entirely evident.

وَأَيْضًا - فَمِنْ أَيْنَ أَضَفْتُمْ إلَيْهِ الْأَبْرَصَ؟ وَقَالَ بَعْضُهُمْ: لَا يُؤْمَنُ مِنْ الْمَجْنُونِ قَتْلُ صَاحِبِهِ؟ قُلْنَا: هَذَا فِي الْفَاسِقِ - بِلَا شَكٍّ - أَخْوَفُ، فَرُدُّوا النِّكَاحَ بِالْفِسْقِ؟ فَلَاحَ فَسَادُ قَوْلِهِمْ جُمْلَةً.

L32815 If an obfuscator has obscured [the matter] by citing what we narrated through the chain of Saʿīd ibn Manṣūr — Abū Muʿāwiyah the Blind — Jamīl ibn Zayd al-Ṭāʾī — from Zayd ibn Kaʿb ibn ʿUjrah, who said: "The Messenger of Allah—peace and blessings be upon him—married a woman from Banū Ghifār. When she entered upon him and removed her clothes, he saw whiteness on her flank. He said: 'Put on your clothes and return to your family.'"

فَإِنْ مَوَّهَ مُمَوِّهٌ بِمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ الضَّرِيرُ نا جَمِيلُ بْنُ زَيْدٍ الطَّائِيُّ عَنْ زَيْدِ بْنِ كَعْبِ بْنِ عُجْرَةَ قَالَ «تَزَوَّجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - امْرَأَةً مِنْ بَنِي غِفَارٍ فَلَمَّا دَخَلَتْ عَلَيْهِ وَوَضَعَتْ ثِيَابَهَا رَأَى بِكَشْحِهَا بَيَاضًا فَقَالَ: الْبَسِي ثِيَابَك وَالْحَقِي بِأَهْلِك» .

L32816 Abu Mu'awiyah said: A man narrated to us from Jamil ibn Zayd, from Zayd ibn Ka'b ibn 'Ujra that the Prophet (may Allah's peace and blessings be upon him) decreed that she be granted her ṣadāq.

قَالَ أَبُو مُعَاوِيَةَ: فَحَدَّثَنَا رَجُلٌ عَنْ جَمِيلِ بْنِ زَيْدٍ «عَنْ زَيْدِ بْنِ كَعْبِ بْنِ عُجْرَةَ أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ لَهَا بِالصَّدَاقِ» .

L32817 Abū Muḥammad said: This is from the narration of Jamīl ibn Zayd—and he is wholly discarded and abandoned—from Zayd ibn Kaʿb—and he is unknown; it is not known that Kaʿb ibn ʿUjrah has a son named Zayd—.

قَالَ أَبُو مُحَمَّدٍ: هَذَا مِنْ رِوَايَةِ جَمِيلِ بْنِ زَيْدٍ وَهُوَ مُطْرَحٌ مَتْرُوكٌ جُمْلَةً عَنْ زَيْدِ بْنِ كَعْبٍ - وَهُوَ مَجْهُولٌ لَا يُعْلَمُ لِكَعْبِ بْنِ عُجْرَةَ وَلَدٌ اسْمُهُ زَيْدٌ -.

L32818–32819 Moreover, it is mursal. Then, even if it were valid, it would not contradict our position, for we do not prohibit the husband from divorce before consummation or after it, if he wishes.

ثُمَّ هُوَ مُرْسَلٌ - ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ مُخَالِفًا لِقَوْلِنَا، لِأَنَّنَا لَا نَمْنَعُ الزَّوْجَ مِنْ الطَّلَاقِ قَبْلَ الدُّخُولِ وَبَعْدَهُ إنْ شَاءَ.

L32820 Abu Muhammad said: If they stipulated freedom from defects in the marriage contract and he found a defect—any defect—then it is an annulled and void marriage. He has no option to ratify it, with no dowry, nor inheritance, nor maintenance—whether he has consummated or not—for the one presented to him is not the one he married, and because the woman stipulated to be free from defects is without doubt different from the defective one. If he did not marry her, is there no marital bond between them? Abu Muhammad said: As for the Hanafis, they have contradicted themselves here by following inauthentic narrations attributed to Umar and Uthman regarding annulment due to chronic impotence and the inheritance of a triply divorced woman—

قَالَ أَبُو مُحَمَّدٍ: فَإِنْ اشْتَرَطَا السَّلَامَةَ فِي عَقْدِ النِّكَاحِ فَوَجَدَ عَيْبًا - أَيَّ عَيْبٍ كَانَ - فَهُوَ نِكَاحٌ مَفْسُوخٌ مَرْدُودٌ لَا خِيَارَ لَهُ فِي إجَازَتِهِ، وَلَا صَدَاقَ فِيهِ، وَلَا مِيرَاثَ، وَلَا نَفَقَةَ - دَخَلَ أَوْ لَمْ يَدْخُلْ - لِأَنَّ الَّتِي أُدْخِلَتْ عَلَيْهِ غَيْرَ الَّتِي تَزَوَّجَ، وَلِأَنَّ الْمُسَالِمَةَ غَيْرُ الْمَعِيبَةِ بِلَا شَكٍّ، فَإِذَا لَمْ يَتَزَوَّجْهَا فَلَا زَوْجِيَّةَ بَيْنَهُمَا؟ قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا الْحَنَفِيُّونَ فَقَدْ تَنَاقَضُوا هَاهُنَا، لِأَنَّهُمْ قَلَّدُوا رِوَايَاتٍ لَا تَصِحُّ عَنْ عُمَرَ وَعُثْمَانَ فِي الْفَسْخِ بِالْعِنَانَةِ،

narrations like those from Umar. The disagreement there persists as it does here, with no distinction. And success comes from Allah, the Exalted.

A legal issue concerning the annulment of marriage on account of the wife being a mahram to the husband or a mahram to the son.

1932 - Issue: As for the one whose marriage is annulled due to his adultery with her mahram, or due to his son's adultery with her - this is based on what we have narrated through the chain of Sufyan al-Thawri from al-Agharr ibn al-Sabbah from Khalifah ibn al-Husayn from Abu Nasr from Ibn Abbas: A man said to him, "He had intercourse with his wife's mother." Ibn Abbas replied, "Your wife has become forbidden to you," and this occurred after his wife had borne seven children who had attained the status of men.

Through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān, from Saʿīd ibn Abī ʿArūbah, from Qatādah, from al-Ḥasan, from ʿImrān ibn al-Ḥuṣayn, who said: "Whoever commits fornication with his wife's mother, his wife becomes permanently unlawful to him." This opinion was affirmed by ʿAṭāʾ, al-Ḥasan al-Baṣrī, al-Ḥakam ibn ʿUtaybah, Ḥammād ibn Abī Sulaymān, Ibrāhīm al-Nakhaʿī, and al-Shaʿbī.

And through the chain of Wakiʿ from Jarīr ibn Ḥāzim from Qays ibn Saʿd from Mujāhid, who said: If he kisses her, touches her, or looks at her genitals with desire, her mother and daughter are forbidden to him—this is the view of Abū Ḥanīfah.

It is reliably established from Jabir ibn Zayd that if a man commits adultery with the sister of his wife, his wife becomes forbidden to him.

It has also been authentically reported from Qatādah that he considered stoning applicable only in cases of penetrative intercourse, not for mere sexual contact.

It has also been established (from Tawus) and narrated from Saʿid ibn al-Musayyib, ʿUrwah ibn al-Zubayr, Abu Salamah ibn ʿAbd al-Rahman, and

وَتَوْرِيثِ الْمُطَلَّقَةِ ثَلَاثًا - وَهَذِهِ رِوَايَاتٌ كَتِلْكَ عَنْ عُمَرَ، وَالْخِلَافُ هُنَالِكَ مَوْجُودٌ كَمَا هُوَ هَاهُنَا وَلَا فَرْقَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَنْ فُسِخَ النِّكَاحُ بِزِنَاهُ بِحَرِيمَتِهَا أَوْ بِزِنَا ابْنِهِ بِهَا]

١٩٣٢ - مَسْأَلَةٌ: وَأَمَّا مَنْ فُسِخَ النِّكَاحُ بِزِنَاهُ بِحَرِيمَتِهَا، أَوْ بِزِنَا ابْنِهِ بِهَا -: فَلِمَا رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنِ الْأَغَرِّ بْنِ الصَّبَّاحِ عَنْ خَلِيفَةَ بْنِ الْحُصَيْنِ عَنْ أَبِي نَصْرٍ " عَنِ ابْنِ عَبَّاسٍ: أَنَّ رَجُلًا قَالَ لَهُ: إِنَّهُ أَصَابَ أُمَّ امْرَأَتِهِ؟ فَقَالَ لَهُ ابْنُ عَبَّاسٍ: حَرُمَتْ عَلَيْكَ امْرَأَتُكَ " وَذَلِكَ بَعْدَ أَنْ وَلَدَتْ امْرَأَتُهُ سَبْعَةَ أَوْلَادٍ بَلَغَ مَبْلَغَ الرِّجَالِ.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنِ الْحَسَنِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ أَنَّهُ قَالَ: مَنْ فَجَرَ بِأُمِّ امْرَأَتِهِ فَقَدْ حَرُمَتْ عَلَيْهِ امْرَأَتُهُ - فَصَحَّ هَذَا الْقَوْلُ عَنْ عَطَاءٍ، وَالْحَسَنِ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ مُجَاهِدٍ قَالَ: إِذَا قَبَّلَهَا أَوْ لَامَسَهَا، أَوْ نَظَرَ إِلَى فَرْجِهَا مِنْ شَهْوَةٍ: حَرُمَتْ عَلَيْهِ أُمُّهَا وَابْنَتُهَا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ.

وَصَحَّ عَنْ جَابِرِ بْنِ زَيْدٍ، إِذَا زَنَى بِأُخْتِ امْرَأَتِهِ: حَرُمَتْ عَلَيْهِ امْرَأَتُهُ.

وَصَحَّ أَيْضًا - عَنْ قَتَادَةَ وَلَمْ يَرَهَا تُرْجَمُ إِلَّا بِالْوَطْءِ، لَا بِالْمُبَاشَرَةِ.

‘Abdullah ibn Mughaffal. This is the opinion of Sufyan al-Thawri, al-Awza‘i, and one of the two opinions of Malik. Others held: It is not forbidden for him. This has been authenticated from Ibn ‘Abbas—we have transmitted it via the route of Yahya ibn Sa‘id al-Qattan and al-Hajjaj ibn al-Minhal. Yahya said: Hisham al-Dastuwa’i narrated to us... Al-Ḥajjāj said: Ḥammād ibn Salamah narrated to us, then the chains of Hishām and Ḥammād converge—both from Qatādah, from ʿIkrimah, from Ibn ʿAbbās—that he said regarding one who commits adultery with the mother of his wife after consummating the marriage: he has erred against two sanctities, but his wife does not thereby become forbidden to him.

وَصَحَّ أَيْضًا - عَنْ طَاوُسٍ - وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، وَعَبْدِ اللَّهِ بْنِ مُغَفَّلٍ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَأَحَدُ قَوْلَيْ مَالِكٍ، وَقَالَ آخَرُونَ: لَا تَحْرُمُ عَلَيْهِ، صَحَّ ذَلِكَ عَنْ ابْنِ عَبَّاسٍ، رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ، وَالْحَجَّاجِ بْنِ الْمِنْهَالِ، قَالَ يَحْيَى: نا هِشَامٌ الدَّسْتُوَائِيُّ - وَقَالَ الْحَجَّاجُ: نا حَمَّادُ بْنُ سَلَمَةَ ثُمَّ اتَّفَقَ هِشَامٌ، وَحَمَّادٌ، كِلَاهُمَا عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ قَالَ فِيمَنْ زَنَى بِأُمِّ امْرَأَتِهِ بَعْدَ أَنْ دَخَلَ بِامْرَأَتِهِ: تَخَطَّأَ حُرْمَتَيْنِ وَلَمْ تَحْرُمْ عَلَيْهِ امْرَأَتُهُ.

L32830 And through the chain of Al-Ḥajjāj ibn al-Minhāl, who narrated from Hammām ibn Yaḥyā, from Qatādah, from Al-Ḥalāl ibn Abī Al-Ḥalāl Al-ʿAtakī, from his father, from ʿAlī ibn Abī Ṭālib: A man came to him and informed him that he had married a man’s daughter, specifically named, but he had her sister brought to him instead. He ordered him to return the one who was brought to him, to consummate the marriage with the one he had married, and not to approach her until the ʿiddah (waiting period) of the one who was initially brought to him is completed.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ الْحَلَالِ بْنِ أَبِي الْحَلَالِ الْعَتَكِيِّ عَنْ أَبِيهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ " أَنَّهُ أَتَاهُ رَجُلٌ فَأَخْبَرَهُ أَنَّهُ تَزَوَّجَ ابْنَةَ رَجُلٍ مُسَمَّاةً بِعَيْنِهَا فَأَدْخَلَ عَلَيْهِ أُخْتَهَا؟ فَأَمَرَهُ بِرَدِّ الَّتِي أُدْخِلَتْ عَلَيْهِ، وَأَنْ يُدْخِلَ عَلَيْهِ الَّتِي تَزَوَّجَتْ، وَأَنْ لَا يَقْرَبَهَا حَتَّى تَتِمَّ عِدَّةُ الَّتِي أُدْخِلَتْ عَلَيْهِ أَوَّلًا.

L32831 It was narrated to us through the chain of Hushaym, a narration other than this one, as we have mentioned earlier, and then Hushaym said immediately afterward: “Narrate to us Yunus from al-Ḥasan that he used to say that.”

وَرُوِّينَا مِنْ طَرِيقِ هُشَيْمٍ خَبَرًا غَيْرَ هَذَا، كَمَا أَوْرَدْنَاهُ، ثُمَّ قَالَ بِإِثْرِهِ: أرنا يُونُسُ عَنْ الْحَسَنِ أَنَّهُ كَانَ يَقُولُ ذَلِكَ.

L32832 And ʿUbaydah narrated to us from Ibrāhīm that he used to say so.

وَنَا عُبَيْدَةُ عَنْ إبْرَاهِيمَ أَنَّهُ كَانَ يَقُولُ ذَلِكَ.

L32833 Abu Muhammad said: I accused this report from Ibrāhīm of being unreliable—and it is narrated from Saʿīd ibn al-Musayyab, ʿUrwah ibn al-Zubayr, Mujāhid, and Saʿīd ibn Jubayr.

قَالَ أَبُو مُحَمَّدٍ: وَأَنَا اتَّهَمْت هَذِهِ الرِّوَايَةَ عَنْ إبْرَاهِيمَ - وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَمُجَاهِدٍ، وَسَعِيدِ بْنِ جُبَيْرٍ.

L32834 And it has been authentically reported from al-Zuhrī and Yaḥyā ibn Yaʿmar.

وَصَحَّ عَنْ الزُّهْرِيِّ، وَيَحْيَى بْنِ يَعْمُرَ.

L32835 This is the opinion of al-Shāfiʿī, Abū Sulaymān, the companions of both of

them, and one of the two opinions of Mālik.

L32836 Our discussion of this matter has already been presented, making its repetition unnecessary.

L32837–32838 **Divorce: a matter where the husband gave his wife the choice, and she chose to stay in the marriage or to be divorced.**

L32839 Issue 1933: If a man delegates to his wife the choice [of divorce], and she chooses separation, selects divorce, chooses her husband, or makes no choice - all these cases are null and void with no distinction between them. She is not divorced by this, nor is she forbidden to him, and no legal consequences arise from any of these. Even if he reiterates the offer [of choice], and she selects separation or divorce a thousand times, it remains without effect.

L32840 Similarly, if he grants her authority over herself or entrusts her affairs to her, there is no distinction between the two.

L32841 It is authentically reported from ʿUmar ibn al-Khaṭṭāb and Ibn Masʿūd regarding a man who entrusted his wife's affairs to her, and she divorced herself three times or divorced him three times, that this constitutes a single revocable divorce.

L32842 And it has also been authenticated from Zayd ibn Thābit, and from Mujāhid, and ʿUmar ibn ʿAbd al-ʿAzīz.

L32843 Another opinion—and it is that the divine decree is that which Allah has ordained. This has been authentically transmitted from ʿUthmān ibn ʿAffān.

L32844 Through the chain of transmission narrated by Saʿīd ibn Manṣūr via Ibn ʿUmar, and through another chain of transmission besides his own via ʿAbdullāh ibn al-Zubayr.

L32845 It has been narrated via a chain disconnected from them [Ali and Ibn Umar], and it is authentically reported from Abdullah ibn al-Harith ibn Abi Rabiʿah, Umar ibn ʿAbd al-ʿAzīz, and Saʿid ibn al-Musayyib.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا - وَأَحَدُ قَوْلَيْ مَالِكٍ.

وَقَدْ تَقَدَّمَ كَلَامُنَا فِي هَذِهِ الْمَسْأَلَةِ فَأَغْنَى عَنْ تَرْدَادِهِ

[الطَّلَاقُ] [مَسْأَلَةٌ خَيَّرَ امْرَأَتَهُ فَاخْتَارَتْ نَفْسَهَا أَوْ اخْتَارَتْ الطَّلَاقَ]

١٩٣٣ - مَسْأَلَةٌ وَمَنْ خَيَّرَ امْرَأَتَهُ فَاخْتَارَتْ نَفْسَهَا، أَوْ اخْتَارَتْ الطَّلَاقَ، أَوْ اخْتَارَتْ زَوْجَهَا، أَوْ لَمْ تَخْتَرْ شَيْئًا، فَكُلُّ ذَلِكَ لَا شَيْءَ، وَكُلُّ ذَلِكَ سَوَاءٌ، وَلَا تَطْلُقُ بِذَلِكَ، وَلَا تُحَرَّمُ عَلَيْهِ، وَلَا لِشَيْءٍ مِنْ ذَلِكَ حُكْمٌ، وَلَوْ كَرَّرَ التَّخْيِيرَ وَكَرَّرَتْ هِيَ اخْتِيَارَ نَفْسِهَا، أَوْ اخْتِيَارَ الطَّلَاقِ أَلْفَ مَرَّةٍ.

وَكَذَلِكَ إنْ مَلَّكَهَا أَمْرَ نَفْسِهَا، أَوْ جَعَلَ أَمْرَهَا بِيَدِهَا وَلَا فَرْقَ.

فَصَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ مَسْعُودٍ فِيمَنْ جَعَلَ أَمْرَ امْرَأَتِهِ بِيَدِهَا فَطَلَّقَتْ نَفْسَهَا ثَلَاثًا، أَوْ طَلَّقَتْهُ ثَلَاثًا: أَنَّهَا طَلْقَةٌ وَاحِدَةٌ رَجْعِيَّةٌ.

وَصَحَّ أَيْضًا - عَنْ زَيْدِ بْنِ ثَابِتٍ، وَعَنْ مُجَاهِدٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

وَقَوْلٌ آخَرُ - وَهُوَ أَنَّ الْقَضَاءَ مَا قَضَتْ: صَحَّ ذَلِكَ عَنْ عُثْمَانَ بْنِ عَفَّانَ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ ابْنِ عُمَرَ - وَمِنْ طَرِيقٍ غَيْرِهِ عَنْ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ.

وَرُوِيَ عَنْ عَلِيٍّ، وَابْنِ عُمَرَ مُنْقَطِعًا عَنْهُمَا - وَصَحَّ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ بْنِ أَبِي رَبِيعَةَ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَسَعِيدِ بْنِ الْمُسَيِّبِ.

L32846 It has been authentically narrated from Umm Salamah and ʿĀ’ishah—the two Mothers of the Believers—Qarībah, her sister, and ʿAbd al-Raḥmān ibn Abī Bakr al-Ṣiddīq: If the right to decide [her divorce] is granted to her and she returns it to her husband, she remains his wife as she was.

وَصَحَّ عَنْ أُمِّ سَلَمَةَ، وَعَائِشَةَ: أُمَّيِ الْمُؤْمِنِينَ، وَقَرِيبَةَ - أُخْتِ أُمِّ سَلَمَةَ - وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ: إِنْ جُعِلَ أَمْرُهَا بِيَدِهَا فَرَدَّتْهُ إِلَى زَوْجِهَا فَهِيَ امْرَأَتُهُ كَمَا كَانَتْ.

L32847–32849 A third opinion: If she chooses separation or herself, it constitutes a single irrevocable divorce. But if she returns it to her husband, the divorce is revoked. She chose it, so it is a revocable divorce. It is authentically reported from Ali, Zayd ibn Thabit, men from the Companions, and al-Hasan al-Basri.

وَقَوْلٌ ثَالِثٌ - إِنْ اخْتَارَتْ الْفِرَاقَ أَوْ نَفْسَهَا: فَهِيَ وَاحِدَةٌ بَائِنَةٌ، وَإِنْ رَدَّتْهُ إِلَى زَوْجِهَا فَاخْتَارَتْهُ، فَهِيَ طَلْقَةٌ رَجْعِيَّةٌ - صَحَّ عَنْ عَلِيٍّ، وَزَيْدِ بْنِ ثَابِتٍ، وَرِجَالٍ مِنْ الصَّحَابَةِ، وَعَنْ الْحَسَنِ الْبَصْرِيِّ.

L32850 The fourth opinion is that the ruling corresponds to what she pronounced, and the husband may deny the ruling. He then swears, and the judgment is rendered in his favor based on his oath affirming his intent, and it becomes a revocable (rajʿiyyah) divorce. This is reported—though unauthenticated—from ʿUmar ibn al-Khaṭṭāb, and authenticated from Ibn ʿUmar, authenticated from al-Qāsim ibn Muḥammad, and authenticated from Marwān.

وَقَوْلٌ رَابِعٌ - أَنَّ الْقَضَاءَ مَا قَضَتْ، وَلَهُ أَنْ يُنَاكِرَهَا، فَيَحْلِفَ وَيُقْضَى لَهُ بِمَا حَلَفَ أَنَّهُ نَوَاهُ، وَتَكُونُ طَلْقَةً رَجْعِيَّةً: رُوِيَ عَنْ عُمَرَ بْنِ الْخَطَّابِ - وَلَمْ يَصِحَّ - وَصَحَّ عَنْ ابْنِ عُمَرَ، وَصَحَّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَمَرْوَانَ.

L32851 A fifth opinion—which holds that it is three in all circumstances—is authentically reported from al-Ḥasan and from men among the Companions, may Allah be pleased with them, and there is a musnad narration concerning it.

وَقَوْلٌ خَامِسٌ - وَهُوَ ثَلَاثٌ بِكُلِّ حَالٍ - صَحَّ عَنْ الْحَسَنِ، وَعَنْ رِجَالٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَفِيهِ أَثَرٌ مُسْنَدٌ.

L32852 A sixth opinion: Whoever places the authority over his wife into the hands of another and then divorces her himself, such a divorce is invalid. This is narrated from Ibn Mas’ud.

وَقَوْلٌ سَادِسٌ - مَنْ جَعَلَ أَمْرَ امْرَأَتِهِ بِيَدِ آخَرَ فَطَلَّقَهَا فَلَيْسَ بِشَيْءٍ، رُوِيَ عَنْ ابْنِ مَسْعُودٍ.

L32853 If a man says to his wife, “Your affair is in your hands,” and declares, “You are forbidden to me, you are forbidden to me,” it constitutes one irrevocable divorce. We have narrated this through the chain of Saʿīd ibn Manṣūr from al-Qāsim ibn Muḥammad, though it is not authentically attributed to him.

وَقَوْلٌ سَابِعٌ - مَنْ قَالَ لِامْرَأَتِهِ: أَمْرُكِ بِيَدِكِ؟ فَقَالَ: قَدْ حَرُمْتِ عَلَيْكِ، قَدْ حَرُمْتِ عَلَيْكِ: فَهِيَ وَاحِدَةٌ - رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ - وَلَيْسَ يَصِحُّ عَنْهُ.

L32854 We have been narrated via the chain of Ibn Abī Laylā from al-Shaʿbī: “Your affair lies in your hand, and choose for yourself” – being equivalent in the statements of Zayd, Ibn Masʿūd, and ʿAlī. It has been authentically established from al-Shaʿbī that this is his opinion, and from al-Nakhaʿī.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي لَيْلَى عَنْ الشَّعْبِيِّ: أَنَّ أَمْرَكِ بِيَدِكِ، وَاخْتَارِي نَفْسَكِ سَوَاءٌ، فِي قَوْلِ زَيْدٍ، وَابْنِ مَسْعُودٍ، وَعَلِيٍّ - وَصَحَّ عَنْ الشَّعْبِيِّ: أَنَّهُ قَوْلُهُ، وَعَنْ النَّخَعِيِّ.

وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ أَبَا حَنِيفَةَ قَالَ: أَمْرُك بِيَدِك، وَالتَّمْلِيكُ، وَالتَّخْيِيرُ سَوَاءٌ، فَإِذَا مَلَّكَهَا أَمْرَهَا، أَوْ قَالَ: اخْتَارِي، أَوْ قَالَ: أَمْرُك بِيَدِك، ثُمَّ قَالَ: لَمْ أَنْوِ طَلَاقًا، فَإِنْ كَانَ فِي غَضَبٍ فِيهِ ذِكْرُ طَلَاقٍ، أَوْ لَيْسَ فِيهِ ذِكْرُ طَلَاقٍ: لَمْ يُصَدَّقْ، وَإِنْ كَانَ فِي رِضًا لَمْ يَلْزَمْهُ شَيْءٌ مِمَّا تَقْضِي بِهِ هِيَ، فَإِنْ كَانَ فِي غَضَبٍ فَرَدَّتْ إلَيْهِ أَمْرَهَا فَلَا شَيْءَ وَهِيَ امْرَأَتُهُ - فَلَوْ كَانَ فِي غَضَبٍ فَطَلَّقَتْ نَفْسَهَا لَمْ يُلْتَفَتْ لِمَا قَالَتْ، لَكِنْ هُوَ يُسْأَلُ عَنْ نِيَّتِهِ؟ فَإِنْ قَالَ: نَوَيْت الثَّلَاثَ، فَهِيَ طَالِقٌ ثَلَاثًا، إلَّا فِي اخْتَارِي، فَإِنَّهَا لَا تَكُونُ إلَّا وَاحِدَةً بَائِنَةً - سَوَاءٌ نَوَى ذَلِكَ أَوْ أَقَلَّ - أَوْ نَوَى طَلَاقًا رَجْعِيًّا أَوْ لَمْ يَنْوِهِ - وَإِنْ قَالَ: نَوَيْت اثْنَتَيْنِ، أَوْ قَالَ: نَوَيْت الطَّلَاقَ بِلَا عَدَدٍ، أَوْ قَالَ: نَوَيْت وَاحِدَةً بَائِنَةً، أَوْ قَالَ: نَوَيْت وَاحِدَةً رَجْعِيَّةً، أَوْ قَالَ: لَمْ أَنْوِ طَلَاقًا أَصْلًا فَكُلُّ هَذَا سَوَاءٌ، وَلَا يَلْزَمُهُ فِي كُلِّ ذَلِكَ إلَّا وَاحِدَةٌ بَائِنَةٌ وَلَا بُدَّ؟ فَاعْلَمُوا أَنَّ كُلَّ مَا مَوَّهَ بِهِ عَنْ الصَّحَابَةِ وَالتَّابِعِينَ - رَضِيَ اللَّهُ عَنْهُمْ - فَبَاطِلٌ، وَأَنَّهُ فِي قَوْلِهِ هَذَا لَمْ يُوَافِقْ أَحَدًا مِنْهُمْ وَهُوَ قَوْلٌ مَا سُبِقَ إلَيْهِ، وَلَمْ يُعْرَفْ عَنْ أَحَدٍ قَبْلَهُ، وَلَا دَلِيلَ لَهُ عَلَى شَيْءٍ مِنْهُ، لَا مِنْ نَصٍّ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ قَوْلٍ يُعْقَلُ.

L32855–32857 As for the later scholars, Abū Ḥanīfah stated: “The decision is yours,” and delegation of authority, granting choice, and saying “your matter is in your hand” are equivalent. If he delegates authority to her, says “choose,” or says “the decision is yours,” then claims “I did not intend divorce,” he is not believed—whether this occurred in anger with mention of divorce or without. If it occurred in mutual agreement, he is not bound by any decision she makes. If it occurred in anger and she returns the matter to him, nothing is required and she remains his wife. If during anger she pronounces divorce upon herself, her statement is disregarded, but he is questioned about his intention. If he says “I intended three divorces,” she is irrevocably divorced thrice—except in cases of “choose,” where it only constitutes one irrevocable divorce regardless of whether he intended three, fewer, a revocable divorce, or did not intend revocability. If he says “I intended two,” “I intended divorce without specifying a number,” “I intended one irrevocable divorce,” “I intended one revocable divorce,” or “I did not intend divorce at all”—all these scenarios are treated equally, requiring only one irrevocable divorce without exception. Know that all specious arguments raised against the Companions and Successors—may Allah be pleased with them—are invalid, and that... In this statement of his, none of them agreed with his opinion, and it is a novel opinion unprecedented in prior discourse, nor is it known from anyone before him. Nor is there any evidence for him regarding any part of it—neither from a textual source, nor analogical reasoning, nor a rationally grounded opinion.

وَأَمَّا مَالِكٌ فَقَالَ: أَمْرُك بِيَدِك وَالتَّمْلِيكُ سَوَاءٌ.

L32858 As for Mālik, he said: “The discretion is yours, and transferring ownership is the same.”

قَالَ: وَمَنْ قَالَ: لِامْرَأَتِهِ أَمْرُكِ بِيَدِكِ فَقَالَتْ: قَدْ قَبِلْت، فَقَدْ طَلُقَتْ، إلَّا أَنْ تَقُولَ هِيَ: لَمْ أُرِدْ طَلَاقًا - قَالَ: فَلَوْ جَعَلَ أَمْرَ امْرَأَتِهِ بِيَدِ امْرَأَةٍ لَهُ أُخْرَى فَطَلَّقَتْهَا ثَلَاثًا، فَهِيَ طَالِقٌ ثَلَاثًا، وَلَهُ أَنْ يُنَاكِرَهَا فَيَقُولَ: لَمْ أُرِدْ إلَّا وَاحِدَةً، أَوْ يَقُولَ: لَمْ أُرِدْ إلَّا اثْنَتَيْنِ، فَالْقَوْلُ قَوْلُهُ مَعَ يَمِينِهِ، وَتَكُونُ وَاحِدَةً بَائِنَةً.

L32859 He said: And whoever says to his wife, “Your matter is in your hand,” and she responds, “I have accepted,” then she is divorced, unless she says, “I did not intend a divorce.” He said: If he delegates the authority to divorce his wife to another of his wives, and she divorces her three times, then she is divorced three times. He may contest it by saying, “I only intended one,” or “I only intended two.” His claim is accepted provided he swears an oath, and it becomes a single irrevocable divorce.

L32860 If a man says to his wife, “I have entrusted you with authority over yourself,

قَالَ: فَلَوْ قَالَ لامْرَأَته: قَدْ وَلَّيْتُكِ أَمْرَكِ إِنْ شَاءَ اللَّهُ؟ فَقَالَتْ هِيَ: قَدْ فَارَقْتُك إِنْ شَاءَ اللَّهُ، فَهُوَ طَلَاقٌ - فَلَوْ قَالَ لَهَا: مَا كُنْت إِلَّا لَاعِبًا، أَوْ قَالَتْ هِيَ: مَا كُنْت إِلَّا لَاعِبَةً مَا أَرَدْنَا طَلَاقًا، فَالْقَوْلُ قَوْلُ الرَّجُلِ مَعَ يَمِينِهِ.

if Allah wills," and she herself responds, "I have divorced you, if Allah wills," this counts as a valid divorce. If he later says, "I was only jesting," or she says, "I was only jesting; I did not intend divorce," the presumption is in favor of the man's statement, provided he swears an oath.

قَالَ: فَلَوْ قَالَ لَهَا: أَمْرُك بِيَدِك فَأَخَذَتْ شُقَّةً وَمَضَتْ إلَى أَهْلِهَا وَخَرَجَ هُوَ إلَى سَفَرٍ وَلَمْ يَكُنْ غَيْرَ هَذَا، قَالُوا: قَدْ طَلُقَتْ.

L32861 He said: If he were to say to her, "The matter is in your hands," and she took her waiting period provisions and went to her family, while he departed on a journey with nothing else occurring, they said: "She is divorced."

فَلَوْ قَالَ: أَمْرُك بِيَدِك، أَوْ مَلَّكَهَا؟ فَطَلَّقَتْ نَفْسَهَا وَاحِدَةً، فَقَالَ هُوَ: لَمْ أَنْوِ إلَّا ثَلَاثًا، لَمْ يَلْزَمْهُ إلَّا وَاحِدَةٌ؟

L32862 If he were to say: "The matter is in your hands," or "I have made you the owner of it," and she then divorces herself once, while he claims: "I only intended three divorces," would only one divorce count against him?

فَاعْلَمُوا أَنَّ هَذَا الْقَوْلَ أَيْضًا غَيْرُ مُوَافِقٍ لِقَوْلِ أَحَدٍ مِنْ الصَّحَابَةِ، وَلَا مِنْ التَّابِعِينَ إلَّا رِوَايَةً عَنْ عُمَرَ لَمْ تَصِحَّ: رُوِّينَاهَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ رَاشِدٍ عَنْ عَبْدِ الْكَرِيمِ أَبِي أُمَيَّةَ أَنَّ رَجُلًا جَعَلَ أَمْرَ امْرَأَتِهِ بِيَدِهَا فِي زَمَانِ عُمَرَ بْنِ الْخَطَّابِ فَطَلَّقَتْ نَفْسَهَا ثَلَاثًا، فَقَالَ هُوَ: وَاَللَّهِ مَا جَعَلْت أَمْرَهَا إلَّا وَاحِدَةً؟ فَتَرَافَعَا إلَى عُمَرَ، فَاسْتَحْلَفَهُ عُمَرُ " بِاَللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ مَا جَعَلْت أَمْرَهَا بِيَدِهَا إلَّا وَاحِدَةً فَحَلَّفَ فَرَدَّهَا عُمَرُ عَلَيْهِ.

L32863 Know that this opinion also does not correspond with the view of any Companion or Successor except for an unverified narration attributed to ʿUmar. We have transmitted it through the chain of ʿAbd al-Razzāq from Muḥammad ibn Rāshid from ʿAbd al-Karīm Abū Umayyah: A man placed the matter of his wife in her hand during the era of ʿUmar ibn al-Khaṭṭāb, whereupon she divorced herself thrice. The husband said: "By Allah, I only placed her matter once!" They took their dispute to ʿUmar, who made him swear: "By Allah, besides whom there is no deity, I did not place her matter in her hand except once." When he swore, ʿUmar returned her to him.

مُحَمَّدُ بْنُ رَاشِدٍ مُتَكَلَّمٌ فِيهِ، وَعَبْدُ الْكَرِيمِ أَبُو أُمَيَّةَ غَيْرُ ثِقَةٍ وَلَمْ يُدْرِكْ عُمَرَ - وَالصَّحِيحُ عَنْ عُمَرَ خِلَافُ ذَلِكَ كَمَا ذَكَرْنَا مِنْ أَقْوَالِهِ وَالْأَسَانِيدُ فِي ذَلِكَ قَدْ ذَكَرْنَاهَا فِي " كِتَابِ الْإِيصَالِ " وَإِنَّمَا قَصَدْنَا هَاهُنَا الِاخْتِصَارَ - وَأَمَّا سَائِرُ تَقَاسِيمِهِ فَلَا سَلَفَ لَهُ فِيهَا.

L32864 Muhammad ibn Rashid is a narrator of disputed reliability, and Abd al-Karim Abu Umayyah is untrustworthy and did not live during Umar's era. (The ṣaḥīḥ narration from Umar contradicts this, as we have mentioned his statements, and we have already cited the chains of transmission for those in *Kitāb al-Iṣāl*; here, however, we aimed for brevity.) As for the rest of his categorizations, there is no precedent from the Salaf for them.

وَأَيْضًا - فَإِنَّ هَذِهِ الرِّوَايَةَ عَنْ عُمَرَ خَالَفَهُ فِيهَا، لِأَنَّ عُمَرَ جَعَلَهَا رَجْعِيَّةً، وَجَعَلَهَا مَالِكٌ بَائِنَةً، فَخَرَجَ عَنْ قَوْلِ جَمِيعِهِمْ.

L32865–32866 Moreover, in this narration from 'Umar, Malik contradicted him, for 'Umar deemed it revocable while Malik deemed it irrevocable. Thus, the ruling diverged from the opinion of all scholars.

L32867 Similarly, Marwān deemed it revocable, as did al-Qāsim ibn Muḥammad.

وَكَذَلِكَ أَيْضًا جَعَلَهَا مَرْوَانُ، وَالْقَاسِمُ بْنُ مُحَمَّدٍ رَجْعِيَّةً.

L32868 وَقَدْ رُوِّينَا ذَلِكَ أَيْضًا - مِنْ طَرِيقٍ ثَابِتَةٍ عَنْ ابْنِ عُمَرَ - يَعْنِي الْمُنَاكَرَةَ - مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ، فَصَحَّ أَنَّهُ رَأْيٌ مُجَرَّدٌ لَا دَلِيلَ عَلَيْهِ، لَا مِنْ نَصٍّ، وَلَا مِنْ قَوْلٍ مُتَقَدِّمٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ يُعْقَلُ.

L32869 وَقَالَ سُفْيَانُ الثَّوْرِيُّ، وَالشَّافِعِيُّ: هُوَ مَا نَوَى، فَإِنْ قَالَ: لَمْ أَنْوِ طَلَاقًا فَهُوَ كَمَا قَالَ - وَكَذَلِكَ إِنْ رَدَّتْ الْأَمْرَ إلَيْهِ؟ فَإِنْ طَلَّقَتْ نَفْسَهَا، أَوْ اخْتَارَتْ نَفْسَهَا فَأَيَّ شَيْءٍ قَالَتْ لَمْ يَلْزَمْهُ إلَّا طَلْقَةٌ وَاحِدَةٌ رَجْعِيَّةٌ فَقَطْ - وَهَكَذَا قَالَا فِي التَّخْيِيرِ، وَالتَّمْلِيكِ.

L32870 قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ هَذِهِ الْأَقَاوِيلِ آرَاءٌ لَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا - وَقَدْ تَقَصَّيْنَا مَنْ رُوِيَ عَنْهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّهُ يَقَعُ بِهِ طَلَاقٌ، فَلَمْ يَكُونُوا بَيْنَ مَنْ صَحَّ عَنْهُ وَمَنْ لَمْ يَصِحَّ عَنْهُ إلَّا سَبْعَةً، ثُمَّ قَدْ اخْتَلَفُوا كَمَا تَرَى، وَلَيْسَ قَوْلُ بَعْضِهِمْ أَوْلَى مِنْ قَوْلِ بَعْضٍ، وَلَا أَثَرَ فِي شَيْءٍ مِنْهَا إلَّا أَثَرًا -: رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أرنا عَلِيُّ بْنُ نَصْرٍ الْجَهْضَمِيُّ نا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ زَيْدٍ قَالَ: قُلْت لِأَيُّوبَ السِّخْتِيَانِيِّ: هَلْ عَلِمْت أَحَدًا قَالَ فِي أَمْرِك بِيَدِك أَنَّهَا ثَلَاثٌ غَيْرَ الْحَسَنِ؟ قَالَ: لَا، اللَّهُمَّ غُفْرًا إلَّا مَا حَدَّثَنِي قَتَادَةُ عَنْ كَثِيرٍ - مَوْلَى ابْنِ سَمُرَةَ - عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «قَالَ: ثَلَاثٌ» ، قَالَ أَيُّوبُ: فَلَقِيتُ كَثِيرًا - مَوْلَى ابْنِ سَمُرَةَ - فَسَأَلْتُهُ، فَلَمْ يَعْرِفْهُ، فَرَجَعْت إلَى قَتَادَةَ فَأَخْبَرْتُهُ، فَقَالَ: نَسِيَ.

L32871–32873 Abu Muhammad said: All these statements are opinions with no evidence to validate any of them. We have exhaustively traced the Companions—may Allah be pleased with them—from whom it was reported that divorce is effected by such statements, and they numbered only seven, whether their transmissions were authenticated or not. Then, as you see, they disagreed, and the view of some holds no greater authority than that of others. There is no trace supporting any of them except a single trace—we narrated it through the path of Ahmad ibn Shuʿayb: he narrated to us ʿAli ibn Nasr al-Jahdhamī, who narrated to us Sulaymān ibn Ḥarb, who narrated to us Ḥammād ibn Zayd. He said: I asked Ayyūb al-Sakhtiyānī, "Do you know anyone besides al-Ḥasan who stated that 'the matter is in your hands' refers to three divorces?" He replied, "No. O Allah, pardon! Except what Qatādah narrated to me from Kathīr—the freed slave of Ibn Samurah—from Abū Salamah, from Abū Hurayrah, from the Prophet—peace and blessings be upon him—who said: 'Three.'" Ayyūb said: I met Kathīr, the freed slave of Ibn Samurah, and questioned him about it, but he did not recognize the narration. I returned to Qatādah and informed him, whereupon he said, "He forgot it."

L32868 We have also been narrated that—through a reliable chain from Ibn ʿUmar (referring to the rejected narration)—and via the chain of Saʿīd ibn Manṣūr. Thus, it was confirmed to be a baseless opinion unsupported by any evidence—whether from an explicit text, an earlier authoritative statement, analogical reasoning, or a rationally defensible opinion.

L32869 Sufyan al-Thawri and al-Shafiʿi said: It is what he intended. If he says, "I did not intend a divorce," then it is as he stated. Similarly, if she returns the matter to him: if she divorces herself [via ṭalāq] or chooses to separate [via khulʿ], no matter what she declares, he is only bound by a single revocable divorce. And thus they both ruled regarding the right of choice in divorce and the granting of divorce authority.

قَالَ أَبُو مُحَمَّد: كَثِيرٌ - مَوْلَى ابْنِ سَمُرَةَ مَجْهُولٌ - وَلَوْ كَانَ مَشْهُورًا بِالثِّقَةِ وَالْحِفْظِ لَمَا خَالَفْنَا هَذَا الْخَبَرَ، وَقَدْ أَوْقَفَهُ بَعْضُ رُوَاتِهِ عَلَى أَبِي هُرَيْرَةَ. وَالَّذِي نَقُولُ بِهِ هُوَ قَوْلُ أَبِي سُلَيْمَانَ وَأَصْحَابِنَا، فَهُوَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا أَبُو بَكْرِ بْنُ عَيَّاشٍ نا حَبِيبُ بْنُ أَبِي ثَابِتٍ " أَنَّ رَجُلًا قَالَ لِامْرَأَةٍ لَهُ: إِنْ أَدْخَلْت هَذَا الْعَدْلَ الْبَيْتَ فَأَمْرُ صَاحِبَتِك بِيَدِك، فَأَدْخَلَتْهُ، ثُمَّ قَالَتْ: هِيَ طَالِقٌ، فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ الْخَطَّابِ فَأَبَانَهَا مِنْهُ، فَمَرُّوا بِعَبْدِ اللَّهِ بْنِ مَسْعُودٍ فَأَخْبَرُوهُ؟ فَذَهَبَ بِهِمْ إلَى عُمَرَ فَقَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ إنَّ اللَّهَ تَعَالَى جَعَلَ الرِّجَالَ قَوَّامِينَ عَلَى النِّسَاءِ، وَلَمْ يَجْعَلْ النِّسَاءَ قَوَّامَاتٍ عَلَى الرِّجَالِ؟ فَقَالَ عُمَرُ: فَمَا تَرَى؟ قَالَ: أَرَاهَا امْرَأَتَهُ، قَالَ عُمَرُ: وَأَنَا أَرَى ذَلِكَ، فَجَعَلَهَا وَاحِدَةً ".

Had he been renowned for reliability and memorization, we would not have opposed this report. Some of its narrators suspended the chain at Abu Hurayrah. Our position is that of Abu Sulayman and our companions—namely, what we narrated through the chain of Abu Ubayd: from Abu Bakr ibn Ayyash, from Habib ibn Abi Thabit: "A man said to his wife, 'If you bring this measuring vessel into the house, then the matter of your co-wife is in your hands.' She brought it in, then declared, 'She is hereby divorced.' The case was brought before Umar ibn al-Khattab, and he divorced her from him. They passed by Abdullah ibn Masud and informed him, whereupon he took them to Umar and said, 'O Leader of the Believers, Allah the Exalted has made men guardians over women, and has not made women...' "Female guardians over men?" So 'Umar asked, "What is your opinion?" He replied, "I consider it to be his wife." 'Umar said, "And I agree with that," so he limited it to one.

L32874 قَالَ أَبُو مُحَمَّد: قَدْ يُمْكِنُ أَنْ يَكُونَ عُمَرُ أَمْضَى حُكْمَهُ وَإِلَّا فَقَدْ رَجَعَ إلَى قَوْلِ ابْنِ مَسْعُودٍ فِي أَنْ لَا يَنْفُذَ طَلَاقُ مَنْ جَعَلَ الزَّوْجُ أَمْرَ امْرَأَتِهِ بِيَدِهِ.

Abu Muhammad said: It is possible that Umar upheld his ruling; otherwise, he reverted to Ibn Mas'ud's opinion that a divorce initiated by a wife to whom the husband delegated authority over herself is not valid.

L32875 وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ، قُلْت لِعَطَاءٍ: رَجُلٌ قَالَ لِامْرَأَتِهِ: أَمْرُك بِيَدِك بَعْدَ يَوْمٍ أَوْ يَوْمَيْنِ، قَالَ: لَيْسَ هَذَا بِشَيْءٍ قُلْت: فَأَرْسَلَ إلَيْهَا رَجُلًا أَنَّ أَمْرَهَا بِيَدِهَا يَوْمًا أَوْ سَاعَةً؟ قَالَ: مَا أَدْرِي مَا هَذَا، مَا أَظُنُّ هَذَا شَيْئًا؟ قُلْت لِعَطَاءٍ: أَمَلَّكَتْ عَائِشَةُ حَفْصَةَ حِينَ مَلَّكَهَا الْمُنْذِرُ بْنُ الزُّبَيْرِ أَمْرَهَا؟ فَقَالَ عَطَاءٌ: لَا، إنَّمَا عَرَضَتْ عَلَيْهِمْ أَيُطَلِّقُهَا أَمْ لَا؟ وَلَمْ يُمَلِّكْهَا أَمْرَهَا.

From the narration of Abd al-Razzaq via Ibn Jurayj: I said to Ata: "A man told his wife: 'Your matter is in your hands after one or two days.'" He replied: "This holds no validity." I asked: "If he sent a man to inform her that her matter is in her hands for a day or an hour?" He said: "I do not know what this is. I do not think this is valid." I asked Ata: "Did Aisha grant Hafsa authority when al-Mundhir ibn al-Zubayr placed her matter in her hands?" Ata answered: "No. She merely presented them with the choice to divorce her or not. He did not grant her authority over her matter."

L32876 وَأَمَّا التَّمْلِيكُ - فَقَدْ صَحَّ عَنْ ابْنِ عُمَرَ أَنَّهُ قَالَ: الْقَضَاءُ مَا قَضَتْ، وَلَهُ أَنْ يُنَاكِرَهَا فَإِنْ نَاكَرَهَا حَلَفَ، وَلَهُ مَا نَوَى.

As for conferring ownership: it has been authentically reported from Ibn 'Umar that he said, "The judgment is what has been decided. He may deny it, and if he denies it, he must swear an oath. He retains what he intended."

L32877 وَرُوِيَ عَنْهُ قَوْلٌ آخَرُ - يَصِحُّ عَنْهُ: الْقَضَاءُ مَا قَضَتْ، وَلَا قَوْلَ لَهُ - وَهُوَ قَوْلُ عَطَاءٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَالزُّهْرِيِّ.

Another statement—authentically reported from him—is: "The judgment is what she has judged, and he has no authority." This is the opinion of 'Aṭā', 'Umar ibn 'Abd al-'Azīz, and al-Zuhrī.

وَرُوِيَ عَنْهُ - قَوْلٌ ثَالِثٌ: أَنَّ التَّمْلِيكَ نَفْسَهُ طَلَاقٌ -: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ: أَنَّ ابْنَ عُمَرَ قَالَ: مَنْ مَلَّكَ امْرَأَتَهُ طَلُقَتْ، وَعَصَى رَبَّهُ - وَهُوَ قَوْلُ الْحَسَنِ.

L32878 A third opinion is reported from him—that the very act of transferring ownership [of the divorce right] itself constitutes a divorce. We have transmitted it through the chain of ʿAbd al-Razzāq, from Maʿmar, from Qatādah: that Ibn ʿUmar said, "If a man grants his wife the right [to divorce], she becomes divorced, and he thereby disobeys his Lord." This is the opinion of al-Ḥasan.

وَقَوْلٌ رَابِعٌ - صَحَّ عَنْ زَيْدِ بْنِ ثَابِتٍ: إنْ مَلَّكَهَا نَفْسَهَا فَطَلَّقَتْ نَفْسَهَا ثَلَاثًا، فَهِيَ وَاحِدَةٌ رَجْعِيَّةٌ.

L32879 The fourth opinion—authentically reported from Zayd ibn Thabit—states: If he grants her authority over herself and she divorces herself three times, it counts as a single revocable divorce.

وَقَدْ ذَكَرْنَا قَوْلَ سُفْيَانَ، وَالشَّافِعِيِّ، وَأَبِي حَنِيفَةَ فِي التَّمْلِيكِ.

L32880 We have mentioned the opinions of Sufyan, al-Shafi'i, and Abu Hanifah concerning the transfer of ownership.

وَلِمَالِكٍ فِي التَّمْلِيكِ أَقْوَالٌ لَمْ نَذْكُرْهَا، نَذْكُرُهَا - إنْ شَاءَ اللَّهُ تَعَالَى - وَهِيَ أَنَّهُ قَالَ: مَنْ مَلَّكَ امْرَأَتَهُ أَمْرَهَا فَسَوَاءٌ كَانَتْ بَالِغًا، أَوْ غَيْرَ بَالِغٍ، إذَا كَانَ مِثْلُهَا يَفْهَمُ مَا يُجْعَلُ إلَيْهَا - فَهِيَ طَالِقٌ ثَلَاثًا، وَلَهُ أَنْ يُنَاكِرَهَا، فَإِنْ رَدَّتْ أَمْرَهَا إلَيْهِ فَلَا حُكْمَ لَهَا، فَإِنْ طَلَّقَتْ نَفْسَهَا أَكْثَرَ مِنْ وَاحِدَةٍ؟ فَقَالَ: لَمْ أُمَلِّكْ إلَّا وَاحِدَةً أَوْ يَقُولُ: لَمْ أُرِدْ الطَّلَاقَ، فَهَذِهِ هِيَ الْمُنَاكَرَةُ، وَيَحْلِفُ هُوَ، فَتَكُونُ طَلْقَةً وَاحِدَةً بَائِنَةً.

L32881 Malik has statements regarding the delegation of divorce authority which we have not mentioned. We shall mention them, God willing. Among them is his statement: If a man delegates his wife's authority over herself, it is the same whether she has reached puberty or not, provided that someone of her capacity would comprehend what is entrusted to her, then she is divorced by three pronouncements. He may contest her action. If she relinquishes the authority back to him, her decision is invalidated. If she pronounces divorce more than once, what then? He [the husband] said: "I only delegated one [divorce]," or "I did not intend the divorce." This is the denial. He must then swear an oath, resulting in a single irrevocable divorce (bā'in).

قَالَ: فَلَوْ قَالَ: لَمْ أَنْوِ عَدَدًا مِنْ الطَّلَاقِ، فَهِيَ طَالِقٌ ثَلَاثًا.

L32882 He said, "If he says, 'I did not intend a specific number of divorces,' she is irrevocably divorced thrice."

قَالَ: فَلَوْ قَالَ لِامْرَأَتِهِ: قَدْ مَلَّكْتُكِ أَمْرَكِ، فَلَيْسَ لَهُ أَنْ يَرْجِعَ عَنْ ذَلِكَ، وَلَيْسَ لَهُ أَنْ يُوقِفَهَا هُوَ لِتَقْضِيَ، أَوْ لِتَتْرُكَ، إنَّمَا الْقَضَاءُ إلَيْهَا حَتَّى يُوقِفَهَا السُّلْطَانُ فَتَقْضِيَ أَوْ تَتْرُكَ، فَيَبْطُلَ مَا جُعِلَ إلَيْهَا إنْ تَرَكَتْ.

L32883–32884 He said: If a man says to his wife, "I have entrusted you with authority over your matters," he cannot retract this, nor may he restrict her [authority] to resolve or relinquish. The decision-making rests entirely with her until the governing authority intervenes to restrict her [right], obliging her to either resolve the matter or refrain, thereby nullifying what was granted to her if she refrains.

قَالَ أَبُو مُحَمَّدٍ: لَمْ يُوَافِقْ فِي هَذَا إلَّا قَوْلًا مِنْ أَقْوَالِ ثَلَاثَةٍ لِابْنِ عُمَرَ فِي الْمُنَاكَرَةِ خَاصَّةً.

L32885 Abu Muhammad said: In this matter, he concurred only with one of three opinions of Ibn Umar, exclusively pertaining to the denial.

L32886 All his statements on this matter have no precedent among earlier schol-

ars, and Zayd opposed him - a position confirmed as sound through Zayd's transmission.

وَسَائِرُ أَقْوَالِهِ فِي ذَلِكَ لَا سَلَفَ لَهُ فِيهَا، وَقَدْ خَالَفَهُ زَيْدٌ صَحَّ ذَلِكَ عَنْهُ.

L32887 There is no obligation of divorce in granting the right (tamlik) reported from any of the Companions—may Allah be pleased with them—except from Ibn Umar and Zaid alone. Some people mentioned it as being from Fadalah ibn Ubayd. The position we adopt is that which we have narrated through the chain of Abu Ubayd: Abd al-Ghaffar ibn Dawud reported to us from Ibn Lahi'ah from Yazid ibn Abi Habib that Rumaythah al-Firasiyyah was married to Muhammad ibn Abd al-Rahman ibn Abi Bakr al-Siddiq, and he granted her authority over herself. She said: "Are you divorced three times?" Uthman ibn Affan said: "She erred. She has no right to divorce. Know that! A woman does not effect divorce."

وَلَيْسَ فِي التَّمْلِيكِ إِيجَابُ طَلَاقٍ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إلَّا عَنْ ابْنِ عُمَرَ، وَزَيْدٍ فَقَطْ، وَذَكَرَهُ بَعْضُ النَّاسِ عَنْ فَضَالَةَ بْنِ عُبَيْدٍ، وَالَّذِي نَقُولُ بِهِ هُوَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي عُبَيْدٍ نَا عَبْدُ الْغَفَّارِ بْنُ دَاوُد عَنْ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ أَنَّ رُمَيْثَةَ الْفِرَاسِيَّةَ كَانَتْ تَحْتَ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ فَمَلَّكَهَا أَمْرَهَا، فَقَالَتْ: أَنْتَ طَالِقٌ ثَلَاثَ مَرَّاتٍ؟ فَقَالَ عُثْمَانُ بْنُ عَفَّانَ: أَخْطَأَتْ، لَا طَلَاقَ لَهَا، أَلَا إنَّ الْمَرْأَةَ لَا تُطَلِّقُ.

L32888 From the narration of Abd al-Razzaq, who narrated to us: Ibn Jurayj informed me that Abu al-Zubayr reported: Mujahid informed him that a man came to Ibn Abbas and said, "I delegated the right of divorce to my wife, and she divorced me three times." Ibn Abbas replied, "May Allah invalidate her effort against you. Divorce is your right over her, not hers over you." This narration is of the highest authenticity from Ibn Abbas.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ: أَنَّ مُجَاهِدًا أَخْبَرَهُ " أَنَّ رَجُلًا جَاءَ إلَى ابْنِ عَبَّاسٍ فَقَالَ: مَلَّكْتُ امْرَأَتِي فَطَلَّقَتْنِي ثَلَاثًا؟ فَقَالَ ابْنُ عَبَّاسٍ: خَطَّأَ اللَّهُ نَوْأَهَا عَلَيْك، إنَّمَا الطَّلَاقُ لَك عَلَيْهَا، وَلَيْسَ لَهَا عَلَيْك " وَهَذَا فِي غَايَةِ الصِّحَّةِ عَنْ ابْنِ عَبَّاسٍ.

L32889 And via the chain of transmission from Ibn Jurayj through Abd al-Razzaq: I asked Abdullah ibn Tawus: What was your father's ruling regarding a man who granted his wife authority over her own divorce—does she possess the right to divorce herself or not? He answered: He would say: "Divorce is not within women's authority." I then asked him: What was his father's ruling regarding a man who granted another man authority over his wife's divorce—does that man possess the right to divorce her? He answered: No—and this is the opinion of Abu Sulayman and all our companions.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ سَأَلْت عَبْدَ اللَّهِ بْنَ طَاوُسٍ: كَيْفَ كَانَ أَبُوك يَقُولُ فِي رَجُلٍ مَلَّكَ امْرَأَتَهُ أَمْرَهَا، أَتَمْلِكُ أَنْ تُطَلِّقَ نَفْسَهَا أَمْ لَا؟ قَالَ: كَانَ يَقُولُ: لَيْسَ إلَى النِّسَاءِ طَلَاقٌ؟ فَقُلْت لَهُ: فَكَيْفَ كَانَ أَبُوهُ يَقُولُ فِي رَجُلٍ مَلَّكَ رَجُلًا أَمْرَ امْرَأَتِهِ، أَيَمْلِكُ الرَّجُلُ أَنْ يُطَلِّقَهَا؟ قَالَ: لَا - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ وَجَمِيعِ أَصْحَابِنَا.

L32890 As for the option of choice, it is authentically reported that Umar ibn al-Khattab said: If she chooses herself, that constitutes one revocable divorce; and if she chooses her husband, she remains his wife as before.

وَأَمَّا التَّخْيِيرُ - فَصَحَّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إنْ اخْتَارَتْ نَفْسَهَا فَوَاحِدَةٌ رَجْعِيَّةٌ، وَإِنْ اخْتَارَتْ زَوْجَهَا فَهِيَ امْرَأَتُهُ كَمَا كَانَتْ.

L32891 It has been narrated to us via the chain of ʿAbdur-Raḥmān ibn Mahdī from

Jarīr ibn Ḥāzim from ʿĪsā ibn ʿĀṣim from Zādhān: that ʿAlī ibn Abī Ṭālib opposed ʿUmar in that matter, then he returned to ʿUmar's opinion when he assumed the caliphate.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ عِيسَى بْنِ عَاصِمٍ عَنْ زَاذَانَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ خَالَفَ عُمَرَ فِي ذَلِكَ، ثُمَّ رَجَعَ إِلَى قَوْلِ عُمَرَ، إِذْ وَلِيَ الْخِلَافَةَ.

L32892–32893 This statement was narrated to us from Ibn Abbas, but it has not been authenticated from him.

وَرُوِّينَا هَذَا الْقَوْلَ عَنِ ابْنِ عَبَّاسٍ، وَلَمْ يَصِحَّ عَنْهُ.

L32894 It is authentically reported from ʿAṭāʾ, ʿUmar ibn ʿAbd al-ʿAzīz, and Ibrāhīm.

وَصَحَّ عَنْ عَطَاءٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَإِبْرَاهِيمَ.

L32895 It is authentically reported from Jabir ibn Abdullah: If she opts for herself, then it constitutes one revocable divorce.

وَصَحَّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ: إِنْ اخْتَارَتْ نَفْسَهَا فَوَاحِدَةٌ رَجْعِيَّةٌ.

L32896 Another opinion states: If she chooses herself, it is a single irrevocable divorce; if she chooses her husband, it is a single revocable divorce. If he repeats this three times - every time she chooses him - she is divorced thrice. If he has intercourse with her before she marries another husband, he is liable to stoning. It has been reported to us that Ali renounced his agreement with Umar's position and adopted this view when he assumed the office of the caliphate. This is transmitted via the narration of Waki' ibn al-Jarrah and al-Ḥajjāj ibn al-Minhāl, both of whom reported from Jarīr ibn Ḥāzim, from ʿĪsā ibn ʿĀṣim, from Zādhān, from Ali.

وَقَوْلٌ آخَرُ - وَهُوَ: إِنْ اخْتَارَتْ نَفْسَهَا فَوَاحِدَةٌ بَائِنَةٌ، وَإِنْ اخْتَارَتْ زَوْجَهَا فَوَاحِدَةٌ رَجْعِيَّةٌ، فَإِنْ كَرَّرَ ذَلِكَ ثَلَاثَ مَرَّاتٍ كُلُّ ذَلِكَ تَخْتَارُهُ: طَلُقَتْ ثَلَاثًا، فَإِنْ وَطِئَهَا قَبْلَ زَوْجٍ يَتَزَوَّجُهَا فَعَلَيْهِ الرَّجْمُ -: رُوِّينَا - أَنَّ عَلِيًّا رَجَعَ عَنْ مُوَافَقَةِ عُمَرَ إِلَى هَذَا الْقَوْلِ، إِذْ وَلِيَ الْخِلَافَةَ: مِنْ طَرِيقَةِ وَكِيعِ بْنِ الْجَرَّاحِ، وَالْحَجَّاجِ بْنِ الْمِنْهَالِ، كِلَاهُمَا عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ عِيسَى بْنِ عَاصِمٍ عَنْ زَاذَانَ عَنْ عَلِيٍّ.

L32897 This statement has been authentically reported from Qatādah—and it has also been authentically reported from ʿAlī—that if she opts for self-separation [khulʿ], neither he nor anyone else may formally propose to her during the waiting period resulting from that divorce. This supplementary narration has been transmitted to us via the chain of Ḥammād ibn Salamah from Qatādah from Khilās ibn ʿAmr: that ʿAlī ibn Abī Ṭālib said: If she chooses self-separation, it counts as one revocable divorce, and neither he nor any other man may propose to her except after the completion of the waiting period. If she chooses to stay with her husband, it is considered a single revocable divorce, and he retains the right to reclaim her.

وَصَحَّ هَذَا الْقَوْلُ عَنْ قَتَادَةَ - وَصَحَّ عَنْ عَلِيٍّ أَيْضًا: أَنَّهَا إِنْ اخْتَارَتْ نَفْسَهَا لَمْ يَجُزْ لَهُ وَلَا لِغَيْرِهِ أَنْ يَخْطُبَهَا فِي الْعِدَّةِ مِنْ تِلْكَ الطَّلْقَةِ -: رُوِّينَا هَذِهِ الزِّيَادَةَ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: إِنْ اخْتَارَتْ نَفْسَهَا فَهِيَ وَاحِدَةٌ، وَلَا يَخْطُبُهَا هُوَ، وَلَا مَنْ سِوَاهُ، إِلَّا بَعْدَ انْقِضَاءِ الْعِدَّةِ، وَإِنْ اخْتَارَتْ زَوْجَهَا فَهِيَ وَاحِدَةٌ، وَهُوَ أَحَقُّ بِهَا.

L32898 And a third opinion—authentically reported from Zayd ibn Thabit—is that if he chooses her [for divorce], then three [irrevocable divorces], and if he

chooses to retain her as his wife, then one revocable [divorce]. This is also the opinion held by Masruq.

وَقَوْلٌ ثَالِثٌ - صَحَّ عَنْ زَيْدِ بْنِ ثَابِتٍ وَهُوَ إِنْ اخْتَارَتْ نَفْسَهَا فَثَلَاثٌ وَإِنْ اخْتَارَتْ زَوْجَهَا فَوَاحِدَةٌ رَجْعِيَّةٌ - وَبِهِ يَقُولُ مَسْرُوقٌ.

L32899 It has been narrated to us through Saʿīd ibn Manṣūr via Hushaym, via Dāwūd ibn Abī Hind, from al-Shaʿbī, from Masrūq, that he would relate Zayd's opinion: "If she chooses herself, three are required; but if she chooses her husband, one suffices."

كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّهُ كَانَ يَقُولُ مِنْ قَوْلِ زَيْدٍ: إنْ اخْتَارَتْ نَفْسَهَا فَثَلَاثٌ، وَإِنْ اخْتَارَتْ زَوْجَهَا فَوَاحِدَةٌ.

L32900 A fourth opinion—that if a man delegates to his wife the right to pronounce divorce and she does so three times, it counts as a single divorce—is narrated through the chain of Sufyān ibn ʿUyaynah, from Abū al-Zinād, from al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq, from Zayd ibn Thābit, who said: "If a man gives his wife the choice and she pronounces divorce upon herself three times, it is counted as one."

وَقَوْلٌ رَابِعٌ - وَهُوَ أَنَّهُ إذَا خَيَّرَهَا فَطَلَّقَتْ نَفْسَهَا ثَلَاثًا فَهِيَ وَاحِدَةٌ -: رُوِّينَاهُ هَكَذَا أَيْضًا: مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ أَبِي الزِّنَادِ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: إذَا خَيَّرَ الرَّجُلُ امْرَأَتَهُ فَطَلَّقَتْ نَفْسَهَا ثَلَاثًا فَهِيَ وَاحِدَةٌ.

L32901 And through the chain of Abd al-Razzaq from Ma'mar, from Yahya ibn Abi Kathir, who said: Muhammad ibn Abi Atiq delegated to his wife the authority to divorce herself, so she pronounced a triple divorce upon herself. He consulted Zayd ibn Thabit, who ruled it to constitute a single revocable divorce, and [the husband] retained the exclusive right to revoke it during her waiting period. Yahya said: "I mentioned this to Ayyub," and he replied: "A similar ruling has reached me concerning Zayd."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: خَيَّرَ مُحَمَّدُ بْنُ أَبِي عَتِيقٍ امْرَأَتَهُ فَطَلَّقَتْ نَفْسَهَا ثَلَاثًا، فَسَأَلَ زَيْدَ بْنَ ثَابِتٍ؟ فَجَعَلَهَا زَيْدٌ وَاحِدَةً، وَهُوَ أَمْلَكُ بِرَجْعَتِهَا - قَالَ: فَذَكَرْت ذَلِكَ لِأَيُّوبَ؟ فَقَالَ: بَلَغَنِي نَحْوُ هَذَا عَنْ زَيْدٍ.

L32902–32903 A fifth opinion—narrated from Ibn Masʿūd through an unauthentic chain containing Jābir al-Juʿfī, a fabricator—holds that if he offers her the choice three times while she remains silent, then on the third occasion she declares "I have chosen myself," she is irrevocably divorced thrice.

وَقَوْلٌ خَامِسٌ - رُوِّينَاهُ عَنْ ابْنِ مَسْعُودٍ مِنْ طَرِيقٍ لَا تَصِحُّ، لِأَنَّ فِيهَا جَابِرًا الْجُعْفِيَّ - وَهُوَ كَذَّابٌ - إنْ خَيَّرَهَا مَرَّةً، ثُمَّ مَرَّةً، ثُمَّ مَرَّةً - وَهِيَ سَاكِتَةٌ، فَقَالَتْ فِي الْمَرَّةِ الثَّالِثَةِ: قَدْ اخْتَرْت نَفْسِي، فَهِيَ طَالِقٌ ثَلَاثًا.

L32904 It has been reported to us from Ibrāhīm al-Nakhaʿī and al-Shaʿbī that they both said: If he repeats giving her the choice three times and she selects one, she is divorced three times. If he gives her the choice once and she chooses three divorces, it is a single divorce.

وَرُوِّينَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ: أَنَّهُمَا قَالَا: إنْ كَرَّرَ تَخْيِيرَهَا ثَلَاثَ مَرَّاتٍ فَاخْتَارَتْ وَاحِدَةً، فَهِيَ طَالِقٌ ثَلَاثًا، وَإِنْ خَيَّرَهَا مَرَّةً وَاحِدَةً فَاخْتَارَتْ ثَلَاثَ تَطْلِيقَاتٍ، فَهِيَ طَلْقَةٌ وَاحِدَةٌ.

L32905 A sixth opinion—narrated from Jābir ibn Zayd concerning the woman whose husband grants her the option [to annul the marriage]: “The obligation is based on what she has decided.” It is authentically reported from Ibn Masʿūd, Jābir ibn ʿAbd Allāh, al-Nakhaʿī, al-Shaʿbī, Jābir ibn Zayd, Makhūl, and ʿAṭāʾ that if she rises from her seat before finalizing her decision, no obligation is incumbent on her.

وَقَوْلٌ سَادِسٌ - رُوِّينَاهُ عَنْ جَابِرِ بْنِ زَيْدٍ فِي الَّتِي يُخَيِّرُهَا زَوْجُهَا: الْقَضَاءُ مَا قَضَتْ - وَصَحَّ عَنْ ابْنِ مَسْعُودٍ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ، وَالنَّخَعِيِّ، وَالشَّعْبِيِّ، وَجَابِرِ بْنِ زَيْدٍ، وَمَكْحُولٍ، وَعَطَاءٍ: إنْ قَامَتْ مِنْ مَجْلِسِهَا قَبْلَ أَنْ تَقْضِيَ فَلَا قَضَاءَ لَهَا.

L32906 It has been narrated to us from Umar ibn al-Khattab, Ali ibn Abi Talib, Zayd ibn Thabit, Ayyub al-Sakhtiyānī, and al-Zuhri that granting the choice and transferring ownership are equivalent.

وَرُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَزَيْدِ بْنِ ثَابِتٍ، وَأَيُّوبَ السِّخْتِيَانِيِّ، وَالزُّهْرِيِّ: أَنَّ التَّخْيِيرَ، وَالتَّمْلِيكَ سَوَاءٌ.

L32907 A seventh opinion—and this is the one we hold—has been narrated through the chain of Sufyan ibn ʻUyaynah from ʻAmr ibn Dinar from ʻIkrimah from Ibn ʻAbbas: He was asked about a man who delegated the authority of divorce to his wife, and she said, “You are divorced! You are divorced! You are divorced!” Ibn ʻAbbas replied, “May Allah invalidate her action! I do not know what the correct option is.”

وَقَوْلٌ سَابِعٌ - وَبِهِ نَقُولُ -: رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ سُئِلَ عَنْ رَجُلٍ جَعَلَ أَمْرَ امْرَأَتِهِ بِيَدِهَا؟ فَقَالَتْ: أَنْتَ طَالِقٌ، أَنْتَ طَالِقٌ، أَنْتَ طَالِقٌ؟ فَقَالَ ابْنُ عَبَّاسٍ: خَطَّأَ اللَّهُ نَوْأَهَا لَا أَدْرِي مَا الْخِيَارُ.

L32908 Abu Muhammad said: This is the most authentic narration transmitted from Ibn Abbas regarding this matter. As for the addition reported by some narrators in this account - that Ibn Abbas stated: “If she were to say ’I am divorced three times,’ it would take effect as she declared, or else the divorce would not occur unless pronounced three times” - this is invalid, for it was only transmitted by Al-Hakam ibn ’Utaybah, Habib ibn Abi Thabit, and Mansur, none of whom ever met Ibn Abbas.

قَالَ أَبُو مُحَمَّدٍ: هَذَا أَصَحُّ مَا رُوِيَ فِي ذَلِكَ عَنْ ابْنِ عَبَّاسٍ، وَأَمَّا الزِّيَادَةُ الَّتِي رَوَاهَا قَوْمٌ فِي هَذَا الْخَبَرِ مِنْ أَنَّ ابْنَ عَبَّاسٍ قَالَ: لَوْ قَالَتْ: أَنَا طَالِقٌ ثَلَاثًا، لَكَانَ كَمَا قَالَتْ، أَوْ إلَّا طَلَّقَتْ نَفْسَهَا ثَلَاثًا، فَلَا يَصِحُّ، لِأَنَّهُ إنَّمَا رَوَاهَا الْحَكَمُ بْنُ عُتَيْبَةَ، وَحَبِيبُ بْنُ أَبِي ثَابِتٍ وَمَنْصُورٌ - وَكُلُّهُمْ لَمْ يَلْقَ ابْنَ عَبَّاسٍ.

L32909 And this has also been narrated to us through the chain of ʿAmr ibn Dīnār from Ibn ʿAbbās, except for the statement “She said: ’I am divorced, I am divorced.’” This report was not heard by ʿAmr from Ibn ʿAbbās, for he only narrated it from ʿIkrimah, contrary to this report attributed to Ibn ʿAbbās. Abū Sulaymān says this, and so do our companions. Abū Muḥammad said: We have already mentioned the opinion of Sufyān and Al-Shāfiʿī regarding the right to choose divorce earlier in this work.

وَرُوِّينَا هَذَا أَيْضًا: مِنْ طَرِيقِ عَمْرِو بْنِ دِينَارٍ عَنْ ابْنِ عَبَّاسٍ: إلَّا " قَالَتْ: أَنَا طَالِقٌ، أَنَا طَالِقٌ " وَهَذَا خَبَرٌ لَمْ يَسْمَعْهُ عَمْرٌو مِنْ ابْنِ عَبَّاسٍ، لِأَنَّهُ إنَّمَا رَوَاهُ عَنْ عِكْرِمَةَ، بِخِلَافِ هَذَا عَنْ ابْنِ عَبَّاسٍ - وَبِهَذَا يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا: قَالَ أَبُو مُحَمَّدٍ: وَقَدْ ذَكَرْنَا قَوْلَ سُفْيَانَ، وَالشَّافِعِيِّ فِي التَّخْيِيرِ آنِفًا.

L32910–32912 As for Abū Ḥanīfah, he said: If he said to her “Choose!” and gave her the choice, and then said “I had no intention of divorce,” then, if... If this

occurred during mutual consent with no mention of divorce, his statement is upheld along with his oath, and she has no option. If it occurred in anger (whether divorce was mentioned or not) or during mutual consent with divorce mentioned, no consideration is given to the husband's claim, and she retains the choice. If she chooses her husband, she remains his wife, and her option is void. If she chooses herself, she is divorced by a single irrevocable divorce (bā'inah), which is categorically non-revocable and cannot exceed one - regardless of whether he intended more than one divorce, she chose multiple divorces, or she opted for a revocable divorce.

وَأَمَّا أَبُو حَنِيفَةَ - فَقَالَ: إِنْ قَالَ لَهَا: اخْتَارِي فَخَيَّرَهَا، ثُمَّ قَالَ: لَمْ أُرِدْ طَلَاقًا، فَإِنْ كَانَ ذَلِكَ فِي رِضًا لَمْ يَجْرِ فِيهِ ذِكْرُ طَلَاقٍ كَانَ الْقَوْلُ قَوْلَهُ مَعَ يَمِينِهِ، وَلَا خِيَارَ لَهَا - فَإِنْ كَانَ فِي غَضَبٍ فِيهِ ذِكْرُ طَلَاقٍ أَوْ لَيْسَ فِيهِ ذِكْرُ طَلَاقٍ، أَوْ كَانَ فِي رِضًا ذُكِرَ فِيهِ طَلَاقٌ لَمْ يُلْتَفَتْ إِلَى دَعْوَى الزَّوْجِ، وَكَانَ لَهَا الْخِيَارُ، فَإِنْ اخْتَارَتْ زَوْجَهَا فَهِيَ امْرَأَتُهُ، وَبَطَلَ خِيَارُهَا، وَإِنْ اخْتَارَتْ نَفْسَهَا فَهِيَ طَالِقٌ وَاحِدَةً بَائِنَةً، لَا تَكُونُ رَجْعِيَّةً أَصْلًا، وَلَا أَكْثَرَ مِنْ وَاحِدَةٍ، سَوَاءٌ نَوَى هُوَ أَكْثَرَ مِنْ وَاحِدَةٍ أَوْ لَمْ يَنْوِ، اخْتَارَتْ هِيَ أَكْثَرَ مِنْ وَاحِدَةٍ، أَوْ اخْتَارَتْ وَاحِدَةً رَجْعِيَّةً.

L32913 Then they have among the confusions in its movements and actions matters too lengthy to recount. Yet these are among the wonders of the worldly life; we have mentioned them in *The Book of Transmission*.

ثُمَّ لَهُمْ مِنَ التَّخَالِيطِ فِي حَرَكَاتِهَا وَأَعْمَالِهَا أَشْيَاءُ يَطُولُ ذِكْرُهَا، إِلَّا أَنَّهَا مِنْ عَجَائِبِ الدُّنْيَا، قَدْ ذَكَرْنَاهَا فِي " كِتَابِ الْإِيصَالِ ".

L32914 Mālik said: If he grants her the choice and she chooses him, she remains his wife and her option is nullified. If she chooses herself, she is inevitably divorced three times—whether she states, "I intended divorce," or states, "I did not intend divorce." He cannot contest her, and no attention is paid to his intention whatsoever. If she divorces herself once or twice, it is void and does not bind him. She may only choose her husband or pronounce a triple divorce inevitably—unless he grants her the choice while resolved to divorce her or initiate a khulʿ separation. In such a case, if she chooses herself, it constitutes one irrevocable divorce. Similarly, if he tells her, "Choose a divorce," she may only pronounce one revocable divorce. All this applies to consummated marriages.

وَقَالَ مَالِكٌ: إِنْ خَيَّرَهَا فَاخْتَارَتْهُ، فَهِيَ امْرَأَتُهُ وَقَدْ بَطَلَ خِيَارُهَا، فَإِنْ اخْتَارَتْ نَفْسَهَا فَهِيَ طَالِقٌ ثَلَاثًا وَلَا بُدَّ، سَوَاءٌ قَالَتْ: أَرَدْتُ الطَّلَاقَ، أَوْ قَالَتْ: لَمْ أُرِدْ الطَّلَاقَ، وَلَيْسَ لَهُ أَنْ يُنَاكِرَهَا، وَلَا يُلْتَفَتُ إِلَى نِيَّتِهِ أَصْلًا، فَلَوْ طَلَّقَتْ نَفْسَهَا وَاحِدَةً أَوْ اثْنَتَيْنِ فَلَيْسَ بِشَيْءٍ، وَلَا يَلْزَمُهُ ذَلِكَ وَلَيْسَ لَهَا إِلَّا اخْتِيَارُ زَوْجِهَا، أَوْ أَنْ تُطَلِّقَ نَفْسَهَا ثَلَاثًا وَلَا بُدَّ، إِلَّا أَنْ يُخَيِّرَهَا وَقَدْ عَزَمَ عَلَى طَلَاقِهَا، أَوْ مُخَالَعَتِهَا؟ فَهَاهُنَا إِنْ اخْتَارَتْ نَفْسَهَا فَهِيَ طَلْقَةٌ وَاحِدَةٌ بَائِنَةٌ - وَكَذَلِكَ لَوْ قَالَ لَهَا: اخْتَارِي طَلْقَةً؟ فَلَيْسَ لَهَا إِلَّا طَلْقَةٌ وَاحِدَةٌ رَجْعِيَّةٌ - هَذَا كُلُّهُ فِي الْمَدْخُولِ بِهَا.

L32915 If he gives her the choice before consummating the marriage, then if she chooses herself, it is only one pronouncement. If the wife whom he did not consummate the marriage with says, "I have chosen myself with three pronouncements," and he responds, "I intended only one," then it is one.

فَإِنْ خَيَّرَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا؟ فَهِيَ إِنْ اخْتَارَتْ نَفْسَهَا طَلْقَةً وَاحِدَةً فَقَطْ - فَلَوْ قَالَتْ الَّتِي لَمْ يَدْخُلْ بِهَا: قَدْ اخْتَرْت نَفْسِي بِثَلَاثِ طَلْقَاتٍ؟ فَقَالَ هُوَ: لَمْ أُرِدْ إِلَّا وَاحِدَةً، فَهِيَ وَاحِدَةٌ.

L32916 He said: If the wife whose marriage has been consummated were to say, "I have accepted my situation?" this would not constitute a divorce unless she herself were to say, "I intended divorce," in which case it would necessarily be three divorces; there can be no fewer than that.

وَقَالَ: فَلَوْ قَالَتْ الْمَدْخُولُ بِهَا: قَدْ قَبِلْت أَمْرِي؟ لَمْ يَكُنْ طَلَاقًا إِلَّا أَنْ تَقُولَ هِيَ: أَرَدْت الطَّلَاقَ فَيَكُونُ ثَلَاثًا وَلَا بُدَّ، لَا أَقَلَّ مِنْ ذَلِكَ.

L32917 If she were to say to him, "I have divorced you (via khulʿ)," then it constitutes an irrevocable triple divorce.

فَلَوْ قَالَتْ لَهُ: قَدْ خَلَّيْت سَبِيلَك، فَهِيَ ثَلَاثٌ وَلَا بُدَّ.

L32918 His opinion differed regarding the woman granted the right of choice (al-mukhayyarah): does her prerogative become void if she rises from the setting of choice before selecting? At one point, he ruled: her right is invalidated, unlike the case of granting ownership. He later revised his position, stating: rather, she retains the right until she is formally presented with the choice to accept or relinquish it. If coerced into consummation, her right remains valid. But if she consents willingly, her right becomes void.

وَاخْتَلَفَ قَوْلُهُ فِي الْمُخَيَّرَةِ تَقُومُ مِنْ مَجْلِسِ التَّخْيِيرِ قَبْلَ أَنْ تَخْتَارَ؟ فَمَرَّةً قَالَ: بَطَلَ خِيَارُهَا بِخِلَافِ التَّمْلِيكِ، ثُمَّ رَجَعَ فَقَالَ: بَلْ لَهَا الْخِيَارُ حَتَّى تُوقَفَ فَتَخْتَارَ أَوْ تَتْرُكَ، فَلَوْ وَطِئَهَا مُكْرَهَةً لَمْ يَبْطُلْ خِيَارُهَا، فَلَوْ وَطِئَهَا طَائِعَةً بَطَلَ خِيَارُهَا.

L32919–32921 Abū Muḥammad said: The mention of these statements suffices to dispense with refuting them, due to their obvious weakness. Regarding her circumstances—in summary, none before him had articulated these distinctions. Rather, he adhered to one of three opinions narrated from Zayd concerning her exercise of choice, which Zayd limited to three only. However, the one who held this opinion contradicted Zayd's own position in differentiating between a consummated and unconsummated marriage, and in Zayd's equating the right of choice with granting the right of divorce. Thus, his reliance on Zayd is invalid.

قَالَ أَبُو مُحَمَّد: ذِكْرُ هَذِهِ الْأَقْوَالِ يُغْنِي عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهَا، لِشِدَّةِ اخْتِلَاطِهَا - وَبِالْجُمْلَةِ فَلَمْ يَقُلْ أَحَدٌ قَبْلَهُ بِهَذِهِ التَّقْسِيمَاتِ، وَإِنَّمَا تَعَلَّقَ بِقَوْلٍ مِنْ أَحَدِ أَقْوَالٍ ثَلَاثَةٍ رُوِيَتْ عَنْ زَيْدٍ فِي إنْ اخْتَارَتْ نَفْسَهَا، فَهِيَ ثَلَاثٌ فَقَطْ، وَخَالَفَهُ فِي ذَلِكَ الْقَوْلِ نَفْسِهِ فِي الْفَرْقِ بَيْنَ الْمَدْخُولِ بِهَا وَغَيْرِ الْمَدْخُولِ بِهَا، وَفِي تَسْوِيَةِ زَيْدٍ بَيْنَ التَّخْيِيرِ وَالتَّمْلِيكِ - فَبَطَلَ تَعَلُّقُهُ بِزَيْدٍ.

L32922 This statement contradicts another opinion from Zaid, an opinion from Umar, and an opinion from Ali. None of these opinions possess any valid proof for their authentication—neither from the Quran, nor the Sunnah, nor reasoned judgment, nor an earlier statement in which no equivalent

authority contradicted him, nor analogy, nor an opinion with an intellectually conceivable basis.

وَقَدْ خَالَفَ هَذَا الْقَوْلَ قَوْلٌ لِزَيْدٍ آخَرُ، وَقَوْلٌ لِعُمَرَ، وَقَوْلٌ لِعَلِيٍّ - وَكُلُّ هَذِهِ الْأَقْوَالِ لَا حُجَّةَ فِي تَصْحِيحِهَا، مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا مَعْقُولٍ، وَلَا قَوْلِ مُتَقَدِّمٍ لَمْ يُخَالِفْهُ فِيهِ مَنْ هُوَ مِثْلُهُ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ يُعْقَلُ.

L32923 Those who held that the option influences divorce cited as evidence that "the Messenger of Allah—may Allah bless him and grant him peace—gave his wives the option." Abu Muhammad said: As for the Malikis, they have no basis for this position whatsoever, for they maintain that the option is valid only in cases of remaining [in marriage] or the triple irrevocable divorce.[39]

وَاحْتَجَّ مَنْ رَأَى أَنَّ التَّخْيِيرَ لَهُ تَأْثِيرٌ فِي الطَّلَاقِ بِأَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيَّرَ نِسَاءَهُ؟» قَالَ أَبُو مُحَمَّد: أَمَّا الْمَالِكِيُّونَ فَلَا مُتَعَلَّقَ لَهُمْ بِذَلِكَ أَصْلًا، لِأَنَّهُمْ يَقُولُونَ: لَا يَكُونُ التَّخْيِيرُ إلَّا فِي الْبَقَاءِ، أَوْ فِي الطَّلَاقِ الثَّلَاثِ.

L32924 They say: "The triple divorce is an innovation and a sin. So how could it be valid—according to them—for the Messenger of God (peace be upon him) to grant a legitimate choice in enforcing a sin? Allah is far above such a thing!"

وَيَقُولُونَ: إنَّ طَلَاقَ الثَّلَاثِ بِدْعَةٌ وَمَعْصِيَةٌ، فَكَيْفَ يَجُوزُ - عِنْدَهُمْ - أَنْ يُخَيِّرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي إنْفَاذِ مَعْصِيَةٍ، حَاشَا لِلَّهِ مِنْ هَذَا.

L32925 Some of them said: "Did he give them only the choice between worldly life and the Hereafter?" We responded: "Your argument about the choice affecting divorce—based on his (peace be upon him) giving his wives the option—is invalid, for according to your view, he did not present them with a choice that would result in divorce if they opted for it. As for others, we say to them: The verse itself nullifies your claim, for its text states: {If you desire worldly life and its adornment, then come—I will provide for you and release you graciously} [Al-Ahzab 33:28]."[40]

وَقَالَ بَعْضُهُمْ: إنَّمَا خَيَّرَهُنَّ بَيْنَ الدُّنْيَا وَالْآخِرَةِ؟ فَقُلْنَا: قَدْ بَطَلَ تَعَلُّقُكُمْ فِي أَنَّ لِلتَّخْيِيرِ تَأْثِيرًا فِي الطَّلَاقِ «بِتَخْيِيرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نِسَاءَهُ» إذْ لَمْ يُخْبِرْهُنَّ تَخْيِيرًا عِنْدَكُمْ يَكُنَّ بِهِ إنْ اخْتَرْنَ الطَّلَاقَ طَوَالِقَ، وَأَمَّا غَيْرُهُمْ فَنَقُولُ لَهُمْ: الْآيَةُ نَفْسُهَا تُبْطِلُ دَعْوَاكُمْ لِأَنَّ نَصَّهَا: {إِنْ كُنْتُنَّ تُرِدْنَ الْحَيَاةَ الدُّنْيَا وَزِينَتَهَا فَتَعَالَيْنَ أُمَتِّعْكُنَّ وَأُسَرِّحْكُنَّ سَرَاحًا جَمِيلًا} [الأحزاب: ٢٨] .

L32926 Indeed, Allah the Exalted has decreed that if they [the wives] desire worldly life and do not desire the Hereafter, the Prophet (peace be upon him) would divorce them at that time by his own volition—choosing to divorce of his own accord—not that they are divorced merely by their choosing worldly life. Whoever claims otherwise has distorted the words of Allah the Mighty and Majestic, wrongfully inserting into the verse's ruling a sheer falsehood for which there exists no explicit text or evidence within the verse itself.

فَإِنَّمَا نَصَّ اللَّهُ تَعَالَى أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنْ أَرَدْنَ الدُّنْيَا، وَلَمْ يُرِدْنَ الْآخِرَةَ: طَلَّقَهُنَّ حِينَئِذٍ مِنْ قِبَلِ نَفْسِهِ مُخْتَارًا لِلطَّلَاقِ، لَا أَنَّهُنَّ طَوَالِقُ بِنَفْسِ اخْتِيَارِهِنَّ الدُّنْيَا - وَمَنْ ادَّعَى غَيْرَ هَذَا فَقَدْ حَرَّفَ كَلَامَ اللَّهِ عَزَّ وَجَلَّ وَأَقْحَمَ فِي حُكْمِ الْآيَةِ كَذِبًا مَحْضًا لَيْسَ فِيهَا مِنْهُ نَصٌّ وَلَا دَلِيلٌ.

[39] **Hadith references (L32923):** Sahih Muslim 1477c.
[40] **Qur'an references (L32925):** Qur'an 33:28 (Al-Ahzab).

L32927 Some of them concealed [their positions] using fabricated reports—among these is what we narrated through the chain of Ibn Wahb from ʿAbd al-Jabbār ibn ʿUmar and Yaḥyā ibn ʿAbd Allāh, both of whom reported from Rabīʿah: "That one of the Prophet's wives—peace and blessings be upon him—chose for herself [lifelong abstinence], thus becoming al-battah (one who has taken a vow of abstinence)." Now, ʿAbd al-Jabbār ibn ʿUmar and Yaḥyā ibn ʿAbd Allāh are discredited narrators. Moreover, the narration is mursal (with an incomplete chain).

وَمَوَّهَ بَعْضُهُمْ بِأَخْبَارٍ مَوْضُوعَةٍ -: مِنْهَا - مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ، وَيَحْيَى بْنِ عَبْدِ اللَّهِ، كِلَاهُمَا عَنْ رَبِيعَةَ: «أَنَّ وَاحِدَةً مِنْ نِسَاءِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اخْتَارَتْ نَفْسَهَا فَكَانَتْ أَلْبَتَّةَ» ، وَعَبْدُ الْجَبَّارِ بْنُ عُمَرَ، وَيَحْيَى بْنُ عَبْدِ اللَّهِ - هَالِكَانِ - ثُمَّ هُوَ مُرْسَلٌ.

L32928–32929 And through the chain of Ibn Wahb from ʿAbd al-Jabbār ibn ʿUmar from al-Zuhrī: that when the Prophet—peace and blessings of Allah be upon him—gave his wives the choice, one of them chose herself and left—and ʿAbd al-Jabbār, we have clarified his narrator standing—and this narration is also *mursal*.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ عَنْ الزُّهْرِيِّ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ خَيَّرَ نِسَاءَهُ؟ تَخَيَّرَتْ امْرَأَةٌ مِنْهُنَّ نَفْسَهَا فَذَهَبَتْ - وَعَبْدُ الْجَبَّارِ قَدْ بَيَّنَّا أَمْرَهُ - وَهُوَ مُرْسَلٌ أَيْضًا.

L32930 And from the chain of Ibn Wahb through Ibn Lahi'ah through Yazid ibn Abi Habib through 'Amr ibn Shu'ayb in similar fashion: He said - she being the daughter of al-Dahhak al-'Amiri (Ibn Lahi'ah's narration is baseless) - and it is also a mursal report. The Prophet - peace and blessings be upon him - never married the daughter of al-Dahhak al-'Amiri. The established report that exposes the falsehood of these scandals is the one we have narrated through various chains, including: From Muslim's chain - Harmala ibn Yahya reported to us, Ibn Wahb narrated to us, Yunus ibn Yazid reported to me from Ibn Shihab: Abu Salama ibn 'Abd al-Rahman ibn 'Awf informed me that 'Aisha said - mentioning the revelation of the Verse of Choice - "The Messenger of Allah - peace and blessings be upon him - recited it to her." She responded: "I choose Allah, His Messenger, and the Final Abode." She added: Then the Prophet's wives - peace and blessings be upon him - did the same as she had done.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ بِنَحْوِ ذَلِكَ، قَالَ: وَهِيَ بِنْتُ الضَّحَّاكِ الْعَامِرِيِّ - ابْنِ لَهِيعَةَ لَا شَيْءَ - وَمُرْسَلٌ أَيْضًا، وَمَا تَزَوَّجَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَطُّ بِنْتَ الضَّحَّاكِ الْعَامِرِيِّ - وَيُوَضِّحُ كَذِبَ هَذِهِ الْفَضَائِحِ الْخَبَرُ الثَّابِتُ الَّذِي رُوِّينَاهُ مِنْ طُرُقٍ: مِنْهَا - مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى نا ابْنُ وَهْبٍ حَدَّثَنِي يُونُسُ بْنُ يَزِيدَ عَنْ ابْنِ شِهَابٍ: أَخْبَرَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: أَنَّ عَائِشَةَ قَالَتْ، فَذَكَرَتْ نُزُولَ آيَةِ التَّخْيِيرِ، «وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَلَاهَا عَلَيْهَا» ؟ فَقَالَتْ: إنِّي أُرِيدُ اللَّهَ وَرَسُولَهُ وَالدَّارَ الْآخِرَةَ، قَالَتْ: ثُمَّ فَعَلَ أَزْوَاجُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلَ مَا فَعَلَتْ.

L32931 Through the chain of Muslim: Isḥāq ibn Manṣūr reported to us; ʿAbd al-Raḥmān—he is Ibn Mahdī—reported to us; from Sufyān al-Thawrī from ʿĀṣim al-Aḥwal and Ismāʿīl ibn Abī Khālid, both from al-Shaʿbī; from Masrūq; from ʿĀ'ishah, the Mother of the Believers, who said: "The Messenger of

وَمِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ مَنْصُورٍ نا عَبْدُ الرَّحْمَنِ - هُوَ ابْنُ مَهْدِيٍّ - عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَاصِمٍ الْأَحْوَلِ، وَإِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ عَنْ

Allah—may Allah bless him and grant him peace—gave us the choice, so we chose him, and he did not consider it a divorce."[41]

عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، قَالَتْ: «خَيَّرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاخْتَرْنَاهُ، فَلَمْ يُعِدَّهُ طَلَاقًا» .

L32932 Abu Muhammad said: We have thoroughly examined all these narrations and demonstrated the great falsehood of those who claimed consensus in any of that. We established that there is nothing regarding the juridical option except statements from Umar, Ali, and Zaid—each of them contradicted his fellow—and an unsound narration from Ibn Masʿūd, along with weak narrations from Ibn ʿAbbās. What is reliably established from him corresponds to our own statement: that the option holds no validity whatsoever. As for the transfer of ownership, there are only differing opinions from Zaid and Ibn ʿUmar alone, with no third opinion from the Companions—may Allah be pleased with them—except a statement transmitted from Faḍālah ibn ʿUbayd concerning it: "The ruling is what has been decreed."

قَالَ أَبُو مُحَمَّدٍ: قَدْ تَقَصَّيْنَا كُلَّ هَذِهِ الْآثَارِ، وَأَرَيْنَا عَظِيمَ كَذِبِ مَنْ ادَّعَى الْإِجْمَاعَ فِي شَيْءٍ مِنْ ذَلِكَ، وَوَقَفْنَا عَلَى أَنَّهُ لَيْسَ فِي التَّخْيِيرِ شَيْءٌ إلَّا عَنْ عُمَرَ، وَعَلِيٍّ، وَزَيْدٍ: أَقْوَالٌ خَالَفَ فِيهَا كُلُّ وَاحِدٍ مِنْهُمْ صَاحِبَهُ وَأَثَرٌ لَا يَصِحُّ عَنْ ابْنِ مَسْعُودٍ، وَآثَارٌ سَاقِطَةٌ عَنْ ابْنِ عَبَّاسٍ، وَالثَّابِتُ عَنْهُ كَقَوْلِنَا: أَنَّهُ لَا مَعْنَى لِلتَّخْيِيرِ أَصْلًا، وَأَنَّهُ لَيْسَ فِي التَّمْلِيكِ إلَّا أَقْوَالٌ مُخْتَلِفَةٌ عَنْ زَيْدٍ، وَابْنِ عُمَرَ فَقَطْ، لَا ثَالِثَ لَهُمَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إلَّا قَوْلًا ذُكِرَ عَنْ فَضَالَةَ بْنِ عُبَيْدٍ فِيهِ: أَنَّ الْقَضَاءَ مَا قَضَتْ.

L32933 Two narrations: from the chains of ʿUthmān and Ibn ʿAbbās, conforming to our position, and that regarding "your affair is in your hand," there are only differing statements narrated from ʿUmar, ʿAlī, Zayd, ʿUthmān, Ibn ʿUmar, Ibn ʿAmr, Abū Hurayrah, Ibn Masʿūd, Ibn al-Zubayr, and unnamed men among the Companions, may Allah be pleased with them all.

وَأَثَرَانِ: مِنْ طَرِيقِ عُثْمَانَ، وَابْنِ عَبَّاسٍ، مُوَافِقَانِ لِقَوْلِنَا، وَأَنَّهُ لَيْسَ " فِي أَمْرِك بِيَدِك " إلَّا أَقْوَالٌ مُخْتَلِفَةٌ عَنْ عُمَرَ، وَعَلِيٍّ، وَزَيْدٍ، وَعُثْمَانَ وَابْنِ عُمَرَ، وَابْنِ عَمْرٍو، وَأَبِي هُرَيْرَةَ، وَابْنِ مَسْعُودٍ، وَابْنِ الزُّبَيْرِ، وَرِجَالٍ لَمْ يُسَمُّوا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L32934 Among some of these is a statement from Jābir ibn ʿAbd Allāh. Mālik did not agree with any of them except for an authenticated narration from Ibn ʿUmar only in the context of the rejected narration—and a similar narration from ʿUmar, which was not authenticated from him—and Abū Ḥanīfah did not agree with any of them.

وَفِي بَعْضِ هَذِهِ قَوْلٌ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ لَمْ يُوَافِقْ مَالِكٌ أَحَدًا مِنْهُمْ، إلَّا رِوَايَةً عَنْ ابْنِ عُمَرَ صَحَّتْ عَنْهُ فِي الْمُنَاكَرَةِ فَقَطْ - وَمِثْلُهَا عَنْ عُمَرَ - لَمْ تَصِحَّ عَنْهُ - وَلَمْ يُوَافِقْ أَبُو حَنِيفَةَ مِنْهُمْ أَحَدًا.

L32935 We ourselves have endorsed the legal opinion transmitted from Ibn Masʿūd and ʿUmar.

وَوَافَقْنَا نَحْنُ قَوْلًا رُوِيَ عَنْ ابْنِ مَسْعُودٍ، وَعُمَرَ.

L32936–32937 Abu Muhammad said: There is no authoritative evidence in anyone apart from the Messenger of Allah—peace be upon him. Since nothing has been mentioned in the Qur'an or from the Messenger of Allah—peace be upon him—that a man's statement to his wife such as "Your affair is in your hands,"

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِذْ لَمْ يَأْتِ فِي الْقُرْآنِ، وَلَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ قَوْلَ الرَّجُلِ لِامْرَأَتِهِ: " أَمْرُك بِيَدِك، أَوْ قَدْ مَلَّكْتُك أَمْرَك، أَوْ اخْتَارِي " يُوجِبُ أَنْ تَكُونَ طَالِقًا، أَوْ أَنَّ لَهَا

[41] **Hadith references (L32931):** Sahih Muslim 1477d.

"I have granted you authority over your matter," or "Choose" necessitates her divorce, grants her the right to divorce herself, or permits her to opt for divorce, it is not permissible to forbid a man from lawful marital relations that Allah the Exalted and His Messenger—peace be upon him—have permitted him, based on utterances that neither Allah the Exalted nor His Messenger—peace be upon him—have mandated. This is of the utmost clarity—and all praise is due to Allah, Lord of the worlds.

أَنْ تُطَلِّقَ نَفْسَهَا، أَوْ أَنْ تَخْتَارَ طَلَاقًا، فَلَا يَجُوزُ أَنْ يَحْرُمَ عَلَى الرَّجُلِ فَرْجٌ أَبَاحَهُ اللَّهُ تَعَالَى لَهُ وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَقْوَالٍ لَمْ يُوجِبْهَا اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا فِي غَايَةِ الْبَيَانِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ

L32938

Issue: If he says to his wife, "You are unlawful to me," or adds to that.

[مَسْأَلَةٌ قَالَ لِامْرَأَتِهِ أَنْتِ عَلَيَّ حَرَامٌ أَوْ زَادَ عَلَى ذَلِكَ]

L32939

1934. Issue: If a man says to his wife, "You are forbidden to me," or adds to that by saying, "Like carrion, blood, and pork," or says anything of that sort, all of it is null and void and unfounded. She does not become forbidden to him by that, and she remains his wife as she was—whether he intended divorce by it or not.

١٩٣٤ - مَسْأَلَةٌ: وَمَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ عَلَيَّ حَرَامٌ، أَوْ زَادَ عَلَى ذَلِكَ فَقَالَ: كَالْمَيْتَةِ، وَالدَّمِ، وَلَحْمِ الْخِنْزِيرِ، أَوْ مَا قَالَ مِنْ ذَلِكَ، فَهُوَ كُلُّهُ بَاطِلٌ وَكَذِبٌ، وَلَا تَكُونُ بِذَلِكَ عَلَيْهِ حَرَامًا، وَهِيَ امْرَأَتُهُ كَمَا كَانَتْ - نَوَى بِذَلِكَ طَلَاقًا أَوْ لَمْ يَنْوِ.

L32940

People have differed regarding this matter. ʿAlī, Zayd ibn Thābit, and Ibn ʿUmar said: she is divorced three times by that statement—and this is the opinion of al-Ḥasan and Muḥammad ibn ʿAbd al-Raḥmān ibn Abī Laylā—and it was narrated from al-Ḥakam ibn ʿUtaybah.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَ عَلِيٌّ، وَزَيْدُ بْنُ ثَابِتٍ، وَابْنُ عُمَرَ: هِيَ بِذَلِكَ الْقَوْلِ طَالِقٌ ثَلَاثًا - وَهُوَ قَوْلُ الْحَسَنِ، وَمُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى - وَرُوِيَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ.

L32941

Another opinion states that it is thereby forbidden for him—they did not mention divorce—this is authentically reported from Ali ibn Abi Talib, from unnamed men among the Companions (may Allah be pleased with them), and from Abu Huraira. It is also authentically reported from al-Hasan, Khilas ibn Amr, Jabir ibn Zayd, and Qatadah that they commanded him to avoid her only.

وَقَوْلٌ آخَرُ - أَنَّهَا بِذَلِكَ حَرَامٌ عَلَيْهِ - وَلَمْ يَذْكُرُوا طَلَاقًا، صَحَّ هَذَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَعَنْ رِجَالٍ لَمْ يُسَمُّوا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَعَنْ أَبِي هُرَيْرَةَ - وَصَحَّ عَنْ الْحَسَنِ، وَخِلَاسِ بْنِ عَمْرٍو، وَجَابِرِ بْنِ زَيْدٍ، وَقَتَادَةَ: أَنَّهُمْ أَمَرُوهُ بِاجْتِنَابِهَا فَقَطْ.

L32942

The third opinion—narrated from Ibn Masʿūd: If he intended divorce at the time of prohibition, otherwise it is an oath—and this is the opinion of al-Ḥasan, Ṭāwūs, al-Shāfiʿī, and al-Zuhrī.

وَقَوْلٌ ثَالِثٌ - رُوِيَ عَنْ ابْنِ مَسْعُودٍ: إنْ كَانَ نَوَى فِي التَّحْرِيمِ الطَّلَاقَ وَإِلَّا فَهُوَ يَمِينٌ - وَهُوَ قَوْلُ الْحَسَنِ، وَطَاوُسٍ، وَالشَّافِعِيِّ، وَالزُّهْرِيِّ.

L32943

A fourth opinion—we have narrated from Ibrāhīm, who said: Our companions ruled concerning irrevocable divorce—if one intended three [divorces],

it is three; and if one intended a single [divorce], it is a single irrevocable (bā'in) divorce. This is the opinion of Sufyān, except that he said: If one intended an oath, it is an oath; and if no intent was made, it is a falsehood with no legal consequence.

وَقَوْلٌ رَابِعٌ - رُوِّينَاهُ عَنْ إِبْرَاهِيمَ قَالَ: كَانَ أَصْحَابُنَا يَقُولُونَ فِي الْحَرَامِ: إِنْ نَوَى ثَلَاثًا فَهِيَ ثَلَاثٌ، وَإِنْ نَوَى وَاحِدَةً فَهِيَ وَاحِدَةٌ بَائِنَةٌ - وَهُوَ قَوْلُ سُفْيَانَ، إِلَّا أَنَّهُ قَالَ: وَإِنْ نَوَى يَمِينًا فَهِيَ يَمِينٌ، وَإِنْ لَمْ يَنْوِ شَيْئًا فَهِيَ كَذِبٌ لَا شَيْءَ فِيهَا.

L32944 A fifth opinion—reported from Ibrāhīm: If he intends one divorce or does not intend anything, then it is a single bā'in (irrevocable) divorce. If he intends three divorces, then it is three divorces. It has been transmitted to us through Wakī''s chain from al-Ḥasan ibn Ḥayyin, from al-Mughīrah, from Ibrāhīm: "If he intends two divorces, then it is two divorces."

وَقَوْلٌ خَامِسٌ - عَنْ إِبْرَاهِيمَ: إِنْ نَوَى وَاحِدَةً أَوْ لَمْ يَنْوِ شَيْئًا فَهِيَ وَاحِدَةٌ بَائِنَةٌ، وَإِنْ نَوَى ثَلَاثًا فَثَلَاثٌ - وَقَدْ رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنِ الْحَسَنِ بْنِ حَيٍّ عَنِ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ: وَإِنْ نَوَى اثْنَتَيْنِ فَهِيَ اثْنَتَانِ.

L32945 A sixth opinion—that it constitutes a single divorce—is reported from 'Umar, and this is the view held by Ḥammād ibn Abī Sulaymān.

وَقَوْلٌ سَادِسٌ - هُوَ طَلْقَةٌ وَاحِدَةٌ: رُوِّينَاهُ عَنْ عُمَرَ - وَبِهِ يَقُولُ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ.

L32946–32947 A seventh opinion—which is that it is a ẓihār, wherein lies the expiation prescribed for ẓihār—has been authentically transmitted from Ibn ʿAbbās through ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from Saʿīd ibn Jubayr, from Ibn ʿAbbās. He stated regarding the prohibited act (al-ḥarām) and the vow: [the expiation entails] emancipating a slave, fasting two consecutive months, or feeding sixty of the poor.

وَقَوْلٌ سَابِعٌ - وَهُوَ أَنَّهُ ظِهَارٌ، فِيهِ كَفَّارَةُ الظِّهَارِ - صَحَّ ذَلِكَ عَنِ ابْنِ عَبَّاسٍ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ قَالَ فِي الْحَرَامِ، وَالنَّذْرِ: عِتْقُ رَقَبَةٍ، أَوْ صِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ، أَوْ إِطْعَامُ سِتِّينَ مِسْكِينًا.

L32948 From the narration of Muhammad ibn Ja'far through Shu'bah through Mansur ibn al-Mu'tamir through Sa'id ibn Jubayr through Ibn Abbas regarding a man who says, "Forbidden upon me is eating," or says, "This food is forbidden upon me": He is obligated to emancipate a slave, fast two consecutive months, or feed sixty indigent people. This is the position of Abi Qilabah, Sa'id ibn Jubayr, and Wahb ibn Munabbih. It is also the position of Uthman al-Battī and Ahmad ibn Hanbal.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ عَنْ شُعْبَةَ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ فِي الرَّجُلِ إِذَا قَالَ: حَرَامٌ عَلَيَّ أَنْ آكُلَ، أَوْ قَالَ: هَذَا الطَّعَامُ عَلَيَّ حَرَامٌ؟ قَالَ: يُعْتِقُ رَقَبَةً، أَوْ يَصُومُ شَهْرَيْنِ مُتَتَابِعَيْنِ، أَوْ يُطْعِمُ سِتِّينَ مِسْكِينًا - وَهُوَ قَوْلُ أَبِي قِلَابَةَ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَوَهْبِ بْنِ مُنَبِّهٍ - وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ.

L32949 And the eighth opinion—which is that the prohibition is treated as an oath, thereby requiring the expiation applicable to oaths.

وَقَوْلٌ ثَامِنٌ - وَهُوَ أَنَّ التَّحْرِيمَ يَمِينٌ فِيهِ كَفَّارَةُ يَمِينٍ.

L32950 Then these differed: a faction among them said, "It is a solemn oath requiring no expiation except freeing a slave"—this has been reported to us from Ibn ʿAbbās.

ثُمَّ اخْتَلَفَ هَؤُلَاءِ: فَقَالَتْ طَائِفَةٌ مِنْهُمْ: هِيَ يَمِينٌ مُغَلَّظَةٌ لَيْسَ فِيهَا إِلَّا عِتْقُ رَقَبَةٍ - رُوِّينَا ذَلِكَ عَنِ ابْنِ عَبَّاسٍ.

L32951 Others said: It is solely an oath, as was narrated to us via the transmission of ʿAbd al-Razzāq from Maʿmar, from Yaḥyā ibn Abī Kathīr and Ayyūb al-Sikhtiyānī—both of whom reported from ʿIkrimah—that ʿUmar ibn al-Khaṭṭāb said: "It is an oath—meaning the prohibitive oath."

وَقَالَ آخَرُونَ: هِيَ يَمِينٌ فَقَطْ، كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، وَأَيُّوبَ السِّخْتِيَانِيِّ، كِلَاهُمَا عَنْ عِكْرِمَةَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: هِيَ يَمِينٌ يَعْنِي التَّحْرِيمَ.

L32952 Through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: Al-Muqaddamī narrated to us → Ḥammād ibn Zayd → Ṣakhr ibn Juwayriyah → Nāfiʿ → Ibn ʿUmar, who said: "The forbidden [declaration] is an oath."

Through the chain of ʿAbdullāh ibn Rabīʿ → Muḥammad ibn Muʿāwiyah al-Qurashī → Abū Khalīfah al-Faḍl ibn al-Ḥubāb al-Jumaḥī → Abū al-Walīd al-Ṭayālisī → al-Layth ibn Saʿd → Yazīd ibn Abī Ḥabīb → ʿAbdullāh ibn Hubayrah → Qabīṣah ibn Dhuʾayb, who said: "I asked Zayd ibn Thābit and Ibn ʿUmar about a man who says to his wife: 'You are forbidden to me.' They both replied: 'This requires the expiation for an oath.'"

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا الْمُقَدَّمِيُّ نا حَمَّادُ بْنُ زَيْدٍ عَنْ صَخْرِ بْنِ جُوَيْرِيَةَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: الْحَرَامُ يَمِينٌ -: نَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ الْقُرَشِيُّ نا أَبُو خَلِيفَةَ الْفَضْلُ بْنُ الْحُبَابِ الْجُمَحِيُّ نا أَبُو الْوَلِيدِ الطَّيَالِسِيُّ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عَبْدِ اللَّهِ بْنِ هُبَيْرَةَ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ قَالَ: سَأَلْت زَيْدَ بْنَ ثَابِتٍ وَابْنَ عُمَرَ عَمَّنْ قَالَ لِامْرَأَتِهِ: أَنْتِ عَلَيَّ حَرَامٌ؟ فَقَالَا جَمِيعًا كَفَّارَةُ يَمِينٍ.

L32953 Narrated via the chain of Abd al-Razzaq from Sufyan ibn Uyaynah from Ibn Abi Najih from Mujahid that Ibn Mas'ud said concerning prohibition (al-tahrim): "Prohibition is an oath that requires expiation."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنِ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ أَنَّ ابْنَ مَسْعُودٍ قَالَ فِي التَّحْرِيمِ: هِيَ يَمِينٌ يُكَفِّرُهَا.

L32954 Through the chain in Ṣaḥīḥ Muslim: Zuhayr ibn Ḥarb narrated to us, from Ismāʿīl ibn Ibrāhīm, from Hishām al-Dastuwāʾī, who said: Yaḥyā ibn Abī Kathīr wrote to me, narrating from Yaʿlā ibn Ḥakīm, from Saʿīd ibn Jubayr, from Ibn ʿAbbās, who said: "The forbidden [act] constitutes an oath requiring expiation."

وَمِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ نَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ قَالَ: كَتَبَ إِلَيَّ يَحْيَى بْنُ أَبِي كَثِيرٍ يُحَدِّثُ عَنْ يَعْلَى بْنِ حَكِيمٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: الْحَرَامُ يَمِينٌ يُكَفِّرُهَا.

L32955–32956 That was also narrated from Abu Bakr al-Siddiq.

وَرُوِيَ أَيْضًا ذَلِكَ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ.

L32957 And Aisha, the Mother of the Believers — and this is the opinion of Ikrimah and Ata. It has been narrated to us through the chain of Abd al-Razzaq from Ibn Jurayj: I said to Ata, "What about one who says to his wife, 'You are forbidden to me'?" He replied, "It is an oath." Ibn Jurayj said: I then asked him, "Even if he intended divorce?" He said, "He knew the place of divorce." Ata said: "Even if he said, 'You are to me like blood' or 'like the flesh of a pig,'" Ata said, "It is equivalent to his saying, 'You are forbidden to me.'" This

وَعَائِشَةَ أُمِّ الْمُؤْمِنِينَ - وَهُوَ قَوْلُ عِكْرِمَةَ، وَعَطَاءٍ رُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: مَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ عَلَيَّ حَرَامٌ؟ قَالَ: يَمِينٌ قَالَ ابْنُ جُرَيْجٍ فَقُلْت لَهُ: وَإِنْ كَانَ أَرَادَ الطَّلَاقَ؟ قَالَ: قَدْ عَلِمَ مَكَانَ الطَّلَاقِ، قَالَ عَطَاءٌ: وَلَوْ قَالَ:

أَنْتِ عَلَيَّ كَالدَّمِ، أَوْ كَلَحْمِ الْخِنْزِيرِ؟ قَالَ عَطَاءٌ: هُوَ كَقَوْلِهِ: أَنْتِ عَلَيَّ حَرَامٌ، وَهُوَ قَوْلُ مَكْحُولٍ، وَقَتَادَةَ، كَقَوْلِ عَطَاءٍ فِي كُلِّ مَا ذَكَرْنَاهُ

is also the opinion of Makhul and Qatadah, like the opinion of Ata in all that we have mentioned.

L32958 وَمِنْ طَرِيقِ قَتَادَةَ عَنْ الْحَسَنِ أَنَّهُ قَالَ: كُلُّ حَلَالٍ عَلَيَّ حَرَامٌ، فَهِيَ يَمِينٌ - وَبِهَذَا كَانَ يُفْتِي قَتَادَةُ - وَهُوَ قَوْلُ الشَّعْبِيِّ.

L32958 And through the narration of Qatādah from al-Ḥasan that he said: "If every lawful thing becomes forbidden to me, that constitutes an oath"—and Qatādah would issue juridical rulings based on this position. This is also the opinion of al-Shaʿbī.

L32959 وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ، عَنْ دَاوُد بْنِ أَبِي هِنْدَ، عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: الْحَرَامُ يَمِينٌ يُكَفِّرُهَا - وَهُوَ قَوْلُ سُلَيْمَانَ بْنِ يَسَارٍ، وَجَابِرِ بْنِ زَيْدٍ، وَسَعِيدِ بْنِ جُبَيْرٍ.

L32959 From the chain of Waki', from Sufyan al-Thawri, from Dawud ibn Abi Hind, from Sa'id ibn al-Musayyab, who said: "An unlawful oath requires expiation." This is the opinion of Sulayman ibn Yasar, Jabir ibn Zayd, and Sa'id ibn Jubayr.

L32960 وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا جَرِيرُ بْنُ حَازِمٍ قَالَ: سَأَلْت نَافِعًا مَوْلَى ابْنِ عُمَرَ عَنْ الْحَرَامِ أَطَلَاقٌ هُوَ؟ قَالَ: لَا، أَوَلَيْسَ قَدْ حَرَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَارِيَتَهُ فَأَمَرَهُ اللَّهُ عَزَّ وَجَلَّ أَنْ يُكَفِّرَ يَمِينَهُ وَلَمْ يُحَرِّمْهَا عَلَيْهِ.

L32960 Through the chain of Al-Ḥajjāj ibn Al-Minhāl, Jarīr ibn Ḥāzim narrated to us, saying: I asked Nāfiʿ, the freed slave of Ibn ʿUmar, "Is declaring something forbidden a divorce?" He replied: No. Did the Messenger of Allah, peace and blessings be upon him, not forbid his slave girl upon himself? Yet Allah the Almighty commanded him to expiate his oath without making her permanently forbidden to him.

L32961 وَرُوِيَ عَنْ طَاوُسٍ أَيْضًا فَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَأَبِي ثَوْرٍ.

L32961 It has also been reported from Ṭāwūs, and this is the opinion of Al-Awzāʿī and Abū Thawr.

L32962 وَرُوِّينَا عَنْ الْحَسَنِ أَنَّهُ قَالَ: هُوَ فِي غَيْرِ الزَّوْجَةِ يَمِينٌ.

L32962 It was reported from al-Ḥasan that he said: "In matters unrelated to the wife, the ruling is an oath."

L32963–32965 وَقَوْلٌ تَاسِعٌ - وَهُوَ التَّوَقُّفُ، كَمَا رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نا إسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: يَقُولُ رِجَالٌ فِي الْحَرَامِ: هِيَ حَرَامٌ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ، وَلَا وَاَللَّهِ مَا قَالَ ذَلِكَ عَلِيٌّ، إنَّمَا قَالَ عَلِيٌّ: مَا أَنَا بِمُحِلِّهَا وَلَا بِمُحَرِّمِهَا عَلَيْك، إنْ شِئْت فَتَقَدَّمْ وَإِنْ شِئْت فَتَأَخَّرْ. وَقَوْلٌ عَاشِرٌ - عَنْ أَبِي حَنِيفَةَ فَإِنَّهُ قَالَ: إذَا قَالَ لِامْرَأَتِهِ: أَنْتِ عَلَيَّ حَرَامٌ، فَإِنْ نَوَى طَلْقَةً وَاحِدَةً، أَوْ طَلْقَتَيْنِ، أَوْ طَلَاقًا دُونَ عَدَدٍ،

L32963–32965 The ninth opinion, which is withholding judgment, as narrated through the chain of Yahya ibn Sa'id al-Qattan, who narrated to us from Ismail ibn Abi Khalid, from al-Sha'bi, who said: Some men say regarding the prohibition: "It remains forbidden until she marries a husband other than him." No, by God, Ali did not say that. Rather, Ali said: "I am neither permitting it nor forbidding it to you. If you wish, proceed; if you wish, hold back." The tenth opinion, attributed to Abu Hanifah, states: If a man says to his wife, "You are forbidden to me," then if he intended a single divorce, two divorces, or a divorce without specifying a number, it is in all these cases a

فَهُوَ فِي كُلِّ ذَلِكَ طَلْقَةٌ وَاحِدَةٌ بَائِنَةٌ، لَا أَكْثَرَ، فَإِنْ نَوَى ثَلَاثًا فَهِيَ ثَلَاثٌ، فَإِنْ نَوَى يَمِينًا فَهِيَ يَمِينٌ فِيهِ كَفَّارَةُ يَمِينٍ، فَإِنْ لَمْ يَنْوِ شَيْئًا فَهُوَ إِيلَاءٌ فِيهِ حُكْمُ الْإِيلَاءِ، فَإِنْ نَوَى الْكَذِبَ صُدِّقَ فِي الْفُتْيَا، وَلَمْ يَكُنْ شَيْئًا، وَلَا يَنْوِي فِي الْقَضَاءِ، بَلْ يَكُونُ إِيلَاءً وَلَا بُدَّ، وَلَا يَكُونُ ذَلِكَ ظِهَارًا أَصْلًا، سَوَاءٌ نَوَاهُ وَقَالَ ذَلِكَ، أَوْ لَمْ يَنْوِهِ وَلَا قَالَهُ. وَقَوْلٌ حَادِيَ عَشَرَ - قَالَهُ مَالِكٌ، وَهُوَ أَنَّهُ مَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ عَلَيَّ حَرَامٌ، فَإِنْ كَانَ مَدْخُولًا بِهَا فَهِيَ ثَلَاثُ طَلْقَاتٍ لَا يَنْوِي فِي ذَلِكَ، فَإِنْ كَانَتْ غَيْرَ مَدْخُولٍ بِهَا فَإِنَّهُ يَنْوِي، فَإِنْ قَالَ نَوَيْت وَاحِدَةً فَهِيَ وَاحِدَةٌ، وَإِنْ قَالَ: نَوَيْت اثْنَتَيْنِ فَهِيَ اثْنَتَانِ، وَإِنْ قَالَ: نَوَيْت ثَلَاثًا فَهِيَ ثَلَاثٌ - قَالَ: فَإِنْ قَالَ ذَلِكَ لِغَيْرِ امْرَأَتِهِ فَلَيْسَ بِشَيْءٍ، سَوَاءٌ قَالَ ذَلِكَ لِأَمَتِهِ، أَوْ لِطَعَامٍ - قَالَ: فَلَوْ قَالَ: كُلُّ حِلٍّ عَلَيَّ حَرَامٌ: لَمْ يَحْرُمْ عَلَيْهِ بِذَلِكَ شَيْءٌ إِلَّا زَوْجَتَهُ فَقَطْ، فَإِنْ قَالَ: اسْتَثْنَيْت نِسَائِي، أَوْ امْرَأَتِي فِي نَفْسِي، صُدِّقَ فِي ذَلِكَ. وَقَوْلٌ ثَانِيَ عَشَرَ - لَيْسَ التَّحْرِيمُ بِشَيْءٍ، لَا فِي الزَّوْجَةِ وَلَا فِي غَيْرِهَا، وَلَا يَقَعُ بِذَلِكَ طَلَاقٌ أَصْلًا، وَلَا إِيلَاءٌ، وَلَا ظِهَارٌ، وَلَا تَحْرِيمٌ، وَلَا تَجِبُ فِي ذَلِكَ كَفَّارَةٌ أَصْلًا. كَمَا رَوَيْنَا مِنْ طَرِيقِ الْبُخَارِيِّ نا الْحَسَنُ بْنُ الصَّبَّاحِ سَمِعَ الرَّبِيعَ بْنَ نَافِعٍ نا مُعَاوِيَةُ - هُوَ ابْنُ سَلَامٍ - عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ يَعْلَى بْنِ حَكِيمٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ يَقُولُ: إِذَا حَرَّمَ امْرَأَتَهُ لَيْسَ بِشَيْءٍ، لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ قَالَ: مَا أُبَالِي حَرَّمْت امْرَأَتِي أَوْ قَصْعَةً مِنْ ثَرِيدٍ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ صَالِحِ بْنِ مُسْلِمٍ عَنْ الشَّعْبِيِّ أَنَّهُ قَالَ فِي تَحْرِيمِ الْمَرْأَةِ: لَهِيَ أَهْوَنُ عَلَيَّ مِنْ نَعْلِي. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي عَبْدُ الْكَرِيمِ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَّهُ

single irrevocable divorce (*bāʾinah*)—nothing more. If he intended three divorces, it is three. If he intended an oath, it is an oath requiring expiation for an oath. If he did not intend anything, it is an oath of abstention (*īlāʾ*), subject to the rulings of *īlāʾ*. If he intended to lie, his statement is accepted in the legal ruling (*fatwa*), and it has no effect. He does not intend in legal rulings, but it must necessarily be an oath of abstention (īlāʾ), and this cannot be considered żihār under any circumstance – whether he intended it and stated so, or neither intended nor stated it. The eleventh opinion – held by Mālik – is that if a man tells his wife, "You are forbidden to me," then if he has consummated the marriage, it constitutes three irrevocable divorces without requiring intent. If unconsummated, he must specify his intention: if he states "I intended one divorce," it counts as one; "two" as two; "three" as three. He said: If uttered to anyone other than his wife – whether to his female slave, food, or anything else – it holds no effect. If one declares, "All lawful things are forbidden to me," nothing becomes prohibited except his wife alone. If he states, "I excepted my wives" or "I excepted my wife in my conscience," his statement is accepted. The twelfth opinion – that such prohibitions hold no legal weight regarding wives or others, incurring neither divorce, īlāʾ, żihār, prohibition, nor requiring any expiation – is supported by our narration through Bukhārī's chain: Al-Ḥasan ibn al-Ṣabbāḥ reported from al-Rabīʿ ibn Nāfiʿ, from Muʿāwiyah ibn Salām, from Yaḥyā ibn Abī Kathīr, from Yaʿlā ibn Ḥakīm, from Saʿīd ibn Jubayr, who heard Ibn ʿAbbās state: "Declaring one's wife forbidden is invalid. You have an exemplary model in God's Messenger." Through Wakīʿ's chain: Ismāʿīl ibn Abī Khālid reported from al-Shaʿbī, from Masrūq, who said: "I care not whether I declare my wife or a bowl of tharīd forbidden." Through ʿAbd al-Razzāq's chain: Sufyān al-Thawrī reported from Ṣāliḥ ibn Muslim, from al-Shaʿbī, who said regarding declaring a wife forbidden: "She is as insignificant to me as my sandal." Through ʿAbd al-Razzāq's chain: Ibn Jurayj reported from ʿAbd al-Karīm, from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, who said: "I care not whether I declare her – meaning his wife – or river water forbidden." Through al-Ḥajjāj ibn al-Minhāl's chain: Hammām ibn Yaḥyā reported from Qatādah that a man declared his wife forbidden and consulted Ḥumayd ibn ʿAbd al-Raḥmān al-Ḥimyarī, who replied: "God Almighty says:

‘When you have fulfilled your obligations, then devote yourself to worship, and turn wholeheartedly to your Lord’ (94:7-8). You are a man playing games – go play!” This is the opinion of Abū Sulaymān and all our companions.[42]

قَالَ: مَا أُبَالِي حَرَّمْتَهَا - يَعْنِي امْرَأَتَهُ - أَوْ حَرَّمْت مَاءَ النَّهْرِ. وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هَمَّامُ بْنُ يَحْيَى أَنَا قَتَادَةُ أَنَّ رَجُلًا جَعَلَ امْرَأَتَهُ عَلَيْهِ حَرَامًا، فَسَأَلَ عَنْ ذَلِكَ حُمَيْدَ بْنَ عَبْدِ الرَّحْمَنِ الْحِمْيَرِيَّ؟ فَقَالَ لَهُ حُمَيْدٌ: قَالَ اللَّهُ عَزَّ وَجَلَّ: {فَإِذَا فَرَغْتَ فَانْصَبْ - وَإِلَى رَبِّكَ فَارْغَبْ} [الشرح: ٧ - ٨] وَأَنْتَ رَجُلٌ تَلْعَبُ، فَاذْهَبْ فَالْعَبْ. وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا.

L32966–32967 Abu Muhammad said: As for the statements of Mālik and Abū Ḥanīfah, we know of no one before them who held the positions they held regarding the distinctions they made, despite their views lacking support from the Quran, any authentic Sunnah, weak narration, analogy, or valid opinion. No one discerns the basis for differentiating between rendering a wife unlawful and rendering a female slave unlawful—since a female slave becomes prohibited through manumission just as a wife becomes prohibited through divorce, and as possessions become prohibited through charitable giving or sale. Moreover, a thrice-divorced woman becomes lawful again after a husband, so why did they not declare her permanently prohibited, as they did for one who marries a woman during her waiting period and consummates the marriage? Thus, it would have perfected the prohibition. Similarly, no one discerns the basis for differentiating between rendering unlawful a wife whom Allah Almighty has made lawful and rendering unlawful food which Allah the Exalted has made lawful—given that ʿAṭāʾ and others equated the two matters. The most absurd aspect is their distinction between a consummated marriage and an unconsummated one. Their argument for this is: “Does the single pronouncement finalize her separation if unconsummated?” We retorted: “In your view, the single irrevocable pronouncement also finalizes the separation of a consummated marriage—so what is the distinction?” This is truly astounding! Likewise, Abū Ḥanīfah’s view—that if one intends two divorces, it counts as a single irrevocable divorce, but if one intends three, it counts as three—is perplexing. They argued that an irrevocable divorce

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مَالِكٍ، وَأَبِي حَنِيفَةَ، فَمَا نَعْلَمُ أَحَدًا قَبْلَهُمَا قَالَ بِمَا قَالَا مِنْ تَقْسِيمِ مَا قَسَّمَاهُ، مَعَ أَنَّهُ لَا يُؤَيِّدُ قَوْلَهُمَا قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ، وَمَا يَدْرِي أَحَدٌ وَجْهَ التَّفْرِيقِ بَيْنَ تَحْرِيمِ الزَّوْجَةِ، وَبَيْنَ تَحْرِيمِ الْأَمَةِ، وَغَيْرِهَا - وَالْأَمَةُ تَحْرُمُ بِالْعِتْقِ كَمَا تَحْرُمُ الزَّوْجَةُ بِالطَّلَاقِ، وَكَمَا يَحْرُمُ الْمَتَاعُ بِالصَّدَقَةِ بِهِ، وَبِبَيْعِهِ، وَقَدْ تَحِلُّ الْمُطَلَّقَةُ ثَلَاثًا بَعْدَ زَوْجٍ، فَهَلَّا قَالُوا بِتَحْرِيمِهَا فِي الْأَبَدِ، كَمَا قَالُوا فِي النَّاكِحِ فِي الْعِدَّةِ يَدْخُلُ بِهَا، فَكَانَ يَكُونُ قَدْ أَتَمَّ فِي التَّحْرِيمِ. وَكَذَلِكَ لَا يَعْلَمُ أَحَدٌ وَجْهَ التَّفْرِيقِ بَيْنَ تَحْرِيمِ الزَّوْجَةِ الَّتِي أَحَلَّهَا اللَّهُ عَزَّ وَجَلَّ، وَبَيْنَ تَحْرِيمِ الطَّعَامِ الَّذِي أَحَلَّهُ اللَّهُ تَعَالَى - وَقَدْ سَوَّى بَيْنَ الْأَمْرَيْنِ عَطَاءٌ، وَغَيْرُهُ. وَأَطْرَفُ شَيْءٍ تَفْرِيقُهُمْ بَيْنَ الْمَدْخُولِ بِهَا وَغَيْرِ الْمَدْخُولِ بِهَا، وَحُجَّتُهُمْ فِي ذَلِكَ: أَنَّ الَّتِي لَمْ يَدْخُلْ بِهَا تَبِينُهَا الْوَاحِدَةُ؟ فَقُلْنَا لَهُمْ: وَالْمَدْخُولُ بِهَا عِنْدَكُمْ أَيْضًا تَبِينُهَا الْوَاحِدَةُ الْبَائِنَةُ، فَمَا الْفَرْقُ؟ إنَّ هَذَا لَعَجَبٌ - وَكَذَلِكَ قَوْلُ أَبِي حَنِيفَةَ: إنْ نَوَى اثْنَتَيْنِ فَهِيَ وَاحِدَةٌ بَائِنَةٌ وَإِنْ نَوَى ثَلَاثًا فَهِيَ ثَلَاثٌ - وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّ الطَّلَاقَ الْبَائِنَ لَا يُرْتَدَفُ عَلَى الطَّلَاقِ الْبَائِنِ، وَنَسَوْا قَوْلَهُمْ: إنَّ الْخُلْعَ طَلَاقٌ بَائِنٌ، وَأَنَّهُ إنْ طَلَّقَهَا فِي عِدَّتِهَا لَحِقَتْهَا طَلْقَةٌ أُخْرَى بَائِنَةٌ، فَاعْجَبُوا لِتَنَاقُضِهِمْ؟ ، وَكَذَلِكَ قَوْلُهُ: إنْ نَوَى إيلَاءً، أَوْ لَمْ يَنْوِ شَيْئًا فَهُوَ إيلَاءٌ، وَإِنْ

[42] **Qur’an references (L32963):** Qur’an 33:21 (Al-Ahzab); Qur’an 94:7 (Ash-Sharh); Qur’an 94:8 (Ash-Sharh).

cannot follow another irrevocable divorce, yet they overlooked their own position that khulʿ is an irrevocable divorce and that if a man divorces his wife during her waiting period, another irrevocable divorce is counted as another. Observe their contradictions! Similarly, his statement—that if one intends īlāʾ, or intends nothing, it is īlāʾ, but if one intends ẓihār, it is not ẓihār—leads one to exclaim: "Would that I knew! From where did this distinction emerge?" Likewise, al-Shāfiʿī's view—that if one intends divorce, it is divorce, but if one intends īlāʾ, it is not īlāʾ, and if one intends ẓihār, it is not ẓihār—is a distinction with no discernible basis. If they argue that ẓihār and īlāʾ require specific phrases and cannot occur without them, we reply: "Divorce too requires a specific phrase and cannot occur without it." If they counter that divorce can occur without the explicit term 'divorce,' we respond: "In your view, ẓihār can occur without mentioning the back of a mother, and īlāʾ can occur without mentioning the oath's specific wording. By Allah the Exalted, there is absolutely no difference!"

نَوَى الظِّهَارَ لَمْ يَكُنْ ظِهَارًا، لَيْتَ شَعْرِي. مِنْ أَيْنَ خَرَجَ هَذَا الْفَرْقُ. وَكَذَلِكَ قَوْلُ الشَّافِعِيِّ: إِنْ نَوَى طَلَاقًا فَهُوَ طَلَاقٌ، وَإِنْ نَوَى إِيلَاءً لَمْ يَكُنْ إِيلَاءً، وَإِنْ نَوَى ظِهَارًا لَمْ يَكُنْ ظِهَارًا - وَهَذَا فَرْقٌ لَا يُعْرَفُ وَجْهُهُ. فَإِنْ قِيلَ: لِلظِّهَارِ، وَلِلْإِيلَاءِ أَلْفَاظٌ لَا يَكُونَانِ إِلَّا بِهَا؟ . قُلْنَا: وَلِلطَّلَاقِ لَفْظٌ لَا يَكُونُ إِلَّا بِهِ. فَإِنْ قَالُوا: قَدْ يَكُونُ الطَّلَاقُ بِغَيْرِ لَفْظِ الطَّلَاقِ؟ قُلْنَا: وَقَدْ يَكُونُ الظِّهَارُ عِنْدَكُمْ بِغَيْرِ ظَهْرِ الْأُمِّ، وَقَدْ يَكُونُ الْإِيلَاءُ عِنْدَكُمْ بِغَيْرِ ذِكْرِ الْأَلْيَةِ - بِاللَّهِ تَعَالَى وَلَا فَرْقَ.

L32968–32969 Abū Muḥammad said: All other statements that necessitate divorce, oaths, *ẓihār*, or *īlāʾ* are utterances not found in the explicit text of the Quran or the Sunnah, nor is there any authoritative proof beyond these two. Indeed, we find Allah the Exalted saying: *"O Prophet, why do you prohibit what Allah has made lawful for you?"* (*At-Tahrim* 66:1). Here Allah denounced the prohibition of what He has permitted. Since a wife is among what Allah has made lawful, declaring her prohibited is reprehensible—and such reprehensible matters are rejected, having no legal validity except repentance and seeking forgiveness. Allah the Almighty also said: *"Do not say falsely of what your tongues describe, 'This is lawful and this is forbidden,' fabricating lies against Allah"* (*An-Nahl* 16:116). Thus, whoever declares his wife—lawful to him by Allah's decree—as forbidden has lied and fabricated falsehood. She does not become forbidden to him by his words, but only by the means through which Allah the Exalted has prohibited her. It is authentically reported from Allah's Messenger that he said: *"Whoever introduces into this matter of ours what is not part of it, it is rejected."* Prohibiting what is lawful constitutes introducing an innovation absent from Allah's command, thus necessitating its rejection. There is no distinction

قَالَ أَبُو مُحَمَّد: وَسَائِرُ الْأَقْوَالِ الْمُوجِبَةِ لِلطَّلَاقِ، وَلِلْيَمِينِ، وَلِلظِّهَارِ، وَلِلْإِيلَاءِ: كُلُّهَا أَقْوَالٌ لَمْ تَأْتِ فِي نَصِّ قُرْآنٍ، وَلَا فِي سُنَّةٍ، وَلَا حُجَّةَ فِي سِوَاهُمَا، بَلْ وَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {يَا أَيُّهَا النَّبِيُّ لِمَ تُحَرِّمُ مَا أَحَلَّ اللَّهُ لَكَ} [التحريم: ١] فَأَنْكَرَ اللَّهُ تَعَالَى تَحْرِيمَ مَا أَحَلَّهُ لَهُ، وَالزَّوْجَةُ مِمَّا أَحَلَّ اللَّهُ: فَتَحْرِيمُهَا مُنْكَرٌ، وَالْمُنْكَرُ مَرْدُودٌ، لَا حُكْمَ لَهُ إِلَّا التَّوْبَةَ وَالِاسْتِغْفَارَ. وَقَالَ عَزَّ وَجَلَّ: {وَلا تَقُولُوا لِمَا تَصِفُ أَلْسِنَتُكُمُ الْكَذِبَ هَذَا حَلالٌ وَهَذَا حَرَامٌ لِتَفْتَرُوا عَلَى اللَّهِ الْكَذِبَ} [النحل: ١١٦] فَمَنْ قَالَ لِامْرَأَتِهِ - الْحَلَالِ لَهُ بِحُكْمِ اللَّهِ عَزَّ وَجَلَّ هِيَ حَرَامٌ، فَقَدْ كَذَبَ وَافْتَرَى، وَلَا تَكُونُ عَلَيْهِ حَرَامًا بِقَوْلِهِ، لَكِنْ بِالْوَجْهِ الَّذِي حَرَّمَهَا اللَّهُ تَعَالَى بِهِ - صَحَّ عَنْ رَسُولِ اللَّهِ أَنَّهُ قَالَ: «مَنْ أَحْدَثَ فِي أَمْرِنَا هَذَا مَا لَيْسَ مِنْهُ فَهُوَ رَدٌّ» فَتَحْرِيمُ الْحَلَالِ إِحْدَاثُ حَدَثٍ لَيْسَ فِي أَمْرِ اللَّهِ عَزَّ وَجَلَّ فَوَجَبَ أَنْ يُرَدَّ. وَلَا فَرْقَ بَيْنَ قَوْلِ الْقَائِلِ: امْرَأَتِي عَلَيَّ حَرَامٌ، وَبَيْنَ قَوْلِهِ: امْرَأَةُ زَيْدٍ

between one who says, “My wife is forbidden to me,” and one who says, “Zayd’s wife is lawful to me.” Similarly, there is no difference between one who forbids himself ram’s meat and one who permits himself swine’s meat. Thus, it is confirmed that such prohibition is invalid, and falsehood holds no legal weight except its invalidation and repentance from it. With Allah the Exalted alone is success. Likewise, if a man tells his wife, “You are to me like carrion, blood, or swine’s meat,” all this is false—rather, she remains as lawful as water and does not become forbidden by such statements. In Allah the Exalted we seek strength.[43][44]

Issue: He said to his wife, “I have given you to your family.”

L32970

L32971–32975

1935. Question: Among such cases is that of a man who says to his wife: “I have transferred you to your family.” We have narrated from Ali ibn Abi Talib through the chain of Hammad ibn Salama, from Qatada, from Khilas ibn Amr, that Ali ibn Abi Talib said regarding a woman transferred to her family: If they accept her, it constitutes one irrevocable divorce (bā’inah). If they reject her, it constitutes one revocable divorce—and he retains priority over her (meaning through his right of retraction). Through another chain reported to us by al-Hajjaj ibn al-Minhal: Yazid ibn Ibrahim (al-Tustari) reported to us from al-Hasan (al-Basri), who said: Some Companions of Allah’s Messenger would state: If a man transfers his wife to her family and they take custody of her, she is irrevocably divorced (bā’inah) from him. If they return her to him, it constitutes one divorce—and he retains priority over her. Regarding her – this opinion is narrated from Ibrāhīm al-Nakhaʿī. Another opinion – also narrated from ʿAlī – states that if they accept her, it constitutes one divorce, and if they reject her, it holds no validity. Narrated via ʿAbd al-Razzāq from Sufyān al-Thawrī from Ashʿath from al-Shaʿbī from Masrūq from ʿAbd Allāh ibn Masʿūd, who said concerning the gifted wife: “If they accept her, it is one irrevocable divorce, and if they reject her, it is invalid.” ʿAṭāʾ said: “If

[43] **Hadith references (L32969):** Sunan Ibn Majah 14; Sahih Muslim 1718a; Mishkat al-Masabih 140.

[44] **Qur’an references (L32969):** Qur’an 66:1 (At-Tahrim); Qur’an 16:116 (An-Nahl).

لِي حَلَالٌ. وَلَا فَرْقَ بَيْنَ مَنْ حَرَّمَ عَلَى نَفْسِهِ لَحْمَ الْكَبْشِ، وَبَيْنَ مَنْ أَحَلَّ لِنَفْسِهِ لَحْمَ الْخِنْزِيرِ. فَصَحَّ أَنَّ التَّحْرِيمَ بَاطِلٌ، وَلَا حُكْمَ لِلْبَاطِلِ إِلَّا إِبْطَالَهُ وَالتَّوْبَةَ مِنْهُ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. وَكَذَلِكَ قَوْلُهُ لَهَا: أَنْتِ عَلَيَّ كَالْمَيْتَةِ وَالدَّمِ وَلَحْمِ الْخِنْزِيرِ وَكُلُّ ذَلِكَ كَذِبٌ بَلْ هِيَ حَلَالٌ كَالْمَاءِ، وَلَا تَكُونُ حَرَامًا بِهَذَا الْقَوْلِ وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

[مَسْأَلَةٌ قَالَ لِامْرَأَتِهِ قَدْ وَهَبْتُك لِأَهْلِك]

١٩٣٥ - مَسْأَلَةٌ: وَمِنْ ذَلِكَ مَنْ قَالَ لِامْرَأَتِهِ: قَدْ وَهَبْتُك لِأَهْلِك؟ فَإِنَّا رَوَيْنَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الْمَرْأَةِ تُوهَبُ لِأَهْلِهَا: إنْ قَبِلُوهَا فَوَاحِدَةٌ بَائِنَةٌ، وَإِنْ رَدُّوهَا فَوَاحِدَةٌ - وَهُوَ أَحَقُّ بِهَا - يَعْنِي بِرَجْعَتِهِ. وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا يَزِيدُ بْنُ إبْرَاهِيمَ - هُوَ التُّسْتَرِيُّ - نا الْحَسَنُ - هُوَ الْبَصْرِيُّ - قَالَ: كَانَ رِجَالٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ يَقُولُونَ: إنْ وَهَبَ امْرَأَتَهُ لِأَهْلِهَا فَأَمْسَكُوهَا، فَقَدْ بَانَتْ مِنْهُ، وَإِنْ هُمْ رَدُّوهَا عَلَيْهِ فَهِيَ وَاحِدَةٌ وَهُوَ أَحَقُّ بِهَا - وَرُوِيَ هَذَا الْقَوْلُ عَنْ إبْرَاهِيمَ النَّخَعِيِّ. وَقَوْلٌ آخَرُ - وَهُوَ مَرْوِيٌّ عَنْ عَلِيٍّ أَيْضًا - وَهُوَ أَنَّهُ إنْ قَبِلُوهَا فَهِيَ وَاحِدَةٌ، وَإِنْ لَمْ يَقْبَلُوهَا فَلَيْسَ بِشَيْءٍ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَشْعَثَ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ - يَعْنِي فِي الْمَوْهُوبَةِ -: إنْ قَبِلُوهَا فَوَاحِدَةٌ بَائِنَةٌ وَإِنْ لَمْ يَقْبَلُوهَا فَلَيْسَ بِشَيْءٍ. وَقَالَ عَطَاءٌ: إنْ قَبِلُوهَا فَوَاحِدَةٌ بَائِنَةٌ وَإِنْ لَمْ يَقْبَلُوهَا فَلَيْسَ بِشَيْءٍ. وَقَوْلٌ ثَالِثٌ - كَمَا رَوَيْنَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ الْحَسَنِ أَنَّ زَيْدَ بْنَ ثَابِتٍ

they accept her, it is one irrevocable divorce, and if they reject her, it holds no validity."

A third opinion – as we narrated via ʿAbd al-Razzāq from Maʿmar from Qatādah from al-Ḥasan – states that Zayd ibn Thābit said: "If they accept her, it counts as three divorces, and she becomes unlawful for him until she marries another husband. If they reject her, it constitutes one divorce, and he retains authority over her." This is al-Ḥasan's opinion.

A fourth opinion – narrated via Saʿīd ibn Manṣūr from Ismāʿīl ibn ʿAyyāsh from ʿAbd Allāh ibn ʿUbayd Allāh al-Kalāʿī and ʿAbd al-ʿAzīz ibn ʿUbayd Allāh: al-Kalāʿī reported from Makḥūl, while ʿAbd al-ʿAzīz reported from al-Shaʿbī from Masrūq – both Masrūq and Makḥūl concurred regarding one who gifts his wife to her family, jointly stating: "If they accept her, it is one divorce, and he retains authority over her. If they reject her, it is invalid." We also narrated this from al-Zuhrī – it being the opinion of Aḥmad ibn Ḥanbal and Isḥāq ibn Rāhwayh.

A fifth opinion – as narrated via Saʿīd ibn Manṣūr: al-Muʿtamir ibn Sulaymān al-Taymī reported to us from Manṣūr from Ibrāhīm, who said: "It was held concerning the wife gifted to her family: one divorce." Saʿīd added: "Abū ʿAwānah demonstrated to us via Manṣūr from Ibrāhīm the same, further noting: 'We cannot determine whether they are irrevocable divorces or a revocable divorce.'"

A sixth opinion – narrated from Rabīʿah, Yaḥyā ibn Saʿīd, and Abū al-Zinād concerning one who gifts his wife to her family – states: "It constitutes three divorces, whether they accept or reject her."

A seventh opinion – stated by al-Awzāʿī: "It is one divorce, regardless of their acceptance or rejection."

An eighth opinion – that of al-Layth ibn Saʿd: "Whoever gifts his wife to her family, the binding ruling depends on their judgment. If he gifted her without awaiting their decision, it constitutes absolute divorce."

A ninth opinion – narrated from Mālik, who said: "If one gifts his wife to her family, if she was..." If she has been consummated with, she is irrevocably

قَالَ: إِنْ قَبِلُوهَا فَهِيَ ثَلَاثٌ لَا تَحِلُّ لَهُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ، وَإِنْ رَدُّوهَا فَوَاحِدَةٌ وَهُوَ أَحَقُّ بِهَا - وَهَذَا قَوْلُ الْحَسَنِ. وَقَوْلٌ رَابِعٌ - رَوَيْنَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ إِسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ عَبْدِ اللَّهِ بْنِ عُبَيْدِ اللَّهِ الْكَلَاعِيِّ، وَعَبْدِ الْعَزِيزِ بْنِ عُبَيْدِ اللَّهِ قَالَ الْكَلَاعِيُّ: عَنْ مَكْحُولٍ، وَقَالَ عَبْدُ الْعَزِيزِ: عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ - ثُمَّ اتَّفَقَ مَسْرُوقٌ وَمَكْحُولٌ فِيمَنْ وَهَبَ امْرَأَتَهُ لِأَهْلِهَا، قَالَا جَمِيعًا: إِنْ قَبِلُوهَا فَهِيَ طَلْقَةٌ وَهُوَ أَمْلَكُ بِهَا، وَإِنْ لَمْ يَقْبَلُوهَا فَلَا شَيْءَ. وَرَوَيْنَا هَذَا أَيْضًا عَنْ الزُّهْرِيِّ - وَهُوَ قَوْلُ أَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ. وَقَوْلٌ خَامِسٌ - كَمَا رَوَيْنَا عَنْ سَعِيدِ بْنِ مَنْصُورٍ أَنَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ قَالَ: كَانَ يُقَالُ فِي الْمَوْهُوبَةِ لِأَهْلِهَا: تَطْلِيقَةٌ قَالَ سَعِيدٌ: وَأَرَانَاهُ أَبُو عَوَانَةَ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ بِمِثْلِهِ، وَزَادَ: لَا نَدْرِي أَبَائِنَةٌ أَمْ رَجْعِيَّةٌ. وَقَوْلٌ سَادِسٌ - رُوِيَ عَنْ رَبِيعَةَ، وَيَحْيَى بْنِ سَعِيدٍ، وَأَبِي الزِّنَادِ فِيمَنْ وَهَبَ امْرَأَتَهُ لِأَهْلِهَا؟ قَالُوا: هِيَ ثَلَاثٌ قَبِلُوهَا أَوْ رَدُّوهَا. وَقَوْلٌ سَابِعٌ - قَالَهُ الْأَوْزَاعِيُّ، قَالَ: هِيَ طَلْقَةٌ وَاحِدَةٌ قَبِلُوهَا أَوْ رَدُّوهَا. وَقَوْلٌ ثَامِنٌ - وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ: مَنْ وَهَبَ امْرَأَتَهُ لِأَهْلِهَا فَالْقَضَاءُ مَا قَضَوْا، فَإِنْ كَانَ وَهَبَهَا لَهُمْ - وَهُوَ لَا يَنْتَظِرُ قَضَاءَهُمْ - فَهُوَ طَلَاقٌ أَلْبَتَّةَ. وَقَوْلٌ تَاسِعٌ - رَوَيْنَاهُ عَنْ مَالِكٍ، وَهُوَ أَنَّهُ قَالَ: مَنْ وَهَبَ امْرَأَتَهُ لِأَهْلِهَا فَإِنْ كَانَتْ مَدْخُولًا بِهَا فَهِيَ طَالِقٌ ثَلَاثًا قَبِلُوهَا أَوْ لَمْ يَقْبَلُوهَا - وَإِنْ كَانَتْ غَيْرَ مَدْخُولٍ بِهَا فَهِيَ وَاحِدَةٌ فَقَطْ - قَبِلُوهَا أَوْ رَدُّوهَا. وَقَوْلٌ عَاشِرٌ - رَوَيْنَاهُ عَنْ الشَّافِعِيِّ قَالَ: مَنْ وَهَبَ امْرَأَتَهُ لِأَهْلِهَا فَلَهُ نِيَّتُهُ فِي الْفُتْيَا وَالْقَضَاءِ، فَإِنْ قَالَ: لَمْ أَنْوِ طَلَاقًا لَمْ يَلْزَمْهُ طَلَاقٌ، وَإِنْ قَالَ: نَوَيْت ثَلَاثًا فَهِيَ ثَلَاثٌ، وَإِنْ قَالَ: نَوَيْت اثْنَتَيْنِ

فَهِيَ اثْنَتَانِ رَجْعِيَّتَانِ، وَإِنْ قَالَ: نَوَيْت وَاحِدَةً فَهِيَ وَاحِدَةٌ رَجْعِيَّةٌ. وَقَوْلٌ حَادِيَ عَشَرَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، قَالَ: إنْ قَالَهُ لِامْرَأَتِهِ: قَدْ وَهَبْتُك لِأَهْلِك، أَوْ قَالَ: لِأَبِيك، أَوْ قَالَ: لِأُمِّك، أَوْ قَالَ: لِلْأَزْوَاجِ؟ فَإِنْ كَانَ هَذَا فِي غَضَبٍ، أَوْ جَوَابًا لَهَا إذْ سَأَلَتْهُ الطَّلَاقَ، ثُمَّ قَالَ: لَمْ أَنْوِ الطَّلَاقَ: صُدِّقَ وَلَمْ يَلْزَمْهُ طَلَاقٌ فِي الْفُتْيَا، وَفِي الْقَضَاءِ. وَإِنْ قَالَ: نَوَيْت بِذَلِكَ الطَّلَاقَ - فَإِنْ نَوَى ثَلَاثًا فَهِيَ ثَلَاثٌ، وَإِنْ نَوَى اثْنَتَيْنِ بِاثْنَتَيْنِ، أَوْ رَجْعِيَّتَيْنِ، أَوْ وَاحِدَةً بَائِنَةً، أَوْ رَجْعِيَّةً، لَمْ يَكُنْ فِي كُلِّ ذَلِكَ إلَّا وَاحِدَةً بَائِنَةً فَقَطْ، لَا أَكْثَرَ. قَالَ: فَلَوْ قَالَ لَهَا: وَهَبْتُك لِخَالَتِك، أَوْ قَالَ لِزَيْدٍ، أَوْ لِفُلَانٍ - وَذَكَرَ أَجْنَبِيًّا فَلَيْسَ ذَلِكَ بِشَيْءٍ، وَلَا يَلْزَمُهُ بِذَلِكَ طَلَاقٌ - سَوَاءٌ نَوَى بِذَلِكَ طَلَاقًا ثَلَاثًا أَوْ أَقَلَّ؛ أَوْ لَمْ يَنْوِ طَلَاقًا - كَانَ ذَلِكَ فِي غَضَبٍ أَوْ فِي جَوَابِ سُؤَالِهَا إيَّاهُ الطَّلَاقَ، أَوْ لَمْ يَكُنْ - وَلَا مَعْنَى لِحُكْمِ أَهْلِهَا الَّذِينَ وَهَبَهَا لَهُمْ فِي ذَلِكَ. وَقَوْلٌ ثَانِيَ عَشَرَ - وَهُوَ أَنَّ كُلَّ ذَلِكَ بَاطِلٌ لَا يَلْزَمُهُ بِهِ طَلَاقٌ أَصْلًا - نَوَاهُ أَوْ لَمْ يَنْوِهِ - وَهُوَ أَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا. قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ - فَآبِدَةٌ مِنْ أَوَابِدِ الدَّهْرِ، وَتَفْرِيقُ مَا سَمِعَ بِأَسْخَفَ مِنْهُ، كُلُّ ذَلِكَ بِلَا دَلِيلٍ يُعْقَلُ، وَلَا قِيَاسٍ يُضْبَطُ، وَلَا رَأْيٍ لَهُ وَجْهٌ، وَلَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ، لَا سِيَّمَا إذَا أُضِيفَ هَذَا الْقَوْلُ إلَى قَوْلِهِ الَّذِي ذَكَرْنَاهُ فِي التَّخْيِيرِ وَالتَّمْلِيكِ وَتِلْكَ التَّفَارِيقِ السَّخِيفَةِ. وَأَمَّا قَوْلُ مَالِكٍ بَيْنَ الْمَدْخُولِ بِهَا وَغَيْرِ الْمَدْخُولِ بِهَا فِي التَّفْرِيقِ - فَمَا يُعْلَمُ عَنْ أَحَدٍ قَبْلَهُ، وَمَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ بِالْهِبَةِ أَنْ تَكُونَ طَالِقًا ثَلَاثًا؟ وَقَالُوا: الْمَدْخُولُ بِهَا لَا يُحَرِّمُهَا إلَّا الثَّلَاثُ؟ فَقُلْنَا: وَقَدْ يُحَرِّمُهَا عِنْدَكُمْ الْوَاحِدَةُ الْبَائِنَةُ.

divorced three times whether they accept it or reject it. If she has not been consummated with, it is only a single revocable divorce whether they accept or reject it. The tenth opinion—which we have narrated from Al-Shāfiʿī—states: Whoever gifts his wife to her family, his intention governs both fatwas and court judgments. If he says, "I did not intend divorce," no divorce is binding. If he says, "I intended three divorces," then it is three. If he says, "I intended two divorces," they are two revocable divorces. If he says, "I intended one divorce," it is one revocable divorce. The eleventh opinion—which is the view of Abū Ḥanīfa—states: If he says to his wife, "I have gifted you to your family," or "to your father," or "to your mother," or "to spouses?" and this was uttered in anger or in response to her request for divorce, and he later says, "I did not intend divorce," he is believed, and no divorce is binding in fatwas or court judgments. If he says, "I intended divorce by that," and he intended three divorces, it is three. If he intended two divorces as two revocable acts, two revocable divorces, one final divorce, or one revocable divorce, it remains only a single final divorce, nothing more. He said: If he tells her, "I have gifted you to your aunt," or says to Zayd, or to a stranger, this holds no validity, and no divorce is binding—whether he intended three divorces, fewer, or no divorce; whether said in anger, in response to her request for divorce, or otherwise. The ruling regarding the recipients of the gift holds no meaning here. The twelfth opinion—held by Abū Thawr, Abū Sulaymān, and our companions—states: All of this is invalid, and no divorce is binding whatsoever, whether he intended it or not. Abū Muḥammad said: As for Abū Ḥanīfa's opinion, it is among the most baseless anomalies of the age, making distinctions more absurd than any known—all without rational evidence, valid analogy, or plausible reasoning, nor is it attested from anyone before him, especially when combined with his aforementioned views on spousal choice, transfer of ownership, and other nonsensical distinctions. As for Mālik's distinction between consummated and unconsummated wives in rulings, it is unknown from any predecessor. How did they conclude that gifting necessitates a triple divorce? They claim a consummated wife is only prohibited by three divorces, yet according to their own principle, even a single final divorce prohibits her.

فَإِنْ قَالُوا: يَتَزَوَّجُهَا إِذَا شَاءَ؟ قُلْنَا: وَفِي الثَّلَاثِ يَتَزَوَّجُهَا بَعْدَ زَوْجٍ، وَكَذَلِكَ غَيْرُ الْمَدْخُولِ بِهَا يَتَزَوَّجُهَا فِي الْبَائِنَةِ إِنْ شَاءَ وَشَاءَتْ، وَهَلَّا حَرَّمْتُمُوهَا فِي الْأَبَدِ، كَمَا فَعَلْتُمْ بِالْمَدْخُولِ بِهَا فِي عِدَّتِهَا؟ ،. قَالَ أَبُو مُحَمَّد: وَسَائِرُ الْأَقْوَالِ لَا نَعْلَمُ لِشَيْءٍ مِنْهَا بُرْهَانًا، لَا قُرْآنًا، وَلَا سُنَّةً - وَلَا حُجَّةً فِي سِوَاهُمَا - وَمَا كَانَ هَكَذَا فَلَا يَجُوزُ الْقَوْلُ بِهِ، وَمِنْ الْبَاطِلِ أَنْ يَهَبَ حُرَّةً، أَوْ أَمَةَ غَيْرِهِ؟ فَهِبَتُهُ فَاسِدَةٌ، وَالْفَسَادُ لَا حُكْمَ لَهُ إلَّا بِإِبْطَالِهِ، وَالتَّوْبَةُ إلَى اللَّهِ عَزَّ وَجَلَّ مِنْهُ - فَصَحَّ الَّذِي قُلْنَا وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

L32976–32977 If they say: "May he marry her if he wishes?" We respond: In the case of the triple divorce, he may marry her only after [she marries and divorces] another husband. Similarly, the unconsummated woman may be married following a final divorce if both he and she consent. Why do you not deem her permanently forbidden, as you did with the consummated woman during her waiting period? Abu Muhammad said: As for the remaining opinions, we know no proof for any of them—neither from the Qur'an, nor the Sunnah, nor any valid argument beyond these two. Whatever resembles this cannot be legally upheld. Is it not invalid for him to unilaterally offer a free woman or another's slave [in marriage]? His act is voidable, and a voidable act holds no legal validity unless annulled, coupled with repentance to Allah Almighty. Thus, what we have stated stands verified, and in Allah, the Exalted, we place our trust.

[مَسْأَلَةٌ مَنْ بَاعَ عَبْدَهُ وَلَهُ زَوْجَةٌ وَمَنْ بَاعَ أَمَتَهُ وَلَهَا زَوْجٌ]

١٩٣٦ - مَسْأَلَةٌ: وَمَنْ بَاعَ عَبْدَهُ وَلَهُ زَوْجَةٌ فَهِيَ زَوْجَتُهُ كَمَا كَانَتْ، وَمَنْ بَاعَ أَمَتَهُ وَلَهَا زَوْجٌ فَهِيَ زَوْجَتُهُ كَمَا كَانَتْ. وَقَدْ اخْتَلَفَ النَّاسُ فِي ذَلِكَ كَمَا رَوَيْنَا مِنْ طَرِيقِ شُعْبَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ قَالَ: سُئِلَ إبْرَاهِيمُ النَّخَعِيُّ عَنْ الْأَمَةِ تُبَاعُ وَلَهَا زَوْجٌ؟ فَقَالَ: كَانَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ يَقُولُ: بَيْعُهَا طَلَاقُهَا وَيَتْلُو هَذِهِ الْآيَةَ: {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] . نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ، عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، عَنْ إبْرَاهِيمَ النَّخَعِيِّ، عَنْ ابْنِ مَسْعُودٍ أَنَّهُ قَالَ فِي قَوْلِ اللَّهِ تَعَالَى: {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] ذَوَاتُ الْأَزْوَاجِ مِنْ الْمُسْلِمِينَ وَالْمُشْرِكِينَ. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الْمُبَارَكِ بْنِ فَضَالَةَ عَنْ الْحَسَنِ الْبَصْرِيِّ عَنْ أُبَيِّ بْنِ كَعْبٍ قَالَ: بَيْعُهَا طَلَاقُهَا. أَنَا

A case regarding one who sells his male slave who has a wife, and one who sells his female slave who has a husband.

L32978

L32979–32981 1936. Issue: If someone sells his male slave who has a wife, she remains the slave's wife as before. If someone sells his female slave who has a husband, she remains her husband's wife as before. People have differed on this matter, as we transmitted through Shu'bah's chain from al-Mughīrah ibn Miqsam, who said: Ibrāhīm al-Nakha'ī was asked about a female slave being sold while having a husband. He replied: 'Abdullāh ibn Mas'ūd used to say: "Selling her constitutes her divorce," and he would recite this verse: {Married women [are forbidden to you], except those whom your right hands possess} [4:24]. Narrated by Muḥammad ibn Sa'īd ibn Nabāt via Aḥmad ibn 'Abd al-Baṣīr via Qāsim ibn Aṣbaġ via Muḥammad ibn 'Abd al-Salām al-Khushanī via Muḥammad ibn al-Muthannā via 'Abd al-Raḥmān ibn Mahdī via Sufyān al-Thawrī from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakha'ī from Ibn Mas'ūd, who said regarding Allah's statement {Married women [are forbidden to you], except those whom your right hands possess} [4:24]: "These are married women from the Muslims and the polytheists." Through Wakī''s chain from al-Mubārak ibn Faḍālah from al-Ḥasan al-Baṣrī from Ubayy ibn Ka'b, who said: "Selling her constitutes her divorce." Narrated by Yūnus ibn 'Abdullāh via Aḥmad ibn 'Abdullāh ibn 'Abd al-Raḥīm via Aḥmad ibn Khālid

via Muḥammad ibn ʻAbd al-Salām al-Khushanī via Muḥammad ibn Bashshār via Yaḥyā ibn Saʻīd al-Qaṭṭān via Sulaymān al-Taymī from... Abu Mijlaz reported from Anas ibn Malik, who said: "The sale of a female slave constitutes her divorce." Anas commented on the verse {And forbidden to you are chaste women except those your right hands possess} [Quran 4:24], stating: "This refers to married women." Through the chain of Abd al-Razzaq from Ma'mar, from Sa'id ibn Abi Arubah, from Qatadah: Jabir ibn Abd Allah declared: "Her sale is her divorce." Through the chain of Sa'id ibn Mansur: Hushaym narrated to us from Khalid al-Hadhdha', from Ikrimah, from Ibn Abbas, who ruled: "Selling a female slave is her divorce." Through another chain of Sa'id ibn Mansur: Hushaym narrated from Yunus ibn Ubayd, from al-Hasan, who stated: "Whichever is sold, their marriage is divorced"—meaning: the male slave from his wife and the female slave from her husband.

Muhammad ibn Sa'id ibn Nabat narrated through Abbas ibn Asbagh, Muhammad ibn Qasim ibn Muhammad, Muhammad ibn Abd al-Salam al-Khushani, Muhammad ibn al-Muthanna, Abd al-A'la, Sa'id ibn Abi Arubah, Qatadah, and al-Hasan al-Basri, who said regarding a female slave: "Her sale is her divorce from her husband, and his sale is her divorce"—meaning: the male slave's wife is divorced when he is sold.

Through the chain of Hammad ibn Salamah from Hisham ibn Urwah, from his father: "If a master marries his male slave to his female slave, divorce remains with the male slave. If one buys a female slave who has a husband, divorce becomes the buyer's right."

A group of scholars held: "If a female slave is sold, this constitutes her divorce from her husband. If a male slave is sold while married, his wife is not divorced by this." As transmitted through Abd al-Razzaq's chain from Ma'mar, al-Zuhri (via Sa'id ibn al-Musayyib) and Ibn Abi Najih (via Mujahid), who both said: "Her sale is her divorce, but his sale does not result in his wife's divorce."

From al-Hasan al-Basri: "If a male slave flees, his flight constitutes his divorce." This was transmitted through Sa'id ibn Mansur's chain: Hushaym

يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا سُلَيْمَانُ التَّيْمِيُّ عَنْ أَبِي مِجْلَزٍ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: بَيْعُ الْأَمَةِ طَلَاقُهَا - قَالَ أَنَسٌ {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] قَالَ: ذَوَاتُ الْبُعُولِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ أَنَّ جَابِرَ بْنَ عَبْدِ اللَّهِ قَالَ: بَيْعُهَا طَلَاقُهَا. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا خَالِدٌ الْحَذَّاءُ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ يَقُولُ: بَيْعُ الْأَمَةِ هُوَ طَلَاقُهَا. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا يُونُسُ بْنُ عُبَيْدٍ عَنِ الْحَسَنِ قَالَ: أَيُّهُمَا بِيعَ فَهُوَ طَلَاقٌ - يَعْنِي: الْعَبْدَ مِنْ زَوْجَتِهِ، وَالْأَمَةَ مِنْ زَوْجِهَا: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ قَاسِمِ بْنِ مُحَمَّدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الْأَعْلَى نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنِ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ قَالَ فِي الْأَمَةِ: بَيْعُهَا طَلَاقُهَا - يَعْنِي: مِنْ زَوْجِهَا، وَبَيْعُهُ طَلَاقُهَا - يَعْنِي: مِنْ زَوْجَتِهِ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: إِذَا زَوَّجَ عَبْدَهُ مِنْ أَمَتِهِ فَالطَّلَاقُ بِيَدِ الْعَبْدِ، وَإِذَا اشْتَرَى أَمَةً وَلَهَا زَوْجٌ فَالطَّلَاقُ بِيَدِ الْمُشْتَرِي. وَقَالَتْ طَائِفَةٌ: إِنْ بِيعَتِ الْأَمَةُ فَهُوَ طَلَاقُهَا مِنْ زَوْجِهَا، وَإِنْ بِيعَ الْعَبْدُ وَلَهُ زَوْجَةٌ لَمْ تَطْلُقْ بِذَلِكَ. كَمَا رَوَيْنَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ وَابْنِ أَبِي نَجِيحٍ قَالَ الزُّهْرِيُّ: عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، وَقَالَ ابْنُ أَبِي نَجِيحٍ: عَنْ مُجَاهِدٍ، قَالَا جَمِيعًا: بَيْعُهَا طَلَاقُهَا، فَإِنْ بِيعَ الْعَبْدُ لَمْ تَطْلُقْ هِيَ حِينَئِذٍ. وَرَوَيْنَا عَنِ الْحَسَنِ الْبَصْرِيِّ أَنَّ الْعَبْدَ إِذَا أَبَقَ وَلَهُ زَوْجَةٌ فَإِنَّهَا طَالِقٌ بِإِبَاقَةِ الْعَبْدِ - رُوِّينَا ذَلِكَ مِنْ

narrated from Mansur, who reported al-Hasan's ruling: "A male slave's flight is his divorce."[45]

طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ: يُسْبَى أرنا مَنْصُورٌ عَنْ الْحَسَنِ أَنَّهُ كَانَ يَقُولُ: إبَاقُ الْعَبْدِ طَلَاقُهُ.

L32982–32984 A group held another opinion, as narrated to us through the chain of Ismail ibn Ishaq al-Qadi: from Musaddad, from al-Mu'tamir ibn Sulayman, who said: "I heard my father narrate from Abu Mijlaz from..." Anas ibn Mālik commented on the verse of Allah, the Exalted and Glorious: *"And chaste women from among the women, except those whom your right hands have possessed"* [al-Nisā' 4:24].[46]

وَذَهَبَتْ طَائِفَةٌ: إلَى قَوْلٍ آخَرَ، كَمَا رُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي نا مُسَدَّدٌ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ قَالَ: سَمِعْت أَبِي يُحَدِّثُ عَنْ أَبِي مِجْلَزٍ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] .

L32985 He said: Married women are those with husbands among the free women, since he sees no harm in matters pertaining to those whom the right hand possesses - that a man may take the slave girl from his male slave and then have intercourse with her.

قَالَ: الْمُحْصَنَاتُ ذَوَاتُ الْأَزْوَاجِ مِنْ الْحَرَائِرِ، وَإِذْ هُوَ لَا يَرَى بَأْسًا بِمَا مَلَكَتْ الْيَمِينُ أَنْ يَنْتَزِعَ الرَّجُلُ الْجَارِيَةَ مِنْ عَبْدِهِ فَيَطَؤُهَا.

L32986 Through him to Ismāʿīl: Abū Bakr ibn Abī Shaybah narrated to us: Muḥammad ibn Jaʿfar Ghundar narrated from Ibn Jurayj from ʿAṭāʾ from Ibn ʿAbbās regarding Allah's statement: {Except what your right hands possess} [an-Nisāʾ 4:24]. He said: A man may take his female slave, the wife of his male slave.[47]

وَبِهِ إلَى إسْمَاعِيلَ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {إلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] قَالَ يَنْتَزِعُ الرَّجُلُ وَلِيدَتَهُ امْرَأَةَ عَبْدِهِ.

L32987 From the narration of Abd al-Razzaq from Ibn Jurayj, who said: I asked Ata, "May I reclaim my slave girl from a slave belonging to another tribe to whom I married her?" He replied, "Yes, and his land." I asked, "Does he insist on keeping his dowry?" He said, "It is all his. If he refuses, then reclaim her if you wish. And if you married her to a free man—" then Ata reconsidered and said, "Do not reclaim her from the free man. If you gave him the dowry, do not employ her, nor sell her."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: أَنْتَزِعُ أَمَتِي مِنْ عَبْدِ قَوْمٍ آخَرِينَ أَنْكَحْتهَا إيَّاهُ؟ قَالَ: نَعَمْ، وَأَرْضِهِ، قُلْت: أَبَى إلَّا صَدَاقَهُ؟ قَالَ: هُوَ لَهُ كُلُّهُ، فَإِنْ أَبَى فَانْتَزِعْهَا، إنْ شِئْت، وَمِنْ حُرٍّ أَنْكَحْتهَا إيَّاهُ - ثُمَّ رَجَعَ عَطَاءٌ فَقَالَ: لَا تَنْتَزِعْهَا مِنْ الْحُرِّ، وَإِنْ أَعْطَيْته الصَّدَاقَ فَلَا تَسْتَخْدِمْهَا، وَلَا تَبِعْهَا.

L32988 Others have held the view that selling a female slave does not constitute divorce, and that selling a male slave or his fleeing does not constitute divorce for his wife. Nor does the master have the right to reclaim his female slave from his male slave if the master married her to him. It has been narrated

وَذَهَبَ آخَرُونَ إلَى أَنَّ بَيْعَ الْأَمَةِ لَيْسَ طَلَاقًا، وَأَنَّ بَيْعَ الْعَبْدِ أَوْ إبَاقَهُ لَيْسَ طَلَاقًا لِزَوْجَتِهِ، وَلَا لِلسَّيِّدِ أَنْ يَنْتَزِعَ أَمَتَهُ مِنْ عَبْدِهِ إذَا زَوَّجَهَا مِنْهُ -: رُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ: أَنَّهُ لَيْسَ بَيْعُ الْأَمَةِ طَلَاقًا لَهَا مِنْ زَوْجِهَا.

[45] **Qur'an references (L32979):** Qur'an 4:24 (An-Nisa).
[46] **Qur'an references (L32982):** Qur'an 4:24 (An-Nisa).
[47] **Qur'an references (L32986):** Qur'an 4:24 (An-Nisa).

from ʿUmar ibn al-Khaṭṭāb that selling a female slave is not a divorce from her husband.

وَصَحَّ أَنَّ ابْنَ عُمَرَ أَنْ سَأَلَهُ رَجُلٌ فَقَالَ: اشْتَرَيْت جَارِيَةً لَهَا زَوْجٌ أَفَأَطَؤُهَا؟ فَقَالَ لَهُ ابْنُ عُمَرَ: أَتُرِيدُ أَنْ أُحِلَّ لَك الزِّنَا؟ وَصَحَّ هَذَا أَيْضًا عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَعَنْ عُثْمَانَ، وَعَلِيٍّ، وَسَعْدِ بْنِ أَبِي وَقَّاصٍ - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ وَمَالِكٌ وَالشَّافِعِيُّ وَأَحْمَدُ وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L32989 It is authentically established that a man asked Ibn ʿUmar, saying, “I purchased a slave girl who has a husband—may I have sexual relations with her?” Ibn ʿUmar replied to him, “Do you wish for me to make adultery permissible for you?” This has also been authentically established from ʿAbd al-Raḥmān ibn ʿAwf, ʿUthmān, ʿAlī, and Saʿd ibn Abī Waqqāṣ. This is the opinion held by Abū Ḥanīfah, Mālik, al-Shāfiʿī, Aḥmad, Abū Sulaymān, and their followers.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ رَأَى بَيْعَهَا طَلَاقَهَا بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] .

L32990 Abu Muhammad said: Those who held the view that the sale of a female slave constitutes her divorce argued by invoking the statement of Allah, the Mighty and Majestic: “Forbidden to you are married women from among [other] women except those whom your right hands possess” [An-Nisa: 24].[48]

قَالُوا: فَحَرَّمَ اللَّهُ تَعَالَى عَلَيْنَا كُلَّ مُحْصَنَةٍ إِلَّا مَا مَلَكَتْ أَيْمَانُنَا فَهِيَ حَلَالٌ لَنَا مِنْ جُمْلَةِ الْمُحْصَنَاتِ - وَالْمُحْصَنَاتُ هُنَّ ذَوَاتُ الْأَزْوَاجِ.

L32991 They said: So Allah the Exalted has forbidden for us every free married woman except those whom our right hands possess [enslaved women]; thus, they are lawful for us as part of the category of free married women. Free married women are those with husbands.

فَصَحَّ أَنَّهُنَّ إذَا كُنَّ ذَوَاتَ أَزْوَاجٍ فَمَلَكْنَاهُنَّ أَنَّهُنَّ لَنَا حَلَالٌ، وَلَا يَحْلِلْنَ لَنَا إلَّا بِأَنْ يُحَرَّمْنَ عَلَى أَزْوَاجِهِنَّ، إذْ كَوْنُ الْفَرْجِ حَلَالًا لِاثْنَيْنِ مَعًا مَمْنُوعٌ فِي الدِّيَانَةِ.

L32992 Thus, it is established that if they are women with husbands and we then take them as captives, they become lawful for us, and they cannot become lawful for us except by being prohibited to their husbands, since the permissibility of a woman’s sexual relations being lawfully available to two men at once is forbidden in the religion.

قَالُوا: وَسَوَاءٌ فِي ذَلِكَ الْمَبِيعَاتُ وَالْمَسْبِيَّاتُ، لِأَنَّ الْآيَةَ عَلَى عُمُومِهَا.

L32993–32994 They said: Women sold into slavery and female captives are treated equally in this matter, as the verse applies in its general sense.

وَقَالَتْ طَائِفَةٌ: إنَّمَا عَنَى اللَّهُ عَزَّ وَجَلَّ بِذَلِكَ الْمَسْبِيَّاتِ خَاصَّةً. رُوِّينَا ذَلِكَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ مِنْ طَرِيقِ إبْرَاهِيمَ عَنْهُ، وَإِبْرَاهِيمُ لَمْ يُدْرِكْهُ، وَلَا لَقِيَهُ، وَعَنْ ابْنِ عَبَّاسٍ مِنْ طَرِيقِ إسْرَائِيلَ بْنِ يُونُسَ - وَهُوَ ضَعِيفٌ.

L32995 A group said: Allah, the Mighty and Majestic, meant by that specifically the female captives. This has been narrated to us from Ali ibn Abi Talib through Ibrahim narrating from him—though Ibrahim neither lived during his time nor met him—and from Ibn Abbas through Isra’il ibn Yunus, who is a weak narrator.

L32996 And it has been narrated to us from Ibn Abbas also: “Every woman who has

[48] **Qur’an references (L32990):** Qur’an 4:24 (An-Nisa).

a husband is forbidden to you" through the chain of Yahya ibn Abd al-Malik al-Ḥimmānī—who is weak—from Sharik—who is a mudallis.

وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ أَيْضًا: كُلُّ ذَاتِ زَوْجٍ عَلَيْك حَرَامٌ مِنْ طَرِيقِ يَحْيَى بْنِ عَبْدِ الْمَلِكِ الْحِمَّانِيُّ - وَهُوَ ضَعِيفٌ - عَنْ شَرِيكٍ - وَهُوَ مُدَلِّسٌ.

L32997 Abu Muhammad said: As for those who deem the sale of a female slave to constitute her divorce, citing as evidence the words of Allah the Exalted: "except what your right hands possess" [Quran 4:24], we find this specifically addressed by an authentic narration: the case of Bareerah's sale when Aisha, the Mother of the Believers, purchased her while she had a husband named Mughith. Her sale did not constitute a divorce for her. Then after purchasing her, she manumitted her, and this too did not constitute a divorce for her. Rather, the Messenger of Allah (peace and blessings be upon him) granted her the choice at that time to remain in his marriage or to separate.[49]

قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ جَعَلَ بَيْعَ الْأَمَةِ طَلَاقَهَا وَاحْتَجَّ بِقَوْلِهِ تَعَالَى: {إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] فَوَجَدْنَاهَا قَدْ خَصَّهَا خَبَرٌ صَحِيحٌ، وَهُوَ بَيْعُ بَرِيرَةَ وَابْتِيَاعُ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ لَهَا، وَلَهَا زَوْجٌ اسْمُهُ مُغِيثٌ، فَلَمْ يَكُنْ بَيْعُهَا طَلَاقًا لَهَا، ثُمَّ أَعْتَقَتْهَا أُمُّ الْمُؤْمِنِينَ بَعْدَ ابْتِيَاعِهَا لَهَا، فَلَمْ يَكُنْ ذَلِكَ أَيْضًا طَلَاقًا لَهَا، بَلْ خَيَّرَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَئِذٍ فِي الْبَقَاءِ فِي زَوْجِيَّتِهِ، أَوْ فِي فِرَاقِهِ.

L32998 This confirms that selling a female slave does not constitute her divorce. This also validates that Allah's statement {except what your right hands possess} [4:24] constitutes a disconnected exception - its meaning: but what your right hands possess, provided they are not forbidden to you, such as female relatives forbidden in marriage (mahram), married women, and unbelieving women. Whatever falls outside these categories is permissible for you.[50]

فَصَحَّ بِذَلِكَ أَنَّ بَيْعَ الْأَمَةِ لَيْسَ طَلَاقًا لَهَا، وَصَحَّ بِهَذَا: أَنَّ قَوْله تَعَالَى {إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] اسْتِثْنَاءٌ مُنْقَطِعٌ - مَعْنَاهُ: لَكِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مَا لَمْ يُحَرَّمْ عَلَيْكُمْ، كَذَوَاتِ الْمَحَارِمِ، وَذَوَاتِ الْأَزْوَاجِ، وَالْكَوَافِرِ، فَمَا عَدَا هَؤُلَاءِ فَحَلَالٌ لَكُمْ.

L32999 As for the one who claims that selling a slave constitutes divorce for his wife [who is] a female slave, we find no evidence to support this. Thus, this claim is invalid, and all praise is due to Allah, Lord of the worlds.

وَأَمَّا مَنْ قَالَ: بَيْعُ الْعَبْدِ طَلَاقٌ لِزَوْجَتِهِ الْأَمَةِ، فَلَا نَعْلَمُ لَهُ شَيْئًا يَتَعَلَّقُ بِهِ - فَسَقَطَ هَذَا الْقَوْلُ، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[49] **Qur'an references (L32997):** Qur'an 4:24 (An-Nisa).
[50] **Qur'an references (L32998):** Qur'an 4:24 (An-Nisa).

L33000 Then we examined the case of the female captive—whether she was captured alongside her husband, separately from him, or he was captured separately from her—or if she departed to Muslim lands while her husband remained in enemy territory. We concluded her situation must necessarily fall into one of these two scenarios without exception: either she was captured or she voluntarily left for Muslim lands. In either case, she would either remain in her Book religion, her non-Book religion, or embrace Islam—with no third possibility beyond these alternatives.

ثُمَّ نَظَرْنَا فِي الْمَسْبِيَّةِ مَعَ زَوْجِهَا، أَوْ دُونَهُ، أَوْ يُسْبَى هُوَ دُونَهَا، أَوْ خَرَجَتْ إِلَى أَرْضِ الْمُسْلِمِينَ وَلَهَا زَوْجٌ فِي أَرْضِ الْحَرْبِ؟ فَوَجَدْنَاهَا لَا تَخْلُو مِنْ أَنْ تَكُونَ إِذْ سُبِيَتْ، أَوْ خَرَجَتْ إِلَى أَرْضِ الْمُسْلِمِينَ مُخْتَارَةً: بَقِيَتْ عَلَى دِينِهَا الْكِتَابِيِّ، أَوْ غَيْرِ الْكِتَابِيِّ، أَوْ أَسْلَمَتْ؟ لَا تَخْلُو ضَرُورَةً مِنْ أَحَدِ هَذَيْنِ الْوَجْهَيْنِ، وَلَا ثَالِثَ هُنَالِكَ.

L33001–33003 If she had not embraced Islam, we have already clarified in the introduction of our discussion on “Marriage” in this book of ours that intercourse with an enslaved disbelieving woman - whether she was from the People of the Book or otherwise - through lawful ownership by right hand is fundamentally impermissible, rendering its repetition unnecessary due to the statement. Allah the Exalted: “And do not marry polytheistic women until they believe. And a believing bondwoman is better than a polytheist woman, even if she pleased you.” [Al-Baqarah: 221][1]

فَإِنْ كَانَتْ لَمْ تُسْلِمْ فَقَدْ بَيَّنَّا فِي صَدْرِ كَلَامِنَا فِي " النِّكَاحِ " مِنْ كِتَابِنَا هَذَا أَنَّ وَطْءَ الْأَمَةِ الْكَافِرَةِ كِتَابِيَّةً كَانَتْ أَوْ غَيْرَ كِتَابِيَّةٍ بِمِلْكِ الْيَمِينِ لَا يَحِلُّ أَصْلًا فَأَغْنَى عَنْ إِعَادَتِهِ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَّ وَلَأَمَةٌ مُؤْمِنَةٌ خَيْرٌ مِنْ مُشْرِكَةٍ وَلَوْ أَعْجَبَتْكُمْ} [البقرة: ٢٢١] .

L33004 Allah, the Exalted, has not specified any exception to this prohibition except what is through marriage only, by His statement: {And chaste women from among the believers and chaste women from among those who were given the Scripture before you, when you have given them their dowers} [Al-Ma’idah: 5].[2]

وَلَمْ يَخُصَّ اللَّهُ تَعَالَى مِنْ هَذَا التَّحْرِيمِ إِلَّا مَا كَانَ بِالزَّوَاجِ فَقَطْ بِقَوْلِهِ تَعَالَى: {وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ} [المائدة: ٥] .

L33005 It has been authentically established that the marriage contracts of disbelievers are valid, and from such marriages came the birth of the Messenger of Allah—may Allah bless him and grant him peace—and his Companions—may Allah be pleased with them. What is established as valid cannot be invalidated except by explicit textual evidence. Thus, it is confirmed that as long as the captured married woman does not embrace Islam, her marriage remains valid regardless of whether her husband remains in the abode of war or is captured with her.

وَقَدْ صَحَّ أَنَّ عُقُودَ نِكَاحَاتِ الْكُفَّارِ صِحَاحٌ، وَمِنْهَا كَانَتْ وِلَادَةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَصْحَابِهِ - رَضِيَ اللَّهُ عَنْهُمْ - وَمَا صَحَّ فَلَا سَبِيلَ لِإِبْطَالِهِ إِلَّا بِنَصٍّ - فَصَحَّ أَنَّهَا مَا لَمْ تُسْلِمْ الْمَسْبِيَّةُ ذَاتُ الزَّوْجِ فَهِيَ عَلَى زَوْجِيَّتِهَا سَوَاءٌ بَقِيَ فِي دَارِ الْحَرْبِ أَوْ سُبِيَ مَعَهَا.

L33006 As for the statement of those who claim that differing territories sever the

وَأَمَّا قَوْلُ مَنْ قَالَ: إِنَّ اخْتِلَافَ الدَّارَيْنِ يَقْطَعُ عِصْمَةَ النِّكَاحِ، فَقَوْلٌ بَاطِلٌ فَاسِدٌ، لِأَنَّهُ دَعْوَى مُجَرَّدَةٌ لَمْ يُؤَيِّدْهَا قَطُّ قُرْآنٌ، وَلَا سُنَّةٌ وَقَدْ تَكَلَّمْنَا فِي صَدْرِ كِتَابِنَا هَذَا فِي

[1] **Qur’an references (L33001):** Qur’an 2:221 (Al-Baqarah).
[2] **Qur’an references (L33004):** Qur’an 5:5 (Al-Ma’idah).

marital bond of marriage, this is a false and invalid assertion, for it is a baseless claim never supported by any Quranic verse or prophetic tradition. We have previously discussed in the introduction of this book the report transmitted through Abū Saʿīd al-Khudrī concerning their acquisition of the female captives from Awṭās, when they felt religious scruples about engaging in intercourse with them. Thereupon Allah the Almighty revealed: {And forbidden to you are the married women except those whom your right hands possess} [4:24]. Thus they become lawful for you once their waiting period has concluded.[3]

الْخَبَرِ الْوَارِدِ مِنْ طَرِيقِ أَبِي سَعِيدٍ الْخُدْرِيِّ إِذْ أَصَابُوا سَبَايَا أَوْطَاسٍ، فَتَحَرَّجُوا مِنْ غَشَيَانِهِنَّ، فَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ: {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] فَهُنَّ لَكُمْ حَلَالٌ إِذَا انْقَضَتْ عِدَّتُهُنَّ.

L33007 We clarified with certainty—and by consensus—that they are middle-aged women among the Hawazin captives, and that intercourse with them remains unlawful for Muslims until they submit to Islam, without any disagreement from us or the opposing scholars present, and by the explicit prohibition against idolatrous women until they attain faith. Thus, it is confirmed that the intent of God, the Exalted, by this applies when they embrace submission.

وَبَيَّنَّا أَنَّهُنَّ بِيَقِينٍ - مُتَّفَقٍ عَلَيْهِ - وَثَنِيَّاتٌ مِنْ سَبَايَا هَوَازِنَ، وَوَطْؤُهُنَّ لَا يَحِلُّ لِلْمُسْلِمِينَ حَتَّى يُسْلِمْنَ بِلَا خِلَافٍ مِنَّا وَمِنَ الْحَاضِرِينَ مِنَ الْمُخَالِفِينَ وَبِنَصِّ تَحْرِيمِ الْمُشْرِكَاتِ حَتَّى يُؤْمِنَّ - فَصَحَّ أَنَّ مُرَادَ اللَّهِ تَعَالَى بِذَلِكَ إِذَا أَسْلَمْنَ.

L33008 Abū Muḥammad said: When they embrace Islam, it is inevitable that the husband of any woman among them who converts—whether he was captured with her or not, rather he is in his land—if he was with her or in his land and did not embrace Islam before her conversion (if she was a woman of the Book) or did not convert alongside her, whatever her religion may have been, then her marriage to him is dissolved as we will explain after this—God Almighty willing. Once her marriage is nullified by her conversion without her husband's acceptance of Islam, her marital bond becomes lawful to her Muslim master at that moment by the explicit text of the Qur'an and Sunnah without dispute. If her husband embraces Islam alongside her conversion—regardless of her prior religion—or if he converted before her while she was a woman of the Book, they remain in all the aforementioned cases bound by their marriage. This is because any marriage sanctioned by God's approval cannot be dissolved except through a Qur'anic injunction or an authentically established Sunnah of the Messenger of God—peace and blessings be upon him. There exists no basis for dissolving the marriage of a female captive after her conversion unless her husband alone does not embrace Islam.

قَالَ أَبُو مُحَمَّد: فَإِذَا أَسْلَمْنَ فَلَا يَخْلُوْنَ ضَرُورَةً مِنْ أَنْ يَكُونَ زَوْجُ مَنْ أَسْلَمَ مِنْهُنَّ سُبِيَ مَعَهَا أَوْ لَمْ يُسْبَ، بَلْ هُوَ فِي أَرْضِهِ، فَإِنْ كَانَ مَعَهَا أَوْ فِي أَرْضِهِ وَلَمْ يُسْلِمْ قَبْلَ إِسْلَامِهَا إِنْ كَانَتْ كِتَابِيَّةً، أَوْ مَعَ إِسْلَامِهَا كَائِنًا مَا كَانَ دِينُهَا؟ فَقَدْ انْفَسَخَ نِكَاحُهَا مِنْهُ عَلَى مَا نَذْكُرُ بَعْدَ هَذَا - إِنْ شَاءَ اللَّهُ تَعَالَى - فَإِذَا انْفَسَخَ نِكَاحُهَا بِإِسْلَامِهَا دُونَ إِسْلَامِ زَوْجِهَا فَقَدْ حَلَّ فَرْجُهَا لِسَيِّدِهَا الْمُسْلِمِ حِينَئِذٍ: بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ بِلَا خِلَافٍ، فَإِنْ أَسْلَمَ زَوْجُهَا مَعَ إِسْلَامِهَا كَائِنًا مَا كَانَ دِينُهَا، أَوْ أَسْلَمَ قَبْلَ إِسْلَامِهَا وَهِيَ كِتَابِيَّةٌ، فَهُمَا فِي كُلِّ مَا ذَكَرْنَا بَاقِيَانِ عَلَى زَوْجِيَّتِهِمَا، لِمَا ذَكَرْنَا: مِنْ أَنَّ كُلَّ نِكَاحٍ صَحَّ بِتَصْحِيحِ اللَّهِ تَعَالَى إِيَّاهُ فَإِنَّهُ لَا يَحِلُّ لِأَحَدٍ فَسْخُهُ إِلَّا بِنَصِّ قُرْآنٍ أَوْ سُنَّةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَابِتَةٍ، وَلَا سَبِيلَ إِلَى وُجُودِ شَيْءٍ مِنْ ذَلِكَ فِي فَسْخِ نِكَاحِ الْمَسْبِيَّةِ بَعْدَ إِسْلَامِهَا دُونَ إِسْلَامِ زَوْجِهَا فَقَطْ.

[3] **Qur'an references (L33006):** Qur'an 4:24 (An-Nisa).

L33009–33010 Abu Hanifah said: If both spouses are captured, their marriage remains valid until they depart to the Abode of Islam. When they enter it, the marriage is annulled. The beginning of this statement of his is sound, while its conclusion is of utmost corruption, for the difference between the two abodes neither prohibits lineage nor legitimizes it.

وَقَدْ قَالَ أَبُو حَنِيفَةَ: إذَا سُبِيَ الزَّوْجَانِ فَهُمَا عَلَى نِكَاحِهِمَا حَتَّى يَخْرُجَا إلَى دَارِ الْإِسْلَامِ، فَإِذَا صَارَ فِيهَا انْفَسَخَ النِّكَاحُ - وَهَذَا قَوْلُهُ أَوَّلُهُ صَحِيحٌ وَآخِرُهُ فِي غَايَةِ الْفَسَادِ، لِأَنَّ اخْتِلَافَ الدَّارَيْنِ لَا يُحَرِّمُ نَسَبًا وَلَا يُحِلُّهُ.

L33011 Malik said: If the people of war bring captives among whom there are two spouses, do they remain bound by their marriage contract? Abu Muhammad said: Every opinion not supported by the Quran or a Sunnah established from the Messenger of Allah—peace and blessings be upon him—is invalid with certain truth, without any doubt. And success is only from Allah, the Exalted.

وَقَالَ مَالِكٌ: إنْ جَاءَ أَهْلُ الْحَرْبِ بِسَبْيٍ فِيهِ زَوْجَانِ فَهُمَا عَلَى نِكَاحِهِمَا؟ قَالَ أَبُو مُحَمَّدٍ: كُلُّ قَوْلٍ مَا لَمْ يُؤَيِّدْهُ قُرْآنٌ وَلَا سُنَّةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَابِتَةٌ فَهُوَ بَاطِلٌ بِيَقِينٍ لَا شَكَّ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33012–33013 Annulment of the Marriage of a Missing Person: A case wherein a man is declared missing, leaving behind either a wife or an umm walad, as well as an enslaved woman and property.

[فَسْخُ نِكَاحِ الْمَفْقُودِ] [مَسْأَلَةٌ فُقِدَ وَلَهُ زَوْجَةٌ أَوْ أُمُّ وَلَدٍ وَأَمَةٌ وَمَالٌ]

L33014 Issue 1937: If a person goes missing—whether his location is known or unknown, and whether he disappeared during war or in peacetime—and he has a wife, an umm walad, a female slave, and property, the marriage of his wife is never annulled. She remains his wife until his death is confirmed or she dies. The umm walad is not freed, his female slave is not sold, and his property is not divided. However, expenses for the aforementioned dependents are provided from his property.

١٩٣٧ - مَسْأَلَةٌ: وَمَنْ فُقِدَ فَعُرِفَ أَيْنَ مَوْضِعُهُ، أَوْ لَمْ يُعْرَفْ فِي حَرْبٍ فُقِدَ، أَوْ فِي غَيْرِ حَرْبٍ - وَلَهُ زَوْجَةٌ أَوْ أُمُّ وَلَدٍ وَأَمَةٌ وَمَالٌ -: لَمْ يُفْسَخْ بِذَلِكَ نِكَاحُ امْرَأَتِهِ أَبَدًا، وَهِيَ امْرَأَتُهُ حَتَّى يَصِحَّ مَوْتُهُ أَوْ تَمُوتَ هِيَ، وَلَا تَعْتِقُ أُمُّ وَلَدِهِ، وَلَا تُبَاعُ أَمَتُهُ، وَلَا يُفَرَّقُ مَالُهُ، لَكِنْ يُنْفَقُ عَلَى مَنْ ذَكَرْنَا مِنْ مَالِهِ.

L33015 If he has no wealth, the female slave is to be sold. It is said to the wife and the umm al-walad: “Provide for yourselves.” If the wife and umm al-walad possess no acquired wealth, they are to be supported from the share designated for the destitute and the needy among the alms, like all other destitute individuals, with no distinction made.

فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ بِيعَتْ الْأَمَةُ، وَقِيلَ لِلزَّوْجَةِ، وَلِأُمِّ الْوَلَدِ: انْظُرَا لِأَنْفُسِكُمَا، فَإِنْ لَمْ يَكُنْ لَهُمَا مَالٌ مُكْتَسَبٌ أُنْفِقَ عَلَيْهِمَا مِنْ سَهْمِ الْفُقَرَاءِ وَالْمَسَاكِينِ مِنْ الصَّدَقَاتِ كَسَائِرِ الْفُقَرَاءِ، وَلَا فَرْقَ.

L33016 People have differed regarding this matter. It has been authentically reported from Umar ibn al-Khattab that he said: “The wife of a missing person observes a waiting period of four years.” This is transmitted through multiple chains - among them a chain via Hammad ibn Salama, who narrates from

وَقَدْ اخْتَلَفَ النَّاسُ فِي ذَلِكَ -: فَصَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ: امْرَأَةُ الْمَفْقُودِ تَعْتَدُّ أَرْبَعَ سِنِينَ مِنْ طُرُقٍ -: مِنْهَا - مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَاصِمٍ الْأَحْوَلِ،

two authorities: Asim al-Ahwal (reporting from Abu Uthman al-Nahdi, citing Umar) and Sulayman al-Taymi (reporting from Abu Amr al-Shaybani, citing Umar). Both Asim and Sulayman met Umar and heard directly from him.

وَسُلَيْمَانَ التَّيْمِيِّ، قَالَ عَاصِمٌ عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ عَنْ عُمَرَ، وَقَالَ سُلَيْمَانُ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ عَنْ عُمَرَ، وَكِلَاهُمَا أَدْرَكَ عُمَرَ وَسَمِعَ مِنْهُ.

L33017 I witnessed ʻUmar give a choice to a missing man whose wife had married [during his absence] between her and the mahr he had conveyed to her.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ نا خَالِدٌ الْحَذَّاءُ عَنْ أَبِي نَضْرَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى قَالَ: شَهِدْت عُمَرَ خَيَّرَ مَفْقُودًا تَزَوَّجَتْ امْرَأَتُهُ بَيْنَهَا وَبَيْنَ الْمَهْرِ الَّذِي سَاقَهُ إلَيْهَا.

L33018–33020 Abu Muhammad said: We have cited this only to confirm the authenticity of Abd al-Rahman's hearing of this from Umar—and through the chain of Hammad ibn Salama, from Thabit al-Bunani, from Abd al-Rahman ibn Abi Layla—that a man... Her husband went missing, so she came to Umar ibn al-Khattab after four years. He inquired of her people, and they confirmed her account. He ordered her to observe a waiting period of four years starting from the time he went missing. She then remarried, and her [original] husband returned—the narrator mentioned the rest of the account. He said: Umar gave him the choice between the mahr and his wife, and he chose the mahr.

قَالَ أَبُو مُحَمَّد: إنَّمَا أَوْرَدْنَا هَذَا لِيَصِحَّ سَمَاعُ عَبْدِ الرَّحْمَنِ لِذَلِكَ مِنْ عُمَرَ -: وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى أَنَّ رَجُلًا فَقَدَتْهُ امْرَأَتُهُ فَأَتَتْ عُمَرَ بْنَ الْخَطَّابِ بَعْدَ أَرْبَعِ سِنِينَ فَسَأَلَ قَوْمَهَا فَصَدَّقُوهَا، فَأَمَرَهَا أَنْ تَعْتَدَّ أَرْبَعَ سِنِينَ مِنْ ذِي قَبْلُ - ثُمَّ تَزَوَّجَتْ، فَجَاءَ زَوْجُهَا - وَذَكَرَ الْخَبَرَ. قَالَ: فَخَيَّرَهُ عُمَرُ بَيْنَ الصَّدَاقِ وَبَيْنَ امْرَأَتِهِ فَاخْتَارَ الصَّدَاقَ.

L33021 From the narration of Hammad ibn Salamah from Dawud ibn Abi Hind from Abu Nadrah from Abd al-Rahman ibn Abi Layla: A woman whose husband went missing came to Umar. He questioned her neighbors and her people, and they confirmed her account. He said to her: "Observe the prescribed waiting period of four years, then you may marry." When her husband later returned, Umar gave him the choice between reclaiming his wife or paying the mahr.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ أَبِي نَضْرَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى: أَنَّ امْرَأَةً فَقَدَتْ زَوْجَهَا فَأَتَتْ عُمَرَ فَسَأَلَ جِيرَانَهَا وَقَوْمَهَا فَصَدَّقُوهَا، فَقَالَ لَهَا: اعْتَدِّي أَرْبَعَ سِنِينَ وَتَزَوَّجِي، فَجَاءَ زَوْجُهَا بَعْدَ ذَلِكَ، فَخَيَّرَهُ عُمَرُ بَيْنَ الصَّدَاقِ وَبَيْنَ امْرَأَتِهِ.

L33022 From the narration of ʻAbd al-Razzāq, from Maʻmar, from Thābit al-Bunānī, from ʻAbd al-Raḥmān ibn Abī Laylā, who said: A woman lost her husband and waited four years. She then presented her case to ʻUmar ibn al-Khaṭṭāb, who instructed her to observe a waiting period of four years from the time she presented her case to him. If her husband returned, she could remain with him; otherwise, she could remarry. She married after the four years had passed without hearing any mention of him. Later, her husband returned and

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى قَالَ: فَقَدَتْ امْرَأَةٌ زَوْجَهَا فَمَكَثَتْ أَرْبَعَ سِنِينَ، ثُمَّ ذَكَرَتْ أَمْرَهَا لِعُمَرَ بْنِ الْخَطَّابِ، فَأَمَرَهَا أَنْ تَتَرَبَّصَ أَرْبَعَ سِنِينَ مِنْ حِينِ رَفَعَتْ أَمْرَهَا إلَيْهِ، فَإِنْ جَاءَ زَوْجُهَا وَإِلَّا تَزَوَّجَتْ؟ فَتَزَوَّجَتْ بَعْدَ أَنْ مَضَتْ السَّنَوَاتُ الْأَرْبَعُ وَلَمْ تَسْمَعْ لَهُ بِذِكْرٍ - ثُمَّ جَاءَ

was informed of the situation. He came to ‘Umar, who said to him: “If you wish, we will return your wife to you, or if you wish, we will marry you to another woman.” He replied: “Rather, marry me to another woman.”

L33023 From the chain of Sa’id ibn Mansur: Hushaym narrated to us; Dawud ibn Abi Hind narrated to us from Abu Nadrah from Abd al-Rahman ibn Abi Layla: A man from the Ansar went out at night, and the jinn seized him, so his absence was prolonged. His wife came to Umar ibn al-Khattab and informed him. He ordered her to observe a waiting period of four years. She complied, and he then commanded her to remarry, which she did. When her first husband returned, Umar offered him the choice between his wife and the dowry. He chose his wife, so Umar annulled her marriage to the second husband and restored her to her first spouse.

L33024 Abu Muhammad said: This is fundamentally the only authentic report attributed to Umar. It stipulates that she must begin a waiting period of four years from the time her case is presented to the Imam. When she completes the four years, she may marry—if she wishes. If her husband returns after she has married, he may choose between reclaiming the dowry he gave her, having his wife returned to him with the annulment of the other marriage, or having the Imam arrange another marriage for him.

L33025–33027 It has been narrated to us similarly from Ibn Abbas and Ibn Umar through the chain of Sa‘id ibn Mansur, who narrated to us from Abu Awanah from Abu Bishr from ‘Amr ibn Harim from Jabir ibn Zayd from Ibn Abbas and Ibn Umar. They both said regarding the wife of a missing man: She waits four years. Ibn Umar said: She is to be supported during this period from her husband’s wealth. Because she has restrained herself for him—Ibn Abbas said: “This would wrong the heirs, but she should borrow. If her husband returns, she takes from his wealth. If he dies, she settles the debt from her share of the inheritance”—then they both jointly stated: “She is to be maintained after four years, four months, and ten days from the entire estate.”

L33028 Abu Muhammad said: This is ṣaḥīḥ (authentic) from Ibn Abbas and Ibn Umar.

زَوْجُهَا فَأُخْبِرَ بِالْخَبَرِ، فَأَتَى إِلَى عُمَرَ؟ فَقَالَ لَهُ عُمَرُ: إِنْ شِئْت رَدَدْنَا إِلَيْك امْرَأَتَك، وَإِنْ شِئْت زَوَّجْنَاك غَيْرَهَا؟ قَالَ: بَلْ زَوِّجْنِي غَيْرَهَا.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ أَبِي نَضْرَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى: أَنَّ رَجُلًا مِنْ الْأَنْصَارِ خَرَجَ لَيْلًا فَاسْتَبَتْهُ الْجِنُّ فَطَالَتْ غَيْبَتُهُ، فَأَتَتْ امْرَأَتُهُ عُمَرَ بْنَ الْخَطَّابِ فَأَخْبَرَتْهُ؟ فَأَمَرَهَا أَنْ تَعْتَدَّ أَرْبَعَ سِنِينَ، فَفَعَلَتْ فَأَمَرَهَا أَنْ تَتَزَوَّجَ فَفَعَلَتْ،. وَقَدِمَ زَوْجُهَا الْأَوَّلُ فَخَيَّرَهُ عُمَرُ بَيْنَ امْرَأَتِهِ وَبَيْنَ الصَّدَاقِ؟ فَاخْتَارَ امْرَأَتَهُ، فَفَرَّقَ عُمَرُ بَيْنَهُمَا وَرَدَّهَا إلَيْهِ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا الَّذِي لَا يَصِحُّ عَنْ عُمَرَ غَيْرُهُ أَصْلًا، وَهُوَ أَنْ تَبْتَدِئَ بِتَرَبُّصِ أَرْبَعِ سِنِينَ مِنْ حِينِ تَرْفَعُ أَمْرَهَا إلَى الْإِمَامِ، فَإِذَا أَتَمَّتْ الْأَرْبَعَ سِنِينَ تَزَوَّجَتْ - إنْ شَاءَتْ - فَإِنْ جَاءَ زَوْجُهَا - وَقَدْ تَزَوَّجَتْ - فَهُوَ مُخَيَّرٌ بَيْنَ صَدَاقِهَا الَّذِي أَعْطَاهَا، وَبَيْنَ أَنْ تُرَدَّ إلَيْهِ امْرَأَتُهُ وَيُفْسَخَ نِكَاحُ الْآخَرِ، أَوْ يُزَوِّجُهُ الْإِمَامُ زَوْجَةً أُخْرَى.

وَرُوِّينَا نَحْوَ هَذَا عَنْ ابْنِ عَبَّاسٍ؛ وَابْنِ عُمَرَ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو عَوَانَةَ عَنْ أَبِي بِشْرٍ عَنْ عَمْرِو بْنِ هَرِمٍ عَنْ جَابِرِ بْنِ زَيْدٍ عَنْ ابْنِ عَبَّاسٍ وَابْنِ عُمَرَ؛ قَالَا جَمِيعًا: فِي امْرَأَةِ الْمَفْقُودِ: تَنْتَظِرُ أَرْبَعَ سِنِينَ - قَالَ ابْنُ عُمَرَ: يُنْفَقُ عَلَيْهَا فِيهَا مِنْ مَالِ زَوْجِهَا، لِأَنَّهَا حَبَسَتْ نَفْسَهَا عَلَيْهِ - قَالَ ابْنُ عَبَّاسٍ: إذَا يُجْحِفُ ذَلِكَ بِالْوَرَثَةِ، وَلَكِنْ تَسْتَدِينُ، فَإِنْ جَاءَ زَوْجُهَا أَخَذَتْ مِنْ مَالِهِ، فَإِنْ مَاتَ قَضَتْ مِنْ نَصِيبِهَا مِنْ الْمِيرَاثِ - ثُمَّ قَالَا جَمِيعًا يُنْفَقُ عَلَيْهَا بَعْدَ الْأَرْبَعِ سِنِينَ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا مِنْ جَمِيعِ الْمَالِ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا صَحِيحٌ عَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ.

L33029 It is reported from ʿUmar through another chain deemed weak due to al-Ḥajjāj ibn Arṭāh's inclusion in it that ʿUmar commanded the wife of a missing man to wait four years from the time she presented her case to him. When she completed this period, his guardian—the husband's guardian—was to divorce her on his behalf. She would then observe the ʿiddah of four months and ten days, after which she could remarry. If her husband returned after her remarriage, ʿUmar permitted him to choose between reclaiming her (which would annul her new marriage) or receiving the dowry from her new marriage.

وَرُوِيَ عَنْ عُمَرَ غَيْرُ هَذَا مِنْ طَرِيقٍ لَا تَصِحُّ فِيهَا الْحَجَّاجُ بْنُ أَرْطَاةَ أَنَّ عُمَرَ أَمَرَ امْرَأَةَ الْمَفْقُودِ أَنْ تَتَرَبَّصَ أَرْبَعَ سِنِينَ مِنْ حِينِ تَرْفَعُ أَمْرَهَا إِلَيْهِ، فَإِذَا أَتَمَّتْهَا طَلَّقَهَا وَلِيُّهُ عَنْهُ، ثُمَّ تَعْتَدُّ بَعْدَ ذَلِكَ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، ثُمَّ تَتَزَوَّجُ، فَإِنْ جَاءَ زَوْجُهَا - وَقَدْ تَزَوَّجَتْ - خَيَّرَهُ عُمَرُ بَيْنَهَا وَبَيْنَ صَدَاقِهَا.

L33030 Other narrations differing from all this have also been reported from Umar through unreliable chains containing Abd al-Malik ibn Abi Sulayman al-Arzami, and these are mursal narrations from Ubayd ibn Umayr. He said: A woman lost her husband, so she came to Umar ibn al-Khattab. He instructed her to observe a waiting period of four years, which she did. Then she came to him again, and he ordered her to observe the iddah of four months and ten days. After that, she returned to him, and he summoned the guardian of the missing man and commanded him to divorce her. The guardian divorced her, and Umar ordered her to observe the iddah of three menstrual cycles, which she did. She then came back to him, and he permitted her to marry. She remarried, and her missing husband returned. Umar gave him the choice between reclaiming that wife of his or receiving the dowry. He chose the dowry, so Umar ordered the dowry to be given to him.

وَرُوِيَ عَنْ عُمَرَ غَيْرُ هَذَا كُلِّهِ أَيْضًا مِنْ طُرُقٍ لَا تَصِحُّ، لِأَنَّ فِيهَا عَبْدَ الْمَلِكِ بْنَ أَبِي سُلَيْمَانَ الْعَرْزَمِيَّ وَهِيَ أَيْضًا مُرْسَلَةٌ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ - قَالَ: فَقَدَتْ امْرَأَةٌ زَوْجَهَا فَأَتَتْ عُمَرَ بْنَ الْخَطَّابِ، فَأَمَرَهَا أَنْ تَتَرَبَّصَ أَرْبَعَةَ أَعْوَامٍ، فَفَعَلَتْ، ثُمَّ جَاءَتْهُ، فَأَمَرَهَا أَنْ تَعْتَدَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، ثُمَّ أَتَتْهُ فَدَعَا وَلِيَّ الْمَفْقُودِ فَأَمَرَهُ أَنْ يُطَلِّقَهَا؟ فَطَلَّقَهَا، فَأَمَرَهَا أَنْ تَعْتَدَّ ثَلَاثَةَ قُرُوءٍ فَفَعَلَتْ ثُمَّ أَتَتْهُ، فَأَبَاحَ لَهَا الزَّوَاجَ، فَتَزَوَّجَتْ فَجَاءَ زَوْجُهَا الْمَفْقُودُ؟ فَخَيَّرَهُ عُمَرُ بَيْنَ امْرَأَتِهِ تِلْكَ وَبَيْنَ الصَّدَاقِ، فَاخْتَارَ الصَّدَاقَ، فَأَمَرَ لَهُ عُمَرُ بِالصَّدَاقِ.

L33031 A fourth statement is also reported from ʿUmar—it is not authentic, as it is a mursal narration transmitted through Mālik from Yaḥyā ibn Saʿīd al-Anṣārī from Saʿīd ibn al-Musayyib, who said: "'Umar ibn al-Khaṭṭāb said: 'Any woman whose husband is missing must wait for him for four years, then observe a waiting period of four months and ten days, after which she becomes lawful.'"

وَرُوِيَ عَنْ عُمَرَ أَيْضًا قَوْلٌ رَابِعٌ - لَا يَصِحُّ، لِأَنَّهُ مُرْسَلٌ مِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: إِنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: أَيُّمَا امْرَأَةٍ فَقَدَتْ زَوْجَهَا فَإِنَّهَا تَنْتَظِرُهُ أَرْبَعَ سِنِينَ، ثُمَّ تَعْتَدُّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، ثُمَّ تَحِلُّ.

L33032 It was narrated to us through Al-Ḥasan's chain from ʿUmar similarly.

وَرُوِّينَا مِنْ طَرِيقِ الْحَسَنِ عَنْ عُمَرَ مِثْلَ ذَلِكَ.

L33033 And through the chain of al-Zuhri, ʿAṭāʾ, and ʿAmr ibn Dīnār from ʿUmar, a similar narration.

وَمِنْ طَرِيقِ الزُّهْرِيِّ وَعَطَاءٍ وَعَمْرِو بْنِ دِينَارٍ عَنْ عُمَرَ مِثْلَ ذَلِكَ.

L33034 It has been reported to us from 'Umar through a different narration apart

from all of that via a weak chain involving al-Minhāl ibn ʾAmr: that a woman came to ʾUmar ibn al-Khaṭṭāb whose husband had been missing for three years and eight months. ʾUmar commanded her to complete four years, then observe the waiting period for a deceased husband, after which she may marry if she wishes.

وَرُوِّينَا عَنْ عُمَرَ أَيْضًا غَيْرَ ذَلِكَ كُلِّهِ مِنْ طَرِيقٍ ضَعِيفَةٍ فِيهَا الْمِنْهَالُ بْنُ عَمْرٍو: أَنَّ عُمَرَ بْنَ الْخَطَّابِ أَتَتْهُ امْرَأَةٌ فَقَدَتْ زَوْجَهَا مُذْ ثَلَاثَةِ أَعْوَامٍ وَثَمَانِيَةِ أَشْهُرٍ، فَأَمَرَهَا عُمَرُ أَنْ تُتِمَّ أَرْبَعَ سِنِينَ، ثُمَّ تَعْتَدَّ عِدَّةَ الْمُتَوَفَّى عَنْهَا، ثُمَّ تَتَزَوَّجَ إِنْ شَاءَتْ.

L33035–33037 Abū Muḥammad said: There have indeed been transmitted via the chain of Saʿīd ibn al-Musayyab, ʿAmr ibn Dīnār, and al-Zuhrī—other than what we previously mentioned from them—: Just as it has been narrated to us through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who informed me, on the authority of ʿAmr ibn Dīnār, that he said: Verily, ʿUmar ibn al-Khaṭṭāb commanded the legal guardian of the woman whose husband is absent from her to divorce her.

قَالَ أَبُو مُحَمَّد: وَقَدْ جَاءَ مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ، وَعَمْرِو بْنِ دِينَارٍ وَالزُّهْرِيِّ، غَيْرُ مَا ذَكَرْنَا آنِفًا عَنْهُمْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ قَالَ: إِنَّ عُمَرَ بْنَ الْخَطَّابِ أَمَرَ وَلِيَّ الْمُغَيَّبِ عَنْهَا زَوْجُهَا أَنْ يُطَلِّقَهَا.

L33038 From the narration of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from Saʿīd ibn al-Musayyab: that ʿUmar ibn al-Khaṭṭāb and ʿUthmān ibn ʿAffān ruled regarding the missing person that his wife should serve a waiting period (ʿiddah) of four years, four months, and ten days, after which she may remarry. If her first husband returns, he may choose to reclaim his wife by refunding the second husband's mahr or allow the remarriage to stand while retaining his original mahr.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ، وَعُثْمَانَ بْنَ عَفَّانَ: قَضَيَا فِي الْمَفْقُودِ أَنَّ امْرَأَتَهُ تَتَرَبَّصُ أَرْبَعَ سِنِينَ، وَأَرْبَعَةَ أَشْهُرٍ وَعَشْرًا بَعْدَ ذَلِكَ، ثُمَّ تَتَزَوَّجَ - فَإِنْ جَاءَ زَوْجُهَا الْأَوَّلُ خُيِّرَ بَيْنَ الصَّدَاقِ وَبَيْنَ امْرَأَتِهِ.

L33039 Abu Muhammad said: Ma'mar is not inferior to Malik.

قَالَ أَبُو مُحَمَّد: لَيْسَ مَعْمَرٌ دُونَ مَالِكٍ.

L33040 As for Az-Zuhri, he is more reliable in memorization than Yaḥyā ibn Saʿīd, and this narration of Saʿīd from ʿUthmān is authentic because he met him, kept his company, and ʿUthmān (may Allah be pleased with him) was martyred when Ibn al-Musayyib was twenty years old.

وَأَمَّا الزُّهْرِيُّ فَأَحْفَظُ مِنْ يَحْيَى بْنِ سَعِيدٍ، وَرِوَايَةُ سَعِيدٍ هَذِهِ عَنْ عُثْمَانَ صَحِيحَةٌ، لِأَنَّهُ أَدْرَكَهُ وَجَالَسَهُ وَقُتِلَ عُثْمَانُ - رَضِيَ اللَّهُ عَنْهُ - وَابْنُ الْمُسَيِّبِ لَهُ عِشْرُونَ سَنَةً.

L33041 And via the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: ʿAṭāʾ al-Khurāsānī informed me that Ibn Shihāb informed him that ʿUmar and ʿUthmān issued a legal ruling regarding the inheritance of a missing person: it is to be distributed starting from the day the four years are completed, and his wife must observe the _ʿiddah_ (waiting period) of four months and ten days.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَطَاءٌ الْخُرَاسَانِيُّ: أَنَّ ابْنَ شِهَابٍ أَخْبَرَهُ: أَنَّ عُمَرَ، وَعُثْمَانَ قَضَيَا فِي مِيرَاثِ الْمَفْقُودِ: أَنَّهُ يُقَسَّمُ مِنْ يَوْمِ تَمْضِي الْأَرْبَعُ السُّنُونَ وَتَسْتَقْبِلُ امْرَأَتُهُ عِدَّةَ أَرْبَعَةِ أَشْهُرٍ وَعَشْرًا.

L33042 From the path of Sa'id ibn Mansur: He narrated from Sufyan—Ibn Uyay-

nah—from Amr ibn Dinar, from Yahya ibn Ja'dah: A woman whose husband went missing remained [waiting] for as long as Allah the Exalted willed. Then she came to Umar ibn al-Khattab, and he ordered her to observe a waiting period of four years. When he did not return, Umar instructed her guardian to divorce her. He then commanded her to observe the post-divorce waiting period. When her waiting period concluded, if her husband came, he would be given the choice between her and the dowry.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ ثَنَا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ يَحْيَى بْنِ جَعْدَةَ: أَنَّ امْرَأَةً فَقَدَتْ زَوْجَهَا فَلَبِثَتْ مَا شَاءَ اللَّهُ تَعَالَى، ثُمَّ أَتَتْ عُمَرَ بْنَ الْخَطَّابِ فَأَمَرَهَا أَنْ تَتَرَبَّصَ أَرْبَعَ سِنِينَ، فَلَمْ يَجِئْ فَأَمَرَ عُمَرُ وَلِيَّهُ أَنْ يُطَلِّقَهَا، ثُمَّ أَمَرَهَا أَنْ تَعْتَدَّ، فَإِذَا انْقَضَتْ عِدَّتُهَا، فَإِنْ جَاءَ زَوْجُهَا خَيَّرَهُ بَيْنَهَا وَبَيْنَ الصَّدَاقِ.

L33043 Through the narration of Hammad ibn Salamah from Ayyub al-Sikhtiyani from Abu al-Malih al-Hudhali: A man embarked on a sea voyage and was lost. His wife and the mothers of his children (ummahat awlad, his concubines) remarried, and his inheritance was divided. He later returned. They brought the case to Uthman ibn Affan, who gave the man the choice between reclaiming his wife or taking the dowry (from her new marriage), returned the mothers of his children (ummahat awlad) to him, and imposed ransom for their children. When Uthman—may Allah be pleased with him—was killed, they appealed to Ali ibn Abi Talib, who ruled in accordance with Uthman's judgment.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي الْمَلِيحِ الْهُذَلِيِّ: أَنَّ رَجُلًا رَكِبَ الْبَحْرَ فَتِيهَ بِهِ، فَتَزَوَّجَتْ امْرَأَتُهُ وَأُمَّهَاتُ أَوْلَادِهِ، وَقُسِّمَ مِيرَاثُهُ، فَقَدِمَ بَعْدَ ذَلِكَ. فَارْتَفَعُوا إِلَى عُثْمَانَ بْنِ عَفَّانَ فَخَيَّرَ الرَّجُلَ بَيْنَ امْرَأَتِهِ وَبَيْنَ الصَّدَاقِ، وَرَدَّ عَلَيْهِ أُمَّهَاتِ أَوْلَادِهِ وَجَعَلَ فِي أَوْلَادِهِنَّ الْفِدَاءَ، فَلَمَّا قُتِلَ عُثْمَانُ - رَضِيَ اللَّهُ عَنْهُ - ارْتَفَعُوا إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَقَضَى بِمِثْلِ قَضَاءِ عُثْمَانَ.

L33044–33046 From the path of Abd al-Razzaq, from Ma'mar, from Ayyub al-Sikhtiyani: that Abu al-Malih ibn Usamah was asked about the wife of a missing man. Abu al-Malih said: Suhayma bint Umar al-Shaybaniyya related to me that she lost her husband in a battle he fought, and it was not known whether he perished or not. She observed the waiting period of four years, then remarried. Then her first husband came. He and her second husband rode to Uthman and informed him. Uthman said: "The first husband is given the choice." A dispute arose between his wife and her claim to the dowry. Soon after, ʿUthmān was killed. They rode to ʿAlī in Kufa, where he said: "I hold no opinion except what ʿUthmān declared." She responded: "He chose the dowry settlement. I assisted my husband with two thousand, while the dowry was four thousand. He restored the ummahāt al-awlād (enslaved mothers of his children) - who had married after him - and returned their children to them. To my knowledge, he affirmed this."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ: أَنَّ أَبَا الْمَلِيحِ بْنَ أُسَامَةَ سُئِلَ عَنْ امْرَأَةِ الْمَفْقُودِ؟ فَقَالَ أَبُو مَلِيحٍ: حَدَّثَتْنِي سُهَيْمَةُ بِنْتُ عُمَرَ الشَّيْبَانِيَّةُ أَنَّهَا فَقَدَتْ زَوْجَهَا فِي غَزَاةٍ غَزَاهَا، فَلَمْ يُدْرَ أَهَلَكَ أَمْ لَا، فَتَرَبَّصَتْ أَرْبَعَ سِنِينَ، ثُمَّ تَزَوَّجَتْ فَجَاءَ زَوْجُهَا الْأَوَّلُ، فَرَكِبَ هُوَ وَزَوْجُهَا الثَّانِي إِلَى عُثْمَانَ فَأَخْبَرَاهُ، فَقَالَ عُثْمَانُ يُخَيَّرُ الْأَوَّلُ بَيْنَ امْرَأَتِهِ وَبَيْنَ صَدَاقِهَا، فَلَمْ يَلْبَثْ أَنْ قُتِلَ عُثْمَانُ فَرَكِبَا إِلَى عَلِيٍّ بِالْكُوفَةِ فَقَالَ: مَا أَرَى إِلَّا مَا قَالَ عُثْمَانُ؟ قَالَتْ: فَاخْتَارَ الصَّدَاقَ، فَأَعَنْت زَوْجِي بِأَلْفَيْنِ وَكَانَ الصَّدَاقُ أَرْبَعَةَ آلَافٍ، وَرَدَّ أُمَّهَاتِ أَوْلَادِهِ - كُنَّ تَزَوَّجْنَ بَعْدَهُ - وَرَدَّ أَوْلَادَهُنَّ مَعَهُنَّ، عِلْمِي أَنَّهُ قَالَهُ.

L33047 From the chain of Ḥammād ibn Salamah: Qatādah narrated to us from Khilās ibn ʿAmr that ʿAlī ibn Abī Ṭālib said: "The wife of a missing man

observes a waiting period of four years. Then the guardian divorces her. She then waits four months and ten. If her husband returns, he may choose either to retain his wife or finalize the divorce by paying the dower." This is authentically reported from ʿAlī.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أرنا قَتَادَةُ عَنْ خِلَاسِ بْنِ عَمْرٍو أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: امْرَأَةُ الْمَفْقُودِ تَعْتَدُّ أَرْبَعَ سِنِينَ، ثُمَّ يُطَلِّقُهَا الْوَلِيُّ، ثُمَّ تَعْتَدُّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، فَإِذَا جَاءَ زَوْجُهَا خُيِّرَ بَيْنَ امْرَأَتِهِ وَبَيْنَ الصَّدَاقِ - وَهَذَا صَحِيحٌ عَنْ عَلِيٍّ.

L33048 Abu Muhammad said: As for the Followers (Tābiʿūn), it has been narrated to us—via the chain of al-Ḥajjāj ibn al-Minhāl—that al-Rabīʿ ibn Ḥabīb reported to us: I asked al-Ḥasan al-Baṣrī about the woman with a disappeared husband. He replied: She observes a waiting period of four years. After this, her guardian pronounces divorce on her behalf. She then observes a waiting period of four months and ten days—equivalent to the waiting period for a woman whose husband has died—after which she may remarry if she wishes. If her husband returns, he has the choice: if he wishes, he may take back his wife, or if he wishes, he may take the mahr he owed her.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا التَّابِعُونَ فَرُوِّينَا -: وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا الرَّبِيعُ بْنُ حَبِيبٍ قَالَ: سَأَلْت الْحَسَنَ الْبَصْرِيَّ عَنْ الْمَفْقُودِ زَوْجُهَا؟ فَقَالَ: تَعْتَدُّ أَرْبَعَ سِنِينَ، ثُمَّ يُطَلِّقُهَا وَلِيُّهُ، ثُمَّ تَعْتَدُّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا - عِدَّةَ الْمُتَوَفَّى عَنْهَا زَوْجُهَا - ثُمَّ تَتَزَوَّجُ إنْ شَاءَتْ، فَإِنْ جَاءَ زَوْجُهَا فَهُوَ بِالْخِيَارِ، فَإِنْ شَاءَ امْرَأَتَهُ، وَإِنْ شَاءَ صَدَاقَهَا الَّذِي كَانَ أَصْدَقَهَا.

L33049 And through the chain of Hammad ibn Salamah from Qatadah: Al-Hasan ruled that the missing husband is given the choice between the first dowry and his wife. Qatadah reported this, and Al-Khilas ibn Amr stated: He is given the choice between the other dowry and his wife.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ أَنَّ الْحَسَنَ كَانَ يُخَيِّرُ الْمَفْقُودَ بَيْنَ الصَّدَاقِ الْأَوَّلِ وَبَيْنَ امْرَأَتِهِ، قَالَ قَتَادَةُ، وَقَالَ الْخِلَاسُ بْنُ عَمْرٍو: يُخَيَّرُ بَيْنَ الصَّدَاقِ الْآخَرِ وَبَيْنَ امْرَأَتِهِ.

L33050 From the narration of Hammad ibn Salamah, who narrated to us that Ata ibn al-Sa'ib said: While I was with Ibrahim al-Nakha'i—and there was a man from the companions of al-Sābirī present, sorrowful and distressed—I asked, "What is the matter with this man?" Al-Nakha'i replied, "Her previous husband has arrived." I asked, "What should he do?" He said, "He is given the choice between the mahr and his wife. If he chooses divorce, this man remains with his wife, and she does not observe a waiting period from him, since he is the biological father. But if he chooses his wife, she must observe a waiting period from this man." Ata said: I informed al-Hakam ibn Utaybah of this, and he said, "No ruling in this matter is valid unless a waiting period is observed."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أرنا عَطَاءُ بْنُ السَّائِبِ قَالَ: بَيْنَمَا أَنَا عِنْدَ إبْرَاهِيمَ النَّخَعِيِّ - وَعِنْدَهُ رَجُلٌ مِنْ أَصْحَابِ السَّابِرِيِّ حَزِينٌ كَئِيبٌ - فَقُلْت: مَا شَأْنُ ذَا؟ فَقَالَ النَّخَعِيُّ قَدِمَ زَوْجُ امْرَأَتِهِ؟ فَقُلْت: فَكَيْفَ يَصْنَعُ؟ قَالَ: يُخَيَّرُ بَيْنَ الصَّدَاقِ وَبَيْنَ امْرَأَتِهِ، فَإِنْ اخْتَارَ الطَّلَاقَ أَقَامَ هَذَا عَلَى امْرَأَتِهِ وَلَا تَعْتَدُّ مِنْهُ، لِأَنَّ الْمَاءَ مَاؤُهُ، وَإِنْ اخْتَارَ امْرَأَتَهُ اعْتَدَّتْ مِنْ هَذَا، قَالَ عَطَاءٌ: فَأَخْبَرْت بِذَلِكَ الْحَكَمَ بْنَ عُتَيْبَةَ، فَقَالَ: لَا يَكُونُ شَيْءٌ مِنْ هَذَا إلَّا وَفِيهِ عِدَّةٌ.

L33051 From the narration chain of ʿAbd al-Razzāq: Ibn Jurayj informed us from ʿAṭāʾ ibn Abī Rabāḥ regarding the wife of a missing man. He said: She observes a waiting period (ʿiddah) of four years from the day the matter is

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ فِي امْرَأَةِ الْمَفْقُودِ؟ قَالَ: تَتَرَبَّصُ أَرْبَعَ سِنِينَ مِنْ يَوْمِ يُتَكَلَّمُ، ثُمَّ يُطَلِّقُهَا وَلِيُّهُ يَأْخُذُ بِالْوَثَاقِ، وَلَا يَمْنَعُ زَوْجَهَا

declared, then her guardian acting on the husband's authority pronounces the divorce, thereby securing it with a binding guarantee. That divorce does not prevent her husband—even if it is irrevocable. If he returns and chooses her, she observes the waiting period (ʿiddah) from the subsequent husband. If he chooses the recovery of her dowry, she must compensate him from her own wealth, does not observe the waiting period (ʿiddah) from the subsequent husband, and remains with him as she was.

تِلْكَ الطَّلْقَةُ - وَإِنْ كَانَتْ أَلْبَتَّةَ - فَإِنْ جَاءَ فَاخْتَارَهَا اعْتَدَّتْ مِنْ الْآخَرِ، وَإِنْ اخْتَارَ صَدَاقَهَا غَرِمَتْهُ هِيَ مِنْ مَالِهَا، وَلَمْ تَعْتَدَّ مِنْ الْآخَرِ، وَقَرَّتْ عِنْدَهُ كَمَا هِيَ.

L33052–33053 Narrated by Abd al-Razzaq, from Ma'mar, from al-Zuhri concerning the wife of a missing man: If he returns after she has remarried, the woman is liable to forfeit the mahr.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي امْرَأَةِ الْمَفْقُودِ يَأْتِي وَقَدْ تَزَوَّجَتْ أَنَّ الْمَرْأَةَ تَغْرَمُ الصَّدَاقَ.

L33054 And through the chain of Abu ʿUbayd: Yahya ibn Bukayr narrated to us from al-Layth ibn Saʿd from Ayyub ibn Musa from Makhlul regarding the wife of a missing man: If the first husband returns, she may remain his wife if he so wishes, and she must observe the waiting period from her current husband. If the first husband chooses, the second husband is entitled to the dowry he gave her.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَحْيَى بْنُ بُكَيْرٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ مَكْحُولٍ فِي امْرَأَةِ الْمَفْقُودِ إذَا قَدِمَ الْأَوَّلُ كَانَتْ امْرَأَتُهُ - إنْ شَاءَ - وَاعْتَدَّتْ مِنْ زَوْجِهَا الَّذِي هِيَ عِنْدَهُ، وَإِنْ شَاءَ فَلَهُ مَا أَصْدَقَهَا.

L33055 Through the chain of Abu ʿUbayd, Muḥammad ibn Abī ʿAdiyyin narrated to us from Dāwūd ibn Abī Hind from al-Shaʿbī, who said: "Were it not for ʿUmar allowing the missing person to choose, I would have considered him more entitled to her if he so wishes."

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ الشَّعْبِيِّ قَالَ: لَوْلَا أَنَّ عُمَرَ خَيَّرَ الْمَفْقُودَ لَرَأَيْته أَحَقَّ بِهَا إذَا شَاءَ.

L33056 From the transmission of Hammad ibn Salamah from Qatadah, he said: Umar ibn Abd al-Aziz wrote to Adi ibn Artah that the wife of a missing person must observe a waiting period of four years.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ إلَى عَدِيِّ بْنِ أَرْطَاةَ أَنَّ امْرَأَةَ الْمَفْقُودِ تَعْتَدُّ أَرْبَعَ سِنِينَ.

L33057 From the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Dāwūd ibn Abī Hind, from Saʿīd ibn al-Musayyib, who said: If one is lost in the battlefront, a waiting period of one year is observed for him, and if lost outside the battlefront, then four years.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: إذَا فُقِدَ فِي الصَّفِّ تَرَبَّصَتْ بِهِ سَنَةً، وَإِذَا فُقِدَ فِي غَيْرِ صَفٍّ فَأَرْبَعُ سِنِينَ.

L33058 And by him to Abd al-Razzaq, from Ma'mar, from Qatadah, who said: When four years have elapsed since the wife of the missing person raises her matter, his estate shall be distributed among his heirs.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: إذَا مَضَتْ أَرْبَعُ سِنِينَ مِنْ حِينِ تَرْفَعُ امْرَأَةُ الْمَفْقُودِ أَمْرَهَا فَإِنَّهُ يُقَسَّمُ مَالُهُ بَيْنَ وَرَثَتِهِ.

L33059 Via the report of Ibn Wahb, from ʿAbd al-Raḥmān ibn Abī al-Zināد, from his father, who said regarding a man who disappears in combat, and it is unknown whether he has been captured or killed: "I hold that his wife should observe the specified ʿiddah of four years, four months, and ten days, after which she may remarry if she wishes."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ عَنْ أَبِيهِ قَالَ فِي الَّذِي يَحْضُرُ الْقِتَالَ فَلَا يُدْرَى أُسِرَ أَمْ قُتِلَ؟ فَإِنِّي أَرَى أَنْ تَعْتَدَّ امْرَأَتُهُ عِدَّةَ الْمُؤَجَّلَةِ أَرْبَعَ سِنِينَ وَأَرْبَعَةَ أَشْهُرٍ وَعَشْرًا ثُمَّ تَنْكِحَ إِنْ شَاءَتْ.

L33060 And from the narration of Ibn Wahb, from Yunus ibn Yazid, from Rabi'ah regarding the missing person: a waiting period is observed to search for him, but no information about him is found. That is the case in which the Imam establishes a waiting period for the wife (of the missing person), as has been reported to us. Then she observes the waiting period of a woman whose husband has died.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ رَبِيعَةَ فِي الْمَفْقُودِ يُتَلَوَّمُ لِطَلَبِهِ فَلَا يُوجَدُ لَهُ خَبَرٌ، فَذَلِكَ الَّذِي يَضْرِبُ الْإِمَامُ لِامْرَأَتِهِ فِيمَا بَلَغَنَا، ثُمَّ تَعْتَدُّ عِدَّةَ الْمُتَوَفَّى عَنْهَا زَوْجُهَا.

L33061 They state: If her husband comes [forward] during her waiting period (ʿiddah) or after it—provided she has not married [another]—he has the prior right to her. But if she marries [another] after the waiting period and the marriage is consummated, he has no claim over her.

يَقُولُونَ: إِنْ جَاءَ زَوْجُهَا فِي عِدَّتِهَا أَوْ بَعْدَ الْعِدَّةِ - مَا لَمْ تُنْكَحْ - فَهُوَ أَحَقُّ بِهَا، فَإِنْ نُكِحَتْ بَعْدَ الْعِدَّةِ وَدُخِلَ بِهَا، فَلَا سَبِيلَ لَهُ عَلَيْهَا.

L33062 From the transmission of Ibn Wahb, from ʿAbd al-Jabbār ibn ʿUmar, from Rabīʿah, who said: If the governing authority annuls the marriage between them, the first husband has no right over her, nor is there a right of return—whether he had consummated the marriage or not.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ عَنْ رَبِيعَةَ قَالَ: إِذَا فَرَّقَ السُّلْطَانُ بَيْنَهُمَا فَلَا سَبِيلَ لِلْأَوَّلِ عَلَيْهَا، وَلَا رَجْعَةَ - دَخَلَ بِهَا أَوْ لَمْ يَدْخُلْ.

L33063 It has been narrated to us—other than all of this—from Ibn Abi Talib and others.

وَرُوِّينَا غَيْرَ هَذَا كُلِّهِ عَنِ ابْنِ أَبِي طَالِبٍ، وَغَيْرِهِ.

L33064–33065 As narrated to us by Abu ʿUbayd, who narrated from Jarir, from Mansur ibn al-Muʿtamir, from al-Hakam ibn ʿUtaybah, who said: "Ali ibn Abi Talib said: 'If a woman loses her husband, she may not remarry until he returns or she dies.'"

كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا جَرِيرٌ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ إِذَا فَقَدَتِ الْمَرْأَةُ زَوْجَهَا لَمْ تَتَزَوَّجْ حَتَّى يَقْدَمَ أَوْ تَمُوتَ.

L33066 And through the chain of Abu Ubayd as well: Hushaym reported to us, Sayyar reported to us from al-Shaʿbi, who said: Ali ibn Abi Talib said: When her first husband comes, he has no right to choose. She is his wife.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ أَيْضًا نا هُشَيْمٌ نا سَيَّارٌ عَنِ الشَّعْبِيِّ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ إِذَا جَاءَ زَوْجُهَا الْأَوَّلُ فَلَا خِيَارَ لَهُ، وَهِيَ امْرَأَتُهُ.

L33067 And through the chain of Abū ʿUbayd: ʿAlī ibn Maʿbad narrated to us from ʿAbdullāh ibn ʿAmr from ʿAbd al-Karīm al-Jazarī from Saʿīd ibn Jubayr, who said: ʿAlī ibn Abī Ṭālib said regarding the wife of a missing man who re-

marries: “She is the wife of the first — whether the second husband has consummated the marriage with her or not.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا عَلِيُّ بْنُ مَعْبَدٍ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ فِي امْرَأَةِ الْمَفْقُودِ تُزَوَّجُ: هِيَ امْرَأَةُ الْأَوَّلِ - دَخَلَ بِهَا الْآخَرُ أَوْ لَمْ يَدْخُلْ.

L33068 And through the narration of ʿAbd al-Razzāq from Ibn Jurayj, who said: It was conveyed to me from Ibn Masʿūd that he agreed with ʿAlī ibn Abī Ṭālib concerning the wife of a missing person—that she is to wait for him perpetually.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: بَلَغَنِي عَنِ ابْنِ مَسْعُودٍ: أَنَّهُ وَافَقَ عَلِيَّ بْنَ أَبِي طَالِبٍ فِي امْرَأَةِ الْمَفْقُودِ عَلَى أَنَّهَا تَنْتَظِرُهُ أَبَدًا.

L33069 Via the chain of Sa’id ibn Mansur: Hushaym narrated to us, informing us through Sayyar from al-Sha’bi that he would rule regarding the missing man’s wife: “If the first husband returns, she remains his wife, and he has no right to annul the marriage.” Hushaym added: “This is the opinion.” Hushaym further stated: Isma’il ibn Abi Khalid showed us from al-Sha’bi that he ruled concerning a missing man’s wife who remarries and conceives from her second husband, then learns her first husband is alive: “A separation is mandated between her and her second husband. If the first husband subsequently dies, she observes the waiting period for this second husband during her remaining pregnancy. Upon delivery, she then observes a waiting period for the first husband of four months and ten days, and inherits from him.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ ثنا هُشَيْمٌ أَخْبَرَنَا سَيَّارٌ عَنِ الشَّعْبِيِّ: أَنَّهُ كَانَ يَقُولُ: فِي امْرَأَةِ الْمَفْقُودِ: إِنْ جَاءَ الْأَوَّلُ فَهِيَ امْرَأَتُهُ، وَلَا خِيَارَ لَهُ - قَالَ هُشَيْمٌ: وَهُوَ الْقَوْلُ - قَالَ هُشَيْمٌ: وَأَرَنَا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنِ الشَّعْبِيِّ أَنَّهُ قَالَ فِي امْرَأَةِ الْمَفْقُودِ إِذَا تَزَوَّجَتْ فَحَمَلَتْ مِنْ زَوْجِهَا الْآخَرِ، ثُمَّ بَلَغَهَا أَنَّ زَوْجَهَا الْأَوَّلَ حَيٌّ، يُفَرَّقُ بَيْنَهَا وَبَيْنَ زَوْجِهَا الْآخَرِ، فَإِنْ مَاتَ زَوْجُهَا الْأَوَّلُ فَإِنَّهَا تَعْتَدُّ مِنْ هَذَا الْآخَرِ بَقِيَّةَ حَمْلِهَا، فَإِذَا وَضَعَتْ اعْتَدَّتْ مِنَ الْأَوَّلِ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا وَوَرِثَتْهُ.

L33070 And via the chain of Wakīʿ from Sufyān al-Thawrī from al-Mughīra ibn Miqsam from Ibrāhīm al-Nakhaʿī concerning the wife of a missing man: he said, “She is afflicted, so let her endure.”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي امْرَأَةِ الْمَفْقُودِ، قَالَ: هِيَ مُبْتَلَاةٌ فَلْتَصْبِرْ.

L33071 From the transmission of Sa’id ibn Mansur: Jarir reported to us from Mughira from al-Nakha’i, similar to Ali’s statement regarding the wife of a missing person: “She should not marry until his situation is clarified.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرٌ عَنْ مُغِيرَةَ عَنِ النَّخَعِيِّ مِثْلُ قَوْلِ عَلِيٍّ فِي امْرَأَةِ الْمَفْقُودِ: لَا تَتَزَوَّجُ حَتَّى يَسْتَبِينَ أَمْرُهُ.

L33072 From the transmission of Shu‘bah: He heard Hammad ibn Abi Sulayman say: “‘Umar said concerning the wife of a missing person that she is to be granted the choice [between remaining or seeking divorce].” And ‘Ali said:

وَمِنْ طَرِيقِ شُعْبَةَ: أَنَّهُ سَمِعَ حَمَّادَ بْنَ أَبِي سُلَيْمَانَ يَقُولُ: قَالَ عُمَرُ فِي امْرَأَةِ الْمَفْقُودِ تُخَيَّرُ - وَقَالَ عَلِيٌّ: هِيَ امْرَأَتُهُ - قَالَ حَمَّادٌ: وَعُمَرُ أَحَبُّ إِلَيَّ مِنْ عَلِيٍّ، وَقَوْلُ عَلِيٍّ أَعْجَبُ إِلَيَّ مِنْ قَوْلِ عُمَرَ.

"She remains his wife." Hammad said: "I hold 'Umar in higher personal esteem than 'Ali, but 'Ali's opinion is more compelling to me than 'Umar's."

وَمِمَّنْ قَالَ: لَا تُؤَجَّلُ امْرَأَةُ الْمَفْقُودِ، وَلَا يُفَرِّقُ بَيْنَهُ وَبَيْنَهَا الْقَاضِي -: ابْنُ أَبِي لَيْلَى، وَابْنُ شُبْرُمَةَ، وَعُثْمَانُ الْبَتِّيُّ، وَسُفْيَانُ الثَّوْرِيِّ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L33073–33075 Among those who held that the wife of a missing husband is not to have her case delayed, nor should the judge separate between him and her, was Ibn Abī Laylā. Ibn Shubrumah, Uthman al-Battī, Sufyan al-Thawri, al-Hasan ibn Ḥayyin, Abu Hanifah, al-Shafi'i, Abu Sulayman, and their companions.

وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: مَنْ حَكَمَ بِتَأْجِيلِهَا ثُمَّ فَسَخَ النِّكَاحَ مِنْهُ وَأَمَرَهَا أَنْ تَعْتَدَّ، ثُمَّ تَزَوَّجَتْ؛ فَإِنَّهُ يَفْسَخُ كُلَّ ذَلِكَ، وَتُرَدُّ إِلَى الْأَوَّلِ كَمَا كَانَتْ.

L33076 Al-Shafi'i and Abu Sulayman said: If a judge rules to postpone the commencement of her 'iddah, then annuls the marriage contract from him and orders her to observe the 'iddah, and she subsequently remarries—he invalidates all these actions, and she is returned to the first husband in her original state as she was.

وَقَالَ الْأَوْزَاعِيُّ - فِي الْقَوْمِ يَلْقَوْنَ الْعَدُوَّ فَيُفْقَدُونَ، فَلَا يُدْرَى أَقُتِلُوا أَمْ أُسِرُوا: فَإِنَّ نِسَاءَهُمْ يَعْتَدُّونَ عِدَّةَ الْمُتَوَفَّى عَنْهَا زَوْجُهَا، ثُمَّ يَتَزَوَّجْنَ - كَتَبَ بِذَلِكَ عُمَرُ بْنُ الْخَطَّابِ - وَعَلَى هَذَا مَضَى أَمْرُ النَّاسِ.

L33077 Al-Awza'ī said concerning men who encounter the enemy and go missing: so it is not known whether they were killed or captured, "Their wives must observe the *'iddah* of a woman whose husband has died, after which they may remarry." Umar ibn al-Khattab decreed this ruling, and this has been the enduring practice of the people.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ فِي امْرَأَةِ الْمَفْقُودِ: أَنَّهَا تُؤَجَّلُ، فَإِنْ جَاءَ زَوْجُهَا الْمَفْقُودُ وَوَجَدَهَا تَزَوَّجَتْ، فَهُوَ أَوْلَى بِهَا وَتُرَدُّ إِلَيْهِ.

L33078 Al-Layth ibn Sa'd said regarding the wife of a missing person that she must observe a waiting period. If her missing husband returns and finds she has remarried, he has more right to her, and she must be returned to him.

وَقَالَ مَالِكٌ: تَنْتَظِرُ امْرَأَةُ الْمَفْقُودِ أَرْبَعَ سِنِينَ مِنْ حِينِ تَرْفَعُ أَمْرَهَا إِلَيْهِ ثُمَّ تَعْتَدُّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، فَإِنْ كَانَ الزَّوْجُ عَبْدًا أُجِّلَتْ عَامَيْنِ ثُمَّ تَعْتَدُّ - كَمَا ذَكَرْنَا - فَإِنْ جَاءَ زَوْجُهَا قَبْلَ أَنْ تَتَزَوَّجَ فَهِيَ امْرَأَتُهُ كَمَا كَانَتْ، وَإِنْ جَاءَ - وَقَدْ تَزَوَّجَتْ - فَلَا سَبِيلَ لَهُ إِلَيْهَا - دَخَلَ الثَّانِي بِهَا أَوْ لَمْ يَدْخُلْ -.

L33079 Malik said: The wife of a missing person (whose status is legally uncertain) waits four years from the time she formally files her case with the judge, then she observes the ʿiddah of four months and ten days. If the husband is enslaved, she waits two years, after which she observes the ʿiddah—as we have mentioned. If her husband returns before she remarries, she remains his wife as before. If he returns after she has remarried—whether the second husband has consummated the marriage or not—he has no lawful right to reclaim her.

L33080 Then Malik reconsidered and said: The first husband retains the strongest claim to her provided the second husband has not consummated the marriage. The first husband has no right to reclaim her. He said: This ruling applies specifically to a husband declared missing in peacetime contexts.

ثُمَّ رَجَعَ مَالِكٌ فَقَالَ: هُوَ أَوْلَى بِهَا مَا لَمْ يَدْخُلْ بِهَا الثَّانِي، وَلَا خِيَارَ لِلْأَوَّلِ - قَالَ: وَإِنَّمَا هَذَا فِي الْمَفْقُودِ فِي غَيْرِ الْحَرْبِ.

L33081 As for one missing in war whose status as deceased or alive is unknown: his wife is not postponed, nor is separation made between him and her. He said: The missing person's wealth is not distributed, nor are the mothers of his children emancipated, until a period of time has come where it is known that he could not have survived.

فَأَمَّا الَّذِي فُقِدَ فِي الْحَرْبِ فَلَمْ يُعْرَفْ أَمَيِّتٌ هُوَ أَمْ حَيٌّ؟ فَلَا تُؤَجَّلُ امْرَأَتُهُ، وَلَا يُفَرَّقُ بَيْنَهُ وَبَيْنَهَا - قَالَ: وَلَا يُقَسَّمُ مَالُ الْمَفْقُودِ، وَلَا تَعْتِقُ أُمَّهَاتُ أَوْلَادِهِ، حَتَّى يَأْتِيَ مِنْ الزَّمَانِ مَا يُعْرَفُ أَنَّهُ لَا يَعِيشُ إِلَيْهِ.

L33082 Ahmad and Ishaq said: The wife of a missing person must observe a waiting period of four months and ten days after four years, then she may remarry. They both stated: The missing person whose wife's waiting period is delayed is one who is missing in war, missing at sea, or who disappears from his home.

وَقَالَ أَحْمَدُ وَإِسْحَاقُ: تَتَرَبَّصُ امْرَأَةُ الْمَفْقُودِ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا بَعْدَ أَرْبَعَةِ أَعْوَامٍ، ثُمَّ تَتَزَوَّجُ - قَالَا جَمِيعًا: وَالْمَفْقُودُ الَّذِي تُؤَجَّلُ امْرَأَتُهُ -: هُوَ الْمَفْقُودُ فِي الْحَرْبِ أَوْ فِي الْبَحْرِ، أَوْ يُفْقَدُ مِنْ مَنْزِلِهِ.

L33083 As for a man who is absent from his family and whose condition is unknown, his wife's ʿiddah (mandatory waiting period) is not delayed.

وَأَمَّا مَنْ غَابَ عَنْ أَهْلِهِ فَلَمْ يُدْرَ مَا فَعَلَ فَلَا تُؤَجَّلُ امْرَأَتُهُ.

L33084–33086 Abu Muhammad said: The Salaf differed over twelve points from this narrative - and they are: who... The missing person? - And the postponement period? - From when does the postponement period begin? - How long is the postponement period? - Is the guardian permitted to dissolve the marriage after the postponement period? - Is there a waiting period after death following this? - What is the ruling on granting the husband the option [to decide] if he returns? - Regarding what does he choose? - Who is responsible for paying the bridal gift (mahr) if he chooses it? - Which bridal gift is required? - Is his inheritance distributed? - Are the mothers of his children [umm al-walad] emancipated?

قَالَ أَبُو مُحَمَّدٍ: اخْتَلَفَ السَّلَفُ فِي اثْنَيْ عَشَرَ مَوْضِعًا مِنْ هَذِهِ الْقِصَّةِ وَهِيَ -: مَنْ الْمَفْقُودُ؟ - وَالتَّأْجِيلُ - وَمِنْ مَتَى يَبْدَأُ التَّأْجِيلُ؟ - وَكَمْ التَّأْجِيلُ - وَهَلْ بَعْدَ التَّأْجِيلِ طَلَاقُ الْوَلِيِّ؟ - وَهَلْ بَعْدَ ذَلِكَ عِدَّةُ الْوَفَاةِ؟ - وَحُكْمُ تَخْيِيرِ الزَّوْجِ إنْ قَدِمَ - وَفِيمَا ذَا تَخَيَّرَ؟ - وَعَلَى مَنْ غُرْمُ الصَّدَاقِ إنْ اخْتَارَهُ؟ - وَأَيُّ صَدَاقٍ يَكُونُ؟ - وَهَلْ يُقَسَّمُ مِيرَاثُهُ؟ - وَهَلْ تُعْتَقُ أُمَّهَاتُ أَوْلَادِهِ؟ .

L33087 As for the case of the missing person: all those from whom a ruling was narrated regarding this matter did not distinguish between the circumstances of disappearance—and they are: Umar, Uthman, Ali, Ibn Mas'ud, Ibn Abbas, and Ibn Umar.

فَأَمَّا مَنْ الْمَفْقُودُ: فَإِنَّ كُلَّ مَنْ رُوِيَ عَنْهُ فِي هَذَا شَيْءٌ لَمْ يُفَرِّقْ بَيْنَ أَحْوَالِ الْفَقْدِ، وَهُمْ -: عُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ، وَابْنُ مَسْعُودٍ وَابْنُ عَبَّاسٍ، وَابْنُ عُمَرَ.

L33088 And from the Followers: Al-Ḥasan, Khilāṣ ibn ʿAmr, Ibrāhīm al-Nakhaʿī,

وَمِنْ التَّابِعِينَ -: الْحَسَنُ، وَخِلَاسُ بْنُ عَمْرٍو، وَإِبْرَاهِيمُ النَّخَعِيُّ، وَالْحَكَمُ بْنُ عُتَيْبَةَ، وَعَطَاءٌ، وَالزُّهْرِيُّ، وَمَكْحُولٌ وَالشَّعْبِيُّ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَقَتَادَةُ، وَأَبُو الزِّنَادِ، وَرَبِيعَةُ، وَحَمَّادُ بْنُ أَبِي سُلَيْمَانَ، وَابْنُ أَبِي لَيْلَى، وَابْنُ شُبْرُمَةَ، وَعُثْمَانُ الْبَتِّيُّ، وَسُفْيَانُ الثَّوْرِيُّ، وَهُشَيْمٌ، وَالْحَسَنُ بْنُ حَيٍّ، وَالْأَوْزَاعِيُّ، وَاللَّيْثُ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَدَاوُد، وَأَصْحَابُهُمْ - حَاشَا: مَالِكًا، وَأَحْمَدَ، وَإِسْحَاقَ -: فَإِنَّ مَالِكًا قَالَ: لَيْسَ هَذَا الْحُكْمُ فِي الْمَفْقُودِ فِي الْحَرْبِ - وَلَا نَعْلَمُ هَذَا عَنْ أَحَدٍ قَبْلَ مَالِكٍ -.

Al-Ḥakam ibn ʿUtaybah, ʿAṭāʾ, Al-Zuhrī, Makḥūl, Al-Shaʿbī, ʿUmar ibn ʿAbd al-ʿAzīz, Saʿīd ibn al-Musayyib, Qatādah, Abū al-Zinād, Rabīʿah, Ḥammād ibn Abī Sulaymān, Ibn Abī Laylā, Ibn Shubrumah, ʿUthmān al-Battī, Sufyān al-Thawrī, Hushaym, Al-Ḥasan ibn Ḥayy, Al-Awzāʿī, Al-Layth, Abū Ḥanīfah, Al-Shāfiʿī, Dāwūd, and their companions—excluding Mālik, Aḥmad, and Isḥāq. This is because Mālik said: "This ruling does not apply to the missing person in war," and we have no record of anyone before Mālik holding this opinion.

وَقَالَ أَحْمَدُ وَإِسْحَاقُ، لَيْسَ هَذَا الْحُكْمُ فِيمَنْ خَرَجَ عَنْ أَهْلِهِ فَفُقِدَ.

L33089 Aḥmad and Isḥāq both said that this ruling does not apply to someone who leaves his family and is missing.

وَأَمَّا التَّأْجِيلُ: فَإِنَّ كُلَّ مَنْ ذَكَرْنَا رَوَى التَّأْجِيلَ - حَاشَا رِوَايَاتٍ عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ، وَرِوَايَةً عَنْ الشَّعْبِيِّ، وَرِوَايَةً عَنْ النَّخَعِيِّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَابْنِ أَبِي لَيْلَى، وَابْنِ شُبْرُمَةَ، وَعُثْمَانَ الْبَتِّيِّ، وَسُفْيَانَ الثَّوْرِيِّ وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَدَاوُد وَأَصْحَابِهِمْ.

L33090 As for the postponement: All those we mentioned have narrated it – except for narrations from ʿAlī and Ibn Masʿūd, and a narration from Al-Shaʿbī, Al-Nakhaʿī, Ḥammād ibn Abī Sulaymān, Ibn Abī Laylā, Ibn Shubrumah, ʿUthmān al-Battī, Sufyān al-Thawrī, Al-Ḥasan ibn Ḥayy, Abū Ḥanīfah, Al-Shāfiʿī, Dāwūd, and their companions.

وَأَمَّا مَتَى يَبْدَأُ التَّأْجِيلُ - فِي قَوْلِ مَنْ قَالَ بِهِ -: فَإِنَّ أَكْثَرَ مَنْ ذَكَرْنَا يَرَى مَبْدَأَهُ مِنْ حِينِ يُرْفَعُ أَمْرُهَا إلَى الْإِمَامِ - حَاشَا رِوَايَةً ضَعِيفَةً عَنْ عُمَرَ: أَنَّهُ أَمَرَهَا بِإِتْمَامِ أَرْبَعِ سِنِينَ مِنْ حِينِ غَابَ.

L33091 As for when the postponement begins according to those who uphold this view, the majority of those we mentioned hold that its starting point is from when her case is raised to the Imam - except for a weakly transmitted report from 'Umar: that he commanded her to complete four years from the time he was absent.

وَقَالَ بَعْضُهُمْ: تَرَبُّصُ أَرْبَعِ سِنِينَ - وَلَمْ يَحُدُّوا مِنْ حِينِ تَبْدَأُ؟ وَأَمَّا كَمْ التَّأْجِيلُ: فَإِنَّ مَنْ ذَكَرْنَا يَرَاهُ أَرْبَعَ سِنِينَ، إلَّا سَعِيدَ بْنَ الْمُسَيِّبِ وَمَالِكًا - قَالَ سَعِيدٌ: أَرَى أَنْ تُؤَجَّلَ امْرَأَةُ مَنْ فُقِدَ فِي الصَّفِّ سَنَةً، وَمَنْ فُقِدَ فِي غَيْرِ الصَّفِّ أَرْبَعَ سِنِينَ -.

L33092 Some of them said: The waiting period is four years—but they did not specify from when it begins? As for the postponement period: Those we mentioned hold it to be four years, except Sa'īd ibn al-Musayyab and Mālik. Sa'īd said: I hold that the wife of one missing in battle should wait one year, while the wife of one missing outside battle should wait four years.

وَقَالَ مَالِكٌ: إنْ كَانَ عَبْدًا أُجِّلَتْ لَهُ عَامَيْنِ - وَلَا يُعْلَمُ هَذَا عَنْ أَحَدٍ قَبْلَهُ.

L33093–33094 And Mālik said: If he is a slave, a deferral of two years was granted to him—and this is not known from anyone before him.

L33095 As for the guardian's pronouncement of divorce after the postponement period, it is validly established from ʿUmar ibn al-Khaṭṭāb, ʿAlī ibn Abī Ṭālib, al-Ḥasan, and ʿAṭāʾ.

وَأَمَّا طَلَاقُ الْوَلِيِّ بَعْدَ التَّأْجِيلِ: فَإِنَّهُ صَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ وَالْحَسَنِ، وَعَطَاءٍ.

L33096 As for whether a waiting period due to death is required after that four-year period: We have cited the opinions of ʻUmar, ʻUthmān, and ʻUmar ibn ʻAbd al-ʻAzīz that she must observe a waiting period of four years, after which she may marry without needing to observe a waiting period due to death.

وَأَمَّا هَلْ بَعْدَ ذَلِكَ عِدَّةُ وَفَاةٍ: فَإِنَّهُ قَدْ ذَكَرْنَا عَنْ عُمَرَ، وَعُثْمَانَ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ: تَرَبُّصَ أَرْبَعَةِ أَعْوَامٍ، ثُمَّ تَتَزَوَّجُ دُونَ ذِكْرِ عِدَّةِ وَفَاةٍ.

L33097 It has been authentically reported from Uthman, Ibn Abbas, Ibn Umar, Ali, al-Hasan, Ataa, Abi az-Zinad, and Rabiʻah that she must also observe the waiting period following death. In some of those narrations, it is stated that she must observe this waiting period due to divorce as well.

وَصَحَّ عَنْ عُثْمَانَ، وَابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ، وَعَلِيٍّ، وَالْحَسَنِ، وَعَطَاءٍ وَأَبِي الزِّنَادِ، وَرَبِيعَةَ: أَنَّهَا تَعْتَدُّ أَيْضًا عِدَّةَ الْوَفَاةِ - وَفِي بَعْضِ تِلْكَ الرِّوَايَاتِ: أَنَّهَا تَعْتَدُّ أَيْضًا مِنْ الطَّلَاقِ.

L33098 As for the husband's option upon returning: it is established from ʿUmar, ʿUthmān, and ʿAlī. Has no disagreement from the proponent of the postponement opinion been reported regarding that? It has also been authenticated from al-Ḥasan, Khilās, Ibrāhīm, ʿAṭāʾ, al-Ḥakam ibn ʿUtaybah, al-Zuhrī, Makḥūl, and al-Shaʿbī.

وَأَمَّا تَخْيِيرُ الزَّوْجِ إذَا قَدِمَ: فَثَابِتٌ عَنْ عُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ، وَلَمْ يُرْوَ عَنْ صَاحِبِ رَأْيِ التَّأْجِيلِ خِلَافُ ذَلِكَ؟ وَصَحَّ أَيْضًا: عَنْ الْحَسَنِ، وَخِلَاسٍ، وَإِبْرَاهِيمَ، وَعَطَاءٍ، وَالْحَكَمِ بْنِ عُتَيْبَةَ وَالزُّهْرِيِّ، وَمَكْحُولٍ، وَالشَّعْبِيِّ.

L33099 And it has been narrated to us from all those we mentioned regarding the husband's option that he is to choose between his wife and the mahr, except for one authentic narration from Umar, which states that he granted him the choice between his wife and marrying him to another woman.

وَرُوِّينَا عَنْ كُلِّ مَنْ ذَكَرْنَا عَنْهُ تَخْيِيرَ الزَّوْجِ: أَنَّهُ يُخَيَّرُ بَيْنَ زَوْجَتِهِ وَبَيْنَ الصَّدَاقِ، إلَّا رِوَايَةً عَنْ عُمَرَ صَحِيحَةً: أَنَّهُ خَيَّرَهُ بَيْنَ زَوْجَتِهِ وَبَيْنَ أَنْ يُزَوِّجَهُ مِنْ أُخْرَى.

L33100 Some of them differed regarding who is liable for the dower if the husband chooses it. The majority of those we mentioned said: The other husband is liable for it. Az-Zuhri said: The woman is liable for it.

وَاخْتَلَفَ بَعْضُهُمْ فِيمَنْ يَغْرَمُ الصَّدَاقَ - إنْ اخْتَارَهُ الزَّوْجُ -: فَقَالَ جُمْهُورُ مَنْ ذَكَرْنَا: يَغْرَمُهُ الزَّوْجُ الْآخَرُ - وَقَالَ الزُّهْرِيُّ: تَغْرَمُهُ الْمَرْأَةُ.

L33101 They also differed regarding which dowry should be legally enforced for her if he opts for it. The majority stated: "The enforceable dowry is the mahr he had originally pledged to her."

وَاخْتَلَفُوا أَيْضًا: أَيُّ الصَّدَاقِ يُقْضَى لَهُ بِهِ. - إنْ اخْتَارَهُ -: فَقَالَ جُمْهُورُهُمْ: صَدَاقُهُ الَّذِي كَانَ أَصْدَقَهَا هُوَ.

L33102 And Khilās ibn ʿAmr said: "Rather, it refers to the mahr of the other husband."

وَقَالَ خِلَاسُ بْنُ عَمْرٍو: بَلْ صَدَاقُ الزَّوْجِ الْآخَرِ.

L33103 They differed regarding whether the mothers of children by enslavement are emancipated. Qatādah said: "The mothers of children by enslavement

are emancipated if his wife is lawfully permitted to him in marriage. This ruling was specifically decreed during the caliphate of Uthmān (may Allah be pleased with him)." Some of them said: "The mothers are not emancipated."

وَاخْتَلَفُوا هَلْ تَعْتِقُ أُمَّهَاتُ أَوْلَادِهِ؟ - فَقَالَ قَتَادَةُ: تَعْتِقُ أُمَّهَاتُ أَوْلَادِهِ إِذَا أُبِيحَ لِزَوْجَتِهِ الزَّوَاجُ، وَإِنَّمَا قُضِيَ بِذَلِكَ فِي خِلَافَةِ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - وَقَالَ بَعْضُهُمْ: لَا يُعْتِقْنَ.

L33104 They differed regarding the deceased's inheritance: is it to be divided? And it has been narrated to us that during the caliphate of ʿUthmān—may Allāh be pleased with him—the inheritance was divided when his wife was permitted to marry.

وَاخْتَلَفُوا فِي مِيرَاثِهِ هَلْ يُقَسَّمُ؟ فَرُوِّينَا: أَنَّ فِي خِلَافَةِ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - قُسِّمَ مِيرَاثُهُ إِذَا أُبِيحَ لِامْرَأَتِهِ الزَّوَاجُ.

L33105–33106 Abu Muhammad said: As for the Malikis, Hanafis, and Shafi'is—they contradicted one another here in the ugliest self-contradiction.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ - فَإِنَّهُمْ تَنَاقَضُوا هَاهُنَا أَقْبَحَ تَنَاقُضٍ.

L33107 As for the Shāfiʿīs—they emulated ʿUmar based on a narration never authentically attributed to him regarding granting a deferment to the wife of an impotent man and dissolving her marital tie without the Quran or the Sunnah.

فَأَمَّا الشَّافِعِيُّونَ - فَقَلَّدُوا عُمَرَ فِي رِوَايَةٍ لَمْ تَصِحَّ عَنْهُ قَطُّ فِي تَأْجِيلِ امْرَأَةِ الْعِنِّينِ وَإِخْرَاجِهَا عَنْ عِصْمَتِهِ بِغَيْرِ قُرْآنٍ وَلَا سُنَّةٍ.

L33108 Then they opposed ʿUmar, ʿUthmān, ʿAlī, Ibn ʿAbbās, and Ibn ʿUmar here regarding what has been authentically reported from them concerning the determination of the waiting period for the wife of a missing man – and this is utterly astonishing?

ثُمَّ خَالَفُوا هَاهُنَا عُمَرَ، وَعُثْمَانَ، وَعَلِيًّا، وَابْنَ عَبَّاسٍ، وَابْنَ عُمَرَ فِيمَا صَحَّ عَنْهُمْ مِنْ تَأْجِيلِ امْرَأَةِ الْمَفْقُودِ - وَهَذَا عَجَبٌ جِدًّا؟

L33109 Similarly, the Ḥanafīs also did this: they rejected uncritical adherence to what was not reliably transmitted from ʿUmar regarding the inheritance of a thrice-divorced woman - and this is frivolous manipulation of religion and of prohibitions and permissions. If ʿUmar is an authority there, he is undoubtedly an authority here; and if he is not an authority here, then he is not an authority there either.

وَكَذَلِكَ فَعَلَ الْحَنَفِيُّونَ أَيْضًا: وَقَدْ رَدُّوا تَقْلِيدَ مَا لَمْ يَصِحَّ عَنْ عُمَرَ فِي تَوْرِيثِ الْمُطَلَّقَةِ ثَلَاثًا - وَهَذَا تَلَاعُبٌ بِالدِّينِ وَبِالتَّحْرِيمِ وَالتَّحْلِيلِ، وَلَئِنْ كَانَ عُمَرُ هُنَالِكَ حُجَّةً إِنَّهُ هَاهُنَا لَحُجَّةٌ، وَإِنْ لَمْ يَكُنْ هَاهُنَا حُجَّةً فَمَا هُوَ هُنَالِكَ حُجَّةً.

L33110 If they say: Did ʿAlī dissent from him here? We say: ʿAlī did dissent from him regarding the waiting period for the impotent man, and there is no difference. Similarly, ʿAbd al-Raḥmān ibn ʿAwf and ʿAbdullāh ibn al-Zubayr dissented from him concerning the inheritance of an irrevocably divorced woman during terminal illness—and both opinions necessitate annulling a marriage that neither Allah the Exalted nor His Messenger—peace and blessings be upon him—made obligatory to annul.

فَإِنْ قَالُوا: قَدْ خَالَفَهُ عَلِيٌّ هَاهُنَا؟ قُلْنَا: قَدْ خَالَفَهُ عَلِيٌّ فِي أَجَلِ الْعِنِّينِ وَلَا فَرْقَ، وَقَدْ خَالَفَهُ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ، وَعَبْدُ اللَّهِ بْنُ الزُّبَيْرِ فِي تَوْرِيثِ الْمَبْتُوتَةِ فِي الْمَرَضِ - وَكِلَا الْقَوْلَيْنِ مُوجِبٌ فَسْخَ نِكَاحٍ لَمْ يُوجِبْ اللَّهُ تَعَالَى فَسْخَهُ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَأَمَّا الْمَالِكِيُّونَ - فَإِنَّهُمْ خَالَفُوا الثَّابِتَ عَنْ عُمَرَ مِنْ أَنَّهُ أَمَرَ وَلِيَّهُ بِطَلَاقِهَا وَأَنَّهُ خَيَّرَ الزَّوْجَ - إذَا أَتَى - بَيْنَهَا وَبَيْنَ الصَّدَاقِ، وَقَلَّدُوهُ فِيمَا لَمْ يَصِحَّ عَنْهُ قَطُّ، مِنْ أَنْ تَعْتَدَّ بَعْدَ ذَلِكَ عِدَّةَ الْوَفَاةِ.

L33111 As for the Malikis, they opposed the established report from Umar—that he commanded his guardian to divorce her and that he gave the husband, upon consummation, a choice between keeping her or forfeiting the mahr. Yet they emulated him in what was never reliably attributed to him—that she must thereafter observe the widow's waiting period.

فَإِنْ قَالُوا: قَدْ صَحَّ ذَلِكَ عَنْ عَلِيٍّ، وَابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ؟ قُلْنَا: وَقَدْ صَحَّ عَنْ عُمَرَ تَخْيِيرُ الزَّوْجِ - إذَا جَاءَ - بَيْنَهَا وَبَيْنَ الصَّدَاقِ، فَمِنْ أَيْنَ وَقَعَ لَكُمْ تَقْلِيدُ بَعْضِ الصَّحَابَةِ فِي بَعْضِ هَذِهِ الْقَضِيَّةِ بِلَا دَلِيلٍ أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ قِيَاسٍ؟ وَمُخَالَفَةُ بَعْضِهِمْ فِيهَا نَفْسَهَا، وَهَذَا تَحَكُّمٌ فِي الدِّينِ بِالْبَاطِلِ، فَلَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ تَقْلِيدُ بَعْضِ مَا رُوِيَ عَنْ عُمَرَ دُونَ سَائِرِ مَا رُوِيَ عَنْهُ بِلَا بُرْهَانٍ أَصْلًا؟ قَالَ عَلِيٌّ: لَا حُجَّةَ فِي أَحَدٍ دُونَ اللَّهِ تَعَالَى وَرَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَلَا يَحِلُّ تَحْرِيمُ فَرْجٍ أَبَاحَهُ اللَّهُ تَعَالَى لِلزَّوْجِ وَتَحْلِيلُهُ لِمَنْ حَرَّمَهُ اللَّهُ تَعَالَى عَلَيْهِ مِنْ سَائِرِ الرِّجَالِ بِغَيْرِ قُرْآنٍ وَلَا سُنَّةٍ.

L33112 If they say: "This has been authentically reported from 'Ali, Ibn 'Abbas, and Ibn 'Umar," we respond: "It has also been authentically reported from 'Umar that the husband is given the choice—when he comes—between retaining her or the dowry. So how have you come to blindly follow some Companions in certain aspects of this issue without any evidence whatsoever—neither from the Quran, nor the Sunnah, nor analogical reasoning—while contradicting others among them on the very same matter? This is wrongfully imposing falsehood in religion. We do not comprehend how you selectively follow some reports from 'Umar while disregarding others without any proof at all." 'Ali said: "There is no valid proof in anyone other than Allah Almighty and His Messenger—peace and blessings be upon him. It is impermissible to prohibit the private part Allah has permitted for the husband or to permit for other men what Allah has forbidden them, without authority from the Quran or Sunnah."

وَأَمَّا الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - فَقَدْ فَازُوا - وَهُمْ وَاَللَّهِ مَأْجُورُونَ - فِي كُلِّ مَا قَالُوهُ قَاصِدِينَ بِهِ الْحَقَّ، وَإِنَّمَا الشَّأْنُ فِيمَنْ قَالَ قَوْلًا فِي الدِّينِ لَمْ يَأْتِ بِهِ قُرْآنٌ وَلَا سُنَّةٌ.

L33113–33114 As for the Companions (may Allah be pleased with them), they have succeeded—and by Allah, they are rewarded—in everything they said, intending thereby the truth. The matter pertains solely to those who assert a religious claim not supported by the Quran or the Sunnah.

فَإِذَا قِيلَ لَهُ: مِنْ أَيْنَ قُلْته؟ قَالَ: لِأَنَّ عُمَرَ، وَعُثْمَانَ قَالَهُ.

L33115 When he is asked, "From where did you derive this?" he replies, "Because 'Umar and 'Uthmān said it."

فَإِذَا قِيلَ لَهُ: فَفِي هَذِهِ الْقَضِيَّةِ نَفْسِهَا لَهُمَا قَوْلٌ خَالَفْتُمُوهُ -: هُوَ أَصَحُّ عَنْهُمَا مِنْ الَّذِي زَعَمْتُمْ أَنَّكُمْ احْتَجَجْتُمْ بِهِمَا فِيهِ؟ لَجُّوا عَلَى تَقْلِيدِهِمْ إعْرَاضًا عَنْ الْحَقِّ بِلَا بُرْهَانٍ أَصْلًا.

L33116 When it is said to him: "In this very issue, do the two scholars not hold a position you have opposed - is this not more authentically attributed to them than the stance you claimed to invoke them upon?" - such people stubbornly cling to their blind imitation, turning away from the truth without any proof whatsoever.

L33117 Abu Muhammad said: Therefore, there is no decisive proof in anyone apart

قَالَ أَبُو مُحَمَّد: فَإِذَا لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا يَجُوزُ فَسْخُ نِكَاحِ أَحَدٍ بِمَغِيبِهِ، وَلَا إيجَابُ عِدَّةٍ مِمَّنْ لَمْ يَصِحَّ مَوْتُهُ، وَلَا أَنْ يُطَلِّقَ أَحَدٌ عَنْ غَيْرِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

from the Messenger of Allah—may Allah bless him and grant him peace. Hence, it is impermissible to annul a marriage due to the spouse's absence, nor to impose a waiting period on one whose death has not been verified, nor for anyone to divorce as a proxy for another. And success comes solely from Allah, the Exalted.

وَمِنْ الْعَجَبِ قَوْلُ مَالِك " إنْ جَاءَ الزَّوْجُ قَبْلَ أَنْ تَتَزَوَّجَ فَهُوَ أَوْلَى بِهَا وَهِيَ امْرَأَتُهُ كَمَا كَانَتْ " فَيُقَالُ لِمَنْ قَلَّدَهُ: وَمِنْ أَيْنَ قُلْت هَذَا وَأَنْت قَدْ قَطَعْت عِصْمَتَهُ مِنْهَا وَأَبَحْت لَهَا أَنْ تَنْكِحَ مَنْ شَاءَتْ؟ وَكَيْفَ تَرُدُّهَا إلَى أَجْنَبِيٍّ قَدْ أَبَحْت لَهَا نِكَاحَ زَوْجٍ سِوَاهُ مِنْ أَجْلِ تَأْخِيرِهَا نِكَاحًا قَدْ أَبَحْته لَهَا عَادَتْ إلَى زَوْجٍ قَدْ فَسَخْت نِكَاحَهَا مِنْهُ؟ هَذَا مَعَ أَنَّهُ قَوْلٌ لَا يُحْفَظُ عَنْ أَحَدٍ قَبْلَ مَالِكٍ، فَاعْجَبُوا لِهَذَا الِاخْتِيَارِ؟

L33118 Among the astonishing statements is Mālik's saying: "If the husband arrives before she remarries, he has the strongest claim to her, and she remains his wife as she was." Thus, it is said to those who adopt his view: From where did you say this when you have severed his marital bond with her and permitted her to marry whomever she wishes? How can you return her to a stranger after permitting her to marry another husband merely because she delayed entering into a marriage you had permitted, thereby causing her to return to a husband whose marriage to her you had annulled? This is despite the fact that this opinion is not recorded from anyone before Mālik. Marvel at this chosen position!

ثُمَّ يُقَالُ لَهُمْ: وَمِنْ أَيْنَ قُلْتُمْ فِي أَحَدِ قَوْلَيْهِ: إنَّهُ إنْ جَاءَ الزَّوْجُ - وَهِيَ قَدْ تَزَوَّجَتْ - فَلَا سَبِيلَ لَهُ إلَيْهَا مِنْ أَجْلِ عَقْدٍ قَدْ كَانَ لَهَا مُبَاحًا، إذْ رَدَدْتهَا إلَيْهِ بِكُلِّ حَالٍ، فَقُولُوا لَنَا: أَيُّ شَيْءٍ أَحْدَثَهُ عَقْدُهَا النِّكَاحَ مِنْ تَحْرِيمِهَا عَلَى زَوْجِهَا مِمَّنْ لَمْ تُحْدِثْهُ إبَاحَتُك لَهَا ذَلِكَ الْعَقْدَ، فَأَجَزْت عَقْدَهَا.

L33119 Then it is said to them: On what basis do you assert in one of his two opinions that if the husband returns—while she has already married—he has no claim over her due to a contract that was lawful for her, when you have returned her to him in any case? Say to us: What prohibition did her marriage contract create against her husband that was not established by the one for whom your permission [to marry] did not produce it, such that you sanctioned her marriage contract?

ثُمَّ قَوْلُهُ الثَّانِي: مِنْ أَنَّهُ إنْ جَاءَ الزَّوْجُ - قَدْ تَزَوَّجَتْ إلَّا أَنَّهُ لَمْ يَدْخُلْ بِهَا فَهِيَ زَوْجَةُ الْأَوَّلِ - وَإِنْ جَاءَ بَعْدَ دُخُولِ الثَّانِي بِهَا فَلَا سَبِيلَ لَهُ عَلَيْهَا؟ فَقُولُوا لَنَا: هَلْ دَخَلَ الزَّوْجُ الثَّانِي عَلَى زَوْجَتِهِ، أَوْ عَلَى أَجْنَبِيَّةٍ؟ فَإِنْ قَالُوا: عَلَى زَوْجَتِهِ؟ قُلْنَا: فَمِنْ أَيْنَ أَبَحْتُمْ فَرْجَ زَوْجَتِهِ الَّتِي أَحْلَلْتُمْ لَهُ الدُّخُولَ بِهَا لِإِنْسَانٍ قَدْ فَسَخْتُمْ نِكَاحَهُ مِنْهَا، وَحَرَّمْتُمُوهَا عَلَيْهِ وَعَقَدْتُمْ نِكَاحَهَا مَعَ غَيْرِهِ؟ وَإِنْ قَالُوا: بَلْ دَخَلَ عَلَى غَيْرِ زَوْجَتِهِ؟ وَمِنْ أَيْنَ اسْتَحْلَلْتُمْ أَنْ

L33120–33122 His second argument is: If the husband returns after she has remarried but he has not consummated the marriage, she remains the wife of the first husband. But if he returns after the second husband has consummated the marriage, he has no recourse to her. Then say to them: Did the second husband consummate the marriage with his wife or with a woman unrelated to him? If they say, "With his wife," respond: How then do you permit the sexual access of his wife—whom you permitted him to consummate with—to a man whose marriage you annulled, prohibited her to him, and contracted her marriage to another? If they say, "Rather, he consummated with a woman unrelated to his wife," say: How do you deem it lawful to permit him to have

intercourse with a woman unrelated to his wife? It is undeniably evident that these are corrupt, conflicting, and unquestionably erroneous statements.

L33123 Some of them said: "We only did that based on what was narrated from Umar - under what circumstance?" We replied: "This is further obfuscation. Why would Umar only do so in a situation where he divorced his wife, informed her of the divorce, then revoked it without informing her of the revocation? Who inserted this case into that one?" Moreover, both these opinions are not recorded from any scholar before Mālik, nor will they ever find it [attributed to anyone]. So marvel at the severity of this imitation when they adopted a statement unattributed to anyone before Mālik - thereby opposing every opinion of a Companion or Successor. They misleadingly claimed in that narrative that they were citing some Companions - may Allah be pleased with them - as evidence. And success comes from Allah, the Exalted.

تُبِيحُوا لَهُ وَطْءَ غَيْرِ زَوْجَتِهِ؟ -: فَلَاحَ يَقِينًا أَنَّهَا أَقْوَالٌ فَاسِدَةٌ مُتَخَاذِلَةٌ، خَطَأٌ لَا شَكَّ فِيهَا.

وَقَدْ قَالَ بَعْضُهُمْ: إِنَّمَا فَعَلْنَا ذَلِكَ بِمَا رُوِيَ عَنْ عُمَرَ ذَلِكَ فِي أَيِّ كَنَفٍ؟ فَقُلْنَا: هَذَا تَمْوِيهٌ آخَرُ، وَهَلَّا فَعَلَ عُمَرُ ذَلِكَ فِي أَيِّ كَنَفٍ إِلَّا إِذَا طَلَّقَ امْرَأَتَهُ وَأَعْلَمَهَا بِالطَّلَاقِ، ثُمَّ رَاجَعَهَا وَلَمْ يُعْلِمْهَا بِالرَّجْعَةِ، فَمَنْ الَّذِي أَدْخَلَ هَذِهِ الْقَضِيَّةَ فِي تِلْكَ؟ مَعَ أَنَّ هَذَيْنِ الْقَوْلَيْنِ جَمِيعًا لَا يُحْفَظَانِ عَنْ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ أَنَّهُ قَالَهُ قَبْلَ مَالِكٍ، وَلَا يَجِدُونَهُ أَبَدًا، فَاعْجَبُوا لِفُحْشِ هَذَا التَّقْلِيدِ إِذْ قَلَّدُوا قَوْلًا لَا يُعْرَفُ أَحَدٌ قَالَهُ قَبْلَ مَالِكٍ -: خَالَفُوا فِيهِ كُلَّ قَوْلٍ لِصَاحِبٍ أَوْ تَابِعٍ رَأَوْا فِي تِلْكَ الْقِصَّةِ الَّتِي أَوْهَمُوا فِيهَا أَنَّهُمْ يَحْتَجُّونَ بِبَعْضِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.



AL-MUHALLA

كِتَاب فَسْخُ النِّكَاحِ

The Book of Annulment of Marriage

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَاب فَسْخُ النِّكَاحِ] [مَسْأَلَةٌ مَا يَقَعُ بِهِ فَسْخُ النِّكَاحِ بَعْدَ صِحَّتِهِ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَبِاللَّهِ تَوْفِيقِي، وَإِلَيْهِ مَتَابِي كِتَاب فَسْخُ النِّكَاحِ ١٩٣٨ - مَسْأَلَةٌ: مَا يَقَعُ بِهِ فَسْخُ النِّكَاحِ بَعْدَ صِحَّتِهِ: وَهِيَ ثَمَانِيَةُ أَوْجُهٍ فَقَطْ -: أَحَدُهَا - أَنْ تَصِيرَ حَرِيمَةً بِرَضَاعٍ وَقَدْ ذَكَرْنَا ذَلِكَ.

وَالثَّانِي - أَنْ يَطَأَهَا أَبُوهُ، أَوْ جَدُّهُ بِجَهَالَةٍ، أَوْ بِقَصْدٍ إِلَى الزِّنَا، وَقَدْ ذَكَرْنَا ذَلِكَ.

وَالثَّالِثُ - أَنْ يَتِمَّ الْتِعَانُهُ وَالْتِعَانُهَا.

وَالرَّابِعُ - أَنْ تَكُونَ أَمَةً فَتُعْتَقَ، فَلَهَا الْخِيَارُ فِي فَسْخِ نِكَاحِهَا مِنْ زَوْجِهَا أَوْ إِبْقَائِهِ.

وَالْخَامِسُ - اخْتِلَافُ الدِّينَيْنِ إِلَّا فِي جِهَةٍ وَاحِدَةٍ، وَهِيَ أَنْ يُسْلِمَ الزَّوْجُ وَهِيَ كِتَابِيَّةٌ، فَإِنَّهُمَا يَبْقَيَانِ عَلَى نِكَاحِهِمَا.

وَيَنْقَسِمُ اخْتِلَافُ دِينِهِمَا فِي غَيْرِ الْوَجْهِ الَّذِي ذَكَرْنَا خَمْسَةَ أَقْسَامٍ -: أَحَدُهَا - أَنْ يُسْلِمَ هُوَ وَهِيَ كَافِرَةٌ غَيْرُ كِتَابِيَّةٍ.

وَثَانِيهَا - أَنْ تُسْلِمَ هِيَ، وَهُوَ كَافِرٌ - كِتَابِيٌّ، أَوْ غَيْرُ كِتَابِيٍّ - فَلَوْ أَسْلَمَا مَعًا، فَهُمَا عَلَى نِكَاحِهِمَا.

ثَالِثُهَا - أَنْ يَرْتَدَّ هُوَ دُونَهَا.

وَرَابِعُهَا - أَنْ تَرْتَدَّ هِيَ دُونَهُ.

وَخَامِسُهَا - أَنْ يَرْتَدَّا مَعًا.

Chapter on the Annulment of Marriage Issue: What Causes the Annulment of Marriage After Its Validity

In the name of Allah, the Most Gracious, the Most Merciful. And with Allah is my success, and to Him is my return. The Book of Dissolution of Marriage 1938 – A Question: What necessitates the dissolution of a valid marriage? There are only eight causes: 1. She becomes forbidden in marriage due to breastfeeding, as we have mentioned that.

The second is if her father or paternal grandfather has intercourse with her out of ignorance of the prohibition or with the intent of fornication, as we have mentioned.

The third is that his mutual assistance and her mutual assistance be perfected.

The fourth case is when a female slave is emancipated, whereupon she may choose to annul her marriage contract with her husband or retain it.

The fifth case is a difference between the two religions, except in one scenario: if the husband embraces Islam while she is a woman of the Book (*Kitabiyyah*), their marriage remains valid.

The difference in their religion regarding aspects other than the one we mentioned is divided into five categories: one of these is when he becomes Muslim while she remains a disbeliever who is not a female from the People of the Book.

The second case is that she embraces Islam while he remains a disbeliever—whether he is a member of the People of the Book or not. If they both embrace Islam together, their marriage remains valid.

The third case is that he apostatizes without her doing so.

The fourth reason is her apostasy from Islam while he remains [Muslim].

The fifth cause is that both apostatize together.

In all these scenarios—whether he converts to Islam after her conversion,

she converts after his conversion, he reverts to Islam, she reverts to Islam, or they both revert together—their marriage is annulled. In all such cases, she does not return to him except with their mutual consent, a mahr, a guardian, and witnesses.

L33138 It is not obligatory to take into account any aspect of the waiting period or the declaration of Islam in that matter.

L33139 We have already clarified all of this in "The Book of Jihad" within this Dīwān of ours here.

L33140 And all praise is to Allah alone.

L33141 The sixth is to own it, or a portion of it.

L33142 The seventh [condition]: that you possess it or a part of it.

L33143 And the eighth reason—his death or her death, with no difference of opinion on this matter. Let us mention here—if Allah the Exalted wills—what we have not yet discussed: "mutual imprecation" and "the freed female slave's right to choose."

Liʿān Issue: The Description of Liʿān

L33144–33145

L33146 1939 – Issue: The procedure for liʿān is as follows: If a man accused his wife of zinā—whether generally or by naming a specific person; regardless of whether he had intercourse with her or not; whether they were both enslaved, one enslaved and the other free; both Muslim, he Muslim and she a Scripturary, both Scripturaries; whether he had been penalized for qadhf or zinā, or she had, or both; whether one was blind or both; whether they were sinners or one claimed to have witnessed it or did not—it is obligatory for the judge to assemble them in his court, whether she requested it or not, or he requested it or not. They have no choice in the matter.

L33147 Then the judge asks him to present evidence for his accusation against her.

فَفِي كُلِّ هَذِهِ الْوُجُوهِ يَنْفَسِخُ نِكَاحُهُمَا - سَوَاءٌ أَسْلَمَ إِثْرَ إِسْلَامِهَا، أَوْ أَسْلَمَتْ إِثْرَ إِسْلَامِهِ، أَوْ رَاجَعَ الْإِسْلَامَ، أَوْ رَاجَعَتْ الْإِسْلَامَ، أَوْ رَاجَعَاهُ مَعًا -: لَا تَرْجِعُ إِلَيْهِ فِي كُلِّ ذَلِكَ إِلَّا بِرِضَاهُمَا وَبِصَدَاقٍ، وَبِوَلِيٍّ، وَإِشْهَادٍ.

وَلَا يَجِبُ أَنْ يُرَاعَى فِي ذَلِكَ شَيْءٌ مِنْ عِدَّةٍ، وَلَا عَرْضِ إِسْلَامٍ.

وَقَدْ أَوْضَحْنَا كُلَّ هَذَا فِي " كِتَابِ الْجِهَادِ " مِنْ دِيوَانِنَا هَذَا.

وَالْحَمْدُ لِلَّهِ وَحْدَهُ.

وَالسَّادِسُ - أَنْ يَمْلِكَهَا، أَوْ بَعْضَهَا.

وَالسَّابِعُ - أَنْ تَمْلِكَهُ أَوْ بَعْضَهُ.

وَالثَّامِنُ - مَوْتُهُ أَوْ مَوْتُهَا، وَلَا خِلَافَ فِي ذَلِكَ، فَلْنَذْكُرْ هُنَا - إِنْ شَاءَ اللَّهُ تَعَالَى - مَا لَمْ نَذْكُرْهُ بَعْدُ، وَهُوَ " اللِّعَانُ " " وَتَخْيِيرُ الْمُعْتَقَةِ "

[اللِّعَانُ] [مَسْأَلَةٌ صِفَةُ اللِّعَانِ]

١٩٣٩ - مَسْأَلَةٌ: صِفَةُ اللِّعَانِ: هُوَ أَنَّ مَنْ قَذَفَ امْرَأَتَهُ بِالزِّنَا هَكَذَا مُطْلَقًا، أَوْ بِإِنْسَانٍ سَمَّاهُ - سَوَاءٌ كَانَ قَدْ دَخَلَ أَوْ لَمْ يَدْخُلْ بِهَا - كَانَا مَمْلُوكَيْنِ أَوْ أَحَدُهُمَا مَمْلُوكًا وَالْآخَرُ حُرًّا - أَوْ مُسْلِمَيْنِ، أَوْ هُوَ مُسْلِمٌ وَهِيَ كِتَابِيَّةٌ، أَوْ كَانَا كِتَابِيَّيْنِ، أَوْ كَانَ مَحْدُودًا فِي قَذْفٍ، أَوْ فِي زِنًى، أَوْ هِيَ كَذَلِكَ أَوْ كِلَاهُمَا، أَوْ أَحَدُهُمَا أَعْمَى أَوْ كِلَاهُمَا، أَوْ فَاسِقَيْنِ، أَوْ أَحَدُهُمَا ادَّعَى رُؤْيَةً أَوْ لَمْ يَدَّعِ -: فَوَاجِبٌ عَلَى الْحَاكِمِ أَنْ يَجْمَعَهُمَا فِي مَجْلِسِهِ؟ طَلَبَتْ هِيَ ذَلِكَ أَوْ لَمْ تَطْلُبْهُ، طَلَبَ هُوَ ذَلِكَ أَوْلَمْ يَطْلُبْهُ، لَا رَأْيَ لَهُمَا فِي ذَلِكَ.

ثُمَّ يَسْأَلُهُ الْبَيِّنَةَ عَلَى مَا رَمَاهَا بِهِ؟ فَإِنْ أَتَى بِبَيِّنَةِ عُدُولٍ بِذَلِكَ عَلَى مَا ذَكَرْنَا فِي الشَّهَادَةِ بِالزِّنَا أُقِيمَ عَلَيْهَا الْحَدُّ.

If he produces testimony from upright witnesses regarding this matter as previously elaborated in the context of bearing witness to adultery, the Hadd punishment is carried out upon her.

فَإِنْ لَمْ يَأْتِ بِالْبَيِّنَةِ قِيلَ لَهُ: الْتَعِنْ؟ فَيَقُولُ: بِاللَّهِ إِنِّي لَمِنْ الصَّادِقِينَ، بِاللَّهِ إِنِّي لَمِنْ الصَّادِقِينَ، بِاللَّهِ إِنِّي لَمِنْ الصَّادِقِينَ، بِاللَّهِ إِنِّي لَمِنْ الصَّادِقِينَ - هَكَذَا يُكَرِّرُ. " بِاللَّهِ إِنِّي لَمِنْ الصَّادِقِينَ " أَرْبَعَ مَرَّاتٍ.

L33148 If he does not bring the evidence, he is told: "Swear the oath of mutual cursing (liʿān)!" He then says: "By Allah, I am indeed among the truthful, by Allah, I am indeed among the truthful, by Allah, I am indeed among the truthful, by Allah, I am indeed among the truthful"—thus he repeats "By Allah, I am indeed among the truthful" four times.

ثُمَّ يَأْمُرُ الْحَاكِمُ مَنْ يَضَعُ يَدَهُ عَلَى فِيهِ، وَيَقُولُ لَهُ: إنَّهَا مُوجِبَةٌ؟ فَإِنْ أَبَى، فَإِنَّهُ يَقُولُ: وَعَلَيَّ لَعْنَةُ اللَّهِ إنْ كُنْت مِنْ الْكَاذِبِينَ - فَإِذَا أَتَمَّ هَذَا الْكَلَامَ سَقَطَ عَنْهُ الْحَدُّ لَهَا، وَالَّذِي رَمَاهَا بِهِ.

L33149 Then the judge orders him to place his hand over his mouth and says: "Does it necessitate [the *hadd*]?" If he refuses, he must declare: "May Allah's curse be upon me if I am lying." When he utters these words, the *hadd* punishment is waived for the woman, and the accuser is absolved.

فَإِنْ لَمْ يَلْتَعِنْ حُدَّ حَدَّ الْقَذْفِ، فَإِذَا الْتَعَنَ كَمَا ذَكَرْنَا، قِيلَ لَهَا: إنْ الْتَعَنَتْ وَإِلَّا حُدَّتْ حَدَّ الزِّنَا، فَتَقُولُ: بِاللَّهِ إنَّهُ لَمِنْ الْكَاذِبِينَ، بِاللَّهِ إنَّهُ لَمِنْ الْكَاذِبِينَ، بِاللَّهِ إنَّهُ لَمِنْ الْكَاذِبِينَ، بِاللَّهِ إنَّهُ لَمِنْ الْكَاذِبِينَ - تُكَرِّرُ " بِاللَّهِ إنَّهُ لَمِنْ الْكَاذِبِينَ " أَرْبَعَ مَرَّاتٍ.

L33150 If he does not engage in mutual imprecation, he is to be punished with the prescribed penalty for false accusation. If he has engaged in mutual imprecation as we mentioned, she is told: "If she engages in mutual imprecation, otherwise she will be subjected to the prescribed penalty for adultery." She then says: "By Allah, he is indeed among the liars. By Allah, he is indeed among the liars. By Allah, he is indeed among the liars. By Allah, he is indeed among the liars"—she repeats "By Allah, he is indeed among the liars" four times.

ثُمَّ تَقُولُ: وَعَلَيَّ غَضَبُ اللَّهِ إنْ كَانَ لَمِنْ الصَّادِقِينَ، وَيَأْمُرُ الْحَاكِمُ مَنْ يُوقِفُهَا عِنْدَ الْخَامِسَةِ، وَيُخْبِرُهَا بِأَنَّهَا مُوجِبَةٌ لِغَضَبِ اللَّهِ تَعَالَى عَلَيْهَا، فَإِذَا قَالَتْ ذَلِكَ بَرِئَتْ مِنْ الْحَدِّ، وَانْفَسَخَ نِكَاحُهَا مِنْهُ، وَحَرُمَتْ عَلَيْهِ أَبَدَ الْآبِدِ لَا تَحِلُّ لَهُ أَصْلًا - لَا بَعْدَ زَوْجٍ وَلَا قَبْلَهُ - وَلَا وَإِنْ أَكْذَبَ نَفْسَهُ، لَكِنْ إنْ أَكْذَبَ نَفْسَهُ حُدَّ فَقَطْ.

L33151–33152 Then she says, "May God's wrath be upon me if he is not among the truthful," and the judge orders someone to halt her at the fifth oath, informing her that it entails God's wrath upon her. If she utters this, she is absolved of the ḥadd punishment, her marriage to him is annulled, and she becomes permanently forbidden to him—never permissible to him under any circumstance, neither after marrying another man nor before doing so—even if he admits to lying. However, if he admits to lying, only the ḥadd punishment for false accusation is imposed upon him.

وَأَمَّا مَا لَمْ يُتِمَّ هُوَ اللِّعَانَ أَوْ تُتِمَّهُ هِيَ، فَهُمَا عَلَى نِكَاحِهِمَا.

L33153 As for cases where he did not complete the liʿān or she completed it, their marriage remains intact.

فَلَوْ مَاتَ أَحَدُهُمَا قَبْلَ تَمَامِ اللِّعَانِ لَتَوَارَثَا، وَلَا مَعْنَى لِتَفْرِيقِ الْحَاكِمِ بَيْنَهُمَا، أَوْ لِتَرْكِهِ، لَكِنْ بِتَمَامِ اللِّعَانِ تَقَعُ الْفُرْقَةُ.

L33154 If either of them were to die before the completion of the mutual imprecation (liʿān), the surviving spouse would inherit from the deceased. There is no justification for the judge to separate them or to leave them together. However, upon the completion of the mutual imprecation, the divorce becomes irrevocable.

فَإِنْ كَانَتْ هِيَ صَغِيرَةً أَوْ مَجْنُونَةً حُدَّ هُوَ حَدَّ الْقَذْفِ وَلَا بُدَّ، وَلَا لِعَانَ فِي ذَلِكَ - فَإِنْ كَانَ هُوَ مَجْنُونًا حِينَ قَذَفَهَا فَلَا حَدَّ وَلَا لِعَانَ.

L33155 If she is a minor or insane, he is necessarily subjected to the ḥadd punishment for qadhf, and there is no liʿān in this case. If he was insane at the time he accused her of unlawful sexual intercourse, neither the ḥadd punishment nor liʿān applies.

وَيَتَلَاعَنُ الْأَخْرَسَانِ كَمَا يَقْدِرَانِ بِالْإِشَارَةِ.

L33156 The two mute individuals curse each other as much as they are able, through gestures.

فَإِنْ كَانَتْ الْمَرْأَةُ الْمُلَاعَنَةُ حَامِلًا فَبِتَمَامِ الِالْتِعَانِ مِنْهُمَا جَمِيعًا يَنْتَفِي عَنْهُ الْحَمْلُ ذَكَرَهُ أَوْ لَمْ يَذْكُرْهُ - إلَّا أَنْ يُقِرَّ بِهِ فَيَلْحَقَهُ وَلَا حَدَّ عَلَيْهِ فِي قَذْفِهِ لَهَا مَعَ إقْرَارِهِ بِأَنَّ حَمْلَهَا مِنْهُ إذَا الْتَعَنَ.

L33157 If the woman undergoing *liʿān* is pregnant, then upon completion of *liʿān* by both parties, the pregnancy is no longer attributed to him—whether he acknowledges it or not—unless he admits to it, in which case it is established as his. No punishment is imposed on him for the accusation (of adultery), despite his admission that her pregnancy is from him when performing *liʿān*.

فَلَوْ صَدَّقَتْهُ هِيَ فِيمَا قَذَفَهَا بِهِ، وَفِي أَنَّ الْحَمْلَ لَيْسَ مِنْهُ حَدَثَ، وَلَا يَنْتَفِي عَنْهُ مَا وَلَدَتْ، بَلْ هُوَ لَاحِقٌ بِهِ - فَإِنْ لَمْ يُلَاعِنْهَا حَتَّى وَضَعَتْ حَمْلَهَا فَلَهُ أَنْ يُلَاعِنَهَا لِدَرْءِ الْحَدِّ عَنْ نَفْسِهِ.

L33158 If she confirms his accusation against her and acknowledges that the pregnancy did not occur from him, while not disavowing the child she bore—rather, it remains affiliated with him—then if he does not invoke liʿān against her until she delivers her pregnancy, he may invoke liʿān against her to avert the punishment from himself.

وَأَمَّا مَا وَلَدَتْ فَلَا يَنْتَفِي عَنْهُ بَعْدُ أَصْلًا.

L33159 As for what she has borne, it is not fundamentally negated concerning him thereafter.

فَلَوْ طَلَّقَهَا وَقَذَفَهَا فِي عِدَّتِهَا مِنْهُ لَاعَنَهَا.

L33160 If he were to divorce her and accuse her of unlawful sexual intercourse (zinā) during her waiting period from him, he would invoke the liʿān procedure against her.

فَلَوْ قَذَفَهَا - وَهِيَ أَجْنَبِيَّةٌ - حُدَّ، وَلَا تَلَاعُنَ، وَلَا يَضُرُّهُ إمْسَاكُهَا وَوَطْؤُهَا بَعْدَ أَنْ قَذَفَهَا، بَلْ يُلَاعِنُهَا مَتَى شَاءَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33161 If he accuses her—while she is a woman unrelated to him—he is subjected to the *ḥadd* punishment, and no *liʿān* occurs. Keeping her or having intercourse with her after the accusation does not harm him. Rather, he may initiate *liʿān* against her whenever he wishes—and with Allah, the Exalted, is success.

[مَسْأَلَةٌ كُلُّ زَوْجٍ قَذَفَ امْرَأَتَهُ فَإِنَّهُ يُلَاعِنُهَا]

١٩٤٠ - مَسْأَلَةٌ: وَأَمَّا قَوْلُنَا: إِنَّ كُلَّ زَوْجٍ قَذَفَ امْرَأَتَهُ فَإِنَّهُ يُلَاعِنُهَا إِذْ ذَكَرْنَا صِفَةَ اللِّعَانِ، فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلا أَنْفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ} [النور: ٦] فَلَمْ يَخُصَّ عَزَّ وَجَلَّ حُرًّا مِنْ عَبْدٍ، وَلَا أَعْمَى مِنْ بَصِيرٍ، وَلَا صَالِحًا مِنْ فَاسِقٍ، وَلَا امْرَأَةً كَافِرَةً مِنْ مُؤْمِنَةٍ، وَلَا حُرَّةً مِنْ أَمَةٍ، وَلَا فَاسِقَةً مِنْ صَالِحَةٍ، وَلَا مَحْدُودًا مِنْ غَيْرِ مَحْدُودٍ، وَلَا مَحْدُودَةً مِنْ غَيْرِ مَحْدُودَةٍ، {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَقَالَ أَبُو حَنِيفَةَ: إِنْ كَانَ أَحَدُهُمَا مَمْلُوكًا أَوْ كَافِرًا فَلَا لِعَانَ - وَهَذَا تَحَكُّمٌ بِالْبَاطِلِ، وَتَخْصِيصٌ لِلْقُرْآنِ بِرَأْيِهِ الْفَاسِدِ.

فَإِنْ قَالُوا: قَالَ اللَّهُ تَعَالَى: {فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ} [النور: ٦] وَالْعَبْدُ لَا شَهَادَةَ لَهُ؟ قُلْنَا: بَاطِلٌ مَا قُلْتُمْ، بَلْ شَهَادَتُهُ كَشَهَادَةِ الْحُرِّ، وَأَنْتُمْ لَا تُجِيزُونَ شَهَادَةَ الْأَعْمَى، وَلَا شَهَادَةَ الْفَاسِقِ، وَتُوجِبُونَ اللِّعَانَ لَهُمَا.

وَرُوِّينَا عَنْ الشَّعْبِيِّ: لَا يُلَاعِنُ مَنْ لَا شَهَادَةَ لَهُ.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ قَضِيَّةٌ فَاسِدَةٌ، لَا يُصَحِّحُهَا قُرْآنٌ وَلَا سُنَّةٌ، وَاَللَّهُ تَعَالَى وَإِنْ كَانَ سَمَّاهَا شَهَادَةً، فَلَيْسَتْ مِنْ سَائِرِ الشَّهَادَاتِ الَّتِي يُرَاعَى فِيهِ الْعَدْلُ مِنْ الْفَاسِقِ، لِأَنَّ تِلْكَ الشَّهَادَاتِ لَا يَحْلِفُ فِيهَا الشَّاهِدُ بِهَا، وَشَهَادَاتُ اللِّعَانِ أَيْمَانٌ، وَسَائِرُ الشَّهَادَاتِ لَا يُقْبَلُ فِي أَكْثَرِهَا إِلَّا اثْنَانِ، وَشَهَادَةُ اللِّعَانِ إِنَّمَا هِيَ مِنْ وَاحِدٍ، وَسَائِرُ الشَّهَادَاتِ لَا

L33162 **Legal issue: Any husband who accuses his wife of unchastity must invoke liʿān against her.**

L33163–33165 1940 - Issue: As for our statement: "Every husband who accuses his wife must perform liʿān with her," when we mentioned the description of liʿān, this is due to the statement of Allah, the Mighty and Majestic: "And those who accuse their wives and have no witnesses except themselves, then the testimony of one of them is four testimonies by Allah" [An-Nur 24:6]. He, the Mighty and Majestic, did not distinguish between a free person and a slave, nor a blind person and a sighted one, nor a righteous person over a sinner, nor... Do not equate a disbelieving woman with a believing woman, nor a free woman with an enslaved woman, nor a transgressing woman with a righteous woman, nor a man subject to *hadd* punishment with one who is not, nor a woman subject to *hadd* punishment with one who is not. "And your Lord is never forgetful" [Maryam: 64].[1]

L33166 Abu Hanifah said: If either of them is enslaved or a disbeliever, then there is no liʿān—and this constitutes an arbitrary imposition of falsehood and a restriction of the Quran's general ruling based on his invalid reasoning.

L33167 If they say: Allah the Exalted has said, {The testimony of one of them is four testimonies by Allah} [24:6], and a slave has no testimony? We say: What you have claimed is false; rather, his testimony is like that of a free person, even though you do not accept the testimony of the blind nor the testimony of the sinner, yet you still mandate *liʿān* for the spouses.[2]

L33168 It was narrated to us from Ash-Shaʿbī: One who cannot testify cannot perform liʿān (the mutual oath of condemnation).

L33169 Abū Muḥammad said: This is an invalid ruling, validated by neither the Qur'ān nor the Sunnah. Though Allah the Exalted has termed it a testimony, it is not like other testimonies where the witness's integrity is required and the testimony of a transgressor is rejected. For in those testimonies, the witness does not swear an oath, whereas the oaths of liʿān are sworn dec-

[1] **Qur'an references (L33163):** Qur'an 24:6 (An-Nur); Qur'an 19:64 (Maryam).
[2] **Qur'an references (L33167):** Qur'an 24:6 (An-Nur).

larations. Moreover, most other testimonies require two witnesses, while the oath of liʿān is from one alone. In other testimonies, a person cannot testify on their own behalf, but the oath of liʿān is for oneself—to avert the prescribed punishment from himself and impose it upon the wife. Thus, it is invalid to equate liʿān with the rulings governing other testimonies.

L33170 As for our statement: If he invokes the curse (liʿān), the ḥadd punishment is lifted from him; otherwise, the ḥadd punishment is applied to her—this is based on the saying of the Messenger of Allah, may the peace and blessings of Allah be upon him, in the ḥadīth of mutual cursing: "The evidence; otherwise, the ḥadd is your liability."

L33171–33173 And his statement: "If he accused her with a specific person, then a single ḥadd suffices to annul the liʿān." When we transmitted it through the chain of Aḥmad ibn Shuʿayb—from ʿImrān ibn Yazīd al-Dimashqī, from Makhlad ibn al-Ḥusayn al-Azdī, from Hishām ibn Ḥassān, from Muḥammad ibn Sīrīn—from Anas ibn Mālik, who said: "The first instance of liʿān in Islam occurred when Hilāl ibn Umayyah accused Sharīk ibn al-Saḥmāʾ with his wife. He came to the Prophet—peace be upon him—and informed him of that. The Prophet—peace be upon him—said to him: 'Four witnesses, otherwise a ḥadd on your back,' repeating this multiple times. Hilāl said to him: 'By Allah, O Messenger of Allah...'" By Allah, Allah knows that I am truthful, and Allah will surely reveal to you what will heal my back from the lashing? While they were in that state, the verse of liʿān was revealed. The Prophet called Hilāl, and he testified four times by Allah that he was among the truthful, and the fifth testimony invoked Allah's curse upon him if he was among the liars. Then the woman was summoned, and she testified four times by Allah that he was among the liars. When she reached the fourth or fifth testimony, the Messenger of Allah—peace and blessings be upon him—said, "Restrain her, for it is binding." She hesitated until we almost believed she would confess, then declared, "I will not disgrace my people for the rest of the day," and proceeded with the oath. The Messenger of Allah—peace and blessings be upon him—said, "Observe her. If she bears a child who is white, straight-haired, and bright-eyed, it belongs to Hilāl ibn Umayyah. But if she bears a child who is dark, curly-haired, stocky, and thin-calved, it belongs to Sharīk

يُقْبَلُ فِيهَا الْمَرْءُ لِنَفْسِه، وَشَهَادَةُ اللِّعَانِ إِنَّمَا هِيَ لِنَفْسِهِ لِيَدْرَأَ عَنْهَا الْحَدَّ، وَلِيُوجِبَهُ عَلَى الْمَرْأَةِ - فَبَطَلَ أَنْ يَكُونَ اللِّعَانُ حُكْمَ سَائِرِ الشَّهَادَاتِ.

وَأَمَّا قَوْلُنَا: إِنْ الْتَعَنَ سَقَطَ عَنْهُ الْحَدُّ وَإِلَّا حُدَّتْ هِيَ: فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثِ اللِّعَانِ «الْبَيِّنَةُ وَإِلَّا حَدٌّ فِي ظَهْرِكَ» .

وَقَوْلِهِ: إنَّهُ رَمَاهَا بِإِنْسَانٍ بِعَيْنِهِ فَحَدٌّ وَاحِدٌ يُسْقِطُ التَّلَاعُنَ فَلَمَّا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عِمْرَانُ بْنُ يَزِيدَ الدِّمَشْقِيُّ نا مَخْلَدُ بْنُ الْحُسَيْنِ الْأَزْدِيُّ نا هِشَامُ بْنُ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ «عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: أَوَّلُ لِعَانٍ كَانَ فِي الْإِسْلَامِ: أَنَّ هِلَالَ بْنَ أُمَيَّةَ قَذَفَ شَرِيكَ ابْنَ السَّحْمَاءِ بِامْرَأَتِهِ فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَهُ بِذَلِكَ؟ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرْبَعَةُ شُهَدَاءَ، وَإِلَّا حَدٌّ فِي ظَهْرِكَ - يُكَرِّرُ ذَلِكَ مِرَارًا، فَقَالَ لَهُ هِلَالٌ: وَاَللَّهِ يَا رَسُولَ اللَّهِ إنَّ اللَّهَ لَيَعْلَمُ إنِّي لَصَادِقٌ وَلَيُنْزِلَنَّ اللَّهُ عَلَيْكَ مَا يُبْرِئُ بِهِ ظَهْرِي مِنْ الْجَلْدِ؟ فَبَيْنَمَا هُمْ كَذَلِكَ إذْ نَزَلَتْ آيَةُ اللِّعَانِ، فَدَعَا هِلَالًا فَشَهِدَ أَرْبَعَ شَهَادَاتٍ بِاَللَّهِ إنَّهُ لَمِنْ الصَّادِقِينَ وَالْخَامِسَةَ أَنَّ لَعْنَةَ اللَّهِ عَلَيْهِ إنْ كَانَ مِنْ الْكَاذِبِينَ. ثُمَّ دُعِيَتْ الْمَرْأَةُ فَشَهِدَتْ أَرْبَعَ شَهَادَاتٍ بِاَللَّهِ إنَّهُ لَمِنْ الْكَاذِبِينَ، فَلَمَّا كَانَ فِي الرَّابِعَةِ أَوْ الْخَامِسَةِ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقِّفُوهَا فَإِنَّهَا مُوجِبَةٌ، فَتَلَكَّأَتْ حَتَّى مَا شَكَكْنَا أَنَّهَا سَتَعْتَرِفُ ثُمَّ قَالَتْ: لَا أَفْضَحُ قَوْمِي سَائِرَ الْيَوْمِ فَمَضَتْ عَلَى الْيَمِينِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - انْظُرُوهَا، فَإِنْ جَاءَتْ بِهِ أَبْيَضَ سَبِطًا قَضِيءَ الْعَيْنَيْنِ فَهُوَ لِهِلَالِ بْنِ أُمَيَّةَ، وَإِنْ جَاءَتْ بِهِ آدَمَ جَعْدًا رَبْعًا حَمْشَ السَّاقَيْنِ فَهُوَ

ibn al-Saḥmāʾ." She bore a child who was dark, curly-haired, stocky, and thin-calved. The Messenger of Allah—peace and blessings be upon him—said, "Were it not for what Allah's decree has ordained, there would have been a grave matter between me and her."[3]

L33174 The verse does not include the additions made by Mālik and others in the oath, such as saying, "the One besides Whom there is no deity" [Al-Ḥashr: 23], nor anything else. There is no distinction between this addition and phrases like "Creator of the heavens and the earth, who raised their structure and fashioned them, who darkened its night and brought forth its morning light," and similar praise of Allah, the Mighty and Majestic. Whoever utters such is rewarded, but whoever omits it in their oath is not held accountable. Judgment upon people is based solely on what Allah has commanded, not on what is non-obligatory at that time, even if it is a reward.[4]

L33175 And Allah, the Exalted and Glorified, says: {The punishment shall be averted from her by her testifying four times by Allah} [An-Nur: 8]. This indicates a known punishment, as the word "punishment" is preceded by the definite article *al-*, and we know of no punishment for fornication except the *ḥadd*.[5]

L33176 As for imprisonment, Abū Ḥanīfah and his followers state that it is not permissible.

L33177 Through the chain of Aḥmad ibn Shuʿayb: ʿAlī ibn Maymūn al-Raqqī narrated to us from Sufyān, from ʿĀṣim ibn Kulayb, from his father, from Ibn ʿAbbās: That the Prophet—peace and blessings of Allah be upon him—when he commanded the two parties undergoing mutual cursing (liʿān) to swear oaths, he instructed a man to cover his mouth during the fifth oath and said, "Verily, it is legally definitive."

L33178–33180 There is no validity to the addition made by anyone who adds to the oath of the two parties engaged in *liʿān* when he himself says: "Indeed, I am

لِشَرِيكِ ابْنِ السَّحْمَاءِ - فَجَاءَتْ بِهِ آدَمَ جَعْدًا رَبْعًا حَمْشَ السَّاقَيْنِ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَوْلَا مَا سَبَقَ مِنْ كِتَابِ اللَّهِ لَكَانَ لِي وَلَهَا شَأْنٌ» .

وَلَيْسَ فِي الْآيَةِ مَا يَزِيدُهُ مَالِكٌ وَغَيْرُهُ فِي الْيَمِينِ مِنْ قَوْلِ: {الَّذِي لا إِلَهَ إِلا هُوَ} [الحشر: ٢٣] وَلَا غَيْرَ ذَلِكَ، وَلَا فَرْقَ بَيْنَ هَذِهِ الزِّيَادَةِ وَبَيْنَ أَنْ يَزِيدَ خَالِقُ السَّمَاوَاتِ وَالْأَرْضِ الَّذِي رَفَعَ سَمْكَهَا فَسَوَّاهَا وَأَغْطَشَ لَيْلَهَا وَأَخْرَجَ ضُحَاهَا وَمَا أَشْبَهَ ذَلِكَ مِنَ الثَّنَاءِ عَلَى اللَّهِ عَزَّ وَجَلَّ، الَّذِي مَنْ قَالَهُ أُجِرَ، وَمَنْ تَرَكَهُ فِي يَمِينِهِ لَمْ يُحْرَجْ، وَإِنَّمَا يُقْضَى عَلَى النَّاسِ بِمَا أَمَرَ بِهِ اللَّهُ، لَا بِمَا لَا يَلْزَمُ فِي ذَلِكَ الْوَقْتِ، وَإِنْ كَانَ أَجْرًا.

وَقَوْلُهُ عَزَّ وَجَلَّ: {وَيَدْرَأُ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ} [النور: ٨] فَإِنَّ فِيهِ إِشَارَةً إِلَى عَذَابٍ مَعْلُومٍ، لِأَنَّهُ بِأَلِفِ التَّعْرِيفِ وَلَامِهِ، وَلَا نَعْلَمُ عَذَابًا فِي الزِّنَا إِلَّا الْحَدَّ.

وَأَمَّا السِّجْنُ - كَمَا قَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ -: فَلَا.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَلِيُّ بْنُ مَيْمُونٍ الرَّقِّيُّ عَنْ سُفْيَانَ عَنْ عَاصِمِ بْنِ كُلَيْبٍ عَنْ أَبِيهِ عَنِ ابْنِ عَبَّاسٍ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَ أَمَرَ الْمُتَلَاعِنَيْنِ بِاللِّعَانِ أَمَرَ رَجُلًا أَنْ يَضَعَ يَدَهُ عَلَى فِيهِ عِنْدَ الْخَامِسَةِ وَقَالَ: إِنَّهَا مُوجِبَةٌ.

وَلَا مَعْنَى لِزِيَادَةِ مَنْ زَادَ فِي يَمِينِ الْمُتَلَاعِنَيْنِ أَنْ يَقُولَ هُوَ: إِنِّي لَمِنَ الصَّادِقِينَ فِيمَا رَمَيْتُهَا بِهِ مِنَ الزِّنَا، وَأَنْ تَقُولَ هِيَ: إِنَّهُ لَمِنَ الْكَاذِبِينَ فِيمَا رَمَانِي بِهِ مِنَ الزِّنَا، لِأَنَّ اللَّهَ تَعَالَى كَفَانَا بِمَا أَمَرَنَا بِهِ فِي الْقُرْآنِ عَنْ تَكَلُّفِ هَذِهِ الزِّيَادَةِ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

[3] **Hadith references (L33171):** Sunan an-Nasai 3469.

[4] **Qur'an references (L33174):** Qur'an 20:98 (Taha); Qur'an 59:22 (Al-Hashr); Qur'an 59:23 (Al-Hashr); Qur'an 79:28 (An-Nazi'at); Qur'an 79:29 (An-Nazi'at).

[5] **Qur'an references (L33175):** Qur'an 24:8 (An-Nur).

among the truthful in what is claimed." He thereby accused her of adultery, and that she should say, "He is surely one of the liars in accusing me of adultery," for Allah the Exalted has spared us—through what He ordained in the Quran—the need to burden ourselves with this superfluous addition: *"And your Lord is not forgetful"* [Maryam 19:64].[6]

L33181 We reject every opinion that adds something to the religion not brought by the command of Allah, the Exalted, and cast it into the dunghill, for it is religious legislation which Allah, the Exalted and Majestic, has not authorized.

L33182 If they say: Perhaps he intended that he is among the truthful in his testimony concerning monotheism, and she intended that he is among the liars in another incident? We say: Suppose they both intended that—by Allah, they derive no benefit from it—and their oath, in accordance with Allah's command concerning one of them brazenly asserting falsehood in it, entails the curse upon him and the wrath upon her, whether they intended what you claim or not. Nor can such a thing be hidden from the Knower of the Unseen.

L33183 And via the chain of Al-Ḥajjāj ibn Al-Minhāl, from Hammām ibn Yaḥyā, from Ayyūb al-Sakhtiyānī, that Saʿīd ibn Jubayr reported to him from Ibn ʿUmar, who said: "Verily, the Messenger of Allah (peace and blessings be upon him) effected a separation between the two brothers of Banū al-ʿAjlān."

L33184 From the narration of Abī Dāwūd and Al-Bukhārī—Abū Dāwūd said: Aḥmad ibn Ḥanbal narrated to us, and Al-Bukhārī said: ʿAlī ibn ʿAbd Allāh narrated to us. Both said: Sufyān—that is, Ibn ʿUyaynah—narrated to us that he heard ʿAmr ibn Dīnār narrate from Saʿīd ibn Jubayr, who said: I heard Ibn ʿUmar say: The Messenger of Allāh—peace and blessings be upon him—said to the two engaged in mutual cursing: "Your account is with Allāh; one of you is lying. You have no right over her." Abū Muḥammad said: I have narrated it from Sufyān. Sufyān said: I memorized it from ʿAmr ibn Dīnār. Thus, the separation decreed by the Messenger of Allāh—peace and blessings be upon him—supersedes the separation decreed by any judge after him. His

وَكُلُّ رَأْيٍ زَادَنَا شَيْئًا فِي الدِّينِ لَمْ يَأْتِ بِهِ أَمْرُ اللَّهِ تَعَالَى فَنَحْنُ نَرْغَبُ عَنْ ذَلِكَ الرَّأْيِ وَنَقْذِفُهُ فِي الْحَشِّ، لِأَنَّهُ شَرْعٌ فِي الدِّينِ لَمْ يَأْذَنْ بِهِ اللَّهُ عَزَّ وَجَلَّ.

فَإِنْ قَالُوا: رُبَّمَا نَوَى: أَنَّهُ لَمِنْ الصَّادِقِينَ فِي شَهَادَتِهِ بِالتَّوْحِيدِ، وَنَوَتْ هِيَ: أَنَّهُ لَمِنْ الْكَاذِبِينَ فِي قِصَّةٍ أُخْرَى؟ قُلْنَا: هَبْكَ أَنَّهُمَا نَوَيَا ذَلِكَ، فَوَاَللَّهِ مَا يَنْتَفِعَانِ بِذَلِكَ، وَأَنَّ يَمِينَهُمَا بِمَا أَمَرَ اللَّهُ تَعَالَى فِي مُجَاهَرَةِ أَحَدِهِمَا فِيهِ بِالْبَاطِلِ مُوجِبٌ عَلَيْهِ اللَّعْنَةَ، وَعَلَيْهَا الْغَضَبَ، نَوَيَا مَا قُلْتُمْ أَوْ لَمْ يَنْوِيَا، وَلَا يُمَوَّهُ عَلَى عَلَّامِ الْغُيُوبِ بِمِثْلِ هَذَا.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هَمَّامُ بْنُ يَحْيَى نا أَيُّوبُ السِّخْتِيَانِيُّ أَنَّ سَعِيدَ بْنَ جُبَيْرٍ حَدَّثَهُ عَنْ ابْنِ عُمَرَ قَالَ: «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَّقَ بَيْنَ أَخَوَيْ بَنِي الْعَجْلَانِ» .

وَمِنْ طَرِيقِ أَبِي دَاوُد، وَالْبُخَارِيِّ - قَالَ أَبُو دَاوُد: نا أَحْمَدُ بْنُ حَنْبَلٍ، وَقَالَ الْبُخَارِيُّ: نا عَلِيُّ بْنُ عَبْدِ اللَّهِ، قَالَا جَمِيعًا: نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - أَنَّهُ سَمِعَ عَمْرَو بْنَ دِينَارٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ يَقُولُ: سَمِعْت ابْنَ عُمَرَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْمُتَلَاعِنَيْنِ: «حِسَابُكُمَا عَلَى اللَّهِ أَحَدُكُمَا كَاذِبٌ لَا سَبِيلَ لَك عَلَيْهَا؟» قَالَ أَبُو مُحَمَّد: قَدْ رَوَيْته عَنْ سُفْيَانَ، قَالَ سُفْيَانُ حَفِظْته مِنْ عَمْرِو بْنِ دِينَارٍ: فَتَفْرِيقُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُغْنِي عَنْ تَفْرِيقِ كُلِّ حَاكِمٍ بَعْدَهُ. وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ

[6] **Qur'an references (L33178):** Qur'an 19:64 (Maryam).

statement—peace and blessings be upon him—"You have no right over her" prohibited them from ever reuniting under any circumstance. He—peace and blessings be upon him—only stated this explicitly in the report after the completion of their mutual cursing. Therefore, the separation does not occur except at that point.[7]

-: «لَا سَبِيلَ لَكَ عَلَيْهَا» مَنَعَ مِنْ أَنْ يَجْتَمِعَا أَبَدًا بِكُلِّ وَجْهٍ، وَلَمْ يَقُلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - ذَلِكَ بِنَصِّ الْخَبَرِ إِلَّا بَعْدَ تَمَامِ الْتِعَانِهِمَا جَمِيعًا، فَلَا يَقَعُ التَّفْرِيقُ إِلَّا حِينَئِذٍ.

L33185–33186 We have been narrated that Muṣʿab ibn al-Zubayr did not deem separation obligatory between the two who engaged in mutual imprecation (liʿān) — this being the view of ʿUthmān al-Battī. Abū Ḥanīfa said: "Separation does not occur merely by completing the liʿān until the judge separates them. When the judge separates them, it constitutes an irrevocable divorce (bā'inah)." This was indeed astonishing! We say to them: "If the judge refuses to separate them, do they remain married?" Far from it! The judge of the wise has already separated them. Thus, the separation by those who succeed him or his own refusal to separate them is as inconsequential as the beard of a goat from al-Ḥazn.

وَقَدْ رُوِّينَا أَنَّ مُصْعَبَ بْنَ الزُّبَيْرِ لَمْ يُوجِبْ التَّفْرِيقَ بَيْنَ الْمُتَلَاعِنَيْنِ - وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ. وَقَالَ أَبُو حَنِيفَةَ: لَا يَقَعُ التَّفْرِيقُ بِتَمَامِ اللِّعَانِ حَتَّى يُفَرِّقَ بَيْنَهُمَا الْحَاكِمُ، وَإِذَا فَرَّقَ الْحَاكِمُ بَيْنَهُمَا فَهِيَ طَلْقَةٌ بَائِنَةٌ - فَكَانَ هَذَا عَجَبًا؟ وَنَقُولُ لَهُمْ: فَإِنْ أَبَى الْحَاكِمُ مِنْ التَّفْرِيقِ أَيَبْقَيَانِ عَلَى زَوْجِيَّتِهِمَا؟ هَيْهَاتَ حَاكِمُ الْحُكَمَاءِ قَدْ فَرَّقَ، فَتَفْرِيقُ مَنْ بَعْدَهُ أَوْ تَرْكُهُ التَّفْرِيقَ نَبِيبُ تَيْسٍ مِنْ الْحَزْنِ سَوَاءٌ.

L33187 Al-Shafiʿi held that when a man's impotence is fully established, the marriage is annulled and the child's legitimacy is negated—and this, too, is an unsubstantiated claim.

وَقَالَ الشَّافِعِيُّ - بِتَمَامِ الْتِعَانِ الرَّجُلِ يَقَعُ التَّفْرِيقُ وَيَنْتَفِي الْوَلَدُ - وَهَذِهِ أَيْضًا دَعْوَى بِلَا بُرْهَانٍ.

L33188 And Mālik said as we have stated - and this is the opinion of al-Awzāʿī and al-Layth.

وَقَالَ مَالِكٌ كَمَا قُلْنَا - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَاللَّيْثِ.

L33189 As for our statement: If she is a female minor or insane, the ḥadd punishment for qadhf is imposed, and liʿān does not apply in this case, since neither a female minor nor an insane woman can commit zinā whatsoever, for zinā is an act of disobedience toward Allah the Almighty, and no sinful act can occur from them. This derives from the statement of the Messenger of Allah—peace and blessings be upon him—: "The pen is lifted from three people," in which he mentioned the minor until they reach puberty, the insane until they regain sanity, and the sleeper until they awaken.

وَأَمَّا قَوْلُنَا: إنْ كَانَتْ صَغِيرَةً أَوْ مَجْنُونَةً حُدَّ لِلْقَذْفِ، وَلَا لِعَانَ فِي ذَلِكَ؛ لِأَنَّ الصَّغِيرَةَ وَالْمَجْنُونَةَ لَا يَكُونُ مِنْهُمَا زِنًى أَصْلًا، لِأَنَّ الزِّنَا مَعْصِيَةٌ لِلَّهِ عَزَّ وَجَلَّ، وَهَاتَانِ لَا تَقَعُ مِنْهُمَا مَعْصِيَةٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ» فَذَكَرَ الصَّغِيرَ حَتَّى يَبْلُغَ، وَالْمَجْنُونَ حَتَّى يُفِيقَ.

L33190 When the hadd punishment becomes obligatory in cases where there is no

وَإِذَا وَجَبَ الْحَدُّ حَيْثُ لَا يُوقَنُ بِكَذِبِهِ فَإِسْقَاطُهُ عَنْ الْقَاذِفِ حِينَ يُوقَنُ بِكَذِبِهِ خَطَأٌ، وَالْحَدُّ بِنَصِّ الْقُرْآنِ وَاجِبٌ عَلَى كُلِّ مَنْ رَمَى مِنَّا بِالزِّنَا.

[7] **Hadith references (L33184):** Sahih al-Bukhari 5312; Sahih al-Bukhari 5350; Sunan Abi Dawud 2257.

certainty of its falsehood, exempting the one who commits qadhf from it when his falsehood is confirmed is incorrect. By the explicit text of the Quran, the hadd punishment is obligatory upon everyone among us who accuses [another] of adultery.

وَأَمَّا الْأَخْرَسُ فَإِنَّ اللَّهَ عَزَّ وَجَلَّ يَقُولُ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَلَيْسَ فِي وُسْعِهِ الْكَلَامُ، فَلَا يَجُوزُ أَنْ يُكَلَّفَ إِيَّاهُ.

L33191 As for the mute person, Allah, the Exalted and Majestic, says: "Allah does not burden a soul beyond its capacity" [Al-Baqarah: 286], and he lacks the capacity for speech; thus, it is not permissible to impose speech upon him.[8]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» .

L33192 The Messenger of Allah—peace be upon him—said: "When I command you to do something, take from it what you can."

فَصَحَّ أَنَّهُ يَلْزَمُ كُلَّ أَحَدٍ مِمَّا أَمَرَ اللَّهُ تَعَالَى بِهِ مَا اسْتَطَاعَ، وَالْأَخْرَسُ يَسْتَطِيعُ الْإِفْهَامَ بِالْإِشَارَةِ، فَعَلَيْهِ أَنْ يَأْتِيَ بِهَا.

L33193 Thus, it is established that it is incumbent upon everyone to fulfill what Allah, the Exalted, has commanded to the best of their ability. The mute person is able to communicate through gestures, so they are obligated to do so.

وَكَذَلِكَ مَنْ لَا يُحْسِنُ الْعَرَبِيَّةَ يَلْتَعِنُ بِلُغَتِهِ بِأَلْفَاظٍ يُعَبِّرُ بِهَا عَمَّا نَصَّ اللَّهُ تَعَالَى عَلَيْهِ.

L33194 Likewise, one who is not proficient in Arabic struggles in their own language, using words to express what Allah, the Exalted, has explicitly decreed.

وَالْعَجَبُ مِنْ زِيَادَاتِ أَبِي حَنِيفَةَ بِرَأْيِهِ، زِيَادَاتٌ فِي غَايَةِ السُّخْفِ عَلَى مَا فِي آيَةِ اللِّعَانِ، وَهُوَ يَرُدُّ أَوَامِرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَعْمَالَهُ كَالْمَسْحِ عَلَى الْعِمَامَةِ وَالْيَمِينِ مَعَ الشَّاهِدِ وَغَيْرِ ذَلِكَ بِأَنَّهَا زِيَادَةٌ عَلَى مَا فِي الْقُرْآنِ، فَأَيُّ ضَلَالٍ يَفُوقُ هَذَا؟

L33195–33197 Astonishment is due to Abū Ḥanīfah's opinion-based additions—additions of the utmost absurdity, contrary to what is in the Quranic verse. Liʿān, which rejects the commands of the Messenger of Allah—peace and blessings be upon him—and his practices such as wiping over the turban, the oath alongside a witness, and other similar matters, on the grounds that they are additions to what is in the Qur'an. What misguidance could surpass this?

وَأَمَّا قَوْلُنَا: إِنَّهُ بِتَمَامِ اللِّعَانِهِ وَاللِّعَانِهَا يَنْتَفِي عَنْهُ لِحَاقُ حَمْلِهَا، إِلَّا أَنْ يُقِرَّ بِهِ - وَسَوَاءٌ ذَكَرَهُ أَوْ لَمْ يَذْكُرْهُ - إِذَا انْتَفَى عَنْهُ قَبْلَ ذَلِكَ -: فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: " إِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَاعَنَ بَيْنَ رَجُلٍ وَامْرَأَتِهِ فَانْتَفَى عَنْ وَلَدِهِ فَفَرَّقَ بَيْنَهُمَا وَأَلْحَقَ الْوَلَدَ بِالْمَرْأَةِ ".

L33198 As for our statement that upon the completion of his liʿān and her liʿān, the child's lineage is disavowed from him—unless he acknowledges him, whether he mentions him or not—provided the lineage had already been disavowed from him beforehand, this is based on what we have transmitted through Mālik's chain from Nāfiʿ, from Ibn 'Umar, who said: "The Prophet, peace and blessings of God be upon him, administered mutual imprecation between a man and his wife. The child's lineage was thereby disavowed from him, and he separated them and attributed the child to the woman."

[8] **Qur'an references (L33191):** Qur'an 2:286 (Al-Baqarah).

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى أَنَا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي سَهْلُ بْنُ سَعْدٍ قَالَ: إنَّ عُوَيْمِرًا الْعَجْلَانِيَّ - فَذَكَرَ حَدِيثَ اللِّعَانِ وَفِيهِ «فَكَانَتْ حَامِلًا فَكَانَ الْوَلَدُ إلَى أُمِّهِ»

L33199 From the chain of Muslim: Haramlah ibn Yahya narrated to me: Ibn Wahb informed me: Yunus narrated on the authority of Ibn Shihab, who informed me that Sahl ibn Sa'd said: "'Uwaymir al-'Ajlānī"—then he mentioned the Hadith of Liʿān, wherein it states: "She was pregnant, so the child was ascribed to his mother."

وَأَمَّا قَوْلُنَا: إنَّهُ لَمْ يُلَاعِنْهَا حَتَّى وَلَدَتْ، لَاعَنَ لِإِسْقَاطِ الْحَدِّ فَقَطْ، وَلَا يَنْتَفِي وَلَدُهَا مِنْهُ، فَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْوَلَدُ لِصَاحِبِ الْفِرَاشِ» .

L33200 As for our statement that he did not perform liʿān upon her until she gave birth—he performed liʿān solely to nullify the legal punishment, and her child is not denied from him—this is because the Messenger of Allah, peace and blessings of Allah be upon him, said: "The child belongs to the legal husband."

فَصَحَّ أَنَّ كُلَّ مَنْ وُلِدَ عَلَى فِرَاشِهِ وَلَدٌ فَهُوَ وَلَدُهُ إلَّا حَيْثُ نَفَاهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ حَيْثُ يُوقِنُ بِلَا شَكٍّ أَنَّهُ لَيْسَ هُوَ وَلَدَهُ، وَلَمْ يَنْفِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إلَّا وَهِيَ حَامِلٌ بِاللِّعَانِ فَقَطْ، فَيَبْقَى مَا عَدَا ذَلِكَ عَلَى لِحَاقِ النَّسَبِ، وَلِذَلِكَ قُلْنَا: إنْ صَدَّقَتْهُ فِي أَنَّ الْحَمْلَ لَيْسَ مِنْهُ فَإِنَّ تَصْدِيقَهَا لَهُ لَا يُلْتَفَتُ إلَيْهِ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤] فَوَجَبَ أَنَّ إقْرَارَ الْأَبَوَيْنِ لَا يُصَدَّقُ عَلَى نَفْيِ الْوَلَدِ، فَيَكُونُ كَسْبًا عَلَى غَيْرِهِمَا، وَإِنَّمَا نَفَى اللَّهُ عَزَّ وَجَلَّ الْوَلَدَ إنْ كَذَّبَتْهُ الْأُمُّ وَالْتَعَنَتْ هِيَ وَالزَّوْجُ فَقَطْ، فَلَا يَنْتَفِي فِي غَيْرِ هَذَا الْمَوْضِعِ، وَالْعَجَبُ كُلُّهُ أَنَّ الْمُخَالِفِينَ لَنَا هَاهُنَا يَقُولُونَ: إنْ اتَّفَقَا جَمِيعًا عَلَى أَنَّ الْحَمْلَ مِنْ غَيْرِهِ، أَوْ عَلَى أَنَّ الْوَلَدَ مِنْ غَيْرِهِ: لَمْ يُصَدَّقَا، وَلَمْ يَنْفِهِ إلَّا بِلِعَانٍ؟ فَلَيْتَ شِعْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ هَذَا إذَا أَلْغَوْا تَصْدِيقَهُمَا فَلَمْ يَنْفُوا نَسَبَهُ إلَّا بِلِعَانٍ، فَإِذْ لَا مَعْنَى لِتَصْدِيقِهِمَا لَهُ فَلَا يَجُوزُ اللِّعَانُ إلَّا حَيْثُ حَكَمَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحَيْثُ أَمَرَ اللَّهُ تَعَالَى بِهِ فِي الْقُرْآنِ، وَهُوَ إذَا رَمَاهَا بِالزِّنَا فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33201 It is established that every child born within his marital bed is his child, except where Allah the Exalted negated it through the tongue of His Messenger—peace and blessings of Allah be upon him—or where one attains absolute certainty without doubt that it is not his child. The Prophet—peace and blessings be upon him—only negated paternity through *liʿān* when she was pregnant. Thus, all other cases remain subject to the establishment of lineage. For this reason, we state: If she supports his claim that the pregnancy is not from him, her support is disregarded, as Allah the Exalted says: *"No soul bears the burden of another"* (6:164). Therefore, the parents' acknowledgment cannot be accepted to negate the child's lineage, for this would impose a burden on another. Allah—Majestic and Exalted—only negates the child if the mother denies him and she and the husband engage in *liʿān*. Beyond this circumstance, paternity cannot be negated. It is utterly perplexing that our opponents here claim: "If they both agree that the pregnancy is not from him or that the child is not from him, they are not believed, and lineage is only negated through *liʿān*." I wonder where they derived this from, given that they nullify their testimony yet refuse to negate lineage except through *liʿān*. Since their testimony carries no meaning, *liʿān* is only permissible where the Messenger of Allah—peace and blessings of Allah be upon him—ruled and where Allah the Exalted commanded it in the Quran: specifically when he accuses her of adultery. And with Allah the Exalted is success.[9]

L33202–33204 As for when he accuses her of adultery while she is in her waiting period

[9] **Qur'an references (L33201):** Qur'an 6:164 (Al-An'am).

following a revocable divorce he pronounced, he is to perform the oath of imprecation (liʿān) with her once the matter is referred for judgment. The ruling pertains to the Imam—even if she was under another husband's marriage—because he accused her while she was his lawful wife, for Allah the Exalted states: {And those who accuse their wives} [An-Nur: 6]. The accusation is assessed strictly by the Quranic text. If it concerns a wife, liʿān remains binding permanently, as Allah the Exalted has not set a time restriction for liʿān to expire. If the accusation occurred during the waiting period of a triple divorce or while she was not his wife, and he later remarries her, the hadd penalty is invariably applied, and liʿān is invalid in this case. This is because he did not accuse his own wife but a woman unrelated to him in marriage. Thus, the hadd is imposed solely by the explicit Quranic injunction.[10]

وَأَمَّا إِذَا قَذَفَهَا وَهِيَ فِي عِدَّتِهَا مِنْ طَلَاقٍ رَجْعِيٍّ مِنْهُ أَنَّهُ يُلَاعِنُهَا مَتَى رُفِعَ الْأَمْرُ لِلْإِمَامِ - وَلَوْ أَنَّهَا عِنْدَ زَوْجٍ آخَرَ - فَلِأَنَّهُ قَذَفَهَا وَهِيَ زَوْجَةٌ لَهُ، وَاَللَّهُ تَعَالَى يَقُولُ: {وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ} [النور: ٦] فَإِنَّمَا يُرَاعَى الرَّمْيُ بِنَصِّ الْقُرْآنِ، فَإِنْ كَانَ لِزَوْجَةٍ لَاعَنَ أَبَدًا، إِذْ لَمْ يَحُدَّ اللَّهُ تَعَالَى لِلِّعَانِ وَقْتًا لَا يَتَعَدَّاهُ، وَإِنْ كَانَ الرَّمْيُ فِي عِدَّةٍ مِنْ طَلَاقِ ثَلَاثٍ أَوْ وَهِيَ غَيْرُ زَوْجَةٍ لَهُ، ثُمَّ تَزَوَّجَهَا، فَالْحَدُّ وَلَا بُدَّ، وَلَا لِعَانَ فِي ذَلِكَ، لِأَنَّهُ لَمْ يَرْمِ زَوْجَةً لَهُ، إِنَّمَا رَمَى زَوْجَةً أَجْنَبِيَّةً، فَالْحَدُّ بِنَصِّ الْقُرْآنِ فَقَطْ.

L33205 As for our statement: "His retaining her after stoning her or after his definitive confession that she committed adultery—and he knew that—does not harm him, nor does his having intercourse with her harm him," this is because Allah, Exalted and Majestic, did not mention that, nor did His Messenger—peace and blessings of Allah be upon him. Thus, it is an invalid condition and a man-made law Allah, Exalted and Majestic, has not permitted.

وَأَمَّا قَوْلُنَا: وَلَا يَضُرُّهُ إِمْسَاكُهُ إِيَّاهَا بَعْدَ رَمْيِهِ لَهَا، أَوْ بَعْدَ إِقْرَارِهِ بِأَنَّهَا زَنَتْ يَقِينًا - وَعَلِمَ بِذَلِكَ - وَلَا يَضُرُّهُ وَطْؤُهُ لَهَا، فَلِأَنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يَذْكُرْ ذَلِكَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ شَرْطٌ فَاسِدٌ، وَشَرْعٌ لَمْ يَأْذَنْ اللَّهُ تَعَالَى بِهِ.

A legal case: Two men married a woman under ambiguous terms within one purity period.

L33206–33207

[مَسْأَلَةٌ تَزَوَّجَ رَجُلَانِ بِجَهَالَةٍ امْرَأَةً فِي طُهْرٍ وَاحِدٍ]

L33208 A legal issue: If two men marry a woman due to contractual uncertainty within the same menstrual purity period, or if one of them purchases a female slave from the other and has intercourse with her—and the first man had also had intercourse with her—and neither the sequence of the two marriages or ownerships nor their dates are known, and it becomes evident that she is pregnant and she bears a child, then if both men claim paternity, a lot must be cast between them concerning the child. Whichever man is selected by the lot, the child is ascribed to him, and he is ordered to pay his share of the diyah (blood money) to the opponent.

مَسْأَلَةٌ: فَإِنْ تَزَوَّجَ رَجُلَانِ بِجَهَالَةٍ امْرَأَةً فِي طُهْرٍ وَاحِدٍ، أَوْ ابْتَاعَ أَحَدُهُمَا أَمَةً مِنْ الْآخَرِ فَوَطِئَهَا - وَكَانَ الْأَوَّلُ قَدْ وَطِئَهَا أَيْضًا - وَلَمْ يُعْرَفْ أَيُّهُمَا الْأَوَّلُ، وَلَا تَارِيخُ النِّكَاحَيْنِ أَوْ الْمِلْكَيْنِ: فَظَهَرَ بِهَا حَمْلٌ، فَأَتَتْ بِوَلَدٍ، فَإِنَّهُ إِنْ تَدَاعَيَاهُ جَمِيعًا: فَإِنَّهُ يُقْرَعُ بَيْنَهُمَا فِيهِ فَأَيُّهُمَا خَرَجَتْ قُرْعَتُهُ أُلْحِقَ بِهِ الْوَلَدُ، وَقُضِيَ عَلَيْهِ لِخَصْمِهِ بِحِصَّتِهِ مِنْ الدِّيَةِ.

L33209 If there is one claimant, they receive half the diyah; if there are three

[10] **Qur'an references (L33202):** Qur'an 24:6 (An-Nur).

claimants, they receive two-thirds of the diyah; if there are four claimants, they receive three-quarters of the diyah. This ruling applies proportionally to larger numbers, whether the two disputing parties consist of two strangers, two relatives, a father and son, or a free person and a slave.

إِنْ كَانَ وَاحِدًا فَنِصْفُ الدِّيَةِ، وَإِنْ كَانُوا ثَلَاثَةً فَلَهُمَا ثُلُثَا الدِّيَةِ، وَإِنْ كَانُوا أَرْبَعَةً فَثَلَاثَةُ أَرْبَاعِ الدِّيَةِ، وَهَكَذَا الْحُكْمُ فِيمَا زَادَ، سَوَاءٌ كَانَ الْمُتَدَاعِيَانِ أَجْنَبِيَّيْنِ، أَوْ قَرِيبَيْنِ أَوْ أَبًا وَابْنًا، أَوْ حُرًّا وَعَبْدًا.

L33210 If one of them is a Muslim and the other is a non-Muslim, affiliation must necessarily follow the Muslim without recourse to lot-drawing.

فَإِنْ كَانَ أَحَدُهُمَا مُسْلِمًا وَالْآخَرُ كَافِرًا أُلْحِقَ بِالْمُسْلِمِ وَلَا بُدَّ بِلَا قُرْعَةٍ.

L33211 If they both mutually deny it, or neither denies nor claims it, then the Qāfah (experts in physical resemblance for lineage determination) are summoned for him. If one or more witnesses among them, qualified in lineage science and morally upright, testify that he is the child of this man, his lineage is legally attributed to him. If one or more attribute him to two or more fathers, their statement is rejected, and other witnesses must be sought.

فَإِنْ تَدَافَعَاهُ جَمِيعًا، أَوْ لَمْ يُنْكِرَاهُ وَلَا تَدَاعَيَاهُ، فَإِنَّهُ يُدْعَى لَهُ بِالْقَافَةِ فَإِنْ شَهِدَ مِنْهُمْ وَاحِدٌ عَالِمٌ عَدْلٌ فَأَكْثَرُ مِنْ وَاحِدٍ بِأَنَّهُ وَلَدُ هَذَا؟ أُلْحِقَ بِهِ نَسَبُهُ، فَإِنْ أَلْحَقَهُ وَاحِدٌ أَوْ أَكْثَرُ بِاثْنَيْنِ فَصَاعِدًا طُرِحَ كَلَامُهُمْ وَطُلِبَ غَيْرُهُمْ.

L33212 It is not permissible for a single child to be the offspring of two men, nor of two women.

وَلَا يَجُوزُ أَنْ يَكُونَ وَلَدٌ وَاحِدٌ ابْنَ رَجُلَيْنِ، وَلَا ابْنَ امْرَأَتَيْنِ.

L33213 Similarly, if two women contend over children, then if it is in the custody of one of them, it belongs to her. But if it is in the custody of both, or if neither disputed nor denied it, or if they mutually rejected it, the qāfah is summoned for it, as previously stated.

وَكَذَلِكَ إِنْ تَدَاعَتْ امْرَأَتَانِ فَأَكْثَرُ وَلَدًا، فَإِنْ كَانَ فِي يَدِ إِحْدَاهُمَا فَهُوَ لَهَا وَإِنْ كَانَ فِي أَيْدِيهِنَّ كُلِّهِنَّ، أَوْ لَمْ يَتَدَاعَيَاهُ وَلَا أَنْكَرَتَاهُ، أَوْ تَدَافَعَتَاهُ دُعِيَ لَهُ الْقَافَةُ كَمَا قُلْنَا.

L33214 The evidence for this is what we have narrated through the chain of Al-Layth ibn Saʿd, from Ibn Shihāb, from ʿUrwah ibn al-Zubayr, from ʿĀʾishah, the Mother of the Believers, who said: “The Messenger of Allah (peace and blessings be upon him) entered upon me joyfully, the lines of his face glowing brightly, and said: ’Did you not see how Mujazziz looked at Zayd ibn Ḥārithah and Usāmah ibn Zayd and said: ”Indeed, some of these feet are certainly from some of the same“?”

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَخَلَ عَلَيَّ مَسْرُورًا تَبْرُقُ أَسَارِيرُ وَجْهِهِ فَقَالَ: أَلَمْ تَرَيْ أَنَّ مُجَزِّزًا نَظَرَ إِلَى زَيْدِ بْنِ حَارِثَةَ وَأُسَامَةَ بْنِ زَيْدٍ فَقَالَ: إِنَّ بَعْضَ هَذِهِ الْأَقْدَامِ لَمِنْ بَعْضٍ» .

L33215–33216 And through the chain of Aḥmad ibn Shuʿayb: Isḥāq ibn Ibrāhīm (Ibn Rāhwayh) narrated to us; Sufyān (Ibn ʿUyaynah) informed us from al-Zuhrī, from ʿUrwah, from ʿĀʾishah, the Mother of the Believers, who said: “Allah’s Messenger—may Allah’s peace and blessings be upon him—entered upon me joyfully and said: ’O ʿĀʾishah, did you not observe that Mujazziz al-Mudlijī came to me while Usāmah ibn Zayd was present? He saw Usāmah and Zayd

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أرنا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - وَهُوَ ابْنُ رَاهْوَيْهِ - نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «دَخَلَ عَلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَسْرُورًا فَقَالَ: يَا عَائِشَةُ أَلَمْ تَرَيْ أَنَّ مُجَزِّزًا الْمُدْلِجِيَّ دَخَلَ

with a single quilt covering them both—their heads veiled and their feet exposed—and remarked: These feet are parts of one another.”’

L33217 From the chain of Muslim: Mansur ibn Abi Muzahim reported to us: Ibrahim ibn Sa‘d ibn Ibrahim ibn ‘Abd al-Rahman ibn ‘Awf narrated from al-Zuhri from ‘Urwah from ‘A’ishah, the Mother of the Believers, who said: “A physiognomist entered while the Messenger of Allah (peace and blessings of Allah be upon him) was present, with Usamah ibn Zayd and Zayd ibn Harithah lying down. He said: ‘These feet are part of one another.’ The Prophet (peace and blessings of Allah be upon him) was pleased by that and it impressed him.”

L33218 And through the chain of Abu Dawud: Amr ibn Uthman al-Himsi informed us, al-Walid - he is Ibn Muslim - informed us, from al-Awzā‘ī, from Yahya ibn Abi Kathir, from Abu Qilabah, from Anas ibn Malik, who mentioned the *ḥadīth* of the Urayniyyin, their killing of the shepherds, and their seizure of the Prophet’s camels - peace and blessings be upon him. Anas said: “The Messenger of Allah - peace and blessings be upon him - sent trackers in pursuit of them, and they were brought to him.” And he mentioned the *ḥadīth*.

L33219 Thus, it has been established that *qiyāfah* is a sound science, and it is obligatory to judge by it in matters of lineage and traces.

L33220 It has been narrated to us through the chain of Abd al-Razzāq from Maʿmar from al-Zuhrī regarding a man who had intercourse with a woman who was both his male slave’s wife and his own female slave. He said that he consulted the Qafah experts for their case. Indeed, Urwah ibn al-Zubayr informed me that Umar ibn al-Khaṭṭāb consulted the Qafah experts in the case of two men who both had intercourse with the same woman during a single purity period and claimed her child. He then attributed the child to one of them.

L33221 Al-Zuhri said: Umar ibn al-Khattab and his successors relied on the evaluation of genealogists in cases like this.

L33222 From the narration of Abd al-Razzaq, from Ma’mar, from Ayyub al-

عَلَيَّ وَعِنْدِي أُسَامَةُ بْنُ زَيْدٍ فَرَأَى أُسَامَةَ وَزَيْدًا وَعَلَيْهِمَا قَطِيفَةٌ وَقَدْ غَطَّيَا رُءُوسَهُمَا وَبَدَتْ أَقْدَامُهُمَا فَقَالَ: هَذِهِ أَقْدَامٌ بَعْضُهَا مِنْ بَعْضٍ» .

وَمِنْ طَرِيقِ مُسْلِمٍ نا مَنْصُورُ بْنُ أَبِي مُزَاحِمٍ نا إِبْرَاهِيمُ بْنُ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «دَخَلَ قَائِفٌ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَاهِدٌ وَأُسَامَةُ بْنُ زَيْدٍ وَزَيْدُ بْنُ حَارِثَةَ مُضْطَجِعَانِ، فَقَالَ: إِنَّ هَذِهِ الْأَقْدَامَ بَعْضُهَا مِنْ بَعْضٍ، فَسُرَّ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ وَأَعْجَبَهُ» .

وَمِنْ طَرِيقِ أَبِي دَاوُد نا عَمْرُو بْنُ عُثْمَانَ الْحِمْصِيُّ نا الْوَلِيدُ - هُوَ ابْنُ مُسْلِمٍ - عَنِ الْأَوْزَاعِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسِ بْنِ مَالِكٍ فَذَكَرَ «حَدِيثَ الْعُرَنِيِّينَ وَقَتْلِهِمْ الرِّعَاءَ وَأَخْذِهِمْ إبِلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ أَنَسٌ فَبَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَافَةً فِي طَلَبِهِمْ فَأُتِيَ بِهِمْ» وَذَكَرَ الْحَدِيثَ.

فَصَحَّ أَنَّ " الْقِيَافَةَ " عِلْمٌ صَحِيحٌ يَجِبُ الْقَضَاءُ بِهِ فِي الْأَنْسَابِ وَالْآثَارِ.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ فِي رَجُلٍ وَقَعَ عَلَى امْرَأَةٍ لِعَبْدِهِ وَهِيَ أَمَتُهُ؟ قَالَ: فَدَعَا لَهُمَا الْقَافَةَ، فَإِنَّ عُرْوَةَ بْنَ الزُّبَيْرِ أَخْبَرَنِي: أَنَّ عُمَرَ بْنَ الْخَطَّابِ دَعَا الْقَافَةَ فِي رَجُلَيْنِ اشْتَرَكَا فِي الْوُقُوعِ عَلَى امْرَأَةٍ فِي طُهْرٍ وَاحِدٍ، وَادَّعَيَا وَلَدَهَا؟ فَأَلْحَقَهُ بِأَحَدِهِمَا.

قَالَ الزُّهْرِيُّ: أَخَذَ عُمَرُ بْنُ الْخَطَّابِ وَمَنْ بَعْدَهُ بِنَظَرِ الْقَافَةِ فِي مِثْلِ هَذَا.

Sakhtiyani, from Muhammad ibn Sirin, who said: A dispute was brought before Abu Musa al-Ash'ari concerning a child claimed by a Dihqan and an Arab man. He summoned the Qafah, who examined him and said to the Arab: "You are dearer to us than this non-Arab, but he is not your son. Relinquish your claim, for he is his son."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: اخْتُصِمَ إِلَى أَبِي مُوسَى الْأَشْعَرِيِّ فِي وَلَدٍ ادَّعَاهُ دُهْقَانٌ، وَرَجُلٌ مِنَ الْعَرَبِ، فَدَعَا الْقَافَةَ فَنَظَرُوا إِلَيْهِ فَقَالُوا لِلْعَرَبِيِّ: أَنْتَ أَحَبُّ إِلَيْنَا مِنْ هَذَا الْعِلْجِ، وَلَكِنْ لَيْسَ بِابْنِكَ فَخَلِّ عَنْهُ فَإِنَّهُ ابْنُهُ.

L33223–33225 Muhammad ibn Saʿīd ibn Nabāt narrated to us; Aḥmad ibn ʿAbd al-Baṣīr narrated to us; Qāsim ibn Aṣbagh narrated to us; Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us; Muḥammad ibn al-Muthannā narrated to us; Abū Aḥmad al-Zubayrī narrated to us; Sufyān al-Thawrī narrated from [...]. Abd al-Karim al-Jazari reported from Ziyad ibn Abi Ziyad, who said: Did Ibn Abbas deny paternity of a child of his? Ibn Abbas then summoned Ibn Kaladah al-Qa'if, the physiognomist, for him. Ibn Kaladah said to him: "Know that this is indeed his child!" Thereupon Ibn Abbas acknowledged the child's paternity.

ثنا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا أَبُو أَحْمَدَ الزُّبَيْرِيُّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ زِيَادِ بْنِ أَبِي زِيَادٍ قَالَ: انْتَفَى ابْنُ عَبَّاسٍ مِنْ وَلَدٍ لَهُ؟ فَدَعَا لَهُ ابْنُ كَلَدَةَ الْقَائِفَ، فَقَالَ لَهُ: أَمَا إِنَّهُ وَلَدُهُ، فَادَّعَاهُ ابْنُ عَبَّاسٍ.

L33226 From the chain of ʿAbd al-Razzāq, from Ibn Jurayj, who reported from Yaḥyā ibn Saʿīd al-Qaṭṭān and Abū al-Zināد—both of whom narrated from Saʿīd ibn al-Musayyib—who said: "If he has a child, let him summon the Qāfah [lineage experts] for the child."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ وَأَبُو الزِّنَادِ، كِلَاهُمَا عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ قَالَ: إِنْ كَانَ لَهُ وَلَدٌ فَلْيَدْعُ لَهُ بِالْقَافَةِ.

L33227 This is also the view of Qatādah, others, Mālik, al-Shāfiʿī, and the majority of our scholars. However, Mālik stated: "Judgment is not rendered based on the statement of the Qāfah except in the case of the son of a slave woman, not the son of a free woman"—but this is erroneous, for the report we cited earlier from Mujazziz al-Mudliji concerning Usāmah ibn Zayd—may Allah be pleased with them both—which is the foundation of Mālik's position and our own foundation in ruling based on the Qāfah, in fact applies to the son of a free woman, not the son of a slave woman.

وَبِهِ يَقُولُ قَتَادَةُ، وَغَيْرُهُ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَجُمْهُورُ أَصْحَابِنَا: إِلَّا أَنَّ مَالِكًا قَالَ: لَا يُحْكَمُ بِقَوْلِ الْقَافَةِ إِلَّا فِي وَلَدِ أَمَةٍ لَا فِي وَلَدِ حُرَّةٍ - وَهَذَا خَطَأٌ، لِأَنَّ الْأَثَرَ الَّذِي أَوْرَدْنَا آنِفًا مِنْ قَوْلِ مُجَزِّزٍ الْمُدْلِجِيِّ فِي أُسَامَةَ بْنِ زَيْدٍ - رَضِيَ اللَّهُ عَنْهُمَا - الَّذِي هُوَ عُمْدَةُ مَالِكٍ وَعُمْدَتُنَا فِي الْحُكْمِ بِالْقَافَةِ إِنَّمَا جَاءَ فِي ابْنِ حُرَّةٍ لَا فِي ابْنِ أَمَةٍ.

L33228 Neither Abū Ḥanīfah nor his companions deemed valid rulings based on the qiyāfah. They argued against it by claiming it constitutes judgment through conjecture, yet they establish religious laws and nullify the divine ordinances of Allah the Exalted and the rulings of His Messenger—peace and bless-

وَلَمْ يَرَ أَبُو حَنِيفَةَ وَلَا أَصْحَابُهُ الْحُكْمَ بِالْقَافَةِ - وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّهُ حُكْمٌ بِالظَّنِّ - وَهُمْ يُشَرِّعُونَ الشَّرَائِعَ، وَيُبْطِلُونَ أَحْكَامَ اللَّهِ تَعَالَى وَأَحْكَامَ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ

ings be upon him—through analogical reasoning which they themselves acknowledge is conjecture. But they have lied: the qiyāfah does not judge by conjecture, but rather by sound knowledge learned by those who pursue it and dedicate themselves to its study. The Messenger of Allah—peace and blessings be upon him—would never judge through conjecture.

وَسَلَّمَ - بِالْقِيَاسِ الَّذِي يُقِرُّونَ بِأَنَّهُ ظَنٌّ - وَقَدْ كَذَبُوا: مَا حَكَمَ الْقَافَةُ بِظَنٍّ، بَلْ بِعِلْمٍ صَحِيحٍ يَتَعَلَّمُهُ مَنْ طَلَبَهُ وَعُنِيَ بِهِ، وَمَا كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيَحْكُمَ بِالظَّنِّ.

L33229 Then, despite all this, they judge according to the ignorance of Abu Hanifa, who attributes the child to two wives, making each one of them his birth mother. He grants the child the inheritance rights of a son from each mother, grants the mothers inheritance rights from the child, and prohibits him from marrying any of the sisters of both mothers. This is true folly and utter blind ignorance - not what pleased the Messenger of Allah (may Allah bless him and grant him peace) nor the rulings enacted by the Companions (may Allah be pleased with them). Nothing escapes the judgment of al-Qāfah (lineage experts) except one scenario: when two or more men dispute paternity of the child. In this case, if there is neither clear evidence nor customary recognition of whose marriage bed it was, a lot is drawn between them as we previously mentioned.

ثُمَّ مَعَ هَذَا كُلِّهِ يَحْكُمُونَ بِجَهْلِ أَبِي حَنِيفَةَ، إذْ يُلْحِقُ الْوَلَدَ بِامْرَأَتَيْنِ يَجْعَلُ كُلَّ وَاحِدَةٍ مِنْهُمَا أُمَّهُ الَّتِي وَلَدَتْهُ، وَيُورِثُهُ مِنْهُمَا مِيرَاثَ الِابْنِ مِنْ الْأُمِّ، وَيُورِثُهُمَا مِنْهُ مِيرَاثَ الْأُمِّ مِنْ الْوَلَدِ، وَيُحَرِّمُ عَلَيْهِ أَخَوَاتِهِمَا جَمِيعًا - فَهَذَا هُوَ الرُّعُونَةُ حَقًّا، وَالْجَهْلُ الْأَعْمَى، لَا مَا سُرَّ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحَكَمَ بِهِ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا يَخْرُجُ عَنْ حُكْمِ الْقَافَةِ شَيْءٌ إلَّا مَوْضِعٌ وَاحِدٌ -: وَهُوَ الرَّجُلَانِ فَصَاعِدًا يَتَدَاعَيَانِ الْوَلَدَ؟ فَإِنَّ هَاهُنَا إنْ لَمْ تَكُنْ بَيِّنَةٌ وَلَا عُرْفٌ لِأَيِّهِمَا كَانَ الْفِرَاشُ، وَإِلَّا أُقْرِعَ بَيْنَهُمَا كَمَا ذَكَرْنَا.

L33230 From what has been narrated through the chain of Abdullah or Sufyan al-Thawri, from Salih ibn Hayy, from Abd Khayr al-Hadhrami, from Zayd ibn Arqam, who said: "Ali was in Yemen when a woman was brought to him who had intercourse with three men within a single period of purity (tuhr). He asked two: 'Do you acknowledge this child?' They refused. Then he asked two: 'Do you acknowledge this child?' They refused. Then he asked two until he finished. He cast lots among them, assigning the child to the one selected by the lot and obligated him to pay two-thirds of the diyah. This matter was referred to the Messenger of Allah—peace and blessings be upon him—and he laughed until his molars showed."

لِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ اللَّهِ أَوْ عَنْ سُفْيَانَ الثَّوْرِيِّ، عَنْ صَالِحِ بْنِ حَيٍّ عَنْ عَبْدِ خَيْرٍ الْحَضْرَمِيِّ عَنْ زَيْدِ بْنِ أَرْقَمَ قَالَ: «كَانَ عَلِيٌّ بِالْيَمَنِ فَأَتَى بِامْرَأَةٍ وَطِئَهَا ثَلَاثَةٌ فِي طُهْرٍ وَاحِدٍ، فَسَأَلَ اثْنَيْنِ: أَتُقِرَّانِ لِهَذَا بِالْوَلَدِ؟ فَلَمْ يُقِرَّا، ثُمَّ سَأَلَ اثْنَيْنِ: أَتُقِرَّانِ لِهَذَا بِالْوَلَدِ؟ فَلَمْ يُقِرَّا، ثُمَّ سَأَلَ اثْنَيْنِ، حَتَّى فَرَغَ، فَأَقْرَعَ بَيْنَهُمْ، فَأَلْزَمَ الْوَلَدَ لِلَّذِي خَرَجَتْ لَهُ الْقُرْعَةُ، وَجَعَلَ عَلَيْهِ ثُلُثَيْ الدِّيَةِ فَرَفَعَ ذَلِكَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَضَحِكَ حَتَّى بَدَتْ نَوَاجِذُهُ» .

L33231–33233 Abu Muhammad said: The Messenger of Allah—peace and blessings be upon him—would not laugh without disapproving of what he saw or disapproving of what he heard that was not. It is entirely permissible unless it brings him joy—and he (peace and blessings be upon him) is only pleased by the truth—and it is not permissible for him to hear falsehood and then approve of it.

قَالَ أَبُو مُحَمَّدٍ: لَا يَضْحَكُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دُونَ أَنْ يُنْكِرَ مَا يَرَى أَوْ يَسْمَعُ مَا لَا يَجُوزُ أَلْبَتَّةَ إلَّا أَنْ يَكُونَ سُرُورًا بِهِ - وَهُوَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَا يُسَرُّ إلَّا بِالْحَقِّ - وَلَا يَجُوزُ أَنْ يَسْمَعَ بَاطِلًا فَيُقِرَّهُ.

وَهَذَا خَبَرٌ مُسْتَقِيمُ السَّنَدِ، نَقَلَتُهُ كُلُّهُمْ ثِقَاتٌ، وَالْحُجَّةُ بِهِ قَائِمَةٌ، وَلَا يَصِحُّ خِلَافُهُ أَلْبَتَّةَ.

L33234 This is a report with a sound chain of transmission; all its narrators are trustworthy, the proof based on it is established, and contradicting it is utterly invalid.

فَإِنْ قِيلَ: إِنَّهُ خَبَرٌ اُضْطُرِبَ فِي إِسْنَادِهِ، فَأَرْسَلَهُ شُعْبَةُ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنِ الشَّعْبِيِّ عَنْ مَجْهُولٍ.

L33235 If it is said: It is a narration with an inconsistent chain because Shu'bah narrated it as mursal from Salamah ibn Kuhayl from Al-Sha'bi from an unknown narrator.

وَرَوَاهُ أَبُو إِسْحَاقَ عَنْ رَجُلٍ مِنْ حَضْرَمَوْتَ عَنْ زَيْدِ بْنِ أَرْقَمَ؟ قُلْنَا: هَذَا الْعَجَبُ، فَكَانَ مَاذَا؟ قَدْ وَصَلَهُ سُفْيَانُ - وَلَيْسَ هُوَ دُونَ شُعْبَةَ - عَنْ صَالِحِ بْنِ حَيٍّ - وَهُوَ ثِقَةٌ - عَنْ عَبْدِ خَيْرٍ - وَهُوَ ثِقَةٌ - عَنْ زَيْدِ بْنِ أَرْقَمَ - وَإِنَّ مَنْ يَتَعَلَّلُ بِهَذَا ثُمَّ يَرُدُّ السُّنَّةَ بِرِوَايَةِ شَيْخٍ مِنْ بَنِي كِنَانَةَ إِنَّ هَذَا لَعَظِيمُ الْمُجَاهَرَةِ، وَقَدْ كَانَ يَنْبَغِي أَنْ يَرْدَعَهُ الْحَيَاءُ عَنِ الرِّضَا بِهِ؟ لَا سِيَّمَا أَبَا حَنِيفَةَ، وَأَصْحَابَهُ الْقَائِلِينَ: إِنْ ادَّعَى الْوَلَدَ اثْنَانِ - وَهُوَ فِي أَيْدِيهِمَا - فَهُوَ ابْنُهُمَا يَرِثَانِهِ وَيَرِثُهُمَا، ثُمَّ اخْتَلَفُوا فَافْتَضَحُوا فِي اخْتِلَافِهِمْ؟ كَمَا افْتَضَحُوا فِي اتِّفَاقِهِمْ فِي وَلَدٍ ادَّعَاهُ ثَلَاثَةُ نَفَرٍ فَصَاعِدًا فَقَالَ أَبُو حَنِيفَةَ: هُوَ ابْنُهُمْ كُلُّهُمْ وَلَوْ كَانُوا أُلُوفًا.

L33236 And Abu Ishaq narrated it from a man of Hadramawt through Zayd ibn Arqam? We said: "This is astonishing—what then occurred?" Sufyan (who is not inferior to Shu'bah) conveyed it via Salih ibn Hayy—a trustworthy narrator—from 'Abd Khayr—also trustworthy—from Zayd ibn Arqam. Indeed, whoever uses this as a pretext and then rejects the Sunnah based on a narration from a sheikh of Banu Kinanah—this is immense audacity! Shouldn't shame have prevented him from accepting this? Particularly Abu Hanifah and his companions who assert: "If two claimants allege a child's parentage while he is in their custody, he becomes their son—they inherit from him and he inherits from them." Then they differed and were exposed in their disagreement—just as they were disgraced in their consensus regarding a child claimed by three or more individuals. Abu Hanifah declared: "He is the son of them all, even if they numbered a thousand."

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: يَكُونُ ابْنَ ثَلَاثَةٍ وَلَا يَكُونُ ابْنَ أَكْثَرَ.

L33237 Muhammad ibn al-Hasan said: He is a son of three and not a son of more.

وَقَالَ أَبُو يُوسُفَ: لَا يَكُونُ إِلَّا ابْنَ اثْنَيْنِ فَقَطْ لَا ابْنَ أَكْثَرَ - فَهُوَ هُوَ الْفُحْشُ وَالسُّخَامُ وَالضَّلَالُ؟ لَا اتِّبَاعُ مَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L33238 Abu Yusuf said: It can only be the offspring of two parents exclusively, not of more than two. Is that not immorality, soot [of sin], and misguidance? There is no adherence to what has been authentically established from the Messenger of Allah—may Allah bless him and grant him peace.

وَمَوَّهُوا فِي إِلْحَاقِهِمْ الْوَلَدَ بِاثْنَيْنِ بِرِوَايَةٍ سَاقِطَةٍ عَنْ عُمَرَ، لِأَنَّهَا مُرْسَلَةٌ مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ عُمَرَ، وَلَمْ يَحْفَظْ سَعِيدٌ عَنْ عُمَرَ شَيْئًا إِلَّا نَعْيَ النُّعْمَانِ بْنِ مُقَرِّنٍ عَلَى الْمِنْبَرِ، مَعَ أَنَّ فِيهَا: أَنَّهُ حَكَمَ مَعَ الْقَافَةِ بِذَلِكَ.

L33239 They obscured their attribution of the child to two fathers by citing a defective narration from 'Umar, as it is a mursal narration (with an interrupted chain) transmitted through Sa'īd ibn al-Musayyab from 'Umar. Sa'īd preserved nothing from 'Umar except the announcement of al-Nu'mān ibn Muqarrin's death on the pulpit. Yet the narration states he ruled in accordance with the Qāfah (lineage experts) on this matter.

وَمِنْ طَرِيقِ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عُمَرَ، وَلَمْ يُدْرِكْهُ أَصْلًا.

وَمِنْ طَرِيقِ ابْنِ سِيرِينَ عَنْ عُمَرَ أَنَّهُ تَوَقَّفَ فِيهِ.

وَرِوَايَةٌ عَنْ عَلِيٍّ فِيهَا قَالُوسُ بْنُ أَبِي ظَبْيَانَ، وَهُوَ ضَعِيفٌ، وَفِيهَا: أَنَّهُ لِلثَّانِي مِنْكُمَا.

وَالثَّابِتُ عَنْ عُمَرَ فِي ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: إنَّ رَجُلَيْنِ ادَّعَيَا وَلَدًا؟ فَدَعَا عُمَرُ الْقَافَةَ، وَاقْتَدَى فِي ذَلِكَ بِبَصَرِ الْقَافَةِ، وَأَلْحَقَهُ بِأَحَدِ الرَّجُلَيْنِ - وَعُرْوَةُ قَدْ اعْتَمَرَ مَعَ عُمَرَ.

وَرِوَايَةٌ أُخْرَى مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ بْنِ حَاطِبٍ قَالَ هِشَامٌ: وَسَمِعْته يُحَدِّثُ أَبِي قَالَ: إنَّ رَجُلَيْنِ وَقَعَا بِامْرَأَةٍ فِي الْجَاهِلِيَّةِ، فَوَلَدَتْ غُلَامًا، فَلَمَّا كَانَ عُمَرُ ادَّعَيَاهُ جَمِيعًا؟ فَدَعَا عُمَرُ رَجُلًا مِنْ بَنِي كَعْبٍ فَقَالَ: انْظُرْ فَاسْتَبْطِنْ وَاسْتَظْهِرْ؟ فَقَالَ: وَالَّذِي أَكْرَمَك بِالْخِلَافَةِ لَقَدْ اشْتَرَكَ فِيهِ جَمِيعًا، فَضَرَبَهُ عُمَرُ بِالدِّرَّةِ حَتَّى اضْطَجَعَ، وَقَالَ لَهُ عُمَرُ: لَقَدْ ذَهَبَ بِك النَّظَرُ إلَى غَيْرِ مَذْهَبٍ - ثُمَّ دَعَا عُمَرُ بِالْمَرْأَةِ فَسَأَلَهَا، فَقَالَتْ: هَذَا كَانَ يَطَؤُنِي، فَإِذَا كَانَ يَطَؤُنِي حَمَانِي مِنْ النَّاسِ حَتَّى إذَا اسْتَمَرَّ بِي الْحَمْلُ خَلَا بِي فَأَهْرَقْتُ دَمًا كَثِيرًا فَجَاءَنِي هَذَا فَوَطِئَنِي، فَلَا أَدْرِي مِنْ أَيِّهِمَا هُوَ؟ فَقَالَ الْكَعْبِيُّ: اللَّهُ أَكْبَرُ، شُرَكَاءُ فِيهِ وَرَبِّ الْكَعْبَةِ، فَقَالَ عُمَرُ: أَمَّا أَنَا فَقَدْ رَأَيْت مَا رَأَيْت، ثُمَّ قَالَ لِلْغُلَامِ: اخْتَرْ أَيَّهُمَا شِئْت؟ قَالَ يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ: فَلَقَدْ رَأَيْت حِينَ سَفَعَ أَحَدُهُمَا بِيَدِ الْغُلَامِ ثُمَّ ذَهَبَ بِهِ.

L33240 And through the chain of Ibrāhīm al-Nakhaʿī from ʿUmar; Ibrāhīm al-Nakhaʿī never met him.

L33241 Via the chain of Ibn Sīrīn from ʿUmar that he refrained from ruling on it.

L33242–33243 And a narration from ʿAlī mentions Qālūs ibn Abī Ẓabyān—a weak narrator—and states in it: “It is for the second of you two.”

L33244 What has been established from ʾUmar regarding this matter is what we narrated through the chain of ʾAbd al-Razzāq from Maʾmar from al-Zuhrī from ʾUrwah ibn al-Zubayr, who said: Two men claimed a child. ʾUmar summoned the lineage experts, followed the judgment of the lineage experts in this matter, and ruled to assign the child to one of the two men. ʾUrwah had performed ʾUmrah with ʾUmar.

L33245 Another narration from the path of Hammad ibn Salamah, from Hisham ibn Urwah, from his father, from Yahya ibn Abd al-Rahman ibn Hatib, who said: Hisham said—and I heard him narrate to my father—that two men had relations with a woman in the pre-Islamic era, and she bore a boy. When Umar became caliph, both claimed him. Umar summoned a man from Banu Kaʿb and said: “Examine him thoroughly, inspecting both his hidden and apparent traits.” The man replied: “By Him who honored you with leadership, they both shared in him!” Umar struck him with a cane until he fell prostrate, saying: “Your judgment has deviated from the correct path!” Then Umar summoned the woman and questioned her. She said: “This man used to lie with me and shielded me from others. When my pregnancy became evident, he abandoned me. I menstruated heavily, then this other man came and lay with me. I do not know which of them is the father.” The Kaʿbi man declared: “Allah is greatest! They are partners in him, by the Lord of the Kaaba!” Umar said: “As for me, I have seen what I have seen,” then told the boy: “Choose whichever you wish.” Yahya ibn Abd al-Rahman said: “I saw one of them grab the boy by the hand and take him away.”

L33246 A narration through the chain of Shuʿbah from Tawbah al-Anbari from al-Shaʿbi from Ibn ʿUmar, who said: Two men shared relations with a woman during her purity period, and she gave birth to a boy. ʿUmar summoned the

lineage experts? They said, “The child bears resemblance to both of them altogether.” So ʻUmar assigned the child to both of them.

وَرِوَايَةٌ مِنْ طَرِيقِ شُعْبَةَ عَنْ تَوْبَةَ الْعَنْبَرِيِّ عَنْ الشَّعْبِيِّ عَنْ ابْنِ عُمَرَ قَالَ: اشْتَرَكَ رَجُلَانِ فِي طُهْرِ امْرَأَةٍ فَوَلَدَتْ غُلَامًا فَدَعَا عُمَرُ بِالْقَافَةِ؟ فَقَالُوا: قَدْ أَخَذَ الشَّبَهَ مِنْهُمَا جَمِيعًا، فَجَعَلَهُ عُمَرُ بَيْنَهُمَا.

L33247 Abu Muhammad said: Tawbah al-Anbari is weak, and there is consensus on his weakness.

قَالَ أَبُو مُحَمَّدٍ: تَوْبَةُ الْعَنْبَرِيُّ ضَعِيفٌ، مُتَّفَقٌ عَلَى ضَعْفِهِ.

L33248 Moreover, all of this contradicts their position, as it constitutes a ruling based on qāfah (lineage determination through physical resemblance). The statement of Ibn Umar—“he placed him between them”—does not indicate that he legally affiliated him with both lineages. Rather, the apparent meaning of his words “he placed him between them” is that he held him between them until the basis for the ruling became evident to him. Is it permissible to presume anything other than this of Umar? We do not know of any precedent from the early scholars regarding the legal affiliation of a child to two fathers except from Ibrāhīm al-Nakhaʿī, and no one besides the Messenger of Allah—peace and blessings be upon him—constitutes a valid proof. What is definitively established from him—peace and blessings be upon him—contradicts the permissibility of a child originating from the semen of two fathers.

ثُمَّ هَذَا كُلُّهُ بِخِلَافِ قَوْلِهِمْ، لِأَنَّهُ حُكْمٌ بِالْقَافَةِ، وَقَوْلُ ابْنِ عُمَرَ: جَعَلَهُ بَيْنَهُمَا، لَيْسَ فِيهِ: أَنَّهُ أَلْحَقَهُ بِنَسَبِهِمَا، لَكِنَّ الظَّاهِرَ مِنْ قَوْلِهِ " جَعَلَهُ بَيْنَهُمَا " أَيْ وَقَفَهُ بَيْنَهُمَا حَتَّى يَلُوحَ لَهُ فِيهِ وَجْهُ الْحُكْمِ، لَا يَجُوزُ أَنْ يُظَنَّ بِعُمَرَ غَيْرَ هَذَا؟ وَمَا نَعْرِفُ إلْحَاقَ الْوَلَدِ بِاثْنَيْنِ عَنْ أَحَدٍ مِنْ الْمُتَقَدِّمِينَ إلَّا عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالثَّابِتُ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - يُكَذِّبُ جَوَازَ كَوْنِ وَلَدٍ مِنْ مَنِيِّ أَبَوَيْنِ.

L33249–33250 And it is that which was narrated to us through the chain of Muslim: From Abū Bakr ibn Abī Shaybah and Muḥammad ibn ʿAbdillāh ibn Numayr—each of them says: From Abū Muʿāwiyah (the blind one) and Wakīʿ, both of whom said: From al-Aʿmash from Zayd ibn Wahb from ʿAbdillāh ibn Masʿūd that the Messenger of Allāh—peace and blessings of Allāh be upon him—said: “Indeed, the formation of one of you is gathered in his mother’s womb for forty days, then he becomes a clinging clot for a similar period, then he becomes a chewed substance for a similar period, then the angel is sent and he breathes the soul into him”—and he related the rest of the ḥadīth.

وَهُوَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ كُلُّ وَاحِدٍ مِنْهُمَا يَقُولُ: نَا أَبُو مُعَاوِيَةَ - هُوَ الضَّرِيرُ - وَوَكِيعٌ، قَالَا جَمِيعًا: نا الْأَعْمَشُ عَنْ زَيْدِ بْنِ وَهْبٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ أَحَدَكُمْ يُجْمَعُ خَلْقُهُ فِي بَطْنِ أُمِّهِ أَرْبَعِينَ يَوْمًا ثُمَّ يَكُونُ عَلَقَةً مِثْلَ ذَلِكَ ثُمَّ يَكُونُ مُضْغَةً مِثْلَ ذَلِكَ ثُمَّ يُرْسَلُ الْمَلَكُ فَيَنْفُخُ فِيهِ الرُّوحَ» وَذَكَرَ الْحَدِيثَ.

L33251 Thus, it is firmly established that the count begins from the moment the nutfah (semen drop) is deposited. Without doubt, the minute in which the nutfah settles in the womb is not the same minute in which the semen of the second partner is deposited. If it were permissible for the two fluids to combine and produce a single child, the count would be rendered false. For

فَصَحَّ يَقِينًا أَنَّ ابْتِدَاءَ الْعَدَدِ مِنْ حِينِ وُقُوعِ النُّطْفَةِ، وَبِلَا شَكٍّ أَنَّ الدَّقِيقَةَ الَّتِي تَقَعُ فِيهَا النُّطْفَةُ فِي الرَّحِمِ هِيَ غَيْرُ الدَّقِيقَةِ الَّتِي يَقَعُ فِيهَا مَنِيُّ الْوَاطِئِ الثَّانِي، فَلَوْ جَازَ أَنْ

if counted from the time the first nutfah is deposited, it belongs solely to the first. If the second is added to it, the count would begin from the time the second semen settles, inevitably causing a decrease and increase in some of the forty days without doubt. They are more deserving of being linked to falsehood and its people than the Messenger of Allah—peace and blessings be upon him—the Truthful.

يُجْمَعَ الْمَاءَانِ فَيَصِيرَ مِنْهُمَا وَلَدٌ وَاحِدٌ، لَكَانَ الْعَدَدُ مَكْذُوبًا فِيهِ، لِأَنَّهُ إِنْ عَدَّ مِنْ حِينِ وُقُوعِ النُّطْفَةِ الْأُولَى، فَهُوَ لِلْأَوَّلِ وَحْدَهُ فَلَوْ اسْتَضَافَ إِلَيْهِ الثَّانِيَ لَابْتَدَأَ الْعَدَدُ مِنْ حِينِ حُلُولِ الْمَنِيِّ الثَّانِي، فَكَانَ يَكُونُ فِي بَعْضِ الْأَرْبَعِينَ يَوْمًا نَقْصٌ وَزِيَادَةٌ بِلَا شَكٍّ، وَهُمْ أَوْلَى بِالْكَذِبِ وَأَهْلِهِ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الصَّادِقِ.

L33252 How astonishing that they said: Abu Hanifah did not rule that the child is actually the son of two women - meaning each of them gave birth to him - yet he obligated the right of motherhood for each of them?

وَالْعَجَبُ أَنَّهُمْ قَالُوا: لَمْ يَحْكُمْ أَبُو حَنِيفَةَ بِأَنَّ الْوَلَدَ يَكُونُ ابْنَ امْرَأَتَيْنِ مُحَقِّقًا: أَنَّ كُلَّ وَاحِدَةٍ مِنْهُمَا وَلَدَتْهُ، لَكِنْ أَوْجَبَ لِكُلِّ وَاحِدَةٍ مِنْهُمَا حَقَّ الْأُمُومَةِ؟ .

L33253 So we said: This is undoubtedly injustice, oppression, and falsehood—to impose the legal ruling of a mother upon one who is not a mother, without any Qur'anic text, Sunnah, or statement from any of Allah the Exalted's creation before this, except through corrupt reasoning. And we ask Allah for well-being.

فَقُلْنَا: وَهَذَا جَوْرٌ وَظُلْمٌ وَبَاطِلٌ بِلَا شَكٍّ أَنْ يُوجَبَ لِغَيْرِ أُمٍّ حُكْمُ أُمٍّ بِلَا نَصِّ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا قَوْلِ أَحَدٍ مِنْ خَلْقِ اللَّهِ تَعَالَى قَبْلَهُ إِلَّا الرَّأْيَ الْفَاسِدَ - وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

L33254 As for our statement that if the parentage of a child is contested between a Muslim and a disbeliever, the child is affiliated with the Muslim, this is based on the words of Allah, the Almighty: "Set your heart steadfastly toward the true religion, devoting yourself exclusively to Him—[according to] the natural disposition of Allah upon which He created mankind. There is no altering Allah's design. That is the upright religion, but most people do not know." [Ar-Rum 30:30][11]

وَأَمَّا قَوْلُنَا: إِنْ تَدَاعَى فِي الْوَلَدِ مُسْلِمٌ وَكَافِرٌ: أُلْحِقَ بِالْمُسْلِمِ، فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {فَأَقِمْ وَجْهَكَ لِلدِّينِ حَنِيفًا فِطْرَتَ اللَّهِ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا لا تَبْدِيلَ لِخَلْقِ اللَّهِ ذَلِكَ الدِّينُ الْقَيِّمُ وَلَكِنَّ أَكْثَرَ النَّاسِ لا يَعْلَمُونَ} [الروم: ٣٠] .

L33255 The established from the statement of the Messenger of Allah—peace and blessings be upon him—is: "Every child is born upon the fitrah."

وَالثَّابِتُ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ مَوْلُودٍ يُولَدُ عَلَى الْفِطْرَةِ» .

L33256 We have also narrated it according to the creed: a child may not be diverted from the innate disposition (fitrah) upon which he was born except with certainty that the parentage belongs to a disbeliever without ambiguity - such that his parents would make him a Jew, Christian, Zoroastrian, or one who associates partners with Allah. Success comes solely from Allah, the Exalted.

وَرُوِّينَاهُ أَيْضًا عَلَى الْمِلَّةِ: حَتَّى يَكُونَ أَبَوَاهُ يُهَوِّدَانِهِ أَوْ يُنَصِّرَانِهِ أَوْ يُمَجِّسَانِهِ أَوْ يُشَرِّكَانِهِ، فَلَا يَجُوزُ أَنْ يُنْقَلَ عَمَّا وُلِدَ عَلَيْهِ مِنْ الْفِطْرَةِ الَّتِي وُلِدَ عَلَيْهَا إِلَّا بِيَقِينٍ كَوْنِ الْفِرَاشِ لِكَافِرٍ بِلَا إِشْكَالٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[11] **Qur'an references (L33254):** Qur'an 30:30 (Ar-Rum).

[نِكَاحُ الْأَمَةِ] [مَسْأَلَةٌ كَانَتْ مَمْلُوكَةٌ لَهَا زَوْجٌ عَبْدٌ أَوْ حُرٌّ فَأُعْتِقَتْ]

١٩٤٢ - مَسْأَلَةٌ: وَإِذَا كَانَتْ مَمْلُوكَةٌ لَهَا زَوْجٌ عَبْدٌ أَوْ حُرٌّ - وَلَوْ أَنَّهُ قُرَشِيٌّ - فَأُعْتِقَتْ فِي وَاجِبٍ، أَوْ تَطَوُّعٍ، أَوْ بِتَمَامِ أَدَاءِ مُكَاتَبَتِهَا، أَوْ بِأَيِّ وَجْهٍ عَتَقَتْ، فَإِنَّهَا تُخَيَّرُ، فَإِنْ اخْتَارَتْ فِرَاقَهُ فَلَهَا ذَلِكَ، وَإِنْ اخْتَارَتْ أَنْ تُقِرَّ عِنْدَهُ فَلَهَا ذَلِكَ، وَقَدْ بَطَلَ خِيَارُهَا، وَعَلَيْهَا الْعِدَّةُ فِي اخْتِيَارِهَا فِرَاقَهُ كَعِدَّةِ الطَّلَاقِ - وَلَيْسَ فِي شَيْءٍ مِنْ وُجُوهِ الْفَسْخِ عِدَّةٌ أَصْلًا إلَّا فِي هَذَا الْمَكَانِ - وَعِدَّةِ الْوَفَاةِ فِي مَوْتِ الزَّوْجِ فَقَطْ، فَإِنْ أَرَادَا جَمِيعًا أَنْ يَتَنَاكَحَا لَمْ يَجُزْ إلَّا بِرِضَاهُمَا، وَبِإِشْهَادٍ، وَصَدَاقٍ، وَوَلِيٍّ، وَلَهُ ذَلِكَ فِي عِدَّتِهَا، وَلَيْسَ ذَلِكَ لِغَيْرِهِ حَتَّى تُتِمَّ عِدَّتَهَا، وَلَا يَسْقُطُ خِيَارُهَا إذَا أُعْتِقَتْ طُولَ بَقَائِهَا مَعَهُ وَلَا وَطْؤُهُ لَهَا بِرِضَاهَا، أَوْ بِغَيْرِ رِضَاهَا، وَلَا عِلْمُهَا بِأَنَّ الْخِيَارَ لَهَا فَإِذَا أُوقِفَتْ فَلَا بُدَّ لَهَا مِنْ أَنْ تَخْتَارَ فِرَاقَهُ أَوْ الْبَقَاءَ مَعَهُ وَلَا تُتْرَكُ تَتَأَنَّى فِي ذَلِكَ أَصْلًا.

بُرْهَانُ ذَلِكَ: «فِعْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي تَخْيِيرِهِ بَرِيرَةَ إذْ أَعْتَقَتْهَا عَائِشَةُ أُمُّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا -» .

وَفِي سَائِرِ مَا ذَكَرْنَا خِلَافٌ -: قَالَ قَوْمٌ: إنَّهَا تُخَيَّرُ تَحْتَ الْعَبْدِ، وَلَا تُخَيَّرُ تَحْتَ الْحُرِّ.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: إنْ أُعْتِقَتْ تَحْتَ حُرٍّ فَلَا خِيَارَ لَهَا.

The marriage of a female slave: A legal issue concerning a female slave who had a husband (whether a slave or free) and was subsequently emancipated.

1942. Issue: If a female slave having a husband—whether enslaved or free, even if he is Qurayshi—is emancipated through obligatory manumission, voluntary release, fulfillment of her manumission contract, or any means of emancipation, she is granted the choice. If she elects separation, this is permitted. If she chooses to remain with him, this is allowed and her option becomes void. She must observe the waiting period upon choosing separation, equivalent to the divorce waiting period—as no annulment scenario inherently requires a waiting period except this specific instance—and the widow's waiting period applies solely upon the husband's death. If both wish to remarry, this is only valid with mutual consent, witnessed ceremony, dowry, and guardian involvement. The husband may renew the marriage during her waiting period, while others are barred until its completion. Her choice remains valid even if she prolongs cohabitation, experiences marital relations (consensual or otherwise), or lacks awareness of her entitlement. When notified, she must decisively choose separation or continuation—no procrastination is permitted.

The evidence for that is «the action of the Messenger of Allah (may the peace and blessings of Allah be upon him) in giving Barīrah the choice when ʿĀ'ishah, the Mother of the Believers (may Allah be pleased with her), freed her.»

There is disagreement regarding the rest of what we have mentioned: some scholars hold that she is given the choice if married to a slave, but not if married to a free man.

It was narrated to us through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from ʿUbayd Allāh ibn ʿUmar from Nāfiʿ from Ibn ʿUmar, who said: "If she is manumitted while [still] in the marriage of a free man, she retains no right to annul the marriage."

It has been authentically reported from al-Ḥasan, az-Zuhri, Abī Qilābah, ʿAṭā', Ṣafiyyah bint Abī ʿUbayd, and ʿUrwah ibn az-Zubayr. Some people

attribute that to Ibn Abbas—though we do not know this from him—and it is the opinion of Ibn Abi Layla, Al-Awza'i, Malik, Al-Layth, Al-Shafi'i, Abu Thawr, Ahmad ibn Hanbal, Ishaq ibn Rāhawayhi, Abu Sulayman, and all their companions.

وَصَحَّ عَنْ الْحَسَنِ، وَالزُّهْرِيِّ، وَأَبِي قِلَابَةَ، وَعَطَاءٍ، وَصَفِيَّةَ بِنْتِ أَبِي عُبَيْدٍ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَيَنْسُبُ قَوْمٌ ذَلِكَ إلَى ابْنِ عَبَّاسٍ - وَلَا نَعْلَمُ هَذَا عَنْهُ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَالْأَوْزَاعِيِّ، وَمَالِكٍ، وَاللَّيْثِ، وَالشَّافِعِيِّ وَأَبِي ثَوْرٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِهِمْ.

L33266 A group upheld our view—as transmitted through Abū Dāwūd's chain: Muḥammad ibn Kathīr narrated to us via Sufyān al-Thawrī via Manṣūr ibn al-Muʿtamir via Ibrāhīm al-Nakhaʿī via al-Aswad ibn Yazīd via ʿĀʾishah, Mother of the Believers, who said: "Indeed, Barirah's husband was a free man when she was emancipated and given the choice. She said: 'I do not wish to remain with him even if I were granted such and such.'"

وَقَالَتْ طَائِفَةٌ كَقَوْلِنَا - كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ كَثِيرٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ الْأَسْوَدِ بْنِ يَزِيدَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ " إنَّ زَوْجَ بَرِيرَةَ كَانَ حُرًّا حِينَ أُعْتِقَتْ وَخُيِّرَتْ؟ فَقَالَتْ: مَا أُحِبُّ أَنْ أَكُونَ مَعَهُ وَأَنَّ لِي كَذَا وَكَذَا ".

L33267 And through the route of Ahmad ibn Shu'ayb: 'Amr ibn 'Ali narrated to us, from al-Thaqafi (he is 'Abd al-Wahhab ibn 'Abd al-Majid), from 'Ubayd Allah ibn 'Umar, spanning sixty years, from Yazid ibn Ruman, from 'Urwah ibn al-Zubayr, from Barirah, who said: She was in a three-year [waiting period] – then she related the Hadith – and in it: "The Messenger of Allah (peace and blessings be upon him) said to 'Aisha: 'Purchase her and stipulate for them the right of clientage, for indeed clientage belongs to the one who manumits.'" So she manumitted me, and I had the right of choice (khiyār).

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ عَلِيٍّ نا الثَّقَفِيُّ - هُوَ عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ - نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ - مُذْ سِتِّينَ سَنَةً - عَنْ يَزِيدَ بْنِ رُومَانَ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ بَرِيرَةَ أَنَّهَا قَالَتْ: كَانَتْ فِي ثَلَاثِ سِنِينَ - فَذَكَرَتْ الْحَدِيثَ - وَفِيهِ: «فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِعَائِشَةَ اشْتَرِيهَا وَاشْتَرِطِي لَهُمْ الْوَلَاءَ فَإِنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ» فَأَعْتَقَتْنِي فَكَانَ لِي الْخِيَارُ.

L33268 Abu Muhammad said: The ruling for Barirah was generalized and not restricted to a slave belonging to a free person.

قَالَ أَبُو مُحَمَّدٍ: فَعَمَّتْ بَرِيرَةُ وَلَمْ تُخَصَّ تَحْتَ عَبْدٍ مِنْ حُرٍّ.

L33269 From the chain of Saʿīd ibn Manṣūr: Hushaym informed us [via] Ibn Abī Laylā, from Nāfiʿ, from Ibn ʿUmar, that he would grant her the option over the free man—and Hushaym holds this opinion as well.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا ابْنُ أَبِي لَيْلَى عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ يَجْعَلُ لَهَا الْخِيَارَ عَلَى الْحُرِّ - وَبِهِ يَقُولُ هُشَيْمٌ.

L33270 From the chain of Al-Ḥajjāj ibn Al-Minhāl: Yazīd ibn Zuraiʿ narrated to us via Khālid Al-Ḥadhāʾ, from Abū Qilābah, who said: 'Umar ibn Al-Khaṭṭāb stated, "If a female slave is emancipated, she retains the choice provided that

her husband has not had intercourse with her." ʿUmar applied this ruling universally without distinguishing between a male slave and a free man.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ: نا يَزِيدُ بْنُ زُرَيْعٍ نا خَالِدٌ الْحَذَّاءُ عَنْ أَبِي قِلَابَةَ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ " إِذَا أُعْتِقَتْ الْأَمَةُ فَلَهَا الْخِيَارُ مَا لَمْ يَطَأْهَا زَوْجُهَا " فَعَمَّ عُمَرُ وَلَمْ يَخُصَّ عَبْدًا مِنْ حُرٍّ.

L33271 And from the narration of Hammad ibn Salamah, from Hammad ibn Abi Sulayman, from Ibrahim al-Nakha'i, that he said regarding a female slave manumitted while married: the choice is upon her husband—whether he is free or enslaved—even if he were someone like Hisham ibn Abd al-Malik.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ فِي الْأَمَةِ تُعْتَقُ تَحْتَ زَوْجٍ: فَهِيَ عَلَيْهِ بِالْخِيَارِ - حُرًّا كَانَ أَوْ عَبْدًا - وَلَوْ أَنَّهُ هِشَامُ بْنُ عَبْدِ الْمَلِكِ.

L33272 From the narration of Abd al-Razzaq, from Sufyan ibn Uyaynah, from Abdullah ibn Tawus, from his father, regarding a female slave emancipated while married: she is given the choice, even if married to a Qurayshi man.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ فِي الْأَمَةِ تُعْتَقُ تَحْتَ زَوْجٍ أَنَّهَا تُخَيَّرُ وَلَوْ كَانَتْ تَحْتَ قُرَشِيٍّ.

L33273 Via the chain of ʿAbd al-Razzāq from Maʿmar from ʿĀṣim from al-Shaʿbī, who said: "When a female slave married to a free man is emancipated, she has the option to dissolve the marriage."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَاصِمٍ عَنْ الشَّعْبِيِّ قَالَ " إِذَا أُعْتِقَتْ تَحْتَ حُرٍّ فَلَهَا الْخِيَارُ ".

L33274–33275 And via the transmission of Ma'mar from Ayyub al-Sakhtiyānī from Ibn Sirin: If a female slave is emancipated in the presence of a free person, she has the option.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ سِيرِينَ إِذَا أُعْتِقَتْ عِنْدَ حُرٍّ فَلَهَا الْخِيَارُ

L33276 On the authority of ʿAbd al-Razzāq from Ibrāhīm ibn Yazīd from ʿAmr ibn Dīnār from Saʿīd ibn al-Musayyab, who said: "The husband of *Barīrah* was a free man."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إِبْرَاهِيمَ بْنِ يَزِيدَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: كَانَ زَوْجُ بَرِيرَةَ حُرًّا.

L33277 And through the chain of Abd al-Razzaq, from Ibn Jurayj, from Husayn ibn Muslim, who said: When a female slave is emancipated in the presence of a free person, she has the option.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ حُسَيْنِ بْنِ مُسْلِمٍ قَالَ: إِذَا أُعْتِقَتْ عِنْدَ حُرٍّ فَلَهَا الْخِيَارُ.

L33278 Abū Muḥammad said: Those who did not grant her the right to choose except in the case of a slave husband cited as evidence the report we transmitted via al-Bukhārī's chain: Qutaybah ibn Saʿīd reported to us; ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī reported to us from Ayyūb al-Sikhtiyānī from

قَالَ أَبُو مُحَمَّد: وَاحْتَجَّ مَنْ لَمْ يُوجِبْ لَهَا الْخِيَارَ إِلَّا تَحْتَ الْعَبْدِ -: بِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا قُتَيْبَةُ بْنُ سَعِيدٍ نَا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ

‘Ikrimah from Ibn ‘Abbās, who said: “Barirah’s husband was a black man called Mughīth, a slave belonging to the sons of so-and-so [fulān], as if I am looking at him.” He mentioned the remainder of the account. Yūsuf ibn ‘Abd Allāh al-Namarī reported to us; ‘Abd al-Wārith ibn Sufyān reported to us; Qāsim ibn Aṣbagh reported to us; Muḥammad ibn Waḍḍāḥ reported to us; Yūsuf ibn ‘Adī reported to us; ‘Abdah ibn Sulaymān reported from Saʿīd ibn Abī ‘Arūbah from Ayyūb al-Sikhtiyānī and Qatādah – both of them transmitting from ‘Ikrimah from Ibn ‘Abbās: “Barirah’s husband was a slave when she was emancipated.”

عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: كَانَ زَوْجُ بَرِيرَةَ أَسْوَدَ يُقَالُ لَهُ مُغِيثٌ عَبْدًا لِبَنِي فُلَانٍ كَأَنِّي أَنْظُرُ إِلَيْهِ - وَذَكَرَ بَاقِيَ الْخَبَرِ -: نا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نا عَبْدُ الْوَارِثِ بْنُ سُفْيَانَ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نَا يُوسُفُ بْنُ عَدِيٍّ نا عَبْدَةُ بْنُ سُلَيْمَانَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، وَقَتَادَةَ، كِلَاهُمَا عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: أَنَّ زَوْجَ بَرِيرَةَ كَانَ عَبْدًا حِينَ أُعْتِقَتْ.

L33279 And through the chain of Abu Dawud: Uthman ibn Abi Shaybah narrated to us from Jarir from Hisham ibn Urwah from his father from Aisha, the Mother of the Believers, concerning the case of Barirah—whose husband was a slave—“The Messenger of Allah, peace be upon him, gave her the choice, and she chose herself. Had he been free, he would not have given her the choice.”[12]

وَمِنْ طَرِيقِ أَبِي دَاوُد نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا جَرِيرٌ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فِي قِصَّةِ بَرِيرَةَ - وَكَانَ زَوْجُهَا عَبْدًا «فَخَيَّرَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاخْتَارَتْ نَفْسَهَا» وَلَوْ كَانَ حُرًّا لَمْ يُخَيِّرْهَا.

L33280 From the chain of Aḥmad ibn Shuʿayb: Isḥāq ibn Ibrāhīm —he is Ibn Rāhawayh— narrated to us, al-Mughīrah ibn Salama narrated to us, Wuḥayb narrated to us from ʿUbayd Allāh ibn ʿUmar from Yazīd ibn Rūmān from ʿUrwah from ʿĀ’ishah, the Mother of the Believers, who said: “The husband of Barirah was a slave.”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - نَا الْمُغِيرَةُ بْنُ سَلَمَةَ نا وُهَيْبٌ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ يَزِيدَ بْنِ رُومَانَ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ " كَانَ زَوْجُ بَرِيرَةَ عَبْدًا ".

L33281 From the chain of Aḥmad ibn Shuʿayb, who narrated from Isḥāq ibn Ibrāhīm—he is Ibn Rāhwayh—who narrated from Ḥammād ibn Masʿadah, who narrated from Ibn Mawhab, who narrated from al-Qāsim ibn Muḥammad, who said: “‘Ā’ishah, the Mother of the Believers, had a male slave and a female slave. She said: ’I intended to manumit them both, so I mentioned this to the Messenger of Allah—peace be upon him—and he said: ”Begin with the male slave before the female slave.“”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - نا حَمَّادُ بْنُ مَسْعَدَةَ نا ابْنُ مَوْهَبٍ عَنِ الْقَاسِمِ بْنِ مُحَمَّدٍ، قَالَ: كَانَ لِعَائِشَةَ أُمِّ الْمُؤْمِنِينَ غُلَامٌ وَجَارِيَةٌ، قَالَتْ: فَأَرَدْت أَنْ أُعْتِقَهُمَا، فَذَكَرْت ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: «ابْتَدِي بِالْغُلَامِ قَبْلَ الْجَارِيَةِ» .

L33282–33283 From the path of Aḥmad ibn Shuʿayb: I am Aḥmad ibn ʿAbd al-Wāḥid, from Marwān, from al-Layth, from ʿUbayd Allāh ibn Abī Jaʿfar, from al-Ḥasan ibn ʿAmr ibn Umayyah al-Ḍamrī that he narrated to him: Men from the

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ عَبْدِ الْوَاحِدِ نا مَرْوَانُ نا اللَّيْثُ نا عُبَيْدُ اللَّهِ بْنُ أَبِي جَعْفَرٍ عَنِ الْحَسَنِ بْنِ عَمْرِو بْنِ أُمَيَّةَ الضَّمْرِيِّ أَنَّهُ حَدَّثَهُ: أَنَّ رِجَالًا مِنْ أَصْحَابِ

[12] **Hadith references (L33279):** Sunan Abi Dawud 2233; Jami at-Tirmidhi 1154; Sahih Muslim 1504e.

Companions of the Messenger of Allah (peace be upon him) narrated to him that the Messenger of Allah (peace be upon him) said: “If a female slave married to a male slave is freed, she has the choice as long as her husband has not had intercourse with her.”

L33284 They said, “By way of juristic reasoning, no valid marriage contract may be dissolved except with certainty.”

L33285 The proponents of analogy among them said: “She was granted the option solely due to the superiority of free status over slavery. When he becomes her equal in status, she has no option.” Is this all they cited as evidence? Abu Muhammad said: “None of this constitutes valid proof for them. As for the reports stating he was a slave, there is disagreement in what is transmitted from Aisha, the Mother of the Believers—may Allah be pleased with her—as we cited earlier. Only three narrators transmitted this report from her: Al-Aswad, Urwah, and Al-Qasim. Regarding Al-Aswad, there is no differing transmission from him, from the Mother of the Believers, stating he was free.”

L33286 As for Urwah—it was narrated from him, as we cited—that he was a slave, though the contrary was also narrated from him: Ahmad ibn Qasim narrated from my father Qasim ibn Muhammad ibn Qasim, from my grandfather Qasim ibn Asbagh, from Ahmad ibn Yazid the Teacher, from Musa ibn Mu’awiyah, from Jarir, from Hisham ibn Urwah, from his father, from Aisha, the Mother of the Believers, who said: “Barirah’s husband was a free man.” Thus, the narrations conflicted from Hisham ibn Urwah, from his father, from Aisha, the Mother of the Believers.

L33287 As for al-Qāsim ibn Muḥammad, we were narrated through the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn Ismāʿīl ibn ʿUlayyah reported to me, from Yaḥyā ibn Abī Bukayr, from Shuʿbah, from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad, from his father, from ʿĀ’ishah, who mentioned that Barirah’s husband was a slave. Then ʿAbd al-Raḥmān later said: “I do not know”—so the narration from the Mother of the Believers became conflicting. The narration of Ibn ʿAbbās persisted, stating he was a slave when she was emancipated, though it contradicted the narration from the Mother

رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَدَّثُوهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَيُّمَا أَمَةٍ كَانَتْ تَحْتَ عَبْدٍ فَعَتَقَتْ فَهِيَ بِالْخِيَارِ مَا لَمْ يَطَأْهَا زَوْجُهَا» .

وَقَالُوا: مِنْ طَرِيقِ النَّظَرِ: كُلُّ عَقْدِ نِكَاحٍ صَحِيحٌ فَلَا يَجُوزُ فَسْخُهُ إلَّا بِيَقِينٍ.

وَقَالَ أَصْحَابُ الْقِيَاسِ مِنْهُمْ: إنَّمَا جُعِلَ لَهَا الْخِيَارُ لِفَضْلِ الْحُرِّيَّةِ عَلَى الرِّقِّ فَإِذَا سَاوَاهَا فَلَا خِيَارَ لَهَا - هَذَا كُلُّ مَا احْتَجُّوا بِهِ؟ قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ -: أَمَّا الْآثَارُ - بِأَنَّهُ كَانَ عَبْدًا، فَقَدْ اُخْتُلِفَ فِي ذَلِكَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - كَمَا أَوْرَدْنَا - وَإِنَّمَا رَوَى هَذَا الْخَبَرَ عَنْهَا ثَلَاثَةٌ الْأَسْوَدُ، وَعُرْوَةُ، وَالْقَاسِمُ -: فَأَمَّا الْأَسْوَدُ - فَلَمْ يَخْتَلِفْ عَنْهُ عَنْ أُمِّ الْمُؤْمِنِينَ أَنَّهُ كَانَ حُرًّا.

وَأَمَّا عُرْوَةُ - فَرُوِيَ عَنْهُ - كَمَا أَوْرَدْنَا - أَنَّهُ كَانَ عَبْدًا - وَقَدْ رُوِيَ عَنْهُ أَيْضًا خِلَافُ ذَلِكَ -: نا أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا أَحْمَدُ بْنُ يَزِيدَ الْمُعَلِّمُ نا مُوسَى بْنُ مُعَاوِيَةَ نا جَرِيرٌ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، قَالَتْ: كَانَ زَوْجُ بَرِيرَةَ حُرًّا - فَتَعَارَضَتْ الرِّوَايَةُ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ.

وَأَمَّا الْقَاسِمُ بْنُ مُحَمَّدٍ فَرُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ إسْمَاعِيلَ بْنِ عُلَيَّةَ نا يَحْيَى بْنُ أَبِي بُكَيْرٍ نا شُعْبَةُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَائِشَةَ، فَذَكَرَتْ أَنَّ زَوْجَ بَرِيرَةَ كَانَ عَبْدًا - ثُمَّ قَالَ عَبْدُ الرَّحْمَنِ بَعْدَ ذَلِكَ: مَا أَدْرِي فَاضْطَرَبَتْ الرِّوَايَةُ عَنْ أُمِّ الْمُؤْمِنِينَ وَبَقِيَتْ رِوَايَةُ ابْنِ عَبَّاسٍ: أَنَّهُ كَانَ عَبْدًا حِينَ أُعْتِقَتْ - وَقَدْ

of the Believens which stated he was free when she was emancipated? We therefore ceased discussing this matter until we could address—the Ḥadīth of ʿUbayd Allāh ibn Abī Jaʿfar.

عَارَضَتْهَا الرِّوَايَةُ عَنْ أُمِّ الْمُؤْمِنِينَ أَنَّهُ كَانَ حُرًّا حِينَ أُعْتِقَتْ؟ فَتَرَكْنَا الْكَلَامَ فِي ذَلِكَ حَتَّى نَتَكَلَّمَ فِي -: حَدِيثِ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ.

L33288 And the hadith of Ibn Mawhab from al-Qasim ibn Muhammad, if Allah, the Exalted and Glorious, wills?

وَحَدِيثِ ابْنِ مَوْهَبٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ - إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ؟

L33289–33290 Abu Muhammad said: As for the report stating, "Any female slave married to a male slave who is then emancipated has the choice [to remain or separate] as long as her husband has not consummated the marriage"—this is only transmitted via the chain of Ḥasan ibn ʿAmr ibn Umayyah, who is unknown—i.e., he is not recognized as a reliable narrator—thus, it cannot be relied upon.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْخَبَرُ الَّذِي فِيهِ: «أَيُّمَا أَمَةٍ كَانَتْ تَحْتَ عَبْدٍ فَعَتَقَتْ، فَهِيَ بِالْخِيَارِ مَا لَمْ يَطَأْهَا زَوْجُهَا» - فَإِنَّمَا هُوَ مِنْ طَرِيقِ حَسَنِ بْنِ عَمْرِو بْنِ أُمَيَّةَ - وَهُوَ مَجْهُولٌ - لَا يُعْرَفُ - فَسَقَطَ التَّعَلُّقُ بِهِ.

L33291 Furthermore, even if it were valid, it would contain no proof that there is no option when married to a free man. It only pertains to the ruling of her manumission when married to a slave exclusively, and it is silent about her manumission when married to a free man. If another narration is authenticated as sound containing what necessitates her manumission when married to a free man, it becomes obligatory to adhere to it.

ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ حُجَّةٌ أَنْ لَا تَخَيُّرَ تَحْتَ حُرٍّ، إنَّمَا فِيهِ حُكْمُ عِتْقِهَا تَحْتَ الْعَبْدِ فَقَطْ، وَسَكَتَ فِيهِ عَنْ عِتْقِهَا تَحْتَ الْحُرِّ - فَإِنْ صَحَّ فِي خَبَرٍ آخَرَ مَا يُوجِبُ عِتْقَهَا تَحْتَ الْحُرِّ وَجَبَ الْمَصِيرُ إلَيْهِ.

L33292 As for the narration of Ibn Mawhab from al-Qāsim ibn Muḥammad from ʿĀ'isha—that she had a male slave and a female slave, and the Messenger of Allah (peace and blessings be upon him) commanded her to begin emancipation with the male slave before the female slave (this is an inauthentic report)—it has been transmitted to us from al-ʿUqaylī that he said when mentioning this report: "This report is only known through ʿUbayd Allāh ibn ʿAbd al-Raḥmān ibn Mawhab—and he is weak." Thus it cannot be relied upon. Abū Muḥammad said: "Then, even if it were authentic, it would contain no proof, for does it state that they were spouses? To interject claims through assertion is a lie."

وَأَمَّا حَدِيثُ ابْنِ مَوْهَبٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَائِشَةَ: أَنَّهُ كَانَ لَهَا عَبْدٌ وَجَارِيَةٌ فَأَمَرَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تَبْدَأَ فِي الْعِتْقِ بِالْغُلَامِ قَبْلَ الْجَارِيَةِ - فَإِنَّهُ خَبَرٌ لَا يَصِحُّ -: رُوِّينَا عَنْ الْعُقَيْلِيِّ أَنَّهُ قَالَ وَقَدْ ذَكَرَ هَذَا الْخَبَرَ فَقَالَ: هَذَا خَبَرٌ لَا يُعْرَفُ إلَّا لِعُبَيْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ مَوْهَبٍ - وَهُوَ ضَعِيفٌ - فَسَقَطَ التَّعَلُّقُ بِهِ -: قَالَ أَبُو مُحَمَّدٍ: ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ: أَنَّهُمَا كَانَا زَوْجَيْنِ؟ فَإِقْحَامُ الْقَوْلِ بِالدَّعْوَى كَذِبٌ.

L33293 Then, even if it were valid that they were spouses, there is no mention in it that he—peace and blessings be upon him—commanded this to invalidate the wife's right of option. Introducing this claim into that narration constitutes a manifest lie—this is a grave matter that no one who fears falsehood would

ثُمَّ لَوْ صَحَّ أَنَّهُمَا كَانَا زَوْجَيْنِ، فَلَيْسَ فِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَمَرَ بِذَلِكَ لِيُسْقِطَ خِيَارَ الزَّوْجَةِ؟ وَإِقْحَامُ هَذَا فِي ذَلِكَ الْخَبَرِ كَذْبَةٌ بَائِنَةٌ - هَذَا عَظِيمٌ لَا يَسْتَجِيزُهُ مَنْ يَهَابُ الْكَذِبَ، لَا سِيَّمَا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنَّهُ يُوجِبُ النَّارَ.

ever permit, especially against the Messenger of Allah (peace and blessings of Allah be upon him), for it entails the Fire.

L33294 And it would be possible—if the narration were authentic—that her instruction is to begin by freeing the slave, based on the statement of Allah the Almighty and Majestic: {And men have a degree over them} [Al-Baqarah 2:228].[13]

L33295 As the Almighty narrates from the mother of Maryam: "The male is not like the female" [Āl ʿImrān 3:36].[14]

L33296 And regarding the narration we transmitted—via Abū Dāwūd's chain from Ḥafṣ ibn ʿUmar, from Shuʿbah, from ʿAmr ibn Murrah, from Sālim ibn Abī al-Jaʿd, from Shuraḥbīl ibn al-Simṭ—that he said to Kaʿb ibn Murrah or Murrah ibn Kaʿb: Relate to us a ḥadīth you heard from Allah's Messenger—peace and blessings be upon him. He then cited a statement containing: Any man who frees a Muslim, any woman who frees two Muslim women, or any man who frees two Muslim women—it will be his ransom from the Fire, each bone from them compensating for a bone of his. Thus, the reward for freeing a male is doubled. However, this narration has been discarded in its entirety.

L33297–33298 And we are certain—without any doubt—that he, prayers and peace be upon him, does not resort to legal artifices to nullify a right that his Lord, the Exalted, has ordained for the emancipated woman—thus their claim against him was nullified through a certainty utterly free from doubt.

L33299 As for their statement: "It is not permissible to dissolve a valid marriage contract except with certainty"—they have spoken truthfully, and were it not for certainty, we would not have ruled thus. As for the claim of the advocates of analogical reasoning: "The choice was granted to her in the case of the slave due to the superiority of freedom over enslavement"—this is a false assertion they will never find any basis for from the Messenger of Allah, peace and blessings be upon him. We seek refuge in Allah from the presumption of attributing to the Messenger of Allah, peace and blessings

وَقَدْ يُمْكِنُ - لَوْ صَحَّ الْخَبَرُ - أَنْ يَكُونَ أَمْرُهَا أَنْ تَبْدَأَ بِعِتْقِ الْعَبْدِ، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ {وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ} [البقرة: ٢٢٨]

لِقَوْلِهِ تَعَالَى حَاكِيًا عَنْ أُمِّ مَرْيَمَ {وَلَيْسَ الذَّكَرُ كَالأُنْثَى} [آل عمران: ٣٦]

وَلِلْخَبَرِ الَّذِي رُوِّينَاهُ - مِنْ طَرِيقِ أَبِي دَاوُد عَنْ حَفْصِ بْنِ عُمَرَ عَنْ شُعْبَةَ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ عَنْ شُرَحْبِيلَ بْنِ السِّمْطِ أَنَّهُ قَالَ لِكَعْبِ بْنِ مُرَّةَ أَوْ مُرَّةَ بْنِ كَعْبٍ: حَدِّثْنَا حَدِيثًا سَمِعْته مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ كَلَامًا، وَفِيهِ «أَيُّمَا امْرِئٍ أَعْتَقَ مُسْلِمًا وَأَيُّمَا امْرَأَةٍ أَعْتَقَتْ امْرَأَةً وَأَيُّمَا رَجُلٍ أَعْتَقَ امْرَأَتَيْنِ مُسْلِمَتَيْنِ إلَّا كَانَتْ فِكَاكَهُ مِنْ النَّارِ يُجْزِي بِكُلِّ عَظْمٍ مِنْهَا عَظْمًا مِنْ عِظَامِهِ» فَالْأَجْرُ فِي عِتْقِ الذَّكَرِ مُضَاعَفٌ - فَسَقَطَ هَذَا الْخَبَرُ جُمْلَةً.

وَنَحْنُ نُوقِنُ - بِلَا شَكٍّ - أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَا يَتَحَيَّلُ فِي إسْقَاطِ حَقٍّ أَوْجَبَهُ رَبُّهُ تَعَالَى لِلْمُعْتَقَةِ - فَبَطَلَ تَعَلُّقُهُمْ بِهِ بِيَقِينٍ لَا إشْكَالَ فِيهِ.

وَأَمَّا قَوْلُهُمْ: لَا يَحِلُّ فَسْخُ عَقْدِ نِكَاحٍ صَحِيحٍ إلَّا بِيَقِينٍ - فَصَدَقُوا، وَلَوْلَا الْيَقِينُ مَا قُلْنَا بِهِ، وَأَمَّا قَوْلُ أَصْحَابِ الْقِيَاسِ: إنَّمَا جُعِلَ لَهَا الْخِيَارُ تَحْتَ الْعَبْدِ لِفَضْلِ الْحُرِّيَّةِ عَلَى الرِّقِّ - فَهَذِهِ دَعْوَى كَاذِبَةٌ، لَا يَجِدُونَهَا أَبَدًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنَعُوذُ بِاَللَّهِ مِنْ الْإِقْدَامِ عَلَى أَنْ نَنْسُبَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ إلَى اللَّهِ تَعَالَى أَنَّهُ إنَّمَا فَعَلَ أَمْرَ كَذَا مِنْ أَجْلِ أَمْرِ كَذَا، مِمَّا لَمْ يُخْبِرْ اللَّهُ تَعَالَى بِهِ وَلَا رَسُولُهُ

[13] **Qur'an references (L33294):** Qur'an 2:228 (Al-Baqarah).
[14] **Qur'an references (L33295):** Qur'an 3:36 (Ali 'Imran).

be upon him, and then to Allah Almighty, that He enacted such a ruling for such a reason—regarding what Allah Almighty and His Messenger, peace and blessings be upon him and his family, have not disclosed. Behold, this is indeed a lie against Allah Almighty and His Messenger, peace and blessings be upon him and his family, without doubt. We ask Allah for protection.

L33300 Abu Muhammad said: "There remains only the apparent conflict between the narration from Ibn Abbas—'Barīrah's husband was a slave when she was emancipated'—and the narration from Umm al-Mu'minīn: 'Barīrah's husband was a free man at that time.'"

L33301 Both narrations are authentic, especially the narration of Al-Aswad from Aisha, the Mother of the Believers, and they contradict the narration from Urwah regarding that matter. All of this conflicts with the narration of Al-Qasim. We found all of this to be in agreement, with no falsehood in it. As long as it is possible to reconcile the narrations of trustworthy narrators, it is impermissible to attribute falsehood or error to some of them.

L33302 Know that whoever says, "He was a slave," and whoever says, "He was free"—both statements are valid because he was formerly a slave who was later manumitted, thereby becoming free. However, this exclusion does not extend to the narration from Ibn Abbas stating he was a slave at the time of his manumission. Rather, it applies when one was aware of his enslavement or unaware of his freedom.

L33303 Aisha—may Allah be pleased with her—narrated an addition in her knowledge that he was free when she (the slave) was emancipated. Uthman ibn Abi Shaybah's narration lacks the phrase "Had he been free, he would not have given her the choice," which forms part of the speech of the Mother of the Believers. It may also potentially originate from someone below her. Since this is the case, how can it be permissible to ascribe a statement to her based on conjecture?

L33304 No Maliki, Shafi'i, Hanbali, or Zahiri differs in the ruling that if two just witnesses testify, "We recognize this individual as a slave," and two other just witnesses testify, "We know him to be free," the judgment must be based on

- صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَلَا إِنَّ هَذَا لَهُوَ الْكَذِبُ عَلَى اللَّهِ تَعَالَى، وَعَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِلَا شَكٍّ وَنَسْأَلُ اللَّهَ الْعَافِيَةَ؟

قَالَ أَبُو مُحَمَّدٍ: فَلَمْ يَبْقَ إِلَّا تَعَارُضُ الرِّوَايَةِ عَنْ ابْنِ عَبَّاسٍ: كَانَ زَوْجُ بَرِيرَةَ عَبْدًا إِذْ أُعْتِقَتْ، لِلرِّوَايَةِ عَنْ أُمِّ الْمُؤْمِنِينَ " كَانَ زَوْجُ بَرِيرَةَ حُرًّا إِذْ أُعْتِقَتْ ".

وَكِلَا الرِّوَايَتَيْنِ صَحِيحَةٌ، لَا سِيَّمَا رِوَايَةَ الْأَسْوَدِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَتُعَارِضُ الرِّوَايَةَ عَنْ عُرْوَةَ فِي ذَلِكَ، وَكُلُّ ذَلِكَ مُعَارِضٌ لِرِوَايَةِ الْقَاسِمِ، فَوَجَدْنَا كُلَّ ذَلِكَ مُتَّفَقًا لَا تَكَاذُبَ فِيهِ، وَمَا دَامَ يُمْكِنُ تَأْلِيفُ رِوَايَاتِ الثِّقَاتِ فَلَا يَحِلُّ أَنْ يُنْسَبَ الْكَذِبُ إِلَى بَعْضِهِمْ، أَوْ الْوَهْمُ.

فَاعْلَمُوا أَنَّ مَنْ قَالَ: كَانَ عَبْدًا، وَمَنْ قَالَ: كَانَ حُرًّا، يَصِحُّ عَلَى أَنَّهُ كَانَ عَبْدًا قَبْلُ ثُمَّ أُعْتِقَ، فَصَارَ حُرًّا، إِلَّا أَنَّهُ لَا يَخْرُجُ هَذَا فِي الرِّوَايَةِ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ كَانَ عَبْدًا حِينَ أُعْتِقَتْ، لَكِنَّهُ يَخْرُجُ عَلَى أَنَّهُ كَانَ يَدْرِيهِ عَبْدًا، أَوْ لَمْ يَعْلَمْ بِحُرِّيَّتِهِ.

وَرَوَتْ عَائِشَةُ - رَضِيَ اللَّهُ عَنْهَا - مَا كَانَ فِي عِلْمِهَا مِنْ الزِّيَادَةِ أَنَّهُ كَانَ حُرًّا حِينَ أُعْتِقَتْ - وَلَيْسَ فِي رِوَايَةِ عُثْمَانَ بْنِ أَبِي شَيْبَةَ: وَلَوْ كَانَ حُرًّا مَا خَيَّرَهَا: أَنَّهُ مِنْ كَلَامِ أُمِّ الْمُؤْمِنِينَ، وَقَدْ يُمْكِنُ أَنْ يَكُونَ مِنْ قَوْلِ مَنْ دُونَهَا - فَإِذْ ذَلِكَ كَذَلِكَ فَلَا يَجُوزُ أَنْ يُنْسَبَ إِلَيْهَا قَوْلٌ بِظَنٍّ؟

the testimony of those who affirmed his freedom, because they testified with superior knowledge they possessed.

وَلَا يَخْتَلِفُ مَالِكِيٌّ، وَلَا شَافِعِيٌّ، وَلَا حَنْبَلِيٌّ، وَلَا ظَاهِرِيٌّ، فِي أَنَّ عَدْلَيْنِ لَوْ شَهِدَا بِأَنَّ هَذَا نَعْرِفُهُ عَبْدًا مَمْلُوكًا، وَشَهِدَ عَدْلَانِ آخَرَانِ: أَنَّنَا نَدْرِيهِ حُرًّا، فَإِنَّ الْحُكْمَ يَجِبُ بِقَوْلِ مَنْ شَهِدَ الْحُرِّيَّةَ، لِأَنَّهُ شَهِدَ بِفَضْلِ عِلْمٍ كَانَ عِنْدَهُ.

L33305–33306 Then we set all this aside and say: Suppose for yourselves that no one reported he was free; rather, the narrators unanimously agreed he was a slave when she was emancipated. Has it ever been mentioned in any of the established reports that the Messenger of Allah—peace and blessings be upon him—said, "I only gave her the choice because she was married to a slave; had her husband been free, I would not have given her the choice"? This is something they will never encounter in any narration from the Messenger of Allah—peace and blessings be upon him—neither in an authentic nor a defective report. Since there is absolutely no way to establish this, it is definitively confirmed that when Barirah was emancipated, he (peace and blessings be upon him) gave her the choice to remain with her husband or separate from him. This is beyond doubt; thus, it is impermissible to transgress it or append any ruling to it.

ثُمَّ نَدَعُ هَذَا كُلَّهُ، فَنَقُولُ: هَبْكُمْ أَنَّهُ لَمْ يَرْوِ أَحَدٌ أَنَّهُ كَانَ حُرًّا، بَلْ لَمْ يَخْتَلِفِ الرُّوَاةُ فِي أَنَّهُ كَانَ عَبْدًا حِينَ أُعْتِقَتْ؟ هَلْ جَاءَ قَطُّ فِي شَيْءٍ مِنَ الْأَخْبَارِ الثَّابِتَةِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: إِنَّمَا خَيَّرْتُهَا؛ لِأَنَّهَا تَحْتَ عَبْدٍ، وَلَوْ كَانَ زَوْجُهَا حُرًّا مَا خَيَّرْتُهَا - هَذَا أَمْرٌ لَا يَجِدُونَهُ أَبَدًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَا فِي رِوَايَةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، فَإِذْ لَا سَبِيلَ إِلَى وُجُودِ هَذَا أَبَدًا فَقَدْ صَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمَّا أُعْتِقَتْ بَرِيرَةُ خَيَّرَهَا فِي الْبَقَاءِ مَعَ زَوْجِهَا أَوْ فِرَاقِهِ، فَهَذَا - لَا شَكَّ فِيهِ، فَلَا يَجُوزُ تَعَدِّيهِ، وَلَا زِيَادَةُ حُكْمٍ فِيهِ.

L33307 There is no distinction between one who claims that he—peace and blessings be upon him—granted her the option solely because he was a slave, another who claims he did not grant her the option except due to his blackness, and a third who claims that the granting of the option was only because his name was Mughīth.

وَلَا فَرْقَ بَيْنَ مَنِ ادَّعَى أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إِنَّمَا خَيَّرَهَا؛ لِأَنَّهُ كَانَ عَبْدًا، وَبَيْنَ آخَرَ ادَّعَى أَنَّهُ لَمْ يُخَيِّرْهَا إِلَّا لِأَنَّهُ كَانَ أَسْوَدَ، وَبَيْنَ ثَالِثٍ ادَّعَى أَنَّ تَخْيِيرَهَا إِنَّمَا كَانَ، لِأَنَّ اسْمَهُ مُغِيثٌ.

L33308 All of these are false presumptions; it is not permissible to speak or judge based on them. The truth is that the Messenger of Allah (peace and blessings be upon him and his family) granted an emancipated female slave the choice between separating from her husband or remaining with him, with no further options. Therefore, it is obligatory that every emancipated female slave be given this choice, with no further options—and success is through Allah, the Most High.

وَكُلُّ هَذِهِ ظُنُونٌ كَاذِبَةٌ لَا يَحِلُّ الْقَوْلُ بِهَا، وَلَا الْحُكْمُ بِهَا، وَإِنَّمَا الْحَقُّ أَنَّ الْمُعْتَقَةَ خَيَّرَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بَيْنَ فِرَاقِ زَوْجِهَا، وَالْبَقَاءِ مَعَهُ وَلَا مَزِيدَ، فَوَاجِبٌ أَنْ تُخَيَّرَ كُلُّ مُعْتَقَةٍ وَلَا مَزِيدَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L33309 Among the matters disputed: Does her option cease due to her husband having intercourse with her or not? It has been narrated to us through the

chain of Ḥammād ibn Salamah from Khālid al-Ḥadhdhā’ from Abu Qilābah that ‘Umar ibn al-Khaṭṭāb said concerning the affair of Barīrah: “If her husband has had intercourse with her, she has no option”—and this chain is disconnected.

وَمِمَّا اُخْتُلِفَ فِيهِ -: هَلْ يَنْقَطِعُ خِيَارُهَا بِوَطْءِ زَوْجِهَا لَهَا أَمْ لَا؟ فَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي أَمْرِ بَرِيرَةَ: إنْ غَشِيَهَا زَوْجُهَا فَلَا خِيَارَ لَهَا - وَهَذَا مُنْقَطِعٌ.

L33310 From the path of Hammad ibn Salamah, from Qatadah, from Sulayman ibn Yasar, who said: Hafsah, the Mother of the Believers, manumitted a slave girl named Zabrā. She then said to her: “Know that if he has intercourse with you, you have no choice”—and this is what Sulayman ibn Yasar used to say—and it has been authentically reported from Qatadah, al-Zuhri, and Nafi‘, the freed slave of Ibn ‘Umar.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: أَعْتَقَتْ حَفْصَةُ أُمُّ الْمُؤْمِنِينَ جَارِيَةً يُقَالُ لَهَا " زَبْرَاءُ " ثُمَّ قَالَتْ لَهَا: اعْلَمِي أَنَّهُ إنْ وَطِئَك فَلَا خِيَارَ لَك - وَبِهِ كَانَ يَقُولُ سُلَيْمَانُ بْنُ يَسَارٍ - وَصَحَّ عَنْ قَتَادَةَ، وَالزُّهْرِيِّ، وَنَافِعٍ مَوْلَى ابْنِ عُمَرَ.

L33311 Others held the opinion that if he has intercourse with her while she is unaware that she has the option, her option is not forfeited by that. However, if she has become aware, then her option is forfeited. It has been reported to us through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from Khālid al-Ḥadhdhāʾ from Abū Qilābah that ʿUmar ibn al-Khaṭṭāb said: “If he has intercourse with her after she becomes aware that she has the option, then she no longer has the option.” This chain is interrupted.

وَذَهَبَ آخَرُونَ - إلَى أَنَّهَا إنْ وَطِئَهَا - وَهِيَ لَا تَعْلَمُ أَنَّ لَهَا الْخِيَارَ: لَمْ يَسْقُطْ بِذَلِكَ خِيَارُهَا، وَإِنْ عَلِمَتْ فَقَدْ سَقَطَ خِيَارُهَا -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إذَا جَامَعَهَا بَعْدَ أَنْ تَعْلَمَ أَنَّ لَهَا الْخِيَارَ، فَلَا خِيَارَ لَهَا - وَهَذَا مُنْقَطِعٌ.

L33312–33313 From the route of ʿAbd al-Razzāq, from Ibn Jurayj: I was informed from ʿAbd Allāh ibn ʿĀmir ibn Rabīʿah that Ibn ʿUmar said: If he had intercourse with her while she was aware, she has no option. If he had intercourse with her while she was unaware, she has the option when she becomes aware. Even if he had intercourse with her a thousand times until upright witnesses testify that she has become aware of her option. This chain is disconnected.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أُخْبِرْت عَنْ عَبْدِ اللَّهِ بْنِ عَامِرِ بْنِ رَبِيعَةَ أَنَّ ابْنَ عُمَرَ قَالَ: إنْ أَصَابَهَا - وَقَدْ عَرَفَتْ فَلَيْسَ لَهَا خِيَارٌ، وَإِنْ أَصَابَهَا - وَلَمْ تَعْرِفْ - فَإِنَّ لَهَا الْخِيَارَ إذَا عَلِمَتْ، وَإِنْ أَصَابَهَا أَلْفَ مَرَّةٍ حَتَّى يَشْهَدَ الْعُدُولُ: أَنَّهَا قَدْ عَلِمَتْ: أَنَّ لَهَا الْخِيَارَ - وَهَذَا مُنْقَطِعٌ.

L33314 From the transmission of ʿAbd al-Razzāq from Ibn Jurayj: It was reported to me from Ibn Masʿūd that he said: If a woman is emancipated while owned by a male slave without being aware of her option [to annul the marriage], or without being given the choice until her husband is emancipated, or he dies, or she dies: they inherit from one another. And this chain is severely disconnected.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أُخْبِرْت عَنْ ابْنِ مَسْعُودٍ أَنَّهُ قَالَ: إنْ أُعْتِقَتْ عِنْدَ عَبْدٍ وَلَمْ تَعْلَمْ أَنَّ لَهَا الْخِيَارَ، أَوْ لَمْ تُخَيَّرْ حَتَّى عَتَقَ زَوْجُهَا، أَوْ يَمُوتُ أَوْ تَمُوتُ: تَوَارَثَا - وَهَذَا شَدِيدُ الِانْقِطَاعِ.

L33315 Sa‘īd ibn al-Musayyib holds this opinion.

وَبِهِ يَقُولُ سَعِيدُ بْنُ الْمُسَيِّبِ.

وَقَوْلٌ آخَرُ، وَآخَرُ فِي دَرَجَةٍ: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ قَالَ: إذَا أُعْتِقَتْ وَزَوْجُهَا مَعَهَا فِي مَجْلِسٍ وَهِيَ تَعْلَمُ حَتَّى تَقُومَ فَلَا خِيَارَ لَهَا، فَإِنْ ادَّعَتْ: أَنَّهَا لَمْ تَعْلَمْ اُسْتُحْلِفَتْ، ثُمَّ خُيِّرَتْ، قَالَ سُفْيَانُ: وَبِهِ يَقُولُ نَاسٌ أَنَّ لَهَا الْخِيَارَ أَبَدًا حَتَّى يَقِفَهَا الْإِمَامُ فَيُخَيِّرَهَا، بَلَغَنِي هَذَا عَنْهُ؟ قَالَ أَبُو مُحَمَّدٍ: فَهَذَا سُفْيَانُ الثَّوْرِيُّ يَذْكُرُ مِثْلَ قَوْلِنَا عَمَّنْ مَعَهُ، أَوْ مَنْ قَبْلَهُ، وَقَدْ قَالَ ابْنُ مَسْعُودٍ - كَمَا أَوْرَدْنَا - أَنَّهَا قَدْ تَبْقَى مَعَهُ وَلَا تَخْتَارُ حَتَّى يَمُوتَ أَوْ تَمُوتَ.

L33316 Another opinion, and another of a different rank: We were narrated through the chain of Abd al-Razzaq from Sufyan al-Thawri, who said: If she is manumitted while her husband remains with her in the same gathering and she is aware until she rises, she has no option. If she claims she was unaware, she is made to swear an oath, then granted the choice. Sufyan said: Some people hold this view - that she retains the option indefinitely until the Imam confronts her and presents her with the choice. Has this reached me from him? Abu Muhammad said: Here Sufyan al-Thawri mentions a position resembling ours from those with him or before him. Ibn Mas'ud indeed stated - as we transmitted - that she may remain with him without choosing until he dies or she dies.

وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: لَهَا الْخِيَارُ مَا لَمْ تَعْلَمْ: فَإِذَا عَلِمَتْ فَلَا خِيَارَ لَهَا إلَّا مَا دَامَتْ فِي الْمَجْلِسِ، فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِالْخَبَرِ الَّذِي ذَكَرْنَاهُ قَبْلُ -: مِنْ طَرِيقِ الْحَسَنِ بْنِ عَمْرِو بْنِ أُمَيَّةَ - وَقَدْ بَيَّنَّا سُقُوطَهُ.

L33317 Abu Hanifa and his associates said: She retains the option as long as she remains unaware. When she becomes aware, she no longer has the option except while remaining in the session. We noted that they invoked as evidence the report we previously mentioned - through al-Hasan ibn Amr ibn Umayyah's transmission - though we have already clarified its dismissal.

وَذَكَرُوا أَيْضًا أَثَرًا آخَرَ: مِنْ طَرِيقِ أَبِي دَاوُد نا عَبْدُ الْعَزِيزِ بْنُ يَحْيَى - هُوَ أَبُو الْأَصْبَغِ الْحَرَّانِيُّ - حَدَّثَنِي مُحَمَّدٌ - يَعْنِي ابْنَ سَلَمَةَ - عَنْ مُحَمَّدِ بْنِ إسْحَاقَ عَنْ أَبِي جَعْفَرٍ، وَأَبَانَ بْنِ صَالِحٍ، وَهِشَامِ بْنِ عُرْوَةَ، قَالَ أَبُو جَعْفَرٍ: إنَّ بَرِيرَةَ، وَقَالَ أَبَانُ عَنْ مُجَاهِدٍ: إنَّ بَرِيرَةَ، وَقَالَ هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ: إنَّ بَرِيرَةَ عَتَقَتْ.

L33318 They also mentioned another narration via the chain of Abu Dawud: Abd al-Aziz ibn Yahya - who is Abu al-Asbagh al-Harrani - narrated to us, saying: Muhammad - meaning Ibn Salamah - narrated to me from Muhammad ibn Ishaq, who narrated from Abu Ja'far, Aban ibn Salih, and Hisham ibn Urwah. Abu Ja'far said: "Indeed, Barirah..." Aban said from Mujahid: "Indeed, Barirah..." while Hisham ibn Urwah said from his father from Aisha: "Indeed, Barirah was emancipated."

ثُمَّ اتَّفَقُوا كُلُّهُمْ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «خَيَّرَهَا وَقَالَ لَهَا: إنْ قَرِبَكِ فَلَا خِيَارَ لَكِ» ؟ قَالَ أَبُو مُحَمَّدٍ: أَبُو الْأَصْبَغِ الْحَرَّانِيُّ ضَعِيفٌ مُنْكَرُ الْحَدِيثِ قَالَ أَبُو مُحَمَّدٍ: وَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - جَعَلَ لَهَا الْخِيَارَ، فَلَا يَجُوزُ أَنْ يُسْقِطَهُ وَطْؤُهُ، وَلَا طُولُ مَقَامِهِ مَعَهَا إذْ لَمْ يَصِحَّ بِذَلِكَ نَصٌّ، وَلَا يَبْطُلُ حُكْمُهُ

L33319–33321 Then all of them agreed that the Messenger of Allah—peace be upon him and his family and grant him peace—"gave her the choice and said to her: If he consummates the marriage with you, then you no longer have the choice." Abu Muhammad said: Abu al-Asbagh al-Harrani. The hadith is weak and rejected. Abu Muhammad said: It has been authentically established that the Messenger of Allah (peace and blessings be upon him and his family) granted her the option. Therefore, it is not permissible for his intercourse with her or his prolonged stay with her to nullify this option, since no valid textual evidence supports that. His ruling (peace and blessings be upon him) cannot

be invalidated by opinions, and there is no argument in anyone besides him (peace and blessings be upon him). And success is from Allah, the Most High.

- عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالْآرَاءِ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L33322 And some people said: The enslaved under a mukatabah contract is not given the choice when their emancipation is finalized.

وَقَالَ قَوْمٌ: لَا تُخَيَّرُ الْمُكَاتَبَةُ إذَا أُعْتِقَتْ.

L33323 It is authentically reported from Ibrāhīm al-Nakhaʿī: If her husband assists her in her written kitāba (manumission contract), she has no right to annul it.

صَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: إنْ أَعَانَهَا زَوْجُهَا فِي كِتَابَتِهَا فَلَا خِيَارَ لَهَا.

L33324 It has been authentically reported from Al-Hasan: There is no contractual option for the mukātabah agreement once emancipation is granted.

وَصَحَّ عَنْ الْحَسَنِ: لَا خِيَارَ لِلْمُكَاتَبَةِ إذَا أُعْتِقَتْ.

L33325 And this is the position of ʿAṭāʾ, Abū Qilābah, and al-Zuhrī.

وَهُوَ قَوْلُ عَطَاءٍ، وَأَبِي قِلَابَةَ، وَالزُّهْرِيِّ.

L33326 And it is authentically reported from Ibn Sīrīn and al-Shaʿbī.

وَصَحَّ عَنْ ابْنِ سِيرِينَ، وَالشَّعْبِيِّ.

L33327 It has been reported to us from Jābir ibn Zayd that she holds the option.

وَرُوِّينَاهُ عَنْ جَابِرِ بْنِ زَيْدٍ: أَنَّ لَهَا الْخِيَارَ.

L33328 And by this opinion state Abu Hanifah, Malik, Al-Shafi'i, Abu Sulayman, and their companions—and this is the position we affirm. Sufyan Al-Thawri said: If he marries her after the *kitabah* contract, she has no choice, but if he marries her before the *kitabah* contract, or she was with him, then she has the choice? Abu Muhammad said: The Messenger of Allah—peace and blessings be upon him and his family—gave the freed woman the right to choose, without specifying a *mukatabah* as distinct from others. Therefore, it is impermissible to differentiate between one freed woman and another.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ - وَبِهِ نَقُولُ - وَقَالَ سُفْيَانُ الثَّوْرِيُّ: إنْ تَزَوَّجَهَا بَعْدَ الْكِتَابَةِ فَلَا خِيَارَ لَهَا، وَإِنْ تَزَوَّجَهَا قَبْلَ الْكِتَابَةِ، أَوْ كَانَتْ مَعَهُ فَلَهَا الْخِيَارُ؟ قَالَ أَبُو مُحَمَّد: خَيَّرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الْمُعْتَقَةَ، وَلَمْ يَخُصَّ مُكَاتَبَةً مِنْ غَيْرِهَا، فَلَا يَجُوزُ أَنْ يَخُصَّ مُعْتَقَةً مِنْ مُعْتَقَةٍ.

L33329 Among the matters they differed upon is whether her choice to separate from her husband constitutes an annulment or a divorce. It was authentically reported from Qatādah that her choice constitutes a single irrevocable divorce—and we have narrated it from ʿUmar ibn ʿAbd al-ʿAzīz.

وَمِمَّا اخْتَلَفُوا فِيهِ: هَلْ اخْتِيَارُهَا فِرَاقَ زَوْجِهَا فَسْخٌ أَوْ طَلَاقٌ؟ فَصَحَّ عَنْ قَتَادَةَ أَنَّهَا وَاحِدَةٌ بَائِنَةٌ - وَرُوِّينَاهُ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

L33330 And this is the opinion of Abū Ḥanīfah, Mālik, and their companions. It is reported from ʿAṭāʾ that it constitutes a single divorce. It has been authentically established from Ḥammād ibn Abī Sulaymān and Ibrāhīm al-Nakhaʿī that this is an annulment (faskh), not a divorce.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَأَصْحَابِهِمَا، وَعَنْ عَطَاءٍ أَنَّهَا طَلْقَةٌ وَاحِدَةٌ - وَصَحَّ أَنَّهُ فَسْخٌ لَا طَلَاقٌ - عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَإِبْرَاهِيمَ النَّخَعِيِّ.

وَرُوِّينَاهُ عَنْ طَاوُسٍ، وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ؟ قَالَ أَبُو مُحَمَّدٍ: التَّسْمِيَةُ فِي الشَّرِيعَةِ لَيْسَتْ إلَّا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَمْ يُسَمِّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَطُّ فِرَاقَ الْمُعْتَقَةِ لِزَوْجِهَا طَلَاقًا، وَلَا جَعَلَ لَهُ مِنْ أَحْكَامِ الطَّلَاقِ غَيْرَ الْعِدَّةِ وَحْدَهَا، فَلَا يَحِلُّ تَسْمِيَتُهُ طَلَاقًا - قَالَ تَعَالَى: {إِنْ هِيَ إِلا أَسْمَاءٌ سَمَّيْتُمُوهَا أَنْتُمْ وَآبَاؤُكُمْ مَا أَنْزَلَ اللَّهُ بِهَا مِنْ سُلْطَانٍ إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَمَا تَهْوَى الأَنْفُسُ وَلَقَدْ جَاءَهُمْ مِنْ رَبِّهِمُ الْهُدَى} [النجم: ٢٣]

L33331–33333 It has been narrated to us from Tāwus, and this is the opinion of al-Shāfiʿī, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhawayh, Abū Sulaymān, and their companions. Abū Muḥammad said: "In the Sharīʿah, the act of naming applies only to the Messenger of Allāh—may Allāh bless him and his family and grant him peace. The Messenger of Allāh—may Allāh bless him and his family and grant him peace—never called the separation of an emancipated woman from her husband a divorce, nor did he assign to it any of the rulings of divorce except the waiting period alone. Therefore, it is impermissible to call it a divorce." Allāh the Exalted said: They are nothing but names which you and your forefathers have named, for which Allah has sent down no authority. They follow nothing but conjecture and the desires of their souls, and certainly there has come to them from their Lord the guidance.[15]

فَصَحَّ أَنَّهُ لَيْسَ طَلَاقًا، لَكِنَّهُ فِرَاقٌ، أَوْ فَسْخٌ، أَوْ نَقْضُ نِكَاحٍ - وَكُلُّ اسْمٍ يُعَبَّرُ بِهِ عَنْ بُطْلَانِ عِصْمَةِ النِّكَاحِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33334 Thus, it is established that it is not a divorce, but rather a separation, annulment, or dissolution of marriage—any term that signifies the exclusive invalidation of the marriage bond. And success is from Allah, the Most High.

وَمِمَّا اخْتَلَفُوا فِيهِ - إنْ تَخَيَّرَتْ قَبْلَ الدُّخُولِ فِرَاقَهُ: مَاذَا لَهَا مِنْ الصَّدَاقِ؟ فَقَالَ قَوْمٌ: لَا صَدَاقَ لَهَا - صَحَّ ذَلِكَ عَنْ الزُّهْرِيِّ -.

L33335 Among the matters they disagreed upon is: if she chooses to dissolve the marriage before consummation, what is her entitlement to the dowry? A group of jurists said: She is entitled to no dowry; this is authentically reported from al-Zuhri.

وَصَحَّ عَنْ قَتَادَةَ: لَهَا نِصْفُ الصَّدَاقِ - وَقَالَ أَصْحَابُنَا: لَهَا الصَّدَاقُ كُلُّهُ؟ قَالَ أَبُو مُحَمَّدٍ: إذْ قَدْ بَيَّنَّا أَنَّهُ لَيْسَ طَلَاقًا، فَقَدْ بَطَلَ قَوْلُ مَنْ قَالَ: لَهَا نِصْفُ الصَّدَاقِ، لِأَنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يَجْعَلْ لَهَا نِصْفَ الصَّدَاقِ إلَّا فِي الطَّلَاقِ قَبْلَ الْمَسِّ فَقَطْ.

L33336 It is authentically reported from Qatādah: she is entitled to half the dower. And our scholars said: *Is she entitled to the entire dower?* Abū Muḥammad said: Since we have clarified that it is not a divorce, then the opinion of those who claimed she is entitled to half the dower is nullified, for Allah the Almighty has not granted her half the dower except solely in divorce before consummation.

وَوَجَدْنَاهُ عَزَّ وَجَلَّ قَالَ: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤]

L33337 We have found Him, the Mighty and Sublime, as saying: {And give the women their dowries as a free gift} [An-Nisa: 4].[16]

فَصَحَّ أَنَّ الصَّدَاقَ لَهَا فَلَا يُسْقِطُهُ شَيْءٌ، وَلَا شَيْئًا مِنْهُ إلَّا حَيْثُ أَسْقَطَ اللَّهُ عَزَّ وَجَلَّ، النِّصْفَ فِي الطَّلَاقِ قَبْلَ الْمَسِّ، وَمَا عَدَا ذَلِكَ فَظُلْمٌ لَا شَكَّ فِيهِ.

L33338 Thus, it is established that the dowry (mahr) rightfully belongs to her, and nothing invalidates it entirely or partially except where Allah, the Mighty and

[15] **Qur'an references (L33331):** Qur'an 53:23 (An-Najm).
[16] **Qur'an references (L33337):** Qur'an 4:4 (An-Nisa).

Majestic, has nullified it—the half in cases of divorce before consummation. Whatever exceeds this is undoubtedly an injustice.

L33339 If it is said: Indeed, the Messenger of Allah—may Allah bless him and his family and grant him peace—said, "He owes her for what he has lawfully accessed of her private part."

L33340 We said: Yes, and her marriage contract establishes the lawfulness of sexual access to her. The Prophet—peace and blessings be upon him—did not state that her entitlement to the *mahr* is dependent on your consummation with her. Therefore, she is entitled to the full *mahr*.

L33341 Similarly, in every marriage dissolved before consummation—whether through liʿān (mutual imprecation), her becoming his forbidden relative through breastfeeding, his father, grandfather, or son having intercourse with her due to ignorance or adultery, her embracing Islam while he remains a disbeliever, his embracing Islam while she is not from the People of the Book, her apostasy, his apostasy, both apostatizing, her death, or his death (with disagreement existing regarding her embracing Islam without him doing so)—a group of jurists invalidated her bridal gift on these grounds. This constitutes an assistance to Satan and a barrier to Islam, for is her bridal gift not equivalent to a debt owed to her among all other debts due to her from him, with no difference whatsoever?

L33342 Abu Muhammad said: Nor is she entitled to a consolatory gift (*mut'ah*) in any of that, for Allah, the Exalted, has not established *mut'ah* except in divorce alone. {And whoever transgresses the bounds set by Allah has truly wronged himself} [Divorce: 1].[17]

L33343–33344 An issue where a female slave was under his ownership, and he owned her or a part of her.

L33345 Issue: If a man has a slave woman as his wife and subsequently acquires full or partial ownership of her—whether the owned portion is small or large, by any means such as inheritance, purchase, gift, lease, or other methods—his marriage to her is annulled immediately upon ownership without delay. This

فَإِنْ قِيلَ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وآلِهِ وَسَلَّمَ - قَالَ: «هُوَ لَهَا بِمَا اسْتَحْلَلْتَ مِنْ فَرْجِهَا» .

قُلْنَا: نَعَمْ، وَعَقْدُ نِكَاحِهَا اسْتِحْلَالٌ لِفَرْجِهَا، وَلَمْ يَقُلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّهُ لَهَا بِوَطْئِك لَهَا، فَوَجَبَ أَنَّ لَهَا جَمِيعَ الصَّدَاقِ.

وَكَذَلِكَ فِي كُلِّ مُنْفَسِخَةِ النِّكَاحِ قَبْلَ الدُّخُولِ بِلِعَانٍ، أَوْ بِأَنْ تَصِيرَ حَرِيمَتَهُ بِرَضَاعٍ، أَوْ بِأَنْ يَطَأَهَا أَبُوهُ، أَوْ جَدُّهُ، أَوْ ابْنُهُ بِجَهَالَةٍ، أَوْ بِزِنًى، أَوْ بِأَنْ تُسْلِمَ هِيَ - وَهُوَ كَافِرٌ - أَوْ بِأَنْ يُسْلِمَ هُوَ - وَهِيَ غَيْرُ كِتَابِيَّةٍ - أَوْ بِأَنْ تَرْتَدَّ هِيَ، أَوْ هُوَ، أَوْ كِلَاهُمَا، أَوْ بِأَنْ تَمُوتَ هِيَ، أَوْ هُوَ - وَقَدْ اُخْتُلِفَ فِي إسْلَامِهَا دُونَهُ -: فَأَبْطَلَ قَوْمٌ صَدَاقَهَا بِذَلِكَ - وَهَذَا عَوْنٌ لِلشَّيْطَانِ، وَصَدٌّ عَنْ الْإِسْلَامِ - وَهَلْ صَدَاقُهَا إلَّا كَدَيْنٍ لَهَا قِبَلَهُ مِنْ سَائِرِ دُيُونِهَا وَلَا فَرْقَ.

قَالَ أَبُو مُحَمَّدٍ: وَلَا مُتْعَةَ لَهَا فِي شَيْءٍ مِنْ ذَلِكَ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ الْمُتْعَةَ إلَّا فِي الطَّلَاقِ فَقَطْ {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١]

[مَسْأَلَةٌ كَانَتْ تَحْتَهُ أَمَةٌ فَمَلَكَهَا أَوْ بَعْضَهَا]

مَسْأَلَةٌ: مَنْ كَانَتْ تَحْتَهُ أَمَةٌ فَمَلَكَهَا، أَوْ بَعْضَهَا - قَلَّ الْجُزْءُ الَّذِي مَلَكَ مِنْهَا أَوْ كَثُرَ - بِأَيِّ وَجْهٍ مَلَكَ ذَلِكَ، مِنْ مِيرَاثٍ، أَوْ ابْتِيَاعٍ، أَوْ هِبَةٍ، أَوْ إجَارَةٍ، أَوْ غَيْرِ ذَلِكَ، فَقَدْ

[17] **Qur'an references (L33342):** Qur'an 65:1 (At-Talaq).

ruling applies equally whether he relinquishes ownership afterward through manumission or other means, or retains her.

انْفَسَخَ نِكَاحُهُ مِنْهَا إِثْرَ الْمِلْكِ بِلَا فَصْلٍ، وَسَوَاءٌ أَخْرَجَهَا عَنْ مِلْكِهِ إِثْرَ ذَلِكَ بِعِتْقٍ، أَوْ غَيْرِ ذَلِكَ، أَوْ لَمْ يُخْرِجْهَا.

L33346 Similarly, if a woman is married to a slave and then comes to own him, or a portion of him, through any means of ownership, her marriage to him is automatically dissolved immediately. It makes no difference whether she subsequently removes him from her ownership through emancipation or other means or does not remove him.

وَكَذَلِكَ مَنْ كَانَتْ مُتَزَوِّجَةً بِعَبْدٍ فَمَلَكَتْهُ، أَوْ بَعْضَهُ، بِأَيِّ وَجْهٍ مَلَكَتْ ذَلِكَ مِنْ وُجُوهِ الْمِلْكِ: فَقَدْ انْفَسَخَ نِكَاحُهَا مِنْهُ بِلَا فَصْلٍ، وَسَوَاءٌ أَخْرَجَتْهُ عَنْ مِلْكِهَا إِثْرَ ذَلِكَ بِعِتْقٍ أَوْ غَيْرِ ذَلِكَ، أَوْ لَمْ تُخْرِجْهُ.

L33347 If the son of her husband, the father of her husband, the mother of her husband, or the slave of her husband were to own the female slave; or if the father of his wife, the wife's son, the wife's mother, the wife's slave, or the wife's father were to own the male slave, the marriage would not be annulled by any of that.

فَلَوْ مَلَكَ الْأَمَةَ ابْنُ زَوْجِهَا، أَوْ أَبُو زَوْجِهَا، أَوْ أُمُّ زَوْجِهَا، أَوْ عَبْدُ زَوْجِهَا، أَوْ مَلَكَ الْعَبْدَ أَبُو امْرَأَتِهِ، أَوْ ابْنُهَا، أَوْ أُمُّهَا، أَوْ عَبْدُهَا، أَوْ أَبُوهَا لَمْ يَنْفَسِخِ النِّكَاحُ بِشَيْءٍ مِنْ ذَلِكَ.

L33348 Similarly, if a man were to initiate the marriage contract with his father's female slave who has never been lawful for his father ever, or his son's female slave who has never been lawful for his son ever, or his mother's female slave, or his daughter's female slave, or his female slave's female slave, or his male slave's female slave; or if a woman were to initiate the marriage contract with her father's male slave, or her son's male slave, or her mother's male slave, or her daughter's male slave, or her male slave's male slave, or her female slave's male slave: all of that would be lawful and valid.

وَكَذَلِكَ لَوْ ابْتَدَأَ الرَّجُلُ نِكَاحَ أَمَةِ أَبِيهِ الَّتِي لَمْ تَحِلَّ لِأَبِيهِ قَطُّ، أَوْ أَمَةِ ابْنِهِ الَّتِي لَمْ تَحِلَّ لِابْنِهِ قَطُّ، أَوْ أَمَةِ أُمِّهِ، أَوْ أَمَةِ ابْنَتِهِ، أَوْ أَمَةِ أَمَتِهِ، أَوْ أَمَةِ عَبْدِهِ، أَوْ ابْتَدَأَتْ امْرَأَةٌ نِكَاحَ عَبْدِ أَبِيهَا، أَوْ عَبْدِ ابْنِهَا، أَوْ عَبْدِ أُمِّهَا، أَوْ عَبْدِ ابْنَتِهَا، أَوْ عَبْدِ عَبْدِهَا، أَوْ عَبْدِ أَمَتِهَا -: لَكَانَ كُلُّ ذَلِكَ حَلَالًا جَائِزًا.

L33349 The proof of that is the words of Allah, the Exalted and Majestic: "[5] And those who guard their private parts [6] except with their spouses or what their right hands possess—then indeed they incur no blame. [7] But whoever seeks beyond that, those are the transgressors" [Al-Mu'minoon 23:5–7].[18]

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إِلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] {فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧]

L33350 Allah the Exalted permitted only a wife or those whom your right hands possess, and He made a distinction between them.

فَلَمْ يُبِحِ اللَّهُ تَعَالَى إِلَّا زَوْجَةً، أَوْ مِلْكَ يَمِينٍ وَفَرَّقَ بَيْنَهُمَا.

[18] **Qur'an references (L33349):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun); Qur'an 70:31 (Al-Ma'arij).

وَكُلُّ اسْمَيْنِ فَرَّقَ اللَّهُ عَزَّ وَجَلَّ بَيْنَهُمَا، فَلَا يَجُوزُ أَنْ يُقَالَ: هُمَا شَيْءٌ وَاحِدٌ إِلَّا بِنَصٍّ يُوجِبُ ذَلِكَ، أَوْ ضَرُورَةٍ تُوجِبُهُ، وَلَا نَصَّ هُنَا وَلَا ضَرُورَةَ تُوجِبُ وُقُوعَ اسْمِ الزَّوْجَةِ، وَاسْمِ مِلْكِ الْيَمِينِ عَلَى امْرَأَةٍ وَاحِدَةٍ لِرَجُلٍ وَاحِدٍ.

L33351 Whenever Allah, the Mighty and Majestic, distinguishes between two terms, it is impermissible to regard them as a single entity unless mandated by a scriptural text or compelled by necessity. In this matter, there exists neither a scriptural text nor a compelling necessity that would permit the simultaneous application of the terms “wife” and “female slave owned by the right hand” to the same woman in relation to one man.

وَبِهَذَا الِاسْتِدْلَالِ حَرُمَ عَلَى الرَّجُلِ أَنْ يَتَزَوَّجَ أَمَتَهُ دُونَ أَنْ يُعْتِقَهَا، أَوْ يُخْرِجَهَا عَنْ مِلْكِهِ - وَحَرُمَ عَلَى الْمَرْأَةِ أَنْ تَتَزَوَّجَ عَبْدَهَا دُونَ أَنْ تُعْتِقَهُ، أَوْ تُخْرِجَهُ عَنْ مِلْكِهَا - وَكَذَلِكَ مُحَالٌ أَنْ يَكُونَ بَعْضُهَا زَوْجَةً لَهُ، وَبَعْضُهَا مِلْكَ يَمِينٍ لَهُ، لِمَا ذَكَرْنَا مِنْ الْآيَةِ.

L33352–33354 Based on this reasoning, it is forbidden for a man to marry his bondwoman without emancipating her or releasing her from bondage. His ownership—and it is forbidden for a woman to marry her male slave without emancipating him or removing him from her ownership. Likewise, it is impossible for part of her status to be as his wife and part as his possession (milk yamīn), due to the verse we mentioned.

فَإِذْ قَدْ صَحَّ مَا ذَكَرْنَا فَقَدْ وَجَبَ أَنَّ الْمِلْكَ يُنَافِي الزَّوْجِيَّةَ، فَلَا يَجُوزُ أَنْ يَجْتَمِعَا، فَوَجَبَ مِنْ هَذَا أَنَّهُ إِذَا مَلَكَهَا، أَوْ بَعْضَهَا، فَهِيَ مِلْكُ يَمِينٍ لَهُ، أَوْ بَعْضُهَا، فَلَا يَكُونُ زَوْجًا لَهَا، وَلَا يَكُونُ بَعْضُهَا زَوْجَةً لَهُ - فَصَحَّ انْفِسَاخُ النِّكَاحِ بِلَا شَكٍّ.

L33355 Since what we have mentioned is established, it necessarily follows that ownership is incompatible with marital relations, and their coexistence is invalid. Therefore, if he acquires full or partial ownership of her, she becomes his lawful property, whether wholly or partially. Consequently, he cannot remain her husband, nor can any part of her remain his wife. Thus, the dissolution of the marriage is confirmed without doubt.

وَكَذَلِكَ قَوْلُهُ تَعَالَى: {وَقُلْ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ وَلا يُبْدِينَ زِينَتَهُنَّ إِلا مَا ظَهَرَ مِنْهَا} [النور: ٣١] إِلَى قَوْلِهِ: {أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ} [النور: ٣١] فَفَرَّقَ عَزَّ وَجَلَّ بَيْنَ الزَّوْجِ وَبَيْنَ مِلْكِ يَمِينِ الْمَرْأَةِ، فَوَجَبَ أَنْ لَا يَكُونَ مِلْكُ يَمِينِهَا زَوْجَهَا أَصْلًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L33356 Similarly, the statement of the Almighty, the Exalted: _“And tell the believing women to lower their gaze, guard their private parts, and not display their adornments except what is apparent thereof”_ until His words: _“or those whom their right hands possess (i.e., slaves)”_ [An-Nur: 31]. Thus, the Almighty, the Exalted, has distinguished between the husband and those whom a woman’s right hand possesses. It is obligatory that those whom her right hand possesses cannot be her husband at all. And success is from Allah, the Exalted.[19]

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُبَيْدٍ الْكَلَاعِيِّ عَنْ مَكْحُولٍ فِي امْرَأَةٍ وَرِثَتْ زَوْجَهَا - وَهُوَ عَبْدٌ - عَنْ بَعْضِ وَلَدِهَا؟ قَالَ: لَا تَحِلُّ لَهُ - وَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: يُؤْمَرُ بِطَلَاقِهَا -.

L33357 It has been narrated to us through the chain of Sa’īd ibn Manṣūr: Ismā’īl ibn ’Ayyāsh reported from ’Ubayd Allāh ibn ’Ubayd al-Kalā’ī, from Makhūl regarding [the case of] a woman who inherited her husband—who was a slave—from some of her children? He said: “She is not lawful for him.” And ’Alī ibn Abī Ṭālib said: “He must be commanded to divorce her.”

[19] **Qur’an references (L33356):** Qur’an 24:31 (An-Nur).

وَقَدْ صَحَّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ وَإِبْرَاهِيمَ النَّخَعِيِّ: إنْ أَعْتَقَتْهُ بَعْدَ أَنْ مَلَكَتْهُ فَهُمَا عَلَى نِكَاحِهِمَا.

L33358 It has been authentically reported from Ubayd Allah ibn Abd Allah ibn Utbah and Ibrahim al-Nakha'i that if she emancipates him after acquiring ownership of him, their marriage continues.

قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ لِأَنَّهُ لَوْ كَانَ ذَلِكَ لَكَانَ النِّكَاحُ صَحِيحًا - وَلَوْ طَرْفَةَ عَيْنٍ - وَلَوْ صَحَّ طَرْفَةَ عَيْنٍ لَصَحَّ بَعْدَ ذَلِكَ - وَأَمَةُ الِابْنِ لَيْسَتْ أَمَةً لِأَبِيهِ، وَلَا لِابْنِهِ، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦]

L33359 Abu Muhammad said: This is incorrect because if that were the case, the marriage would be valid even if for the blink of an eye, and if it were valid for the blink of an eye, it would be valid afterward. The son's female slave is not a slave owned by his father or his son, for Allah the Most High said: "And those who guard their private parts except from their spouses or those their right hands possess, for indeed they are not to be blamed" [23:5-6].[20]

فَلَوْ كَانَتْ أَمَةُ الْوَلَدِ لِأَبِيهِ لَكَانَتْ حَرَامًا عَلَى الْوَلَدِ وَهَكَذَا نَقُولُ فِي أَمَةِ الْعَبْدِ وَعَبْدِ الْأَمَةِ لَا يَكُونُ شَيْءٌ مِنْ ذَلِكَ مِلْكًا لِلسَّيِّدِ إلَّا أَنْ يُنْتَزَعَ ذَلِكَ مِنْ مِلْكِ الْعَبْدِ فَيَصِيرُ مِلْكًا لَهُ حِينَئِذٍ.

L33360 If the child's slave woman belonged to his father, she would be forbidden to the child. Similarly, we rule concerning the male-slave's slave-woman and the female-slave's male-slave: none of these become the master's property unless seized from the slave's ownership, at which point they become his property.

فَإِنْ احْتَجَّ مُحْتَجٌّ بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنْتَ وَمَالُكَ لِأَبِيكَ» .

L33361 If someone argues by the authentic narration from the Messenger of Allah (peace and blessings of Allah be upon him and his household): "You and your wealth are for your father."

قُلْنَا: هَذَا مَنْسُوخٌ بِالْمَوَارِيثِ وَبِالْآيَةِ الَّتِي ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33362 We said: This is abrogated by the laws of inheritance and the verse we mentioned—and success is from Allah, the Exalted, alone.

كَمُلَ كِتَابُ النِّكَاحِ، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ

L33363–33364 This concludes the Book of Marriage Contract, and all praise is due to Allah, Lord of all the worlds.

[فَسْخُ النِّكَاحِ]

L33365 **Annulment of Marriage**

[مَسْأَلَةٌ لَا عِدَّةَ فِي شَيْءٍ مِنْ وُجُوهِ فَسْخِ النِّكَاحِ إلَّا فِي الْوَفَاةِ]

L33366 **Issue: There is no waiting period required in any form of marriage annulment except in the case of death.**

فَسْخُ النِّكَاحِ ١٩٤٤ - مَسْأَلَةٌ: وَلَا عِدَّةَ فِي شَيْءٍ مِنْ وُجُوهِ الْفَسْخِ الَّذِي ذَكَرْنَا إلَّا فِي الْوَفَاةِ وَفِي الْمُعْتَقَةِ الَّتِي تَخْتَارُ فِرَاقَ زَوْجِهَا، لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ

L33367 Annulment of Marriage 1944 - Issue: There is no waiting period required in any of the aspects of annulment we have mentioned except in the event of

[20] **Qur'an references (L33359):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij).

death and in the case of the freed slave woman who chooses to separate from her husband, due to the command of the Messenger of Allah—may Allah bless him and grant him peace—to observe the waiting period in these two cases. He did not command others besides these two to observe a waiting period, nor is it permissible to impose this [ruling] upon her, because it constitutes legislation for which Allah the Exalted has not granted permission.

وَسَلَّمَ - لَهُمَا بِالْعِدَّةِ، وَلَمْ يَأْمُرْ غَيْرَهُمَا بِعِدَّةٍ وَلَا يَجُوزُ أَمْرُهَا بِذَلِكَ؛ لِأَنَّهُ شَرْعٌ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى.

L33368 It is not permissible to analogize annulment to divorce, for they are fundamentally different: divorce occurs only through the husband's utterance and his volition, while annulment takes effect without the husband's utterance (whether he consents or objects). How then can analogy apply, when analogy itself is entirely invalid?

وَلَا يَجُوزُ قِيَاسُ الْفَسْخِ عَلَى الطَّلَاقِ، لِأَنَّهُمَا مُخْتَلِفَانِ، لِأَنَّ الطَّلَاقَ لَا يَكُونُ إِلَّا بِلَفْظِ الْمُطَلِّقِ وَاخْتِيَارِهِ، وَالْفَسْخُ يَقَعُ بِغَيْرِ لَفْظِ الزَّوْجِ - أَحَبَّ أَمْ كَرِهَ - فَكَيْفَ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

L33369 It was narrated to us via Al-Bukhārī's chain: Ibrāhīm ibn Mūsā narrated to us from Hishām ibn Yūsuf, from Ibn Jurayj, who said: "'Aṭāʾ narrated from Ibn ʿAbbās: 'When a woman emigrated from the abode of war, she would not be proposed to until she menstruates and becomes pure. Once she becomes pure, marriage becomes permissible for her.'"

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا إِبْرَاهِيمُ بْنُ مُوسَى نا هِشَامُ بْنُ يُوسُفَ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ عَطَاءٌ عَنْ ابْنِ عَبَّاسٍ: كَانُوا إِذَا هَاجَرَتْ امْرَأَةٌ مِنْ دَارِ الْحَرْبِ لَمْ تُخْطَبْ حَتَّى تَحِيضَ وَتَطْهُرَ، فَإِذَا طَهُرَتْ حَلَّ لَهَا النِّكَاحُ.

L33370 Ibn Abbas relates: This was the practice of the Companions in its entirety, and it is impermissible to oppose it. The text states this, as Allah the Exalted says: _"O you who believe! When believing women come to you as emigrants, test them. Allah knows best about their faith. If you know them to be believers, do not return them to the disbelievers - they are not lawful for them, nor are they lawful for them"_ [Al-Mumtahanah: 10] up to His statement: _"There is no blame upon you if you marry them when you give them their dowers"_ [Al-Mumtahanah: 10]. Thus the Almighty and Majestic did not obligate upon them any waiting period following the annulment of their marriages with their disbelieving husbands due to their acceptance of Islam. And success is from Allah, the Exalted.[21]

فَهَذَا ابْنُ عَبَّاسٍ يَحْكِي: أَنَّ هَذَا فِعْلُ الصَّحَابَةِ جُمْلَةً فَلَا يَجُوزُ خِلَافُهُ، وَبِذَلِكَ جَاءَ النَّصُّ، قَالَ اللَّهُ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ اللَّهُ أَعْلَمُ بِإِيمَانِهِنَّ فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لَا هُنَّ حِلٌّ لَهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ} [الممتحنة: ١٠] إِلَى قَوْلِهِ {وَلَا جُنَاحَ عَلَيْكُمْ أَنْ تَنْكِحُوهُنَّ إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ} [الممتحنة: ١٠] ، فَلَمْ يُوجِبْ عَزَّ وَجَلَّ عَلَيْهِنَّ عِدَّةً فِي انْفِسَاخِ نِكَاحِهِنَّ مِنْ أَزْوَاجِهِنَّ الْكُفَّارِ بِإِسْلَامِهِنَّ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[21] **Qur'an references (L33370):** Qur'an 60:10 (Al-Mumtahanah).



AL-MUHALLA

كِتَابُ الطَّلَاقِ

The Book of Divorce

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الطَّلَاقِ] [مَسْأَلَةٌ أَرَادَ طَلَاقَ امْرَأَةٍ لَهُ قَدْ وَطِئَهَا لَمْ يَحِلَّ لَهُ أَنْ يُطَلِّقَهَا فِي حَيْضَتِهَا]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الطَّلَاقِ ١٩٤٥ - مَسْأَلَةٌ: مِنْ الطَّلَاقِ - مَنْ أَرَادَ طَلَاقَ امْرَأَةٍ لَهُ قَدْ وَطِئَهَا: لَمْ يَحِلَّ لَهُ أَنْ يُطَلِّقَهَا فِي حَيْضَتِهَا، وَلَا فِي طُهْرٍ وَطِئَهَا فِيهِ.

فَإِنْ طَلَّقَهَا طَلْقَةً أَوْ طَلْقَتَيْنِ فِي طُهْرٍ وَطِئَهَا فِيهِ، أَوْ فِي حَيْضَتِهَا: لَمْ يَنْفُذْ ذَلِكَ الطَّلَاقُ وَهِيَ امْرَأَتُهُ كَمَا كَانَتْ، إلَّا أَنْ يُطَلِّقَهَا كَذَلِكَ ثَالِثَةً أَوْ ثَلَاثَةً مَجْمُوعَةً فَيَلْزَمُ.

فَإِنْ طَلَّقَهَا فِي طُهْرٍ لَمْ يَطَأْهَا فِيهِ فَهُوَ طَلَاقُ سُنَّةٍ لَازِمٌ - كَيْفَمَا أَوْقَعَهُ - إنْ شَاءَ طَلْقَةً وَاحِدَةً، وَإِنْ شَاءَ طَلْقَتَيْنِ مَجْمُوعَتَيْنِ، وَإِنْ شَاءَ ثَلَاثًا مَجْمُوعَةً.

فَإِنْ كَانَتْ حَامِلًا مِنْهُ أَوْ مِنْ غَيْرِهِ: فَلَهُ أَنْ يُطَلِّقَهَا حَامِلًا وَهُوَ لَازِمٌ، وَلَوْ إثْرَ وَطْئِهِ إيَّاهَا فَإِنْ كَانَ لَمْ يَطَأْهَا قَطُّ فَلَهُ أَنْ يُطَلِّقَهَا فِي حَالِ طُهْرِهَا وَفِي حَالِ حَيْضَتِهَا - إنْ شَاءَ - وَاحِدَةً، وَإِنْ شَاءَ اثْنَتَيْنِ وَإِنْ شَاءَ ثَلَاثًا.

فَإِنْ كَانَتْ لَمْ تَحِضْ قَطُّ، أَوْ قَدْ انْقَطَعَ حَيْضُهَا طَلَّقَهَا أَيْضًا كَمَا قُلْنَا فِي الْحَامِلِ مَتَى شَاءَ.

وَفِيمَا ذَكَرْنَا اخْتِلَافٌ فِي ثَلَاثَةِ مَوَاضِعَ -:

أَحَدُهَا - هَلْ يَنْفُذُ الطَّلَاقُ الَّذِي هُوَ بِدْعَةٌ مُخَالِفٌ لِأَمْرِ اللَّهِ عَزَّ وَجَلَّ أَمْ لَا يَنْفُذُ؟

[The Book of Divorce] [A ruling: If a man wishes to divorce a wife he has had intercourse with, it is impermissible for him to divorce her during her menstrual period.]

In the name of Allah, the Most Gracious, the Most Merciful. The Book of Divorce 1945 – A Legal Issue Regarding Divorce: For one who intends to divorce his wife with whom he has had intercourse, it is impermissible for him to divorce her during her menstruation or during a state of ritual purity in which he had intercourse with her.

If he divorces her once or twice during a state of purity (after intercourse without observing the waiting period) or during her menstruation, the divorce is invalid, and she retains her status as his wife. However, if he issues a third divorce in the same invalid manner or pronounces a triple divorce collectively, it becomes irrevocable.

If he divorces her during a period of purity in which he has not had intercourse with her, it is a binding divorce in accordance with the Sunnah, regardless of how he effects it. He may declare one divorce, two in a single instance, or three collectively.

If she is pregnant by him or by another, he may divorce her while she is pregnant, and it is binding, even immediately after having intercourse with her. If he has never had intercourse with her, he may divorce her during her state of purity and during her menstruation - if he wishes once, and if he wishes twice, and if he wishes three times.

If she has never menstruated at all, or if her menstruation has ceased, he may divorce her, as we said regarding the pregnant woman: he may do so whenever he wishes.

And in what we have mentioned, there is disagreement concerning three places:

One of the issues: Is a divorce that is an innovation, contrary to the command of Allah, the Exalted and Majestic, executed, or is it not?

The second: Is the triple divorce an innovation or not?

وَالثَّانِي - هَلْ طَلَاقُ الثَّلَاثِ بِدْعَةٌ أَمْ لَا؟

وَالثَّالِثُ - صِفَةُ طَلَاقِ السُّنَّةِ.

L33384 The third – the method of divorce in accordance with the *Sunnah*.

بُرْهَانُ مَا قُلْنَا: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّونَهَا} [الأحزاب: ٤٩]

L33385–33386 The proof of what we have said is the statement of Allah, the Exalted: "O you who have believed, when you marry believing women and then divorce them before consummating the marriage, there is no waiting period incumbent upon them for you to enforce." [Al-Ahzab: 49][1]

فَأَبَاحَ عَزَّ وَجَلَّ طَلَاقَ الَّتِي لَمْ تُمَسَّ بِالْوَطْءِ، وَلَمْ يَحُدَّ فِي طَلَاقِهَا وَقْتًا، وَلَا عَدَدًا: فَوَجَبَ مِنْ ذَلِكَ أَنَّ هَذَا حُكْمُهَا - وَإِنْ دَخَلَ بِهَا، وَطَالَ مُكْثُهَا مَعَهُ، وَلَا أَشْفَرَهَا فَحَمَلَتْ مِنْ ذَلِكَ، لِأَنَّهُ لَمْ يَمَسَّهَا.

L33387 The Almighty permitted divorce for a woman with whom intercourse has not occurred, prescribing neither a waiting period nor restricting the number [of divorces] for her case. Thus, it is established that this ruling applies to her even if he was secluded with her, their time together has been prolonged, nor did he make her conceive such that she became pregnant from it—because he did not engage in intercourse with her.

وَلَا تَكُونُ بِذَلِكَ مُحْصَنَةً، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَسْتَثْنِ شَيْئًا مِنْ ذَلِكَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L33388 And she does not thereby become a muḥṣanah (a lawfully protected woman), because Allah, the Exalted, excluded nothing from that: "Your Lord is not forgetful" [Maryam: 64].[2]

وَالْمُفَرِّقُ بَيْنَ هَذِهِ الْأَحْكَامِ مُتَنَاقِضٌ شَارِعٌ مِنْ الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ عَزَّ وَجَلَّ.

L33389 The one who differentiates between these rulings is a self-contradicting legislator in matters of religion regarding what Allah, the Mighty and Majestic, has not permitted.

فَإِنْ قِيلَ: فَمِنْ أَيْنَ حَكَمْتُمْ بِذَلِكَ فِي الْكِتَابِيَّاتِ إذَا طَلَّقَهُنَّ الْمُؤْمِنُونَ وَأَنْتُمْ تُبْطِلُونَ الْقِيَاسَ؟ قُلْنَا: لِقَوْلِ اللَّهِ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩]

L33390 If it is said: "From where have you ruled this regarding the Women of the Book when believers divorce them, while you nullify qiyas?" We said: Due to the statement of Allah the Exalted: "And judge between them by what Allah has revealed" [Al-Mā'idah: 49].[3]

وَبِقَوْلِهِ تَعَالَى: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] وَأَخَصُّ مِنْ هَذَا كُلِّهِ بِجَوَابِ هَذَا السُّؤَالِ قَوْله تَعَالَى: {لا جُنَاحَ عَلَيْكُمْ إِنْ طَلَّقْتُمُ النِّسَاءَ مَا لَمْ تَمَسُّوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً} [البقرة: ٢٣٦] الْآيَةَ، فَعَمَّ عَزَّ وَجَلَّ جَمِيعَ النِّسَاءِ، وَلَمْ يَخُصَّ مُؤْمِنَةً مِنْ كَافِرَةٍ - فَهَذَا قَوْلُهُ عَزَّ وَجَلَّ فِي غَيْرِ الْمَوْطُوءَةِ.

L33391 And by His statement, Exalted: {And fight them until there is no discord and the entire religion is for Allah} [Al-Anfal: 39]. More specific to answering this question is His statement, Almighty and Majestic: {There is no blame upon you if you divorce women you have neither touched nor stipulated a dowry for} [Al-Baqarah: 236] - this verse. Thus He Almighty and Majes-

[1] **Qur'an references (L33386):** Qur'an 33:49 (Al-Ahzab).
[2] **Qur'an references (L33388):** Qur'an 19:64 (Maryam).
[3] **Qur'an references (L33390):** Qur'an 5:49 (Al-Ma'idah).

tic generalized all women, without singling out believers or disbelievers - this is His declaration regarding women with whom marriage has not been consummated.[4]

L33392–33393 As for the woman with whom the marriage has been consummated, the words of Allah Almighty apply: "O Prophet, when you divorce women, divorce them during their waiting periods and calculate the waiting period precisely. Be mindful of Allah, your Lord. Do not evict them from their [marital] homes, nor should they leave unless they commit clear immorality. These are the boundaries set by Allah. Whoever transgresses Allah's boundaries has truly wronged himself. You do not know; perhaps Allah will bring about something after that." [At-Talaq 65:1][5]

L33394 The waiting period is not part of divorce except in the case of consummated marriage. Thus, Allah—the Mighty and Majestic—has taught us how the divorce of a consummated wife is conducted, and He has informed us that those are the boundaries set by Allah. Whoever transgresses them wrongs his own soul.

L33395 It has been established that whoever acts unjustly and transgresses the limits set by Allah (the Mighty and Majestic), his action is invalid and rejected, in accordance with the statement of the Prophet (peace and blessings be upon him and his family): "Whoever performs an action not in accordance with our command, that action is rejected."[6]

L33396 It has been established that the aforementioned divorce is only valid for the waiting period, as Allah, the Exalted and Majestic, commanded.

L33397 We explored the elucidation of Allah's intent, the Exalted and Majestic, in His statement: "Divorce them for their waiting period" [Surah At-Talaq (65:1)].[7]

L33398–33400 We found what we have narrated through Muslim: Muhammad ibn Abdullah ibn Numayr reported to us, from his father, from Ubayd Allah ibn Umar,

[4]**Qur'an references (L33391):** Qur'an 8:39 (Al-Anfal); Qur'an 2:236 (Al-Baqarah).

[5]**Qur'an references (L33393):** Qur'an 65:1 (At-Talaq).

[6]**Hadith references (L33395):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[7]**Qur'an references (L33397):** Qur'an 65:1 (At-Talaq).

وَأَمَّا فِي الْمَوْطُوءَةِ فَقَوْلُ اللَّهِ عَزَّ وَجَلَّ: {يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلا يَخْرُجْنَ إِلا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا} [الطلاق: ١]

وَالْعِدَّةُ لَا تَكُونُ مِنْ الطَّلَاقِ إلَّا فِي مَوْطُوءَةٍ فَعَلَّمَنَا اللَّهُ عَزَّ وَجَلَّ كَيْفَ يَكُونُ طَلَاقُ الْمَوْطُوءَةِ، وَأَخْبَرَنَا أَنَّ تِلْكَ حُدُودُ اللَّهِ، وَأَنَّ مَنْ تَعَدَّاهَا ظَالِمٌ لِنَفْسِهِ.

فَصَحَّ أَنَّ مَنْ ظَلَمَ وَتَعَدَّى حُدُودَ اللَّهِ - عَزَّ وَجَلَّ - فَفِعْلُهُ بَاطِلٌ مَرْدُودٌ، لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

فَصَحَّ أَنَّ الطَّلَاقَ الْمَذْكُورَ لَا يَكُونُ إلَّا لِلْعِدَّةِ كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ.

فَنَظَرْنَا بَيَانَ مُرَادِ اللَّهِ عَزَّ وَجَلَّ بِقَوْلِهِ: {فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١]

فَوَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ نا أَبِي نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ " طَلَّقْت امْرَأَتِي عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهِيَ حَائِضٌ فَذَكَرَ ذَلِكَ عُمَرُ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: «مُرْهُ فَلْيُرَاجِعْهَا ثُمَّ لِيَدَعْهَا حَتَّى تَطْهُرَ ثُمَّ تَحِيضَ حَيْضَةً أُخْرَى فَإِذَا طَهُرَتْ

فَلْيُطَلِّقْهَا قَبْلَ أَنْ يُجَامِعَهَا أَوْ يُمْسِكَهَا، فَإِنَّهَا الْعِدَّةُ الَّتِي أَمَرَ اللَّهُ أَنْ تُطَلَّقَ لَهَا النِّسَاءُ» فَكَانَ هَذَا بَيَانًا لَا يَحِلُّ خِلَافُهُ، وَقَدْ رُوِيَ هَذَا الْخَبَرُ بِنُقْصَانٍ عَمَّا أَوْرَدْنَاهُ -: مِنْهَا - مَا رُوِّينَاهُ مِنْ طَرِيقِ شُعْبَةَ عَنْ قَتَادَةَ قَالَ: سَمِعْتُ يُونُسَ بْنَ جُبَيْرٍ قَالَ: سَمِعْتُ ابْنَ عُمَرَ يَقُولُ طَلَّقْت امْرَأَتِي - وَهِيَ حَائِضٌ - فَأَتَى عُمَرُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَذَكَرَ ذَلِكَ لَهُ، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مُرْهُ فَلْيُرَاجِعْهَا فَإِذَا طَهُرَتْ فَإِنْ شَاءَ طَلَّقَهَا؟» .

from Nāfiʿ, from Ibn Umar, who said: "I divorced my wife during the time of the Messenger of Allah—peace and blessings be upon him and his family—while she was menstruating. Umar mentioned this to the Messenger of Allah—peace and blessings be upon him and his family—and he said: 'Order him to take her back, then let him leave her until she becomes pure, then menstruates another period. When she becomes pure, he should divorce her before having intercourse with her or retain her. For that is the waiting period which Allah has ordained for divorcing women [properly].'" This was a definitive clarification that must not be contravened, and this report has been narrated with omissions compared to what we have cited. Among them is what we have narrated through the chain of Shuʿbah from Qatādah, who said: I heard Yūnus ibn Jubayr say: I heard Ibn ʿUmar say: "I divorced my wife while she was menstruating." ʿUmar went to the Prophet—may Allah bless him, his family, and grant him peace—and mentioned that to him. The Prophet—may Allah bless him, his family, and grant him peace—said: "Direct him to take her back. When she becomes pure, if he wishes, let him divorce her?"

قَالَ أَبُو مُحَمَّدٍ: وَرُوِّينَا الْأَخْذَ بِهَذَا عَنْ عَطَاءٍ - قَالَ عَلِيٌّ: وَزِيَادَةُ الْعَدْلِ لَا يَحِلُّ تَرْكُ الْأَخْذِ بِهَا - وَهُوَ خَبَرٌ وَاحِدٌ، عَنْ قِصَّةٍ وَاحِدَةٍ، فِي مَقَامٍ وَاحِدٍ وَأَمَّا طَلَاقُ الْحَامِلِ - فَكَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ مَوْلَى لِطَلْحَةَ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ ابْنِ عُمَرَ: أَنَّهُ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «مُرْهُ فَلْيُرَاجِعْهَا، ثُمَّ لِيُطَلِّقْهَا طَاهِرًا، أَوْ حَامِلًا» .

L33401–33404 Abu Muhammad said: It has been narrated to us that this ruling was accepted from ʿAṭāʾ – ʿAlī said: "It is impermissible to neglect accepting the additional report from a just narrator" – and this is a solitary report pertaining to a single incident in one specific context. As for the divorce of a pregnant woman—as we have been narrated through the chain of Muslim: I, Abu Bakr ibn Abi Shaybah, narrate from Waki', from Sufyan al-Thawri, from Muhammad ibn ʿAbd al-Rahman, a freed slave of Talha, from Salim ibn ʿAbd Allah ibn ʿUmar, from Ibn ʿUmar—that he divorced his wife while she was menstruating. The Messenger of Allah (peace and blessings be upon him and his family) said: "Command him to take her back, then let him divorce her when she is either in a state of ritual purity or pregnant."

وَأَمَّا الَّتِي لَمْ تَحِضْ - أَوْ قَدْ انْقَطَعَ حَيْضُهَا - فَإِنَّ اللَّهَ عَزَّ وَجَلَّ أَجْمَلَ لَنَا إبَاحَةَ الطَّلَاقِ، وَبَيَّنَ لَنَا طَلَاقَ الْحَامِلِ، وَطَلَاقَ الَّتِي تَحِيضُ، وَلَمْ يَحُدَّ لَنَا تَعَالَى فِي الَّتِي لَمْ تَحِضْ،

L33405–33406 As for the woman who has not menstruated—or whose menstruation has ceased—Allah, the Exalted and Majestic, has outlined for us the permissibility of divorce. He has clarified the divorce of a pregnant woman and the divorce of a menstruating woman, but He, the Exalted, has not specified an iddah (waiting period) for the woman who has not menstruated, nor one for the

woman whose menstruation has ceased. Thus it necessarily follows that He, the Exalted, has permitted her divorce whenever the husband wills, for if there were a divine ruling from Him, the Exalted and Majestic, regarding when to divorce her, He would have made it clear to us.

وَلَا فِي الَّتِي انْقَطَعَ حَيْضُهَا حَدًّا، فَوَجَبَ أَنَّهُ تَعَالَى أَبَاحَ طَلَاقَهَا مَتَى شَاءَ الزَّوْجُ، إِذْ لَوْ كَانَ لَهُ عَزَّ وَجَلَّ فِي وَقْتِ طَلَاقِهَا شَرْعٌ لَبَيَّنَهُ عَلَيْنَا ".

L33407 Then people differed regarding divorce during menstruation—if a man divorces in such a manner, or during a purity period in which he had intercourse with her—whether such a divorce is binding or not. Abu Muhammad said: "Some proponents of this position claimed it was a consensus?"

ثُمَّ اخْتَلَفَ النَّاسُ فِي الطَّلَاقِ فِي الْحَيْضِ إِنْ طَلَّقَ الرَّجُلُ كَذَلِكَ، أَوْ فِي طُهْرٍ وَطِئَهَا فِيهِ، هَلْ يَلْزَمُ ذَلِكَ الطَّلَاقُ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ: ادَّعَى بَعْضُ الْقَائِلِينَ بِهَذَا أَنَّهُ إِجْمَاعٌ؟

L33408 Abu Muhammad said: The one who claims that has indeed lied, because disagreement on that matter exists. Even if the disagreement had not reached us, the one who makes a definitive judgment—regarding all the people of Islam—about something about which he has no certainty and has not received from the entirety of them, would be lying against all of them.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ كَذَبَ مُدَّعِي ذَلِكَ، لِأَنَّ الْخِلَافَ فِي ذَلِكَ مَوْجُودٌ، وَحَتَّى لَوْ لَمْ يَبْلُغْنَا لَكَانَ الْقَاطِعُ - عَلَى جَمِيعِ أَهْلِ الْإِسْلَامِ - بِمَا لَا يَقِينَ عِنْدَهُ بِهِ، وَلَا بَلَغَهُ عَنْ جَمِيعِهِمْ -: كَاذِبًا عَلَى جَمِيعِهِمْ.

L33409–33411 It has been narrated to us through ʿAbd al-Razzāq from Wahb ibn Nāfiʿ that ʿIkrimah reported to him that he heard Ibn ʿAbbās. He states: Divorce is of four kinds – two permissible and two impermissible. The permissible are divorcing her without having engaged in intercourse or during a pregnancy when her condition is clearly evident. The impermissible are divorcing her during menstruation or at the time of intercourse, when it is uncertain whether the womb contains a child or not.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ وَهْبِ بْنِ نَافِعٍ أَنَّ عِكْرِمَةَ أَخْبَرَهُ: أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ يَقُولُ: الطَّلَاقُ عَلَى أَرْبَعَةِ أَوْجُهٍ -: وَجْهَانِ حَلَالٌ، وَوَجْهَانِ حَرَامٌ، فَأَمَّا الْحَلَالُ فَأَنْ يُطَلِّقَهَا مِنْ غَيْرِ جِمَاعٍ أَوْ حَامِلًا مُسْتَبِينًا حَمْلُهَا، وَأَمَّا الْحَرَامُ فَأَنْ يُطَلِّقَهَا حَائِضًا أَوْ حِينَ يُجَامِعُهَا لَا يَدْرِي أَيَشْتَمِلُ الرَّحِمُ عَلَى الْوَلَدِ أَمْ لَا؟

L33412 Abu Muhammad said: It is inconceivable that Ibn Abbas would declare something permissible to be forbidden.

قَالَ أَبُو مُحَمَّدٍ: وَمِنْ الْمُحَالِ أَنْ يُخْبِرَ ابْنَ عَبَّاسٍ عَمَّا هُوَ جَائِزٌ بِأَنَّهُ حَرَامٌ.

L33413–33415 And through the chain of Ibn Wahb: Jarīr ibn Ḥāzim informed me from al-Aʿmash that Ibn Masʿūd said: "Whoever divorces in accordance with Allah's command, Allah the Exalted has clarified the matter for him. As for those who contravene it, we cannot tolerate their contravention." Narrated by Yūnus ibn ʿUbayd Allāh, from Ibn ʿAbd Allāh ibn ʿAbd al-Raḥīm, from Aḥmad ibn Khālid, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Ibn Bashshār, from ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī, from ʿUbayd Allāh ibn ʿUmar, from Nāfiʿ - the freed slave of Ibn ʿUmar - from Ibn ʿUmar, who said regarding a man divorcing his wife during menstruation: "That divorce is invalid."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي جَرِيرُ بْنُ حَازِمٍ عَنْ الْأَعْمَشِ أَنَّ ابْنَ مَسْعُودٍ قَالَ: مَنْ طَلَّقَ كَمَا أَمَرَ اللَّهُ تَعَالَى فَقَدْ بَيَّنَ اللَّهُ تَعَالَى لَهُ، وَمَنْ خَالَفَ فَإِنَّا لَا نُطِيقُ خِلَافَهُ -: نا يُونُسُ بْنُ عُبَيْدِ اللَّهِ نا ابْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا ابْنُ بَشَّارٍ نا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ عَنْ ابْنِ عُمَرَ أَنَّهُ قَالَ فِي الرَّجُلِ يُطَلِّقُ امْرَأَتَهُ وَهِيَ حَائِضٌ،

قَالَ ابْنُ عُمَرَ: لَا يُعْتَدُّ لِذَلِكَ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ كَانَ لَا يَرَى طَلَاقًا مَا خَالَفَ وَجْهَ الطَّلَاقِ، وَوَجْهَ الْعِدَّةِ، وَكَانَ يَقُولُ: وَجْهُ الطَّلَاقِ: أَنْ يُطَلِّقَهَا طَاهِرًا عَنْ غَيْرِ جِمَاعٍ، وَإِذَا اسْتَبَانَ حَمْلُهَا -: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبَّاسُ بْنُ أَصْبَغَ نَا مُحَمَّدُ بْنُ قَاسِمِ بْنِ مُحَمَّدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا حُمَامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو أَنَّهُ قَالَ فِي الرَّجُلِ يُطَلِّقُ امْرَأَتَهُ وَهِيَ حَائِضٌ؟ قَالَ: لَا يُعْتَدُّ بِهَا.

Through the chain of ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAbd Allāh ibn Ṭāwūs, from his father: He held that no divorce is valid if it contradicts the proper manner of divorce and the prescribed waiting period. He stated: "The proper manner of divorce requires divorcing her while she is pure without prior intercourse, and when her pregnancy becomes evident—" Muhammad ibn Sa'id ibn Nabat narrated from Abbas ibn Asbagh, who narrated from Muhammad ibn Qasim ibn Muhammad, who narrated from Muhammad ibn Abd al-Salam al-Khushani, who narrated from Muhammad ibn al-Muthanna, who narrated from Abd al-Rahman ibn Mahdi, who narrated from Humam ibn Yahya from Qatadah from Khilas ibn Amr that he said regarding a man who divorces his wife while she is menstruating: "It is not counted."

L33416 قَالَ أَبُو مُحَمَّد: وَالْعَجَبُ مِنْ جُرْأَةِ مَنْ ادَّعَى الْإِجْمَاعَ عَلَى خِلَافِ هَذَا - وَهُوَ لَا يَجِدُ فِيمَا يُوَافِقُ قَوْلَهُ فِي إمْضَاءِ الطَّلَاقِ فِي الْحَيْضِ، أَوْ فِي طُهْرٍ جَامَعَهَا فِيهِ -: كَلِمَةً عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - غَيْرَ رِوَايَةٍ عَنْ ابْنِ عُمَرَ قَدْ عَارَضَهَا مَا هُوَ أَحْسَنُ مِنْهَا عَنْ ابْنِ عُمَرَ، وَرِوَايَتَيْنِ سَاقِطَتَيْنِ عَنْ عُثْمَانَ، وَزَيْدِ بْنِ ثَابِتٍ.

Abu Muhammad said: How astonishing is the audacity of those who claim consensus against this ruling, when they find no support for their position regarding the execution of divorce during menstruation or during a state of purity in which he had intercourse with her - not a single word from any Companion (may Allah be pleased with them) - besides a narration from Ibn Umar that is contradicted by a superior narration from Ibn Umar himself, and two rejected narrations attributed to Uthman and Zayd ibn Thabit.

L33417 إحْدَاهُمَا - رُوِّينَاهَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ سَمْعَانَ عَنْ رَجُلٍ أَخْبَرَهُ أَنَّ عُثْمَانَ بْنَ عَفَّانَ كَانَ يَقْضِي فِي الْمَرْأَةِ الَّتِي يُطَلِّقُهَا زَوْجُهَا وَهِيَ حَائِضٌ أَنَّهَا لَا تَعْتَدُّ بِحَيْضَتِهَا تِلْكَ وَتَعْتَدُّ بَعْدَهَا ثَلَاثَةَ قُرُوءٍ.

One of them—we narrated her through the chain of Ibn Wahb from Ibn Samʿān, from a man who reported to him—states that ʿUthmān ibn ʿAffān ruled that a woman divorced by her husband during menstruation does not observe her waiting period with that menstruation and must observe three menstrual cycles thereafter.

L33418–33420 وَالْأُخْرَى - مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ قَيْسِ بْنِ سَعْدٍ مَوْلَى ابْنِ عَلْقَمَةَ عَنْ رَجُلٍ سَمَّاهُ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّهُ قَالَ فِيمَنْ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ: يَلْزَمُهُ الطَّلَاقُ وَتَعْتَدُّ بِثَلَاثِ حِيَضٍ سِوَى تِلْكَ الْحَيْضَةِ. قَالَ أَبُو مُحَمَّد: بَلْ نَحْنُ أَسْعَدُ بِدَعْوَى الْإِجْمَاعِ هَاهُنَا لَوْ اسْتَجَزْنَا مَا يَسْتَجِيزُونَ - وَنَعُوذُ بِاَللَّهِ مِنْ ذَلِكَ - وَذَلِكَ أَنَّهُ لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ قَاطِبَةً، وَفِي جُمْلَتِهِمْ جَمِيعُ الْمُخَالِفِينَ لَنَا فِي ذَلِكَ

The second narration - through the chain of ʿAbd al-Razzāq from Hishām ibn Ḥassān from Qays ibn Saʿd, the client of Ibn ʿAlqamah, from a man whom he named, from Zayd ibn Thābit, that he said regarding one who divorces his wife while she is menstruating: The divorce becomes binding upon him, and she must observe three menstrual cycles excluding that menstrual period. Abū Muḥammad said: Rather, we are more entitled to claim consensus here - if we permitted what they permit (and we seek refuge with Allah from that) - because there exists no disagreement among any scholar whatsoever, including in their entirety all those who oppose us in this mat-

ter, that divorce during menstruation or during a state of ritual purity in which he had intercourse with her constitutes an innovation that was prohibited. Concerning her, the Messenger of Allah—peace and blessings be upon him and his family—is a contradiction to his own command—upon him be peace and blessings. Since they entertain no doubt about this matter, how can they deem it permissible to rule by sanctioning an innovation they themselves acknowledge as an innovation and misguidance? Does not the very act of permitting such innovation, by observable judgment, contradict the consensus of those who affirm that it is an innovation? Abu Muhammad said: They cited as evidence from transmitted reports—including what we narrated through the chain of Ibn Wahb, who narrated to us from Ibn Abi Dhi'b, that Nāfiʿ reported to them from Ibn ʿUmar that he divorced his wife while she was menstruating. ʿUmar asked the Messenger of Allah—peace and blessings be upon him and his family—about this, whereupon he said: "Command him to take her back, then retain her until she becomes ritually pure, then menstruates, then becomes ritually pure again. Thereafter, if he wishes, he may keep her, or if he wishes, divorce her before intimacy. That is the prescribed waiting period within which Allah the Exalted has commanded that women be divorced." This counts as one divorce.

فِي أَنَّ الطَّلَاقَ فِي الْحَيْضِ أَوْ فِي طُهْرٍ جَامَعَهَا فِيهِ: بِدْعَةٌ نَهَى عَنْهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مُخَالِفَةٌ لِأَمْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَإِذْ لَا شَكَّ فِي هَذَا عِنْدَهُمْ: فَكَيْفَ يَسْتَجِيزُونَ الْحُكْمَ بِتَجْوِيزِ الْبِدْعَةِ الَّتِي يُقِرُّونَ أَنَّهَا بِدْعَةٌ وَضَلَالَةٌ؟ أَلَيْسَ بِحُكْمِ الْمُشَاهَدَةِ مُجِيزَ الْبِدْعَةِ مُخَالِفًا لِإِجْمَاعِ الْقَائِلِينَ بِأَنَّهَا بِدْعَةٌ؟ قَالَ أَبُو مُحَمَّد: وَاحْتَجُّوا مِنْ الْآثَارِ -: بِمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ نا ابْنُ أَبِي ذِئْبٍ أَنَّ نَافِعًا أَخْبَرَهُمْ عَنْ ابْنِ عُمَرَ أَنَّهُ طَلَّقَ امْرَأَتَهُ - وَهِيَ حَائِضٌ - فَسَأَلَ عُمَرُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ ذَلِكَ؟ فَقَالَ: «مُرْهُ فَلْيُرَاجِعْهَا ثُمَّ لِيُمْسِكْهَا حَتَّى تَطْهُرَ ثُمَّ تَحِيضَ ثُمَّ تَطْهُرَ ثُمَّ إنْ شَاءَ أَمْسَكَ بَعْدَ ذَلِكَ، وَإِنْ شَاءَ طَلَّقَ قَبْلَ أَنْ يَمَسَّ، فَتِلْكَ الْعِدَّةُ الَّتِي أَمَرَ اللَّهُ تَعَالَى أَنْ تَطْلُقَ لَهَا النِّسَاءُ» وَهِيَ وَاحِدَةٌ.

L33421 And through the transmission of Muslim—it was narrated to me by Isḥāq ibn Rāhawayh, who reported to us from Yazīd ibn ʿAbd Rabbihi, who reported to us from Muḥammad ibn Ḥarb, who narrated to me from al-Zubaydī, from al-Zuhrī, from Sālim, from his father. He mentioned divorcing his wife while she was menstruating, concluding: "He revoked it, and the talaq he pronounced was counted as a divorce for her."

وَمِنْ طَرِيقِ مُسْلِمٍ - حَدَّثَنِي إِسْحَاقُ بْنُ رَاهْوَيْهِ نا يَزِيدُ بْنُ عَبْدِ رَبِّهِ نا مُحَمَّدُ بْنُ حَرْبٍ حَدَّثَنِي الزُّبَيْدِيُّ عَنْ الزُّهْرِيِّ عَنْ سَالِمٍ عَنْ أَبِيهِ فَذَكَرَ طَلَاقَهُ لِامْرَأَتِهِ وَهِيَ حَائِضٌ، وَقَالَ فِي آخِرِهِ: فَرَاجَعْتَهَا وَحُسِبَتْ لَهَا التَّطْلِيقَةُ الَّتِي طَلَّقْتَهَا.

L33422–33423 And because of what is found in some of those reports from Ibn Umar's statement: "What prevents me from counting it?" And in others: "So, wait - what do you think if he becomes incapacitated and is declared legally incompetent?"

وَبِمَا فِي بَعْضِ تِلْكَ الْآثَارِ مِنْ قَوْلِ ابْنِ عُمَرَ: مَا يَمْنَعُنِي أَنْ أَعْتَدَّ بِهَا. وَفِي بَعْضِهَا: فَمَهْ أَرَأَيْت إنْ عَجَزَ وَاسْتَحْمَقَ.

L33424 From the narration of Abd al-Razzaq through Ibn Jurayj, who said: We sent to Nafi' while he was grooming himself in Dar al-Nadwah, heading toward Medina (and we were with Ata) - [to ask]: "Was the divorce pronounced by Abdullah ibn Umar upon his wife while she was menstruating counted

during the era of the Messenger of Allah - peace and blessings of Allah be upon him and his family?" He replied: "Yes."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَرْسَلْنَا إِلَى نَافِعٍ وَهُوَ يَتَرَجَّلُ فِي دَارِ النَّدْوَةِ ذَاهِبًا إِلَى الْمَدِينَةِ - وَنَحْنُ مَعَ عَطَاءٍ - هَلْ حُسِبَتْ تَطْلِيقَةُ عَبْدِ اللَّهِ بْنِ عُمَرَ امْرَأَتَهُ حَائِضًا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ قَالَ: نَعَمْ.

L33425 Some of them mentioned a narration transmitted through ʿAbd al-Bāqī ibn Qāniʿ from Abū Yaḥyā al-Sājī: Ismāʿīl ibn Umayyah al-Dharraʿ narrated to us, Ḥammād ibn Zayd from ʿAbd al-ʿAzīz ibn Ṣuhayb from Anas, who said: The Messenger of Allah (may Allah bless him and his family and grant him peace) said: "Whoever divorces through an innovation, We will bind him to his innovation."

وَذَكَرَ بَعْضُهُمْ: رِوَايَةً مِنْ طَرِيقِ عَبْدِ الْبَاقِي بْنِ قَانِعٍ عَنْ أَبِي يَحْيَى السَّاجِيِّ نا إِسْمَاعِيلُ بْنُ أُمَيَّةَ الذَّرَّاعُ نا حَمَّادُ بْنُ زَيْدٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ عَنْ أَنَسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «، مَنْ طَلَّقَ فِي بِدْعَةٍ أَلْزَمْنَاهُ بِدْعَتَهُ» .

L33426 Abu Muhammad said: All of this provides no valid proof for them. As for the cited ḥadīth of Anas—it is undoubtedly fabricated, for none of the trustworthy narrators among Ḥammād ibn Zayd's students transmitted it. It is solely narrated through the chain of Ismāʿīl ibn Umayyah al-Dharrāʿ. If this refers to al-Qurashī the Younger, the Basran—and this is certain—then he is weak and rejected. If it refers to someone else—then he is unknown, so who is he?

قَالَ أَبُو مُحَمَّدٍ: كُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ: أَمَّا حَدِيثُ أَنَسٍ الْمَذْكُورُ - فَمَوْضُوعٌ بِلَا شَكٍّ - لَمْ يَرْوِهِ أَحَدٌ مِنْ أَصْحَابِ حَمَّادِ بْنِ زَيْدٍ الثِّقَاتِ إنَّمَا هُوَ مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ أُمَيَّةَ الذَّرَّاعِ، فَإِنْ كَانَ الْقُرَشِيُّ الصَّغِيرُ الْبَصْرِيُّ - وَهُوَ بِلَا شَكٍّ - فَهُوَ ضَعِيفٌ مَتْرُوكٌ، وَإِنْ كَانَ غَيْرُهُ - فَهُوَ مَجْهُولٌ لَا يُعْرَفُ مَنْ هُوَ؟

L33427 And through the chain of—Abdul-Baqi ibn Qani', a narrator of every lie, isolated in every calamity, and not a valid authority because he altered in his later days—moreover, even if it were authentic—and it has never been authentic—it would hold no authority, because the meaning of his statement "We have bound him to his innovation" was as the Almighty said: {And every human We have bound his deeds to his neck} [Al-Isra: 13].[8]

وَمِنْ طَرِيقِ - عَبْدِ الْبَاقِي بْنِ قَانِعٍ رَاوِي كُلِّ كِذْبَةٍ، الْمُنْفَرِدُ بِكُلِّ طَامَّةٍ وَلَيْسَ بِحُجَّةٍ، لِأَنَّهُ تَغَيَّرَ بِآخِرَةٍ - ثُمَّ لَوْ صَحَّ - وَلَمْ يَصِحَّ قَطُّ - لَكَانَ لَا حُجَّةَ فِيهِ، لِأَنَّهُ كَانَ مَعْنَى قَوْلِهِ " أَلْزَمْنَاهُ بِدْعَتَهُ " أَيْ كَمَا قَالَ عَزَّ وَجَلَّ: {وَكُلَّ إِنْسَانٍ أَلْزَمْنَاهُ طَائِرَهُ فِي عُنُقِهِ} [الإسراء: ١٣]

L33428–33430 And it does not mean that a judgment is passed against him to enforce the ruling of his innovation or to permit [heretical] matters in the religion; and this is... The apparent ruling—as they themselves assert—applies to one who conducts an invalid sale or enters into a bidʿah marriage. It extends to all other legal rulings without distinction.

وَلَيْسَ فِيهِ - أَنَّهُ يُحْكَمُ عَلَيْهِ بِإِمْضَاءِ حُكْمِ بِدْعَتِهِ، وَتَجْوِيزِ مَا فِي الدِّينِ، وَهَذَا هُوَ الظَّاهِرُ، كَمَا يَقُولُونَ هُمْ فِيمَنْ بَاعَ بَيْعًا لَا يَحِلُّ، أَوْ نَكَحَ نِكَاحًا بِبِدْعَةٍ وَفِي سَائِرِ الْأَحْكَامِ وَلَا فَرْقَ.

L33431 As for the report of Nāfiʿ, it is mawqūf [stopping at him], and there is no

وَأَمَّا خَبَرُ نَافِعٍ - فَمَوْقُوفٌ عَلَيْهِ لَيْسَ فِيهِ: أَنَّهُ سَمِعَهُ مِنْ ابْنِ عُمَرَ فَبَطَلَ الِاحْتِجَاجُ بِهِ.

[8] **Qur'an references (L33427):** Qur'an 17:13 (Al-Isra).

mention within it that he heard it from Ibn ʻUmar. Thus, using it as evidence is invalid.

L33432 As for what is narrated from Ibn Umar, “Enough! Have you considered if he becomes incapacitated and irrational?”—this wording contains no clarification that such a divorce would count as a valid divorce for him. Legal rulings are not derived from unclarified statements. Rather, it may plausibly mean he intended to deter such questioning and indicate that the individual became incapacitated and irrational in this matter. The more apparent view regarding such a scenario is that it should not be recognized, being a lapse from the doer’s action, for there is no binding ruling in Allah’s religion—Exalted is He—through which the judge enforcing it becomes senseless or incapacitated. Rather, every religious ruling is executed by one who is attentive and judicious. All praise is due to Allah, Lord of the worlds.

L33433 As for what has been narrated regarding his statement: “What prevents me from counting it,” and his saying: “The divorce he pronounced was counted as a divorce for her” - he did not state in it that the Messenger of Allah (may Allah bless him and his family and grant him peace) counted it as a divorce, nor that he (peace and blessings be upon him) said to him: “Count it as a divorce.” Rather, it is a report about himself - and there is no authoritative proof in his action nor in the actions of anyone besides the Messenger of Allah (may Allah bless him and his family and grant him peace).

L33434–33436 As for the ḥadīth of Ibn Abī Dhi’b which concludes with “and it is one,” this is a phrase that Ibn Abī Dhi’b introduced. He alone; nor do we assert that it is from the speech of the Messenger of Allah (may Allah bless him and his family and grant him peace). It may be from the statement of someone other than him—peace and blessings be upon him—and religious laws are not taken based on conjectures.

L33437 Then, if it were definitively established that [this statement] is from the speech of the Messenger of Allah—peace and blessings be upon him and his family—its meaning would be: “It is a single case in which Ibn Umar erred,” or “It is a binding ruling incumbent upon every divorcer.”

وَأَمَّا مَا رُوِيَ عَنْ ابْنِ عُمَرَ " فَمَهْ أَرَأَيْت إنْ عَجَزَ وَاسْتَحْمَقَ " فَلَا بَيَانَ فِي هَذَا اللَّفْظِ بِأَنَّ تِلْكَ الطَّلْقَةَ عُدَّتْ لَهُ طَلْقَةً، وَالشَّرَائِعُ لَا تُؤْخَذُ بِلَفْظٍ لَا بَيَانَ فِيهِ، بَلْ قَدْ يُحْتَمَلُ أَنْ يَكُونَ أَرَادَ الزَّجْرَ عَنْ السُّؤَالِ عَنْ هَذَا، وَالْإِخْبَارَ بِأَنَّهُ عَجَزَ وَاسْتَحْمَقَ فِي ذَلِكَ، وَالْأَظْهَرُ فِيمَا هَذِهِ صِفَتُهُ أَنْ لَا يُعْتَدَّ بِهِ، وَأَنَّهُ سَقْطَةٌ مِنْ فِعْلِ فَاعِلِهِ، لِأَنَّهُ لَيْسَ فِي دِينِ اللَّهِ تَعَالَى حُكْمٌ نَافِذٌ يَسْتَحْمِقُ الْحَاكِمُ بِهِ وَيَعْجِزُ، بَلْ كُلُّ حُكْمٍ فِي الدِّينِ فَالْمُنَفِّذُ لَهُ مُسْتَغْفِلٌ كَيِّسٌ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَأَمَّا مَا رُوِيَ مِنْ قَوْلِهِ: " مَا يَمْنَعُنِي أَنْ أَعْتَدَّ بِهَا " وَقَوْلُهُ " وَحُسِبَتْ لَهَا التَّطْلِيقَةُ الَّتِي طَلَّقَتْهَا " فَلَمْ يَقُلْ فِيهِ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَسَبَهَا تَطْلِيقَةً، وَلَا أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - هُوَ الَّذِي قَالَ لَهُ: أَعْتَدَّ بِهَا طَلْقَةً، إنَّمَا هُوَ إخْبَارٌ عَنْ نَفْسِهِ - وَلَا حُجَّةَ فِي فِعْلِهِ وَلَا فِعْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

وَأَمَّا حَدِيثُ ابْنِ أَبِي ذِئْبٍ الَّذِي فِي آخِرِهِ «وَهِيَ وَاحِدَةٌ» فَهَذِهِ لَفْظَةٌ أَتَى بِهَا ابْنُ أَبِي ذِئْبٍ وَحْدَهُ، وَلَا نَقْطَعُ عَلَى أَنَّهَا مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَمُمْكِنٌ أَنْ تَكُونَ مِنْ قَوْلِ مَنْ دُونَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَالشَّرَائِعُ لَا تُؤْخَذُ بِالظُّنُونِ.

ثُمَّ لَوْ صَحَّ يَقِينًا أَنَّهَا مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَكَانَ مَعْنَاهُ -: وَهِيَ وَاحِدَةٌ أَخْطَأَ فِيهَا ابْنُ عُمَرَ، أَوْ وَهِيَ قَضِيَّةٌ وَاحِدَةٌ لَازِمَةٌ لِكُلِّ مُطَلِّقٍ.

L33438 The apparent meaning is that this is from the statement of someone other than the Prophet (peace be upon him), reporting that Ibn ʿUmar had divorced her with one divorce pronouncement. We previously mentioned the authentic narration through the chain of ʿUbayd Allāh ibn ʿUmar, from Nāfiʿ, from Ibn ʿUmar, concerning one who divorces his wife while she is menstruating, that such a divorce is not counted.

وَالظَّاهِرُ - أَنَّهُ مِنْ قَوْلِ مَنْ دُونَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مُخْبِرًا بِأَنَّ ابْنَ عُمَرَ كَانَ طَلَّقَهَا طَلْقَةً وَاحِدَةً، وَقَدْ ذَكَرْنَا قَبْلُ الرِّوَايَةَ الصَّحِيحَةَ مِنْ طَرِيقِ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ فِيمَنْ طَلَّقَ امْرَأَتَهُ حَائِضًا أَنَّهُ لَا يُعْتَدُّ بِذَلِكَ.

L33439 Sufficient from all this is the well-documented ḥadīth, clear and established, which we transmitted through the chain of Abū Dāwūd al-Sijistānī, who said: Aḥmad ibn Ṣāliḥ narrated to us, ʿAbd al-Razzāq narrated to us, Ibn Jurayj narrated to us, informing me on the authority of Abū al-Zubayr, who heard ʿAbd al-Raḥmān ibn Ayman, the client of ʿAzza, questioning Ibn ʿUmar. Abū al-Zubayr said—while I was listening—"What is your opinion regarding a man who divorces his wife while she is menstruating?" Ibn ʿUmar responded: "Ibn ʿUmar divorced his wife while she was menstruating during the time of Allah's Messenger—peace and blessings be upon him and his household. ʿUmar then asked Allah's Messenger—peace and blessings be upon him and his household—about this, saying, 'Ibn ʿUmar divorced his wife while she was menstruating.'" ʿAbdullāh said: "He ordered me to take her back and did not count it as a valid divorce. He said, 'When she becomes pure, let him divorce her if he wishes or retain her.' And Allah's Messenger—peace and blessings be upon him and his household—recited: 'O Prophet, when you divorce women, divorce them at the outset of their waiting period.'"

وَيَكْفِي مِنْ هَذَا كُلِّهِ الْمُسْنَدُ الْبَيِّنُ الثَّابِتُ، الَّذِي رُوِّينَاهُ - مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ قَالَ: نا أَحْمَدُ بْنُ صَالِحٍ نَا عَبْدُ الرَّزَّاقِ نَا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ عَبْدَ الرَّحْمَنِ بْنَ أَيْمَنَ مَوْلَى عَزَّةَ يَسْأَلُ ابْنَ عُمَرَ قَالَ أَبُو الزُّبَيْرِ - وَأَنَا أَسْمَعُ - كَيْفَ تَرَى فِي رَجُلٍ طَلَّقَ امْرَأَتَهُ حَائِضًا؟ فَقَالَ ابْنُ عُمَرَ: طَلَّقَ ابْنُ عُمَرَ امْرَأَتَهُ وَهِيَ حَائِضٌ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَسَأَلَ عُمَرُ عَنْ ذَلِكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إِنَّ ابْنَ عُمَرَ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ قَالَ عَبْدُ اللَّهِ: فَرَدَّهَا عَلَيَّ وَلَمْ يَرَهَا شَيْئًا؟ وَقَالَ: إِذَا طَهُرَتْ فَلْيُطَلِّقْ إِذَا شَاءَ أَوْ لِيُمْسِكْ وَقَرَأَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - " يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ فِي قُبُلِ عِدَّتِهِنَّ ".

L33440–33442 Abu Muhammad said: This is among what was initially revealed, then the phrase "during the initial phase of their waiting periods" was abrogated, and Allah the Exalted revealed {for their waiting periods} [At-Talaq: 1]. And likewise, we have transmitted it through the chain of al-Dabarī from ʿAbd al-Razzāq from Ibn Jurayj: Abū al-Zubayr informed me that he heard Ibn ʿUmar, and ʿAbd al-Raḥmān ibn Ayman asked him—and Ibn ʿUmar recounted it verbatim. This is an impeccably authentic chain of transmission; it does not permit [scholarly] interpretations.[9]

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا مِمَّا قُرِئَ ثُمَّ رُفِعَتْ لَفْظَةُ " فِي قُبُلِ " وَأَنْزَلَ اللَّهُ تَعَالَى {لِعِدَّتِهِنَّ} [الطلاق: ١] وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ الدَّبَرِيِّ عَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ ابْنَ عُمَرَ وَسَأَلَهُ عَبْدُ الرَّحْمَنِ بْنُ أَيْمَنَ - فَذَكَرَهُ نَصًّا - وَهَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ، لَا يَحْتَمِلُ التَّوْجِيهَاتِ.

L33443 And all praise is due to Allah, Lord of the worlds.

وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[9] **Qur'an references (L33440):** Qur'an 65:1 (At-Talaq).

وَقَالَ بَعْضُهُمْ: أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِمُرَاجَعَتِهَا دَلِيلٌ عَلَى أَنَّهَا طَلْقَةٌ يُعْتَدُّ بِهَا؟ فَقُلْنَا: لَيْسَ ذَلِكَ دَلِيلًا عَلَى مَا زَعَمْتُمْ، لِأَنَّ ابْنَ عُمَرَ - بِلَا شَكٍّ - إذْ طَلَّقَهَا حَائِضًا فَقَدْ اجْتَنَبَهَا، فَإِنَّمَا أَمَرَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِرَفْضِ فِرَاقِهِ لَهَا وَأَنْ يُرَاجِعَهَا كَمَا كَانَتْ قَبْلُ، بِلَا شَكٍّ.

L33444 Some of them said: The command of the Messenger of Allah—peace and blessings be upon him—to take her back is proof that this constitutes a divorce requiring observance of the waiting period. We responded: This provides no evidence for your claim, for Ibn Umar—undoubtedly—had already abstained from her when he divorced her during menstruation. The Prophet—peace and blessings be upon him—only commanded him to reject his separation from her and restore her to her prior marital status as she was before, without question.

وَقَالَ بَعْضُهُمْ: الْوَرَعُ إلْزَامُهُ تِلْكَ الطَّلْقَةَ إذْ قَدْ يُطَلِّقُهَا بَعْدَ ذَلِكَ طَلْقَتَيْنِ فَتَبْقَى عِنْدَهُ، وَلَعَلَّهَا مُطَلَّقَةٌ ثَلَاثًا؟ .

L33445 Some scholars said: Piety requires him to uphold that divorce, for he may later divorce her twice [more], and she would remain with him. Yet she might [already] be thrice-divorced?

فَقُلْنَا: بَلْ هَذَا ضِدُّ الْوَرَعِ، إذْ تُبِيحُونَ فَرْجَهَا لِأَجْنَبِيٍّ بِلَا بَيَانٍ، وَإِنَّمَا الْوَرَعُ أَنْ لَا تُحَرِّمَ عَلَى الْمُسْلِمِ امْرَأَتَهُ الَّتِي نَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ اللَّهَ عَزَّ وَجَلَّ أَبَاحَهَا لَهُ وَحَرَّمَهَا عَلَى مَنْ سِوَاهُ إلَّا بِيَقِينٍ، وَأَمَّا بِالظُّنُونِ وَالْمُحْتَمَلَاتِ فَلَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33446 We said: Rather, this contradicts piety, since you permit her private parts to a non-mahram without clarification. True piety lies in not depriving a Muslim of his wife—whom we are certain Allah the Exalted has permitted to him and forbidden to all others—except through definitive proof. As for suspicions and probabilities, they hold no validity. And success comes only from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: وَالْعَجَبُ كُلُّهُ أَنَّهُمْ إنْ وَجَدُوا فِي الطَّلَاقِ فِي الْحَيْضِ مَا يَشْغَبُونَ بِهِ مِمَّا ذَكَرْنَا، فَأَيُّ شَيْءٍ وَجَدُوا فِي طَلَاقِهِ إيَّاهَا فِي طُهْرٍ وَطِئَهَا فِيهِ؟ فَإِنْ قَالُوا: قِسْنَاهُ عَلَى الطَّلَاقِ فِي الْحَيْضِ؟ قُلْنَا: هَذَا بَاطِلٌ مِنْ الْقِيَاسِ، وَلَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّهُ قِيَاسُ الشَّيْءِ عَلَى ضِدِّهِ: طُهْرٌ عَلَى حَيْضٍ، فَكَيْفَ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ؟

L33447 Abū Muḥammad said: What is utterly perplexing is that if they find in divorce during menstruation any grounds for frivolous dispute from what we have mentioned, then what justification do they find for divorcing her during a state of ritual purity (ṭuhr) in which he had intercourse with her? If they say: "We have analogized it to divorce during menstruation," we respond: This is invalid by analogy. Even if analogy were valid, this would still constitute the very essence of falsehood, for it analogizes a thing to its opposite: ritual purity to menstruation. How then, when all analogy is inherently invalid?

فَإِنْ قَالُوا: إنَّكُمْ تُلْزِمُونَهُ الطَّلَاقَ فِي الْحَيْضِ، وَفِي طُهْرٍ مَسَّهَا فِيهِ إذَا كَانَ طَلَاقًا ثَالِثًا أَوْ ثَلَاثَةً مَجْمُوعَةً، وَهِيَ غَيْرُ الْمَدْخُولِ بِهَا بِكُلِّ حَالٍ؟

L33448–33449 If they say: "Do you oblige him to divorce her during menstruation or during a purity period in which he had intercourse with her - if it is a third divorce or three combined divorces - while she is someone with whom the marriage has not been consummated in any case?"

L33450 We said: Yes, because Allah's statement—the Almighty, the Majestic—{Divorce them for their waiting period} [65:1] leaves no ambiguity that He,

exalted, commanded this specifically regarding divorces in cases of consummated marriage, excluding the triple divorce. It is in these two aspects that Allah's Messenger—peace and blessings be upon him—issued a legal opinion to Ibn ʻUmar. The Almighty never commanded this for non-consummated marriages, nor for those who pronounce a third divorce or three cumulative divorces. There exists no waiting period for divorce in non-consummated marriages, thus requiring the divorce to be effected for her, as we have clarified through the Quranic text. His statement—exalted—{You [the husband] do not know—perhaps Allah will bring about a new circumstance after that} [65:1] and {When they have reached their term, either retain them honorably or separate from them honorably} [65:2] does not apply to triple divorce.[10]

قُلْنَا: نَعَمْ، لِأَنَّ قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] لَا إِشْكَالَ فِي أَنَّهُ تَعَالَى إِنَّمَا أَمَرَ بِذَلِكَ فِي الْمَدْخُولِ بِهَا فِيمَا كَانَ مِنَ الطَّلَاقِ دُونَ الثَّلَاثِ - وَفِي هَذَيْنِ الْوَجْهَيْنِ أَفْتَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ابْنَ عُمَرَ، وَلَمْ يَأْمُرْ قَطُّ عَزَّ وَجَلَّ بِذَلِكَ فِي غَيْرِ مَدْخُولٍ بِهَا، وَلَا فِيمَنْ طَلَّقَ ثَالِثَةً، أَوْ ثَلَاثَةً مَجْمُوعَةً وَلَيْسَ فِي غَيْرِ الْمَدْخُولِ بِهَا عِدَّةُ طَلَاقٍ فَيَلْزَمُ أَنْ يُطَلَّقَ لَهَا، كَمَا بَيَّنَّا بِنَصِّ الْقُرْآنِ وقَوْله تَعَالَى: {لا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا} [الطلاق: ١] {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] وَلَيْسَ هَذَا فِي طَلَاقِ الثَّلَاثِ.

L33451 From ʿAbd al-Razzāq, who reported to us: Maʿmar narrated from Ayyūb al-Sikhtiyānī from Nāfiʿ from Ibn ʿUmar that Ibn ʿUmar divorced his wife once while she was menstruating, mentioning the ḥadīth.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ " أَنَّهُ طَلَّقَ امْرَأَتَهُ وَاحِدَةً وَهِيَ حَائِضٌ " وَذَكَرَ الْحَدِيثَ.

L33452 From the chain of Muslim: Muḥammad ibn Rumḥ reported to us, al-Layth ibn Saʿd reported to us, from Nāfiʿ, from Ibn ʿUmar: That he divorced his wife with a single pronouncement of divorce while she was menstruating. The Messenger of Allah (peace and blessings of Allah be upon him) commanded him to take her back, retain her until she becomes pure, then she menstruates another menstruation with him. Then he should let her wait until she becomes pure from her menstruation. If he wishes to divorce her thereafter, let him divorce her when she is pure before resuming intimacy. That is the waiting period Allah the Exalted has ordained for divorcing women within its prescribed time.

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رُمْحٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ (أَنَّهُ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ تَطْلِيقَةً وَاحِدَةً فَأَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُرَاجِعَهَا ثُمَّ يُمْسِكَهَا حَتَّى تَطْهُرَ ثُمَّ تَحِيضَ عِنْدَهُ حَيْضَةً أُخْرَى ثُمَّ يُمْهِلَهَا حَتَّى تَطْهُرَ مِنْ حَيْضَتِهَا، فَإِنْ أَرَادَ أَنْ يُطَلِّقَهَا فَلْيُطَلِّقْهَا حِينَ تَطْهُرُ مِنْ قَبْلِ أَنْ يُجَامِعَهَا، فَتِلْكَ الْعِدَّةُ الَّتِي أَمَرَ اللَّهُ تَعَالَى أَنْ تُطَلَّقَ لَهَا النِّسَاءُ.

L33453 Ibn Umar said: "Did you divorce your wife once or twice? The Messenger of Allah (peace and blessings be upon him) has commanded you regarding that. But if you divorced her three times, she is forbidden to you until she marries another husband. You have disobeyed your Lord in what He commanded you concerning the divorce of your wife."

قَالَ ابْنُ عُمَرَ: أَأَنْت طَلَّقْتَ امْرَأَتَك مَرَّةً أَوْ مَرَّتَيْنِ، فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَك بِذَلِكَ، وَإِنْ كُنْت طَلَّقْتَهَا ثَلَاثًا فَقَدْ حُرِّمَتْ عَلَيْك حَتَّى تَنْكِحَ زَوْجًا غَيْرَك، وَعَصَيْت رَبَّك فِيمَا أَمَرَك بِهِ مِنْ طَلَاقِ امْرَأَتِك) .

L33454–33455 Abu Muhammad said: It is possible that Ibn Umar meant by *the sinful act*

قَالَ أَبُو مُحَمَّدٍ: قَدْ يُمْكِنُ أَنَّ ابْنَ عُمَرَ أَرَادَ بِالْمَعْصِيَةِ مَنْ طَلَّقَهَا كَذَلِكَ دُونَ الثَّلَاثِ.

[10] **Qur'an references (L33450):** Qur'an 65:1 (At-Talaq); Qur'an 65:2 (At-Talaq).

the one who divorces his wife in that way without the triple divorce.

L33456 As for the disagreement regarding the triple divorce pronounced collectively: is it a bidʿah or not? A group claimed that it was a bidʿah, then they differed among themselves.

L33457 A group among them said, “It is not valid at all, because innovation is rejected.”

L33458 A group among them said: Rather, it is referred back to the judgment of the single authorized individual, such that the ruling on divorce is likewise.

L33459 A group said: Rather, it takes effect as it is, and the divorcer is similarly disciplined.

L33460 A group held the view that it is not an innovation, but rather a Sunnah in which there is no reprehensibility.

L33461 Those who asserted that it is nullified argued by citing the verse of Allah, the Exalted: {O Prophet, when you divorce women} [At-Talaq: 1], the verse.[11]

L33462 And by the statement of Allah, the Exalted: {Divorced women shall wait three menstrual periods, and it is not lawful for them} [Al-Baqarah: 228] up to His words: {and their husbands have the greatest right to restore them during that} [Al-Baqarah: 228].[12]

L33463 And by His statement, the Exalted: {When you divorce women and they have reached their prescribed term, either retain them in a kind manner or release them honorably} [Al-Baqarah 2:231].[13]

L33464 They said: “A divorce does not [count as] divorce unless it fulfills these conditions.”

L33465–33466 They said: The meaning of Allah’s statement, the Exalted: “Divorce is [allowed] twice; thereafter, either retain [your wives] with kindness or release

وَأَمَّا الِاخْتِلَافُ فِي طَلَاقِ الثَّلَاثِ مَجْمُوعَةً - أَهُوَ بِدْعَةٌ أَمْ لَا؟ فَزَعَمَ قَوْمٌ أَنَّهَا بِدْعَةٌ، ثُمَّ اخْتَلَفُوا.

فَقَالَتْ طَائِفَةٌ مِنْهُمْ - لَا يَقَعُ أَلْبَتَّةَ، لِأَنَّ الْبِدْعَةَ مَرْدُودَةٌ.

وَقَالَتْ طَائِفَةٌ مِنْهُمْ: بَلْ يُرَدُّ إِلَى حُكْمِ الْوَاحِدِ الْمَأْمُورِ بِأَنْ يَكُونَ حُكْمُ الطَّلَاقِ كَذَلِكَ.

قَالَتْ طَائِفَةٌ: بَلْ تَقَعُ كَمَا هُوَ، وَيُؤَدَّبُ الْمُطَلِّقُ كَذَلِكَ.

وَقَالَتْ طَائِفَةٌ: لَيْسَتْ بِدْعَةً، وَلَكِنَّهَا سُنَّةٌ لَا كَرَاهَةَ فِيهَا.

وَاحْتَجَّ مَنْ قَالَ: إِنَّهَا تَبْطُلُ بِقَوْلِ اللَّهِ تَعَالَى: {يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ} [الطلاق: ١] الْآيَةَ.

وَبِقَوْلِهِ تَعَالَى: {وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ} [البقرة: ٢٢٨] إِلَى قَوْله تَعَالَى {وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ} [البقرة: ٢٢٨] .

وَبِقَوْلِهِ تَعَالَى: {وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ} [البقرة: ٢٣١] .

قَالُوا: فَلَا يَكُونُ طَلَاقًا إِلَّا مَا كَانَ بِهَذِهِ الصِّفَةِ.

قَالُوا: وَمَعْنَى قَوْلِ اللَّهِ تَعَالَى: {الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ} [البقرة: ٢٢٩] أَيْ مَرَّةً بَعْدَ مَرَّةٍ كَمَا تَقُولُ: سِيرَ بِهِ فَرْسَخَانِ.

[11] **Qur’an references (L33461):** Qur’an 65:1 (At-Talaq).
[12] **Qur’an references (L33462):** Qur’an 2:228 (Al-Baqarah).
[13] **Qur’an references (L33463):** Qur’an 2:231 (Al-Baqarah).

them with good treatment" [Al-Baqarah: 229] is that [it must be done] on two separate occasions, just as one might say: "He traveled two parasangs."[14]

L33467 They mentioned what we have narrated through the chain of Aḥmad ibn Shuʿayb, who narrated from Sulaymān ibn Dāwūd, who narrated from Ibn Wahb, who narrated from Makhramah (who is the son of Bukayr ibn al-Ashajj), who narrated from his father, who said: I heard Maḥmūd ibn Labīd say: "The Messenger of God (may God's blessings and peace be upon him and his family) reported regarding a man who divorced his wife with threefold divorce (triple talaq) simultaneously. He rose in anger and said: 'Does he play with the Book of God while I am present among you?' A man then stood and asked: 'O Messenger of God, shall I kill him?'"

L33468–33469 Aḥmad ibn Shuʿayb said, "I do not know of anyone who narrated it besides Makhrama."

L33470 Abu Muhammad said: As for their statement, "An innovation is rejected," they have spoken truthfully. For if it were an innovation, it would be obligatory to reject and nullify it.

L33471–33472 As for the verses, they were revealed exclusively concerning those who divorced their wives only once or twice.

L33473 Then ask them about one who divorces once, then reconciles, then divorces a second time, then reconciles a second time, then divorces a third time—has he acted upon an innovation? If they answer, "No—rather, in accordance with the Sunnah," then ask them: "Do you rule for him based on what is in the aforementioned verses?" They will respond: "No," without any difference of opinion.

L33474 Thus, it has become evident that the intended [subject] in the mentioned verses is he who seeks to issue a revocable divorce? Consequently, their argumentation using these verses regarding the ruling of one who issued a triple divorce has been invalidated.

L33475 As for their claim that the meaning of His statement {Divorce is twice} [Al-Baqarah: 229] is that it signifies one after another, this is erroneous. Rather,

[14]**Qur'an references (L33466):** Qur'an 2:229 (Al-Baqarah).

وَذَكَرُوا مَا رُوِّينَاهُ - مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا سُلَيْمَانُ بْنُ دَاوُد نا ابْنُ وَهْبٍ نا مَخْرَمَةُ - هُوَ ابْنُ بُكَيْرِ بْنِ الْأَشَجِّ - عَنْ أَبِيهِ قَالَ: سَمِعْتُ مَحْمُودَ بْنَ لَبِيدٍ قَالَ: «أُخْبِرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ رَجُلٍ طَلَّقَ امْرَأَتَهُ ثَلَاثَ تَطْلِيقَاتٍ جَمِيعًا فَقَامَ غَضْبَانَ ثُمَّ قَالَ: أَيُلْعَبُ بِكِتَابِ اللَّهِ وَأَنَا بَيْنَ أَظْهُرِكُمْ، فَقَامَ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ أَلَا أَقْتُلُهُ» .

قَالَ أَحْمَدُ بْنُ شُعَيْبٍ: لَا أَعْلَمُ أَحَدًا رَوَاهُ غَيْرَ مَخْرَمَةَ.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُهُمْ: " الْبِدْعَةُ مَرْدُودَةٌ " فَصَدَقُوا، وَلَوْ كَانَتْ بِدْعَةً لَوَجَبَ أَنْ تُرَدَّ وَتَبْطُلَ.

وَأَمَّا الْآيَاتُ - فَإِنَّمَا نَزَلَتْ فِيمَنْ طَلَّقَ وَاحِدَةً أَوْ اثْنَتَيْنِ فَقَطْ.

ثُمَّ تَسْأَلُهُمْ عَمَّنْ طَلَّقَ مَرَّةً، ثُمَّ رَاجَعَ، ثُمَّ مَرَّةً، ثُمَّ رَاجَعَ ثَانِيَةً، ثُمَّ ثَالِثَةً، أَبِبِدْعَةٍ أَتَى؟ فَمَنْ قَوْلُهُمْ: لَا، بَلْ بِسُنَّةٍ؟ فَنَسْأَلُهُمْ: أَتَحْكُمُونَ لَهُ بِمَا فِي الْآيَاتِ الْمَذْكُورَاتِ؟ فَمِنْ قَوْلِهِمْ: لَا، بِلَا خِلَافٍ.

فَصَحَّ أَنَّ الْمَقْصُودَ - فِي الْآيَاتِ الْمَذْكُورَاتِ - مَنْ أَرَادَ أَنْ يُطَلِّقَ طَلَاقًا رَجْعِيًّا؟ فَبَطَلَ احْتِجَاجُهُمْ بِهَا فِي حُكْمِ مَنْ طَلَّقَ ثَلَاثًا.

وَأَمَّا قَوْلُهُمْ مَعْنَى قَوْلِهِ: {الطَّلَاقُ مَرَّتَانِ} [البقرة: ٢٢٩] أَنَّ مَعْنَاهُ: مَرَّةً بَعْدَ مَرَّةٍ فَخَطَأٌ، بَلْ هَذِهِ الْآيَةُ كَقَوْلِهِ تَعَالَى: {نُؤْتِهَا أَجْرَهَا مَرَّتَيْنِ} [الأحزاب: ٣١] أَيْ مُضَاعَفًا مَعًا.

this verse is like His saying—exalted is He—: {We will give her her reward twice} [Al-Ahzab: 31], meaning doubled at once.[15]

وَهَذِهِ الْآيَةُ أَيْضًا تَعْلِيمٌ لِمَا دُونَ الثَّلَاثِ مِنْ الطَّلَاقِ، وَهُوَ حُجَّةٌ لَنَا عَلَيْهِمْ، لِأَنَّهُمْ لَا يَخْتَلِفُونَ - يَعْنِي الْمُخَالِفِينَ لَنَا - فِي أَنَّ طَلَاقَ السُّنَّةِ هُوَ أَنْ يُطَلِّقَهَا وَاحِدَةً، ثُمَّ يَتْرُكَهَا حَتَّى تَنْقَضِيَ عِدَّتُهَا - فِي قَوْلِ طَائِفَةٍ مِنْهُمْ.

L33476–33477 This verse also provides instruction regarding divorce pronounced fewer than three times, and it constitutes proof for us against our opponents, for they—those who differ from us—do not dispute that the Sunnah-compliant divorce is to issue a single pronouncement, then leave her until her waiting period expires—this being affirmed in the juridical view of a faction among them.

وَفِي قَوْلِ آخَرِينَ مِنْهُمْ: أَنْ يُطَلِّقَهَا فِي كُلِّ طُهْرٍ طَلْقَةً -: وَلَيْسَ شَيْءٌ مِنْ هَذَا فِي هَذِهِ الْآيَةِ، وَهُمْ لَا يَرَوْنَ مَنْ طَلَّقَ طَلْقَتَيْنِ مُتَتَابِعَتَيْنِ فِي كَلَامٍ مُتَّصِلٍ: طَلَاقَ سُنَّةٍ، فَبَطَلَ تَعَلُّقُهُمْ بِقَوْلِهِ تَعَالَى: {الطَّلَاقُ مَرَّتَانِ} [البقرة: ٢٢٩] .

L33478 In the opinion of others among them: that he divorces her once in each period of purity. None of this is present in this verse, and they do not consider someone who issues two consecutive divorces in a single connected statement as having performed a Sunnah-compliant divorce. Thus, their reliance upon the words of the Almighty, “Divorce is twice” [Al-Baqarah: 229], is invalidated.[16]

وَأَمَّا خَبَرُ مَحْمُودِ بْنِ لَبِيدٍ فَمُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ - وَمَخْرَمَةُ لَمْ يَسْمَعْ مِنْ أَبِيهِ شَيْئًا.

L33479 As for the report of Maḥmūd ibn Labīd, it is *mursal*, and there is no authoritative proof in a *mursal* report—for Makhramah never heard anything directly from his father.

وَأَمَّا قَوْلُ مَنْ قَالَ: إنَّ الثَّلَاثَ تُجْعَلُ وَاحِدَةً، فَإِنَّهُمْ احْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رَافِعٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ قَالَ: كَانَ الطَّلَاقُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَأَبِي بَكْرٍ وَسَنَتَيْنِ مِنْ خِلَافَةِ عُمَرَ: طَلَاقُ الثَّلَاثِ وَاحِدَةً، فَقَالَ عُمَرُ بْنُ الْخَطَّابِ: إنَّ النَّاسَ قَدْ اسْتَعْجَلُوا فِي أَمْرٍ كَانَ لَهُمْ فِيهِ أَنَاةٌ، فَلَوْ أَمْضَيْنَاهُ عَلَيْهِمْ؟ فَأَمْضَاهُ عَلَيْهِمْ.

L33480 As for the statement of those who claim that three divorce pronouncements are treated as one, they argued using the narration transmitted through the chain of Muslim: Muḥammad ibn Rāfiʿ reported from ʿAbd al-Razzāq, from Maʿmar, from Ibn Ṭāwūs, from his father, from Ibn ʿAbbās, who said: “During the era of Allah’s Messenger (peace and blessings be upon him and his family), Abū Bakr, and two years of ʿUmar’s caliphate, three divorce pronouncements were counted as a single act.” Then ʿUmar ibn al-Khaṭṭāb said: “People have hastened in a matter wherein they had the capacity for deliberation. What if we were to enforce it upon them?” Thus, he ratified it among them.

وَرُوِّينَا مِنْ طَرِيقِ الدَّبَرِيِّ عَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي ابْنُ طَاوُسٍ عَنْ أَبِيهِ أَنَّ أَبَا الصَّهْبَاءِ قَالَ لِابْنِ عَبَّاسٍ: أَلَمْ تَعْلَمْ أَنَّهَا كَانَتْ الثَّلَاثُ تُجْعَلُ وَاحِدَةً عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَأَبِي بَكْرٍ وَصَدْرًا مِنْ إمَارَةِ عُمَرَ؟ قَالَ: نَعَمْ.

L33481–33482 It was narrated to us through the chain of al-Dabarī from ʿAbd al-Razzāq from Ibn Jurayj: Ibn Ṭāwūs informed me from his father that Abū al-Ṣahbāʾ said to Ibn ʿAbbās, “Did you not know that the three were combined into

[15] **Qur’an references (L33475):** Qur’an 33:31 (Al-Ahzab); Qur’an 2:229 (Al-Baqarah).
[16] **Qur’an references (L33478):** Qur’an 2:229 (Al-Baqarah).

one during the time of Allah's Messenger (peace be upon him and his family), Abū Bakr, and the early phase of ʿUmar's rule?" He replied, "Yes."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا سُلَيْمَانُ بْنُ سَيْفٍ الْحَرَّانِيُّ نا أَبُو عَاصِمٍ هُوَ النَّبِيلُ - عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ أَنَّ أَبَا الصَّهْبَاءِ قَالَ لِابْنِ عَبَّاسٍ: أَلَمْ تَعْلَمْ أَنَّ الثَّلَاثَ كَانَتْ تُجْعَلُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبِي بَكْرٍ وَصَدْرًا مِنْ خِلَافَةِ عُمَرَ تُرَدُّ إِلَى الْوَاحِدَةِ؟ قَالَ: نَعَمْ.

L33483 And through the chain of Ahmad ibn Shu'ayb: Sulayman ibn Sayf al-Harrani reported to us: Abu 'Asim, who is al-Nabil, reported to us from Ibn Jurayj from Ibn Tawus from his father that Abu al-Sahba' said to Ibn 'Abbas: "Did you not know that during the time of the Messenger of Allah (peace be upon him), Abu Bakr, and the early part of 'Umar's caliphate, the three were reverted to one?" He said: "Yes."

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مُسْلِمٍ عَنْ إِسْحَاقَ بْنِ رَاهَوَيْهِ نا سُلَيْمَانُ بْنُ حَرْبٍ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ إِبْرَاهِيمَ بْنِ مَيْسَرَةَ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ.

L33484 It was also narrated to us through the chain of Muslim, from Ishaq ibn Rāhawayh, who narrated to us from Sulayman ibn Harb, from Hammad ibn Zayd, from Ayyub al-Sikhtiyani, from Ibrahim ibn Maysarah, from Tawus, from Ibn Abbas.

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ صَالِحٍ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي بَعْضُ بَنِي أَبِي رَافِعٍ مَوْلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: «طَلَّقَ عَبْدُ يَزِيدَ أَبُو رُكَانَةَ وَإِخْوَتُهُ أُمَّ رُكَانَةَ - فَذَكَرَ الْحَدِيثَ وَفِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: رَاجِعْ امْرَأَتَكَ أُمَّ رُكَانَةَ وَإِخْوَتِهِ؟ فَقَالَ: إِنِّي طَلَّقْتُهَا ثَلَاثًا يَا رَسُولَ اللَّهِ؟ قَالَ: قَدْ عَلِمْتُ أَرْجِعْهَا وَتَلَا {يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] ».

L33485 And according to what we have narrated through the chain of Abu Dawud—Ahmad ibn Salih—Abd al-Razzaq—Ibn Jurayj—some of the sons of Abu Rafi', the freed slave of the Messenger of Allah (peace be upon him), from Ikrimah, from Ibn Abbas, who said: "Abd Yazeed Abu Rukanah and his brothers divorced Umm Rukanah." He mentioned the hadith, which states that the Messenger of Allah (peace be upon him) said to him: "Take back your wife Umm Rukanah and his brothers?" He replied: "I have divorced her three times, O Messenger of Allah." He said: "I know. Take her back," and he recited: {O Prophet, when you divorce women, divorce them for their waiting period} [At-Talaq 65:1].[17]

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ لَهُمْ شَيْئًا احْتَجُّوا بِهِ غَيْرَ هَذَا، وَهَذَا لَا يَصِحُّ، لِأَنَّهُ عَنْ غَيْرِ مُسَمًّى مِنْ بَنِي أَبِي رَافِعٍ وَلَا حُجَّةَ فِي مَجْهُولٍ، وَمَا نَعْلَمُ فِي بَنِي أَبِي رَافِعٍ مِنْ يُحْتَجُّ بِهِ إِلَّا عُبَيْدُ اللَّهِ وَحْدَهُ وَسَائِرُهُمْ مَجْهُولُونَ.

L33486–33487 Abu Muhammad said: We do not know of any proof they have used as evidence other than this, and this is not sound, for it is transmitted by an unnamed individual from the sons of Abi Rafi'—and there is no valid argument from an unknown narrator. We do not know of anyone among the sons of Abi Rafi' whose narration is relied upon except Ubayd Allah alone; all the rest are unknown narrators.

L33488–33490 As for the narration of Ṭāwūs - from Ibn ʿAbbās - which states that the three

[17] **Qur'an references (L33485):** Qur'an 65:1 (At-Talaq).

were one [feminine], are reverted to the one [feminine], and are rendered as one, there is nothing in it to indicate that he - peace and blessings be upon him - is the one who made them one. Or returned it to the one, nor that he—peace and blessings be upon him—knew of that and approved it. Nor is there any proof except in what is authentically established that he—peace and blessings be upon him—said it, did it, or knew of it and did not reject it. This report is only incumbent upon those who claimed regarding Abū Sa'īd al-Khudrī's statement: "We used to give in Zakāt al-Fiṭr during the time of Allah's Messenger—may the peace and blessings of Allah be upon him and his family—a ṣāʿ of such-and-such," but as for us, we do not do so. All praise is due to Allah, Lord of the worlds.[18]

وَأَمَّا حَدِيثُ طَاوُسٍ - عَنْ ابْنِ عَبَّاسٍ الَّذِي فِيهِ أَنَّ الثَّلَاثَ كَانَتْ وَاحِدَةً وَتُرَدُّ إِلَى الْوَاحِدَةِ وَتُجْعَلُ وَاحِدَةً فَلَيْسَ شَيْءٌ مِنْهُ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - هُوَ الَّذِي جَعَلَهَا وَاحِدَةً، أَوْ رَدَّهَا إِلَى الْوَاحِدَةِ، وَلَا أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلِمَ بِذَلِكَ فَأَقَرَّهُ، وَلَا حُجَّةَ إِلَّا فِيمَا صَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَهُ أَوْ فَعَلَهُ أَوْ عَلِمَهُ فَلَمْ يُنْكِرْهُ وَإِنَّمَا يَلْزَمُ هَذَا الْخَبَرُ مَنْ قَالَ فِي قَوْلِ أَبِي سَعِيدٍ الْخُدْرِيِّ: «كُنَّا نُخْرِجُ فِي زَكَاةِ الْفِطْرِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - صَاعًا مِنْ كَذَا» ، وَأَمَّا نَحْنُ فَلَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L33491 As for those who asserted it is a sin and that it takes effect, they were deluded by what we narrated through the chain of ʿAbd al-Razzāq from Yaḥyā ibn al-ʿAlā' from ʿUbayd Allāh ibn al-Walīd al-Ruṣāfī al-ʿIjlī from Ibrāhīm—who is the son of ʿUbayd Allāh ibn ʿUbādah ibn al-Ṣāmit—from Dāwūd from ʿUbādah ibn al-Ṣāmit, who said: "My grandfather divorced his wife a thousand times. My father went to the Messenger of Allah—peace and blessings be upon him—and mentioned this to him. The Prophet said: 'Did your grandfather not fear Allah?! As for three, they are his right; as for the nine hundred and ninety-seven, they are transgression and injustice. If Allah wills, He punishes him, and if He wills, He forgives him.'"

وَأَمَّا مَنْ قَالَ: إِنَّهَا مَعْصِيَةٌ وَأَنَّهَا تَقَعُ فَإِنَّهُمْ مَوَّهُوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ يَحْيَى بْنِ الْعَلَاءِ عَنْ عُبَيْدِ اللَّهِ بْنِ الْوَلِيدِ الرُّصَافِيِّ الْعِجْلِيِّ عَنْ إِبْرَاهِيمَ - هُوَ ابْنُ عُبَيْدِ اللَّهِ بْنُ عُبَادَةَ بْنِ الصَّامِتِ - عَنْ دَاوُد عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: «طَلَّقَ جَدِّي امْرَأَةً لَهُ أَلْفَ تَطْلِيقَةٍ فَانْطَلَقَ أَبِي إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ ذَلِكَ لَهُ، فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَا اتَّقَى اللَّهَ جَدُّكَ، أَمَّا ثَلَاثٌ فَلَهُ، وَأَمَّا تِسْعُمِائَةٍ وَسَبْعٌ وَتِسْعُونَ فَعُدْوَانٌ وَظُلْمٌ، إِنْ شَاءَ اللَّهُ عَذَّبَهُ، وَإِنْ شَاءَ غَفَرَ لَهُ» .

L33492 Some people narrated it from Sadaqah ibn Abī ʿImrān, from Ibrāhīm ibn ʿUbayd Allāh ibn ʿUbādah ibn al-Ṣāmit, from his father, from his grandfather, who said: "One of my ancestors divorced his wife. His sons went to the Messenger of Allah—peace and blessings be upon him—and said: 'O Messenger of Allah, our father has divorced our mother a thousand times. Is there any way out for him?' He replied: 'Your father did not fear Allah, so He did not provide a way out. She is irrevocably divorced by three divorce pronouncements contrary to the Sunnah, and nine-hundred-and-ninety-seven sins remain upon his neck.'"

وَرَوَاهُ بَعْضُ النَّاسِ عَنْ صَدَقَةَ بْنِ أَبِي عِمْرَانَ عَنْ إِبْرَاهِيمَ بْنِ عُبَيْدِ اللَّهِ بْنِ عُبَادَةَ بْنِ الصَّامِتِ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ: «طَلَّقَ بَعْضُ آبَائِي امْرَأَتَهُ فَانْطَلَقَ بَنُوهُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: يَا رَسُولَ اللَّهِ إِنَّ أَبَانَا طَلَّقَ أُمَّنَا أَلْفًا فَهَلْ لَهُ مِنْ مَخْرَجٍ؟ فَقَالَ: إِنَّ أَبَاكُمْ لَمْ يَتَّقِ اللَّهَ فَيَجْعَلْ مَخْرَجًا بَانَتْ مِنْهُ بِثَلَاثٍ عَلَى غَيْرِ السُّنَّةِ، وَتِسْعُمِائَةٍ وَسَبْعٌ وَتِسْعُونَ إِثْمًا فِي عُنُقِهِ» .

[18] **Qur'an references (L33488):** Qur'an 37:182 (As-Saffat).

L33493 A narration reported through the chain of Muḥammad ibn Shādhān from Muʿallā ibn Manṣūr from Shuʿayb ibn Ruzayq that ʿAṭāʾ al-Khurāsānī related to them from al-Ḥasan, who said: ʿAbdullāh ibn ʿUmar reported that he divorced his wife while she was menstruating, then he intended to pronounce two additional divorces during the two remaining waiting periods of purity. When this reached the Messenger of Allāh—peace be upon him and his progeny—he said: "O Ibn ʿUmar, Allāh has not commanded you thus; indeed, you have erred against the Sunnah." He cited the full narration, which continues: I said: "O Messenger of Allāh, had I divorced her three times, would I have been permitted to take her back?" He replied: "No, she would have been irrevocably divorced, and it would have been a sinful act."

وَخَبَرٌ رُوِيَ مِنْ طَرِيقِ مُحَمَّدِ بْنِ شَاذَانَ عَنْ مُعَلَّى بْنِ مَنْصُورٍ عَنْ شُعَيْبِ بْنِ رُزَيْقٍ أَنَّ عَطَاءً الْخُرَاسَانِيَّ حَدَّثَهُمْ عَنْ الْحَسَنِ قَالَ: نا عَبْدُ اللَّهِ بْنُ عُمَرَ " أَنَّهُ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ ثُمَّ أَرَادَ أَنْ يُتْبِعَهَا تَطْلِيقَتَيْنِ أُخْرَيَيْنِ عِنْدَ الْقُرْأَيْنِ الْبَاقِيَيْنِ فَبَلَغَ ذَلِكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «فَقَالَ: يَا ابْنَ عُمَرَ مَا هَكَذَا أَمَرَكَ اللَّهُ إنَّكَ قَدْ أَخْطَأْتَ السُّنَّةَ» وَذَكَرَ الْخَبَرَ، وَفِيهِ - فَقُلْت: «يَا رَسُولَ اللَّهِ لَوْ كُنْتُ طَلَّقْتُهَا ثَلَاثًا أَكَانَ لِي أَنْ أُرَاجِعَهَا؟ قَالَ: لَا، كَانَتْ تَبِينُ وَتَكُونُ مَعْصِيَةً» .

L33494–33495 The report we mentioned previously is narrated through the chain of Ismail ibn Umayyah al-Dharra, from Hammad ibn Zayd, from Abd al-Aziz ibn Suhayb, from Anas, from the Messenger of Allah (peace and blessings be upon him and his family): "Whoever divorces through innovation, we bind him to his innovation."

وَالْخَبَرُ الَّذِي ذَكَرْنَاهُ آنِفًا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ أُمَيَّةَ الذَّرَّاعِ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ عَنْ أَنَسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ طَلَّقَ فِي بِدْعَةٍ أَلْزَمْنَاهُ بِدْعَتَهُ» .

L33496 They narrated from those other than the Messenger of Allah—may Allah bless him and his family and grant him peace—what we previously mentioned of Umar's statement in the narration of Tawus: "People hastened into a matter they could have deliberated upon; had we implemented it for them..."

وَذَكَرُوا عَمَّنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا ذَكَرْنَاهُ آنِفًا مِنْ قَوْلِ عُمَرَ فِي حَدِيثِ طَاوُسٍ: إنَّ النَّاسَ قَدْ اسْتَعْجَلُوا أَمْرًا كَانَتْ لَهُمْ فِيهِ أَنَاةٌ فَلَوْ أَمْضَيْنَاهُ عَلَيْهِمْ.

L33497 From the narration of Abd al-Razzaq via Ismail ibn Abi Abdullah: Ubaydullah ibn al-Ayzar informed me that he heard Anas ibn Malik say: "When Umar caught someone who had pronounced a triple divorce, he would beat his head severely."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إسْمَاعِيلَ بْنِ أَبِي عَبْدِ اللَّهِ أَخْبَرَنِي عُبَيْدُ اللَّهِ بْنُ الْعَيْزَارِ أَنَّهُ سَمِعَ أَنَسَ بْنَ مَالِكٍ يَقُولُ: كَانَ عُمَرُ إذَا ظَفَرَ بِمَنْ طَلَّقَ ثَلَاثًا أَوْجَعَ رَأْسَهُ.

L33498 Narrated by ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from Sālim ibn ʿAbd Allāh ibn ʿUmar from his father, who said: Whoever divorces his wife three times, she is divorced, but he has thereby transgressed against his Lord.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: مَنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا طَلُقَتْ وَعَصَى رَبَّهُ.

L33499 Narrated by Abd al-Razzaq from Ma'mar from Ibn Tawus from his father, who said: When Ibn Abbas was asked regarding someone who divorced his

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: كَانَ ابْنُ عَبَّاسٍ إذَا سُئِلَ عَمَّنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا؟ قَالَ: لَوْ اتَّقَيْت اللَّهَ لَجَعَلَ لَك مَخْرَجًا.

wife three times, he would say: "If you had feared Allah, He would have granted you a way out."

L33500 Abu Muhammad said: We know of nothing they dispute contentiously except this, and none of it constitutes a decisive proof for them. As for the narration of ʻUbadah ibn al-Samit, it is utterly rejected—for it is transmitted through Yahya ibn al-ʻAla'—who is not reliable—from ʻUbayd Allah ibn al-Walid al-Waṣṣāf—who is rejected—from Ibrahim ibn ʻUbayd Allah ibn ʻUbadah ibn al-Samit—who is unknown and unrecognized.

قَالَ أَبُو مُحَمَّدٍ: لَا نَعْلَمُ لَهُمْ شَيْئًا يَشْغَبُونَ بِهِ إِلَّا هَذَا، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ - أَمَّا حَدِيثُ عُبَادَةَ بْنِ الصَّامِتِ فَفِي غَايَةِ السُّقُوطِ، لِأَنَّهُ إِمَّا مِنْ طَرِيقِ يَحْيَى بْنِ الْعَلَاءِ - وَلَيْسَ بِالْقَوِيِّ - عَنْ عُبَيْدِ اللَّهِ بْنِ الْوَلِيدِ الْوَصَّافِيِّ - وَهُوَ هَالِكٌ - عَنْ إِبْرَاهِيمَ بْنِ عُبَيْدِ اللَّهِ بْنِ عُبَادَةَ بْنِ الصَّامِتِ - وَهُوَ مَجْهُولٌ لَا يُعْرَفُ.

L33501–33502 Moreover, this is utterly invalid because it has never been found in any of the narrations that the father of Ubada—may Allah be pleased with him—lived to witness the advent of Islam, so how then could his grandfather have done so? This is undeniably impossible.

ثُمَّ هُوَ مُنْكَرٌ جِدًّا، لِأَنَّهُ لَمْ يُوجَدْ قَطُّ فِي شَيْءٍ مِنْ الْآثَارِ: أَنَّ وَالِدَ عُبَادَةَ - رَضِيَ اللَّهُ عَنْهُ - أَدْرَكَ الْإِسْلَامَ، فَكَيْفَ جَدُّهُ؟ وَهُوَ مُحَالٌ بِلَا شَكٍّ.

L33503 Furthermore, its expressions are contradictory in some parts: "As for three, they are permitted for you"—this indicates the permissibility of the three—while others are contrary to that.

ثُمَّ أَلْفَاظُهُ مُتَنَاقِضَةٌ فِي بَعْضِهَا " أَمَّا ثَلَاثٌ فَلَكَ " وَهَذَا إبَاحَةٌ لِلثَّلَاثِ، وَبَعْضُهَا بِخِلَافِ ذَلِكَ.

L33504 As for the ḥadīth of Ibn ʿUmar—it is utterly rejected, for it is narrated from Ruzaiq ibn Shuʿayb or Shuʿayb ibn Ruzaiq al-Shāmī—who is weak—and we have previously mentioned the weakness of Ismāʿīl ibn Umayyah al-Dharraʿ and his anonymity. Thus, the arguments they raised are invalidated.

وَأَمَّا حَدِيثُ ابْنِ عُمَرَ - فَفِي غَايَةِ السُّقُوطِ، لِأَنَّهُ عَنْ رُزَيْقِ بْنِ شُعَيْبٍ أَوْ شُعَيْبِ بْنِ رُزَيْقٍ الشَّامِيِّ - وَهُوَ ضَعِيفٌ - وَقَدْ ذَكَرْنَا ضَعْفَ إسْمَاعِيلَ بْنِ أُمَيَّةَ الذَّرَّاعِ وَجَهَالَتَهُ فَبَطَلَ مَا شَغَبُوا بِهِ.

L33505 And nothing remained in their hands—and all praise is due to Allah, the Lord of all the worlds.

وَلَمْ يَبْقَ بِأَيْدِيهِمْ شَيْءٌ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L33506 As for what they cited from the Companions—may Allah be pleased with them—such as the narration from ʿUmar: "We see people have hastened into something they once exercised patience in," this contains no proof that pronouncing three divorces at once is inherently sinful. It is authentically reported from Ibn ʿUmar, and no one's opinion constitutes valid proof against the Messenger of Allah—peace and blessings be upon him and his family.

وَأَمَّا مَا ذَكَرُوا عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَالرِّوَايَةُ عَنْ عُمَرَ " نَرَى النَّاسَ قَدْ اسْتَعْجَلُوا شَيْئًا كَانَتْ لَهُمْ فِيهِ أَنَاةٌ " فَلَا دَلِيلَ فِيهِ عَلَى أَنَّ طَلَاقَ الثَّلَاثِ مَعْصِيَةٌ أَصْلًا وَهُوَ صَحِيحٌ عَنْ ابْنِ عُمَرَ وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - ".

L33507 Abū Muḥammad said: There is nothing weaker than the statement of one who admits to implementing heretical innovation and issuing rulings based on invalid [principles] without textual evidence from Allah the Exalted or His Messenger (peace and blessings be upon him and his family).

قَالَ أَبُو مُحَمَّدٍ: وَلَا أَضْعَفُ مِنْ قَوْلِ مَنْ يُقِرُّ أَنَّهُ يُنَفِّذُ الْبِدْعَةَ وَيَحْكُمُ بِمَا لَا يَجُوزُ بِغَيْرِ نَصٍّ مِنْ اللَّهِ تَعَالَى، وَلَا مِنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L33508–33510 Abū Muḥammad said: We encountered, within the arguments of those who claim that issuing the threefold divorce in a single pronouncement is valid and not an innovation, the statement of Allah Almighty: {If he divorces her, she is not lawful for him thereafter until she marries a husband other than him} [Al-Baqarah: 230]. This ruling applies to the triple divorce whether issued collectively in one instance or separately, and it is impermissible to restrict this verse to certain cases rather than others without a scriptural text. Likewise, Allah Almighty's statement: {When you marry believing women and then divorce them before touching them, there is no waiting period incumbent upon them for you to enforce} [Al-Aḥzāb: 49] is of general import (ʿumūm). Regarding the permissibility of three, two, or one divorces, and His Exalted's statement: "Divorced women are entitled to fair provision" [Al-Baqarah: 241], the Exalted has not distinguished a woman divorced once from a woman divorced twice or a woman divorced three times.[1]

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ وَجَدْنَا مِنْ حُجَّةِ مَنْ قَالَ: إنَّ الطَّلَاقَ الثَّلَاثَ مَجْمُوعَةً سُنَّةٌ وَلَا بِدْعَةٌ قَوْلُ اللَّهِ تَعَالَى: {فَإِنْ طَلَّقَهَا فَلا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ} [البقرة: ٢٣٠] فَهَذَا يَقَعُ عَلَى الثَّلَاثِ مَجْمُوعَةً وَمُفَرَّقَةً، وَلَا يَجُوزُ أَنْ يُخَصَّ بِهَذِهِ الْآيَةِ بَعْضُ ذَلِكَ دُونَ بَعْضٍ بِغَيْرِ نَصٍّ - وَكَذَلِكَ قَوْلُه تَعَالَى: {إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّونَهَا} [الأحزاب: ٤٩] عُمُومٌ لِإِبَاحَةِ الثَّلَاثِ وَالِاثْنَيْنِ وَالْوَاحِدَةِ، وَقَوْلُه تَعَالَى: {وَلِلْمُطَلَّقَاتِ مَتَاعٌ بِالْمَعْرُوفِ} [البقرة: ٢٤١] فَلَمْ يُخَصَّ تَعَالَى مُطَلَّقَةً وَاحِدَةً مِنْ مُطَلَّقَةٍ اثْنَتَيْنِ وَمِنْ مُطَلَّقَةٍ ثَلَاثًا.

L33511 We found what we have transmitted through Mālik from Ibn Shihāb: that Sahl ibn Saʿd al-Sāʿidī informed him of the Hadith of Liʿān (mutual imprecation) of ʿUwaymir al-ʿAjlānī with his wife. At its conclusion, ʿUwaymir said: "I lied against her, O Messenger of God, if I retain her," so he divorced her three times before the Messenger of God (peace and blessings be upon him and his family) could instruct him. Then he said: "And I was among the people present before the Messenger of God (peace and blessings be upon him and his family)."

وَوَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ: أَنَّ سَهْلَ بْنَ سَعْدٍ السَّاعِدِيَّ أَخْبَرَهُ عَنْ حَدِيثِ اللِّعَانِ عُوَيْمِرٌ الْعَجْلَانِيُّ مَعَ امْرَأَتِهِ - وَفِي آخِرِهِ: أَنَّهُ قَالَ: «كَذَبْتُ عَلَيْهَا يَا رَسُولَ اللَّهِ إنْ أَمْسَكْتُهَا فَطَلَّقَهَا ثَلَاثًا قَبْلَ أَنْ يَأْمُرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - ثُمَّ قَالَ: وَأَنَا مَعَ النَّاسِ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -» .

L33512–33514 Abu Muhammad said: If pronouncing a triple talaq were an act of disobedience to Allah the Exalted, the Messenger of Allah would not have remained silent. It was validated with certainty—regarding the clarification from the Prophet, may Allah bless him and grant him peace and his family—that this is a permissible practice.

قَالَ أَبُو مُحَمَّدٍ: لَوْ كَانَ طَلَاقُ الثَّلَاثِ مَجْمُوعَةً مَعْصِيَةً لِلَّهِ تَعَالَى لَمَا سَكَتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ بَيَانِ ذَلِكَ - فَصَحَّ يَقِينًا أَنَّهَا سُنَّةٌ مُبَاحَةٌ.

L33515 Some of our companions said: It cannot be except that he divorced her while she was his wife, or he divorced her when she had become forbidden to him, requiring permanent separation between them. If he divorced her while she was his wife, this is not your position, for your view is that she becomes

وَقَالَ بَعْضُ أَصْحَابِنَا: لَا يَخْلُو مِنْ أَنْ يَكُونَ طَلَّقَهَا وَهِيَ امْرَأَتُه، أَوْ طَلَّقَهَا وَقَدْ حُرِّمَتْ عَلَيْه، وَوَجَبَ التَّفْرِيقُ بَيْنَهُمَا، فَإِنْ كَانَ طَلَّقَهَا وَهِيَ امْرَأَتُه فَلَيْسَ هَذَا قَوْلُكُمْ، لِأَنَّ قَوْلَكُمْ أَنَّهَا بِتَمَامِ اللِّعَانِ تَبِينُ عَنْهُ إلَى الْأَبَدِ، وَإِنْ كَانَ طَلَّقَهَا أَجْنَبِيَّةً، فَإِنَّمَا نَحْنُ فِيمَنْ

[1] **Qur'an references (L33508):** Qur'an 2:230 (Al-Baqarah); Qur'an 33:49 (Al-Ahzab); Qur'an 2:241 (Al-Baqarah).

irrevocably separated from him upon completing the mutual imprecation. But if he divorced her as a stranger, are we discussing one who divorces his wife or one who divorces a stranger? We replied: He divorced her while assuming she was his wife – this is something no one disputes. Had this been sinful, the Messenger of Allah (peace and blessings be upon him and his family) would have preceded you in objecting to it. Our entire proof rests on the Messenger of Allah's (peace and blessings be upon him and his family) silence toward one who pronounced a triple divorce to a woman he believed to be his wife, having no doubt that she remained within his marital bond.

طَلَّقَ امْرَأَتَهُ، لَا فِيمَنْ طَلَّقَ أَجْنَبِيَّةً؟ فَقُلْنَا: إِنَّمَا طَلَّقَهَا وَهُوَ يُقَدِّرُ أَنَّهَا امْرَأَتُهُ - هَذَا مَا لَا يَشُكُّ فِيهِ أَحَدٌ فَلَوْ كَانَ ذَلِكَ مَعْصِيَةً لَسَبَقَكُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِلَى هَذَا الِاعْتِرَاضِ، فَإِنَّمَا حُجَّتُنَا كُلُّهَا فِي تَرْكِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الْإِنْكَارَ عَلَى مَنْ طَلَّقَ ثَلَاثًا مَجْمُوعَةً امْرَأَةً يَظُنُّهَا امْرَأَتَهُ، وَلَا يَشُكُّ أَنَّهَا فِي عِصْمَتِهِ فَقَطْ.

L33516 If they say: "Not every case where mention is omitted in the narrations means that its omission constitutes binding evidence..."

فَإِنْ قَالُوا: لَيْسَ كُلُّ مَسْكُوتٍ عَنْ ذِكْرِهِ فِي الْأَخْبَارِ يَكُونُ تَرْكُ ذِكْرِهِ حُجَّةً؟ .

L33517 So we said: Yes, it is a binding proof unless there exists a clarification in another report that has not been mentioned in this report. In such a case, silence about it in another report does not constitute proof.

فَقُلْنَا: نَعَمْ، هُوَ حُجَّةٌ لَازِمَةٌ إِلَّا أَنْ يُوجَدَ بَيَانٌ فِي خَبَرٍ آخَرَ لَمْ يُذْكَرْ فِي هَذَا الْخَبَرِ فَحِينَئِذٍ لَا يَكُونُ السُّكُوتُ عَنْهُ فِي خَبَرٍ آخَرَ حُجَّةً.

L33518 Through the chain of al-Bukhārī: Muḥammad ibn Bashshār narrated to us: Yaḥyā—that is, Ibn Saʿīd al-Qaṭṭān—narrated to us from ʿUbayd ibn ʿUmar, from al-Qāsim ibn Muḥammad ibn Abī Bakr, from ʿĀ'ishah, the Mother of the Believers, who said: "A man divorced his wife three times. She then married [another], and he divorced her. The Messenger of Allah—may Allah send blessings upon him and his family and grant him peace—was asked: 'Is she lawful for the first?' He replied: 'No, until he tastes her sweetness as the first tasted.'" The Prophet—upon him be peace and blessings—did not reject this question, and had it been impermissible, he would have informed them so.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ عُبَيْدِ بْنِ عُمَرَ نا الْقَاسِمُ بْنُ مُحَمَّدِ بْنِ أَبِي بَكْرٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «إِنَّ رَجُلًا طَلَّقَ امْرَأَتَهُ ثَلَاثًا فَتَزَوَّجَتْ فَطَلَّقَ. فَسُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَتَحِلُّ لِلْأَوَّلِ؟ قَالَ: لَا، حَتَّى يَذُوقَ عُسَيْلَتَهَا كَمَا ذَاقَ الْأَوَّلُ» فَلَمْ يُنْكِرْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - هَذَا السُّؤَالَ، وَلَوْ كَانَ لَا يَجُوزُ لَأَخْبَرَ بِذَلِكَ.

L33519–33521 The well-known report of Fatimah bint Qays—we have narrated it through the chain of Yahya ibn Abi Kathir, who reported that Abu Salamah ibn Abd al-Rahman informed him that Fatimah bint Qays informed him: Her husband, Ibn Hafs ibn al-Mughirah al-Makhzumi, divorced her three times, then departed for Yemen. Khalid ibn al-Walid set out with a group and came to the Messenger of Allah (peace be upon him and his family) in the house of Maymunah, the Mother of the Believers. They said: "Ibn Hafs has divorced her." He divorced his wife three times. Is she entitled to maintenance? The

وَخَبَرُ فَاطِمَةَ بِنْتِ قَيْسٍ الْمَشْهُورُ -: رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ أَبِي كَثِيرٍ أَخْبَرَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ أَنَّ فَاطِمَةَ بِنْتَ قَيْسٍ أَخْبَرَتْهُ: أَنَّ زَوْجَهَا ابْنَ حَفْصِ بْنِ الْمُغِيرَةِ الْمَخْزُومِيَّ طَلَّقَهَا ثَلَاثًا ثُمَّ انْطَلَقَ إِلَى الْيَمَنِ، فَانْطَلَقَ خَالِدُ بْنُ الْوَلِيدِ فِي نَفَرٍ فَأَتَوْا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي بَيْتِ مَيْمُونَةَ أُمِّ الْمُؤْمِنِينَ فَقَالُوا: إِنَّ ابْنَ حَفْصٍ

طَلَّقَ امْرَأَتَهُ ثَلَاثًا فَهَلْ لَهَا مِنْ نَفَقَةٍ؟ فَقَالَ رَسُولُ اللَّهِ «- صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: لَيْسَ لَهَا نَفَقَةٌ وَعَلَيْهَا الْعِدَّةُ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

Messenger of Allah—peace be upon him and his family—said: "There is no maintenance for her, and she must observe the 'iddah (waiting period)." The narrator mentioned the rest of the hadith.

L33522 وَمِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ مَنْصُورٍ نا عَبْدُ الرَّحْمَنِ - هُوَ ابْنُ مَهْدِيٍّ - عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي بَكْرِ بْنِ أَبِي الْجَهْمِ قَالَ: سَمِعْت فَاطِمَةَ بِنْتَ قَيْسٍ فَذَكَرَتْ حَدِيثَ طَلَاقِهَا قَالَتْ «وَأَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: كَمْ طَلَّقَكِ؟ قُلْتُ: ثَلَاثًا، فَقَالَ: صَدَقَ، لَيْسَ لَكِ نَفَقَةٌ» وَذَكَرَتْ بَاقِيَ الْخَبَرِ.

And through the chain of Imam Muslim: Ishaq ibn Mansur narrated to us, Abd al-Rahman (Ibn Mahdi) narrated to us, from Sufyan al-Thawri, from Abu Bakr ibn Abi al-Jahm, who said: I heard Fatimah bint Qays, and she mentioned the narration of her divorce. She said, "I went to the Messenger of Allah (peace be upon him and his family), and he said: 'How many times has he divorced you?' I said: 'Three times.' He said: 'He spoke truthfully. You have no right to maintenance,'" and she mentioned the remainder of the report.

L33523 وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا حَفْصُ بْنُ غِيَاثٍ نا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ قَالَتْ: «قُلْتُ: يَا رَسُولَ اللَّهِ إِنَّ زَوْجِي طَلَّقَنِي ثَلَاثًا وَأَنَا أَخَافُ أَنْ يَقْتَحِمَ عَلَيَّ؟ قَالَ: فَأَمَرَهَا فَتَحَوَّلَتْ» .

From the chain of Muslim: Muḥammad ibn al-Muthannā reported to us, Ḥafṣ ibn Ghiyāth reported to us, Hishām ibn ʿUrwah reported to us from his father, from Fāṭimah bint Qays, who said: "I said, 'O Messenger of Allah, my husband has divorced me three times, and I fear he may intrude upon me.' The Prophet commanded her to move, and she complied."

L33524 وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ الشَّعْبِيِّ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمُطَلَّقَةِ ثَلَاثًا قَالَ: «لَيْسَ لَهَا سُكْنَى وَلَا نَفَقَةٌ» .

And through the chain of Muslim: Muḥammad ibn al-Muthannā narrated to us from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Salamah ibn Kuhayl, from al-Shaʿbī, from Fāṭimah bint Qays, from the Prophet (peace be upon him) regarding the irrevocably divorced woman (thrice-divorced). He said: "She is not entitled to housing or financial maintenance."

L33525 فَهَذَا نَقْلُ تَوَاتُرٍ عَنْ فَاطِمَةَ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَخْبَرَهَا هِيَ وَنَفَرٌ سِوَاهَا بِأَنَّ زَوْجَهَا طَلَّقَهَا ثَلَاثًا.

This is a mutawatir narration from Fatimah that the Messenger of Allah—may Allah bless him and his family and grant him peace—informed her and others besides her that her husband had divorced her three times.

L33526 وَبِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - حَكَمَ فِي الْمُطَلَّقَةِ ثَلَاثًا وَلَمْ يُنْكِرْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - ذَلِكَ، وَلَا أَخْبَرَ بِأَنَّهُ لَيْسَ بِسُنَّةٍ - وَفِي هَذَا كِفَايَةٌ لِمَنْ نَصَحَ نَفْسَهُ.

And that he—may blessings and peace be upon him—ruled regarding the woman divorced by a thrice-pronounced divorce, and did not disapprove of that, nor did he state that it was not a Sunnah. In this lies sufficient guidance for whoever counsels himself.

L33527–33529 وَإِنْ قِيلَ: إنَّ الزُّهْرِيَّ رَوَى هَذَا الْخَبَرَ عَنْ أَبِي سَلَمَةَ وَفِيهِ أَنَّهَا ذَكَرَتْ أَنَّهُ... طَلَّقَهَا آخِرَ ثَلَاثٍ

If it is said: Indeed, al-Zuhrī narrated this report from Abū Salamah, and in it he stated that she mentioned that he... He divorced her with the last of three

فَإِنْ قِيلَ: إنَّ الزُّهْرِيَّ رَوَى عَنْ أَبِي سَلَمَةَ هَذَا الْخَبَرَ فَقَالَ فِيهِ: إنَّهَا ذَكَرَتْ أَنَّهُ طَلَّقَهَا آخِرُ ثَلَاثَ تَطْلِيقَاتٍ - وَرَوَى الزُّهْرِيُّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ أَنَّ زَوْجَهَا أَرْسَلَ إلَيْهَا بِتَطْلِيقَةٍ كَانَتْ بَقِيَتْ لَهَا مِنْ طَلَاقِهَا - فَذَكَرَ الْخَبَرَ وَفِيهِ: فَأَرْسَلَ مَرْوَانُ إلَيْهَا قَبِيصَةُ بْنُ ذُؤَيْبٍ فَحَدَّثَتْهُ - وَذَكَرَ بَاقِيَ الْخَبَرِ؟ قُلْنَا: نَعَمْ، هَكَذَا رَوَاهُ الزُّهْرِيُّ، فَأَمَّا رِوَايَتُهُ مِنْ طَرِيقِ عُبَيْدِ اللَّهِ فَمُنْقَطِعَةٌ، لَمْ يَذْكُرْ عُبَيْدُ اللَّهِ ذَلِكَ عَنْهَا، وَلَا عَنْ قَبِيصَةَ عَنْهَا، إنَّمَا قَالَ: إنَّ فَاطِمَةَ طَلَّقَهَا زَوْجُهَا، وَأَنَّ مَرْوَانَ بَعَثَ إلَيْهَا قَبِيصَةَ فَحَدَّثَتْهُ.

وَأَمَّا خَبَرُهُ عَنْ أَبِي سَلَمَةَ فَمُتَّصِلٌ - إلَّا أَنَّ كِلَا الْخَبَرَيْنِ لَيْسَ فِيهِمَا: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَخْبَرَتْهُ هِيَ وَلَا غَيْرُهَا بِذَلِكَ - إنَّمَا الْمُسْنَدُ الصَّحِيحُ الَّذِي فِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - سَأَلَ عَنْ كَمِّيَّةِ طَلَاقِهَا وَأَنَّهَا أَخْبَرَتْهُ، فَهِيَ الَّتِي قَدَّمْنَا أَوَّلًا وَعَلَى ذَلِكَ الْإِجْمَالِ جَاءَ حُكْمُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L33530 As for his narration from Abu Salama, it is connected. However, neither of the two narrations contains any indication that she [the woman] or anyone else informed the Messenger of Allah (peace and blessings be upon him and his family) of that matter. The only authentic *Musnad* narration states that he (peace and blessings be upon him and his family) inquired about the number of her divorces and that she informed him. This is the narration we initially cited, and his ruling (peace and blessings be upon him and his family) was based on that concise account.

وَكَذَلِكَ كُلُّ لَفْظٍ رُوِيَ بِهِ خَبَرُ فَاطِمَةَ مِنْ " أَبَتَّ طَلَاقِي "، " وَطَلَّقَهَا أَلْبَتَّةَ " " وَطَلَّقَهَا طَلَاقًا بَاتًّا " " وَطَلَاقًا بَائِنًا " فَلَيْسَ فِي شَيْءٍ مِنْهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَفَ عَلَيْهِ أَصْلًا.

L33531 Similarly, every wording used to narrate the report of Fāṭimah—such as "You have made my divorce irrevocable," "and divorced her absolutely," "and divorced her with an irrevocable divorce," or "and divorced her with a non-retractable divorce"—contains no indication in any of these that the Messenger of Allah—peace be upon him and his family—endorsed it as a basis whatsoever.

فَسَقَطَ كُلُّ ذَلِكَ، وَثَبَتَ حُكْمُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَى مَا صَحَّ أَنَّهُ أَخْبَرَ بِهِ مِنْ أَنَّهُ طَلَّقَهَا ثَلَاثًا فَقَطْ.

L33532 Thus, all of that was invalidated, and the ruling of the Prophet (peace and blessings be upon him) was established based on what was authentically confirmed: that he had divorced her three times only.

وَأَمَّا الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - فَإِنَّ الثَّابِتَ عَنْ عُمَرَ الَّذِي لَا يَثْبُتُ عَنْهُ غَيْرُهُ مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ نا زَيْدُ بْنُ وَهْبٍ أَنَّهُ رُفِعَ إلَى عُمَرَ بْنِ الْخَطَّابِ بِرَجُلٍ طَلَّقَ امْرَأَتَهُ أَلْفًا فَقَالَ لَهُ عُمَرُ: أَطَلَّقْت امْرَأَتَك؟

L33533–33535 As for the Companions—may Allah be pleased with them—the authenticated report from Umar, which no other narration is confirmed from him besides this one, is what we have narrated through the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Salama ibn Kuhayl, narrated to us by Zayd ibn Wahb. It was reported to Umar ibn al-Khattab that a man had divorced his wife a

thousand times. Umar asked him, “Did you divorce your wife?” The man replied, “I was only joking.” Umar then struck him with a cane and said, “Three are sufficient for you in that regard.” Umar struck him for exceeding the three divorces, acted rightly in doing so, made clear to him that three are sufficient, and did not deny them.

فَقَالَ: إِنَّمَا كُنْت أَلْعَبُ، فَعَلَاهُ عُمَرُ بِالدِّرَّةِ وَقَالَ: إِنَّمَا يَكْفِيك مِنْ ذَلِكَ ثَلَاثٌ - فَإِنَّمَا ضَرَبَهُ عُمَرُ عَلَى الزِّيَادَةِ عَلَى الثَّلَاثِ، وَأَحْسَنَ عُمَرُ فِي ذَلِكَ، وَأَعْلَمَهُ أَنَّ الثَّلَاثَ تَكْفِي وَلَمْ يُنْكِرْهَا.

L33536 And through the narration of Wakīʿ from al-Aʿmash from Ḥabīb ibn Abī Thābit: A man came to ʿAlī ibn Abī Ṭālib and said, “I have divorced my wife a thousand times.” ʿAlī said to him, “She is irrevocably divorced from you with three [final] divorces, and divide the rest among your [other] wives”—and he did not reject the permissibility of combining three [divorces] in a single instance.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الْأَعْمَشِ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ جَاءَ رَجُلٌ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَقَالَ: إنِّي طَلَّقْت امْرَأَتِي أَلْفًا؟ فَقَالَ لَهُ عَلِيٌّ: بَانَتْ مِنْك بِثَلَاثٍ، وَاقْسِمْ سَائِرَهُنَّ بَيْنَ نِسَائِك - فَلَمْ يُنْكِرْ جَمْعَ الثَّلَاثِ.

L33537 And through the chain of Waki‘ from Ja‘far ibn Burqān from Mu‘āwiyah ibn Abī Yaḥyā, he said: A man came to ‘Uthmān ibn ‘Affān and said, “I have divorced my wife a thousand times.” He replied, “She is irrevocably divorced from you by three.” And he did not disapprove of the three.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ جَعْفَرِ بْنِ بُرْقَانَ عَنْ مُعَاوِيَةَ بْنِ أَبِي يَحْيَى قَالَ: جَاءَ رَجُلٌ إلَى عُثْمَانَ بْنِ عَفَّانَ فَقَالَ: طَلَّقْتُ امْرَأَتِي أَلْفًا؟ فَقَالَ: بَانَتْ مِنْك بِثَلَاثٍ - فَلَمْ يُنْكِرْ الثَّلَاثَ.

L33538 And through the chain of Abd al-Razzaq from Sufyan al-Thawri from Amr ibn Murrah from Sa‘id ibn Jubayr, who said: A man asked Ibn Abbas, “I divorced my wife a thousand times.” Ibn Abbas replied, “Three divorces make her permanently unlawful to you, and the rest are a sin upon you. You have taken Allah’s Quranic injunctions as a mockery.” He did not reject the validity of the three divorces but rejected what exceeded them.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: قَالَ رَجُلٌ لِابْنِ عَبَّاسٍ: طَلَّقْت امْرَأَتِي أَلْفًا؟ فَقَالَ لَهُ ابْنُ عَبَّاسٍ: ثَلَاثٌ تُحَرِّمُهَا عَلَيْك، وَبَقِيَّتُهَا عَلَيْك وِزْرًا، اتَّخَذْت آيَاتِ اللَّهِ هُزُوًا - لَمْ يُنْكِرْ الثَّلَاثَ وَأَنْكَرَ مَا زَادَ.

L33539 And what is reported from the Prophet ﷺ regarding his statement to the one who pronounced a triple divorce and then regretted it—“If you had feared Allah, He would have provided a way out for you”—is to be understood literally: *Yes*, if he fears Allah, He will provide a way out for him. There is nothing in this to indicate that his triple divorce constitutes a sin.

وَالَّذِي جَاءَ عَنْهُ مِنْ قَوْلِهِ لِمَنْ طَلَّقَ ثَلَاثًا ثُمَّ نَدِمَ " لَوْ اتَّقَيْت اللَّهَ لَجَعَلَ لَك مَخْرَجًا " وَهُوَ عَلَى ظَاهِرِهِ: نَعَمْ، إنْ اتَّقَى اللَّهَ جَعَلَ لَهُ مَخْرَجًا - وَلَيْسَ فِيهِ أَنَّ طَلَاقَهُ الثَّلَاثَ مَعْصِيَةٌ.

L33540–33541 Via the chain of Abd al-Razzaq, from Ma’mar, from al-A’mash, from Ibrahim, from Alqamah, who said: A man came to Ibn Mas’ud and said, “I have divorced my wife ninety-nine times?” Ibn Mas’ud replied, “Three divorces irrevocably separate her, and the remainder are transgression.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ عَنْ عَلْقَمَةَ قَالَ: جَاءَ رَجُلٌ عَنْ ابْنِ مَسْعُودٍ فَقَالَ: إنِّي طَلَّقْت امْرَأَتِي تِسْعًا وَتِسْعِينَ؟ فَقَالَ لَهُ ابْنُ مَسْعُودٍ: ثَلَاثٌ تُبِينُهَا وَسَائِرُهُنَّ عُدْوَانٌ.

L33542 And these are two rigorously authentic reports. Ibn Mas'ud and Ibn Abbas did not fundamentally disapprove of the three being grouped; rather, they objected to exceeding three.

وَهَذَانِ خَبَرَانِ فِي غَايَةِ الصِّحَّةِ لَمْ يُنْكِرْ ابْنُ مَسْعُودٍ، وَابْنُ عَبَّاسٍ الثَّلَاثَ مَجْمُوعَةً أَصْلًا، وَإِنَّمَا أَنْكَرَ الزِّيَادَةَ عَلَى الثَّلَاثِ.

L33543 From the path of Ahmad ibn Shu'ayb: I heard from Amr ibn Ali, who narrated to us from Yahya ibn Sa'id al-Qattan, from Sufyan al-Thawri, from Abu Ishaq al-Sabi'i, from Abu al-Ahwas, from Abdullah ibn Mas'ud, who said: "The Sunnah-compliant divorce is to divorce her while ritually pure without having engaged in intercourse." This narration is of the highest authenticity from Ibn Mas'ud, and he did not specify a single divorce [as distinct] from two or three.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ أَبِي الْأَحْوَصِ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: طَلَاقُ السُّنَّةِ أَنْ يُطَلِّقَهَا طَاهِرًا مِنْ غَيْرِ جِمَاعٍ - وَهَذَا فِي غَايَةِ الصِّحَّةِ عَنْ ابْنِ مَسْعُودٍ فَلَمْ يَخُصَّ طَلْقَةً مِنْ طَلْقَتَيْنِ مِنْ ثَلَاثٍ.

L33544 If it is said: Al-A'mash narrated from Abū Isḥāq from Abū'l-Aḥwaṣ from Ibn Mas'ūd—and in it [the narration] is: "When she menstruates and becomes pure, he divorces her again; when she menstruates and becomes pure, he divorces her again"—we say: Yes, this is also a *sunnah*, and it does not contain [the assertion] that anything besides that is unlawful and a *bid'ah*.

فَإِنْ قِيلَ: قَدْ رَوَى الْأَعْمَشُ عَنْ أَبِي إِسْحَاقَ عَنْ أَبِي الْأَحْوَصِ عَنْ ابْنِ مَسْعُودٍ وَفِيهِ فَإِذَا حَاضَتْ وَطَهُرَتْ طَلَّقَهَا أُخْرَى، فَإِذَا حَاضَتْ وَطَهُرَتْ طَلَّقَهَا أُخْرَى؟ قُلْنَا: نَعَمْ، هَذَا أَيْضًا سُنَّةٌ - وَلَيْسَ فِيهِ أَنَّ مَا عَدَا ذَلِكَ حَرَامٌ وَبِدْعَةٌ.

L33545 If it is said: You have narrated through the chain of Ḥammād ibn Zayd, from Yaḥyā ibn ʿAtīq, from Muḥammad ibn Sīrīn, who said: ʿAlī ibn Abī Ṭālib stated: "Had people adhered to Allah's command regarding divorce, no man would ever permit himself concerning a woman in such a way. He would initiate by divorcing her once, then observe the interval between her [current state] and the conclusion of her waiting period. Thereafter, whenever he wills, he may take her back." We respond: This chain is disconnected, for Ibn Sīrīn did not hear a single word from ʿAlī. Moreover, the narration does not state that what differs from this is sinful or an innovation - nor is any practice other than what we mentioned known from the Companions (may Allah be pleased with them).

فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ نا يَحْيَى بْنُ عَتِيقٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: لَوْ أَنَّ النَّاسَ أَخَذُوا بِأَمْرِ اللَّهِ تَعَالَى فِي الطَّلَاقِ مَا يُبِيحُ رَجُلٌ نَفْسَهُ فِي امْرَأَةٍ أَبَدًا يَبْدَأُ فَيُطَلِّقُهَا تَطْلِيقَةً، ثُمَّ يَتَرَبَّصُ مَا بَيْنَهَا وَبَيْنَ أَنْ تَنْقَضِيَ عِدَّتُهَا، فَمَتَى مَا شَاءَ رَاجَعَهَا؟ قُلْنَا هَذَا مُنْقَطِعٌ عَنْهُ، لِأَنَّ ابْنَ سِيرِينَ لَمْ يَسْمَعْ مِنْ عَلِيٍّ كَلِمَةً، ثُمَّ لَيْسَ فِيهِ أَيْضًا: أَنَّ مَا عَدَا ذَلِكَ مَعْصِيَةٌ وَلَا بِدْعَةٌ - لَا يُعْلَمُ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - غَيْرُ مَا ذَكَرْنَا.

L33546–33547 As for the Tābiʿūn: it has been reported to us through the chain of Wakiʿ from Ismāʿīl ibn Abī Khālid from al-Shaʿbī, who said: A man said to Shuraih the judge, "I divorced my wife one hundred times." He replied, "She is irrevocably divorced from you with three [pronouncements]; the remaining ninety-seven are excess and sin." Shuraih did not reject the three; he only regarded what exceeded three as excess and sin.

وَأَمَّا التَّابِعُونَ - فَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: قَالَ رَجُلٌ لِشُرَيْحٍ الْقَاضِي: طَلَّقْت امْرَأَتِي مِائَةً؟ فَقَالَ: بَانَتْ مِنْك بِثَلَاثٍ؟ وَسَبْعٌ وَتِسْعُونَ

إِسْرَافٌ وَمَعْصِيَةٌ - فَلَمْ يُنْكِرْ شُرَيْحٌ الثَّلَاثَ، وَإِنَّمَا جَعَلَ الْإِسْرَافَ وَالْمَعْصِيَةَ مَا زَادَ عَلَى الثَّلَاثِ.

L33548 Through the chain of transmission from ʻAbd al-Razzāq, from Maʻmar, from Qatādah, from Saʻīd ibn al-Musayyib, who said: The divorce of the waiting period is when a man divorces his wife after she has become pure from menstruation, without having had sexual relations.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: طَلَاقُ الْعِدَّةِ أَنْ يُطَلِّقَهَا إِذَا طَهُرَتْ مِنْ الْحَيْضَةِ بِغَيْرِ جِمَاعٍ.

L33549 Abu Muhammad said: He did not specify one out of three, but rather one out of two. It is not known that any of the Followers held that all three were sinful except al-Hasan, who alone explicitly affirmed this.

قَالَ أَبُو مُحَمَّد: فَلَمْ يَخُصَّ وَاحِدَةً مِنْ ثَلَاثٍ، مِنْ اثْنَتَيْنِ - لَا يُعْلَمُ عَنْ أَحَدٍ مِنْ التَّابِعِينَ - أَنَّ الثَّلَاثَ مَعْصِيَةٌ - صُرِّحَ بِذَلِكَ إِلَّا الْحَسَنُ.

L33550 The view that the three are a Sunnah is held by Al-Shāfiʻī, Abū Dharr, and their companions.

وَالْقَوْلُ بِأَنَّ الثَّلَاثَ سُنَّةٌ: قَوْلُ الشَّافِعِيِّ، وَأَبِي ذَرٍّ، وَأَصْحَابِهِمَا.

L33551 As for the manner of divorce according to the Sunnah, we previously mentioned Ibn Mas'ud's statement regarding this through the chain of transmission of Al-A'mash from Abu Ishaq - and another narration through a chain transmitted from Ali ibn Abi Talib - which states that Ibn Mas'ud said: A man should divorce her during a pure period in which he has not had intercourse with her, then leave her until she menstruates. When she becomes pure, he divorces her another time, then leaves her until she menstruates. When she becomes pure again, he divorces her a third time.

وَأَمَّا صِفَةُ طَلَاقِ السُّنَّةِ فَقَدْ ذَكَرْنَا قَوْلَ ابْنِ مَسْعُودٍ آنِفًا فِي ذَلِكَ مِنْ طَرِيقِ الْأَعْمَشِ عَنْ أَبِي إِسْحَاقَ - وَآخَرَ مِنْ طَرِيقِ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَهُوَ أَنَّ ابْنَ مَسْعُودٍ قَالَ: يُطَلِّقُهَا فِي طُهْرٍ لَمْ يَمَسَّهَا فِيهِ - ثُمَّ يَدَعُهَا حَتَّى تَحِيضَ، فَإِذَا طَهُرَتْ طَلَّقَهَا أُخْرَى - ثُمَّ يَدَعُهَا حَتَّى تَحِيضَ، فَإِذَا طَهُرَتْ طَلَّقَهَا ثَالِثَةً.

L33552 And Ali said: He may divorce her, then he leaves her until she completes her waiting period, or he takes her back during the waiting period if he wishes.

وَقَالَ عَلِيٌّ: لَهُ أَنْ يُطَلِّقَهَا ثُمَّ يَدَعَهَا حَتَّى تُتِمَّ عِدَّتَهَا، أَوْ يُرَاجِعَهَا فِي الْعِدَّةِ إِنْ شَاءَ.

L33553 Among the statements of Ibn Masʻūd that we mentioned is one narrated through the chain of ʻAbd al-Razzāq from Maʻmar from Qatādah. And a similar one is narrated from Maʻmar from al-Zuhrī, and from Qatādah from Ibn al-Musayyib.

وَمِنْ قَوْلِ ابْنِ مَسْعُودٍ الَّذِي ذَكَرْنَا قَوْلٌ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ -: وَمِثْلُهُ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ، وَعَنْ قَتَادَةَ عَنْ ابْنِ الْمُسَيِّبِ.

L33554 And a similar narration via the chain of Abd al-Razzaq from Abu Hanifah from Hammad ibn Abi Sulayman from Ibrahim al-Nakha'i—and Abd al-Razzaq added: If she has despaired of menstruation, then he must divorce her with one pronouncement at each new moon—and this is the opinion of al-Sha'bi.

وَمِثْلُهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي حَنِيفَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ - وَزَادَ فَإِنْ كَانَتْ يَئِسَتْ مِنْ الْمَحِيضِ فَلْيُطَلِّقْهَا عِنْدَ كُلِّ هِلَالٍ تَطْلِيقَةً - وَهُوَ قَوْلُ الشَّعْبِيِّ.

وَمِمَّنْ كَرِهَ أَنْ يُطَلِّقَهَا أَكْثَرَ مِنْ وَاحِدَةٍ: اللَّيْثُ، وَالْأَوْزَاعِيُّ، وَمَالِكٌ، وَأَبُو حَنِيفَةَ، وَعَبْدُ الْعَزِيزِ بْنُ الْمَاجِشُونِ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L33555–33556 Among those who disliked divorcing her more than once were Al-Layth, Al-Awzāʿī, Mālik, Abū Ḥanīfah, ʿAbd al-ʿAzīz ibn al-Mājashūn, Al-Ḥasan ibn Ziyād, Abū Sulaymān, and their companions.

وَأَمَّا قَوْلُنَا فِي طَلَاقِ الْحَامِلِ، وَالَّتِي لَمْ يَطَأْهَا، وَالَّتِي لَمْ تَحِضْ، وَالَّتِي يَئِسَتْ مِنَ الْمَحِيضِ: فَإِنَّ النُّصُوصَ الَّتِي ذَكَرْنَا قَبْلُ وَإِنَّمَا جَاءَتْ فِي اللَّوَاتِي عِدَّتُهُنَّ الْأَطْهَارُ.

L33557 As for our ruling regarding the divorce of the pregnant woman, the unconsummated wife, the prepubescent girl, and the menopausal woman: the texts we previously mentioned indeed apply only to those women whose waiting period is determined by menstrual purity periods.

وَأَمَّا الْحَامِلُ - فَلَيْسَ لَهَا أَقْرَاءٌ تُرَاعَى، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَمَا أَوْرَدْنَاهُ قَبْلُ فِي صَدْرِ كَلَامِنَا فِي الطَّلَاقِ ثُمَّ لِيُطَلِّقْهَا طَاهِرًا أَوْ حَامِلًا - فَبَيَّنَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي الطَّاهِرِ أَنْ لَا يَطَأَهَا فِي ذَلِكَ الطُّهْرِ قَبْلَ أَنْ يُطَلِّقَهَا، وَأَجْمَلُ طَلَاقِ الْحَامِلِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

L33558–33559 As for the pregnant woman—she has no menstrual cycles to observe. The Messenger of Allah—may Allah's blessings and peace be upon him and his family—said, as we mentioned earlier at the beginning of our discussion on divorce: "Then let him divorce her while she is in a state of purity or pregnant." He clarified—may peace and blessings be upon him—regarding the pure state that he should not have intercourse with her during that period of purity before divorcing her. The established ruling concerning divorcing a pregnant woman is affirmed by the verse: "And your Lord is never forgetful" [Maryam: 64], which underscores that Allah's rulings are precise and never overlooked.[2]

وَأَمَّا الَّتِي لَمْ يَطَأْهَا - فَلَا عِدَّةَ عَلَيْهَا بِنَصِّ الْقُرْآنِ، فَلَيْسَتْ مِنَ اللَّاتِي قَالَ اللَّهُ تَعَالَى فِيهِنَّ: {فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] فَلَهُ أَنْ يُطَلِّقَهَا كَمَا أَبَاحَ اللَّهُ تَعَالَى مَتَى شَاءَ قَالَ تَعَالَى: {لا جُنَاحَ عَلَيْكُمْ إِنْ طَلَّقْتُمُ النِّسَاءَ مَا لَمْ تَمَسُّوهُنَّ} [البقرة: ٢٣٦] .

L33560 As for the woman he has not consummated the marriage with, there is no waiting period incumbent upon her according to the Quran's explicit text, for she is not among those women concerning whom Allah the Exalted stated: "Divorce them during their waiting period" [At-Talaq:1]. Thus he may divorce her as Allah the Exalted has permitted at any time he wills. Allah the Exalted said: "There is no blame upon you if you divorce women whom you have not touched" [Al-Baqarah:236].[3]

وَأَمَّا الَّتِي لَمْ تَحِضْ قَطُّ، أَوِ الَّتِي انْقَطَعَ حَيْضُهَا فَقَدْ قَالَ مَنْ ذَكَرْنَا: إِنَّهُ يُطَلِّقُهَا عِنْدَ اسْتِهْلَالِ الْهِلَالِ وَهَذَا شَيْءٌ لَا نُوجِبُهُ، لِأَنَّهُ لَمْ يَأْتِ بِإِيجَابِهِ قُرْآنٌ وَلَا سُنَّةٌ.

L33561 As for the woman who has never menstruated at all, or the one whose menstruation has ceased, those we have mentioned stated: He divorces her upon the sighting of the crescent moon. This is something we do not consider obligatory, because neither the Quran nor the Sunnah have prescribed it as obligatory.

[2] **Qur'an references (L33559):** Qur'an 19:64 (Maryam).
[3] **Qur'an references (L33560):** Qur'an 2:236 (Al-Baqarah); Qur'an 65:1 (At-Talaq).

L33562–33563 If it is said: Did not Allah, the Mighty and Sublime, say: “As for those of your women who have reached menopause—if you are uncertain—their waiting period is three months, and those who have not yet menstruated” [at-Talaq 4].[4]

فَإِنْ قِيلَ: أَلَمْ يَقُلْ اللَّهُ عَزَّ وَجَلَّ: {وَاللائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ وَاللائِي لَمْ يَحِضْنَ} [الطلاق: ٤] .

L33564 We said: Yes, and it has been authentically reported from the Messenger of Allah—peace be upon him and his family—that he said, “A month consists of twenty-nine days.” Therefore, from where he began the count, once he completes twenty-nine days, then it is a month.

قُلْنَا: نَعَمْ، وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ «الشَّهْرُ تِسْعَةٌ وَعِشْرُونَ يَوْمًا» فَمِنْ حَيْثُ ابْتَدَأَ بِالْعِدَّةِ فَإِذَا أَتَمَّ تِسْعَةً وَعِشْرِينَ يَوْمًا فَهُوَ شَهْرٌ.

L33565 The proof of this is the statement of Allah, the Almighty: {Divorced women shall wait for three waiting periods (qurū’)} [Al-Baqarah: 228]. Thus, the Almighty has mandated what we have stated. This means the woman may begin with the count of the months from any day or night she chooses, or from when the waiting period becomes obligatory due to death or calculated by months—and success is from Allah, the Exalted.[5]

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلاثَةَ قُرُوءٍ} [البقرة: ٢٢٨] فَأَوْجَبَ عَزَّ وَجَلَّ مَا قُلْنَا، وَهُوَ أَنْ يَبْدَأَ بِعَدَدِ الشُّهُورِ مِنْ أَيِّ يَوْمٍ أَوْ لَيْلَةٍ شَاءَ الْعَادُّ، أَوْ مِنْ حَيْثُ تَجِبُ الْعِدَّةُ بِالْوَفَاةِ، أَوْ بِالشُّهُورِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

He said, “You are divorced,” intending the statement to count as two or three divorces.

[مَسْأَلَةٌ قَالَ أَنْتِ طَالِقٌ وَنَوَى اثْنَتَيْنِ أَوْ ثَلاثًا]

L33566–33567

L33568 Issue: Whoever says, “You are divorced,” and intends two or three divorces, then it is as he intended—whether he made that statement and intended it regarding a consummated wife or a non-consummated wife.

مَسْأَلَةٌ: وَمَنْ قَالَ: أَنْتِ طَالِقٌ، وَنَوَى اثْنَتَيْنِ أَوْ ثَلاثًا فَهُوَ كَمَا نَوَى - سَوَاءٌ قَالَ ذَلِكَ وَنَوَاهُ فِي مَوْطُوءَةٍ أَوْ فِي غَيْرِ مَوْطُوءَةٍ.

L33569 The evidence for this is that we have mentioned that divorcing three times in a single instance is Sunnah, and that the term “divorce” applies to three, two, or one. Since this is so, it is what he intended regarding the number of divorces, according to the Prophet’s statement (peace be upon him): “Actions are but by intentions, and each person will have only what they intended.” If he did not intend a specific number of divorces, it counts as one, for it is the minimum divorce – being the unequivocal certainty that obligates him without doubt. It is impermissible to be obligated by an increase without certainty. This is the opinion of Mālik, al-Layth, and al-Shāfiʿī.[6]

بُرْهَانُ ذَلِكَ - أَنَّا قَدْ ذَكَرْنَا أَنَّ طَلاقَ الثَّلاثِ مَجْمُوعَةً سُنَّةٌ وَأَنَّ اسْمَ الطَّلاقِ يَقَعُ عَلَيْهَا، وَعَلَى الثِّنْتَيْنِ، وَعَلَى الْوَاحِدَةِ، فَإِذْ ذَلِكَ كَذَلِكَ فَهُوَ مَا نَوَى مِنْ عَدَدِ الطَّلاقِ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى» فَإِنْ لَمْ يَنْوِ عَدَدًا مِنَ الطَّلاقِ فَهِيَ وَاحِدَةٌ، لِأَنَّهَا أَقَلُّ الطَّلاقِ فَهِيَ الْيَقِينُ الَّذِي لَا شَكَّ فِيهِ أَنْ يَلْزَمَهُ، وَلَا يَجُوزُ أَنْ يَلْزَمَ زِيَادَةٌ بِلَا يَقِينٍ - وَهُوَ قَوْلُ مَالِكٍ، وَاللَّيْثِ، وَالشَّافِعِيِّ.

[4] **Qur’an references (L33563):** Qur’an 65:4 (At-Talaq).
[5] **Qur’an references (L33565):** Qur’an 2:228 (Al-Baqarah).

L33570 Abu Hanifa, Abu Sulayman, Sufyan, and Al-Awza'i said: He is obligated to perform one expiation and no more. And with Allah, the Exalted, is success.

وَقَالَ أَبُو حَنِيفَةَ، وَأَبُو سُلَيْمَانَ، وَسُفْيَانُ، وَالْأَوْزَاعِيُّ: يَلْزَمُهُ وَاحِدَةٌ لَا أَكْثَرُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L33571 **A jurisprudential issue: He said to a consummated wife, "You are divorced. You are divorced. You are divorced."**

[مَسْأَلَةٌ قَالَ لِمَوْطُوءَةٍ أَنْتِ طَالِقٌ أَنْتِ طَالِقٌ أَنْتِ طَالِقٌ]

L33572–33574 1947 - Issue: If a man says to a woman with whom he has consummated marriage, "You are divorced, you are divorced, you are divorced"—then if he intended the repetition of his initial word and to inform her, it counts as a single divorce. Likewise, if he intended nothing by his repetition—if he intended By that ruling, each single talaq distinct from the others counts as three if he repeats it thrice, and not two if he repeats it twice without doubt.

١٩٤٧ - مَسْأَلَةٌ: فَلَوْ قَالَ لِمَوْطُوءَةٍ: أَنْتِ طَالِقٌ أَنْتِ طَالِقٌ أَنْتِ طَالِقٌ - فَإِنْ نَوَى التَّكْرِيرَ لِكَلِمَتِهِ الْأُولَى وَإِعْلَامَهَا فَهِيَ وَاحِدَةٌ، وَكَذَلِكَ إِنْ لَمْ يَنْوِ بِتَكْرَارِهِ شَيْئًا - فَإِنْ نَوَى بِذَلِكَ أَنَّ كُلَّ طَلْقَةٍ غَيْرُ الْأُخْرَى فَهِيَ ثَلَاثٌ إِنْ كَرَّرَهَا ثَلَاثًا، وَلَا اثْنَتَانِ إِنْ كَرَّرَهَا مَرَّتَيْنِ بِلَا شَكٍّ.

L33575 If he were to say to a woman with whom he has not consummated marriage: "You are divorced, you are divorced, you are divorced," it would count as a single divorce only. This is because the repetition of divorce occurred while she was not in a waiting period from him, as there is no waiting period for a woman who has not been consummated with, according to the explicit text of the Quran. She becomes a stranger thereafter, and divorcing a stranger is invalid.

فَلَوْ قَالَ لِغَيْرِ مَوْطُوءَةٍ مِنْهُ: أَنْتِ طَالِقٌ أَنْتِ طَالِقٌ أَنْتِ طَالِقٌ فَهِيَ طَلْقَةٌ وَاحِدَةٌ فَقَطْ، لِأَنَّ تَكْرَارَهُ لِلطَّلَاقِ وَقَعَ - وَهِيَ فِي غَيْرِ عِدَّةٍ مِنْهُ - إِذْ لَا عِدَّةَ عَلَى غَيْرِ مَوْطُوءَةٍ بِنَصِّ الْقُرْآنِ وَهِيَ أَجْنَبِيَّةٌ بَعْدُ، وَطَلَاقُ الْأَجْنَبِيَّةِ بَاطِلٌ.

L33576 And the people differed regarding this—so a group said as we said.

وَاخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَتْ طَائِفَةٌ كَمَا قُلْنَا.

L33577–33578 A group held that if his speech was connected and he did not interrupt parts of it from one another, it constitutes three irrevocable divorces. But if he separated his speech with a pause, it is only a single pronouncement.

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَ وَصَلَ كَلَامَهُ وَلَا يَقْطَعُ بَعْضَهُ عَنْ بَعْضٍ فَهِيَ ثَلَاثٌ لَازِمَةٌ، وَإِنْ كَانَ فَرَّقَ بَيْنَ كَلَامِهِ بِسَكْتَةٍ فَهِيَ طَلْقَةٌ وَاحِدَةٌ فَقَطْ.

L33579 A group stated: If the divorces are pronounced in a single session, all of them are binding, whether he inserts a pause between each divorce pronouncement or not. But if they occur across multiple sessions, only the divorces from the first session become binding.

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَ ذَلِكَ فِي مَجْلِسٍ وَاحِدٍ فَهِيَ كُلُّهَا لَوَازِمُ سَوَاءٌ فَرَّقَ بَيْنَ كُلِّ طَلَاقٍ بِسَكْتَةٍ أَوْ لَمْ يُفَرِّقْ، وَإِنْ كَانَ ذَلِكَ فِي مَجَالِسَ شَتَّى لَمْ يَلْزَمْ مِنَ الطَّلَاقِ إِلَّا مَا كَانَ فِي الْمَجْلِسِ الْأَوَّلِ فَقَطْ.

[6] **Hadith references (L33569):** Sahih al-Bukhari 1; Sunan Abi Dawud 2201; Mishkat al-Masabih 1.

L33580 Among those from whom we have narrated an opinion similar to ours is the following, via the chain of Sa‘īd ibn Manṣūr: ‘Attāb ibn Bashīr narrated to us from Khuṣayf from Ziyād ibn Abī Maryam from Ibn Mas‘ūd concerning one who divorces his wife three times without having consummated the marriage. He said: “It counts as three. If he divorces her once, then makes a second, then a third, the latter two do not count against her, for she was irrevocably separated by the first.” This is authentically reported from Khilās, Ibrāhīm al-Nakha‘ī in one of his opinions, Ṭāwūs, al-Sha‘bī, ‘Ikrimah, Abū Bakr ibn ‘Abd al-Raḥmān ibn al-Ḥārith ibn Hishām, and Ḥammād ibn Abī Sulaymān. We have also narrated it from Masrūq.

فَمِمَّنْ رُوِّينَا عَنْهُ مِثْلُ قَوْلِنَا: مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ: نا عَتَّابُ بْنُ بَشِيرٍ عَنْ خُصَيْفٍ عَنْ زِيَادِ بْنِ أَبِي مَرْيَمَ عَنِ ابْنِ مَسْعُودٍ فِيمَنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا وَلَمْ يَكُنْ دَخَلَ بِهَا؟ قَالَ: هِيَ ثَلَاثٌ، فَإِنْ طَلَّقَهَا وَاحِدَةً ثُمَّ ثَنَّى ثُمَّ ثَلَّثَ لَمْ يَقَعْ عَلَيْهَا، لِأَنَّهَا قَدْ بَانَتْ بِالْأُولَى - وَصَحَّ هَذَا عَنْ خِلَاسٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ فِي أَحَدِ أَقْوَالِهِ، وَطَاوُسٍ، وَالشَّعْبِيِّ، وَعِكْرِمَةَ، وَأَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ - وَرُوِّينَاهُ عَنْ مَسْرُوقٍ.

L33581–33583 And we have narrated it through the chain of Al-Ḥajjāj ibn Al-Minhāl: Abū ‘Awānah reported to us from Muṭarrif ibn Ṭarīf, who said: I asked Al-Ḥakam ibn ‘Utaybah about someone who said to his wife, “You are divorced, you are divorced, you are divorced?” meaning he did not... Had he consummated the marriage with her? He said: The irrevocable separation occurs with the first divorce pronouncement, and the two divorce pronouncements he subsequently issued are invalid. I then asked him: From whom do you narrate this? He replied: From Ali ibn Abi Talib, Abdullah ibn Mas’ud, and Zayd ibn Thabit.

وَرُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ قَالَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ عَمَّنْ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ، أَنْتِ طَالِقٌ، أَنْتِ طَالِقٌ؟ يَعْنِي لَمْ يَكُنْ دَخَلَ بِهَا؟ قَالَ: تَبِينُ بِالتَّطْلِيقَةِ الْأُولَى وَالثِّنْتَانِ الَّتِي أَتْبَعَ لَيْسَتَا بِشَيْءٍ، فَقُلْت لَهُ: عَمَّنْ تَحْفَظُهُ؟ قَالَ: عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَعَبْدِ اللَّهِ بْنِ مَسْعُودٍ، وَزَيْدِ بْنِ ثَابِتٍ.

L33584 We have also narrated it from Ibn Abbas—and it is the opinion of Sufyan al-Thawri, al-Hasan ibn Hayy, Abu Hanifah, al-Shafi’i, Abu Thawr, Abu Ubayd, Ahmad ibn Hanbal, Abu Sulayman, and their companions.

وَرُوِّينَاهُ أَيْضًا عَنِ ابْنِ عَبَّاسٍ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي عُبَيْدٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L33585 The second opinion—narrated through the chain of Sa‘īd ibn Manṣūr: Hushaym reported to us, al-Mughīrah reported to us from Ibrāhīm al-Nakha‘ī concerning one who says to an unconsummated marriage: “You are divorced, you are divorced, you are divorced”—uttered consecutively: she is not permitted to him until she marries another husband. If he says: “You are divorced,” then says: “You are divorced,” then pauses, then says: “You are divorced,” she is irrevocably divorced by the first declaration, and the latter two declarations are invalid. Exactly the same, without any difference, applies from ‘Abdullāh ibn Mughaffal al-Muzanī—and this is the opinion of Mālik, al-Awzā‘ī, and al-Layth.

وَالْقَوْلُ الثَّانِي - رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الْمُغِيرَةُ عَنْ إبْرَاهِيمَ النَّخَعِيِّ فِيمَنْ قَالَ لِغَيْرِ الْمَدْخُولِ بِهَا: أَنْتِ طَالِقٌ، أَنْتِ طَالِقٌ، أَنْتِ طَالِقٌ - وَقَالَهَا مُتَّصِلَةً: لَمْ تَحِلَّ لَهُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ، فَإِنْ قَالَ: أَنْتِ طَالِقٌ ثُمَّ قَالَ: أَنْتِ طَالِقٌ ثُمَّ سَكَتَ، ثُمَّ قَالَ: أَنْتِ طَالِقٌ، بَانَتْ بِالْأُولَى وَلَمْ تَكُنْ الْأُخْرَيَانِ شَيْئًا - وَمِثْلُهُ سَوَاءً سَوَاءً عَنْ عَبْدِ اللَّهِ بْنِ مُغَفَّلٍ الْمُزَنِيِّ - وَهُوَ قَوْلُ مَالِكٍ - وَالْأَوْزَاعِيِّ، وَاللَّيْثِ.

L33586 The third opinion—we have narrated it through the chain of al-Ḥajjāj ibn al-Minhāl, narrated to us by ʿAbd al-ʿAzīz ibn ʿAbd al-Ṣamad, who said: Manṣūr said to me: “It was conveyed to me from Ibrāhīm al-Nakhaʿī that he would state: If a man says to his wife whom he has not had intercourse with in a single gathering: ’You are divorced, you are divorced, you are divorced,’ she becomes unlawful to him until she marries another husband; but if he leaves that gathering after uttering a single pronouncement of divorce, then pronounces divorce again afterward, it counts for nothing.”[7]

L33587 There have come narrations without elaboration—among them is what we narrated through the chain of Saʿīd ibn Manṣūr, who reported to us: Sufyān ibn ʿUyaynah narrated from ʿAmr ibn Dīnār, from ʿAṭāʾ ibn Abī Rabāḥ and Jābir ibn Zayd. Both said: “If a virgin is divorced three times, it constitutes one divorce.”

L33588 And via the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us from Manṣūr - he is the son of al-Muʿtamir - that al-Ḥasan’s final opinion regarding one who divorces his wife thrice before consummation was: “If he wishes, he may propose to her.”

L33589 And from the chain of Malik, from Yahya ibn Sa’id al-Ansari, from al-Nu’man ibn Abi ’Ayyash, from ’Ata’ ibn Yasar: He was asked about a man who divorced his wife before consummating the marriage. He said: A single pronouncement of divorce suffices for a virgin.

L33590 Abu Muhammad said: They did not single out an individual case from a collective, and Allah knows best what they intended.

L33591–33593 Among these is also what we have narrated through ʿAbd al-Razzāq, from ʿUmar ibn Rāshid, from Yaḥyā ibn Abī Kathīr, from Muḥammad ibn ʿAbd al-Raḥmān ibn Thawbān, who said: A man from Muzaynah divorced his wife three times before [...] Regarding the matter of consummation, he asked Ibn Abbas—while Abu Hurayrah was present with him—about it. Abu Hurayrah said: “Does one pronouncement finalize the divorce, and three render her

وَالْقَوْلُ الثَّالِثُ - رُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ الصَّمَدِ قَالَ: قَالَ لِي مَنْصُورٌ: حُدِّثْتُ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ كَانَ يَقُولُ: إذَا قَالَ لِلَّتِي لَمْ يَدْخُلْ بِهَا فِي مَجْلِسٍ وَاحِدٍ: أَنْتِ طَالِقٌ، أَنْتِ طَالِقٌ، أَنْتِ طَالِقٌ، فَلَا تَحِلُّ لَهُ حَتَّى تَنْكِحَ زَوْجًا، غَيْرَهُ - فَإِنْ قَامَ مِنْ مَجْلِسِهِ ذَلِكَ بَعْدَ أَنْ طَلَّقَ طَلْقَةً وَاحِدَةً ثُمَّ طَلَّقَ بَعْدَ ذَلِكَ، فَلَيْسَ بِشَيْءٍ.

وَقَدْ جَاءَتْ رِوَايَاتٌ لَا بَيَانَ فِيهَا -: مِنْهَا - مَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ، وَجَابِرِ بْنِ زَيْدٍ، قَالَا جَمِيعًا: إذَا طَلُقَتْ الْبِكْرُ ثَلَاثًا فَهِيَ وَاحِدَةٌ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا مَنْصُورٌ - هُوَ ابْنُ الْمُعْتَمِرِ - أَنَّ آخِرَ قَوْلِ الْحَسَنِ فِيمَنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا قَبْلَ الدُّخُولِ بِهَا: أَنَّهُ إنْ شَاءَ خَطَبَهَا.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ النُّعْمَانِ بْنِ أَبِي عَيَّاشٍ عَنْ عَطَاءِ بْنِ يَسَارٍ أَنَّهُ سُئِلَ عَمَّنْ طَلَّقَ امْرَأَتَهُ قَبْلَ أَنْ يَمَسَّهَا؟ قَالَ: طَلَاقُ الْبِكْرِ وَاحِدَةٌ.

قَالَ أَبُو مُحَمَّدٍ: لَمْ يَخُصُّوا مُفَرَّقَةً مِنْ مَجْمُوعَةٍ، وَاَللَّهُ أَعْلَمُ بِمُرَادِهِمْ.

وَمِنْهَا أَيْضًا مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُمَرَ بْنِ رَاشِدٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ قَالَ: طَلَّقَ رَجُلٌ مِنْ مُزَيْنَةَ امْرَأَتَهُ ثَلَاثًا قَبْلَ الدُّخُولِ، فَسَأَلَ ابْنَ عَبَّاسٍ وَعِنْدَهُ أَبُو هُرَيْرَةَ؟ فَقَالَ أَبُو هُرَيْرَةَ: وَاحِدَةٌ تُبِينُهَا وَثَلَاثٌ تُحَرِّمُهَا؟ فَصَوَّبَهَا ابْنُ عَبَّاسٍ - وَهَذَا لَا يَصِحُّ، لِأَنَّ عُمَرَ بْنَ رَاشِدٍ ضَعِيفٌ.

[7] **Qur’an references (L33586):** Qur’an 2:230 (Al-Baqarah).

unlawful?" Ibn Abbas endorsed this. However, this is invalid because Umar ibn Rashid is weak.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ بُكَيْرِ بْنِ النُّعْمَانِ بْنِ أَبِي عَيَّاشٍ أَنَّ عَبْدَ اللَّهِ قَالَ فِيمَنْ طَلَّقَ امْرَأَتَهُ الْبِكْرَ: وَاحِدَةٌ تُبِينُهَا، وَثَلَاثٌ تُحَرِّمُهَا - وَنَحْوُهُ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ - فَلَمْ يُبَيِّنُوا مُفَرَّقَةً أَمْ مَجْمُوعَةً.

L33594 And from the chain of Mālik, from Yaḥyā ibn Saʿīd, from Bukayr ibn al-Nuʿmān ibn Abī ʿAyyāsh, that ʿAbdullāh said concerning one who divorces his virgin wife: "One [declaration] constitutes a revocable divorce, and three render her unlawful" — a similar position is reported from Umm Salamah, the Mother of the Believers, and ʿAlī ibn Abī Ṭālib — though they did not clarify whether the declarations were separated [by intervals] or uttered together [in one sitting].

قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ فَرَّقَ بَيْنَ قَوْلِهِ ذَلِكَ فِي مَجْلِسٍ، وَبَيْنَ قَوْلِهِ ذَلِكَ فِي مَجْلِسَيْنِ فَدَعْوَى بِلَا بُرْهَانٍ، وَكَذَلِكَ مَنْ فَرَّقَ بَيْنَ قَوْلِهِ ذَلِكَ مُتَّصِلًا، وَبَيْنَ تَفْرِيقِهِ بَيْنَ ذَلِكَ بِالسُّكُوتِ هُوَ أَيْضًا قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ - فَهُوَ سَاقِطٌ -.

L33595 Abū Muḥammad said: As for one who distinguishes between uttering this statement in one session and two sessions, this is a baseless claim. Similarly, distinguishing between uttering it continuously and separating it with silence is also an assertion lacking evidence—thus, it is invalid.

فَصَحَّ قَوْلُنَا، لِأَنَّهُ بِتَمَامِ قَوْلِهِ لَهَا: أَنْتِ طَالِقٌ بَانَتْ وَحَلَّ لَهَا زَوْجٌ غَيْرُهُ - وَلَوْ مَاتَ لَمْ تَرِثْهُ - وَلَوْ مَاتَتْ لَمْ يَرِثْهَا - وَلَيْسَ فِي عِدَّةٍ مِنْهُ، فَطَلَاقُهُ لَهَا لَغْوٌ سَاقِطٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L33596 Thus, our position is valid, because by the completeness of his statement to her: "You are irrevocably divorced"—she is permitted to marry another husband (if he dies, she does not inherit him; if she dies, he does not inherit her)—and she is not observing a waiting period for him. Therefore, his divorce of her is invalid and void—and success comes from Allah, the Exalted.

[مَسْأَلَةٌ قَالَ لِغَيْرِ مَوْطُوءَةٍ مِنْهُ أَنْتِ طَالِقٌ ثَلَاثًا]

Issue: He said to a woman with whom he has not consummated marriage, "You are divorced thrice."

١٩٤٨ - مَسْأَلَةٌ: فَلَوْ قَالَ لِغَيْرِ مَوْطُوءَةٍ مِنْهُ: أَنْتِ طَالِقٌ ثَلَاثًا؟ فَإِنْ كَانَ نَوَى فِي قَوْلِهِ: أَنْتِ طَالِقٌ: أَنَّهَا ثَلَاثٌ فَهِيَ ثَلَاثٌ، فَإِنْ لَمْ يَنْوِ ذَلِكَ لَكِنْ نَوَى الثَّلَاثَ، إذْ قَالَ: ثَلَاثًا لَمْ تَكُنْ طَلَاقًا إلَّا وَاحِدَةً، لِأَنَّ بِتَمَامِ قَوْلِهِ: أَنْتِ طَالِقٌ بَانَتْ مِنْهُ - فَصَارَ قَوْلُهُ " ثَلَاثًا " لَغْوًا لَا مَعْنَى لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33598 1948 - Issue: If he says to his non-consummated wife: "You are divorced threefold" - if he intended his statement "You are divorced" to represent three divorces, then it constitutes three. If he did not intend this but instead intended a triple divorce through uttering "threefold," it does not constitute more than a single divorce. This is because upon completing his statement "You are divorced," she became irrevocably divorced from him, rendering his utterance of "threefold" legally void. And with Allah the Exalted lies success.

[مَسْأَلَةٌ طَلَاقُ النُّفَسَاءِ]

An Issue Concerning the Divorce of Women in the State of Nifās.

L33599–33600

L33601 Issue: The divorce of a woman in postpartum bleeding is exactly the same in every respect as divorce during menstruation. It does not take effect unless it constitutes three pronouncements issued collectively or the third pronouncement as the last of three, two of which have already been made.

مَسْأَلَةٌ: وَطَلَاقُ النُّفَسَاءِ كَالطَّلَاقِ فِي الْحَيْضِ سَوَاءً سَوَاءً لَا يَلْزَمُ إلَّا أَنْ يَكُونَ ثَلَاثًا مَجْمُوعَةً أَوْ آخِرُ ثَلَاثٌ قَدْ تَقَدَّمَتْ مِنْهَا اثْنَتَانِ.

L33602–33604 The proof of this is: There is only menstruation or a state of purity. We have cited from the Messenger of Allah—peace and blessings be upon him—that he prohibited divorce during menstruation and instructed divorce during a purity period in which no intercourse occurred, or [to divorce] a pregnant woman. There is no disagreement that postnatal bleeding is neither a purity period nor pregnancy. Thus, nothing remains except menstruation—so it is menstruation. No authentic scriptural evidence has ever established that postnatal bleeding is not menstruation. Rather, there is no dispute that it entails the rulings of menstruation, such as abstaining from prayer, fasting, and intercourse. It has been authentically reported from the Messenger of Allah—peace and blessings be upon him—that menstrual blood is black and distinctly identifiable. It is established that any black blood emerging from a woman's private parts is menstruation, provided it does not exceed the duration of menstruation and she is not pregnant.

بُرْهَانُ ذَلِكَ -: أَنَّهُ لَيْسَ إلَّا حَيْضٌ أَوْ طُهْرٌ - وَقَدْ ذَكَرْنَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّهُ نَهَى عَنْ الطَّلَاقِ فِي الْحَيْضِ، وَأَمَرَ بِالطَّلَاقِ فِي طُهْرٍ لَمْ يُجَامِعْهَا فِيهِ، أَوْ حَامِلًا» وَلَا خِلَافَ فِي أَنَّ دَمَ النِّفَاسِ لَيْسَ طُهْرًا، وَلَا هُوَ حَمْلٌ، فَلَمْ يَبْقَ إلَّا الْحَيْضُ فَهُوَ حَيْضٌ، وَلَمْ يَصِحَّ قَطُّ نَصٌّ بِأَنَّ النِّفَاسَ لَيْسَ حَيْضًا، بَلْ لَا خِلَافَ فِي أَنَّ لَهُ حُكْمَ الْحَيْضِ، مِنْ تَرْكِ الصَّلَاةِ، وَالصَّوْمِ، وَالْوَطْءِ وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّ دَمَ الْحَيْضِ أَسْوَدُ يُعْرَفُ» فَصَحَّ أَنَّ كُلَّ دَمٍ أَسْوَدَ ظَهَرَ مِنْ فَرْجِ الْمَرْأَةِ فَهُوَ حَيْضٌ مَا لَمْ يَتَجَاوَزْ أَمَدَ الْحَيْضِ، وَمَا لَمْ يَكُنْ فِي حَمْلٍ.

L33605 It is authentically established that the Prophet—peace and blessings be upon him—said to Umm Salamah and ʻĀ'ishah, the Mothers of the Believers—may Allah be pleased with them both—when one of them experienced menstrual bleeding: "Have you entered postpartum bleeding?" They replied: "Yes." Thereupon, the Messenger of Allah—peace and blessings be upon him—referred to menstruation as postpartum bleeding.

وَصَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ لِأُمِّ سَلَمَةَ، وَعَائِشَةَ: أُمَّيْ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهُمَا - «إذْ حَاضَتْ كُلُّ وَاحِدَةٍ مِنْهُمَا: أَنُفِسْتِ؟ قَالَتْ: نَعَمْ، فَسَمَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْحَيْضَ نِفَاسًا» .

L33606 Among those who held our opinion is a group of the Salaf—as transmitted through Waki''s narration from Jarīr ibn Ḥāzim and Sufyān al-Thawrī. Jarīr reported from Qays ibn Saʿd from Bukayr from ʿAbdullāh ibn al-Ashajj from Sulaymān ibn Yasār from Zayd ibn Thābit, while Sufyān al-Thawrī said: from Ibn Jarīr from ʿAṭāʾ. Zayd and ʿAṭāʾ stated: If a man divorces his wife while she is experiencing postpartum bleeding, she does not count her postpartum bleeding as part of her waiting period.

وَمِمَّنْ قَالَ بِقَوْلِنَا طَائِفَةٌ مِنْ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ جَرِيرِ بْنِ حَازِمٍ، وَسُفْيَانَ الثَّوْرِيِّ، قَالَ جَرِيرٌ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ بُكَيْرٍ عَنْ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ زَيْدِ بْنِ ثَابِتٍ، وَقَالَ سُفْيَانُ: عَنْ ابْنِ جَرِيرٍ عَنْ عَطَاءٍ، قَالَ زَيْدٌ، وَعَطَاءٌ: إذَا طَلَّقَ الرَّجُلُ امْرَأَتَهُ - وَهِيَ نُفَسَاءُ - لَمْ تَعْتَدَّ بِدَمِ نِفَاسِهَا فِي عِدَّتِهَا.

L33607 Others besides those two said differently, as we were narrated through the

chain of transmission of ʻAbd al-Razzāq from ʻUthmān ibn Maṭar from Saʻīd ibn Abī ʻArūbah, who said: Maṭar al-Warrāq reported from al-Ḥasan regarding the woman who divorces three times while menstruating? He said: She observes her waiting period by counting one menstrual cycle from her cycles.

وَقَالَ غَيْرُهُمَا غَيْرَ هَذَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُثْمَانَ بْنِ مَطَرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ قَالَ: قَالَ مَطَرٌ الْوَرَّاقُ عَنْ الْحَسَنِ فِي الَّتِي تَطْلُقُ وَهِيَ حَائِضٌ ثَلَاثَةً؟ قَالَ: تَعْتَدُّ بِهِ قَرْءًا مِنْ أَقْرَائِهَا.

L33608 From the narration of Abd al-Razzaq from Ibn Jurayj from Ata, he said: It is forbidden to divorce one's wife during menstruation, just as it is forbidden to divorce her during the postpartum period.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ، قَالَ: يُكْرَهُ أَنْ يُطَلِّقَ امْرَأَتَهُ حَائِضًا كَمَا يُكْرَهُ أَنْ يُطَلِّقَهَا نُفَسَاءَ.

L33609–33611 Abu Muhammad said: If a man revocably divorces his wife during a period of purity without having intercourse with her, and she then becomes pregnant through adultery, coercion, or a mistaken assumption due to ignorance, her waiting period transitions to that of a pregnant woman. Her waiting period is concluded by the delivery of her child, as she remains his wife; she inherits from him and he inherits from her. His *īlāʾ* (oath of abstention) and *ẓihār* (sworn allegation) affect her, and he may invoke mutual cursing (*liʿān*, a procedure to deny paternity) against her. If he accuses her of adultery and invokes *liʿān*, she is divorced as a pregnant woman.

قَالَ أَبُو مُحَمَّد: وَلَوْ أَنَّ امْرَأً طَلَّقَ امْرَأَتَهُ فِي طُهْرٍ لَمْ يَمَسَّهَا فِيهِ طَلَاقًا رَجْعِيًّا فَحَمَلَتْ مِنْ زِنًى، أَوْ مِنْ إكْرَاهٍ أَوْ مِنْ شُبْهَةٍ بِجَهَالَةٍ، فَإِنَّهَا تَنْتَقِلُ إلَى عِدَّةِ الْحَامِلِ فَتَنْقَضِي عِدَّتُهَا بِوَضْعِ حَمْلِهَا، لِأَنَّهَا زَوْجَتُهُ بَعْدُ، تَرِثُهُ وَيَرِثُهَا، وَيَلْحَقُهَا إيلَاؤُهُ، وَظِهَارُهُ، وَيُلَاعِنُهَا - إنْ قَذَفَهَا فَهِيَ مُطَلَّقَةٌ مِنْ ذَوَاتِ الْأَحْمَالِ.

L33612 And the Most High has said: "For pregnant women, their waiting period lasts until they deliver their burden." [At-Talaq: 4][8]

وَقَدْ قَالَ تَعَالَى: {وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤]

L33613 Similarly, the waiting period (due to death) becomes that of a pregnant woman if the husband dies—whether she conceived during the first, second, or third post-menstrual purity period. However, if the divorce was a triple pronouncement, the final of three divorces, or if a freed slave woman chose to separate from him, the waiting period does not shift to the widow's waiting period nor to any waiting period whatsoever.

وَكَذَلِكَ تَنْتَقِلُ إلَى عِدَّةِ الْحَامِلِ الْوَفَاةُ إنْ مَاتَ - وَسَوَاءٌ حَمَلَتْ فِي الطُّهْرِ الْأَوَّلِ أَوْ الثَّانِي أَوْ الثَّالِثِ، فَإِنْ كَانَ الطَّلَاقُ ثَلَاثًا، أَوْ آخِرَ ثَلَاثٍ، أَوْ مُعْتَقَةً تَخَيَّرَتْ فِرَاقَهُ: لَمْ تَنْتَقِلْ إلَى عِدَّةِ الْوَفَاةِ، وَلَا إلَى عِدَّةٍ.

L33614 However, if she conceives during the first clean period, she counts her entire pregnancy as one menstrual cycle, then counts her postpartum bleeding as part of her menstrual cycle. She must then complete two additional cycles afterward. There is no distinction between her counting a cycle—even if only an instant remains of it—and her counting it—even if only an instant

لَكِنْ إنْ حَمَلَتْ فِي الطُّهْرِ الْأَوَّلِ عَدَّتْ جَمِيعَ حَمْلِهَا قُرْءًا ثُمَّ عَدَّتْ نِفَاسَهَا حَيْضًا، ثُمَّ تَأْتِي بِقُرْأَيْنِ بَعْدَهُ، وَلَا فَرْقَ بَيْنَ اعْتِدَادِهَا بِهِ قُرْءًا - وَلَوْ لَمْ يَبْقَ مِنْهُ إلَّا طَرْفَةُ عَيْنٍ - وَبَيْنَ اعْتِدَادِهَا بِهِ - وَلَوْ لَمْ يَمْضِ مِنْهُ إلَّا طَرْفَةُ عَيْنٍ - لِأَنَّ بَعْضَ الطُّهْرِ طُهْرٌ، فَإِنْ

[8] **Qur'an references (L33612):** Qur'an 65:4 (At-Talaq).

has passed of it—since any portion of the clean period is considered a complete cycle. If she conceives during the second clean period, she counts the duration of her pregnancy as a second menstrual cycle, then her postpartum bleeding as part of her menstrual cycle, then she must complete a third cycle. If she conceives during the third clean period, she counts the duration of her pregnancy as a menstrual cycle. When she delivers her child, the first postpartum blood that appears marks the completion of her waiting period, and she becomes lawful for marriage, as she is obligated to observe the waiting period through menstrual cycles by explicit Quranic decree, which cannot be waived. If she is among women who do not menstruate, her divorce is irrevocable, as previously established.

حَمَلَتْ فِي الطُّهْرِ الثَّانِي عَدَّتْ مُدَّةَ حَمْلِهَا قُرْءًا ثَانِيًا، ثُمَّ نِفَاسَهَا حَيْضًا، ثُمَّ عَلَيْهَا أَنْ تَأْتِيَ بِقُرْءٍ ثَالِثٍ، فَإِنْ حَمَلَتْ فِي الطُّهْرِ الثَّالِثِ عَدَّتْ مُدَّةَ حَمْلِهَا قُرْءًا، فَإِذَا وَضَعَتْ حَمْلَهَا بِأَوَّلِ دَمٍ يَظْهَرُ مِنْهَا تَمَّتْ عِدَّتُهَا، وَحَلَّتْ لِلْأَزْوَاجِ، لِأَنَّهَا قَدْ لَزِمَهَا الِاعْتِدَادُ بِالْأَقْرَاءِ بِنَصِّ الْقُرْآنِ فَلَا يَسْقُطُ عَنْهَا، فَلَوْ كَانَتْ مِمَّنْ لَا تَحِيضُ فَكَانَ طَلَاقُهَا بَائِنًا كَمَا ذَكَرْنَا.

L33615 Or if she was a freed slave and sought divorce from him, she observes the three-month waiting period and becomes permissible to [new] spouses upon its completion, as pregnancy is irrelevant in this case.

أَوْ كَانَتْ مُعْتَقَةً فَاخْتَارَتْ فِرَاقَهُ فَإِنَّهَا تَتَمَادَى عَلَى عِدَّةِ الشُّهُورِ وَتَحِلُّ لِلْأَزْوَاجِ بِتَمَامِهَا، وَلَا مَعْنَى لِلْحَمْلِ حِينَئِذٍ.

L33616–33617 Similarly, if she becomes pregnant after his death, she continues in her waiting period of four months and ten nights. She becomes lawful for remarriage to husbands upon its full completion, and the pregnancy is not taken into account.

وَكَذَلِكَ لَوْ حَمَلَتْ بَعْدَ مَوْتِهِ فَإِنَّهَا تَتَمَادَى عَلَى عِدَّتِهَا أَرْبَعَةَ أَشْهُرٍ وَعَشْرَ لَيَالٍ، ثُمَّ تَحِلُّ لِلْأَزْوَاجِ بِتَمَامِهَا - وَلَا يُرَاعَى الْحَمْلُ.

L33618 By our statement "she becomes permissible to her spouse(s)," we mean that the marital bond is reestablished. As for marital intimacy, it remains entirely prohibited until she delivers her child and her postpartum bleeding ceases—and with Allah alone is success.

وَإِنَّمَا نَعْنِي بِقَوْلِنَا " تَحِلُّ لِلْأَزْوَاجِ " أَنَّهَا يَحِلُّ لَهَا الزَّوَاجُ، وَأَمَّا الْوَطْءُ فَلَا أَلْبَتَّةَ، حَتَّى تَضَعَ حَمْلَهَا ثُمَّ تَطْهُرَ مِنْ دَمِ نِفَاسِهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا لَمْ يَحِلَّ لَهُ زَوَاجُهَا إلَّا بَعْدَ زَوْجٍ يَطَؤُهَا بِنِكَاحٍ صَحِيحٍ]

L33619–33620 **Issue: If a man divorces his wife three times, it is not lawful for him to remarry her unless she marries another husband in a valid marriage and he consummates it.**

مَسْأَلَةٌ: وَمَنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا كَمَا ذَكَرْنَا لَمْ يَحِلَّ لَهُ زَوَاجُهَا إلَّا بَعْدَ زَوْجٍ يَطَؤُهَا فِي فَرْجِهَا بِنِكَاحٍ صَحِيحٍ فِي حَالِ عَقْلِهِ وَعَقْلِهَا وَلَا بُدَّ - وَلَا يُحِلُّهَا لَهُ وَطْءٌ فِي نِكَاحٍ فَاسِدٍ، وَلَا وَطْءٌ فِي دُبُرٍ، وَلَا وَطْؤُهَا فِي نِكَاحٍ صَحِيحٍ - وَهِيَ فِي غَيْرِ عَقْلِهَا بِإِغْمَاءٍ أَوْ بِسُكْرٍ أَوْ

L33621 Issue: If a man divorces his wife three times as we have mentioned, it is not lawful for him to remarry her unless she marries another husband who has vaginal intercourse with her in a valid marriage while both he and she are of sound mind—and this is a necessary condition. Intercourse in an invalid marriage, anal intercourse, or intercourse with her in a valid marriage while she is not in her right mind due to fainting, intoxication, or insanity—or if

he is not in his right mind—does not make her lawful for him. However, if either retains enough consciousness during such states or during sleep to attain pleasure, then such intercourse makes her lawful for him again if that husband dies, divorces her, or their marriage with him is dissolved after the marriage is validly contracted.

L33622–33624 Similarly, if the marriage is valid and he subsequently has intercourse with her in a state where intercourse is impermissible, such as during fasting hours. An obligation on him or her, entering iḥrām (ritual consecration for pilgrimage), observing iʿtikāf (mosque seclusion), or her being menstruating—none of these make her lawful for marriage. An enslaved man may make her lawful by marrying her, and a dhimmī (if she is a dhimmī woman). And if she is an enslaved woman, her master's intercourse with her does not make her lawful.

L33625 The evidence for this is the statement of Allah, the Mighty and Majestic: *{Then she is not lawful for him thereafter until she marries another husband. But if the new husband divorces her, there is no sin upon them to return to each other if they think they can uphold Allah's limits}* [Al-Baqarah: 230]. This verse applies universally to all husbands, and no marriage is valid unless it is lawfully contracted.[9]

L33626 As for one who marries contrary to what Allah the Almighty has commanded, he is not a husband, nor is the marriage considered valid. This [invalid union] enables his lawful return to her after the husband's divorce.

L33627 The matter of intercourse, the matter of the second husband's death, and the dissolution of his marriage remained. We found what we have narrated through the chain of Abū Dāwūd al-Sijistānī: from Musaddad, from Abū Muʿāwiyah, from al-Aʿmash, from Ibrāhīm al-Nakhaʿī, from al-Aswad, from ʿĀ'ishah, the Mother of the Believers, who said: "The Messenger of Allāh—peace and blessings be upon him—was asked about a man who divorced his wife—meaning three times—whereupon she married another man who divorced her before consummating the marriage. Does she become lawful for her first husband?" She said: "The Messenger of Allāh—peace and blessings

بِجُنُونٍ، وَلَا هُوَ كَذَلِكَ - فَإِنْ بَقِيَ مِنْ حِسِّهِ أَوْ مِنْ حِسِّهَا - فِي هَذِهِ الْأَحْوَالِ، أَوْ فِي النَّوْمِ - مَا تُدْرِكُ بِهِ اللَّذَّةَ أَحَلَّهَا ذَلِكَ إِذَا مَاتَ ذَلِكَ الزَّوْجُ أَوْ طَلَّقَهَا، أَوْ انْفَسَخَ نِكَاحُهَا مِنْهُ بَعْدَ صِحَّتِهِ.

وَكَذَلِكَ إِنْ كَانَ النِّكَاحُ صَحِيحًا ثُمَّ وَطِئَهَا فِي حَالٍ لَا يَحِلُّ فِيهِ الْوَطْءُ مِنْ صَوْمِ فَرْضٍ مِنْهُ، أَوْ مِنْهَا، أَوْ إِحْرَامٍ كَذَلِكَ، أَوْ اعْتِكَافٍ كَذَلِكَ، أَوْ وَهِيَ حَائِضٌ: فَكُلُّ ذَلِكَ لَا يُحِلُّهَا - وَيُحِلُّهَا الْعَبْدُ يَتَزَوَّجُهَا، وَالذِّمِّيُّ - إِنْ كَانَتْ هِيَ ذِمِّيَّةً - وَلَا يُحِلُّهَا - إِنْ كَانَتْ أَمَةً -: وَطْءُ سَيِّدِهَا لَهَا.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {فَلا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ} [البقرة: ٢٣٠] فَفِي هَذِهِ الْآيَةِ عُمُومُ كُلِّ زَوْجٍ، وَلَا يَكُونُ زَوَاجًا إِلَّا مَنْ كَانَ زَوَاجُهُ صَحِيحًا.

وَأَمَّا مَنْ تَزَوَّجَ بِخِلَافِ مَا أَمَرَهُ اللَّهُ عَزَّ وَجَلَّ فَلَيْسَ زَوْجًا، وَلَا عُدَّ زَوَاجًا، وَفِيهَا تَحْلِيلُ رَجْعَتِهِ لَهَا بَعْدَ طَلَاقِ الزَّوْجِ.

وَبَقِيَ أَمْرُ الْوَطْءِ، وَأَمْرُ مَوْتِ الزَّوْجِ الثَّانِي، وَانْفِسَاخُ نِكَاحِهِ: فَوَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نَا مُسَدَّدٌ نا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ الْأَسْوَدِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ رَجُلٍ طَلَّقَ امْرَأَتَهُ - تَعْنِي ثَلَاثًا - فَتَزَوَّجَتْ غَيْرَهُ فَطَلَّقَهَا قَبْلَ أَنْ يُوَاقِعَهَا، أَتَحِلُّ لِزَوْجِهَا الْأَوَّلِ؟ قَالَتْ: فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَا تَحِلُّ لِلْأَوَّلِ حَتَّى تَذُوقَ عُسَيْلَةَ الْآخَرِ وَيَذُوقَ عُسَيْلَتَهَا» .

[9] **Qur'an references (L33625):** Qur'an 2:230 (Al-Baqarah).

be upon him—replied: 'She is not lawful for the first until she tastes the other's intimacy and he tastes her intimacy.'"

L33628–33629 In this report, there is an extension of the generality of its permissibility for him through intercourse, not other means. Thus, included in this are his death and the dissolution of his marriage after its validity, and all that we previously mentioned enters into the generality of 'tasting the sweetness'—and success is from Allah, the Exalted.

L33630 We stated that the master's intercourse does not render her lawful for the husband who divorced her, because the master is not a husband. Rather, the Exalted has permitted her to return to him only after she marries another man.

L33631 In many of what we have mentioned, there are opinions differing from that of Saʿīd ibn al-Musayyib. He said—as we were narrated through the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us from Dāwūd ibn Abī Hind, from Saʿīd ibn al-Musayyib—regarding the question: "A woman divorced thrice, then she remarries?" Saʿīd said: "As for the people, they say: He may consummate the marriage with her. But as for me, I say: If the second husband marries her with a valid marriage, not intending by that [act] to facilitate ḥalāla, then there is no harm in the first husband marrying her."

L33632–33633 Abū Muḥammad said: It would have been appropriate for those who argue in rejecting the ḥadīth about wiping over the turban and the ḥadīth of five sucklings—claiming these are additions to the Qur'ān and thus impermissible to take from except what is conveyed through mass-transmitted reports (tawātur)—to adhere to the opinion of Saʿīd here. For ʿĀ'ishah's report regarding tasting the date paste (ʿusaylah) is an addition to the Qur'ān, transmitted solely through the chain from ʿĀ'ishah—may Allah be pleased with her—from whom the report of five sucklings came, and there is no difference.

L33634 And it is narrated through Ibn Abbas. It is also narrated, though inauthentic, through Anas and Ibn Umar.

L33635 Similarly, it is necessary for those who uphold the rejection of the second Sunnah—that a sale is only valid if the two parties separate from their place—

فَفِي هَذَا الْخَبَرِ زِيَادَةُ عُمُومِ حِلِّهَا لَهُ بِالْوَطْءِ لَا بِغَيْرِهِ، فَدَخَلَ فِي ذَلِكَ مَوْتُهُ، وَانْفِسَاخُ نِكَاحِهِ بَعْدَ صِحَّتِهِ، وَدَخَلَ فِي عُمُومِ ذَوْقِ الْعُسَيْلَةِ كُلُّ مَا ذَكَرْنَا قَبْلُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَإِنَّمَا قُلْنَا " إنَّ وَطْءَ السَّيِّدِ لَا يُحِلُّهَا لِزَوْجِهَا الْمُطَلِّقِ لَهَا " لِأَنَّهُ لَيْسَ زَوْجًا، وَإِنَّمَا أَحَلَّهَا لَهُ تَعَالَى بَعْدَ أَنْ تَنْكِحَ زَوْجًا غَيْرَهُ.

وَفِي كَثِيرٍ مِمَّا ذَكَرْنَا خِلَافٌ مِنْ ذَلِكَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، قَالَ: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي الْمُطَلَّقَةِ ثَلَاثًا ثُمَّ تَتَزَوَّجُ؟ قَالَ سَعِيدٌ: أَمَّا النَّاسُ فَيَقُولُونَ: يُجَامِعُهَا، وَأَمَّا أَنَا فَإِنِّي أَقُولُ: إذَا تَزَوَّجَهَا بِتَزْوِيجٍ صَحِيحٍ لَا يُرِيدُ بِذَلِكَ إحْلَالًا، فَلَا بَأْسَ أَنْ يَتَزَوَّجَهَا الْأَوَّلُ.

قَالَ أَبُو مُحَمَّدٍ: كَانَ يَنْبَغِي لِمَنْ يَقُولُ فِي رَدِّهِ حَدِيثَ الْمَسْحِ عَلَى الْعِمَامَةِ وَحَدِيثَ الْخَمْسِ رَضَعَاتٍ إنَّ هَذَا زَائِدٌ عَلَى الْقُرْآنِ فَلَا يَجُوزُ أَنْ يُؤْخَذَ مِنْهُ إلَّا مَا جَاءَ مَجِيءَ تَوَاتُرٍ أَنْ يَقُولَ بِقَوْلِ سَعِيدٍ هَهُنَا، لِأَنَّ خَبَرَ عَائِشَةَ فِي ذَوْقِ الْعُسَيْلَةِ زَائِدٌ عَلَى مَا فِي الْقُرْآنِ لَمْ يَأْتِ إلَّا مِنْ طَرِيقِ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - الَّتِي مِنْ قِبَلِهَا جَاءَ خَبَرُ الْخَمْسِ رَضَعَاتٍ وَلَا فَرْقَ.

وَمِنْ طَرِيقِ ابْنِ عَبَّاسٍ، وَرُوِيَ غَيْرُ صَحِيحٍ مِنْ طَرِيقِ أَنَسٍ، وَابْنِ عُمَرَ.

to acknowledge that among matters causing frequent trials is adhering to the opinion of Saʿīd while stating: "This is among what causes widespread tribulations." If what was obscure to Saʿīd were valid—as transmitted from al-Ḥasan: that the divorced woman does not become lawful for her first husband even if the second [husband] has intercourse with her unless he ejaculates within her—[this would apply].

وَكَذَلِكَ يَنْبَغِي لِمَنْ قَالَ بِرَدِّ السُّنَّةِ الثَّانِيَةِ فِي أَنْ لَا يَتِمَّ بَيْعٌ إِلَّا بِأَنْ يَفْتَرِقَا عَنْ مَوْضِعِهِمَا فَإِنَّ مِمَّا تَكْثُرُ بِهِ الْبَلْوَى أَنْ يَقُولَ بِقَوْلِ سَعِيدٍ، وَيَقُولَ: هَذَا مِمَّا تَكْثُرُ بِهِ الْبَلْوَى، فَلَوْ صَحَّ مَا خَفِيَ عَنْ سَعِيدٍ - وَجَاءَ عَنِ الْحَسَنِ: أَنَّهَا لَا تَحِلُّ لِزَوْجِهَا الْأَوَّلِ وَإِنْ وَطِئَهَا الثَّانِي إِلَّا حَتَّى يُنْزِلَ فِيهَا.

L33636–33637 It is indeed incumbent upon the Malikis—those who maintain that prohibition enters through the most tenuous of grounds while permissibility only enters through the most robust of grounds—to adhere to this precise opinion of al-Hasan. Yet their contradictions extend far beyond this matter.

وَلَقَدْ يَنْبَغِي لِلْمَالِكِيِّينَ الْقَائِلِينَ: إِنَّ التَّحْرِيمَ يَدْخُلُ بِأَرَقِّ الْأَسْبَابِ، وَلَا يَدْخُلُ التَّحْلِيلُ إِلَّا بِأَغْلَظِ الْأَسْبَابِ، أَنْ يَقُولَ بِقَوْلِ الْحَسَنِ هَذَا - وَلَكِنَّ تَنَاقُضَهُمْ أَكْثَرُ مِنْ ذَلِكَ.

L33638 They differed concerning a Muslim who divorces a woman from the People of the Book thrice, then she marries a man from the People of the Book and he consummates the marriage, after which he dies. Al-Ḥasan al-Baṣrī, al-Zuhrī, Sufyān al-Thawrī, Abū Ḥanīfah, al-Shāfiʿī, Abū Sulaymān, and their adherents stated that she has become permissible for the first [husband].

وَاخْتَلَفُوا فِي الْمُسْلِمِ يُطَلِّقُ الْكِتَابِيَّةَ ثَلَاثًا فَتَتَزَوَّجُ كِتَابِيًّا وَيَطَؤُهَا ثُمَّ يَمُوتُ؟ فَقَالَ الْحَسَنُ الْبَصْرِيُّ، وَالزُّهْرِيُّ، وَسُفْيَانُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ: أَنَّهَا قَدْ حَلَّتْ لِلْأَوَّلِ.

L33639 Rabiʿah and Mālik said: "It does not make her lawful"—and we know of no dispute from them except their statement, "Does he not have the right to divorce?" We said: "What does that entail? What in that prevents her from being made lawful if he dies or his marriage to her is dissolved?"

وَقَالَ رَبِيعَةُ، وَمَالِكٌ: لَا يُحِلُّهَا - وَمَا نَعْلَمُ لَهُمْ شَغَبًا إِلَّا قَوْلَهُمْ: لَيْسَ لَهُ طَلَاقٌ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ أَيُّ شَيْءٍ فِي ذَلِكَ مِمَّا يَمْنَعُ مِنْ إِحْلَالِهَا إِنْ مَاتَ أَوْ انْفَسَخَ نِكَاحُهُ مِنْهَا.

L33640 Then we ask them: If he marries her and consummates the marriage, then embraces Islam without having consummated after his conversion, then divorces her—does this render her lawful to him or not? If they say: It does not render her lawful to him, their rationale—that he has no right to divorce—is invalidated, since his divorce is valid. If they say: Rather, it renders her lawful, they contradict their own claim that a husband from the People of the Book's consummation does not make her lawful.

ثُمَّ نَسْأَلُهُمْ: إِنْ تَزَوَّجَهَا وَوَطِئَهَا ثُمَّ أَسْلَمَ وَلَمْ يَطَأْهَا بَعْدَ إِسْلَامِهِ ثُمَّ طَلَّقَهَا أَيُحِلُّهَا لَهُ أَمْ لَا؟ فَإِنْ قَالُوا: لَا يُحِلُّهَا لَهُ، بَطَلَ تَعْلِيلُهُمْ بِأَنَّهُ لَا طَلَاقَ لَهُ، إِذْ قَدْ صَحَّ طَلَاقُهُ، وَإِنْ قَالُوا: بَلْ يُحِلُّهَا: نَقَضُوا قَوْلَهُمْ فِي أَنَّ وَطْءَ الزَّوْجِ الْكِتَابِيِّ لَا يُحِلُّهَا.

L33641 As for their differing views regarding the invalid marriage, the majority uphold this position, except for an opinion attributed to al-Ḥakam ibn ʿUtaybah: that he permits her [to remain in it]—but this is erroneous, for he is not [legally] a husband. Even if he were [considered] a husband, one could

وَأَمَّا اخْتِلَافُهُمْ فِي النِّكَاحِ الْفَاسِدِ، فَجُمْهُورُ النَّاسِ عَلَى هَذَا، إِلَّا شَيْئًا رُوِيَ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ: أَنَّهُ يُحِلُّهَا - وَهَذَا خَطَأٌ، لِأَنَّهُ لَيْسَ زَوْجًا، وَلَوْ كَانَ زَوْجًا مَا حَلَّ أَنْ يُفَرِّقَ بَيْنَهُمَا بِلَا مَعْنًى إِلَّا فَسَادُ عَقْدِهِ فَقَطْ.

not separate them without valid justification except for the invalidity of the contract itself.

وَأَمَّا الِاخْتِلَافُ فِي هَلْ يُحِلُّهَا وَطْءُ سَيِّدِهَا إِنْ كَانَتْ أَمَةً؟ فَرُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا يَزِيدُ بْنُ زُرَيْعٍ نا خَالِدٌ عَنْ مَرْوَانَ الْأَصْفَرِ عَنْ أَبِي رَافِعٍ، قَالَ: دَخَلْنَا عَلَى عُثْمَانَ أَمِيرِ الْمُؤْمِنِينَ فَسَأَلْنَاهُ عَنْ رَجُلٍ كَانَتْ تَحْتَهُ أَمَةٌ فَطَلَّقَهَا فَبَانَتْ مِنْهُ، فَخَلَّفَ عَلَيْهَا سَيِّدَهَا ثُمَّ خَلَا عَنْهَا، وَعِنْدَهُ زَيْدُ بْنُ ثَابِتٍ، وَرَجُلٌ آخَرُ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَا جَمِيعًا: لَا بَأْسَ بِهِ.

L33642 As for the differing opinions regarding whether her master's intercourse makes her permissible if she was a female slave—it was narrated to us through the chain of al-Ḥajjāj ibn al-Minhāl, from Yazīd ibn Zuraiʿ, from Khālid, from Marwān al-Aṣfar, from Abū Rāfiʿ, who said: We entered upon ʿUthmān, the Commander of the Faithful, and asked him about a man who had a female slave as his wife, then divorced her, resulting in her irrevocable separation. Her master subsequently took her back and later abandoned her. Present with him were Zayd ibn Thābit and another companion of the Messenger of Allah (peace and blessings be upon him and his family), and they both said: "There is no harm in it."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ: أَنَّ زَيْدَ بْنَ ثَابِتٍ، وَالزُّبَيْرَ بْنَ الْعَوَّامِ كَانَا لَا يَرَيَانِ بَأْسًا بِالْأَمَةِ يُطَلِّقُهَا زَوْجُهَا فَيَتَسَرَّاهَا سَيِّدُهَا ثُمَّ يَتَزَوَّجُهَا زَوْجُهَا، قَالَا جَمِيعًا: إذَا لَمْ يُرِدْ السَّيِّدُ بِذَلِكَ إحْلَالَهَا فَلَيْسَ بِهِ بَأْسٌ.

L33643 And through the narration of Ḥammād ibn Salamah from Qaṭādah from al-Ḥasan: that Zayd ibn Thābit and al-Zubayr ibn al-ʿAwwām saw no objection if a slave woman was divorced by her husband, her master took her as a concubine after her divorce, and her former husband subsequently remarried her. They both said: If the master did not intend by this to facilitate her permissibility (ḥalālah) for remarriage, there is no harm in it.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ أَشْعَثِ بْنِ عَبْدِ الْمَلِكِ الْحُمْرَانِيِّ عَنْ الْحَسَنِ الْبَصْرِيِّ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: السَّيِّدُ زَوْجٌ.

L33644–33645 And from the transmission of Yaḥyā ibn Saʿīd al-Qaṭṭān, from Ashʿath ibn ʿAbd al-Malik al-Ḥumrānī, from al-Ḥasan al-Baṣrī, from Zayd ibn Thābit, who said: The master [of a female slave] is [legally] her spouse.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ فِي الْعَبْدِ يَبِتُّ الْأَمَةَ أَنَّهُ يُحِلُّهَا أَنْ يَطَأَهَا سَيِّدُهَا - قَالَ عَطَاءٌ: مَنْ كَانَتْ زَوْجَتُهُ أَمَةً فَبَتَّهَا ثُمَّ ابْتَاعَهَا قَبْلَ أَنْ تَنْكِحَ غَيْرَهُ فَحَلَالٌ لَهُ وَطْؤُهَا، فَإِنْ وَطِئَهَا ثُمَّ أَعْتَقَهَا فَلَهُ أَنْ يَتَزَوَّجَهَا، فَإِنْ أَعْتَقَهَا قَبْلَ أَنْ يَطَأَهَا لَمْ تَحِلَّ لَهُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ؟ وَهَذَا تَقْسِيمٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ.

L33646 From the narration of ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAṭāʾ, from Ibn ʿAbbās regarding a male slave who irrevocably divorces a female slave: that he declares her lawful for her master to have intercourse with her. ʿAṭāʾ said: If a man's wife is a slave woman and he irrevocably divorces her, then purchases her before she marries another husband, she is lawful for him to have intercourse with. If he has intercourse with her and then emancipates her, he may marry her. But if he emancipates her before he has intercourse with her, does she not become lawful for him until she marries another husband? This classification has no evidence to confirm its validity.

L33647 Different opinions have been narrated to us from other scholars - as conveyed through the chain of al-Ḥajjāj ibn al-Minhāl who narrated from Yazīd

ibn Zurayʿ, who narrated from Khālid al-Ḥadhdhā, who narrated from al-Ḥakam ibn ʿUtaybah, who narrated from ʿAlī ibn Abī Ṭālib, who said: “Until she becomes permissible to him in the same respect she was forbidden to him” - meaning: when a female slave is divorced by her master, her master may have intercourse with her without her marrying another husband.

وَرُوِّينَا خِلَافَ هَذَا عَنْ غَيْرِهِمْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا يَزِيدُ بْنُ زُرَيْعٍ نا خَالِدٌ - هُوَ الْحَذَّاءُ - عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: حَتَّى تَحِلَّ لَهُ مِنْ حَيْثُ حُرِّمَتْ عَلَيْهِ - يَعْنِي: الْأَمَةَ تَطْلُقُ فَيَطَأُهَا سَيِّدُهَا دُونَ أَنْ تَتَزَوَّجَ زَوْجًا آخَرَ.

L33648 And through him to Khalid al-Khazzāʾ, from Abū Maʿshar, from Ibrāhīm al-Nakhaʿī, from ʿAbīdah al-Salmanī, from Ibn Masʿūd, who said: “It is not lawful for him except in the same manner it was prohibited to him.” It is established from Masrūq that he retracted [his fatwā] and returned to the [original] opinion after having issued a legal verdict in accordance with the view of Zayd.

وَبِهِ إِلَى خَالِدٍ الْحَذَّاءِ عَنْ أَبِي مَعْشَرٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَبِيدَةَ السَّلْمَانِيِّ عَنْ ابْنِ مَسْعُودٍ قَالَ: لَا تَحِلُّ لَهُ إِلَّا مِنْ حَيْثُ حُرِّمَتْ عَلَيْهِ - وَصَحَّ عَنْ مَسْرُوقٍ أَنَّهُ رَجَعَ إِلَى الْقَوْلِ بَعْدَ أَنْ أَفْتَى بِقَوْلِ زَيْدٍ.

L33649 As for whether she becomes lawful for her master as a slave under his possession if he purchases her after she had been his wife and he divorced her irrevocably [three times], we have already mentioned the opinion of ʿAṭāʾ regarding this.

وَأَمَّا هَلْ تَحِلُّ لِسَيِّدِهَا بِمِلْكِ الْيَمِينِ إِذَا اشْتَرَاهَا بَعْدَ أَنْ كَانَتْ زَوْجَتَهُ وَطَلَّقَهَا ثَلَاثًا؟ فَقَدْ ذَكَرْنَا آنِفًا عَنْ عَطَاءٍ.

L33650 And from the transmission of Abd al-Razzaq from Ibn Jarir: I asked Ata, “If a man committed zinā with a slave woman, then purchased her, and she did not marry anyone after him - does she become permissible for him?” He replied, “Yes. Ibn Abbas used to say it.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جَرِيرٍ قُلْت لِعَطَاءٍ: رَجُلٌ بَتَّ أَمَةً ثُمَّ ابْتَاعَهَا وَلَمْ تَنْكِحْ بَعْدَهُ أَحَدًا، أَتَحِلُّ لَهُ؟ قَالَ: نَعَمْ، كَانَ ابْنُ عَبَّاسٍ يَقُولُهُ.

L33651 And through the chain of ʿAbd al-Razzāq from Maʿmar from Ismāʿīl ibn Umayyah from Ibn Qusayṭ: Kathīr, the freedman of al-Ṣalt, divorced her twice then purchased her and freed her. Zayd ibn Thābit said: “If you had consummated the marriage by virtue of ownership, she would have become lawful for you. But she is not lawful for you until she marries a husband other than you.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ ابْنِ قُسَيْطٍ أَنَّ كَثِيرًا مَوْلَى الصَّلْتِ طَلَّقَهَا تَطْلِيقَتَيْنِ ثُمَّ اشْتَرَاهَا فَأَعْتَقَهَا؟ فَقَالَ زَيْدُ بْنُ ثَابِتٍ: لَوْ كُنْت وَطِئْتَهَا بِمِلْكٍ حَلَّتْ لَك، وَلَكِنْ لَا تَحِلُّ لَك حَتَّى تَنْكِحَ زَوْجًا غَيْرَك.

L33652–33654 And through the chain of Ḥammād ibn Salamah from Ziyād al-Aʿlam from al-Ḥasan—the same, the same as the opinions of Zayd and ʿAṭāʾ—a contrary position has been authentically reported from others: It has been narrated to us from ʿUthmān and Zayd ibn Thābit that she is not lawful for her owner through lawful ownership if he purchases her after divorcing her thrice. It has been authentically reported from Jābir ibn ʿAbdullāh and from ʿAlī ibn

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ زِيَادٍ الْأَعْلَمِ عَنْ الْحَسَنِ مِثْلُ قَوْلِ زَيْدٍ وَعَطَاءٍ سَوَاءً سَوَاءً - صَحَّ عَنْ غَيْرِهِمْ خِلَافُ ذَلِكَ: رُوِّينَا: أَنَّهُ لَا تَحِلُّ لِسَيِّدِهَا بِمِلْكِ الْيَمِينِ إِذَا اشْتَرَاهَا بَعْدَ أَنْ طَلَّقَهَا ثَلَاثًا عَنْ عُثْمَانَ، وَزَيْدِ بْنِ ثَابِتٍ - وَصَحَّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، وَعَنْ

Abī Ṭālib that he disliked it. That is—it has been authentically narrated from Masrūq, an-Nakhaʿī, ʿUbaydah as-Salmānī, ash-Shaʿbī, Ibn al-Musayyib, and Sulaymān *ibn* Yasār.

L33655 Abū Muḥammad said: It is not permissible for the master to see anything of her ʻawrah except what he may see of his mahram women, nor may he derive sexual pleasure from her, due to the words of Allah, the Mighty and Sublime: {Then she is not lawful to him until she marries a husband other than him} [Al-Baqarah: 230]. Thus, He, the Exalted, generalized the ruling without specifying, contrary to the case of women of the Book, the menstruating woman, the woman fasting an obligatory fast, and the woman in iḥrām, for these women are only prohibited in terms of marriage—which is sexual intercourse—and nothing else. And success is attained only through Allah, the Exalted.[10]

L33656 **A case in which a husband who pronounced a triple divorce enticed another man to marry her and consummate the marriage, thereby rendering her permissible for him again.**

L33657 Issue 1951: If a man who has pronounced a triple divorce encourages someone to marry her and consummate the marriage to render her lawful for him, this is permissible provided the marriage is contracted without stipulating such a condition within the actual marriage contract. If he marries her, he holds the option: if he wishes, he may divorce her, and if he wishes, he may retain her. If he divorces her, she becomes lawful for the first [husband]. However, if the marriage contract stipulates that he will divorce her upon consummation, the contract becomes invalid and perpetually annulled. She does not become lawful for him through it. There is no distinction between this case and what we previously mentioned regarding every invalid marriage.

L33658 Abu Muhammad said: Some proponents stated: She is not rendered lawful

[10] **Qur'an references (L33655):** Qur'an 2:230 (Al-Baqarah).

عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ كَرِهَ ذَلِكَ - وَصَحَّ عَنْ مَسْرُوقٍ، وَالنَّخَعِيِّ، وَعُبَيْدَةَ السَّلْمَانِيِّ، وَالشَّعْبِيِّ، وَابْنِ الْمُسَيِّبِ، وَسُلَيْمَانَ بْنِ يَسَارٍ.

قَالَ أَبُو مُحَمَّدٍ: وَلَا يَحِلُّ لِلسَّيِّدِ أَنْ يَرَى مِنْ عَوْرَتِهَا شَيْئًا إِلَّا مَا يَرَى مِنْ حَرِيمَتِهِ، وَلَا أَنْ يَتَلَذَّذَ بِهَا، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {فَلا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ} [البقرة: ٢٣٠] فَعَمَّ تَعَالَى وَلَمْ يَخُصَّ، بِخِلَافِ الْكِتَابِيَّةِ، وَالْحَائِضِ، وَالصَّائِمَةِ فَرْضًا، وَالْمُحْرِمَةِ، لِأَنَّ هَؤُلَاءِ إِنَّمَا حُرِّمَ نِكَاحُهُنَّ فَقَطْ - وَهُوَ الْوَطْءُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ رَغَّبَ الْمُطَلِّقُ ثَلَاثًا إلَى مَنْ يَتَزَوَّجُهَا وَيَطَؤُهَا لِيُحِلَّهَا لَهُ]

١٩٥١ - مَسْأَلَةٌ: فَلَوْ رَغَّبَ الْمُطَلِّقُ ثَلَاثًا إلَى مَنْ يَتَزَوَّجُهَا وَيَطَؤُهَا لِيُحِلَّهَا لَهُ فَذَلِكَ جَائِزٌ إذَا تَزَوَّجَهَا بِغَيْرِ شَرْطٍ لِذَلِكَ فِي نَفْسِ عَقْدِهِ لِنِكَاحِهِ إيَّاهَا، فَإِذَا تَزَوَّجَهَا فَهُوَ بِالْخِيَارِ إنْ شَاءَ طَلَّقَهَا، وَإِنْ شَاءَ أَمْسَكَهَا، فَإِنْ طَلَّقَهَا حَلَّتْ لِلْأَوَّلِ، فَلَوْ شَرَطَ فِي عَقْدِ نِكَاحِهَا أَنَّهُ يُطَلِّقُهَا إذَا وَطِئَهَا، فَهُوَ عَقْدٌ فَاسِدٌ مَفْسُوخٌ أَبَدًا، وَلَا تَحِلُّ لَهُ بِهِ، وَلَا فَرْقَ بَيْنَ هَذَا وَبَيْنَ مَا ذَكَرْنَا قَبْلُ فِي كُلِّ نِكَاحٍ فَاسِدٍ.

قَالَ أَبُو مُحَمَّدٍ: وَقَالَ بَعْضُ الْقَائِلِينَ: لَا تَكُونُ حَلَالًا إلَّا بِنِكَاحِ رَغْبَةٍ لَا يَنْوِي بِهِ تَحْلِيلَهَا لِلَّذِي طَلَّقَهَا.

except through a marriage based on desire, where he does not intend by it to make her lawful for the one who had divorced her.

وَاحْتَجُّوا فِي ذَلِكَ بِأَثَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ مَنْصُورٍ نَا أَبُو نُعَيْمٍ - هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي قَيْسٍ - هُوَ عَبْدُ الرَّحْمَنِ بْنُ ثَرْوَانَ - عَنْ هُذَيْلِ بْنِ شُرَحْبِيلَ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: «وَلَعَنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْوَاشِمَةَ، وَالْمُسْتَوْشِمَةَ، وَالْوَاصِلَةَ، وَالْمَوْصُولَةَ - وَآكِلَ الرِّبَا وَمُؤَكِّلَهُ، وَالْمُحِلَّ وَالْمُحَلَّلَ لَهُ» .

L33659–33661 They argued for that position by citing a narration reported through the chain of Ahmad ibn Shu'ayb → 'Amr ibn Mansur → Abu Nu'aym (al-Fadl ibn Dukayn) → Sufyan al-Thawri → Abu Qays ('Abd al-Rahman ibn Tharwan) → Hudhayl ibn Shurahbīl → 'Abdullah ibn Mas'ud, who said: "The Messenger of Allah—peace and blessings be upon him—cursed—" Those who tattoo, those who are tattooed, those who attach hair extensions, those who wear them, the consumer of usury and its facilitator, the one who legalizes religiously forbidden acts through trickery, and the one for whom it is legalized.

L33662 This is the only authentic narration in this chapter. Furthermore, there are other reports conveying its meaning, but they are invalid—either transmitted through the chain of Al-Ḥārith Al-A'war, the liar, or through the chain of Isḥāq Al-Farwī—and they are entirely devoid of value.

وَهَذَا خَبَرٌ لَا يَصِحُّ فِي هَذَا الْبَابِ سِوَاهُ، ثُمَّ آثَارٌ بِمَعْنَاهُ إلَّا أَنَّهَا هَالِكَةٌ - إمَّا مِنْ طَرِيقِ الْحَارِثِ الْأَعْوَرِ الْكَذَّابِ، أَوْ مِنْ طَرِيقِ إسْحَاقَ الْفَرْوِيِّ - وَلَا خَيْرَ فِيهِ -.

L33663 Abū Muḥammad said: People have differed regarding the sinful, cursed muḥallil and the sinful, cursed one for whom it is made lawful (muḥallal lahu)—who are they? So, it has been narrated to us through the chain of Wakī', from Sufyān al-Thawrī, from al-Musayyib ibn Rāfi', from Qabīṣa ibn Jābir, who said: 'Umar ibn al-Khaṭṭāb declared: "If any muḥill or muḥallal is brought before me, I will stone them."

قَالَ أَبُو مُحَمَّدٍ: اخْتَلَفَ النَّاسُ فِي الْمُحَلِّلِ الْآثِمِ الْمَلْعُونِ، وَالْمُحَلَّلِ لَهُ الْآثِمِ الْمَلْعُونِ، مَنْ هُمَا؟ فَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُسَيِّبِ بْنِ رَافِعٍ عَنْ قَبِيصَةَ بْنِ جَابِرٍ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَا أُوتَى بِمُحِلٍّ وَلَا بِمُحَلَّلٍ إلَّا رَجَمْته.

L33664–33665 And through the chain of Ibn Wahb, Yazīd ibn 'Iyāḍ ibn Ju'duba informed me that he heard Nāfi' say: A man asked Ibn 'Umar about the tahlīl. Ibn 'Umar said to him: Do you not know of 'Umar ibn al-Khaṭṭāb? Had he witnessed any of that, he would have stoned for it?

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي يَزِيدُ بْنُ عِيَاضِ بْنِ جُعْدُبَةَ أَنَّهُ سَمِعَ نَافِعًا يَقُولُ: إنَّ رَجُلًا سَأَلَ ابْنَ عُمَرَ عَنْ التَّحْلِيلِ؟ فَقَالَ لَهُ ابْنُ عُمَرَ: عَرَفْت عُمَرَ بْنَ الْخَطَّابِ لَوْ رَأَى شَيْئًا مِنْ ذَلِكَ لَرَجَمَ فِيهِ.؟

L33666 Abu Muhammad said: Yazid ibn Iyad ibn Ju'dubah is a liar, known for fabricating hadith.

قَالَ أَبُو مُحَمَّدٍ: يَزِيدُ بْنُ عِيَاضِ بْنِ جُعْدُبَةَ كَذَّابٌ مَذْكُورٌ بِوَضْعِ الْحَدِيثِ.

L33667 On the authority of Abd al-Razzaq, on the authority of Sufyan al-Thawri, on the authority of Abdullah ibn Shuraik al-Amiri, who said: I heard Ibn Umar being asked about a man who divorced his wife then regretted it, and wanted a man to marry her for *taḥlīl* [to make her permissible for him again]. Ibn Umar responded: "Both of them [the divorcer and the *muḥallil*]

are fornicators, even if the two men were to remain [in this arrangement] for twenty years."

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ شَرِيكٍ الْعَامِرِيِّ، قَالَ: سَمِعْت ابْنَ عُمَرَ يَسْأَلُ عَمَّنْ طَلَّقَ امْرَأَتَهُ ثُمَّ نَدِمَ، فَأَرَادَ أَنْ يَتَزَوَّجَهَا رَجُلٌ يُحَلِّلُهَا لَهُ؟ فَقَالَ لَهُ ابْنُ عُمَرَ: كِلَاهُمَا زَانٍ، وَلَوْ مَكَثَا عِشْرِينَ سَنَةً.

L33668 And through the chain of Waki‘ from Abu Ghassan al-Madani from ‘Umar ibn Nafi‘ from his father: A man asked Ibn ‘Umar about one who divorced his wife three times, then this same questioner married her without the divorcer’s consent—does she become permissible for her original husband? Ibn ‘Umar replied: No, except through a valid marriage of sincere intent. We regarded it as fornication during the era of the Messenger of Allah (peace and blessings of Allah be upon him).

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ أَبِي غَسَّانَ الْمَدَنِيِّ عَنْ عُمَرَ بْنِ نَافِعٍ عَنْ أَبِيهِ: أَنَّ رَجُلًا سَأَلَ ابْنَ عُمَرَ عَمَّنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا فَتَزَوَّجَهَا هَذَا السَّائِلُ عَنْ غَيْرِ مُؤَامَرَةٍ مِنْهُ، أَتَحِلُّ لِمُطَلَّقِهَا؟ قَالَ ابْنُ عُمَرَ: لَا، إِلَّا بِنِكَاحِ رَغْبَةٍ، كُنَّا نَعُدُّهُ سِفَاحًا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L33669–33670 And through the chain of Ibn Wahb, Al-Layth ibn Saʿd reported to me from Muḥammad ibn ʿAbd al-Raḥmān al-Murādī that he heard Abū Marzūq al-Tujībī say: A man divorced his wife thrice, then they both regretted it. He had a neighbor who sought to facilitate a *tahleel* between them without the couple’s knowledge. I asked ʿUthmān about this, and ʿUthmān replied: “No, except through a genuine marriage, free of deception.”

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي اللَّيْثُ بْنُ سَعْدٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ الْمُرَادِيِّ أَنَّهُ سَمِعَ أَبَا مَرْزُوقٍ التُّجِيبِيَّ يَقُولُ: إِنَّ رَجُلًا طَلَّقَ امْرَأَتَهُ ثَلَاثًا ثُمَّ نَدِمَا، وَكَانَ لَهُ جَارٌ فَأَرَادَ أَنْ يُحَلِّلَ بَيْنَهُمَا بِغَيْرِ عِلْمِهِمَا، فَسَأَلْت عَنْ ذَلِكَ عُثْمَانَ؟ فَقَالَ لَهُ عُثْمَانُ: لَا، إِلَّا بِنِكَاحِ رَغْبَةٍ، غَيْرِ مُدَالَسَةٍ.

L33671 From the path of Abd al-Razzaq, from Ma’mar, from al-A’mash, from Abdullah ibn Murrah, from al-Harith, from Abdullah ibn Mas’ud, who said: The consumer of usury, the facilitator of it, its two witnesses, and its scribe if they are aware of it, the woman who attaches hair extensions, the one who seeks them, the one who withholds Zakat, the transgressor, the apostate who reverts to nomadic life after his migration, and the one for whom tahleel is performed—all are cursed by the tongue of Muhammad, peace and blessings be upon him, on the Day of Resurrection.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الْأَعْمَشِ عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةَ عَنْ الْحَارِثِ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ، قَالَ: آكِلُ الرِّبَا وَمُؤَكِّلُهُ وَشَاهِدَاهُ وَكَاتِبُهُ إذَا عَلِمُوا بِهِ، وَالْوَاصِلَةُ، وَالْمُسْتَوْصِلَةُ وَلَاوِي الصَّدَقَةِ، وَالْمُعْتَدِي، وَالْمُرْتَدُّ أَعْرَابِيًّا بَعْدَ هِجْرَتِهِ، وَالْمُحَلَّلُ لَهُ: مَلْعُونُونَ عَلَى لِسَانِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ الْقِيَامَةِ.

L33672 From the chain of Abd al-Razzaq, from Hushaym, from Khalid al-Ḥadhdhā’, from Marwan al-Asfar, from Abu Rafi’, who said: Uthman, Ali, and Zayd ibn Thabit were asked about a female slave - does her master permit her to return to her husband if he does not intend to facilitate her lawful remarriage

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هُشَيْمٍ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ مَرْوَانَ الْأَصْفَرِ عَنْ أَبِي رَافِعٍ قَالَ: سُئِلَ عُثْمَانُ، وَعَلِيٌّ، وَزَيْدُ بْنُ ثَابِتٍ: عَنْ الْأَمَةِ، هَلْ يُحِلُّهَا سَيِّدُهَا لِزَوْجِهَا

(tahleel), meaning if he has irrevocably divorced her? Uthman and Zayd said: "Yes." Ali rose in anger and disapproved of their statement.

إِذَا كَانَ لَا يُرِيدُ التَّحْلِيلَ؟ يَعْنِي: إِذَا بَتَّ طَلَاقَهَا؟ فَقَالَ عُثْمَانُ، وَزَيْدٌ: نَعَمْ، فَقَامَ عَلِيٌّ غَضْبَانَ وَكَرِهَ قَوْلَهُمَا.

L33673 On the authority of ʿAlī: Cursed are both the one who performs tahleel and the one for whom tahleel is enacted.

وَعَنْ عَلِيٍّ: لُعِنَ الْمُحَلِّلُ وَالْمُحَلَّلُ لَهُ

L33674 From the narration of Abd al-Razzaq, who reported from Sufyan al-Thawri and Maʿmar - both of whom narrated from al-Aʿmash, from Malik ibn al-Harith, from Ibn Abbas: A man inquired about someone who had divorced his wife, asking, "What is your view concerning a man who makes her lawful for himself through *tahlil*?" Ibn Abbas responded, "Whoever tries to deceive Allah, Allah will outwit him."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ، كِلَاهُمَا: عَنْ الْأَعْمَشِ عَنْ مَالِكِ بْنِ الْحَارِثِ عَنْ ابْنِ عَبَّاسٍ: أَنَّ رَجُلًا سَأَلَ عَمَّنْ طَلَّقَ امْرَأَتَهُ، كَيْفَ تَرَى فِي رَجُلٍ يُحِلُّهَا لَهُ؟ فَقَالَ ابْنُ عَبَّاسٍ: مَنْ يُخَادِعْ اللَّهَ يَخْدَعْهُ.

L33675–33677 It is authentically established from Qatādah, al-Ḥasan, and al-Nakhaʿī that they said: "If one of the marrying parties intends, or..." If the marriage or the woman is contracted for *tahleel* (a temporary marriage to circumvent Islamic divorce law and permit remarriage to a former husband), it is invalid. If the temporary husband divorces her, she does not become lawful for the original husband, and their union is annulled if his marriage was contracted for the purpose of *tahleel*.

وَصَحَّ عَنْ قَتَادَةَ، وَالْحَسَنِ، وَالنَّخَعِيِّ، قَالُوا: إنْ نَوَى وَاحِدٌ مِنْ النَّاكِحِ، أَوْ الْمُنْكَحِ أَوْ الْمَرْأَةِ التَّحْلِيلَ، فَلَا يَصْلُحُ، فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لِلَّذِي طَلَّقَهَا، وَيُفَرَّقُ بَيْنَهُمَا - إذَا كَانَ نِكَاحُهُ عَلَى وَجْهِ التَّحْلِيلِ.

L33678 It has been reported from al-Ḥasan that he was asked about that. He replied: Fear Allah and do not become a fiery nail in Allah's sacred boundaries. He also said: The Muslims used to say, "It is the borrowed male goat [referring to temporary marriage facilitators]." From Saʿīd ibn Jubayr: The muḥallil is cursed.

وَرُوِيَ عَنْ الْحَسَنِ أَنَّهُ سُئِلَ عَنْ ذَلِكَ؟ فَقَالَ: اتَّقِ اللَّهَ وَلَا تَكُنْ مِسْمَارَ نَارٍ فِي حُدُودِ اللَّهِ - وَأَنَّهُ قَالَ: كَانَ الْمُسْلِمُونَ يَقُولُونَ: هُوَ التَّيْسُ الْمُسْتَعَارُ؟ وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ: الْمُحَلِّلُ مَلْعُونٌ.

L33679 It was also narrated from Saʿīd ibn al-Musayyib and Ṭāwus.

وَرُوِيَ أَيْضًا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَطَاوُسٍ.

L33680 And that was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar, and also from Qatādah.

وَرُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ أَيْضًا.

L33681 And from the chain of transmission of Saʿīd ibn Manṣūr: Hushaym narrated to us: I received from Mughīrah and Yūnus ibn ʿUbayd. Mughīrah said from Ibrāhīm; Yūnus said from al-Ḥasan. Then he cited it verbatim as we have presented it.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا مُغِيرَةُ، وَيُونُسُ بْنُ عُبَيْدٍ، قَالَ مُغِيرَةُ عَنْ إبْرَاهِيمَ - وَقَالَ يُونُسُ عَنْ الْحَسَنِ ثُمَّ ذَكَرَهُ نَصًّا كَمَا أَوْرَدْنَاهُ.

L33682 Sufyan al-Thawri said: “If he marries her to make her permissible [for re-marriage] to the man who divorced her, and she appeals to him?” Sufyan replied: “He must renew the marriage contract.”

L33683–33685 Mālik said: If the second husband intends to marry her in order to make her lawful [to return] to the first [husband], then it is an invalid marriage. The marriage is annulled, she is entitled to the stipulated dowry from him, and she does not become permissible to the first husband through intercourse with him.

L33686 Others maintained the permissibility of that.

L33687 As it was narrated to us through the chain of ʿAbd al-Razzāq from Hishām—who is Ibn Ḥassān—from Muḥammad ibn Sīrīn, who said: A woman sent for a man and offered herself in marriage to him to perform *ḥalāla* for her husband. ʿUmar ibn al-Khaṭṭāb then commanded the man to uphold the marriage with her and not divorce her, and threatened to punish him if he divorced her.

L33688 Via the narration of ʿAbd al-Razzāq, from Maʿmar, from Hishām ibn ʿUrwah, from his father, that he did not deem *tahlīl* impermissible if one of the original spouses is unaware of it.

L33689 Al-Layth ibn Saʿd said: If he marries her then divorces her so that she may return to her husband, while neither the divorcer nor she knew of this purpose - was this action done by him seeking Allah’s reward? There is no harm in her returning to the first husband. If the second husband clarifies this matter to the first after consummating the marriage, it does not harm the ruling.

L33690 And this is the view of Sālim ibn ʿAbd Allāh ibn ʿUmar and al-Qāsim ibn Muḥammad ibn Abī Bakr.

L33691 It has been authentically reported that ʿAṭāʾ was asked about a man who intentionally marries a woman as a muḥallil (to render her permissible for her former husband), then develops affection for her and keeps her [in marriage]—what is the ruling? He replied: “There is no harm in that.” It has been

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: إِنْ تَزَوَّجَهَا لِيُحِلَّهَا لِلَّذِي طَلَّقَهَا فَأَعْجَبَتْهُ؟ قَالَ سُفْيَانُ: يُجَدِّدُ نِكَاحًا.

وَقَالَ مَالِكٌ: إِنْ نَوَى الزَّوْجُ الثَّانِي أَنْ يَتَزَوَّجَهَا لِيُحِلَّهَا لِلْأَوَّلِ؟ فَهُوَ نِكَاحٌ فَاسِدٌ مَفْسُوخٌ، وَلَهَا عَلَيْهِ الْمَهْرُ الَّذِي سُمِّيَ لَهَا، وَلَا تَحِلُّ بِوَطْئِهِ لِلْأَوَّلِ.

وَذَهَبَ آخَرُونَ إِلَى إِجَازَةِ ذَلِكَ.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هِشَامٍ - هُوَ ابْنُ حَسَّانَ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ، قَالَ: أَرْسَلَتْ امْرَأَةٌ إِلَى رَجُلٍ فَزَوَّجَتْهُ نَفْسَهَا لِيُحِلَّهَا لِزَوْجِهَا؟ فَأَمَرَهُ عُمَرُ بْنُ الْخَطَّابِ أَنْ يُقِيمَ عَلَيْهَا، وَلَا يُطَلِّقَهَا، وَأَوْعَدَهُ أَنْ يُعَاقِبَهُ إِنْ طَلَّقَهَا.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِالتَّحْلِيلِ إِذَا لَمْ يَعْلَمْ أَحَدُ الزَّوْجَيْنِ بِهِ.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ: إِنْ تَزَوَّجَهَا ثُمَّ فَارَقَهَا لِتَرْجِعَ إِلَى زَوْجِهَا وَلَمْ يَعْلَمْ الْمُطَلِّقُ وَلَا هِيَ بِذَلِكَ، وَإِنَّمَا كَانَ ذَلِكَ مِنْهُ احْتِسَابًا؟ فَلَا بَأْسَ بِأَنْ تَرْجِعَ إِلَى الْأَوَّلِ، فَإِنْ بَيَّنَ الثَّانِي ذَلِكَ لِلْأَوَّلِ بَعْدَ دُخُولِهِ بِهَا لَمْ يَضُرَّهُ ذَلِكَ.

وَهُوَ قَوْلُ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، وَالْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ.

وَصَحَّ عَنْ عَطَاءٍ فِيمَنْ نَكَحَ امْرَأَةً عَامِدًا مُحَلِّلًا ثُمَّ رَغِبَ فِيهَا فَأَمْسَكَهَا؟ قَالَ: لَا بَأْسَ بِذَلِكَ: وَرُوِّينَا عَنْ الشَّعْبِيِّ: لَا بَأْسَ بِالتَّحْلِيلِ إِذَا لَمْ يَأْمُرْ بِهِ الزَّوْجُ.

narrated to us from al-Shaʿbī: "There is no blame in taḥlīl (the intermediary marriage for permissibility) provided the former husband did not order it."

وَبِهِ يَقُولُ الشَّافِعِيُّ، وَأَبُو ثَوْرٍ، قَالَا جَمِيعًا: الْمُحَلِّلُ - الَّذِي يَفْسُدُ نِكَاحُهُ - هُوَ الَّذِي يَعْقِدُ عَلَيْهِ فِي نَفْسِ عَقْدِ النِّكَاحِ أَنَّهُ إِنَّمَا يَتَزَوَّجُهَا لِيُحِلَّهَا ثُمَّ يُطَلِّقَهَا فَأَمَّا مَنْ لَمْ يَشْتَرِطْ ذَلِكَ عَلَيْهِ فِي عَقْدِ النِّكَاحِ فَهُوَ عَقْدٌ صَحِيحٌ لَا دَاخِلَةَ فِيهِ، سَوَاءٌ شَرَطَ ذَلِكَ عَلَيْهِ قَبْلَ الْعَقْدِ أَوْ لَمْ يَشْتَرِطْ - نَوَى ذَلِكَ فِي نَفْسِهِ أَوْ لَمْ يَنْوِهِ؟ - قَالَ أَبُو ثَوْرٍ: وَهُوَ مَأْجُورٌ.

L33692–33694 Al-Shāfiʿī and Abū Thawr both state: The muḥallil (a man who marries to facilitate re-legitimation)—whose marriage is inherently invalid—is one who stipulates within the marriage contract itself that his sole intent is to marry her merely to make her lawful for her former husband and then divorce her. As for one who does not... If a condition is imposed on him in the marriage contract, the contract remains valid without the condition having any effect on it—whether he stipulated it before the contract or did not stipulate it, whether he intended it inwardly or did not intend it? Abu Thawr said: He is rewarded.

وَأَمَّا أَبُو حَنِيفَةَ، وَأَصْحَابُهُ -: فَرَوَى بِشْرُ بْنُ الْوَلِيدِ عَنْ أَبِي يُوسُفَ عَنْ أَبِي حَنِيفَةَ مِثْلَ قَوْلِ الشَّافِعِيِّ سَوَاءً سَوَاءً.

L33695 As for Abū Ḥanīfah and his companions, Bishr ibn al-Walīd narrated from Abū Yūsuf from Abū Ḥanīfah the same as the view of al-Shāfiʿī—identical, identical.

وَرُوِيَ أَيْضًا عَنْ مُحَمَّدِ بْنِ الْحَسَنِ عَنْ أَبِي يُوسُفَ عَنْ أَبِي حَنِيفَةَ: أَنَّهُ إِذَا نَوَى الثَّانِي تَحْلِيلَهَا لِلْأَوَّلِ لَمْ تَحِلَّ لَهُ بِذَلِكَ.

L33696 It was also narrated from Muḥammad ibn al-Ḥasan from Abū Yūsuf from Abū Ḥanīfah that if the second husband intended the *taḥlīl* (making her lawful) for the first husband, she does not thereby become lawful for him.

وَهُوَ قَوْلُ أَبِي يُوسُفَ، وَمُحَمَّدٍ.

L33697 And this is the opinion of Abī Yūsuf and Muḥammad.

وَرُوِيَ عَنْ زُفَرَ بْنِ الْهُذَيْلِ، وَأَبِي حَنِيفَةَ: أَنَّهُ وَإِنْ اشْتَرَطَ عَلَيْهِ فِي نَفْسِ الْعَقْدِ أَنَّهُ إِنَّمَا يَتَزَوَّجُهَا لِيُحِلَّهَا لِلْأَوَّلِ، فَإِنَّهُ نِكَاحٌ صَحِيحٌ، وَيُحْصَنَانِ بِهِ وَيَبْطُلُ الشَّرْطُ، وَلَهُ أَنْ يُمْسِكَهَا، فَإِنْ طَلَّقَهَا حَلَّتْ لِلْأَوَّلِ.

L33698 It is narrated from Zufar ibn al-Hudhayl and Abu Hanifah that if a man stipulates within the marriage contract itself that he is marrying her solely to make her permissible for the first husband, the marriage is valid. It establishes their lawful union, the stipulation is nullified, and he may retain her. If he divorces her, she becomes permissible for the first husband.

وَرُوِيَ ذَلِكَ عَنْ زُفَرَ عَنْ أَبِي حَنِيفَةَ، وَالْحَسَنِ بْنِ زِيَادٍ.

L33699 And that was narrated from Zufar from Abu Hanifah, and Al-Hasan ibn Ziyad.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا احْتِجَاجُ الْمَالِكِيِّينَ بِمَنْ ذَكَرْنَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَهُوَ كُلُّهُ عَلَيْهِمْ لَا لَهُمْ.

L33700 Abū Muḥammad said: As for the Mālikīs' citing as evidence those Companions we mentioned—may Allah be pleased with them—it is entirely against them, not for them.

L33701 As for Umar, no clarification came from him regarding who the cursed one

who performs tahleel—deserving stoning—is. Thus, they hold no greater authority over him than others. Moreover, they opposed Umar in this matter, as they do not deem stoning applicable in such cases.

أَمَّا عُمَرُ - فَلَمْ يَأْتِ عَنْهُ بَيَانُ مَنْ هُوَ الْمُحَلِّلُ الْمَلْعُونُ الَّذِي يَسْتَحِقُّ الرَّجْمَ فَلَيْسُوا أَوْلَى بِهِ مِنْ غَيْرِهِمْ ثُمَّ قَدْ خَالَفُوا عُمَرَ فِي ذَلِكَ فَلَا يَرَوْنَ فِيهِ الرَّجْمَ.

L33702 Furthermore, we have cited from Umar the permissibility of the Muḥallil's divorce—thereby invalidating their reliance on it.

ثُمَّ قَدْ أَوْرَدْنَا عَنْ عُمَرَ إجَازَةَ طَلَاقِ الْمُحَلِّلِ - فَبَطَلَ تَعَلُّقُهُمْ بِهِ.

L33703 Similarly, the narration transmitted from Ali and Ibn Mas'ud does not include the phrase "from them both," i.e., the facilitators of *tahlil*—are they the cursed ones? We maintain: The cursed one is he who contracts his marriage openly for that purpose alone.

وَكَذَلِكَ الرِّوَايَةُ عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ لَيْسَ فِيهَا " عَنْهُمَا " أَيْ الْمُحَلِّلِينَ هُوَ الْمَلْعُونُ؟ وَنَحْنُ نَقُولُ: إنَّ الْمَلْعُونَ هُوَ الَّذِي يَعْقِدُ نِكَاحَهُ مُعْلِنًا بِذَلِكَ فَقَطْ.

L33704–33706 As for Uthman and Zayd, they oppose both of them in that very fatwa in that the master's sexual intercourse. He permits the female slave to the one who conclusively finalized her status. It is invalid to cite their opinion as evidence in one context but reject it as evidence in another—this is trivializing the religion.

وَأَمَّا عُثْمَانُ، وَزَيْدٌ - فَهُمْ مُخَالِفُونَ لَهُمَا فِي تِلْكَ الْفُتْيَا بِعَيْنِهَا فِي أَنَّ وَطْءَ السَّيِّدِ بِمِلْكِ الْيَمِينِ يُحَلِّلُهَا لِلَّذِي بَتَّهَا، وَمِنْ الْبَاطِلِ أَنْ يُحْتَجَّ بِقَوْلِهِمْ فِي مَوْضِعٍ وَلَا يُحْتَجَّ بِهِ فِي آخَرَ - هَذَا تَلَاعُبٌ بِالدِّينِ.

L33707 As for Ibn Umar, they opposed him regarding his view that it constituted unlawful sexual intercourse.

وَأَمَّا ابْنُ عُمَرَ - فَقَدْ خَالَفُوهُ فِي أَنَّهُ زِنًى.

L33708 As for Ibn Abbas, there is no statement from him declaring the marriage invalid, nor that she does not become lawful through it. How many rulings have they opposed Ibn Abbas in? Yet no proof resides with anyone except the Messenger of Allah (peace be upon him and his family).

وَأَمَّا ابْنُ عَبَّاسٍ فَلَيْسَ عَنْهُ بَيَانُ أَنَّ النِّكَاحَ فَاسِدٌ، وَلَا أَنَّهَا لَا تَحِلُّ بِهِ، وَكَمْ قَضِيَّةٍ خَالَفُوا فِيهَا ابْنَ عَبَّاسٍ؟ مَعَ أَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L33709 As for the report from the Messenger of Allah - peace and blessings be upon him - that he "cursed the muḥallil (one who permits a prohibited act) and the muḥallal lahu (the one for whom it is permitted)," then yes, all that he said - upon him be peace - is truth. However, we and all our opponents agree that this wording from him - upon him be peace - is not a universal condemnation of every muḥallil (permitter) and every muḥallal lahu (one for whom something is permitted). Were this the case - and I seek refuge in Allah, for He has already protected us from that - he would have cursed every giver and every recipient, every seller and every buyer, every person entering into marriage and every person being married to. For all these are

وَأَمَّا الْخَبَرُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّهُ «لَعَنَ الْمُحَلِّلَ وَالْمُحَلَّلَ لَهُ» ، فَنَعَمْ، كُلُّ مَا قَالَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَهُوَ حَقٌّ، إلَّا أَنَّنَا وَجَمِيعُ خُصُومِنَا لَا نَخْتَلِفُ فِي أَنَّ هَذَا اللَّفْظَ مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَيْسَ عُمُومًا لِكُلِّ مُحَلٍّ، وَلِكُلِّ مُحَلَّلٍ لَهُ، وَلَوْ كَانَ ذَلِكَ - وَأَعُوذُ بِاَللَّهِ، وَقَدْ أَعَاذَنَا اللَّهُ تَعَالَى مِنْ ذَلِكَ - لَلَعَنَ كُلَّ وَاهِبٍ وَكُلَّ مَوْهُوبٍ لَهُ، وَكُلَّ بَائِعٍ وَكُلَّ مُبْتَاعٍ لَهُ، وَكُلَّ نَاكِحٍ وَكُلَّ مُنْكَحٍ، لِأَنَّ

permitting acts that were prohibited and having matters made permissible for them that were once forbidden to them. There is no doubt about this.

هَؤُلَاءِ كُلُّهُمْ مُحِلُّونَ لِشَيْءٍ كَانَ حَرَامًا وَمُحَلَّلٌ لَهُمْ أَشْيَاءُ كَانَتْ حَرَامًا عَلَيْهِمْ، هَذَا مَا لَا شَكَّ فِيهِ.

L33710 Thus, it is conclusively evident that he—peace and blessings be upon him—specifically referred to certain permiters and certain permittees. Therefore, this matter is as clear as the sun and irrefutably certain. It is impermissible for any Muslim to ascribe to him—peace and blessings of Allah be upon him—an intention regarding any ruling except with absolute certainty derived from textual evidence mentioned without doubt. Otherwise, such a person lies against the Messenger of Allah—peace and blessings of Allah be upon him—falsely attributing to him what he did not state and spreading falsehood about him. Hence, given this absolute certainty, the cursed permitter and the one for whom it is permitted: they both are undoubtedly those who declare lawful what is unlawful for others without any textual evidence.

فَصَحَّ يَقِينًا أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّمَا أَرَادَ بَعْضَ الْمُحِلِّينَ وَبَعْضَ الْمُحَلَّلِ لَهُمْ، فَإِذَا هَذَا كَالشَّمْسِ وُضُوحًا وَيَقِينًا لَا يُمْكِنُ سِوَاهُ فَلَا يَحِلُّ لِمُسْلِمٍ أَنْ يَنْسِبَ إلَيْهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ أَرَادَ أَمْرَ كَذَا إلَّا بِيَقِينٍ مِنْ نَصٍّ وَارِدٍ لَا شَكَّ فِيهِ، وَإِلَّا فَهُوَ كَاذِبٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمُقَوِّلٌ لَهُ مَا لَمْ يَقُلْهُ، وَمُخْبِرٌ عَنْهُ بِالْبَاطِلِ، فَإِذَا هَذَا كُلُّهُ يَقِينٌ فَالْمُحِلُّ الْمَلْعُونُ، وَالْمُحَلَّلُ لَهُ كَذَلِكَ: إنَّمَا هُمَا بِلَا شَكٍّ مَنْ أَحَلَّ حَرَامًا لِغَيْرِهِ بِلَا نَصٍّ.

L33711–33713 Then we considered: Does one who marries a thrice-divorced woman with the intention of making her permissible for the husband who issued the triple divorce fall under that ruling, or not? We found that anyone who marries a thrice-divorced woman becomes the one who makes her permissible through intercourse, while the divorcer is the one for whom she is made permissible—whether he intended this or not. Thus, it is invalid for him to be included in this divine censure, because even if he stipulated this condition upon himself... Before the contract, such speech is inconsequential, and the marriage is not validly contracted unless it is sound and free from all conditions, but rather as Allah, the Mighty and Majestic, has commanded. As for the intention for that, we have now sufficiently addressed it.

ثُمَّ نَظَرْنَا -: هَلْ يَدْخُلُ فِي ذَلِكَ مَنْ تَزَوَّجَ وَفِي نِيَّتِهِ أَنْ يُحِلَّهَا لِمُطَلِّقِهَا ثَلَاثًا، أَمْ لَا يَدْخُلُ؟ فَوَجَدْنَا كُلَّ مَنْ يَتَزَوَّجُ مُطَلَّقَةً ثَلَاثًا فَإِنَّهُ بِوَطْئِهِ لَهَا مُحِلٌّ وَالْمُطَلِّقُ مُحَلَّلٌ لَهُ - نَوَى ذَلِكَ أَوْ لَمْ يَنْوِهِ - فَبَطَلَ أَنْ يَكُونَ دَاخِلًا فِي هَذَا الْوَعِيدِ، لِأَنَّهُ حَتَّى إنْ اشْتَرَطَ ذَلِكَ عَلَيْهِ قَبْلَ الْعَقْدِ فَهُوَ لَغْوٌ مِنْ الْقَوْلِ وَلَمْ يَنْعَقِدْ النِّكَاحُ إلَّا صَحِيحًا بَرِيًّا مِنْ كُلِّ شَرْطٍ، بَلْ كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ؛ وَأَمَّا بِنِيَّتِهِ لِذَلِكَ -: فَقَدْ قُلْنَا فِيهَا الْآنَ مَا كَفَى.

L33714 And it is astonishing that those who oppose us assert regarding a man who marries a woman intending not to retain her beyond a month before divorcing her—provided he did not stipulate this in the marriage contract—that the marriage remains valid without defect, granting him discretion to divorce or retain her as he wishes. Yet had he stipulated this within the contract itself, they deem it invalid and annulled. What distinction exists between what they permit and what they prohibit? This is not analogizing one spouse to another, but rather a single legal category governed by the ruling

وَالْعَجَبُ - أَنَّ الْمُخَالِفِينَ لَنَا يَقُولُونَ فِيمَنْ تَزَوَّجَ امْرَأَةً وَفِي نِيَّتِهِ أَنْ لَا يُمْسِكَهَا إلَّا شَهْرًا ثُمَّ يُطَلِّقَهَا، إلَّا أَنَّهُ لَمْ يَذْكُرْ ذَلِكَ فِي عَقْدِ النِّكَاحِ، فَإِنَّهُ نِكَاحٌ صَحِيحٌ لَا دَاخِلَةَ فِيهِ، وَهُوَ مُخَيَّرٌ إنْ شَاءَ طَلَّقَهَا وَإِنْ شَاءَ أَمْسَكَهَا، وَأَنَّهُ لَوْ ذَكَرَ ذَلِكَ فِي نَفْسِ الْعَقْدِ لَكَانَ عَقْدًا فَاسِدًا مَفْسُوخًا - فَأَيُّ فَرْقٍ بَيْنَ مَا أَجَازُوهُ، وَبَيْنَ مَا مَنَعُوا مِنْهُ، وَلَيْسَ هَذَا قِيَاسًا

of Allah's Messenger—peace and blessings be upon him—in his statement we previously cited with its chain: "My nation is forgiven for what their souls inwardly conceive," so long as it is not manifested through speech or action. This is further corroborated by the authenticated report of his—peace and blessings be upon him—addressing the woman divorced by Rifa'ah al-Qurazi and later married by 'Abd al-Rahman ibn al-Zubayr: "Do you desire to return to Rifa'ah? No, not until he tastes the taste of marriage with you and you taste it with him"—or as he—peace and blessings be upon him—stated.

لِأَحَدِ النَّاكِحِينَ عَلَى صَاحِبِهِ، لَكِنَّهُ كُلُّهُ بَابٌ وَاحِدٌ يُبَيِّنُ حُكْمَهُ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي قَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ: «عُفِيَ لِأُمَّتِي عَمَّا حَدَّثَتْ بِهِ أَنْفُسَهَا» مَا لَمْ يَخْرُجْ ذَلِكَ بِقَوْلٍ أَوْ عَمَلٍ - لَا سِيَّمَا وَقَدْ جَاءَ فِي ذَلِكَ الْخَبَرُ الثَّابِتُ «عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِنْ قَوْلِهِ لِلَّتِي طَلَّقَهَا رِفَاعَةُ الْقُرَظِيِّ وَتَزَوَّجَهَا عَبْدُ الرَّحْمَنِ بْنُ الزُّبَيْرِ أَتُرِيدِينَ أَنْ تَرْجِعِي إلَى رِفَاعَةَ؟ لَا، حَتَّى يَذُوقَ عُسَيْلَتَكِ وَتَذُوقِي عُسَيْلَتَهُ» أَوْ كَمَا قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L33715 He—peace and blessings be upon him—did not consider her intention to return to the one who divorced her three times as preventing her return if the second husband has intercourse with her. Thus our position is validated by this, while their opinion and interpretation remain devoid of all proof, and their claim lacks any evidence to support its validity.

فَلَمْ يَجْعَلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إرَادَتَهَا الرُّجُوعَ إلَى الَّذِي طَلَّقَهَا ثَلَاثًا مَانِعًا مِنْ رُجُوعِهَا إذَا وَطِئَهَا الثَّانِي - فَصَحَّ بِذَلِكَ قَوْلُنَا، وَبَقِيَ قَوْلُهُمْ وَتَأْوِيلُهُمْ عَارِيًا مِنْ كُلِّ بُرْهَانٍ وَدَعْوَى لَا حُجَّةَ عَلَى صِحَّتِهَا.

L33716 It has been established that the cursed *muḥallil* is the one who marries her by declaring that he is marrying her solely to make her lawful, then divorces her—and they contract the marriage on this basis. Such a marriage is forbidden and nullified forever, because they stipulated a binding condition not permitted by the Book of Allah the Exalted, which provides no allowance for such adherence. The Prophet (peace be upon him) said: "Every condition not in the Book of Allah is void."

وَصَحَّ أَنَّ الْمُحَلِّلَ الْمَلْعُونَ هُوَ الَّذِي يَتَزَوَّجُهَا بِبَيَانٍ أَنَّهُ إنَّمَا يَتَزَوَّجُهَا لِيُحِلَّهَا ثُمَّ يُطَلِّقَهَا، وَيَعْقِدَانِ النِّكَاحَ عَلَى هَذَا - فَهَذَا حَرَامٌ مَفْسُوخٌ أَبَدًا، لِأَنَّهُمَا تَشَارَطَا شَرْطًا يَلْتَزِمَانِهِ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى إبَاحَةُ الْتِزَامِهِ، وَقَدْ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» .

L33717–33718 It is established that every marriage contract—or other contract—concluded on the condition that its validity is contingent solely on the validity of what is inherently invalid is itself null and void, devoid of any validity. And in Allah, the Exalted, we place our trust.

وَصَحَّ أَنَّ كُلَّ عَقْدِ نِكَاحٍ أَوْ غَيْرِهِ عُقِدَ عَلَى أَنْ لَا صِحَّةَ لَهُ إلَّا بِصِحَّةِ مَا لَا صِحَّةَ لَهُ فَهُوَ بَاطِلٌ لَا صِحَّةَ لَهُ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

L33719 If they mentioned: What was narrated to us by Ahmad ibn Qasim, narrated to us by his father Qasim ibn Muhammad ibn Qasim, narrated to us by my grandfather Qasim ibn Asbagh, narrated to us by Isma'il ibn Ishaq, narrated to us by Ishaq ibn Muhammad al-Farawi, narrated to us by my grandfather Qasim ibn Asbagh, narrated to us by Isma'il ibn Ishaq, narrated to us by Ishaq ibn Muhammad al-Farawi, narrated to us by Ibrahim ibn Isma'il al-

فَإِنْ ذَكَرُوا -: مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا إسْمَاعِيلُ بْنُ إسْحَاقَ نا إسْحَاقُ بْنُ مُحَمَّدٍ الْفَرْوِيُّ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا إسْمَاعِيلُ بْنُ إسْحَاقَ نا إسْحَاقُ بْنُ مُحَمَّدٍ الْفَرْوِيُّ نا إبْرَاهِيمُ بْنُ إسْمَاعِيلَ الْفَرْوِيُّ عَنْ دَاوُد

Farawi from Dawud, who narrated to me from Ikrimah from Ibn Abbas: "The Messenger of Allah—peace and blessings be upon him—was asked about the temporary marriage facilitator, and he said: 'There is no marriage except a marriage of earnest desire, no marriage except a marriage of earnest desire, no marriage of deceit, nor one who mocks the Book of Allah Almighty—then he has tasted the honeyed drink.'"

حَدَّثَنِي عِكْرِمَةُ عَنْ ابْنِ عَبَّاسٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ عَنْ الْمُحَلِّلِ فَقَالَ لَا نِكَاحَ إِلَّا نِكَاحَ رَغْبَةٍ، لَا نِكَاحَ إِلَّا نِكَاحَ رَغْبَةٍ، لَا نِكَاحَ دُلْسَةٍ، وَلَا مُسْتَهْزِئٍ بِكِتَابِ اللَّهِ تَعَالَى، ثُمَّ تَذُوقَ الْعُسَيْلَةَ» .

L33720 This is a fabricated ḥadīth, because Isḥāq ibn Muḥammad al-Farwī is extremely weak and his narrations are abandoned. Then through Ibrāhīm ibn Ismāʿīl—who is undoubtedly either Ibn Mujammiʿ or Ibn Abī Ḥabībah—both are Ansārī, Medinan, and weak; their narrations cannot be cited as authoritative evidence.

فَهَذَا حَدِيثٌ مَوْضُوعٌ، لِأَنَّ إِسْحَاقَ بْنَ مُحَمَّدٍ الْفَرْوِيَّ ضَعِيفٌ جِدًّا مَتْرُوكُ الْحَدِيثِ - ثُمَّ عَنْ إِبْرَاهِيمَ بْنِ إِسْمَاعِيلَ - وَهُوَ بِلَا شَكٍّ أَمَّا ابْنُ مُجَمِّعٍ، وَأَمَّا ابْنُ أَبِي حَبِيبَةَ - كِلَاهُمَا أَنْصَارِيٌّ مَدَنِيٌّ ضَعِيفٌ - لَا يُحْتَجُّ بِهِمَا.

L33721 Then, even if it were valid, there would be no binding proof against us in this matter, for they do not bring forth to us the specific type of interim husband he (peace be upon him) intended. We have clarified that it was said: "He (peace and blessings be upon him) did not refer to every interim husband." Rather, this report establishes that no marriage is valid except one entered with genuine intent, and this marriage fulfills the genuine intent required to make her lawful for the Muslim - as Almighty Allah decreed: {until she marries a husband other than him} [Al-Baqarah: 230]. This man is unquestionably a husband other than the former one.[11]

ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ فِيهِ عَلَيْنَا حُجَّةٌ، لِأَنَّهُمْ لَا يَأْتُونَنَا بِأَيِّ الْمُحَلِّلِينَ أَرَادَ - عَلَيْهِ السَّلَامُ - وَقَدْ بَيَّنَّا قِيلَ: إنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يُرِدْ كُلَّ مُحَلِّلٍ، وَإِنَّمَا فِي هَذَا الْخَبَرِ أَنَّهُ لَا نِكَاحَ إِلَّا نِكَاحَ رَغْبَةٍ وَهَذَا نِكَاحُ رَغْبَةٍ فِي تَحْلِيلِهَا لِلْمُسْلِمِ كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ: {حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ} [البقرة: ٢٣٠] وَهُوَ زَوْجٌ غَيْرُهُ بِلَا شَكٍّ.

L33722 And as he—peace and blessings be upon him—clarified: "Until each one of the two tastes the other's honeyed sweetness, thus when he has intercourse with her, each one has indeed tasted the other's honeyed sweetness."

وَكَمَا بَيَّنَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «حَتَّى يَذُوقَ كُلُّ وَاحِدٍ مِنْهُمَا عُسَيْلَةَ الْآخَرِ فَهُوَ إِذَا وَطِئَهَا قَدْ ذَاقَ كُلُّ وَاحِدٍ عُسَيْلَةَ الْآخَرِ» .

L33723–33725 In it [the ruling]: There is no validity to a deceptive marriage (nikāḥ al-dulsah), and this is not a deceptive marriage. Deceptive marriage refers to deceiving someone by substituting a spouse other than the one he married or is marrying—not out of genuine desire for marriage, but to harm her personally or financially. And they... They permit the marriage of a woman who is not wed except for her wealth, her lineage, or the prestige of her father

وَفِيهِ: لَا نِكَاحَ دُلْسَةٍ وَلَيْسَ هَذَا نِكَاحَ دُلْسَةٍ - إِنَّمَا الدُّلْسَةُ: أَنْ يُدَلِّسَ لَهُ بِغَيْرِ الَّتِي تَزَوَّجَ أَوْ الَّذِي يَتَزَوَّجُ، لَا رَغْبَةً فِي نِكَاحٍ، لَكِنْ لِيَضُرَّ بِهَا فِي نَفْسِهَا أَوْ مَالِهَا، وَهُمْ يُبِيحُونَ نِكَاحَ مَنْ لَا تُنْكَحُ إِلَّا لِمَالِهَا أَوْ لِحَسَبِهَا أَوْ لِوَجَاهَةِ أَبِيهَا أَوْ أَخِيهَا، لَا رَغْبَةً فِيهَا، وَهَذَا تَنَاقُضٌ مِنْهُمْ.

[11] **Qur'an references (L33721):** Qur'an 2:230 (Al-Baqarah).

or brother - not out of desire for her - and this constitutes a contradiction on their part.

وَفِيهِ: وَلَا مُسْتَهْزِئَ بِكِتَابِ اللَّهِ عَزَّ وَجَلَّ - وَهَذَانِ لَيْسَ مِنْهُمْ أَحَدٌ مُسْتَهْزِئًا بِكِتَابِ اللَّهِ عَزَّ وَجَلَّ، بَلْ كُلُّ وَاحِدٍ مِنْهُمْ طَائِعٌ لِكِتَابِ اللَّهِ عَزَّ وَجَلَّ، عَامِلُونَ بِهِ مُمْتَنِعُونَ مِنْ خِلَافِهِ، إِذْ قَصَدُوا مَا لَا يَحِلُّ لَهُ مُرَاجَعَتُهَا إِلَّا بِمَا أَمَرَ اللَّهُ تَعَالَى بِهِ، إِنَّمَا الْمُسْتَهْزِئُ بِكِتَابِ اللَّهِ عَزَّ وَجَلَّ مَنْ يُخَالِفُ مَا فِيهِ، أَوْ لَوْ تَزَوَّجَهَا قَبْلَ زَوْجٍ -.

L33726 And in it: There is no one who mocks the Book of Allah, the Mighty and Sublime—and these two are not among those who mock it. Rather, each of them is obedient to the Book of Allah, acting upon it and refraining from opposing it, since they sought what it is not permissible to revoke except in the manner Allah has commanded. Indeed, the one who mocks the Book of Allah is either he who opposes what is in it or [he who acts as] if he were to marry her before [the term of] her husband.

فَصَحَّ أَنَّ هَذَا الْخَبَرَ - عَلَى سُقُوطِهِ - عَلَيْهِمْ لَا لَهُمْ.

L33727 Thus, it is established that this narration (despite its invalidity) binds them as evidence, not benefits them.

وَخَبَرٌ آخَرُ -: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ وَمَعْمَرٍ أَنَّ ابْنَ شِهَابٍ أَخْبَرَهُمَا عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا أَخْبَرَتْهُ بِخَبَرِ امْرَأَةِ رِفَاعَةَ الْقُرَظِيِّ إِذْ طَلَّقَهَا ثَلَاثًا، وَذِكْرِهَا لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ لَيْسَ مَعَهُ إِلَّا مِثْلُ هُدْبَةٍ مِنْ ثَوْبِهَا - وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «تُرِيدِينَ أَنْ تَرْجِعِي إِلَى رِفَاعَةَ؟ لَا، حَتَّى تَذُوقِي عُسَيْلَتَهُ وَيَذُوقَ عُسَيْلَتَكِ» .

L33728 And another account: We have transmitted it through the chain of Abd al-Razzaq from both Ibn Jurayj and Ma'mar, that Ibn Shihab informed them from Urwah ibn al-Zubayr, from Aisha, the Mother of the Believers, that she informed him of the incident involving the wife of Rifa'ah al-Qurazi when he divorced her thrice, and her mention to the Prophet (peace and blessings of Allah be upon him) that he possessed nothing except the equivalent of the fringe of her garment, and his statement (peace and blessings be upon him): "Do you wish to return to Rifa'ah? No, until you experience his intimacy and he experiences yours."[12]

ثُمَّ رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنِ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا قَالَتْ: «أَتَتْ امْرَأَةٌ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَعَقَدَتْ، ثُمَّ جَاءَتْهُ بَعْدُ فَأَخْبَرَتْهُ: أَنَّهُ قَدْ مَسَّهَا، فَمَنَعَهَا أَنْ تَرْجِعَ إِلَى زَوْجِهَا الْأَوَّلِ، وَقَالَ: اللَّهُمَّ إِنْ كَانَ إِنَّمَا بِهَا أَنْ يُحِلَّهَا لِرِفَاعَةَ لَا يَتِمُّ لَهُ نِكَاحُهَا مَرَّةً أُخْرَى» ، ثُمَّ أَتَتْ أَبَا بَكْرٍ، وَعُمَرَ فِي خِلَافَتِهِمَا فَمَنَعَاهَا.

L33729 Then it was narrated to us from 'Abd al-Razzaq from Ibn Jurayj from Ibn Shihab from 'Urwah ibn al-Zubayr from 'A'ishah, the Mother of the Believers, that she said: "A woman came to the Prophet (peace and blessings of Allah be upon him) and contracted [a marriage]. Then she came to him afterward and informed him that he had touched her. He prevented her from returning to her first husband and said: 'O Allah, if it was solely because of her situation that she became lawful for Rifa'ah, may her marriage to him never be valid a second time.'" Then she went to Abu Bakr and 'Umar during their two caliphates, and they both prevented her.

قَالَ أَبُو مُحَمَّد: فَهَذِهِ حُجَّةٌ قَاطِعَةٌ لَنَا عَلَيْهِمْ، لِأَنَّ فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُبْطِلْ نِكَاحَهَا لِعَبْدِ الرَّحْمَنِ مَعَ تَقْدِيرِهِ أَنَّهُ إِنَّمَا يُرِيدُ إِحْلَالَهَا لِرِفَاعَةَ، لَكِنْ

L33730–33731 Abu Muhammad said: This is a decisive proof for us against them, because in it is that the Messenger of Allah—peace and blessings of Allah be upon him—

[12] **Hadith references (L33728):** Sahih al-Bukhari 6084; Sunan an-Nasai 3409.

did not invalidate her marriage to Abd al-Rahman despite his awareness that he only intended to facilitate her lawful remarriage through tahleel for Rifa'ah. However, when she denied that Abd al-Rahman had consummated the marriage with her, then when she learned that she could not become lawful for Rifa'ah unless Abd al-Rahman had consummated with her, she retracted that denial and acknowledged that he had indeed consummated with her.

لَمَّا أَنْكَرَتْ أَنَّ عَبْدَ الرَّحْمَنِ وَطِئَهَا، ثُمَّ لَمَّا عَلِمَتْ أَنَّهَا لَا تَحِلُّ لَهُ إلَّا بَعْدَ أَنْ يَطَأَهَا عَبْدُ الرَّحْمَنِ رَجَعَتْ عَنْ ذَلِكَ الْإِنْكَارِ، وَأَقَرَّتْ بِأَنَّهُ وَطِئَهَا.

L33732 And his saying—peace and blessings be upon him—"If the only reason in her case is that he declares her lawful for Rifa'ah, then his marriage to her will not be valid another time," undoubtedly means that Rifa'ah's marriage to her will not be valid another time.

وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «إنْ كَانَ إنَّمَا بِهَا أَنْ يُحِلَّهَا لِرِفَاعَةَ فَلَا يَتِمُّ لَهُ نِكَاحُهَا مَرَّةً أُخْرَى» ، إنَّمَا هُوَ بِلَا شَكٍّ أَنَّهُ لَا يَتِمُّ لِرِفَاعَةَ نِكَاحُهَا مَرَّةً أُخْرَى.

L33733 The Mālikīs hold no disagreement that if the second husband did not intend to render her permissible for the first [husband], and she never intended at all through her marriage to him except to achieve her permissibility for the first, she becomes permissible through that marriage contract and through intercourse within it. This certainly contradicts this narration.

وَالْمَالِكِيُّونَ لَا يَخْتَلِفُونَ إذَا لَمْ تَكُنْ نِيَّةُ الزَّوْجِ الثَّانِي إحْلَالَهَا لِلْأَوَّلِ وَكَانَتْ هِيَ لَمْ تَنْوِ قَطُّ بِزَوَاجِهَا إيَّاهُ إلَّا لِتَحْلِيلِهَا لِلْأَوَّلِ، فَإِنَّهَا تَحِلُّ بِذَلِكَ الْعَقْدِ وَبِالْوَطْءِ فِيهِ - وَهَذَا خِلَافٌ لِهَذَا الْخَبَرِ بِيَقِينٍ.

L33734 In this report, it is stated that she is not to be believed if she denies the second act of intercourse with her, then comes to know that she is not lawful for him except through his intercourse with her, so she acknowledges that he did have intercourse with her. With this, we assert: she is not to be believed unless her acknowledgment and the husband's acknowledgment of intercourse concur, or there is established evidence of his intercourse with her. And with Allah alone is success.

وَإِنَّمَا فِي هَذَا الْخَبَرِ: أَنَّهَا لَا تُصَدَّقُ إذَا أَنْكَرَتْ مَسَّ الثَّانِي لَهَا، ثُمَّ عَلِمَتْ أَنَّهَا لَا تَحِلُّ لَهُ إلَّا بِوَطْئِهِ إيَّاهَا، فَأَقَرَّتْ بِأَنَّهُ وَطِئَهَا - وَبِهَذَا نَقُولُ: إنَّهَا لَا تُصَدَّقُ، إلَّا حَتَّى يَجْتَمِعَ إقْرَارُهَا وَإِقْرَارُ الزَّوْجِ بِالْوَطْءِ، أَوْ تَقُومَ بِوَطْئِهِ لَهَا بَيِّنَةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33735 Abu Muhammad said: If he took a wage for that, it is a forbidden wage whose restitution has been obligated.

قَالَ أَبُو مُحَمَّدٍ: وَلَوْ أَخَذَ لِذَلِكَ أُجْرَةً فَهِيَ أُجْرَةٌ حَرَامٌ، فُرِضَ رَدُّهَا.

L33736 Abū Muḥammad said: We do not know of any valid argument for those who oppose our position—not from the Quran, nor a sound or weak *sunnah*, nor *qiyās*, and especially not Mālik's statement, which restricted the relevance of intention solely to the second husband while excluding both her intention and that of the divorcer.

قَالَ أَبُو مُحَمَّدٍ: وَمَا نَعْلَمُ لِمَنْ خَالَفَ قَوْلَنَا حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا قِيَاسٍ - وَلَا سِيَّمَا قَوْلُ مَالِكٍ الَّذِي خَصَّ نِيَّةَ الزَّوْجِ الثَّانِي دُونَ نِيَّتِهَا، وَدُونَ نِيَّةِ الْمُطَلِّقِ.

L33737 The Issue of the Verbal Expressions of Divorce

[مَسْأَلَةُ أَلْفَاظ الطَّلَاق]

L33738 Issue 1952: A divorce does not take effect unless pronounced using one of three words: “ṭalāq,” “sarāḥ,” or “firāq.”

١٩٥٢ - مَسْأَلَةٌ: لَا يَقَعُ طَلَاقٌ إِلَّا بِلَفْظٍ مِنْ أَحَدِ ثَلَاثَةِ أَلْفَاظٍ: إِمَّا الطَّلَاقُ، وَإِمَّا السَّرَاحُ، وَإِمَّا الْفِرَاقُ.

L33739–33740 Such as saying: “You are divorced (ṭāliq),” or saying: “Divorced (muṭallaqah),” or “I have divorced you,” or “You are divorced (ṭāliqah),” or “You are the divorce itself,” or “You are released (musarḥah),” or “I have released you,” or “You are the release itself,” or “You are separated (mufāraqah),” or “I have separated from you,” or “You are the separation itself.”

مِثْلَ أَنْ يَقُولَ: أَنْتِ طَالِقٌ، أَوْ يَقُولَ: مُطَلَّقَةٌ، أَوْ قَدْ طَلَّقْتُك - أَوْ أَنْتِ طَالِقَةٌ، أَوْ أَنْتِ الطَّلَاقُ - أَوْ أَنْتِ مُسَرَّحَةٌ، أَوْ قَدْ سَرَحْتُك، أَوْ أَنْتِ السَّرَاحُ - أَوْ أَنْتِ مُفَارَقَةٌ، أَوْ قَدْ فَارَقْتُك، أَوْ أَنْتِ الْفِرَاقُ.

L33741 All of this applies if he intended divorce by it. If he states regarding any part of all this: “I did not intend divorce,” he is deemed truthful in fatwa, but not deemed truthful in judicial proceedings concerning divorce and acts arising from it. He is deemed truthful in all other such matters in judicial proceedings as well.

هَذَا كُلُّهُ إذَا نَوَى بِهِ الطَّلَاقَ، فَإِنْ قَالَ فِي شَيْءٍ مِنْ ذَلِكَ كُلِّهِ: لَمْ أَنْوِ الطَّلَاقَ، صُدِّقَ فِي الْفُتْيَا، وَلَمْ يُصَدَّقْ فِي الْقَضَاءِ فِي الطَّلَاقِ، وَمَا تَصَرَّفَ مِنْهُ، وَصُدِّقَ فِي سَائِرِ ذَلِكَ فِي الْقَضَاءِ أَيْضًا.

L33742–33743 The evidence for that is the statement of Allah, the Almighty and Majestic: “Then you divorced them” [Al-Ahzab 49].[13]

بُرْهَانُ ذَلِكَ: قَوْلُهُ عَزَّ وَجَلَّ: {ثُمَّ طَلَّقْتُمُوهُنَّ} [الأحزاب: ٤٩]

L33744 The Exalted has said: “Then divorce them” [At-Talāq: 1]. “Divorced women are entitled to a consolatory gift” [Al-Baqarah: 241].[14]

وقَوْله تَعَالَى: {فَطَلِّقُوهُنَّ} [الطلاق: ١] ، {وَلِلْمُطَلَّقَاتِ مَتَاعٌ} [البقرة: ٢٤١]

L33745 “And release them in a gracious manner.” [Al-Aḥzāb 33:49][15]

وقَوْله تَعَالَى: {وَسَرِّحُوهُنَّ سَرَاحًا جَمِيلا} [الأحزاب: ٤٩] .

L33746 Then either retain them in kindness or release them with kindness. [Al-Baqarah: 229][16]

وقَوْله تَعَالَى: {فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ} [البقرة: ٢٢٩] .

L33747 And Allah, the Exalted, says: {Retain them in kindness or divorce them in kindness} [Surah At-Talaq 65:2].[17]

وقَوْله تَعَالَى: {فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] .

L33748 And if they separate, Allah will enrich each from His abundance.[18]

{وَإِنْ يَتَفَرَّقَا يُغْنِ اللَّهُ كُلا مِنْ سَعَتِهِ} [النساء: ١٣٠] .

L33749 Allah the Exalted has not mentioned the lawfulness of the husband’s marriage

لَمْ يَذْكُرْ اللَّهُ تَعَالَى حِلَّ الزَّوْجِ لِلزَّوْجَةِ إلَّا بِهَذِهِ الْأَلْفَاظِ، فَلَا يَجُوزُ حَلُّ عُقْدَةٍ عُقِدَتْ بِكَلِمَةِ اللَّهِ عَزَّ وَجَلَّ وَسُنَّةِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا بِمَا نَصَّ اللَّهُ عَزَّ وَجَلَّ عَلَيْهِ: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

[13] **Qur’an references (L33743):** Qur’an 33:49 (Al-Ahzab).
[14] **Qur’an references (L33744):** Qur’an 65:1 (At-Talaq); Qur’an 2:241 (Al-Baqarah).
[15] **Qur’an references (L33745):** Qur’an 33:49 (Al-Ahzab).
[16] **Qur’an references (L33746):** Qur’an 2:229 (Al-Baqarah).
[17] **Qur’an references (L33747):** Qur’an 65:2 (At-Talaq).
[18] **Qur’an references (L33748):** Qur’an 4:130 (An-Nisa).

to the wife except through these terms. Thus, it is impermissible to dissolve a contract concluded by the word of Allah, the Exalted and Majestic, and the Sunnah of His Messenger (peace be upon him) except by what Allah, the Exalted and Majestic, has ordained: {And whoever transgresses the limits of Allah has wronged himself} (Quran 65:1).[19]

L33750 As for our statement: "If he intends divorce along with that," this is based on the saying of the Messenger of Allah (peace be upon him and his family): "Actions are but by intentions, and every person will have what he intended."

L33751 As for our distinction between the expressions of divorce, it does not necessitate taking into account his statement regarding them—"I did not intend divorce specifically in the judgment"—though we considered this in the terms "final divorce (sarāḥ)" and "separation." This is because the term "divorce" and its derivatives are not used in the language by which God—Exalted and Majestic—addressed us in the rulings of the Sharia except exclusively for the marriage contract, with absolutely no other meaning whatsoever, not even remotely. Therefore, his claim cannot be accepted in a judgment that has been established against him by conclusive evidence, nor in nullifying rights that were incontestably owed to the woman due to the divorce preceding [the judgment].

L33752 We have considered his claim in the fatwa, for he may intend a different wording while his tongue outpaces him to what he did not intend. If this cannot be ascertained except through his statement, then his entire statement is admissible. It is impermissible to accept part of it and disregard the rest.

L33753 As for "al-sarāḥ (release) and al-firāq (separation)," these terms occur in the language through which God—Exalted and Majestic—has addressed us in His laws concerning the dissolution of marriage contracts, along with other meanings that are equally applicable. No single meaning among these holds greater claim to the term than the others. Thus, "You are released (musarraḥah)" signifies "You are free to depart if you wish," while the statements "I have separated from you (qad fāraqtuk)" and "You are separated (mufāraqah)" pertain to any matters between them where she does not agree with him.

وَأَمَّا قَوْلُنَا: إِنْ نَوَى مَعَ ذَلِكَ الطَّلَاقَ - فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» .

وَأَمَّا تَفْرِيقُنَا بَيْنَ أَلْفَاظِ الطَّلَاقِ، فَلَمْ يُوجِبْ أَنْ يُرَاعَى قَوْلُهُ فِيهَا: لَمْ أَنْوِ الطَّلَاقَ فِي الْقَضَاءِ خَاصَّةً - وَرَاعَيْنَا ذَلِكَ فِي أَلْفَاظِ " السَّرَاحِ، وَالْفِرَاقِ " فَلِأَنَّ لَفْظَةَ " الطَّلَاقِ " وَمَا تَصَرَّفَ مِنْهَا لَا يَقَعُ فِي اللُّغَةِ الَّتِي خَاطَبَنَا اللَّهُ - عَزَّ وَجَلَّ - بِهَا فِي أَحْكَامِ الشَّرِيعَةِ إِلَّا عَلَى عَقْدِ الزَّوَاجِ فَقَطْ، لَا مَعْنًى آخَرَ أَلْبَتَّةَ، فَلَا يَجُوزُ أَنْ يُصَدَّقَ فِي دَعْوَاهُ فِي حُكْمٍ قَدْ ثَبَتَ بِالْبَيِّنَةِ عَلَيْهِ وَفِي إِسْقَاطِ حُقُوقٍ وَجَبَتْ يَقِينًا لِلْمَرْأَةِ بِالطَّلَاقِ قَبْلَهُ.

وَرَاعَيْنَا دَعْوَاهُ تِلْكَ فِي الْفُتْيَا، لِأَنَّهُ قَدْ يُرِيدُ لَفْظًا آخَرَ فَيَسْبِقُهُ لِسَانُهُ إِلَى مَا لَمْ يُرِدْهُ، فَإِذَا لَمْ يُعْرَفْ ذَلِكَ إِلَّا بِقَوْلِهِ، فَقَوْلُهُ كُلُّهُ مَقْبُولٌ لَا يَجُوزُ أَخْذُ بَعْضِهِ وَإِسْقَاطُ بَعْضِهِ.

وَأَمَّا " السَّرَاحُ، وَالْفِرَاقُ " فَإِنَّهُمَا تَقَعُ فِي اللُّغَةِ الَّتِي بِهَا خَاطَبَنَا اللَّهُ - عَزَّ وَجَلَّ - فِي شَرَائِعِهِ عَلَى حَلِّ عَقْدِ النِّكَاحِ، وَعَلَى مَعَانٍ أُخَرَ وُقُوعًا مُسْتَوِيًا لَيْسَ مَعْنًى مِنْ تِلْكَ الْمَعَانِي أَحَقَّ بِتِلْكَ اللَّفْظَةِ مِنْ سَائِرِ تِلْكَ الْمَعَانِي، فَيَكُونُ: أَنْتِ مُسَرَّحَةٌ، أَيْ: أَنْتِ مُسَرَّحَةٌ لِلْخُرُوجِ إِذَا شِئْتِ، وَبِقَوْلِهِ قَدْ فَارَقْتُكِ، وَأَنْتِ مُفَارَقَةٌ، فِي شَيْءٍ مِمَّا بَيْنَهُمَا مَا لَمْ تُوَافِقْهُ فِيهِ.

[19] **Qur'an references (L33749):** Qur'an 65:1 (At-Talaq).

L33754 When that was the case, it was not permissible to decree the dissolution of a valid contract by the word of Allah, the Almighty and Majestic, without certainty of what necessitates its dissolution. And with Allah, the Exalted, is success.

فَلَمَّا كَانَ ذَلِكَ كَذَلِكَ لَمْ يَجُزْ أَنْ يَحْكُمَ بِحِلِّ عَقْدٍ صَحِيحٍ بِكَلِمَةِ اللَّهِ عَزَّ وَجَلَّ بِغَيْرِ يَقِينٍ مَا يُوجِبُ حِلَّهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L33755–33756 The issue of expressions by which divorce is not valid.

[مَسْأَلَةُ الْأَلْفَاظ الَّتِي لَا يَقَع بِهَا الطَّلَاق]

L33757 Issue: Any expressions other than these terms do not constitute divorce at all—whether one intends divorce by them or not—neither in legal opinions nor in judicial rulings. Examples include: “the released woman,” “I am free of you,” “you are absolved,” “I have renounced you,” “your obligation is upon you,” “imposing constraint,” “I have granted you to your family or to someone he mentions other than the family,” “declaring unlawful,” “granting the option to choose,” and “granting the right of divorce.”

مَسْأَلَةٌ: وَمَا عَدَا هَذِهِ الْأَلْفَاظُ فَلَا يَقَعُ بِهَا طَلَاقٌ أَلْبَتَّةَ - نَوَى بِهَا طَلَاقًا أَوْ لَمْ يَنْوِ - لَا فِي فُتْيَا وَلَا فِي قَضَاءٍ -: مِثْلُ: الْخَلِيَّةِ، وَالْبَرِيَّةِ، وَأَنْتِ مُبَرَّأَةٌ، وَقَدْ بَارَأْتُك، وَحَبْلُك عَلَى غَارِبِك، وَالْخَرَجُ، وَقَدْ وَهَبْتُك لِأَهْلِك، أَوْ لِمَنْ يَذْكُرُ غَيْرَ الْأَهْلِ، وَالتَّحْرِيمُ، وَالتَّخْيِيرُ، وَالتَّمْلِيكُ.

L33758 These are matters regarding which there exist differing legal opinions from a number of the Companions—may Allah be pleased with them—while no foundational evidence whatsoever has been transmitted from the Messenger of Allah—peace and blessings be upon him. Nor is there any decisive authority in the statements of others besides the Prophet—peace and blessings be upon him—particularly in divergent rulings where none is more preponderant than another.

وَهَذِهِ أَلْفَاظٌ جَاءَتْ فِيهَا آثَارٌ مُخْتَلِفَةُ الْفُتْيَا عَنْ نَفَرٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَمْ يَأْتِ فِيهَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَيْءٌ أَصْلًا، وَلَا حُجَّةَ فِي كَلَامِ غَيْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -، لَا سِيَّمَا فِي أَقْوَالٍ مُخْتَلِفَةٍ لَيْسَ بَعْضُهَا أَوْلَى مِنْ بَعْضٍ.

L33759 As for prohibition, granting choice, transferring ownership, and *I have given you*—we have previously mentioned these. Here, if Allah, the Almighty and Majestic, wills, we will mention what has been made accessible to us of the teachings of the early predecessors concerning the remaining terms we have not mentioned before.

فَأَمَّا - التَّحْرِيمُ، وَالتَّخْيِيرُ، وَالتَّمْلِيكُ، وَقَدْ وَهَبْتُك - فَقَدْ ذَكَرْنَاهَا قَبْلُ وَنَذْكُرُ هَهُنَا - إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ - مَا يُسِّرَ لَنَا مِنْ أَقْوَالِ السَّلَفِ فِي سَائِرِ الْأَلْفَاظِ الَّتِي لَمْ نَذْكُرْهَا قَبْلُ.

L33760 Here also are terms for which there are reports from the Prophet (peace be upon him): al-bā’in, al-battata, i‘tiddī, al-ḥiqī bi-ahlik, and amruk bi-yadik.

هَهُنَا أَيْضًا أَلْفَاظٌ جَاءَتْ فِيهَا آثَارٌ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهِيَ: الْبَائِنُ، وَأَلْبَتَّةَ، وَاعْتَدِّي، وَأَلْحِقِي بِأَهْلِك وَأَمْرُك بِيَدِك.

L33761 As for your matter being under your discretion, we have previously addressed this. It is necessary to mention the transmitted reports found within all these terms and clarify their legal rulings—if Allah, the Almighty and Majestic, wills.

فَأَمَّا أَمْرُك بِيَدِك فَقَدْ ذَكَرْنَاهُ قَبْلُ فَلَا بُدَّ مِنْ ذِكْرِ الْآثَارِ الَّتِي جَاءَتْ فِي سَائِرِ هَذِهِ الْأَلْفَاظِ وَبَيَانِ حُكْمِهَا - إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ -.

L33762 Here also are expressions regarding which no narration—neither authentic nor weak—has been transmitted from the Prophet, peace and blessings of Allah be upon him, nor from any of the Companions, may Allah be pleased with them. However, differing legal opinions concerning them have arisen from a group of the Followers. Thus, we shall mention—if Allah, the Exalted and Majestic, wills—from that which Allah, the Most High, has made easy for us to mention.

هَهُنَا أَيْضًا أَلْفَاظٌ لَمْ يَأْتِ فِي شَيْءٍ مِنْهَا أَثَرٌ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا صَحِيحٌ وَلَا سَقِيمٌ، وَلَا عَنْ أَحَدٍ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَكِنْ جَاءَتْ فِيهَا فَتَاوَى مُخْتَلِفَةٌ عَنْ نَفَرٍ مِنَ التَّابِعِينَ، فَنَذْكُرُ - إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ - مِنْ ذَلِكَ مَا يَسَّرَ اللَّهُ تَعَالَى لَنَا ذِكْرَهُ.

L33763 As for the expressions for which no precedent is found from the Prophet—peace and blessings of Allah be upon him—nor from any of the Companions—may Allah be pleased with them—nor from any of the Followers—may Allah have mercy on them—but only legal verdicts from the jurists of the regions based on their personal opinions, there is no validity in concerning oneself with them. This is because it is impermissible to dissolve a Muslim's marriage or permit lawful access to a Muslim woman's private parts for anyone other than those whom Allah the Exalted has permitted, except for a follower engaged in misguided imitation through his adherence—a self-destructive [individual] facing perishment. We seek refuge in Allah from being forsaken [by Him].

وَأَمَّا الْأَلْفَاظُ الَّتِي لَمْ يَأْتِ فِيهَا أَثَرٌ لَا عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا عَنْ أَحَدٍ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا عَنْ أَحَدٍ مِنَ التَّابِعِينَ - رَحِمَهُمُ اللَّهُ - وَإِنَّمَا جَاءَتْ فِيهَا فَتَاوَى عَنْ فُقَهَاءِ الْأَمْصَارِ بِآرَائِهِمْ، فَلَا مَعْنَى لِلِاشْتِغَالِ بِهَا، لِأَنَّهُ لَا يَسْتَحِلُّ تَفْرِيقَ نِكَاحِ مُسْلِمٍ، وَإِبَاحَةَ فَرْجِ مُسْلِمَةٍ لِغَيْرِ مَنْ أَبَاحَهُ اللَّهُ تَعَالَى لَهُ إِلَّا مُقَلِّدٌ ضَالٌّ بِتَقْلِيدِهِ، مُسْتَهْلِكٌ هَالِكٌ - وَنَعُوذُ بِاللَّهِ مِنَ الْخِذْلَانِ.

L33764 An issue concerning the words of divorce that appear in them from the Messenger...

[مَسْأَلَةٌ أَلْفَاظِ الطَّلَاقِ الَّتِي جَاءَتْ فِيهَا عَنْ رَسُولِ]

L33765–33767 1954 - Issue: Concerning the phrases narrated from the Messenger of Allah (peace and blessings be upon him), which are: "Return to your family and undergo your waiting period," "the final divorce," and "the separating divorce." As narrated through the chain of Al-Bukhari: Al-Humaidi narrated to us, Sufyan Al-Thawri narrated to us. Sufyan said: Al-Zuhri narrated to me, informing me through Urwah ibn Al-Zubayr from Aisha, the Mother of the Believers, that when the daughter of Al-Jawn was brought to the Messenger of Allah (peace and blessings be upon him and his family) and he approached her, she exclaimed: "I seek refuge in Allah from you!" He replied: "You have sought refuge with the Great One. Return to your family."

١٩٥٤ - مَسْأَلَةٌ: فِي الْأَلْفَاظِ الَّتِي جَاءَتْ فِيهَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهِيَ الْحَقِي بِأَهْلِك وَاعْتَدِّي، وَأَلْبَتَّةَ، وَالْبَائِنُ فَأَمَّا الْحَقِي بِأَهْلِك - فَكَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ ثنا الْحُمَيْدِيُّ ثنا سُفْيَانُ الثَّوْرِيُّ، قَالَ: حَدَّثَنِي الزُّهْرِيُّ أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ ابْنَةَ الْجَوْنِ لَمَّا أُدْخِلَتْ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَدَنَا مِنْهَا قَالَتْ: أَعُوذُ بِاللَّهِ مِنْكَ؟ قَالَ لَهَا: لَقَدْ عُذْتِ بِعَظِيمٍ، الْحَقِي بِأَهْلِكِ» .

L33768 Abu Muhammad said: There is no proof in this narration for those who claim the phrase "Rejoin your family" constitutes divorce pronouncement -

due to what we narrated through al-Bukhari's chain: Abu Nu'aym (who is al-Fadl ibn Dukayn) narrated to us from Abd al-Rahman ibn al-Ghasil from Hamzah ibn Abi Usayd from his father: "He was with Allah's Messenger (peace and blessings be upon him and his family) when a Juhaniyyah woman was brought and lodged in Umaymah bint al-Nu'man ibn Sharahil's dwelling among palm trees, accompanied by her mount. The Prophet (peace and blessings be upon him and his family) entered her quarters and said: 'Surrender yourself to me.' She retorted: 'Would a queen yield herself to a plebeian?' He reached out to place his hand upon her to pacify her, whereupon she exclaimed: 'I seek refuge with Allah from you!' He responded: 'You have sought refuge with a mighty refuge.' Then he departed and instructed: 'O Abu Usayd, clothe her with two provision garments and escort her back to her people.'"

L33769 From the chain of Muslim: Muhammad ibn Sahl narrated to us: Ibn Abi Maryam (he is Sa'id) narrated to us: Muhammad (he is Ibn Mutarrif, Abu Ghassan) informed me, from Abu Hazim, from Sahl ibn Sa'd, who said: "An Arab woman was mentioned to the Messenger of Allah (peace be upon him), so he commanded Abu Usayd to send for her. He sent for her: she came and settled in the thicket of Banu Sa'idah. The Messenger of Allah (peace be upon him) entered. When he spoke to her, she said: 'I seek refuge with Allah from you!' He responded: 'I grant you refuge from me.' They asked her: 'Do you know who this is?' She replied: 'No.' They said: 'This is the Messenger of Allah (peace be upon him) who has come to propose to you.' She responded: 'I would have been the most wretched [if that were the case]!'"

L33770 All these reports pertain to a single narrative involving one woman in a single context, making it evident that the Prophet (peace and blessings be upon him) had not yet married her but had visited her to propose marriage.

L33771 Thus, their reliance on his statement—peace and blessings be upon him—"Join with your household" [feminine command] was nullified.

L33772 Then, even if it were valid that he - peace and blessings be upon him - had

قَالَ أَبُو مُحَمَّدٍ: وَلَيْسَ فِي هَذَا الْخَبَرِ حُجَّةٌ لِمَنْ ادَّعَى أَنَّ " الْحَقِي بِأَهْلِك " لَفْظٌ يَقَعُ بِهِ الطَّلَاقُ -: لِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو نُعَيْمٍ - هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - نا عَبْدُ الرَّحْمَنِ بْنُ الْغَسِيلِ عَنْ حَمْزَةَ بْنِ أَبِي أُسَيْدٍ عَنْ أَبِيهِ: «أَنَّهُ كَانَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَدْ أُوتِيَ بِالْجُونِيَّةِ فَأُنْزِلَتْ فِي بَيْتِ أُمَيْمَةَ بِنْتِ النُّعْمَانِ بْنِ شَرَاحِيلَ فِي نَخْلٍ وَمَعَهَا دَابَّتُهَا فَدَخَلَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَيْهَا فَقَالَ لَهَا: هَبِي لِي نَفْسَكِ؟ قَالَتْ: وَهَلْ تَهَبُ الْمَلِكَةُ نَفْسَهَا لِسُوقَةٍ؟ فَأَهْوَى لِيَضَعَ يَدَهُ عَلَيْهَا لِتَسْكُنَ فَقَالَتْ: أَعُوذُ بِاَللَّهِ مِنْكَ، فَقَالَ: قَدْ عُذْتِ بِمَعَاذٍ، ثُمَّ خَرَجَ فَقَالَ: يَا أَبَا أُسَيْدٍ اُكْسُهَا رَازِقِيَّتَيْنِ وَأَلْحِقْهَا بِأَهْلِهَا» .

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي مُحَمَّدُ بْنُ سَهْلٍ نا ابْنُ أَبِي مَرْيَمَ - هُوَ سَعِيدٌ - نَا مُحَمَّدٌ - هُوَ ابْنُ مُطَرِّفٍ أَبُو غَسَّانَ - أَخْبَرَنِي أَبُو حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ قَالَ: «ذُكِرَتْ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - امْرَأَةٌ مِنْ الْعَرَبِ فَأَمَرَ أَبَا أُسَيْدٍ أَنْ يُرْسِلَ إلَيْهَا: فَأَرْسَلَ إلَيْهَا، فَقَدِمَتْ فَنَزَلَتْ فِي أَجَمِ بَنِي سَاعِدَةَ، فَدَخَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمَّا كَلَّمَهَا قَالَتْ: أَعُوذُ بِاَللَّهِ مِنْكَ؟ قَالَ: قَدْ أَعَذْتُكِ مِنِّي، فَقَالُوا لَهَا: أَتَدْرِينَ مَنْ هَذَا؟ قَالَتْ: لَا، قَالُوا: هَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَاءَكِ لِيَخْطُبَكِ؟ قَالَتْ: أَنَا كُنْتُ أَشْقَى مِنْ ذَلِكَ» .

فَهَذِهِ كُلُّهَا أَخْبَارٌ عَنْ قِصَّةٍ وَاحِدَةٍ، فِي امْرَأَةٍ وَاحِدَةٍ، فِي مَقَامٍ وَاحِدٍ، فَلَاحَ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَكُنْ تَزَوَّجَهَا بَعْدُ، وَإِنَّمَا دَخَلَ عَلَيْهَا لِيَخْطُبَهَا.

فَبَطَلَ تَعَلُّقُهُمْ بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: الْحَقِي بِأَهْلِك.

married her, there is no evidence that he - peace and blessings be upon him - stated he divorced her merely by saying “Join your family?” Valid marriages are only lawful with certainty.

ثُمَّ لَوْ صَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كَانَ قَدْ تَزَوَّجَهَا فَلَيْسَ فِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - ذَكَرَ أَنَّهُ إنَّمَا طَلَّقَهَا بِقَوْلِهِ الْحَقِي بِأَهْلِك؟ وَلَا تَحِلُّ النِّكَاحَاتُ الصِّحَاحُ إلَّا بِيَقِينٍ.

L33773–33775 It has been narrated to us through the chain of Aḥmad ibn Shuʿayb: Sulaymān ibn Dāwūd narrated to us; Ibn Wahb narrated to us from Yūnus ibn Yazīd, who said: Ibn Shihāb said: ʿAbd al-Raḥmān ibn Kaʿb ibn Mālik informed me that ʿAbd al-Raḥmān ibn Kaʿb [continued]... He said: “I heard Kaʿb ibn Mālik narrate the story of his staying behind from the Battle of Tabūk, in which he mentioned that the Messenger of Allah (peace be upon him and his family) sent a message to him ordering him to separate from his wife.” He said: “So I asked his Messenger: ‘Should I divorce her, or what should I do instead?’ He said: ‘No, rather stay away from her and do not approach her.’” Kaʿb said: “So I told my wife: ‘Go to your family and remain with them until Allah decides regarding this matter.’”

وَقَدْ رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا سُلَيْمَانُ بْنُ دَاوُد نا ابْنُ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ قَالَ: قَالَ ابْنُ شِهَابٍ أَخْبَرَنِي عَبْدُ الرَّحْمَنِ بْنُ كَعْبِ بْنِ مَالِكٍ أَنَّ عَبْدَ الرَّحْمَنِ بْنَ كَعْبٍ قَالَ: «سَمِعْتُ كَعْبَ بْنَ مَالِكٍ يُحَدِّثُ حَدِيثَ تَخَلُّفِهِ عَنْ تَبُوكَ، فَذَكَرَ فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَرْسَلَ إلَيْهِ يَأْمُرُهُ أَنْ يَعْتَزِلَ امْرَأَتَهُ؟ قَالَ: فَقُلْتُ لِرَسُولِهِ: أُطَلِّقُهَا أَمْ مَاذَا أَفْعَلُ؟ قَالَ: لَا، بَلْ اعْتَزِلْهَا فَلَا تَقْرَبْهَا؟ قَالَ كَعْبٌ فَقُلْت لِامْرَأَتِي: الْحَقِي بِأَهْلِكِ فَكُونِي فِيهِمْ حَتَّى يَقْضِيَ اللَّهُ فِي هَذَا الْأَمْرِ» .

L33776 Thus, this Kaʿb did not consider “Rejoin your family” among the expressions of divorce, and none of the Companions—may Allah be pleased with them—are known to have opposed him in that.

فَهَذَا كَعْبٌ لَمْ يَرَ " الْحَقِي بِأَهْلِك " مِنْ أَلْفَاظِ الطَّلَاقِ، وَلَا يُعْرَفُ لَهُ مُخَالِفٌ فِي ذَلِكَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L33777 It was also narrated to us from Qatādah: that that is not a thing.

وَرُوِّينَا عَنْ قَتَادَةَ أَيْضًا: أَنَّهُ لَيْسَ ذَلِكَ شَيْءٌ.

L33778 There are narrations reported from the Followers concerning that matter—Al-Shaʿbi and al-Hasan narrated that whoever says to his wife, “Join your family,” the ruling depends on his intention.

وَجَاءَتْ عَنْ التَّابِعِينَ فِي ذَلِكَ آثَارٌ -: رُوِّينَا عَنْ الشَّعْبِيِّ، وَالْحَسَنِ: أَنَّ مَنْ قَالَ لِامْرَأَتِهِ: الْحَقِي بِأَهْلِك، فَهُوَ عَلَى مَا نَوَى -.

L33779 And this is the position of Mālik and al-Shāfiʿī.

وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ.

L33780 It is authentically reported from Al-Hasan: If he intended divorce, then it is one revocable divorce; otherwise, it is null and void—and it was narrated by us from Al-Sha’bi as well—and it was narrated from Ikrimah: that it is solely one revocable divorce—and from Al-Zuhri: that it is one talaq.

وَصَحَّ عَنْ الْحَسَنِ: إنْ نَوَى طَلَاقًا فَهِيَ وَاحِدَةٌ رَجْعِيَّةٌ، وَإِلَّا فَلَيْسَ بِشَيْءٍ - وَرُوِّينَاهُ عَنْ الشَّعْبِيِّ أَيْضًا - وَرُوِيَ عَنْ عِكْرِمَةَ: أَنَّهَا طَلْقَةٌ وَاحِدَةٌ رَجْعِيَّةٌ فَقَطْ - وَعَنْ الزُّهْرِيِّ: أَنَّهَا طَلْقَةٌ وَاحِدَةٌ.

L33781 Abu Hanifa and his disciples stated: If he intended one or two divorces, it is necessarily a single irrevocable divorce. If he intended three, then it counts as three. And if he did not intend a divorce, then it is not a divorce.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: إِنْ نَوَى وَاحِدَةً أَوْ اثْنَتَيْنِ، فَهِيَ طَلْقَةٌ وَاحِدَةٌ بَائِنَةٌ وَلَا بُدَّ، وَإِنْ نَوَى ثَلَاثًا فَهِيَ ثَلَاثٌ، وَإِنْ لَمْ يَنْوِ طَلَاقًا فَلَيْسَ طَلَاقًا.

L33782 Zufar said: If he intended two prayers, then they are two.

قَالَ زُفَرُ: وَإِنْ نَوَى اثْنَتَيْنِ فَهِيَ اثْنَتَانِ.

L33783 As for the irrevocable divorce, there is the established report transmitted from the chain of Aḥmad ibn Shuʿayb: from Aḥmad ibn ʿAbd Allāh ibn al-Ḥakam, from Muḥammad ibn Jaʿfar, from Shuʿbah, from Abū Bakr ibn Abī al-Jahm, who narrated, "I visited Fāṭimah bint Qays, and she mentioned the ḥadīth. In its conclusion: 'Her husband had divorced her with an irrevocable divorce.'"

وَأَمَّا الْبَائِنُ - فَفِيهِ الْخَبَرُ الثَّابِتُ: مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ الْحَكَمِ نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ عَنْ أَبِي بَكْرِ بْنِ أَبِي الْجَهْمِ، قَالَ: «دَخَلْتُ عَلَى فَاطِمَةَ بِنْتِ قَيْسٍ فَذَكَرَتْ الْحَدِيثَ، وَفِي آخِرِهِ: وَكَانَ زَوْجُهَا طَلَّقَهَا طَلَاقًا بَائِنًا» .

L33784 Abu Muhammad said: There is no valid argument in this, because it is not from her wording; rather, it is from the wording of someone other than her. It does not state that the Messenger of Allah – peace be upon him and his family – heard this wording and ruled it as a divorce, nor is there any valid argument regarding those below him in authority – peace be upon him. We have mentioned in the chapter on the threefold divorce a collection of how the divorce of Fatimah bint Qays occurred.

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ فِيهِ، لِأَنَّهُ لَيْسَ مِنْ لَفْظِهَا، إنَّمَا هُوَ مِنْ لَفْظِ مِنْ دُونِهَا، وَلَيْسَ فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - سَمِعَ هَذِهِ اللَّفْظَةَ فَجَعَلَهَا طَلَاقًا، وَلَا حُجَّةَ فِيمَنْ دُونَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَقَدْ ذَكَرْنَا فِي " بَابِ طَلَاقِ الثَّلَاثِ " مَجْمُوعَةً كَيْفَ أَنَّ طَلَاقَ فَاطِمَةَ بِنْتِ قَيْسٍ.

L33785 There is a difference of opinion reported from the Salaf regarding this matter. What has been authenticated from 'Ali is what we narrated through Shu'bah: 'Aṭā' ibn al-Sā'ib narrated to us, saying: Abū al-Buḥturī narrated to me from 'Ali ibn Abī Ṭālib that he said concerning al-Bā'inah: "It is three pronouncements."

وَاخْتُلِفَ عَنْ السَّلَفِ مِنْ ذَلِكَ -: فَصَحَّ عَنْ عَلِيٍّ مَا رُوِّينَاهُ عَنْ شُعْبَةَ نا عَطَاءُ بْنُ السَّائِبِ حَدَّثَنِي أَبُو الْبُخْتُرِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ فِي الْبَائِنَةِ: هِيَ ثَلَاثٌ.

L33786–33787 And through the chain of Qatadah, from al-Ḥasan, from Zayd ibn Thābit, that he said regarding irrevocable divorce (al-Bā'ina): It is three.

وَمِنْ طَرِيقِ قَتَادَةَ عَنْ الْحَسَنِ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّهُ قَالَ فِي الْبَائِنَةِ: هِيَ ثَلَاثٌ.

L33788 And through the transmission of ʿAbd al-Razzāq from Maʿmar from al-Ḥasan and al-Zuhrī, that they both regarded al-bā'inah (the irrevocably divorced woman) as equivalent to the three pronouncements of divorce - and this is the view of Ibn Abī Laylā, al-Awzāʿī, and Abū ʿUbayd.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الْحَسَنِ، وَالزُّهْرِيِّ أَنَّهُمَا كَانَا يَجْعَلَانِ الْبَائِنَةَ بِمَنْزِلِ الثَّلَاثِ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى وَالْأَوْزَاعِيِّ، وَأَبِي عُبَيْدٍ.

L33789 It has been transmitted to us in a different narration—as conveyed through the chain of Abd al-Razzaq from Sufyan al-Thawri from Hammad ibn Abi

Sulayman from Ibrahim al-Nakha'i—that Umar ibn al-Khattab said concerning the irrevocable divorce (al-Ba'inah): "It constitutes one pronouncement of divorce, and he retains the right to her."

وَرُوِّينَا غَيْرَ هَذَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنْ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي الْبَائِنَةِ: هِيَ طَلْقَةٌ وَاحِدَةٌ وَهُوَ أَحَقُّ بِهَا.

L33790 Via the narration of ʿAbd al-Razzāq, from Ibn Jurayj, that ʿAmr ibn Dīnār said regarding the irrevocable divorce (al-bā'inah): "It is a single divorce, and he judges." Ibn Jurayj said: "I asked him: 'What if he intended it to be three?' He replied: 'It is one.'"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَنْ عَمْرَو بْنَ دِينَارٍ قَالَ فِي الْبَائِنَةِ: هِيَ طَلْقَةٌ وَاحِدَةٌ وَيَدِينُ، قَالَ ابْنُ جُرَيْجٍ فَقُلْت لَهُ: فَإِنْ نَوَى بِهَا ثَلَاثًا؟ قَالَ: هِيَ وَاحِدَةٌ.

L33791 And from the chain of Ḥammād ibn Salamah from Qays—he is Ibn ʿAbbād—from ʿAṭā' ibn Abī Rabāḥ that he said regarding the irrevocable divorce (al-bā'inah): it is a single one, and he has more right to her.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسٍ - هُوَ ابْنُ عَبَّادٍ - عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ أَنَّهُ قَالَ فِي الْبَائِنَةِ: هِيَ وَاحِدَةٌ وَهُوَ أَحَقُّ بِهَا.

L33792 This is the opinion of Abū Thawr, except that he said: if he does not intend [divorce]—whether he intended three, two, or one [divorces]. This is also the view of Isḥāq ibn Rāhawayh and Abū Sulaymān, except that they said: If he states, "I did not intend a divorce," then it was not considered a divorce.

وَهُوَ قَوْلُ أَبِي ثَوْرٍ إلَّا أَنَّهُ قَالَ: لَا يَنْوِي - وَسَوَاءٌ نَوَى ثَلَاثًا أَوْ اثْنَتَيْنِ أَوْ وَاحِدَةً - وَهُوَ قَوْلُ إسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي سُلَيْمَانَ، إلَّا أَنَّهُمَا قَالَا: إنْ قَالَ: لَمْ أَنْوِ طَلَاقًا لَمْ يَكُنْ طَلَاقًا.

L33793–33795 A third opinion—narrated through Ḥammād ibn Salamah's transmission from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī—states regarding the definitive divorce (al-bā'inah): "It is a single definitive divorce." A fourth opinion asserts that the ruling follows his intention: if he intended three divorces, it counts as three; if he intended two, it counts as two; if he intended one, it counts as one; and if he declared, "I did not intend a divorce," then no divorce occurs—narrated through ʿAbd al-Razzāq's transmission from Ibn Jurayj, from ʿAṭā', which aligns with al-Shāfiʿī's view. A fifth opinion—that three divorces are irrevocably binding for a wife with whom consummation has occurred, while only one divorce applies to a wife without consummation—is reported from Rabīʿah and represents al-Layth ibn Saʿd's position. A sixth opinion—that three divorces are obligatory for a consummated marriage, while a non-consummated marriage follows the number intended (one, two, or three)—is held by Mālik and his school, with no predecessor known to have endorsed this view. A seventh opinion—that if he uttered this to her

وَقَوْلٌ ثَالِثٌ - رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ فِي الْبَائِنَةِ: هِيَ وَاحِدَةٌ بَائِنَةٌ. وَقَوْلٌ رَابِعٌ - لَهُ نِيَّتُهُ، فَإِنْ نَوَى ثَلَاثًا فَهِيَ ثَلَاثٌ، وَإِنْ نَوَى اثْنَتَيْنِ فَهِيَ اثْنَتَانِ، وَإِنْ نَوَى وَاحِدَةً فَوَاحِدَةٌ، وَإِنْ قَالَ: لَمْ أَنْوِ طَلَاقًا فَلَيْسَ طَلَاقًا - رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ - وَهُوَ قَوْلُ الشَّافِعِيِّ. وَقَوْلٌ خَامِسٌ - وَهُوَ أَنَّهُ فِي الْمَدْخُولِ بِهَا ثَلَاثٌ وَلَا بُدَّ، وَفِي غَيْرِ الْمَدْخُولِ بِهَا وَاحِدَةٌ فَقَطْ - وَرُوِيَ عَنْ رَبِيعَةَ - وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ. وَقَوْلٌ سَادِسٌ - إنَّهَا فِي الْمَدْخُولِ بِهَا ثَلَاثٌ وَلَا بُدَّ، وَفِي غَيْرِ الْمَدْخُولِ بِهَا مَا نَوَى مِنْ وَاحِدَةٍ أَوْ اثْنَتَيْنِ أَوْ ثَلَاثٍ - وَهُوَ قَوْلُ مَالِكٍ وَأَصْحَابِهِ - وَلَا نَعْلَمُ هَذَا الْقَوْلَ عَنْ أَحَدٍ مِمَّنْ قَبْلَهُ. وَقَوْلٌ

in anger or otherwise, provided it was not during the mention of... If it is a divorce, he must intend it. If he says, “I did not intend a divorce,” then it is not a divorce. If he says, “I intended a divorce without specifying a number,” or says, “I intended one revocable divorce,” or says, “I intended one irrevocable divorce,” or says, “I intended two revocable or two irrevocable divorces,” then in all these cases, it is necessarily one irrevocable divorce. If this occurs during the mention of divorce, the ruling is identical in every way. However, his claim, “I did not specifically intend a divorce,” is not accepted—and this is the opinion of Abu Hanifah, Abu Yusuf, and Muhammad ibn al-Hasan. An eighth opinion—that of Sufyan al-Thawri—matches Abu Hanifah’s view in all we have mentioned, except that no distinction is made between cases where divorce is mentioned and those where it is not, nor between anger and other states.

سَابِعٌ - أَنَّهُ إِنْ قَالَ لَهَا ذَلِكَ فِي غَضَبٍ أَوْ فِي غَيْرِ غَضَبٍ، مَا لَمْ يَكُنْ فِي ذِكْرِ طَلَاقٍ فَإِنَّهُ يَنْوِي، فَإِنْ قَالَ: لَمْ أَنْوِ طَلَاقًا، فَلَيْسَ طَلَاقًا، وَإِنْ قَالَ: نَوَيْت طَلَاقًا بِلَا عَدَدٍ، أَوْ قَالَ: نَوَيْت وَاحِدَةً رَجْعِيَّةً، أَوْ قَالَ: نَوَيْت وَاحِدَةً بَائِنَةً، أَوْ قَالَ: نَوَيْت اثْنَتَيْنِ رَجْعِيَّتَيْنِ أَوْ بَائِنَتَيْنِ فَهِيَ فِي كُلِّ ذَلِكَ طَلْقَةٌ وَاحِدَةٌ بَائِنَةٌ وَلَا بُدَّ، فَلَوْ كَانَ ذَلِكَ فِي ذِكْرِ طَلَاقٍ فَكَذَلِكَ سَوَاءً سَوَاءً، إِلَّا أَنَّهُ لَا يُصَدَّقُ فِي قَوْلِهِ: لَمْ أَنْوِ طَلَاقًا فَقَطْ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ. وَقَوْلٌ ثَامِنٌ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ مِثْلُ قَوْلِ أَبِي حَنِيفَةَ سَوَاءً سَوَاءً، فِي كُلِّ مَا ذَكَرْنَا، إِلَّا أَنَّهُ لَمْ يُفَرِّقْ بَيْنَ ذِكْرِ طَلَاقٍ وَغَيْرِ ذِكْرِهِ، وَلَا بَيْنَ غَضَبٍ وَغَيْرِهِ.

L33796 The ninth opinion—held by Zufar ibn al-Hudhayl and identical to Abu Hanifah’s view—except that he stated: If one intends two divorces, they must necessarily be two irrevocable divorces.

وَقَوْلٌ تَاسِعٌ - وَهُوَ قَوْلُ زُفَرَ بْنِ الْهُذَيْلِ مِثْلُ قَوْلِ أَبِي حَنِيفَةَ، إِلَّا أَنَّهُ قَالَ: إِنْ نَوَى اثْنَتَيْنِ فَهِيَ اثْنَتَانِ بَائِنَتَانِ وَلَا بُدَّ.

L33797 As for al-bātt and al-battah—it has been narrated to us through the chain of Muslim: ‘Ubayd Allāh ibn Mu‘ādh al-‘Anbarī narrated to us, my father narrated to us, Shu‘bah narrated to us, Abū Bakr—he is Ibn Abī al-Jahm—narrated to us that he visited Fāṭimah bint Qays, and she informed him that her husband had divorced her with an absolute divorce. Through another chain of Muslim: Abū Bakr ibn Abī Shaybah narrated to us, Muḥammad ibn Bishr narrated to us, Muḥammad ibn ‘Amr narrated to us, Abū Salamah ibn ‘Abd al-Raḥmān narrated to us, from Fāṭimah bint Qays, who said: “I was married to a man from Banū Makhzūm, and he divorced me with an absolute divorce,” and she mentioned the ḥadīth.

وَأَمَّا الْبَاتُّ، وَأَلْبَتَّةَ - فَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا عُبَيْدُ اللَّهِ بْنُ مُعَاذٍ الْعَنْبَرِيُّ نا أَبِي نا شُعْبَةُ ثنا أَبُو بَكْرٍ - هُوَ ابْنُ أَبِي الْجَهْمِ - أَنَّهُ «دَخَلَ عَلَى فَاطِمَةَ بِنْتِ قَيْسٍ فَحَدَّثَتْهُ أَنَّ زَوْجَهَا طَلَّقَهَا طَلَاقًا بَاتًّا» وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نَا مُحَمَّدُ بْنُ بِشْرٍ نا مُحَمَّدُ بْنُ عَمْرٍو نا أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ عَنْ «فَاطِمَةَ بِنْتِ قَيْسٍ قَالَتْ: كُنْت عِنْدَ رَجُلٍ مِنْ بَنِي مَخْزُومٍ فَطَلَّقَنِي أَلْبَتَّةَ وَذَكَرَتْ الْحَدِيثَ» .

L33798 And through the chain of Malik from Abdullah ibn Yazid, the client of Al-Aswad ibn Sufyan, from Abu Salamah ibn Abd al-Rahman, from Fatimah bint Qays: that Abu Amr ibn Hafs divorced her irrevocably. His agent sent her some barley, so she resented this. He said, “By Allah, you have no claim to anything from us!” She then went to the Messenger of Allah, peace and blessings of Allah be upon him and his family, and mentioned this to him.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ مَوْلَى الْأَسْوَدِ بْنِ سُفْيَانَ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ «فَاطِمَةَ بِنْتِ قَيْسٍ أَنَّ أَبَا عَمْرِو بْنَ حَفْصٍ طَلَّقَهَا أَلْبَتَّةَ، فَأَرْسَلَ إِلَيْهَا وَكِيلُهُ بِشَعِيرٍ، فَسَخِطَتْ فَقَالَ: وَاَللَّهِ مَالَكِ عَلَيْنَا مِنْ شَيْءٍ؟ فَجَاءَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ

He said to her, “You have no right to maintenance upon him,” and she related the hadith.

L33799 Through the chain of Muslim: ʻAmr al-Nāqid narrated to us, Sufyān narrated to us from al-Zuhrī from ʻUrwah from ʻĀ’ishah, the Mother of the Believers, who said: “The wife of Rifāʻah came to the Prophet—peace and blessings be upon him—and said: ’I was married to Rifāʻah, and he divorced me irrevocably. Then I married ʻAbd al-Raḥmān ibn al-Zubayr, and he has something like the fringe of a garment.’ The Prophet—peace and blessings be upon him—said: ’Do you wish to return to Rifāʻah? No, not until you taste his sweetness and he tastes your sweetness.’”

L33800 On the authority of Aḥmad ibn Shuʿayb: ʿAmr ibn ʿAlī narrated to us; Yazīd ibn Zuraiʿ narrated to us; Maʿmar narrated to us from al-Zuhrī, from ʿUrwah, from ʿĀ’ishah: “The wife of Rifāʿah said: ’O Messenger of Allāh, I was married to Rifāʿah, and he divorced me irrevocably (a final triple divorce),’ and she narrated the hadith” - as we have previously cited it verbatim.

L33801–33802 Through the chain of Abū Dāwūd from Abū Thawr Ibrāhīm ibn Khālid al-Faqīh, from Muḥammad ibn Idrīs al-Shāfiʿī, who said: My uncle Muḥammad ibn ʿAlī ibn Shāfiʿ narrated to me from ʿAbdullāh ibn ʿAlī ibn al-Sā’ib, from Nāfiʿ, from ʿUjayr ibn ʿAbdul-Yazīd, from Rukānah ibn ʿAbdul-Yazīd that he divorced his wife Suhaymah irrevocably. When the Messenger of Allah—peace and blessings be upon him—was informed of this, Rukānah said: “By Allah, I only intended one [divorce].” The Prophet asked him: “By Allah, did you intend only one?” Rukānah replied: “By Allah, I only intended one.” Thereupon the Messenger of Allah—peace and blessings be upon him—returned her to him.

L33803 Through the chain of Abu Dawud: Sulayman ibn Dawud al-Ataki narrated to us, Jarir ibn Hazim narrated to us from al-Zubayr ibn Sa‘id—he is al-Hashimi—from his grandfather that he divorced his wife irrevocably (albattah). He came to the Messenger of Allah—peace and blessings be upon him—who asked: “What did you intend?” He replied: “One.” He said: “By Allah?”

عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَذَكَرَتْ ذَلِكَ لَهُ؟ فَقَالَ لَهَا: لَيْسَ لَكِ عَلَيْهِ نَفَقَةٌ، وَذَكَرَتْ الْحَدِيثَ» .

وَمِنْ طَرِيقِ مُسْلِمٍ نا عَمْرُو النَّاقِدُ نا سُفْيَانُ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «جَاءَتْ امْرَأَةُ رِفَاعَةَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ كُنْتُ عِنْدَ رِفَاعَةَ فَطَلَّقَنِي فَبَتَّ طَلَاقِي، فَتَزَوَّجْتُ عَبْدَ الرَّحْمَنِ بْنَ الزُّبَيْرِ وَإِنَّمَا مَعَهُ مِثْلُ هُدْبَةِ الثَّوْبِ فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: أَتُرِيدِينَ أَنْ تَرْجِعِي إلَى رِفَاعَةَ؟ لَا، حَتَّى تَذُوقِي عُسَيْلَتَهُ وَيَذُوقَ عُسَيْلَتَكِ» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ عَلِيٍّ نا يَزِيدُ بْنُ زُرَيْعٍ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ «أَنَّ امْرَأَةَ رِفَاعَةَ قَالَتْ: يَا رَسُولَ اللَّهِ إنِّي كُنْتُ تَحْتَ رِفَاعَةَ فَطَلَّقَنِي أَلْبَتَّةَ وَذَكَرَتْ الْحَدِيثَ» كَمَا أَوْرَدْنَاهُ آنِفًا حَرْفًا حَرْفًا.

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا أَبُو ثَوْرٍ إبْرَاهِيمُ بْنُ خَالِدٍ الْفَقِيهُ نا مُحَمَّدُ بْنُ إدْرِيسَ الشَّافِعِيُّ حَدَّثَنِي عَمِّي مُحَمَّدُ بْنُ عَلِيِّ بْنِ شَافِعٍ عَنْ عَبْدِ اللَّهِ بْنِ عَلِيِّ بْنِ السَّائِبِ عَنْ نَافِعٍ عَنْ عُبَيْدِ بْنِ عَبْدِ يَزِيدَ عَنْ «رُكَانَةَ بْنِ عَبْدِ يَزِيدَ أَنَّهُ طَلَّقَ امْرَأَتَهُ سُهَيْمَةَ أَلْبَتَّةَ، فَأُخْبِرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ، وَقَالَ: وَاَللَّهِ مَا أَرَدْتُ بِذَلِكَ إلَّا وَاحِدَةً فَقَالَ لَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: وَاَللَّهِ مَا أَرَدْتُ إلَّا وَاحِدَةً؟ فَقَالَ رُكَانَةُ: وَاَللَّهِ مَا أَرَدْتُ إلَّا وَاحِدَةً، فَرَدَّهَا إلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

وَمِنْ طَرِيقِ أَبِي دَاوُد نا سُلَيْمَانُ بْنُ دَاوُد الْعَتَكِيُّ نا جَرِيرُ بْنُ حَازِمٍ عَنْ «الزُّبَيْرِ بْنِ سَعِيدٍ - هُوَ الْهَاشِمِيُّ - عَنْ جَدِّهِ أَنَّهُ طَلَّقَ امْرَأَتَهُ أَلْبَتَّةَ فَأَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ

He responded: “By Allah.” The Messenger of Allah—peace and blessings be upon him—said: “It is as you intended.”

عَلَيْهِ وَسَلَّمَ - فَقَالَ: مَا أَرَدْتَ؟ قَالَ: وَاحِدَةً، قَالَ: آللَّهِ، قَالَ: آللَّهِ؟ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: هُوَ عَلَى مَا أَرَدْتَ» .

L33804 As for those below him—peace and blessings be upon him—it is transmitted through Shuʿbah’s chain: ʻAṭāʼ ibn al-Sāʼib narrated to us, [that] Abū al-Bakhtarī reported to me from ʻAlī ibn Abī Ṭālib regarding al-battah: “It is three.”

وَأَمَّا مَنْ دُونَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَمِنْ طَرِيقِ شُعْبَةَ نا عَطَاءُ بْنُ السَّائِبِ أَخْبَرَنِي أَبُو الْبَخْتَرِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ فِي أَلْبَتَّةَ: هِيَ ثَلَاثٌ.

L33805 And through the chain of ʿAbd al-Razzāq from Maʿmar, from al-Zuhrī, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father, who said regarding al-battah: “It entails three.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ أَنَّهُ قَالَ فِي أَلْبَتَّةَ: هِيَ ثَلَاثٌ.

L33806 From the transmission of Ibn Wahb, Maslamah ibn Ali informed us from Muhammad ibn al-Walid al-Zubaydi from al-Zuhri, who said: “Whoever irrevocably divorces his wife, she is not lawful for him until she marries another husband.” Al-Zubaydi said: “The successors also stated the same,” and this chain is disconnected.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنَا مَسْلَمَةُ بْنُ عَلِيٍّ عَنْ مُحَمَّدِ بْنِ الْوَلِيدِ الزُّبَيْدِيِّ عَنْ الزُّهْرِيِّ قَالَ: مَنْ بَتَّ امْرَأَتَهُ لَمْ تَحِلَّ لَهُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ؟ قَالَ الزُّبَيْدِيُّ: وَقَالَ الْخُلَفَاءُ مِثْلَ ذَلِكَ - وَهَذَا مُنْقَطِعٌ.

L33807 It has also been narrated to us via a broken chain from ʿUmar ibn al-Khaṭṭāb, Ibn ʿAbbās, al-Qāsim ibn Muḥammad, Rabīʿah, Makḥūl, and al-Ḥasan.

وَرُوِّينَاهُ أَيْضًا مُنْقَطِعًا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَنْ ابْنِ عَبَّاسٍ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ، وَرَبِيعَةَ، وَمَكْحُولٍ، وَالْحَسَنِ.

L33808 None of that is authentic except from ʿAlī and Ibn ʿUmar.

وَلَا يَصِحُّ شَيْءٌ مِنْ ذَلِكَ إلَّا عَنْ عَلِيٍّ، وَابْنِ عُمَرَ.

L33809 It has been authentically reported from al-Zuhri, Qatadah, Urwah ibn al-Zubayr, and Umar ibn Abd al-Aziz—and it is narrated from Saʿid ibn al-Musayyab—and it is the view of Ibn Abi Layla, al-Awzaʿi, and Abu Ubayd. A second opinion. It has been transmitted to us via the chain of Shuʿbah from Abu Ishaq al-Shaybani from Abdullah ibn Shaddad ibn al-Hadi from Umar ibn al-Khattab, who said: “The irrevocable divorce is one, and he is more entitled to it.”

وَصَحَّ عَنْ الزُّهْرِيِّ، وَقَتَادَةَ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ - وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَالْأَوْزَاعِيِّ، وَأَبِي عُبَيْدٍ. وَقَوْلٌ ثَانٍ - رُوِّينَاهُ مِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ شَدَّادِ بْنِ الْهَادِي عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: أَلْبَتَّةَ وَاحِدَةٌ وَهُوَ أَحَقُّ بِهَا.

L33810–33812 And through the chain of ʿAbd al-Razzāq: Ibn Jurayj informed us; ʿAmr ibn Dīnār informed me; Muḥammad ibn ʿAbbād ibn Jaʿfar al-Makhzūmī informed me. That al-Muṭṭalib ibn Hantab came to Umar ibn al-Khattab and

said to him: “I said to my wife: ’You are irrevocably divorced.”’ Umar then recited: _“O Prophet, when you divorce women, divorce them during their waiting periods”_ [At-Talaq: 1]. Then he recited: _“And if only they had acted according to what they were admonished, it would have been better for them”_ [An-Nisa: 66]. “The single pronouncement is irrevocable. Return to your wife.”[20]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ أَخْبَرَنِي مُحَمَّدُ بْنُ عَبَّادِ بْنِ جَعْفَرٍ الْمَخْزُومِيُّ أَنَّ الْمُطَّلِبَ بْنَ حَنْطَبٍ جَاءَ إِلَى عُمَرَ بْنِ الْخَطَّابِ فَقَالَ لَهُ: إِنِّي قُلْت لِامْرَأَتِي: أَنْتِ طَالِقٌ أَلْبَتَّةَ، فَتَلَا عُمَرُ {يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] ثُمَّ تَلَا: {وَلَوْ أَنَّهُمْ فَعَلُوا مَا يُوعَظُونَ بِهِ لَكَانَ خَيْرًا لَهُمْ} [النساء: ٦٦] الْوَاحِدَةُ تَبُتُّ ارْجِعْ إِلَى أَهْلِك

L33813 This has been authentically reported from Abān ibn ʿUthmān, Saʿīd ibn Jubayr, Abū Thawr, and Abū Sulaymān, except that Abū Sulaymān said: If he did not intend divorce, it is not a divorce. If he intended two or three, it is one revocable divorce. A third opinion—that he intends, so it becomes what he intended—has been authentically reported from Shurayḥ, and it is the view of Al-Shāfiʿī and his companions.

- وَصَحَّ هَذَا عَنْ أَبَانَ بْنِ عُثْمَانَ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، إلَّا أَنَّ أَبَا سُلَيْمَانَ قَالَ: إنْ لَمْ يَنْوِ طَلَاقًا فَلَيْسَ طَلَاقًا، فَإِنْ نَوَى ثَلَاثًا أَوْ اثْنَتَيْنِ فَهِيَ وَاحِدَةٌ رَجْعِيَّةٌ. وَقَوْلٌ ثَالِثٌ - أَنَّهُ يَنْوِي فَيَكُونُ مَا نَوَى - صَحَّ ذَلِكَ عَنْ شُرَيْحٍ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَصْحَابِهِ.

L33814 A fourth opinion - authentically reported from Ibrāhīm al-Nakhaʿī: that “al-battah” (irrevocable divorce) - if he intends it as a single divorce, it counts as a single irrevocable divorce, and if he intends it as three divorces, it counts as three divorces.

وَقَوْلٌ رَابِعٌ - صَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّ " أَلْبَتَّةَ " إنْ نَوَاهَا طَلْقَةً فَهِيَ وَاحِدَةٌ بَائِنَةٌ، وَإِنْ نَوَاهَا ثَلَاثًا فَهِيَ ثَلَاثٌ.

L33815 The fifth opinion—which is that if he pronounces this to a woman with whom he has consummated the marriage, it counts as three divorces without exception. If he pronounces it to a woman with whom he has not consummated the marriage, it follows his intention: if he intended one, it counts as one; if two, two; if three, three. If he did not specify a number, it counts as three. This is Mālik’s opinion, and this distinction is not known to have been held by any of the early scholars before him—we mean this particular distinction. The sixth opinion—that if he utters this while mentioning divorce, then if he intended one or two divorces, or did not specify a number, it counts as a single irrevocable divorce. If he says, “I intend divorce,” he is not believed. If he says this to her without mentioning divorce, the ruling

وَقَوْلٌ خَامِسٌ - وَهُوَ أَنَّهُ إنْ قَالَ ذَلِكَ لِمَدْخُولٍ بِهَا، فَهِيَ ثَلَاثٌ وَلَا بُدَّ، وَإِنْ قَالَهَا لِغَيْرِ مَدْخُولٍ بِهَا فَهُوَ عَلَى مَا نَوَى: إنْ وَاحِدَةً فَوَاحِدَةٌ، وَإِنْ اثْنَتَيْنِ فَاثْنَتَانِ، وَإِنْ ثَلَاثًا فَثَلَاثٌ - وَإِنْ لَمْ يَنْوِ عَدَدًا فَهِيَ ثَلَاثٌ - وَهُوَ قَوْلُ مَالِكٍ وَلَا يُعْرَفُ هَذَا عَنْ أَحَدٍ مِنْ السَّلَفِ قَبْلَهُ - نَعْنِي هَذَا الْفَرْقَ. وَقَوْلٌ سَادِسٌ - أَنَّهُ إنْ قَالَ ذَلِكَ فِي ذِكْرِ طَلَاقٍ، فَإِنْ نَوَى وَاحِدَةً أَوْ اثْنَتَيْنِ، أَوْ لَمْ يَنْوِ عَدَدًا فَهِيَ وَاحِدَةٌ بَائِنَةٌ، فَإِنْ قَالَ: أَنْوِي طَلَاقًا لَمْ يُصَدَّقْ، فَإِنْ قَالَ لَهَا ذَلِكَ فِي غَيْرِ ذِكْرِ طَلَاقٍ فَكَذَلِكَ سَوَاءً سَوَاءً، إلَّا أَنَّهُ إنْ قَالَ: لَمْ أَنْوِ طَلَاقًا فَصُدِّقَ.

[20] **Qur’an references (L33810):** Qur’an 65:1 (At-Talaq); Qur’an 4:66 (An-Nisa).

applies the same way, except that if he says, “I did not intend divorce,” he is believed.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَأَصْحَابِهِ إِلَّا زُفَرَ بْنَ الْهُذَيْلِ فَإِنَّهُ وَافَقَهُمْ فِي كُلِّ ذَلِكَ، إِلَّا أَنَّهُ قَالَ: إِنْ نَوَى اثْنَتَيْنِ فَهِيَ اثْنَتَانِ بَائِنَتَانِ.

L33816 This is the opinion of Abū Ḥanīfa and his companions except Zufar ibn al-Hudhayl, for he agreed with them in all of that, except that he said: “If he intends two divorces, then they are two irrevocable divorces.”

قَالَ أَبُو مُحَمَّد: وَقَدْ قُلْنَا وَنَقُولُ: لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَا سِيَّمَا فِي أَقْوَالٍ مُخْتَلِفَةٍ لَا بُرْهَانَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا، فَلَمْ يَبْقَ إِلَّا الْآثَارُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: فَأَمَّا الَّتِي مِنْ طَرِيقِ فَاطِمَةَ فَقَدْ بَيَّنَّا قَبْلُ أَنَّهُ قَدْ صَحَّ طَلَاقُ زَوْجِهَا لَهَا كَانَ ثَلَاثًا هَكَذَا، أَوْ آخِرَ ثَلَاثٍ، فَوَجَبَ ضَرُورَةً أَنَّ قَوْلَ مَنْ قَالَ فِي خَبَرِهَا أَلْبَتَّةَ، أَوْ بَتَّ طَلَاقَهَا، أَوْ بَائِنًا أَنَّهُ إِنَّمَا عَنَى مِنْ عِنْدِ نَفْسِهِ آخِرَ ثَلَاثِ طَلْقَاتٍ - فَبَطَلَ التَّعَلُّقُ بِهَا.

L33817–33819 Abū Muḥammad said: We have said and we say: There is no proof in the statement of anyone other than the Messenger of Allah, may Allah bless him and his family and grant him peace. Especially in differing statements where there is no proof validating any of them, nothing remains except the transmitted reports from the Prophet (peace be upon him and his family). As for the report transmitted through Fāṭimah, we previously clarified that her husband’s divorce of her was confirmed as three [acts] in this manner, or as the third and final [act]. It necessarily follows that those who stated in her report “al-battah (as irrevocable),” “he divorced her irrevocably,” or “a Bā’in divorce (irrevocable)” merely intended, from their own perspective, the final one of three pronouncements. Thus, relying on these [statements] as evidence is invalid.

وَأَمَّا حَدِيثُ امْرَأَةِ رِفَاعَةَ فَكَذَلِكَ أَيْضًا -: لِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا عَبْدُ بْنُ حُمَيْدٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ رِفَاعَةَ الْقُرَظِيَّ طَلَّقَ امْرَأَتَهُ فَجَاءَتْ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: يَا رَسُولَ اللَّهِ: إنَّ رِفَاعَةَ طَلَّقَهَا آخِرَ ثَلَاثِ تَطْلِيقَاتٍ - وَذَكَرَتْ الْخَبَرَ» فَفَسَّرَ عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ مَا أَجْمَلَهُ غَيْرُهُ - وَصَحَّ أَنَّ طَلَاقَهُ لَهَا كَانَ آخِرَ ثَلَاثِ تَطْلِيقَاتٍ.

L33820 As for the ḥadīth concerning the wife of Rifāʿah al-Quraẓī, it is similarly established: As transmitted through the chain of Muslim—ʿAbd ibn Ḥumayd narrated to us, who narrated from ʿAbd al-Razzāq, who narrated from Maʿmar, from al-Zuhrī, from ʿUrwah, from ʿĀ’ishah, the Mother of the Believers—that Rifāʿah al-Quraẓī divorced his wife. She came to the Prophet (peace be upon him) and said, “O Messenger of Allāh, Rifāʿah divorced her as the last of three pronouncements of divorce”—and she relayed the narration. ʿAbd al-Razzāq, via Maʿmar, explained what others had summarized, and it was verified that his divorce of her was the final of three pronouncements of divorce.

ثُمَّ نَظَرْنَا فِي خَبَرِ رُكَانَةَ فَوَجَدْنَاهُ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ عَلِيِّ بْنِ يَزِيدَ عَنْ نَافِعٍ عَنْ عُجَيْرٍ - وَكِلَاهُمَا مَجْهُولٌ - وَلَوْ صَحَّ لَقُلْنَا بِهِ مُبَادِرِينَ إلَيْهِ.

L33821 Then we examined the report of Rukānah and found it via the narration of ʿAbd Allāh ibn ʿAlī ibn Yazīd through Nāfiʿ and ʿUjayr—both unknown—and had it been authentic, we would have promptly adhered to it.

L33822 Then we examined the ḥadīth of az-Zubayr ibn Saʿīd and found it weak, for this az-Zubayr is a narrator whose ḥadīths are rejected. Thus, all reliance on

every transmitted report in this matter becomes invalid. It is impermissible to prohibit marital relations for one to whom Almighty Allāh has made it lawful, nor to permit it to one whom Allāh has forbidden it without a Quranic text or a Sunnah - particularly the statements of Mālik and Abū Ḥanīfah, as no one is known to have upheld these two opinions before them.

ثُمَّ نَظَرْنَا فِي حَدِيثِ الزُّبَيْرِ بْنِ سَعِيدٍ فَوَجَدْنَاهُ ضَعِيفًا، وَالزُّبَيْرُ هَذَا مَتْرُوكُ الْحَدِيثِ، فَبَطَلَ التَّعَلُّقُ بِكُلِّ أَثَرٍ فِي هَذِهِ الْمَسْأَلَةِ، وَلَا يَحِلُّ تَحْرِيمُ فَرْجٍ عَلَى مَنْ أَبَاحَهُ اللَّهُ عَزَّ وَجَلَّ لَهُ، وَإِبَاحَتُهُ لِمَنْ حَرَّمَهُ اللَّهُ عَلَيْهِ بِغَيْرِ قُرْآنٍ وَلَا سُنَّةٍ، لَا سِيَّمَا قَوْلُ مَالِكٍ، وَأَبِي حَنِيفَةَ لَا يُعْرَفُ أَحَدٌ قَالَ بِهِمَا قَبْلَهُمَا.

L33823 As for the matter of observing the waiting period: some who care nothing about supporting misguidance by circulating lies fabricated against the Messenger of Allah—peace and blessings be upon him and his household—have claimed that the Messenger of Allah—peace and blessings be upon him and his household—said to Sawdah, the Mother of the Believers: "Observe your waiting period," so it was a divorce, after which he took her back.

وَأَمَّا اعْتِدِّي - فَإِنَّ بَعْضَ مَنْ لَا يُبَالِي بِنَصْرِ ضَلَالَةٍ بِأَنْ يُورِدَ الْكَذِبَ الْمُفْتَرَى عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدْ ادَّعَى «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِسَوْدَةَ أُمِّ الْمُؤْمِنِينَ: اعْتَدِّي، فَكَانَ طَلَاقًا ثُمَّ رَاجَعَهَا» .

L33824 Abu Muhammad said: This is a fabricated falsehood. It has never been authentically established that the Messenger of Allah—may Allah bless him and his household and grant him peace—divorced any of his wives except Hafsa alone, then he reconciled with her. As for Sawda—no—the only report concerning her is that she gave her day and night—when she grew old—to Aisha—may Allah be pleased with her.

قَالَ أَبُو مُحَمَّد: وَهَذَا كَذِبٌ مَوْضُوعٌ مَا صَحَّ قَطُّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - طَلَّقَ امْرَأَةً مِنْ نِسَائِهِ إلَّا حَفْصَةَ فَقَطْ ثُمَّ رَاجَعَهَا، وَأَمَّا سَوْدَةُ فَلَا إنَّمَا جَاءَ فِيهَا: أَنَّهَا وَهَبَتْ يَوْمَهَا وَلَيْلَتَهَا - لَمَّا أَسَنَّتْ - لِعَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا -.

L33825 And it was reported that he—peace and blessings be upon him—intended to divorce her. When she pleaded with him—peace and blessings be upon him—to keep her and would give her day and night to ʿĀ'isha, he did not divorce her.

وَجَاءَ - أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَرَادَ فِرَاقَهَا؟ فَلَمَّا رَغِبَتْ إلَيْهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي إمْسَاكِهَا وَتَجْعَلُ يَوْمَهَا وَلَيْلَتَهَا لِعَائِشَةَ لَمْ يُفَارِقْهَا.

L33826–33827 There remained those below him—peace and blessings be upon him—: it was reported from Ibn Masʿūd that it constitutes one *ṭalāq*.

فَبَقِيَ مَنْ دُونَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: فَذُكِرَ عَنْ ابْنِ مَسْعُودٍ أَنَّهَا طَلْقَةٌ.

L33828 This has also been authentically reported from Ibrāhīm, Makhūl, and al-Awzāʿī; and it is authentically reported from ʿAṭā' that this counts as a valid divorce.

وَصَحَّ هَذَا أَيْضًا عَنْ إبْرَاهِيمَ، وَمَكْحُولٍ، وَالْأَوْزَاعِيِّ - وَصَحَّ عَنْ عَطَاءٍ: أَنَّهُ طَلَاقٌ.

L33829 It is authentically reported from Qatādah that it constitutes a single divorce. If he repeats it three times, it counts as three divorces unless he states: "I intended to make it clear to her," in which case it is as he stated. And it is narrated from Ash-Shaʿbī: It counts as one divorce, even if he intended

وَصَحَّ عَنْ قَتَادَةَ أَنَّهَا طَلْقَةٌ وَاحِدَةٌ، فَإِنْ كَرَّرَهَا ثَلَاثَ مَرَّاتٍ فَهِيَ ثَلَاثُ تَطْلِيقَاتٍ، إلَّا أَنْ يَقُولَ: أَرَدْت إفْهَامَهَا، فَهُوَ كَمَا قَالَ - وَرُوِيَ عَنْ الشَّعْبِيِّ: هِيَ وَاحِدَةٌ، نَوَى ثَلَاثًا

three or fewer than three. From Al-Hasan: If he says, “You are divorced. Observe your waiting period,” it constitutes two divorces unless he intends one. Qatādah would deem it exactly two divorces.

أَوْ أَقَلَّ - وَعَنْ الْحَسَنِ إنْ قَالَ: أَنْتِ طَالِقٌ اعْتَدِّي؟ فَهِيَ اثْنَتَانِ، إلَّا أَنْ يَنْوِيَ وَاحِدَةً - وَكَانَ قَتَادَةُ يَجْعَلُهَا اثْنَتَيْنِ.

L33830 Abu Hanifa said: If he intended divorce by his statement “Count your waiting period,” then it is a divorce. If he says, “I did not intend divorce,” and this occurred neither in anger nor in a situation where divorce is mentioned, he is believed. However, if it was during a discussion of divorce or in anger, he is disbelieved, and one revocable divorce is binding upon him—whether he said, “I did not intend divorce,” or said, “I intended [divorce] without a specific number,” or said, “I intended a revocable divorce,” or said, “I intended an irrevocable divorce,” or said, “I intended two revocable divorces,” or said, “I intended two irrevocable divorces,” or said, “I intended three divorces.”

وَقَالَ أَبُو حَنِيفَةَ: إنْ نَوَى بِقَوْلِهِ: اعْتَدِّي، طَلَاقًا فَهُوَ طَلَاقٌ، وَإِنْ قَالَ: لَمْ أَنْوِ طَلَاقًا، فَإِنْ كَانَ فِي غَيْرِ غَضَبٍ، وَفِي غَيْرِ ذَلِكَ طَلَاقٌ صُدِّقَ، وَإِنْ كَانَ فِي ذِكْرِ طَلَاقٍ أَوْ فِي غَضَبٍ لَمْ يُصَدَّقْ وَلَزِمَتْهُ طَلْقَةٌ وَاحِدَةٌ رَجْعِيَّةٌ، سَوَاءٌ قَالَ: لَمْ أَنْوِ طَلَاقًا أَوْ قَالَ: نَوَيْت بِلَا عَدَدٍ، أَوْ قَالَ: نَوَيْت طَلْقَةً رَجْعِيَّةً، أَوْ قَالَ: نَوَيْت بَائِنَةً، أَوْ قَالَ: نَوَيْت طَلْقَتَيْنِ رَجْعِيَّتَيْنِ، أَوْ قَالَ: نَوَيْت طَلْقَتَيْنِ بَائِنَتَيْنِ، أَوْ قَالَ: نَوَيْت ثَلَاثًا.

L33831 They said: If he says to her, “Observe the waiting period, observe the waiting period, observe the waiting period?” If he states, “I intended one divorce,” or says, “I did not intend anything,” it is inevitably three. If he says, “I intended the first as a divorce, and intended the two subsequent declarations to refer to menstrual periods,” he is believed. They said: If he says, “Observe three waiting periods,” his intention is scrutinized. If he says, “I intended one divorce for which she observes three menstrual periods,” he is believed.

قَالُوا: فَإِنْ قَالَ لَهَا: اعْتَدِّي اعْتَدِّي اعْتَدِّي؟ فَإِنْ قَالَ: نَوَيْت طَلْقَةً وَاحِدَةً، أَوْ قَالَ: لَمْ أَنْوِ شَيْئًا - فَهِيَ ثَلَاثٌ وَلَا بُدَّ، وَإِنْ قَالَ: نَوَيْت بِالْأُولَى طَلَاقًا، وَنَوَيْت بِالِاثْنَتَيْنِ الْحَيْضَ صُدِّقَ - قَالُوا فَإِنْ قَالَ: اعْتَدِّي ثَلَاثًا، سُئِلَ عَنْ نِيَّتِهِ، فَإِنْ قَالَ: نَوَيْت وَاحِدَةً تَعْتَدُّ لَهَا ثَلَاثَ حِيَضٍ صُدِّقَ.

L33832 Abu Muhammad said: These are divine statutes that are not accepted from anyone except the Messenger of Allah—may Allah bless him and his family and grant him peace—as conveyed from Allah the Exalted, who is not questioned about what He does. As for anyone beyond him, these are deviations, sinister whispers, and mockery—and we seek refuge in Allah from abandonment! Moreover, these very corrupt classifications were not transmitted from any predecessor before Abu Hanifah.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ شَرَائِعُ لَا تُقْبَلُ مِنْ أَحَدٍ إلَّا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ اللَّهِ تَعَالَى الَّذِي لَا يُسْأَلُ عَمَّا يَفْعَلُ، وَأَمَّا مَنْ دُونَهُ فَهِيَ ضَلَالَاتٌ وَوَسَاوِسُ وَتَلَاعُبٌ - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ؟ مَعَ أَنَّ هَذِهِ التَّقَاسِيمَ الْفَاسِدَةَ لَمْ تُحْفَظْ عَنْ أَحَدٍ سَلَفَ قَبْلَ أَبِي حَنِيفَةَ.

L33833 Malik said: If a man says to his wife, “Observe the waiting period,” he must intend. If he says, “I did not intend a divorce,” his claim is not accepted, and a revocable divorce becomes binding on him. Similarly, if he intended a divorce without specifying a number—if he says, “I intended two divorces,” then it is two divorces; if he says, “I intended three divorces,” then it is three divorces. This is also a classification not known from anyone before him.

وَقَالَ مَالِكٌ: إنْ قَالَ لِامْرَأَتِهِ: اعْتَدِّي؟ فَإِنَّهُ يَنْوِي فَإِنْ قَالَ: لَمْ أَنْوِ طَلَاقًا لَمْ يُصَدَّقْ وَلَزِمَتْهُ طَلْقَةٌ رَجْعِيَّةٌ - وَكَذَلِكَ إنْ نَوَى طَلَاقًا بِغَيْرِ عَدَدٍ، فَإِنْ قَالَ: نَوَيْت اثْنَتَيْنِ فَهِيَ اثْنَتَانِ، وَإِنْ قَالَ: نَوَيْت ثَلَاثًا فَهِيَ ثَلَاثٌ - وَهَذَا أَيْضًا تَقْسِيمٌ لَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُ،

Since there is no established precedent from the Messenger of Allah—peace and blessings be upon him and his family—regarding this matter, it is impermissible to invalidate a valid marriage, declare her private part forbidden, or make it lawful through unsound opinions lacking textual evidence. And success is from Allah, the Most High.

فَإِذْ لَيْسَ فِي هَذَا أَثَرٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَلَا يَحِلُّ إبْطَالُ نِكَاحٍ صَحِيحٍ وَتَحْرِيمُ فَرْجٍ وَإِحْلَالُهُ بِآرَاءٍ فَاسِدَةٍ بِغَيْرِ نَصٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33834–33836 As for the terms accompanied by narrations from the Companions – may Allah be pleased with them – but not from the Prophet – peace and blessings of Allah be upon him and his family – They are: the declaration of freedom (khaliyyah), as in "I have freed myself from you," and the mutual separation (bariyyah), as in "I have severed ties with you," and you are absolved, "your rope is upon your back," the constrained divorce (haraj), the option (takhyir), the delegation (tamlik), and "I have bestowed [the choice] upon you." As for the prohibition (tahrim), the option (takhyir), the delegation (tamlik), and "I have bestowed upon you," we have mentioned these. We shall now mention the remaining types here—if Allah the Exalted wills. Among them is the khaliyyah: it has been narrated to us through the chain of Abdullah ibn Ahmad ibn Hanbal, from his father, from Muhammad ibn Ja'far, from Shu'bah, from 'Ata' ibn al-Sa'ib, from Abu al-Bakhtari, from 'Ali ibn Abi Talib, who said concerning the khaliyyah: "It comprises three types."

وَأَمَّا الْأَلْفَاظُ الَّتِي فِيهَا آثَارٌ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَهِيَ: الْخَلِيَّةُ، وَقَدْ خَلَوْت مِنِّي، وَالْبَرِيَّةُ وَقَدْ بَارَأْتُك، وَأَنْتِ مُبْرَأَةٌ، وَحَبْلُك عَلَى غَارِبِك، وَالْحَرَجُ، وَالتَّخْيِيرُ، وَالتَّمْلِيكُ، وَقَدْ وَهَبْتُك -: فَأَمَّا التَّحْرِيمُ وَالتَّخْيِيرُ وَالتَّمْلِيكُ وَقَدْ وَهَبْتُك، فَقَدْ ذَكَرْنَاهَا وَنَذْكُرُ الْبَوَاقِيَ هَاهُنَا - إنْ شَاءَ اللَّهُ تَعَالَى -: فَمِنْ ذَلِكَ: الْخَلِيَّةُ - رُوِّينَا مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ عَنْ أَبِيهِ عَنْ مُحَمَّدِ بْنِ جَعْفَرٍ عَنْ شُعْبَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي الْبَخْتَرِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ فِي الْخَلِيَّةِ: إنَّهَا ثَلَاثٌ.

L33837 And through the chain of Ḥammād ibn Salamah from 'Ubayd Allāh ibn 'Umar from Nāfi' from Ibn 'Umar, he said regarding the *khaliyyah*: "It is three [divorces]" — and this is the opinion of Ibn Abī Laylā and Abū 'Ubayd. Another opinion — as narrated through the chain of 'Abd al-Razzāq from Sufyān al-Thawrī from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakha'ī — states that 'Umar ibn al-Khaṭṭāb said regarding the *khaliyyah*: "It is one [divorce], and he retains the right to revoke it."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ فِي الْخَلِيَّةِ: إنَّهَا ثَلَاثٌ - وَهَذَا قَوْلُ ابْنِ أَبِي لَيْلَى، وَأَبِي عُبَيْدٍ. وَقَوْلٌ ثَانٍ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي الْخَلِيَّةِ: هِيَ وَاحِدَةٌ وَهُوَ أَحَقُّ بِهَا.

L33838 It is authentically narrated from al-Zuhri and Qatāda that they both stated regarding *khul'* and the phrase "you have become free of me" that these constitute a single irrevocable divorce. This is also narrated from al-Ḥasan and ʿAṭāʾ, and it is the opinion of Abū Thawr.

وَصَحَّ عَنْ الزُّهْرِيِّ وَقَتَادَةَ أَنَّهُمَا قَالَا جَمِيعًا فِي الْخَلِيَّةِ، وَخَلَوْت عَنِّي: هِيَ وَاحِدَةٌ رَجْعِيَّةٌ - وَصَحَّ عَنْ الْحَسَنِ أَيْضًا، وَعَنْ عَطَاءٍ - وَهُوَ قَوْلُ أَبِي ثَوْرٍ.

L33839 A third legal opinion—as we were narrated through Hammad ibn Salamah's chain from Marwan al-Asfar, who said: A man told his wife, "If you leave the house, you are divorced." She left, so Mu'āwiyah ibn Abī Sufyān annulled

their marriage. This constituted only an annulment, with no mention of it being a formal divorce.

وَقَوْلٌ ثَالِثٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مَرْوَانَ الْأَصْفَرِ قَالَ: قَالَ رَجُلٌ لِامْرَأَتِهِ: إنْ خَرَجْت فَأَنْتِ خَلِيَّةٌ، فَخَرَجَتْ: فَفَرَّقَ مُعَاوِيَةُ بْنُ أَبِي سُفْيَانَ بَيْنَهُمَا - فَهَذَا تَفْرِيقٌ فَقَطْ وَلَمْ يَذْكُرْ أَنَّهُ طَلَاقٌ.

L33840 And a fourth opinion—as we have been narrated through the chain of Ḥammād ibn Salamah from Ziyād al-Aʿlam from al-Ḥasan, who said regarding al-khalīyah: He said, “It is a single irrevocable.”

وَقَوْلٌ رَابِعٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ زِيَادٍ الْأَعْلَمِ عَنْ الْحَسَنِ قَالَ فِي الْخَلِيَّةِ، قَالَ: هِيَ وَاحِدَةٌ بَائِنَةٌ.

L33841 A fifth opinion—authentically reported from Ibrāhīm al-Nakhaʿī—is that he said: Our companions used to say: In a khulʿ divorce, if one intends a single [declaration], it counts as a single irrevocable divorce (bā’in); and if one intends three, then three are effected.

وَقَوْلٌ خَامِسٌ - صَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ: كَانَ أَصْحَابُنَا يَقُولُونَ: الْخَلِيَّةُ إنْ نَوَى وَاحِدَةً فَهِيَ وَاحِدَةٌ بَائِنَةٌ - وَإِنْ نَوَى ثَلَاثًا فَهِيَ ثَلَاثٌ.

L33842 From the chain of Wakiʿ, from al-Ḥasan ibn Ḥayy, from al-Mughīrah ibn Miqsam, from Ibrāhīm al-Nakhaʿī, who said regarding the non-pregnant ewe: “If two are vowed, they count as two.”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الْحَسَنِ بْنِ حَيٍّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ فِي الْخَلِيَّةِ: إنْ نَوَى اثْنَتَيْنِ فَهِيَ اثْنَتَانِ.

L33843 It has been authentically reported from Shuraih that he said: “He judges. If he intends one, it is a single irrevocable ruling.”

وَصَحَّ عَنْ شُرَيْحٍ أَنَّهُ قَالَ: يَدِينُ، فَإِنْ نَوَى وَاحِدَةً فَهِيَ وَاحِدَةٌ بَائِنَةٌ.

L33844–33846 It is authentically reported from ‘Aṭā’ that he said: “Whether you declare, ‘You are free’ or ‘You have been freed from me,’ it is equivalent. This is the established Sunnah. No sin is incurred.” It is a divorce—and it is authentically reported from Amr ibn Dinar that “it is only one, and he is bound by it religiously”—whether he intended divorce or did not intend it.

وَصَحَّ عَنْ عَطَاءٍ أَنَّهُ قَالَ: أَنْتِ خَلِيَّةٌ، أَوْ خَلَوْت مِنِّي سَوَاءٌ، هِيَ سُنَّةٌ، لَا يَدِينُ، وَهِيَ طَلَاقٌ - وَصَحَّ عَنْ عَمْرِو بْنِ دِينَارٍ: إنَّمَا هِيَ وَاحِدَةٌ وَيَدِينُ - نَوَى طَلَاقًا أَوْ لَمْ يَنْوِ.

L33847 From Marwān and ʿUmar ibn ʿAbd al-ʿAzīz: that one forms the intention and becomes bound by what one intends—and this is the position of al-Shāfiʿī and Isḥāq ibn Rāhwayh. A sixth opinion—narrated from Rabīʿah regarding al-khaliyyah—is that it entails three pronouncements in the case of a consummated marriage and one pronouncement in the case of a non-consummated marriage.

وَعَنْ مَرْوَانَ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ يَنْوِي وَيَلْزَمُهُ مَا نَوَى - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ. وَقَوْلٌ سَادِسٌ - رُوِيَ عَنْ رَبِيعَةَ فِي الْخَلِيَّةِ أَنَّهَا ثَلَاثٌ فِي الْمَدْخُولِ بِهَا، وَفِي غَيْرِ الْمَدْخُولِ بِهَا وَاحِدَةٌ.

L33848 The seventh opinion—stated by Mālik—is that the waiting period for a woman in a consummated marriage must be three cycles without exception, while for a woman in a non-consummated marriage: if he intended three

cycles, it is three; if he intended two, it is two; and if he intended one, it is one. This classification was not known from anyone before him.

وَقَوْلٌ سَابِعٌ - قَالَهُ مَالِكٌ، وَهُوَ أَنَّ الْخَلِيَّةَ فِي الْمَدْخُولِ بِهَا ثَلَاثٌ وَلَا بُدَّ، وَفِي غَيْرِ الْمَدْخُولِ بِهَا إنْ نَوَى ثَلَاثًا فَثَلَاثٌ، وَإِنْ نَوَى اثْنَتَيْنِ فَهِيَ اثْنَتَانِ، وَإِنْ نَوَى وَاحِدَةً فَوَاحِدَةٌ - وَلَا يُعْرَفُ هَذَا التَّقْسِيمُ عَنْ أَحَدٍ قَبْلَهُ.

L33849 The eighth opinion—held by Abū Ḥanīfah, his companions, and Sufyān al-Thawrī—states: If one intends three divorces through al-khalīyah, it is three. However, if one intends one or two, it is a single irrevocable divorce (bāʾin) only.

وَقَوْلٌ ثَامِنٌ - قَالَهُ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، وَسُفْيَانُ الثَّوْرِيُّ: إنْ نَوَى بِالْخَلِيَّةِ ثَلَاثًا فَهِيَ ثَلَاثٌ، وَإِنْ نَوَى وَاحِدَةً أَوْ اثْنَتَيْنِ فَهِيَ وَاحِدَةٌ بَائِنَةٌ فَقَطْ.

L33850 Abu Hanifa and his companions said: If a man declares, "I did not intend a divorce," then if he said this in the context of mentioning divorce, he is not believed and one irrevocable divorce becomes binding upon him. And if he made this declaration in a context unrelated to mentioning divorce, he is believed—whether it was not in anger or in anger.

قَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: فَإِنْ قَالَ: لَمْ أَنْوِ طَلَاقًا، فَإِنْ كَانَ فِي ذِكْرِ طَلَاقٍ لَمْ يُصَدَّقْ وَلَزِمَتْهُ وَاحِدَةٌ بَائِنَةٌ، وَإِنْ كَانَ فِي غَيْرِ ذِكْرِ طَلَاقٍ صُدِّقَ - سَوَاءٌ كَانَ فِي غَيْرِ غَضَبٍ أَوْ فِي غَضَبٍ.

L33851 Abu Muhammad said: Among the abominations are his differentiating between anger and non-anger, and his once equating the two - all of which was not known from anyone before him.

قَالَ أَبُو مُحَمَّدٍ: إنَّ مِنْ الشُّنْعِ تَفْرِيقَهُ بَيْنَ الْغَضَبِ وَغَيْرِ الْغَضَبِ، وَتَسْوِيَتِهِ مَرَّةً بَيْنَهُمَا - وَهَذَا كُلُّهُ لَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُ.

L33852 We have stated: Prohibiting what is permitted in marital relations or permitting what is prohibited is not permissible for anyone without a Quranic text or a Sunnah from the Messenger of Allah—may Allah bless him and his family and grant him peace.

وَقَدْ قُلْنَا: إنَّ تَحْرِيمَ الْفُرُوجِ الْمُحَلَّلَةِ وَتَحْلِيلَ الْفُرُوجِ الْمُحَرَّمَةِ: لَا يَحِلُّ لِأَحَدٍ بِغَيْرِ نَصِّ قُرْآنٍ أَوْ سُنَّةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L33853 As for *al-bariyyah* (a juristic divorce oath): "You are absolved from me, we have mutually parted, and I am free from me"—it was narrated to us through the chain of ʿAbdullāh ibn Aḥmad ibn Ḥanbal from his father, from Muḥammad ibn Jaʿfar, from Shuʿbah, from ʿAṭāʾ ibn al-Sāʾib, from Abū al-Bakhtarī, from ʿAlī ibn Abī Ṭālib that he said regarding *al-bariyyah*: "It entails three [declarations]."

وَأَمَّا الْبَرِيَّةُ، وَأَنْتِ مُبْرَأَةٌ مِنِّي، وَقَدْ بَارَأْتُك، وَقَدْ بَرِئْت مِنِّي: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ عَنْ أَبِيهِ عَنْ مُحَمَّدِ بْنِ جَعْفَرٍ عَنْ شُعْبَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي الْبَخْتَرِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ فِي الْبَرِيَّةِ: هِيَ ثَلَاثٌ.

L33854 Narrated via the chain of Hammad ibn Salamah, from Ubayd Allah ibn Umar, from Nafiʾ, from Ibn Umar: He said regarding wild animals, "There are three types."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ قَالَ فِي الْبَرِيَّةِ: هِيَ ثَلَاثٌ.

- وَمِنْ طَرِيقِ قَتَادَةَ عَنْ الْحَسَنِ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: الْبَرِيَّةُ ثَلَاثٌ.

L33855 And from the chain of Qatadah, from Al-Hasan, from Zayd ibn Thabit, who said: Oaths are of three types.

وَصَحَّ عَنْ قَتَادَةَ، وَالزُّهْرِيِّ: أَنَّ الْبَرِيَّةَ ثَلَاثٌ.

L33856 It has been authentically reported from Qatadah and Az-Zuhri that creation comprises three categories.

وَصَحَّ عَنْ الْحَسَنِ أَيْضًا - فَفَرَّقَ الزُّهْرِيُّ، وَقَتَادَةُ بَيْنَ الْخَلِيَّةِ وَبَيْنَ الْبَرِيَّةِ كَمَا ذَكَرْنَا.

L33857–33858 It has also been authentically reported from Al-Ḥasan that Az-Zuhri and Qatādah differentiated between free-ranging and wild animals, as mentioned previously.

وَهُوَ قَوْلُ ابْنِ وَهْبٍ صَاحِبُ مَالِكٍ.

L33859 And this is the statement of Ibn Wahb, the companion of Malik.

وَقَوْلٌ ثَانٍ - كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي الْبَرِيَّةِ: هِيَ وَاحِدَةٌ، وَهُوَ أَحَقُّ بِهَا - وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ: أَنَّ الْبَرِيَّةَ وَاحِدَةٌ - وَهُوَ قَوْلُ أَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا، وَبَعْضِ أَصْحَابِ مَالِكٍ.

L33860 A second opinion, as reported to us via the chain of Wakīʿ from Sufyān al-Thawrī from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakhaʿī: that ʿUmar ibn al-Khaṭṭāb ruled concerning barren land: It is considered a single unit, and the claimant holds the strongest entitlement to it. We also received reports from Ibn ʿAbbās that barren land constitutes a single unit. This is the position of Abū Thawr, Abū Sulaymān, our school's scholars, and some Mālikī jurists.

وَقَوْلٌ ثَالِثٌ - صَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ: كَانَ أَصْحَابُنَا يَقُولُونَ فِي الْبَرِيَّةِ: هِيَ وَاحِدَةٌ بَائِنَةٌ.

L33861 A third opinion—it has been authentically reported from Ibrāhīm al-Nakhaʿī that he said: "Our companions used to say regarding the wilderness: It is one irrevocable divorce."

وَقَوْلٌ رَابِعٌ - كَمَا رُوِّينَا صَحِيحًا عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ أَصْحَابُنَا يَقُولُونَ فِي الْبَرِيَّةِ: إنْ نَوَى ثَلَاثًا فَثَلَاثٌ، وَإِنْ نَوَى وَاحِدَةً فَوَاحِدَةٌ بَائِنَةٌ - وَصَحَّ عَنْ إبْرَاهِيمَ أَيْضًا - وَإِنْ نَوَى اثْنَتَيْنِ فَاثْنَتَانِ - وَهُوَ قَوْلُ الشَّعْبِيِّ، وَعَطَاءٍ، وَعَمْرِو بْنِ دِينَارٍ، وَالشَّافِعِيِّ.

L33862 A fourth opinion—as we have authentically reported from Ibrāhīm al-Nakhaʿī, who said: "Our companions ruled regarding the wilderness: If he intends three, then three; if he intends one, then one final divorce." It is also authentically reported from Ibrāhīm: "If he intends two, then two." This is the opinion of al-Shaʿbī, ʿAṭāʾ, ʿAmr ibn Dīnār, and al-Shāfiʿī.

وَقَوْلٌ خَامِسٌ - قَالَهُ رَبِيعَةُ فِي الْمَدْخُولِ بِهَا ثَلَاثٌ وَلَا بُدَّ، وَفِي غَيْرِ الْمَدْخُولِ بِهَا وَاحِدَةٌ.

L33863 A fifth opinion, stated by Rabiʿah, is that for the consummated woman three are obligatory, and for the unconsummated woman, one.

L33864 A sixth opinion—stated by Mālik regarding a bride not yet secluded: For a consummated wife, three [divorce declarations] are necessarily required,

and for a non-consummated wife, one, unless the husband intends a greater number, in which case the number he intended applies.

وَقَوْلٌ سَادِسٌ - قَالَهُ مَالِكٌ فِي الْبَرِيَّةِ: فِي الْمَدْخُولِ بِهَا ثَلَاثٌ وَلَا بُدَّ، وَفِي غَيْرِ الْمَدْخُولِ بِهَا وَاحِدَةٌ، إلَّا أَنْ يَنْوِيَ أَكْثَرَ فَيَكُونَ مَا نَوَى.

L33865 The seventh opinion—held by Abū Ḥanīfah and his companions except Zufar and Sufyān al-Thawrī—is that if one intends three divorces, they are counted as three. But if one intends one revocable divorce or one irrevocable divorce, or two revocable divorces or two irrevocable divorces, then it is deemed a single irrevocable divorce and no more.

وَقَوْلٌ سَابِعٌ - قَالَهُ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ - إلَّا زُفَرُ، وَسُفْيَانُ الثَّوْرِيُّ: إنْ نَوَى ثَلَاثًا فَهِيَ ثَلَاثٌ، وَإِنْ نَوَى وَاحِدَةً رَجْعِيَّةً، أَوْ بَائِنَةً، أَوْ اثْنَتَيْنِ رَجْعِيَّتَيْنِ، أَوْ بَائِنَتَيْنِ، فَهِيَ وَاحِدَةٌ بَائِنَةٌ لَا أَكْثَرَ.

L33866 Abu Hanifa and his companions stated: If a man says, "I did not intend divorce," his statement is not accepted if made within the context of divorce. If it occurs outside such a context, his statement is accepted—whether he was in a state of anger or not.

قَالَ أَبُو حَنِيفَةَ: وَأَصْحَابُهُ: إنْ قَالَ: لَمْ أَنْوِ طَلَاقًا، فَإِنْ كَانَ فِي ذِكْرِ طَلَاقٍ لَمْ يُصَدَّقْ، فَإِنْ كَانَ فِي غَيْرِ ذِكْرِ طَلَاقٍ فَهُوَ مُصَدَّقٌ - سَوَاءٌ كَانَ ذَلِكَ فِي ذِكْرِ غَضَبٍ أَوْ فِي غَيْرِ ذِكْرِ غَضَبٍ.

L33867 Zufar similarly said, except that he stated: And if one intends two [acts], then they are two separate acts.

وَقَالَ زُفَرُ كَذَلِكَ، إلَّا أَنَّهُ قَالَ: وَإِنْ نَوَى اثْنَتَيْنِ فَهِيَ اثْنَتَانِ بَائِنَتَانِ.

L33868–33870 Abu Muhammad said: We do not know of any statement by Malik and Abu Hanifah attributed to anyone before them, nor is there any proof in... anyone other than the Messenger of Allah (may Allah bless him and his family and grant him peace), and they apply the same ruling to the phrases "al-bariyyah" and "I have irrevocably divorced you, and you are irrevocably divorced," except in a narration reported from Ibn al-Qasim, the disciple of Malik, for he said: "Whoever says, 'I have divorced you,' it constitutes a single irrevocable divorce for a wife whose marriage has been consummated."

قَالَ أَبُو مُحَمَّدٍ: لَا نَعْلَمُ قَوْلَ مَالِكٍ، وَأَبِي حَنِيفَةَ عَنْ أَحَدٍ قَبْلَهُمَا، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَسَوَاءٌ عِنْدَهُمْ " الْبَرِيَّةُ، وَقَدْ بَارَأْتُك، وَأَنْتِ مُبْرَأَةٌ " إلَّا رِوَايَةً عَنْ ابْنِ الْقَاسِمِ صَاحِبِ مَالِكٍ، فَإِنَّهُ قَالَ: مَنْ قَالَ: قَدْ بَارَأْتُك، فَهِيَ وَاحِدَةٌ بَائِنَةٌ فِي الْمَدْخُولِ بِهَا.

L33871 Abu Muhammad said: It is not permissible to prohibit a lawful sexual union decreed by Allah, the Mighty and Majestic, nor to permit a union forbidden by the decree of Allah, the Exalted, without a scriptural text—and success is from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: لَا يَحِلُّ تَحْرِيمُ فَرْجٍ مُحَلَّلٍ بِحُكْمِ اللَّهِ عَزَّ وَجَلَّ، وَتَحْلِيلُ فَرْجٍ مُحَرَّمٍ بِحُكْمِهِ تَعَالَى بِغَيْرِ نَصٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33872 As for al-ḥaraj, it is established from ʿAlī that he said: If a man says, "You are divorced with a divorce under compulsion," then it counts as three divorces.

وَأَمَّا الْحَرَجُ - فَصَحَّ عَنْ عَلِيٍّ أَنَّهُ قَالَ: إذَا قَالَ: أَنْتِ طَالِقٌ طَلَاقَ الْحَرَجِ فَهِيَ ثَلَاثٌ.

L33873 And it has been authenticated: from al-Ḥasan as well as from al-Zuhrī in one of his two opinions.

وَصَحَّ - عَنْ الْحَسَنِ أَيْضًا، وَعَنْ الزُّهْرِيِّ فِي أَحَدِ قَوْلَيْهِ.

L33874 And a second opinion – from Umar ibn al-Khattab: “It is one” – and it is one of the two opinions of al-Zuhri.

وَقَوْلٌ ثَانٍ - عَنْ عُمَرَ بْنِ الْخَطَّابِ: هِيَ وَاحِدَةٌ - وَهُوَ أَحَدُ قَوْلَيْ الزُّهْرِيِّ.

L33875 A third view—Sufyān al-Thawrī said: “His intention is his own”—and this is the view of Isḥāq ibn Rāhawayh.

وَقَوْلٌ ثَالِثٌ - قَالَ سُفْيَانُ الثَّوْرِيُّ: لَهُ نِيَّتُهُ - وَهُوَ قَوْلُ إِسْحَاقَ بْنِ رَاهْوَيْهِ.

L33876 Abu Muhammad said, “We have stated that there is no binding authority for anyone other than the Messenger of Allah (peace be upon him).”

قَالَ أَبُو مُحَمَّدٍ: قَدْ قُلْنَا: إنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L33877 As for the phrase “your obligation is upon your own shoulders” - it was narrated to us from Mālik that ʿUmar ordered a man from Iraq to be brought to Mecca. The man had said to his wife: “Your obligation is upon your own shoulders (meaning separation).” ʿUmar made him swear an oath near the Kaaba, demanding: “What did you intend?” The man replied: “I intended separation.” ʿUmar then declared: “Then it shall be as you intended.” This ruling encompassed three aspects: the first was the swearing of the oath.

وَأَمَّا حَبْلُك عَلَى غَارِبِك - فَرُوِّينَا عَنْ مَالِكٍ: أَنَّ عُمَرَ كَتَبَ: أَنْ يُجْلَبَ إلَى مَكَّةَ رَجُلٌ مِنْ الْعِرَاقِ قَالَ لِامْرَأَتِهِ: حَبْلُك عَلَى غَارِبِك، فَأَحْلَفَهُ عِنْدَ الْكَعْبَةِ: مَاذَا أَرَادَ؟ فَقَالَ: أَرَدْت الْفِرَاقَ، فَقَالَ لَهُ عُمَرُ: فَهُوَ مَا أَرَدْت - فَجَمَعَ هَذَا الْحُكْمُ ثَلَاثَةَ أَوْجُهٍ -: أَحَدُهَا - التَّحْلِيفُ.

L33878 And the second is its procurement from Iraq to Makkah.

وَالثَّانِي - الِاسْتِجْلَابُ فِيهِ مِنْ الْعِرَاقِ إلَى مَكَّةَ.

L33879 The third principle—that it is according to what one intends—and we have received narrations from Ali that this is the case.

وَالثَّالِثُ - أَنَّهُ عَلَى مَا نَوَى - وَرُوِّينَا عَنْ عَلِيٍّ أَنَّهُ عَلَى مَا نَوَى.

L33880 A second opinion—stated by Mālik: “Your rope is on your camel’s hump”—prescribes three waiting periods for a consummated marriage and none for a non-consummated marriage. This ruling is not known from anyone before him.

وَقَوْلٌ ثَانٍ - قَالَهُ مَالِكٌ: حَبْلُك عَلَى غَارِبِك، فِي الْمَدْخُولِ بِهَا ثَلَاثٌ، وَفِي غَيْرِ الْمَدْخُولِ بِهَا وَاحِدَةٌ - وَلَا يُعْرَفُ هَذَا عَنْ أَحَدٍ قَبْلَهُ.

L33881 As for the expressions not transmitted from any Companion among the Companions—may Allah be pleased with them—but rather reported in statements by certain Successors, we shall mention what Allah the Exalted has made easy to mention, if Allah, the Exalted and Majestic, wills. Among these is the declaration “I have emancipated you.” It has been reported to us from ʿAṭāʾ: If he intended divorce, it constitutes divorce; otherwise, it is nothing.

وَأَمَّا الْأَلْفَاظُ الَّتِي لَمْ تَأْتِ مِنْهَا لَفْظَةٌ عَنْ صَاحِبٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَإِنَّمَا جَاءَ فِيهَا أَقْوَالٌ عَنْ نَفَرٍ مِنْ التَّابِعِينَ، فَنَذْكُرُ مِنْهَا مَا يَسَّرَ اللَّهُ تَعَالَى لِذِكْرِهِ إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ -: فَمِنْهَا - قَدْ أَعْتَقْتُك، فَرُوِّينَا عَنْ عَطَاءٍ: إنْ نَوَى الطَّلَاقَ فَهُوَ طَلَاقٌ، وَإِلَّا فَلَيْسَ شَيْئًا -.

L33882–33883 It is authentically reported from Al-Hasan concerning one who says to his wife, “You are divorced,” that he said: It constitutes one irrevocable divorce.

وَصَحَّ عَنْ الْحَسَنِ فِيمَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ عَتِيقَةٌ، قَالَ: هِيَ وَاحِدَةٌ -.

L33884 Qatadah said: Whoever says to her, “You are free,” his intention is binding.

وَقَالَ قَتَادَةُ: مَنْ قَالَ لَهَا: أَنْتِ حُرَّةٌ فَلَهُ مَا نَوَى.

L33885 As for the statement, “I have permitted you, so marry?” it has been reliably transmitted from Ibrāhīm that it is baseless.

وَأَمَّا - قَدْ أَذِنْت لَك فَتَزَوَّجِي؟ فَصَحَّ عَنْ إبْرَاهِيمَ أَنَّهُ لَيْسَ بِشَيْءٍ.

L33886 It has also been authentically reported from him: If he did not intend a divorce, then it is invalid.

وَصَحَّ عَنْهُ أَيْضًا: إنْ لَمْ يَنْوِ طَلَاقًا فَلَيْسَ بِشَيْءٍ.

L33887 On the authority of Al-Shaʿbī: Even less than this is considered a divorce.

وَعَنْ الشَّعْبِيِّ: أَقَلُّ مِنْ هَذَا يَكُونُ طَلَاقًا.

L33888 It is authentically reported from Qatādah that this constitutes a single pronouncement of divorce.

وَصَحَّ عَنْ قَتَادَةَ: أَنَّهَا طَلْقَةٌ.

L33889 It has been reported from Al-Ḥasan that it is a single revocable divorce.

وَرُوِيَ عَنْ الْحَسَنِ: هِيَ طَلْقَةٌ رَجْعِيَّةٌ.

L33890 As for: “Leave my house—what keeps you here? Are you not my wife?”—it is established from Al-Hasan that he said: “Whoever repeats it three times, it is one [divorce], and he intends.”

وَأَمَّا - اُخْرُجِي عَنْ بَيْتِي مَا يُجْلِسُك، لَسْتِ لِي بِامْرَأَةٍ؟ فَصَحَّ عَنْ الْحَسَنِ أَنَّهُ قَالَ: مَنْ كَرَّرَهَا ثَلَاثًا فَهِيَ وَاحِدَةٌ، وَيَنْوِي.

L33891 As for “I have no need in you”—it is soundly established from Ibrāhīm that he said, “His intention is his own.”

وَأَمَّا - لَا حَاجَةَ لِي فِيك - فَصَحَّ عَنْ إبْرَاهِيمَ أَنَّهُ قَالَ: لَهُ نِيَّتُهُ.

L33892 Al-Hasan held that if a man intends divorce, it counts as one pronouncement of divorce, whereas Makhul maintained that it holds no legal weight.

وَعَنْ الْحَسَنِ: إنْ نَوَى الطَّلَاقَ فَهِيَ طَلْقَةٌ، وَعَنْ مَكْحُولٍ: لَيْسَ بِشَيْءٍ.

L33893 And from the narration of Waki‘ through Shu‘bah: I asked al-Ḥakam ibn ‘Utaybah and Ḥammād ibn Abī Sulaymān about a man who said to his wife, “Go wherever you wish; I have no need of you.” They both said: If he intended divorce, then it is a single revocable divorce.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَمَّنْ قَالَ لِامْرَأَتِهِ: اذْهَبِي حَيْثُ شِئْت، لَا حَاجَةَ لِي فِيك؟ فَقَالَا جَمِيعًا: إنْ نَوَى طَلَاقًا فَهِيَ وَاحِدَةٌ رَجْعِيَّةٌ.

L33894 As for “Wait out the istibrāʾ period, depart, and go”—it is authentically reported from Al-Hasan concerning all of them: If he intended divorce, it constitutes one divorce. It is also authentically reported from Al-Hasan regarding one who says to his wife: “Go, I have no need in you”—that it constitutes three divorces.

وَأَمَّا - اسْتَبْرِئِي، وَاخْرُجِي، وَاذْهَبِي - فَصَحَّ عَنْ الْحَسَنِ فِي جَمِيعِهَا: إنْ نَوَى الطَّلَاقَ فَهِيَ طَلْقَةٌ - وَصَحَّ أَيْضًا عَنْ الْحَسَنِ فِيمَنْ قَالَ لِامْرَأَتِهِ: اذْهَبِي، فَلَا حَاجَةَ لِي فِيك: أَنَّهَا ثَلَاثٌ.

L33895 As for “I have relinquished my right over you; is there no claim upon you?”—it has been narrated from Ibrāhīm and Al-Shaʿbī (though not authentically established from either) that this constitutes an irrevocable divorce. And it is authentically established from Al-Ḥakam ibn ʿUtaybah: his intention prevails.

وَأَمَّا - قَدْ خَلَّيْت سَبِيلَك، لَا سَبِيلَ عَلَيْك؟ فَرُوِّينَا عَنْ إبْرَاهِيمَ، وَالشَّعْبِيِّ - وَلَمْ يَصِحَّ عَنْهُمَا -: هِيَ طَلْقَةٌ بَائِنَةٌ - وَصَحَّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ: لَهُ نِيَّتُهُ.

L33896 It is authentically reported from al-Ḥasan regarding the statement “There is no authority for me over you”: If he intended a divorce, then it is a single revocable divorce; otherwise, it is null. We have also narrated this from al-Shaʿbī.

وَصَحَّ عَنْ الْحَسَنِ فِي لَا سَبِيلَ لِي عَلَيْك: إنْ نَوَى طَلَاقًا فَهِيَ وَاحِدَةٌ رَجْعِيَّةٌ، وَإِلَّا فَلَيْسَ بِشَيْءٍ - رُوِّينَاهُ أَيْضًا عَنْ الشَّعْبِيِّ.

L33897 As for the one who said, “You are not a wife to me,” it has been narrated to us from Ibrāhīm that he said: “I do not see—if he repeats this three times—that he intended anything but divorce.” It is authentically narrated from Qatādah: “If he intended divorce by that, then it is a divorce.” Saʿīd ibn al-Musayyab hesitated concerning this.

وَأَمَّا - مَنْ قَالَ: لَسْت لِي بِامْرَأَةٍ - فَرُوِّينَا عَنْ إبْرَاهِيمَ أَنَّهُ قَالَ: مَا أَرَاهُ - إنْ كَرَّرَ ذَلِكَ ثَلَاثًا - أَرَادَ إلَّا الطَّلَاقَ - وَصَحَّ عَنْ قَتَادَةَ: إنْ أَرَادَ بِذَلِكَ طَلَاقًا فَهُوَ طَلَاقٌ - وَتَوَقَّفَ فِيهَا سَعِيدُ بْنُ الْمُسَيِّبِ.

L33898 As for Aflajī, it was narrated to us from Ṭāwūs: If he intends divorce, then it is a divorce.

وَأَمَّا - أَفْلِجِي؛ فَرُوِّينَا عَنْ طَاوُسٍ: إنْ نَوَى طَلَاقًا فَهُوَ طَلَاقٌ.

L33899–33900 As for your situation with it: It has been narrated to us from Al-Qāsim ibn Muḥammad that he said, “The scholars held the view that it constituted a single pronouncement of divorce.” From Masrūq, Ṭāwūs, and Ibrāhīm: “Whatever is intended as divorce counts as such.”

وَأَمَّا - شَأْنُكُمْ بِهَا؟ فَرُوِّينَا عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ أَنَّهُ قَالَ: رَأَى النَّاسُ أَنَّهَا طَلْقَةٌ - وَعَنْ مَسْرُوقٍ، وَطَاوُسٍ، وَإِبْرَاهِيمَ: مَا أُرِيدَ بِهِ الطَّلَاقُ فَهُوَ طَلَاقٌ.

L33901 Abu Muhammad said: There is no authoritative proof in anyone beneath the Messenger of Allah—may Allah’s blessings and peace be upon him and his family.

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

L33902 If they say, “Is scrupulousness for him to separate from her?” We reply: The most scrupulous course for every jurist on earth is not to enforce precautions upon others that would harm himself, nor to deem a woman’s private part prohibited for her husband while permitting her [sexual relations] to another without a divine ruling from Allah the Exalted and His Messenger (peace be upon him). The Exalted has said: “They learn from them that by which they cause separation between a man and his wife, though they harm none thereby except by Allah’s permission” [Al-Baqarah: 102].[21]

فَإِنْ قَالُوا: الْوَرَعُ لَهُ أَنْ يُفَارِقَهَا؟ قُلْنَا: إنَّمَا أَوْرَعُ لِكُلِّ مُفْتٍ فِي الْأَرْضِ أَنْ لَا يَحْتَاطَ لِغَيْرِهِ بِمَا يُهْلِكُ بِهِ نَفْسَهُ، وَأَنْ لَا يَسْتَحِلَّ تَحْرِيمَ فَرْجِ امْرَأَةٍ عَلَى زَوْجِهَا وَإِبَاحَتَهُ لِغَيْرِهِ بِغَيْرِ حُكْمٍ مِنْ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ قَالَ تَعَالَى: {فَيَتَعَلَّمُونَ مِنْهُمَا مَا يُفَرِّقُونَ بِهِ بَيْنَ الْمَرْءِ وَزَوْجِهِ وَمَا هُمْ بِضَارِّينَ بِهِ مِنْ أَحَدٍ إلا بِإِذْنِ اللَّهِ} [البقرة: ١٠٢] .

L33903 It was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from Ayyūb al-Sikhtiyānī from Ṭāwūs from Ibn ʿAbbās that he did not consider the ransom (fidāʾ) as divorce until a divorce was formally pronounced. Ibn ʿAbbās said: “Do you not see that He—Exalted and Mighty is He—first mentioned divorce, then mentioned the ransom without counting it as divorce? Then

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ كَانَ لَا يَرَى الْفِدَاءَ طَلَاقًا حَتَّى يُطَلِّقَ؟ قَالَ ابْنُ عَبَّاسٍ: أَلَا تَرَى أَنَّهُ -

[21] **Qur’an references (L33902):** Qur’an 2:102 (Al-Baqarah).

He declared regarding the third instance of divorce: *‘But if he divorces her, she is not lawful to him thereafter’* (Q 2:230).”[22]

L33904 This is Ibn Abbas—via the most rigorously authenticated chain of transmission from him—holding that divorce is not established except by the explicit pronouncement of divorce or what Allah, the Mighty and Majestic, has legislated as divorce. This is our position.

L33905 We have mentioned the difference of opinion of Abū Ḥanīfah and Mālik regarding every Companion from whom something was narrated concerning that matter—may Allah be pleased with them—and their statements were among what no one before them had ever said, without any textual evidence for it whatsoever.

L33906 ## [An Issue of Agency in Divorce]

L33907 1955. Issue: It is impermissible to delegate divorce through an agent, for Allah, the Almighty, says: {No soul bears responsibility except against itself} [6:164]. Thus, acting on another’s behalf is invalid unless permitted by the Quran or the established Sunnah of the Messenger of Allah—peace and blessings be upon him and his family. Similarly, speaking on another’s behalf is invalid unless sanctioned by the Quran or the established Sunnah from the Messenger of Allah—peace and blessings be upon him and his family. Since neither the Quran nor the Sunnah has authorized delegating divorce to an agent, it is invalid.[23]

L33908 Those who differ from us claim to follow analogy, yet by necessity every person knows that divorce, *ẓihār*, *liʿān*, and *īlāʾ* are verbal declarations.

L33909–33911 They do not disagree that it is impermissible for anyone to pronounce ẓihār

[22] **Qur’an references (L33903):** Qur’an 2:230 (Al-Baqarah).
[23] **Qur’an references (L33907):** Qur’an 6:164 (Al-An’am).

جَلَّ وَعَزَّ - ذَكَرَ الطَّلَاقَ مِنْ قَبْلِهِ، ثُمَّ ذَكَرَ الْفِدَاءَ فَلَمْ يَجْعَلْهُ طَلَاقًا، ثُمَّ قَالَ فِي الثَّالِثَةِ {فَإِنْ طَلَّقَهَا فَلا تَحِلُّ لَهُ مِنْ بَعْدُ} [البقرة: ٢٣٠] .

فَهَذَا ابْنُ عَبَّاسٍ بِأَصَحِّ إِسْنَادٍ عَنْهُ: لَا يَرَى طَلَاقًا إِلَّا بِلَفْظِ الطَّلَاقِ، أَوْ مَا سَمَّاهُ اللَّهُ عَزَّ وَجَلَّ طَلَاقًا وَهَذَا هُوَ قَوْلُنَا.

قَدْ ذَكَرْنَا خِلَافَ أَبِي حَنِيفَةَ، وَمَالِكٍ لِكُلِّ مَنْ رُوِيَ عَنْهُ فِي ذَلِكَ شَيْءٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَمَا قَالَاهُ مِمَّا لَمْ يَقُلْهُ أَحَدٌ قَبْلَهُمَا بِغَيْرِ نَصٍّ فِي ذَلِكَ أَصْلًا.

[مَسْأَلَةُ الْوَكَالَةُ فِي الطَّلَاقِ]

١٩٥٥ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْوَكَالَةُ فِي الطَّلَاقِ، لِأَنَّ اللَّهَ عَزَّ وَجَلَّ يَقُولُ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَلَا يَجُوزُ عَمَلُ أَحَدٍ عَنْ أَحَدٍ إِلَّا حَيْثُ أَجَازَهُ الْقُرْآنُ، أَوْ السُّنَّةُ الثَّابِتَةُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَا يَجُوزُ كَلَامُ أَحَدٍ عَنْ كَلَامِ غَيْرِهِ مِنْ حَيْثُ أَجَازَهُ الْقُرْآنُ أَوْ سُنَّةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَمْ يَأْتِ فِي طَلَاقِ أَحَدٍ عَنْ أَحَدٍ بِتَوْكِيلِهِ إِيَّاهُ قُرْآنٌ وَلَا سُنَّةٌ، فَهُوَ بَاطِلٌ.

وَالْمُخَالِفُونَ لَنَا أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَبِالضَّرُورَةِ يَدْرِي كُلُّ أَحَدٍ أَنَّ الطَّلَاقَ كَلَامٌ، وَالظِّهَارَ كَلَامٌ، وَاللِّعَانَ كَلَامٌ، وَالْإِيلَاءَ كَلَامٌ.

against another, nor to engage in liʿān against another [text incomplete]. No one can act independently, nor can anyone appoint another on their behalf—whether through proxy or other means. Why do they not analogize divorce to this [principle]? Yet they neither follow the textual sources nor practice sound analogy (qiyās).

L33912 Every instance where Allah the Exalted has mentioned "divorce," He has addressed it exclusively to the husbands. Therefore, it is impermissible for anyone other than them to act on their behalf—neither through agency nor through any other means besides it—as this would constitute a violation of the limits set by Allah, the Mighty and Majestic.

L33913 Allah, the Exalted, has said: "And whoever transgresses the limits of Allah—those are the wrongdoers" (Al-Baqarah 2:229).[24]

L33914 Allah the Exalted said: {It is not for a believing man or a believing woman, when Allah and His Messenger have decreed a matter, to have any choice in their affair} (Sūrat al-Aḥzāb 33:36). Thus, no one has any choice to contradict what the divine text prescribes. We know of no permission for delegation in *divorce* from any of the early predecessors except [opinions] transmitted from Ibrāhīm and al-Ḥasan.[25]

L33915 Issue: He wrote to his wife pronouncing divorce.

L33916 1956 – Issue: If a man writes to his wife declaring divorce, it is invalid.

L33917 People have differed regarding this—It has been narrated to us from al-Nakhaʿī, Al-Shaʿbī, and Al-Zuhrī that if he writes the divorce with his own hand, it constitutes an irrevocable divorce. This is also the opinion of Al-Awzāʿī, Al-Ḥasan ibn Ḥayy, and Aḥmad ibn Ḥanbal.

L33918 It has been narrated to us from Saʿid ibn Mansur: Hushaym narrated to us [saying], "Yunus and Mansur [narrated] from al-Hasan regarding a man

[24] **Qur'an references (L33913):** Qur'an 2:229 (Al-Baqarah).
[25] **Qur'an references (L33914):** Qur'an 33:36 (Al-Ahzab).

وَلَا يَخْتَلِفُونَ فِي أَنَّهُ لَا يَجُوزُ أَنْ يُظَاهِرَ أَحَدٌ عَنْ أَحَدٍ، وَلَا أَنْ يُلَاعِنَ أَحَدٌ عَنْ أَحَدٍ، وَلَا أَنْ يُولِيَ أَحَدٌ عَنْ أَحَدٍ، لَا بِوَكَالَةٍ، وَلَا بِغَيْرِهَا، فَهَلَّا قَاسُوا الطَّلَاقَ عَلَى ذَلِكَ؟ وَلَكِنْ لَا النُّصُوصُ يَتَّبِعُونَ، وَلَا الْقِيَاسُ يُحْسِنُونَ.

وَكُلُّ مَكَانٍ ذَكَرَ اللَّهُ تَعَالَى فِيهِ " الطَّلَاقَ " فَإِنَّهُ خَاطَبَ بِهِ الْأَزْوَاجَ لَا غَيْرَهُمْ، فَلَا يَجُوزُ أَنْ يَنُوبَ غَيْرُهُمْ عَنْهُمْ - لَا بِوَكَالَةٍ وَلَا بِغَيْرِهَا - لِأَنَّهُ كَانَ تَعَدِّيًا لِحُدُودِ اللَّهِ عَزَّ وَجَلَّ.

وَقَدْ قَالَ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ} [البقرة: ٢٢٩] .

وَقَالَ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] فَلَا خِيَارَ لِأَحَدٍ فِي خِلَافِ مَا جَاءَ بِهِ النَّصُّ - وَمَا نَعْلَمُ إِجَازَةَ التَّوْكِيلِ فِي " الطَّلَاقِ " عَنْ أَحَدٍ مِنْ الْمُتَقَدِّمِينَ إِلَّا عَنْ إِبْرَاهِيمَ، وَالْحَسَنِ.

[مَسْأَلَةٌ كَتَبَ إِلَى امْرَأَتِهِ بِالطَّلَاقِ]

١٩٥٦ - مَسْأَلَةٌ: وَمَنْ كَتَبَ إِلَى امْرَأَتِهِ بِالطَّلَاقِ فَلَيْسَ شَيْئًا.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا عَنْ النَّخَعِيِّ وَالشَّعْبِيِّ وَالزُّهْرِيِّ إذَا كَتَبَ الطَّلَاقَ بِيَدِهِ فَهُوَ طَلَاقٌ لَازِمٌ - وَبِهِ يَقُولُ الْأَوْزَاعِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَحْمَدُ بْنُ حَنْبَلٍ.

وَرُوِّينَا عَنْ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا يُونُسُ، وَمَنْصُورٌ عَنْ الْحَسَنِ، فِي رَجُلٍ كَتَبَ بِطَلَاقِ امْرَأَتِهِ ثُمَّ مَحَاهُ؟ فَقَالَ: لَيْسَ بِشَيْءٍ إلَّا أَنْ يُمْضِيَهُ، أَوْ يَتَكَلَّمَ بِهِ.

who wrote down [a document stipulating] the divorce of his wife and then erased it." He was asked [about this], and he said: "It holds no effect unless he formalizes it or verbally pronounces it."

L33919 It has been reported to us from Al-Sha'bi the same ruling, and it has also been authentically established from Qatādah. Abū Ḥanīfah said: If a man writes [the word] "divorce" for his wife on the ground, no divorce is legally valid. If he writes it in writing then states, "I did not intend [to enact] a divorce," his statement is accepted in issuing fatwas but not upheld in court judgments.

L33920 Mālik said: If a man writes the divorce of his wife, then if he intended by that a divorce, it is a divorce. But if he did not intend by it a divorce, it is not a divorce. This is the statement of al-Layth and al-Shāfi'ī.

L33921 Abu Muhammad said: "Allah, the Exalted, said, 'Divorce is twice' [Al-Baqarah: 229]."[26]

L33922 And the Exalted said: {Divorce them for their waiting period} [65:1]. In the language by which Allah the Exalted and His Messenger—peace and blessings be upon him and his family—addressed us, the term "talaq" does not apply to writing alone; rather, it only takes effect when verbally pronounced. Thus, it is established that the written form is not considered talaq until he utters it, as no scriptural text mandates that. And success comes only from Allah, the Exalted.[27]

L33923–33924 Legal Issue: The Validity of Divorce Pronounced by Someone Who Does Not Know Arabic.

L33925 Issue: A person who is not proficient in Arabic may pronounce divorce in his own language using wording that translates into Arabic as divorce. A mute or a sick person may also pronounce divorce through sound or gesture according to their capability, provided that whoever hears it is absolutely certain that the person intended divorce.

L33926 The proof of that—: the Words of Allah, the Exalted and Majestic: "He does

وَرُوِّينَا عَنْ الشَّعْبِيِّ مِثْلَهُ - وَصَحَّ أَيْضًا عَنْ قَتَادَةَ - وَقَالَ أَبُو حَنِيفَةَ: إنْ كَتَبَ طَلَاقَ امْرَأَتِهِ فِي الْأَرْضِ لَمْ يَلْزَمْهُ طَلَاقٌ وَإِنْ كَتَبَهُ فِي كِتَابٍ ثُمَّ قَالَ: لَمْ أَنْوِ طَلَاقًا صُدِّقَ فِي الْفُتْيَا وَلَمْ يُصَدَّقْ فِي الْقَضَاءِ.

وَقَالَ مَالِكٌ إنْ كَتَبَ طَلَاقَ امْرَأَتِهِ فَإِنْ نَوَى بِذَلِكَ الطَّلَاقَ فَهُوَ طَلَاقٌ وَإِنْ لَمْ يَنْوِ بِهِ طَلَاقًا فَلَيْسَ بِطَلَاقٍ وَهُوَ قَوْلُ اللَّيْثِ، وَالشَّافِعِيِّ.

قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ تَعَالَى: {الطَّلاقُ مَرَّتَانِ} [البقرة: ٢٢٩]

وَقَالَ تَعَالَى: {فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] وَلَا يَقَعُ فِي اللُّغَةِ الَّتِي خَاطَبَنَا اللَّهُ تَعَالَى بِهَا وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - اسْمُ تَطْلِيقٍ عَلَى أَنْ يَكْتُبَ إنَّمَا يَقَعُ ذَلِكَ اللَّفْظُ بِهِ - فَصَحَّ أَنَّ الْكِتَابَ لَيْسَ طَلَاقًا حَتَّى يَلْفِظَ بِهِ إذْ لَمْ يُوجِبْ ذَلِكَ نَصٌّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ طَلَاقُ مَنْ لَا يُحْسِنُ الْعَرَبِيَّةَ]

مَسْأَلَةٌ: وَيُطَلِّقُ مَنْ لَا يُحْسِنُ الْعَرَبِيَّةَ بِلُغَتِهِ بِاللَّفْظِ الَّذِي يُتَرْجَمُ عَنْهُ فِي الْعَرَبِيَّةِ بِالطَّلَاقِ وَيُطَلِّقُ الْأَبْكَمُ وَالْمَرِيضُ بِمَا يَقْدِرُ عَلَيْهِ مِنْ الصَّوْتِ أَوْ الْإِشَارَةِ الَّتِي يُوقِنُ بِهَا مَنْ سَمِعَهَا قَطْعًا أَنَّهُمَا أَرَادَا الطَّلَاقَ.

وَبُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إلا وُسْعَهَا} [البقرة: ٢٨٦]

[26] **Qur'an references (L33921):** Qur'an 2:229 (Al-Baqarah).
[27] **Qur'an references (L33922):** Qur'an 65:1 (At-Talaq).

not burden any soul beyond its capacity" [Al-Baqarah: 286].[28]

L33927 And the saying of the Messenger of Allah: «When I command you with a matter, then fulfill from it what you are able.»

L33928 It is established that whatever is neither within a person's capacity nor within their ability is lifted from them, and that they must fulfill only what they are capable of from what they have been commanded. And success is with Allah, the Most High.

Issue: If a man divorced his wife while he was absent.

L33929

L33930 1958. Issue: If a man divorces his wife while absent, this does not constitute a valid divorce. She retains her status as his wife as before—they inherit from each other if either dies, and all marital rights between them remain intact, regardless of whether the marriage was consummated or not, or whether the divorce was pronounced three times or fewer. The divorce only becomes binding once the news reaches her through either a person she deems truthful or judicially acceptable testimony. At that point, the divorce takes effect provided she is either pregnant or in a state of purity during a menstrual-free period in which he did not engage in intercourse with her.

L33931 The evidence for this is the statement of Allah, the Almighty: "O Prophet, when you [all] divorce women, divorce them at the time of their waiting period, count the waiting period, and fear Allah, your Lord. Do not evict them from their homes, nor should they leave unless they commit a manifestly indecent act. These are the boundaries set by Allah—and whoever transgresses Allah's boundaries has wronged himself." [At-Talaq: 1] This describes the manner of divorcing a woman whose marriage has been consummated.[29]

L33932 And He, the Exalted, said: "There is no blame upon you if you divorce women before consummating the marriage or specifying a bridal gift for them. And provide for them: the affluent according to their means and the straitened according to theirs." [Al-Baqarah: 236][30]

وَقَوْلُ رَسُولِ اللَّهِ «إِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» .

فَصَحَّ - أَنَّ مَا لَيْسَ فِي وُسْعِ الْمَرْءِ وَلَا يَسْتَطِيعُهُ فَقَدْ سَقَطَ مِنْهُ، وَأَنَّهُ يُؤَدِّي مِمَّا أُمِرَ بِهِ مَا اسْتَطَاعَ فَقَطْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ طَلَّقَ امْرَأَتَهُ وَهُوَ غَائِبٌ]

١٩٥٨ - مَسْأَلَةٌ: وَمَنْ طَلَّقَ امْرَأَتَهُ وَهُوَ غَائِبٌ: لَمْ يَكُنْ طَلَاقًا، وَهِيَ امْرَأَتُهُ كَمَا كَانَتْ، يَتَوَارَثَانِ إِنْ مَاتَ أَحَدُهُمَا، وَجَمِيعُ حُقُوقِ الزَّوْجِيَّةِ بَيْنَهُمَا - سَوَاءٌ كَانَتْ مَدْخُولًا بِهَا أَوْ غَيْرَ مَدْخُولٍ بِهَا - ثَلَاثًا أَوْ أَقَلَّ إلَّا حَتَّى يَبْلُغَ إلَيْهَا، فَإِذَا بَلَّغَهَا الْخَبَرُ مَنْ تُصَدِّقُهُ أَوْ بِشَهَادَةٍ تُقْبَلُ فِي الْحُكْمِ فَحِينَئِذٍ يَلْزَمُهَا الطَّلَاقُ إِنْ كَانَتْ حَامِلًا أَوْ طَاهِرًا فِي طُهْرٍ لَمْ يَمَسَّهَا فِيهِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلا يَخْرُجْنَ إِلا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] فَهَذِهِ صِفَةُ طَلَاقِ الْمَدْخُولِ بِهَا.

وَقَالَ تَعَالَى: {لا جُنَاحَ عَلَيْكُمْ إِنْ طَلَّقْتُمُ النِّسَاءَ مَا لَمْ تَمَسُّوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتِّعُوهُنَّ عَلَى الْمُوسِعِ قَدَرُهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ} [البقرة: ٢٣٦] .

[28] **Qur'an references (L33926):** Qur'an 2:286 (Al-Baqarah).
[29] **Qur'an references (L33931):** Qur'an 65:1 (At-Talaq).
[30] **Qur'an references (L33932):** Qur'an 2:236 (Al-Baqarah).

L33933 *“O you who have believed, when you marry believing women and then divorce them before you have consummated the marriage, there is no waiting period for you to count against them. So give them a compensatory gift and release them honorably.”* [Al-Ahzab 49][31]

L33934 And He, the Exalted, said: “Do not harm them to restrict them. And if they are women bearing pregnancy, then provide for them until they give birth.” [Surah At-Talaq 65:6][32]

L33935–33936 This describes the ruling on divorcing a woman with whom the marriage has not been consummated, which includes three divorces issued collectively and the finality of the third. Every sound-minded person necessarily knows with certainty that whoever divorces her without informing her of the divorce has harmed her, and harming her is forbidden. Thus, his action is rejected and invalid, for disobedience cannot substitute for compliance. Everyone necessarily knows with certainty that whoever does this has not released her honorably, and whoever did not divorce in accordance with the waiting period nor observe the waiting period has not divorced as Allah the Exalted commanded. Whoever does not divorce as Allah the Exalted commanded has not divorced at all.

L33937 If someone mentions—what we have narrated through the chain of Ahmad ibn Shuʿayb, who said: Ubayd Allah ibn Qudamah al-Sarakhsi narrated to us, Abd al-Rahman Mahdi narrated to us, from Sufyan al-Thawri, from Abu Bakr—who is Ibn Abi al-Jahm—who said: I heard Fatimah bint Qays say: “My husband initiated my divorce and informed me, so I tightened my garments and went to the Prophet (peace and blessings of Allah be upon him and his family). He said: ’How many times has he divorced you?’ I said: ’Three times,”’ and he mentioned the hadith? We said: Yes, and this is our opinion. We have never said that the divorce does not become binding upon her when it reaches her. We will mention—if Allah the Exalted wills—in the Chapter on Waiting Periods those among the early scholars who said: If her

[31] **Qur’an references (L33933):** Qur’an 33:49 (Al-Ahzab).

[32] **Qur’an references (L33934):** Qur’an 65:6 (At-Talaq).

وَقَالَ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّونَهَا فَمَتِّعُوهُنَّ وَسَرِّحُوهُنَّ سَرَاحًا جَمِيلا} [الأحزاب: ٤٩] .

وَقَالَ تَعَالَى: {وَلا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولاتِ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٦] .

فَهَذِهِ صِفَةُ طَلَاقِ غَيْرِ الْمَدْخُولِ بِهَا، وَيَدْخُلُ فِيهِ طَلَاقُ الثَّلَاثِ الْمَجْمُوعَةِ، وَآخِرُ الثَّلَاثِ، وَبِالضَّرُورَةِ يُوقِنُ كُلُّ ذِي حِسٍّ سَلِيمٍ أَنَّ مَنْ طَلَّقَهَا فَلَمْ يُبْلِغْهَا الطَّلَاقَ فَقَدْ ضَارَّهَا، وَمُضَارَّتُهَا حَرَامٌ، فَفِعْلُهُ مَرْدُودٌ بَاطِلٌ، وَالْمَعْصِيَةُ لَا تَنُوبُ عَنْ الطَّاعَةِ، وَبِالضَّرُورَةِ يُوقِنُ كُلُّ أَحَدٍ أَنَّ مَنْ فَعَلَ ذَلِكَ فَلَمْ يُسَرِّحْهَا سَرَاحًا جَمِيلًا، وَمَنْ لَمْ يُطَلِّقْ لِلْعِدَّةِ، وَلَمْ يُحْصِ الْعِدَّةَ فَلَمْ يُطَلِّقْ كَمَا أَمَرَهُ اللَّهُ تَعَالَى، وَمَنْ لَمْ يُطَلِّقْ كَمَا أَمَرَهُ اللَّهُ تَعَالَى فَلَمْ يُطَلِّقْ أَصْلًا.

فَإِنْ ذَكَرَ ذَاكِرٌ - مَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ قَالَ: نَا عُبَيْدُ اللَّهِ بْنُ قُدَامَةَ السَّرَخْسِيُّ نا عَبْدُ الرَّحْمَنِ مَهْدِيٌّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي بَكْرٍ - هُوَ ابْنُ أَبِي الْجَهْمِ - قَالَ: سَمِعْتُ «فَاطِمَةَ بِنْتَ قَيْسٍ تَقُولُ: أَرْسَلَ إِلَيَّ زَوْجِي بِطَلَاقِي، فَشَدَدْتُ عَلَيَّ ثِيَابِي ثُمَّ أَتَيْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: كَمْ طَلَّقَكِ؟ قُلْتُ: ثَلَاثًا - وَذَكَرَ الْحَدِيثَ» ؟ قُلْنَا: نَعَمْ، وَهَذَا قَوْلُنَا، وَلَمْ نَقُلْ قَطُّ: إنَّهُ لَا يَلْزَمُهَا الطَّلَاقُ إذَا بَلَغَهَا وَسَنَذْكُرُ - إنْ شَاءَ اللَّهُ تَعَالَى - فِي " بَابِ الْعِدَدِ " مَنْ قَالَ مِنْ السَّلَفِ: إنَّ مَنْ طَلَّقَهَا زَوْجُهَا وَهُوَ غَائِبٌ فَإِنَّهَا لَا تَلْزَمُهَا الْعِدَّةُ، إلَّا مِنْ حِينِ يَبْلُغُهَا الْخَبَرُ.

husband divorces her while he is absent, the waiting period does not become obligatory for her except from the time the news reaches her.

وَهَذَا يَدُلُّ عَلَى أَنَّهَا لَمْ يَلْزَمْهَا الطَّلَاقُ إِلَّا مِنْ حِينِ لَزِمَتْهَا الْعِدَّةُ، لَا قَبْلَ ذَلِكَ، إِذْ لَا يَجُوزُ فِي دِينِ الْإِسْلَامِ أَنْ يُحَالَ بِزَمَانٍ بَيْنَ الطَّلَاقِ وَبَيْنَ أَوَّلِ عِدَّتِهَا.

L33938 This indicates that the divorce does not become binding upon her except from the time the waiting period becomes incumbent upon her, not before that, for it is impermissible in Islam that any time should be interposed between the divorce and the beginning of her waiting period.

وَلَا يَجُوزُ أَنْ تَكُونَ امْرَأَةٌ ذَاتُ زَوْجٍ مَوْطُوءَةٌ مِنْهُ خَارِجَةً عَنْ الزَّوْجِيَّةِ بِطَلَاقِهِ، وَفِي غَيْرِ عِدَّةٍ - هَذَا خِلَافُ الْقُرْآنِ وَالسُّنَّةِ، فَكَيْفَ وَقَدْ جَاءَ خَبَرُ فَاطِمَةَ بِخِلَافِ مَا ذَكَرَ أَبُو بَكْرِ بْنُ أَبِي الْجَهْمِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي مُحَمَّدُ بْنُ رَافِعٍ نا حُسَيْنُ بْنُ مُحَمَّدٍ نا شَيْبَانُ - هُوَ ابْنُ فَرُّوخَ - عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ أَخْبَرَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ «أَنَّ فَاطِمَةَ بِنْتَ قَيْسٍ أَخْبَرَتْهُ أَنَّ أَبَا حَفْصِ بْنَ الْمُغِيرَةِ طَلَّقَهَا ثَلَاثًا ثُمَّ انْطَلَقَ إِلَى الْيَمَنِ - وَذَكَرَتْ الْخَبَرَ» .

L33939 It is not permissible for a married woman with whom he has consummated to be outside the marital bond through his divorce while not in the ʿiddah period - this is contrary to the Quran and Sunnah. How could this be, when the report of Fāṭimah contradicts what Abū Bakr ibn Abi al-Jahm mentioned? As transmitted to us through Muslim's chain: Muḥammad ibn Rāfiʿ narrated to us, Ḥusayn ibn Muḥammad narrated to us, from Shaybān [Ibn Farrūkh], from Yaḥyā [Ibn Abī Kathīr], who informed me: Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf narrated that Fāṭimah bint Qays informed him Abū Ḥafṣ ibn al-Mughīrah divorced her thrice, then left for Yemen - and she mentioned the report.

فَإِنْ قِيلَ: فَأَنْتُمْ لَا تُجِيزُونَ الطَّلَاقَ إلَى أَجَلٍ، وَلَا الطَّلَاقَ بِصِفَةٍ، وَتَحْتَجُّونَ بِأَنَّ كُلَّ طَلَاقٍ لَا يَقَعُ حِينَ يُوقَعُ، فَمِنْ الْمُحَالِ أَنْ يَقَعَ حِينَ لَمْ يَقَعْ، فَكَيْفَ أَجَزْتُمْ طَلَاقَ الْغَائِبِ؟ قُلْنَا: لِأَنَّ اللَّهَ عَزَّ وَجَلَّ عَلَّمَنَا الطَّلَاقَ فِي كُلِّ صِنْفٍ مِنْ الْمُطَلَّقَاتِ، وَفِي الْمُطَلَّقَةِ الصَّغِيرَةِ الَّتِي لَمْ تُخَاطَبْ، وَالْمَجْنُونَةِ، وَهُمَا لَا يَلْزَمُ خِطَابُهُمَا بِالطَّلَاقِ، وَقَدْ يُطَلِّقُ الْمُطَلِّقُ عِنْدَ بَابِ الدَّارِ وَيَبْعَثُ إلَيْهَا الْخَبَرَ، وَعَلَى أَذْرُعٍ مِنْهَا، وَإِذَا جَازَ ذَلِكَ فَلَا فَرْقَ بَيْنَ الطَّلَاقِ فِي الْبُعْدِ - وَلَوْ أَقْصَى الْمَعْمُورِ وَبَيْنَ الطَّلَاقِ خَلْفَ حَائِطٍ - وَلَيْسَ ذَلِكَ طَلَاقًا إلَى أَجَلٍ، إنَّمَا هُوَ كُلُّهُ طَلَاقٌ لَازِمٌ إذَا بَلَغَهَا، أَوْ بَلَغَ أَهْلَهَا إنْ كَانَتْ مِمَّنْ لَا تُخَاطَبُ، فَيَقَعُ بِذَلِكَ حِلُّ النِّكَاحِ، كَمَا يَقَعُ بِالْفَسْخِ وَلَا فَرْقَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33940–33942 "If it is said: 'Then you do not permit divorce for a specified term, nor conditional divorce, and you argue on the basis that...'" Every divorce that does not take effect when executed cannot possibly take effect when it did not occur. How then do you permit divorcing an absent woman? We replied: Because Allah Almighty has taught us divorce for every category of divorceable women, including the minor divorceable woman who is not legally competent to be addressed and the insane woman—for addressing them is not required to effect the divorce. A divorcer may pronounce divorce at the door of the house and send the news to her while she remains at a distance of a few arm's lengths. If this is permissible, there is no distinction between divorce pronounced at the farthest inhabited land and divorce pronounced behind a wall. This is not a delayed divorce—rather, it becomes fully binding once the news reaches her or reaches her guardians if she is among those incompetent to be addressed. The dissolution of marriage is thereby effected, just as it is effected through annulment, with no distinction. Success comes only from Allah, the Exalted.

Case: Silent Pronouncement of Divorce

Issue 1959: If a person pronounces divorce inwardly, the divorce does not take effect.

The proof of that is the established report from the Messenger of Allah: "My Ummah has been pardoned for what their souls inwardly speak within themselves, so long as they do not manifest it through speech or action"—or as he, upon him be prayers and peace, said. Thus, it is confirmed that the inner discourse of the soul is disregarded so long as one does not utter it.

Similarly, manumission in the heart, revocation of divorce during the waiting period (iddah) in the heart, gift-giving and charity in the heart, and embracing Islam in the heart - all these have no legal effect.

The Salaf have three positions regarding this matter: the first—as we mentioned—is what was narrated to us via the chain of Waki' from Sufyan al-Thawri, from Ibn Jurayj, from ʿAṭā, who said: "If he divorces [her] inwardly, it is not valid."

And through him to Ibn Jurayj from ʿAmr ibn Dīnār from Abū al-Shaʿthaʾ Jābir ibn Zayd, who said: If he divorces inwardly, it is invalid.

From the narration of ʿAbd al-Razzāq via Ibn Jurayj via ʿAṭāʾ: Neither his divorce nor his emancipation of a slave [intended] mentally counts as valid. Ibn Jurayj said: ʿAmr ibn Dīnār informed me that a man divorced his wife mentally—so was it revoked from him? Jābir ibn Zayd said: He was indeed wronged.

This was also narrated to us from Al-Shaʿbī.

And through the chain of ʻAbd al-Razzāq from Maʻmar, from Qaṭādah and al-Ḥasan, they both said together: Whoever divorces mentally, then such a divorce is invalid.

Abū Ḥanīfah, al-Shāfiʿī, Abū Sulaymān, and their companions say this.

[مَسْأَلَةٌ طَلَّقَ فِي نَفْسِهِ]

١٩٥٩ - مَسْأَلَةٌ: وَمَنْ طَلَّقَ فِي نَفْسِهِ لَمْ يَلْزَمْهُ الطَّلَاقُ.

بُرْهَانُ ذَلِكَ -: الْخَبَرُ الثَّابِتُ عَنْ رَسُولِ اللَّهِ «عُفِيَ لِأُمَّتِي عَمَّا حَدَّثَتْ بِهِ أَنْفُسَهَا مَا لَمْ تُخْرِجْهُ بِقَوْلٍ أَوْ عَمَلٍ» أَوْ كَمَا قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَصَحَّ أَنَّ حَدِيثَ النَّفْسِ سَاقِطٌ مَا لَمْ يَنْطِقْ بِهِ.

وَكَذَلِكَ الْعِتْقُ فِي النَّفْسِ، وَالْمُرَاجَعَةُ فِي النَّفْسِ، وَالْهِبَةُ وَالصَّدَقَةُ فِي النَّفْسِ، وَالْإِسْلَامُ فِي النَّفْسِ، كُلُّ ذَلِكَ لَيْسَ بِشَيْءٍ -.

وَلِلسَّلَفِ فِي ذَلِكَ ثَلَاثَةُ أَقْوَالٍ -: أَحَدُهَا - كَمَا قُلْنَا: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: إذَا طَلَّقَ فِي نَفْسِهِ فَلَيْسَ بِشَيْءٍ -.

وَبِهِ إلَى ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ قَالَ: إذَا طَلَّقَ فِي نَفْسِهِ فَلَيْسَ بِشَيْءٍ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: لَيْسَ طَلَاقُهُ وَلَا عَتَاقُهُ فِي نَفْسِهِ شَيْئًا - قَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ أَنَّ رَجُلًا طَلَّقَ امْرَأَتَهُ فِي نَفْسِهِ فَانْتُزِعَتْ مِنْهُ؟ فَقَالَ جَابِرُ بْنُ زَيْدٍ: لَقَدْ ظُلِمَ.

وَرُوِّينَا ذَلِكَ أَيْضًا عَنْ الشَّعْبِيِّ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ وَالْحَسَنِ قَالَا جَمِيعًا: مَنْ طَلَّقَ فِي نَفْسِهِ فَلَيْسَ طَلَاقُهُ ذَلِكَ بِشَيْءٍ.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L33954 A second opinion—as transmitted to us through the chain of Abd al-Razzaq from Ma'mar, who said: Ibn Sirin was asked about it and he said, "Did Allah not know what is in your soul?" He said: "Yes." He said: "Then I will not say anything about it"—this constitutes jurisprudential abstention.

وَقَوْلٌ ثَانٍ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ سُئِلَ عَنْهَا ابْنُ سِيرِينَ فَقَالَ: أَلَيْسَ قَدْ عَلِمَ اللَّهُ مَا فِي نَفْسِكَ؟ قَالَ: بَلَى، قَالَ: فَلَا أَقُولُ فِيهَا شَيْئًا - فَهَذَا تَوَقُّفٌ.

L33955 A third opinion: that it is a divorce—was reported from al-Zuhri, and Ashhab reported it on the authority of Malik.

وَقَوْلٌ ثَالِثٌ - إنَّهُ طَلَاقٌ، رُوِيَ عَنْ الزُّهْرِيِّ، وَرَوَاهُ أَشْهَبُ عَنْ مَالِكٍ.

L33956 Abu Muhammad said: It is an obligation and a duty of piety that no judge may issue a ruling nor any jurist give a legal verdict to dissolve the marriage of a wife whose nikāḥ was contracted according to the Book of Allah, the Mighty and Majestic, and the Sunnah of His Messenger Muhammad (ṣallallāhu ʿalayhi wa-ālihi wa-sallam), without a Qur'anic injunction or an established Sunnah.

قَالَ أَبُو مُحَمَّدٍ: الْفَرْضُ وَالْوَرَعُ أَنْ لَا يَحْكُمَ حَاكِمٌ وَلَا يُفْتِي مُفْتٍ بِفِرَاقِ زَوْجَةٍ عُقِدَ نِكَاحُهَا بِكِتَابِ اللَّهِ عَزَّ وَجَلَّ وَسُنَّةِ رَسُولِهِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِغَيْرِ قُرْآنٍ أَوْ سُنَّةٍ ثَابِتَةٍ.

L33957 Those who upheld this opinion argued using the authentically established report from the Messenger of Allah—may Allah's peace and blessings be upon him and his family—"Actions are judged by intentions, and every person will have what they intended."

وَاحْتَجَّ مَنْ ذَهَبَ إلَى هَذَا الْقَوْلِ بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» .

L33958 Abū Muḥammad said: This report serves as proof for us against them, because the Prophet—peace and blessings be upon him—did not isolate intention from action, nor action from intention, but rather combined both. He did not establish a ruling based on one without the other. Thus, we say: Whoever intends divorce but does not utter it, or utters it but does not intend it, there is no divorce until he utters it and intends it—unless a scriptural text specifies something from the rulings that necessitates it based on intention alone without action, or action alone without intention; in which case we adhere strictly to it. And with Allāh, the Exalted, lies success.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا الْخَبَرُ حُجَّةٌ لَنَا عَلَيْهِمْ، لِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يُفْرِدْ فِيهِ النِّيَّةَ عَنْ الْعَمَلِ، وَلَا الْعَمَلَ عَنْ النِّيَّةِ، بَلْ جَمَعَهُمَا جَمِيعًا، وَلَمْ يُوجِبْ حُكْمًا بِأَحَدِهِمَا دُونَ الْآخَرِ - وَهَكَذَا نَقُولُ: إنَّ مَنْ نَوَى الطَّلَاقَ وَلَمْ يَلْفِظْ بِهِ، أَوْ لَفَظَ بِهِ وَلَمْ يَنْوِهِ فَلَيْسَ طَلَاقٌ، إلَّا حَتَّى يَلْفِظَ بِهِ وَيَنْوِيَهُ، إلَّا أَنْ يَخُصَّ نَصٌّ شَيْئًا مِنْ الْأَحْكَامِ بِإِلْزَامِهِ بِنِيَّةٍ دُونَ عَمَلٍ، أَوْ بِعَمَلٍ دُونَ نِيَّةٍ، فَنَقِفُ عِنْدَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33959 They also argued: "Do you not claim that whoever harbors disbelief in their heart is a disbeliever, even if they do not utter it? Do you not assert that one who persists in sins is a sinner, guilty and deserving punishment? Do you not say that whoever entertains the false accusation of a chaste woman in

وَاحْتَجُّوا أَيْضًا - بِأَنْ قَالُوا: إنَّكُمْ تَقُولُونَ: مَنْ اعْتَقَدَ الْكُفْرَ بِقَلْبِهِ فَهُوَ كَافِرٌ وَإِنْ لَمْ يَلْفِظْ بِهِ؟ وَتَقُولُونَ: إنَّ الْمُصِرَّ عَلَى الْمَعَاصِي عَاصٍ آثِمٌ مُعَاقَبٌ بِذَلِكَ؟ وَتَقُولُونَ: إنَّ مَنْ

their heart is guilty, and whoever unjustly harbors enmity toward a believer is in defiance of God Almighty—even if they do not manifest this through speech or action?"

L33960 And whoever is self-admiring of his knowledge or seeks praise through deeds—is he not doomed? We said: As for the belief in disbelief, the Quran has indeed addressed this explicitly. The Exalted said: {O Messenger, let not grieve you those who hasten into disbelief among those who say, "We believe" [verbally], but their hearts do not believe} [Al-Ma'idah: 41]. Thus, by the explicit texts of the Quran and the Sunnah, these individuals have excluded themselves from what was overlooked.[33]

L33961–33963 Moreover, the exemption from accountability for the whispers of the soul applies exclusively to the Ummah of Muhammad—may Allah bless him and his family and grant him peace. They are distinguished by a virtue through the explicit textual evidence, and whoever conceals disbelief inwardly is not of his community (peace and blessings be upon him), so he is excluded from this virtue.

L33964 As for the one who persists in sins—is he not as you supposed? It has been authentically reported from the Prophet (peace and blessings of Allah be upon him and his family) that he said: "Whoever resolves to commit an evil deed but does not act upon it, it is not recorded against him."

L33965 It is thus established that the sinner who persists in his wrongdoing is he who commits an evil deed and then persists in it—thus, such a person combined evil intent and evil action.

L33966 As for one who slanders a chaste woman in his mind, Allah the Almighty has indeed forbidden him from evil suspicion—and this is baseless suspicion—thus he has exceeded what was pardoned by the explicit ruling. It is impermissible to analogize other cases to his, thereby contradicting the established textual ruling regarding Allah's pardon of such matters.

L33967 As for one who harbors enmity toward a Muslim, if he does not harm him

قَذَفَ مُحْصَنَةً فِي نَفْسِهِ فَهُوَ آثِمٌ، وَمَنْ اعْتَقَدَ عَدَاوَةَ مُؤْمِنٍ ظُلْمًا فَهُوَ عَاصٍ لِلَّهِ عَزَّ وَجَلَّ - وَإِنْ لَمْ يُظْهِرْ ذَلِكَ بِقَوْلٍ أَوْ فِعْلٍ.

وَمَنْ أُعْجِبَ بِعِلْمِهِ أَوْ رَاءَى فَهُوَ هَالِكٌ؟ قُلْنَا: أَمَّا اعْتِقَادُ الْكُفْرِ، فَإِنَّ الْقُرْآنَ قَدْ جَاءَ بِذَلِكَ نَصًّا، قَالَ تَعَالَى: {يَا أَيُّهَا الرَّسُولُ لا يَحْزُنْكَ الَّذِينَ يُسَارِعُونَ فِي الْكُفْرِ مِنَ الَّذِينَ قَالُوا آمَنَّا بِأَفْوَاهِهِمْ وَلَمْ تُؤْمِنْ قُلُوبُهُمْ} [المائدة: ٤١] فَخَرَجَ هَؤُلَاءِ بِنُصُوصِ الْقُرْآنِ وَالسُّنَنِ عَمَّا عُفِيَ عَنْهُ.

وَأَيْضًا - فَإِنَّ الْعَفْوَ عَنْ حَدِيثِ النَّفْسِ إِنَّمَا هُوَ عَنْ أُمَّةِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَضِيلَةٌ لَهُمْ بِنَصِّ الْخَبَرِ، وَمَنْ أَسَرَّ الْكُفْرَ فَلَيْسَ مِنْ أُمَّتِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَهُوَ خَارِجٌ عَنْ هَذِهِ الْفَضِيلَةِ.

وَأَمَّا الْمُصِرُّ عَلَى الْمَعَاصِي فَلَيْسَ كَمَا ظَنَنْتُمْ؟ صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ: «مَنْ هَمَّ بِسَيِّئَةٍ فَلَمْ يَعْمَلْهَا لَمْ تُكْتَبْ عَلَيْهِ» .

فَصَحَّ أَنَّ الْمُصِرَّ الْآثِمَ بِإِصْرَارِهِ هُوَ الَّذِي عَمِلَ السَّيِّئَةَ ثُمَّ أَصَرَّ عَلَيْهَا - فَهَذَا جَمَعَ نِيَّةَ السُّوءِ وَالْعَمَلَ السُّوءَ مَعًا.

وَأَمَّا مَنْ قَذَفَ مُحْصَنَةً فِي نَفْسِهِ فَقَدْ نَهَاهُ اللَّهُ عَزَّ وَجَلَّ عَنِ الظَّنِّ السُّوءِ، وَهَذَا ظَنُّ سُوءٍ، فَخَرَجَ عَمَّا عُفِيَ عَنْهُ بِالنَّصِّ، وَلَا يَحِلُّ أَنْ يُقَاسَ عَلَيْهِ غَيْرُهُ فَيُخَالِفُ النَّصَّ الثَّابِتَ فِي عَفْوِ اللَّهِ عَزَّ وَجَلَّ عَنْ ذَلِكَ.

[33] **Qur'an references (L33960):** Qur'an 5:41 (Al-Ma'idah).

through action or speech, it is merely hatred. Hatred that a person cannot rid himself of is not held against him. However, if he does so deliberately, he is sinful, for he is commanded to show allegiance to a Muslim and love him. He has thereby transgressed what God Almighty commanded him, and thus he incurs sin.

L33968 Similarly, ostentation and self-admiration - the prohibition against them has been authentically established, yet no explicit text has ever obligated divorce, manumission, revocation of divorce, gift-giving, or charity involving oneself when no verbal declaration of such matters was made. Therefore, it is necessarily established that all such acts are legally non-binding - and with Allah the Exalted lies all success.

L33969 **An issue: If a man pronounces divorce without intending it, but his tongue errs.**

L33970 1960 – Issue: And whoever pronounces divorce without intending it, but his tongue slips? If conclusive evidence is established against him, the divorce is legally validated. But if no conclusive evidence is established against him, and he consults a scholar for a formal legal opinion, the divorce is not binding upon him.

L33971 The proof of that is: the statement of Allah, the Mighty and Majestic: "There is no blame upon you for mistakes you unintentionally made, but only what your hearts deliberately intended." [Al-Ahzab:5][34]

L33972 The statement of the Messenger of Allah — may the peace and blessings of Allah be upon him and his family — "Deeds are by intentions, and for every person is only what they intended." Thus, it is established that there is no deed except with intention, and no intention except with a deed.[35]

L33973 As for when clear proof is established regarding that matter, it is a confirmed right. And when he states in his claim, "I did not intend divorce," he asserts the invalidity of this confirmed right - thus his claim is void.

[34]**Qur'an references (L33971):** Qur'an 33:5 (Al-Ahzab).

[35]**Hadith references (L33972):** Sahih al-Bukhari 1; Sunan Abi Dawud 2201; Mishkat al-Masabih 1.

وَأَمَّا مَنْ اعْتَقَدَ عَدَاوَةَ مُسْلِمٍ فَإِنْ لَمْ يَضُرَّ بِهِ بِعَمَلٍ وَلَا بِكَلَامٍ فَإِنَّمَا هُوَ بُغْضَةٌ وَالْبُغْضَةُ الَّتِي لَا يَقْدِرُ الْمَرْءُ عَلَى صَرْفِهَا عَنْ نَفْسِهِ لَا يُؤَاخَذُ بِهَا، فَإِنْ تَعَمَّدَ ذَلِكَ فَهُوَ عَاصٍ، لِأَنَّهُ مَأْمُورٌ بِمُوَالَاةِ الْمُسْلِمِ وَمَحَبَّتِهِ، فَتَعَدَّى مَا أَمَرَهُ اللَّهُ تَعَالَى بِهِ، فَلِذَلِكَ أَثِمَ.

وَهَكَذَا الرِّيَاءُ وَالْعُجْبُ قَدْ صَحَّ النَّهْيُ عَنْهُمَا، وَلَمْ يَأْتِ نَصٌّ قَطُّ بِإِلْزَامِ طَلَاقٍ، أَوْ عَتَاقٍ، أَوْ رَجْعَةٍ، أَوْ هِبَةٍ، أَوْ صَدَقَةٍ بِالنَّفْسِ، لَمْ يَلْفِظْ بِشَيْءٍ مِنْ ذَلِكَ، فَوَجَبَ أَنَّهُ كُلُّهُ لَغْوٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ طَلَّقَ وَهُوَ غَيْرُ قَاصِدٍ إلَى الطَّلَاقِ لَكِنْ أَخْطَأَ لِسَانُهُ]

١٩٦٠ - مَسْأَلَةٌ: وَمَنْ طَلَّقَ وَهُوَ غَيْرُ قَاصِدٍ إلَى الطَّلَاقِ، لَكِنْ أَخْطَأَ لِسَانُهُ؟ فَإِنْ قَامَتْ عَلَيْهِ بَيِّنَةٌ قُضِيَ عَلَيْهِ بِالطَّلَاقِ، وَإِنْ لَمْ تَقُمْ عَلَيْهِ بَيِّنَةٌ لَكِنْ أَتَى مُسْتَفْتِيًا لَمْ يَلْزَمْهُ الطَّلَاقُ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ، وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى» فَصَحَّ أَنْ لَا عَمَلَ إلَّا بِنِيَّةٍ وَلَا نِيَّةَ إلَّا بِعَمَلٍ.

وَأَمَّا إذَا قَامَتْ بِذَلِكَ بَيِّنَةٌ فَإِنَّهُ حَقٌّ قَدْ ثَبَتَ، وَهُوَ فِي قَوْلِهِ: لَمْ أَنْوِ الطَّلَاقَ، مُدَّعٍ بُطْلَانَ ذَلِكَ الْحَقِّ الثَّابِتِ، فَدَعْوَاهُ بَاطِلٌ -.

L33974–33975 It was narrated to us through the chain of Wakiʿ from Ibn Abi Laylā from al-Ḥakam ibn ʿUtaybah from Khaythamah ibn ʿAbd al-Raḥmān, who said: A woman said to her husband, “Name me!” He called her “the gazelle.” She said, “You have said nothing!” He replied, “Then provide a name for me to call you!” She said, “Name me ’free and divorced’!” He declared, “Then you are free and divorced.” She went to ʿUmar ibn al-Khaṭṭāb and said, “My husband has divorced me.” Her husband came and recounted the story to him. ʿUmar caused her head pain and said to her husband, “Take her by the hand and cause her head pain.”

رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ خَيْثَمَةَ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: قَالَتْ امْرَأَةٌ لِزَوْجِهَا: سَمِّنِي؟ فَسَمَّاهَا الظَّبْيَةَ، قَالَتْ: مَا قُلْت شَيْئًا؟ قَالَ: فَهَاتِ مَا أُسَمِّيك بِهِ؟ قَالَتْ: سَمِّنِي خَلِيَّةٌ طَالِقٌ، قَالَ: فَأَنْتِ خَلِيَّةٌ طَالِقٌ، فَأَتَتْ عُمَرَ بْنَ الْخَطَّابِ فَقَالَتْ: إنَّ زَوْجِي طَلَّقَنِي؟ فَجَاءَ زَوْجُهَا فَقَصَّ عَلَيْهِ الْقِصَّةَ؟ فَأَوْجَعَ عُمَرُ رَأْسَهَا، وَقَالَ لِزَوْجِهَا: خُذْ بِيَدِهَا وَأَوْجِعْ رَأْسَهَا.

L33976 Abu Muhammad said: As for a case like this, even if evidence were established in it, it would not count as a divorce.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا مِثْلُ هَذَا فَحَتَّى لَوْ قَامَتْ بِهِ بَيِّنَةٌ لَمْ يَكُنْ طَلَاقًا -.

L33977 And our opinion is narrated from Iyās ibn Muʿāwiyah.

وَرُوِيَ قَوْلُنَا عَنْ إيَاسِ بْنِ مُعَاوِيَةَ.

L33978 Malik said: If a man says, “You are irrevocably divorced (al-battah)” while intending to swear an oath regarding something, then changes his mind and abandons the oath, she is not divorced, because he did not intend to divorce her.

وَقَالَ مَالِكٌ: إذَا قَالَ: أَنْتِ طَالِقٌ أَلْبَتَّةَ - وَهُوَ يُرِيدُ أَنْ يَحْلِفَ عَلَى شَيْءٍ - ثُمَّ بَدَا لَهُ فَتَرَكَ الْيَمِينَ؟ فَلَيْسَتْ طَالِقًا، لِأَنَّهُ لَمْ يُرِدْ أَنْ يُطَلِّقَهَا -.

L33979 It is the doctrine of Al-Layth ibn Saʿd.

وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ.

L33980 Al-Shafiʿī said: Speech that overpowers a person’s tongue without their deliberate intent is equivalent to no utterance at all; neither divorce nor anything else incurs legal consequences upon them because of it.

وَقَالَ الشَّافِعِيُّ: مَا غَلَبَ الْمَرْءُ عَلَى لِسَانِهِ بِغَيْرِ اخْتِيَارٍ مِنْهُ لِذَلِكَ فَهُوَ كَلَا قَوْلٍ، لَا يَلْزَمُهُ بِهِ طَلَاقٌ وَلَا غَيْرُهُ.

L33981 Abu Hanifa and his companions said: If someone intends to say something to his wife but his tongue slips and he says, “You are divorced,” the divorce is binding upon him in judicial rulings, in fatwas, and between him and Allah, the Exalted and the Majestic.

قَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: مَنْ أَرَادَ أَنْ يَقُولَ شَيْئًا لِامْرَأَتِهِ فَسَبَقَهُ لِسَانُهُ فَقَالَ: أَنْتِ طَالِقٌ، لَزِمَهُ الطَّلَاقُ فِي الْقَضَاءِ، وَفِي الْفُتْيَا، وَبَيْنَهُ وَبَيْنَ اللَّهِ عَزَّ وَجَلَّ.

L33982 Similarly, if he intended to say, “You are divorced three times if you enter the house,” but instead said, “You are divorced three times,” then changed his mind about the conditional oath, or an intervenor intervened to prevent him from uttering what he intended to say, she is divorced according to legal opinion (fatwa) and judicial ruling (qadaʾ). Between him and Allah Almighty, it is the same whether she entered the house or not.

وَكَذَلِكَ لَوْ أَرَادَ أَنْ يَقُولَ: أَنْتِ طَالِقٌ ثَلَاثًا إنْ دَخَلْت الدَّارَ، فَقَالَ: أَنْتِ طَالِقٌ ثَلَاثًا، ثُمَّ بَدَا لَهُ عَنْ الْيَمِينِ، أَوْ قَطَعَ بِهِ عَنْ ذَلِكَ قَاطِعٌ فَلَمْ يَلْفِظْ بِمَا أَرَادَ أَنْ يَقُولَ فَهِيَ طَالِقٌ فِي الْفُتْيَا، وَالْقَضَاءِ، وَبَيْنَهُ وَبَيْنَ اللَّهِ عَزَّ وَجَلَّ سَوَاءٌ دَخَلَتْ الدَّارَ أَوْ لَمْ تَدْخُلْ.

L33983 Abū Ḥanīfa said: If he intended to say, “You are free if you enter the house,” but instead said, “You are free,” then reconsidered the oath or was interrupted by another party, she is free according to legal opinion and judicial ruling. And between him and Allah, the Almighty, it is a matter of whether she entered the house or not.

L33984 If he intended to say something to her but erred, and his tongue slipped by asking “Are you free?” Abu Hanifa said: She does not become free by this, nor is he bound to manumit her - contrary to divorce and contrary to the case regarding manumission we mentioned earlier. His disciples said: All such cases are treated the same.

L33985 Abū Muḥammad said: As for the opinion of Abū Ḥanīfah, it is profoundly flawed and contradictory.

L33986–33988 As for Mālik’s opinion, it contradicts his rulings regarding prohibition, the expression “leaving matters unattended” (literally “your rope upon your camel’s hump”), and all other related matters... He held the view that prohibition applies to it through the subtlest of means - and success is from Allah, the Exalted.

L33989 **A polytheist’s divorce is not binding.**

L33990 1961 - Issue: The divorce of a polytheist is not binding. As for his marriage, sale, purchase, gift, charity, manumission, and leasing—all are permissible.

L33991 The evidence for this is the statement of the Prophet (peace and blessings be upon him): “Whoever does a deed not in accordance with our command, it is rejected.”[36]

L33992 And the Words of Allah, the Mighty and Majestic: “Whoever transgresses the limits set by Allah has certainly wronged himself” [Surah At-Talaq: 1].[37]

[36] **Hadith references (L33991):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[37] **Qur’an references (L33992):** Qur’an 65:1 (At-Talaq).

قَالَ أَبُو حَنِيفَةَ: فَلَوْ أَرَادَ أَنْ يَقُولَ: أَنْتِ حُرَّةٌ إِنْ دَخَلْتِ الدَّارَ، فَقَالَ: أَنْتِ حُرَّةٌ، ثُمَّ بَدَا لَهُ عَنْ الْيَمِينِ، أَوْ قَطَعَهُ عَنْهُ قَاطِعٌ، فَهِيَ حُرَّةٌ فِي الْفُتْيَا: وَفِي الْقَضَاءِ، وَبَيْنَهُ وَبَيْنَ اللَّهِ عَزَّ وَجَلَّ دَخَلَتْ الدَّارَ أَوْ لَمْ تَدْخُلْ.

فَلَوْ أَرَادَ أَنْ يَقُولَ لَهَا كَلَامًا فَأَخْطَأَ فَسَبَقَهُ لِسَانُهُ فَقَالَ: أَنْتِ حُرَّةٌ؟ قَالَ أَبُو حَنِيفَةَ: لَا تَكُونُ بِذَلِكَ حُرَّةً، وَلَا يَلْزَمُهُ الْعِتْقُ، بِخِلَافِ الطَّلَاقِ، وَبِخِلَافِ الْمَسْأَلَةِ فِي الْعِتْقِ الَّتِي ذَكَرْنَا آنِفًا - وَقَالَ أَصْحَابُهُ: كُلُّ ذَلِكَ سَوَاءٌ.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفِي غَايَةِ الْفَسَادِ وَالْمُنَاقَضَةِ.

وَأَمَّا قَوْلُ مَالِكٍ - فَمُنَاقِضٌ لِقَوْلِهِ فِي التَّحْرِيمِ، وَفِي حَبْلِك عَلَى غَارِبِك، وَسَائِرِ مَا رَأَى التَّحْرِيمَ يَدْخُلُ فِيهِ بِأَرَقِّ الْأَسْبَابِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يَلْزَمُ الْمُشْرِكَ طَلَاقُهُ]

١٩٦١ - مَسْأَلَةٌ: وَلَا يَلْزَمُ الْمُشْرِكَ طَلَاقُهُ، وَأَمَّا نِكَاحُهُ، وَبَيْعُهُ، وَابْتِيَاعُهُ، وَهِبَتُهُ، وَصَدَقَتُهُ، وَعِتْقُهُ، وَمُؤَاجَرَتُهُ: فَجَائِزٌ كُلُّ ذَلِكَ.

بُرْهَانُ ذَلِكَ: قَوْلُ النَّبِيِّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

وَقَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١]

فَصَحَّ بِهَذَيْنِ النَّصَّيْنِ أَنَّ كُلَّ مَنْ عَمِلَ بِخِلَافِ مَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ بِهِ، أَوْ رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَهُوَ بَاطِلٌ لَا يُعْتَدُّ بِهِ.

L33993 It has been established through these two texts that whoever acts in contradiction to what Allah, the Almighty and Majestic, or His Messenger—peace and blessings of Allah be upon him and his family—has commanded, his deed is null and void and not to be considered.

L33994 There is no doubt that the disbeliever is commanded to profess, "There is no deity but Allah, and Muhammad is the Messenger of Allah." He is compelled to this testimony and threatened with eternal abiding among the levels of the Fire if he rejects it. Thus, any speech he utters while rejecting this testimony is misplaced and holds no weight.

L33995 We say: As for marriage, it is because the Messenger of Allah—peace be upon him and his family—validated the marriages of polytheists and maintained their validity after their conversion to Islam.

L33996 As for his selling and buying: this is because the Messenger of Allah—peace and blessings be upon him and his family—used to engage in transactions with merchants from the disbelievers, and he died—peace and blessings be upon him—while his armor was pledged to a Jew for ṣāʿs of barley.

L33997 As for the permissibility of hiring him, it is because "the Messenger of Allah—may Allah bless him and his family and grant him peace—hired Ibn Arqat, who was a disbeliever, to guide him to Medina," and "he contracted the Jews of Khaybar to work on cultivating their land and tending to their trees in return for half of what Allah, the Exalted and Glorified, causes to grow therein."

L33998 As for the gift, charity, and emancipation of slaves, this is based on the statement of Ḥakīm ibn Ḥizām: "O Messenger of God, are the deeds I used to engage in as pious acts during the Age of Ignorance - such as emancipating slaves, maintaining kinship ties, and giving charity - [valid]?" The Messenger of God—peace and blessings be upon him and his family—responded: "You have embraced Islam while retaining the good you had previously accomplished."

L33999 He—peace and blessings be upon him—called all of that good and informed

وَلَا شَكَّ فِي أَنَّ الْكَافِرَ مَأْمُورٌ بِقَوْلِ: لَا إلَهَ إلَّا اللَّهُ مُحَمَّدٌ رَسُولُ اللَّهِ، مُلْزَمٌ ذَلِكَ، مُتَوَعَّدٌ عَلَى تَرْكِهِ بِالْخُلُودِ بَيْنَ أَطْبَاقِ النِّيرَانِ فَكُلُّ كَلَامٍ قَالَهُ، وَتَرَكَ الشَّهَادَةَ الْمَذْكُورَةَ: فَقَدْ وَضَعَ ذَلِكَ الْكَلَامَ غَيْرَ مَوْضِعِهِ، فَهُوَ غَيْرُ مُعْتَدٍّ.

فَإِنْ قِيلَ: فَمِنْ أَيْنَ أَجَزْتُمْ سَائِرَ عُقُودِهِ الَّتِي ذَكَرْتُمْ؟ قُلْنَا: أَمَّا النِّكَاحُ فَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَجَازَ نِكَاحَ أَهْلِ الشِّرْكِ، وَأَبْقَاهُمْ بَعْدَ إسْلَامِهِمْ عَلَيْهِ.

وَأَمَّا بَيْعُهُ، وَابْتِيَاعُهُ: فَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ يُعَامِلُ تُجَّارَ الْكُفَّارِ، «وَمَاتَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَدِرْعُهُ مَرْهُونَةٌ عِنْدَ يَهُودِيٍّ فِي أَصْوَاعٍ شَعِيرٍ» .

وَأَمَّا مُؤَاجَرَتُهُ - فَلِأَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - اسْتَأْجَرَ ابْنَ أَرْقَطَ لِيَدُلَّ بِهِ إلَى الْمَدِينَةِ وَهُوَ كَافِرٌ» «وَعَامَلَ يَهُودَ خَيْبَرَ عَلَى عَمَلِ أَرْضِهَا وَشَجَرِهَا بِنِصْفِ مَا يُخْرِجُ اللَّهُ عَزَّ وَجَلَّ مِنْ ذَلِكَ» .

وَأَمَّا هِبَتُهُ، وَصَدَقَتُهُ وَعِتْقُهُ «فَلِقَوْلِ حَكِيمِ بْنِ حِزَامٍ يَا رَسُولَ اللَّهِ، أَشْيَاءُ كُنْت أَتَحَنَّثُ بِهَا فِي الْجَاهِلِيَّةِ مِنْ عَتَاقَةٍ وَصِلَةِ رَحِمٍ وَصَدَقَةٍ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَسْلَمْتَ عَلَى مَا أَسْلَفْتَ مِنْ خَيْرٍ» .

that it is counted for him therein. Thus divorce remained without any explicit textual ruling emerging regarding its implementation, so it remains established upon its preceding foundational principle.

فَسَمَّى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كُلَّ ذَلِكَ خَيْرًا، وَأَخْبَرَ: أَنَّهُ مُعْتَدٌّ لَهُ بِهِ -: فَبَقِيَ الطَّلَاقُ لَمْ يَأْتِ فِي إمْضَائِهِ نَصٌّ: فَثَبَتَ عَلَى أَصْلِهِ الْمُتَقَدِّمِ.

L34000–34001 So if it is said: “Indeed, Allah, the Exalted, has said, ’And to judge between them by what Allah has revealed, and do not follow their capricious desires’” [Al-Mā’idah: 49].[1]

فَإِنْ قِيلَ: فَقَدْ قَالَ اللَّهُ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلا تَتَّبِعْ أَهْوَاءَهُمْ} [المائدة: ٤٩] .

L34002 We said: Yes, and this which we have judged between them is from what Allah, the Exalted, has revealed, as we have mentioned.

قُلْنَا: نَعَمْ، وَهَذَا الَّذِي حَكَمْنَا بِهِ بَيْنَهُمْ هُوَ مِمَّا أَنْزَلَ اللَّهُ تَعَالَى كَمَا ذَكَرْنَا.

L34003 People have differed regarding this matter -: We have reported via the chain of Qatādah that a man divorced his wife twice during the pre-Islamic era and once during the Islamic era. He asked ʿUmar, who responded: “I neither command nor forbid you.” Thereupon ʿAbd al-Raḥmān ibn ʿAwf told him: “But I do command you: your divorce during polytheism is invalid.” Qatādah used to issue fatwas based on this position.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَاهُ مِنْ طَرِيقِ قَتَادَةَ أَنَّ رَجُلًا طَلَّقَ امْرَأَتَهُ طَلْقَتَيْنِ فِي الْجَاهِلِيَّةِ، وَطَلْقَةً فِي الْإِسْلَامِ فَسَأَلَ عُمَرَ؟ فَقَالَ لَهُ عُمَرُ: لَا آمُرُك وَلَا أَنْهَاك؟ فَقَالَ لَهُ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ: لَكِنَّنِي آمُرُك، لَيْسَ طَلَاقُك فِي الشِّرْكِ بِشَيْءٍ - وَبِهَذَا كَانَ يُفْتِي قَتَادَةُ.

L34004 It has been authentically reported from Al-Ḥasan and Rabiʿah—and it is the opinion of Mālik, Abū Sulaymān, and the followers of both.

وَصَحَّ عَنْ الْحَسَنِ، وَرَبِيعَةَ - وَهُوَ قَوْلُ مَالِكٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

L34005 It is authentically established from ʿAṭāʾ, ʿAmr ibn Dīnār, Firās al-Hamdānī, al-Zuhrī, al-Nakhaʿī, and Ḥammād ibn Abī Sulaymān that the permissibility of divorcing a polytheist.

وَصَحَّ عَنْ عَطَاءٍ، وَعَمْرِو بْنِ دِينَارٍ، وَفِرَاسٍ الْهَمْدَانِيِّ، وَالزُّهْرِيِّ، وَالنَّخَعِيِّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ إجَازَةُ طَلَاقِ الْمُشْرِكِ

L34006 It is the opinion of Al-Awza’i, Abu Hanifah, Al-Shafi’i, and the followers of Abu Hanifah and Al-Shafi’i.

هُوَ قَوْلُ الْأَوْزَاعِيِّ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمَا.

L34007 If it is said: You have narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAmr ibn Dīnār, who stated: “Men divorced women during the Jahiliyyah, then Islam came, yet they did not return to their husbands?” Abū Muḥammad responded: This contains no valid proof for the following reasons—

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ دِينَارٍ، قَالَ: لَقَدْ طَلَّقَ رِجَالٌ نِسَاءً فِي الْجَاهِلِيَّةِ ثُمَّ جَاءَ الْإِسْلَامُ فَمَا رَجَعْنَ إلَى أَزْوَاجِهِنَّ؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا حُجَّةَ فِيهِ لِوُجُوهٍ -:

L34008 The first is that it is mursal (disconnected narration), and that ʿAmr ibn Dīnār transmits from the pre-Islamic Jahiliyyah (era of ignorance).

أَوَّلُهَا - أَنَّهُ مُرْسَلٌ، وَأَنَّ عَمْرَو بْنَ دِينَارٍ مِنْ الْجَاهِلِيَّةِ.

L34009 And the second is that there is nothing in it stating that the Messenger of Allah (peace be upon him and his family) prohibited it.

وَثَانِيهَا - أَنَّهُ لَيْسَ فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَنَعَ مِنْ ذَلِكَ.

L34010 And the third is that we ourselves did not prevent there being people who

وَثَالِثُهَا - أَنَّا لَمْ نَمْنَعْ نَحْنُ مِنْ أَنْ يَكُونَ قَوْمٌ رَأَوْا أَنَّ ذَلِكَ نَافِذٌ، وَلَا حُجَّةَ فِي ذَلِكَ، إلَّا أَنْ يَعْلَمَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَيُقِرَّهُ.

[1] **Qur’an references (L34001):** Qur’an 5:49 (Al-Ma’idah).

held the view that such a matter was valid, nor is there any proof against that except if he, peace be upon him, should know it and then approve it.

The Issue of Divorce by a Compelled Person.

Issue 1962: A divorce issued by a coerced individual is not binding on them.

People have differed regarding this. It has been narrated to us via ʿAbd al-Razzāq's isnād: from Sufyān al-Thawrī, from Sulaymān al-Shaybānī, from ʿAlī ibn Ḥanẓalah, from his father, who said: ʿUmar ibn al-Khaṭṭāb stated, "A man is not trustworthy over himself if you coerce him, strike him, or restrain him."

And through the chain of Abdur Rahman ibn Mahdi from Abdul Malik ibn Qudamah al-Jumahi, my father narrated to me that a man lowered himself by a rope to buy honey. His wife came to him and said: "I will surely cut the rope, or you will surely divorce me!"

So he implored her by Allah the Exalted, but she refused. He then divorced her. When the divorce became apparent, he went to Umar ibn al-Khattab and informed him of what occurred. Umar said to him: "Return to your wife, for this is not a valid divorce."

And on the authority of Abd al-Rahman ibn Mahdi, from Hammad ibn Salama, from Humayd, from al-Hasan: that Ali ibn Abi Talib did not recognize as legally valid a divorce pronounced under coercion.

And from the chain of Sufyān ibn 'Uyaynah from 'Amr ibn Dīnār from Thābit al-A'raj, who said: I asked Ibn 'Umar and Ibn al-Zubayr about the divorce of one compelled under duress, and they both said together: It is not valid.

From the chain of Al-Hajjaj ibn Al-Minhal: Hushaym narrated to us from Ubayd Allah ibn Talhah Al-Khuza'i, from Abu Yazid Al-Madani, from Ibn Abbas, who said: No divorce is valid for one coerced or compelled by dire necessity.

[مَسْأَلَةُ طَلَاقُ الْمُكْرَهِ]

١٩٦٢ - مَسْأَلَةٌ: وَطَلَاقُ الْمُكْرَهِ غَيْرُ لَازِمٍ لَهُ.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سُلَيْمَانَ الشَّيْبَانِيِّ عَنْ عَلِيِّ بْنِ حَنْظَلَةَ عَنْ أَبِيهِ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ لَيْسَ الرَّجُلُ بِأَمِينٍ عَلَى نَفْسِهِ إذَا أَخَفْتَهُ أَوْ ضَرَبْتَهُ أَوْ أَوْثَقْتَهُ.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ عَبْدِ الْمَلِكِ بْنِ قُدَامَةَ الْجُمَحِيِّ حَدَّثَنِي أَبِي أَنَّ رَجُلًا تَدَلَّى بِحَبْلٍ لِيَشْتَارَ عَسَلًا فَأَتَتْ امْرَأَتُهُ فَقَالَتْ لَهُ: لَأَقْطَعَنَّ الْحَبْلَ، أَوْ لَتُطَلِّقَنِّي؟

فَنَاشَدَهَا اللَّهَ تَعَالَى فَأَبَتْ، فَطَلَّقَهَا، فَلَمَّا ظَهَرَ أَتَى عُمَرَ بْنَ الْخَطَّابِ فَذَكَرَ ذَلِكَ لَهُ؟ فَقَالَ لَهُ عُمَرُ: ارْجِعْ إلَى امْرَأَتِك، فَإِنَّ هَذَا لَيْسَ بِطَلَاقٍ.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ لَا يُجِيزُ طَلَاقَ الْمُكْرَهِ.

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ ثَابِتٍ الْأَعْرَجِ، قَالَ: سَأَلْت ابْنَ عُمَرَ، وَابْنَ الزُّبَيْرِ عَنْ طَلَاقِ الْمُكْرَهِ فَقَالَا جَمِيعًا: لَيْسَ بِشَيْءٍ.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هُشَيْمٌ نا عُبَيْدُ اللَّهِ بْنُ طَلْحَةَ الْخُزَاعِيُّ نا أَبُو يَزِيدَ الْمَدَنِيُّ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَيْسَ لِمُكْرَهٍ وَلَا لِمُضْطَرٍّ طَلَاقٌ.

L34020 Narrated through the chain of Abd al-Razzaq from Abdullah ibn al-Mubarak from al-Awza'i from Yahya ibn Abi Kathir from Ibn Abbas, that he did not consider a coerced divorce as having any validity.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ الْأَوْزَاعِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ لَا يَرَى طَلَاقَ الْمُكْرَهِ شَيْئًا.

L34021 It is authentically reported from al-Ḥasan al-Baṣrī: "A coerced divorce is not valid" - this being one of the two views of ʿUmar ibn ʿAbd al-ʿAzīz. It is also authentically reported from ʿAṭāʾ, Ṭāwūs, Abū al-Shaʿthāʾ Jābir ibn Zayd, and from al-Ḥajjāj ibn al-Minhāl. Abū ʿAwānah reported to us from al-Mughīrah from Ibrāhīm, who said: "Divorce is that which is explicitly intended as such." This is the view of Mālik, al-Awzāʿī, al-Ḥasan ibn Ḥayy, al-Shāfiʿī, Abū Sulaymān, their companions, and constitutes one of the two views of al-Shāfiʿī.

وَصَحَّ عَنْ الْحَسَنِ الْبَصْرِيِّ: طَلَاقُ الْمُكْرَهِ لَا يَجُوزُ - وَهُوَ أَحَدُ قَوْلَيْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ - وَصَحَّ أَيْضًا عَنْ عَطَاءٍ، وَطَاوُسٍ، وَأَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ وَعَنْ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا أَبُو عَوَانَةَ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ قَالَ: الطَّلَاقُ مَا عُنِيَ بِهِ الطَّلَاقُ - وَهُوَ قَوْلُ مَالِكٍ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ - وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ.

L34022 A contrary ruling has been attributed to ʿUmar, as narrated by Saʿīd ibn Manṣūr through his chain: Faraj ibn Faḍālah reported: ʿAmr ibn Sharāḥīl al-Maʿāfirī narrated to me that a woman unsheathed a sword, placed it on her husband's abdomen, and swore: "By Allah, I will pierce you through or you must divorce me!" He pronounced three divorces upon her. When the matter was presented to ʿUmar ibn al-Khaṭṭāb, he ratified the validity of her divorce.

وَرُوِيَ خِلَافُ ذَلِكَ عَنْ عُمَرَ -: كَمَا رُوِّينَا عَنْ سَعِيدِ بْنِ مَنْصُورٍ نَا فَرَجُ بْنُ فَضَالَةَ حَدَّثَنِي عَمْرُو بْنُ شَرَاحِيلَ الْمَعَافِرِيُّ أَنَّ امْرَأَةً سَلَّتْ سَيْفًا فَوَضَعَتْهُ عَلَى بَطْنِ زَوْجِهَا وَقَالَتْ: وَاَللَّهِ لَأَنْفُذَنك أَوْ لِتُطَلِّقَنِي؟ فَطَلَّقَهَا ثَلَاثًا، فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ الْخَطَّابِ، فَأَمْضَى طَلَاقَهَا.

L34023 It is narrated from Ibn ʿUmar that a man asked him, saying, "Someone stepped on my leg to force me to divorce my wife, so I divorced her." He disapproved of him returning to her. This is interpreted based on the view that he did not regard this as coercion, and it is also narrated from ʿUmar ibn ʿAbd al-ʿAzīz.

وَعَنْ ابْنِ عُمَرَ رُوِّينَا عَنْهُ أَنَّهُ سَأَلَهُ رَجُلٌ فَقَالَ لَهُ: إنَّهُ وَطِئَ فُلَانٌ عَلَى رِجْلِي حَتَّى أُطَلِّقَ امْرَأَتِي، فَطَلَّقْتهَا، فَكَرِهَ لَهُ الرُّجُوعَ إلَيْهَا - وَهَذَا يُخَرَّجُ عَلَى أَنَّهُ لَمْ يَرَ ذَلِكَ إكْرَاهًا - وَرُوِيَ أَيْضًا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

L34024 It has been reported to us from Ali ibn Abi Talib that all divorce is permissible except the divorce of the insane. It has previously been reported from him that the divorce of a coerced person is invalid. It has also been reported from Ibrahim - and soundly narrated from Abi Qilabah, al-Zuhri, Qatadah, and Sa'id ibn Jubayr.

وَرُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ كُلُّ الطَّلَاقِ جَائِزٌ إلَّا طَلَاقَ الْمَعْتُوهِ، وَقَدْ رُوِّينَا عَنْهُ قَبْلُ إبْطَالَ طَلَاقِ الْمُكْرَهِ وَرُوِيَ أَيْضًا عَنْ إبْرَاهِيمَ - وَصَحَّ عَنْ أَبِي قِلَابَةَ، وَالزُّهْرِيِّ، وَقَتَادَةَ، وَسَعِيدِ بْنِ جُبَيْرٍ -.

L34025–34026 Abu Hanifah and his disciples upheld this ruling.

وَبِهِ أَخَذَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ.

L34027 A third opinion—which states that the divorce pronounced by a person under duress is not binding if compelled by thieves, but is binding if compelled by the ruler—is one we have reported from Al-Sha'bi.

وَقَوْلٌ ثَالِثٌ - وَهُوَ أَنَّ طَلَاقَ الْمُكْرَهِ إنْ أَكْرَهَهُ اللُّصُوصُ لَمْ يَلْزَمْهُ، وَإِنْ أَكْرَهَهُ السُّلْطَانُ لَزِمَهُ -: رُوِّينَاهُ عَنْ الشَّعْبِيِّ.

L34028 A fourth opinion—narrated from Ibrāhīm—states: "If someone is unjustly compelled to divorce and employs a stratagem [tawreek] through alternative wording, it is not binding upon him. But if he does not employ such a stratagem, it becomes binding. The oppressor gains no benefit from the tawreek, and this is one of the two opinions of Sufyān."

وَقَوْلٌ رَابِعٌ - رُوِّينَاهُ عَنْ إبْرَاهِيمَ أَنَّهُ قَالَ: مَنْ أُكْرِهَ ظُلْمًا عَلَى الطَّلَاقِ فَوَرَّكَ إلَى شَيْءٍ آخَرَ لَمْ يَلْزَمْهُ، فَإِنْ لَمْ يُوَرِّكْ لَزِمَهُ، وَلَا يَنْتَفِعُ الظَّالِمُ بِالتَّوْرِيكِ وَهُوَ أَحَدُ قَوْلَيْ سُفْيَانَ.

L34029 Abu Muhammad said: Those who deemed it permissible argued with a narration we reported through Baqiyyah's chain from al-Ghāzī ibn Jabalah, from Ṣafwān ibn ʿAmr al-Aṣamm al-Ṭāʾī, from a man among the Companions of the Messenger of Allah—peace and blessings be upon him and his family—that a man's wife sat on his chest, held a knife to his throat, and said: "Divorce me, or I will slaughter you!" He implored her by Allah the Exalted, but she persisted, so he pronounced three divorces upon her. This was brought to the Prophet—peace and blessings be upon him and his family—and he said: "There is no validity to a divorce under duress."

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ أَجَازَهُ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ بَقِيَّةَ عَنْ الْغَازِي بْنِ جَبَلَةَ عَنْ صَفْوَانَ بْنِ عَمْرٍو الْأَصَمِّ الطَّائِيِّ عَنْ رَجُلٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنَّ رَجُلًا جَلَسَتْ امْرَأَتُهُ عَلَى صَدْرِهِ وَجَعَلَتْ السِّكِّينَ عَلَى حَلْقِهِ وَقَالَتْ لَهُ: طَلِّقْنِي أَوْ لَأَذْبَحَنَّكَ؟ فَنَاشَدَهَا اللَّهَ تَعَالَى فَأَبَتْ، فَطَلَّقَهَا ثَلَاثًا، فَذُكِرَ ذَلِكَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: لَا قَيْلُولَةَ فِي الطَّلَاقِ» .

L34030 From the path of Sa'id ibn Mansur, Al-Walid ibn Muslim narrated to me from Al-Ghazi ibn Jabalah Al-Jublani that he heard Safwan say: "A man's wife sat on his chest, placed a knife over his heart, and declared: 'Divorce me or I will kill you!' So he divorced her. He then came to the Messenger of Allah—peace and blessings be upon him and his family—and he—peace and blessings be upon him—said: 'There is no validity to a divorce during the midday rest (qaylula).'" This is an utterly unreliable report: Safwan's narrations are rejected, the remaining narrators are weak, and Al-Ghazi ibn Jabalah is obscure.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ حَدَّثَنِي الْوَلِيدُ بْنُ مُسْلِمٍ عَنْ الْغَازِي بْنِ جَبَلَةَ الْجُبْلَانِيِّ أَنَّهُ سَمِعَ صَفْوَانَ يَقُولُ: «إنَّ رَجُلًا جَلَسَتْ امْرَأَتُهُ عَلَى صَدْرِهِ فَوَضَعَتْ السِّكِّينَ عَلَى فُؤَادِهِ وَهِيَ تَقُولُ: لَتُطَلِّقَنِّي أَوْ لَأَقْتُلَنَّكَ؟ فَطَلَّقَهَا، ثُمَّ أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ لَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: لَا قَيْلُولَةَ فِي الطَّلَاقِ» وَهَذَا خَبَرٌ فِي غَايَةِ السُّقُوطِ، صَفْوَانُ مُنْكَرُ الْحَدِيثِ - وَبَقِيَّةُ ضَعِيفٌ - وَالْغَازِي بْنُ جَبَلَةَ مَغْمُورٌ.

L34031 They mentioned another report—narrated through the chain of ʿAṭāʾ ibn ʿAjlān from ʿIkrimah from Ibn ʿAbbās from the Prophet (peace be upon him and his family)—who said: "Every divorce is permissible except that of a mentally incapacitated person whose reason is impaired."

وَذَكَرُوا خَبَرًا آخَرَ - مِنْ طَرِيقِ عَطَاءِ بْنِ عَجْلَانَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «كُلُّ الطَّلَاقِ جَائِزٌ إلَّا طَلَاقَ الْمَعْتُوهِ الْمَغْلُوبِ عَلَى عَقْلِهِ» .

L34032 This is worse than the first, because ʿAṭāʾ ibn ʿAjlān is noted for lying.

وَهَذَا شَرٌّ مِنْ الْأَوَّلِ، لِأَنَّ عَطَاءَ بْنَ عَجْلَانَ مَذْكُورٌ بِالْكَذِبِ

L34033 وَالْعَجَبُ أَنَّ الْمُحْتَجِّينَ بِهِ أَوَّلُ الْمُخَالِفِينَ لَهُ لِأَصْلٍ فَاسِدٍ لَهُمْ -: أَمَّا أَصْلُهُمْ - فَإِنَّهُمْ يَقُولُونَ فِي الْأَخْبَارِ الثَّابِتَةِ: إذَا خَالَفَ شَيْئًا مِنْهَا رَاوِيهِ فَهُوَ دَلِيلٌ عَلَى سُقُوطِهِ، وَهَذَا خَبَرٌ إنَّمَا ذُكِرَ مِنْ طَرِيقِ ابْنِ عَبَّاسٍ، وَالثَّابِتُ عَنْ ابْنِ عَبَّاسٍ إبْطَالُ طَلَاقِ الْمُكْرَهِ كَمَا ذَكَرْنَا آنِفًا.

L34034 وَأَمَّا خِلَافُهُمْ لَهُ - فَإِنَّهُمْ لَا يُجِيزُونَ طَلَاقَ الصَّبِيِّ الَّذِي لَمْ يَبْلُغْ، وَعُمُومُ هَذَا الْخَبَرِ الْمَلْعُونِ يَقْتَضِي جَوَازَهُ، كَمَا يَقْتَضِي عِنْدَهُمْ جَوَازَ طَلَاقِ الْمُكْرَهِ.

L34035–34036 فَإِنْ ادَّعَوْا فِي إبْطَالِ طَلَاقِ الصَّبِيِّ الْإِجْمَاعَ عَلَى عَادَتِهِمْ فِي اسْتِسْهَالِ الْكَذِبِ فِي دَعْوَى الْإِجْمَاعِ بَيَّنَ كَذِبَهُمْ مَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ عَمَّنْ سَمِعَ عَلِيَّ بْنَ أَبِي طَالِبٍ أَنَّهُ كَانَ يَقُولُ " اُكْتُمُوا الصِّبْيَانَ النِّكَاحَ ".

L34037 مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هُشَيْمٌ نا الْمُغِيرَةُ عَنْ إبْرَاهِيمَ أَنَّهُ كَانَ لَا يَهَابُ شَيْئًا مِنْ أَمْرِ الْغُلَامِ إلَّا الطَّلَاقَ.

L34038 وَمِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي طَلَاقِ الصَّبِيِّ قَالَ: إذَا صَامَ رَمَضَانَ وَأَحْصَى الصَّلَاةَ جَازَ طَلَاقُهُ.

L34039 مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانُوا يَكْتُمُونَ الصِّبْيَانَ النِّكَاحَ إذَا زَوَّجُوهُمْ مَخَافَةَ الطَّلَاقِ.

L34040 فَإِنْ قِيلَ: فَفِي هَذَا الْخَبَرِ " وَكَانَ إذَا وَقَعَ لَمْ يَرَهُ شَيْئًا ".

L34041 The remarkable thing is that those who cite it as evidence are foremost in opposing it due to their own corrupt principle—a principle which: they assert regarding established narrations that if something within them contradicts their narrator, this constitutes proof of its invalidation. Yet this narration is indeed only transmitted through Ibn Abbas, while what is definitively established from Ibn Abbas is the invalidation of coerced divorce, as we previously mentioned.

As for their disagreement with him, they do not permit the divorce of a prepubescent boy, while the general wording of this rejected narration necessitates its permissibility, just as it necessitates, according to their principles, the validity of a divorce issued under compulsion.

If they claim consensus in invalidating a minor's divorce according to their customary practice of taking lying lightly in claims of consensus, what has been transmitted to us through Wakīʿ's narration from Sufyān al-Thawrī, from Abū Isḥāq, from someone who heard ʿAlī ibn Abī Ṭālib say: "Conceal marriage from boys" exposes the falsehood of their claim.

Through the chain of al-Ḥajjāj ibn al-Minhāl: Hushaym narrated to us, from al-Mughīrah, from Ibrāhīm, that he feared nothing in matters pertaining to the boy except divorce.

And via the chain of transmission of Wakiʿ, from Hishām al-Dastawā'ī, from Qatādah, from Saʿīd ibn al-Musayyib concerning the divorce of a prepubescent boy: He said, "If he fasts Ramadan and properly observes prayer, his divorce is valid."

Narrated via Wakiʿ, from Sufyān al-Thawrī, from Manṣūr, from Ibrāhīm al-Nakhaʿī: "They would conceal the marriage from the boys when they married them off, for fear of divorce."

If it is said: "Then in this report, 'And whenever it occurred, he did not regard it as anything.'"

We said: Yes, this is an account from Ibrāhīm, not from his companions

from whom it was narrated that they concealed the children's marriages for fear of divorce.

قُلْنَا: نَعَمْ، هَذِهِ حِكَايَةٌ عَنْ إِبْرَاهِيمَ، لَا عَنْ أَصْحَابِهِ الَّذِينَ حُكِيَ عَنْهُمْ كِتْمَانُ الصِّبْيَانِ زَوَاجَهُمْ مَخَافَةَ الطَّلَاقِ.

L34042 They also cited narrations containing: "Three matters whose seriousness is binding and whose jest is binding: marriage, divorce, and revocation." These narrations are fabricated because they only address rulings pertaining to those acting in jest and those acting earnestly, with no mention of the coerced in them.

وَاحْتَجُّوا أَيْضًا بِآثَارٍ فِيهَا «ثَلَاثٌ جَدُّهُنَّ جَدٌّ وَهَزْلُهُنَّ جَدٌّ: النِّكَاحُ، وَالطَّلَاقُ، وَالرَّجْعَةُ» وَهِيَ أَخْبَارٌ مَوْضُوعَةٌ، لِأَنَّهَا إِنَّمَا فِيهَا حُكْمُ الْهَازِلِ، وَالْجَادِّ، لَا ذِكْرَ لِلْمُكْرَهِ فِيهَا

L34043 To proceed: We have narrated it through the chain of ʿAbd al-Raḥmān ibn Ḥabīb ibn Adraka (denounced in ḥadīth transmission and unknown), for some transmitters stated: "from ʿAbd al-Raḥmān ibn Ḥabīb," while others stated: "Ḥabīb ibn ʿAbd al-Raḥmān." Yet there is unanimous agreement regarding the weakness of his narration.

وَبَعْدُ: فَإِنَّمَا رُوِّينَاهَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ حَبِيبِ بْنِ أَدْرَكَ - وَهُوَ مُنْكَرُ الْحَدِيثِ مَجْهُولٌ - لِأَنَّ قَوْمًا قَالُوا: عَنْ عَبْدِ الرَّحْمَنِ بْنِ حَبِيبٍ، وَقَوْمًا قَالُوا: حَبِيبُ بْنُ عَبْدِ الرَّحْمَنِ، وَهُوَ مَعَ ذَلِكَ مُتَّفَقٌ عَلَى ضَعْفِ رِوَايَتِهِ.

L34044 From the narration of Waki' through Sufyan from Abu Ishaq from Abu Burda: The Messenger of Allah (peace be upon him and his family) said, "What is wrong with men who trifle with Allah's ordained limits? One of them says: 'I have divorced,' then takes back [his wife]." This is a mursal narration (one with an incomplete chain of transmission), and no conclusive evidence can be derived from a mursal report. Moreover, it does not address the permissibility of a coerced divorce.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ أَبِي إِسْحَاقَ عَنْ أَبِي بُرْدَةَ، أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «مَا بَالُ رِجَالٍ يَلْعَبُونَ بِحُدُودِ اللَّهِ، يَقُولُ أَحَدُهُمْ: قَدْ طَلَّقْتُ ثُمَّ رَاجَعْتُ» وَهَذَا مُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ، وَلَيْسَ فِيهِ أَيْضًا جَوَازُ طَلَاقِ مُكْرَهٍ.

L34045 Or it is narrated from Al-Hasan that the Messenger of Allah—may Allah bless him and his family and grant him peace—said: "Whoever divorces in jest, arranges a marriage in jest, marries in jest, or emancipates in jest, it is valid." There is no proof in a mursal report, nor is there any basis for the divorce of a coerced person.

أَوْ عَنْ الْحَسَنِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «مَنْ طَلَّقَ لَاعِبًا أَوْ أَنْكَحَ لَاعِبًا أَوْ نَكَحَ لَاعِبًا أَوْ أَعْتَقَ لَاعِبًا فَقَدْ جَازَ» وَلَا حُجَّةَ فِي مُرْسَلٍ، وَلَيْسَ فِيهِ أَيْضًا لِطَلَاقِ مُكْرَهٍ أَثَرٌ.

L34046–34047 And from a chain of transmission containing Ibrāhīm ibn Muḥammad ibn Abī Laylā—known for lying—and it only includes those who divorce in jest or free in jest.

وَمِنْ طَرِيقٍ فِيهَا إِبْرَاهِيمُ بْنُ مُحَمَّدِ بْنِ أَبِي لَيْلَى - وَهُوَ مَذْكُورٌ بِالْكَذِبِ - ثُمَّ لَيْسَ فِيهِ إِلَّا مَنْ طَلَّقَ لَاعِبًا أَوْ أَعْتَقَ لَاعِبًا.

L34048 And there is no mention of the compelled person therein.

وَلَيْسَ فِيهِ لِلْمُكْرَهِ ذِكْرٌ.

L34049 Or through the chain of Ibn Jurayj—that the Messenger of Allah (peace and

blessings of Allah be upon him and his family)—though this chain is grossly interrupted. The coerced person's statement is not considered, for the text states only: "Whoever marries in jest or divorces in jest." If they ask: "Is this a divorce?" We reply: By no means. It is not a divorce. Divorce is solely what the divorcer utters willingly with his tongue while intending it in his heart, as Allah the Exalted has commanded. Yet you label temporary marriage and ten-day marriage as "marriage"—do you then permit it for that reason? Since all their camouflaged arguments have been nullified, we must present proof—by Allah's will and power—to invalidate coerced divorce. Among these proofs is the statement of the Messenger of Allah (peace and blessings of Allah be upon him and his family): "Actions are judged by intentions, and each person will have only what he intended." This confirms that every act without intent is invalid and inconsequential. The coerced person's divorce is an act without intent, thus, invalid. It is merely a rehearsal of what he was commanded to say, and no divorce applies to one who utters words he did not sincerely believe.[2]

أَوْ مِنْ طَرِيقِ ابْنِ جُرَيْجٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهَذَا فَاحِشُ الِانْقِطَاعِ، ثُمَّ لَيْسَ لِلْمُكْرَهِ ذِكْرٌ، وَإِنَّمَا فِيهِ «مَنْ نَكَحَ لَاعِبًا أَوْ طَلَّقَ لَاعِبًا» وَإِنْ قَالُوا: هُوَ طَلَاقٌ؟ قُلْنَا: كَلَّا، لَيْسَ طَلَاقًا إنَّمَا الطَّلَاقُ مَا نَطَقَ بِهِ الْمُطَلِّقُ مُخْتَارًا بِلِسَانِهِ قَاصِدًا بِقَلْبِهِ، كَمَا أَمَرَ اللَّهُ تَعَالَى، وَأَنْتُمْ تُسَمُّونَ نِكَاحَ الْمُتْعَةِ، وَنِكَاحَ عَشْرٍ: نِكَاحًا فَأَجِيزُوهُ لِذَلِكَ؟ فَإِذْ قَدْ بَطَلَ كُلُّ مَا مَوَّهُوا بِهِ فَعَلَيْنَا إيرَادُ الْبُرْهَانِ - بِحَوْلِ اللَّهِ وَقُوَّتِهِ عَلَى بُطْلَانِ طَلَاقِ الْمُكْرَهِ -: فَمِنْ ذَلِكَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى» فَصَحَّ أَنَّ كُلَّ عَمَلٍ بِلَا نِيَّةٍ فَهُوَ بَاطِلٌ لَا يُعْتَدُّ بِهِ، وَطَلَاقُ الْمُكْرَهِ عَمَلٌ بِلَا نِيَّةٍ، فَهُوَ بَاطِلٌ، وَإِنَّمَا هُوَ حَاكٍ لِمَا أُمِرَ أَنْ يَقُولَهُ فَقَطْ، وَلَا طَلَاقَ عَلَى حَاكٍ كَلَامًا لَمْ يَعْتَقِدْهُ.

L34050 It has been authentically reported from the Messenger of Allah—peace and blessings of Allah be upon him and his family—that he said: "Allah has pardoned for me [on behalf of] my Ummah their mistakes, forgetfulness, and that which they are compelled to do." We have narrated it by way of Ar-Rabi' ibn Sulayman the mu'adhdhin: Bishr ibn Bakr narrated to us from Al-Awza'i from 'Ata' ibn Abi Rabah from 'Ubayd ibn 'Umayr from Ibn 'Abbas from the Prophet—peace and blessings of Allah be upon him and his family.

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّ اللَّهَ تَجَاوَزَ لِي عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» رُوِّينَاهُ مِنْ طَرِيقِ الرَّبِيعِ بْنِ سُلَيْمَانَ الْمُؤَذِّنِ نا بِشْرُ بْنُ بَكْرٍ عَنْ الْأَوْزَاعِيِّ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L34051 Among the greatest of their contradictions is that they permit divorce by the coerced, his marriage contract, marrying him off, his revocable divorce, and his emancipation - yet they do not permit his sale, purchase, gifting, nor his confession. This is toying with the religion - and we seek refuge in Allah from being forsaken.

وَمِنْ أَعْظَمِ تَنَاقُضِهِمْ: أَنَّهُمْ يُجِيزُونَ طَلَاقَ الْمُكْرَهِ، وَنِكَاحَهُ، وَإِنْكَاحَهُ، وَرَجْعَتَهُ، وَعِتْقَهُ - وَلَا يُجِيزُونَ بَيْعَهُ، وَلَا ابْتِيَاعَهُ، وَلَا هِبَتَهُ، وَلَا إقْرَارَهُ - وَهَذَا تَلَاعُبٌ بِالدِّينِ - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L34052 **A legal issue: If a person says, "Should I marry so-and-so, she is divorced."**

[مَسْأَلَةٌ قَالَ إنْ تَزَوَّجْت فُلَانَةَ فَهِيَ طَالِقٌ]

[2] **Hadith references (L34049):** Sahih al-Bukhari 1; Sunan Abi Dawud 2201; Mishkat al-Masabih 1.

L34053 1963 – Issue: If someone says, “If I marry a specific woman, then she is divorced,” or says, “then she is divorced three times”—all such statements are null and void. He may marry her, and she will not be considered divorced.

١٩٦٣ - مَسْأَلَةٌ: وَمَنْ قَالَ: إنْ تَزَوَّجْت فُلَانَةَ فَهِيَ طَالِقٌ، أَوْ قَالَ: فَهِيَ طَالِقٌ ثَلَاثًا - فَكُلُّ ذَلِكَ بَاطِلٌ، وَلَهُ أَنْ يَتَزَوَّجَهَا وَلَا تَكُونَ طَالِقًا.

L34054 Similarly, if he were to say, “Every woman I marry shall be divorced”—and whether he specifies a duration, near or far, a tribe, or a town—all of that is void and not binding.

وَكَذَلِكَ لَوْ قَالَ: كُلُّ امْرَأَةٍ أَتَزَوَّجُهَا فَهِيَ طَالِقٌ - وَسَوَاءٌ عَيَّنَ مُدَّةً قَرِيبَةً أَوْ بَعِيدَةً أَوْ قَبِيلَةً أَوْ بَلْدَةً - كُلُّ ذَلِكَ بَاطِلٌ لَا يَلْزَمُ.

L34055–34056 People have differed regarding this: a group held that all of that is obligatory for him.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَتْ طَائِفَةٌ: يَلْزَمُهُ كُلُّ ذَلِكَ.

L34057 A group held: If he specifies a tribe, a specific location, a particular woman, or a short period he expects to live, it becomes binding on him. But if he speaks generally, it does not become binding.

وَقَالَتْ طَائِفَةٌ: إنْ عَيَّنَ قَبِيلَةً أَوْ بَلْدَةً أَوْ امْرَأَةً أَوْ مُدَّةً قَرِيبَةً يَعِيشُ إلَيْهَا لَزِمَهُ، فَإِنْ عَمَّ لَمْ يَلْزَمْهُ.

L34058 A group held that it is makruh for him to marry her. But if he does marry her, we did not prevent him nor annul the marriage.

وَقَالَتْ طَائِفَةٌ: يُكْرَهُ لَهُ أَنْ يَتَزَوَّجَهَا، فَإِنْ تَزَوَّجَهَا لَمْ نَمْنَعْهُ، وَلَمْ نَفْسَخْهُ.

L34059 From those from whom our view has been reported - as transmitted through the chain of Hammad ibn Salamah from Humayd from al-Hasan - is that Ali ibn Abi Talib said: “There is no divorce except after marriage. If he pronounces it, it is not a divorce.”

فَمِمَّنْ رُوِيَ عَنْهُ قَوْلُنَا كَمَا رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ " لَا طَلَاقَ إلَّا مِنْ بَعْدِ نِكَاحٍ وَإِنْ سَمَّاهَا فَلَيْسَ بِطَلَاقٍ ".

L34060 From the chain of Abu ʿUbayd: Hushaym narrated to us, Al-Mubarak ibn Fadalah narrated to us, from Al-Hasan, from Ali ibn Abi Talib that he was asked about a man who said: “If I marry so-and-so, she will be divorced.” Ali responded: “There is no divorce except after marriage.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا هُشَيْمٌ نا الْمُبَارَكُ بْنُ فَضَالَةَ عَنْ الْحَسَنِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ سُئِلَ عَنْ رَجُلٍ قَالَ: إنْ تَزَوَّجْت فُلَانَةَ فَهِيَ طَالِقٌ؟ فَقَالَ عَلِيٌّ: لَيْسَ طَلَاقٌ إلَّا مِنْ بَعْدِ مِلْكٍ.

L34061 From the narration of ʿAbd al-Razzāq, who narrated to us from Ibn Jurayj, who said: I heard ʿAṭāʾ say: Ibn ʿAbbās stated, “There is no divorce except after marriage.” ʿAṭāʾ said: “If one swears by divorce before marrying, there is no consequence.” Ibn Jurayj said: It reached Ibn ʿAbbās that Ibn Masʿūd stated: “If one divorces before marrying, it is valid.” Ibn ʿAbbās responded: “He erred in this matter—Allah, the Mighty and Majestic, says: {When you

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ قَالَ: سَمِعْت عَطَاءً يَقُولُ: قَالَ ابْنُ عَبَّاسٍ، لَا طَلَاقَ إلَّا مِنْ بَعْدِ نِكَاحٍ "، قَالَ عَطَاءٌ: فَإِنْ حَلَفَ بِطَلَاقٍ مَا لَمْ يَنْكِحْ فَلَا شَيْءَ - قَالَ ابْنُ جُرَيْجٍ: بَلَغَ ابْنَ عَبَّاسٍ أَنَّ ابْنَ مَسْعُودٍ يَقُولُ: إنْ طَلَّقَ مَا لَمْ يَنْكِحْ فَهُوَ جَائِزٌ؟

marry believing women and then divorce them} [Al-Aḥzāb: 49], and He did not say, 'When you divorce believing women and then marry them.'"[3]

فَقَالَ ابْنُ عَبَّاسٍ: أَخْطَأَ فِي هَذَا - إِنَّ اللَّهَ عَزَّ وَجَلَّ يَقُولُ: {إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ} [الأحزاب: ٤٩] وَلَمْ يَقُلْ إِذَا طَلَّقْتُمُ الْمُؤْمِنَاتِ ثُمَّ نَكَحْتُمُوهُنَّ.

L34062 And through the chain of Wakīʿ from Ibn Abī Dhiʾb, from Muḥammad ibn al-Munkadir and ʿAṭāʾ ibn Abī Rabāḥ—both of them narrating from Jābir ibn ʿAbdullāh, who elevates it to the Prophet: "There is no divorce prior to marriage."

وَمِنْ طَرِيقِ وَكِيعٍ عَنِ ابْنِ أَبِي ذِئْبٍ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ، كِلَاهُمَا عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ يَرْفَعُهُ «لَا طَلَاقَ قَبْلَ نِكَاحٍ» .

L34063 It has been authentically reported from Tawus, Sa'id ibn al-Musayyib, Ata', Mujahid, Sa'id ibn Jubayr, Urwah ibn al-Zubayr, Qatadah, al-Hasan, Wahb ibn Munabbih, Ali ibn al-Husayn, al-Qasim ibn Abd al-Raḥmān, and Shurayh al-Qadi.

وَصَحَّ عَنْ طَاوُسٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَعَطَاءٍ، وَمُجَاهِدٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَقَتَادَةَ وَالْحَسَنِ، وَوَهْبِ بْنِ مُنَبِّهٍ، وَعَلِيِّ بْنِ الْحُسَيْنِ، وَالْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ، وَشُرَيْحٍ الْقَاضِي.

L34064 It has also been narrated from 'Ā'ishah, the Mother of the Believers, and 'Ikrimah—and this is the opinion of Sufyān ibn 'Uyaynah, 'Abd al-Raḥmān ibn Mahdī, al-Shāfi'ī and his companions, Aḥmad and his companions, Isḥāq ibn Rāhuyah, Abū Sulaymān and his companions, and the majority of proponents of hadith.

وَرُوِيَ أَيْضًا عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ وَعِكْرِمَةَ - وَهُوَ قَوْلُ سُفْيَانَ بْنِ عُيَيْنَةَ، وَعَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ، وَالشَّافِعِيِّ، وَأَصْحَابِهِ، وَأَحْمَدَ، وَأَصْحَابِهِ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِ، وَجُمْهُورِ أَصْحَابِ الْحَدِيثِ.

L34065–34067 As for the one who disapproved of that and did not annul it - as narrated via the chain of al-Ḥajjāj ibn al-Minhāl, who narrated to Jarīr ibn Ḥāzim from Yaḥyā ibn Saʿīd al-Anṣārī from al-Qāsim ibn Muḥammad ibn Abī Bakr regarding one who stated: "Every woman I marry is divorced" - He disliked it—and that is the position of al-Awzāʿī—and it is reported from him that he said: "If he married her, I do not command him to separate from her, and if he had not married her, I do not command him to marry her"—and that is the position of Sufyān al-Thawrī. When asked: "Is it forbidden?" he replied: "Who says it is forbidden? Those who grant concession regarding it are more numerous than those who take a strict stance on it"—and this is the position upheld by Abū ʿUbayd.

وَأَمَّا مَنْ كَرِهَ ذَلِكَ وَلَمْ يَفْسَخْهُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا جَرِيرُ بْنُ حَازِمٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ فِيمَنْ قَالَ: كُلُّ امْرَأَةٍ أَتَزَوَّجُهَا فَهِيَ طَالِقٌ، فَكَرِهَهُ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ - وَرُوِيَ عَنْهُ أَنَّهُ قَالَ: إِنْ تَزَوَّجَهَا لَمْ آمُرْهُ بِفِرَاقِهَا، وَإِنْ كَانَ لَمْ يَتَزَوَّجْهَا لَمْ آمُرْهُ أَنْ يَتَزَوَّجَهَا - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، فَقِيلَ لَهُ: أَحَرَامٌ هُوَ؟ فَقَالَ: وَمَنْ يَقُولُ: إِنَّهُ حَرَامٌ، مَنْ رَخَّصَ فِيهِ أَكْثَرُ مِمَّنْ شَدَّدَ فِيهِ - وَبِهِ يَقُولُ أَبُو عُبَيْدٍ.

L34068 The third opinion (concerning the distinction between specification and generality) has been transmitted to us through Mālik's chain from Saʿīd ibn

[3] **Qur'an references (L34061):** Qur'an 33:49 (Al-Ahzab).

ʿAmr ibn Sulaym, from al-Qāsim ibn Muḥammad: A man declared, “If I marry so-and-so, she shall be to me like my mother’s back [a form of unlawful divorce] (ẓihār),” and then married her. Umar ibn al-Khattab said to him, “Do not approach her until you offer kaffārah.”

وَالْقَوْلُ الثَّالِثُ - فِي الْفَرْقِ بَيْنَ التَّخْصِيصِ وَالْعُمُومِ -: رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ سَعِيدِ بْنِ عَمْرِو بْنِ سُلَيْمٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ أَنَّ رَجُلًا قَالَ: إنْ تَزَوَّجْت فُلَانَةَ فَهِيَ عَلَيَّ كَظَهْرِ أُمِّي، فَتَزَوَّجَهَا، فَقَالَ لَهُ عُمَرُ بْنُ الْخَطَّابِ: لَا تَقْرَبْهَا حَتَّى تُكَفِّرَ.

L34069 Abū Muḥammad said: This does not align with their position, for it has been reported from ʿUmar that even if it is general, it remains binding. He mentioned this after this—God, the Mighty and Majestic, willing. It has reached me from Ibn Masʿūd that he said: “Whoever declares, ’Every woman I marry is divorced,’ without specifying a tribe, a village, or a particular woman, it is invalid.” We have previously cited this from Ibn Masʿūd in summary.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ هَذَا مُوَافِقًا لَهُمْ، لِأَنَّهُ قَدْ رُوِيَ عَنْ عُمَرَ: أَنَّهُ وَإِنْ عَمَّ فَهُوَ لَازِمٌ فَذَكَرَهُ بَعْدَ هَذَا - إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ، بَلَغَنِي عَنْ ابْنِ مَسْعُودٍ أَنَّهُ قَالَ: مَنْ قَالَ: كُلُّ امْرَأَةٍ أَنْكِحُهَا فَهِيَ طَالِقٌ إنْ لَمْ يُسَمِّ قَبِيلَةً أَوْ قَرْيَةً أَوْ امْرَأَةً بِعَيْنِهَا فَلَيْسَ بِشَيْءٍ - وَقَدْ ذَكَرْنَاهُ قَبْلُ عَنْ ابْنِ مَسْعُودٍ مُجْمَلًا.

L34070 From the transmission of Al-Hajjaj ibn Al-Minhal: Abu ʿAwanah narrated to us from Muhammad ibn Qays—known as Al-Marhabi—who said: I asked Ibrahim Al-Nakha’i about a man who said regarding a woman, “If I marry her, then she is divorced.” Ibrahim narrated from ʿAlqamah or from Al-Aswad that Ibn Mas’ud said, “It is as he said.” Then I asked Al-Sha’bi and mentioned to him the statement of Ibrahim Al-Nakha’i. He replied, “He is correct.”

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ مُحَمَّدِ بْنِ قَيْسٍ - هُوَ الْمَرْهَبِيُّ - قَالَ: سَأَلْت إبْرَاهِيمَ النَّخَعِيَّ عَنْ رَجُلٍ قَالَ فِي امْرَأَةٍ: إنْ تَزَوَّجْتهَا فَهِيَ طَالِقٌ، فَذَكَرَ إبْرَاهِيمُ عَنْ عَلْقَمَةَ أَوْ عَنْ الْأَسْوَدِ: أَنَّ ابْنَ مَسْعُودٍ قَالَ: هِيَ كَمَا قَالَ - ثُمَّ سَأَلْت الشَّعْبِيَّ وَذَكَرْت لَهُ قَوْلَ إبْرَاهِيمَ النَّخَعِيِّ؟ فَقَالَ: صَدَقَ.

L34071 From the narration of Abū ʿUbayd via Hushaym: Mughīrah reported to us from Ibrāhīm al-Nakhaʿī concerning one who said: “Every woman I marry is divorced.” He replied: “This is invalid. This man has rendered married women unlawful for himself; let him marry.” He said: “If he names her, attributes her lineage, specifies a city, or fixes a timeframe, then it is as he said.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ هُشَيْمٍ نا مُغِيرَةُ عَنْ إبْرَاهِيمَ النَّخَعِيِّ فِيمَنْ قَالَ: كُلُّ امْرَأَةٍ أَتَزَوَّجُهَا فَهِيَ طَالِقٌ؟ قَالَ: لَيْسَ بِشَيْءٍ، هَذَا رَجُلٌ حَرَّمَ الْمُحْصَنَاتِ عَلَى نَفْسِهِ: فَلْيَتَزَوَّجْ، قَالَ: فَإِنْ سَمَّاهَا أَوْ نَسَبَهَا، أَوْ سَمَّى مِصْرًا، أَوْ وَقَّتَ وَقْتًا، فَهِيَ كَمَا قَالَ.

L34072 From the chain of Wakiʿ, from Ismāʿīl ibn Abī Khālid, from al-Shaʿbī, who said: If a man says, “Every woman I marry is divorced,” it holds no effect. But if he stipulates a time, it becomes binding.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: إنْ قَالَ: كُلُّ امْرَأَةٍ أَتَزَوَّجُهَا فَهِيَ طَالِقٌ، فَلَيْسَ بِشَيْءٍ، فَإِنْ وَقَّتَ لَزِمَهُ.

L34073 And from the chain of Abū ’Ubayd: Muḥammad ibn Kathīr narrated to us from Ḥammād ibn Salamah from Qays ibn Sa’d from ’Aṭā’, who said:

"Whoever says, 'If I marry so-and-so woman, she is divorced,' then she is divorced exactly as he stated."

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا مُحَمَّدُ بْنُ كَثِيرٍ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ عَطَاءٍ، قَالَ: مَنْ قَالَ: إنْ تَزَوَّجْت فُلَانَةَ فَهِيَ طَالِقٌ، فَهِيَ كَمَا قَالَ -.

L34074 And this is the opinion of Al-Ḥakam ibn ʿUtaybah, Rabīʿah, Al-Ḥasan ibn Ḥayy, Al-Layth ibn Saʿd, Mālik, and his companions.

وَهُوَ قَوْلُ الْحَكَمِ بْنِ عُتَيْبَةَ، وَرَبِيعَةَ، وَالْحَسَنِ بْنِ حَيٍّ، وَاللَّيْثِ بْنِ سَعْدٍ، وَمَالِكٍ، وَأَصْحَابِهِ.

L34075–34076 The fourth opinion is that it becomes binding upon him, even if the declaration is general. It has been narrated to us through the chain of Abd al-Razzaq from Yasin al-Zayyat from Abu Muhammad from Ata al-Khurasani from Abu Salama ibn Abd al-Rahman: A man said, "Every woman I marry is divorced." Umar ibn al-Khattab responded to him: "It is as you have said."

وَالْقَوْلُ الرَّابِعُ - أَنَّهُ يَلْزَمُهُ، وَإِنْ عَمَّ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ يَاسِينَ الزَّيَّاتِ عَنْ أَبِي مُحَمَّدٍ عَنْ عَطَاءٍ الْخُرَاسَانِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ أَنَّ رَجُلًا قَالَ: كُلُّ امْرَأَةٍ أَتَزَوَّجُهَا فَهِيَ طَالِقٌ؟ فَقَالَ لَهُ عُمَرُ بْنُ الْخَطَّابِ: هُوَ كَمَا قُلْت.

L34077 Through the narration of Abd al-Razzaq from Maʿmar from al-Zuhri regarding one who said: "Every woman I marry is divorced? And every female slave I purchase is free?" Al-Zuhri said: "It is as he said."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِيمَنْ قَالَ: كُلُّ امْرَأَةٍ أَتَزَوَّجُهَا فَهِيَ طَالِقٌ؟ وَكُلُّ أَمَةٍ أَشْتَرِيهَا فَهِيَ حُرَّةٌ؟ قَالَ الزُّهْرِيُّ: هُوَ كَمَا قَالَ.

L34078 From the transmission path of Abu 'Ubayd, who narrated to us from Yahya ibn Sa'id al-Qattan and Yazid ibn Harun - both transmitting from Yahya ibn Sa'id al-Ansari - who said: Al-Qasim ibn Muhammad, Salim ibn 'Abdullah ibn 'Umar, and 'Umar ibn 'Abd al-'Aziz viewed divorce before marriage as he said.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ، وَيَزِيدُ بْنُ هَارُونَ، كِلَاهُمَا عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، قَالَ: كَانَ الْقَاسِمُ بْنُ مُحَمَّدٍ، وَسَالِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ: يَرَوْنَ الطَّلَاقَ قَبْلَ النِّكَاحِ كَمَا قَالَ.

L34079 From the narration of Abū 'Ubayd: Marwān reported from Shujā' from Khuṣayf, who said: I asked Mujāhid about the statement of one who said, "He divorced before acquiring marital authority," and Mujāhid criticized him, saying: "He has no valid divorce except after acquiring marital authority." This is the opinion of 'Uthmān al-Battī and Abū Ḥanīfah. Abū Muḥammad said: We examined the evidence cited by those who permit it under all circumstances. We found their proponents arguing: "Do you disagree with us concerning someone who says to his wife, 'You are divorced if I father a daughter'—[claiming] that it is nothing?" Thus, it is established that the divorce is contingent upon the time to which it is attached. Abū Muḥammad said: This is invalid, because he did not execute the divorce as commanded.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا مَرْوَانُ عَنْ شُجَاعٍ عَنْ خُصَيْفٍ قَالَ: سَأَلْت مُجَاهِدًا عَنْ قَوْلِ مَنْ قَالَ: طَلَّقَ قَبْلَ أَنْ يَمْلِكَ فَعَابَهُ مُجَاهِدٌ، وَقَالَ: مَا لَهُ طَلَاقٌ إلَّا بَعْدَمَا مَلَكَ - وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ، وَأَبِي حَنِيفَةَ. قَالَ أَبُو مُحَمَّدٍ: فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ أَجَازَهُ بِكُلِّ حَالٍ؟ فَوَجَدْنَا قَائِلَهُمْ قَالَ: لَا تُخَالِفُونَنَا فِيمَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إذَا بِنْت مِنِّي -: أَنَّهُ لَيْسَ شَيْئًا - فَصَحَّ أَنَّ الطَّلَاقَ مُعَلَّقٌ بِالْوَقْتِ الَّذِي أُضِيفَ إلَيْهِ؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا فَاسِدٌ، لِأَنَّهُ لَمْ يُخْرِجْ الطَّلَاقَ كَمَا أُمِرَ، بَلْ لَمْ يُوقِعْهُ حِينَ نَطَقَ بِهِ، وَأَوْقَعَهُ حَيْثُ لَا يَقَعُ؟ فَهُوَ بَاطِلٌ فَقَطْ.

Rather, he failed to effectuate it when he uttered it and attempted to effectuate it where it cannot apply. Thus, it is merely void.

L34080 They said: "Did we analogize it to the *nadhr* (vow)?" We replied: "All *qiyas* (analogy) is invalid. Furthermore, even if it were valid, this instance of it would still be invalid, because the *nadhr* is supported by an explicit text, while no text exists regarding advancing divorce before marriage."

L34081 A vow is something by which one draws near to Allah, the Mighty and Majestic, whereas divorce is not among the acts by which one draws near to Allah, the Mighty and Majestic, nor is it among the matters Allah, the Exalted, has recommended to His servants nor encouraged them to perform.

L34082–34084 And they do not differ with us regarding one who says, "I vow to Allah, the Exalted, that I will divorce my wife" - that divorcing her is not binding upon him. This invalidates their specious argumentation in citing the Almighty's injunction: {Fulfill [your] covenants} [Al-Mā'idah: 1]. Because divorce is a contract that does not obligate fulfillment for one who binds himself to it—meaning he contracted to divorce without having divorced—is divorce not among the contracts God Almighty commanded to fulfill before their execution? They stated: "We analogized it to the bequest." Abu Muhammad said: "This is among the vilest of their analogies and the most evidently invalid, except that the bequest takes effect after death, whereas if a living person were to divorce after his death, it would not be permissible."[4]

L34085 The bequest is a means of drawing closer to Allah, the Exalted and Glorious - rather, it is an obligation - whereas divorce is neither an obligation nor recommended. We have found no objection from them other than this.

L34086 This is an opinion not authentically reported from any of the Companions—may Allah be pleased with them—for the narration attributed to ʿUmar is fabricated. The chain includes Yāsīn—who is discredited—and Abū Muḥammad—who is unknown. Additionally, the chain of transmission is interrupted between Abū Salamah and ʿUmar.

L34087 Then we examined the stance of those who impose obligations when he

وَقَالُوا: قِسْنَاهُ عَلَى النَّذْرِ؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ - ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّ النَّذْرَ جَاءَ فِيهِ النَّصُّ، وَلَمْ يَأْتِ فِي تَقْدِيمِ الطَّلَاقِ قَبْلَ النِّكَاحِ نَصٌّ -.

وَالنَّذْرُ شَيْءٌ يُتَقَرَّبُ بِهِ إلَى اللَّهِ عَزَّ وَجَلَّ، وَلَيْسَ الطَّلَاقُ مِمَّا يُتَقَرَّبُ بِهِ إلَى اللَّهِ عَزَّ وَجَلَّ، وَلَا مِمَّا نَدَبَ اللَّهُ تَعَالَى عِبَادَهُ إلَيْهِ، وَحَضَّهُمْ عَلَيْهِ.

وَهُمْ لَا يُخَالِفُونَنَا فِي أَنَّ مَنْ قَالَ: عَلَيَّ نَذْرٌ لِلَّهِ تَعَالَى أَنْ أُطَلِّقَ زَوْجَتِي -: أَنَّهُ لَا يَلْزَمُهُ طَلَاقُهَا - وَهَذَا يُبْطِلُ عَلَيْهِمْ تَمْوِيهَهُمْ فِي ذَلِكَ بِقَوْلِهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] لِأَنَّ الطَّلَاقَ عَقْدٌ لَا يَلْزَمُ الْوَفَاءُ بِهِ لِمَنْ عَقَدَهُ عَلَى نَفْسِهِ - بِمَعْنَى عَقَدَ أَنْ يُطَلِّقَ، إلَّا أَنَّهُ لَمْ يُطَلِّقْ، فَلَيْسَ الطَّلَاقُ مِنْ الْعُقُودِ الَّتِي أَمَرَ اللَّهُ تَعَالَى بِالْوَفَاءِ بِهَا قَبْلَ أَنْ تُوقَعَ؟ وَقَالُوا: قِسْنَاهُ عَلَى الْوَصِيَّةِ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا مِنْ أَرْذَلِ قِيَاسَاتِهِمْ وَأَظْهَرِهَا فَسَادًا، إلَّا أَنَّ الْوَصِيَّةَ نَافِذَةٌ بَعْدَ الْمَوْتِ، وَلَوْ طَلَّقَ الْحَيُّ بَعْدَ مَوْتِهِ لَمْ يَجُزْ.

وَالْوَصِيَّةُ قُرْبَةٌ إلَى اللَّهِ عَزَّ وَجَلَّ، بَلْ هِيَ فَرْضٌ وَالطَّلَاقُ لَيْسَ فَرْضًا وَلَا مَنْدُوبًا إلَيْهِ - وَمَا وَجَدْنَا لَهُمْ شَغَبًا غَيْرَ هَذَا.

وَهُوَ قَوْلٌ لَمْ يَصِحَّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لِأَنَّ الرِّوَايَةَ عَنْ عُمَرَ مَوْضُوعَةٌ، فِيهَا يَاسِينُ - وَهُوَ هَالِكٌ - وَأَبُو مُحَمَّدٍ - مَجْهُولٌ - ثُمَّ هُوَ مُنْقَطِعٌ بَيْنَ أَبِي سَلَمَةَ، وَعُمَرَ.

[4] **Qur'an references (L34082):** Qur'an 5:1 (Al-Ma'idah).

specifies but refrain from imposing them when he generalizes, and we found this to be a corrupt distinction and an apparent contradiction. We found no argument of theirs beyond their claim: "If he generalizes, he has restricted himself." We responded: "He has not restricted himself - rather, he maintains leeway in the matter. Even if we grant he did restrict himself, where did you establish that such restriction in this context permits the forbidden?" Moreover, the fear incurred by abstaining from marrying the woman whose divorce he specified - should he then marry her - may exceed the fear if he had generalized, due to his obsession with with her. Thus, the corruption of this claim becomes evident through its complete lack of substantiating evidence.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ أَلْزَمَهُ إِنْ خَصَّ، وَلَمْ يُلْزِمْهُ إِنْ عَمَّ، فَوَجَدْنَاهُ فَرْقًا فَاسِدًا، وَمُنَاقَضَةً ظَاهِرَةً، وَلَمْ نَجِدْ لَهُمْ حُجَّةً أَكْثَرَ مِنْ قَوْلِهِمْ: إِذَا عَمَّ فَقَدْ ضَيَّقَ عَلَى نَفْسِهِ؟ فَقُلْنَا: مَا ضَيَّقَ، بَلْ لَهُ فِي الشِّرَاءِ فُسْحَةٌ، ثُمَّ هَبْكَ أَنَّهُ قَدْ ضَيَّقَ فَأَيْنَ وَجَدْتُمْ أَنَّ الضِّيقَ فِي مِثْلِ هَذَا يُبِيحُ الْحَرَامَ؟ وَأَيْضًا - فَقَدْ يَخَافُ فِي امْتِنَاعِهِ مِنْ نِكَاحِ الَّتِي خَصَّ طَلَاقَهَا إِنْ تَزَوَّجَهَا أَكْثَرَ مِمَّا يَخَافُ لَوْ عَمَّ لِكَلَفِهِ بِهَا - فَوَضَحَ فَسَادُ هَذَا الْقَوْلِ لِتَعَرِّيهِ عَنْ الْبُرْهَانِ جُمْلَةً.

L34088 We also found it—it is not authentically transmitted from any Companion, as it is either a broken chain or narrated through Muḥammad ibn Qays al-Marhabī—who is not renowned. Then we reconsidered our earlier opinion and found Allah the Exalted stating: {When you divorce women, divorce them during their waiting period} [al-Ṭalāq: 1].[5]

وَوَجَدْنَاهُ أَيْضًا - لَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ، لِأَنَّهُ إِمَّا مُنْقَطِعٌ، وَإِمَّا مِنْ طَرِيقِ مُحَمَّدِ بْنِ قَيْسٍ الْمَرْهَبِيِّ - وَلَيْسَ بِالْمَشْهُورِ ثُمَّ رَجَعْنَا إلَى قَوْلِنَا فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١]

L34089 And the Most High said: "O you who have believed, when you marry believing women and then divorce them before consummating the marriage" [Al-Ahzab: 49]. Thus, Allah the Most High has not permitted divorce except after the marriage contract.[6]

وَقَالَ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ} [الأحزاب: ٤٩] فَلَمْ يَجْعَلْ اللَّهُ تَعَالَى الطَّلَاقَ إلَّا بَعْدَ عَقْدِ النِّكَاحِ.

L34090 Among the invalid [acts] is that divorce does not take effect when pronounced, yet later occurs without being pronounced—unless supported by clear proof. We found that he divorced none other than a woman not his lawful wife, and divorcing such a woman is invalid.

وَمِنْ الْبَاطِلِ أَنْ لَا يَقَعَ الطَّلَاقُ حِينَ إيقَاعِهِ، ثُمَّ يَقَعَ حِينَ لَمْ يُوقِعْهُ إلَّا بِبُرْهَانٍ وَاضِحٍ - وَوَجَدْنَاهُ إنَّمَا طَلَّقَ أَجْنَبِيَّةً، وَطَلَاقُ الْأَجْنَبِيَّةِ بَاطِلٌ.

L34091–34093 Astonishingly, those who oppose us—proponents of analogy by their own claim—do not differ regarding whoever said... To his wife: "If I divorce you, you are revocably divorced [by me]." But if he divorces her, she cannot be reclaimed unless he initiates an explicit verbal declaration of taking her back.

وَالْعَجَبُ - أَنَّ الْمُخَالِفِينَ لَنَا أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَلَا يَخْتَلِفُونَ فِيمَنْ قَالَ لِامْرَأَتِهِ: إنْ طَلَّقْتُكِ فَأَنْتِ مُرْتَجَعَةٌ مِنِّي، فَطَلَّقَهَا: أَنَّهَا لَا تَكُونُ مُرْتَجَعَةً حَتَّى يَبْتَدِئَ النُّطْقَ بِارْتِجَاعِهِ لَهَا.

L34094 We found them in agreement regarding one who says, "If my father arrives, then marry me to yourself"—for I have accepted your marriage proposal?

[5] **Qur'an references (L34088):** Qur'an 65:1 (At-Talaq).
[6] **Qur'an references (L34089):** Qur'an 33:49 (Al-Ahzab).

She—being legally competent to manage her own affairs—said, “When your father comes, I have married you and accepted you as a husband.” When his father arrived, no valid marriage was established between them whatsoever due to that.

وَوَجَدْنَاهُمْ - لَا يَخْتَلِفُونَ فِيمَنْ قَالَ: إذَا قَدِمَ أَبِي فَزَوِّجِينِي مِنْ نَفْسِك فَقَدْ قَبِلْتُ نِكَاحَك؟ فَقَالَتْ هِيَ - وَهِيَ مَالِكَةٌ أَمْرَ نَفْسِهَا - وَأَنَا إذَا جَاءَ أَبُوك فَقَدْ تَزَوَّجْتُك وَرَضِيت بِك زَوْجًا، فَقَدِمَ أَبُوهُ، فَإِنَّهُ لَيْسَ بَيْنَهُمَا بِذَلِكَ نِكَاحٌ أَصْلًا.

L34095 They do not differ concerning one who says to another: “If you acquire wealth, you are my agent to give charity from it,” and if he acquires wealth—the latter does not become an agent to give charity from it until he initiates the verbal wording of his appointment. We do not know from where they derived the permissibility of advancing divorce or ẓihār before marriage? Sufficient is Allah for us—what an excellent Guardian!

وَلَا يَخْتَلِفُونَ فِيمَنْ قَالَ لِآخَرَ: إذَا كَسَبْت مَالًا فَأَنْتَ وَكِيلِي فِي الصَّدَقَةِ بِهِ، فَكَسَبَ مَالًا، فَإِنَّهُ لَا يَكُونُ الْآخَرُ وَكِيلًا فِي الصَّدَقَةِ بِهِ إلَّا حَتَّى يَبْتَدِئَ اللَّفْظَ بِتَوْكِيلِهِ، فَلَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ جَوَازُ تَقْدِيمِ الطَّلَاقِ، وَالظِّهَارِ، قَبْلَ النِّكَاحِ؟ - وَحَسْبُنَا اللَّهَ وَنِعْمَ الْوَكِيلُ.

L34096 Similarly, they do not differ concerning one who says to another: “Marry me to your daughter if she is born to you from so-and-so.” The other replied: “Yes, I have married you to my daughter - if so-and-so gives birth to her for me.” Then so-and-so gave birth to a daughter for him. In that case, she does not become his wife through that agreement.

وَكَذَلِكَ لَا يَخْتَلِفُونَ فِيمَنْ قَالَ لِآخَرَ: زَوِّجْنِي ابْنَتَك إنْ وُلِدَتْ لَك مِنْ فُلَانَةَ؟ فَقَالَ الْآخَرُ: نَعَمْ، قَدْ زَوَّجْتُك ابْنَتِي - إنْ وَلَدَتْهَا لِي فُلَانَةُ - فَوَلَدَتْ لَهُ فُلَانَةُ ابْنَةً، فَإِنَّهَا لَا تَكُونُ لَهُ بِذَلِكَ زَوْجَةً.

L34097 The enforcement of this marriage has been reported from Ibn Mas’ud and al-Hasan—it was narrated to us via the chain of Hammad ibn Salamah, who narrated to me from Yahya ibn Sa’id al-Taymi, from al-Sha’bi, from Ibn Mas’ud, who ruled that she was entitled to the dowry of one of her husband’s wives—and no opposing view from the Companions (may Allah be pleased with them) against Ibn Mas’ud’s ruling is known.

وَقَدْ جَاءَ إنْفَاذُ هَذَا النِّكَاحِ عَنْ ابْنِ مَسْعُودٍ، وَالْحَسَنِ -: رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَخْبَرَنِي يَحْيَى بْنُ سَعِيدٍ التَّيْمِيُّ عَنْ الشَّعْبِيِّ عَنْ ابْنِ مَسْعُودٍ بِذَلِكَ وَقَضَى لَهَا بِصَدَاقِ إحْدَى نِسَائِهَا - وَلَا يُعْرَفُ لِابْنِ مَسْعُودٍ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L34098 They do not differ concerning one who says to another, “If you authorize me to divorce your wife so-and-so, then I have divorced her three times,” and then the husband authorizes him to divorce her, that she is not thereby divorced.

وَلَا يَخْتَلِفُونَ فِيمَنْ قَالَ لِآخَرَ: إذَا وَكَّلْتنِي بِطَلَاقِ امْرَأَتِك فُلَانَةَ فَقَدْ طَلَّقْتهَا ثَلَاثًا، ثُمَّ وَكَّلَهُ الزَّوْجُ بِطَلَاقِهَا، أَنَّهَا لَا تَكُونُ بِذَلِكَ طَالِقًا.

L34099 And they do not differ regarding one who said, “If you were to marry so-and-so, she would be divorced three times,” then he married her and divorced her three times immediately after the completion of the marriage contract,

وَلَا يَخْتَلِفُونَ فِيمَنْ قَالَ: إنْ تَزَوَّجْت فُلَانَةَ فَهِيَ طَالِقٌ ثَلَاثًا، فَتَزَوَّجَهَا فَطَلَّقَهَا إثْرَ تَمَامِ الْعَقْدِ ثَلَاثًا، ثُمَّ أَتَتْ بِوَلَدٍ لِتَمَامِ سِتَّةِ أَشْهُرٍ مِنْ حِينِ ذَلِكَ، فَإِنَّهُ لَاحِقٌ بِهِ.

then she gave birth to a child six months after that event—indeed, the child is ascribed to him.

L34100 All of these are invalid contradictions. And success is from Allah, the Exalted.

L34101 **The Ruling on Divorce Pronounced by an Intoxicated Man.**

L34102 Issue 1964: A divorce pronounced by an intoxicated person is not binding.

L34103 Likewise, anyone who loses his reason through means other than intoxicants.

L34104–34106 The legal definition of intoxication is when one's speech becomes confused, uttering what is unreasonable and what he would not utter if not intoxicated. He is considered drunk—even if he demonstrates rational behavior during that state—because a madman may similarly act rationally and guard against authorities and other dangers.

L34107 As for the one whose tongue became heavy, his speech articulation was impaired, his gait was unsteady, and he merely acted wildly—except that he did not speak nonsensically—he is not considered intoxicated.

L34108 The proof of that is the statement of Allah the Exalted: "Do not approach Prayer while you are intoxicated until you know what you are saying" [An-Nisa: 43]. Allah the Exalted clarified that the intoxicated person does not know what he is saying. Thus, whoever does not know what he is saying is intoxicated, and whoever knows what he is saying is not intoxicated.[7]

L34109 Whoever mixes [drinks] and thereby exhibits both rational and irrational speech or behavior is in a state of intoxication (sukr), for he does not know what he is saying.

L34110 Whoever Allah, the Exalted, has declared to be unaware of what he is saying, it is impermissible to hold him accountable for any legal rulings—neither divorce nor otherwise—because he is not legally responsible. Thus, he is not among those endowed with understanding.

[7] **Qur'an references (L34108):** Qur'an 4:43 (An-Nisa).

وَهَذِهِ كُلُّهَا مُنَاقِضَاتٌ فَاسِدَةٌ: - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ طَلَاقُ السَّكْرَانِ]

١٩٦٤ - مَسْأَلَةٌ: وَطَلَاقُ السَّكْرَانِ غَيْرُ لَازِمٍ.

وَكَذَلِكَ مَنْ فَقَدَ عَقْلَهُ بِغَيْرِ الْخَمْرِ.

وَحَدُّ السُّكْرِ - هُوَ أَنْ يَخْلِطَ فِي كَلَامِهِ فَيَأْتِيَ بِمَا لَا يُعْقَلُ، وَبِمَا لَا يَأْتِي بِهِ إذَا لَمْ يَكُنْ سَكْرَانَ - وَإِنْ أَتَى بِمَا يُعْقَلُ فِي خِلَالِ ذَلِكَ - لِأَنَّ الْمَجْنُونَ قَدْ يَأْتِي بِمَا يُعْقَلُ، وَيَتَحَفَّظُ مِنْ السُّلْطَانِ وَمِنْ سَائِرِ الْمَخَاوِفِ.

وَأَمَّا مَنْ ثَقُلَ لِسَانُهُ وَتَخَبَّلَ مَخْرَجُ كَلَامِهِ وَتَخَبَّلَتْ مَشْيَته وَعَرْبَدَ فَقَطْ إلَّا أَنَّهُ لَمْ يَتَكَلَّمْ بِمَا لَا يُعْقَلُ - فَلَيْسَ هُوَ سَكْرَانُ.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى: {لا تَقْرَبُوا الصَّلاةَ وَأَنْتُمْ سُكَارَى حَتَّى تَعْلَمُوا مَا تَقُولُونَ} [النساء: ٤٣] فَبَيَّنَ اللَّهُ تَعَالَى أَنَّ السَّكْرَانَ لَا يَعْلَمُ مَا يَقُولُ، فَمَنْ لَمْ يَعْلَمْ مَا يَقُولُ فَهُوَ سَكْرَانُ، وَمَنْ عَلِمَ مَا يَقُولُ فَلَيْسَ بِسَكْرَانَ.

وَمَنْ خَلَطَ فَأَتَى بِمَا يُعْقَلُ وَمَا لَا يُعْقَلُ فَهُوَ سَكْرَانُ، لِأَنَّهُ لَا يَعْلَمُ مَا يَقُولُ.

وَمَنْ أَخْبَرَ اللَّهُ تَعَالَى أَنَّهُ لَا يَدْرِي مَا يَقُولُ فَلَا يَحِلُّ أَنْ يُلْزَمَ شَيْئًا مِنْ الْأَحْكَامِ، لَا طَلَاقًا، وَلَا غَيْرَهُ، لِأَنَّهُ غَيْرُ مُخَاطَبٍ، إذًا لَيْسَ مِنْ ذَوِي الْأَلْبَابِ.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا - فَمَنْ رُوِيَ عَنْهُ خِلَافُ مَا قُلْنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ خِرَاشِ بْنِ مَالِكٍ الْجَهْضَمِيِّ حَدَّثَنِي يَحْيَى بْنُ عُبَيْدٍ عَنْ أَبِيهِ: أَنَّ رَجُلًا مِنْ أَهْلِ عُمَانَ تَمَلَّأَ مِنَ الشَّرَابِ فَطَلَّقَ امْرَأَتَهُ ثَلَاثًا فَشَهِدَ عَلَيْهِ نِسْوَةٌ فَكُتِبَ إِلَى عُمَرَ بِذَلِكَ، فَأَجَازَ شَهَادَةَ النِّسْوَةِ، وَأَثْبَتَ عَلَيْهِ الطَّلَاقَ.

L34111 People have differed regarding this matter. As transmitted to us through the chain of Abd al-Rahman ibn Mahdi from Khirash ibn Malik al-Jahdhami, who narrated to me from Yahya ibn Ubayd on his father's authority: A man from Oman consumed a large amount of drink and divorced his wife three times. Women testified against him, so a report was sent in writing to Umar about this. He validated the women's testimony and upheld the divorce ruling against him.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَزِيدُ بْنُ هَارُونَ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنِ الزُّبَيْرِ بْنِ الْخِرِّيتِ عَنْ أَبِي لَبِيدٍ أَنَّ رَجُلًا طَلَّقَ امْرَأَتَهُ وَهُوَ سَكْرَانُ فَرُفِعَ إِلَى عُمَرَ بْنِ الْخَطَّابِ وَشَهِدَ عَلَيْهِ أَرْبَعُ نِسْوَةٍ فَفَرَّقَ عُمَرُ بَيْنَهُمَا.

L34112 Through the chain of Abu ʻUbayd: Yazid ibn Harun narrated to us from Jarir ibn Hazim from al-Zubayr ibn al-Khirrit from Abu Labid that a man divorced his wife while intoxicated. The case was referred to ʻUmar ibn al-Khattab, and four women testified against him. ʻUmar then separated the couple.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا ابْنُ أَبِي مَرْيَمَ - وَهُوَ سَعِيدٌ - عَنْ نَاجِيَةَ بْنِ أَبِي بَكْرٍ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ عَنِ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ مُعَاوِيَةَ أَجَازَ طَلَاقَ السَّكْرَانِ.

L34113 Through the chain of Abū ʻUbayd: Ibn Abī Maryam (who is Saʻīd) narrated from Nājiyah ibn Abī Bakr, from Jaʻfar ibn Rabīʻah, from Ibn Shihāb, from Saʻīd ibn al-Musayyab: that Muʻāwiyah permitted the divorce pronounced by a drunk person.

وَرُوِّينَاهُ عَنِ ابْنِ عَبَّاسٍ مِنْ طُرُقٍ لَمْ تَصِحَّ: لِأَنَّ فِي إِحْدَى طَرِيقَيْهِ الْحَجَّاجَ بْنَ أَرْطَاةَ، وَفِي الْأُخْرَى إِبْرَاهِيمَ بْنَ أَبِي يَحْيَى.

L34114 We have narrated it from Ibn Abbas through chains that are not authentic, because one of its two chains includes Al-Ḥajjāj ibn Arṭāʾah, and the other includes Ibrāhīm ibn Abī Yaḥyā.

وَصَحَّ عَنِ النَّخَعِيِّ، وَابْنِ سِيرِينَ، وَالْحَسَنِ، وَمَيْمُونِ بْنِ مِهْرَانَ، وَحُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ، وَعَطَاءٍ، وَقَتَادَةَ، وَالزُّهْرِيِّ - إِلَّا أَنَّهُ فَرَّقَ بَيْنَ أَحْكَامِهِ.

L34115 It has been authentically reported from an-Nakhaʻī, Ibn Sīrīn, al-Ḥasan, Maymūn ibn Mihrān, Ḥumaid ibn ʻAbd al-Raḥmān, ʻAṭāʾ, Qatādah, and az-Zuhrī (though az-Zuhrī differentiated between his rulings).

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ قَالَ: يَجُوزُ طَلَاقُ السَّكْرَانِ وَعِتْقُهُ، وَلَا يَجُوزُ نِكَاحُهُ، وَلَا شِرَاؤُهُ وَلَا بَيْعُهُ.

L34116 It has been reported to us via the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī, who said: The divorce pronounced by an intoxicated person and his manumission are valid, but his act of marriage, buying, and selling are not valid.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنِ ابْنِ شِهَابٍ يَجُوزُ طَلَاقُ السَّكْرَانِ وَلَا تَجُوزُ هِبَتُهُ وَلَا صَدَقَتُهُ.

L34117–34118 Narrated by Abd al-Razzaq from Ibn Jurayj from Ibn Shihab: An intoxicated person's divorce is permissible, and his gift and charity are not permissible.

L34119 The validity of the divorce pronounced by an intoxicated person was af-

firmed, as reported by al-Shaʿbī, Mujāhid, Saʿīd ibn al-Musayyab, Jābir ibn Zayd, and ʿUmar ibn ʿAbd al-ʿAzīz.

وَصَحَّتْ إِجَازَةُ طَلَاقِ السَّكْرَانِ عَنْ الشَّعْبِيِّ، وَمُجَاهِدٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ وَجَابِرِ بْنِ زَيْدٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

L34120 We have reported the opinion from ʿAṭāʾ ibn Abī Rabāḥ and Sulaymān ibn Yasār—this being the view of Ibn Shubruma, though he withheld judgment regarding its permissibility—while Ibn Abī Laylā permitted both scenarios.

وَرُوِّينَاهُ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ، وَسُلَيْمَانَ بْنِ يَسَارٍ - وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ، وَتَوَقَّفَ فِي نِكَاحِهِ - وَأَجَازَ ابْنُ أَبِي لَيْلَى كِلَا الْأَمْرَيْنِ.

L34121 Among those who deemed his divorce permissible are Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, and al-Shāfiʿī—in one of his two opinions.

وَمِمَّنْ أَجَازَ طَلَاقَهُ: سُفْيَانُ الثَّوْرِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَالشَّافِعِيِّ - فِي أَحَدِ قَوْلَيْهِ.

L34122 Mālik said: The divorce, marriage, and all actions of a drunkard are valid except apostasy alone. Consequently, no ruling pertaining to an apostate is applied to his benefit in any of his affairs.

وَقَالَ مَالِكٌ: طَلَاقُ السَّكْرَانِ وَنِكَاحُهُ وَجَمِيعُ أَفْعَالِهِ جَائِزَةٌ إِلَّا الرِّدَّةُ فَقَطْ، فَلَا يُحْكَمُ لَهُ فِي شَيْءٍ مِنْ أُمُورِهِ بِحُكْمِ الْمُرْتَدِّ.

L34123 Ibn Wahb narrated from him that his divorce is permissible, but his marriage is impermissible.

وَرَوَى عَنْهُ ابْنُ وَهْبٍ يَجُوزُ طَلَاقُهُ وَلَا يَجُوزُ نِكَاحُهُ.

L34124 Mutarrif ibn Abdullah, a companion of Malik, said: "An intoxicated person is not liable nor held accountable for anything except four matters—there is no fifth. He then named them: divorce, freeing a slave, intentional killing, and false accusation of adultery (*qadhf*)." This indicates that there is no *ḥadd* punishment for *zinā* nor for theft.

وَقَالَ مُطَرِّفُ بْنُ عَبْدِ اللَّهِ صَاحِبُ مَالِكٍ: لَا يَلْزَمُ السَّكْرَانَ شَيْءٌ وَلَا يُؤَاخَذُ بِشَيْءٍ، إِلَّا بِأَرْبَعَةِ أَشْيَاءَ لَا خَامِسَ لَهَا - هَكَذَا قَالَ، ثُمَّ سَمَّاهَا - فَقَالَ: الطَّلَاقُ، وَالْعِتْقُ، وَالْقَتْلُ، وَالْقَذْفُ - فَدَلَّ ذَلِكَ عَلَى أَنَّهُ لَا يُحَدُّ لِلزِّنَى وَلَا لِلسَّرِقَةِ.

L34125 Abu Hanifa and his companions said: His divorce is permissible, and all his legal acts are permissible except apostasy. Muhammad ibn al-Hasan said: Neither is his conversion to Islam valid if he was a disbeliever, nor is his confession to offenses entailing ḥudūd penalties valid.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: يَجُوزُ طَلَاقُهُ، وَجَمِيعُ أَفْعَالِهِ إِلَّا الرِّدَّةُ. وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: وَلَا إِسْلَامُهُ إِنْ كَانَ كَافِرًا، وَلَا إِقْرَارُهُ بِالْحُدُودِ.

L34126 Abu Yusuf said: All of that is binding upon him.

وَقَالَ أَبُو يُوسُفَ: كُلُّ ذَلِكَ لَهُ لَازِمٌ.

L34127 As for those from whom opinions similar to ours are narrated—and similarly, as transmitted through Ibn Abī Shaybah, who narrated to us from Wakīʿ, from Ibn Abī Dhi'b, from al-Zuhrī, from Abān ibn ʿUthmān, from his father ʿUthmān, who said: "There is no divorce for the insane or the intoxicated."

وَأَمَّا مَنْ رُوِيَ عَنْهُ مِثْلُ قَوْلِنَا -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ بْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ الزُّهْرِيِّ عَنْ أَبَانَ بْنِ عُثْمَانَ عَنْ أَبِيهِ عُثْمَانَ قَالَ: لَيْسَ لِمَجْنُونٍ، وَلَا لِسَكْرَانَ طَلَاقٌ.

L34128 It has been reported to us that al-Zuhrī and ʻUmar ibn ʻAbd al-ʻAzīz retracted their position and reverted to this opinion.

وَقَدْ رُوِّينَا رُجُوعَ الزُّهْرِيِّ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ إِلَى هَذَا.

L34129 And narrated via Wakiʿ from Rabāḥ ibn Abī Maʿrūf from ʿAṭāʾ ibn Abī Rabāḥ, who said: The divorce pronounced by an intoxicated man is not valid.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ رَبَاحِ بْنِ أَبِي مَعْرُوفٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: طَلَاقُ السَّكْرَانِ لَا يَجُوزُ.

L34130 And through the chain of ʿAbd al-Razzāq from Maʿmar from Ibn Ṭāwūs from his father: The divorce of an intoxicated person is not permissible.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ: لَا يَجُوزُ طَلَاقُ السَّكْرَانِ.

L34131–34132 It has been authentically reported from Al-Qasim ibn Muhammad that divorcing him is not permissible, nor should his hand be amputated if he steals unless he is known for theft.

وَصَحَّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ أَنَّهُ لَا يَجُوزُ طَلَاقُهُ، وَأَنَّهُ لَا يُقْطَعُ إنْ سَرَقَ إلَّا أَنْ يَكُونَ مَعْرُوفًا بِالسَّرِقَةِ.

L34133 From the chain of Abū ʻUbayd, from Hushaym, from Yaḥyā ibn Saʻīd al-Anṣārī: ʻUmar ibn ʻAbd al-ʻAzīz was brought a drunk man who had divorced his wife. He made him swear by Him besides whom there is no deity, [saying]: "I swear that I divorced her while not in my senses." The man swore, so ʻUmar returned his wife to him and imposed the ḥadd punishment. Yaḥyā ibn Saʻīd said: This is the opinion held by al-Qāsim ibn Muḥammad ibn Abī Bakr.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا هُشَيْمٌ نا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أُتِيَ بِسَكْرَانَ طَلَّقَ امْرَأَتَهُ، فَاسْتَحْلَفَهُ بِالَّذِي لَا إلَهَ إلَّا هُوَ لَقَدْ طَلَّقَهَا - وَهُوَ لَا يَعْقِلُ - فَحَلَفَ، فَرَدَّ إلَيْهِ امْرَأَتَهُ وَضَرَبَهُ الْحَدَّ - قَالَ يَحْيَى بْنُ سَعِيدٍ: وَبِهَذَا يَقُولُ الْقَاسِمُ بْنُ مُحَمَّدِ بْنِ أَبِي بَكْرٍ.

L34134 It is soundly established from Yaḥyā ibn Saʿīd al-Anṣārī and Ḥumayd ibn ʿAbd al-Raḥman.

وَصَحَّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَحُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ.

L34135 We have narrated it from Rabīʿah—and it is the statement of ʿUbayd Allāh ibn al-Ḥasan and al-Layth ibn Saʿd.

وَرُوِّينَاهُ عَنْ رَبِيعَةَ - وَهُوَ قَوْلُ عُبَيْدِ اللَّهِ بْنِ الْحَسَنِ، وَاللَّيْثِ بْنِ سَعْدٍ.

L34136 One of the two opinions of al-Shāfiʿī, along with the view of Isḥāq ibn Rāhwayh, Abū Thawr, al-Muzanī, Abū Sulaymān, all their companions, and the position held by Abū Jaʿfar al-Ṭaḥāwī and Abū al-Ḥasan al-Karkhī among the senior Ḥanafī scholars, states that he incurs no obligation for contracts, sales, or prescribed penalties except the penalty for consuming khamr alone. ʿUthmān al-Battī said: "He is not bound by contracts, sales, or penalties except the penalty for khamr exclusively—even if he commits adultery, falsely accuses, or steals." Al-Layth said: "No divorce, sale, marriage, manumission, or any verbal declaration becomes binding upon him. As for physical acts such as killing, theft, or adultery, all such offenses are enforced against him."

وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ، وَقَوْلُ إِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي ثَوْرٍ، وَالْمُزَنِيِّ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِهِمْ وَبِهِ يَقُولُ أَبُو جَعْفَرٍ الطَّحَاوِيُّ، وَأَبُو الْحَسَنِ الْكَرْخِيُّ مِنْ شُيُوخِ الْحَنَفِيِّينَ - وَقَالَ عُثْمَانُ الْبَتِّيُّ: لَا يَلْزَمُهُ عَقْدٌ وَلَا بَيْعٌ وَلَا حَدٌّ إلَّا حَدَّ الْخَمْرِ فَقَطْ، وَإِنْ زَنَى وَقَذَفَ وَسَرَقَ - وَقَالَ اللَّيْثُ: لَا يَلْزَمُهُ طَلَاقٌ وَلَا بَيْعٌ وَلَا نِكَاحٌ وَلَا عِتْقٌ وَلَا شَيْءٌ بِقَوْلِهِ. وَأَمَّا مَا عَمِلَ بِبَدَنِهِ مِنْ قَتْلٍ، أَوْ سَرِقَةٍ، أَوْ زِنًى، فَإِنَّهُ يُقَامُ عَلَيْهِ كُلُّ ذَلِكَ

L34137 We examined the arguments of those opposing our position and found them claiming: “He brought madness upon himself through disobedience to Allah the Almighty.” We countered: “What consequence follows? Why must one who inflicted this upon himself be held liable for acts committed during his mental corruption?” This principle finds no basis in the Qur’an or Sunnah. You yourselves agree regarding one who throws himself to die in disobedience to Allah - surviving only to strike his head and corrupt his mind - and regarding one who wages armed rebellion and spreads corruption on the road, then suffers a head injury causing mental corruption: such individuals bear no accountability for the obligations incumbent upon the sound-minded, even though they incurred madness through the most grievous sins.

- فَنَظَرْنَا فِيمَا يَحْتَجُّ بِهِ مَنْ خَالَفَ قَوْلَنَا؟ فَوَجَدْنَاهُمْ يَقُولُونَ: هُوَ أَدْخَلَ عَلَى نَفْسِهِ ذَهَابَ عَقْلِهِ بِمَعْصِيَتِهِ لِلَّهِ عَزَّ وَجَلَّ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ وَجَبَ إِذَا أَدْخَلَ ذَلِكَ عَلَى نَفْسِهِ أَنْ يُؤَاخَذَ بِمَا يَجْنِي فِي ذَهَابِ عَقْلِهِ؟ وَهَذَا مَا لَا يُوجَدُ فِي قُرْآنٍ وَلَا سُنَّةٍ، وَلَا خِلَافَ بَيْنَكُمْ فِيمَنْ تَرَدَّى لِيَقْتُلَ نَفْسَهُ عَاصِيًا لِلَّهِ عَزَّ وَجَلَّ، فَسَلِمَتْ نَفْسُهُ إِلَّا أَنَّهُ سَقَطَ عَلَى رَأْسِهِ فَفَسَدَ عَقْلُهُ، وَفِيمَنْ حَارَبَ وَأَفْسَدَ الطَّرِيقَ فَضُرِبَ فِي رَأْسِهِ فَفَسَدَ عَقْلُهُ أَنَّهُ لَا يَلْزَمُهُ شَيْءٌ مِمَّا يَلْزَمُ الْأَصِحَّاءَ وَهُوَ الَّذِي أَدْخَلَ عَلَى نَفْسِهِ الْجُنُونَ بِأَعْظَمِ الْمَعَاصِي.

L34138 Then they do not differ regarding someone whom a group of ruffians seized—his hands and feet were restrained, his mouth was forced open with a hook, and wine was poured into it until he became intoxicated. They disputed whether he is held accountable for his divorce, though he neither voluntarily consumed anything nor disobeyed. Thus, the baselessness of their objection became evident.

ثُمَّ لَا يَخْتَلِفُونَ فِيمَنْ أَمْسَكَهُ قَوْمٌ عَيَّارُونَ فَضَبَطَتْ يَدَاهُ وَرِجْلَاهُ، وَفُتِحَ فَمُهُ بِكَلُّوبٍ وَصُبَّ فِيهِ الْخَمْرُ حَتَّى سَكِرَ أَنَّهُ مُؤَاخَذٌ بِطَلَاقِهِ - وَهُوَ لَمْ يُدْخِلْ عَلَى نَفْسِهِ شَيْئًا وَلَا عَصَى -: فَظَهَرَ فَسَادُ اعْتِرَاضِهِمْ.

L34139–34140 They obscured using narrations stating, “Three [acts] for which jesting about them is serious,” yet these narrations neither mention their nullification for the intoxicated person nor provide evidence for it.

وَمَوَّهُوا بِالْأَخْبَارِ الَّتِي فِيهَا «ثَلَاثٌ هَزْلُهُنَّ جَدٌّ» وَلَيْسَ فِيهَا عَلَى سُقُوطِهَا لِلسَّكْرَانِ ذِكْرٌ، وَلَا دَلِيلَ عَلَيْهِ.

L34141 They cited the fabricated report: “There is no divorce during qaylulah (noon rest period).” If this were authentic, it would apply to the divorce of one whose divorce is a divorce—among those of sound mind—as they [scholars] state regarding the divorce of a minor or a mentally incapacitated person.

وَاحْتَجُّوا بِالْخَبَرِ الْمَوْضُوعِ «لَا قَيْلُولَةَ فِي الطَّلَاقِ» وَلَوْ صَحَّ هَذَا لَكَانَ ذَلِكَ فِي طَلَاقِ مَنْ طَلَاقُهُ طَلَاقٌ مِمَّنْ يَعْقِلُ كَمَا يَقُولُونَ فِي طَلَاقِ الصَّبِيِّ وَالْمَجْنُونِ.

L34142 And by the false report: “Every divorce is valid except that of the mentally incompetent.”

وَبِالْخَبَرِ الْكَاذِبِ: «كُلُّ طَلَاقٍ جَائِزٌ إِلَّا طَلَاقَ الْمَعْتُوهِ» .

L34143 Abu Muhammad said: We have explained its invalidity earlier in the chapter on “Divorce under Duress.”

قَالَ أَبُو مُحَمَّدٍ: قَدْ بَيَّنَّا سُقُوطَهُ آنِفًا فِي بَابِ " طَلَاقِ الْمُكْرَهِ ".

L34144 Furthermore, even if it were valid, they would have no argument for it,

ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُمْ لَا يُجِيزُونَ طَلَاقَ مَنْ لَمْ يَبْلُغْ وَلَيْسَ بِمَعْتُوهٍ.

because they do not recognize the divorce of a minor who has not reached puberty and is not mentally incapacitated.

L34145 As for the intoxicated person who does not know what he is saying, he is unquestionably deemed *maʿtūh*—mentally deranged—for linguistically, the *maʿtūh* is one who has no intellect. Whoever is unaware of what he is saying has no intellect, and thus he is *maʿtūh* regardless of the situation.

وَأَمَّا السَّكْرَانُ الَّذِي لَا يَدْرِي مَا يَتَكَلَّمُ بِهِ فَهُوَ مَعْتُوهٌ بِلَا شَكٍّ، لِأَنَّ الْمَعْتُوهَ فِي اللُّغَةِ: هُوَ الَّذِي لَا عَقْلَ لَهُ، وَمَنْ لَا يَدْرِي مَا يَتَكَلَّمُ بِهِ، فَلَا عَقْلَ لَهُ، فَهُوَ مَعْتُوهٌ بِأَيِّ وَجْهٍ كَانَ.

L34146 They said: It has been reported from ʿAlī and ʿAbd al-Raḥmān in the presence of the Companions: If he drinks, he becomes intoxicated; when intoxicated, he babbles deliriously; when babbling deliriously, he fabricates; and when he fabricates, he is flogged eighty lashes.

وَقَالُوا: قَدْ رُوِيَ عَنْ عَلِيٍّ، وَعَبْدِ الرَّحْمَنِ بِحَضْرَةِ الصَّحَابَةِ، إِذَا شَرِبَ سَكِرَ، وَإِذَا سَكِرَ هَذَى، وَإِذَا هَذَى افْتَرَى، وَإِذَا افْتَرَى: جُلِدَ ثَمَانِينَ.

L34147 Abu Muhammad said: This is a fabricated report. God, Exalted is He, has declared Ali and Abd al-Rahman free from it, as its chain of transmission is not authentic. Moreover, the magnitude of the contradiction within it lies in the fact that it stipulates imposing the prescribed punishment on one who is delirious, while no prescribed punishment applies to the delirious.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَبَرٌ مَكْذُوبٌ قَدْ نَزَّهَ اللَّهُ تَعَالَى عَلِيًّا، وَعَبْدَ الرَّحْمَنِ عَنْهُ، لِأَنَّهُ لَا يَصِحُّ إِسْنَادُهُ، ثُمَّ عَظِيمُ مَا فِيهِ مِنْ الْمُنَاقَضَةِ، لِأَنَّ فِيهِ إِيجَابَ الْحَدِّ عَلَى مَنْ هَذَى، وَالْهَاذِي لَا حَدَّ عَلَيْهِ.

L34148 Why did you not say: If he raves, he apostatizes, and if he apostatizes, he is to be killed? They said: By intoxication itself, the ḥadd is obligatory for him—is divorce the same? We said: You have lied! The ḥadd has never been obligatory for intoxication alone, but rather for his intent to drink a substance whose large quantity only causes intoxication, whether he became intoxicated or not.

وَهَلَّا قُلْتُمْ: إِذَا هَذَى كَفَرَ، وَإِذَا كَفَرَ قُتِلَ؟ وَقَالُوا: بِنَفْسِ السُّكْرِ يَجِبُ عَلَيْهِ الْحَدُّ، فَالطَّلَاقُ كَذَلِكَ؟ قُلْنَا: كَذَبْتُمْ مَا وَجَبَ قَطُّ بِالسُّكْرِ حَدٌّ، لَكِنْ بِقَصْدِهِ إِلَى شُرْبِ مَا يُسْكِرُ كَثِيرُهُ فَقَطْ، سَوَاءٌ سَكِرَ أَوْ لَمْ يَسْكَرْ.

L34149 The proof of that is that there is no prescribed punishment for one who becomes intoxicated by someone compelled to make them drink the intoxicant.

بُرْهَانُ ذَلِكَ -: أَنَّ مَنْ سَكِرَ مِمَّنْ أُكْرِهَ عَلَى شُرْبِهَا لَا حَدَّ عَلَيْهِ.

L34150 They said: "Is he obligated to pray, so the divorce he pronounces becomes binding on him?" We replied: "You are mistaken. The Qur'an's text clarifies that he is not obligated to pray; rather, he is prohibited from praying until he understands what he is saying."

وَقَالُوا: هُوَ مُخَاطَبٌ بِالصَّلَاةِ فَطَلَاقُهُ لَازِمٌ لَهُ؟ قُلْنَا: كَذَبْتُمْ، بَلْ نَصُّ الْقُرْآنِ يُبَيِّنُ أَنَّهُ غَيْرُ مُخَاطَبٍ بِالصَّلَاةِ، بَلْ هُوَ مَنْهِيٌّ عَنْهَا حَتَّى يَدْرِيَ مَا يَقُولُ.

L34151 They said: If that were the case, then whoever wished to kill his enemy

وَقَالُوا: لَوْ كَانَ ذَلِكَ لَكَانَ مَنْ شَاءَ قَتْلَ عَدُوِّهِ سَكِرَ فَقَتَلَهُ، وَمَنْ يَدْرِي أَنَّهُ سَكْرَانُ؟

would have become intoxicated and killed him, and who could know that he was intoxicated?

فَقُلْنَا: فَقُولُوا إذًا بِإِقَامَةِ الْحُدُودِ عَلَى الْمَجَانِينِ، لِأَنَّهُ لَوْ سَقَطَ عَنْهُمْ الْحَدُّ لَكَانَ مَنْ شَاءَ قَتْلَ عَدُوِّهِ تَحَامَقَ، وَمَنْ يَدْرِي أَنَّهُ أَحْمَقُ - لَكِنْ نَقُولُ: لَا يَخْفَى السَّكْرَانُ مِنْ الْمُتَسَاكِرِ، وَلَا الْأَحْمَقُ مِنْ الْمُتَحَامِقِ.

L34152–34153 So we said: Then assert that Hudud penalties are to be enforced upon the mentally incompetent, for if the punishment were waived for them, anyone wishing to kill their enemy would feign foolishness—and who could discern whether he is truly a fool? However, we say: A drunkard cannot be concealed among those who are drunk, nor a fool among those feigning foolishness.

وَمِمَّا يُوَضِّحُ صِحَّةَ قَوْلِنَا يَقِينًا: الْخَبَرُ الثَّابِتُ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا عَبْدَانُ، وَأَحْمَدُ بْنُ صَالِحٍ قَالَ عَبْدَانُ: نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ - وَقَالَ أَحْمَدُ: نا عَنْبَسَةُ، كِلَاهُمَا أَخْبَرَهُ يُونُسُ بْنُ يَزِيدَ عَنْ الزُّهْرِيِّ أَخْبَرَنِي عَلِيُّ بْنُ الْحُسَيْنِ أَنَّ الْحُسَيْنَ بْنَ عَلِيٍّ أَخْبَرَهُ أَنَّ عَلِيًّا قَالَ فِي حَدِيثٍ طَوِيلٍ، قَالَ: «فَطَفِقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَلُومُ حَمْزَةَ فِيمَا فَعَلَ -: يَعْنِي إذْ عَقَرَ شَارِفَيْ عَلِيٍّ وَهُوَ يَشْرَبُ مَعَ قَوْمٍ مِنْ الْأَنْصَارِ، قَالَ عَلِيٌّ: فَإِذَا حَمْزَةُ ثَمِلٌ مُحْمَرَّةٌ عَيْنَاهُ فَقَالَ لَهُ حَمْزَةُ: هَلْ أَنْتُمْ إلَّا عَبِيدٌ لِأَبِي؟ فَعَرَفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ ثَمِلَ فَنَكَصَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَى عَقِبَيْهِ الْقَهْقَرَى، فَخَرَجَ وَخَرَجْنَا مَعَهُ» . فَهَذَا حَمْزَةُ - رَضِيَ اللَّهُ عَنْهُ - يَقُولُ وَهُوَ سَكْرَانُ مَا لَوْ قَالَهُ غَيْرُ سَكْرَانَ لَكَفَرَ، وَقَدْ أَعَاذَهُ اللَّهُ مِنْ ذَلِكَ.

L34154 Among what clarifies the soundness of our position with certainty is the authentically established report we transmitted through Al-Bukhārī's chain: ʿAbdān and Aḥmad ibn Ṣāliḥ narrated to us. ʿAbdān said: ʿAbdullāh ibn al-Mubārak narrated to us - while Aḥmad said: ʿAnbasah narrated to us - both of whom were informed by Yūnus ibn Yazīd, from Al-Zuhrī, who reported: ʿAlī ibn al-Ḥusayn informed me that al-Ḥusayn ibn ʿAlī informed him that ʿAlī said in a lengthy ḥadīth: "Thereupon the Messenger of Allah - peace and blessings be upon him - proceeded to reproach Ḥamzah for his deed" - referring to when he hamstrung ʿAlī's two prized camels while drinking with a group of the Anṣār. ʿAlī said: "Ḥamzah was there in a state of intoxication, his eyes crimson. Ḥamzah said to him: 'Are you not but slaves belonging to my father?' When the Messenger of Allah - peace and blessings be upon him - perceived his drunkenness, he - upon him be peace and blessings - retreated backward on his heels. He departed, and we departed with him." Thus Ḥamzah - may Allah be pleased with him - spoke while intoxicated what would have constituted disbelief if uttered by one sober, yet Allah safeguarded him from that consequence.

L34155 Therefore, it is validly established that the intoxicated person is entirely exempt from accountability for his actions.

فَصَحَّ أَنَّ السَّكْرَانَ غَيْرُ مُؤَاخَذٍ بِمَا يَفْعَلُ جُمْلَةً.

L34156 As for the one who differentiates and does not impose apostasy but imposes other than that, his statement is contradictory, his ruling invalid with certainty without ambiguity—and by Allah the Most High is all divine facilitation.

وَأَمَّا مَنْ فَرَّقَ فَلَمْ يُلْزِمْهُ الرِّدَّةَ، وَأَلْزَمَهُ غَيْرَ ذَلِكَ، فَمُتَنَاقِضُ الْقَوْلِ، بَاطِلُ الْحُكْمِ بِيَقِينٍ لَا إشْكَالَ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْيَمِينُ بِالطَّلَاقِ لَا يَلْزَمُ سَوَاءٌ بَرَّ أَوْ حَنِثَ]

L34157 **A juristic ruling: An oath sworn with divorce as its condition does not take effect, whether fulfilled or broken.**

L34158 Issue 1965: An oath involving divorce is not binding - whether fulfilled or broken - and no divorce is effected by it. There is no divorce except as Allah, the Exalted, has commanded, and no oath except as Allah, the Exalted, has commanded on the tongue of His Messenger - may Allah bless him and grant him peace.

١٩٦٥ - مَسْأَلَةٌ: وَالْيَمِينُ بِالطَّلَاقِ لَا يَلْزَمُ - سَوَاءٌ بَرَّ أَوْ حَنِثَ - لَا يَقَعُ بِهِ طَلَاقٌ، وَلَا طَلَاقَ إِلَّا كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ، وَلَا يَمِينَ إِلَّا كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L34159 The proof of this is the statement of Allah, the Mighty and Majestic: *"That is the expiation for your oaths when you swear"* [Al-Mā'idah: 89]. All those who disagree with us here do not differ in affirming that oaths by divorce, freeing a slave, walking to Mecca, or alms-giving of wealth—in their view, there is no expiation for breaking any of them except by fulfilling the sworn action or upholding the oath itself.[8]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ} [المائدة: ٨٩] وَجَمِيعُ الْمُخَالِفِينَ لَنَا هَاهُنَا لَا يَخْتَلِفُونَ فِي أَنَّ الْيَمِينَ بِالطَّلَاقِ، وَالْعَتَاقِ وَالْمَشْيِ إِلَى مَكَّةَ، وَصَدَقَةَ الْمَالِ فَإِنَّهُ لَا كَفَّارَةَ عِنْدَهُمْ فِي حِنْثِهِ فِي شَيْءٍ مِنْهُ إِلَّا بِالْوَفَاءِ بِالْفِعْلِ، أَوْ الْوَفَاءِ بِالْيَمِينِ.

L34160 Thus, it is thereby established with certainty that none of those [aforementioned] things is an oath at all, for there is no oath except what Allah, the Exalted, has explicitly designated as an oath.

فَصَحَّ بِذَلِكَ يَقِينًا أَنَّهُ لَيْسَ شَيْءٌ مِنْ ذَلِكَ يَمِينًا، إِذْ لَا يَمِينَ إِلَّا مَا سَمَّاهُ اللَّهُ تَعَالَى يَمِينًا.

L34161–34163 And the statement of the Messenger of Allah—may peace and blessings be upon him—which we have narrated via the chain of Abu 'Ubayd: Ismāʿīl ibn Jaʿfar informed us. Abdullah ibn Dinar narrated from Ibn Umar that the Messenger of Allah (peace be upon him) said, "Whoever takes an oath, let him swear only by Allah." Thus, the ambiguity is removed regarding that every oath sworn by other than Allah, the Exalted and Glorified, is a sin and not a valid oath.

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ أَبِي عُبَيْدٍ نَا إِسْمَاعِيلُ بْنُ جَعْفَرٍ نا عَبْدُ اللَّهِ بْنُ دِينَارٍ عَنْ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ كَانَ حَالِفًا فَلَا يَحْلِفْ إِلَّا بِاللَّهِ» فَارْتَفَعَ الْإِشْكَالُ فِي أَنَّ كُلَّ حَلِفٍ بِغَيْرِ اللَّهِ عَزَّ وَجَلَّ فَإِنَّهُ مَعْصِيَةٌ وَلَيْسَ يَمِينًا.

L34164 And this is a matter wherein there is disagreement. It has been authentically reported from al-Ḥasan regarding one who said to his wife: "You are divorced if I do not strike my slave," then the slave absconded. He said: "She remains his wife; he may remain married to her and they inherit from one another until he fulfills his declaration. If the slave dies before he fulfills what he declared, his wife is irrevocably divorced from him."

وَهَذَا مَكَانٌ اُخْتُلِفَ فِيهِ - فَصَحَّ: عَنْ الْحَسَنِ فِيمَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إِنْ لَمْ أَضْرِبْ غُلَامِي، فَأَبَقَ الْغُلَامُ؟ قَالَ: هِيَ امْرَأَتُهُ يَنْكِحُهَا وَيَتَوَارَثَانِ حَتَّى يَفْعَلَ مَا قَالَ، فَإِنْ مَاتَ الْغُلَامُ قَبْلَ أَنْ يَفْعَلَ مَا قَالَ فَقَدْ ذَهَبَتْ مِنْهُ امْرَأَتُهُ.

L34165 From the narration of Abd al-Razzaq, from Ma'mar, from Matar al-Warraq, from Amr ibn Shu'ayb, from Sa'id ibn al-Musayyib regarding a man who divorces his wife if he does not do such a thing: He said: He must not

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ مَطَرٍ الْوَرَّاقِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي رَجُلٍ طَلَّقَ امْرَأَتَهُ إِنْ لَمْ يَفْعَلْ كَذَا؟ قَالَ: لَا يَقْرَبُ امْرَأَتَهُ حَتَّى يَفْعَلَ مَا قَالَ، فَإِنْ مَاتَ قَبْلَ أَنْ يَفْعَلَ فَلَا مِيرَاثَ بَيْنَهُمَا.

[8] **Qur'an references (L34159):** Qur'an 5:89 (Al-Ma'idah).

approach his wife until he does what he said. If he dies before doing it, there is no inheritance between them.

L34166 A valid disagreement concerning this has been established from a group of the Salaf.

L34167 As reported to us through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ regarding a man who said to his wife: "You are divorced if I do not marry another [woman]." He said: If he does not marry another until she dies or he dies, they inherit from each other.

L34168 From the chain of Abd al-Razzaq via Sufyan al-Thawri, from Ghaylan ibn Jami', from al-Hakam ibn Utaybah, who said regarding a man who tells his wife, "You are divorced if I do not do such-and-such"—then if one of them dies before the act is performed, they inherit from each other. Sufyan al-Thawri said: "The oath's violation occurred only after death."

L34169 Abū Muḥammad said: How astonishing is this! That a deceased person violates an oath after dying—and we have thoroughly expounded upon this in Kitāb al-Aymān within this book of ours.

L34170 Among those from whom a statement similar to our opinion has been narrated—as reported through the chain of Ḥammād ibn Salama from Ḥumayd from al-Ḥasan—is the account of a man who married a woman and intended to travel. Her family detained him, so he rendered her divorced if he failed to send her maintenance by the end of a month. When the term arrived and he did not send her anything, they took their dispute to ʿAlī when he arrived. ʿAlī said, "You oppressed him until he pronounced her divorce," and thus he restored her to him.

L34171 From the narration of Abd al-Razzaq, from Hisham ibn Hassan, from Muhammad ibn Sirin, from Shuraih: A case was brought before him regarding a man who divorced his wife if he committed an act in Islam. He rented a mule to go to the bathhouse of A'yan but overstepped by taking it to Isfahan, sold it, and used the proceeds to buy wine? Shuraih said, "If you wish, you may testify against him that he divorced her." They repeated the

وَصَحَّ خِلَافُ هَذَا عَنْ طَائِفَةٍ مِنْ السَّلَفِ.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِي رَجُلٍ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إنْ لَمْ أَتَزَوَّجْ عَلَيْكِ؟ قَالَ: إنْ لَمْ يَتَزَوَّجْ عَلَيْهَا حَتَّى تَمُوتَ أَوْ يَمُوتَ تَوَارَثَا.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ غَيْلَانَ بْنِ جَامِعٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ فِي الرَّجُلِ يَقُولُ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إنْ لَمْ أَفْعَلْ كَذَا - ثُمَّ مَاتَ أَحَدُهُمَا قَبْلَ أَنْ يَفْعَلَ فَإِنَّهُمَا يَتَوَارَثَانِ - قَالَ سُفْيَانُ الثَّوْرِيُّ: إنَّمَا وَقَعَ الْحِنْثُ بَعْدَ الْمَوْتِ.

قَالَ أَبُو مُحَمَّد: هَذَا عَجَبٌ؟ مَيِّتٌ يَحْنَثُ بَعْدَ مَوْتٍ - وَقَدْ تَقَصَّيْنَا هَذَا فِي " كِتَابِ الْأَيْمَانِ " مِنْ كِتَابِنَا هَذَا.

وَمِمَّنْ رُوِيَ عَنْهُ مِثْلُ قَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ أَنَّ رَجُلًا تَزَوَّجَ امْرَأَةً وَأَرَادَ سَفَرًا فَأَخَذَهُ أَهْلُ امْرَأَتِهِ، فَجَعَلَهَا طَالِقًا إنْ لَمْ يَبْعَثْ بِنَفَقَتِهَا إلَى شَهْرٍ، فَجَاءَ الْأَجَلُ وَلَمْ يَبْعَثْ إلَيْهَا بِشَيْءٍ فَلَمَّا قَدِمَ خَاصَمُوهُ إلَى عَلِيٍّ فَقَالَ عَلِيٌّ: اضْطَهَدْتُمُوهُ حَتَّى جَعَلَهَا طَالِقًا، فَرَدَّهَا عَلَيْهِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ شُرَيْحٍ: أَنَّهُ خُوصِمَ إلَيْهِ فِي رَجُلٍ طَلَّقَ امْرَأَتَهُ إنْ أَحْدَثَ فِي الْإِسْلَامِ حَدَثًا فَاكْتَرَى بَغْلًا إلَى حَمَّامِ أَعْيَنَ فَتَعَدَّى بِهِ إلَى أَصْبَهَانَ فَبَاعَهُ وَاشْتَرَى بِهِ خَمْرًا؟ فَقَالَ شُرَيْحٌ: إنْ شِئْتُمْ شَهِدْتُمْ عَلَيْهِ أَنَّهُ طَلَّقَهَا؟ فَجَعَلُوا يُرَدِّدُونَ عَلَيْهِ الْقِصَّةَ وَيُرَدِّدُ عَلَيْهِمْ - فَلَمْ يَرَهُ حَدَثًا؟

story to him, and he repeated his response to them—did he not consider it an act?

قَالَ أَبُو مُحَمَّد: لَا مُتَعَلَّقَ لَهُمْ بِمَا رُوِيَ مِنْ قَوْلِ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - اضْطَهَدْتُمُوهُ، لِأَنَّهُ لَمْ يَكُنْ هُنَالِكَ إكْرَاهٌ، إنَّمَا طَالَبُوهُ بِحَقِّ نَفَقَتِهَا فَقَطْ فَإِنَّمَا أَنْكَرَ عَلَى الْيَمِينِ بِالطَّلَاقِ فَقَطْ وَلَمْ يُرِدْ الطَّلَاقَ يَقَعُ بِذَلِكَ - وَكَذَلِكَ لَا مُتَعَلَّقَ لَهُمْ بِمَا فِي خَبَرِ شُرَيْحٍ مِنْ قَوْلِ أَحَدِ مَنْ رَوَاهُ فَلَمْ يَرَهُ حَدَثًا - فَإِنَّمَا هُوَ ظَنٌّ مِنْ مُحَمَّدِ بْنِ سِيرِينَ، أَوَ مِنْ هِشَامِ بْنِ حَسَّانَ - وَهُوَ ظَنٌّ خَطَأٌ - أَوَ مَا نَعْلَمُ فِي الْإِسْلَامِ أَكْثَرَ مِمَّنْ تَعَدَّى مِنْ " حَمَّامِ أَعْيَنَ " وَهُوَ عَلَى أَمْيَالٍ يَسِيرَةٍ دُونَ الْعَشَرَةِ مِنْ الْكُوفَةِ إلَى أَصْبَهَانَ، وَهِيَ أَيَّامٌ كَثِيرَةٌ مِنْ الْكُوفَةِ، ثُمَّ بَاعَ بَغْلَ مُسْلِمٍ ظُلْمًا وَاشْتَرَى بِالثَّمَنِ خَمْرًا.

L34172–34173 Abu Muhammad said: They have no basis in what is narrated from the statement of Ali—may Allah be pleased with him—"You oppressed him," for there was no coercion. They merely demanded her maintenance rights alone. He only rejected the oath contingent upon divorce, not intending that divorce would result from it. Similarly, they have no basis in what is mentioned in the report of Shuraih regarding the statement of one of its narrators who did not deem it a valid legal ruling—it is merely a conjecture from Muhammad ibn Sirin or Hisham ibn Hassan, and it is an erroneous conjecture. Or do we not know in Islam anyone who has transgressed more than the one from "Hammam Aʿyan"—located a few miles, less than ten, from Kufa, while Isfahan is a journey of many days from Kufa—who then unjustly sold a Muslim's mule and purchased wine with the proceeds?

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ كَانَ يَقُولُ: الْحَلِفُ بِالطَّلَاقِ لَيْسَ شَيْئًا، قُلْت: كَانَ يَرَاهُ يَمِينًا؟ قَالَ: لَا أَدْرِي - فَهَؤُلَاءِ: عَلِيُّ بْنُ أَبِي طَالِبٍ، وَشُرَيْحٌ، وَطَاوُسٌ لَا يَقْضُونَ بِالطَّلَاقِ عَلَى مَنْ حَلَفَ بِهِ فَحَنِثَ، وَلَا يُعْرَفُ لِعَلِيٍّ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L34174 From the transmission of ʿAbd al-Razzāq, from Ibn Jurayj, who reported: Ibn Ṭāwūs informed me from his father that he would say: "An oath sworn by divorce is invalid." I asked: "Did he consider it an oath?" He replied: "I do not know." Thus, these—ʿAlī ibn Abī Ṭālib, Shurayḥ, and Ṭāwūs—did not decree divorce upon one who swore by it and then broke the oath. No opposing view from the Companions (may Allah be pleased with them) is known regarding ʿAlī's position on this matter.

قَالَ أَبُو مُحَمَّد: وَالطَّلَاقُ بِالصِّفَةِ عِنْدَنَا كَمَا هُوَ الطَّلَاقُ بِالْيَمِينِ، كُلُّ ذَلِكَ لَا يَلْزَمُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L34175 Abu Muhammad said: Conditional divorce, according to our school, is like divorce by oath; none of these are binding. And by Allah, the Exalted, is success.

وَلَا يَكُونُ طَلَاقًا إلَّا كَمَا أَمَرَ اللَّهُ تَعَالَى بِهِ وَعَلِمَهُ، وَهُوَ الْقَصْدُ إلَى الطَّلَاقِ وَأَمَّا مَا عَدَا ذَلِكَ فَبَاطِلٌ، وَتَعَدٍّ - لِحُدُودِ اللَّهِ عَزَّ وَجَلَّ.

L34176 A divorce is not valid except in the manner Allah the Exalted has commanded it and knew it, which is the intention to divorce. As for anything other than that, it is invalid and transgressing the boundaries of Allah, the Mighty and Majestic.

L34177 We have mentioned the opinion of ʿAṭāʾ regarding one who swears to divorce his wife three times if he does not strike Zayd, and then Zayd dies or he himself dies: that no divorce is incumbent upon him whatsoever, that he

inherits from his wife if she dies, and she inherits from him if he dies—and this is the opinion of Abū Thawr.

وَقَدْ ذَكَرْنَا قَوْلَ عَطَاءٍ فِيمَنْ حَلَفَ بِطَلَاقِ امْرَأَتِهِ ثَلَاثًا إِنْ لَمْ يَضْرِبْ زَيْدًا فَمَاتَ زَيْدٌ أَوْ مَاتَ هُوَ: أَنَّهُ لَا طَلَاقَ عَلَيْهِ أَصْلًا، وَأَنَّهُ يَرِثُ امْرَأَتَهُ إِنْ مَاتَتْ، وَتَرِثُهُ إِنْ مَاتَ - وَهُوَ قَوْلُ أَبِي ثَوْرٍ.

L34178 Sufyan said, "Divorce takes effect after death." This is a clear error.

وَقَالَ سُفْيَانُ: الطَّلَاقُ يَقَعُ بَعْدَ الْمَوْتِ - وَهَذَا خَطَأٌ ظَاهِرٌ.

L34179 Al-Shafi'i said: Divorce is incumbent upon the husband, whereas breaking an oath [is judged] at the final stages of life - and this is an assertion without proof.

وَقَالَ الشَّافِعِيُّ: الطَّلَاقُ يَقَعُ عَلَيْهِ وَالْحِنْثُ فِي آخِرِ أَوْقَاتِ الْحَيَاةِ - وَهَذِهِ دَعْوَى بِلَا بُرْهَانٍ.

L34180 Mālik said: He is barred from approaching his wife while breaking an oath until he fulfills it—but this is unsound reasoning, for if he is breaking an oath, he is an oath-breaker, and thus his wife must divorce him, or he must undertake the expiation for the oath sworn by God. Otherwise, he is not an oath-breaker, and if he is not an oath-breaker, he is fulfilling his oath—one of the two is necessarily the case. There is absolutely no third state for the oath-taker whatsoever.

وَقَالَ مَالِكٌ: يُوقَفُ عَنْ امْرَأَتِهِ، وَهُوَ عَلَى حِنْثٍ حَتَّى يَبَرَّ - وَهَذَا كَلَامٌ فَاسِدٌ، لِأَنَّهُ إِنْ كَانَ عَلَى حِنْثٍ فَهُوَ حَانِثٌ فَيَلْزَمُهُ أَنْ تَطْلُقَ عَلَيْهِ امْرَأَتُهُ، أَوْ أَنْ تَلْزَمَهُ الْكَفَّارَةُ بِالْيَمِينِ بِاللَّهِ، وَإِلَّا فَلَيْسَ حَانِثًا، وَإِذَا لَمْ يَكُنْ حَانِثًا فَهُوَ عَلَى بِرٍّ - لَا بُدَّ مِنْ أَحَدِهِمَا - وَلَا سَبِيلَ إِلَى حَالٍ ثَالِثَةٍ لِلْحَالِفِ أَصْلًا.

L34181–34182 Thus, it became evident that his statement, "He is upon [breaking] an oath," is an illogical statement—and success is from Allah, the Most High.

فَصَحَّ أَنَّ قَوْلَهُ " هُوَ عَلَى حِنْثٍ " كَلَامٌ لَا يُعْقَلُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L34183 "Would that I knew—why would one refrain from his wife? It must inevitably be one of two scenarios: either she is lawful, in which case it is impermissible for him to withhold [relations with] what is lawful."

وَلَيْتَ شِعْرِي - لِأَيِّ شَيْءٍ يُوقَفُ عَنْ امْرَأَتِهِ، وَلَا تَخْلُو مِنْ أَحَدِ وَجْهَيْنِ -: إِمَّا أَنْ تَكُونَ حَلَالًا فَلَا يَحِلُّ تَوَقُّفُهُ عَنْ الْحَلَالِ.

L34184 Or if she becomes unlawful, she is not unlawful to him except by breaking the oath; then he must divorce her as an obligation upon him.

أَوْ تَكُونَ حَرَامًا فَلَا تَحْرُمُ عَلَيْهِ إِلَّا بِالْحِنْثِ فَلْيُطَلِّقْهَا عَلَيْهِ.

L34185 Then we say to them: From where do you permit divorce in a specified form while not permitting marriage in a specified form, nor revocation (of divorce) in a specified form? Such as one who says: "If I enter the house, I have revoked the divorce from my wife" - or says: "Then it is established that I have married you?" - while she declares the same, and the guardian

ثُمَّ نَقُولُ لَهُمْ: مِنْ أَيْنَ أَجَزْتُمْ الطَّلَاقَ بِصِفَةٍ وَلَمْ تُجِيزُوا النِّكَاحَ بِصِفَةٍ؟ وَالرَّجْعَةَ بِصِفَةٍ؟ كَمَنْ قَالَ: إِذَا دَخَلْت الدَّارَ فَقَدْ رَاجَعْت زَوْجَتِي الْمُطَلَّقَةَ - أَوْ قَالَ: فَقَدْ تَزَوَّجْتُك؟

declares the same - with no distinction possible between them. And success is from Allah, the Exalted.

L34186 **An issue: He said, "When the beginning of the month arrives, you are divorced," or he specified a time.**

L34187 1966 - Issue: If someone says, "When the new month is sighted, you are divorced," or specifies any time, she is not divorced by that—neither now nor when the new month is sighted.

L34188 The proof of that is that there has come no Quranic verse or Sunnah indicating the occurrence of divorce in that manner. Indeed, Allah has taught us the rulings of divorce for the wife with whom marriage has been consummated and the one with whom it has not been consummated, and this is not among what He has taught us: "And whoever transgresses the limits of Allah has certainly wronged himself" (Surah At-Talaq 65:1).[9]

L34189 Moreover, if a divorce does not take effect at the moment of its pronouncement, it is impossible for it to take effect afterward at a time when it was not pronounced—and people have differed regarding this. A faction has stated: Whoever pronounces a divorce effective at a specified term, the divorce only takes effect at that designated time—as narrated to us through the chain of narration of Abū Ubayd: Yazīd ibn Hārūn reported to us from al-Jarrāḥ ibn al-Minhāl, from al-Ḥakam (ibn Utaybah)—that Ibn Abbās used to say: If a man says to his wife, "You are divorced at the beginning of the year," he may have intercourse with her between the pronouncement and the beginning of the year.

L34190 Narrated through Abd al-Razzaq, via Ibn Jurayj, via Ata: Whoever says to his wife, "You are divorced when you give birth," may engage in marital relations with her as long as she has not yet given birth—and he does not divorce [her] until the specified term arrives.

L34191 Likewise, whoever says: "You are divorced until a year has elapsed."

وَقَالَتْ هِيَ مِثْلَ ذَلِكَ، وَقَالَ الْوَلِيُّ مِثْلَ ذَلِكَ - وَلَا سَبِيلَ إِلَى فَرْقٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَالَ إِذَا جَاءَ رَأْسُ الشَّهْرِ فَأَنْتِ طَالِقٌ أَوْ ذَكَرَ وَقْتًا مَا]

١٩٦٦ - مَسْأَلَةٌ: مَنْ قَالَ: إِذَا جَاءَ رَأْسُ الشَّهْرِ فَأَنْتِ طَالِقٌ، أَوْ ذَكَرَ وَقْتًا مَا؟ فَلَا تَكُونُ طَالِقًا بِذَلِكَ، لَا الْآنَ، وَلَا إِذَا جَاءَ رَأْسُ الشَّهْرِ.

بُرْهَانُ ذَلِكَ -: أَنَّهُ لَمْ يَأْتِ قُرْآنٌ وَلَا سُنَّةٌ بِوُقُوعِ الطَّلَاقِ بِذَلِكَ، وَقَدْ عَلَّمَنَا اللَّهُ الطَّلَاقَ عَلَى الْمَدْخُولِ بِهَا، وَفِي غَيْرِ الْمَدْخُولِ بِهَا، وَلَيْسَ هَذَا فِيمَا عَلَّمَنَا {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

وَأَيْضًا - فَإِنْ كَانَ كُلُّ طَلَاقٍ لَا يَقَعُ حِينَ إِيقَاعِهِ فَمِنَ الْمُحَالِ أَنْ يَقَعَ بَعْدَ ذَلِكَ فِي حِينٍ لَمْ يُوقِعْهُ فِيهِ - وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَتْ طَائِفَةٌ: مَنْ طَلَّقَ إِلَى أَجَلٍ لَمْ يَقَعْ الطَّلَاقُ إِلَّا إِلَى ذَلِكَ الْأَجَلِ - كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَزِيدُ بْنُ هَارُونَ عَنْ الْجَرَّاحِ بْنِ الْمِنْهَالِ نَا الْحَكَمُ - هُوَ ابْنُ عُتَيْبَةَ - أَنَّ ابْنَ عَبَّاسٍ كَانَ يَقُولُ: مَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إِلَى رَأْسِ السَّنَةِ -: أَنَّهُ يَطَؤُهَا مَا بَيْنَهُ وَبَيْنَ رَأْسِ السَّنَةِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ مَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إِذَا وَلَدْتِ؟ فَلَهُ أَنْ يُصِيبَهَا مَا لَمْ تَلِدْ - وَلَا يُطَلِّقُ حَتَّى يَأْتِيَ الْأَجَلُ.

وَكَذَلِكَ مَنْ قَالَ: أَنْتِ طَالِقٌ إِلَى سَنَةٍ

[9] **Qur'an references (L34188):** Qur'an 65:1 (At-Talaq).

L34192 And through the chain of Abū ʻUbayd: Yazīd ibn Hārūn reported to us from Ḥabīb ibn Abī Ḥabīb, from ʻAmr ibn Harim, from Jābir ibn Zayd Abū al-Shaʻthāʼ, who said: She is divorced until the term specified, and she remains lawful for him before its conclusion.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَزِيدُ بْنُ هَارُونَ عَنْ حَبِيبِ بْنِ أَبِي حَبِيبٍ عَنْ عَمْرِو بْنِ هَرِمٍ عَنْ جَابِرِ بْنِ زَيْدٍ أَبِي الشَّعْثَاءِ قَالَ: هِيَ طَالِقٌ إِلَى الْأَجَلِ الَّذِي سُمِّيَ، وَتَحِلُّ لَهُ مَا دُونَ ذَلِكَ.

L34193–34194 From the path of Abū ʻUbayd: Hushaym narrated to us—Mughīrah—from Ibrāhīm al-Nakhaʻī regarding one who stipulates a time period for divorce. He said: When that time arrives, the divorce takes effect.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا هُشَيْمٌ أَنَا مُغِيرَةُ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِيمَنْ وَقَّتَ فِي الطَّلَاقِ وَقْتًا، قَالَ: إِذَا جَاءَ ذَلِكَ الْوَقْتُ وَقَعَ.

L34195 We have also narrated it from Al-Shaʻbī.

وَرُوِّينَاهُ أَيْضًا عَنِ الشَّعْبِيِّ.

L34196 And from the chain of Saʼid ibn Mansur: Abu Muʼawiyah narrated to us from ʼUbaydah from al-Shaʼbi, similar to the statement of Ibrahim - and it is also reported: from ʼAbdullah ibn Muhammad ibn al-Ḥanafiyyah.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ عَنْ عُبَيْدَةَ عَنِ الشَّعْبِيِّ مِثْلُ قَوْلِ إِبْرَاهِيمَ - وَرُوِيَ أَيْضًا: عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ الْحَنَفِيَّةِ.

L34197 It has been reported from Sufyan al-Thawri that he said: If a man says to his wife, “If you menstruate, you are divorced,” the divorce takes effect immediately when she enters menstruation. He said: If he says to her, “When you menstruate, you are divorced,” she is not divorced until she completes ghusl after her final menstrual cycle, because he may revoke [the divorce] until she completes ghusl. This reflects the rule that a contingent divorce only takes effect at its appointed time.

وَرُوِّينَا عَنْ سُفْيَانَ الثَّوْرِيِّ قَالَ: مَنْ قَالَ لِامْرَأَتِهِ: إِذَا حِضْتِ فَأَنْتِ طَالِقٌ؟ فَإِنَّهَا إِذَا دَخَلَتْ فِي الدَّمِ طَلُقَتْ عَلَيْهِ. قَالَ: فَإِنْ قَالَ لَهَا: مَتَى حِضْتِ حَيْضَةً فَأَنْتِ طَالِقٌ؟ فَلَا تَطْلُقُ حَتَّى تَغْتَسِلَ مِنْ آخِرِ حَيْضَتِهَا، لِأَنَّهُ يُرَاجِعُهَا حَتَّى تَغْتَسِلَ. وَبِأَنْ: لَا يَقَعَ الطَّلَاقُ الْمُؤَجَّلُ إِلَّا إِلَى أَجَلِهِ

L34198 Abu ʼUbayd, Ishaq ibn Rahawayh, al-Shafiʼi, Ahmad, Abu Sulayman, and their companions hold this view. Another opinion—that the divorce in such a case takes effect the moment it is uttered—is one we have received reports of through the chain of Abd al-Razzaq from Sufyan al-Thawri from Yahya ibn Saʼid al-Ansari from Saʼid ibn al-Musayyab regarding a man who divorces his wife to a term. He said: The divorce takes effect at that moment, and he must not approach her.

-: يَقُولُ أَبُو عُبَيْدٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ. وَقَوْلٌ آخَرُ - وَهُوَ أَنَّ الطَّلَاقَ يَقَعُ فِي ذَلِكَ سَاعَةَ يَلْفِظُ بِهِ -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ فِيمَنْ طَلَّقَ امْرَأَتَهُ إِلَى أَجَلٍ؟ قَالَ: يَقَعُ الطَّلَاقُ سَاعَتَئِذٍ وَلَا يَقْرَبُهَا.

L34199 From the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us from Manṣūr and Yūnus, from al-Ḥasan—that he did not postpone divorce.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نَا مَنْصُورٌ، وَيُونُسُ عَنِ الْحَسَنِ: أَنَّهُ كَانَ لَا يُؤَجِّلُ فِي الطَّلَاقِ -.

وَرُوِّينَا عَنْ الزُّهْرِيِّ مَنْ طَلَّقَ إلَى سَنَةٍ؟ فَهِيَ طَالِقٌ حِينَئِذٍ.

L34200 It has been transmitted to us from al-Zuhrī that he was asked, "What is the ruling for one who pronounces a divorce to take effect after a year?" He replied, "The divorce becomes effective at that point."

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ هُشَيْمٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّهُ كَانَ لَا يُؤَجِّلُ فِي الطَّلَاقِ أَجَلًا.

L34201 Through the chain of Abi 'Ubayd from Hushaym from Yaḥyā ibn Saʿīd al-Anṣārī, it is reported that he did not postpone the waiting period (ʿiddah) in divorce.

وَرُوِيَ عَنْ رَبِيعَةَ - وَهُوَ قَوْلُ اللَّيْثِ، وَأَحَدُ قَوْلَيْ أَبِي حَنِيفَةَ - وَهُوَ قَوْلُ زُفَرَ.

L34202 It has been reported from Rabiʿah—and this is the opinion of al-Layth and one of the two opinions of Abū Ḥanīfah—, and it is the opinion of Zufar.

وَقَوْلٌ ثَالِثٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ قَتَادَةَ عَنْ الْحَسَنِ أَنَّهُ قَالَ: إذَا قَالَ: أَنْتِ طَالِقٌ إذَا كَانَ كَذَا - لِأَمْرٍ لَا يَدْرِي أَيَكُونُ أَمْ لَا؟ - فَلَيْسَ بِطَلَاقٍ حَتَّى يَكُونَ ذَلِكَ وَيَطَؤُهَا، فَإِنْ مَاتَا قَبْلَ ذَلِكَ تَوَارَثَا. فَإِنْ قَالَ: أَنْتِ طَالِقٌ إلَى سَنَةٍ فَهِيَ طَالِقٌ حِينَ يَقُولُ ذَلِكَ - وَهُوَ قَوْلُ مَالِكٍ.

L34203–34205 A third opinion—as we have narrated via the chain of Abd al-Razzaq, who reported from Maʿmar, from Qatadah, from Al-Hasan—states: If he says "You are divorced if such-and-such occurs" concerning a matter he does not know whether it will happen or not, it is not a divorce until... If he does so and has intercourse with her, then if they die before that time, they inherit from each other. If he says: "You are divorced until a year," she is divorced when he utters those words—and this is the opinion of Mālik.

وَقَوْلٌ رَابِعٌ - رُوِيَ عَنْ ابْنِ أَبِي لَيْلَى فِيمَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إلَى رَأْسِ الْهِلَالِ؟ قَالَ: أَتَخَوَّفُ أَنْ يَكُونَ قَدْ طَلَّقَهَا؟ فَوَجَدْنَا مِنْ حُجَّةِ مَنْ قَالَ: بِأَنَّهُ وَقَعَ عَلَيْهِ الطَّلَاقُ الْآنَ -: أَنْ قَالُوا: هَذَا الطَّلَاقُ إلَى أَجَلٍ، فَهُوَ بَاطِلٌ كَالنِّكَاحِ إلَى أَجَلٍ؟ فَقُلْنَا لَهُمْ: فَلِمَ قُلْتُمْ: إنَّهُ إنْ قَالَ: إنْ دَخَلْت الدَّارَ فَأَنْتِ طَالِقٌ؟ أَنَّهَا لَا تَطْلُقُ إلَّا بِدُخُولِ الدَّارِ، فَإِنَّهُ طَلَاقٌ إلَى أَجَلٍ، فَأَوْقَعْتُمُوهُ حِينَ لَفَظَ بِهِ.

L34206 A fourth opinion—narrated from Ibn Abī Laylā regarding one who told his wife, "You are divorced until the crescent's appearance"—stated: "Do I fear that he has divorced her?" We found in the proof of those who maintained that the divorce takes effect immediately their argument: "This is a conditional divorce, thus invalid like a time-bound marriage?" We responded: "Then why do you rule that if he says, 'If you enter the house, you are divorced,' she is not divorced except upon entering the house? For this too is a conditional divorce, yet you make it take effect only when he utters it?"

وَبِهَذَا نُعَارِضُهُمْ فِي قَوْلِهِمْ: إنَّ ظَاهِرَ أَمْرِهِ أَنَّهُ نَدِمَ إذْ قَالَ: أَنْتِ طَالِقٌ، فَأَتْبَعَ ذَلِكَ بِالْأَجَلِ؟ فَيَلْزَمُهُمْ ذَلِكَ فِيمَنْ قَالَ: أَنْتِ طَالِقٌ إنْ دَخَلْت الدَّارَ.

L34207 With this, we counter them regarding their statement: "Does the apparent nature of his statement—'You are divorced'—indicate that he regretted, since he appended a condition to it?" This same reasoning necessarily applies to them in the case of one who says: "You are divorced if you enter the house."

وَهُوَ قَوْلٌ صَحَّ عَنْ شُرَيْحٍ أَلْزَمَهُ الطَّلَاقَ - دَخَلَتْ الدَّارَ أَوْ لَمْ تَدْخُلْهُ.

L34208 This is a valid statement authentically attributed to Shurayh, who deemed the divorce binding—whether she entered the house or did not enter it.

L34209 They said: If he says, "You are divorced," then the divorce is permissible.

وَقَالُوا: إذَا قَالَ: أَنْتِ طَالِقٌ، فَالطَّلَاقُ مُبَاحٌ، فَإِنْ أَتْبَعَهُ أَجَلًا فَهُوَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ؟ فَقُلْنَا: بَلْ مَا طَلَاقُهُ إلَّا فَاسِدٌ لَا مُبَاحٌ؟ إذْ عَلَّقَهُ بِوَقْتٍ، وَلَا يَجُوزُ إلْزَامُهُ بَعْضَ مَا الْتَزَمَ دُونَ سَائِرِهِ - فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ، وَيَكْفِي مِنْ هَذَا أَنَّهُ تَحْرِيمُ فَرْجٍ بِالظَّنِّ عَلَى مَنْ أَبَاحَهُ اللَّهُ تَعَالَى لَهُ بِالْيَقِينِ - وَنَعُوذُ بِاَللَّهِ مِنْ هَذَا.

But if he makes it contingent upon a time limit, it constitutes a stipulation not found in the Book of Allah Almighty, so it is invalid? We replied: Rather, his divorce is nothing but invalid, not permissible? Since he conditioned it upon a specific time, and it is not permissible to legally bind him to part of what he undertook while excluding the rest—thus, the invalidity of this claim becomes evident. It suffices that this constitutes prohibiting lawful marital relations based on conjecture against one whom Allah Almighty has permitted to him with certainty—and we seek refuge in Allah from this.

وَلَمْ نَجِدْ لِمَنْ فَرَّقَ بَيْنَ الْأَجَلِ الْآتِي وَالْآبِدِ، وَبَيْنَ الْأَجَلِ الَّذِي لَا يَأْتِي حُجَّةً أَصْلًا، غَيْرَ دَعْوَاهُ؟ لَا سِيَّمَا وَهُمْ يُفْسِدُونَ النِّكَاحَ إذَا أَجَّلَ الصَّدَاقَ إلَى أَجَلٍ قَدْ يَكُونُ وَقَدْ لَا يَكُونُ، بِعَكْسِ قَوْلِهِمْ فِي الطَّلَاقِ؟ وَكِلَا الْأَمْرَيْنِ أَجَلٌ وَلَا فَرْقَ.

L34210 We have found no proof whatsoever for those who differentiate between the impending term and the indefinite term, and between the term that may or may not materialize, except their mere claim? This is especially so when they nullify the marriage if the dowry is deferred to a term that may or may not occur—opposite to their ruling on divorce. Yet both cases involve a term, and there is no distinction.

وَأَيْضًا - فَقَدْ يَأْتِي الْأَجَلُ الَّذِي قَالُوا فِيهِ: إنَّهُ يَجِيءُ - وَهُوَ مَيِّتٌ أَوْ وَهِيَ مَيِّتَةٌ، أَوْ كِلَاهُمَا، أَوْ قَدْ طَلَّقَهَا ثَلَاثًا -: فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L34211 Moreover, the appointed term they posited concerning its arrival may occur while he is dead, she is dead, both are dead, or he has already divorced her thrice. Thus, the invalidity of this opinion is entirely clear. And success is attained only through Allah, the Exalted.

وَهُمْ يُشَنِّعُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ؟ وَقَدْ خَالَفُوا هَاهُنَا ابْنَ عَبَّاسٍ، وَأَيْضًا - فَإِنَّهُمْ يُوقِعُونَ عَلَيْهِ طَلَاقًا لَمْ يَلْتَزِمْهُ قَطُّ؟ وَهَذَا بَاطِلٌ.

L34212 They condemn opposition to the Companion whose position has no known dissenters, yet they themselves oppose Ibn Abbas in this matter! Moreover, how can they impose a divorce ruling he never acknowledged? This is utterly invalid.

ثُمَّ لَوْ عُكِسَ عَلَيْهِمْ قَوْلُهُمْ، فَقِيلَ: بَلْ تَطْلُقُ عَلَيْهِ إذَا أَجَّلَ أَجَلًا - قَدْ يَكُونُ وَقَدْ لَا يَكُونُ - سَاعَةَ لَفْظِهِ بِالطَّلَاقِ، وَلَا تَطْلُقُ عَلَيْهِ إذَا أَجَّلَ أَجَلًا يَأْتِي وَلَا بُدَّ، لَمَا كَانَ بَيْنَهُمْ فَرْقٌ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L34213–34214 Then, if their own argument were turned back on them, and it were said: “Rather, the divorce takes effect upon him if he stipulates a term—one that may or may not occur—at the moment of his pronouncement, and does not take effect if he stipulates a term that must inevitably occur,” there would be no distinction at all between the two scenarios—and success comes from Allah, the Most High.

ثُمَّ نَظَرْنَا فِيمَا يَحْتَجُّ بِهِ مَنْ أَجَازَ ذَلِكَ وَجَعَلَ الطَّلَاقَ يَقَعُ إذَا جَاءَ الْأَجَلُ - لَا قَبْلَ ذَلِكَ - بِأَنْ قَالَ: قَالَ اللَّهُ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] ؟ فَقُلْنَا: إنَّمَا هَذَا فِي كُلِّ

L34215 Then we examined the argument of those who permit this and hold that divorce takes effect only upon the appointed term—not before—by citing Allah’s statement, the Exalted: {Fulfill the contracts} [Al-Ma’idah: 1]. We responded: This verse pertains solely to every contract Allah, the Exalted, has

commanded to fulfill or encouraged—not to all contracts universally, nor to sinful acts. Among such sinful acts is divorcing contrary to the manner Allah, the Exalted, has commanded, and thus fulfilling such a divorce is impermissible.[10]

L34216 The scholars ruled: "Muslims are held to their stipulations."

L34217 And this is similar to the previous one, because the Messenger of Allah—peace and blessings of Allah be upon him—said: «Every condition not in the Book of Allah, the Most High, is void.»

L34218 A divorce stipulated to a term by a condition not found in the Book of Allah, the Most High, is invalid.

L34219 They said: "We analogize this to deferred payment to a specified term and manumission to a specified term." We replied: "The analogy is invalid. Furthermore, even if it were valid, this instance of it would still be invalid, because textual evidence exists for the permissibility of deferred payment to a specified term and manumission to a specified term, whereas no such evidence exists for divorce to a specified term."

L34220 Furthermore, if analogy were valid, this [ruling on time-bound divorce] would be invalid by it, for you unanimously agree that time-bound marriage is impermissible and that such a marriage is invalid. Why then do you not analogize time-bound divorce to this [ruling]?

L34221 They said: They have reached consensus that divorce occurs at the fixed term, for whoever enacted it when he uttered it has validated this. Is it not then obligatory to adhere to their consensus? We responded: This is invalid, for they never reached consensus on this matter. Whoever enacted the divorce when uttered by the divorcer never permitted delaying its enactment to a fixed term, while those who enacted it at the fixed term did not validate its enactment when he uttered it.

L34222 They said: "This is the statement of a companion for whom no dissenter among the companions is known?"

عَقْدٍ أَمَرَ اللَّهُ تَعَالَى بِالْوَفَاءِ بِهِ، أَوْ نَدَبَ إِلَيْهِ - لَا فِي كُلِّ عَقْدٍ جُمْلَةً، وَلَا فِي مَعْصِيَةٍ، وَمِنْ الْمَعَاصِي أَنْ يُطَلِّقَ بِخِلَافِ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ، فَلَا يَحِلُّ الْوَفَاءُ بِهِ.

وَقَالُوا: " الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ ".

وَهَذَا كَالَّذِي قَبْلَهُ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ» .

وَالطَّلَاقُ إلَى أَجَلٍ مُشْتَرَطٍ بِشَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ.

وَقَالُوا: نَقِيسُ ذَلِكَ عَلَى الْمُدَايَنَةِ إلَى أَجَلٍ، وَالْعِتْقِ إلَى أَجَلٍ؟ فَقُلْنَا: الْقِيَاسُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّ الْمُدَايَنَةَ وَالْعِتْقَ قَدْ جَاءَ فِي جَوَازِهِمَا إلَى أَجَلٍ النَّصُّ، وَلَمْ يَأْتِ ذَلِكَ فِي الطَّلَاقِ.

ثُمَّ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّكُمْ مُجْمِعُونَ عَلَى أَنَّ النِّكَاحَ إلَى أَجَلٍ لَا يَجُوزُ، وَأَنَّ ذَلِكَ النِّكَاحَ بَاطِلٌ، فَهَلَّا قِسْتُمْ الطَّلَاقَ إلَى أَجَلٍ عَلَى ذَلِكَ.

وَقَالُوا: قَدْ أَجْمَعُوا عَلَى وُقُوعِ الطَّلَاقِ عِنْدَ الْأَجَلِ، لِأَنَّ مَنْ أَوْقَعَهُ حِينَ نَطَقَ بِهِ فَقَدْ أَجَازَهُ، فَالْوَاجِبُ الْمَصِيرُ إلَى مَا اتَّفَقُوا عَلَيْهِ؟ فَقُلْنَا: هَذَا بَاطِلٌ، وَمَا أَجْمَعُوا قَطُّ عَلَى ذَلِكَ، لِأَنَّ مَنْ أَوْقَعَ الطَّلَاقَ - حِينَ لَفَظَ بِهِ الْمُطَلِّقُ - لَمْ يَجُزْ قَطُّ أَنْ يُؤَخِّرَ إيقَاعَهُ إلَى أَجَلٍ وَالَّذِينَ أَوْقَعُوهُ عِنْدَ الْأَجَلِ لَمْ يُجِيزُوا إيقَاعَهُ حِينَ نَطَقَ بِهِ.

وَقَالُوا: هَذَا قَوْلُ صَاحِبٍ لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ؟

[10] **Qur'an references (L34215):** Qur'an 5:1 (Al-Ma'idah).

فَقُلْنَا: هَذَا مِنْ رِوَايَةِ أَبِي الْعَطُوفِ الْجَرَّاحِ بْنِ الْمِنْهَالِ الْجَزَرِيِّ - وَهُوَ كَذَّابٌ مَشْهُورٌ بِوَضْعِ الْحَدِيثِ - فَبَطَلَ هَذَا الْقَوْلُ أَيْضًا -.

وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

We said: This is from the narration of Abī al-ʿAṭūf al-Jarrāḥ ibn al-Minhāl al-Jazari—and he is a liar well-known for fabricating ḥadīth—thus, this statement also became nullified.

And all praise is due to Allah, the Lord of the worlds.

[مَسْأَلَةٌ جَعَلَ إِلَى امْرَأَتِهِ أَنْ تُطَلِّقَ نَفْسَهَا]

A case in which he delegated to his wife the authority to divorce herself.

١٩٦٧ - مَسْأَلَةٌ: وَمَنْ جَعَلَ إِلَى امْرَأَتِهِ أَنْ تُطَلِّقَ نَفْسَهَا: لَمْ يَلْزَمْهُ ذَلِكَ، وَلَا تَكُونُ طَالِقًا - طَلَّقَتْ نَفْسَهَا أَوْ لَمْ تُطَلِّقْ - لِمَا ذَكَرْنَا قَبْلُ مِنْ أَنَّ الطَّلَاقَ إِنَّمَا جَعَلَهُ اللَّهُ تَعَالَى لِلرِّجَالِ لَا لِلنِّسَاءِ.

Issue 1967: If a man delegates to his wife the authority to divorce herself, this is not binding upon him, and she is not divorced - whether she divorces herself or refrains from divorcing herself - due to what we previously mentioned that Allah the Exalted has ordained divorce as a right for men specifically, not for women.

[مَسْأَلَةٌ لَا يَكُونُ طَلَاقًا بَائِنًا أَبَدًا إِلَّا فِي مَوْضِعَيْنِ]

Issue: An irrevocable divorce can never occur except in two specific instances.

١٩٦٨ - مَسْأَلَةٌ: وَلَا يَكُونُ طَلَاقًا بَائِنًا أَبَدًا إِلَّا فِي مَوْضِعَيْنِ لَا ثَالِثَ لَهُمَا.

1968 - Issue: A divorce is not considered irrevocable forever except in two cases, and there is no third besides them.

أَحَدُهُمَا - طَلَاقُ غَيْرِ الْمَوْطُوءَةِ، لِقَوْلِهِ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّونَهَا} [الأحزاب: ٤٩] .

One of them is the divorce of a woman with whom the marriage has not been consummated, as stated by the Exalted: *O you who have believed, when you marry believing women and then divorce them before consummating the marriage, there is no waiting period incumbent upon them for you to reckon* [Al-Aḥzāb: 49].[11]

وَالثَّانِي - طَلَاقُ الثَّلَاثِ مَجْمُوعَةً أَوْ مُفَرَّقَةً، لِقَوْلِهِ تَعَالَى: {فَلا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ} [البقرة: ٢٣٠] .

The second is the triple *talaq*, whether pronounced collectively or separately, as stated by the Exalted: {Then she is not lawful to him thereafter until she marries another husband} [Al-Baqarah: 230].[12]

وَأَمَّا مَا عَدَا هَذَيْنِ فَلَا أَصْلًا، لِقَوْلِهِ تَعَالَى: {وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ} [البقرة: ٢٢٨] .

As for what is other than these two, there is no basis at all, due to the statement of Allah, the Most High: “And their husbands are more entitled to take them back in that” [al-Baqarah 2:228].[13]

وَلِقَوْلِهِ تَعَالَى: {فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ} [البقرة: ٢٣١]

[11] **Qur’an references (L34230):** Qur’an 33:49 (Al-Ahzab).
[12] **Qur’an references (L34231):** Qur’an 2:230 (Al-Baqarah).
[13] **Qur’an references (L34232):** Qur’an 2:228 (Al-Baqarah).

L34233 And [they are obligated] because of Allah's saying: "Then retain them with fairness or release them with fairness" [Al-Baqarah: 231][14]

وَقَالَ تَعَالَى: {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢]

L34234 And He, the Exalted, said: "When they have reached their prescribed term, either keep them in a kind manner or part with them in a kind manner." (65:2)[15]

فَجُعِلَ إِلَى الزَّوْجِ فِي الْعِدَّةِ أَنْ يُرَاجِعَهَا أَوْ يَتْرُكَ.

L34235 During the waiting period, the husband is granted the choice to either take her back or let the waiting period lapse.

L34236 Among those who held this opinion are Al-Shafi'i, Abu Sulayman, and their companions. However, Al-Shafi'i considered khul' an irrevocable divorce—though this is not our view—and we will discuss it in its chapter, God, the Most High, willing.

وَمِمَّنْ قَالَ بِذَلِكَ -: الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا، إِلَّا أَنَّ الشَّافِعِيَّ رَأَى الْخُلْعَ طَلَاقًا بَائِنًا - وَلَيْسَ عِنْدَنَا كَذَلِكَ، وَسَنَتَكَلَّمُ فِيهِ فِي بَابِهِ إِنْ شَاءَ اللَّهُ تَعَالَى.

L34237 If a man says to his wife, "You are divorced; I have no right to retract it concerning you in this matter, rather you have full control over yourself through it," scholars have differed regarding this. Abū Ḥanīfa, al-Shāfi'ī, their companions, and Ibn Wahb—Mālik's disciple—said: "This counts as a single revocable divorce in which her husband retains the right to take her back. Any statement he utters contradicting this is null and void."

فَمَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ لَا رَجْعَةَ لِي فِيهَا عَلَيْكِ، بَلْ تَمْلِكِينَ بِهَا نَفْسَكِ، فَإِنَّ النَّاسَ اخْتَلَفُوا فِي ذَلِكَ: فَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمَا، وَابْنُ وَهْبٍ - صَاحِبُ مَالِكٍ -: هِيَ طَلْقَةٌ يَمْلِكُ فِيهَا زَوْجُهَا رَجْعَتَهَا، وَقَوْلُهُ بِخِلَافِ ذَلِكَ لَغْوٌ.

L34238–34239 And a scholarly faction said: They are three, and that is the opinion of Ibn al-Mājishūn — the disciple of Mālik.

وَقَالَتْ طَائِفَةٌ: هِيَ ثَلَاثَةٌ، وَهُوَ قَوْلُ ابْنِ الْمَاجِشُونِ - صَاحِبِ مَالِكٍ.

L34240 And a group said: "It is as he stated," and this is the view of Ibn al-Qāsim, the companion of Mālik.

وَقَالَتْ طَائِفَةٌ: هِيَ كَمَا قَالَ، وَهُوَ قَوْلُ ابْنِ الْقَاسِمِ صَاحِبِ مَالِكٍ.

L34241 The position we hold is that it is invalid speech through which no divorce occurs at all, because he did not divorce as Allah—the Mighty and Majestic—commanded him, and there is no divorce except as Allah, the Exalted, has commanded.

وَالَّذِي نَقُولُ بِهِ: إِنَّهُ كَلَامٌ فَاسِدٌ لَا يَقَعُ بِهِ طَلَاقٌ أَصْلًا، لِأَنَّهُ لَمْ يُطَلِّقْ كَمَا أَمَرَهُ اللَّهُ - عَزَّ وَجَلَّ - وَلَا طَلَاقَ إِلَّا كَمَا أَمَرَ اللَّهُ تَعَالَى.

L34242 The Messenger of Allah—peace and blessings be upon him—said: "Whoever does an action not in accordance with our command, it is rejected."[16]

قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

[14]**Qur'an references (L34233):** Qur'an 2:231 (Al-Baqarah).

[15]**Qur'an references (L34234):** Qur'an 65:2 (At-Talaq).

[16]**Hadith references (L34242):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

وَالطَّلَاقُ الرَّجْعِيُّ - هُوَ الَّذِي يَكُونُ فِيهِ الزَّوْجُ مُخَيَّرًا مَا دَامَتْ فِي الْعِدَّةِ بَيْنَ تَرْكِهَا لَا يُرَاجِعُهَا حَتَّى تَنْقَضِيَ عِدَّتُهَا، فَتَمْلِكُ أَمْرَهَا فَلَا يُرَاجِعُهَا إِلَّا بِوَلِيٍّ وَرِضَاهَا، وَصَدَاقٍ، وَبَيْنَ أَنْ يُشْهِدَ عَلَى ارْتِجَاعِهَا فَقَطْ فَتَكُونُ زَوْجَتُهُ - أَحَبَّتْ أَمْ كَرِهَتْ - بِلَا وَلِيٍّ وَلَا صَدَاقٍ، لَكِنْ بِإِشْهَادٍ فَقَطْ. وَلَوْ مَاتَ أَحَدُهُمَا قَبْلَ تَمَامِ الْعِدَّةِ وَقَبْلَ الْمُرَاجَعَةِ وَرِثَهُ الْبَاقِي مِنْهُمَا - وَهَذَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ مِنَ الْأَئِمَّةِ.

L34243 Revocable divorce is that in which the husband has the option during the waiting period either to refrain from revoking the divorce until her waiting period concludes—whereupon she gains control over her affairs, and thus he cannot reinstate the marriage except through a guardian, her consent, and a dower—or to have witnesses attest solely to the reinstatement, whereby she remains his wife regardless of her consent, without requiring a guardian or dower, but solely through witnessing. If either spouse dies before completing the waiting period and before reinstatement, the surviving spouse inherits from the deceased—a ruling undisputed among all jurists.

وَالْبَائِنُ - هُوَ الَّذِي لَا رَجْعَةَ لَهُ عَلَيْهَا إِلَّا أَنْ تَشَاءَ هِيَ - فِي غَيْرِ الثَّلَاثِ - بِوَلِيٍّ، وَصَدَاقٍ، وَرِضَاهَا، وَنَفَقَتُهَا عَلَيْهِ فِي الطَّلَاقِ الرَّجْعِيِّ مَا دَامَتْ فِي الْعِدَّةِ، وَيَلْحَقُهَا طَلَاقُهُ.

L34244 The irrevocable divorce (al-bā'in) is one where the husband has no right to revoke it unless she herself wills it—excluding those beyond the first three revocable divorces. [Reconciliation in this case] requires a guardian, a dowry, and her consent. In a revocable divorce, his obligation to provide her maintenance persists throughout her prescribed waiting period ('iddah), and the divorce becomes legally binding upon her.

[مَسْأَلَةٌ قَالَ أَنْتِ طَالِقٌ إِنْ شَاءَ اللَّهُ]

L34245 ## Issue: He said, "You are divorced if Allah wills."

١٩٦٩ - مَسْأَلَةٌ: وَمَنْ قَالَ: أَنْتِ طَالِقٌ إِنْ شَاءَ اللَّهُ، أَوْ قَالَ: إِلَّا أَنْ يَشَاءَ اللَّهُ، أَوْ قَالَ: إِلَّا أَنْ لَا يَشَاءَ اللَّهُ -: فَكُلُّ ذَلِكَ سَوَاءٌ، وَلَا يَقَعُ بِشَيْءٍ مِنْ ذَلِكَ طَلَاقٌ.

L34246 Issue 1969: If someone says, "You are divorced if Allah wills," or says, "unless Allah wills," or says, "except if Allah does not will"—all such statements are treated the same, and no divorce is effected through any of them.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَقُولَنَّ لِشَيْءٍ إِنِّي فَاعِلٌ ذَلِكَ غَدًا} [الكهف: ٢٣] {إِلا أَنْ يَشَاءَ اللَّهُ} [الكهف: ٢٤] .

L34247 The proof of that is the statement of Allah, the Exalted and Majestic: "And never say of anything, 'I will surely do that tomorrow,' unless Allah wills" [Al-Kahf: 23, 24].[17]

وَقَالَ تَعَالَى: {وَمَا تَشَاءُونَ إِلا أَنْ يَشَاءَ اللَّهُ} [الإنسان: ٣٠]

L34248 And He, the Exalted, said: "You cannot will anything unless Allah wills it" (Qur'an 76:30).[18]

وَنَحْنُ نَعْلَمُ أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ إِمْضَاءَ هَذَا الطَّلَاقِ لَيَسَّرَهُ لِإِخْرَاجِهِ بِغَيْرِ اسْتِثْنَاءٍ.

L34249 And we know that if Allah, the Exalted, had willed the execution of this divorce, He would have made its implementation effortless, without exception.

فَصَحَّ أَنَّهُ تَعَالَى لَمْ يُرِدْ وُقُوعَهُ إِذْ يَسَّرَهُ لِتَعْلِيقِهِ بِمَشِيئَتِهِ - عَزَّ وَجَلَّ.

L34250 Thus, it is confirmed that He, the Exalted, did not will its occurrence, since

[17] **Qur'an references (L34247):** Qur'an 18:23 (Al-Kahf); Qur'an 18:24 (Al-Kahf).
[18] **Qur'an references (L34248):** Qur'an 76:30 (Al-Insan); Qur'an 81:29 (At-Takwir).

He made it easy by conditioning it upon His will—the Almighty and Majestic.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَتْ طَائِفَةٌ كَمَا قُلْنَا - كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا مُعَاذُ بْنُ مُعَاذٍ عَنْ وَرْقَاءَ بْنِ عُمَرَ عَنِ ابْنِ طَاوُسٍ عَنْ أَبِيهِ فِيمَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إِنْ شَاءَ اللَّهُ؟ قَالَ: لَهُ ثُنْيَاهُ وَمِنْ طَرِيقِ وَكِيعٍ عَنِ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِيمَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إِنْ شَاءَ اللَّهُ؟ قَالَ: لَا يَحْنَثُ.

L34251–34253 People have differed regarding this: A group has said as we have said—as narrated to us via Abū ʻUbayd: Muʻadh ibn Muʻadh reported to us from Warqāʼ ibn ʻUmar from Ibn Ṭāwūs, who reported from his father concerning one who says to his wife, “You are divorced if Allah wills?” His father said: “He retains his two chances [to revoke it].” And through the chain of Wakiʿ from al-Aʿmash from Ibrāhīm al-Nakhaʿī regarding one who said to his wife, “You are divorced if Allah wills,” Ibrāhīm al-Nakhaʿī said: Such a person does not break his oath.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ أَبِيهِ عَنِ اللَّيْثِ قَالَ: اجْتَمَعَ عَطَاءٌ، وَمُجَاهِدٌ وَطَاوُسٌ، وَالزُّهْرِيُّ: عَلَى أَنَّ الِاسْتِثْنَاءَ فِي كُلِّ شَيْءٍ جَائِزٌ.

L34254 And through the chain of Wakīʿ from his father from al-Layth, who said: ʿAṭāʼ, Mujāhid, Ṭāwūs, and al-Zuhrī collectively agreed that conditional exceptions are permissible in all matters.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ حَكِيمٍ أَبِي دَاوُد عَنِ الشَّعْبِيِّ فِيمَنْ قَالَ: أَنْتَ حُرٌّ إِنْ شَاءَ اللَّهُ تَعَالَى؟ قَالَ: لَا يَحْنَثُ.

L34255 And via the narration of Waki‘ from Hakim, the father of Dawud, from al-Sha‘bi concerning someone who said: “You are free if Allah the Exalted wills.” He [al-Sha‘bi] said: “The oath is not binding.”

وَمِنْ طَرِيقِ الْحَكَمِ بْنِ عُتَيْبَةَ فِيمَنْ قَالَ: أَنْتِ طَالِقٌ إِنْ شَاءَ اللَّهُ؟ لَهُ ثُنْيَاهُ.

L34256 And from the narration of Al-Ḥakam ibn ʻUtaybah regarding someone who says, “You are divorced if Allah wills,” the divorce remains revocable, and he retains the right to revoke it.

وَعَنْ أَبِي مِجْلَزٍ مِثْلُ ذَلِكَ - وَهُوَ قَوْلُ عَطَاءٍ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَسَعِيدِ بْنِ الْمُسَيِّبِ.

L34257 And from Abu Mijlaz likewise—and that is the opinion of ‘Aṭā’, Ḥammād ibn Abī Sulaymān, and Sa‘īd ibn al-Musayyib.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي حَنِيفَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ قَالَ: إِذَا قَالَ: إِنْ لَمْ أَفْعَلْ كَذَا فَامْرَأَتِي طَالِقٌ - إِنْ شَاءَ اللَّهُ - فَحَنِثَ لَمْ تَطْلُقْ امْرَأَتُهُ.

L34258 From Abd al-Razzaq, from Abu Hanifah, from Hammad ibn Abi Sulayman, from Ibrahim, who said: If someone says, “If I do not do such-and-such, then my wife is divorced—if Allah wills,” and he then breaks his oath, his wife is not divorced.

وَبِهِ - كَانَ يَأْخُذُ أَبُو حَنِيفَةَ، وَعَبْدُ الرَّزَّاقِ قَالَ: وَالنَّاسُ عَلَيْهِ.

L34259 And with it—Abu Hanifah and Abd al-Razzaq used to hold [this position]. He said: “And the people are upon it.”

وَقَالَ سُفْيَانُ الثَّوْرِيُّ - مَنْ قَالَ: امْرَأَتِي طَالِقٌ إِنْ كَلَّمْتُ فُلَانًا شَهْرًا إِلَّا أَنْ يَبْدُوَ لِي أَنَّهُ إِنْ وَصَلَ الْكَلَامُ فَلَهُ اسْتِثْنَاؤُهُ، فَإِنْ قَطَعَهُ وَسَكَتَ ثُمَّ اسْتَثْنَى فَلَا اسْتِثْنَاءَ لَهُ.

L34260 Sufyan al-Thawri said: If someone declares, “My wife is divorced if I speak to so-and-so for a month, unless I make an exception”—then if he continues speaking, his exception is valid. But if he stops speaking and remains silent, then attempts to make an exception afterward, no exception is valid for him.

L34261 Al-Awzaʿī said in one of his two opinions: If he states, “If you do a stipulated act, then you [as a wife] are divorced, Allah willing,” the exception is permissible, the divorce does not take effect, and the same applies to emancipation.

وَقَالَ الْأَوْزَاعِيُّ - فِي أَحَدِ قَوْلَيْهِ -: إِنْ قَالَ: إِنْ فَعَلْت كَذَا فَأَنْتِ طَالِقٌ - إِنْ شَاءَ اللَّهُ - فَالِاسْتِثْنَاءُ جَائِزٌ، وَلَا يَقَعُ الطَّلَاقُ، وَكَذَلِكَ الْعَتَاقُ.

L34262 According to this, Ash-Shāfiʿī, his companions, Abū Thawr, ʿUthmān al-Battī, Isḥāq, Abū Sulaymān, and our companions hold the opinion.

وَبِهِ يَقُولُ الشَّافِعِيُّ، وَأَصْحَابُهُ، وَأَبُو ثَوْرٍ، وَعُثْمَانُ الْبَتِّيُّ، وَإِسْحَاقُ، وَأَبُو سُلَيْمَانَ وَأَصْحَابُنَا.

L34263 Others said: The divorce does not take effect by the exception—as has been narrated to us via the chain of narration from Abu Ubayd: Saʿid ibn ʿUfayr narrated to us, saying: al-Fadl ibn al-Mukhtar narrated to me from Abu Hamzah, who said: I heard Ibn Abbas say: If a man says to his wife “You are divorced, Allah willing,” then she is divorced.

وَقَالَ آخَرُونَ: لَا يَسْقُطُ الطَّلَاقُ بِالِاسْتِثْنَاءِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا سَعِيدُ بْنُ عُفَيْرٍ حَدَّثَنِي الْفَضْلُ بْنُ الْمُخْتَارِ عَنْ أَبِي حَمْزَةَ ، قَالَ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ: إذَا قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إنْ شَاءَ اللَّهُ، فَهِيَ طَالِقٌ.

L34264 This has been authentically reported from Sa’id ibn al-Musayyib, al-Hasan, al-Sha’bi, al-Zuhri, Qatadah, and Makḥūl - and it is one of the two opinions of each of al-Awza’i, Malik, and al-Layth, as well as one of the two opinions of Ibn Abi Layla.

وَقَدْ صَحَّ هَذَا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَالْحَسَنِ، وَالشَّعْبِيِّ، وَالزُّهْرِيِّ، وَقَتَادَةَ، وَمَكْحُولٍ - وَهُوَ أَحَدُ قَوْلَيْ الْأَوْزَاعِيِّ، وَمَالِكٍ، وَاللَّيْثِ، وَأَحَدُ قَوْلَيْ ابْنِ أَبِي لَيْلَى.

L34265–34266 It is narrated from Ibn Abi Laylā: If a man divorces [his wife] while stipulating an exception, the divorce is valid. If he frames the exception as an oath, his exception remains valid.

وَرُوِيَ عَنْ ابْنِ أَبِي لَيْلَى: إنْ طَلَّقَ وَاسْتَثْنَى فَالطَّلَاقُ وَاقِعٌ، وَإِنْ أَخْرَجَهُ مَخْرَجَ الْيَمِينِ فَلَهُ اسْتِثْنَاؤُهُ.

L34267 Malik said: If he says, “You are divorced if Zayd wills,” or says, “Unless Zayd does not will,” or “Unless Zayd wills,” then the divorce does not take effect unless Zayd wills. They cited as evidence in this regard by stating that Zayd’s will can be ascertained, whereas the will of God Almighty cannot be ascertained.

وَقَالَ مَالِكٌ: فَإِنْ قَالَ: أَنْتِ طَالِقٌ إنْ شَاءَ زَيْدٌ - أَوْ قَالَ: إلَّا أَنْ لَا يَشَاءَ زَيْدٌ - أَوْ إلَّا أَنْ يَشَاءَ زَيْدٌ: فَإِنَّهَا لَا تَطْلُقُ إلَّا أَنْ يَشَاءَ زَيْدٌ - وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّ مَشِيئَةَ زَيْدٍ تُعْرَفُ، وَمَشِيئَةَ اللَّهِ تَعَالَى لَا تُعْرَفُ.

L34268 Abu Muhammad said: This is invalid. Rather, the will of Zayd is never known by anyone other than himself and Allah the Exalted, for he may lie. As for the will of Allah the Exalted, it is known without doubt, because everything that has come to pass exists only by Allah’s will, and whatever has not occurred – we have no doubt that Allah the Exalted did not will its existence. This is among the matters in which the Hanafis opposed others by condemning [them] through their opposition to a companion for whom no opponent among the companions is known.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ، بَلْ مَشِيئَةُ زَيْدٍ لَا يَعْرِفُهَا أَبَدًا أَحَدٌ غَيْرُهُ، وَغَيْرُ اللَّهِ تَعَالَى، لِأَنَّهُ قَدْ يَكْذِبُ، وَأَمَّا مَشِيئَةُ اللَّهِ تَعَالَى فَمَعْرُوفَةٌ بِلَا شَكٍّ، لِأَنَّ كُلَّ مَا نَفَذَ فَقَدْ شَاءَ اللَّهُ تَعَالَى كَوْنَهُ، وَمَا لَمْ يَنْفُذْ فَلَا نَشُكُّ أَنَّ اللَّهَ تَعَالَى لَمْ يَشَأْ كَوْنَهُ - وَهَذَا مِمَّا خَالَفَ فِيهِ الْحَنَفِيُّونَ تَشْنِيعَهُمْ بِمُخَالَفَةِ صَاحِبٍ لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ.

[مَسْأَلَةٌ طَلَّقَ امْرَأَتَهُ ثُمَّ كَرَّرَ طَلَاقَهَا لِكُلِّ مَنْ لَقِيَهُ مُشْهِدًا أَوْ مُخْبِرًا]

١٩٧٠ - مَسْأَلَةٌ: وَمَنْ طَلَّقَ امْرَأَتَهُ ثُمَّ كَرَّرَ طَلَاقَهَا لِكُلِّ مَنْ لَقِيَهُ مُشْهِدًا أَوْ مُخْبِرًا: فَهُوَ طَلَاقٌ وَاحِدٌ، لَا يَلْزَمُهُ أَكْثَرُ مِنْ ذَلِكَ - وَهَذَا مَا لَا خِلَافَ فِيهِ، لِأَنَّهُ لَمْ يَنْوِ بِذَلِكَ طَلَاقًا آخَرَ.

[مَسْأَلَةٌ أَيْقَنَتْ امْرَأَتُهُ أَنَّهُ طَلَّقَهَا ثَلَاثًا]

١٩٧١ - مَسْأَلَةٌ: وَمَنْ أَيْقَنَتْ امْرَأَتُهُ أَنَّهُ طَلَّقَهَا ثَلَاثًا، أَوْ آخِرَ ثَلَاثٍ أَوْ دُونَ ثَلَاثٍ، وَلَمْ يُشْهِدْ عَلَى مُرَاجَعَتِهِ إيَّاهَا حَتَّى تَمَّتْ عِدَّتُهَا ثُمَّ أَمْسَكَهَا مُعْتَدِيًا: فَفَرْضٌ عَلَيْهَا أَنْ تَهْرُبَ عَنْهُ - إنْ لَمْ تَكُنْ لَهَا بَيِّنَةٌ - فَإِنْ أَكْرَهَهَا فَلَهَا قَتْلُهُ دِفَاعًا عَنْ نَفْسِهَا، وَإِلَّا فَهُوَ زِنًى مِنْهَا إنْ أَمْكَنَتْهُ مِنْ نَفْسِهَا - وَهُوَ أَجْنَبِيٌّ - كَعَابِرِ السَّبِيلِ فَحُكْمُهُ فِي كُلِّ شَيْءٍ حُكْمُ الْأَجْنَبِيِّ

[مَسْأَلَةٌ طَلَاقُ الْمَرِيضِ]

١٩٧٢ - مَسْأَلَةٌ: وَطَلَاقُ الْمَرِيضِ كَطَلَاقِ الصَّحِيحِ، وَلَا فَرْقَ - مَاتَ مِنْ ذَلِكَ الْمَرَضِ أَوْ لَمْ يَمُتْ مِنْهُ - فَإِنْ كَانَ طَلَاقُ الْمَرِيضِ ثَلَاثًا، أَوْ آخِرَ ثَلَاثٍ، أَوْ قَبْلَ أَنْ يَطَأَهَا فَمَاتَ، أَوْ مَاتَتْ - قَبْلَ تَمَامِ الْعِدَّةِ أَوْ بَعْدَهَا - أَوْ كَانَ طَلَاقًا رَجْعِيًّا فَلَمْ يُرْتَجِعْهَا - حَتَّى مَاتَ أَوْ مَاتَتْ بَعْدَ تَمَامِ الْعِدَّةِ، فَلَا تَرِثُهُ فِي شَيْءٍ مِنْ ذَلِكَ كُلِّهِ، وَلَا يَرِثُهَا أَصْلًا.

L34269 **A case where a man divorced his wife and then repeated her divorce to everyone he met, treating them as witnesses or informants.**

L34270 1970. Issue: If a man divorces his wife and then repeats her divorce to everyone he encounters - whether by having someone bear witness or informing them - it constitutes a single divorce, and nothing beyond that becomes binding upon him. There is no disagreement on this matter, as he did not intend another divorce through this action.

L34271 **An issue where his wife became certain that he had divorced her three times.**

L34272 Issue 1971: Whoever's wife becomes certain that he has divorced her thrice, the last of three, or less than three, and he did not have witnesses attest to resuming relations with her until her waiting period concluded; then he wrongfully retains her. It is incumbent upon her to flee from him—if she has no proof. If he coerces her, she may kill him in self-defense. Otherwise, if she permits him access to herself, it is adultery on her part—as he is a stranger, like a passerby—and his legal status in all matters is that of a stranger.

L34273 **Issue: Divorce by a Sick Person**

L34274 Issue 1972: The divorce of an ill person holds the same ruling as that of a healthy person without distinction - whether he dies from that illness or not. If the ill person pronounces a triple divorce, the final instance of three divorces, or divorces before consummating the marriage, and either dies or the wife dies - whether before or after completing the waiting period (ʿiddah) - or if it is a revocable divorce (where the husband may resume the marriage) and he does not take her back until he dies, or she dies after completing the ʿiddah - then she does not inherit anything from him in any of these circumstances, nor does he inherit from her at all.

L34275–34277 Similarly, the divorce of a healthy man for a sick wife, the divorce of a

sick man for a sick wife—there is no difference—and likewise the divorce of one detained for murder and a heavily burdened pregnant woman: this is a matter on which people have disagreed. The first opinion concerning it states it does not constitute a divorce, as narrated to us by Muḥammad ibn Saʿīd ibn Nabāt, from Ibn Mufarrij, from... Abdullah ibn Ja'far ibn al-Ward narrated: Yahya ibn Ayyub ibn Badi al-Allaf narrated: Yahya ibn Bukayr narrated: Al-Layth ibn Sa'd narrated from Nafi' - the freed slave of Ibn Umar - who said: Abd al-Rahman ibn Awf divorced his Kalbi wife during the illness from which he died. Uthman spoke to him so that he would take her back, but Abd al-Rahman hesitated in response. Uthman said: "I know you divorced her only to prevent her from inheriting alongside Umm Kulthum. By Allah, I will certainly allocate her inheritance even if Umm Kulthum is my sister." Nafi' said: Her final divorce was a single pronouncement made during his illness.

L34278 So this Uthman ordered Abd al-Rahman to take her back after he divorced her the last of his divorces during his illness—thus it was confirmed that he did not consider it a divorce.

L34279 Therefore, anything narrated from ʿUthmān after this is to be referred back to it.

L34280 It is also reported from Uthman that Abd al-Rahman ibn Mukammil divorced one of his wives after being afflicted with hemiplegia, then died two years later. Uthman granted her inheritance rights from him. It is authentically established that he granted inheritance rights to the Kalbi woman, wife of Abd al-Rahman ibn Awf, whom he had divorced—while ill—as the third and final divorce. He died after she had completed her waiting period. Uthman was asked: "Why do you make her inherit from Abd al-Rahman when you know he did not divorce her to cause harm nor to evade the Book of Allah Almighty?" Uthman replied: "I sought to establish a practice that would deter people from evading the Book of Allah Almighty."

L34281 Another opinion—she inherits from him and he inherits from her: as we have reported via the chain of Abd al-Razzaq from Maʿmar from one who heard al-Hasan say: They mutually inherit if he dies due to that illness.

وَكَذَلِكَ طَلَاقُ الصَّحِيحِ لِلْمَرِيضَةِ، وَطَلَاقُ الْمَرِيضِ لِلْمَرِيضَةِ، وَلَا فَرْقَ وَكَذَلِكَ طَلَاقُ الْمَوْقُوفِ لِلْقَتْلِ وَالْحَامِلِ الْمُثْقَلَةِ -: وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ -: فَقَوْلٌ أَوَّلٌ - فِيهِ: أَنَّهُ لَيْسَ طَلَاقًا، كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا ابْنُ مُفَرِّجٍ نا عَبْدُ اللَّهِ بْنُ جَعْفَرِ بْنِ الْوَرْدِ نا يَحْيَى بْنُ أَيُّوبَ بْنِ بَادِي الْعَلَّافُ نا يَحْيَى بْنُ بُكَيْرٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ نَافِعٍ - مَوْلَى ابْنِ عُمَرَ - قَالَ: إِنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ طَلَّقَ امْرَأَةً لَهُ كَلْبِيَّةً فِي مَرَضِهِ الَّذِي مَاتَ فِيهِ، فَكَلَّمَهُ عُثْمَانُ لِيُرَاجِعَهَا؟ فَتَلَكَّأَ عَلَيْهِ عَبْدُ الرَّحْمَنِ؟ فَقَالَ عُثْمَانُ: قَدْ أَعْرِفُ إِنَّمَا طَلَّقَهَا كَرَاهِيَةَ أَنْ تَرِثَ مَعَ أُمِّ كُلْثُومٍ، وَإِنِّي وَاللَّهِ لَأَقْسِمَنَّ لَهَا مِيرَاثَهَا، وَإِنْ كَانَتْ أُمُّ كُلْثُومٍ أُخْتِي - قَالَ نَافِعٌ: وَكَانَ آخِرُ طَلَاقِهَا تَطْلِيقَةً فِي مَرَضِهِ.

فَهَذَا عُثْمَانُ يَأْمُرُ عَبْدَ الرَّحْمَنِ بِمُرَاجَعَتِهَا بَعْدَ أَنْ طَلَّقَهَا آخِرَ طَلَاقِهَا فِي مَرَضِهِ - فَصَحَّ أَنَّهُ لَمْ يَكُنْ يَرَاهُ طَلَاقًا.

فَكُلُّ مَا رُوِيَ عَنْ عُثْمَانَ بَعْدَ هَذَا فَهُوَ مَرْدُودٌ إِلَى هَذَا.

وَجَاءَ عَنْ عُثْمَانَ أَيْضًا - أَنَّ عَبْدَ الرَّحْمَنِ بْنَ مُكَمِّلٍ طَلَّقَ بَعْضَ نِسَائِهِ بَعْدَ أَنْ أَصَابَهُ فَالِجٌ، ثُمَّ مَاتَ بَعْدَ سَنَتَيْنِ فَوَرَّثَهَا مِنْهُ عُثْمَانُ. وَصَحَّ عَنْهُ أَنَّهُ وَرَّثَ امْرَأَةَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ الْكَلْبِيَّةَ، وَقَدْ طَلَّقَهَا - وَهُوَ مَرِيضٌ - آخِرَ ثَلَاثِ تَطْلِيقَاتٍ، ثُمَّ مَاتَ بَعْدَ أَنْ أَتَمَّتْ عِدَّتَهَا، فَقِيلَ لِعُثْمَانَ: لِمَ تُوَرِّثُهَا مِنْ عَبْدِ الرَّحْمَنِ، وَقَدْ عَلِمْتَ أَنَّهُ لَمْ يُطَلِّقْهَا ضِرَارًا وَلَا فِرَارًا مِنْ كِتَابِ اللَّهِ عَزَّ وَجَلَّ؟ فَقَالَ عُثْمَانُ: أَرَدْتُ أَنْ تَكُونَ سُنَّةً يَهَابُ النَّاسُ الْفِرَارَ مِنْ كِتَابِ اللَّهِ عَزَّ وَجَلَّ.

وَقَوْلٌ آخَرُ - تَرِثُهُ وَيَرِثُهَا: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَمَّنْ سَمِعَ الْحَسَنَ يَقُولُ: يَتَوَرَّثَانِ إِنْ مَاتَ مِنْ مَرَضِهِ ذَلِكَ.

L34282 A third opinion: she inherits from him if he recovered and then died from another illness. We have been narrated through the chain of Abu ʻUbayd, from ʻAbdullah ibn Salih, from Al-Layth ibn Saʻd, from Yunus ibn Yazid, from Al-Zuhri: He was asked about a man who divorced his wife while ill, irrevocably divorced her, and he recovered for some days during her waiting period, then fell ill again and died from another illness or his previous illness recurred. Al-Zuhri said: "We hold that when he divorced her while ill, she inherits from him according to ʻUthman's judgment."

وَقَوْلٌ ثَالِثٌ -: تَرِثُهُ - وَإِنْ صَحَّ ثُمَّ مَاتَ مِنْ مَرَضٍ آخَرَ -: رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نَا عَبْدُ اللَّهِ بْنُ صَالِحٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ الزُّهْرِيِّ: أَنَّهُ سُئِلَ عَمَّنْ طَلَّقَ امْرَأَتَهُ - وَهُوَ مَرِيضٌ - فَبَتَّهَا فَصَحَّ أَيَّامًا - وَهِيَ فِي الْعِدَّةِ - ثُمَّ مَرِضَ ثُمَّ مَاتَ مِنْ وَجَعٍ آخَرَ، أَوْ عَادَ لَهُ وَجَعُهُ؟ قَالَ الزُّهْرِيُّ: نَرَى حِينَ طَلَّقَهَا - وَهُوَ مَرِيضٌ - أَنَّهَا - فِي قَضَاءِ عُثْمَانَ - تَرِثُهُ.

L34283 With this, Sufyān al-Thawrī, al-Awzāʻī, Zufar ibn al-Hudhayl, Aḥmad ibn Ḥanbal, and Isḥāq ibn Rāhawayh all hold: If a man divorces his wife while he is sick, recovers, and subsequently dies before the conclusion of her ʻiddah (waiting period), she inherits from him.

وَبِهَذَا يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَالْأَوْزَاعِيُّ، وَزُفَرُ بْنُ الْهُذَيْلِ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ، كُلُّهُمْ يَقُولُ: إذَا طَلَّقَهَا وَهُوَ مَرِيضٌ، ثُمَّ صَحَّ، ثُمَّ مَاتَ قَبْلَ انْقِضَاءِ عِدَّتِهَا، فَإِنَّهَا تَرِثُهُ.

L34284–34285 Al-Awzāʻī said: If a husband, while ill, empowers his wife to divorce herself and she does so, she forfeits inheritance. But if he divorces her during his illness with her explicit permission, she retains inheritance rights.

وَقَالَ الْأَوْزَاعِيُّ: إنْ مَلَّكَهَا نَفْسَهَا - وَهُوَ مَرِيضٌ - فَطَلَّقَتْ نَفْسَهَا لَمْ تَرِثْهُ، وَإِنْ طَلَّقَهَا - وَهُوَ مَرِيضٌ - بِإِذْنِهَا وَرِثَتْهُ.

L34286 A fourth opinion—we have reported it through the chain of Saʻīd ibn Manṣūr: Ismāʻīl ibn ʻAyyāsh narrated to us from Hishām ibn ʻUrwah that he asked his father ʻUrwah about a man who divorced his wife irrevocably while he was ill. ʻUrwah said: They do not inherit from each other unless she is pregnant, or unless he divorced her with the intent to cause detriment and then died while she was in her waiting period from him.

وَقَوْلٌ رَابِعٌ - رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا إسْمَاعِيلُ بْنُ عَيَّاشٍ عَنْ هِشَامِ بْنِ عُرْوَةَ أَنَّهُ سَأَلَ أَبَاهُ عُرْوَةَ عَمَّنْ طَلَّقَ امْرَأَتَهُ أَلْبَتَّةَ، وَهُوَ مَرِيضٌ؟ فَقَالَ عُرْوَةُ: لَا يَتَوَارَثَانِ إلَّا أَنْ يَكُونَ بِهَا حَبَلٌ، أَوْ يُطَلِّقُ مُضَارَّةً فَيَمُوتُ وَهِيَ فِي الْعِدَّةِ مِنْهُ.

L34287 A fifth opinion states: If he pronounces three divorces to her while sick and does not recover until he dies, she inherits from him as long as her waiting period regarding him has not expired. But if he dies after her waiting period has ended, she does not inherit from him.

وَقَوْلٌ خَامِسٌ - إنْ طَلَّقَ ثَلَاثًا وَهُوَ مَرِيضٌ وَلَمْ يَصِحَّ حَتَّى مَاتَ، فَإِنَّهَا تَرِثُهُ مَا لَمْ تَنْقَضِ عِدَّتُهَا مِنْهُ، فَإِنْ مَاتَ بَعْدَ أَنْ انْقَضَتْ عِدَّتُهَا لَمْ تَرِثْهُ.

L34288 As reported via Ibn Abi Shaybah, who narrated to us from Yazid ibn Harun

كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أَنَّهَا قَالَتْ فِي الْمُطَلَّقَةِ ثَلَاثًا - وَهُوَ مَرِيضٌ -: تَرِثُهُ مَا دَامَتْ فِي الْعِدَّةِ.

from Saʿīd ibn Abī ʻArūbah, from Hishām ibn ʻUrwah, from his father, from ʻĀ'ishah, that she said regarding a woman divorced three times by her husband while he was ill: she inherits from him as long as she remains in the iddah.

قَالَ أَبُو مُحَمَّدٍ: لَمْ يَسْمَعْ ابْنُ أَبِي عَرُوبَةَ مِنْ هِشَامِ بْنِ عُرْوَةَ شَيْئًا.

L34289 Abū Muḥammad said, Ibn Abī al-ʿArūba did not hear a single thing from Hishām ibn ʿUrwa.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَاتِمُ بْنُ إِسْمَاعِيلَ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّ حُسَيْنَ بْنَ عَلِيٍّ طَلَّقَ امْرَأَتَهُ - وَهُوَ مَرِيضٌ - فَوَرِثَتْهُ.

L34290 Through the chain of Ibn Abi Shaybah: Ḥātim ibn Ismāʿīl narrated to us from Jaʿfar ibn Muḥammad from his father that Ḥusayn ibn ʿAlī divorced his wife—while he was ill—so she inherited from him.

وَمِنْ طَرِيقِ شُعْبَةَ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ عُبَيْدَةَ بْنِ مُغِيثٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ: الرَّجُلُ إِذَا طَلَّقَ امْرَأَتَهُ ثَلَاثًا وَرِثَتْهُ مَا كَانَتْ فِي الْعِدَّةِ - وَبِهِ يَقُولُ إِبْرَاهِيمُ.

L34291 From the narration of Shuʿbah, from al-Mughīrah ibn Miqsam, from ʿUbaydah ibn Mughīth, from Ibrāhīm al-Nakhaʿī, from ʿUmar ibn al-Khaṭṭāb, who said: "When a man divorces his wife three times [irrevocably], she inherits him as long as she is in her ʿiddah." This is the view upheld by Ibrāhīm.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنِ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ عَنْ شُرَيْحٍ قَالَ: أَتَانِي عُرْوَةُ الْبَارِقِيُّ مِنْ عِنْدِ عُمَرَ فِي الرَّجُلِ يُطَلِّقُ امْرَأَتَهُ ثَلَاثًا فِي مَرَضِهِ: أَنَّهَا تَرِثُهُ مَا دَامَتْ فِي الْعِدَّةِ وَلَا يَرِثُهَا - وَبِهِ يَقُولُ إِبْرَاهِيمُ.

L34292 Via the transmission route of Abu Bakr ibn Abi Shaybah, who narrated to us: Jarir ibn Abd al-Hamid narrated from al-Mughirah, from Ibrahim, from Shurayh, who said: "Urwah al-Bāriqī came to me bearing a ruling issued by Umar concerning a man who divorces his wife thrice during his illness: she inherits from him as long as she remains in the waiting period, but he does not inherit from her"—and this is the opinion held by Ibrahim.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا مُغِيرَةُ عَنْ إِبْرَاهِيمَ فِيمَنْ طَلَّقَ امْرَأَتَهُ - وَهُوَ مَرِيضٌ - ثَلَاثًا قَبْلَ أَنْ يَدْخُلَ بِهَا؟ قَالَ: لَهَا نِصْفُ الصَّدَاقِ، وَلَا مِيرَاثَ لَهَا، وَلَا عِدَّةَ عَلَيْهَا - قَالَ هُشَيْمٌ: وَبِهَذَا نَقُولُ.

L34293 Through the narration of Saʿīd ibn Manṣūr: Hushaym reported to us from Mughīrah, who reported from Ibrāhīm regarding a man who divorces his wife—while ill—three times before consummating the marriage? He said: She receives half the dower, she has no inheritance rights, and no waiting period is required of her. Hushaym said: This is our opinion.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنِ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ عَنِ ابْنِ عُمَرَ قَالَ: إِذَا طَلَّقَ امْرَأَتَهُ ثَلَاثًا، وَهُوَ مَرِيضٌ وَرِثَتْ فِي الْعِدَّةِ.

L34294 From the path of Waki' through Sufyān al-Thawrī through al-Mughīrah through Ibrāhīm through Ibn ʻUmar, who said: If a man pronounces a triple divorce against his wife while he is ill, she inherits during the waiting period.

L34295–34296 Abu Muhammad said: This is in my book from Muhammad ibn Saʿīd ibn

ʿUmar, and I consider it nothing but an error, and that it is actually ʿUmar—and Allah knows best—similarly, we have transmitted it via the narration of Sufyān and Shuʿbah.

قَالَ أَبُو مُحَمَّد: هَكَذَا فِي كِتَابِي عَنْ مُحَمَّدِ بْنِ سَعِيدِ بْنِ عُمَرَ، وَلَا أَرَاهُ إِلَّا وَهْمًا، وَأَنَّهُ إِنَّمَا هُوَ عُمَرُ - وَاَللَّهُ أَعْلَمُ - كَذَلِكَ رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ، وَشُعْبَةَ.

L34297 From the transmission of Ibn Abī Shaybah: Ḥafṣ ibn Ghiyāth reported to us from Dāwūd and al-Ashʿath, the latter of whom reported from al-Shaʿbī and Shurayḥ—both of whom said: If he pronounces a triple ṭalāq during his illness, she inherits from him so long as she remains observing the waiting period.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ دَاوُد، وَالْأَشْعَثِ عَنْ الشَّعْبِيِّ، وَشُرَيْحٍ، قَالَا: إذَا طَلَّقَ ثَلَاثًا فِي مَرَضِهِ وَرِثَتْهُ مَا دَامَتْ فِي الْعِدَّةِ.

L34298 Abu Hanifah and his companions said: If he gave her the choice [to divorce], delegated to her the right to divorce, or divorced her via *khulʿ* while he was ill, or if he swore to divorce her three times while he was healthy, then she caused him to violate his oath while he was ill, and he died, she does not inherit from him.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: فَإِنْ خَيَّرَهَا أَوْ مَلَّكَهَا، أَوْ خَالَعَهَا - وَهُوَ مَرِيضٌ - أَوْ حَلَفَ بِطَلَاقِهَا ثَلَاثًا - وَهُوَ صَحِيحٌ - فَحَنِثَ - وَهُوَ مَرِيضٌ - فَمَاتَ - لَمْ تَرِثْهُ.

L34299 If a man were to challenge another in combat or was presented for execution, and then divorces her three times, she inherits him.

فَلَوْ بَارَزَ رَجُلًا فِي الْقِتَالِ أَوْ قُدِّمَ لِيُقْتَلَ فَطَلَّقَهَا ثَلَاثًا وَرِثَتْهُ.

L34300 If he divorces her while he is sick and has not consummated the marriage with her, she does not inherit from him.

فَلَوْ طَلَّقَهَا وَهُوَ مَرِيضٌ - وَلَمْ يَكُنْ دَخَلَ بِهَا - لَمْ تَرِثْهُ.

L34301 If her father coerced her, and then the father's son had intercourse with her during the son's illness, and the son died, she does not inherit from the son.

فَلَوْ أَكْرَهَهَا أَبُوهُ فَوَطِئَهَا فِي مَرَضِهِ ابْنُهُ فَمَاتَ - لَمْ تَرِثْهُ.

L34302 Through the narration of Ḥammād ibn Salamah from Hishām ibn ʿUrwah from his father: That ʿAbd al-Raḥmān ibn ʿAwf divorced his wife three times during his illness. ʿUthmān declared: "If you die, I will assuredly ensure she inherits from you." He responded: "I am aware of that." When he died during her waiting period, ʿUthmān ruled she should inherit from him while she remained in her waiting period.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ أَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ طَلَّقَ امْرَأَتَهُ ثَلَاثًا فِي مَرَضِهِ؟ فَقَالَ عُثْمَانُ: لَئِنْ مِتّ لَأُوَرِّثَنَّهَا مِنْك؟ قَالَ: قَدْ عَلِمْت ذَلِكَ، فَمَاتَ فِي عِدَّتِهَا، فَوَرَّثَهَا عُثْمَانُ فِي عِدَّتِهَا.

L34303 From the narration chain of Abd al-Razzaq, from Ibn Jurayj, who reported: Ibn Abi Mulaikah informed me that he asked Abdullah ibn al-Zubayr, whereupon Ibn al-Zubayr said to him: Abd al-Rahman ibn Awf divorced the daughter of al-Asbagh al-Kalbiyyah irrevocably, then he died. Uthman granted her the right to inherit during her waiting period. Then Ibn al-Zubayr stated his own view.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ أَبِي مُلَيْكَةَ أَنَّهُ سَأَلَ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ فَقَالَ لَهُ ابْنُ الزُّبَيْرِ: طَلَّقَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ بِنْتَ الْأَصْبَغِ الْكَلْبِيَّةَ فَبَتَّهَا، ثُمَّ مَاتَ، فَوَرَّثَهَا عُثْمَانُ فِي عِدَّتِهَا - ثُمَّ ذَكَرَ ابْنُ الزُّبَيْرِ قَوْلَهُ نَفْسَهُ.

نا عَلِيُّ بْنُ عَبَّادٍ الْأَنْصَارِيُّ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ يَزِيدَ اللَّخْمِيُّ نا ابْنُ مُفَرِّجٍ نا أَحْمَدُ بْنُ عَبْدِ الرَّحِيمِ الْأَسَدِيُّ نا عَمْرُو بْنُ ثَوْبَانَ نا مُحَمَّدُ بْنُ يُوسُفَ الْفِرْيَابِيُّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَيُّوبَ السَّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: مَنْ طَلَّقَ - وَهُوَ مَرِيضٌ - طَلَاقًا بَائِنًا فَإِنَّهَا تَرِثُهُ مَا دَامَتْ فِي الْعِدَّةِ.

L34304 ʿAlī ibn ʿAbbād *al-Anṣārī* from Muḥammad ibn ʿAbd Allāh ibn Muḥammad ibn Yazīd *al-Lakhmī* from Ibn Mufarrij from Aḥmad ibn ʿAbd al-Raḥīm *al-Asadī* from ʿAmr ibn Thawbān from Muḥammad ibn Yūsuf *al-Firyābī* from Sufyān *al-Thawrī* from Ayyūb *al-Sikhtiyānī* from Muḥammad ibn Sīrīn, who said: “Whoever pronounces an irrevocable divorce while ill, she retains her right to inherit from him for the duration of her waiting period.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ وَابْنِ جُرَيْجٍ كِلَاهُمَا عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: إِذَا طَلَّقَهَا مَرِيضًا فَبَتَّهَا فَانْقَضَتْ الْعِدَّةُ فَلَا مِيرَاثَ بَيْنَهُمَا.

L34305 Narrated by Abd al-Razzaq from Ma’mar and Ibn Jurayj, both of whom narrated from Hisham ibn Urwah from his father, who said: If a man divorces his wife while ill and makes the divorce irrevocable, and her waiting period concludes, no right of inheritance exists between them.

وَصَحَّ عَنْ شُرَيْحٍ فِيمَنْ طَلَّقَ مَرِيضًا فَمَاتَ فَإِنَّهَا تَرِثُهُ مَا كَانَتْ فِي الْعِدَّةِ، فَبَلَغَ ذَلِكَ سَعِيدَ بْنَ الْمُسَيِّبِ فَلَمْ يُنْكِرْهُ.

L34306 It is authentically reported from Shurayh concerning a man who divorces while ill and then dies, that she inherits from him as long as she is in her ʿiddah. When this ruling reached Saʿīd ibn al-Musayyab, he did not reject it.

وَهُوَ قَوْلُ الشَّعْبِيِّ، وَالْحَارِثِ الْعُكْلِيِّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ.

L34307 This is the opinion of al-Shaʿbī, al-Ḥārith al-ʿUklī, and Ḥammād ibn Abī Sulaymān.

وَرُوِيَ عَنْ رَبِيعَةَ، وَطَاوُسٍ، وَاللَّيْثِ بْنِ سَعْدٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَابْنِ شُبْرُمَةَ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ.

L34308–34309 It has been narrated from Rabīʿah, Ṭāwūs, al-Layth ibn Saʿd, Sufyān al-Thawrī, al-Awzāʿī, Ibn Shubrumah, Abū Ḥanīfah, and his companions.

وَقَوْلٌ سَادِسٌ - مَنْ رُوِيَ عَنْهُ أَنَّ الْمُطَلَّقَةَ فِي الْمَرَضِ تَرِثُ - هَكَذَا جُمْلَةً - لَمْ يُبَيِّنْ فِي الْعِدَّةِ فَقَطْ أَمْ بَعْدَهَا؟ فَكَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي رِجَالٌ - مِنْ أَهْلِ الْعِلْمِ - أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: الْمُطَلَّقَةُ فِي الْمَرَضِ تَرِثُ.

L34310 A sixth opinion—attributed to those from whom it was narrated that a woman divorced during illness inherits—is phrased thus, in general terms, without clarifying whether this applies only during the waiting period or after it. And just as it was narrated to us via the transmission chain of Ibn Wahb: men from the scholars informed me that Ali ibn Abi Talib said, “A woman divorced during illness inherits.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عُبَيْدُ اللَّهِ عَنْ عُثْمَانَ بْنِ أَبِي الْأَسْوَدِ عَنْ عَطَاءٍ قَالَ: لَوْ مَرِضَ سَنَةً لَوَرَّثْتُهَا مِنْهُ.

L34311 Through the chain of transmission of Ibn Abi Shaybah: ‘Ubaydullah narrated to us from ‘Uthman ibn Abi al-Aswad, from ‘Ata’, who said: “If he were ill for a year, I would make her inherit from him.”

وَالْأَصَحُّ عَنْ عَطَاءٍ أَنَّهَا تَرِثُهُ فِي الْعِدَّةِ، وَلَا تَرِثُهُ بَعْدَهَا.

L34312 The most correct opinion narrated from ‘Aṭā’ is that she inherits from him during the ʿiddah (waiting period), but not after it.

L34313 And through the chain of Ibn Abi Shaybah: Yazid ibn Harun narrated to us

from Ash'ath from Muhammad ibn Sirin, who said: They would say: "They do not differ concerning one who flees from the Book of Allah—he is to be returned to it," meaning: regarding one who divorces his wife while he is ill.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ عَنْ أَشْعَثَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: كَانُوا يَقُولُونَ: لَا يَخْتَلِفُونَ فِيمَنْ فَرَّ مِنْ كِتَابِ اللَّهِ رُدَّ إِلَيْهِ - يَعْنِي: فِيمَنْ طَلَّقَ امْرَأَتَهُ وَهُوَ مَرِيضٌ.

L34314 A seventh opinion—from one who said, "She inherits from him after the waiting period provided she does not marry"—: Muḥammad ibn Saʿīd ibn Nabāt narrated from Aḥmad ibn ʿAbd Allāh ibn ʿAbd al-Baṣīr from Qāsim ibn Aṣbagh from Muḥammad ibn ʿAbd al-Salām al-Khushanī from Muḥammad ibn al-Muthannā from ʿAbd al-Raḥmān ibn Mahdī from Sufyān al-Thawrī from Ḥabīb ibn Abī Thābit from a scholar of Quraysh from Ubayy ibn Kaʿb regarding a man who divorces his wife thrice during his illness. He said: "I continue to entitle her to inherit from him until he recovers, she marries, or she waits a year"—or he said: "even if she waits a year."

وَقَوْلٌ سَابِعٌ - مَنْ قَالَ: تَرِثُهُ بَعْدَ الْعِدَّةِ مَا لَمْ تَتَزَوَّجْ - فَكَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ شَيْخٍ مِنْ قُرَيْشٍ عَنْ أُبَيِّ بْنِ كَعْبٍ فِيمَنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا فِي مَرَضِهِ؟ قَالَ: لَا أَزَالُ أُوَرِّثُهَا مِنْهُ حَتَّى يَبْرَأَ، أَوْ تَتَزَوَّجَ، أَوْ تَمْكُثَ سَنَةً - أَوْ قَالَ: وَلَوْ مَكَثَتْ سَنَةً.

L34315 Through the chain of Abd al-Razzaq from Ibn Jurayj: I said to Ata, "What if a man divorces his wife while ill, then dies from that ailment?" Ata replied, "She inherits from him even if her waiting period from him has expired, if he dies during that illness, as long as she has not been married."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: الرَّجُلُ يُطَلِّقُ امْرَأَتَهُ مَرِيضًا ثُمَّ يَمُوتُ مِنْ وَجَعِهِ ذَلِكَ؟ قَالَ عَطَاءٌ: تَرِثُهُ وَإِنْ انْقَضَتْ عِدَّتُهَا مِنْهُ إذَا مَاتَ فِي مَرَضِهِ ذَلِكَ، مَا لَمْ تُنْكَحْ.

L34316 From the route of Abū ʿUbayd, Yazīd ibn Hārūn narrated to us from Ismāʿīl ibn Abī Khālid from al-Shaʿbī regarding the woman whom he divorces while ill. He said: She inherits from him even if the illness lasted up to two years, provided she has not married.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَزِيدُ بْنُ هَارُونَ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ فِي الَّتِي يُطَلِّقُهَا وَهُوَ مَرِيضٌ؟ قَالَ: تَرِثُهُ وَإِنْ كَانَ إلَى سَنَتَيْنِ مَا لَمْ تَتَزَوَّجْ.

L34317 Abu Ubayd said: I heard Abu Yusuf the judge relate from Ibn Abi Layla that he said concerning a woman divorced during illness: she inherits from him as long as she does not marry. This is the opinion of Sharik the judge, Ahmad ibn Hanbal, Ishaq, and Abu Ubayd.

وَقَالَ أَبُو عُبَيْدٍ: وَسَمِعْت أَبَا يُوسُفَ الْقَاضِيَ يَقُولُ عَنِ ابْنِ أَبِي لَيْلَى، أَنَّهُ قَالَ فِي الْمُطَلَّقَةِ فِي الْمَرَضِ: تَرِثُهُ مَا لَمْ تَتَزَوَّجْ - وَهُوَ قَوْلُ شَرِيكٍ الْقَاضِي، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَأَبِي عُبَيْدٍ.

L34318–34320 The eighth opinion—held by those who assert she does not inherit him except during the iddah and transitions to the iddah of death—was also maintained by even some scholars who grant her inheritance after the iddah. As

وَقَوْلٌ ثَامِنٌ - وَهُوَ لِمَنْ قَالَ: إنَّهَا لَا تَرِثُهُ، إلَّا مَا دَامَتْ فِي الْعِدَّةِ، وَإِنَّهَا تَنْتَقِلُ إلَى عِدَّةِ الْوَفَاةِ - وَقَالَهُ أَيْضًا بَعْضُ مَنْ وَرَّثَهَا بَعْدَ الْعِدَّةِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَحْيَى

narrated to us through the chain of Abū ʿUbayd: Yaḥyā ibn Zakariyyā ibn Abī Zāʾidah → his father → al-Shaʿbī, who said: "A significant chapter on divorce [is as follows]: If a woman inherits from him, she observes the ʿiddah—she inherits from him only if she had not been married before his death. If she inherits from him, she observes the ʿiddah of four months and ten days."

بْنُ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ عَنْ أَبِيهِ عَنْ الشَّعْبِيِّ، قَالَ: بَابٌ مِنْ الطَّلَاقِ جَسِيمٌ: إذَا وَرِثَتْ الْمَرْأَةُ اعْتَدَّتْ - تَرِثُهُ مَا لَمْ تُنْكَحْ قَبْلَ مَوْتِهِ - فَإِذَا وَرِثَتْهُ اعْتَدَّتْ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا.

L34321 Narrated by Waki', from Sufyan al-Thawri, from al-Mughirah ibn Miqsam, from Ibrahim al-Nakha'i, who said: If a man divorces his wife—while he is sick—and then dies, she inherits from him (as his legal heir) and must restart the ʿiddah [waiting period] of four months and ten days.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إذَا طَلَّقَ الرَّجُلُ امْرَأَتَهُ - وَهُوَ مَرِيضٌ - فَمَاتَ وَرِثَتْهُ وَاسْتَأْنَفَتْ الْعِدَّةَ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا.

L34322 And from the narration of Abd al-Razzaq, from Sufyan al-Thawri, that he said: If a man divorces his wife while he is ill, she observes the longer of the two waiting periods. If four months and ten days exceed the duration of her menstrual period, she observes four months and ten days; but if the menstrual period is longer, she observes that instead.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ أَنَّهُ قَالَ: إذَا طَلَّقَ الرَّجُلُ امْرَأَتَهُ - وَهُوَ مَرِيضٌ - فَإِنَّهَا تَكُونُ عَلَى أَقْصَى الْعِدَّتَيْنِ إنْ كَانَتْ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا أَكْثَرَ مِنْ حَيْضَتِهَا أَخَذَتْ بِالْأَرْبَعَةِ الْأَشْهُرِ وَالْعَشْرِ، وَإِنْ كَانَ الْحَيْضُ أَكْثَرَ أَخَذَتْ بِالْحَيْضِ.

L34323 Abu Muhammad said: This is the opinion of Abū Ḥanīfah and Muḥammad ibn al-Ḥasan.

قَالَ أَبُو مُحَمَّدٍ وَهَذَا هُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمُحَمَّدِ بْنِ الْحَسَنِ.

L34324 Abu Yusuf said: It extends exclusively over the menstrual period and does not shift to the Iddah of death.

وَقَالَ أَبُو يُوسُفَ: تَتَمَادَى عَلَى الْحَيْضِ فَقَطْ، وَلَا تَنْتَقِلُ إلَى عِدَّةِ الْوَفَاةِ.

L34325 The ninth opinion, which is the view of those who say: she inherits from him during the waiting period and after the waiting period, without stipulating "if she does not remarry" or "even if she remarries."

وَقَوْلٌ تَاسِعٌ - وَهُوَ قَوْلُ مَنْ قَالَ: تَرِثُهُ فِي الْعِدَّةِ وَبَعْدَ الْعِدَّةِ، وَلَمْ يَخُصَّ " إنْ لَمْ تَتَزَوَّجْ " وَلَا قَالَ " وَإِنْ تَزَوَّجَتْ ".

L34326 Just as it has been narrated to us through the chain of Ibn Wahb: Mūsā ibn Yazīd informed me on the authority of al-Zuhrī, who said: Ṭalḥah ibn ʿAbd Allāh ibn ʿAwf narrated to me that ʿAbd al-Raḥmān ibn ʿAwf lived until Tumāḍir's waiting period ended. Then ʿUthmān assigned her inheritance from him after her waiting period had concluded.

فَكَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي مُوسَى بْنُ يَزِيدَ عَنْ الزُّهْرِيِّ حَدَّثَنِي طَلْحَةُ بْنُ عَبْدِ اللَّهِ بْنِ عَوْفٍ أَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ عَاشَ حَتَّى حَلَّتْ تُمَاضِرُ، ثُمَّ وَرَّثَهَا عُثْمَانُ مِنْهُ بَعْدَ مَا حَلَّتْ.

L34327 And similarly, we have transmitted it through the chain of Saʿīd ibn Manṣūr who reported to us from ʿAbbād ibn ʿAbbād al-Muhallabī, who reported to us from Hishām ibn ʿUrwah (from his father) and Muḥammad ibn ʿAmr ibn ʿAlqamah—both of whom narrated from Abū Salamah ibn ʿAbd al-Raḥmān

ibn ʿAwf—that his father divorced his wife during his illness. He died after she had completed her waiting period, so ʿUthmān granted her inheritance.

وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا عَبَّادُ بْنُ عَبَّادٍ الْمُهَلَّبِيُّ نا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ، وَمُحَمَّدُ بْنُ عَمْرِو بْنِ عَلْقَمَةَ، كِلَاهُمَا عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَّ أَبَاهُ طَلَّقَ امْرَأَتَهُ فِي مَرَضِهِ فَمَاتَ بَعْدَ مَا حَلَّتْ فَوَرَّثَهَا عُثْمَانُ.

L34328 There are differing reports from ʿUmar ibn Abi Salama via his father: Abu ʿAwanah reported from him that this occurred during the waiting period, while Hushaym reported from him that this occurred after the waiting period, and ʿUmar is a weak narrator.

وَاخْتُلِفَ عَنْ عُمَرَ بْنِ أَبِي سَلَمَةَ عَنْ أَبِيهِ فَرَوَى عَنْهُ أَبُو عَوَانَةَ أَنَّهُ كَانَ ذَلِكَ فِي الْعِدَّةِ - وَرَوَى عَنْهُ هُشَيْمٌ: كَانَ ذَلِكَ بَعْدَ الْعِدَّةِ، وَعُمَرُ ضَعِيفٌ.

L34329 From the transmission of Ibn Wahb: Yazid ibn Iyad ibn Juʿdubah reported to me, from Abd al-Karim ibn al-Harith, from Mujahid, that he said: "If a sick man divorces his wife before consummating the marriage, she is entitled to her inheritance from him and half of the mahr."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي يَزِيدُ بْنُ عِيَاضِ بْنِ جُعْدُبَةَ عَنْ عَبْدِ الْكَرِيمِ بْنِ الْحَارِثِ عَنْ مُجَاهِدٍ أَنَّهُ قَالَ: إذَا طَلَّقَ الْمَرِيضُ امْرَأَتَهُ قَبْلَ أَنْ يَدْخُلَ بِهَا فَلَهَا مِيرَاثُهَا مِنْهُ وَنِصْفُ الصَّدَاقِ.

L34330–34331 From the transmission of Ibn Wahb, Makhramah ibn Bukayr informed me from his father, who said: It is said that if a man divorces his wife while he is ill, having specified her mahr and not having consummated the marriage, she is entitled to half of her mahr and she inherits from him.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي مَخْرَمَةُ بْنُ بُكَيْرٍ عَنْ أَبِيهِ، قَالَ يُقَالُ: إذَا طَلَّقَ امْرَأَتَهُ - وَهُوَ وَجِعٌ - وَقَدْ فَرَضَ لَهَا وَلَمْ يَمَسَّهَا، فَلَهَا نِصْفُ صَدَاقِهَا وَتَرِثُهُ.

L34332 And through the chain of Abū Bakr ibn Abī Shaybah—narrated to us by Sahl ibn Yūsuf, from Ḥumayd, from Bakr, from al-Ḥasan—regarding one who divorces his wife three times during his illness and dies—after her ʿiddah has concluded—then she inherits from him.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا سَهْلُ بْنُ يُوسُفَ عَنْ حُمَيْدٍ عَنْ بَكْرٍ عَنْ الْحَسَنِ فِيمَنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا فِي مَرَضِهِ فَمَاتَ - وَقَدْ انْقَضَتْ عِدَّتُهَا - فَإِنَّهَا تَرِثُهُ.

L34333 Via Saʿīd ibn Manṣūr: Hushaym reported to us that Yūnus ibn ʿUbayd and Manṣūr—both of them—narrated from al-Ḥasan concerning one who divorces his wife while ill before consummating the marriage—what is the ruling? He said: She receives the entire mahr and the inheritance, and she is obligated to observe the ʿiddah.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يُونُسُ بْنُ عُبَيْدٍ، وَمَنْصُورٌ، كِلَاهُمَا: عَنْ الْحَسَنِ فِيمَنْ طَلَّقَ امْرَأَتَهُ - وَهُوَ مَرِيضٌ - قَبْلَ أَنْ يَدْخُلَ بِهَا؟ قَالَ: لَهَا الصَّدَاقُ كُلُّهُ وَالْمِيرَاثُ، وَعَلَيْهَا الْعِدَّةُ.

L34334 Through the chain of Ḥammād ibn Salamah from ʿUthmān al-Battī, Ḥumayd, and the companions of al-Ḥasan, they said: She inherits from him after the completion of the ʿiddah.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُثْمَانَ الْبَتِّيِّ، وَحُمَيْدٍ، وَأَصْحَابِ الْحَسَنِ، قَالُوا: تَرِثُهُ بَعْدَ انْقِضَاءِ الْعِدَّةِ.

L34335 A tenth opinion—we have related it through the chain of Ibn Wahb, who

reported: “Men from the people of knowledge informed me”—states that Rabīʿah ruled regarding a woman divorced three times during an illness: she inherits from him even if she marries ten husbands after him.

وَقَوْلٌ عَاشِرٌ - رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي رِجَالٌ - مِنْ أَهْلِ الْعِلْمِ - أَنَّ رَبِيعَةَ قَالَ فِي الْمُطَلَّقَةِ ثَلَاثًا فِي الْمَرَضِ: تَرِثُهُ وَإِنْ نَكَحَتْ بَعْدَهُ عَشْرَةَ أَزْوَاجٍ.

L34336 This is the opinion of Mālik and those who imitate him in taqlīd, and it is also narrated from al-Layth ibn Saʿd.

وَبِهَذَا يَقُولُ مَالِكٌ وَمَنْ قَلَّدَهُ - وَرُوِيَ أَيْضًا عَنِ اللَّيْثِ بْنِ سَعْدٍ.

L34337 Mālik said: If he divorces her while sick before consummating the marriage, she is entitled to inherit from him, half the bridal gift (ṣadāq), and no waiting period is required of her. He also said: If the husband gives her the choice while he is sick, and she chooses herself—thereby being divorced thrice—or if she seeks a *khulʿ* from him while he is sick, and he later dies of his illness, she inherits him.

وَقَالَ مَالِكٌ: إِنْ طَلَّقَهَا مَرِيضًا قَبْلَ الدُّخُولِ بِهَا؟ فَلَهَا الْمِيرَاثُ، وَلَهَا نِصْفُ الصَّدَاقِ وَلَا عِدَّةَ عَلَيْهَا - وَقَالَ: إِنْ خَيَّرَهَا - وَهُوَ مَرِيضٌ - فَاخْتَارَتْ نَفْسَهَا فَطَلُقَتْ ثَلَاثًا، أَوْ اخْتَلَعَتْ مِنْهُ - وَهُوَ مَرِيضٌ ثُمَّ مَاتَ مِنْ مَرَضِهِ - فَإِنَّهَا تَرِثُهُ.

L34338 He said: Similarly, if he swore to divorce her three times if she entered the house of Fulān while he was healthy—then he fell ill—and she deliberately entered that house, she is divorced three times; or if he died from his illness, she inherits him.

قَالَ: وَكَذَلِكَ لَوْ حَلَفَ بِطَلَاقِهَا ثَلَاثًا إِنْ دَخَلَتْ دَارَ فُلَانٍ، وَهُوَ صَحِيحٌ فَمَرِضَ فَتَعَمَّدَتْ دُخُولَ تِلْكَ الدَّارِ فَطَلُقَتْ ثَلَاثًا، أَوْ مَاتَ مِنْ مَرَضِهِ، فَإِنَّهَا تَرِثُهُ.

L34339 He said: Similarly, if a healthy person of sound mind declares, “If my father arrives, you are divorced three times,” and his father arrives while he is ill—whereupon she becomes divorced three times—then if he dies afterward, she inherits from him.

قَالَ: وَكَذَلِكَ مَنْ قَالَ وَهُوَ صَحِيحٌ: إِذَا قَدِمَ أَبِي فَأَنْتِ طَالِقٌ ثَلَاثًا؟ فَقَدِمَ أَبُوهُ - وَهُوَ مَرِيضٌ - فَطَلُقَتْ ثَلَاثًا ثُمَّ مَاتَ هُوَ؟ فَإِنَّهَا تَرِثُهُ.

L34340 He said: Whoever fights during a military advance, or is detained for the purpose of killing, and then pronounces a triple divorce upon his wife, she retains her right to inherit from him.

قَالَ: وَمَنْ قَاتَلَ فِي الزَّحْفِ، أَوْ حُبِسَ لِلْقَتْلِ، فَطَلَّقَ امْرَأَتَهُ ثَلَاثًا، فَإِنَّهَا تَرِثُهُ.

L34341 He said: If a constrained person pronounces a triple divorce, she does not inherit him.

قَالَ: وَالْمَحْصُورُ - إِنْ طَلَّقَ ثَلَاثًا لَمْ تَرِثْهُ.

L34342 He said: If he were to apostatize while ill, the female heir does not inherit from him.

قَالَ: فَلَوْ ارْتَدَّ وَهُوَ مَرِيضٌ لَمْ تَرِثْهُ.

L34343–34345 The eleventh opinion: As transmitted to us through the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father, who stated: Ghaylān ibn Salamah al-Thaqafī divorced all his wives and apportioned his wealth. Between his sons—and this occurred during the caliphate of ʿUmar—had that reached him? ʿUmar said to him:

وَقَوْلٌ حَادِيَ عَشَرَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ، قَالَ: طَلَّقَ غَيْلَانُ بْنُ سَلَمَةَ الثَّقَفِيُّ نِسَاءَهُ، وَقَسَّمَ مَالَهُ بَيْنَ بَنِيهِ، وَذَلِكَ فِي خِلَافَةِ عُمَرَ، فَبَلَغَهُ ذَلِكَ؟ فَقَالَ لَهُ عُمَرُ: طَلَّقْتَ نِسَاءَكَ، وَقَسَّمْتَ مَالَكَ

بَيْنَ بَنِيك؟ قَالَ: نَعَمْ، قَالَ لَهُ عُمَرُ: وَاَللَّهِ لَأَرَى الشَّيْطَانَ فِيمَا يَسْتَرِقُ مِنْ السَّمْعِ سَمِعَ بِمَوْتِك، فَأَلْقَاهُ فِي نَفْسِك؟ فَلَعَلَّك أَنْ لَا تَمْكُثَ إلَّا قَلِيلًا، وَأَيْمُ اللَّهِ لَئِنْ لَمْ تُرَاجِعْ نِسَاءَك، وَتَرْجِعْ فِي مَالِك لَأُوَرِّثَنَّهُنَّ مِنْك إذَا مِتَّ، ثُمَّ لَآمُرَنَّ بِقَبْرِك فَلْيُرْجَمَنَّ كَمَا يُرْجَمُ قَبْرُ أَبِي رِغَالَ؟ قَالَ فَرَاجَعَ نِسَاءَهُ وَمَالَهُ، قَالَ نَافِعٌ: فَمَا لَبِثَ إلَّا سَبْعًا حَتَّى مَاتَ.

"Did you divorce your wives and divide your wealth among your sons?" He replied: "Yes." ʿUmar said: "By Allah, I see Satan - through what he steals by eavesdropping - heard of your death and cast it into your heart? Perhaps you will not remain except briefly. By Allah, if you do not retract your divorce and reclaim your wealth, I will make them inherit from you when you die. Then I will order your grave to be stoned as the grave of Abū Righāl was stoned?" So he retracted his divorce and reclaimed his wealth. Nāfiʿ said: "He did not remain except seven until he died."

وَأَمَّا الْمَحْصُورُ - فَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ، قَالَ: نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ أَشْعَثَ عَنْ الشَّعْبِيِّ أَنَّ أُمَّ الْبَنِينَ بِنْتَ عُيَيْنَةَ بْنِ حِصْنٍ كَانَتْ تَحْتَ عُثْمَانَ، فَلَمَّا حُوصِرَ طَلَّقَهَا، وَكَانَ قَدْ أَرْسَلَ إلَيْهَا يَشْتَرِي مِنْهَا ثَمَنَهَا، فَأَبَتْ، فَلَمَّا قُتِلَ أَتَتْ عَلِيَّ بْنَ أَبِي طَالِبٍ فَذَكَرَتْ ذَلِكَ لَهُ؟ فَقَالَ عَلِيٌّ: تَرَكَهَا حَتَّى إذَا أَشْرَفَ عَلَى الْمَوْتِ طَلَّقَهَا، فَوَرَّثَهَا.

L34346 As for the besieged individual – it has been narrated to us through the narration chain of Ibn Abi Shaybah, who said: ʿAbbad ibn al-ʿAwwam reported to us from Ashʿath from al-Shaʿbi that Umm al-Banin bint ʿUyaynah ibn Hisn was married to Uthman. When he was besieged, he divorced her. He had sent to her to reclaim her dowry, but she refused. When he was killed, she came to Ali ibn Abi Talib and mentioned this matter to him. Ali said: "He refrained from divorcing her until he approached the brink of death, then divorced her, thereby entitling her to inherit."

وَقَوْلٌ ثَانِي عَشَرَ - وَهُوَ مَنْ لَمْ يُوَرِّثْ الْمَبْتُوتَةَ فِي الْمَرَضِ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ أَبِي مُلَيْكَةَ: أَنَّهُ سَأَلَ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ عَنْ الْمَبْتُوتَةِ -: يَعْنِي فِي الْمَرَضِ؟ قَالَ: فَقَالَ لِي ابْنُ الزُّبَيْرِ: طَلَّقَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ بِنْتَ الْأَصْبَغِ الْكَلْبِيَّةَ ثَلَاثًا ثُمَّ مَاتَ وَهِيَ فِي عِدَّتِهَا فَوَرَّثَهَا عُثْمَانُ. قَالَ ابْنُ الزُّبَيْرِ: فَأَمَّا أَنَا فَلَا أَرَى أَنْ تَرِثَ الْمَبْتُوتَةُ.

L34347 The twelfth opinion—which is that of those who do not grant inheritance to a woman irrevocably divorced during terminal illness—is as follows: It was narrated to us via the chain of ʿAbd al-Razzāq, from Ibn Jurayj, who reported that Ibn Abī Mulaykah asked ʿAbd Allāh ibn al-Zubayr about the irrevocably divorced woman—referring to divorce during illness. Ibn al-Zubayr replied: "ʿAbd al-Raḥmān ibn ʿAwf divorced the daughter of al-Aṣbagh of the Kalbi tribe with three pronouncements. He then died while she was in her post-divorce waiting period, and ʿUthmān granted her inheritance." Ibn al-Zubayr added: "As for me, I do not believe an irrevocably divorced woman should inherit."

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا ابْنُ جُرَيْجٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ قَالَ: سَأَلْت عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ عَمَّنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا وَهُوَ مَرِيضٌ؟ فَقَالَ ابْنُ الزُّبَيْرِ: أَمَّا عُثْمَانُ فَوَرَّثَ ابْنَةَ الْأَصْبَغِ الْكَلْبِيَّةَ، وَأَمَّا أَنَا فَلَا أَرَى أَنْ تَرِثَ مَبْتُوتَةٌ.

L34348 From the path of Abū ʿUbayd: Yaḥyā ibn Saʿīd al-Qaṭṭān narrated to us, Ibn Jurayj narrated to us from Ibn Abī Mulaykah, who said: I asked ʿAbdullāh ibn al-Zubayr about a man who divorced his wife three times while he was ill. Ibn al-Zubayr replied: As for ʿUthmān, he granted the daughter of al-Aṣbagh of the Kalb tribe the right to inherit from her husband. But as for me, I do not maintain that an irrevocably divorced woman should inherit.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ، وَالْحَجَّاجِ بْنِ الْمِنْهَالِ، قَالَا جَمِيعًا: نا أَبُو عَوَانَةَ نا عُمَرُ بْنُ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِيهِ، فَذَكَرَ حَدِيثَ أَبِيهِ، وَأَنَّ امْرَأَتَهُ تُمَاضِرَ بِنْتَ الْأَصْبَغِ بْنِ زِيَادِ بْنِ الْحُصَيْنِ أَرْسَلَتْ إِلَيْهِ تَسْأَلُهُ الطَّلَاقَ؟ فَقَالَ: إِذَا طَهُرَتْ -: يَعْنِي مِنْ حَيْضِهَا فَلْتُؤْذِنِّي؟ فَطَهُرَتْ، فَأَرْسَلَتْ إِلَيْهِ وَهُوَ مَرِيضٌ، فَغَضِبَ وَقَالَ: هِيَ طَالِقٌ أَلْبَتَّةَ، وَلَا رَجْعَةَ لَهَا، فَلَمْ يَلْبَثْ إِلَّا يَسِيرًا حَتَّى مَاتَ، فَقَالَ عَبْدُ اللَّهِ بْنُ عَوْفٍ: لَا أُوَرِّثُ تُمَاضِرَ شَيْئًا - هَذَا لَفْظُ الْحَجَّاجِ وَقَالَ سَعِيدُ بْنُ مَنْصُورٍ فِي رِوَايَتِهِ: فَقَالَ عَبْدُ الرَّحْمَنِ: لَا أُوَرِّثُ تُمَاضِرَ شَيْئًا، ثُمَّ اتَّفَقَا، فَارْتَفَعُوا إِلَى عُثْمَانَ فَوَرَّثَهَا، وَكَانَ ذَلِكَ فِي الْعِدَّةِ.

L34349 And from the narration of Saʿīd ibn Manṣūr and al-Ḥajjāj ibn al-Minhāl—both narrated via Abū ʿAwānah: ʿUmar ibn Abī Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf reported from his father, who mentioned the ḥadīth of his father: His wife Tumāḍir bint al-Aṣbagh ibn Ziyād ibn al-Ḥuṣayn sent to him requesting divorce. He responded: "When she becomes pure"—meaning from her menstruation—"let her inform me." She became pure and sent to him while he was ill. He grew angry and declared: "She is irrevocably divorced with no possibility of revocation." He survived only briefly before dying. ʿAbdullāh ibn ʿAwf said: "I do not let her inherit anything"—this being al-Ḥajjāj's wording. In Saʿīd ibn Manṣūr's narration, ʿAbd al-Raḥmān said: "I do not let her inherit anything." Both narrations then concur: They elevated the case to ʿUthmān, who ruled her entitled to inheritance. This ruling was issued during her ʿiddah period.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا أَبُو أَحْمَدَ الزُّبَيْرِيُّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ لَيْثٍ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ فِي الَّذِي يُطَلِّقُ امْرَأَتَهُ ثَلَاثًا فِي مَرَضِهِ قَبْلَ أَنْ يَدْخُلَ بِهَا؟ قَالَ: لَيْسَ لَهَا مِيرَاثٌ، وَلَهَا نِصْفُ الصَّدَاقِ.

L34350–34351 From the chain of Abū ʿUbayd: Abū Aḥmad al-Zubayrī narrated to us from Sufyān al-Thawrī from Layth from Ṭāwūs from Ibn ʿAbbās regarding one who divorces his wife thrice during his illness before having consummated the marriage—what is the ruling? He said: She has no inheritance right, but she is entitled to half the *mahr*.

وَمِنْ طَرِيقِ قَتَادَةَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لَا تَرِثُ الْمَبْتُوتَةُ.

L34352 Through the narration of Qatadah: ʿAlī ibn Abī Ṭālib said, "The irrevocably divorced woman does not inherit."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنِ الْحَارِثِ الْعُكْلِيِّ، قَالَ: مَنْ طَلَّقَ امْرَأَتَهُ طَلْقَتَيْنِ فِي صِحَّتِهِ فَطَلَّقَهَا الثَّالِثَةَ لِلْعِدَّةِ فِي مَرَضِهِ لَمْ تَرِثْهُ، لِأَنَّهُ لَمْ تَعْتَدَّ - وَبِأَنْ لَا تَرِثَ الْمُطَلَّقَةُ الْمَبْتُوتَةُ فِي الْمَرَضِ يَقُولُ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا.

L34353 From the path of Sa'id ibn Mansur: Jarir ibn 'Abd al-Hamid narrated to us from al-Mughirah ibn Miqsam from al-Harith al-'Ukli, who said: Whoever divorces his wife twice during his health, then divorces her a third time during the husband's illness for the waiting period, she does not inherit him because she has not completed it. Al-Shafi'i, Abu Sulayman, and their companions state that the woman who has been irrevocably divorced during the husband's illness does not inherit.

L34354 Abu Muhammad said: Those who held the view that a finally divorced woman during illness inherits argued that the husband evaded what God the Exalted had ordained for her in His Book regarding inheritance. Therefore,

a ruling should be made against him and against those not suspected of that, to prevent this from becoming a means of withholding rights.

قَالَ أَبُو مُحَمَّد: احْتَجَّ مَنْ رَأَى تَوْرِيثَ الْمَبْتُوتَةِ فِي الْمَرَضِ بِأَنْ قَالُوا: فَرَّ بِذَلِكَ عَمَّا أَوْجَبَ اللَّهُ تَعَالَى لَهَا فِي كِتَابِهِ فِي الْمِيرَاثِ، فَوَجَبَ أَنْ يُقْضَى عَلَيْهِ وَعَلَى مَنْ لَا يُتَّهَمُ بِذَلِكَ، لِئَلَّا يَكُونَ ذَرِيعَةً إِلَى مَنْعِ الْحُقُوقِ.

L34355 Abū Muḥammad said: We say—and we seek support from Allah the Exalted—he never fled from the Book of Allah; rather, he adhered to Allah's Book and followed it. For Allah the Exalted permitted divorce, decreed via the threefold divorce and via divorce before consummation: the termination of all spousal rights—maintenance, lawful intimacy, and inheritance. Where then is fleeing from Allah's Book here? Fleeing from Allah's Book would only occur if he had said, "She inherits nothing from me without him divorcing her." Rather, fleeing from Allah's Book is granting inheritance to one who is neither a wife, mother, grandmother, daughter, granddaughter, sister, nor an emancipated female slave—but rather an unrelated woman for whom Allah the Exalted has never ordained inheritance.

قَالَ أَبُو مُحَمَّد: فَنَقُولُ - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ - مَا فَرَّ قَطُّ عَنْ كِتَابِ اللَّهِ تَعَالَى بَلْ أَخَذَ بِكِتَابِ اللَّهِ وَاتَّبَعَهُ، لِأَنَّ اللَّهَ تَعَالَى أَبَاحَ الطَّلَاقَ، وَقَطَعَ بِالثَّلَاثِ، وَبِالطَّلَاقِ قَبْلَ الْوَطْءِ: جَمِيعَ حُقُوقِ الزَّوْجِيَّةِ: مِنْ النَّفَقَةِ، وَإِبَاحَةِ الْوَطْءِ، وَالتَّوَارُثِ، فَأَيْنَ هَاهُنَا الْفِرَارُ مِنْ كِتَابِ اللَّهِ تَعَالَى؟ إنَّمَا كَانَ يَفِرُّ عَنْ كِتَابِ اللَّهِ تَعَالَى لَوْ قَالَ: لَا تَرِثُ مِنِّي شَيْئًا دُونَ أَنْ يُطَلِّقَهَا، بَلْ الْفِرَارُ مِنْ كِتَابِ اللَّهِ تَعَالَى: هُوَ تَوْرِيثُ مَنْ لَيْسَتْ زَوْجَةً، وَلَا أُمًّا، وَلَا جَدَّةً، وَلَا ابْنَةً، وَلَا ابْنَةَ ابْنٍ، وَلَا أُخْتًا، وَلَا مُعْتِقَةً، وَلَكِنْ أَجْنَبِيَّةً لَمْ يَجْعَلْ اللَّهُ تَعَالَى قَطُّ لَهَا مِيرَاثًا.

L34356 How can it be permissible for a woman to be inherited through the spousal bond when intercourse with her would warrant stoning? Or for one whom it has become permissible to marry another? Or for one who is already another man's wife? This is truly in opposition to the Book of Allah Almighty, without any doubt.

وَكَيْف يَجُوزُ أَنْ تُورَّثَ بِالزَّوْجِيَّةِ مَنْ إنْ وَطِئَهَا رُجِمَ؟ أَوْ مَنْ قَدْ حَلَّ لَهَا زَوَاجُ غَيْرِهِ: أَوْ مَنْ هِيَ زَوْجَةٌ لِغَيْرِهِ؟ هَذَا هُوَ خِلَافُ كِتَابِ اللَّهِ تَعَالَى حَقًّا، بِلَا شَكٍّ.

L34357 Furthermore, if she inherits from him by virtue of the marital bond, he must inherit from her by virtue of the marital bond—as Al-Ḥasan says—since it is absurd, impossible, and inconceivable that she should be his wife while he is not her husband. If they say, "She is not his wife," we respond: Then why have you given her the inheritance of a wife? This is most perplexing! This is undeniably misappropriation of wealth.

وَأَيْضًا - فَإِنْ كَانَتْ تَرِثُهُ بِالزَّوْجِيَّةِ فَوَاجِبٌ أَنْ يَرِثَهَا بِالزَّوْجِيَّةِ - كَمَا يَقُولُ الْحَسَنُ - إذْ مِنْ الْبَاطِلِ الْمُحَالِ الْمُمْتَنِعِ أَنْ تَكُونَ هِيَ امْرَأَتَهُ، وَلَا يَكُونُ هُوَ زَوْجَهَا؟ فَإِنْ قَالُوا: لَيْسَتْ امْرَأَتَهُ.؟ قُلْنَا: فَلِمَ وَرَّثْتُمُوهَا مِيرَاثَ زَوْجَةٍ، وَهَذَا عَجَبٌ جِدًّا؟ وَهَذَا أَكْلُ الْمَالِ بِالْبَاطِلِ، بِلَا شَكٍّ.

L34358–34359 And among the astonishing matters is their claim: "He fled with her inheritance"—but what inheritance could she possibly have from a healthy husband? Perhaps she might die before him, for many a healthy husband dies

before that ailing one. Moreover, the husband may recover from his illness. Thus, since he divorced her, no inheritance was ever established for him to flee with from her.

وَمِنْ الْعَجَبِ؟ قَوْلُهُمْ: فَرَّ بِمِيرَاثِهَا، وَأَيُّ مِيرَاثٍ لَهَا مِنْ صَحِيحٍ لَعَلَّهَا هِيَ تَمُوتُ قَبْلَهُ - وَرُبَّ صَحِيحٍ يَمُوتُ قَبْلَ ذَلِكَ الْمَرِيضِ، وَقَدْ يَبْرَأُ مِنْ مَرَضِهِ، فَمَا وَجَبَ بِهَا قَطُّ - إذْ طَلَّقَهَا - مِيرَاثٌ يَفِرُّ بِهِ عَنْهَا.

L34360 Then, it is astonishing that the Ḥanafīs grant inheritance to the irrevocably divorced woman from a husband imprisoned for murder or who engaged in combat while not ill, yet deny inheritance to the woman coerced by her husband's father into intercourse during her husband's illness—though her husband had no involvement whatsoever and never willingly divorced her. Similarly perplexing is the Mālikīs' granting inheritance to the woman who obtained a *khulʿ* divorce, the woman who chooses to ransom herself through *khulʿ*, and the woman who seeks to cause him to break his oath made during his illness—even though he is legally competent to divorce, reluctant to separate from her, while she eagerly pursues it, compelling him to do so.

ثُمَّ مِنْ الْعَجَبِ تَوْرِيثُ الْحَنَفِيِّينَ الْمَبْتُوتَةَ مِمَّنْ حُبِسَ لِلْقَتْلِ، أَوْ بَارَزَ فِي حَرْبٍ وَلَيْسَ مَرِيضًا، وَمَنْعُهُمْ الْمِيرَاثَ لِلَّتِي أَكْرَهَهَا أَبُو زَوْجِهَا عَلَى أَنْ وَطِئَهَا فِي مَرَضِ زَوْجِهَا، وَلَيْسَ لِزَوْجِهَا فِي ذَلِكَ عَمَلٌ أَصْلًا، وَلَا طَلَّقَهَا مُخْتَارًا قَطُّ؟ وَتَوْرِيثُ الْمَالِكِيِّينَ الْمُخْتَلِعَةَ، وَالْمُخْتَارَةَ نَفْسَهَا، وَالْقَاصِدَةَ إلَى تَحْنِيثِهِ فِي مَرَضِهِ فِي يَمِينِهِ، وَهُوَ صَحِيحٌ بِالطَّلَاقِ، وَهُوَ كَارِهٌ لِمُفَارَقَتِهَا وَهِيَ مُسَارِعَةٌ إلَيْهِ، مُكْرِهَةٌ لَهُ عَلَى ذَلِكَ.

L34361 Astonishment peaks at their denial of inheritance to the married woman during illness—a right Allah has ordained for her based on the certainty of a valid marriage—while granting inheritance to the thrice-divorced woman during illness. Thus, they grant inheritance through marital ties to one who is no longer a wife, yet deny the wife's inheritance to one who remains his wife. Allah suffices us, and He is the Best Disposer of Affairs.

وَمَا فِي الْعَجَبِ أَكْثَرُ مِنْ مَنْعِهِمْ الْمُتَزَوِّجَةَ فِي الْمَرَضِ مِنْ الْمِيرَاثِ الَّذِي أَوْجَبَهُ اللَّهُ تَعَالَى لَهَا يَقِينًا بِالزَّوْجِيَّةِ الصَّحِيحَةِ، وَتَوْرِيثِهِمْ الْمُطَلَّقَةَ ثَلَاثًا فِي الْمَرَضِ، فَوَرَّثُوا بِالزَّوْجِيَّةِ مَنْ لَيْسَتْ زَوْجَةً، وَمَنَعُوا مِيرَاثَ الزَّوْجَةِ مَنْ هِيَ زَوْجَتُهُ - وَحَسْبُنَا اللَّهُ، وَنِعْمَ الْوَكِيلُ.

L34362–34364 We have been narrated through the chain of Ibn Wahb: Malik, Amr ibn al-Harith, al-Layth ibn Sa'd, Makhramah ibn Bukayr, and Yunus ibn Yazid informed me. Malik, al-Layth, Amr—all of them reported from Yahya ibn Sa'id al-Ansari from Muhammad ibn Yahya ibn Hibban. Makhramah reported from his father from Sulayman ibn Yasar. Yunus said—and the wording is his—: Al-Zuhri narrated to us that a man from the Ansar named Hibban ibn Munqidh was married to Hind bint Rabi'ah ibn al-Harith ibn Abd al-Muttalib and a woman from the Ansar. He divorced the Ansari woman while she was breastfeeding his son—the child being healthy. She remained for seven months or nearly eight months without menstruating. Then Hibban fell ill, and it was said to him: "She will inherit you if you die." He

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي مَالِكٌ وَعَمْرُو بْنُ الْحَارِثِ، وَاللَّيْثُ بْنُ سَعْدٍ، وَمَخْرَمَةُ بْنُ بُكَيْرٍ، وَيُونُسُ بْنُ يَزِيدَ، قَالَ مَالِكٌ، وَاللَّيْثُ وَعَمْرٌو وَكُلُّهُمْ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ مُحَمَّدِ بْنِ يَحْيَى بْنِ حِبَّانَ - وَقَالَ مَخْرَمَةُ عَنْ أَبِيهِ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ " وَقَالَ يُونُسُ - وَاللَّفْظُ لَهُ -: نا الزُّهْرِيُّ أَنَّ رَجُلًا مِنْ الْأَنْصَارِ يُقَالُ: لَهُ: حِبَّانُ بْنُ مُنْقِذٍ كَانَتْ تَحْتَهُ هِنْدُ بِنْتُ رَبِيعَةَ بْنِ الْحَارِثِ بْنِ عَبْدِ الْمُطَّلِبِ، وَامْرَأَةٌ مِنْ الْأَنْصَارِ فَطَلَّقَ الْأَنْصَارِيَّةَ - وَهِيَ تُرْضِعُ ابْنَهُ وَهُوَ صَحِيحٌ - فَمَكَثَتْ سَبْعَةَ أَشْهُرٍ أَوْ قَرِيبًا مِنْ

said: “Carry me to the Commander of the Faithful Uthman.” He was carried to him, and he mentioned his wife’s situation—with Ali ibn Abi Talib (may Allah be pleased with him) and Zayd ibn Thabit present. Uthman asked them: “What is your view?” They both replied: “We hold that she inherits him if he dies, and he inherits her if she dies. She is neither among postmenopausal women who have despaired of menstruation nor among those who have not yet menstruated. She remains subject to her menstrual cycle, whether scant or abundant, and nothing has prevented her menstruation except breastfeeding.” Hibban returned and took back his son from her. When she ceased breastfeeding, she menstruated once, then menstruated again at the new moon. Hibban died at the beginning of the year or close to it, and Uthman ordered the inheritance to be shared. He ruled between the two women concerning inheritance, and commanded the Ansari woman to observe the widow’s waiting period. To the Hashimi woman he said: “This is the opinion of your paternal cousin - he recommended it to us” - meaning Ali ibn Abi Talib. Ibn Wahb reported: Bishr ibn Bakr reported to us from Al-Awza’i, from Ibn Shihab, who said: “Uthman ruled that we should remove her child from her custody until she completes the prescribed waiting period through menstruation.”

ثَمَانِيَةِ أَشْهُرٍ لَا تَحِيضُ، ثُمَّ مَرِضَ حِبَّانُ فَقِيلَ لَهُ: إِنَّهَا تَرِثُكَ إِنْ مِتَّ؟ قَالَ: احْمِلُونِي إِلَى أَمِيرِ الْمُؤْمِنِينَ عُثْمَانَ فَحُمِلَ إِلَيْهِ فَذَكَرَ لَهُ شَأْنَ امْرَأَتِهِ - وَعِنْدَهُ عَلِيُّ بْنُ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - وَزَيْدُ بْنُ ثَابِتٍ؟ فَقَالَ لَهُمَا عُثْمَانُ: مَا تَرَيَانِ؟ قَالَا جَمِيعًا: نَرَى أَنَّهَا تَرِثُهُ إِنْ مَاتَ، وَيَرِثُهَا إِنْ مَاتَتْ، فَإِنَّهَا لَيْسَتْ مِنْ الْقَوَاعِدِ اللَّاتِي يَئِسْنَ مِنْ الْمَحِيضِ، وَلَيْسَتْ مِنْ اللَّائِي لَمْ يَحِضْنَ، فَهِيَ عِنْدَهُ عَلَى حَيْضِهَا مَا كَانَتْ مِنْ قَلِيلٍ أَوْ كَثِيرٍ، وَأَنَّهُ لَمْ يَمْنَعْهَا مِنْ أَنْ تَحِيضَ إِلَّا الرَّضَاعُ؟ فَرَجَعَ حِبَّانُ فَانْتَزَعَ ابْنَهُ مِنْهَا، فَلَمَّا فَقَدَتْ الرَّضَاعَ حَاضَتْ حَيْضَةً، ثُمَّ حَاضَتْ أُخْرَى فِي الْهِلَالِ، ثُمَّ تُوُفِّيَ حِبَّانُ عَلَى رَأْسِ السَّنَةِ أَوْ قَرِيبًا مِنْهَا؟ فَشَرَّكَ عُثْمَانُ بَيْنَ الْمَرْأَتَيْنِ فِي الْمِيرَاثِ، وَأَمَرَ الْأَنْصَارِيَّةَ أَنْ تَعْتَدَّ عِدَّةَ الْوَفَاةِ - وَقَالَ لِلْهَاشِمِيَّةِ هَذَا رَأْيُ ابْنِ عَمِّكَ، هُوَ أَشَارَ عَلَيْنَا بِهِ - يَعْنِي عَلِيَّ بْنَ أَبِي طَالِبٍ - قَالَ ابْنُ وَهْبٍ: نا بِشْرُ بْنُ بَكْرٍ عَنْ الْأَوْزَاعِيِّ عَنْ ابْنِ شِهَابٍ قَالَ: إِنَّ عُثْمَانَ قَضَى أَنْ نَخْتَلِجَ مِنْهَا وَلَدَهَا حَتَّى تَحِيضَ أَقْرَاءَهَا.

L34365 Ibn Wahb said: Khālid ibn Ḥumayd al-Mahrī informed me from someone who informed him from Ibn Shihāb that ʿUthmān sent to Zayd ibn Thābit to consult him regarding the matter of Ḥibbān ibn Munqidh? Zayd said: “His son was snatched from her—does menstruation resume?” ʿUthmān then acted accordingly, and he mentioned the report. This is the opinion held by Imam Mālik.

قَالَ ابْنُ وَهْبٍ: أَخْبَرَنِي خَالِدُ بْنُ حُمَيْدٍ الْمَهْرِيُّ عَمَّنْ أَخْبَرَهُ عَنْ ابْنِ شِهَابٍ أَنَّ عُثْمَانَ أَرْسَلَ إِلَى زَيْدِ بْنِ ثَابِتٍ يُشَاوِرُهُ فِي أَمْرِ حِبَّانَ بْنِ مُنْقِذٍ؟ فَقَالَ زَيْدٌ: اخْتَلَجَ ابْنُهُ مِنْهَا، تَرْجِعُ الْحَيْضَةُ؟ فَفَعَلَ عُثْمَانُ، وَذَكَرَ الْخَبَرَ - وَبِهِ يَقُولُ مَالِكٌ.

L34366 Abū Muḥammad said: This is indeed fleeing from the Book of Allah, the Almighty—that she is prevented from breastfeeding her child to hasten her menstruation, thereby completing her waiting period and nullifying her inheritance. The correct view—if he is deemed by them to be fleeing from the Book of Allah—is to invalidate the divorce by which he aimed to prevent her inheritance, as the Mālikīs did regarding the marriage of a sick person.

قَالَ أَبُو مُحَمَّدٍ: هَذَا حَقًّا هُوَ الْفِرَارُ مِنْ كِتَابِ اللَّهِ عَزَّ وَجَلَّ أَنْ تُمْنَعَ رَضَاعَ وَلَدِهَا لِيَتَعَجَّلَ حَيْضَهَا فَتَتِمَّ عِدَّتُهَا، وَتُبْطِلَ مِيرَاثَهَا - وَإِنَّمَا كَانَ الْوَجْهُ - إِذَا هُوَ عِنْدَهُمْ فَارٌّ مِنْ كِتَابِ اللَّهِ - أَنْ يُبْطِلُوا الطَّلَاقَ الَّذِي بِهِ أَرَادَ مَنْعَهَا الْمِيرَاثَ، كَمَا فَعَلَ الْمَالِكِيُّونَ فِي نِكَاحِ الْمَرِيضِ.

L34367 As for their permitting divorce while retaining inheritance, it constitutes a

contradiction that is clearly erroneous.

وَأَمَّا تَجْوِيزُهُمْ الطَّلَاقَ وَإِبْقَاؤُهُمْ الْمِيرَاثَ فَمُنَاقَضَةٌ ظَاهِرَةُ الْخَطَأِ.

L34368 We have previously cited from ʿUthmān that he did not consider that divorce valid, as he commanded ʿAbd al-Raḥmān to revoke the divorce after he had pronounced three divorces (in one instance).

وَقَدْ أَوْرَدْنَا قَبْلُ عَنْ عُثْمَانَ أَنَّهُ لَمْ يُجِزْ ذَلِكَ الطَّلَاقَ، إذْ أَمَرَ عَبْدَ الرَّحْمَنِ بِمُرَاجَعَتِهَا بَعْدَ أَنْ طَلَّقَهَا ثَلَاثًا.

L34369 They are told: Do you see ʿAbd al-Raḥmān ibn ʿAwf fleeing from the Book of God Almighty? Far be it from him! Among their statements is: "He only did this against one from whom fleeing is inconceivable, to block the means [to evil]." We said: Why do you not adopt Abū Ḥanīfa's opinion that a woman coerced by her husband's father into intercourse still inherits? For the husband might secretly collude with his father to deprive her of inheritance, as many a transgressor might trivialize this regarding his female kin—thus precluding potential pretexts.

وَيُقَالُ لَهُمْ: أَتَرَوْنَ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ فَرَّ مِنْ كِتَابِ اللَّهِ تَعَالَى؟ حَاشَا لَهُ مِنْ ذَلِكَ، فَمِنْ قَوْلِهِمْ: إنَّمَا فَعَلَ ذَلِكَ بِمَنْ لَا يُظَنُّ بِهِ الْفِرَارُ لِقَطْعِ الذَّرِيعَةِ؟ فَقُلْنَا: فَهَلَّا قُلْتُمْ بِقَوْلِ أَبِي حَنِيفَةَ فِي أَنَّ مَنْ أَكْرَهَهَا أَبُو زَوْجِهَا عَلَى الْوَطْءِ أَنَّهَا تَرِثُ، لِأَنَّهُ قَدْ يُمْكِنُ أَنْ يَدُسَّ الزَّوْجُ أَبَاهُ لِذَلِكَ لِيَمْنَعَهَا الْمِيرَاثَ فَرُبَّ فَاسِقٍ يَسْتَسْهِلُ هَذَا فِي حَرِيمَتِهِ فَيَكُونُ قَطْعًا لِلذَّرِيعَةِ.

L34370 If you are Malikis, why did you not apply this reasoning to the apostate during his illness when you claimed, "We do not suspect him of apostatizing to evade her inheritance"? Countless people have fled to the land of war and apostatized out of personal anger or to provoke their neighbors through harm. All this constitutes blatant contradiction. What then of one who apostatizes to prevent her from inheriting from him, then returns to Islam? Why did you not permit her to inherit from him—even if she died before him? There is no distinction between granting her inheritance from him posthumously and granting it through marital ties when she is an unrelated woman—married to another—where even adultery with her would necessitate his stoning for adultery, and hers as well?

وَهَلَّا إنْ كُنْتُمْ مَالِكِيِّينَ قُلْتُمْ بِذَلِكَ فِي الْمُرْتَدِّ فِي مَرَضِهِ، إذْ قُلْتُمْ: لَا نَتَّهِمُهُ أَنَّهُ ارْتَدَّ فِرَارًا مِنْ مِيرَاثِهَا، فَكَمْ مِنْ النَّاسِ فَرَّ إلَى أَرْضِ الْحَرْبِ وَارْتَدَّ لِغَضَبٍ غَضِبَهُ، وَلِيَغِيظَ جَارَهُ بِأَذَاهُ لَهُ؟ وَهَذَا كُلُّهُ تَنَاقُضٌ لَا خَفَاءَ بِهِ فَكَيْفَ مَنْ ارْتَدَّ لِئَلَّا تَرِثَهُ ثُمَّ رَاجَعَ الْإِسْلَامَ؟ وَهَلَّا وَرَّثُوهَا مِنْهُ - وَإِنْ مَاتَتْ قَبْلَهُ؟ فَلَا فَرْقَ بَيْنَ تَوْرِيثِهَا وَهِيَ مَيِّتَةٌ وَبَيْنَ تَوْرِيثِهَا بِالزَّوْجِيَّةِ وَهِيَ أَجْنَبِيَّةٌ زَوْجَةٌ لِغَيْرِهِ لَوْ وَطِئَهَا هُوَ لَرُجِمَ وَرُجِمَتْ؟

L34371–34372 If they say, "No textual precedent exists for this?" We respond: "Nor does any precedent exist regarding the duelist. Why did you not apply analogy to the divorced woman as you did to the one who pronounces divorce? Nor did you grant her inheritance rights from the apostate, for indeed a group of early scholars affirmed that the apostate's wealth is inherited by his heirs from among the Muslims."

فَإِنْ قَالُوا: لَمْ يَأْتِ بِهَذَا أَثَرٌ؟ قُلْنَا: وَلَا جَاءَ فِي الْمُبَارِزِ أَثَرٌ فَهَلَّا قِسْتُمْ هَذَا عَلَى الْمُطَلَّقَةِ كَمَا قِسْتُمْ ذَلِكَ عَلَى الْمُطَلِّقِ؟ وَلَا وَرَّثْتُمُوهَا مِنْ الْمُرْتَدِّ، فَقَدْ قَالَ بِتَوْرِيثِ مَالِ الْمُرْتَدِّ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ طَائِفَةٌ مِنْ السَّلَفِ.

L34373 We do not know their position regarding a sick man married to an enslaved woman who is emancipated during his illness and chooses to separate from

him; a male slave married to a free woman who irrevocably divorces her while sick, then gains his freedom; or a Muslim married to a Scripturist woman whom he divorces thrice during his illness, after which she completes her waiting period and embraces Islam during her waiting period, after her waiting period, or after she marries another. Moreover, preventing her from inheriting applies to divorce by a healthy man just as it does to divorce by a sick man. A healthy man may die before the sick man. They must therefore grant her inheritance rights from one who divorced her thrice while healthy, then died suddenly or from an illness that befell him. Additionally, they unanimously agree that if a man wounded in battle or injured until his entrails protrude exerts himself to have intercourse with his enslaved woman while declaring that he only had intercourse with her to impregnate her, this act deprives his agnatic relatives of inheritance if she conceives and gives birth.

L34374 If they say, "But she may not be pregnant?" We reply, "He may recover, and she may die before him." Why did they not apply their conjecture about evasion where it is most fitting in the Book of Allah Almighty? They should have said: If he divorces her three times while he is ill, he has merely circumvented Allah's ordinance regarding what He obligated for her—maintenance, clothing, and all that is due to her—thus obligating him to provide clothing and maintenance indefinitely. Yet they did not do this, instead acting on their conjecture that he evaded obligations concerning an inheritance she was never entitled to at all.

L34375 They do not differ regarding the fact that whoever acknowledges a child during his terminal illness—from which he dies—the child is legally ascribed to him, inherits from him, deprives his agnatic relatives of inheritance, and reduces the wife's share from a quarter to an eighth. Why then do they not say he did this to reduce her portion of the inheritance? As for the Ḥanafīs—they upheld his evasion of the Book of Allah, the Exalted and Majestic, by terminating her inheritance after the *ʿiddah*. Thus they allowed him to benefit from this evasion of Allah's Book in one case but denied it in another—this constitutes confusion and arbitrariness. The cessation of the *ʿiddah* itself is generated by the divorce, which is his own act.

وَلَا نَدْرِي مَا قَوْلُهُمْ فِي مَرِيضٍ تَحْتَهُ مَمْلُوكَةٌ فَأُعْتِقَتْ فِي مَرَضِهِ فَاخْتَارَتْ فِرَاقَهُ؟ وَفِي مَمْلُوكٍ تَحْتَهُ حُرَّةٌ فَطَلَّقَهَا بَتَاتًا، وَهُوَ مَرِيضٌ ثُمَّ أُعْتِقَ هُوَ؟ وَفِي مُسْلِمٍ تَحْتَهُ كِتَابِيَّةٌ فَطَلَّقَهَا فِي مَرَضِهِ ثَلَاثًا ثُمَّ اعْتَدَّتْ وَأَسْلَمَتْ فِي عِدَّتِهَا أَوْ بَعْدَ عِدَّتِهَا، أَوْ بَعْدَ أَنْ تَزَوَّجَتْ؟ وَأَيْضًا - فَإِنَّ الْفِرَارَ بِالْمِيرَاثِ عَنْهَا يَدْخُلُ فِي طَلَاقِ الصَّحِيحِ كَمَا يَدْخُلُ فِي طَلَاقِ الْمَرِيضِ، وَقَدْ يَمُوتُ الصَّحِيحُ قَبْلَ الْمَرِيضِ، فَلْيُوَرِّثُوهَا مِمَّنْ طَلَّقَهَا ثَلَاثًا - وَهُوَ صَحِيحٌ - ثُمَّ مَاتَ بَغْتَةً أَوْ مِنْ مَرَضٍ أَصَابَهُ؟ وَأَيْضًا - فَلَا يَخْتَلِفُونَ فِيمَنْ بِهِ حِينَ قَاتَلَ، أَوْ جُرِحَ فَانْتَثَرَتْ حَشْوَتُهُ فَتَحَامَلَ فَوَطِئَ جَارِيَةً لَهُ فَحَمَلَتْ - وَهُوَ يَهْتِفُ بِأَنَّهُ إنَّمَا وَطِئَهَا لِتَحْمِلَ - فَيَحْرِمَ عَصَبَتَهُ الْمِيرَاثَ أَنَّهَا إنْ حَمَلَتْ وَوَلَدَتْ حَرَمَتْ الْعَصَبَةَ الْمِيرَاثَ.

فَإِنْ قَالُوا: وَقَدْ لَا تَحْمِلُ؟ قُلْنَا: وَهُوَ قَدْ يُفِيقُ، وَهِيَ قَدْ تَمُوتُ قَبْلَهُ - وَهَلَّا وَضَعُوا الظَّنَّ فِي الْفِرَارِ مِنْ كِتَابِ اللَّهِ تَعَالَى حَيْثُ هُوَ أَلْيَقُ بِهِ فَيَقُولُوا: إذَا طَلَّقَهَا ثَلَاثًا - وَهُوَ مَرِيضٌ - فَإِنَّمَا فَرَّ عَنْ كِتَابِ اللَّهِ تَعَالَى فِيمَا أَوْجَبَ لَهَا مِنْ النَّفَقَةِ وَالْكِسْوَةِ الْوَاجِبِ لَهَا كُلَّ ذَلِكَ، فَيُلْزِمُونَهُ الْكِسْوَةَ وَالنَّفَقَةَ أَبَدًا، فَلَمْ يَفْعَلُوا، وَأَعْمَلُوا ظَنَّهُمْ فِي أَنَّهُ فَرَّ عَنْهَا بِمِيرَاثٍ لَمْ يَجِبْ لَهَا قَطُّ.

وَلَا يَخْتَلِفُونَ فِي أَنَّ مَنْ أَقَرَّ فِي مَرَضِهِ - الَّذِي مَاتَ فِيهِ - بِوَلَدٍ أَنَّهُ يَلْحَقُهُ وَيَرِثُ وَيَمْنَعُ عَصَبَتَهُ الْمِيرَاثَ، وَيَحُطُّ الزَّوْجَةَ مِنْ رُبُعٍ إلَى ثُمُنٍ - فَهَلَّا قَالُوا: إنَّمَا فَعَلَ ذَلِكَ لِيَحُطَّهَا مِنْ الْمِيرَاثِ؟ وَأَمَّا الْحَنَفِيُّونَ - فَإِنَّهُمْ أَمْضَوْا فِرَارَهُ عَنْ كِتَابِ اللَّهِ عَزَّ وَجَلَّ، إذْ قَطَعُوا مِيرَاثَهَا بَعْدَ الْعِدَّةِ فَجَعَلُوهُ يَنْتَفِعُ بِفِرَارِهِ عَنْ كِتَابِ اللَّهِ تَعَالَى فِي مَوْضِعٍ، وَلَا يَنْتَفِعُ بِهِ فِي مَوْضِعٍ آخَرَ - فَهَذَا التَّخْلِيطُ وَالْخَبْطُ، وَانْقِطَاعُ الْعِدَّةِ: مُتَوَلِّدٌ مِنْ الطَّلَاقِ الَّذِي هُوَ فِعْلُهُ.

وَيُقَالُ لَهُمْ: قَدْ أَجَزْتُمْ نِكَاحَ الْمَرِيضِ وَهُوَ إِضْرَارٌ بِأَهْلِ الْمِيرَاثِ فِي إِدْخَالِ مَنْ يُشْرِكُهُمْ فِيهِ؟ فَهَلَّا إِذْ أَجَزْتُمْ طَلَاقَ الْمَرِيضِ أَمْضَيْتُمْ حُكْمَهُ فِي قَطْعِ الْمِيرَاثِ؟ وَيُقَالُ لِلْمَالِكِيِّينَ: مِنْ أَيْنَ وَرَّثْتُمُ الْمُخَنَّثَةَ لِزَوْجِهَا فِي مَرَضِهِ - وَهُوَ لَمْ يَفِرَّ قَطُّ بِمِيرَاثِهَا، وَلَا طَلَّقَهَا فِي مَرَضِهِ، وَكَيْفَ يَجُوزُ أَنْ يُقَاسَ غَيْرُ فَارٍّ عَلَى فَارٍّ؟ .

L34376–34377 They are told: You have permitted the marriage of a sick person, which harms the heirs by introducing someone who shares with them in the inheritance. Why then, when you permitted a sick person's divorce, did you not enforce its ruling to terminate the inheritance? And it is said to the Mālikīs: From what basis do you entitle the spouse of ambiguous gender to inherit from her husband during his illness—when he never evaded her inheritance rights nor divorced her during his illness—and how can it be valid to analogize one who did not evade [inheritance obligations] to one who did?

وَأَعْجَبُ شَيْءٍ - قَوْلُ الْمَالِكِيِّينَ فِي الَّتِي يُطَلِّقُهَا زَوْجُهَا - وَهُوَ مَرِيضٌ - وَلَمْ يَدْخُلْ بِهَا: أَنَّهَا تَرِثُهُ، وَلَيْسَ لَهَا إِلَّا نِصْفُ الصَّدَاقِ؟ فَهَلَّا قَالُوا: إِنَّهُ فَرَّ بِنِصْفِ صَدَاقِهَا فَيَقْضُوا لَهَا بِجَمِيعِهِ - كَمَا قَالَ الْحَسَنُ؟ وَهَلَّا قَالُوا فِيمَنْ قَالَ لِامْرَأَتِهِ: إِنْ دَخَلْتِ دَارَ زَيْدٍ فَأَنْتِ طَالِقٌ ثَلَاثًا، وَهُوَ صَحِيحٌ فَاعْتَلَّتْ هِيَ فَأَمَرَتْ مَنْ حَمَلَهَا فَدَخَلَتْ دَارَ زَيْدٍ وَقَالَتْ: إِنَّمَا أَفْعَلُ هَذَا لِئَلَّا يَرِثَنِي؟ فَهَذِهِ فَارَّةٌ بِمِيرَاثِهَا، فَهَلَّا وَرَّثُوهُ مِنْهَا بِعِلَّةِ الْفِرَارِ؟ وَلَكِنَّهُمْ لَا يَتَمَسَّكُونَ بِنَصٍّ، وَلَا بِقِيَاسٍ، وَلَا بِعِلَّةٍ.

L34378 The most baffling thing is the Mālikīs' statement regarding a woman whose husband divorces her—while he is ill and has not consummated the marriage—that she inherits from him yet is entitled only to half the dower. Why do they not say: "He fled with half her dower," so that they rule to grant her the entirety—as al-Ḥasan held? And why do they not rule concerning a man who tells his wife, "If you enter Zayd's house, you are triply divorced"—while he is healthy—then she feigns illness, instructs someone to carry her, enters Zayd's house, and declares, "I am doing this only to prevent him from inheriting me"? For this woman is evading his right to inherit from her. Why do they not make him inherit from her on the grounds of evasion? Yet they adhere neither to an explicit text, nor to analogy, nor to a legal cause.

وَعَجَبٌ آخَرُ - وَهُوَ أَنَّهُمْ قَالُوا: إِنْ صَحَّ لَمْ تَرِثْهُ فَجَعَلُوهُ يَنْتَفِعُ بِفِرَارِهِ مِنْ كِتَابِ اللَّهِ عَزَّ وَجَلَّ إِنْ صَحَّ - وَهَذَا تَلَاعُبٌ، وَلَمْ يَأْتِ قَطُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ أَنَّهُ إِنْ صَحَّ لَمْ تَرِثْهُ إِلَّا عَنْ أُبَيٍّ وَحْدَهُ.

L34379 Another cause for wonder is their statement: "If he is legally competent, she does not inherit from him," thereby making him benefit by fleeing from Allah's Book. This is sheer mockery. No report has ever come from any of the Companions stating that "if he is competent, she does not inherit from him," except from Ubayy alone.

وَقَدْ خَالَفَهُ الْمَالِكِيُّونَ فِي قَوْلِهِ: إِلَّا أَنْ تَتَزَوَّجَ.

L34380 The Mālikīs, however, disagreed with him concerning his statement: "unless one marries."

وَخَالَفَهُ الْحَنَفِيُّونَ فِي تَوْرِيثِهَا مِنْهُ بَعْدَ الْعِدَّةِ - وَالْقَوْمُ مُتَلَاعِبُونَ بِلَا شَكٍّ.

L34381 The Hanafis opposed him regarding her inheritance from him after the waiting period—and the group is undeniably frivolous.

وَقَالَ بَعْضُهُمْ: لَمَّا كَانَ الْمَرَضُ يُحْدِثُ لِصَاحِبِهِ أَحْكَامًا لَمْ تَكُنْ لَهُ فِي الصِّحَّةِ فَيُمْنَعُ مِنْ أَكْثَرَ مِنْ ثُلُثِ مَالِهِ فِي الصَّدَقَةِ، وَالْعِتْقِ، وَالْهِبَةِ، وَكَانَ الطَّلَاقُ كَذَلِكَ؟ فَقُلْنَا: هَذَا

L34382 Some of them argued: Since illness imposes legal rulings upon the sick person that were not applicable during health—such as prohibiting him from donating more than a third of his wealth for charity, from freeing slaves, or from making gifts—[they asked]: "Is divorce analogous to this?" We replied:

This is defending one error with another. It has never been obligatory to prevent a sick person from disposing of all his wealth; rather, he remains exactly equal to a healthy person. Even if your premise were accepted, what obligates us to analogize divorce to this ruling? We know of no evidence supporting this—neither from scriptural text, nor consensus, nor prior scholarly opinion, nor sound rational basis, nor even a false claim. Thus this argument is decisively invalidated, and anyone can assert whatever they wish.

احْتِجَاجٌ لِلْخَطَأِ بِالْخَطَأِ، وَمَا وَجَبَ قَطُّ مَنْعُ الْمَرِيضِ مِنْ جَمِيعِ مَالِهِ، بَلْ هُوَ كَالصَّحِيحِ سَوَاءً سَوَاءً، وَحَتَّى لَوْ كَانَ مَا قُلْتُمْ فَمِنْ أَيْنَ وَجَبَ أَنْ يَكُونَ الطَّلَاقُ مَقِيسًا عَلَى ذَلِكَ، وَمَا نَعْلَمُ دَلِيلًا عَلَى ذَلِكَ لَا مِنْ نَصٍّ، وَلَا مِنْ إجْمَاعٍ، وَلَا مِنْ قَوْلٍ مُتَقَدِّمٍ، وَلَا مِنْ مَعْقُولٍ، وَلَا دَعْوَى كَاذِبَةٍ - فَبَطَلَ هَذَا أَيْضًا بِيَقِينٍ، وَلَا يَعْجِزُ أَحَدٌ عَنْ أَنْ يَدَّعِيَ مَا شَاءَ.

L34383 We have already discussed this in the “Book of Gifts” from this diwan of ours, and thus it renders repetition unnecessary.

وَقَدْ تَكَلَّمْنَا عَلَى هَذَا فِي " كِتَابِ الْهِبَاتِ " مِنْ دِيوَانِنَا هَذَا فَأَغْنَى عَنْ إعَادَتِهِ.

L34384–34385 They said: “Is this the opinion of the majority of the Companions—may God be pleased with them—?” We responded: “He who said this has lied: the most heinous lie. Only differing and contradictory narrations have come regarding that from five Companions alone: Umar, Uthman, Ali, Aisha the Mother of the Believers, and Ubayy ibn Ka‘b.”

وَقَالُوا: هَذَا قَوْلُ جُمْهُورِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؟ فَقُلْنَا: كَذَبَ مَنْ قَالَ هَذَا، أَشْنَعَ كَذِبٍ، إنَّمَا جَاءَتْ فِي ذَلِكَ رِوَايَاتٌ مُخْتَلِفَةٌ مُتَنَاقِضَةٌ عَنْ خَمْسَةٍ مِنْ الصَّحَابَةِ فَقَطْ: عُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ، وَعَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَأُبَيِّ بْنِ كَعْبٍ.

L34386 As for the narration from Ali, it is weak and exposed as flawed, having never been authenticated. This is because it comes through Ibn Wahb and certain scholars from Ali. Then, nothing is established from him except the ruling that a woman divorced during illness inherits - though we say she inherits unless the divorce is irrevocable. The narration does not state that she inherits specifically during the waiting period rather than after it, nor that she inherits only if the divorce is valid. Thus, despite its weakness, this narration contradicts the legal rulings of the Hanafis and Malikis. How could it be otherwise when we have transmitted a similar ruling from Ali: “A woman subject to irrevocable divorce does not inherit”?

أَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ فَسَاقِطَةٌ مَفْضُوحَةٌ، وَلَمْ تَصِحَّ قَطُّ، لِأَنَّهَا عَنْ ابْنِ وَهْبٍ وَعَنْ رِجَالٍ مِنْ أَهْلِ الْعِلْمِ عَنْ عَلِيٍّ، ثُمَّ لَيْسَ عَنْهُ إلَّا الْمُطَلَّقَةُ فِي الْمَرَضِ تَرِثُ - وَنَحْنُ نَقُولُ: إنَّهَا تَرِثُ مَا لَمْ تَكُنْ مَبْتُوتَةً، وَلَيْسَ فِيهِ: أَنَّهَا تَرِثُ فِي الْعِدَّةِ دُونَ مَا بَعْدَ الْعِدَّةِ، وَلَا أَنَّهَا تَرِثُ إلَّا أَنْ يَصِحَّ - فَهِيَ رِوَايَةٌ عَلَى سُقُوطِهَا غَيْرُ مُوَافِقَةٍ لِتَحَكُّمِ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، فَكَيْفَ وَقَدْ أَوْرَدْنَا عَنْ عَلِيٍّ مِثْلَهَا: لَا تَرِثُ مَبْتُوتَةٌ.

L34387 We cited from him that he granted the woman whom ʿUthmān divorced while he was under siege the right to inherit, though all of them categorically reject this ruling.

وَأَوْرَدْنَا عَنْهُ: أَنَّهُ وَرَّثَ الْمَرْأَةَ الَّتِي طَلَّقَهَا عُثْمَانُ وَهُوَ مَحْصُورٌ وَهُمْ كُلُّهُمْ لَا يَقُولُونَ بِهَذَا.

L34388 The report transmitted from Aisha, the Mother of the Believers, is invalid, for Sa‘īd ibn Abī ʿArūbah never heard anything from Hishām ibn ʿUrwah whatsoever. Consequently, we cannot ascertain his source for this, and it

opposes the doctrine of the Mālikīs; thus, it undermines their position rather than affirming it. Therefore, this transmitted opinion is deemed invalid.

وَالرِّوَايَةُ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ لَا تَصِحُّ، لِأَنَّ سَعِيدَ بْنَ أَبِي عَرُوبَةَ لَمْ يَسْمَعْ مِنْ هِشَامِ بْنِ عُرْوَةَ شَيْئًا قَطُّ، فَلَا نَدْرِي عَمَّنْ أَخَذَهُ، وَهُوَ مُخَالِفٌ لِقَوْلِ الْمَالِكِيِّينَ، فَهُوَ عَلَيْهِمْ لَا لَهُمْ - فَسَقَطَتْ هَذِهِ الرِّوَايَةُ.

L34389 The narration from Ubay is rejected as invalid because it is transmitted through a sheikh from Quraysh whose identity is unknown? Moreover, it contradicts both the Hanafis and Malikis entirely, as it states: “unless she marries”—thus their reliance became invalid upon what they were the first to oppose.

وَالرِّوَايَةُ عَنْ أُبَيٍّ سَاقِطَةٌ لَا تَصِحُّ، لِأَنَّهَا مِنْ طَرِيقِ شَيْخٍ مِنْ قُرَيْشٍ لَا يُدْرَى مَنْ هُوَ؟ ثُمَّ هِيَ مُخَالِفَةٌ لِلْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ جَمِيعًا، لِأَنَّ فِيهَا: إِلَّا أَنْ تَتَزَوَّجَ - فَبَطَلَ تَعَلُّقُهُمْ بِمَا هُمْ أَوَّلُ مُخَالِفِينَ لَهُ.

L34390 The narration from ʿUmar is disconnected because it is transmitted through Ibrāhīm from ʿUmar. In some of my narrations—due to a mistaken attribution—it is reported from Ibn ʿUmar, but both chains are disconnected since Ibrāhīm never heard a single word from ʿUmar or Ibn ʿUmar. It is only valid through the chain we have cited from Ibrāhīm from Shurayḥ, despite the fact that all reports transmitted on this matter from ʿUmar contradict the Mālikīs, because all of them only permit inheritance during the waiting period. Thus, the Ḥanafīs have no narration besides this solitary one.

الرِّوَايَةُ عَنْ عُمَرَ مُنْقَطِعَةٌ، لِأَنَّهَا عَنْ إِبْرَاهِيمَ عَنْ عُمَرَ، وَفِي بَعْضِ رِوَايَاتِي عَنِ ابْنِ عُمَرَ - وَهُوَ وَهْمٌ - وَكِلَاهُمَا غَيْرُ مُتَّصِلَةٍ، لِأَنَّ إِبْرَاهِيمَ لَمْ يَسْمَعْ قَطُّ مِنْ عُمَرَ، وَلَا مِنِ ابْنِ عُمَرَ كَلِمَةً، وَإِنَّمَا تَصِحُّ مِنَ الطَّرِيقِ الَّتِي أَوْرَدْنَا عَنْ إِبْرَاهِيمَ عَنْ شُرَيْحٍ مَعَ أَنَّ كُلَّ مَا رُوِيَ فِي ذَلِكَ عَنْ عُمَرَ مُخَالِفٌ لِلْمَالِكِيِّينَ، لِأَنَّهَا كُلَّهَا، لَا تَرِثُ إِلَّا فِي الْعِدَّةِ - فَلَيْسَ لِلْحَنَفِيِّينَ غَيْرُ هَذِهِ الرِّوَايَةِ وَحْدَهَا.

L34391 How numerous are the cases in which a group of Companions held opinions with no opponent known against them therein, such as ’Umar’s ruling regarding the wife of a missing person and others.

وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا الطَّائِفَةَ مِنَ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ فِيهَا مُخَالِفٌ، كَقَوْلِ عُمَرَ فِي امْرَأَةِ الْمَفْقُودِ وَغَيْرِ ذَلِكَ.

L34392–34394 Yes, and in this same narration, because it contains: “Among what Urwah al-Bariqi brought forth to Shurayh was...” From Umar ibn al-Khattab: The wounds of men and women are equal, except for the muwḍiḥah, where half the compensation applies.

نَعَمْ، وَفِي هَذِهِ الرِّوَايَةِ نَفْسِهَا، لِأَنَّ فِيهَا: كَانَ فِيمَا جَاءَ بِهِ عُرْوَةُ الْبَارِقِيُّ إِلَى شُرَيْحٍ مِنْ عِنْدِ عُمَرَ بْنِ الْخَطَّابِ: أَنَّ جُرُوحَ الرِّجَالِ وَالنِّسَاءِ سَوَاءٌ إِلَّا الْمُوضِحَةَ فَعَلَى النِّصْفِ.

L34395 When he pronounces a threefold *ṭalāq* upon his wife, she inherits him as long as she is in the *ʿiddah*.

وَإِذَا طَلَّقَ امْرَأَتَهُ ثَلَاثًا وَرِثَتْهُ مَا دَامَتْ فِي الْعِدَّةِ.

L34396 It is invalid to regard some of ʿUmar’s letter as authoritative evidence while dismissing other parts as non-authoritative, for all of them categorically reject this position.

وَمِنْ الْبَاطِلِ أَنْ يَكُونَ بَعْضُ كِتَابِ عُمَرَ حُجَّةً وَبَعْضُهُ لَيْسَ بِحُجَّةٍ، لِأَنَّهُمْ كُلُّهُمْ لَا يَقُولُونَ بِهَذَا.

وَقَدْ أَوْرَدْنَا عَنْ عُمَرَ بِأَصَحِّ طَرِيقٍ أَنَّهُ قَالَ لِغَيْلَانَ بْنِ سَلَمَةَ وَقَدْ طَلَّقَ نِسَاءَهُ وَهُوَ صَحِيحٌ: لَئِنْ مِتّ لَأُوَرِّثَنَّهُنَّ مِنْك وَهُمْ لَا يَقُولُونَ بِهَذَا، فَكَيْفَ وَقَدْ صَحَّ خِلَافُ عُمَرَ فِي هَذَا عَنْ ابْنِ الزُّبَيْرِ وَعَبْدِ اللَّهِ بْنِ عَوْفٍ - أَخِي عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ وَلَهُ صُحْبَةٌ - وَرُوِيَ عَنْ عَلِيٍّ مِثْلُ قَوْلِنَا، وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ.

L34397 We have conveyed from ʿUmar through the soundest chain that he said to Ghaylān ibn Salamah when he divorced his wives while in sound health: "If you die, I will indeed entitle them to inherit from you," though later scholars do not uphold this position. How then is this tenable when authentic disagreement with ʿUmar on this matter is established from Ibn al-Zubayr and ʿAbdullāh ibn ʿAwf (brother of ʿAbd al-Raḥmān ibn ʿAwf and a Companion of the Prophet), while a statement aligning with our view is reported from ʿAlī and likewise from ʿAbd al-Raḥmān ibn ʿAwf.

وَأَمَّا الرِّوَايَةُ عَنْ عُثْمَانَ فَقَدْ ذَكَرْنَا أَنَّهُ لَمْ يَرَهُ طَلَاقًا، وَأَنَّهُ أَمَرَهُ بِمُرَاجَعَتِهَا - وَهَذَا خِلَافٌ لِلطَّائِفَتَيْنِ مَعًا.

L34398 As for the narration from ʿUthmān, we have mentioned that he did not deem it a divorce and commanded him to take her back—a stance contrary to both schools of thought simultaneously.

ثُمَّ اضْطَرَبَتْ رِوَايَةُ الثِّقَاتِ عَنْهُ -: فَرَوَى عَنْهُ عَبْدُ اللَّهِ بْنُ الزُّبَيْرِ، وَحَمَّادُ بْنُ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عُرْوَةَ بْنِ الزُّبَيْرِ: أَنَّهُ لَمْ يُوَرِّثْهَا إلَّا فِي الْعِدَّةِ - وَكَذَلِكَ رَوَى أَبُو عَوَانَةَ عَنْ عُمَرَ بْنِ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي سَلَمَةَ

L34399 Then the narrations of the trustworthy narrators from him conflicted: ʿAbdullāh ibn al-Zubayr narrated directly from him, while Ḥammād ibn Salamah narrated from Hishām ibn ʿUrwah from his father ʿUrwah ibn al-Zubayr, stating that he granted her inheritance rights only during the waiting period. Similarly, Abū ʿAwānah narrated from ʿUmar ibn Abī Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf from Abū Salamah.

وَرَوَى عُرْوَةُ بْنُ الزُّبَيْرِ، وَمُحَمَّدُ بْنُ عَمْرِو بْنِ عَلْقَمَةَ عَنْ أَبِي سَلَمَةَ، وَطَلْحَةَ بْنِ عَبْدِ اللَّهِ بْنِ عَوْفٍ، وَهُشَيْمٌ عَنْ عُمَرَ بْنِ أَبِي سَلَمَةَ عَنْ أَبِي سَلَمَةَ، وَابْنِ الْمُسَيِّبِ: أَنَّهُ وَرَّثَهَا مِنْهُ بَعْدَ الْعِدَّةِ - فَإِحْدَى الرِّوَايَتَيْنِ مُخَالِفَةٌ لِلْحَنَفِيِّينَ وَلَا شَكَّ فِي أَنَّ إحْدَاهُمَا وَهْمٌ، لَا نَدْرِي أَيَّتُهُمَا هِيَ؟ وَلَا يَجُوزُ الْحُكْمُ بِقَضِيَّةٍ قَدْ صَحَّ الْوَهْمُ فِيهَا، فَلَا يُدْرَى كَيْف وَقَعَتْ؟

L34400 Urwah ibn al-Zubayr and Muhammad ibn Amr ibn Alqamah narrated from Abu Salamah, Talhah ibn Abdullah ibn Awf, and Hushaym - who narrated from Umar ibn Abi Salamah, from Abu Salamah and Ibn al-Musayyib - that he granted her inheritance from him after the ʿiddah. One of the two narrations contradicts the Hanafis, and there is no doubt that one of them contains an error. We do not know which one it is, nor is it permissible to issue a ruling regarding a case where error has been confirmed, for it remains unknown how this occurred.

L34401 It has been reported to us from Uthman that Zayd divorced his wife while afflicted with hemiplegia, lived for two years, then died, and she inherited from him. The scholars do not disagree that the one divorced by the hemi-

plegic during that illness does not inherit from him. Thus, their reliance on Uthman's report is invalidated.

وَقَدْ رُوِّينَا عَنْ عُثْمَانَ: أَنَّ زَيْدًا طَلَّقَ امْرَأَتَهُ - وَبِهِ فَالِجٌ - فَعَاشَ سَنَتَيْنِ ثُمَّ مَاتَ فَوَرَّثَهَا مِنْهُ - وَهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ الْمَفْلُوجَ لَا يَرِثُهُ بِذَلِكَ الْمَرَضِ مَنْ طَلَّقَهَا فِيهِ - فَسَقَطَ تَعَلُّقُهُمْ بِعُثْمَانَ.

L34402 It is astonishing that the Ḥanafīs say that if she asks him for divorce during his illness and he divorces her, she does not inherit from him. What is established from ʿAbd al-Raḥmān is that he only divorced her after she persistently sought divorce to the extent that he became angered, thus the Ḥanafīs contradicted ʿUthmān in this ruling.

وَالْعَجَبُ - أَنَّ الْحَنَفِيِّينَ يَقُولُونَ: إِنَّهَا إِنْ سَأَلَتْهُ الطَّلَاقَ فِي مَرَضِهِ فَطَلَّقَهَا: أَنَّهَا لَا تَرِثُهُ، وَالثَّابِتُ عَنْ عَبْدِ الرَّحْمَنِ أَنَّهُ لَمْ يُطَلِّقْهَا إِلَّا بَعْدَ أَنْ سَأَلَتْهُ الطَّلَاقَ حَتَّى غَضِبَ، فَخَالَفُوا عُثْمَانَ فِي ذَلِكَ.

L34403–34404 Thus, there remained no basis among the Companions—may Allah be pleased with them—for them to cling to.

فَلَمْ يَبْقَ لَهُمْ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُتَعَلَّقٌ.

L34405 If it is said: "You have reported from Jaʿfar ibn Muḥammad, from his father, that al-Ḥusayn ibn ʿAlī divorced his wife while he was ill, and she inherited from him?" We reply: This narration lacks evidentiary weight. The first reason is that it is discredited (munkar), for it claims al-Ḥusayn divorced his wife while ill and she inherited from him, whereas al-Ḥusayn—may Allah be pleased with him—did not die a natural death; he was slain. Thus, it was established that he had recovered from that illness, and this contradicts the positions of the two groups.

فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ: أَنَّ الْحُسَيْنَ بْنَ عَلِيٍّ طَلَّقَ امْرَأَتَهُ وَهُوَ مَرِيضٌ فَوَرِثَتْهُ؟ قُلْنَا: هَذِهِ رِوَايَةٌ لَا حُجَّةَ فِيهَا؟ أَوَّلُ ذَلِكَ: أَنَّهَا مُنْكَرَةٌ، لِأَنَّ فِيهَا: أَنَّ الْحُسَيْنَ طَلَّقَ امْرَأَتَهُ وَهُوَ مَرِيضٌ فَوَرِثَتْهُ، وَالْحُسَيْنُ - رَضِيَ اللَّهُ عَنْهُ - لَمْ يَمُتْ حَتْفَ أَنْفِهِ، إِنَّمَا مَاتَ مَقْتُولًا، فَصَحَّ أَنَّهُ قَدْ كَانَ صَحَّ مِنْ ذَلِكَ الْمَرَضِ فَهَذَا مُخَالِفٌ لِلطَّائِفَتَيْنِ.

L34406 Moreover, the chain is disconnected because Muḥammad ibn ʿAlī ibn al-Ḥusayn was not contemporaneous with al-Ḥusayn or al-Ḥasan (peace be upon them).

ثُمَّ هِيَ مُنْقَطِعَةٌ، لِأَنَّ مُحَمَّدَ بْنَ عَلِيِّ بْنِ الْحُسَيْنِ لَمْ يُدْرِكْ الْحُسَيْنَ وَلَا الْحَسَنَ.

L34407 Furthermore, the text does not specify the testator from whom she inherits, nor does it state that Imam Al-Ḥusayn affirmed she inherits from him.

ثُمَّ لَيْسَ فِيهِ: مَنْ هُوَ الْمُوَرِّثُ لَهَا، وَلَا أَنَّ الْحُسَيْنَ أَخْبَرَ أَنَّهَا تَرِثُهُ.

L34408 Some of them said: "You have narrated that 'Uthman said to 'Abd al-Rahman: 'If you die, I will certainly inherit it from you.'" 'Abd al-Rahman responded: "You certainly know."

وَقَالَ بَعْضُهُمْ: قَدْ رَوَيْتُمْ أَنَّ عُثْمَانَ قَالَ لِعَبْدِ الرَّحْمَنِ: لَئِنْ مِتّ لَأُوَرِّثَنَّهَا مِنْك؟ فَقَالَ عَبْدُ الرَّحْمَنِ: لَقَدْ عَلِمْت.

L34409 They said: Does this indicate his agreement with ʿUthmān in that matter? We replied: Not at all! This does not in any way indicate his agreement with ʿUthmān in that. Rather, it contains only what cannot be interpreted

otherwise: “You have known what you informed me of—that it stems from your own opinion.” Thus, all they disputed against any of the Companions - may Allah be pleased with them - regarding that matter became invalid, and praise be to Allah, Lord of the worlds.

قَالُوا: فَدَلَّ ذَلِكَ عَلَى مُوَافَقَتِه لِعُثْمَانَ فِي ذَلِكَ؟ فَقُلْنَا: كَلَّا، مَا دَلَّ ذَلِكَ قَطُّ عَلَى مُوَافَقَتِه لِعُثْمَانَ فِي ذَلِكَ، بَلْ إِنَّمَا فِيهِ مِمَّا لَا يَحْتَمِلُ سِوَاهُ: قَدْ عَلِمْت مَا أَعْلَمَنِي بِهِ أَنَّهُ مِنْ رَأْيِك - فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L34410–34412 Some of them objected to the established narration from Ibn al-Zubayr that an irrevocably divorced woman does not inherit, based on what Sa‘īd ibn ‘Abd al-Barr al-Balansī narrated to us, stating: ‘Abdullāh ibn Abī Zayd al-Mālikī narrated to us – from Ibn ‘Uthmān – from Muḥammad ibn Aḥmad ibn al-Jahm – from Muḥammad ibn Shādhān – from Mu‘allā ibn Manṣūr – from Hushaym – from al-Ḥajjāj ibn Arṭāh – from Ibn Abī Mulaykah – from ‘Abdullāh ibn al-Zubayr, who said: “Ibn ‘Awf divorced his Kalbī wife three times while he was ill. When Ibn ‘Awf died, ‘Uthmān granted her inheritance from him.” Ibn al-Zubayr said: “Had ‘Uthmān not granted her inheritance, I would not recognize any inheritance for a divorced woman.” Abū Muḥammad said: “Al-Ḥajjāj ibn Arṭāh is worthless and rejected. None would oppose the narration of the renowned Imam Ibn Jurayj from Ibn Abī Mulaykah through al-Ḥajjāj’s narration except an ignorant person, or one who flagrantly upholds falsehood and argues with it to subvert the truth. Far is he from attaining that! What such a person accomplishes by this is merely to expose his defect, ignorance, or lack of piety – and we seek refuge in Allah from misguidance. Thus, all their obfuscations in this matter are nullified – and it is confirmed to be pure error –.” And it is established that the woman irrevocably divorced during a terminal illness or the one divorced during it, whom he has not had intercourse with, has no inheritance for them both at all.

وَاعْتَرَضَ بَعْضُهُمْ عَلَى الرِّوَايَةِ الثَّابِتَةِ عَنْ ابْنِ الزُّبَيْرِ: أَنَّهُ لَا تَرِثُ مَبْتُوتَةٌ بِمَا حَدَّثَنَاهُ سَعِيدُ بْنُ عَبْدِ الْبَرِّ الْبَلَنْسِيُّ قَالَ: نا عَبْدُ اللَّهِ بْنُ أَبِي زَيْدٍ الْمَالِكِيُّ نا ابْنُ عُثْمَانَ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ نا مُحَمَّدُ بْنُ شَاذَانَ نا مُعَلَّى بْنُ مَنْصُورٍ نَا هُشَيْمٌ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنْ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ قَالَ: طَلَّقَ ابْنُ عَوْفٍ امْرَأَتَهُ الْكَلْبِيَّةَ - وَهُوَ مَرِيضٌ ثَلَاثًا - فَمَاتَ ابْنُ عَوْفٍ فَوَرَّثَهَا مِنْهُ عُثْمَانُ، قَالَ ابْنُ الزُّبَيْرِ: لَوْلَا أَنَّ عُثْمَانَ وَرَّثَهَا لَمْ أَرَ لِمُطَلَّقَةٍ مِيرَاثًا؟ قَالَ أَبُو مُحَمَّدٍ: الْحَجَّاجُ بْنُ أَرْطَاةَ هَالِكٌ سَاقِطٌ، وَلَا يُعْتَرَضُ بِرِوَايَتِهِ عَلَى رِوَايَةِ الْإِمَامِ الْمَشْهُورِ ابْنِ جُرَيْجٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ إلَّا جَاهِلٌ، أَوْ مُجَاهِرٌ بِالْبَاطِلِ مُجَادِلٌ بِهِ لِيُدْحِضَ بِهِ الْحَقَّ، وَهَيْهَاتَ لَهُ مِنْ ذَلِكَ، وَمَا يَزِيدُ مِنْ فَعَلَ هَذَا عَلَى أَنْ يُبْدِيَ عَنْ عَوَارِهِ وَجَهْلِهِ أَوْ قِلَّةِ وَرَعِهِ - وَنَعُوذُ بِاَللَّهِ مِنْ الضَّلَالِ. فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ فِي هَذِهِ الْمَسْأَلَةِ - وَصَحَّ أَنَّهَا خَطَأٌ مَحْضٌ - وَصَحَّ أَنَّ الْمَبْتُوتَةَ فِي الْمَرَضِ، أَوْ الْمُطَلَّقَةَ فِيهِ، لَمْ يَطَأْهَا لَا مِيرَاثَ لَهُمَا أَصْلًا.

L34413 Similarly, the woman revocably divorced during his illness has no inheritance if he does not take her back until his death—even if he declares openly that he did so solely to prevent her from inheriting from him. There is no sin upon him for this, for he has performed a divorce from what is permissible

وَكَذَلِكَ الْمُطَلَّقَةُ طَلَاقًا رَجْعِيًّا فِي الْمَرَضِ إذَا لَمْ يُرَاجِعْهَا حَتَّى مَاتَ فَلَا مِيرَاثَ لَهَا - وَحَتَّى لَوْ أَقَرَّ عَلَانِيَةً أَنَّهُ إنَّمَا فَعَلَ ذَلِكَ لِئَلَّا تَرِثَهُ، وَلَا حَرَجَ عَلَيْهِ فِي ذَلِكَ، لِأَنَّهُ فَعَلَ مَا

for him, through which Allah the Exalted has severed inheritance between them and abolished the marital bond between them.

أُبِيحَ لَهُ مِنْ الطَّلَاقِ الَّذِي قَطَعَ اللَّهُ تَعَالَى بِهِ الْمُوَارَثَةَ بَيْنَهُمَا، وَقَطَعَ بِهِ حُكْمَ الزَّوْجِيَّةِ بَيْنَهُمَا.

L34414 Similarly, if he divorces while detained for execution—whether rightful or wrongful—or for stoning in adultery, there is no distinction, because no text has ever distinguished between their divorce and that of others.

وَكَذَلِكَ إنْ طَلَّقَ وَهُوَ مَوْقُوفٌ لِلْقَتْلِ فِي حَقٍّ أَوْ بَاطِلٍ أَوْ لِلرَّجْمِ فِي زِنًى، وَلَا فَرْقَ، لِأَنَّهُ لَمْ يَأْتِ نَصٌّ قَطُّ بَيْنَ طَلَاقِ هَؤُلَاءِ وَبَيْنَ غَيْرِهِمْ بِفَرْقٍ.

L34415 It is not permissible to inherit through spousal relationship except a wife or a husband who inherits her under the same conditions she inherits him, without distinction. None inherits through filiation except a son or daughter. None inherits through fatherhood except a father. None inherits through motherhood except a mother—with no difference between any of these relationships.

وَلَا يَجُوزُ أَنْ يَرِثَ بِالزَّوْجِيَّةِ إلَّا زَوْجَةٌ، أَوْ زَوْجٌ تَرِثُهُ حَيْثُ يَرِثُهَا وَلَا فَرْقَ، وَلَا يَرِثُ بِالْبُنُوَّةِ، إلَّا ابْنٌ أَوْ ابْنَةٌ، وَلَا يَرِثُ بِالْأُبُوَّةِ إلَّا أَبٌ، وَلَا يَرِثُ بِالْأُمُومَةِ إلَّا أُمٌّ - وَلَا فَرْقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ.

L34416 The one who differentiates between such matters enables the wrongful seizure of wealth. Whoever is authentically reported to have judged thus among the Companions—may Allah be pleased with them—is rewarded in all circumstances, whether in error or correctness. The concern lies with those who blindly follow some of the matters in which the Companions exercised ijtihad, yet oppose them in other aspects, arbitrarily controlling matters of religion through whims and falsehood—and with Allah alone is success.

وَالْمُفَرِّقُ بَيْنَ ذَلِكَ مُؤْكِلٌ مَالًا بِالْبَاطِلِ، وَمَنْ صَحَّ عَنْهُ أَنَّهُ قَضَى بِذَلِكَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَمَأْجُورٌ بِكُلِّ حَالٍ مِنْ خَطَأٍ أَوْ صَوَابٍ، وَإِنَّمَا الشَّأْنُ فِيمَنْ قَلَّدَ بَعْضَ مَا اجْتَهَدُوا فِيهِ، وَخَالَفَهُمْ فِي بَعْضِهِ تَحَكُّمًا فِي الدِّينِ بِالْهَوَى وَالْبَاطِلِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ طَلَاقُ الْعَبْدِ بِيَدِهِ]

Issue: The slave's right to divorce his wife is in his hand.

L34417

L34418 1973 - Issue: The divorce of a slave is under his own control, not his master's. The divorce of a slave for his wife—whether she is an enslaved or free woman—and the divorce of a free man for his wife—whether she is an enslaved or free woman—all these cases are equivalent. None of the aforementioned women becomes religiously prohibited to the aforementioned divorcer except through three repudiations, whether pronounced together or separately. This cannot be achieved with fewer than three fundamentally.

١٩٧٣ - مَسْأَلَةٌ: وَطَلَاقُ الْعَبْدِ بِيَدِهِ لَا بِيَدِ سَيِّدِهِ، وَطَلَاقُ الْعَبْدِ لِزَوْجَتِهِ الْأَمَةِ أَوْ الْحُرَّةِ، وَطَلَاقُ الْحُرِّ لِزَوْجَتِهِ الْأَمَةِ أَوْ الْحُرَّةِ -: كُلُّ ذَلِكَ سَوَاءٌ، لَا تَحْرُمُ وَاحِدَةٌ مِمَّنْ ذَكَرْنَا عَلَى مُطَلِّقٍ مِمَّنْ ذَكَرْنَا إلَّا بِثَلَاثِ تَطْلِيقَاتٍ مَجْمُوعَةٍ أَوْ مُفَرَّقَةٍ، لَا بِأَقَلَّ أَصْلًا.

L34419 The evidence for that is the statement of Allah, the Almighty and Majestic:

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١]

{When you divorce women, then divorce them during their waiting period} [Surah At-Talaq (The Divorce) 65:1].[19]

وَقَالَ تَعَالَى: {إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ} [الأحزاب: ٤٩]

L34420 And He, the Exalted, said: "When you have contracted marriage with the believing women, then divorce them before consummating the marriage" [Al-Aḥzāb 33:49].[20]

وَقَالَ تَعَالَى: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] فَسَوَّى تَعَالَى بَيْنَ طَلَاقِ كُلِّ نَاكِحٍ مِنْ حُرٍّ أَوْ عَبْدٍ، أَوْ عَرَبِيٍّ أَوْ عَجَمِيٍّ، أَوْ مَرِيضٍ أَوْ صَحِيحٍ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L34421–34423 And He, the Exalted, said: "Marry the unmarried among you, and the righteous among your male slaves and female slaves." [An-Nur: 32] The Exalted has equalized the ruling of divorce for every husband, whether free or enslaved, Arab or non-Arab, sick or healthy: "And your Lord is not forgetful" (Quran 19:64).[21]

وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ أَنَّهُ تَعَالَى لَوْ أَرَادَ أَنْ يُفَرِّقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ لَمَا أَهْمَلَهُ وَلَا أَغْفَلَهُ وَلَا غَشَّنَا بِكِتْمَانِهِ، وَلَبَيَّنَهُ لَنَا عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِذْ لَمْ يَفْعَلْ ذَلِكَ فَوَاللَّهِ مَا أَرَادَ اللَّهُ قَطُّ فَرْقًا بَيْنَ شَيْءٍ مِنْ ذَلِكَ.

L34424 We testify by the testimony of Allah, the Almighty and Majestic, that if He, Exalted, had willed to differentiate between any part of that, He would not have neglected it, overlooked it, or concealed from us by keeping it secret. Rather, He would have clarified it to us through the words of His Messenger (peace and blessings be upon him). Since He did not do so, by Allah, Allah never intended any differentiation between any part of that.

وَبِالْآيَاتِ الَّتِي ذَكَرْنَا صَحَّ أَنَّ الطَّلَاقَ بِيَدِ النَّاكِحِ لَا بِيَدِ سِوَاهُ، فَدَخَلَ فِي ذَلِكَ الْحُرُّ وَالْعَبْدُ دُخُولًا مُسْتَوِيًا بِلَا شَكٍّ.

L34425 By the verses we have mentioned, it is established that divorce is in the hand of the marrying party, not in the hand of another. Thus, the free man and the slave enter into this ruling with equal inclusion, unquestionably.

وَقَدْ وَافَقَنَا الْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ وَالشَّافِعِيُّونَ عَلَى هَذَا.

L34426 Indeed, the Malikis, the Hanafis and the Shafi'is have agreed with us on this.

وَوَافَقَنَا الْحَنَفِيُّونَ عَلَى أَنَّ الْحُرَّةَ لَا تَحْرُمُ عَلَى زَوْجِهَا الْعَبْدِ إِلَّا بِثَلَاثِ تَطْلِيقَاتٍ.

L34427 The Hanafis agreed with us that a free woman is not forbidden to her enslaved husband except after three divorces.

وَوَافَقَنَا الشَّافِعِيُّونَ وَالْمَالِكِيُّونَ عَلَى أَنَّ الْأَمَةَ لَا تَحْرُمُ عَلَى زَوْجِهَا الْحُرِّ إِلَّا بِثَلَاثِ تَطْلِيقَاتٍ - وَخَالَفُونَا فِي الْأَمَةِ تَحْتَ الْعَبْدِ.

L34428 The Shāfiʿīs and Mālikīs agreed with us that a female slave does not become forbidden to her free husband except by three pronouncements of divorce, but disagreed with us concerning a female slave married to a slave.

وَقَوْلُ اللَّهِ تَعَالَى: {فَإِنْ طَلَّقَهَا فَلا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ} [البقرة: ٢٣٠] بَعْدَ قَوْله تَعَالَى: {الطَّلاقُ مَرَّتَانِ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ} [البقرة:

L34429 And the statement of Allah, the Most High: {Then if he divorces her, she

[19] **Qur'an references (L34419):** Qur'an 65:1 (At-Talaq).
[20] **Qur'an references (L34420):** Qur'an 33:49 (Al-Ahzab).
[21] **Qur'an references (L34421):** Qur'an 24:32 (An-Nur); Qur'an 19:64 (Maryam).

is not lawful to him afterward until she marries a husband other than him} [Al-Baqarah: 230], after His statement, the Most High: {Divorce is twice. Then either retain with kindness or release with good treatment} [Al-Baqarah: 229], decisively confirms the correctness of our view and serves as clear evidence that it is undoubtedly the truth, for He, the Most High, did not distinguish in this between a free person and a slave.[22]

٢٢٩] قَاضٍ لِقَوْلِنَا بِالصَّوَابِ، وَشَاهِدٌ بِأَنَّهُ الْحَقُّ قَطْعًا، لِأَنَّهُ تَعَالَى لَمْ يَخُصَّ بِذَلِكَ حُرًّا مِنْ عَبْدٍ.

L34430 In what we have mentioned there is differing opinion. We shall mention—if Allah the Exalted wills—what He has facilitated by His bounty for His remembrance. There is no power nor strength except through Allah, the Most High, the Magnificent. We were narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ that Ibn ʿAbbās would say: "The slave's divorce rests with his master. If he pronounces divorce, it is valid. If he effects a separation, it counts as one divorce when both spouses are entirely his property. If the male slave is his while the female slave belongs to another, the master may likewise divorce her if he so wills." Narrated to us by Muḥammad ibn Saʿīd ibn Nabāt → Aḥmad ibn ʿAbd Allāh ibn ʿAbd al-Baṣīr → Qāsim ibn Aṣbagh → Muḥammad ibn ʿAbd al-Salām al-Khushanī → Muḥammad ibn al-Muthannā → ʿAbd al-Raḥmān ibn Mahdī → Sufyān al-Thawrī → ʿAbd al-Karīm al-Jazarī → ʿAṭāʾ → Ibn ʿAbbās, who said: "Neither the slave's divorce nor his separation has any effect."

وَفِيمَا ذَكَرْنَا خِلَافٌ نَذْكُرُ مِنْهُ - إِنْ شَاءَ اللَّهُ تَعَالَى - مَا يَسَّرَ بِفَضْلِهِ لِذِكْرِهِ - وَلَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ الْعَلِيِّ الْعَظِيمِ: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ أَنَّ ابْنَ عَبَّاسٍ كَانَ يَقُولُ: طَلَاقُ الْعَبْدِ بِيَدِ سَيِّدِهِ إِنْ طَلَّقَ جَازَ، وَإِنْ فَرَّقَ فَهِيَ وَاحِدَةٌ إِذَا كَانَا لَهُ جَمِيعًا، فَإِنْ كَانَ الْعَبْدُ لَهُ وَالْأَمَةُ لِغَيْرِهِ طَلَّقَ السَّيِّدُ أَيْضًا إِنْ شَاءَ. وَحَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ، عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ عَطَاءٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: لَيْسَ طَلَاقُ الْعَبْدِ وَلَا فُرْقَتُهُ بِشَيْءٍ.

L34431–34432 Abū Muḥammad said (here, regarding the free woman and the slave woman): From the chain of ʿAbd al-Razzāq – who narrated from Ibn Jurayj, who narrated from Abū al-Zubayr – that he heard Jābir ibn ʿAbd Allāh state concerning the female slave and the male slave: "Their master may marry them [to others] or divorce them."

قَالَ أَبُو مُحَمَّدٍ، هَاهُنَا عَمَّ الْحُرَّةَ وَالْأَمَةَ -: وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ فِي الْأَمَةِ وَالْعَبْدِ: سَيِّدُهُمَا يَجْمَعُ بَيْنَهُمَا وَيُفَرِّقُ.

L34433 From the narration of ʿAbd al-Razzāq: Ibn Jurayj reported to us, who informed me through ʿAmr ibn Dīnār from Abu al-Shaʿthāʾ that he said: A slave cannot divorce except with his master's permission. If he divorces twice, his master does not ratify it, should he so wish.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ عَنْ أَبِي الشَّعْثَاءِ أَنَّهُ قَالَ: لَا طَلَاقَ لِعَبْدٍ إِلَّا بِإِذْنِ سَيِّدِهِ، فَإِنْ طَلَّقَ اثْنَتَيْنِ لَمْ يُجِزْهُ سَيِّدُهُ إِنْ شَاءَ.

L34434 From the chain of Wakiʿ, from Ismāʿīl ibn Abī Khālid, from al-Shaʿbī, who

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنِ الشَّعْبِيِّ قَالَ: أَهْلُ الْمَدِينَةِ لَا يَرَوْنَ لِلْعَبْدِ طَلَاقًا إِلَّا بِإِذْنِ سَيِّدِهِ - فَهَذَا قَوْلٌ.

[22] **Qur'an references (L34429):** Qur'an 2:230 (Al-Baqarah); Qur'an 2:229 (Al-Baqarah).

said: The people of Medina do not regard a slave's divorce as valid except with his master's permission. This is a position.

L34435 A second opinion—as conveyed to us through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who reported: Hishām ibn ʿUrwah informed me, saying: We asked ʿUrwah—referring to his father—about a man who married his male slave to his female slave. Is it permissible for him to take her away from him without the male slave's consent? He replied: "No. However, in that case, he must purchase him, since he had already married him off."

وَقَوْلٌ ثَانٍ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي هِشَامُ بْنُ عُرْوَةَ قَالَ: سَأَلْنَا عُرْوَةَ - يَعْنِي أَبَاهُ - عَنْ رَجُلٍ أَنْكَحَ عَبْدَهُ أَمَتَهُ، هَلْ يَصْلُحُ لَهُ أَنْ يَنْتَزِعَهَا مِنْهُ بِغَيْرِ طِيبِ نَفْسِ الْعَبْدِ؟ قَالَ: لَا، وَلَكِنْ إِذَا ابْتَاعَهُ وَقَدْ أَنْكَحَهُ.

L34436 A third opinion—as narrated to us through ʿAbd al-Razzāq from Ibn Jurayj, who said to ʿAṭāʾ: "Do I reclaim my slave woman from a slave belonging to other people after marrying her to him?" He answered: "Yes, and I was satisfied with him." I said: "Does he refuse unless he keeps the entire dowry?" He replied: "The dowry is entirely his. If he refuses, reclaim her if you wish, even if you married her to a free man." Then ʿAṭāʾ retracted his earlier opinion and said: "Do not reclaim her from the free man even if you give him the dowry, nor force her to work, nor sell her."

وَقَوْلٌ ثَالِثٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَنَّهُ قَالَ لِعَطَاءٍ: أَنْتَزِعُ أَمَتِي مِنْ عَبْدِ قَوْمٍ آخَرِينَ، وَقَدْ أَنْكَحْتهَا إيَّاهُ؟ قَالَ: نَعَمْ، وَأَرْضِهِ، قُلْت: أَبَى إلَّا صَدَاقَهُ كُلَّهُ؟ قَالَ: هُوَ لَهُ كُلُّهُ، فَإِنْ أَبَى فَانْتَزِعْهَا إنْ شِئْت، وَمِنْ حُرٍّ أَنْكَحْتهَا إيَّاهُ - ثُمَّ رَجَعَ عَطَاءٌ فَقَالَ: لَا تَنْزِعْهَا مِنْ الْحُرِّ، وَإِنْ أَعْطَيْته الصَّدَاقَ، وَلَا تَسْتَخْدِمْهَا وَلَا تَبِعْهَا.

L34437 A fourth opinion—via a broken chain from ʿUmar ibn al-Khaṭṭāb: If a slave marries without his masters' permission, his marriage is forbidden. But if he marries with their permission, the right to divorce lies with the masters who authorize the sexual union.

وَقَوْلٌ رَابِعٌ - مِنْ طَرِيقٍ مُنْقَطِعَةٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ: إذَا نَكَحَ الْعَبْدُ بِغَيْرِ إذْنِ مَوَالِيهِ فَنِكَاحُهُ حَرَامٌ، فَإِنْ نَكَحَ بِإِذْنِ مَوَالِيهِ فَالطَّلَاقُ بِيَدِ مَنْ يَسْتَحِلُّ الْفَرْجَ.

L34438 Through the chain of Mālik, from Nāfiʿ, from Ibn ʿUmar: If a master permits his slave to marry, it is not permissible for the slave's wife to be divorced unless the slave himself divorces her. If the slave refuses to take the female slave of his master's male slave or the female slave of his master's female slave, there is no blame on him.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: إنْ أَذِنَ السَّيِّدُ لِعَبْدِهِ أَنْ يَتَزَوَّجَ فَإِنَّهُ لَا يَجُوزُ لِامْرَأَتِهِ طَلَاقٌ إلَّا أَنْ يُطَلِّقَهَا الْعَبْدُ وَإِنْ أَبَى أَنْ يَأْخُذَ أَمَةَ غُلَامِهِ، أَوْ أَمَةَ وَلِيدَتِهِ فَلَا جُنَاحَ عَلَيْهِ.

L34439 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAmr ibn Dīnār that Abū Maʿbad informed him: A male slave belonging to Ibn ʿAbbās had a wife who was a female slave owned by Ibn ʿAbbās. He divorced her—did he finalize it? Ibn ʿAbbās said: "You have no valid divorce; revoke the divorce," but he refused? ʿAbd al-Razzāq said: Maʿmar narrated to us through Simāk ibn al-Faḍl that when the slave inquired of Ibn ʿUmar, he responded: "Do not return to her, even if he strikes your head."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ دِينَارٍ أَنَّ أَبَا مَعْبَدٍ أَخْبَرَهُ أَنَّ عَبْدًا كَانَ لِابْنِ عَبَّاسٍ وَكَانَتْ لَهُ امْرَأَةٌ جَارِيَةٌ لِابْنِ عَبَّاسٍ، فَطَلَّقَهَا فَبَتَّهَا؟ فَقَالَ ابْنُ عَبَّاسٍ: لَا طَلَاقَ لَك فَارْتَجِعْهَا، فَأَبَى؟ قَالَ عَبْدُ الرَّزَّاقِ: نا مَعْمَرٌ عَنْ سِمَاكِ بْنِ الْفَضْلِ أَنَّ الْعَبْدَ سَأَلَ ابْنَ عُمَرَ؟ فَقَالَ لَهُ: لَا تَرْجِعْ إلَيْهَا، وَإِنْ ضَرَبَ رَأْسَك.

وَصَحَّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ: الطَّلَاقُ بِيَدِ الْعَبْدِ.

L34440 It has been authentically reported from Saʿīd ibn Jubayr: Divorce is the right of the slave.

وَصَحَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ إِذَا أَنْكَحَ السَّيِّدُ عَبْدَهُ فَلَيْسَ لَهُ أَنْ يُفَرِّقَ بَيْنَهُمَا.

L34441 It is authentically reported from Saʿīd ibn al-Musayyib: If a master marries off his male slave, he does not have the right to separate them.

وَصَحَّ عَنْ شُرَيْحٍ، وَالْحَسَنِ، وَإِبْرَاهِيمَ: أَنَّ الطَّلَاقَ بِيَدِ الْعَبْدِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L34442–34443 It is established from Shurayḥ, al-Ḥasan, and Ibrāhīm that divorce is within the authority of the slave—and this is the opinion of Abū Ḥanīfah, Mālik, al-Shāfiʿī, Abī Sulaymān, and their companions.

وَأَمَّا بِكَمْ تَحْرُمُ الْأَمَةُ تَحْتَ الْعَبْدِ مِنْ عَدَدِ الطَّلَاقِ أَوْ الْحُرَّةُ؟ وَبِكَمْ تَحْرُمُ الْأَمَةُ وَالْحُرَّةُ تَحْتَ الْحُرِّ؟ فَرُوِّينَا مِنْ طَرِيقِ إِسْحَاقَ بْنِ أَحْمَدَ نا الْعُقَيْلِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ: السُّنَّةُ بِالنِّسَاءِ - يَعْنِي الطَّلَاقَ وَالْعِدَّةَ - قَالَ هَمَّامٌ: لَا أَشُكُّ فِيهِ وَلَا أَمْتَرِي.

L34444 After how many divorces does a slave woman become irrevocably prohibited when married to a slave man, or a free woman? And after how many divorces do a slave woman and a free woman become prohibited when married to a free man? It was narrated to us via the chain of Isḥāq ibn Aḥmad: Al-ʿUqaylī narrated to us, ʿAbdullāh ibn Aḥmad ibn Ḥanbal narrated to us, my father narrated to us, Muḥammad ibn Jaʿfar Ghundar narrated to us, Hammām ibn Yaḥyā narrated to us from Qatādah from Saʿīd ibn al-Musayyib from ʿAlī ibn Abī Ṭālib that he said: "The Sunnah concerning women"—meaning divorce and the waiting period. Hammām said: "I have no doubt about it, nor do I hesitate."

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ قَتَادَةَ - وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا عَبْدُ الرَّحْمَنِ بْنُ زِيَادٍ عَنْ شُعْبَةَ عَنْ أَشْعَثَ بْنِ سَوَّارٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ عَنْ ابْنِ مَسْعُودٍ قَالَ: السُّنَّةُ بِالنِّسَاءِ الطَّلَاقُ وَالْعِدَّةُ.

L34445 Abū Muḥammad said: This is the opinion of Qatādah. From the chain of Saʿīd ibn Manṣūr: He narrated to us from ʿAbd al-Raḥmān ibn Ziyād, from Shuʿbah, from Ashʿath ibn Sawwār, from al-Shaʿbī, from Masrūq, from Ibn Masʿūd, who said: "The Sunnah regarding women is divorce and the waiting period."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ يَحْيَى، وَغَيْرِ وَاحِدٍ عَنْ عِيسَى عَنْ الشَّعْبِيِّ عَنْ اثْنَيْ عَشَرَ مِنْ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالُوا: الطَّلَاقُ وَالْعِدَّةُ بِالْمَرْأَةِ.

L34446 And through the chain of ʿAbd al-Razzāq from Muḥammad ibn Yaḥyā, and through multiple narrators from ʿĪsā from al-Shaʿbī, from twelve Companions of the Prophet (PBUH) who said: "Divorce and the waiting period pertain to the woman."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَدَاوُد، وَقَتَادَةَ، قَالَ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ، وَقَالَ دَاوُد: عَنْ الشَّعْبِيِّ، وَقَالَ قَتَادَةُ: عَنْ الْحَسَنِ، قَالُوا

L34447 Through the chain of Ḥammād ibn Salamah from Ḥammād ibn Abī Sulaymān, Dāwūd, and Qatādah: Ḥammād ibn Abī Sulaymān narrated from Ibrāhīm, Dāwūd narrated from al-Shaʿbī, and Qatādah narrated from al-Ḥasan. They all said, "A slave divorces a free woman thrice, and she under-

goes an ʿiddah of three menstrual cycles. A free man divorces a slave woman twice, and she undergoes an ʿiddah of two menstrual cycles."

كُلُّهُمْ: الْعَبْدُ يُطَلِّقُ الْحُرَّةَ ثَلَاثًا وَتَعْتَدُّ ثَلَاثَ حِيَضٍ، وَالْحُرُّ يُطَلِّقُ الْأَمَةَ تَطْلِيقَتَيْنِ وَتَعْتَدُّ حَيْضَتَيْنِ.

L34448 Through the chain of al-Ḥajjāj ibn al-Minhāl: Ḥammād ibn Zayd narrated to us from Ayyūb al-Sikhtiyānī from Muḥammad ibn Sīrīn and al-Ḥasan: They both said: "Divorce and the waiting period are incumbent upon women."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ، نَا حَمَّادُ بْنُ زَيْدٍ نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ وَالْحَسَنِ، قَالَا جَمِيعًا: الطَّلَاقُ وَالْعِدَّةُ بِالنِّسَاءِ.

L34449 From the narration of Saʿīd ibn Manṣūr: Sufyān reported from ʿAmr ibn Dīnār from ʿIkrimah, who said: "A male slave divorces a free woman with three pronouncements, and a free man divorces a female slave with two pronouncements." From the narration of Abū Bakr ibn Abī Shaybah: Ibn ʿUlayyah reported from Ayyūb al-Sikhtiyānī from Nāfiʿ, who said: "A female slave is conclusively separated by a free man or a male slave with two pronouncements."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عِكْرِمَةَ قَالَ: يُطَلِّقُ الْمَمْلُوكُ الْحُرَّةَ ثَلَاثًا، وَيُطَلِّقُ الْحُرُّ الْمَمْلُوكَةَ تَطْلِيقَتَيْنِ. وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ قَالَ: تَبِينُ الْأَمَةُ مِنَ الْحُرِّ وَالْعَبْدِ بِتَطْلِيقَتَيْنِ.

L34450–34451 Ayyūb said: It is established according to Ibn ʿAbbās that divorce and the waiting period are rulings pertaining to women.

قَالَ أَيُّوبُ: وَثَبَتَ عِنْدَ ابْنِ عَبَّاسٍ: الطَّلَاقُ وَالْعِدَّةُ بِالنِّسَاءِ.

L34452 From the chain of Ibn Abi Shaybah: Zayd ibn al-Ḥubāb narrated to us via Sayf, from Mujāhid, who said: If a free woman is married to a male slave, her divorce is three, and her waiting period is three menstrual cycles. If a female slave is married to a free man, her divorce is two, and her waiting period is two menstrual cycles.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا زَيْدُ بْنُ الْحُبَابِ عَنْ سَيْفٍ عَنْ مُجَاهِدٍ قَالَ: إِذَا كَانَتِ الْحُرَّةُ تَحْتَ الْعَبْدِ فَطَلَاقُهَا ثَلَاثٌ، وَعِدَّتُهَا ثَلَاثُ حِيَضٍ، وَإِذَا كَانَتِ الْأَمَةُ تَحْتَ الْحُرِّ فَطَلَاقُهَا اثْنَتَانِ، وَعِدَّتُهَا حَيْضَتَانِ.

L34453 And from the chain of al-Ḥajjāj ibn al-Minhāl: Shuʿbah narrated to us from al-Ḥakam ibn ʿUtaybah and al-Aʿmash. Al-Ḥakam said from Ibrāhīm that ʿUbaydah al-Salmanī asked about a man who had a slave woman as his wife, divorced her twice, then purchased her—whether he could resume intercourse with her. He prohibited it. Al-Aʿmash reported from Abū al-Ḍuḥā from Masrūq concerning one who had a slave woman as his wife, divorced her twice, then bought her—he deemed it reprehensible to resume intercourse with her.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ: نا شُعْبَةُ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ، وَالْأَعْمَشِ، قَالَ الْحَكَمُ عَنْ إِبْرَاهِيمَ أَنَّهُ سَأَلَ عَبِيدَةَ السَّلْمَانِيَّ عَمَّنْ كَانَ تَحْتَهُ أَمَةٌ فَطَلَّقَهَا ثِنْتَيْنِ، ثُمَّ اشْتَرَاهَا أَنْ يَأْتِيَهَا؟ فَأَبَى، وَقَالَ الْأَعْمَشُ عَنْ أَبِي الضُّحَى عَنْ مَسْرُوقٍ فِيمَنْ كَانَتْ تَحْتَهُ أَمَةٌ فَطَلَّقَهَا اثْنَتَيْنِ ثُمَّ اشْتَرَاهَا؟ فَكَرِهَ أَنْ يَأْتِيَهَا.

L34454 Sufyan al-Thawri, al-Hasan ibn Hayy, Abu Hanifa, and his companions hold this opinion. They include: Ali (and it is authentically reported from him), Ibn Mas'ud, Ibn Abbas, and twelve of the Companions (may Allah be pleased

وَبِهِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو حَنِيفَةَ، وَأَصْحَابُهُ فَهُمْ: عَلِيٌّ - وَصَحَّ عَنْهُ - وَابْنِ مَسْعُودٍ، وَابْنِ عَبَّاسٍ، وَاثْنَيْ عَشَرَ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا

with them). However, no authentic report exists from any of them, as the chain is either interrupted or reported through Ash'ath ibn Sawwar and Isa al-Hannat - both of whom are weak narrators. It is authentically reported from Qatadah, al-Nakha'i, al-Sha'bi, Masruq, Ubaidah, al-Hasan, Ibn Sirin, Nafi' (the freed slave of Ibn Umar), and Mujahid.

يَصِحُّ عَنْ أَحَدٍ مِنْهُمْ، لِأَنَّهُ إِمَّا مُنْقَطِعٌ، وَإِمَّا عَنْ أَشْعَثَ بْنِ سَوَّارٍ، وَعِيسَى الْخَنَّاطِ - وَكِلَاهُمَا ضَعِيفٌ - وَهُوَ صَحِيحٌ عَنْ قَتَادَةَ وَالنَّخَعِيِّ، وَالشَّعْبِيِّ، وَمَسْرُوقٍ، وَعَبِيدَةَ، وَالْحَسَنِ، وَابْنِ سِيرِينَ، وَنَافِعٍ مَوْلَى ابْنِ عُمَرَ - وَمُجَاهِدٍ.

L34455 A group held a contrary opinion, as narrated to us through the chain of Ibn Wahb from Yunus ibn Yazid from Ibn Shihab: Qabisa ibn Dhu'ayb narrated to me that he heard Zayd ibn Thabit say: If a man is free and his wife is a slave woman, he divorces her three times, and she observes two menstrual cycles. And if he is a male slave and his wife is a free woman, he divorces her twice, and she observes three menstrual cycles.

وَقَالَتْ طَائِفَةٌ - بِخِلَافِ ذَلِكَ - كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنِ ابْنِ شِهَابٍ أَخْبَرَنِي قَبِيصَةُ بْنُ ذُؤَيْبٍ: أَنَّهُ سَمِعَ زَيْدَ بْنَ ثَابِتٍ يَقُولُ: إِنْ كَانَ الرَّجُلُ حُرًّا وَامْرَأَتُهُ أَمَةً طَلَّقَ ثَلَاثَ تَطْلِيقَاتٍ، وَاعْتَدَّتْ حَيْضَتَيْنِ - وَإِنْ كَانَ عَبْدًا وَامْرَأَتُهُ حُرَّةً طَلَّقَ تَطْلِيقَتَيْنِ، وَاعْتَدَّتْ ثَلَاثَ حِيَضٍ.

L34456 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj from Ayyūb al-Sikhtiyānī: Narrated to us by Rajāʾ ibn Ḥaywah from Qabīṣah ibn Dhuʾayb from ʿĀʾishah, the Mother of the Believers: A young man divorced his wife—a free woman—twice, so he asked ʿĀʾishah. She said: "Do not approach her."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ: نا رَجَاءُ بْنُ حَيْوَةَ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّ غُلَامًا طَلَّقَ امْرَأَتَهُ - وَهِيَ حُرَّةٌ - تَطْلِيقَتَيْنِ، فَسَأَلَ عَائِشَةَ؟ فَقَالَتْ: لَا تَقْرَبْهَا.

L34457 From the chain of Abd al-Razzaq, from Maʿmar, from al-Zuhri, from Saʿid ibn al-Musayyab, who said: Uthman ibn Affan ruled regarding a mukatab (a slave who contracted for manumission) who divorced his wife—and she was free—twice, ruling that she is not lawful for him until she marries another man.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: قَضَى عُثْمَانُ بْنُ عَفَّانَ فِي مُكَاتَبٍ طَلَّقَ امْرَأَتَهُ - وَهِيَ حُرَّةٌ - تَطْلِيقَتَيْنِ: أَنَّهَا لَا تَحِلُّ لَهُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ.

L34458 And through the chain of Abd al-Razzaq from Abdullah ibn Ziyad ibn Samʿan al-Ansari: that Abdullah ibn Abd al-Rahman al-Ansari informed him from Nafiʿ from Umm Salamah, the Mother of the Believers, a statement similar to that of Uthman and Zayd.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عَبْدِ اللَّهِ بْنِ زِيَادِ بْنِ سَمْعَانَ: أَنَّ عَبْدَ اللَّهِ بْنَ عَبْدِ الرَّحْمَنِ الْأَنْصَارِيَّ أَخْبَرَهُ عَنْ نَافِعٍ عَنْ أُمِّ سَلَمَةَ - أُمِّ الْمُؤْمِنِينَ - مِثْلُ قَوْلِ عُثْمَانَ، وَزَيْدٍ.

L34459–34460 And through the chain of Ibn Abī Shaybah: Wakīʿ narrated to us from Hishām from Qatādah from ʿIkrimah from Ibn ʿAbbās that he used to say: Divorce is in the hands of men, and the waiting period is incumbent upon women.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ هِشَامٍ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ يَقُولُ: الطَّلَاقُ بِالرِّجَالِ، وَالْعِدَّةُ بِالنِّسَاءِ.

L34461 From the route of Ibn Abi Shaybah: Ali ibn Mushir from Ubayd Allah ibn Umar from Nafi' from Ibn Umar, who said: If a free woman is married to a slave, she is separated from him by two pronouncements, and her waiting period is three menstrual cycles. If a slave woman is married to a free man, she is separated from him by three pronouncements, and her waiting period is two menstrual cycles.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَلِيُّ بْنُ مُسْهِرٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: إِذَا كَانَتْ الْحُرَّةُ تَحْتَ الْعَبْدِ فَقَدْ بَانَتْ مِنْهُ بِتَطْلِيقَتَيْنِ، وَعِدَّتُهَا ثَلَاثُ حِيَضٍ، وَإِذَا كَانَتْ الْأَمَةُ تَحْتَ الْحُرِّ فَقَدْ بَانَتْ مِنْهُ بِثَلَاثٍ، وَعِدَّتُهَا حَيْضَتَانِ.

L34462 Through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from Yaḥyā ibn Saʿīd from Saʿīd ibn al-Musayyab, who said: "Divorce is the prerogative of men, and the observance of the ʿiddah (waiting period) is an obligation upon women."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: الطَّلَاقُ بِالرِّجَالِ، وَالْعِدَّةُ بِالنِّسَاءِ.

L34463 And through the chain of Ibn Abi Shaybah from Waki' from Al-Sha'bi from Makhūl, who said: "Divorce is for men, and the 'iddah is for women."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ الشَّعْبِيِّ عَنْ مَكْحُولٍ قَالَ: الطَّلَاقُ بِالرِّجَالِ، وَالْعِدَّةُ بِالنِّسَاءِ.

L34464 And through the chain of Abd al-Razzaq from Ibn Jurayj from Ata, he said: Divorce is pronounced by men, and the iddah [waiting period] is incumbent upon women.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: الطَّلَاقُ بِالرِّجَالِ، وَالْعِدَّةُ بِالنِّسَاءِ.

L34465 And via Ibn Wahb's chain, men of knowledge reported to me from al-Qāsim ibn Muḥammad, Sālim ibn ʿAbd Allāh, Abū Salama ibn ʿAbd al-Raḥmān, ʿUmar ibn ʿAbd al-ʿAzīz, Yaḥyā ibn Saʿīd, Yazīd ibn Qusayṭ, ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn al-Hadīr, Rabīʿah, Abū al-Zinād, Sulaymān ibn Yasār, Muḥammad ibn ʿAbd al-Raḥmān ibn Thawbān, and ʿAmr ibn Shuʿayb: "Divorce is effected by men, and the waiting period is observed by women."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي رِجَالٌ مِنْ أَهْلِ الْعِلْمِ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَيَحْيَى بْنِ سَعِيدٍ، وَيَزِيدَ بْنِ قُسَيْطٍ، وَعَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ الْهَدِيرِ، وَرَبِيعَةَ، وَأَبِي الزِّنَادِ، وَسُلَيْمَانَ بْنِ يَسَارٍ، وَمُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ، وَعَمْرِو بْنِ شُعَيْبٍ: الطَّلَاقُ بِالرِّجَالِ، وَالْعِدَّةُ بِالنِّسَاءِ.

L34466 It is the opinion of Mālik and al-Shāfiʿī. They are Zayd ibn Thābit, ʿUthmān, Ibn ʿAbbās, and Ibn ʿUmar (with no authentic reports transmitted from others besides them), Saʿīd ibn al-Musayyab, and ʿAṭāʾ. All other [narrations] are disconnected.

وَهُوَ قَوْلُ: مَالِكٍ، وَالشَّافِعِيِّ، فَهُمْ: زَيْدُ بْنُ ثَابِتٍ، وَعُثْمَانُ، وَابْنُ عَبَّاسٍ وَابْنُ عُمَرَ - وَلَا يَصِحُّ عَنْ غَيْرِهِمْ - وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَعَطَاءٌ، وَسَائِرُ ذَلِكَ مُنْقَطِعٌ.

L34467 A group of scholars said: The ruling is specific to slavery—as has been narrated to us via the chain of Ḥammād ibn Salamah from 'Ubayd Allāh ibn 'Umar from Nāfi' from Ibn 'Umar, who said: A free man divorces a female slave twice, and she observes a waiting period of two menstrual cycles. A

slave divorces a free woman twice, and she observes a waiting period of three menstrual cycles.

وَقَالَتْ طَائِفَةٌ: الْحُكْمُ لِلرِّقِّ خَاصَّةً - كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: الْحُرُّ يُطَلِّقُ الْأَمَةَ تَطْلِيقَتَيْنِ وَتَعْتَدُّ حَيْضَتَيْنِ، وَالْعَبْدُ يُطَلِّقُ الْحُرَّةَ تَطْلِيقَتَيْنِ، وَتَعْتَدُّ ثَلَاثَ حِيَضٍ.

L34468 And with it Uthman al-Battī says.

وَبِهِ يَقُولُ عُثْمَانُ الْبَتِّيُّ.

L34469–34471 A group adopted a position akin to our opinion, as narrated to us by Muḥammad ibn Saʿīd ibn Nabāt, narrated to us by Ismāʿīl ibn Isḥāq al-Naṣrī, narrated to us by ʿĪsā ibn Ḥabīb, narrated to us by ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Muḥammad ibn ʿAbd Allāh ibn Yazīd al-Muqrī. My grandfather Muhammad ibn Abdullah narrated to us that Sufyan ibn Uyaynah narrated to him from Amr ibn Dinar from Abu Maʿbad—the freed slave of Ibn Abbas—from Ibn Abbas that a slave of his divorced his wife twice. Ibn Abbas ordered him to take her back, but he refused. So Ibn Abbas said to him: "She is yours; reclaim her by right of ownership." This is the position upheld by Abu Sulayman and all our companions.

وَذَهَبَتْ طَائِفَةٌ - إِلَى مِثْلِ قَوْلِنَا - كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ النَّصْرِيُّ نا عِيسَى بْنُ حَبِيبٍ نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي نا جَدِّي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي مَعْبَدٍ - مَوْلَى ابْنِ عَبَّاسٍ - عَنِ ابْنِ عَبَّاسٍ أَنَّ عَبْدًا لَهُ طَلَّقَ امْرَأَتَهُ طَلْقَتَيْنِ فَأَمَرَهُ ابْنُ عَبَّاسٍ أَنْ يُرَاجِعَهَا فَأَبَى؟ فَقَالَ لَهُ ابْنُ عَبَّاسٍ: هِيَ لَك فَاسْتَحَلَّهَا بِمِلْكِ الْيَمِينِ - وَبِهِ يَأْخُذُ أَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا.

L34472 Abū Muḥammad said: The first group vehemently argued based on what we transmitted through the chain of Abū Dāwūd: Muḥammad ibn Masʿūd → Abū ʿĀṣim → Ibn Jurayj → Muzāhir ibn Aslam → al-Qāsim ibn Muḥammad → ʿĀ'ishah, Mother of the Believers → the Prophet (peace be upon him), who said: "The divorce of a female slave requires two pronouncements, and her waiting period is two menstrual cycles." Abū ʿĀṣim said: Muzāhir narrated it to me from al-Qāsim from ʿĀ'ishah from the Prophet (peace be upon him), except that he [Ibn Jurayj] said: "And her waiting period is two menstrual cycles."

قَالَ أَبُو مُحَمَّدٍ: شَغَبَتْ الطَّائِفَةُ الْأُولَى بِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد: نا مُحَمَّدُ بْنُ مَسْعُودٍ نا أَبُو عَاصِمٍ عَنِ ابْنِ جُرَيْجٍ عَنْ مُظَاهِرِ بْنِ أَسْلَمَ عَنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «طَلَاقُ الْأَمَةِ تَطْلِيقَتَانِ وَقُرْؤُهَا حَيْضَتَانِ» قَالَ أَبُو عَاصِمٍ: حَدَّثَنِي بِهِ مُظَاهِرٌ عَنِ الْقَاسِمِ عَنْ عَائِشَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا أَنَّهُ قَالَ «وَعِدَّتُهَا حَيْضَتَانِ» .

L34473 Narrated by Hammam from Yahya ibn Malik ibn A'idh from Ibn Abi Ghassan from Abu Yahya Zakariyya ibn Yahya al-Saji from Muhammad ibn Isma'il ibn Samurah al-Ahmasi from Umar ibn Shabib al-Musli from Abdullah ibn Isa from Atiyyah from Ibn Umar, who said: The Messenger of Allah (peace be

نا حُمَامٌ نا يَحْيَى بْنُ مَالِكِ بْنِ عَائِذٍ نا ابْنُ أَبِي غَسَّانَ نا أَبُو يَحْيَى زَكَرِيَّا بْنُ يَحْيَى السَّاجِيُّ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ سَمُرَةَ الْأَحْمَسِيُّ نا عُمَرُ بْنُ شَبِيبٍ الْمُسْلِيُّ نا عَبْدُ اللَّهِ بْنُ عِيسَى

upon him) said, “The divorce of a slave woman is twice, and her waiting period is two menstrual cycles.”

عَنْ عَطِيَّةَ عَنْ ابْنِ عُمَرَ قَالَ: " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «طَلَاقُ الْأَمَةِ ثِنْتَانِ، وَعِدَّتُهَا حَيْضَتَانِ» .

L34474 They said: Since we have agreed with the Mālikīs and the Shāfiʿīs that the waiting period of a bondwoman is half that of a free woman, and since divorce is what necessitates the waiting period, it follows that her divorce must be half that of a free woman.

وَقَالُوا: لَمَّا اتَّفَقْنَا مَعَ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ عَلَى أَنَّ عِدَّةَ الْأَمَةِ نِصْفُ عِدَّةِ الْحُرَّةِ، وَكَانَ الطَّلَاقُ هُوَ الْمُوجِبُ لِلْعِدَّةِ وَجَبَ أَنْ يَكُونَ طَلَاقُهَا نِصْفَ طَلَاقِ الْحُرَّةِ.

L34475 They said: And since the prescribed punishment for an adulterous male slave and female slave is half that of a free man and a free woman, whether they committed adultery with a free man, a free woman, a male slave, or a female slave.

قَالُوا: وَلَمَّا كَانَ حَدُّ الْعَبْدِ وَالْأَمَةِ الزَّانِيَيْنِ: نِصْفَ حَدِّ الْحُرِّ وَالْحُرَّةِ - سَوَاءٌ زَنَيَا بِحُرٍّ أَوْ بِحُرَّةٍ، أَوْ بِعَبْدٍ أَوْ أَمَةٍ.

L34476 And since the prescribed punishment for the female slave who commits qadhf—whether against a free man, a male slave, a female slave, or a free woman—is half that of the free woman, it is obligatory that the divorce for her be likewise half. Do we know of any argument for them besides this? Abu Muhammad said: The two narrations are invalid—because one of them is transmitted through Muẓāhir ibn Aslam, who is weak.

وَلَمَّا كَانَ حَدُّ الْأَمَةِ الْقَاذِفَةِ لِلْحُرِّ وَالْعَبْدِ، وَلِلْأَمَةِ وَالْحُرَّةِ: نِصْفَ حَدِّ الْحُرَّةِ وَجَبَ أَنْ يَكُونَ الطَّلَاقُ لَهَا كَذَلِكَ - مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا؟ قَالَ أَبُو مُحَمَّدٍ: الْأَثَرَانِ سَاقِطَانِ -: لِأَنَّ أَحَدَهُمَا - مِنْ طَرِيقِ مُظَاهِرِ بْنِ أَسْلَمَ، وَهُوَ ضَعِيفٌ.

L34477 In the second: ʿUmar ibn Shabīb al-Musliyy and ʿAṭiyyah, both of whom are weak.

وَفِي الثَّانِي - عُمَرُ بْنُ شَبِيبٍ الْمُسْلِيُّ، وَعَطِيَّةُ، وَهُمَا ضَعِيفَانِ.

L34478 Abu ’Asim (from whom he narrated) and Al-Bukhari openly declared [the narrator] weak.

ضَعَّفَ مُظَاهِرًا: أَبُو عَاصِمٍ الَّذِي رَوَى عَنْهُ، وَالْبُخَارِيُّ.

L34479 Atiyyah was deemed weak by: Sufyan al-Thawri and Ahmad ibn Hanbal.

وَضَعَّفَ عَطِيَّةَ: سُفْيَانُ الثَّوْرِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ.

L34480 Ibn Maʿīn and Al-Sājī declared the narrator ʿUmar ibn Shabīb weak—thus, reliance on him is dismissed.

وَضَعَّفَ عُمَرَ بْنَ شَبِيبٍ: ابْنُ مَعِينٍ، وَالسَّاجِيُّ - فَسَقَطَ التَّعَلُّقُ بِهِمَا.

L34481–34482 As for their analogy of divorce to false accusation of adultery, adultery, and the waiting period—why did they not analogize it to what all Muslims have unanimously agreed upon: that the waiting period for a slave woman is determined by the delivery of the child, just as it is for a free woman.

وَأَمَّا قِيَاسُهُمْ الطَّلَاقَ عَلَى الْقَذْفِ، وَالزِّنَا، وَالْعِدَّةِ، فَهَلَّا قَاسُوهُ عَلَى مَا اتَّفَقَ عَلَيْهِ جَمِيعُ أَهْلِ الْإِسْلَامِ مِنْ أَنَّ عِدَّةَ الْأَمَةِ بِوَضْعِ الْحَمْلِ كَعِدَّةِ الْحُرَّةِ.

L34483 That the prescribed punishment for the male slave and female slave in amputation for theft and highway robbery—are all these equal to those of free

مِنْ أَنَّ حَدَّ الْعَبْدِ وَالْأَمَةِ فِي الْقَطْعِ وَفِي السَّرِقَةِ وَفِي الْحِرَابَةِ - كُلُّ ذَلِكَ سَوَاءٌ كَالْحُرِّ وَالْحُرَّةِ؟ لَا سِيَّمَا وَالْحَنَفِيُّونَ يَقُولُونَ: إِنَّ أَجَلَ الْعَبْدِ الْعِنِّينِ مِنْ زَوْجِهِ الْأَمَةِ وَالْحُرَّةِ كَأَجَلِ الْحُرِّ، وَصِيَامَ الْعَبْدِ فِي الظِّهَارِ كَصِيَامِ الْحُرِّ، وَفِي كَفَّارَةِ الْيَمِينِ كَذَلِكَ - فَبَطَلَ هَذَا الْقَوْلُ.

men and women? Especially since the Ḥanafīs assert: The waiting period for the wife of the impotent male slave—whether she is a female slave or free—is equivalent to that of the free man, the slave's fasting in *ẓihār* equals the free man's fasting, and similarly in oath expiations—thus this assertion is invalid.

L34484 ثُمَّ نَظَرْنَا فِيمَا احْتَجَّتْ بِهِ الطَّائِفَةُ الثَّانِيَةُ - فَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ قَالَ: كَتَبَ إِلَيَّ عَبْدُ اللَّهِ بْنُ زِيَادِ بْنِ سَمْعَانَ أَنَّ عَبْدَ اللَّهِ بْنَ عَبْدِ الرَّحْمَنِ الْأَنْصَارِيَّ أَخْبَرَهُ عَنْ نَافِعٍ عَنْ «أُمِّ سَلَمَةَ - أُمِّ الْمُؤْمِنِينَ - أَنَّ غُلَامًا لَهَا طَلَّقَ امْرَأَةً لَهُ حُرَّةً تَطْلِيقَتَيْنِ فَاسْتَفْتَتْ أُمَّ سَلَمَةَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: حَرُمَتْ عَلَيْكَ حَتَّى تَنْكِحَ زَوْجًا غَيْرَكَ» .

Then we examined what the second group cited as evidence and found the narration transmitted to us through the path of ʿAbd al-Razzāq—who informed us—from Ibn Jurayj, who said: ʿAbdullāh ibn Ziyād ibn Samʿān wrote to me that ʿAbdullāh ibn ʿAbd al-Raḥmān al-Anṣārī informed him from Nāfiʿ, from Umm Salamah—the Mother of the Believers—that her male slave pronounced two divorces to his free wife. Umm Salamah sought a verdict from the Prophet (peace and blessings be upon him), and he—peace and blessings be upon him—said: "She is forbidden to you until she marries a husband other than you."

L34485 وَقَالُوا: لَمَّا كَانَ حَدُّ الْعَبْدِ نِصْفَ حَدِّ الْحُرِّ وَجَبَ أَنْ يَكُونَ طَلَاقُهُ نِصْفَ طَلَاقِ الْحُرِّ؟ قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْقِيَاسُ - فَعَارَضَهُ قِيَاسُ الطَّائِفَةِ الْأُولَى، وَكُلُّ ذَلِكَ بَاطِلٌ وَدَعْوَى بِلَا حُجَّةٍ؟

They said: Since the prescribed punishment for a slave is half that of a free man, it necessarily follows that his divorce should be half that of a free man. Abu Muhammad said: As for analogy, it was opposed by the analogy of the first school. All of that is invalid and a claim without evidence.

L34486 وَيُقَالُ لَهُمْ: هَلَّا قِسْتُمْ طَلَاقَ الْعَبْدِ عَلَى مُسَاوَاتِهِ لِلْحُرِّ فِي حَدِّ السَّرِقَةِ وَالْحِرَابَةِ، وَعَلَى مَا أَبَاحَ لَهُ مَالِكٌ مِنْ زَوَاجِ أَرْبَعٍ كَالْحُرِّ، وَعَلَى مَا جَعَلَ الشَّافِعِيُّ أَجَلَهُ فِي الْإِيلَاءِ كَأَجَلِ الْحُرِّ، وَعَلَى صِيَامِهِ فِي الْكَفَّارَاتِ؟ لَا سِيَّمَا وَكُلُّهُمْ مُتَنَاقِضٌ إِذَا احْتَجُّوا - بِزَعْمِهِمْ - لِكَوْنِ طَلَاقِ الْعَبْدِ، أَوِ الْأَمَةِ نِصْفَ طَلَاقِ الْحُرِّ وَالْحُرَّةِ.

It is said to them: Why did you not equate the divorce of a slave to that of a free man in the prescribed punishment for theft and ḥirābah, to what Mālik permitted him regarding marrying four wives as a free man is permitted, to what al-Shāfiʿī established concerning his waiting period in ilā' being equal to that of a free man, and to his fasting in expiations? Especially since they all contradict themselves when they argue - as they claim - that the divorce of a male or female slave is half the divorce of a free man or free woman.

L34487 وَقَدْ أَبْطَلُوا فِي ذَلِكَ، لِأَنَّ طَلَاقَ الْعَبْدِ عِنْدَ إِحْدَى الطَّائِفَتَيْنِ: طَلْقَتَانِ، وَطَلَاقَ الْأَمَةِ عِنْدَ الطَّائِفَةِ الْأُخْرَى: ثَلَاثًا - طَلَاقُ الْحُرِّ وَالْحُرَّةِ.

They nullified that because, according to one of the two groups, a male slave's divorce entails two instances, while the other group holds that a female slave's divorce entails three instances—the divorce of a free man and a free woman.

L34488–34489 We have not found a punishment prescribed for a slave that is two-thirds of

the punishment for a free person. If they argue: “He is unable to perform one and a half divorce pronouncements?” We say: Then disregard what you are unable to perform and make it irrevocable with one divorce pronouncement.

L34490 As for the report—it is utterly corrupt, for Ibn Samʿān is noted for lying, and ʿAbd Allāh ibn ʿAbd al-Raḥmān is unknown—though this rejected report contradicts those two rejected reports. They are mutually conflicting and inherently false; it is impermissible to base any ruling on any of them.

L34491 By Allah, if any of these matters were valid, they would not have preceded us in it, nor to the assertion of it. However, proclaiming falsehood is not lawful, just as opposing the truth is not lawful - and success comes only from Allah, the Most High.

L34492 As for those overcome by slavery, we know of no decisive argument for them except that they combined the juristic analogies of the two factions.

L34493 It will be said to them: “What distinguishes you from those overcome by freedom? Is this anything but a mere claim like any other claim?” If they argue: “Ibn Abbas only ordered his slave to retract the divorce of his enslaved wife after divorcing her twice, because he held that a slave cannot divorce,” we respond: “May Allah protect Ibn Abbas from deception! Rather, Ata reported from him: ’A slave has no capacity for divorce,’ while Abu Ma’bad reported: ’His divorce is permissible.’ Both are trustworthy and reliable narrators. Since there is no definitive text distinguishing between a slave’s divorce and a free man’s divorce, nor between an enslaved woman’s divorce and a free woman’s divorce, it is impermissible to make exceptions to the Quranic ruling - that divorce only becomes irrevocable after three [pronouncements], whether for a free man or a slave, a free woman or an enslaved woman - based on mere claims without evidence. And in Allah the Exalted we seek support.”

L34494–34495 **Khulʿ is a matter: Khulʿ is when the woman dislikes her husband.**

وَمَا وَجَدْنَا حَدًّا يَكُونُ لِلْعَبْدِ ثُلُثَيْ حَدِّ الْحُرِّ؟ فَإِنْ قَالُوا: لَمْ يَقْدِرْ عَلَى طَلْقَةٍ وَنِصْفٍ؟ قُلْنَا: فَأَسْقِطُوا مَا عَجَزْتُمْ عَنْهُ وَحَرِّمُوهَا بِطَلْقَةٍ.

وَأَمَّا الْخَبَرُ - فَفِي غَايَةِ الْفَسَادِ، لِأَنَّ ابْنَ سَمْعَانَ مَذْكُورٌ بِالْكَذِبِ، وَعَبْدَ اللَّهِ بْنَ عَبْدِ الرَّحْمَنِ مَجْهُولٌ - مَعَ أَنَّ هَذَا الْأَثَرَ السَّاقِطَ يُعَارِضُ ذَيْنِك الْأَثَرَيْنِ السَّاقِطَيْنِ، فَهِيَ مُتَدَافِعَةٌ مُتَكَاذِبَةٌ، لَا يَحِلُّ الْقَوْلُ بِشَيْءٍ مِنْهَا.

وَتَاللَّهِ لَوْ صَحَّ شَيْءٌ مِنْهَا لَمَا سَبَقُونَا إلَيْهِ، وَلَا إلَى الْقَوْلِ بِهِ، وَلَكِنَّ الْقَوْلَ بِالْبَاطِلِ لَا يَحِلُّ، كَمَا لَا تَحِلُّ مُخَالَفَةُ الْحَقِّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا مَنْ غَلَبَ عَلَيْهِ الرِّقُّ فَمَا نَعْلَمُ لَهُمْ حُجَّةً إلَّا أَنْ جَمَعُوا قِيَاسَ الطَّائِفَتَيْنِ.

فَيُقَالُ لَهُمْ: مَا الْفَرْقُ بَيْنَكُمْ وَبَيْنَ مَنْ غَلَبَ الْحُرِّيَّةُ، وَهَلْ هِيَ إلَّا دَعْوَى كَدَعْوَى؟ فَإِنْ قِيلَ: إنَّ ابْنَ عَبَّاسٍ إنَّمَا أَمَرَ غُلَامَهُ أَنْ يُرَاجِعَ زَوْجَتَهُ الْأَمَةَ بَعْدَ أَنْ طَلَّقَهَا طَلْقَتَيْنِ، لِأَنَّهُ لَا يَرَى طَلَاقَ الْعَبْدِ شَيْئًا؟ قُلْنَا: قَدْ أَعَاذَ اللَّهُ ابْنَ عَبَّاسٍ مِنْ التَّدْلِيسِ، بَلْ رَوَى عَنْهُ عَطَاءٌ: لَا طَلَاقَ لِلْعَبْدِ - وَقَدْ رَوَى عَنْهُ أَبُو مَعْبَدٍ: أَنَّ طَلَاقَهُ جَائِزٌ، وَكِلَاهُمَا ثِقَةٌ مَأْمُونٌ، فَإِذْ لَا نَصَّ فِي الْفَرْقِ بَيْنَ طَلَاقِ الْعَبْدِ، وَطَلَاقِ الْحُرِّ، وَلَا بَيْنَ طَلَاقِ الْأَمَةِ، وَطَلَاقِ الْحُرَّةِ: فَلَا يَحِلُّ تَخْصِيصُ الْقُرْآنِ فِي أَنَّ الطَّلَاقَ لَا يَحْرُمُ إلَّا بِثَلَاثٍ - فِي حُرٍّ أَوْ عَبْدٍ، أَوْ حُرَّةٍ أَوْ أَمَةٍ -: بِالدَّعْوَى بِلَا بُرْهَانٍ وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

[الْخُلْعُ] [مَسْأَلَةٌ الْخُلْعُ إذَا كَرِهَتْ الْمَرْأَةُ زَوْجَهَا]

- مَسْأَلَةٌ: الْخُلْعُ، وَهُوَ: الِافْتِدَاءُ إِذَا كَرِهَتْ الْمَرْأَةُ زَوْجَهَا، فَخَافَتْ أَنْ لَا تُوفِيَهُ حَقَّهُ، أَوْ خَافَتْ أَنْ يُبْغِضَهَا فَلَا يُوفِيهَا حَقَّهَا، فَلَهَا أَنْ تَفْتَدِيَ مِنْهُ وَيُطَلِّقَهَا، إنْ رَضِيَ هُوَ؟ وَإِلَّا لَمْ يُجْبَرْ هُوَ؟ وَلَا أُجْبِرَتْ هِيَ؟ إنَّمَا يَجُوزُ بِتَرَاضِيهِمَا.

L34496 Issue: Khul‘—which refers to redemption (iftidā’)—occurs when a woman dislikes her husband and fears she cannot fulfill his rights or that he may grow averse to her and neglect her rights. In such a case, she may redeem herself from him by offering compensation, and he divorces her if he consents. Otherwise, he is not compelled, nor is she compelled. It is only valid through their mutual consent.

وَلَا يَحِلُّ الِافْتِدَاءُ إلَّا بِأَحَدِ الْوَجْهَيْنِ الْمَذْكُورَيْنِ، أَوْ بِاجْتِمَاعِهِمَا، فَإِنْ وَقَعَ بِغَيْرِهِمَا فَهُوَ بَاطِلٌ، وَيَرُدُّ عَلَيْهَا مَا أَخَذَ مِنْهَا، وَهِيَ امْرَأَتُهُ كَمَا كَانَتْ، وَيَبْطُلُ طَلَاقُهُ وَيُمْنَعُ مِنْ ظُلْمِهَا فَقَطْ.

L34497 It is impermissible to seek release via khulʿ except through one of the two aforementioned conditions or their combination. If it is effected by any means other than these two, it is invalid. He must return the dowry he received from her, and she retains her status as his wife. The divorce is invalidated, and he is only barred from unjustly harming her.

وَلَهَا أَنْ تَفْتَدِيَ بِجَمِيعِ مَا تَمْلِكُ، وَهُوَ طَلَاقٌ رَجْعِيٌّ، إلَّا أَنْ يُطَلِّقَهَا ثَلَاثًا، أَوْ آخِرَ ثَلَاثٍ، أَوْ تَكُونَ غَيْرَ مَوْطُوءَةٍ.

L34498 She may ransom herself with all that she possesses, and it is a revocable divorce unless he pronounces three simultaneous divorces, issues the final divorce in a sequence, or she is unconsummated.

فَإِنْ رَاجَعَهَا فِي الْعِدَّةِ جَازَ ذَلِكَ أَحَبَّتْ أَمْ كَرِهَتْ - وَيَرُدُّ مَا أَخَذَ مِنْهَا إلَيْهَا.

L34499 If he takes her back during the ʿiddah, this is permissible whether she is willing or unwilling, and he must return what he took from her to her.

L34500 It is permissible to offer ransom through a limited service, but not with unknown wealth. Rather, it is permissible with wealth that is known, limited, visible, specified, or described.

وَيَجُوزُ الْفِدَاءُ بِخِدْمَةٍ مَحْدُودَةٍ، وَلَا يَجُوزُ بِمَالٍ مَجْهُولٍ، لَكِنْ بِمَعْرُوفٍ مَحْدُودٍ، مَرْئِيٍّ، مَعْلُومٍ، أَوْ مَوْصُوفٍ.

L34501–34502 "Abu Muḥammad said: 'People have differed regarding khul'? A group did not permit it, while those who permitted it differed? Another group stated: "It is not permissible except with the permission of the ruler."'"

قَالَ أَبُو مُحَمَّد: وَاخْتَلَفَ النَّاسُ فِي الْخُلْعِ؟ فَلَمْ تُجِزْهُ طَائِفَةٌ، وَاخْتَلَفَ الَّذِينَ أَجَازُوهُ؟ فَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ إِلَّا بِإِذْنِ السُّلْطَانِ.

L34503 One school said: It constitutes a divorce; another said it does not.

وَقَالَتْ طَائِفَةٌ: هُوَ طَلَاقٌ - وَقَالَتْ طَائِفَةٌ: لَيْسَ طَلَاقًا.

L34504 Then those who held that it was a divorce differed: one group said, "It is revocable, as we have stated?" and another group said, "It is irrevocable."

ثُمَّ اخْتَلَفَ الْقَائِلُونَ: إِنَّهُ طَلَاقٌ -: فَقَالَتْ طَائِفَةٌ: هُوَ رَجْعِيٌّ كَمَا قُلْنَا؟ وَقَالَتْ طَائِفَةٌ: هُوَ بَائِنٌ.

L34505 A group maintained: It is permissible only with the dower he has specified for her, not exceeding it.

وَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ إِلَّا بِمَا أَصْدَقَهَا، لَا بِأَكْثَرَ.

L34506 A group among them said: If he takes more, we would love that he give it as charity.

وَقَالَتْ طَائِفَةٌ مِنْهُمْ: فَإِنْ أَخَذَ أَكْثَرَ أَحْبَبْنَا لَهُ أَنْ يَتَصَدَّقَ بِهِ.

L34507 And a group said: It is permissible with all that you own.

وَقَالَتْ طَائِفَةٌ: يَجُوزُ بِكُلِّ مَا تَمْلِكُ.

L34508 A group of scholars holds that khul' is permissible only when there is fear of his ill-conduct (nushūz) or aversion, or if she cannot uphold the limits set by God, the Exalted, while living with him.

وَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ الْخُلْعُ إِلَّا مَعَ خَوْفِ نُشُوزِهِ وَإِعْرَاضِهِ، أَوْ أَنْ لَا تُقِيمَ مَعَهُ حُدُودَ اللَّهِ تَعَالَى.

L34509 A group held that khul' is not permissible unless he finds a man on her abdomen.

وَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ الْخُلْعُ إِلَّا بِأَنْ يَجِدَ عَلَى بَطْنِهَا رَجُلًا.

L34510 A group said: Khul' is not permissible unless she declares, "I will not fulfill any of your marital obligations, nor perform the ritual bath required after janabah (major impurity) caused by intercourse with you."

وَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ الْخُلْعُ إِلَّا بِأَنْ تَقُولَ: لَا أُطِيعُ لَك أَمْرًا، وَلَا أَغْتَسِلُ لَك مِنْ جَنَابَةٍ.

L34511 Scholars differed concerning the defective khul': A group maintained that it is to be carried out and finalized.

وَاخْتَلَفُوا فِي الْخُلْعِ الْفَاسِدِ -: فَقَالَتْ طَائِفَةٌ: يُنَفَّذُ وَيَتِمُّ.

L34512 A faction of scholars said: [The ruling] is rejected and annulled—

وَقَالَتْ طَائِفَةٌ: يُرَدُّ وَيُفْسَخُ -:

فَأَمَّا مَنْ قَالَ: لَا يَجُوزُ الْخُلْعُ - فَكَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا عُقْبَةُ بْنُ أَبِي الصَّهْبَاءِ قَالَ سَأَلْت بَكْرَ بْنَ عَبْدِ اللَّهِ الْمُزَنِيّ عَنْ الْخُلْعِ؟ قَالَ: لَا يَحِلُّ لَهُ أَنْ يَأْخُذَ مِنْهَا؟ قُلْت: فَقَوْلُ اللَّهِ عَزَّ وَجَلَّ فِي كِتَابِهِ {فَلا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ} [البقرة: ٢٢٩] قَالَ: نُسِخَتْ هَذِهِ، وَذَكَرَ أَنَّ النَّاسِخَ لَهَا قَوْله تَعَالَى: {وَإِنْ أَرَدْتُمُ اسْتِبْدَالَ زَوْجٍ مَكَانَ زَوْجٍ وَآتَيْتُمْ إِحْدَاهُنَّ قِنْطَارًا فَلا تَأْخُذُوا مِنْهُ شَيْئًا أَتَأْخُذُونَهُ بُهْتَانًا وَإِثْمًا مُبِينًا} [النساء: ٢٠] {وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَى بَعْضُكُمْ إِلَى بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا} [النساء: ٢١]

L34513 As for those who say that khulʿ is not permissible—as narrated via Al-Ḥajjāj ibn Al-Minhāl—ʿUqbah ibn Abī Aṣ-Ṣahbāʾ reported: “I asked Bakr ibn ʿAbdillāh Al-Muzannī about khulʿ. He said: ‘It is not lawful for him to take anything from her.’ I said: ‘What about Allah’s statement in His Book: {There is no blame on them concerning what she gives up to redeem herself} [2:229]?’ He replied: ‘This verse has been abrogated.’ He then mentioned that its abrogator is His saying: {If you wish to replace one wife with another and you have given one of them a qinṭār, do not take anything back from it. Would you take it through slander and manifest sin?} [4:20] and {How could you take it when you have been intimate with each other, and they have taken from you a solemn covenant?} [4:21].”[1]

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ مَنْ ذَهَبَ إلَى هَذَا -: بِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إسْحَاقَ بْنِ السُّلَيْمِ نَا ابْنُ الْأَعْرَابِيِّ نا مُحَمَّدُ بْنُ إسْمَاعِيلَ الصَّائِغُ نا عَفَّانُ بْنُ مُسْلِمٍ نا حَمَّادٌ نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي أَسْمَاءَ الرَّحَبِيِّ عَنْ ثَوْبَانَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَيُّمَا امْرَأَةٍ سَأَلَتْ زَوْجَهَا الطَّلَاقَ مِنْ غَيْرِ مَا بَأْسٍ فَحَرَامٌ عَلَيْهَا رَائِحَةُ الْجَنَّةِ» .

L34514–34516 Abū Muḥammad said: Those who held this opinion cited as evidence the narration transmitted to us by ʿAbdullāh ibn Rabīʿ from Muḥammad ibn Isḥāq ibn as-Sulaym from Ibn al-Aʿrābī from Muḥammad ibn Ismāʿīl aṣ-Ṣāʾigh from ʿAffān ibn Muslim from Ḥammād from Ayyūb as-Sikhtiyānī from Abū Qilābah from Abū Asmāʾ ar-Raḥabī from Thawbān, who said: The Messenger of Allah (peace and blessings be upon him) said: “Any woman who seeks divorce from her husband without a valid reason will be deprived of the fragrance of Paradise.”

وَبِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نَا إِسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - نا الْمَخْزُومِيُّ - هُوَ الْمُغِيرَةُ بْنُ سَلَمَةَ - نا وُهَيْبٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ الْحَسَنِ الْبَصْرِيِّ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «الْمُنْتَزِعَاتُ وَالْمُخْتَلِعَاتُ هُنَّ الْمُنَافِقَاتُ» . قَالَ الْحَسَنُ: لَمْ أَسْمَعْهُ مِنْ أَبِي هُرَيْرَةَ.

L34517 And as reported to us through the chain of transmission: Ahmad ibn Shuʿayb → Isḥāq ibn Ibrāhīm (Ibn Rāhawayh) → Al-Makhzūmī (Al-Mughīrah ibn Salamah) → Wuhaib → Ayyūb al-Sakhtiyānī → al-Ḥasan al-Baṣrī → Abū Hurayrah → the Prophet (peace be upon him), who said: “Women who abandon marriage and women who initiate khulʿ are the female hypocrites.” Al-Ḥasan said: “I did not hear this from Abū Hurayrah.”

قَالَ أَبُو مُحَمَّدٍ: فَسَقَطَ بِقَوْلِ الْحَسَنِ أَنْ نَحْتَجَّ بِذَلِكَ الْخَبَرِ.

L34518 Abu Muhammad said: By Al-Hasan’s statement, the citation of that narration as evidence is thereby invalidated.

[1] **Qur’an references (L34513):** Qur’an 2:229 (Al-Baqarah); Qur’an 4:20 (An-Nisa); Qur’an 4:21 (An-Nisa).

L34519 As for the first narration, it contains no valid argument for prohibiting khul‘, as it merely conveys a warning to the woman who seeks divorce without a valid reason. Thus we maintain—there is no greater valid reason than fearing that the husband does not uphold Allah’s limits concerning the wife.

وَأَمَّا الْخَبَرُ الْأَوَّلُ - فَلَا حُجَّةَ فِيهِ فِي الْمَنْعِ مِنْ الْخُلْعِ، لِأَنَّهُ إنَّمَا فِيهِ الْوَعِيدُ عَلَى السَّائِلَةِ الطَّلَاقَ مِنْ غَيْرِ بَأْسٍ - وَهَكَذَا نَقُولُ وَلَيْسَ فِي الْبَأْسِ أَعْظَمُ مِنْ أَنْ يُخَافَ أَلَّا يُقِيمَ حُدُودَ اللَّهِ فِي الزَّوْجَةِ.

L34520 As for the two verses, they are not contradictory. Rather, the verse cited by Bakr establishes the prohibition of taking anything from her dowry as a clear sin and slanderous act—this is beyond doubt—and neither verse contains any prohibition against *khul‘* whatsoever.

وَأَمَّا الْآيَتَانِ فَلَيْسَتَا بِمُتَعَارِضَتَيْنِ، إنَّمَا فِي الَّتِي نَزَعَ بِهَا " بَكْرٌ " تَحْرِيمُ أَخْذِ شَيْءٍ مِنْ صَدَاقِهَا إثْمًا مُبِينًا وَبُهْتَانًا - وَهَذَا لَا شَكَّ فِيهِ - وَلَيْسَ فِيهِمَا نَهْيٌ عَنْ الْخُلْعِ أَصْلًا.

L34521 And He, the Exalted, said: “If they willingly relinquish a portion of it with contentment, then partake of it freely and wholesomely.” (An-Nisāʾ 4:4)[2]

وَقَالَ تَعَالَى: {فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا} [النساء: ٤]

L34522 And in the other verse: The ruling of khul‘ with her voluntary consent entails neither sin nor transgression. When such is the case, it is impermissible to claim it contains an abrogating verse or an abrogated verse except through a scriptural text. Rather, the obligation is to uphold both verses without abandoning one for the other - and we are capable of implementing both - by exempting one from the other.

وَفِي الْآيَةِ الْأُخْرَى: حُكْمُ الْخُلْعِ بِطِيبِ النَّفْسِ مِنْهَا فَلَيْسَ إثْمًا وَلَا عُدْوَانًا، وَمَا كَانَ هَكَذَا فَلَا يَحِلُّ أَنْ يُقَالَ: فِيهِ نَاسِخٌ أَوْ مَنْسُوخٌ إلَّا بِنَصٍّ، بَلْ الْفَرْضُ الْأَخْذُ بِكِلَا الْآيَتَيْنِ لَا تَرْكُ إحْدَاهُمَا لِلْأُخْرَى - وَنَحْنُ قَادِرُونَ عَلَى الْعَمَلِ بِهِمَا - بِأَنْ نَسْتَثْنِيَ إحْدَاهُمَا مِنْ الْأُخْرَى.

L34523 Abu Muhammad said: Allah, the Exalted and Majestic, declared: “If a woman fears ill-treatment or aversion from her husband, there is no sin upon them if they seek to reconcile between them with a settlement; and reconciliation is best.” [Surah An-Nisāʾ 4:128][3]

قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَإِنِ امْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ} [النساء: ١٢٨]

L34524 And He, the Exalted, said: {If you fear that the two will not uphold the limits of Allah, then there is no blame on them concerning what she offers as ransom} [Al-Baqarah: 229]. These two verses are decisive over all matters pertaining to khul‘.[4]

وَقَالَ تَعَالَى: {فَإِنْ خِفْتُمْ أَلا يُقِيمَا حُدُودَ اللَّهِ فَلا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ} [البقرة: ٢٢٩] فَهَاتَانِ الْآيَتَانِ قَاضِيَتَانِ عَلَى كُلِّ مَا فِي الْخُلْعِ.

L34525–34526 As for the one who prevents *khul‘* without the Sultan’s permission, it has been narrated to us through the chain of Waki‘ from Yazīd ibn Ibrāhīm

وَأَمَّا مَنْ مَنَعَ مِنْهُ بِغَيْرِ إذْنِ السُّلْطَانِ - فَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ يَزِيدَ بْنِ إبْرَاهِيمَ التُّسْتَرِيِّ، وَرَبِيعٍ - هُوَ ابْنُ صُبَيْحٍ - كِلَاهُمَا عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: لَا يَكُونُ خُلْعٌ إلَّا عِنْدَ السُّلْطَانِ.

[2] **Qur’an references (L34521):** Qur’an 4:4 (An-Nisa).
[3] **Qur’an references (L34523):** Qur’an 4:128 (An-Nisa).
[4] **Qur’an references (L34524):** Qur’an 2:229 (Al-Baqarah).

al-Tustarī and Rabīʿ [Ibn Ṣubayḥ], both transmitting from al-Ḥasan al-Baṣrī, who said: “There is no *khulʿ* except with the Sultan.”

L34527 Via the narration of Al-Ḥajjāj ibn al-Minhāl: Ḥammād ibn Zayd narrated to us from Yaḥyā (who is Ibn ʿAtīq) that he heard Muḥammad ibn Sīrīn say: They [the scholars] used to say: *Khulʿ* is not valid except before the Sultan.

L34528 From the narration of Ḥammād ibn Salamah, from Ayyūb al-Sikhtiyānī, from Saʿīd ibn Jubayr, who said: Khulʿ cannot be valid unless he admonishes her. If she heeds, [well]; otherwise, he strikes her. If she does not heed, they refer the matter to the ruler. The ruler then appoints an arbitrator from her family and an arbitrator from his family. Each arbitrator conveys to the ruler what he hears from the spouse they represent. If the ruler deems separation appropriate, he separates them; if he deems reconciliation appropriate, he reconciles them.

L34529 Abu Muhammad said: And all of this is no proof for its validation.

L34530 He, the Exalted, said: *Say, “Bring forth your proof if you are truthful”* (al-Baqarah 2:111).[5]

L34531 As for those who said that *khulʿ* is not a divorce, they argued based on what Muḥammad ibn Saʿīd ibn Nabāt narrated to us, Ibn Mufarrij narrated to us, ʿAbdullāh ibn Jaʿfar ibn al-Ward narrated to us, Yaḥyā ibn Ayyūb ibn Bādī al-ʿAllāf narrated to us, Yaḥyā ibn Bukayr narrated to us, al-Layth ibn Saʿd narrated from Nāfiʿ, the freed slave of Ibn ʿUmar, that he heard Rubayyiʿ bint Muʿawwidh ibn ʿAfrāʾ informing ʿAbdullāh ibn ʿUmar: She sought *khulʿ* from her husband during the reign of ʿUthmān ibn ʿAffān. Her uncle came to ʿUthmān and said, “The daughter of Muʿawwidh sought *khulʿ* from her husband today. Should we proceed?” ʿUthmān replied, “We must indeed proceed. She has no right to inheritance from him, nor is any waiting period required of her, except that she may not be wed until she menstruates once—for fear that she might be pregnant.” So ʿAbdullāh ibn ʿUmar said, “‘Uthmān informed us and was the most knowledgeable among us.”

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا حَمَّادُ بْنُ زَيْدٍ نا يَحْيَى - هُوَ ابْنُ عَتِيقٍ - أَنَّهُ سَمِعَ مُحَمَّدَ بْنَ سِيرِينَ يَقُولُ: كَانُوا يَقُولُونَ: لَا يَجُوزُ الْخُلْعُ إِلَّا عِنْدَ السُّلْطَانِ.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: لَا يَكُونُ الْخُلْعُ إِلَّا حَتَّى يَعِظَهَا، فَإِنْ اتَّعَظَتْ وَإِلَّا ضَرَبَهَا، فَإِنْ اتَّعَظَتْ وَإِلَّا ارْتَفَعَا إِلَى السُّلْطَانِ، فَيَبْعَثُ حَكَمًا مِنْ أَهْلِهَا وَحَكَمًا مِنْ أَهْلِهِ يَرْفَعُ كُلُّ وَاحِدٍ مِنْهُمَا إِلَى السُّلْطَانِ مَا يَسْمَعُ مِنْ صَاحِبِهِ، فَإِنْ رَأَى أَنْ يُفَرِّقَ فَرَّقَ، وَإِنْ رَأَى أَنْ يَجْمَعَ جَمَعَ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كُلُّهُ لَا حُجَّةَ عَلَى تَصْحِيحِهِ.

قَالَ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١]

وَأَمَّا مَنْ قَالَ الْخُلْعُ لَيْسَ طَلَاقًا، فَاحْتَجَّ بِمَا - نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا ابْنُ مُفَرِّجٍ نا عَبْدُ اللَّهِ بْنُ جَعْفَرِ بْنِ الْوَرْدِ نا يَحْيَى بْنُ أَيُّوبَ بْنِ بَادِي الْعَلَّافُ نا يَحْيَى بْنُ بُكَيْرٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ أَنَّهُ سَمِعَ رُبَيِّعَ ابْنَةَ مُعَوِّذِ ابْنِ عَفْرَاءَ وَهِيَ تُخْبِرُ عَبْدَ اللَّهِ بْنَ عُمَرَ: أَنَّهَا اخْتَلَعَتْ مِنْ زَوْجِهَا عَلَى عَهْدِ عُثْمَانَ بْنِ عَفَّانَ، فَجَاءَ عَمُّهَا إِلَى عُثْمَانَ فَقَالَ: إِنَّ ابْنَةَ مُعَوِّذٍ اخْتَلَعَتْ مِنْ زَوْجِهَا الْيَوْمَ أَفَنَنْتَقِلُ؟ فَقَالَ عُثْمَانُ: لَنَنْتَقِلُ وَلَا مِيرَاثَ بَيْنَهُمَا لَهَا، وَلَا عِدَّةَ عَلَيْهَا، إِلَّا أَنَّهَا لَا تُنْكَحُ حَتَّى تَحِيضَ حَيْضَةً - خَشْيَةَ أَنْ يَكُونَ بِهَا حَمْلٌ؟ فَقَالَ عَبْدُ اللَّهِ بْنُ عُمَرَ: فَعُثْمَانُ أَخْبَرُنَا وَأَعْلَمُنَا.

[5] **Qur’an references (L34530):** Qur’an 2:111 (Al-Baqarah); Qur’an 27:64 (An-Naml).

فَهَذَا عُثْمَانُ، وَالرُّبَيِّعُ - وَلَهَا صُحْبَةٌ - وَعَمُّهَا - وَهُوَ مِنْ كِبَارِ الصَّحَابَةِ - وَابْنُ عُمَرَ، كُلُّهُمْ لَا يَرَى فِي الْفَسْخِ عِدَّةً.

L34532 Uthman; al-Rubayyiʿ—a Companion—; her uncle—who was among the senior Companions—; and Ibn ʿUmar—all of them do not consider a waiting period necessary in the case of annulment.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ نا يَحْيَى بْنُ سَعِيدٍ هُوَ الْقَطَّانُ عَنْ سُفْيَانَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: الْخُلْعُ: تَفْرِيقٌ، وَلَيْسَ بِطَلَاقٍ.

L34533–34534 From the chain of Aḥmad ibn Ḥanbal: He narrated to us from Yaḥyā ibn Saʿīd—he is al-Qaṭṭān—from Sufyān, from ʿAmr ibn Dīnār, from Ṭāwūs, from Ibn ʿAbbās, who said: "Khulʿ: a separation, it is not a divorce."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ أَنَّهُ سَأَلَهُ إِبْرَاهِيمُ بْنُ سَعْدٍ عَنْ رَجُلٍ طَلَّقَ امْرَأَتَهُ تَطْلِيقَتَيْنِ، ثُمَّ اخْتَلَعَتْ مِنْهُ، أَيَنْكِحُهَا؟ قَالَ ابْنُ عَبَّاسٍ: نَعَمْ، ذَكَرَ اللَّهُ الطَّلَاقَ فِي أَوَّلِ الْآيَةِ وَفِي آخِرِهَا، وَالْخُلْعُ بَيْنَ ذَلِكَ.

L34535 And from the chain of ʿAbd al-Razzāq, from Sufyān ibn ʿUyaynah, from ʿAmr ibn Dīnār, from Ṭāwūs: Ibrāhīm ibn Saʿd asked him about a man who divorced his wife twice, then she sought khulʿ from him: "Can he remarry her?" Ṭāwūs said: "Ibn ʿAbbās said: Yes. Allāh mentioned divorce at the beginning of the verse and at its end, and khulʿ comes between them."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنِ ابْنِ طَاوُسٍ قَالَ: كَانَ أَبِي لَا يَرَى الْفِدَاءَ طَلَاقًا وَيُجِيزُهُ بَيْنَهُمَا - وَقَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ أَنَّهُ سَمِعَ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ يَقُولُ: مَا أَجَازَهُ الْمَرْءُ فَلَيْسَ بِطَلَاقٍ.

L34536 Through the narration of Abd al-Razzaq, from Ibn Jurayj, from Ibn Tawus, who said: "My father did not consider redemption as divorce, yet permitted it between the two spouses." Ibn Jurayj stated: "Amr ibn Dinar informed me that he heard Ikrimah, the freed servant of Ibn Abbas, declare: 'What a person permits is not considered divorce.'"

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ قَالَ: رَأَيْت أَبِي كَأَنَّهُ يَذْهَبُ إِلَى قَوْلِ ابْنِ عَبَّاسٍ: أَنَّ الْخُلْعَ لَيْسَ طَلَاقًا - وَهُوَ قَوْلُ إِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ وَأَصْحَابِهِ.

L34537 We have been narrated through the chain of ʿAbdullāh ibn Aḥmad ibn Ḥanbal, who said: "I observed my father as if he inclined toward the opinion of Ibn ʿAbbās—that khulʿ is not a divorce—and this is the position of Isḥāq ibn Rāhawayh, Abū Thawr, Abū Sulaymān, and his companions."

وَأَمَّا مَنْ قَالَ: إِنَّهَا تَطْلِيقَةٌ - فَكَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ جُمْهَانَ أَنَّ أُمَّ بَكْرَةَ الْأَسْلَمِيَّةَ كَانَتْ تَحْتَ عَبْدِ اللَّهِ بْنِ أُسَيْدَ فَاخْتَلَعَتْ مِنْهُ، فَنَدِمَا فَارْتَفَعَا إِلَى عُثْمَانَ بْنِ عَفَّانَ؟ فَأَجَازَ ذَلِكَ - وَقَالَ: هِيَ وَاحِدَةٌ إِلَّا أَنْ تَكُونَ سَمَّيْت شَيْئًا، فَهُوَ عَلَى مَا سَمَّيْت.

L34538 As for those who said it counts as one divorce, it is as narrated to us through the chain of Ḥammād ibn Salamah from Hishām ibn ʿUrwah from his father from Jumhān: Umm Bakrah al-Aslamiyyah was married to ʿAbdullāh ibn Usayd, and she sought a *khulʿ* from him. They both regretted it and brought the case to ʿUthmān ibn ʿAffān. He upheld it, stating: "This counts as one irrevocable divorce unless one has specified a stipulation, in which case it follows what was stipulated."

L34539 From the narration of Abū Bakr ibn Abī Shaybah, who reported from ʿAlī ibn Hāshim, from Ibn Abī Laylā, from Ṭalḥa ibn Muṣarrif, from Ibrāhīm

al-Nakhaʿī, from ʿAlqama, from Ibn Masʿūd, who said: A definitive divorce (ṭalāq bāʾin) only occurs in cases involving compensation [as in khulʿ] or an oath of abstinence (īlāʾ).

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَلِيُّ بْنُ هَاشِمٍ عَنْ ابْنِ أَبِي لَيْلَى عَنْ طَلْحَةَ بْنِ مُصَرِّفٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ عَنْ ابْنِ مَسْعُودٍ قَالَ: لَا تَكُونُ طَلْقَةً بَائِنَةً إِلَّا فِي فِدْيَةٍ أَوْ إِيلَاءٍ.

L34540 We have narrated it through a chain that is not authentic from Ali ibn Abi Talib.

وَرُوِّينَاهُ مِنْ طَرِيقٍ لَا تَصِحُّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ.

L34541–34542 And with this say al-Hasan, Saʿid ibn al-Musayyib, ʿAtaʾ, Shurayh, ash-Shaʿbi, Qabisah ibn Dhuʾayb, Mujahid, Abu Salamah ibn ʿAbd al-Rahman, Ibrahim al-Nakhaʿi, al-Zuhri, Makhul, Ibn Abi Najih, Urwah ibn al-Zubayr, al-Awzaʿi, Sufyan al-Thawri, Abu Hanifah, Malik, and al-Shafiʿi.

وَبِهَذَا يَقُولُ الْحَسَنُ، وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَعَطَاءٌ، وَشُرَيْحٌ، وَالشَّعْبِيُّ، وَقَبِيصَةُ بْنُ ذُؤَيْبٍ، وَمُجَاهِدٌ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ، وَإِبْرَاهِيمُ النَّخَعِيُّ، وَالزُّهْرِيُّ، وَمَكْحُولٌ، وَابْنُ أَبِي نَجِيحٍ، وَعُرْوَةُ بْنُ الزُّبَيْرِ، وَالْأَوْزَاعِيُّ، وَسُفْيَانُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ.

L34543 Abu Muhammad said: As for the contention of those who cite Allah the Exalted's mention of divorce, thereafter *khulʿ*, thereafter divorce in the Quran—this is indeed its sequence in the text. However, the Quran neither explicitly negates nor affirms *khulʿ* as a divorce. Thus, it becomes imperative to revert to the exposition of Allah's Messenger—peace and blessings be upon him.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا احْتِجَاجُ مَنْ احْتَجَّ بِأَنَّ اللَّهَ تَعَالَى ذَكَرَ الطَّلَاقَ، ثُمَّ الْخُلْعَ، ثُمَّ الطَّلَاقَ؟ فَنَعَمْ، هُوَ فِي الْقُرْآنِ كَذَلِكَ، إِلَّا أَنَّهُ لَيْسَ فِي الْقُرْآنِ أَنَّهُ لَيْسَ طَلَاقًا، وَلَا أَنَّهُ طَلَاقٌ، فَوَجَبَ الرُّجُوعُ إِلَى بَيَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L34544 We examined that matter and found what was narrated to us through Malik from Yahya ibn Saʿīd al-Anṣārī from ʿAmrah bint ʿAbd al-Raḥmān ibn Saʿd ibn Zurārah: that she informed him about Ḥabībah bint Sahl al-Anṣāriyyah, who mentioned that she sought *khulʿ* from her husband Thābit ibn Qays ibn al-Shammās, and that the Messenger of Allah—peace and blessings be upon him—said to Thābit, "Take from her." So he took from her, and she resided with her family.

فَنَظَرْنَا فِي ذَلِكَ - فَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ بْنِ سَعْدِ بْنِ زُرَارَةَ: أَنَّهَا أَخْبَرَتْهُ عَنْ «حَبِيبَةَ بِنْتِ سَهْلٍ الْأَنْصَارِيَّةِ، فَذَكَرَتْ اخْتِلَاعَهَا مِنْ زَوْجِهَا ثَابِتِ بْنِ قَيْسِ بْنِ الشَّمَّاسِ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِثَابِتٍ: خُذْ مِنْهَا؟ فَأَخَذَ مِنْهَا، وَجَلَسَتْ فِي أَهْلِهَا» .

L34545 And through the chain of Ahmad ibn Shu'ayb: Muhammad ibn Yahya al-Marwazi narrated to us: Shadhan ibn Uthman, brother of Abdan, narrated to me: Ubai narrated to us: Ali ibn al-Mubarak narrated from Yahya ibn Abi Kathir: Muhammad ibn Abd al-Rahman informed me: "Rubayyi' bint Mu'awwidh ibn Afra informed him - she mentioned the khul' of Thabit ibn

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ يَحْيَى الْمَرْوَزِيِّ حَدَّثَنِي شَاذَانُ بْنُ عُثْمَانَ أَخُو عَبْدَانَ نا أُبَيٌّ نا عَلِيُّ بْنُ الْمُبَارَكِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ: أَخْبَرَنِي مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ:

Qays' wife from him - and that her brother complained about him to the Messenger of Allah (peace and blessings be upon him). The Messenger of Allah (peace and blessings be upon him) sent for Thabit and said to him: 'Take what is hers [as compensation] and release her.' He replied: 'Yes.' Thereupon the Messenger of Allah (peace and blessings be upon him) commanded her to wait for one menstrual cycle and return to her family."

L34546 From the narration of Abd al-Razzaq, from Ma'mar, from Amr ibn Muslim, from Ikrimah, the freed slave of Ibn Abbas, who said: "The wife of Thabit ibn Qays sought khul' from her husband, so the Prophet—peace be upon him—established her waiting period as one menstrual cycle." They said: "Does this not clarify that khul' is not a divorce but rather a dissolution?" Abu Muhammad said: "As for the hadith of Abd al-Razzaq we previously mentioned, it is invalid because it is mursal—and it contains Amr ibn Muslim—and the narration itself holds no reliability."

L34547 As for the report of Ar-Rubayyiʿ and Habībah, even if no other besides them had come forth, they both would have constituted an irrefutable proof.

L34548–34550 It was narrated to us through the chain of al-Bukhārī: Azhar ibn Jamil reported to us, ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī reported to us, from Khālid—who is al-Khaddāʾ—from ʿIkrimah, from Ibn ʿAbbās, that the wife of Thābit ibn Qays came... The Prophet (peace be upon him), then she said: "O Messenger of Allah, concerning Thabit ibn Qays - I find no fault in his character or religion, but I detest disbelief in Islam." The Messenger of Allah (peace be upon him) said: "Will you return his garden to him?" She said: "Yes?" The Messenger of Allah (peace be upon him) said: "Accept the garden and divorce her with a single pronouncement." This report contains an addition beyond the two previously mentioned reports that must not be disregarded. Since this concerns divorce, Allah the Exalted and Majestic mentioned the waiting period for divorce - thus it is an addition to what is in Rubayyi's report. This addition must not be disregarded.[6]

«أَنَّ رُبَيِّعَ بِنْتَ مُعَوِّذِ ابْنِ عَفْرَاءَ أَخْبَرَتْهُ - فَذَكَرَتْ اخْتِلَاعَ امْرَأَةِ ثَابِتِ بْنِ قَيْسٍ مِنْهُ - وَأَنَّ أَخَاهُ شَكَاهُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَرْسَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى ثَابِتٍ فَقَالَ لَهُ: خُذْ الَّذِي لَهَا وَخَلِّ سَبِيلَهَا؟ قَالَ: نَعَمْ، فَأَمَرَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تَتَرَبَّصَ حَيْضَةً وَاحِدَةً، وَتَلْحَقَ بِأَهْلِهَا» .

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَمْرِو بْنِ مُسْلِمٍ عَنْ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ قَالَ: «اخْتَلَعَتْ امْرَأَةُ ثَابِتِ بْنِ قَيْسٍ مِنْ زَوْجِهَا فَجَعَلَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِدَّتَهَا حَيْضَةً» ، قَالُوا: فَهَذَا يُبَيِّنُ أَنَّ الْخُلْعَ لَيْسَ طَلَاقًا، لَكِنَّهُ فَسْخٌ؟ قَالَ أَبُو مُحَمَّدٍ: أَمَّا حَدِيثُ عَبْدِ الرَّزَّاقِ الَّذِي ذَكَرْنَا آنِفًا فَسَاقِطٌ، لِأَنَّهُ مُرْسَلٌ - وَفِيهِ عَمْرُو بْنُ مُسْلِمٍ - وَلَيْسَ بِشَيْءٍ.

وَأَمَّا خَبَرُ الرُّبَيِّعِ وَحَبِيبَةَ - فَلَوْ لَمْ يَأْتِ غَيْرُهُمَا لَكَانَا حُجَّةً قَاطِعَةً.

لَكِنْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا أَزْهَرُ بْنُ جَمِيلٍ نا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ نا خَالِدٌ - هُوَ الْحَذَّاءُ - عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ امْرَأَةَ ثَابِتِ بْنِ قَيْسٍ أَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: يَا رَسُولَ اللَّهِ ثَابِتُ بْنُ قَيْسٍ مَا أَعْتِبُ عَلَيْهِ فِي خُلُقٍ وَلَا دِينٍ، وَلَكِنِّي أَكْرَهُ الْكُفْرَ فِي الْإِسْلَامِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَتَرُدِّينَ عَلَيْهِ حَدِيقَتَهُ؟ قَالَتْ: نَعَمْ؟ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: اقْبَلْ الْحَدِيقَةَ وَطَلِّقْهَا تَطْلِيقَةً» فَكَانَ هَذَا الْخَبَرُ فِيهِ زِيَادَةٌ عَلَى الْخَبَرَيْنِ الْمَذْكُورَيْنِ لَا يَجُوزُ تَرْكُهَا، وَإِذْ هُوَ طَلَاقٌ ذَكَرَ اللَّهُ عَزَّ وَجَلَّ عِدَّةَ الطَّلَاقِ، فَهُوَ زَائِدٌ - عَلَى مَا فِي حَدِيثِ الرُّبَيِّعِ - وَالزِّيَادَةُ لَا يَجُوزُ تَرْكُهَا.

[6] **Hadith references (L34548):** Mishkat al-Masabih 3274.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L34551 And with Allah, the Exalted, lies all divine success.

قَالَ أَبُو مُحَمَّدٍ: إِلَّا أَنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ - لَا يَجُوزُ لَهُمُ الِاحْتِجَاجُ بِهَذَا الْخَبَرِ عَلَى أُصُولِهِمُ الْفَاسِدَةِ، لِأَنَّ مِنْ قَوْلِهِمْ: إِذَا خَالَفَ الصَّاحِبُ مَا رُوِيَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَلَّ عَلَى نَسْخِهِ أَوْ ضَعْفِهِ، كَمَا فَعَلُوا فِي رِوَايَةِ عَائِشَةَ، وَابْنِ عَبَّاسٍ «مَنْ مَاتَ وَعَلَيْهِ صِيَامٌ صَامَ عَنْهُ وَلِيُّهُ» .

L34552 Abu Muhammad said: However, the Hanafis and Malikis cannot validly cite this report as evidence for their corrupt principles, because from their principles is: When a Companion contradicts what is narrated from the Prophet—peace and blessings of Allah be upon him—it indicates its abrogation or weakness, as they did regarding the narration of ʾĀʾisha and Ibn ʾAbbās: “Whoever dies while owing fasts, his guardian may fast on his behalf.”

وَهَذَا الْخَبَرُ لَمْ يَأْتِ إِلَّا مِنْ طَرِيقِ ابْنِ عَبَّاسٍ، وَالثَّابِتُ عَنْ ابْنِ عَبَّاسٍ مَا ذَكَرْنَا آنِفًا مِنْ أَنَّ الْخُلْعَ لَيْسَ طَلَاقًا.

L34553 This report has only been transmitted through the chain of Ibn Abbas, and what is established from Ibn Abbas is what we previously mentioned: that Khulʿ is not ṭalāq.

وَأَمَّا نَحْنُ فَلَا نَلْتَفِتُ إِلَى شَيْءٍ مِنْ هَذَا، إِنَّمَا هُوَ مَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قُلْنَا بِهِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L34554 As for us, we pay no heed to any of this. We affirm only what has been established from the Messenger of Allah (peace and blessings be upon him), and all praise is due to Allah, Lord of the worlds.

[مَسْأَلَةٌ هَلْ الْخُلْعُ طَلَاقٌ بَائِنٌ أَوْ رَجْعِيٌّ]

L34555 Question: Is khulʿ classified as an irrevocable divorce (ṭalāq bāʾin) or a revocable divorce (ṭalāq rajʿī)?

وَأَمَّا هَلْ الْخُلْعُ طَلَاقٌ بَائِنٌ أَوْ رَجْعِيٌّ؟ فَقَالَتْ طَائِفَةٌ: هِيَ طَلْقَةٌ بَائِنَةٌ كَمَا ذَكَرْنَا عَنْ ابْنِ مَسْعُودٍ آنِفًا.

L34556 As for whether khulʿ constitutes an irrevocable divorce or a revocable one, a group maintained that it is a single irrevocable divorce, as we mentioned earlier from Ibn Masʿūd.

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ عَلِيِّ بْنِ الْمُبَارَكِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: كَانَ عِمْرَانُ بْنُ الْحُصَيْنِ، وَابْنُ مَسْعُودٍ يَقُولَانِ فِي الَّتِي تَفْتَدِي مِنْ زَوْجِهَا بِمَالِهَا: يَقَعُ عَلَيْهَا الطَّلَاقُ مَا دَامَتْ فِي الْعِدَّةِ، وَخَالَفَ ذَلِكَ غَيْرُهُمَا.

L34557–34559 And we were narrated through the route of Wakīʿ from ʿAlī ibn al-Mubārak from Yaḥyā ibn Abī Kathīr, who said: “There was...” Imran ibn al-Husayn and Ibn Mas’ud ruled concerning a woman who redeems herself from her husband using her own wealth: the divorce takes effect on her as long as she remains in the waiting period. Others disagreed with them.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ أَنَّهُ قَالَ فِيمَنْ طَلَّقَ بَعْدَ الْفِدَاءِ: لَا يُحْسَبُ شَيْئًا مِنْ أَجْلِ أَنَّهُ طَلَّقَ امْرَأَةً لَا يَمْلِكُ مِنْهَا شَيْئًا - اتَّفَقَ عَلَى ذَلِكَ:

L34560 As transmitted to us through the chain of Abd al-Razzaq from Ibn Jurayj from Ata, who said regarding one who pronounces divorce after the redemption (khulʿ): “It is not counted as anything, because he divorced a woman over whom he has no authority.” Ibn Abbas and Ibn al-Zubayr concurred on this concerning a man who effected a khulʿ with his wife then divorced her after

the khulʿ—it holds no legal weight. Both declared: "Did he divorce his wife? Rather, he divorced someone over whom he has no authority."

ابْنُ عَبَّاسٍ، وَابْنُ الزُّبَيْرِ فِي رَجُلٍ اخْتَلَعَ مِنْ امْرَأَتِهِ ثُمَّ طَلَّقَهَا بَعْدَ الْخُلْعِ، فَإِنَّهُ لَا يُحْسَبُ شَيْئًا، قَالَا جَمِيعًا: أَطَلَّقَ امْرَأَتَهُ؟ إِنَّمَا طَلَّقَ مَنْ لَا يَمْلِكُ.

L34561 Ibn Jurayj said: Ibn Ṭāwus claimed from his father that he would say: If he divorces her after the compensation, it is permissible.

قَالَ ابْنُ جُرَيْجٍ: وَزَعَمَ ابْنُ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ كَانَ يَقُولُ: إِنْ طَلَّقَهَا بَعْدَ الْفِدَاءِ جَازَ.

L34562 Abu Hanifah said: It is a definitive divorce, and his divorce applies to her as long as she is in the ʿiddah.

وَقَالَ أَبُو حَنِيفَةَ: هُوَ طَلَاقٌ بَائِنٌ وَيَلْحَقُهَا طَلَاقُهُ مَا دَامَتْ فِي الْعِدَّةِ.

L34563 Mālik and al-Shāfiʿī said: It is a final divorce, and his divorce during the ʿiddah does not affect her.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: هُوَ طَلَاقٌ بَائِنٌ وَلَا يَلْحَقُهَا طَلَاقُهُ فِي الْعِدَّةِ.

L34564 As for those who say that khulʿ is a revocable divorce: as transmitted to us through the chain of ʿAbd al-Razzāq from Maʿmar from Qatādah from Saʿīd ibn al-Musayyab, who said regarding the woman who seeks khulʿ: "If he wishes to revoke the divorce during the waiting period, he must return to her what he received from her and have witnesses attest to his revocation of the divorce." Maʿmar said: "Al-Zuhrī used to say this." Qatādah said: "Al-Ḥasan would say: 'He may only reinstate the marriage through a new proposal?'" Abū Muḥammad said: "Allah the Exalted has clarified the ruling on divorce, stating: {And their husbands are most entitled to restore them during this [waiting period]} [2:228], and He said: {Either retain them honorably or release them honorably} [65:2]. It is impermissible to contravene this."[7]

وَأَمَّا مَنْ قَالَ: إِنَّ الْخُلْعَ طَلَاقٌ رَجْعِيٌّ -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّهُ قَالَ فِي الْمُخْتَلِعَةِ: إِنْ شَاءَ أَنْ يُرَاجِعَهَا فَلْيَرْدُدْ عَلَيْهَا مَا أَخَذَ مِنْهَا فِي الْعِدَّةِ، وَلْيُشْهِدْ عَلَى رَجْعَتِهَا - قَالَ مَعْمَرٌ: وَكَانَ الزُّهْرِيُّ يَقُولُ ذَلِكَ - قَالَ قَتَادَةُ: وَكَانَ الْحَسَنُ يَقُولُ: لَا يُرَاجِعُهَا إِلَّا بِخِطْبَةٍ؟ قَالَ أَبُو مُحَمَّدٍ: قَدْ بَيَّنَ اللَّهُ تَعَالَى حُكْمَ الطَّلَاقِ، وَأَنَّ {وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ} [البقرة: ٢٢٨] وَقَالَ {فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] فَلَا يَجُوزُ خِلَافُ ذَلِكَ.

L34565–34567 And we have never found in the religion of Islam—from Allah the Exalted or His Messenger (peace be upon him)—a final divorce that does not... Revocable divorce applies here, except in cases of the threefold divorce—whether combined or separate—or [divorcing] the one he has not had intercourse with, with no further cases. As for other scenarios, they are opinions with no valid proof.

وَمَا وَجَدْنَا قَطُّ فِي دِينِ الْإِسْلَامِ عَنْ اللَّهِ تَعَالَى، وَلَا عَنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَلَاقًا بَائِنًا لَا رَجْعَةَ فِيهِ، إِلَّا الثَّلَاثُ مَجْمُوعَةً أَوْ مُفَرَّقَةً، أَوْ الَّتِي لَمْ يَطَأْهَا، وَلَا مَزِيدَ - وَأَمَّا عَدَا ذَلِكَ فَآرَاءٌ لَا حُجَّةَ فِيهَا.

L34568 As for returning what he took from her, he only took it so that she would not remain under his marital bond. If her objective is not achieved, her property—which she gave solely for that purpose—must be returned to her, unless he clarifies to her that it is a revocable divorce in which he retains

وَأَمَّا رَدُّهُ مَا أَخَذَ مِنْهَا فَإِنَّمَا أَخَذَهُ لِئَلَّا تَكُونَ فِي عِصْمَتِهِ، فَإِذَا لَمْ يَتِمَّ لَهَا مُرَادُهَا فَمَالُهَا - الَّذِي لَمْ تُعْطِهِ إِلَّا لِذَلِكَ - مَرْدُودٌ عَلَيْهَا، إِلَّا أَنْ يُبَيِّنَ عَلَيْهَا أَنَّهَا طَلْقَةٌ لَهُ الرَّجْعَةُ فِيهَا، فَتَرْضَى، فَلَا يَرُدُّ عَلَيْهَا شَيْئًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[7] **Qur'an references (L34564):** Qur'an 2:228 (Al-Baqarah); Qur'an 65:2 (At-Talaq).

the right of retraction and she consents, in which case he does not return anything to her. And success comes from Allah, the Exalted.

L34569 As for what is permissible regarding compensation: A group maintained that compensation is valid only with the amount of the dowry he gave her, not more. This is based on the narration through ʿAbd al-Razzāq from al-Muʿtamir ibn Sulaymān al-Taymī, from Layth ibn Abī Sulaym, from al-Ḥakam ibn ʿUtaybah, that ʿAlī ibn Abī Ṭālib said: "One may not take from her more than what he gave her as dowry."

وَأَمَّا مَا يَجُوزُ فِيهِ الْفِدَاءُ -: فَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ الْفِدَاءُ إِلَّا بِمَا أَصْدَقَهَا لَا بِأَكْثَرَ -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لَا يَأْخُذُ مِنْهَا فَوْقَ مَا أَعْطَاهَا.

L34570 This is not authentically reported from ʿAlī, as its chain of transmission is disconnected, and in its chain is Layth.

وَهَذَا لَا يَصِحُّ عَنْ عَلِيٍّ، لِأَنَّهُ مُنْقَطِعٌ، وَفِيهِ لَيْثٌ.

L34571 And through the chain of ʿAbd al-Razzāq from Maʿmar and Ibn Jurayj, both said: Ibn Ṭāwūs narrated **to us** from his father that he used to say: It is not permissible for him to take from her more than what he gave her. Ibn Jurayj said: ʿAṭāʾ said to me: If he takes an increase **over** her dower, then the increase must be returned to her. Maʿmar narrated from al-Zuhrī: It is not permissible for him to take from his wife more than what he gave her.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَابْنِ جُرَيْجٍ، قَالَا: نا ابْنُ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ كَانَ يَقُولُ: لَا يَحِلُّ لَهُ أَنْ يَأْخُذَ مِنْهَا أَكْثَرَ مِمَّا أَعْطَاهَا، قَالَ ابْنُ جُرَيْجٍ: وَقَالَ لِي عَطَاءٌ: إِنْ أَخَذَ زِيَادَةً عَلَى صَدَاقِهَا، فَالزِّيَادَةُ مَرْدُودَةٌ إِلَيْهَا - وَقَالَ مَعْمَرٌ عَنْ الزُّهْرِيِّ: لَا يَحِلُّ لَهُ أَنْ يَأْخُذَ مِنْ امْرَأَتِهِ أَكْثَرَ مِمَّا أَعْطَاهَا.

L34572 And through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: Abū Bakr—identified as al-Muqaddamī—narrated to us, from ʿUmar ibn Ayyūb, from Jaʿfar ibn Burqān, from Maymūn ibn Mihrān, who said: Whoever takes more from her [the wife/marriage] than he has given her has not released her with kindness.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا أَبُو بَكْرٍ - هُوَ الْمُقَدَّمِيُّ - نَا عُمَرُ بْنُ أَيُّوبَ عَنْ جَعْفَرِ بْنِ بُرْقَانَ عَنْ مَيْمُونِ بْنِ مِهْرَانَ قَالَ: مَنْ أَخَذَ مِنْهَا أَكْثَرَ مِمَّا أَعْطَاهَا فَلَمْ يُسَرِّحْ بِإِحْسَانٍ.

L34573 Al-Awzāʿī said, "The judges did not permit reclaiming anything from her except what had been provided to her."

وَقَالَ الْأَوْزَاعِيُّ كَانَتْ الْقُضَاةُ لَا تُجِيزُ أَنْ يَأْخُذَ مِنْهَا إِلَّا مَا سَاقَ إِلَيْهَا.

L34574 A group of scholars said: This is disliked (makruh)—as was narrated to us via the chain of Wakīʿ, from Abū Ḥanīfah, from ʿAmmār ibn ʿImrān al-Hamdānī, from his father [ʿImrān]—that ʿAlī ibn Abī Ṭālib disliked taking from her [e.g., a wife] more than he gave her.

وَقَالَتْ طَائِفَةٌ: بِكَرَاهَةِ ذَلِكَ - كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ أَبِي حَنِيفَةَ عَنْ عَمَّارِ بْنِ عِمْرَانَ الْهَمْدَانِيِّ عَنْ أَبِيهِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَرِهَ أَنْ يَأْخُذَ مِنْهَا أَكْثَرَ مِمَّا أَعْطَاهَا.

L34575 And through the chain of Wakiʿ from Shuʿbah, from al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān, that they both disapproved of a man taking

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ أَنَّهُمَا كَرِهَا أَنْ يَأْخُذَ مِنْ فِدَاءِ امْرَأَتِهِ مِنْهَا أَكْثَرَ مِمَّا سَاقَ إِلَيْهَا.

from his wife as ransom an amount exceeding the dower he had conveyed to her.

L34576 And through the chain of Wakiʿ from Sufyān from Abī Ḥuṣayn from ʿĀmir al-Shaʿbī that he disliked taking from the woman who sought khulʿ more than he had given her.

L34577–34578 A school of thought maintained: It is reprehensible for him to take all that he had given her.

L34579 As narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar, from ʿAbd al-Karīm al-Jazarī, from Saʿīd ibn al-Musayyab, who said: "I disapprove of him reclaiming all he gave her unless he leaves her what suffices her."

L34580 A group said: He takes from her either all that she has with her or anything less than that, provided they mutually consent to it.

L34581 As we have been narrated through the chain of Hammad ibn Salamah, from Ayyub al-Sikhtiyani, from Kathir ibn Abi Kathir, the freed slave of Abd al-Rahman ibn Samurah, that a woman was disobedient toward her husband, so he brought her case to Umar ibn al-Khattab. He mentioned the account, stating that Umar said to her husband: "Divorce her, even if it means her earring."

L34582 Through the chain of Abd al-Razzaq from Ma'mar from Abdullah ibn Muhammad ibn Aqil ibn Abi Talib, that al-Rubayyi' bint Mu'awwidh ibn Afra' narrated to him that she initiated a khul' from her husband by relinquishing everything she owned. He disputed her over this matter before Uthman ibn Affan, who approved it and commanded him to take the braids of her head and the rest of her hair.

L34583 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj from Mūsā ibn ʿUqbah from Nāfiʿ: A freedwoman of Ibn ʿUmar's wife came to him after initiating khulʿ, relinquishing every possession she owned—even down to her face-covering with eye openings. This ruling is authentically reported from ʿIkrimah, Ibrāhīm, and Mujāhid.

L34584 And this is the opinion of Mālik, al-Shāfiʿī, Abū Sulaymān, and their com-

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ أَبِي حُصَيْنٍ عَنْ عَامِرٍ الشَّعْبِيِّ أَنَّهُ كَرِهَ أَنْ يَأْخُذَ مِنْ الْمُخْتَلِعَةِ أَكْثَرَ مِمَّا أَعْطَاهَا.

وَقَالَتْ طَائِفَةٌ: يُكْرَهُ أَنْ يَأْخُذَ مِنْهَا كُلَّ مَا أَعْطَاهَا.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: لَا أُحِبُّ أَنْ يَأْخُذَ مِنْهَا كُلَّ مَا أَعْطَاهَا حَتَّى يَدَعَ لَهَا مَا يُغْنِيهَا.

وَقَالَتْ طَائِفَةٌ: يَأْخُذُ مِنْهَا كُلَّ مَا مَعَهَا فَمَا دُونَ ذَلِكَ إذَا تَرَاضَيَا بِهِ.

كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ كَثِيرِ بْنِ أَبِي كَثِيرٍ مَوْلَى عَبْدِ الرَّحْمَنِ بْنِ سَمُرَةَ أَنَّ امْرَأَةً نَشَزَتْ عَلَى زَوْجِهَا فَرَفَعَهَا إلَى عُمَرَ بْنِ الْخَطَّابِ، فَذَكَرَ الْقِصَّةَ، وَأَنَّ عُمَرَ قَالَ لِزَوْجِهَا: اخْلَعْهَا وَلَوْ مِنْ قُرْطِهَا.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلِ بْنِ أَبِي طَالِبٍ أَنَّ الرُّبَيِّعَ بِنْتَ مُعَوِّذِ ابْنِ عَفْرَاءَ حَدَّثَتْهُ أَنَّهَا اخْتَلَعَتْ مِنْ زَوْجِهَا بِكُلِّ شَيْءٍ تَمْلِكُهُ فَخَاصَمَهُ فِي ذَلِكَ إلَى عُثْمَانَ بْنِ عَفَّانَ فَأَجَازَهُ، وَأَمَرَهُ أَنْ يَأْخُذَ عِقَاصَ رَأْسِهَا فَمَا دُونَهُ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ جَاءَتْهُ مَوْلَاةٌ لِامْرَأَتِهِ اخْتَلَعَتْ مِنْ كُلِّ شَيْءٍ لَهَا وَكُلِّ ثَوْبٍ لَهَا حَتَّى مِنْ نُقْبَتِهَا - وَصَحَّ عَنْ عِكْرِمَةَ، وَإِبْرَاهِيمَ، وَمُجَاهِدٍ.

وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

panions.

L34585 Abu Hanifah said: He should not take from her more than he gave her. If he does so, he should give the excess as voluntary charity.

L34586 Abū Muḥammad said: The first group cited as evidence what we have narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: ʿAṭāʾ said to me: "A woman came to the Messenger of Allāh (peace and blessings be upon him) and said: 'O Messenger of Allāh, I detest my husband and desire to separate from him.' He said: 'Would you return to him the garden he gave you as a dowry?' She replied: 'Yes—and [should I give] more from my wealth?' The Messenger of Allāh (ﷺ) said: 'As for giving more from your wealth, no—only the garden [is required].' She said: 'Yes.' Thereupon he (upon him be peace and blessings) ruled in favor of the wife regarding the husband's obligation to accept this."

L34587 It was also narrated from Ibn Jurayj, from Abi al-Zubayr.

L34588 Abu Muhammad said: This is a *mursal* narration, and it was indeed incumbent upon the Malikis—who assert that the *mursal* is equivalent to the *musnad*—to adhere to it. And there is no proof with us in a *mursal* narration. Thus, the mentioned opinion is dismissed.

L34589–34591 Then we considered the second opinion and found: what was reported to us by Muḥammad ibn Saʿīd ibn Nabāt, reporting to us. Aḥmad ibn ʿAbd Allāh ibn ʿAbd al-Baṣīr narrated from Qāsim ibn Aṣbagh, who narrated from Muḥammad ibn ʿAbd al-Salām al-Khushanī, who narrated from Muḥammad ibn al-Muthannā, who narrated from Muʾammal ibn Ismāʿīl, from Ibn Jurayj, from ʿAṭāʾ: "The Prophet—peace be upon him—disapproved of the husband taking in the case of *khulʿ* more than the dowry he had given her." This is a *mursal* narration, thus it cannot be used as evidence.

L34592 We did not find any foundational basis supporting the statement of Ibn al-Musayyib.

L34593 As for Abu Hanifah's position, it is utterly invalid, for his taking of the excess beyond what he gave her as her dowry must necessarily be either impermis-

وَقَالَ أَبُو حَنِيفَةَ: لَا يَأْخُذُ مِنْهَا أَكْثَرَ مِمَّا أَعْطَاهَا، فَإِنْ فَعَلَ فَلْيَتَصَدَّقْ الزِّيَادَةَ.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّتْ الطَّائِفَةُ الْأُولَى -: بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ لِي عَطَاءٌ: «أَتَتْ امْرَأَةٌ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: يَا رَسُولَ اللَّهِ إنِّي أُبْغِضُ زَوْجِي وَأُحِبُّ فِرَاقَهُ؟ قَالَ: فَتَرُدِّينَ إلَيْهِ حَدِيقَتَهُ الَّتِي أَصْدَقَكِ؟ قَالَتْ: نَعَمْ، وَزِيَادَةً مِنْ مَالِي؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَمَّا زِيَادَةٌ مِنْ مَالِكِ فَلَا، وَلَكِنْ الْحَدِيقَةَ، قَالَتْ: نَعَمْ فَقَضَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِذَلِكَ عَلَى الزَّوْجِ» .

وَرُوِيَ أَيْضًا عَنْ ابْنِ جُرَيْجٍ عَنْ أَبِي الزُّبَيْرِ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا مُرْسَلٌ، وَلَقَدْ كَانَ يَلْزَمُ الْمَالِكِيِّينَ الْقَائِلِينَ بِأَنَّ الْمُرْسَلَ كَالْمُسْنَدِ أَنْ يَقُولُوا بِهِ، وَلَا حُجَّةَ عِنْدَنَا فِي مُرْسَلٍ - فَسَقَطَ الْقَوْلُ الْمَذْكُورُ.

ثُمَّ نَظَرْنَا فِي الْقَوْلِ الثَّانِي - فَوَجَدْنَا: مَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُؤَمَّلُ بْنُ إسْمَاعِيلَ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَكْرَهُ أَنْ يَأْخُذَ فِي الْخُلْعِ أَكْثَرَ مِمَّا أَعْطَاهَا» وَهَذَا مُرْسَلٌ، فَسَقَطَ الِاحْتِجَاجُ بِهِ.

وَلَمْ نَجِدْ لِقَوْلِ ابْنِ الْمُسَيِّبِ مُتَعَلَّقًا أَصْلًا.

sible or permissible. If it is impermissible, its restitution to her becomes obligatory as 'Ata stated. If it is permissible, why would they command him to donate the excess as charity rather than any other portion of his wealth? - this constitutes manifest error.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفِي غَايَةِ الْفَسَادِ، لِأَنَّهُ لَا يَخْلُو أَخْذُهُ الزِّيَادَةَ عَلَى مَا أَعْطَاهَا فِي صَدَاقِهَا مِنْ أَنْ يَكُونَ حَرَامًا أَوْ مُبَاحًا فَإِنْ كَانَ حَرَامًا فَوَاجِبٌ رَدُّهُ إِلَيْهَا كَمَا قَالَ عَطَاءٌ، وَإِنْ كَانَ مُبَاحًا فَلِمَ أَمَرُوهُ بِالصَّدَقَةِ بِالزِّيَادَةِ دُونَ سَائِرِ مَالِهِ - وَهَذَا ظَاهِرُ الْخَطَأِ.

L34594 It is astonishing that they reject the established statements of Allah's Messenger—peace and blessings be upon him—claiming they are additions to the Quran, such as wiping over the turban, inhaling water into the nostrils, and other similar acts, yet they adopt weak and contradictory statements that conflict with the Quran—having no basis except Abu Hanifah's opinion alone. Therefore, it is obligatory to adhere to the generality of Allah's statement: {There is no blame upon them regarding what she offers as compensation for her release} [Al-Baqarah 2:229].[8]

وَالْعَجَبُ أَنَّهُمْ يَرُدُّونَ كَلَامَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الثَّابِتَ بِدَعْوَاهُمْ أَنَّهُ زَائِدٌ عَلَى مَا فِي الْقُرْآنِ، كَالْمَسْحِ عَلَى الْعِمَامَةِ، وَالِاسْتِنْشَاقِ وَغَيْرِ ذَلِكَ، ثُمَّ يَأْخُذُونَ بِكَلَامٍ سَاقِطٍ مُتَنَاقِضٍ، مُخَالِفٍ لِمَا فِي الْقُرْآنِ، لَيْسَ مَعَهُمْ فِيهِ إِلَّا رَأْيُ أَبِي حَنِيفَةَ فَقَطْ - فَوَجَبَ الْأَخْذُ بِعُمُومِ قَوْلِهِ تَعَالَى: {فَلا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ} [البقرة: ٢٢٩].

L34595 It is astonishing how some of them obscure the truth by citing the Almighty's words: *"If you have given one of them a quintal, then do not take anything from it"* [An-Nisā: 20], and the Almighty's words: *"It is not lawful for you to take back anything from what you have given them unless both fear they will fail to uphold the bounds set by Allah"* [Al-Baqarah: 229].[9]

وَمِنَ الْعَجَبِ تَمْوِيهُ بَعْضِهِمْ بِقَوْلِهِ تَعَالَى: {وَآتَيْتُمْ إِحْدَاهُنَّ قِنْطَارًا فَلا تَأْخُذُوا مِنْهُ شَيْئًا} [النساء: ٢٠] وقَوْله تَعَالَى: {وَلا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلا أَنْ يَخَافَا أَلا يُقِيمَا حُدُودَ اللَّهِ} [البقرة: ٢٢٩]

L34596 Abu Muhammad said: Indeed, it is not permissible for him to take anything from what he has given her unless she willingly consents to it. Then another ruling: "But if you fear the two will not uphold Allah's boundaries, there is no blame upon them regarding what she offers for her release" (Quran 2:229). This is a generality that cannot be particularized through false allegations.[10]

قَالَ أَبُو مُحَمَّد: نَعَمْ، لَا يَحِلُّ لَهُ أَنْ يَأْخُذَ مِمَّا آتَاهَا شَيْئًا، إِلَّا أَنْ تَطِيبَ نَفْسُهَا بِهِ - ثُمَّ حُكْمٌ آخَرُ {فَإِنْ خِفْتُمْ أَلا يُقِيمَا حُدُودَ اللَّهِ فَلا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ} [البقرة: ٢٢٩] عُمُومٌ لَا يَحِلُّ تَخْصِيصُهُ بِالدَّعَاوَى الْكَاذِبَةِ.

L34597 Some of them said: "If one takes more than he gave her, has he not failed to divorce her properly?" We replied: There is no distinction between taking all he gave her, part of what he gave her, or more than he gave her without right. At that point, he is not divorcing her properly. However, in cases where God

وَقَالَ بَعْضُهُمْ: مَنْ أَخَذَ أَكْثَرَ مِمَّا أَعْطَى فَلَمْ يُسَرِّحْ بِإِحْسَانٍ؟ فَقُلْنَا: لَا فَرْقَ بَيْنَ أَخْذِهِ كُلَّ مَا أَعْطَاهَا أَوْ بَعْضَ مَا أَعْطَاهَا أَوْ أَكْثَرَ مِمَّا أَعْطَاهَا بِغَيْرِ حَقٍّ فَحِينَئِذٍ يَكُونُ غَيْرَ مُسَرِّحٍ بِإِحْسَانٍ أَنْ يَأْخُذَ كُلَّ ذَلِكَ حَيْثُ أَبَاحَ اللَّهُ تَعَالَى لَهُ أَخْذَهُ، فَهُوَ مُسَرِّحٌ بِإِحْسَانٍ، وَلَوْ أَبَاحَ اللَّهُ لَهُ قَتْلَهَا لَكَانَ مُحْسِنًا فِي ذَلِكَ.

[8] **Qur'an references (L34594):** Qur'an 2:229 (Al-Baqarah).
[9] **Qur'an references (L34595):** Qur'an 4:20 (An-Nisa); Qur'an 2:229 (Al-Baqarah).
[10] **Qur'an references (L34596):** Qur'an 2:229 (Al-Baqarah).

Almighty has permitted him to take it, he is divorcing her properly. Had God permitted him to kill her, he would be virtuous in doing so.

L34598 If it is said: "You [jurists] prohibit anyone from donating all their wealth or what leaves them without financial independence afterwards, and you explicitly forbid a man from donating his entire wealth—yet you permit her to give away all her wealth?"

L34599–34600 We said: We only follow in that the command of Allah the Exalted. Then came the prohibition regarding charity except what preserves sufficiency, and that he should not give her his lower garment as charity since he lacks sufficiency without it. The text states: *"Then there is no sin upon them concerning what she redeems herself with"* (Quran 2:229). Thus we adhered to all that and did not oppose the commands of Allah the Exalted and the commands of His Messenger (peace and blessings of Allah be upon him) through personal opinion. With Allah the Exalted lies all success.[11]

L34601 As for the situation permitting ransom: It has been narrated to us through the chain of Abd al-Razzaq from Ma'mar via Ayyub al-Sakhtiyānī, who said: Abu Qilabah held the view that when a woman commits fornication and her husband becomes aware of it, he must beat her until she offers a ransom.

L34602 Abu Muhammad said: This is meaningless, for if he witnesses that while she is a woman in a state of legal marital protection, it becomes permissible for him to kill her.

L34603 And from the chain of Ismāʿīl ibn Isḥāq: from Musaddad, from al-Muʿtamir ibn Sulaymān al-Taymī - I heard my father say: "Abū Qilābah and Muḥammad ibn Sīrīn used to say: Khulʿ is not permissible until he finds a man on her belly. Allāh the Exalted said: {Unless they commit a clear immorality} [an-Nisāʾ: 19]."[12]

L34604 Abu Muhammad said: This applies to remaining in homes during the ʿiddah, not to khulʿ.

فَإِنْ قِيلَ: أَنْتُمْ تَمْنَعُونَ مِنْ أَنْ يَتَصَدَّقَ بِجَمِيعِ مَالِهِ أَوْ بِمَا لَا يَبْقَى لِنَفْسِهِ غِنًى بَعْدَهُ، وَمِنْ أَنْ يَصَّدَّقَ الرَّجُلُ بِمَالِهِ كُلِّهِ، وَتُبِيحُونَ لَهَا أَنْ تُعْطِيَ مَالَهَا كُلَّهُ؟

قُلْنَا: إِنَّمَا نَتَّبِعُ فِي ذَلِكَ أَمْرَ اللَّهِ تَعَالَى فَجَاءَ النَّهْيُ عَنْ الصَّدَقَةِ إِلَّا بِمَا أَبْقَى غِنًى، وَبِأَنْ لَا يُصْدِقَهَا إزَارَهُ إذْ لَا غِنًى بِهِ عَنْهُ، وَجَاءَ النَّصُّ بِأَنْ {فَلا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ} [البقرة: ٢٢٩] فَوَقَفْنَا عِنْدَ كُلِّ ذَلِكَ وَلَمْ نَعْتَرِضْ عَلَى أَوَامِرِ اللَّهِ تَعَالَى وَأَوَامِرِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالرَّأْيِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا الْحَالُ الَّتِي يَجُوزُ فِيهَا الْفِدَاءُ - فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ قَالَ: كَانَ أَبُو قِلَابَةَ يَرَى أَنَّ الْمَرْأَةَ إذَا فَجَرَتْ فَاطَّلَعَ زَوْجُهَا عَلَى ذَلِكَ فَلْيَضْرِبْهَا حَتَّى تَفْتَدِيَ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا مَعْنَى لَهُ إذَا رَأَى ذَلِكَ وَهِيَ مُحْصَنَةٌ حَلَّ لَهُ قَتْلُهَا.

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ نا مُسَدَّدٌ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ سَمِعْت أَبِي يَقُولُ: إنَّ أَبَا قِلَابَةَ، وَمُحَمَّدَ بْنَ سِيرِينَ كَانَا يَقُولَانِ: لَا يَحِلُّ الْخُلْعُ حَتَّى يَجِدَ عَلَى بَطْنِهَا رَجُلًا قَالَ اللَّهُ تَعَالَى: {إلا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ} [النساء: ١٩] .

قَالَ أَبُو مُحَمَّدٍ: هَذَا فِي الْإِخْرَاجِ مِنْ الْبُيُوتِ مِنْ الْعِدَّةِ، لَا فِي الْخُلْعِ.

[11] **Qur'an references (L34600):** Qur'an 2:229 (Al-Baqarah).
[12] **Qur'an references (L34603):** Qur'an 4:19 (An-Nisa); Qur'an 65:1 (At-Talaq).

L34605 Through the chain of Ḥammād ibn Salamah, Ḥumayd narrated that Bakr ibn ʿAbdillāh al-Muzanī asked al-Ḥasan about a man who sees another man kissing his wife. He said: He has the right to divorce her via khulʿ.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا حُمَيْدٌ أَنَّ بَكْرَ بْنَ عَبْدِ اللَّهِ الْمُزَنِيَّ سَأَلَ الْحَسَنَ عَمَّنْ رَأَى امْرَأَتَهُ يُقَبِّلُهَا رَجُلٌ غَيْرُهُ؟ قَالَ: قَدْ حَلَّ أَنْ يَخْلَعَهَا.

L34606 It has been reported to us from Ali—though it is not authentic—that khulʿ becomes valid for a man if she says: "By Allah, I will not fulfill any oath for your sake, nor obey any command of yours, nor perform ghusl from a state of major ritual impurity for your sake, nor honor any person for your sake." In the chain is Isra'il—who is weak—via Jabir—who is a fabricator.

رُوِّينَا عَنْ عَلِيٍّ - وَلَا يَصِحُّ - يَطِيبُ الْخُلْعُ لِلرَّجُلِ إذَا قَالَتْ: وَاَللَّهِ لَا أَبَرُّ لَك قَسَمًا، وَلَا أُطِيعُ لَك أَمْرًا، وَلَا أَغْتَسِلُ لَك مِنْ جَنَابَةٍ، وَلَا أُكْرِمُ لَك نَفْسًا - فِيهَا إسْرَائِيلُ - وَهُوَ ضَعِيفٌ - عَنْ جَابِرٍ - وَهُوَ كَذَّابٌ.

L34607 From him [the Prophet] also, via a chain including Ibrāhīm ibn Abī Yaḥyā: It is permissible for a woman to obtain khulʿ in three instances - if she violates your marital rights, if you summon her to reconcile with you and she refuses, or if she leaves without your permission.

وَعَنْهُ أَيْضًا - مِنْ طَرِيقٍ فِيهَا إبْرَاهِيمُ بْنُ أَبِي يَحْيَى: يَحِلُّ خُلْعُ الْمَرْأَةِ ثَلَاثًا إذَا أَفْسَدَتْ عَلَيْك ذَاتَ يَدِك، أَوْ دَعَوْتهَا لِتَسْكُنَ إلَيْهَا فَأَبَتْ، أَوْ خَرَجَتْ بِغَيْرِ إذْنِك.

L34608 And from the chain of Ḥammād ibn Salama, Marwān al-Aṣfar narrated to me from Ḥumayd ibn ʿAbd al-Raḥmān al-Himyārī, who said: "The khulʿ is not valid until the woman states: By Allah, I will not obey you in any command, nor perform for you the ritual bath required from a state of major impurity."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَخْبَرَنِي مَرْوَانُ الْأَصْفَرُ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ الْحِمْيَرِيِّ قَالَ: لَا يَصِحُّ الْخُلْعُ حَتَّى تَقُولَ الْمَرْأَةُ: وَاَللَّهِ لَا أُطِيعُ لَك أَمْرًا، وَلَا أَغْتَسِلُ لَك مِنْ جَنَابَةٍ.

L34609–34611 And through the chain of Hammad ibn Salamah: from Qays, who narrated from 'Ata'; and from Mujahid. One of the two [narrators, 'Ata' or Mujahid] said: It is not authentic. Khulʿ is valid until she does not perform the ritual bath for him due to janabah, does not obey his commands, and does not honor his oaths. The other scholar said: If she were to do this, she would have apostatized. Rather, it is until she says: "I will not honor your oaths, perform the ritual bath for you due to janabah, or obey your commands."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسٍ عَنْ عَطَاءٍ، وَمُجَاهِدٍ، قَالَ أَحَدُهُمَا: لَا يَصِحُّ الْخُلْعُ حَتَّى لَا تَغْتَسِلَ لَهُ مِنْ جَنَابَةٍ، وَلَا تُطِيعُ لَهُ أَمْرًا، وَلَا تَبَرُّ لَهُ قَسَمًا، وَقَالَ الْآخَرُ: لَوْ فَعَلَتْ هَذَا كَفَرَتْ، وَلَكِنْ حَتَّى تَقُولَ: لَا أَبَرُّ لَك قَسَمًا، وَلَا أَغْتَسِلُ لَك مِنْ جَنَابَةٍ، وَلَا أُطِيعُ لَك أَمْرًا.

L34612 And through the chain of Waki' from Yazid ibn Ibrahim from Al-Hasan, he said: "Khul' is when she says: 'By Allah, I will not perform the ritual bath for you from impurity incurred through intimacy.'" And all of this has no proof to substantiate its authenticity.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ يَزِيدَ بْنِ إبْرَاهِيمَ عَنْ الْحَسَنِ قَالَ: الْخُلْعُ إذَا قَالَتْ: وَاَللَّهِ لَا أَغْتَسِلُ لَك مِنْ جَنَابَةٍ - وَكُلُّ هَذَا لَا بُرْهَانَ عَلَى صِحَّتِهِ.

L34613 And from the narration of Waki' from Ismāʿīl ibn Abī Khālid from Al-Shaʿbī: If a woman dislikes her husband, let him take from her.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ إذَا كَرِهَتْ الْمَرْأَةُ زَوْجَهَا فَلْيَأْخُذْ مِنْهَا.

L34614 From the narration of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī: It is unlawful for him to take anything from the compensation unless defiance originates from her side: by openly displaying enmity toward him, treating him poorly in companionship, and disobeying his commands. It is not lawful for him to take more than what he gave her.

مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ: لَا يَحِلُّ لَهُ أَخْذُ شَيْءٍ مِنْ الْفِدْيَةِ حَتَّى يَكُونَ النُّشُوزُ مِنْ قِبَلِهَا، أَنْ تُظْهِرَ لَهُ الْبَغْضَاءَ، وَتُسِيءَ عِشْرَتَهُ وَتَعْصِيَ أَمْرَهُ، وَلَا يَحِلُّ لَهُ أَنْ يَأْخُذَ أَكْثَرَ مِمَّا أَعْطَاهَا.

L34615 From the path of Abd al-Razzaq, from Ibn Jurayj: Ibn Tawus informed me from his father regarding Khulʿ. He said: Allah Almighty said: {That they fear they will not uphold the limits of Allah} [Al-Baqarah: 229]. He did not utter the statement of the foolish ones: "It is not lawful for him until she says, 'I will not perform the major ritual ablution to remove janābah for you,'" but rather {that they fear they will not uphold the limits of Allah} [Al-Baqarah: 229], the Exalted, in the duties He has ordained for each toward the other in marital life and companionship.[13]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ طَاوُسٍ عَنْ أَبِيهِ فِي الْخُلْعِ قَالَ: قَالَ اللَّهُ عَزَّ وَجَلَّ: {أَنْ يَخَافَا أَلا يُقِيمَا حُدُودَ اللَّهِ} [البقرة: ٢٢٩] . وَلَمْ يَكُنْ يَقُولُ قَوْلَ السُّفَهَاءِ: لَا يَحِلُّ لَهُ حَتَّى تَقُولَ: لَا أَغْتَسِلُ لَك مِنْ جَنَابَةٍ، لَكِنْ {أَنْ يَخَافَا أَلا يُقِيمَا حُدُودَ اللَّهِ} [البقرة: ٢٢٩] تَعَالَى فِيمَا افْتَرَضَ لِكُلِّ وَاحِدٍ مِنْهُمَا عَلَى صَاحِبِهِ فِي الْعِشْرَةِ وَالصُّحْبَةِ.

L34616 Abu Muhammad said: This is the truth, based on the words of Allah, the Exalted, which we have mentioned, and success is only by Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: هَذَا هُوَ الْحَقُّ، لِقَوْلِهِ تَعَالَى الَّذِي ذَكَرْنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L34617 Al-Shafiʿi said: Khulʿ is permissible by their mutual consent, even if neither of them fears disobedience or aversion, and they do not fear failing to uphold Allah's boundaries [Al-Baqarah 2:229]. This is incorrect, because it is a claim without demonstrative evidence.[14]

وَقَالَ الشَّافِعِيُّ: الْخُلْعُ جَائِزٌ بِتَرَاضِيهِمَا وَإِنْ لَمْ يَخَفْ مِنْهُمَا نُشُوزًا وَلَا إعْرَاضًا وَلَا خَافَا {أَلا يُقِيمَا حُدُودَ اللَّهِ} [البقرة: ٢٢٩] وَهَذَا خَطَأٌ، لِأَنَّهُ قَوْلٌ بِلَا بُرْهَانٍ.

L34618 As for the invalid khulʿ, some people have permitted it. I know of no proof they hold. How can a corrupt act be permissible, when Allah the Exalted says: "Indeed, Allah does not rectify the work of the corrupters" [Quran 10:81]?[15]

وَأَمَّا الْخُلْعُ الْفَاسِدُ - فَقَدْ أَجَازَهُ قَوْمٌ: وَمَا أَعْلَمُ لَهُمْ حُجَّةً، وَكَيْفَ يَجُوزُ عَمَلٌ فَاسِدٌ، وَاَللَّهُ تَعَالَى يَقُولُ: {إِنَّ اللَّهَ لا يُصْلِحُ عَمَلَ الْمُفْسِدِينَ} [يونس: ٨١]

L34619 Abu Hanifah said: It is not permissible for him to take anything from her

وَقَالَ أَبُو حَنِيفَةَ: لَا يَحِلُّ لَهُ أَنْ يَأْخُذَ مِنْهَا شَيْئًا - وَهُوَ مُضَارٌّ بِهَا - فَإِنْ فَعَلَ لَزِمَهُ الطَّلَاقُ، وَجَازَ لَهُ مَا أَخَذَ.

[13] **Qur'an references (L34615):** Qur'an 2:229 (Al-Baqarah).
[14] **Qur'an references (L34617):** Qur'an 2:229 (Al-Baqarah).
[15] **Qur'an references (L34618):** Qur'an 10:81 (Yunus).

while he is actively harming her. If he does so, divorce becomes obligatory for him, but he retains what he took.

L34620–34622 Abu Muhammad said: There is astonishment in this statement! If it is not permissible for him to take it, then what is permissible for him? He took it, and if indeed it was permissible for him when he took it: would that mean it is permissible for him to take it? Anything beyond this is evil whispers.

قَالَ أَبُو مُحَمَّدٍ: فِي هَذَا الْقَوْلِ عَجَبٌ، لَئِنْ كَانَ لَا يَحِلُّ لَهُ أَنْ يَأْخُذَهُ فَمَا يَحِلُّ لَهُ إذَا أَخَذَهُ، وَلَئِنْ كَانَ يَحِلُّ لَهُ إذَا أَخَذَهُ: أَنَّهُ لِيَحِلَّ لَهُ أَنْ يَأْخُذَهُ؟ - وَمَا عَدَا هَذَا فَوَسَاوِسُ.

L34623 Al-Zuhri and Malik said: It is not permissible for him to take anything from her—as this constitutes harming her—for if he does so, divorce becomes binding upon him, and he must return what he took. This also involves a contradiction: if divorce becomes binding upon him, he becomes entitled to own what he took as compensation for the divorce. Conversely, if he is not entitled to own what he took as compensation for the divorce: then the divorce is not binding upon him, because he did not pronounce an absolute divorce, but rather a divorce contingent on compensation—one he would not have pronounced without this exchange.

وَقَالَ الزُّهْرِيُّ، وَمَالِكٌ: لَا يَحِلُّ لَهُ أَنْ يَأْخُذَ مِنْهَا شَيْئًا - وَهُوَ مُضَارٌّ لَهَا - فَإِنْ فَعَلَ لَزِمَهُ الطَّلَاقُ، وَيَرُدُّ مَا أَخَذَ؟ وَهَذِهِ أَيْضًا مُنَاقَضَةٌ، لِأَنَّهُ إنْ لَزِمَهُ الطَّلَاقُ وَجَبَ لَهُ تَمَلُّكُ مَا أَخَذَهُ عِوَضًا عَنْ الطَّلَاقِ، وَإِنْ لَمْ يَجِبْ لَهُ تَمَلُّكُ مَا أَخَذَهُ عِوَضًا مِنْ الطَّلَاقِ: لَمْ يَلْزَمْهُ الطَّلَاقُ، لِأَنَّهُ لَمْ يُطَلِّقْ طَلَاقًا مُطْلَقًا، بَلْ طَلَاقًا بِعِوَضٍ، لَوْلَاهُ لَمْ يُطَلِّقْ.

L34624 Qatādah said: If he took it from her with intent to harm her, he must return what he took. He may take her back as long as she remains in the waiting period, but he cannot resume the marriage after the waiting period expires except with her consent? This is erroneous, for if the divorce is irrevocable for him, what he took becomes his legally valid ownership—unless he claims that a khulʿ divorce is revocable (rajʿī)? We hold that if the consideration (upon which the divorce depended) is invalid, the divorce itself is invalid because it cannot take effect unless the husband has lawful ownership of what he took as compensation for the divorce.

وَقَالَ قَتَادَةُ: إنْ أَخَذَهُ مِنْهَا وَهُوَ مُضَارٌّ لَهَا يَرُدُّ مَا أَخَذَ، وَلَهُ أَنْ يَرْجِعَ إلَيْهَا مَا دَامَتْ فِي الْعِدَّةِ، وَلَا يَرْجِعُ إلَيْهَا بَعْدَ انْقِضَاءِ الْعِدَّةِ إلَّا بِرِضَاهَا؟ وَهَذَا خَطَأٌ، لِأَنَّهُ إنْ كَانَ الطَّلَاقُ لَهُ لَازِمًا، فَالَّذِي أَخَذَ لَهُ مِلْكٌ، إلَّا إنْ كَانَ يَقُولُ: إنَّ طَلَاقَ الْخُلْعِ طَلَاقٌ رَجْعِيٌّ؟ فَقَدْ قُلْنَا: إذَا لَمْ يَصِحَّ الْعِوَضُ الَّذِي لَمْ يُعْقَدْ الطَّلَاقُ إلَّا عَلَيْهِ: لَمْ يَصِحَّ الطَّلَاقُ الَّذِي لَا وُقُوعَ لَهُ بِصِحَّةِ مِلْكِ الْمُطَلِّقِ لِمَا أَخَذَ عِوَضًا مِنْ الطَّلَاقِ.

L34625 The statement of ʿAṭāʾ—that if she ransoms herself from him while being compliant toward him, she returns to him and her wealth remains hers, unless it is the third instance, in which case she departs—we have transmitted this through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ. This too is erroneous due to what we previously mentioned regarding the invalidity of the positions of Qatādah and Mālik. The statement of Ṭāwus constitutes the correct position—we transmitted it through the chain of ʿAbd al-Razzāq from Ibn Jurayj from Ibn Ṭāwus from his father, who said: If he takes her

وَقَوْلُ عَطَاءٍ أَنَّهُ إنْ افْتَدَتْ مِنْهُ وَكَانَتْ لَهُ مُطَاوِعَةً فَإِنَّهَا تَرْجِعُ إلَيْهِ، وَمَالُهَا لَهَا، إلَّا أَنْ تَكُونَ الثَّالِثَةُ فَتَذْهَبَ -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْهُ، فَهُوَ أَيْضًا خَطَأٌ لِمَا ذَكَرْنَا فِي بُطْلَانِ قَوْلِ قَتَادَةَ، وَمَالِكٍ، وَقَوْلُ طَاوُسٍ هُوَ الْحَقُّ: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: إنْ أَخَذَ فِدَاءَهَا -

ransom—though it is impermissible for him to take it—her wealth reverts to her, she returns to him, and she does not depart with herself and her wealth. No other opinion is permissible besides this, due to what we earlier established.

L34626 And by Allah, the Most High, is the divine success.

L34627 ## A case of khulʿ conditioned on an unspecified term.

L34628 1975. Issue: If a husband divorces through khulʿ for an unknown consideration, it is invalid because he does not know what becomes incumbent upon him through it, nor does she inform him of what is owed. This constitutes a corrupt contract. Any divorce contingent upon the validity of what is inherently invalid is itself invalid. If it is invalid, then he has not divorced at all. What is most astounding is their argument against this ruling by citing God's words: "There is no blame upon them for what she offers as ransom" [2:229].[16]

L34629–34631 They said, "Is this a general ruling?" We replied, "Yes—a general ruling for what is lawful in its contract and ownership, not for the forbidden. And if that were the case, it would be permissible to redeem." From his wife by committing adultery with her whenever he wishes, by a wineskin of wine, by his ownership remaining valid, by not praying, and similar acts.

L34632 ## Issue: Khulʿ Based on a Limited Action

L34633 1976. Issue: Khulʿ (divorce initiated by the wife) in exchange for a limited permissible act is permissible, as it falls under His Exalted's statement: *"There is no blame upon either of them concerning that by which she ransoms herself"* [Al-Baqarah 2:229]. This applies if that act is permissible and the exchange is permissible through hire or other means. And success is from Allah, the Exalted.[17]

وَلَا يَحِلُّ لَهُ أَخْذُهُ - رَجَعَ إِلَيْهَا مَالُهَا وَرَجَعَتْ إِلَيْهِ، وَلَمْ تَذْهَبْ بِنَفْسِهَا وَمَالِهَا - وَهَذَا الَّذِي لَا يَجُوزُ غَيْرُهُ، لِمَا ذَكَرْنَا قَبْلُ.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ خَالَعَ عَلَى مَجْهُولٍ]

١٩٧٥ - مَسْأَلَةٌ: وَمَنْ خَالَعَ عَلَى مَجْهُولٍ فَهُوَ بَاطِلٌ، لِأَنَّهُ لَا يَدْرِي هُوَ مَا يَجِبُ لَهُ عِنْدَهَا، وَلَا تَدْرِيهِ هِيَ، فَهُوَ عَقْدٌ فَاسِدٌ وَكُلُّ طَلَاقٍ لَمْ يَصِحَّ إِلَّا بِصِحَّةِ مَا لَا صِحَّةَ لَهُ فَهُوَ غَيْرُ صَحِيحٍ، إِذَا كَانَ غَيْرَ صَحِيحٍ فَلَمْ يُطَلِّقْ أَصْلًا - وَالْعَجَبُ كُلُّهُ احْتِجَاجُهُمْ فِي خِلَافِ هَذَا بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {فَلا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ} [البقرة: ٢٢٩] .

قَالُوا: هَذَا عُمُومٌ؟ فَقُلْنَا: نَعَمْ، عُمُومٌ لِمَا يَحِلُّ عَقْدُهُ وَمِلْكُهُ لَا لِلْحَرَامِ، وَلَوْ كَانَ ذَلِكَ لَجَازَ أَنْ يَفْتَدِيَ مِنْ زَوْجَتِهِ بِأَنْ يَزْنِيَ بِهَا مَتَى أَرَادَ، وَبِزِقِّ خَمْرٍ وَيَصِحُّ لَهُ مِلْكُهُ، وَبِأَنْ لَا يُصَلِّيَ، وَمَا أَشْبَهَ ذَلِكَ.

[مَسْأَلَةٌ الْخُلْعُ عَلَى عَمَلٍ مَحْدُودٍ]

١٩٧٦ - مَسْأَلَةٌ: وَالْخُلْعُ عَلَى عَمَلٍ مَحْدُودٍ جَائِزٌ لِدُخُولِهِ تَحْتَ قَوْلِهِ تَعَالَى: {فَلا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ} [البقرة: ٢٢٩] هَذَا إِذَا كَانَ ذَلِكَ الْعَمَلُ مُبَاحًا تَجُوزُ الْمُعَاوَضَةُ فِيهِ بِالْإِجَارَةِ وَغَيْرِهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[16] **Qur'an references (L34628):** Qur'an 2:229 (Al-Baqarah).
[17] **Qur'an references (L34633):** Qur'an 2:229 (Al-Baqarah).

He divorced his wife through a valid khulʿ.

[مَسْأَلَةٌ خَالَعَ امْرَأَتَهُ خُلْعًا صَحِيحًا]

1977 - Issue: If a man validly divorces his wife through *khulʿ*, his obligation to provide her maintenance, clothing, and housing during the waiting period does not cease unless three menstrual cycles have passed—whether consecutive or separate. Nor does he cease to be obligated to pay whatever remains of her mahr—whether small or large.

١٩٧٧ - مَسْأَلَةٌ: وَمَنْ خَالَعَ امْرَأَتَهُ خُلْعًا صَحِيحًا لَمْ يَسْقُطْ بِذَلِكَ عَنْهُ نَفَقَتُهَا وَكِسْوَتُهَا وَإِسْكَانُهَا فِي الْعِدَّةِ، إلَّا أَنْ تَكُونَ ثَلَاثَةً مَجْمُوعَةً أَوْ مُفَرَّقَةً، وَلَا يَسْقُطُ بِذَلِكَ عَنْهُ مَا بَقِيَ عَلَيْهِ مِنْ صَدَاقِهَا - قَلَّ أَوْ كَثُرَ.

The dissenting scholars here hold distinctive opinions: Abu Hanifah stated: If he divorces her in exchange for a sum of money taken from her, he is not absolved of any of her rights that existed prior to it - whether they pertained to the marriage itself or to other matters.

وَلِلْمُخَالِفِينَ هَاهُنَا أَقْوَالٌ طَرِيفَةٌ -: قَالَ أَبُو حَنِيفَةَ: إنْ طَلَّقَهَا عَلَى مَالٍ يَأْخُذُهُ مِنْهَا، فَإِنَّهُ لَا يَبْرَأُ مِنْ شَيْءٍ مِنْ حُقُوقِهَا قَبْلَهُ - سَوَاءٌ كَانَتْ مِنْ قِبَلِ النِّكَاحِ أَوْ مِنْ قِبَلِ غَيْرِهِ.

He said: If he divorces her through *mubara'ah* in exchange for property she gives him, then all her rights against him arising from the marriage are thereby waived, specifically such as the *ṣadāq* (dowry) and the *mut'ah* (post-divorce compensation). If she had already received the *mahr* (dower), it remains hers, and he cannot claim anything back from her, whether he had consummated the marriage with her or not.

قَالَ: فَإِنْ بَارَأَهَا عَلَى مَالٍ يَأْخُذُهُ مِنْهَا، فَإِنَّهُ يَسْقُطُ بِذَلِكَ عَنْهُ جَمِيعُ حُقُوقِهَا الَّتِي لَهَا عَلَيْهِ مِنْ قِبَلِ النِّكَاحِ خَاصَّةً كَالصَّدَاقِ وَالْمُتْعَةِ، فَإِنْ كَانَتْ قَدْ قَبَضَتْ الْمَهْرَ فَهُوَ لَهَا وَلَا يَرْجِعُ عَلَيْهَا بِشَيْءٍ سَوَاءٌ كَانَتْ مَدْخُولًا بِهَا أَوْ غَيْرَ مَدْخُولٍ بِهَا.

He said: He is not absolved from her maintenance and housing during the waiting period. If, as part of the khulʿ contract, she releases him from maintenance and the right to residence during her waiting period, he is absolved from maintenance but is not absolved from the right to residence.

قَالَ: وَلَا يَبْرَأُ مِنْ نَفَقَتِهَا وَإِسْكَانِهَا فِي الْعِدَّةِ، فَإِنْ أَبْرَأَتْهُ فِي عَقْدِ الْخُلْعِ مِنْ النَّفَقَةِ وَالسُّكْنَى مُدَّةَ عِدَّتِهَا بَرِئَ مِنْ النَّفَقَةِ وَلَمْ يَبْرَأْ مِنْ السُّكْنَى.

Abū Muḥammad said: Presenting this categorization makes refuting him unnecessary—and we ask Allāh for safety.

قَالَ أَبُو مُحَمَّدٍ: إيرَادُ هَذَا التَّقْسِيمِ يُغْنِي مِنْ الرَّدِّ عَلَيْهِ - وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

Mālik said: If she ransoms herself from him before consummation with ten dinars, she may not resell it for half [of that amount]. As for the mahr, if she asks him to divorce her in exchange for part of her dowry (ṣadāq), she is to return to him half of what remains.

وَقَالَ مَالِكٌ: إنْ افْتَدَتْ مِنْهُ قَبْلَ الدُّخُولِ بِعَشَرَةِ دَنَانِيرَ لَمْ يَكُنْ لَهَا أَنْ تَبِيعَهُ بِنِصْفِ الْمَهْرِ، فَلَوْ سَأَلَتْهُ أَنْ يُطَلِّقَهَا عَلَى شَيْءٍ مِنْ صَدَاقِهَا رَجَعَتْ عَلَيْهِ بِنِصْفِ مَا بَقِيَ.

The mere mention of this statement renders a contrived rebuttal unnecessary, for it constitutes sheer injustice and the dropping of a right that has not been dropped.

وَهَذَا كَلَامٌ يُغْنِي ذِكْرُهُ عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهِ، لِأَنَّهُ ظُلْمٌ صُرَاحٌ وَإِسْقَاطُ حَقٍّ لَمْ تُسْقِطْهُ.

And the wonder is their waiving of one thousand dinars owed to her from

her dowry because she redeemed herself from him with a single dinar, yet they do not reduce a single dirham of what she borrowed from him—and these are sheer confusions, enough to mention them!—and in Allah the Exalted we seek assistance.

L34645 **A legal issue: It is impermissible for a father or anyone else to initiate khulʿ on behalf of a mentally incompetent woman or a minor girl.**

L34646 1978 - Issue: It is impermissible for a father or anyone else to grant khulʿ from an insane woman or a minor, due to Allah's statement: {No soul bears a burden except its own} [al-Anʿām 6:164] and His statement: {Do not consume one another's wealth unjustly unless it is a transaction through mutual consent} [al-Nisāʾ 4:29].[18]

L34647 Khulʿ enacted by the father, guardian, or ruler regarding a minor or adult woman is an unlawful gain at another's expense, and such an act is prohibited. The husband's appropriation of her wealth without her consent constitutes wrongful consumption of property, and this is ḥarām (unlawful). And success is attained solely through Allah, the Most High.

L34648 **A legal case: Khulʿ is on the condition that she releases him from maintenance.**

L34649 1979 – Issue: It is not permissible to enact khulʿ on the condition that she absolves him from the expenses of her pregnancy or the expenses of breastfeeding her child. All of that is invalid, as the amount is unspecified – for the cost may increase or decrease – and because it has not yet become obligatory for her. Therefore, her khulʿ in exchange for obligations she has no entitlement to is invalid and an injustice.

L34650 Among the marvels of this world is Abū Ḥanīfah's permission for a woman

[18] **Qur'an references (L34646):** Qur'an 6:164 (Al-An'am); Qur'an 4:29 (An-Nisa).

وَالْعَجَبُ مِنْ إسْقَاطِهِمْ أَلْفَ دِينَارٍ لَهَا قِبَلَهُ مِنْ صَدَاقِهَا مِنْ أَجْلِ أَنَّهَا افْتَدَتْ مِنْهُ بِدِينَارٍ، وَلَا يُسْقِطُونَ عَنْهُ بِذَلِكَ دِرْهَمًا اسْتَقْرَضَتْهُ مِنْهُ - وَهَذِهِ تَخَالِيطُ نَاهِيك بِهَا - وَبِاَللَّهِ تَعَالَى نَسْتَعِينُ.

[مَسْأَلَةٌ لَا يَجُوزُ أَنْ يُخَالِعَ عَنْ الْمَجْنُونَةِ وَلَا عَنْ الصَّغِيرَةِ أَبٌ وَلَا غَيْرُهُ]

١٩٧٨ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُخَالِعَ عَنْ الْمَجْنُونَةِ وَلَا عَنْ الصَّغِيرَةِ أَبٌ، وَلَا غَيْرُهُ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَقَوْله تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] فَمُخَالَعَةُ الْأَبِ أَوْ الْوَصِيِّ أَوْ السُّلْطَانِ عَنْ صَغِيرَةٍ أَوْ كَبِيرَةٍ كَسْبٌ عَلَى غَيْرِهِ، وَهَذَا لَا يَجُوزُ - وَاسْتِحْلَالُ الزَّوْجِ مَالَهَا بِغَيْرِ رِضًا مِنْهَا أَكْلُ مَالٍ بِالْبَاطِلِ، فَهُوَ حَرَامٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْخُلْعُ عَلَى أَنْ تُبْرِيَهُ مِنْ نَفَقَةٍ]

١٩٧٩ - مَسْأَلَةٌ: وَلَا يَجُوزُ الْخُلْعُ عَلَى أَنْ تُبْرِيَهُ مِنْ نَفَقَةِ حَمْلِهَا أَوْ مِنْ رَضَاعِ وَلَدِهَا - وَكُلُّ ذَلِكَ بَاطِلٌ، لِأَنَّهُ غَيْرُ مَعْلُومِ الْقَدْرِ، وَقَدْ يَزِيدُ السِّعْرُ وَقَدْ يَنْقُصُ، وَلِأَنَّهُ لَمْ يَجِبْ لَهَا بَعْدُ، فَمُخَالَعَتُهَا بِمَا لَا تَمْلِكُهُ بَاطِلٌ وَظُلْمٌ.

وَمِنْ عَجَائِبِ الدُّنْيَا - إجَازَةُ أَبِي حَنِيفَةَ أَنْ تُخَالِعَهُ عَلَى خَمْرٍ أَوْ خِنْزِيرٍ - وَهُمَا مُسْلِمَانِ

to seek a khulʿ divorce from her husband in exchange for wine or a pig - even though both are Muslims.

L34651 Malik prohibited using unripe visible fruit in marriage contracts before they ripen and crops that have not yet formed ears, yet he permits khulʿ contingent on what the palm trees will produce even if there is no fruit on them, and he allows no alternative to that—and sufficient for us is Allah, the Excellent Trustee.

The issue of *mutʾah* is an obligation for every divorcer.

L34652–34653

L34654 Issue 1980: Mutʾah is obligatory upon every divorcing husband—whether he divorced her once, twice, thrice, or the final irrevocable divorce after three pronouncements; whether he consummated the marriage or not; whether he assigned her dowry or did not assign her anything—to provide her with mutʾah. Similarly, the woman seeking a compensatory divorce (khulʿ) is also entitled to it, and the judge must compel him to do so, whether he consents or refuses.

L34655 No *mutʾah* is owed by one whose marriage to her is dissolved without divorce. Neither the husband resuming the marriage with her during the waiting period, nor his death, nor her death nullifies the obligation of *mutʾah*.

L34656 The *mutʿah* (post-divorce compensation) is due to her or her heirs from his personal capital, distributed proportionally among creditors and heirs. If he faces hardship in providing the *mutʿah*, a judgment obligates the solvent party to sustain her equitably—whether he is immensely wealthy or possesses surplus beyond the basic sustenance required for himself, his dependents, and a servant who autonomously performs service.

L34657 The obligation for one who possesses no surplus beyond the sustenance of his household and himself is thirty dirhams by the Iraqi standard—this being the dirham in which Zakāt is obligatory, as previously established in “the Book of Zakāt.”

L34658 He obligates upon the one of limited means—even if by a mudd or a dirham—according to their capacity. The proof for this is Allah the Ex-

وَمَنَعَ مَالِكٌ مِنْ النِّكَاحِ بِثَمَرَةٍ ظَاهِرَةٍ قَبْلَ أَنْ تَنْضَجَ، وَبِزَرْعٍ لَمْ يُسْنْبِلْ وَهُوَ يُجِيزُ الْخُلْعَ عَلَى مَا يُثْمِرُ نَخْلَهَا وَإِنْ لَمْ يَكُنْ فِيهَا ثَمَرَةٌ، وَلَا يَرَى لَهَا غَيْرَ ذَلِكَ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ. .

[الْمُتْعَةُ] [مَسْأَلَةٌ الْمُتْعَةُ فَرْضٌ عَلَى كُلِّ مُطَلِّقٍ]

١٩٨٠ - مَسْأَلَةٌ: الْمُتْعَةُ فَرْضٌ عَلَى كُلِّ مُطَلِّقٍ وَاحِدَةً أَوْ اثْنَتَيْنِ أَوْ ثَلَاثًا - أَوْ آخَرَ ثَلَاثٍ - وَطِئَهَا أَوْ لَمْ يَطَأْهَا - فَرَضَ لَهَا صَدَاقَهَا أَوْ لَمْ يَفْرِضْ لَهَا شَيْئًا -: أَنْ يُمَتِّعَهَا، وَكَذَلِكَ الْمُفْتَدِيَةُ أَيْضًا وَيُجْبِرُهُ الْحَاكِمُ عَلَى ذَلِكَ - أَحَبَّ أَمْ كَرِهَ.

وَلَا مُتْعَةَ عَلَى مَنْ انْفَسَخَ نِكَاحُهُ مِنْهَا بِغَيْرِ طَلَاقٍ وَلَا يُسْقِطُ التَّمَتُّعَ عَنْ الْمُطَلِّقِ مُرَاجَعَتُهُ إيَّاهَا فِي الْعِدَّةِ وَلَا مَوْتُهُ وَلَا مَوْتُهَا -.

وَالْمُتْعَةُ لَهَا أَوْ لِوَرَثَتِهَا مِنْ رَأْسِ مَالِهِ يَضْرِبُ بِهَا مَعَ الْغُرَمَاءِ، وَإِنْ تَعَاسَرَ فِي الْمُتْعَةِ قَضَى عَلَى الْمُوسِرِ لَهَا سَوَاءٌ كَانَ عَظِيمَ الْيَسَارِ أَوْ زَادَ فَضْلَةً عَنْ قُوتِهِ وَقُوتِ أَهْلِهِ خَادِمٌ يَسْتَقِلُّ بِالْخِدْمَةِ.

وَعَلَى مَنْ لَا فَضْلَةَ عِنْدَهُ عَنْ قُوتِ أَهْلِهِ وَنَفْسِهِ ثَلَاثُونَ دِرْهَمًا بِالْعِرَاقِيِّ وَهُوَ الدِّرْهَمُ الَّذِي تَجِبُ الزَّكَاةُ فِيهِ وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الزَّكَاةِ ".

alted's statement: *"Divorced women are entitled to provision according to what is fair—a binding obligation upon the righteous"* [Al-Baqarah: 241]. Thus, the Almighty and Majestic universalized this ruling for every divorced woman without exception, obligating it upon every righteous person who fears Allah, the Exalted.[19]

L34659 People have differed regarding its obligation—it has been reported from a group that it is not obligatory—this was transmitted to us through the chain of ʿAbd al-Raḥmān ibn Abi al-Zināد, from his father, from the seven jurists of Medina. Abū Muḥammad said: ʿAbd al-Raḥmān ibn Abi al-Zināد—weak.

L34660 This is the view of Ibn Abī Laylā, ʿAbd al-ʿAzīz ibn Abī Salama al-Mājishūn, and Mālik.

L34661–34662 And among the marvels of worldly logic is the argument advanced by adherents of his school to defend their claim that Allah the Exalted obligated these acts solely upon the God-fearing and those perfected in virtue, not upon others?

L34663 So we said to them: Suppose you are truthful in that—do you consider it obligatory upon those among the pious and virtuous upon whom God Almighty has ordained it, or not? If they say no, they acknowledge their own contradiction of God's statement and nullify their cited argument. If they say yes, they abandon their doctrine.

L34664 A group said: It is an obligation upon the God-fearing and the virtuous, arguing based on the apparent meaning of Allah's words—as narrated to us through the chain of Hammad ibn Zayd from Ayyub al-Sikhtiyani from Muhammad ibn Sirin, who said: I witnessed Shurayh when they brought him a case regarding mut'ah (post-divorce compensation). He said: "Do not refuse to be among the God-fearing?" He said: "I am in need." He said: "Do not refuse to be among the virtuous?" Ayyub said: I asked Sa'id ibn Jubayr: "Does every divorced woman have a right to mut'ah?" He said: "Yes, if he is among the God-fearing, if he is among the virtuous." Ayyub said: A

[19] **Qur'an references (L34658):** Qur'an 2:241 (Al-Baqarah).

وَيَقْضِي عَلَى الْمُقِلِّ وَلَوْ بِمُدٍّ أَوْ بِدِرْهَمٍ - عَلَى حَسَبِ طَاقَتِهِ بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {وَلِلْمُطَلَّقَاتِ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ} [البقرة: ٢٤١] فَعَمَّ عَزَّ وَجَلَّ كُلَّ مُطَلَّقَةٍ وَلَمْ يَخُصَّ وَأَوْجَبَهُ لَهَا عَلَى كُلِّ مُتَّقٍ يَخَافُ اللَّهَ تَعَالَى.

وَقَدْ اخْتَلَفَ النَّاسُ فِي وُجُوبِهَا -: فَرُوِيَ عَنْ طَائِفَةٍ: أَنَّهَا لَيْسَتْ وَاجِبَةً -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ عَنْ أَبِيهِ عَنْ فُقَهَاءِ الْمَدِينَةِ السَّبْعَةِ. قَالَ أَبُو مُحَمَّدٍ: عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ - ضَعِيفٌ

- وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَعَبْدِ الْعَزِيزِ بْنِ أَبِي سَلَمَةَ الْمَاجِشُونِ، وَمَالِكٍ.

وَمِنْ عَجَائِبِ الدُّنْيَا احْتِجَاجُ مَنْ قَلَّدَهُ لِقَوْلِهِمْ هَذَا بِأَنَّ اللَّهَ تَعَالَى إنَّمَا أَوْجَبَهَا عَلَى الْمُتَّقِينَ وَالْمُحْسِنِينَ لَا عَلَى غَيْرِهِمْ؟ .

فَقُلْنَا لَهُمْ: فَهَبْكُمْ صَادِقِينَ فِي ذَلِكَ، أَتُوجِبُونَهَا أَنْتُمْ عَلَى مَنْ أَوْجَبَهَا اللَّهُ تَعَالَى عَلَيْهِ مِنْ الْمُتَّقِينَ وَالْمُحْسِنِينَ أَوْ لَا؟ فَإِنْ قَالُوا: لَا، أَقَرُّوا بِخِلَافِهِمْ لِقَوْلِ اللَّهِ تَعَالَى، وَأَبْطَلُوا احْتِجَاجَهُمْ الْمَذْكُورَ، وَإِنْ قَالُوا: نَعَمْ، تَرَكُوا مَذْهَبَهُمْ.

وَقَالَتْ طَائِفَةٌ: هِيَ فَرْضٌ عَلَى الْمُتَّقِينَ، وَالْمُحْسِنِينَ - وَاحْتَجُّوا بِظَاهِرِ كَلَامِ اللَّهِ تَعَالَى -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: شَهِدْت شُرَيْحًا وَأَتَوْهُ مِنْ مَتَاعٍ، فَقَالَ: لَا تَأْبَ أَنْ تَكُونَ مِنْ الْمُتَّقِينَ؟ قَالَ: إنِّي مُحْتَاجٌ قَالَ: لَا تَأْبَ أَنْ تَكُونَ مِنْ الْمُحْسِنِينَ؟ قَالَ أَيُّوبُ: قُلْت لِسَعِيدِ بْنِ جُبَيْرٍ: لِكُلِّ مُطَلَّقَةٍ مَتَاعٌ؟ قَالَ: نَعَمْ، إنْ كَانَ مِنْ الْمُتَّقِينَ، إنْ كَانَ مِنْ الْمُحْسِنِينَ، قَالَ أَيُّوبُ: وَسَأَلَ

man asked ʻIkrimah: “I divorced my wife. Is there any mut’ah (post-divorce compensation) due from me?” He said: “If you are among the God-fearing, then yes.”

عِكْرِمَةَ رَجُلٌ فَقَالَ: إِنِّي طَلَّقْت امْرَأَتِي فَهَلْ عَلَيَّ مُتْعَةٌ؟ قَالَ: إنْ كُنْت مِنْ الْمُتَّقِينَ، فَنَعَمْ.

L34665 Abu Muhammad said: Every Muslim who is upon the face of the earth, by his declaration of “There is no god but Allah, Muhammad is the Messenger of Allah,” is counted among the God-fearing and the doers of good by virtue of this declaration and his faith. Yet it is Allah’s right, the Exalted, to cast him into the Fire eternally if he does not submit to Islam.

قَالَ أَبُو مُحَمَّد: كُلُّ مُسْلِمٍ هُوَ عَلَى أَدِيمِ الْأَرْضِ، فَهُوَ بِقَوْلِهِ لَا إلَهَ إلَّا اللَّهُ مُحَمَّدٌ رَسُولُ اللَّهِ مِنْ جُمْلَةِ الْمُتَّقِينَ بِقَوْلِهِ ذَلِكَ، وَإِيمَانِهِ، وَمِنْ جُمْلَةِ الْمُحْسِنِينَ - وَلِلَّهِ تَعَالَى أَنْ يُخْلِدَهُ فِي النَّارِ إنْ لَمْ يُسْلِمْ.

L34666 Thus every Muslim in the world is virtuous and God-fearing, from among the virtuous and God-fearing ones.

فَكُلُّ مُسْلِمٍ فِي الْعَالَمِ فَهُوَ مُحْسِنٌ مُتَّقٍ، مِنْ الْمُحْسِنِينَ الْمُتَّقِينَ.

L34667 If the names “Muḥsin” (doer of good) and “Muttaqī” (God-fearing) were only ascribed to one who does good and is God-fearing in all his deeds, there would be no “Muḥsin” or “Muttaqī” on earth after the Messenger of Allah (peace and blessings be upon him), for everyone besides him inevitably has shortcomings and misdeeds, and in those actions they would not be counted among the doers of good or the God-fearing.

وَلَوْ لَمْ يَقَعْ اسْمُ “ مُحْسِنٍ، وَمُتَّقٍ ” إلَّا عَلَى مَنْ يُحْسِنُ وَيَتَّقِي فِي كُلِّ أَفْعَالِهِ: لَمْ يَكُنْ فِي الْأَرْضِ مُحْسِنٌ، وَلَا مُتَّقٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ لَا بُدَّ لِكُلِّ مَنْ دُونَهُ مِنْ تَقْصِيرٍ، وَإِسَاءَةٍ لَمْ يَكُنْ فِيهَا مِنْ الْمُحْسِنِينَ، وَلَا مِنْ الْمُتَّقِينَ.

L34668 Thus, according to this, the words of Allah the Exalted—{an obligation upon those who do good} [Al-Baqarah: 236] and {an obligation upon the God-fearing} [Al-Baqarah: 241]—would be empty, vain, and null and void. It is impermissible for anyone to hold such a belief.[20]

فَكَانَ عَلَى هَذَا يَكُونُ كَلَامُ اللَّهِ تَعَالَى: {حَقًّا عَلَى الْمُحْسِنِينَ} [البقرة: ٢٣٦] {حَقًّا عَلَى الْمُتَّقِينَ} [البقرة: ٢٤١] فَارِغًا وَلَغْوًا وَبَاطِلًا، وَهَذَا لَا يَحِلُّ لِأَحَدٍ أَنْ يَعْتَقِدَهُ.

L34669 There is no distinction between His saying, the Exalted, “from the doers of good” [Al-A’raf 7:56] and His saying, the Exalted, “from the God-fearing” [Al-Ma’idah 5:27], and between His saying, the Exalted, “from the Muslims” [Yunus 10:72] and His saying, the Exalted, “from the believers” [An-Nisa’ 4:95], and the meaning in all these cases is the same, and there is no difference.[21]

وَلَا فَرْقَ بَيْنَ قَوْله تَعَالَى {مِنَ الْمُحْسِنِينَ} [الأعراف: ٥٦] وَ {مِنَ الْمُتَّقِينَ} [المائدة: ٢٧] وَبَيْنَ قَوْله تَعَالَى {مِنَ الْمُسْلِمِينَ} [يونس: ٧٢] وَ {مِنَ الْمُؤْمِنِينَ} [النساء: ٩٥] وَالْمَعْنَى فِي كُلِّ ذَلِكَ وَاحِدٌ، وَلَا فَرْقَ.

L34670 If they mentioned what we have narrated through the path of Wakīʻ from

فَإِنْ ذَكَرُوا: مَا رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ.

[20] **Qur’an references (L34668):** Qur’an 2:236 (Al-Baqarah); Qur’an 2:180 (Al-Baqarah); Qur’an 2:241 (Al-Baqarah).

[21] **Qur’an references (L34669):** Qur’an 7:56 (Al-A’raf); Qur’an 5:27 (Al-Ma’idah); Qur’an 10:72 (Yunus); Qur’an 4:95 (An-Nisa).

Shuʿbah from Qatādah from Saʿīd ibn al-Musayyib

L34671–34672 The verse {And for the divorced women is maintenance according to what is customary} [Al-Baqarah: 241] abrogates the earlier verse {And if you divorce them before you have touched them and you have already assigned them a settlement} [Al-Baqarah: 237].[22]

L34673–34674 We said: No one is to be believed in their attempt to invalidate the ruling of a revealed verse except through an authentic report from the Messenger of Allah (peace and blessings be upon him). How can this be when the verse he cited contains nothing that contradicts the one he alleged to have abrogated it? Thus, both are valid.

L34675 A group holds that mut'ah is only obligatory for a woman divorced before consummation—even if no dower was specified for her—and for such a woman, mut'ah becomes a compulsory obligation.

L34676 As has been narrated to us through the chain of Ismāʿīl ibn Isḥāq: ʿAlī ibn ʿAbd Allāh ibn al-Madīnī narrated to us; Sufyān ibn ʿUyaynah narrated to us from ʿAmr ibn Dīnār from ʿAṭāʾ from Ibn ʿAbbās, who said: If the right to divorce is delegated to the man and he divorces her before consummation, she is entitled only to the mutʿah.

L34677 Abu Muhammad said: There is no evidence in this to indicate that he did not consider temporary marriage permissible for others, except that this opinion is the view of Sufyan al-Thawri, al-Hasan ibn Ḥayy, al-Awza'i, Abu Hanifa, and his companions.

L34678 However, Al-Awza'i said: There is no temporary marriage imposed on a male slave.

L34679 However, Abū Ḥanīfah said: Whoever marries without specifying a dowry, then establishes a dowry for her with mutual consent - the judge having already stipulated for her the customary dowry - and divorces her before consummating the marriage, that stipulated dowry becomes invalid, and she is entitled only to the mut'ah.

نَسَخَتْ هَذِهِ الْآيَةُ: {وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً} [البقرة: ٢٣٧] الَّتِي بَعْدَهَا {وَلِلْمُطَلَّقَاتِ مَتَاعٌ بِالْمَعْرُوفِ} [البقرة: ٢٤١] .

قُلْنَا: لَا يُصَدَّقُ أَحَدٌ عَلَى إبْطَالِ حُكْمِ آيَةٍ مُنَزَّلَةٍ إلَّا بِخَبَرٍ ثَابِتٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَيْفَ وَلَيْسَ فِي الْآيَةِ الَّتِي ذَكَرَ شَيْءٌ يُخَالِفُ الَّتِي زَعَمَ أَنَّهَا نَسَخَتْهَا؟ فَكِلْتَاهُمَا حَقٌّ.

وَقَالَتْ طَائِفَةٌ: لَا تَجِبُ الْمُتْعَةُ إلَّا لِلَّتِي طَلُقَتْ قَبْلَ أَنْ تُوطَأَ -، وَإِنْ لَمْ يُسَمَّ لَهَا صَدَاقٌ - فَهَذِهِ تَجِبُ لَهَا الْمُتْعَةُ فَرْضًا.

كَمَا رُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ أَنَا عَلِيُّ بْنُ عَبْدِ اللَّهِ بْنِ الْمَدِينِيِّ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: إذَا فُوِّضَ إلَى الرَّجُلِ فَطَلَّقَ قَبْلَ أَنْ يَمَسَّ؟ فَلَيْسَ لَهَا إلَّا الْمَتَاعُ.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ فِي هَذَا دَلِيلٌ عَلَى أَنَّهُ لَمْ يَكُنْ يَرَى لِغَيْرِهَا الْمُتْعَةَ، إلَّا أَنَّ هَذَا الْقَوْلَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَالْأَوْزَاعِيِّ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ.

إلَّا ، أَنَّ الْأَوْزَاعِيَّ قَالَ: لَا مُتْعَةَ عَلَى عَبْدٍ.

إلَّا أَنَّ أَبَا حَنِيفَةَ قَالَ: مَنْ تَزَوَّجَ وَلَمْ يَذْكُرْ مَهْرًا ثُمَّ فَرَضَ لَهَا مَهْرًا بِرِضَاهُ وَبِرِضَاهَا - وَقَدْ فَرَضَ لَهَا الْقَاضِي مَهْرَ الْمِثْلِ - ثُمَّ طَلَّقَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا، فَإِنَّ ذَلِكَ الْمَهْرَ يَبْطُلُ، وَلَا يَجِبُ لَهَا إلَّا الْمُتْعَةُ.

[22] **Qur'an references (L34672):** Qur'an 2:237 (Al-Baqarah); Qur'an 2:241 (Al-Baqarah).

قَالَ أَبُو مُحَمَّد: وَهَذَا فَاسِدٌ جِدًّا، وَقَوْلٌ بِلَا بُرْهَانٍ: إِسْقَاطُ فَرْضٍ أَمَرَ بِهِ اللَّهُ تَعَالَى بَعْدَ الْتِزَامِهِ أَوْ إِلْزَامِهِ بِغَيْرِ حَقٍّ.

L34680–34681 Abu Muhammad said: This is utterly invalid and a claim without evidence - the nullification of an obligation (farḍ) that Allah the Exalted has commanded after one has voluntarily committed to it or been legally bound to it without legitimate justification.

وَاحْتَجَّ هَؤُلَاءِ بِقَوْلِ اللَّهِ تَعَالَى: {لا جُنَاحَ عَلَيْكُمْ إِنْ طَلَّقْتُمُ النِّسَاءَ مَا لَمْ تَمَسُّوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتِّعُوهُنَّ} [البقرة: ٢٣٦] .

L34682 These people cited as evidence the words of Allah, the Most High: “There is no blame upon you if you divorce women before you have touched them or specified a bridal gift for them. And provide for them” [Al-Baqarah: 236].[23]

قَالَ عَلِيٌّ: لَوْ لَمْ يَكُنْ إِلَّا هَذِهِ الْآيَةَ لَكَانَ قَوْلُهُ هَذَا حَقًّا، لَكِنَّ قَوْلَ اللَّهِ تَعَالَى: {وَلِلْمُطَلَّقَاتِ مَتَاعٌ بِالْمَعْرُوفِ} [البقرة: ٢٤١] جَامِعٌ لِكُلِّ مُطَلَّقَةٍ مَفْرُوضٌ لَهَا، أَوْ غَيْرُ مَفْرُوضٍ لَهَا، مَدْخُولٌ بِهَا، أَوْ غَيْرُ مَدْخُولٍ بِهَا - وَلَمْ يَقُلْ عَزَّ وَجَلَّ فِي أَوَّلِ الْآيَةِ الَّتِي نَزَعُوا بِهَا: أَنَّهُ لَا مُتْعَةَ لِغَيْرِهَا؟ فَظَهَرَ بُطْلَانُ قَوْلِهِمْ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L34683 Ali said: “If only this verse existed, his claim would be valid. However, Allah, Exalted is He, states: *‘And for divorced women is a provision according to what is acceptable’* [Al-Baqarah 2:241], encompassing every divorced woman—whether a dowry was specified for her or not, and whether the marriage was consummated or not. Yet did Allah, Mighty and Majestic, not state in the earlier verse they cited that there is no compensation for others? Thus, the falsity of their claim becomes evident—and all praise is due to Allah, Lord of the worlds.”[24]

وَقَالَتْ طَائِفَةٌ: لِكُلِّ مُطَلَّقَةٍ مُتْعَةٌ، إِلَّا الَّتِي طَلُقَتْ قَبْلَ أَنْ تُمَسَّ وَقَدْ فَرَضَ لَهَا بِحَسَبِهَا نِصْفَ مَا فَرَضَ لَهَا.

L34684 A group maintained that every divorced woman is entitled to compensation, except one divorced before consummation—for her, half of what was stipulated for her according to her circumstances was stipulated.

بِمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ، قَالَ: لِكُلِّ مُطَلَّقَةٍ مُتْعَةٌ، إِلَّا الَّتِي لَمْ يُدْخَلْ بِهَا.

L34685 By what has been narrated to us through the chain of Ḥammād ibn Salamah: from Ubayd Allāh ibn Umar, from Nāfiʿ, from Ibn Umar, who said: Every divorced woman is entitled to a mutʿah, except the one whose marriage has not been consummated.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَنَا اللَّيْثُ، وَمَالِكٌ، قَالَا جَمِيعًا: أَنَا نَافِعٌ أَنَّ ابْنَ عُمَرَ كَانَ يَقُولُ: لِكُلِّ مُطَلَّقَةٍ مُتْعَةٌ - الَّتِي تَطْلُقُ وَاحِدَةً أَوْ اثْنَتَيْنِ أَوْ ثَلَاثًا - إِلَّا أَنْ تَكُونَ امْرَأَةً طَلَّقَهَا زَوْجُهَا قَبْلَ أَنْ يَمَسَّهَا وَقَدْ فَرَضَ لَهَا فَرِيضَةً فَحَسْبُهَا فَرِيضَتُهَا، وَإِنْ لَمْ يَكُنْ فَرَضَ لَهَا، فَلَيْسَ لَهَا إِلَّا الْمُتْعَةُ - وَهُوَ قَوْلُ شُرَيْحٍ، وَمُجَاهِدٍ، وَصَحَّ عَنْ إِبْرَاهِيمَ.

L34686 From the path of Ibn Wahb: Al-Layth and Mālik both reported via Nāfiʿ that Ibn ʿUmar said: “Every divorced woman is entitled to mutʿah - whether divorced once, twice, or thrice - except a woman whose husband divorces her before consummation when he had assigned her a specified dowry. In that case, her assigned dowry suffices her. If no dowry was assigned for her, she has nothing except the mutʿah.” This is the opinion of Shurayḥ and Mujāhid, and it is authentically reported from Ibrāhīm.

وَرُوِّينَاهُ عَنِ الْقَاسِمِ بْنِ مُحَمَّدٍ وَعَبْدِ اللَّهِ بْنِ أَبِي سَلَمَةَ.

[23] **Qur’an references (L34682):** Qur’an 2:236 (Al-Baqarah).
[24] **Qur’an references (L34683):** Qur’an 2:241 (Al-Baqarah); Qur’an 37:182 (As-Saffat).

L34687 We have narrated it on the authority of al-Qāsim ibn Muḥammad and ʿAbdullāh ibn Abī Salama.

L34688 Abu Muhammad said: This nullifies the statement because Allah, the Exalted, when He mentioned that she is entitled to half of what was ordained for her, did not say, “Nor any mut’ah for her.”

L34689–34690 He has obligated the mutʿah for her through His truthful statement: {And for divorced women is a provision in a reasonable manner} [Al-Baqarah: 241]. This is a divorced woman; thus, she is entitled to the mutʿah as an obligation along with half of what was decreed for her.[25]

L34691 And a strange opinion—we have narrated it through the chain of Ibn Wahb from Yunus ibn Yazīd from Rabīʿah, who said: “Only one not subject to apostasy is obligated to provide maintenance, and creditors are not subjected to proportional division of assets—for proportional division does not apply to one who has no assets.” This is an opinion unsupported by evidence for its validity, thus it is rejected.

L34692 A group held the same opinion as us, as narrated through Ibn Wahb → Yahya ibn Ayyub → Musa ibn Ayyub al-Ghafiqi → Iyas ibn Amir, who heard Ali ibn Abi Talib say: “Every divorced woman is entitled to mut’ah.”

L34693 Through the chain of Ibn Wahb from Malik from Al-Zuhri, who said, “Every divorced woman is due *mut’ah*.”

L34694 And via the chain of Ibn Wahb from Yunus bin Yazid, who said: Ibn Shihab was asked about the woman granted the right to divorce (al-mumallakah) and the one granted the choice (al-mukhayyarah). He replied: “Every divorced woman on earth is entitled to provisions (matāʿ).”

L34695 From the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: A woman who seeks khulʿ is entitled to the mutʿah equally, whether she has consummated or not.

قَالَ أَبُو مُحَمَّد: وَيُبْطِلُ هَذَا الْقَوْلَ أَنَّ اللَّهَ تَعَالَى إِذْ ذَكَرَ: أَنَّ لَهَا نِصْفَ مَا فُرِضَ لَهَا، لَمْ يَقُلْ: وَلَا مُتْعَةَ لَهَا.

وَقَدْ أَوْجَبَ لَهَا الْمُتْعَةَ بِقَوْلِهِ الصَّادِقِ: {وَلِلْمُطَلَّقَاتِ مَتَاعٌ بِالْمَعْرُوفِ} [البقرة: ٢٤١] وَهَذِهِ مُطَلَّقَةٌ فَلَهَا الْمُتْعَةُ فَرْضًا مَعَ نِصْفِ مَا فُرِضَ لَهَا.

وَقَوْلٌ غَرِيبٌ - رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ رَبِيعَةَ، قَالَ: إِنَّمَا يُؤْمَرُ بِالْمَتَاعِ مَنْ لَا رِدَّةَ عَلَيْهِ، وَلَا تُحَاصُّ الْغُرَمَاءُ، لَيْسَتْ عَلَى مَنْ لَيْسَ لَهُ شَيْءٌ - وَهَذَا قَوْلٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ، فَهُوَ سَاقِطٌ.

وَطَائِفَةٌ قَالَتْ كَقَوْلِنَا - كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنْ مُوسَى ابْنِ أَيُّوبَ الْغَافِقِيِّ عَنْ إِيَاسِ بْنِ عَامِرٍ: أَنَّهُ سَمِعَ عَلِيَّ بْنَ أَبِي طَالِبٍ يَقُولُ: لِكُلِّ مُطَلَّقَةٍ مُتْعَةٌ.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَالِكٍ عَنِ الزُّهْرِيِّ قَالَ: لِكُلِّ مُطَلَّقَةٍ مُتْعَةٌ.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ قَالَ: سُئِلَ ابْنُ شِهَابٍ عَنِ الْمُمَلَّكَةِ وَالْمُخَيَّرَةِ؟ فَقَالَ ابْنِ شِهَابٍ: كُلُّ مُطَلَّقَةٍ فِي الْأَرْضِ لَهَا مَتَاعٌ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ، قَالَ: لِلْمُخْتَلِعَةِ الْمُتْعَةُ، الَّتِي جَمَعَتْ، وَالَّتِي لَمْ تَجْمَعْ سَوَاءٌ.

[25] **Qur’an references (L34690):** Qur’an 2:241 (Al-Baqarah).

L34696 And through the chain of Ḥammād ibn Zayd from Ayyūb al-Sikhtiyānī from Saʿīd ibn Jubayr, who said: “Every divorced woman has a right to *mutʿah*,” and he recited: *“And for divorced women is a provision in fairness - an obligation upon the righteous”* (2:241).[26]

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: لِكُلِّ مُطَلَّقَةٍ مُتْعَةٌ وَتَلَا: {وَلِلْمُطَلَّقَاتِ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ} [البقرة: ٢٤١] .

L34697 And narrated by Abd al-Razzaq via Maʿmar from Abu Qilabah, who said: “Every divorced woman is entitled to a mut’ah.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي قِلَابَةَ، قَالَ: لِكُلِّ مُطَلَّقَةٍ مُتْعَةٌ.

L34698 From the chain of ‘Abd al-Razzāq: Ibn Jurayj reported from ‘Aṭā’, who said: Every woman who freed herself from her husband is entitled to the mut’ah (consolatory gift).

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: لِكُلِّ امْرَأَةٍ افْتَلَتَتْ نَفْسَهَا مِنْ زَوْجِهَا فَلَهَا الْمُتْعَةُ.

L34699–34700 And through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from Ḥammād Abū Sulaymān from Ibrāhīm al-Nakhaʿī, who said: The mutʿah is for the woman who has sought khulʿ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادٍ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: لِلْمُخْتَلِعَةِ الْمُتْعَةُ.

L34701 Through the transmission of Saʿīd ibn Manṣūr: We [heard] from Hushaym, who [heard] from Yūnus ibn ʿUbayd, from al-Ḥasan, who said, “Every divorced woman is due provision.” Through the transmission of ʿAbd al-Razzāq, from Sufyān al-Thawrī, who said, “For the female slave, the Jewish woman, and the Christian woman: the mutʿah is due when she is divorced.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يُونُسُ بْنُ عُبَيْدٍ عَنْ الْحَسَنِ قَالَ: لِكُلِّ مُطَلَّقَةٍ مَتَاعٌ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، قَالَ: لِلْمَمْلُوكَةِ، وَالْيَهُودِيَّةِ وَالنَّصْرَانِيَّةِ: الْمُتْعَةُ إِذَا طَلُقَتْ.

L34702 Abu Muhammad said: Among the marvels in the reasoning of the proponents of analogical deduction is that Allah, the Almighty, has obligated the waiting period (ʿiddah) for every widow, every divorced woman whose marriage was consummated, and every emancipated slave woman who chooses separation from her husband. He has also categorically mandated post-divorce compensation (mutʿah) for all divorced women.

قَالَ أَبُو مُحَمَّدٍ: مِنْ عَجَائِبِ أَصْحَابِ الْقِيَاسِ - أَنَّ اللَّهَ عَزَّ وَجَلَّ أَوْجَبَ الْعِدَّةَ -: عَلَى كُلِّ مُتَوَفًّى عَنْهَا زَوْجُهَا مِنْ الزَّوْجَاتِ - وَعَلَى كُلِّ مُطَلَّقَةٍ مَوْطُوءَةٍ مِنْهُنَّ - وَعَلَى الْمُعْتَقَةِ الْمُخْتَارَةِ فِرَاقَ زَوْجِهَا - وَأَوْجَبَ الْمُتْعَةَ لِلْمُطَلَّقَاتِ جُمْلَةً.

L34703 They analogized by their opinions that any man without a wife, but with whom intercourse occurred under a defective and annulled contract, does not obligate inheritance for the validly married wife in the obligation of the waiting period upon both of them.

فَقَاسُوا بِآرَائِهِمْ كُلَّ مَنْ لَيْسَتْ لَهُ زَوْجَةٌ، لَكِنْ وُطِئَتْ بِعَقْدٍ مَفْسُوخٍ فَاسِدٍ، لَا يُوجِبُ مِيرَاثًا عَلَى الزَّوْجَةِ الصَّحِيحَةِ النِّكَاحِ فِي إِيجَابِ الْعِدَّةِ عَلَيْهِمَا.

L34704 They have exempted many divorced women from the obligation of mut’ah

وَأَسْقَطُوا كَثِيرًا مِنْ الْمُطَلَّقَاتِ عَنْ إِيجَابِ الْمُتْعَةِ لَهُنَّ، فَهَلْ سُمِعَ بِأَعْجَبَ مِنْ فَسَادِ هَذَا الْعَمَلِ - وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

[26] **Qur’an references (L34696):** Qur’an 2:241 (Al-Baqarah).

due to them. Has anything more astonishing than this corrupt action ever been heard? We ask Allah for safety.

L34705 As for the measure of mut'ah - we have narrated through Abd al-Razzaq's chain from Ibn Jurayj via Musa ibn Uqbah from Nafi' that Ibn Umar stated: "The minimum amount I consider sufficient for mut'ah is thirty dirhams." Through Waki's chain from Sufyan al-Thawri via Isma'il ibn Umayyah from Ikrimah from Ibn Abbas, he said: "The highest form of mut'ah is granting a servant, while lesser forms include sustenance and clothing." Through Waki's chain from Sufyan al-Thawri via Amr ibn Ubayd from al-Hasan concerning mut'ah owed to a divorced woman - he ruled: "There is no fixed amount restricting it, but rather according to one's financial capacity." Through Abd al-Razzaq's chain from Ibn Jurayj via Ata', he declared: "I know of no fixed time for mut'ah. Allah the Exalted has stated: ***'Upon the wealthy according to their means, and upon the needy according to their means'*** [Al-Baqarah 2:236]."[27]

وَأَمَّا مِقْدَارُ الْمُتْعَةِ - فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ قَالَ: أَدْنَى مَا أَرَاهُ يَجْزِي فِي الْمُتْعَةِ ثَلَاثُونَ دِرْهَمًا. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: أَعْلَى الْمُتْعَةِ، الْخَادِمُ، وَدُونَ ذَلِكَ: النَّفَقَةُ وَالْكِسْوَةُ. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمْرِو بْنِ عُبَيْدٍ عَنْ الْحَسَنِ فِي الْمُتْعَةِ لِلْمُطَلَّقَةِ - قَالَ: لَيْسَ فِيهَا شَيْءٌ مُؤَقَّتٌ يَمْنَعُهَا عَلَى قَدْرِ الْمَيْسَرَةِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: لَا أَعْلَمُ لِلْمُتْعَةِ وَقْتًا، قَالَ اللَّهُ تَعَالَى: {عَلَى الْمُوسِعِ قَدَرُهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ} [البقرة: ٢٣٦] .

L34706 Abū Ḥanīfah said: The maximum compensation one can be obligated to give for *mut'ah* is ten *dirhams*, and the minimum compensation is five *dirhams*.

وَقَالَ أَبُو حَنِيفَةَ: أَعْلَى مَا يُجْبَرُ عَلَيْهِ مِنْ الْمُتْعَةِ: عَشَرَةُ دَرَاهِمَ، وَأَدْنَى ذَلِكَ: خَمْسَةُ دَرَاهِمَ.

L34707–34708 And this is a statement without evidence? Assuming he analogized the ten dirhams to the amount warranting hand amputation—then upon what basis did he analogize the five dirhams? Abu Muhammad said: Had Allah the Exalted delegated the mut'ah to the recipient's discretion, we would have adhered strictly to His command and obligated the recipient accordingly, as practiced in granting property to a slave under a contract of manumission. However, He the Exalted obligated it according to financial capacity in affluence and poverty. Thus, we are compelled to establish that the mut'ah of the affluent differs necessarily from that of the impoverished. Finding no stipulated measure from Allah's Messenger (peace be upon him) in this matter, we must interpret it by the convention understood by those addressed. This necessitates recourse to authentic reports from the Companions (may Allah be pleased with them), as we did regarding hunting expiations. Whatever

وَهَذَا قَوْلٌ لَا دَلِيلَ عَلَيْهِ؟ وَهَبْكَ أَنَّهُ قَاسَ الْعَشَرَةَ دَرَاهِمَ عَلَى مَا تُقْطَعُ فِيهِ الْيَدُ؟ فَعَلَى أَيِّ شَيْءٍ قَاسَ الْخَمْسَةَ دَرَاهِمَ؟ قَالَ أَبُو مُحَمَّدٍ: لَوْ أَنَّ اللَّهَ تَعَالَى وَكَّلَ الْمُتْعَةَ إلَى الْمُتَمَتِّعِ لَوَقَفْنَا عِنْدَ أَمْرِهِ عَزَّ وَجَلَّ وَأَلْزَمْنَاهُ ذَلِكَ؟ كَمَا يَفْعَلُ فِي إيتَاءِ الْمُكَاتِبِ مِنْ مَالِ الْمُكَاتَبِ لَكِنَّهُ تَعَالَى أَلْزَمَهُ عَلَى قَدْرِ الْيَسَارِ وَالْإِقْتَارِ، فَلَزِمَنَا فَرْضًا أَنْ نَجْعَلَ مُتْعَةَ الْمُوسِرِ غَيْرَ مُتْعَةِ الْمُقْتِرِ وَلَا بُدَّ - وَلَمْ نَجِدْ فِي ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَدًّا وَجَبَ حَمْلُ ذَلِكَ عَلَى الْمَعْرُوفِ عِنْدَ الْمُخَاطَبِينَ بِذَلِكَ، فَوَجَبَ بِهَذَا الرُّجُوعُ إلَى مَا صَحَّ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ، كَمَا فَعَلْنَا فِي جَزَاءِ الصَّيْدِ فَمَا كَانَ هُوَ الْمَعْرُوفُ عِنْدَهُمْ فِي الْمُتْعَةِ، فَهُوَ الَّذِي أَرَادَ اللَّهُ عَزَّ وَجَلَّ بِلَا شَكٍّ، إذْ لَا بُدَّ لِمَا أَمَرَ

[27] **Qur'an references (L34705):** Qur'an 2:236 (Al-Baqarah).

convention they recognized for mut'ah is undoubtedly Allah's intent, for His commands require clarification. Among them (may Allah be pleased with them) were those of utmost affluence like Abd al-Rahman ibn Awf, while Ibn Abbas and Ibn Umar were affluent but less so than Abd al-Rahman.

L34709 One of the proofs clarifying the obligation to refer back to the opinions of the Companions—may Allah be pleased with them—is that it constitutes a post-divorce provision granted in a fair manner, as we stated regarding maintenance and clothing, since Allah the Exalted said: "Let the affluent spend from his abundance, and let him whose provision is restricted spend from what Allah has granted him. Allah does not burden any soul beyond what He has given it" (65:7). Dissenting scholars have agreed with us on this matter, and it is obligatory to follow both texts.[28]

L34710 From Muhammad ibn Sa'id ibn Nubatah, from Ibn Mufarrih, from Abdullah ibn Ja'far ibn al-Ward, from Yahya ibn Ayyub ibn Badi al-Allaf, from Yahya ibn Bukayr, from al-Layth ibn Sa'd, from Abdullah ibn Yazid—the freed slave of al-Aswad—from Abu Salamah ibn Abd al-Rahman ibn Awf, from Fatimah bint Qays herself. She said: Abu Amr ibn Hafs divorced me irrevocably, then departed for Yemen and appointed Ayyash ibn Abi Rabi'ah as his agent over her. Ayyash sent her some maintenance, but did she resent it? Ayyash said to her: "You have no right to maintenance or housing from us. The Messenger of Allah is here—peace and blessings be upon him—so ask him." She asked the Messenger of Allah—peace and blessings be upon him—about his statement. The Messenger of Allah—peace and blessings be upon him—said to her: "You have no right to maintenance or housing, but only to a provision in kindness. Depart from them." She then relayed the remainder of the account.

L34711–34712 This, then, is the ultimate clarification: temporary marriage is restored to what was known among them at that time, for we have cited the statements of Ibn ʻUmar and Ibn ʻAbbās.

L34713 It was reported to us through the chain of Saʻīd ibn Manṣūr: From ʻAbd al-

[28] **Qur'an references (L34709):** Qur'an 65:7 (At-Talaq).

اللَّهُ تَعَالَى بِهِ مِنْ بَيَانٍ، فَقَدْ كَانَ فِيهِمْ - رَضِيَ اللَّهُ عَنْهُمْ - الْمُوسِرُ الْمُتَنَاهِي، كَعَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَغَيْرِهِ، وَكَانَ ابْنُ عَبَّاسٍ، وَابْنُ عُمَرَ مُوسِرَيْنِ دُونَ عَبْدِ الرَّحْمَنِ.

وَمِمَّا يُبَيِّنُ وُجُوبَ الرُّجُوعِ إلَى مَا رَآهُ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّهُ مُتْعَةٌ بِالْمَعْرُوفِ، كَمَا قُلْنَا فِي النَّفَقَةِ، وَالْكِسْوَةِ، إذْ قَالَ اللَّهُ تَعَالَى: {لِيُنْفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لا يُكَلِّفُ اللَّهُ نَفْسًا إلا مَا آتَاهَا} [الطلاق: ٧] وَقَدْ وَافَقَنَا الْمُخَالِفُونَ عَلَى هَذَا، وَكِلَا النَّصَّيْنِ وَاجِبٌ اتِّبَاعُهُ.

وَمَا أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ أَنَا ابْنُ مُفَرِّجٍ أَنَا عَبْدُ اللَّهِ بْنُ جَعْفَرِ بْنِ الْوَرْدِ أَنَا يَحْيَى بْنُ أَيُّوبَ بْنِ بَادِي الْعَلَّافُ أَنَا يَحْيَى بْنُ بُكَيْرٍ أَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ مَوْلَى الْأَسْوَدِ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ نَفْسِهَا قَالَتْ: طَلَّقَنِي أَبُو عَمْرِو بْنِ حَفْصٍ أَلْبَتَّةَ ثُمَّ خَرَجَ إلَى الْيَمَنِ وَوَكَّلَ بِهَا عَيَّاشُ بْنُ أَبِي رَبِيعَةَ فَأَرْسَلَ إلَيْهَا عَيَّاشٌ بِبَعْضِ النَّفَقَةِ، فَسَخِطَتْهَا؟ فَقَالَ لَهَا عَيَّاشٌ: مَا لَك عَلَيْنَا نَفَقَةٌ وَلَا سُكْنَى هَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَلِيهِ؟ فَسَأَلَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَمَّا قَالَ؟ فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَيْسَ لَكِ نَفَقَةٌ وَلَا مَسْكَنٌ، وَلَكِنْ مَتَاعٌ بِالْمَعْرُوفِ وَاخْرُجِي عَنْهُمْ» ، وَذَكَرَتْ بَاقِي الْخَبَرِ.

فَهَذَا غَايَةُ الْبَيَانِ - أَنَّ الْمُتْعَةَ مَرْدُودَةٌ إلَى مَا كَانَ مَعْرُوفًا عِنْدَهُمْ يَوْمَئِذٍ، فَقَدْ ذَكَرْنَا قَوْلَ ابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ.

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ زِيَادٍ أَنَا شُعْبَةُ عَنْ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ قَالَ: سَمِعْت حُمَيْدَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ يُحَدِّثُ عَنْ أُمِّهِ - هِيَ أُمُّ كُلْثُومٍ بِنْتُ عُقْبَةَ، مِنْ الْمُهَاجِرَاتِ الْفَوَاضِلِ لَهَا صُحْبَةٌ - أَنَّهَا قَالَتْ: كَأَنِّي أَنْظُرُ إلَى جَارِيَةٍ سَوْدَاءَ حَمَّمَهَا عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ امْرَأَتُهُ أُمُّ أَبِي سَلَمَةَ حِينَ طَلَّقَهَا فِي مَرَضِهِ. قَالَ سَعِيدِ بْنِ مَنْصُورٍ: أَنَا هُشَيْمٌ أَنَا مُغِيرَةَ عَنْ إبْرَاهِيمَ قَالَ: الْعَرَبُ تُسَمِّي " الْمُتْعَةَ " التَّحْمِيمَ.

Raḥmān ibn Ziyād, from Shu'bah, from Sa'd ibn Ibrāhīm ibn 'Abd al-Raḥmān ibn 'Awf, who said: I heard Ḥumayd ibn 'Abd al-Raḥmān ibn 'Awf narrating from his mother—she was Umm Kulthūm bint 'Uqbah, one of the eminent emigrant women honored with the Prophet's companionship—that she said: "It is as though I am looking at a black slave girl whom 'Abd al-Raḥmān ibn 'Awf's wife, Umm Abī Salamah, heated water for when he divorced her during his illness." Sa'īd ibn Manṣūr said: From Hushaym, from Mughīrah, from Ibrāhīm, who said: "The Arabs called 'al-mut'ah' 'al-taḥmīm'."

فَقَدْ اتَّفَقَ ابْنُ عَبَّاسٍ، وَعَبْدُ الرَّحْمَنِ، بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُمَا فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - عَلَى أَنَّ مُتْعَةَ الْمُوسِرِ الْمُتَنَاهِي - خَادِمُ سَوْدَاءُ، فَإِنْ زَادَ عَلَى ذَلِكَ فَهُوَ مُحْسِنٌ، كَمَا فَعَلَ الْحَسَنُ بْنُ عَلِيٍّ، وَغَيْرُهُ، فَإِنْ كَانَتْ غَيْرَ مُطِيقَةٍ لِلْخِدْمَةِ فَلَيْسَتْ خَادِمًا، فَعَلَى هَذَا الْمِقْدَارِ يُجْبَرُ الْمُوسِرُ إذَا أَبَى أَكْثَرَ مِنْ ذَلِكَ.

L34714 Ibn Abbas and Abd al-Rahman unanimously agreed—in the presence of the Companions, may Allah be pleased with them, with no known opposition from the Companions—may Allah be pleased with them—that the utmost obligation of a financially capable person is a black female servant. If he exceeds this, he performs an act of excellence, as did al-Hasan ibn Ali and others. If she is incapable of service, she does not qualify as a servant. Based on this standard, the financially capable person who refuses to give more than that must be compelled.

وَأَمَّا الْمُتَوَسِّطُ - فَيُجْبَرُ عَلَى ثَلَاثِينَ دِرْهَمًا أَوْ قِيمَتِهَا إذْ لَمْ يَأْتِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَقَلُّ مِنْ ذَلِكَ كَمَا رُوِّينَا آنِفًا عَنْ ابْنِ عَبَّاسٍ وَابْنِ عُمَرَ إذْ رَأَيَا ذَلِكَ هُوَ الْمَعْرُوفُ.

L34715 As for the person of average means, he is compelled to pay thirty dirhams or their value, since no lesser amount has been transmitted from any of the Companions (may Allah be pleased with them), as we have previously narrated from Ibn Abbas and Ibn Umar, who ruled that to be the established amount.

وَأَمَّا الْمُقْتِرُ - فَأَقَلُّهُمْ مَنْ لَا يَجِدُ قُوتَ يَوْمِهِ، أَوْ لَا يَجِدُ زِيَادَةً عَلَى ذَلِكَ، فَهَذَا لَا يُكَلَّفُ حِينَئِذٍ شَيْئًا، لَكِنَّهَا دَيْنٌ عَلَيْهِ، فَإِذَا وَجَدَ زِيَادَةً عَلَى قُوتِهِ كُلِّفَ أَنْ يُعْطِيَهَا مَا تَنْتَفِعُ بِهِ - وَلَوْ فِي أَكْلَةِ يَوْمٍ - كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ إذْ يَقُولُ: {وَعَلَى الْمُقْتِرِ قَدَرُهُ} [البقرة: ٢٣٦] وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L34716–34718 As for the constrained person, the minimum definition is one who cannot find sustenance for a day or anything beyond that. Such a person does not... He is then obligated to do something, but it remains a debt upon him. When he possesses surplus beyond his basic sustenance, he must give her what she can benefit from—even if it amounts to a day's meal—as Almighty Allah has commanded when He says: {And for the one who is straitened is according

to his means} [Al-Baqarah: 236]. And success comes from Allah, the Most High.[29]

[الرَّجْعَةُ] [مَسْأَلَةٌ طَلَّقَ امْرَأَتَهُ ثُمَّ تَزَوَّجَتْ بِآخَرَ وَطِئَهَا ثُمَّ مَاتَ عَنْهَا ثُمَّ رَاجَعَهَا الَّذِي كَانَ طَلَّقَهَا ثُمَّ طَلَّقَهَا]

The Case of Revocation (Rajʿa): A man divorced his wife. She then married another man who consummated the marriage with her. When this second husband died, the first husband who had divorced her attempted to revoke the divorce via rajʿa, then divorced her again.

١٩٨١ - مَسْأَلَةٌ: وَمِنْ الرَّجْعَةِ مَنْ طَلَّقَ امْرَأَتَهُ تَطْلِيقَةً أَوْ تَطْلِيقَتَيْنِ فَاعْتَدَّتْ ثُمَّ تَزَوَّجَتْ زَوْجًا وَطِئَهَا فِي فَرْجِهَا ثُمَّ مَاتَ عَنْهَا أَوْ طَلَّقَهَا ثُمَّ رَاجَعَهَا الَّذِي كَانَ طَلَّقَهَا ثُمَّ طَلَّقَهَا لَمْ تَحِلَّ لَهُ إلَّا حَتَّى تَنْكِحَ زَوْجًا آخَرَ - يَطَؤُهَا فِي فَرْجِهَا - إنْ كَانَ طَلَّقَهَا قَبْلَ ذَلِكَ طَلْقَتَيْنِ فَإِنْ كَانَ إنَّمَا طَلَّقَهَا طَلْقَةً وَاحِدَةً فَإِنَّهُ تَبْقَى لَهُ فِيهَا طَلْقَةٌ هِيَ الثَّالِثَةُ.

L34719–34720

L34721 Issue 1981: Among rulings related to revocable divorce: If a man divorces his wife once or twice, she completes her waiting period, then marries another husband who consummates the marriage through vaginal intercourse. If this second husband dies or divorces her, and the first husband who originally divorced her then takes her back and divorces her again, she becomes unlawful for him unless she contracts a valid marriage with another husband who consummates it through vaginal intercourse. This applies specifically if he had divorced her twice before these events. If he had only divorced her once previously, he retains one remaining divorce count - which constitutes the third divorce.

وَقَالَتْ طَائِفَةٌ: إنَّ الَّذِي تَزَوَّجَهَا بَعْدَ طَلَاقِ الْأَوَّلِ قَدْ هَدَمَ طَلَاقَهُ كَمَا يَهْدِمُ الثَّلَاثَ، فَإِنَّهُ يَهْدِمُ مَا دُونَهَا - فَمِمَّنْ رُوِيَ عَنْهُ الْقَوْلُ الْأَوَّلُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ أَبَا هُرَيْرَةَ قَالَ فِيمَنْ طَلَّقَ امْرَأَتَهُ طَلْقَةً فَاعْتَدَّتْ، ثُمَّ تَزَوَّجَتْ، ثُمَّ طَلَّقَهَا الثَّانِي، فَتَزَوَّجَهَا الْأَوَّلُ فَطَلَّقَهَا طَلْقَتَيْنِ: أَنَّهَا قَدْ حُرِّمَتْ عَلَيْهِ - وَوَافَقَهُ عَلَى ذَلِكَ عَلِيٌّ، وَأُبَيُّ بْنُ كَعْبٍ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَالِكٍ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، كِلَاهُمَا عَنْ الزُّهْرِيِّ قَالَ: سَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ، وَحُمَيْدَ بْنَ عَبْدِ الرَّحْمَنِ، وَعُبَيْدَ اللَّهِ بْنَ عَبْدِ اللَّهِ بْنِ عُتْبَةَ، وَسُلَيْمَانَ بْنَ يَسَارٍ، كُلَّهُمْ قَالَ: سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: سَمِعْت عُمَرَ يَقُولُ: أَيُّمَا امْرَأَةٍ طَلَّقَهَا زَوْجُهَا

L34722–34723 A group said: The one who marries her after the first divorce has nullified his divorce, just as the triple divorce nullifies, for it nullifies any number fewer than three. Among those from whom the first opinion is narrated—as transmitted through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who informed me that Yaḥyā ibn Saʿīd al-Anṣārī reported from Saʿīd ibn al-Musayyib: That Abū Hurayrah said regarding a man who divorced his wife once, she observed her ʿiddah, then married another, then the second husband divorced her, and the first husband remarried her and divorced her twice: She has become forbidden to him. This was concurred by ʿAlī and Ubayy ibn Kaʿb. From ʿAbd al-Razzāq's transmission via Mālik and Sufyān ibn ʿUyaynah—both from al-Zuhrī—who said: I heard Saʿīd ibn al-Musayyib, Ḥumayd ibn ʿAbd al-Raḥmān, ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah, and Sulaymān ibn Yasār—all of whom said: I heard Abū Hurayrah say: I heard ʿUmar say: Any

[29] **Qur'an references (L34716):** Qur'an 2:236 (Al-Baqarah).

woman divorced by her husband once or twice, then marries another—if he dies or divorces her, and the first husband remarries her—she remains with him according to what remains from his divorce for her. Through the chain of Ḥammād ibn Salamah from Ḥumayd from al-Ḥasan from ʿImrān ibn al-Ḥuṣayn, a similar statement is reported. This is also authentically established from Ibn ʿUmar—in one of his two contradictory opinions—through the chain of Ḥammād ibn Salamah from ʿUbayd Allāh ibn ʿUmar from Nāfiʿ from him.

طَلْقَةً أَوْ طَلْقَتَيْنِ ثُمَّ تَزَوَّجَتْ غَيْرَهُ فَمَاتَ أَوْ طَلَّقَهَا ثُمَّ تَزَوَّجَهَا الْأَوَّلُ فَإِنَّهَا عِنْدَهُ عَلَى مَا بَقِيَ مِنْ طَلَاقِهِ لَهَا. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ مِثْلُهُ - وَصَحَّ أَيْضًا: عَنْ ابْنِ عُمَرَ - فِي أَحَدِ قَوْلَيْهِ - عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْهُ.

L34724 It has also been reported from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ and a number of the Companions—may Allah be pleased with them—and it is the opinion of al-Ḥasan, Ibn Abī Laylā, Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, Muḥammad ibn al-Ḥasan, Mālik, al-Shāfiʿī, Abū Sulaymān, and their followers.

وَرُوِيَ أَيْضًا - عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ، وَنَفَرٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهُوَ قَوْلُ الْحَسَنِ، وَابْنِ أَبِي لَيْلَى، وَسُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L34725–34727 And it has been narrated to us the second opinion through various chains, among which is that which we have narrated via ʿAbd al-Razzāq from Maʿmar. From Ibn Tawus from his father from Ibn Abbas, he said: “A new marriage and a new divorce.” And from Ibn Umar (in one of his two opinions) via the chains of Abd al-Razzaq and Wakiʿ. Wakiʿ narrated from Ismail ibn Abi Khalid from al-Shaʿbi, while Abd al-Razzaq narrated from Maʿdin ibn Tawus from his father. Then they both agreed upon the narration from Ibn Umar, who said: “A new marriage and a new divorce.”

وَرُوِّينَا الْقَوْلَ الثَّانِي - مِنْ طُرُقٍ، مِنْهَا - مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ قَالَ: نِكَاحٌ جَدِيدٌ، وَطَلَاقٌ جَدِيدٌ - وَعَنْ ابْنِ عُمَرَ - فِي أَحَدِ قَوْلَيْهِ - مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ، وَوَكِيعٍ، قَالَ وَكِيعٌ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ، وَقَالَ عَبْدُ الرَّزَّاقِ: عَنْ مَعْدِنِ بْنِ طَاوُسٍ عَنْ أَبِيهِ، ثُمَّ اتَّفَقَا عَنْ ابْنِ عُمَرَ، قَالَ: نِكَاحٌ جَدِيدٌ، وَطَلَاقٌ جَدِيدٌ.

L34728 We have also narrated it from Ibn Mas’ud—and this is the position of Ata, Shuraih, Ibrahim, the companions of Ibn Mas’ud, Ubaydah al-Salmani, Abu Hanifah, Zufar, and Abu Yusuf—so have we not examined the evidence cited by the proponents of this view? We found no evidence beyond their claim: “There is no disagreement among us that marriage to another husband annuls the three divorces. There is no doubt that if it annuls them, it has annulled the single [divorce] within their totality and the two [divorces] within their totality—for it is impossible that it annuls them piecemeal.”

وَرُوِّينَاهُ أَيْضًا - عَنْ ابْنِ مَسْعُودٍ - وَهُوَ قَوْلُ عَطَاءٍ وَشُرَيْحٍ، وَإِبْرَاهِيمَ، وَأَصْحَابِ ابْنِ مَسْعُودٍ، وَعَبِيدَةَ السَّلْمَانِيِّ، وَأَبِي حَنِيفَةَ، وَزُفَرَ، وَأَبِي يُوسُفَ -: فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ أَهْلُ هَذِهِ الْمَقَالَةِ؟ فَلَمْ نَجِدْ لَهُمْ أَكْثَرَ مِنْ أَنْ قَالُوا: إنَّنَا لَمْ نَخْتَلِفْ أَنَّ نِكَاحَ زَوْجٍ آخَرَ يَهْدِمُ الثَّلَاثَ، وَلَا شَكَّ فِي أَنَّهُ إذَا هَدَمَهَا فَإِنَّهُ قَدْ هَدَمَ الْوَاحِدَةَ مِنْ جُمْلَتِهَا، وَالِاثْنَيْنِ مِنْ جُمْلَتِهَا - وَمِنْ الْمُحَالِ أَنْ يَهْدِمَهَا مُتَفَرِّقَةً.

L34729 Abū Muḥammad said: We said, “He never nullified any divorce at all. He only nullified the prohibition incurred by the completion of three divorces—

whether separated or combined—exclusively. Neither two divorces nor one render her prohibited through the nullification of that prohibition."

قَالَ أَبُو مُحَمَّد: فَقُلْنَا: لَمْ يَهْدِمْ قَطُّ طَلَاقًا، إِنَّمَا هَدَمَ التَّحْرِيمَ الْوَاقِعَ بِتَمَامِ الثَّلَاثِ مُفَرَّقَةً أَوْ مَجْمُوعَةً فَقَطْ، وَلَا تُحَرَّمُ بِالطَّلْقَتَيْنِ وَلَا بِالْوَاحِدَةِ بِهَدْمِهِ.

L34730 We said to them: You have imposed upon the agnatic group half a tenth of the blood money or more, yet exempted them from anything less than half a tenth. Undoubtedly, when they are charged half a tenth, they are in fact collectively burdened with less than that? They replied: We only imposed what was financially burdensome. We said: What authority do you have to assert that half a tenth or more constitutes the burden, rather than a third being the burden or the entire amount?

وَقُلْنَا لَهُمْ: أَنْتُمْ قَدْ حَمَّلْتُمْ الْعَاقِلَةَ نِصْفَ عُشْرِ الدِّيَةِ فَأَكْثَرَ، وَلَمْ تُحَمِّلُوهَا أَقَلَّ مِنْ نِصْفِ الْعُشْرِ، وَلَا شَكَّ أَنَّهَا إذَا حُمِّلَتْ نِصْفَ الْعُشْرِ فَقَدْ حُمِّلَتْ فِي جُمْلَتِهِ أَقَلَّ مِنْهُ؟ فَقَالُوا: إنَّمَا حَمَّلْنَاهَا مَا ثَقُلَ؟ فَقُلْنَا: وَمَنْ لَكُمْ بِأَنَّ نِصْفَ الْعُشْرِ فَصَاعِدًا هُوَ الثِّقَلُ دُونَ أَنْ يَكُونَ الثُّلُثُ هُوَ الثِّقَلُ أَوْ الْكُلُّ.

L34731 Moreover, there may be a perpetrator upon whom even one-fortieth of the *diyah* becomes burdensome due to the scarcity of his wealth, while another may find the entire *diyah* light due to the abundance of his wealth.

وَأَيْضًا - فَرُبَّ جَانٍ يَعْظُمُ عَلَيْهِ وَيَثْقُلُ رُبُعُ عُشْرِ الدِّيَةِ، لِقِلَّةِ مَالِهِ، وَآخَرَ تَخِفُّ عَلَيْهِ الدِّيَةُ كُلُّهَا لِكَثْرَةِ مَالِهِ.

L34732 The question still remains for you, since you imposed a heavy burden on her, then it would be more fitting to impose a lighter one—yet all of this is meaningless. The decisive proof lies in Allah's statement: {If he divorces her} [Al-Baqarah: 230]—referring to the third divorce—{she is not lawful for him thereafter until she marries another husband} [Al-Baqarah: 230]. Therefore, it is impermissible to transgress Allah's ordained limits, and all qiyas is invalid. Success is attained only through Allah, the Exalted.[30]

ثُمَّ السُّؤَالُ بَاقٍ عَلَيْكُمْ، إذْ حَمَّلْتُمُوهَا مَا ثَقُلَ، فَالْأَوْلَى أَنْ تُحَمِّلُوهَا مَا خَفَّ وَكُلُّ هَذَا لَا مَعْنَى لَهُ، إنَّمَا الْحُجَّةُ فِي ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {فَإِنْ طَلَّقَهَا} [البقرة: ٢٣٠] يَعْنِي فِي الثَّالِثَةِ {فَلا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ} [البقرة: ٢٣٠] فَلَا يَجُوزُ تَعَدِّي حُدُودَ اللَّهِ تَعَالَى وَالْقِيَاسُ كُلُّهُ بَاطِلٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حُكْمُ الْمُطَلَّقَةِ طَلَاقًا رَجْعِيًّا]

Issue: The ruling concerning the woman divorced through a revocable divorce.

L34733

L34734–34736 1982 - Issue: We have stated that the woman divorced by a revocable divorce remains the wife of the one who divorced her as long as... Her waiting period has not expired; they inherit from each other. His divorce, oath of abstention (īlāʾ), disavowal (ẓihār), and imprecation (liʿān—if he accuses her) apply to her. He is obligated to provide her maintenance, clothing, and housing.

١٩٨٢ - مَسْأَلَةٌ: وَقَدْ قُلْنَا: إنَّ الْمُطَلَّقَةَ طَلَاقًا رَجْعِيًّا فَهِيَ زَوْجَةٌ لِلَّذِي طَلَّقَهَا مَا لَمْ تَنْقَضِ عِدَّتُهَا، يَتَوَارَثَانِ، وَيَلْحَقُهَا طَلَاقُهُ، وَإِيلَاؤُهُ، وَظِهَارُهُ، وَلِعَانُهُ إنْ قَذَفَهَا، وَعَلَيْهِ نَفَقَتُهَا، وَكِسْوَتُهَا، وَإِسْكَانُهَا.

L34737 Since she is his wife, it is permissible for him to look at from her what he used to look at from her before he divorced her and to have intercourse

[30] **Qur'an references (L34732):** Qur'an 2:230 (Al-Baqarah).

with her, as no text has come to prohibit him from any of that. Allah the Exalted has named him her "baʿl," for He, the Almighty and Majestic, states: "And their husbands are more entitled to take them back in that" [Al-Baqarah 2:228].[31]

فَإِذْ هِيَ زَوْجَتُهُ فَحَلَالٌ لَهُ أَنْ يَنْظُرَ مِنْهَا إلَى مَا كَانَ يَنْظُرُ إلَيْهِ مِنْهَا قَبْلَ أَنْ يُطَلِّقَهَا، وَأَنْ يَطَأَهَا، إذْ لَمْ يَأْتِ نَصٌّ بِمَنْعِهِ مِنْ شَيْءٍ مِنْ ذَلِكَ - وَقَدْ سَمَّاهُ اللَّهُ تَعَالَى " بَعْلًا " لَهَا، إذْ يَقُولُ عَزَّ وَجَلَّ: {وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ} [البقرة: ٢٢٨] .

L34738–34739 Abū Muḥammad said: If he has intercourse with her, he does not thereby become one who has revoked the divorce to her until he verbally pronounces the revocation, has it witnessed, and informs her of this before the completion of her waiting period. If he revokes the divorce without having two just witnesses attest to it, it is not a valid revocation due to Allah the Exalted's statement: {When they have fulfilled their term, either retain them honorably or separate from them honorably, and have two just witnesses from among you attest} [65:2]. He, the Almighty and Majestic, distinguished between revocation, divorce, and the requirement of witnessing. Thus, it is impermissible to separate any of these from the others. Whoever divorces without having two just witnesses attest to it, or revokes the divorce without having two just witnesses attest to it, has transgressed the boundaries set by Allah the Exalted.[32]

قَالَ أَبُو مُحَمَّد: فَإِنْ وَطِئَهَا لَمْ يَكُنْ بِذَلِكَ مُرَاجِعًا لَهَا حَتَّى يَلْفِظَ بِالرَّجْعَةِ وَيُشْهِدَ، وَيُعْلِمَهَا بِذَلِكَ قَبْلَ تَمَامِ عِدَّتِهَا، فَإِنْ رَاجَعَ وَلَمْ يُشْهِدْ فَلَيْسَ مُرَاجِعًا لِقَوْلِ اللَّهِ تَعَالَى: {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ} [الطلاق: ٢] فَرَّقَ عَزَّ وَجَلَّ بَيْنَ الْمُرَاجَعَةِ، وَالطَّلَاقِ وَالْإِشْهَادِ، فَلَا يَجُوزُ إفْرَادُ بَعْضِ ذَلِكَ عَنْ بَعْضٍ، وَكَانَ مَنْ طَلَّقَ وَلَمْ يُشْهِدْ ذَوَيْ عَدْلٍ، أَوْ رَاجَعَ وَلَمْ يُشْهِدْ ذَوَيْ عَدْلٍ، مُتَعَدِّيًا لِحُدُودِ اللَّهِ تَعَالَى.

L34740 The Messenger of Allah, peace and blessings be upon him, said, "Whoever does a deed not in accordance with our command, it is rejected."[33]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L34741 If it is said: Allah—the Exalted and Majestic—has declared, "And call upon witnesses when you engage in transactions" (Quran 2:282).[34]

فَإِنْ قِيلَ: قَدْ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ} [البقرة: ٢٨٢] .

L34742 And He, the Exalted, said regarding deferred debt: "Call upon two witnesses from among your men. But if the two are not men, then a man and two women." (Al-Baqarah 2:282)[35]

وَقَالَ تَعَالَى فِي الدَّيْنِ الْمُؤَجَّلِ: {وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ} [البقرة: ٢٨٢] .

L34743 Why did you permit the deferred sale and others when they did not have it

فَلِمَ أَجَزْتُمْ الْبَيْعَ الْمُؤَجَّلَ وَغَيْرَهُ إذَا لَمْ يُشْهِدْ عَلَيْهِ؟ وَقَالَ تَعَالَى: {فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهِدُوا عَلَيْهِمْ} [النساء: ٦] .

[31] **Qur'an references (L34737):** Qur'an 2:228 (Al-Baqarah).
[32] **Qur'an references (L34739):** Qur'an 65:2 (At-Talaq).
[33] **Hadith references (L34740):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.
[34] **Qur'an references (L34741):** Qur'an 2:282 (Al-Baqarah).
[35] **Qur'an references (L34742):** Qur'an 2:282 (Al-Baqarah).

witnessed? And He, the Most High, said: “So when you deliver their wealth to them, appoint witnesses over them” [An-Nisa’ 4:6].[36]

L34744 Why did you permit handing over his property to the orphan when he attains discernment without testimony? We replied: We did not accept his claim to receive the property unless he furnishes evidence, and we obligated the orphan to swear an oath if the custodian fails to furnish evidence that he has handed over his property to the orphan. However, we deem him disobedient to God Almighty only if he swears a perjured oath.

فَلِمَ أَجَزْتُمْ الدَّفْعَ إِلَى الْيَتِيمِ مَالَهُ إِذَا بَلَغَ مُمَيِّزًا دُونَ إِشْهَادٍ؟ قُلْنَا: لَمْ نُجِزْ دَعْوَاهُ لِلدَّفْعِ لَا حَتَّى يَأْتِيَ بِالْبَيِّنَةِ، وَقَضَيْنَا بِالْيَمِينِ عَلَى الْيَتِيمِ إِنْ لَمْ يَأْتِ الْمَوْلَى بِالْبَيِّنَةِ عَلَى أَنَّهُ قَدْ دَفَعَ إِلَيْهِ مَالَهُ، وَلَكِنْ جَعَلْنَاهُ عَاصِيًا لِلَّهِ تَعَالَى إِنْ حَلَفَ حَانِثًا فَقَطْ.

L34745–34746 Just as We have deemed the woman—for whom no clear evidence has been established by the husband regarding her divorce or its revocation—disobedient to Allah, the Almighty, the Majestic: if she swears falsely, knowing that he has divorced her or revoked [the divorce].

كَمَا جَعَلْنَا الْمَرْأَةَ الَّتِي لَمْ يَقُمْ لِلزَّوْجِ بَيِّنَةٌ بِطَلَاقِهَا، وَلَا بِرَجْعَتِهَا: عَاصِيَةً لِلَّهِ عَزَّ وَجَلَّ إِنْ حَلَفَتْ حَانِثَةً، عَالِمَةً بِأَنَّهُ قَدْ طَلَّقَهَا أَوْ رَاجَعَهَا.

L34747 As for our permitting of the deferred sale and other [transactions], even if they did not have it witnessed—this ruling derives from the statement of Allah’s Messenger (peace and blessings be upon him): “The two parties retain the right of choice until they part. If they part, or if one offers the other the choice and he opts to finalize the sale, then the sale is concluded”—as he (peace and blessings be upon him) expressed it—in accordance with what we have previously cited verbatim with its chain of transmission in the “Book of Sales” within this compendium of ours and other sources. All praise belongs to Allah, Lord of the worlds.

وَأَمَّا إِجَازَتُنَا الْبَيْعَ الْمُؤَجَّلَ وَغَيْرَهُ -، وَإِنْ لَمْ يُشْهِدَا عَلَيْهِ - فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - “ أَنَّهُمَا بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا فَإِذَا تَفَرَّقَا أَوْ خَيَّرَ أَحَدُهُمَا الْآخَرَ فَاخْتَارَ الْبَيْعَ فَقَدْ تَمَّ الْبَيْعُ ” أَوْ كَمَا قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِمَّا قَدْ ذَكَرْنَاهُ فِي “ كِتَابِ الْبُيُوعِ ” مِنْ دِيوَانِنَا هَذَا وَغَيْرِهِ بِنَصِّهِ، وَإِسْنَادِهِ، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L34748 And in all of that, he is disobeying Allah, the Mighty and Majestic, if he does not have witnesses in deferred sales and similar transactions, and in transferring wealth to the orphan when he reaches the age of discernment, in his divorce, and in reinstating the marriage, if he does not act as Allah, the Mighty and Majestic, has commanded him.

وَهُوَ فِي كُلِّ ذَلِكَ عَاصٍ لِلَّهِ عَزَّ وَجَلَّ إِنْ لَمْ يُشْهِدْ فِي الْبَيْعِ الْمُؤَجَّلِ، وَغَيْرِهِ، وَفِي دَفْعِ الْمَالِ لِلْيَتِيمِ إِذَا بَلَغَ مُمَيِّزًا، وَفِي طَلَاقِهِ، وَفِي رَجْعَتِهِ، إِذَا لَمْ يَفْعَلْ كَمَا أَمَرَهُ اللَّهُ عَزَّ وَجَلَّ.

L34749 People have differed regarding intercourse during the waiting period: does it constitute a revocable act (*rajʿah*) or not? Indeed, there is a view that it does. As for acts short of intercourse—it has been reported to us from al-Ḥakam ibn ʿUtaybah and Saʿīd ibn al-Musayyab that intercourse constitutes a revocable act (*rajʿah*), and this has also been authenticated from Ibrāhīm

وَقَدْ اخْتَلَفَ النَّاسُ فِي الْوَطْءِ فِي الْعِدَّةِ، أَيَكُونُ رَجْعَةً أَمْ لَا؟ نَعَمْ، وَفِيمَا دُونَ الْوَطْءِ -: فَرُوِّينَا عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ وَسَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ الْوَطْءَ رَجْعَةٌ - وَصَحَّ هَذَا أَيْضًا

[36] **Qur’an references (L34743):** Qur’an 4:6 (An-Nisa).

al-Nakhaʿī, Ṭāwūs, al-Ḥasan, al-Zuhrī, and ʿAṭāʾ. It has been reported to us from al-Shaʿbī, and it was reported from Ibn Sīrīn—this being the opinion of al-Awzāʿī and Ibn Abī Laylā.

- عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَطَاوُسٍ، وَالْحَسَنِ، وَالزُّهْرِيِّ، وَعَطَاءٍ. وَرُوِّينَاهُ عَنْ الشَّعْبِيِّ - وَرُوِيَ عَنْ ابْنِ سِيرِينَ -، وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَابْنِ أَبِي لَيْلَى.

L34750 Malik and Ishaq ibn Rāhawayh said: If he intends revocation [of divorce] through intercourse, it constitutes a revocation. But if he does not intend revocation through it, it is not a revocation. They both agreed: As for acts less than intercourse, they are not a revocation, even if he intended them as revocation.

وَقَالَ مَالِكٌ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ: إِنْ نَوَى بِالْجِمَاعِ الرَّجْعَةَ فَهِيَ رَجْعَةٌ، وَإِنْ لَمْ يَنْوِ بِهِ الرَّجْعَةَ فَلَيْسَ رَجْعَةً، قَالَا جَمِيعًا: وَأَمَّا مَا دُونَ النِّكَاحِ فَلَيْسَ رَجْعَةً، وَإِنْ نَوَى بِهِ الرَّجْعَةَ؟

L34751–34752 Abū Muḥammad said: This categorization has no valid basis at all. Al-Ḥasan ibn Ḥayy, Sufyān al-Thawrī, and Abū Ḥanīfah said: Intercourse constitutes revocation of the divorce—whether he intended it as such or not—and likewise intimate contact.

قَالَ أَبُو مُحَمَّدٍ: هَذَا تَقْسِيمٌ لَا حُجَّةَ عَلَى صِحَّتِهِ أَصْلًا وَقَالَ الْحَسَنُ بْنُ حَيٍّ، وَسُفْيَانُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ: الْجِمَاعُ رَجْعَةٌ - نَوَى بِهِ الرَّجْعَةَ أَوْ لَمْ يَنْوِ - وَكَذَلِكَ اللَّمْسُ.

L34753 Sufyan and Abu Hanifah said: If it is for desire, then yes; otherwise, no.

قَالَ سُفْيَانُ، وَأَبُو حَنِيفَةَ: إِذَا كَانَ لِشَهْوَةٍ، وَإِلَّا فَلَا.

L34754 Abu Hanifah said: Looking at the private parts with illicit desire is a reversion.

قَالَ أَبُو حَنِيفَةَ: وَالنَّظَرُ إِلَى الْفَرْجِ بِشَهْوَةٍ رَجْعَةٌ.

L34755 If she kisses him out of desire or touches him out of desire—and he formally admits this—it constitutes revocation. If he is insane and kisses her out of desire, it constitutes revocation. If she has intercourse with him under compulsion, it constitutes revocation, but acts less than intercourse—even if compelled—do not constitute revocation.

قَالَ: فَلَوْ قَبَّلَتْهُ لِشَهْوَةٍ، أَوْ لَمَسَتْهُ لِشَهْوَةٍ - وَأَقَرَّ هُوَ بِذَلِكَ - فَهِيَ رَجْعَةٌ؟ فَلَوْ جُنَّ فَقَبَّلَهَا لِشَهْوَةٍ فَهِيَ رَجْعَةٌ، فَلَوْ جَامَعَتْهُ مُكْرَهَةً فَهِيَ رَجْعَةٌ، وَلَا يَكُونُ مَا دُونَ الْجِمَاعِ بِإِكْرَاهٍ رَجْعَةً.

L34756 Abu Muhammad said: These opinions are utterly corrupt, for they constitute legislation in religion without Quran, sound Sunnah, weak Sunnah, any analogy with a valid basis, any opinion that has even a trace of soundness, nor—to our knowledge—has anyone preceded them in this.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ الْأَقْوَالُ فِي غَايَةِ الْفَسَادِ، لِأَنَّهَا شَرْعٌ فِي الدِّينِ بِغَيْرِ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا قِيَاسٍ لَهُ وَجْهٌ، وَلَا رَأْيٍ لَهُ فِي السَّدَادِ حَظٌّ، وَلَا سَبَقَهُ إِلَيْهَا أَحَدٌ نَعْلَمُهُ.

L34757 Jabir ibn Zayd, Abu Qilabah, Al-Layth ibn Sa'd, and Al-Shafi'i said: Intercourse or acts short of it do not constitute a revocable divorce—whether the husband intended by such acts to effect revocation or not—and revocation is only valid through an explicit verbal declaration.

وَقَالَ جَابِرُ بْنُ زَيْدٍ، وَأَبُو قِلَابَةَ، وَاللَّيْثُ بْنُ سَعْدٍ وَالشَّافِعِيُّ: الْوَطْءُ فَمَا دُونَهُ لَا يَكُونُ رَجْعَةً - نَوَى بِهِ الرَّجْعَةَ أَوْ لَمْ يَنْوِ - وَلَا رَجْعَةَ إِلَّا بِالْكَلَامِ.

L34758 Abū Muḥammad said: Neither the Qur'ān nor the Sunnah has established

that intercourse constitutes revocation. There is no disagreement that revocation effected through speech is valid. Therefore, revocation occurs only through what is established as valid revocation. The Exalted said: *"Then retain them with what is recognized as proper"* [al-Ṭalāq: 2]. "What is recognized as proper" refers to what reveals the intention of the husband retaining [his wife] through revocation. This can only be known through speech. And success is from Allah, the Exalted.[37]

L34759 Some have said: The meaning of Allah the Exalted's statement, "So when they have [nearly] reached their term, then keep them with kindness" [al-Ṭalāq 65:2], is that its meaning is the approach of reaching the term.[38]

L34760–34761 Abu Muhammad said: This is an error and unquestionably false, for it constitutes an assertion about Allah (the Exalted and Majestic) that He willed what He has not informed us of, and that He willed it and the Messenger of Allah (peace and blessings be upon him) did not inform us of it.

L34762 And He, the Exalted, has said: *"And that you associate with Allah [partners] for which He has not sent down any authority, and that you say about Allah what you do not know."* (Surah Al-A'rāf 7:33)[39]

L34763 Moreover, if their claim were true, there would be no retention [of the wife] except near the end of the maximum waiting period—a position neither they nor anyone else upholds.

L34764 Abu Muhammad said: "Its meaning, without doubt, is: 'When they have reached their term' [At-Talaq: ٢] - the term of their prescribed waiting period ('iddah)."[40]

L34765 The proof of this is that from the beginning to the end of the *iddah* period, there exists a timeframe for revoking the divorce (*raj'a*) or retaining her. No statement holds greater validity than one confirmed by the definitive consensus acknowledged by both opponents and proponents. Abū Muḥammad

قَالَ أَبُو مُحَمَّد: لَمْ يَأْتِ بِأَنَّ الْجِمَاعَ رَجْعَةٌ: قُرْآنٌ وَلَا سُنَّةٌ، وَلَا خِلَافَ فِي أَنَّ الرَّجْعَةَ بِالْكَلَامِ رَجْعَةٌ، فَلَا يَكُونُ رَجْعَةً إِلَّا بِمَا صَحَّ أَنَّهُ رَجْعَةٌ وَقَالَ تَعَالَى: {فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] وَالْمَعْرُوفُ مَا عُرِفَ بِهِ مَا فِي نَفْسِ الْمُمْسِكِ الرَّادِّ، وَلَا يُعْرَفُ ذَلِكَ إِلَّا بِالْكَلَامِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَدْ قَالَ قَوْمٌ: إِنَّ مَعْنَى قَوْلِ اللَّهِ تَعَالَى: {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] إِنَّمَا مَعْنَاهُ: مُقَارَبَةُ بُلُوغِ الْأَجَلِ.

قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ وَبَاطِلٌ بِلَا شَكٍّ، لِأَنَّهُ إِخْبَارٌ عَنْ اللَّهِ تَعَالَى بِأَنَّهُ أَرَادَ مَا لَمْ يُخْبِرْنَا - عَزَّ وَجَلَّ - وَبِأَنَّهُ أَرَادَهُ وَلَا أَخْبَرَنَا بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَقَدْ قَالَ تَعَالَى: {وَأَنْ تُشْرِكُوا بِاللَّهِ مَا لَمْ يُنَزِّلْ بِهِ سُلْطَانًا وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لا تَعْلَمُونَ} [الأعراف: ٣٣] .

وَأَيْضًا - فَلَوْ كَانَ مَا قَالُوا لَكَانَ لَا إِمْسَاكَ إِلَّا قُرْبَ بُلُوغِ أَقْصَى الْعِدَّةِ وَهَذَا مَا لَا يَقُولُونَهُ، لَا هُمْ وَلَا غَيْرُهُمْ.

قَالَ أَبُو مُحَمَّدٍ: مَعْنَاهُ - بِلَا شَكٍّ -: {فَإِذَا بَلَغْنَ أَجَلَهُنَّ} [الطلاق: ٢] أَجَلُ عِدَّتِهِنَّ.

بُرْهَانُ ذَلِكَ -: أَنَّ مِنْ أَوَّلِ الْعِدَّةِ إِلَى آخِرِهَا وَقْتًا لِرَدِّهِ إِيَّاهَا وَلِإِمْسَاكِهِ لَهَا، وَلَا قَوْلَ أَصَحَّ مِنْ قَوْلٍ صَحَّحَهُ الْإِجْمَاعُ الْمُتَيَقَّنُ مِنْ الْمُخَالِفِ وَالْمُوَالِفِ، قَالَ أَبُو مُحَمَّد: وَأَمَّا قَوْلُنَا: إِنَّهُ إِنْ رَاجَعَ وَلَمْ يُشْهِدْ، أَوْ أَشْهَدَ وَلَمْ يُعْلِمْهَا حَتَّى تَنْقَضِيَ عِدَّتُهَا - غَائِبًا كَانَ أَوْ حَاضِرًا - وَقَدْ طَلَّقَهَا وَأَعْلَمَهَا وَأَشْهَدَ، فَقَدْ بَانَتْ مِنْهُ، وَلَا رَجْعَةَ لَهُ عَلَيْهَا إِلَّا بِرِضَاهَا بِابْتِدَاءِ

[37] **Qur'an references (L34758):** Qur'an 65:2 (At-Talaq).
[38] **Qur'an references (L34759):** Qur'an 65:2 (At-Talaq).
[39] **Qur'an references (L34762):** Qur'an 7:33 (Al-A'raf).
[40] **Qur'an references (L34764):** Qur'an 2:234 (Al-Baqarah); Qur'an 65:2 (At-Talaq).

said: As for our position—if he revokes the divorce without witnesses, or appoints witnesses but fails to inform her until her *iddah* concludes (whether the husband is absent or present), even though he had already divorced her, notified her, and appointed witnesses—then she becomes irrevocably separated from him. He retains no right to revoke the divorce unless she consents to a new marriage contract initiated with a guardian, witnesses, and a newly stipulated *mahr*—regardless of whether she remarries or not, and irrespective of the second husband's consummation of the marriage. If news of the revocation reaches her while she remains within her *iddah* period, this constitutes a valid revocation of the divorce (*raj'a*).

L34766 The evidence for that is the statement of Allah, the Exalted: "They seek to deceive Allah and those who believe, but they deceive none except themselves" [Al-Baqarah: 9]. And He, the Exalted, said: "Do not harm them in order to make things difficult for them" [At-Talāq: 6], for this constitutes clear harm. The Messenger of Allah—peace and blessings be upon him—said: "Whoever performs an act not in accordance with our command, it is rejected." Therefore, his harmful act is rejected and invalid.[41][42]

L34767–34769 Furthermore, Allah the Exalted has referred to the act of taking back (*raj'ah*) as "retaining with kindness." He, the Exalted, said: *"When they have reached their term, either retain them in a decent manner or part with them in a decent manner"* [Quran, At-Talaq 65:2]. The revocation [of divorce] is retaining [the wife], and according to the explicit text of Allah's words, it is only valid when conducted through recognized norms. These norms require informing her and her family if she is a minor or mentally incapacitated. If he fails to notify her, his retention becomes wrongful rather than lawful, for he thereby denies her marital rights: financial support, clothing, housing, and equitable division [of time]. Such retention remains defective and void unless attested through formal notification of her awareness, after which it becomes valid according to established norms.[43]

نِكَاحٍ بِوَلِيٍّ، وَإِشْهَادٍ وَصَدَاقٍ مُبْتَدَأٍ - سَوَاءٌ تَزَوَّجَتْ أَوْ لَمْ تَتَزَوَّجْ دَخَلَ بِهَا الزَّوْجُ الثَّانِي أَوْ لَمْ يَدْخُلْ - فَإِنْ أَتَاهَا الْخَبَرُ - وَهِيَ بَعْدُ فِي الْعِدَّةِ - فَهِيَ رَجْعَةٌ صَحِيحَةٌ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {يُخَادِعُونَ اللَّهَ وَالَّذِينَ آمَنُوا وَمَا يَخْدَعُونَ إِلا أَنْفُسَهُمْ} [البقرة: ٩] ، وَقَالَ تَعَالَى: {وَلا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ} [الطلاق: ٦] وَهَذَا عَيْنُ الْمُضَارَّةِ، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» ، فَمُضَارَّتُهُ مَرْدُودَةٌ بَاطِلٌ.

وَأَيْضًا - فَإِنَّ اللَّهَ تَعَالَى سَمَّى الرَّجْعَةَ إمْسَاكًا بِمَعْرُوفٍ، قَالَ تَعَالَى {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] فَالرَّجْعَةُ - هِيَ الْإِمْسَاكُ، وَلَا تَكُونُ - بِنَصِّ كَلَامِ اللَّهِ تَعَالَى إلَّا بِمَعْرُوفٍ وَالْمَعْرُوفُ - هُوَ إعْلَامُهَا، وَإِعْلَامُ أَهْلِهَا، إنْ كَانَتْ صَغِيرَةً أَوْ مَجْنُونَةً - فَإِنْ لَمْ يُعْلِمْهَا لَمْ يُمْسِكْ بِمَعْرُوفٍ، وَلَكِنْ بِمُنْكَرٍ، إذْ مَنَعَهَا حُقُوقَ الزَّوْجِيَّةِ: مِنْ النَّفَقَةِ، وَالْكِسْوَةِ، وَالْإِسْكَانِ، وَالْقِسْمَةِ فَهُوَ إمْسَاكٌ فَاسِدٌ بَاطِلٌ مَا لَمْ يُشْهِدْ بِإِعْلَامِهَا فَحِينَئِذٍ يَكُونُ بِمَعْرُوفٍ.

[41] **Hadith references (L34766):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[42] **Qur'an references (L34766):** Qur'an 2:9 (Al-Baqarah); Qur'an 65:6 (At-Talaq).

[43] **Qur'an references (L34767):** Qur'an 65:2 (At-Talaq).

L34770 And similarly, Allah, the Mighty and Majestic, has said: “And their husbands are more entitled to take them back during that waiting period if they desire reconciliation. And women have rights equivalent to the responsibilities they owe in accordance with what is recognized [as customary].” [Al-Baqarah 2:228][44]

وَكَذَلِكَ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ} [البقرة: ٢٢٨] .

L34771 Abu Muhammad said: The husband is only entitled to retract [the divorce] if he intends reconciliation—by the Quranic text itself. Whoever conceals the retraction or retracts it in a manner that does not reach her has unquestionably not intended reconciliation but rather corruption. Thus, it constitutes neither a valid retraction nor a restitution of marriage in any sense.

قَالَ أَبُو مُحَمَّد: إِنَّمَا يَكُونُ " الْبَعْلُ " أَحَقَّ بِرَدِّهَا إِنْ أَرَادَ إِصْلَاحًا - بِنَصِّ الْقُرْآنِ وَمَنْ كَتَمَهَا الرَّدَّ، أَوْ رَدَّ بِحَيْثُ لَا يَبْلُغُهَا، فَلَمْ يُرِدْ إِصْلَاحًا بِلَا شَكٍّ، بَلْ أَرَادَ الْفَسَادَ، فَلَيْسَ رَدًّا وَلَا رَجْعَةً أَصْلًا.

L34772 Indeed, people have differed regarding this matter into five opinions: –

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا عَلَى خَمْسَةِ أَقْوَالٍ: -:.

L34773–34775 The first opinion—as was reported to us through the chain of Shuʿbah from al-Ḥakam ibn ʿUtaybah: that ʿUmar ibn al-Khaṭṭāb said regarding a woman whose husband divorced her, informed her of the divorce, then took her back without informing her until her waiting period concluded: she is irrevocably separated from him. Through the chain of Saʿd ibn Manṣūr: I, al-Muʿtamir ibn Sulaymān, report from Manṣūr ibn al-Muʿtamir from Ibrāhīm al-Nakhaʿī, who said: ʿUmar ibn al-Khaṭṭāb said, “If a man divorces his wife, informs her of the divorce, then takes her back but conceals the revocation from her until the waiting period concludes: he has no claim over her.” Through the chain of ʿAbd al-Razzāq from Ibn Jurayj: ʿAmr ibn Dīnār reported to us, narrating from Abū al-Shaʿthāʾ Jābir ibn Zayd, who said: “I disputed with a man among the early Qurʾānic scholars regarding a woman whom a man divorces, then...” He took her back but concealed the revocation? I said, “He has nothing,” so we asked Judge Shurayh? He replied, “He has nothing except the teeth of the hyena.” From the path of Sa’id ibn Mansur: I am Husaym, I am Yunus ibn ’Ubayd, from Ibn Sirin, who said: A man asked ’Imran ibn al-Husayn, “He divorced without witnesses and revoked without witnesses.” ’Imran said to him, “You divorced without observing the waiting period and revoked not in accordance with the Prophetic practice. Have witnesses attest to what you have done.”

فَالْقَوْلُ الْأَوَّلُ - كَمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي امْرَأَةٍ طَلَّقَهَا زَوْجُهَا، فَأَعْلَمَهَا، ثُمَّ رَاجَعَهَا وَلَمْ يُعْلِمْهَا حَتَّى تَنْقَضِيَ عِدَّتُهَا: فَقَدْ بَانَتْ مِنْهُ. وَمِنْ طَرِيقِ سَعْدِ بْنِ مَنْصُورٍ أَنَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ إذَا طَلَّقَ امْرَأَتَهُ فَأَعْلَمَهَا طَلَاقَهَا، ثُمَّ رَاجَعَهَا فَكَتَمَهَا الرَّجْعَةَ حَتَّى انْقَضَتْ الْعِدَّةُ: فَلَا سَبِيلَ لَهُ عَلَيْهَا. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنَا عَمْرُو بْنُ دِينَارٍ أَخْبَرَنِي أَبُو الشَّعْثَاءِ جَابِرُ بْنُ زَيْدٍ، قَالَ: تَمَارَيْتُ أَنَا وَرَجُلٌ مِنْ الْقُرَّاءِ الْأَوَّلِينَ فِي الْمَرْأَةِ يُطَلِّقُهَا الرَّجُلُ ثُمَّ يَرْتَجِعُهَا، فَيَكْتُمُهَا رَجْعَتَهَا؟ فَقُلْت أَنَا: لَيْسَ لَهُ شَيْءٌ فَسَأَلْنَا شُرَيْحًا الْقَاضِيَ؟ فَقَالَ: لَيْسَ لَهُ إلَّا فَسْوَةُ الضَّبُعِ. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يُونُسُ بْنُ عُبَيْدٍ عَنْ ابْنِ سِيرِينَ قَالَ: سَأَلَ رَجُلٌ عِمْرَانَ بْنَ الْحُصَيْنِ فَقَالَ: إنَّهُ طَلَّقَ وَلَمْ يُشْهِدْ، وَرَاجَعَ وَلَمْ يُشْهِدْ؟ فَقَالَ لَهُ عِمْرَانُ: طَلَّقْت بِغَيْرِ عِدَّةٍ، وَرَاجَعْت فِي غَيْرِ سُنَّةٍ، فَأَشْهِدْ عَلَى مَا صَنَعْت.

[44]**Qur’an references (L34770):** Qur’an 2:228 (Al-Baqarah).

L34776 From the chain of Saʿīd ibn Manṣūr: I am Hushaym, who reported to me that ʿUbaydah narrated from al-Ḥasan ibn Rawwāḥ, who said: I asked Saʿīd ibn al-Musayyib about a man who divorces secretly and revokes secretly. He replied: "You divorced outside the iddah and revoked in obscurity. Produce witnesses for what you have done!"

From another chain of Saʿīd ibn Manṣūr: I am Hushaym; I am Manṣūr, from al-Ḥasan, who said: If a man divorces his wife, then takes her back in her absence or presence without informing her of the revocation until the iddah expires, he has no claim over her. This is an opinion.

L34777 A second opinion—we have narrated it through the chain of Ibn Wahb from Mālik, who said: It reached me that ʿUmar ibn al-Khaṭṭāb said regarding a man who divorces his wife while absent, then takes her back without informing her of his revocation—after he had informed her of the divorce—that if she marries another husband and he has not consummated the marriage with her, or if he has consummated it, the first husband has no recourse to her. Mālik said: "This is the most preferable opinion I have heard concerning this matter and the case of the missing person." From the chain of Ibn Wahb: Yunus informed me from Ibn Shihāb from Saʿīd ibn al-Musayyib, who said: "The established Sunnah regarding a man who divorces his wife, then revokes it during her waiting period while concealing his revocation from her until her ʿiddah concludes and she marries another—he has no authority over her. Rather, she is to remain with her other husband."

L34778–34779 Ibn Wahb said: Makhramah ibn Bukayr informed me from his father from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad—and Nāfiʿ reported similarly—and it has also been authenticated via the chain of Ibn Samʿān from al-Zuhrī in like manner—when the two are in the same locality. A third narration—via the chain of Ibn Wahb—states that Mālik said: "The ruling according to me, with no disagreement, is as follows: If her other husband consummates the marriage with her before the first husband consummates the marriage with her, then he has no right to her. This ruling applies in our view to this case and to the missing person—meaning: one who divorced her and informed her, then reinstated the marriage with witnessed testimony but failed to notify her."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَخْبَرَنِي عَبِيدَةُ عَنْ الْحَسَنِ بْنِ رَوَّاحٍ قَالَ: سَأَلْت سَعِيدَ بْنَ الْمُسَيِّبِ عَنْ رَجُلٍ طَلَّقَ سِرًّا، وَرَاجَعَ سِرًّا؟ فَقَالَ: طَلَّقْت فِي غَيْرِ عِدَّةٍ، وَارْتَجَعْت فِي عَمَاءٍ، أَشْهِدْ عَلَى مَا صَنَعْت؟ وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا مَنْصُورٌ عَنْ الْحَسَنِ قَالَ: إذَا طَلَّقَ امْرَأَتَهُ ثُمَّ رَاجَعَهَا فِي غَيْبٍ أَوْ مَشْهَدٍ، وَلَمْ يُعْلِمْهَا بِالرَّجْعَةِ حَتَّى انْقَضَتْ الْعِدَّةُ، فَلَا سَبِيلَ لَهُ عَلَيْهَا - فَهَذَا قَوْلٌ.

وَقَوْلٌ ثَانٍ - رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَالِكٍ قَالَ: بَلَغَنِي أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ الَّذِي يُطَلِّقُ امْرَأَتَهُ - وَهُوَ غَائِبٌ - ثُمَّ يُرَاجِعُهَا وَلَا يُبَلِّغُهَا مُرَاجَعَتَهُ -، وَقَدْ بَلَّغَهَا طَلَاقُهُ -: أَنَّهَا إنْ تَزَوَّجَتْ وَلَمْ يَدْخُلْ بِهَا زَوْجُهَا الْآخَرُ، أَوْ دَخَلَ: فَلَا سَبِيلَ إلَى زَوْجِهَا الْأَوَّلِ إلَيْهَا. وَقَالَ مَالِكٌ: وَهَذَا أَحَبُّ مَا سَمِعْت إلَيَّ فِيهَا وَفِي الْمَفْقُودِ. وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: مَضَتْ السُّنَّةُ فِي الَّذِي يُطَلِّقُ امْرَأَتَهُ ثُمَّ يُرَاجِعُهَا فَيَكْتُمُهَا رَجْعَتَهَا حَتَّى تَحِلَّ فَتَنْكِحَ زَوْجًا غَيْرَهُ: فَإِنَّهُ لَيْسَ لَهُ مِنْ أَمْرِهَا شَيْءٌ، وَلَكِنَّهَا مِنْ زَوْجِهَا الْآخَرِ.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي مَخْرَمَةُ بْنُ بُكَيْرٍ عَنْ أَبِيهِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَنَافِعٍ مِثْلُهُ - وَصَحَّ أَيْضًا مِنْ طَرِيقِ ابْنِ سَمْعَانَ عَنْ الزُّهْرِيِّ مِثْلُ ذَلِكَ، إذَا كَانَا فِي بَلَدٍ وَاحِدٍ. وَقَالَ ثَالِثٌ - مِنْ طَرِيقِ ابْنِ وَهْبٍ، قَالَ مَالِكٌ: الْأَمْرُ لِي لَا اخْتِلَافَ فِيهِ: إنَّهُ إذَا دَخَلَ بِهَا زَوْجُهَا الْآخَرُ قَبْلَ أَنْ يُدْرِكَهَا الْأَوَّلُ فَلَا سَبِيلَ لَهُ إلَيْهَا - وَذَلِكَ الْأَمْرُ عِنْدَنَا فِي هَذَا وَفِي الْمَفْقُودِ - يَعْنِي: فِي الَّذِي طَلَّقَهَا وَأَعْلَمَهَا ثُمَّ رَاجَعَهَا وَأَشْهَدَ وَلَمْ يُبْلِغْهَا.

L34780 Ibn al-Qasim said: Then Malik retracted his earlier opinion and stated: The first husband has a greater right to her. Ibn al-Qasim said: As for me, I hold that if the second husband has consummated the marriage, he retains no claim over her; but if he has not consummated the marriage, she reverts to the first husband.

قَالَ ابْنُ الْقَاسِمِ: ثُمَّ رَجَعَ مَالِكٌ عَنْ ذَلِكَ وَقَالَ: زَوْجُهَا الْأَوَّلُ أَحَقُّ بِهَا قَالَ ابْنُ الْقَاسِمِ: أَمَّا أَنَا فَأَرَى أَنَّهَا إِنْ دَخَلَ بِهَا زَوْجُهَا فَلَا سَبِيلَ لَهُ إِلَيْهَا، فَإِنْ لَمْ يَدْخُلْ بِهَا فَهِيَ لِلْأَوَّلِ.

L34781 Abu Muhammad said: We have mentioned this to expose how the troublemakers cite Malik's statements—"The established position among us" and "The position about which there is no disagreement among us"—as evidence and consensus, claiming it is impermissible to oppose them.

قَالَ أَبُو مُحَمَّدٍ: إِنَّمَا أَوْرَدْنَا هَذَا لِنَرَى الْمُشْغِبِينَ بِقَوْلِ مَالِكٍ: " الْأَمْرُ عِنْدَنَا، وَالْأَمْرُ الَّذِي لَا اخْتِلَافَ فِيهِ عِنْدَنَا " حُجَّةً، وَإِجْمَاعًا، لَا يَحِلُّ خِلَافُهُ.

L34782 And this is Malik, who has retracted from a statement he mentioned as being their established position, and the position that is undisputed suffices them and suffices you.

وَهَذَا مَالِكٌ قَدْ رَجَعَ عَنْ قَوْلٍ ذَكَرَ أَنَّهُ الْأَمْرُ عِنْدَهُمْ، وَالْأَمْرُ الَّذِي لَا اخْتِلَافَ فِيهِ: فَحَسْبُهُمْ وَحَسْبُكُمْ.

L34783 It has been narrated to us through various chains from ʻUmar—all disconnected, as they are from Ibrāhīm from ʻUmar, or al-Ḥasan ibn Muslim from ʻUmar, or Saʿīd ibn al-Musayyab from ʻUmar, or Abū al-Zinād—that ʻUmar ruled regarding a man who divorced his wife, then traveled and appointed witnesses to attest to his revocation of the divorce pronouncement before the waiting period's end while she remained unaware until she married another man: If he reaches her in time before the new husband consummates the marriage, she remains his wife. But if he fails to reach her until consummation occurs, she becomes the second husband's wife. He ruled this regarding Abū Kanaf—and this is the opinion of al-Layth and al-Awzāʿī.

وَرُوِّينَا مِنْ طُرُقٍ عَنْ عُمَرَ كُلُّهَا مُنْقَطِعَةٌ؛ لِأَنَّهَا عَنْ إِبْرَاهِيمَ عَنْ عُمَرَ أَوْ عَنْ الْحَسَنِ بْنِ مُسْلِمٍ عَنْ عُمَرَ، أَوْ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُمَرَ، أَوْ عَنْ أَبِي الزِّنَادِ: أَنَّ عُمَرَ قَالَ فِيمَنْ طَلَّقَ امْرَأَتَهُ ثُمَّ سَافَرَ وَأَشْهَدَ عَلَى رَجْعَتِهَا قَبْلَ انْقِضَاءِ الْعِدَّةِ لَا عِلْمَ لَهَا بِذَلِكَ حَتَّى تَزَوَّجَتْ: أَنَّهُ إِنْ أَدْرَكَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا فَهِيَ امْرَأَتُهُ، وَإِنْ لَمْ يُدْرِكْهَا حَتَّى دَخَلَ بِهَا الثَّانِي فَهِيَ امْرَأَةُ الثَّانِي، حَكَمَ بِذَلِكَ فِي أَبِي كَنَفٍ - وَهُوَ قَوْلُ اللَّيْثِ، وَالْأَوْزَاعِيِّ.

L34784 A fourth opinion—we have transmitted it through the chain of Abd al-Razzaq from Ibn Jurayj from Ata' concerning one who divorces [his wife], then revokes [the divorce] and attests to it, but the revocation does not take effect for her before she remarries. He said: If the marriage is consummated, the first [husband] has no claim over her according to what has reached us—it is said so. But if she is married and the marriage is not consummated, then the first [husband] has a stronger right to her—and this is the opinion held by Abd al-Karim.

وَقَوْلٌ رَابِعٌ - رُوِّينَاهُ: مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِيمَنْ طَلَّقَ ثُمَّ ارْتَجَعَهَا وَأَشْهَدَ فَلَمْ تَأْتِهَا الرَّجْعَةُ حَتَّى تَزَوَّجَتْ؟ قَالَ: إِنْ أُصِيبَتْ فَلَا شَيْءَ لِلْأَوَّلِ فِيمَا بَلَغَنَا - يُقَالُ ذَلِكَ، فَإِنْ نُكِحَتْ وَلَمْ تُصَبْ؟ فَالْأَوَّلُ أَحَقُّ بِهَا - وَبِهِ يَقُولُ عَبْدُ الْكَرِيمِ.

L34785–34786 A fifth opinion—narrated to us through the chain of transmission of Waki' from Shu'bah from al-Hakam ibn 'Utaybah, who said: 'Ali ibn Abī Ṭālib

stated: “If a man divorces his wife, then takes her back without informing her, she remains his wife if he formalizes the revocation with witnesses.” Through the chain of transmission of Sufyān al-Thawrī from Manṣūr ibn al-Muʿtamir from al-Ḥakam ibn ʿUtaybah from ʿAlī ibn Abī Ṭālib, that he ruled regarding a man who divorced his wife, departed, then wrote to her about taking her back, but the letter went missing until her waiting period concluded: “Her first husband retains priority over her, whether the other party has consummated the marriage or not.” Through the chain of transmission of Ḥammād ibn Abī Sulaymān and Qatādah from ʿAlī, an identical ruling is cited—and through the chain of transmission of Ibrāhīm from ʿAlī regarding the case of Abī Kanaff, a corresponding ruling is reported.

وَقَوْلٌ خَامِسٌ - رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: إذَا طَلَّقَ الرَّجُلُ امْرَأَتَهُ ثُمَّ رَاجَعَهَا وَلَمْ يُعْلِمْهَا: فَهِيَ امْرَأَتُهُ إذَا أَشْهَدَ. وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ فِيمَنْ طَلَّقَ امْرَأَتَهُ ثُمَّ غَابَ، فَكَتَبَ إلَيْهَا بِرَجْعَتِهَا، فَضَاعَ الْكِتَابُ حَتَّى انْقَضَتْ عِدَّتُهَا، فَإِنَّ زَوْجَهَا الْأَوَّلَ أَحَقُّ بِهَا دَخَلَ بِهَا الْآخَرُ أَوْ لَمْ يَدْخُلْ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَقَتَادَةَ عَنْ عَلِيٍّ مِثْلُهُ - وَمِنْ طَرِيقِ إبْرَاهِيمَ عَنْ عَلِيٍّ فِي أَبِي كَنَفٍ مِثْلُهُ

L34787 This is the statement of al-Ḥakam ibn ʿUtaybah. Then we found it transmitted through an uninterrupted chain from ʿAlī as follows: I, Muḥammad ibn Saʿīd ibn Nubāt, [transmit] from ʿAyyāsh ibn Aṣbagh, from Muḥammad ibn Qāsim ibn Muḥammad, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from ʿAbd al-Aʿlā, from Saʿīd—he is the son of Abī ʿArūbah—from Qatādah, from Khilāṣ ibn ʿAmr: A man divorced his wife, informed her of it, took her back, and had two witnesses testify. He told them, “Keep this concealed for me,” so they concealed it until her waiting period had elapsed. They then referred the matter to ʿAlī ibn Abī Ṭālib? He upheld the divorce, ordered the two witnesses to be flogged, and accused them [of dishonesty].

وَهُوَ قَوْلُ الْحَكَمِ بْنِ عُتَيْبَةَ. ثُمَّ وَجَدْنَاهُ مُتَّصِلًا عَنْ عَلِيٍّ كَمَا أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ أَنَا عَيَّاشُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ قَاسِمِ بْنِ مُحَمَّدٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَبْدُ الْأَعْلَى أَنَا سَعِيدٌ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو أَنَّ رَجُلًا طَلَّقَ امْرَأَتَهُ، وَأَعْلَمَهَا، وَأَرْجَعَهَا، وَأَشْهَدَ شَاهِدَيْنِ وَقَالَ: اُكْتُمَا عَلَيَّ، فَكَتَمَا، حَتَّى انْقَضَتْ عِدَّتُهَا، فَارْتَفَعُوا إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ؟ فَأَجَازَ الطَّلَاقَ وَجَلَدَ الشَّاهِدَيْنِ وَاتَّهَمَهُمَا.

L34788 Abu Muhammad said: Then we examined this narration and found no evidence in it for those who hold this opinion, for it contains nothing but the permissibility of divorce, not the permissibility of revocation.

قَالَ أَبُو مُحَمَّد: ثُمَّ نَظَرْنَا فِي هَذِهِ الرِّوَايَةِ، فَوَجَدْنَاهَا لَا حُجَّةَ فِيهَا لِمَنْ ذَهَبَ إلَى هَذَا الْقَوْلِ؛ لِأَنَّهُ لَيْسَ فِيهَا إلَّا إجَازَةُ الطَّلَاقِ، لَا إجَازَةُ الرَّجْعَةِ.

L34789 Abu Muhammad said: There is only this opinion or the one we have chosen. Whatever differs from them is an error without ambiguity, for neither her marriage contract, his consummation with her, nor his lawful intercourse with her invalidates a sound marriage - and success is with Allah, the Exalted. The matter concerns only the validity or nullity of revocable divorce. The

قَالَ أَبُو مُحَمَّد: لَيْسَ إلَّا هَذَا الْقَوْلُ، أَوْ الَّذِي تَخَيَّرْنَاهُ، وَمَا عَدَاهُمَا خَطَأٌ لَا إشْكَالَ فِيهِ؛ لِأَنَّ زَوَاجَهَا أَوْ دُخُولَهُ بِهَا، أَوْ وَطْأَهُ لَهَا، لَا يَفْسَخُ شَيْءٌ مِنْ ذَلِكَ نِكَاحًا صَحِيحًا -،

opinion of Ali which we mentioned is affirmed by Sufyan al-Thawri, Abu Hanifa, al-Shafi'i, Abu Sulayman, and their companions.

The Issue of Revocability Regarding the Triple Divorce.

A legal issue: We compile here what we may have mentioned separately, which is: There is no divorce in which the divorcer lacks the right to reconciliation during her waiting period except the triple divorce—whether grouped or separated—and the divorce of a woman whom the divorcer has not consummated with, whether he divorces her once, twice, or three times—except that it is less than three. If he and she consent, they may initiate marriage with a guardian, witnesses, and a dowry—and this is the ruling for all annulments.

As for divorcing a consummated woman once or twice: the divorcer may reclaim her—whether she consents or objects—without mahr or wali, but solely through formal witnessing—and this is a matter with no disagreement—. Success comes through Allah, the Most High.

[The Waiting Periods (ʿIddāt)] [A Legal Issue Regarding the Types of ʿIddāt]

Issue 1984: The waiting periods are three types. The first is [resulting] from a divorce within a marriage in which he had intercourse with her at least once in her lifetime or more.

Or whether it is due to death, it makes no difference whether he had consummated the marriage with her or not.

As for the woman granted khulʿ when she chooses herself and separation from her husband, this case is specifically distinct from other forms of annulment: her waiting period is exactly the same as that of a divorced woman.

As for the remaining types of annulment, including those where the husband

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ -، وَإِنَّمَا هُوَ صِحَّةُ الرَّجْعَةِ أَوْ فَسَادُهَا، وَبِقَوْلِ عَلِيٍّ الَّذِي ذَكَرْنَا يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

[مَسْأَلَةٌ الرَّجْعَةِ مِنْ الطَّلَاقِ الثَّلَاثِ]

مَسْأَلَةٌ وَنَجْمَعُ هَاهُنَا مَا لَعَلَّنَا ذَكَرْنَاهُ مُفَرَّقًا هُوَ: أَنَّهُ لَا يَكُونُ طَلَاقٌ لَا يَمْلِكُ فِيهِ الْمُطَلِّقُ الرَّجْعَةَ مَا دَامَتْ فِي الْعِدَّةِ إلَّا طَلَاقَ الثَّلَاثِ - مَجْمُوعَةً، أَوْ مُفَرَّقَةً - وَطَلَاقُ الَّتِي لَمْ يَطَأْهَا الْمُطَلِّقُ سَوَاءٌ طَلَّقَهَا وَاحِدَةً أَوْ اثْنَتَيْنِ أَوْ ثَلَاثًا - إلَّا أَنَّهُ دُونَ الثَّلَاثِ - إنْ رَضِيَ هُوَ وَهِيَ - فَلَهُمَا ابْتِدَاءُ النِّكَاحِ بِوَلِيٍّ، وَإِشْهَادٍ، وَصَدَاقٍ - وَهَذَا حُكْمُ الْفَسْخِ كُلِّهِ.

وَأَمَّا طَلَاقُ الْمَوْطُوءَةِ وَاحِدَةً، أَوْ اثْنَتَيْنِ: فَلِلْمُطَلِّقِ مُرَاجَعَتُهَا - أَحَبَّتْ أَمْ كَرِهَتْ - بِلَا صَدَاقٍ، وَلَا وَلِيٍّ، وَلَكِنْ بِإِشْهَادٍ فَقَطْ - وَهَذَا مَا لَا خِلَافَ فِيهِ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[الْعِدَدُ] [مَسْأَلَةٌ أَنْوَاعُ الْعِدَدِ]

١٩٨٤ - مَسْأَلَةٌ: الْعِدَدُ ثَلَاثٌ -: إمَّا مِنْ طَلَاقٍ فِي نِكَاحٍ وَطِئَهَا فِيهِ مَرَّةً فِي الدَّهْرِ فَأَكْثَرَ.

وَإِمَّا مِنْ وَفَاةٍ، سَوَاءٌ وَطِئَهَا أَوْ لَمْ يَطَأْهَا.

وَأَمَّا الْمُعْتَقَةُ - إذَا اخْتَارَتْ نَفْسَهَا وَفِرَاقَ زَوْجِهَا؟ فَإِنَّ هَذِهِ خَاصَّةً دُونَ سَائِرِ وُجُوهِ الْفَسْخِ: عِدَّتُهَا عِدَّةُ الْمُطَلَّقَةِ سَوَاءً سَوَاءً.

has not consummated the marriage, no waiting period is required for any of these women, and they may be married upon annulment or divorce.

وَأَمَّا سَائِرُ وُجُوهِ الْفَسْخِ، وَالَّتِي لَمْ يَطَأْهَا زَوْجُهَا فَلَا عِدَّةَ عَلَى وَاحِدَةٍ مِنْهُنَّ، وَلَهُنَّ أَنْ يُنْكَحْنَ: سَاعَةَ الْفَسْخِ، وَسَاعَةَ الطَّلَاقِ.

L34800 The proof of this is that the waiting period for divorce and death is mentioned in the Qur'an, as well as the exemption of the exempted waiting period for the woman who was divorced if the divorcing husband did not consummate the marriage with her during that marriage.

بُرْهَانُ ذَلِكَ -: أَنَّ عِدَّةَ الطَّلَاقِ، وَالْوَفَاةِ: مَذْكُورَةٌ فِي الْقُرْآنِ - وَكَذَلِكَ سُقُوطُ الْمَسْقُوطَةِ الْعِدَّةِ عَنْ الَّتِي طَلُقَتْ وَلَمْ يَطَأْهَا الْمُطَلِّقُ فِي ذَلِكَ النِّكَاحِ.

L34801–34803 As for the woman who has been manumitted and chooses to annul her marriage: Just as we were narrated through the chain of Abu Dawud—I am Uthman ibn Abi Shaybah—[the ruling applies]. From Affan ibn Muslim, from Hammam ibn Yahya, from Qatadah, from Ikrimah, from Ibn Abbas: "Barirah's husband was a black slave named Mughīth. The Messenger of Allah, peace and blessings be upon him, gave her the choice and commanded her to undertake the waiting period."

وَأَمَّا الْمُعْتَقَةُ - تَخْتَارُ فَسْخَ نِكَاحِهَا -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ أَنَا عَفَّانُ بْنُ مُسْلِمٍ أَنَا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: «أَنَّ زَوْجَ بَرِيرَةَ كَانَ عَبْدًا أَسْوَدَ اسْمُهُ مُغِيثٌ فَخَيَّرَهَا - يَعْنِي رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَمَرَهَا تَعْتَدُّ» .

L34804 Abū Muḥammad said: If there were a waiting period (ʿiddah) other than that mentioned in the Qur'ān, the Messenger of Allāh—peace and blessings of Allāh be upon him—would have undoubtedly clarified it. We maintain this is the ʿiddah for divorce because it applies to separation from a living one, not a deceased one. It is valid because he—peace and blessings be upon him—commanded her to observe the ʿiddah due to her separation from him while he was alive, establishing that this is unequivocally the ʿiddah from separation from a living one.

قَالَ أَبُو مُحَمَّدٍ: فَلَوْ كَانَتْ عِدَّةٌ غَيْرَ الْمَذْكُورَةِ فِي الْقُرْآنِ لَبَيَّنَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِلَا شَكٍّ، وَإِنَّمَا قُلْنَا: إنَّهَا عِدَّةُ الطَّلَاقِ، لِأَنَّهَا عِدَّةٌ مِنْ حَيٍّ لَا مِنْ مَيِّتٍ - فَصَحَّ إذْ أَمَرَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنْ تَعْتَدَّ مِنْ فِرَاقِهَا لَهُ - وَهُوَ حَيٌّ - أَنَّهَا الْعِدَّةُ مِنْ مُفَارَقَةِ الْحَيِّ بِلَا شَكٍّ.

L34805 As for the remaining forms of annulment—whether they pertain to a valid marriage or an invalid contract—: there is no waiting period in any of those cases, because neither the Quran, the Sunnah, nor any valid evidence beyond these two sources has established it.

وَأَمَّا سَائِرُ وُجُوهِ الْفَسْخِ - سَوَاءٌ كَانَتْ مِنْ نِكَاحٍ صَحِيحٍ أَوْ مِنْ عَقْدٍ فَاسِدٍ -: فَلَا عِدَّةَ فِي شَيْءٍ مِنْ ذَلِكَ؛ لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا حُجَّةٌ فِيمَا سِوَاهُمَا.

L34806–34808 Divorce does not occur except within a valid marriage. Similarly, there is no waiting period required upon the death of one whose marriage contract is invalid, because Allah the Exalted has not prescribed a waiting period for such a person's divorce or death except in the case of a husband. One whose marriage contract is invalid is not considered a husband, so there is no divorce for him. Since there is no... A divorce for him entails no ʿiddah from

وَلَا يَكُونُ طَلَاقٌ إلَّا فِي نِكَاحٍ صَحِيحٍ، وَكَذَلِكَ لَا عِدَّةَ مِنْ وَفَاةِ مَنْ لَيْسَ عَقْدُ زَوَاجِهِ صَحِيحًا؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ عِدَّةَ طَلَاقٍ لَهُ، أَوْ وَفَاةٍ، إلَّا مِنْ زَوْجٍ، وَمَنْ عَقْدُهُ

separation. Since he is not a husband, no ʿiddah from his death. {*And whoever transgresses the limits of Allāh has certainly wronged himself*} [Sūrah al-Ṭalāq: 1].[45]

فَاسِدٌ لَيْسَ زَوْجًا، فَلَا طَلَاقَ لَهُ، وَإِذْ لَا طَلَاقَ لَهُ فَلَا عِدَّةَ مِنْ فِرَاقِهِ، وَإِذْ لَيْسَ زَوْجًا فَلَا عِدَّةَ مِنْ وَفَاتِهِ {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

L34809 If they say: "We have analogized every annulment to the emancipated woman who chooses to separate from her husband," we respond: All analogical reasoning is invalid. Even if it were valid, this particular case would epitomize invalidity, for in all forms of annulment, the woman whose marriage is dissolved has no choice except the emancipated woman. They have unanimously agreed—without exception—that her ruling diverges from the rulings applicable to all other women whose marriages are annulled. The obligatory waiting period is solely a ruling commanded by Allah, the Most High; none of its durations relate to ascertaining pregnancy.

فَإِنْ قَالُوا: قِسْنَا كُلَّ فَسْخٍ عَلَى الْمُعْتَقَةِ تَخْتَارُ فِرَاقَ زَوْجِهَا. قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّ جَمِيعَ وُجُوهِ الْفَسْخِ لَا خِيَارَ فِيهِ لِلْمُنْفَسِخِ نِكَاحُهَا إِلَّا الْمُعْتَقَةَ فَقَدْ أَجْمَعُوا - بِلَا خِلَافٍ - عَلَى مُفَارَقَةِ حُكْمِهَا لِحُكْمِ سَائِرِ الْمُنْفَسِخِ نِكَاحُهُنَّ، وَالْعِدَّةُ الْوَاجِبَةُ إِنَّمَا هِيَ حُكْمٌ أَمَرَ اللَّهُ تَعَالَى بِهِ، لَيْسَ شَيْءٌ مِنْهَا لِاسْتِبْرَاءِ الرَّحِمِ.

L34810 The proof of that is that our opponents in this matter do not oppose us regarding the waiting period being incumbent upon the prepubescent girl who has been consummated with—meaning the one who does not conceive—and the elderly woman who does not conceive, in cases of divorce or death. Even if they oppose us concerning the divorce of the prepubescent girl, the statement of Allah, the Exalted: {As for women who have ceased menstruation among you, if you are uncertain, their waiting period is three months—and [also] those who have not menstruated} [65:4] would judge the validity of our position and the invalidity of theirs.[46]

بُرْهَانُ ذَلِكَ -: أَنَّ الْمُخَالِفِينَ لَنَا فِي هَذَا لَا يُخَالِفُونَنَا فِي أَنَّ الْعِدَّةَ: عَلَى الصَّغِيرَةِ الْمَوْطُوءَةِ أَيْ الَّتِي لَا تَحْمِلُ، وَالْعَجُوزِ الْكَبِيرَةِ الَّتِي لَا تَحْمِلُ -: فِي الطَّلَاقِ وَالْوَفَاةِ، وَلَوْ خَالَفُونَا فِي الطَّلَاقِ فِي الصَّغِيرَةِ لَكَانَ قَوْلُ اللَّهِ تَعَالَى: {وَاللائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ وَاللائِي لَمْ يَحِضْنَ} [الطلاق: ٤] حَاكِمًا بِصِحَّةِ قَوْلِنَا وَبُطْلَانِ قَوْلِهِمْ.

L34811 The meaning of the statement of the Most High, {If you are in doubt} [Quran 65:4], is that if you doubt how her ruling is determined, no alternative ruling is permitted. This is because no one doubts that there is no uncertainty about pregnancy in women who have reached menopause.[47]

وَمَعْنَى قَوْله تَعَالَى: {إِنِ ارْتَبْتُمْ} [الطلاق: ٤] إِنَّمَا هُوَ إِنْ ارْتَبْتُمْ كَيْفَ يَكُونُ حُكْمُهَا لَا يَجُوزُ غَيْرُ ذَلِكَ؛ لِأَنَّ اللَّائِي يَئِسْنَ مِنْ الْمَحِيضِ لَا يَشُكُّ أَحَدٌ فِي أَنَّهُ لَا يَرْتَابُ فِيهَا بِحَمْلٍ.

L34812 Likewise, they unanimously agree that a castrated man who has a remaining part of the male organ that allows penetration—his wife must observe the waiting period, and he will, without doubt, never have a child.

وَكَذَلِكَ لَا يَخْتَلِفُونَ فِي أَنَّ الْخَصِيَّ الَّذِي بَقِيَ لَهُ مِنْ الذَّكَرِ مَا يُولِجُ، فَإِنَّ عَلَى امْرَأَتِهِ الْعِدَّةَ - وَهُوَ بِلَا شَكٍّ لَا يَكُونُ لَهُ وَلَدٌ أَبَدًا.

[45] **Qur'an references (L34806):** Qur'an 65:1 (At-Talaq).
[46] **Qur'an references (L34810):** Qur'an 65:4 (At-Talaq).
[47] **Qur'an references (L34811):** Qur'an 65:4 (At-Talaq).

L34813 Similarly, there is no disagreement among them that if a man has intercourse with his wife once, then remains absent from her for decades, and later divorces her, she is obligated to observe the waiting period.

L34814 There is no doubt that she is not pregnant, for if the waiting period were prescribed due to fear of pregnancy, a single menstrual cycle would suffice—and success is from Allah, the Most High.

L34815 **Issue: The waiting period for a menstruating divorced woman whose marriage was consummated.**

L34816–34818 Issue 1985: The waiting period for a divorced woman who has had intercourse and menstruates consists of three purity periods. This includes the remainder of the purity period during which she was divorced (even if it was an hour, less, or more), followed by the menstruation occurring after that remaining portion of purity, then a second complete purity period, followed by the menstruation after it, then a third complete purity period. When she observes its sign, her waiting period ends. Upon the onset of menstruation, her ʿiddah has been completed, and she may marry at that time if she wishes.

L34819 And the people differed concerning this—they said as we said.

L34820 And a group held the view that the aqrāʾ refers to menstruation, despite the consensus of all on obedience, based on the statement of the Almighty: "Divorced women must observe a waiting period of three qurūʾ [menstrual periods], and it is not lawful for them to conceal what Allah has created in their wombs" [Al-Baqarah 2:228].[48]

L34821–34823 Abu Muhammad said: The term "qurū'" is the plural of "qur'." In the Arabic language in which the Quran was revealed, "qur'" applies to the period of ritual purity, applies to menstruation, and applies to both ritual purity and menstruation: I, Abu Sa'id al-Ja'fari, by this chain: I, Muhammad ibn Ali al-Muqri'; I, Abu Ja'far Ahmad ibn Muhammad ibn Isma'il an-Nahhas the Grammarian; I, Abu Ja'far at-Tahawi; I, Muhammad ibn Muhammad ibn Hassan; I, Abd al-Malik ibn Hisham; I, Abu Zayd al-Ansari, who said: "I

[48] **Qur'an references (L34820):** Qur'an 2:228 (Al-Baqarah).

وَكَذَلِكَ لَا يَخْتَلِفُونَ فِي أَنَّ مَنْ وَطِئَ امْرَأَتَهُ مَرَّةً، ثُمَّ غَابَ عَنْهَا عَشَرَاتِ السِّنِينَ، ثُمَّ طَلَّقَهَا أَنَّ الْعِدَّةَ عَلَيْهَا.

وَلَا شَكَّ فِي أَنَّهَا لَا حَمْلَ بِهَا، وَلَوْ كَانَتْ الْعِدَّةُ خَوْفَ الْحَمْلِ لَأَجْزَأَتْ حَيْضَةٌ وَاحِدَةٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ عِدَّةُ الْمُطَلَّقَةِ الْمَوْطُوءَةِ الَّتِي تَحِيضُ]

١٩٨٥ - مَسْأَلَةٌ: وَعِدَّةُ الْمُطَلَّقَةِ الْمَوْطُوءَةِ الَّتِي تَحِيضُ ثَلَاثَةُ قُرُوءٍ - وَهِيَ بَقِيَّةُ الطُّهْرِ الَّذِي طَلَّقَهَا فِيهِ - وَلَوْ أَنَّهَا سَاعَةٌ أَوْ أَقَلُّ أَوْ أَكْثَرُ - ثُمَّ الْحَيْضَةُ الَّتِي تَلِي بَقِيَّةَ ذَلِكَ الطُّهْرِ، ثُمَّ طُهْرٍ ثَانٍ كَامِلٍ، ثُمَّ الْحَيْضَةُ الَّتِي تَلِيهِ، ثُمَّ طُهْرٍ ثَالِثٍ كَامِلٍ -: فَإِذَا رَأَتْ أَثَرَهُ أَوَّلَ شَيْءٍ مِنْ الْحَيْضِ فَقَدْ تَمَّتْ عِدَّتُهَا وَلَهَا أَنْ تَنْكِحَ حِينَئِذٍ إنْ شَاءَتْ.

وَاخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَتْ كَمَا قُلْنَا.

وَقَالَتْ طَائِفَةٌ: الْأَقْرَاءُ الْحَيْضُ - مَعَ اتِّفَاقِ الْجَمِيعِ عَلَى الطَّاعَةِ - لِقَوْلِهِ عَزَّ وَجَلَّ: {وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ} [البقرة: ٢٢٨] .

قَالَ أَبُو مُحَمَّدٍ: الْقُرُوءُ جَمْعُ " قُرْءٍ " وَالْقُرْءُ فِي لُغَةِ الْعَرَبِ الَّتِي بِهَا نَزَلَ الْقُرْآنُ: يَقَعُ عَلَى الطُّهْرِ وَيَقَعُ عَلَى الْحَيْضِ، وَيَقَعُ عَلَى الطُّهْرِ وَالْحَيْضِ -: أَنَا بِذَلِكَ أَبُو سَعِيدٍ الْجَعْفَرِيُّ أَنَا مُحَمَّدُ بْنُ عَلِيٍّ الْمُقْرِي أَنَا أَبُو جَعْفَرٍ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ إسْمَاعِيلَ النَّحَّاسِ النَّحْوِيُّ أَنَا

heard Abu Amr ibn al-Ala' say" - and he mentioned it as we have transmitted - and al-A'sha said:

أَبُو جَعْفَرٍ الطَّحَاوِيَّ أَنَا مُحَمَّدُ بْنُ مُحَمَّدِ بْنِ حَسَّانَ أَنَا عَبْدُ الْمَلِكِ بْنُ هِشَامٍ أَنَا أَبُو زَيْدٍ الْأَنْصَارِيُّ قَالَ: سَمِعْت أَبَا عَمْرِو بْنَ الْعَلَاءِ يَقُولُ فَذَكَرَهُ كَمَا أَوْرَدْنَا - وَقَالَ الْأَعْشَى:

L34824 Is it every year you relentlessly undertake an expedition, Dragging to its farthest limit the debtor of your mourning?

أَفِي كُلِّ عَامٍ أَنْتَ جَاشِمُ غَزْوَةٍ ... تَشُدُّ لِأَقْصَاهَا عَزِيمَ عَزَائِكَا

L34825 She inherits wealth, and in principle, sanctity, For the waiting periods of your women invalidated therein.

مُورِثَةٍ مَالًا وَفِي الْأَصْلِ رِفْعَةٌ ... لِمَا ضَاعَ فِيهَا مِنْ قُرُوءِ نِسَائِكَا

L34826 So he intended the ritual purification—and another said:

فَأَرَادَ الْأَطْهَارَ - وَقَالَ آخَرُ:

L34827 How many resent the usurer... whose recurring cycles mirror the menstrual cycles of women!

يَا رُبَّ ذِي ضِغْنٍ عَلَى قَارِضٍ ... لَهُ قُرُوءٌ كَقُرُوءِ الْحَائِضِ

L34828 Then she anticipated menstruation.

فَأَرَادَ الْحَيْضَ.

L34829 Among those from whom statements resembling our position have been transmitted is a group – as narrated through ʿAbd al-Razzāq's chain from Maʿmar, from al-Zuhrī, from Saʿīd ibn al-Musayyib, from Zayd ibn Thābit, who said: "When the divorced woman completes her third menstrual period, the divorce from her husband is finalized." Through the same chain to al-Zuhrī, from ʿUrwah, from ʿĀ'ishah, the Mother of the Believers, an explicit statement identical to Zayd's is reported. Al-Zuhrī said: "This is the opinion of Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām," and al-Zuhrī adheres to this view.

وَمِمَّنْ رُوِيَ عَنْهُ مِثْلُ قَوْلِنَا جَمَاعَةٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: إذَا دَخَلَتْ الْمُطَلَّقَةُ فِي الْحَيْضَةِ الثَّالِثَةِ فَقَدْ بَانَتْ مِنْ زَوْجِهَا. وَبِهِ إلَى الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ مِثْلُ قَوْلِ زَيْدٍ نَصًّا، قَالَ الزُّهْرِيُّ: وَهُوَ قَوْلُ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ - وَبِهِ يَأْخُذُ الزُّهْرِيُّ.

L34830 And from the chain of ʿAbd al-Razzāq, from Maʿmar, from Ayyūb al-Sikhtiyānī, from Nāfiʿ, from Ibn ʿUmar: similar to the explicit text of the aforementioned Zayd—this is the statement of Abān ibn ʿUthmān and al-Qāsim ibn Muḥammad ibn Abī Bakr.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ مِثْلُ قَوْلِ زَيْدٍ الْمَذْكُورِ نَصًّا - وَهُوَ قَوْلُ أَبَانِ بْنِ عُثْمَانَ، وَالْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ.

L34831 And with this view hold Mālik, al-Shāfiʿī, Abū Thawr, Abū Sulaymān, and their companions.

وَبِهِ يَقُولُ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L34832 Some of them said: When she observes the beginning of the third menstrual cycle, she is irrevocably divorced from her husband, and it is not permissible for her to remarry until she observes purity from that cycle.

وَقَالَ بَعْضُ هَؤُلَاءِ: إذَا رَأَتْ أَوَّلَ الْحَيْضَةِ الثَّالِثَةِ فَقَدْ بَانَتْ مِنْ زَوْجِهَا وَلَا يَجُوزُ لَهَا أَنْ تَتَزَوَّجَ حَتَّى تَرَى الطُّهْرَ مِنْ تِلْكَ الْحَيْضَةِ.

L34833 It has been narrated to us through the chain of Sa'īd ibn Manṣūr: From 'Abd al-'Azīz ibn Muḥammad al-Darāwardī, from Thawr ibn Zayd, from 'Ikrimah, from Ibn 'Abbās, who said: "If she menstruates the third time, her waiting period has ended, but she must not remarry until she becomes ritually pure."

كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ ثَوْرِ بْنِ زَيْدٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: إِذَا حَاضَتْ الثَّالِثَةَ فَقَدْ بَرِئَتْ مِنْهُ، إِلَّا أَنَّهَا لَا تَتَزَوَّجُ حَتَّى تَطْهُرَ.

L34834–34835 And through the narration of Hammad ibn Salamah from Yaḥya ibn Sa'īd al-Anṣārī from Sālim ibn 'Abdullāh ibn 'Umar, he said: When the third menstrual period enters, the waiting period has ended. Yaḥya said: I asked him, "Is it permissible to marry during the third menstrual period [of the waiting period]?" He replied, "No." This statement is narrated from Isḥāq ibn Rāhawayh.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ إِذَا دَخَلَتْ فِي الْحَيْضَةِ الثَّالِثَةِ فَقَدْ ذَهَبَتْ مِنْهُ - قَالَ يَحْيَى فَقُلْت لَهُ: أَتَتَزَوَّجُ فِي الْحَيْضَةِ الثَّالِثَةِ؟ قَالَ: لَا، رُوِيَ هَذَا الْقَوْلُ عَنْ إِسْحَاقَ بْنِ رَاهْوَيْهِ.

L34836 A group hesitated regarding that—as was narrated to us by Al-Hajjaj ibn Al-Minhal: I, Hammad ibn Zayd, narrate from Ayyub As-Sikhtiyani from Nafi' from Sulayman ibn Yasar, who said: A man pronounced one or two divorces to his wife. When she entered her third menstrual cycle, he died. She sought her inheritance from him. The case was referred to Mu'awiyah ibn Abi Sufyan, who sent for a group of the Companions of the Messenger of Allah (peace and blessings be upon him), including Fadalah ibn 'Ubayd, but found they possessed no juristic knowledge regarding the matter.

وَتَوَقَّفَتْ فِي ذَلِكَ طَائِفَةٌ -: كَمَا رُوِّينَا عَنْ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ طَلَّقَ رَجُلٌ امْرَأَتَهُ طَلْقَةً أَوْ طَلْقَتَيْنِ فَلَمَّا دَخَلَتْ فِي الْحَيْضَةِ الثَّالِثَةِ مَاتَ فَطَلَبَتْ مِيرَاثَهُ، فَأُتِيَ مُعَاوِيَةُ بْنُ أَبِي سُفْيَانَ فِي ذَلِكَ، فَأَرْسَلَ فِي ذَلِكَ إلَى رَهْطٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْهُمْ: فَضَالَةُ بْنُ عُبَيْدٍ، فَلَمْ يَجِدْ عِنْدَهُمْ بِذَلِكَ عِلْمًا.

L34837 Ahmad ibn Hanbal expressed conflicting views on this matter: at one point, he stated, "The aqrā' [waiting periods] are purity," while at another, he said, "The aqrā' are menstruation." On yet another occasion, he abstained from definitively ruling on the issue.

وَاضْطَرَبَ فِي ذَلِكَ أَحْمَدُ بْنُ حَنْبَلٍ -: فَمَرَّةً قَالَ: الْأَقْرَاءُ الْأَطْهَارُ وَمَرَّةً قَالَ: الْأَقْرَاءُ الْحَيْضُ، وَمَرَّةً تَوَقَّفَ فِي ذَلِكَ.

L34838 Those who affirm that it is menstruation differed: A group said, "He may revoke [the divorce] as long as she is in the third menstrual period. Once she becomes pure from it, he can no longer revoke the divorce."

وَاخْتَلَفَ الْقَائِلُ بِأَنَّهَا الْحَيْضُ -: فَقَالَتْ طَائِفَةٌ: لَهُ رَجْعَةٌ مَا كَانَتْ فِي الْحَيْضَةِ الثَّالِثَةِ، فَإِذَا رَأَتْ الطُّهْرَ مِنْهَا فَلَا رَجْعَةَ عَلَيْهَا.

L34839 As reported through the chain of Abd al-Razzaq, from Ibn Jurayj, who reported from Amr ibn Muslim, from Tawus, who said: "He may resume relations with her while she is menstruating" - and this is the view of Sa'id ibn Jubayr.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ مُسْلِمٍ عَنْ طَاوُسٍ قَالَ: يُرَاجِعُهَا مَا كَانَتْ فِي الدَّمِ - وَهُوَ قَوْلُ سَعِيدِ بْنِ جُبَيْرٍ -.

L34840 It was narrated to us via the chain of Saʿīd ibn Manṣūr: Sufyān ibn ʿUyaynah said: I narrate from ʿAmr ibn Dīnār, from Saʿīd ibn Jubayr, who said: “He is most entitled to it as long as it is in the blood.”

رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: هُوَ أَحَقُّ بِهَا مَا كَانَتْ فِي الدَّمِ.

L34841 This is the view of Ibn Shubrumah and al-Awzāʿī, and it has been narrated to us from some of the Companions which corroborate this view.

وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ، وَالْأَوْزَاعِيِّ، وَرُوِّينَا عَنْ بَعْضِ الصَّحَابَةِ مَا يَدُلُّ عَلَى ذَلِكَ.

L34842 It has been narrated to us through the chain of Mālik from Nāfiʿ from Ibn ʿUmar, who said: The waiting period for a slave woman is two menstrual cycles, and the waiting period for a free woman is three menstrual cycles. Similarly, it has been narrated through the chain of al-Zuhrī from Qabīṣa ibn Dhu’ayb from Zayd ibn Thābit, exactly the same, identical in wording.

كَمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: عِدَّةُ الْأَمَةِ حَيْضَتَانِ، وَعِدَّةُ الْحُرَّةِ ثَلَاثُ حِيَضٍ. وَمِنْ طَرِيقِ الزُّهْرِيِّ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ عَنْ زَيْدِ بْنِ ثَابِتٍ مِثْلُ ذَلِكَ سَوَاءً سَوَاءً.

L34843–34844 A group held—as narrated through the chain of ʿAbd al-Razzāq from Maʿmar, from Zayd ibn Rufayʿ, from Maʿbad al-Juhanī—who said: When she washes her private parts after the third menstruation, she is separated from him.

وَقَالَتْ طَائِفَةٌ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ زَيْدِ بْنِ رُفَيْعٍ عَنْ مَعْبَدٍ الْجُهَنِيِّ قَالَ: إِذَا غَسَلَتْ فَرْجَهَا مِنْ الْحَيْضَةِ الثَّالِثَةِ فَقَدْ بَانَتْ مِنْهُ.

L34845 A group of scholars maintained that he retains the right to revoke the divorce as long as she has not performed the purificatory bath following the third menstruation—as we have been narrated through the transmission chain of Al-Ḥajjāj ibn Minhāl: Abū ʿAwānah from Manṣūr from Ibrāhīm al-Nakhaʿī from ʿAlqamah from Ibn Masʿūd, who reported being present with ʿUmar ibn al-Khaṭṭāb when a woman came accompanied by a man. She said: “He divorced me, then left me until I reached the end of my third menstruation. When my bleeding ceased, I prepared my purificatory bath and removed my garments. Then he knocked on the door and declared: ’I have revoked the divorce.”’ ʿUmar asked Ibn Masʿūd: “What is your ruling regarding her?” He replied: “I consider him most entitled to reclaim her before she regains eligibility for prayer.” ʿUmar responded: “Excellent is your opinion! This is likewise my judgment.”

وَقَالَتْ طَائِفَةٌ: إِنَّ لَهُ أَنْ يَرْتَجِعَهَا مَا لَمْ تَغْتَسِلْ مِنْ الْحَيْضَةِ الثَّالِثَةِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا أَبُو عَوَانَةَ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ عَنْ ابْنِ مَسْعُودٍ أَنَّهُ كَانَ عِنْدَ عُمَرَ بْنِ الْخَطَّابِ فَأَتَتْهُ امْرَأَةٌ مَعَ رَجُلٍ فَقَالَتْ: طَلَّقَنِي ثُمَّ تَرَكَنِي حَتَّى إذَا كُنْت فِي آخِرِ ثَلَاثِ حِيَضٍ وَانْقَطَعَ عَنِّي الدَّمُ وَضَعْت غُسْلِي وَنَزَعْت ثِيَابِي فَقَرَعَ الْبَابَ وَقَالَ: قَدْ رَاجَعْتُك؟ فَقَالَ عُمَرُ لِابْنِ مَسْعُودٍ: مَا تَقُولُ فِيهَا؟ فَقَالَ: أَرَاهُ أَحَقَّ بِهَا مَا دُونَ أَنْ تَحِلَّ لَهَا الصَّلَاةُ، فَقَالَ لَهُ عُمَرُ: نِعْمَ مَا رَأَيْت، وَأَنَا أَرَى ذَلِكَ.

L34846 From the narration of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from Saʿīd ibn al-Musayyab: that ʿAlī ibn Abī Ṭālib said: Her husband has the right to revoke the divorce until she performs *ghusl* after the third menstrual period and becomes ritually pure to pray again.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لِزَوْجِهَا الرَّجْعَةُ عَلَيْهَا حَتَّى تَغْتَسِلَ مِنْ الْحَيْضَةِ الثَّالِثَةِ وَتَحِلُّ لَهَا الصَّلَاةُ.

L34847 Via the chain of Hammad ibn Salamah, from Humaid, from al-Hasan: A man

divorced his wife with one pronouncement. When she was about to perform the ritual bath after her third menstrual cycle, he reconciled with her. They brought their dispute to Abu Musa al-Ash'ari, who required them to swear by Allah—besides whom there is no deity—whether prayer had indeed become permissible for her. She refused to swear, so he ruled that she must return to her husband. A similar ruling has been authentically reported from Ibn Mas'ud.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ: أَنَّ رَجُلًا طَلَّقَ امْرَأَتَهُ طَلْقَةً، فَلَمَّا أَرَادَتْ أَنْ تَغْتَسِلَ مِنْ الْحَيْضَةِ الثَّالِثَةِ رَاجَعَهَا؟ فَاخْتَصَمَا إلَى أَبِي مُوسَى الْأَشْعَرِيِّ، فَاسْتَحْلَفَهُمَا بِاَللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ لَقَدْ حَلَّتْ لَهَا الصَّلَاةُ؟ فَأَبَتْ أَنْ تَحْلِفَ، فَرَدَّهَا إلَيْهِ - وَصَحَّ مِثْلُهُ أَيْضًا عَنْ ابْنِ مَسْعُودٍ.

L34848 And through the chain of Abd al-Razzaq, from Maʿmar, from Zayd ibn Rufayʿ, from Abi Ubaydah ibn Abd Allah ibn Masʿud, who said: Did Uthman send a messenger to Ubayy ibn Kaʿb regarding that matter? Ubayy ibn Kaʿb said: "I hold that she remains entitled to it until she performs *ghusl* after her third menstruation, after which prayer is permissible for her." Abu Ubaydah said: "I know of no action by Uthman except that he adopted this ruling."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ زَيْدِ بْنِ رُفَيْعٍ عَنْ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: أَرْسَلَ عُثْمَانُ إلَى أُبَيِّ بْنِ كَعْبٍ فِي ذَلِكَ؟ فَقَالَ أُبَيّ بْنُ كَعْبٍ: أَرَى أَنَّهُ أَحَقُّ بِهَا حَتَّى تَغْتَسِلَ مِنْ حَيْضَتِهَا الثَّالِثَةِ، وَتَحِلَّ لَهَا الصَّلَاةُ؟ قَالَ: فَمَا أَعْلَمُ عُثْمَانَ إلَّا أَخَذَ بِذَلِكَ.

L34849 And through the narration of Waki' from Muḥammad ibn Rāshid from Makhūl from Muʿādh ibn Jabal and Abū al-Dardāʾ, a similar report is related. And through the narration of Waki' from ʿĪsā al-Ḥannāṭ from al-Shaʿbī from thirteen of the Companions of the Messenger of Allah—peace and blessings be upon him—the virtuous, the virtuous: among them are Abū Bakr, ʿUmar, and Ibn ʿAbbās, that he has the strongest right to her as long as she has not performed the ritual bath from the third menstrual period.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ مُحَمَّدِ بْنِ رَاشِدٍ عَنْ مَكْحُولٍ عَنْ مُعَاذِ بْنِ جَبَلٍ، وَأَبِي الدَّرْدَاءِ مِثْلُهُ. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عِيسَى الْحَنَّاطِ عَنْ الشَّعْبِيِّ عَنْ ثَلَاثَةَ عَشَرَ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْخَيِّرُ، فَالْخَيِّرُ -: مِنْهُمْ: أَبُو بَكْرٍ، وَعُمَرُ، وَابْنُ عَبَّاسٍ: أَنَّهُ أَحَقُّ بِهَا مَا لَمْ تَغْتَسِلْ مِنْ الْحَيْضَةِ الثَّالِثَةِ.

L34850–34852 And through the chain of transmission of ʿAbd al-Razzāq, from ʿUmar ibn Rāshid, from Yaḥyā ibn Abī Kathīr: that ʿUbādah ibn al-Ṣāmit He said: She is not irrevocably divorced until she performs the ritual bath following the third menstrual period, so that prayers become permissible for her again. This ruling is authentically reported from ʿAṭāʾ ibn Abī Rabāḥ, ʿAbd al-Karīm al-Jazarī, Saʿīd ibn al-Musayyib, and al-Ḥasan ibn Ḥayyin. He made no distinction between the Muslim woman and the dhimmi woman in this ruling.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُمَرَ بْنِ رَاشِدٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ: أَنَّ عُبَادَةَ بْنَ الصَّامِتِ قَالَ: لَا تَبِينُ حَتَّى تَغْتَسِلَ مِنْ الْحَيْضَةِ الثَّالِثَةِ، وَتَحِلَّ لَهَا الصَّلَوَاتُ وَصَحَّ هَذَا عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ وَعَبْدِ الْكَرِيمِ الْجَزَرِيِّ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَالْحَسَنِ بْنِ حَيٍّ، وَسَوَّى فِي ذَلِكَ بَيْنَ الْمُسْلِمَةِ وَالذِّمِّيَّةِ.

L34853 Sharik ibn Abdullah al-Qāḍī said: If she neglects the ritual bath (ghusl) for twenty years, he has the right of revocation (rajʿah) over her.

وَقَالَ شَرِيكُ بْنُ عَبْدِ اللَّهِ الْقَاضِي: إنْ فَرَّطَتْ فِي الْغُسْلِ عِشْرِينَ سَنَةً فَلَهُ الرَّجْعَةُ عَلَيْهَا.

L34854 Abu Muhammad said: This is the clear meaning of what has been narrated to us earlier from the Companions - referring to those who stated: "He is

more entitled to her as long as she has not performed the ritual bath, after which the prayers become permissible for her."

قَالَ أَبُو مُحَمَّد: هَذَا ظَاهِرُ مَا رُوِّينَا عَنْ الصَّحَابَةِ آنِفًا - نَعْنِي الْقَائِلِينَ: هُوَ أَحَقُّ بِهَا مَا لَمْ تَغْتَسِلْ وَتَحِلَّ لَهَا الصَّلَوَاتُ.

L34855 A group said, as narrated to us by ʿAbd al-Razzāq from Ibn Jurayj from Ismāʿīl ibn Muslim from al-Ḥasan al-Baṣrī, who said: "Unless she observes the cessation of bleeding and then delays her ritual bath until she misses that prayer. If she does so, she became liable at that point." This is also the position upheld by Sufyān al-Thawrī.

وَقَالَتْ طَائِفَةٌ كَمَا رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ إسْمَاعِيلَ بْنِ مُسْلِمٍ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: إلَّا أَنْ تَرَى الطُّهْرَ ثُمَّ تُؤَخِّرُ اغْتِسَالَهَا حَتَّى تَفُوتَهَا تِلْكَ الصَّلَاةُ، فَإِنْ فَعَلَتْ فَقَدْ بَانَتْ حِينَئِذٍ. وَبِهِ - يَقُولُ سُفْيَانُ الثَّوْرِيُّ

L34856 And Abu Hanifa—Abu Hanifa and his companions said: If her menstrual period is ten days, her waiting period concludes with its full completion, and she is not lawful for her husbands—whether she has performed the ritual bath or not, or whether she has observed the cessation of bleeding or not.

وَأَبُو حَنِيفَةَ، وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: إنْ كَانَتْ حَيْضَتُهَا عَشَرَةَ أَيَّامٍ فَبِتَمَامِهَا تَنْقَضِي عِدَّتُهَا، وَلَا تَحِلُّ لِلْأَزْوَاجِ - اغْتَسَلَتْ أَوْ لَمْ تَغْتَسِلْ، رَأَتْ الطُّهْرَ أَوْ لَمْ تَرَهُ.

L34857 They said: As for the Dhimmī woman, her waiting period concludes by the cessation of blood from the third menstruation, and she becomes permissible to husbands - whether her waiting period was ten or less than ten, whether she performed ghusl or did not perform it.

قَالُوا: وَأَمَّا الذِّمِّيَّةُ فَبِانْقِطَاعِ الدَّمِ مِنْ الْحَيْضَةِ الثَّالِثَةِ تَنْقَضِي عِدَّتُهَا وَتَحِلُّ لِلْأَزْوَاجِ - كَانَتْ عِدَّتُهَا عَشَرًا أَوْ أَقَلَّ مِنْ عَشَرٍ، اغْتَسَلَتْ أَوْ لَمْ تَغْتَسِلْ.

L34858 They said: As for the Muslim woman whose menstrual period lasts fewer than ten days, the husband retains the right to retract the divorce as long as she has not washed her entire body during ghusl - even if a single complete body part remains unwashed in the process.

قَالُوا: وَأَمَّا الْمُسْلِمَةُ الَّتِي حَيْضُهَا أَقَلُّ مِنْ عَشَرَةِ أَيَّامٍ فَلَهُ الرَّجْعَةُ عَلَيْهَا مَا لَمْ تَغْتَسِلْ كُلُّهَا وَلَوْ لَمْ يَبْقَ لَهَا مِنْ الْغُسْلِ إلَّا عُضْوٌ وَاحِدٌ كَامِلٌ.

L34859–34860 They said: "According to analogical reasoning, if she did not wash a complete body part that remained [to be washed], would he not retain the right to revoke [the divorce] against her?" They said: "Rather, we abandon analogical reasoning and approve via juristic preference that he retains the right to revoke against her. If all that remains for her to wash is part of a limb, he has no right to revoke, and she has now become lawful to marry."

قَالُوا: وَكَانَ الْقِيَاسُ أَنَّهُ إنْ بَقِيَ لَهَا عُضْوٌ كَامِلٌ لَمْ تَغْسِلْ أَنْ لَا يَكُونَ لَهُ عَلَيْهَا رَجْعَةٌ؟ قَالُوا: وَلَكِنْ نَدَعُ الْقِيَاسَ، وَنَسْتَحْسِنُ أَنْ يَكُونَ لَهُ عَلَيْهَا الرَّجْعَةُ، فَإِنْ لَمْ يَبْقَ لَهَا أَنْ تَغْسِلَ إلَّا بَعْضَ عُضْوٍ فَلَا رَجْعَةَ لَهُ عَلَيْهَا، وَقَدْ حَلَّ لَهَا الزَّوَاجُ.

L34861 Abu Hanifah holds another opinion: if more than the measure of a Baghli dirham remains on her limb, he cannot take her back, nor is it lawful for her to marry until she washes off that trace.

وَلِأَبِي حَنِيفَةَ قَوْلٌ آخَرُ - وَهُوَ أَنَّهُ إنْ بَقِيَ عَلَيْهَا مِنْ الْعُضْوِ أَكْثَرُ مِنْ قَدْرِ الدِّرْهَمِ الْبَغْلِيِّ فَلَا رَجْعَةَ لَهُ عَلَيْهَا، وَلَا يَحِلُّ لَهَا الزَّوَاجُ حَتَّى تَغْسِلَ تِلْكَ اللُّمْعَةَ.

L34862 He said: If she observes purification after the third menstruation while

traveling with no water at her disposal and performs tayammum, he retains the right to take her back as long as she has not prayed.

قَالَ: فَلَوْ رَأَتْ الطُّهْرَ مِنْ الْحَيْضَةِ الثَّالِثَةِ وَهِيَ مُسَافِرَةٌ لَا مَاءَ مَعَهَا فَتَيَمَّمَتْ، فَلَهُ عَلَيْهَا الرَّجْعَةُ مَا لَمْ تُصَلِّ.

L34863 He said: If she found water from which a donkey had drunk—and found no other—then she performed *ghusl* with it or *tayammum*, he has no right to revoke the divorce, nor is she permitted to marry under those circumstances.

قَالَ: فَلَوْ وَجَدَتْ مَاءً قَدْ شَرِبَ مِنْهُ حِمَارٌ - وَلَمْ تَجِدْ غَيْرَهُ - فَاغْتَسَلَتْ بِهِ، أَوْ تَيَمَّمَتْ فَلَا رَجْعَةَ لَهُ عَلَيْهَا، وَلَا يَحِلُّ مَعَ ذَلِكَ لَهَا الزَّوَاجُ.

L34864 Abu Muhammad said: As for the statement of Abu Hanifah - it is utterly invalid, and it is an opinion not known from anyone before him. Similarly, the defining by those who stipulate the cessation of the waiting period as the passing of a prayer's time - so she does not perform the ritual bath - [is invalid] because this is a claim entirely devoid of supporting evidence, neither from the Quran, nor the Sunnah, nor an authentic narration, nor the saying of a Companion.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ أَبِي حَنِيفَةَ - فَفِي غَايَةِ الْفَسَادِ، وَهُوَ قَوْلٌ لَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُ - وَكَذَلِكَ تَحْدِيدُ مَنْ حَدَّ انْقِطَاعَ الْعِدَّةِ بِأَنْ يَمْضِيَ لَهَا وَقْتُ صَلَاةٍ فَلَا تَغْتَسِلُ؛ لِأَنَّهُ قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ صَحِيحَةٍ وَلَا قَوْلِ صَاحِبٍ.

L34865 Similarly, the opinion of those who stated "until she washes her private parts from the third menstrual period" - all these opinions have been invalidated.

وَكَذَلِكَ قَوْلُ مَنْ قَالَ حَتَّى تَغْسِلَ فَرْجَهَا مِنْ الْحَيْضَةِ الثَّالِثَةِ فَسَقَطَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا.

L34866 There remain only two opinions: that of those who say, "He has the strongest claim to her [for revoking the divorce] as long as she has not performed the ritual bath and prayer becomes permissible for her," and that of those who say, "Her waiting period is completed upon her purity following the third menstruation"—which is our opinion.

وَلَمْ يَبْقَ إلَّا قَوْلُ مَنْ قَالَ: هُوَ أَحَقُّ بِهَا مَا لَمْ تَغْتَسِلْ وَتَحِلَّ لَهَا الصَّلَاةُ، وَقَوْلُ مَنْ قَالَ: إنَّ بِطُهْرِهَا مِنْ الْحَيْضَةِ الثَّالِثَةِ تَتِمُّ عِدَّتُهَا - وَهُوَ قَوْلُنَا.

L34867 We found the evidence of those who asserted: He remains most entitled to her as long as her [obligatory] prayers are not due. They cite as evidence the authentic reports from 'Umar ibn al-Khaṭṭāb, 'Alī ibn Abī Ṭālib, and Ibn Mas'ūd, along with narrations attributed to Abū Bakr al-Ṣiddīq, Abū Mūsā al-Ash'arī, Ubayy ibn Ka'b, Mu'ādh ibn Jabal, Abū al-Dardā', Ibn 'Abbās, 'Ubāda ibn al-Ṣāmit, and others - even if these narrations are not authentically established from them. They stated: Such a ruling cannot be derived through speculative reasoning.

فَوَجَدْنَا حُجَّةَ مَنْ قَالَ: هُوَ أَحَقُّ بِهَا مَا لَمْ تَحِلَّ لَهَا الصَّلَوَاتُ - يَحْتَجُّونَ بِأَنَّهُ صَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَابْنِ مَسْعُودٍ، وَرُوِيَ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ، وَأَبِي مُوسَى الْأَشْعَرِيِّ، وَأُبَيِّ بْنِ كَعْبٍ، وَمُعَاذِ بْنِ جَبَلٍ، وَأَبِي الدَّرْدَاءِ، وَابْنِ عَبَّاسٍ، وَعُبَادَةَ بْنِ الصَّامِتِ، وَغَيْرِهِمْ، وَإِنْ لَمْ يَصِحَّ عَنْهُمْ - قَالُوا: وَمِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ.

L34868–34870 Abu Muhammad said: We do not know of any clamor on their part other than this, and it is invalid. For it is impermissible to attribute to the Mes-

senger of Allah—may Allah bless him and grant him peace—anything based on conjecture, which he—peace and blessings be upon him—described as the most false of narrations, unless it is established. From him—peace and blessings be upon him—especially, the established narrations from Umar and Ibn Mas'ud are what we previously mentioned: that it was an opinion they formulated independently, not derived from any narrational evidence they possessed—rather, the two of them stated it.

L34871 Despite this, the Hanafis take no pleasure in this controversy, for they are the first to oppose the Companions in this matter. It is established from the Companions we mentioned—may Allah be pleased with them—that a man retains the right to revoke [the divorce] as long as her waiting period has not concluded. Yet the Hanafis deny him this right of revocation before her waiting period ends if any part [of the fetus] remains in her body, even the size of a dirham.

L34872 Abu Muhammad said: Those we have mentioned have contradicted the opinion held by some Companions who maintained that her waiting period concludes upon entering the third menstruation. This view is also undoubtedly invalid, as there exists no evidence supporting it from the Qur'an, the Sunnah, nor even an unsound narration. Thus, only the opinion of those who stated that her waiting period concludes with the cessation of bleeding in the third menstruation remains valid. This aligns with the view of those who declared: "The aqrā' [menstrual cycles] refer to menstruation." Among their proofs, we found that if the qur' [menstrual cycle] denoted purity, the waiting period would amount to two aqrā' and part of a third. Yet Allah the Exalted has obligated three aqrā', thereby confirming that they signify menstruation, three full cycles of which must be completed.

L34873 Abū Muḥammad said: It is not so. Rather, some *qur'* is *qur'* without doubt, and some menstruation is menstruation.

L34874 Abu Muhammad said, and they mentioned what was narrated to us through the chain of Abu Dawud: from Muhammad ibn Mas'ud, from Abu 'Asim, from Ibn Jurayj, from Muẓāhir ibn Aslam, from al-Qasim ibn Muhammad, from 'A'ishah, the Mother of the Believers, from the Prophet—peace and

قَالَ أَبُو مُحَمَّدٍ: وَمَا نَعْلَمُ لَهُمْ شَغَبًا غَيْرَ هَذَا، وَهُوَ بَاطِلٌ؛ لِأَنَّهُ لَا يَحِلُّ أَنْ يُضَافَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالظَّنِّ الَّذِي أَخْبَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ أَكْذَبُ الْحَدِيثِ، مَا لَمْ يَأْتِ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَا سِيَّمَا وَالثَّابِتُ عَنْ عُمَرَ، وَابْنِ مَسْعُودٍ مَا ذَكَرْنَا قَبْلُ مِنْ أَنَّهُ رَأْيٌ رَأَيَاهُ لَا عَنْ أَثَرٍ عِنْدَهُمَا قَالَاهُ.

وَمَعَ ذَلِكَ فَلَا يَفْرَحُ الْحَنَفِيُّونَ بِهَذَا الشَّغَبِ، فَهُمْ أَوَّلُ مُخَالِفٍ لِلصَّحَابَةِ فِي هَذَا الْمَكَانِ، لِأَنَّ الثَّابِتَ عَمَّنْ ذَكَرْنَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّ لَهُ الرَّجْعَةَ مَا لَمْ تَحِلَّ لَهَا الصَّلَاةُ، وَهُمْ يَقْطَعُونَ عَنْهُ الرَّجْعَةَ قَبْلَ أَنْ تَحِلَّ لَهَا الصَّلَاةُ إذَا بَقِيَ لَهَا شَيْءٌ مِنْ أَعْضَاءِ جَسَدِهَا وَلَوْ قَدْرَ الدِّرْهَمِ.

قَالَ أَبُو مُحَمَّدٍ وَقَدْ خَالَفَ مَنْ ذَكَرْنَا هَذَا مَنْ رَأَى مِنْ الصَّحَابَةِ أَنَّ بِدُخُولِهَا فِي الْحَيْضَةِ الثَّالِثَةِ تَتِمُّ عِدَّتُهَا - فَبَطَلَ هَذَا الْقَوْلُ أَيْضًا بِلَا شَكٍّ إذْ لَا دَلِيلَ عَلَى صِحَّتِهِ مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، فَلَمْ يَبْقَ إلَّا قَوْلُ مَنْ قَالَ بِانْقِطَاعِ الدَّمِ مِنْ الْحَيْضَةِ الثَّالِثَةِ تَتِمُّ عِدَّتُهَا - وَهُوَ قَوْلُ مَنْ قَالَ: الْأَقْرَاءُ الْحِيَضُ، فَوَجَدْنَا مِنْ حُجَّتِهِمْ أَنَّهُ لَوْ كَانَ الْقُرْءُ الطُّهْرَ لَكَانَتْ الْعِدَّةُ قُرْأَيْنِ وَشَيْئًا مِنْ قُرْءٍ وَاَللَّهُ تَعَالَى أَوْجَبَ ثَلَاثَ قُرُوءٍ، فَصَحَّ أَنَّهَا الْحِيَضُ الَّتِي تُسْتَوْفَى ثَلَاثٌ مِنْهَا كَامِلَةً.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ كَذَلِكَ بَلْ بَعْضُ الْقُرْءِ قُرْءٌ بِلَا شَكٍّ، وَبَعْضُ الْحَيْضِ حَيْضٌ.

blessings be upon him—who said: “The divorce of a slave woman is two divorces, and her waiting period is two menstrual cycles.”

قَالَ أَبُو مُحَمَّدٍ وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُحَمَّدُ بْنُ مَسْعُودٍ أَنَا أَبُو عَاصِمٍ عَنْ ابْنِ جُرَيْجٍ عَنْ مُظَاهِرِ بْنِ أَسْلَمَ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «طَلَاقُ الْأَمَةِ طَلْقَتَانِ، وَعِدَّتُهَا حَيْضَتَانِ» .

L34875 Humaam narrated to us: Yahya ibn Malik ibn ‘A’idh narrated to me; Abu al-Hasan ibn Abi Ghassan narrated to me; Abu Yahya Zakariyya ibn Yahya al-Sājī narrated to me; Muhammad ibn Isma‘il ibn Samurah al-Ahmasi narrated to me; ‘Umar ibn Shabib al-Musli narrated to me; ‘Abdullah ibn ‘Isa narrated to me from ‘Atiyyah, from Ibn ‘Umar, who said: The Messenger of Allah—peace and blessings be upon him—said, “The divorce of a slave woman is twice, and her waiting period is two menstrual cycles.”

وَنَا حُمَامٌ أَنَا يَحْيَى بْنُ مَالِكِ بْنِ عَائِذٍ أَنَا أَبُو الْحَسَنِ بْنُ أَبِي غَسَّانَ أَنَا أَبُو يَحْيَى زَكَرِيَّا ابْنُ يَحْيَى السَّاجِيُّ أَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ سَمُرَةَ الْأَحْمَسِيُّ أَنَا عُمَرُ بْنُ شَبِيبٍ الْمُسْلِيُّ أَنَا عَبْدُ اللَّهِ بْنُ عِيسَى عَنْ عَطِيَّةَ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «طَلَاقُ الْأَمَةِ ثِنْتَانِ وَعِدَّتُهَا حَيْضَتَانِ» .

L34876–34878 Abu Muhammad said: These two reports are weak; it is not permissible to cite them as evidence because of Muẓāhir ibn Aslam. Weak: Similarly, Umar ibn Shabib and ’Atiyyah are both weak narrators; they are not considered authoritative. If either or both of them were authentic, we would not oppose them.

قَالَ أَبُو مُحَمَّدٍ: هَذَانِ خَبَرَانِ سَاقِطَانِ لَا يَجُوزُ الِاحْتِجَاجُ بِهِمَا، لِأَنَّ مُظَاهِرَ بْنَ أَسْلَمَ ضَعِيفٌ - وَكَذَلِكَ عُمَرُ بْنُ شَبِيبٍ، وَعَطِيَّةُ ضَعِيفَانِ لَا يُحْتَجُّ بِهِمَا، وَلَوْ صَحَّ أَحَدُهُمَا أَوْ كِلَاهُمَا لَمَا خَالَفْنَاهُ.

L34879 Abu Muhammad said: If someone mentions the authentic report from the Messenger of Allah—peace be upon him—that he said to the woman experiencing irregular bleeding: “When your *qur’* comes, do not pray, and when the *qur’* passes, purify yourself then pray from one *qur’* to the next,” and the authentic report from him—peace be upon him—that he ordered her to abstain from prayer equivalent to the duration of her periods (qurū’) and her menstruation? We replied: We do not deny that menstruation is called *qur’*, just as you do not deny that the clean period is called *qur’*. Our disagreement concerns only which of these is intended by the statement of the Exalted: *{three qurū’}* [al-Baqarah 2:228].[49]

قَالَ أَبُو مُحَمَّدٍ: فَإِنْ ذَكَرَ ذَاكِرٌ الْخَبَرَ الثَّابِتَ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ لِلْمُسْتَحَاضَةِ: إذَا أَتَاكِ قُرْؤُكِ فَلَا تُصَلِّي وَإِذَا مَرَّ الْقُرْءُ تَطَهَّرِي ثُمَّ صَلِّي مِنْ الْقُرْءِ إلَى الْقُرْءِ» وَالْخَبَرُ الثَّابِتُ عَنْهُ - عَلَيْهِ السَّلَامُ - أَنَّهُ أَمَرَهَا أَنْ تَتْرُكَ الصَّلَاةَ قَدْرَ أَقْرَائِهَا وَحَيْضَتِهَا؟ قُلْنَا: لَمْ نُنْكِرْ أَنَّ الْحَيْضَ يُسَمَّى قُرْءًا، كَمَا أَنَّكُمْ لَا تُنْكِرُونَ أَنَّ الطُّهْرَ يُسَمَّى قُرْءًا، وَإِنَّمَا اخْتَلَفْنَا فِي أَيِّ ذَلِكَ الْمُرَادُ مِنْ قَوْلِهِ تَعَالَى: {ثَلَاثَةَ قُرُوءٍ} [البقرة: ٢٢٨] .

L34880 And they said: Indeed, Allah, the Exalted, commanded the divorce of women solely for the observance of the waiting period.

وَقَالُوا: إنَّمَا أَمَرَ اللَّهُ تَعَالَى بِطَلَاقِ النِّسَاءِ لِاسْتِقْبَالِ الْعِدَّةِ.

L34881 They said: If the *qur’* (purity period) were equivalent to the *tuhr* (state

[49] **Qur’an references (L34879):** Qur’an 2:228 (Al-Baqarah).

of purity), would divorce then occur during the *iddah* (waiting period)? We replied: This is an error in your ruling and legal framework, even though it is built on a sound premise. And yes, indeed, Allah the Exalted commanded that divorce occur at the onset of the *iddah*. If the *iddah*—defined by the *aqrā'* (purity periods)—were equivalent to menstruation itself, there would be a span between the divorce and the start of the *iddah* during which the woman would not be considered in the waiting period, and this is invalid.

قَالُوا: فَلَوْ كَانَ الْقُرْءُ هُوَ الطُّهْرَ لَكَانَ مُطَلَّقًا فِي الْعِدَّةِ؟ فَقُلْنَا: هَذَا خَطَأٌ مِنْ حُكْمِكُمْ وَبِنَائِكُمْ عَلَى مُقَدَّمَةٍ صَحِيحَةٍ وَنَعَمْ، إنَّ الطَّلَاقَ إنَّمَا أَمَرَ اللَّهُ تَعَالَى بِالطَّلَاقِ فِي اسْتِقْبَالِ الْعِدَّةِ، فَلَوْ كَانَتْ الْعِدَّةُ الَّتِي هِيَ الْأَقْرَاءُ الْحِيَضَ، لَكَانَ بَيْنَ الطَّلَاقِ وَبَيْنَ أَوَّلِ الْعِدَّةِ مُدَّةٌ لَيْسَتْ فِيهَا مُعْتَدَّةً، وَهَذَا بَاطِلٌ.

L34882 Abu Muhammad said: All the evidence they presented was invalidated, and our position remained. We identified evidence for those who held this opinion in what has been narrated to us through Al-Bukhari's chain: Ismāʿīl ibn ʿAbdullāh reported to us, from Mālik, from Nāfiʿ, from Ibn ʿUmar, that he divorced his wife while she was menstruating. ʿUmar asked Allah's Messenger (peace be upon him) about this? The Messenger of Allah (peace be upon him) said: "Command him to take her back, then keep her until she attains purity, then menstruates, then attains purity again. After that, if he wishes, he may retain her thereafter, or divorce her before intimacy. That is the waiting period within which Allah the Exalted has commanded that women are divorced."

قَالَ أَبُو مُحَمَّدٍ: فَسَقَطَ كُلُّ مَا احْتَجُّوا بِهِ - وَبَقِيَ قَوْلُنَا - فَوَجَدْنَا حُجَّةَ مَنْ قَالَ بِهِ -: مَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا إسْمَاعِيلُ بْنُ عَبْدِ اللَّهِ أَنَا مَالِكٌ عَنْ نَافِعٍ «عَنْ ابْنِ عُمَرَ: أَنَّهُ طَلَّقَ امْرَأَتَهُ، وَهِيَ حَائِضٌ، فَسَأَلَ عُمَرُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُرْهُ فَلْيُرَاجِعْهَا ثُمَّ لِيُمْسِكْهَا حَتَّى تَطْهُرَ ثُمَّ تَحِيضَ ثُمَّ تَطْهُرَ، ثُمَّ إنْ شَاءَ أَمْسَكَ بَعْدُ، وَإِنْ شَاءَ طَلَّقَ قَبْلَ أَنْ يَمَسَّ فَتِلْكَ الْعِدَّةُ الَّتِي أَمَرَ اللَّهُ تَعَالَى أَنْ تَطْلُقَ لَهَا النِّسَاءُ» .

L34883 The Messenger of Allah—peace and blessings be upon him—indicated the purity (ṭuhr) and clarified that it constitutes the waiting period during which Allah the Exalted has commanded that women be divorced. Thus, it is confirmed that the "qur'" is the purity (ṭuhr).

فَأَشَارَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى الطُّهْرِ، وَأَخْبَرَ أَنَّهُ الْعِدَّةُ الَّتِي أَمَرَ اللَّهُ تَعَالَى أَنْ تَطْلُقَ لَهَا النِّسَاءُ - فَصَحَّ أَنَّ الْقُرْءَ هُوَ الطُّهْرُ.

L34884–34885 Moreover, the waiting period is a mandatory obligation immediately after divorce, without delay. Thus, it is validly established that this refers to the period of purity connected in time to the divorce, not menstruation that occurs unrelated to it.

وَأَيْضًا - فَإِنَّ الْعِدَّةَ وَاجِبَةٌ فَرْضًا إثْرَ الطَّلَاقِ بِلَا مُهْلَةٍ - فَصَحَّ أَنَّهَا الطُّهْرُ الْمُتَّصِلُ بِالطَّلَاقِ، لَا الْحَيْضُ الَّذِي لَا يَتَّصِلُ بِالطَّلَاقِ.

L34886 If *qur'* were equated to menstruation, it would necessitate—according to their doctrine—that a woman divorced during menstruation observe her waiting period by treating that menstruation itself as a *qur'*. And al-Ḥasan did indeed hold this view.

وَلَوْ كَانَ الْقُرْءُ هُوَ الْحَيْضَ لَوَجَبَ عِنْدَهُمْ عَلَى أَصْلِهِمْ فِيمَنْ طَلَّقَ حَائِضًا أَنْ تَعْتَدَّ بِتِلْكَ الْحَيْضَةِ قُرْءًا - وَقَدْ قَالَ بِذَلِكَ الْحَسَنُ.

L34887 As narrated through the chain of ʿAbd al-Razzāq from ʿUthmān ibn Maṭar, from Saʿīd ibn Abī ʿArūbah, from Maṭar al-Warrāq, from al-Ḥasan, regarding

a man who divorces his wife three times while she is menstruating: she observes her waiting period based on her menstrual cycles through those three divorces.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُثْمَانَ بْنِ مَطَرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ مَطَرٍ الْوَرَّاقِ عَنْ الْحَسَنِ فِيمَنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا وَهِيَ حَائِضٌ أَنَّهَا تَعْتَدُّ بِهَا مِنْ أَقْرَائِهَا.

L34888 Ibn Abī ʿArūbah said: Qatadah and Abu Maʿshar narrated to me. Qatadah narrated from Saʿīd ibn al-Musayyib, and Abu Maʿshar narrated from Ibrāhīm. They both said, "Do not count it."

وَقَالَ ابْنُ أَبِي عَرُوبَةَ: وَحَدَّثَنِي قَتَادَةُ، وَأَبُو مَعْشَرٍ، قَالَ قَتَادَةُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَقَالَ أَبُو مَعْشَرٍ عَنْ إبْرَاهِيمَ، قَالَا جَمِيعًا: لَا تَعْتَدُّ بِهَا.

L34889 Abu Muhammad said: Whichever of the two interpretations Allah the Exalted intended—are the "aqrā'" referring to purity periods or menstruation? Our position necessitates both, for divorce occurs during a purity period, which constitutes a qur', then the second purity period, then the third. Between the first and second purity periods lies a menstrual period, then between the second and third lies another menstrual period, followed by the occurrence of the final menstrual period of the three.

قَالَ أَبُو مُحَمَّدٍ: وَأَيُّ الْقَوْلَيْنِ كَانَ مُرَادَ اللَّهِ تَعَالَى، فَالْأَقْرَاءُ الْأَطْهَارُ أَمْ الْحِيَضُ؟ فَإِنَّ قَوْلَنَا يَقْتَضِيهِمَا جَمِيعًا؛ لِأَنَّ الطَّلَاقَ يَقَعُ فِي الطُّهْرِ فَهُوَ قُرْءٌ، ثُمَّ الطُّهْرِ الثَّانِي، ثُمَّ الثَّالِثِ، وَبَيْنَ الطُّهْرِ الْأَوَّلِ وَالثَّانِي حَيْضٌ، ثُمَّ بَيْنَ الثَّانِي وَالثَّالِثِ حَيْضٌ، ثُمَّ دُفْعَةُ حَيْضِ آخِرِ الثَّلَاثِ.

L34890–34892 We have said: A portion of menstruation is valid menstruation, a portion of purity is valid purity, and a portion of the qur' is a valid qur'. Thus, she observes three qur' periods in all cases. We adhere to al-Ḥasan's opinion: If a man divorces her thrice while she is menstruating, she observes her waiting period with that menstruation, then the subsequent purity period, then the second menstruation, then the second purity period, then the third menstruation. When she completes the purity period following it (the third purity period), she becomes lawful to her husbands. Such is the ruling. The ruling concerning the waiting period of a female slave who is emancipated and chooses to divorce her husband—if she is menstruating at that time—is the same; there is no difference.

وَقَدْ قُلْنَا: إنَّ بَعْضَ الْحَيْضِ حَيْضٌ، وَبَعْضَ الطُّهْرِ طُهْرٌ، وَبَعْضَ الْقُرْءِ قُرْءٌ، فَهِيَ ثَلَاثَةُ أَقْرَاءٍ بِكُلِّ حَالٍ - وَبِقَوْلِ الْحَسَنُ نَقُولُ إنْ طَلَّقَهَا ثَلَاثًا - وَهِيَ حَائِضٌ - فَإِنَّهَا تَعْتَدُّ بِتِلْكَ الْحَيْضَةِ، ثُمَّ بِالطُّهْرِ الَّذِي يَلِيهَا، ثُمَّ بِالْحَيْضَةِ الثَّانِيَةِ ثُمَّ بِالطُّهْرِ الثَّانِي، ثُمَّ بِالْحَيْضَةِ الثَّالِثَةِ فَإِذَا رَأَتْ الطُّهْرَ مِنْهَا - فَهُوَ طُهْرٌ ثَالِثٌ - حَلَّتْ بِهِ لِلْأَزْوَاجِ، وَهَكَذَا الْقَوْلُ فِي عِدَّةِ الْأَمَةِ الَّتِي تُعْتَقُ فَتَخْتَارُ فِرَاقَ زَوْجِهَا - إنْ كَانَتْ حِينَ ذَلِكَ حَائِضًا - وَلَا فَرْقَ.

L34893 Similarly, we state regarding a woman thrice-divorced in a single pronouncement during a period of purity in which her husband had intercourse with her, and a freedwoman who chooses to separate from her husband, that both observe their waiting period starting from that same purity, calculated according to menstrual cycles.

وَكَذَلِكَ نَقُولُ فِي الْمُطَلَّقَةِ ثَلَاثًا فِي طُهْرٍ مَسَّهَا فِيهِ، وَفِي الْمُعْتَقَةِ تَخْتَارُ فِرَاقَ زَوْجِهَا أَنَّهُمَا يَعْتَدَّانِ بِذَلِكَ الطُّهْرِ قُرْءًا.

L34894 It has been authentically reported from Az-Zuhri that she does not observe

وَقَدْ صَحَّ عَنْ الزُّهْرِيِّ أَنَّهَا لَا تَعْتَدُّ بِهِ، لَكِنْ بِثَلَاثَةِ أَقْرَاءٍ مُسْتَأْنَفَةٍ.

the iddah with that method, but rather [must complete] three newly started menstrual cycles.

L34895 **A legal issue wherein he issued her an irrevocable divorce during her waiting period prior to its completion.**

L34896 Issue 1986: If he follows a divorce with an irrevocable pronouncement during her waiting period before its completion - provided the waiting period is not due to a triple divorce issued in a single instance nor a third pronouncement - she must commence the waiting period anew from its beginning. If he divorces her a third time after two prior pronouncements, she must likewise commence the waiting period anew without exception. Similarly, if he revokes the divorce (rajʿah) during her waiting period - whether he consummates the marriage or not - then divorces her, she must necessarily commence the waiting period anew.

L34897 And it has been narrated to us—as per our statement—from a group of the Salaf, as has been narrated to us through ʿAbd al-Razzāq's chain from Maʿmar and through other chains from Qatādah, that Jābir ibn ʿAbdullāh and Khilās ibn ʿAmr jointly stated regarding a woman divorced during her waiting period: "She observes her waiting period from the other divorce for three menstrual cycles."

L34898 It is reported from Ibn Masʿūd that she resumes her waiting period of the first divorce—this is the opinion of Ibrāhīm al-Nakhaʿī, Saʿīd ibn al-Musayyab, al-Ḥasan, and Abū Qilābah—and this is also the view of al-Zuhrī and Qatādah.

L34899–34901 Abu Muhammad said: This is the opinion of Abu Hanifah, Malik, and al-Shafi'i, except that Abu Hanifah, Malik, and one of the two opinions of al-Shafi'i regarding the woman whom he takes back during her waiting period and then divorces again before consummation hold that she... She restarts the waiting period - and Ash-Shāfiʿī once stated: she resumes her waiting period from the first divorce - and this is the opinion of ʿAṭāʾ.

L34902 Abū Muḥammad said: We know of no evidence for them from the Quran or Sunnah whatsoever, nor any foundational basis for these groups in what is re-

[مَسْأَلَةٌ أَتْبَعَهَا فِي عِدَّتِهَا قَبْلَ انْقِضَائِهَا طَلَاقًا بَائِنًا]

١٩٨٦ - مَسْأَلَةٌ: فَإِنْ أَتْبَعَهَا فِي عِدَّتِهَا قَبْلَ انْقِضَائِهَا طَلَاقًا بَائِنًا، وَلَمْ تَكُنْ عِدَّتُهَا تِلْكَ مِنْ طَلَاقِ ثَلَاثٍ مَجْمُوعَةٍ وَلَا مِنْ طَلْقَةٍ ثَالِثَةٍ فَعَلَيْهَا أَنْ تَبْتَدِئَ الْعِدَّةَ مِنْ أَوَّلِهَا فَإِنْ طَلَّقَهَا بَعْدَ ثِنْتَيْنِ ثَالِثَةً فَتَبْتَدِئُ الْعِدَّةَ أَيْضًا وَلَا بُدَّ - وَكَذَلِكَ لَوْ رَاجَعَهَا فِي عِدَّتِهَا فَوَطِئَهَا أَوْ لَمْ يَطَأْهَا ثُمَّ طَلَّقَهَا فَإِنَّهَا تَبْتَدِئُ الْعِدَّةَ وَلَا بُدَّ.

وَرُوِّينَا مِثْلَ قَوْلِنَا عَنْ طَائِفَةٍ مِنْ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَغَيْرِهِ عَنْ قَتَادَةَ أَنَّ جَابِرَ بْنَ عَبْدِ اللَّهِ، وَخِلَاسَ بْنَ عَمْرٍو، قَالَا جَمِيعًا فِي الْمُطَلَّقَةِ فِي الْعِدَّةِ: تَعْتَدُّ مِنْ الطَّلَاقِ الْآخَرِ ثَلَاثَ حِيَضٍ.

وَرُوِّينَا عَنْ ابْنِ مَسْعُودٍ: أَنَّهَا تَبْنِي عَلَى عِدَّتِهَا مِنْ الطَّلَاقِ الْأَوَّلِ - وَهُوَ قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَالْحَسَنِ، وَأَبِي قِلَابَةَ - وَبِهِ قَالَ الزُّهْرِيُّ، وَقَتَادَةُ.

قَالَ أَبُو مُحَمَّدٍ: وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، إلَّا أَنَّ أَبَا حَنِيفَةَ، وَمَالِكًا، وَأَحَدَ قَوْلَيْ الشَّافِعِيِّ فِي الَّتِي يُرَاجِعُهَا فِي الْعِدَّةِ ثُمَّ يُطَلِّقُ قَبْلَ أَنْ يَطَأَهَا: أَنَّهَا تَسْتَأْنِفُ الْعِدَّةَ - وَقَالَ الشَّافِعِيُّ مَرَّةً: تَبْنِي عَلَى عِدَّتِهَا مِنْ الطَّلَاقِ الْأَوَّلِ - وَهُوَ قَوْلُ عَطَاءٍ.

ported from Ibn Masʿūd concerning this matter—for it is merely a narration: ʿAbdullāh ibn Rabīʿ narrated to us, stating: I am Muḥammad ibn Muʿāwiyah al-Qurashī, I am Aḥmad ibn Shuʿayb, I am Muḥammad ibn Yaḥyā ibn Ayyūb al-Marwazī, I am Ḥafṣ—who is Ibn Ghīyāth—from al-Aʿmash, from Abū Isḥāq, from Abū al-Aḥwaṣ, from ʿAbdullāh ibn Masʿūd, who said: "The divorce in accordance with the Sunnah is to divorce her once while she is in a state of purity without intercourse. When her menstruation arrives and she thereafter becomes pure, he divorces her another time. When she menstruates again and becomes pure, he divorces her a third time. She then observes her waiting period with one subsequent menstrual cycle."

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ لَهُمْ حُجَّةً مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ أَصْلًا وَلَا مُتَعَلَّقَ لِهَذِهِ الطَّوَائِفِ فِيمَا جَاءَ عَنْ ابْنِ مَسْعُودٍ فِي ذَلِكَ، لِأَنَّهُ خَبَرٌ -: حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ قَالَ: أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ الْقُرَشِيُّ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ يَحْيَى بْنِ أَيُّوبَ الْمَرْوَزِيِّ أَنَا حَفْصٌ - هُوَ ابْنُ غِيَاثٍ - أَنَا الْأَعْمَشُ عَنْ أَبِي إِسْحَاقَ عَنْ أَبِي الْأَحْوَصِ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: طَلَاقُ السُّنَّةِ يُطَلِّقُهَا تَطْلِيقَةً وَهِيَ طَاهِرَةٌ فِي غَيْرِ جِمَاعٍ، فَإِذَا جَاءَ وَطَهُرَتْ طَلَّقَهَا أُخْرَى فَإِذَا حَاضَتْ وَطَهُرَتْ طَلَّقَهَا أُخْرَى، ثُمَّ تَعْتَدُّ بَعْدَ ذَلِكَ بِحَيْضَةٍ.

L34903 Al-Aʿmash said, "So I asked Ibrāhīm al-Nakhaʿī," and Ibrāhīm replied likewise.

قَالَ الْأَعْمَشُ فَسَأَلْت إبْرَاهِيمَ النَّخَعِيَّ؟ فَقَالَ مِثْلَ ذَلِكَ.

L34904 Abu Muhammad said: All these schools contradict the authentic reports from Ibn Masʿūd here—that it is the Sunnah—because they all deem it reprehensible to follow it with a divorce during the waiting period. The Mālikīs and Shāfiʿīs do not regard menstruation as the waiting period.

قَالَ أَبُو مُحَمَّد: كُلُّ هَؤُلَاءِ الطَّوَائِفِ مُخَالِفُونَ لِمَا صَحَّ عَنْ ابْنِ مَسْعُودٍ هَاهُنَا أَنَّهُ السُّنَّةُ، لِأَنَّهُمْ كُلَّهُمْ يَكْرَهُونَ أَنْ يُتْبِعَهَا طَلَاقًا فِي الْعِدَّةِ، وَالْمَالِكِيُّونَ وَالشَّافِعِيُّونَ لَا يَرَوْنَ الْحَيْضَ عِدَّةً.

L34905 There is no greater astonishment than [that directed at] one who invokes the statement of Saʿīd ibn al-Musayyib regarding the diyah for a woman's fingers—"This is the Sunnah, O my nephew"—and here relies on Ibn Masʿūd's statement that it [the ruling on the woman's fingers] is the Sunnah.

وَلَا عَجَبَ أَعْجَبُ مِمَّنْ يَحْتَجُّ بِقَوْلِ سَعِيدِ بْنِ الْمُسَيِّبِ فِي دِيَةِ أَصَابِعِ الْمَرْأَةِ: هِيَ السُّنَّةُ يَا ابْنَ أَخِي، وَيَحْتَجُّ بِقَوْلِ ابْنِ مَسْعُودٍ هَاهُنَا أَنَّهُ السُّنَّةُ.

L34906 Abu Muhammad said: As for us, there is no proof with us except the text of the Qur'an and the Sunnah—the latter's rulings being established from the Messenger of Allah, may Allah's peace and blessings be upon him.

قَالَ أَبُو مُحَمَّد: وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِيمَا عَدَا نَصِّ قُرْآنٍ وَسُنَّةٍ ثَبَتَ حُكْمُهَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L34907 Our evidence for this ruling is that Allah, the Almighty and Majestic, has waived the waiting period for the divorced woman who has not been touched only, and has imposed it upon the divorced woman who has been touched.

وَحُجَّتُنَا لِقَوْلِنَا هَاهُنَا: هُوَ أَنَّ اللَّهَ عَزَّ وَجَلَّ إنَّمَا أَسْقَطَ الْعِدَّةَ عَنْ الْمُطَلَّقَةِ غَيْرِ الْمَمْسُوسَةِ فَقَطْ، وَأَوْجَبَهَا عَلَى الْمَطْلَقَةِ الْمَمْسُوسَةِ.

L34908–34909 Allah, the Exalted, has commanded that whoever divorces must divorce in accordance with the waiting period, and He has prescribed the waiting period for a menstruating woman as three cycles.

وَأَمَرَ اللَّهُ تَعَالَى مَنْ طَلَّقَ أَنْ يُطَلِّقَ لِلْعِدَّةِ، وَجَعَلَ الْعِدَّةَ عَلَى الَّتِي تَحِيضُ ثَلَاثَةَ قُرُوءٍ.

L34910 And for the woman who does not menstruate—due to young age or advanced age—three months.

وَعَلَى الَّتِي لَا تَحِيضُ - لِصِغَرٍ أَوْ كِبَرٍ - ثَلَاثَةَ أَشْهُرٍ.

L34911 The Exalted has decreed that she remains his wife as long as her waiting period from him has not expired: they inherit from one another, and his divorce takes effect upon her. Thus, if he divorces her a second time, he is undeniably divorcing his wife with whom he has consummated the marriage within that matrimonial contract. Consequently, she must begin the waiting period immediately after this divorce, without interruption.

وَحَكَمَ تَعَالَى أَنَّهَا امْرَأَتُهُ مَا لَمْ تَنْقَضِ عِدَّتُهَا مِنْهُ: يَتَوَارَثَانِ، وَيَلْحَقُهَا طَلَاقُهُ، فَهُوَ إِذَا طَلَّقَهَا ثَانِيَةً: مُطَلِّقٌ امْرَأَتَهُ الْمَوْطُوءَةَ مِنْهُ فِي ذَلِكَ النِّكَاحِ بِلَا شَكٍّ، فَعَلَيْهَا أَنْ تَبْتَدِئَ الْعِدَّةَ مِنْ إِثْرِهِ بِلَا فَصْلٍ.

L34912 It is invalid for any part of the waiting period to precede the divorce, just as it is invalid to divorce a wife with whom intercourse has occurred without a waiting period.

وَمِنَ الْبَاطِلِ أَنْ يَتَقَدَّمَ شَيْءٌ مِنَ الْعِدَّةِ قَبْلَ الطَّلَاقِ، كَمَا مِنَ الْبَاطِلِ طَلَاقُ مَوْطُوءَةٍ بِلَا عِدَّةٍ.

L34913 Or the divorce of a woman with whom intercourse has occurred would constitute one menstrual cycle or two. Our opponents in this matter must necessarily adopt one of these three approaches - all of which are invalid with certainty.

أَوْ طَلَاقُ مَوْطُوءَةٍ يَكُونُ قُرْءًا وَاحِدًا أَوْ قُرْأَيْنِ، وَلَا بُدَّ لِمُخَالِفِينَا هَاهُنَا مِنْ أَحَدِ هَذِهِ الْوُجُوهِ الثَّلَاثَةِ - وَهِيَ كُلُّهَا بَاطِلٌ بِيَقِينٍ.

L34914 Similarly, it is impossible for the revocably divorced woman (murtajiʿah) to base her status on a waiting period (ʿiddah) that has been invalidated by the reinstatement (rajʿah), as it is invalid for her to retain the status of a revocably divorced woman while she is, after the reinstatement, in the waiting period. And success is from Allah, the Exalted.

وَكَذَلِكَ مِنَ الْمُحَالِ أَنْ تَبْنِيَ الْمُرْتَجَعَةُ عَلَى عِدَّةٍ قَدْ بَطَلَتْ بِالرَّجْعَةِ، إِذْ مِنَ الْبَاطِلِ أَنْ تَكُونَ مُرْتَجَعَةً، وَهِيَ بَعْدَ الِارْتِجَاعِ فِي الْعِدَّةِ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L34915 **A legal case where the divorced woman was pregnant from the one who divorced her, from adultery, or by coercion.**

[مَسْأَلَةٌ كَانَتْ الْمُطَلَّقَةُ حَامِلًا مِنْ الَّذِي طَلَّقَهَا أَوْ مِنْ زِنًى أَوْ بِإِكْرَاهٍ]

L34916 If the divorced woman is pregnant by the man who divorced her—whether through adultery, coercion, or otherwise—her waiting period concludes with the delivery of the child, even if this occurs immediately after her husband's divorce (whether by an hour, less, or more), provided it is the final offspring in her womb. When she delivers it (as we mentioned) or miscarries, her waiting period has ended, and marriage becomes permissible for her.

١٩٨٧ - مَسْأَلَةٌ: فَإِنْ كَانَتْ الْمُطَلَّقَةُ حَامِلًا مِنْ الَّذِي طَلَّقَهَا أَوْ مِنْ زِنًى أَوْ بِإِكْرَاهٍ فَعِدَّتُهَا وَضْعُ حَمْلِهَا - وَلَوْ إثْرَ طَلَاقِ زَوْجِهَا لَهَا بِسَاعَةٍ أَوْ أَقَلَّ أَوْ أَكْثَرَ - وَهُوَ آخِرُ وَلَدٍ فِي بَطْنِهَا، فَإِذَا وَضَعَتْهُ - كَمَا ذَكَرْنَا - أَوْ أَسْقَطَتْهُ فَقَدْ انْقَضَتْ عِدَّتُهَا وَحَلَّ لَهَا الزَّوَاجُ.

L34917–34918 Similarly, an emancipated woman who is pregnant may choose to separate from her husband, with no distinction [in the ruling].

وَكَذَلِكَ الْمُعْتَقَةُ - وَهِيَ حَامِلٌ - تَتَخَيَّرُ فِرَاقَ زَوْجِهَا وَلَا فَرْقَ.

L34919 Similarly, a woman whose husband has died—whether her pregnancy is from him, from illicit intercourse, or from coercion—her waiting period concludes upon delivering the last child in her womb, even if she delivers it immediately after her husband's death. She may then remarry if she wishes.

وَكَذَلِكَ الْمُتَوَفَّى عَنْهَا زَوْجُهَا - وَهِيَ حَامِلٌ مِنْهُ، أَوْ مِنْ زِنًى، أَوْ مِنْ إِكْرَاهٍ - فَإِنَّ عِدَّتَهَا تَنْقَضِي بِوَضْعِ آخِرِ وَلَدٍ فِي بَطْنِهَا - وَلَوْ وَضَعَتْهُ إِثْرَ مَوْتِ زَوْجِهَا - وَلَهَا أَنْ تَتَزَوَّجَ إِنْ شَاءَتْ.

L34920 And likewise, if she were to miscarry it, and there is no difference.

وَكَذَلِكَ لَوْ أَسْقَطَتْهُ، وَلَا فَرْقَ.

L34921 The proof of that is the statement of Allah, the Most High, the Exalted: {And for those who are pregnant, their waiting period is until they deliver their pregnancy} [At-Talaq: 4]. He, the Most High, the Exalted, did not specify whether the pregnancy is from the husband or another man, and it is the same whether the husband had sexual intercourse with her or not, because Allah, the Exalted, has stated this.[50]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤] فَلَمْ يَخُصَّ عَزَّ وَجَلَّ كَوْنَ الْحَمْلِ مِنْهُ أَوْ مِنْ غَيْرِهِ - وَسَوَاءٌ وَطِئَهَا الزَّوْجُ أَوْ لَمْ يَطَأْهَا، لِأَنَّ اللَّهَ تَعَالَى قَالَ مَا ذَكَرْنَا.

L34922 And He, the Exalted, said: {O you who believe, when you marry believing women and then divorce them before consummating the marriage, there is no waiting period for you to impose upon them} [Al-Ahzab: 49].[51]

وَقَالَ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّونَهَا} [الأحزاب: ٤٩] .

L34923 Abu Muhammad said: It is legally valid to interpret this as excluding these [cases] from the former category. Thus, the intended meaning is: "For pregnant women, their waiting period lasts until they deliver, except those who became pregnant by you without sexual relations—through non-vaginal intercourse (tashfīr)—or by non-Muslim men."

قَالَ أَبُو مُحَمَّدٍ: فَاحْتَمَلَ أَنْ يَسْتَثْنِيَ هَذِهِ مِنْ الْأُولَى فَيَكُونُ الْمُرَادُ: وَأُولَاتُ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ إلَّا اللَّوَاتِي لَمْ تَمَسُّوهُنَّ وَهُنَّ حَوَامِلُ مِنْكُمْ مِنْ تَشْفِيرٍ أَوْ مِنْ غَيْرِكُمْ.

L34924 It is possible that the first instance is excluded from this ruling, so that the intended meaning is: "Then if you divorce them before having touched them, you have no waiting period to count against them - unless they are pregnant from you or from someone other than you." Therefore, it becomes obligatory to examine which of the two usages - or which of the two exceptions - is correct, since the Exalted and Majestic has guaranteed the clarification of this matter through the laws He revealed to us. We found the narration of Abdullah ibn Umar regarding his divorce of his wife, which we previously

وَاحْتَمَلَ أَنْ تُسْتَثْنَى الْأُولَى مِنْ هَذِهِ فَيَكُونُ الْمُرَادُ: ثُمَّ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّونَهَا إلَّا أَنْ يَكُنَّ حَوَامِلَ مِنْكُمْ أَوْ مِنْ غَيْرِكُمْ، فَوَاجِبٌ أَنْ نَنْظُرَ أَيَّ الِاسْتِعْمَالَيْنِ، أَوْ أَيَّ الِاسْتِثْنَاءَيْنِ هُوَ الْحَقُّ؟ إذْ قَدْ ضَمِنَ عَزَّ وَجَلَّ بَيَانَ ذَلِكَ فِيمَا أَنْزَلَ إلَيْنَا مِنْ شَرَائِعِهِ -: فَوَجَدْنَا - خَبَرَ عَبْدِ اللَّهِ بْنِ عُمَرَ فِي طَلَاقِ امْرَأَتِهِ وَقَدْ ذَكَرْنَاهُ فِي " أَوَّلِ مَسْأَلَةٍ مِنْ الطَّلَاقِ فِي كِتَابِنَا هَذَا " بِإِسْنَادِهِ.

[50] **Qur'an references (L34921):** Qur'an 65:4 (At-Talaq).
[51] **Qur'an references (L34922):** Qur'an 33:49 (Al-Ahzab).

mentioned in “the first issue of divorce in this book of ours” with its chain of transmission.[52]

L34925–34926 We found therein that he—peace and blessings be upon him—said: “Command him to take her back and then divorce her either in a state of ritual purity or when she is pregnant with his child.”

L34927 And in it also: “When she becomes pure, let him either divorce her or retain her,” and the Messenger of Allah (peace and blessings be upon him) recited: “O Prophet, when you divorce women, divorce them at the commencement of their waiting period.”[53]

L34928–34930 Abu Muhammad said: It has been established that divorcing a pregnant woman is universally permissible, as this ruling originates from him—peace and blessings be upon him. Instruction for every husband who divorces until the Day of Resurrection—regardless of whether the pregnancy is from him or another—because the Prophet (peace and blessings be upon him) did not distinguish between a pregnant woman and a pregnant woman from another. That circumstance signifies the commencement of her waiting period, thus obligating her to observe it due to what we have mentioned. This ruling cannot be nullified except with certainty, and no certainty exists for its annulment except in the case of the repudiated woman with whom he has not had intercourse and who is not pregnant at all.

L34931 If it is confirmed that she is obligated to observe the waiting period, then it necessarily follows that he retains the right to take her back as long as she remains within the waiting period following his divorce; he is obligated to provide financial support, they inherit from one another, his ilā’ (sworn abstention) and his ẓihār (injurious comparison) apply to her, and he may engage in li‘ān (oath-based denial of paternity) with her, based on the statement of Allah the Exalted: {And their husbands have the greatest right to reclaim them during this period} [Al-Baqarah: 228].[54]

L34932 And by His saying, the Most High: “Retain them equitably or divorce them

فَوَجَدْنَا فِيهِ «أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ مُرْهُ: فَلْيُرَاجِعْهَا ثُمَّ لِيُطَلِّقْهَا طَاهِرًا، أَوْ حَامِلًا مِنْهُ» .

وَفِيهِ أَيْضًا «إذَا طَهُرَتْ فَلْيُطَلِّقْ أَوْ لِيُمْسِكْ، وَقَرَأَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَا أَيُّهَا النَّبِيُّ إذَا طَلَّقْتُمْ النِّسَاءَ فَطَلِّقُوهُنَّ لِقُبُلِ عِدَّتِهِنَّ» .

قَالَ أَبُو مُحَمَّد: فَصَحَّ أَنَّ طَلَاقَ الْحَامِلِ جَائِزٌ عُمُومًا، إذْ هَذَا مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - تَعْلِيمٌ لِكُلِّ مُطَلِّقٍ إلَى يَوْمِ الْقِيَامَةِ، سَوَاءٌ كَانَ الْحَمْلُ مِنْهُ أَوْ مِنْ غَيْرِهِ، لِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَخُصَّ حَامِلًا مِنْ حَامِلٍ مِنْ غَيْرِهِ، وَأَنَّ تِلْكَ الْحَالَ هُوَ قُبُلُ عِدَّتِهَا، فَوَجَبَتْ الْعِدَّةُ عَلَيْهَا بِمَا ذَكَرْنَا، وَلَمْ يَجُزْ أَنْ يَسْقُطَ هَذَا الْحُكْمُ إلَّا بِيَقِينٍ، وَلَا يَقِينَ فِي سُقُوطِهِ إلَّا فِي الْمُطَلَّقَةِ الَّتِي لَمْ يَطَأْهَا وَلَيْسَتْ حَامِلًا فَقَطْ.

وَإِذَا صَحَّ أَنَّ عَلَيْهَا الْعِدَّةَ فَقَدْ وَجَبَ ضَرُورَةً أَنَّ لَهُ الرَّجْعَةَ عَلَيْهَا مَا دَامَتْ فِي الْعِدَّةِ مِنْ طَلَاقِهِ، وَعَلَيْهِ النَّفَقَةُ، وَيَتَوَارَثَانِ، وَيَلْحَقُهَا إيلَاؤُهُ، وَظِهَارُهُ، وَيُلَاعِنُهَا؛ لِقَوْلِهِ تَعَالَى: {وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ} [البقرة: ٢٢٨] .

وَبِقَوْلِهِ تَعَالَى: {فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] .

[52] **Qur’an references (L34924):** Qur’an 33:49 (Al-Ahzab).
[53] **Qur’an references (L34927):** Qur’an 65:1 (At-Talaq).
[54] **Qur’an references (L34931):** Qur’an 2:228 (Al-Baqarah).

equitably" [At-Talaq 2].[55]

L34933 Success is by Allah, the Most High.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L34934 Similarly, we say: If he divorces her while her waiting period is determined by menstrual cycles or months, then she becomes pregnant before completing the waiting period—whether from him or another man, through adultery or coercion—her waiting period transfers to the childbirth of that pregnancy. Then, when she delivers, her waiting period is deemed complete.

وَكَذَلِكَ نَقُولُ: إنَّهُ إنْ طَلَّقَهَا وَعِدَّتُهَا بِالْأَقْرَاءِ أَوْ بِالشُّهُورِ، ثُمَّ حَمَلَتْ قَبْلَ تَمَامِ الْعِدَّةِ مِنْهُ أَوْ مِنْ غَيْرِهِ بِزِنًى أَوْ بِإِكْرَاهٍ، فَإِنَّهَا تَنْتَقِلُ عِدَّتُهَا إلَى وَضْعِ ذَلِكَ الْحَمْلِ، فَإِذَا وَضَعَتْ فَقَدْ تَمَّتْ عِدَّتُهَا.

L34935 Similarly, if a man dies and she becomes pregnant during her waiting period from his death—whether through illicit intercourse or coercion—her waiting period transitions to that of a pregnant woman, ending upon childbirth. This is because all such cases fall under the general ruling of Allah's statement: "As for those who are pregnant, their term is until they deliver" (Quran 65:4).[56]

وَكَذَلِكَ لَوْ مَاتَ فَحَمَلَتْ فِي عِدَّتِهَا مِنْ وَفَاتِهِ مِنْ زِنًى أَوْ إكْرَاهٍ فَإِنَّ عِدَّتَهَا تَنْتَقِلُ إلَى عِدَّةِ الْحَامِلِ بِوَضْعِ الْحَمْلِ؛ لِأَنَّ كُلَّ ذَلِكَ دَاخِلٌ فِي عُمُومِ قَوْله تَعَالَى: {وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤] .

L34936–34938 The Messenger of Allah—may Allah bless him and grant him peace—ruled that the delivery of the child in the event of the husband's death supersedes the four months and ten days [waiting period]. As we have been narrated through the chain of Ahmad ibn Shuʿayb: I am Husayn ibn Manṣūr ibn Jaʿfar al-Naysābūrī, I am Jaʿfar ibn ʿAwn, Yaḥyā ibn Saʿīd al-Anṣārī informed me, Sulaymān ibn Yasār informed me, Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf said: "We sent Kuraib—the client of Ibn ʿAbbās—to Umm Salamah, the Mother of the Believers..." The believers? Then we received news from her that Subay'ah gave birth days after her husband's death, so the Messenger of Allah (peace and blessings of Allah be upon him) commanded her to marry.

وَقَدْ غَلَّبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَضْعَ الْحَمْلِ فِي الْوَفَاةِ عَلَى الْأَرْبَعَةِ الْأَشْهُرِ وَالْعَشْرِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا حُسَيْنُ بْنُ مَنْصُورِ بْنِ جَعْفَرٍ النَّيْسَابُورِيُّ أَنَا جَعْفَرُ بْنُ عَوْنٍ أَنَا يَحْيَى بْنُ سَعِيدٍ - هُوَ الْأَنْصَارِيُّ - أَخْبَرَنِي سُلَيْمَانُ بْنُ يَسَارٍ أَخْبَرَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ قَالَ: «بَعَثْنَا كُرَيْبًا - هُوَ مَوْلَى ابْنِ عَبَّاسٍ - إلَى أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ؟ فَجَاءَنَا مِنْ عِنْدِهَا أَنَّ سُبَيْعَةَ وَضَعَتْ بَعْدَ وَفَاةِ زَوْجِهَا بِأَيَّامٍ، فَأَمَرَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تَتَزَوَّجَ» .

L34939 As for our statement, "the last child in her womb," it is based on the words of Allah, the Almighty: {Their waiting period is until they deliver their child} [At-Talaq: 4]. Thus, as long as any part of the child remains in her womb, she has not delivered the child.[57]

وَأَمَّا قَوْلُنَا " آخِرُ وَلَدٍ فِي بَطْنِهَا " فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤] فَمَتَى مَا بَقِيَ مِنْ حَمْلِهَا شَيْءٌ فِي بَطْنِهَا: لَمْ تَضَعْ حَمْلَهَا.

L34940 Abū Muḥammad said: Muḥammad ibn al-Ḥasan has an opinion here which

قَالَ أَبُو مُحَمَّدٍ: وَلِمُحَمَّدِ بْنِ الْحَسَنِ قَوْلٌ هَاهُنَا نَذْكُرُهُ - لِيَحْمَدَ اللَّهَ تَعَالَى سَامِعُهُ عَلَى السَّلَامَةِ - وَهُوَ أَنَّهُ قَالَ: إذَا خَرَجَ مِنْ بَطْنِ الْمَرْأَةِ مِنْ الْوَلَدِ النِّصْفُ فَقَدْ تَمَّتْ عِدَّتُهَا، لَا يَعُدُّ

[55] **Qur'an references (L34932):** Qur'an 65:2 (At-Talaq).
[56] **Qur'an references (L34935):** Qur'an 65:4 (At-Talaq).
[57] **Qur'an references (L34939):** Qur'an 65:4 (At-Talaq).

we shall mention—so that whoever hears it may praise Allah Almighty for granting safety—and it is that he said: If half of the child exits the woman's womb, her postpartum waiting period is considered complete. Excluded from that half are his thighs, shins, feet, and head. Abū Yūsuf said: If a man says to his slave woman while she is giving birth, "You are free," then if, at the time of his statement, half of the child containing its head has already emerged, she is freed and the child is free. But if half of the child's body, excluding the head, has emerged, the child remains enslaved, though she is freed.

فِي ذَلِكَ النِّصْفِ: فَخِذَاهُ، وَلَا سَاقَاهُ، وَلَا رِجْلَاهُ، وَلَا رَأْسُهُ - وَقَالَ أَبُو يُوسُفَ: مَنْ قَالَ لِأَمَتِهِ وَهِيَ تَلِدُ: أَنْتِ حُرَّةٌ فَإِنْ كَانَتْ حِينَ قَوْلِهِ ذَلِكَ قَدْ خَرَجَ نِصْفُهُ الَّذِي فِيهِ رَأْسُهُ فَهِيَ حُرَّةٌ وَالْوَلَدُ حُرٌّ، وَإِنْ كَانَتْ قَدْ خَرَجَ نِصْفُ بَدَنِهِ سِوَى رَأْسِهِ فَالْوَلَدُ مَمْلُوكٌ، وَهِيَ حُرَّةٌ.

L34941 Hisham ibn ʻUbayd Allah, the narrator, reported all of that from both of them through his hearing. Abu Muhammad said: Let the hearer of this be astonished at this confusion? Could the wretched one be so immersed in naivety that he does not realize when the newborn's head and shoulders emerge, the entire body falls out in a time swifter than the rolling of an eye? When could one possibly find the time to break the newborn's spine and measure the newborn? Until he knows whether half of it has emerged, or less, or more? For when its head and shoulders emerge, it is wholly impossible—under any circumstance—for his declaration "You are emancipated" to take effect until the entire body has fully emerged.

رَوَى عَنْهُمَا ذَلِكَ جَمِيعًا هِشَامُ بْنُ عُبَيْدِ اللَّهِ الرَّاوِي فِي سَمَاعِهِ مِنْهُمَا؟ قَالَ أَبُو مُحَمَّد: فَلْيَعْجَبْ سَامِعُ هَذَا مِنْ هَذَا الِاخْتِلَاطِ؟ أَتُرَاهُ الْبَائِسُ كَانَ مِنْ الْغَرَارَةِ بِحَيْثُ لَا يَدْرِي أَنَّهُ مَتَى خَرَجَ رَأْسُ الْمَوْلُودِ وَمَنْكِبَاهُ فَإِنَّهُ فِي أَسْرَعَ مِنْ كَرِّ الطَّرْفِ يَسْقُطُ كُلُّهُ، فَمَتَى يَتَفَرَّغُ لِتَكْسِيرِ صُلْبِ الْمَوْلُودِ وَمِسَاحَتِهِ؟ حَتَّى يَعْلَمَ أَخَرَجَ نِصْفُهُ أَمْ أَقَلُّ أَمْ أَكْثَرُ، وَأَنَّهُ مَتَى خَرَجَ رَأْسُهُ وَمَنْكِبَاهُ فَإِنَّهُ لَا يُمْكِنُ أَلْبَتَّةَ أَنْ يَتِمَّ قَوْلُهُ أَنْتِ حُرَّةٌ حَتَّى يَقَعَ جَمِيعُهُ.

L34942 Could he have possibly been unaware that the poor woman, at that time, was busier than one grieving two losses?

أَتُرَاهُ خَفِيَ عَلَيْهِ أَنَّهَا الْمِسْكِينَةُ فِي ذَلِكَ الْوَقْتِ " أَشْغَلُ مِنْ ذَاتِ النَّحْيَيْنِ ".

L34943–34944 Indeed, astonishment abounds at ascribing any portion of knowledge to one whose measure of knowledge is this meager — Sufficient for us is Allah, and what an excellent Trustee He is.

إنَّ الْعَجَبَ لَيَكْثُرُ مِنْ نِسْبَةِ مَنْ هَذَا مِقْدَارُ عِلْمِهِ إلَى شَيْءٍ مِنْ الْعِلْمِ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

L34945 If any part of the placenta remains, even the slightest amount, she remains in her waiting period, because it is from her pregnancy generated alongside the child, equally, equally.

فَإِنْ بَقِيَ مِنْ الْمَشِيمَةِ وَلَوْ شَيْءٌ - فَهِيَ فِي الْعِدَّةِ بَعْدُ، لِأَنَّهَا مِنْ حَمْلِهَا الْمُتَوَلِّدِ مَعَ الْوَلَدِ سَوَاءٌ سَوَاءٌ

L34946 **Issue: If the fetus dies in the womb of the muʻtaddah (woman in her ʻiddah), her ʻiddah is not completed until the entirety of it is expelled.**

[مَسْأَلَةٌ مَاتَ الْحَمْلُ فِي بَطْنِ الْمُعْتَدَّةِ فَلَا تَنْقَضِي عِدَّتُهَا إلَّا بِطَرْحِ جَمِيعِهِ]

L34947 Issue 1988: If the fetus dies in her womb, her waiting period does not

conclude until she expels all of it, even if nothing remains of it except a finger or part of the finger. This is because she has not expelled all of it and thus has not delivered her fetus. And success is with Allah, the Exalted.

L34948 **A case in which the divorced woman does not menstruate, is not pregnant, and he had intercourse with her.**

L34949 If the divorced woman does not menstruate due to young age, old age, or physical constitution and is not pregnant - provided she had been intimate with - her waiting period is three months from the time the divorce is formally communicated to her or to her guardians if she is a minor, according to Allah's statement: "As for those women who have ceased menstruation among your women, if you are in doubt, their waiting period is three months, and those who have not menstruated" [at-Talāq 65:4].[58]

L34950–34951 This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, Abū Sulaymān, and their companions—meaning the necessity of this ruling for both minor and major sins.

L34952 Mālik said: No waiting period is required for a prepubescent girl.

L34953 Abu Muhammad said: We do not know anyone who held this view before him, and it is a corrupt opinion for several reasons. The first is that it constitutes a specification of the Quran contrary to its legal ruling.

L34954 The second point is that He obligated her to observe the waiting period for death, even if she is in the cradle, and exempted her from the waiting period for divorce, while she is a divorced woman whose marriage has been consummated. This constitutes a contradiction that is manifestly invalid.

L34955 And the third is that he failed to define the endpoint of minority at which he waived her obligation to observe the ʿiddah, from the start of a period when he obligated her to observe it. This is a clear deception—its corruption undeniable—and a conflation of obligatory acts with non-obligatory ones.

[58] **Qur'an references (L34949):** Qur'an 65:4 (At-Talaq).

١٩٨٨ - مَسْأَلَةٌ: فَإِنْ مَاتَ فِي بَطْنِهَا فَلَا تَنْقَضِي عِدَّتُهَا إلَّا بِطَرْحِ جَمِيعِهِ، وَلَوْ لَمْ يَبْقَ مِنْهُ إلَّا أُصْبُعٌ أَوْ بَعْضُهَا؛ لِأَنَّهَا لَمْ تَضَعْ جَمِيعَهُ فَلَمْ تَضَعْ حَمْلَهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ كَانَتْ الْمُطَلَّقَةُ لَا تَحِيضُ وَلَمْ تَكُنْ حَامِلًا وَكَانَ قَدْ وَطِئَهَا]

١٩٨٩ - مَسْأَلَةٌ: فَإِنْ كَانَتْ الْمُطَلَّقَةُ لَا تَحِيضُ لِصِغَرٍ أَوْ كِبَرٍ أَوْ خِلْقَةٍ وَلَمْ تَكُنْ حَامِلًا وَكَانَ قَدْ وَطِئَهَا: فَعِدَّتُهَا ثَلَاثَةُ أَشْهُرٍ مِنْ حِينِ بُلُوغِ الطَّلَاقِ إلَيْهَا أَوْ إلَى أَهْلِهَا إنْ كَانَتْ صَغِيرَةً، لِقَوْلِ اللَّهِ تَعَالَى: {وَاللائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ وَاللائِي لَمْ يَحِضْنَ} [الطلاق: ٤] .

وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ - يَعْنِي: لُزُومَ ذَلِكَ لِلصَّغِيرَةِ وَالْكَبِيرَةِ.

وَقَالَ مَالِكٌ: لَا عِدَّةَ عَلَى الصَّغِيرَةِ جِدًّا.

قَالَ أَبُو مُحَمَّد: وَلَا نَعْلَمُ أَحَدًا قَالَ بِهَذَا قَبْلَهُ، وَهُوَ قَوْلٌ فَاسِدٌ، لِوُجُوهٍ: أَحَدُهَا - أَنَّهُ تَخْصِيصٌ لِلْقُرْآنِ مُخَالِفٌ لِحُكْمِهِ.

وَثَانِيهَا - أَنَّهُ أَوْجَبَ عَلَيْهَا عِدَّةَ الْوَفَاةِ - وَلَوْ أَنَّهَا فِي الْمَهْدِ - وَأَسْقَطَ عَنْهَا عِدَّةَ الطَّلَاقِ - وَهِيَ مَوْطُوءَةٌ مُطَلَّقَةٌ - وَهَذَا تَنَاقُضٌ ظَاهِرُ الْفَسَادِ.

وَثَالِثُهَا - أَنَّهُ لَمْ يَحُدَّ مُنْتَهَى الصِّغَرِ الَّذِي أَسْقَطَ فِيهِ عَنْهَا عِدَّةَ الطَّلَاقِ مِنْ مَبْدَأِ وَقْتٍ أَلْزَمَهَا فِيهِ الْعِدَّةَ - وَهَذَا تَلْبِيسٌ لَا خَفَاءَ بِفَسَادِهِ، وَمَزْجٌ لِلْفَرْضِ بِمَا لَيْسَ فَرْضًا -.

L34956 Sufficient concerning all of this is that it is a statement with no evidence for its validity—neither from the Quran, nor the Sunnah, nor a weak narration, nor a corrupt narration, nor analogy, nor an opinion with basis, nor the sayings of the Salaf. Anything of this nature is invalidated with certainty.

L34957 **A legal issue wherein he divorced her at the beginning of the first night of the month.**

L34958 1990 - Issue: If he divorces her at the beginning of the first night of the month when the sun has fully set, she observes her waiting period until the crescent of the fourth month appears. When the crescent appears, her waiting period ends.

L34959 If he divorces her before or after that, she is obligated to observe a waiting period of eighty-seven nights equivalent to eighty-seven complete days, until the same time during which the waiting period became required of her.

L34960 The fraction of a day or night is not invalidated, for it is impermissible that there be any distinction whatsoever between the beginning of her waiting period and when the obligation of this waiting period becomes binding upon her—neither a small amount nor a large one.

L34961 When she completes the menstrual period we have mentioned, she becomes pure, based on the statement of the Messenger of Allah (peace and blessings be upon him), "The month may be twenty-nine days," as we have cited in the "Book of Fasting" with its isnād (chain of narration).

L34962 If it is asked: "Since her waiting period was definitively established, can she exit it without equal certainty?"

L34963–34964 We said: This is an invalid ruling. However, she becomes obligated to observe the waiting period by the revelation from Allah, the Mighty and Majestic, to His Messenger (peace be upon him) - with certainty from the revelation we described, not an absolute certainty arising from false conjecture or someone's statement. We cannot depart from this except through the clarification of Allah's Messenger, which constitutes true certainty.

وَيَكْفِي مِنْ هَذَا كُلِّهِ أَنَّهُ قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا رِوَايَةٍ فَاسِدَةٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ، وَلَا قَوْلِ سَلَفٍ - وَمَا كَانَ هَكَذَا فَهُوَ سَاقِطٌ بِيَقِينٍ.

[مَسْأَلَةٌ طَلَّقَهَا فِي اسْتِقْبَالِ أَوَّلِ لَيْلَةٍ مِنْ الشَّهْرِ]

١٩٩٠ - مَسْأَلَةٌ: فَإِنْ طَلَّقَهَا فِي اسْتِقْبَالِ أَوَّلِ لَيْلَةٍ مِنْ الشَّهْرِ مَعَ تَمَامِ غُرُوبِ الشَّمْسِ اعْتَدَّتْ حَتَّى يَظْهَرَ هِلَالُ الشَّهْرِ الرَّابِعِ، فَإِذَا ظَهَرَ حَلَّتْ مِنْ عِدَّتِهَا.

فَإِنْ طَلَّقَهَا قَبْلَ ذَلِكَ أَوْ بَعْدَهُ لَزِمَهَا أَنْ تَعْتَدَّ سَبْعًا وَثَمَانِينَ لَيْلَةً بِمِثْلِهِنَّ مِنْ الْأَيَّامِ كَمْلَى، إلَى مِثْلِ الْوَقْتِ الَّذِي لَزِمَتْهَا فِيهِ الْعِدَّةُ.

وَلَا يُلْغَى كَسْرُ الْيَوْمِ، وَلَا كَسْرُ اللَّيْلَةِ؛ لِأَنَّهُ لَا يَجُوزُ أَنْ يَكُونَ بَيْنَ أَوَّلِ عِدَّتِهَا وَبَيْنَ وَقْتِ لُزُومِ الْعِدَّةِ لَهَا فَرْقٌ أَصْلًا، لَا مَا قَلَّ وَلَا مَا كَثُرَ.

فَإِذَا أَتَمَّتْ مَا ذَكَرْنَا حَلَّتْ؛ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الشَّهْرُ تِسْعٌ وَعِشْرُونَ» وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الصِّيَامِ " بِإِسْنَادِهِ.

فَإِنْ قِيلَ: إنَّهُ قَدْ لَزِمَتْهَا عِدَّةٌ بِيَقِينٍ فَلَا تَخْرُجُ مِنْهَا إلَّا بِيَقِينٍ؟

قُلْنَا: هَذَا وَضْعٌ فَاسِدٌ، لَكِنْ قَدْ لَزِمَتْهَا عِدَّةٌ بِوَحْيِ اللَّهِ عَزَّ وَجَلَّ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِيَقِينٍ مِنْ قِبَلِ الْوَحْيِ الَّذِي ذَكَرْنَا لَا بِيَقِينٍ مُطْلَقٍ مِنْ ظَنٍّ كَاذِبٍ، أَوْ قَوْلِ قَائِلٍ، فَلَا نَخْرُجُ مِنْ ذَلِكَ إلَّا بِبَيَانِ رَسُولِ اللَّهِ الَّذِي هُوَ الْيَقِينُ حَقًّا.

L34965 He—peace be upon him—clarified that the month is twenty-nine days, and it is impermissible to add anything beyond that due to baseless whispers. {And your Lord is never forgetful} [Maryam: 64].[59]

L34966 **An issue: a pregnant woman who is divorced or widowed miscarried.**

L34967 1991. Issue: We hold: If a pregnant divorced woman, a pregnant widow, or a pregnant emancipated slave woman who chooses to separate from her husband causes a miscarriage, she becomes lawful to remarry.

L34968 The criterion for this is that she miscarries a clot (ʿalaqah) or beyond. As for miscarrying a nutfah (germinal fluid) below the clot stage, it is insignificant and does not terminate the waiting period.

L34969 The proof of this is what we have transmitted through the chain (ṭarīq) of Muslim: Abū Bakr ibn Abī Shaybah and Muḥammad ibn ʿAbdillāh ibn Numayr both said: "We heard from Abū Muʿāwiyah and Wakīʿ," who both said: "We heard from al-Aʿmash, from Zayd ibn Wahb, from ʿAbdillāh ibn Masʿūd," who said: The Messenger of Allah (peace and blessings be upon him) said, "Verily, the formation of each one of you is gathered in his mother's womb for forty days, then he becomes a clinging clot"—and Ibn Masʿūd mentioned the remainder of the ḥadīth.[60]

L34970 Through the chain of transmission recorded by Muslim: From Abū Ṭāhir Aḥmad ibn ʿUmar ibn al-Sarḥ, from Ibn Wahb, from ʿAmr ibn al-Ḥārith, from Abū al-Zubayr al-Makkī, that ʿĀmir ibn Wāthilah reported to him that he heard Ḥudhayfah ibn Usayd al-Ghifārī say: I heard the Messenger of Allah—peace and blessings be upon him—say, "When forty-two nights pass over the nutfah, Allah sends an angel to it who forms it and creates its hearing, sight, skin, flesh, and bones. Then the angel says: O Lord, is it male or female?" And he mentioned the remainder of the report.[61]

وَقَدْ بَيَّنَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّ الشَّهْرَ تِسْعٌ وَعِشْرُونَ فَلَا يَحِلُّ أَنْ يُزَادَ عَلَى ذَلِكَ شَيْءٌ بِوَسْوَسَةٍ لَا أَصْلَ لَهَا {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

[مَسْأَلَةٌ أَسْقَطَتْ الْحَامِلُ الْمُطَلَّقَةُ أَوْ الْمُتَوَفَّى عَنْهَا زَوْجُهَا]

١٩٩١ - مَسْأَلَةٌ: وَقَدْ قُلْنَا: إنْ أَسْقَطَتْ الْحَامِلُ الْمُطَلَّقَةُ، أَوْ الْمُتَوَفَّى عَنْهَا زَوْجُهَا، أَوْ الْمُعْتَقَةُ الْمُتَخَيِّرَةُ فِرَاقَ زَوْجِهَا: حَلَّتْ.

وَحَدُّ ذَلِكَ: أَنْ تُسْقِطَهُ عَلَقَةً فَصَاعِدًا، وَأَمَّا إنْ أَسْقَطَتْ نُطْفَةً دُونَ الْعَلَقَةِ فَلَيْسَ بِشَيْءٍ، لَا تَنْقَضِي بِذَلِكَ عِدَّةٌ.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ، قَالَا جَمِيعًا: أَنَا أَبُو مُعَاوِيَةَ، وَوَكِيعٌ، قَالَا جَمِيعًا: أَنَا الْأَعْمَشُ عَنْ زَيْدِ بْنِ وَهْبٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ أَحَدَكُمْ يُجْمَعُ خَلْقُهُ فِي بَطْنِ أُمِّهِ أَرْبَعِينَ يَوْمًا ثُمَّ يَكُونُ عَلَقَةً» وَذَكَرَ بَاقِي الْخَبَرِ.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو الطَّاهِرِ أَحْمَدُ بْنُ عُمَرَ بْنِ السَّرْحِ أَنَا ابْنُ وَهْبٍ أَنَا عَمْرُو بْنُ الْحَارِثِ عَنْ أَبِي الزُّبَيْرِ الْمَكِّيِّ أَنَّ عَامِرَ بْنَ وَاثِلَةَ حَدَّثَهُ أَنَّهُ سَمِعَ حُذَيْفَةَ بْنَ أُسَيْدَ الْغِفَارِيَّ يَقُولُ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «إذَا مَرَّ بِالنُّطْفَةِ ثِنْتَانِ وَأَرْبَعُونَ لَيْلَةً بَعَثَ اللَّهُ إلَيْهَا مَلَكًا فَصَوَّرَهَا وَخَلَقَ سَمْعَهَا وَبَصَرَهَا وَجِلْدَهَا وَلَحْمَهَا وَعِظَامَهَا ثُمَّ قَالَ: يَا رَبِّ أَذَكَرٌ أَمْ أُنْثَى؟» وَذَكَرَ بَاقِي الْخَبَرِ.

[59] **Qur'an references (L34965):** Qur'an 19:64 (Maryam).
[60] **Hadith references (L34969):** Sahih al-Bukhari 3208.
[61] **Hadith references (L34970):** Sahih Muslim 2645a.

L34971 Abu Muhammad said: Its meaning is the creation of the whole entity that later divides into hearing, sight, skin, flesh, and bones. Thus, it is confirmed that the first stage of the child's creation is its being a clinging clot rather than a sperm-drop, which refers to the seminal fluid.

قَالَ أَبُو مُحَمَّد: مَعْنَاهُ خَلْقُ الْجُمْلَةِ الَّتِي تَنْقَسِمُ بَعْدَ ذَلِكَ سَمْعًا وَبَصَرًا وَجِلْدًا وَلَحْمًا وَعِظَامًا - فَصَحَّ أَنَّ أَوَّلَ خَلْقِ الْمَوْلُودِ كَوْنُهُ عَلَقَةً لَا كَوْنُهُ نُطْفَةً، وَهِيَ الْمَاءُ.

[مَسْأَلَةٌ طَلُقَتْ الَّتِي لَمْ تَحِضْ قَطُّ ثُمَّ حَاضَتْ قَبْلَ تَمَامِ الْعِدَّةِ]

L34972–34973 **Issue: A woman who had never menstruated was divorced, then she menstruated before the completion of the waiting period.**

L34974 Issue: If a woman who has never menstruated at all is divorced, then menstruated before completing her waiting period—whether immediately after the divorce, at the end of the month, or between these times—her waiting period shifts to being measured by months. When she completes it, she is permitted to remarry, and the menstruation is disregarded.

مَسْأَلَةٌ: فَإِنْ طَلُقَتْ الَّتِي لَمْ تَحِضْ قَطُّ ثُمَّ حَاضَتْ قَبْلَ تَمَامِ الْعِدَّةِ، سَوَاءٌ إثْرَ طَلَاقِهَا أَوْ فِي آخِرِ الشَّهْرِ فَمَا بَيْنَ ذَلِكَ: تَمَادَتْ عَلَى الْعِدَّةِ بِالشُّهُورِ، فَإِذَا أَتَمَّتْهَا حَلَّتْ وَلَمْ تَلْتَفِتْ إلَى الْحَيْضِ.

L34975 Similarly, if she becomes pregnant by him or another after her divorce or before the completion of the three months, she begins the full widowhood ʿiddah.

وَكَذَلِكَ لَوْ حَمَلَتْ مِنْهُ أَوْ مِنْ غَيْرِهِ إثْرَ طَلَاقِهَا، أَوْ قَبْلَ انْقِضَاءِ الثَّلَاثَةِ الْأَشْهُرِ ابْتَدَأَتْ عِدَّةَ الْوَفَاةِ كَامِلَةً.

L34976 The evidence for this is the statement of Allah, the Almighty and Majestic: {As for those women who have ceased menstruation among your women, if you are uncertain, their waiting period is three months, and those who have not yet menstruated} [At-Talāq: 4]. Indeed, Allah, the Almighty and Majestic, has obligated upon her a three-month waiting period after the obligation of the waiting period upon her from the divorce. Thus, what Allah, the Almighty and Majestic, has obligated upon her cannot be invalidated by any claim that no text has ever substantiated.[62]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَاللائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ وَاللائِي لَمْ يَحِضْنَ} [الطلاق: ٤] فَإِنَّمَا أَوْجَبَ اللَّهُ عَزَّ وَجَلَّ عَلَيْهَا عِدَّةَ ثَلَاثَةِ أَشْهُرٍ إثْرَ وُجُوبِ الْعِدَّةِ عَلَيْهَا مِنْ الطَّلَاقِ، فَلَا يُبْطِلُ مَا أَوْجَبَهُ اللَّهُ تَعَالَى عَلَيْهَا بِدَعْوَى لَمْ يَأْتِ بِهَا قَطُّ نَصٌّ.

L34977 If it is said: Allah the Exalted has obligated the menstrual periods by His statement: {And divorced women shall wait for three menstrual periods} [Al-Baqarah: 228], and He also said: {And those who are pregnant, their term is until they deliver} [At-Talaq: 4], and this is a divorced wife? We respond: Allah the Exalted has only obligated what you mentioned upon menstruating women and upon pregnant women. This woman, since the waiting period for this divorce is required of her, was only obligated because

فَإِنْ قِيلَ: فَاَللَّهُ تَعَالَى قَدْ أَوْجَبَ الْأَقْرَاءَ بِقَوْلِهِ تَعَالَى: {وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلاثَةَ قُرُوءٍ} [البقرة: ٢٢٨] وَقَالَ تَعَالَى أَيْضًا: {وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤] وَهَذِهِ زَوْجَةٌ مُطَلَّقَةٌ؟ قُلْنَا: إنَّمَا أَوْجَبَ اللَّهُ تَعَالَى مَا ذَكَرْتُمْ عَلَى ذَوَاتِ الْأَقْرَاءِ، وَعَلَى ذَوَاتِ الْحَمْلِ، وَهَذِهِ إذْ لَزِمَتْهَا عِدَّةُ هَذَا الطَّلَاقِ إنَّمَا كَانَتْ بِيَقِينٍ

[62] **Qur'an references (L34976):** Qur'an 65:4 (At-Talaq).

it is certain she is among those who have ceased menstruating or those who have not menstruated. She is neither among menstruating women nor among pregnant women.[63]

مِنْ اللَّائِي يَئِسْنَ، أَوْ مِنْ اللَّائِي لَمْ يَحِضْنَ، وَلَمْ تَكُنْ أَصْلًا مِنْ ذَوَاتِ الْأَقْرَاءِ، وَلَا مِنْ ذَوَاتِ الْحَمْلِ.

L34978–34979 Among the definitively false and inherently impossible absurdities is that Allah the Exalted would obligate a woman with no menstrual periods at the time the waiting period becomes incumbent upon her to base her waiting period on menstruation, or obligate a woman who is not pregnant at the time the waiting period becomes incumbent upon her to base her waiting period on pregnancy.

وَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ، وَالْمُحَالِ الْمُمْتَنِعِ: أَنْ يُلْزِمَ اللَّهُ تَعَالَى الْعِدَّةَ بِالْأَقْرَاءِ مَنْ لَا قُرْءَ لَهَا حِينَ وُجُوبِ الْعِدَّةِ عَلَيْهَا، أَوْ يُلْزِمَ الْعِدَّةَ بِالْحَمْلِ مَنْ لَيْسَتْ ذَاتَ حَمْلٍ حِينَ وُجُوبِ الْعِدَّةِ عَلَيْهَا.

L34980 Just as it is invalid for there to be a period—not counted as part of the ʿiddah—between the time the obligation of the ʿiddah arises (due to divorce or death) and the actual commencement of the ʿiddah itself, based on the Prophet's statement (peace and blessings be upon him): "Divorce them at the onset of their ʿiddah"—which we previously cited with its chain of narration—unless an explicit text emerges, in which case it is adhered to.

كَمَا أَنَّ مِنْ الْبَاطِلِ أَنْ يَحُولَ بَيْنَ وَقْتِ وُجُوبِ الْعِدَّةِ مِنْ الطَّلَاقِ، أَوْ الْمَوْتِ، وَبَيْنَ الْعِدَّةِ وَقْتٌ لَيْسَ مِنْ الْعِدَّةِ؛ لِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «فَطَلِّقُوهُنَّ لِقُبُلِ عِدَّتِهِنَّ» وَقَدْ ذَكَرْنَاهُ قَبْلَ هَذَا بِإِسْنَادِهِ إلَّا أَنْ يَأْتِيَ بِذَلِكَ نَصٌّ جَلِيٌّ فَيُوقَفُ عِنْدَهُ.

L34981 Furthermore, the 'quroo [period of purity]' refers specifically to the interval between two menstrual cycles. Thus, her state before experiencing menstruation and after menopause does not constitute a quroo. Therefore, it is invalid for a woman not divorced at the onset of a quroo [period of purity] she was in to calculate her waiting period using quroo. Even if her child from him is legally attributed to him since she remains his wife, we have clarified: His intercourse with her is neither a revocation nor a divorce, thus she does not begin the waiting period from it.

وَأَيْضًا - فَإِنَّ الْقُرْءَ إنَّمَا هُوَ مَا بَيْنَ الْحَيْضَتَيْنِ مِنْ الطُّهْرِ، فَحَالُهَا قَبْلَ أَنْ تَحِيضَ وَبَعْدَ الْيَأْسِ مِنْ الْمَحِيضِ لَيْسَ قُرْءًا - فَبَطَلَ أَنْ تَعْتَدَّ بِالْأَقْرَاءِ مَنْ لَمْ تَطْلُقْ فِي اسْتِقْبَالِ قُرْءٍ هِيَ فِيهِ، وَهِيَ وَإِنْ كَانَ وَلَدُهَا مِنْهُ لَاحِقًا بِهِ؛ لِأَنَّهَا زَوْجَتُهُ بَعْدُ؟ فَقَدْ قُلْنَا: إنَّ وَطْأَهُ لَهَا لَيْسَ رَجْعَةً، وَلَا طَلَاقًا فَتَبْتَدِئُ الْعِدَّةَ مِنْهُ.

L34982 Some people have claimed consensus here—but this is invalid, as they cannot cite a single statement from any of the Companions (may Allah be pleased with them). Only narrations from then eight of the Successors have been reported in this regard: they are ʿAṭāʾ, Mujāhid, Saʿīd ibn al-Musayyab, al-Zuhrī, al-Ḥasan, Qatādah, al-Nakhaʿī, and al-Shaʿbī. Such a claim cannot be deemed consensus except by one who dares to justify lying to the Ummah.

وَقَدْ ادَّعَى قَوْمٌ الْإِجْمَاعَ هَاهُنَا - وَهَذَا بَاطِلٌ؛ لِأَنَّهُمْ لَا يَقْدِرُونَ عَلَى إيرَادِ كَلِمَةٍ فِي ذَلِكَ عَنْ أَحَدٍ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إنَّمَا جَاءَتْ فِي ذَلِكَ آثَارٌ عَنْ ثَمَانِيَةٍ مِنْ التَّابِعِينَ فَقَطْ -: وَهُمْ: عَطَاءٌ، وَمُجَاهِدٌ، وَسَعِيدُ بْنُ الْمُسَيِّبِ وَالزُّهْرِيُّ، وَالْحَسَنُ، وَقَتَادَةُ، وَالنَّخَعِيُّ، وَالشَّعْبِيُّ - وَمِثْلُ هَذَا لَا يَعُدُّهُ إجْمَاعًا إلَّا مَنْ اسْتَجَازَ الْكَذِبَ عَلَى الْأُمَّةِ.

[63] **Qur'an references (L34977):** Qur'an 2:228 (Al-Baqarah); Qur'an 65:4 (At-Talaq).

L34983–34985 Abu Muhammad said: Then we further considered the statement of Allah—the Most High—"They shall wait for themselves three periods." [Al-Baqarah: 228] And His Exalted saying: *"As for the women among you who have despaired of menstruation—if you are uncertain [about their status]—their waiting period is three months, and those who have not yet menstruated"* [At-Talaq: 4].[64]

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ اسْتَدْرَكْنَا النَّظَرَ فِي قَوْلِ اللَّهِ تَعَالَى: {يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلاثَةَ قُرُوءٍ} [البقرة: ٢٢٨] وقَوْله تَعَالَى: {وَاللائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ وَاللائِي لَمْ يَحِضْنَ} [الطلاق: ٤] .

L34986 We found that the woman undergoing the waiting period who menstruates during it is neither among those who have ceased menstruation nor among those unquestionably categorized as not having menstruated. Rather, she belongs to those who menstruate. Thus, it necessarily follows that her waiting period is three menstrual cycles. It is invalid that she be classified among menstruating women while her waiting period is determined by months.

فَوَجَدْنَا الْمُعْتَدَّةَ إِذَا حَاضَتْ فِي الْعِدَّةِ فَلَيْسَتْ مِنْ اللَّائِي يَئِسْنَ مِنْ الْمَحِيضِ وَلَا مِنْ اللَّائِي لَمْ يَحِضْنَ بِلَا شَكٍّ، بَلْ هِيَ مِنْ اللَّائِي حِضْنَ، فَوَجَبَ ضَرُورَةً أَنَّ عِدَّتَهَا ثَلَاثَةُ قُرُوءٍ - وَمِنْ الْبَاطِلِ أَنْ تَكُونَ مِنْ اللَّائِي يَحِضْنَ، وَتَكُونَ عِدَّتُهَا الشُّهُورَ.

L34987 Thus, it has been established that the ruling requiring observance of the waiting period by months has been invalidated, even if part of the waiting period had already elapsed.

فَصَحَّ أَنَّ حُكْمَ الِاعْتِدَادِ بِالشُّهُورِ قَدْ بَطَلَ، وَإِنْ كَانَ بَعْضَ الْعِدَّةِ.

L34988 It is established that her waiting period transfers to menstrual periods or, if she is pregnant, to childbirth.

وَصَحَّ أَنَّهَا تَنْتَقِلُ إِلَى الْأَقْرَاءِ، أَوْ إِلَى وَضْعِ الْحَمْلِ إِنْ حَمَلَتْ.

L34989 As for her transition into the ʿiddah of death, this applies only if the divorce was revocable; otherwise, it does not. This is because she is his wife - she inherits him and he inherits her. Since death has occurred [to her husband], the ʿiddah of death becomes obligatory upon her. And with Allah, the Most High, is success.

وَأَمَّا انْتِقَالُهَا إِلَى عِدَّةِ الْوَفَاةِ إِنْ كَانَ الطَّلَاقُ رَجْعِيًّا فَقَطْ، وَإِلَّا فَلَا، فَلِأَنَّهَا زَوْجَةٌ تَرِثُهُ وَيَرِثُهَا، فَهِيَ مُتَوَفًّى عَنْهَا فَيَلْزَمُهَا بِالْوَفَاةِ عِدَّةُ الْوَفَاةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L34990 Issue: The ruling on the menstrual cycle of a woman experiencing irregular bleeding (mustahādah) whose blood is indistinct and who cannot identify her menstrual days.

[مَسْأَلَةٌ عِدَةُ الْمُسْتَحَاضَةُ الَّتِي لَا يَتَمَيَّزُ دَمُهَا وَلَا تَعْرِفُ أَيَّامَ حَيْضَتِهَا]

L34991 1993 AH - Issue: As for the mustahādah (a woman with chronic irregular bleeding) whose blood cannot be distinguished and who does not know the days of her menstruation: If she is newly menstruating and had no established days of menstruation prior to this regarding her waiting period, her waiting period is three months, for she has never experienced valid menstru-

١٩٩٣ - مَسْأَلَةٌ: وَأَمَّا الْمُسْتَحَاضَةُ الَّتِي لَا يَتَمَيَّزُ دَمُهَا وَلَا تَعْرِفُ أَيَّامَ حَيْضَتِهَا؟ فَإِنْ كَانَتْ مُبْتَدَأَةً لَمْ يَكُنْ لَهَا أَيَّامُ حَيْضٍ قَبْلَ ذَلِكَ بِعِدَّتِهَا: فَعِدَّتُهَا ثَلَاثَةُ أَشْهُرٍ، لِأَنَّهَا لَمْ يَصِحَّ مِنْهَا حَيْضٌ قَطُّ، فَهِيَ مِنْ اللَّائِي لَمْ يَحِضْنَ، فَإِنْ كَانَتْ مِمَّنْ كَانَ لَهَا حَيْضٌ

[64] **Qur'an references (L34983):** Qur'an 2:228 (Al-Baqarah); Qur'an 65:4 (At-Talaq).

ation—thus she is among those who have not menstruated. If she belongs to those who had a known menstrual cycle but forgot it, or forgot its duration and timing, she must observe a waiting period for a duration during which she becomes certain she has completed three clean periods and two menstrual periods, thereby entering the third clean period—without fail.

مَعْرُوفٌ فَنَسِيَتْهُ، أَوْ نَسِيَتْ مِقْدَارَهُ وَوَقْتَهُ فَعَلَيْهَا أَنْ تَتَرَبَّصَ مِقْدَارًا تُوقِنُ فِيهِ أَنَّهَا قَدْ أَتَمَّتْ ثَلَاثَةَ أَطْهَارٍ وَحَيْضَتَيْنِ، وَصَارَتْ فِي الثَّالِثَةِ، وَلَا بُدَّ.

L34992 When the aforementioned period has elapsed, she is permitted [to resume relations] because she is—undoubtedly—among those subject to intermenstrual periods. She must therefore complete three clean periods. If her blood becomes distinguishable, her situation is evident: when she observes black blood, it is menstruation; when she sees red blood or yellowish discharge, this signifies ritual purity.

فَإِذَا مَضَى الْمِقْدَارُ الْمَذْكُورُ فَقَدْ حَلَّتْ؛ لِأَنَّهَا مِنْ ذَوَاتِ الْأَقْرَاءِ - بِلَا شَكٍّ - فَعَلَيْهَا إتْمَامُ ثَلَاثَةِ قُرُوءٍ -، وَأَمَّا إذَا تَمَيَّزَ دَمُهَا فَأَمْرُهَا بَيِّنٌ إذَا رَأَتْ الدَّمَ الْأَسْوَدَ فَهُوَ حَيْضٌ، وَإِذْ رَأَتْ الْأَحْمَرَ، أَوْ الصُّفْرَةَ فَهُوَ طُهْرٌ.

L34993 Similarly, a woman whose menstrual blood is indistinguishable—yet knows her established days—observes her waiting period when the days she used to menstruate arrive as menstruation and by the days she used to be pure as cleanliness.

وَكَذَلِكَ الَّتِي لَا يَتَمَيَّزُ دَمُهَا إلَّا أَنَّهَا تَعْرِفُ أَيَّامَهَا فَإِنَّهَا تَعْتَدُّ إذَا جَاءَتْ أَيَّامُهَا الَّتِي كَانَتْ تَحِيضُ فِيهَا حَيْضًا، وَبِأَيَّامِهَا الَّتِي كَانَتْ تَطْهُرُ فِيهَا طُهْرًا.

L34994 We have already mentioned the proof of that—in "The Book of Menstruation" within the section on "Purification" from this compendium of ours—making its repetition unnecessary. These are established narrations from the Messenger of Allah (ṣallallāhu ʿalayhi wa-sallam) as we have mentioned.

وَقَدْ ذَكَرْنَا بُرْهَانَ ذَلِكَ -: فِي " كِتَابِ الْحَيْضِ " فِي " الطَّهَارَةِ " مِنْ دِيوَانِنَا هَذَا فَأَغْنَى عَنْ إعَادَتِهِ، وَهِيَ أَخْبَارٌ ثَابِتَةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَا ذَكَرْنَا.

L34995–34997 As for the woman uncertain about pregnancy—if her waiting period is calculated by menstrual cycles or months and she has completed it, yet estimates she might be pregnant without being certain of this nor certain she is not pregnant—then she is a woman who has not conclusively determined whether her waiting period is based on cycles or months. Undoubtedly, do you not affirm she is among women with pregnancies ending in miscarriage? This is her attribute—without doubt—we know it through sensory perception and observation.

وَأَمَّا الْمُسْتَرِيبَةُ - فَإِنْ كَانَتْ عِدَّتُهَا بِالْأَقْرَاءِ أَوْ بِالشُّهُورِ فَأَتَمَّتْهَا إلَّا أَنَّهَا تُقَدِّرُ أَنَّهَا حَامِلٌ وَلَيْسَتْ مُوقِنَةً بِذَلِكَ، وَلَا بِأَنَّهَا لَيْسَتْ حَامِلًا؟ فَهَذِهِ امْرَأَةٌ لَمْ تُوقِنْ أَنَّهَا مِنْ ذَوَاتِ الْأَقْرَاءِ قَطْعًا، وَلَا تُوقِنُ أَنَّهَا مِنْ ذَوَاتِ الشُّهُورِ حَتْمًا، وَلَا تُوقِنُ أَنَّهَا مِنْ ذَوَاتِ الْأَحْمَالِ بَتْلًا؟ هَذِهِ صِفَتُهَا - بِلَا شَكٍّ - نَعْلَمُ ذَلِكَ حِسًّا وَمُشَاهَدَةً.

L34998 When this is the case, she must observe the waiting period until she is certain she is pregnant - whereby her waiting period concludes with the delivery of her pregnancy - or until she is certain she is not pregnant, after which she may remarry if she wishes once certain of her non-pregnant state. This is because her continuous waiting period connected to what Allah the Exalted

فَإِذْ هِيَ كَذَلِكَ فَلَا بُدَّ لَهَا مِنْ التَّرَبُّصِ حَتَّى تُوقِنَ أَنَّهَا حَامِلٌ فَتَكُونُ عِدَّتُهَا وَضْعَ حَمْلِهَا، أَوْ تُوقِنَ أَنَّهَا لَيْسَتْ حَامِلًا فَتَتَزَوَّجُ إنْ شَاءَتْ إذَا أَيْقَنَتْ أَنَّهَا لَا حَمْلَ بِهَا؛ لِأَنَّهَا

ordained from divorce - whether through menstrual purity periods (qurū') or months - has been completed. And success comes only from Allah, the Exalted.

L34999 The maximum duration of the waiting period from the last time her husband had intercourse with her is five months. She cannot exceed this period unless she is certain of pregnancy or its cessation, because the Messenger of Allah—peace and blessings be upon him—informed that after four months, the spirit is breathed into it. Once the spirit is breathed into it, it becomes alive, and being alive, it must exhibit movement.

قَدْ تَمَّتْ عِدَّتُهَا الْمُتَّصِلَةُ بِمَا أَوْجَبَهَا اللَّهُ تَعَالَى مِنْ الطَّلَاقِ - إمَّا الْأَقْرَاءُ وَإِمَّا الشُّهُورُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

، وَأَقْصَى مَا يَكُونُ التَّرَبُّصُ مِنْ آخِرِ وَطْءٍ وَطِئَهَا زَوْجُهَا خَمْسَةُ أَشْهُرٍ، فَلَا سَبِيلَ إلَى أَنْ تَتَجَاوَزَهَا إلَّا وَهِيَ مُوقِنَةٌ بِالْحَمْلِ، أَوْ بِبُطْلَانِهِ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخْبَرَ بِأَنَّهُ بَعْدَ أَرْبَعَةِ أَشْهُرٍ يُنْفَخُ فِيهِ الرُّوحُ، وَإِذَا نُفِخَ فِيهِ الرُّوحُ فَهُوَ حَيٌّ إذَا كَانَ حَيًّا فَلَا بُدَّ لَهُ - ضَرُورَةً - مِنْ حَرَكَةٍ.

وَأَمَّا الْمُخْتَلِفَةُ الْأَقْرَاءِ - فَلَا بُدَّ لَهَا مِنْ تَمَامِ أَقْرَائِهَا بَالِغَةً مَا بَلَغَتْ لَا حَدَّ لِذَلِكَ، لِأَنَّ اللَّهَ تَعَالَى أَوْجَبَ عَلَيْهَا أَنْ تَتَرَبَّصَ ثَلَاثَةَ قُرُوءٍ، وَلَمْ يَجْعَلْ اللَّهُ تَعَالَى لِذَلِكَ حَدًّا مَحْدُودًا {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] فَإِنْ حَاضَتْ حَيْضَةً ثُمَّ لَمْ تَحِضْ، أَوْ حَاضَتْ حَيْضَتَيْنِ ثُمَّ لَمْ تَحِضْ، أَوْ انْتَظَرَتْ الْحَيْضَةَ الْأُولَى فَلَمْ تَأْتِهَا بَعْدَ أَنْ كَانَتْ قَدْ حَاضَتْ فِي عِصْمَةِ زَوْجِهَا، أَوْ قَبْلَهَا.

L35000 As for the woman with irregular menstrual cycles—she must complete her waiting period through her full cycles, however prolonged they may be, for there is no defined limit. This is because Allah the Exalted has obligated her to observe a waiting period of three cycles, and He has not designated any restricted limit. *"And whoever transgresses the limits of Allah has certainly wronged himself"* (Quran 65:1). If she menstruates once and then ceases, menstruates twice and then ceases, or awaited the first menstrual cycle—whether she had previously menstruated during her husband's custody or before it—and it did not occur.[1]

فَلَا بُدَّ لِهَؤُلَاءِ كُلِّهِنَّ مِنْ التَّرَبُّصِ أَبَدًا حَتَّى يَحِضْنَ تَمَامَ ثَلَاثِ حِيَضٍ كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ، أَوْ حَتَّى يَصِرْنَ فِي حَدِّ الْيَأْسِ مِنْ الْمَحِيضِ، فَإِذَا صِرْنَ فِيهِ اسْتَأْنَفْنَ ثَلَاثَةَ أَشْهُرٍ - وَلَا بُدَّ - لِأَنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ الْعِدَّةَ ثَلَاثَةَ أَشْهُرٍ إلَّا عَلَى اللَّوَاتِي لَمْ يَحِضْنَ، وَعَلَى الْيَائِسَاتِ مِنْ الْمَحِيضِ؟ وَهَذِهِ لَيْسَتْ وَاحِدَةً مِنْهُمَا، فَإِذَا صَارَتْ مِنْ الْيَائِسَاتِ فَحِينَئِذٍ دَخَلَتْ فِي أَمْرِ اللَّهِ تَعَالَى لَهَا بِالْعِدَّةِ بِثَلَاثَةِ أَشْهُرٍ - هَذَا نَصُّ كَلَامِ اللَّهِ عَزَّ وَجَلَّ وَحُكْمُهُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L35001–35003 All of these women must perpetually observe the waiting period until they complete three menstrual cycles as Allah, the Mighty and Majestic, has commanded, or until they reach the stage of despair from menstruation. Concerning menstruation, if they enter into it, they must necessarily begin a new three-month period because Allah the Exalted has not ordained the ʿiddah as three months except for those who have not menstruated and those who have despaired of menstruation. This is not one of the two categories. When she becomes among those who have despaired of menstruation, then she enters into Allah the Exalted's command for her to observe the ʿiddah of three months—this is the explicit text of Allah's speech and His ruling. And praise be to Allah, the Lord of the worlds.

وَفِيمَا ذَكَرْنَا اخْتِلَافٌ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ أَنَّ حِبَّانَ بْنَ مُنْقِذٍ طَلَّقَ امْرَأَتَهُ - وَهُوَ صَحِيحٌ - وَهِيَ تُرْضِعُ فَمَكَثَتْ سَبْعَةَ أَشْهُرٍ لَا تَحِيضُ يَمْنَعُهَا الرَّضَاعُ الْحَيْضَ، ثُمَّ مَرِضَ حِبَّانُ بَعْدَ أَنْ طَلَّقَهَا بِأَشْهُرٍ؟ فَقَالُوا لَهُ: إنَّهَا تَرِثُك إنْ مِتَّ؟ فَأَمَرَ أَنْ يُحْمَلَ إلَى عُثْمَانَ؟ فَحُمِلَ إلَيْهِ، فَذَكَرَ لَهُ شَأْنَ امْرَأَتِهِ - وَعِنْدَهُ عَلِيُّ بْنُ أَبِي طَالِبٍ، وَزَيْدُ بْنُ ثَابِتٍ، فَسَأَلَهُمَا عُثْمَانُ؟ فَقَالَا جَمِيعًا: نَرَى أَنْ تَرِثَهُ إنْ مَاتَ، وَأَنَّهُ يَرِثُهَا إنْ مَاتَتْ، فَإِنَّهَا لَيْسَتْ مِنْ الْقَوَاعِدِ اللَّائِي يَئِسْنَ مِنْ الْمَحِيضِ، وَلَا مِنْ الْأَبْكَارِ اللَّائِي لَمْ يَحِضْنَ.

L35004 In what we have mentioned, there is a difference of opinion. It has been narrated to us via ʿAbd al-Razzāq's chain from Maʿmar from al-Zuhrī that Ḥibbān ibn Munqidh divorced his wife—while he was healthy—and she was breastfeeding. She remained for seven months without menstruating, as breastfeeding prevented her menstruation. Then Ḥibbān fell ill months after divorcing her. They asked him, "Will she inherit from you if you die?" So Ḥibbān ordered that he be carried to ʿUthmān, and he was transported there. He recounted his wife's situation to him—while ʿAlī ibn Abī Ṭālib and Zayd ibn Thābit were present. ʿUthmān asked them both, and they said together: "We hold that she would inherit from him if he dies, and he would inherit from her if she dies, for she is neither among post-menopausal women who have ceased menstruation nor among young girls who have not menstruated."

[1] **Qur'an references (L35000):** Qur'an 65:1 (At-Talaq).

أَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ أَنَا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدَ الرَّحِيمِ أَنَا أَحْمَدُ بْنُ خَالِدٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ أَشْعَثَ بْنِ عَبْدِ الْمَلِكِ الْحُمْرَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ، وَعَبْدَ اللَّهِ بْنَ مَسْعُودٍ قَالَا جَمِيعًا فِي الشَّابَّةِ تَطْلُقُ فَلَا تَحِيضُ: إِنَّهَا تَنْتَظِرُ حَتَّى تَيْأَسَ مِنْ الْمَحِيضِ.

L35005 Yunus ibn Abdullah narrated from Ahmad ibn Abdullah ibn Abd al-Rahim, who narrated from Ahmad ibn Khalid, who narrated from Muhammad ibn Abd al-Salam al-Khushani, who narrated from Muhammad ibn Bishar, who narrated from Yahya ibn Saʿīd al-Qaṭṭān, from Ashʿath ibn Abd al-Malik al-Ḥumrānī, from Muḥammad ibn Sīrīn: that ʿUmar ibn al-Khaṭṭāb and ʿAbdullāh ibn Masʿūd both agreed regarding a young woman who is divorced and does not menstruate—she waits until she despairs of menstruation.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ، كِلَاهُمَا عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، كِلَاهُمَا عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ أَنَّهُ طَلَّقَ امْرَأَتَهُ تَطْلِيقَةً أَوْ تَطْلِقَتَيْنِ، ثُمَّ ارْتَفَعَتْ حَيْضَتُهَا سِتَّةَ عَشَرَ شَهْرًا ثُمَّ مَاتَتْ؟ فَقَالَ لَهُ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ: حَبَسَ اللَّهُ عَلَيْك مِيرَاثَهَا، وَوَرَّثَهُ مِنْهَا - هَذَا فِي غَايَةِ الصِّحَّةِ عَنْ ابْنِ مَسْعُودٍ.

L35006 From the path of Abd al-Razzaq—who narrates from both Sufyan al-Thawri and Ma'mar (each of whom reported from Mansur ibn al-Mu'tamir and Hammad ibn Abi Sulayman)—both of whom reported from Ibrahim al-Nakha'i, from Alqamah: that he divorced his wife once or twice, then her menstruation ceased for sixteen months, then she died. Abdullah ibn Mas'ud said to him: "God has deprived you of her inheritance and made you inherit from her." This narration is of the utmost authenticity transmitted from Ibn Mas'ud.

وَقَدْ رُوِّينَا هَذَا بِعَيْنِهِ عَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ، إلَّا أَنَّهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ سَمْعَانَ.

L35007–35008 This exact narration has been transmitted to us from Ibn ʿAbbās and Ibn ʿUmar, but it is via the chain of Ibn Wahb from Ibn Samʿān.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ الْخُشَنِيِّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ الصَّمَدِ الْعَمِّيُّ، قَالَ: سَأَلْت مَنْصُورَ بْنَ الْمُعْتَمِرِ عَمَّنْ طَلَّقَ امْرَأَتَهُ فَحَاضَتْ حَيْضَةً ثُمَّ يَئِسَتْ مِنْ الْمَحِيضِ؟ قَالَ: تَسْتَأْنِفُ الْعِدَّةَ حِينَئِذٍ بِثَلَاثَةِ أَشْهُرٍ. قَالَ: وَسَأَلْته عَنْ امْرَأَةٍ شَابَّةٍ طَلُقَتْ فَلَمْ تَحِضْ مِنْ مَرَضٍ أَوْ ارْتَفَعَ حَيْضُهَا؟ قَالَ: تَعْتَدُّ بِالْحَيْضِ مَا كَانَ. وَسَأَلْته عَنْ جَارِيَةٍ حَاضَتْ حَيْضَةً وَطَلُقَتْ فَلَمْ تَحِضْ سَنَتَيْنِ؟ قَالَ عِدَّتُهَا الْحَيْضُ مَا كَانَ.

L35009 From the path of Muhammad ibn Abd al-Salam al-Khushani: I am Muhammad ibn al-Muthanna, I am Abdul Aziz ibn Abd al-Samad al-Ammi, who said: I asked Mansur ibn al-Mu'tamir about a man who divorces his wife after she menstruated once and then ceased menstruating. He said: She must restart the waiting period at that point with three months. He said: I asked him about a young woman who was divorced and did not menstruate due to illness or her menstruation ceasing. He said: She observes the waiting period according to her menstrual cycle. I asked him about a young woman who menstruated once, was divorced, then did not menstruate for two years. He said: Her waiting period is according to her menstrual cycle.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَنَا عُقْبَةُ بْنُ نَافِعٍ عَنْ خَالِدِ بْنِ يَزِيدَ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ أَنَّهُ سَأَلَ عَنْ مُطَلَّقَةٍ لَا تَحِيضُ فِي السَّنَةِ إلَّا مَرَّةً؟ قَالَ: أَقْرَاؤُهَا مَا كَانَتْ.

L35010 Through the chain of Ibn Wahb: I, 'Uqbah ibn Nāfi', report from Khālid ibn Yazīd, from 'Aṭā' ibn Abī Rabāḥ, that he was asked about a divorced woman who menstruates only once a year. He said: "Her menstrual periods remain as they were."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَالِكٍ عَنِ الزُّهْرِيِّ مِثْلُ ذَلِكَ.

L35011 And from the chain of Ibn Wahb from Mālik from al-Zuhrī, similarly.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ أَبِي الزِّنَادِ قَالَ: يَنْبَغِي لَهَا أَنْ تَعْتَدَّ ثَلَاثَ حِيَضٍ - وَلَوْ كَانَتْ فِي عِشْرِينَ سَنَةً - إِذَا كَانَتْ تَحِيضُ وَلَهَا شَبَابٌ. وَمِنْ طَرِيقِ وَكِيعٍ عَنِ الرَّبِيعِ بْنِ صُبَيْحٍ، وَيَزِيدَ بْنِ إِبْرَاهِيمَ - هُوَ التُّسْتَرِيُّ - عَنِ الْحَسَنِ الْبَصْرِيِّ قَالَ: تَعْتَدُّ بِالْحَيْضِ، وَإِنْ كَانَتْ لَا تَحِيضُ فِي السَّنَةِ إِلَّا مَرَّةً.

L35012 From the narration of Ibn Wahb, Yunus reported to me from Abu Az-Zinad, who said: She should observe a waiting period of three menstrual cycles—even if it occurs within twenty years—provided that she menstruates and is of childbearing age. From the narration of Waki‘, from Ar-Rabi‘ ibn Subayh and Yazid ibn Ibrahim (the one from Tustar), from Al-Hasan Al-Basri, who said: She observes the waiting period based on her menstrual cycles, even if she only menstruates once a year.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ، قَالَ عَطَاءٌ: تَعْتَدُّ أَقْرَاءَهَا مَا كَانَتْ تَقَارَبَتْ أَوْ تَبَاعَدَتْ.

L35013 On the authority of Abd al-Razzaq from Ibn Jurayj, Ata said: She observes her waiting period by counting her clean intervals, whether they occur frequently or infrequently.

- وَقَالَ ابْنُ جُرَيْجٍ: وَهُوَ قَوْلُ عَبْدِ الْكَرِيمِ - قَالَ عَطَاءٌ: فَإِنْ وَجَدَتْ فِي بَطْنِهَا كَالْحَشَّةِ لَا تَدْرِي أَفِي بَطْنِهَا وَلَدٌ أَمْ لَا؟ فَلَا تُعَجِّلْ بِنِكَاحٍ حَتَّى تَسْتَبِينَ أَنَّهُ لَيْسَ فِي بَطْنِهَا وَلَدٌ.

L35014 Ibn Jurayj said—and this is the opinion of ʿAbd al-Karīm—who reported that ʿAṭāʾ said: If she detects something like a vermin in her womb but does not know whether there is a child in her womb or not, then do not rush into marriage until she ascertains that there is no child in her womb.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ قَالَ: إِذَا كَانَتْ تَحِيضُ فَعِدَّتُهَا عَلَى حَيْضَتِهَا، تَقَارَبَتْ أَوْ تَبَاعَدَتْ.

L35015 Through the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: If she menstruates, her waiting period is based on her menstrual cycle, whether it is close or far apart.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ عَنْ أَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ أَنَّهُ كَانَ يَقُولُ: تَعْتَدُّ أَقْرَاءَهَا مَا كَانَتْ.

L35016 She observes her waiting period by counting her menstrual cycles as they occur.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنِ الشَّعْبِيِّ فِي الْمَرْأَةِ تَحِيضُ حَيْضًا مُخْتَلِفًا أَنَّ عِدَّتَهَا الْحَيْضُ، وَإِنْ لَمْ تَحِضْ فِي كُلِّ سَنَةٍ إِلَّا مَرَّةً.

L35017–35018 Via the transmission of ʿAbd al-Razzāq from Sufyān al-Thawrī from Dāwūd ibn Abī Hind from al-Shaʿbī concerning the woman who has irregular menstruation: her waiting period is reckoned through menstruation, even if she does not menstruate in a year except once.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا عَبِيدَةُ عَنْ إِبْرَاهِيمَ قَالَ: إِذَا كَانَتْ تَحِيضُ فَعِدَّتُهَا بِالْحَيْضِ - وَإِنْ حَاضَتْ فِي كُلِّ سَنَةٍ مَرَّةً.

L35019 From the transmission of Saʿīd ibn Manṣūr: From Hushaym → ʿUbaydah → Ibrāhīm, who said: If she menstruates, her waiting period is by menstruation, even if she menstruates once a year.

L35020 Through the transmission of Saʿīd ibn Manṣūr: I report - Sufyān ibn ʻUyaynah narrated to us from ʻAmr ibn Dīnār - concerning the woman who menstruates only once a year. He said: “Her menstrual periods remain as they were.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ فِي الَّتِي لَا تَحِيضُ فِي السَّنَةِ إِلَّا مَرَّةً؟ قَالَ: أَقْرَاؤُهَا مَا كَانَتْ.

L35021 This is the opinion of Abu Hanifah, Sufyan al-Thawri, al-Shafi’i, Abu Sulayman, their companions, and Abu ’Ubayd - and al-Layth stated it regarding differing periods of purity.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ، وَأَبِي عُبَيْدٍ - وَقَالَهُ اللَّيْثُ فِي الْمُخْتَلِفَةِ الْأَقْرَاءِ.

L35022 Abu Muhammad said: All these individuals hold the same opinion as ours. Here is a second opinion—as narrated to us through Malik’s chain from Yaḥyā ibn Saʿīd, from Saʿīd ibn al-Musayyib, who said: ʿUmar ibn al-Khaṭṭāb stated: “Any woman who is divorced and menstruates once or twice, then her menstruation ceases, she must wait nine months. If pregnancy becomes evident, this suffices; otherwise, she must fulfill her waiting period of three months after the nine months, then she becomes lawful to remarry.”

قَالَ أَبُو مُحَمَّدٍ: فَكُلُّ هَؤُلَاءِ يَقُولُونَ مِثْلَ قَوْلِنَا، وَهَهُنَا قَوْلٌ ثَانٍ - كَمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ أَيُّمَا امْرَأَةٍ طَلُقَتْ فَحَاضَتْ حَيْضَةً أَوْ حَيْضَتَيْنِ، ثُمَّ رُفِعَتْ حَيْضَتُهَا "، فَإِنَّهَا تَنْتَظِرُ تِسْعَةَ أَشْهُرٍ، فَإِنْ بَانَ بِهَا حَمْلٌ فَذَلِكَ، وَإِلَّا اعْتَدَّتْ بَعْدَ التِّسْعَةِ الْأَشْهُرِ ثَلَاثَةَ أَشْهُرٍ ثُمَّ حَلَّتْ.

L35023 A similar ruling has been authentically reported from Al-Ḥasan Al-Baṣrī and Saʿīd ibn Al-Musayyib, and through the transmission of Mālik from Ibn Shihāb—who is Az-Zuhrī—from Saʿīd ibn Al-Musayyib, resembling ʿUmar’s statement that the mustaḥāḍah observes a waiting period of one year.

وَصَحَّ مِثْلُ هَذَا عَنْ الْحَسَنِ الْبَصْرِيِّ، وَسَعِيدِ بْنِ الْمُسَيِّبِ وَمِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ - هُوَ الزُّهْرِيُّ - عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مِثْلُ قَوْلِ عُمَرَ فِي الْمُسْتَحَاضَةِ تَعْتَدُّ سَنَةً.

L35024 Via ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from Saʿīd ibn al-Musayyab, who said: If menstruation occurs once over the course of months, her ʿiddah (waiting period) is one year.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: إذَا كَانَتْ فِي الْأَشْهُرِ مَرَّةً - يَعْنِي الْحَيْضَ - فَعِدَّتُهَا سَنَةٌ.

L35025 A third opinion—as narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from a man from ʿIkrimah—is that he was asked about a woman who menstruates but whose bleeding becomes so excessive that she cannot determine the state of her menstruation. He said: She should observe the prescribed waiting period (ʿiddah) of three months, and that is the doubt about which Allah, the Exalted and Glorified, said: {If you are in doubt} (65:4). This ruling was issued by Ibn ʿAbbās and Zayd ibn Thābit.[2]

وَقَوْلٌ ثَالِثٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ عِكْرِمَةَ أَنَّهُ سُئِلَ عَنْ الَّتِي تَحِيضُ فَيَكْثُرُ دَمُهَا حَتَّى لَا تَدْرِي كَيْفَ حَيْضَتُهَا؟ قَالَ: تَعْتَدُّ ثَلَاثَةَ أَشْهُرٍ وَهِيَ الرِّيبَةُ، الَّتِي قَالَ اللَّهُ عَزَّ وَجَلَّ: {إِنِ ارْتَبْتُمْ} [الطلاق: ٤] قَضَى بِذَلِكَ ابْنُ عَبَّاسٍ، وَزَيْدُ بْنُ ثَابِتٍ.

L35026 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: ʿAmr

[2] **Qur’an references (L35025):** Qur’an 65:4 (At-Talaq).

ibn Dīnār informed me from Ṭāwus, who said: If she experiences irregular menstruation, it suffices for her to observe a waiting period of three months.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ عَنْ طَاوُسٍ قَالَ: إِذَا كَانَتْ تَحِيضُ حَيْضًا مُخْتَلِفًا أَجْزَأَ عَنْهَا أَنْ تَعْتَدَّ ثَلَاثَةَ أَشْهُرٍ.

L35027–35028 From the chain of ʿAbd al-Razzāq, from Maʿmar, from Qatādah, from ʿIkrimah, who said: If a woman menstruates with irregular bleeding, then indeed it is a matter of uncertainty—her waiting period is three months. Qatādah said: The mustahāḍah—a woman experiencing abnormal bleeding—likewise observes a waiting period of three months.

مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ قَالَ: إِذَا كَانَتْ تَحِيضُ حَيْضًا مُخْتَلِفًا فَإِنَّهَا رِيبَةٌ عِدَّتُهَا ثَلَاثَةُ أَشْهُرٍ، قَالَ قَتَادَةُ: تَعْتَدُّ الْمُسْتَحَاضَةُ ثَلَاثَةَ أَشْهُرٍ.

L35029 Narrated by Saʿīd ibn Manṣūr: Sufyān ibn ʿUyaynah reported from ʿAmr ibn Dīnār, from Jābir ibn Zayd, who said: "If a woman menstruates only once a year, a three-month waiting period suffices for her."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ جَابِرِ بْنِ زَيْدٍ قَالَ: إِذَا كَانَتْ تَحِيضُ فِي كُلِّ سَنَةٍ مَرَّةً يَكْفِيهَا ثَلَاثَةُ أَشْهُرٍ.

L35030 Abu Muhammad said: Ibn Jurayj and Sufyan ibn Uyaynah differed from Amr ibn Dinar regarding this matter, as we mentioned. Sufyan reported from Jabir ibn Zayd: three months – and from Tawus: her menstrual cycles whatever they were.

قَالَ أَبُو مُحَمَّدٍ: اخْتَلَفَ ابْنُ جُرَيْجٍ، وَسُفْيَانُ بْنُ عُيَيْنَةَ: عَلَى عَمْرِو بْنِ دِينَارٍ فِي هَذَا؟ كَمَا أَوْرَدْنَا، فَذَكَرَ سُفْيَانُ عَنْ جَابِرِ بْنِ زَيْدٍ: ثَلَاثَةَ أَشْهُرٍ - وَعَنْ طَاوُسٍ: أَقْرَاؤُهَا مَا كَانَتْ.

L35031 Ibn Jurayj mentioned that Jabir ibn Zayd said, "Her waiting period is determined by her menstrual cycles as they occur," and cited Tawus as saying, "Three months."

وَذَكَرَ ابْنُ جُرَيْجٍ عَنْ جَابِرِ بْنِ زَيْدٍ: أَقْرَاؤُهَا مَا كَانَتْ - وَعَنْ طَاوُسٍ: ثَلَاثَةُ أَشْهُرٍ.

L35032 As for the later scholars, Layth ibn Saʿd said: The waiting period (ʿiddah) for the mustahāḍah (a woman with chronic irregular bleeding) in cases of divorce or death [of the husband] is one year.

وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ اللَّيْثَ بْنَ سَعْدٍ قَالَ: عِدَّةُ الْمُسْتَحَاضَةِ فِي الطَّلَاقِ وَالْوَفَاةِ سَنَةٌ.

L35033 Al-Awzaʿī said: If the menstruation of the divorced woman ceases for three months, she must observe an ʿiddah of one year.

وَقَالَ الْأَوْزَاعِيُّ: إِنْ ارْتَفَعَ حَيْضُ الْمُطَلَّقَةِ ثَلَاثَةَ أَشْهُرٍ اعْتَدَّتْ سَنَةً.

L35034 Ahmad and Isḥāq said: The waiting period for a mustahāḍah (woman with irregular bleeding) is based on her intervals of purity (aqrā') if she knows their timing; otherwise, it is a year.

وَقَالَ أَحْمَدُ، وَإِسْحَاقُ: عِدَّةُ الْمُسْتَحَاضَةِ الْأَقْرَاءُ، إِنْ عَرَفَتْ أَوْقَاتَهَا وَإِلَّا فَسَنَةٌ.

L35035 Malik said: If a divorced woman does not menstruate for nine consecutive months, she must restart the waiting period of three months. If she completes it without menstruating, her waiting period is concluded, and she becomes lawful for remarriage. If she menstruates before completing it, she counts all

وَقَالَ مَالِكٌ: إِنْ لَمْ تَحِضْ الْمُطَلَّقَةُ تِسْعَةَ أَشْهُرٍ مُتَّصِلَةٍ اسْتَأْنَفَتْ عِدَّةَ ثَلَاثَةِ أَشْهُرٍ، فَإِنْ أَتَمَّتْهَا، وَلَمْ تَحِضْ فَقَدْ تَمَّتْ الْعِدَّةُ، وَحَلَّتْ لِلْأَزْوَاجِ - وَإِنْ حَاضَتْ قَبْلَ تَمَامِهَا عَدَّتْ

that time as one menstrual cycle (qurʾ), then she must await menstruation. If she does not menstruate for nine months, she must restart the three-month waiting period. If she does not menstruate until completing it, her waiting period is concluded. If she menstruates during it, she counts all that time as a second menstrual cycle (qurʾ), then she must wait nine months. If she does not menstruate, she begins the three-month waiting period. If she menstruates during it or completes it without experiencing menstruation, her waiting period is concluded.

كُلَّ ذَلِكَ قُرْءًا وَاحِدًا ثُمَّ تَنْتَظِرُ الْحَيْضَ، فَإِنْ لَمْ تَحِضْ تِسْعَةَ أَشْهُرٍ اسْتَأْنَفَتْ عِدَّةَ ثَلَاثَةِ أَشْهُرٍ، فَإِنْ لَمْ تَحِضْ حَتَّى تُتِمَّهَا تَمَّتْ عِدَّتُهَا، وَإِنْ حَاضَتْ فِيهَا عَدَّتْ كُلَّ ذَلِكَ قُرْءًا ثَانِيًا ثُمَّ تَنْتَظِرُ تِسْعَةَ أَشْهُرٍ، فَإِنْ لَمْ تَحِضْ اعْتَدَّتْ ثَلَاثَةَ أَشْهُرٍ، فَإِنْ حَاضَتْ فِيهَا أَوْ أَتَمَّتْهَا دُونَ أَنْ تَرَى حَيْضًا فَقَدْ تَمَّتْ عِدَّتُهَا.

L35036 Abu Muhammad said: All these statements lack any valid proof to validate them—neither from the Quran, nor the Sunnah, nor a weak report, nor analogy, nor a sound opinion, nor an authentic narration from a Companion. The only narration concerning this is what we mentioned from Umar, though it remains inauthentic because Saʿīd ibn al-Musayyib heard nothing from Umar except the announcement of al-Nuʿmān ibn Muqarrin's death.

قَالَ أَبُو مُحَمَّدٍ: كُلُّ هَذِهِ الْأَقْوَالِ لَا حُجَّةَ لِتَصْحِيحِهَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ ضَعِيفَةٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ يَصِحُّ، وَلَا رِوَايَةٍ تَصِحُّ عَنْ صَاحِبٍ، إِنَّمَا جَاءَ فِي ذَلِكَ الرِّوَايَةُ الَّتِي ذَكَرْنَا عَنْ عُمَرَ، مَعَ أَنَّهَا لَا تَصِحُّ؛ لِأَنَّ سَعِيدَ بْنَ الْمُسَيِّبِ لَمْ يَسْمَعْ مِنْ عُمَرَ إِلَّا نَعْيَهُ النُّعْمَانَ بْنَ مُقَرِّنٍ.

L35037 We have been transmitted narrations from ʿUmar contrary to that, as we presented earlier. What makes one of the two narrations from him more valid than the other?

وَقَدْ رُوِّينَا عَنْ عُمَرَ خِلَافَ ذَلِكَ كَمَا أَوْرَدْنَا آنِفًا فَمَا الَّذِي جَعَلَ إِحْدَى الرِّوَايَتَيْنِ عَنْهُ أَوْلَى مِنَ الْأُخْرَى.

L35038–35039 Mālik said: The prescribed waiting period of nine months begins at the time her menstruation ceased, not from when her husband divorced her, except for the woman whose menstruation had ceased immediately after her divorce. In that case, she observes the nine-month prescribed waiting period from the time she was divorced.

وَقَالَ مَالِكٌ: إِنَّمَا تَبْتَدِي بِتَرَبُّصِ التِّسْعَةِ الْأَشْهُرِ مِنْ حِينِ ارْتَفَعَتْ حَيْضَتُهَا، لَا مِنْ حِينِ طَلَّقَهَا زَوْجُهَا، إِلَّا الَّتِي رَفَعَتْهَا حَيْضَتُهَا إِثْرَ طَلَاقِهَا، فَهَذِهِ تَعْتَدُّ التِّسْعَةَ الْأَشْهُرَ مِنْ حِينِ طُلِّقَتْ.

L35040 He said: The woman experiencing istihadah - her waiting period is likewise a year - the free woman and the slave woman are equal. Similarly, the woman whose menstruation has ceased due to illness - the slave woman and the free woman are equal. As for the woman whose menstruation has ceased due to breastfeeding - her case differs from those mentioned, and her waiting period is only completed by fulfilling three full menstrual cycles, regardless of their circumstances.

قَالَ: وَالْمُسْتَحَاضَةُ - كَذَلِكَ عِدَّتُهَا سَنَةٌ - الْحُرَّةُ وَالْأَمَةُ سَوَاءٌ - وَكَذَلِكَ الَّتِي ارْتَفَعَ حَيْضُهَا مِنْ مَرَضٍ - الْأَمَةُ وَالْحُرَّةُ سَوَاءٌ - قَالَ: وَأَمَّا الَّتِي ارْتَفَعَ حَيْضُهَا مِنْ أَجْلِ الرَّضَاعِ - فَإِنَّهَا بِخِلَافِ ذَلِكَ، وَلَا تَتِمُّ عِدَّتُهَا إِلَّا بِتَمَامِ ثَلَاثَةِ أَقْرَاءٍ كَائِنَةً مَا كَانَتْ.

L35041 He said: As for the woman in doubt [regarding pregnancy], she must observe

the waiting period until the doubt is dispelled or the pregnancy becomes evident. The maximum duration of her ʿiddah is nine months.

قَالَ: وَأَمَّا الْمُرْتَابَةُ - فَإِنَّهَا تُقِيمُ حَتَّى تَذْهَبَ الرِّيبَةُ أَوْ يَصِحَّ الْحَمْلُ، قَالَ: وَأَقْصَى تَرَبُّصِهَا تِسْعَةُ أَشْهُرٍ.

L35042 Imam Abū Muḥammad said: These [aforementioned] methodological divisions are not attested to any scholar before him.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ تَقَاسِيمُ لَا تُحْفَظُ عَنْ أَحَدٍ قَبْلَهُ.

L35043 If they raise objections based on the narration from Ali and Zaid during Uthman's authority, we say: They did not state that this was due to breastfeeding. Rather, they clarified that she is neither among prepubescent girls nor among those who have not yet ceased menstruation. Therefore, it is impermissible to attribute to them statements they never made—and success comes only from Allah, the Exalted.

فَإِنْ شَغَبُوا بِالرِّوَايَةِ الَّتِي هِيَ عَنْ عَلِيٍّ، وَزَيْدٍ بِحَضْرَةِ عُثْمَانَ؟ قُلْنَا: لَمْ يَقُولُوا إنَّ ذَلِكَ مِنْ أَجْلِ الرَّضَاعِ، إنَّمَا بَيَّنُوا أَنَّهَا لَيْسَتْ مِنْ اللَّائِي لَمْ يَحِضْنَ، وَلَا مِنْ اللَّائِي لَمْ يَيْأَسْنَ مِنْ الْمَحِيضِ، فَلَا يَحِلُّ أَنْ يَقُولُوا مَا لَمْ يَقُولُوا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَقَارُبُ الْأَقْرَاءِ أَوْ تَبَاعُدُهَا]

A legal case regarding irregularly spaced menstrual/purity cycles.

L35044

L35045 1994 - Issue: It is the same regarding what we mentioned—whether menstrual cycles are close-spaced or widely spaced (there being no defined limit in this matter)—except that the woman's claim shall not be accepted if the husband denies her statement unless four just and knowledgeable women testify that she had a black menstrual flow and then attained purity from it, thus three menstrual cycles, or through the testimony of two women in like manner coupled with her oath. This is because Allah the Almighty has not prescribed a defined limit in this matter, nor has His Messenger—peace and blessings of Allah be upon him—{And your Lord is never forgetful} [Maryam 19:64].[3]

١٩٩٤ - مَسْأَلَةٌ: وَسَوَاءٌ فِيمَا ذَكَرْنَا تَقَارُبُ الْأَقْرَاءِ أَوْ تَبَاعُدُهَا - لَا حَدَّ فِي ذَلِكَ - إلَّا أَنَّهُ لَا تُصَدَّقُ الْمَرْأَةُ فِي ذَلِكَ إذَا أَنْكَرَ الزَّوْجُ قَوْلَهَا، إلَّا بِأَرْبَعِ عُدُولٍ مِنْ النِّسَاءِ عَالِمَاتٍ، يَشْهَدْنَ أَنَّهَا حَاضَتْ حَيْضًا أَسْوَدَ ثُمَّ طَهُرَتْ مِنْهُ - هَكَذَا ثَلَاثَةَ أَقْرَاءٍ - أَوْ بِشَهَادَةِ امْرَأَتَيْنِ كَذَلِكَ مَعَ يَمِينِهَا؛ لِأَنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يَحُدَّ فِي ذَلِكَ حَدًّا، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L35046 And among the certain falsehood is that the Exalted would have intended for the menstrual cycles to have a specific minimum duration, then remain silent about it? Thereby obliging us to possess knowledge of the unseen, which He has concealed from us, or leaving us to rely on false conjectures and corrupt statements whose invalidity is beyond doubt.

وَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يَكُونَ تَعَالَى أَرَادَ أَنْ يَكُونَ لِلْأَقْرَاءِ مِقْدَارٌ لَا يَكُونُ أَقَلَّ مِنْهُ ثُمَّ يَسْكُتُ عَنْ ذَلِكَ؟ لِيُكَلِّفَنَا عِلْمَ الْغَيْبِ الَّذِي حَجَبَهُ عَنَّا، أَوْ يَكِلَنَا إلَى الظُّنُونِ الْكَاذِبَةِ، وَالْأَقْوَالِ الْفَاسِدَةِ الَّتِي لَا يُشَكُّ فِي بُطْلَانِهَا.

L35047 As for her not being believed if the husband denies her claim, this is because

[3] **Qur'an references (L35045):** Qur'an 19:64 (Maryam).

the Messenger of Allah, peace and blessings be upon him, ruled that proof must be provided by the claimant. She is contesting her husband's established right to revoke the divorce during the waiting period—whether she likes it or dislikes it. Thus, her claim is not accepted except through the testimony of just witnesses.

وَأَمَّا أَنْ لَا تُصَدَّقَ فِي ذَلِكَ إِذَا أَنْكَرَ الزَّوْجُ - فَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ بِالْبَيِّنَةِ عَلَى مَنْ ادَّعَى، وَهِيَ مُدَّعِيَةٌ بُطْلَانَ حَقٍّ ثَابِتٍ لِزَوْجِهَا فِي رَجْعَتِهَا - أَحَبَّتْ أَمْ كَرِهَتْ - فَلَا تُصَدَّقُ إِلَّا بِبَيِّنَةِ عَدْلٍ.

L35048–35050 -: It has been narrated to us through the chain of Waki‘ from Ismā‘īl ibn Abī Khālid from al-Sha‘bī, who said: A woman came to ‘Alī ibn Abī Ṭālib whose husband had divorced her. She claimed that she had menstruated three times in a month. ‘Alī said to Shurayḥ: “Speak concerning her case.” Shurayḥ said: “If she produces evidence—from those approved in religious integrity and trustworthiness among her close family—that she menstruated three times in a month, and that she attained purity after each period of purity and prayed, then she is truthful. Otherwise, she is lying.” ‘Alī said: “Qālūn”—a Greek term (καλόν) meaning “well done.”

-: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ، قَالَ: جَاءَتْ امْرَأَةٌ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ قَدْ طَلَّقَهَا زَوْجُهَا فَادَّعَتْ أَنَّهَا حَاضَتْ ثَلَاثَةَ حِيَضٍ فِي الشَّهْرِ؟ فَقَالَ عَلِيٌّ لِشُرَيْحٍ: قُلْ فِيهَا؟ فَقَالَ شُرَيْحٌ: إنْ جَاءَتْ بِبَيِّنَةٍ - مِمَّنْ يُرْضَى دِينُهُ، وَأَمَانَتُهُ - مِنْ بِطَانَةِ أَهْلِهَا أَنَّهَا حَاضَتْ فِي شَهْرٍ ثَلَاثًا: طَهُرَتْ عِنْدَ كُلِّ قُرْءٍ وَصَلَّتْ، فَهِيَ صَادِقَةٌ؟ وَإِلَّا فَهِيَ كَاذِبَةٌ، فَقَالَ عَلِيٌّ: قالون - يَعْنِي: أَصَبْت بِالرُّومِيَّةِ.

L35051 - From the narration of Hammad ibn Salamah through Qatadah, who said: A woman was divorced and menstruated three times in approximately forty nights. They disputed before Shuraih, who referred them to Ali ibn Abi Talib? Ali ruled: If four women from her women testify that her menstruation was like this, she is irrevocably separated. Otherwise, she must observe her waiting period through three menstruations in three months.

- وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ قَالَ: إنَّ امْرَأَةً طَلُقَتْ فَحَاضَتْ فِي نَحْوٍ مِنْ أَرْبَعِينَ لَيْلَةً ثَلَاثَ حِيَضٍ، فَاخْتَصَمُوا إلَى شُرَيْحٍ فَرَفَعَهُمْ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ؟ فَقَالَ عَلِيٌّ: إنْ شَهِدَ أَرْبَعَةٌ مِنْ نِسَائِهَا أَنَّ حَيْضَهَا كَانَ هَكَذَا أَبَانَتْ مِنْهُ، وَإِلَّا فَلْتَعْتَدَّ ثَلَاثَ حِيَضٍ فِي ثَلَاثَةِ أَشْهُرٍ.

L35052 From the narration of Al-Hajjaj ibn Al-Minhal: I am Abu Awanah, from Al-Mughirah, from Ibrahim Al-Nakha’i concerning a woman who menstruated three times either in a month or over forty nights. He said: If upright women testify on her behalf that she has seen what prohibits prayer - the menstruation of women, which is the commonly recognized menstruation - then her waiting period has concluded. Abu Muhammad said: All of this is our opinion. I have transmitted a narration we shall mention - if Allah wills - as related through Waki’ from Sufyan Al-Thawri and Sufyan ibn Uyaynah. Sufyan Al-Thawri said: From Al-A’mash, from Abu Al-Duha, from Masruq, and from Ubayy ibn Ka’b. Ibn Uyaynah said: From Amr ibn Dinar, from

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا أَبُو عَوَانَةَ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ فِي امْرَأَةٍ حَاضَتْ فِي شَهْرٍ أَوْ أَرْبَعِينَ لَيْلَةً ثَلَاثَ حِيَضٍ؟ قَالَ: إذَا شَهِدَتْ لَهَا الْعُدُولُ مِنْ النِّسَاءِ أَنَّهَا قَدْ رَأَتْ مَا يُحَرِّمُ عَلَيْهَا الصَّلَاةَ مِنْ طُمُوثِ النِّسَاءِ الَّذِي هُوَ الطُّمُوثُ الْمَعْرُوفُ، فَقَدْ خَلَا أَجَلُهَا قَالَ أَبُو مُحَمَّد: هَذَا كُلُّهُ قَوْلُنَا - وَقَدْ رَوَيْت رِوَايَةً نَذْكُرُهَا - إنْ شَاءَ اللَّهُ تَعَالَى -: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَسُفْيَانَ بْنِ عُيَيْنَةَ - قَالَ سُفْيَانُ الثَّوْرِيُّ: عَنْ الْأَعْمَشِ عَنْ أَبِي الضُّحَى عَنْ مَسْرُوقٍ، وَعَنْ أُبَيِّ بْنِ كَعْبٍ - وَقَالَ

Ubaid ibn Umayr. They both said unanimously: Among the matters of trust is that a woman was entrusted with her private parts.

ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ، قَالَا جَمِيعًا: مِنْ الْأَمَانَةِ أَنَّ الْمَرْأَةَ أُؤْتُمِنَتْ عَلَى فَرْجِهَا.

L35053–35054 From the path of Wakiʿ via Ḥammād ibn Zayd via Ayyūb al-Sikhtiyānī via Sulaymān ibn Yasār: When women were mentioned in his presence, he said: "Were we not commanded to physically inspect them?" Abū Muḥammad said: Ubayy (may Allah be pleased with him) and ʿUbayd ibn ʿUmayr spoke truthfully regarding the woman being entrusted with her private parts—and likewise the man too. Every person is entrusted with their religion—matters hidden from others regarding it—based on their trustworthiness. There is nothing here that necessitates accepting her testimony to nullify her husband's right to revocable divorce, due to Allah's statement: {No soul earns [sin] except against itself} [6:164]. Similarly, Sulaymān ibn Yasār's statement "We were not commanded to physically inspect women" is correct—none have contested this. Requiring her to provide evidence of menstruation parallels requiring evidence for women's hidden defects—is there any distinction?[4]

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ: أَنَّهُ ذُكِرَ عِنْدَهُ النِّسَاءُ؟ فَقَالَ: لَمْ نُؤْمَرْ بِفَتْحِهِنَّ؟ قَالَ أَبُو مُحَمَّدٍ: صَدَقَ أُبَيٌّ - رَضِيَ اللَّهُ عَنْهُ - وَعُبَيْدُ بْنُ عُمَيْرٍ: فِي أَنَّ الْمَرْأَةَ أُؤْتُمِنَتْ عَلَى فَرْجِهَا، وَكَذَلِكَ الرَّجُلُ أَيْضًا: كُلُّ أَحَدٍ مُوَكَّلٌ فِي دِينِهِ الَّذِي يَغِيبُ عَنْ النَّاسِ بِهِ إلَى أَمَانَتِهِ - وَلَيْسَ فِي هَذَا مَا يُوجِبُ تَصْدِيقَهَا عَلَى إبْطَالِ حَقِّ زَوْجِهَا فِي الرَّجْعَةِ، لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَكَذَلِكَ قَوْلُ سُلَيْمَانَ بْنِ يَسَارٍ " لَمْ نُؤْمَرْ بِفَتْحِ النِّسَاءِ " قَوْلٌ صَحِيحٌ مَا نَازَعَهُ فِي ذَلِكَ أَحَدٌ، وَتَكْلِيفُهَا الْبَيِّنَةَ عَلَى أَنَّهَا حَاضَتْ كَتَكْلِيفِ الْبَيِّنَةِ عَلَى عُيُوبِ النِّسَاءِ الْبَاطِنَةِ وَلَا فَرْقَ؟ .

L35055 Abu Muhammad said: Then these [scholars] disagreed, and it was narrated from Abū Ḥanīfah that a woman's claim about completing the waiting period in less than sixty days is not accepted, nor is the claim of postpartum women accepted if it is less than eighty-five days.

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ اخْتَلَفَ هَؤُلَاءِ، فَرُوِيَ عَنْ أَبِي حَنِيفَةَ: لَا تُصَدَّقُ فِي انْقِضَاءِ الْعِدَّةِ فِي أَقَلَّ مِنْ سِتِّينَ يَوْمًا وَلَا تُصَدَّقُ النُّفَسَاءُ فِي أَقَلَّ مِنْ خَمْسَةٍ وَثَمَانِينَ يَوْمًا.

L35056 Abu Yusuf, Muhammad ibn al-Hasan, Sufyan in one of his two opinions, and Malik in the validity of his rulings maintained that the completion of the waiting period cannot be validated in fewer than thirty-nine days.

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَسُفْيَانُ فِي أَحَدِ قَوْلَيْهِ - وَمَالِكٌ - فِي مُوجِبِ أَقْوَالِهِ - لَا تُصَدَّقُ فِي انْقِضَاءِ الْعِدَّةِ فِي أَقَلَّ مِنْ تِسْعَةٍ وَثَلَاثِينَ يَوْمًا.

L35057 Abū Muḥammad said: This is most consistent with their foundational principles, as it deems her divorced at the end of her clean period—then three menstruations, each lasting three days (the shortest menstrual period they recognize)—and two clean periods, each lasting fifteen days (the minimum duration of purity in their view).

قَالَ أَبُو مُحَمَّدٍ: هَذَا أَقْيَسُ عَلَى أُصُولِهِمْ؛ لِأَنَّهُ يَجْعَلُهَا مُطَلَّقَةً فِي آخِرِ طُهْرِهَا، ثُمَّ ثَلَاثُ حِيَضٍ، كُلُّ حَيْضَةٍ مِنْ ثَلَاثَةِ أَيَّامٍ - وَهُوَ أَقَلُّ الْحَيْضِ عِنْدَهُمْ - وَطُهْرَانِ، كُلُّ طُهْرٍ خَمْسَةَ عَشَرَ يَوْمًا - وَهُوَ أَقَلُّ الطُّهْرِ عِنْدَهُمْ.

[4] **Qur'an references (L35054):** Qur'an 6:164 (Al-An'am).

L35058 They differed concerning the postpartum woman. Abū Yūsuf said: I do not accept her claim for a duration shorter than sixty-five days.

وَاخْتَلَفُوا فِي النُّفَسَاءِ - فَقَالَ أَبُو يُوسُفَ: لَا أُصَدِّقُهَا فِي أَقَلَّ مِنْ خَمْسَةٍ وَسِتِّينَ يَوْمًا.

L35059 Muhammad ibn al-Hasan said: I do not affirm it in fewer than fifty-four days and an hour.

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: لَا أُصَدِّقُهَا فِي أَقَلَّ مِنْ أَرْبَعَةٍ وَخَمْسِينَ يَوْمًا وَسَاعَةً.

L35060 Al-Ḥasan ibn Ḥayy said: I do not deem valid a woman's observance of the waiting period through menstrual cycles in fewer than forty-five days.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: لَا أُصَدِّقُ الْمُعْتَدَّةَ بِالْأَقْرَاءِ فِي أَقَلَّ مِنْ خَمْسَةٍ وَأَرْبَعِينَ يَوْمًا.

L35061 Al-Awza'i said: I do not accept it in fewer than forty days.

وَقَالَ الْأَوْزَاعِيُّ: لَا أُصَدِّقُهَا فِي أَقَلَّ مِنْ أَرْبَعِينَ يَوْمًا.

L35062 Abu Ubayd said: If you do not present clear evidence, your claim will not be upheld if made in less than three months.

وَقَالَ أَبُو عُبَيْدٍ: إِنْ لَمْ تَأْتِ بِبَيِّنَةٍ لَمْ تُصَدَّقْ فِي أَقَلَّ مِنْ ثَلَاثَةِ أَشْهُرٍ.

L35063 According to one of al-Shāfiʿī's opinions: A woman's claim about her menstruation is not accepted if she states a duration shorter than thirty-two days and even a part of a day. This is because, in this opinion, the minimum menstruation period is one day, and the minimum purity period is fifteen days.

وَعَلَى أَحَدِ أَقْوَالِ الشَّافِعِيِّ: لَا تُصَدَّقُ فِي أَقَلَّ مِنْ اثْنَيْنِ وَثَلَاثِينَ يَوْمًا، وَبَعْضِ يَوْمٍ؛ لِأَنَّ أَقَلَّ الْحَيْضِ عِنْدَهُ فِي هَذَا الْقَوْلِ يَوْمٌ،، وَأَقَلُّ الطُّهْرِ خَمْسَةَ عَشَرَ يَوْمًا.

L35064–35065 Abu Muhammad said: Allah, the Mighty and Majestic, said: "Had it been from other than Allah, they would have found in it much contradiction." [Surah An-Nisa 4:82][5]

قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ اخْتِلافًا كَثِيرًا} [النساء: ٨٢] .

L35066 It is correct that these differences are not from Allah, the Exalted and Majestic—there is no doubt in that. Since they are not from Allah, they are invalid. Rather, they erred in this by stipulating the minimum of menstruation and the minimum of purity. Specifying something Allah, the Most High, has not specified is invalid, for it constitutes a law Allah has not permitted.

فَصَحَّ - أَنَّ هَذِهِ الِاخْتِلَافَاتِ لَيْسَتْ مِنْ عِنْدِ اللَّهِ عَزَّ وَجَلَّ لَا شَكَّ فِي ذَلِكَ، وَإِذْ لَيْسَتْ مِنْ عِنْدِ اللَّهِ فَلَيْسَتْ بِشَيْءٍ، وَإِنَّمَا أُتُوا فِي ذَلِكَ لِتَحْدِيدِهِمْ أَقَلَّ الْحَيْضِ، وَأَقَلَّ الطُّهْرِ، وَمِنْ الْبَاطِلِ تَحْدِيدُ شَيْءٍ لَمْ يُحَدَّهُ اللَّهُ عَزَّ وَجَلَّ فَهُوَ شَرْعٌ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى.

L35067 If they say: It has been narrated from the Prophet—may Allah bless him and grant him peace—"She has a menstrual period of six or seven days in Allah's knowledge."

فَإِنْ قَالُوا: قَدْ جَاءَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «تَحِيضُ فِي عِلْمِ اللَّهِ سِتًّا أَوْ سَبْعًا» .

L35068 We said: It is not valid, and even if it were valid, it would be against you, not

قُلْنَا: لَا يَصِحُّ، وَلَوْ صَحَّ لَكَانَ عَلَيْكُمْ لَا لَكُمْ؛ لِأَنَّكُمْ لَا تَقُولُونَ بِهَذَا التَّحْدِيدِ، فِي أَقَلِّ الْحَيْضِ وَلَا فِي أَكْثَرِ.

[5] **Qur'an references (L35065):** Qur'an 4:82 (An-Nisa).

in your favor; for you do not uphold this restriction in neither the minimum nor the maximum period of menstruation.

فَإِنْ قَالُوا: صَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ: «انْظُرِي عَدَدَ الْأَيَّامِ وَاللَّيَالِي الَّتِي كُنْتِ، تَحِيضِينَ» ؟ قُلْنَا: لَا شَكَّ فِي أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّمَا أَمَرَ بِذَلِكَ مَنْ كَانَتْ تَحِيضُ أَيَّامًا وَلَيَالِيَ - وَقَدْ صَحَّ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ: «إذَا أَتَاكِ قُرْؤُكِ فَلَا تُصَلِّي، فَإِذَا مَرَّ الْقُرْءُ فَتَطَهَّرِي، ثُمَّ صَلِّي مِنْ الْقُرْءِ إلَى الْقُرْءِ» فَلَمْ يَجْعَلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لِذَلِكَ حَدًّا لَا يَكُونُ أَقَلَّ مِنْهُ.

L35069 If they say: It is established that he—peace and blessings be upon him—said, "Observe the number of days and nights during which you were menstruating," we reply: There is no doubt that he—peace and blessings be upon him—only commanded this to one whose menstruation spans days and nights. It is authentically reported from him—peace and blessings be upon him—that he said, "When your menstruation begins, do not pray. When the menstrual period ends, purify yourself, then pray from one clean interval to the next." Thus, he—peace and blessings be upon him—did not set a minimum limit for that [duration].

فَصَحَّ أَنَّ ذَلِكَ الْخَبَرَ لِمَنْ لَهَا أَيَّامٌ وَلَيَالٍ مَعْرُوفَةٌ.

L35070 Thus, it has been established that the report pertains to those for whom it specifies a known period.

فَهَذَا الْآخَرُ لِمَنْ لَمْ يَبْلُغْ اللَّيَالِيَ وَلَا الْأَيَّامَ: كُلُّ خَبَرٍ عَلَى ظَاهِرِهِ دُونَ تَكْلِيفِ تَأْوِيلٍ فَاسِدٍ، أَوْ تَرْكِ أَحَدِهِمَا لِلْآخَرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L35071 As for the latter, it is for those who have not yet attained [the discernment marked by] nights and days [of experience]: every textual report must be taken at its apparent meaning without imposing a corrupt interpretation or abandoning one of the two [principles] for the other—and with Allah alone is success, the Exalted.

فَإِنْ قِيلَ: إنَّ اللَّهَ تَعَالَى جَعَلَ ثَلَاثَةَ أَشْهُرٍ بِإِزَاءِ ثَلَاثَةِ أَقْرَاءٍ؟

L35072 If it is asked: "Has Allah, the Exalted, established three months as equivalent to three menstrual cycles?"

قُلْنَا: نَعَمْ، وَلَيْسَ ذَلِكَ بِمُوجِبٍ أَنَّهُ لَا يَكُونُ قُرْءٌ فِي أَقَلَّ مِنْ شَهْرٍ، وَلَا فِي أَكْثَرَ مِنْهُ، وَأَنْتُمْ أَوَّلُ مُبْطِلٍ لِهَذِهِ الْحُجَّةِ، لِأَنَّكُمْ تُجِيزُونَ كَوْنَ قُرْءَيْنِ فِي شَهْرٍ وَاحِدٍ، وَتُجِيزُونَ أَنْ يَكُونَ قُرْءٌ وَاحِدٌ أَكْثَرَ مِنْ ثَلَاثَةِ أَشْهُرٍ - فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ.

L35073–35074 We said: Yes, and this does not necessitate that a clean interval cannot occur in less than a month nor in more than a month. Yet you yourselves are the first to invalidate this argument, for you permit two clean intervals within a single month and permit a single clean interval to extend beyond three months. Thus, all their contentious objections are thereby nullified.

فَإِنْ قَالُوا: لَا تَظْهَرُ الْبَرَاءَةُ مِنْ الرَّحِمِ فِي نِصْفِ شَهْرٍ فَأَقَلَّ؟ قُلْنَا: وَلَا فِي ثَلَاثَةِ أَشْهُرٍ، وَكُلُّكُمْ يَجْعَلُ الْعِدَّةَ تَتِمُّ بِالْأَقْرَاءِ فِي أَقَلَّ مِنْ ثَلَاثَةِ أَشْهُرٍ -.

L35075 If they say: "Does the clearance [from pregnancy] not become evident within half a month or less?" We reply: "Nor in three months. Yet all of you consider the waiting period completed through menstrual cycles in less than three months."

L35076 As for Mālik, he said: When menstruation begins, she ceases prayer and fasting, and her husband is prohibited from having intercourse with her.

When she observes purity from it [menstruation], she resumes prayer and fasting, and becomes permissible to her husband. However, this purity is not one by which she reckons [days] during the waiting period.

وَأَمَّا مَالِكٌ فَإِنَّهُ قَالَ: الْحَيْضُ مَتَى ظَهَرَ -: تَرَكَتْ الصَّلَاةَ وَالصَّوْمَ، وَحَرُمَ وَطْؤُهَا عَلَى زَوْجِهَا - فَمَتَى رَأَتْ الطُّهْرَ مِنْهُ صَلَّتْ، وَصَامَتْ وَحَلَّتْ لِزَوْجِهَا، إلَّا أَنَّ ذَلِكَ لَا يَكُونُ طُهْرًا تَعْتَدُّ بِهِ فِي الْعِدَّةِ.

L35077 Abū Muḥammad said: This is utterly corrupt, for it is impossible for it to be menstruation and purity that alter the rulings of prayer and fasting, the permission and prohibition of intercourse, and yet it cannot be menstruation and purity that count as qur' in the waiting period. This is a statement whose corruption is self-evident, as it contradicts the Quran, the Sunnah, and the statements of all the predecessors.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا فِي غَايَةِ الْفَسَادِ، إذْ مِنْ الْمُحَالِ أَنْ يَكُونَ حَيْضًا وَطُهْرًا يُحِيلُ حُكْمَ الصَّلَاةِ، وَالصِّيَامِ، وَإِبَاحَةَ الْوَطْءِ وَتَحْرِيمَهُ، وَلَا يَكُونُ حَيْضًا وَطُهْرًا يُعَدُّ قُرْءًا فِي الْعِدَّةِ - هَذَا قَوْلٌ لَا خَفَاءَ بِفَسَادِهِ، لِأَنَّهُ خِلَافٌ لِلْقُرْآنِ وَالسُّنَنِ، وَلِقَوْلِ كُلِّ مَنْ سَلَفَ.

L35078 We are not aware that Abu Hanifah and Malik based their opinion in this matter on the view of any predecessors, thus it becomes obligatory to refer back to the speech of Allah—the Mighty and Majestic—and the explanation of His Messenger, may Allah bless him and grant him peace.

وَمَا نَعْلَمُ لِأَبِي حَنِيفَةَ، وَمَالِكٍ، أَنَّهُمَا تَعَلَّقَا فِي هَذِهِ الْمَسْأَلَةِ بِقَوْلِ أَحَدٍ مِنْ السَّلَفِ، فَوَجَبَ الرُّجُوعُ إلَى كَلَامِ اللَّهِ عَزَّ وَجَلَّ وَبَيَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L35079 We found Him, the Exalted, stating: {three menstrual periods} [Al-Baqarah: 228], and He did not specify therein a number of days that must not be exceeded. {Your Lord is not forgetful} [Maryam: 64].[6]

فَوَجَدْنَاهُ تَعَالَى قَالَ: {ثَلَاثَةَ قُرُوءٍ} [البقرة: ٢٢٨] وَلَمْ يَحُدَّ فِي ذَلِكَ بِعَدَدِ أَيَّامٍ لَا تُتَجَاوَزُ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L35080 He (peace and blessings be upon him) commanded that when menses begins, she should cease praying. And when it ends, she should pray, fast, and become permissible for her husband.

وَأَمَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إذَا أَقْبَلَتْ الْحَيْضَةُ - أَنْ تَدَعَ الصَّلَاةَ، فَإِذَا أَدْبَرَتْ صَلَّتْ، وَصَامَتْ، وَحَلَّتْ لِبَعْلِهَا.

L35081 He (peace be upon him) said: "Menstrual blood is black and recognizable. When it comes, she must stop praying." Yet he (peace be upon him) did not specify a fixed duration, so it is impermissible for anyone to set a limit in this matter. However, if her husband denies her claim, her assertion is not accepted unless supported by evidence from a just person, as we have mentioned.

وَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «دَمُ الْحَيْضِ أَسْوَدُ يُعْرَفُ فَإِذَا أَقْبَلَ فَدَعِي الصَّلَاةَ» وَلَمْ يَحُدَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - حَدًّا، فَلَا يَجُوزُ لِأَحَدٍ التَّحْدِيدُ فِي ذَلِكَ إلَّا أَنَّهُ إنْ أَنْكَرَ زَوْجُهَا ذَلِكَ لَمْ تُصَدَّقْ إلَّا بِبَيِّنَةِ عَدْلٍ كَمَا ذَكَرْنَا.

L35082 Similarly, if the husband claims that her waiting period has concluded while she asserts it has not, the husband's claim is not accepted unless he provides

وَكَذَلِكَ إنْ ادَّعَى الزَّوْجُ أَنَّ عِدَّتَهَا قَدْ تَمَّتْ وَقَالَتْ: هِيَ لَمْ تَتِمَّ - فَالزَّوْجُ غَيْرُ مُصَدَّقٍ إلَّا بِبَيِّنَةٍ، وَهِيَ مُصَدَّقَةٌ مَعَ يَمِينِهَا؛ لِأَنَّهَا مُدَّعًى عَلَيْهَا، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[6] **Qur'an references (L35079):** Qur'an 19:64 (Maryam); Qur'an 2:228 (Al-Baqarah).

evidence, whereas her statement is accepted when supported by her oath, as she is the defendant in this claim. And with Allah, the Exalted, lies success.

L35083–35084 Abu Muhammad said: Some of them have raised clamorous objections concerning granting credence to her statement about the completion of her waiting period, citing Allah the Exalted's words: {It is not lawful for them to conceal what Allah has created in their wombs if they believe in Allah and the Last Day} [Al-Baqarah 2:228]. Abu Muhammad responded: This verse contains no evidence obligating belief in her statement, nor do we know how it occurred to them that this verse requires credence to her claim. We have received via the chain of Abd al-Razzaq from Ibn Jurayj from Mujahid regarding the interpretation of this verse: It is not lawful for her to say "I am pregnant" while not being pregnant, nor "I am not pregnant" while being pregnant; nor "I am menstruating" while not menstruating, nor "I am not menstruating" while menstruating. Narrated from Ata, he said: She must not conceal the child, though I do not know—perhaps menstruation is included with it.[7]

L35085 Abū Muḥammad said: The woman who claims she has completed her waiting period [asserts she] did not conceal anything God the Exalted created in her womb. She merely claims that He ordained her menstruation. Whether she lies or speaks truthfully, she is not implicated by the verse's prohibition against concealing what God created in her womb. Even if this action is impermissible for her, it does not negate the husband's right to revocation during the waiting period, which God the Exalted has ordained.

L35086–35087 Abu Muhammad said: If she claims to be pregnant while the husband denies this, four midwives from those whose trustworthiness is beyond doubt must necessarily be presented to her, and this is obligatory.

L35088 If they testify to her pregnancy, the judge rules according to what the pregnancy necessitates. If they testify that she is not pregnant, her claim is invalidated. If they testify to her pregnancy and then it is confirmed that they lied or were mistaken, the judge rules against her to return what she took

[7] **Qur'an references (L35084):** Qur'an 2:228 (Al-Baqarah).

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ شَغَبَ بَعْضُهُمْ فِي تَصْدِيقِهَا فِي انْقِضَاءِ عِدَّتِهَا بِقَوْلِ اللَّهِ تَعَالَى: {وَلا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنَّ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [البقرة: ٢٢٨] قَالَ أَبُو مُحَمَّدٍ: وَلَيْسَ فِي هَذِهِ الْآيَةِ دَلِيلٌ عَلَى وُجُوبِ تَصْدِيقِهَا، وَلَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ أَنَّ هَذِهِ الْآيَةَ تُوجِبُ تَصْدِيقَهَا؟ وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ مُجَاهِدٍ فِي تَفْسِيرِ هَذِهِ الْآيَةِ قَالَ: لَا يَحِلُّ لَهَا أَنْ تَقُولَ: أَنَا حُبْلَى - وَلَيْسَتْ حُبْلَى - وَلَا لَسْتُ حُبْلَى - وَهِيَ حُبْلَى - وَلَا أَنَا حَائِضٌ - وَلَيْسَتْ حَائِضًا - وَلَا لَسْتُ حَائِضًا - وَهِيَ حَائِضٌ - وَعَنْ عَطَاءٍ قَالَ: الْوَلَدُ لَا تَكْتُمُهُ، وَلَا أَدْرِي لَعَلَّ الْحَيْضَةَ مَعَهُ.

قَالَ أَبُو مُحَمَّدٍ: الْمُدَّعِيَةُ أَنَّهَا قَدْ أَتَمَّتْ عِدَّتَهَا لَمْ تَكْتُمْ شَيْئًا خَلَقَهُ اللَّهُ تَعَالَى فِي رَحِمِهَا، إِنَّمَا ادَّعَتْ أَنَّهُ تَعَالَى قَدْ خَلَقَ حَيْضَهَا، وَهِيَ إِمَّا كَاذِبَةٌ وَإِمَّا صَادِقَةٌ فَلَا مَدْخَلَ لَهَا فِيمَا فِي الْآيَةِ مِنْ تَحْرِيمِ كِتْمَانِ مَا خَلَقَ اللَّهُ فِي رَحِمِهَا - وَلَيْسَ فِي أَنَّ ذَلِكَ لَا يَحِلُّ لَهَا مَا يُسْقِطُ حَقَّ الزَّوْجِ الَّذِي أَوْجَبَهُ اللَّهُ تَعَالَى فِي الرَّجْعَةِ.

قَالَ أَبُو مُحَمَّدٍ: وَلَوِ ادَّعَتْ أَنَّهَا حَامِلٌ، وَأَنْكَرَ الزَّوْجُ ذَلِكَ عُرِضَ عَلَيْهَا مِنَ الْقَوَابِلِ مَنْ لَا يُشَكُّ فِي عَدَالَتِهِنَّ أَرْبَعٌ، وَلَا بُدَّ.

فَإِنْ شَهِدْنَ بِحَمْلِهَا قَضَى بِمَا يُوجِبُهُ الْحَمْلُ، وَإِنْ شَهِدْنَ بِأَنْ لَا حَمْلَ بِهَا بَطَلَتْ دَعْوَاهَا - فَلَوْ شَهِدْنَ - بِحَمْلِهَا ثُمَّ صَحَّ أَنَّهُنَّ كَذَبْنَ أَوْ أَوْهَمْنَ قَضَى عَلَيْهَا بِرَدِّ مَا أَخَذَتْ مِنَ الزَّوْجِ مِنْ نَفَقَةٍ وَكِسْوَةٍ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

from the husband pertaining to maintenance and clothing. And success is from Allah, the Exalted.

An Issue on the Widow's Waiting Period and Mourning Observance

1995. Issue: The waiting period following death and the mourning restrictions observed during it are obligatory for a minor female—even if she is in the cradle—and likewise for the mentally incapacitated woman. This is the opinion of Mālik and al-Shāfiʿī.

Abu Hanifah said: She must observe the waiting period ('iddah), but is not required to undertake formal mourning (iḥdād), because she is not [legally] addressed.

Abu Muhammad said: If he possesses evidence that invalidates the mourning obligation during the waiting period, it is necessary to relieve her of the waiting period based on that evidence, for Allah the Exalted states: "And those of you who die and leave wives behind - they shall wait by themselves for four months and ten days" [Al-Baqarah: 234]. The minor girl is not addressed by this ruling, and similarly the mentally incapacitated woman - for she does not wait by herself.[8]

As for us, our proof in that is what we have narrated through the chain of Al-Bukhari: Abdullah ibn Yusuf narrated to us, Malik narrated to us from Abdullah ibn Abi Bakr ibn Muhammad ibn Amr ibn Hazm from Humaid ibn Nafi' from Zaynab bint Abi Salamah that she informed him that she heard Umm Salamah, the Mother of the Believers, say: A woman said, "O Messenger of Allah, my daughter's husband has died, and she suffered from an eye ailment. Should we apply kohl to her?" The Messenger of Allah—peace and blessings of Allah be upon him—said, "No, no. It is only four months and ten." And she related the report.

He did not specify (peace and blessings be upon him) major sins from minor ones, nor sane women from insane ones, nor did he address the woman

[8] **Qur'an references (L35092):** Qur'an 2:234 (Al-Baqarah).

[مَسْأَلَةُ عِدَّةُ الْوَفَاةِ وَالْإِحْدَادِ]

١٩٩٥ - مَسْأَلَةٌ: وَعِدَّةُ الْوَفَاةِ وَالْإِحْدَادِ فِيهَا يَلْزَمُ الصَّغِيرَةَ - وَلَوْ فِي الْمَهْدِ - وَكَذَلِكَ الْمَجْنُونَةُ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ.

وَقَالَ أَبُو حَنِيفَةَ: عَلَيْهَا الْعِدَّةُ، وَلَا إحْدَادَ عَلَيْهَا - قَالَ: لِأَنَّهَا غَيْرُ مُخَاطَبَةٍ.

قَالَ أَبُو مُحَمَّد: إنْ كَانَ ذَلِكَ عِنْدَهُ حُجَّةً مُسْقِطَةً لِلْإِحْدَادِ فَيَنْبَغِي أَنْ يُسْقِطَ بِذَلِكَ عَنْهَا الْعِدَّةَ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا} [البقرة: ٢٣٤] وَالصَّغِيرَةُ غَيْرُ مُخَاطَبَةٍ، وَكَذَلِكَ الْمَجْنُونَةُ - وَلَا تَتَرَبَّصُ بِنَفْسِهَا.

وَأَمَّا نَحْنُ، فَحُجَّتُنَا فِي ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ أَنَا مَالِكٌ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ حُمَيْدِ بْنِ نَافِعٍ «عَنْ زَيْنَبَ بِنْتِ أَبِي سَلَمَةَ أَنَّهَا أَخْبَرَتْهُ أَنَّهَا سَمِعَتْ أُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ تَقُولُ: قَالَتْ امْرَأَةٌ: يَا رَسُولَ اللَّهِ إنَّ ابْنَتِي تُوُفِّيَ عَنْهَا زَوْجُهَا وَقَدْ اشْتَكَتْ عَيْنَهَا أَفَنُكَحِّلُهَا؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا لَا إنَّمَا هِيَ أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ» وَذَكَرَتْ الْخَبَرَ.

فَلَمْ يَخُصَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كَبِيرَةً مِنْ صَغِيرَةٍ، وَلَا عَاقِلَةً مِنْ مَجْنُونَةٍ، وَلَا خَاطَبَهَا، بَلْ خَاطَبَ غَيْرَهَا فِيهَا - فَهَذَا عُمُومٌ زَائِدٌ عَلَى مَا فِي الْقُرْآنِ.

herself; instead, he addressed others about her. This constitutes a generality that extends beyond what is in the Qur'an.

L35095–35096 If she begins observing the waiting period from the first night of the month, she proceeds through four lunar months and ten nights beginning with the fifth crescent. When dawn appears of the tenth day, her waiting period is concluded and she becomes eligible for remarriage, for the Almighty stated: {and ten} [Al-Baqarah: 234]. This is a feminine grammatical form, indicating nights. Had He intended days, He would have used the masculine form of the number ten (*ʿasharah*).[9]

L35097 If she begins the waiting period before or after that, her waiting period is 126 nights (including the days between them only), based on the statement of Allah's Messenger (peace and blessings of Allah be upon him): "The month is twenty-nine." It is impermissible to interject between the days of a single month anything not part of it, for this is invalid without doubt—and success comes from Allah, the Exalted.

L35098 **Issue: The woman observing the ʿiddah due to her husband's death must avoid kohl.**

L35099 1996. Matter: It is obligatory upon the woman observing the waiting period due to death to avoid all kohl entirely—whether necessary or not, even if she lost her eyesight—neither at night nor during the day. As for the medicinal poultice, it is permissible for her.

L35100 She is also obliged to avoid every dyed garment worn on the head, on the body, or on any part of the body—including black, green, red, yellow, or any other color—except *al-ʿaṣb* alone, which are embroidered garments made in Yemen, and it is permissible for her.

L35101 She is also religiously obligated to avoid all hair dyeing; she must not engage in any of it whatsoever, in its entirety.

L35102 She must avoid combing [her hair] except with the comb alone, for that [act]

فَإِنْ ابْتَدَأَتْ بِالْعِدَّةِ مِنْ أَوَّلِ لَيْلَةٍ مِنَ الشَّهْرِ مَشَتْ: أَرْبَعَةُ أَهِلَّةٍ وَعَشْرُ لَيَالٍ مِنَ الْهِلَالِ الْخَامِسِ، فَإِذَا طَلَعَ الْفَجْرُ مِنَ الْيَوْمِ الْعَاشِرِ: فَقَدْ تَمَّتْ عِدَّتُهَا وَحَلَّتْ لِلْأَزْوَاجِ؛ لِأَنَّهُ تَعَالَى قَالَ: {وَعَشْرًا} [البقرة: ٢٣٤] فَهُوَ لَفْظُ تَأْنِيثٍ، فَهُوَ لِلَّيَالِي، وَلَوْ أَرَادَ الْأَيَّامَ لَقَالَ: وَعَشْرَةً.

وَإِنْ بَدَأَتْ بِالْعِدَّةِ قَبْلَ ذَلِكَ أَوْ بَعْدَهُ، فَعِدَّتُهَا مِائَةُ لَيْلَةٍ وَسِتٍّ وَعِشْرُونَ لَيْلَةً بِمَا بَيْنَهَا مِنَ الْأَيَّامِ فَقَطْ؛ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الشَّهْرُ تِسْعَةٌ وَعِشْرُونَ» وَلَا يَجُوزُ أَنْ يُحَالَ بَيْنَ أَيَّامِ شَهْرٍ وَاحِدٍ بِمَا لَيْسَ مِنْهُ، هَذَا مُحَالٌ بِلَا شَكٍّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْمُعْتَدَّةُ مِنْ وَفَاةٍ تَجْتَنِبُ الْكُحْلَ]

١٩٩٦ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى الْمُعْتَدَّةِ مِنَ الْوَفَاةِ أَنْ تَجْتَنِبَ الْكُحْلَ كُلَّهُ لِضَرُورَةٍ أَوْ لِغَيْرِ ضَرُورَةٍ - وَلَوْ ذَهَبَتْ عَيْنَاهَا - لَا لَيْلًا وَلَا نَهَارًا -، وَأَمَّا الضِّمَادُ - فَمُبَاحٌ لَهَا.

وَتَجْتَنِبُ أَيْضًا فَرْضًا: كُلَّ ثَوْبٍ مَصْبُوغٍ مِمَّا يُلْبَسُ فِي الرَّأْسِ، أَوْ عَلَى الْجَسَدِ، أَوْ عَلَى شَيْءٍ مِنْهُ، سَوَاءٌ فِي ذَلِكَ السَّوَادُ، وَالْخُضْرَةُ، وَالْحُمْرَةُ وَالصُّفْرَةُ، وَغَيْرُ ذَلِكَ - إِلَّا الْعَصْبَ وَحْدَهُ - وَهِيَ: ثِيَابٌ مُوَشَّاةٌ تُعْمَلُ بِالْيَمَنِ، فَهُوَ مُبَاحٌ لَهَا.

وَتَجْتَنِبُ أَيْضًا فَرْضًا: الْخِضَابَ كُلَّهُ، فَلَا تَقْرَبُهُ كُلَّهُ جُمْلَةً.

وَتَجْتَنِبُ الِامْتِشَاطَ حَاشَ بِالْمُشْطِ فَقَطْ، فَهُوَ حَلَالٌ لَهَا.

[9] **Qur'an references (L35096):** Qur'an 2:234 (Al-Baqarah).

is permissible for her.

L35103 She is also obligated to avoid all fragrances entirely and must not use them, except for costus root or cypress cloves—and only during her state of post-menstrual purity.

وَتَجْتَنِبُ أَيْضًا فَرْضًا - الطِّيبَ كُلَّهُ فَلَا تَقْرَبُهُ حَاشَا شَيْئًا مِنْ قُسْطٍ، أَوْ إِظْفَارٍ عِنْدَ طُهْرِهَا فَقَطْ.

L35104 And it is permissible for her to wear after that whatever she wishes of white silk, undyed yellow silk in its natural hue, wool of its natural color, white cotton, white linen from the fine linen of the Mudar tribe, fabrics from Marw, and other materials.

وَمُبَاحٌ لَهَا: أَنْ تَلْبَسَ بَعْدَ ذَلِكَ مَا شَاءَتْ مِنْ حَرِيرٍ أَبْيَضَ، أَوْ أَصْفَرَ مِنْ لَوْنِهِ الَّذِي لَمْ يُصْبَغْ، وَصُوفَ الْبَحْرِ الَّذِي هُوَ لَوْنُهُ، وَالْقُطْنَ الْأَبْيَضَ، وَالْكَتَّانَ الْأَبْيَضَ مِنْ دِبْقِ مُضَرَ، وَالْمَرْوِيَّ، وَغَيْرَ ذَلِكَ.

L35105 It is permissible for her to wear what is woven with gold—and all jewelry, including gold, silver, gemstones, rubies, emeralds, and others.

وَمُبَاحٌ لَهَا: أَنْ تَلْبَسَ الْمَنْسُوجَ بِالذَّهَبِ - وَالْحُلِيَّ كُلَّهُ: مِنَ الذَّهَبِ، وَالْفِضَّةِ، وَالْجَوْهَرِ وَالْيَاقُوتِ، وَالزُّمُرُّدِ، وَغَيْرِ ذَلِكَ.

L35106–35107 She must avoid entering the bathhouse, washing her head with khitmi (marshmallow root), and [interacting with] the child. These are the only five things she must avoid.

وَتَدْخُلُ الْحَمَّامَ، وَتَغْسِلُ رَأْسَهَا بِالْخِطْمِيِّ، وَالطِّفْلِ فَهِيَ خَمْسَةُ أَشْيَاءَ تَجْتَنِبُهَا فَقَطْ.

L35108 The proof of this is what Aḥmad ibn Qāsim narrated to us, stating: from my father Qāsim ibn Muḥammad ibn Qāsim, from my grandfather Qāsim ibn Aṣbagh, from Muḥammad ibn Ismāʿīl, from Muḥammad ibn Kathīr al-ʿAbdī, from Sufyān al-Thawrī, from ʿAbdullāh ibn Abī Bakr, Ayyūb ibn Mūsā, and Yaḥyā ibn Saʿīd al-Anṣārī—all of them from Ḥumayd ibn Nāfiʿ, from Zaynab bint Umm Salamah: When the husband of al-Naḥḥām's daughter died, her mother came to the Prophet (peace be upon him) and said, "My daughter's eye is causing her pain. May I apply kohl to it?" He replied, "No." She said, "I fear her eye might rupture." He responded, "Even if it ruptures"—and Zaynab mentioned the rest of the report.

بُرْهَانُ ذَلِكَ -: مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ قَاسِمٍ أَنَا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ أَنَا جَدِّي قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ أَنَا مُحَمَّدُ بْنُ كَثِيرٍ الْعَبْدِيُّ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ، وَأَيُّوبُ بْنُ مُوسَى، وَيَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ كُلُّهُمْ عَنْ حُمَيْدِ بْنِ نَافِعٍ «عَنْ زَيْنَبَ بِنْتِ أُمِّ سَلَمَةَ أَنَّ ابْنَةَ النَّحَّامِ تُوُفِّيَ عَنْهَا زَوْجُهَا، فَأَتَتْ أُمُّهَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: إِنَّ ابْنَتِي تَشْتَكِي عَيْنَهَا أَفَأُكَحِّلُهَا؟ قَالَ: لَا قَالَتْ: إِنِّي أَخْشَى أَنْ تَنْفَقِئَ عَيْنُهَا؟ قَالَ: وَإِنْ انْفَقَأَتْ» وَذَكَرَتْ الْخَبَرَ.

L35109 Abu Muhammad said: Zaynab has companionship, and we have mentioned it before this from Zaynab from her mother—the Mother of the Believers (may Allah be pleased with her).

قَالَ أَبُو مُحَمَّدٍ: زَيْنَبُ لَهَا صُحْبَةٌ وَقَدْ ذَكَرْنَاهُ قَبْلَ هَذَا عَنْ زَيْنَبَ عَنْ أُمِّهَا أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا -.

L35110 From the chain of Aḥmad ibn Shuʿayb: I [Ḥusayn ibn Muḥammad al-Zāriʿ

al-Baṣrī] report, from Khālid ibn al-Ḥārith, from Hishām ibn Ḥassān, from Ḥafṣa bint Sīrīn, from Umm ʿAṭiyya, who said: The Messenger of Allah (peace be upon him) said: "A woman shall not mourn any deceased for more than three days except for her husband, for she must mourn him four months and ten days. She shall not wear dyed garments except a garment of ʿaṣb fabric, nor apply kohl, nor comb her hair, nor use any fragrance except at the time of her purification when she becomes pure: a small measure of qust and nail-shaped [substance]."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا حُسَيْنُ بْنُ مُحَمَّدٍ الزَّارِعُ الْبَصْرِيُّ أَنَا خَالِدُ بْنُ الْحَارِثِ أَنَا هِشَامُ بْنُ حَسَّانٍ عَنْ حَفْصَةَ بِنْتِ سِيرِينَ عَنْ أُمِّ عَطِيَّةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تُحِدُّ الْمَرْأَةُ عَلَى مَيِّتٍ فَوْقَ ثَلَاثٍ إِلَّا عَلَى زَوْجٍ فَإِنَّهَا تُحِدُّ عَلَيْهِ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا وَلَا تَلْبَسُ ثَوْبًا مَصْبُوغًا إِلَّا ثَوْبَ عَصْبٍ وَلَا تَكْتَحِلُ وَلَا تَمْتَشِطُ، وَلَا تَمَسُّ طِيبًا إِلَّا عِنْدَ طُهْرِهَا حِينَ تَطْهُرُ: نُبْذَةً مِنْ قُسْطٍ وَأَظْفَارٍ» .

L35111 Through the chain of Ahmad ibn Shuʿayb: From Muhammad ibn Mansur al-Makki, from Sufyan, from ʿAsim, from Hafsah bint Sirin, from Umm ʿAtiyyah, that the Messenger of Allah—peace and blessings be upon him—said: "It is not lawful for a woman who believes in Allah and the Last Day to mourn a deceased person beyond three days, except for her husband; nor may she apply kohl, apply henna, or wear dyed garments."[10]

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَنْصُورٍ الْمَكِّيُّ أَنَا سُفْيَانُ أَنَا عَاصِمٌ عَنْ حَفْصَةَ بِنْتِ سِيرِينَ عَنْ أُمِّ عَطِيَّةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا يَحِلُّ لِامْرَأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ تُحِدَّ عَلَى مَيِّتٍ فَوْقَ ثَلَاثٍ إِلَّا عَلَى زَوْجٍ وَلَا تَكْتَحِلُ وَلَا تَخْتَضِبُ وَلَا تَلْبَسُ ثَوْبًا مَصْبُوغًا» .

L35112–35113 These are the established narrations from the Messenger of Allah—may Allah bless him and grant him peace—and they encompass all that we have mentioned. Here are narrations we clarify as inauthentic—if Allah the Exalted wills—so that those unaware may not err through them.

فَهَذِهِ هِيَ الْآثَارُ الثَّابِتَةُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهِيَ جَامِعَةٌ لِكُلِّ مَا ذَكَرْنَا - وَهَهُنَا - آثَارٌ لَا تَصِحُّ، نُنَبِّهُ عَلَيْهَا - إِنْ شَاءَ اللَّهُ تَعَالَى لِئَلَّا يُخْطِئَ بِهَا مَنْ لَا يَعْرِفُ.

L35114 And here: Among them is a narration via the chain of Ibrāhīm ibn Ṭahmān – Badīl narrated from al-Ḥasan ibn Muslim from Ṣafiyyah bint Shaybah from Umm Salamah from the Prophet (peace be upon him), who said: "A woman whose husband has died must not wear safflower-dyed garments, nor stiffened clothing, nor jewelry." Abū Muḥammad said: This narration mentions jewelry.[11]

وَهَهُنَا -: مِنْهَا خَبَرٌ مِنْ طَرِيقِ إِبْرَاهِيمَ بْنِ طَهْمَانَ حَدَّثَنِي بَدِيلٌ عَنْ الْحَسَنِ بْنِ مُسْلِمٍ عَنْ صَفِيَّةَ بِنْتِ شَيْبَةَ عَنْ أُمِّ سَلَمَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الْمُتَوَفَّى عَنْهَا زَوْجُهَا: لَا تَلْبَسُ الْمُعَصْفَرَ مِنْ الثِّيَابِ وَلَا الْمُمَشَّقَةَ وَلَا الْحُلِيَّ» . قَالَ أَبُو مُحَمَّدٍ: فِي هَذَا الْخَبَرِ ذِكْرُ الْحُلِيِّ،

L35115 And it is not sound because Ibrāhīm ibn Ṭahmān is weak, and had it been

وَلَا يَصِحُّ لِأَنَّ إِبْرَاهِيمَ بْنَ طَهْمَانَ ضَعِيفٌ، وَلَوْ صَحَّ لَقُلْنَا بِهِ.

[10] **Hadith references (L35111):** Sunan an-Nasai 3536.
[11] **Hadith references (L35114):** Sunan Abi Dawud 2304; Mishkat al-Masabih 3334.

sound, we would have upheld it.

وَالْإِحْدَادُ وَاجِبٌ عَلَى الذِّمِّيَّةِ - لِقَوْلِ اللَّهِ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] ، وَبِقَوْلِهِ تَعَالَى: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] وَالدِّينُ الْحُكْمُ.

L35116 Mourning is obligatory upon the dhimmi woman due to Allah's statement, the Exalted: "Judge between them by what Allah has revealed" [Al-Mā'idah: 49], and His saying: "Fight them until there is no fitnah and the religion is entirely for Allah" [Al-Anfāl: 39] – for the religion is the governance.[12]

فَوَاجِبٌ أَنْ يَحْكُمَ عَلَيْهِمْ بِحُكْمِ الْإِسْلَامِ، وَهُوَ لَازِمٌ لَهُمْ، وَبِتَرْكِهِمْ إِيَّاهُ اسْتَحَقُّوا الْخُلُودَ - وَمَنْ قَالَ: إِنَّهُ لَا يَلْزَمُهُمْ دِينُ الْإِسْلَامِ: فَقَدْ فَارَقَ الْإِسْلَامَ.

L35117 It is obligatory to judge them by the ruling of Islam, and it is binding upon them. By abandoning it, they have become deserving of eternal punishment in Hell. Whoever claims that the religion of Islam is not binding upon them has indeed abandoned Islam.

وَيَلْزَمُ الْإِحْدَادُ الْأَمَةَ الْمُتَوَفَّى عَنْهَا زَوْجُهَا كَالْحُرَّةِ.

L35118 Mourning is incumbent upon the bondwoman whose husband has died, just as it is for the free woman.

وَمِنَ الْآثَارِ الَّتِي ذَكَرْنَا -: أَثَرٌ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ قَالَ: سَمِعْت الْمُغِيرَةَ بْنَ الضَّحَّاكِ يَقُولُ: «أَخْبَرَتْنِي أُمُّ حَكِيمٍ بِنْتُ أُسَيْدَ عَنْ أُمِّهَا أَنَّ زَوْجَهَا تُوُفِّيَ عَنْهَا فَأَرْسَلَتْ مَوْلَاتَهَا إلَى أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ تَسْأَلُهَا عَنْ كُحْلِ الْجَلَاءِ؟ فَقَالَتْ: لَا تَكْتَحِلُ بِهِ إلَّا لِأَمْرٍ لَا بُدَّ مِنْهُ يَشْتَدُّ عَلَيْكِ وَتَمْسَحِينَهُ بِالنَّهَارِ فَإِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَخَلَ عَلَيَّ حِينَ تُوُفِّيَ أَبُو سَلَمَةَ - وَقَدْ جَعَلْتُ عَلَى عَيْنِي صَبِرًا؟ فَقَالَ: مَا هَذَا يَا أُمَّ سَلَمَةَ؟

L35119 Among the narrations we mentioned is one we transmitted through Ibn Wahb's chain from Makhramah ibn Bukayr from his father, who said: I heard al-Mughīrah ibn al-Ḍaḥḥāk say: "Umm Ḥakīm bint Usayd informed me through her mother that when her husband died, she sent her freed-woman to Umm Salamah, the Mother of the Believers, to ask her about kohl of jalā'." Umm Salamah replied: "Do not apply it except for an unavoidable necessity that causes you hardship, and wipe it off during the day. For the Prophet—peace and blessings of Allah be upon him—entered upon me when Abū Salamah died, and I had applied aloe sap on my eye. He said: 'What is this, O Umm Salamah?'"

قُلْتُ: يَا رَسُولَ اللَّهِ إنَّمَا هُوَ صَبْرٌ لَيْسَ فِيهِ طِيبٌ، فَقَالَ: إنَّهُ يَشُبُّ الْوَجْهَ فَلَا تَجْعَلِينَهُ إلَّا بِاللَّيْلِ وَتَنْزِعِينَهُ بِالنَّهَارِ وَلَا تَمْتَشِطِي بِالطِّيبِ وَلَا بِالْحِنَّاءِ فَإِنَّهُ خِضَابٌ؟ قُلْت: بِأَيِّ شَيْءٍ أَمْتَشِطُ يَا رَسُولَ اللَّهِ؟ قَالَ: بِالسِّدْرِ تُغَلِّفِينَ بِهِ رَأْسَكِ» . أُمُّ حَكِيمٍ: مَجْهُولَةٌ، وَأُمُّهَا أَشَدُّ إيغَالًا فِي الْجَهَالَةِ.

L35120–35121 I said, "O Messenger of Allah, this is merely aloe (with no fragrance)." He replied, "It enhances the clarity of the complexion, so apply it only at night and remove it by day. Do not comb your hair with perfume or henna, for it is a dye." I asked, "With what should I comb my hair, O Messenger of Allah?" He said, "With lote leaves - apply them to your head." Umm Hakim is obscure, and her mother is even more deeply entrenched in obscurity.

[12] **Qur'an references (L35116):** Qur'an 5:49 (Al-Ma'idah); Qur'an 8:39 (Al-Anfal).

وَجَاءَ فِي ذَلِكَ -: عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، صَحَّ عَنْ ابْنِ عُمَرَ: لَا تَكْتَحِلُ وَلَا تَطَيَّبُ، وَلَا تَخْتَضِبُ، وَلَا تَلْبَسُ الْمُعَصْفَرَ، وَلَا ثَوْبًا مَصْبُوغًا إلَّا بُرْدًا، وَلَا تَتَزَيَّنُ بِحُلِيٍّ، وَلَا تَلْبَسُ شَيْئًا تُرِيدُ بِهِ الزِّينَةَ. وَلَا تَكْتَحِلُ بِكُحْلٍ تُرِيدُ بِهِ الزِّينَةَ إلَّا أَنْ تَشْتَكِيَ عَيْنَهَا.

L35122 It is mentioned regarding this matter from the Companions - may Allah be pleased with them - and it is authentically reported from Ibn Umar: “She must not apply kohl, perfume herself, dye herself with henna, wear safflower-dyed garments, nor any dyed garment except a *burd*; she must not adorn herself with jewelry, wear anything intended for adornment, nor apply kohl with the intent of beautification unless she has an eye ailment.”

وَصَحَّ عَنْهُ أَيْضًا - مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ لَا تَمَسُّ الْمُتَوَفَّى عَنْهَا زَوْجُهَا طِيبًا، وَلَا تَخْتَضِبُ وَلَا تَكْتَحِلُ، وَلَا تَلْبَسُ ثَوْبًا مَصْبُوغًا، إلَّا ثَوْبَ عَصْبٍ تَتَجَلْبَبُ بِهِ - وَهَذَا قَوْلُنَا.

L35123 It has also been authentically reported from him—through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from ʿUbayd Allāh ibn ʿUmar, from Nāfiʿ, from Ibn ʿUmar—that a woman whose husband has died during her waiting period may not touch any perfume, nor dye with henna, nor apply kohl, nor wear a dyed garment, except for a garment of undyed striped ʿaṣb cloth which she wears as an outer garment—and this is our position.

وَصَحَّ عَنْ أُمِّ عَطِيَّةَ أَنْ لَا تَلْبَسَ فِي الْإِحْدَادِ الثِّيَابَ الْمُصْبَغَةَ إلَّا الْعَصْبَ، وَأَنْ لَا تَمَسَّ طِيبًا إلَّا أَدْنَاهُ فِي الطُّهْرِ: الْقُسْطَ، وَالْأَظْفَارَ.

L35124 It is authentically reported from Umm ʿAṭiyyah that during mourning, a woman must not wear dyed garments except for undyed cloth (ʿaṣb), nor may she apply any perfume except the least of it - costus (qusṭ) and aromatic buds (aẓfār) - during ritual purity.

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا هِشَامُ بْنُ حَسَّانٍ عَنْ ابْنِ سِيرِينَ، وَحَفْصَةُ عَنْ أُمِّ عَطِيَّةَ قَالَتْ فِي الْمُتَوَفَّى عَنْهَا زَوْجُهَا، أَنَّهَا لَا تَمَسُّ خِضَابًا، وَلَا تَكْتَحِلُ بِكُحْلٍ زِينَةً، وَلَا تَلْبَسُ ثَوْبًا مَصْبُوغًا، وَلَا تَمَسُّ مِنْ الطِّيبِ إلَّا أَدْنَى الطِّيبِ: نُبْذَةً مِنْ قُسْطٍ، وَأَظْفَارٍ عِنْدَ طُهْرِهَا.

L35125 It has been narrated to us via the chain of Saʿīd ibn Manṣūr → Ḥushaym → Hishām ibn Ḥassān → Ibn Sīrīn and Ḥafṣah—narrating from Umm ʿAṭiyyah—who said regarding a woman whose husband has died: She must not apply henna or hair dye, nor adorn herself with decorative kohl, nor wear dyed garments, nor use perfume except the most minimal amount: a small portion of costus (قُسْط) and cloves (أَظْفَار) at the time of her purification after menstruation.

وَقَدْ رُوِّينَا عَنْ أُمِّ سَلَمَةَ - أُمِّ الْمُؤْمِنِينَ -: لَا تَكْتَحِلُ وَإِنْ انْفَقَأَتْ عَيْنَاهَا.

L35126 It has been narrated to us from Umm Salamah—the Mother of the Believers—“Do not apply kohl, even if her eyes were to burst.”

وَهَذَا قَوْلُنَا.

L35127 And this is our position.

وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ أَنَّهَا تَجْتَنِبُ الطِّيبَ وَالزِّينَةَ.

L35128 It has been reported to us from Ibn Abbas that a woman must avoid fragrances and adornment.

L35129–35130 It has been narrated to us from Umm Salamah—the Mother of the Believers—through the chain of ʿAbd al-Razzāq, from Maʿmar, from Budayl al-ʿUqaylī, from al-Ḥasan ibn Muslim, from Ṣafiyyah bint Shaybah, who nar-

rated from Umm Salamah, the Mother of the Believers (whose husband had passed away): she must not wear anything of dyed garments, nor apply kohl, nor wear a ring, nor dye, nor apply perfume.

وَرُوِّينَا عَنْ أُمِّ سَلَمَةَ - أُمِّ الْمُؤْمِنِينَ - مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ بُدَيْلٍ الْعُقَيْلِيِّ عَنْ الْحَسَنِ بْنِ مُسْلِمٍ عَنْ صَفِيَّةَ بِنْتِ شَيْبَةَ عَنْ أُمِّ سَلَمَةَ - أُمِّ الْمُؤْمِنِينَ - الْمُتَوَفَّى عَنْهَا زَوْجُهَا: لَا تَلْبَسُ مِنْ الثِّيَابِ الْمُصْبَغَةِ شَيْئًا، وَلَا تَكْتَحِلُ، وَلَا تَلْبَسُ خَاتَمًا، وَلَا تَخْتَضِبُ، وَلَا تَطَيَّبُ.

L35131 It is reported from Ibn Abbas or Saʿīd ibn al-Musayyib that a woman whose husband has died during her waiting period must not use perfume, wear a garment dyed with conspicuous colors, apply kohl, wear jewelry, or apply dye.

وَعَنْ ابْنِ عَبَّاسٍ - أَوْ سَعِيدِ بْنِ الْمُسَيِّبِ -: الْمُتَوَفَّى عَنْهَا زَوْجُهَا لَا تَمَسُّ طِيبًا، وَلَا تَلْبَسُ ثَوْبًا مَصْبُوغًا، وَلَا تَكْتَحِلُ، وَلَا تَلْبَسُ الْحُلِيَّ، وَلَا تَخْتَضِبُ.

L35132 And from a chain that is not sound from ʿĀʾishah—the Mother of the Believers—due to Ibn Lahiʿah's presence in it: A widow should not wear saffron-dyed clothing, nor use perfume, nor apply kohl, nor wear jewelry. She may wear striped woven garments if she wishes.

وَمِنْ طَرِيقٍ لَا تَصِحُّ عَنْ عَائِشَةَ - أُمِّ الْمُؤْمِنِينَ - لِأَنَّ فِيهَا ابْنَ لَهِيعَةَ -: لَا تَلْبَسُ الْمُتَوَفَّى عَنْهَا مُعَصْفَرًا، وَلَا تَقْرَبُ طِيبًا، وَلَا تَكْتَحِلُ، وَلَا تَلْبَسُ حُلِيًّا، وَتَلْبَسُ - إنْ شَاءَتْ - ثِيَابَ الْعَصْبِ.

L35133 As for the followers—it is authentically reported from ʻAṭāʾ that a woman in mourning must not wear dyed garments or jewelry, nor use perfume or adornment. She must not apply antimony-based kohl, as it constitutes adornment, nor use ḥaḍḍ—as they claimed it contains wars—though she may apply aloe-based kohl if she wishes. If she already wears silver jewelry, she need not remove it if she chooses, but if she does not wear it, she must not don it for adornment. If compelled to use antimony or perfume medicinally, she may do so. He disliked gold for her and others except as a ring. He said: She may apply henna and katam to her hair. He stated: Costus root and cloves are not perfume, and she must not adorn her howdah if she rides in it. He regarded garments from Marw and Herat as adornment and pearls as adornment. He said: If she wears silver rings set with rubies or other gems, she may retain them. He ruled: If a young girl's husband dies, her guardians may adorn and perfume her.

أَمَّا التَّابِعُونَ - فَصَحَّ عَنْ عَطَاءٍ أَنَّ الْمُتَوَفَّى عَنْهَا لَا تَلْبَسُ صِبَاغًا، وَلَا حُلِيًّا وَتُنْهَى عَنْ الطِّيبِ، وَالزِّينَةِ، وَلَا تَكْتَحِلُ بِإِثْمِدٍ، فَإِنَّ فِيهِ زِينَةً، وَلَا تُخَضِّضُ فَإِنَّ فِيهِ - زَعَمُوا - وَرْسًا، وَتَكْتَحِلُ بِالصَّبِرِ - إنْ شَاءَتْ - فَإِنْ كَانَ عَلَيْهَا حُلِيٌّ فِضَّةٍ فَلَا تَنْزِعُهُ - إنْ شَاءَتْ - وَإِنْ لَمْ يَكُنْ عَلَيْهَا فَلَا تَلْبَسُهُ تُرِيدُ بِهِ الزِّينَةَ، فَإِنْ اُضْطُرَّتْ إلَى الْإِثْمِدِ، أَوْ الطِّيبِ: فَلَهَا أَنْ تَتَدَاوَى بِهِ، وَكَانَ يَكْرَهُ الذَّهَبَ لَهَا، وَلِغَيْرِهَا إلَّا أَنْ يَكُونَ خَاتَمًا. قَالَ: وَلَهَا أَنْ تَمْتَشِطَ بِالْحِنَّاءِ، وَالْكَتَمِ. قَالَ: وَلَيْسَ الْقُسْطُ، وَالْأَظْفَارُ طِيبًا، وَلَا تُزَيِّنُ هَوْدَجَهَا - إنْ رَكِبَتْ فِيهِ وَرَأَى: الْمَرْوِيَّ، وَالْهَرَوِيَّ زِينَةً - وَرَأَى اللُّؤْلُؤَ زِينَةً. قَالَ: فَإِنْ كَانَ عَلَيْهَا خَوَاتِمُ فِضَّةٍ فِيهَا فُصُوصٌ يَوَاقِيتُ، أَوْ غَيْرُهُ: فَلَهَا أَنْ تَلْبَسَهُ - قَالَ: فَإِنْ تُوُفِّيَ زَوْجُ الصَّغِيرَةِ فَلِأَهْلِهَا أَنْ يُزَيِّنُوهَا وَيُطَيِّبُوهَا.

L35134 It has been reported from Saʿīd ibn al-Musayyib, ʿAmrah bint ʿAbd al-

Raḥmān, ʿUrwah ibn al-Zubayr, ʿAṭāʾ, Yaḥyā ibn Saʿīd al-Anṣārī, and Rabīʿah that she should not wear jewelry nor garments dyed with any kind of dye.

وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَعَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَعَطَاءٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَرَبِيعَةَ: أَنَّهَا لَا تَلْبَسُ حُلِيًّا، وَلَا ثَوْبًا مَصْبُوغًا بِشَيْءٍ مِنْ الْأَصْبَاغِ.

L35135 It is authentically reported from Urwah ibn al-Zubayr: A woman whose husband has died must not apply kohl, dye her hair, comb her hair, wear a garment dyed with wars or saffron, nor wear red clothing except for those made of ʿaṣb—a striped Yemeni cloth.

وَصَحَّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ: الْمُتَوَفَّى عَنْهَا زَوْجُهَا لَا تَكْتَحِلُ، وَلَا تَخْتَضِبُ وَلَا تَمْتَشِطُ، وَلَا تَلْبَسُ ثَوْبًا فِيهِ وَرْسٌ، أَوْ زَعْفَرَانٌ، وَلَا تَلْبَسُ الْحُمْرَةَ إلَّا الْعَصْبَ.

L35136–35137 It is authentically reported from Az-Zuhri that he said: It is disliked for a widow to bind her hair tightly, wear black in any form, wear garments dyed with bright colors, adorn herself with jewelry, or apply perfume.

وَصَحَّ عَنْ الزُّهْرِيِّ قَالَ: يُكْرَهُ لِلْمُتَوَفَّى عَنْهَا: الْعَصْبُ وَالسَّوَادُ، وَلَا تَلْبَسُ الثِّيَابَ الْمُصْبَغَةَ، وَلَا تَلْبَسُ حُلِيًّا وَلَا طِيبًا.

L35138 It has been authentically reported from Ibrāhīm al-Nakhaʿī: A widow in her waiting period must not apply yellow dye, nor touch perfume, nor apply kohl for adornment. However, she may apply kohl made from medicinal kohl (zūr) or aloe (ṣabr) - except if her eyes become inflamed, in which case she may apply kohl.

وَصَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: الْمُتَوَفَّى عَنْهَا لَا تَمَسُّ الصُّفْرَةَ، وَلَا الطِّيبَ، وَلَا تَكْتَحِلُ بِكُحْلٍ زِينَةً، لَكِنْ بِزُورٍ، أَوْ صَبْرٍ، إلَّا أَنْ تَرْمَدَ فَتَكْتَحِلَ.

L35139 It has been authentically reported from Urwa ibn al-Zubayr: A woman whose husband died said to him, “I have nothing but this headscarf—and it is dyed with sappanwood?” He replied, “Dye it black.”

وَصَحَّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ: أَنَّ امْرَأَةً مَاتَ زَوْجُهَا، قَالَتْ لَهُ: لَيْسَ لِي إلَّا هَذَا الْخِمَارُ - وَهُوَ مَصْبُوغٌ بِبَقَّمٍ؟ فَقَالَ: أُصْبُغِيهِ بِسَوَادٍ -.

L35140 As for the later scholars, Abū Ḥanīfa and his companions stated: She must abstain from adornment, perfume, kohl, and garments dyed specifically with wars (a type of dye plant), saffron, or safflower. She must not apply oil at all—whether perfumed or not.

وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ أَبَا حَنِيفَةَ، وَأَصْحَابَهُ قَالُوا: تَمْتَنِعُ مِنْ الزِّينَةِ، وَالطِّيبِ، وَالْكُحْلِ، وَالثِّيَابِ الْمَصْبُوغَةِ بِالْوَرْسِ، وَالزَّعْفَرَانِ، وَالْعُصْفُرِ خَاصَّةً - وَلَا تَدَّهِنُ بِزَيْتٍ أَصْلًا، سَوَاءٌ مُطَيَّبًا كَانَ أَوْ غَيْرَ مُطَيَّبٍ.

L35141 They permitted her the red *khazz*.

وَأَبَاحُوا لَهَا الْخَزَّ الْأَحْمَرَ.

L35142 Malik said: She must avoid all adornment and jewelry entirely—rings and other items. She may not wear silk or striped cloth, except coarse striped cloth specifically, nor any dyed garment except those dyed black. She must not apply kohl whatsoever, nor use any perfume, nor any oil scented with

وَقَالَ مَالِكٌ: تَجْتَنِبُ الزِّينَةَ كُلَّهَا، وَالْحُلِيَّ: الْخَاتَمَ، وَغَيْرَهُ - وَلَا تَلْبَسُ الْخَزَّ، وَلَا الْعَصْبَ، إلَّا الْعَصْبَ الْغَلِيظَ خَاصَّةً، وَلَا ثَوْبًا مَصْبُوغًا إلَّا بِسَوَادٍ وَلَا تَكْتَحِلُ أَصْلًا، وَلَا تَقْرَبُ

basil or other substances. She may not comb her hair with henna or katam, nor use anything that remains in the hair, but may use sidr or similar substances. She may apply oil or sesame oil (shiraj).

شَيْئًا مِنْ الطِّيبِ، وَلَا دُهْنًا مُطَيَّبًا بِرَيْحَانٍ، أَوْ غَيْرِهِ، وَلَا تَمْتَشِطُ بِحِنَّاءٍ، وَلَا بِكَتَمٍ، وَلَا بِشَيْءٍ يَخْتَمِرُ فِي الرَّأْسِ، لَكِنْ بِالسِّدْرِ، وَمَا أَشْبَهَهُ - وَتَدَّهِنُ بِالزَّيْتِ وَالشَّيْرَجِ.

L35143 Al-Shafi'i said: She must avoid all adornment and all ointments—oil and similar substances, whether applied to the head or elsewhere. She should not apply kohl that contains adornment, but there is no harm in using plain kohl without adornment. If compelled to use kohl containing adornment, she may apply it at night and wipe it off during the day, such as aloe sap and the like.

وَقَالَ الشَّافِعِيُّ: تَجْتَنِبُ الزِّينَةَ كُلَّهَا، وَالدُّهْنَ كُلَّهُ: الزَّيْتَ، وَغَيْرَهُ، فِي الرَّأْسِ، وَغَيْرِهِ، وَلَا تَكْتَحِلُ بِمَا فِيهِ زِينَةٌ، وَلَا بَأْسَ بِالْكُحْلِ الَّذِي لَا زِينَةَ فِيهِ، فَإِنْ اُضْطُرَّتْ إلَى مَا فِيهِ زِينَةٌ مِنْهُ جَعَلَتْهُ لَيْلًا، وَمَسَحَتْهُ نَهَارًا، كَالصَّبْرِ، وَنَحْوِهِ.

L35144 She avoids any dye containing ornamentation, wears white, black-dyed [clothing], green hues proximate to black, and non-ornamental [items], and avoids perfume.

وَتَجْتَنِبُ كُلَّ صِبَاغٍ فِيهِ زِينَةٌ، وَتَلْبَسُ الْبَيَاضَ، وَالْمَصْبُوغَ بِالسَّوَادِ، وَالْخُضْرَةَ الْمُقَارِبَةَ لِلسَّوَادِ، وَمَا لَيْسَ بِزِينَةٍ - وَتَجْتَنِبُ الطِّيبَ.

L35145 Abu Muhammad said: All these statements are erroneous, and there is no obscurity in this, for there is no proof whatsoever in any of them to validate them—neither from the Quran nor the Sunnah—let alone Abu Hanifah's statement restricting exclusively to what is dyed with wars, saffron, or safflower.

قَالَ أَبُو مُحَمَّد: كُلُّ هَذِهِ الْأَقْوَالِ خَطَأٌ لَا خَفَاءَ بِهِ؛ لِأَنَّهَا لَيْسَ بِشَيْءٍ مِنْهَا بُرْهَانٌ يُصَحِّحُهُ، لَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا سِيَّمَا قَوْلَ أَبِي حَنِيفَةَ فِي تَخْصِيصِ مَا صُبِغَ بِوَرْسٍ، أَوْ زَعْفَرَانٍ، أَوْ عُصْفُرٍ خَاصَّةً.

L35146 The opinion of Mālik concerning avoiding sinews except the thick one, and the opinion of al-Shāfiʿī regarding specifying dyes: these are positions not known from anyone before them, and they have no basis whatsoever.

وَقَوْلُ مَالِكٍ فِي اجْتِنَابِ الْعَصْبِ إلَّا الْغَلِيظَ مِنْهُ، وَقَوْلُ الشَّافِعِيِّ فِي تَخْصِيصِ الْأَصْبَاغِ، فَإِنَّهَا أَقْوَالٌ لَا تُعْرَفُ عَنْ أَحَدٍ قَبْلَهُمْ، وَلَا مَعْنَى لَهَا أَصْلًا.

L35147–35148 If it is said: "The meaning in mourning is avoiding adornment?" We reply: Allah is far removed from that. By Allah, had the Messenger of Allah—peace and blessings be upon him—intended this, he would not have failed to state it in a single word. Nor would he have elaborated by mentioning dye except ʿaṣb, perfume except qusṭ, trimming nails only at the time of post-menstrual purification, or restricted applying kohl for adornment and styling hair specifically to henna dyeing. Yet he—upon him be peace and blessings—was endowed with comprehensive speech.

فَإِنْ قِيلَ: الْمَعْنَى فِي الْإِحْدَادِ اجْتِنَابُ الزِّينَةِ؟ قُلْنَا: حَاشَا لِلَّهِ مِنْ ذَلِكَ، وَاَللَّهِ لَوْ أَرَادَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ لَمَا عَجَزَ عَنْ كَلِمَةٍ وَاحِدَةٍ يَقُولُهَا، وَلَا يُطَوِّلُ بِذِكْرِ الصِّبَاغِ إلَّا الْعَصْبَ، وَبِذِكْرِ الطِّيبِ إلَّا الْقُسْطَ، وَالْأَظْفَارَ عِنْدَ الطُّهْرِ، خَاصَّةً، وَبِذِكْرِ الْكُحْلِ، وَالِامْتِشَاطِ، فِي الِاخْتِضَابِ خَاصَّةً، وَهُوَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَدْ أُوتِيَ جَوَامِعَ الْكَلِمِ.

L35149 Among the definitively established falsehoods is attributing to him—peace

and blessings be upon him—that he intended adornment without specifying it, and that he merely intended some dye yet generalized it. This is the undoubted falsehood, the definitive lie, and every statement devoid of proof is falsehood.

وَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ -: أَنْ يُنْسَبَ إلَيْهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ أَرَادَ الزِّينَةَ فَلَمْ يُسَمِّهَا، وَلَمْ يُرِدْ إلَّا بَعْضَ الصِّبَاغِ فَسَمَّاهُ عُمُومًا - هَذَا الْبَاطِلُ الَّذِي لَا شَكَّ فِيهِ، وَالْكَذِبُ الْمَقْطُوعُ بِهِ، وَكُلُّ قَوْلٍ عَرِيَ مِنْ الْبُرْهَانِ فَهُوَ بَاطِلٌ.

L35150 If they say: "The purpose of prescribed mourning is merely grief?" We respond: This is a falsehood. If that were the case, it would have been obligatory first upon the Prophet (peace be upon him)—for there is no grief more obligatory than grief for him (peace be upon him)—then next upon the parents. If a woman were to openly declare that at no time was she made as happy as by her husband's death, she would bear no sin nor reproach for that, provided she did not neglect her marital duties during his lifetime. If the prescribed mourning period were intended for grieving him, it would be permissible for her after the waiting period, as grieving him after the waiting period is not forbidden. However, she is not permitted to observe prescribed mourning beyond the specified duration.

فَإِنْ قَالُوا: إنَّمَا قَصَدَ بِالْإِحْدَادِ الْحُزْنَ؟ قُلْنَا: هَذَا الْكَذِبُ، لَوْ كَانَ ذَلِكَ لَكَانَ وَاجِبًا عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي لَا حُزْنَ أَوْجَبَ مِنْ الْحُزْنِ عَلَيْهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ عَلَى الْأَبَوَيْنِ، وَلَوْ أَنَّ امْرَأَةً أَعْلَنَتْ بِأَنَّهَا لَمْ تُسَرَّ قَطُّ كَسُرُورِهَا بِمَوْتِ زَوْجِهَا لَمَا كَانَ عَلَيْهَا فِي ذَلِكَ إثْمٌ، وَلَا مَلَامَةٌ، إذْ لَمْ تُقَصِّرْ فِي حُقُوقِ التَّبَعُّلِ فِي حَيَاتِهِ، وَلَوْ كَانَ لِلْحُزْنِ عَلَيْهِ لَكَانَ مُبَاحًا لَهَا بَعْدَ الْعِدَّةِ، وَالْحُزْنُ عَلَيْهِ بَعْدَ الْعِدَّةِ لَيْسَ مَحْظُورًا، وَلَا يَجُوزُ لَهَا الْإِحْدَادُ أَكْثَرَ الْمُدَّةِ الْمَذْكُورَةِ.

L35151 And here is another opinion—as reported to us through the chain of Ḥammād ibn Salamah from Ḥumayd that Al-Ḥasan Al-Baṣrī used to say: The triply divorced woman and the widow may both apply kohl, comb their hair, apply perfume, dye with henna, wear sandals, and apply whatever they wish.

وَهَهُنَا قَوْلٌ آخَرُ - كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ أَنَّ الْحَسَنَ الْبَصْرِيَّ كَانَ يَقُولُ: الْمُطَلَّقَةُ ثَلَاثًا، أَوْ الْمُتَوَفَّى عَنْهَا زَوْجُهَا يَكْتَحِلَانِ وَيَمْتَشِطَانِ وَيَطَّيَّبَانِ، وَيَخْتَضِبَانِ، وَيَنْتَعِلَانِ، وَيَضَعَانِ مَا شَاءَتَا.

L35152 It is reported through the chain of transmission of Shu'bah from al-Ḥakam ibn 'Utaybah that the widow does not observe the mourning period ('iddah).

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّ الْمُتَوَفَّى عَنْهَا لَا تُحِدُّ.

L35153–35155 Abū Muḥammad said: The proponents of this doctrine cited as evidence by what – I am Muḥammad ibn Sa'īd ibn Nubāt, I am Aḥmad ibn 'Awn Allāh, I am Qāsim ibn Aṣbagh, I am Muḥammad ibn 'Abd al-Salām al-Khushanī, I am Muḥammad ibn Bashshār, I am Muḥammad ibn Ja'far, from Shu'bah, from al-Ḥakam ibn 'Utaybah, from 'Abd Allāh ibn Shaddād ibn al-Hādī: "That the Messenger of..." Allah's Messenger—may Allah's peace and blessings be upon him—said to the wife of Ja'far ibn Abī Ṭālib: "When three days have passed, then wear whatever you wish," or "after three days"—Shu'bah doubted.

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِمَا - أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ أَنَا أَحْمَدُ بْنُ عَوْنِ اللَّهِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ أَنَا مُحَمَّدُ بْنُ جَعْفَرٍ أَنَا شُعْبَةُ أَنَا الْحَكَمُ بْنُ عُتَيْبَةَ عَنْ عَبْدِ اللَّهِ بْنِ شَدَّادِ بْنِ الْهَادِي «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِامْرَأَةِ جَعْفَرِ بْنِ أَبِي طَالِبٍ: إذَا كَانَ ثَلَاثَةُ أَيَّامٍ فَالْبَسِي مَا شِئْتِ، أَوْ إذَا كَانَ بَعْدَ ثَلَاثَةِ أَيَّامٍ» شُعْبَةُ شَكَّ.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ: أَنَا الْحَجَّاجُ بْنُ أَرْطَاةَ عَنْ الْحَسَنِ بْنِ سَعِيدٍ عَنْ عَبْدِ اللَّهِ بْنِ شَدَّادٍ «أَنَّ أَسْمَاءَ بِنْتَ عُمَيْسٍ اسْتَأْذَنَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تَبْكِيَ عَلَى جَعْفَرٍ - وَهِيَ امْرَأَتُهُ - فَأَذِنَ لَهَا ثَلَاثَةَ أَيَّامٍ، ثُمَّ بَعَثَ إلَيْهَا بَعْدَ ثَلَاثَةِ أَيَّامٍ: أَنْ تَطَهَّرِي وَاكْتَحِلِي.» قَالَ أَبُو مُحَمَّدٍ: هَذَا مُنْقَطِعٌ وَلَا حُجَّةَ فِيهِ؛ لِأَنَّ عَبْدَ اللَّهِ بْنَ شَدَّادٍ لَمْ يَسْمَعْ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَيْئًا.

From the path of Hammad ibn Salama: I [narrate] from Al-Hajjaj ibn Artat, from Al-Hasan ibn Sa'id, from 'Abdullah ibn Shaddad, that Asma' bint 'Umays sought permission from the Prophet (peace be upon him) to mourn Ja'far—who was her husband—so he permitted her for three days. Then after three days, he sent her a message instructing her to purify herself and apply kohl. Abu Muhammad said: This chain is disconnected and contains no valid evidence, for 'Abdullah ibn Shaddad did not hear anything from the Messenger of Allah (peace be upon him).

قَالَ عَلِيٌّ: وَلَقَدْ كَانَ يَلْزَمُ الْآخِذِينَ بِالْمُرْسَلِ إذَا وَافَقَ آرَاءَهُمْ الْفَاسِدَةَ وَرَدُّوا بِهِ السُّنَنَ الثَّابِتَةَ: كَصَلَاةِ الْإِمَامِ قَاعِدًا لِمَرَضٍ بِالْأَصِحَّاءِ.

Ali said: Indeed, those who persist in rigidly following *mursal* reports—when they align with their flawed opinions—use them to reject established Sunnah practices, such as [rejecting] the Imam praying seated due to illness while the congregation is healthy.

وَكَإِيجَابِ الْعِدَّةِ أَنْ يَأْخُذُوا بِهَذَا، وَلَا سِيَّمَا وَالْإِحْدَادُ رَوَتْهُ أُمُّ سَلَمَةَ - أُمُّ الْمُؤْمِنِينَ -: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَمَرَ بِهِ إثْرَ مَوْتِ أَبِي سَلَمَةَ، وَلَا خِلَافَ فِي أَنَّ مَوْتَ أَبِي سَلَمَةَ كَانَ قَبْلَ قَتْلِ جَعْفَرٍ - رَضِيَ اللَّهُ عَنْهُمَا - بِسَنَتَيْنِ - وَلَكِنَّهُمَا لَا يُبَالُونَ بِالتَّنَاقُضِ.

The obligation of the waiting period entails adhering to this practice of mourning, all the more so because Umm Salamah - the Mother of the Believers - reported that the Prophet (peace and blessings be upon him) commanded it following Abu Salamah's death. There is no disagreement that Abu Salamah's death occurred two years before the killing of Ja'far (may Allah be pleased with them both). Yet they pay no heed to the contradiction.

قَالَ عَلِيٌّ: إنْ غُسِلَ الثَّوْبُ الْمَصْبُوغُ حَتَّى لَا يَبْقَى فِيهِ أَثَرُ صِبَاغٍ فَلَيْسَ مَصْبُوغًا: فَلَهَا لِبَاسُهُ.

Ali said: If a dyed garment is washed until no trace of dye remains in it, it is not dyed; therefore, for her, wearing it is permissible.

[مَسْأَلَةُ الْإِحْدَادِ عَلَى الْمَيِّتِ]

The Ruling on the Widow's 'Iddah (Mourning Period) for the Deceased

١٩٩٧ - مَسْأَلَةٌ: فَلَوْ الْتَزَمَتْ الْمَرْأَةُ هَذَا ثَلَاثَةَ أَيَّامٍ عَلَى أَبٍ، أَوْ أَخٍ، أَوْ ابْنٍ، أَوْ أُمٍّ، أَوْ قَرِيبٍ، أَوْ قَرِيبَةٍ: كَانَ ذَلِكَ مُبَاحًا -: لِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ أَنَا مَالِكٌ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ حُمَيْدِ بْنِ نَافِعٍ «عَنْ زَيْنَبَ بِنْتِ أَبِي سَلَمَةَ أَنَّهَا أَخْبَرَتْهُ أَنَّهَا سَمِعَتْ أُمَّ حَبِيبَةَ، وَزَيْنَبَ بِنْتَ جَحْشٍ -

1997. Issue: If a woman undertakes mourning for three days over a father, brother, son, mother, male relative, or female relative, this is permissible—based on what we have narrated through Al-Bukhari's chain: I am Abdullah ibn Yusuf, I am Malik, from Abdullah ibn Abi Bakr ibn Muhammad ibn Amr ibn Hazm, from Humaid ibn Nāfiʿ, from Zaynab bint Abi Salamah, who informed him that she heard Umm Habibah and Zaynab bint Jahsh—the two Mothers of the Believers—say they heard Allah's Messenger, peace and blessings be upon him, state: "It is not lawful for a woman who believes

in Allah and the Last Day to mourn a deceased person beyond three days, except for a husband: four months and ten days."[13]

أُمِّ الْمُؤْمِنِينَ - تَقُولَانِ: إِنَّهُمَا سَمِعَتَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ لَا يَحِلُّ لِامْرَأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ تُحِدَّ عَلَى مَيِّتٍ فَوْقَ ثَلَاثٍ إِلَّا عَلَى زَوْجٍ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا» .

L35162–35163 **A legal issue: A thrice-divorced woman is not obligated to observe the waiting period.**

[مَسْأَلَةٌ لَيْسَ عَلَى الْمُطَلَّقَةِ ثَلَاثًا إِحْدَادٌ]

L35164 Issue: A woman thrice-divorced is not obligated to observe *iḥdād* (mourning) whatsoever. This is the position of ʿAṭāʾ, Mālik, and Abū Sulaymān. Others held a contrary view—as we have transmitted via the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from Saʿīd ibn al-Musayyab, who stated: "A woman definitively divorced observes mourning like a widow. She is not to use perfume, wear dyed garments, apply kohl, nor dye with henna, nor adorn herself with jewelry."

مَسْأَلَةٌ: وَلَيْسَ عَلَى الْمُطَلَّقَةِ ثَلَاثًا إِحْدَادٌ أَصْلًا، وَهُوَ قَوْلُ عَطَاءٍ، وَمَالِكٍ وَأَبِي سُلَيْمَانَ - وَقَالَ غَيْرُهُمْ خِلَافَ ذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: تُحِدُّ الْمَبْتُوتَةُ كَمَا تُحِدُّ الْمُتَوَفَّى عَنْهَا، فَلَا تَمَسُّ طِيبًا وَلَا تَلْبَسُ ثَوْبًا مَصْبُوغًا وَلَا تَكْتَحِلُ لَا تَخْتَضِبُ وَلَا تَلْبَسُ الْحُلِيَّ.

L35165 Al-Zuhri said: A woman irrevocably divorced must not wear new jewelry. If she has jewelry on, she need not remove it. She must not apply perfume. She may dye or style her hair with henna and katam (a plant used for dye), and may use oil infused with basil. Al-Zuhri considered reprehensible oil containing aromatic substances.

وَقَالَ الزُّهْرِيُّ: الْمَبْتُوتَةُ لَا تُحْدِثُ حُلِيًّا فَإِنْ كَانَ عَلَيْهَا حُلِيٌّ لَمْ تَنْزِعْهُ، وَلَا تَمَسُّ طِيبًا، وَتَمْتَشِطُ بِالْحِنَّاءِ وَالْكَتَمِ، وَتَدَّهِنُ بِالدُّهْنِ الَّذِي يَنِشُّ بِالرَّيْحَانِ - وَكَرِهَ الزُّهْرِيُّ الَّذِي فِيهِ الْأَفَاوِيهُ.

L35166 And through the chain of Ibn Abī Shaybah: I am Abdul Wahhab ibn Abdul Majid al-Thaqafi, from Ayyub al-Sikhtiyānī, who said: Ata al-Khurasani wrote to me, stating: I asked Sa'id ibn al-Musayyib and the jurists of Medina about the divorced woman and the widow during her waiting period. They replied: Both must observe the iḥdād mourning restrictions and refrain from using kohl, henna application, perfume, and adornment.

وَمِنْ طَرِيقِ ابْنِ بْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ قَالَ: كَتَبَ إِلَيَّ عَطَاءُ الْخُرَاسَانِيُّ قَالَ: سَأَلْت سَعِيدَ بْنَ الْمُسَيِّبِ، وَفُقَهَاءَ الْمَدِينَةِ عَنْ الْمُطَلَّقَةِ، وَالْمُتَوَفَّى عَنْهَا زَوْجُهَا؟ فَقَالُوا: تُحِدَّانِ وَتَتْرُكَانِ التَّكْحِيلَ، وَالتَّخْضِيبَ وَالتَّطْيِيبَ، وَالزِّينَةَ.

L35167 Through the chain of Abu Bakr ibn Abi Shaybah: Jarir reported from al-Mughirah, from Ibrahim, who said: A divorced woman should not apply kohl as adornment.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا جَرِيرٌ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ قَالَ: الْمُطَلَّقَةُ لَا تَكْتَحِلُ بِكُحْلٍ زِينَةً.

[13] **Hadith references (L35161):** Sunan Ibn Majah 2086.

L35168 And through the chain of Abū Bakr ibn Abī Shaybah: Abū Dāwūd—he is al-Ṭayālisī—narrated from Ḥammād ibn Salamah from Ayyūb al-Sikhtiyānī from Muḥammad ibn Sīrīn, who said: A woman thrice-divorced does not apply kohl nor dye her hair.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا أَبُو دَاوُد - هُوَ الطَّيَالِسِيُّ - عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: الْمُطَلَّقَةُ ثَلَاثًا لَا تَكْتَحِلُ، وَلَا تَخْتَضِبُ.

L35169 From the chain of Abū Bakr ibn Abī Shaybah: Ghundar narrated from Shuʿbah from al-Ḥakam regarding the thrice-divorced woman—she must not apply kohl nor deliberately adorn herself, and her restrictions are stricter, in his view, than those of a widow.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا غُنْدَرٌ عَنْ شُعْبَةَ عَنْ الْحَكَمِ فِي الْمُطَلَّقَةِ ثَلَاثًا لَا تَكْتَحِلُ وَلَا تَزَيَّنُ - وَهِيَ عِنْدَهُ أَشَدُّ مِنْ الْمُتَوَفَّى عَنْهَا.

L35170 And through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī, from al-Mughīrah, from Ibrāhīm al-Nakhaʿī: he considered adornment reprehensible for divorced women over whom the husband has no right of revocation. Al-Shāfiʿī states the view of Ibrāhīm al-Nakhaʿī but did not deem it obligatory, whereas Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, Abū Ḥanīfah, his companions, Abū ʿUbayd, and Abū Thawr deemed it obligatory.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ كَانَ يَكْرَهُ الزِّينَةَ لِلَّتِي لَا رَجْعَةَ لَهُ عَلَيْهَا مِنْ الْمُطَلَّقَاتِ - وَبِقَوْلِ إبْرَاهِيمَ النَّخَعِيِّ يَقُولُ الشَّافِعِيُّ، وَلَمْ يُوجِبْهُ، وَأَوْجَبَهُ سُفْيَانُ الثَّوْرِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو حَنِيفَةَ، وَأَصْحَابُهُ، وَأَبُو عُبَيْدٍ، وَأَبُو ثَوْرٍ.

L35171–35172 Abu Muhammad said: The argument of those who obligate mourning on a thrice-divorced woman is their statement: “She is divorced from her husband like a widow, so the legal ruling for both should be the same.”

قَالَ أَبُو مُحَمَّد: حُجَّةُ مَنْ أَوْجَبَ الْإِحْدَادَ عَلَى الْمُطَلَّقَةِ ثَلَاثًا أَنْ قَالُوا: هِيَ مُفَارِقَةٌ لِزَوْجِهَا كَالْمُتَوَفَّى عَنْهَا فَيَجِبُ أَنْ يَكُونَ حُكْمُهُمَا وَاحِدًا.

L35173 Ali said: We know of no objection from them other than this, and it is invalid, for all qiyas is void.

قَالَ عَلِيٌّ: مَا نَعْلَمُ لَهُمْ شَغَبًا غَيْرَ هَذَا، وَهُوَ شَغَبٌ فَاسِدٌ، لِأَنَّ الْقِيَاسَ كُلَّهُ بَاطِلٌ.

L35174 Then it is said to them: Why have you not obligated mourning practices for the woman involved in liʿān, the khulʿ divorcee, and the woman divorced with an irrevocable divorce—according to your view—so all these women, in your understanding, are separated from their husbands?

ثُمَّ يُقَالُ لَهُمْ: هَلَّا أَوْجَبْتُمْ الْإِحْدَادَ عَلَى الْمُلَاعِنَةِ، وَالْمُخْتَلِعَةِ، وَالْمُطَلَّقَةِ - عِنْدَكُمْ - طَلَاقًا بَائِنًا، فَكُلُّ هَؤُلَاءِ عِنْدَكُمْ مُفَارِقَاتٌ لِأَزْوَاجِهِنَّ.

L35175 Moreover, Allah the Almighty refers to the revocably divorced woman as “one separating from her husband” throughout her entire waiting period, as He the Exalted says: {So retain them honorably or part with them honorably} [65:2]. There is no disagreement that the mourning observance (ihdād) is not required of her—neither during the waiting period nor after its completion.[14]

وَأَيْضًا فَقَدْ سَمَّى اللَّهُ - عَزَّ وَجَلَّ - الْمُطَلَّقَةَ طَلَاقًا رَجْعِيًّا " مُفَارِقَةً لِزَوْجِهَا " بِتَمَامِ عِدَّتِهَا، إذْ يَقُولُ تَعَالَى: {فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] وَلَا خِلَافَ فِي أَنَّهُ لَا إحْدَادَ عَلَيْهَا لَا فِي الْعِدَّةِ وَلَا بَعْدَ الْعِدَّةِ.

[14] **Qur’an references (L35175):** Qur’an 65:2 (At-Talaq).

L35176 Allah the Exalted has distinguished between what they had conflated: He decreed that the widow's waiting period is four months and ten days, and the irrevocably divorced (ba'in) woman's waiting period is three menstrual cycles or three months. Thus, the invalidity of those who analogize one to the other becomes evident—and success comes only from Allah, the Exalted.

L35177 This is among the matters in which Mālik nullified the veneration due to him through his opposition to the jurists of Medina and the majority of earlier scholars.

L35178 **A case regarding a woman in her waiting period who failed to observe mourning prohibitions during her ʿiddah.**

L35179 1999. Issue: If the woman observing the waiting period neglects the aforementioned mourning obligations until her waiting period concludes, then if this was due to ignorance, there is no blame on her. But if intentional, she is disobedient to Allah, the Mighty and Majestic, and she does not have to repeat it, as the time designated for mourning has already passed. It is not permissible to perform any act outside its proper place or beyond its appointed time.

L35180 Abu Muhammad said: If the waiting period of the woman whose husband has died is determined by the delivery of her pregnancy, she must observe mourning for exactly four months and ten days; we do not impose it upon her beyond that, because all the texts stipulate four months and ten days only.

L35181 It has been authentically established that the Messenger of Allah—peace and blessings be upon him—commanded Subay'ah al-Aslamiyyah to marry whomever she wished when she delivered her child after her husband's death by nights, as she was eager for marriage, and he did not disapprove of that for her.

L35182 Thus, it is confirmed that if her pregnancy ends before completing four months and ten days, there is no mourning obligation upon her thereafter. We have not found an explicit text obligating it upon her - if the pregnancy extends beyond four months and ten days. If such a text exists, ruling ac-

وَقَدْ فَرَّقَ اللَّهُ تَعَالَى بَيْنَ مَا جَمَعُوا بَيْنَهُ فَجَعَلَ عِدَّةَ الْمُتَوَفَّى عَنْهَا أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، وَعِدَّةَ الْمَبْتُوتَةِ ثَلَاثَةَ قُرُوءٍ أَوْ ثَلَاثَةَ أَشْهُرٍ -: فَلَاحَ فَسَادُ مَنْ قَاسَ إحْدَاهُمَا عَلَى الْأُخْرَى - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَهَذَا مِمَّا نَقَضَ فِيهِ مَالِكٌ تَعْظِيمَهُ مُخَالَفَةَ فُقَهَاءِ الْمَدِينَةِ، وَجُمْهُورِ الْمُتَقَدِّمِينَ.

[مَسْأَلَةٌ أَغْفَلَتْ الْمُعْتَدَّةُ الْإِحْدَادَ حَتَّى تَنْقَضِيَ الْعِدَّةُ]

١٩٩٩ - مَسْأَلَةٌ: فَإِنْ أَغْفَلَتْ الْمُعْتَدَّةُ الْإِحْدَادَ الْمَذْكُورَ حَتَّى تَنْقَضِيَ الْعِدَّةُ، فَإِنْ كَانَ مِنْ جَهْلٍ فَلَا حَرَجَ، وَإِنْ كَانَ عَمْدًا فَهِيَ عَاصِيَةٌ لِلَّهِ عَزَّ وَجَلَّ وَلَا تُعِيدُ ذَلِكَ؛ لِأَنَّ وَقْتَ الْإِحْدَادِ قَدْ مَضَى، وَلَا يَجُوزُ عَمَلُ شَيْءٍ فِي غَيْرِ مَوْضِعِهِ وَفِي غَيْرِ وَقْتِهِ.

قَالَ أَبُو مُحَمَّدٍ إنْ كَانَتْ عِدَّةُ الْمُتَوَفَّى عَنْهَا وَضْعَ حَمْلِهَا فَلَا بُدَّ لَهَا مِنْ الْإِحْدَادِ أَرْبَعَةِ أَشْهُرٍ وَعَشْرٍ فَأَقَلَّ - وَلَا نُوجِبُهُ عَلَيْهَا بَعْدَ ذَلِكَ، لِأَنَّ النُّصُوصَ كُلَّهَا إنَّمَا جَاءَتْ بِأَرْبَعَةِ أَشْهُرٍ وَعَشْرٍ فَقَطْ.

وَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ سُبَيْعَةَ الْأَسْلَمِيَّةَ بِأَنْ تَنْكِحَ مَنْ شَاءَتْ إذْ وَضَعَتْ حَمْلَهَا إثْرَ مَوْتِ زَوْجِهَا بِلَيَالٍ وَقَدْ تَشَوَّفَتْ لِلْخُطَّابِ فَلَمْ يُنْكِرْ ذَلِكَ عَلَيْهَا.

cordingly becomes obligatory; otherwise, it does not. And success comes only from Allah, the Exalted.

فَصَحَّ أَنَّهُ لَا إحْدَادَ عَلَيْهَا بَعْدَ انْقِضَاءِ حَمْلِهَا قَبْلَ الْأَرْبَعَةِ الْأَشْهُرِ وَالْعَشْرِ وَلَمْ نَجِدْ نَصًّا بِإِيجَابِهِ عَلَيْهَا - إنْ تَمَادَى الْحَمْلُ أَكْثَرَ مِنْ أَرْبَعَةِ أَشْهُرٍ وَعَشْرٍ، فَإِنْ وُجِدَ فَالْقَوْلُ بِهِ وَاجِبٌ، وَإِلَّا فَلَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L35183–35185 Then, when we reflected, we made up for it by examining the Messenger of Allah—may Allah's blessings and peace be upon him—in some chains of the narration from Umm ʿAṭiyyah, which states that she avoids [something]. What he mentioned requiring abstention, without specifying [the waiting period of] four months and ten days, therefore the default ruling takes precedence: that she must carry her pregnancy to term.

ثُمَّ اسْتَدْرَكْنَا إذْ تَدَبَّرْنَا قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي بَعْضِ طُرُقِ خَبَرِ أُمِّ عَطِيَّةَ أَنَّهَا تَجْتَنِبُ مَا ذَكَرَ اجْتِنَابَهُ دُونَ ذِكْرِ أَرْبَعَةِ أَشْهُرٍ وَعَشْرٍ، فَكَانَ الْعُمُومُ أَوْلَى أَنْ تَضَعَ حَمْلَهَا.

L35186 **A legal issue: The widow and the thrice-divorced woman must fulfill their prescribed waiting periods in the residence mandated by law.**

[مَسْأَلَةٌ تَعْتَدُّ الْمُتَوَفَّى عَنْهَا وَالْمُطَلَّقَةُ ثَلَاثًا حَيْثُ أَحْبَبْنَ]

L35187 2000 – Issue: The widow observing her waiting period, the thrice-divorced woman, and the manumitted woman who chooses to separate from her husband may be wherever they wish.

٢٠٠٠ - مَسْأَلَةٌ: وَتَعْتَدُّ الْمُتَوَفَّى عَنْهَا، وَالْمُطَلَّقَةُ ثَلَاثًا، أَوْ آخِرِ ثَلَاثٍ وَالْمُعْتَقَةُ تَخْتَارُ فِرَاقَ زَوْجِهَا -: حَيْثُ أَحْبَبْنَ.

L35188–35189 There is no housing entitlement for them—neither on the divorcing husband, nor on the heirs of the deceased, nor on the one she chose to separate from—and there is no maintenance.

وَلَا سُكْنَى لَهُنَّ، لَا عَلَى الْمُطَلِّقِ، وَلَا عَلَى وَرَثَةِ الْمَيِّتِ، وَلَا عَلَى الَّذِي اخْتَارَتْ فِرَاقَهُ، وَلَا نَفَقَةَ.

L35190 They are permitted to perform Hajj during their ʿiddah and to travel wherever they wish.

وَلَهُنَّ أَنْ يَحْجُجْنَ فِي عِدَّتِهِنَّ، وَأَنْ يَرْحَلْنَ حَيْثُ شِئْنَ.

L35191 As for every woman revocably divorced (ṭalāq rajʿī) by her husband—while she remains in her waiting period (ʿiddah)—it is not permissible for her to leave the house she occupied when he divorced her. She is entitled to sustenance and clothing from him. If she faces intense fear (of harm) or a hadd punishment is legally imposed upon her, she may leave at that time. Otherwise, she is not permitted to leave absolutely—at any time—under any circumstance except for an unavoidable necessity permitting no alternative.

وَأَمَّا كُلُّ مُطَلَّقَةٍ لِلَّذِي طَلَّقَهَا عَلَيْهَا الرَّجْعَةُ - مَا دَامَتْ فِي الْعِدَّةِ - فَلَا يَحِلُّ لَهَا الْخُرُوجُ مِنْ بَيْتِهَا الَّذِي كَانَتْ فِيهِ إذْ طَلَّقَهَا، وَلَهَا عَلَيْهِ النَّفَقَةُ وَالْكِسْوَةُ فَإِنْ كَانَ خَوْفٌ شَدِيدٌ، أَوْ لَزِمَهَا حَدٌّ فَلَهَا أَنْ تَخْرُجَ حِينَئِذٍ، وَإِلَّا فَلَا أَصْلًا - لَا لَيْلًا وَلَا نَهَارًا - أَلْبَتَّةَ إلَّا لِضَرُورَةٍ لَا حِيلَةَ فِيهَا.

L35192 The evidence for this is the statement of Allah, the Exalted and Majestic:

{O Prophet, when you divorce women, divorce them during their waiting period and count the waiting period. Fear Allah, your Lord. Do not expel them from their homes, nor should they depart unless they commit a clear indecency. These are the limits of Allah. Whoever transgresses Allah's limits has wronged himself. You [O Prophet] do not know—perhaps Allah will bring about a resolution after that.} [At-Talaq: 1] {When they have reached their term, either retain them with kindness or separate from them with kindness.} [At-Talaq: 2].[15]

L35193 So this is the description of the revocable divorce, not that of the irrevocable divorce.

L35194 As for the irrevocable divorce—as narrated to us through the chain of Muslim: Muhammad ibn al-Muthanna from Abd al-Rahman ibn Mahdi from Sufyan al-Thawri from Salamah ibn Kuhayl from al-Sha'bi from Fatimah bint Qays—from the Prophet, peace and blessings be upon him, regarding the woman divorced three times: she is not entitled to sukna nor nafaqah.

L35195 Narrated by Humam ibn Ahmad from Abbas ibn Asbagh from Muhammad ibn Abd al-Malik ibn Ayman from Abdullah ibn Ahmad ibn Hanbal from his father from Hushaym from Sayyar—and Husayn ibn Abd al-Rahman—and al-Mughirah ibn Miqsam—and Ismail ibn Abi Khalid and Dawud ibn Abi Hind, all narrating from al-Sha'bi who said: I visited Fatimah bint Qays and asked her about the ruling of Allah's Messenger (peace be upon him) regarding her case. She said: "My husband divorced me irrevocably. I brought my dispute with him to Allah's Messenger (peace be upon him) concerning housing and maintenance, but he did not assign me housing or maintenance, and commanded me to observe my waiting period in the house of Ibn Umm Maktum."

L35196–35197 Through the chain of Muslim: I am Qutaybah ibn Sa'd, I am 'Abd al-'Aziz ibn Abi Hazim and Ya'qub — the son of 'Abd al-Rahman — al-Qari. Both of

[15] **Qur'an references (L35192):** Qur'an 65:1 (At-Talaq); Qur'an 65:2 (At-Talaq).

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلا يَخْرُجْنَ إِلا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا} [الطلاق: ١] {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] .

فَهَذِهِ صِفَةُ الطَّلَاقِ الرَّجْعِيِّ لَا صِفَةُ الطَّلَاقِ الْبَاتِّ.

وَأَمَّا الطَّلَاقُ الْبَاتُّ -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ الشَّعْبِيِّ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمُطَلَّقَةِ ثَلَاثًا لَيْسَ لَهَا سُكْنَى وَلَا نَفَقَةٌ» .

أَنَا حُمَامُ بْنُ أَحْمَدَ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ أَنَا أَبِي أَنَا هُشَيْمٌ أَنَا سَيَّارٌ، وَحُصَيْنٌ - هُوَ ابْنُ عَبْدِ الرَّحْمَنِ - وَالْمُغِيرَةُ - هُوَ ابْنُ مِقْسَمٍ - وَإِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ، وَدَاوُد بْنُ أَبِي هِنْدٍ كُلُّهُمْ عَنْ الشَّعْبِيِّ قَالَ: دَخَلْت عَلَى فَاطِمَةَ بِنْتِ قَيْسٍ فَسَأَلْتهَا عَنْ قَضَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَيْهَا؟ فَقَالَتْ: «طَلَّقَهَا زَوْجُهَا أَلْبَتَّةَ، قَالَتْ: فَخَاصَمْتُهُ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي السُّكْنَى وَالنَّفَقَةِ؟ فَلَمْ يَجْعَلْ لِي سُكْنَى وَلَا نَفَقَةً، وَأَمَرَنِي أَنْ أَعْتَدَّ فِي بَيْتِ ابْنِ أُمِّ مَكْتُومٍ» .

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا قُتَيْبَةُ بْنُ سَعْدٍ أَنَا عَبْدُ الْعَزِيزِ بْنُ أَبِي حَازِمٍ وَيَعْقُوبُ - هُوَ ابْنُ عَبْدِ الرَّحْمَنِ - الْقَارِيِّ كِلَاهُمَا عَنْ أَبِي حَازِمٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ

them narrated from Abu Hazim, from Abu Salamah ibn ‘Abd al-Rahman ibn ‘Awf, from Fatimah bint Qays that her husband divorced her. She said: “I mentioned that to the Messenger of Allah — may Allah’s peace and blessings be upon him — and he said: ’There is no maintenance for you nor housing.’”

L35198 From the chain of Muslim: I am Abu Bakr ibn Abi Shaybah, I heard from Waki’, who heard from Sufyan al-Thawri, from Abu Bakr ibn Abi al-Jahm al-Adawi, who said: “I heard Fatimah bint Qays say: ’Her husband divorced her three times, and the Prophet—peace and blessings of Allah be upon him—did not assign for her housing or maintenance.’”

L35199 From the chain of transmission via Muslim: Ibn Ḥātim ibn Maymūn, Muḥammad ibn Rāfi‘, and Hārūn ibn ‘Abdullāh—with the wording being Hārūn’s—narrated to me. Ibn Ḥātim said: “Yaḥyā ibn Sa‘īd al-Qaṭṭān narrated to me.” Ibn Rāfi‘ said: “‘Abd al-Razzāq narrated to me.” Hārūn said: “Ḥajjāj ibn Muḥammad narrated to me.” Then their narrations converged—Yaḥyā, ‘Abd al-Razzāq, and Ḥajjāj—all transmitting from Ibn Jurayj, who informed me: Abū al-Zubayr al-Makkī reported to me that he heard Jābir ibn ‘Abdullāh say: “My maternal aunt was divorced and wished to harvest her palm trees, but a man prevented her from going out. She came to the Prophet (peace and blessings be upon him), and the Prophet (peace and blessings be upon him) said to her: ’Go harvest your palm trees, for perhaps you may give charity or perform a virtuous act.’”

L35200 And through the chain of Abū Dāwūd al-Sijistānī: I am Aḥmad ibn Ḥanbal: Yaḥyā—he is Ibn Saʿīd al-Qaṭṭān—from Ibn Jurayj, who said: “Abū al-Zubayr narrated to me from Jābir ibn ʿAbd Allāh, who said: ’My maternal aunt was divorced three times, so she went out to harvest her date palms. A man forbade her? She then came to the Prophet—peace be upon him—and mentioned that to him? He said: ”Go out and harvest your date palms, so that you might give charity from it or do some good.“’”

L35201 Abu Muhammad said: As for the narration of Fatimah, it is universally transmitted in a manner that decisively cuts off any excuse.

L35202 As for the report of Jābir, it is of the utmost authenticity, and Abū al-Zubayr

عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ أَنَّهُ «طَلَّقَهَا زَوْجُهَا قَالَتْ: فَذَكَرْتُ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: لَا نَفَقَةَ لَكِ وَلَا سُكْنَى»

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا وَكِيعٌ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي بَكْرِ بْنِ أَبِي الْجَهْمِ الْعَدَوِيِّ قَالَ: " سَمِعْتُ «فَاطِمَةَ بِنْتِ قَيْسٍ تَقُولُ إِنَّ زَوْجَهَا طَلَّقَهَا ثَلَاثًا فَلَمْ يَجْعَلْ لَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُكْنَى وَلَا نَفَقَةً» .

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي ابْنُ حَاتِمِ بْنِ مَيْمُونٍ، وَمُحَمَّدُ بْنُ رَافِعٍ وَهَارُونُ بْنُ عَبْدِ اللَّهِ - وَاللَّفْظُ لَهُ - قَالَ ابْنُ حَاتِمٍ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ وَقَالَ ابْنُ رَافِعٍ: أَنَا عَبْدُ الرَّزَّاقِ، وَقَالَ هَارُونُ: أَنَا حَجَّاجُ بْنُ مُحَمَّدٍ - ثُمَّ اتَّفَقَ يَحْيَى، وَعَبْدُ الرَّزَّاقِ، وَحَجَّاجٌ، كُلُّهُمْ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ الْمَكِّيُّ «أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: طَلُقَتْ خَالَتِي فَأَرَادَتْ أَنْ تَجُذَّ نَخْلَهَا فَزَجَرَهَا رَجُلٌ أَنْ تَخْرُجَ، فَأَتَتِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَلْ اذْهَبِي فَجُدِّي نَخْلَكِ، فَإِنَّكِ عَسَى أَنْ تَصَدَّقِي أَوْ تَفْعَلِي مَعْرُوفًا» .

وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ أَنَا أَحْمَدُ بْنُ حَنْبَلٍ أَنَا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ عَنِ ابْنِ جُرَيْجٍ حَدَّثَنِي أَبُو الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ «طَلُقَتْ خَالَتِي ثَلَاثًا فَخَرَجَتْ تَجُذُّ نَخْلَهَا فَنَهَاهَا رَجُلٌ؟ فَأَتَتِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَتْ ذَلِكَ لَهُ؟ فَقَالَ: اُخْرُجِي فَجُدِّي نَخْلَكِ، فَعَسَى أَنْ تَصَدَّقِي مِنْهُ، أَوْ تَفْعَلِي خَيْرًا» .

قَالَ أَبُو مُحَمَّدٍ: أَمَّا خَبَرُ فَاطِمَةَ فَمَنْقُولٌ نَقْلَ الْكَافَّةِ قَاطِعٌ لِلْعُذْرِ.

heard it from him. He did not specify for her a ruling that she should not stay there rather than staying: *“He does not speak from [his own] inclination”* (al-Najm 53:3), *“It is nothing but a revelation revealed”* (al-Najm 53:4), *“And your Lord is not forgetful”* (Maryam 19:64).[16]

وَأَمَّا خَبَرُ جَابِرٍ فَفِي غَايَةِ الصِّحَّةِ، وَقَدْ سَمِعَهُ مِنْهُ أَبُو الزُّبَيْرِ، وَلَمْ يَخُصَّ لَهَا أَنْ لَا تَبِيتَ هُنَالِكَ مِنْ أَنْ تَبِيتَ: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] ، {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L35203–35204 It is not permissible for anyone to deviate from these two narrations due to their clarity and authenticity.

وَلَا يَسَعُ أَحَدًا الْخُرُوجُ عَنْ هَذَيْنِ الْأَثَرَيْنِ لِبَيَانِهِمَا وَصِحَّتِهِمَا.

L35205 There is no authentic narration whatsoever concerning the obligation to provide residence for the widow.

وَلَمْ يَصِحَّ فِي وُجُوبِ السُّكْنَى لِلْمُتَوَفَّى عَنْهَا أَثَرٌ أَصْلًا.

L35206 The residence is either owned by the deceased or owned by another. If it is owned by another—whether rented or unowned—the contract is voided upon his death. No one may lawfully reside in it without the owner’s permission and willing consent. The Messenger of Allah (peace be upon him) said, “Your blood and your wealth are inviolable to you.”

وَالْمَنْزِلُ لَا يَخْلُو مِنْ أَنْ يَكُونَ مِلْكًا لِلْمَيِّتِ أَوْ مِلْكًا لِغَيْرِهِ -: فَإِنْ كَانَ مِلْكًا لِغَيْرِهِ - وَهُوَ مُكْتَرًى أَوْ مُبَاحٌ - فَقَدْ بَطَلَ الْعَقْدُ بِمَوْتِهِ، فَلَا يَحِلُّ لِأَحَدٍ سُكْنَاهُ إِلَّا بِإِذْنِ صَاحِبِهِ وَطِيبِ نَفْسِهِ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L35207 If the property was owned by the deceased, it now belongs to the creditors, the heirs, or the legatees. Therefore, it is unlawful for her to claim the wealth of the creditors, heirs, or those designated in the will for the reasons we mentioned. She is only entitled to the amount of her inheritance from it if she is an heir—nothing beyond this. This is clear and decisive proof, while anything contrary constitutes blatant injustice without doubt. This is an issue where people have widely disagreed. One group upheld our position—as reported through the transmission chain of ‘Abd al-Razzāq from Ibn Jurayj from ‘Aṭā’ that Ibn ‘Abbās said: “A woman divorced irrevocably may observe her waiting period wherever she wishes.”

وَإِنْ كَانَ مِلْكًا لِلْمَيِّتِ، فَقَدْ صَارَ لِلْغُرَمَاءِ أَوْ لِلْوَرَثَةِ أَوْ لِلْوَصِيَّةِ، فَلَا يَحِلُّ لَهَا مَالُ الْغُرَمَاءِ، وَالْوَرَثَةِ، وَالْمُوصَى لَهُمْ لِمَا ذَكَرْنَا، وَإِنَّمَا لَهَا مِنْهُ مِقْدَارُ مِيرَاثِهَا إِنْ كَانَتْ وَارِثَةً فَقَطْ، وَهَذَا بُرْهَانٌ قَاطِعٌ لَائِحٌ وَمَا عَدَا هَذَا فَظُلْمٌ لَا خَفَاءَ بِهِ، وَهَذَا مَكَانٌ كَثُرَ فِيهِ اخْتِلَافُ النَّاسِ -: فَطَائِفَةٌ قَالَتْ بِقَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ أَنَّ ابْنَ عَبَّاسٍ قَالَ: تَعْتَدُّ الْمَبْتُوتَةُ حَيْثُ شَاءَتْ.

L35208 Ibn Jurayj said: Abu al-Zubayr informed me that he heard Jabir ibn Abdullah say: The irrevocably divorced woman observes her waiting period where she wishes.

- قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: تَعْتَدُّ الْمَبْتُوتَةُ حَيْثُ شَاءَتْ.

[16] **Qur’an references (L35202):** Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm); Qur’an 19:64 (Maryam).

L35209 From the narration of Abd al-Razzaq, who said: I am Ma’mar, from al-Zuhri, from Ubayd Allah ibn Abd Allah ibn Utba ibn Mas’ud: That Fatimah bint Qays said: Allah the Almighty said: “Do not drive them out of their homes” [Quran 65:1]. She said: This was for the one who retained the right of revocation [during the waiting period]. So what ruling applies after the third [irrevocable] divorce? Ubayd Allah ibn Abd Allah said to us: Abdullah ibn Amr ibn Uthman—a young man—divorced the daughter of Sa‘id ibn Zayd ibn Amr during the rule of Marwan. Her mother was the daughter of Qays, and her maternal aunt Fatimah bint Qays took her into her care.[17]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ قَالَ: أَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ: أَنَّ فَاطِمَةَ بِنْتَ قَيْسٍ قَالَتْ: قَالَ اللَّهُ عَزَّ وَجَلَّ: {لا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ} [الطلاق: ١] قَالَتْ: هَذَا كَانَ لِمَنْ كَانَتْ لَهُ رَجْعَةٌ، فَأَيُّ أَمْرٍ يَحْدُثُ بَعْدَ الثَّلَاثِ - قَالَ لَنَا عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ: فَطَلَّقَ عَبْدُ اللَّهِ بْنُ عَمْرِو بْنِ عُثْمَانَ - وَهُوَ غُلَامٌ شَابٌّ - بِنْتَ سَعِيدِ بْنِ زَيْدِ بْنِ عَمْرٍو فِي إِمَارَةِ مَرْوَانَ، وَأُمُّهَا بِنْتُ قَيْسٍ، فَانْتَقَلَتْهَا خَالَتُهَا فَاطِمَةُ بِنْتُ قَيْسٍ.

L35210 From the path of Ibn Abi Shaybah: I, Al-Thaqafi—he is Abd al-Wahhab ibn Abd al-Majid—narrated from Ubayd Allah ibn Umar, from Nafi’, from Ibn Umar, who said: “Al-Rubayyi‘ sought khul‘ from her husband. Mu‘awwidh—he is Ibn Afra‘—came to Uthman ibn Affan and asked him: ’Does she leave?’ He replied: ’Yes, she leaves.’”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا الثَّقَفِيُّ - هُوَ عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: إِنَّ الرُّبَيِّعَ اخْتَلَعَتْ مِنْ زَوْجِهَا، فَأَتَى مُعَوِّذٌ - هُوَ ابْنُ عَفْرَاءَ - عُثْمَانَ بْنَ عَفَّانَ فَسَأَلَهُ أَتَنْتَقِلُ؟ قَالَ: نَعَمْ تَنْتَقِلُ.

L35211–35213 Abū Muḥammad said: We have mentioned this because according to them, the woman who seeks khul‘ has an irrevocable divorce, and she is obligated to observe the waiting period. In our view, she is divorced with a revocable divorce and must not leave her residence—the place where the divorce was pronounced—until her waiting period is completed. This is the position held by some of the Companions, may Allah be pleased with them.

قَالَ أَبُو مُحَمَّدٍ: إِنَّمَا أَوْرَدْنَا هَذَا، لِأَنَّ الْمُخْتَلِعَةَ عِنْدَهُمْ طَلَاقُهَا بَائِنٌ وَعَلَيْهَا الْعِدَّةُ وَأَمَّا نَحْنُ فَهِيَ عِنْدَنَا مُطَلَّقَةٌ طَلَاقًا رَجْعِيًّا لَا تَخْرُجُ فِيهِ مِنْ مَوْضِعِهَا الَّذِي طَلَّقَهَا فِيهِ حَتَّى تَتِمَّ عِدَّتُهَا - فَهَؤُلَاءِ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L35214 As for the Successors (Tābiʿūn), we have been informed through the chain of Saʿīd ibn Manṣūr: Hushaym said: I [heard] from Yūnus ibn ʿUbayd, who said: I [heard] from al-Ḥasan al-Baṣrī that he used to say: “A thrice-divorced woman and a widow have no lodging or maintenance, and both women may spend their waiting period wherever they choose.”

وَأَمَّا التَّابِعُونَ - فَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يُونُسُ - هُوَ ابْنُ عُبَيْدٍ - عَنِ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ كَانَ يَقُولُ: الْمُطَلَّقَةُ ثَلَاثًا، وَالْمُتَوَفَّى عَنْهَا لَا سُكْنَى لَهُمَا، وَلَا نَفَقَةَ، وَتَعْتَدَّانِ حَيْثُ شَاءَتَا.

L35215 And from the chain of Abd al-Razzaq, from Muhammad ibn Muslim, from Amr ibn Dinar, from Tawus and from Ata, who both said: The irrevocably divorced woman and the woman whose husband has died may perform Hajj and Umrah, relocate, and finalize the separation.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ مُسْلِمٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ، وَعَطَاءٍ، قَالَا جَمِيعًا: الْمَبْتُوتَةُ، وَالْمُتَوَفَّى عَنْهَا يَحُجَّانِ، وَيَعْتَمِرَانِ، وَيَنْتَقِلَانِ، وَيَبِينَانِ.

[17] **Qur’an references (L35209):** Qur’an 65:1 (At-Talaq).

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ وَسُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ أَنَّهُ قَالَ: تَحُجُّ الْمَبْتُوتَةُ فِي عِدَّتِهَا.

L35216–35217 Narrated by Abd al-Razzaq and Sufyan al-Thawri, from Yunus ibn Ubayd, from al-Hasan, who said: A woman irrevocably divorced performs Hajj during her waiting period.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ أَنَّهُ قَالَ: فِي الْمُطَلَّقَةِ ثَلَاثًا لَهَا أَنْ تَنْتَقِلَ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا} [الطلاق: ١] فَأَيُّ أَمْرٍ بَعْدَ الثَّلَاثِ، إنَّمَا جَاءَ ذَلِكَ فِي الْوَاحِدَةِ وَالِاثْنَتَيْنِ.

L35218 From the narration of Hammad ibn Zayd from Ayyub al-Sikhtiyani from Ikrimah, who said: Regarding a woman irrevocably divorced three times, she must transfer [to another husband]. Allah Almighty said: {It may be that Allah will ordain a new situation after that} [65:1]. What [possible] matter could arise after three divorces? This ruling [of potential reconciliation] only applies to the first or second divorce.[18]

أَنَا حُمَامٌ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ أَنَا أَبِي، قَالَ الشَّعْبِيِّ: الْمُطَلَّقَةُ ثَلَاثًا لَا سُكْنَى لَهَا وَلَا نَفَقَةَ، قَالَ أَحْمَدُ: وَبِهِ أَقُولُ.

L35219 I am Humam; I am Abbas ibn Asbagh; I am Muhammad ibn Abd al-Malik ibn Ayman; I am Abdullah ibn Ahmad ibn Hanbal; [reporting] from my father. Al-Sha'bi said: A woman irrevocably divorced three times has no right to housing or maintenance. Ahmad said: This is my view.

قَالَ أَبُو مُحَمَّدٍ: وَبِهِ يَقُولُ إِسْحَاقُ بْنُ رَاهْوَيْهِ وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا.

L35220 Abū Muḥammad said: In accordance with this, hold the view Isḥāq ibn Rāhawayh, Abū Sulaymān, and all our companions.

وَأَمَّا الْمُتَوَفَّى عَنْهَا - فَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا قَيْسٌ - هُوَ ابْنُ عَبَّادٍ - عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ عَائِشَةَ - أُمِّ الْمُؤْمِنِينَ - أَنَّهَا حَجَّتْ بِأُخْتِهَا أُمِّ كُلْثُومٍ امْرَأَةِ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ فِي عِدَّتِهَا فِي الْفِتْنَةِ.

L35221 As for the woman whose husband has died—it was narrated to us via Hammad ibn Salamah from Qays ibn ʻAbbad, from ʻAta' ibn Abi Rabah, from ʻAishah, the Mother of the Believers, that she took her sister Umm Kulthum, the wife of Talhah ibn ʻUbaydullah, with her to perform Hajj during her waiting period in the Fitnah.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ - أُمِّ الْمُؤْمِنِينَ - أَنَّهَا كَانَتْ تُفْتِي الْمُتَوَفَّى عَنْهَا زَوْجُهَا بِالْخُرُوجِ فِي عِدَّتِهَا، وَخَرَجَتْ بِأُخْتِهَا أُمِّ كُلْثُومٍ حِينَ قُتِلَ عَنْهَا طَلْحَةُ بْنُ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ إلَى مَكَّةَ فِي عُمْرَةٍ.

L35222 Narrated via the chain of Abd al-Razzaq, from Ma'mar, from al-Zuhri, from Urwah ibn al-Zubayr, from Aisha—the Mother of the Believers—that she would issue rulings for a woman whose husband had died to go out during her waiting period. She herself went out with her sister Umm Kulthum when Talha ibn Ubayd Allah ibn Abd Allah was killed, traveling to Mecca to perform Umrah.

L35223 From the transmission of ʿAbd al-Razzāq: I, Ibn Jurayj, inform you that ʿAṭāʾ reported from Ibn ʿAbbās, who said: Allah the Exalted and Majestic specifically stated, *"They shall wait for four months and ten days"* [al-

[18] **Qur'an references (L35218):** Qur'an 65:1 (At-Talaq).

Baqarah 2:234], and He did not say, “They shall observe the waiting period in their homes.” Thus, she may observe it wherever she wishes.[19]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَطَاءٌ عَنِ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: إِنَّمَا قَالَ اللَّهُ عَزَّ وَجَلَّ تَعْتَدُّ: {أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا} [البقرة: ٢٣٤] وَلَمْ يَقُلْ: تَعْتَدُّ فِي بَيْتِهَا، فَلْتَعْتَدَّ حَيْثُ شَاءَتْ.

L35224–35226 From the chain of Ismāʿīl ibn Isḥāq the Judge: I, ʿAlī ibn ʿAbd Allāh—he is Ibn al-Madīnī—narrated from I... Sufyan ibn ’Uyaynah reported from Ibn Jurayj from ’Ata’, who said: I heard Ibn ’Abbas say regarding the verse, *“And those of you who die and leave wives behind—they must observe the waiting period for four months and ten days”* [Al-Baqarah 2:234]—that he did not say “they must observe the waiting period in their homes.” Rather, she observes her waiting period wherever she wishes. Sufyan said: Ibn Jurayj reported this to us, as he had narrated. This clarifies that ’Ata’ directly heard it from Ibn ’Abbas.[20]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي أَنَا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ ابْنُ الْمَدِينِيُّ - أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: سَمِعْتُ ابْنَ عَبَّاسٍ يَقُولُ: {وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا} [البقرة: ٢٣٤] وَلَمْ يَقُلْ يَعْتَدِدْنَ فِي بُيُوتِهِنَّ، تَعْتَدُّ حَيْثُ شَاءَتْ، وَقَالَ سُفْيَانُ: قَالَهُ لَنَا ابْنُ جُرَيْجٍ كَمَا أَخْبَرَنَا - هَذَا يُبَيِّنُ أَنَّ عَطَاءً سَمِعَهُ مِنِ ابْنِ عَبَّاسٍ.

L35227 Via the chain of ʿAbd al-Razzāq: I am Ibn Jurayj, [who said]: Abū al-Zubayr reported to me that he heard Jābir ibn ʿAbd Allāh saying: A widow observes her waiting period wherever she wishes.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: تَعْتَدُّ الْمُتَوَفَّى عَنْهَا حَيْثُ شَاءَتْ.

L35228 Narrated through the chain of Abd al-Razzaq: Sufyan al-Thawri → Isma’il ibn Abi Khalid → al-Sha’bi: That Ali ibn Abi Talib would relocate women whose husbands had died away from them during their waiting period.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنِ الشَّعْبِيِّ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يُرَحِّلُ الْمُتَوَفَّى عَنْهُنَّ فِي عِدَّتِهِنَّ.

L35229 From the narration of Abd al-Razzaq, on the authority of Ibn Jurayj, on the authority of Ata, who said: “The location where the widow observes her waiting period does not harm [her observance].” We have mentioned this ruling earlier, prior to this chapter, from al-Hasan.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: لَا يَضُرُّ الْمُتَوَفَّى عَنْهَا أَيْنَ اعْتَدَّتْ، وَقَدْ ذَكَرْنَاهُ قَبْلَ هَذَا الْبَابِ عَنِ الْحَسَنِ.

L35230 From the chain of Ismāʿīl ibn Isḥāq: I, ʿAlī ibn ʿAbdillāh al-Madanī, from Sufyān ibn ʿUyaynah, from ʿAmr ibn Dīnār, from ʿAṭāʾ and Abū al-Shaʿthāʾ Jābir ibn Zayd, both of whom said together: The woman whose husband has died may go out during her waiting period wherever she wishes.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ الْمَدِينِيُّ - أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءٍ، وَأَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ، قَالَا جَمِيعًا: الْمُتَوَفَّى عَنْهَا تَخْرُجُ فِي عِدَّتِهَا حَيْثُ شَاءَتْ.

[19] **Qur’an references (L35223):** Qur’an 2:234 (Al-Baqarah).
[20] **Qur’an references (L35224):** Qur’an 2:234 (Al-Baqarah).

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ عَنْ حَبِيبٍ الْمُعَلِّمِ قَالَ: سَأَلْت عَطَاءً عَنْ الْمُطَلَّقَةِ ثَلَاثًا وَالْمُتَوَفَّى عَنْهَا أَيَحُجَّانِ فِي عِدَّتِهِمَا؟ قَالَ: نَعَمْ، وَكَانَ الْحَسَنُ يَقُولُ مِثْلَ ذَلِكَ.

L35231 From the chain of Ismāʿīl ibn Isḥāq: Abū Bakr ibn Abī Shaybah narrated from ʿAbd al-Wahhāb al-Thaqafī, from Ḥabīb al-Muʿallim, who said: I asked ʿAṭāʾ about a woman divorced three times and a widow—are they permitted to perform Hajj during their waiting period? He replied: Yes. Al-Ḥasan also held this view.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا أَبُو ثَابِتٍ الْمَدَنِيُّ أَنَا ابْنُ وَهْبٍ أَنَا عَمْرُو بْنُ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ قَالَ: سَأَلْنَا سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ الْمَرْأَةِ يَخْرُجُ بِهَا زَوْجُهَا إلَى بَلَدٍ فَيُتَوَفَّى الزَّوْجُ؟ فَقَالَ: تَعْتَدُّ حَيْثُ تُوُفِّيَ عَنْهَا زَوْجُهَا، أَوْ تَرْجِعُ إلَى بَيْتِ زَوْجِهَا حَتَّى تَنْقَضِيَ عِدَّتُهَا.

L35232 And through the chain of Ismail ibn Ishaq: From Abu Thabit al-Madani, who said: From Ibn Wahb, from Amr ibn al-Harith, from Bukayr ibn al-Ashajj, who said: We asked Salim ibn Abdullah ibn Umar about a woman whose husband takes her to a place where he dies. He replied: She observes her waiting period where her husband died, or she returns to her husband's house until her waiting period elapses.

- قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي ابْنُ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ بِهَذَا.

L35233 Ibn Wahb said: Ibn Lahiʿah informed me from Yazīd ibn Abī Ḥabīb, from al-Qāsim ibn Muḥammad, with this.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي ابْنُ لَهِيعَةَ عَنْ حُسَيْنِ بْنِ أَبِي حَكِيمٍ أَنَّ امْرَأَةَ مُزَاحِمٍ لَمَّا تُوُفِّيَ عَنْهَا زَوْجُهَا بِخَنَاصِرَةَ سَأَلْت عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَأَمْكُثُ حَتَّى تَنْقَضِيَ عِدَّتِي؟ فَقَالَ لَهَا: بَلْ الْحَقِي بِقَرَارِك وَدَارِ أَبِيك فَاعْتَدِّي فِيهَا.

L35234 Ibn Wahb said: Ibn Lahīʿah informed me from Ḥusayn ibn Abī Ḥakīm that the wife of Muzāḥim, when her husband died in Khanāṣirah, asked ʿUmar ibn ʿAbd al-ʿAzīz: "Shall I remain until my waiting period concludes?" He replied: "Rather, go to your settlement and your father's household, and observe your waiting period there."

وَبِهِ يَقُولُ ابْنُ وَهْبٍ - أَنَا يَحْيَى بْنُ أَيُّوبَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّهُ قَالَ فِي رَجُلٍ تُوُفِّيَ بِالْإِسْكَنْدَرِيَّةِ وَمَعَهُ امْرَأَتُهُ وَلَهُ بِالْفُسْطَاطِ دَارٌ فَقَالَ: إنْ أَحَبَّتْ أَنْ تَعْتَدَّ حَيْثُ تُوُفِّيَ زَوْجُهَا فَلْتَعْتَدَّ، وَإِنْ أَحَبَّتْ أَنْ تَرْجِعَ إلَى دَارِ زَوْجِهَا وَقَرَارِهِ بِالْفُسْطَاطِ فَتَعْتَدَّ فِيهَا فَلْتَرْجِعْ.

L35235–35236 Ibn Wahb relates—I am Yahya ibn Ayyub, narrating from Yahya ibn Saʿid al-Ansari—that he said regarding a man who died in Alexandria while his wife was with him, and who owned a house in Fustat: If she wishes to complete her waiting period where her husband died, let her do so. If she wishes to return to her husband's house and residence in Fustat to complete her waiting period there, let her return.

وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا.

L35237 This is the view stated by Abū Sulaymān and all our companions.

وَقَوْلٌ آخَرُ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِي الْمَبْتُوتَةِ إنْ كَانَتْ غَيْرَ حُبْلَى فَلَا نَفَقَةَ لَهَا، وَيُنْفِقُ عَلَى الْحُبْلَى مِنْ أَجْلِ وَلَدِهِ.

L35238 Another opinion—as conveyed to us through the chain of Abd al-Razzaq, from Ibn Jurayj, from Ata—concerning the irrevocably divorced woman: if

she is not pregnant, she has no right to maintenance, and he is obligated to provide for the pregnant woman because of his child.

L35239 And through the chain of ʿAbd al-Razzāq from Maʿmar, who narrated from ʿAṭāʾ and Qatāda, both stated together regarding the irrevocably divorced woman (al-mabtutah): She is entitled to maintenance until she delivers her child.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَطَاءٍ، وَقَتَادَةَ، قَالَا جَمِيعًا فِي الْمَبْتُوتَةِ: لَهَا النَّفَقَةُ حَتَّى تَضَعَ حَمْلَهَا

L35240 From the transmission of ʿAbd al-Razzāq, from Ibn Jurayj, from Hishām ibn ʿUrwah, from his father (ʿUrwah ibn al-Zubayr): No post-divorce financial support is obligatory for the finally divorced woman unless she is pregnant.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ لَا نَفَقَةَ لِلْمَبْتُوتَةِ إِلَّا أَنْ تَكُونَ حَامِلًا.

L35241 From the chain of Ibn Wahb, ʿAmr ibn al-Ḥārith informed me from Yazīd ibn Abī Ḥabīb that ʿUmar ibn ʿAbd al-ʿAzīz ordered maintenance to be provided for the irrevocably divorced pregnant woman until she delivers her child, then he must give her the compensation for breastfeeding and grant her the mutʿah.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَمَرَ بِالنَّفَقَةِ عَلَى الْمَبْتُوتَةِ الْحَامِلِ حَتَّى تَضَعَ حَمْلَهَا، ثُمَّ يُعْطِيهَا أَجْرَ الرَّضَاعِ، ثُمَّ يُمَتِّعُهَا.

L35242 And through the chain of Ibn Wahb, Ibn Samʿān reported to me that Ibn Qusayṭ informed him that Ibn al-Musayyib would say: “There is no maintenance for an irrevocably divorced woman unless she is pregnant, in which case she is entitled to maintenance until she delivers her child.” He further stated: “This is in the Book of Allah, the Almighty and Majestic, and the Prophetic Sunnah. This is what the Companions of the Messenger of Allah (peace be upon him) adhered to.”

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي ابْنُ سَمْعَانَ: أَنَّ ابْنَ قُسَيْطٍ أَخْبَرَهُ أَنَّ ابْنَ الْمُسَيِّبِ كَانَ يَقُولُ: لَا نَفَقَةَ لِلْمَبْتُوتَةِ إِلَّا أَنْ تَكُونَ حَامِلًا فَلَهَا النَّفَقَةُ حَتَّى تَضَعَ حَمْلَهَا، وَيَقُولُ: هَذَا فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ، وَهِيَ السُّنَّةُ، وَعَلَى ذَلِكَ كَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L35243 It is authentically reported from Rabiʿah: She has no right to maintenance unless she is pregnant. If maintenance is ruled for her due to her pregnancy, then it becomes evident she is not pregnant, she must return what she received as maintenance. The rulings that maintenance is obligatory for her if she is pregnant, and that residence is obligatory in all circumstances, are held by Mālik, al-Shāfiʿī, Abū ʿUbayd, and ʿAbd al-Raḥmān ibn Mahdī.

وَصَحَّ عَنْ رَبِيعَةَ: لَا نَفَقَةَ لَهَا إِلَّا أَنْ تَكُونَ حَامِلًا، فَإِنْ قُضِيَ لَهَا بِالنَّفَقَةِ لِحَمْلِهَا ثُمَّ ظَهَرَ أَنَّهُ لَا حَمْلَ بِهَا رَدَّتْ مَا أَخَذَتْ مِنَ النَّفَقَةِ وَبِإِيجَابِ النَّفَقَةِ لَهَا إِنْ كَانَتْ حَامِلًا - وَبِإِيجَابِ السُّكْنَى بِكُلِّ حَالٍ يَقُولُ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو عُبَيْدٍ وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ.

L35244–35245 It has been transmitted to us through the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Ibn Abi Layla, that he ruled concerning the divorced woman and the pregnant woman: Each is entitled to housing and full financial maintenance.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنِ ابْنِ أَبِي لَيْلَى أَنَّهُ قَالَ فِي الْمُطَلَّقَةِ وَالْحَامِلِ: لَهَا السُّكْنَى وَالنَّفَقَةُ.

L35246 A third opinion—she is entitled to lodging but not maintenance. Some people have cited traditions in this regard which we shall mention, and it is as reported to us through ʿAbd al-Razzāq, who reported that Ibn Jurayj informed him: from Ibn Shihāb, from ʿUrwah ibn al-Zubayr, who said: "'Ā'ishah criticized Fāṭimah bint Qays regarding that—meaning the relocation of a thrice-divorced woman."

وَقَوْلٌ ثَالِثٌ - لَهَا السُّكْنَى وَلَا نَفَقَةَ لَهَا، أَتَى قَوْمٌ فِي هَذَا بِآثَارٍ نَذْكُرُهَا، وَهُوَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَخْبَرَنِي ابْنُ جُرَيْجٍ عَنِ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: إِنَّ عَائِشَةَ أَنْكَرَتْ ذَلِكَ عَلَى فَاطِمَةَ بِنْتِ قَيْسٍ يَعْنِي انْتِقَالَ الْمُطَلَّقَةِ ثَلَاثًا.

L35247 Narrated through Sa'id ibn Mansur: I [heard from] Abu Mu'awiyah, I [heard from] al-A'mash, from Ibrahim ibn Masruq, who said: A man came to Ibn Mas'ud and said, "I divorced my wife thrice, yet she refuses to observe her waiting period in her home." Ibn Mas'ud said, "Do not permit her to leave." The man said, "She insists on departing." He said, "Restrain her in the house." The man said, "She has thick-necked brothers." He said, "Seek the authorities' assistance against them."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو مُعَاوِيَةَ أَنَا الْأَعْمَشُ عَنْ إِبْرَاهِيمَ بْنِ مَسْرُوقٍ قَالَ: جَاءَ رَجُلٌ إِلَى ابْنِ مَسْعُودٍ فَقَالَ: إِنِّي طَلَّقْت امْرَأَتِي ثَلَاثًا فَأَبَتْ أَنْ تَعْتَدَّ فِي بَيْتِهَا؟ قَالَ: لَا تَدَعْهَا، قَالَ: أَبَتْ إلَّا بِالْخُرُوجِ، قَالَ: فَقَيِّدْهَا، قَالَ: إنَّ لَهَا إخْوَةً غَلِيظَةً رِقَابُهُمْ، قَالَ: اسْتَعِنْ عَلَيْهِمْ بِالسُّلْطَانِ.

L35248 And from the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father, who said: A woman irrevocably divorced (mabtūtah) must not move from her husband's house until her ʿiddah period has expired.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: لَا تَنْتَقِلُ الْمَبْتُوتَةُ مِنْ بَيْتِ زَوْجِهَا حَتَّى يَخْلُوَ أَجَلُهَا.

L35249 Reported via the chain of Ismāʿīl ibn Isḥāq: from Abū Bakr ibn Abī Shaybah, from Yazīd ibn Hārūn, from Saʿīd ibn Abī ʿArūbah, from Yaʿlā ibn Abī Ḥakīm, from Nāfiʿ, from Ibn ʿUmar, who said concerning the irrevocably divorced woman (mabtūṭah): "She has no right to financial support."

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا يَزِيدُ بْنُ هَارُونَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ يَعْلَى بْنِ أَبِي حَكِيمٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ فِي الْمَبْتُوتَةِ: أَنَّهُ لَا نَفَقَةَ لَهَا.

L35250 And via the chain of ʿAbd al-Razzāq from Ibrāhīm ibn Muḥammad – he is the son of Abī Yaḥyā – from Jaʿfar ibn Muḥammad from his father: that ʿAlī ibn Abī Ṭālib said regarding the irrevocably divorced woman: "There is no maintenance for her."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إبْرَاهِيمَ بْنِ مُحَمَّدٍ - هُوَ ابْنُ أَبِي يَحْيَى - عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الْمَبْتُوتَةِ: لَا نَفَقَةَ لَهَا.

L35251 From the chain of Wakīʿ through Jaʿfar ibn Burqān through Maymūn ibn Mihrān, who said: I asked Saʿīd ibn al-Musayyab: "Where does a woman divorced three times observe her waiting period?" He replied: "In her husband's house."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ جَعْفَرِ بْنِ بُرْقَانَ عَنْ مَيْمُونِ بْنِ مِهْرَانَ قَالَ: قُلْت لِسَعِيدِ بْنِ الْمُسَيِّبِ: الْمُطَلَّقَةُ ثَلَاثًا أَيْنَ تَعْتَدُّ؟ قَالَ: فِي بَيْتِ زَوْجِهَا.

L35252 Narrated through the chain of Sa'id ibn Mansur: Hammad ibn Zayd from Yahya ibn Sa'id from Sa'id ibn al-Musayyib regarding a divorced woman in

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي الْمُطَلَّقَةِ فِي بَيْتٍ مُكْتَرًى، قَالَ: تَعْتَدُّ فِيهِ، وَعَلَى زَوْجِهَا الْكِرَاءُ.

a rented house. He said: She observes her waiting period in it, and the rent is incumbent upon her husband.

وَأَمَّا الْمُتَوَفَّى عَنْهَا -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ رَدَّ نِسْوَةً مِنْ ذِي الْحُلَيْفَةِ حَاجَّاتٍ، أَوْ مُعْتَمِرَاتٍ تُوُفِّيَ عَنْهُنَّ أَزْوَاجُهُنَّ.

L35253 As for the woman whose husband has died—it is narrated to us through the chain from Waki‘, from Sufyan al-Thawri, from Mansur, from Mujahid, from Sa‘id ibn al-Musayyab, that ‘Umar sent back women from Dhu al-Hulayfah who were performing Hajj or ‘Umrah and whose husbands had died.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَنَا حُمَيْدٌ الْأَعْرَجُ عَنْ مُجَاهِدٍ قَالَ: كَانَ عُمَرُ، وَعُثْمَانُ يُرْجِعَانِهِنَّ حَوَاجَّ أَوْ مُعْتَمِرَاتٍ مِنَ الْجُحْفَةِ، وَمِنْ ذِي الْحُلَيْفَةِ.

L35254–35255 Through the chain of ‘Abd al-Razzāq: Ibn Jurayj said: I [heard] from Humayd al-A‘raj, who reported from Mujāhid, who said: “Umar and Uthman would send back women who were female Ḥajj pilgrims or ‘Umrah pilgrims assuming iḥrām from Al-Juhfah and Dhū al-Ḥulayfah.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ يُوسُفَ بْنِ مَاهَكَ عَنْ أُمِّهِ مُسَيْكَةَ: أَنَّ امْرَأَةً مُتَوَفًّى عَنْهَا زَارَتْ أَهْلَهَا فِي عِدَّتِهَا فَضَرَبَهَا الطَّلْقُ فَأَتَوْا عُثْمَانَ؟ فَقَالَ: احْمِلُوهَا إِلَى بَيْتِهَا وَهِيَ تُطْلَقُ.

L35256 From the narration of ‘Abd al-Razzāq, from Ma‘mar, from Ayyūb, from Yūsuf ibn Māhak, from his mother Musaykah: A woman whose husband had died visited her family during her waiting period, and was struck by labor pains. They came to Uthman, and he said: “Take her to her house while she is giving birth.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: كَانَتْ لَهُ ابْنَةٌ تَعْتَدُّ مِنْ وَفَاةِ زَوْجِهَا فَكَانَتْ تَأْتِيهِمْ بِالنَّهَارِ فَتَتَحَدَّثُ إِلَيْهِمْ، فَإِذَا كَانَ اللَّيْلُ أَمَرَهَا أَنْ تَرْجِعَ إِلَى بَيْتِهَا.

L35257 And from the narration of Abd al-Razzaq, from Ma’mar, from Ayyub, from Nafi’, from Ibn Umar, who said: He had a daughter observing the *‘iddah* after her husband’s death. She would come to them during the day and converse with them. When night fell, he would order her to return to her house.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ عَلِيِّ بْنِ الْمُبَارَكِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنِ ابْنِ ثَوْبَانَ أَنَّ عُمَرَ رَخَّصَ لِلْمُتَوَفَّى عَنْهَا أَنْ تَأْتِيَ أَهْلَهَا بَيَاضَ يَوْمِهَا.

L35258 Via the chain of Ismail ibn Ishaq: Abu Bakr ibn Abi Shaybah said: Waki‘ narrated from Ali ibn al-Mubarak, from Yahya ibn Abi Kathir, from Ibn Thawban, that Umar granted a concession to the widow to visit her family during the daytime of her waiting period.

وَأَنَّ زَيْدَ بْنَ ثَابِتٍ لَمْ يُرَخِّصْ لَهَا إِلَّا فِي بَيَاضِ يَوْمِهَا أَوْ لَيْلَتِهَا.

L35259 And that Zayd ibn Thābit only granted her a concession during the bright part of her day or her night.

L35260 From the narration of Abd al-Razzaq, from Sufyan al-Thawri, from Mansur

ibn al-Mu'tamir, from Ibrahim al-Nakha'i, from Alqamah, who said: Women from Hamdan, whose husbands' deaths had been announced to them, asked Ibn Mas'ud, "We feel lonely." Ibn Mas'ud replied, "They should gather during the day, then each woman among them should return to her home at night."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ قَالَ: سَأَلَ ابْنَ مَسْعُودٍ نِسَاءٌ مِنْ هَمْدَانَ نُعِيَ إِلَيْهِنَّ أَزْوَاجُهُنَّ فَقُلْنَ: إِنَّا نَسْتَوْحِشُ؟ فَقَالَ ابْنُ مَسْعُودٍ: يَجْتَمِعْنَ بِالنَّهَارِ ثُمَّ تَرْجِعُ كُلُّ امْرَأَةٍ مِنْهُنَّ إِلَى بَيْتِهَا بِاللَّيْلِ.

L35261 And through the chain of Al-Hajjaj ibn Al-Minhal: I, Abu Awanah, narrated from Mansur from Ibrahim that a woman sent a message to Umm Salamah, the Mother of the Believers, saying: "My father is ill, and I am in my waiting period. May I go to tend to him?" She replied, "Yes, but spend one end of the night in my house."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا أَبُو عَوَانَةَ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ أَنَّ امْرَأَةً بَعَثَتْ إِلَى أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ: إِنَّ أَبِي مَرِيضٌ، وَأَنَا فِي عِدَّةٍ أَفَآتِيهِ أُمَرِّضُهُ؟ قَالَتْ: نَعَمْ، وَلَكِنْ بِبَيْتِي أَحَدَ طَرَفَيْ اللَّيْلِ فِي بَيْتِك.

L35262 From the narration of Hammad ibn Salamah, Hisham ibn Urwah reported that his father said: A woman whose husband has passed away observes her waiting period in her marital home unless her family relocates, in which case she may relocate with them.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أرنا هِشَامُ بْنُ عُرْوَةَ أَنَّ أَبَاهُ قَالَ: الْمُتَوَفَّى عَنْهَا زَوْجُهَا تَعْتَدُّ فِي بَيْتِهَا إِلَّا أَنْ يَنْتَوِيَ أَهْلُهَا فَتَنْتَوِي مَعَهُمْ.

L35263–35265 And through the chain of Saʿīd ibn Manṣūr: I am Hushaym; Ismāʿīl ibn Abī Khālid reported to us from al-Shaʿbī that he was asked about the widow: "Does she leave during her waiting period?" He said: "Most of Ibn Masʿūd's associates were stricter." They say something about this: "She should not go out," and the Elder—meaning Ali ibn Abi Talib, may Allah be pleased with him—would prepare her mount.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أرنا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ أَنَّهُ سُئِلَ عَنْ الْمُتَوَفَّى عَنْهَا: أَتَخْرُجُ فِي عِدَّتِهَا؟ فَقَالَ: كَانَ أَكْثَرُ أَصْحَابِ ابْنِ مَسْعُودٍ أَشَدَّ شَيْءٍ فِي ذَلِكَ يَقُولُونَ: لَا تَخْرُجُ، وَكَانَ الشَّيْخُ - يَعْنِي: عَلِيَّ بْنَ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ -: يُرَحِّلُهَا.

L35266 Narrated via the chain of Saʿīd ibn Manṣūr: I am Sufyān ibn ʿUyaynah, from ʿAmr ibn Dīnār, from ʿAṭāʾ and Jābir ibn Zayd. Both of them stated concerning the woman whose husband has died [and is in her waiting period]: She should not leave her home.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءٍ، وَجَابِرِ بْنِ زَيْدٍ، كِلَاهُمَا قَالَ فِي الْمُتَوَفَّى عَنْهَا: لَا تَخْرُجُ.

L35267 From the chain of Saʿīd ibn Manṣūr: I am Hushaym, I am Yaḥyā ibn Saʿīd—he is the Anṣārī—that al-Qāsim ibn Muḥammad, Sālim ibn ʿAbd Allāh, and Saʿīd ibn al-Musayyab said concerning the woman whose husband has died: She must not leave until her ʿiddah concludes.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يَحْيَى بْنُ سَعِيدٍ - هُوَ الْأَنْصَارِيُّ - أَنَّ الْقَاسِمَ بْنَ مُحَمَّدٍ، وَسَالِمَ بْنَ عَبْدِ اللَّهِ، وَسَعِيدَ بْنَ الْمُسَيِّبِ قَالُوا فِي الْمُتَوَفَّى عَنْهَا: لَا تَخْرُجُ حَتَّى تَنْقَضِيَ عِدَّتُهَا.

L35268 From the chain via Waki‘, from al-Ḥasan ibn Ṣāliḥ, from al-Mughīrah, from Ibrāhīm: that he said regarding the widow: There is no harm in her going out during the day, provided she does not spend the night away from her home.

وَمِنْ طَرِيقِ وَكِيعٍ عَنِ الْحَسَنِ بْنِ صَالِحٍ عَنِ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ: أَنَّهُ قَالَ فِي الْمُتَوَفَّى عَنْهَا: لَا بَأْسَ بِأَنْ تَخْرُجَ بِالنَّهَارِ وَلَا تَبِيتَ عَنْ بَيْتِهَا.

L35269 Through the chain of Sa’id ibn Mansur: Jarir reported from al-Mughirah from Ibrahim concerning a widow in a rented house. He said: “It is best that the rent be paid, and she shall observe her waiting period in the house where she was.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا جَرِيرٌ عَنِ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ فِي الْمُتَوَفَّى عَنْهَا فِي بَيْتٍ بِأُجْرَةٍ؟ قَالَ: إِنْ أَحْسَنَ أَنْ يُعْطَى الْكِرَاءَ، وَتَعْتَدَّ فِي الْبَيْتِ الَّذِي كَانَتْ فِيهِ.

L35270 We have cited Ibrāhīm’s statement solely due to his statement regarding the conditions of departure and regarding lease; otherwise, his explicit statement is that she holds the right to residence and maintenance.

إِنَّمَا أَوْرَدْنَا كَلَامَ إِبْرَاهِيمَ لِقَوْلِهِ فِي صِفَةِ الْخُرُوجِ، وَفِي الْكِرَاءِ، وَإِلَّا فَإِنَّ قَوْلَهُ إِنَّ لَهَا السُّكْنَى، وَالنَّفَقَةَ.

L35271 And via the chain of narration of ‘Abd al-Razzāq from Ibn Jurayj: I heard Yaḥyā ibn Sa‘īd al-Anṣārī speak regarding the matter of the widow. He said: “We hold that she may remain the entire day in full, until night, outside her home if she wishes, and she may go back.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ سَمِعْت يَحْيَى بْنَ سَعِيدٍ الْأَنْصَارِيَّ يَقُولُ فِي أَمْرِ الْمُتَوَفَّى عَنْهَا، قَالَ: فَنَحْنُ عَلَى أَنْ تَظَلَّ يَوْمَهَا أَجْمَعَ حَتَّى اللَّيْلَ فِي غَيْرِ بَيْتِهَا إِنْ شَاءَتْ وَتَنْقَلِبَ.

L35272 From the narration of Ismail ibn Ishaq: Abu Thabit al-Madini narrated from Ibn Wahb, who informed me that Amr ibn al-Harith narrated that Bukayr—Ibn al-Ashajj—related to him that the daughter of Habbār ibn al-Aswad; her husband died, and she wished to perform Hajj while still in her waiting period. She asked Sa‘id ibn al-Musayyib. He forbade her. Then another instructed her to proceed with Hajj, so she departed. When she reached al-Baydā’, she fell and suffered a fracture. Abu Muhammad remarked: It is astonishing how the ignorant cite this incident as proof of punishment. By Allah, if such reasoning were valid, then by that, the army of Musrif ibn ‘Uqbah—those who assaulted the people of Medina on the Day of al-Ḥarrah and waged war against Mecca—would have been punished. Sa‘id ibn al-Musayyib—may Allah have mercy on him—was tested with harsher trials than this woman’s ordeal. Trials for a Muslim are a source of reward and atonement, while Allah Almighty may delay the disbelievers and sinners until the Day of Resurrection.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا أَبُو ثَابِتٍ الْمَدِينِيُّ عَنِ ابْنِ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ أَنَّ بُكَيْرًا - هُوَ ابْنُ الْأَشَجِّ - حَدَّثَهُ أَنَّ ابْنَةَ هَبَّارِ بْنِ الْأَسْوَدِ تُوُفِّيَ عَنْهَا زَوْجُهَا فَأَرَادَتْ الْحَجَّ وَهِيَ فِي عِدَّتِهَا، فَسَأَلَتْ سَعِيدَ بْنَ الْمُسَيِّبِ؟ فَنَهَاهَا، ثُمَّ أَمَرَهَا غَيْرُهُ بِالْحَجِّ، فَخَرَجَتْ فَلَمَّا كَانَتْ بِالْبَيْدَاءِ صُرِعَتْ فَانْكَسَرَتْ؟ قَالَ أَبُو مُحَمَّدٍ: مِنَ الْعَجَبِ احْتِجَاجُ أَهْلِ الْجَهْلِ بِهَذَا عَلَى أَنَّهَا عُقُوبَةٌ، وَتَاللَّهِ لَوْ جَرَتْ هَذِهِ الْقِصَّةُ أَوْ غَيْرُهَا عَلَى مَا ظَنُّوا لَكَانَ بِذَلِكَ عَسْكَرُ مُسْرِفِ بْنِ عُقْبَةَ الْمُوقِعُونَ بِأَهْلِ الْمَدِينَةِ يَوْمَ الْحَرَّةِ، الْمُحَارِبُونَ لِمَكَّةَ وَقَدْ امْتُحِنَ سَعِيدُ بْنُ الْمُسَيِّبِ - رَحِمَهُ اللَّهُ - بِأَشَدَّ مِنْ مِحْنَةِ هَذِهِ الْمَرْأَةِ، وَالْمِحَنُ لِلْمُسْلِمِ أَجْرٌ وَتَكْفِيرٌ، وَقَدْ يُمْهِلُ اللَّهُ تَعَالَى الْكُفَّارَ وَالْفُسَّاقَ إِلَى يَوْمِ الْقِيَامَةِ.

L35273–35274 It was narrated from Rabi’ah—though it is not authentic—that the woman

whose husband has died must resolve to stay with her family, and if she is in a place of danger, she must not remain there.

وَرُوِيَ عَنْ رَبِيعَةَ - وَلَمْ يَصِحَّ - أَنَّ الْمُتَوَفَّى عَنْهَا تَنْتَوِي مَعَ أَهْلِهَا، وَإِنْ كَانَتْ فِي مَوْضِعِ خَوْفٍ فَإِنَّهَا لَا تُقِيمُ فِيهِ.

L35275 It has been authentically narrated from Al-Zuhrī regarding one who initiates [marital life] and then dies that his wife returns to her husband's house if she is not in a dwelling she resides in.

وَصَحَّ عَنْ الزُّهْرِيِّ فِي الَّذِي يَبْتَدِئُ فَيَمُوتُ أَنَّ امْرَأَتَهُ تَرْجِعُ إلَى بَيْتِ زَوْجِهَا إذَا لَمْ تَكُنْ فِي مَسْكَنٍ تَسْكُنُهُ.

L35276 Through the chain of Ḥammād ibn Zayd, from Ayyūb al-Sakhtiyānī, from Muḥammad ibn Sīrīn: A woman whose husband died while she was ill, so her family moved her. Then they asked. All of them instructed them that she should be returned to her husband's house. Ibn Sīrīn said: So we returned her on a mat.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ امْرَأَةً تُوُفِّيَ عَنْهَا زَوْجُهَا - وَهِيَ مَرِيضَةٌ - فَنَقَلَهَا أَهْلُهَا، ثُمَّ سَأَلُوا؟ فَكُلُّهُمْ يَأْمُرُهُمْ أَنْ تُرَدَّ إلَى بَيْتِ زَوْجِهَا، قَالَ ابْنُ سِيرِينَ: فَرَدَدْنَاهَا فِي نَمَطٍ -.

L35277 And with this, Mālik, al-Shāfiʿī, ʿAbd al-Raḥmān ibn Mahdī, and Abū ʿUbayd say.

وَبِهِ يَقُولُ مَالِكٌ، وَالشَّافِعِيُّ، وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، وَأَبُو عُبَيْدٍ.

L35278 I am Aḥmad ibn Qāsim, from my father Qāsim ibn Muḥammad ibn Qāsim, from my grandfather Qāsim ibn Aṣbagh, from Muḥammad ibn Shādhān, from al-Muʿallā ibn Manṣūr, from Yaʿqūb—who is Abū Yūsuf al-Qāḍī—and Ḥafṣ ibn Ghayyāth. Both narrated from Ibrāhīm, from al-Aswad, from ʿUmar ibn al-Khaṭṭāb: that he would assign to the woman divorced three times the right to housing and maintenance during her ʿiddah. Ḥafṣ appended: as long as she remains in her waiting period.

وَقَوْلٌ رَابِعٌ - أَنَّ لَهَا السُّكْنَى، وَالنَّفَقَةَ -: كَمَا أَنَا أَحْمَدُ بْنُ قَاسِمٍ أَنَا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ أَنَا جَدِّي قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ شَاذَانَ أَنَا الْمُعَلَّى بْنُ مَنْصُورٍ أَنَا يَعْقُوبُ - هُوَ أَبُو يُوسُفَ الْقَاضِي - وَحَفْصُ بْنُ غِيَاثٍ، قَالَا: عَنْ إبْرَاهِيمَ عَنْ الْأَسْوَدِ عَنْ عُمَرَ بْنِ الْخَطَّابِ: أَنَّهُ كَانَ يَجْعَلُ لِلْمُطَلَّقَةِ ثَلَاثًا السُّكْنَى، وَالنَّفَقَةَ - زَادَ حَفْصٌ: مَا دَامَتْ فِي عِدَّتِهَا.

L35279 And we have narrated it via the route of Saʿīd ibn Manṣūr: from Abū Muʿāwiyah, from Al-Aʿmash, from Ibrāhīm, who said: "'Umar ibn Al-Khaṭṭāb and 'Abdullāh ibn Masʿūd used to assign three [rights] to a divorced woman: housing and maintenance."

وَرُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو مُعَاوِيَةَ أَنَا الْأَعْمَشُ عَنْ إبْرَاهِيمَ قَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ، وَعَبْدُ اللَّهِ بْنُ مَسْعُودٍ يَجْعَلَانِ لِلْمُطَلَّقَةِ ثَلَاثًا السُّكْنَى وَالنَّفَقَةَ.

L35280–35281 From the narration of ʿAbd al-Razzāq via Sufyān al-Thawrī, from al-Aʿmash, from Ibrāhīm, from Shurayh concerning the irrevocably divorced woman (thrice-divorced): He held that she is entitled to residence and financial maintenance.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ عَنْ شُرَيْحٍ فِي الْمُطَلَّقَةِ ثَلَاثًا، قَالَ: لَهَا السُّكْنَى، وَالنَّفَقَةُ.

L35282 Narrated by him to Sufyān, from Ḥammād ibn Abī Sulaymān, who said: "The thrice-divorced woman is granted residence and maintenance." And via the chain of Wakīʿ, from Shuʿbah, from Al-Ḥakam ibn ʿUtaybah, from Ibrāhīm al-Nakhaʿī, who said: "The thrice-divorced woman is granted residence and maintenance."

وَبِهِ إِلَى سُفْيَانَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ قَالَ: لِلْمُطَلَّقَةِ ثَلَاثًا السُّكْنَى وَالنَّفَقَةُ. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: الْمُطَلَّقَةُ ثَلَاثًا لَهَا السُّكْنَى وَالنَّفَقَةُ.

L35283 From the narration chain of Isma'il ibn Ishaq: Abu Bakr ibn Abi Shaybah reported to us, Humaid reported to us from al-Hasan ibn Salih ibn Hayy from al-Suddi from al-Sha'bi regarding a woman irrevocably divorced three times. He said: She is entitled to lodging and maintenance—this is the opinion of Sufyan al-Thawri, al-Hasan ibn Hayy, Abu Hanifah, and his companions. As for the pregnant woman whose husband has died: A group held that if she is an heir, her maintenance is drawn from her share—whether she is pregnant or not—. If she is not an heir, it is drawn from the share of the possessor of her womb—if the possessor is an heir—. If neither of them is an heir, it is drawn from her own wealth—if she possesses any—. Otherwise, she is considered one of the poor among Muslims. If the possessor of her womb dies before being born alive, she is liable to repay what was spent on her from his share to the heirs.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا حُمَيْدٌ عَنْ الْحَسَنِ بْنِ صَالِحِ بْنِ حَيٍّ عَنْ السُّدِّيِّ عَنْ الشَّعْبِيِّ فِي الْمُطَلَّقَةِ ثَلَاثًا قَالَ: لَهَا السُّكْنَى، وَالنَّفَقَةُ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي حَنِيفَةَ وَأَصْحَابِهِ وَأَمَّا الْمُتَوَفَّى عَنْهَا الْحَامِلُ -: فَطَائِفَةٌ قَالَتْ: إنْ كَانَتْ وَارِثَةً فَمِنْ نَصِيبِهَا - حَامِلًا كَانَتْ أَوْ غَيْرَ حَامِلٍ - فَإِنْ لَمْ تَكُنْ وَارِثَةً فَمِنْ نَصِيبِ ذِي بَطْنِهَا - إنْ كَانَ وَارِثًا - فَإِنْ لَمْ يَكُونَا وَارِثَيْنِ فَمِنْ مَالِهَا نَفْسِهَا - إنْ كَانَ لَهَا مَالٌ - وَإِلَّا فَهِيَ أَحَدُ فُقَرَاءِ الْمُسْلِمِينَ، فَإِنْ مَاتَ ذُو بَطْنِهَا قَبْلَ أَنْ يَخْرُجَ حَيًّا رَدَّتْ مَا أُنْفِقَ عَلَيْهَا مِنْ نَصِيبِهِ إلَى الْوَرَثَةِ.

L35284 And the interpretation of our statement "if there is no heir" refers to a scenario where she embraced Islam after her husband's death—he being a disbeliever. Thus, the child becomes Muslim by virtue of his mother's conversion, for a Muslim does not inherit from a disbeliever. This is our position.

وَتَفْسِيرُ قَوْلِنَا: إنْ لَمْ يَكُنْ وَارِثًا، أَنْ تَكُونَ أَسْلَمَتْ بَعْدَ مَوْتِ زَوْجِهَا - وَهُوَ كَافِرٌ - فَيَكُونُ هُوَ مُسْلِمًا بِإِسْلَامِ أُمِّهِ، وَلَا يَرِثُ كَافِرًا مُسْلِمٌ - وَهَذَا قَوْلُنَا.

L35285 A group said: If the wealth is abundant, he should spend on her from her share, but if it is limited, he should spend from the entirety of the wealth.

وَقَالَتْ طَائِفَةٌ: إنْ كَانَ الْمَالُ كَثِيرًا أَنْفَقَ عَلَيْهَا مِنْ نَصِيبِهَا، وَإِنْ كَانَ قَلِيلًا فَمِنْ جَمِيعِ الْمَالِ.

L35286 A group said: Her maintenance is to be provided from the entirety of the wealth. Another group said: Whether she is an heir(ess) or not, her maintenance is her responsibility - from her own assets if she possesses any, and by her asking if she has none. It is neither from her inheritance, nor from the inheritance share allocated to the fetus in her womb, nor from the entirety of the wealth.

وَقَالَتْ طَائِفَةٌ: نَفَقَتُهَا مِنْ جَمِيعِ الْمَالِ، وَقَالَتْ طَائِفَةٌ: وَارِثَةً كَانَتْ أَوْ لَمْ تَكُنْ نَفَقَتُهَا عَلَيْهَا مِنْ مَالِهَا - إنْ كَانَ لَهَا مَالٌ - وَمِنْ سُؤَالِهَا إنْ كَانَ لَا مَالَ لَهَا، لَا مِنْ مِيرَاثِهَا، وَلَا مِنْ مِيرَاثِ ذِي بَطْنِهَا، وَلَا مِنْ جَمِيعِ الْمَالِ.

L35287–35288 The first opinion: It was narrated to us via Waki' from Sufyan al-Thawri

فَالْقَوْلُ الْأَوَّلُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: نَفَقَةُ الْمُتَوَفَّى عَنْهَا الْحَامِلِ مِنْ نَصِيبِهَا.

from Abu al-Zubayr from Jabir ibn ʻAbd Allah, who said: The financial support for the pregnant woman whose husband has died upon her shall be provided from her inheritance share.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَبَّادِ بْنِ أَبِي ذَكْوَانَ أَنَّ ابْنَ عَبَّاسٍ قَالَ فِي الْمُتَوَفَّى عَنْهَا الْحَامِلِ: نَفَقَتُهَا مِنْ نَصِيبِهَا.

L35289 Narrated through Ḥammād ibn Salamah from ʿAmr ibn Dīnār from ʿAbbād ibn Abī Dhakwān that Ibn ʿAbbās said concerning a pregnant widow: “Her maintenance is taken from her prescribed share.”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الرَّبِيِّعِ عَنْ عَطَاءٍ قَالَ: الْمُتَوَفَّى عَنْهَا مِنْ نَصِيبِهَا يُنْفَقُ عَلَى الْحَامِلِ.

L35290 And from the narration of Wakiʿ through Rubayyʿ from ʿAṭāʾ, he said: What is to be spent on the pregnant woman [whose husband died] is taken from her share.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ فِي الْحَامِلِ الْمُتَوَفَّى عَنْهَا قَالَ: يُنْفَقُ عَلَيْهَا مِنْ نَصِيبِهَا.

L35291 From the narration of Wakiʿ, from Shuʿbah, from al-Ḥakam ibn ʿUtaybah concerning the pregnant widow whose husband has died, al-Ḥakam said: “Maintenance for her is provided from her share.”

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَّ زِيَادًا الْأَعْلَمَ أَخْبَرَهُ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ أَرْسَلَ إِلَى عَبْدِ الْمَلِكِ بْنِ يَعْلَى - قَاضِي الْبَصْرَةِ - فِي الْحَامِلِ الْمُتَوَفَّى عَنْهَا؟ فَقَالَ: نَفَقَتُهَا مِنْ نَصِيبِهَا.

L35292 And through the chain of Ḥammād ibn Salama, Ziyād al-Aʿlam informed him from Muḥammad ibn Sīrīn that he sent to ʿAbd al-Malik ibn Yaʿlā—the judge of Basra—inquiring, “What about the pregnant woman whose husband has died?” He responded: “Her maintenance is from her share.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يُونُسُ عَنْ الْحَسَنِ قَالَ: نَفَقَتُهَا مِنْ نَصِيبِهَا.

L35293 And from the narrational path of Saʿīd ibn Manṣūr: via Hushaym, via Yūnus, via al-Ḥasan, who said: Her [obligatory] maintenance is to be provided from his obligated portion [of wealth].

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو شِهَابٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ فِي الْمُتَوَفَّى عَنْهَا، وَبَلَغَهَا الْخَبَرُ، وَقَدْ أَنْفَقَتْ مِنْ مَالِهِ قَالَ: يُحْسَبُ مَا أَنْفَقَتْ مِنْ مَالِهِ مِنْ يَوْمِ مَاتَ فَجُعِلَ مِنْ نَصِيبِهَا.

L35294 From the chain of Saʿīd ibn Manṣūr: I received from Abū Shihāb, from Ismāʿīl ibn Abī Khālid, from al-Shaʿbī regarding a widow who learned of her husband’s death after spending from his wealth. Al-Shaʿbī said: The amount she spent from his wealth is calculated starting from the day he died and counted as part of her inheritance share.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَأَحْمَدُ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِهِمْ، وَهُوَ أَحَدُ قَوْلَيْ الشَّافِعِيِّ - وَأَحَدُ قَوْلَيْ سُفْيَانَ.

L35295 And this is the opinion of Abū Ḥanīfah, Aḥmad, Abū Sulaymān, and all their companions. It is one of the two views of al-Shāfiʿī—and one of the two views of Sufyān.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ جَعْفَرِ بْنِ بُرْقَانَ عَنْ الزُّهْرِيِّ قَالَ: قَالَ قَبِيصَةُ بْنُ ذُؤَيْبٍ فِي الْحَامِلِ الْمُتَوَفَّى عَنْهَا: لَوْ أَنْفَقَتْ عَلَيْهَا مِنْ غَيْرِ نَصِيبِهَا أَنْفَقَتْ عَلَيْهَا مِنْ مَالِ ذِي بَطْنِهَا.

L35296 And through the narration of Waki‘ from Ja‘far ibn Burqān from al-Zuhrī, he said: Qabīṣah ibn Dhu’ayb stated concerning the pregnant widow: If she

were to spend on herself from other than her allotted share, she would be spending from the wealth of the child in her womb.

L35297 The second opinion: As we have narrated through the chain of Saʿīd ibn Manṣūr – I am Abū ʿAwānah, from Manṣūr, from Ibrāhīm al-Nakhaʿī – who said regarding the pregnant woman whose husband has died: "Our fellow scholars used to say: If the estate was large, he was commanded to provide for her from her allocated portion. If it was small, he was to provide for her from the entirety of the estate."

L35298–35300 The third opinion—those who hold it are divided into categories—: A group said: If she inherits, it is from the share of the owner of her womb, and if she does not inherit, it is from the entire estate.

L35301 A group maintained that the maintenance of the pregnant woman whose husband has died is to be provided from the entirety of the wealth.

L35302 A group held that she is entitled to maintenance from the principal of the estate (whether she was pregnant or not pregnant) as long as she remained in the waiting period. This is as we have narrated through the chain of Saʿīd ibn Manṣūr: "I report via Hushaym, who reports via Yūnus, from al-Ḥasan, who would state regarding the *umm al-walad* (enslaved woman bearing her master's child) whose master died while she was pregnant: 'If she delivers the child alive, her maintenance is drawn from the child's share. But if it is born dead, then from the entire estate.'" Yūnus added: "Ibn Sīrīn used to assert: 'Maintenance is provided for her from the entire estate.'" This had been his opinion until he became the executor of the estate of a nephew who died, leaving his *umm al-walad* pregnant. He then disliked acting upon his own opinion in her case and sent for ʿAbd al-Malik ibn Yaʿlā—the judge of Basra—who ruled: "She has no right to maintenance."

L35303 The second opinion—as reported through ʿAbd al-Razzāq from Ibn Jurayj, who said: Ibn Shihāb was asked regarding the woman whose husband has died—from whose wealth is her maintenance due? He replied: Ibn ʿUmar held that her maintenance—whether she was pregnant or not—should be provided from all the wealth her husband left. But the jurists rejected this view and ruled that she has no right to maintenance.

وَالْقَوْلُ الثَّانِي -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو عَوَانَةَ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ فِي الْحَامِلِ الْمُتَوَفَّى عَنْهَا: كَانَ أَصْحَابُنَا يَقُولُونَ: إِنْ كَانَ الْمَالُ كَثِيرًا أُمِرَ أَنْ يُنْفِقَ عَلَيْهَا مِنْ نَصِيبِهَا، وَإِنْ كَانَ قَلِيلًا أَنْفَقَ عَلَيْهَا مِنْ جَمِيعِ الْمَالِ.

وَالْقَوْلُ الثَّالِثُ -: انْقَسَمَ الْقَائِلُونَ بِهِ أَقْسَامًا -: فَقَالَتْ طَائِفَةٌ: إِنْ وَرِثَتْ فَمِنْ نَصِيبِ ذِي بَطْنِهَا وَإِنْ لَمْ تَرِثْ فَمِنْ جَمِيعِ الْمَالِ.

وَقَالَتْ طَائِفَةٌ: نَفَقَةُ الْحَامِلِ الْمُتَوَفَّى عَنْهَا مِنْ جَمِيعِ الْمَالِ.

وَقَالَتْ طَائِفَةٌ: لَهَا النَّفَقَةُ مِنْ رَأْسِ الْمَالِ - حَامِلًا كَانَتْ أَوْ غَيْرَ حَامِلٍ - مَا كَانَتْ فِي الْعِدَّةِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يُونُسُ عَنْ الْحَسَنِ أَنَّهُ كَانَ يَقُولُ فِي أُمِّ الْوَلَدِ إِذَا مَاتَ عَنْهَا سَيِّدُهَا وَهِيَ حَامِلٌ: إِنْ وَلَدَتْهُ حَيًّا فَنَفَقَتُهَا مِنْ نَصِيبِهِ، وَإِنْ كَانَ مَيِّتًا فَمِنْ جَمِيعِ الْمَالِ، قَالَ يُونُسُ: كَانَ ابْنُ سِيرِينَ يَقُولُ: يُنْفَقُ عَلَيْهَا مِنْ جَمِيعِ الْمَالِ - كَانَ ذَلِكَ رَأْيَهُ حَتَّى وَلِيَ تَرِكَةَ ابْنِ أَخٍ لَهُ مَاتَ وَتَرَكَ أُمَّ وَلَدِهِ حَامِلًا، فَكَرِهَ أَنْ يَعْمَلَ فِيهَا بِرَأْيِهِ، فَأَرْسَلَ إِلَى عَبْدِ الْمَلِكِ بْنِ يَعْلَى - قَاضِي الْبَصْرَةِ - فَقَالَ: لَا نَفَقَةَ لَهَا.

وَالْقَوْلُ الثَّانِي - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: سُئِلَ ابْنُ شِهَابٍ عَنْ الْمُتَوَفَّى عَنْهَا عَلَى مَنْ نَفَقَتُهَا؟ فَقَالَ: كَانَ ابْنُ عُمَرَ يَرَى نَفَقَتَهَا - حَامِلًا كَانَتْ أَوْ

غَيْرَ حَامِلٍ - مِنْ جَمِيعِ الْمَالِ الَّذِي تَرَكَ زَوْجُهَا؟ فَأَبَى الْأَئِمَّةُ ذَلِكَ وَقَضَوْا أَنْ لَا نَفَقَةَ لَهَا.

L35304 قَالَ أَبُو مُحَمَّد: التَّهْوِيلُ بِخِلَافِ الْأَئِمَّةِ هَاهُنَا كَلَامٌ فَارِغٌ، لِأَنَّهُ لَمْ يَكُنْ فِي الْأَئِمَّةِ - بَعْدَ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ: أَحَدٌ يَعْدِلُ ابْنَ عُمَرَ.

L35305 وَلَا شَكَّ فِي أَنَّ الزُّهْرِيَّ لَمْ يَعْنِ الْأَرْبَعَةَ الْمَذْكُورِينَ، إِنَّمَا عَنَى مَنْ بَعْدَهُمْ الَّذِينَ أَبَوْا قَوْلَ ابْنِ عُمَرَ: - أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا أَحْمَدُ بْنُ عَوْنِ اللَّهِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ أَنَا مُحَمَّدُ بْنُ جَعْفَرَ غُنْدَرٌ أَنَا شُعْبَةُ عَنْ سُفْيَانَ بْنِ حُسَيْنٍ، قَالَ سَمِعْت الزُّهْرِيَّ يُحَدِّثُ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ فِي الْحَامِلِ الْمُتَوَفَّى عَنْهَا زَوْجُهَا: نَفَقَتُهَا مِنْ جَمِيعِ الْمَالِ.

L35306 وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَشْعَثَ عَنْ الشَّعْبِيِّ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ وَابْنَ مَسْعُودٍ كَانَا يَقُولَانِ: النَّفَقَةُ مِنْ جَمِيعِ الْمَالِ لِلْحَامِلِ.

L35307–35309 أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَصِيرِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ قَالَ: سَأَلْت سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ الْحَامِلِ الْمُتَوَفَّى عَنْهَا؟ فَقَالَ: قَدْ كُنَّا نُنْفِقُ عَلَيْهَا حَتَّى نَبْتُمْ مَا نَبْتُمْ.

L35310 وَبِهِ إلَى الْخُشَنِيِّ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ حَدَّثَتْنِي أُمُّ دَاوُد الْوَابِشِيَّةِ قَالَتْ: تُوُفِّيَ زَوْجِي وَأَنَا حُبْلَى فِي ثَلَاثَةِ أَشْهُرٍ فَخَاصَمَنِي أَهْلُهُ إلَى شُرَيْحٍ فَعَرَضَ لِي خَمْسَةَ

L35304 Abu Muhammad said: Exaggerating disagreement with the caliphs here is baseless talk, for after Abu Bakr, Umar, Uthman, and Ali, there was none among the caliphs who equaled Ibn Umar.

L35305 There is no doubt that al-Zuhrī did not intend the four mentioned individuals, but rather those who came after them who rejected the statement of Ibn ʿUmar. The chain of transmission proceeds as follows: I am Muḥammad ibn Saʿīd ibn Nubāt; I am Aḥmad ibn ʿAwn Allāh; I am Qāsim ibn Aṣbagh; I am Muḥammad ibn ʿAbd al-Salām al-Khushanī; I am Muḥammad ibn Bashshār; I am Muḥammad ibn Jaʿfar Ghundur; I am Shuʿbah, from Sufyān ibn Ḥusayn, who said: "I heard al-Zuhrī narrating from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father, who said concerning the pregnant woman whose husband has died: her maintenance shall be drawn from the entirety of the estate."

L35306 And through the chain of Abd al-Razzaq from Sufyan al-Thawri from Ash'ath from al-Sha'bi: Ali ibn Abi Talib and Ibn Mas'ud used to say, "Maintenance for the pregnant wife is from the entirety of the wealth."

L35307–35309 Muhammad ibn Saʿīd ibn Nubāt narrated from Aḥmad ibn ʿAbdillāh ibn ʿAbd al-Baṣīr, from Qāsim ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Ḥabīb ibn Abī Thābit. He said: I asked Salim ibn Abdullah ibn Umar about the pregnant woman whose husband had died, and he replied, "We used to provide maintenance for her until the matter was conclusively settled."

L35310 Through him to Al-Khushani—I am Muhammad ibn Bishar: Yahya ibn Sa'id Al-Qattan reported to me—Umm Dawud al-Wabishiyyah narrated to me, saying: "My husband died while I was three months pregnant. His family brought a lawsuit against me before Shuraih. He offered me fifteen dirhams from the entire estate each month, saying: 'This is for you until you de-

liver. When you give birth, if you keep the child, you shall receive the same amount.'"

عَشَرَ دِرْهَمًا مِنْ جَمِيعِ الْمَالِ فِي كُلِّ شَهْرٍ، وَقَالَ: هَذِهِ لَك حَتَّى تَلِدِي، فَإِذَا وَلَدْت فَإِنْ أَمْسَكْتِهِ فَلَكِ مِثْلُهَا.

L35311 And we have also narrated it through the chain of Waki' from the mentioned Umm Dawud, and he added: "until you grow."

وَرُوِّينَاهُ أَيْضًا - مِنْ طَرِيقِ وَكِيعٍ عَنْ أُمِّ دَاوُد الْمَذْكُورَةِ، وَزَادَ: حَتَّى تَعْظُمِي.

L35312 And through the chain of Saʿīd ibn Manṣūr: I am Abū ʿAwānah, from Manṣūr from Ibrāhīm from Shurayḥ, who said: Maintenance for the pregnant woman whose husband has died shall be provided from the entirety of the estate.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو عَوَانَةَ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ عَنْ شُرَيْحٍ قَالَ: يُنْفَقُ عَلَى الْحَامِلِ الْمُتَوَفَّى عَنْهَا مِنْ جَمِيعِ الْمَالِ.

L35313 From the narration of Waki', who narrated from Shu'bah; Shu'bah narrated from Qatadah, Hammad ibn Abi Sulayman, and al-Mughirah. Al-Mughirah said: from Ibrahim. They all stated concerning the pregnant widow when her husband dies: maintenance for her is to be provided from the entire estate.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ قَتَادَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَالْمُغِيرَةِ، قَالَ الْمُغِيرَةُ: عَنْ إبْرَاهِيمَ، قَالُوا كُلُّهُمْ فِي الْحَامِلِ الْمُتَوَفَّى عَنْهَا: يُنْفَقُ عَلَيْهَا مِنْ جَمِيعِ الْمَالِ.

L35314 Narrated via Ḥammād ibn Salamah from Qaṭādah, who reported from Abī al-ʻĀliyah and Khilāṣ ibn ʻAmr—both of them said together regarding the woman whose husband died while she is pregnant: "Her maintenance is from the entirety of the wealth."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا قَتَادَةُ عَنْ أَبِي الْعَالِيَةِ، وَخِلَاسِ بْنِ عَمْرٍو، قَالَا جَمِيعًا فِي الْمُتَوَفَّى عَنْهَا زَوْجُهَا وَهِيَ حَامِلٌ -: إنَّ نَفَقَتَهَا مِنْ جَمِيعِ الْمَالِ.

L35315 From the chain of Saʿīd ibn Manṣūr: Hushaym narrated, "I [heard] from Sayyār, on the authority of Al-Shaʻbī, concerning the pregnant woman whose husband has died." He said: "Expenditure for her is to be provided from the entirety of the wealth."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا سَيَّارٌ عَنْ الشَّعْبِيِّ فِي الْمُتَوَفَّى عَنْهَا الْحَامِلِ، قَالَ: يُنْفَقُ عَلَيْهَا مِنْ جَمِيعِ الْمَالِ.

L35316 Through the chain of Hammad ibn Salamah from Qatadah—who narrates from al-Hasan and ʿAṭāʾ ibn Abī Rabāḥ—both al-Hasan and ʿAṭāʾ stated regarding a woman widowed while pregnant: "Her maintenance is to be provided from the entire estate."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ، قَالَا جَمِيعًا فِي الْمُتَوَفَّى عَنْهَا وَهِيَ حَامِلٌ -: إنَّ نَفَقَتَهَا مِنْ جَمِيعِ الْمَالِ.

L35317 This is the opinion of Ayyūb al-Sakhtiyānī, Ibn Abī Laylā, al-Ḥasan ibn Ḥayy, Abū ʿUbayd, one of the two opinions of Sufyān, and one of the two opinions of al-Shāfiʿī.

وَهُوَ قَوْلُ أَيُّوبَ السِّخْتِيَانِيِّ وَابْنِ أَبِي لَيْلَى، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي عُبَيْدٍ وَأَحَدُ قَوْلَيْ سُفْيَانَ، وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ.

L35318 Mālik said: No expenditure is to be made for her from her share, nor from

the unborn child's share, nor from the entire estate until she gives birth. And creditors are not to receive half from their debts until she gives birth.

وَقَالَ مَالِكٌ: لَا يُنْفَقُ عَلَيْهَا مِنْ نَصِيبِهَا، وَلَا مِنْ نَصِيبِ ذِي بَطْنِهَا، وَلَا مِنْ جَمِيعِ الْمَالِ حَتَّى تَضَعَ، وَلَا يَنْتَصِفُ الْغُرَمَاءُ مِنْ دُيُونِهِمْ حَتَّى تَضَعَ.

L35319 Al-Awza'i said: If the pregnant woman whose husband has died was a wife, there is no maintenance for her upon the heirs. But if she was an umm walad—an enslaved woman who bore her master's child—her maintenance must be provided from the entire estate until she gives birth.

وَقَالَ الْأَوْزَاعِيُّ: إِنْ كَانَتْ الْمُتَوَفَّى عَنْهَا الْحَامِلُ زَوْجَةً فَلَا نَفَقَةَ لَهَا عَلَى الْوَرَثَةِ، وَإِنْ كَانَتْ أُمَّ وَلَدٍ فَنَفَقَتُهَا مِنْ جَمِيعِ الْمَالِ حَتَّى تَضَعَ.

L35320–35321 Al-Layth said: The expenses for a pregnant umm al-walad [enslaved woman who has borne her master's child] shall be covered from the entirety of her deceased master's estate. If she gives birth, the amount spent on her shall be deducted from the child's share of the inheritance. If she does not deliver, she is required to repay what was given to her.

وَقَالَ اللَّيْثُ يُنْفَقُ عَلَى أُمِّ الْوَلَدِ الْحَامِلِ إِذَا مَاتَ سَيِّدُهَا مِنْ جَمِيعِ الْمَالِ، فَإِنْ وَلَدَتْ جُعِلَ مَا أُنْفِقَ عَلَيْهَا مِنْ حِصَّةِ وَلَدِهَا، وَإِنْ لَمْ تَلِدْ قُضِيَ عَلَيْهَا بِرَدِّ مَا أُعْطِيت.

L35322 Abu Hanifah said: The widow is allowed to go out during the day but must return to her home at night. As for the irrevocably divorced woman, she must not go out, neither at night nor during the day.

وَقَالَ أَبُو حَنِيفَةَ: تَخْرُجُ الْمُتَوَفَّى عَنْهَا نَهَارًا وَتَرْجِعُ لَيْلًا إِلَى مَنْزِلِهَا وَأَمَّا الْمُطَلَّقَةُ الْمَبْتُوتَةُ فَلَا تَخْرُجُ لَا لَيْلًا وَلَا نَهَارًا.

L35323 Abu Muhammad said: As for Abu Hanifah's opinion here, it is manifestly invalid and a categorization unsupported by evidence — the same applies to the opinions of Al-Awza'i and Malik.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ أَبِي حَنِيفَةَ هُنَا فَظَاهِرُ الْفَسَادِ، وَتَقْسِيمٌ لَا دَلِيلَ عَلَى صِحَّتِهِ - كَذَلِكَ قَوْلُ الْأَوْزَاعِيِّ، وَقَوْلُ مَالِكٍ.

L35324 The most evidently flawed is Mālik's opinion in his prohibition of the creditors.

وَأَظْهَرُهَا فَسَادًا قَوْلُ مَالِكٍ فِي مَنْعِهِ الْغُرَمَاءَ.

L35325 The heirs have no share except in what remains after the creditors. If nothing remains for the creditors, then the heirs receive nothing. Why are they denied their due right? Similarly, anyone with a definite entitlement in the inheritance, if denied what must necessarily fall into their share, is subjected to a definite injustice of unknown origin. We have repeatedly questioned them about this and found no basis for them, except their assertion: "Death must be confirmed, the number of heirs determined, and an overseer appointed over the newborn." We responded: "This is a corrupt and invalid argument. Rather, there are countless necessities beyond this. As for debts, establishing death is entirely meaningless. Their rights must be adjudicated whether the debtor is alive or dead."

وَلَا حَظَّ لِلْوَرَثَةِ إِلَّا فِيمَا بَقِيَ لِلْغُرَمَاءِ فَإِنْ لَمْ يَبْقَ لِلْغُرَمَاءِ شَيْءٌ فَلَا شَيْءَ لِلْوَرَثَةِ فَلِأَيِّ مَعْنًى يُمْنَعُونَ حَقَّهُمْ الْوَاجِبَ، وَكَذَلِكَ كُلُّ مَنْ لَهُ حَقٌّ مُتَيَقَّنٌ فِي الْمِيرَاثِ فَمَنْعُهُ مِمَّا لَا بُدَّ لَهُ مِنْ أَنْ يَقَعَ فِي حِصَّتِهِ ظُلْمٌ مُتَيَقَّنٌ، لَا يُدْرَى مِنْ أَيْنَ وَقَعَ لَهُمْ؟ وَقَدْ أَكْثَرْنَا مُسَاءَلَتَهُمْ عَنْ ذَلِكَ فَمَا وَجَدْنَا لَهُمْ مُتَعَلَّقًا، إِلَّا أَنَّهُمْ قَالُوا: لَا بُدَّ مِنْ إثْبَاتِ الْمَوْتِ، وَعِدَّةِ الْوَرَثَةِ، وَمِنْ تَقْدِيمِ نَاظِرٍ عَلَى الْمَوْلُودِ؟ فَقُلْنَا لَهُمْ: هَذَا قَوْلٌ فَاسِدٌ بَاطِلٌ، بَلْ مِنْ

ذَلِكَ أَلْفُ بُدٍّ -: أَمَّا الدُّيُونُ - فَلَا مَعْنَى لِإِثْبَاتِ الْمَوْتِ أَصْلًا، بَلْ يُقْضَى لَهُمْ بِحُقُوقِهِمْ حَيًّا كَانَ أَوْ مَيِّتًا.

L35326 As for the heirs, there is no purpose in establishing their number in matters where there is no doubt that it applies to each one of them.

وَأَمَّا الْوَرَثَةُ - فَلَا مَعْنَى لِإِثْبَاتِ عَدَدِهِمْ فِيمَا لَا شَكَّ أَنَّهُ يَقَعُ لِكُلِّ وَاحِدٍ مِنْهُمْ.

L35327 As for what may or may not occur due to the large number of heirs or their scarcity, or the birth of a male or female child, this must necessarily be suspended until it is ascertained what the ruling will be? As for those who obligate maintenance from the entire estate for the deceased's wife or the irrevocably divorced woman—this is an unmistakable error, for the deceased's wealth no longer belongs to him but has passed to others. Therefore, it is impermissible to spend from the creditors' wealth, the heirs' wealth, or what he bequeathed to others for the maintenance of his wife or the mother of his child—and this is the very essence of injustice. The irrevocably divorced woman is not his wife; she holds the same status as a stranger. Thus, taking from his estate for her maintenance is impermissible.

وَأَمَّا مَا يَقَعُ لَهُ أَوْ لَا يَقَعُ، لِكَثْرَةِ الْوَرَثَةِ، أَوْ لِقِلَّتِهِمْ، وَبِوِلَادَةِ ذَكَرٍ أَوْ أُنْثَى، فَهَذَا يُوقَفُ وَلَا بُدَّ حَتَّى يُتَيَقَّنَ كَيْفَ يَكُونُ حُكْمُهُ؟ وَأَمَّا مَنْ أَوْجَبَ النَّفَقَةَ مِنْ جَمِيعِ الْمَالِ لِلْمُتَوَفَّى عَنْهَا، أَوْ لِلْمَبْتُوتَةِ -: فَخَطَأٌ لَا خَفَاءَ بِهِ؛ لِأَنَّ مَالَ الْمَيِّتِ لَيْسَ لَهُ، بَلْ قَدْ صَارَ لِغَيْرِهِ، فَلَا يَجُوزُ أَنْ يُنْفَقَ عَلَى امْرَأَتِهِ، أَوْ أُمِّ وَلَدِهِ مِنْ مَالِ الْغُرَمَاءِ، أَوْ مِنْ مَالِ الْوَرَثَةِ، أَوْ مِمَّا أَوْصَى بِهِ لِغَيْرِهِمْ - وَهَذَا عَيْنُ الظُّلْمِ - وَالْمَبْتُوتَةُ لَيْسَتْ لَهُ زَوْجَةً، فَهِيَ وَالْأَجْنَبِيَّةُ سَوَاءٌ، فَأَخْذُهُ بِالنَّفَقَةِ عَلَيْهَا لَا يَجُوزُ.

L35328–35330 And we shall mention, if Allah the Exalted wills, the contention of those who obligate housing and maintenance, or housing, for the irrevocably divorced woman. excluding the expenditure, or singled out the pregnant woman for this [exclusion] – and we clarify, by Allah's assistance, the invalidity of all such claims – and through Him, the Almighty and Majestic, we are sustained.

وَنَذْكُرُ إِنْ شَاءَ اللَّهُ تَعَالَى شَغَبَ مَنْ أَوْجَبَ لِلْمَبْتُوتَةِ السُّكْنَى، وَالنَّفَقَةَ، أَوْ السُّكْنَى دُونَ النَّفَقَةِ، أَوْ خَصَّ الْحَامِلَ بِذَلِكَ - وَنُبَيِّنُ بِعَوْنِ اللَّهِ تَعَالَى فَسَادَ كُلِّ ذَلِكَ - وَبِهِ عَزَّ وَجَلَّ نَتَأَيَّدُ.

L35331 As for the statement of those who say, "She has no maintenance nor housing unless she is pregnant," they argued by citing Allah's words: {If they are pregnant, provide for them until they deliver their burden. Then if they breastfeed your child, give them their compensation, and resolve matters between you equitably. But if you disagree, another woman will breastfeed [the child] on his behalf. Let the affluent spend according to their capacity, and let him whose provision is restricted spend from what Allah has given him. Allah does not burden any soul beyond what He has granted it} [At-Talaq: 6-7].[21]

أَمَّا قَوْلُ مَنْ قَالَ: لَا نَفَقَةَ لَهَا وَلَا سُكْنَى إِلَّا أَنْ تَكُونَ حَامِلًا؟ فَإِنَّهُمْ احْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {وَإِنْ كُنَّ أُولَاتِ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأْتَمِرُوا بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاسَرْتُمْ فَسَتُرْضِعُ لَهُ أُخْرَى - لِيُنْفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا مَا آتَاهَا} [الطلاق: ٦ - ٧] الْآيَةَ.

[21] **Qur'an references (L35331):** Qur'an 65:6 (At-Talaq); Qur'an 65:7 (At-Talaq).

قَالُوا: وَهَذَا عُمُومٌ لِكُلِّ مُطَلَّقَةٍ حَامِلٍ؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُمْ سَكَتُوا عَنْ أَوَّلِ الْآيَةِ، وَهُوَ قَوْلُهُ عَزَّ وَجَلَّ: {أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولاتِ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٦] فَالَّتِي أَمَرَ اللَّهُ عَزَّ وَجَلَّ بِالنَّفَقَةِ عَلَيْهَا إِنْ كَانَتْ حَامِلًا هِيَ الَّتِي أَمَرَ بِإِسْكَانِهَا وَلَا فَرْقَ، فَمَنْ أَوْجَبَ النَّفَقَةَ دُونَ السُّكْنَى فَقَدْ قَالَ بِلَا دَلِيلٍ، وَبَطَلَ قَوْلُهُ، وَلَمْ يَبْقَ إِلَّا قَوْلُنَا، أَوْ قَوْلُ مَنْ أَوْجَبَ لَهَا السُّكْنَى، وَالنَّفَقَةَ - إِنْ كَانَتْ حَامِلًا - وَسَنُبَيِّنُ وَجْهَ الْحَقِّ فِي ذَلِكَ إِنْ شَاءَ اللَّهُ تَعَالَى.

L35332 They said: “Is this a general ruling for every divorced pregnant woman?” Abu Muhammad responded: “This contains no valid proof for them, for they remained silent about the beginning of the verse - the words of the Almighty: {House them where you dwell according to your means, and do not harm them to restrict them. If they are pregnant, provide for them until they deliver their burden} (Quran 65:6). The pregnant woman whom Allah Almighty commanded to be provided sustenance is precisely the same one He commanded to be housed, with no distinction. Whoever obligates sustenance without housing provision has spoken without evidence, thus invalidating their claim. Only our position remains - or the position of those who obligate both housing provision and sustenance for her if she is pregnant. We shall clarify the correct position in this matter, if Allah, the Exalted, wills.”[22]

وَاحْتَجُّوا أَيْضًا - بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ قَالَ: أَخْبَرَنِي عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ قَالَ: أَرْسَلَ مَرْوَانُ قَبِيصَةَ بْنَ ذُؤَيْبٍ إِلَى فَاطِمَةَ بِنْتِ قَيْسٍ يَسْأَلُهَا؟ فَأَخْبَرَتْهُ أَنَّهَا كَانَتْ تَحْتَ أَبِي عَمْرِو بْنِ حَفْصٍ الْمَخْزُومِيِّ - فَذَكَرَ الْحَدِيثَ - وَأَنَّهُ طَلَّقَهَا آخِرَ ثَلَاثِ تَطْلِيقَاتٍ، إِذْ خَرَجَ إِلَى الْيَمَنِ مَعَ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَأَنَّ عَيَّاشَ بْنَ أَبِي رَبِيعَةَ، وَالْحَارِثَ بْنَ هِشَامٍ، قَالَا: وَاللَّهِ مَا لَهَا نَفَقَةٌ إِلَّا أَنْ تَكُونَ حَامِلًا، قَالَ: فَذَكَرَتْ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: «لَا نَفَقَةَ لَكِ إِلَّا أَنْ تَكُونِي حَامِلًا - وَاسْتَأْذَنَتْهُ فِي الِانْتِقَالِ؟ فَأَذِنَ لَهَا» .

L35333–35335 They also cited as evidence—what we have narrated through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī, who said: ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah ibn Masʿūd informed me, saying: Marwān sent Qabīṣah ibn Dhuʾayb to Fāṭimah bint Qays to question her? She informed him that she had been married to Abū ʿAmr ibn Ḥafṣ al-Makhzūmī—and he related the hadith—and that he divorced her with the third and final pronouncement of divorce when he departed for Yemen with ʿAlī ibn Abī Ṭālib. ʿAyyāṣ ibn Abī Rabīʿah and al-Ḥārith ibn Hishām said: “By Allāh, she has no right to maintenance unless...” He said: She mentioned that to the Messenger of Allah—peace and blessings be upon him—and he said, “No financial maintenance is due to you unless you are pregnant.” She asked his permission to move, and he allowed her.[23]

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ اللَّفْظَةُ «إِلَّا أَنْ تَكُونِي حَامِلًا» لَمْ تَأْتِ إِلَّا مِنْ هَذِهِ الطَّرِيقِ وَلَمْ يَذْكُرْهَا أَحَدٌ مِمَّنْ رَوَى هَذَا الْخَبَرَ عَنْ فَاطِمَةَ غَيْرُ قَبِيصَةَ - وَعِلَّةُ هَذَا الْخَبَرِ: أَنَّهُ مُنْقَطِعٌ لَمْ يَسْمَعْهُ عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ - لَا مِنْ قَبِيصَةَ وَلَا مِنْ مَرْوَانَ - فَلَا نَدْرِي مِمَّنْ

L35336 Abu Muhammad said: This phrase, “except if you are pregnant,” has only come through this chain of transmission, and none of those who narrated this report from Fāṭimah mentioned it except Qabīṣah. The flaw in this report is that it constitutes a broken chain, as ʿUbayd Allāh ibn ʿAbd Allāh neither heard it from Qabīṣah nor from Marwān—so we do not know from whom he heard it. There is no valid proof in a broken chain. Had it been

[22] **Qur’an references (L35332):** Qur’an 65:6 (At-Talaq).
[23] **Hadith references (L35333):** Sunan Abi Dawud 2290.

continuous, we would have hastened to act upon it. Thus, this report is invalidated—and praise be to Allāh, Lord of the worlds.

L35337–35339 Then we examined the view of those who obligate residence for the divorced woman without maintenance. We found them invoking the aforementioned text as evidence, but there is no valid argument in it for anyone who reflects deeply. For Allah the Almighty introduced His truthful statement: "House them from where you reside according to your means" [Surah al-Talaq: 6], following His Exalted's statement in explaining the waiting periods when—The Almighty says: {As for those women who have ceased menstruation among your women, if you are in doubt, their waiting period is three months; and [also] those who have not yet menstruated; and those who are pregnant, their term is until they deliver their child. And whoever fears Allah, He will make ease for him in his matter.} [At-Talaq: 4] {That is the command of Allah, which He has revealed to you. And whoever fears Allah, He will expiate his sins for him and grant him a great reward.} [At-Talaq: 5] {Let them reside where you live according to your means, and do not harass them to restrict them. If they are pregnant, provide for them until they deliver their child.} [At-Talaq: 6] up to His saying, the Most High: {according to your means} [At-Talaq: 6].[24]

L35340 As we have established (with no disagreement among us) that this waiting period applies equally to irrevocably divorced women (mabtutah) and revocably divorced women (raj'iyyah) without distinction, it necessarily follows that Allah's statement "Provide residence for them where you dwell according to your means, and do not harass them to make life difficult for them. If they are pregnant, provide for them until they give birth to their children" (65:6) must have been intended by Him to include irrevocably divorced (mabtutah) and revocably divorced (raj'iyyah) women, or to apply to one of these two categories - this is beyond doubt.[25]

L35341 If you argue: "Indeed, He, the Exalted, intended both categories," we re-

[24]**Qur'an references (L35337):** Qur'an 65:6 (At-Talaq); Qur'an 65:4 (At-Talaq); Qur'an 65:5 (At-Talaq).

[25]**Qur'an references (L35340):** Qur'an 65:6 (At-Talaq).

سَمعَهُ؟ وَلَا حُجَّةَ فِي مُنْقَطِعٍ - وَلَوْ اتَّصَلَ لَسَارَعْنَا إلَى الْقَوْلِ بِهِ، فَبَطَلَ هَذَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ أَوْجَبَ لِلْمَبْتُوتَةِ السُّكْنَى دُونَ النَّفَقَةِ - فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِالنَّصِّ الْمَذْكُورِ، وَلَا حُجَّةَ لَهُمْ فِيهِ لِمَنْ تَأَمَّلَهُ؛ لِأَنَّ اللَّهَ عَزَّ وَجَلَّ ابْتَدَأَ قَوْلَهُ الصَّادِقَ: {أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ} [الطلاق: ٦] إثْرَ قَوْله تَعَالَى فِي بَيَانِ الْعِدَدِ إذْ يَقُولُ عَزَّ وَجَلَّ: {وَاللائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ وَاللائِي لَمْ يَحِضْنَ وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مِنْ أَمْرِهِ يُسْرًا} [الطلاق: ٤] {ذَلِكَ أَمْرُ اللَّهِ أَنْزَلَهُ إِلَيْكُمْ وَمَنْ يَتَّقِ اللَّهَ يُكَفِّرْ عَنْهُ سَيِّئَاتِهِ وَيُعْظِمْ لَهُ أَجْرًا} [الطلاق: ٥] {أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولاتِ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٦] إلَى قَوْله تَعَالَى {مِنْ وُجْدِكُمْ} [الطلاق: ٦] الْآيَةَ.

كَمَا أَوْرَدْنَا وَنَحْنُ لَا نَخْتَلِفُ فِي أَنَّ هَذِهِ الْعِدَّةَ لِلْمَبْتُوتَةِ كَمَا هِيَ لِغَيْرِ الْمَبْتُوتَةِ، وَلَا فَرْقَ، فَوَجَبَ ضَرُورَةً أَنْ يَكُونَ قَوْله تَعَالَى: {أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولاتِ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٦] أَرَادَ بِهِ تَعَالَى جَمِيعَ الْمُطَلَّقَاتِ مِنْ مَبْتُوتَةٍ وَرَجْعِيَّةٍ، أَوْ أَرَادَ أَحَدَ الْقِسْمَيْنِ، هَذَا مَا لَا شَكَّ فِيهِ.

ply: Then it necessarily follows that a non-irrevocably divorced woman has no right to maintenance unless she is pregnant—as you yourselves assert regarding the irrevocably divorced woman—and this conclusion is inescapable. For the scriptural text, according to your position, applies to both categories alike, yet this contradicts your doctrine. Thus, this argument is invalidated.

فَإِنْ قُلْتُمْ: إنَّهُ تَعَالَى أَرَادَ كِلَا الْقِسْمَيْنِ؟ قُلْنَا لَكُمْ: فَيَجِبُ عَلَى هَذَا أَنَّ غَيْرَ الْمَبْتُوتَةِ لَا نَفَقَةَ لَهَا إلَّا أَنْ تَكُونَ حَامِلًا، كَمَا قُلْتُمْ فِي الْمَبْتُوتَةِ وَلَا بُدَّ؛ لِأَنَّ النَّصَّ عِنْدَكُمْ فِيهِمَا جَمِيعًا - وَهَذَا خِلَافُ قَوْلِكُمْ - فَبَطَلَ هَذَا الْقَوْلُ.

L35342 If they say, "He intended only the irrevocably divorced women," we say: This is erroneous in two aspects:

فَإِنْ قَالُوا: أَرَادَ الْمَبْتُوتَاتِ فَقَطْ؟ قُلْنَا: هَذَا خَطَأٌ مِنْ وَجْهَيْنِ:

L35343 The first of these two is—a claim without proof and a specification of the Quran without proof; this is not permissible.

أَوَّلُهُمَا - أَنَّهُ دَعْوَى بِلَا بُرْهَانٍ، وَتَخْصِيصٌ لِلْقُرْآنِ بِلَا دَلِيلٍ، وَهَذَا لَا يَحِلُّ.

L35344 The second point is that the Sunnah from the Messenger of Allah (peace be upon him) has been authentically established in the report of Fāṭimah bint Qays that there is no maintenance due to her nor housing.

وَالْوَجْهُ الثَّانِي -: أَنَّ السُّنَّةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ صَحَّتْ فِي خَبَرِ فَاطِمَةَ بِنْتِ قَيْسٍ بِأَنَّهُ لَا نَفَقَةَ لَهَا وَلَا سُكْنَى.

L35345 Allah forbid that the Messenger of Allah—peace and blessings be upon him—should ever judge contrary to the Quran, except if it were an abrogation or an addition to what is in the Quran. And this is not an addition to what is in the verse.

وَمَعَاذَ اللَّهِ أَنْ يَحْكُمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِخِلَافِ الْقُرْآنِ، إلَّا أَنْ يَكُونَ نَسْخًا أَوْ مُضَافًا إلَى مَا فِي الْقُرْآنِ، وَلَيْسَ هَذَا مُضَافًا إلَى مَا فِي الْآيَةِ.

L35346 It is not permissible to assert: "This constitutes abrogation," except through definitive proof, not by unsubstantiated claim—therefore, this claim is nullified.

وَلَا يَحِلُّ أَنْ يُقَالَ: هَذَا نَسْخٌ، إلَّا بِيَقِينٍ لَا بِالدَّعْوَى - فَبَطَلَ هَذَا الْقَوْلُ.

L35347 If they say: "Did Allah, the Exalted and Glorified, intend only revocable divorces?" We reply: "You are correct, and this is our position and evidence for it: the narration of Fatimah bint Qays and our having obligated maintenance upon the woman divorced with a revocable divorce (who is not pregnant), because she remains his wife - he inherits from her, and she inherits from him - without any difference of opinion."

فَإِنْ قَالُوا: أَرَادَ اللَّهُ عَزَّ وَجَلَّ الرَّجْعِيَّاتِ فَقَطْ؟ قُلْنَا: صَدَقْتُمْ، وَهَذَا قَوْلُنَا وَبُرْهَانُنَا عَلَى ذَلِكَ -: خَبَرُ فَاطِمَةَ بِنْتِ قَيْسٍ وَأَوْجَبْنَا النَّفَقَةَ عَلَى الْمُطَلَّقَةِ طَلَاقًا رَجْعِيًّا - لَيْسَتْ بِحَامِلٍ -؛ لِأَنَّهَا زَوْجَتُهُ يَرِثُهَا وَتَرِثُهُ بِلَا خِلَافٍ.

L35348–35349 The legal text states that wives are entitled to maintenance and clothing, as mentioned earlier in our discussion of "the rulings on maintenance."

وَقَدْ جَاءَ النَّصُّ بِأَنَّ لِلزَّوْجَاتِ النَّفَقَةَ، وَالْكِسْوَةَ بِنَصٍّ قَدْ ذَكَرْنَاهُ قَبْلُ فِي ذِكْرِنَا " حُكْمَ النَّفَقَاتِ ".

L35350 We have derived the ruling regarding breastfeeding by the irrevocably divorced, the woman whose marriage has been annulled, and the one whose

child's affiliation is established in a void marriage from the words of Allah the Exalted: {Mothers shall breastfeed their children for two complete years} [Al-Baqarah: 233]—the verses as they stand—as we will elaborate later in its dedicated chapter, if Allah the Exalted wills.[26]

وَأَخَذْنَا حُكْمَ إِرْضَاعِ الْمَبْتُوتَةِ، وَالْمُنْفَسِخَةِ النِّكَاحِ، وَالَّتِي يَلْحَقُ وَلَدُهَا فِي نِكَاحٍ فَاسِدٍ مِنْ قَوْلِهِ تَعَالَى: {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ} [البقرة: ٢٣٣] الْآيَاتُ كَمَا هِيَ عَلَى مَا نَذْكُرُ بَعْدَ هَذَا فِي بَابِهِ - إِنْ شَاءَ اللَّهُ تَعَالَى -.

L35351 Therefore, these are irrefutably essential proofs from which there is no escape—and divine success is from Allah, the Exalted.

فَهَذِهِ بَرَاهِينُ ضَرُورِيَّةٌ قَاطِعَةٌ لَا مَحِيدَ عَنْهَا -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L35352 Therefore, the aforementioned statement is invalidated—and all praise is due to Allah, the Lord of the worlds.

فَسَقَطَ الْقَوْلُ الْمَذْكُورُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L35353 As for what they have cited from the Companions and Followers—specifically ʿUmar and Ibn Masʿūd—they [the opponents] oppose both of them, since it is established from these two that an irrevocably divorced woman is entitled to maintenance, whereas they reject this position. It is baseless for them to cite them as proof in one matter while disregarding their authority in another.

وَأَمَّا مَا تَعَلَّقُوا بِهِ عَنْ الصَّحَابَةِ وَالتَّابِعِينَ - فَإِنَّمَا هُمْ: عُمَرُ، وَابْنُ مَسْعُودٍ، وَهُمْ مُخَالِفُونَ لَهُمَا، لِأَنَّ الثَّابِتَ عَنْهُمَا أَنَّ لِلْمَبْتُوتَةِ النَّفَقَةَ - وَهُمْ لَا يَقُولُونَ بِذَلِكَ، وَمِنْ الْبَاطِلِ: أَنْ يَحْتَجُّوا بِهِمَا فِي مَوْضِعٍ وَلَا يَرَوْنَهُمَا حُجَّةً فِي آخَرَ.

L35354 Ibn ʿUmar and ʿĀ'ishah—the Mother of the Believers—and among the Successors: Saʿīd ibn al-Musayyib and a group of them. Some said: "She has no financial support unless pregnant," but did not mention housing—while others mentioned housing without financial support.

وَابْنُ عُمَرَ، وَعَائِشَةُ أُمُّ الْمُؤْمِنِينَ -، وَمِنْ التَّابِعِينَ: سَعِيدُ بْنُ الْمُسَيِّبِ وَنَفَرٌ مِنْهُمْ، قَالَ بَعْضُهُمْ: لَا نَفَقَةَ لَهَا إلَّا أَنْ تَكُونَ حَامِلًا، وَلَمْ يَذْكُرُوا السُّكْنَى - وَذَكَرَ بَعْضُهُمْ: السُّكْنَى دُونَ النَّفَقَةِ.

L35355 As for Ibn Umar, it is authentically established from him that the maintenance of the deceased's widow is to be provided from the entire estate. Yet those who oppose him contradict him - and it is baseless for his opinion to be deemed authoritative proof in matters they desire, while not being proof in matters they do not desire.

فَأَمَّا ابْنُ عُمَرَ - فَقَدْ صَحَّ عَنْهُ: أَنَّ نَفَقَةَ الْمُتَوَفَّى عَنْهَا مِنْ جَمِيعِ الْمَالِ - وَهُمْ يُخَالِفُونَهُ، وَمِنْ الْبَاطِلِ: أَنْ يَكُونَ حُجَّةً حَيْثُ اشْتَهَوْا، غَيْرَ حُجَّةٍ حَيْثُ لَا يَشْتَهُونَ.

L35356 As for the Mother of the Believers, they disagreed with her regarding her expulsion after her husband's death. It is baseless for her to be a proof in one context but not in another. Furthermore, no report has been transmitted from her indicating she has no right to financial maintenance.

وَأَمَّا أُمُّ الْمُؤْمِنِينَ - فَقَدْ خَالَفُوهَا فِي إخْرَاجِهَا الْمُتَوَفَّى عَنْهَا زَوْجُهَا، وَمِنْ الْبَاطِلِ: أَنْ تَكُونَ حُجَّةً فِي مَوْضِعٍ، وَغَيْرَ حُجَّةٍ فِي آخَرَ، وَلَمْ يَأْتِ عَنْهَا أَيْضًا أَنَّهَا لَا نَفَقَةَ لَهَا.

L35357 The narration from ʿAlī is rejected because it is transmitted via Ibrāhīm

[26] **Qur'an references (L35350):** Qur'an 2:233 (Al-Baqarah).

ibn Abī Yaḥyā—who is noted as a liar—and its chain is also interrupted. Moreover, no statement has been transmitted from him declaring, “There is no financial support for her.”

L35358–35360 As for Sa’id ibn al-Musayyib, only the obligation to provide housing for the thrice-divorced woman has been transmitted from him. Nothing has been transmitted from him, nor from Aisha, nor from Ali stating that she has no entitlement to maintenance from the husband. Thus, their position is devoid of evidence. From the Quran, from the Sunnah, or from the statement of any Companion—except Ibn Umar alone. If it is established as such, there is no doubt about its invalidity and dismissal—and all praise is due to Allah, Lord of the worlds.[27]

L35361 What remains for us except our position and the stance of those who mandate housing and maintenance for the irrevocably divorced woman? We examined their argument but found they had no basis except unfounded objections regarding the report of Fāṭimah bint Qays. They based their position on the premise that if this report were invalidated, the aforementioned verses would then be understood to apply to every divorced woman: whether irrevocably or revocably divorced.

L35362 Abu Muhammad said: They objected to that report by citing what we narrated through the chain of Abd al-Razzaq from Ibn Jurayj, who reported: Ibn Shihab informed me from Urwah ibn al-Zubayr that Aisha, the Mother of the Believers, rejected Fatimah bint Qays’ position regarding that matter (by which we mean the relocation of the thrice-divorced woman).

L35363 Through the chain of Malik from Yahya ibn Sa’id from al-Qasim ibn Muhammad: Yahya ibn Sa’id ibn al-As divorced the daughter of Abd al-Rahman ibn al-Hakam, whereupon Abd al-Rahman took her away. Aisha sent a message to Marwan ibn al-Hakam—the governor of Medina—saying: “Fear Allah and return the woman to her home!” Marwan responded: “Has the case of Fatimah bint Qays not reached you?” Aisha retorted: “It does you no harm not to mention the narration of Fatimah.”

وَالرِّوَايَةُ عَنْ عَلِيٍّ سَاقِطَةٌ، لِأَنَّهَا مِنْ طَرِيقِ إِبْرَاهِيمَ بْنِ أَبِي يَحْيَى - وَهُوَ مَذْكُورٌ بِالْكَذِبِ - وَهِيَ مُنْقَطِعَةٌ أَيْضًا، ثُمَّ لَمْ يَأْتِ عَنْهُ: لَا نَفَقَةَ لَهَا.

وَأَمَّا سَعِيدُ بْنُ الْمُسَيِّبِ فَإِنَّمَا جَاءَ عَنْهُ إِيجَابُ السُّكْنَى لِلْمَبْتُوتَةِ، وَلَمْ يَأْتِ عَنْهُ، وَلَا عَنْ عَائِشَةَ، وَلَا عَنْ عَلِيٍّ: أَنَّهُ لَا نَفَقَةَ لَهَا عَلَى الزَّوْجِ - فَحَصَلَ قَوْلُهُمْ عَارِيًا مِنَ الْبُرْهَانِ: مِنْ قُرْآنٍ، أَوْ سُنَّةٍ، أَوْ قَوْلِ أَحَدٍ الصَّحَابَةِ، إِلَّا ابْنَ عُمَرَ وَحْدَهُ، وَمَا كَانَ هَكَذَا فَلَا شَكَّ فِي بُطْلَانِهِ وَسُقُوطِهِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

فَلَمْ يَبْقَ لَنَا إِلَّا قَوْلُنَا، وَقَوْلُ مَنْ وَجَبَ لِلْمَبْتُوتَةِ السُّكْنَى، وَالنَّفَقَةَ؟ فَنَظَرْنَا فِي قَوْلِهِمْ فَلَمْ نَجِدْ لَهُمْ شَيْئًا يَشْغَبُونَ بِهِ إِلَّا الِاعْتِرَاضَ فِي خَبَرِ فَاطِمَةَ بِنْتِ قَيْسٍ وَبَنَوْا أَنَّهُمْ إِنْ سَقَطَ ذَلِكَ الْخَبَرُ كَانَتِ الْآيَاتُ الْمَذْكُورَاتُ مَحْمُولَاتٍ عَلَى كُلِّ مُطَلَّقَةٍ مَبْتُوتَةٍ، أَوْ غَيْرِ مَبْتُوتَةٍ.

قَالَ أَبُو مُحَمَّدٍ: فَاعْتَرَضُوا فِي ذَلِكَ الْخَبَرِ بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَنْكَرَتْ ذَلِكَ عَلَى فَاطِمَةَ بِنْتِ قَيْسٍ - نَعْنِي انْتِقَالَ الْمُطَلَّقَةِ ثَلَاثًا.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنِ الْقَاسِمِ بْنِ مُحَمَّدٍ أَنَّ يَحْيَى بْنَ سَعِيدِ بْنِ الْعَاصِ طَلَّقَ بِنْتَ عَبْدِ الرَّحْمَنِ بْنِ الْحَكَمِ فَانْتَقَلَهَا عَبْدُ الرَّحْمَنِ فَأَرْسَلَتْ عَائِشَةُ إِلَى مَرْوَانَ بْنِ الْحَكَمِ - وَهُوَ أَمِيرُ الْمَدِينَةِ -: اتَّقِ اللَّهَ وَارْدُدِ الْمَرْأَةَ إِلَى بَيْتِهَا؟ فَقَالَ مَرْوَانُ: أَوَ مَا بَلَغَكِ شَأْنُ فَاطِمَةَ بِنْتِ قَيْسٍ؟ فَقَالَتْ عَائِشَةُ: لَا يَضُرُّكَ أَنْ لَا تَذْكُرَ حَدِيثَ فَاطِمَةَ.

[27] **Qur’an references (L35358):** Qur’an 37:182 (As-Saffat).

L35364 From the chain of al-Bukhārī: I am Muḥammad, I am Ghundar, I am Shuʿbah, from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad, from his father, from ʿĀ'ishah the Mother of the Believers, that she said: "What is with Fāṭimah? Does she not fear Allah?" – meaning her statement: "No residence, no maintenance."

وَمِنْ طَرِيقِ الْبُخَارِيِّ أَنَا مُحَمَّدٌ أَنَا غُنْدَرٌ أَنَا شُعْبَةُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا قَالَتْ: مَا لِفَاطِمَةَ؟ لَا تَتَّقِي اللَّهَ - تَعْنِي فِي قَوْلِهَا: لَا سُكْنَى، وَلَا نَفَقَةَ -.

Via another chain of al-Bukhārī: I am ʿAmr ibn ʿAbbās, I am Ibn Mahdī, I am Sufyān, from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad, from his father, that ʿUrwah said to ʿĀ'ishah the Mother of the Believers: "Did you not hear about Fāṭimah's statement?" She replied: "Indeed, she has no valid grounds in mentioning this ḥadīth."

وَمِنْ طَرِيقِ الْبُخَارِيِّ أَنَا عَمْرُو بْنُ عَبَّاسٍ أَنَا ابْنُ مَهْدِيٍّ أَنَا سُفْيَانُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّ عُرْوَةَ قَالَ لِعَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَلَمْ تَسْمَعِي فِي قَوْلِ فَاطِمَةَ؟ فَقَالَتْ: أَمَا إِنَّهُ لَيْسَ لَهَا خَبَرٌ فِي ذِكْرِ هَذَا الْحَدِيثِ.

L35365 And through the chain of Ismāʿīl ibn Isḥāq the judge: Naṣr ibn ʿAlī reported from his father, from Hārūn, from Muḥammad ibn Isḥāq, who said: I believe he [Muḥammad ibn Isḥāq] reported from Muḥammad ibn Ibrāhīm that ʿĀ'ishah said to Fāṭimah bint Qays, "It was only this that expelled you"—meaning the tongue.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنَ إِسْحَاقَ الْقَاضِي أَنَا نَصْرُ بْنُ عَلِيٍّ أَنَا أَبِي عَنْ هَارُونَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، قَالَ: أَحْسَبُهُ عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ أَنَّ عَائِشَةَ قَالَتْ لِفَاطِمَةَ بِنْتِ قَيْسٍ: إِنَّمَا أَخْرَجَكِ هَذَا - تَعْنِي اللِّسَانَ.

L35366–35368 Abū Muḥammad said: As for this narration, it is rejected, and there is no valid reason to consider it, because its chain of transmission is doubtful as we have mentioned. Furthermore, it is disconnected, for Muḥammad ibn Ibrāhīm never heard from ʿĀ'ishah, the Mother of the Believers, at all. So none rejects the established ruling from the Messenger of Allah (may Allah bless him and grant him peace) by such means except one shrouded in ignorance or weak in faith - and we seek refuge in Allah from both of them.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا هَذَا الْخَبَرُ فَسَاقِطٌ، لَا وَجْهَ لِلِاشْتِغَالِ بِهِ، لِأَنَّهُ مَشْكُوكٌ فِي إِسْنَادِهِ كَمَا أَوْرَدْنَا - ثُمَّ مُنْقَطِعٌ أَيْضًا لَمْ يَسْمَعْ مُحَمَّدُ بْنُ إِبْرَاهِيمَ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ قَطُّ، فَلَا يَرُدُّ الثَّابِتَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِ هَذَا إِلَّا مُظْلِمُ الْجَهْلِ، أَوْ رَقِيقُ الدِّينِ - وَنَعُوذُ بِاللَّهِ مِنْ كِلَيْهِمَا.

L35369 And through the chain of Ismail ibn Ishaq: I [Abu Thabit al-Madini] am Ibn Wahb, I am Ibn Abi al-Zinad, from Hisham ibn Urwah, from his father, who said: Aisha strongly criticized this with the utmost censure, saying: Fatimah was in a desolate place, and fear arose for the safety of her vicinity. For this reason, the Prophet—peace be upon him (PBUH)—granted her a concession.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا أَبُو ثَابِتٍ الْمَدِينِيُّ أَنَا ابْنُ وَهْبٍ أَنَا ابْنُ أَبِي الزِّنَادِ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: عَابَتْ ذَلِكَ عَائِشَةُ أَشَدَّ الْعَيْبِ، وَقَالَتْ: إِنَّ فَاطِمَةَ كَانَتْ فِي مَكَانٍ وَحْشٍ، فَخِيفَ عَلَى نَاحِيَتِهَا، فَلِذَلِكَ أَرْخَصَ لَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L35370 Abū Muḥammad said: This is baseless, for it is from the narration of Ibn Abī al-Zinād—who is weak—the first to rigorously weaken him: Mālik ibn Anas.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ، لِأَنَّهُ مِنْ رِوَايَةِ ابْنِ أَبِي الزِّنَادِ - وَهُوَ ضَعِيفٌ - أَوَّلُ مَنْ ضَعَّفَهُ جِدًّا: مَالِكُ بْنُ أَنَسٍ.

L35371 Whoever examines this report and the one preceding it will realize that they contradict each other, for if her expulsion was due to her slander, as mentioned in that report, then this report—which states "she was in a desolate wilderness area where fears were held for her safety in her vicinity, so the Prophet (peace be upon him) gave her a dispensation"—is invalidated.

وَمَنْ تَأَمَّلَ هَذَا الْخَبَرَ وَالَّذِي قَبْلَهُ عَلِمَ أَنَّهُمَا مُتَكَاذِبَانِ، لِأَنَّهَا إِنْ كَانَ إِخْرَاجُهَا مِنْ أَجْلِ لِسَانِهَا، كَمَا فِي ذَلِكَ الْخَبَرِ فَقَدْ بَطَلَ هَذَا الَّذِي فِيهِ " أَنَّهَا كَانَتْ فِي مَكَانٍ وَحْشٍ نَخِيفَ عَلَى نَاحِيَتِهَا فَلِذَلِكَ أَرْخَصَ لَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L35372 For there is no doubt that if she is among people whom she harms with her tongue, she is not in a desolate place; or if she is in a desolate place where there is fear for her safety, then it is certain that there are no people there for her to harm with her tongue, thus she is expelled for that reason. And Allah refuses but to expose the disgrace of the liars.

إِذْ لَا شَكَّ أَنَّهَا إِذَا كَانَتْ بَيْنَ قَوْمٍ تُؤْذِيهِمْ بِلِسَانِهَا فَلَيْسَتْ فِي مَكَانٍ وَحْشٍ، أَوْ إِذَا كَانَتْ فِي مَكَانٍ وَحْشٍ يُخَافُ عَلَيْهَا فِيهِ، فَلَا شَكَّ أَنَّهُ لَيْسَ هُنَالِكَ قَوْمٌ تُؤْذِيهِمْ بِلِسَانِهَا فَتُخْرَجُ لِذَلِكَ - وَيَأْبَى اللَّهُ إِلَّا فَضِيحَةَ الْكَاذِبِينَ.

L35373 This is what they relied upon from Aisha, the Mother of the Believers, and they mentioned: Hamam ibn Ahmad narrated to us—I am Abbas ibn Asbagh, I heard from Muhammad ibn Abd al-Malik ibn Ayman, I heard from Muttalib, I heard from Abu Salih—who is Abdullah ibn Salih, the scribe of al-Layth—al-Layth ibn Sa'd narrated to me, saying: Ja'far related to me from Ibn Hurmuz, from Abu Salamah ibn Abd al-Rahman ibn Awf, who said: Muhammad ibn Usamah ibn Zayd used to report that whenever Fatimah mentioned anything regarding her relocation during her waiting period, his father Usamah would refute her with whatever [evidence] he had at hand?

فَهَذَا مَا تَعَلَّقُوا بِهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَذَكَرُوا: مَا نَاهُ حُمَامُ بْنُ أَحْمَدَ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا مُطَّلِبُ أَنَا أَبُو صَالِحٍ - هُوَ عَبْدُ اللَّهِ بْنُ صَالِحٍ - كَاتِبُ اللَّيْثِ حَدَّثَنِي اللَّيْثُ بْنُ سَعْدٍ حَدَّثَنِي جَعْفَرٌ عَنِ ابْنِ هُرْمُزَ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ قَالَ: كَانَ مُحَمَّدُ بْنُ أُسَامَةَ بْنِ زَيْدٍ يَقُولُ كَانَ أُسَامَةُ إِذَا ذَكَرَتْ فَاطِمَةُ شَيْئًا مِنْ ذَلِكَ - يَعْنِي مِنِ انْتِقَالِهَا فِي عِدَّتِهَا - رَمَاهَا بِمَا فِي يَدِهِ؟ .

L35374–35376 Abu Muhammad said: This is rejected; because its narrator is ʿAbdullāh ibn Ṣāliḥ, the scribe of al-Layth ibn Saʿd—and he is [text cut off]. Very weak—furthermore, even if it were authentic, it would only be Usama's rejection of that, like the rejection of Aisha and Umar—may Allah be pleased with both of them.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا سَاقِطٌ، لِأَنَّ رَاوِيَهُ عَبْدَ اللَّهِ بْنَ صَالِحٍ كَاتِبَ اللَّيْثِ - وَهُوَ ضَعِيفٌ جِدًّا - ثُمَّ لَوْ صَحَّ لَمَا كَانَ إِلَّا إِنْكَارُ أُسَامَةَ لِذَلِكَ كَإِنْكَارِ عَائِشَةَ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا -.

L35377 And the discussion will come regarding the refutation of the argument based on that, if Allah the Exalted wills, when we scrutinize all they have obscured—and there is no might nor power except with Allah, the Most High, the Almighty.

وَسَيَأْتِي الْكَلَامُ فِي إِبْطَالِ الِاحْتِجَاجِ بِذَلِكَ إِنْ شَاءَ اللَّهُ تَعَالَى إِذَا تَقَصَّيْنَا كُلَّ مَا مَوَّهُوا بِهِ - وَلَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ الْعَلِيِّ الْعَظِيمِ.

L35378 From the chain of Sa'id ibn Mansur: I am Abu Mu'awiyah, I am Al-A'mash, from Ibrahim, who said: When the hadith of Fatimah bint Qays was mentioned before Umar ibn al-Khattab—that the Messenger of Allah (Allah's prayers and peace be upon him and his family) commanded her to observe her waiting period outside her husband's house?—he said: "We do not establish rulings in our religion based on the narration of a woman."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو مُعَاوِيَةَ أَنَا الْأَعْمَشُ عَنْ إِبْرَاهِيمَ قَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ إِذَا ذُكِرَ عِنْدَهُ حَدِيثُ فَاطِمَةَ بِنْتِ قَيْسٍ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَمَرَهَا أَنْ تَعْتَدَّ فِي غَيْرِ بَيْتِ زَوْجِهَا؟ قَالَ: مَا كُنَّا نَعْتَدُّ فِي دِينِنَا بِشَهَادَةِ امْرَأَةٍ.

L35379 Abu Muhammad said: This is undoubtedly invalid because it is disconnected, for Ibrahim was not born until two years after Umar's death, and this Ibrahim took it from none except someone in whom there is no good—undoubtedly.

قَالَ أَبُو مُحَمَّدٍ: هَذَا بَاطِلٌ لَا شَكَّ، لِأَنَّهُ مُنْقَطِعٌ، وَلَمْ يُولَدْ إِبْرَاهِيمُ إِلَّا بَعْدَ مَوْتِ عُمَرَ بِسِنِينَ، وَمَا أَخَذَ إِبْرَاهِيمُ هَذَا إِلَّا عَمَّنْ لَا خَيْرَ فِيهِ بِلَا شَكٍّ.

L35380 Complete astonishment stems from the disgraceful persistence of those Hanafis, Malikis, and Shāfiʿīs who invoke this argument—and they are the foremost nullifiers of what is contained within the statement attributed to ʿUmar: "We do not consider—in matters of our religion—a woman's testimony valid." Yet they unanimously agree that Sunnī traditions are accepted from women just as they are accepted from men.

وَالْعَجَبُ كُلُّهُ مِنْ قَبِيحِ مُجَاهَرَةِ مَنْ يَحْتَجُّ بِهَذَا مِنَ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ وَالشَّافِعِيِّينَ، وَهُمْ أَوَّلُ مُبْطِلٍ لِمَا فِيهِ مَنْسُوبٌ إِلَى عُمَرَ مِنْ أَنْ لَا نَعْتَدَّ - فِي دِينِنَا - بِشَهَادَةِ امْرَأَةٍ، وَهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ السُّنَنَ تُؤْخَذُ عَنِ الْمَرْأَةِ كَمَا تُؤْخَذُ عَنِ الرَّجُلِ.

L35381 Should not one feel ashamed to cite this from Umar, who permits the solitary testimony of a midwife regarding breastfeeding, childbirth, marital defects in women, and the testimony of a single free woman or slave woman concerning the sighting of Ramadan's crescent? Do you not realize that none of this is part of the religion?

أَلَا يَسْتَحْيِي مِنَ الِاحْتِجَاجِ بِهَذَا عَنْ عُمَرَ مَنْ يُجِيزُ شَهَادَةَ الْقَابِلَةِ وَحْدَهَا فِي الرَّضَاعِ، وَالْوِلَادَةِ، وَعُيُوبِ النِّسَاءِ وَالْمَرْأَةِ الْوَاحِدَةِ الْحُرَّةِ أَوِ الْأَمَةِ فِي هِلَالِ رَمَضَانَ أَتَرَوْنَ كُلَّ هَذَا لَيْسَ مِنَ الدِّينِ.

L35382–35383 And whoever openly opposes the Quran [as stated] in the statement of Allah, the Most High: "Allah has permitted trade and forbidden usury" [al-Baqarah 2:275].[28]

وَمَنْ خَالَفَ الْقُرْآنَ جِهَارًا فِي قَوْلِ اللَّهِ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥].

L35384 And His statement, the Exalted: {When you contract a debt for a specified term, write it down} [Al-Baqarah: 282] — that is forbidden based on the narration of an unknown woman: the wife of Abū Isḥāq—who narrated from Umm Maḥabbah, the Umm Walad of Zayd ibn Arqam—when no one knows her identity.[29]

وَقَوْلِهِ تَعَالَى: {إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ} [البقرة: ٢٨٢] مُحَرَّمٌ ذَلِكَ بِرِوَايَةِ امْرَأَةٍ مَجْهُولَةٍ لَا يَدْرِي أَحَدٌ مَنْ هِيَ امْرَأَةُ أَبِي إِسْحَاقَ عَنْ أُمِّ مَحَبَّةَ - أُمِّ وَلَدِ زَيْدِ بْنِ أَرْقَمَ -.

[28] **Qur'an references (L35383):** Qur'an 2:275 (Al-Baqarah).
[29] **Qur'an references (L35384):** Qur'an 2:282 (Al-Baqarah).

وَمَنْ أَبَاحَ مَنْزِلَةَ الْوَرَثَةِ مِنْ غَيْرِ حَقٍّ وَخَالَفَ السُّنَّةَ الثَّابِتَةَ فِي أَنَّ أَمْوَالَ النَّاسِ مُحَرَّمَةٌ إِلَّا بِإِذْنِهِمْ بِرِوَايَةِ امْرَأَةٍ مَجْهُولَةٍ لَا تُعْرَفُ [مَنْ هِيَ] وَهِيَ زَيْنَبُ بِنْتُ كَعْبٍ فَأَوْجَبُوا السُّكْنَى بِرِوَايَتِهَا لِلْمُتَوَفَّى عَنْهَا، وَلَمْ يَلْتَفِتُوا حِينَئِذٍ إِلَى عَمَلِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، أَلَيْسَ هَذَا عَجَبًا؟ فَإِنْ قَالُوا: قَدْ اتَّصَلَ مِنْ بَيْنِ إِبْرَاهِيمَ، وَعُمَرَ فِي هَذَا الْحَدِيثِ كَمَا حَدَّثَكُمْ أَحْمَدُ بْنُ قَاسِمٍ قَالَ: أَنَا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ أَنَا جَدِّي قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ شَاذَانَ أَنَا الْمُعَلَّى بْنُ مَنْصُورٍ أَنَا أَبُو يُوسُفَ الْقَاضِي عَنِ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ عَنِ الْأَسْوَدِ عَنْ عُمَرَ أَنَّهُ قَالَ: لَا يَجُوزُ فِي دِينِ الْمُسْلِمِينَ قَوْلُ امْرَأَةٍ؟ قُلْنَا: الْآنَ زَادَ وَهْيُ هَذَا الْإِسْنَادِ، وَقَدْ عَلِمْتُمْ مَحَلَّ أَبِي يُوسُفَ عِنْدَ الَّذِينَ شَاهَدُوهُ وَعَرَفُوهُ مِنْ أَئِمَّةِ الْمُسْلِمِينَ، وَعُلَمَاءِ الْحَدِيثِ، كَابْنِ الْمُبَارَكِ، وَعَبْدِ اللَّهِ بْنِ إِدْرِيسَ، وَأَبِي نُعَيْمٍ الْفَضْلِ بْنِ دُكَيْنٍ، وَوَكِيعِ بْنِ الْجَرَّاحِ، وَيَزِيدَ بْنِ هَارُونَ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَغَيْرِهِمْ.

L35385 Whoever permits the status of the heirs without legitimate justification—contradicting the established Sunnah that people's wealth is inviolable except with their consent—by relying on the report of an unknown woman who is Zaynab bint Kaʿb, thereby mandating residence rights for the widow of the deceased based on her narration while disregarding the practice of ʿĀʾishah, the Mother of the Believers: is this not astonishing? If they argue that the chain between Ibrāhīm and ʿUmar in this ḥadīth is continuous—as Aḥmad ibn Qāsim narrated to you, stating: "From my father Qāsim ibn Muḥammad ibn Qāsim, from my grandfather Qāsim ibn Aṣbagh, from Muḥammad ibn Shādhān, from al-Muʿallā ibn Manṣūr, from Abū Yūsuf the Judge, from al-Aʿmash, from Ibrāhīm, from al-Aswad, from ʿUmar, who said: 'The statement of a woman is inadmissible in the religion of Muslims'"—we respond: Now he has added this chain. You are well aware of Abū Yūsuf's standing among the Muslim Imams and ḥadīth scholars who witnessed him and knew him, such as Ibn al-Mubārak, ʿAbdullāh ibn Idrīs, Abū Nuʿaym al-Faḍl ibn Dukayn, Wakīʿ ibn al-Jarrāḥ, Yazīd ibn Hārūn, Aḥmad ibn Ḥanbal, and others.

وَقَدْ رُوِيَ هَذَا الْخَبَرُ عَنِ الْأَعْمَشِ الثِّقَةِ حَفْصِ بْنِ غِيَاثٍ بِهَذَا الْإِسْنَادِ، فَلَمْ يَذْكُرْ فِيهِ هَذِهِ الْفَضِيحَةَ الَّتِي إِنَّمَا هِيَ مَذْهَبُ الْخَوَارِجِ وَالْمُعْتَزِلَةِ.

L35386 This report has been narrated from Al-Aʿmash via the trustworthy Hafs ibn Ghiyath in this chain of transmission, yet Hafs ibn Ghiyath did not mention within it this scandal, which pertains solely to the doctrine of the Kharijites and the Muʿtazilites.

ثُمَّ لَا عَلَيْكُمْ إِنْ كُنْتُمْ تَحْتَجُّونَ بِهَذَا الْكَلَامِ وَتُصَحِّحُونَهُ عَنْ عُمَرَ، فَخُذُوا بِهِ، لِأَنَّكُمْ أَوَّلُ مُخَالِفٍ لَهُ، وَإِنْ عَصَيْتُمُوهُ وَاطَّرَحْتُمُوهُ، وَأَنْ تُجِيزُوا الْقَوْلَ بِهِ، فَبِأَيِّ وَجْهٍ اسْتَحْلَلْتُمُ الِاحْتِجَاجَ بِهِ؟ لَقَدْ كَانَ يَنْبَغِي لِلْحَيَاءِ، وَالدِّينِ، وَخَوْفِ الْعَارِ، وَالنَّارِ، أَنْ يَمْنَعَ كُلُّ ذَلِكَ مِنْ مِثْلِ هَذَا، وَلَكِنْ مَنْ يَضْلِلِ اللَّهُ فَلَا هَادِيَ لَهُ.

L35387–35389 Then, there is no blame upon you if you cite this statement as evidence and authenticate its attribution to ʿUmar. Take it. Because you are the first of those who oppose him, and if you disobey him, cast it aside, and yet endorse arguments derived from it – by what justification do you deem it permissible to invoke it as evidence? Verily, modesty, religious devotion, fear of shame, and the Hellfire should have prevented all such things. But whomsoever Allah leads astray has no guide.

وَذَكَرُوا - مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ عَمْرِو بْنِ جَبَلَةَ أَنَا أَبُو أَحْمَدَ - هُوَ الزُّبَيْرِيُّ - أَنَا عَمَّارُ بْنُ زُرَيْقٍ عَنْ أَبِي إِسْحَاقَ قَالَ: كُنْتُ مَعَ الْأَسْوَدِ بْنِ يَزِيدَ فِي الْمَسْجِدِ الْأَعْظَمِ

L35390 They mentioned—what was narrated to us through the chain of Muslim: I am Muhammad ibn Amr ibn Jabalah; Abu Ahmad—who is al-Zubayri—narrated to us; Ammar ibn Zurayq narrated from Abu Ishaq, who said: "I was with Al-Aswad ibn Yazid in the Grand Mosque, and Al-Shaʿbi was with

us. Al-Shaʿbi narrated the hadith of Fatimah bint Qays: 'The Messenger of Allah—peace and blessings be upon him and his family—did not grant her housing or maintenance.' Then Al-Aswad took a handful of pebbles and threw them at him, saying: 'Woe to you! Do you narrate such a thing?' Umar said: 'We will not abandon the Book of Allah and the Sunnah of our Prophet for the statement of a woman. We do not know whether she retained it accurately or forgot. She is entitled to housing and maintenance.' Allah Almighty said: 'Do not drive them out of their homes, nor should they leave unless they commit a clear immorality' (65:1)."[30]

L35391 Muslim said: And Aḥmad ibn ʿAbdah narrated to us: Abū Dāwūd narrated to us, Sulaymān ibn Muʿādh narrated to us, from Abū Isḥāq via this chain of transmission, similar to the ḥadīth of Abū Aḥmad from ʿAmmār ibn Zurayq.

L35392–35394 Through the chain of Abū Dāwūd al-Sijistānī: I, Naṣr ibn ʿAlī, report from Abū Aḥmad—he is al-Zubairī— I was in the Congregational Mosque with al-Aswad ibn Yazid when he mentioned that Fāṭimah bint Qays came to ʿUmar. ʿUmar said: "We would never abandon the Book of our Lord and the Sunnah of our Prophet for the statement of a woman—we do not know whether she remembered it correctly or forgot." Through the chain of Aḥmad ibn Shuʿayb: From Abū Bakr ibn Isḥāq, from Abū al-Jawāb al-Aḥwaṣ ibn Jawāb, from ʿAmmār—that is, ibn Zurayq—from al-Shaʿbī, from Fāṭimah bint Qays. He then mentioned the ḥadīth, whereupon al-Aswad threw pebbles at him and said: "Shame on you! Why do you issue such a legal opinion?" ʿUmar told her: "If you bring two witnesses who testify they heard this from the Messenger of Allah—peace and blessings be upon him and his family—then [we will accept it]. Otherwise, we will not abandon the Book of Allah for the statement of a woman: 'Do not evict them from their homes, nor should they leave unless they commit a clear immorality' [Sūrah al-Ṭalāq 65:1]."[31]

L35395 We said: All of this is correct. As for Umar's statement: "We would never abandon the Book of our Lord and the Sunnah of our Prophet for the word

[30] **Qur'an references (L35390):** Qur'an 65:1 (At-Talaq).
[31] **Qur'an references (L35392):** Qur'an 65:1 (At-Talaq).

وَمَعَنَا الشَّعْبِيُّ فَحَدَّثَ الشَّعْبِيُّ بِحَدِيثِ فَاطِمَةَ بِنْتِ قَيْسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَمْ يَجْعَلْ لَهَا سُكْنَى، وَلَا نَفَقَةً» ، ثُمَّ أَخَذَ الْأَسْوَدُ كَفًّا مِنْ حَصًى فَحَصَبَهُ بِهِ، فَقَالَ: وَيْلَكَ تُحَدِّثُ بِمِثْلِ هَذَا؟ قَالَ عُمَرُ: لَا نَتْرُكُ كِتَابَ اللَّهِ وَسُنَّةَ نَبِيِّنَا لِقَوْلِ امْرَأَةٍ لَا نَدْرِي هَلْ حَفِظَتْ أَمْ نَسِيَتْ: لَهَا السُّكْنَى، وَالنَّفَقَةُ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {لا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلا يَخْرُجْنَ إِلا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ} [الطلاق: ١] .

قَالَ مُسْلِمٌ: ونا أَحْمَدُ بْنُ عَبْدَةَ أَنَا أَبُو دَاوُد أَنَا سُلَيْمَانُ بْنُ مُعَاذٍ عَنْ أَبِي إِسْحَاقَ بِهَذَا الْإِسْنَادِ نَحْوُ حَدِيثِ أَبِي أَحْمَدَ عَنْ عَمَّارِ بْنِ زُرَيْقٍ.

وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ أَنَا نَصْرُ بْنُ عَلِيٍّ أَخْبَرَنِي أَبُو أَحْمَدَ - هُوَ الزُّبَيْرِيُّ - أَنَا عَمَّارُ بْنُ زُرَيْقٍ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ قَالَ: كُنْتُ فِي الْمَسْجِدِ الْجَامِعِ مَعَ الْأَسْوَدِ بْنِ يَزِيدَ فَذَكَرَ: أَنَّ فَاطِمَةَ بِنْتِ قَيْسٍ أَتَتْ عُمَرَ فَقَالَ عُمَرُ: مَا كُنَّا لِنَدَعَ كِتَابَ رَبِّنَا وَسُنَّةَ نَبِيِّنَا لِقَوْلِ امْرَأَةٍ: لَا نَدْرِي أَحَفِظَتْ أَمْ نَسِيَتْ؟ وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَبُو بَكْرِ بْنُ إِسْحَاقَ أَنَا أَبُو الْجَوَابِ الْأَحْوَصُ بْنُ جَوَابٍ أَنَا عَمَّارٌ - هُوَ ابْنُ زُرَيْقٍ - عَنْ الشَّعْبِيِّ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ فَذَكَرَ الْحَدِيثَ، فَحَصَبَهُ الْأَسْوَدُ وَقَالَ: وَيْحَكَ لِمَ تُفْتِي بِمِثْلِ هَذَا؟ قَالَ عُمَرُ لَهَا: إِنْ جِئْتِ بِشَاهِدَيْنِ يَشْهَدَانِ أَنَّهُمَا سَمِعَاهُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَإِلَّا لَمْ نَتْرُكْ كِتَابَ اللَّهِ لِقَوْلِ امْرَأَةٍ: {لا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلا يَخْرُجْنَ إِلا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ} [الطلاق: ١] .

قُلْنَا: هَذَا كُلُّهُ صَحِيحٌ -: فَأَمَّا قَوْلُ عُمَرَ: مَا كُنَّا لِنَدَعَ كِتَابَ رَبِّنَا وَسُنَّةَ نَبِيِّنَا لِقَوْلِ امْرَأَةٍ لَا نَدْرِي أَحَفِظَتْ أَمْ نَسِيَتْ فَإِنَّ هَذَا يَجْمَعُ ثَلَاثَةَ مَعَانٍ -: أَمَّا سُنَّةُ رَسُولِ اللَّهِ - صَلَّى

of a woman - we do not know whether she remembered it or forgot" - this combines three meanings. As for the Sunnah of Allah's Messenger (peace be upon him), it is in the hands of Fatimah bint Qays. We categorically testify by Allah's authority that Umar had no Sunnah from Allah's Messenger (peace be upon him) in this matter except the general provision of residence for divorced women alone.

L35396 It is not permissible for a Muslim to suspect that Umar—may Allah be pleased with him—held a ruling from the Messenger of Allah (peace and blessings be upon him) in that matter, nor that there was clear evidence for the people, or to proceed with such suspicion, due to the severe divine warning in the Quran regarding this.

L35397 And here is a matter very close at hand - we have explicitly stated that there was no Sunnah from the Messenger of Allah (peace be upon him) regarding this matter with Umar that he concealed, neither stipulating nor clarifying it. Let them explicitly declare that there was with Umar concerning this matter a Sunnah from the Messenger of Allah (peace be upon him) which he did not convey to people through its explicit text, so they may see which of us fabricates lies against the Messenger of Allah (peace be upon him) and which of us ascribes to Umar what Allah the Exalted has absolved him of. We will accept nothing from them except their definitive proof that Umar (may Allah be pleased with him) received from the Prophet (peace be upon him) the ruling that a divorced woman is entitled to three things: residence, financial maintenance, and the waiting period throughout her waiting period.

L35398–35400 As for the Book of God Almighty, it has clarified, since it contains the aforementioned verse—a proof for Fāṭimah against him—for it contains: {You do not know—perhaps God will bring about a new matter after that} [65:1] {When they have fulfilled their term, retain them honorably or part with them honorably} [65:2]. Can anyone doubt that this verse pertains specifically to revocable divorce? Had 'Umar been reminded of this, he would have retracted, just as he retracted his opinion, since he had forbidden anyone from adding to... Four hundred dirhams in a woman's dowry, when a woman

اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهِيَ بِيَدِ فَاطِمَةَ بِنْتِ قَيْسٍ وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى قَطْعًا أَنَّهُ لَمْ يَكُنْ عِنْدَ عُمَرَ فِي ذَلِكَ سُنَّةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَيْرُ عُمُومِ سُكْنَى الْمُطَلَّقَاتِ فَقَطْ.

وَلَا يَحِلُّ لِمُسْلِمٍ أَنْ يَظُنَّ بِعُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فِي ذَلِكَ حُكْمٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا بَيِّنَةٌ لِلنَّاسِ، وَيَأْتِي بِهِ لِمَا فِي هَذَا مِنْ عَظِيمِ الْوَعِيدِ فِي الْقُرْآنِ.

وَهَا هُنَا أَمْرٌ قَرِيبٌ جِدًّا - نَحْنُ قَدْ صَرَّحْنَا بِأَنَّهُ لَمْ يَكُنْ فِي ذَلِكَ عِنْدَ عُمَرَ سُنَّةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَتَمَهَا، وَلَمْ يَنُصَّهَا وَيُبَيِّنْهَا فَلْيُصَرِّحُوا بِأَنَّهُ كَانَ عِنْدَ عُمَرَ فِي ذَلِكَ سُنَّةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُخْبِرْ بِنَصِّهَا النَّاسَ، حَتَّى يَرَوْا مَنْ مِنَّا الَّذِي يَكْذِبُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَيُّنَا يُضِيفُ إِلَى عُمَرَ مَا قَدْ نَزَّهَهُ اللَّهُ تَعَالَى عَنْهُ وَلَا نَقْنَعُ مِنْهُمْ إِلَّا بِالْقَطْعِ بِأَنَّهُ كَانَ عِنْدَهُ - رَضِيَ اللَّهُ عَنْهُ - عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ لِلْمُطَلَّقَةِ ثَلَاثًا السُّكْنَى وَالنَّفَقَةَ مُدَّةَ الْعِدَّةِ.

وَأَمَّا كِتَابُ اللَّهِ تَعَالَى فَقَدْ بَيَّنَهُ، إذْ أَتَى بِالْآيَةِ الْمَذْكُورَةِ وَهِيَ حُجَّةٌ لِفَاطِمَةَ عَلَيْهِ، لِأَنَّ فِيهَا {لا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا} [الطلاق: ١] {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] فَهَلْ يَشُكُّ أَحَدٌ فِي أَنَّ هَذِهِ الْآيَةَ فِي الطَّلَاقِ الرَّجْعِيِّ خَاصَّةً؟ وَلَوْ ذُكِّرَ عُمَرُ بِذَلِكَ لَرَجَعَ كَمَا رَجَعَ عَنْ قَوْلِهِ،

reminded him of Allah's words, the Exalted: *"And you have given one of them a qinṭār [a vast sum]"* [Quran 4:20], so he remembered and retracted.[32]

إِذْ مَنَعَ مِنْ أَنْ يَزِيدَ أَحَدٌ عَلَى أَرْبَعِمِائَةِ دِرْهَمٍ فِي صَدَاقِ امْرَأَةٍ حِينَ ذَكَّرَتْهُ امْرَأَةٌ بِقَوْلِ اللَّهِ تَعَالَى: {وَآتَيْتُمْ إِحْدَاهُنَّ قِنْطَارًا} [النساء: ٢٠] فَتَذَكَّرَ وَرَجَعَ.

L35401 And just as Abu Bakr reminded him when he drew his sword and said: "Let no one say that the Messenger of God (may God's blessings and peace be upon him) has died, except that I will strike him with the sword!" Then when Abu Bakr recited to him God's words: {Indeed, you are to die, and indeed, they are to die} [Az-Zumar: 30], he fell to the ground.[33]

وَكَمَا ذَكَّرَهُ أَبُو بَكْرٍ إِذْ سَلَّ سَيْفَهُ وَقَالَ: لَا يَقُولَنَّ أَحَدٌ: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَاتَ إِلَّا ضَرَبْتُه بِالسَّيْفِ؟ فَلَمَّا تَلَا عَلَيْهِ أَبُو بَكْرٍ قَوْلَ اللَّهِ تَعَالَى: {إِنَّكَ مَيِّتٌ وَإِنَّهُمْ مَيِّتُونَ} [الزمر: ٣٠] سَقَطَ إِلَى الْأَرْضِ.

L35402 With this, Fatimah argued textually—as we have been narrated through the chain of Abd al-Razzaq from Ma'mar, from al-Zuhri, from Ubayd Allah ibn Abdullah—that when Marwan's statement in this report reached her, she said: "Between me and you all is the Book of Allah, the Mighty and Exalted. Allah the Exalted said: {Divorce them for their waiting period} [At-Talaq: 1], concluding with His words, Glorified is He: {You do not know; perhaps Allah will bring about after that a matter} [At-Talaq: 1]." She said: "So what matter could occur after the three?"[34]

وَبِهَذَا احْتَجَّتْ فَاطِمَةُ نَصًّا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ أَنَّ فَاطِمَةَ قَالَتْ حِينَ بَلَغَهَا قَوْلُ مَرْوَانَ فِي هَذَا الْخَبَرِ بَيْنِي وَبَيْنَكُمْ كِتَابُ اللَّهِ عَزَّ وَجَلَّ قَالَ اللَّهُ تَعَالَى {فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] إلَى قَوْلِهِ سُبْحَانَهُ {لا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا} [الطلاق: ١] قَالَتْ: فَأَيُّ أَمْرٍ يَحْدُثُ بَعْدَ الثَّلَاثِ.

L35403 As for his statement, "regarding a woman's statement, we do not know whether she retained or forgot," indeed, the possibility of forgetfulness applicable to Fāṭimah is equally applicable to ʿUmar without doubt.

وَأَمَّا قَوْلُهُ " لِقَوْلِ امْرَأَةٍ لَا نَدْرِي أَحَفِظَتْ أَمْ نَسِيَتْ " فَإِنَّ مَا أَمْكَنَ مِنْ النِّسْيَانِ عَلَى فَاطِمَةَ فَهُوَ مُمْكِنٌ عَلَى عُمَرَ بِلَا شَكٍّ.

L35404 The clearest example of this is when ʿAmmār reminded him of the Messenger of Allah's command—peace and blessings be upon him—to both of them to perform dry ablution due to major ritual impurity if one did not find water. Yet ʿUmar did not mention this and persisted in his view that he would not pray until he found water.

وَأَقْرَبُ ذَلِكَ تَذْكِيرُ عَمَّارٍ لَهُ بِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهُمَا جَمِيعًا بِالتَّيَمُّمِ مِنْ الْجَنَابَةِ لِمَنْ لَمْ يَجِدْ الْمَاءَ، فَلَمْ يَذْكُرْ عُمَرُ ذَلِكَ، وَثَبَتَ عَلَى أَنَّهُ لَا يُصَلِّي حَتَّى يَجِدَ الْمَاءَ.

L35405 We have mentioned it through the chain of Al-Bukhari in our books. Just as one might forget what we mentioned earlier, the permissibility of forget-

وَقَدْ ذَكَرْنَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ فِي كُتُبِنَا وَكَمَا نَسِيَ مَا ذَكَرْنَا آنِفًا فَلَيْسَ جَوَازُ النِّسْيَانِ مَانِعًا مِنْ قَبُولِ رِوَايَةِ الْعَدْلِ الَّذِي قَدْ افْتَرَضَ اللَّهُ تَعَالَى قَبُولَ رِوَايَتِهِ، وَلَوْ كَانَ ذَلِكَ

[32] **Qur'an references (L35398):** Qur'an 65:1 (At-Talaq); Qur'an 65:2 (At-Talaq); Qur'an 4:20 (An-Nisa).

[33] **Qur'an references (L35401):** Qur'an 39:30 (Az-Zumar).

[34] **Qur'an references (L35402):** Qur'an 65:1 (At-Talaq).

fulness does not preclude accepting the narration of a reliable transmitter whose narration Allah the Exalted has obligated acceptance of. Were this principle valid, it would necessitate—by the methodological standards of our opponents—the wholesale abandonment of solitary narrations and the rejection of every legal witness's testimony in Islam due to the permissibility of forgetfulness in this matter.

لَوَجَبَ عَلَى أُصُولِ خُصُومِنَا تَرْكُ خَبَرِ الْوَاحِدِ جُمْلَةً وَرَدُّ شَهَادَةِ كُلِّ شَاهِدٍ فِي الْإِسْلَامِ لِجَوَازِ النِّسْيَانِ فِي هَذَا.

L35406–35407 Who is more astray than one who argues with what itself is the first invalidator of his stance, with tribal partisanship and obstinacy in falsehood?

فَمَنْ أَضَلُّ مِمَّنْ يَحْتَجُّ بِمَا هُوَ أَوَّلُ مُبْطِلٍ لَهُ عَصَبِيَّةً وَلَجَاجًا فِي الْبَاطِلِ.

L35408 And likewise, the same applies to his statement to her: "If you bring two witnesses who testify that the two of them heard it from the Messenger of Allah (peace and blessings be upon him)," would they not be the first ones to contradict this? If this were imposed on Fāṭimah, it would be imposed on ʿUmar regarding everything he narrated from the Messenger of Allah (peace and blessings be upon him), and on every one of the Companions without any distinction.

وَهَكَذَا الْقَوْلُ فِي قَوْلِهِ لَهَا " إنْ جِئْت بِشَاهِدَيْنِ يَشْهَدَانِ أَنَّهُمَا سَمِعَاهُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " فَهُمْ أَوَّلُ مُخَالِفٍ لِهَذَا؟ وَلَوْ لَزِمَ هَذَا فَاطِمَةَ لَلَزِمَ عُمَرَ فِي كُلِّ مَا حَدَّثَ بِهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكُلَّ أَحَدٍ مِنْ الصَّحَابَةِ وَلَا فَرْقَ.

L35409 Who is more astray than one who deludes the Muslims with matters that contradict Allah's religion and are invalid? We seek refuge in Allah from being forsaken.

فَمَنْ أَضَلُّ مِمَّنْ يُمَوِّهُ عَلَى الْمُسْلِمِينَ بِأَشْيَاءَ هُوَ بِدِينِ اللَّهِ تَعَالَى بِخِلَافِهَا وَبُطْلَانِهَا - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L35410 If it is said: You have narrated through the chain of Ḥammād ibn Salamah from Ḥammād ibn Abī Sulaymān that he informed Ibrāhīm al-Nakhaʿī of al-Shaʿbī's narration from Fāṭimah bint Qays, whereupon Ibrāhīm said to him: "'Umar was informed of her statement and declared: 'We will not abandon a verse from the Book of Allah Almighty or the saying of the Prophet (peace and blessings be upon him and his family) for the statement of a woman who may have misremembered. Perhaps she merely imagined she heard the Prophet (peace and blessings be upon him and his family) say, 'They are entitled to housing and maintenance.'"" We respond: This is a mursal narration, because Ibrāhīm was not born except years after ʿUmar's death.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ أَنَّهُ أَخْبَرَ إبْرَاهِيمَ النَّخَعِيَّ بِحَدِيثِ الشَّعْبِيِّ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ فَقَالَ لَهُ إبْرَاهِيمُ: إنَّ عُمَرَ أُخْبِرَ بِقَوْلِهَا فَقَالَ: لَسْنَا بِتَارِكِي آيَةٍ مِنْ كِتَابِ اللَّهِ تَعَالَى وَقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِقَوْلِ امْرَأَةٍ لَعَلَّهَا أَوْهَمَتْ سَمِعَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ: لَهُمَا السُّكْنَى وَالنَّفَقَةُ؟ قُلْنَا: هَذَا مُرْسَلٌ؛ لِأَنَّ إبْرَاهِيمَ لَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ عُمَرَ بِسِنِينَ.

L35411 Furthermore, even if it were authentic, it would not constitute a proof, because it does not state that 'Umar heard the Prophet—may God bless him and his family and grant him peace—say, "An irrevocably divorced woman is due housing and maintenance."

ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَيْسَ فِيهِ أَنَّ عُمَرَ سَمِعَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لِلْمُطَلَّقَةِ ثَلَاثًا السُّكْنَى وَالنَّفَقَةُ» .

L35412 It is possible that the Prophet (peace be upon him) heard a man say to the divorced woman regarding residence and maintenance, and this is taken according to its general sense. This is impermissible. Rather, this must necessarily be applied alongside the ḥadīth of Fāṭimah, whereby the lesser is excluded by the greater. A clear established text cannot be rejected except by another clear established text - not by invalid problematic matters and ambiguous statements without clarification. Nothing remains from all this except that ʿUmar objected solely to Fāṭimah's position, though this discredited report is not accepted by the Mālikīs nor the Shāfiʿīs.

وَقَدْ يُمْكِنُ أَنْ يَسْمَعَهُ - عَلَيْهِ السَّلَامُ - يَقُولُ لِلْمُطَلَّقَةِ السُّكْنَى وَالنَّفَقَةُ، فَيُحْمَلُ ذَلِكَ عَلَى عُمُومِهِ، وَهَذَا لَا يَجُوزُ، بَلْ يَجِبُ اسْتِعْمَالُ ذَلِكَ مَعَ حَدِيثِ فَاطِمَةَ وَلَا بُدَّ، فَيُسْتَثْنَى الْأَقَلُّ مِنْ الْأَكْثَرِ، وَلَا يَجُوزُ رَدُّ نَصٍّ ثَابِتٍ بَيِّنٍ إلَّا بِنَصٍّ ثَابِتٍ بَيِّنٍ، لَا بِمُشْكَلَاتٍ لَا تَصِحُّ وَبِمُجْمَلَاتٍ لَا بَيَانَ فِيهَا، فَلَمْ يَبْقَ مِنْ كُلِّ ذَلِكَ إلَّا أَنَّ عُمَرَ أَنْكَرَ عَلَى فَاطِمَةَ فَقَطْ، مَعَ أَنَّ هَذَا الْخَبَرَ السَّاقِطَ لَا يَرْضَاهُ الْمَالِكِيُّونَ وَلَا الشَّافِعِيُّونَ.

L35413–35415 They also claimed—based on what was narrated to us through the path of Ibn Wahb: Ibn Samʿān informed me that Ibn Qusayṭ informed him that Ibn al-Musayyib used to say: If a man divorces his wife three times separately while of sound mind and body, she has no right to maintenance unless she is pregnant, in which case he must provide for her until she delivers her child; for the pregnant divorced woman, maintenance is prescribed in the Book of Allah, the Almighty and Majestic. The companions of the Messenger of Allah (may Allah bless him and grant him peace) were upon that, and it is the Sunnah.

وَمَوَّهُوا أَيْضًا - بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي ابْنُ سَمْعَانَ أَنَّ ابْنَ قُسَيْطٍ أَخْبَرَهُ أَنَّ ابْنَ الْمُسَيِّبِ كَانَ يَقُولُ: إذَا طَلَّقَ الرَّجُلُ امْرَأَتَهُ وَهُوَ صَحِيحٌ سَوِيٌّ ثَلَاثًا فَلَا نَفَقَةَ لَهَا إلَّا أَنْ تَكُونَ حَامِلًا فَيُنْفِقُ عَلَيْهَا حَتَّى تَضَعَ حَمْلَهَا، لِلْحَامِلِ الْمُطَلَّقَةِ النَّفَقَةُ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ وَعَلَى ذَلِكَ كَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهِيَ السُّنَّةُ.

L35416 Abū Muḥammad said: This is utterly baseless, for Ibn Samʿān is noted for lying—Mālik and others rejected him. As for his argument that she is entitled to maintenance in the Book of Allah, the Mighty and Majestic, maintenance in His Book, the Exalted, is only for the revocably divorced woman.

قَالَ أَبُو مُحَمَّد: هَذَا فِي غَايَةِ السُّقُوطِ، لِأَنَّ ابْنَ سَمْعَانَ مَذْكُورٌ بِالْكَذِبِ أَسْقَطَهُ مَالِكٌ وَغَيْرُهُ، وَأَمَّا احْتِجَاجُهُ بِأَنَّ لَهَا النَّفَقَةَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَإِنَّمَا النَّفَقَةُ فِي كِتَابِ اللَّهِ تَعَالَى لِلْمُطَلَّقَةِ الرَّجْعِيَّةِ.

L35417 As for his statement that the Companions of the Messenger of Allah (peace and blessings be upon him and his family) held this view, all those from whom we have received any narration concerning this matter are of the view that she is entitled to maintenance—whether pregnant or not—or that she is not entitled to maintenance at all, except Ibn Umar alone.

وَأَمَّا قَوْلُهُ " عَلَى ذَلِكَ كَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - " فَكُلُّ مَنْ رُوِّينَا عَنْهُ فِي ذَلِكَ شَيْئًا، فَإِنَّمَا هُمْ عَلَى أَنَّ لَهَا النَّفَقَةَ حَامِلًا أَوْ غَيْرَ حَامِلٍ، أَوْ عَلَى أَنَّهُ لَا نَفَقَةَ لَهَا أَصْلًا، إلَّا ابْنُ عُمَرَ وَحْدَهُ.

L35418 As for the revocable divorce, there is no doubt that maintenance is due to her according to the Companions of the Messenger of Allah (may Allah bless him and grant him peace).

وَأَمَّا الرَّجْعِيَّةُ فَلَا شَكَّ أَنَّ لَهَا النَّفَقَةَ عِنْدَ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L35419 As for his statement, "and this ruling is the Sunnah," he made it regarding

the diyah for a woman's fingers, but the Hanafis and Shafi'is disregarded his statement on that matter.

وَأَمَّا قَوْلُهُ " وَهِيَ السُّنَّةُ " فَقَدْ قَالَهَا فِي دِيَةِ أَصَابِعِ الْمَرْأَةِ، فَلَمْ يَلْتَفِتْ إِلَى قَوْلِهِ فِي ذَلِكَ الْحَنَفِيُّونَ وَالشَّافِعِيُّونَ.

L35420 And someone better than him said: It was narrated to us via the chain of Abū Dāwūd: I am Muḥammad ibn Kathīr → I am Sufyān → Saʿd ibn Ibrāhīm ibn ʿAbd al-Raḥmān ibn ʿAwf → Ṭalḥa ibn ʿAbd Allāh ibn ʿAwf, who said: "I prayed the funeral prayer with Ibn ʿAbbās, and he recited the Fātiḥah. He said: 'This is indeed from the Sunnah.'" The Ḥanafīs and Mālikīs did not take that statement of his into consideration.

وَقَالَ مَنْ هُوَ خَيْرٌ مِنْهُ مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُحَمَّدُ بْنُ كَثِيرٍ أَنَا سُفْيَانُ عَنْ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ طَلْحَةَ بْنِ عَبْدِ اللَّهِ بْنِ عَوْفٍ قَالَ صَلَّيْت مَعَ ابْنِ عَبَّاسٍ عَلَى جِنَازَةٍ فَقَرَأَ بِفَاتِحَةِ الْكِتَابِ فَقَالَ: إنَّهَا مِنْ السُّنَّةِ، فَلَمْ يَلْتَفِتْ إلَى قَوْلِهِ ذَلِكَ الْحَنَفِيُّونَ وَالْمَالِكِيُّونَ.

L35421 Who is more astray than one who adheres to validating a statement unestablished from Saʿīd ibn al-Musayyab—"It is the Sunnah"—yet does not accept the firmly attested statement from Ibn ʿAbbās—"It is the Sunnah"? Indeed, thus let falsehood and misguidance be.

فَمَنْ أَضَلُّ مِمَّنْ يَدِينُ بِتَصْحِيحِ قَوْلٍ لَمْ يَثْبُتْ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ " هِيَ السُّنَّةُ " وَلَا يُصَدِّقُ الْقَوْلَ الثَّابِتَ عَنْ ابْنِ عَبَّاسٍ هِيَ السُّنَّةُ أَلَا هَكَذَا فَلْيَكُنْ الْبَاطِلُ وَالضَّلَالُ.

L35422 They mentioned: What was transmitted to us from the chain of Abī Dāwūd—I am Aḥmad ibn Zuhayr; he informed us Aḥmad ibn Yūnus; narrated by Zuhayr; narrated by Jaʿfar ibn Barqān; narrated by Maymūn ibn Mihrān, who said: I asked Saʿīd ibn al-Musayyib: "Fāṭimah bint Qays was divorced and left her house." Saʿīd replied: "That woman stirred discord among the people. She was indeed sharp-tongued, so she was placed under the guardianship of Ibn Umm Maktūm."

وَذَكَرُوا -: مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا أَحْمَدُ بْنُ زُهَيْرٍ نا أَحْمَدُ بْنُ يُونُسَ أَنَا زُهَيْرٌ أَنَا جَعْفَرُ بْنُ بَرْقَانَ أَنَا مَيْمُونُ بْنُ مِهْرَانَ قَالَ: قُلْت لِسَعِيدِ بْنِ الْمُسَيِّبِ فَاطِمَةُ بِنْتُ قَيْسٍ طَلُقَتْ فَخَرَجَتْ مِنْ بَيْتِهَا، فَقَالَ سَعِيدٌ: تِلْكَ الْمَرْأَةُ فَتَنَتْ النَّاسَ، إنَّهَا كَانَتْ لَسِنَةً، فَوُضِعَتْ عَلَى يَدِي ابْنِ أُمِّ مَكْتُومٍ.

L35423 Abū Muḥammad said: This is a Mursal narration; we do not know who reported it to Saʿīd, so it is discarded.

قَالَ أَبُو مُحَمَّدٍ: هَذَا مُرْسَلٌ لَا نَدْرِي مَنْ أَخْبَرَ سَعِيدًا بِذَلِكَ فَهُوَ سَاقِطٌ.

L35424–35426 The saying of the Messenger of Allah (peace be upon him and his progeny) concerning the thrice-divorced woman, "She has no right to lodging nor..." The "maintenance" which we previously cited through the most authentic chain of narration invalidates all these false assumptions and clarifies that that is not limited to Fāṭimah alone, but applies to every thrice-divorced woman.

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي الْمُطَلَّقَةِ ثَلَاثًا «لَيْسَ لَهَا سُكْنَى وَلَا نَفَقَةٌ» الَّذِي أَوْرَدْنَا قَبْلُ بِأَصَحِّ إسْنَادٍ يُبْطِلُ هَذِهِ الظُّنُونَ الْكَاذِبَةَ كُلَّهَا، وَيُبَيِّنُ أَنَّهُ لَيْسَ ذَلِكَ فِي فَاطِمَةَ وَحْدَهَا، بَلْ فِي كُلِّ مُطَلَّقَةٍ ثَلَاثًا.

L35427 And they mentioned—what Hammam transmitted: I am ʿAbbās ibn Aṣbagh—I am Muḥammad ibn ʿAbd al-Malik ibn Ayman—I am al-Muṭṭalib—I am Abū

وَذَكَرُوا -: مَا نَاهُ حُمَامٌ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا مُطَّلِبُ أَنَا أَبُو صَالِحٍ - هُوَ عَبْدُ اللَّهِ بْنُ صَالِحٍ كَاتِبُ اللَّيْثِ حَدَّثَنِي اللَّيْثُ حَدَّثَنِي عُقَيْلٌ عَنِ ابْنِ شِهَابٍ أَخْبَرَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ فَذَكَرَ حَدِيثَ فَاطِمَةَ.

Ṣāliḥ—who is ʿAbd Allāh ibn Ṣāliḥ, the scribe of al-Layth—al-Layth narrated to me: ʿUqayl narrated to me from Ibn Shihāb—Abū Salamah ibn ʿAbd al-Raḥmān reported to me—then he mentioned the ḥadīth of Fāṭimah.

L35428 ثُمَّ قَالَ: فَأَنْكَرَ النَّاسُ عَلَيْهَا مَا كَانَتْ تُحَدِّثُ مِنْ خُرُوجِهَا مِنْ قَبْلِ أَنْ تَحِلَّ.

Then he said: The people censured her for speaking about her departure before she had become lawful [after her ʿiddah].

L35429 قَالَ أَبُو مُحَمَّدٍ: وَهَذَا سَاقِطٌ، لِأَنَّهُ مِنْ رِوَايَةِ عَبْدِ اللَّهِ بْنِ صَالِحٍ - وَهُوَ ضَعِيفٌ جِدًّا - كَمَا ذَكَرْنَا قَبْلُ.

Abū Muḥammad said: This is rejected, as it comes from the narration of ʿAbd Allāh ibn Ṣāliḥ—who is extremely weak—as we mentioned previously.

L35430 وَلَا نَدْرِي مَنْ هَؤُلَاءِ النَّاسُ، وَإِنَّمَا نَدْرِي أَنَّ الْحُجَّةَ تَقُومُ عَلَى النَّاسِ بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَا أَنَّ الْحُجَّةَ تَقُومُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِالنَّاسِ، وَإِنْكَارُ مَنْ أَنْكَرَ مِنَ النَّاسِ هُوَ الَّذِي يَجِبُ أَنْ يُنْكَرَ حَقًّا.

And we do not know who these people are. We only know that the divine proof is established upon the people through the Messenger of Allah (peace be upon him and his family), not that the divine proof is established upon the Messenger of Allah (peace be upon him and his family) through the people. The denial by those who deny among the people is itself what must rightfully be rejected.

L35431 وَذَكَرُوا -: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ أَنَا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُتْبَةَ فَذَكَرَ حَدِيثَ فَاطِمَةَ هَذَا، فَقَالَ مَرْوَانُ: لَمْ يُسْمَعْ هَذَا الْحَدِيثُ إِلَّا مِنِ امْرَأَةٍ سَنَأْخُذُ بِالْعِصْمَةِ الَّتِي وَجَدْنَا النَّاسَ عَلَيْهَا.

They mentioned: What was narrated to us through the chain of Muslim—from Isḥāq ibn Ibrāhīm, from ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from ʿUbayd Allāh ibn ʿUtbah—and he mentioned this ḥadīth of Fāṭimah. Marwān said: "This ḥadīth has only been heard from a woman. We will adhere to the criteria we found people upholding."

L35432–35434 قَالَ أَبُو مُحَمَّدٍ: لَوْ أَنَّ مَرْوَانَ تَوَرَّعَ هَذَا الْوَرَعَ حَيْثُ شَقَّ عَصَا الْمُسْلِمِينَ، وَخَرَجَ عَلَى ابْنِ الزُّبَيْرِ أَمِيرِ الْمُؤْمِنِينَ، بِلَا تَأْوِيلٍ وَلَا تَمْوِيهٍ، فَأَخَذَ بِالْعِصْمَةِ الَّتِي وَجَدَ جَمِيعَ النَّاسِ وَأَهْلَ الْإِسْلَامِ عَلَيْهَا مِنَ الْقَوْلِ بِإِمَامَةِ ابْنِ الزُّبَيْرِ مِنْ أَقْصَى أَعْمَالِ إِفْرِيقِيَّةَ إِلَى أَقْصَى خُرَاسَانَ - حَاشَا أَهْلِ الْأُرْدُنِّ - لَكَانَ أَوْلَى بِهِ وَأَنْجَى لَهُ فِي آخِرَتِهِ.

Abu Muhammad said: If only Marwan had shown such piety when he splintered the unity of the Muslims and revolted against Ibn al-Zubayr, the Commander of the Believers, without pretext or deception, and had instead held fast to the complete divine protection available to him in its entirety... The people and the Muslims adhered to the declaration of Ibn al-Zubayr's imamate, extending from the farthest districts of Ifriqiyah to the farthest regions of Khurasan—except for the people of Jordan—and it would have been more rightful for him and more salvific for him in his Hereafter.

L35435 وَقَدْ ذَكَرْنَا الْخِلَافَ فِي الصَّحَابَةِ - رِضْوَانُ اللَّهِ عَلَيْهِمْ - فِي الْمُدَّعِي الْعِصْمَةَ، وَاحْتَجَّ

We have mentioned the disagreement among the Companions—may Allah be pleased with them—regarding one who claimed infallibility. They cited

as evidence the narration relayed to us through the chain of transmission in Ṣaḥīḥ Muslim: Muhammad ibn al-Muthannā → Hafs ibn Ghiyāth → Hishām ibn ʿUrwah → his father → Fāṭimah bint Qays, who said: "I said, 'O Messenger of Allah, my husband has divorced me three times, and I fear I may be intruded upon.'" The Prophet commanded her to move out, so she did.

وَقَدْ ذَكَرْنَا اخْتِلَافَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِيمَا ادَّعَى فِيهِ الْعِصْمَةَ، وَاحْتَجُّوا بِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا حَفْصُ بْنُ غِيَاثٍ أَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ قَالَتْ «قُلْتُ يَا رَسُولَ اللَّهِ: إنَّ زَوْجِي طَلَّقَنِي ثَلَاثًا وَأَنَا أَخَافُ أَنْ يُقْتَحَمَ عَلَيَّ قَالَ: فَأَمَرَهَا فَتَحَوَّلَتْ» .

L35436 Abū Muḥammad said: This is as you observe. Therefore, reflect upon his statement, "he commanded her, so she moved." This phrase is neither from the speech of Allah's Messenger—may Allah bless him and his family and grant him peace—nor from Fāṭimah's speech, for its wording states: "he commanded her, so she moved." Thus, it is established that this is from ʿUrwah's speech. This report cannot but be considered as possibly being something ʿUrwah did not hear from Fāṭimah, thereby making it a *mursal* narration.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كَمَا تَرَوْنَ فَتَأَمَّلُوا قَوْلَهُ «فَأَمَرَهَا فَتَحَوَّلَتْ» لَيْسَ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَلَا مِنْ كَلَامِ فَاطِمَةَ؛ لِأَنَّ نَصَّهُ قَالَ: «فَأَمَرَهَا فَتَحَوَّلَتْ» فَصَحَّ أَنَّهُ مِنْ كَلَامِ عُرْوَةَ - وَلَا يَخْلُو هَذَا الْخَبَرُ مِنْ أَنْ يَكُونَ لَمْ يَسْمَعْهُ عُرْوَةُ مِنْ فَاطِمَةَ فَيَكُونُ مُرْسَلًا -:

L35437 This clarifies what Yunus ibn Abdullah ibn Mughith informed us, reporting: Muhammad ibn Ahmad ibn Khalid reported from his father, from Muhammad ibn Waddah, from Abu Bakr ibn Abi Shaybah, from Hafs ibn Ghiyath, from Hisham ibn Urwah, from his father, who said: "Fatimah bint Qays said: 'O Messenger of Allah, I fear intrusion upon me,' so he ordered her to relocate." If this constitutes the original report, it is a disconnected chain, and no valid proof exists in a disconnected narration. Even if Urwah heard it directly from Fatimah, it still holds no authority, for it does not explicitly state that the Messenger of Allah—peace and blessings be upon him—said: "I command you to relocate solely due to your fear of intrusion." Since he—peace and blessings be upon him—did not utter these words, it is impermissible for any Muslim who fears the Fire to assert that he—peace and blessings be upon him—commanded her relocation specifically for that reason, because this constitutes attributing to him—peace and blessings be upon him—a statement he never made about himself.[35]

وَيُوَضِّحُ ذَلِكَ -: أَنَّهُ مَا خَبَّرَنَا بِهِ يُونُسُ بْنُ عَبْدِ اللَّهِ بْنِ مُغِيثٍ قَالَ أَنَا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ خَالِدٍ أَنَا أَبِي أَنَا مُحَمَّدُ بْنُ وَضَّاحٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ حَفْصِ بْنِ غِيَاثٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ «قَالَتْ فَاطِمَةُ بِنْتُ قَيْسٍ: يَا رَسُولَ اللَّهِ إنِّي أَخَافُ أَنْ يُقْتَحَمَ عَلَيَّ فَأَمَرَهَا أَنْ تَتَحَوَّلَ» فَإِنْ كَانَ هَذَا هُوَ أَصْلَ الْخَبَرِ فَهُوَ مُنْقَطِعٌ، وَلَا حُجَّةَ فِي مُنْقَطِعٍ، أَوْ يَكُونُ عُرْوَةُ سَمِعَهُ مِنْ فَاطِمَةَ فَلَا حُجَّةَ فِيهِ أَيْضًا؛ لِأَنَّهُ لَيْسَ فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: إنَّمَا آمُرُك بِالتَّحَوُّلِ مِنْ أَجْلِ خَوْفِك أَنْ يُقْتَحَمَ عَلَيْك - وَإِذْ لَمْ يَقُلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - هَذَا فَلَا يَحِلُّ لِمُسْلِمٍ يَخَافُ النَّارَ أَنْ يَقُولَ: إنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّمَا أَمَرَهَا بِالتَّحَوُّلِ مِنْ أَجْلِ ذَلِكَ؛ لِأَنَّهُ إخْبَارٌ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِمَا لَمْ يُخْبِرْ بِهِ عَنْ نَفْسِهِ.

L35438 In any case, it has been authentically established through the chain of Abu

[35] **Hadith references (L35437):** Sunan Ibn Majah 2033.

Salama ibn Abd al-Rahman, al-Sha'bi, and Abu Bakr ibn Abi al-Jahm that the Messenger of Allah—may Allah bless him and his family and grant him peace—said, "There is no lodging for her nor maintenance." Do you think maintenance has been abrogated out of fear of encroachment upon her? All of this is a scratch on Safa.

L35439 And his statement (peace and blessings be upon him), "Rather, the triply divorced woman has no right to housing nor financial support," suffices for all of this and renders unnecessary resorting to false assumptions—and with Allah the Exalted is success.

L35440 There remained nothing but the denial of Umar, and of Aisha, the Mother of the Believers (may Allah be pleased with her). What happened then?

L35441–35442 Jabir ibn Abdullah, Ibn Abbas, Ayyash ibn Abi Rabi'ah, and other Companions—may Allah be pleased with them—agreed with her. So what justifies considering the opinion of Aisha and Umar as part of those we mentioned? How can that be, when there is no conclusive proof in any of that? The only binding proof for everyone is what is authentically established from the Messenger of Allah—peace and blessings be upon him and his family.

L35443 We declare, proclaim, and affirm: that we do not take the opinion of the Mother of the Believers and of Umar, the Commander of the Believers, if what is authentically established from the Messenger of Allah—peace and blessings of Allah be upon him and his family—contradicts it. It is impermissible to adopt their opinions in such a case, nor should anyone claim in their presence regarding that matter that there exists a Sunnah of the Messenger of Allah—peace and blessings of Allah be upon him and his family—which the two of them concealed. They themselves declare by saying: "Indeed, the opinion of Umar and the Mother of the Believers is more deserving to be followed than what is authentically established from the Messenger of Allah—peace and blessings of Allah be upon him and his family—until they see their status before Allah the Exalted and in the eyes of the Muslim community."

L35444 I wish I knew where this submission from them to Umm al-Mu'minīn ʿĀ'isha

وَعَلَى كُلِّ حَالٍ فَقَدْ صَحَّ: مِنْ طَرِيقِ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، وَالشَّعْبِيِّ وَأَبِي بَكْرِ بْنِ أَبِي الْجَهْمِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «لَا سُكْنَى لَهَا وَلَا نَفَقَةَ» : أَفَتَرَوْنَ النَّفَقَةَ سَقَطَتْ خَوْفَ الِاقْتِحَامِ عَلَيْهَا؟ هَذَا كُلُّهُ خَدْشٌ فِي الصَّفَا.

وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «بَلْ الْمُطَلَّقَةُ ثَلَاثًا لَا سُكْنَى لَهَا وَلَا نَفَقَةَ» يُغْنِي عَنْ هَذَا كُلِّهِ، وَعَنْ تَكَلُّفِ الظُّنُونِ الْكَاذِبَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَلَمْ يَبْقَ إلَّا إنْكَارُ عُمَرَ، وَعَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَلَيْهَا، فَكَانَ مَاذَا؟

فَقَدْ وَافَقَهَا جَابِرُ بْنُ عَبْدِ اللَّهِ، وَابْنُ عَبَّاسٍ، وَعَيَّاشُ بْنُ أَبِي رَبِيعَةَ، وَغَيْرُهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَمَا الَّذِي جَعَلَ رَأْيَ عَائِشَةَ، وَعُمَرَ مِنْ رَأْيِ مَنْ ذَكَرْنَا؟ فَكَيْفَ وَلَا حُجَّةَ فِي شَيْءٍ مِنْ ذَلِكَ، إنَّمَا الْحُجَّةُ عَلَى كُلِّ أَحَدٍ مَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

وَنَحْنُ نُعْلِنُ وَنَهْتِفُ وَنَصْرُخُ: أَنَّ رَأْيَ أُمِّ الْمُؤْمِنِينَ، وَعُمَرَ أَمِيرِ الْمُؤْمِنِينَ لَا نَأْخُذُ بِهِ إذَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - خِلَافُهُ، وَلَا يَحِلُّ الْأَخْذُ بِرَأْيِهِمَا حِينَئِذٍ، وَلَا أَنْ يَقُولَ أَحَدٌ عِنْدَهُمَا فِي ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - سُنَّةٌ كَتَمَاهَا، وَيُصَرِّحُوا هُمْ بِأَنْ يَقُولُوا: إنَّ رَأْيَ عُمَرَ، وَأُمِّ الْمُؤْمِنِينَ أَحَقُّ أَنْ يُتَّبَعَ مِمَّا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَتَّى يَرَوْا حَالَهُمْ عِنْدَ اللَّهِ تَعَالَى، وَعِنْدَ أَهْلِ الْإِسْلَامِ.

had gone when they disregarded her statement prohibiting the suckling of adults. They ascribed to her what Allah—Exalted is He—has absolved her of: that she would allow entry into the veil of Allah—which He established over the wives of the Messenger of Allah (peace be upon him and his family)—to one who has no right to enter it. This is the grave sin that makes the skins of the believers shudder.

وَلَيْتَ شِعْرِي - أَيْنَ كَانَ عَنْهُمْ هَذَا الِانْقِيَادُ لِأُمِّ الْمُؤْمِنِينَ عَائِشَةَ، إِذْ لَمْ يَلْتَفِتُوا إِلَى قَوْلِهَا بِتَحْرِيمِ رَضَاعِ الْكَبِيرِ، إِذْ قَدْ نَسَبُوا إِلَيْهَا مَا قَدْ بَرَّأَهَا اللَّهُ تَعَالَى عَنْهُ مِنْ أَنَّهَا تُولِجُ حِجَابَ اللَّهِ تَعَالَى الَّذِي ضَرَبَهُ عَلَى نِسَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَنْ لَا يَحِلُّ لَهُ وُلُوجُهُ فَهَذِهِ هِيَ الْعَظِيمَةُ الَّتِي تَقْشَعِرُّ مِنْهَا جُلُودُ الْمُؤْمِنِينَ.

L35445 And in permitting the widow to observe her waiting period wherever she wishes—how far were they from obeying ʿUmar (may Allah be pleased with him) when they opposed him concerning wiping over the turban and caused him to issue a fatwa about praying without ablution?

وَفِي إِبَاحَتِهَا لِلْمُتَوَفَّى عَنْهَا أَنْ تَعْتَدَّ حَيْثُ شَاءَتْ وَأَيْنَ كَانُوا مِنْ هَذِهِ الطَّاعَةِ لِعُمَرَ - رَضِيَ اللَّهُ عَنْهُ - إِذْ خَالَفُوهُ فِي الْمَسْحِ عَلَى الْعِمَامَةِ وَجَعَلُوهُ يُفْتِي بِالصَّلَاةِ بِغَيْرِ وُضُوءٍ؟

L35446 And what we have compiled against them from matters in which they contradicted both of them is contained in a book we dedicated specifically for this purpose. When the reflective observer examines it, he will see them as if they are obsessed with opposing the Companion in matters where he aligned with the Sunnah, while blindly following him in opinions in which he was perpetually mistaken. But whoever does not count his speech as part of his deeds will multiply false speech - and Allah suffices us; how excellent is the Ultimate Trustee!

وَمَا قَدْ جَمَعْنَاهُ عَلَيْهِمْ مِمَّا قَدْ خَالَفُوهُمَا فِيهِ فِي كِتَابٍ أَفْرَدْنَاهُ لِذَلِكَ، إِذَا تَأَمَّلَهُ الْمُتَأَمِّلُ رَآهُمْ كَأَنَّهُمْ مُغْرَمُونَ بِخِلَافِ الصَّاحِبِ فِيمَا وَافَقَ فِيهِ السُّنَّةَ، وَتَقْلِيدُهُ فِي رَأْيٍ وَهِمَ فِيهِ أَبَدًا، وَلَكِنْ مَنْ لَمْ يَعُدَّ كَلَامَهُ مِنْ عَمَلِهِ كَثُرَ كَلَامُهُ بِالْبَاطِلِ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

L35447 So the report of Fāṭimah was confirmed like the sun because she was among the Emigrant Women who were the first to pledge allegiance.

فَصَحَّ خَبَرُ فَاطِمَةَ كَالشَّمْسِ؛ لِأَنَّهَا مِنْ الْمُهَاجِرَاتِ الْمُبَايِعَاتِ الْأُوَلِ:

L35448–35450 As we have transmitted via the route of Muslim: [I am ʿAbd al-Wārith ibn ʿAbd al-Ṣamad ibn ʿAbd al-Wārith, and Ḥajjāj ibn al-Shāʿir—both from ʿAbd al-Ṣamad ibn ʿAbd al-Wārith, from his father ʿAbd al-Wārith ibn Saʿīd al-Tannūrī.] From Al-Hasan ibn Zakwān: I am Abu Barīrah, from ʿĀmir al-Shaʿbī that he asked Fāṭimah bint Qays - and she was among the first female emigrants - and he narrated the ḥadīth.

كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ [أَنَا عَبْدُ الْوَارِثِ بْنُ عَبْدِ الصَّمَدِ بْنِ عَبْدِ الْوَارِثِ، وَحَجَّاجُ بْنُ الشَّاعِرِ، كِلَاهُمَا عَنْ عَبْدِ الصَّمَدِ بْنِ عَبْدِ الْوَارِثِ عَنْ أَبِيهِ عَبْدِ الْوَارِثِ بْنِ سَعِيدٍ التَّنُّورِيِّ عَنْ الْحَسَنِ بْنِ زَكْوَانَ أَنَا أَبُو بَرِيرَةَ] عَنْ عَامِرٍ الشَّعْبِيِّ أَنَّهُ سَأَلَ فَاطِمَةَ بِنْتَ قَيْسٍ - وَهِيَ مِنْ الْمُهَاجِرَاتِ الْأُوَلِ - وَذَكَرَ الْحَدِيثَ.

L35451 Abu Muhammad said: Allah, the Mighty and Majestic, has testified to the truthfulness of all of them—He, the Mighty and Majestic, said: *"For the poor emigrants who were driven out of their homes and their wealth, seek-

ing bounty from Allah and His pleasure, and supporting Allah and His Messenger—it is they who are the truthful."* [Al-Hashr: 8].[36]

قَالَ أَبُو مُحَمَّد: قَدْ شَهِدَ اللَّهُ عَزَّ وَجَلَّ لِكُلِّهِمْ بِالصِّدْقِ -: قَالَ عَزَّ وَجَلَّ: {لِلْفُقَرَاءِ الْمُهَاجِرِينَ الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ وَأَمْوَالِهِمْ يَبْتَغُونَ فَضْلا مِنَ اللَّهِ وَرِضْوَانًا وَيَنْصُرُونَ اللَّهَ وَرَسُولَهُ أُولَئِكَ هُمُ الصَّادِقُونَ} [الحشر: ٨] .

L35452 Who is more astray than one who denies any one from among them? And we ask Allah for safety, and praise be to Allah, Lord of the worlds.

فَمَنْ أَضَلُّ مِمَّنْ يُكَذِّبُ مِنْهُمْ أَحَدًا -، وَنَسْأَلُ اللَّهَ الْعَافِيَةَ، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L35453 We did not find anyone differing from him. They said regarding the report of Jābir's maternal aunt: He (peace and blessings be upon him) only commanded her to leave on the condition that she not spend the night there—thus, this was a lightly regarded falsehood and a report falsely attributed to the Messenger of Allah (peace and blessings be upon him and his family), fabricating without evidence.

وَلَمْ نَجِدْ لِأَحَدٍ خِلَافَهُ، وَقَالُوا: فِي خَبَرِ خَالَةِ جَابِرٍ إِنَّمَا أَمَرَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالْخُرُوجِ عَلَى أَنْ لَا تَبِيتَ هُنَالِكَ - فَكَانَ هَذَا كَذِبًا مُسْتَسْهَلًا، وَإِخْبَارًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِالِافْتِرَاءِ بِلَا دَلِيلٍ.

L35454 By my life, had there been no textual evidence, it would be obligatory to deny maintenance or housing to a woman whose divorce is final, for she is an unrelated woman and not his wife—she has no right to his property, neither for housing nor maintenance. The waiting period is an obligation Allah Almighty has imposed upon her; the husband holds no authority to annul the waiting period nor prolong it. And success comes only from Allah, the Most High.

وَلَعَمْرِي لَوْ لَمْ يَأْتِ أَثَرٌ لَكَانَ الْوَاجِبُ أَنْ لَا نَفَقَةَ لِمَبْتُوتَةٍ، وَلَا سُكْنَى؛ لِأَنَّهَا أَجْنَبِيَّةٌ لَيْسَتْ لَهُ بِزَوْجَةٍ، فَلَا حَقَّ لَهَا فِي مَالِهِ - لَا فِي إِسْكَانٍ، وَلَا فِي نَفَقَةٍ - وَالْعِدَّةُ شَيْءٌ أَلْزَمَهَا اللَّهُ تَعَالَى إِيَّاهَا، لَا مَدْخَلَ لِلزَّوْجِ فِي إِسْقَاطِهِ، وَلَا الزِّيَادَةِ فِيهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L35455 As for the woman whose husband has died—those who affirm her right to the matrimonial home cite the narration we reported through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Saʿīd ibn Isḥāq ibn Kaʿb ibn ʿUjrah, from his paternal aunt Zaynab bint Kaʿb, from Furayʿah bint Mālik: "Her husband was killed with an axe, so she came to the Prophet—may Allah's blessings be upon him and his family—and said, 'Do I have dependents?' He ordered her to relocate. When she turned to leave, he called her back and said, 'Remain in your home until the Book decrees the completion of its term: four months and ten days.'"

وَأَمَّا الْمُتَوَفَّى عَنْهَا - فَإِنَّ مَنْ أَوْجَبَ لَهَا السُّكْنَى احْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سَعِيدِ بْنِ إِسْحَاقَ بْنِ كَعْبِ بْنِ عُجْرَةَ عَنْ عَمَّتِهِ زَيْنَبَ بِنْتِ كَعْبٍ عَنْ فُرَيْعَةَ بِنْتِ مَالِكٍ «أَنَّ زَوْجَهَا قُتِلَ بِالْقَدُّومِ فَأَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَتْ: إِنَّ لَهَا أَهْلًا؟ فَأَمَرَهَا أَنْ تَنْتَقِلَ، فَلَمَّا أَدْبَرَتْ دَعَاهَا فَقَالَ: امْكُثِي فِي بَيْتِك حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا» .

L35456–35458 And from the chain of Abd al-Razzaq, from Ma'mar, from al-Zuhri, from Ibn Ka'b ibn Ujrah, who said: My paternal aunt (who was married to Abu Sa'id

[36] **Qur'an references (L35451):** Qur'an 59:8 (Al-Hashr).

al-Khudri) narrated to me that Furay'ah narrated to her that her husband went out in... Her husband was in pursuit of non-Arabs until he reached the edge of Al-Qadum Mountain. They overtook him there and killed him. She came to the Messenger of Allah—may Allah bless him and his family and grant him peace—informing him that her husband had been killed, that he had left her in a dwelling not owned by him, and sought permission to relocate. He permitted her, so she departed. When she reached the entrance to the chamber, he had her summoned back and instructed her not to leave until the waiting period ordained by the Book had concluded.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ ابْنِ كَعْبِ بْنِ عُجْرَةَ قَالَ: حَدَّثَتْنِي عَمَّتِي - وَكَانَتْ تَحْتَ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ فُرَيْعَةَ حَدَّثَتْهَا أَنَّ زَوْجَهَا خَرَجَ فِي طَلَبِ أَعْلَاجٍ حَتَّى إذَا كَانَ بِطَرَفِ الْقَدُومِ - وَهُوَ جَبَلٌ - أَدْرَكَهُمْ فَقَتَلُوهُ فَأَتَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَذَكَرَتْ لَهُ: أَنَّ زَوْجَهَا قُتِلَ، وَأَنَّهُ تَرَكَهَا فِي مَسْكَنٍ لَيْسَ لَهُ، وَاسْتَأْذَنَتْهُ فِي الِانْتِقَالِ؟ فَأَذِنَ لَهَا، فَانْطَلَقَتْ حَتَّى إذَا كَانَتْ بِبَابِ الْحُجْرَةِ أَمَرَ بِهَا فَرُدَّتْ، فَأَمَرَهَا أَنْ لَا تَخْرُجَ حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ» .

L35459 And from the path of Mālik, from Saʿd ibn Isḥāq ibn Kaʿb ibn ʿUjrah, from his paternal aunt Zaynab bint Kaʿb ibn ʿUjrah, from al-Furaiʿah bint Mālik ibn Sinān, the sister of Abū Saʿīd al-Khudrī—and he mentioned it, wherein she said: "I asked the Messenger of Allah—peace be upon him and his family and grant him peace—to return to my family in Banī Khadrah, for my husband did not leave me in a dwelling that he owns."

وَمِنْ طَرِيقِ مَالِكٍ عَنْ سَعْدِ بْنِ إسْحَاقَ بْنِ كَعْبِ بْنِ عُجْرَةَ عَنْ عَمَّتِهِ زَيْنَبَ بِنْتِ كَعْبِ بْنِ عُجْرَةَ عَنْ الْفُرَيْعَةِ بِنْتِ مَالِكِ بْنِ سِنَانٍ أُخْتِ أَبِي سَعِيدٍ الْخُدْرِيِّ فَذَكَرَهُ - وَفِيهِ قَالَتْ: «فَسَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنْ أَرْجِعَ إلَى أَهْلِي فِي بَنِي خُدْرَةَ فَإِنَّ زَوْجِي لَمْ يَتْرُكْنِي فِي مَسْكَنٍ يَمْلِكُهُ» .

L35460 In the narration: "He—peace and blessings be upon him—said to her: 'Remain in your home until the term prescribed by the Book is fulfilled.'" He said: So she observed her waiting period therein for four months and ten days.

وَفِيهِ: «أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ لَهَا: اُمْكُثِي فِي بَيْتِكِ حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ» ، قَالَ: فَاعْتَدَّتْ فِيهِ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا.

L35461 From the narration of Abd al-Razzaq, from Ibn Jurayj, from Abdullah ibn Kathir, who said: Mujahid said, "Men were martyred on the day of Uhud, and their wives came to the Messenger of Allah (peace and blessings of Allah be upon him and his household) and said, 'O Messenger of Allah, we feel lonely at night. May we spend the night at the home of one of us until morning comes, at which point we disperse to our houses?' The Messenger of Allah (peace and blessings of Allah be upon him and his household) replied, 'Converse at the home of one of you as you wish. Then, when you intend to sleep, let every woman among you return to her own home.'"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ اللَّهِ بْنِ كَثِيرٍ قَالَ: قَالَ مُجَاهِدٌ «اُسْتُشْهِدَ رِجَالٌ يَوْمَ أُحُدٍ فَجَاءَ نِسَاؤُهُمْ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقُلْنَ: إنَّا نَسْتَوْحِشُ يَا رَسُولَ اللَّهِ بِاللَّيْلِ فَنَبِيتُ عِنْدَ إحْدَانَا حَتَّى إذَا أَصْبَحْنَا تَبَدَّدْنَا فِي بُيُوتِنَا؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: تَحَدَّثْنَ عِنْدَ إحْدَاكُنَّ مَا بَدَا لَكُنَّ حَتَّى إذَا أَرَدْتُنَّ النَّوْمَ فَلْتَؤُبْ كُلُّ امْرَأَةٍ مِنْكُنَّ إلَى بَيْتِهَا» .

L35462 Abu Muhammad said: As for the narration of Mujāhid, it is disconnected and there is no proof in it.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا حَدِيثُ مُجَاهِدٍ فَمُنْقَطِعٌ لَا حُجَّةَ فِيهِ.

وَأَمَّا حَدِيثُ فُرَيْعَةَ - فَفِيهِ زَيْنَبُ بِنْتُ كَعْبِ بْنِ عُجْرَةَ - وَهِيَ مَجْهُولَةٌ لَا تُعْرَفُ - وَلَا رَوَى عَنْهَا أَحَدٌ غَيْرُ سَعْدِ بْنِ إِسْحَاقَ - وَهُوَ غَيْرُ مَشْهُورٍ بِالْعَدَالَةِ - عَلَى أَنَّ النَّاسَ أَخَذُوا عَنْهُ هَذَا الْحَدِيثَ لِغَرَابَتِهِ، وَلِأَنَّهُ لَمْ يُوجَدْ عِنْدَ أَحَدٍ سِوَاهُ - فَسُفْيَانُ يَقُولُ: سَعِيدٌ، وَمَالِكٌ، وَغَيْرُهُ يَقُولُونَ: سَعْدٌ، وَالزُّهْرِيُّ يَقُولُ: عَنْ ابْنِ كَعْبِ بْنِ عُجْرَةَ - فَبَطَلَ الِاحْتِجَاجُ بِهِ.

L35463–35465 As for the ḥadīth of Furayʿah—it is transmitted through Zaynab bint Kaʿb ibn ʿUjrah, a non-established narrator unrecognized in tradition. No one narrated from her except Saʿd ibn Isḥāq, who is not renowned for reliability. People nevertheless accepted this ḥadīth from him due to its rarity and because no other source preserved it. Sufyān cites "Saʿīd," while Mālik and others cite "Saʿd," and al-Zuhrī states: "from Ibn Kaʿb ibn ʿUjrah"—thus the narration is rendered void. Citing it as evidence.

إِذْ لَا يَحِلُّ أَنْ يُؤْخَذَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِلَّا مَا لَيْسَ فِي إِسْنَادِهِ مَجْهُولٌ، وَلَا ضَعِيفٌ.

L35466 For it is impermissible to transmit anything from the Messenger of Allah—may Allah's peace and blessings be upon him and his family—unless its isnād has neither unknown nor weak narrators.

ثُمَّ لَوْ صَحَّ لَكَانَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، مُخَالِفِينَ لَهُ؛ لِأَنَّ مَالِكًا يَقُولُ: إِنْ كَانَ الْمَنْزِلُ لَيْسَ لِلْمَيِّتِ فَإِنْ كَانَ بِكِرَاءٍ فَهِيَ أَوْلَى بِهِ، وَإِنْ كَانَ لَيْسَ إِلَّا إِسْكَانًا، أَوْ كَانَ قَدْ تَمَّتْ فِيهِ مُدَّةُ الْكِرَاءِ: فَلِصَاحِبِ الْمَنْزِلِ إِخْرَاجُهَا مِنْهُ، وَلَوْ طَلَبَ مِنْهَا الْكِرَاءَ فَغَلَى عَلَيْهَا لَمْ يَلْزَمْهَا أَنْ تُكْرِيَهُ، وَلَا يَلْزَمُ الْوَرَثَةَ أَنْ يُكْرُوهُ لَهَا مِنْ مَالِ الْمَيِّتِ.

L35467 Then, if it were valid, the Hanafis and Malikis would oppose it; for Malik states: If the dwelling is not owned by the deceased, then if it was rented, she has the strongest claim to it. But if it was merely occupancy, or the rental period had expired: the owner of the dwelling may evict her. If he demands rent from her and raises it excessively, she is not obligated to rent it, nor are the heirs obligated to rent it to her from the deceased's estate.

وَقَالَ أَبُو حَنِيفَةَ: لَا سُكْنَى لَهَا فِي مَالِ الْمَيِّتِ أَصْلًا، سَوَاءٌ كَانَ الْمَنْزِلُ لَهُ أَوْ بِكِرَاءٍ - فَقَدْ خَالَفُوا نَصَّ هَذَا الْخَبَرِ.

L35468 Abu Hanifah said: She has no right of residence in the deceased's estate whatsoever, whether the dwelling was his or rented, for they have contradicted the explicit wording of this hadith.

وَمِنْ الْمُحَالِ احْتِجَاجُ قَوْمٍ بِخَبَرِهِمْ أَوَّلَ عَاصِينَ لَهُ.

L35469 Among the impossibilities is a community invoking their own report as evidence while being the foremost to contravene it.

وَمَوَّهُوا فِيمَا صَحَّ مِنْ ذَلِكَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا سُلَيْمَانُ بْنُ حَرْبٍ أَنَا حَمَّادُ بْنُ زَيْدٍ قَالَ: سَمِعْت أَيُّوبَ السِّخْتِيَانِيَّ ذَكَرَ لَهُ نَقْلَهُ أُمُّ كُلْثُومٍ بِنْتُ عَلِيٍّ؟ فَقَالَ أَيُّوبُ: إنَّمَا نَقَلَهَا مِنْ دَارِ الْإِمَارَةِ.

L35470 They embellished what was authentically established from ʿĀʾishah, Mother of the Believers, and ʿAlī ibn Abī Ṭālib through the narration chain we reported via Ismāʿīl ibn Isḥāq: Sulaymān ibn Ḥarb; Ḥammād ibn Zayd, who said: I heard Ayyūb al-Sakhtiyānī mention to him the narration of Umm Kulthūm bint ʿAlī (questionably attributed). Ayyūb said: "It was only transmitted from the seat of governance."

L35471 Hammad said: I heard Jarīr ibn Ḥāzim narrate to Ayyūb the ḥadīth of ʿAṭāʾ: "Did ʿĀʾishah perform ḥajj with her sister Umm Kulthūm during her waiting

period after divorcing Ṭalḥah ibn ʿUbayd Allāh?" Ayyūb said: "She [ʿĀʾishah] merely relocated her [Umm Kulthūm] to her [ʿĀʾishah's] homeland."

وَقَالَ حَمَّادٌ: وَسَمِعْت جَرِيرَ بْنَ حَازِمٍ يُحَدِّثُ أَيُّوبَ بِحَدِيثِ عَطَاءٍ: أَنَّ عَائِشَةَ حَجَّتْ بِأُخْتِهَا أُمِّ كُلْثُومٍ فِي عِدَّتِهَا مِنْ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ؟ فَقَالَ أَيُّوبُ: إنَّمَا نَقَلَتْهَا إلَى بِلَادِهَا.

L35472 And through him to Hammad ibn Zayd, from Yahya ibn Saʿīd, from al-Qasim ibn Muhammad, who said: "Aisha used to make a woman leave her house when her husband died, as she saw no harm in it. But the people refused to do anything but oppose her. Therefore, we do not adopt her opinion and disregard the people's view."

وَبِهِ إلَى حَمَّادِ بْنِ زَيْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ قَالَ: كَانَتْ عَائِشَةُ تُخْرِجُ الْمَرْأَةَ مِنْ بَيْتِهَا إذَا تُوُفِّيَ زَوْجُهَا لَا تَرَى بِهِ بَأْسًا - وَأَبَى النَّاسُ إلَّا خِلَافَهَا، فَلَا نَأْخُذُ بِقَوْلِهَا وَنَدَعُ قَوْلَ النَّاسِ.

L35473–35475 Abu Muhammad said: We do not know: Who are these people? The stipulation pertains to people, and there is no valid evidence among the people. Indeed, the speech of Allah, the Exalted, and the speech of His Messenger—may Allah's blessings and peace be upon him and his family—alone constitute the proof upon people. Allah, the Exalted, and His Messenger—may Allah's blessings and peace be upon him and his family—have prohibited the wealth of every person universally, except by right.

قَالَ أَبُو مُحَمَّدٍ: لَا نَدْرِي مَنْ هَؤُلَاءِ النَّاسُ؟ وَالشَّرْطُ نَاسٍ، وَلَا حُجَّةَ فِي النَّاسِ عَلَى اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إنَّمَا كَلَامُ اللَّهِ تَعَالَى وَكَلَامُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ الْحُجَّةُ عَلَى النَّاسِ، وَقَدْ حَرَّمَ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَالَ كُلِّ أَحَدٍ عَلَى سَوَاءٍ إلَّا بِحَقٍّ.

L35476 The residence of the deceased—either for creditors or, after settling debts, for heirs—grants his wife no right to it if she is an heir, except the exact measure of her allotted share. Anything beyond this is forbidden to her unless the heirs willingly consent. As for Ayyūb's statement, it is a scholar's error against which warnings were issued long ago.

وَمَنْزِلُ الْمَيِّتِ - إمَّا لِلْغُرَمَاءِ، وَإِمَّا لِلْوَرَثَةِ - بَعْدَ الْوَصِيَّةِ - لَيْسَ لِامْرَأَتِهِ فِيهِ حَقٌّ إنْ كَانَتْ وَارِثَةً إلَّا مِقْدَارَ حِصَّتِهَا فَقَطْ، وَمَا عَدَا ذَلِكَ فَحَرَامٌ عَلَيْهَا إلَّا بِطِيبِ أَنْفُسِ الْوَرَثَةِ، وَأَمَّا كَلَامُ أَيُّوبَ فَزَلَّةُ عَالِمٍ قَدْ حُذِّرَ مِنْهَا قَدِيمًا.

L35477 As for the obfuscation of the disputant who knows the invalidity of his argument, this is a calamity. As for his statement, "He moved it from the house of authority"—alas, what a double disgrace! Could there ever have been a house of authority in Medina during the era of the Messenger of Allah (peace and blessings be upon him and his family), Abū Bakr, ʿUmar, ʿUthmān, ʿAlī, or Muʿāwiyah?

وَأَمَّا تَمْوِيهُ الْمُحْتَجِّ بِهِ وَهُوَ يَدْرِي بُطْلَانَهُ فَمُصِيبَةٌ، أَمَّا قَوْلُهُ " نَقَلَهَا عَنْ دَارِ الْإِمَارَةِ " فَوَا فَضِيحَتَاهُ؟ وَهَلْ كَانَ فِي الْمَدِينَةِ قَطُّ دَارُ إمَارَةٍ مُدَّةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَأَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ، وَمُعَاوِيَةَ.

L35478 Did each of these individuals reside anywhere but in their own homes? However, when Ayyub—may Allah have mercy on him—saw the Governor's Residence in Basra, he assumed that the Governor's Residence in Medina was likewise, and that Umar ibn al-Khattab lived in the Governor's Residence in Medina. How astonishing!

وَهَلْ سَكَنَ كُلُّ وَاحِدٍ مِنْ هَؤُلَاءِ إلَّا فِي دَارِ نَفْسِهِ، لَكِنْ لَمَّا رَأَى أَيُّوبُ - رَحِمَهُ اللَّهُ - دَارَ الْإِمَارَةِ بِالْبَصْرَةِ ظَنَّ أَنَّهَا بِالْمَدِينَةِ كَذَلِكَ، وَأَنَّ عُمَرَ بْنَ الْخَطَّابِ سَكَنَ فِي دَارِ الْإِمَارَةِ بِالْمَدِينَةِ، فَيَا لَلْعَجَبِ؟ .

وَكَذَلِكَ قَوْلُهُ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ " إِنَّمَا نَقَلَتْهَا إِلَى بِلَادِهَا " فَهَذِهِ طَامَّةٌ أُخْرَى هُوَ يَسْمَعُ حَجَّتْ بِهَا فِي عِدَّتِهَا وَيَقُولُ " نَقَلَتْهَا إِلَى بِلَادِهَا " وَهِيَ الْمَدِينَةُ.

L35479 Similarly, his statement regarding ʿĀ'ishah, the Mother of the Believers—"she merely relocated her to her homeland"—this constitutes another calamity. He hears that she performed Hajj with her during her waiting period yet claims, "she relocated her to her homeland," referring to Medina.

وَهَلْ يَخْفَى عَلَى أَحَدٍ أَنَّهُ ضِدُّ قَوْلِ أَيُّوبَ، وَأَنَّهَا إِنَّمَا نَقَلَتْهَا عَنْ بِلَادِهَا - وَهِيَ الْمَدِينَةُ - وَعَنْ الْمَوْضِعِ الَّذِي قُتِلَ فِيهِ زَوْجُهَا طَلْحَةُ - رَضِيَ اللَّهُ عَنْهُ - وَهُوَ الْبَصْرَةُ إِلَى مَكَّةَ الَّتِي لَيْسَتْ لَهَا بَلَدًا، وَلَكِنْ مَنْ ذَا عُصِمَ مِنْ الْخَطَأِ مِنْ النَّاسِ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الَّذِي تَكَفَّلَ اللَّهُ تَعَالَى لَهُ بِالْعِصْمَةِ.

L35480 Is it hidden from anyone that this contradicts the statement of Ayyub, and that she merely relocated herself from her homeland—Medina—and from the place where her husband Talha—may Allah be pleased with him—was killed, namely Basra, to Mecca—which was not her homeland? But who among people after the Messenger of Allah—peace and blessings be upon him and his family—has been protected from error, when Allah the Exalted guaranteed him alone infallibility?

وَأَمَّا تَهْوِيلُهُمْ بِعُمَرَ، وَعُثْمَانَ، فَإِنَّمَا الرِّوَايَةُ عَنْهُمَا فِي ذَلِكَ، وَعَنْ أُمِّ سَلَمَةَ، وَزَيْدٍ: مُنْقَطِعَةٌ، وَنَحْنُ نَأْتِيهِمْ عَنْهُمْ بِمِثْلِهَا سَوَاءً سَوَاءً - قَدْ أَوْرَدْنَا فِي تِلْكَ الرِّوَايَةِ نَفْسِهَا: أَنَّ زَيْدَ بْنَ ثَابِتٍ أَرْخَصَ لِلْمُتَوَفَّى عَنْهَا أَنْ تَبْقَى عَنْ مَنْزِلِهَا بَيَاضَ يَوْمِهَا أَوْ لَيْلَتِهَا وَهَذَا خِلَافُ قَوْلِهِمْ.

L35481 As for their exaggeration concerning ʿUmar and ʿUthmān, the reports from them on that matter—and from Umm Salamah and Zayd—are disconnected. However, we bring forth from them reports of the same kind, exactly equivalent. Indeed, we have cited within that very report itself that Zayd ibn Thābit permitted a widow to remain away from her residence for the entirety of her day or her night—and this opposes their view.

وَعَنْ أُمِّ سَلَمَةَ أَنْ تَبْقَى عَنْ مَنْزِلِهَا أَحَدَ طَرَفَيْ اللَّيْلِ، فَلَيْتَ شِعْرِي مَا الْفَرْقُ بَيْنَ الطَّرَفِ الْوَاحِدِ، وَالطَّرَفِ الثَّانِي.

L35482–35483 It is narrated from Umm Salamah that she would refrain from entering her home during one of the two ends of the night. I wish I knew: What is the difference between the one end and the second end?

وَأَمَّا عُمَرُ - فَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا يَحْيَى بْنُ سَعِيدٍ - هُوَ الْقَطَّانُ - عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ امْرَأَةً تُوُفِّيَ عَنْهَا زَوْجُهَا فَكَانَتْ فِي عِدَّتِهَا، فَمَاتَ أَبُوهَا، فَسُئِلَ لَهَا عُمَرُ بْنُ الْخَطَّابِ؟ فَرَخَّصَ لَهَا أَنْ تَبِيتَ اللَّيْلَةَ وَاللَّيْلَتَيْنِ - وَهَذَا خِلَافُ قَوْلِهِ - فَمَرَّةً عُمَرُ حُجَّةٌ، وَمَرَّةً لَيْسَ بِحُجَّةٍ مِنْ مِثْلِ تِلْكَ الرِّوَايَةِ نَفْسِهَا.

L35484 As for Umar—it has been narrated to us through the chain of Saeed ibn Mansoor: Yahya ibn Saeed—al-Qattan—from Ayyub ibn Musa from Saeed ibn al-Musayyib that a woman whose husband had died was in her waiting period when her father died. Was Umar ibn al-Khattab asked on her behalf? He permitted her to spend one night and two nights. This contradicts his own statement. At times Umar's ruling serves as a legal proof, and at times it does not—both deriving from the same narration itself.

وَقَدْ ذَكَرْنَا الرِّوَايَةَ الثَّابِتَةَ عَنْ ابْنِ عُمَرَ: نَفَقَةُ الْمُتَوَفَّى عَنْهَا مِنْ جَمِيعِ الْمَالِ وَقَوْلُ سَالِمٍ ابْنِهِ: كُنَّا نُنْفِقُ عَلَيْهِنَّ حَتَّى نُبْتُمْ مَا نُبْتُمْ.

L35485 We have mentioned the established narration from Ibn Umar: "The maintenance for the woman whose husband has died is to be provided from the

entirety of the estate," and the statement of his son Salim: "We used to provide for them until we ceased as we ceased."

L35486 They abandoned all of this, abandoning Umar, Uthman, the Mother of the Believers, and Ibn Masʿud as they desired. They vilified those who differed from these figures—even if their own opposition contradicted the established Sunnah transmitted by them—as they desired.

L35487 By Allah—a righteous oath—those present among them never followed ʻUmar, nor ʻUthmān, nor Ibn ʻUmar, nor Ibn Masʿūd, nor ʻĀ'ishah. They followed none but Abū Ḥanīfah, Mālik, and al-Shāfiʿī. Then they bear no burden in denying what they inwardly acknowledge of this, and Allah the Exalted knows it, and people among them are aware of it—and in Allah the Exalted we seek refuge from the like of this. Allah suffices us, and He is the best Trustee.

L35488 al-Āmiddī

L35489 **Al-Amidi: The bondwoman in her waiting period (ʿiddah) is not permissible to her master until her waiting period expires.**

L35490 2001 – Issue: A female slave in her waiting period is not lawful for her master until her waiting period concludes, due to the statement of Allah, the Exalted: {But do not make a secret promise to them except that you utter a proper declaration} [Al-Baqarah 2:235]. The "secret" [in the verse] refers to marriage – and "secret" also denotes the opposite of public declaration. Both [secret marriage and secret promises] are prohibited by the explicit text of the verse, with no disagreement on this matter.[37]

L35491 **A legal issue: There is no waiting period from an invalid marriage.**

L35492 2002. Issue: There is no waiting period arising from an invalid marriage.

[37] **Qur'an references (L35490):** Qur'an 2:235 (Al-Baqarah).

فَتَرَكُوا هَذَا كُلَّهُ، وَتَرَكُوا: عُمَرَ، وَعُثْمَانَ، وَأُمَّ الْمُؤْمِنِينَ، وَابْنَ مَسْعُودٍ حَيْثُ أَحَبُّوا، وَشَنَّعُوا بِخِلَافِهِمْ، وَإِنْ خَالَفَ مَا جَاءَ عَنْهُمْ السُّنَنَ الثَّابِتَةَ - حَيْثُ أَحَبُّوا -.

وَوَاللَّهِ - قَسَمًا بَرًّا - مَا اتَّبَعَ الْحَاضِرُونَ مِنْهُمْ قَطُّ عُمَرَ، وَلَا عُثْمَانَ، وَلَا ابْنَ عُمَرَ، وَلَا ابْنَ مَسْعُودٍ، وَلَا عَائِشَةَ - وَمَا اتَّبَعُوا إلَّا أَبَا حَنِيفَةَ، وَمَالِكًا، وَالشَّافِعِيَّ، ثُمَّ لَا مَئُونَةَ عَلَيْهِمْ فِي إنْكَارِ مَا يَعْرِفُونَهُ مِنْ أَنْفُسِهِمْ مِنْ ذَلِكَ، وَيَعْلَمُهُ اللَّهُ تَعَالَى وَالنَّاسُ مِنْهُمْ، - وَبِاَللَّهِ تَعَالَى نَعُوذُ مِنْ مِثْلِ هَذَا -، وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

الْآمِدِيّ

[الْآمِدِيّ الْأَمَةُ الْمُعْتَدَّةُ لَا تَحِلُّ لِسَيِّدِهَا حَتَّى تَنْقَضِيَ عِدَّتُهَا]

٢٠٠١ - مَسْأَلَةٌ: وَالْأَمَةُ الْمُعْتَدَّةُ لَا تَحِلُّ لِسَيِّدِهَا حَتَّى تَنْقَضِيَ عِدَّتُهَا؛ لِقَوْلِ اللَّهِ تَعَالَى: {وَلَكِنْ لا تُوَاعِدُوهُنَّ سِرًّا إِلا أَنْ تَقُولُوا قَوْلا مَعْرُوفًا} [البقرة: ٢٣٥] وَالسِّرُّ النِّكَاحُ - وَالسِّرُّ أَيْضًا ضِدُّ الْإِعْلَانِ، وَكِلَاهُمَا مَمْنُوعٌ بِنَصِّ الْآيَةِ، وَلَا خِلَافَ فِي هَذَا.

[مَسْأَلَةٌ لَا عِدَّةَ مِنْ نِكَاحٍ فَاسِدٍ]

٢٠٠٢ - مَسْأَلَةٌ: وَلَا عِدَّةَ مِنْ نِكَاحٍ فَاسِدٍ.

L35493 The proof of that is: she is neither divorced nor has her husband died, and neither the Qur'an nor the Sunnah has brought an obligation of a waiting period upon her, nor is there a proof in other than these two.

L35494 Issue 2003: There is no waiting period for an umm walad (a slave woman who has borne her master's child) if she is emancipated or her master dies, nor for a female slave upon the death of her master or his emancipation of her. This is because neither the Quran nor the Sunnah has mandated such a waiting period. The two of them may be married whenever the two of them wish, as there is no waiting period incumbent upon the two of them. {And your Lord is never forgetful} [Maryam: 64]. However, if she suspects pregnancy, she must wait until she ascertains that she is pregnant or that she is not pregnant.[38]

L35495–35497 There has been disagreement regarding this. The first opinion is: "Just as I am Ḥumām, I am Abbas ibn Aṣbagh." From Muhammad ibn Abd al-Malik ibn Ayman, from Muhammad ibn Isma'il al-Sa'igh, from Abdullah ibn Bakr al-Sahmi, from Sa'id—meaning Ibn Abi Arubah—from Matar al-Warraq, from Raja' ibn Haywah, from Qabisah ibn Dhu'ayb, from Amr ibn al-As, who said: "Do not confuse us regarding the Sunnah of our Prophet (peace and blessings of Allah be upon him and his family). The ʿiddah of an umm al-walad when her master dies is the ʿiddah of a free woman whose husband has died: four months and ten days."

L35498 And through the chain of ʿAbd al-Razzāq from Maʿmar from Qatādah: ʿAmr ibn al-ʿĀṣ said regarding a female slave who has been manumitted after sexual intercourse - if her master had intercourse with her, even if she had not borne a child - her waiting period upon his death while she is under his ownership is four months and ten days.

L35499 Muhammad ibn Saʿīd ibn Nubāt reported from Aḥmad ibn ʿAbd al-Baṣīr, from Qāsim ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Salām al-Khushaniyy, from Muḥammad ibn al-Muthannā, from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Thawr ibn Zayd, from Rajāʾ ibn Ḥaywatu, that ʿAmr ibn al-ʿĀṣ said: "The waiting period for an *umm al-walad* [enslaved woman

[38] **Qur'an references (L35494):** Qur'an 19:64 (Maryam).

بُرْهَانُ ذَلِكَ -: أَنَّهَا لَيْسَتْ مُطَلَّقَةً، وَلَا مُتَوَفًّى عَنْهَا، وَلَمْ يَأْتِ بِإِيجَابِ عِدَّةٍ عَلَيْهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا حُجَّةَ فِي سِوَاهُمَا.

٢٠٠٣ - مَسْأَلَةٌ: وَلَا عِدَّةَ عَلَى أُمِّ وَلَدٍ - إِنْ أُعْتِقَتْ أَوْ مَاتَ سَيِّدُهَا - وَلَا عَلَى أَمَةٍ مِنْ وَفَاةِ سَيِّدِهَا، أَوْ عِتْقِهِ لَهَا، لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَهُمَا أَنْ يُنْكَحَا مَتَى شَاءَتَا، لِأَنَّهُ لَا عِدَّةَ عَلَيْهِمَا {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] إِلَّا أَنَّهَا إِنْ خَافَتْ حَمْلًا تَرَبَّصَتْ حَتَّى تُوقِنَ بِأَنَّ بِهَا حَمْلًا، أَوْ أَنَّهَا لَا حَمْلَ بِهَا.

وَقَدْ اُخْتُلِفَ فِي هَذَا: فَقَوْلٌ أَوَّلٌ: كَمَا أَنَا حُمَامٌ أَنَا عَبَّاسُ بْنُ أَصْبَغَ، أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ الصَّائِغُ أَنَا عَبْدُ اللَّهِ بْنُ بَكْرٍ السَّهْمِيُّ أَنَا سَعِيدٌ - يَعْنِي ابْنَ أَبِي عَرُوبَةَ - عَنْ مَطَرٍ الْوَرَّاقِ عَنْ رَجَاءِ بْنِ حَيْوَةَ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ عَنْ عَمْرِو بْنِ الْعَاصِ قَالَ: لَا تُلَبِّسُوا عَلَيْنَا سُنَّةَ نَبِيِّنَا - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عِدَّةُ أُمِّ الْوَلَدِ إِذَا تُوُفِّيَ عَنْهَا سَيِّدُهَا عِدَّةُ الْحُرَّةِ الْمُتَوَفَّى عَنْهَا زَوْجُهَا أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ أَنَّ عَمْرَو بْنَ الْعَاصِ قَالَ: فِي الْمُعْتَقَةِ عَنْ دُبُرٍ إِذَا كَانَ سَيِّدُهَا يَطَؤُهَا - وَإِنْ لَمْ تَلِدْ - فَعِدَّتُهَا إِذَا مَاتَ عَنْهَا أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ.

أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ ثَوْرِ بْنِ زَيْدٍ عَنْ رَجَاءِ بْنِ حَيْوَةَ أَنَّ عَمْرَو بْنَ الْعَاصِ قَالَ: عِدَّةُ أُمِّ الْوَلَدِ ثَلَاثَةُ قُرُوءٍ.

who bears her master's child and is entitled to emancipation upon his death]
is three menstrual cycles."

وَبِهِ إِلَى عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ أَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ عَمْرٍو قَالَ: إِنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ، وَالزُّهْرِيَّ، قَالَا جَمِيعًا: عِدَّةُ أُمِّ الْوَلَدِ مِنْ وَفَاةِ سَيِّدِهَا أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ.

L35500–35502 And through him to Abd al-Rahman ibn Mahdi, I am Hammad ibn Salamah, from Muhammad ibn Amr, who said: “Verily...” Umar ibn Abd al-Aziz and al-Zuhrī jointly said: The waiting period for an *umm al-walad* following the death of her master is four months and ten days.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عِدَّةُ أُمِّ الْوَلَدِ مِنْ وَفَاةِ سَيِّدِهَا أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ، فَإِنْ كَانَتْ أَمَةً يَطَؤُهَا - وَلَمْ تَلِدْ لَهُ - فَمَاتَ فَتُسْتَبْرَأُ بِشَهْرَيْنِ وَخَمْسِ لَيَالٍ.

L35503 From the transmission of Abd al-Razzaq from Ma’mar from al-Zuhri: The waiting period for an umm al-walad (mother of a child by her master) upon the death of her master is four months and ten days. If she was a slave woman whom he has intercourse with—and she had not borne him a child—and he died, she must observe a waiting period of two months and five nights to ascertain the absence of pregnancy.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَخْبَرَنَا حُمَيْدٌ قَالَ: سَأَلْتُ الْحَسَنَ الْبَصْرِيَّ عَنْ عِدَّةِ أُمِّ الْوَلَدِ إِذَا تُوُفِّيَ عَنْهَا سَيِّدُهَا قَالَ: تَعْتَدُّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا.

L35504 Via the chain of Hammad ibn Salamah, Humayd reported to us, saying: I asked al-Hasan al-Basri about the ʿiddah of the umm al-walad when her master dies. He said: She observes an ʿiddah of four months and ten days.

وَبِهِ إِلَى حُمَيْدٍ عَنْ عُمَارَةَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: عِدَّةُ أُمِّ الْوَلَدِ إِذَا تُوُفِّيَ عَنْهَا سَيِّدُهَا أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ.

L35505 And through him to Humaid from ‘Umarah from Sa‘id ibn Jubayr, who said: The waiting period for the umm al-walad when her master passes away from her is four months and ten.

وَبِهِ إِلَى حَمَّادٍ أَخْبَرَنَا قَيْسٌ عَنْ مُجَاهِدٍ فِي أُمِّ الْوَلَدِ إِذَا تُوُفِّيَ عَنْهَا سَيِّدُهَا قَالَ: تَعْتَدُّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا.

L35506 And through him (the previous narrator) to Hammad: Qays informed us from Mujāhid regarding the umm al-walad when her master dies. He said: She observes a waiting period of four months and ten days.

وَبِهِ إِلَى حَمَّادٍ أَنَا دَاوُد - هُوَ ابْنُ أَبِي هِنْدٍ - عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: فِي أُمِّ الْوَلَدِ يُتَوَفَّى عَنْهَا سَيِّدُهَا عِدَّتُهَا أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ.

L35507 From Dawud—son of Abi Hind—who narrated to Hammad, from Sa‘īd ibn al-Musayyib, who said: Regarding the umm al-walad [enslaved woman who bore her master’s child] when her master dies, her waiting period is four months and ten days.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا حُمَامُ بْنُ يَحْيَى قَالَ: سُئِلَ قَتَادَةُ عَنْ عِدَّةِ أُمِّ الْوَلَدِ إِذَا تُوُفِّيَ عَنْهَا سَيِّدُهَا؟ فَقَالَ: قَالَ سَعِيدُ بْنُ الْمُسَيِّبِ، وَخِلَاسُ بْنُ عَمْرٍو، وَأَبُو عِيَاضٍ: عِدَّتُهَا عِدَّةُ الْحُرَّةِ أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ.

L35508 Through the narration of Al-Hajjaj ibn Minhal, I, Humam ibn Yahya, said: Qatadah was asked about the waiting period of an umm al-walad when her master passes away. He replied, citing Sa‘id ibn al-Musayyib, Khilas ibn ‘Amr, and Abu ’Iyad: “Her waiting period is that of a free woman: four months and ten days.”

L35509 And through the chain of Ḥammād ibn Salamah: I am Muḥammad ibn

ʿAmr from ʿUbādah ibn Nusayy: that a letter was written to ʿAbd al-Malik ibn Marwān concerning an umm walad who married before four months and ten days had passed for her, [stating] that the two be separated and both subjected to discretionary punishment -

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا مُحَمَّدُ بْنُ عَمْرٍو عَنْ عُبَادَةَ بْنِ نُسَيٍّ: أَنَّ عَبْدَ الْمَلِكِ بْنَ مَرْوَانَ كُتِبَ إِلَيْهِ فِي أُمِّ وَلَدٍ تَزَوَّجَتْ قَبْلَ أَنْ تَمْضِيَ لَهَا أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ، أَنْ يُفَرَّقَ بَيْنَهُمَا وَيُعَزَّرَهُمَا -.

L35510 This is the view of Muḥammad ibn Sīrīn, al-Awzāʿī, and Isḥāq ibn Rāhawayh.

وَهُوَ قَوْلُ مُحَمَّدِ بْنِ سِيرِينَ وَالْأَوْزَاعِيِّ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ.

L35511 A second opinion holds that her waiting period after emancipation or a spouse's death is three menstrual cycles.

وَقَوْلٌ ثَانٍ - يَجْعَلُ عِدَّتَهَا فِي الْعِتْقِ وَالْوَفَاةِ ثَلَاثَةَ قُرُوءٍ -:

L35512 It has been narrated to us via the chain of Abd al-Razzaq from Ibn al-Mubarak from al-Hajjaj ibn Arṭāʾah from al-Hakam ibn Utaybah from Ali ibn Abi Talib, who said: The waiting period for a female slave is three menstrual cycles.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ الْمُبَارَكِ عَنِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: عِدَّةُ السُّرِّيَّةِ ثَلَاثُ حِيَضٍ.

L35513–35515 From the chain of Saʿīd ibn Manṣūr: I, Yazīd ibn Hārūn, reported from Ḥajjāj ibn Arṭāh, from al-Shaʿbī. It is reported from Ali ibn Abi Talib and Ibn Masʿud that they both said together regarding the umm al-walad: her waiting period when her master dies is three menstrual periods.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا يَزِيدُ بْنُ هَارُونَ عَنْ حَجَّاجِ بْنِ أَرْطَاةَ عَنِ الشَّعْبِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَابْنِ مَسْعُودٍ، قَالَا جَمِيعًا فِي أُمِّ الْوَلَدِ: عِدَّتُهَا إِذَا مَاتَ عَنْهَا سَيِّدُهَا ثَلَاثَةُ قُرُوءٍ.

L35516 Via the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ concerning one who manumits a concubine while she is pregnant, he said: She - now a free woman - must observe the ʿiddah of three menstrual cycles. This was also stated by ʿAmr ibn Dīnār.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِيمَنْ أَعْتَقَ سُرِّيَّةً - وَهِيَ حُبْلَى - قَالَ: تَعْتَدُّ ثَلَاثَ حِيَضٍ - وَهِيَ امْرَأَةٌ حُرَّةٌ - وَقَالَهُ أَيْضًا عَمْرُو بْنُ دِينَارٍ.

L35517 And through the chain of Abd al-Razzaq from Sufyan al-Thawri from Abu Ishaq al-Shaybani from al-Hakam ibn Utaybah, who said: If a master has intercourse with his female slave, and she did not bear a child for him, then he emancipated her, and her waiting period is three months.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: الْأَمَةُ يُصِيبُهَا سَيِّدُهَا - فَلَمْ تَلِدْ - لَهُ فَأَعْتَقَهَا فَعِدَّتُهَا ثَلَاثَةُ أَشْهُرٍ.

L35518 And from the narration of Abd al-Razzaq, from Sufyan al-Thawri, from Habib ibn Abi Thabit, from Ibrahim al-Nakha'i, who said: The waiting period for a female slave when emancipated or when her master dies is three menstrual cycles—this is the opinion of Sufyan, Abu Hanifah, his companions, and al-Hasan ibn Hayy. It is recommended for her to observe ritual mourning.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: عِدَّةُ السُّرِّيَّةِ إِذَا أُعْتِقَتْ أَوْ مَاتَ عَنْهَا سَيِّدُهَا ثَلَاثُ حِيَضٍ - وَهُوَ قَوْلُ سُفْيَانَ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَالْحَسَنِ بْنِ حَيٍّ، وَاسْتُحِبَّ لَهَا الْإِحْدَادُ.

وَقَوْلٌ ثَالِثٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أرنا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ: أَنَّ ابْنَ عُمَرَ قَالَ فِي عِدَّةِ أُمِّ الْوَلَدِ إذَا أَعْتَقَهَا سَيِّدُهَا فِي مَرَضِهِ ثُمَّ تُوُفِّيَ: فَإِنَّهَا تَعْتَدُّ ثَلَاثَ حِيَضٍ، فَإِنْ لَمْ يُعْتِقْهَا فَحَيْضَةٌ وَاحِدَةٌ.

L35519 A third opinion: As we have been narrated through the chain of Ḥammād ibn Salamah, from Dāwūd ibn Abī Hind, from al-Shaʿbī, that Ibn ʿUmar said regarding the waiting period of an umm al-walad when her master emancipated her during his illness then died: she observes a waiting period of three menstrual cycles. If he did not emancipate her, she observes one menstrual cycle.

وَقَوْلٌ رَابِعٌ: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا دَاوُد عَنْ الشَّعْبِيِّ عَنْ ابْنِ عُمَرَ قَالَ: تَعْتَدُّ حَيْضَةً وَاحِدَةً - يَعْنِي أُمَّ الْوَلَدِ - قَالَ هُشَيْمٌ: وَأَنَا إسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: عِدَّتُهَا حَيْضَةٌ وَاحِدَةٌ قَالَ إسْمَاعِيلُ بْنُ أَبِي خَالِدٍ: وَهُوَ قَوْلُ أَبِي قِلَابَةَ.

L35520 A fourth opinion: It was narrated to us via the chain of Saʿīd ibn Manṣūr: “Hushaym narrated from Dāwūd, from al-Shaʿbī, from Ibn ʿUmar, who said: ’She observes one menstrual period as her waiting period”’ - referring to the umm al-walad. Hushaym said: “I also narrate from Ismāʿīl ibn Abī Khālid, from al-Shaʿbī, who said: ’Her waiting period is one menstrual period.”’ Ismāʿīl ibn Abī Khālid added: “This is the opinion of Abū Qilābah.”

وَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ قَالَ: سَمِعْت الْقَاسِمَ بْنَ مُحَمَّدٍ، وَذَكَرَ أَنْ ابْنَ يَزِيدَ بْنِ عَبْدِ الْمَلِكِ فَرَّقَ بَيْنَ رِجَالٍ وَنِسَائِهِمْ وَكُنَّ أُمَّهَاتِ أَوْلَادٍ فَتَزَوَّجْنَ بَعْدَ حَيْضَةٍ أَوْ حَيْضَتَيْنِ فَفَرَّقَ بَيْنَهُمْ حَتَّى يَعْتَدِدْنَ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا فَقَالَ الْقَاسِمُ: عِدَّةُ أُمِّ الْوَلَدِ إذَا تُوُفِّيَ عَنْهَا سَيِّدُهَا حَيْضَةٌ.

L35521 It has been narrated to us through Malik’s transmission from Yahya ibn Saʿid, who said: I heard al-Qasim ibn Muhammad mention that Ibn Yazid ibn ʿAbd al-Malik separated men from their wives—who were *ummahat al-awlad* (mothers of their masters’ children)—when they married after one or two menstrual cycles. He separated them until they observed a waiting period of four months and ten days. Al-Qasim said: The waiting period for an *umm al-walad* (enslaved woman who bore her master a child) upon her master’s death is one menstrual cycle.

وَرُوِيَ أَيْضًا - عَنْ مَكْحُولٍ وَهُوَ قَوْلُ الشَّافِعِيِّ: وَأَبِي عُبَيْدٍ.

L35522 It has also been reported from Makḥūl—and this is the opinion of al-Shāfiʿī and Abū ʿUbayd.

وَقَوْلٌ خَامِسٌ -: عِدَّتُهَا حَيْضَةٌ، فَإِنْ لَمْ تَحِضْ فَثَلَاثَةُ أَشْهُرٍ -، وَهُوَ قَوْلُ مَالِكٍ.

L35523 A fifth opinion: her waiting period is one menstrual period; if she has not menstruated, then three months—and this is the opinion of Malik.

قَالَ أَبُو مُحَمَّدٍ: لَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ الْقَائِلِينَ: إنَّ الْمُرْسَلَ كَالْمُسْنَدِ أَنْ يَقُولُوا بِمَا رُوِّينَا عَنْ عَمْرِو بْنِ الْعَاصِ.

L35524 Abū Muḥammad said: It was indeed incumbent upon the Ḥanafīs and Mālikīs—those who assert that the *mursal* is like the *musnad*—to state in accordance with what was narrated to us from ʿAmr ibn al-ʿĀṣ.

L35525–35526 It is astonishing that they say regarding Saʿīd ibn al-Musayyab’s statement on the blood money for a woman’s fingers—“it is the Sunnah”—“This is a chain that suffices as proof,” yet they did not say this regarding the statement of

ʿAmr ibn al-ʿĀṣ concerning the waiting period of the umm al-walad: “Do not obscure for us the Sunnah of our Prophet—may God’s blessings and peace be upon him and his family.”

وَمِنْ الْعَجَبِ قَوْلُهُمْ فِي قَوْلِ سَعِيدِ بْنِ الْمُسَيِّبِ فِي دِيَةِ أَصَابِعِ الْمَرْأَةِ هِيَ السُّنَّةُ: إنَّ هَذَا إسْنَادٌ تَقُومُ بِهِ الْحُجَّةُ، وَلَمْ يَقُولُوا ذَلِكَ فِي قَوْلِ عَمْرِو بْنِ الْعَاصِ فِي عِدَّةِ أُمِّ الْوَلَدِ: لَا تُلَبِّسُوا عَلَيْنَا سُنَّةَ نَبِيِّنَا - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L35527 Would that I knew who is more entitled to knowledge of the Messenger of Allah—May Allah bless him and his family and grant him peace—and more deserving of credibility: ʿAmr ibn al-ʿĀṣ, the Companion of the Messenger of Allah—May Allah bless him and his family and grant him peace—or Saʿīd ibn al-Musayyib?

فَيَا لَيْتَ شِعْرِي مَنْ أَوْلَى بِمَعْرِفَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَأَوْلَى أَنْ يُصَدَّقَ عَمْرُو بْنُ الْعَاصِ صَاحِبُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَوْ سَعِيدُ بْنُ الْمُسَيِّبِ؟

L35528 The wonder is that they claim to apply analogy, yet they analogized the invalid, annulled contract—which it is impermissible for them to uphold—to the established, valid marriage in requiring the ʿiddah in both cases, but did not analogize the umm al-walad whose master has died to the wife whose husband has died.

وَالْعَجَبُ أَنَّهُمْ يَدَّعُونَ الْعَمَلَ بِالْقِيَاسِ وَهُمْ قَدْ قَاسُوا الْعَقْدَ الْفَاسِدَ الْمَفْسُوخَ الَّذِي لَا يَحِلُّ عِنْدَهُمْ إقْرَارُهُ عَلَى النِّكَاحِ الثَّابِتِ الصَّحِيحِ فِي إيجَابِ الْعِدَّةِ فِيهِمَا، وَلَمْ يَقِيسُوا أُمَّ الْوَلَدِ الْمُتَوَفَّى عَنْهَا عَلَى الزَّوْجَةِ الْمُتَوَفَّى عَنْهَا؟ .

L35529 The astonishment lies in the Hanafis’ argument that God Almighty restricted the death-related waiting period solely to the widow—yet they did not apply the same reasoning to themselves by noting that God restricted the waiting period based on purity periods and months solely to a divorced woman. Yet are they not a people who lack understanding?

وَالْعَجَبُ مِنْ احْتِجَاجِ الْحَنَفِيِّينَ بِأَنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ عِدَّةَ الْوَفَاةِ إلَّا عَلَى الزَّوْجَةِ - وَلَمْ يَحْتَجُّوا عَلَى أَنْفُسِهِمْ بِأَنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ الْعِدَّةَ بِالْأَقْرَاءِ، وَبِالشُّهُورِ، إلَّا عَلَى مُطَلَّقَةٍ - وَلَكِنَّهُمْ قَوْمٌ لَا يَفْقَهُونَ؟ .

L35530 Abu Muhammad said: Were ʿAmr’s report supported by a complete chain, we would hasten to endorse it—and in its chain is also Matar, who is deficient in retention.

قَالَ أَبُو مُحَمَّدٍ: لَوْ صَحَّ خَبَرُ عَمْرٍو مُسْنَدًا لَسَارَعْنَا إلَى الْقَوْلِ بِهِ - وَفِيهِ أَيْضًا مَطَرٌ وَهُوَ سَيِّئُ الْحِفْظِ.

L35531 As for Mālik’s opinion, we know of no earlier jurists who upheld it, because he prescribed three months in place of a single menstrual period without textual evidence.

وَأَمَّا قَوْلُ مَالِكٍ فَمَا نَعْلَمُ لَهُ سَلَفًا إذْ عَوَّضَ مِنْ حَيْضَةٍ وَاحِدَةٍ ثَلَاثَةَ أَشْهُرٍ بِلَا بُرْهَانٍ.

L35532 Abū Muḥammad said: Allāh the Exalted has never obligated a waiting period except upon a wife whose husband has died, a divorced woman, or a woman given the choice upon being emancipated who then chooses to separate from her husband. {Your Lord is never forgetful} [19:64]; {Whoever transgresses the boundaries of Allāh has wronged himself} [65:1]. To analogize a woman

قَالَ أَبُو مُحَمَّدٍ: لَمْ يُوجِبْ اللَّهُ تَعَالَى قَطُّ عِدَّةً إلَّا عَلَى زَوْجَةٍ مُتَوَفًّى عَنْهَا، أَوْ مُطَلَّقَةٍ، أَوْ مُخَيَّرَةٍ إذَا أُعْتِقَتْ فَاخْتَارَتْ فِرَاقَ زَوْجِهَا {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] ،

who is not a wife to a wife is invalid in every circumstance—and success is from Allāh the Exalted.[1]

L35533 **A legal issue regarding the waiting period (ʿiddah) of a married female slave in cases of divorce or death.**

L35534 2004. Issue: The waiting period of a married slave woman following divorce or death is exactly the same as that of a free woman, with no distinction. This is because Allah Almighty has taught us the rulings on waiting periods in the Book, stating: _"And divorced women shall wait by themselves for three periods"_ [Quran 2:228].[2]

L35535–35536 And the Most High said: "And those of you who die and leave wives behind, they shall observe a waiting period of four months and ten days for themselves." [Al-Baqarah: 234][3]

L35537 And He, the Exalted, said: {As for those of your women who have ceased to menstruation—if you are in doubt, their waiting period is three months—and those who have not yet menstruated, and those who are pregnant, their waiting period is until they deliver their child} [At-Talaq: 4].[4]

L35538 Abu Muhammad said: Allah, the Mighty and Majestic, knew when He permitted us to marry female slaves that the mentioned waiting periods would apply to them. Thus, the Mighty and Majestic did not differentiate between a free woman and a slave woman in that matter, "And your Lord is not forgetful" [Maryam: 64].[5]

L35539 We seek refuge in Allah, the Most High, from presuming to correct what Allah, the Mighty and Majestic, has decreed, from attributing to Him what He has not said, and from legislating in the religion what Allah has not authorized.

{وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] وَقِيَاسُ مَنْ لَيْسَتْ زَوْجَةً عَلَى زَوْجَةٍ بَاطِلٌ بِكُلِّ حَالٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ عِدَّةُ الْأَمَةِ الْمُتَزَوِّجَةِ مِنْ الطَّلَاقِ وَالْوَفَاةِ]

٢٠٠٤ - مَسْأَلَةٌ: وَعِدَّةُ الْأَمَةِ الْمُتَزَوِّجَةِ مِنْ الطَّلَاقِ وَالْوَفَاةِ كَعِدَّةِ الْحُرَّةِ سَوَاءً سَوَاءً وَلَا فَرْقَ، لِأَنَّ اللَّهَ عَزَّ وَجَلَّ عَلَّمَنَا الْعِدَدَ فِي الْكِتَابِ فَقَالَ {وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ} [البقرة: ٢٢٨] .

وَقَالَ تَعَالَى: {وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا} [البقرة: ٢٣٤] .

وَقَالَ تَعَالَى: {وَاللائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ وَاللائِي لَمْ يَحِضْنَ وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤] .

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ عَلِمَ اللَّهُ عَزَّ وَجَلَّ إذْ أَبَاحَ لَنَا زَوَاجَ الْإِمَاءِ أَنَّهُ يَكُونُ عَلَيْهِنَّ الْعِدَدُ الْمَذْكُورَاتُ فَمَا فَرَّقَ عَزَّ وَجَلَّ بَيْنَ حُرَّةٍ وَلَا أَمَةٍ فِي ذَلِكَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَنَعُوذُ بِاَللَّهِ تَعَالَى مِنْ الِاسْتِدْرَاكِ عَلَى اللَّهِ عَزَّ وَجَلَّ، وَالْقَوْلِ عَلَيْهِ بِمَا لَمْ يَقُلْ، وَمِنْ أَنْ نُشَرِّعَ فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ.

[1] **Qur'an references (L35532):** Qur'an 19:64 (Maryam); Qur'an 65:1 (At-Talaq).
[2] **Qur'an references (L35534):** Qur'an 2:228 (Al-Baqarah).
[3] **Qur'an references (L35536):** Qur'an 2:234 (Al-Baqarah).
[4] **Qur'an references (L35537):** Qur'an 65:4 (At-Talaq).
[5] **Qur'an references (L35538):** Qur'an 19:64 (Maryam).

وَقَدْ اُخْتُلِفَ فِي هَذَا -: فَرُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ عَمْرِو بْنِ أَوْسٍ الثَّقَفِيِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: لَوْ اسْتَطَعْت أَنْ أَجْعَلَ عِدَّةَ الْأَمَةِ حَيْضَةً وَنِصْفًا لَفَعَلْت؟ فَقَالَ لَهُ رَجُلٌ: يَا أَمِيرَ الْمُؤْمِنِينَ فَاجْعَلْهَا شَهْرًا وَنِصْفًا.

L35540 There has been a difference of opinion regarding this matter. It has been narrated to us through the chain of al-Ḥajjāj ibn al-Minhāl: I [al-Ḥajjāj] narrate from Ḥammād ibn Zayd, who reported from ʿAmr ibn Aws al-Thaqafī that ʿUmar ibn al-Khaṭṭāb said, "Were it within my power to decree the waiting period for a female slave as one and a half menstrual cycles, I would do so." A man said to him, "O Commander of the Believers, then decree it as one and a half months."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: جَعَلَ لَهَا عُمَرُ حَيْضَتَيْنِ - يَعْنِي الْأَمَةَ الْمُطَلَّقَةَ -.

L35541 From ʿAbd al-Razzāq: Ibn Jurayj said, "Abū al-Zubayr informed me that he heard Jābir ibn ʿAbd Allāh say: 'Umar prescribed for her two menstrual cycles'—referring to the divorced female slave."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ مَوْلَى آلِ طَلْحَةَ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: يَنْكِحُ الْعَبْدُ اثْنَتَيْنِ، وَيُطَلِّقُ تَطْلِيقَتَيْنِ، وَتَعْتَدُّ الْأَمَةُ حَيْضَتَيْنِ فَإِنْ لَمْ تَحِضْ فَشَهْرَيْنِ - وَقَالَ: فَشَهْرًا وَنِصْفًا.

L35542 And through the chain of Abd al-Razzaq from Sufyan ibn Uyaynah from Muhammad ibn Abd al-Rahman, the client of the family of Talha, from Sulayman ibn Yasar from Abdullah ibn Utbah ibn Masud from Umar ibn al-Khattab, who said: A male slave may marry two wives, may divorce by two pronouncements, and a female slave observes the iddah of two menstrual cycles. If she does not menstruate, then two months - and he said: then one and a half months.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ ابْنِ مَسْعُودٍ قَالَ: يَكُونُ عَلَيْهَا نِصْفُ الْعَذَابِ وَلَا يَكُونُ لَهَا نِصْفُ الرُّخْصَةِ.

L35543 And through the chain of ʿAbd al-Razzāq from Maʿmar, from al-Mughīrah, from Ibrāhīm al-Nakhaʿī, from Ibn Masʿūd, who said: "Half the punishment is upon her, and half the concession is not for her."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: الْحُرُّ يُطَلِّقُ الْأَمَةَ تَطْلِيقَتَيْنِ، وَتَعْتَدُّ حَيْضَتَيْنِ.

L35544 Narrated via the chain of Hammad ibn Salamah from 'Ubayd Allah ibn 'Umar, from Nafi', from Ibn 'Umar, who said: A free man divorces a female slave with two pronouncements of divorce, and she undergoes a waiting period of two menstrual cycles.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي قَبِيصَةُ بْنُ ذُؤَيْبٍ أَنَّهُ سَمِعَ زَيْدَ بْنَ ثَابِتٍ يَقُولُ: عِدَّةُ الْأَمَةِ حَيْضَتَانِ.

L35545 And from the narration of Ibn Wahb, from Yunus ibn Yazid, from Ibn Shihab: Qabisah ibn Dhu'ayb reported to me that he heard Zayd ibn Thabit say: The waiting period for a female slave is two menstruations.

L35546–35547 Through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Muḥammad ibn ʿAbd al-Raḥmān, from Sulaymān ibn Yasār, from ʿAbd Allāh ibn ʿUtbah ibn Masʿūd, who said: A male slave may marry two wives, and the

ʿiddah of a female slave is two menstrual cycles; Maʿmar said: This is the opinion of al-Zuhrī.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ قَالَ: يَنْكِحُ الْعَبْدُ اثْنَتَيْنِ، وَعِدَّةُ الْأَمَةِ حَيْضَتَانِ - قَالَ مَعْمَرٌ: وَهُوَ قَوْلُ الزُّهْرِيِّ.

L35548 Reported via the chain of ʿAbd al-Razzāq, from Maʿmar, from Qatāda, from Saʿīd ibn al-Musayyab: The waiting period for a female slave is two menstrual cycles. Maʿmar said, "This is the view of al-Zuhrī."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عِدَّةُ الْأَمَةِ حَيْضَتَانِ - قَالَ مَعْمَرٌ: وَهُوَ قَوْلُ الزُّهْرِيِّ.

L35549 And via the chain of ʿAbd al-Razzāq from Dāwūd ibn Qays, who reported: "I asked Sālim ibn ʿAbd Allāh ibn ʿUmar about the ʿiddah of a female slave." He said: "Two menstrual cycles. If she does not menstruate, then one and a half months."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ دَاوُد بْنِ قَيْسٍ قَالَ: سَأَلْت سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ عِدَّةِ الْأَمَةِ قَالَ: حَيْضَتَانِ، وَإِنْ كَانَتْ لَا تَحِيضُ فَشَهْرٌ وَنِصْفٌ.

L35550 And from the chain of Ibn Wahb from Usamah ibn Zayd from Zayd ibn Aslam: The waiting period for a female slave is two menstrual cycles.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ أُسَامَةَ بْنِ زَيْدٍ عَنْ زَيْدِ بْنِ أَسْلَمَ: عِدَّةُ الْأَمَةِ حَيْضَتَانِ.

L35551 And via the chain of Ibn Wahb, scholars informed me that Nāfiʿ, Ibn Qusayṭ, Yaḥyā ibn Saʿīd, Rabīʿah, and several others among the Companions of the Messenger of Allah—peace and blessings be upon him and his family—and the Successors held that the waiting period for a female slave is two menstrual cycles.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي رِجَالٌ مِنْ أَهْلِ الْعِلْمِ أَنَّ نَافِعًا، وَابْنَ قُسَيْطٍ وَيَحْيَى بْنَ سَعِيدٍ، وَرَبِيعَةَ، وَغَيْرَ وَاحِدٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَالتَّابِعِينَ: عِدَّةُ الْأَمَةِ حَيْضَتَانِ.

L35552 And through the chain of Hammad ibn Salamah: from Hammad ibn Abi Sulayman, Qatadah, and Dawud ibn Abi Hind. Hammad [ibn Abi Sulayman] said: from Ibrahim al-Nakha'i. Qatadah said: from al-Hasan. Dawud said: from al-Sha'bi. All of them said: The waiting period for a female slave is two menstrual cycles.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَقَتَادَةَ، وَدَاوُد بْنِ أَبِي هِنْدٍ قَالَ حَمَّادٌ: عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَقَالَ قَتَادَةُ عَنْ الْحَسَنِ، وَقَالَ دَاوُد: عَنْ الشَّعْبِيِّ، قَالُوا كُلُّهُمْ: عِدَّةُ الْأَمَةِ حَيْضَتَانِ.

L35553 From the chain of Ibn Wahb, Hisham ibn Sa'd narrated to me from al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq, who said: "The waiting period for a female slave is two menstrual cycles." Al-Qasim said: "Though this is not in the Book of Allah (the Almighty and Majestic), nor do we know it to be a Sunnah from the Messenger of Allah (peace be upon him and his family), yet the practice of the people has persisted in this manner."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي هِشَامُ بْنُ سَعْدٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ قَالَ: عِدَّةُ الْأَمَةِ حَيْضَتَانِ: قَالَ الْقَاسِمُ: مَعَ أَنَّ هَذَا لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ، وَلَا نَعْلَمُهُ سُنَّةً عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَكِنْ قَدْ مَضَى أَمْرُ النَّاسِ عَلَى هَذَا.

L35554 From the narration of ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAṭāʾ regarding the prescribed waiting period (ʿiddah) of a female slave, whether she is prepubescent or non-menstruating.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِي عِدَّةِ الْأَمَةِ صَغِيرَةً أَوْ قَاعِدًا.

L35555 He said, “Umar ibn al-Khattab said, ‘A month and a half.’”

قَالَ: عُمَرُ بْنُ الْخَطَّابِ: شَهْرٌ وَنِصْفٌ.

L35556 And through the chain of Ḥammād ibn Salamah, from Qatādah who narrated from Saʿīd ibn al-Musayyab and Abū Qilābah - both of whom stated together: “When a female slave is divorced (and she does not menstruate), she undergoes a waiting period of a month and a half.”

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَأَبِي قِلَابَةَ أَنَّهُمَا قَالَا جَمِيعًا: الْأَمَةُ إِذَا طَلُقَتْ - وَهِيَ لَا تَحِيضُ - تَعْتَدُّ شَهْرًا وَنِصْفًا.

L35557–35559 And from the narration of Hammad ibn Salamah from Hammad ibn Abi Sulayman from Ibrahim al-Nakha’i, who said: The waiting period for a female slave who has been divorced is: if she wishes, a month and a half; if she wishes, two months; or if she wishes, three months.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: عِدَّةُ الْأَمَةِ الَّتِي طَلُقَتْ إِنْ شَاءَتْ شَهْرًا وَنِصْفًا، وَإِنْ شَاءَتْ شَهْرَيْنِ، وَإِنْ شَاءَتْ ثَلَاثَةَ أَشْهُرٍ.

L35560 And via ʿAbd al-Razzāq → Maʿmar → al-Zuhrī: The ʿiddah of a female slave is two months - a month for each menstruation.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ: عِدَّةُ الْأَمَةِ شَهْرَانِ لِكُلِّ حَيْضَةٍ شَهْرٌ.

L35561 From the chain of Al-Ḥajjāj ibn Al-Minhāl, from Ḥammād ibn Zayd, from ʿAmr ibn Dīnār: It was said to him, “Ibn Jurayj says from ʿAṭāʾ regarding the waiting period of the bondmaid who does not menstruate: forty-five nights.” ʿAmr replied, “I bear witness that ʿAṭāʾ said: Her waiting period is two months if she does not menstruate.”

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ عَمْرِو بْنِ دِينَارٍ قِيلَ لَهُ: إِنَّ ابْنَ جُرَيْجٍ يَقُولُ عَنْ عَطَاءٍ فِي عِدَّةِ الْأَمَةِ الَّتِي لَا تَحِيضُ خَمْسٌ وَأَرْبَعُونَ لَيْلَةً، فَقَالَ عَمْرٌو: أَشْهَدُ عَلَى عَطَاءٍ أَنَّهُ قَالَ: عِدَّتُهَا شَهْرَانِ إِذَا كَانَتْ لَا تَحِيضُ.

L35562 Abu Hanifa, his companions, Sufyan al-Thawri, al-Hasan ibn Ḥayy, al-Shafi‘i, and his companions said: The waiting period for a divorced slave woman who does not menstruate is one and a half months. All of them stated that her waiting period is two menstruations, except al-Shafi‘i, who said: two purity periods. When she sees blood from the second menstruation, that signifies the end of her waiting period.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، وَسُفْيَانُ الثَّوْرِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَالشَّافِعِيُّ، وَأَصْحَابُهُ: عِدَّةُ الْأَمَةِ الْمُطَلَّقَةِ الَّتِي لَا تَحِيضُ: شَهْرٌ وَنِصْفٌ - وَقَالُوا كُلُّهُمْ: عِدَّتُهَا حَيْضَتَانِ إِلَّا الشَّافِعِيَّ فَإِنَّهُ قَالَ: طُهْرَانِ، فَإِذَا رَأَتْ الدَّمَ مِنَ الْحَيْضَةِ الثَّانِيَةِ فَهُوَ خُرُوجُهَا مِنَ الْعِدَّةِ.

L35563 By way of Abd al-Razzaq, from Sufyan al-Thawri, from Abd al-Karim al-Basri, from Mujahid, who said: The *ʿiddah* (waiting period) for the bondwoman who does not menstruate is three months.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الْكَرِيمِ الْبَصْرِيِّ عَنْ مُجَاهِدٍ قَالَ: عِدَّةُ الْأَمَةِ الَّتِي لَا تَحِيضُ ثَلَاثَةُ أَشْهُرٍ.

L35564 And via the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Yunus ibn

Ubayd, who reported: Al-Hasan stated: The prescribed waiting period for a bondwoman who does not menstruate is three months.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ قَالَ: قَالَ الْحَسَنُ: عِدَّةُ الْأَمَةِ الَّتِي لَا تَحِيضُ ثَلَاثَةُ أَشْهُرٍ.

L35565 Narrated by ʿAbd al-Razzāq, from Maʿmar, from Ṣadaqah ibn Yāsār, who said: I disputed with ʿUmar ibn ʿAbd al-ʿAzīz regarding a female slave who had not yet begun menstruating, so he set her *ʿiddah* [waiting period] as three months.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ صَدَقَةَ بْنِ يَسَارٍ قَالَ: خَاصَمْت إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي أَمَةٍ لَمْ تَحِضْ فَجَعَلَ عِدَّتَهَا ثَلَاثَةَ أَشْهُرٍ.

L35566 From the narration of Ibn Wahb through Yunus ibn Yazid, from Rabi'ah, who said regarding a female slave—whether she has menstruated, has not menstruated, or has ceased menstruating: "Three months are observed for her. Do we not determine her waiting period except by equating it to that of a free woman in this case?" Ibn Wahb said: Scholars informed me from Umar ibn al-Khattab, Ibn Shihab, Bukayr ibn al-Ashajj, and others: "The waiting period (ʿiddah) for a female slave who has ceased menstruation and for one who has not yet reached the age of menstruation is three months."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ رَبِيعَةَ قَالَ فِي الْأَمَةِ حَاضَتْ أَوْ لَمْ تَحِضْ أَوْ قَعَدَتْ: يُنْتَظَرُ بِهَا ثَلَاثَةُ أَشْهُرٍ لَا نَعْلَمُ بَرَاءَتَهَا إلَّا بَرَاءَةَ الْحُرَّةِ هَاهُنَا؟ قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي رِجَالٌ مِنْ أَهْلِ الْعِلْمِ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ شِهَابٍ، وَبُكَيْرِ بْنِ الْأَشَجِّ، وَغَيْرِهِمْ: أَنَّ عِدَّةَ الْأَمَةِ الَّتِي يَئِسَتْ مِنْ الْمَحِيضِ وَالَّتِي لَمْ تَبْلُغْ ثَلَاثَةَ أَشْهُرٍ.

L35567 This is the opinion of Mālik, his companions, and al-Layth b. Saʿd.

- وَهُوَ قَوْلُ مَالِكٍ، وَأَصْحَابِهِ، وَاللَّيْثِ بْنِ سَعْدٍ.

L35568–35570 Abu Muhammad said: It has been reported from Ibn ʿUmar, Saʿīd ibn al-Musayyib, Sulaymān ibn Yasār, Rabīʿah, Yaḥyā ibn Saʿīd, and Ibn Qusayṭ through weak chains that the waiting period for an enslaved woman after her husband's death is two months. And five nights—this is established from ʿAṭā', Qatādah, and Al-Zuhrī, and it is the opinion of Abū Ḥanīfah, Al-Shāfiʿī, Mālik, and their followers.

قَالَ أَبُو مُحَمَّدٍ: وَرُوِيَ عَنْ ابْنِ عُمَرَ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَسُلَيْمَانَ بْنِ يَسَارٍ، وَرَبِيعَةَ، وَيَحْيَى بْنِ سَعِيدٍ، وَابْنِ قُسَيْطٍ مِنْ طُرُقٍ سَاقِطَةٍ عِدَّةُ الْأَمَةِ مِنْ الْوَفَاةِ شَهْرَانِ وَخَمْسُ لَيَالٍ - وَصَحَّ ذَلِكَ عَنْ عَطَاءٍ، وَقَتَادَةَ، وَالزُّهْرِيِّ وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَمَالِكٍ، وَأَصْحَابِهِمْ.

L35571 It has been narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from Ayyūb al-Sikhtiyānī from Muḥammad ibn Sīrīn, he said: I do not consider the waiting period of a slave woman to be other than like that of a free woman, unless a Sunnah has passed in that matter, for the Sunnah is most deserving of being followed.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: مَا أَرَى عِدَّةَ الْأَمَةِ إلَّا كَعِدَّةِ الْحُرَّةِ إلَّا أَنْ تَكُونَ مَضَتْ فِي ذَلِكَ سُنَّةٌ، فَالسُّنَّةُ أَحَقُّ أَنْ تُتَّبَعَ.

L35572 It is reported from Ahmad ibn Hanbal that Makhūl's statement—that the

waiting period of the female slave in all respects is like that of the free woman—is the opinion of Abū Sulaymān and all of our companions.

وَذُكِرَ عَنْ أَحْمَدَ بْنِ حَنْبَلٍ: أَنَّ قَوْلَ مَكْحُولٍ إنَّ عِدَّةَ الْأَمَةِ فِي كُلِّ شَيْءٍ كَعِدَّةِ الْحُرَّةِ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا.

L35573 Abu Muhammad said: Those who held the view that her waiting period is two menstrual cycles cited as evidence what we have narrated through the chain of Abu Dawud al-Sijistani - Muhammad ibn Mas'ud reported: Abu 'Asim reported from Ibn Jurayj from Muzahir ibn Aslam from al-Qasim ibn Muhammad ibn Abi-Bakr from 'Aishah, the Mother of the Believers, from the Prophet—peace be upon him—who said: "The divorce of a female slave is effected by two pronouncements, and her waiting period is two menstrual cycles."

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ رَأَى أَنَّ عِدَّتَهَا حَيْضَتَانِ بِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد - هُوَ السِّجِسْتَانِيُّ - أَنَا مُحَمَّدُ بْنُ مَسْعُودٍ أَنَا أَبُو عَاصِمٍ عَنْ ابْنِ جُرَيْجٍ عَنْ مُظَاهِرِ بْنِ أَسْلَمَ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «طَلَاقُ الْأَمَةِ تَطْلِيقَتَانِ، وَقُرْؤُهَا حَيْضَتَانِ» .

L35574 And by what Humam ibn Ahmad transmitted to us: I, Yahya ibn Malik ibn 'A'idh, narrate on the authority of 'Abdullah ibn Abi Ghassan, on the authority of Abu Yahya Zakariyya ibn Yahya al-Saji, on the authority of Muhammad ibn Isma'il ibn Samurah, on the authority of 'Umar ibn Shabib al-Muslī, on the authority of 'Abdullah ibn 'Isa, from 'Atiyyah, from Ibn 'Umar, from the Messenger of Allah (ṣallallāhu ʿalayhi wa-ālihi wa-sallam), that he said: "The divorce of a bondwoman is twice, and her waiting period is two menstrual cycles."

وَبِمَا نَاهُ حُمَامُ بْنُ أَحْمَدَ أَنَا يَحْيَى بْنُ مَالِكِ بْنِ عَائِذٍ أَنَا عَبْدُ اللَّهِ بْنُ أَبِي غَسَّانَ أَنَا أَبُو يَحْيَى زَكَرِيَّا بْنُ يَحْيَى السَّاجِيُّ أَنَا مُحَمَّدُ بْنُ إسْمَاعِيلَ بْنِ سَمُرَةَ أَنَا عُمَرُ بْنُ شَبِيبٍ الْمُسْلِيُّ أَنَا عَبْدُ اللَّهِ بْنُ عِيسَى عَنْ عَطِيَّةَ عَنْ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ «طَلَاقُ الْأَمَةِ ثِنْتَانِ وَعِدَّتُهَا حَيْضَتَانِ» .

L35575 Abū Muḥammad said: They only relied upon this from the transmitted reports – and these two reports are not permissible for the Mālikīs or the Shāfiʿīs to use as evidence, for they invalidate their doctrines. This is because divorce according to them is the prerogative of men, and "the menstrual cycles" refer to the purity periods. If they validate these reports, they would be compelled to abandon their doctrine on this matter. If they reject them, they have spared us the effort regarding these two reports.

قَالَ أَبُو مُحَمَّدٍ: مَا تَعَلَّقُوا مِنْ الْآثَارِ إلَّا بِهَذَا - وَهَذَانِ الْخَبَرَانِ لَا يَسُوغُ لِلْمَالِكِيَّيْنِ، وَلَا لِلشَّافِعِيَّيْنِ الِاحْتِجَاجُ بِهِمَا، لِأَنَّهُمَا مُبْطِلَانِ لِمَذْهَبِهِمَا، لِأَنَّ الطَّلَاقَ عِنْدَهُمَا لِلرِّجَالِ، وَالْأَقْرَاءُ: الْأَطْهَارُ، فَإِنْ صَحَّحُوهُمَا لَزِمَهُمَا تَرْكُ مَذْهَبِهِمَا فِي ذَلِكَ، وَإِنْ أَبْطَلُوهُمَا فَقَدْ كَفَوْنَا مُؤْنَتَهُمْ فِي هَذَيْنِ الْخَبَرَيْنِ.

L35576 As for the Ḥanafīs, they have cited both narrations—though both are dismissed—because one of them is narrated via the chain of Maẓāhir ibn Aslam, who is regarded as profoundly weak and unreliable.

وَأَمَّا الْحَنَفِيُّونَ - فَإِنَّهُمْ احْتَجُّوا بِهِمَا - وَهُمَا سَاقِطَانِ - لِأَنَّ أَحَدَهُمَا مِنْ طَرِيقِ مَظَاهِرِ ابْنِ أَسْلَمَ - وَهُوَ فِي غَايَةِ الضَّعْفِ وَالسُّقُوطِ -.

L35577 It is remarkable—that the Ḥanafīs, among their principles, hold that if a narrator contradicts a report he himself narrated, or it is mentioned to him

and he does not recognize it, this constitutes evidence for the invalidity of that report—they invoked this principle in the case of the oath with a witness.

وَالْعَجَبُ - أَنَّ الْحَنَفِيِّينَ مِنْ أُصُولِهِمْ أَنَّ الرَّاوِيَ إذَا خَالَفَ خَبَرًا رَوَاهُ أَوْ ذُكِرَ لَهُ فَلَمْ يَعْرِفْهُ فَإِنَّهُ دَلِيلٌ عَلَى سُقُوطِ ذَلِكَ الْخَبَرِ -: احْتَجُّوا بِذَلِكَ -: فِي خَبَرِ الْيَمِينِ مَعَ الشَّاهِدِ.

L35578–35579 And by the established narration: "Whoever dies with unfulfilled fasts, his guardian may fast on his behalf."

وَبِالْخَبَرِ الثَّابِتِ «مَنْ مَاتَ وَعَلَيْهِ صِيَامٌ صَامَ عَنْهُ وَلِيُّهُ» .

L35580 In the authentic report: "If any woman enters into a marriage contract without her guardians' permission, her marriage is null and void," and in the authentic report concerning raising the hands during bowing and upon rising from the bowing.

وَفِي الْخَبَرِ الثَّابِتِ «أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إذْنِ مَوَالِيهَا فَنِكَاحُهَا بَاطِلٌ» ، وَفِي الْخَبَرِ الثَّابِتِ فِي رَفْعِ الْيَدَيْنِ عِنْدَ الرُّكُوعِ وَالرَّفْعِ مِنْهُ.

L35581 In the authentically transmitted *ḥadīth* regarding washing the utensil seven times due to a dog's lapping.

وَفِي الْخَبَرِ الثَّابِتِ فِي غَسْلِ الْإِنَاءِ مِنْ وُلُوغِ الْكَلْبِ سَبْعًا.

L35582 Then they cling to this weak, meritless report. It has been authentically established from al-Qāsim ibn Muḥammad—as we mentioned earlier—that the ruling that a female slave's waiting period is two menstrual cycles has no basis in the Sunnah of the Messenger of Allah, peace and blessings be upon him and his family.

ثُمَّ يَتَعَلَّقُونَ بِهَذَا الْخَبَرِ السَّاقِطِ الَّذِي لَا خَيْرَ فِيهِ، وَقَدْ صَحَّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ كَمَا ذَكَرْنَا آنِفًا أَنَّ الْحُكْمَ بِأَنَّ عِدَّةَ الْأَمَةِ حَيْضَتَانِ لَمْ يَأْتِ بِهِ سُنَّةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L35583 They reject the narrations by claiming they are additions to what is in the Quran - as they did with the established report regarding wiping over the turban - then they cite these two invalid narrations, which truly contradict what is in the Quran. So marvel at the profound contradiction of these people?

وَيَرُدُّونَ الْأَخْبَارَ بِأَنَّهَا زَائِدَةٌ عَلَى مَا فِي الْقُرْآنِ -: كَمَا فَعَلُوا فِي الْخَبَرِ الثَّابِتِ بِالْمَسْحِ عَلَى الْعِمَامَةِ ثُمَّ يَحْتَجُّونَ بِهَذَيْنِ الْخَبَرَيْنِ السَّاقِطَيْنِ - وَهُمَا مُخَالِفَانِ لِمَا فِي الْقُرْآنِ حَقًّا، فَاعْجَبُوا لِعَظِيمِ تَنَاقُضِ هَؤُلَاءِ الْقَوْمِ؟ .

L35584 The second report—from the chain of ʿUmar ibn Shabīb al-Muslī and ʿAṭiyyah, both consensually deemed weak (thus impermissible to rely upon)—even if they were authentic, they would not have preceded us in adopting their opinion. They said: This is the position of the majority of the pious predecessors from the Companions and the Followers.

وَالْخَبَرُ الثَّانِي - مِنْ طَرِيقِ عُمَرَ بْنِ شَبِيبٍ الْمُسْلِيِّ، وَعَطِيَّةَ وَهُمَا مُتَّفَقٌ عَلَى ضَعْفِهِمَا فَلَا يَحِلُّ الْأَخْذُ بِهِمَا - وَلَوْ صَحَّا لَمَا سَبَقُونَا إلَى الْقَوْلِ بِهِمَا وَقَالُوا: وَهُوَ قَوْلُ جُمْهُورِ السَّلَفِ الصَّالِحِ مِنْ الصَّحَابَةِ، وَالتَّابِعِينَ.

L35585 Abu Muhammad said: This also does not allow the Malikis or the Shafiʿis to cite this as evidence, for they contradict every Companion (may Allah be pleased with them) from whom a statement on this matter is reported. What is established from Umar ibn al-Khattab, his son, Zayd ibn Thabit, and what

قَالَ أَبُو مُحَمَّد: وَهَذَا أَيْضًا لَا يُمَكِّنُ الْمَالِكِيِّينَ، وَلَا الشَّافِعِيِّينَ الِاحْتِجَاجَ بِهَذَا؛ لِأَنَّهُمْ مُخَالِفُونَ لِكُلِّ مَنْ جَاءَ عَنْهُ فِي ذَلِكَ قَوْلٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؛ لِأَنَّ الثَّابِتَ

is transmitted from Ibn Masʿud is that the waiting period for a female slave is two menstrual periods - and this opposes the view of the Malikis and Shafiʿis. If they consider it permissible that the Companions erred regarding the number of periods for a female slave, then we cannot object to those who say the same regarding the duration of her waiting period.

L35586 As for the Ḥanafīs, that is authentically reported only from ʿUmar, his son, and Zayd ibn Thābit.

L35587 Moreover, Umar clarified that it was his opinion, and there is no authoritative evidence in opinion. It has been authentically reported from Umar, his son, and Zayd: the warning against opinion, and there is no authoritative evidence in anyone's opinion. Umar said: "If I could prescribe its waiting period as one and a half menstrual cycles, I would have done so."

L35588–35589 We do not know how this is? What prevents one from saying: If she observes that the majority of the menstrual period and its intensity have begun to subside, she has become permitted—since undoubtedly half of the menstrual period has elapsed?

L35590 We have stated: There is no conclusive proof in anyone other than the Messenger of Allah (Peace and blessings of Allah be upon him and his family).

L35591 In previous issues of this book prior to this matter, we have mentioned what they said in opposition—through their personal opinions—to the majority of the Companions (may Allah be pleased with them). Indeed, all those from whom statements have been narrated regarding such matters—statements of a kind unknown to have been voiced by anyone before them—are exceedingly numerous.

L35592 As their ruling on the condition permitting intercourse with the menstruating woman when she observes the signs of purity.

L35593 Similarly, their statements concerning the manner of widow's mourning (Iḥdād) and how numerous are other such matters! We have said: No authoritative evidence lies in anyone's opinion apart from the Quran and what is authentically transmitted from the Messenger of Allah, peace be upon him and his family.

عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِهِ، وَزَيْدِ بْنِ ثَابِتٍ، وَالْمَأْثُورُ عَنْ ابْنِ مَسْعُودٍ: أَنَّ عِدَّةَ الْأَمَةِ حَيْضَتَانِ - وَهَذَا خِلَافُ قَوْلِ الْمَالِكِيِّينَ، وَالشَّافِعِينَ، وَإِذَا جَازَ عِنْدَهُمْ أَنْ يُخْطِئَ الصَّحَابَةُ فِي مَئِيَّةِ الْأَقْرَاءِ مِنْ الْأَمَةِ فَلَا نُنْكِرُ عَلَى مَنْ قَالَ بِذَلِكَ فِي كَمِّيَّةِ عِدَّتِهَا.

وَأَمَّا الْحَنَفِيُّونَ - فَإِنَّمَا صَحَّ ذَلِكَ عَنْ عُمَرَ، وَابْنِهِ، وَزَيْدٍ، فَقَطْ.

وَأَيْضًا - فَإِنَّ عُمَرَ قَدْ بَيَّنَ أَنَّهُ رَأْيٌ مِنْهُ، وَلَا حُجَّةَ فِي رَأْيٍ - وَقَدْ صَحَّ عَنْ عُمَرَ، وَابْنِهِ، وَزَيْدٍ: التَّحْذِيرُ مِنْ الرَّأْيِ - وَلَا حُجَّةَ فِي رَأْيِ أَحَدٍ، وَعُمَرُ يَقُولُ: لَوْ اسْتَطَعْت أَنْ أَجْعَلَ عِدَّتَهَا حَيْضَةً وَنِصْفًا لَفَعَلْت.

وَمَا نَدْرِي كَيْفَ هَذَا؟ وَأَيُّ امْتِنَاعٍ فِي أَنْ يَقُولَ: إذَا رَأَتْ جُمْهُورَ الْحَيْضَةِ وَفَوْرَهَا قَدْ أَخَذَ فِي الِانْحِطَاطِ فَقَدْ حَلَّتْ، لِأَنَّهُ بِلَا شَكٍّ قَدْ مَضَى نِصْفُ الْحَيْضَةِ؟ .

وَقَدْ قُلْنَا: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

وَقَدْ ذَكَرْنَا فِيمَا خَلَا مِنْ الْمَسَائِلِ فِي كِتَابِنَا هَذَا قَبْلَ هَذِهِ الْمَسْأَلَةِ مَا قَالُوهُ مِمَّا خَالَفُوا فِيهِ بِآرَائِهِمْ جُمْهُورَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بَلْ كُلُّ مَنْ رُوِيَ عَنْهُ فِي ذَلِكَ قَوْلٌ مِمَّا لَا يُعْرَفُ أَنَّ أَحَدًا قَالَهُ قَبْلَهُمْ كَثِيرٌ جِدًّا -:

كَقَوْلِهِمْ فِيمَا يَحِلُّ بِهِ وَطْءُ الْحَائِضِ إذَا رَأَتْ الطُّهْرَ.

وَكَقَوْلِهِمْ فِي صِفَةِ الْإِحْدَادِ وَغَيْرُ ذَلِكَ كَثِيرٌ جِدًّا؟ وَقَدْ قُلْنَا: لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ الْقُرْآنِ وَالثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L35594 They argued that since the ḥadd punishment for the female slave is half that of the ḥurrah, it necessarily follows that her ʿiddah should be half the ʿiddah of the ḥurrah.

وَاحْتَجُّوا بِأَنَّهُ لَمَّا كَانَ حَدُّ الْأَمَةِ نِصْفَ حَدِّ الْحُرَّةِ وَجَبَ أَنْ تَكُونَ عِدَّتُهَا نِصْفَ عِدَّةِ الْحُرَّةِ.

L35595 Abu Muhammad said: And this is analogy, and all analogy is invalid. Furthermore, even if analogy were valid, this would be the most corrupt analogy and the most invalid due to what we will clarify regarding it—God Almighty willing.

قَالَ أَبُو مُحَمَّد: وَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ أَفْسَدَ قِيَاسٍ وَأَشَدَّ بُطْلَانًا لِمَا نُبَيِّنُهُ عَلَيْهِ - إِنْ شَاءَ اللَّهُ تَعَالَى.

L35596 It is astonishing that what is narrated—though unauthenticated—from Ibn Mas'ūd: "Do they impose upon her half the punishment yet fail to grant her half the concession? This is utterly implausible from a man of common status!" How then could this apply to someone like Ibn Mas'ūd—may Allah be pleased with him? For it would be said to the one who makes this statement and upholds it as valid: "We neither impose upon her half the punishment nor grant her half the concession. Rather, Allah the Exalted imposed upon her half the punishment where He willed and did not grant her half the concession. {And your Lord is never forgetful} [Maryam: 64]."[6]

وَالْعَجَبُ فِيمَا رُوِيَ - وَلَمْ يَصِحَّ - عَنْ ابْنِ مَسْعُودٍ أَيَجْعَلُونَ عَلَيْهَا نِصْفَ الْعَذَابِ وَلَا يَجْعَلُونَ لَهَا نِصْفَ الرُّخْصَةِ وَإِنَّ هَذَا لَبَعِيدٌ عَنْ رَجُلٍ مِنْ عُرْضِ النَّاسِ؟ فَكَيْفَ عَنْ مِثْلِ ابْنِ مَسْعُودٍ - رَضِيَ اللَّهُ عَنْهُ - لِأَنَّهُ يُقَالُ لِقَائِلِ هَذَا الْقَوْلِ وَمُصَوِّبِهِ: مَا نَحْنُ جَعَلْنَا عَلَيْهَا نِصْفَ الْعَذَابِ، وَلَا نَحْنُ نَجْعَلُ لَهَا نِصْفَ الرُّخْصَةِ، بَلْ اللَّهُ تَعَالَى جَعَلَ عَلَيْهَا نِصْفَ الْعَذَابِ حَيْثُ شَاءَ، وَلَمْ يَجْعَلْ لَهَا نِصْفَ الرُّخْصَةِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L35597 Now, suppose we were to impose upon it half the punishment—and it was permissible for us to do so—how could it then become obligatory for us to grant it half the concession? Truly, this is a marvel without parallel!

ثُمَّ هَبْكَ لَوْ جَعَلْنَا نَحْنُ عَلَيْهَا نِصْفَ الْعَذَابِ - وَكَانَ ذَلِكَ مُبَاحًا لَنَا أَنْ نَجْعَلَهُ - فَمِنْ أَيْنَ وَجَبَ عَلَيْنَا أَنْ نَجْعَلَ لَهَا نِصْفَ الرُّخْصَةِ؟ إِنَّ هَذَا لَعَجَبٌ لَا نَظِيرَ لَهُ؟ .

L35598–35600 As for the invalidity of this analogy: analogizing this waiting period to the ḥadd punishment for adultery is invalid because there is no resemblance between adultery that necessitates the ḥadd punishment and the husband's death or divorce. According to their jurists, analogy is invalid unless based on a resemblance. Between the subsidiary case (farʿ) and the original case (aṣl), the invalidity of this legal analogy was confirmed according to their juridical principles. What then of those who do not permit qiyas at all? And all praise is due to Allah, Lord of the worlds.

وَأَمَّا فَسَادُ هَذَا الْقِيَاسِ - فَإِنَّ قِيَاسَ هَذِهِ الْعِدَّةِ عَلَى حَدِّ الزِّنَى فَاسِدٌ، لِأَنَّهُ لَا شَبَهَ بَيْنَ الزِّنَى الْمُوجِبِ لِلْحَدِّ وَبَيْنَ مَوْتِ الزَّوْجِ وَطَلَاقِهِ، وَالْقِيَاسُ عِنْدَهُمْ بَاطِلٌ إِلَّا عَلَى شَبَهٍ بَيْنَ الْمَقِيسِ وَالْمَقِيسِ عَلَيْهِ - فَصَحَّ عَلَى أُصُولِهِمْ بُطْلَانُ هَذَا الْقِيَاسِ، فَكَيْفَ عِنْدَ مَنْ لَا يُجِيزُ الْقِيَاسَ أَصْلًا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L35601 Then another flaw: that they imposed analogical reasoning based on half the prescribed punishment for the female slave in adultery, while they unan-

[6] **Qur'an references (L35596):** Qur'an 19:64 (Maryam).

imously agree that the punishment for the female slave regarding the amputation for theft equals that of the free woman. On what basis did it become obligatory for the punishment to be analogized in their view to the punishment for adultery, rather than analogizing it to the punishment for theft?

ثُمَّ فَسَادٌ آخَرُ - وَهُوَ أَنَّهُمْ أَوْجَبُوا الْقِيَاسَ عَلَى نِصْفِ الْحَدِّ فِي الْأَمَةِ وَهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ حَدَّ الْأَمَةِ فِي قَطْعِ السَّرِقَةِ كَحَدِّ الْحُرَّةِ، فَمِنْ أَيْنَ وَجَبَ أَنْ تُقَاسَ الْعِدَّةُ عِنْدَهُمْ عَلَى حَدِّ الزِّنَى دُونَ أَنْ يَقِيسُوهُ عَلَى السَّرِقَةِ؟

L35602 Then why did they not analogize the waiting period of the female slave in cases of divorce and death to menstrual cycles and months, based on what they do not dispute—that her waiting period in all such matters, if she is pregnant, is identical to that of a free woman? If analogy were ever valid, then analogizing the waiting period for death and divorce to the waiting period for death and divorce itself would undoubtedly, to anyone with basic understanding, be more appropriate than analogizing the waiting period to the ḥadd punishment for zinā. Thus, the flaw in their analogy has become as evident as the sun on a clear day—and all praise is due to Allah, Lord of the worlds.

ثُمَّ هَلَّا قَاسُوا عِدَّةَ الْأَمَةِ مِنَ الطَّلَاقِ وَالْوَفَاةِ بِالْأَقْرَاءِ وَبِالشُّهُورِ عَلَى مَا لَا يَخْتَلِفُونَ فِيهِ مِنْ أَنَّ عِدَّتَهَا مِنْ كُلِّ ذَلِكَ - إِنْ كَانَتْ حَامِلًا - كَعِدَّةِ الْحُرَّةِ، فَلَئِنْ صَحَّ الْقِيَاسُ يَوْمًا فَإِنَّ قِيَاسَ الْعِدَّةِ مِنَ الْوَفَاةِ وَالطَّلَاقِ عَلَى الْعِدَّةِ مِنَ الْوَفَاةِ وَالطَّلَاقِ لَا شَكَّ عِنْدَ مَنْ عِنْدَهُ أَدْنَى فَهْمٍ أَوْلَى مِنْ قِيَاسِ الْعِدَّةِ عَلَى حَدِّ الزِّنَى فَلَاحَ فَسَادُ قِيَاسِهِمْ فِي ذَلِكَ، كَظُهُورِ الشَّمْسِ يَوْمَ صَحْوٍ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L35603 The entirety of the perplexity lies in Mālik's use of qiyās to derive the female slave's waiting period after death by analogy from her waiting period based on menstrual cycles as he holds it, while not applying the same qiyās to her waiting period after divorce (in months) by analogy from her waiting period after death (in months). Instead, he equated her waiting period in months after divorce to that of a free woman without distinction. These are contradictions and invalid opinions, unconcealed to anyone possessing a portion of understanding.

ثُمَّ الْعَجَبُ كُلُّهُ مِنْ قِيَاسِ مَالِكٍ عِدَّةَ الْأَمَةِ مِنَ الْوَفَاةِ عَلَى عِدَّتِهَا عِنْدَهُ بِالْأَقْرَاءِ، ثُمَّ لَمْ يَقِسْ عِدَّةَ الْأَمَةِ بِالشُّهُورِ مِنَ الطَّلَاقِ عَلَى عِدَّتِهَا بِالشُّهُورِ مِنَ الْوَفَاةِ، بَلْ جَعَلَ عِدَّةَ الْأَمَةِ بِالشُّهُورِ مِنَ الطَّلَاقِ كَعِدَّةِ الْحُرَّةِ وَلَا فَرْقَ - وَهَذِهِ مُنَاقَضَاتٌ، وَأَقْوَالٌ فَاسِدَةٌ، لَا تَخْفَى عَلَى ذِي حَظٍّ مِنْ فَهْمٍ.

L35604 Another perplexity is that they established the waiting period of a female slave after death as half that of a free woman - a hair-splitting distinction. They then differed: Abū Ḥanīfah and al-Shāfiʿī ruled that the female slave's waiting period calculated in months following divorce is half the free woman's waiting period calculated in months following divorce, while Mālik held that the female slave's waiting period calculated in months following divorce is exactly equal in every respect to the free woman's waiting period calculated in months following divorce.

ثُمَّ عَجَبٌ آخَرُ - وَهُوَ أَنَّهُمْ جَعَلُوا عِدَّةَ الْأَمَةِ مِنَ الْوَفَاةِ نِصْفَ عِدَّةِ الْحُرَّةِ مِنَ الْوَفَاةِ - شَقَّ الْأُنْمُلَةِ - ثُمَّ اخْتَلَفُوا فَجَعَلَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ عِدَّةَ الْأَمَةِ بِالشُّهُورِ مِنَ الطَّلَاقِ نِصْفَ عِدَّةِ الْحُرَّةِ بِالشُّهُورِ مِنَ الطَّلَاقِ، وَجَعَلَ مَالِكٌ عِدَّةَ الْأَمَةِ مِنَ الطَّلَاقِ بِالشُّهُورِ كَعِدَّةِ الْحُرَّةِ مِنَ الطَّلَاقِ بِالشُّهُورِ سَوَاءً سَوَاءً.

L35605 Then they established three positions for the female slave's waiting period by menstrual cycles as two-thirds of the free woman's by menstrual cycles.

Could there be any greater absurdity than this? At one time half the free woman's waiting period by menstrual cycles; at another time equal to the free woman's by menstrual cycles; at another time two-thirds of hers by menstrual cycles - all without Quran, Sunnah, or rationally valid analogy.

ثُمَّ جَعَلُوا ثَلَاثَتُهُمْ عِدَّةَ الْأَمَةِ بِالْأَقْرَاءِ ثُلُثَيْ عِدَّةِ الْحُرَّةِ بِالْأَقْرَاءِ، فَهَلْ فِي التَّلَاعُبِ أَكْثَرُ مِنْ هَذَا؟ مَرَّةً نِصْفَ عِدَّةِ الْحُرَّةِ، وَمَرَّةً مِثْلَ عِدَّةِ الْحُرَّةِ، وَمَرَّةً ثُلُثَيْ عِدَّةِ الْحُرَّةِ - كُلُّ هَذَا بِلَا قُرْآنٍ، وَلَا سُنَّةٍ وَلَا قِيَاسٍ يُعْقَلُ.

L35606 All of this has been a matter of disagreement among the predecessors, both earlier and later. On what basis did they analogize their ruling that her waiting period—measured by menstrual cycles—is two-thirds of a free woman's waiting period? Sufficient is Allah for us, and what an excellent Trustee He is. Much praise be to Allah for enabling us to attain the truth and facilitating what is correct.

وَكُلُّ هَذَا قَدْ اخْتَلَفَ فِيهِ السَّلَفُ، وَقَبْلُ وَبَعْدُ فَعَلَى أَيِّ شَيْءٍ قَاسُوا قَوْلَهُمْ فِي عِدَّتِهَا بِالْأَقْرَاءِ ثُلُثَيْ عِدَّةِ الْحُرَّةِ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ، وَالْحَمْدُ لِلَّهِ كَثِيرًا عَلَى تَوْفِيقِهِ إِيَّانَا لِلْحَقِّ وَتَيْسِيرِهِ لِلصَّوَابِ.

L35607–35609 And indeed, it was incumbent upon them—when they analogized the waiting period of the female slave based on her prescribed legal punishment—to impose upon her only half. Purification constitutes half of the prayer and half of fasting by analogy to its definition. What is required of them exceeds what we have stated—and with Allah, the Exalted, is success.

وَلَقَدْ كَانَ يَلْزَمُهُمْ - إِذْ قَاسُوا عِدَّةَ الْأَمَةِ عَلَى حَدِّهَا - أَنْ لَا يُوجِبُوا عَلَيْهَا إِلَّا نِصْفَ الطَّهَارَةِ، وَنِصْفَ الصَّلَاةِ، وَنِصْفَ الصِّيَامِ: قِيَاسًا عَلَى حَدِّهَا، وَالَّذِي يَلْزَمُهُمْ أَكْثَرُ مِمَّا ذَكَرْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَعْتَدُّ الْمُطَلَّقَةُ مِنْ حِينِ يَأْتِيهَا خَبَرُ الطَّلَاقِ]

L35610 **A jurisprudential issue: The divorced woman begins her waiting period from the moment she is notified of the divorce.**

L35611 2005 - Issue: A divorced woman who is not pregnant observes her waiting period from the time she receives news of the divorce. A pregnant woman whose husband has died initially observes her waiting period from the time she receives news of his death, but her waiting period is instead counted only from the time of his death itself.

٢٠٠٥ - مَسْأَلَةٌ: وَتَعْتَدُّ الْمُطَلَّقَةُ غَيْرُ الْحَامِلِ، وَالْحَامِلُ الْمُتَوَفَّى عَنْهَا مِنْ حِينِ يَأْتِيهَا خَبَرُ الطَّلَاقِ، وَخَبَرُ الْوَفَاةِ، وَتَعْتَدُّ الْحَامِلُ الْمُتَوَفَّى عَنْهَا مِنْ حِينِ مَوْتِهِ فَقَطْ.

L35612 The proof of that is the statement of Allah, the Mighty and Majestic: "And those who are taken in death among you and leave wives behind – they shall wait with themselves four months and ten" (Al-Baqarah 2:234).[7]

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا} [البقرة: ٢٣٤] .

L35613 Allah, the Exalted, says: {Divorced women shall observe upon themselves a waiting period of three menstrual cycles} [Al-Baqarah: 228].[8]

وَقَوْله تَعَالَى: {وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ} [البقرة: ٢٢٨] .

[7] **Qur'an references (L35612):** Qur'an 2:234 (Al-Baqarah).
[8] **Qur'an references (L35613):** Qur'an 2:228 (Al-Baqarah).

وَقَالَ تَعَالَى: {فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ وَاللائِي لَمْ يَحِضْنَ} [الطلاق: ٤] فَلَا بُدَّ مِنْ أَنْ يُفْضُوْنَ إِلَى الْعِدَّةِ مِنْ الْوَفَاةِ وَالْقُرُوءِ، وَعِدَّةِ الْأَشْهُرِ بِنِيَّةٍ لَهَا، وَتَرَبُّصٍ مِنْهُنَّ، وَإِلَّا فَذَلِكَ عَلَيْهِنَّ بَاقٍ.

L35614 And He, the Exalted, said: {Their waiting period is three months, and those who have not menstruated} [At-Talaq: 4]. Thus, they must necessarily enter the waiting period for death [widowhood] and menstrual cycles [divorce]. The waiting period counted in months requires the intention to observe it and their residing [in waiting]; otherwise, that obligation remains incumbent upon them.[9]

وَأَمَّا الْحَامِلُ - فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤] فَلَيْسَ هَاهُنَا فِعْلٌ أُمِرْنَ بِقَصْدِهِ وَالنِّيَّةِ لَهُ، لَكِنَّ الْمُطَلَّقَةَ الْحَامِلَ خَرَجَتْ مِنْ ذَلِكَ مِمَّا ذَكَرْنَا قَبْلُ مِنْ أَنَّهُ لَا يَكُونُ طَلَاقُ الْغَائِبِ طَلَاقًا أَصْلًا حَتَّى يَبْلُغَهَا فَأَغْنَى ذَلِكَ عَنْ إِعَادَتِهِ.

L35615 As for the pregnant woman—Allah the Exalted says: {For pregnant women, their waiting period is until they deliver their pregnancy} [At-Talaq: 4]. Here, there is no action they are obligated to perform with deliberate intent. However, the pregnant divorcee is exempt from this ruling, as previously explained—that a divorce [issued] by an absent husband is not considered a valid divorce at all until it reaches her, making its repetition unnecessary.[10]

وَبَقِيَتْ الْمُتَوَفَّى عَنْهَا عَلَى وَضْعِ الْحَمْلِ إِثْرَ مَوْتِ الزَّوْجِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ -.

L35616 The widow remained in the state of pregnancy following her husband's death—and with Allah, the Exalted, is success.

وَفِي هَذَا خِلَافٌ قَدِيمٌ صَحَّ عَنْ ابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ: أَنَّهَا تَعْتَدُّ مِنْ يَوْمِ مَاتَ، أَوْ طَلَّقَ.

L35617 There is an ancient disagreement regarding this matter. It is authentically reported from Ibn ʻUmar and Ibn ʻAbbās that she observes her waiting period (ʻiddah) from the day of his death or her divorce.

وَرُوِّينَاهُ عَنْ ابْنِ مَسْعُودٍ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا أَبُو الْأَحْوَصِ سَلَامُ بْنُ سُلَيْمٍ عَنْ أَبِي إِسْحَاقَ عَنْ أَبِي الْأَحْوَصِ عَنْ ابْنِ مَسْعُودٍ.

L35618 We have narrated it from Ibn Mas'ud through the chain of Ibn Abi Shaybah: I am Abu al-Aḥwaṣ Salam ibn Sulaym, from Abu Ishaq, from Abdullah ibn al-Aḥwaṣ, from Ibn Mas'ud.

وَصَحَّ أَيْضًا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَالنَّخَعِيِّ، وَالشَّعْبِيِّ، وَعَطَاءٍ، وَطَاوُسٍ، وَمُجَاهِدٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَأَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ، وَالزُّهْرِيِّ وَسُلَيْمَانَ بْنِ يَسَارٍ، وَأَبِي قِلَابَةَ، وَمُحَمَّدِ بْنِ سِيرِينَ، وَعِكْرِمَةَ، وَمَسْرُوقٍ، وَعَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمْ.

L35619 It has also been authentically reported from Saʻīd ibn al-Musayyib, al-Nakhaʻī, al-Shaʻbī, ʻAṭā', Ṭāwus, Mujāhid, Saʻīd ibn Jubayr, Abū ash-Shaʻthā', Jābir ibn Zayd, al-Zuhrī, Sulaymān ibn Yasār, Abū Qilābah, Muḥammad ibn Sīrīn, ʻIkrimah, Masrūq, and ʻAbd al-Raḥmān ibn Yazīd. This is the opinion of Abū Ḥanīfah, Mālik, al-Shāfiʻī, and their followers.

وَقَالَ آخَرُونَ بِخِلَافِ ذَلِكَ -: كَمَا حَدَّثَنَا بِهِ مُحَمَّدُ بْنُ سَعِيدٍ

L35620–35622 And others said otherwise -: as narrated to us by Muḥammad ibn Saʻīd

[9] **Qur'an references (L35614):** Qur'an 65:4 (At-Talaq).
[10] **Qur'an references (L35615):** Qur'an 65:4 (At-Talaq).

ibn Nubāt: I am Aḥmad ibn ʿAwn Allāh. I am Qasim ibn Asbagh, I am Muhammad ibn Abd al-Salam al-Khushani, I am Muhammad ibn Bashshar Bundar, I am Abu Dawud al-Tayalisi, I am Shu'bah from Aban ibn Tha'labah from al-Hakam ibn Utaybah from Abu Sadiq from Rabi'ah ibn Najid from Ali ibn Abi Talib regarding the woman whose husband has died: he said, "Her waiting period is from the day the news reaches her."

وَقَالَ آخَرُونَ غَيْرَ ذَلِكَ -: كَمَا نَاهُ مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ أَنَا أَحْمَدُ بْنُ عَوْنِ اللَّهِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ بَشَّارِ بُنْدَارٍ أَنَا أَبُو دَاوُد الطَّيَالِسِيُّ أَنَا شُعْبَةُ عَنْ أَبَانَ بْنِ ثَعْلَبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ أَبِي صَادِقٍ عَنْ رَبِيعَةَ بْنِ نَاجِدٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ فِي الْمُتَوَفَّى عَنْهَا قَالَ: عِدَّتُهَا مِنْ يَوْمِ يَأْتِيهَا الْخَبَرُ.

L35623 From the chain of Wakiʿ, from Abu al-Ashhab, from al-Ḥasan al-Baṣrī, who said: She begins observing her waiting period from the day the news reaches her.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ أَبِي الْأَشْهَبِ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: تَعْتَدُّ مِنْ يَوْمِ يَأْتِيهَا الْخَبَرُ.

L35624 And through the chain of Abd al-Razzaq: from Sufyan al-Thawri and Ma'mar. Sufyan narrated from Yunus ibn Ubayd, and Ma'mar narrated from Ayyub. Then Yunus and Ayyub agreed, both of them narrating from al-Hasan regarding divorce and death, that she observes her waiting period from the day the news reaches her from her husband.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ، قَالَ سُفْيَانُ عَنْ يُونُسَ بْنِ عُبَيْدٍ، وَقَالَ مَعْمَرٌ عَنْ أَيُّوبَ، ثُمَّ اتَّفَقَ يُونُسُ، وَأَيُّوبُ كِلَاهُمَا عَنْ الْحَسَنِ فِي الطَّلَاقِ وَالْمَوْتِ: تَعْتَدُّ مِنْ يَوْمِ يَأْتِيهَا مِنْ زَوْجِهَا الْخَبَرُ -.

L35625 Ayyūb added in his narration: "And she is entitled to maintenance." Maʿmar said: "Qatādah also said it."

زَادَ أَيُّوبُ فِي رِوَايَتِهِ: وَلَهَا النَّفَقَةُ، قَالَ مَعْمَرٌ: وَقَالَهُ قَتَادَةُ.

L35626 And through the chain of Ḥammād ibn Salamah, from Qatādah, from Khilāṣ ibn ʿAmr, who said: She begins her ʿiddah from the day the news reaches her.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو قَالَ: تَعْتَدُّ مِنْ يَوْمِ يَأْتِيهَا الْخَبَرُ.

L35627 Others said: "From the day the conclusive evidence is established"—as transmitted through the chain of Ḥammād ibn Salamah from Qatādah, from Saʿīd ibn al-Musayyib, from Abū al-Shaʿthāʾ Jābir ibn Zayd, and from Abū Qilābah. They all said regarding a woman who has been divorced or faces death? "She observes her waiting period from the day the conclusive evidence is established."

وَقَالَ آخَرُونَ: مِنْ يَوْمِ تَقُومُ الْبَيِّنَةُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَأَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ، وَأَبِي قِلَابَةَ، قَالُوا كُلُّهُمْ فِي امْرَأَةٍ جَاءَهَا طَلَاقٌ أَوْ مَوْتٌ؟ قَالُوا: تَعْتَدُّ مِنْ يَوْمِ قَامَتْ الْبَيِّنَةُ.

L35628 From the path of Ibn Abi Shaybah: Abu Khalid al-Ahmar and al-Thaqafi (Abd al-Wahhab ibn Abd al-Majid). Abu Khalid reported from Dawud from Sa'id ibn al-Musayyib and al-Sha'bi. Abd al-Wahhab reported from Yazid from Makḥūl. They all stated concerning a man who divorces his wife or dies: If valid testimony is established, she observes her waiting period from

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا أَبُو خَالِدٍ الْأَحْمَرُ، وَالثَّقَفِيُّ - هُوَ عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ - قَالَ أَبُو خَالِدٍ عَنْ دَاوُد عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَالشَّعْبِيِّ، وَقَالَ عَبْدُ الْوَهَّابِ

the day he dies. If no valid testimony is established in her case, then from the day the news reaches her.

عَنْ يَزِيدَ عَنْ مَكْحُولٍ، قَالُوا كُلُّهُمْ فِي الرَّجُلِ يُطَلِّقُ أَوْ يَمُوتُ: إذَا قَامَتْ الْبَيِّنَةُ فَتَعْتَدُّ مِنْ يَوْمِ يَمُوتُ، وَإِنْ لَمْ تَقُمْ لَهَا بَيِّنَةٌ فَمِنْ يَوْمِ يَأْتِيهَا الْخَبَرُ.

L35629 And through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī, who reported that Ḥammād ibn Abī Sulaymān and Manṣūr ibn al-Muʿtamir narrated from Ibrāhīm al-Nakhaʿī, who said: Whatever she consumed after his death—while unaware of his death—remains permissible for her; whatever she restrained herself from [consuming] after [learning of his death] is hers.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، قَالَ: قَالَ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ، وَمَنْصُورُ بْنُ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، قَالَ: مَا أَكَلَتْ بَعْدَ مَوْتِهِ - وَهِيَ لَا تَدْرِي بِمَوْتِهِ - فَهُوَ لَهَا مَا حَبَسَتْ نَفْسَهَا عَلَيْهِ.

L35630 It has been authentically reported from Al-Shaʿbi that only the amount of her inheritance is taken from her.

وَصَحَّ عَنْ الشَّعْبِيِّ: أَنَّهُ يُؤْخَذُ مِنْهَا إلَّا قَدْرَ مِيرَاثِهَا.

L35631 Narrated by Abd al-Razzaq from Ma'mar, who said: "They do not inherit from each other, and he has no right to revoke the divorce concerning her during the waiting period according to the opinion of both groups—as narrated by Qatadah from Ali and Ibn Mas'ud."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: لَا يَتَوَارَثَانِ، وَلَا رَجْعَةَ لَهُ عَلَيْهَا فِي قَوْلِ الْفَرِيقَيْنِ جَمِيعًا - قَالَهُ قَتَادَةُ عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ.

L35632–35634 Abu Muhammad said: Qatadah did not meet ʿAlī, nor Ibn Masʿūd, nor have we found any narration from reliable sources. Our legal opinion is that they inherit from one another, and he retains the right to revoke the divorce against her as long as his pronouncement of the irrevocable triple divorce has not been communicated to her. She is not required to return what she consumed during the divorce, for she remains his wife until the divorce is formally communicated to her or she receives notification of it.

قَالَ أَبُو مُحَمَّد: لَمْ يُدْرِكْ قَتَادَةُ عَلِيًّا، وَلَا ابْنَ مَسْعُودٍ، وَلَا وَجَدْنَا ذَلِكَ عَنْ غَيْرِهِ - وَالَّذِي نَقُولُ بِهِ: إنَّهُمَا يَتَوَارَثَانِ، وَلَهُ الرَّجْعَةُ عَلَيْهَا مَا لَمْ يَبْلُغْهَا طَلَاقُهُ بِالثَّلَاثِ - وَلَا تَرُدُّ مَا أَكَلَتْ فِي الطَّلَاقِ، لِأَنَّهَا زَوْجَتُهُ مَا لَمْ يَبْلُغْهَا أَوْ يَأْتِهَا الْخَبَرُ.

L35635 In the case of death, the ruling differs from that, and she must return what she has consumed, for she has taken the property of the heirs or creditors—and she has no right with them. Her right is solely in the husband's property. As long as the property remains his, her right to it endures—and with Allah, the Exalted, lies all success.

وَأَمَّا فِي الْمَوْتِ فَبِخِلَافِ ذَلِكَ، وَتَرُدُّ مَا أَكَلَتْ، لِأَنَّهَا أَكَلَتْ مَالَ الْوَرَثَةِ أَوْ مَالَ الْغُرَمَاءِ - وَلَا حَقَّ لَهَا عِنْدَهُمْ - إنَّمَا حَقُّهَا فِي مَالِ الزَّوْجِ، فَمَا دَامَ الْمَالُ مَالَهُ فَحَقُّهَا فِيهِ بَاقٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L35636 A Legal Issue Where the Spouses Have Disputed Over Household Chattels During the Marriage or After Divorce.

[مَسْأَلَةٌ تَنَازَعَ الزَّوْجَانِ فِي مَتَاعِ الْبَيْتِ فِي حَالِ الزَّوْجِيَّةِ أَوْ بَعْدَ الطَّلَاقِ]

L35637 2006. Legal Question: If the spouses dispute over household belongings during the marriage, after the divorce, or if one of them disputes with the heirs of the deceased among them after the death, or their heirs jointly after

٢٠٠٦ - مَسْأَلَةٌ: وَإِذَا تَنَازَعَ الزَّوْجَانِ فِي مَتَاعِ الْبَيْتِ فِي حَالِ الزَّوْجِيَّةِ أَوْ بَعْدَ الطَّلَاقِ، أَوْ تَنَازَعَ أَحَدُهُمَا مَعَ وَرَثَةِ الْآخَرِ بَعْدَ الْمَوْتِ، أَوْ وَرَثَتِهِمَا جَمِيعًا بَعْدَ مَوْتِهِمَا، فَكُلُّ ذَلِكَ سَوَاءٌ، وَكُلُّ ذَلِكَ بَيْنَهُمَا مَعَ أَيْمَانِهِمَا، أَوْ يَمِينِ الْبَاقِي مِنْهُمَا، أَوْ وَرَثَةِ الْمَيِّتِ مِنْهُمَا، أَوْ أَيْمَانِ وَرَثَتِهِمَا مَعًا - وَسَوَاءٌ فِي ذَلِكَ السِّلَاحُ، وَالْحُلِيُّ، وَمَا لَا يَصْلُحُ إِلَّا لِلرِّجَالِ، أَوْ إِلَّا لِلنِّسَاءِ، أَوْ لِلرِّجَالِ وَالنِّسَاءِ، إِلَّا مَا عَلَى ظَهْرِ كُلِّ وَاحِدٍ مِنْهُمَا فَهُوَ لَهُ مَعَ يَمِينِهِ.

both have died—all these cases are equivalent. In all such instances, the matter is determined by their oaths: the oath of the surviving party, the oath of the heirs of the deceased among them, or the oaths of the heirs of both. This applies equally to weapons, jewelry, items suitable exclusively for men or exclusively for women, or items suitable for both—except for what is worn on the person of each individual, which belongs to them upon their oath.

وَقَدْ اخْتَلَفَ السَّلَفُ فِي هَذَا عَلَى أَقْوَالٍ -: فَقَوْلٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ أَنَّهُ قَالَ فِي تَدَاعِي الزَّوْجَيْنِ: الْبَيْتُ بَيْتُ الْمَرْأَةِ، إِلَّا مَا عُرِفَ لِلرَّجُلِ.

L35638 The Salaf differed on several opinions regarding this matter. One opinion—as we have been narrated from ʿAbd al-Razzāq: Maʿmar reported from al-Zuhrī—concerning mutual claims between spouses: "The house belongs to the wife, except what is recognized as belonging to the man."

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ فِي ذَلِكَ مِثْلُ قَوْلِ الزُّهْرِيِّ.

L35639 And via the route of Maʿmar, from Ayyūb al-Sikhtiyānī, from Abū Qilābah concerning this matter—akin to the statement of al-Zuhrī.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ أَبِيهِ عَنِ الْحَسَنِ الْبَصْرِيِّ قَالَ: لِلْمَرْأَةِ مَا أُغْلِقَ عَلَيْهَا بَابُهَا إِذَا مَاتَ زَوْجُهَا.

L35640 From the narration of Abd al-Razzaq: I [narrate] from Mu'tamir ibn Sulayman al-Taymi, from his father, from al-Hasan al-Basri, who said: A woman must remain in her house with her door closed when her husband dies.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنِ الْحَسَنِ قَالَ: لَيْسَ لِلرَّجُلِ إِلَّا سِلَاحُهُ وَثِيَابُ جِلْدِهِ.

L35641 And through the chain of Abd al-Razzaq from Sufyan al-Thawri from Yunus ibn Ubayd from al-Hasan, who said: A man has nothing except his weapons and his leather garments.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: أَيُّمَا مَا أَحْدَثَ الرَّجُلُ مِنْ مَتَاعٍ فَهُوَ لَهُ إِذَا أَقَامَ عَلَيْهِ الْبَيِّنَةَ.

L35642 Narrated by ʿAbd al-Razzāq from Maʿmar from Qatādah, who said: Any item a man newly acquires belongs to him, provided he establishes clear proof for it.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا مَنْصُورٌ عَنِ الْحَسَنِ فِي رَجُلٍ طَلَّقَ امْرَأَتَهُ أَوْ مَاتَ عَنْهَا - وَقَدْ أَحْدَثَتْ فِي بَيْتِهِ أَشْيَاءَ - فَقَالَ الْحَسَنُ: لَهَا مَا أَغْلَقَتْ عَلَيْهِ بَابَهَا، إِلَّا سِلَاحَ الرَّجُلِ وَمُصْحَفَهُ.

L35643–35644 From the narration of Saʿīd ibn Manṣūr: I am Hushaym, from Manṣūr, from Al-Ḥasan regarding a man who divorced his wife or died leaving her—when she had introduced things into his house. Al-Ḥasan said: "She is entitled to whatever she secured behind her door, except the man's arms and his Muṣḥaf."

وَقَالَتْ طَائِفَةٌ: غَيْرَ هَذَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا مَنْصُورٌ عَنْ ابْنِ سِيرِينَ قَالَ: مَا كَانَ مِنْ صَدَاقٍ فَهُوَ لَهَا وَمَا كَانَ مِنْ غَيْرِ صَدَاقٍ فَهُوَ مِيرَاثٌ.

L35645 A group said differing from this: as we have been narrated via the chain of Saʿīd ibn Manṣūr—I am Hushaym, via Manṣūr, from Ibn Sīrīn—who said: "Whatever is of dowry belongs to her, and whatever is not of dowry is part of the inheritance."

وَقَالَ ثَالِثٌ - كُلُّ شَيْءٍ لِلرَّجُلِ إِلَّا مَا عَلَى الْمَرْأَةِ مِنْ الثِّيَابِ أَوْ الدِّرْعِ، وَالْخِمَارِ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى.

L35646 A third scholar said, "Everything belongs to the man except what is on the woman: her clothing, her tunic, or her khimar (head-covering)"—and this is the opinion of Ibn Abi Layla.

وَقَوْلٌ رَابِعٌ - كَمَا أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَصِيرِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا الضَّحَّاكُ بْنُ مَخْلَدٍ - هُوَ أَبُو عَاصِمٍ - عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عُبَيْدَةَ بْنِ مُغِيثٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ فِي الرَّجُلِ إذَا مَاتَ فَادَّعَتْ الْمَرْأَةُ مَتَاعَ الْبَيْتِ أَجْمَعَ؟ قَالَ: إنْ كَانَ مِنْ مَتَاعِ الرَّجُلِ فَهُوَ لِلرَّجُلِ - وَأَمَّا مَا كَانَ مِنْ مَتَاعِ النِّسَاءِ فَهُوَ لِلْمَرْأَةِ وَمَا كَانَ مِمَّا يَكُونُ لِلرَّجُلِ وَلِلْمَرْأَةِ فَهُوَ لِلْبَاقِي مِنْهُمَا، فَإِنْ كَانَ فُرْقَةً - وَلَيْسَ مَوْتًا - فَهُوَ لِلرَّجُلِ.

L35647 A fourth statement—narrated by Muḥammad ibn Saʿīd ibn Nubāt → Aḥmad ibn ʿAbd Allāh ibn ʿAbd al-Baṣīr → Qāsim ibn Aṣbagh → Muḥammad ibn al-Salām al-Khushanī → Muḥammad ibn al-Muthannā → al-Ḍaḥḥāk ibn Makhlad (who is Abū ʿĀṣim) → Sufyān al-Thawrī → ʿUbaydah ibn Mughīth → Ibrāhīm al-Nakhaʿī—who said regarding a man who dies and his wife claims all the household belongings: "If it was from the man's belongings, it belongs to the man. As for what was from women's belongings, it belongs to the wife. Whatever is shared between the man and the wife belongs to the surviving one of them. If the separation was due to divorce (not death), then it belongs to the man."

وَقَوْلٌ خَامِسٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُوَيْدُ بْنُ عَبْدِ الْعَزِيزِ قَالَ: سَأَلْت ابْنَ شُبْرُمَةَ عَنْ تَدَاعِي الزَّوْجَيْنِ فَقَالَ: مَتَاعُ النِّسَاءِ لِلنِّسَاءِ، وَمَتَاعُ الرِّجَالِ لِلرِّجَالِ وَمَا كَانَ مِنْ مَتَاعٍ يَكُونُ لِلرِّجَالِ وَالنِّسَاءِ فَهُوَ بَيْنَهُمَا - وَسَأَلْت ابْنَ أَبِي لَيْلَى عَنْ ذَلِكَ؟ فَقَالَ مِثْلَ قَوْلِ ابْنِ شُبْرُمَةَ - وَزَادَ: فِي الْحَيَاةِ وَالْمَوْتِ.

L35648 A fifth opinion—as we were narrated through the chain of Saʿīd ibn Manṣūr: From Suwayd ibn ʿAbd al-ʿAzīz, who said: I asked Ibn Shubrumah about disputes between spouses. He replied: "Women's belongings belong to women, men's belongings belong to men, and whatever belongings are shared between men and women are divided between them." I asked Ibn Abī Laylā about that. He said the same as Ibn Shubrumah's statement, adding: in life and death.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا مَنْ سَمِعَ ابْنَ ذَكْوَانَ الْمَدَنِيَّ، وَعُثْمَانَ الْبَتِّيَّ يَقُولَانِ: مَا كَانَ لِلرِّجَالِ وَالنِّسَاءِ فَهُوَ بَيْنَهُمَا -.

L35649 From the chain of Saʿīd ibn Manṣūr: I am Hushaym, the one who heard Ibn Dhakwān al-Madanī and ʿUthmān al-Battī saying, "What was for men and women is between the two of them."

وَهُوَ قَوْلُ عُبَيْدِ اللَّهِ بْنِ الْحَسَنِ، وَالْحَسَنِ بْنِ حَيٍّ - وَأَحَدُ قَوْلَيْ زُفَرَ - وَأَوْجَبُوا الْأَيْمَانَ مَعَ ذَلِكَ كُلِّهِ.

L35650 This is the opinion of Ubayd Allah ibn al-Hasan, al-Hasan ibn Ḥayyin—and one of the two opinions of Zufar—and they held oaths obligatory alongside all of that.

وَقَوْلٌ سَادِسٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ عَنِ ابْنِ شُبْرُمَةَ، وَابْنِ أَبِي لَيْلَى، قَالَا جَمِيعًا: مَا كَانَ لِلرِّجَالِ فَهُوَ لِلرَّجُلِ، وَمَا كَانَ لِلنِّسَاءِ فَهُوَ لِلْمَرْأَةِ، وَمَا كَانَ مِمَّا يَكُونُ لِلرِّجَالِ وَالنِّسَاءِ فَهُوَ لِلرَّجُلِ وَهُوَ قَوْلُ الْحَكَمِ - وَهُوَ قَوْلُ مَالِكٍ - الْفُرْقَةُ وَالْمَوْتُ سَوَاءٌ فِي ذَلِكَ عِنْدَهُ - وَيَحْلِفُ كُلُّ وَاحِدٍ مِنْهُمَا فِي كُلِّ ذَلِكَ.

L35651–35653 A sixth opinion—as transmitted through the chain of Sa'īd ibn Manṣūr: Hushaym reported from Ibn Shubrumah and Ibn Abī Laylā, both of whom said: What applies to men as a group applies to each man, and what applies to women as a group applies to each woman. Whatever pertains to both men and women belongs to the man—this is the opinion of al-Ḥakam—and it is the opinion of Mālik. Divorce and death are equivalent in this regard according to him, and each of the two parties must swear an oath in all such cases.

وَقَوْلٌ سَابِعٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ: أَخْبَرَنَا مَنْ سَمِعَ الْحَكَمَ بْنَ عُتَيْبَةَ، وَسَعِيدَ بْنَ أَشْوَعَ يَقُولَانِ: مَا كَانَ لِلرِّجَالِ فَهُوَ لِلرَّجُلِ، وَمَا كَانَ لِلنِّسَاءِ فَهُوَ لِلْمَرْأَةِ، وَمَا كَانَ لِلرِّجَالِ وَالنِّسَاءِ فَهُوَ لِلْمَرْأَةِ - وَبِهَذَا يَقُولُ هُشَيْمٌ.

L35654 The seventh opinion—as we were narrated through the chain of Sa'īd ibn Manṣūr: I am Ḥushaym—who reported from someone who heard both al-Ḥakam ibn 'Utaybah and Sa'īd ibn Ashwa' saying: "What is designated for men belongs to the man, what is designated for women belongs to the woman, and what is designated for both men and women belongs to the woman." This is the opinion Ḥushaym states.

وَقَوْلٌ ثَامِنٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا غُنْدَرٌ عَنْ شُعْبَةَ عَنْ حَمَّادٍ أَنَّهُ سُئِلَ عَنْ مَتَاعِ الْبَيْتِ؟ قَالَ: ثِيَابُ الْمَرْأَةِ لِلْمَرْأَةِ، وَثِيَابُ الرَّجُلِ لِلرَّجُلِ، وَمَا تَشَاجَرَا فِيهِ وَلَمْ يَكُنْ لِهَذَا وَلَا لِهَذَا بَيِّنَةٌ فَهُوَ لِلَّذِي فِي يَدَيْهِ.

L35655 And an eighth opinion—as reported to us through Abu Bakr ibn Abi Shaybah: I am Gundar, from Shu'bah, from Hammad—who was asked about household effects. He said: "A woman's clothes belong to her, and a man's clothes belong to him. As for that over which they quarreled, where neither this one nor that one could produce evidence, it belongs to the one in whose possession it is found."

وَقَالَ أَبُو حَنِيفَةَ: إِنْ كَانَ أَحَدُ الزَّوْجَيْنِ مَمْلُوكًا وَالْآخَرُ حُرًّا، فَالْمَالُ كُلُّهُ لِمَنْ كَانَ مِنْهُمَا حُرًّا مَعَ يَمِينِهِ - وَكَذَلِكَ قَالَ أَبُو يُوسُفَ، وَمُحَمَّدٌ، إِلَّا أَنْ يَكُونَ الْعَبْدُ مَأْذُونًا لَهُ فِي التِّجَارَةِ فَهُوَ كَالْحُرِّ فِي حُكْمِهِ فِي ذَلِكَ.

L35656 Abu Hanifa said: If one of the spouses is enslaved and the other is free, all property belongs to the free spouse with his oath. Similarly, Abu Yusuf and Muhammad ruled, except when the male slave is authorized to engage in trade, in which case he is subject to the same legal ruling as a free person in this matter.

ثُمَّ اخْتَلَفُوا - فَقَالَ أَبُو يُوسُفَ: فَإِنْ كَانَا حُرَّيْنِ، أَوْ مُكَاتَبَيْنِ، أَوْ مَأْذُونَيْنِ لَهُمَا فِي التِّجَارَةِ، أَوْ أَحَدُهُمَا حُرًّا وَالْآخَرُ مُكَاتَبًا، أَوْ مَأْذُونًا لَهُ فِي التِّجَارَةِ، أَوْ مُسْلِمَيْنِ، أَوْ أَحَدُهُمَا، فَإِنَّهُ يُقْضَى لِلْمَرْأَةِ بِمِثْلِ مَا تُجَهَّزُ بِهِ إِلَى زَوْجِهَا، فَمَا بَقِيَ بَعْدَ ذَلِكَ، فَسَوَاءٌ كَانَ

L35657 Then they differed. Abu Yusuf said: If they are both free, or both mukatabs, or both permitted to engage in trade, or one is free and the other a mukatab, or one is free and the other permitted to engage in trade, or both are Muslims, or one of them is Muslim—then the woman is granted the equivalent of what was provided to her husband. Whatever remains after that—whether it is suitable exclusively for men, exclusively for women, or for both—it makes no

difference: all of that belongs to the man with his oath in cases of separation and death.

مِمَّا لَا يَصْلُحُ إِلَّا لِلرِّجَالِ، أَوْ لَا يَصْلُحُ إِلَّا لِلنِّسَاءِ، أَوْ يَصْلُحُ لِلرِّجَالِ وَالنِّسَاءِ -: فَكُلُّ ذَلِكَ لِلرَّجُلِ مَعَ يَمِينِهِ فِي الْفُرْقَةِ وَالْمَوْتِ.

L35658 Abu Hanifa said concerning all these matters: What is of men's belongings belongs to the man with his oath, and what is of women's belongings belongs to the woman with her oath—this applies in cases of divorce and death. What is suitable for both men and women belongs to the men with his oath in cases of divorce—and it belongs to the remaining spouse, whichever of the two it may be. Muhammad ibn al-Hasan agreed with him on all of that except in the case of death, for he assigned what is suitable for both men and women to the man or his heirs with his oath or their oaths.

وَقَالَ أَبُو حَنِيفَةَ فِي كُلِّ هَؤُلَاءِ: مَا كَانَ مِنْ مَتَاعِ الرِّجَالِ فَهُوَ لِلرَّجُلِ مَعَ يَمِينِهِ، وَمَا كَانَ مِنْ مَتَاعِ النِّسَاءِ فَهُوَ لِلْمَرْأَةِ مَعَ يَمِينِهَا - هَذَا فِي الْفُرْقَةِ وَالْمَوْتِ، وَمَا صَلُحَ لِلرِّجَالِ وَالنِّسَاءِ فَهُوَ لِلرِّجَالِ مَعَ يَمِينِهِ فِي الْفُرْقَةِ - وَهُوَ لِلْبَاقِي مِنْهُمَا أَيُّهُمَا كَانَ - وَوَافَقَهُ عَلَى كُلِّ ذَلِكَ: مُحَمَّدُ بْنُ الْحَسَنِ إِلَّا فِي الْمَوْتِ، فَإِنَّهُ جَعَلَ مَا يَصْلُحُ لِلرِّجَالِ وَالنِّسَاءِ لِلرَّجُلِ، أَوْ لِوَرَثَتِهِ مَعَ يَمِينِهِ أَوْ أَيْمَانِهِمْ.

L35659 The ninth opinion—as we have stated—is the view of Sufyān al-Thawrī, al-Qāsim ibn Maʿn ibn ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Masʿūd al-Qāḍī, Sharīk ibn ʿAbd Allāh al-Qāḍī, al-Shāfiʿī, Abū Sulaymān, and the companions of both of them, as well as one of the two opinions of Zufar ibn al-Hudhayl and the opinion of al-Ṭaḥāwī.

وَقَوْلٌ تَاسِعٌ - كَمَا قُلْنَا نَحْنُ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْقَاسِمِ بْنِ مَعْنِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ الْقَاضِي، وَشَرِيكِ بْنِ عَبْدِ اللَّهِ الْقَاضِي، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ وَأَصْحَابِهِمَا -، وَأَحَدُ قَوْلَيْ: زُفَرَ بْنِ الْهُذَيْلِ، وَقَوْلُ الطَّحَاوِيِّ.

L35660–35661 Abu Muhammad said, "Those who held this opinion argued that what is suited to men belongs to men, and what is suited to women belongs to women."

قَالَ أَبُو مُحَمَّدٍ احْتَجَّ مَنْ قَالَ بِأَنَّ مَا صَلُحَ لِلرِّجَالِ فَهُوَ لِلرَّجُلِ، وَمَا صَلُحَ لِلنِّسَاءِ فَهُوَ لِلْمَرْأَةِ.

L35662 Through what we have transmitted via the chain of Saʿīd ibn Manṣūr: Suwayd ibn ʿAbd al-ʿAzīz al-Dimashqī reported to us: Abū Nūḥ al-Madanī (from the family of Abū Bakr) said: Al-Ḥaḍramī—a man he named—narrated from ʿAlī ibn Abī Ṭālib, who said: The Messenger of Allāh—peace and blessings be upon him—said: "Women's personal effects belong to women, and men's personal effects belong to men."

بِمَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُوَيْدُ بْنُ عَبْدِ الْعَزِيزِ الدِّمَشْقِيُّ أَنَا أَبُو نُوحٍ الْمَدَنِيُّ - مِنْ آلِ أَبِي بَكْرٍ - قَالَ: أَنَا الْحَضْرَمِيُّ - رَجُلٌ قَدْ سَمَّاهُ - عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَتَاعُ النِّسَاءِ لِلنِّسَاءِ، وَمَتَاعُ الرِّجَالِ لِلرِّجَالِ» .

L35663 Abu Muhammad said: This is a fabricated, false narration. It is not permissible for anyone to relate it except with an explanation of its fabrication: Suwayd ibn Abd al-Aziz is known for falsehood. As for Abu Nuh, no one knows who he is. And al-Hadhrami is similarly unknown.

قَالَ أَبُو مُحَمَّدٍ: هَذَا خَبَرٌ مَوْضُوعٌ مَكْذُوبٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يَرْوِيَهُ إلَّا عَلَى بَيَانِ وَضْعِهِ -: سُوَيْدُ بْنُ عَبْدِ الْعَزِيزِ مَذْكُورٌ بِالْكَذِبِ - وَأَبُو نُوحٍ لَا يَدْرِي أَحَدٌ مَنْ هُوَ؟ وَالْحَضْرَمِيُّ مِثْلُ ذَلِكَ.

L35664 ثُمَّ لَوْ صَحَّ لَكَانَ غَيْرَ حُجَّةٍ لَهُمْ؛ لِأَنَّ ظَاهِرَهُ أَنَّ لِكُلِّ أَحَدٍ مَتَاعَهُ الَّذِي بِيَدِهِ؛ لِأَنَّهُ لَمْ يَقُلْ فِيهِ: إنْ اخْتَلَفَ الزَّوْجَانِ، وَلَا قَالَ فِيهِ: مَا صَلُحَ لِلرِّجَالِ، وَلَا مَا صَلُحَ لِلنِّسَاءِ - وَإِنَّمَا فِيهِ: مَتَاعُ النِّسَاءِ، وَمَتَاعُ الرِّجَالِ، وَالْمَتَاعُ: هُوَ مَتَاعُ الْمَرْءِ الَّذِي فِي مِلْكِهِ - سَوَاءٌ صَلُحَ لَهُ أَوْ لَمْ يَصْلُحْ لَهُ - وَإِذَا لَمْ يَخُصَّ بِهِ اخْتِلَافَ الزَّوْجَيْنِ، فَلَيْسَ لِأَحَدٍ أَنْ يَخُصَّ هَذَا الْبَابَ دُونَ اخْتِلَافِ الْأَخِ وَالْأُخْتِ - فَبَطَلَ تَمْوِيهُهُمْ بِهَذَا الْخَبَرِ الْمَكْذُوبِ.

L35665 قَالَ أَبُو مُحَمَّدٍ: وَلَا يَخْتَلِفُ الْمُخَالِفُونَ لَنَا مِنْ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ فِي أَخٍ وَأُخْتٍ سَاكِنَيْنِ فِي بَيْتٍ، فَتَدَاعَيَا مَا فِيهِ أَنَّهُ بَيْنَهُمَا بِنِصْفَيْنِ مَعَ أَيْمَانِهِمَا، وَلَمْ يَحْكُمُوا فِي ذَلِكَ بِمَا حَكَمُوا بِهِ فِي الزَّوْجَيْنِ.

L35666 وَكَذَلِكَ لَمْ يَخْتَلِفُوا فِي عَطَّارٍ، وَدَبَّاغٍ، أَوْ بَزَّازٍ، سَاكِنِينَ فِي بَيْتٍ: فِي أَنَّ كُلَّ مَا فِي الْبَيْتِ بَيْنَهُمَا - مَعَ أَيْمَانِهِمَا - وَلَمْ يَحْكُمُوا أَنَّ مَا كَانَ مِنْ عِطْرٍ فَلِلْعَطَّارِ، وَمَا كَانَ مِنْ آلَةِ الدَّبَّاغِ فَلِلدَّبَّاغِ، وَمَا كَانَ مِنْ آلَةِ الْبَزِّ فَلِلْبَزَّازِ - فَظَهَرَ تَنَاقُضُهُمْ، وَفَسَادُ قَوْلِهِمْ بِيَقِينٍ، وَأَنَّهُ ظَنٌّ كَاذِبٌ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» .

L35667–35669 The proof for the validity of our statement is that the man's responsibility and the woman's responsibility apply to what is in the house they both inhabit. Or the house of their residence—whatever it may be—neither of

them has a greater right to it; it belongs to both of them, since it is in their possession along with their oaths.

بُرْهَانُ صِحَّةِ قَوْلِنَا -: أَنَّ يَدَ الرَّجُلِ، وَيَدَ الْمَرْأَةِ عَلَى مَا فِي الْبَيْتِ الَّذِي يَسْكُنَانِهِ، أَوْ دَارِ سُكْنَاهُمَا - أَيِّ شَيْءٍ كَانَ - فَلَيْسَ أَحَدُهُمَا أَوْلَى بِهِ، فَهُوَ لَهُمَا إذْ هُوَ بِأَيْدِيهِمَا مَعَ أَيْمَانِهِمَا.

L35670 We do not deny a woman's right to own weapons or a man's right to own adornments, and success comes from Allah, the Most High.

وَلَا نُنْكِرُ مِلْكَ الْمَرْأَةِ لِلسِّلَاحِ، وَلَا مِلْكَ الرَّجُلِ لِلْحُلِيِّ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[الِاسْتِبْرَاءُ] [مَسْأَلَةٌ كَانَتْ لَهُ جَارِيَةٌ يَطَؤُهَا وَهِيَ مِمَّنْ تَحِيضُ فَأَرَادَ بَيْعَهَا]

L35671–35672 **Istibrā' (pregnancy confirmation period): A case where a man owned a female slave with whom he had intercourse, and she was among those who menstruate, so he intended to sell her.**

٢٠٠٧ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: وَقَدْ ذَكَرْنَا فِي " كِتَابِ اللِّعَانِ " مِنْ دِيوَانِنَا هَذَا حُكْمَ الْوَلَدِ يَدَّعِيهِ اثْنَانِ فَصَاعِدًا إذَا لَمْ يُعْرَفْ أَيُّهُمْ كَانَ مَعَهَا أَوَّلًا - سَوَاءٌ مِنْ أَمَةٍ كَانَ أَوْ مِنْ حُرَّةٍ وَنَذْكُرُ هَاهُنَا إنْ شَاءَ اللَّهُ تَعَالَى حُكْمَ ذَلِكَ إذَا كَانَ يُعْرَفُ أَيُّهُمَا الْأَوَّلُ مِنْ الْأَزْوَاجِ، أَوْ السَّادَاتِ فِي مِلْكِ الْيَمِينِ.

L35673 Issue 2007: Abū Muḥammad said: We have previously mentioned in the "Book of Liʿān" within this compilation of ours the ruling regarding a child claimed by two or more men when it is unknown which of them was with the mother first—regardless of whether the child is born to an enslaved woman or a free woman. Here, by the will of Allāh the Most High, we will mention the ruling on this matter when it is known which of the two—husbands or masters in the possession of the right hand—was the first.

قَالَ أَبُو مُحَمَّدٍ: مَنْ كَانَتْ لَهُ جَارِيَةٌ يَطَؤُهَا - وَهِيَ مِمَّنْ تَحِيضُ - فَأَرَادَ بَيْعَهَا، فَالْوَاجِبُ عَلَيْهِ أَنْ لَا يَبِيعَهَا حَتَّى تَحِيضَ حَيْضًا يَتَيَقَّنُهُ، وَكَذَلِكَ إنْ أَرَادَ إنْكَاحَهَا، أَوْ هِبَتَهَا، أَوْ صَدَاقَهَا، فَإِنْ كَانَتْ مِمَّنْ لَا تَحِيضُ فَلَا يَبِعْهَا حَتَّى يُوقِنَ أَنَّهُ لَا حَمْلَ بِهَا - ثُمَّ عَلَى الَّذِي انْتَقَلَ مِلْكُهَا إلَيْهِ أَنْ لَا يَطَأَهَا حَتَّى يَسْتَبْرِئَهَا بِحَيْضَةٍ، وَيُوقِنَ أَنَّهَا حَيْضَةٌ، أَوْ حَتَّى يُوقِنَ أَنَّهُ لَا حَمْلَ بِهَا، إلَّا أَنْ يَصِحَّ عِنْدَهُ أَنَّهَا قَدْ حَاضَتْ عِنْدَ الَّذِي انْتَقَلَ مِلْكُهَا عَنْهُ حَيْضًا مُتَيَقَّنًا، وَأَنَّهُ لَمْ يُخْرِجْهَا عَنْ مِلْكِهِ حَتَّى أَيْقَنَ أَنَّهُ لَا حَمْلَ بِهَا فَلَيْسَ عَلَيْهِ أَنْ يَسْتَبْرِئَهَا حِينَئِذٍ، وَلَا يَجُوزُ أَنْ يُجْبَرَ عَلَى مُوَاضَعَتِهَا عَلَى يَدَيْ ثِقَةٍ، وَلَا أَنْ يُمْنَعَ مِنْهَا؛ لِأَنَّ كِلَا الْأَمْرَيْنِ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى.

L35674 Abu Muhammad said: If a man owns a female slave with whom he has intercourse—and she is of menstruating age—he must not sell her until she menstruates a period he has verified. The same applies if he wishes to marry her off, gift her, or use her as dowry. If she does not menstruate, he must not sell her until he ascertains she is not pregnant. The new owner must then refrain from intercourse with her until he either observes a verified menstrual period confirming non-pregnancy or ascertains her non-pregnancy—unless it is confirmed to him that she menstruated a verified period under the previous owner, and that the previous owner did not transfer her out of his ownership until confirming her non-pregnancy. In such cases, the new owner need not verify her non-pregnancy. It is impermissible to force him to have intercourse with her under the supervision of a trustworthy person or to prohibit him from doing so, as both stipulations constitute conditions not stipulated in the Book of Allah Almighty.

L35675 The Messenger of Allah—peace be upon him and his family—said: "Every condition not in the Book of Allah, the Almighty, the Majestic, is invalid."

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ» .

L35676 Allah the Exalted has permitted right-hand possession, so it is not lawful to prevent an owner from his female slave.

وَقَدْ أَبَاحَ اللَّهُ تَعَالَى مِلْكَ الْيَمِينِ فَلَا يَحِلُّ مَنْعُ الْمَالِكِ مِنْ أَمَتِهِ.

L35677 It is astonishing that the Mālikīs who require mutual stipulation unanimously agree that no benefit is derived from it when pregnancy becomes evident in her. What purpose does an action serve that has no benefit, and doubt cannot be dispelled unless a scriptural text obligates it?

وَالْعَجَبُ أَنَّ الْمَالِكِيِّينَ الْمُوجِبِينَ لِلْمُوَاضَعَةِ مُتَّفِقُونَ عَلَى أَنَّهُ لَا يُنْتَفَعُ بِذَلِكَ مَتَى ظَهَرَ بِهَا حَمْلٌ، فَأَيُّ مَعْنًى لِعَمَلٍ لَا فَائِدَةَ فِيهِ، وَلَا تَنْقَطِعُ الرِّيبَةُ دُونَ أَنْ يُوجِبَهُ نَصٌّ.

L35678–35679 Abu Muhammad said: No waiting period to ascertain pregnancy is required for a virgin at all. If pregnancy becomes apparent to the buyer, the transferee, or the spouse, she remains as per her condition until she delivers or until certainty is established that the pregnancy existed prior to the transfer of ownership. If this is confirmed, the sale, gift, bridal gift (mahr), and marriage are annulled, and she is restored to her original owner. If he married her while she was a slave, he is instructed not to consummate the marriage until she delivers, though the marriage remains valid, as we have previously detailed in the Book of Marriage within this diwan of ours.

قَالَ أَبُو مُحَمَّدٍ وَلَا يَجِبُ فِي الْبِكْرِ اسْتِبْرَاءٌ أَصْلًا، فَإِنْ ظَهَرَ بِهَا عِنْدَ الْمُشْتَرِي، أَوْ الَّذِي انْتَقَلَ مِلْكُهَا إلَيْهِ، أَوْ الَّذِي تَزَوَّجَهَا حَمْلٌ بَقِيَتْ بِحَسَبِهَا حَتَّى تَضَعَ، أَوْ حَتَّى تُوقِنَ بِأَنَّ الْحَمْلَ كَانَ قَبْلَ انْتِقَالِ مِلْكِهَا إلَيْهِ، فَإِنْ تَيَقَّنَ بِذَلِكَ فُسِخَ الْبَيْعُ، وَالْهِبَةُ، وَالْإِصْدَاقُ، وَالنِّكَاحُ، وَرُدَّتْ إلَى الَّذِي كَانَتْ لَهُ، فَإِنْ كَانَ تَزَوَّجَهَا وَهِيَ أَمَةٌ: أُمِرَ بِأَنْ لَا يَطَأَهَا حَتَّى تَضَعَ وَلَمْ يُفْسَخْ النِّكَاحُ، لِمَا قَدْ ذَكَرْنَاهُ فِي " كِتَابِ النِّكَاحِ " مِنْ دِيوَانِنَا هَذَا.

L35680 The summary of this ruling is that a female slave without a husband has no waiting period. If she is not in a waiting period, her marriage is permissible. If certainty is not achieved by the time she gives birth - an assessment is conducted - should her delivery occur less than nine months from when the first husband denied having had intercourse with her, or less than six months from when the second husband had intercourse with her, the child is unquestionably attributed to the first husband.

وَجُمْلَتُهُ: أَنَّهُ لَا عِدَّةَ عَلَى أَمَةٍ مِنْ غَيْرِ زَوْجٍ، فَإِذَا لَمْ تَكُنْ فِي عِدَّةٍ فَنِكَاحُهَا جَائِزٌ، فَإِنْ لَمْ يُوقِنْ ذَلِكَ حَتَّى تَضَعَ -: نُظِرَ - فَإِنْ كَانَ وَضْعُهَا لِأَقَلَّ مِنْ تِسْعَةِ أَشْهُرٍ مِنْ حِينِ أَنْكَرَ الْأَوَّلُ وَطْأَهَا، أَوْ لِأَقَلَّ مِنْ سِتَّةِ أَشْهُرٍ مِنْ حَيْثُ وَطِئَهَا الثَّانِي: فَالْوَلَدُ لِلْأَوَّلِ بِلَا شَكٍّ.

L35681 If she gives birth to the child even a moment beyond nine months from the time of the second intercourse, the child is legally attributed to the latter without doubt.

إنْ وَلَدَتْهُ لِأَكْثَرَ مِنْ تِسْعَةِ أَشْهُرٍ بِطَرْفَةِ عَيْنٍ مِنْ حِينِ وَطِئَهَا الثَّانِي: فَالْوَلَدُ لِلثَّانِي بِلَا شَكٍّ.

L35682 If she gives birth after more than nine months since the first was able to have intercourse with her and less than six months since the second had intercourse with her, the child is not legally affiliated with the first nor the

second. The child is owned by the second if his mother is an enslaved woman, except that she is necessarily emancipated because of him, as per the rulings we detailed in the Book of Emancipation.

فَإِنْ وَلَدَتْهُ لِأَكْثَرَ مِنْ تِسْعَةِ أَشْهُرٍ مِنْ حِينِ أَمْكَنَ الْأَوَّلُ وَطْأَهَا، وَلِأَقَلَّ مِنْ سِتَّةِ أَشْهُرٍ مِنْ حِينِ وَطِئَهَا الثَّانِي: فَهُوَ غَيْرُ لَاحِقٍ بِالْأَوَّلِ وَلَا بِالثَّانِي، وَهُوَ مَمْلُوكٌ لِلثَّانِي إِنْ كَانَتْ أُمُّهُ أَمَةً، إِلَّا أَنَّهَا تَعْتِقُ عَلَيْهِ وَلَا بُدَّ، لِمَا ذَكَرْنَا فِي " كِتَابِ الْعِتْقِ ".

L35683 If she gives birth to the child less than nine months from when intercourse became possible with the first [husband] and more than six months from when the second husband had intercourse with her, then the child necessarily belongs to the first husband. This is because his marital bed preceded that of the second husband, and paternity cannot be reassigned from him except by a definitive text or certainty necessitated by direct observation. The Messenger of Allah (peace and blessings be upon him) said: "The child belongs to the holder of the marital bed."

فَلَوْ وَلَدَتْهُ لِأَقَلَّ مِنْ تِسْعَةِ أَشْهُرٍ مِنْ حِينِ أَمْكَنَ الْأَوَّلُ وَطْأَهَا، وَلِأَكْثَرَ مِنْ سِتَّةِ أَشْهُرٍ مِنْ حِينِ وَطِئَهَا الثَّانِي: فَهُوَ لِلْأَوَّلِ وَلَا بُدَّ، لِأَنَّ فِرَاشَهُ كَانَ قَبْلَ فِرَاشِ الثَّانِي، فَلَا يَنْتَقِلُ عَنْهُ إِلَّا بِنَصٍّ، أَوْ يَقِينٍ مِنْ ضَرُورَةِ مُشَاهَدَةٍ وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْوَلَدُ لِصَاحِبِ الْفِرَاشِ» .

L35684 Since there is no doubt about this, it is impermissible to invalidate the first marital bond (which is the one established with certainty) and validate a second bond based on conjecture. However, this may only occur with a certainty that leaves no room for doubt.

فَإِذْ لَا شَكَّ فِي هَذَا فَلَا يَجُوزُ أَنْ يُبْطَلَ الْفِرَاشُ الْأَوَّلُ الَّذِي هُوَ الْمُتَيَقَّنُ وَيَصِحُّ فِرَاشٌ ثَانٍ بِظَنٍّ، لَكِنْ بِيَقِينٍ لَا مَجَالَ لِلشَّكِّ فِيهِ.

L35685 If it is ascertained, due to a deficiency in the child's formation, that the child is six months, seven months, or eight months [old], and this period was completed with the second, confirming that it does not belong to the first, then it undoubtedly belongs to the second without doubt.

فَإِنْ تَيَقَّنَ بِضُؤُولَةِ خِلْقَتِهِ أَنَّهُ لِسِتَّةِ أَشْهُرٍ، أَوْ سَبْعَةِ أَشْهُرٍ، أَوْ ثَمَانِيَةٍ، وَكَانَتْ هَذِهِ الْمُدَّةُ قَدْ اسْتَوْفَتْهَا عِنْدَ الثَّانِي وَتَيَقَّنَ بِذَلِكَ أَنَّهُ لَيْسَ لِلْأَوَّلِ، فَهُوَ لِلثَّانِي بِلَا شَكٍّ.

L35686 A pregnancy cannot validly be longer than nine months or shorter than six months; based on the words of Allah the Exalted: "And the child's gestation and weaning total thirty months" [Al-Ahqaf: 15].[11]

وَلَا يَجُوزُ أَنْ يَكُونَ حَمْلٌ أَكْثَرَ مِنْ تِسْعَةِ أَشْهُرٍ وَلَا أَقَلَّ مِنْ سِتَّةِ أَشْهُرٍ؛ لِقَوْلِ اللَّهِ تَعَالَى: {وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا} [الأحقاف: ١٥] .

L35687–35688 And the Almighty said: {Mothers shall breastfeed their children for two complete years for those who wish to complete the breastfeeding period} [Al-Baqarah: 233]. Thus, whoever claims that a pregnancy and weaning can occur in more than thirty months has spoken falsehood and impossibility, openly rejecting the words of Allah, the Exalted and Glorious.[12]

وَقَالَ تَعَالَى: {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ} [البقرة: ٢٣٣] فَمَنْ ادَّعَى أَنَّ حَمْلًا وَفِصَالًا يَكُونُ فِي أَكْثَرَ مِنْ ثَلَاثِينَ شَهْرًا: فَقَدْ قَالَ الْبَاطِلَ وَالْمُحَالَ، وَرَدَّ كَلَامَ اللَّهِ عَزَّ وَجَلَّ جِهَارًا.

[11] **Qur'an references (L35686):** Qur'an 46:15 (Al-Ahqaf).
[12] **Qur'an references (L35688):** Qur'an 2:233 (Al-Baqarah).

L35689 Abu Hanifah said: “Pregnancy can last two years.” His companions supported this with a ḥadīth transmitted by al-Ḥārith ibn Ḥaṣīrah (a discredited narrator) claiming Ibn Ṣayyād was born after two years of pregnancy. This is a lie and a falsehood. This Ibn Ḥaṣīrah (al-Ḥārith) was a Shiʿi who upheld the doctrine of the Return of ʿAlī to this world before the Judgment Day.

وَقَدْ قَالَ أَبُو حَنِيفَةَ: يَكُونُ الْحَمْلُ عَامَيْنِ، وَاحْتَجَّ لَهُ أَصْحَابُهُ بِحَدِيثٍ فِيهِ الْحَارِثُ بْنُ حَصِيرَةَ - وَهُوَ هَالِكٌ - أَنَّ ابْنَ صَيَّادٍ وُلِدَ لِسَنَتَيْنِ - وَهَذَا كَذِبٌ وَبَاطِلٌ - وَابْنُ حَصِيرَةَ هَذَا شِيعِيٌّ يَقُولُ بِرَجْعَةِ عَلِيٍّ إِلَى الدُّنْيَا.

L35690 They also mentioned—as we have narrated through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from al-Aʿmash from Abū Sufyān from their elders from ʿUmar: that a case was brought to him concerning a woman whose husband had been absent for two years. When he returned, she was pregnant. ʿUmar intended to stone her, but Muʿādh ibn Jabal said: “O Commander of the Faithful, if you have a claim against her, do you not also have a claim against what is in her womb?” ʿUmar therefore spared her until she gave birth to a boy whose incisors had grown in. Her husband recognized his likeness in the child, and ʿUmar declared: “Women fall short of being like Muʿādh! Had it not been for Muʿādh, ʿUmar would have perished!”

وَذَكَرُوا أَيْضًا - مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ أَبِي سُفْيَانَ عَنْ أَشْيَاخٍ لَهُمْ عَنْ عُمَرَ: أَنَّهُ رُفِعَ إلَيْهِ امْرَأَةٌ غَابَ عَنْهَا زَوْجُهَا سَنَتَيْنِ فَجَاءَ - وَهِيَ حُبْلَى - فَهَمَّ عُمَرُ بِرَجْمِهَا، فَقَالَ لَهُ مُعَاذُ بْنُ جَبَلٍ: يَا أَمِيرَ الْمُؤْمِنِينَ، إنْ يَكُ السَّبِيلُ لَك عَلَيْهَا، فَلَا سَبِيلَ لَك عَلَى مَا فِي بَطْنِهَا؟ فَتَرَكَهَا عُمَرُ حَتَّى وَلَدَتْ غُلَامًا - قَدْ نَبَتَتْ ثَنَايَاهُ - فَعَرَفَ زَوْجُهَا شَبَهَهُ، فَقَالَ عُمَرُ: عَجَزَ النِّسَاءُ أَنْ تَكُونَ مِثْلَ مُعَاذٍ، لَوْلَا مُعَاذٌ هَلَكَ عُمَرُ.

L35691 Abu Muhammad said: “This is also invalid because it is from Abu Sufyan—who is weak—from their elders, and they are unknown [in reliability].”

قَالَ أَبُو مُحَمَّد: وَهَذَا أَيْضًا بَاطِلٌ، لِأَنَّهُ عَنْ أَبِي سُفْيَانَ - وَهُوَ ضَعِيفٌ - عَنْ أَشْيَاخٍ لَهُمْ، وَهُمْ مَجْهُولُونَ.

L35692 From the chain of Saʿīd ibn Manṣūr: I am Dāwūd ibn ʿAbd al-Raḥmān, from Ibn Jurayj, from Jamīlah bint Saʿd, from ʿĀ’ishah, the Mother of the Believers, who said: “A woman’s pregnancy cannot exceed two years by the amount it takes for the shadow of this spindle to shift.” —Jamīlah bint Saʿd is unknown as a narrator: her reliability is not established—therefore, this statement is invalid—and all praise is due to Allah, Lord of the worlds.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا دَاوُد بْنُ عَبْدِ الرَّحْمَنِ عَنْ ابْنِ جُرَيْجٍ عَنْ جَمِيلَةَ بِنْتِ سَعْدٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: مَا تَزِيدُ الْمَرْأَةُ فِي الْحَمْلِ عَلَى سَنَتَيْنِ قَدْرَ مَا يَتَحَوَّلُ ظِلُّ هَذَا الْمِغْزَلِ - جَمِيلَةُ بِنْتُ سَعْدٍ مَجْهُولَةٌ: لَا يُدْرَى مَنْ هِيَ؟ فَبَطَلَ هَذَا الْقَوْلُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L35693 A group has maintained that pregnancy can extend beyond four years: we have transmitted this from Saʿīd ibn al-Musayyab through a chain containing ʿAlī ibn Zayd ibn Judʿān—and he is weak—and this is the position of al-Shāfiʿī. We are unaware of any plausible basis whatsoever for this opinion upon which they could have relied.

وَقَالَتْ طَائِفَةٌ: يَكُونُ الْحَمْلُ أَكْثَرَ مِنْ أَرْبَعِ سِنِينَ -: رُوِّينَاهُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مِنْ طَرِيقٍ فِيهَا عَلِيُّ بْنُ زَيْدِ بْنِ جُدْعَانَ - وَهُوَ ضَعِيفٌ - وَهُوَ قَوْلُ الشَّافِعِيِّ - وَلَا نَعْلَمُ لِهَذَا الْقَوْلِ شُبْهَةً تَعَلَّقُوا بِهَا أَصْلًا.

وَقَالَتْ طَائِفَةٌ: يَكُونُ الْحَمْلُ خَمْسَ سِنِينَ وَلَا يَكُونُ أَكْثَرَ أَصْلًا - وَهُوَ قَوْلُ عَبَّادِ بْنِ الْعَوَّامِ، وَاللَّيْثِ بْنِ سَعْدٍ - وَرُوِيَ عَنْ مَالِكٍ أَيْضًا - وَلَا نَعْلَمُ لِهَذَا الْقَوْلِ مُتَعَلَّقًا أَصْلًا.

L35694 A group held that pregnancy may last up to five years and cannot exceed that at all—this being the opinion of ʿAbbād ibn al-ʿAwwām and al-Layth ibn Saʿd, and it is also attributed to Mālik. We find no foundational basis for this opinion.

وَقَالَتْ طَائِفَةٌ: يَكُونُ الْحَمْلُ سَبْعَ سِنِينَ وَلَا يَكُونُ أَكْثَرَ - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَمَالِكٍ، وَاحْتَجَّ مُقَلِّدُوهُ: بِأَنَّ مَالِكًا وُلِدَ لِثَلَاثَةِ أَعْوَامٍ.

L35695 A group said: The pregnancy period is seven years and cannot exceed this—this being the opinion of al-Zuhrī and Mālik; their adherents cited as evidence that Mālik was born following a three-year gestational period.

وَأَنَّ نِسَاءَ بَنِي الْعِجْلَانِ وَلَدْنَ لِثَلَاثِينَ شَهْرًا.

L35696–35697 And that the women of Banū al-ʿIjlān gave birth after thirty months of pregnancy.

وَأَنَّ مَوْلَاةً لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ حَمَلَتْ ثَلَاثَ سِنِينَ.

L35698 And that a freed female slave of Umar ibn Abd al-Aziz carried a pregnancy for three years.

وَأَنَّ هَرِمَ بْنَ حَيَّانَ، وَالضَّحَّاكَ بْنَ مُزَاحِمَ حُمِلَ بِكُلِّ وَاحِدٍ مِنْهُمَا سَنَتَيْنِ -.

L35699 It is reported that both Haram ibn Hayyan and al-Ḍaḥḥāk ibn Muzāḥim gestated for two years each.

وَقَالَ مَالِكٌ: بَلَغَنِي عَنْ امْرَأَةٍ حَمَلَتْ سَبْعَ سِنِينَ.

L35700 And Mālik said: It has reached me that a woman carried a pregnancy for seven years.

قَالَ أَبُو مُحَمَّد: وَكُلُّ هَذِهِ أَخْبَارٌ مَكْذُوبَةٌ رَاجِعَةٌ إلَى مَنْ لَا يُصَدَّقُ، وَلَا يُعْرَفُ مَنْ هُوَ؟ لَا يَجُوزُ الْحُكْمُ فِي دِينِ اللَّهِ تَعَالَى بِمِثْلِ هَذَا.

L35701 Abu Muhammad said: All of these are fabricated reports traced back to an untrustworthy source, and it is not known who he is. It is impermissible to rule in the religion of Allah the Exalted based on such things.

وَمِمَّنْ رُوِيَ عَنْهُ مِثْلُ قَوْلِنَا: عُمَرُ بْنُ الْخَطَّابِ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ أَنَّهُ سَمِعَ سَعِيدَ بْنَ الْمُسَيَّبِ يَقُولُ: قَالَ عُمَرُ بْنُ الْخَطَّابِ أَيُّمَا رَجُلٍ طَلَّقَ امْرَأَتَهُ فَحَاضَتْ حَيْضَةً أَوْ حَيْضَتَيْنِ ثُمَّ قَعَدَتْ فَلْتَجْلِسْ تِسْعَةَ أَشْهُرٍ حَتَّى يَسْتَبِينَ حَمْلُهَا، فَإِنْ لَمْ يَسْتَبِنْ حَمْلُهَا فِي تِسْعَةِ أَشْهُرٍ فَلْتَعْتَدَّ بَعْدَ التِّسْعَةِ الْأَشْهُرِ ثَلَاثَةَ أَشْهُرٍ عِدَّةَ الَّتِي قَدْ قَعَدَتْ عَنْ الْمَحِيضِ.

L35702 Among those from whom a similar opinion to ours has been narrated is ʿUmar ibn al-Khaṭṭāb—as reported through ʿAbd al-Razzāq from Ibn Jurayj, who narrated: Yaḥyā ibn Saʿīd al-Anṣārī informed me that he heard Saʿīd ibn al-Musayyab say: ʿUmar ibn al-Khaṭṭāb stated, “Any man who divorces his wife and she menstruates once or twice must then wait nine months until her pregnancy becomes evident. If her pregnancy does not become evident within nine months, she must thereafter observe a three-month waiting period—the waiting period for a woman who has ceased menstruation.”

قَالَ أَبُو مُحَمَّد: فَهَذَا عُمَرُ لَا يَرَى الْحَمْلَ أَكْثَرَ مِنْ تِسْعَةِ أَشْهُرٍ، وَهُوَ قَوْلُ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L35703 Abū Muḥammad said: Thus, this ʿUmar does not hold the view that pregnancy lasts beyond nine months, and this is the opinion of Muḥammad ibn ʿAbd Allāh ibn ʿAbd al-Ḥakam, Abū Sulaymān, and our associates.

L35704 Ali said: However, a child may die in its mother's womb and remain there indefinitely until she expels it in pieces over several years. If this is confirmed, it is a valid pregnancy, and her waiting period only concludes upon delivering it entirely. However, no inheritance is withheld for it, nor is paternity established at all, because there is no possibility of it being born alive. If she were to act upon certainty of this to abort it initially, it would be permissible, as it is undoubtedly dead—and success is from Allah, the Exalted.

قَالَ عَلِيٌّ: إِلَّا أَنَّ الْوَلَدَ قَدْ يَمُوتُ فِي بَطْنِ أُمِّهِ فَيَتَمَادَى بِلَا غَايَةٍ حَتَّى تُلْقِيَهُ مُتَقَطِّعًا فِي سِنِينَ، فَإِنْ صَحَّ هَذَا فَإِنَّهُ حَمْلٌ صَحِيحٌ لَا تَنْقَضِي عِدَّتُهَا إِلَّا بِوَضْعِهِ كُلِّهِ إِلَّا أَنَّهُ لَا يُوقَفُ لَهُ مِيرَاثٌ، وَلَا يُلْحَقُ أَصْلًا؛ لِأَنَّهُ لَا سَبِيلَ إِلَى أَنْ يُولَدَ حَيًّا، وَلَوْ سَعَتْ عِنْدَ تَيَقُّنِ ذَلِكَ فِي إِسْقَاطِهِ بَدْوًا لَكَانَ مُبَاحًا؛ لِأَنَّهُ مَيِّتٌ بِلَا شَكٍّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L35705 As for the child of the wife born no more than nine months after her husband's last intercourse with her, it is definitively attributed to him without *liʿān*. Similarly, if she delivers the child in less than six months (unless it is a non-viable fetus), it belongs to him. The enslaved woman becomes an *umm walad* through this child, and the waiting period of the divorced woman and the widow concludes upon its birth.

وَأَمَّا وَلَدُ الزَّوْجَةِ لَا أَكْثَرُ مِنْ تِسْعَةِ أَشْهُرٍ مِنْ آخِرِ وَطْءٍ وَطِئَهَا زَوْجُهَا فَهُوَ مُتَيَقَّنٌ بِلَا لِعَانٍ، وَكَذَلِكَ إِنْ وَلَدَتْهُ لِأَقَلَّ مِنْ سِتَّةِ أَشْهُرٍ إِلَّا أَنْ يَكُونَ سِقْطًا فَهُوَ لَهُ وَتَصِيرُ الْأَمَةُ بِهِ أُمَّ، وَلَدِهِ، وَتَنْقَضِي بِهِ عِدَّةُ الْمُطَلَّقَةِ، وَالْمُتَوَفَّى عَنْهَا.

L35706–35707 Regarding the istibraʾ (waiting period) for a female slave with transferring ownership, differences of opinion have also been recorded - as we narrated through Abd al-Razzaq's transmission: I [Ibn Jurayj] said: Ata reported that three merchants traded a female slave among themselves, and she gave birth. Umar ibn al-Khattab summoned the lineage experts, who attributed the child's parentage to one of them. Umar then ruled: "Whoever purchases a female slave who has reached menstruation must observe a waiting period with her until she menstruates. If she has not menstruated, he must wait forty-five nights with her."

وَأَمَّا اسْتِبْرَاءُ الْأَمَةِ الْمُتَنَقِّلَةِ الْمِلْكِ فَقَدْ اُخْتُلِفَ فِي ذَلِكَ أَيْضًا - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ قَالَ: قَالَ عَطَاءٌ: تَدَاوَلَ ثَلَاثَةٌ مِنْ التُّجَّارِ جَارِيَةً فَوَلَدَتْ، فَدَعَا عُمَرُ بْنُ الْخَطَّابِ الْقَافَةَ فَأَلْحَقُوا وَلَدَهَا بِأَحَدِهِمْ. ثُمَّ قَالَ عُمَرُ: مَنْ ابْتَاعَ جَارِيَةً قَدْ بَلَغَتْ الْمَحِيضَ فَلْيَتَرَبَّصْ بِهَا حَتَّى تَحِيضَ، فَإِنْ كَانَتْ لَمْ تَحِضْ فَلْيَتَرَبَّصْ بِهَا خَمْسًا وَأَرْبَعِينَ لَيْلَةً.

L35708 And through the chain of Al-Ḥajjāj ibn Al-Minhāl: Hushaym said: I heard from Al-Ḥajjāj and Manṣūr. Al-Ḥajjāj reported from ʿAṭāʾ, while Manṣūr reported from Saʿīd ibn Al-Musayyib. They both said: A female slave who has not menstruated must undergo *istibrāʾ* of one and a half months.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا هُشَيْمٌ أَنَا الْحَجَّاجُ، وَمَنْصُورٌ، قَالَ الْحَجَّاجُ عَنْ عَطَاءٍ، وَقَالَ مَنْصُورٌ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، قَالَا جَمِيعًا: تُسْتَبْرَأُ الْأَمَةُ الَّتِي لَمْ تَحِضْ بِشَهْرٍ وَنِصْفٍ.

L35709 A second opinion—as narrated to us through ʿAbd al-Razzāq, who reported two chains: one from Sufyān al-Thawrī and another from Maʿmar. Sufyān reported from Firās, from al-Shaʿbī, from ʿAlqamah, from Ibn Masʿūd; and Maʿmar reported from Ayyūb, from Nāfiʿ, from Ibn ʿUmar. They both stated

collectively: A female slave must undergo istibrāʾ (a waiting period) of one menstrual cycle to confirm she is not pregnant.

وَقَوْلٌ ثَانٍ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ، قَالَ سُفْيَانُ عَنْ فِرَاسٍ عَنْ الشَّعْبِيِّ عَنْ عَلْقَمَةَ عَنْ ابْنِ مَسْعُودٍ، وَقَالَ مَعْمَرٌ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ، قَالَا جَمِيعًا: تُسْتَبْرَأُ الْأَمَةُ بِحَيْضَةٍ.

L35710 Via the chain of ʿAbd al-Razzāq, from Ibn Jurayj: I asked ʿAṭāʾ, "What is the ʿiddah of a female slave when she is sold?" He replied, "One menstrual cycle." ʿAmr ibn Dīnār also stated this.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: كَمْ عِدَّةُ الْأَمَةِ تُبَاعُ؟ قَالَ: حَيْضَةٌ - وَقَالَهُ أَيْضًا عَمْرُو بْنُ دِينَارٍ.

L35711 And through the chain of ʿAbd al-Razzāq from Maʿmar from Qatādah regarding the female slave sold after having menstruated: The seller must subject her to *istibrā'* (a waiting period to confirm non-pregnancy), and the buyer must perform *istibrā'* by awaiting another menstrual cycle. Al-Thawrī maintained this ruling.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي الْأَمَةِ تُبَاعُ وَقَدْ حَاضَتْ قَالَ: يَسْتَبْرِئُهَا الَّذِي بَاعَهَا، وَيَسْتَبْرِئُهَا الَّذِي اشْتَرَاهَا بِحَيْضَةٍ أُخْرَى - وَقَالَ بِهِ الثَّوْرِيُّ.

L35712 And via the chain of Ḥammād ibn Salamah, from Ḥumayd, from al-Ḥasan regarding the female slave whose master sells her—while he has intercourse with her—[al-Ḥasan] said: The master must ascertain her non-pregnancy by [waiting for] one menstrual cycle before selling her, and the buyer must ascertain her non-pregnancy by [waiting for] another menstrual cycle. This is the view of al-Shāfiʿī and Abū Sulaymān.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ فِي الْأَمَةِ إذَا بَاعَهَا سَيِّدُهَا - وَهُوَ يَطَؤُهَا - قَالَ: يَسْتَبْرِئُهَا بِحَيْضَةٍ قَبْلَ أَنْ يَبِيعَهَا، وَيَسْتَبْرِئُهَا الْمُشْتَرِي بِحَيْضَةٍ أُخْرَى - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L35713 A third opinion—as transmitted to us through Al-Ḥajjāj ibn Minhal's chain: Hushaym reported to us from Manṣūr from Al-Ḥasan that he was asked about the istibrā' (pregnancy waiting period) for a female slave who does not menstruate. He answered: "She undergoes istibrā' for three months." We then came to Ibn Sīrīn and asked him about this, to which he replied: "Three months." Hushaym said: Khalid al-Ḥadhā' reported to us from Abū Qilābah, who said: "The female slave undergoes istibrā' for three months."

وَقَوْلٌ ثَالِثٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا هُشَيْمٌ أَنَا مَنْصُورٌ عَنْ الْحَسَنِ: أَنَّهُ سُئِلَ عَنْ اسْتِبْرَاءِ الْأَمَةِ الَّتِي لَمْ تَحِضْ؟ قَالَ: تُسْتَبْرَأُ بِثَلَاثَةِ أَشْهُرٍ، فَأَتَيْنَا ابْنَ سِيرِينَ فَسَأَلْنَاهُ عَنْ ذَلِكَ؟ فَقَالَ: ثَلَاثَةُ أَشْهُرٍ، قَالَ هُشَيْمٌ: وَأَرَنَا خَالِدٌ الْحَذَّاءُ عَنْ أَبِي قِلَابَةَ قَالَ: تُسْتَبْرَأُ الْأَمَةُ بِثَلَاثَةِ أَشْهُرٍ.

L35714–35715 From the path of Abd al-Razzaq from Ma'mar from Ayyub from Nafi' from Ibn Umar, who said: If the female slave is a virgin, he does not need to observe the waiting period (istibra') to ascertain her non-pregnancy if he wishes. Ayyub said: He must ascertain her non-pregnancy by observing the waiting period before having intercourse with her.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: إذَا كَانَتْ الْأَمَةُ عَذْرَاءَ لَمْ يَسْتَبْرِئْهَا إنْ شَاءَ - قَالَ أَيُّوبُ: يَسْتَبْرِئُهَا قَبْلَ أَنْ يَقَعَ عَلَيْهَا.

L35716 And through him to Ma’mar from Qatadah, who said regarding a virgin slave girl purchased from a woman: “He is not required to subject her to istibra’. But if he purchases her from a man, he must subject her to istibra’.”

وَبِهِ إِلَى مَعْمَرٍ عَنْ قَتَادَةَ قَالَ فِي أَمَةٍ عَذْرَاءَ اشْتَرَاهَا مِنْ امْرَأَةٍ قَالَ: لَا يَسْتَبْرِئُهَا، فَإِنْ اشْتَرَاهَا مِنْ رَجُلٍ فَلْيَسْتَبْرِئْهَا.

L35717 Sufyan al-Thawri said: The female who has not reached puberty is subjected to *istibra’* just as the old woman is subjected to *istibra’*.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: تُسْتَبْرَأُ الَّتِي لَمْ تَبْلُغْ كَمَا تُسْتَبْرَأُ الْعَجُوزُ.

L35718 Abu Hanifa and his companions said: A man must not have sexual intercourse with a female slave he purchases her until he observes the waiting period to confirm non-pregnancy through one menstrual cycle. If she does not menstruate, the waiting period is one month. It is not lawful for him to derive any pleasure from her before completing this istibra’.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا يَطَأُ الرَّجُلُ الْجَارِيَةَ يَشْتَرِيهَا حَتَّى يَسْتَبْرِئَهَا بِحَيْضَةٍ، فَإِنْ كَانَتْ لَا تَحِيضُ فَشَهْرٌ، وَلَا يَحِلُّ لَهُ أَنْ يَتَلَذَّذَ مِنْهَا بِشَيْءٍ قَبْلَ الِاسْتِبْرَاءِ.

L35719 They said: If he purchased her but did not take custody of her until she menstruated, it would not be permissible for him to count that menstruation as the waiting period (istibrā’). Rather, he must require her to observe the waiting period with another menstruation without exception.

قَالُوا: فَلَوْ اشْتَرَاهَا فَلَمْ يَقْبِضْهَا حَتَّى حَاضَتْ لَمْ يَجُزْ لَهُ أَنْ يَعُدَّ تِلْكَ الْحَيْضَةَ اسْتِبْرَاءً، بَلْ يَسْتَبْرِئُهَا بِحَيْضَةٍ أُخْرَى وَلَا بُدَّ.

L35720 They said: If the guardian marries her to a man, neither the guardian nor the husband is required to ensure she observes the waiting period except in the report of Al-Hasan ibn Ziyad from Abu Hanifa, for he said: He must not consummate the marriage until he ensures she undergoes one menstrual cycle for istibrā’.

قَالُوا: فَلَوْ زَوَّجَهَا مِنْ رَجُلٍ لَمْ يَكُنْ عَلَيْهِ أَنْ يَسْتَبْرِئَهَا لَا هُوَ وَلَا النَّاكِحُ إِلَّا فِي رِوَايَةِ الْحَسَنِ بْنِ زِيَادٍ عَنْ أَبِي حَنِيفَةَ، فَإِنَّهُ قَالَ: لَا يَطَؤُهَا حَتَّى يَسْتَبْرِئَهَا بِحَيْضَةٍ.

L35721 Scholars differed concerning a woman who is sold while menstruating, then her menstruation ceases—not due to a pregnancy identifiable by that cessation. Abū Ḥanīfa and Abū Yūsuf said: He must not have intercourse with her until four months have elapsed.

وَاخْتَلَفُوا فِي الَّتِي تَحِيضُ تُبَاعُ فَتَرْتَفِعُ حَيْضَتُهَا لَا مِنْ حَمْلٍ يُعْرَفُ بِهَا؟ قَالَ أَبُو حَنِيفَةَ، وَأَبُو يُوسُفَ: لَا يَطَؤُهَا حَتَّى تَمْضِيَ أَرْبَعَةُ أَشْهُرٍ.

L35722 Muhammad ibn al-Hasan said: “He must not cohabit with her until she has completed two months and five nights”—then he revised his opinion and said: “He must not cohabit with her until she has completed four months and ten nights.”

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: لَا يَطَؤُهَا حَتَّى يَمْضِيَ عَلَيْهَا شَهْرَانِ وَخَمْسُ لَيَالٍ - ثُمَّ رَجَعَ فَقَالَ: لَا يَطَؤُهَا حَتَّى تَمْضِيَ لَهَا أَرْبَعَةُ أَشْهُرٍ وَعَشْرُ لَيَالٍ.

L35723 And Zufar said: He must not consummate the marriage with her until two years have passed for her—and this is the opinion of Sufyān al-Thawrī.

وَقَالَ زُفَرُ: لَا يَطَؤُهَا حَتَّى يَمْضِيَ لَهَا سَنَتَانِ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ -

L35724 These statements are utterly corrupt because they are without proof.

وَهَذِهِ أَقْوَالٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّهَا بِلَا بُرْهَانٍ.

L35725 Abu Muhammad said: Those who held the view requiring istibrā' (ensuring absence of pregnancy) – as we mentioned – cited as evidence the narration we transmitted through Abu Dawud's chain: 'Ubaydullah ibn 'Umar ibn Maysarah, Yazid ibn Zurai', Sa'id—that is, Ibn Abi 'Arubah—from Qatadah, from Ṣāliḥ ibn Rustum al-Khazzāz, from Abu 'Alqamah al-Hāshimī, from Abu Sa'īd al-Khudrī: Some Companions of the Messenger of Allah (peace be upon him) took female captives at Awṭās. People hesitated to engage in sexual relations with them due to their husbands being among the polytheists. Thereupon Allah the Almighty revealed: "And forbidden to you are married women except those whom your right hands possess" [4:24] – meaning they are lawful for you once their waiting period has ended.[13]

قَالَ أَبُو مُحَمَّد: وَاحْتَجَّ مَنْ رَأَى الِاسْتِبْرَاءَ - كَمَا ذَكَرْنَا -: بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد أَنَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ بْنِ مَيْسَرَةَ أَنَا يَزِيدُ بْنُ زُرَيْعٍ أَنَا سَعِيدٌ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ صَالِحِ بْنِ رُسْتُمَ الْخَزَّازِ عَنْ أَبِي عَلْقَمَةَ الْهَاشِمِيِّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّ بَعْضَ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَصَابُوا سَبَايَا بِأَوْطَاسٍ فَكَانَ النَّاسُ تَحَرَّجُوا مِنْ غِشْيَانِهِنَّ مِنْ أَجْلِ أَزْوَاجِهِنَّ مِنْ الْمُشْرِكِينَ، فَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ: {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلا مَا مَلَكَتْ} [النساء: ٢٤] أَيْ فَهُنَّ لَكُمْ حَلَالٌ إِذَا انْقَضَتْ عِدَّتُهُنَّ.

L35726–35728 And from the chain of Abū Dāwūd: We are ʿAmr ibn ʿAwn who narrated to us from Sharīk, who narrated from Qays ibn Wahb, from Abū al-Waddāk, from Abū Saʿīd al-Khudrī who elevated it to the Prophet. Regarding the captives of Awṭās, the Prophet said: "A pregnant woman should not be had intercourse with until she gives birth, and a non-pregnant woman [should not be had intercourse with] until she menstruates."

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا عَمْرُو بْنُ عَوْنٍ أَنَا شَرِيكٌ عَنْ قَيْسِ بْنِ وَهْبٍ عَنْ أَبِي الْوَدَّاكِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ رَفَعَهُ أَنَّهُ قَالَ فِي سَبَايَا أَوْطَاسٍ «لَا تُوطَأُ حَامِلٌ حَتَّى تَضَعَ، وَلَا غَيْرُ ذَاتِ حَمْلٍ حَتَّى تَحِيضَ» .

L35729 From the chain of ʿAbd al-Razzāq, from Maʿmar, from Ṭāwus: The Messenger of Allah—peace and blessings be upon him—sent a caller during some of his military expeditions, declaring, "No man shall have sexual intercourse with a pregnant woman until she delivers or with a non-pregnant woman until she has menstruated."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ طَاوُسٍ أَرْسَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُنَادِيًا فِي بَعْضِ مَغَازِيهِ: «لَا يَقَعَنَّ رَجُلٌ عَلَى حَامِلٍ، وَلَا عَلَى حَائِلٍ حَتَّى تَحِيضَ» .

L35730 From the narration of Abd al-Razzaq, from Sufyan al-Thawri, from Zakariya, from al-Sha'bi: "The Muslims captured female captives on the day of Awṭās, so the Messenger of Allah (peace be upon him) commanded them not to approach a pregnant woman until she delivers, nor a non-pregnant woman until she menstruates once." We are not aware of any other reports on this matter apart from what we have mentioned.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ زَكَرِيَّا عَنْ الشَّعْبِيِّ «أَصَابَ الْمُسْلِمُونَ سَبَايَا يَوْمَ أَوْطَاسٍ فَأَمَرَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ لَا يَقَعُوا عَلَى حَامِلٍ حَتَّى تَضَعَ، وَلَا غَيْرِ حَامِلٍ حَتَّى تَحِيضَ حَيْضَةً» لَا نَعْلَمُ وَرَدَ فِي هَذَا غَيْرُ مَا ذَكَرْنَا.

L35731 Abū Muḥammad said: The ḥadīth of Ṭāwus and al-Sha'bī are mursal, and

قَالَ أَبُو مُحَمَّد حَدِيثُ طَاوُسٍ، وَالشَّعْبِيُّ: مُرْسَلَانِ، وَلَا حُجَّةَ فِي مُرْسَلٍ - وَخَبَرُ أَبِي الْوَدَّاكِ - سَاقِطٌ، لِأَنَّ أَبِي الْوَدَّاكِ وَشَرِيكًا ضَعِيفَانِ.

[13] **Qur'an references (L35725):** Qur'an 4:24 (An-Nisa).

there is no proof in a mursal. The narration of Abū al-Waddāk is rejected because Abū al-Waddāk and Shurayk are weak narrators.

L35732 Then, if it were authentic, it would constitute a proof against those who cite it as evidence, for it contains the prohibition of intercourse with a woman who is not pregnant until she menstruates. Yet they do not hold this opinion; rather, they prescribe limits not found in these transmitted reports. Among the major sins is opposing a narration one cites as evidence and deems sound.

L35733 As for the report of Abū ʻAlqamah, it is the only authentic narration in this chapter. It contains no mention of the waiting period (istibrāʾ) whatsoever—neither by explicit text nor inferential evidence—and no indication permitting intercourse with enslaved chaste women solely upon acquiring them through ownership. Thus, the report is against them, not in their favor.

L35734 As for the statement at the end—"Are they lawful for you once their waiting period has ended?"—there is no doubt that it is not from the speech of Allah's Messenger, peace and blessings be upon him. The highest level it could occupy is that it originates from the speech of Abū Saʿīd, and no authoritative evidence can be derived from the words of anyone besides those of Allah's Messenger, peace and blessings be upon him.

L35735–35737 Then, even if it were established—and it can never be established—that it is from the words of the Messenger of Allah, may Allah's peace and blessings be upon him, they would have no proof in it. Because it only states "when their waiting periods have concluded," while the well-known waiting period in the religion is none other than four months and ten days for widows, three menstrual cycles for menstruating divorced women, three months for divorced women who have not yet menstruated or those who do not menstruate, delivery of pregnancy for a divorced or widowed woman—with no extension—yet here they have equated istibrāʾ—waiting to confirm non-pregnancy—with a single menstruation cycle? This does not constitute a valid waiting period—thus their claim to any basis for it is invalidated.

L35738 As for Mālik, he deemed the waiting period (istibrāʾ) through stipulated terms in the case of female slaves but did not require it for livestock and did

ثُمَّ لَوْ صَحَّتْ لَكَانَتْ حُجَّةً عَلَى مَنْ احْتَجَّ بِهَا؛ لِأَنَّ فِيهَا الْمَنْعَ مِنْ وَطْءِ الَّتِي لَيْسَتْ حَامِلًا حَتَّى تَحِيضَ، وَهُمْ لَا يَقُولُونَ بِهَذَا بَلْ يَحُدُّونَ حُدُودًا لَيْسَتْ فِي هَذِهِ الْآثَارِ، وَمِنْ الْكَبَائِرِ مُخَالَفَةُ أَثَرٍ يَحْتَجُّ بِهِ الْمَرْءُ وَيُصَحِّحُهُ.

وَأَمَّا خَبَرُ أَبِي عَلْقَمَةَ فَهُوَ الَّذِي لَا يَصِحُّ فِي هَذَا الْبَابِ غَيْرُهُ، فَلَيْسَ فِيهِ ذِكْرٌ لِلِاسْتِبْرَاءِ أَصْلًا، لَا بِنَصٍّ وَلَا بِدَلِيلٍ فِيهِ إبَاحَةُ وَطْءِ الْمُحْصَنَاتِ إذَا مَلَكَهُنَّ فَقَطْ - فَهُوَ عَلَيْهِمْ لَا لَهُمْ.

وَأَمَّا الَّذِي فِي آخَرَ - أَيْ فَهِيَ لَكُمْ حَلَالٌ إذَا انْقَضَتْ عِدَّتُهُنَّ؟ فَلَا شَكَّ فِي أَنَّهُ لَيْسَ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَعْلَى مَرَاتِبِهِ أَنْ يَكُونَ مِنْ كَلَامِ أَبِي سَعِيدٍ - وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

ثُمَّ لَوْ صَحَّ أَنَّهُ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ لَا يَصِحُّ أَبَدًا لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ إنَّمَا فِيهِ " إذَا انْقَضَتْ عِدَّتُهُنَّ " وَالْعِدَّةُ الْمَعْرُوفَةُ فِي الدِّينِ لَيْسَتْ إلَّا أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا فِي الْوَفَاةِ، وَثَلَاثَةُ قُرُوءٍ لِلَّتِي تَحِيضُ مِنْ الْمُطَلَّقَاتِ، أَوْ ثَلَاثَةُ أَشْهُرٍ لِلَّتِي لَمْ تَحِضْ أَوْ لَا تَحِيضُ مِنْ الْمُطَلَّقَاتِ، أَوْ وَضْعُ الْحَمْلِ لِمُطَلَّقَةٍ، أَوْ مُتَوَفًّى عَنْهَا - وَلَا مَزِيدَ - وَهُمْ هَاهُنَا جَعَلُوا الِاسْتِبْرَاءَ بِحَيْضَةٍ؟ وَلَيْسَ هَذَا عِدَّةً - فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ فِيهِ أَصْلًا.

not permit stipulating cash payment in that matter. He also held that the expenses for her upkeep during the stipulated period are incumbent upon the seller.

L35739 He held that what occurred during the period of the stipulated agreement would fall upon the seller, and he affirmed the validity of such agreements concerning virgins—yet despite all this, he did not hold that the stipulated agreement absolves from pregnancy. These are opinions unattributed to any scholar before him, and they reach the utmost contradiction and corruption in reasoning.

L35740 And the first of that is establishing as an obligation the condition of mutual agreement—a condition not found in the Book of Allah the Almighty and Majestic—and invalidating the condition of cash payment of the price, which is a right for the seller commanded in the Quran to fulfill it to him, since Allah the Exalted says: "And do not deprive people of their rightful possessions" [Al-A'raf: 85], and His statement the Exalted: "unless it is a trade by mutual consent among you" [An-Nisa: 29].[14]

L35741 The second matter is that he differentiated it by making a distinction in that regard between the high-quality [animals] and the defective ones—and this is utterly astonishing! Do you suppose they are unaware that the defective [animal] bears [it] just as the high-quality [animal] bears it, with no difference?

L35742 The third issue is obligating maintenance upon the seller, which constitutes unlawful consumption of wealth. The transaction between them must either be valid or invalid. If it were valid, what rationale would obligate the seller to provide maintenance regarding another's female slave? If it were invalid, for what reason was the mutual agreement obligated?

L35743–35745 If they were to say, "Because her pregnancy became evident, the sale is invalid?" We would reply, "This [claim] cannot be reliably upheld by your position regarding intercourse after a menstrual cycle, and thus they obligated her maintenance in that case." The obligation lies on the seller; otherwise, the unsoundness of your assertion has been conclusively established. Simi-

وَأَمَّا مَالِكٌ - فَإِنَّهُ رَأَى الِاسْتِبْرَاءَ بِالْمُوَاضَعَةِ فِي عِلِّيَّةِ الرَّقِيقِ وَلَمْ يَرَهَا فِي الْوَخْشِ وَلَمْ يَجُزْ اشْتِرَاطَ النَّقْدِ فِي ذَلِكَ - وَرَأَى نَفَقَتَهَا مُدَّةَ الْمُوَاضَعَةِ عَلَى الْبَائِعِ.

وَرَأَى مَا حَدَثَ فِيهَا مُدَّةَ الْمُوَاضَعَةِ عَلَى الْبَائِعِ، وَرَأَى الْمُوَاضَعَةَ فِي الْبِكْرِ - وَلَمْ يَرَ مَعَ هَذَا كُلِّهِ أَنَّ الْمُوَاضَعَةَ تُبْرِئُ مِنْ الْحَمْلِ - وَهَذِهِ أَقْوَالٌ لَا تُعْرَفُ عَنْ أَحَدٍ قَبْلَهُ، وَهِيَ مَعَ ذَلِكَ فِي غَايَةِ الْمُنَاقَضَةِ وَالْفَسَادِ.

وَأَوَّلُ ذَلِكَ - إيجَابُهُ فَرْضًا شَرْطَ الْمُوَاضَعَةِ، وَهُوَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ وَأَبْطَلَ شَرْطَ نَقْدِ الثَّمَنِ وَهُوَ حَقٌّ لِلْبَائِعِ مَأْمُورٌ فِي الْقُرْآنِ بِإِيفَائِهِ إيَّاهُ إذْ يَقُولُ اللَّهُ تَعَالَى: {وَلا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ} [الأعراف: ٨٥] وقَوْله تَعَالَى: {إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

وَثَانِيهَا - فَرَّقَهُ بِتَفْرِيقِهِ فِي ذَلِكَ بَيْنَ الْعَالِيَةِ وَالْوَخْشِ وَهَذَا عَجَبٌ جِدًّا؟ أَتَرَاهُمْ يَجْهَلُونَ أَنَّ الْوَخْشَ يَحْمِلُ كَمَا تَحْمِلُ الْعَالِيَةُ وَلَا فَرْقَ.

وَثَالِثُهَا - إيجَابُهُ النَّفَقَةَ عَلَى الْبَائِعِ وَهَذَا أَكْلُ مَالٍ بِالْبَاطِلِ، وَلَا يَخْلُو أَنْ يَكُونَ صَحَّ بَيْنَهُمَا بَيْعٌ أَوْ لَمْ يَصِحَّ، فَإِنْ كَانَ صَحَّ بَيْنَهُمَا بَيْعٌ فَأَيُّ شَيْءٍ يُوجِبُ النَّفَقَةَ عَلَى الْبَائِعِ عَلَى أَمَةِ غَيْرِهِ، وَإِنْ كَانَ لَمْ يَصِحَّ بَيْنَهُمَا بَيْعٌ فَلِأَيِّ مَعْنًى أَوْجَبَ الْمُوَاضَعَةَ.

فَإِنْ قَالُوا: بِمَا ظَهَرَ بِهَا حَمْلٌ فَبَطَلَ الْبَيْعُ؟ قُلْنَا: هَذَا لَا يُؤْمَنُ مِنْ عِنْدِكُمْ بَعْدَ الْحَيْضَةِ فِي الْمُوَاضَعَةِ فَأَوْجَبُوا فِي ذَلِكَ نَفَقَتَهَا عَلَى الْبَائِعِ وَإِلَّا فَقَدْ ظَهَرَ فَسَادُ قَوْلِكُمْ يَقِينًا، وَكَذَلِكَ لَا يُؤْمَنُ ظُهُورُ عَيْبٍ يُوجِبُ الرَّدَّ وَلَا فَرْقَ.

[14] **Qur'an references (L35740):** Qur'an 7:85 (Al-A'raf); Qur'an 11:85 (Hud); Qur'an 26:183 (Ash-Shu'ara); Qur'an 4:29 (An-Nisa).

larly, there is no assurance against the emergence of a defect that obligates the right to return, and no distinction is made.

L35746 The fourth is the obligation upon the seller for whatever occurred during the period of mutual agreement, thereby binding him to what we have established regarding the seller's liability to cover expenses, uniformly and without exception.

وَرَابِعُهَا - إيجَابُهُ مَا حَدَثَ فِيهَا مُدَّةَ الْمُوَاضَعَةِ عَلَى الْبَائِعِ فَيَلْزَمُهُ فِيهَا مَا أَلْزَمْنَاهُ فِي إيجَابِهِ النَّفَقَةَ عَلَى الْبَائِعِ سَوَاءً سَوَاءً.

L35747 It has been narrated to us through the chain of Hammad ibn Salamah: from Ali ibn Yazid, from Ayyub ibn Abdullah al-Lakhmi, from Ibn Umar, who said: "A slave girl fell into my share during the Battle of Jalula - her neck was like a silver pitcher." Ibn Umar said: "I could not restrain myself from kissing her while people were watching." He thereby permitted sexual relations before the waiting period (istibra') - and success comes from Allah, the Exalted.

وَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا عَلِيُّ بْنُ يَزِيدَ عَنْ أَيُّوبَ بْنِ عَبْدِ اللَّهِ اللَّخْمِيِّ عَنْ ابْنِ عُمَرَ قَالَ: وَقَعَتْ فِي سَهْمِي جَارِيَةٌ يَوْمَ جَلُولَاءَ كَأَنَّ عُنُقَهَا إبْرِيقُ فِضَّةٍ، قَالَ ابْنُ عُمَرَ: فَمَا مَلَكْت نَفْسِي أَنْ جَعَلْت أُقَبِّلُهَا - وَالنَّاسُ يَنْظُرُونَ - فَقَدْ أَجَازَ التَّلَذُّذَ قَبْلَ الِاسْتِبْرَاءِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L35748 **Issue: He retroactively claimed paternity of a child born to his female servant, whom he later sold, without having previously acknowledged through clear legal proof that he had intercourse with her.**

[مَسْأَلَةٌ اسْتَلْحَقَ وَلَدَ خَادِمٍ لَهُ بَاعَهَا وَلَمْ يَكُنْ عَرَفَ قَبْلَ ذَلِكَ بِبَيِّنَةٍ أَنَّهُ وَطِئَهَا]

L35749–35751 2008: Issue: If someone claims paternity of a child born to his female slave whom he sold, without having established through conclusive proof or his own admission prior to his sale of her that he had intercourse with her, his claim is neither accepted nor is the child attributed to him—regardless of whether he sold her while pregnant, the pregnancy occurred after his sale of her, he sold her without her child, or he sold her child. Excluding her—all of that is the same. If it is established by evidence from just witnesses that he had intercourse with her prior to selling her, or by his acknowledgment before selling her of having done so, and if she is found pregnant with a pregnancy whose origin indisputably preceded his sale of her, the sale is annulled in all cases. The *umm al-walad* is returned to him, and her child is legally ascribed to him—whether he likes or dislikes, acknowledges or denies.

٢٠٠٨ - مَسْأَلَةٌ: وَمَنْ اسْتَلْحَقَ وَلَدَ خَادِمٍ لَهُ بَاعَهَا وَلَمْ يَكُنْ عَرَفَ قَبْلَ ذَلِكَ بِبَيِّنَةٍ أَنَّهُ وَطِئَهَا، أَوْ بِإِقْرَارٍ مِنْهُ قَبْلَ بَيْعِهِ لَهَا بِوَطْئِهِ إيَّاهَا - لَمْ يُصَدَّقْ وَلَمْ يُلْحَقْ بِهِ سَوَاءٌ بَاعَهَا حَامِلًا، أَوْ حَدَثَ الْحَمْلُ بِهَا بَعْدَ بَيْعِهِ لَهَا، أَوْ بَاعَهَا دُونَ وَلَدِهَا، أَوْ بَاعَ وَلَدَهَا دُونَهَا - كُلُّ ذَلِكَ سَوَاءٌ، فَلَوْ صَحَّ بِبَيِّنَةِ عَدْلٍ أَنَّهُ وَطِئَهَا قَبْلَ بَيْعِهِ لَهَا، أَوْ بِأَنَّهُ أَقَرَّ قَبْلَ أَنْ يَبِيعَهَا بِوَطْئِهِ لَهَا، فَإِنْ ظَهَرَ بِهَا حَمْلٌ كَانَ مَبْدَؤُهُ قَبْلَ بَيْعِهِ لَهَا - بِلَا شَكٍّ - فُسِخَ الْبَيْعُ بِكُلِّ حَالٍ، وَرُدَّتْ إلَيْهِ أُمُّ الْوَلَدِ، وَلَحِقَ بِهِ وَلَدُهَا - أَحَبَّ أَمْ كَرِهَ - أَقَرَّ بِهِ أَوْ لَمْ يُقِرَّ.

L35752 And every female slave owned by a man, if it is established through evidence or his own admission that he had intercourse with her, then whatever child

she bears is attributed to him - whether he likes it or not. He cannot gain any advantage by asserting the observance of the waiting period (istibrāʾ) or by claiming withdrawal. And success comes only from Allah, the Exalted.

L35753 The proof of that is the statement of Allah, the Almighty: {No soul earns [anything] except against itself} [Al-An'am 6:164], and the statement of the Messenger of Allah—peace and blessings be upon him: "Indeed, your blood and your wealth are inviolable to you." There is no doubt that the ownership of the female slave, or the ownership of her child, or the ownership of both has been confirmed for the buyer. Hence, Allah, the Almighty, has prohibited accepting the seller's claim to invalidate the buyer's ownership based on his own ownership, because he is acquiring at the expense of another and claiming against the wealth of another without evidence.[15]

L35754 Malik said: If he sells her while pregnant and then claims her child is his, the sale is rescinded. He added: But if he makes this claim after she has been emancipated, neither the emancipation nor the emancipator's act of purchasing her is rescinded.

L35755 Abu Muhammad said: This is an evident contradiction, for if the claimant's assertion is accepted—thereby annulling a Muslim's ownership and his contract—then it becomes obligatory to accept his claim and thereby annul the emancipation of a female slave, with no distinction between the two cases. If it is impermissible to validate his claim in annulling emancipation, then it is equally impermissible to validate his claim in annulling a Muslim's contract and invalidating his ownership. By Allah the Exalted we seek strength.

L35756 If they ask: "Is a sale annulled due to a defect?" We reply: "Similarly, manumission is annulled due to [another's] entitlement." As for the permissibility of intercourse with her while she is under his ownership, or the validity of his acknowledgment of intercourse at that time.

L35757 Thus, the proof of our statement regarding the child's legal affiliation to him, and the annulment of manumission, sale, and procreation in these two matters is:

وَكُلُّ أَمَةٍ لِإِنْسَانٍ صَحَّ أَنَّهُ وَطِئَهَا بِبَيِّنَةٍ، أَوْ بِإِقْرَارٍ مِنْهُ، فَإِنَّهُ يَلْحَقُ بِهِ مَا وَلَدَتْ - أَحَبَّ أَمْ كَرِهَ - وَلَا يَنْتَفِعُ بِأَنْ يَدَّعِيَ اسْتِبْرَاءً، أَوْ بِدَعْوَاهُ الْعَزْلَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَلَا شَكَّ فِي أَنَّ الْأَمَةَ قَدْ صَحَّ مِلْكُهَا، أَوْ مِلْكُ وَلَدِهَا، أَوْ مِلْكُهُمَا لِلْمُشْتَرِي فَقَدْ مَنَعَ اللَّهُ عَزَّ وَجَلَّ مِنْ قَبُولِ دَعْوَى الْبَائِعِ فِي إبْطَالِ مِلْكِ الْمُشْتَرِي بِالْمِلْكِ، لِأَنَّهُ كَاسِبٌ عَلَى غَيْرِهِ، وَمُدَّعٍ فِي مَالِ سِوَاهُ بِلَا بَيِّنَةٍ.

وَقَالَ مَالِكٌ: إنْ بَاعَهَا حَامِلًا ثُمَّ ادَّعَى أَنَّ وَلَدَهَا مِنْهُ فُسِخَ الْبَيْعُ - قَالَ: فَلَوْ ادَّعَاهُ وَقَدْ أُعْتِقَتْ لَمْ يُفْسَخْ الْعِتْقُ وَلَا ابْتِيَاعُ الْمُعْتِقِ لَهَا.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ مُنَاقَضَةٌ لَا خَفَاءَ بِهَا، لِأَنَّهُ إذَا صُدِّقَ فِي دَعْوَاهُ فَفُسِخَ بِهَا مِلْكُ مُسْلِمٍ وَصَفْقَتُهُ فَوَاجِبٌ أَنْ يُصَدَّقَ وَيُفْسَخَ بِهَا عِتْقُ الْأَمَةِ وَلَا فَرْقَ، وَلَئِنْ لَمْ يَجُزْ أَنْ يُصَدَّقَ فِي فَسْخِ الْعِتْقِ فَإِنَّهُ لَا يَجُوزُ أَنْ يُصَدَّقَ فِي فَسْخِ صَفْقَةِ مُسْلِمٍ وَإِبْطَالِ مِلْكِهِ - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

فَإِنْ قَالُوا: الْبَيْعُ يُفْسَخُ بِالْعَيْبِ؟ قُلْنَا: وَالْعِتْقُ يُفْسَخُ بِالِاسْتِحْقَاقِ، وَأَمَّا إذَا صَحَّ وَطْؤُهُ لَهَا إذَا كَانَتْ فِي مِلْكِهِ أَوْ صَحَّ حِينَئِذٍ إقْرَارُهُ بِوَطْئِهَا.

فَبُرْهَانُ قَوْلِنَا فِي لِحَاقِ الْوَلَدِ بِهِ، وَفَسْخِ الْعِتْقِ وَالْبَيْعِ وَالْإِيلَادِ فِيهِمَا -:

[15] **Qur'an references (L35753):** Qur'an 6:164 (Al-An'am).

L35758 What has been narrated to us through Abu Dawud al-Sijistani's chain: Musaddad narrated from Sufyan ibn Uyaynah, who narrated from al-Zuhri, from Urwah, from Aisha, the Mother of the Believers, who said: Sa'd ibn Abi Waqqas and Abd ibn Zam'ah disputed before the Messenger of Allah (peace and blessings be upon him) regarding the son of Zam'ah's concubine. Ibn Zam'ah said: "He is my brother - the son of my father's concubine, born on my father's bed." The Messenger of Allah (peace and blessings be upon him) ruled: "The child belongs to the [marital] bed. Observe hijab from him, O Sawdah. He is your brother, O Abd."

مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ أَنَا مُسَدَّدٌ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: اخْتَصَمَ سَعْدُ بْنُ أَبِي وَقَّاصٍ وَعَبْدُ بْنُ زَمْعَةَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ابْنِ أَمَةِ زَمْعَةَ فَقَالَ ابْنُ زَمْعَةَ: أَخِي ابْنُ أَمَةِ أَبِي وُلِدَ عَلَى فِرَاشِ أَبِي فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْوَلَدُ لِلْفِرَاشِ احْتَجِبِي مِنْهُ يَا سَوْدَةُ هُوَ أَخُوكَ يَا عَبْدُ» .

L35759–35760 I am Ahmad ibn Qasim. My father Qasim ibn Muhammad ibn Qasim narrated to me, from my grandfather Qasim ibn Asbagh. I am Ahmad ibn Zuhayr ibn Harb. My father narrated to me, from Jarir, from al-Mughirah ibn Miqsam, from Abu Wa'il, from Abdullah ibn Mas'ud, from the Prophet—peace and blessings of Allah be upon him—who said: "The child is ascribed to the legal husband."

أَنَا أَحْمَدُ بْنُ قَاسِمٍ أَنَا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ ثنا جَدِّي قَاسِمُ بْنُ أَصْبَغَ أَنَا أَحْمَدُ ابْنُ زُهَيْرِ بْنِ حَرْبٍ أَنَا أَبِي أَنَا جَرِيرٌ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ أَبِي وَائِلٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْوَلَدُ لِصَاحِبِ الْفِرَاشِ» .

L35761 Narrated by Humam ibn Ahmad, from Abbas ibn Asbagh, from Muhammad ibn Abd al-Malik ibn Ayman, from Bakr ibn Hammad al-Tamaranti, from Musaddad, from Yahya ibn Sa'id al-Qattan, from Shu'bah, from Muhammad ibn Ziyad, that he heard Abu Hurairah narrating from the Prophet—peace and blessings be upon him and his family, and grant him peace—that he said: "The child belongs to the one to whom the bed belongs."

نا حُمَامُ بْنُ أَحْمَدَ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا بَكْرُ بْنُ حَمَّادٍ التَّمَرَنْتِيُّ أَنَا مُسَدَّدٌ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ شُعْبَةَ عَنْ مُحَمَّدِ بْنِ زِيَادٍ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يُحَدِّثُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ: «الْوَلَدُ لِصَاحِبِ الْفِرَاشِ» .

L35762 Abu Muhammad said: The Messenger of Allah (peace be upon him) ruled that the child belongs to the owner of the bed after his death in the case of a female slave whose master's acknowledgment of that child was not preserved. Had he acknowledged it, Abd Ibn Zamʿah would not have needed anything other than that.

قَالَ أَبُو مُحَمَّدٍ: فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْوَلَدِ لِصَاحِبِ الْفِرَاشِ بَعْدَ مَوْتِهِ فِي أَمَةٍ لَمْ يَحْفَظْ إقْرَارَ سَيِّدِهَا بِذَلِكَ الْوَلَدِ، وَلَوْ أَقَرَّ بِهِ لَمْ يَحْتَجَّ عَبْدُ بْنُ زَمْعَةَ لِسِوَى ذَلِكَ.

L35763 The Prophet (peace and blessings be upon him) ruled that a female slave is a lawful conjugal partner and that the child belongs to her master. She is only deemed a lawful partner when valid evidence establishes that her master had intercourse with her, or when evidence confirms his explicit acknowledgment of paternity.

وَحَكَمَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنَّ الْأَمَةَ فِرَاشٌ وَأَنَّ الْوَلَدَ لِصَاحِبِ الْفِرَاشِ، وَإِنَّمَا تَكُونُ الْأَمَةُ فِرَاشًا إذَا صَحَّ أَنَّ سَيِّدَهَا افْتَرَشَهَا بِبَيِّنَةٍ بِذَلِكَ، أَوْ بِبَيِّنَةٍ بِإِقْرَارِهِ بِذَلِكَ.

L35764 The ruling of the Prophet (peace and blessings be upon him) concerning Sawdah, the Mother of the Believers, secluding herself from him was never rooted in imposing hardship upon her, nor does a sister's seclusion from her brother negate their siblinghood in the slightest. For it is not obligatory upon a woman to see her brother; her duty is solely to uphold familial bonds with him. The Prophet (PBUH) never commanded her to sever ties with him—and whoever claims otherwise has lied. He (PBUH) said: "He is your brother, O Servant [of God]," and this suffices for those of understanding.

وَلَيْسَ أَمْرُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - سَوْدَةَ أُمَّ الْمُؤْمِنِينَ بِالِاحْتِجَابِ مِنْهُ بِكَادِحٍ فِي ذَلِكَ أَصْلًا وَلَا احْتِجَابُ الْأُخْتِ عَنْ أَخِيهَا بِمُبْطِلٍ أُخُوَّتَهُ لَهَا أَلْبَتَّةَ؛ لِأَنَّهُ لَيْسَ فَرْضًا عَلَى الْمَرْأَةِ رُؤْيَةُ أَخِيهَا لَهَا، إنَّمَا الْفَرْضُ عَلَيْهَا صِلَةُ رَحِمِهِ فَقَطْ، وَلَمْ يَأْمُرْهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَطُّ بِأَنْ لَا تَصِلَهُ - وَمَنْ ادَّعَى ذَلِكَ فَقَدْ كَذَبَ، وَقَدْ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «هُوَ أَخُوكَ يَا عَبْدُ» وَهَذَا يَكْفِي مَنْ لَهُ عَقْلٌ.

L35765 Some of those who carelessly utter falsehood in matters of religion have claimed: "The sole meaning of his statement - peace be upon him - 'He is yours, O servant' is that he is your servant?"

وَقَدْ قَالَ بَعْضُ مَنْ لَا يُبَالِي بِمَا أَطْلَقَ بِهِ لِسَانَهُ مِنْ الْكَذِبِ فِي الدِّينِ: إنَّمَا مَعْنَى قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «هُوَ لَكَ يَا عَبْدُ» أَيْ هُوَ عَبْدُك؟

L35766 So we said: The established [ruling] is that he stated "He is your brother" as we presented. Even if he had decreed him to be a slave, she would not be required to observe hijab from him by the explicit text. So be appalled at the severity of these people's stance. Thus, what we said is established explicitly - and all praise belongs to Allah, Lord of the worlds.[16]

فَقُلْنَا: الثَّابِتُ أَنَّهُ قَالَ «هُوَ أَخُوكَ» كَمَا أَوْرَدْنَا، وَلَوْ قَضَى بِهِ عَبْدًا لَمْ يَلْزَمْهَا أَنْ تَحْتَجِبَ عَنْهُ بِنَصِّ الْقُرْآنِ، فَاعْجَبُوا لِهَوْلِ هَؤُلَاءِ الْقَوْمِ فَوَجَبَ مَا قُلْنَا نَصًّا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L35767 And if it is confirmed that the pregnancy is from him, then it is obligatory to annul the sale of the free person, the sale of the umm al-walad, annulment of the emancipation by the one who emancipated them both, and annulment of the establishment of parentage for the one who fathered her child thereafter—and with Allah, the Most High, is success.

وَإِذَا صَحَّ أَنَّ الْحَمْلَ مِنْهُ فَوَاجِبٌ فَسْخُ بَيْعِ الْحُرِّ، وَبَيْعُ أُمِّ الْوَلَدِ، وَفَسْخُ عِتْقِ مَنْ أَعْتَقَهُمَا، وَفَسْخُ إيلَادِ مَنْ أَوْلَدَهَا بَعْدَ ذَلِكَ، - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -.

L35768–35770 And with this came the report from the Salaf: It has been reported to us through the chain of Abd al-Razzaq, who said: Ma'mar and Ibn Jurayj—both of them—narrated from al-Zuhri, from Salim ibn Abd Allah ibn Umar, from his father, from Umar ibn al-Khattab, who said: "It has reached me that some men among you practice withdrawal. When the woman becomes pregnant, the man says: 'This child is not mine.' By Allah, no man among you who does this will be brought before me except that I will assign the child to him! Let whoever wishes practice withdrawal do so, and whoever wishes not to, let him abstain."

وَبِهَذَا جَاءَ الْأَثَرُ عَنْ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ، وَابْنُ جُرَيْجٍ كِلَاهُمَا عَنْ الزُّهْرِيِّ عَنْ سَالِمِ ابْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: بَلَغَنِي أَنَّ رِجَالًا مِنْكُمْ يَعْزِلُونَ، فَإِذَا حَمَلَتْ الْجَارِيَةُ قَالَ: لَيْسَ مِنِّي، وَاَللَّهِ لَا أُوتَى بِرَجُلٍ مِنْكُمْ فَعَلَ ذَلِكَ إلَّا أَلْحَقْت بِهِ الْوَلَدَ فَمَنْ شَاءَ فَلْيَعْزِلْ وَمَنْ شَاءَ لَا يَعْزِلُ.

[16] **Qur'an references (L35766):** Qur'an 37:182 (As-Saffat).

L35771 From the narration of Abd al-Razzaq, from Abdullah ibn Umar, from Nafi', from Safiyya bint Abi Ubayd, that Umar ibn al-Khattab said: "Whoever among you has relations with his slave woman, let him free her, for none of you would admit to having relations with his slave woman except when the child is attributed to him."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ صَفِيَّةَ بِنْتِ أَبِي عُبَيْدٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: مَنْ كَانَ مِنْكُمْ يَطَأُ جَارِيَتَهُ فَلْيُحْصِنْهَا فَإِنَّ أَحَدَكُمْ لَا يُقِرُّ بِإِصَابَتِهِ جَارِيَتَهُ إِلَّا أَلْحَقَتْ بِهِ الْوَلَدَ.

L35772 We are not aware of any disagreement by a Companion [of the school] on this matter except for what has been narrated to us through the chain of Muḥammad ibn ʿAbd Allāh ibn Yazīd al-Muqrī, who said: I [heard] from Sufyān ibn ʿUyaynah, from Abū al-Zinād, from Khārijah ibn Zayd ibn Thābit that his father had a slave girl with whom he practiced coitus interruptus, yet she came to him with a pregnancy. He denied this, and he mentioned the ḥadīth.

وَمَا نَعْلَمُ فِي هَذَا خِلَافًا لِصَاحِبٍ إِلَّا مَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أَبِي الزِّنَادِ عَنْ خَارِجَةَ بْنِ زَيْدِ بْنِ ثَابِتٍ أَنَّ أَبَاهُ كَانَتْ لَهُ جَارِيَةٌ يَعْزِلُ عَنْهَا وَأَنَّهَا جَاءَتْهُ بِحَمْلٍ فَأَنْكَرَ ذَلِكَ وَذَكَرَ الْحَدِيثَ.

L35773 And from the path of Abd al-Razzaq, from Sufyan al-Thawri, from Ibn Dhakwan—he being Abu al-Zinad—from Kharijah ibn Zayd ibn Thabit, who said: Zayd ibn Thabit would have relations with a female slave he owned and practiced withdrawal. When she gave birth, he disavowed the child, flogged her one hundred times, and thereafter emancipated the boy.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنِ ابْنِ ذَكْوَانَ - هُوَ أَبُو الزِّنَادِ - عَنْ خَارِجَةَ بْنِ زَيْدِ بْنِ ثَابِتٍ قَالَ: كَانَ زَيْدُ بْنُ ثَابِتٍ يَقَعُ عَلَى جَارِيَةٍ لَهُ، وَكَانَ يَعْزِلُهَا فَلَمَّا وَلَدَتْ انْتَفَى مِنْ وَلَدِهَا وَضَرَبَهَا مِائَةً ثُمَّ أَعْتَقَ الْغُلَامَ.

L35774 From the chain of Abd al-Razzāq via Muhammad ibn Umar, and Amr ibn Dinar informed me that Ibn Abbas had intercourse with his female slave—with whom he practiced *coitus interruptus*—and he disavowed paternity of her child.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ عُمَرَ، وَأَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ أَنَّ ابْنَ عَبَّاسٍ وَقَعَ عَلَى جَارِيَةٍ لَهُ - وَكَانَ يَعْزِلُهَا - فَانْتَفَى مِنْ وَلَدِهَا.

L35775 Abu Muhammad said. Abu Hanifah stated that the child of a slave woman is not legally affiliated with her master—whether she is an *umm walad* or not—except through his explicit claim; otherwise, the child is disavowed by him.

قَالَ أَبُو مُحَمَّدٍ: وَقَالَ أَبُو حَنِيفَةَ: لَا يَلْحَقُ وَلَدُ الْأَمَةِ بِسَيِّدِهَا سَوَاءٌ كَانَتْ أُمَّ وَلَدٍ أَوْ لَمْ تَكُنْ إِلَّا بِأَنْ يَدَّعِيَهُ وَإِلَّا فَهُوَ مُنْتَفٍ عَنْهُ.

L35776 Malik said: The child is legally ascribed to him as his offspring due to his intercourse with her, unless he substantiates his claim that she observed the *istibrāʾ* (waiting period) and afterward refrained from intercourse with her.

وَقَالَ مَالِكٌ: يَلْحَقُ بِهِ لِوَطْئِهِ إِيَّاهَا إِلَّا أَنْ يَدَّعِيَ أَنَّهَا اسْتَبْرَأَتْ ثُمَّ لَمْ يَطَأْهَا.

L35777 Abu Muhammad said: All that has been narrated in this chapter from the Companions contradicts the opinions of the two of them.

قَالَ أَبُو مُحَمَّدٍ: كُلُّ مَا رُوِيَ فِي هَذَا الْبَابِ عَنِ الصَّحَابَةِ مُخَالِفٌ لِقَوْلِهِمَا.

L35778 The height of astonishment is that these two opinions are entirely without any evidence—neither from the Quran, nor from the Sunnah, nor from a

weak narration, nor from the statement of a Companion, nor from analogy, nor from any opinion with a valid basis.

L35779 What is utterly astonishing is that Mālik does not consider the waiting period to ascertain pregnancy (istibrā') to prevent conception, yet here he maintains it denies paternity through it—and this is even more astonishing than the original amazement?

L35780 **Legal Issue: In both valid and invalid marriage contracts, the child is legally attributed to the unaware party.**

L35781–35783 Issue 2009: A child's lineage is attributed to both a valid marriage and a defective contract concluded by an ignorant party, and not... The ruling applies to the knowledgeable one due to his invalidity, applies to valid ownership, and to ownership acquired through a void contract for the ignorant one. It does not apply to the knowledgeable one despite his invalidity, because the Messenger of Allah (peace and blessings be upon him) attributed children to those born from the women they married and those they owned in the pre-Islamic era. There is no doubt that among them were invalid marriages and invalid ownerships, yet he entirely rejected children born of fornication by his statement (peace and blessings be upon him): "The adulterer is to be stoned." Thus, our position is confirmed.

L35784 As for the one aware of the invalidity of the marriage contract or the valid ownership contract, he is deemed a fornicator liable to the ḥadd punishment, and the child is not affiliated with him. The child is affiliated with the woman if she committed fornication and conceived him, but not with the man. The child inherits from his mother, and she inherits from him, because the Prophet (peace and blessings be upon him) ruled in the liʿān procedure that the child is affiliated with the woman and negated affiliation from the man.

L35785 The woman in establishing a child's legal affiliation to herself is equivalent to the man. Rather, her claim is stronger in this matter due to what we mentioned - that the child is affiliated with her whether from lawful or

وَالْعَجَبُ كُلُّهُ أَنَّ هَذَيْنِ قَوْلَانِ بِلَا دَلِيلٍ أَصْلًا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ.

وَالْعَجَبُ كُلُّهُ أَنَّ مَالِكًا لَا يَرَى الِاسْتِبْرَاءَ يَمْنَعُ مِنَ الْحَمْلِ، ثُمَّ يَرَاهُ هَاهُنَا يَنْفِي النَّسَبَ بِهِ - وَهَذَا أَعْجَبُ مِنَ الْعَجَبِ؟ .

[مَسْأَلَةُ الْوَلَدُ يَلْحَقُ فِي النِّكَاحِ الصَّحِيحِ وَالْعَقْدِ الْفَاسِدِ بِالْجَاهِلِ]

٢٠٠٩ - مَسْأَلَةٌ: وَالْوَلَدُ يَلْحَقُ فِي النِّكَاحِ الصَّحِيحِ، وَالْعَقْدِ الْفَاسِدِ بِالْجَاهِلِ، وَلَا يَلْحَقُ بِالْعَالِمِ بِفَسَادِهِ، وَيَلْحَقُ فِي الْمِلْكِ الصَّحِيحِ، وَفِي الْمُتَمَلَّكَةِ بِعَقْدٍ فَاسِدٍ بِالْجَاهِلِ، وَلَا يَلْحَقُ بِالْعَالِمِ بِفَسَادِهِ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَلْحَقَ النَّاسَ بِمَنْ وُلِدُوا مِمَّنْ تَزَوَّجُوا مِنَ النِّسَاءِ، وَمِمَّنْ تَمَلَّكُوا فِي الْجَاهِلِيَّةِ، وَلَا شَكَّ فِي أَنَّهُ كَانَ فِيهِمْ مِنْ نِكَاحِهِ فَاسِدٌ، وَمِلْكُهُ فَاسِدٌ، وَنَفَى أَوْلَادَ الزِّنَى جُمْلَةً بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «وَلِلْعَاهِرِ الْحَجَرُ» فَصَحَّ مَا قُلْنَا.

وَأَمَّا الْعَالِمُ بِفَسَادِ عَقْدِ النِّكَاحِ، أَوْ عَقْدِ الْمِلْكِ، فَهُوَ عَاهِرٌ عَلَيْهِ الْحَدُّ، فَلَا يَلْحَقُ بِهِ الْوَلَدُ، وَالْوَلَدُ يَلْحَقُ بِالْمَرْأَةِ إِذَا زَنَتْ وَحَمَلَتْ بِهِ، وَلَا يَلْحَقُ بِالرَّجُلِ، وَيَرِثُ أُمَّهُ وَتَرِثُهُ؛ لِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَلْحَقَ الْوَلَدَ بِالْمَرْأَةِ فِي اللِّعَانِ وَنَفَاهُ عَنِ الرَّجُلِ.

unlawful relations - and because there is no doubt regarding her motherhood when pregnancy is confirmed. And success comes only from Allah, the Most High.

وَالْمَرْأَةُ فِي اسْتِلْحَاقِ الْوَلَدِ بِنَفْسِهِ كَالرَّجُلِ، بَلْ هِيَ أَقْوَى سَبَبًا فِي ذَلِكَ لِمَا ذَكَرْنَا مِنْ أَنَّهُ يَلْحَقُ بِهَا مِنْ حَلَالٍ كَانَ أَوْ مِنْ حَرَامٍ، وَلِأَنَّهُ لَا شَكَّ مِنْهَا إذَا صَحَّ أَنَّهَا حَمَلَتْهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Custody: The mother has greater priority in caring for a young male child and a young female child.

[الْحَضَانَةُ] [مَسْأَلَةٌ الْأُمُّ أَحَقُّ بِحَضَانَةِ الْوَلَدِ الصَّغِيرِ وَالِابْنَةِ الصَّغِيرَةِ]

L35786–35787

2010. Issue: The mother has the greatest right to custody of the young male child and young female child until the female reaches menstruation or the male reaches nocturnal emission or pubic hair growth—provided they achieve discernment and physical soundness. This applies equally whether she is a slave woman or free, married or unmarried, and regardless of whether the father has left that place or remains. The grandmother is a mother.

٢٠١٠ - مَسْأَلَةٌ: الْأُمُّ أَحَقُّ بِحَضَانَةِ الْوَلَدِ الصَّغِيرِ وَالِابْنَةِ الصَّغِيرَةِ حَتَّى يَبْلُغَا الْمَحِيضَ، أَوْ الِاحْتِلَامَ، أَوْ الْإِنْبَاتَ مَعَ التَّمْيِيزِ، وَصِحَّةِ الْجِسْمِ - سَوَاءٌ كَانَتْ أَمَةً أَوْ حُرَّةً، تَزَوَّجَتْ أَوْ لَمْ تَتَزَوَّجْ، رَحَلَ الْأَبُ عَنْ ذَلِكَ الْبَلَدِ أَوْ لَمْ يَرْحَلْ - وَالْجَدَّةُ أُمٌّ.

L35789

If the mother is not trustworthy in her religion or worldly affairs, the interests of the minor boy or girl must be assessed by adopting the most precautionary approach in their religious matters, then their worldly matters. Precautionary care for them in both aspects is incumbent upon the father, brother, sister, paternal aunt, maternal aunt, paternal uncle, or maternal uncle - with blood relatives always taking precedence over others in every circumstance. Religion is prioritized over worldly matters.

فَإِنْ لَمْ تَكُنْ الْأُمُّ مَأْمُونَةً فِي دِينِهَا وَدُنْيَاهَا نُظِرَ لِلصَّغِيرِ أَوْ الصَّغِيرَةِ بِالْأَحْوَطِ فِي دِينِهِمَا ثُمَّ دُنْيَاهُمَا، فَحَيْثُمَا كَانَتْ الْحِيَاطَةُ لَهُمَا فِي كِلَا الْوَجْهَيْنِ وَجَبَتْ هُنَالِكَ عِنْدَ الْأَبِ، أَوْ الْأَخِ، أَوْ الْأُخْتِ، أَوْ الْعَمَّةِ، أَوْ الْخَالَةِ، أَوْ الْعَمِّ، أَوْ الْخَالِ - وَذُو الرَّحِمِ أَوْلَى مِنْ غَيْرِهِمْ بِكُلِّ حَالٍ، وَالدِّينُ مُغَلَّبٌ عَلَى الدُّنْيَا.

L35790

If they are equal in suitability of condition, then the mother and the grandmother, followed by the father and the grandfather, then the brother and the sister, then the closest relative, then the next closest.

فَإِنْ اسْتَوَوْا فِي صَلَاحِ الْحَالِ فَالْأُمُّ وَالْجَدَّةُ، ثُمَّ الْأَبُ وَالْجَدُّ، ثُمَّ الْأَخُ وَالْأُخْتُ، ثُمَّ الْأَقْرَبُ فَالْأَقْرَبُ.

L35791

The disbelieving mother has greater custody rights over the two young children during the breastfeeding period. Once they reach the level of understanding in terms of age and self-sufficiency, no custody is given to a disbelieving woman or a sinful woman.

وَالْأُمُّ الْكَافِرَةُ أَحَقُّ بِالصَّغِيرَيْنِ مُدَّةَ الرَّضَاعِ، فَإِذَا بَلَغَا مِنْ السِّنِّ وَالِاسْتِغْنَاءِ مَبْلَغَ الْفَهْمِ فَلَا حَضَانَةَ لِكَافِرَةٍ وَلَا لِفَاسِقَةٍ.

L35792

The evidence for this is the statement of Allah, the Exalted and Majestic: {And relatives by kinship are closer to one another in Allah's decree} [Al-Anfāl:75]. As for the mother, the child is in her custody because he is in her womb and then under her custody during the breastfeeding period, by the

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَأُولُو الْأَرْحَامِ بَعْضُهُمْ أَوْلَى بِبَعْضٍ فِي كِتَابِ اللَّهِ} [الأنفال: ٧٥] فَأَمَّا الْأُمُّ فَإِنَّهُ فِي يَدِهَا، لِأَنَّهُ فِي بَطْنِهَا ثُمَّ فِي حِجْرِهَا مُدَّةَ الرَّضَاعِ بِنَصِّ

explicit statement of Allah, the Exalted and Majestic: {Mothers shall nurse their children for two complete years} [Al-Baqarah:233]. Therefore, it is impermissible to move the child or relocate the mother from the position Allah the Most High has ordained for them without a textual ruling. No authentic textual evidence exists stating that the mother's custody right is nullified if she remarries, nor that her custodial right ceases if the father moves away from that city.[17]

قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ} [البقرة: ٢٣٣] فَلَا يَجُوزُ نَقْلُهُ أَوْ نَقْلُهَا عَنْ مَوْضِعٍ جَعَلَهُمَا اللَّهُ تَعَالَى فِيهِ بِغَيْرِ نَصٍّ، وَلَمْ يَأْتِ نَصٌّ صَحِيحٌ قَطُّ بِأَنَّ الْأُمَّ إِنْ تَزَوَّجَتْ يَسْقُطُ حَقُّهَا فِي الْحَضَانَةِ، وَلَا بِأَنَّ الْأَبَ إِنْ رَحَلَ عَنْ ذَلِكَ الْبَلَدِ سَقَطَ حَقُّ الْأُمِّ فِي الْحَضَانَةِ.

L35793–35794 We were informed via Muslim's narration: Qutaybah ibn Saʿīd and Zuhayr ibn Ḥarb both said together: We were told by Jarīr ibn Ḥāzim, who reported from ʿUmārah ibn al-Qaʿqāʿ, from Abū Zurʿah, from Abū Hurayrah (may Allah be pleased with him), who said: A man asked, "O Messenger of Allah" – peace and blessings be upon him – "Who is most deserving of my good treatment?" He replied: "Your mother." The man asked: "Then who?" He said: "Your mother." The man asked again: "Then who?" He said: "Your mother." The man inquired once more: "Then who?" He responded: "Your father."

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، وَزُهَيْرُ بْنُ حَرْبٍ قَالَا جَمِيعًا: أَنَا جَرِيرُ بْنُ حَازِمٍ عَنْ عُمَارَةَ بْنِ الْقَعْقَاعِ عَنْ أَبِي زُرْعَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ: «قَالَ رَجُلٌ يَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ أَحَقُّ النَّاسِ بِحُسْنِ صَحَابَتِي؟ قَالَ: أُمُّكَ، قَالَ: ثُمَّ مَنْ؟ قَالَ: أُمُّكَ، قَالَ: ثُمَّ مَنْ؟ قَالَ: أُمُّكَ، قَالَ: ثُمَّ مَنْ؟ قَالَ: أَبُوكَ» .

L35795 From the narration of Muslim: I am Abu Kurayb Muhammad ibn al-ʻAla' al-Hamadani – from Ibn Fudayl, from his father, from ʻUmarah ibn al-Qaʻqaʻ, from Abu Zurʻah, from Abu Hurayrah, who said: "A man asked: 'O Messenger of Allah, who is most deserving of good companionship among people?' He replied: 'Your mother, then your mother, then your mother, then your father, then those closest to you in kinship, then the next closest.'" This is an explicit textual proof affirming the obligation of custody, as it constitutes companionship.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ الْهَمْدَانِيُّ أَنَا ابْنُ فُضَيْلٍ عَنْ أَبِيهِ عَنْ عُمَارَةَ بْنِ الْقَعْقَاعِ عَنْ أَبِي زُرْعَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ «قَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ مَنْ أَحَقُّ النَّاسِ بِحُسْنِ الصُّحْبَةِ؟ قَالَ: أُمُّكَ ثُمَّ أُمُّكَ ثُمَّ أُمُّكَ ثُمَّ أَبَاكَ ثُمَّ أَدْنَاكَ أَدْنَاكَ» فَهَذَا نَصٌّ جَلِيٌّ عَلَى إيجَابِ الْحَضَانَةِ؛ لِأَنَّهَا صُحْبَةٌ.

L35796 As for prioritizing religion, it is based on Allah's statement, the Almighty: "Cooperate in righteousness and piety, and do not aid one another in sin and aggression." [Al-Mā'idah 5:2][18]

وَأَمَّا تَقْدِيمُ الدِّينِ - فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L35797 Allah the Exalted says: "Be upholders of justice" [An-Nisā': 135], and He says: "Abandon sin in both its outward and inward forms" [Al-Anʻām: 120].

وَقَوْله تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] . وَقَوْله تَعَالَى: {وَذَرُوا ظَاهِرَ الإِثْمِ وَبَاطِنَهُ} [الأنعام: ١٢٠] . فَمَنْ تَرَكَ الصَّغِيرَ وَالصَّغِيرَةَ حَيْثُ يُدَرَّبَانِ عَلَى سَمَاعِ الْكُفْرِ، وَيَتَمَرَّنَانِ عَلَى جَحْدِ نُبُوَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَى تَرْكِ الصَّلَاةِ،

[17] **Qur'an references (L35792):** Qur'an 8:75 (Al-Anfal); Qur'an 33:6 (Al-Ahzab); Qur'an 2:233 (Al-Baqarah).

[18] **Qur'an references (L35796):** Qur'an 5:2 (Al-Ma'idah).

وَالْأَكْلِ فِي رَمَضَانَ، وَشُرْبِ الْخَمْرِ وَالْأُنْسِ إِلَيْهَا حَتَّى يَسْهُلَ عَلَيْهِمَا شَرَائِعُ الْكُفْرِ، أَوْ عَلَى صُحْبَةِ مَنْ لَا خَيْرَ فِيهِ، وَالِانْهِمَاكِ عَلَى الْبَلَاءِ: فَقَدْ عَاوَنَ عَلَى الْإِثْمِ وَالْعُدْوَانِ، وَلَمْ يُعَاوِنْ عَلَى الْبِرِّ وَالتَّقْوَى، وَلَمْ يَقُمْ بِالْقِسْطِ، وَلَا تَرَكَ ظَاهِرَ الْإِثْمِ وَبَاطِنَهُ - وَهَذَا حَرَامٌ وَمَعْصِيَةٌ.

Whoever neglects a young boy or girl when they are being trained to listen to disbelief, practicing the denial of the prophethood of Allah's Messenger—peace and blessings be upon him—abandoning prayer, eating during Ramadan, drinking wine and becoming accustomed to it until the laws of disbelief become easy for them, or associating with those in whom there is no good and plunging into corruption—such a person has indeed collaborated in sin and aggression, failed to collaborate in righteousness and piety, neglected to uphold justice, and failed to abandon sin in both its outward and inward forms. This is forbidden and sinful.[19]

وَمَنْ أَزَالَهُمَا عَنْ الْمَكَانِ الَّذِي فِيهِ مَا ذَكَرْنَا إلَى حَيْثُ يُدَرَّبَانِ عَلَى الصَّلَاةِ وَالصَّوْمِ، وَتَعَلُّمِ الْقُرْآنِ، وَشَرَائِعِ الْإِسْلَامِ، وَالْمَعْرِفَةِ بِنُبُوَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَالتَّنْفِيرِ عَنْ الْخَمْرِ وَالْفَوَاحِشِ: فَقَدْ عَاوَنَ عَلَى الْبِرِّ وَالتَّقْوَى، وَلَمْ يُعَاوِنْ عَلَى الْإِثْمِ وَالْعُدْوَانِ، وَتَرَكَ ظَاهِرَ الْإِثْمِ وَبَاطِنَهُ، وَأَدَّى الْفَرْضَ فِي ذَلِكَ.

L35798 Whoever removes both of them from the place containing what we described to a location where they are trained in prayer, fasting, learning the Quran, the laws of Islam, knowledge of the prophethood of Allah's Messenger—may Allah bless him and his family and grant him peace—and discouragement from intoxicants and immoral acts, has indeed collaborated in righteousness and piety. Such a person did not collaborate in sin and aggression, abandoned sin in both its outward and inward forms, and fulfilled the obligatory duty in this matter.

وَأَمَّا مُدَّةُ الرَّضَاعِ فَلَا نُبَالِي عَنْ ذَلِكَ - لِقَوْلِ اللَّهِ تَعَالَى: {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ} [البقرة: ٢٣٣] .

L35799 As for the duration of breastfeeding, we do not prescribe any ruling beyond that, in accordance with the decree of Allah, the Exalted: "And mothers shall breastfeed their children for two complete years" (Al-Baqarah 2:233).[20]

وَلِأَنَّ الصَّغِيرَيْنِ فِي هَذِهِ السِّنِّ وَمَنْ زَادَ عَلَيْهَا - بِعَامٍ أَوْ عَامَيْنِ - لَا فَهْمَ لَهُمَا، وَلَا مَعْرِفَةَ بِمَا يُشَاهِدَانِ، فَلَا ضَرَرَ عَلَيْهِمَا فِي ذَلِكَ.

L35800 And because the two young children at this specified age—and those who exceed it by a year or two—lack comprehension and awareness of what they witness, no harm is incurred by them both in such a case.

فَإِنْ كَانَتْ الْأُمُّ مَأْمُونَةً فِي دِينِهَا وَالْأَبُ كَذَلِكَ: فَهِيَ أَحَقُّ مِنْ الْأَبِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَا، ثُمَّ الْجَدَّةُ كَالْأُمِّ، فَإِنْ لَمْ تَكُنْ مَأْمُونَةً - لَا الْأُمُّ، وَلَا الْجَدَّةُ فِي دِينِهَا - أَوْ تَزَوَّجَتْ غَيْرَ مَأْمُونٍ فِي دِينِهِ، وَكَانَ الْأَبُ مَأْمُونًا: فَالْأَبُ أَوْلَى، ثُمَّ الْجَدُّ.

L35801–35802 If the mother is trustworthy in her religion and the father is likewise, then she has greater right than the father, according to the statement of the Messenger of Allah—peace and blessings be upon him—that we mentioned. Then the grandmother is like the mother. If she is not trustworthy—neither the mother nor the grandmother in her religion—or if either the mother or grandmother marries someone untrustworthy in his religion, while the father was trustworthy, then the father takes precedence, then the grandfather.

[19] **Qur'an references (L35797):** Qur'an 4:135 (An-Nisa); Qur'an 6:120 (Al-An'am).

[20] **Qur'an references (L35799):** Qur'an 2:233 (Al-Baqarah).

L35803 If none of those we mentioned are trustworthy in their religion, and the minor boy or girl has a brother trustworthy in his religion or a sister trustworthy in her religion, then the trustworthy sibling takes precedence. This same rule applies to the relatives after the siblings.

فَإِنْ لَمْ يَكُنْ أَحَدٌ مِمَّنْ ذَكَرْنَا مَأْمُونًا فِي دِينِهِ، وَكَانَ لِلصَّغِيرِ أَوْ الصَّغِيرَةِ أَخٌ مَأْمُونٌ فِي دِينِهِ، أَوْ أُخْتٌ مَأْمُونَةٌ فِي دِينِهَا: فَالْمَأْمُونُ أَوْلَى، وَهَكَذَا فِي الْأَقَارِبِ بَعْدَ الْإِخْوَةِ.

L35804 If there are two from among the brothers, sisters, or relatives who are both trustworthy in their faith and equal in that trustworthiness.

فَإِنْ كَانَ اثْنَانِ مِنْ الْإِخْوَةِ أَوْ الْأَخَوَاتِ، أَوْ الْأَقَارِبِ مَأْمُونَيْنِ فِي دِينِهِمَا مُسْتَوِيَيْنِ فِي ذَلِكَ.

L35805 If one parent is more cautious in safeguarding the minor's worldly affairs, that parent takes precedence. If one is more cautious in safeguarding the minor's religion while the other is more cautious in worldly affairs, custody is granted to the one more cautious in religion due to what we have previously mentioned.

فَإِنْ كَانَ أَحَدُهُمَا أَحْوَطَ لِلصَّغِيرِ فِي دُنْيَاهُ: فَهُوَ أَوْلَى، فَإِنْ كَانَ أَحَدُهُمَا أَحْوَطَ فِي دِينِهِ وَالْآخَرُ أَحْوَطَ فِي دُنْيَاهُ: فَالْحَضَانَةُ لِذِي الدِّينِ لِمَا ذَكَرْنَا قَبْلُ.

L35806 And due to the saying of Allah, the Most High: "Indeed, the life of this world is but play and diversion, adornment, mutual boasting and rivalry in increasing wealth and children among you—as a parable of rain whose growth pleases the tillers, then it dries up and you see it turn yellow, then it becomes debris." [Al-Hadid: 20][21]

وَلِقَوْلِ اللَّهِ تَعَالَى: {أَنَّمَا الْحَيَاةُ الدُّنْيَا لَعِبٌ وَلَهْوٌ وَزِينَةٌ وَتَفَاخُرٌ بَيْنَكُمْ وَتَكَاثُرٌ فِي الْأَمْوَالِ وَالْأَوْلادِ كَمَثَلِ غَيْثٍ أَعْجَبَ الْكُفَّارَ نَبَاتُهُ ثُمَّ يَهِيجُ فَتَرَاهُ مُصْفَرًّا ثُمَّ يَكُونُ حُطَامًا} [الحديد: ٢٠] .

L35807 The interpretation of diligent care in worldly life is that a guardian should provide the utmost comfort in their child's living conditions, food, clothing, sleeping arrangements, care, kindness, honor, and devoted attention—this constitutes proper treatment of the young boy and girl. It is therefore obligatory to observe this after religious duties, in accordance with the statement of the Exalted: *"And be good to parents and relatives"* [An-Nisā': 36].[22]

وَتَفْسِيرُ الْحِيَاطَةِ فِي الدُّنْيَا -: أَنْ يَكُونَ أَحَدُهُمْ أَشَدَّ رَفَاهِيَةً فِي عَيْشِهِ، وَمَطْعَمِهِ وَمَلْبَسِهِ، وَمَرْقَدِهِ وَخِدْمَتِهِ، وَبِرِّهِ وَإِكْرَامِهِ، وَالِاهْتِبَالِ بِهِ - فَهَذَا فِيهِ إحْسَانٌ إلَى الصَّغِيرِ وَالصَّغِيرَةِ، فَوَاجِبٌ أَنْ يُرَاعَى بَعْدَ الدِّينِ لِقَوْلِهِ تَعَالَى {وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَى} [النساء: ٣٦] .

L35808 It has been reported to us through the chain of Waki' from al-Hasan ibn 'Utbah from Sa'id ibn al-Harith, who said: A maternal uncle and a paternal uncle disputed before Shuraih regarding a child, and he ruled the child to the paternal uncle. The maternal uncle said: "Shall I not spend on him from my wealth?" So Shuraih handed the child over to the maternal uncle. And this is the explicit text of our position.

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ الْحَسَنِ بْنِ عُتْبَةَ عَنْ سَعِيدِ بْنِ الْحَارِثِ قَالَ: اخْتَصَمَ خَالٌ وَعَمٌّ إلَى شُرَيْحٍ فِي صَبِيٍّ فَقَضَى بِهِ لِلْعَمِّ، فَقَالَ الْخَالُ: لَا أُنْفِقُ عَلَيْهِ مِنْ مَالِي؟ فَدَفَعَهُ إلَيْهِ شُرَيْحٌ - وَهَذَا نَصُّ قَوْلِنَا.

[21] **Qur'an references (L35806):** Qur'an 57:20 (Al-Hadid).
[22] **Qur'an references (L35807):** Qur'an 4:36 (An-Nisa).

L35809 Abū Muḥammad said: If the sisters, brothers, or relatives are equal in all those matters, and they mutually agree that the minor boy or girl stays with each of them for a duration, this is permissible for them. If there is harm to the minor boy or girl, and the child was already in the custody of one of them, the child must not be removed from their custody. If they refuse to agree, the decision is by drawing lots.

قَالَ أَبُو مُحَمَّد: فَإِنْ اسْتَوَوْا الْأَخَوَاتُ أَوْ الْإِخْوَةُ فِي كُلِّ ذَلِكَ، أَوْ الْأَقَارِبُ، فَإِنْ تَرَاضَوْا فِي أَنْ يَكُونَ الصَّغِيرُ أَوْ الصَّغِيرَةُ عِنْدَ كُلِّ وَاحِدٍ مِنْهُمْ مُدَّةً فَذَلِكَ لَهُمْ، فَإِنْ كَانَ فِي ذَلِكَ ضَرَرٌ عَلَى الصَّغِيرِ أَوْ الصَّغِيرَةِ: فَإِنْ كَانَ تَقَدَّمَ كَوْنُهُ عِنْدَ أَحَدِهِمْ لَمْ يَزُلْ عَنْ يَدِهِ،، فَإِنْ أَبَوْا فَالْقُرْعَةُ.

L35810 As for our statement that the female slave and the free woman are equal, this is because neither the Quran nor the Sunnah contains textual evidence differentiating between them. Therefore, ruling on matters without textual evidence is legislation that Allah the Exalted has not sanctioned.

وَأَمَّا قَوْلُنَا - إنَّ الْأَمَةَ وَالْحُرَّةَ سَوَاءٌ - فَلِأَنَّ الْقُرْآنَ وَالسُّنَّةَ لَمْ يَأْتِ فِي أَحَدِهِمَا نَصٌّ فِي التَّفْرِيقِ بَيْنَهُمَا فَالْحُكْمُ فِيمَا لَا نَصَّ فِيهِ شَرْعٌ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى.

L35811–35812 As for our statement—"whether the father relocates or does not"—this is because neither a Quranic text nor Sunnah has stipulated the revocation of the mother's custody due to the father's relocation. Thus, it constitutes an invalid legal ruling from those who assert this view: a specification of the Quran and the Sunnah we have cited, a contradiction of both through corrupt reasoning, poor consideration for the two minors, and harm inflicted upon them through forced displacement and removal from the mother and grandmother. This is an unmistakable injustice and undeniable oppression.

وَأَمَّا قَوْلُنَا - سَوَاءٌ رَحَلَ الْأَبُ أَوْ لَمْ يَرْحَلْ - فَلِأَنَّهُ لَمْ يَأْتِ نَصٌّ قُرْآنٍ، وَلَا سُنَّةٍ بِسُقُوطِ حَضَانَةِ الْأُمِّ مِنْ أَجْلِ رَحِيلِ الْأَبِ فَهُوَ شَرْعٌ بَاطِلٌ مِمَّنْ قَالَ بِهِ، وَتَخْصِيصٌ لِلْقُرْآنِ وَالسُّنَنِ الَّتِي أَوْرَدْنَا، وَمُخَالِفٌ لَهُمَا بِالرَّأْيِ الْفَاسِدِ وَسُوءُ نَظَرٍ لِلصَّغِيرَيْنِ وَإِضْرَارٌ بِهِمَا، فِي تَكْلِيفِ الْحَلِّ وَالتَّرْحَالِ وَالْإِزَالَةِ عَنْ الْأُمِّ وَالْجَدَّةِ - وَهَذَا ظُلْمٌ لَا خَفَاءَ بِهِ، وَجَوْرٌ لَا شَكَّ فِيهِ.

L35813 As for our statement that the mother's right to custody is not forfeited by her marriage if she is trustworthy and the one she married is trustworthy, this is based on the texts we have cited, and the Prophet—peace and blessings be upon him—did not distinguish between her marriage and her non-marriage.

وَأَمَّا قَوْلُنَا - إنَّهُ لَا يَسْقُطُ حَقُّ الْأُمِّ فِي الْحَضَانَةِ بِزَوَاجِهَا إذَا كَانَتْ مَأْمُونَةً وَكَانَ الَّذِي تَزَوَّجَهَا مَأْمُونًا - فَلِلنُّصُوصِ الَّتِي ذَكَرْنَا وَلَمْ يَخُصَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - زَوَاجَهَا مِنْ غَيْرِ زَوَاجِهَا.

L35814 And according to what was narrated to us through the chain of Al-Bukhari: I am Ya'qub ibn Ibrāhīm ibn Kathīr; I am Ibn 'Ulayyah; I am 'Abd al-'Azīz, from Anas ibn Mālik, who said: "When the Messenger of Allah—may Allah's blessings and peace be upon him—came to Medina, he had no servant. Abū Ṭalḥah took my hand and brought me to the Messenger of Allah—may Allah's blessings and peace be upon him and his family—saying: 'O Messenger of Allah, Anas is a sensible boy. Let him serve you.' Anas said: Thus I served

وَلِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا يَعْقُوبُ بْنُ إبْرَاهِيمَ بْنِ كَثِيرٍ أَنَا ابْنُ عُلَيَّةَ أَنَا عَبْدُ الْعَزِيزِ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ «قَدِمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَدِينَةَ لَيْسَ لَهُ خَادِمٌ فَأَخَذَ أَبُو طَلْحَةَ بِيَدِي فَانْطَلَقَ بِي إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إنَّ أَنَسًا غُلَامٌ كَيِّسٌ فَلْيَخْدُمْك؟ قَالَ: فَخَدَمْته فِي السَّفَرِ وَالْحَضَرِ»

him while traveling and at home." Anas mentioned the report. This Anas was in the custody of his mother while she had a husband—Abū Ṭalḥah—with the knowledge of the Messenger of Allah—may Allah's blessings and peace be upon him and his family.

وَذَكَرَ الْخَبَرَ - فَهَذَا أَنَسٌ فِي حَضَانَةِ أُمِّهِ، وَلَهَا زَوْجٌ وَهُوَ أَبُو طَلْحَةَ بِعِلْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

L35815 There is no distinction in consideration and safeguarding between the stepson (the son of the mother's husband) and the stepdaughter (the daughter of the father's wife). Rather, in most cases, the stepson is more compassionate and less harmful than the stepdaughter. In all such matters, religious commitment is prioritized, followed solely by worldly well-being.

وَلَا فَرْقَ فِي النَّظَرِ وَالْحِيَاطَةِ بَيْنَ الرَّبِيبِ زَوْجِ الْأُمِّ وَالرَّبِيبَةِ زَوْجَةِ الْأَبِ، بَلْ فِي الْأَغْلَبِ الرَّبِيبُ أَشْفَقُ، وَأَقَلُّ ضَرَرًا مِنَ الرَّبِيبَةِ، وَإِنَّمَا يُرَاعَى فِي كُلِّ ذَلِكَ الدِّينُ، ثُمَّ صَلَاحُ الدُّنْيَا فَقَطْ.

L35816 Those who prohibit this cited as evidence what was narrated to us through Abd al-Razzaq's chain: From Ibn Jurayj, from Abu al-Zubayr, from an unnamed righteous man among the people of Medina, from Abu Salama ibn Abd al-Rahman, who said: "There was a woman from the Ansar married to a man from the Ansar who was killed at Uhud, leaving her with their child. The paternal uncle of her child and another man sought her hand through her father, but her father gave her in marriage to the other man. She came to the Prophet—peace and blessings be upon him—and said: 'My father gave me in marriage to a man I do not want, rejecting the paternal uncle of my child—and so he would take my child from me.' Allah's Messenger—peace and blessings be upon him—summoned her father and told him: 'You have no right to arrange this marriage. Go and marry the paternal uncle of your child.'"

وَاحْتَجَّ الْمَانِعُونَ مِنْ ذَلِكَ بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَنَا أَبُو الزُّبَيْرِ عَنْ رَجُلٍ صَالِحٍ مِنْ أَهْلِ الْمَدِينَةِ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ قَالَ «كَانَتْ امْرَأَةٌ مِنَ الْأَنْصَارِ تَحْتَ رَجُلٍ مِنَ الْأَنْصَارِ فَقُتِلَ عَنْهَا يَوْمَ أُحُدٍ وَلَهُ مِنْهَا وَلَدٌ فَخَطَبَهَا عَمُّ وَلَدِهَا وَرَجُلٌ آخَرُ إِلَى أَبِيهَا فَأَنْكَحَ الْآخَرَ، فَجَاءَتْ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: أَنْكَحَنِي أَبِي رَجُلًا لَا أُرِيدُهُ وَتَرَكَ عَمَّ وَلَدِي فَيَأْخُذُ مِنِّي وَلَدِي فَدَعَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَبَاهَا فَقَالَ لَهُ: أَنْتَ الَّذِي لَا نِكَاحَ لَكَ اذْهَبِي فَأَنْكِحِي عَمَّ وَلَدِكِ» .

L35817–35819 Abū Muḥammad said: This is mursal and contains a majhūl (unknown), and the like of this cannot be used as evidence—and they mentioned what was narrated to us. From the path of Abū Dāwūd: Narrated by Maḥmūd ibn Khālid al-Sulamī, from al-Walīd—he being Ibn Muslim—from Abū ʿAmr al-Awzāʿī, who narrated to me: ʿAmr ibn Shuʿayb reported from his father, from his grandfather ʿAbdullāh ibn ʿAmr: "A woman was divorced by her husband, and he sought to deprive her of custody of his child. The Messenger of Allāh (peace and blessings be upon him) said to her: 'You are more entitled to him as long as you do not contract a new marriage.'" This is a written record that is not used as evidence.

قَالَ أَبُو مُحَمَّدٍ: هَذَا مُرْسَلٌ وَفِيهِ مَجْهُولٌ، وَمِثْلُ هَذَا لَا يُحْتَجُّ بِهِ - وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا مَحْمُودُ بْنُ خَالِدٍ السُّلَمِيُّ أَنَا الْوَلِيدُ - هُوَ ابْنُ مُسْلِمٍ - عَنْ أَبِي عَمْرٍو الْأَوْزَاعِيِّ حَدَّثَنِي عَمْرُو بْنُ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَبْدِ اللَّهِ بْنِ عَمْرٍو «أَنَّ امْرَأَةً طَلَّقَهَا زَوْجُهَا وَأَرَادَ انْتِزَاعَ وَلَدِهِ مِنْهَا فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْتِ أَحَقُّ بِهِ مَا لَمْ تَنْكِحِي» وَهَذِهِ صَحِيفَةٌ لَا يُحْتَجُّ بِهَا ".

وَقَدْ ذَكَرْنَا فِي " كِتَابَنَا الْمَوْسُومِ بِالْإِعْرَابِ " وَفِي " كِتَابِ الْإِيصَالِ " مَا تَرَكُوا فِيهِ رِوَايَةَ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ وَلَمْ يَعِيبُوهُ إِلَّا بِأَنَّهُ صَحِيفَةٌ.

L35820 We have mentioned in our book *Al-Iʿrāb* and in *Al-Īṣāl* the instances where they excluded the narration of ʿAmr ibn Shuʿayb from his father, from his grandfather, and they only criticized it for being a written document.

فَإِنْ قِيلَ: فَهَلَّا قُلْتُمْ: الْخَالَةُ كَالْجَدَّةِ، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَرَفَعَ أَبَوَيْهِ عَلَى الْعَرْشِ} [يوسف: ١٠٠] وَإِنَّمَا كَانَتْ خَالَتُهُ وَأَبَاهُ؟

L35821 If it is said: Why did you not assert that the maternal aunt is equivalent to the grandmother, based on the statement of Allah—Exalted and Majestic is He—{And he raised his parents upon the throne} [Yusuf 12:100], when it was in fact his maternal aunt and his father?[23]

قُلْنَا: لَمْ يَأْتِ قَطُّ نَصٌّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهَا كَانَتْ خَالَتَهُ وَإِنَّمَا هِيَ مِنْ أَخْبَارِ بَنِي إِسْرَائِيلَ وَهِيَ ظَاهِرَةُ الْكَذِبِ، وَلَعَلَّهَا كَانَتْ أُمَّهُ مِنْ الرَّضَاعَةِ، فَهُمَا أَبَوَانِ عَلَى هَذَا.

L35822 We said: There has never come any text from the Messenger of Allah—peace be upon him and his family—stating that she was his maternal aunt. Rather, this is among the reports of the Children of Israel, and it is manifestly false. It is plausible that she was his milk mother, in which case they would both be milk parents according to this.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ عَنْ أَبِي دَاوُد أَنَا عَبَّادُ بْنُ مُوسَى أَنَا إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ إِسْرَائِيلَ عَنْ أَبِي إِسْحَاقَ عَنْ هَانِئٍ، وَهُبَيْرَةَ «عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ فَذَكَرَ أَخْذَهُ بِنْتَ حَمْزَةَ مِنْ مَكَّةَ، وَأَنَّ جَعْفَرَ بْنَ أَبِي طَالِبٍ قَالَ: ابْنَةُ عَمِّي وَخَالَتُهَا عِنْدِي فَقَضَى بِهَا - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِخَالَتِهَا وَقَالَ: الْخَالَةُ بِمَنْزِلَةِ الْأُمِّ» .

L35823 If it is said: You have indeed narrated from Abū Dāwūd—I am ʿAbbād ibn Mūsā, who narrated from Ismāʿīl ibn Jaʿfar, from Isrāʾīl, from Abū Isḥāq, from Hāniʾ and Hubayrah—that ʿAlī ibn Abī Ṭālib mentioned his taking custodial responsibility of Ḥamzah's daughter from Makkah, and that Jaʿfar ibn Abī Ṭālib said: "She is my cousin, and her maternal aunt is in my custody." The Prophet—may Allah's blessings and peace be upon him and his family—then ruled to grant her to her maternal aunt and said: "The maternal aunt holds the status of the mother."

قُلْنَا: لَا يَصِحُّ؛ لِأَنَّ إِسْرَائِيلَ ضَعِيفٌ - وَهَانِئٌ، وَهُبَيْرَةُ مَجْهُولَانِ.

L35824–35825 We said: It is not valid because Isrāʾīl is weak; Hāniʾ and Hubayrah are both unknown.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُحَمَّدُ بْنُ عِيسَى أَنَا سُفْيَانُ عَنْ أَبِي فَرْوَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَضَى بِبِنْتِ حَمْزَةَ لِجَعْفَرٍ» ؛ لِأَنَّ خَالَتَهَا عِنْدَهُ؟

L35826 If it is said: "You have narrated through the transmission chain of Abū Dāwūd: Muḥammad ibn ʿĪsā narrated from Sufyān, from Abī Farwah, from ʿAbd al-Raḥmān ibn Abī Laylā that 'the Messenger of Allāh (peace be upon him and his family) awarded custody of Ḥamzah's daughter to Jaʿfar'" - because her maternal aunt was with him?

قُلْنَا: هَذَا مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ - وَأَبُو فَرْوَةَ - هُوَ مُسْلِمُ بْنُ سَالِمٍ الْجُهَنِيُّ - وَلَيْسَ بِالْمَعْرُوفِ.

L35827 We said: This is a mursal narration, and there is no valid evidence in a mursal narration. As for Abu Farwah—Muslim ibn Salim al-Juhani—he is not well-known.

[23] **Qur'an references (L35821):** Qur'an 12:100 (Yusuf).

L35828 If it is said: Yusuf ibn Abdullah al-Namari narrated to you, stating: Abdullah ibn Muhammad Yusuf al-Azdi reported from Ishaq ibn Ahmad, who reported from al-Uqayli, who reported from Ahmad ibn Dawud, who reported from Imran al-Hisni, who reported from Yusuf ibn Khalid al-Samti, who reported from Abu Hurayrah al-Madani via Mujahid, from Abu Hurayrah: "The Messenger of Allah—may Allah bless him and his family and grant him peace—said: The maternal aunt is a mother."

فَإِنْ قِيلَ: قَدْ حَدَّثَكُمْ يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ قَالَ أَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ يُوسُفُ الْأَزْدِيُّ أَنَا إِسْحَاقُ بْنُ أَحْمَدَ أَنَا الْعُقَيْلِيُّ أَنَا أَحْمَدُ بْنُ دَاوُد أَنَا عِمْرَانُ الْحِصْنِيُّ أَنَا يُوسُفُ بْنُ خَالِدٍ السَّمْتِيُّ " أَنَا أَبُو هُرَيْرَةَ الْمَدَنِيُّ عَنْ مُجَاهِدٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: الْخَالَةُ أُمٌّ» ؟ .

L35829 We said: This is too weak to concern oneself with, for it includes Yusuf ibn Khalid al-Samti—a shunned, abandoned figure notorious for lying—and Abu Hurayrah al-Madani, whom no one knows: who is he?

قُلْنَا: هَذَا أَسْقَطُ مِنْ أَنْ يَشْتَغِلَ بِهِ، لِأَنَّ فِيهِ يُوسُفَ بْنَ خَالِدٍ السَّمْتِيَّ، وَهُوَ مَرْغُوبٌ عَنْهُ مَتْرُوكٌ مَذْكُورٌ بِالْكَذِبِ - وَأَبُو هُرَيْرَةَ الْمَدَنِيُّ لَا يَدْرِي أَحَدٌ مَنْ هُوَ؟ .

L35830–35832 If it is said: Aḥmad ibn Muḥammad al-Ṭalamankī narrated to you: Muḥammad ibn Aḥmad ibn Mufarrij, I am... Muhammad ibn Ayyub as-Samut: I am Ahmad ibn Amr ibn Abd al-Khaliq al-Bazzar, from Muhammad ibn al-Muthanna, from Abu Amir al-Aqadi, from Abdul Aziz ibn Muhammad al-Darawardi, from Yazid ibn Abdullah - meaning Ibn al-Hadi - from Muhammad ibn Ibrahim, from Nafi ibn Ujair, from his father: From Ali ibn Abi Talib that he, his brother Jaʿfar, and Zayd ibn Harithah disputed over the custody of Hamzah's daughter. The Messenger of Allah - peace and blessings be upon him and his family - said: "As for the girl, I judge her to be with Jaʿfar because she will remain with her maternal aunt. Indeed, the maternal aunt holds the status of a mother."

فَإِنْ قِيلَ: فَقَدْ حَدَّثَكُمْ أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ أَنَا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ مُفَرِّجٍ أَنَا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ أَنَا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا أَبُو عَامِرٍ الْعَقَدِيُّ أَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ - يَعْنِي ابْنَ الْهَادِي - عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ عَنْ نَافِعِ بْنِ عُجَيْرٍ عَنْ أَبِيهِ «عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ اخْتَصَمَ هُوَ وَأَخُوهُ جَعْفَرٌ وَزَيْدُ بْنُ حَارِثَةَ فِي حَضَانَةِ بِنْتِ حَمْزَةَ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: أَمَّا الْجَارِيَةُ فَأَقْضِي بِهَا لِجَعْفَرٍ تَكُونُ مَعَ خَالَتِهَا وَإِنَّمَا الْخَالَةُ أُمٌّ» .

L35833 We said: Nāfiʿ ibn ʿUjayr and his father ʿUjayr are unknown, and there is no valid evidence in an unknown [person]. However, this narration in every respect serves as evidence against the Ḥanafīs, Mālikīs, and Shāfiʿīs, for her maternal aunt was married to Jaʿfar—who was the most handsome youth among Quraysh—and he was not a maḥram to the daughter of Ḥamzah. We do not deny the Prophet's ruling—peace and blessings be upon him—in her case for Jaʿfar due to her aunt, as that was a greater safeguard for her.

قُلْنَا: نَافِعُ بْنُ عُجَيْرٍ وَأَبُوهُ عُجَيْرٌ مَجْهُولَانِ، وَلَا حُجَّةَ فِي مَجْهُولٍ إلَّا أَنَّ هَذَا الْخَبَرَ بِكُلِّ وَجْهٍ حُجَّةٌ عَلَى الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، لِأَنَّ خَالَتَهَا كَانَتْ مُتَزَوِّجَةً بِجَعْفَرٍ - وَهُوَ أَجْمَلُ شَابٍّ فِي قُرَيْشٍ - وَلَيْسَ هُوَ ذَا مَحْرَمٍ مِنْ بِنْتِ حَمْزَةَ - وَنَحْنُ لَا نُنْكِرُ قَضَاءَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِهَا لِجَعْفَرٍ مِنْ أَجْلِ خَالَتِهَا، لِأَنَّ ذَلِكَ أَحْوَطُ لَهَا.

L35834 If it is asked: Why do you not hold the opinion of granting him the choice when he has attained the age of discernment, based on what Ḥumām ibn Aḥmad conveyed to you—I am ʿAbbās ibn Aṣbagh, I am Muḥammad ibn ʿAbd

فَإِنْ قِيلَ: فَهَلَّا قُلْتُمْ بِتَخْيِيرِهِ إذَا عَقَلَ لِمَا حَدَّثَكُمْ بِهِ - حُمَامُ بْنُ أَحْمَدَ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ أَنَا أَبِي أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ

al-Malik ibn Ayman, I am Aḥmad ibn Zuhayr ibn Ḥarb, from my father, from Sufyān ibn ʿUyaynah, from Ziyād ibn Saʿd, from Hilāl ibn Usāmah, from Abū Maymūnah—who said: I witnessed Abū Hurayrah granting a boy the choice between his father and his mother.

عَنْ زِيَادِ بْنِ سَعْدٍ عَنْ هِلَالِ بْنِ أُسَامَةَ عَنْ " أَبِي مَيْمُونَةَ قَالَ: شَهِدْت أَبَا هُرَيْرَةَ خَيَّرَ غُلَامًا بَيْنَ أَبِيهِ وَأُمِّهِ.

L35835–35836 From the path of Abu Bakr ibn Abi Shaybah: I [narrate] from Waki‘, from ‘Ali ibn al-Mubarak, from Yahya ibn Abi Kathir, from Abu Maimunah, from Abu Hurayrah—that a woman came to the Prophet (prayers and peace be upon him and his family) whose husband had divorced her; she sought to take her child. The Messenger of Allah (prayers and peace be upon him and his family) said: “Cast lots between yourselves for him.” Then he (prayers and peace be upon him and his family) said to the boy: “Choose whichever of them you wish,” and he chose his mother?

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ عَلِيِّ بْنِ الْمُبَارَكِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي مَيْمُونَةَ عَنْ أَبِي هُرَيْرَةَ «أَنَّ امْرَأَةً جَاءَتْ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدْ طَلَّقَهَا زَوْجُهَا فَأَرَادَتْ أَنْ تَأْخُذَ وَلَدَهَا فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - اسْتَهِمَا عَلَيْهِ ثُمَّ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لِلْغُلَامِ: تَخَيَّرْ أَيَّهُمَا شِئْتَ فَاخْتَارَ أُمَّهُ» ؟ .

L35837 We said: This Abu Maimunah is unknown (as a narrator); he is not the father of Hilal—the one from whom narrations are reported. Moreover, upon reflection, there is no proof in it, because it does not state that if he had chosen his father, it would have been ruled in his favor.

قُلْنَا: أَبُو مَيْمُونَةَ هَذَا مَجْهُولٌ لَيْسَ هُوَ وَالِدُ هِلَالٍ الَّذِي رُوِيَ عَنْهُ ثُمَّ إذَا تَدَبَّرَ لَمْ تَكُنْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَيْسَ فِيهِ أَنَّهُ لَوْ تَخَيَّرَ أَبَاهُ قُضِيَ لَهُ بِهِ.

L35838 Moreover, we do not deny allowing him to choose if one of the parents is more compassionate toward him. There is no doubt that the Messenger of Allah—peace and blessings be upon him—does not offer a choice between good and evil, and no doubt that he—upon him be peace and blessings—only offers a choice between two good options.

وَأَيْضًا - فَنَحْنُ لَا نُنْكِرُ تَخْيِيرَهُ إذَا كَانَ أَحَدُ الْأَبَوَيْنِ أَرْفَقَ بِهِ، وَلَا شَكَّ فِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُخَيِّرُ بَيْنَ خَيْرٍ وَشَرٍّ، وَلَا شَكَّ فِي أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَا يُخَيِّرُ إلَّا بَيْنَ خَيْرَيْنِ.

L35839 Likewise, we are certain that he (peace and blessings be upon him) would not leave anyone to follow their own choice in matters that constitute corruption for them in their religion or their personal condition. For the minor’s choice for himself may be flawed, as he leans toward comfort and negligence. Thus, there is no doubt that if he (peace and blessings be upon him) gave the child the choice, the child’s choice would not be implemented unless he had chosen what he was obligated to choose. No other option is permissible whatsoever.

وَكَذَلِكَ نَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَا يَتْرُكُ أَحَدًا عَلَى اخْتِيَارِهِ مَا هُوَ فَسَادٌ لَهُ فِي دِينِهِ أَوْ فِي حَالَتِهِ، فَقَدْ يَسُوءُ اخْتِيَارُ الصَّغِيرِ لِنَفْسِهِ، وَيَمِيلُ إلَى الرَّاحَةِ وَالْإِهْمَالِ، فَلَا شَكَّ فِي أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنْ كَانَ خَيَّرَ الصَّبِيَّ فَلَمْ يَنْفُذْ اخْتِيَارُهُ إلَّا وَقَدْ اخْتَارَ الَّذِي يَجِبُ أَنْ يَخْتَارَ - لَا يَجُوزُ غَيْرُ ذَلِكَ أَصْلًا.

L35840 If it is objected: “You have cited what ʿAbdullāh ibn Rabīʿ al-Tamīmī narrated to us—I [am] Muḥammad ibn Muʿāwiyah al-Qurashī—I [am] Aḥmad ibn Shuʿayb al-Nasāʾī—I [am] Maḥmūd ibn Ghaylān—[from] ʿAbd al-Razzāq who informed us: Sufyān al-Thawrī—[from] ʿUthmān al-Battī—[from] ʿAbd

فَإِنْ قِيلَ: فَقَدْ ذَكَرْتُمْ مَا حَدَّثَكُمْ عَبْدُ اللَّهِ بْنُ رَبِيعٍ التَّمِيمِيُّ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ الْقُرَشِيُّ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ النَّسَائِيِّ أَنَا مَحْمُودُ بْنُ غَيْلَانَ أَنَا عَبْدِ الرَّزَّاقِ أرنا سُفْيَانُ هُوَ الثَّوْرِيُّ

عَنْ عُثْمَانَ الْبَتِّيِّ عَنْ عَبْدِ الْحَمِيدِ الْأَنْصَارِيِّ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّهُ لَمَّا أَسْلَمَ وَأَبَتْ امْرَأَتُهُ أَنْ تُسْلِمَ فَجَاءَ ابْنٌ لَهُمَا صَغِيرٌ لَمْ يَبْلُغْ ثُمَّ خَيَّرَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَيْنَهُمَا فَاخْتَارَ أُمَّهُ، فَقَالَ: اللَّهُمَّ اهْدِهِ؟ فَذَهَبَ إلَى أَبِيهِ» .

قُلْنَا: هَذَا خَبَرٌ لَمْ يَصِحَّ قَطُّ، لِأَنَّ الرُّوَاةَ لَهُ اخْتَلَفُوا فَقَالَ عُثْمَانُ الْبَتِّيُّ: عَبْدُ الْحَمِيدِ الْأَنْصَارِيُّ عَنْ أَبِيهِ عَنْ جَدِّهِ.

وَقَالَ مَرَّةً أُخْرَى: عَبْدُ الْحَمِيدِ بْنُ يَزِيدَ بْنِ سَلَمَةَ: أَنَّ جَدَّهُ أَسْلَمَ.

وَقَالَ مَرَّةً أُخْرَى: عَبْدُ الْحَمِيدِ بْنُ سَلَمَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ.

وَقَالَ عِيسَى: عَبْدُ الْحَمِيدِ بْنُ جَعْفَرٍ أَخْبَرَنِي أَبِي عَنْ جَدِّي رَافِعِ بْنِ سِنَانٍ.

وَكُلُّ هَؤُلَاءِ مَجْهُولُونَ وَلَا يَجُوزُ تَخْيِيرٌ بَيْنَ كَافِرٍ وَمُسْلِمٍ أَصْلًا -.

فَهَذَا مَا يُذْكَرُ مِنْ الْآثَارِ فِي هَذَا الْبَابِ.

وَأَمَّا مَا جَاءَ عَنْ السَّلَفِ فِيهِ -: فَرُوِّينَا مِنْ طَرِيقِ الزُّهْرِيِّ، وَعِكْرِمَةَ أَنَّهُ قَضَى بِحَضَانَةِ ابْنٍ لِعُمَرَ بْنِ الْخَطَّابِ لِأُمِّ الصَّبِيِّ وَقَالَ: هِيَ أَحَقُّ بِهِ مَا لَمْ تَتَزَوَّجْ وَكَانَ عُمَرُ نَازَعَهَا فِيهِ وَخَاصَمَهَا إلَى أَبِي بَكْرٍ - وَهَذَانِ مُنْقَطِعَانِ.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ غَيْرِ وَاحِدٍ مِنْ الْأَنْصَارِ، وَغَيْرِهِمْ: أَنَّ أُمَّ عَاصِمِ بْنِ عُمَرَ تَزَوَّجَتْ فَقَضَى أَبُو بَكْرٍ بِعَاصِمٍ لِأُمِّ أُمِّهِ، وَقَدْ كَانَ عُمَرُ يُخَاصِمُهَا فِيهِ، وَهَذَا لَا شَيْءَ؛ لِأَنَّ ابْنَ لَهِيعَةَ سَاقِطٌ، فَكَيْفَ وَهُوَ عَمَّنْ لَا يُدْرَى.

al-Ḥamīd al-Anṣārī—[from] his father—[from] his grandfather: ’When the grandfather embraced Islam while his wife refused to do so, they had a young son who had not reached puberty. The Prophet—peace and blessings be upon him—presented him the choice between them, and he chose his mother. The Prophet said: ”O Allah, guide him“—whereupon the boy subsequently went to his father.”’

L35841–35842 We said: This narration has never been authenticated, as its narrators disagreed. Uthman al-Batti stated: ‘Abd al-Hamid al-Ansari, from his father, from his grandfather.’

L35843 And he said on another occasion: Abd al-Hamid ibn Yazid ibn Salama’s grandfather embraced Islam.

L35844 He also said on another occasion: Abd al-Hamid ibn Salamah from his father, from his grandfather.

L35845 And ʿĪsā said: ʿAbd al-Ḥamīd ibn Jaʿfar informed me, my father from my grandfather Rāfiʿ ibn Sinān.

L35846 All of these are unknown individuals, and it is impermissible in principle to allow a choice between a disbeliever and a Muslim—

L35847 This is what has been cited among the narrations in this chapter.

L35848 As for what has been reported from the Salaf regarding this matter: It has been narrated to us through the chains of al-Zuhri and Ikrimah that Abu Bakr ruled in favor of the child’s mother concerning the custody of a son of Umar ibn al-Khattab, declaring: “She has greater right to him so long as she does not marry.” Umar had disputed her claim and brought the case to Abu Bakr - and these two chains are disconnected.

L35849 From the transmission of Ibn Wahb, from Ibn Lahīʿah, from multiple Anṣārī narrators and others: Umm ʿĀṣim ibn ʿUmar married, and Abū Bakr ruled that ʿĀṣim belonged to his maternal grandmother, while ʿUmar had disputed her claim over him. This [narration] is invalid, for Ibn Lahīʿah is disregarded; how then [can it be accepted] when he transmits from someone unknown?

L35850–35851 And via the chain of ʿAbd al-Razzāq from Ibn Jurayj: Aṭāʾ al-Khurāsānī

reported to me from Ibn ʿAbbās that ʿUmar disputed with his wife, the mother of his son ʿĀṣim, before Abū Bakr when he divorced her, claiming, “I have a greater right to him.” Abū Bakr responded, “Her fragrance, her warmth, and her care are better for him than you until he reaches puberty and chooses for himself.” And Abū Bakr ruled in her favor regarding him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَطَاءٌ الْخُرَاسَانِيُّ عَنْ ابْنِ عَبَّاسٍ أَنَّ عُمَرَ خَاصَمَ امْرَأَتَهُ أُمَّ ابْنِهِ عَاصِمٍ إِلَى أَبِي بَكْرٍ إِذْ طَلَّقَهَا وَقَالَ: أَنَا أَحَقُّ بِهِ، فَقَالَ لَهُ أَبُو بَكْرٍ: رِيحُهَا وَحَرُّهَا وَفِرَاشُهَا خَيْرٌ لَهُ مِنْكَ حَتَّى يَشِبَّ وَيَخْتَارَ لِنَفْسِهِ - وَقَضَى أَبُو بَكْرٍ لَهَا بِهِ.

L35852 From the narration of Al-Qāsim ibn Muḥammad: Abū Bakr (may Allah be pleased with him) ruled in favor of ʿĀṣim ibn ʿUmar’s maternal grandmother, though ʿUmar disputed her claim regarding it. This chain is disconnected. Such is what is known from Abū Bakr, may Allah be pleased with him.

وَمِنْ طَرِيقِ الْقَاسِمِ بْنِ مُحَمَّدٍ أَنَّ أَبَا بَكْرٍ قَضَى لِجَدَّةِ عَاصِمِ بْنِ عُمَرَ أُمِّ أُمِّهِ وَقَدْ جَاذَبَهَا عُمَرُ فِيهِ، وَهَذَا مُنْقَطِعٌ - فَهَذَا مَا يُعْرَفُ عَنْ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ -.

L35853 As for ʿUmar (may Allah be pleased with him), it has been narrated to us via ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAbd Allāh ibn ʿUbayd ibn ʿUmayr, who said: ʿUmar offered a young boy the choice between his father and his mother. He chose his mother, so she took him away.

وَأَمَّا عُمَرُ - رَضِيَ اللَّهُ عَنْهُ -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ اللَّهِ بْنِ عُبَيْدِ بْنِ عُمَيْرٍ قَالَ: خَيَّرَ عُمَرُ غُلَامًا بَيْنَ أَبِيهِ وَأُمِّهِ؟ فَاخْتَارَ أُمَّهُ فَانْطَلَقَتْ بِهِ.

L35854 A dispute regarding a boy was brought to ʿUmar ibn al-Khaṭṭāb, who ruled: “He remains with his mother until he can articulate clearly about himself, then he may choose.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ إِسْمَاعِيلَ بْنِ عُبَيْدِ اللَّهِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ غُنَيْمٍ قَالَ: اخْتَصَمَ إِلَى عُمَرَ بْنِ الْخَطَّابِ فِي غُلَامٍ فَقَالَ: هُوَ مَعَ أُمِّهِ حَتَّى يُعْرِبَ عَنْهُ لِسَانُهُ فَيَخْتَارَ.

L35855 And through the narration of Ḥammād ibn Salamah from al-Agharr ibn Suwayd, from ʿUmayr ibn Saʿīd: ʿUmar (may Allah be pleased with him) ruled that the child belonged to the paternal uncle rather than the mother, then returned the child to the mother. This is what has reached us from ʿUmar.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْأَغَرِّ بْنِ سُوَيْدٍ عَنْ عُمَيْرِ بْنِ سَعِيدٍ أَنَّ عُمَرَ قَضَى بِالْوَلَدِ لِلْعَمِّ دُونَ الْأُمِّ، ثُمَّ رَدَّهُ إِلَى الْأُمِّ - فَهَذَا مَا بَلَغَنَا عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ -.

L35856 As for Ali—may Allah be pleased with him—we have been narrated through Yahya ibn Sa‘id al-Qattan’s chain: I am Yunus ibn ‘Ubayd Allah al-Harami—‘Umarah ibn Rabi‘ah reported to me that he disputed with his mother and uncle before Ali ibn Abi Talib regarding it. He said: “Ali gave me the choice three times? Each time I chose my mother. With us was a minor brother of mine. Ali said: ’When this one reaches the age of this one, he will be given the choice.”’

وَأَمَّا عَلِيٌّ - رَضِيَ اللَّهُ عَنْهُ -: فَرُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ أَنَا يُونُسُ بْنُ عُبَيْدِ اللَّهِ الْحَرَمِيُّ حَدَّثَنِي عُمَارَةُ بْنُ رَبِيعَةَ أَنَّهُ خَاصَمَ فِيهِ أُمَّهُ وَعَمَّهُ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: فَخَيَّرَنِي عَلِيٌّ ثَلَاثًا؟ كُلَّهُنَّ أَخْتَارُ أُمِّي وَمَعَنَا أَخٌ لِي صَغِيرٌ، فَقَالَ عَلِيٌّ: هَذَا إِذَا بَلَغَ مَبْلَغَ هَذَا خُيِّرَ.

L35857 As for Abu Hurairah, we have previously mentioned his view on granting

the legal option. This is what we have presented from the Companions, may Allah be pleased with them.

وَأَمَّا أَبُو هُرَيْرَةَ فَقَدْ ذَكَرْنَا عَنْهُ التَّخْيِيرَ قَبْلُ، فَهَذَا مَا حَضَرْنَا فِيهِ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L35858 It has been narrated to us from ʿUmar and Ibn ʿUmar that when you sell two brothers, do not separate them.

وَرُوِّينَا عَنْ عُمَرَ، وَابْنِ عُمَرَ: إذَا بِعْتُمْ أَخَوَيْنِ فَلَا تُفَرِّقُوا بَيْنَهُمَا.

L35859 As for the Followers: It has been narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from Ayyūb al-Sikhtiyānī from Muḥammad ibn Sīrīn from Shurayḥ, who said: "The mother is more compassionate, and the father is more entitled." He ruled that the boy is to be with his mother if they reside in the same household and possess sufficient financial means to sustain themselves.

وَأَمَّا التَّابِعُونَ -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ شُرَيْحٍ قَالَ: الْأُمُّ أَرْفَقُ، وَالْأَبُ أَحَقُّ، وَقَضَى: أَنَّ الصَّبِيَّ مَعَ أُمِّهِ إذَا كَانَتْ الدَّارُ وَاحِدَةً وَيَكُونُ مَعَهُمْ مِنْ النَّفَقَةِ مَا يُصْلِحُهُمْ.

L35860 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj from Ajlaḥ: that Shurayh ruled to grant custody of the child to the grandmother if his mother marries.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ أَجْلَحَ: أَنَّ شُرَيْحًا قَضَى بِالصَّبِيِّ لِلْجَدَّةِ إذَا تَزَوَّجَتْ أُمُّهُ.

L35861–35862 Through the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: The mother has the greatest right to the child so long as she does not marry. If she marries, the father takes him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: الْأُمُّ أَحَقُّ بِالْوَلَدِ مَا لَمْ تَتَزَوَّجْ فَإِذَا تَزَوَّجَتْ أَخَذَهُ أَبُوهُ.

L35863 From the transmission of ʿAbd al-Razzāq, from Ibn Jurayj: I heard that Aṭāʾ was asked about the child of a mukatab [from a free woman] and the child of a slave [from a free woman]. He said: "The mother has more right to him because she is free."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ سَمِعْت عَطَاءً سُئِلَ عَنْ وَلَدِ الْمُكَاتَبِ وَالْعَبْدِ مِنْ الْحُرَّةِ فَقَالَ: الْأُمُّ أَحَقُّ بِهِ؛ لِأَنَّهَا حُرَّةٌ.

L35864 From the narration of Ibn Wahb from Al-Layth ibn Saʿd, who said: Yahya ibn Saʿid said: When a woman is divorced, she has greater right to the child—whether male or female—as long as she does not remarry. If the father travels to a land where he intends to reside, he would assume greater right to the child even if they are young. But if he departs as a ghāzī (one engaged in a military expedition) or as a trader, the mother retains greater right to her child unless he leaves for a campaign of severed return. We know of no differing view from a successor (Tābiʿī) other than what we have mentioned.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ قَالَ: أَنَا يَحْيَى بْنُ سَعِيدٍ أَنَّ الْمَرْأَةَ إذَا طَلُقَتْ فَهِيَ أَوْلَى بِالْوَلَدِ الذَّكَرِ وَالْأُنْثَى مَا لَمْ تَتَزَوَّجْ، فَإِذَا خَرَجَ الْوَالِدُ إلَى أَرْضٍ يَسْكُنُهَا كَانَ أَوْلَى بِالْوَلَدِ - وَإِنْ كَانُوا صِغَارًا وَإِنْ هُوَ خَرَجَ غَازِيًا أَوْ تَاجِرًا - فَالْأُمُّ أَحَقُّ بِوَلَدِهَا إلَّا أَنْ يَكُونَ غَزَا غَزْوَةَ انْقِطَاعٍ - لَا نَعْلَمُ عَنْ تَابِعٍ غَيْرَ مَا ذَكَرْنَا.

L35865 We are unaware of any exceptions to the prohibition of marrying one's mother except [the opinions] attributed to Shurayh, al-Zuhri, and Yaḥyā ibn

Saʿīd al-Anṣārī. However, al-Zuhri ruled in favor of the father on this matter, while Shurayh ruled in favor of the grandmother.

وَمَا نَعْلَمُ اسْتِثْنَاءَ الزَّوَاجِ فِي الْأُمِّ إِلَّا عَنْ شُرَيْحٍ، وَالزُّهْرِيِّ وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ إِلَّا أَنَّ الزُّهْرِيَّ قَضَى بِهِ فِي ذَلِكَ لِلْأَبِ وَقَضَى بِهِ شُرَيْحٌ لِلْجَدَّةِ.

L35866 If they say: Perhaps al-Zuhri ruled in favor of the father if the child had no grandmother or maternal aunt? We say: Perhaps Shurayh ruled in favor of the grandmother if the child had no father. We have not found the permissibility of the father taking the child away except from Yahya ibn Saʿid alone - and Shurayh's statement on that matter is unclear. Would he then be more of a liar than one who claims consensus in this? We seek refuge in Allah from abandonment and trivializing falsehood.

فَإِنْ قَالُوا: لَعَلَّ الزُّهْرِيَّ قَضَى بِهِ لِلْأَبِ إِذَا لَمْ يَكُنْ لَهُ جَدَّةٌ وَلَا خَالَةٌ؟ قُلْنَا: وَلَعَلَّ شُرَيْحًا إِنَّمَا قَضَى بِهِ لِلْجَدَّةِ إِذَا لَمْ يَكُنْ لِلْوَلَدِ أَبٌ وَمَا وَجَدْنَا إِبَاحَةَ رَحِيلِ الْأَبِ بِالْوَلَدِ إِلَّا عَنْ يَحْيَى بْنِ سَعِيدٍ وَحْدَهُ - وَكَلَامُ شُرَيْحٍ فِي ذَلِكَ وَلَيْسَ بِالْبَيِّنِ، أَفَيَكُونُ أَكْذَبَ مِمَّنْ ادَّعَى الْإِجْمَاعَ فِي هَذَا - وَنَعُوذُ بِاللَّهِ مِنْ الْخِذْلَانِ وَاسْتِسْهَالِ الْكَذِبِ.

L35867 As for the later jurists, Sufyān al-Thawrī stated: "If the mother marries, the maternal aunt has priority." Al-Awzāʿī said: "If the mother marries, the paternal grandmother has priority over the child. If she does not exist, then the paternal uncle has priority over the child rather than his maternal grandmother (the mother of the child's mother). If the mother is divorced [after remarriage], she does not return to custody."

وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ سُفْيَانَ الثَّوْرِيَّ قَالَ: إِنْ تَزَوَّجَتْ الْأُمُّ فَالْخَالَةُ أَحَقُّ - وَقَالَ الْأَوْزَاعِيُّ: إِذَا تَزَوَّجَتْ الْأُمُّ فَالْجَدَّةُ لِلْأَبِ أَحَقُّ بِالْوَلَدِ، فَإِنْ لَمْ تَكُنْ فَالْعَمُّ أَحَقُّ بِالْوَلَدِ مِنْ جَدَّتِهِ أُمِّ أُمِّهِ فَإِنْ طَلُقَتْ الْأُمُّ لَمْ تَرْجِعْ إِلَى الْحَضَانَةِ.

L35868 Layth ibn Saʿd said: The mother has the greatest right to the son until he reaches eight years of age and to the daughter until she reaches her designated age. Thereafter, the father has the greater right to her, unless the mother is found unsuitable, in which case the daughter is removed from her care before reaching that age.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ: الْأُمُّ أَحَقُّ بِالِابْنِ حَتَّى يَبْلُغَ ثَمَانِي سِنِينَ وَبِالِابْنَةِ حَتَّى تَبْلُغَ، ثُمَّ الْأَبُ أَوْلَى بِهَا، إِلَّا أَنْ تَكُونَ الْأُمُّ غَيْرَ مَرْضِيَّةٍ فَتُنْتَزَعُ الِابْنَةُ مِنْهَا قَبْلَ ذَلِكَ.

L35869–35871 Al-Ḥasan ibn Ḥayy said: The mother has priority until the daughter's ankles become prominent (takʿub) and the boy grows pubic hair (yayʿ), at which point they are granted the choice. Between their two parents, so whichever one the son chooses, it is decided for him accordingly. Then, if after that the son and daughter wish to return to the other parent, that is permissible for both of them. If the mother marries, she loses her right to custody. If she is divorced before the time of the son and daughter's being granted the choice, her right to custody is restored. He said: When the daughter reaches maturity—provided she is of sound character—she may reside wherever she wishes. Similarly, the son, when he reaches maturity and his sound judgment is recognized.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: الْأُمُّ أَوْلَى حَتَّى تَكْعُبَ الِابْنَةُ، وَيَيْفَعَ الْغُلَامُ فَيُخَيَّرَانِ بَيْنَ أَبَوَيْهِمَا، فَأَيَّهُمَا اخْتَارَ قُضِيَ لَهُ بِذَلِكَ، ثُمَّ إِنْ بَدَا لِلْوَلَدِ وَالِابْنَةِ بَعْدَ ذَلِكَ فَأَرَادَ الرُّجُوعَ إِلَى الْآخَرِ فَذَلِكَ لَهُمَا، فَإِنْ تَزَوَّجَتْ الْأُمُّ فَلَا حَقَّ لَهَا فِي الْحَضَانَةِ، فَإِنْ طَلُقَتْ قَبْلَ وَقْتِ تَخْيِيرِ الْوَلَدِ وَالِابْنَةِ عَادَتْ عَلَى حَقِّهَا فِي الْحَضَانَةِ، قَالَ: فَإِذَا بَلَغَتْ الِابْنَةُ - وَهِيَ مَأْمُونَةٌ - فَلَهَا أَنْ تَسْكُنَ حَيْثُ شَاءَتْ، كَذَلِكَ الِابْنُ إِذَا بَلَغَ وَأُونِسَ رُشْدُهُ.

وَقَالَ أَبُو حَنِيفَةَ: الْأُمُّ أَحَقُّ بِالِابْنِ وَالِابْنَةِ الصَّغِيرَيْنِ، ثُمَّ الْجَدَّةُ أُمُّ الْأُمِّ ثُمَّ أُمُّ الْأَبِ، ثُمَّ الْأُخْتُ الشَّقِيقَةُ، ثُمَّ الْأُخْتُ لِلْأُمِّ.

L35872 Abu Hanifa said: The mother is most entitled to custody of the minor son and daughter, then the maternal grandmother, then the paternal grandmother, then the full sister, then the maternal half-sister.

ثُمَّ اخْتَلَفَ قَوْلُهُ - فَمَرَّةً قَالَ: ثُمَّ الْخَالَةُ، ثُمَّ الْأُخْتُ لِلْأَبِ، ثُمَّ الْعَمَّةُ - وَبِهِ يَأْخُذُ زُفَرُ - وَمَرَّةً قَالَ: ثُمَّ الْأُخْتُ لِلْأَبِ، ثُمَّ الْخَالَةُ، ثُمَّ الْعَمَّةُ، وَبِهِ يَأْخُذُ أَبُو يُوسُفَ.

L35873 Then his statements differed—on one occasion stating: next the maternal aunt, followed by the paternal sister, then the paternal aunt—a position adopted by Zufar—and on another occasion stating: next the paternal sister, followed by the maternal aunt, then the paternal aunt—a position adopted by Abū Yūsuf.

ثُمَّ لَمْ يَخْتَلِفْ قَوْلُهُ فِي أَنَّ الْخَالَةَ الشَّقِيقَةَ أَحَقُّ مِنْ الْخَالَةِ لِلْأَبِ، وَأَنَّ الْخَالَةَ لِلْأَبِ أَحَقُّ مِنْ الْخَالَةِ لِلْأُمِّ، وَالْخَالَةُ لِلْأُمِّ أَحَقُّ مِنْ الْعَمَّةِ الشَّقِيقَةِ، وَالْعَمَّةُ الشَّقِيقَةُ أَحَقُّ مِنْ الْعَمَّةِ لِلْأَبِ، وَأَنَّ الْعَمَّةَ لِلْأَبِ أَحَقُّ مِنْ الْعَمَّةِ لِلْأُمِّ.

L35874 Then his position did not differ in affirming that the full maternal aunt has greater entitlement than the maternal aunt through the father, the maternal aunt through the father has greater entitlement than the maternal aunt through the mother, the maternal aunt through the mother has greater entitlement than the full paternal aunt, the full paternal aunt has greater entitlement than the paternal aunt through the father, and the paternal aunt through the father has greater entitlement than the paternal aunt through the mother.

وَقَالَ أَبُو حَنِيفَةَ: وَالْكَافِرَةُ وَالْمُؤْمِنَةُ سَوَاءٌ.

L35875 Abū Ḥanīfah said: The disbelieving woman and the believing woman are the same.

قَالَ: فَالْأُمُّ وَالْجَدَّتَانِ أَحَقُّ بِالْجَارِيَةِ حَتَّى تَحِيضَ، وَبِالْغُلَامِ حَتَّى يَأْكُلَ وَحْدَهُ وَيَشْرَبَ وَحْدَهُ وَيَلْبَسَ ثِيَابَهُ وَحْدَهُ.

L35876 He said: So the mother and the two grandmothers have a greater right to the female child until she reaches puberty, and to the male child until he can eat, drink, and dress himself independently.

وَأَمَّا الْأَخَوَاتُ، وَالْخَالَاتُ، وَالْعَمَّاتُ - فَهُنَّ أَحَقُّ بِالْجَارِيَةِ وَالْغُلَامِ حَتَّى يَأْكُلَا وَحْدَهُمَا، وَيَشْرَبَا وَحْدَهُمَا وَيَلْبَسَا ثِيَابَهُمَا وَحْدَهُمَا فَقَطْ.

L35877 As for sisters, maternal aunts, and paternal aunts—they have the foremost right over the girl and the boy, but only until the two can eat by themselves, drink by themselves, and dress themselves in their clothes independently.

وَلَا حَقَّ لِمَنْ ذَكَرْنَا فِي الْحَضَانَةِ إنْ تَزَوَّجْنَ إلَّا أَنْ يَكُونَ زَوْجُ الْجَدَّةِ هُوَ الْجَدُّ، وَيَكُونَ زَوْجُ سَائِرِ مَنْ ذَكَرْنَا ذَا رَحِمٍ مَحْرَمَةٍ مِنْ الْجَارِيَةِ وَالْغُلَامِ فَلَا يَسْقُطُ بِذَلِكَ حَقُّ الْحَضَانَةِ لَهُنَّ.

L35878 And those women we mentioned regarding custody have no right if they marry, except when the grandmother's husband is the grandfather, and the husband of the remaining women we mentioned is a mahram through a forbidden blood relation to the young girl or boy. In such cases, their marriage does not nullify their right to custody.

L35879 He said: After all those we have mentioned, custody is incumbent upon the

قَالَ: وَبَعْدَ كُلِّ مَنْ ذَكَرْنَا تَجِبُ الْحَضَانَةُ لِلْأَبِ، ثُمَّ لِأَبِ الْأَبِ، ثُمَّ لِلْأَخِ الشَّقِيقِ، ثُمَّ لِلْأَخِ لِلْأَبِ، ثُمَّ لِلْعَمِّ الشَّقِيقِ، ثُمَّ لِلْعَمِّ لِلْأَبِ.

father, then upon the paternal grandfather, then upon the full brother, then upon the paternal half-brother, then upon the full paternal uncle, then upon the paternal half-uncle.

L35880–35881 قَالَ: وَلَا حَقَّ فِي الْحَضَانَةِ لِلْأَخِ لِلْأُمِّ، وَلَا لِلْعَمِّ لِلْأُمِّ، وَلَا لِلْجَدِّ لِلْأُمِّ، وَلَا لِلْخَالِ جُمْلَةً، وَلَا لِلرَّجُلِ تَكُونُ قَرَابَتُهُ مِنْ قِبَلِ الْأُمِّ.

He said: There is no right to custody for the uterine brother, nor for the mother's paternal uncle, nor for the maternal grandfather, nor for the maternal uncle whatsoever, nor for any male relative whose kinship is through the mother's side.

L35882 وَقَدْ رُوِيَ عَنْ زُفَرَ: أَنَّ الْخَالَةَ أَوْلَى مِنْ الْجَدَّةِ لِلْأَبِ، وَأَنَّ الْأُخْتَ الشَّقِيقَةَ وَالْأُخْتَ لِلْأُمِّ سَوَاءٌ لَا تُقَدَّمُ إحْدَاهُمَا عَلَى الْأُخْرَى قَالُوا: فَإِنْ أُمَّتْ أَوْ طَلُقَتْ إحْدَى مَنْ ذَكَرْنَا رَجَعَتْ عَلَى حَقِّهَا فِي الْحَضَانَةِ.

It has been reported from Zufar that the maternal aunt holds a stronger claim to custody than the paternal grandmother, and that the full sister and the uterine sister are equal - neither is given precedence over the other. The scholars stated: If one of the aforementioned relatives assumes maternal responsibility or is divorced, she regains her right to custody.

L35883 وَقَالَ مَالِكٌ: الْأُمُّ أَحَقُّ بِحَضَانَةِ الْوَلَدِ، ثُمَّ الْجَدَّةُ أُمُّ الْأُمِّ، ثُمَّ الْخَالَةُ، ثُمَّ الْجَدَّةُ مِنْ قِبَلِ الْأَبِ، ثُمَّ الْأُخْتُ، ثُمَّ الْعَمَّةُ، ثُمَّ ابْنَةُ الْأَخِ.

Malik said: The mother holds the primary right to custody of the child, followed by the maternal grandmother, then the maternal aunt, then the paternal grandmother, then the sister, then the paternal aunt, and finally the niece.

L35884 قَالَ: وَكُلُّ هَؤُلَاءِ أَحَقُّ بِالذَّكَرِ حَتَّى يَبْلُغَ الْحُلُمَ، وَبِالِابْنَةِ حَتَّى تُزَوَّجَ.

He said: All of these have a greater right to the son until he reaches puberty and to the daughter until she is married.

L35885 قَالَ: فَإِنْ تَزَوَّجَتْ الْأُمُّ سَقَطَ حَقُّهَا فِي الْحَضَانَةِ فَإِنْ كَانَ زَوْجُ الْجَدَّةِ الْجَدَّ لَمْ يَسْقُطْ حَقُّهَا فِي الْحَضَانَةِ قَالَ: ثُمَّ بَعْدَ ابْنَةِ الْأَخِ الْأَبُ، ثُمَّ الْعَصَبَةُ.

He said: If the mother marries, her right to custody is forfeited. If the grandmother's husband is the grandfather, her custody right does not lapse. He added: After the brother's daughter comes the father, then the agnates.

L35886–35888 وَقَالَ الشَّافِعِيُّ: الْأُمُّ أَحَقُّ بِالِابْنِ وَالِابْنَةِ مَا لَمْ تَتَزَوَّجْ، ثُمَّ الْجَدَّةُ مِنْ قِبَلِ الْأُمِّ وَإِنْ عَلَتْ، ثُمَّ الْأَبُ، ثُمَّ الْجَدُّ أَبُو الْأَبِ وَإِنْ عَلَا، ثُمَّ سَائِرُ الْعَصَبَةِ: الْأَخُ وَابْنُ الْأَخِ، وَالْعَمُّ وَابْنُ الْعَمِّ، ثُمَّ الْجَدَّةُ أُمُّ الْأَبِ، ثُمَّ أُمَّهَاتُهَا، ثُمَّ الْجَدَّةُ أُمُّ أَبِ الْأَبِ، ثُمَّ أُمَّهَاتُهَا وَإِنْ عَلَتْ، ثُمَّ الْأُخْتُ الشَّقِيقَةُ، ثُمَّ الْأُخْتُ لِلْأَبِ، ثُمَّ الْأُخْتُ لِلْأُمِّ، ثُمَّ الْخَالَةُ الشَّقِيقَةُ، ثُمَّ الْخَالَةُ لِلْأَبِ، ثُمَّ الْعَمَّةُ.

Al-Shafi'i said: The mother has the greatest right to the son and daughter as long as she has not remarried, then the maternal grandmother and her ascendants, then the father, then the paternal grandfather and his ascendants, then the rest of the agnates: the brother and the brother's son, the paternal uncle and the paternal uncle's son, then the paternal grandmother (the father's mother), then her ascendants, then the paternal great-grandmother, then her ascendants. The female ascendant, then the full sister, then the paternal sister, then the maternal sister, then the maternal aunt, then the paternal aunt, then the paternal aunt.

L35889 He said: When the minor reaches seven years of age and possesses under-

قَالَ: فَإِذَا بَلَغَ الصَّغِيرُ سَبْعَ سِنِينَ وَهُوَ يَعْقِلُ عَقْلَ مِثْلِهِ خُيِّرَ بَيْنَ أَبِيهِ وَأُمِّهِ، فَحَيْثُ اخْتَارَ جُعِلَ فَإِنْ تَزَوَّجَتْ الْأُمُّ خَرَجَتْ عَنْ الْحَضَانَةِ فَإِنْ أُمَّتْ عَادَتْ إلَى حَقِّهَا فِي الْحَضَانَةِ.

وَاخْتَلَفُوا فِي رَحِيلِ الْأَبِ - فَقَالَ أَبُو حَنِيفَةَ: إنْ كَانَ النِّكَاحُ وَقَعَ فِي مِصْرٍ فَأَرَادَتْ الْمَرْأَةُ أَنْ تَشْخَصَ بِوَلَدِهَا الصِّغَارِ فَالْوَالِدُ أَحَقُّ فَإِنْ سَكَنَتْ فِي غَيْرِ الْمَوْضِعِ الَّذِي وَقَعَ فِيهِ عَقْدُ النِّكَاحِ فَأَرَادَتْ الرُّجُوعَ إلَى الْمَكَانِ الَّذِي وَقَعَ فِيهِ عَقْدُ النِّكَاحِ فَلَهَا ذَلِكَ - وَهِيَ فِي ذَلِكَ أَحَقُّ بِهِمْ مِنْ الْأَبِ - وَلَهَا أَنْ تَرْحَلَ بِهِمْ إلَى مَا يَقْرُبُ مِنْ الْمِصْرِ الَّذِي وَقَعَ فِيهِ عَقْدُ النِّكَاحِ إنْ كَانَ يُمْكِنُ عَصَبَةُ الْوَلَدِ أَنْ يَنْهَضُوا إلَى رُؤْيَةِ الصَّغِيرِ أَوْ الصَّغِيرَةِ وَيَرْجِعُوا مِنْ نَهَارِهِمْ، وَقَالَ ابْنُ أَبِي لَيْلَى: نَحْوَ ذَلِكَ.

وَقَالَ مَالِكٌ: لِلْأَبِ أَنْ يَرْحَلَ بِبَنِيهِ إذَا كَانَ رَاحِلًا رِحْلَةَ إقَامَةٍ لَا رُجُوعَ لَهُ - صِغَارًا كَانُوا أَوْ كِبَارًا - قَالَ: وَالْعَصَبَةُ كَالْأَبِ فِي ذَلِكَ إذَا مَاتَ الْأَبُ، قَالَ: وَلَيْسَ لِلْأُمِّ أَنْ تُرَحِّلَهُمْ إلَى الْبَرِيدِ وَنَحْوِهِ.

وَقَالَ اللَّيْثُ، وَالشَّافِعِيُّ نَحْوَ ذَلِكَ.

قَالَ أَبُو مُحَمَّد: كُلُّ مَا ذَكَرْنَا مِنْ حَقِّ الْحَضَانَةِ فِي الزَّوْجَاتِ فَهُوَ فِي الْمَمَالِيكِ الْمَسْبِيِّينَ، وَالْمَبِيعِينَ، كُلُّ ذَلِكَ سَوَاءٌ سَوَاءٌ؛ لِأَنَّ النُّصُوصَ الَّتِي أَوْرَدْنَا تَقْتَضِي ذَلِكَ، وَلَا يُفْسَخُ الْبَيْعُ، لَكِنْ يُخَيَّرُ مَنْ لَهُ مِلْكُ الصَّغِيرِ وَالصَّغِيرَةِ عَلَى أَنْ يَدَعَهُمَا عِنْدَ مَنْ لَهُ حَضَانَتُهُمَا؛ لِأَنَّهُ لَمْ يَأْتِ نَصٌّ بِفَسْخِ الْبَيْعِ.

standing equivalent to his peers, he is given the choice between his father and mother. Whichever he chooses, he is placed there. If the mother marries, she loses custody. If she becomes single again, she regains her rightful claim to custody.

L35890 The jurists differed concerning the father's relocation. Abū Ḥanīfah said: If the marriage was contracted in a city and the woman wishes to depart with her young children, the father has a greater right. However, if she resides in a place other than where the marriage contract was concluded and wishes to return to the location of the marriage contract, she is entitled to do so—and in that case, she holds greater right over them than the father. She may move with them to a place near the city where the marriage was contracted, provided the child's paternal male relatives are able to journey to visit the minor boy or girl and return on the same day. Ibn Abī Laylā held a similar view.

L35891 Malik said: A father has the right to relocate with his sons if he undertakes a relocation journey for permanent settlement with no intention of return—whether they are minors or adults. He added: The male paternal relatives (agnates) hold the same authority as the father in this matter if the father dies. He further stated: The mother does not have the right to relocate them to a distance of one barīd [approximately 12 miles] or similar distances.

L35892 Al-Layth said, and Al-Shāfiʿī similarly.

L35893 Abu Muhammad said: All that we have mentioned regarding the right of custody concerning wives applies equally to captives and those sold into slavery—all of it is exactly the same in every respect. This is because the texts we have cited necessitate that, and the sale is not invalidated. However, the owner of the minor boy or girl is given the choice to leave them with the person entitled to their custody, as no explicit text prescribes the invalidation of the sale.

L35894 Abu Hanifah said: No distinction is made between the minor boy and the minor girl, nor between them and their mahram relatives. If the minor boy

or girl is sold without her mahram relatives or his mahram relative, the sale is not invalidated.

وَقَالَ أَبُو حَنِيفَةَ: لَا يُفَرَّقُ بَيْنَ الصَّغِيرِ وَالصَّغِيرَةِ وَبَيْنَ ذَوِي رَحِمِهَا الْمَحْرَمَةِ، فَإِنْ بِيعَ الصَّغِيرُ أَوْ الصَّغِيرَةُ دُونَ ذَوِي رَحِمِهَا أَوْ ذَاتِ رَحِمِهِ لَمْ يُفْسَخْ الْبَيْعُ.

L35895 Abū Yūsuf said: "The marriage is annulled specifically in the case of the mother and the child." Mālik, al-Layth, and al-Shāfiʿī said: "Separation is mandated between two minors [in a marriage] and between all prohibited mahram relatives, except the parents alone; hence, no separation is mandated between the parents and their child."

قَالَ أَبُو يُوسُفَ: يُفْسَخُ فِي الْأُمِّ وَالْوَلَدِ خَاصَّةً وَقَالَ مَالِكٌ، وَاللَّيْثُ، وَالشَّافِعِيُّ: يُفَرَّقُ بَيْنَ الصَّغِيرَيْنِ وَبَيْنَ كُلِّ ذِي رَحِمٍ مَحْرَمَةٍ إلَّا الْأَبَوَيْنِ فَقَطْ فَلَا يُفَرَّقُ بَيْنَهُمَا وَبَيْنَ وَلَدِهِمَا.

L35896–35897 Ahmad ibn Hanbal said: No separation should be made between the two minors from the captives and their mahram relatives.

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: لَا يُفَرَّقُ بَيْنَ الصَّغِيرَيْنِ مِنْ السَّبْيِ وَبَيْنَ ذَوِي رَحِمِهِ الْمَحْرَمَةِ.

L35898 Muhammad ibn Abdullah ibn Abd al-Hakam said: A child should not be separated from their mother, even if they have reached puberty.

وَقَالَ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ: لَا يُفَرَّقُ بَيْنَ الْوَلَدِ وَأُمِّهِ وَإِنْ كَانَ بَالِغًا.

L35899 Abu Muhammad said: We have presented these statements only to bring awareness to their weakness, contradictions, and invalidity, and to demonstrate that they are arbitrary preferences without meaning, and to expose the falsehood of whoever claims consensus in any aspect of this matter.

قَالَ أَبُو مُحَمَّد: إنَّمَا أَوْرَدْنَا هَذِهِ الْأَقْوَالَ لِيُوقَفَ عَلَى تَخَاذُلِهَا وَتَنَاقُضِهَا وَفَسَادِهَا، وَأَنَّهَا اسْتِحْسَانَاتٌ لَا مَعْنَى لَهَا، وَلِيَظْهَرَ كَذِبُ مَنْ ادَّعَى الْإِجْمَاعَ فِي شَيْءٍ مِنْ ذَلِكَ.

L35900 It has been narrated to us through the chain of Shuʻbah from ʻAmr ibn Dīnār, from ʻAbd al-Raḥmān ibn Farrūkh, from his father, from ʻUmar ibn al-Khaṭṭāb, who said: "If you sell two brothers, do not separate between them."

وَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ فَرُّوخَ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: إذَا بِعْتُمْ أَخَوَيْنِ فَلَا تُفَرِّقُوا بَيْنَهُمَا.

L35901 I am Muḥammad ibn Saʿīd ibn Nubāt. I am Aḥmad ibn ʿAwn Allāh. I am Qāsim ibn Aṣbagh. Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us: I am Muḥammad ibn Bashshār. ʿUthmān ibn ʿUmar narrated to us from Ibn Abī Dhiʾb, from someone who heard Sālim ibn ʿAbd Allāh ibn ʿUmar relate from his father that he said: "If you sell two brother slaves, do not separate them." I said to him: "Then the division is not fair?" He said: "No, it has become fair."

أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ أَنَا أَحْمَدُ بْنُ عَوْنِ اللَّهِ أَنَا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ أَنَا عُثْمَانُ بْنُ عُمَرَ عَنْ ابْنِ أَبِي ذِئْبٍ عَمَّنْ سَمِعَ سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ يَذْكُرُ عَنْ أَبِيهِ أَنَّهُ قَالَ: إذَا بِعْتُمْ أَخَوَيْنِ فَلَا تُفَرِّقُوا بَيْنَهُمَا، قُلْت لَهُ: إذًا لَا يَعْتَدِلُ الْقَسْمُ؟ قَالَ: لَا اعْتَدَلَ.

L35902 It is narrated from Uthman—may Allah be pleased with him—that captives should not be sold except in intact family units; and it is narrated from Umar ibn Abd al-Aziz that a sale contrary to that [prohibition] is annulled.

وَعَنْ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - أَنْ لَا يُبَاعَ السَّبِيُّ إلَّا أَعْشَاشًا - وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَسْخُ الْبَيْعِ بِخِلَافِ ذَلِكَ.

An issue where the son or daughter under custodianship, both being of sound mind, attain legal maturity.

2011 - Issue: When a child, whether a son or daughter, reaches the age of sound judgment, they both have greater entitlement over themselves and may reside wherever they choose. However, if they cannot be trusted to avoid sins such as drinking alcohol, immodest display, or indiscriminate gender mixing, the father, other agnatic kin, the ruler, or neighbors may restrain them from such acts and resettle them under supervision. We have previously cited analogous statements from Abū Ḥanīfah and al-Ḥasan ibn Ḥayy regarding this matter.

The proof of the soundness of our statement is Allah's declaration - the Almighty, the Majestic: *"No soul earns [evil] except against itself"* [Al-An'am 6:164].[24]

And his endorsement—peace and blessings be upon him—of Salmān's statement: "Give every possessor of a right his right."

There is no significance to differentiating between male and female in this matter, nor to considering a daughter's marriage, since this constitutes legislation not permitted by God the Exalted—for she might have been married while in the cradle, or she might never marry even as a ninety-year-old woman.

Perhaps a virgin is more righteous and observant than married women, and by necessity of innate perception, everyone knows that marriage has not granted her reason or righteousness she did not already possess.

As for when mixing or sin becomes apparent in a male or female, preventing that is obligatory, based on Allah's statement, the Most High: "Be staunch maintainers of justice, witnesses for Allah" [An-Nisa: 135], and His saying: "Cooperate in righteousness and piety, and do not cooperate in sin and aggression" [Al-Ma'idah: 2].[25]

[24]**Qur'an references (L35905):** Qur'an 6:164 (Al-An'am).

[25]**Qur'an references (L35910):** Qur'an 4:135 (An-Nisa); Qur'an 5:2 (Al-Ma'idah).

[مَسْأَلَةٌ بَلَغَ الْوَلَدُ أَوْ الِابْنَةُ المحضونين عَاقِلَيْنِ]

٢٠١١ - مَسْأَلَةٌ: وَإِذَا بَلَغَ الْوَلَدُ أَوْ الِابْنَةُ عَاقِلَيْنِ، فَهُمَا أَمْلَكُ بِأَنْفُسِهِمَا، وَيَسْكُنَانِ أَيْنَمَا أَحَبَّا، فَإِنْ لَمْ يُؤْمَنَا عَلَى مَعْصِيَةٍ مِنْ شُرْبِ خَمْرٍ، أَوْ تَبَرُّجٍ، أَوْ تَخْلِيطٍ، فَلِلْأَبِ أَوْ غَيْرِهِ مِنْ الْعَصَبَةِ، أَوْ لِلْحَاكِمِ، أَوْ لِلْجِيرَانِ أَنْ يَمْنَعَاهُمَا مِنْ ذَلِكَ، وَيُسْكِنَاهُمَا حَيْثُ يُشْرِفَانِ عَلَى أُمُورِهِمَا، وَقَدْ ذَكَرْنَا قَوْلَ أَبِي حَنِيفَةَ، وَالْحَسَنِ بْنِ حَيٍّ بِمِثْلِ هَذَا.

بُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

وَتَصْوِيبُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَوْلُ سَلْمَانَ «أَعْطِ كُلَّ ذِي حَقٍّ حَقَّهُ» .

وَلَا مَعْنَى لِلْفَرْقِ بَيْنَ الذَّكَرِ وَالْأُنْثَى فِي ذَلِكَ، وَلَا لِمُرَاعَاةِ زَوَاجِ الِابْنَةِ؛ لِأَنَّهُ شَرْعٌ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى - وَقَدْ تَزَوَّجَ وَهِيَ فِي الْمَهْدِ وَقَدْ لَا تَتَزَوَّجُ وَهِيَ بِنْتُ تِسْعِينَ سَنَةً.

وَرُبَّ بِكْرٍ أَصْلَحُ وَأَنْظَرُ مِنْ ذَوَاتِ الْأَزْوَاجِ وَبِضَرُورَةِ الْحِسِّ يَدْرِي كُلُّ أَحَدٍ أَنَّ الزَّوَاجَ لَمْ يَزِدْهَا عَقْلًا لَمْ يَكُنْ وَلَا صَلَاحًا لَمْ يَكُنْ.

وَأَمَّا إذَا ظَهَرَ مِنْ الذَّكَرِ أَوْ الْأُنْثَى تَخْلِيطٌ أَوْ مَعْصِيَةٌ فَالْمَنْعُ مِنْ ذَلِكَ وَاجِبٌ: لِقَوْلِ اللَّهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥] ، وقَوْله تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L35911 And the saying of the Most High: “Let there be among you a community calling to good, enjoining what is right, and forbidding what is wrong. They are the successful ones” [Āl ʿImrān: 104].[26]

وقَوْله تعَالَى: {وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَأُولَئِكَ هُمُ الْمُفْلِحُونَ} [آل عمران: ١٠٤] .

L35912 **An issue where the father and mother were in need of service from the son or daughter.**

[مَسْأَلَةٌ كَانَ الْأَبُ وَالْأُمُّ مُحْتَاجَيْنِ إِلَى خِدْمَةِ الِابْنِ أَوْ الِابْنَةِ]

L35913 2012 - Issue: If the father and mother require care from their son or daughter—whether married or unmarried—it becomes impermissible for the son or daughter to depart nor to neglect the parents in any way. Their right takes precedence over the right of the spouse. If the father and mother have no essential need for such care, the husband may relocate his wife wherever he wishes, provided this relocation causes no harm to the parents.

٢٠١٢ - مَسْأَلَةٌ: وَإِنْ كَانَ الْأَبُ، وَالْأُمُّ مُحْتَاجَيْنِ إِلَى خِدْمَةِ الِابْنِ أَوْ الِابْنَةِ - النَّاكِحِ أَوْ غَيْرِ النَّاكِحِ - لَمْ يَجُزْ لِلِابْنِ وَلَا لِلِابْنَةِ الرَّحِيلُ، وَلَا تَضْيِيعُ الْأَبَوَيْنِ أَصْلًا، وَحَقُّهُمَا أَوْجَبُ مِنْ حَقِّ الزَّوْجِ وَالزَّوْجَةِ - فَإِنْ لَمْ يَكُنْ بِالْأَبِ وَالْأُمِّ ضَرُورَةٌ إلَى ذَلِكَ فَلِلزَّوْجِ إرْحَالُ امْرَأَتِهِ حَيْثُ شَاءَ مِمَّا لَا ضَرَرَ عَلَيْهِمَا فِيهِ.

L35914 The proof of this is the saying of Allah, the Mighty and Majestic: “Be grateful to Me and to your parents” [Luqman: 14]. Thus, the Exalted has joined gratitude to them with gratitude to Him, the Mighty and Majestic.[27]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {أَنِ اشْكُرْ لِي وَلِوَالِدَيْكَ} [لقمان: ١٤] فَقَرَنَ تَعَالَى الشُّكْرَ لَهُمَا بِالشُّكْرِ لَهُ عَزَّ وَجَلَّ.

L35915 And the statement of the Almighty: {And if they strive to make you associate with Me that of which you have no knowledge, then do not obey them but accompany them in this world kindly} [Luqman: 15]. Thus, Allah Almighty has obligated that one accompany their parents kindly—even if they are disbelievers both calling him to disbelief—and whoever neglects them and did not accompany them in this world kindly.[28]

وقَوْله تعَالَى: {وَإِنْ جَاهَدَاكَ عَلَى أَنْ تُشْرِكَ بِي مَا لَيْسَ لَكَ بِهِ عِلْمٌ فَلا تُطِعْهُمَا وَصَاحِبْهُمَا فِي الدُّنْيَا مَعْرُوفًا} [لقمان: ١٥] فَافْتَرَضَ اللَّهُ عَزَّ وَجَلَّ أَنْ يَصْحَبَ الْأَبَوَيْنِ بِالْمَعْرُوفِ - وَإِنْ كَانَا كَافِرَيْنِ يَدْعُوَانِهِ إلَى الْكُفْرِ - وَمَنْ ضَيَّعَهُمَا فَلَمْ يَصْحَبْهُمَا فِي الدُّنْيَا مَعْرُوفًا.

L35916 And His statement, the Most High: “And show kindness to parents. If they reach old age with you—one of them or both—do not say to them, ‘Uff’ (a word of disgust), nor rebuke them harshly, but speak to them a kind and generous word.” [Al-Isrā’: 23] “And lower to them the wing of gentle submission out of mercy.” [Al-Isrā’: 24].[29]

وقَوْله تعَالَى: {وَبِالْوَالِدَيْنِ إِحْسَانًا إِمَّا يَبْلُغَنَّ عِنْدَكَ الْكِبَرَ أَحَدُهُمَا أَوْ كِلاهُمَا فَلا تَقُلْ لَهُمَا أُفٍّ وَلا تَنْهَرْهُمَا وَقُلْ لَهُمَا قَوْلا كَرِيمًا} [الإسراء: ٢٣] {وَاخْفِضْ لَهُمَا جَنَاحَ الذُّلِّ مِنَ الرَّحْمَةِ} [الإسراء: ٢٤] .

[26] **Qur’an references (L35911):** Qur’an 3:104 (Ali ’Imran).
[27] **Qur’an references (L35914):** Qur’an 31:14 (Luqman).
[28] **Qur’an references (L35915):** Qur’an 31:15 (Luqman).
[29] **Qur’an references (L35916):** Qur’an 17:23 (Al-Isra); Qur’an 17:24 (Al-Isra).

وَقَدْ ذَكَرْنَا آنِفًا قَوْلَ الرَّجُلِ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أَحَقُّ النَّاسِ بِحُسْنِ الصُّحْبَةِ؟ قَالَ: أُمُّكَ ثُمَّ أُمُّكَ ثُمَّ أَبَاكَ» . وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «عُقُوقُ الْوَالِدَيْنِ مِنْ الْكَبَائِرِ» ، وَقَدْ اخْتَلَفَ قَوْمٌ فِيمَا ذَكَرْنَا وَاحْتَجُّوا بِأَخْبَارٍ سَاقِطَةٍ -:

L35917 We have previously mentioned the statement of the man who asked the Messenger of Allah—peace and blessings be upon him—"Who among people is most deserving of my good companionship?" He replied: "Your mother, then your mother, then your father." And his statement—peace and blessings be upon him—"Disobedience to parents is among the major sins." And indeed, some people have differed regarding what we have mentioned and have argued using weak narrations:

مِنْهَا - خَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ الْحَارِثِ بْنِ أَبِي أُسَامَةَ عَنْ يَزِيدَ بْنِ هَارُونَ عَنْ يُوسُفَ عَطِيَّةَ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَجُلًا غَزَا وَتَرَكَ امْرَأَتَهُ فِي عُلْوٍّ وَأَبُوهَا فِي سُفْلٍ وَأَمَرَهَا أَنْ لَا تَخْرُجَ مِنْ بَيْتِهَا فَاشْتَكَى أَبُوهَا فَاسْتَأْذَنَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَمْرِهِ؟ فَقَالَ لَهَا: اتَّقِي اللَّهَ وَأَطِيعِي زَوْجَكِ - ثُمَّ كَذَلِكَ إذْ مَاتَ أَبُوهَا وَلَمْ تَشْهَدْهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ اللَّهَ غَفَرَ لِأَبِيكِ بِطَوَاعِيَتِكِ لِزَوْجِكِ» . يُوسُفُ بْنُ عَطِيَّةَ مَتْرُوكُ الْحَدِيثِ وَلَا يُكْتَبُ حَدِيثُهُ.

L35918–35920 Among them is a report we have transmitted through the chain of transmission of Al-Harith ibn Abi Usamah from Yazid ibn Harun from Yusuf Atiyyah from Thabit al-Bunaniyy from Anas ibn Malik that a man went on a military expedition and left his wife upstairs. Her father was in a weakened state and had ordered her not to leave her house. When her father fell ill, she sought permission from the Messenger of Allah—peace be upon him—to attend to him. He said to her: "Fear Allah and obey your husband." Later, when her father died and she did not witness his death, the Messenger of Allah—peace be upon him—said: "Allah has forgiven your father because of your obedience to your husband." Yusuf ibn 'Atiyyah is abandoned in hadith narration, and his narrations are not to be recorded.

وَمِنْ طَرِيقِ مُسَدَّدٍ عَنْ عَبْدِ الْوَاحِدِ بْنِ زِيَادٍ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ عَطَاءٍ عَنْ ابْنِ عُمَرَ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ حَقِّ الرَّجُلِ عَلَى زَوْجَتِهِ؟ فَقَالَ كَلَامًا مِنْهُ: أَنْ لَا تَخْرُجَ مِنْ بَيْتِهَا إلَّا بِإِذْنِهِ، فَإِنْ فَعَلَتْ لَعَنَتْهَا مَلَائِكَةُ اللَّهِ وَمَلَائِكَةُ الرَّحْمَةِ وَمَلَائِكَةُ الْعَذَابِ حَتَّى تَرْجِعَ إلَى بَيْتِهَا أَوْ تَتُوبَ، قِيلَ: يَا رَسُولَ اللَّهِ وَإِنْ ظَلَمَهَا؟ قَالَ: وَإِنْ ظَلَمَهَا» .

L35921 Narrated through the chain of Musaddad from Abd al-Wahid ibn Ziyad from Laith ibn Abi Sulaim from Ata' from Ibn Umar: The Messenger of Allah (peace be upon him) was asked about a man's right over his wife. He replied: "She must not leave her house except with his permission. If she does so, the angels of Allah, the angels of mercy, and the angels of punishment curse her until she returns to her house or seeks repentance." It was asked: "O Messenger of Allah, even if he wrongs her?" He said: "Even if he wrongs her."

لَيْثٌ ضَعِيفٌ، وَحَاشَ لِلَّهِ أَنْ يُبِيحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الظُّلْمَ، وَهِيَ زِيَادَةٌ مَوْضُوعَةٌ لَيْسَتْ لِلَّيْثِ بِلَا شَكٍّ.

L35922 Layth is weak, and far be it from Allah that the Messenger of Allah (may Allah bless him and grant him peace) would permit injustice. This is a fabricated addition, and it is without any doubt not from Layth.

L35923 Through the chain of Qasim ibn Asbagh: Ibn Abi al-Awwam reported to us that Ubayd ibn Ishaq—he is the perfumer—narrated to us. Hayyan ibn Ali al-Anazi narrated from Salih ibn Hayyan, from Ibn Buraidah, from Buraidah,

that the Messenger of Allah—peace and blessings be upon him and his family—said: “If I were to command any human to prostrate to another human, I would command the woman to prostrate to her husband to honor his due right.”

وَمِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ أَنَا ابْنُ أَبِي الْعَوَّامِ ثنا عُبَيْدُ بْنُ إِسْحَاقَ - هُوَ الْعَطَّارُ - أَنَا حَيَّانُ بْنُ عَلِيٍّ الْعَنَزِيُّ عَنْ صَالِحِ بْنِ حَيَّانَ عَنْ ابْنِ بُرَيْدَةَ عَنْ بُرَيْدَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: لَوْ كُنْتُ آمِرًا بَشَرًا أَنْ يَسْجُدَ لِبَشَرٍ لَأَمَرْتُ الْمَرْأَةَ أَنْ تَسْجُدَ لِزَوْجِهَا تَعْظِيمًا لِحَقِّهِ» .

L35924–35925 And through the chain of Wakiʿ from al-Aʿmash, from Abū Zabyān, from Muʿādh ibn Jabal, from the Messenger of Allah (may Allah’s peace and blessings be upon him), verbatim, letter for letter. It does not contain the phrase “honoring His right.”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الْأَعْمَشِ عَنْ أَبِي ظَبْيَانَ عَنْ مُعَاذِ بْنِ جَبَلٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلُهُ حَرْفًا حَرْفًا، لَيْسَ فِيهِ " تَعْظِيمًا لِحَقِّهِ ".

L35926 Through the chain of Khalaf ibn Khalifah from Hafs—the nephew of Anas ibn Malik—from Anas, from the Messenger of Allah (peace and blessings be upon him and his family): “If it were proper for a created being to prostrate to another, I would have commanded the wife to prostrate to her husband because of the immense right he holds over her.”

وَمِنْ طَرِيقِ خَلَفِ بْنِ خَلِيفَةَ عَنْ حَفْصٍ ابْنِ أَخِي أَنَسِ بْنِ مَالِكٍ عَنْ أَنَسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَوْ صَلَحَ لِبَشَرٍ أَنْ يَسْجُدَ لِبَشَرٍ لَأَمَرْتُ الْمَرْأَةَ أَنْ تَسْجُدَ لِزَوْجِهَا مِنْ عَظِيمِ حَقِّهِ عَلَيْهَا» .

L35927 Narrated by Abū Dāwūd via ʿAmr ibn ʿAwn, Isḥāq ibn Yūsuf al-Azraq, Sharīk ibn ʿAbd Allāh the judge, Ḥuṣayn, al-Shaʿbī, Qays ibn Saʿd, from the Messenger of Allāh—peace and blessings of Allāh be upon him—: “If I were to command anyone to prostrate before another, I would command women to prostrate before their husbands due to the rights Allāh has granted husbands over wives.”[30]

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا عَمْرُو بْنُ عَوْنٍ أَنَا إِسْحَاقُ بْنُ يُوسُفَ الْأَزْرَقُ عَنْ شَرِيكِ بْنِ عَبْدِ اللَّهِ الْقَاضِي عَنْ حُصَيْنٍ عَنْ الشَّعْبِيِّ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَوْ كُنْتُ آمِرًا أَحَدًا أَنْ يَسْجُدَ لِأَحَدٍ لَأَمَرْتُ النِّسَاءَ أَنْ يَسْجُدْنَ لِأَزْوَاجِهِنَّ لِمَا جَعَلَ اللَّهُ لَهُمْ عَلَيْهِنَّ مِنْ الْحَقِّ» .

L35928 I am Aḥmad ibn Muḥammad ibn Aḥmad ibn al-Jasūr. I am Aḥmad ibn al-Faḍl al-Dīnawarī. I am Muḥammad ibn Jarīr al-Ṭabarī. I am Ibrāhīm ibn al-Mustamir. I am Wahb ibn Jarīr ibn Ḥāzim. I am Mūsā ibn ʿAlī ibn Rabāḥ, from his father, from Suraqah ibn Juʿshum, that he heard the Messenger of Allah (peace be upon him) say: “If I had ever commanded anyone to prostrate to another, I would have commanded the woman to prostrate to her husband.”[31]

أَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ أَحْمَدَ بْنِ الْجَسُورِ أَنَا أَحْمَدُ بْنُ الْفَضْلِ الدِّينَوَرِيُّ أَنَا مُحَمَّدُ بْنُ جَرِيرٍ الطَّبَرِيُّ أَنَا إِبْرَاهِيمُ بْنُ الْمُسْتَمِرِّ أَنَا وَهْبُ بْنُ جَرِيرِ بْنِ حَازِمٍ أَنَا مُوسَى بْنُ عَلِيِّ بْنِ رَبَاحٍ عَنْ أَبِيهِ عَنْ سُرَاقَةَ بْنِ جُعْشُمٍ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَوْ كُنْتُ آمُرُ أَحَدًا أَنْ يَسْجُدَ لِأَحَدٍ لَأَمَرْتُ الْمَرْأَةَ أَنْ تَسْجُدَ لِزَوْجِهَا» .

[30] **Hadith references (L35927):** Sunan Abi Dawud 2140.
[31] **Hadith references (L35928):** Mishkat al-Masabih 3255.

L35929 Abu Muhammad said: All of this is invalid. As for the hadith of Buraidah—it contains ʾUbayd ibn Isḥāq, known as the so-called Perfumer of Triply Divorced Women, a Kufan who narrates falsehoods. He is worthless—the same one who transmitted "Your children's teachers are the worst among you"—and this is pure falsehood, given the authenticity of the Messenger of Allah's—peace and blessings be upon him and his family—statement: "The best of you are those who learn the Quran and teach it." As for the hadith of Mu'adh—it is a discontinuous chain, for Abū Ẓabyān neither met Mu'adh nor encountered him.

قَالَ أَبُو مُحَمَّد: كُلُّ هَذَا بَاطِلٌ -: أَمَّا حَدِيثُ بُرَيْدَةَ - فَفِيهِ عُبَيْدُ بْنُ إِسْحَاقَ يُعْرَفُ بِعَطَّارِ الْمُطَلَّقَاتِ كُوفِيٌّ يُحَدِّثُ بِالْبَاطِلِ لَيْسَ بِشَيْءٍ وَهُوَ الَّذِي أَسْنَدَ " مُعَلِّمُو صِبْيَانِكُمْ شِرَارُكُمْ " وَهَذَا هُوَ الْكَذِبُ الْبَحْتُ، لِصِحَّةِ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «خَيْرُكُمْ مَنْ تَعَلَّمَ الْقُرْآنَ وَعَلَّمَهُ» . وَأَمَّا حَدِيثُ مُعَاذٍ - فَمُنْقَطِعٌ؛ لِأَنَّ أَبَا ظَبْيَانَ لَمْ يَلْقَ مُعَاذًا وَلَا أَدْرَكَهُ.

L35930 As for the ḥadīth of Anas—it mentions Ḥafṣ, the son of his brother, though it is not known that Anas had a brother's son named Ḥafṣ, nor did Anas have any brother except al-Barā' ibn Mālik from his father.

وَأَمَّا حَدِيثُ أَنَسٍ - فَفِيهِ حَفْصُ ابْنُ أَخِي أَنَسٍ وَلَا يُعْرَفُ لِأَنَسٍ ابْنُ أَخٍ اسْمُهُ حَفْصٌ، وَلَا أَخٌ لِأَنَسٍ، إِلَّا الْبَرَاءُ بْنُ مَالِكٍ مِنْ أَبِيهِ.

L35931–35932 Abdullah ibn Abi Talhah is known through his mother. Neither he nor his mother is recorded to have had a child named Hafs. Khalaf ibn Khalifah is not recognized as a ḥāfiẓ (reliable hadith memorizer).

وَعَبْدُ اللَّهِ بْنُ أَبِي طَلْحَةَ مِنْ أُمِّهِ وَلَا يُعْرَفُ لِوَاحِدٍ مِنْهُمَا وَلَدٌ اسْمُهُ حَفْصٌ - وَخَلَفُ بْنُ خَلِيفَةَ لَيْسَ بِالْحَافِظِ.

L35933 As for the ḥadīth of Suraqah ibn Juʿshum, it is broken because ʿAlī ibn Rabāḥ never met Suraqah.

وَأَمَّا حَدِيثُ سُرَاقَةَ بْنِ جُعْشُمٍ - فَمُنْقَطِعٌ؛ لِأَنَّ عَلِيَّ بْنَ رَبَاحٍ لَمْ يُدْرِكْ سُرَاقَةَ قَطُّ.

L35934 As for the ḥadīth of Qays ibn Saʿd, in its chain is Sharīk ibn ʿAbdullāh the judge—and he is a mudallis (one who engages in tadlīs by concealing objectionable matters)—narrating from someone of no merit except [when he transmits from] the trustworthy authorities.

وَأَمَّا حَدِيثُ قَيْسِ بْنِ سَعْدٍ فَفِيهِ شَرِيكُ بْنُ عَبْدِ اللَّهِ الْقَاضِي - وَهُوَ مُدَلِّسٌ يُدَلِّسُ الْمُنْكَرَاتِ - عَمَّنْ لَا خَيْرَ فِيهِ إِلَّا الثِّقَاتِ.

L35935 From the path of Aḥmad ibn Shuʿayb: I am Shuʿayb ibn Shuʿayb ibn Isḥāq, from ʿAbd al-Wahhāb, who narrated to me from Shuʿayb ibn Isḥāq, from al-Awzāʿī, who informed me from Yaḥyā—that is, Ibn Saʿīd al-Anṣārī—that Bashīr ibn Yasār informed him that ʿAbd Allāh ibn Miḥṣan informed him from his paternal aunt, that she mentioned her husband to the Messenger of Allāh—peace and blessings be upon him—and he said to her: "Consider where you stand regarding him, for he is your Paradise or your Fire."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا شُعَيْبُ بْنُ شُعَيْبِ بْنِ إِسْحَاقَ أَنَا عَبْدُ الْوَهَّابِ حَدَّثَنِي شُعَيْبُ بْنُ إِسْحَاقَ أَنَا الْأَوْزَاعِيُّ أَخْبَرَنِي يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْأَنْصَارِيِّ - أَنْ بَشِيرَ بْنَ يَسَارٍ أَخْبَرَهُ أَنَّ عَبْدَ اللَّهِ بْنَ مِحْصَنٍ أَخْبَرَهُ عَنْ عَمَّةٍ لَهُ «أَنَّهَا ذَكَرَتْ زَوْجَهَا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: انْظُرِي أَيْنَ أَنْتِ مِنْهُ فَإِنَّهُ جَنَّتُكِ أَوْ نَارُكِ» .

L35936–35938 From the chain of Aḥmad Ibn Shuʿayb: Qutaybah Ibn Saʿīd, Muḥammad

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، وَمُحَمَّدُ بْنُ مَنْصُورٍ، وَأَحْمَدَ بْنِ سُلَيْمَانَ، وَمُحَمَّدُ بْنُ بَشَّارٍ، وَمُحَمَّدِ بْنِ الْمُثَنَّى، وَيُونُسَ بْنِ عَبْدِ الْأَعْلَى وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ - قَالَ قُتَيْبَةُ: أَنَا اللَّيْثُ بْنُ سَعْدٍ وَقَالَ مُحَمَّدُ بْنُ مَنْصُورٍ: أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ - وَقَالَ أَحْمَدُ بْنُ سُلَيْمَانَ أَنَا يَعْلَى، وَيَزِيدُ، وَقَالَ ابْنُ الْمُثَنَّى، وَابْنُ بَشَّارٍ: أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ - وَقَالَ يُونُسُ أَنَا ابْنُ وَهْبٍ أَنَا مَالِكٌ - وَقَالَ ابْنُ عَبْدِ الْحَكَمِ أَنَا شُعَيْبُ بْنُ اللَّيْثِ أَنَا اللَّيْثُ - وَقَالَ يُونُسُ أَنَا خَالِدٌ عَنْ سَعِيدِ بْنِ أَبِي هِلَالٍ - ثُمَّ اتَّفَقَ اللَّيْثُ، وَسُفْيَانُ، وَيَعْلَى، وَيَزِيدُ وَيَحْيَى، وَمَالِكٌ، وَابْنُ أَبِي هِلَالٍ، كُلُّهُمْ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ بَشِيرِ بْنِ يَسَارٍ عَنْ حُصَيْنِ بْنِ مِحْصَنٍ عَنْ عَمَّةٍ لَهُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِهِ.

Ibn Manṣūr, Aḥmad Ibn Sulaymān, Muḥammad Ibn Bashshār, Muḥammad Ibn al-Muthannā, Yūnus Ibn ʿAbd al-Aʿlā, and Muḥammad Ibn ʿAbd Allāh Ibn ʿAbd al-Ḥakam. Qutaybah said: From al-Layth ibn Sa‘d. Muhammad ibn Mansur said: From Sufyan ibn ‘Uyaynah. Ahmad ibn Sulayman said: From Ya‘la and Yazid. Ibn al-Muthanna and Ibn Bashshar said: From Yahya ibn Sa‘id al-Qattan. Yunus said: From Ibn Wahb, from Malik. Ibn ‘Abd al-Hakam said: From Shu‘ayb ibn al-Layth, from al-Layth. Yunus said: From Khalid, from Sa‘id ibn Abi Hilal. Then al-Layth, Sufyan, Ya‘la, Yazid, Yahya, Malik, and Ibn Abi Hilal concurred—all of them narrating from Yahya ibn Sa‘id al-Ansari, from Bashir ibn Yasar, from Husayn ibn Mihsan, from his paternal aunt, who reported the same narration from the Prophet—peace and blessings be upon him.

L35939 وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ حُصَيْنِ بْنِ مِحْصَنٍ - فَهَذَا كُلُّهُ لَا يَصِحُّ، لِأَنَّ عَبْدَ اللَّهِ بْنَ مِحْصَنٍ، وَحُصَيْنَ بْنَ مِحْصَنٍ مَجْهُولَانِ، لَا يَدْرِي أَحَدٌ مَنْ هُمَا؟ .

Similarly, we have transmitted it through the chain of Ḥammād ibn Zayd from Yaḥyā ibn Saʿīd al-Anṣārī from Ḥuṣayn ibn Miḥṣan—all of this is unreliable, because ʿAbdullāh ibn Miḥṣan and Ḥuṣayn ibn Miḥṣan are unknown; no one knows who they are.

L35940 وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مَحْمُودُ بْنُ غَيْلَانَ أَنَا أَبُو أَحْمَدَ - هُوَ الزُّبَيْرِيُّ - أَنَا مِسْعَرٌ - هُوَ ابْنُ كِدَامٍ - عَنْ أَبِي عُتْبَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «سَأَلْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَيُّ النَّاسِ أَعْظَمُ حَقًّا عَلَى الْمَرْأَةِ؟ قَالَ: زَوْجُهَا قُلْتُ: فَأَيُّ النَّاسِ أَعْظَمُ حَقًّا عَلَى الرَّجُلِ؟ قَالَ: أُمُّهُ» . قَالَ أَبُو مُحَمَّدٍ: أَبُو عُتْبَةَ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ؟ وَالْقُرْآنُ كَمَا أَوْرَدْنَا، وَالثَّابِتُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا صَدَّرْنَا بِهِ يُبْطِلُ هَذَا.

From the chain of Ahmad ibn Shuʿayb: from Maḥmūd ibn Ghaylān, from Abū Aḥmad—he is al-Zubayrī—, from Misʿar—he is ibn Kidām—, from Abū ʿUtbah, from ʿĀ’ishah, the Mother of the Believers, who said: “I asked the Prophet—peace be upon him—: ’Who among people holds the greatest right over a woman?’ He said: ’Her husband.’ I asked: ’And who among people holds the greatest right over a man?’ He said: ’His mother.’” Abū Muḥammad said: Abū ʿUtbah is unknown; it is not known who he is? The Quran, as we have cited, and what is conclusively established from the Messenger of Allah—peace be upon him—as we have prefaced earlier, invalidates this.

L35941 From the path of Ahmad ibn Shu’ayb: I am Ahmad ibn Uthman ibn Hakim

al-Kufi. Ja’far ibn Awn narrated to me from Rabi’ah ibn Uthman from Muhammad ibn Yahya ibn Hibban from Nahar al-Abdi—a Medinan narrator with no criticism against him—from Abu Sa’id from the Prophet, peace and blessings of Allah be upon him and his family, who said: “The right of the husband over his wife is such that if he had a sore and she licked it, she would still not have fulfilled his due.” Rabi’ah ibn Uthman is an unknown narrator.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ عُثْمَانَ بْنِ حَكِيمٍ الْكُوفِيُّ أَنَا جَعْفَرُ بْنُ عَوْنٍ حَدَّثَنِي رَبِيعَةُ بْنُ عُثْمَانَ عَنْ مُحَمَّدِ بْنِ يَحْيَى بْنِ حِبَّانَ عَنْ نَهَارٍ الْعَبْدِيِّ - مَدَنِي لَا بَأْسَ بِهِ - عَنْ أَبِي سَعِيدٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «حَقُّ الزَّوْجِ عَلَى زَوْجَتِهِ لَوْ كَانَتْ بِهِ قُرْحَةٌ فَلَحِسَتْهَا مَا أَدَّتْ حَقَّهُ» . رَبِيعَةُ بْنُ عُثْمَانَ مَجْهُولٌ.

L35942–35943 From the narration of Khalaf ibn Khalifa, from Abu Hashim, from Sa’id ibn Jubayr, from Ibn Abbas, who said: The Messenger of Allah—peace and blessings be upon him—said, “Shall I inform you about your women among the people of Paradise? The affectionate, the fertile, the one who constantly returns to her husband—she who, when she harms or is harmed, comes to take her husband’s hand and says, ’By Allah, I will not taste a bone until you are pleased!’”

وَمِنْ طَرِيقِ خَلَفِ بْنِ خَلِيفَةَ عَنْ أَبِي هَاشِمٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَلَا أُخْبِرُكُمْ بِنِسَائِكُمْ مِنْ أَهْلِ الْجَنَّةِ الْوَدُودُ الْوَلُودُ الْعَئُودُ عَلَى زَوْجِهَا الَّتِي إِذَا آذَتْ أَوْ أُوذِيَتْ جَاءَتْ حَتَّى تَأْخُذَ بِيَدِ زَوْجِهَا، ثُمَّ تَقُولُ: وَاللَّهِ لَا أَذُوقُ عَضْمًا حَتَّى تَرْضَى» .

L35944 This is a report that is not problematic—and in my book, it is written as “‘aḍman” (with a ḍād), and it is the bone of the bow, which has no relevance here.

هَذَا خَبَرٌ لَا بَأْسَ بِهِ - وَهَكَذَا فِي كِتَابِي " عَضْمًا " بِالضَّادِ، وَهُوَ عَظْمُ الْقَوْسِ، وَلَا مَدْخَلَ لَهُ هَاهُنَا.

L35945–35947 And from the transmission path of Aḥmad ibn Shuʿayb: ʿAmr ibn Manṣūr narrated to us: I am Muḥammad ibn Maḥbūb; I narrated [...] Sarār ibn Mujashshar ibn Qabīṣah al-Baṣrī narrated from Saʿīd ibn Abī ʿArūbah from Qatādah from Saʿīd ibn al-Musayyib from ʿAbd Allāh ibn ʿAmr ibn al-ʿĀṣ, who said: The Messenger of Allah—may Allah’s blessings and peace be upon him and his family—said, “Allah will not regard with mercy a woman who does not show gratitude to her husband and she cannot do without him.”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أرنا عَمْرُو بْنُ مَنْصُورٍ أَنَا مُحَمَّدُ بْنُ مَحْبُوبٍ أَنَا سَرَّارُ بْنُ مُجَشِّرِ بْنِ قَبِيصَةَ الْبَصْرِيُّ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَا يَنْظُرُ اللَّهُ إِلَى امْرَأَةٍ لَا تَشْكُرُ لِزَوْجِهَا وَهِيَ لَا تَسْتَغْنِي عَنْهُ» .

L35948 Ahmad ibn Shu’ayb said: Sarār ibn Mujashshir is reliable. Both he and Yazid ibn Zurayʿ are foremost in Saʿid ibn Abi ʿArubah. The name is written thus: [Sarār] with a “Sin” and two Ra’s [between them is an Alif].

قَالَ أَحْمَدُ بْنُ شُعَيْبٍ، سَرَّارُ بْنُ مُجَشِّرٍ ثِقَةٌ هُوَ وَيَزِيدُ بْنُ زُرَيْعٍ مُقَدَّمَانِ فِي سَعِيدِ بْنِ أَبِي عَرُوبَةَ هَكَذَا [سَرَّارُ] بِالسِّينِ وَرَاءَيْنِ [بَيْنَهُمَا أَلِفٌ] .

L35949 Abu Muhammad said: This is a ḥasan ḥadīth, and gratitude toward every one who does good is obligatory.

قَالَ أَبُو مُحَمَّدٍ: هَذَا حَدِيثٌ حَسَنٌ، وَالشُّكْرُ لِكُلِّ مُحْسِنٍ وَاجِبٌ.

L35950 From the chain of Ahmad ibn Shuʿayb: I [heard] from ʿAmr ibn ʿAlī, from Yaḥyā—who is Ibn Saʿīd al-Qaṭṭān—from Ibn ʿIjlān, from Saʿīd ibn Abī Saʿīd

al-Maqburī, from Abū Hurayrah, from the Prophet—peace and blessings of Allah be upon him and his family—that he was asked about the best of women. He said: “She who obeys her husband when he commands, pleases him when he looks, and guards him in her chastity and his wealth.”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ أَنَا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - أَنَا ابْنُ عَجْلَانَ أَنَا سَعِيدُ بْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنَّهُ سُئِلَ عَنْ خَيْرِ النِّسَاءِ؟ فَقَالَ: الَّتِي تُطِيعُ زَوْجَهَا إِذَا أَمَرَ، وَتَسُرُّهُ إِذَا نَظَرَ، وَتَحْفَظُهُ فِي نَفْسِهَا وَمَالِهِ» .

L35951 This is an authentic narration, and what we have transmitted has been authenticated through the chain of Muslim: I am Muḥammad ibn al-Muthannā, from Muḥammad ibn Jaʿfar, from Shuʿbah, from Zubayd al-Yāmī, from Saʿīd ibn ʿUbaydah, from Abū ʿAbd al-Raḥmān al-Sulamī, from ʿAlī ibn Abī Ṭālib, from the Messenger of Allah (may Allah bless him and grant him peace, and upon his family), who said: “No obedience is due in acts of disobedience; obedience lies only in what is morally right.”[32]

هَذَا خَبَرٌ صَحِيحٌ، وَقَدْ صَحَّ مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا مُحَمَّدُ بْنُ جَعْفَرٍ أَنَا شُعْبَةُ عَنْ زُبَيْدٍ اليامي عَنْ سَعِيدِ بْنِ عُبَيْدَةَ عَنْ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «لَا طَاعَةَ فِي مَعْصِيَةٍ إِنَّمَا الطَّاعَةُ فِي الْمَعْرُوفِ» .

L35952 As for the Salaf: It has been narrated to us via the chain of Abd al-Razzaq from Ibn Jurayj, who said: I asked Ata, “If a man is absent from his wife without having sought his permission to leave, may she go out to perform circumambulation of the Kaaba, to visit a sick blood relative, or to attend her dying father?” Ata refused to permit her to go out for any of these matters.

وَأَمَّا السَّلَفُ -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: رَجُلٌ غَابَ عَنْ امْرَأَتِهِ وَلَمْ تَكُنْ اسْتَأْذَنَتْهُ فِي الْخُرُوجِ أَتَخْرُجُ فِي طَوَافِ الْكَعْبَةِ، أَوْ فِي عِيَادَةِ مَرِيضٍ ذِي رَحِمٍ، أَوْ أَبُوهَا يَمُوتُ؟ فَأَبَى عَطَاءٌ أَنْ تَخْرُجَ فِي شَيْءٍ مِنْ ذَلِكَ.

L35953 Ibn Jurayj said: I maintain that it applies to every near kinsman.

قَالَ ابْنُ جُرَيْجٍ: وَأَقُولُ أَنَا: تَأْتِي كُلَّ ذِي رَحِمٍ قَرِيبٍ.

[32] **Hadith references (L35951):** Sahih al-Bukhari 7257; Mishkat al-Masabih 3665.



AL-MUHALLA

كِتَابُ الرَّضَاعِ

The Book of Breastfeeding

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الرَّضَاعِ] [مَسْأَلَةٌ الْوَاجِبُ عَلَى كُلِّ وَالِدَةٍ أَنْ تُرْضِعَ وَلَدَهَا]

مَسْأَلَةٌ: وَالْوَاجِبُ عَلَى كُلِّ وَالِدَةٍ - حُرَّةً كَانَتْ أَوْ أَمَةً - فِي عِصْمَةِ زَوْجٍ أَوْ فِي مِلْكِ سَيِّدٍ، أَوْ كَانَتْ خُلُوًّا مِنْهُمَا - لَحِقَ وَلَدُهَا بِالَّذِي تَوَلَّدَ مِنْ مَائِهِ أَوْ لَمْ يَلْحَقْ -: أَنْ تُرْضِعَ وَلَدَهَا - أَحَبَّتْ أَمْ كَرِهَتْ، وَلَوْ أَنَّهَا بِنْتُ الْخَلِيفَةِ - وَتُجْبَرُ عَلَى ذَلِكَ إِلَّا أَنْ تَكُونَ مُطَلَّقَةً -.

فَإِنْ كَانَتْ مُطَلَّقَةً لَمْ تُجْبَرْ عَلَى إرْضَاعِ وَلَدِهَا مِنْ الَّذِي طَلَّقَهَا إِلَّا أَنْ تَشَاءَ هِيَ ذَلِكَ، فَلَهَا ذَلِكَ - أَحَبَّ أَبُوهُ أَمْ كَرِهَ، أَحَبَّ الَّذِي تَزَوَّجَهَا بَعْدَهُ أَمْ كَرِهَ.

فَإِنْ تَعَاسَرَتْ هِيَ وَأَبُو الرَّضِيعِ: أُمِرَ الْوَالِدُ بِأَنْ يَسْتَرْضِعَ لِوَلَدِهِ امْرَأَةً أُخْرَى وَلَا بُدَّ إِلَّا أَنْ لَا يَقْبَلَ الْوَلَدُ غَيْرَ ثَدْيِهَا، فَتُجْبَرُ حِينَئِذٍ - أَحَبَّتْ أَمْ كَرِهَتْ، أَحَبَّ زَوْجُهَا إنْ كَانَ لَهَا أَمْ كَرِهَ -.

فَإِنْ مَاتَ أَبُو الرَّضِيعِ، أَوْ أَفْلَسَ، أَوْ غَابَ بِحَيْثُ لَا يُقْدَرُ عَلَيْهِ: أُجْبِرَتْ الْأُمُّ عَلَى إرْضَاعِهِ، إلَّا أَنْ لَا يَكُونَ لَهَا لَبَنٌ، أَوْ كَانَ لَهَا لَبَنٌ يُضِرُّ بِهِ: فَإِنَّهُ يَسْتَرْضِعُ لَهُ غَيْرَهَا، وَيُتْبَعُ الْأَبُ بِذَلِكَ إنْ كَانَ حَيًّا وَلَهُ مَالٌ.

فَإِنْ لَمْ تَكُنْ مُطَلَّقَةً لَكِنْ فِي عِصْمَتِهِ أَوْ مُنْفَسِخَةَ النِّكَاحِ مِنْهُ أَوْ مِنْ عَقْدٍ فَاسِدٍ بِجَهْلٍ، فَاتَّفَقَ أَبُوهُ وَهِيَ عَلَى اسْتِرْضَاعِهِ وَقَبِلَ غَيْرَ ثَدْيِهَا فَذَلِكَ جَائِزٌ.

فَإِنْ أَرَادَ أَبُوهُ ذَلِكَ فَأَبَتْ هِيَ إلَّا إرْضَاعَهُ فَلَهَا ذَلِكَ.

Chapter on Breastfeeding: It is obligatory for every mother to breastfeed her child.

Issue: It is obligatory upon every mother—whether free or enslaved—regardless of whether she is under the marital bond of a husband, under the ownership of a master, or independent of both, to breastfeed her child. This applies whether the child is legally affiliated with the man from whose semen it originated or not, and irrespective of her willingness or reluctance—even if she were the daughter of the caliph. She is compelled to do so unless she is divorced.

If she is divorced, she is not compelled by the one who divorced her to breastfeed her child unless she herself wills it; she may do so, whether the father consents or objects, or whether the one who married her afterward consents or objects.

If the mother and the father of the nursing infant are unable to agree, the father is obligated to secure another woman to nurse the child. This obligation ceases only if the infant refuses any breast other than the mother's, in which case she is compelled—regardless of her own or her husband's consent (if she is married)—to nurse.

If the father of the nursing child dies, becomes insolvent, or is absent in a way that makes him unreachable, the mother is obligated to breastfeed the child unless she has no milk or her milk harms the child. In such cases, another woman must be sought to breastfeed him, and the father is pursued for this obligation if he is alive and has financial means.

If she is not divorced but remains under his marital bond, or the marriage is annulled by him or due to an invalid contract arising from ignorance, and she and the father mutually agree to secure nursing for the child from someone other than her, this is permissible.

If the father intends that, but she refuses to do anything other than breastfeed the child, then she has the right to breastfeed the child.

If she wishes to have someone else breastfeed the child instead of her, and the father refuses, she has no right to do so. She is compelled to breastfeed

him regardless of whether the child accepts a breast other than hers or rejects it, unless she lacks milk or her milk harms him. In such a case, the father is obligated to seek a wet nurse for his child.

فَإِذَا أَرَادَتْ هِيَ أَنْ تَسْتَرْضِعَ لَهُ غَيْرَهَا وَأَبَى الْوَالِدُ: لَمْ يَكُنْ لَهَا ذَلِكَ، وَأُجْبِرَتْ عَلَى إرْضَاعِهِ - قَبِلَ غَيْرَ ثَدْيِهَا أَوْ لَمْ يَقْبَلْ غَيْرَ ثَدْيِهَا - إلَّا أَنْ يَكُونَ لَهَا لَبَنٌ، أَوْ كَانَ لَبَنُهَا يُضِرُّ بِهِ: فَعَلَى الْوَالِدِ حِينَئِذٍ أَنْ يَسْتَرْضِعَ لِوَلَدِهِ غَيْرَهَا.

L35964 If the child refuses all other options except his mother's breast, she is compelled to breastfeed him, provided her milk is safe for the child.

فَإِنْ لَمْ يَقْبَلْ فِي كُلِّ ذَلِكَ إلَّا ثَدْيَ أُمِّهِ: أُجْبِرَتْ عَلَى إرْضَاعِهِ إنْ كَانَ لَهَا لَبَنٌ لَا يُضِرُّ بِهِ.

L35965 If the child has no father—whether due to intercourse invalidated by fornication, coercion, oath of imprecation (liʿān), or because he is not legally affiliated with the one whose semen he was born from—or if his father has died: his mother is compelled to breastfeed him, unless she has no milk, her milk harms him, his mother has died, or she is in a location where she cannot be reached. In such cases, another woman must be sought to breastfeed him. This applies equally in all cases, whether the infant has wealth or not.

فَإِنْ كَانَ لَا أَبَ لَهُ: إمَّا بِفَسَادِ الْوَطْءِ بِزِنًى، أَوْ إكْرَاهٍ، أَوْ لِعَانٍ، أَوْ بِحَيْثُ لَا يَلْحَقُ بِالَّذِي تَوَلَّدَ مِنْ مَائِهِ، وَإِمَّا قَدْ مَاتَ أَبُوهُ: فَالْأُمُّ تُجْبَرُ عَلَى إرْضَاعِهِ، إلَّا أَنْ لَا يَكُونَ لَهَا لَبَنٌ، أَوْ كَانَ لَهَا لَبَنٌ يُضِرُّ بِهِ، أَوْ مَاتَتْ أُمُّهُ، أَوْ غَابَتْ حَيْثُ لَا يُقْدَرُ عَلَيْهَا: فَيَسْتَرْضِعُ لَهُ غَيْرَهَا، سَوَاءٌ فِي كُلِّ ذَلِكَ كَانَ لِلرَّضِيعِ مَالٌ أَوْ لَمْ يَكُنْ.

L35966 If the child has a father or a mother, and the father wishes to wean him without the mother's consent, or the mother wishes to wean him without the father's consent, neither of them is permitted to act on their desire before the completion of two full years, regardless of whether harm is caused to the nursing infant.

فَإِنْ كَانَ لَهُ أَبٌ، أَوْ أُمٌّ، فَأَرَادَ الْأَبُ فِصَالَهُ دُونَ رَأْيِ الْأُمِّ، أَوْ أَرَادَتْ الْأُمُّ فِصَالَهُ دُونَ رَأْيِ الْأَبِ: فَلَيْسَ ذَلِكَ لِمَنْ أَرَادَهُ مِنْهُمَا قَبْلَ تَمَامِ الْحَوْلَيْنِ - كَانَ فِي ذَلِكَ ضَرَرٌ بِالرَّضِيعِ أَوْ لَمْ يَكُنْ -.

L35967 If they both wish to wean the child before the completion of two years, then if there is harm to the infant in doing so - due to an illness he has, weakness in his constitution, or his inability to accept food - it is not permissible for them to do so. If there is no harm to the infant in that, then they may do so.

فَإِنْ أَرَادَا جَمِيعًا فِصَالَهُ قَبْلَ الْحَوْلَيْنِ، فَإِنْ كَانَ فِي ذَلِكَ ضَرَرٌ عَلَى الرَّضِيعِ لِمَرَضٍ بِهِ، أَوْ لِضَعْفِ بِنْيَتِهِ، أَوْ لِأَنَّهُ لَا يَقْبَلُ الطَّعَامَ: لَمْ يَجُزْ ذَلِكَ لَهُمَا فَإِنْ كَانَ لَا ضَرَرَ عَلَى الرَّضِيعِ فِي ذَلِكَ فَلَهُمَا ذَلِكَ.

L35968 If they both wish to continue breastfeeding him after two years, they may do so. If one of them wishes to wean him after two years and the other refuses, and if weaning would harm the infant, it is prohibited to wean him. Similarly, even if both agree to wean him, it is prohibited.

فَإِنْ أَرَادَا التَّمَادِيَ عَلَى إرْضَاعِهِ بَعْدَ الْحَوْلَيْنِ فَلَهُمَا ذَلِكَ، فَإِنْ أَرَادَ أَحَدُهُمَا - بَعْدَ الْحَوْلَيْنِ - فِصَالَهُ وَأَبَى الْآخَرُ مِنْهُمَا، فَإِنْ كَانَ فِي ذَلِكَ ضَرَرٌ عَلَى الرَّضِيعِ لَمْ يَجُزْ فِصَالُهُ، وَكَذَلِكَ لَوْ اتَّفَقَا عَلَى فِصَالِهِ.

L35969 If there is no harm to the infant in weaning him after two years, then

whichever of the two parents wishes to wean him—after the full two-year period—has the right to do so. This is the right of the infant, and the right is an obligation upon the father and the mother to breastfeed him.

وَإِنْ كَانَ لَا ضَرَرَ عَلَى الرَّضِيعِ فِي فِصَالِهِ بَعْدَ الْحَوْلَيْنِ: فَأَيُّ الْأَبَوَيْنِ أَرَادَ فِصَالَهُ - بَعْدَ تَمَامِ الْحَوْلَيْنِ - فَلَهُ ذَلِكَ، هَذَا حَقُّ الرَّضِيعِ، وَالْحَقُّ عَلَى الْأَبِ وَالْأُمِّ فِي إرْضَاعِهِ.

L35970–35972 As for the obligation upon the mother in this regard, if the child's lineage does not attach to the one from whose semen he came into being, or If his father was deceased or absent and unreachable, and there was no heir for the infant, then breastfeeding is incumbent upon the mother, and she has no claim to compensation from anyone for breastfeeding him.

وَأَمَّا الْوَاجِبُ لِلْأُمِّ فِي ذَلِكَ - فَإِنْ كَانَ الْوَلَدُ لَا يَلْحَقُ نَسَبُهُ بِالَّذِي تَوَلَّدَ مِنْ مَائِهِ، أَوْ كَانَ أَبُوهُ مَيِّتًا، أَوْ غَائِبًا حَيْثُ لَا يُقْدَرُ عَلَيْهِ، وَلَا وَارِثَ لِلرَّضِيعِ: فَالرَّضَاعُ عَلَى الْأُمِّ، وَلَا شَيْءَ لَهَا عَلَى أَحَدٍ مِنْ أَجْلِ إرْضَاعِهِ.

L35973 If she is under his guardianship through a valid marriage or lawful ownership of a slave, then the father is obligated to provide the maintenance or clothing of both the wife and the slave alone, as was previously the case, without any increase.

فَإِنْ كَانَ فِي عِصْمَتِهِ بِزَوَاجٍ صَحِيحٍ، أَوْ مِلْكِ يَمِينٍ صَحِيحٍ: فَعَلَى الْوَالِدِ نَفَقَتُهُمَا، أَوْ كِسْوَتُهُمَا فَقَطْ، كَمَا كَانَ قَبْلَ ذَلِكَ وَلَا مَزِيدَ.

L35974 If she is not under his guardianship—whether she is the mother of his child whom he emancipated, a marriage dissolved after its validity without divorce through causes we previously mentioned, a marriage consummated under a void contract due to ignorance resulting in the child's affiliation to his father, or a revocably divorced wife during the child's nursing period—then in all these cases, she is entitled solely to sustenance and clothing from the child's father, with no increase.

وَإِنْ كَانَتْ فِي غَيْرِ عِصْمَتِهِ - فَإِنْ كَانَتْ أُمَّ وَلَدِهِ فَأَعْتَقَهَا، أَوْ مُنْفَسِخَةَ النِّكَاحِ بَعْدَ صِحَّتِهِ بِغَيْرِ طَلَاقٍ، لَكِنْ بِمَا ذَكَرْنَا قَبْلُ أَنَّ النِّكَاحَ يَنْفَسِخُ بِهِ بَعْدَ صِحَّتِهِ أَوْ مَوْطُوءَةً بِعَقْدٍ فَاسِدٍ بِجَهْلٍ يَلْحَقُ فِيهِ الْوَلَدُ بِوَالِدِهِ، أَوْ طَلَّقَهَا طَلَاقًا رَجْعِيًّا - وَهُوَ رَضِيعٌ - فَلَهَا فِي كُلِّ ذَلِكَ عَلَى وَالِدِهِ النَّفَقَةُ، وَالْكِسْوَةُ فَقَطْ، وَلَا مَزِيدَ.

L35975 If the father is poor, she is obligated to nurse the child, and she has no claim against the poor father. If he is absent and has wealth and refuses, he shall be pursued for maintenance and clothing whenever he is able to afford it.

فَإِنْ كَانَ فَقِيرًا كُلِّفَتْ إرْضَاعَهُ وَلَا شَيْءَ لَهَا عَلَى الْأَبِ الْفَقِيرِ، فَإِنْ غَابَ وَلَهُ مَالٌ وَامْتَنَعَ أُتْبِعَ بِالنَّفَقَةِ وَالْكِسْوَةِ مَتَى قَدَرَ عَلَى مَالٍ.

L35976 If she has been irrevocably divorced three times and completed her waiting period—as prescribed for a revocable divorce—through childbirth, she is entitled to compensation from the child's father solely for breastfeeding.

فَإِنْ كَانَتْ مُطَلَّقَةً ثَلَاثًا وَأَتَمَّتْ عِدَّتَهَا مِنْ الطَّلَاقِ الرَّجْعِيِّ بِوَضْعِهِ: فَلَهَا عَلَى أَبِيهِ الْأُجْرَةُ فِي إرْضَاعِهِ فَقَطْ.

L35977 If she agrees to the equivalent fee for her nursing, the father is compelled to this - whether he likes or dislikes - and no consideration is given to his claim: "I can find someone to breastfeed him for a lower fee, or without payment."

فَإِنْ رَضِيَتْ هِيَ أُجْرَةَ مِثْلِهَا: فَإِنَّ الْأَبَ يُجْبَرُ عَلَى ذَلِكَ - أَحَبَّ أَمْ كَرِهَ - وَلَا يُلْتَفَتُ إلَى قَوْلِهِ: أَنَا وَاجِدٌ مَنْ يُرْضِعُهُ بِأَقَلَّ، أَوْ بِلَا أُجْرَةٍ.

L35978 If she demands more than the standard fee for a wet nurse of her equivalent

and the father insists on paying only the standard fee, this constitutes mutual impasse. In such a case, the father may engage another wet nurse for his child unless the child does not accept any breast but hers, the father cannot find anyone except a woman whose milk harms the infant, or he lacks sufficient wealth. Under these circumstances, the mother is compelled to nurse the child, and she is compelled to nurse while the father is compelled to pay the standard fee if he has wealth. Otherwise, he bears no obligation.

فَإِنْ لَمْ تَرْضَ هِيَ إِلَّا بِأَكْثَرَ مِنْ أُجْرَةِ مِثْلِهَا وَأَبَى الْأَبُ إِلَّا أُجْرَةَ مِثْلِهَا فَهَذَا هُوَ التَّعَاسُرُ، وَلِلْأَبِ حِينَئِذٍ أَنْ يَسْتَرْضِعَ غَيْرَهَا لِوَلَدِهِ إِلَّا أَنْ لَا يَقْبَلَ غَيْرَ ثَدْيِهَا، أَوْ لَا يَجِدُ الْأَبُ إِلَّا مَنْ لَبَنُهَا مُضِرٌّ بِالرَّضِيعِ، أَوْ كَانَ الْأَبُ لَا مَالَ لَهُ: فَتُجْبَرُ الْأُمُّ حِينَئِذٍ عَلَى إِرْضَاعِهِ، وَتُجْبَرُ هِيَ وَالْوَالِدُ عَلَى أُجْرَةِ مِثْلِهَا - إِنْ كَانَ لَهُ مَالٌ - وَإِلَّا فَلَا شَيْءَ عَلَيْهِ.

L35979 Every obligation we have mentioned that falls upon the father regarding breastfeeding—whether a fee, sustenance, or clothing—remains binding regardless of whether the nursing child owns property or not, or whether the child is a female minor whose father has contracted her marriage or not. This differs from the maintenance obligation for a weaned child, whether female or male.

وَكُلُّ مَا ذَكَرْنَا أَنَّهُ يَجِبُ عَلَى الْوَالِدِ - فِي الرَّضَاعِ - مِنْ أُجْرَةٍ، أَوْ رِزْقٍ أَوْ كِسْوَةٍ: فَهُوَ وَاجِبٌ عَلَيْهِ - كَانَ لِلرَّضِيعِ مَالٌ أَوْ لَمْ يَكُنْ، كَانَتْ صَغِيرَةً زَوَّجَهَا أَبُوهَا أَوْ لَمْ تَكُنْ - بِخِلَافِ النَّفَقَةِ عَلَى الْفَطِيمَةِ أَوْ الْفَطِيمِ.

L35980–35982 If the father dies, then all that we have mentioned as being obligatory upon the father—such as clothing, maintenance, or wages—and if the infant has an heir, this obligation falls upon the infant's heir according to their number, not according to the proportions of their inheritance shares from him. The mother is included among them, and the husband—if her father married her off—is likewise included, whether the infant possesses property or not. Unlike his clothing and maintenance when he starts eating solid food, this ruling applies regardless. If the infant has no heir, then his breastfeeding is upon... [text cuts off here] The mother—whether she is an heir or not—is entitled to nothing from the nursing child's property due to that status, in contrast to the obligation for her maintenance to be provided from his property if he has wealth while she herself possesses none.

فَإِنْ مَاتَ الْأَبُ فَكُلُّ مَا ذَكَرْنَا أَنَّهُ يَجِبُ عَلَى الْوَالِدِ: مِنْ كِسْوَةٍ، أَوْ نَفَقَةٍ، أَوْ أُجْرَةٍ، وَلِلرَّضِيعِ وَارِثٌ فَهُوَ عَلَى وَارِثِ الرَّضِيعِ - عَلَى عَدَدِهِمْ لَا عَلَى مَقَادِيرِ مَوَارِيثِهِمْ مِنْهُ، وَالْأُمُّ مِنْ جُمْلَتِهِمْ: وَالزَّوْجُ إِنْ كَانَ زَوَّجَهَا أَبُوهَا مِنْ جُمْلَتِهِمْ، سَوَاءٌ كَانَ لِلرَّضِيعِ مَالٌ أَوْ لَمْ يَكُنْ، بِخِلَافِ كِسْوَتِهِ، وَنَفَقَتِهِ إِذَا أَكَلَ الطَّعَامَ، فَإِنْ لَمْ يَكُنْ لَهُ وَارِثٌ فَرَضَاعُهُ عَلَى الْأُمِّ - وَارِثَةً كَانَتْ أَوْ غَيْرَ وَارِثَةٍ وَلَا شَيْءَ لَهَا مِنْ أَجْلِ ذَلِكَ مِنْ مَالِ الرَّضِيعِ، بِخِلَافِ وُجُوبِ نَفَقَتِهَا فِي مَالِهِ - إِنْ كَانَ لَهُ مَالٌ، وَلَا مَالَ لَهَا.

L35983 If she is a slave woman and her child is a male slave belonging to her master or to someone other than her master, then his breastfeeding is the mother's duty - unlike his clothing and maintenance, which become the responsibility of her master once he no longer requires breastfeeding.

فَإِنْ كَانَتْ مَمْلُوكَةً وَوَلَدُهَا عَبْدًا لِسَيِّدِهَا، أَوْ لِغَيْرِ سَيِّدِهَا: فَرَضَاعُهُ عَلَى الْأُمِّ، بِخِلَافِ كِسْوَتِهِ، وَنَفَقَتِهِ - إِذَا اسْتَغْنَى عَنْ الرَّضَاعِ.

L35984 If she is enslaved and her child is free—if the child has a father or heir, then maintenance, clothing, or payment fall upon the father or heir, as we

have previously established. If the child has neither a father nor an heir, the mother is obligated to breastfeed the child.

فَإِنْ كَانَتْ مَمْلُوكَةً وَوَلَدُهَا حُرٌّ - فَإِنْ كَانَ لَهُ أَبٌ، أَوْ وَارِثٌ، فَالنَّفَقَةُ، وَالْكِسْوَةُ، أَوْ الْأُجْرَةُ عَلَى الْأَبِ، أَوْ عَلَى الْوَارِثِ كَمَا قَدَّمْنَا، فَإِنْ لَمْ يَكُنْ لَهُ أَبٌ وَلَا وَارِثٌ: فَرَضَاعُهُ عَلَى أُمِّهِ.

L35985 If she dies, falls ill, her milk has harmed him, or she has neither milk nor wealth, then the obligation lies upon the public treasury of the Muslims. If it refuses, then upon the neighbors. The ruler must compel them to fulfill it. And success is by Allah, the Exalted.

فَإِنْ مَاتَتْ، أَوْ مَرِضَتْ، أَوْ أَضَرَّ بِهِ لَبَنُهَا، أَوْ كَانَتْ لَا لَبَنَ لَهَا، وَلَا مَالَ لَهَا: فَعَلَى بَيْتِ مَالِ الْمُسْلِمِينَ - فَإِنْ مَنَعَ: فَعَلَى الْجِيرَانِ يُجْبِرُهُمْ الْحَاكِمُ عَلَى ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L35986 Abu Muhammad said: The proof of all that we have mentioned is explicitly stated in the words of Allah, the Almighty and Majestic: “Mothers shall nurse their children for two full years for those who wish to complete the nursing period. Upon the one to whom the child is born rests the provision of their sustenance and clothing in accordance with customary norms. No soul is burdened beyond its capacity. No mother shall be harmed through her child, nor shall the one to whom the child is born be harmed through his child. The same obligation binds the heir. If they both decide to wean by mutual agreement and consultation, there is no blame upon them. If you choose to have your children nursed by others, there is no blame upon you provided you hand over what you have given in accordance with customary norms. Fear Allah, and know that Allah is All-Seeing of what you do” [Al-Baqarah: 233].[1]

قَالَ أَبُو مُحَمَّد: بُرْهَانُ كُلِّ مَا ذَكَرْنَا مَنْصُوصٌ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لا تُكَلَّفُ نَفْسٌ إِلا وُسْعَهَا لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلا مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ فَإِنْ أَرَادَا فِصَالا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ تَسْتَرْضِعُوا أَوْلادَكُمْ فَلا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُمْ بِالْمَعْرُوفِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ} [البقرة: ٢٣٣] .

L35987 O Prophet, when you [all] divorce women, divorce them at the beginning of their waiting period, and count the waiting period. And fear Allah, your Lord. Do not expel them from their homes, nor should they leave unless they commit an evident indecency. These are the limits set by Allah, and whoever transgresses the limits of Allah has wronged himself. You [Prophet] do not know—perhaps Allah will bring about a new situation thereafter. [65:1] When they have reached their term, then either retain them with kindness or part with them with kindness, and call to witness two just men from

وَفِي قَوْله تَعَالَى: {يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلا يَخْرُجْنَ إِلا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا} [الطلاق: ١] {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ

[1] **Qur’an references (L35986):** Qur’an 2:233 (Al-Baqarah).

among you. And establish the testimony for Allah. By this is admonished whoever believes in Allah and the Last Day. [65:2][2]

وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ ذَلِكُمْ يُوعَظُ بِهِ مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [الطلاق: ٢] .

L35988 This is the description of revocable divorce without doubt. Then Allah, the Exalted, mentioned the waiting period by menstrual cycles and months.

فَهَذِهِ صِفَةُ الطَّلَاقِ الرَّجْعِيِّ بِلَا شَكٍّ، ثُمَّ ذَكَرَ اللَّهُ تَعَالَى الْعِدَّةَ بِالْأَقْرَاءِ وَالشُّهُورِ.

L35989 Then the Exalted and Majestic said: "House them [divorced women] according to your means, wherever you reside, and do not harm them to restrict them. If they are pregnant women, provide for them until they give birth to their burden. Allah will bring ease after hardship" (Quran 65:6–7).[3]

ثُمَّ قَالَ عَزَّ وَجَلَّ: {أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولاتِ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٦] إِلَى قَوْلِهِ {سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا} [الطلاق: ٧] .

L35990–35991 We have previously mentioned in this book of ours that the statement of the Almighty: "Provide residence for them where you live from your means, and do not harm them to constrain them. If they are pregnant, spend on them until they give birth to their child" (Quran 65:6) is clarified by the hadith of Fāṭimah bint Qays, indicating that the Almighty specifically meant this for women given a revocable divorce, not irrevocably divorced women. All that we have stated is explicitly affirmed in the aforementioned verses without interpretation—and we will, God, the Exalted, willing, elaborate on this in detail, section by section.[4]

وَقَدْ ذَكَرْنَا فِيمَا سَلَفَ مِنْ كِتَابِنَا هَذَا أَنَّ قَوْله تَعَالَى: {أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولاتِ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٦] قَدْ بَيَّنَ حَدِيثُ فَاطِمَةَ بِنْتِ قَيْسٍ أَنَّهُ عَزَّ وَجَلَّ إِنَّمَا أَرَادَ بِهِ الْمُطَلَّقَاتِ طَلَاقًا رَجْعِيًّا لَا الْمُطَلَّقَاتِ ثَلَاثًا، فَكُلُّ مَا قُلْنَا فَإِنَّهُ مَنْصُوصٌ فِي الْآيَاتِ الْمَذْكُورَاتِ بِلَا تَأْوِيلٍ - وَنَحْنُ إِنْ شَاءَ اللَّهُ تَعَالَى ذَاكِرُونَ بَيَانَ ذَلِكَ فَصْلًا فَصْلًا -

L35992 There is no power nor strength except with Allah, the Most High, the Almighty.

وَلَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ الْعَلِيِّ الْعَظِيمِ.

L35993–35994 Regarding our statement at the beginning of the issue: It is obligatory upon every free woman or slave woman—whether bound in marriage to a husband, under the ownership of a master, or independent of both—to breastfeed her child, whether the child is affiliated with the man from whose semen it was conceived or not, and whether she is willing or unwilling, even if she were the daughter of the Caliph. She is compelled to do so, based on the words of

أَمَّا قَوْلُنَا فِي أَوَّلِ الْمَسْأَلَةِ - الْوَاجِبُ عَلَى كُلِّ حُرَّةٍ أَوْ أَمَةٍ فِي عِصْمَةِ زَوْجٍ كَانَتْ أَوْ فِي مِلْكِ سَيِّدٍ أَوْ خِلْوًا مِنْهُمَا لَحِقَ وَلَدُهَا بِالَّذِي تَوَلَّدَ مِنْ مَائِهِ أَوْ لَمْ يَلْحَقْ أَنْ تُرْضِعَ وَلَدَهَا أَحَبَّتْ أَمْ كَرِهَتْ وَلَوْ أَنَّهَا بِنْتُ الْخَلِيفَةِ وَتُجْبَرُ عَلَى ذَلِكَ فَلِقَوْلِ اللَّهِ تَعَالَى: {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ} [البقرة: ٢٣٣] .

[2] **Qur'an references (L35987):** Qur'an 65:1 (At-Talaq); Qur'an 65:2 (At-Talaq).
[3] **Qur'an references (L35989):** Qur'an 65:6 (At-Talaq); Qur'an 65:7 (At-Talaq).
[4] **Qur'an references (L35991):** Qur'an 65:6 (At-Talaq).

Allah the Exalted: {Mothers shall breastfeed their children for two full years for those who wish to complete the breastfeeding} [Al-Baqarah: 233].[5]

وَهَذَا عُمُومٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يَخُصَّ مِنْهُ شَيْئًا إِلَّا مَا خَصَّهُ نَصٌّ ثَابِتٌ وَإِلَّا فَهُوَ كَذِبٌ عَلَى اللَّهِ تَعَالَى.

L35995 This is a general principle that no one may specify any part of it except what an established text has specified; otherwise, it constitutes lying upon Allah the Exalted.

فَإِنْ قِيلَ: هَذَا خَبَرٌ لَا أَمْرٌ؟

L35996 If it is objected: "Is this a *khabar* and not an *amr*?"

قُلْنَا: هَذَا أَشَدُّ عَلَيْكُمْ، إِذْ أَخْبَرَ عَزَّ وَجَلَّ بِذَلِكَ، فَمُخَالِفُ خَبَرِهِ سَاعٍ فِي تَكْذِيبِ مَا أَخْبَرَ اللَّهُ عَزَّ وَجَلَّ وَفِي هَذَا مَا فِيهِ.

L35997 We said: This is more severe upon you, since He, the Mighty and Majestic, has informed of that. Thus, whoever contradicts His report strives to deny what Allah, the Mighty and Majestic, has informed, and in this there is what there is.

وَهَذَا قَوْلُ ابْنِ أَبِي لَيْلَى، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا، وَاخْتُلِفَ فِيهِ عَنْ مَالِكٍ - فَمَرَّةً قَالَ مِثْلَ قَوْلِنَا، ومَرَّةً قَالَ: الشَّرِيفَةُ لَا تُجْبَرُ عَلَى ذَلِكَ - وَهَذَا قَوْلٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّ الشَّرَفَ هُوَ التَّقْوَى، فَرُبَّ هَاشِمِيَّةٍ أَوْ عَبْشَمِيَّةٍ بِنْتِ خَلِيفَةٍ تَمُوتُ هَزْلًا، وَرُبَّ زِنْجِيَّةٍ أَوْ بِنْتِ غَيَّةٍ قَدْ صَارَتْ حُرْمَةَ مَالِكٍ، أَوْ أَمَةً.

L35998 This is the opinion of Ibn Abī Laylā, al-Ḥasan ibn Ḥayy, Abū Thawr, Abū Sulaymān, and our companions. Differing views have been reported from Mālik - at times he affirmed a position like ours, and at times he said: "A woman of noble lineage cannot be compelled to that." This latter view is utterly corrupt, for true nobility lies in piety. Many a Hashimite or Abbasid woman, daughter of a caliph, might waste away in frailty, while many a Zanjī woman or daughter of waywardness might embody the sanctity of Mālik or become a slave woman.

وَقَالَ أَبُو حَنِيفَةَ: لَا تُجْبَرُ الْأُمُّ عَلَى الرَّضَاعِ - وَهَذَا خِلَافٌ مُجَرَّدٌ لِلْقُرْآنِ.

L35999 Abu Hanifah said: The mother cannot be compelled to breastfeed. This is purely contrary to the Quran.

[5] **Qur'an references (L35994):** Qur'an 2:233 (Al-Baqarah).

وَأَمَّا قَوْلُنَا - إِلَّا أَنْ تَكُونَ مُطَلَّقَةً فَإِنْ كَانَتْ مُطَلَّقَةً فَإِنَّهَا لَا تُجْبَرُ عَلَى إِرْضَاعِ وَلَدِهَا مِنْ الَّذِي طَلَّقَهَا إِلَّا أَنْ تَشَاءَ هِيَ فَإِنْ شَاءَتْ هِيَ ذَلِكَ فَذَلِكَ لَهَا أَحَبَّ ذَلِكَ الَّذِي طَلَّقَهَا أَوْ أَبَى أَحَبَّ ذَلِكَ زَوْجٌ إِنْ كَانَ لَهَا أَوْ أَبَى فَلِقَوْلِ اللَّهِ تَعَالَى فِي " سُورَةِ الطَّلَاقِ " بَعْدَ ذِكْرِ الْمُعْتَدَّاتِ: {فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأْتَمِرُوا بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاسَرْتُمْ فَسَتُرْضِعُ لَهُ أُخْرَى} [الطلاق: ٦] فَلَمْ يَخُصَّ تَعَالَى ذَاتَ زَوْجٍ مِنْ غَيْرِهَا وَلَا جَعَلَ فِي ذَلِكَ خِيَارًا لِلْأَبِ وَلَا لِلزَّوْجِ بَلْ جَعَلَ الْإِرْضَاعَ إلَى الْأُمَّهَاتِ وَفِي هَذَا خِلَافٌ قَدِيمٌ.

L36000–36002 As for our statement—except if she is divorced; if she is divorced, then she is not compelled to breastfeed her child. The decision is not for the one who divorced her unless she herself wills it. If she chooses that, then it is her right—whether the one who divorced her desires it or refuses. If she has a husband, his desire or refusal [is irrelevant]. This is based on Allah's verse in Sūrah al-Ṭalāq after mentioning women observing their waiting periods: {If they breastfeed your children, give them their due payment, and settle the matter by mutual consent. But if you disagree, another woman will breastfeed the child} (65:6). The Exalted did not distinguish between a woman with a husband and one without, nor granted any choice in it to the father or husband. Rather, He placed breastfeeding under the mothers' authority. There is an old disagreement regarding this.[1]

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ قَالَ: أُتِيَ عَبْدُ اللَّهِ بْنُ عُتْبَةَ بْنِ مَسْعُودٍ فِي رَجُلٍ تَزَوَّجَ امْرَأَةً وَلَهَا وَلَدٌ تُرْضِعُهُ فَأَبَى الزَّوْجُ أَنْ تُرْضِعَهُ؟ فَقَضَى عَبْدُ اللَّهِ بْنُ عُتْبَةَ أَنْ لَا تُرْضِعَهُ؟

L36003 It was narrated to us through the chain of Abd al-Rahman ibn Mahdi from Sufyan al-Thawri from Abu Ishaq al-Shaybani, who said: Abdullah ibn Utbah ibn Mas'ud was approached regarding a man who married a woman with a child she was suckling. When the husband refused to let her suckle him, Abdullah ibn Utbah ruled that she should not suckle him.

قُلْنَا: حَكَمَ حُكْمًا لَا دَلِيلَ عَلَى صِحَّتِهِ، وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L36004 We said: He issued a ruling for which there is no evidence of its validity, nor any authoritative evidence in the opinion of anyone apart from the Messenger of Allah (peace and blessings of Allah be upon him).

وَمَنْ احْتَجَّ هَاهُنَا بِهَذَا، فَنَحْنُ نَذْكُرُ لَهُ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ إِسْمَاعِيلَ بْنَ إِسْحَاقَ الْقَاضِي أَنَا سُلَيْمَانُ بْنُ حَرْبٍ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: أُتِيَ عَبْدُ اللَّهِ بْنُ عُتْبَةَ بْنِ مَسْعُودٍ فِي رَضَاعِ صَبِيٍّ؟ فَقَضَاهُ فِي مَالِ الْغُلَامِ، وَقَالَ لِوَلِيِّهِ: لَوْ لَمْ يَكُنْ لَهُ مَالٌ لَأَلْزَمْتُك، أَلَا تَقْرَأُ {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] .

L36005 Whoever argues using this here, we mention to him what we narrated through the chain of Qadi Isma'il ibn Ishaq: I [am] Sulayman ibn Harb, I [am] Hammad ibn Zayd, from Ayyub al-Sakhtiyani, from Muhammad ibn Sirin, who said: "Abdullah ibn 'Utbah ibn Mas'ud was approached concerning the breastfeeding of an infant? He ruled it to be charged to the child's wealth and said to his guardian: 'Had he possessed no wealth, I would have obligated you. Do you not recite: {And upon the heir is the like of that} [Al-Baqarah: 233]?'"[2]

L36006 Ahmad ibn Umar ibn Anas al-Udhri reported: Abu Dharr al-Harawi re-

[1] **Qur'an references (L36000):** Qur'an 65:6 (At-Talaq).
[2] **Qur'an references (L36005):** Qur'an 2:233 (Al-Baqarah).

ported to me, from Abdullah ibn Ahmad ibn Hamawayh, from Ibrahim ibn Khuraym, from Abd ibn Humaid, from Rawh, from Hisham ibn Hassan, from Muhammad ibn Sirin, that Abdullah ibn Utbah ibn Mas'ud ruled the child's maintenance should be provided from his own wealth, saying to his heir: "Had he no wealth, I would have ruled maintenance upon you. Do you not recite: {And upon the heir is a duty like that} [Al-Baqarah: 233]?" He blindly followed Abdullah ibn Utbah's opinion wherein he erred, lacking proof of its validity. Let them follow him only in what he was correct about and aligned with the Quran—yet his critics do not do this.[3]

وَمَا نَاهِ أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ أَنَا أَبُو ذَرٍّ الْهَرَوِيُّ أَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنُ حَمَوَيْهِ. أَنَا إِبْرَاهِيمُ بْنُ خُرَيْمٍ أَنَا عَبْدُ بْنُ حُمَيْدٍ أَنَا رَوْحٌ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنْ عَبْدَ اللَّهِ بْنَ عُتْبَةَ بْنِ مَسْعُودٍ قَضَى بِنَفَقَةِ الصَّبِيِّ فِي مَالِهِ، وَقَالَ لِوَارِثِهِ: لَوْ لَمْ يَكُنْ لَهُ مَالٌ لَقَضَيْت بِالنَّفَقَةِ عَلَيْك، أَلَا تَقْرَأُ: {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] فَقَدْ قَلَّدَ عَبْدَ اللَّهِ بْنَ عُتْبَةَ فِي قَوْلٍ أَخْطَأَ فِيهِ لَا بُرْهَانَ لَهُ عَلَى صِحَّتِهِ، فَلْيَتْبَعْهُ فِيمَا أَصَابَ فِيهِ، وَوَافَقَ الْقُرْآنَ - وَهُمْ لَا يَفْعَلُونَ ذَلِكَ.

L36007 And if they say, "He married her solely for intercourse?"

فَإِنْ قَالُوا: إنَّمَا تَزَوَّجَهَا لِلْوَطْءِ؟

L36008 We said: Yes, what then? She gave birth to him specifically to breastfeed him. Thus, the child's right takes priority over the right of the man who married her after she gave birth to him. Her breastfeeding her child does not prevent him from having intercourse with her.

قُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ وَإِنَّمَا وَلَدَتْهُ لِتُرْضِعَهُ، فَحَقُّ الصَّبِيِّ قَبْلَ حَقِّ الَّذِي تَزَوَّجَهَا بَعْدَ أَنْ وَلَدَتْهُ، وَلَا يَمْنَعُهُ إرْضَاعُهَا وَلَدَهَا مِنْ وَطْئِهِ لَهَا.

L36009–36010 As for our statement: If the mother and the father of the nursing child face mutual hardship, the father is necessarily commanded to arrange for another woman to nurse his child. This is based on Allah Almighty's words in the mentioned verse: {But if you mutually face hardship, then another woman will nurse him} [65:6], as the Quranic text explicitly addresses both fathers and mothers. As for our statement—except when the child refuses any breast other than hers, in which case she is compelled to nurse him, whether she likes or dislikes, whether her husband consents or refuses, whether the child's father consents or refuses—this is based on Allah Almighty's words: {Indeed lost are those who killed their children foolishly without knowledge} [6:140], His words: {Cooperate in goodness and piety, and do not cooperate in sin and transgression} [5:2], and His words: {Let no mother be harmed through

وَأَمَّا قَوْلُنَا - فَإِنْ تَعَاسَرَتْ هِيَ وَأَبُو الرَّضِيعِ: أُمِرَ الْوَالِدُ أَنْ يَسْتَرْضِعَ لِوَلَدِهِ امْرَأَةً أُخْرَى وَلَا بُدَّ، فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ فِي الْآيَةِ الْمَذْكُورَةِ: {وَإِنْ تَعَاسَرْتُمْ فَسَتُرْضِعُ لَهُ أُخْرَى} [الطلاق: ٦] وَالْخِطَابُ لِلْآبَاءِ وَالْأُمَّهَاتِ بِنَصِّ الْقُرْآنِ. وَأَمَّا قَوْلُنَا - إلَّا أَنْ لَا يَقْبَلَ الْوَلَدُ غَيْرَ ثَدْيِهَا فَتُجْبَرُ حِينَئِذٍ عَلَى إرْضَاعِهِ - أَحَبَّتْ أَمْ كَرِهَتْ - أَحَبَّ زَوْجُهَا أَمْ كَرِهَ أَحَبَّ أَبُوهُ أَمْ كَرِهَ، فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {قَدْ خَسِرَ الَّذِينَ قَتَلُوا أَوْلَادَهُمْ سَفَهًا بِغَيْرِ عِلْمٍ} [الأنعام: ١٤٠] . وَلِقَوْلِهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] . وَلِقَوْلِهِ تَعَالَى: {لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] وَهَذِهِ هِيَ الْمُضَارَّةُ حَقًّا.

[3] **Qur'an references (L36006):** Qur'an 2:233 (Al-Baqarah).

her child, nor any father through his child, and the same obligation lies upon the heir} [2:233]. This constitutes true harm indeed.[4]

L36011 It has been authentically established from the Messenger of Allah (peace and blessings be upon him): “Whoever does not show mercy to people will not be shown mercy by Allah.” We have transmitted this through numerous mass-transmitted (mutawatir) chains of the highest authenticity—including a narration via Wakīʿ ← Ismāʿīl ibn Abī Khālid ← Qays ibn Abī Ḥāzim ← Jarīr ibn ʿAbd Allāh al-Bajalī ← the Messenger of Allah (peace and blessings be upon him). As for our ruling: If the nursing child’s father dies, becomes bankrupt, or is absent in a manner rendering him unattainable, the mother is compelled to nurse him unless the child rejects her breast, she lacks milk, or her milk harms him. In such cases, another woman must be sought to lactate for him. This aligns with our explicit statement in the preceding chapter. The father remains liable for this obligation if alive and financially capable, for the legal responsibility in this matter rests upon him.

L36012 As for our statement: If she is not divorced but remains within his marital bond, or the marriage is annulled by him or dissolved due to an invalid contract arising from ignorance, or she is an umm walad—a slave mother emancipated after bearing her master’s child—and the father and she mutually agree to arrange for the child’s nursing, with the father consenting to suckling from other than her breast, then this is permissible. This ruling derives from Allah the Almighty, the Majestic’s words: “If you decide to have your children nursed by others, there is no blame upon you” [Al-Baqarah: 233]. This address from Allah the Most High is directed to those who hold parental rights over the children—the fathers and mothers, without doubt.[5]

L36013–36014 Regarding our statement: If the father desires this, but the mother refuses unless she breastfeeds him herself, then she has the right to do so. If she desires to seek a wet nurse for him other than herself, but the father refuses, she does not have that right and is compelled to breastfeed him. This is

وَصَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ لَا يَرْحَمُ النَّاسَ لَا يَرْحَمُهُ اللَّهُ» . رُوِّينَاهُ مِنْ طُرُقٍ شَتَّى مُتَوَاتِرَةٍ فِي غَايَةِ الصِّحَّةِ -: مِنْهَا - مِنْ طَرِيقِ وَكِيعٍ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ الْبَجَلِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَأَمَّا قَوْلُنَا - فَإِنْ مَاتَ أَبُو الرَّضِيعِ، أَوْ أَفْلَسَ، أَوْ غَابَ بِحَيْثُ لَا يُقْدَرُ عَلَيْهِ: أُجْبِرَتْ الْأُمُّ أَيْضًا عَلَى إرْضَاعِهِ إلَّا أَنْ لَا يَقْبَلَ ثَدْيَهَا، أَوْ لَا يَكُونَ لَهَا لَبَنٌ، أَوْ كَانَ لَبَنُهَا مِمَّا يُضِرُّ بِهِ فَإِنَّهُ يُسْتَرْضَعُ لَهُ غَيْرُهَا فَلِمَا ذَكَرْنَا فِي الْفَصْلِ الَّذِي قَبْلَ هَذَا مُتَّصِلًا بِهِ نَصًّا، وَيُتْبَعُ الْأَبُ بِذَلِكَ إنْ كَانَ حَيًّا وَلَهُ مَالٌ؛ لِأَنَّ الْحَقَّ عَلَيْهِ فِي ذَلِكَ.

وَأَمَّا قَوْلُنَا - فَإِنْ لَمْ تَكُنْ مُطَلَّقَةً لَكِنْ فِي عِصْمَتِهِ أَوْ مُنْفَسِخَةَ النِّكَاحِ مِنْهُ أَوْ مِنْ عَقْدٍ فَاسِدٍ بِجَهْلٍ أَوْ أُمَّ وَلَدٍ أُعْتِقَتْ فَاتَّفَقَ أَبُوهُ وَهِيَ عَلَى اسْتِرْضَاعِهِ وَقَبِلَ غَيْرَ ثَدْيِهَا فَذَلِكَ جَائِزٌ - فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَإِنْ أَرَدْتُمْ أَنْ تَسْتَرْضِعُوا أَوْلَادَكُمْ فَلا جُنَاحَ عَلَيْكُمْ} [البقرة: ٢٣٣] وَهَذَا خِطَابٌ مِنْ اللَّهِ تَعَالَى لِمَنْ الْأَوْلَادُ لَهُمْ، وَهُمْ الْآبَاءُ وَالْأُمَّهَاتُ، بِلَا شَكٍّ.

وَأَمَّا قَوْلُنَا: فَإِنْ أَرَادَ أَبُوهُ ذَلِكَ وَأَبَتْ الْأُمُّ إلَّا أَنْ تُرْضِعَهُ هِيَ فَلَهَا ذَلِكَ، فَإِنْ أَرَادَتْ هِيَ أَنْ تَسْتَرْضِعَ لَهُ غَيْرَهَا وَأَبَى الْوَالِدُ لَمْ يَكُنْ لَهَا ذَلِكَ، وَأُجْبِرَتْ عَلَى إرْضَاعِهِ؛ فَلِأَنَّ إرَادَةَ الْأَبِ وَالْأُمِّ لَمْ تَتَّفِقْ عَلَى الِاسْتِرْضَاعِ لَهُ، وَلَمْ يَجْعَلْ اللَّهُ تَعَالَى ذَلِكَ إلَّا بِإِرَادَتِهِمَا.

[4] **Qur’an references (L36010):** Qur’an 65:6 (At-Talaq); Qur’an 6:140 (Al-An’am); Qur’an 5:2 (Al-Ma’idah); Qur’an 2:233 (Al-Baqarah).

[5] **Qur’an references (L36012):** Qur’an 2:233 (Al-Baqarah).

because the father's and mother's desires did not align on seeking a wet nurse for him, and Allah the Exalted has not decreed this except through their mutual will.

وَأَمَّا قَوْلُنَا - إِلَّا أَنْ لَا يَكُونَ لَهَا لَبَنٌ، أَوْ كَانَ لَهَا لَبَنٌ يُضِرُّ بِهِ فَعَلَى الْوَالِدِ حِينَئِذٍ أَنْ يَسْتَرْضِعَ لَهُ غَيْرَهَا، فَإِنْ لَمْ يَقْبَلْ فِي كُلِّ ذَلِكَ إِلَّا ثَدْيَ أُمِّهِ أُجْبِرَتْ عَلَى إِرْضَاعِهِ إِنْ كَانَ لَهَا لَبَنٌ لَا يُضِرُّ بِهِ فَلِمَا ذَكَرْنَا آنِفًا مِنْ قَوْلِه تَعَالَى: {لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلا مَوْلُودٌ لَهُ بِوَلَدِهِ} [البقرة: ٢٣٣] مَعَ سَائِرِ مَا ذَكَرْنَا فِي ذَلِكَ الْفَصْلِ.

L36015 As for our statement: except if she has no milk, or if her milk is harmful to the child, then the father is obligated at that point to seek another wet nurse for him. If the child refuses all alternatives except his mother's breast, she is compelled to breastfeed him provided she has milk that is not harmful to the child. This ruling is based on what we have previously cited from the words of Allah, the Exalted: "No mother should be harmed because of her child, nor a father [harmed] through his child" [Al-Baqarah 2:233], along with the other matters we mentioned in that chapter.[6]

وَأَمَّا قَوْلُنَا - فَإِنْ كَانَ لَا أَبَ لَهُ إِمَّا بِفَسَادِ الْوَطْءِ بِزِنًى أَوْ إِكْرَاهٍ أَوْ لِعَانٍ أَوْ بِحَيْثُ لَا يَلْحَقُ بِالَّذِي تَوَلَّدَ مِنْ مَائِهِ، وَإِمَّا قَدْ مَاتَ أَبُوهُ فَالْأُمُّ تُجْبَرُ عَلَى إِرْضَاعِهِ فَلِقَوْلِ اللَّهِ تَعَالَى: {لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا} [البقرة: ٢٣٣] وَلِمَا ذَكَرْنَا مَعَ هَذِهِ الْآيَةِ فِي ذَلِكَ الْفَصْلِ.

L36016 As for our statement—if the child has no father either due to invalid intercourse, such as unlawful sexual intercourse (zinā), coercion, an oath of imprecation (liʿān), or because the child is not legally recognized as the offspring of the man whose sperm caused conception, or if his father has died—then the mother is legally compelled to breastfeed him, based on the decree of Allah, the Exalted: "No mother should be harmed through her child" [Al-Baqarah: 233], and due to the arguments we have cited in connection with this verse in that chapter.[7]

وَأَمَّا قَوْلُنَا - إِلَّا أَنْ لَا يَكُونَ لَهَا لَبَنٌ أَوْ كَانَ لَهَا لَبَنٌ يُضِرُّ بِهِ أَوْ مَاتَتْ أُمُّهُ أَوْ غَابَتْ حَيْثُ لَا يُقْدَرُ عَلَيْهَا فَيَسْتَرْضِعُ لَهُ غَيْرَهَا سَوَاءٌ كَانَ فِي ذَلِكَ كُلِّهِ لِلرَّضِيعِ مَالٌ أَوْ لَمْ يَكُنْ، فَلِمَا ذُكِرَ مِنْ قَوْلِه تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] ، وَمَا أَوْرَدْنَا فِي وُجُوبِ الرَّحْمَةِ.

L36017 As for our statement—except if she has no milk, or her milk harms him, or his mother dies or is absent where she cannot be reached, then another wet nurse must be sought for him, whether the infant has means in all these cases or not—this is based on what has been mentioned of the words of the Exalted: "And cooperate in righteousness and piety, and do not cooperate in sin and aggression" (Al-Mā'idah: 2), and what we have cited concerning the obligation of mercy.[8]

وَأَمَّا قَوْلُنَا - فَإِنْ كَانَ لَهُ أَبٌ أَوْ أُمٌّ فَأَرَادَ الْأَبُ فِصَالَهُ دُونَ رَأْيِ الْأُمِّ، أَوْ أَرَادَتْ الْأُمُّ فِصَالَهُ دُونَ رَأْيِ الْأَبِ: فَلَيْسَ ذَلِكَ لِمَنْ أَرَادَهُ مِنْهُمَا قَبْلَ تَمَامِ الْحَوْلَيْنِ - كَانَ فِي الْفِصَالِ ضَرَرٌ بِالصَّغِيرِ أَوْ لَمْ يَكُنْ.

L36018 As for our statement: If the child has a father or mother, and the father wishes to wean him without the mother's consent, or the mother wishes to wean him without the father's consent, then that is not permissible for the

[6] **Qur'an references (L36015):** Qur'an 2:233 (Al-Baqarah).
[7] **Qur'an references (L36016):** Qur'an 2:233 (Al-Baqarah).
[8] **Qur'an references (L36017):** Qur'an 5:2 (Al-Ma'idah).

فَإِنْ أَرَادَ جَمِيعًا فِصَالَهُ قَبْلَ الْحَوْلَيْنِ فَإِنْ كَانَ لَا ضَرَرَ فِي ذَلِكَ عَلَى الرَّضِيعِ فَلَهُمَا ذَلِكَ، فَإِنْ كَانَ فِي ذَلِكَ ضَرَرٌ عَلَى الرَّضِيعِ لِمَرَضٍ بِهِ، أَوْ لِضَعْفِ بِنْيَتِهِ أَوْ لِأَنَّهُ لَا يَقْبَلُ الطَّعَامَ: لَمْ يَجُزْ لَهُمَا ذَلِكَ، فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ} [البقرة: ٢٣٣] .

L36019 If they both wish to wean the infant before the completion of two years, and there is no harm to the infant, then it is permissible for them. But if harm arises due to the infant's illness, constitutional weakness, or inability to tolerate food, then it is impermissible. This is based on Allah's statement, the Mighty and Majestic: "Mothers shall breastfeed their children for two complete years for those who wish to perfect the breastfeeding" [Al-Baqarah 2:233].[9]

وَلِقَوْلِهِ تَعَالَى: {فَإِنْ أَرَادَا فِصَالا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلا جُنَاحَ عَلَيْهِمَا} [البقرة: ٢٣٣] .

L36020 And due to the statement of the Exalted: {If they both wish to wean the child by mutual consent and consultation from both of them, then there is no blame upon them} [Al-Baqarah: 233].[10]

وَأَمَّا مُرَاعَاةُ ضَرَرِ الرَّضِيعِ فَلِمَا ذَكَرْنَا مِنْ قَوْلِه تَعَالَى: {لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلا مَوْلُودٌ لَهُ بِوَلَدِهِ} [البقرة: ٢٣٣] مَعَ مَا ذَكَرْنَا مَعَ هَذِهِ الْآيَةِ هُنَالِكَ.

L36021–36022 As for the consideration of harm to the infant, this is based on the Exalted's saying: *"Let no mother be harmed through her child, nor any parent through their child"* [Al-Baqarah 2:233], along with what we mentioned there alongside this verse.[11]

وَأَمَّا قَوْلُنَا - فَإِنْ أَرَادَتْ الْأُمُّ أَوْ الْأَبُ التَّمَادِيَ عَلَى إرْضَاعِ الرَّضِيعِ بَعْدَ الْحَوْلَيْنِ فَلَهُمَا ذَلِكَ فَلِأَنَّهُ لَمْ يَأْتِ نَصٌّ بِالْمَنْعِ مِنْ ذَلِكَ، وَلَا بِأَنَّ هَذَا مِنْ حُقُوقِ زَوْجٍ إنْ كَانَ لَهَا وَهُوَ صِلَةٌ لِابْنِهَا وَقَدْ أَوْجَبَ اللَّهُ تَعَالَى صِلَةَ الرَّحِمِ فَلَيْسَ لِأَحَدٍ مَنْعُهَا مِمَّا أَوْجَبَهُ اللَّهُ تَعَالَى عَلَيْهَا لِلثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَلَا طَاعَةَ فِي مَعْصِيَةٍ» .

L36023 As for our statement: If the mother or father intends to continue breastfeeding the infant beyond two years, they are permitted to do so. This is because there exists no explicit textual prohibition against it, nor does this act fall under a husband's rights even if she has one. Breastfeeding is an act of maintaining kinship ties with her child, and Allah the Exalted has mandated the upholding of kinship ties. Thus, no one may prevent her from fulfilling what Allah has ordained upon her, as established by the Messenger of Allah—peace and blessings be upon him: "There is no obedience in disobedience."

وَأَمَّا قَوْلُنَا - فَإِنْ كَانَ الْوَلَدُ لَا يَلْحَقُ نَسَبُهُ بِالَّذِي تَوَلَّدَ مِنْ مَائِهِ أَوْ كَانَ أَبُوهُ مَيِّتًا أَوْ غَائِبًا حَيْثُ لَا يُقْدَرُ عَلَيْهِ وَلَا وَارِثَ لِلرَّضِيعِ فَالرَّضَاعُ عَلَى الْأُمِّ وَلَا شَيْءَ لَهَا عَلَى أَحَدٍ مِنْ أَجْلِ الرَّضَاعَةِ لِقَوْلِ اللَّهِ تَعَالَى: {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ} [البقرة: ٢٣٣] وَلَيْسَ هَاهُنَا مَوْلُودٌ لَهُ وَلَا وَارِثٌ فَهُوَ عَلَيْهَا فَقَطْ.

L36024 As for our statement: If the child's lineage is not established with the one from whose semen the child was conceived, or if the father is deceased or absent and inaccessible, and there is no guardian for the infant, then breastfeeding is incumbent upon the mother. She has no claim against anyone for breastfeeding, based on Allah's saying, exalted is He: {Mothers shall breast-

[9] **Qur'an references (L36019):** Qur'an 2:233 (Al-Baqarah).
[10] **Qur'an references (L36020):** Qur'an 2:233 (Al-Baqarah).
[11] **Qur'an references (L36022):** Qur'an 2:233 (Al-Baqarah).

feed their children for two full years for whoever wishes to complete the breastfeeding} [Al-Baqarah: 233]. Here, there is no father for the child nor a guardian, so the obligation rests upon her alone.[12]

وَأَمَّا قَوْلُنَا - فَإِنْ كَانَتْ عِصْمَةُ الْأَبِ بِزَوَاجٍ صَحِيحٍ أَوْ مِلْكِ يَمِينٍ صَحِيحٍ فَعَلَى الْوَالِدِ نَفَقَتُهَا وَكِسْوَتُهَا كَمَا كَانَ قَبْلَ ذَلِكَ وَلَا مَزِيدَ فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ} [البقرة: ٢٣٣] .

L36025 As for our statement: If the father's guardianship is established through a valid marriage or lawful ownership (those whom his right hand possesses), then the father must provide her maintenance and clothing as before, without any increase. This is based on the words of Allah, Exalted is He: *"And upon the child's father is their provision [i.e., the mothers'] and clothing according to what is reasonable"* [Al-Baqarah: 233].[13]

وَأَمَّا قَوْلُنَا - فَإِنْ كَانَتْ فِي غَيْرِ عِصْمَتِهِ، فَإِنْ كَانَتْ أُمَّ وَلَدٍ فَأَعْتَقَهَا أَوْ مُنْفَسِخَةَ النِّكَاحِ بَعْدَ صِحَّتِهِ بِغَيْرِ طَلَاقٍ لَكِنْ بِمَا ذَكَرْنَا قَبْلُ أَنَّ النِّكَاحَ يَنْفَسِخُ بِهِ بَعْدَ صِحَّتِهِ أَوْ مَوْطُوءَةً بِعَقْدٍ فَاسِدٍ بِجَهْلٍ يَلْحَقُ فِيهِ الْوَلَدُ بِوَالِدِهِ، أَوْ طَلَّقَهَا طَلَاقًا رَجْعِيًّا وَهُوَ رَضِيعٌ فَلَهَا فِي كُلِّ ذَلِكَ عَلَى وَالِدِهِ النَّفَقَةُ وَالْكِسْوَةُ بِالْمَعْرُوفِ فَقَطْ، وَهُوَ لِلْمُطَلَّقَةِ مُدَّةَ عِدَّتِهَا.

L36026 As for our statement—if she is outside his marriage bond, then if she is an umm walad (an enslaved woman who bore her master's child) whom he emancipates, or the marriage is annulled after its validity—not through divorce but due to the reasons we mentioned before, by which the marriage is dissolved post-validation—or she is a woman with whom intercourse occurred under a void contract due to ignorance (such that the child is attributed to the father), or he divorces her with a revocable divorce while the child is nursing—then in all these cases, she is entitled only to maintenance and clothing from the father according to customary norms. This applies to the divorced woman during her waiting period.

فَإِنْ كَانَ فَقِيرًا كُلِّفَتْ إرْضَاعَ الْوَلَدِ وَلَا شَيْءَ لَهَا عَلَى الْأَبِ الْفَقِيرِ فَإِنْ غَابَ وَلَهُ مَالٌ أُتْبِعَ بِالنَّفَقَةِ وَالْكِسْوَةِ مَتَى قُدِرَ عَلَيْهِ أَوْ عَلَى مَالٍ لَهُ.

L36027 If he is poor, she is obligated to breastfeed the child, and she has no claim against the poor father. If he is absent but has wealth, he must provide maintenance and clothing, either from his own means when financially able or from his assets.

وَكَذَلِكَ إنْ امْتَنَعَ وَلَهُ مَالٌ لِقَوْلِهِ عَزَّ وَجَلَّ: {وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ} [البقرة: ٢٣٣] وَإِذَا أَوْجَبَ اللَّهُ تَعَالَى ذَلِكَ لَهَا فَهُوَ دَيْنٌ عَلَيْهِ إنْ كَانَ لَهُ مَالٌ فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا مَا آتَاهَا} [الطلاق: ٧] .

L36028 Similarly, if he refuses despite having wealth, based on the saying of Allah, the Almighty: {And the one to whom the child is born must provide their sustenance and clothing in an honorable manner} [Al-Baqarah: 233]. Since Allah, the Exalted, has obligated this for her, it becomes a debt upon him if he possesses wealth. If he has no wealth, then by the saying of Allah, the

[12] **Qur'an references (L36024):** Qur'an 2:233 (Al-Baqarah).
[13] **Qur'an references (L36025):** Qur'an 2:233 (Al-Baqarah).

Almighty: {Allah does not burden a soul beyond what He has granted it} [At-Talāq: 7].[14]

L36029 If he is not obligated to do something, it is impermissible to hold him accountable for it if he gains the means for what he was never obligated to do. However, if he gains the means while the prescribed breastfeeding period is ongoing, he becomes obligated from the time he gains the means.

L36030–36031 As for our statement: If she has been thrice-divorced or completed the ʿiddah of the revocable divorce by the delivery of the child, she has no right against her father after his triple divorce of her - either the final divorce of the three or following the completion of her ʿiddah from the revocable divorce - except compensation for breastfeeding alone.

L36032 For the statement of Allah, the Most High: “And if they are pregnant, then spend on them until they give birth. Then if they breastfeed for you, give them their wages” [At-Talaq: 6].[15]

L36033 We have previously clarified that this text applies exclusively to women divorced with a revocable divorce, as established by the hadith of Fatimah bint Qays.

L36034 As for our statement—if she agrees to the standard wage for a wet nurse of her equivalence, the father is legally obligated to pay it, whether he likes it or not—no consideration is given to his claim: “I can find someone to breastfeed him for less or without payment,” based on the Almighty’s words: “If they breastfeed for you, give them their due wages, and settle the matter fairly by mutual agreement. But if you disagree, another woman shall breastfeed [the child] for him” (Qur’an 65:6).[16]

L36035 Allah the Exalted decreed the compensation obligatory for them except in cases of mutual refusal. Mutual refusal—in the Arabic tongue through which the Quran was revealed—denotes an action involving two agents. If she

وَإِذَا لَمْ يُكَلَّفْ شَيْئًا فَلَا يَجُوزُ أَنْ يُتْبَعَ إِنْ أَيْسَرَ بِمَا لَمْ يُكَلَّفْهُ قَطُّ، لَكِنْ إِنْ أَيْسَرَ وَالرَّضَاعُ مُتَمَادٍ كُلِّفَ مِنْ حِينِ يُوسِرُ.

وَأَمَّا قَوْلُنَا - فَإِنْ كَانَتْ مُطَلَّقَةً ثَلَاثًا، أَوْ أَتَمَّتْ عِدَّةَ الطَّلَاقِ الرَّجْعِيِّ بِوَضْعِهِ، فَلَيْسَ لَهَا عَلَى أَبِيهِ إِثْرَ طَلَاقِهِ لَهَا ثَلَاثًا، أَوْ آخِرَ ثَلَاثٍ، أَوْ إِثْرَ تَمَامِ عِدَّتِهَا مِنْ الطَّلَاقِ الرَّجْعِيِّ إِلَّا أُجْرَةُ الرَّضَاعِ فَقَطْ.

فَلِقَوْلِ اللَّهِ تَعَالَى: {وَإِنْ كُنَّ أُولاتِ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ} [الطلاق: ٦] .

وَقَدْ بَيَّنَّا قَبْلُ أَنَّ هَذَا النَّصَّ إِنَّمَا هُوَ فِي الْمُطَلَّقَاتِ طَلَاقًا رَجْعِيًّا فَقَطْ، بِحَدِيثِ فَاطِمَةَ بِنْتِ قَيْسٍ.

وَأَمَّا قَوْلُنَا - فَإِنْ رَضِيَتْ هِيَ بِأُجْرَةِ مِثْلِهَا، فَإِنَّ الْأَبَ يُجْبَرُ عَلَى ذَلِكَ - أَحَبَّ أَمْ كَرِهَ - وَلَا يُلْتَفَتُ إلَى قَوْلِهِ: أَنَا أَجِدُ مَنْ يُرْضِعُهُ بِأَقَلَّ أَوْ بِلَا أُجْرَةٍ فَلِقَوْلِهِ تَعَالَى: {فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأْتَمِرُوا بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاسَرْتُمْ فَسَتُرْضِعُ لَهُ أُخْرَى} [الطلاق: ٦]

فَأَوْجَبَ اللَّهُ تَعَالَى لَهُنَّ الْأُجْرَةَ، إلَّا مَعَ التَّعَاسُرِ، وَالتَّعَاسُرُ فِي لُغَةِ الْعَرَبِ الَّتِي بِهَا نَزَلَ الْقُرْآنُ: فِعْلٌ مِنْ فَاعِلَيْنِ، فَإِذَا قَنَعَتْ هِيَ بِأُجْرَتِهَا الَّتِي أَوْجَبَهَا اللَّهُ تَعَالَى لَهَا بِالْمَعْرُوفِ؟ فَلَمْ تُعَاسِرْهُ، وَإِذَا لَمْ تُعَاسِرْهُ: فَهِيَ عَلَى حَقِّهَا فِي الْأُجْرَةِ الْمُؤْتَمَرَةِ بِالْمَعْرُوفِ.

[14] **Qur’an references (L36028):** Qur’an 2:233 (Al-Baqarah); Qur’an 65:7 (At-Talaq).
[15] **Qur’an references (L36032):** Qur’an 65:6 (At-Talaq).
[16] **Qur’an references (L36034):** Qur’an 65:6 (At-Talaq).

accepts the compensation Allah the Exalted decreed for her in accordance with what is equitable, does she not thereby avoid mutual refusal with him? If she does not engage in mutual refusal with him, she retains her rightful claim to the compensation prescribed through equitable standards.

L36036 As for our ruling: if she does not accept except more than the standard wage for breastfeeding, and the father refuses to pay anything but the standard wage, this constitutes mutual obstinacy. In such a case, the father may seek another wet nurse for his child at the standard wage, a lower wage, or without payment, if he finds someone.

وَأَمَّا قَوْلُنَا - فَإِنْ لَمْ تَرْضَ هِيَ إِلَّا بِأَكْثَرَ مِنْ أُجْرَةِ مِثْلِهَا وَأَبَى الْأَبُ إِلَّا أُجْرَةَ مِثْلِهَا، فَهَذَا هُوَ التَّعَاسُرُ، وَلِلْأَبِ حِينَئِذٍ أَنْ يَسْتَرْضِعَ لِوَلَدِهِ غَيْرَهَا بِأُجْرَةِ مِثْلِهَا، أَوْ بِأَقَلَّ، أَوْ بِلَا أُجْرَةٍ إِنْ وَجَدَ.

L36037 As for our statement—except if the infant refuses any breast other than hers, or the father cannot find anyone except a woman whose milk harms the infant, one who endangers the infant, or if the father lacks wealth—then the mother is compelled in such a case to breastfeed him. She is compelled to nurse while the father is compelled under these circumstances to pay a wage equivalent to that of a comparable wet nurse if he possesses wealth. If not, he bears no obligation.

وَأَمَّا قَوْلُنَا - إِلَّا أَنْ لَا يَقْبَلَ غَيْرَ ثَدْيِهَا، أَوْ لَا يَجِدَ الْأَبُ إِلَّا مَنْ لَبَنُهَا مُضِرٌّ بِالرَّضِيعِ، أَوْ مَنْ تُضَيِّعُهُ، أَوْ كَانَ الْأَبُ لَا مَالَ لَهُ: فَتُجْبَرُ الْأُمُّ حِينَئِذٍ عَلَى إِرْضَاعِهِ، وَتُجْبَرُ هِيَ وَالْوَالِدُ حِينَئِذٍ عَلَى أُجْرَةِ مِثْلِهَا، إِنْ كَانَ لَهُ مَالٌ، وَإِلَّا فَلَا شَيْءَ عَلَيْهِ.

L36038 Therefore, due to what we mentioned from the words of Allah, the Exalted and Majestic: {If you find it difficult [to agree], then another woman shall nurse the child for him} [At-Talaq: 6] {Let the affluent spend from his abundance, and let him whose provision is restricted spend from what Allah has granted him. Allah does not burden any soul beyond what He has given it. Allah will bring ease after hardship} [At-Talaq: 7].[17]

فَلِمَا ذَكَرْنَا مِنْ قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَإِنْ تَعَاسَرْتُمْ فَسَتُرْضِعُ لَهُ أُخْرَى} [الطلاق: ٦] {لِيُنْفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا} [الطلاق: ٧] .

L36039–36040 And for what we have cited from the words of the Most High: “No mother shall be harmed through her child, nor shall one to whom a child is born be harmed through their child” [Al-Baqarah: 233], and for what we have mentioned regarding the obligation of mercy.[18]

وَلِمَا ذَكَرْنَا مِنْ قَوْله تَعَالَى: {لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلا مَوْلُودٌ لَهُ بِوَلَدِهِ} [البقرة: ٢٣٣] وَلِمَا ذَكَرْنَا مِنْ وُجُوبِ الرَّحْمَةِ.

L36041 As for our statement—all that we have mentioned as being obligatory upon the father regarding breastfeeding, whether in terms of payment, clothing, or sustenance (which refers to provision)—it is obligatory on him whether

وَأَمَّا قَوْلُنَا - كُلُّ مَا ذَكَرْنَا أَنَّهُ يَجِبُ عَلَى الْوَالِدِ فِي الرَّضَاعِ مِنْ أُجْرَةٍ أَوْ كِسْوَةٍ أَوْ نَفَقَةٍ، وَهِيَ الرِّزْقُ - فَهُوَ وَاجِبٌ عَلَيْهِ - كَانَ لِلرَّضِيعِ مَالٌ أَوْ لَمْ يَكُنْ، صَغِيرَةً كَانَتْ أَوْ لَمْ

[17] **Qur’an references (L36038):** Qur’an 65:6 (At-Talaq); Qur’an 65:7 (At-Talaq).
[18] **Qur’an references (L36040):** Qur’an 2:233 (Al-Baqarah).

the infant has wealth or not, whether the female child is a minor or not, and whether the father has married her off or not—unlike the sustenance of a weaned male or female child. This is because Allah, the Almighty and Majestic, has obligated all that we have mentioned.

تَكُنْ، زَوَّجَهَا أَبُوهَا أَوْ لَمْ يَكُنْ - بِخِلَافِ النَّفَقَةِ عَلَى الْفَطِيمِ أَوْ الْفَطِيمَةِ، فَلِأَنَّ اللَّهَ عَزَّ وَجَلَّ أَوْجَبَ كُلَّ مَا ذَكَرْنَا.

L36042 No exception was made if the nursing infant has property, nor if the minor female has a husband: "And your Lord is not forgetful" [Maryam: 64].[19]

وَلَمْ يَسْتَثْنِ إنْ كَانَ لِلرَّضِيعِ مَالٌ، وَلَا إنْ كَانَتْ صَغِيرَةً وَلَهَا زَوْجٌ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L36043 Allah, the Almighty and Majestic, has obligated that one must spend on everyone from his wealth, and on the husband for the wife. It is not permissible to strike the commands of Allah the Exalted against one another, due to His statement: "And if it had been from other than Allah, they would have found within it much discrepancy" [An-Nisa': 82].[20]

وَأَوْجَبَ عَزَّ وَجَلَّ أَنْ يُنْفِقَ عَلَى كُلِّ أَحَدٍ مِنْ مَالِهِ، وَعَلَى الزَّوْجِ لِلزَّوْجَةِ، وَلَا يَجُوزُ ضَرْبُ أَوَامِرِ اللَّهِ تَعَالَى بَعْضِهَا بِبَعْضٍ، لِقَوْلِهِ تَعَالَى: {وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ اخْتِلافًا كَثِيرًا} [النساء: ٨٢] .

L36044 As for our statement: If the father dies, all obligations we mentioned as incumbent upon him—whether maintenance, clothing, or wet nurse wages—devolve upon the suckling infant's heirs if they exist, distributed equally per capita among them, not proportionally to their inheritance shares had the infant died. The mother is included among them if she would inherit him upon his death. Similarly, the husband of the minor wife who is breastfeeding is included among them if he would inherit her upon her death—whether the male or female suckling infant has property or not. This differs from their maintenance and clothing after weaning, based on the verse of Allah Almighty: "The father of the child shall bear the cost of the mother's food and clothing in a fair manner. No soul is burdened beyond its capacity. Neither shall a mother be harmed for her child, nor a father for his child. And the same duty rests upon the heir." [Al-Baqarah 2:233].[21]

وَأَمَّا قَوْلُنَا - فَإِنْ مَاتَ الْأَبُ فَكُلُّ مَا ذَكَرْنَا أَنَّهُ يَجِبُ عَلَى الْوَالِدِ مِنْ نَفَقَةٍ أَوْ كِسْوَةٍ أَوْ أُجْرَةٍ فَهُوَ عَلَى وَارِثِ الرَّضِيعِ إنْ كَانَ لَهُ وَارِثٌ عَلَى عَدَدِهِمْ، لَا عَلَى قَدْرِ مَوَارِيثِهِمْ مِنْهُ لَوْ مَاتَ - وَالْأُمُّ مِنْ جُمْلَتِهِمْ إنْ كَانَتْ تَرِثُهُ إنْ مَاتَ - وَزَوْجُ الصَّغِيرَةِ الْمُرْضِعِ أَيْضًا مِنْ جُمْلَتِهِمْ - إنْ كَانَ يَرِثُهَا لَوْ مَاتَتْ - سَوَاءٌ كَانَ لِلرَّضِيعِ أَوْ الرَّضِيعَةِ مَالٌ أَوْ لَمْ يَكُنْ - بِخِلَافِ نَفَقَتِهِمَا وَكِسْوَتِهِمَا بَعْدَ الْفِطَامِ فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لا تُكَلَّفُ نَفْسٌ إِلا وُسْعَهَا لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلا مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] .

L36045 If it is asked: "The heir is only required not to be harmed, though this is narrated from Ibn Abbas through a chain that includes Ash'ath ibn Sawwār—who is deemed weak?"

فَإِنْ قِيلَ: إنَّمَا عَلَى الْوَارِثِ أَنْ لَا يُضَارَّ، وَقَدْ رُوِيَ ذَلِكَ عَنْ ابْنِ عَبَّاسٍ مِنْ طَرِيقٍ فِيهَا أَشْعَثُ بْنُ سَوَّارٍ وَهُوَ ضَعِيفٌ؟

[19] **Qur'an references (L36042):** Qur'an 19:64 (Maryam).
[20] **Qur'an references (L36043):** Qur'an 4:82 (An-Nisa).
[21] **Qur'an references (L36044):** Qur'an 2:233 (Al-Baqarah).

قُلْنَا: نَعَمْ، وَمِنْ الْمُضَارَّةِ تَرْكُ الرَّضِيعِ يَضِيعُ، وَكَيْفَ وقَوْله تَعَالَى: {مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] لَا يَخْتَلِفُ أَهْلُ الْعِلْمِ بِاللُّغَةِ الْعَرَبِيَّةِ الَّتِي بِهَا خَاطَبَنَا اللَّهُ عَزَّ وَجَلَّ فِي أَنَّ ذَلِكَ إشَارَةٌ إلَى الْأَبْعَدِ لَا إلَى - الْأَقْرَبِ - فَصَحَّ أَنَّهُ إشَارَةٌ إلَى الرِّزْقِ، وَالْكِسْوَةِ يَقِينًا.

L36046 We said: Yes, and among the harms is abandoning the infant to perish. How does the Exalted's statement {the like of that} [Al-Baqarah 2:233] apply? Scholars of the Arabic language - through which God Almighty addressed us - do not differ regarding the fact that "that" refers to the more distant, not to the nearer. Thus, it is confirmed that it points to the sustenance and clothing with certainty.[22]

وَقَدْ ذَكَرْنَا مَنْ قَالَ بِهَذَا فِي " كِتَابِ النَّفَقَاتِ " مِنْ دِيوَانِنَا هَذَا فَأَغْنَى عَنْ إعَادَتِهِ كَعُمَرَ بْنِ الْخَطَّابِ، وَزَيْدِ بْنِ ثَابِتٍ، وَغَيْرِهِمَا - وَلَا حُجَّةَ لِمَنْ خَالَفَ ذَلِكَ مَعَ الْقُرْآنِ.

L36047 We have mentioned those who held this opinion in "The Book of Maintenance" from this compendium of ours, making it unnecessary to repeat their names—such as Umar ibn al-Khattab, Zayd ibn Thabit, and others besides these two. There is no valid argument for those who oppose this while invoking the Quran.

وَهَذَا مِمَّا خَالَفُوا فِيهِ عُمَرَ، وَزَيْدَ بْنَ ثَابِتٍ وَلَا يُعْرَفُ لَهُمَا فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهُمْ يُشَنِّعُونَ هَذَا إذَا وَافَقَ أَهْوَاءَهُمْ.

L36048 This is among the matters in which they opposed 'Umar and Zayd ibn Thābit, and no opponent from the Companions—may Allah be pleased with them—is known to have opposed them both in that matter. Yet they condemn this when it aligns with their own desires.

وَأَمَّا قَوْلُنَا: فَإِنْ لَمْ يَكُنْ لَهُ وَارِثٌ فَرَضَاعُهُ عَلَى الْأُمِّ - وَارِثَةً كَانَتْ أَوْ غَيْرَ وَارِثَةٍ - لَا شَيْءَ لَهَا مِنْ أَجْلِ ذَلِكَ فِي مَالِ الرَّضِيعِ - إنْ كَانَ لَهُ مَالٌ - بِخِلَافِ نَفَقَتِهِ بَعْدَ الْفِطَامِ إنْ كَانَ لَهُ مَالٌ، فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا} [البقرة: ٢٣٣] .

L36049–36050 As for our statement: If he has no heir, then breastfeeding is incumbent upon the mother—whether she is a legal heir or not—and she has no claim to the infant's property for this reason if he possesses any, unlike his maintenance after weaning if he has property, due to the decree of Allah the Almighty and Majestic: "No mother shall be harmed through her child" [al-Baqarah 2:233].[23]

وَلِقَوْلِهِ تَعَالَى {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ} [البقرة: ٢٣٣] . وَأَمَّا قَوْلُنَا - فَإِنْ كَانَتْ مَمْلُوكَةً، وَوَلَدُهَا عَبْدٌ لِسَيِّدِهَا أَوْ لِغَيْرِهِ: فَرَضَاعُهُ عَلَى الْأُمِّ بِخِلَافِ نَفَقَتِهِ وَكِسْوَتِهِ بَعْدَ الْفِطَامِ - فَلِهَذَيْنِ النَّصَّيْنِ الْمَذْكُورَيْنِ أَيْضًا، وَلَيْسَ السَّيِّدُ وَارِثًا لِعَبْدِهِ؛ لِأَنَّهُ يَأْخُذُ مَالَهُ - وَإِنْ كَانَ كَافِرًا - بَعْدَ مَوْتِهِ.

L36051 And due to the statement of the Most High: "Mothers shall breastfeed their children for two complete years" [Al-Baqarah: 233]. As for our statement: If she is a female slave, and her child is a male slave belonging to her master or another, then breastfeeding him falls upon the mother, unlike his upkeep and clothing after weaning—this ruling is also due to this aforementioned text. The master does not inherit from his male slave because, after the slave's death, the master takes possession of his property—even if the slave was a disbeliever.[24]

[22] **Qur'an references (L36046):** Qur'an 2:233 (Al-Baqarah).
[23] **Qur'an references (L36050):** Qur'an 2:233 (Al-Baqarah).
[24] **Qur'an references (L36051):** Qur'an 2:233 (Al-Baqarah).

وَأَمَّا قَوْلُنَا: فَإِنْ كَانَتْ مَمْلُوكَةً وَوَلَدُهَا حُرٌّ فَإِنْ كَانَ لَهُ أَبٌ أَوْ وَارِثٌ: فَالنَّفَقَةُ لَهَا، وَالْكِسْوَةُ وَالْأُجْرَةُ عَلَى الْأَبِ، أَوْ عَلَى الْوَارِثِ كَمَا قَدَّمْنَا، فَإِنْ لَمْ يَكُنْ لَهُ وَارِثٌ فَرَضَاعُهُ عَلَى أُمِّهِ، فَلِمَا ذَكَرْنَا آنِفًا، فَأَغْنَى عَنْ إعَادَتِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L36052 As for our statement: If she is enslaved and her child is free, then if the child has a father or heir, maintenance is provided to her, while clothing and payment are upon the father or heir as we have mentioned earlier. If the child has no heir, breastfeeding becomes the mother's obligation due to what we mentioned previously, removing the need to repeat it. And success is by Allah, the Most High.

وَأَمَّا قَوْلُنَا: فَإِنْ مَاتَتْ، أَوْ مَرِضَتْ، أَوْ أَضَرَّ بِهِ لَبَنُهَا، أَوْ كَانَتْ لَا لَبَنَ لَهَا، وَلَا مَالَ لَهَا: فَإِرْضَاعُهُ عَلَى بَيْتِ الْمَالِ - فَإِنْ مَنَعَ فَعَلَى الْجِيرَانِ: يُجْبِرُهُمْ الْحَاكِمُ عَلَى ذَلِكَ، فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ تَرَكَ دَيْنًا أَوْ ضِيَاعًا فَإِلَيَّ أَوْ عَلَيَّ» أَوْ كَمَا قَالَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L36053 As for our statement that if she dies, falls ill, her milk harms him, has no milk, and lacks means, then his nursing becomes the responsibility of the public treasury. If the treasury refuses to provide, it falls upon the neighbors – the ruler must compel them to fulfill this obligation, in accordance with the saying of Allah's Messenger – peace be upon him: "Whoever leaves a debt or dependents without support, then their provision is incumbent upon me," or words to that effect as he said – peace be upon him.

وَلِقَوْلِ اللَّهِ تَعَالَى: {وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَالْجَارِ ذِي الْقُرْبَى وَالْجَارِ الْجُنُبِ وَالصَّاحِبِ} [النساء: ٣٦] وَهَذَا مِنْ الْإِحْسَانِ الْمُفْتَرَضِ الْمَأْمُورِ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L36054 And due to the saying of Allah, the Exalted: "And do good to parents, close relatives, orphans, the needy, the near neighbor, the neighbor who is unrelated, and the companion at your side" [An-Nisā': 36]. This is part of the obligatory benevolence that has been commanded, and success is with Allah, the Exalted.[25]

[مَسْأَلَةٌ كَانَتْ لَهُ امْرَأَتَانِ فَأَرْضَعَتْ إحْدَاهُمَا بِلَبَنٍ حَدَثَ لَهَا مِنْ حَمْلٍ مِنْهُ]

A case in which a man had two wives, and one of them breastfed with milk that occurred for her from a pregnancy by him.

٢٠١٤ - مَسْأَلَةٌ: وَمَنْ كَانَتْ لَهُ امْرَأَتَانِ، أَوْ أَمَتَانِ، أَوْ زَوْجَةٌ وَأَمَةٌ: فَأَرْضَعَتْ إحْدَاهُمَا بِلَبَنٍ حَدَثَ لَهَا مِنْ حَمْلٍ مِنْهُ رَجُلًا رَضَاعًا مُحَرَّمًا، وَأَرْضَعَتْ الْأُخْرَى بِلَبَنٍ حَدَثَ لَهَا مِنْ حَمْلٍ مِنْهُ امْرَأَةً كَذَلِكَ: لَمْ يَحِلَّ لِأَحَدِهِمَا نِكَاحُ الْآخَرِ أَصْلًا.

L36055 **A case in which a man had two wives, and one of them breastfed with milk that occurred for her from a pregnancy by him.**

2014 – Issue: If a man has two wives, two bondmaids, or a wife and a bondmaid, and one breastfeeds a male child with milk produced from a pregnancy by him through prohibited breastfeeding, while the other similarly breastfeeds a female child under the same circumstances: it is absolutely impermissible for either of the two to marry the other at all.

وَكُلُّ مَنْ أَرْضَعَتْ الرَّجُلَ حُرِّمَتْ عَلَيْهِ؛ لِأَنَّهَا أُمُّهُ مِنْ الرَّضَاعَةِ.

L36056

Every woman who breastfeeds a man is forbidden to him, for she becomes his mother by virtue of breastfeeding.

L36057

And forbidden to him are her daughters, for they are his milk sisters—it is

L36058

[25] **Qur'an references (L36054):** Qur'an 4:36 (An-Nisa).

the same in that regard whether they were born before him or after him—due to breastfeeding.

وَحَرُمَ عَلَيْهِ بَنَاتُهَا، لِأَنَّهُنَّ أَخَوَاتُهُ - سَوَاءٌ فِي ذَلِكَ مَنْ وُلِدَتْ قَبْلَهُ، أَوْ مَنْ وُلِدَتْ بَعْدَهُ - مِنْ الرَّضَاعَةِ.

L36059 The sisters of the woman who breastfed him were forbidden for him to marry because they are his maternal aunts by virtue of breastfeeding.

وَحُرِّمَتْ عَلَيْهِ أَخَوَاتُهَا، لِأَنَّهُنَّ خَالَاتُهُ مِنْ الرَّضَاعَةِ.

L36060–36061 And her mothers are forbidden to him because they are his grandmothers.

وَحُرِّمَتْ عَلَيْهِ أُمَّهَاتُهَا، لِأَنَّهُنَّ جَدَّاتُهُ.

L36062 And forbidden to him are the sisters of the wife who breastfed him with milk from a pregnancy of his, because they are his paternal aunts through breastfeeding.

وَحُرِّمَتْ عَلَيْهِ أَخَوَاتُ زَوْجِ الَّتِي أَرْضَعَتْهُ بِلَبَنِهَا مِنْ حَمْلٍ مِنْهُ، لِأَنَّهُنَّ عَمَّاتُهُ مِنْ الرَّضَاعَةِ.

L36063 And his mothers (including grandmothers) are forbidden to him because they are his grandmothers.

وَحُرِّمَتْ عَلَيْهِ أُمَّهَاتُهُ لِأَنَّهُنَّ جَدَّاتُهُ.

L36064 It is forbidden for him to marry the woman nursed by his wife with milk resulting from a pregnancy he caused, for she is legally considered his daughter.

وَحُرِّمَ عَلَيْهِ مَنْ أَرْضَعَتْ امْرَأَتُهُ بِلَبَنٍ حَدَثَ لَهَا مِنْ حَمْلٍ مِنْهُ، لِأَنَّهَا مِنْ بَنَاتِهِ.

L36065 Similarly, it is prohibited for a man whose wife has breastfed.

وَكَذَلِكَ يَحْرُمُ عَلَى الرَّجُلِ الَّذِي أَرْضَعَتْ امْرَأَتُهُ.

L36066 The ruling for a woman who breastfeeds his child is the same as the ruling for her biological daughter, and it is prohibited to marry two sisters related through milk kinship.

وَحُكْمُ الَّتِي تُرْضِعُ امْرَأَتُهُ حُكْمُ ابْنَتِهَا الَّتِي وَلَدَتْهَا، وَلَا يَجْمَعُ بَيْنَ الْأُخْتَيْنِ مِنْ الرَّضَاعَةِ.

L36067 The evidence for this is the saying of Allah, the Mighty and Majestic, regarding the women forbidden to you [in marriage]: "And your mothers who have breastfed you and your milk sisters through breastfeeding" [an-Nisā' 4:23].[26]

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ فِيمَا حَرَّمَ مِنْ النِّسَاءِ: {وَأُمَّهَاتُكُمُ اللاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُمْ مِنَ الرَّضَاعَةِ} [النساء: ٢٣] .

L36068 The statement of the Messenger of Allah (peace and blessings be upon him)—"What is forbidden through breastfeeding is what is forbidden through birth"—includes everything we have mentioned and what we have not mentioned. And with Allah lies all success, the Most High.

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «يَحْرُمُ مِنْ الرَّضَاعِ مَا يَحْرُمُ مِنْ الْوِلَادَةِ» فَدَخَلَ فِي هَذَا كُلُّ مَا ذَكَرْنَا وَمَا لَمْ نَذْكُرْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L36069 All of this is unanimously agreed upon except in five matters: the role of the male in establishing kinship through breastfeeding, the description of

وَكُلُّ هَذَا فَلَا خِلَافَ فِيهِ إلَّا فِي خَمْسَةِ مَوَاضِعَ -: وَهِيَ: لَبَنُ الْفَحْلِ، وَصِفَةُ الرَّضَاعِ الْمُحَرِّمِ، وَعَدَدُ الرَّضَاعِ الْمُحَرِّمِ، وَرَضَاعُ الْكَبِيرِ، وَالرَّضَاعُ مِنْ مَيِّتَةٍ.

[26] **Qur'an references (L36067):** Qur'an 4:23 (An-Nisa).

breastfeeding that establishes prohibition, the number of breastfeedings causing prohibition, breastfeeding an adult, and breastfeeding from a deceased woman.

Issue: The male's milk prohibits.

L36070

L36071 Issue 2015: The husband's milk kinship causes prohibition, as we previously explained: when a man's wife breastfeeds a male child, and his other wife breastfeeds a female child, marriage between the two children becomes unlawful.

L36072–36074 A group of the Salaf maintained that this does not prohibit anything, just as it is authentically established from 'Ā'ishah, the Mother of the Believers. - May Allah be pleased with her - We have narrated it via the chain of Abu Ubayd: I, Ismail ibn Ja'far, reported from Muhammad ibn Amr ibn Alqamah, from Abd al-Rahman ibn al-Qasim ibn Muhammad, from his father, from Aisha, the Mother of the Believers: that she would allow [as mahrams] those breastfed by her sisters and her brother's daughters, but would not allow those breastfed by the wives of her brothers and the sons of her brothers. A similar report is narrated via the chain of Malik: Abd al-Rahman ibn al-Qasim reported from his father that he related this from Aisha, the Mother of the Believers.

L36075 From the narration of Sa'id ibn Mansur: I am Abdul Aziz ibn Muhammad al-Darawardi, who said: Rabi'ah, Yahya ibn Sa'id, Amr ibn Abdullah, and Aflah ibn Humaid - all of them narrated to me, each transmitting from al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq - who said: Those breastfed by the daughters of Abu Bakr were permitted to enter upon Aisha, the Mother of the Believers (may Allah be pleased with her), while those breastfed by the wives of Abu Bakr were not permitted to enter upon her.

L36076 And from the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Khusayf, from Salim ibn Abdullah ibn Umar, from his father, Abdullah ibn Umar, who said: "There is no harm in the milk of a stud animal."

L36077 And we have also narrated it through the chain of Jābir ibn ʿAbd Allāh.

[مَسْأَلَةٌ لَبَنُ الْفَحْلِ يُحَرِّمُ]

٢٠١٥ - مَسْأَلَةٌ: لَبَنُ الْفَحْلِ يُحَرِّمُ، وَهُوَ مَا ذَكَرْنَا آنِفًا: مِنْ أَنْ تُرْضِعَ امْرَأَةُ رَجُلٍ ذَكَرًا، وَتُرْضِعَ امْرَأَتُهُ الْأُخْرَى أُنْثَى: فَتَحْرُمُ إِحْدَاهُمَا عَلَى الْأُخْرَى.

وَقَدْ رَأَى قَوْمٌ مِنَ السَّلَفِ هَذَا لَا يُحَرِّمُ شَيْئًا -: كَمَا صَحَّ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - رُوِّينَاهُ مِنْ طَرِيقِ أَبِي عُبَيْدٍ أَنَا إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَلْقَمَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّهَا كَانَتْ تَأْذَنُ لِمَنْ أَرْضَعَتْهُ أَخَوَاتُهَا، وَبَنَاتُ أَخِيهَا وَلَا تَأْذَنُ لِمَنْ أَرْضَعَتْهُ نِسَاءُ إِخْوَتِهَا وَبَنِي إِخْوَتِهَا وَمِثْلُهُ مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ أَنَّ أَبَاهُ حَدَّثَهُ بِذَلِكَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ قَالَ: أَخْبَرَنِي رَبِيعَةُ، وَيَحْيَى بْنُ سَعِيدٍ، وَعَمْرُو بْنُ عَبْدِ اللَّهِ، وَأَفْلَحُ بْنُ حُمَيْدٍ، كُلُّهُمْ عَنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ قَالَ: كَانَ يَدْخُلُ عَلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - مَنْ أَرْضَعَتْهُ بَنَاتُ أَبِي بَكْرٍ، وَلَا يَدْخُلُ عَلَيْهَا مَنْ أَرْضَعَتْهُ نِسَاءُ أَبِي بَكْرٍ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ خُصَيْفٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّهُ قَالَ: لَا بَأْسَ بِلَبَنِ الْفَحْلِ.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ جَابِرِ بْنِ عَبْدِ اللَّهِ.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ أَنَا إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ زَمْعَةَ بْنِ الْأَسْوَدِ: أَنَّ أُمَّهُ زَيْنَبَ بِنْتَ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ أَرْضَعَتْهَا أَسْمَاءُ بِنْتُ أَبِي بَكْرٍ الصِّدِّيقِ امْرَأَةُ الزُّبَيْرِ قَالَتْ زَيْنَبُ: فَأَرْسَلَ إِلَيَّ عَبْدُ اللَّهِ بْنُ الزُّبَيْرِ يَخْطُبُ ابْنَتِي أُمَّ كُلْثُومٍ عَلَى أَخِيهِ حَمْزَةَ بْنِ الزُّبَيْرِ وَكَانَ حَمْزَةَ ابْنَ الْكَلْبِيَّةِ، فَقُلْت لِرَسُولِهِ: وَهَلْ تَحِلُّ لَهُ؟ إِنَّمَا هِيَ بِنْتُ أَخِيهِ، فَأَرْسَلَ إِلَيَّ ابْنُ الزُّبَيْرِ إِنَّمَا تُرِيدِينَ الْمَنْعَ أَنَا وَمَا وَلَدَتْ أَسْمَاءُ إِخْوَتُك، وَمَا كَانَ مِنْ وَلَدِ الزُّبَيْرِ مِنْ غَيْرِ أَسْمَاءَ فَلَيْسُوا لَك بِإِخْوَةٍ فَأَرْسِلِي فَاسْأَلِي عَنْ هَذَا؟ فَأَرْسَلَتْ فَسَأَلَتْ، وَأَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُتَوَافِرُونَ وَأُمَّهَاتُ الْمُؤْمِنِينَ - فَقَالُوا: إِنَّ الرَّضَاعَةَ مِنْ قِبَلِ الرِّجَالِ لَا تُحَرِّمُ شَيْئًا؟ فَأَنْكَحَتْهَا إِيَّاهُ، فَلَمْ تَزَلْ عِنْدَهُ حَتَّى هَلَكَتْ.

L36078 Through the path of Abu ʻUbayd: Isma'il ibn Ja'far narrated to me from Muhammad ibn ʻAmr from Abu ʻUbaydah ibn ʻAbdullah ibn Zam'ah ibn al-Aswad: That his mother Zaynab bint Umm Salamah, the Mother of the Believers, was suckled by Asma bint Abi Bakr al-Siddiq, the wife of al-Zubayr. Zaynab said: "Then ʻAbdullah ibn al-Zubayr sent to me proposing marriage on behalf of his brother Hamzah ibn al-Zubayr - whose mother was al-Kalbiyyah - to my daughter Umm Kulthum. I said to his messenger: 'Is she lawful for him? She is merely his brother's daughter.' Ibn al-Zubayr then sent to me: 'You only seek to prevent this. I and those borne by Asma are your brothers, while those born to al-Zubayr from women other than Asma are not your brothers. Send to inquire about this.' She sent and inquired while the Companions of the Messenger of Allah—peace and blessings of Allah be upon him—were present in great numbers along with the Mothers of the Believers. They said: 'Suckling traced through male relations does not prohibit marriage.' She thus gave her daughter in marriage to him, and she remained with him until her death."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا حَمَّادُ بْنُ سَلَمَةَ أَنَا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ أَنَّ حَمْزَةَ بْنَ الزُّبَيْرِ بْنِ الْعَوَّامِ تَزَوَّجَ ابْنَةَ زَيْنَبَ بِنْتِ أُمِّ سَلَمَةَ وَقَدْ أَرْضَعَتْ أَسْمَاءُ بِنْتُ أَبِي بَكْرٍ زَيْنَبَ بِنْتَ أُمِّ سَلَمَةَ بِلَبَنِ الزُّبَيْرِ، قَالَ يَحْيَى بْنُ سَعِيدٍ: وَكَانَتْ امْرَأَةُ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ قَدْ أَرْضَعَتْ حَمْزَةَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ فَوُلِدَ لِسَالِمِ بْنِ عَبْدِ اللَّهِ مِنْ امْرَأَةٍ أُخْرَى غُلَامٌ اسْمُهُ عُمَرُ فَتَزَوَّجَ بِنْتَ حَمْزَةَ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ.

L36079 From the chain of Al-Ḥajjāj ibn Al-Minhāl: I am Ḥammād ibn Salamah; I [relate] from Yaḥyā ibn Saʿīd Al-Anṣārī that Ḥamzah ibn Al-Zubayr ibn Al-ʿAwwām married the daughter of Zaynab, the daughter of Umm Salamah. Asmāʾ bint Abī Bakr had breastfed Zaynab, the daughter of Umm Salamah, with the milk of Al-Zubayr. Yaḥyā ibn Saʿīd said: "The wife of Sālim ibn ʿAbd Allāh ibn ʿUmar ibn Al-Khaṭṭāb had breastfed Ḥamzah ibn ʿAbd Allāh ibn ʿUmar. Then Sālim ibn ʿAbd Allāh had a son named ʿUmar from another wife, and this ʿUmar married the daughter of Ḥamzah ibn ʿAbd Allāh ibn ʿUmar."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ أَخْبَرَنِي عَمْرُو بْنُ حُسَيْنٍ مَوْلَى قُدَامَةَ بْنِ مَظْعُونٍ: أَنَّ سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ زَوَّجَ ابْنًا لَهُ أُخْتًا لَهُ مِنْ أَبِيهِ مِنْ الرَّضَاعَةِ.

L36080–36081 And from the narration of Saʿīd ibn Manṣūr: I am ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī. ʿAmr ibn Ḥusayn, the client of Qudāmah ibn Maẓʿūn, informed me: That Sālim ibn ʿAbd Allāh ibn ʿUmar gave his son in marriage to the son's sister through his father via breastfeeding.

L36082 And from the path of Abd al-Razzaq and Waki', Abd al-Razzaq said: From Sufyan al-Thawri from al-A'mash, and Waki' said: From Shu'bah from al-

Hakam ibn Utaybah, they both narrated: From Ibrahim al-Nakha'i who said: There is no harm in the milk of the male.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ، وَوَكِيعٍ، قَالَ عَبْدُ الرَّزَّاقِ: عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ، وَقَالَ: وَكِيعٌ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، قَالَا جَمِيعًا: عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَا بَأْسَ بِلَبَنِ الْفَحْلِ.

L36083 From the narration of Ḥammād ibn Salamah: I am Muḥammad ibn ʿAmr, from Yazīd ibn ʿAbd Allāh ibn Qusayṭ, who inquired of Saʿīd ibn al-Musayyib, ʿAṭāʾ ibn Yasār, Sulaymān ibn Yasār, and Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf. They all responded: "Prohibition through nursing (radāʿah) arises solely from the act on the part of women; no prohibition arises from what is attributed to men."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا مُحَمَّدُ بْنُ عَمْرٍو عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ: أَنَّهُ سَأَلَ سَعِيدَ بْنَ الْمُسَيِّبِ، وَعَطَاءَ بْنَ يَسَارٍ، وَسُلَيْمَانَ بْنَ يَسَارٍ، وَأَبَا سَلَمَةَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، قَالُوا كُلُّهُمْ: إنَّمَا يَحْرُمُ مِنْ الرَّضَاعَةِ مَا كَانَ مِنْ قِبَلِ النِّسَاءِ، وَلَا يَحْرُمُ مَا كَانَ مِنْ قِبَلِ الرِّجَالِ.

L36084 And from the chain of Abū 'Ubayd: from me, from Abū Mu'āwiyah - he is Muḥammad ibn Khāzim the Blind - from Muḥammad ibn 'Amr from Yazīd ibn 'Abdullāh ibn Quṣayṭ. Yazīd mentioned it on their authority and added among them Abū Bakr ibn Sulaymān ibn Abī Ḥathma. It was also reported from Makhūl and al-Sha'bī.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ أَنَا أَبُو مُعَاوِيَةَ - هُوَ مُحَمَّدُ بْنُ خَازِمٍ الضَّرِيرُ - عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ فَذَكَرَهُ عَنْهُمْ، وَزَادَ فِيهِمْ أَبَا بَكْرِ بْنَ سُلَيْمَانَ بْنِ أَبِي حَثْمَةَ - وَرُوِيَ أَيْضًا عَنْ مَكْحُولٍ، وَالشَّعْبِيِّ.

L36085 And through the chain of Saʿīd ibn Manṣūr: I [received it] from Khālid ibn ʿAbdillāh al-Wāsiṭī, from Khālid al-Khaddāʾ, from Bakr ibn ʿAbdillāh, from Abū Qilābah, that he did not deem the milk of a stallion harmful.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا خَالِدُ بْنُ عَبْدِ اللَّهِ الْوَاسِطِيُّ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِي قِلَابَةَ أَنَّهُ لَمْ يَكُنْ يَرَى بِلَبَنِ الْفَحْلِ بَأْسًا.

L36086 And through the chain of Saʿīd ibn Manṣūr: I, ʿAbd al-ʿAzīz ibn Muḥammad, was informed by Aflaḥ ibn Ḥumayd, who said: I said to al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq: "A certain man from the family of Abī Farwah intends to marry off a male to his sister through paternal breastfeeding." Al-Qāsim said: "There is no harm in that."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ أَخْبَرَنِي أَفْلَحُ بْنُ حُمَيْدٍ، قَالَ: قُلْت لِلْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ: إنَّ فُلَانًا مِنْ آلِ أَبِي فَرْوَةَ أَرَادَ أَنْ يُزَوِّجَ غُلَامًا أُخْتَهُ مِنْ أَبِيهِ مِنْ الرَّضَاعَةِ؟ فَقَالَ الْقَاسِمُ: لَا بَأْسَ بِذَلِكَ.

L36087 Others held the view of prohibition in this matter, as we have narrated through the chain of Abu 'Ubayd. I, Isma'il ibn Ja'far, report from Muhammad ibn 'Amr ibn 'Alqamah from Abu 'Ubaydah ibn 'Abd Allah ibn Zam'ah that his mother Zaynab bint Umm Salamah, the Mother of the Believers, was breastfed by Asma' bint Abi Bakr al-Siddiq, the wife of al-Zubayr ibn al-'Awwam. Zaynab said: "Al-Zubayr would enter upon me while I was comb-

وَذَهَبَ آخَرُونَ إلَى التَّحْرِيمِ بِهِ: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ. أَنَا إسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَلْقَمَةَ عَنْ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ زَمْعَةَ أَنَّ أُمَّهُ زَيْنَبَ بِنْتَ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ أَرْضَعَتْهَا أَسْمَاءُ بِنْتُ أَبِي بَكْرٍ الصِّدِّيقِ امْرَأَةُ الزُّبَيْرِ بْنِ الْعَوَّامِ قَالَتْ

ing my hair, take a lock from my head, and say: ‘Turn to me and converse with me, for I consider him my father, and his children are my brothers.’”

زَيْنَبُ: فَكَانَ الزُّبَيْرُ يَدْخُلُ عَلَيَّ وَأَنَا أَمْتَشِطُ فَيَأْخُذُ بِقَرْنٍ مِنْ قُرُونِ رَأْسِي يَقُولُ: أَقْبِلِي عَلَيَّ فَحَدِّثِينِي أَرَى أَنَّهُ أَبِي وَمَا وَلَدَ فَهُمْ إِخْوَتِي.

L36088–36090 And via the chain of Abī ʻUbayd: I, from ʻAbdur-Raḥmān ibn Mahdī from Mālik ibn Anas from Ibn Shihāb from Amr ibn al-Sharid reported from Ibn Abbas that he was asked about a man who had two wives, one of whom suckled a girl and the other a boy: “Is it permissible for the girl and the boy to marry each other?” Ibn Abbas replied: “No, the suckling is one.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ مَالِكِ بْنِ أَنَسٍ عَنِ ابْنِ شِهَابٍ عَنْ عَمْرِو بْنِ الشَّرِيدِ عَنِ ابْنِ عَبَّاسٍ أَنَّهُ سُئِلَ عَنْ رَجُلٍ كَانَتْ لَهُ امْرَأَتَانِ أَرْضَعَتْ إِحْدَاهُمَا جَارِيَةً، وَالْأُخْرَى غُلَامًا، أَيَحِلُّ أَنْ يَتَنَاكَحَا؟ فَقَالَ ابْنُ عَبَّاسٍ: لَا، اللِّقَاحُ وَاحِدٌ.

L36091 And through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān: From ʿAbbād ibn Manṣūr: I asked al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq, Ṭāwus, ʿAṭāʾ ibn Abī Rabāḥ, and al-Ḥasan al-Baṣrī, saying, “My father’s wife breastfed a girl from among the people using my brothers’ milk. May I marry her?” Al-Qāsim replied: “No, your father is her father.” ʿAṭāʾ, Ṭāwus, and al-Ḥasan said: “She is your sister.”

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ أَنَا عَبَّادُ بْنُ مَنْصُورٍ: سَأَلْتُ الْقَاسِمَ بْنَ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ، وَطَاوُسًا، وَعَطَاءَ بْنَ أَبِي رَبَاحٍ، وَالْحَسَنَ الْبَصْرِيَّ، فَقُلْتُ: امْرَأَةُ أَبِي أَرْضَعَتْ بِلِبَانِ إِخْوَتِي جَارِيَةً مِنْ عُرْضِ النَّاسِ أَلِيَ أَنْ أَتَزَوَّجَهَا؟ فَقَالَ الْقَاسِمُ: لَا، أَبُوكَ أَبُوهَا - وَقَالَ عَطَاءٌ، وَطَاوُسٌ، وَالْحَسَنُ: هِيَ أُخْتُكَ. وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ مُجَاهِدٍ، أَنَّهُ كَرِهَ لَبَنَ الْفَحْلِ. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ، وَأَبِي عُبَيْدٍ، قَالَا: أَنَا هُشَيْمٌ أَنَّ عَبْدَ اللَّهِ بْنَ سَبْرَةَ الْهَمْدَانِيَّ إِنَّهُ سَمِعَ الشَّعْبِيَّ: يُكْرَهُ لَبَنَ الْفَحْلِ.

Through the chain of ʿAbd al-Raḥmān ibn Mahdī: From Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from Mujāhid: He disliked the milk of the male progenitor.

Through the chain of Saʿīd ibn Manṣūr and Abū ʿUbayd: They said: From Hushaym, that ʿAbd Allāh ibn Sabrah al-Hamdānī heard al-Shaʿbī state: The milk of the male progenitor is disliked.

L36092 From the narration of Hammad ibn Salamah: Hisham ibn Urwah ibn al-Zubayr reported from his father regarding a man whose father’s wife breast-fed a woman who was not his mother—is she lawful for him to marry? Urwah said: She [the father’s wife] is not lawful for him.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا هِشَامُ بْنُ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ فِي رَجُلٍ أَرْضَعَتْ امْرَأَةُ أَبِيهِ امْرَأَةً وَلَيْسَتْ أُمَّهُ: أَتَحِلُّ لَهُ؟ قَالَ عُرْوَةُ: لَا تَحِلُّ لَهُ.

L36093 And via the chain of Mālik from Ibn Shihāb, who said: “Suckling from the mother’s side establishes prohibition (in marriage).”

وَمِنْ طَرِيقِ مَالِكٍ عَنِ ابْنِ شِهَابٍ قَالَ: الرَّضَاعَةُ مِنْ قِبَلِ الْأُمِّ تُحَرِّمُ.

L36094 And through the chain of Abu Ubayd: I am Abdullah ibn Idris al-Awdi, reporting from al-A’mash who said: Umara, Ibrahim, and our associates saw no harm in male camel’s milk until al-Hakam ibn Utaybah came to them

with Abu al-Qu'ays's report. Abu Muhammad said: This is how the people of knowledge act - not like those who say: "Where were so-and-so and so-and-so regarding this report?" This is the position of Sufyan al-Thawri, al-Awza'i, al-Layth ibn Sa'd, Abu Hanifa, Malik, al-Shafi'i, Abu Sulayman and their companions.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ أَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ الْأَوْدِيُّ عَنْ الْأَعْمَشِ قَالَ: كَانَ عُمَارَةُ، وَإِبْرَاهِيمُ وَأَصْحَابُنَا: لَا يَرَوْنَ بِلَبَنِ الْفَحْلِ بَأْسًا، حَتَّى أَتَاهُمْ الْحَكَمُ بْنُ عُتَيْبَةَ بِخَبَرِ أَبِي الْقُعَيْسِ. قَالَ أَبُو مُحَمَّدٍ: هَكَذَا يَفْعَلُ أَهْلُ الْعِلْمِ، لَا كَمَنْ يَقُولُ: أَيْنَ كَانَ فُلَانٌ وَفُلَانٌ عَنْ هَذَا الْخَبَرِ؟ وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَاللَّيْثِ بْنِ سَعْدٍ، وَأَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ وَأَصْحَابِهِمْ.

L36095 Others refrained from issuing a ruling concerning it—as was narrated to us through the chain of Sa'īd ibn Manṣūr: **I** narrate from Ismā'īl ibn Ibrāhīm—he is Ibn 'Ulayyah—from 'Abbād ibn Manṣūr, who said: "I asked Mujāhid about a girl from among the people whom my father's wife had suckled. Do you deem it permissible for me to marry her?" He replied: "The jurists have differed concerning this matter, so I will not say anything." I then asked Ibn Sīrīn, and he said: "The same as Mujāhid's statement."

وَتَوَقَّفَ فِيهِ آخَرُونَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ عُلَيَّةَ - أَنَا عَبَّادُ بْنُ مَنْصُورٍ قَالَ: سَأَلْت مُجَاهِدًا عَنْ جَارِيَةٍ مِنْ عُرْضِ النَّاسِ أَرْضَعَتْهَا امْرَأَةُ أَبِي، أَتَرَى لِي أَنْ أَتَزَوَّجَهَا؟ فَقَالَ: اخْتَلَفَ فِيهَا الْفُقَهَاءُ، فَلَسْت أَقُولُ شَيْئًا - وَسَأَلْت ابْنَ سِيرِينَ فَقَالَ: مِثْلَ قَوْلِ مُجَاهِدٍ.

L36096–36098 Abu Muhammad said: We examined that matter and found—as we have narrated via the chain of Muslim ibn al-Hajjaj: I, Harmalah ibn Yahya al-Tujibi; I am Ibn Wahb, who informed me from Yunus ibn Yazid, from Ibn Shihab. From Urwah ibn Al-Zubayr, from Aisha, the Mother of the Believers, that she informed him: Aflah, the brother of Abu Al-Qu'ays, came to seek permission to visit her after the ordainment of hijab. Abu Al-Qu'ays was Aisha's milk father through breastfeeding. Aisha said: "By Allah, I will not permit Aflah until I seek permission from the Messenger of Allah (ﷺ), for Abu Al-Qu'ays was not the one who breastfed me - his wife breastfed me." When the Messenger of Allah (ﷺ) entered upon her, she said: "O Messenger of Allah, Aflah, the brother of Abu Al-Qu'ays, came to seek permission to visit me, and I was reluctant to permit him until I sought your permission?" The Prophet (ﷺ) said: "Permit him."

قَالَ أَبُو مُحَمَّدٍ: فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا - مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ أَنَا حَرْمَلَةُ بْنُ يَحْيَى التُّجِيبِيُّ - أَنَا ابْنَ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ «عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا أَخْبَرَتْهُ أَنَّهُ جَاءَ أَفْلَحُ أَخُو أَبِي الْقُعَيْسِ يَسْتَأْذِنُ عَلَيْهَا بَعْدَ الْحِجَابِ، وَكَانَ أَبُو الْقُعَيْسِ أَبَا عَائِشَةَ مِنْ الرَّضَاعَةِ قَالَتْ عَائِشَةُ: فَقُلْت: وَاَللَّهِ لَا آذَنُ لِأَفْلَحَ حَتَّى أَسْتَأْذِنَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنَّ أَبَا الْقُعَيْسِ لَيْسَ هُوَ الَّذِي أَرْضَعَنِي، وَلَكِنْ أَرْضَعَتْنِي امْرَأَتُهُ، فَلَمَّا دَخَلَ عَلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قُلْتُ يَا رَسُولَ اللَّهِ إنَّ أَفْلَحَ أَخَا أَبِي الْقُعَيْسِ جَاءَ يَسْتَأْذِنُ عَلَيَّ فَكَرِهْتُ أَنْ آذَنَ حَتَّى أَسْتَأْذِنَكَ؟ قَالَتْ: فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: ائْذَنِي لَهُ» .

L36099 Muhammad ibn Sa'id ibn Nubāt said: I am Ismā'īl ibn Isḥāq al-Naṣrī. I am 'Īsā ibn Ḥabīb al-Qāḍī. I am 'Abd al-Raḥmān ibn 'Abd Allāh ibn Muḥammad ibn 'Abd Allāh ibn Yazīd al-Muqrī. My grandfather Muḥammad ibn 'Abd

Allāh narrated to me: I am Sufyān ibn ʻUyaynah from al-Zuhrī and Hishām ibn ʻUrwah (both narrating from ʻUrwah from ʻĀ'ishah, the Mother of the Believers – one adding details the other omits). She said: "My uncle came after the hijab was instituted. He sought permission to enter upon me, but I refused. The Prophet – peace and blessings of Allah be upon him – arrived and said: 'Let him in, for he is your uncle.' I said: 'O Messenger of Allah, only the woman breastfed me, not the man.' He said: 'May your right hand be dusty! Let him in, for he is your uncle.'"

وَنا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ أَنَا إِسْمَاعِيلُ بْنُ إِسْحَاقَ النَّصْرِيُّ أَنَا عِيسَى بْنُ حَبِيبٍ الْقَاضِي أَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي حَدَّثَنِي جَدِّي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ وَهِشَامِ بْنِ عُرْوَةَ كِلَاهُمَا عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - يَزِيدُ أَحَدُهُمَا عَلَى صَاحِبِهِ قَالَتْ «جَاءَ عَمِّي بَعْدَ مَا ضُرِبَ الْحِجَابُ فَاسْتَأْذَنَ عَلَيَّ فَلَمْ آذَنْ لَهُ، فَجَاءَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: ائْذَنِي لَهُ فَإِنَّهُ عَمُّكِ، فَقُلْتُ: يَا رَسُولَ اللَّهِ فَإِنَّمَا أَرْضَعَتْنِي الْمَرْأَةُ وَلَمْ يُرْضِعْنِي الرَّجُلُ قَالَ: تَرِبَتْ يَمِينُكِ ائْذَنِي لَهُ فَإِنَّهُ عَمُّكِ» .

L36100 Via the chain of Muslim: I am Abdullah ibn Muʿādh al-Anbari, from my father, from Shuʿbah, from al-Ḥakam ibn ʿUtaybah, from ʿIrāk ibn Mālik, from ʿUrwah, from ʿĀ'ishah, Mother of the Believers, who said: "Aflaḥ ibn Quʿays sought permission to enter upon me, but I refused to permit him. He sent me a message: 'I am your uncle - my brother's wife breastfed you.' So I refused to permit him. Then the Messenger of Allah—peace and blessings be upon him—came, and I mentioned this to him. He said: 'Let him enter upon you, for he is your uncle.'"

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عَبْدُ اللَّهِ بْنُ مُعَاذٍ الْعَنْبَرِيُّ أَنَا أَبِي أَنَا شُعْبَةُ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عِرَاكِ بْنِ مَالِكٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «اسْتَأْذَنَ عَلَيَّ أَفْلَحُ بْنُ قُعَيْسٍ، فَأَبَيْتُ أَنْ آذَنَ لَهُ فَأَرْسَلَ إِلَيَّ: إِنِّي عَمُّكِ أَرْضَعَتْكِ امْرَأَةُ أَخِي، فَأَبَيْتُ أَنْ آذَنَ لَهُ فَجَاءَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرْتُ ذَلِكَ لَهُ فَقَالَ: لِيَدْخُلْ عَلَيْكِ فَإِنَّهُ عَمُّكِ» .

L36101 This is an authentic report that must not be contradicted, and it goes beyond what is in the Quran.

فَكَانَ هَذَا خَبَرًا لَا تَجُوزُ مُخَالَفَتُهُ وَهُوَ زَائِدٌ عَلَى مَا فِي الْقُرْآنِ.

L36102–36104 As for the Ḥanafīs and Mālikīs, they contradicted themselves here in the gravest manner, since both groups... The jurists state: If a Companion narrates a ḥadīth from the Messenger of Allah (peace and blessings be upon him), and a narration contrary to what he narrated is transmitted from that same Companion, this indicates the abrogation of the first narration. They articulated this principle in several cases:

وَأَمَّا الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، فَتَنَاقَضُوا هَاهُنَا أَقْبَحَ تَنَاقُضٍ؛ لِأَنَّ كِلْتَا الطَّائِفَتَيْنِ تَقُولُ: إِذَا رَوَى الصَّاحِبُ خَبَرًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرُوِيَ عَنْ ذَلِكَ الصَّاحِبِ خِلَافُ مَا رَوَى، فَهُوَ دَلِيلٌ عَلَى نَسْخِ ذَلِكَ الْخَبَرِ، قَالُوا ذَلِكَ فِي مَوَاضِعَ :-

L36105 Among them is what was narrated from Jabir concerning the child of a female *mudabbara* (a slave designated for posthumous emancipation): that he is emancipated by virtue of her emancipation and enslaved by virtue of her

enslavement. They asserted this contradicts what was narrated from Jabir, from the Prophet (peace and blessings of Allah be upon him), who "sold a male *mudabbar* (a slave designated for posthumous emancipation)."

L36106 What is astonishing is that this does not contradict the reported rulings; rather, it is consistent with the ruling on selling a *mudabbar* (a slave granted conditional manumission), for in such a sale, the slave is returned to enslavement due to her existing status as an enslaved person.

L36107 Abu Muhammad said: This is a narration transmitted from the Messenger of Allah—may Allah bless him and grant him peace—by none other than ʿĀ'ishah alone. Yet an authentic narration from her contradicts it. They adopted her transmitted narration but abandoned her opinion, without stating: "She only opposed it due to the superior knowledge they [women] possess." Instead, they said: "We do not know why the one whom her brothers' wives had breastfed was not permitted to be in seclusion with her."

L36108 Abu Muhammad said: This was truly astonishing, as established from her—as we desired—that those nursed by the wives of Abu Bakr, the wives of her brothers, and the wives of her paternal nephews did not enter upon her, according to the most authentic chains of transmission. Yet those nursed by her sisters and her nieces entered upon her. Is there any interpretation possible here except that those she allowed to enter, she viewed them as her mahram relatives, while those she did not allow, she did not view them as her mahram relatives? But they feel no shame in publicly proclaiming falsehood and repelling the truth with every trivial and feeble argument that flows from their tongues—and we seek refuge in Allah from misguidance.

L36109 Some of them said: "A woman may veil herself from whomever she wishes among her prohibited relatives." We responded: This is permissible for her, except that her specification—may Allah be pleased with her—to veil specifically from those nursed by her father's wives, her brothers' wives, and the wives of her sisters' sons, while not veiling from those nursed by her sisters and her sisters' daughters, can only be justified by the reasoning we mentioned. This is particularly evident given Ibn al-Zubayr's explicit statement—

مِنْهَا - مَا رُوِيَ عَنْ جَابِرٍ فِي وَلَدِ الْمُدَبَّرَةِ أَنَّهُ يُعْتَقُ فِي عِتْقِهَا وَيُرَقُّ فِي رِقِّهَا - فَادَّعُوا أَنَّ هَذَا خِلَافٌ لِمَا رُوِيَ عَنْ جَابِرٍ عَنْ «النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَاعَ مُدَبَّرًا» .

وَالْعَجَبُ أَنَّهُ لَيْسَ خِلَافًا لِمَا رُوِيَ، بَلْ هُوَ مُوَافِقٌ لِبَيْعِ الْمُدَبَّرِ؛ لِأَنَّ فِيهِ يُرَقُّ بِرِقِّهَا.

قَالَ أَبُو مُحَمَّد: وَهَذَا خَبَرٌ لَمْ يَرْوِهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا عَائِشَةُ وَحْدَهَا، وَقَدْ صَحَّ عَنْهَا خِلَافُهُ، فَأَخَذُوا بِرِوَايَتِهَا وَتَرَكُوا رَأْيَهَا، وَلَمْ يَقُولُوا: لَمْ تُخَالِفْهُ إلَّا لِفَضْلِ عِلْمٍ عِنْدَهُنَّ، وَقَالُوا: لَا نَدْرِي لِأَيِّ مَعْنًى لَمْ يَدْخُلْ عَلَيْهَا مَنْ أَرْضَعَتْهُ نِسَاءُ إخْوَتِهَا.

قَالَ أَبُو مُحَمَّد: فَكَانَ هَذَا عَجَبًا جِدًّا يَثْبُتُ عَنْهَا، كَمَا أَرَدْنَا: أَنَّهُ كَانَ لَا يَدْخُلُ عَلَيْهَا مَنْ أَرْضَعَتْهُ نِسَاءُ أَبِي بَكْرٍ، وَنِسَاءُ إخْوَتِهَا، وَنِسَاءُ بَنِي إخْوَتِهَا بِأَصَحِّ إسْنَادٍ، وَأَنَّهُ كَانَ يَدْخُلُ عَلَيْهَا مَنْ أَرْضَعَتْهُ أَخَوَاتُهَا، وَبَنَاتُ أَخَوَاتِهَا، فَهَلْ هَاهُنَا شَيْءٌ يُمْكِنُ أَنْ يُحْمَلَ هَذَا عَلَيْهِ؟ إلَّا أَنَّ الَّذِينَ أَذِنَتْ لَهُمْ رَأَتْهُمْ ذَوِي مَحْرَمٍ مِنْهَا، وَأَنَّ الَّذِينَ لَمْ تَأْذَنْ لَهُمْ لَمْ تَرَهُمْ ذَوِي مَحْرَمٍ مِنْهَا - وَلَكِنَّهُمْ لَا يَسْتَحْيُونَ مِنْ الْمُجَاهَرَةِ بِالْبَاطِلِ، وَمُدَافَعَةِ الْحَقِّ بِكُلِّ مَا جَرَى عَلَى أَلْسِنَتِهِمْ مِنْ غَثٍّ وَرَثٍّ - وَنَعُوذُ بِاَللَّهِ مِنْ الضَّلَالِ.

وَقَالَ بَعْضُهُمْ: لِلْمَرْأَةِ أَنْ تَحْتَجِبَ مِمَّنْ شَاءَتْ مِنْ ذَوِي مَحَارِمِهَا؟ فَقُلْنَا: إنَّ ذَلِكَ لَهَا إلَّا أَنَّ تَخْصِيصَهَا - رَضِيَ اللَّهُ عَنْهَا - بِالِاحْتِجَابِ عَنْهُمْ مَنْ أَرْضَعَتْهُ نِسَاءُ أَبِيهَا، وَنِسَاءُ إخْوَتِهَا، وَنِسَاءُ بَنِي أَخَوَاتِهَا، دُونَ مَنْ أَرْضَعَتْهُ أَخَوَاتُهَا، وَبَنَاتُ أَخَوَاتِهَا، لَا يُمْكِنُ إلَّا

he being closest to her—that "the father's milk does not establish prohibition through breastfeeding," and Al-Qāsim ibn Muḥammad issued a fatwa affirming this. Thus, the contradiction in their statements became manifest, and all praise is due to Allah, Lord of the worlds.

L36110 Our argument regarding the two groups is that both object to the authenticated report concerning wiping over the turban and the case of Salim's breastfeeding, claiming these to be additions beyond the Qur'an. There is no doubt that the prohibition through the male's milk constitutes an addition to the Qur'an, yet it has not been transmitted through tawatur - thus their contradiction in this matter also becomes evident.

L36111–36113 Our covenant with the two groups that assert: "A solitary report is not accepted regarding matters of widespread occurrence," while they sought through this objection to challenge the established report stating that no sale exists between the two parties to the sale (buyer and seller) until they separate, and the milk... [text breaks off] The male camel—a matter involving frequent tribulation—was opposed by the Companions, the Mothers of the Believers collectively, Ibn al-Zubayr, Zaynab bint Umm Salamah, al-Qāsim, Sālim, Saʿīd ibn al-Musayyab, ʿAṭāʾ ibn Yasār, Sulaymān ibn Yasār, Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, Abū Bakr ibn Sulaymān ibn Abī Ḥathmah, Ibrāhīm al-Nakhaʿī, Abū Qilābah, Makhūl, and others. Why do they not say here: "Had this been authentic, it would not have been unknown to these individuals," given it is among matters involving frequent tribulation, just as they said regarding the report of separation in sale? We know of no instance where this was unknown to any Companion or Successor except Ibrāhīm al-Nakhaʿī alone. Thus, the corruption of their invalid principles—which we mentioned—is exposed, proving their meaninglessness and that they constitute nothing but rejecting the truth with falsehood. We seek refuge in Allah from being forsaken.

L36114 **Case: A man married two women, and a woman breastfed both wives with breastfeeding that established a prohibited maternal kinship bond (maḥram).**

L36115 2016 – Issue: If a man marries two women and a woman breastfeeds

لِلْوَجْهِ الَّذِي ذَكَرْنَا، لَا سِيَّمَا مَعَ تَصْرِيحِ ابْنِ الزُّبَيْرِ - وَهُوَ أَخَصُّ النَّاسِ بِهَا - بِأَنَّ لَبَنَ الْفَحْلِ لَا يُحَرِّمُ، وَأَفْتَى الْقَاسِمُ بِذَلِكَ، فَظَهَرَ تَنَاقُضُ أَقْوَالِهِمْ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَعَهْدُنَا بِالطَّائِفَتَيْنِ تَعْتَرِضُ كِلْتَاهُمَا عَنْ الْخَبَرِ الثَّابِتِ بِالْمَسْحِ عَلَى الْعِمَامَةِ وَعَلَى رَضَاعِ سَالِمٍ بِأَنَّهَا زِيَادَةٌ عَلَى مَا فِي الْقُرْآنِ، وَلَا شَكَّ فِي أَنَّ التَّحْرِيمَ بِلَبَنِ الْفَحْلِ زِيَادَةٌ عَلَى مَا فِي الْقُرْآنِ، وَلَمْ يَجِئْ مَجِيءَ التَّوَاتُرِ - فَظَهَرَ أَيْضًا تَنَاقُضُهُمْ هَاهُنَا.

وَعَهْدُنَا بِالطَّائِفَتَيْنِ تَقُولَانِ: إنَّ مَا كَثُرَ بِهِ الْبَلْوَى لَمْ يُقْبَلْ فِيهِ خَبَرُ الْوَاحِدِ، وَرَامُوا بِذَلِكَ الِاعْتِرَاضِ عَلَى الْخَبَرِ الثَّابِتِ: مِنْ أَنَّ الْبَيِّعَيْنِ لَا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا وَلَبَنُ الْفَحْلِ مِمَّا تَكْثُرُ بِهِ الْبَلْوَى، وَقَدْ خَالَفَتْهُ الصَّحَابَةُ، وَأُمَّهَاتُ الْمُؤْمِنِينَ هَكَذَا جُمْلَةً، وَابْنُ الزُّبَيْرِ، وَزَيْنَبُ بِنْتُ أُمِّ سَلَمَةَ، وَالْقَاسِمُ، وَسَالِمٌ، وَسَعِيدُ بْنُ الْمُسَيِّبِ وَعَطَاءُ بْنُ يَسَارٍ، وَسُلَيْمَانُ بْنُ يَسَارٍ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَأَبُو بَكْرِ بْنُ سُلَيْمَانَ بْنِ أَبِي حَثْمَةَ، وَإِبْرَاهِيمُ النَّخَعِيُّ، وَأَبُو قِلَابَةَ، وَمَكْحُولٌ، وَغَيْرُهُمْ، فَهَلَّا قَالُوا هَاهُنَا: لَوْ كَانَ صَحِيحًا مَا خَفِيَ عَلَى هَؤُلَاءِ، وَهُوَ مِمَّا تَكْثُرُ بِهِ الْبَلْوَى، كَمَا قَالُوا فِي خَبَرِ التَّفَرُّقِ فِي الْبَيْعِ، وَمَا نَعْلَمُهُ خَفِيَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ، وَالتَّابِعِينَ، إلَّا عَنْ إبْرَاهِيمَ النَّخَعِيِّ وَحْدَهُ - فَظَهَرَ بِهَذَا فَسَادُ أُصُولِهِمْ الْفَاسِدَةِ الَّتِي ذَكَرْنَا، وَأَنَّهَا لَا مَعْنَى لَهَا، وَإِنَّمَا هِيَ اعْتِرَاضٌ عَلَى الْحَقِّ بِالْبَاطِلِ - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

[مَسْأَلَةٌ تَزَوَّجَ امْرَأَتَيْنِ فَأَرْضَعَتْهُمَا امْرَأَةٌ رَضَاعًا مُحَرِّمًا]

them both with breastfeeding that establishes prohibition, they both become forbidden to him, and their marriages are annulled. This is because the breastfeeding renders them sisters, or a paternal aunt and brother's daughter, or a maternal aunt and sister's daughter, or a mahram of his wife. Since the prohibition applies to both of them simultaneously, neither one has a greater right to annulment than the other.

L36116–36118 Similarly, if he consummates the marriage with both wives and one breastfeeds the other in a manner that establishes a prohibited relationship, the ruling remains unchanged. If he has not consummated the marriage with them and one breastfeeds the other in a manner that establishes a prohibited relationship, the marriage of the woman who became a mother to the other is annulled, while the marriage of the one who became her daughter remains valid. This is because Allah the Exalted said: "And your stepdaughters under your guardianship from your wives with whom you have consummated marriage—but if you have not consummated marriage with them, there is no blame upon you" [Quran 4:23]. So, the daughter of his wife (whom he has not consummated the marriage with and who is not under his guardianship) retains a confirmed marriage, while the other becomes one of the mothers of his wives, thereby being entirely forbidden—and in Allah, the Exalted, do we seek support.[27]

L36119 ## The Issue: The Attributes of Prohibitive Breastfeeding

L36120 2017 – Issue: As for the definition of breastfeeding that establishes prohibition, it is only what the suckling infant draws directly from the breast of the nursing woman.

L36121 As for one who was given a woman's milk to drink from a vessel, or it was milked into his mouth and he swallowed it; or was fed it in bread, or in food, or it was poured into his mouth, nose, ear, or administered as an enema—none of these actions establish a prohibition, even if this were his sole nourishment throughout his entire lifetime.

[27] **Qur'an references (L36116):** Qur'an 4:23 (An-Nisa).

٢٠١٦ - مَسْأَلَةٌ: وَلَوْ أَنَّ رَجُلًا تَزَوَّجَ امْرَأَتَيْنِ فَأَرْضَعَتْهُمَا امْرَأَةٌ رَضَاعًا مُحَرِّمًا حُرِّمَتَا جَمِيعًا وَانْفَسَخَ نِكَاحُهُمَا، إذْ صَارَتَا بِذَلِكَ الرَّضَاعِ أُخْتَيْنِ، أَوْ عَمَّةً وَبِنْتَ أَخٍ، أَوْ خَالَةً وَبِنْتَ أُخْتٍ، أَوْ حَرِيمَةَ امْرَأَةٍ لَهُ؛ لِأَنَّهُمَا مَعًا حَدَثَ لَهُمَا التَّحْرِيمُ، فَلَمْ تَكُنْ إحْدَاهُمَا أَوْلَى بِالْفَسْخِ مِنْ الْأُخْرَى.

وَكَذَلِكَ لَوْ دَخَلَ بِهِمَا فَأَرْضَعَتْ إحْدَاهُمَا الْأُخْرَى رَضَاعًا مُحَرِّمًا وَلَا فَرْقَ، فَلَوْ لَمْ يَدْخُلْ بِهِمَا فَأَرْضَعَتْ إحْدَاهُمَا الْأُخْرَى رَضَاعًا مُحَرِّمًا انْفَسَخَ نِكَاحُ الَّتِي صَارَتْ أُمًّا لِلْأُخْرَى وَبَقِيَ نِكَاحُ الَّتِي صَارَتْ لَهَا ابْنَةً صَحِيحًا، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {وَرَبَائِبُكُمُ اللاتِي فِي حُجُورِكُمْ مِنْ نِسَائِكُمُ اللاتِي دَخَلْتُمْ بِهِنَّ فَإِنْ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلا جُنَاحَ عَلَيْكُمْ} [النساء: ٢٣] فَصَارَتْ بِنْتَ امْرَأَتِهِ الَّتِي لَمْ يَدْخُلْ بِهَا، وَلَا هِيَ فِي حِجْرِهِ، فَثَبَتَ نِكَاحُهَا، وَصَارَتْ الْأُخْرَى مِنْ أُمَّهَاتِ نِسَائِهِ، فَحُرِّمَتْ جُمْلَةً - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

[مَسْأَلَةُ صِفَةُ الرَّضَاعِ الْمُحَرِّمِ]

٢٠١٧ - مَسْأَلَةٌ: وَأَمَّا صِفَةُ الرَّضَاعِ الْمُحَرِّمِ، فَإِنَّمَا هُوَ: مَا امْتَصَّهُ الرَّاضِعُ مِنْ ثَدْيِ الْمُرْضِعَةِ بِفِيهِ فَقَطْ.

فَأَمَّا مَنْ سُقِيَ لَبَنَ امْرَأَةٍ فَشَرِبَهُ مِنْ إنَاءٍ، أَوْ حُلِبَ فِي فِيهِ فَبَلَعَهُ، أَوْ أُطْعِمَهُ بِخُبْزٍ، أَوْ فِي طَعَامٍ، أَوْ صُبَّ فِي فَمِهِ، أَوْ فِي أَنْفِهِ، أَوْ فِي أُذُنِهِ، أَوْ حُقِنَ بِهِ: فَكُلُّ ذَلِكَ لَا يُحَرِّمُ شَيْئًا، وَلَوْ كَانَ ذَلِكَ غِذَاءَهُ دَهْرَهُ كُلَّهُ.

L36122 The evidence for that is the statement of Allah, the Exalted: {Your mothers who suckled you and your sisters through suckling} [4:23], and the Messenger of Allah—peace and blessings be upon him—said: "What is prohibited due to lineage is also prohibited due to suckling."[28]

L36123 Neither Allah the Exalted nor His Messenger—may Allah's peace and blessings be upon him—prohibited any marriage in this sense except through suckling, nursing, or breastfeeding alone. It is not termed "suckling" unless the nursing woman places milk from her breast into the child's mouth. It is expressed as: "She suckled him," "she suckles him," or "suckling."

L36124 It is not termed "radāʿan" or "irḍāʿan" except by the nursed infant taking the breast into their mouth and suckling from it. You say: "raḍiʿa" (he suckled), "yarḍaʿu" (he suckles), "radāʿan" (suckling) and "radāʿatan" (a suckling instance).

L36125–36127 As for all matters beyond what we have mentioned, none of them are termed *irḍāʿ* (lactation), *raḍāʿah* (nursing relationship), nor any equivalent designation. Breastfeeding is indeed milking, food, a water skin, drinking, eating, swallowing, enema, nasal administration, and dripping. Allah, the Mighty and Majestic, has not prohibited anything by this means.

L36128 If they say: We have analogized that upon suckling and lactation?

L36129 We said: All analogical reasoning (qiyas) is invalid, and were qiyas valid, this would epitomize invalidity. By necessity, every person of understanding knows that suckling from an ewe more closely resembles suckling from a woman, for both are suckling: one via enema and another via nasal administration. Yet they do not consider anything prohibited except through women—thus exposing their contradiction in their corrupt qiyas, and their religious legislation of what Allah the Almighty never permitted. Abu Muhammad said: People have differed concerning this—:

L36130 Al-Layth ibn Saʿd said: Nasal instillation with a woman's milk does not

[28] **Qur'an references (L36122):** Qur'an 4:23 (An-Nisa).

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَأُمَّهَاتُكُمُ اللاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُمْ مِنَ الرَّضَاعَةِ} [النساء: ٢٣] ، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَيَحْرُمُ مِنْ الرَّضَاعِ مَا يَحْرُمُ مِنْ النَّسَبِ» .

فَلَمْ يُحَرِّمْ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي هَذَا الْمَعْنَى نِكَاحًا، إلَّا بِالْإِرْضَاعِ وَالرَّضَاعَةِ وَالرَّضَاعِ فَقَطْ - وَلَا يُسَمَّى إرْضَاعًا إلَّا مَا وَضَعَتْهُ الْمَرْأَةُ الْمُرْضِعَةُ مِنْ ثَدْيِهَا فِي فَمِ الرَّضِيعِ - يُقَالُ أَرْضَعَتْهُ تُرْضِعُهُ إرْضَاعًا.

وَلَا يُسَمَّى رَضَاعَةً، وَلَا إرْضَاعًا إلَّا أَخْذُ الْمُرْضَعِ، أَوْ الرَّضِيعِ بِفِيهِ الثَّدْيَ وَامْتِصَاصُهُ إيَّاهُ - تَقُولُ: رَضِعَ يَرْضَعُ رَضَاعًا وَرَضَاعَةً.

وَأَمَّا كُلُّ مَا عَدَا ذَلِكَ مِمَّا ذَكَرْنَا فَلَا يُسَمَّى شَيْءٌ مِنْهُ إرْضَاعًا، وَلَا رَضَاعَةً وَلَا رَضَاعًا، إنَّمَا هُوَ حَلْبٌ وَطَعَامٌ وَسِقَاءٌ، وَشُرْبٌ وَأَكْلٌ وَبَلْعٌ، وَحُقْنَةٌ وَسَعُوطٌ وَتَقْطِيرٌ، وَلَمْ يُحَرِّمْ اللَّهُ عَزَّ وَجَلَّ بِهَذَا شَيْئًا.

فَإِنْ قَالُوا: قِسْنَا ذَلِكَ عَلَى الرَّضَاعِ وَالْإِرْضَاعِ؟

قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، وَلَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، وَبِالضَّرُورَةِ يَدْرِي كُلُّ ذِي فَهْمٍ أَنَّ الرَّضَاعَ مِنْ شَاةٍ أَشْبَهَ بِالرَّضَاعِ مِنْ امْرَأَةٍ؛ لِأَنَّهُمَا جَمِيعًا رَضَاعٌ مِنْ الْحُقْنَةِ بِالرَّضَاعِ، وَمِنْ السَّعُوطِ بِالرَّضَاعِ، وَهُمْ لَا يُحَرِّمُونَ بِغَيْرِ النِّسَاءِ - فَلَاحَ تَنَاقُضُهُمْ فِي قِيَاسِهِمْ الْفَاسِدِ، وَشَرْعُهُمْ بِذَلِكَ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ عَزَّ وَجَلَّ. قَالَ أَبُو مُحَمَّدٍ: وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -:

create a prohibition, nor does administering her milk to a child as medicine. This is because it is not رَضَاع (breastfeeding), for رَضَاع is only what is sucked directly from the breast.

فَقَالَ اللَّيْثُ بْنُ سَعْدٍ: لَا يُحَرِّمُ السَّعُوطُ بِلَبَنِ الْمَرْأَةِ وَلَا يُحَرِّمُ أَنْ يُسْقَى الصَّبِيُّ لَبَنَ الْمَرْأَةِ فِي الدَّوَاءِ، لِأَنَّهُ لَيْسَ بِرَضَاعٍ، إِنَّمَا الرَّضَاعُ مَا مُصَّ مِنْ الثَّدْيِ.

L36131 This is the explicit statement of al-Layth; this is our position, and it is the position of Abu Sulayman and our companions.

هَذَا نَصُّ قَوْلِ اللَّيْثِ، وَهَذَا قَوْلُنَا، وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L36132 From the narration of ʿAbd al-Razzāq, from Ibn Jurayj, who said: I sent a message to ʿAṭāʾ to ask him about administering milk as nasal drops to a minor and applying it as kohl—does that invalidate [the fast]? He said: I have not heard that it invalidates.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَرْسَلْت إلَى عَطَاءٍ أَسْأَلُهُ عَنْ سَعُوطِ اللَّبَنِ لِلصَّغِيرِ وَكُحْلِهِ بِهِ أَيُحَرِّمُ؟ قَالَ: مَا سَمِعْت أَنَّهُ يُحَرِّمُ.

L36133 Abū Ḥanīfah and his companions said: Does using milk in kohl for a child not render the kohl unlawful, nor pouring it into the eye or ear, nor administering an enema with it, nor treating a penetrating wound with it, nor a cranial wound with it, nor instilling it into the urethra?

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا يُحَرِّمُ الْكُحْلُ لِلصَّبِيِّ بِاللَّبَنِ، وَلَا صَبُّهُ فِي الْعَيْنِ أَوْ الْأُذُنِ، وَلَا الْحُقْنَةُ بِهِ، وَلَا مُدَاوَاةُ الْجَائِفَةِ بِهِ، وَلَا الْمَأْمُومَةِ بِهِ، وَلَا تَقْطِيرُهُ فِي الْإِحْلِيلِ؟

L36134 They said: If food were cooked with a woman's milk until it became a fully cooked broth, and the milk was apparent in it, dominating it in both color and taste, and someone fed it to an infant, this would not prohibit him from marrying the woman whose milk it was, nor her daughters.

قَالُوا: فَلَوْ طُبِخَ طَعَامٌ بِلَبَنِ امْرَأَةٍ حَتَّى صَارَ مَرَقَةً نَضِجَةً، وَكَانَ اللَّبَنُ ظَاهِرًا فِيهَا غَالِبًا عَلَيْهَا بِلَوْنِهِ وَطَعْمِهِ، فَأَطْعَمَهُ صَغِيرًا لَمْ يُحَرِّمْ ذَلِكَ عَلَيْهِ نِكَاحَ الَّتِي اللَّبَنُ مِنْهَا، وَلَا نِكَاحَ بَنَاتِهَا.

L36135 Similarly, if bread were crumbled into a woman's milk for him and he ate all of it, no prohibition would arise from that whatsoever. But if he were to drink the mixture, it would be prohibited, as with suckling.

وَكَذَلِكَ لَوْ ثُرِدَ لَهُ خُبْزٌ فِي لَبَنِ امْرَأَةٍ فَأَكَلَهُ كُلَّهُ لَمْ يَقَعْ بِذَلِكَ تَحْرِيمٌ أَصْلًا فَلَوْ شَرِبَهُ كَانَ مُحَرِّمًا كَالرَّضَاعِ.

L36136 As for the disagreement regarding this matter, Abū Ḥanīfah, Mālik, and Al-Shāfiʿī maintained that nasal drops and ear drops both prohibit marriage eligibility in the same manner as breastfeeding.

وَأَمَّا الْخِلَافُ فِي ذَلِكَ فَإِنَّهُ قَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: السَّعُوطُ وَالْوَجُورُ يُحَرِّمَانِ كَتَحْرِيمِ الرَّضَاعِ.

L36137 And they have contradicted [themselves/one another] in this, concerning what we will mention after this—if Allah, the Exalted, wills.

وَقَدْ تَنَاقَضُوا فِي هَذَا عَلَى مَا نَذْكُرُ بَعْدَ هَذَا - إنْ شَاءَ اللَّهُ تَعَالَى.

L36138 It has been narrated to us from al-Shaʿbī that nasal drops and ear drops render the fast invalid.

وَرُوِّينَا عَنْ الشَّعْبِيِّ: أَنَّ السَّعُوطَ وَالْوَجُورَ يُحَرِّمَانِ.

L36139–36140 Abu Muhammad said: The proponents of this view argued by citing what is

authentically reported from the Messenger of Allah, may Allah bless him and grant him peace, that he said: “Breastfeeding is only [valid] from hunger.”

قَالَ أَبُو مُحَمَّد: احْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِأَنْ قَالُوا: صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إنَّمَا الرَّضَاعَةُ مِنْ الْمَجَاعَةِ» .

L36141 When he—peace and blessings be upon him—defined prohibitive breastfeeding as that which is used to ward off hunger, is that [condition] present in suckling and eating?

قَالُوا: فَلَمَّا جَعَلَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الرَّضَاعَةَ الْمُحَرِّمَةَ مَا اُسْتُعْمِلَ لِطَرْدِ الْجُوعِ كَانَ ذَلِكَ مَوْجُودًا فِي السَّقْيِ وَالْأَكْلِ؟

L36142 Therefore, we said: This provides no valid argument for your position for two reasons.

فَقُلْنَا: هَذَا لَا حُجَّةَ لَكُمْ فِيهِ لِوَجْهَيْنِ:

L36143 One of them is that the meaning you mentioned does not apply to snuffing, since it alleviates nothing of hunger. If they insist and say, “Rather, it repels [it].”

أَحَدُهُمَا - أَنَّ الْمَعْنَى الَّذِي ذَكَرْتُمْ لَا يُوجَدُ فِي السَّعُوطِ؛ لِأَنَّهُ لَا يُرْفَعُ بِهِ شَيْءٌ مِنْ الْجُوعِ، فَإِنْ لَجُّوا وَقَالُوا: بَلْ يُدْفَعُ.

L36144 We said to the disciples of Abū Ḥanīfah: If the ruling for nasal administration with milk is exactly the same as applying kohl with milk or dripping milk into the eye, since all these reach the throat and enter the internal cavity, why do you distinguish between using milk for kohl and using it for nasal administration?

قُلْنَا: لِأَصْحَابِ أَبِي حَنِيفَةَ: إنْ حَظَّ السَّعُوطِ مِنْ ذَلِكَ كَحَظِّ الْكُحْلِ وَالتَّقْطِيرِ فِي الْعَيْنِ بِاللَّبَنِ سَوَاءٌ بِسَوَاءٍ، لِأَنَّ كُلَّ ذَلِكَ وَاصِلٌ إلَى الْحَلْقِ إلَى الْجَوْفِ، فَلِمَ فَرَّقْتُمْ بَيْنَ الْكُحْلِ بِهِ وَبَيْنَ السَّعُوطِ بِهِ؟

L36145 You say: “If one drips some oils into his ear while fasting, he breaks his fast. Similarly, if he uses an enema that reaches the stomach”—yet they did not prohibit this in the case of milk used for enemas or eye kohl, even if it does not reach the stomach. So why do you invalidate the fasting person’s fast through this? This is undeniably frivolous play.

هَذَا وَأَنْتُمْ تَقُولُونَ: إنَّ مَنْ قَطَّرَ شَيْئًا مِنْ الْأَدْهَانِ فِي أُذُنِهِ وَهُوَ صَائِمٌ فَإِنَّهُ يُفْطِرُ، وَكَذَلِكَ إنْ احْتَقَنَ فَإِنْ كَانَ ذَلِكَ يَصِلُ إلَى الْجَوْفِ فَلَمْ يُحَرِّمُوا بِهِ فِي اللَّبَنِ يُحْقَنُ بِهَا أَوْ يُكْتَحَلُ بِهِ - وَإِنْ كَانَ لَا يَصِلُ إلَى الْجَوْفِ - فَلِمَ فَطَّرْتُمْ بِهِ الصَّائِمَ؟ وَهَذَا تَلَاعُبٌ لَا خَفَاءَ بِهِ.

L36146 Imam Mālik said: If a woman’s milk is mixed into food and cooked, and the milk disappears, or poured into water and the water is predominant, then the child drinks that water or eats that food, the prohibition is not established.

وَقَالَ مَالِكٌ: إنْ جُعِلَ لَبَنُ الْمَرْأَةِ فِي طَعَامٍ وَطُبِخَ وَغَابَ اللَّبَنُ أَوْ صُبَّ فِي مَاءٍ فَكَانَ الْمَاءُ هُوَ الْغَالِبَ فَسُقِيَ الصَّغِيرُ ذَلِكَ الْمَاءَ أَوْ أُطْعِمَ ذَلِكَ الطَّعَامَ لَمْ يَقَعْ بِهِ التَّحْرِيمُ.

L36147 Moreover, they prohibit even a single drop that reaches his stomach—which, according to them, does not alleviate the slightest hunger—thereby revealing their contradiction of the report they ambiguously cited as evidence.

وَأَيْضًا - فَإِنَّهُمْ يُحَرِّمُونَ بِالنُّقْطَةِ تَصِلُ إلَى جَوْفِهِ وَهِيَ لَا تَدْفَعُ عِنْدَهُمْ شَيْئًا مِنْ الْمَجَاعَةِ فَظَهَرَ خِلَافُهُمْ لِلْخَبَرِ الَّذِي مَوَّهُوا بِأَنَّهُمْ يَحْتَجُّونَ بِهِ.

L36148 The second aspect is that this report constitutes evidence for our position,

because the Prophet—peace and blessings be upon him—only established prohibition through breastfeeding that counters hunger, and he did not prohibit anything by other means. Thus, no prohibition applies to what counters hunger—whether through eating, drinking, injustice, or other means—unless it involves breastfeeding, as the Messenger of God said: "Whoever transgresses God's boundaries—such are the wrongdoers" [Al-Baqarah 2:229].[29]

L36149–36151 If they obscured [the narration] with what was transmitted to us through the chain of ʿAbd al-Razzāq: Ibn Jurayj: ʿAbd al-Karīm: that Sālim ibn Abī al-Jaʿd, the freedman of al-Ashjaʿī, narrated to him that his father informed him he had asked ʿAlī ibn Abī Ṭālib, who said: "Indeed I..." I intended to marry a woman who gave me her milk to drink as treatment when I was an adult? Ali said to him: "Do not marry her," and forbade him from her. Ali ibn Abi Talib would state: "If a man's wife feeds him from his concubine's milk, or his concubine feeds him from his wife's milk, intending to render the other woman forbidden to him, that does not render her forbidden."

L36152 Abu Muhammad said: This is against them, not in their favor, because it contains the concept of adult breastfeeding and the resultant prohibition—which they do not uphold—and because it states that breastfeeding between co-wives does not establish prohibition according to Ali's position, while they reject this ruling.

L36153 **Issue: If a minor or adult suckled the milk of a deceased, insane, or intoxicated woman five sucklings.**

L36154 2018 – Issue: Abū Muḥammad said: If a minor or an adult suckles milk from a deceased, insane, or intoxicated woman in five sucklings, the prohibition of marriage takes effect, for this constitutes valid suckling.

L36155 Al-Shafiʿi said: "Breastfeeding does not establish kinship through the milk of a dead animal, because it is impure."

[29] **Qur'an references (L36148):** Qur'an 2:229 (Al-Baqarah).

وَالْوَجْهُ الثَّانِي -: أَنَّ هَذَا الْخَبَرَ حُجَّةٌ لَنَا، لِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّمَا حَرَّمَ بِالرَّضَاعَةِ الَّتِي تُقَابَلُ بِهَا الْمَجَاعَةُ وَلَمْ يُحَرِّمْ بِغَيْرِهَا شَيْئًا فَلَا يَقَعُ تَحْرِيمٌ بِمَا قُوبِلَتْ بِهِ الْمَجَاعَةُ مِنْ أَكْلٍ أَوْ شُرْبٍ أَوْ وَجُورٍ أَوْ غَيْرِ ذَلِكَ، إلَّا أَنْ يَكُونَ رَضَاعَةً كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ} [البقرة: ٢٢٩] .

فَإِنْ مَوَّهُوا بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَنَا عَبْدُ الْكَرِيمِ أَنَّ سَالِمَ بْنَ أَبِي الْجَعْدِ مَوْلَى الْأَشْجَعِيِّ حَدَّثَهُ أَنَّ أَبَاهُ أَخْبَرَهُ أَنَّهُ سَأَلَ عَلِيَّ بْنَ أَبِي طَالِبٍ فَقَالَ: إنِّي أَرَدْت أَنْ أَتَزَوَّجَ امْرَأَةً وَقَدْ سَقَتْنِي مِنْ لَبَنِهَا وَأَنَا كَبِيرٌ تَدَاوَيْت بِهِ؟ فَقَالَ لَهُ عَلِيٌّ: لَا تَنْكِحُهَا وَنَهَاهُ عَنْهَا. وَكَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ يَقُولُ: إنْ سَقَتْهُ امْرَأَتُهُ مِنْ لَبَنِ سُرِّيَّتِهِ، أَوْ سَقَتْهُ سُرِّيَّتُهُ مِنْ لَبَنِ امْرَأَتِهِ لِتُحَرِّمَهَا عَلَيْهِ فَلَا يُحَرِّمُهَا ذَلِكَ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا عَلَيْهِمْ لَا لَهُمْ، لِأَنَّ فِيهِ رَضَاعَ الْكَبِيرِ وَالتَّحْرِيمَ بِهِ - وَهُمْ لَا يَقُولُونَ بِذَلِكَ، وَفِيهِ أَنَّ رَضَاعَ الضَّرَائِرِ لَا يُحَرِّمُ عِنْدَ عَلِيٍّ وَهُمْ لَا يَقُولُونَ بِهَذَا.

[مَسْأَلَةٌ ارْتَضَعَ صَغِيرٌ أَوْ كَبِيرٌ لَبَنَ مَيِّتَةٍ أَوْ مَجْنُونَةٍ أَوْ سَكْرَى خَمْسَ رَضَعَاتٍ]

٢٠١٨ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: وَإِنْ ارْتَضَعَ صَغِيرٌ أَوْ كَبِيرٌ لَبَنَ مَيِّتَةٍ أَوْ مَجْنُونَةٍ أَوْ سَكْرَى خَمْسَ رَضَعَاتٍ فَإِنَّ التَّحْرِيمَ يَقَعُ بِهِ، لِأَنَّهُ رَضَاعٌ صَحِيحٌ.

وَقَالَ الشَّافِعِيُّ: لَا يَقَعُ بِلَبَنِ الْمَيِّتَةِ رَضَاعٌ، لِأَنَّهُ نَجِسٌ؟

L36156 Ali said: “This is exceedingly strange—to declare the milk of a believing woman impure, when it has been authentically reported from the Prophet (peace be upon him) that he said: ’The believer is not impure.’ We know that the believer, whether in life or death, remains the same; he is pure in both states. A woman’s milk is a part of her, and a part of a pure entity is itself pure—unless a definitive text excludes it from purity, in which case one must adhere strictly to that text.”

L36157 Then he deems the milk of a disbelieving woman ritually pure yet forbids it, and it is part of her. Allah, the Exalted, says: “Indeed, the polytheists are ritually impure” (Quran 9:28). And a part of the ritually impure is itself impure without doubt.[30]

L36158 If it is objected: “You assert that the milk of a female disbeliever is undoubtedly impure, yet you permit her to be employed as a wet nurse despite this?”

L36159–36160 We said: Because Allah the Exalted permitted us to marry women of the People of the Book, obligated the mother to breastfeed her child, and Allah the Exalted had known that we would have children from them: {And your Lord is not forgetful} [Maryam 64].[31]

L36161 However, we say: It is not permissible for us to have a woman not from the People of the Book breastfeed, because she is not among those whom we are permitted to take as wives or seek offspring from; thus her milk remains entirely ritually impure. And success is from Allah, the Exalted.

L36162 Then we say: If the nursing woman’s milk mixes with visible blood from the nursling’s mouth or other prohibited matters, it would be prohibited in the same manner as milk untainted by such things. This is because we have clarified in the “Book of Purity” in this work of ours and others that when pure, lawful substances mingle with impure or unlawful ones, the pure remains pure, the impure remains impure, the lawful remains lawful, and the unlawful remains unlawful. Thus, the prohibition applies specifically to the milk itself, not to the unlawful or impure matters that mixed with it - for

قَالَ عَلِيٌّ: هَذَا عَجَبٌ جِدًّا أَنْ يَقُولَ فِي لَبَنِ مُؤْمِنَةٍ: إنَّهُ نَجِسٌ وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «الْمُؤْمِنُ لَا يَنْجَسُ» وَقَدْ عَلِمْنَا أَنَّ الْمُؤْمِنَ فِي حَالِ مَوْتِهِ وَحَيَاتِهِ سَوَاءٌ، هُوَ طَاهِرٌ فِي كِلْتَا الْحَالَتَيْنِ، وَلَبَنُ الْمَرْأَةِ بَعْضُهَا، وَبَعْضُ الطَّاهِرِ طَاهِرٌ، إلَّا أَنْ يُخْرِجَهُ عَنْ الطَّهَارَةِ نَصٌّ فَيُوقَفُ عِنْدَهُ -

ثُمَّ يَرَى لَبَنَ الْكَافِرَةِ طَاهِرًا يُحَرِّمُ، وَهُوَ بَعْضُهَا، وَاَللَّهُ تَعَالَى يَقُولُ: {إنَّمَا الْمُشْرِكُونَ نَجَسٌ} [التوبة: ٢٨] وَبَعْضُ النَّجِسِ نَجِسٌ بِلَا شَكٍّ.

فَإِنْ قِيلَ: فَأَنْتُمْ تَقُولُونَ: إنَّ لَبَنَ الْكَافِرَةِ نَجِسٌ بِلَا شَكٍّ وَأَنْتُمْ تُجِيزُونَ مَعَ ذَلِكَ اسْتِرْضَاعَ الْكَافِرَةِ؟

قُلْنَا: لِأَنَّ اللَّهَ تَعَالَى أَبَاحَ لَنَا نِكَاحَ الْكِتَابِيَّةِ، وَأَوْجَبَ عَلَى الْأُمِّ رَضَاعَ وَلَدِهَا، وَقَدْ عَلِمَ اللَّهُ تَعَالَى أَنَّهُ سَيَكُونُ لَنَا أَوْلَادٌ مِنْهُنَّ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

إلَّا أَنَّا نَقُولُ: إنَّ غَيْرَ الْكِتَابِيَّةِ لَا يَحِلُّ لَنَا اسْتِرْضَاعُهَا، لِأَنَّهَا لَيْسَتْ مِمَّا أُبِيحَ لَنَا اتِّخَاذُهُنَّ أَزْوَاجًا وَطَلَبُ الْوَلَدِ مِنْهُنَّ فَبَقِيَ لَبَنُهَا عَلَى النَّجَاسَةِ جُمْلَةً -، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

ثُمَّ نَقُولُ: لَوْ خَالَطَ لَبَنُ الْمُرْضِعَةِ دَمٌ ظَاهِرٌ مِنْ فَمِ الْمُرْضَعِ، أَوْ غَيْرُ ذَلِكَ مِنْ الْمُحَرَّمَاتِ كَمَا يُحَرِّمُ الَّذِي لَمْ يُخَالِطْهُ شَيْءٌ مِنْ ذَلِكَ، لِأَنَّا قَدْ بَيَّنَّا فِي " كِتَابِ الطَّهَارَةِ " مِنْ كِتَابِنَا هَذَا وَغَيْرِهِ أَنَّ النَّجِسَ، وَالْحَرَامَ إذَا خَالَطَهُمَا الطَّاهِرُ الْحَلَالُ فَإِنَّ الطَّاهِرَ طَاهِرٌ، وَالنَّجِسَ نَجِسٌ، وَالْحَلَالَ حَلَالٌ، وَالْحَرَامَ حَرَامٌ، فَالْمُحَرَّمُ هُوَ اللَّبَنُ لَا مَا خَالَطَهُ مِنْ حَرَامٍ أَوْ نَجِسٍ وَلِكُلِّ شَيْءٍ حُكْمُهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[30] **Qur’an references (L36157):** Qur’an 9:28 (At-Tawbah).
[31] **Qur’an references (L36160):** Qur’an 19:64 (Maryam).

each entity retains its distinct ruling. And success is attained only by Allah, the Most High.

L36163 The milk of a polytheist woman is indeed impure, as is she herself, due to her impure religion. If she were to embrace Islam, she would become entirely pure. Therefore, her breastfeeding is subject to the rulings of breastfeeding in prohibition, based on what we have mentioned—and success is from Allah, the Most High.

L36164 ****Issue:** Prohibition [in marital relations] is only established by five breastfeedings.**

L36165 2019 – Issue: Prohibition through breastfeeding is established only by five distinct sucklings, each separated from the others; or five separate single suckles; or five instances, each being either a single suckle or a full feeding, distinct and separate from one another. This applies if the single suckle suffices to alleviate hunger; otherwise, it is insignificant and establishes no prohibition.

L36166 This is a matter regarding which the Salaf differed - it has been reported from a group that prohibition is established only by ten instances of suckling, and no fewer than that.

L36167 As we have narrated through the chain of Malik from Nafi' that Salim ibn Abdullah ibn Umar informed him: Aisha, the wife of the Prophet (peace be upon him), sent him to her sister Umm Kulthum, daughter of Abu Bakr al-Siddiq, who was nursing. She said: "Suckle him ten times so he may enter my presence." Salim said: "She suckled me three times, then Umm Kulthum fell ill and did not nurse me. Thus I did not enter upon Aisha, Mother of the Believers, because Umm Kulthum had not completed ten sucklings for me."

L36168–36170 And via the chain of Mālik from Nāfi‘ from Ṣafiyyah bint Abī ‘Ubayd, that she informed him that Ḥafṣah Umm... Among the believers, [a woman] sent

وَلَبَنُ الْمُشْرِكَةِ إِنَّمَا يَنْجُسُ هُوَ وَهِيَ بِذَلِكَ؛ لِدِينِهَا النَّجِسِ، فَلَوْ أَسْلَمَتْ لَطَهُرَتْ كُلُّهَا، فَلِإِرْضَاعِهَا حُكْمُ الْإِرْضَاعِ فِي التَّحْرِيمِ؛ لِمَا ذَكَرْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يُحَرِّمُ مِنْ الرَّضَاعِ إِلَّا خَمْسُ رَضَعَاتٍ]

٢٠١٩ - مَسْأَلَةٌ: وَلَا يُحَرِّمُ مِنْ الرَّضَاعِ إِلَّا خَمْسُ رَضَعَاتٍ، تُقْطَعُ كُلُّ رَضْعَةٍ مِنْ الْأُخْرَى - أَوْ خَمْسُ مَصَّاتٍ مُفْتَرِقَاتٍ كَذَلِكَ - أَوْ خَمْسُ مَا بَيْنَ مَصَّةٍ وَرَضْعَةٍ، تُقْطَعُ كُلُّ وَاحِدَةٍ مِنْ الْأُخْرَى - هَذَا إِذَا كَانَتْ الْمَصَّةُ تُغْنِي شَيْئًا مِنْ دَفْعِ الْجُوعِ، وَإِلَّا فَلَيْسَتْ شَيْئًا وَلَا تُحَرِّمُ شَيْئًا.

وَهَذَا مَكَانٌ اخْتَلَفَ فِيهِ السَّلَفُ -: فَرُوِيَ عَنْ طَائِفَةٍ: أَنَّهُ لَا يُحَرِّمُ إِلَّا عَشْرُ رَضَعَاتٍ لَا أَقَلُّ مِنْ ذَلِكَ.

كَمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ أَنَّ سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ أَخْبَرَهُ أَنَّ عَائِشَةَ زَوْجَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرْسَلَتْ بِهِ إِلَى أُمِّ كُلْثُومٍ أُخْتِهَا بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ وَهِيَ تُرْضِعُ فَقَالَتْ: أَرْضِعِيهِ عَشْرَ رَضَعَاتٍ حَتَّى يَدْخُلَ عَلَيَّ قَالَ سَالِمٌ: فَأَرْضَعَتْنِي ثَلَاثَ رَضَعَاتٍ، ثُمَّ مَرِضَتْ أُمُّ كُلْثُومٍ فَلَمْ تُرْضِعْنِي، فَلَمْ أَكُنْ أَدْخُلُ عَلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ مِنْ أَجْلِ أَنَّ أُمَّ كُلْثُومٍ لَمْ تُتِمَّ لِي عَشْرًا مِنْ الرَّضَعَاتِ.

Asim ibn Abdullah ibn Sa'd to her sister Fatimah bint Umar to nurse him ten times, so he could become her mahram (non-marriageable kin) while he was young. She did so, and he was thereafter permitted to be in her private company.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ صَفِيَّةَ بِنْتِ أَبِي عُبَيْدٍ أَنَّهَا أَخْبَرَتْهُ أَنَّ حَفْصَةَ أُمَّ الْمُؤْمِنِينَ أَرْسَلَتْ عَاصِمَ بْنَ عَبْدِ اللَّهِ بْنِ سَعْدٍ إِلَى أُخْتِهَا فَاطِمَةَ بِنْتِ عُمَرَ تُرْضِعُهُ عَشْرَ رَضَعَاتٍ لِيَدْخُلَ عَلَيْهَا - وَهُوَ صَغِيرٌ - فَفَعَلَتْ، فَكَانَ يَدْخُلُ عَلَيْهَا.

L36171 Abū Muḥammad said: ʿĀṣim ibn ʿAbd Allāh ibn Saʿd—client of ʿUmar ibn al-Khaṭṭāb—narrated to us: Aḥmad ibn Muḥammad al-Ṭalamankī → Ibn Mufarrij → Aḥmad ibn Firās → Muḥammad ibn ʿAlī ibn Yazīd → Saʿīd ibn Manṣūr → ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī → Ibrāhīm ibn ʿUqbah, who said: I asked ʿUrwah ibn al-Zubayr about breastfeeding. He replied: ʿĀ'ishah held that fewer than ten breastfeedings had no legal effect; only ten or more [sessions] established milk kinship.

قَالَ أَبُو مُحَمَّدٍ: عَاصِمُ بْنُ عَبْدِ اللَّهِ بْنِ سَعْدٍ هَذَا هُوَ مَوْلَى عُمَرَ بْنِ الْخَطَّابِ -: ثنا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ أَنَا ابْنُ مُفَرِّجٍ أَنَا أَحْمَدُ بْنُ فِرَاسٍ أَنَا مُحَمَّدُ بْنُ عَلِيِّ بْنِ يَزِيدَ أَنَا سَعِيدُ بْنُ مَنْصُورٍ أَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ إِبْرَاهِيمَ بْنِ عُقْبَةَ قَالَ: سَأَلْتُ عُرْوَةَ بْنَ الزُّبَيْرِ عَنْ الرَّضَاعِ فَقَالَ: كَانَتْ عَائِشَةُ لَا تَرَى شَيْئًا دُونَ عَشْرِ رَضَعَاتٍ فَصَاعِدًا.

L36172 This indicates that it is the juristic opinion of Urwah, for he responded with it to the one who sought his fatwā.

فَدَلَّ هَذَا عَلَى أَنَّهُ قَوْلُ عُرْوَةَ؛ لِأَنَّهُ أَجَابَ بِهِ الَّذِي اسْتَفْتَاهُ.

L36173 It has also been reported regarding seven breastfeedings: Ahmad ibn Qasim narrated to us, from his father Qasim ibn Muhammad ibn Qasim, from his grandfather Qasim ibn Asbagh, from Ahmad ibn Zuhayr ibn Harb, from Ubaydullah ibn Umar al-Qawariri, from Muadh ibn Hisham al-Dastuwa'i, who said: My father narrated to me from Qatadah, from Abu al-Khalil Salih ibn Abi Maryam, from Yusuf ibn Mahak, from Abdullah ibn al-Zubayr, from Aisha, the Mother of the Believers, that she said: "Only seven breastfeedings cause prohibition."

وَقَدْ رُوِيَ أَيْضًا: سَبْعَ رَضَعَاتٍ -: كَمَا حَدَّثَنَا أَحْمَدُ بْنُ قَاسِمٍ أَنَا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ أَنَا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ أَنَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ أَنَا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ حَدَّثَنِي أَبِي عَنْ قَتَادَةَ عَنْ أَبِي الْخَلِيلِ صَالِحِ بْنِ أَبِي مَرْيَمَ عَنْ يُوسُفَ بْنِ مَاهَكَ عَنْ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا قَالَتْ: إِنَّمَا يُحَرِّمُ مِنْ الرَّضَاعِ سَبْعُ رَضَعَاتٍ.

L36174 Abu Muhammad said: "The first from her is more authentic, and this has been narrated by one more precise in memorization than Abi al-Khalil and than Yusuf ibn Māhak."

قَالَ أَبُو مُحَمَّدٍ: الْأَوَّلُ عَنْهَا أَصَحُّ، وَهَذَا قَدْ رَوَاهُ مَنْ هُوَ أَحْفَظُ مِنْ أَبِي الْخَلِيلِ، وَمِنْ يُوسُفَ بْنِ مَاهَكَ.

L36175 As we have narrated through the chain of ʿAbd al-Razzāq from Maʿmar from Ibrāhīm ibn ʿUqbah that he asked ʿUrwah ibn al-Zubayr about a child who drank a small amount of a woman's milk. ʿUrwah replied: "'Ā'ishah used to say, 'It does not cause prohibition with fewer than seven or five breastfeed-

ings.' And a scholarly faction maintained the opinion of five breastfeedings, as we ourselves have stated."

كَمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ إبْرَاهِيمَ بْنِ عُقْبَةَ أَنَّهُ سَأَلَ عُرْوَةَ بْنَ الزُّبَيْرِ عَنْ صَبِيٍّ شَرِبَ قَلِيلًا مِنْ لَبَنِ امْرَأَةٍ فَقَالَ لَهُ عُرْوَةُ: كَانَتْ عَائِشَةُ تَقُولُ: لَا تُحَرِّمُ دُونَ سَبْعِ رَضَعَاتٍ أَوْ خَمْسٍ، وَطَائِفَةٌ قَالَتْ: بِخَمْسِ رَضَعَاتٍ كَمَا قُلْنَا نَحْنُ.

L36176–36178 As it has been narrated to us through the chain of Abd al-Razzaq from Ma'mar from al-Zuhri from Urwah ibn al-Zubayr from Aisha, the Mother of the Believers—may Allah be pleased with her—that she said: "Prohibition [of marriage] is not established by fewer than five distinct breastfeedings." Abu Muhammad said: "This is based on her adopting ten breastfeedings as the standard for herself and five for others." Muhammad ibn Sa'id ibn Nubat → Ahmad ibn Abd al-Basir → Qasim ibn Asbagh → Muhammad ibn Abd al-Salam al-Khushani → Muhammad ibn al-Muthanna → Muhammad ibn Abi Adi from... Hanzalah ibn Abi Sufyan al-Jumahi reported from Salim ibn Abdullah ibn Umar from Zayd ibn Thabit, who said: One breastfeeding, two breastfeedings, or three breastfeedings do not result in the prohibition of marriage...

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - أَنَّهَا قَالَتْ: لَا تُحَرِّمُ دُونَ خَمْسِ رَضَعَاتٍ مَعْلُومَاتٍ. قَالَ أَبُو مُحَمَّدٍ: هَذَا يَخْرُجُ عَلَى أَنَّهَا كَمَا كَانَتْ تَأْخُذُ لِنَفْسِهَا بِعَشْرِ رَضَعَاتٍ، وَلِغَيْرِهَا بِخَمْسِ رَضَعَاتٍ -: أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ أَنَا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنْ حَنْظَلَةَ بْنِ أَبِي سُفْيَانَ الْجُمَحِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: لَا تُحَرِّمُ الرَّضْعَةُ وَالرَّضْعَتَانِ وَالثَّلَاثُ -

L36179 And it is the opinion of al-Shāfiʿī and his companions.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَصْحَابِهِ.

L36180 A group held that fewer than three sucklings do not establish prohibition—this is the view of Sulaymān ibn Yasār, Saʿīd ibn Jubayr, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhawayh, Abū ʿUbayd, Abū Thawr, Ibn al-Mundhir, Abū Sulaymān, and all the scholars of our school.

وَطَائِفَةٌ قَالَتْ: لَا يُحَرِّمُ أَقَلُّ مِنْ ثَلَاثِ رَضَعَاتٍ - وَهُوَ قَوْلُ سُلَيْمَانَ بْنِ يَسَارٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي عُبَيْدٍ، وَأَبِي ثَوْرٍ، وَابْنِ الْمُنْذِرِ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا.

L36181 Some people held the view that this ruling encompasses what we transmitted through the isnād of Ahmad ibn Shu'ayb: From Ahmad ibn Harb al-Mawlā, from Abū Mu'āwiyah al-Ḍarīr, from Hishām ibn 'Urwah, from his father, from 'Ā'ishah the Mother of the Believers and 'Abdullāh ibn al-Zubayr - both jointly stated: "One suckling act does not establish prohibition, nor do two suckling acts."

وَظَنَّ قَوْمٌ أَنَّهُ يَدْخُلُ فِي هَذَا الْقَوْلِ مَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ حَرْبٍ الْمَوْلَى أَنَا أَبُو مُعَاوِيَةَ الضَّرِيرُ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَعَبْدِ اللَّهِ بْنِ الزُّبَيْرِ، قَالَا جَمِيعًا: لَا تُحَرِّمُ الْمَصَّةُ وَلَا الْمَصَّتَانِ.

L36182 And from the transmission of Saʿīd ibn Manṣūr: ʿAbd al-ʿAzīz ibn Muḥam-

mad al-Darāwardī narrated to us from Ibrāhīm ibn ʿUqbah, who said: I asked Saʿīd ibn al-Musayyab about breastfeeding? He replied: I do not say as ibn ʿAbbās and ibn al-Zubayr say. They both used to say: Neither a single suckle nor two suckles establish prohibition.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ ثنا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ إِبْرَاهِيمَ بْنِ عُقْبَةَ قَالَ: سَأَلْت سَعِيدَ بْنَ الْمُسَيِّبِ عَنْ الرَّضَاعِ؟ فَقَالَ: لَا أَقُولُ كَمَا يَقُولُ ابْنُ عَبَّاسٍ، وَابْنُ الزُّبَيْرِ، كَانَا يَقُولَانِ: لَا تُحَرِّمُ الْمَصَّةُ وَلَا الْمَصَّتَانِ.

L36183 Abū Muḥammad said: None of this indicates that they ever practiced finalizing divorce through three declarations.

قَالَ أَبُو مُحَمَّدٍ: كُلُّ هَذَا لَيْسَ فِيهِ بَيَانٌ أَنَّهُمْ كَانُوا يُحَرِّمُونَ بِالثَّلَاثِ.

L36184 A group said: Suckling does not establish prohibition except what stimulates the bowels and sustains the body's growth—as we have narrated through the chain of Aḥmad ibn Shuʿayb. ʿAbd al-Wārith ibn ʿAbd al-Ṣamad ibn ʿAbd al-Wārith ibn Saʿīd al-Tannūrī reported to us, through his father ʿAbd al-Wārith, who narrated from Ḥusayn the Teacher, who narrated from Makhūl via ʿUrwah ibn al-Zubayr, from ʿĀ'ishah, the Mother of the Believers, who said: "There is no harm in a single suckling instance or two. Prohibition arises only from suckling that stimulates the bowels."

وَقَالَتْ طَائِفَةٌ: لَا يُحَرِّمُ مِنْ الرَّضَاعِ إلَّا مَا فَتَقَ الْأَمْعَاءَ، وَأَخْصَبَ الْجِسْمَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ: أرنا عَبْدُ الْوَارِثِ بْنُ عَبْدِ الصَّمَدِ بْنِ عَبْدِ الْوَارِثِ بْنِ سَعِيدٍ التَّنُّورِيُّ، حَدَّثَنِي أَبِي - يَعْنِي عَبْدَ الْوَارِثِ - أَنَا حُسَيْنٌ - هُوَ الْمُعَلِّمُ - أَنَا مَكْحُولٌ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: لَيْسَ بِالْمَصَّةِ وَلَا بِالْمَصَّتَيْنِ بَأْسٌ، إنَّمَا الرَّضَاعُ مَا فَتَقَ الْأَمْعَاءَ.

L36185 And through the chain of ʿAbd al-Razzāq who said: I [heard] from Ibn Jurayj, from Thawr - he is Abū Zayd - from ʿAmr ibn Shuʿayb, that Sufyān ibn ʿAbd Allāh wrote to ʿUmar ibn al-Khaṭṭāb asking: "What causes prohibition through breastfeeding?" He wrote to him that the following do not cause prohibition: ḍirār, ʿufāfah, and maljah.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ عَنْ ثَوْرٍ - هُوَ أَبُو زَيْدٍ - عَنْ عَمْرِو بْنِ شُعَيْبٍ أَنَّ سُفْيَانَ بْنَ عَبْدِ اللَّهِ كَتَبَ إلَى عُمَرَ بْنِ الْخَطَّابِ يَسْأَلُهُ: مَا يُحَرِّمُ مِنْ الرَّضَاعِ؟ فَكَتَبَ إلَيْهِ أَنَّهُ لَا يُحَرِّمُ مِنْهَا: الضِّرَارُ، وَالْعُفَافَةُ وَالْمَلْجَةُ.

L36186 It is impermissible [ḍirār] for a woman to breastfeed two children in order to establish a mahram relationship (prohibiting marriage) between them.

وَالضِّرَارُ - أَنْ تُرْضِعَ الْمَرْأَةُ الْوَلَدَيْنِ كَيْ تُحَرِّمَ بَيْنَهُمَا.

L36187 Al-ʿUfāfah—the small thing of milk remaining in the breast after weaning.

وَالْعُفَافَةُ - الشَّيْءُ الْيَسِيرُ الَّذِي يَبْقَى فِي الثَّدْيِ.

L36188 Al-Muljah is a woman's act of stealthily taking another's child and placing him at her breast to suckle.

وَالْمُلْجَةُ - اخْتِلَاسُ الْمَرْأَةِ وَلَدَ غَيْرِهَا فَتُلْقِمُهُ ثَدْيَهَا.

L36189–36191 Ibn Jurayj said, "Muhammad ibn 'Ajlan reported to me that 'Umar ibn al-Khattab brought a young servant." They intended to arrange a marriage between a young girl and a man when they already knew that a woman had breastfed one of them. Umar said to her, "How did you breastfeed the other?" She replied, "I passed by him while he was crying, so I breastfed him," or she

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي مُحَمَّدُ بْنُ عَجْلَانَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ أُتِيَ بِغُلَامٍ وَجَارِيَةٍ - أَرَادُوا أَنْ يُنَاكِحُوا بَيْنَهُمَا - قَدْ عَلِمُوا أَنَّ امْرَأَةً أَرْضَعَتْ أَحَدَهُمَا؟ فَقَالَ لَهَا عُمَرُ: كَيْفَ أَرْضَعْتِ

said, “I breastfed him.” Umar then declared, “Proceed with their marriage, for breastfeeding is the kinship-establishing act.”

الْآخَرَ؟ قَالَتْ: مَرَرْتُ بِهِ وَهُوَ يَبْكِي فَأَرْضَعَتْهُ أَوْ قَالَتْ: فَأَمْصَصْتُهُ، فَقَالَ عُمَرُ: نَاكِحُوا بَيْنَهُمَا، فَإِنَّمَا الرَّضَاعَةُ الْخَصَابَةُ.

L36192 From the chain of Abd al-Razzaq: Ma’mar and Ibn Jurayj both narrated from Hisham ibn Urwah ibn al-Zubayr, from his father, from al-Hajjaj ibn al-Hajjaj al-Aslami - that he sought a legal ruling from Abu Hurayrah. Abu Hurayrah said: “Nothing establishes prohibition except what splits the intestines” - meaning in the context of breastfeeding.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ، وَابْنُ جُرَيْجٍ، قَالَا جَمِيعًا: أَنَا هِشَامُ بْنُ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ عَنْ الْحَجَّاجِ بْنِ الْحَجَّاجِ الْأَسْلَمِيِّ: أَنَّهُ اسْتَفْتَى أَبَا هُرَيْرَةَ؟ فَقَالَ لَهُ أَبُو هُرَيْرَةَ: لَا يُحَرِّمُ إلَّا مَا فَتَقَ الْأَمْعَاءَ - يَعْنِي مِنْ الرَّضَاعِ.

L36193 And through the narration of Waki‘ from Ismā‘īl ibn Abī Khālid from Abū ‘Amr al-Shaybānī from ‘Abdullāh ibn Mas‘ūd, who said: “Breastfeeding does not establish prohibition except for that which produces flesh and strengthens the bone”—and this is the opinion adopted.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: لَا يُحَرِّمُ مِنْ الرَّضَاعِ إلَّا مَا أَنْبَتَ اللَّحْمَ وَأَنْشَزَ الْعَظْمَ - وَبِهِ يُؤْخَذُ.

L36194 Abū Muḥammad said: The wording of the hadith is as follows—from Muḥammad ibn Sa‘īd ibn Nubāt, from Aḥmad ibn ‘Abd al-Baṣīr, from Qāsim ibn Aṣbagh, from Muḥammad ibn ‘Abd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from ‘Abd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Abū Ḥuṣayn, from Abū ‘Aṭiyyah al-Wādi‘ī: Ibn Mas‘ūd stated, “Suckling that establishes kinship is only what nourishes the growth of flesh and bone.” When this reached Abū Mūsā al-Ash‘arī, he said, “Do not ask me about anything so long as this scholar remains present among you.”

قَالَ أَبُو مُحَمَّد: هَكَذَا نَصَّ الْحَدِيثُ -: أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ أَنَا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي حُصَيْنٍ عَنْ أَبِي عَطِيَّةَ الْوَادِعِيِّ: أَنَّ ابْنَ مَسْعُودٍ قَالَ: إنَّمَا الرَّضَاعُ مَا أَنْبَتَ اللَّحْمَ وَالْعَظْمَ، فَبَلَغَ ذَلِكَ أَبَا مُوسَى الْأَشْعَرِيَّ فَقَالَ: لَا تَسْأَلُونِي عَنْ شَيْءٍ مَا دَامَ هَذَا الْحَبْرُ بَيْنَ أَظْهُرِكُمْ.

L36195 Through the transmission of Mālik from Yaḥyā ibn Sa‘īd al-Anṣārī: that he heard Sa‘īd ibn al-Musayyab say: There is no breastfeeding except that which brings about the growth of flesh and blood.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ: أَنَّهُ سَمِعَ سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ: لَا رَضَاعَ إلَّا مَا أَنْبَتَ اللَّحْمَ وَالدَّمَ.

L36196 A group of scholars maintained that prohibition applies concerning any amount, whether small or large—even a drop—. This has been authentically reported from Ibn ‘Umar and Ibn ‘Abbās in one of his two opinions.

وَذَهَبَتْ طَائِفَةٌ إلَى التَّحْرِيمِ بِمَا قَلَّ أَوْ كَثُرَ - وَلَوْ بِقَطْرَةٍ - صَحَّ ذَلِكَ عَنْ ابْنِ عُمَرَ، وَعَنْ ابْنِ عَبَّاسٍ فِي أَحَدِ قَوْلَيْهِ -.

L36197 It has been narrated from Ali ibn Abi Talib and Ibn Mas’ud through a chain with a missing link that does not reach them.

وَرُوِيَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَابْنِ مَسْعُودٍ مُنْقَطِعًا دُونَهُمَا.

L36198 And likewise also from Jābir ibn ‘Abdullāh.

وَعَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ كَذَلِكَ أَيْضًا.

L36199 It has been validated from Saʿīd ibn al-Musayyib in one of his two positions.

وَصَحَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي أَحَدِ قَوْلَيْهِ.

L36200 And it has also been established from ʿAṭāʾ, ʿUrwah, and Ṭāwūs.

وَصَحَّ أَيْضًا عَنْ عَطَاءٍ، وَعُرْوَةَ، وَطَاوُسٍ.

L36201 It has been narrated from Al-Ḥasan, Al-Zuhrī, Makhūl, Qatādah, Rabīʿah, Al-Qāsim, Sālim, and Qabīṣah ibn Dhuʾayb.

وَرُوِيَ عَنْ الْحَسَنِ، وَالزُّهْرِيِّ، وَمَكْحُولٍ، وَقَتَادَةَ، وَرَبِيعَةَ وَالْقَاسِمِ، وَسَالِمٍ، وَقَبِيصَةَ بْنِ ذُؤَيْبٍ.

L36202 This is the opinion of Abū Ḥanīfah, Mālik, al-Awzāʿī, al-Layth ibn Saʿd, and Sufyān al-Thawrī.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالْأَوْزَاعِيِّ، وَاللَّيْثِ بْنِ سَعْدٍ، وَسُفْيَانَ الثَّوْرِيِّ.

L36203–36204 We therefore examined the evidence cited by those who hold the opinion of seven sucklings but found no valid basis for this view, so it is dismissed.

فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ ذَهَبَ إلَى سَبْعِ رَضَعَاتٍ، فَلَمْ نَجِدْ لِهَذَا الْقَوْلِ مُتَعَلَّقًا، فَسَقَطَ.

L36205 Then we examined the evidence cited by those who hold the opinion of ten breastfeedings, and found them referencing the document sent to Abū al-Murājjā ʿAlī ibn ʿAbdullāh ibn Zarwāz: I am Abū al-Ḥasan Muḥammad ibn Ḥamzah al-Raḥabī, I am Abū Muslim al-Kātib, I am Abū al-Ḥasan ʿAbdullāh ibn Aḥmad ibn al-Mughallis. ʿAbdullāh ibn Aḥmad ibn Ḥanbal said: I am my father. I am Yaʿqūb ibn Ibrāhīm al-Zuhrī, I am Ubayy—who is Ibrāhīm ibn Saʿd—from Ibn Isḥāq. He said: I am al-Zuhrī from ʿUrwah from ʿĀʾishah, Mother of the Believers, that Sahlah bint Suhayl came to the Prophet—peace and blessings of Allah be upon him—and said: "Salim was among us as you know—we counted him as a son. He used to enter upon me. But when Allah—Exalted and Majestic—revealed concerning him and his similars, I noticed disapproval on Abū Ḥudhayfah's face when he saw him entering upon me." The Prophet said: "Breastfeed him ten breastfeedings, then let him enter upon you as he wishes, for he is indeed your son."

ثُمَّ نَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ ذَهَبَ إلَى عَشْرِ رَضَعَاتٍ فَوَجَدْنَاهُمْ يَذْكُرُونَ مَا كُتِبَ بِهِ إلَى أَبُو الْمُرَجَّى عَلِيُّ بْنُ عَبْدِ اللَّهِ بْنِ زَرْوَازٍ: أَنَا أَبُو الْحَسَنِ مُحَمَّدُ بْنُ حَمْزَةَ الرَّحَبِيُّ أَنَا أَبُو مُسْلِمٍ الْكَاتِبُ أَنَا أَبُو الْحَسَنِ عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ الْمُغَلِّسِ قَالَ أَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ قَالَ: أَنَا أَبِي أَنَا يَعْقُوبُ بْنُ إبْرَاهِيمَ الزُّهْرِيُّ أَنَا أُبَيٌّ - هُوَ إبْرَاهِيمُ بْنُ سَعْدٍ - عَنْ ابْنِ إسْحَاقَ قَالَ: أَنَا الزُّهْرِيُّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّ سَهْلَةَ بِنْتَ سُهَيْلٍ أَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ لَهُ: إنَّ سَالِمًا كَانَ مِنَّا حَيْثُ عَلِمْت كُنَّا نَعُدُّهُ وَلَدًا، وَكَانَ يَدْخُلُ عَلَيَّ، فَلَمَّا أَنْزَلَ اللَّهُ عَزَّ وَجَلَّ فِيهِ وَفِي أَشْبَاهِهِ: أَنْكَرْتُ وَجْهَ أَبِي حُذَيْفَةَ، إذْ رَآهُ يَدْخُلُ عَلَيَّ قَالَ: فَأَرْضِعِيهِ عَشْرَ رَضَعَاتٍ ثُمَّ لِيَدْخُلْ عَلَيْك كَيْفَ شَاءَ، فَإِنَّمَا هُوَ ابْنُك.

L36206 Abu Muhammad said: This is a sound chain of transmission, but it necessarily falls into one of two interpretations—there being no third possibility.

L36207 One of the two possibilities is that Ibn Isḥāq erred in this matter, for this

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا إسْنَادٌ صَحِيحٌ، إلَّا أَنَّهُ لَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا -:

report has been narrated from al-Zuhrī by someone more reliable in memorization than Ibn Isḥāq—namely Ibn Jurayj—who stated in it: "Breastfeed him five times," as we will present later, if God the Majestic and Almighty wills.

أَحَدُهُمَا - أَنْ يَكُونَ ابْنُ إِسْحَاقَ وَهِمَ فِيهِ، لِأَنَّهُ قَدْ رَوَى هَذَا الْخَبَرَ عَنِ الزُّهْرِيِّ مَنْ هُوَ أَحْفَظُ مِنِ ابْنِ إِسْحَاقَ - وَهُوَ ابْنُ جُرَيْجٍ - فَقَالَ فِيهِ: أَرْضِعِيهِ خَمْسَ رَضَعَاتٍ - عَلَى مَا نُورِدُهُ بَعْدَ هَذَا إِنْ شَاءَ عَزَّ وَجَلَّ.

L36208 Or it is preserved, such that the narration of Ibn Isḥāq is authentic and the narration of Ibn Jurayj is authentic, thus constituting two reports. If that is the case, then the ten acts of suckling are abrogated, as we will mention after this (if Allah, the Exalted, wills), which has invalidated this report, since it must necessarily be either a mistake or abrogated—one of the two is unavoidable.

أَوْ يَكُونُ مَحْفُوظًا فَتَكُونُ رِوَايَةُ ابْنِ إِسْحَاقَ صَحِيحَةً وَرِوَايَةُ ابْنِ جُرَيْجٍ صَحِيحَةً فَيَكُونَانِ خَبَرَيْنِ اثْنَيْنِ، فَإِذَا كَانَ ذَلِكَ، فَالْعَشْرُ الرَّضَعَاتُ مَنْسُوخَاتٌ عَلَى مَا نُورِدُ بَعْدَ هَذَا - إِنْ شَاءَ اللَّهُ تَعَالَى - فَسَقَطَ هَذَا الْخَبَرُ، إِذْ لَا يَخْلُو ضَرُورَةً مِنْ أَنْ يَكُونَ وَهْمًا، أَوْ مَنْسُوخًا، لَا بُدَّ مِنْ أَحَدِهِمَا.

L36209 Then we examined the evidence cited by those who prohibit based on three breastfeedings (and not fewer), and found them invoking the well-known report transmitted through various chains of narration.

ثُمَّ نَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ حَرَّمَ بِثَلَاثِ رَضَعَاتٍ لَا بِأَقَلَّ فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِالْخَبَرِ الْمَشْهُورِ مِنْ طُرُقٍ شَتَّى.

L36210–36211 Among them is what we have narrated through the chain of Muslim: Narrated by Muhammad ibn Abdullah ibn Numayr, narrated by Isma'il ibn Ibrahim - that is, Ibn Ulayyah - narrated by Ayyub al-Sikhtiyani, narrated by Ibn Abi Mulaykah, narrated by Abdullah ibn al-Zubayr, narrated by Aishah, the Mother of the Believers, who said: The Messenger of Allah (peace and blessings of Allah be upon him) said: "Neither one suckle nor two make (a relationship) prohibited."

مِنْهَا - مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ أَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ عُلَيَّةَ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنِ ابْنِ أَبِي مُلَيْكَةَ عَنْ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُحَرِّمُ الْمَصَّةُ وَلَا الْمَصَّتَانِ» .

L36212 Similarly, the students of Shu'bah narrated from Shu'bah, from Ayyub al-Sakhtiyānī, from Ibn Abi Mulaykah, from 'Ā'ishah, the Mother of the Believers, from the Prophet, the Messenger of Allah (peace be upon him), who said: "Neither one nor two instances of suckling establish prohibition."

وَهَكَذَا رَوَاهُ أَصْحَابُ شُعْبَةَ عَنْ شُعْبَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنِ ابْنِ أَبِي مُلَيْكَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُحَرِّمُ الْمَصَّةُ وَلَا الْمَصَّتَانِ» .

L36213 Abu Muhammad said: Ibn Abi Mulaykah met the Mother of the Believers and heard [the narration] from her, as well as from Ibn al-Zubayr—who reported it on her authority. He transmitted it in the same manner, for he was trustworthy, reliable, and renowned.

قَالَ أَبُو مُحَمَّدٍ: ابْنُ أَبِي مُلَيْكَةَ أَدْرَكَ أُمَّ الْمُؤْمِنِينَ فَسَمِعَهُ مِنْهَا، وَمِنِ ابْنِ الزُّبَيْرِ عَنْهَا، فَحَدَّثَ بِهِ كَذَلِكَ، وَهُوَ الثِّقَةُ الْمَأْمُونُ الْمَشْهُورُ.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ بَزِيعٍ أَنَا يَزِيدُ - هُوَ ابْنُ زُرَيْعٍ - أَنَا سَعِيدٌ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ قَالَ: كَتَبْنَا إِلَى إِبْرَاهِيمَ النَّخَعِيِّ نَسْأَلُهُ عَنْ الرَّضَاعِ؟ فَكَتَبَ: إِنَّ أَبَا الشَّعْثَاءِ الْمُحَارِبِيَّ حَدَّثَنَا أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ حَدَّثَتْهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَقُولُ: «لَا تُحَرِّمُ الْخَطْفَةُ وَلَا الْخَطْفَتَانِ» .

L36214 From the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn ʿAbdillāh ibn Bazīʿ, from Yazīd—that is, Ibn Zuraʿ—from Saʿīd—that is, Ibn Abī ʿArūbah—from Qatādah, who said: We wrote to Ibrāhīm al-Nakhaʿī inquiring about breast-feeding. He wrote: Abū al-Shaʿthāʾ al-Muḥāribī narrated to us that ʿĀʾishah, the Mother of the Believers, reported to him that the Messenger of Allah—peace and blessings be upon him—used to say: “Neither a single suckle nor two establish prohibition.”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي عُبَيْدُ اللَّهِ بْنُ فَضَالَةَ بْنِ إِبْرَاهِيمَ النَّسَائِيّ أَنَا مُسْلِمُ بْنُ إِبْرَاهِيمَ أَنَا مُحَمَّدُ بْنُ دِينَارٍ أَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ ابْنِ الزُّبَيْرِ عَنْ الزُّبَيْرِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تُحَرِّمُ الْمَصَّةُ وَلَا الْمَصَّتَانِ وَلَا الْإِمْلَاجَةُ وَلَا الْإِمْلَاجَتَانِ» .

L36215 From the path of Ahmad ibn Shu’ayb, who informed me: Ubayd Allah ibn Fadalah ibn Ibrahim al-Nasa’i → Muslim ibn Ibrahim → Muhammad ibn Dinar → Hisham ibn Urwah → his father → Ibn al-Zubayr → al-Zubayr → the Prophet, peace and blessings of Allah be upon him, who said: “A single instance of suckling does not establish a prohibition, nor do two instances; nor does a single drawing of milk establish a prohibition, nor do two instances.”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي شُعَيْبُ بْنُ يُوسُفَ النَّسَائِيّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ هِشَامِ بْنِ عُرْوَةَ أَخْبَرَنِي أُبَيٌّ عَنْ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُحَرِّمُ الْمَصَّةُ وَلَا الْمَصَّتَانِ» .

L36216 And through the chain of Aḥmad ibn Shuʿayb: Shuʿayb ibn Yūsuf al-Nasāʾī narrated to me from Yaḥyā ibn Saʿīd al-Qaṭṭān from Hishām ibn ʿUrwah, who reported from Ubayy, from ʿAbdullāh ibn al-Zubayr, from the Prophet—peace and blessings of Allah be upon him—: “A single suckling does not make unlawful, nor do two sucklings.”

قَالَ أَبُو مُحَمَّد: ابْنُ الزُّبَيْرِ سَمِعَ أَبَاهُ، وَخَالَتَهُ أُمَّ الْمُؤْمِنِينَ، فَرَوَاهُ عَنْ كُلِّ وَاحِدٍ مِنْهُمَا، وَلَهُ أَيْضًا صُحْبَةٌ، وَإِلَّا فَلْيُخْبِرْنَا الْمُقْدِمُ عَلَى نَصْرِ الْبَاطِلِ، وَدَفْعِ الْحَقِّ، وَمُؤْثِرُ رَأْيِهِ عَلَى مَا ثَبَتَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَنْ يَتَّهِمُ مِنْ رُوَاةِ هَذِهِ الْأَخْبَارِ؟ .

L36217–36219 Abu Muhammad said: Ibn al-Zubayr heard his father and his maternal aunt, the Mother of the Believers, and transmitted from each of them. He was also a Companion. If not, then let the one who dares to support falsehood, suppress the truth, and give precedence inform us. His opinion rests on what is authentically transmitted from the Messenger of Allah—peace and blessings be upon him and his family—: who accuses among the narrators of these narrations?

وَقَدْ صَحَّ أَيْضًا: مِنْ طَرِيقِ أَبِي هُرَيْرَةَ، كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَنْصُورٍ الطُّوسِيُّ أَنَا يَعْقُوبُ هُوَ ابْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ - أَنَا أَبِي عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ عَنْ الْحَجَّاجِ بْنِ الْحَجَّاجِ الْأَسْلَمِيِّ عَنْ أَبِي

L36220 It has also been authentically established through the chain of Abū Hurayrah—as narrated to us via Aḥmad ibn Shuʿayb: Muḥammad ibn Manṣūr al-Ṭūsī → Yaʿqūb—that is, the son of Ibrāhīm ibn Saʿd—→ his father → Muḥammad ibn Isḥāq → Hishām ibn ʿUrwah → his father → ʿAbdullāh ibn al-Zubayr → al-Ḥajjāj ibn al-Ḥajjāj al-Aslamī → Abū Hurayrah—who said: The Messenger of Allāh—peace and blessings be upon him—said: “Neither

a single instance of suckling nor two instances of suckling cause prohibition through breastfeeding. Nothing causes prohibition except that which nourishes the intestines from the milk."

هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُحَرِّمُ مِنْ الرَّضَاعِ الْمَصَّةُ وَلَا الْمَصَّتَانِ وَلَا يُحَرِّمُ مِنْهُ إِلَّا مَا فَتَقَ الْأَمْعَاءَ مِنْ اللَّبَنِ» .

L36221 It has also been authenticated through the chain of Umm al-Faḍl, mother of ʿAbd Allāh ibn al-ʿAbbās - as we were narrated via Muslim's chain: I am Isḥāq (Ibn Rāhwayh), Yaḥyā ibn Yaḥyā, and ʿAmr al-Nāqid (the Evaluator), all transmitting from al-Muʿtamir ibn Sulaymān al-Taymī. The wording is from Yaḥyā, who reported: Al-Muʿtamir ibn Sulaymān said: "I transmit from Ayyūb al-Sikhtiyānī, from Abū al-Khalīl Ṣāliḥ ibn Abī Maryam, from ʿAbd Allāh ibn al-Ḥārith ibn Nawfal ibn al-Ḥārith ibn ʿAbd al-Muṭṭalib, from Umm al-Faḍl, that the Messenger of Allāh, peace and blessings of Allāh be upon him, said: 'A single suckle or two do not establish prohibition.'"

وَصَحَّ أَيْضًا مِنْ طَرِيقِ أُمِّ الْفَضْلِ أُمِّ عَبْدِ اللَّهِ بْنِ الْعَبَّاسِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا إِسْحَاقُ - هُوَ ابْنُ رَاهْوَيْهِ - وَيَحْيَى بْنُ يَحْيَى، وَعَمْرٌو النَّاقِدُ كُلُّهُمْ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ - وَاللَّفْظُ لِيَحْيَى - قَالَ: أَنَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ أَيُّوبَ - هُوَ السِّخْتِيَانِيُّ - عَنْ أَبِي الْخَلِيلِ - هُوَ صَالِحُ بْنُ أَبِي مَرْيَمَ - عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ - هُوَ ابْنُ نَوْفَلِ بْنِ الْحَارِثِ بْنِ عَبْدِ الْمُطَّلِبِ - عَنْ أُمِّ الْفَضْلِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تُحَرِّمُ الْإِمْلَاجَةُ وَلَا الْإِمْلَاجَتَانِ» .

L36222 And through the chain of Imam Muslim: from Abu Bakr ibn Abi Shaybah, from Abdah ibn Sulayman, from Sa'id ibn Abi Arubah, from Qatadah, from Abi al-Khalil, from Abdullah ibn al-Harith, that Umm al-Fadl narrated to him that the Messenger of Allah (may Allah bless him and grant him peace) said: "Neither one nor two instances of breastfeeding, nor one nor two instances of suckling, result in prohibition."

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ عَبْدَةَ بْنِ سُلَيْمَانَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ أَبِي الْخَلِيلِ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ أَنَّ أُمَّ الْفَضْلِ حَدَّثَتْهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تُحَرِّمُ الرَّضْعَةُ وَلَا الرَّضْعَتَانِ، وَلَا الْمَصَّةُ وَلَا الْمَصَّتَانِ» .

L36223 We have also narrated it through the chain of Muslim: Ibn Abī ʿUmar → Bishr ibn as-Sarī → Ḥammād ibn Abī Salamah → Qatādah → Abū al-Khalīl aḍ-Ḍuʿabī → ʿAbdullāh ibn al-Ḥārith ibn Nawfal → Umm al-Faḍl that the Messenger of God - may God bless him and his family and grant him peace - said: "A single instance of suckling does not make it unlawful, nor do two instances of suckling."

وَرُوِّينَاهُ أَيْضًا - مِنْ طَرِيقِ مُسْلِمٍ أَنَا ابْنُ أَبِي عُمَرَ أَنَا بِشْرُ بْنُ السَّرِيِّ أَنَا حَمَّادُ بْنُ أَبِي سَلَمَةَ عَنْ قَتَادَةَ عَنْ أَبِي الْخَلِيلِ الضُّبَعِيِّ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ بْنِ نَوْفَلٍ عَنْ أُمِّ الْفَضْلِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «لَا تُحَرِّمُ الْإِمْلَاجَةُ وَلَا الْإِمْلَاجَتَانِ» .

L36224–36226 Ḥumām ibn Aḥmad said: I am ʿAbbās ibn Aṣbagh; I am Muḥammad ibn ʿAbd al-Malik ibn Ayman; I am Jaʿfar ibn Muḥammad aṣṢā'igh; I am ʿAffān ibn Muslim Wuhaib ibn Khalid narrated from Ayyub al-Sakhtiyānī, from Salih Abu al-Khalil al-Duba'i, from Abdullah ibn al-Harith, from Umm al-

وَنَاهُ حُمَامُ بْنُ أَحْمَدَ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا جَعْفَرُ بْنُ مُحَمَّدٍ الصَّائِغُ أَنَا عَفَّانُ بْنُ مُسْلِمٍ أَنَا وُهَيْبُ بْنُ خَالِدٍ أَنَا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ صَالِحٍ

Fadl, that the Messenger of Allah (peace and blessings be upon him) said: “Neither one suckle nor two suckles make marriage unlawful.”

أَبِي الْخَلِيلِ الضُّبَعِيِّ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ عَنْ أُمِّ الْفَضْلِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تُحَرِّمُ الْإِمْلَاجَةُ وَلَا الْإِمْلَاجَتَانِ» .

L36227 They said: These are authentic narrations reported by Umm al-Mu’minīn, Umm al-Faḍl, al-Zubayr, Abū Hurayrah, and Ibn al-Zubayr—all of them from the Messenger of Allah, peace and blessings be upon him—attaining the status of recurrent transmission. They said: Thus, it is excepted from the generality of the verse of Allah, the Exalted and Majestic: “And your mothers who breastfed you and your sisters through breastfeeding” [al-Nisā’ 4:23], and what lies beyond the prohibited degrees remains.[32]

قَالُوا: فَهَذِهِ آثَارٌ صِحَاحٌ رَوَاهَا أُمُّ الْمُؤْمِنِينَ، وَأُمُّ الْفَضْلِ، وَالزُّبَيْرُ، وَأَبُو هُرَيْرَةَ، وَابْنُ الزُّبَيْرِ كُلُّهُمْ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَاءَتْ مَجِيءَ التَّوَاتُرِ قَالُوا: فَهِيَ مُسْتَثْنَاةٌ مِنْ عُمُومِ قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَأُمَّهَاتُكُمُ اللاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُمْ مِنَ الرَّضَاعَةِ} [النساء: ٢٣] وَبَقِيَ مَا زَادَ عَلَى التَّحْرِيمِ.

L36228 Abū Muḥammad said: They spoke truthfully in affirming its utmost soundness. But had nothing else been reported besides it, the opinion would have been as they asserted. However, other than this has been transmitted, which we shall now mention—if Allah, Exalted and Majestic, so wills.

قَالَ أَبُو مُحَمَّدٍ: صَدَقُوا فِي أَنَّهَا فِي غَايَةِ الصِّحَّةِ، وَلَكِنْ لَوْ لَمْ يَرِدْ غَيْرُهَا لَكَانَ الْقَوْلُ مَا قَالُوا لَكِنْ قَدْ جَاءَ غَيْرُ هَذَا مِمَّا سَنَذْكُرُهُ الْآنَ إِنْ شَاءَ عَزَّ وَجَلَّ.

L36229 Then we examined the evidence cited by those who restrict nursing prohibition to cases satisfying hunger. We found them invoking the report transmitted via Muslim’s Ṣaḥīḥ through this chain: Hannād ibn al-Sarri → Abū al-Aḥwaṣ → Ashʿath ibn Abī al-Shaʿthāʾ → his father → Masrūq → ʿĀʾishah, Mother of the Believers, that Allah’s Messenger—peace be upon him and his progeny—said to her: “O women, be mindful of your nursing brothers, for only breastfeeding that alleviates hunger establishes prohibition.”

ثُمَّ نَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ لَمْ يُحِدَّ الْمُحَرِّمَ مِنَ الرَّضَاعِ إِلَّا بِمَا أَغْنَى مِنَ الْجُوعِ فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا هَنَّادُ بْنُ السَّرِيِّ أَنَا أَبُو الْأَحْوَصِ عَنْ أَشْعَثَ بْنِ أَبِي الشَّعْثَاءِ عَنْ أَبِيهِ عَنْ مَسْرُوقٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لَهَا: انْظُرْنَ مِنْ إِخْوَتِكُنَّ مِنَ الرَّضَاعَةِ فَإِنَّمَا الرَّضَاعَةُ مِنَ الْمَجَاعَةِ» .

L36230 We have also narrated it through the narration of Shuʿbah, Sufyān al-Thawrī, and Zāʾidah—all of them from Ashʿath ibn Abī al-Shaʿthāʾ, from his father, from Masrūq, from ʿĀʾishah, the Mother of the Believers, from the Prophet (peace be upon him): “Suckling is only from hunger.”

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ شُعْبَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَزَائِدَةَ، كُلِّهِمْ عَنْ أَشْعَثَ بْنِ أَبِي الشَّعْثَاءِ عَنْ أَبِيهِ عَنْ مَسْرُوقٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّمَا الرَّضَاعَةُ مِنَ الْمَجَاعَةِ» .

L36231 We have also cited earlier in this work through the chain of transmission from Abū Hurayrah that the Prophet—peace be upon him and his family—

وَقَدْ أَوْرَدْنَا أَيْضًا قَبْلُ مِنْ طَرِيقِ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ «لَا يُحَرِّمُ مِنَ الرَّضَاعِ إِلَّا مَا فَتَقَ الْأَمْعَاءَ» .

[32] **Qur’an references (L36227):** Qur’an 4:23 (An-Nisa).

said: “Nothing establishes a prohibition through breastfeeding except that which nourishes and sustains [the child].”[33]

L36232–36233 We have also narrated it via the chain of Shurayḥ ibn Nuʿmān from Ḥammād ibn Salamah from Hishām ibn ʿUrwah from his father from al-Ḥajjāj ibn al-Ḥajjāj al-Aslamī from Abū Hurayrah from the Prophet (may Allah bless him and his family and grant him peace).

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ شُرَيْحِ بْنِ النُّعْمَانِ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ الْحَجَّاجِ بْنِ الْحَجَّاجِ الْأَسْلَمِيِّ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L36234 Abu Muhammad said: These two narrations are of the utmost authenticity, and the evidence based on them is established.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَانِ أَثَرَانِ فِي غَايَةِ الصِّحَّةِ، وَالْحُجَّةُ بِهِمَا قَائِمَةٌ.

L36235 Then we examined the evidence of those who asserted: “Less than five breastfeedings do not cause prohibition.” We found what we narrated through Hammad ibn Salamah’s chain from Yahya ibn Saʿid al-Ansari and ʿAbd al-Rahman ibn al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq – both relating from ʿAmrah from ʿA’ishah, the Mother of the Believers, who said: “The Quran was revealed stating that nothing causes prohibition except ten breastfeedings, then afterward, ‘and five specified feedings’ were revealed.” These are Yahya ibn Saʿid’s exact words. ʿAbd al-Rahman’s version states: She said, “Among what was revealed in the Quran and later omitted was: ‘Breastfeeding does not cause prohibition except ten breastfeedings,’ then afterward, ‘and five specified feedings’ were revealed.”

ثُمَّ نَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ قَالَ: لَا يُحَرِّمُ مِنْ الرَّضَاعِ أَقَلُّ مِنْ خَمْسِ رَضَعَاتٍ؟ فَوَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَعَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ، كِلَاهُمَا عَنْ عَمْرَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: نَزَلَ الْقُرْآنُ أَنْ لَا يُحَرِّمَ إلَّا عَشْرُ رَضَعَاتٍ، ثُمَّ نَزَلَ بَعْدُ وَخَمْسٌ مَعْلُومَاتٌ هَذَا لَفْظُ يَحْيَى بْنِ سَعِيدٍ. وَلَفْظُ عَبْدِ الرَّحْمَنِ: قَالَتْ " كَانَ مِمَّا نَزَلَ مِنْ الْقُرْآنِ ثُمَّ سَقَطَ: لَا يُحَرِّمُ مِنْ الرَّضَاعِ إلَّا عَشْرُ رَضَعَاتٍ، ثُمَّ نَزَلَ بَعْدُ وَخَمْسٌ مَعْلُومَاتٌ ".

L36236 Narrated by Al-Qaʿnabi from Malik from ʿAbdullāh ibn Abī Bakr ibn ʿAmr ibn Ḥazm from ʿAmrah bint ʿAbd al-Raḥmān from ʿĀ’ishah, the Mother of the Believers, that she said: “Among what was revealed in the Quran were ten breastfeedings that cause prohibition. These were later abrogated by five specified instances that cause prohibition. The Messenger of Allah (peace and blessings be upon him) passed away while they were still recited as part of the Quran.”

وَمِنْ طَرِيقِ الْقَعْنَبِيِّ عَنْ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا قَالَتْ " كَانَ فِيمَا نَزَلَ مِنْ الْقُرْآنِ عَشْرُ رَضَعَاتٍ يُحَرِّمْنَ، ثُمَّ نُسِخْنَ بِخَمْسٍ مَعْلُومَاتٍ يُحَرِّمْنَ، فَتُوُفِّيَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُنَّ مِمَّا يُقْرَأُ مِنْ الْقُرْآنِ ".

L36237 And it was also narrated to us—its meaning via the chain (isnād) of Imam Muslim: from Al-Qaʿnabi and Muhammad ibn Al-Muthanna. Ibn Al-Muthanna said: I narrate from ʿAbd al-Wahhab ibn ʿAbd al-Majid al-Thaqafi, while Al-Qaʿnabi said: I narrate from Sulayman ibn Bilal. Then their narrations converged—both transmitting from Yahya ibn Saʿid al-Ansari, from

وَرُوِّينَا أَيْضًا - مَعْنَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا الْقَعْنَبِيُّ، وَمُحَمَّدُ بْنُ الْمُثَنَّى، قَالَ ابْنُ الْمُثَنَّى أَنَا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ، وَقَالَ الْقَعْنَبِيُّ: أَنَا سُلَيْمَانُ بْنُ بِلَالٍ، ثُمَّ اتَّفَقَ سُلَيْمَانُ، وَعَبْدُ الْوَهَّابِ كِلَاهُمَا عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ عَمْرَةَ عَنْ عَائِشَةَ

[33] **Hadith references (L36231):** Mishkat al-Masabih 3173.

‘Amrah, from ‘Aishah, the Mother of the Believers, who said: “When the revelation concerning ten specified sucklings was decreed in the Quran, another revelation concerning five specified sucklings was subsequently decreed.”

أُمِّ الْمُؤْمِنِينَ قَالَتْ: لَمَّا نَزَلَ فِي الْقُرْآنِ عَشْرُ رَضَعَاتٍ مَعْلُومَاتٍ، ثُمَّ نَزَلَ أَيْضًا خَمْسٌ مَعْلُومَاتٌ.

L36238–36240 And through the chain of ʿAbd al-Razzāq: I [Ibn Jurayj] heard from Ibn Shihāb, who was informed by ʿUrwah ibn al-Zubayr, who reported from… Aisha, the Mother of the Believers, narrated that Abu Hudhayfah adopted Salim, who was the freed slave of a woman from the Ansar, just as the Messenger of Allah—peace and blessings be upon him and his family—had adopted Zaid. In the Age of Ignorance, when someone adopted a person, people would attribute him to the adopter, and the adopted would inherit from the adopter’s estate until Allah the Exalted revealed: *“Call them by [the names of] their fathers; that is more just in the sight of Allah. But if you do not know their fathers, they are your brothers in religion and your clients”* [Al-Ahzab: 5]. Thus, they were reverted to their biological fathers. Whoever’s father was unknown became a client and a brother in religion. Sahlah then came and said, “O Messenger of Allah, we used to regard Salim as a son who lived with me and Abu Hudhayfah, and he sees my private areas. Allah has revealed about him what you know?” The Messenger of Allah—peace and blessings be upon him and his family—replied, “Breastfeed him five times.” Consequently, he became legally regarded as her child through breastfeeding.[34]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَنَا ابْنُ شِهَابٍ أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ أَبَا حُذَيْفَةَ تَبَنَّى سَالِمًا وَهُوَ مَوْلَى امْرَأَةٍ مِنْ الْأَنْصَارِ كَمَا تَبَنَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - زَيْدًا، وَكَانَ مَنْ تَبَنَّى رَجُلًا فِي الْجَاهِلِيَّةِ دَعَاهُ النَّاسُ إلَيْهِ وَوَرِثَ مِنْ مِيرَاثِهِ حَتَّى أَنْزَلَ اللَّهُ عَزَّ وَجَلَّ: {ادْعُوهُمْ لِآبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَإِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ} [الأحزاب: ٥] فَرُدُّوا إلَى آبَائِهِمْ فَمَنْ لَمْ يُعْرَفْ لَهُ أَبٌ فَمَوْلَى وَأَخٌ فِي الدِّينِ، فَجَاءَتْ سَهْلَةُ فَقَالَتْ: يَا رَسُولَ اللَّهِ إنَّا كُنَّا نَرَى سَالِمًا وَلَدًا يَأْوِي مَعِي وَمَعَ أَبِي حُذَيْفَةَ وَيَرَانِي فُضْلًا، وَقَدْ أَنْزَلَ اللَّهُ فِيهِ مَا قَدْ عَلِمْتَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَرْضِعِيهِ خَمْسَ رَضَعَاتٍ» فَكَانَ بِمَنْزِلَةِ وَلَدِهَا مِنْ الرَّضَاعَةِ.

L36241 Abu Muhammad said: These are two reports at the peak of authenticity, marked by the eminence and trustworthiness of their narrators, and it is impermissible for anyone to deviate from them.

قَالَ أَبُو مُحَمَّد: وَهَذَانِ خَبَرَانِ فِي غَايَةِ الصِّحَّةِ وَجَلَالَةِ الرُّوَاةِ وَثِقَتِهِمْ، وَلَا يَسَعُ أَحَدًا الْخُرُوجُ عَنْهُمَا.

L36242 This report from the narration of Ibn Jurayj clarifies the error in Ibn Isḥāq’s narration of this report, as he mentioned ten breastfeedings or its abrogation. For it is possible that the Prophet (peace and blessings be upon him) issued her a legal ruling concerning ten breastfeedings before the prohibition concerning five was revealed, then issued her a legal ruling concerning five after its revelation, and there may have been only a portion of an hour between the two rulings.

وَهَذَا الْخَبَرُ مِنْ رِوَايَةِ ابْنِ جُرَيْجٍ يُبَيِّنُ وَهْمَ رِوَايَةِ ابْنِ إسْحَاقَ لِهَذَا الْخَبَرِ، فَذَكَرَ فِيهِ عَشْرَ رَضَعَاتٍ أَوْ نَسْخَهُ، إذْ قَدْ يُمْكِنُ أَنْ يَكُونَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَفْتَاهَا بِالْعَشْرِ قَبْلَ أَنْ يَنْزِلَ التَّحْرِيمُ بِالْخَمْسِ، ثُمَّ أَفْتَاهَا بِالْخَمْسِ بَعْدَ نُزُولِهَا، وَقَدْ لَا يَكُونُ بَيْنَ الْأَمْرَيْنِ إلَّا بَعْضُ سَاعَةٍ.

[34] **Qur’an references (L36238):** Qur’an 33:5 (Al-Ahzab).

L36243 Then we considered the evidence cited by those who held that prohibition arises from both a small amount of breastfeeding and a large amount. We found them invoking Allah's words, Exalted and Majestic is He: {Your mothers who suckled you and your sisters through breastfeeding} [al-Nisā': 23]. They argued: "Allah, Exalted and Majestic is He, stated this universally without specification."[35]

ثُمَّ نَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ رَأَى أَنَّ التَّحْرِيمَ بِقَلِيلِ الرَّضَاعَةِ وَكَثِيرِهَا؟ فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَأُمَّهَاتُكُمُ اللاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُمْ مِنَ الرَّضَاعَةِ} [النساء: ٢٣] قَالُوا: فَعَمَّ اللَّهُ عَزَّ وَجَلَّ وَلَمْ يَخُصَّ.

L36244 Then they cited authentic narrations such as his saying (peace and blessings be upon him) regarding Hamza's daughter, "Indeed, she is the daughter of my brother through milk kinship."

ثُمَّ ذَكَرُوا آثَارًا صِحَاحًا -: مِثْلَ «قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي بِنْتِ حَمْزَةَ: إِنَّهَا ابْنَةُ أَخِي مِنْ الرَّضَاعَةِ» .

L36245 And his statement—may the peace and blessings of Allah be upon him—regarding the daughter of Abū Salamah: "She is the daughter of my milk brother."

«وَقَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي بِنْتِ أَبِي سَلَمَةَ: إِنَّهَا ابْنَةُ أَخِي مِنْ الرَّضَاعَةِ» .

L36246 "And his statement (peace and blessings be upon him) to Aisha, the Mother of the Believers, regarding her uncle through milk kinship: 'He is your uncle; let him enter upon you,' and in the case of Hafsa, the Mother of the Believers, when he said: 'I see so-and-so' - referring to her uncle through milk kinship."

«وَقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لِعَائِشَةَ أُمِّ الْمُؤْمِنِينَ فِي عَمِّهَا مِنْ الرَّضَاعَةِ: إنَّهُ عَمُّكِ فَلْيَلِجْ عَلَيْكِ، وَفِي عَمِّ حَفْصَةَ أُمِّ الْمُؤْمِنِينَ: أَرَى فُلَانًا - يَعْنِي عَمَّهَا مِنْ الرَّضَاعَةِ» .

L36247–36248 And based on the authentic report in the matter of Sālim, the client of Abū Ḥudhayfah.

وَبِالْخَبَرِ الثَّابِتِ فِي أَمْرِ سَالِمٍ مَوْلَى أَبِي حُذَيْفَةَ.

L36249 We have narrated it through the chain of Sufyan ibn 'Uyaynah and Sufyan al-Thawri, from Abd al-Rahman ibn al-Qasim ibn Muhammad, from his father, from Aisha, the Mother of the Believers.

وَرُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ وَسُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ.

L36250 And from the chain of Ayyub al-Sikhtiyānī and Ibn Jurayj, from Ibn Abi Mulaykah, from al-Qasim ibn Muhammad, from Aisha, the Mother of the Believers.

وَمِنْ طَرِيقِ أَيُّوبَ السِّخْتِيَانِيِّ، وَابْنِ جُرَيْجٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ.

L36251 And through the chain of Mālik ibn Anas, Yūnus ibn Yazīd, and Jaʿfar ibn Rabīʿah, all of them from al-Zuhrī, from ʿUrwah, from ʿĀ'ishah, Mother of the Believers.

وَمِنْ طَرِيقِ مَالِكِ بْنِ أَنَسٍ، وَيُونُسَ بْنِ يَزِيدَ، وَجَعْفَرِ بْنِ رَبِيعَةَ، كُلِّهِمْ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ.

[35] **Qur'an references (L36243):** Qur'an 4:23 (An-Nisa).

L36252 From the chain of Shu‘bah, from Humaid ibn Nāfi‘, from Zainab—daughter of Umm Salamah (the Mother of the Believers)—from ‘Ā’ishah, the Mother of the Believers: all of them mentioned only “breastfeed him,” without specifying a number.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ حُمَيْدِ بْنِ نَافِعٍ عَنْ زَيْنَبَ بِنْتِ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، كُلِّهِمْ لَمْ يَذْكُرُوا إِلَّا " أَرْضِعِيهِ " فَقَطْ دُونَ ذِكْرِ عَدَدٍ.

L36253 They mentioned his saying—peace and blessings be upon him—“Suckling [as a basis for prohibition] is only due to hunger, and no prohibition results from suckling except what splits the bowels.” They said: Yet he—peace and blessings be upon him—did not mention any specific number in all of that.

وَذَكَرُوا قَوْلَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «إِنَّمَا الرَّضَاعَةُ مِنْ الْمَجَاعَةِ وَلَا يُحَرِّمُ مِنْ الرَّضَاعِ إِلَّا مَا فَتَقَ الْأَمْعَاءَ» قَالُوا: فَلَمْ يَذْكُرْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي كُلِّ ذَلِكَ عَدَدًا.

L36254 They mentioned, concerning matters devoid of benefit: a report we narrated through the chain of Ibn Wahb from Maslamah ibn ‘Ali from some scholars from ‘Abdullah ibn al-Harith ibn Nawfal from Umm al-Fadl bint al-Harith, who said: “The Messenger of Allah—may Allah bless him and his family and grant him peace—was asked about what establishes prohibition due to breastfeeding. He replied: ’One feeding or two.’”

وَذَكَرُوا مِمَّا لَا خَيْرَ فِيهِ -: خَبَرًا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَسْلَمَةَ بْنِ عَلِيٍّ عَنْ رِجَالٍ مِنْ أَهْلِ الْعِلْمِ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ بْنِ نَوْفَلٍ عَنْ أُمِّ الْفَضْلِ بِنْتِ الْحَارِثِ قَالَتْ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَمَّا يُحَرِّمُ مِنْ الرَّضَاعَةِ؟ فَقَالَ: الرَّضْعَةُ وَالرَّضْعَتَانِ» .

L36255 Abū Muḥammad said: As for this report, it is a vile fabricated report. Maslamah ibn ʿAlī is discredited - no narration is transmitted from him. People condemned Ibn Wahb for narrating from him. Then he mentioned it from someone he did not name, so there is no point in concerning oneself with falsehood.

قَالَ أَبُو مُحَمَّد: أَمَّا هَذَا الْخَبَرُ، فَخَبَرُ سُوءٍ مَوْضُوعٌ، وَمَسْلَمَةُ بْنُ عَلِيٍّ فَسَاقِطٌ لَا يُرْوَى عَنْهُ، قَدْ أَنْكَرَ النَّاسُ عَلَى ابْنِ وَهْبٍ الرِّوَايَةَ عَنْهُ، ثُمَّ ذَكَرَهُ عَمَّنْ لَمْ يُسَمِّهِ، فَلَا مَعْنَى لِأَنْ يُشْتَغَلَ بِالْبَاطِلِ.

L36256–36258 As for the authenticated narrations we previously mentioned and the cited verse, all of that is valid. However, when the narration from the trustworthy transmitters we referenced was established—stating that neither one nor two breastfeedings cause prohibition, and that only five breastfeedings cause prohibition—these narrations became additional to what is contained in that verse and those narrations, and they were... The narration of Ibn Jurayj in the hadith of Abu Hudhayfah—“Suckle him five sucklings”—constitutes an addition to the transmissions of those we mentioned. Ibn Jurayj is trustworthy, and it is impermissible to reject his unique addition, which he solely transmitted.

وَأَمَّا الْأَخْبَارُ الثَّابِتَةُ الَّتِي ذَكَرْنَا قَبْلُ وَالْآيَةُ الْمَذْكُورَةُ، فَإِنَّ كُلَّ ذَلِكَ حَقٌّ، لَكِنْ لَمَّا جَاءَتْ رِوَايَةُ الثِّقَاتِ الَّتِي ذَكَرْنَا بِأَنَّهُ لَا تُحَرِّمُ الرَّضْعَةُ وَلَا الرَّضْعَتَانِ، وَأَنَّهُ إِنَّمَا يُحَرِّمُ خَمْسُ رَضَعَاتٍ: كَانَتْ هَذِهِ الْأَخْبَارُ زَائِدَةً عَلَى مَا فِي تِلْكَ الْآيَةِ، وَفِي تِلْكَ الْأَخْبَارِ، وَكَانَتْ رِوَايَةُ ابْنِ جُرَيْجٍ فِي حَدِيثِ أَبِي حُذَيْفَةَ " أَرْضِعِيهِ خَمْسَ رَضَعَاتٍ، هِيَ زَائِدَةً عَلَى رِوَايَةِ مَنْ ذَكَرْنَا، وَابْنُ جُرَيْجٍ ثِقَةٌ لَا يَجُوزُ تَرْكُ زِيَادَتِهِ الَّتِي انْفَرَدَ بِهَا.

L36259 The dissenters against us have done similar things—in contexts where it is obligatory and where it is not—such as their abandoning the Qur’an’s

generality in the cutting off of the thief due to an invalid narration concerning ten dirhams and a sound narration concerning a quarter of a dinar.

وَقَدْ فَعَلَ الْمُخَالِفُونَ لَنَا مِثْلَ هَذَا حَيْثُ يَجِبُ أَنْ يُفْعَلَ، وَحَيْثُ لَا يَجِبُ أَنْ يُفْعَلَ -: كَتَرْكِهِمْ عُمُومَ الْقُرْآنِ فِي قَطْعِ السَّارِقِ لِرِوَايَةٍ فَاسِدَةٍ فِي الْعَشَرَةِ الدَّرَاهِمِ وَلِرِوَايَةٍ صَالِحَةٍ فِي رُبُعِ الدِّينَارِ.

L36260 And among the additions of the Malikis is rubbing the body during the ritual bath based on the Quran without explicit textual evidence, and among the additions of the Hanafis is performing ablution with nabīdh (fermented date drink), and due to nosebleeds and vomiting, based on narrations of the utmost weakness.

وَكَزِيَادَةِ الْمَالِكِيِّينَ التَّدَلُّكَ فِي الْغُسْلِ عَلَى مَا فِي الْقُرْآنِ لِغَيْرِ نَصٍّ، وَكَزِيَادَةِ الْحَنَفِيِّينَ الْوُضُوءَ بِالنَّبِيذِ، وَمِنْ الرُّعَافِ، وَالْقَيْءِ لِرِوَايَاتٍ فِي غَايَةِ الْفَسَادِ.

L36261 Abandoning the addition narrated by the just narrator constitutes an invalid error, for it is an authentic narration from the Messenger of Allah—peace and blessings be upon him and his household. Thus, whoever contradicts it has contradicted his command—peace and blessings be upon him and his household—and this is impermissible.

وَتَرْكُ الزِّيَادَةِ الَّتِي يَرْوِيهَا الْعَدْلُ خَطَأٌ لَا تَجُوزُ، لِأَنَّهَا رِوَايَةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - ثَابِتَةٌ فَمَنْ خَالَفَهَا فَقَدْ خَالَفَ أَمْرَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَهَذَا لَا يَجُوزُ.

L36262 They objected by citing the reports specifying five sucklings as prohibition-establishing, as we narrated from Ṭāwus, who said: For the Prophet's wives—may God bless him and his family and grant him peace—sucklings established prohibition, while for all other women, there were a specified number of sucklings. This was later discontinued.

وَاعْتَرَضُوا بِالْآثَارِ الَّتِي جَاءَتْ بِخَمْسِ رَضَعَاتٍ مُحَرِّمَاتٍ بِمَا رُوِّينَاهُ عَنْ طَاوُسٍ أَنَّهُ قَالَ: كَانَ لِأَزْوَاجِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَضَاعَاتٌ مُحَرِّمَاتٌ، وَلِسَائِرِ النِّسَاءِ رَضَاعَاتٍ مَعْلُومَاتٍ، ثُمَّ تُرِكَ ذَلِكَ بَعْدُ.

L36263 And that he was asked about the statement of those who say: "Breastfeeding does not establish prohibition with less than seven feedings," then he revised it to five. Tawus said: "That had been the case, but afterward a matter arose that brought the prohibition - a single instance suffices to establish prohibition."

وَأَنَّهُ سُئِلَ عَنْ قَوْلِ مَنْ يَقُولُ: لَا يُحَرِّمُ مِنْ الرَّضَاعِ دُونَ سَبْعِ رَضَعَاتٍ ثُمَّ صَارَ إلَى خَمْسٍ - وَقَالَ طَاوُسٌ: قَدْ كَانَ ذَلِكَ فَحَدَثَ بَعْدَ ذَلِكَ أَمْرٌ جَاءَ بِالتَّحْرِيمِ الْمَرَّةُ الْوَاحِدَةُ تُحَرِّمُ.

L36264 Abu Muhammad said: This is the statement of Tawus, who did not attribute it to a Companion, much less the Messenger of Allah (peace be upon him and his family). Such a statement does not constitute a proof, nor is it permissible to definitively affirm abrogation based on the conjecture of a Follower.

قَالَ أَبُو مُحَمَّدٍ: هَذَا قَوْلُ طَاوُسٍ لَمْ يُسْنِدْهُ إلَى صَاحِبٍ فَضْلًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَمِثْلُ هَذَا لَا تَقُومُ بِهِ حُجَّةٌ، وَلَا يَحِلُّ الْقَطْعُ بِالنَّسْخِ بِظَنِّ تَابِعِيٍّ.

L36265 They also said: Is the narrator's statement - "He died (peace be upon him) while it was among what was recited from the Quran?" - a reprehensible

statement and a crime against the Quran? Is it impermissible for anyone to permit the omission of anything from the Quran after the death of Allah's Messenger (peace be upon him and his family)?

وَقَالُوا أَيْضًا: قَوْلُ الرَّاوِي: فَمَاتَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَهُوَ مِمَّا يُقْرَأُ مِنْ الْقُرْآنِ؟ قَوْلٌ مُنْكَرٌ، وَجُرْمٌ فِي الْقُرْآنِ، وَلَا يَحِلُّ أَنْ يُجَوِّزَ أَحَدٌ سُقُوطَ شَيْءٍ مِنْ الْقُرْآنِ بَعْدَ مَوْتِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ .

L36266–36268 So we said: It is not as you assumed. Rather, the meaning of ʿAbdullāh ibn Abī Bakr's statement in his narration concerns what you mentioned. The Prophet (peace and blessings be upon him) died while there remained variant readings involving prepositions recited alongside the Quran—where some particles were substituted for others—and Quranic verses that were no longer written in the codices though their rulings remained valid, such as the stoning verse in its entirety. Thus their aforementioned objection became invalid.

فَقُلْنَا: لَيْسَ كَمَا ظَنَنْتُمْ إنَّمَا مَعْنَى قَوْلِ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ فِي رِوَايَتِهِ لِمَا ذَكَرْتُمْ، ثُمَّ - إنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَاتَ وَهُوَ مِمَّا يُقْرَأُ مَعَ الْقُرْآنِ بِحُرُوفِ الْجَرِّ يُبْدَلُ بَعْضُهَا مِنْ بَعْضٍ، وَمِمَّا يُقْرَأُ مِنْ الْقُرْآنِ الَّذِي بَطَلَ أَنْ يُكْتَبَ فِي الْمَصَاحِفِ، وَبَقِيَ حُكْمُهُ، كَآيَةِ الرَّجْمِ سَوَاءً سَوَاءً - فَبَطَلَ اعْتِرَاضُهُمْ الْمَذْكُورُ.

L36269 They objected to the authentic report stating "A single suckle, two suckles, a single breastfeed, or two breastfeeds do not establish prohibition" by claiming it is a report with an inconsistent chain - sometimes narrated from 'Ā'ishah and sometimes from al-Zubayr?

وَاعْتَرَضُوا عَلَى الْخَبَرِ الثَّابِتِ الَّذِي فِيهِ «لَا تُحَرِّمُ الْمَصَّةُ وَلَا الْمَصَّتَانِ وَلَا الرَّضْعَةُ وَلَا الرَّضْعَتَانِ» بِأَنْ قَالُوا: هُوَ خَبَرٌ مُضْطَرِبٌ فِي سَنَدِهِ، فَمَرَّةً عَنْ عَائِشَةَ، وَمَرَّةً عَنْ الزُّبَيْرِ؟

L36270 So we said: Then what was it? This demonstrates the strength of the report that it is narrated through multiple chains of transmission. None objects to this in the narrations except one who is ignorant of what is required in the report of an established transmission, for it is an objection without any evidence for its validity at all; it is merely an invalid claim.

فَقُلْنَا: فَكَانَ مَاذَا؟ هَذَا قُوَّةٌ لِلْخَبَرِ أَنْ يُرْوَى مِنْ طُرُقٍ، وَمَا يَعْتَرِضُ بِهَذَا فِي الْآثَارِ إلَّا جَاهِلٌ بِمَا يَجِبُ فِي قَوْلِ النَّقْلِ الثَّابِتِ؛ لِأَنَّهُ اعْتِرَاضٌ لَا دَلِيلَ عَلَى صِحَّتِهِ أَصْلًا، إنَّمَا هُوَ دَعْوَى فَاسِدَةٌ.

L36271 What is utterly astonishing is that they criticize the authentically established narrations for being transmitted once from one companion and another time from another, yet the Ḥanafīs do not reflect on their acceptance of the ḥadīth of Ayman concerning the amputation of the thief's hand—a ḥadīth that is rejected and exhibits the most severe inconsistency.

وَالْعَجَبُ كُلُّهُ أَنَّهُمْ يَعِيبُونَ الْأَخْبَارَ الثَّابِتَةَ بِنَقْلِهَا مَرَّةً عَنْ صَاحِبٍ، وَمَرَّةً عَنْ آخَرَ، ثُمَّ لَا يُفَكِّرُ الْحَنَفِيُّونَ فِي أَخْذِهِمْ بِحَدِيثِ أَيْمَنَ فِيمَا تُقْطَعُ فِيهِ يَدُ السَّارِقِ، وَهُوَ حَدِيثٌ سَاقِطٌ مُضْطَرِبٌ فِيهِ أَشَدُّ الِاضْطِرَابِ.

L36272 The Malikis do not consider using the Hadith of the quarter-dinar in their analysis of that matter.

وَلَا يُفَكِّرُ الْمَالِكِيُّونَ فِي أَخْذِهِمْ فِي ذَلِكَ بِحَدِيثِ رُبُعِ الدِّينَارِ.

L36273 And concerning Zakāt al-Fiṭr through Abū Saʿīd's narration - both are more

inconsistent than the narration about two breastfeedings - yet they adhere to what was feasible for them.

وَفِي الصَّدَقَةِ فِي الْفِطْرِ بِخَبَرِ أَبِي سَعِيدٍ، وَكِلَاهُمَا أَشَدُّ اضْطِرَابًا مِنْ خَبَرِ الرَّضْعَتَيْنِ، وَلَكِنَّهُمْ يَتَعَلَّقُونَ بِمَا أَمْكَنَهُمْ.

L36274 They said: Urwah ibn al-Zubayr is one of the narrators of that report, and it has been narrated from him that a small or large amount of breastfeeding does not create a prohibition? We responded: What does that signify? The authority lies in his narration, not his opinion. We dedicated a separate section in our book known as *al-Iʿrāb* to the conflict between the two groups regarding this matter, their adoption of the narrator's report, and their dismissal of his opinion when it contradicts his narration.

وَقَالُوا: عُرْوَةُ بْنُ الزُّبَيْرِ أَحَدُ رُوَاةِ ذَلِكَ الْخَبَرِ، وَقَدْ رُوِيَ عَنْهُ: أَنَّ قَلِيلَ الرَّضَاعِ وَكَثِيرَهُ لَا يُحَرِّمُ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ إِنَّمَا الْحُجَّةُ فِي رِوَايَتِهِ لَا رَأْيِهِ، وَقَدْ أَفْرَدْنَا فِي كِتَابِنَا الْمَعْرُوفِ بِـ " الْإِعْرَابِ " اضْطِرَابَ الطَّائِفَتَيْنِ فِي هَذَا الْمَعْنَى، وَأَخْذَهُمْ بِرِوَايَةِ الرَّاوِي وَتَرْكَهُمْ لِرَأْيِهِ فِي خِلَافِهِ لِمَا رَوَاهُ.

L36275 They also mentioned objections—of utmost invalidity and shallowness—whose collapse is not hidden from a person of understanding, their foundation being what we have mentioned—and with Allah, the Exalted, lies all success.

وَذَكَرُوا أَيْضًا - اعْتِرَاضَاتٍ فِي غَايَةِ الْفَسَادِ وَالْغَثَاثَةِ، لَا يَخْفَى سُقُوطُهَا عَلَى ذِي فَهْمٍ، عُمْدَتُهَا مَا ذَكَرْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ -.

L36276 It became obligatory to adhere to these narrations. Since the Prophet—peace and blessings be upon him—stated, "Neither one full suckling, two full sucklings, one light suckling, nor two light sucklings prohibit," we understood that light suckling differs from full suckling. Therefore, we ruled: A single full suckling occurs when the infant completely drains both breasts in one continuous feeding. Light suckling does not prohibit unless we confirm it has satisfied a measure of hunger and it is not certain that it reaches the intestines. A negligible amount that neither satisfies a measure of hunger nor is confirmed to reach the intestines does not prohibit anything at all—and success is from Allah, the Exalted.

فَوَجَبَ الْأَخْذُ بِهَذِهِ الْأَخْبَارِ، وَلَمَّا كَانَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَدْ أَخْبَرَ أَنَّهُ «لَا تُحَرِّمُ الرَّضْعَةُ وَلَا الرَّضْعَتَانِ وَلَا الْمَصَّةُ وَلَا الْمَصَّتَانِ» عَلِمْنَا أَنَّ الْمَصَّةَ غَيْرُ الرَّضْعَةِ، فَمِنْ ذَلِكَ قُلْنَا: إِنَّ اسْتِنْفَادَ الرَّاضِعِ مَا فِي الثَّدْيَيْنِ مُتَّصِلًا رَضْعَةٌ وَاحِدَةٌ، وَأَنَّ الْمَصَّةَ لَا تُحَرِّمُ، إِلَّا إِذَا عَلِمْنَا أَنَّهَا قَدْ سَدَّتْ مَسَدًّا مِنْ الْجُوعِ وَلَا يُوقَنُ بِوُصُولِهَا إِلَى الْأَمْعَاءِ، وَأَنَّ الْيَسِيرَ مِنْ ذَلِكَ الَّذِي لَا يَسُدُّ مَسَدًّا مِنْ الْجُوعِ، وَلَا يُوقَنُ بِوُصُولِهِ إِلَى الْأَمْعَاءِ لَا يُحَرِّمُ شَيْئًا أَصْلًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

An issue: Breastfeeding an adult is forbidden.

[مَسْأَلَةٌ رَضَاعُ الْكَبِيرِ مُحَرِّمٌ]

L36277–36278

L36279 Issue: The breastfeeding of an adult person is prohibited—even if he is an elderly man, it prohibits—just as the breastfeeding of a minor prohibits. Is there no distinction?

مَسْأَلَةٌ: وَرَضَاعُ الْكَبِيرِ مُحَرِّمٌ - وَلَوْ أَنَّهُ شَيْخٌ يُحَرِّمُ - كَمَا يُحَرِّمُ رَضَاعُ الصَّغِيرِ وَلَا فَرْقَ؟

L36280 This is an issue regarding which people have differed. One group held that nursing during infancy establishes prohibition through kinship, while

nursing during adulthood does not establish prohibition—without defining specific limits for this. As transmitted through Malik's chain from Ibn Shihab via Urwah ibn al-Zubayr: the Prophet's wives (peace and blessings be upon him and his family)—all except Aisha alone—considered the nursing of Salim, the freed slave of Abu Hudhayfah, to apply exclusively to him. This indicates their view that only nursing during infancy establishes prohibition, not nursing during adulthood, though no defined limit was transmitted from them. Through Malik's chain from Abdullah ibn Dinar: when a man asked Ibn Umar about nursing an adult, he replied: "Umar ibn al-Khattab said: 'Nursing is only the nursing of a small child.'" Through Malik's chain from Nafi' via Ibn Umar: "No nursing kinship exists except what occurs during infancy, and no nursing kinship applies to an adult." Another group maintained that prohibition through nursing only applies if it occurs in the cradle. As transmitted through Abu Dawud's chain: Ahmad ibn Salih narrated to me from Anbasah from Yunus ibn Yazid from Ibn Shihab via Urwah ibn al-Zubayr: "The Prophet's wives (peace and blessings be upon him) refused to permit anyone's entry to their quarters through nursing kinship unless the nursing occurred in the cradle."

وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ -: فَطَائِفَةٌ قَالَتْ: يُحَرِّمُ مِنْ الرَّضَاعِ فِي الصِّغَرِ وَلَا يُحَرِّمُ فِي الْكِبْرِ، وَلَمْ يَحُدُّوا حَدًّا فِي ذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ أَنَّ أَزْوَاجَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَاشَ عَائِشَةَ وَحْدَهَا كُنَّ يَرَيْنَ رَضَاعَ سَالِمٍ مَوْلَى أَبِي حُذَيْفَةَ خَاصَّةً لَهُ فَدَلَّ ذَلِكَ عَلَى أَنَّهُنَّ كُنَّ يَرَيْنَ: لَا يُحَرِّمُ إلَّا رَضَاعُ الصَّغِيرِ، لَا رَضَاعُ الْكَبِيرِ، دُونَ أَنْ يَرِدَ عَنْهُنَّ فِي ذَلِكَ حَدٌّ. وَمِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ أَنَّهُ سَمِعَ ابْنَ عُمَرَ - وَقَدْ سَأَلَهُ رَجُلٌ عَنْ رَضَاعِ الْكَبِيرِ - فَقَالَ لَهُ ابْنُ عُمَرَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: إنَّمَا الرَّضَاعَةُ رَضَاعَةُ الصَّغِيرِ. وَمِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ يَقُولُ: لَا رَضَاعَةَ إلَّا مَا أُرْضِعَ فِي الصِّغَرِ، وَلَا رَضَاعَةَ لِكَبِيرٍ. وَقَالَتْ طَائِفَةٌ: لَا يَلْزَمُ مِنْ الرَّضَاعِ إلَّا مَا كَانَ فِي الْمَهْدِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد حَدَّثَنِي أَحْمَدُ بْنُ صَالِحٍ حَدَّثَنِي عَنْبَسَةُ حَدَّثَنِي يُونُسُ - هُوَ ابْنُ يَزِيدَ - عَنْ ابْنِ شِهَابٍ حَدَّثَنِي عُرْوَةُ بْنُ الزُّبَيْرِ أَبَى أَزْوَاجُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنْ يَدْخُلَ عَلَيْهِنَّ بِالرَّضَاعَةِ أَحَدٌ حَتَّى رَضَعَ فِي الْمَهْدِ.

L36281–36282 From the chain of ʻAbd al-Razzāq, from Sufyān ibn ʻUyaynah, from Yaḥyā ibn Saʻīd al-Anṣārī, from Saʻīd ibn al-Musayyib, who said: "No breastfeeding is recognized [as valid] except what occurs during infancy."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: لَا رَضَاعَ إلَّا مَا كَانَ فِي الْمَهْدِ.

L36283 A group has stated: Only suckling that occurs before weaning causes prohibition, while after weaning it does not. As narrated through the chain of Ḥammād ibn Salamah from Hishām ibn ʿUrwah from Yaḥyā ibn ʿAbd al-Raḥmān ibn Ḥāṭib: Umm Salamah, the Mother of the Believers (may Allah be pleased with her), was asked: Does suckling after weaning cause prohibition? She replied: There is no suckling after weaning. Through the chain of ʿAbd al-Raḥmān ibn Mahdī from Sufyān al-Thawrī from Abu Ḥuṣayn from Abu ʿAṭiyyah al-Wādiʿī: A man sucked from his wife's breast, and milk entered his

وَقَالَتْ طَائِفَةٌ: لَا يُحَرِّمُ مِنْ الرَّضَاعِ إلَّا مَا كَانَ قَبْلَ الْفِطَامِ، وَأَمَّا بَعْدَ الْفِطَامِ فَلَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ بْنِ حَاطِبٍ: أَنَّ أُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - سُئِلَتْ: هَلْ يُحَرِّمُ الرَّضَاعُ بَعْدَ الْفِطَامِ؟ قَالَتْ: لَا رَضَاعَ بَعْدَ فِطَامٍ. وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ

throat. He asked Abū Mūsā al-Ashʿarī about this, and Abū Mūsā said: Your wife has been forbidden to you. He then asked Ibn Masʿūd about it. Abu ʿAṭiyyah said—while we were present with him: Ibn Masʿūd stood up, and we rose with him until he reached Abū Mūsā al-Ashʿarī. He said: Do you regard this as suckling? Suckling is only what nourishes flesh and bone. Abū Mūsā replied: Do not ask me about anything so long as this scholar remains among you. Thus, it becomes clear here that prohibition applies only during the period when the infant is sustained by milk through suckling.

الثَّوْرِيِّ عَنْ أَبِي حُصَيْنٍ عَنْ أَبِي عَطِيَّةَ الْوَادِعِيِّ أَنَّ رَجُلًا مَصَّ مِنْ ثَدْيِ امْرَأَتِهِ فَدَخَلَ اللَّبَنُ فِي حَلْقِهِ فَسَأَلَ أَبَا مُوسَى الْأَشْعَرِيَّ عَنْ ذَلِكَ؟ فَقَالَ لَهُ أَبُو مُوسَى: حُرِّمَتْ عَلَيْكَ امْرَأَتُكَ، ثُمَّ سَأَلَ ابْنَ مَسْعُودٍ عَنْ ذَلِكَ، قَالَ أَبُو عَطِيَّةَ - وَنَحْنُ عِنْدَهُ -: فَقَامَ ابْنُ مَسْعُودٍ وَقُمْنَا مَعَهُ حَتَّى أَتَى أَبَا مُوسَى الْأَشْعَرِيَّ فَقَالَ: أَرَضِيعًا تَرَى هَذَا؟ إِنَّمَا الرَّضَاعُ مَا أَنْبَتَ اللَّحْمَ وَالْعَظْمَ؟ فَقَالَ أَبُو مُوسَى: لَا تَسْأَلُونِي عَنْ شَيْءٍ مَا دَامَ هَذَا الْحَبْرُ بَيْنَ أَظْهُرِكُمْ. فَتَبَيَّنَ هَاهُنَا أَنَّهُ إِنَّمَا يُحَرِّمُ مُدَّةَ تَغَذِّي الرَّضِيعِ بِاللَّبَنِ.

L36284–36286 From the path of Abd al-Razzaq, from Sufyan al-Thawri, from Juwaybir, from al-Dahhak, from al-Nazzal—he is Ibn Sabrah—from Ali ibn Abi Talib, who said: "There is no nursing after the weaning period." From the path of Abd al-Razzaq, from Sufyan al-Thawri, from Amr ibn Dinar, from someone who heard [a report] from Ibn Abbas, who said: "There is no nursing after the act of weaning." From the path of Abd al-Razzaq, from Ma'mar, from al-Hasan, al-Zuhri, and Qatadah, who said: "There is no nursing after the weaning period." Ma'mar said: "I was informed by someone who heard Ikrimah say that, and he said: 'Nursing after the act of weaning is like water that is drunk.'" Al-Awzaʿi also holds this view and said: "If a child is weaned at one year old and the weaning was sustained, then he nurses again..." This second breastfeeding did not establish any legal prohibition during the two years. He stated: If breastfeeding continues and the child is not weaned before the completion of the two years, then whatever occurred within this period establishes prohibition, while whatever occurs after the two years does not establish prohibition—even if breastfeeding persists. Another scholarly group maintained: Only breastfeeding that nourishes the intestines establishes prohibition—as transmitted through the chain of Saʿīd ibn Manṣūr, who said: Sufyān ibn ʿUyaynah narrated to us from Hishām ibn ʿUrwah from his father from al-Ḥajjāj ibn al-Ḥajjāj al-Aslamī from Abū Hurayrah, who said: "Breastfeeding does not establish prohibition unless it nourishes the intestines."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جُوَيْبِرٍ عَنْ الضَّحَّاكِ عَنْ النَّزَّالِ - هُوَ ابْنُ سَبْرَةَ - عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: لَا رَضَاعَ بَعْدَ الْفِصَالِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمْرِو بْنِ دِينَارٍ عَمَّنْ سَمِعَ مِنْ ابْنِ عَبَّاسٍ يَقُولُ: لَا رَضَاعَ بَعْدَ الْفِطَامِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الْحَسَنِ، وَالزُّهْرِيِّ، وَقَتَادَةَ، قَالُوا: لَا رَضَاعَ بَعْدَ الْفِصَالِ - قَالَ مَعْمَرٌ: وَأَخْبَرَنِي مَنْ سَمِعَ عِكْرِمَةَ يَقُولُ ذَلِكَ، وَيَقُولُ: الرَّضَاعُ بَعْدَ الْفِطَامِ مِثْلُ الْمَاءِ يَشْرَبُهُ. وَبِهِ يَقُولُ الْأَوْزَاعِيُّ وَقَالَ: إِنْ فُطِمَ وَلَهُ عَامٌ وَاحِدٌ وَاسْتَمَرَّ فِطَامُهُ ثُمَّ رَضَعَ فِي الْحَوْلَيْنِ لَمْ يُحَرِّمْ هَذَا الرَّضَاعُ الثَّانِي شَيْئًا، وَقَالَ: فَإِنْ تَمَادَى رَضَاعُهُ وَلَمْ يُفْطَمْ قَبْلَ الْحَوْلَيْنِ، فَإِنَّهُ مَا كَانَ فِي الْحَوْلَيْنِ، فَإِنَّهُ يُحَرِّمُ، وَمَا كَانَ بَعْدَهُمَا، فَإِنَّهُ لَا يُحَرِّمُ وَإِنْ تَمَادَى الرَّضَاعُ. وَقَالَتْ طَائِفَةٌ: لَا يُحَرِّمُ مِنْ الرَّضَاعِ إِلَّا مَا فَتَقَ الْأَمْعَاءَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ الْحَجَّاجِ بْنِ الْحَجَّاجِ الْأَسْلَمِيِّ عَنْ أَبِي هُرَيْرَةَ قَالَ: لَا رَضَاعَ إِلَى مَا فَتَقَ الْأَمْعَاءَ.

L36287 A group stated that nothing causes prohibition from breastfeeding except

what occurs within three years, and as for what is suckled after three years, it does not cause prohibition – and this is the opinion of Zufar ibn al-Hudhayl.

وَقَالَتْ طَائِفَةٌ: لَا يُحَرِّمُ مِنْ الرَّضَاعِ إِلَّا مَا كَانَ فِي ثَلَاثَةِ أَعْوَامٍ، وَأَمَّا مَا رُضِعَ بَعْدَ الثَّلَاثَةِ الْأَعْوَامِ فَلَا يُحَرِّمُ - وَهَذَا قَوْلُ زُفَرَ بْنِ الْهُذَيْلِ.

L36288 A group held that no prohibition arises from breastfeeding except for what occurs within two years and six months, for whatever occurs after that period does not establish prohibition. This is the opinion of Abū Ḥanīfah.

وَقَالَتْ طَائِفَةٌ: لَا يُحَرِّمُ مِنْ الرَّضَاعِ إِلَى مَا كَانَ فِي عَامَيْنِ وَسِتَّةِ أَشْهُرٍ فَمَا كَانَ بَعْدَ ذَلِكَ فَإِنَّهُ لَا يُحَرِّمُ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ.

L36289 A group said: Breastfeeding only causes prohibition if it occurs within two years and two months, and whatever occurs after that does not cause prohibition, and this is the opinion of Mālik.

وَقَالَتْ طَائِفَةٌ: لَا يُحَرِّمُ مِنْ الرَّضَاعِ إِلَّا مَا كَانَ فِي عَامَيْنِ وَشَهْرَيْنِ، فَمَا كَانَ بَعْدَ ذَلِكَ لَمْ يُحَرِّمْ - وَهَذَا قَوْلُ مَالِكٍ.

L36290 These three statements—those of Abu Hanifah, Zufar, and Malik—: we do not know of any scholar who espoused any of them prior to the aforementioned, nor alongside them, save those who blindly emulated them in adherence to their desires. And we seek refuge in Allah from trials and tribulations.

وَهَذِهِ الْأَقْوَالُ الثَّلَاثَةُ -: قَوْلُ أَبِي حَنِيفَةَ، وَزُفَرَ، وَمَالِكٍ: مَا نَعْلَمُ أَحَدًا مِنْ أَهْلِ الْعِلْمِ قَالَ بِشَيْءٍ مِنْهَا قَبْلَ الْمَذْكُورِينَ، وَلَا مَعَهُمْ، إِلَّا مَنْ قَلَّدَهُمْ اتِّبَاعًا لِهَوَاهُمْ - وَنَعُوذُ بِاَللَّهِ مِنْ الْفِتْنَةِ.

L36291 A group has stated: No breastfeeding establishes marital prohibition except that which occurs within two years, and breastfeeding after them does not create impediment—as we have been narrated through the narration chain of al-Ḥajjāj ibn al-Minhāl: from Abū ʿAwānah, from al-Mughīrah ibn Miqsam, from Ibrāhīm al-Nakhaʿī, from Ibn Masʿūd who said: "No breastfeeding establishes prohibition after two years." And through the narration chain of Abū ʿUbayd: from Sufyān ibn ʿUyaynah, from ʿAmr ibn Dīnār, from Ibn ʿAbbās who said: "No breastfeeding establishes prohibition except within two years."

وَقَالَتْ طَائِفَةٌ: لَا يُحَرِّمُ مِنْ الرَّضَاعِ إِلَّا مَا كَانَ فِي الْحَوْلَيْنِ، وَأَمَّا الرَّضَاعُ بَعْدَهُمَا فَلَا يُحَرِّمُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا أَبُو عَوَانَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ ابْنِ مَسْعُودٍ قَالَ: لَا رَضَاعَ بَعْدَ حَوْلَيْنِ. وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ: أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا رَضَاعَ إِلَّا فِي الْحَوْلَيْنِ.

L36292–36293 And through the chain of Mālik from Ibrāhīm ibn ʻUqbah: He asked Saʻīd ibn al-Musayyib and ʻUrwah ibn al-Zubayr about breastfeeding. They both said: "Whatever occurs within the two years – even a single drop – establishes a prohibition. What occurs after the two years is merely food consumed [with no legal implications]."

وَمِنْ طَرِيقِ مَالِكٍ عَنْ إِبْرَاهِيمَ بْنِ عُقْبَةَ أَنَّهُ سَأَلَ سَعِيدَ بْنَ الْمُسَيِّبِ، وَعُرْوَةَ بْنَ الزُّبَيْرِ عَنْ الرَّضَاعَةِ؟ فَقَالَا جَمِيعًا: كُلُّ مَا كَانَ فِي الْحَوْلَيْنِ وَإِنْ كَانَتْ قَطْرَةً وَاحِدَةً فَهِيَ تُحَرِّمُ، وَمَا كَانَ بَعْدَ الْحَوْلَيْنِ فَإِنَّمَا هُوَ طَعَامٌ يَأْكُلُهُ. وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ قَالَ: سَمِعْت الشَّعْبِيَّ

Through the chain of Abū ʻUbayd: From ʻAbd al-Raḥmān ibn Mahdī from Sufyān al-Thawrī from Abū Isḥāq al-Shaybānī, who said: "I heard al-Shaʻbī

say: 'Any substance introduced via the nose, force-feeding via pouring, or breastfeeding within the two years establishes a prohibition. What occurs after the two years does not establish any prohibition.'"

This is the position of Ibn Shubrumah, Sufyān al-Thawrī, al-Shāfiʿī, Abū Yūsuf, Muḥammad ibn al-Ḥasan, Abū Sulaymān, and our school's scholars.

L36294 Ibn Wahb narrated it from Malik, then he returned to what we mentioned before because it is the transmitted report from him in his *Muwatta'*, which was read to him until his death.

L36295 Abu Muhammad said: A group held that breastfeeding an older child or a minor creates a prohibition [of marriage], as we previously cited on the authority of Abu Musa, even though he later retracted this view.

L36296–36298 From the narration of Abd al-Razzaq: I am Ibn Jurayj. Abdul Karim informed me that Salim ibn Abi al-Jaʿd, the client of al-Ashjaʿi, reported his father's account of asking Ali ibn Abi Talib: "I wished to marry a woman who gave me her milk to drink as an adult for medicinal treatment." Ali replied: "Do not marry her," and forbade him from marrying her.

From the narration of Malik: "From Ibn Shihab that he was asked about adult suckling. He said: Urwah ibn al-Zubayr informed me of the incident where the Messenger of Allah—peace and blessings be upon him—commanded Sahlah bint Suhayl to breastfeed Salim, the client of Abu Hudhayfah, five times—while he was an adult—so she did. Thus, she regarded him as her son. Urwah said: Aisha, the Mother of the Believers, adopted this practice for any man she wished to allow entry into her presence. She would instruct her sister-in-law Umm Kulthum and her brother's daughters to breastfeed any man she desired to permit entry."

From the narration of Abd al-Razzaq: I am Ibn Jurayj. I heard Ata ibn Abi Rabah when a man asked him, saying: A woman gave me her breast milk to drink after I had become a grown man. Can I marry her? ʿAṭāʾ said: "No." Ibn Jurayj said: I asked him: "Is that your opinion?" He said: "Yes. ʿĀʾisha used to order her brother's daughters to do that," and that is the opinion of al-Layth ibn Saʿd. Abū Muḥammad said: As for the opinion of Abū Ḥanīfa,

يَقُولُ: مَا كَانَ مِنْ سَعُوطٍ، أَوْ وَجُورٍ أَوْ رَضَاعٍ فِي الْحَوْلَيْنِ فَهُوَ يُحَرِّمُ، وَمَا كَانَ بَعْدَ الْحَوْلَيْنِ لَمْ يُحَرِّمْ شَيْئًا. وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَالشَّافِعِيِّ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

وَرَوَاهُ ابْنُ وَهْبٍ عَنْ مَالِكٍ ثُمَّ رَجَعَ إِلَى الَّذِي ذَكَرْنَا قَبْلُ؛ لِأَنَّهُ هُوَ الْمَأْثُورُ عَنْهُ فِي مَوْطِئِهِ الَّذِي قُرِئَ عَلَيْهِ إِلَى أَنْ مَاتَ.

قَالَ أَبُو مُحَمَّد: وَقَالَتْ طَائِفَةٌ إرْضَاعُ الْكَبِيرِ وَالصَّغِيرِ يُحَرِّمُ كَمَا ذَكَرْنَا قَبْلُ عَنْ أَبِي مُوسَى وَإِنْ كَانَ قَدْ رَجَعَ عَنْهُ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْكَرِيمِ: أَنَّ سَالِمَ بْنَ أَبِي الْجَعْدِ مَوْلَى الْأَشْجَعِيِّ أَخْبَرَهُ أَنَّ أَبَاهُ أَخْبَرَهُ أَنَّهُ سَأَلَ عَلِيَّ بْنَ أَبِي طَالِبٍ فَقَالَ: إنِّي أَرَدْت أَنْ أَتَزَوَّجَ امْرَأَةً وَقَدْ سَقَتْنِي مِنْ لَبَنِهَا وَأَنَا كَبِيرٌ تَدَاوَيْت بِهِ؟ فَقَالَ لَهُ عَلِيٌّ: لَا تَنْكِحُهَا وَنَهَاهُ عَنْهَا.

وَمِنْ طَرِيقِ مَالِكٍ «عَنْ ابْنِ شِهَابٍ أَنَّهُ سُئِلَ عَنْ رَضَاعِ الْكَبِيرِ؟ فَقَالَ: أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ بِحَدِيثِ أَمْرِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَهْلَةَ بِنْتَ سُهَيْلٍ بِأَنْ تُرْضِعَ سَالِمًا مَوْلَى أَبِي حُذَيْفَةَ خَمْسَ رَضَعَاتٍ - وَهُوَ كَبِيرٌ - فَفَعَلَتْ، فَكَانَتْ تَرَاهُ ابْنًا لَهَا، قَالَ عُرْوَةُ: فَأَخَذَتْ بِذَلِكَ عَائِشَةُ أُمُّ الْمُؤْمِنِينَ فِيمَنْ كَانَتْ تُحِبُّ أَنْ يَدْخُلَ عَلَيْهَا مِنْ الرِّجَالِ فَكَانَتْ تَأْمُرُ أُخْتَهَا أُمَّ كُلْثُومٍ، وَبَنَاتِ أَخِيهَا يُرْضِعْنَ مَنْ أَحَبَّتْ أَنْ يَدْخُلَ عَلَيْهَا مِنْ الرِّجَالِ.» وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ قَالَ: سَمِعْت عَطَاءَ بْنَ أَبِي رَبَاحٍ وَسَأَلَهُ رَجُلٌ فَقَالَ: سَقَتْنِي امْرَأَةٌ مِنْ لَبَنِهَا بَعْدَ مَا كُنْت رَجُلًا كَبِيرًا أَفَأَنْكِحُهَا؟ قَالَ عَطَاءٌ: لَا، قَالَ ابْنُ جُرَيْجٍ فَقُلْتُ لَهُ: وَذَلِكَ رَأْيُك؟ قَالَ: نَعَمْ، كَانَتْ عَائِشَةُ تَأْمُرُ بِذَلِكَ

Zufar, and Mālik, the invalidity of their rulings is undeniable - except by those who claim in broad daylight “This is night!” through willful denial and support of falsehood.

بَنَاتِ أَخِيهَا - وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ. قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَزُفَرَ، وَمَالِكٍ، فَلَا خَفَاءَ بِفَسَادِهَا، إِلَّا عَلَى قَوْلِ مَنْ يَقُولُ فِي النَّهَارِ: إِنَّهُ لَيْلٌ، مُكَابَرَةً وَنَصْرًا لِلْبَاطِلِ.

L36299 Among the marvels of the world is the statement of some misguided individuals: When Allah the Exalted said, *“Mothers shall breastfeed their children for two complete years”* [Al-Baqarah: 233], they claim this implies there are two incomplete years here, and that He indicated their count by the sun.[36]

وَمِنْ عَجَائِبِ الدُّنْيَا قَوْلُ بَعْضِ الْمَفْتُونِينَ: لَمَّا قَالَ اللَّهُ تَعَالَى: {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ} [البقرة: ٢٣٣] دَلَّ ذَلِكَ عَلَى أَنَّ هَاهُنَا حَوْلَيْنِ نَاقِصَيْنِ، وَأَشَارَ إِلَى عَدَدِهَا بِالشَّمْسِ.

L36300 Abu Muhammad said: This statement combines defiance of Allah, the Mighty and Majestic, and rejection of observable reality. As for defiance of Allah, the Mighty and Majestic, He says: “Indeed, the number of months ordained by Allah is twelve months in the Book of Allah [as decreed] from the day He created the heavens and the earth. Among these are four sacred. That is the upright system” [al-Tawbah 9:36].[37]

قَالَ أَبُو مُحَمَّدٍ: فَجَمَعَ هَذَا الْقَوْلُ مُخَالَفَةَ اللَّهِ عَزَّ وَجَلَّ، وَمُكَابَرَةَ الْحِسِّ: أَمَّا مُخَالَفَةُ اللَّهِ عَزَّ وَجَلَّ فَإِنَّهُ يَقُولُ: {إِنَّ عِدَّةَ الشُّهُورِ عِنْدَ اللَّهِ اثْنَا عَشَرَ شَهْرًا فِي كِتَابِ اللَّهِ يَوْمَ خَلَقَ السَّمَاوَاتِ وَالأَرْضَ مِنْهَا أَرْبَعَةٌ حُرُمٌ ذَلِكَ الدِّينُ الْقَيِّمُ} [التوبة: ٣٦] .

L36301 He, the Exalted, has explicitly decreed that the number of months ordained by Him includes four sacred ones, and that this [ordinance] is in the Book of Allah on the day He created the heavens and the earth, and that this constitutes the upright religion. The sacred months can only exist within the Arabic lunar months. Whoever opposes this opposes the upright religion and attributes falsehood to Allah, the Exalted, by claiming that He commanded the observance of two years through non-Arabic systems.

فَنَصَّ تَعَالَى عَلَى أَنَّ عِدَّةَ الشُّهُورِ عِنْدَهُ هِيَ الَّتِي مِنْهَا أَرْبَعَةٌ حُرُمٌ، وَأَنَّهُ فِي كِتَابِ اللَّهِ يَوْمَ خَلَقَ السَّمَوَاتِ وَالْأَرْضَ، وَأَنَّ ذَلِكَ هُوَ الدِّينُ الْقَيِّمُ، وَلَا يُمْكِنُ أَنْ تَكُونَ الْأَشْهُرُ الْحُرُمُ إِلَّا فِي الْأَشْهُرِ الْعَرَبِيَّةِ الْقَمَرِيَّةِ، فَمَنْ خَالَفَ ذَلِكَ فَقَدْ خَالَفَ الدِّينَ الْقَيِّمَ، وَنَسَبَ إِلَى اللَّهِ تَعَالَى الْكَذِبَ مِنْ أَنَّهُ أَمَرَ أَنْ يُرَاعَى عَدَدَ الْحَوْلَيْنِ بِالْعَجَمِيَّةِ.

L36302 As for the defiance of manifest evidence—between the two non-Arab solar years reckoned by the sun and their determination of celestial orbits, and the two Arab lunar years reckoned by the moon, there is only a difference of twenty-two days. Any increase beyond that to complete two months—we are unaware of its origin. Issuing definitive rulings regarding prohibition and permissibility in the religion of Allah, the Almighty and Majestic, based on such grounds is unlawful.

وَأَمَّا مُكَابَرَةُ الْعِيَانِ - فَإِنَّهُ لَيْسَ بَيْنَ الْحَوْلَيْنِ الْأَعْجَمِيَّيْنِ الْمَعْدُودَيْنِ بِالشَّمْسِ وَقَطْعِهِمَا لِلْفُلْكِ وَبَيْنَ الْحَوْلَيْنِ الْعَرَبِيَّيْنِ الْمَعْدُودَيْنِ بِالْقَمَرِ إِلَّا اثْنَانِ وَعِشْرُونَ يَوْمًا، فَالزِّيَادَةُ عَلَى ذَلِكَ إِلَى تَمَامِ شَهْرَيْنِ لَا نَدْرِي مِنْ أَيْنَ أَتَتْ، وَالْقَطْعُ بِالتَّحْرِيمِ وَالتَّحْلِيلِ فِي دِينِ اللَّهِ عَزَّ وَجَلَّ بِمِثْلِ هَذَا لَا يَحِلُّ.

[36] **Qur’an references (L36299):** Qur’an 2:233 (Al-Baqarah).
[37] **Qur’an references (L36300):** Qur’an 9:36 (At-Tawbah).

L36303 As for those who define that limit as what occurs during infancy, this assertion too has no valid evidence to support it—neither from the Qur'an, the Sunnah, Consensus, Analogy, nor a weak narration—and thus, this opinion is invalidated.

وَأَمَّا مَنْ حَدَّ ذَلِكَ بِمَا كَانَ فِي الْمَهْدِ - فَكَلَامٌ أَيْضًا لَا تَقُومُ بِصِحَّتِهِ حُجَّةٌ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ إجْمَاعٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رِوَايَةٍ ضَعِيفَةٍ - فَسَقَطَ هَذَا الْقَوْلُ.

L36304 As for those who define this limit based on what pertains to minority—for minority legally extends until the attainment of puberty, since prior to that, Hudud penalties and religious obligations are not binding upon him—this constitutes a ruling not mandated by the Qur'an or Sunnah.

وَأَمَّا مَنْ حَدَّ ذَلِكَ بِمَا كَانَ فِي الصِّغَرِ - فَإِنَّ الصِّغَرَ يَتَمَادَى إلَى بُلُوغِ الْحُلُمِ، لِأَنَّهُ قَبْلَ ذَلِكَ لَا تَلْزَمُهُ الْحُدُودُ، وَلَا الْفَرَائِضُ - وَهَذَا حَدٌّ لَا يُوجِبُهُ قُرْآنٌ وَلَا سُنَّةٌ.

L36305–36306 As for those who define that period as weaning, they base their argument on the words of Allah the Exalted: {If they both decide on weaning by mutual consent and consultation, there is no blame on them} [Al-Baqarah: 233]. Abu Muhammad said: This contains no evidence for them regarding the prohibition due to breastfeeding, for this verse makes no mention of prohibition. Their mutual agreement on weaning does not constitute a prohibition—because if the child were to breastfeed after that period, the prohibition would still apply if the child breastfeeds. The verse only addresses the termination of the father's obligatory financial obligation for breastfeeding, not the child's need for breastfeeding. The prohibition arising from breastfeeding (if the child breastfeeds) does not cease merely because the child's need for breastfeeding ceases—since no Quranic verse or Sunnah has mentioned such cessation.[38]

وَأَمَّا مَنْ حَدَّ ذَلِكَ بِالْفِطَامِ - فَإِنَّهُمْ احْتَجُّوا بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {فَإِنْ أَرَادَا فِصَالا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلا جُنَاحَ عَلَيْهِمَا} [البقرة: ٢٣٣] قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ فِي التَّحْرِيمِ إذْ لَيْسَ لِلتَّحْرِيمِ فِي هَذِهِ الْآيَةِ ذِكْرٌ، وَلَا فِي تَرَاضِيهِمَا بِالْفِصَالِ تَحْرِيمٌ؛ لِأَنْ يَرْتَضِعَ الْوَلَدُ بَعْدَ ذَلِكَ، إنَّمَا فِيهَا انْقِطَاعُ النَّفَقَةِ الْوَاجِبَةِ عَلَى الْأَبِ فِي الرَّضَاعِ، وَلَيْسَ بِانْقِطَاعِ حَاجَةِ الصَّبِيِّ إلَى الرَّضَاعِ يَنْقَطِعُ التَّحْرِيمُ بِرَضَاعِهِ - إنْ رَضَعَ - إذْ لَمْ يَأْتِ بِذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ.

L36307 They cited as evidence a report we narrated through the chain of Ahmad ibn Shu'ayb: from Qutaybah ibn Sa'id, from Abu 'Awanah, from Hisham ibn 'Urwah, from Fatimah bint al-Mundhir, from Umm Salamah, the Mother of the Believers, who said: The Messenger of Allah—peace and blessings be upon him—said, "Nothing causes prohibition through breastfeeding except what nourishes the intestines from the breast, provided it occurs before weaning."[39]

وَاحْتَجُّوا بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ أَنَا أَبُو عَوَانَةَ أَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ فَاطِمَةَ بِنْتِ الْمُنْذِرِ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يُحَرِّمُ مِنْ الرَّضَاعِ إلَّا مَا فَتَقَ الْأَمْعَاءَ فِي الثَّدْيِ، وَكَانَ قَبْلَ الْفِطَامِ» .

L36308 Abu Muhammad said: This is a disconnected report because Fāṭimah bint

قَالَ أَبُو مُحَمَّد: هَذَا خَبَرٌ مُنْقَطِعٌ؛ لِأَنَّ فَاطِمَةَ بِنْتَ الْمُنْذِرِ لَمْ تَسْمَعْ مِنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ؛ لِأَنَّهَا كَانَتْ أَسَنَّ مِنْ زَوْجِهَا هِشَامٍ بِاثْنَيْ عَشَرَ عَامًا وَكَانَ مَوْلِدُ هِشَامٍ سَنَةَ

[38] **Qur'an references (L36306):** Qur'an 2:233 (Al-Baqarah).
[39] **Hadith references (L36307):** Mishkat al-Masabih 3173.

[٦٠ هـ] سِتِّينَ، فَمَوْلِدُ فَاطِمَةَ عَلَى هَذَا سَنَةَ [٤٨ هـ] ثَمَانٍ وَأَرْبَعِينَ، وَمَاتَتْ أُمُّ سَلَمَةَ سَنَةَ [٥٩ هـ] تِسْعٍ وَخَمْسِينَ، وَفَاطِمَةُ صَغِيرَةٌ لَمْ تَلْقَهَا، فَكَيْفَ أَنْ تَحْفَظَ عَنْهَا، وَلَمْ تَسْمَعْ مِنْ خَالَةِ أَبِيهَا عَائِشَةَ أُمِّ الْمُؤْمِنِينَ شَيْئًا - وَهِيَ فِي حِجْرِهَا - إِنَّمَا أَبْعَدُ سَمَاعِهَا مِنْ جَدَّتِهَا أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ - رَضِيَ اللَّهُ عَنْهُمْ -.

al-Mundhir did not hear from Umm Salamah, the Mother of the Believers. She was twelve years older than her husband Hishām. He was born in 60 AH (sixty AH), making Fāṭimah's birth year 48 AH (forty-eight AH) by this calculation. Umm Salamah died in 59 AH (fifty-nine AH), while Fāṭimah was still young and had not met her. How, then, could she have narrated from her? She also did not hear anything from her father's maternal aunt, ʿĀ'ishah, the Mother of the Believers, despite being under her guardianship. The most remote source of her hearing would be her grandmother Asmāʾ bint Abī Bakr al-Ṣiddīq—may Allah be pleased with them.

وَمَوَّهُوا أَيْضًا - بِخَبَرَيْنِ سَاقِطَيْنِ -: أَحَدُهُمَا - مِنْ طَرِيقِ مَعْمَرٍ عَنْ جُوَيْبِرٍ عَنْ الضَّحَّاكِ عَنْ النَّزَّالِ بْنِ سَبْرَةَ عَنْ عَلِيٍّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا رَضَاعَ بَعْدَ الْفِصَالِ» .

L36309 They also camouflaged—with two rejected narrations—one of which is narrated through the chain of Maʿmar from Juwaybir from al-Ḍaḥḥāk from al-Nazzāl ibn Sabrah from ʿAlī from the Prophet (peace and blessings of Allah be upon him), "There is no breastfeeding after weaning."

وَالْآخَرُ - مِنْ طَرِيقِ مَعْمَرٍ أَيْضًا عَنْ حَرَامِ بْنِ عُثْمَانَ عَنْ عَبْدِ الرَّحْمَنِ وَمُحَمَّدٍ ابْنَيْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِمَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ كَلَامًا كَثِيرًا وَفِيهِ: وَلَا رَضَاعَ بَعْدَ الْفِطَامِ.

L36310 The other – also through Maʿmar from Ḥarām ibn ʿUthmān, from ʿAbd al-Raḥmān and Muḥammad, the two sons of Jābir ibn ʿAbd Allāh, from their father, from the Messenger of Allah (peace be upon him) – who narrated much speech, including: "There is no breastfeeding after weaning."

وَهَذَانِ خَبَرَانِ لَا يَجُوزُ التَّشَاغُلُ بِهِمَا؛ لِأَنَّ جُوَيْبِرًا سَاقِطٌ، وَالضَّحَّاكَ ضَعِيفٌ وَحَرَامَ بْنَ عُثْمَانَ هَالِكٌ بِمُرَّةٍ - فَسَقَطَ كُلُّ مَا تَعَلَّقُوا بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L36311–36312 These two reports must not be engaged with, for Juwaybir is discarded, al-Dahhak is weak, and Haram ibn Uthman is utterly dismissed—thereby invalidating all they relied upon—and success comes from Allah, the Exalted.

وَسَقَطَتْ الْأَقْوَالُ كُلُّهَا إلَّا قَوْلَ مَنْ رَاعَى الْحَوْلَيْنِ، وَقَوْلَ مَنْ لَمْ يُرَاعِ فِي ذَلِكَ حَدًّا أَصْلًا، فَنَظَرْنَا فِيمَنْ رَاعَى الْحَوْلَيْنِ فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا} [الأحقاف: ١٥] . وَبِقَوْلِهِ عَزَّ وَجَلَّ: {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ} [البقرة: ٢٣٣] .

L36313 All opinions were discarded except the view of those who uphold the two-year period and the view of those who observe no specific limit in that regard whatsoever. We examined the position of those upholding the two-year period and found them invoking the words of Allah the Almighty: *"The gestation and weaning period is thirty months"* [al-Aḥqāf 15], and His words the Almighty: *"Mothers shall breastfeed their children two complete years for whoever wishes to complete the breastfeeding"* [al-Baqarah 233].[40]

وَبِقَوْلِهِ عَزَّ وَجَلَّ: {حَمَلَتْهُ أُمُّهُ وَهْنًا عَلَى وَهْنٍ وَفِصَالُهُ فِي عَامَيْنِ} [لقمان: ١٤] .

L36314 His mother carried him in weakness upon weakness, and his weaning is in

[40] **Qur'an references (L36313):** Qur'an 46:15 (Al-Ahqaf); Qur'an 2:233 (Al-Baqarah).

two years [Luqman: 14].[41]

L36315 They said: Allah, the Mighty and Majestic, has decreed that the weaning of an infant is to be completed within two years, and that breastfeeding lasts two full years for whoever wishes to complete it.

فَقَالُوا: قَدْ قَطَعَ اللَّهُ عَزَّ وَجَلَّ أَنَّ فِصَالَ الرَّضِيعِ فِي عَامَيْنِ، وَأَنَّ رَضَاعَهُ حَوْلَانِ كَامِلَانِ، لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ.

L36316 They said: Therefore, breastfeeding after two years is not considered at all, because the breastfeeding has been completed. When breastfeeding ceases, its legal rulings—such as prohibition and other related matters—cease.

قَالُوا: فَلَا رَضَاعَ بَعْدَ الْحَوْلَيْنِ أَصْلًا؛ لِأَنَّ الرَّضَاعَةَ قَدْ تَمَّتْ، وَإِذَا انْقَطَعَ الرَّضَاعُ انْقَطَعَ حُكْمُهُ مِنَ التَّحْرِيمِ، وَغَيْرِ ذَلِكَ.

L36317–36319 Abu Muhammad said: Allah, the Exalted, has spoken the truth, and we must adhere to the boundaries He has established. Even if no other explicit text beyond this existed, these scriptural texts alone would provide sufficient basis. However, regarding this matter, what we have narrated has come - as transmitted through Muslim's chain: ʿAmr al-Nāqid and Ibn Abī ʿUmar both said: We are Sufyān ibn ʿUyaynah, from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq, from his father, from ʿĀ'ishah, Mother of the Believers, who said: Sahlah bint Suhayl came to the Prophet (peace and blessings be upon him) and said: "O Messenger of Allah, I see the face of my father [...]" Hudhayfah [narrated]: "What about preventing Salim from entering while he is his successor?" The Messenger of Allah (peace be upon him) said, "Breastfeed him." She said, "How can I breastfeed him when he is a grown man?" The Messenger of Allah (peace be upon him) smiled and said, "I knew he was a grown man."

قَالَ أَبُو مُحَمَّدٍ: صَدَقَ اللَّهُ تَعَالَى وَعَلَيْنَا الْوُقُوفُ عِنْدَ مَا حَدَّ عَزَّ وَجَلَّ، وَلَوْ لَمْ يَأْتِ نَصٌّ غَيْرُ هَذَا لَكَانَ فِي هَذِهِ النُّصُوصِ مُتَعَلَّقٌ، لَكِنْ قَدْ جَاءَ فِي ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا عَمْرٌو النَّاقِدُ، وَابْنُ أَبِي عُمَرَ، قَالَا جَمِيعًا: أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «جَاءَتْ سَهْلَةُ بِنْتُ سُهَيْلٍ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: يَا رَسُولَ اللَّهِ إِنِّي أَرَى وَجْهَ أَبِي حُذَيْفَةَ مِنْ دُخُولِ سَالِمٍ وَهُوَ خَلِيفُهُ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرْضِعِيهِ، فَقَالَتْ: وَكَيْفَ أُرْضِعُهُ وَهُوَ رَجُلٌ كَبِيرٌ؟ فَتَبَسَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ: قَدْ عَلِمْتُ أَنَّهُ رَجُلٌ كَبِيرٌ» .

L36320 Through the chain of Muslim: It was Isḥāq ibn Ibrāhīm – he being Ibn Rāhawayh – and Muḥammad ibn Abī ʿUmar – the wording is his – who said: It was ʿAbd al-Wahhāb al-Thaqafī from Ayyūb – he being al-Sakhtiyānī – from Ibn Abī Mulaykah, from al-Qāsim ibn Muḥammad ibn Abī Bakr, from ʿĀ'ishah the Mother of the Believers: That Sālim, the freed slave of Abū Ḥudhayfah, was living with Abū Ḥudhayfah and his family in their home. Then she came [i.e., Sahlah bint Suhayl] to the Prophet – peace and blessings of Allah be upon him – and said: "Sālim has reached the maturity of men and comprehends as they do. He enters upon us, and I suspect there is something

وَمِنْ طَرِيقِ مُسْلِمٍ. أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - وَمُحَمَّدُ بْنُ أَبِي عُمَرَ - وَاللَّفْظُ لَهُ - قَالَ: أَنَا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ عَنْ أَيُّوبَ - هُوَ السِّخْتِيَانِيُّ - عَنِ ابْنِ أَبِي مُلَيْكَةَ عَنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ «عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّ سَالِمًا مَوْلَى أَبِي حُذَيْفَةَ كَانَ مَعَ أَبِي حُذَيْفَةَ وَأَهْلِهِ فِي بَيْتِهِمْ فَأَتَتْ - يَعْنِي سَهْلَةَ بِنْتَ سُهَيْلٍ - إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: إِنَّ سَالِمًا قَدْ بَلَغَ مَا يَبْلُغُ الرِّجَالُ، وَعَقَلَ مَا عَقَلُوا، وَأَنَّهُ يَدْخُلُ

[41] **Qur'an references (L36314):** Qur'an 31:14 (Luqman).

in Abū Ḥudhayfah's mind regarding this?" The Prophet – peace and blessings of Allah be upon him – said to her: "Breastfeed him so he becomes forbidden to you, thereby dispelling what troubles Abū Ḥudhayfah's mind."

L36321 From the narration of Muslim: Muhammad ibn al-Muthannā narrated to us, Muhammad ibn Ja'far narrated to us, Ghundar narrated to us, Shu'bah narrated to us from Ḥumayd ibn Nāfi' from Zaynab bint Umm Salamah, who reported that her mother, Umm Salamah, said to 'Ā'ishah—may Allah be pleased with them—"Does the adolescent boy—whom I do not like to enter upon me—enter upon you?" 'Ā'ishah replied, "Do you not have in the Messenger of Allah—peace and blessings of Allah be upon him and his family—an exemplary model? The wife of Abū Ḥudhayfah (Sahlah bint Suhayl) said, 'O Messenger of Allah, Sālim enters upon me—and he is a man—while Abū Ḥudhayfah harbors resentment toward him?' The Messenger of Allah—peace and blessings of Allah be upon him and his family—said, 'Breastfeed him until he enters upon you.'"

From the narration of 'Abd al-Razzāq, from Ma'mar, from al-Zuhrī, from 'Urwah ibn al-Zubayr, from 'Ā'ishah, the Mother of the Believers, who said: Sahlah bint Suhayl ibn 'Amr came to the Prophet—peace and blessings of Allah be upon him and his family—and said, "Sālim is called the son of Abū Ḥudhayfah, yet Allah has revealed in His Book: *Call them by [the names of] their fathers* [Al-Aḥzāb: 5]. He enters upon me while I am in a state of undress, and we reside in a confined space?" The Prophet—peace and blessings of Allah be upon him and his family—said to her, "Breastfeed Sālim, and he will become forbidden to you."

Al-Zuhrī said: Some wives of the Messenger of Allah—peace and blessings of Allah be upon him and his family—remarked, "We do not know—perhaps this was a concession specific to Sālim." Al-Zuhrī added: 'Ā'ishah continued to issue rulings that breastfeeding after weaning results in prohibition until her death.[42]

L36322–36323 Abu Muhammad said: These reports dispel the difficulty and clarify the intent of Allah, the Almighty, in the aforementioned verses - that breastfeeding

[42] **Qur'an references (L36321):** Qur'an 33:5 (Al-Ahzab).

عَلَيْنَا، وَإِنِّي أَظُنُّ أَنَّ فِي نَفْسِ أَبِي حُذَيْفَةَ مِنْ ذَلِكَ شَيْئًا؟ فَقَالَ لَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرْضِعِيهِ تَحْرُمِي عَلَيْهِ وَيَذْهَبُ الَّذِي فِي نَفْسِ أَبِي حُذَيْفَةَ» .

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا مُحَمَّدُ بْنُ جَعْفَرٍ أَنَا غُنْدَرٌ أَنَا شُعْبَةُ عَنْ حُمَيْدِ بْنِ نَافِعٍ عَنْ زَيْنَبَ بِنْتِ أُمِّ سَلَمَةَ، قَالَتْ: «قَالَتْ أُمُّ سَلَمَةَ لِعَائِشَةَ - رَضِيَ اللَّهُ عَنْهُمَا - إِنَّهُ يَدْخُلُ عَلَيْكِ الْغُلَامُ الْأَيْفَعُ الَّذِي مَا أُحِبُّ أَنْ يَدْخُلَ عَلَيَّ؟ فَقَالَتْ عَائِشَةُ: أَمَا لَكِ فِي رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُسْوَةٌ حَسَنَةٌ؟ إِنَّ امْرَأَةَ أَبِي حُذَيْفَةَ قَالَتْ: يَا رَسُولَ اللَّهِ إِنَّ سَالِمًا يَدْخُلُ عَلَيَّ - وَهُوَ رَجُلٌ - وَفِي نَفْسِ أَبِي حُذَيْفَةَ مِنْهُ شَيْءٌ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَرْضِعِيهِ حَتَّى يَدْخُلَ عَلَيْكِ» وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «جَاءَتْ سَهْلَةُ بِنْتُ سُهَيْلِ بْنِ عَمْرٍو إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَتْ: إنَّ سَالِمًا كَانَ يُدْعَى ابْنَ أَبِي حُذَيْفَةَ، وَإِنَّ اللَّهَ قَدْ أَنْزَلَ فِي كِتَابِهِ {ادْعُوهُمْ لآبَائِهِمْ} [الأحزاب: ٥] وَكَانَ يَدْخُلُ عَلَيَّ وَأَنَا فُضْلٌ وَنَحْنُ فِي مَنْزِلِ ضَيِّقٍ؟ فَقَالَ لَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَرْضِعِي سَالِمًا تَحْرُمِي عَلَيْهِ.» قَالَ الزُّهْرِيُّ: قَالَ بَعْضُ أَزْوَاجِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا نَدْرِي لَعَلَّ هَذِهِ كَانَتْ رُخْصَةً لِسَالِمٍ خَاصَّةً - قَالَ الزُّهْرِيُّ: فَكَانَتْ عَائِشَةُ تُفْتِي بِأَنَّهُ يُحَرِّمُ الرَّضَاعُ بَعْدَ الْفِصَالِ حَتَّى مَاتَتْ.

قَالَ أَبُو مُحَمَّدٍ: فَهَذِهِ الْأَخْبَارُ تَرْفَعُ الْإِشْكَالَ، وَتُبَيِّنُ مُرَادَ اللَّهِ عَزَّ وَجَلَّ فِي الْآيَاتِ الْمَذْكُورَاتِ أَنَّ الرَّضَاعَةَ الَّتِي تَتِمُّ بِتَمَامِ الْحَوْلَيْنِ، أَوْ بِتَرَاضِي الْأَبَوَيْنِ قَبْلَ الْحَوْلَيْنِ، إذَا

which becomes binding either upon completion of two full years or through parental agreement before two years, provided they see benefit for the infant, is specifically what obligates maintenance to the nursing mother. Both parents are compelled to fulfill this obligation, whether they are willing or reluctant.

رَأَيَا فِي ذَلِكَ صَلَاحًا لِلرَّضِيعِ أَنَّهَا هِيَ الْمُوجِبَةُ لِلنَّفَقَةِ عَلَى الْمُرْضِعَةِ، وَالَّتِي يُجْبَرُ عَلَيْهَا الْأَبَوَانِ أَحَبَّا أَمْ كَرِهَا.

L36324 By my life, the verse itself suffices in this regard, for the Exalted says: "Mothers may breastfeed their children for two full years—for those who wish to complete the nursing [period]. And the father of the child is responsible for their provision and clothing in a fair manner" [Al-Baqarah: 233].[43]

وَلَعَمْرِي لَقَدْ كَانَ فِي الْآيَةِ كِفَايَةٌ فِي هَذَا، لِأَنَّهُ تَعَالَى قَالَ: {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ} [البقرة: ٢٣٣] .

L36325 The Exalted commanded mothers to breastfeed the child for two years. This does not indicate a prohibition of breastfeeding after that period, nor does it mean the prohibition ceases upon the completion of two lunar years.

فَأَمَرَ تَعَالَى الْوَالِدَاتِ بِإِرْضَاعِ الْمَوْلُودِ عَامَيْنِ، وَلَيْسَ فِي هَذَا تَحْرِيمُ الرَّضَاعَةِ بَعْدَ ذَلِكَ، وَلَا أَنَّ التَّحْرِيمَ يَنْقَطِعُ بِتَمَامِ الْحَوْلَيْنِ.

L36326 The statement of Allah, the Exalted: "And your mothers who breastfed you and your sisters through breastfeeding" [An-Nisa: 23]—the Exalted did not mention "two years" or "a time less than another time," as found in other verses. As a general principle, it is impermissible to specify it except through a text that clarifies it is a specification, not through conjecture nor through a probable interpretation lacking clarification.[44]

وَكَانَ قَوْلُ اللَّهِ تَعَالَى: {وَأُمَّهَاتُكُمُ اللاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُمْ مِنَ الرَّضَاعَةِ} [النساء: ٢٣] وَلَمْ يَقُلْ تَعَالَى فِي حَوْلَيْنِ وَلَا فِي وَقْتٍ دُونَ وَقْتٍ زَائِدًا عَلَى الْآيَاتِ الْأُخَرِ، وَعُمُومًا لَا يَجُوزُ تَخْصِيصُهُ إِلَّا بِنَصٍّ يُبَيِّنُ أَنَّهُ مُخَصِّصٌ لَهُ لَا بِظَنٍّ، وَلَا بِمُحْتَمَلٍ لَا بَيَانَ فِيهِ.

L36327 These reports were transmitted through successive transmission. They were narrated by the wives of the Messenger of Allah—peace and blessings be upon him and his family—as we have cited, and Sahlah bint Suhayl—one of the female emigrants—and Zaynab bint Umm Salamah.

وَكَانَتْ هَذِهِ الْآثَارُ قَدْ جَاءَتْ مَجِيءَ التَّوَاتُرِ رَوَاهَا نِسَاءُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَمَا أَوْرَدْنَا، وَسَهْلَةُ بِنْتُ سُهَيْلٍ مِنْ الْمُهَاجِرَاتِ وَزَيْنَبُ بِنْتُ أُمِّ سَلَمَةَ.

L36328 He narrated it from the Successors: al-Qāsim ibn Muḥammad, ʿUrwah ibn al-Zubayr, and Humayd ibn Nāfiʿ.

وَرَوَاهُ مِنْ التَّابِعِينَ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَعُرْوَةُ بْنُ الزُّبَيْرِ، وَحُمَيْدُ بْنُ نَافِعٍ.

L36329 And he narrated it from these: al-Zuhri, Ibn Abi Mulaykah, Abdur-Rahman ibn al-Qasim, Yahya ibn Sa'id al-Ansari, and Rabi'ah.

وَرَوَاهُ عَنْ هَؤُلَاءِ الزُّهْرِيِّ، وَابْنِ أَبِي مُلَيْكَةَ، وَعَبْدُ الرَّحْمَنِ بْنُ الْقَاسِمِ، وَيَحْيَى ابْنُ سَعِيدٍ الْأَنْصَارِيُّ، وَرَبِيعَةُ.

[43] **Qur'an references (L36324):** Qur'an 2:233 (Al-Baqarah).
[44] **Qur'an references (L36326):** Qur'an 4:23 (An-Nisa).

L36330 It was narrated from these: Ayyūb al-Sakhtiyānī, Sufyān al-Thawrī, Sufyān ibn ʿUyaynah, Shuʿbah, Mālik, ibn Jarīr, Shuʿayb ibn Abī Ḥamzah, Yūnus ibn Yazīd, Jaʿfar ibn Rabīʿah, Sulaymān ibn Bilāl, Maʿmar, and others.

وَرَوَاهُ عَنْ هَؤُلَاءِ أَيُّوبُ السِّخْتِيَانِيُّ، وَسُفْيَانُ الثَّوْرِيُّ، وَسُفْيَانُ بْنُ عُيَيْنَةَ، وَشُعْبَةُ، وَمَالِكٌ، وَابْنُ جَرِيرٍ، وَشُعَيْبُ بْنُ أَبِي حَمْزَةَ، وَيُونُسُ بْنُ يَزِيدَ، وَجَعْفَرُ بْنُ رَبِيعَةَ، وَسُلَيْمَانُ بْنُ بِلَالٍ، وَمَعْمَرٌ، وَغَيْرُهُمْ.

L36331 And it was narrated from these people by Al-Jammā' al-Ghafīr, thus it is a transmission by all, in whose authenticity neither an agreeing scholar nor a dissenting one differs. There remains no objection except that someone might say: "It is specific to Sālim," as some of the wives of the Messenger of Allah (peace be upon him) stated. Let whoever cites this know it is mere conjecture by those among them who speculated (may Allah be pleased with them).

وَرَوَاهُ عَنْ هَؤُلَاءِ النَّاسِ: الْجَمَّاءُ الْغَفِيرُ، فَهُوَ نَقْلُ كَافَّةٍ لَا يَخْتَلِفُ مُؤَالِفٌ وَلَا مُخَالِفٌ فِي صِحَّتِهِ فَلَمْ يَبْقَ مِنَ الِاعْتِرَاضِ إِلَّا أَنْ يَقُولَ قَائِلٌ: هُوَ خَاصٌّ لِسَالِمٍ كَمَا قَالَ بَعْضُ أَزْوَاجِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلْيَعْلَمْ مَنْ تَعَلَّقَ بِهَذَا أَنَّهُ ظَنٌّ مِمَّنْ ظَنَّ ذَلِكَ مِنْهُنَّ - رَضِيَ اللَّهُ عَنْهُنَّ -.

L36332–36333 Similarly, it is mentioned in the hadith that the women said: "We do not see this except as specific to Salim, and we do not know—perhaps it is a concession for Salim." Then behold, it was conjecture without any doubt, for assumption is not countered by the established traditions. He, the Exalted, said: "Indeed, assumption avails nothing against the truth" [Yunus (Jonah): 36].[45]

وَهَكَذَا جَاءَ فِي الْحَدِيثِ أَنَّهُنَّ قُلْنَ: مَا نَرَى هَذَا إِلَّا خَاصًّا لِسَالِمٍ، وَمَا نَدْرِي لَعَلَّهُ رُخْصَةٌ لِسَالِمٍ، فَإِذْ هُوَ ظَنٌّ بِلَا شَكٍّ، فَإِنَّ الظَّنَّ لَا يُعَارَضُ بِالسُّنَنِ قَالَ تَعَالَى: {إِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [يونس: ٣٦] .

L36334 What a stark contrast between the argument of Umm Salamah—may Allah be pleased with her—based on her personal choice, and the argument of ʿĀ'ishah—may Allah be pleased with her—rooted in the established Sunnah, when she said to her: "Do you not have in the Messenger of Allah—peace and blessings be upon him—an excellent example?" Umm Salamah's silence indicates her return to the truth after abandoning her precautionary stance.

وَشَتَّانَ بَيْنَ احْتِجَاجِ أُمِّ سَلَمَةَ - رَضِيَ اللَّهُ عَنْهَا - بِاخْتِيَارِهَا وَبَيْنَ احْتِجَاجِ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - بِالسُّنَّةِ الثَّابِتَةِ، وَقَوْلُهَا لَهَا: أَمَا لَك فِي رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُسْوَةٌ حَسَنَةٌ؟ وَسُكُوتُ أُمِّ سَلَمَةَ يُنْبِئُ بِرُجُوعِهَا إِلَى الْحَقِّ عَنْ احْتِيَاطِهَا.

L36335 Among the most astonishing wonders is that our opponents here say: "The mursal is equivalent to the musnad." We have indeed received a narration through Abd al-Razzaq's chain from Ma'mar that when the Prophet's wives—peace and blessings be upon him—breastfed an adult male, he became permitted to marry them, and this ruling was exclusively designated for them.

وَمِنْ أَعْجَبِ الْعَجَائِبِ أَنَّ الْمُخَالِفِينَ لَنَا هَاهُنَا يَقُولُونَ: إِنَّ الْمُرْسَلَ كَالْمُسْنَدِ، وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ أَنَّ أَزْوَاجَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا أَرْضَعْنَ الْكَبِيرَ دَخَلَ عَلَيْهِنَّ، فَكَانَ ذَلِكَ لَهُنَّ خَاصَّةً.

L36336 Others said: This is abrogated by the abrogation of adoption.

وَقَالَ آخَرُونَ: هَذَا مَنْسُوخٌ بِنَسْخِ التَّبَنِّي.

[45] **Qur'an references (L36333):** Qur'an 10:36 (Yunus).

L36337 Abu Muhammad said: This is undeniably false, for it is impermissible for anyone to declare an established text abrogated except through another established text that is explicit, unambiguous, and not susceptible to ambiguity. How then [could this apply], when Sahlah's statement—may Allah be pleased with her—to the Messenger of Allah (peace and blessings be upon him), "How can I breastfeed him when he is a grown man?" constitutes a manifest clarification? For we know with absolute certainty that after the revelation of the aforementioned verses, had this ruling been specific to Salim or related to adoption—which was abrogated—the Prophet (upon him be prayers and peace) would have clarified it, just as he clarified to Abu Burda regarding the yearling ewe when he said, "It suffices for you, but will not suffice anyone after you."

قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ بِيَقِينٍ، لِأَنَّهُ لَا يَحِلُّ لِأَحَدٍ أَنْ يَقُولَ فِي نَصٍّ ثَابِتٍ: هَذَا مَنْسُوخٌ، إِلَّا بِنَصٍّ ثَابِتٍ مُبَيَّنٍ غَيْرِ مُحْتَمَلٍ، فَكَيْفَ وَقَوْلُ سَهْلَةَ - رَضِيَ اللَّهُ عَنْهَا - لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: كَيْفَ أُرْضِعُهُ وَهُوَ رَجُلٌ كَبِيرٌ؟ بَيَانٌ جَلِيٌّ، لِأَنَّهُ بَعْدَ نُزُولِ الْآيَاتِ الْمَذْكُورَاتِ وَبِالْيَقِينِ نَدْرِي أَنَّهُ لَوْ كَانَ خَاصًّا لِسَالِمٍ، أَوْ فِي التَّبَنِّي الَّذِي نُسِخَ لَبَيَّنَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كَمَا بَيَّنَ لِأَبِي بُرْدَةَ فِي الْجَذَعَةِ إِذْ قَالَ لَهُ تُجْزِئُك وَلَا تُجْزِئُ أَحَدًا بَعْدَك.

L36338 Some who show no fear of Allah Almighty in their speech have said: How can it be lawful for an adult man to suckle from the breast of an unrelated woman? Abu Muhammad responded: This is mere opposition to the Messenger of Allah (peace be upon him) who ordained this ruling. The one making this objection feels no shame in claiming that a female slave may pray uncovered with people seeing her breasts and midriff, nor in asserting that a free woman may deliberately expose an area equivalent to a Baghli dirham from her private parts while praying - visible to those entering and exiting among the group in the mosque - or that she may similarly expose less than a quarter of her abdomen. We seek refuge with Allah from shamelessness and lack of religious commitment.

وَقَالَ بَعْضُ مَنْ لَا يَخَافُ اللَّهَ تَعَالَى فِيمَا يُطْلِقُ بِهِ لِسَانَهُ: كَيْفَ يَحِلُّ لِلْكَبِيرِ أَنْ يَرْضِعَ ثَدْيَ امْرَأَةٍ أَجْنَبِيَّةٍ؟ قَالَ أَبُو مُحَمَّد: هَذَا اعْتِرَاضٌ مُجَرَّدٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي أَمَرَ بِذَلِكَ، وَالْقَائِلُ بِهَذَا لَا يَسْتَحْيِي مِنْ أَنْ يُطْلِقَ: أَنَّ لِلْمَمْلُوكَةِ أَنْ تُصَلِّيَ عُرْيَانَةً يَرَى النَّاسُ ثَدْيَيْهَا وَخَاصِرَتَهَا، وَأَنَّ لِلْحُرَّةِ أَنْ تَتَعَمَّدَ أَنْ تَكْشِفَ مِنْ شَفَتَيْ فَرْجِهَا مِقْدَارَ الدِّرْهَمِ الْبَغْلِيِّ تُصَلِّي كَذَلِكَ وَيَرَاهَا الصَّادِرُ وَالْوَارِدُ بَيْنَ الْجَمَاعَةِ فِي الْمَسْجِدِ، وَأَنْ تَكْشِفَ أَقَلَّ مِنْ رُبُعِ بَطْنِهَا كَذَلِكَ - وَنَعُوذُ بِاَللَّهِ مِنْ عَدَمِ الْحَيَاءِ وَقِلَّةِ الدِّينِ.

L36339 Abu Muhammad said: The statement of the Messenger of Allah (peace be upon him), "Suckling is only valid to alleviate hunger," constitutes a clear proof for us. For suckling serves to repel hunger for the adult in the same manner as it does for the infant. Thus, it is a universal principle applying to all instances of suckling once they amount to five feedings, as the Messenger of Allah (peace be upon him) instructed.

قَالَ أَبُو مُحَمَّد: وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا الرَّضَاعَةُ مِنْ الْمَجَاعَةِ» حُجَّةٌ لَنَا بَيِّنَةٌ، لِأَنَّ لِلْكَبِيرِ مِنْ الرَّضَاعَةِ فِي طَرْدِ الْمَجَاعَةِ نَحْوَ مَا لِلصَّغِيرِ، فَهُوَ عُمُومٌ لِكُلِّ رَضَاعٍ إذَا بَلَغَ خَمْسَ رَضَعَاتٍ كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L36340–36341 Ali said: It is established that Aisha—may Allah be pleased with her—would be visited by an elderly man if a sister of hers (through breastfeeding) had breastfed him during his old age, creating a prohibited breastfeeding relationship. We bear witness by Allah's testimony—the Almighty and Majestic—and

قَالَ عَلِيٌّ: فَصَحَّ أَنَّ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - كَانَ يَدْخُلُ عَلَيْهَا الْكَبِيرُ إذَا أَرْضَعَتْهُ فِي حَالِ كِبَرِهِ أُخْتٌ مِنْ أَخَوَاتِهَا الرَّضَاعَ الْمُحَرِّمَ، وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ

affirm with certainty that He—Exalted is He—would never permit the private affair of the Messenger of Allah—peace and blessings of Allah be upon him—to be violated by one who has no lawful right to it, in light of His Exalted's statement: {And Allah protects you from the people} [Al-Ma'idah: 67].[46]

L36342 We are certain and affirm that the suckling of an adult results in prohibition, and there is nothing objectionable in the refusal of the remaining women regarding someone entering upon them through this suckling, for it is permissible for them that those lawfully permitted to enter upon them do not enter—and success is from Allah, the Exalted.

L36343 **A juridical case: A woman became pregnant by one entitled to paternal attribution of her child, and her milk thereafter flowed naturally.**

L36344 **Issue 2021:** If a woman whose child's lineage is ascribed to her husband becomes pregnant, her milk begins to flow, she delivers, and her husband divorces her, dies, leaves her, she marries another, or she was an enslaved woman and another acquires ownership of her—the child she breastfeeds is ascribed through milk kinship to the first husband, not the second. If she conceives from the second and the lactation persists, the ruling remains with the first unless the milk changes and then stabilizes. If it changes, the legal ruling for the first is invalidated and transfers to the second. And all praise is due to Allah, Lord of the worlds.

[46] **Qur'an references (L36341):** Qur'an 5:67 (Al-Ma'idah).

وَنَقْطَعُ بِأَنَّهُ تَعَالَى لَمْ يَكُنْ لِيُبِيحَ سِرَّ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْتَهِكُهُ مَنْ لَا يَحِلُّ لَهُ مَعَ قَوْلِهِ تَعَالَى: {وَاللَّهُ يَعْصِمُكَ مِنَ النَّاسِ} [المائدة: ٦٧] .

فَنَحْنُ نُوقِنُ وَنَبُتُّ بِأَنَّ رَضَاعَ الْكَبِيرِ يَقَعُ بِهِ التَّحْرِيمُ، وَلَيْسَ فِي امْتِنَاعِ سَائِرِهِنَّ مِنْ أَنْ يَدْخُلَ عَلَيْهِنَّ بِهَذِهِ الرَّضَاعَةِ شَيْءٌ يُنْكَرُ، لِأَنَّ مُبَاحًا لَهُنَّ أَنْ لَا يَدْخُلَ عَلَيْهِنَّ مَنْ يَحِلُّ لَهُ الدُّخُولُ عَلَيْهِنَّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حَمَلَتْ امْرَأَةٌ مِمَّنْ يَلْحَقُ وَلَدُهَا بِهِ فَدُرَّ لَهَا اللَّبَنُ]

٢٠٢١ - مَسْأَلَةٌ: وَإِنْ حَمَلَتْ امْرَأَةٌ مِمَّنْ يَلْحَقُ وَلَدُهَا بِهِ فَدُرَّ لَهَا اللَّبَنُ، ثُمَّ وَضَعَتْ فَطَلَّقَهَا زَوْجُهَا، أَوْ مَاتَ عَنْهَا فَتَزَوَّجَهَا آخَرُ، أَوْ كَانَتْ أَمَةً فَمَلَكَهَا آخَرُ، فَمَا أَرْضَعَتْ فَهُوَ وَلَدٌ لِلْأَوَّلِ لَا لِلثَّانِي، فَإِنْ حَمَلَتْ مِنَ الثَّانِي فَتَمَادَى اللَّبَنُ فَهُوَ لِلْأَوَّلِ إِلَّا أَنْ يَتَغَيَّرَ، ثُمَّ يَعْتَدِلُ، فَإِنَّهُ إِذَا تَغَيَّرَ فَقَدْ بَطَلَ حُكْمُ الْأَوَّلِ وَصَارَ لِلثَّانِي [وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ] .



AL-MUHALLA

كِتَابُ الدِّمَاءِ وَالْقِصَاصِ وَالدِّيَاتِ

The Book of Homicide, Retaliation and Blood Money

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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The Book of Homicide, Retaliation, and Diyat Chapter on the Intentional Killing of a Male Believer or Female Believer Without Just Cause

In the name of Allah, the Most Gracious, the Most Merciful. May Allah send blessings upon Muhammad and his family.

The Book of Laws of Bloodshed, Retaliation, and Blood Money (2022) – Issue: Abu Muhammad – may Allah be pleased with him – said: "After polytheism, no sin is greater before Allah the Almighty than two matters: the first is willfully neglecting an obligatory prayer until its designated time expires."

The second offense is the intentional killing of a Muslim man or Muslim woman without lawful right.

As for prayer, we have already mentioned it in *The Book of Prayer*.

As for killing — the Almighty and Majestic said: "And it is not for a believer to kill a believer except unintentionally" [An-Nisa: 92].[1]

And the words of the Most High: {And whoever kills a believer intentionally, his recompense shall be Hellfire, wherein he will remain forever. Allah has become wrathful toward him, and He has cursed him and prepared for him a tremendous punishment} [An-Nisā': 93].[2]

From the chain of al-Bukhārī: It has been narrated to us from ʿAlī ibn ʿAbdullāh, from Isḥāq ibn Saʿīd ibn ʿAmr ibn Saʿīd ibn al-ʿĀṣ, from his father, from ʿAbdullāh ibn ʿUmar ibn al-Khaṭṭāb, who said: The Messenger of Allāh—may Allāh's peace and blessings be upon him and his family—said, "A believer will remain within the bounds of his religion so long as he does not shed unlawful blood."

[كِتَابُ الدِّمَاءِ وَالْقِصَاصِ وَالدِّيَاتِ] [مَسْأَلَةٌ قَتْلُ مُؤْمِنٍ أَوْ مُؤْمِنَةٍ عَمْدًا بِغَيْرِ حَقٍّ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ

كِتَابُ الدِّمَاءِ وَالْقِصَاصِ وَالدِّيَاتِ ٢٠٢٢ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: لَا ذَنْبَ عِنْدَ اللَّهِ عَزَّ وَجَلَّ بَعْدَ الشِّرْكِ أَعْظَمُ مِنْ شَيْئَيْنِ -: أَحَدُهُمَا - تَعَمُّدُ تَرْكِ صَلَاةِ فَرْضٍ حَتَّى يَخْرُجَ وَقْتُهَا.

الثَّانِي - قَتْلُ مُؤْمِنٍ أَوْ مُؤْمِنَةٍ عَمْدًا بِغَيْرِ حَقٍّ.

أَمَّا الصَّلَاةُ فَقَدْ ذَكَرْنَاهَا فِي " كِتَابِ الصَّلَاةِ ".

وَأَمَّا الْقَتْلُ - فَقَالَ عَزَّ وَجَلَّ: {وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إِلا خَطَأً} [النساء: ٩٢] .

وقَوْله تَعَالَى: {وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا} [النساء: ٩٣] .

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا عَلِيٌّ - هُوَ ابْنُ عَبْدِ اللَّهِ - أَنَا إِسْحَاقُ بْنُ سَعِيدِ بْنِ عَمْرِو بْنِ سَعِيدِ بْنِ الْعَاصِ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَا يَزَالُ الْمُؤْمِنُ فِي فُسْحَةٍ مِنْ دِينِهِ مَا لَمْ يُصِبْ دَمًا حَرَامًا» .

[1] **Qur'an references (L36351):** Qur'an 4:92 (An-Nisa).
[2] **Qur'an references (L36352):** Qur'an 4:93 (An-Nisa).

L36354–36355 Al-Bukhari said: Ahmad ibn Ya‘qub informed us: Ishaq narrated to us—he being the son of Sa‘id, the previously mentioned—from his father, that he heard him relate from Ibn ‘Umar that he said: “Among the inescapable perils from which there is no escape for one who casts himself into them is shedding inviolable blood without lawful cause.”

قَالَ الْبُخَارِيُّ: ونا أَحْمَدُ بْنُ يَعْقُوبَ أَنَا إِسْحَاقُ - هُوَ ابْنُ سَعِيدٍ الْمَذْكُورُ - عَنْ أَبِيهِ أَنَّهُ سَمِعَهُ يُحَدِّثُ عَنِ ابْنِ عُمَرَ أَنَّهُ قَالَ " إِنَّ مَنْ وَرَطَاتِ الْأُمُورِ الَّتِي لَا مَخْرَجَ لِمَنْ أَوْقَعَ نَفْسَهُ فِيهَا: سَفْكَ الدَّمِ الْحَرَامِ بِغَيْرِ حِلِّهِ ".

L36356 **The legal issue: The killing is divided into two categories—premeditated and unintentional.**

[مَسْأَلَةُ الْقَتْلُ قِسْمَانِ عَمْدٌ وَخَطَأٌ]

L36357 Question 2023: Homicide is divided into two categories: intentional and accidental.

٢٠٢٣ - مَسْأَلَةٌ: وَالْقَتْلُ قِسْمَانِ: عَمْدٌ، وَخَطَأٌ.

L36358 The proof of that is the two verses we mentioned earlier, for He, the Almighty and Majestic, did not establish a third category in killing—though some people claimed there exists a third category here, being semi-intentional killing. This is an invalid opinion, as no textual evidence whatsoever supports it. We have demonstrated the invalidity of those textual narrations in *Kitāb al-Iṣāl*, and all praise belongs to Allah, Lord of the worlds.

بُرْهَانُ ذَلِكَ -: الْآيَتَانِ اللَّتَانِ ذَكَرْنَا آنِفًا، فَلَمْ يَجْعَلْ عَزَّ وَجَلَّ فِي الْقَتْلِ قِسْمًا ثَالِثًا - وَادَّعَى قَوْمٌ أَنَّ هَاهُنَا قِسْمًا ثَالِثًا، وَهُوَ عَمْدُ الْخَطَأِ - وَهُوَ قَوْلٌ فَاسِدٌ، لِأَنَّهُ لَمْ يَصِحَّ فِي ذَلِكَ نَصٌّ أَصْلًا، وَقَدْ بَيَّنَّا سُقُوطَ تِلْكَ الْآثَارِ فِي " كِتَابِ الْإِيصَالِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L36359 Although the Hanafis and Shafi’is who affirm quasi-deliberate acts oppose those invalid narrations that others have used as a pretext regarding the description of diyah contained in them and other matters—as we clarified elsewhere—in their view, it is divided into two categories: the first consists of what a person intentionally commits from acts that may cause death in similar cases, though such acts may not necessarily do so.

مَعَ أَنَّ الْحَنَفِيِّينَ، وَالشَّافِعِيِّينَ الْقَائِلِينَ بِشِبْهِ الْعَمْدِ هُمْ مُخَالِفُونَ لِتِلْكَ الْآثَارِ السَّاقِطَةِ الَّتِي مَوَّهُوا بِهَا فِيمَا فِيهَا مِنْ صِفَةِ الدِّيَةِ، وَغَيْرِ ذَلِكَ عَلَى مَا بَيَّنَّا فِي غَيْرِ هَذَا الْمَوْضِعِ - وَهُوَ عِنْدَهُمْ يَنْقَسِمُ قِسْمَيْنِ -: أَحَدُهُمَا - مَا تَعَمَّدَ بِهِ الْمَرْءُ مِمَّا قَدْ يُمَاتُ مِنْ مِثْلِهِ - وَقَدْ لَا يُمَاتُ مِنْ مِثْلِهِ.

L36360 Abū Muḥammad—may Allāh be pleased with him—said: This is an intentional act, and it entails retaliation or blood money (diyah), as in all intentional acts, because it constitutes aggression. The Almighty and Majestic has said: “So whoever commits aggression against you, then retaliate against him in the same manner as he has committed aggression against you” [al-Baqarah 2:194].[3]

قَالَ أَبُو مُحَمَّد: - رَضِيَ اللَّهُ عَنْهُ -: هَذَا عَمْدٌ وَفِيهِ الْقَوَدُ أَوْ الدِّيَةُ، كَمَا فِي سَائِرِ الْعَمْدِ، لِأَنَّهُ عُدْوَانٌ، وَقَالَ عَزَّ وَجَلَّ: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

L36361 The second [type] is that which one intentionally commits, from which no

[3] **Qur’an references (L36360):** Qur’an 2:194 (Al-Baqarah).

death at all would result from its like. This constitutes neither intentional killing nor unintentional killing, and nothing is incurred except disciplinary punishment alone.

وَالثَّانِي - مَا تَعَمَّدَ بِهِ مِمَّا لَا يَمُوتُ أَحَدٌ أَصْلًا مِنْ مِثْلِهِ، فَهَذَا لَيْسَ قَتْلَ عَمْدٍ وَلَا خَطَأً - وَلَا شَيْءَ فِيهِ إلَّا الْأَدَبُ فَقَطْ.

L36362 Among the astonishing statements here is that the Ḥanafīs state: If someone takes a stone from a qinṭār [large weight] and intentionally strikes a Muslim's head with it, then continues striking him relentlessly until he shatters his entire head, qisas does not apply in this case, nor is it considered intentional killing.

وَمِنْ عَجَائِبِ الْأَقْوَالِ هَاهُنَا أَنَّ الْحَنَفِيِّينَ يَقُولُونَ: مَنْ أَخَذَ حَجَرًا مِنْ قِنْطَارٍ فَضَرَبَ مُتَعَمِّدًا رَأْسَ مُسْلِمٍ، ثُمَّ لَمْ يَزَلْ يَضْرِبُهُ بِهِ حَتَّى شَدَخَ رَأْسَهُ كُلَّهُ: فَإِنَّهُ لَا قَوَدَ فِيهِ، وَلَيْسَ قَتْلَ عَمْدٍ.

L36363 Similarly, if he intentionally strikes his head with a thick stick, breaking it entirely and causing his brain to spill out, leading to his death; there is no difference.

وَكَذَلِكَ لَوْ تَعَمَّدَ ضَرْبَ رَأْسِهِ بِعُودٍ غَلِيظٍ حَتَّى يَكْسِرَهُ كُلَّهُ وَيُسِيلَ دِمَاغَهُ وَيَمُوتَ وَلَا فَرْقَ.

L36364 The Malikis stated: If someone strikes the thigh of a Muslim with his hand, and the struck individual dies as a result of the blow, retaliatory execution is mandated, and the striker is to be executed.

وَقَالَ الْمَالِكِيُّونَ مَنْ ضَرَبَ بِيَدِهِ فِي فَخِذِ مُسْلِمٍ فَمَاتَ الْمَضْرُوبُ إثْرَ الضَّرْبَةِ -: فَفِيهِ الْقَوَدُ، وَيُقْتَلُ الضَّارِبُ.

L36365 Hearing these two statements suffices to dispense with the effort of refuting them.

وَسَمَاعُ هَذَيْنِ الْقَوْلَيْنِ يَكْفِي مِنْ تَكَلُّفِ الرَّدِّ عَلَيْهِمَا.

L36366–36367 Abū Muḥammad—may Allāh be pleased with him—said: Unintentional killing is when someone throws an object that could cause death when used in such a manner, unintentionally striking a Muslim they did not intend to harm, resulting in the struck person's death; or when one falls upon a Muslim, causing death from the impact. There is no disagreement that all such cases constitute unintentional killing, for which no qawad is due.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: فَالْخَطَأُ مَنْ رَمَى شَيْئًا فَأَصَابَ مُسْلِمًا لَمْ يُرِدْهُ بِمَا قَدْ يُمَاتُ مِنْ مِثْلِهِ فَمَاتَ الْمُصَابُ، أَوْ وَقَعَ عَلَى مُسْلِمٍ فَمَاتَ مِنْ وَقْعَتِهِ - فَهَذَا كُلُّهُ لَا خِلَافَ فِي أَنَّهُ قَتْلُ خَطَأٍ لَا قَوَدَ فِيهِ.

L36368 Or if he killed in Dar al-Harb (territory of war) a person he deemed to be a disbeliever, but it was later established he was a Muslim, or he killed a person exercising independent legal reasoning without following a school of jurisprudence (while believing him to be in error), but it was later established he was correct.

أَوْ قَتَلَ فِي دَارِ الْحَرْبِ إنْسَانًا يَرَى أَنَّهُ كَافِرٌ فَإِذَا بِهِ مُسْلِمٌ، أَوْ قَتَلَ إنْسَانًا مُتَأَوِّلًا غَيْرَ مُقَلِّدٍ - وَهُوَ يَرَى أَنَّهُ عَلَى الْحَقِّ فَإِذَا بِهِ عَلَى الْخَطَأِ.

L36369 The evidence for our statement regarding the killer in the abode of war is the word of Allah the Exalted: {Whoever kills a believer unintentionally, [the penalty is] the freeing of a believing slave and a blood payment delivered to

his family unless they relinquish it as charity. If he belonged to a people hostile to you and was a believer, then [the penalty is] the freeing of a believing slave} [An-Nisa: 92].[4]

L36370 The preposition “min” here carries the meaning of “fi” (in), as there is no disagreement among anyone that if a person from a group of belligerent disbelievers embraces Islam and emigrates to the abode of Islam, and a Muslim then kills him unintentionally. Indeed, in this case there is blood money for his child and expiation. Thus, what we have said is validated. All praise is due to Allah, the Lord of the worlds.

L36371 As for the jurist—regarding what was transmitted to us through the chain of Abū Dāwūd al-Sijistānī: Narrated by Musaddad from Yaḥyā ibn Saʿīd al-Qaṭṭān, from Ibn Abī Dhi’b, from Saʿīd—who is Saʿīd ibn Abī Saʿīd al-Maqburī—who said: I heard Abū Shurayḥ al-Kaʿbī state: “Allah’s Messenger (peace and blessings be upon him and his family) said: ‘O assembly of Khuzāʿah! You have slain this man from Hudhayl, and I will pay his blood money. Whoever suffers the killing of a kinsman after this statement of mine, his family must choose between two options: either to accept the blood money or to kill [in retaliation].’”

L36372 Abu Muhammad—may Allah be pleased with him—said: There is no doubt that Khuzāʿah killed him while interpreting that his killing was permissible for them. This is our position regarding one against whom proof established by the text has been presented, yet he persists in his corrupt interpretation contradicting the text, or in following someone who interpreted erroneously—he is subject to qisas.

L36373 This report supplements the reports of Usāmah ibn Zayd and Khālid—may Allah be pleased with them both—regarding Khālid’s killing of members of Banū Khudhaymah based on his interpretation of the law, and regarding Usāmah’s killing of the man who had said, “There is no god but Allah.” The addition must not be omitted.

[4]**Qur’an references (L36369):** Qur’an 4:92 (An-Nisa).

بُرْهَانُ قَوْلِنَا فِي الْقَاتِلِ فِي دَارِ الْحَرْبِ -: قَوْلُ اللَّهِ تَعَالَى: {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ إِلا أَنْ يَصَّدَّقُوا فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ} [النساء: ٩٢] .

“ مِنْ ” هَاهُنَا بِمَعْنَى “ فِي ” لِأَنَّهُ لَا خِلَافَ بَيْنَ أَحَدٍ فِي أَنَّ قَوْمًا كُفَّارًا حَرْبِيِّينَ أَسْلَمَ مِنْهُمْ إنْسَانٌ وَخَرَجَ إلَى دَارِ الْإِسْلَامِ فَقَتَلَهُ مُسْلِمٌ خَطَأً: فَإِنَّ فِيهِ الدِّيَةَ لِوَلَدِهِ، وَالْكَفَّارَةَ - فَصَحَّ بِذَلِكَ مَا قُلْنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَأَمَّا الْمُتَأَوِّلُ - فَلَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ أَنَا مُسَدَّدٌ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ أَنَا ابْنُ أَبِي ذِئْبٍ حَدَّثَنِي سَعِيدٌ - هُوَ ابْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ - سَمِعْت أَبَا شُرَيْحٍ الْكَعْبِيَّ يَقُولُ: «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَا مَعْشَرَ خُزَاعَةَ قَتَلْتُمْ هَذَا الْقَتِيلَ مِنْ هُذَيْلٍ وَإِنِّي عَاقِلُهُ وَمَنْ قُتِلَ لَهُ بَعْدَ مَقَالَتِي هَذِهِ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيرَتَيْنِ: أَنْ يَأْخُذُوا الْعَقْلَ، وَبَيْنَ أَنْ يَقْتُلُوا» .

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: فَلَا شَكَّ أَنَّ خُزَاعَةَ قَتَلُوهُ مُتَأَوِّلِينَ أَنَّ لَهُمْ قَتْلَهُ - وَهَكَذَا نَقُولُ فِيمَنْ قَامَتْ عَلَيْهِ الْحُجَّةُ مِنْ النَّصِّ ثُمَّ قَتَلَ مُتَمَادِيًا عَلَى تَأْوِيلِهِ الْفَاسِدِ، الْمُخَالِفِ لِلنَّصِّ، أَوْ عَلَى تَقْلِيدِ مَنْ تَأَوَّلَ فَأَخْطَأَ: فَعَلَيْهِ الْقَوَدُ.

وَهَذَا الْخَبَرُ زَائِدٌ عَلَى خَبَرِ أُسَامَةَ بْنِ زَيْدٍ - وَخَالِدٍ - رَضِيَ اللَّهُ عَنْهُمَا - فِي قَتْلِ خَالِدٍ مَنْ قَتَلَ مِنْ بَنِي خُذَيْمَةَ مُتَأَوِّلًا - وَفِي قَتْلِ أُسَامَةَ: الرَّجُلَ الَّذِي قَالَ: لَا إلَهَ إلَّا اللَّهُ - وَالزِّيَادَةُ لَا يَجُوزُ تَرْكُهَا.

[مَسْأَلَةٌ لَا قَوَدَ عَلَى مَجْنُونٍ وَلَا عَلَى سَكْرَانَ]

مَسْأَلَةٌ: وَلَا قَوَدَ عَلَى مَجْنُونٍ فِيمَا أَصَابَ فِي جُنُونِهِ، وَلَا عَلَى سَكْرَانَ فِيمَا أَصَابَ فِي سُكْرِهِ - الْمُخْرِجِ لَهُ مِنْ عَقْلِهِ - وَلَا عَلَى مَنْ لَمْ يَبْلُغْ، وَلَا عَلَى أَحَدٍ مِنْ هَؤُلَاءِ: دِيَةٌ، وَلَا ضَمَانٌ، وَهَؤُلَاءِ وَالْبَهَائِمُ سَوَاءٌ لِمَا ذَكَرْنَا فِي " الطَّلَاقِ " وَغَيْرِهِ مِنْ الْخَبَرِ الثَّابِتِ فِي رَفْعِ الْقَلَمِ عَنْ الصَّبِيِّ حَتَّى يَبْلُغَ وَعَنْ الْمَجْنُونِ حَتَّى يُفِيقَ وَالسَّكْرَانِ لَا يَعْقِلُ وَقَدْ ذَكَرْنَا «خَبَرَ حَمْزَةَ - رَضِيَ اللَّهُ عَنْهُ - فِي قَوْلِهِ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا لَوْ قَالَهُ فِي صِحَّتِهِ لَخَرَجَ بِذَلِكَ عَنْ الْإِسْلَامِ وَعَقْرُهُ نَاقَتَيْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - فَلَمْ يَجْعَلْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي ذَلِكَ مَلَامَةً وَلَا غَرَامَةً» .

وَقَالَ بَعْضُهُمْ: لَوْ كَانَ هَذَا مَا شَاءَ وَاحِدٌ أَنْ يَقْتُلَ أَحَدًا أَوْ يُفْسِدَ مَالَهُ إلَّا تَسَاكَرَ حَتَّى يَبْلُغَ مَا يُرِيدُ؟ فَقُلْنَا لَهُمْ: فَقُولُوا هَذَا الْكَلَامَ فِي الْمَجْنُونِ، فَقُولُوا: لَوْ كَانَ هَذَا لَمَا شَاءَ أَحَدٌ أَنْ يَقْتُلَ أَحَدًا، أَوْ يُتْلِفَ مَالَهُ إلَّا تَحَامَقَ وَتَجَنَّنَ، حَتَّى يَبْلُغَ مِنْ ذَلِكَ مَا يُرِيدُ وَلَا فَرْقَ.

فَقَالُوا: وَمَنْ يَعْرِفُ أَنَّهُ سَكْرَانُ؟ فَقُلْنَا: وَمَنْ يَعْرِفُ أَنَّهُ مَجْنُونٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَالْحَقُّ الْمُتَيَقَّنُ فِي هَذَا: أَنَّ الْأَحْكَامَ لَازِمَةٌ لِكُلِّ بَالِغٍ حَتَّى يُوقَنَ أَنَّهُ ذَاهِبُ الْعَقْلِ بِجُنُونٍ أَوْ سُكْرٍ.

An issue: There is no qawad against an insane person or an intoxicated one.

Issue: There is no legal retaliation (qisas) upon an insane person for harm inflicted during their insanity, nor upon an intoxicated person for harm caused during their intoxication—which removes their rationality—nor upon a minor. None of these individuals incur blood money (diyah) or compensation. These individuals and animals are equivalent in legal consideration, based on what we established in "Divorce" and other contexts regarding the authentic report about the lifting of accountability: from the child until puberty, the insane until sanity returns, and the intoxicated who lacks rational capacity. We also referenced the report concerning Hamza—may Allah be pleased with him—when he addressed the Messenger of Allah (peace and blessings of Allah be upon him and his family) with words that, had he uttered them in his sane state, would have taken him beyond Islam. Likewise, his hamstringing of Ali's two she-camels (may Allah be pleased with him) led the Messenger of Allah (peace and blessings of Allah be upon him and his family) to impose neither blame nor financial penalty.

Some of them said: If this were valid, would anyone who wishes to kill someone or spoil his property do so only by getting drunk until he achieves his aim? We responded: Then apply this same reasoning to the insane person - [say]: If this were valid, would anyone who wishes to kill someone or destroy his property do so only by feigning foolishness or insanity until he attains what he desires? There is no distinction.

They said, "And who can determine if someone is intoxicated?" We responded, "And who can determine if someone is insane?" Abū Muḥammad—may Allāh be pleased with him—stated: "The indubitable truth in this matter is that legal obligations apply to every legally responsible person until it is conclusively established that he has lost his mental capacity due to insanity or intoxication."

As for cases where this certainty is absent, the legal rulings remain binding upon him, and the state of mental incapacity arising from one of these two causes is evident to anyone who witnesses it. Our opponents have concurred

with us in this matter that an intoxicated person is not held liable for apostasy from Islam—yet this [ruling] is more reprehensible than any other.

وَأَمَّا مَا لَمْ يُوقَنْ ذَلِكَ - فَالْأَحْكَامُ لَهُ لَازِمَةٌ وَحَالُ ذَهَابِ الْعَقْلِ بِأَحَدِ هَذَيْنِ الْوَجْهَيْنِ لَا يَخْفَى عَلَى مَنْ يُشَاهِدُهُ، وَقَدْ وَافَقَنَا الْمُخَالِفُونَ لَنَا فِي هَذَا الْمَكَانِ عَلَى أَنْ لَا يُؤْخَذَ السَّكْرَانُ بِارْتِدَادِهِ عَنْ الْإِسْلَامِ - وَهَذَا أَشْنَعُ مِنْ كُلِّ مَا سِوَاهُ.

L36380 If they were to say: "Why have you not stipulated blood money for that?" We would respond: Due to the statement of Allah's Messenger (peace and blessings be upon him and his family), "Your blood, your wealth, your honor, and your bodies are inviolable upon you." Thus, the wealth of minors, the insane, and intoxicated persons remains inviolable without explicit textual evidence - like the prohibition against shedding their blood - with no distinction [between these cases]. Nor is there any textual basis whatsoever establishing the obligation of a financial penalty upon them at all.

فَإِنْ قَالُوا: فَهَلَّا جَعَلْتُمْ فِي ذَلِكَ دِيَةً؟ قُلْنَا: لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» فَأَمْوَالُ الصَّبِيِّ وَالْمَجْنُونِ وَالسَّكْرَانِ حَرَامٌ بِغَيْرِ نَصٍّ، كَتَحْرِيمِ دِمَائِهِمْ وَلَا فَرْقَ وَلَا نَصَّ فِي وُجُوبِ غَرَامَةٍ عَلَيْهِمْ أَصْلًا.

L36381–36383 There are traditions reported from those below the rank of the Messenger of Allah—may Allah bless him and his family and grant him peace—concerning that: Regarding the case of boys, there is a tradition narrated from ʿAlī ibn Abī Ṭālib that six boys plunged into the river, where one drowned. Two testified against three, and three testified against the two. ʿAlī consequently assigned three-fifths of the blood money to the two and two-fifths of the blood money to the three.

وَجَاءَتْ عَمَّنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي ذَلِكَ آثَارٌ -: أَمَّا الصَّبِيُّ - فَجَاءَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَثَرٌ بِأَنَّ سِتَّةَ صِبْيَانٍ تَغَاطَّوا فِي النَّهْرِ فَغَرِقَ أَحَدُهُمْ فَشَهِدَ اثْنَانِ عَلَى ثَلَاثَةٍ، وَشَهِدَ الثَّلَاثَةُ عَلَى الِاثْنَيْنِ، فَجَعَلَ عَلِيٌّ عَلَى الِاثْنَيْنِ ثَلَاثَةَ أَخْمَاسِ الدِّيَةِ، وَجَعَلَ عَلَى الثَّلَاثَةِ خُمُسَيْ الدِّيَةِ -.

L36384 This is absolutely invalid because it is a narration from Salama ibn Kuhayl or Hammad ibn Abi Sulayman—both of whom were only born after Ali's death—claiming that Ali ibn Abi Talib...

وَهَذَا لَا يَصِحُّ أَلْبَتَّةَ؛ لِأَنَّهُ مِنْ رِوَايَةِ سَلَمَةَ بْنِ كُهَيْلٍ، أَوْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ - وَكِلَاهُمَا لَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ عَلِيٍّ.

L36385 And from the chain of Al-Ḥajjāj ibn Arṭāʾah—and he is rejected—. Furthermore, even if it were authentic, the Mālikīs, Ḥanafīs, and Shāfiʿīs would contradict it. For something only serves as evidence against those who have authenticated it, not against those who have not.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ هَالِكٌ -. ثُمَّ لَوْ صَحَّ لَكَانَ الْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ مُخَالِفُونَ لَهُ، وَإِنَّمَا يَكُونُ الشَّيْءُ حُجَّةً عَلَى مَنْ صَحَّحَهُ، لَا عَلَى مَنْ لَمْ يُصَحِّحْهُ.

L36386 It is reported that the imposition of the fine upon the minor's male agnatic kin is attributed to al-Zuhrī, Ḥammād ibn Abī Sulaymān, Ibrāhīm al-Nakhaʿī, and Qatādah—and this is the position upheld by Abū Ḥanīfah.

وَرُوِيَ إيجَابُ الْغَرَامَةِ عَلَى عَاقِلَةِ الصَّبِيِّ عَنْ الزُّهْرِيِّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَقَتَادَةَ - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ.

L36387 It has been narrated from Rabiʿah that he said: If the boy is very young,

there is no liability upon his ʿāqilah nor in his wealth—and if he is legally responsible, then the diyah (blood money) is upon his ʿāqilah.

وَرُوِيَ عَنْ رَبِيعَةَ أَنَّهُ قَالَ: إذَا كَانَ الصَّبِيُّ صَغِيرًا جِدًّا فَلَا شَيْءَ عَلَى عَاقِلَتِهِ، وَلَا فِي مَالِهِ - وَإِنْ كَانَ يَعْقِلُ فَالدِّيَةُ عَلَى عَاقِلَتِهِ.

L36388 Mālik also holds this opinion - Al-Shāfiʿī said: "It is in his property under all circumstances."

وَبِهِ يَقُولُ مَالِكٌ - وَقَالَ الشَّافِعِيُّ: هِيَ فِي مَالِهِ بِكُلِّ حَالٍ.

L36389 Abū Muḥammad—may Allah be pleased with him—said: "These are manifest contradictions and assertions devoid of evidence—neither from the Quran, nor a sound Sunnah, nor a weak one, nor any narration from a Companion at all, nor analogical reasoning. Whatever is thus is indubitably invalid."

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: فَهَذِهِ مُنَاقَضَاتٌ ظَاهِرَةٌ، وَأَقْوَالٌ بِلَا دَلِيلٍ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا رِوَايَةٍ عَنْ صَاحِبٍ أَصْلًا، وَلَا قِيَاسٍ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ مُتَيَقَّنٌ.

L36390 They have unanimously agreed that it is impermissible to apply analogy to the intentional act, and analogizing the intentional act to the unintentional one is invalid—even if analogy were valid—because, according to them, a thing is only analogized to its equivalent or similar counterpart. There is absolutely no resemblance between a sane adult on one hand, and a minor or an insane person on the other. Thus, all their arguments are rendered void. And success comes from Allah, the Exalted.

وَقَدْ اتَّفَقُوا عَلَى أَنَّهُ لَا يَجُوزُ أَنْ يُقَاسَ عَلَى الْعَامِدِ، وَقِيَاسُهُ عَلَى الْخَطَأِ بَاطِلٌ لَوْ كَانَ الْقِيَاسُ حَقًّا، لِأَنَّهُ لَا يُقَاسُ عِنْدَهُمْ الشَّيْءُ إلَّا عَلَى نَظِيرِهِ وَمُشْبِهِهِ، وَلَا شَبَهَ بَيْنَ الْعَاقِلِ الْبَالِغِ وَبَيْنَ الصَّبِيِّ الْمَجْنُونِ أَصْلًا - فَبَطَلَ كُلُّ مَا قَالُوهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L36391 They have unanimously agreed upon the waiver of expiation from him regarding that matter. If analogy were valid, then waiving blood money by analogy to the waiver of expiation in that matter would be the soundest existing analogy. Yet they neither follow the textual sources, nor correctly apply analogy, nor emulate the Companions.

وَقَدْ أَجْمَعُوا عَلَى سُقُوطِ الْكَفَّارَةِ فِي ذَلِكَ عَنْهُ، فَلَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ إسْقَاطُ الدِّيَةِ قِيَاسًا عَلَى سُقُوطِ الْكَفَّارَةِ فِي ذَلِكَ أَصَحَّ قِيَاسٍ يُوجَدُ، وَلَكِنَّهُمْ لَا النُّصُوصَ يَتَّبِعُونَ، وَلَا الْقِيَاسَ يُحْسِنُونَ، وَلَا الصَّحَابَةَ يُقَلِّدُونَ.

L36392–36394 As for the insane person - Aḥmad ibn ʿUmar ibn Anas narrated to us, from ʿAbdullāh ibn al-Ḥusayn ibn ʿIqāl, from Ibrāhīm ibn Muḥammad al-Dīnawarī, from Muḥammad ibn Aḥmad ibn al-Jahm, from Jaʿfar ibn Muḥammad al-Ṣāʾigh, from me. Affan—he is Ibn Muslim—I, Sakhr ibn Juwayriyah, report from Nāfiʿ, the freedman of Ibn ʿUmar, who said: An insane man during the era of Ibn Az-Zubayr entered the Sacred House with a dagger and stabbed his cousin, killing him. Ibn Az-Zubayr ruled that compensation should be taken from his wealth and given to the slain man's family. Via the narration of Hammād ibn Salamah, from Hishām ibn ʿUrwah ibn Az-Zubayr, from his

وَأَمَّا الْمَجْنُونُ - فَحَدَّثَنَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ أَنَا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ أَنَا إبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ أَنَا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ أَنَا جَعْفَرُ بْنُ مُحَمَّدٍ الصَّائِغُ أَنَا عَفَّانُ - هُوَ ابْنُ مُسْلِمٍ - أَنَا صَخْرُ بْنُ جُوَيْرِيَةَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ قَالَ: إنَّ مَجْنُونًا عَلَى عَهْدِ ابْنِ الزُّبَيْرِ دَخَلَ الْبَيْتَ بِخِنْجَرٍ فَطَعَنَ ابْنَ عَمِّهِ فَقَتَلَهُ؟ فَقَضَى ابْنُ الزُّبَيْرِ بِأَنْ

father: ʿAbdullāh ibn Az-Zubayr said: The liability for the insane person's offense is from his wealth.

يُخْلَعَ مِنْ مَالِهِ وَيُدْفَعَ إِلَى أَهْلِ الْمَقْتُولِ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ: أَنَّ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ قَالَ: جِنَايَةُ الْمَجْنُونِ فِي مَالِهِ.

L36395 Abū Muḥammad—may Allāh be pleased with him—said: "And these two narrations are of the highest degree of authenticity."

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَانِ الْأَثَرَانِ فِي غَايَةِ الصِّحَّةِ.

L36396 The liability for the criminal act of a minor or an insane person is borne by their respective agnates.

وَمِنْ طَرِيقِ الْحُسَيْنِ بْنِ عَبْدِ اللَّهِ بْنِ ضَمْرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيٍّ قَالَ: جِنَايَةُ الصَّبِيِّ، وَالْمَجْنُونِ عَلَى عَاقِلَتِهِمَا -.

L36397 And this is invalid, for Al-Husayn ibn Abdullah, his father, and his grandfather: there is no good in them.

وَهَذَا لَا يَصِحُّ؛ لِأَنَّ الْحُسَيْنَ بْنَ عَبْدِ اللَّهِ، وَأَبَاهُ، وَجَدَّهُ: لَا خَيْرَ فِيهِمْ.

L36398 Narrated by Malik from Yahya ibn Sa'id al-Ansari: Marwan wrote to Mu'awiyah concerning a mentally ill man who had killed someone. Mu'awiyah wrote to him: "Confine him, and do not exact retaliation from him."

وَمِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ: أَنَّ مَرْوَانَ كَتَبَ إِلَى مُعَاوِيَةَ فِي مَجْنُونٍ قَتَلَ رَجُلًا؟ فَكَتَبَ إِلَيْهِ مُعَاوِيَةُ: اعْقِلْهُ، وَلَا تُقِدْ مِنْهُ -.

L36399 This is invalid because Yaḥyā ibn Saʿīd al-Anṣārī was not born until after the death of Muʿāwiyah.

وَهَذَا لَا يَصِحُّ؛ لِأَنَّ يَحْيَى بْنَ سَعِيدٍ الْأَنْصَارِيَّ لَمْ يُولَدْ إِلَّا بَعْدَ مَوْتِ مُعَاوِيَةَ.

L36400 It has been narrated to us from Saʿīd ibn al-Musayyib and Sulaymān ibn Yasār that the blood money liability (ʿaql) applies to the insane person. However, this is not authentically established from them, as it is transmitted via Makhramah ibn Bukayr from his father, and Makhramah did not hear anything from his father.

وَرُوِّينَا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَسُلَيْمَانَ بْنِ يَسَارٍ عَلَى الْمَجْنُونِ الْعَقْلُ - وَلَا يَصِحُّ عَنْهُمَا؛ لِأَنَّهُ عَنْ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ، وَلَمْ يَسْمَعْ مِنْ أَبِيهِ شَيْئًا.

L36401 We have also narrated from Yaḥyā ibn Saʿīd al-Anṣārī and Muḥammad ibn Jaʿfar ibn al-Zubayr that the criminal liability of the insane person is borne by his ʿāqila.

وَرُوِّينَاهُ أَيْضًا - عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَمُحَمَّدِ بْنِ جَعْفَرِ بْنِ الزُّبَيْرِ جِنَايَةُ الْمَجْنُونِ عَلَى عَاقِلَتِهِ -.

L36402 And it is not authentically reported from both of them, because it is from an unnamed narrator from them [i.e., the two], except that it is authentic from al-Zuhri and Abu al-Zinad. There is no authoritative proof in anyone apart from the Messenger of Allah (may Allah bless him and his family and grant him peace.)

وَلَا يَصِحُّ عَنْهُمَا؛ لِأَنَّهُ عَمَّنْ لَمْ يُسَمِّ عَنْهُمَا إِلَّا أَنَّهُ صَحِيحٌ عَنْ الزُّهْرِيِّ، وَأَبِي الزِّنَادِ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L36403 The Hanafis, Malikis, and Shafi'is have opposed what has been authentically

reported from Ibn al-Zubayr in this matter, and no disagreement with him from any of the Companions has ever been authenticated.

وَقَدْ خَالَفَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ فِي هَذَا مَا صَحَّ عَنْ ابْنِ الزُّبَيْرِ، وَلَمْ يَصِحَّ قَطُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ خِلَافُهُ.

L36404–36406 They have no valid proof in what is narrated from Muʿāwiyah, for it does not state that the financial liability is to be paid from the insane person's wealth nor that it is incumbent upon his agnatic relatives. Rather, it only mentions that he ordered Marwān to have the agnatic relatives pay it. The apparent meaning of the command is that he had it paid from the public treasury. Financial liability, and if the Imam were to do this, it would be commendable though not obligatory—this is what they contradicted in the texts. Among the authentically established positions of a Companion whose statement none of them validly opposed is the matter of qiyās (legal analogy): since they applied qiyās by equating the liability of an insane person erroneously presumed to have intent with its opposite—the liability of a sane person who erred—yet they did not extend this analogy to waiving the blood money (diyah) as they did to waiving the expiation (kaffārah) in that case. And success is from Allah, the Exalted.

وَلَا حُجَّةَ لَهُمْ فِيمَا رُوِيَ عَنْ مُعَاوِيَةَ؛ لِأَنَّهُ لَيْسَ فِيهِ: أَنَّ الْغَرَامَةَ فِي مَالِ الْمَجْنُونِ، وَلَا أَنَّهَا عَلَى عَاقِلَتِهِ: إنَّمَا فِيهَا: أَنَّهُ أَمَرَ مَرْوَانَ بِأَنْ يَعْقِلَهُ - وَظَاهِرُ الْأَمْرِ أَنَّهُ عَقَلَهُ مِنْ بَيْتِ الْمَالِ، وَلَوْ فَعَلَ الْإِمَامُ هَذَا لَكَانَ حَسَنًا، وَلَيْسَ وَاجِبًا - وَهَذَا مَا خَالَفُوا فِيهِ النُّصُوصَ، وَمِمَّا صَحَّ عَنْ الصَّاحِبِ الَّذِي لَا يَصِحُّ لِقَوْلِهِ خِلَافٌ عَنْ أَحَدٍ مِنْهُمْ، وَالْقِيَاسُ: إذْ قَاسُوا مَا جَنَى الْمَجْنُونُ الْقَاصِدُ عَلَى ضِدِّهِ - وَهُوَ مَا جَنَاهُ الْعَاقِلُ الْمُخْطِئُ - وَلَمْ يَقِيسُوا إسْقَاطَ الدِّيَةِ عَلَى إسْقَاطِهِمْ الْكَفَّارَةَ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L36407 As for the intoxicated man, it was narrated to us from Ali ibn Abi Talib that intoxicated men fought with knives. They were four individuals: two were wounded, and two died. Ali imposed the diyah for the two slain men upon their tribes and upon the tribes of the two who did not die, and offset from the two living parties the diyah corresponding to their wounds. It was narrated that Hasan ibn Ali deemed qisas should be enforced against the two living parties for the two dead, but Ali did not hold this view, stating: "Perhaps each of the two slain men killed the other." This narration is not sound from Ali, as its chain includes Simak ibn Harb narrating from an unknown man—reported by Hammad ibn Salama from Simak, who said: "From Ubayd ibn al-Qaʿqaʿ."

فَأَمَّا السَّكْرَانُ فَرُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّ سُكَارَى تَضَارَبُوا بِالسَّكَاكِينِ. وَهُمْ أَرْبَعَةٌ فَجُرِحَ اثْنَانِ، وَمَاتَ اثْنَانِ: فَجَعَلَ عَلِيٌّ دِيَةَ الِاثْنَيْنِ الْمَقْتُولَيْنِ عَلَى قَبَائِلِهِمَا، وَعَلَى قَبَائِلِ اللَّذَيْنِ لَمْ يَمُوتَا، وَقَاصَّ الْحَيَّيْنِ مِنْ ذَلِكَ بِدِيَةِ جِرَاحِهِمَا - وَأَنَّ الْحَسَنَ بْنَ عَلِيٍّ رَأَى أَنْ يُقِيدَ لِلْحَيَّيْنِ لِلْمَيِّتَيْنِ وَلَمْ يَرَ عَلِيٌّ ذَلِكَ، وَقَالَ: لَعَلَّ الْمَيِّتَيْنِ قَتَلَ كُلُّ وَاحِدٍ مِنْهُمَا الْآخَرَ - وَهَذَا لَا يَصِحُّ عَنْ عَلِيٍّ؛ لِأَنَّهُ مِنْ طَرِيقٍ فِيهَا سِمَاكُ بْنُ حَرْبٍ عَنْ رَجُلٍ مَجْهُولٍ، رَوَاهُ حَمَّادُ بْنُ سَلَمَةَ عَنْ سِمَاكٍ، فَقَالَ: عَنْ عُبَيْدِ بْنِ الْقَعْقَاعِ.

L36408 Abu al-Ahwash narrated it from Simak, who cited ʿAbd al-Raḥmān ibn al-Qaʿqaʿ—both of whom are unknown—and Simak is susceptible to talqīn (coaching/prompting).

وَرَوَاهُ أَبُو الْأَحْوَصِ عَنْ سِمَاكٍ فَقَالَ: عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَعْقَاعِ، وَكِلَاهُمَا لَا يُدْرَى مَنْ هُوَ - وَسِمَاكٌ يَقْبَلُ التَّلْقِينَ.

L36409 If it had been valid, it would have conflicted with the doctrines of the Hanafis,

the Shafi'is, and the Malikis.

وَلَوْ صَحَّ لَكَانَ مُخَالِفًا لِقَوْلِ الْحَنَفِيِّينَ، وَالشَّافِعِيِّينَ، وَالْمَالِكِيِّينَ.

L36410 From the transmission chains of Yaḥyā ibn Saʿīd al-Anṣārī and ʿAbd al-Raḥmān ibn Abī al-Zināد: Muʿāwiyah exacted legal retribution from an intoxicated person. Ibn Abī al-Zināد stated: The killer was Muḥammad ibn al-Nuʿmān al-Anṣārī, and the slain was ʿUmārah ibn Zayd ibn Thābit. Abū Muḥammad—may Allāh be pleased with him—commented: This account is inauthentic, for Yaḥyā was born only after Muʿāwiyah's death, while ʿAbd al-Raḥmān ibn Abī al-Zināد stands at the extreme end of unreliability—the first to deem him weak was Mālik. We know of no other reports from the Companions on this matter beyond what we have cited. And authenticated reports derive from al-Zuhrī and Rabīʿa.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ: أَنَّ مُعَاوِيَةَ أَقَادَ مِنْ السَّكْرَانِ، قَالَ ابْنُ أَبِي الزِّنَادِ: وَكَانَ الْقَاتِلُ مُحَمَّدَ بْنَ النُّعْمَانِ الْأَنْصَارِيَّ - وَالْمَقْتُولُ عُمَارَةَ بْنَ زَيْدِ بْنِ ثَابِتٍ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَا لَا يَصِحُّ؛ لِأَنَّ يَحْيَى لَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ مُعَاوِيَةَ، وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ فِي غَايَةِ الضَّعْفِ، أَوَّلُ مَنْ ضَعَّفَهُ: مَالِكٌ، وَلَا نَعْلَمُ فِي هَذَا الْبَابِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ شَيْئًا غَيْرَ مَا ذَكَرْنَا - وَصَحَّ عَنْ الزُّهْرِيِّ، وَرَبِيعَةَ.

L36411 And with this, Abu Hanifah, Malik, and al-Shafi'i say: retaliation is taken from the intoxicated person—and no argument is valid from anyone other than the Messenger of Allah, may Allah's blessings and peace be upon him and his family. This is among the matters in which they opposed the texts, what was narrated from the Companions, and analogical reasoning, as we mentioned.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: يُقَادُ مِنْ السَّكْرَانِ - وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهَذَا مِمَّا خَالَفُوا فِيهِ النُّصُوصَ وَمَا رُوِيَ عَنْ الصَّحَابَةِ، وَالْقِيَاسَ، كَمَا ذَكَرْنَا.

L36412–36413 Abu Muhammad—may Allah be pleased with him—said: It was narrated to us through the chain of Abd al-Razzaq, from Ibn Jurayj, who informed me that Abd al-Aziz ibn Umar ibn Abd al-Aziz reported: In a book of his father, it is reported from Umar ibn al-Khattab that he said: There is no retaliation for killing, no legal retribution, no prescribed punishment, no compensation for injuries, no execution, and no exemplary punishment against one who has not reached puberty until he understands his rights and obligations in Islam.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّ فِي كِتَابٍ لِأَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: لَا قَوَدَ، وَلَا قِصَاصَ، وَلَا حَدَّ، وَلَا جِرَاحَ، وَلَا قَتْلَ، وَلَا نَكَالَ عَلَى مَنْ لَمْ يَبْلُغْ الْحُلُمَ حَتَّى يَعْلَمَ مَا لَهُ فِي الْإِسْلَامِ، وَمَا عَلَيْهِ.

L36414 It has been authentically established from Uthman ibn Affan that a divorce pronounced by an intoxicated person is not binding upon him - thereby establishing that in his view the drunkard holds the same legal status as the insane. This position is maintained by Abu Sulayman, al-Muzani, al-Tahawi, and others.

وَقَدْ صَحَّ عَنْ عُثْمَانَ بْنِ عَفَّانَ: أَنَّ السَّكْرَانَ لَا يَلْزَمُهُ طَلَاقٌ - فَصَحَّ أَنَّهُ عِنْدَهُ بِمَنْزِلَةِ الْمَجْنُونِ - وَبِهَذَا يَقُولُ أَبُو سُلَيْمَانَ، وَالْمُزَنِيُّ، وَالطَّحَاوِيُّ، وَغَيْرُهُمْ.

L36415 The imposition of a fine constitutes divine legislation. If established without

a textual basis from the Quran or Sunnah, it is legislation in the religion which Allah has not sanctioned, and we seek refuge in Allah from this.

وَإِيجَابُ الْغَرَامَةِ شَرْعٌ، فَإِذَا كَانَ بِغَيْرِ نَصِّ قُرْآنٍ أَوْ سُنَّةٍ - فَهُوَ شَرْعٌ مِنْ الدِّينِ لَمْ يَأْذَنْ بِهِ اللَّهُ - وَنَعُوذُ بِاَللَّهِ مِنْ هَذَا.

L36416 Abu Muhammad—may Allah be pleased with him—said: However, if a child, an insane person, or an intoxicated person does this regarding blood, a wound, or property, confinement is imposed on him in a house to prevent his harm until the intoxicated person sobers up, the insane person regains consciousness, and the child reaches puberty.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: إلَّا أَنَّ مَنْ فَعَلَ هَذَا مِنْ الصِّبْيَانِ، أَوْ الْمَجَانِينِ، أَوْ السُّكَارَى فِي: دَمٍ، أَوْ جُرْحٍ، أَوْ مَالٍ: فَفُرِضَ ثِقَافُهُ فِي بَيْتٍ لِيَكُفَّ أَذَاهُ، حَتَّى يَتُوبَ السَّكْرَانُ، وَيُفِيقَ الْمَجْنُونُ، وَيَبْلُغَ الصَّبِيُّ.

L36417 Due to the saying of Allah, the Most High: *"Cooperate in righteousness and piety, and do not cooperate in sin and transgression"* [Al-Mā'idah 5:2]. Educating them constitutes cooperation in righteousness and piety, while neglecting them constitutes cooperation in sin and transgression. And with Allah, the Most High, lies all success.[5]

لِقَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَتَثْقِيفُهُمْ تَعَاوُنٌ عَلَى الْبِرِّ وَالتَّقْوَى، وَإِهْمَالُهُمْ تَعَاوُنٌ عَلَى الْإِثْمِ وَالْعُدْوَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L36418 Issue: If a sane adult Muslim kills a dhimmi or a musta'man.

[مَسْأَلَةٌ قَتَلَ مُسْلِمٌ عَاقِلٌ بَالِـغٌ ذِمِّيًّا أَوْ مُسْتَأْمَنًا]

L36419 **٢٠٢٥** – Issue: If a sane, adult Muslim kills a dhimmi or musta'man—whether intentionally or accidentally—no qawad (retribution), diyah (blood money), or kaffarah (expiation) is required. However, he is disciplined specifically for intentional acts and detained until he repents to prevent his harm.

٢٠٢٥ - مَسْأَلَةٌ: وَإِنْ قَتَلَ مُسْلِمٌ عَاقِلٌ بَالِـغٌ: ذِمِّيًّا، أَوْ مُسْتَأْمَنًا - عَمْدًا، أَوْ خَطَأً - فَلَا قَوَدَ عَلَيْهِ، وَلَا دِيَةَ، وَلَا كَفَّارَةَ - وَلَكِنْ يُؤَدَّبُ فِي الْعَمْدِ خَاصَّةً، وَيُسْجَنُ حَتَّى يَتُوبَ كَفًّا لِضَرَرِهِ.

L36420 The proof of that is the statement of Allah, the Most High: "And whoever kills a believer by mistake must free a believing slave and deliver blood-money to the deceased's family, unless they donate it as charity" up to His words, the Most High: "And Allah has ever been All-Knowing, All-Wise" [An-Nisa': 92].[6]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ إِلا أَنْ يَصَّدَّقُوا} [النساء: ٩٢] إلَى قَوْله تَعَالَى: {وَكَانَ اللَّهُ عَلِيمًا حَكِيمًا} [النساء: ٩٢] .

L36421–36423 All of this regarding the believer is with certainty. The pronoun in "If he belonged to a people with whom you have a treaty, then a compensation must be delivered to his family and the freeing of a believing slave. But

فَهَذَا كُلُّهُ فِي الْمُؤْمِنِ بِيَقِينٍ - وَالضَّمِيرُ الَّذِي فِي {كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِنَ اللَّهِ} [النساء: ٩٢] رَاجِعٌ ضَرُورَةً - لَا يُمْكِنُ غَيْرُ هَذَا - إلَى الْمُؤْمِنِ الْمَذْكُورِ أَوَّلًا،

[5] **Qur'an references (L36417):** Qur'an 5:2 (Al-Ma'idah).
[6] **Qur'an references (L36420):** Qur'an 4:92 (An-Nisa).

whoever cannot find the means, then fasting for two consecutive months as expiation from Allah" [4:92] necessarily refers back—there is no alternative to this—to the believer mentioned initially, and not to others. The mention in this verse does not pertain to a dhimmi at all, nor to a musta'min. Thus, it is certainly correct that imposing diyah on the Muslim in such a case is not permissible whatsoever, and likewise imposing qisas upon him, with no distinction.[7]

وَلَا ذِكْرَ فِي هَذِهِ الْآيَةِ لِذِمِّيٍّ أَصْلًا، وَلَا لِمُسْتَأْمَنٍ - فَصَحَّ يَقِينًا أَنَّ إِيجَابَ الدِّيَةِ عَلَى الْمُسْلِمِ فِي ذَلِكَ لَا يَجُوزُ أَلْبَتَّةَ، وَكَذَلِكَ إِيجَابُ الْقَوَدِ عَلَيْهِ وَلَا فَرْقَ.

L36424 People have differed regarding this matter. A group among them—Abū Ḥanīfah—said: A Muslim may be subjected to retaliation (qiṣāṣ) for intentionally killing a dhimmi, and he is obligated to pay blood money (diyah) and perform expiation (kaffārah) in cases of accidental killing. However, he is not executed for killing a muʿāhad even if done intentionally. We know of no precedent or basis for this opinion of his.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَتْ طَائِفَةٌ - مِنْهُمْ: أَبُو حَنِيفَةَ: يُقَادُ الْمُسْلِمُ بِالذِّمِّيِّ فِي الْعَمْدِ، وَعَلَيْهِ فِي قَتْلِهِ خَطَأً الدِّيَةِ وَالْكَفَّارَةِ، وَلَا يُقْتَلُ بِالْمُعَاهَدِ - وَإِنْ تَعَمَّدَ قَتْلَهُ وَلَا نَعْلَمُ لَهُ فِي قَوْلِهِ هَذَا سَلَفًا أَصْلًا.

L36425 A group of scholars—among them Mālik—said: A Muslim is not subject to *qisas* for killing a *dhimmi* unless he kills him through treachery (*ghīlah*) or highway robbery (*ḥirābah*), in which case *qisas* is obligatory. If the killing is accidental or intentional killing not involving treachery, he is liable for only blood money (*diyah*), and expiation (*kaffārah*) applies only in accidental killing.

وَقَالَتْ طَائِفَةٌ - مِنْهَا مَالِكٌ: لَا يُقَادُ الْمُسْلِمُ بِالذِّمِّيِّ إِلَّا أَنْ يَقْتُلَهُ غِيلَةً، أَوْ حِرَابَةً، فَيُقَادُ بِهِ وَلَا بُدَّ - وَعَلَيْهِ فِي قَتْلِهِ خَطَأً أَوْ عَمْدًا - غَيْرَ غِيلَةٍ - الدِّيَةُ فَقَطْ، وَالْكَفَّارَةُ فِي الْخَطَأِ.

L36426 A group—including al-Shāfiʿī—said: A Muslim is not subject to retaliation for killing a *dhimmi* fundamentally. However, he is liable for *diyah* and *kaffarah* if he kills him intentionally or unintentionally.

وَقَالَتْ طَائِفَةٌ - مِنْهَا الشَّافِعِيُّ: لَا يُقَادُ الْمُسْلِمُ بِالذِّمِّيِّ أَصْلًا، لَكِنْ عَلَيْهِ فِي قَتْلِهِ إِيَّاهُ - عَمْدًا أَوْ خَطَأً - الدِّيَةُ، وَالْكَفَّارَةُ.

L36427 And it has been reported regarding that from the Salaf: what was narrated to us through the chain of Wakīʿ—I am Sufyān al-Thawrī, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī: That a Muslim man killed a man from al-Ḥīrah? So ʿUmar ibn al-Khaṭṭāb enforced retaliation against him. Wakīʿ said: And we have it from Abū al-Ashhab, from Abū Naḍrah, with the same report, exactly the same, without any difference. And this is a mursal report.

وَجَاءَ فِي ذَلِكَ عَنْ السَّلَفِ - مَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ: أَنَّ رَجُلًا مُسْلِمًا قَتَلَ رَجُلًا مِنْ أَهْلِ الْحِيرَةِ؟ فَأَقَادَهُ عُمَرُ بْنُ الْخَطَّابِ - قَالَ وَكِيعٌ: ونا أَبُو الْأَشْهَبِ عَنْ أَبِي نَضْرَةَ بِمِثْلِهِ سَوَاءً سَوَاءً - وَهَذَا مُرْسَلٌ.

L36428 I am Muḥammad ibn Saʿīd ibn Nubāt: I am Qāsim ibn Aṣbagh: I am Muḥam-

[7] **Qur'an references (L36421):** Qur'an 4:92 (An-Nisa).

mad ibn ʿAbd al-Salām al-Khushanī: I am Muḥammad ibn al-Muthannā: I am ʿAbdullāh ibn Idrīs al-Awdī, from Layth ibn Abī Sulaym, from al-Ḥakam ibn ʿUtaybah: that ʿAlī ibn Abī Ṭālib and Ibn Masʿūd both jointly stated: "Whoever kills a Jew or a Christian is to be killed in retaliation for it"—and this is also a *mursal* [report with an interrupted chain].

أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ الْأَوْدِيُّ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ، وَابْنَ مَسْعُودٍ، قَالَا جَمِيعًا: مَنْ قَتَلَ يَهُودِيًّا، أَوْ نَصْرَانِيًّا قُتِلَ بِهِ - وَهَذَا مُرْسَلٌ أَيْضًا -.

L36429–36431 This was authentically reported from ʿUmar ibn ʿAbd al-ʿAzīz—as we have narrated through the chain of ʿAbd al-Razzāq from Maʿmar from ʿAmr ibn Maymūn, who said: "I witnessed the letter of ʿUmar ibn ʿAbd al-ʿAzīz to one of his governors concerning a Muslim who killed a dhimmi. He commanded him to hand the killer over to the victim's next of kin (wali). If the wali wished, he could execute him, or if he wished, pardon him." Maymūn said: "He was handed over to the wali, who struck his neck in my presence." This was also authentically reported from Ibrāhīm al-Nakhaʿī—as we have narrated through the chain of Ḥammād ibn Salama from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakhaʿī. A free Muslim is killed in retaliation for killing a Jew or a Christian – and a similar narration is attributed to Al-Shaʿbi – and this is the opinion of Ibn Abi Layla, Uthman al-Batti, and one of the two opinions of Abu Yusuf.

وَصَحَّ هَذَا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَمْرِو بْنِ مَيْمُونٍ، قَالَ: شَهِدْتُ كِتَابَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ إِلَى بَعْضِ أُمَرَائِهِ فِي مُسْلِمٍ قَتَلَ ذِمِّيًّا: فَأَمَرَهُ أَنْ يَدْفَعَهُ إِلَى وَلِيِّهِ، فَإِنْ شَاءَ قَتَلَهُ، وَإِنْ شَاءَ عَفَا عَنْهُ - قَالَ مَيْمُونٌ: فَدُفِعَ إِلَيْهِ فَضَرَبَ عُنُقَهُ وَأَنَا أَنْظُرُهُ - وَصَحَّ أَيْضًا عَنْ إِبْرَاهِيمَ النَّخَعِيِّ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ: الْمُسْلِمُ الْحُرُّ يُقْتَلُ بِالْيَهُودِيِّ وَالنَّصْرَانِيِّ - وَرُوِيَ عَنِ الشَّعْبِيِّ مِثْلُهُ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَعُثْمَانَ الْبَتِّيِّ، وَأَحَدُ قَوْلَيْ أَبِي يُوسُفَ.

L36432 There are differing reports from Umar ibn Abd al-Aziz regarding this matter. As we have narrated through the chain of Abd al-Razzaq from Ma'mar from Simak ibn al-Fadl, the judge of Yemen, who said: Umar ibn Abd al-Aziz wrote concerning Ziyad ibn Muslim—who had killed an Indian in Yemen—that he should be fined five hundred, and he should not be subjected to retaliation for it. Another opinion—we have also narrated from Umar ibn al-Khattab regarding a Muslim who kills a protected non-Muslim (dhimmi): If this was done by him as a character trait and habit, and he was a habitual thief, then execute him by beheading—but if this was done in anger or superstition, then require him to pay blood money—and it is narrated: require him to pay four thousand—though this is not authentic from Umar, because it is through the chain of Abdullah ibn Muharrar—who is an abandoned narrator—from Abu Mulayh ibn Usamah: that Umar—and this is a disconnected report (mursal)—

وَقَدْ اخْتُلِفَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي ذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ سِمَاكِ بْنِ الْفَضْلِ قَاضِي الْيَمَنِ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي زِيَادِ بْنِ مُسْلِمٍ - وَكَانَ قَدْ قَتَلَ هِنْدِيًّا بِالْيَمَنِ -: أَنْ أَغْرِمْهُ خَمْسَمِائَةٍ، وَلَا تُقِدْهُ بِهِ. وَقَوْلٌ آخَرُ - رُوِّيناهُ أَيْضًا عَنْ عُمَرَ بْنِ الْخَطَّابِ فِي الْمُسْلِمِ يَقْتُلُ الذِّمِّيَّ: إِنْ كَانَ ذَلِكَ مِنْهُ خُلُقًا وَعَادَةً، وَكَانَ لِصًّا عَادِيًا فَأَقِدْهُ بِهِ - وَرُوِيَ: فَاضْرِبْ عُنُقَهُ - وَإِنْ كَانَ ذَلِكَ فِي غَضَبِهِ، أَوْ طِيَرَةً، فَأَغْرِمْهُ الدِّيَةَ - وَرُوِيَ فَأَغْرِمْهُ أَرْبَعَةَ آلَافٍ - وَلَا يَصِحُّ - عَنْ عُمَرَ؛ لِأَنَّهُ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ مُحَرَّرٍ - وَهُوَ هَالِكٌ - عَنْ أَبِي مُلَيْحِ بْنِ أُسَامَةَ: أَنَّ

and through the chain of Abd al-Aziz ibn Umar ibn Abd al-Aziz in a book by his father: that Umar...

عُمَرَ - وَهَذَا مُرْسَلٌ، وَمِنْ طَرِيقِ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي كِتَابٍ لِأَبِيهِ: أَنَّ عُمَرَ.

L36433 And through the chain of Hammad ibn Zayd, from Amr ibn Dinar, from al-Qasim ibn Abi Bazzah narrating from ʾUmar—and this chain is mursal.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ الْقَاسِمِ بْنِ أَبِي بَزَّةَ أَنَّ عُمَرَ، وَهَذَا مُرْسَلٌ.

L36434 Or from a defective chain within it: ʿAbd al-Malik ibn Ḥabīb al-Andalusī from Asad ibn Mūsā from Saʿīd ibn Abī Arūba from ʿAmr ibn Dīnār: that ʿUmar—and this is a mursal isnād.

أَوْ مِنْ طَرِيقٍ سُوءٍ فِيهَا: عَبْدُ الْمَلِكِ بْنُ حَبِيبٍ الْأَنْدَلُسِيُّ عَنْ أَسَدِ بْنِ مُوسَى عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ عَمْرِو بْنِ دِينَارٍ: أَنَّ عُمَرَ - وَهَذَا مُرْسَلٌ.

L36435–36437 Another opinion—which states that a Muslim is not killed in retaliation for a *dhimmi* unless he kills him through treachery—has been narrated from ʿUthmān ibn ʿAffān through a defective, mursal chain containing ʿAbd al-Malik ibn Ḥabīb al-Andalusī, from Muṭarrif, from Ibn Abī Dhiʾb, from Muslim ibn Jundub al-Hudhalī, who said: ʿAbdullāh ibn ʿĀmir wrote to ʿUthmān, “A Muslim man attacked a village chief and killed him for his wealth.” ʿUthmān wrote back to him, “Execute him in retaliation, for this treacherous killing constitutes ḥirābah (highway robbery).” It has also been narrated from Abān ibn ʿUthmān, Abū Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm, and many sons of the Companions of the Messenger of Allah—peace and blessings be upon him and his family—except that all [...] That is from the narration of ʿAbd al-Malik ibn Ḥabīb al-Andalusī - and in some of them Ibn Abī al-Zinād - who is weak - and some of them are mursal, and none of them is authentic.

وَقَوْلٌ آخَرُ - وَهُوَ أَنَّهُ لَا يُقْتَلُ الْمُسْلِمُ بِالذِّمِّيِّ إلَّا أَنْ يَقْتُلَهُ غِيلَةً -: رُوِّينَاهُ عَنْ عُثْمَانَ بْنِ عَفَّانَ مِنْ طَرِيقٍ هَالِكَةٍ مُرْسَلَةً فِيهَا: عَبْدُ الْمَلِكِ بْنُ حَبِيبٍ الْأَنْدَلُسِيُّ عَنْ مُطَرِّفٍ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ مُسْلِمِ بْنِ جُنْدُبٍ الْهُذَلِيِّ قَالَ: كَتَبَ عَبْدُ اللَّهِ بْنُ عَامِرٍ إلَى عُثْمَانَ: أَنَّ رَجُلًا مِنْ الْمُسْلِمِينَ عَدَا عَلَى دِهْقَانٍ فَقَتَلَهُ عَلَى مَالِهِ؟ فَكَتَبَ إلَيْهِ عُثْمَانُ: أَنْ اُقْتُلْهُ بِهِ - فَإِنَّ هَذَا قَتْلُ غِيلَةٍ عَلَى الْحِرَابَةِ -: وَرُوِّينَاهُ أَيْضًا - عَنْ أَبَانَ بْنِ عُثْمَانَ، وَأَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ، وَرِجَالٍ كَثِيرٍ مِنْ أَبْنَاءِ الصَّحَابَةِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إلَّا أَنَّ كُلَّ ذَلِكَ مِنْ رِوَايَةِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ - وَفِي بَعْضِهَا ابْنُ أَبِي الزِّنَادِ - وَهُوَ ضَعِيفٌ - وَبَعْضُهَا مُرْسَلٌ، وَلَا يَصِحُّ مِنْهَا شَيْءٌ.

L36438 Another opinion states that he is not to be killed for it, as we have narrated through a sound chain from Shuʻbah: I am ʻAbd al-Malik ibn Maysarah, from al-Nazzal ibn Sabrah, that a Muslim man killed a man from the people of al-Hirah. So ʻUmar ibn al-Khattab wrote: “He is to be retaliated against.” Then ʻUmar wrote another letter afterward: “Do not kill him, but restrain him.” From the chain of Isma‘il ibn Ishaq: I am Sulayman ibn Harb, I am Hammad ibn Zayd, from Kathir ibn Ziyad, from al-Hasan al-Basri, who said: ʻUmar ibn al-Khattab said: “A believer is not killed for an unbeliever.” From the chain

وَقَوْلٌ آخَرُ - لَا يُقْتَلُ بِهِ، كَمَا رُوِّينَا بِالرِّوَايَةِ الثَّابِتَةِ مِنْ طَرِيقِ شُعْبَةَ أَنَا عَبْدُ الْمَلِكِ بْنُ مَيْسَرَةَ عَنْ النَّزَّالِ بْنِ سَبْرَةَ أَنَّ رَجُلًا مُسْلِمًا قَتَلَ رَجُلًا مِنْ أَهْلِ الْحِيرَةِ؟ فَكَتَبَ عُمَرُ بْنُ الْخَطَّابِ: أَنْ يُقَادَ بِهِ - ثُمَّ كَتَبَ عُمَرُ كِتَابًا بَعْدَهُ: أَنْ لَا تَقْتُلُوهُ، وَلَكِنْ اعْقِلُوهُ. وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ أَنَا سُلَيْمَانُ بْنُ حَرْبٍ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ كَثِيرِ بْنِ زِيَادٍ

of Isma'il: I am Yahya ibn Khalaf, I am Abu 'Asim al-Nabil, from Ibn Jurayj, who informed me that Ibn Shihab, regarding a Muslim killing a Christian, said that 'Uthman ibn 'Affan ruled: "He is not to be killed for it, but he is to be punished." From the chain of 'Abd al-Razzaq: I am Ma'mar, from al-Zuhri, from Salim ibn 'Abd Allah ibn 'Umar, from his father: A Muslim man intentionally killed a man from the people of the dhimma. He was brought to 'Uthman ibn 'Affan, who did not execute him for it, but imposed upon him the stringent blood money equivalent to that of a Muslim. Al-Zuhri said: Khalid ibn al-Muhajir—he is the son of Khalid ibn al-Walid—killed a dhimmi man during the time of Mu'awiyah? So he [the authority] did not execute him for it, but imposed upon him a blood money of one thousand dinars. Abu Muhammad—may Allah be pleased with him—said: This is of the highest authenticity from 'Uthman, and nothing else authentic on this matter is reported from any of the Companions except what we mentioned from 'Umar as well, through the chain of al-Nazzal ibn Sabrah.

عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ. وَمِنْ طَرِيقِ إِسْمَاعِيلَ أَنَا يَحْيَى بْنُ خَلَفٍ أَنَا أَبُو عَاصِمٍ النَّبِيلُ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ شِهَابٍ فِي قَتْلِ الْمُسْلِمِ النَّصْرَانِيَّ أَنَّ عُثْمَانَ بْنَ عَفَّانَ قَضَى: أَنْ لَا يُقْتَلَ بِهِ، وَأَنْ يُعَاقَبَ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ: أَنَّ رَجُلًا مُسْلِمًا قَتَلَ رَجُلًا مِنْ أَهْلِ الذِّمَّةِ عَمْدًا؟ فَدُفِعَ إلَى عُثْمَانَ بْنِ عَفَّانَ فَلَمْ يَقْتُلْهُ بِهِ، وَغَلَّظَ عَلَيْهِ الدِّيَةَ كَدِيَةِ الْمُسْلِمِ - قَالَ الزُّهْرِيُّ: وَقَتَلَ خَالِدُ بْنُ الْمُهَاجِرِ - هُوَ ابْنُ خَالِدِ بْنِ الْوَلِيدِ - رَجُلًا ذِمِّيًّا فِي زَمَنِ مُعَاوِيَةَ؟ فَلَمْ يَقْتُلْهُ بِهِ، وَغَلَّظَ عَلَيْهِ الدِّيَةَ أَلْفَ دِينَارٍ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا فِي غَايَةِ الصِّحَّةِ عَنْ عُثْمَانَ - وَلَا يَصِحُّ فِي هَذَا شَيْءٌ غَيْرَ هَذَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ إلَّا مَا ذَكَرْنَا عَنْ عُمَرَ أَيْضًا مِنْ طَرِيقِ النَّزَّالِ بْنِ سَبْرَةَ.

L36439 From the chain of ʿAbd al-Razzāq: Rabāḥ ibn ʿAbd Allāh ibn ʿUmar informed us from Ḥumayd al-Ṭawīl, who heard Anas ibn Mālik narrate that a Jew was killed treacherously, so ʿUmar ibn al-Khaṭṭāb ruled in his case with twelve thousand dirhams. From the chain of Ismāʿīl ibn Isḥāq: Sulaymān ibn Ḥarb reported from Abū Hilāl, from al-Ḥasan al-Baṣrī, that ʿAlī ibn Abī Ṭālib said: "A believer is not to be executed in retaliation for a disbeliever." This has been transmitted through mursal reports collectively from the Companions, including Abū ʿUbaydah ibn al-Jarrāḥ, Muʿādh ibn Jabal, Zayd ibn Thābit, and Abū Mūsā al-Ashʿarī. From the chain of ʿAbd al-Razzāq, from Maʿmar, from Yaḥyā ibn Abī Kathīr, from ʿIkrimah, the client of Ibn ʿAbbās, who said regarding a Muslim who kills a protected non-Muslim: "He is not to be executed for killing him, but blood money is owed instead."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا رَبَاحُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ أَخْبَرَنِي حُمَيْدٌ الطَّوِيلُ: أَنَّهُ سَمِعَ أَنَسَ بْنَ مَالِكٍ يُحَدِّثُ أَنَّ يَهُودِيًّا قُتِلَ غِيلَةً فَقَضَى فِيهِ عُمَرُ بْنُ الْخَطَّابِ بِاثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ. وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ أَنَا سُلَيْمَانُ بْنُ حَرْبٍ أَنَا أَبُو هِلَالٍ أَنَا الْحَسَنُ الْبَصْرِيُّ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ. وَرُوِيَتْ بِذَلِكَ مُرْسَلَاتٌ مِنْ طَرِيقِ الصَّحَابَةِ جُمْلَةً، وَعَنْ أَبِي عُبَيْدَةَ بْنِ الْجَرَّاحِ، وَمُعَاذِ بْنِ جَبَلٍ، وَزَيْدِ بْنِ ثَابِتٍ، وَأَبِي مُوسَى الْأَشْعَرِيِّ - وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ قَالَ فِي الْمُسْلِمِ يَقْتُلُ الذِّمِّيَّ: لَا يُقْتَلُ بِهِ، وَفِيهِ الدِّيَةُ.

L36440–36441 Abu Muhammad—may Allah be pleased with him—said: It has also been

narrated from Umar ibn Abd al-Aziz—and this is the view of Sufyan al-Thawri, Ibn Shubruma, al-Awza'i, al-Shafi'i, Ahmad ibn Hanbal, Abu Thawr, Ishaq, Abu Sulayman, Ibn al-Mundhir, and all their companions—. Zufar ibn al-Hudhayl reverted to this opinion.

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: وَرُوِيَ أَيْضًا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَابْنِ شُبْرُمَةَ، وَالْأَوْزَاعِيِّ، وَالشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ وَأَبِي ثَوْرٍ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَابْنِ الْمُنْذِرِ، وَجَمِيعِ أَصْحَابِهِمْ - وَإِلَيْهِ رَجَعَ زُفَرُ بْنُ الْهُذَيْلِ -.

L36442 That was narrated to us: through the chain of Abū 'Ubayd from 'Abd al-Raḥmān ibn Mahdīin from him.

رُوِّينَا ذَلِكَ: مِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْهُ.

L36443 Abu Muhammad—may Allah be pleased with him—said: As for Abu Hanifah's distinction between the *dhimmi* and the *mu'ahid*, we know of no evidence for it—neither from the Quran, nor the Sunnah, nor a weak narration, nor a narration from any of the Companions, nor a narration from the Successors, nor analogy, nor any sound opinion. Thus, it is undoubtedly invalid.

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: أَمَّا قَوْلُ أَبِي حَنِيفَةَ - فِي تَفْرِيقِهِ بَيْنَ الذِّمِّيِّ، وَالْمُعَاهِدِ، فَمَا نَعْلَمُ لَهُ حُجَّةً لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ وَلَا مِنْ رِوَايَةٍ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ، وَلَا مِنْ التَّابِعِينَ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ - فَسَقَطَ بِيَقِينٍ.

L36444 Similarly, we have found those who differentiate between a single occurrence and the frequent repetition of that act. They have no evidence from the Quran, nor from the Sunnah, nor from a weak narration, nor from an authentic narration from any of the Companions (may Allah be pleased with them), nor from analogical reasoning, nor from any considered opinion.

وَكَذَلِكَ وَجَدْنَا مَنْ فَرَّقَ بَيْنَ الْمَرَّةِ، وَبَيْنَ الْإِكْثَارِ مِنْ ذَلِكَ، لَا حُجَّةَ لَهُمْ مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ رِوَايَةٍ ثَابِتَةٍ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ.

L36445 As for Mālik's statement regarding the distinction between *ghīlah* (stealth murder) and other [crimes]—and likewise, "they are entirely equal, entirely equal"—except they said: "Did we kill him only for *ḥirābah* (highway robbery)?" We replied: "You do not uphold the sequential application in the ḥadd punishment for *ḥirābah*. Were you to do so, you would be self-contradictory, for there is no disagreement among proponents of the sequence that a highway robber is not executed if he kills during ḥirābah someone whose killer would not warrant execution outside ḥirābah. Yet you do not execute a Muslim in retaliation for a *dhimmi* outside ḥirābah." Thus, the invalidity of this distinction becomes conclusively evident.

وَأَمَّا قَوْلُ مَالِكٍ - فِي الْفَرْقِ بَيْنَ الْغِيلَةِ وَغَيْرِهَا - وَكَذَلِكَ أَيْضًا سَوَاءً سَوَاءً، إلَّا أَنَّهُمْ قَالُوا: إنَّمَا قَتَلْنَاهُ لِلْحِرَابَةِ؟ فَقُلْنَا: أَنْتُمْ لَا تَقُولُونَ بِالتَّرْتِيبِ فِي حَدِّ الْحِرَابَةِ، وَلَوْ قُلْتُمُوهُ لَكُنْتُمْ مُتَنَاقِضِينَ أَيْضًا؛ لِأَنَّهُ لَا خِلَافَ بَيْنَ أَحَدٍ مِمَّنْ قَالَ بِالتَّرْتِيبِ فِي أَنَّهُ لَا يُقْتَلُ الْمُحَارِبُ إنْ قُتِلَ فِي حِرَابَةٍ، مَنْ لَا يُقْتَلُ بِهِ إنْ قَتَلَهُ فِي غَيْرِ الْحِرَابَةِ، وَأَنْتُمْ لَا تَقْتُلُونَ الْمُسْلِمَ بِالذِّمِّيِّ فِي غَيْرِ الْحِرَابَةِ - فَظَهَرَ فَسَادُ هَذَا التَّقْسِيمِ بِيَقِينٍ.

L36446 As for the well-known position of the Mālikīs that the Imam may choose between executing the brigand, crucifying him, amputating him, or exiling him—how can they mandate killing a Muslim for a *dhimmī* when

وَأَمَّا الْمَشْهُورُ مِنْ قَوْلِ الْمَالِكِيِّينَ أَنَّهُمْ يَقُولُونَ بِتَخْيِيرِ الْإِمَامِ فِي قَتْلِ الْمُحَارِبِ، أَوْ صَلْبِهِ، أَوْ قَطْعِهِ، أَوْ نَفْيِهِ - فَمِنْ أَيْنَ أَوْجَبُوا قَتْلَ الْمُسْلِمِ بِالذِّمِّيِّ - وَلَا بُدَّ - فِي الْحِرَابَةِ وَتَرَكُوا

brigandage inherently necessitates [punishment], yet they abandon their own principle of the Imam's discretionary choice in this matter? Thus, the corruption of their position becomes undeniably evident with absolute certainty, and they have no valid proof whatsoever. Success lies with Allāh, the Exalted.

L36447 Then we examined the statement of those who assert: "A Muslim is to be killed in retaliation for a *dhimmi* or a *mu'āhad*." We found them citing as evidence the words of Allah, the Almighty: "And We ordained upon them therein that a life is for a life" [Al-Mā'idah: 45]. They argued: "This is a general principle."[8]

L36448–36449 And by His statement, the Most High: *"Retaliation is prescribed for violations of the sacred months. So whoever aggresses against you, retaliate against him to the same extent as he has aggressed against you"* [Al-Baqarah: 194].[9]

L36450 And the word of He, the Exalted: "The recompense for an evil deed is an evil deed equivalent to it" (42:40).[10]

L36451 And the statement of the Almighty, the Majestic: {If you retaliate, retaliate in the same measure as you were harmed} [An-Naḥl: 126], and His saying: {As for those who retaliate after being wronged, there is no accountability upon them} [Ash-Shūrā: 41], {Accountability lies only with those who oppress people and spread corruption in the land wrongfully} [Ash-Shūrā: 42].[11]

L36452 Retaliation has been ordained for you in cases of intentional killing: a free person for a free person, a slave for a slave, and a female for a female [Al-Baqarah: 178].[12]

L36453 Allah, the Exalted, says, "And whoever is slain unjustly, We have indeed

قَوْلُهُمْ فِي تَخْيِيرِ الْإِمَامِ فِيهِ - فَوَضَحَ فَسَادُ قَوْلِهِمْ بِيَقِينٍ لَا إشْكَالَ فِيهِ، وَأَنَّهُ لَا حُجَّةَ لَهُمْ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

ثُمَّ نَظَرْنَا - فِي قَوْلِ مَنْ قَالَ: يُقْتَلُ الْمُسْلِمُ بِالذِّمِّيِّ، وَبِالْمُعَاهَدِ، فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ} [المائدة: ٤٥] قَالُوا: هَذَا عُمُومٌ.

وَبِقَوْلِهِ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

وقَوْله تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] .

وقَوْله تَعَالَى: {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] وَبِقَوْلِهِ عَزَّ وَجَلَّ: {وَلَمَنِ انْتَصَرَ بَعْدَ ظُلْمِهِ فَأُولَئِكَ مَا عَلَيْهِمْ مِنْ سَبِيلٍ} [الشورى: ٤١] {إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الْأَرْضِ بِغَيْرِ الْحَقِّ} [الشورى: ٤٢] .

وَبِقَوْلِهِ تَعَالَى: {كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنْثَى بِالْأُنْثَى} [البقرة: ١٧٨] .

وقَوْله تَعَالَى: {وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لِوَلِيِّهِ سُلْطَانًا فَلا يُسْرِفْ فِي الْقَتْلِ إِنَّهُ كَانَ مَنْصُورًا} [الإسراء: ٣٣] .

[8] **Qur'an references (L36447):** Qur'an 5:45 (Al-Ma'idah).
[9] **Qur'an references (L36449):** Qur'an 2:194 (Al-Baqarah).
[10] **Qur'an references (L36450):** Qur'an 42:40 (Ash-Shuraa).
[11] **Qur'an references (L36451):** Qur'an 16:126 (An-Nahl); Qur'an 42:41 (Ash-Shuraa); Qur'an 42:42 (Ash-Shuraa).
[12] **Qur'an references (L36452):** Qur'an 2:178 (Al-Baqarah).

granted his guardian authority. So let him not exceed in killing. Truly, he will be supported." [Al-Isra 17:33].[13]

L36454 They said: As for the one under a covenant—even if he is a disbeliever—verily, if he is killed unjustly, he is undoubtedly wronged.

L36455 And by the authentically narrated report from the Messenger of Allah—may Allah bless him and his family and grant him peace—: "Whoever has a slain person, then they have the best of two options: either blood money is paid or retaliation is enacted."

L36456 And by the authentically transmitted report from him—may Allah's blessings and peace be upon him and his family—it is also stated: "The blood of a Muslim man cannot be shed lawfully except in three categories," and among these he mentioned "a soul for a soul."

L36457 Ali said: "And we will mention both of them with their chains of transmission—if Allah, the Exalted, wills—after this."

L36458 Abū Muḥammad—may Allah be pleased with him—said: They cited as evidence what we have narrated through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Rabīʿah ibn Abī ʿAbd al-Raḥmān, from ʿAbd al-Raḥmān al-Baylamānī, who attributed it to the Prophet—peace and blessings be upon him and his family—"that he executed qisas against a Muslim who killed a Jew, declaring: I am the most entitled to fulfill the covenant owed to him."

L36459–36461 Some people narrated it from Yaḥyā ibn Salām from Muḥammad ibn Abī Ḥumayd al-Madanī from Muḥammad ibn al-Munkadir, who said: "The Messenger of Allah—peace be upon him and his family—and they mentioned matters in which they claimed consensus: that when the father of ʿUbayd Allāh ibn ʿUmar ibn al-Khaṭṭāb, may Allah be pleased with him, died, he killed al-Hurmuzān, who was a Muslim, and Jufaynah, who was a Christian, and he killed Bunayyah." The young girl belonging to Abu Lu'lu'ah—who herself professed Islam—so the Muhajirun counseled Uthman to execute him? They said: The apparent meaning indicates they advised his execution along with their three [associates]. They said: Just as there is no dispute that a Mus-

قَالُوا: وَذُو الْعَهْدِ - وَإِنْ كَانَ كَافِرًا - فَإِنَّهُ إنْ قُتِلَ بِغَيْرِ حَقٍّ فَهُوَ مَظْلُومٌ بِلَا شَكٍّ.

وَبِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مِنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ إمَّا يُودَى وَإِمَّا يُقَادُ» .

وَبِالْخَبَرِ الثَّابِتِ عَنْهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَيْضًا «لَا يَحِلُّ دَمُ رَجُلٍ مُسْلِمٍ إلَّا ثَلَاثَةُ نَفَرٍ، فَذَكَرَ فِيهِمْ النَّفْسَ بِالنَّفْسِ» .

قَالَ عَلِيٌّ: وَسَنَذْكُرُهُمَا بِأَسَانِيدِهِمَا - إنْ شَاءَ اللَّهُ تَعَالَى بَعْدَ هَذَا.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَاحْتَجُّوا - بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْبَيْلَمَانِيِّ يَرْفَعُهُ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنَّهُ أَقَادَ مُسْلِمًا قَتَلَ يَهُودِيًّا، وَقَالَ: أَنَا أَحَقُّ مَنْ وَفَّى بِذِمَّتِهِ» .

وَرَوَاهُ بَعْضُ النَّاسِ عَنْ يَحْيَى بْنِ سَلَامٍ عَنْ مُحَمَّدِ بْنِ أَبِي حُمَيْدٍ الْمَدَنِيِّ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ قَالَ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَذَكَرُوا أَشْيَاءَ ادَّعَوْا فِيهَا الْإِجْمَاعَ - وَهُوَ أَنَّ عُبَيْدَ اللَّهِ بْنَ عُمَرَ بْنِ الْخَطَّابِ لَمَّا مَاتَ أَبُوهُ - رَضِيَ اللَّهُ عَنْهُ - قَتَلَ الْهُرْمُزَانِ وَكَانَ مُسْلِمًا، وَقَتَلَ جُفَيْنَةَ وَكَانَ نَصْرَانِيًّا، وَقَتَلَ بُنَيَّةً صَغِيرَةً لِأَبِي لُؤْلُؤَةَ وَكَانَتْ تَدَّعِي الْإِسْلَامَ - فَأَشَارَ الْمُهَاجِرُونَ عَلَى عُثْمَانَ بِقَتْلِهِ؟ قَالُوا: فَظَاهِرُ الْأَمْرِ أَنَّهُمْ أَشَارُوا بِقَتْلِهِ بِهِمْ ثَلَاثَتِهِمْ. وَقَالُوا: كَمَا لَا خِلَافَ فِي أَنَّ الْمُسْلِمَ يُقْطَعُ إنْ سَرَقَ مِنْ

[13] **Qur'an references (L36453):** Qur'an 17:33 (Al-Isra).

lim is amputated if he steals from the property of a dhimmi or a musta'min [a non-Muslim under temporary protection], his execution in retaliation for both [a dhimmi and a musta'min] is more imperative—for blood holds greater sanctity than property. They directed their argument specifically at us: You apply the hadd punishment to a Muslim who falsely accuses a dhimmi or a musta'min of adultery, yet you prohibit executing him for killing either of them—and this is utterly astonishing? They contended against the Shafi'is with their view: If a dhimmi kills a dhimmi then embraces Islam, you mandate his execution for it—so what distinction exists between your execution of a Muslim for killing a disbeliever in one case and your execution of a Muslim for a disbeliever in the other matter? Abu Muhammad—may Allah be pleased with him—said: None of this holds any argumentative weight for them in any respect. As for Allah's statement—Exalted is He: "And We prescribed for them therein that a life is for a life" [5:45]—this pertains to what Allah ordained in the Torah. We are not bound by the legal codes of those preceding our Prophet—peace and blessings be upon him. Even if it were valid that we are obligated thereby, the ruling concerning this verse would align with the rulings of the other verses we cited thereafter and the authenticated reports we presented—which state "or a life for a life."[14]

مَالِ الذِّمِّيِّ، وَالْمُسْتَأْمَنِ، فَقَتْلُهُ بِهِمَا أَوْلَى؛ لِأَنَّ الدَّمَ أَعْظَمُ حُرْمَةً مِنْ الْمَالِ، وَقَالُوا لَنَا خَاصَّةً: أَنْتُمْ تَحُدُّونَ الْمُسْلِمَ إنْ قَذَفَ الذِّمِّيَّ، وَالْمُسْتَأْمَنَ، وَتَمْنَعُونَ مِنْ قَتْلِهِ بِقَتْلِهِ لَهُمَا - وَهَذَا عَجَبٌ جِدًّا؟ وَاحْتَجُّوا عَلَى الشَّافِعِيِّينَ بِقَوْلِهِمْ: إنْ قَتَلَ ذِمِّيٌّ ذِمِّيًّا ثُمَّ أَسْلَمَ فَإِنَّهُ يُقْتَلُ بِهِ عِنْدَكُمْ، وَلَا فَرْقَ بَيْنَ قَتْلِكُمْ مُسْلِمًا بِكَافِرٍ، وَبَيْنَ قَتْلِكُمْ مُسْلِمًا بِكَافِرٍ فِي الْمَسْأَلَةِ الْأُخْرَى؟ قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ: أَمَّا قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ} [المائدة: ٤٥] فَإِنَّ هَذَا مِمَّا كَتَبَ اللَّهُ عَزَّ وَجَلَّ فِي التَّوْرَاةِ، وَلَا تَلْزَمُنَا شَرَائِعُ مَنْ قَبْلَ نَبِيِّنَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - ثُمَّ لَوْ صَحَّ أَنَّنَا مُلْزَمُونَ ذَلِكَ لَكَانَ الْقَوْلُ فِي هَذِهِ الْآيَةِ كَالْقَوْلِ فِي الْآيَاتِ الْأُخَرِ الَّتِي ذَكَرْنَاهَا بَعْدَهَا، وَفِي الْأَخْبَارِ الثَّابِتَةِ الَّتِي أَوْرَدْنَا، وَفِيهَا «أَوْ نَفْسٌ بِنَفْسٍ» .

L36462 Moreover, the end of this verse clarifies that it pertains exclusively to believers in relation to believers, as Allah, the Almighty and Majestic, states at its conclusion: {Whoever offers it as charity, it will be an expiation for him} [Al-Ma'idah: 45]. There is no disagreement between us and them that the disbeliever's charity to the guardian of a dhimmi killed intentionally does not serve as an expiation for him—thus their reliance on this verse is invalidated.[15]

وَأَيْضًا - فَفِي آخِرِ هَذِهِ الْآيَةِ بَيَانُ أَنَّهَا فِي الْمُؤْمِنِينَ بِالْمُؤْمِنِينَ خَاصَّةً؛ لِأَنَّهُ قَالَ عَزَّ وَجَلَّ فِي آخِرِهَا: {فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] وَلَا خِلَافَ بَيْنَنَا وَبَيْنَهُمْ فِي أَنَّ صَدَقَةَ الْكَافِرِ عَلَى وَلِيِّ الْكَافِرِ الذِّمِّيِّ الْمَقْتُولِ عَمْدًا لَا تَكُونُ كَفَّارَةً لَهُ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْآيَةِ.

L36463 As for the statement of the Almighty: {Retaliation is prescribed for violations of sanctity. So whoever transgresses against you, retaliate against him in equal measure to the manner he transgressed against you} [Al-Baqarah: 194], the address in these verses is directed to the believers, not the disbelievers. The believers are those addressed at the beginning and end of the verse,

وَأَمَّا قَوْلُهُ عَزَّ وَجَلَّ: {وَالْحُرُمَاتُ قِصَاصٌ فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] فَإِنَّ الْخِطَابَ فِي هَذِهِ الْآيَاتِ لِلْمُؤْمِنِينَ لَا لِلْكَافِرِينَ، فَالْمُؤْمِنُونَ هُمْ الْمُخَاطَبُونَ فِي أَوَّلِ الْآيَةِ، وَآخِرِهَا بِأَنْ يَعْتَدُوا عَلَى مَنْ اعْتَدَى عَلَيْهِمْ،

[14] **Qur'an references (L36459):** Qur'an 5:45 (Al-Ma'idah).
[15] **Qur'an references (L36462):** Qur'an 5:45 (Al-Ma'idah).

commanding them to retaliate against whoever transgressed against them, to the same extent and manner of his transgression. The verse does not permit disbelievers to retaliate against believers for an initial transgression committed by believers against them.[16]

L36464 Indeed, retaliation is obligatory for a dhimmi against another dhimmi by the command of Allah, the Exalted: "And judge between them by what Allah has revealed" [Surah Al-Mā'idah 5:49], not by the previously mentioned verse.[17]

L36465–36467 As for Allah's statement, the Exalted: {And the recompense for an evil deed is an evil deed like it} [42:40], this ruling also applies to the believer. He [the disbeliever] is specifically wronged, for its text states: {The recompense for an evil deed is an evil deed like it, but whoever pardons and seeks reconciliation, his reward rests with Allah} [Ash-Shura: 40]. There is no disagreement that this [ruling] does not apply to disbelievers, nor will they receive any reward whatsoever.[18]

L36468 As for the statement of Allah, the Almighty and Majestic: {And if you punish, then punish with the equivalent of that with which you were punished} [16:126], this, likewise, is an address directed specifically to the believers. This is necessarily clarified by His statement, the Exalted, within the same verse: {And if you punish, then punish with the equivalent of that with which you were punished. But if you endure patiently—it is indeed better for those who are patient} [16:126]. There is no good whatsoever for a disbeliever, whether he shows patience or not, as Allah, the Almighty and Majestic, said: {And We will present whatever deeds they have done, rendering them like scattered dust} [25:23].[19]

L36469 As for His statement—Exalted is He—"And whoever retaliates after being wronged—there is no blame upon them" [Ash-Shura 42:41]. "Blame is only upon those who wrong the people and act oppressively in the land without right" [Ash-Shura 42:42]. And His statement—Exalted is He—"And whoever

بِمِثْلِ مَا اعْتَدَى بِهِ عَلَيْهِمْ - وَلَيْسَ فِيهَا: أَنْ يَعْتَدِيَ غَيْرُ الْمُؤْمِنِينَ عَلَى الْمُؤْمِنِينَ بِاعْتِدَاءٍ يَكُونُ مِنْ الْمُؤْمِنِينَ عَلَيْهِمْ أَصْلًا.

وَإِنَّمَا وَجَبَ الْقِصَاصُ مِنْ الذِّمِّيِّ لِلذِّمِّيِّ بِقَوْلِ اللَّهِ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] لَا بِالْآيَةِ الْمَذْكُورَةِ.

وَأَمَّا قَوْله تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] فَهُوَ أَيْضًا فِي الْمُؤْمِنِ يُسَاءُ إلَيْهِ خَاصَّةً؛ لِأَنَّ نَصَّهَا {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: ٤٠] وَلَا خِلَافَ فِي أَنَّ هَذَا لَيْسَ لِلْكُفَّارِ وَلَا أَجْرَ لَهُمْ أَلْبَتَّةَ.

وَأَمَّا قَوْلُهُ عَزَّ وَجَلَّ: {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] فَكَذَلِكَ أَيْضًا إنَّمَا هُوَ خِطَابٌ لِلْمُؤْمِنِينَ خَاصَّةً، يُبَيِّنُ ذَلِكَ ضَرُورَةً قَوْله تَعَالَى فِيهَا: {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ وَلَئِنْ صَبَرْتُمْ لَهُوَ خَيْرٌ لِلصَّابِرِينَ} [النحل: ١٢٦] وَلَا خَيْرَ لِكَافِرٍ أَصْلًا صَبَرَ أَوْ لَمْ يَصْبِرْ -: قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَقَدِمْنَا إِلَى مَا عَمِلُوا مِنْ عَمَلٍ فَجَعَلْنَاهُ هَبَاءً مَنْثُورًا} [الفرقان: ٢٣] .

وَأَمَّا قَوْله تَعَالَى: {وَلَمَنِ انْتَصَرَ بَعْدَ ظُلْمِهِ فَأُولَئِكَ مَا عَلَيْهِمْ مِنْ سَبِيلٍ} [الشورى: ٤١] {إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الْأَرْضِ بِغَيْرِ الْحَقِّ} [الشورى: ٤٢] وَقَوْله تَعَالَى: {وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لِوَلِيِّهِ سُلْطَانًا فَلَا يُسْرِفْ فِي الْقَتْلِ إِنَّهُ كَانَ مَنْصُورًا} [الإسراء: ٣٣] .

[16] **Qur'an references (L36463):** Qur'an 2:194 (Al-Baqarah).
[17] **Qur'an references (L36464):** Qur'an 5:49 (Al-Ma'idah).
[18] **Qur'an references (L36465):** Qur'an 42:40 (Ash-Shuraa).
[19] **Qur'an references (L36468):** Qur'an 16:126 (An-Nahl); Qur'an 25:23 (Al-Furqan).

is killed unjustly—We have granted his heir authority. Let him not exceed limits in killing, for he was indeed avenged" [Al-Isra 17:33].[20]

L36470 And His saying, the Most High: "Then, after he is oppressed, Allah will surely grant him victory." [Al-Hajj 22:60][21]

L36471 And the words of Allah, the Mighty and Majestic: "Equal retaliation has been prescribed for you regarding the slain—a free person for a free person, a slave for a slave, and a woman for a woman" [Al-Baqarah: 178] the verse.[22]

L36472 And the established narrations containing "a soul for a soul" and "the kin of a slain person: either blood money is to be paid or retaliation is to be enforced."

L36473 For indeed, all of that is specifically addressed by the words of Allah, the Mighty and Majestic: "Shall We treat the Muslims like the wicked?" [The Pen: 35] "What is the matter with you? How do you pass judgment?" [The Pen: 36].[23]

L36474 And by His saying, the Most High: {Is one who is a believer like one who is a transgressor? They are not equal} (As-Sajdah: 18), and by His saying, the Most High: {Allah will never grant the disbelievers a way to prevail over the believers} (An-Nisa: 141).[24]

L36475 It is therefore conclusively established that a Muslim does not resemble a disbeliever in anything whatsoever, nor does he equal him in any matter. Since this is the case, it is invalid for the Muslim's blood to equate with the disbeliever's blood, his limb with the disbeliever's limb, or his skin with the disbeliever's skin. Thus, seeking retaliation against a believer on behalf of a disbeliever, or exacting retribution for the disbeliever in cases less than homicide, is nullified—for there is no equality between them whatsoever.

وقَوْله تَعَالَى: {ثُمَّ بُغِيَ عَلَيْهِ لَيَنْصُرَنَّهُ اللَّهُ} [الحج: ٦٠] .

وَقَوْلُهُ عَزَّ وَجَلَّ: {كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالأُنْثَى بِالأُنْثَى} [البقرة: ١٧٨] الْآيَةَ.

وَالْأَخْبَارُ الثَّابِتَةُ الَّتِي فِيهَا «النَّفْسُ بِالنَّفْسِ» وَ «مَنْ قُتِلَ لَهُ قَتِيلٌ فَإِمَّا يُودَى وَإِمَّا يُقَادُ» .

فَإِنَّ كُلَّ ذَلِكَ يُخَصُّ بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {أَفَنَجْعَلُ الْمُسْلِمِينَ كَالْمُجْرِمِينَ} [القلم: ٣٥] {مَا لَكُمْ كَيْفَ تَحْكُمُونَ} [القلم: ٣٦] .

وَبِقَوْلِهِ تَعَالَى: {أَفَمَنْ كَانَ مُؤْمِنًا كَمَنْ كَانَ فَاسِقًا لا يَسْتَوُونَ} [السجدة: ١٨] وَبِقَوْلِهِ تَعَالَى: {وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلا} [النساء: ١٤١] .

فَوَجَبَ يَقِينًا أَنَّ الْمُسْلِمَ لَيْسَ كَالْكَافِرِ فِي شَيْءٍ أَصْلًا، وَلَا يُسَاوِيهِ فِي شَيْءٍ، فَإِذْ هُوَ كَذَلِكَ فَبَاطِلٌ أَنْ يُكَافِئَ دَمُهُ بِدَمِهِ، أَوْ عُضْوُهُ بِعُضْوِهِ أَوْ بَشَرَتُهُ بِبَشَرَتِهِ - فَبَطَلَ أَنْ يُسْتَقَادَ لِلْكَافِرِ مِنْ الْمُؤْمِنِ، أَوْ يُقْتَصَّ لَهُ مِنْهُ - فِيمَا دُونَ النَّفْسِ - إذْ لَا مُسَاوَاةَ بَيْنَهُمَا أَصْلًا.

[20]**Qur'an references (L36469):** Qur'an 42:41 (Ash-Shuraa); Qur'an 42:42 (Ash-Shuraa); Qur'an 17:33 (Al-Isra).

[21]**Qur'an references (L36470):** Qur'an 22:60 (Al-Hajj).

[22]**Qur'an references (L36471):** Qur'an 2:178 (Al-Baqarah).

[23]**Qur'an references (L36473):** Qur'an 68:35 (Al-Qalam); Qur'an 37:154 (As-Saffat); Qur'an 68:36 (Al-Qalam).

[24]**Qur'an references (L36474):** Qur'an 32:18 (As-Sajdah); Qur'an 4:141 (An-Nisa).

وَلَمَّا مَنَعَ اللَّهُ عَزَّ وَجَلَّ أَنْ يَجْعَلَ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا وَجَبَ ضَرُورَةً أَنْ لَا يَكُونَ لَهُ عَلَيْهِ سَبِيلٌ فِي قَوَدِهِ، وَلَا فِي قِصَاصٍ، أَصْلًا - وَوَجَبَ ضَرُورَةً اسْتِعْمَالُ النُّصُوصِ كُلِّهَا، إِذْ لَا يَحِلُّ تَرْكُ شَيْءٍ مِنْهَا.

L36476–36477 Since Allah, the Mighty and Majestic, has prevented disbelievers from having any means over believers, it is obligatory by necessity that no disbeliever may have a means over a believer in retaliation (qisas) against him, nor in qisas at all. It is also obligatory by necessity to apply all textual proofs, as it is impermissible to abandon any part of them.

وَمِنْ فَضَائِحِ الْحَنَفِيِّينَ - الْمُخْزِيَةِ لِقَائِلِهَا فِي الدُّنْيَا وَالْآخِرَةِ - قَطْعُهُمْ يَدَ الْمُسْلِمِ بِيَدِ الذِّمِّيِّ الْكَافِرِ، وَمَنْعُهُمْ مِنْ قَطْعِ يَدِ الرَّجُلِ الْمُسْلِمِ بِيَدِ الْمَرْأَةِ الْحُرَّةِ الْمُسْلِمَةِ، نَعَمْ، وَلَا يَقْطَعُونَ يَدَ الذِّمِّيِّ الْكَافِرِ إِنْ تَعَمَّدَ قَطْعَ يَدِ امْرَأَةٍ حُرَّةٍ مُسْلِمَةٍ، فَاعْجَبُوا لِهَذِهِ الْمَصَائِبِ مَعَ قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ} [الحجرات: ١٠] .

L36478 Among the disgraceful scandals of the Hanafis—shameful to their proponents in this world and the Hereafter—is their ruling to amputate a Muslim's hand in retribution for the hand of a dhimmi non-Muslim, while prohibiting the amputation of a Muslim man's hand in retribution for the hand of a free Muslim woman. Moreover, they do not amputate the hand of a dhimmi non-Muslim even if he deliberately amputates the hand of a free Muslim woman. Be appalled, then, at these calamities despite Allah's decree: "The believers are but brothers" [Al-Hujurat: 10].[25]

فَإِنْ اعْتَرَضُوا فِي الْآيَةِ الْمَذْكُورَةِ - بِمَا رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ زِرٍّ عَنْ يَسِيعَ الْكِنْدِيِّ قَالَ: جَاءَ رَجُلٌ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَقَالَ لَهُ: كَيْفَ تَقْرَأُ هَذِهِ الْآيَةَ {وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلا} [النساء: ١٤١] وَهُمْ يَقْتُلُونَ - يَعْنِي الْمُسْلِمِينَ - فَقَالَ عَلِيٌّ: فَاللَّهُ يَحْكُمُ بَيْنَهُمْ يَوْمَ الْقِيَامَةِ، وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ - يَوْمَ الْقِيَامَةِ - عَلَى الْمُؤْمِنِينَ سَبِيلًا. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: يَسِيعُ الْكِنْدِيُّ مَجْهُولٌ لَا يَدْرِي أَحَدٌ مَنْ هُوَ؟ وَجَوَابُ هَذَا السَّائِلِ: أَنَّ هَذِهِ الْآيَةَ حَقٌّ وَاجِبٌ فِي الدُّنْيَا وَالْآخِرَةِ، إِنَّمَا مَنَعَ اللَّهُ تَعَالَى مِنْ أَنْ يَكُونَ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلٌ بِحَقٍّ يَجْعَلُهُ اللَّهُ تَعَالَى لَهُ، وَيَأْمُرُ بِإِنْفَاذِهِ لِلْكَافِرِ عَلَى الْمُسْلِمِ فِي الدُّنْيَا وَيَوْمَ الْقِيَامَةِ.

L36479 If they raise an objection regarding the aforementioned verse - based on what we have narrated through the chain of Sufyān al-Thawrī from al-Aʿmash from Zarr from Yasīʿ al-Kindī, who said: A man came to ʿAlī ibn Abī Ṭālib and said to him: "How do you recite this verse: {And never will Allāh grant the disbelievers a way over the believers} [4:141], while they are killing them—meaning the Muslims?" ʿAlī replied: "Allāh will judge between them on the Day of Resurrection, and never will Allāh grant the disbelievers—on the Day of Resurrection—a way over the believers." Abū Muḥammad—may Allāh be pleased with him—said: Yasīʿ al-Kindī is of unknown status; no one knows who he is. The answer to this questioner is that this verse is an established truth and binding in both this world and the Hereafter. Allāh the Exalted has only prevented the disbelievers from having a way over the believers through a right that He establishes for the disbeliever and commands that it be enforced against the Muslim in this world and on the Day of Resurrection.[26]

وَأَمَّا بِالظُّلْمِ وَالتَّعَدِّي - فَلَمْ يُؤَمِّنَّا اللَّهُ تَعَالَى - قَطُّ - مِنْ ذَلِكَ، كَمَا أَطْلَقَ أَيْدِي الْكُفَّارِ فِيمَا خَلَا عَلَى بَعْضِ الْأَنْبِيَاءِ - عَلَيْهِمْ الصَّلَاةُ وَالسَّلَامُ - فَقَتَلُوهُمْ، وَعَلَى رَسُولِهِ مُحَمَّدٍ

L36480 As for oppression and transgression—Allah the Exalted has never protected us from that, just as He unleashed the hands of disbelievers in past times against some prophets (peace be upon them) by killing them, and against His

[25] **Qur'an references (L36478):** Qur'an 49:10 (Al-Hujurat).

[26] **Qur'an references (L36479):** Qur'an 4:141 (An-Nisa); Qur'an 2:113 (Al-Baqarah).

Messenger Muhammad (may Allah's blessings and peace be upon him) by wounding his sanctified face and breaking his incisor tooth—by my soul, he is, and by my father and mother.

L36481–36483 Just as He freed the tongues of the Hanafi jurists and empowered those who agreed with them to legitimize falsehood by imposing retaliation for a disbeliever against a Muslim—and all of this constitutes injustice that Allah the Exalted has neither commanded, nor approved, nor established as rightful. Rather, He, the Almighty, has denounced it most vehemently? Indeed, in the verse: "Retaliation is prescribed for you in cases of killing: the free for the free, the enslaved for the enslaved, and the female for the female. But if pardon is offered by the victim's heir, then let the pursuit be in fairness, and payment to him with kindness" [Al-Baqarah 2:178]—this constitutes an explicit text confirming its application exclusively among believers, some against others. Only because they are all brothers—their sinners and righteous, their slaves and free people—and the Dhimmis are not brothers to us, nor do they have any honor.[27]

L36484 Similarly, His Exalted saying: _"We have indeed granted his heir authority"_ [Al-Isra: 33]. Allah forbid that this would be for a disbeliever! By Allah, He the Exalted has never granted them, by the ruling of His religion, any authority. Rather, He has decreed for them humiliation. He the Mighty and Majestic has said: _"Until they pay the jizyah with their own hands while they are humbled"_ [At-Tawbah: 29].[28]

L36485 If they say: "Since they are not equal to us, why do you kill the non-Muslim in retribution for the Muslim?" We respond: "It is not a matter of honor for us to kill him as qisas (retribution). Rather, we kill him because he violated the covenant of protection and transgressed the pact by renouncing the subjugation [of his status]. Similarly, we kill him if he strikes a Muslim or insults him; we seize all his wealth as reparation thereby, and we enslave his adult family members and take his young children as captives."

L36486 If they say: Why do you rule that the Muslim must return what he usurped

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَرَحُوا وَجْهَهُ الْمُقَدَّسَ، وَكَسَرُوا ثَنِيَّتَهُ - بِنَفْسِي هُوَ، وَبِأَبِي وَأُمِّي.

وَكَمَا أَطْلَقَ أَلْسِنَةَ الْحَنَفِيِّينَ، وَأَيْدِي مَنْ وَافَقَهُمْ بِإِيجَابِ الْبَاطِلِ فِي الْقِصَاصِ لِلْكَافِرِ مِنْ الْمُسْلِمِ - وَكُلُّ ذَلِكَ ظُلْمٌ لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِهِ، وَلَا رَضِيَهُ وَلَا جَعَلَهُ حَقًّا، بَلْ أَنْكَرَهُ عَزَّ وَجَلَّ أَشَدَّ الْإِنْكَارِ؟ نَعَمْ، وَفِي الْآيَةِ الَّتِي فِيهَا {كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنْثَى بِالْأُنْثَى فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ} [البقرة: ١٧٨] وَهَذَا نَصٌّ جَلِيٌّ بِأَنَّهَا فِي الْمُؤْمِنِينَ خَاصَّةً، بَعْضُهُمْ فِي بَعْضٍ فَقَطْ؛ لِأَنَّهُمْ إخْوَةٌ كُلُّهُمْ، فَاسِقُهُمْ وَصَالِحُهُمْ، عَبْدُهُمْ وَحُرُّهُمْ، وَلَيْسَ أَهْلُ الذِّمَّةِ إخْوَةً لَنَا - وَلَا كَرَامَةَ لَهُمْ.

وَكَذَلِكَ قَوْله تَعَالَى: {فَقَدْ جَعَلْنَا لِوَلِيِّهِ سُلْطَانًا} [الإسراء: ٣٣] فَمَعَاذَ اللَّهِ أَنْ يَكُونَ هَذَا لِكَافِرٍ، وَاَللَّهِ مَا جَعَلَ تَعَالَى لَهُمْ قَطُّ - بِحُكْمِ دِينِهِ - سُلْطَانًا، بَلْ جَعَلَ لَهُمْ الصَّغَارَ، قَالَ عَزَّ وَجَلَّ: {حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] .

فَإِنْ قَالُوا: فَإِذْ لَا يُسَاوُونَنَا فَلِمَ قَتَلْتُمْ الْكَافِرَ بِالْمُؤْمِنِ؟ قُلْنَا: وَلَا كَرَامَةَ أَنْ نَقْتُلَهُ بِهِ قَوَدًا، بَلْ قَتَلْنَاهُ؛ لِأَنَّهُ نَقَضَ الذِّمَّةَ، وَخَالَفَ الْعَهْدَ بِخُرُوجِهِ عَنْ الصَّغَارِ، وَكَذَلِكَ نَقْتُلُهُ إنْ لَطَمَ مُسْلِمًا أَوْ سَبَّهُ، وَنَسْتَفِيءُ جَمِيعَ مَالِهِ بِذَلِكَ، وَنَسْبِي أَهْلَهُ وَصِغَارَ وَلَدِهِ.

[27] **Qur'an references (L36481):** Qur'an 2:178 (Al-Baqarah).
[28] **Qur'an references (L36484):** Qur'an 17:33 (Al-Isra); Qur'an 9:29 (At-Tawbah).

from the Dhimmi or wrongfully withheld the wealth from him? We say: The Dhimmi has no legal recourse against the Muslim in this matter. It is merely an injustice from which the Muslim purifies himself by relinquishing the wealth, thereby clearing himself of retaining it.

فَإِنْ قَالُوا: فَلِمَ تَحْكُمُونَ عَلَى الْمُسْلِمِ بِرَدِّ مَا غَصَبَهُ مِنْ الذِّمِّيِّ أَوْ مَنَعَهُ إيَّاهُ مِنْ الْمَالِ؟ قُلْنَا: لَيْسَ فِي هَذَا سَبِيلٌ لَهُ عَلَى الْمُسْلِمِ، إنَّمَا هِيَ مَظْلَمَةٌ يَبْرَأُ مِنْهَا الْمُسْلِمُ تَنْزِيهًا لَهُ عَنْ حَبْسِهَا فَقَطْ.

L36487 Abu Muhammad—may Allah be pleased with him—said: This matter is clarified with utmost clarity: what we have narrated through the chain of Abu Dawud al-Sijistani who said: Ahmad ibn Hanbal from Yahya ibn Sa'id al-Qattan from Sa'id ibn Abi 'Arubah from Qatadah from al-Hasan al-Basri from Qays ibn 'Abbad, who said: "I and another person—whose name he mentioned—went to 'Ali ibn Abi Talib and asked: 'Did the Messenger of Allah—peace and blessings be upon him—entrust to you any specific instruction he did not convey to the general people?' He replied: 'None except what is in this book of mine.' In it is written: 'The believers are equal in their blood. They are united against others, and the least in rank among them may undertake their protection. Know that a believer must not be killed in retaliation for a disbeliever, nor may a covenanted person be killed during the validity of his covenant. Whoever introduces an innovation or shelters an innovator shall incur the curse of Allah, the angels, and all people collectively.'"

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَيُوَضِّحُ هَذَا غَايَةَ الْوُضُوحِ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ قَالَ: أَنَا أَحْمَدُ بْنُ حَنْبَلٍ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ أَنَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ الْبَصْرِيِّ «عَنْ قَيْسِ بْنِ عَبَّادٍ قَالَ: انْطَلَقْتُ أَنَا وَآخَرُ - ذَكَرَهُ - إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَقُلْنَا: هَلْ عَهِدَ إلَيْكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَهْدًا لَمْ يَعْهَدْهُ إلَى النَّاسِ عَامَّةً؟ قَالَ: لَا، إلَّا مَا فِي كِتَابِي هَذَا، فَإِذَا فِيهِ الْمُؤْمِنُونَ تَتَكَافَأُ دِمَاؤُهُمْ وَهُمْ يَدٌ عَلَى مَنْ سِوَاهُمْ وَيَسْعَى بِذِمَّتِهِمْ أَدْنَاهُمْ أَلَا لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ وَلَا ذُو عَهْدٍ فِي عَهْدِهِ مَنْ أَحْدَثَ حَدَثًا أَوْ آوَى مُحْدِثًا فَعَلَيْهِ لَعْنَةُ اللَّهِ وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ» .

L36488–36490 Himām ibn Aḥmad ibn Himām al-Qāḍī narrated, on the authority of ʿAbbās ibn Aṣbagh, on the authority of Muḥammad ibn ʿAbd al-Malik ibn Ayman. I am Abdullah ibn Ahmad ibn Hanbal, and Muhammad ibn Isma'il al-Tirmidhi. Abdullah said: "I am [from] my father," and al-Tirmidhi said: "I am [from] al-Humaidi." Then the chains of Ahmad ibn Hanbal and al-Humaidi converged—with the wording being al-Humaidi's—both saying: "From Sufyan ibn Uyaynah, from Mutarrif ibn Tarif, who said: I heard al-Sha'bi say: I am Abu Juhaifah—al-Suwa'i—who said: I asked Ali ibn Abi Talib: 'Do you possess anything from Allah's Messenger—peace and blessings be upon him—besides the Quran?' Ali replied: 'No, by Him who split the seed and created living beings, except what Allah grants a servant: understanding of His Book, or what is in the scroll.' I asked: 'What is in the scroll?' He said: 'Blood money, the ransom of captives, and that a Muslim is not to be killed in retaliation for [the death of] a disbeliever.'"

أَنَا حِمَامُ بْنُ أَحْمَدَ بْنِ حِمَامٍ الْقَاضِي أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ، وَمُحَمَّدُ بْنُ إسْمَاعِيلَ التِّرْمِذِيُّ، قَالَ عَبْدُ اللَّهِ: أَنَا أَبِي، وَقَالَ التِّرْمِذِيُّ: أَنَا الْحُمَيْدِيُّ، ثُمَّ اتَّفَقَ أَحْمَدُ بْنُ حَنْبَلٍ، وَالْحُمَيْدِيُّ - وَاللَّفْظُ لَهُ - قَالَا جَمِيعًا: أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ أَنَا مُطَرِّفُ بْنُ طَرِيفٍ قَالَ: سَمِعْت الشَّعْبِيَّ يَقُولُ: أَنَا أَبُو جُحَيْفَةَ - هُوَ السُّوَائِيُّ - قَالَ: قُلْت لِعَلِيِّ بْنِ أَبِي طَالِبٍ: هَلْ عِنْدَكُمْ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سِوَى الْقُرْآنِ؟ قَالَ عَلِيٌّ " لَا، وَالَّذِي فَلَقَ الْحَبَّةَ، وَبَرَأَ النَّسَمَةَ،

إِلَّا أَنْ يُعْطِيَ اللَّهُ عَبْدًا فَهْمًا فِي كِتَابِهِ، أَوْ مَا فِي الصَّحِيفَةِ؟ قُلْت: وَمَا فِي الصَّحِيفَةِ؟ قَالَ: الْعَقْلُ، وَفِكَاكُ الْأَسِيرِ، وَأَنْ لَا يُقْتَلَ مُسْلِمٌ بِكَافِرٍ ".

L36491 Abu Muhammad — may Allah be pleased with him — said: **And this** is not permissible for any Muslim to oppose.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَا لَا يَحِلُّ لِمُسْلِمٍ خِلَافُهُ.

L36492 The people of misguided ignorance objected by saying: This report has been narrated through the chain of Aḥmad ibn Shuʿayb—Muḥammad ibn Bashshār narrated from al-Ḥajjāj ibn al-Minhāl, from Hammām, from Qatādah, from Abū Ḥassān, who said: "'Alī ibn Abī Ṭālib said: 'Did the Messenger of Allāh—peace and blessings be upon him—entrust anything to me privately that was not shared with the people except a scroll in my sword's scabbard?' They did not cease persisting in their demand until he produced it. Within it was written: 'Believers' blood are equal in value. The lowest among them may act to fulfill their covenant of protection, and they are one hand against whoever opposes them. No believer shall be killed in retribution for a disbeliever, nor shall a covenanted person be slain during the term of his covenant.'"

فَاعْتَرَضَ فِيهِ أَهْلُ الْجَهَالَةِ الْمُضِلَّةِ بِأَنْ قَالُوا: قَدْ رُوِيَ هَذَا الْخَبَرُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ أَنَا الْحَجَّاجُ بْنُ الْمِنْهَالِ أَنَا هَمَّامٌ عَنْ قَتَادَةَ عَنْ أَبِي حَسَّانَ، قَالَ: «قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ مَا عَهِدَ إِلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَيْئًا دُونَ النَّاسِ إِلَّا صَحِيفَةً فِي قِرَابِ سَيْفِي؟ فَلَمْ يَزَالُوا بِهِ حَتَّى أَخْرَجَهَا؟ فَإِذَا فِيهَا الْمُؤْمِنُونَ تَتَكَافَأُ دِمَاؤُهُمْ، وَيَسْعَى بِذِمَّتِهِمْ أَدْنَاهُمْ، وَهُمْ يَدٌ عَلَى مَنْ سِوَاهُمْ، لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ، وَلَا ذُو عَهْدٍ فِي عَهْدِهِ» .

L36493 They said: "At one time Qatadah narrated it from al-Ḥasan, and at another time he narrated it from Abū Ḥassān as a mursal report—is this a defect in the narration?" We replied: "So what is that? None would deem such a matter defective except one with a defect in his religion. We find no valid objection to Qatadah's narration of the report—once from Abū Ḥassān and once from al-Ḥasan—except from one devoid of shame who stubbornly denies what is as glaring as the sun itself."

قَالُوا: فَمَرَّةً رَوَاهُ قَتَادَةُ عَنْ الْحَسَنِ، وَمَرَّةً رَوَاهُ عَنْ أَبِي حَسَّانَ مُرْسَلًا - وَهَذِهِ عِلَّةٌ فِي الْخَبَرِ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ مَا جَعَلَ مِثْلَ هَذَا عِلَّةً، إِلَّا ذُو عِلَّةٍ فِي دِينِهِ، وَمَا نَدْرِي فِي رِوَايَةِ قَتَادَةَ لِلْخَبَرِ - مَرَّةً عَنْ أَبِي حَسَّانَ، وَمَرَّةً عَنْ الْحَسَنِ -: وَجْهًا يَعْتَرِضُ بِهِ، إِلَّا مَنْ عَدِمَ الْحَيَاءَ، وَكَابَرَ عَيْنَ الشَّمْسِ.

L36494 They also said: You have narrated from the chain of Waki': "I am Abu Bakr al-Hudhali," from Sa'id ibn Jubayr, who said: The Messenger of Allah (peace be upon him) only said, "A Muslim is not to be killed in retaliation for a disbeliever"—for the people of Jahiliyyah used to demand blood vengeance from one another. When Islam came, the Messenger of Allah (peace be upon him) said, "No Muslim man shall be executed for blood he had shed during the Jahiliyyah."

وَقَالُوا أَيْضًا: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ وَكِيعٍ أَنَا أَبُو بَكْرٍ الْهُذَلِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: إِنَّمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُقْتَلُ مُسْلِمٌ بِكَافِرٍ - إِنَّ أَهْلَ الْجَاهِلِيَّةِ كَانُوا يَتَطَالَبُونَ بِالدِّمَاءِ، فَلَمَّا جَاءَ الْإِسْلَامُ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يُقْتَلُ رَجُلٌ مِنْ الْمُسْلِمِينَ بِدَمٍ أَصَابَهُ فِي الْجَاهِلِيَّةِ» .

L36495–36496 Abū Muḥammad—may Allāh be pleased with him—said: "This is utterly astonishing: Abū Bakr al-Hudhalī—a notorious liar?! Even if Ayyūb had

narrated it from Saʿīd ibn Jubayr, there would be no ambiguity in it for an opponent of the truth to exploit. For either he saw what Saʿīd ibn Jubayr saw—in which case, it would be like any other opinion; no objection can be raised against the Sunnah through it, nor is there any dignity—or he heard it from someone unknown [as to who he is], and this would make it even less plausible for him to depend upon."

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا عَجَبٌ جِدًّا، أَبُو بَكْرٍ الْهُذَلِيّ: كَذَّابٌ مَشْهُورٌ؟ ثُمَّ لَوْ رَوَاهُ أَيُّوبُ عَنْ سَعِيدِ بْنِ جُبَيْرٍ لَمَا كَانَتْ فِيهِ شُبْهَةٌ يَتَعَلَّقُ بِهَا مُخَالِفٌ لِلْحَقِّ؛ لِأَنَّهُ إمَّا رَأَى مَا رَآهُ سَعِيدُ بْنُ جُبَيْرٍ فَهُوَ كَسَائِرِ الْآرَاءِ، لَا يُعْتَرَضُ بِهَا عَلَى السُّنَنِ، وَلَا كَرَامَةَ - وَإِمَّا سَمِعَهُ مِمَّنْ لَا يُدْرَى [مَنْ هُوَ] فَهَذَا أَبْعَدُ لَهُ مِنْ أَنْ يَتَعَلَّقَ بِهِ.

L36497 Then, even if it were valid that the Messenger of Allah—peace and blessings be upon him—had said it, this would have been an independent report standing on its own, like his abolition—peace and blessings be upon him—of the blood feuds of pre-Islamic ignorance during the Farewell Pilgrimage. What was in the document of Ali ibn Abi Talib would have constituted another independent report standing on its own, impermissible to specify it by that report, for this would be a corrupt practice without proof, a claim without textual evidence, and pitting parts of the Sunnah against one another—like one who permits eating pork and drinking wine based on Allah Almighty's words: {Eat and drink} [Al-Baqarah: 187], with no valid distinction.[29]

ثُمَّ لَوْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَهُ لَكَانَ هَذَا خَبَرًا قَائِمًا بِنَفْسِهِ، كَوَضْعِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - دِمَاءَ الْجَاهِلِيَّةِ فِي " حَجَّةِ الْوَدَاعِ " وَكَانَ مَا فِي صَحِيفَةِ عَلِيِّ بْنِ أَبِي طَالِبٍ خَبَرًا آخَرَ قَائِمًا بِنَفْسِهِ لَا يَحِلُّ تَخْصِيصُهُ بِذَلِكَ الْخَبَرِ؛ لِأَنَّهُ عَمَلٌ فَاسِدٌ بِلَا بُرْهَانٍ، وَدَعْوَى بِلَا بِدَلِيلٍ، وَضَرْبٌ لِلسُّنَنِ بَعْضِهَا بِبَعْضٍ، كَمَنْ أَبَاحَ أَكْلَ الْخِنْزِيرِ، وَشُرْبَ الْخَمْرِ بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَكُلُوا وَاشْرَبُوا} [البقرة: ١٨٧] وَلَا فَرْقَ.

L36498 They also said: You have transmitted this report through the chain of Abū Dāwūd al-Sijistānī, who said: From Muslim ibn Ibrāhīm, from Muḥammad ibn Rāshid, from Sulaymān ibn Mūsā, from ʿAmr ibn Shuʿayb, from his father, from his grandfather, from the Prophet—peace and blessings of Allah be upon him—who said: "A believer is not to be killed in retaliation for an unbeliever. Whoever kills intentionally is delivered to the guardians of the slain; if they wish, they may execute him, and if they wish, they may take the diyah."

وَقَالُوا أَيْضًا: قَدْ رَوَيْتُمْ هَذَا الْخَبَرَ مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ، قَالَ: أَنَا مُسْلِمُ بْنُ إبْرَاهِيمَ أَنَا مُحَمَّدُ بْنُ رَاشِدٍ أَنَا سُلَيْمَانُ بْنُ مُوسَى عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ فَمَنْ قَتَلَ مُتَعَمِّدًا دُفِعَ إلَى أَوْلِيَاءِ الْمَقْتُولِ فَإِنْ شَاءُوا قَتَلُوهُ وَإِنْ شَاءُوا أَخَذُوا الدِّيَةَ» .

L36499 Abu Muhammad—may Allah be pleased with him—said:

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -:

[29] **Qur'an references (L36497):** Qur'an 2:187 (Al-Baqarah).

L36500 The narration of ʿAmr ibn Shuʿayb through his father, from his grandfather, constitutes a written compilation that is impermissible to adduce as evidence, for it is filled with rejected reports.

حَدِيثُ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ صَحِيفَةٌ لَا يَجُوزُ الِاحْتِجَاجُ بِهَا وَهِيَ مَمْلُوءَةٌ مَنَاكِيرَ.

L36501 Then, even if it were valid, they would have no proof within it. Rather, it would instead serve as proof for us against them, for it states that a believer must not be killed for [the killing of] an unbeliever. This constitutes a sound, self-contained legal principle in its own right - and such is our position.

ثُمَّ لَوْ صَحَّتْ لَمَا كَانَتْ لَهُمْ فِيهَا حُجَّةٌ، بَلْ كَانَتْ تَكُونُ حُجَّةً لَنَا عَلَيْهِمْ؛ لِأَنَّ فِيهَا أَنْ لَا يُقْتَلَ مُؤْمِنٌ بِكَافِرٍ، فَهَذِهِ قَضِيَّةٌ صَحِيحَةٌ قَائِمَةٌ بِنَفْسِهَا وَهِيَ قَوْلُنَا.

L36502 Then, in it is the ruling concerning one intentionally killed. If the believer who intentionally kills a *dhimmi* were included in this ruling, it would contradict the prior ruling – and this is invalid – for if it were valid, it would undoubtedly apply to the case of a believer intentionally killing another believer, not to what was previously invalidated regarding retaliation against a believer for killing a disbeliever.

ثُمَّ فِيهَا حُكْمُ مَنْ قُتِلَ عَمْدًا فَلَوْ دَخَلَ فِي هَذِهِ الْقَضِيَّةِ الْمُؤْمِنُ يَقْتُلُ الذِّمِّيَّ عَمْدًا لَكَانَتْ مُخَالِفَةً لِلْحُكْمِ الَّذِي قَبْلَهَا - وَهَذَا بَاطِلٌ - فَلَوْ صَحَّتْ لَكَانَتْ بِلَا شَكٍّ فِي الْمُؤْمِنِ يَقْتُلُ الْمُؤْمِنَ عَمْدًا، لَا فِيمَا قَدْ أَبْطَلَهُ قَبْلُ مِنْ أَنْ يُقْتَلَ مُؤْمِنٌ بِكَافِرٍ.

L36503–36505 They said: Its meaning is that a believer is not to be killed in retaliation for a ḥarbī disbeliever, or if he killed him accidentally. Yet this is among the most absurd things they have asserted. How could one possessing even a trace of reason deem this permissible, when we are indeed urged to kill the ḥarbī disbelievers? They are promised the greatest reward for their killing. Could one possessing a shred of reason imagine that the Prophet—peace and blessings be upon him—amidst such circumstances and his command for jihad, would strain to inform us that we cannot be slain by hostile combatants if we kill them—"What Allah wills, occurs"? Likewise, their absurd interpretation—that he, peace and blessings be upon him, intended a believer should not be killed in retaliation for a disbeliever slain by mistake—this, by Allah, is sheer falsehood against Allah's Messenger—peace and blessings be upon him—meriting Hellfire. How could this enter the mind of anyone possessing a grain of intellect: that since Allah sent His Prophet—peace and blessings be upon him—until the Day of Resurrection, we have been immune from any among us being slain for a thousand disbelievers killed unintentionally? Then the Prophet—peace and blessings be upon him—would labor to inform us that a believer is not to be executed for a disbeliever slain by accident, yet only convey this through vague wording from which none could grasp such a meaning? None would advance this except those who fabricate distortions

وَقَالُوا: مَعْنَاهُ لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ حَرْبِيٍّ، أَوْ إِذَا قَتَلَهُ خَطَأً، فَكَانَ هَذَا مِنْ أَسْخَفِ مَا أَتَوْا بِهِ، وَكَيْفَ يَجُوزُ أَنْ يَظُنَّ هَذَا ذُو مِسْكَةِ عَقْلٍ، وَنَحْنُ مَنْدُوبُونَ إِلَى قَتْلِ الْحَرْبِيِّينَ، مَوْعُودُونَ عَلَى قَتْلِهِمْ بِأَعْظَمِ الْأَجْرِ، أَيُمْكِنُ أَنْ يَظُنَّ مَنْ بِهِ طَبَاخٌ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعَ هَذَا الْحَالِ وَأَمْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالْجِهَادِ يَتَكَلَّفُ أَنْ يُخْبِرَنَا أَنَّنَا لَا نُقْتَلُ بِالْحَرْبِيِّينَ إِذَا قَتَلْنَاهُمْ، مَا شَاءَ اللَّهُ كَانَ؟ وَكَذَلِكَ الْقَوْلُ فِي تَأْوِيلِهِمْ السَّخِيفِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَرَادَ أَنْ لَا يُقْتَلَ مُؤْمِنٌ بِكَافِرٍ إِذَا قَتَلَهُ خَطَأً - هَذَا وَاَللَّهِ يَقِينُ الْكَذِبِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُوجِبِ لِلنَّارِ، وَكَيْفَ يُمْكِنُ أَنْ يَسَعَ هَذَا فِي دِمَاغِ مَنْ بِهِ مِسْكَةُ عَقْلٍ أَنْ يَكُونَ مُذْ بَعَثَ اللَّهُ نَبِيَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إِلَى يَوْمِ الْقِيَامَةِ قَدْ أَمِنَّا أَنْ يُقْتَلَ مِنَّا أَحَدٌ بِأَلْفِ كَافِرٍ قَتَلَهُمْ خَطَأً ثُمَّ يَتَكَلَّفُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إِخْبَارَنَا بِأَنْ لَا يُقْتَلَ الْمُؤْمِنُ بِكَافِرٍ قَتَلَهُ خَطَأً ثُمَّ لَا يُبَيِّنُ لَنَا ذَلِكَ إِلَّا بِكَلَامٍ مُجْمَلٍ لَا يَفْهَمُ أَحَدٌ مِنْهُ هَذَا الْمَعْنَى، إِنَّمَا يَأْتِي

to uphold falsehood. As for Allah's Messenger—peace and blessings be upon him—who was granted concise eloquence, and whose Lord, Exalted is He, commanded him to clarify matters for us: No, and no respect! Allah the Almighty has wholly absolved him of this and made it inconceivable for any Muslim to harbor such a suspicion against him.

L36506 They said concerning his statement—peace and blessings be upon him—"A believer is not killed in retribution for a disbeliever, nor a covenanted person during their covenant period," that the wording involves rearrangement. He truly meant to say: "A believer is not killed in retribution for a disbeliever, nor is a covenanted person during their covenant period killed in retribution for a disbeliever." It has been soundly established—without disagreement—that killing a covenanted person in retribution for a dhimmi is obligatory.

L36507 Thus, it was established that by "the disbeliever" he specifically intended the ḥarbī combatant.

L36508 Abū Muḥammad—may Allāh be pleased with him—said: This is another lie against the Messenger of Allāh—peace and blessings of Allāh be upon him—which necessitates its perpetrator's entry into the Fire and [Allāh's] curse. For they presumed to arbitrate in his speech—peace and blessings of Allāh be upon him—without evidence. It is not valid that, merely because a text exists for which proof has been established that it contains transposition [of words], one may declare another text to have transposition without evidence. Just as when a text is found to be abrogated, it is impermissible for anyone to claim that another text—for which no evidence of abrogation exists—is abrogated. This is the characteristic of the lying, immoral fabricators who attribute lies through falsehood against Allāh—the Mighty and Majestic—and against His Messenger—peace and blessings of Allāh be upon him.

L36509 They said: "Al-Sha'bi is one of the narrators of that report, and he holds the view that a Muslim may be executed in retaliation for killing a Dhimmi?" We replied: "This has never been authentically attributed to Al-Sha'bi, because only Ibn Abi Layla—who has a poor memory—and Dawud ibn Yazid al-Zaghafiri—who is discredited—narrated it."

بِهِ الْمُتَكَلِّفُونَ لِنَصْرِ الْبَاطِلِ، وَأَمَّا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي أُعْطِيَ جَوَامِعَ الْكَلِمِ، وَأَمَرَهُ رَبُّهُ تَعَالَى بِالْبَيَانِ لَنَا: فَلَا، وَلَا كَرَامَةَ، لَقَدْ نَزَّهَهُ اللَّهُ عَزَّ وَجَلَّ عَنْ هَذَا وَبَاعَدَهُ عَنْ أَنْ يَظُنَّ بِهِ ذَلِكَ مُسْلِمٌ.

وَقَالُوا فِي قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ وَلَا ذُو عَهْدٍ فِي عَهْدِهِ» تَقْدِيمٌ وَتَأْخِيرٌ، إنَّمَا أَرَادَ أَنْ يَقُولَ: لَا يُقْتَلُ مُؤْمِنٌ، وَلَا ذُو عَهْدٍ فِي عَهْدِهِ بِكَافِرٍ - وَقَدْ صَحَّ - بِلَا خِلَافٍ - وُجُوبُ قَتْلِ الْمُعَاهَدِ بِالذِّمِّيِّ.

فَصَحَّ أَنَّهُ إنَّمَا أَرَادَ بِالْكَافِرِ: الْحَرْبِيَّ.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَا كَذِبٌ آخَرُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُوجِبٌ لِصَاحِبِهِ وُلُوجَ النَّارِ وَاللَّعْنَةَ، إذْ تَحَكَّمُوا فِي كَلَامِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِلَا دَلِيلٍ، وَلَيْسَ إذَا وُجِدَ نَصٌّ قَدْ قَامَ الْبُرْهَانُ: بِأَنَّ فِيهِ تَقْدِيمًا وَتَأْخِيرًا وَجَبَ أَنْ يَحْكُمَ فِي نَصٍّ آخَرَ بِالتَّقْدِيمِ وَالتَّأْخِيرِ بِلَا دَلِيلٍ، كَمَا أَنَّهُ إذْ وُجِدَ نَصٌّ مَنْسُوخٌ لَمْ يَحِلَّ لِأَحَدٍ أَنْ يَقُولَ فِي نَصٍّ آخَرَ لَمْ يَأْتِ دَلِيلٌ بِأَنَّهُ مَنْسُوخٌ: هَذَا مَنْسُوخٌ - هَذِهِ صِفَةُ الْكَذَّابِينَ الْفُسَّاقِ الْمُفْتَرِينَ عَلَى اللَّهِ عَزَّ وَجَلَّ، وَعَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْكَذِبِ.

وَقَالُوا: إنَّ الشَّعْبِيَّ هُوَ أَحَدُ رُوَاةِ ذَلِكَ الْخَبَرِ وَهُوَ يَرَى قَتْلَ الْمُؤْمِنِ بِالذِّمِّيِّ؟ فَقُلْنَا: هَذَا لَمْ يَصِحَّ قَطُّ عَنْ الشَّعْبِيِّ؛ لِأَنَّهُ لَمْ يَرْوِهِ إلَّا ابْنُ أَبِي لَيْلَى - وَهُوَ سَيِّئُ الْحِفْظِ، وَدَاوُد بْنُ يَزِيدَ الزَّغَافِرِيُّ - وَهُوَ سَاقِطٌ.

L36510–36511 Then, if this were authentically established from him, it would be obligatory to reject his opinion, cast it aside, and adhere to his transmitted narration.

ثُمَّ لَوْ صَحَّ ذَلِكَ عَنْهُ لَكَانَ الْوَاجِبُ رَفْضَ رَأْيِهِ وَاطِّرَاحَهُ وَالْأَخْذَ بِرِوَايَتِهِ.

L36512 Because he and other imams are trusted regarding their truthfulness due to their virtue, but not trusted in their immunity from error. Rather, every person after Allah's Messenger—peace and blessings be upon him—is inevitably fallible, for none is infallible from mistakes. No one errs in religious matters except by opposing an explicit Quranic text or an explicit prophetic tradition through an interpretation wherein they intended truth but missed it. We dedicated a substantial chapter in our book titled *Al-I'rab* concerning the sunnah traditions adopted by Hanafi jurists which were contradicted by those who narrated them from the Companions—may Allah be pleased with them. This is among the most futile arguments they deceptively disguised.

لِأَنَّهُ وَغَيْرُهُ مِنْ الْأَئِمَّةِ مَوْثُوقٌ بِهِمْ فِي أَنَّهُمْ لَا يَكْذِبُونَ لِفَضْلِهِمْ غَيْرَ مَوْثُوقٍ بِهِمْ بِأَنَّهُمْ لَا يُخْطِئُونَ، بَلْ كُلُّ أَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَيْرُ مَعْصُومٍ مِنْ الْخَطَأِ وَلَا بُدَّ، وَلَيْسَ يُخْطِئُ أَحَدٌ فِي الدِّينِ إلَّا لِمُخَالَفَةِ نَصِّ قُرْآنٍ، أَوْ نَصِّ سُنَّةٍ بِتَأْوِيلٍ مِنْهُ قَصَدَ بِهِ الْحَقَّ فَأَخْطَأَهُ - وَقَدْ أَفْرَدْنَا بَابًا ضَخْمًا فِي كِتَابِنَا الْمَوْسُومِ " بِالْإِعْرَابِ " فِيمَا أَخَذَ بِهِ الْحَنَفِيُّونَ مِنْ السُّنَنِ الَّتِي خَالَفَهَا مَنْ رَوَاهَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهَذَا مِنْ أَبْرَدِ مَا مَوَّهُوا بِهِ.

L36513 So this is what they objected to; we have clarified the fallaciousness of their statements in this matter.

فَهَذَا مَا اعْتَرَضُوا بِهِ قَدْ أَوْضَحْنَا سُقُوطَ أَقْوَالِهِمْ فِيهِ.

L36514 As for their argument based on the report of Ibn al-Munkadir...

وَأَمَّا احْتِجَاجُهُمْ بِخَبَرِ ابْنِ الْمُنْكَدِرِ.

L36515 And Rabiʿah from Ibn al-Baylamānī: hence both are mursal, and there is no valid proof in a mursal report.

وَرَبِيعَةَ عَنْ ابْنِ الْبَيْلَمَانِيِّ فَمُرْسَلَانِ وَلَا حُجَّةَ فِي مُرْسَلٍ.

L36516 If they persisted, we said to them: Here is a mursal report comparable to both—I am Humaam ibn Ahmad, I am Ibn Mufarrij, I am Ibn al-Aʿrabī, I am al-Dabari, I am ʿAbd al-Razzāq, from Ibn Jurayj, who said: "'Amr ibn Shuʿayb informed me: The Messenger of Allah—peace and blessings be upon him—ordained upon every Muslim who killed a man from the People of the Book a payment of four thousand dirhams, and that he be exiled from his land to another."

فَإِنْ لَجُّوا: قُلْنَا لَهُمْ: دُونَكُمْ مُرْسَلًا مِثْلَهُمَا - أَنَا حُمَامُ بْنُ أَحْمَدَ أَنَا ابْنُ مُفَرِّجٍ أَنَا ابْنُ الْأَعْرَابِيِّ أَنَا الدَّبَرِيُّ أَنَا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَمْرُو بْنُ شُعَيْبٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَضَ عَلَى كُلِّ مُسْلِمٍ قَتَلَ رَجُلًا مِنْ أَهْلِ الْكِتَابِ أَرْبَعَةَ آلَافِ دِرْهَمٍ، وَأَنَّهُ يُنْفَى مِنْ أَرْضِهِ إلَى غَيْرِهَا» .

L36517 He mentioned that ʿUmar ibn ʿAbd al-ʿAzīz ruled in accordance with that.

وَذَكَرَ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ قَضَى بِذَلِكَ.

L36518 As for the account of Ubayd Allāh ibn ʿUmar ibn al-Khaṭṭāb, his killing of al-Hurmuzān, Jufayna, and the daughter of Abū Luʾluʾah—there exists no explicit textual basis in the report, nor any indication that any authority sanctioned the killing of Jufayna. Thus, their assertion is thereby rendered void.

وَأَمَّا قِصَّةُ عُبَيْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ، وَقَتْلُهُ الْهُرْمُزَانَ، وَجُفَيْنَةَ وَبِنْتَ أَبِي لُؤْلُؤَةَ - فَلَيْسَ فِي الْخَبَرِ نَصٌّ، وَلَا دَلِيلٌ عَلَى أَنَّ أَحَدًا قَالَ بِقَتْلِ جُفَيْنَةَ -: فَبَطَلَ بِذَلِكَ دَعْوَاهُمْ.

L36519 It has been established that he was only demanded for the blood of Hormuzan, and he was a Muslim. There is no disagreement regarding retaliation by a Muslim against a Muslim. Therefore, it is impermissible to introduce into the report what is not mentioned in it without a text or consensus.

وَصَحَّ أَنَّهُ إنَّمَا طُولِبَ بِدَمِ الْهُرْمُزَانِ فَقَطْ، وَكَانَ مُسْلِمًا - وَلَا خِلَافَ فِي الْقَوَدِ لِلْمُسْلِمِ مِنْ الْمُسْلِمِ، فَلَا يَجُوزُ أَنْ يُقْحَمَ فِي الْخَبَرِ مَا لَيْسَ فِيهِ بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ.

L36520 As for their argument that just as a Muslim's hand must be cut off if he steals a Dhimmi's property, so too must he be executed for it—this is a corrupt analogy, and all qiyas (analogical reasoning) is invalid. Even if qiyas were valid, this would constitute sheer invalidity, for according to their view, the right to seek retaliation (qawad) and retribution (qisas) from the Muslim belongs to the Dhimmi. The Dhimmi may demand it, abandon it, or pardon him.

وَأَمَّا احْتِجَاجُهُمْ بِأَنَّهُ كَمَا يَجِبُ قَطْعُ يَدِ الْمُسْلِمِ إذَا سَرَقَ مَالَ ذِمِّيٍّ، فَكَذَلِكَ يَجِبُ قَتْلُهُ بِهِ، فَقِيَاسٌ فَاسِدٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ - ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّ الْقَوَدَ، وَالْقِصَاصَ لِلْمُسْلِمِ مِنْ الذِّمِّيِّ حَقٌّ لِلذِّمِّيِّ عِنْدَهُمْ، لَهُ طَلَبُهُ، وَلَهُ تَرْكُهُ وَالْعَفْوُ عَنْهُ.

L36521–36522 This is the right which Allah, the Mighty and Majestic, has prohibited for us, and He has not granted this authority to a disbeliever over a Muslim. This is not the case with the punishment of amputation for theft, for it is not among the rights of the one whose property was stolen, nor does he hold exclusive authority to demand its enforcement over others, nor can he forgive the offense. Rather, it is a right reserved for Allah, the Mighty and Majestic, which He has commanded—whether the one whose property was stolen wills it or refuses. Thus, a dhimmi holds no legal authority over a Muslim in this matter whatsoever.

وَهَذَا هُوَ السَّبِيلُ الَّذِي مَنَعَ اللَّهُ عَزَّ وَجَلَّ مِنَّا، وَلَمْ يَجْعَلْهَا لِكَافِرٍ عَلَى مُسْلِمٍ - وَلَيْسَ كَذَلِكَ الْقَطْعُ فِي السَّرِقَةِ، لَيْسَ هُوَ مِنْ حُقُوقِ الْمَسْرُوقِ مِنْهُ الْمَالُ، وَلَا لَهُ طَلَبُهُ دُونَ غَيْرِهِ، وَلَا لَهُ الْعَفْوُ عَنْهُ، إنَّمَا هُوَ حَقٌّ لِلَّهِ عَزَّ وَجَلَّ أَمَرَ بِهِ - شَاءَ الْمَسْرُوقُ مِنْهُ أَوْ أَبَى - فَلَا سَبِيلَ فِيهِ لِلذِّمِّيِّ عَلَى الْمُسْلِمِ أَصْلًا.

L36523 As for their statement: "Do we impose the *ḥadd* punishment on a Muslim if he slanders a *Dhimmī*?" We respond: Yes, and likewise we impose the *ḥadd* punishment on him if he slanders a *Ḥarbī* without distinction, due to what we mentioned regarding amputation for theft—that neither of the two matters constitutes a right for the *Dhimmī*, the slandered individual, or the victim of theft, nor do either of these two cases grant the authority to pardon it, nor to seek it to the exclusion of the rest of the people.

وَأَمَّا قَوْلُهُمْ: إنَّا نَحُدُّ الْمُسْلِمَ إذَا قَذَفَ الذِّمِّيَّ؟ قُلْنَا: نَعَمْ، وَكَذَلِكَ نَحُدُّهُ إذَا قَذَفَ الْحَرْبِيَّ وَلَا فَرْقَ، لِمَا ذَكَرْنَا فِي الْقَطْعِ فِي السَّرِقَةِ مِنْ أَنَّهُ لَيْسَ كِلَا الْأَمْرَيْنِ حَقًّا لِلذِّمِّيِّ، وَلَا لِلْمَقْذُوفِ، وَلَا لِلْمَسْرُوقِ مِنْهُ، وَلَا لَهُمَا الْعَفْوُ عَنْهُ، وَلَا طَلَبُهُ دُونَ سَائِرِ النَّاسِ.

L36524 The prescribed punishment for slander (qadhf) is exclusively a right of Allah, the Exalted, which He ordained—just as the punishment for intoxicants (khamr) is [a right of Allah]—whether it applies to a dhimmi or a ḥarbī, with no distinction.

إِنَّمَا الْحَدُّ فِي الْقَذْفِ حَقُّ اللَّهِ تَعَالَى أَمَرَ بِهِ - كَمَا هُوَ الْحَدُّ فِي الْخَمْرِ لِذِمِّيٍّ - كَانَتْ - أَوْ لِحَرْبِيٍّ، وَلَا فَرْقَ.

L36525 If they say: "Do you impose a financial penalty upon the Muslim for the debt owed to a dhimmi (protected non-Muslim citizen), enforcing it through imprisonment and disciplinary punishment if he refuses to pay despite being capable?"

فَإِنْ قَالُوا: إِنَّكُمْ تُغَرِّمُونَ الْمُسْلِمَ الْمَالَ إِذَا وَجَبَ لِلذِّمِّيِّ قِبَلَهُ، وَتَأْخُذُونَهُ مِنْ الْمُسْلِمِ بِالسَّجْنِ وَالْأَدَبِ إِذَا امْتَنَعَ مِنْ أَدَائِهِ، وَهُوَ قَادِرٌ عَلَيْهِ؟

L36526 We said: Yes, and this has no connection to retaliation or qisas whatsoever, for property taken without legitimate right is forbidden to its taker—whoever they may be—and since this is so, it is null and void. We have invalidated it from him and stripped him of possession, just as we prohibit him from killing a dhimmi without legitimate right, and there is no distinction between them.

قُلْنَا: نَعَمْ، وَلَيْسَ هَذَا مِنْ الْقَوَدِ وَالْقِصَاصِ فِي شَيْءٍ؛ لِأَنَّ الْمَالَ الْمَأْخُوذَ بِغَيْرِ حَقٍّ هُوَ مُحَرَّمٌ عَلَى آخِذِهِ - كَائِنًا مَنْ كَانَ - وَإِذْ هُوَ كَذَلِكَ، فَإِنَّمَا هُوَ بَاطِلٌ مَنَعْنَاهُ مِنْهُ، وَأَزَلْنَاهُ عَنْ يَدِهِ، كَمَا نَمْنَعُهُ مِنْ قَتْلِ الذِّمِّيِّ بِلَا حَقٍّ وَلَا فَرْقَ.

L36527 If we could compel him to resurrect the *dhimmi* he killed, we would do so. Since he cannot achieve this, nothing is incumbent upon him except disciplinary punishment for transgressing what Allah the Exalted has forbidden him—solely. This is akin to disciplining someone who usurps property if they cannot return it nor provide fair compensation at all. Not every transgressor against what Allah the Almighty has forbidden is liable for execution, limb amputation, or qisas (retribution in kind).

وَلَوْ قَدَرْنَا عَلَى تَكْلِيفِهِ إحْيَاءَ الذِّمِّيِّ الَّذِي قَتَلَ لَفَعَلْنَا ذَلِكَ بِهِ، فَإِذْ لَا يَقْدِرُ عَلَى ذَلِكَ فَلَا شَيْءَ عَلَيْهِ، إلَّا الْأَدَبُ؛ لِتَعَدِّيهِ إلَى مَا حَرَّمَ اللَّهُ تَعَالَى عَلَيْهِ فَقَطْ كَمَا نُؤَدِّبُهُ فِي غَصْبِهِ مَالَهُ إذَا لَمْ يَقْدِرْ عَلَى رَدِّهِ، وَلَا عَلَى إنْصَافِهِ فَقَطْ، وَلَيْسَ كُلُّ مُتَعَدٍّ إلَى مَا حَرَّمَ عَلَيْهِ اللَّهُ عَزَّ وَجَلَّ يَلْزَمُهُ قَتْلٌ وَلَا قَطْعُ عُضْوٍ وَلَا قِصَاصٌ.

L36528 As for their argument against those who assert: "If a dhimmi kills another dhimmi and then the killer embraces Islam, retaliation (qisas) remains obligatory against him"—this claimant has erred. Rather, retaliation and legal retribution are waived from him, for it constitutes killing a believer in retaliation for a disbeliever. Allah the Exalted has prohibited this through the words of His Messenger—peace be upon him.

وَأَمَّا احْتِجَاجُهُمْ عَلَى مَنْ قَالَ: إذَا قَتَلَ ذِمِّيٌّ ذِمِّيًّا ثُمَّ أَسْلَمَ الْقَاتِلُ: فَالْقَوَدُ عَلَيْهِ بَاقٍ - فَقَدْ أَخْطَأَ هَذَا الْقَائِلُ، بَلْ قَدْ سَقَطَ الْقَوَدُ وَالْقِصَاصُ عَنْهُ؛ لِأَنَّهُ قَتْلُ مُؤْمِنٍ بِكَافِرٍ، وَقَدْ حَرَّمَ اللَّهُ تَعَالَى ذَلِكَ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L36529 Then these invalid analogies are turned back against them, and it is said to them: Just as you do not impose the hadd punishment on a Muslim who slanders a protected non-Muslim, yet impose it on a protected non-Muslim who slanders a Muslim, so too must you kill the protected non-Muslim for killing a Muslim, and do not kill the Muslim for killing a protected

ثُمَّ يُعْكَسُ عَلَيْهِمْ هَذِهِ الْقِيَاسَاتُ الْفَاسِدَةُ فَيُقَالُ لَهُمْ: كَمَا لَا تَحُدُّونَ أَنْتُمْ الْمُسْلِمَ إذَا قَذَفَ الذِّمِّيَّ، وَتَحُدُّونَ الذِّمِّيَّ إذَا قَذَفَ الْمُسْلِمَ، فَكَذَلِكَ اُقْتُلُوا الذِّمِّيَّ بِالْمُسْلِمِ، وَلَا

non-Muslim - and this is the soundest analogy possible - were analogical reasoning valid - because they are an inviolability and an inviolability.

تَقْتُلُوا الْمُسْلِمَ بِالذِّمِّيِّ - وَهَذَا أَصَحُّ قِيَاسٍ يَكُونُ - لَوْ كَانَ الْقِيَاسُ حَقًّا - لِأَنَّهَا حُرْمَةٌ وَحُرْمَةٌ.

L36530–36531 And among the peculiarities of their legal doctrine is the Ḥanafīs' argument for distinguishing between the killer of a musta'min—against whom they do not enforce retaliation based on this distinction—and the killer of a dhimmī—against whom they do enforce retaliation based on it.

وَمِنْ غَرَائِبِ الْقَوْلِ: احْتِجَاجُ الْحَنَفِيِّينَ فِي الْفَرْقِ بَيْنَ قَاتِلِ الْمُسْتَأْمَنِ فَلَا يُقِيدُونَهُ بِهِ، وَبَيْنَ قَاتِلِ الذِّمِّيِّ فَيُقِيدُونَهُ بِهِ.

L36532 If they argue: The dhimmi's blood is inviolable indefinitely, while the musta'min's blood is inviolable only temporarily—then his blood becomes permissible again if he returns to the abode of war—how does this distinction necessitate nullifying qisas, when both are forbidden in bloodshed: a prohibition equal to the other's inviolability?

فَإِنْ قَالُوا: الذِّمِّيُّ مَحْقُونُ الدَّمِ بِغَيْرِ وَقْتٍ، وَالْمُسْتَأْمَنُ مَحْقُونُ الدَّمِ بِوَقْتٍ ثُمَّ يَعُودُ دَمُهُ حَلَالًا إذَا رَجَعَ إلَى دَارِ الْحَرْبِ؟ وَلَا نَدْرِي مِنْ أَيْنَ وَجَبَ إسْقَاطُ الْقَوَدِ بِهَذَا الْفَرْقِ، وَكِلَاهُمَا مُحَرَّمُ الدَّمِ إذَا قُتِلَ: تَحْرِيمًا مُسَاوِيًا لِتَحْرِيمِ الْآخَرِ.

L36533 The ruling is considered solely at the moment of the offense that necessitates it—not afterward. It is possible the *musta'man* may not return to the abode of war, or the *dhimmi* may violate the covenant and join the abode of war, rendering his blood permissible. There is no distinction—and let it suffice you that a people whose knowledge amounts merely to this [level] permit the shedding of Muslims' blood. Sufficient for us is Allah, the Best Trustee.

وَإِنَّمَا يُرَاعَى الْحُكْمُ وَقْتَ الْجِنَايَةِ الْمُوجِبَةِ لِلْحُكْمِ - لَا بَعْدَ ذَلِكَ - وَلَعَلَّ الْمُسْتَأْمَنَ لَا يَرْجِعُ إلَى دَارِ الْحَرْبِ، وَلَعَلَّ الذِّمِّيَّ يَنْقُضُ الذِّمَّةَ وَيَلْحَقُ بِدَارِ الْحَرْبِ فَيَعُودُ دَمُهُ حَلَالًا وَلَا فَرْقَ - وَحَسْبُك بِقَوْمٍ هَذَا مِقْدَارُ عِلْمِهِمْ الَّذِي بِهِ يُحِلُّونَ دِمَاءَ الْمُسْلِمِينَ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

L36534 Abu Muhammad—may Allah be pleased with him—said: As for our statement that no blood money is due from a Muslim for intentionally killing a *dhimmi*, nor from his [the Muslim's] agnatic kin for the Muslim's accidental killing of the *dhimmi*, nor is expiation required of him also—this is because of what we clarified earlier at the outset of our discourse on this issue: that the verse obligating blood money and expiation for accidental killing applies exclusively to the accidental killing of a believer. No text has ever been revealed obligating blood money or expiation for the accidental killing of a *dhimmi* unbeliever.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَأَمَّا قَوْلُنَا: لَا دِيَةَ عَلَى الْمُسْلِمِ فِي قَتْلِهِ الذِّمِّيَّ عَمْدًا، وَلَا عَلَى عَاقِلَتِهِ فِي قَتْلِهِ إيَّاهُ خَطَأً، وَلَا كَفَّارَةَ عَلَيْهِ أَيْضًا - فَلِمَا قَدْ بَيَّنَّا قَبْلُ فِي أَوَّلِ كَلَامِنَا فِي هَذِهِ الْمَسْأَلَةِ مِنْ أَنَّ الْآيَةَ الَّتِي فِيهَا إيجَابُ الدِّيَةِ وَالْكَفَّارَةِ فِي قَتْلِ الْخَطَأِ إنَّمَا هِيَ فِي الْمُؤْمِنِ الْمَقْتُولِ خَطَأً فَقَطْ، وَلَمْ يَأْتِ قَطُّ نَصٌّ فِي إيجَابِ دِيَةٍ، وَلَا كَفَّارَةٍ، فِي قَتْلِ الْكَافِرِ الذِّمِّيِّ خَطَأً.

L36535 The Messenger of Allah—peace and blessings of Allah be upon him—said, "Indeed, your blood and wealth are inviolable upon you." According to the foundational principles of the proponents of analogy, nothing may be analo-

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَلَا يَجُوزُ عَلَى أُصُولِ أَصْحَابِ الْقِيَاسِ أَنْ يُقَاسَ الشَّيْءُ إلَّا عَلَى نَظِيرِهِ، وَلَيْسَ الْكَافِرُ

gized except to its counterpart. The disbeliever is neither a counterpart nor a comparable example to the believer. Thus, analogizing the disbeliever to the believer is invalid according to the principles of those who affirm analogy and those who reject it—and with Allah, the Most High, lies all success.

نَظِيرَ الْمُؤْمِنِ وَلَا مَثَلًا، فَقِيَاسُهُ عَلَيْهِ بَاطِلٌ عَلَى أُصُولِ الْقَائِلِينَ بِالْقِيَاسِ، وَالْمَانِعِينَ مِنْهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L36536 We have only obligated blood money for a Muslim's accidental killing of a disbeliever based on the general application of Allah's statement: {Whoever kills a believer by mistake} [4:92]. This verse applies the ruling to every case of accidental killing without distinguishing between a believer or disbeliever as the victim. No evidence from the Quran, Sunnah, or consensus exists to restrict this ruling specifically to believers - therefore, it remains obligatory to uphold blood money according to the verse's unrestricted generality.[1]

وَإِنَّمَا أَوْجَبْنَا الدِّيَةَ فِي قَتْلِ الْكَافِرِ الْمُسْلِمَ خَطَأً بِعُمُومِ قَوْلِ اللَّهِ تَعَالَى: {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً} [النساء: ٩٢] الْآيَةَ فَعَمَّ بِهَذَا قَاتِلَ الْمُؤْمِنِ خَطَأً، وَلَمْ يَخُصَّ بِذَلِكَ مُؤْمِنًا مِنْ كَافِرٍ، وَلَمْ يَأْتِ دَلِيلٌ مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إجْمَاعٍ يَخُصُّ ذَلِكَ - فَوَجَبَ إمْضَاؤُهَا عَلَى عُمُومِهِ.

L36537–36538 As for this verse, there is no valid proof for them in it whatsoever, because its explicit text states that Allah the Exalted says: "It is not for a believer to kill a believer except by mistake" up to His words: "an enemy to you while he is a believer, then the freeing of a believing female slave" [An-Nisa: 92].[2]

وَأَمَّا هَذِهِ الْآيَةُ فَلَا حُجَّةَ لَهُمْ فِيهَا أَصْلًا، لِأَنَّ نَصَّهَا أَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إلا خَطَأً} [النساء: ٩٢] إلَى قَوْله تَعَالَى: {عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ} [النساء: ٩٢] .

L36539 The text of these two verses has been validated as a clear text, precluding any allegorical interpretation, confirming that this ruling applies exclusively to a believer killed unintentionally.

فَصَحَّ بِنَصِّ هَاتَيْنِ الْآيَتَيْنِ نَصًّا جَلِيًّا لَا يُمْكِنُ أَنْ يُتَأَوَّلَ فِيهِ شَيْءٌ، أَنَّ هَذَا الْحُكْمَ إنَّمَا هُوَ فِي الْمُؤْمِنِ الْمَقْتُولِ خَطَأً فَقَطْ.

L36540 Then the Almighty said: {If he was from a people hostile to you while being a believer, then the freeing of a believing slave; and if he was from a people with whom you have a covenant, then blood money must be delivered to his family along with the freeing of a believing slave} [An-Nisa: 92]. This necessarily and indubitably establishes that the verb *كَانَ* (was) in God's statement {If he was from a people} contains an implicit pronoun referring exclusively to the first mentioned antecedent – the believer killed by mistake – with no possible alternative. Since pronouns in Arabic grammar refer only to the nearest preceding antecedent unless evidence dictates otherwise, and

ثُمَّ قَالَ عَزَّ وَجَلَّ: {فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَةٌ مُسَلَّمَةٌ إلَى أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ} [النساء: ٩٢] فَصَحَّ بِالضَّرُورَةِ الَّتِي لَا مَدْخَلَ لِلشَّكِّ فِيهَا أَنَّ فِي {كَانَ} [النساء: ٩٢] مِنْ قَوْله تَعَالَى: {فَإِنْ كَانَ مِنْ قَوْمٍ} [النساء: ٩٢] ضَمِيرٌ رَاجِعٌ إلَى أَوَّلِ مَذْكُورٍ، لَا يُمْكِنُ غَيْرُ ذَلِكَ أَلْبَتَّةَ، فَإِذْ لَا بُدَّ مِنْ هَذَا، وَالضَّمِيرُ فِي لُغَةِ الْعَرَبِ لَا يَرْجِعُ إلَّا إلَى أَقْرَبِ

[1] **Qur'an references (L36536):** Qur'an 4:92 (An-Nisa).
[2] **Qur'an references (L36538):** Qur'an 4:92 (An-Nisa).

given that these verses mention no other antecedent, whether near or far, except the believer killed unintentionally alone.[3]

مَذْكُورٍ قَبْلَهُ، إِلَّا بِبُرْهَانٍ يَدُلُّ عَلَى غَيْرِ ذَلِكَ، فَلَيْسَ فِي هَذِهِ الْآيَاتِ أَقْرَبُ مَذْكُورٍ وَلَا أَبْعَدُ مَذْكُورٍ، إِلَّا الْمُؤْمِنَ الْمَقْتُولَ خَطَأً فَقَطْ.

L36541 It has been established with certainty, free from ambiguity, that Allah the Exalted's intent in His saying, "And if he belonged to a people with whom you have a covenant" [An-Nisa': 92], is that it refers to a believer who was killed unintentionally, as affirmed by al-Ḥasan and Jābir ibn Zayd.[4]

فَصَحَّ بِيَقِينٍ لَا إِشْكَالَ فِيهِ: أَنَّ مُرَادَ اللَّهِ تَعَالَى بِقَوْلِهِ: {وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ} [النساء: ٩٢] أَنَّهُ مُؤْمِنٌ يُقْتَلُ خَطَأً، كَمَا قَالَ الْحَسَنُ، وَجَابِرُ بْنُ زَيْدٍ.

L36542 It has been established that the meaning of Allah's statement, the Exalted, *"From a people with whom you have a covenant"* [Quran 4:92] specifically pertains to a people when his residence is established among them. This is because the Messenger of Allah (peace be upon him) ruled that a disbeliever does not inherit a Muslim, and that diyah (blood money) is subject to inheritance.[5]

وَصَحَّ أَنَّ مَعْنَى قَوْلِ اللَّهِ تَعَالَى: {مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ} [النساء: ٩٢] إِنَّمَا هُوَ فِي قَوْمٍ إِذَا كَانَ سُكْنَاهُ فِيهِمْ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ حَكَمَ بِأَنْ لَا يَرِثَ الْكَافِرُ الْمُسْلِمَ، وَأَنَّ الدِّيَةَ مَوْرُوثَةٌ -.

L36543 Thus, it became invalid with certainty that the dhimmi non-believers inherit their believing paternal cousin.

فَبَطَلَ بِيَقِينٍ أَنْ يَرِثَ الْكُفَّارُ الذِّمِّيُّونَ ابْنَ عَمِّهِمْ الْمُؤْمِنَ.

L36544 The blood money in intentional homicide is obligated solely by the words of Allah the Almighty: {O you who believe, retribution is ordained for you concerning the slain—the free for the free, the enslaved for the enslaved, and the female for the female. But if anything is pardoned by one's brother, then let there be pursuit [of compensation] with fairness, and payment to him in a commendable manner} [Al-Baqarah 2:178], and by the saying of Allah's Messenger (peace and blessings be upon him): "Whoever has a slain relative may choose the better of two options: either to receive blood money (diyah) or to enforce retaliation (qisas)." Thus, it is established by the explicit texts of the Quran and the Sunnah that there is no blood money in intentional homicide except where retaliation is certain.[6]

وَالدِّيَةُ فِي الْعَمْدِ إِنَّمَا وَجَبَتْ بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنْثَى بِالْأُنْثَى فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ} [البقرة: ١٧٨] وَبِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ إِمَّا أَنْ يُودَى، وَإِمَّا يُقَادَ» فَصَحَّ بِنَصِّ الْقُرْآنِ، وَالسُّنَّةِ: أَنَّهُ لَا دِيَةَ فِي الْعَمْدِ إِلَّا حَيْثُ يَكُونُ الْقَوَدُ يَقِينًا.

L36545–36546 We have clarified that there is no qisas (retribution) against a Muslim for killing a protected non-Muslim. Since there is no qisas due to the dhimmi

وَقَدْ بَيَّنَّا أَنَّهُ لَا قَوَدَ مِنْ الْمُسْلِمِ لِلذِّمِّيِّ فَإِذْ لَا قَوَدَ لَهُ مِنْهُ فَلَا دِيَةَ لَهُ عَلَيْهِ، إِذْ لَمْ يُوجِبْ الدِّيَةَ دُونَ الْقَوَدِ فِي الْعَمْدِ قَطُّ قُرْآنٌ، وَلَا سُنَّةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[3] **Qur'an references (L36540):** Qur'an 4:92 (An-Nisa).
[4] **Qur'an references (L36541):** Qur'an 4:92 (An-Nisa).
[5] **Qur'an references (L36542):** Qur'an 4:92 (An-Nisa).
[6] **Qur'an references (L36544):** Qur'an 2:178 (Al-Baqarah).

from the Muslim, there is no blood money owed to him by him, as neither the Quran nor the Sunnah has ever mandated blood money without qisas in cases of intentional killing—and success is from Allah, the Exalted.

L36547 From Hummām, from Abū Muḥammad al-Bājī, from ʿAbd Allāh ibn Yūnus, from Baqī ibn Makhlad, from Abū Bakr ibn Abī Shaybah, from Yaḥyā ibn Saʿīd al-Qaṭṭān, from Ashʿath ibn ʿAbd al-Malik al-Ḥumrānī, from al-Ḥasan al-Baṣrī, who said: If a Muslim kills a dhimmī, he is not obligated to perform expiation.

أَنَا حُمَامٌ أَنَا أَبُو مُحَمَّدٍ الْبَاجِيَّ أَنَا عَبْدُ اللَّهِ بْنُ يُونُسَ أَنَا بَقِيُّ بْنُ مَخْلَدٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ أَشْعَثَ بْنِ عَبْدِ الْمَلِكِ الْحُمْرَانِيِّ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: إذَا قَتَلَ الْمُسْلِمُ الذِّمِّيَّ فَلَيْسَ عَلَيْهِ كَفَّارَةٌ.

L36548 And through the chain of Ismāʿīl ibn Isḥāq: from Muḥammad ibn al-Minhāl, from Yazīd ibn Zuraiʿ, from Yūnus - that is, Ibn Yazīd - from al-Ḥasan that he only considered manumission obligatory for killing the Muslim dhimmi - and this is the opinion of Abū ʿIyāḍ and Jābir ibn Zayd. If they object by citing what al-Ṭalamankī transmitted: from Ibn Mufarrij, from al-Ṣamūṭ Muḥammad ibn Ayyūb, from al-Bazzār, from Muḥammad ibn Muʿāwiyah al-Zanādī, from Abū Dāwūd, from Yaʿqūb ibn ʿAbd Allāh ibn Nujayd who reported: My father narrated from his father from ʿImrān ibn al-Ḥuṣayn, who said: "A man from Khuzāʿah killed a man from Hudhayl, so the Messenger of Allāh - peace and blessings be upon him - said: 'If I were to kill a believer for a disbeliever, I would kill him. Therefore, produce his blood money.'" Yet Yaʿqūb, his father, and his grandfather are unknown narrators.

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ أَنَا مُحَمَّدُ بْنُ الْمِنْهَالِ أَنَا يَزِيدُ بْنُ زُرَيْعٍ أَنَا يُونُسُ - هُوَ ابْنُ يَزِيدَ - عَنْ الْحَسَنِ أَنَّهُ كَانَ لَا يَرَى الْعِتْقَ إلَّا فِي قَتْلِ الْمُسْلِمِ الذِّمِّيَّ - وَهُوَ قَوْلُ أَبِي عِيَاضٍ، وَجَابِرِ بْنِ زَيْدٍ. فَإِنْ شَغَبُوا بِمَا نَاهَ الطَّلَمَنْكِيُّ أَنَا ابْنُ مُفَرِّجٍ أَنَا الصَّمُوتُ مُحَمَّدُ بْنُ أَيُّوبَ أَنَا الْبَزَّارُ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ الزَّنَادِيُّ أَنَا أَبُو دَاوُد أَنَا يَعْقُوبُ بْنُ عَبْدِ اللَّهِ بْنِ نُجَيْدٍ حَدَّثَنِي أَبِي عَنْ أَبِيهِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ قَالَ «إنَّ رَجُلًا مِنْ خُزَاعَةَ قَتَلَ رَجُلًا مِنْ هُذَيْلٍ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَوْ كُنْتُ قَاتِلًا مُؤْمِنًا بِكَافِرٍ لَقَتَلْتُهُ فَأَخْرِجُوا عَقْلَهُ» فَإِنَّ يَعْقُوبَ وَأَبَاهُ وَجَدَّهُ مَجْهُولُونَ.

L36549 As for his disciplinary action and imprisonment—what is established from the Messenger of Allah (peace be upon him) is the prohibition of flogging anyone beyond ten lashes except in cases of prescribed punishments. This is based on his saying (peace be upon him): "Whoever among you witnesses wrongdoing must physically prevent it if able." Killing a dhimmi wrongfully constitutes wrongdoing, thus obligating its prevention through direct action. Allah the Exalted said: "Cooperate in righteousness and piety, and do not cooperate in sin and transgression" [5:2]. Imprisoning the killer restrains him from oppression and constitutes cooperation in righteousness, while releasing him aids him in sin and transgression—and with Allah the Exalted lies all success.[7]

وَأَمَّا أَدَبُهُ وَسَجْنُهُ - فَالثَّابِتُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَنْعُ مِنْ أَنْ يُجْلَدَ أَحَدٌ فِي غَيْرِ حَدٍّ أَكْثَرَ مِنْ عَشْرِ جَلَدَاتٍ، وَلِقَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ» وَقَتْلُ الذِّمِّيِّ بِغَيْرِ حَقٍّ مُنْكَرٌ فَوَاجِبٌ تَغْيِيرُهُ بِالْيَدِ وَقَالَ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] فَسَجْنُ الْقَاتِلِ مَنْعٌ لَهُ مِنْ الظُّلْمِ وَتَعَاوُنٌ عَلَى الْبِرِّ وَالتَّقْوَى وَإِطْلَاقُهُ عَوْنٌ لَهُ عَلَى الْإِثْمِ وَالْعُدْوَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[7] **Qur'an references (L36549):** Qur'an 5:2 (Al-Ma'idah).

[مَسْأَلَةٌ قَتَلَ الْمُسْلِمُ أَوْ الذِّمِّيُّ مُسْلِمًا خَطَأً]

A case where a Muslim or a dhimmi killed a Muslim by mistake.

٢٠٢٦ - مَسْأَلَةٌ: وَإِنْ قَتَلَ الْمُسْلِمُ، أَوْ الذِّمِّيُّ - الْبَالِغَانِ الْعَاقِلَانِ - مُسْلِمًا خَطَأً فَالدِّيَةُ وَاجِبَةٌ عَلَى عَاقِلَةِ الْقَاتِلِ - وَهِيَ عَشِيرَتُهُ، وَقَبِيلَتُهُ.

2026 – Issue: If a Muslim or a Dhimmi—each being an adult male of sound mind—kills a Muslim by mistake, then the diyah is obligatory upon the killer's ʻaqilah, which are his clan and tribe.

وَعَلَى الْقَاتِلِ فِي نَفْسِهِ - إنْ كَانَ بَالِغًا عَاقِلًا مُسْلِمًا -: عِتْقُ رَقَبَةٍ مُؤْمِنَةٍ وَلَا بُدَّ، فَإِنْ لَمْ يَقْدِرْ عَلَيْهَا لِفَقْرِهِ: فَعَلَيْهِ صِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ، لَا يَحُولُ بَيْنَهُمَا شَهْرُ رَمَضَانَ، وَلَا بِيَوْمِ فِطْرٍ، وَلَا بِيَوْمِ أَضْحَى، وَلَا بِمَرَضٍ، وَلَا بِأَيَّامِ حَيْضٍ - إنْ كَانَتْ امْرَأَةً -.

And upon one who kills himself—if he is an adult, sane Muslim—it is obligatory to free a believing slave. If he cannot do so due to poverty, he must fast two consecutive months. The month of Ramadan should not intervene between them, nor the day of Eid al-Fitr, nor the day of Eid al-Adha, nor illness, nor—if she is a woman—menstrual days.

وَذَلِكَ - وَاجِبٌ عَلَى الذِّمِّيِّ، لَا أَنَّهُ لَا يَقْدِرُ فِي حَالِهِ تِلْكَ عَلَى عِتْقِ رَقَبَةٍ مُؤْمِنَةٍ، وَلَا عَلَى صِيَامٍ حَتَّى يُسْلِمَ، فَإِنْ أَسْلَمَ يَوْمًا مَا لَزِمَهُ الْعِتْقُ، أَوْ الصِّيَامُ فَإِنْ لَمْ يُسْلِمْ حَتَّى مَاتَ لَقِيَ اللَّهَ عَزَّ وَجَلَّ.

And that is obligatory upon the dhimmi, not that he is not able - in that situation of his - to free a believing slave, nor... He must fast until he converts to Islam. If he converts on any day, he is required to either free a slave or fast. If he dies without converting, he will meet Allah, the Almighty, the Majestic.

وَذَلِكَ زَائِدٌ فِي إثْمِهِ وَعَذَابِهِ، وَلَا يَصُومُ عَنْهُ وَلِيُّهُ - هَذَا كُلُّهُ نَصُّ الْقُرْآنِ الَّذِي لَا يَجْهَلُهُ مَنْ لَهُ فِي الْعِلْمِ أَقَلُّ حَظٍّ.

And that adds to his sin and punishment, nor does his guardian fast in his stead—all of this is the unequivocal text of the Qur'an, which no one with even the slightest share of knowledge would be ignorant of.

وَأَمَّا كَوْنُ الدِّيَةِ عَلَى عَشِيرَتِهِ - فَلِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ أَنَا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ ابْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي جَنِينِ امْرَأَةٍ سَقَطَ مَيِّتًا بِغُرَّةٍ عَبْدٍ أَوْ أَمَةٍ، ثُمَّ إنَّ الْمَرْأَةَ الَّتِي قَضَى عَلَيْهَا بِالْغُرَّةِ تُوُفِّيَتْ؟ فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ مِيرَاثَهَا لِبَنِيهَا، وَزَوْجِهَا، أَنَّ الْعَقْلَ عَلَى عَصَبَتِهَا» .

As for the ruling that the blood money is incumbent upon his clan, it is based on what was narrated to us through the chain of Ahmad ibn Shuʿayb: From Qutaybah ibn Saʿīd, from Al-Layth ibn Saʿd, from Ibn Shihāb, from Ibn al-Musayyab, from Abū Hurayrah: "The Messenger of Allah (peace and blessings of Allah be upon him) ruled regarding the fetus of a woman who miscarried dead that a *ghurrah* (a male or female slave) was due. Then the woman upon whom the *ghurrah* was ruled died. So the Messenger of Allah (peace and blessings of Allah be upon him) ruled that her inheritance belonged to her children and husband, and that the liability for blood money fell upon her agnatic kin."

وَأَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: الْحَنَفِيُّونَ وَالْمَالِكِيُّونَ: الدِّيَةُ فِي مَالِ الْقَاتِلِ

Abū Muḥammad—may Allāh be pleased with him—said: The Ḥanafīs and the Mālikīs asserted that the financial liability for blood money falls upon the

people of the state registry (dīwān), claiming that ʿUmar issued such a ruling. This, however, is not valid. Even if it were valid, it would not constitute proof, for no proof lies with anyone apart from the Messenger of Allāh—Peace and blessings of Allāh be upon him. Allāh the Exalted forbid that ʿUmar would ever nullify the ruling of the Messenger of Allāh—Peace and blessings of Allāh be upon him—and institute another ruling without revelation from Allāh the Exalted, for that would be an enormity beyond measure.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَقَالَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ: الْعَقْلُ عَلَى أَهْلِ الدِّيوَانِ - وَادَّعَوْا أَنَّ عُمَرَ قَضَى بِذَلِكَ، وَذَلِكَ لَا يَصِحُّ، وَلَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَيُعِيذُ اللَّهُ تَعَالَى عُمَرَ مِنْ أَنْ يَكُونَ يُحِيلُ حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَيُحْدِثُ حُكْمًا آخَرَ بِغَيْرِ وَحْيٍ مِنْ اللَّهِ تَعَالَى وَهَذَا عَظِيمٌ جِدًّا.

L36559 Abu Muhammad—may Allah be pleased with him—said: Whoever lacks agnatic kin among Muslims is to be supported from the share of those burdened by debt or from every endowment designated for all communal interests of Muslims, in accordance with Allah's decree: "The believing men and believing women are allies of one another" [At-Tawbah: 71]. No portion of the mentioned wealth is allocated to a disbeliever—whether a dhimmi or otherwise. And with Allah, the Most High, is success.[8]

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: فَمَنْ لَمْ يَكُنْ لَهُ مِنْ الْمُسْلِمِينَ خَاصَّةً عَصَبَةٌ فَمِنْ سَهْمِ الْغَارِمِينَ، أَوْ مِنْ كُلِّ مَالٍ مَوْقُوفٍ لِجَمِيعِ مَصَالِحِ الْمُسْلِمِينَ؛ لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [التوبة: ٧١] وَلَا حَظَّ فِي الْمَالِ الْمَذْكُورِ لِكَافِرٍ ذِمِّيًّا كَانَ أَوْ غَيْرَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L36560 As for our statement: Nothing intervenes between the two months due to Ramadan, Eid al-Adha, illness, or days of menstruation - this is because Allah, the Mighty and Majestic, commanded them to be consecutive. If any of the aforementioned things intervene between them, they are no longer consecutive, and Allah has not distinguished between an intervention without a valid excuse and one with an excuse.

وَأَمَّا قَوْلُنَا: لَا يَحُولُ بَيْنَ الشَّهْرَيْنِ بِرَمَضَانَ، وَلَا بِأَضْحَى، وَلَا بِمَرَضٍ وَلَا أَيَّامِ حَيْضٍ - فَلِأَنَّ اللَّهَ عَزَّ وَجَلَّ أَمَرَ بِهِمَا مُتَتَابِعَيْنِ، وَأَمَّا إذَا حَالَ بَيْنَهُمَا شَيْءٌ مِمَّا ذَكَرْنَا فَلَيْسَا مُتَتَابِعَيْنِ، وَلَمْ يَخُصَّ اللَّهُ عَزَّ وَجَلَّ حَيْلُولَةً بِغَيْرِ عُذْرٍ مِنْ حَيْلُولَةٍ بِعُذْرٍ.

L36561 A woman must delay her fasting until her menstruation ends because she is unable to continue. Thus, her obligation is to delay fasting until she becomes capable, like the sick and others.

وَتُؤَخِّرُ الْمَرْأَةُ صِيَامَهَا حَتَّى تَرْتَفِعَ حَيْضَتُهَا؛ لِأَنَّهَا لَا تَقْدِرُ عَلَى الْمُتَابَعَةِ، فَفَرْضُهَا أَنْ تُؤَخِّرَ حَتَّى تَقْدِرَ كَالْمَرِيضِ وَغَيْرِهِ.

L36562 If he began the two months at the start of Sha'bān, then traveled throughout all of Ramadan, completing the two months during his journey suffices him. Thereafter, he must make up Ramadan as Allah the Exalted has commanded him.

وَلَوْ بَدَأَهُمَا فِي أَوَّلِ شَعْبَانَ ثُمَّ سَافَرَ رَمَضَانَ كُلَّهُ أَجْزَأَهُ إتْمَامُ الشَّهْرَيْنِ فِيهِ ثُمَّ يَقْضِي رَمَضَانَ كَمَا أَمَرَهُ اللَّهُ تَعَالَى.

L36563–36565 As for the Dhimmi—indeed, every disbeliever, whether jinn or human—it is obligatory upon them to abandon all religions, return to Islam, and adhere

وَأَمَّا الذِّمِّيُّ - فَإِنَّ كُلَّ كَافِرٍ مِنْ جِنٍّ أَوْ إنْسٍ فَفَرْضٌ عَلَيْهِمْ تَرْكُ كُلِّ دِينٍ وَالرُّجُوعُ إلَى الْإِسْلَامِ، وَالْتِزَامُ شَرَائِعِهِ لَا يَقْبَلُ غَيْرَ هَذَا مُسْلِمٌ؛ لِأَنَّهُ بِهَذَا جَاءَ الْقُرْآنُ وَعَلَيْهِ حَارَبَ

[8] **Qur'an references (L36559):** Qur'an 9:71 (At-Tawbah).

to its laws. No Muslim would say otherwise, for the Qur'an has come with this command, and upon this the Messenger waged war. He who opposes Allah - and does not believe in His Messenger (peace be upon him) - thus eternal abode in the Fire is decreed for those who do not submit to Islam. Therefore, every disbeliever is obligated to adhere to the religion of Islam and is commanded to follow it. Its rulings are binding upon them, and its laws likewise, except that among these obligations are acts not accepted from them until they submit to Islam, such as prayer which is obligatory upon the person in major impurity and the one without ablution. However, it is not accepted from either of them until the person in major impurity performs ritual bathing and the one in minor impurity performs ablution.

L36566 As for our statement that the guardian does not fast on behalf of the disbeliever—unlike the Muslim who dies while owing fasts—this is because the guardian only fasts what would have sufficed the deceased had he fasted it. This is not an attribute of the disbeliever, and success is from Allah, the Most High.

L36567 **Issue: He killed a believer intentionally while knowing he was a Muslim.**

L36568 Issue 2027: Whoever intentionally kills a believer in the Abode of Islam or the Abode of War—while knowing he is Muslim—the guardian of the slain may choose: if he wishes, he may kill him in the same manner he killed him: by striking, stabbing, shooting, throwing from a height, burning, drowning, crushing, starving, depriving of water, strangling, suffocating, trampling by a horse, or any other means—excluding nothing.

L36569 If he wishes, he may pardon him—whether the killer consents or objects—as he holds no authority in this matter. The guardian's pardon of retaliation (qisas) and silence regarding the blood money (diya) do not, by those very acts, invalidate the diya. Rather, it remains obligatory for the guardian to receive it, even if unmentioned, unless he verbally declares pardon of the diya itself.

L36570 If the legal guardian wishes, they may pardon the killer based on mutual

رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ خَالَفَهُ وَلَمْ يُؤْمِنْ بِهِ، وَبِذَلِكَ وَجَبَ الْخُلُودُ فِي النَّارِ عَلَى مَنْ لَمْ يُسْلِمْ، فَإِذْ كُلُّ كَافِرٍ فَمُلْزَمٌ دِينَ الْإِسْلَامِ، وَمَأْمُورٌ بِهِ، فَحُكْمُهُ لَازِمٌ لَهُمْ، وَشَرَائِعُهُ كَذَلِكَ، إِلَّا أَنَّ مِنْهَا مَا لَا يُقْبَلُ مِنْهُمْ حَتَّى يُسْلِمُوا، كَالصَّلَاةِ هِيَ فَرْضٌ عَلَى الْجُنُبِ، وَغَيْرُ الْمُتَوَضِّئِ، إِلَّا أَنَّهَا لَا تُقْبَلُ مِنْهُمَا إِلَّا حَتَّى يَغْتَسِلَ الْجُنُبُ وَيَتَوَضَّأَ الْمُحْدِثُ.

وَأَمَّا قَوْلُنَا: لَا يَصُومُ عَنْ الْكَافِرِ وَلِيُّهُ بِخِلَافِ الْمُسْلِمِ يَمُوتُ وَعَلَيْهِ صِيَامٌ، لِأَنَّهُ لَا يَصُومُ الْوَلِيُّ إِلَّا مَا لَوْ صَامَهُ الْمَيِّتُ لَأَجْزَأَهُ، وَلَيْسَ هَذَا صِفَةَ الْكَافِرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ قَتَلَ مُؤْمِنًا عَمْدًا وَهُوَ يَدْرِي أَنَّهُ مُسْلِمٌ]

٢٠٢٧ - مَسْأَلَةٌ: وَمَنْ قَتَلَ مُؤْمِنًا عَمْدًا فِي دَارِ الْإِسْلَامِ أَوْ فِي دَارِ الْحَرْبِ - وَهُوَ يَدْرِي أَنَّهُ مُسْلِمٌ - فَوَلِيُّ الْمَقْتُولِ مُخَيَّرٌ إِنْ شَاءَ قَتَلَهُ بِمِثْلِ مَا قَتَلَ هُوَ بِهِ وَلِيَّهُ: مِنْ ضَرْبٍ، أَوْ طَعْنٍ، أَوْ رَمْيٍ، أَوْ صَبٍّ مِنْ حَالِقٍ، أَوْ تَحْرِيقٍ أَوْ تَغْرِيقٍ، أَوْ شَدْخٍ، أَوْ إِجَاعَةٍ أَوْ تَعْطِيشٍ، أَوْ خَنْقٍ أَوْ غَمٍّ، أَوْ وَطْءِ فَرَسٍ، أَوْ غَيْرِ ذَلِكَ - لَا تُحَاشَ شَيْئًا.

وَإِنْ شَاءَ عَفَا عَنْهُ - أَحَبَّ الْقَاتِلُ أَمْ كَرِهَ - لَا رَأْيَ لَهُ فِي ذَلِكَ، وَلَيْسَ عَفْوُ الْوَلِيِّ عَنْ الْقَوَدِ وَسُكُوتُهُ عَنْ ذِكْرِ الدِّيَةِ بِذَلِكَ بِمُسْقِطٍ لِلدِّيَةِ، بَلْ هِيَ وَاجِبَةٌ لِلْوَلِيِّ، وَإِنْ لَمْ يَذْكُرْهَا، إِلَّا أَنْ يَلْفِظَ بِالْعَفْوِ عَنْ الدِّيَةِ أَيْضًا.

agreement. In this case, if the killer does not satisfy the legal guardian, the guardian is not obligated to accept, and may choose between retaliation or blood money. If the legal guardian insists on demanding more than the blood money, the killer is not obligated to pay beyond it, not even a voluntary payment or anything exceeding that.

وَإِنْ شَاءَ عَفَا عَنْهُ بِمَا يَتَّفِقَانِ عَلَيْهِ، فَهَاهُنَا خَاصَّةً إِنْ لَمْ يُرْضِهِ الْقَاتِلُ لَمْ يَلْزَمْهُ، وَيَكُونُ لِلْوَلِيِّ الْقَوَدُ، أَوْ الدِّيَةُ، فَإِنْ أَبَى الْوَلِيُّ إلَّا أَكْثَرَ مِنْ الدِّيَةِ لَمْ يَلْزَمْ الْقَاتِلَ أَنْ يَزِيدَهُ عَلَى الدِّيَةِ وَبَرَةً فَمَا فَوْقَهَا.

L36571 Abu Muhammad—may Allah be pleased with him—said: "Indeed, the people have differed regarding this—"

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -:

L36572 A group said: The guardian of the slain has only retaliation or pardon, and blood money is not owed to him except with the killer's consent. If the guardian insists on more than the blood money—even many multiples—and if the killer consents to that, it is permissible; otherwise, it is not permissible. This opinion is authentically reported from Ibrāhīm al-Nakhaʿī and Abū al-Zināد, and it is the opinion of Abū Ḥanīfah, Sufyān al-Thawrī, Mālik, Ibn Shubrumah, al-Ḥasan ibn Ḥayy, and their companions.

فَقَالَتْ طَائِفَةٌ: لَيْسَ لِوَلِيِّ الْمَقْتُولِ إلَّا الْقَوَدُ فَقَطْ، أَوْ الْعَفْوُ، وَلَا تَجِبُ لَهُ الدِّيَةُ إلَّا بِرِضَا الْقَاتِلِ، فَإِنْ أَبَى الْوَلِيُّ إلَّا أَكْثَرَ مِنْ الدِّيَةِ - وَلَوْ أَضْعَافًا كَثِيرَةً فَإِنْ رَضِيَ بِذَلِكَ الْقَاتِلُ جَازَ ذَلِكَ، وَإِلَّا فَلَا - صَحَّ هَذَا الْقَوْلُ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَعَنْ أَبِي الزِّنَادِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيِّ وَمَالِكٍ، وَابْنِ شُبْرُمَةَ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَصْحَابِهِمْ.

L36573 Our position is validated through the narration from Ibn Abbas: We have been narrated through Al-Bukhari's chain—Qutaybah ibn Saʿīd → Sufyān ibn ʿUyaynah → ʿAmr ibn Dīnār → Mujāhid → Ibn Abbas—regarding Allah's verse: *"But whoever is pardoned by his brother for something, then let there be pursuit [of compensation] in a proper manner and payment to him with graciousness"* [al-Baqarah 2:178]. He said: "Among the Children of Israel, capital retaliation (*al-qawad*) was enforced, but blood money (*diyah*) did not exist among them." He clarified: "Pardoning here means accepting blood money for intentional [acts], seeking it through proper channels and fulfilling it with excellence."[9]

وَصَحَّ قَوْلُنَا عَنْ ابْنِ عَبَّاسٍ: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ} [البقرة: ١٧٨] قَالَ: كَانَ فِي بَنِي إسْرَائِيلَ الْقَوَدُ، وَلَمْ تَكُنْ فِيهِمْ الدِّيَةُ، قَالَ: فَالْعَفْوُ -: أَنْ يَقْبَلَ الدِّيَةَ فِي الْعَمْدِ يَطْلُبُ بِمَعْرُوفٍ، وَيُؤَدِّي بِإِحْسَانٍ.

L36574–36575 From the path of Hammad ibn Salamah: From Amr ibn Dinar, from Jabir ibn Zayd, from Ibn Abbas concerning the mentioned verse: "This refers to intentional killing—the legal guardians may accept blood money through the claimant's adherence on the part of what is fair and the dutiful fulfillment by the one liable in a commendable manner." It has also been authentically reported from Mujahid, Al-Shaʿbi, and Umar ibn Abd al-Aziz, as we have narrated through the path of Abd al-Razzaq, from Maʿmar, from Simak ibn

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا عَمْرُو بْنُ دِينَارٍ عَنْ جَابِرِ بْنِ زَيْدٍ عَنْ ابْنِ عَبَّاسٍ فِي الْآيَةِ الْمَذْكُورَةِ هُوَ الْعَمْدُ يَرْضَى أَهْلُهُ بِالدِّيَةِ اتِّبَاعًا مِنْ الطَّالِبِ بِالْمَعْرُوفِ وَأَدَاءً إلَيْهِ مِنْ الْمَطْلُوبِ بِإِحْسَانٍ. وَصَحَّ أَيْضًا عَنْ مُجَاهِدٍ، وَالشَّعْبِيِّ، وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ سِمَاكِ بْنِ الْفَضْلِ قَاضِي صَنْعَاءَ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي امْرَأَةٍ قَتَلَتْ رَجُلًا - إنْ أَحَبَّ الْأَوْلِيَاءُ أَنْ يَعْفُوا عَفَوْا

[9] **Qur'an references (L36573):** Qur'an 2:178 (Al-Baqarah).

al-Fadl, the judge of Sana'a, who said: Umar ibn Abd al-Aziz wrote regarding a woman who killed a man: "If the legal guardians wish to pardon, let them pardon; if they wish to kill, let them kill; and if they wish to take the blood money, let them take it. They are to give his wife her inheritance share from the blood money."

L36576 And via the chain of Abd al-Razzāq from Ma'mar from Qatadah, he said: The killer is legally compelled to give the diyah. If they agree to three diyahs, then it is permissible, for they have purchased immunity for their companion with it. This is the opinion of Sa'id ibn al-Musayyib, Muhammad ibn Sirin, al-Awza'i, al-Shafi'i, Abu Thawr, Ahmad ibn Hanbal, Ishaq, Abu Sulayman, their companions, and the majority of Ahl al-Hadith.

L36577 Abu Muhammad—may Allah be pleased with him—said: We examined what the proponents of this view argued? Then we found the statement of Allah, the Almighty and Majestic: "Retaliation is prescribed for you concerning the slain: the free person for the free person, the slave for the slave, and the woman for the woman. But if pardon is granted to anyone by his brother [in faith], then let there be fair recourse and payment to him with kindness." [Al-Baqarah 2:178].[10]

L36578 The pronoun in the words of Him, the Exalted—"for him" and "from his brother" (Al-Baqarah: 178)—refers to the killer. No other interpretation is valid, for he is the one pardoned for him from his sin in killing his Muslim brother.[11]

L36579 And what was narrated to us through al-Bukhārī's chain: I am Abū Nu'aym - he is al-Faḍl ibn Dukayn - narrating from Shaybān, from Yaḥyā - he is Ibn Abī Kathīr - from Abū Salamah ibn 'Abd al-Raḥmān ibn 'Awf, from Abū Hurayrah, and he mentioned a ḥadīth wherein the Messenger of Allāh - peace and blessings of Allāh be upon him - said: "Whoever has a kinsman killed may choose the better of two options: either blood-money is paid or retaliation is carried out."

- وَإِنْ أَحَبُّوا أَنْ يَقْتُلُوا قَتَلُوا، وَإِنْ أَحَبُّوا أَنْ يَأْخُذُوا الدِّيَةَ أَخَذُوهَا، وَأَعْطُوا امْرَأَتَهُ مِيرَاثَهَا مِنْ الدِّيَةِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، قَالَ: يُجْبَرُ الْقَاتِلُ عَلَى إعْطَاءِ الدِّيَةِ، فَإِنْ اتَّفَقُوا عَلَى ثَلَاثِ دِيَاتٍ: فَهُوَ جَائِزٌ، إنَّمَا اشْتَرَوْا بِهِ صَاحِبَهُمْ. وَهُوَ قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ، وَمُحَمَّدِ بْنِ سِيرِينَ، وَالْأَوْزَاعِيِّ، وَالشَّافِعِيِّ وَأَبِي ثَوْرٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ، وَجُمْهُورِ أَصْحَابِ الْحَدِيثِ.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ أَهْلُ هَذَا الْقَوْلِ؟ فَوَجَدْنَا قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالأُنْثَى بِالأُنْثَى فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ} [البقرة: ١٧٨] .

فَالضَّمِيرُ فِي قَوْله تَعَالَى: {لَهُ} [البقرة: ١٧٨] وَفِي {مِنْ أَخِيهِ} [البقرة: ١٧٨] رَاجِعٌ إلَى الْقَاتِلِ، لَا يَجُوزُ غَيْرُ ذَلِكَ؛ لِأَنَّهُ هُوَ الَّذِي عُفِيَ لَهُ مِنْ ذَنْبِهِ فِي قَتْلِ أَخِيهِ الْمُسْلِمِ.

وَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا أَبُو نُعَيْمٍ - هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - أَنَا شَيْبَانُ عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ فَذَكَرَ حَدِيثًا وَفِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «وَمَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ: إمَّا يُودَى وَإِمَّا أَنْ يُقَادَ» .

[10] **Qur'an references (L36577):** Qur'an 2:178 (Al-Baqarah).
[11] **Qur'an references (L36578):** Qur'an 2:178 (Al-Baqarah).

وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ أَنَا مُسَدَّدٌ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ أَنَا ابْنُ أَبِي ذِئْبٍ أَنَا سَعِيدُ بْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ قَالَ: سَمِعْت أَبَا شُرَيْحٍ الْكَعْبِيَّ يَقُولُ فِي خَبَرِ «فَمَنْ قُتِلَ لَهُ بَعْدَ مَقَالَتِي هَذِهِ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيرَتَيْنِ: بَيْنَ أَنْ يَأْخُذُوا الْعَقْلَ وَبَيْنَ أَنْ يَقْتُلُوا» فَهَذَا نَصٌّ جَلِيٌّ لَا يَحْتَمِلُ تَأْوِيلًا بِأَنَّ الْخِيَارَ فِي الدِّيَةِ أَوْ الْقَوَدِ إلَى وَلِيِّ الْمَقْتُولِ لَا إلَى الْقَاتِلِ، وَقَدْ وَافَقُونَا عَلَى أَنَّهُ إنْ عَفَا وَاحِدٌ مِنْ الْأَوْلِيَاءِ فَأَكْثَرُ: أَنَّ الدِّيَةَ وَاجِبَةٌ لِلْبَاقِينَ - أَحَبَّ الْقَاتِلُ أَمْ كَرِهَ - وَكَذَلِكَ عِنْدَهُمْ: إذَا بَطَلَ الْقَوَدُ بِأَيِّ وَجْهٍ بَطَلَ، كَالْأَبِ قَتَلَ ابْنَهُ، أَوْ نَحْوِ ذَلِكَ، فَأَيُّ فَرْقٍ بَيْنَ امْتِنَاعِ الْقَوَدِ بِهَذَا وَبَيْنَ امْتِنَاعِهِ بِعَفْوِ الْوَلِيِّ.

L36580–36581 From the path of Abū Dāwūd al-Sijistānī: I am Musaddad, I am Yaḥyā ibn Saʿīd al-Qaṭṭān, I am Ibn Abī Dhiʾb, I am Saʿīd ibn Abī Saʿīd al-Maqburī, who said: I heard Abū Shurayḥ al-Kaʿbī say regarding the report: "Whoever is killed after this statement of mine, his family has two good choices: to accept the *diya* or to seek retribution." This is an explicit text that admits no interpretation, as the choice between *diya* or *qiṣāṣ* lies with the heir of the slain, not the killer. They have concurred with us that if one or more of the guardians pardon, the *diya* remains obligatory for the remaining heirs—whether the killer desires it or not. Similarly, according to them: if *qiṣāṣ* is nullified for any reason—such as a father killing his son or similar cases—it becomes void. What distinction then exists between *qiṣāṣ* being prevented by such circumstances and its prevention by the heir's pardon?

قَالُوا: وَلَا يَصِحُّ خِلَافُ ابْنِ عَبَّاسٍ فِي ذَلِكَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L36582 They said: No valid disagreement of Ibn Abbas regarding that matter is established through any report from the Companions, may Allah be pleased with them.

ثُمَّ نَظَرْنَا فِيمَا يَشْغَبُ بِهِ أَهْلُ الْقَوْلِ الَّذِي ذَكَرْنَا أَوَّلًا، فَوَجَدْنَاهُمْ يَحْتَجُّونَ -: بِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي هِلَالُ بْنُ الْعَلَاءِ أَنَا سَعِيدُ بْنُ سُلَيْمَانَ أَنَا سُلَيْمَانُ بْنُ كَثِيرٍ أَنَا عَمْرُو بْنُ دِينَارٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ فِي رِمِّيَّا أَوْ عِمِّيَّا يَكُونُ بَيْنَهُمْ بِحَجَرٍ أَوْ بِسَوْطٍ أَوْ عَصًا فَعَقْلُهُ عَقْلُ خَطَأٍ وَمَنْ قَتَلَ عَمْدًا فَقَوَدُ يَدَيْهِ، فَمَنْ حَالَ بَيْنَهُ وَبَيْنَهُ فَعَلَيْهِ لَعْنَةُ اللَّهِ» ، وَذَكَرَ الْحَدِيثَ.

L36583 Then we examined the arguments put forth by the proponents of the aforementioned doctrine, and found them invoking as proof the narration transmitted to us through the chain of Aḥmad ibn Shuʿayb: Hilāl ibn al-ʿAlāʾ informed me, from Saʿīd ibn Sulaymān, from Sulaymān ibn Kathīr, from ʿAmr ibn Dīnār, from Ṭāwūs, from Ibn ʿAbbās, who said: The Messenger of Allah—peace and blessings be upon him—said: "Whoever is killed in accidental projectile throwing or blind striking—occurring among people through a stone, whip, or stick—his blood money (diya) is that of unintentional killing. Whoever kills intentionally shall face retaliation in kind (qisas). Whoever intervenes between him [the killer] and it [retaliation] shall incur Allah's curse." He then related the ḥadīth in full.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي سُفْيَانُ الثَّوْرِيُّ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ اغْتَبَطَ مُؤْمِنًا قَتْلًا فَهُوَ مُودِيهِ إلَّا أَنْ يَرْضَى وَلِيُّ الْمَقْتُولِ وَذَكَرَ الْحَدِيثَ -

L36584–36586 From the transmission of Ibn Wahb: Sufyan al-Thawri informed me through Muhammad ibn Abd al-Rahman ibn Abi Layla, from al-Hakam ibn Utaybah, from Abd al-Rahman ibn Abi Layla, that the Messenger of Allah (peace and blessings be upon him) said: "Whoever kills a believer out of envy must surrender him, unless the guardian of the slain is satisfied." He mentioned

the hadith—concluding with: {Whatever you differ about regarding anything, its judgment belongs to Allah} [42:10]—and to the Messenger.

As conveyed by Ahmad ibn Qasim: From my father Qasim ibn Muhammad ibn Qasim, from my grandfather Qasim ibn Asbagh, from Ahmad ibn Zuhayr, from al-Hakam ibn Musa, from Yahya ibn Hamzah, from Sulayman ibn Dawud al-Jazari. From al-Zuhri, from Abu Bakr ibn Muhammad ibn Amr ibn Hazm, from his father, from his grandfather: "That the Messenger of Allah—peace and blessings of Allah be upon him—wrote in his letter to the people of Yemen sent with Amr ibn Hazm: Whoever kills a believer through an act of killing established by clear evidence, retaliation is required unless the legal guardians of the slain consent."[12]

L36587 And according to what was narrated to us through the chain of Abu Dawud: We were narrated by Ubaydullah ibn Umar ibn Maysarah, from Yahya ibn Sa'id—al-Qattan—from Awf al-A'rabi, from Hamzah Abu Umar al-'Aydhi al-Dabbi, who said: Alqamah ibn Wa'il narrated to me, who said: Wa'il ibn al-Awza'i narrated to me, saying: "I was with the Messenger of Allah (peace be upon him) when a killer was brought with a palm-fiber rope around his neck. The Prophet (peace be upon him) said to the guardian of the slain: 'Will you pardon?' He said: 'No.' He said: 'Will you take the blood money?' He said: 'No.' He said: 'Will you kill?' He said: 'Yes.' At the end of the hadith: The Prophet (peace be upon him) said to him: 'If you pardon him, he will bear the burden of your sin and the sin of your companion.' So he pardoned him."

And through another chain of Abu Dawud: We were narrated by Muhammad ibn Awf al-Ta'i, from Abdul-Quddus ibn al-Hajjaj, from Yazid ibn Ata al-Wasiti, from Simak ibn Harb, from Alqamah ibn Wa'il ibn Hujr, from his father: "A killer was brought to the Messenger of Allah (peace be upon him), and he said to him: 'Do you have wealth to pay his blood money?' He said: 'No.' He said: 'What if I send you to ask the people to gather his blood money?' He said: 'No.' He said: 'Will your kinsmen give you [the means] to pay his blood money?' He said: 'No.' The Prophet (peace be upon him) then

[12] **Qur'an references (L36584):** Qur'an 42:10 (Ash-Shuraa).

وَفِي آخِرِهِ: {وَمَا اخْتَلَفْتُمْ فِيهِ مِنْ شَيْءٍ فَحُكْمُهُ إِلَى اللَّهِ} [الشورى: ١٠] وَالرَّسُولِ.»

وَبِمَا نَاهُ أَحْمَدُ بْنُ قَاسِمٍ حَدَّثَنِي أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ أَنَا جَدِّي قَاسِمُ بْنُ أَصْبَغَ أَنَا أَحْمَدُ بْنُ زُهَيْرٍ أَنَا الْحَكَمُ بْنُ مُوسَى أَنَا يَحْيَى بْنُ حَمْزَةَ عَنْ سُلَيْمَانَ بْنِ دَاوُد الْجَزَرِيِّ عَنْ الزُّهْرِيِّ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَبَ فِي كِتَابِهِ إِلَى أَهْلِ الْيَمَنِ مَعَ عَمْرِو بْنِ حَزْمٍ فَمَنْ اعْتَبَطَ مُؤْمِنًا قَتْلًا عَنْ بَيِّنَةٍ فَإِنَّهُ قَوَدٌ إِلَّا أَنْ يَرْضَى أَوْلِيَاءُ الْمَقْتُولِ» .

وَبِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ بْنِ مَيْسَرَةَ أَنَا يَحْيَى بْنُ سَعِيدٍ - هُوَ الْقَطَّانُ - عَنْ عَوْفٍ الْأَعْرَابِيِّ عَنْ حَمْزَةَ أَبِي عُمَرَ الْعَايِذِيِّ الضَّبِّيِّ حَدَّثَنِي عَلْقَمَةُ بْنُ وَائِلٍ حَدَّثَنِي وَائِلُ بْنُ الْأَوْزَاعِيِّ، قَالَ: «كُنْتُ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ جِيءَ بِقَاتِلٍ فِي عُنُقِهِ النِّسْعَةُ فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لِمَوْلَى الْمَقْتُولِ: أَتَعْفُو؟ قَالَ: لَا، قَالَ: أَتَأْخُذُ الدِّيَةَ؟ قَالَ: لَا، قَالَ: أَفَتَقْتُلُ؟ قَالَ: نَعَمْ، وَفِي آخِرِ الْحَدِيثِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ لَهُ أَمَا إِنَّكَ إِنْ عَفَوْتَ عَنْهُ فَإِنَّهُ يَبُوءُ بِإِثْمِكَ وَإِثْمِ صَاحِبِكَ فَعَفَا عَنْهُ.» وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُحَمَّدُ بْنُ عَوْفٍ الطَّائِيُّ أَنَا عَبْدُ الْقُدُّوسِ بْنُ الْحَجَّاجِ ثنا يَزِيدُ بْنُ عَطَاءٍ الْوَاسِطِيُّ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ عَلْقَمَةَ بْنِ وَائِلِ بْنِ حُجْرٍ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِقَاتِلٍ فَقَالَ لَهُ: هَلْ لَكَ مِنْ مَالٍ تُؤَدِّي دِيَتَهُ؟ قَالَ: لَا، قَالَ: أَفَرَأَيْتَ إِنْ أَرْسَلْتُكَ تَسْأَلُ النَّاسَ تَجْمَعُ دِيَتَهُ؟ قَالَ: لَا، قَالَ: فَمَوَالِيكَ يُعْطُونَكَ دِيَتَهُ؟ قَالَ: لَا، قَالَ لِوَلِيِّ الْمَقْتُولِ: خُذْهُ - ثُمَّ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: أَمَا إِنَّهُ إِنْ قَتَلَهُ كَانَ مِثْلَهُ، وَذَكَرَ بَاقِيَ الْحَدِيثِ - وَفِيهِ: أَنَّهُ - عَلَيْهِ

said to the guardian of the slain: ‘Take him.’ Then he (peace be upon him) added: ‘If you kill him, you will be like him.’ The remainder of the hadith states that the Prophet (peace be upon him) said: ‘Release him, and he will bear the burden of his sin and the sin of your companion, becoming among the dwellers of the Fire.’ So he released him.”

الصَّلَاةُ وَالسَّلَامُ - قَالَ لَهُ أَرْسِلْهُ يَبُوءُ بِإِثْمِ صَاحِبِك وَإِثْمِهِ، فَيَكُونُ مِنْ أَصْحَابِ النَّارِ؟ فَأَرْسَلَهُ» .

L36588 From the chain of Ahmad ibn Shu’ayb: From Isa ibn Yunus al-Fakhuri, from Damrah, from Abdullah ibn Shawdhab, from Thabit al-Bunani, from Anas ibn Malik: A man came to the Messenger of Allah (peace and blessings be upon him) with the killer of his heir. The Prophet (peace and blessings be upon him) said to him: “Grant him pardon?” But he refused. He said: “Accept the blood money?” But he refused. He said: “Go kill him, for you are like him.” He then mentioned the rest of the hadith, which states that the Prophet (peace and blessings be upon him) sent him away.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عِيسَى بْنُ يُونُسَ الْفَاخُورِيُّ أَنَا ضَمْرَةُ عَنْ عَبْدِ اللَّهِ بْنِ شَوْذَبَ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ، «أَنَّ رَجُلًا أَتَى بِقَاتِلِ وَلِيِّهِ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: أَعْفُ عَنْهُ؟ فَأَبَى، فَقَالَ: خُذْ الدِّيَةَ؟ فَأَبَى، قَالَ: اذْهَبْ فَاقْتُلْهُ، فَإِنَّك مِثْلُهُ فَذَكَرَ الْحَدِيثَ - وَفِيهِ أَنَّهُ أَرْسَلَهُ» .

L36589–36590 They said: In the hadith narrated by Ibn Abbas, Abd al-Rahman ibn Abi Layla, and Amr ibn Hazm: Retaliation is required unless the legal guardians of the slain consent to forgo it.

قَالُوا: فَفِي حَدِيثِ ابْنِ عَبَّاسٍ، وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى، وَعَمْرِو بْنِ حَزْمٍ: الْقَوَدُ إلَّا أَنْ يَرْضَى أَوْلِيَاءُ الْمَقْتُولِ.

L36591 And in the ḥadīth of Wā’il ibn Ḥujr and Anas: the distinction between pardon and between taking the blood money.

وَفِي حَدِيثِ وَائِلِ بْنِ حُجْرٍ، وَأَنَسٍ: الْفَرْقُ بَيْنَ الْعَفْوِ، وَبَيْنَ أَخْذِ الدِّيَةِ.

L36592 If the diyah were obligatory despite pardon, even when the lay guardian does not mention it, he (PBUH) would have dispensed with reiterating it.

قَالُوا: فَلَوْ كَانَتْ الدِّيَةُ وَاجِبَةً بِالْعَفْوِ وَإِنْ لَمْ يَذْكُرْهَا الْوَلِيُّ الْعَامِّيُّ لَاسْتَغْنَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَنْ إعَادَةِ ذِكْرِهَا.

L36593 They said: In one of the two hadiths of Wa’il, that he consulted with the killer concerning the payment of the *diyah*. Had it been obligatory upon him, he would not have consulted him concerning that.

قَالُوا: وَفِي أَحَدِ حَدِيثَيْ وَائِلٍ أَنَّهُ اسْتَشَارَ الْقَاتِلَ فِي إعْطَاءِ الدِّيَةِ، فَلَوْ كَانَتْ وَاجِبَةً عَلَيْهِ مَا اسْتَشَارَهُ فِي ذَلِكَ.

L36594 They said: And you have narrated through the chain of ʿAbd al-Razzāq, from Ibn Jurayj, from Ibn Ṭāwūs, who said: In the book that is with my father, which is from the Messenger of Allah—peace be upon him—like what is in the ḥadīth of Maʿmar, and it concerns quasi-intentional killing: thirty she-camels in their fifth year, thirty she-camels in their fourth year, and forty pregnant she-camels, young and well-fattened. If they mutually agree

قَالُوا: وَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ طَاوُسٍ قَالَ: فِي الْكِتَابِ الَّذِي هُوَ عِنْدَ أَبِي، وَهُوَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَالَّذِي فِي حَدِيثِ مَعْمَرٍ، وَهِيَ فِي شِبْهِ الْعَمْدِ: ثَلَاثُونَ حِقَّةً، وَثَلَاثُونَ بِنْتَ لَبُونٍ، وَأَرْبَعُونَ خَلِفَةً فَتِيَّةً

regarding intentional killing, it is according to what they have settled upon. They said: But no blood-money is mentioned for intentional killing.

سَمِينَةً - إِذَا اصْطَلَحُوا فِي الْعَمْدِ، فَهُوَ عَلَى مَا اصْطَلَحُوا عَلَيْهِ - قَالُوا - فَلَمْ يُذْكَرْ فِي الْعَمْدِ دِيَةٌ.

L36595 They said, "Allah, the Almighty, the Majestic, said: 'Do not devour one another's wealth wrongfully' [Al-Baqarah: 188]."[13]

وَقَالُوا: قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

L36596 The Messenger of Allah—may Allah bless him and grant him peace—said, "It is not lawful to appropriate the property of a Muslim man without his willing consent."

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَحِلُّ مَالُ امْرِئٍ مُسْلِمٍ بِغَيْرِ طِيبِ نَفْسٍ مِنْهُ» .

L36597 They said: These two texts indicate that it is impermissible to take anything from the killer's property except with his voluntary consent.

قَالُوا: فَدَلَّ هَذَانِ النَّصَّانِ عَلَى أَنَّ مَالَ الْقَاتِلِ لَا يَجُوزُ أَخْذُ شَيْءٍ مِنْهُ إِلَّا بِطِيبِ نَفْسٍ مِنْهُ.

L36598 And they said: Allah, the Almighty and Majestic, stated: "So whoever aggresses against you, repel them in like manner to their aggression against you" [Al-Baqarah: 194], and He, the Exalted, said: "If you punish [in response], then punish with the equivalent of what you were punished with" [An-Nahl: 126].[14]

وَقَالُوا: قَالَ اللَّهُ عَزَّ وَجَلَّ: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] ، وَقَالَ تَعَالَى: {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] .

L36599 They said: The equivalent of killing is only killing itself; thus, blood money is inadmissible here unless both parties mutually consent.

وَقَالُوا: وَلَيْسَ مِثْلُ الْقَتْلِ إِلَّا الْقَتْلَ، فَلَا مَدْخَلَ لِلدِّيَةِ هَاهُنَا إِلَّا بِرِضَاهُمَا مَعًا.

L36600 They said: Allah, the Exalted and Glorified, said: "And whoever is slain unjustly, We have certainly granted his guardian authority. So let him not transgress in killing." [Al-Isra: 33][15]

وَقَالُوا: قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لِوَلِيِّهِ سُلْطَانًا فَلا يُسْرِفْ فِي الْقَتْلِ} [الإسراء: ٣٣] .

L36601–36602 They said: The Exalted and Glorified One mentioned nothing but killing alone.

قَالُوا: فَلَمْ يَذْكُرْ عَزَّ وَجَلَّ إِلَّا الْقَتْلَ فَقَطْ.

L36603 They said, "The guardian of the deceased must have either the right to retaliation (qiṣāṣ) or also the right to take diyah (blood money) instead. So if you say this?"

وَقَالُوا " لَا يَخْلُو وَلِيُّ الْمَقْتُولِ مِنْ أَنْ يَكُونَ لَهُ الْقِصَاصُ أَوْ يَكُونَ لَهُ أَيْضًا أَخْذُ الدِّيَةِ بَدَلًا مِنْ الْقِصَاصِ، فَإِنْ قُلْتُمْ هَذَا؟

L36604 We said: We have never found any right for a person to take compensation

قُلْنَا: لَمْ نَجِدْ قَطُّ حَقًّا لِإِنْسَانٍ أَنْ يَكُونَ لَهُ أَخْذُ بَدَلٍ مِنْهُ إِلَّا بِرِضَا الَّذِي عَلَيْهِ الْحَقُّ، فَإِنْ قُلْتُمْ: لَهُ إِمَّا الْقِصَاصُ وَإِمَّا الدِّيَةُ؟ .

[13] **Qur'an references (L36595):** Qur'an 2:188 (Al-Baqarah).
[14] **Qur'an references (L36598):** Qur'an 2:194 (Al-Baqarah); Qur'an 16:126 (An-Nahl).

from another except with the consent of the obligated party. If you argue, "He has either retaliation (qisas) or blood money (diyah),"

L36605 We said: Were that the case, then if he were to forgive either of them, his forgiveness would not be valid, for it had not yet become specifically incumbent for him. Rather, his forgiveness of him is only valid when he chooses him, then forgives him after it becomes specifically incumbent for him.

L36606 They said: It has been narrated from Umar ibn al-Khattab—as narrated through the chain of Abd al-Razzaq from Ibn Jurayj from Abd al-Aziz ibn Umar ibn Abd al-Aziz from his father from Umar ibn al-Khattab—who said: The ruler must neither prevent the victim's heir from pardoning if he wishes, nor from taking diya if they reconcile upon it, nor prevent him from killing if he refuses except killing after the right to kill in intentional homicide has been established for him. They raised objections based on the words of Allah Almighty: "But whoever is pardoned by his brother for something, then following it with fairness..." [Al-Baqarah 2:178].[16]

L36607 They said: The pronoun in {lahu} [Al-Baqarah 2:178] and in {min akhīhi} [Al-Baqarah 2:178] refers back to the guardian of the slain person, not to the killer, meaning: so whoever is granted the diyah (blood money) by the killer.[17]

L36608 They objected to the narration of Abū Hurayrah by saying: "You have transmitted this very narration with wording contrary to its own. However, as you transmitted through the chain of Aḥmad ibn Shuʿayb: I am al-ʿAbbās ibn al-Walīd ibn Mazyad - my father narrated to me: al-Awzāʿī narrated to me: I am Yaḥyā ibn Abī Kathīr - Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf narrated to me that Abū Hurayrah informed him: The Messenger of Allah—peace and blessings be upon him—said: 'Whoever has a slain person [entitling them to justice], they may choose the better of two options: either retaliatory execution is carried out, or diya (blood money) is paid.'"

قُلْنَا: لَوْ كَانَ ذَلِكَ لَكَانَ إِنْ عَفَا عَنْ أَحَدِهِمَا لَمْ يَجُزْ عَفْوُهُ، لِأَنَّهُ لَمْ يَجِبْ لَهُ بَعْدُ بِعَيْنِهِ - وَإِنَّمَا يَجُوزُ عَفْوُهُ عَنْهُ إِذَا اخْتَارَهُ ثُمَّ عَفَا عَنْهُ بَعْدَ وُجُوبِهِ لَهُ بِعَيْنِهِ.

وَقَالُوا: قَدْ رُوِيَ عَنْ عُمَرَ بْنِ الْخَطَّابِ كَمَا رَوَيْتُمْ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: لَا يَمْنَعُ السُّلْطَانُ وَلِيَّ الدَّمِ أَنْ يَعْفُوَ - إِنْ شَاءَ - أَوْ يَأْخُذَ الْعَقْلَ - إِنْ اصْطَلَحُوا عَلَيْهِ - وَلَا يَمْنَعُهُ أَنْ يَقْتُلَ إِنْ أَبَى إِلَّا الْقَتْلَ بَعْدَ أَنْ يَحِقَّ لَهُ الْقَتْلُ فِي الْعَمْدِ. وَاعْتَرَضُوا فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ} [البقرة: ١٧٨] .

وَقَالُوا: إِنَّ الضَّمِيرَ الَّذِي فِي {لَهُ} [البقرة: ١٧٨] وَفِي {مِنْ أَخِيهِ} [البقرة: ١٧٨] رَاجِعٌ إِلَى وَلِيِّ الْمَقْتُولِ، لَا إِلَى الْقَاتِلِ، بِمَعْنَى: فَمَنْ سَمَحَ لَهُ الْقَاتِلُ بِالدِّيَةِ.

وَاعْتَرَضُوا فِي خَبَرِ أَبِي هُرَيْرَةَ بِأَنْ قَالُوا: قَدْ رَوَيْتُمْ هَذَا الْخَبَرَ بِعَيْنِهِ بِخِلَافِ ذَلِكَ اللَّفْظِ، لَكِنْ كَمَا رَوَيْتُمْ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا الْعَبَّاسُ بْنُ الْوَلِيدِ بْنِ مَزْيَدٍ أَنَا أَبِي حَدَّثَنِي الْأَوْزَاعِيُّ أَنَا يَحْيَى بْنُ أَبِي كَثِيرٍ حَدَّثَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنُ عَوْفٍ أَنَّ أَبَا هُرَيْرَةَ أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ إِمَّا يُقَادُ، وَإِمَّا يُفَادَى» .

[15] **Qur'an references (L36600):** Qur'an 17:33 (Al-Isra).
[16] **Qur'an references (L36606):** Qur'an 2:178 (Al-Baqarah).
[17] **Qur'an references (L36607):** Qur'an 2:178 (Al-Baqarah).

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا الْحَسَنُ بْنُ مُوسَى عَنْ شَيْبَانَ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ أَخْبَرَنِي أَبُو سَلَمَةَ بْنُ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ أَنَّ أَبَا هُرَيْرَةَ أَخْبَرَهُ فِي حَدِيثٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «وَمَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ: إِمَّا أَنْ يَقْتُلَ، وَإِمَّا أَنْ يُفَادِيَ أَهْلَ الْقَتِيلِ» قَالُوا: فَلَمْ يَذْكُرْ دِيَةً - وَهَذَا قَوْلُنَا.

L36609–36611 And through the chain of Abu Bakr ibn Abi Shaybah: I, Al-Hasan ibn Musa, narrate from Shayban, from Yahya ibn Abi Kathir, from Abu Salamah ibn Abd al-Rahman ibn Awf, that Abu Hurairah informed him in a hadith that... The Messenger of Allah - peace and blessings be upon him - said: “For whoever has a slain relative, he may choose the better of two options: either to seek retribution or to accept blood money paid to the slain person’s family.” They said: “But he did not mention blood money?” And this is our doctrine.

وَاعْتَرَضُوا فِي خَبَرِ أَبِي شُرَيْحٍ الْكَعْبِيِّ بِأَنْ قَالُوا: قَدْ رَوَيْتُمُوهُ كَمَا حَدَّثَكُمْ أَحْمَدُ بْنُ قَاسِمٍ أَنَا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ قَالَ حَدَّثَنِي جَدِّي قَاسِمُ بْنُ أَصْبَغَ قَالَ: أَنَا عَبْدُ اللَّهِ بْنُ رَوْحٍ أَنَا يَزِيدُ بْنُ هَارُونَ أَنَا ابْنُ إِسْحَاقَ عَنْ الْحَارِثِ بْنِ فُضَيْلٍ عَنْ سُفْيَانَ بْنِ أَبِي الْعَوْجَاءِ السُّلَمِيِّ عَنْ أَبِي شُرَيْحٍ الْخُزَاعِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أُصِيبَ بِدَمٍ أَوْ خَبْلٍ - وَالْخَبْلُ الْجِرَاحُ - فَهُوَ بِالْخِيَارِ فِي إِحْدَى ثَلَاثِ أَشْيَاءَ: إِمَّا أَنْ يَعْفُوَ، وَإِمَّا أَنْ يَقْتَصَّ، وَإِمَّا أَنْ يَأْخُذَ الْعَقْلَ» .

L36612 They objected regarding the narration of Abū Shurayh al-Kaʿbī by saying: “You have transmitted it as Aḥmad ibn Qāsim related to you: I am, my father Qāsim ibn Muḥammad ibn Qāsim, who said: My grandfather Qāsim ibn Aṣbagh narrated to me: ʿAbdullāh ibn Rawḥ related to us: from Yazīd ibn Hārūn: from Ibn Isḥāq: from al-Ḥārith ibn Fuḍayl: from Sufyān ibn Abī al-ʿAwjāʾ al-Sulamī: from Abū Shurayh al-Khuzāʿī, who said: The Messenger of Allah—peace and blessings be upon him—said: ‘Whoever suffers a killing or wounding (al-khabl meaning wounds) may choose one of three things: either to pardon, to seek retaliation, or to accept blood money.’”

قَالُوا: فَلَوْ وَجَبَتْ الدِّيَةُ بِالْعَفْوِ - وَإِنْ لَمْ تُذْكَرْ - لَمَا كَانَ لِذِكْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لِلدِّيَةِ مَعَ ذِكْرِهِ لِلْعَفْوِ مُخَيِّرًا بَيْنَهُمَا مَعْنًى.

L36613 They said: If blood money were obligatory due to forgiveness—even if not explicitly mentioned—there would have been no significance in the Prophet’s mention (peace and blessings be upon him) of blood money alongside his mention of forgiveness while offering a choice between the two.

قَالُوا: وَمَعْنَى قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - " إِمَّا أَنْ يُقَادَ وَإِمَّا أَنْ يَعْقِلَ " أَنْ يَرْضَى الْقَاتِلُ كَمَا تَقُولُ: خُذْ بِسِلْعَتِك كَذَا وَكَذَا، أَيْ يَرْضَى الْبَائِعُ.

L36614 They said: The meaning of the Prophet’s statement—peace and blessings be upon him—“Either retaliation (qisas) is enacted or he pays blood money (diya)” is that it requires the killer’s consent, just as one might say, “Accept such-and-such for your item,” meaning the seller’s agreement is required.

هَذَا كُلُّ مَا مَوَّهُوا بِهِ قَدْ تَقَصَّيْنَاهُ لَهُمْ، وَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ عَلَى مَا نَذْكُرُ إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ وَلَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاَللَّهِ الْعَلِيِّ الْعَظِيمِ.

L36615 This is all they have disguised; We have thoroughly examined it for them, and they have no argument against what We will mention, if Allah, the Exalted and Majestic, wills. And there is no might nor power except with Allah, the Most High, the Most Great.

L36616 As for the ḥadīth of Saʿīd ibn Sulaymān from Saʿīd ibn Kathīr from ʿAmr ibn Dīnār from Ṭāwūs from Ibn ʿAbbās: There is no valid argument for them in

it, for by consensus from us and them, it did not mention any pardon within it, but rather mentioned only legal retribution.

أَمَّا حَدِيثُ سَعِيدِ بْنِ سُلَيْمَانَ عَنْ سَعِيدِ بْنِ كَثِيرٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ: فَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ بِإِجْمَاعٍ مِنَّا وَمِنْهُمْ لَمْ يَذْكُرْ فِيهِ عَفْوًا، وَإِنَّمَا ذَكَرَ فِيهِ الْقَوَدَ فَقَطْ.

L36617 If they say, “Has he mentioned forgiveness elsewhere?”

فَإِنْ قَالُوا: قَدْ ذَكَرَ الْعَفْوَ فِي غَيْرِ هَذَا الْمَكَانِ؟

L36618 We said: Blood money has been mentioned in contexts other than this one, and there is no distinction—for the increase in justice must not be abandoned. The Ḥanafīs oppose this report, as they do not recognize retribution for a child [seeking justice] from a parent, thereby restricting it without proof. Similarly, the Mālikīs oppose it, as they do not recognize retribution for a slave [seeking justice] from a free person, thus also restricting it without proof.

قُلْنَا: وَقَدْ ذُكِرَتْ الدِّيَةُ فِي غَيْرِ هَذَا الْمَكَانِ، وَلَا فَرْقَ - وَزِيَادَةُ الْعَدْلِ لَا يَجُوزُ تَرْكُهَا - وَالْحَنَفِيُّونَ يُخَالِفُونَ هَذَا الْخَبَرَ، لِأَنَّهُمْ لَا يَرَوْنَ الْقَوَدَ لِلْوَلَدِ مِنْ الْوَالِدِ، فَخَصَّهُ بِلَا بُرْهَانٍ - وَكَذَلِكَ الْمَالِكِيُّونَ، لِأَنَّهُمْ لَا يَرَوْنَ الْقَوَدَ لِلْعَبْدِ مِنْ الْحُرِّ فَخَصُّوهُ أَيْضًا بِلَا بُرْهَانٍ.

L36619 As for the hadith of Ibn Abi Layla, it is mursal, and no conclusive proof exists in a mursal [hadith]. Then, it is narrated from Muhammad ibn Abd al-Rahman, who is deficient in hadith retention.

وَأَمَّا حَدِيثُ ابْنِ أَبِي لَيْلَى فَمُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ - ثُمَّ هُوَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ، وَهُوَ سَيِّئُ الْحِفْظِ.

L36620–36621 As for the ḥadīth of ʿAmr ibn Ḥazm, it is invalid because Sulaymān ibn Dāwūd—who narrated it from al-Zuhrī—is weak in ḥadīth transmission and obscure in status, as stated by Ibn Maʿīn and others. Furthermore, even if this narration and the ḥadīth of Ibn Abī Laylā were authentic, they would serve as evidence for our position, not theirs, since the text specifies: “unless the heirs of the slain consent”—and we do not reject this. Rather, we assert: If they consent to diyah or to more than diyah, they are entitled to their consent.

وَأَمَّا حَدِيثُ عَمْرِو بْنِ حَزْمٍ فَسَاقِطٌ، لِأَنَّ سُلَيْمَانَ بْنَ دَاوُد الَّذِي رَوَاهُ عَنْ الزُّهْرِيِّ - ضَعِيفُ الْحَدِيثِ مَجْهُولُ الْحَالِ - قَالَ ابْنُ مَعِينٍ وَغَيْرُهُ: ثُمَّ لَوْ صَحَّ هُوَ وَحَدِيثُ ابْنِ أَبِي لَيْلَى لَكَانَا حُجَّةً لَنَا لَا لَهُمْ، لِأَنَّ فِيهِ: إلَّا أَنْ يَرْضَى أَوْلِيَاءُ الْمَقْتُولِ - وَنَحْنُ لَا نُنْكِرُ هَذَا، بَلْ نَقُولُ: إنَّهُمْ إنْ رَضُوا بِالدِّيَةِ أَوْ بِأَكْثَرَ مِنْ الدِّيَةِ، فَلَهُمْ رِضَاهُمْ.

L36622 The narrations of Abu Shuraih and Abu Hurairah contain an additional reliable narrator compared to these two reports, along with two additional reliable narrators that must not be omitted. Numerous legal rulings are established in the aforementioned narration of ʿAmr ibn Ḥazm—yet scholars opposed them on the basis of their personal reasoning, as we mentioned in *the Book of Zakat*. And with Allah, the Exalted, lies all success.

وَخَبَرُ أَبِي شُرَيْحٍ، وَأَبِي هُرَيْرَةَ: فِيهِمَا زِيَادَةُ عَدْلٍ عَلَى هَذَيْنِ الْخَبَرَيْنِ، وَزِيَادَةُ عَدْلَيْنِ لَا يَجُوزُ تَرْكُهَا - وَكَمْ قَضِيَّةً فِي خَبَرِ عَمْرِو بْنِ حَزْمٍ الْمَذْكُورِ، وَقَدْ خَالَفُوهَا بِآرَائِهِمْ كَمَا ذَكَرْنَا فِي " كِتَابِ الزَّكَاةِ " - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L36623 As for the two hadiths of Wā’il ibn Ḥujr, they are rejected. One of them is

from the narration of Abū ʻAmr al-ʻĀyidhī—who is unknown—and it has also been narrated from ʻAwf, from Abū ʻAmr al-Ḍabbī. If that is not the case, then it is weak. This report has been narrated with concealment (tadlis), and we will clarify it—if Allah Almighty wills, upon Him—so that it may not be exploited to deceive those ignorant of the sciences of Hadith. This is as we have been narrated through the chain of Aḥmad ibn Shuʻayb: from Muḥammad ibn Ismāʻīl ibn Ibrāhīm, from Isḥāq ibn Yūsuf al-Azraq, from ʻAwf al-Aʻrābī, from ʻAlqamah ibn Wā'il, from his father, who said: "The killer was brought"—and he mentioned the same hadith—but omitted the aforementioned Abū ʻAmr between ʻAwf and ʻAlqamah.

وَأَمَّا حَدِيثَا وَائِلِ بْنِ حُجْرٍ فَسَاقِطَانِ -: أَحَدُهُمَا - مِنْ رِوَايَةِ أَبِي عَمْرٍو الْعَايِذِيِّ - وَهُوَ مَجْهُولٌ - وَقَدْ رُوِيَ عَنْ عَوْفٍ أَيْضًا عَنْ أَبِي عَمْرٍو الضَّبِّيِّ، فَإِنْ لَمْ يَكُنْ ذَلِكَ فَهُوَ ضَعِيفٌ - وَقَدْ رُوِيَ هَذَا الْخَبَرُ مُدَلَّسًا، وَنَحْنُ نُبَيِّنُهُ - إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ عَلَيْهِ لِئَلَّا يُمَوَّهَ بِهِ عَلَى جَاهِلٍ بِعُلُومِ الْحَدِيثِ، وَهُوَ كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ إِبْرَاهِيمَ أَنَا إِسْحَاقُ بْنُ يُوسُفَ الْأَزْرَقُ عَنْ عَوْفٍ الْأَعْرَابِيِّ عَنْ عَلْقَمَةَ بْنِ وَائِلٍ عَنْ أَبِيهِ، قَالَ: جِيءَ بِالْقَاتِلِ - وَذَكَرَ الْحَدِيثَ نَفْسَهُ - فَأَسْقَطَ بَيْنَ عَوْفٍ، وَعَلْقَمَةَ: أَبَا عَمْرٍو الْمَذْكُورَ.

L36624 And the second [opinion]—from the narration of Simak ibn Harb—admits talqīn (prompting to affirm the declaration of faith).

وَالثَّانِي - مِنْ رِوَايَةِ سِمَاكِ بْنِ حَرْبٍ - وَهُوَ يَقْبَلُ التَّلْقِينَ.

L36625 Then, if they were authentic, they would both serve as an argument for us against them, because in one of them, he - peace be upon him - said to the killer's guardian: "Do you forgive?" The guardian replied: "No." He asked: "Will you accept the blood money?" The guardian said: "No." He inquired: "Will you demand retribution?" The guardian answered: "Yes."

ثُمَّ لَوْ صَحَّا لَكَانَا حُجَّةً لَنَا عَلَيْهِمْ؛ لِأَنَّ فِي أَحَدِهِمَا أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ لِوَلِيِّ الْقَاتِلِ: أَتَعْفُو؟ قَالَ: لَا، قَالَ: أَفَتَأْخُذُ الدِّيَةَ؟ قَالَ: لَا، قَالَ: أَفَتَقْتُلُ؟ قَالَ: نَعَمْ.

L36626 The Messenger of Allah—peace and blessings be upon him—granted the guardian of the murdered person the choice of forgiveness, qisas (retaliation), or diyah (blood money), without consulting the killer or requiring his consent. This is our opinion, not theirs.

فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْخِيَارَ فِي الْعَفْوِ أَوْ الْقَوَدِ أَوْ أَخْذِ الدِّيَةِ لِوَلِيِّ الْمَقْتُولِ دُونَ أَنْ يَسْتَشِيرَ الْقَاتِلَ، أَوْ يَلْتَفِتَ إلَى رِضَاهُ - وَهَذَا قَوْلُنَا لَا قَوْلُهُمْ.

L36627 The other scenario is one in which the Prophet (peace be upon him) said to the killer: "Do you possess wealth to pay the diyah?" He replied: "No." He said: "What do you think if I send you to ask people to collect the diyah?" He replied: "No." He said: "Will your kinsmen give you the diyah?" He replied: "No." Abu Muhammad (may Allah be pleased with him) said: "For someone who has no wealth and no means to collect the diyah - neither through people nor through his kinsmen who bear absolutely no responsibility for his crime - it is impermissible to obligate him to do what he cannot bear."

وَالْآخَرُ - أَنَّ فِيهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ لِلْقَاتِلِ: «أَلَكَ مَالٌ تُؤَدِّي دِيَتَهُ؟ قَالَ: لَا: قَالَ: أَفَرَأَيْتَ إنْ أَرْسَلْتُكَ تَسْأَلُ النَّاسَ تَجْمَعُ دِيَتَهُ؟ قَالَ: لَا، قَالَ: فَمَوَالِيكَ يُعْطُونَكَ دِيَتَهُ؟ قَالَ: لَا.» قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَمَنْ لَا مَالَ لَهُ وَلَا يَطْمَعُ فِي أَنْ يَجْمَعَ لَهُ الدِّيَةَ، لَا النَّاسُ وَلَا مَوَالِيهِ الَّذِينَ لَا شَيْءَ عَلَيْهِمْ مِنْ جِنَايَتِهِ فَلَا يَجُوزُ تَكْلِيفُهُ مَا لَا يُطِيقُ.

وَأَمَّا خَبَرُ أَنَسٍ فَسَاقِطٌ، لِأَنَّهُ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ شَوْذَبَ - وَهُوَ مَجْهُولٌ - ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا كَمَا قُلْنَا فِي خَبَرِ وَائِلٍ؛ لِأَنَّ فِيهِ تَخْيِيرَ الْوَلِيِّ بَيْنَ أَخْذِ الدِّيَةِ أَوْ الْقَوَدِ أَوْ الْعَفْوِ، فَكَيْفَ وَهُمَا خَبَرَانِ مَوْضُوعَانِ بِلَا شَكٍّ؛ لِأَنَّ فِيهِمَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَا يُمْكِنُ أَنْ يَقُولُوهُ مِنْ إيجَابِ النَّارِ عَلَى مَنْ أَخَذَ حَقَّهُ الَّذِي أَعْطَاهُ إيَّاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمِنْ أَمْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إيَّاهُ فَقَتَلَ مَنْ نَهَاهُ عَنْ قَتْلِهِ - فَهَذَا تَنَاقُضٌ قَدْ نَزَّهَ اللَّهُ عَزَّ وَجَلَّ نَبِيَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهُ.

L36628–36629 As for the report of Anas, it is invalid because it is transmitted through Abdullah ibn Shawdhab—who is unknown. Even if it were authentic, it would serve as evidence for our position, as we stated regarding the report of Wa'il, since it grants the guardian the choice between taking diyah, retribution (qawad), or pardon. How could this be, when both reports are undoubtedly fabricated? For they contain statements attributed to the Messenger of Allah—peace be upon him—that he could not possibly have uttered: decreeing Hellfire upon one who took his right which the Messenger of Allah—peace be upon him—had given him, and his command—peace be upon him—to kill someone whom he had previously forbidden to be killed. This is a contradiction from which Allah, the Exalted and Majestic, has declared His Prophet—peace be upon him—free.

وَأَمَّا قَوْلُهُمْ: لَوْ كَانَتْ الدِّيَةُ وَاجِبَةً بِالْعَفْوِ - وَإِنْ لَمْ يَذْكُرْ - لَمَا كَرَّرَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَلَيْسَ كَمَا ظَنُّوا، وَإِنَّمَا ذَكَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَفْوًا مُطْلَقًا عَامًّا لَا عَفْوًا خَاصًّا عَنْ الدَّمِ فَقَطْ - وَكَذَلِكَ نَقُولُ: إنْ عَفَا عَنْ الدَّمِ وَحْدَهُ خَاصَّةً، فَالدِّيَةُ بَاقِيَةٌ لَهُ، وَإِنْ عَفَا عَفْوًا عَامًّا عَنْ الدَّمِ وَالدِّيَةِ فَذَلِكَ لَهُ.

L36630 As for their assertion: "If the blood money were obligatory upon pardon—even if unspecified—he (peace and blessings be upon him) would not have reiterated the blood money," this is not as they supposed. Rather, he (peace and blessings be upon him) mentioned an unrestricted, comprehensive pardon—not a specific pardon limited to blood alone. Similarly, we state: If one pardons regarding the blood alone specifically, the blood money remains due. But if one issues a general pardon encompassing both blood and blood money, then that is his prerogative.

وَأَمَّا خَبَرُ ابْنِ طَاوُسٍ عَنْ أَبِيهِ فَمُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ، ثُمَّ هُوَ أَعْظَمُ حُجَّةً عَلَى الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ لِخِلَافِهِمْ لِمَا فِيهِ.

L36631 As for the report of Ibn Ṭāwūs from his father, it is a mursal narration, and there is no proof in a mursal narration. Moreover, it is a greater argument against the Ḥanafīs and Mālikīs due to their disagreement and because of what it contains.

أَمَّا الْحَنَفِيُّونَ فَالدِّيَةُ عِنْدَهُمْ فِي شِبْهِ الْعَمْدِ بِخِلَافِ مَا فِيهِ، لَكِنْ أَرْبَاعًا جِذَاعٌ، وَحِقَاقٌ، وَبَنَاتُ لَبُونٍ، وَبَنَاتُ مَخَاضٍ، وَأَمَّا الْمَالِكِيُّونَ فَلَا يَرَوْنَ فِي شِبْهِ الْعَمْدِ شَيْئًا أَصْلًا.

L36632 As for the Ḥanafīs, the blood money in quasi-intentional homicide according to them differs from that in intentional homicide, being divided into four parts: *jidhaʿ* camels, *ḥiqāq* camels, *banāt labūn* camels, and *banāt makhāḍ* camels. As for the Mālikīs, they do not recognize any blood money at all in quasi-intentional homicide.

فَمَنْ أَعْجَبُ مِمَّنْ يَحْتَجُّ بِمَا هُوَ أَوَّلُ مُخَالِفٍ لَهُ، وَيُصَحِّحُهُ عَلَى مَنْ لَا يُصَحِّحُهُ - ثُمَّ لَيْسَ فِيهِ إلَّا كَمَا فِي الْعَمْدِ مَا اصْطَلَحُوا عَلَيْهِ إذَا اصْطَلَحُوا، وَنَحْنُ نَقُولُ بِهَذَا وَلَا نُخَالِفُهُ.

L36633 Who is more astonishing than one who cites as evidence something he himself was the first to oppose, and asserts its validity upon those who do not accept it? For this contains nothing beyond what they have agreed upon

regarding intentional acts - agreements they themselves adhere to when they do agree. We affirm this and do not oppose it.

L36634 As for their mention of the words of Allah, the Mighty and Majestic: "And do not devour your wealth unjustly among yourselves" [Al-Baqarah 188].[18]

وَأَمَّا ذِكْرُهُمْ قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

L36635 The statement of the Messenger of Allah (may Allah's peace and blessings be upon him), "It is not lawful to appropriate the wealth of a Muslim except with his willing consent"—all of this is sound, and it is our doctrine.

وَقَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَحِلُّ مَالُ امْرِئٍ مُسْلِمٍ إِلَّا بِطِيبِ نَفْسٍ مِنْهُ» فَصَحِيحٌ كُلُّ ذَلِكَ - وَهُوَ قَوْلُنَا.

L36636 Allah, the Exalted and Majestic, has said: "No believing man or woman has the right to have any choice from their matter once Allah and His Messenger have decided it" [Al-Ahzab: 36].[19]

وَقَدْ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] .

L36637–36638 When Allah, Exalted is He, or His Messenger—may Allah bless him and grant him peace—obligates blood money, it is obligated by one of them despite the claimant's objection—whether the one from whom it is taken consents or resents, and whether his soul is pure or impure, as we have stated.

فَإِذَا أَوْجَبَ اللَّهُ تَعَالَى الدِّيَةَ، أَوْ رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ وَجَبَ أَحَدُهُمَا عَلَى رَغْمِ أَنْفِ الزَّاعِمِ - رَضِيَ الَّذِي يُؤْخَذُ مِنْهُ أَوْ كَرِهَ - طَابَتْ نَفْسُهُ، أَوْ خَبُثَتْ كَمَا قُلْنَا.

L36639 They opined regarding the agnatic group (al-ʿāqilah), zakah (al-zakāh), obligatory expenditures, and other such matters.

وَقَالُوا فِي الْعَاقِلَةِ، وَالزَّكَاةِ، وَالنَّفَقَاتِ الْوَاجِبَاتِ، وَغَيْرِ ذَلِكَ.

L36640 If only they had held themselves accountable through these two texts—where they imposed blood money upon the ʿāqila of the minor and the insane, even if they objected, their souls unwilling and unaccepting, and neither Allah the Exalted nor His Messenger (peace be upon him) ever obligated it—it would have been more fitting for them. This is truly the unlawful usurpation of wealth.

وَلَوْ أَنَّهُمْ احْتَجُّوا عَلَى أَنْفُسِهِمْ بِهَذَيْنِ النَّصَّيْنِ حَيْثُ أَوْجَبُوا الدِّيَةَ عَلَى عَاقِلَةِ الصَّبِيِّ، وَالْمَجْنُونِ، وَإِنْ كَرِهُوا وَلَمْ تَطِبْ أَنْفُسُهُمْ وَلَا رَضُوا وَلَا أَوْجَبَهَا اللَّهُ تَعَالَى قَطُّ، وَلَا رَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَكَانَ أَوْلَى بِهِمْ - وَهَذَا هُوَ الْأَكْلُ لِلْمَالِ بِالْبَاطِلِ حَقًّا.

L36641 As for the statement of Almighty Allah: "So punish in the same manner you were punished" (16:126), "Violations of sacred ordinances are subject to retaliation" (2:194), and "Retaliate proportionally against him in equivalence

وَأَمَّا قَوْلُهُ عَزَّ وَجَلَّ: {فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] وَ {فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] فَحَقٌّ كُلُّ ذَلِكَ.

[18] **Qur'an references (L36634):** Qur'an 2:188 (Al-Baqarah).
[19] **Qur'an references (L36636):** Qur'an 33:36 (Al-Ahzab).

to how he transgressed against you" (2:194): all of this constitutes a rightful decree.[20]

L36642 The statement of Allah, may He be glorified and exalted: {So whoever is pardoned by his brother for something, then [it requires] pursuing fairness and proper compensation to him in a commendable manner} [Al-Baqarah: 178], and the statement of the Messenger of Allah—peace and blessings of Allah be upon him—"Either retaliation is exacted or blood money is paid," constitute a supplementary ruling to those verses. All the rulings of Allah, may He be glorified and exalted, and the rulings of His Messenger—peace and blessings of Allah be upon him—are truths that complement one another, and it is impermissible to contravene any part of them.[21]

L36643 If only they had argued against themselves using these verses when they contravened them by waiving qisas for a child against his father; waiving qisas for the perpetrator because one heir pardoned, even if others did not; and some of them waiving qisas for a slave against a free person—it would have been more fitting for them.

L36644 As for the statement of the Almighty: "We have granted his heir authority, so he must not exceed the limits in killing" [Al-Isrāʾ 17:33], it is the truth, and this is our position: If the guardian chooses retaliation, he must kill the killer of his relative, and it is not permissible for him to exceed the bounds by killing someone other than the killer. The mention of blood money, whose ruling has indeed been established in another text, is not mentioned here.[22]

L36645 As for their statement: The legal guardian of the slain person must either exercise *qisas* or accept *diyah* as a substitute for *qisas*.

L36646 "They said: 'We have never recognized any legitimate right whereby a person may take compensation without the consent of the entitled claimant' - this is delirious nonsense, for they have neglected their own invalid assertions."

وَقَوْلُهُ عَزَّ وَجَلَّ: {فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ} [البقرة: ١٧٨] ، وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إمَّا أَنْ يُقَادَ وَإِمَّا أَنْ يُودَى» حُكْمٌ زَائِدٌ عَلَى تِلْكَ الْآيَاتِ، وَأَحْكَامُ اللَّهِ عَزَّ وَجَلَّ، وَأَحْكَامُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلُّهَا حَقٌّ يُضَمُّ بَعْضُهَا إلَى بَعْضٍ - وَلَا يَحِلُّ خِلَافُ شَيْءٍ مِنْهَا.

وَلَوْ أَنَّهُمْ احْتَجُّوا عَلَى أَنْفُسِهِمْ بِهَذِهِ الْآيَاتِ حَيْثُ خَالَفُوهَا مِنْ إسْقَاطِهِمْ الْقَوَدَ لِلْوَلَدِ مِنْ أَبِيهِ، وَإِسْقَاطِ الْقَوَدِ لِمَنْ لَمْ يَعْفُ مِنْ أَجْلِ عَفْوِ وَاحِدٍ مِنْهُمْ، وَإِسْقَاطِ بَعْضِهِمْ الْقَوَدَ لِلْعَبْدِ مِنْ الْحُرِّ -: لَكَانَ أَوْلَى بِهِمْ.

وَأَمَّا قَوْلُهُ عَزَّ وَجَلَّ: {فَقَدْ جَعَلْنَا لِوَلِيِّهِ سُلْطَانًا فَلا يُسْرِفْ فِي الْقَتْلِ} [الإسراء: ٣٣] فَحَقٌّ، وَبِهِ نَقُولُ: إذَا اخْتَارَ الْقَوَدَ فَلْيَقْتُلْ قَاتِلَ وَلِيِّهِ، وَلَا يَحِلُّ لَهُ أَنْ يُسْرِفَ فَيَقْتُلَ غَيْرَ قَاتِلِهِ - وَلَيْسَ هَاهُنَا ذِكْرُ الدِّيَةِ الَّتِي قَدْ وَرَدَ حُكْمُهَا فِي نَصٍّ آخَرَ.

وَأَمَّا قَوْلُهُمْ: لَا يَخْلُو وَلِيُّ الْمَقْتُولِ مِنْ أَنْ يَكُونَ لَهُ الْقِصَاصُ، أَوْ أَخْذُ الدِّيَةِ بَدَلًا مِنْ الْقِصَاصِ.

قَالُوا: وَلَمْ نَجِدْ قَطُّ حَقًّا لِإِنْسَانٍ يَكُونُ لَهُ أَخْذُ بَدَلٍ مِنْهُ بِغَيْرِ رِضَا الَّذِي عَلَيْهِ الْحَقُّ - فَهَذَيَانٌ نَسَوْا فِيهِ أَقْوَالَهُمْ الْفَاسِدَةَ.

[20] **Qur'an references (L36641):** Qur'an 16:126 (An-Nahl); Qur'an 2:194 (Al-Baqarah).
[21] **Qur'an references (L36642):** Qur'an 2:178 (Al-Baqarah).
[22] **Qur'an references (L36644):** Qur'an 17:33 (Al-Isra).

إِذْ قَالُوا: مَنْ كَسَرَ قَلْبَ فِضَّةٍ لِغَيْرِهِ فَصَاحِبُ الْقَلْبِ يُخَيَّرُ بَيْنَ أَخْذِ قَلْبِهِ كَمَا هُوَ وَلَا شَيْءَ لَهُ، وَإِنْ شَاءَ ضَمِنَ قِيمَتَهُ مَصُوغًا غَيْرَ مَكْسُورٍ مِنَ الذَّهَبِ - أَحَبَّ الْكَاسِرُ أَوْ أَبَى.

L36647–36648 When they stated: Whoever breaks a silver ingot belonging to another, the owner may choose between taking his ingot as-is with no compensation, or if he wishes, the breaker must compensate its value equivalent to a crafted, unbroken gold item, regardless of whether the breaker is willing or not.

وَإِذْ قَالُوا: مَنْ غَصَبَ ثَوْبًا لِآخَرَ فَقَطَعَهُ قِطَعًا اسْتَهْلَكَهُ بِهِ، كَخَرْقٍ أَوْ خَرْقٍ فِي بَعْضِهِ؟ فَإِنَّ صَاحِبَ الثَّوْبِ مُخَيَّرٌ بَيْنَ أَنْ يَأْخُذَ ثَوْبَهُ وَقِيمَةَ نُقْصَانِهِ، وَإِنْ شَاءَ أَعْطَاهُ لِلْغَاصِبِ وَأَلْزَمَهُ قِيمَتَهُ صَحِيحًا - بِخِلَافِ الْحُكْمِ لَوْ قَطَعَهُ قَمِيصًا.

L36649 And when they said: "What if someone unlawfully seizes another's garment, cuts it into pieces to the point of destroying it—such as by burning or partially tearing it?" Then the owner of the garment has the choice between taking his garment and the value of its diminution, or if he wishes, surrendering it to the usurper and compelling him to pay its full value as if intact—unlike the ruling if he had cut it into a shirt.

بِخِلَافِ الْقَمْحِ إِذَا طَحَنَهُ دَقِيقًا وَالدَّقِيقِ إِذَا خَبَزَهُ خُبْزًا، وَاللَّحْمِ إِذَا طَبَخَهُ أَوْ شَوَاهُ، فَلَمْ يَرَوْا لِلْمَغْصُوبِ فِي كُلِّ هَذَا إِلَّا قِيمَةَ مَا غُصِبَ مِنْهُ فَقَطْ - وَجَعَلُوا الْقَمِيصَ، وَالْخُبْزَ، وَالطَّبْخَ، وَالشِّوَاءَ: حَلَالًا لِلْغَاصِبِ، بِحُكْمِ إِبْلِيسَ اللَّعِينِ.

L36650 Contrary to wheat when ground into flour, flour when baked into bread, and meat when cooked or roasted, they granted the victim of usurpation in all these cases nothing except the value of the usurped property itself. They deemed the shirt, bread, cooked dish, and roasted meat permissible for the usurper by the ruling of the accursed Satan.

فَهَذِهِ أَبْدَالٌ أَوْجَبُوهَا بِآرَائِهِمْ الْفَاسِدَةِ فَرْضًا مِنْ حُقُوقٍ وَاجِبَةٍ بِغَيْرِ رِضَا الَّذِي أَلْزَمُوهَا إِيَّاهَا، وَلَا طِيبِ نَفْسِهِ.

L36651 Thus, these are substitutes they imposed as obligations through their corrupt opinions—derived from obligatory rights—without the consent of the one they enforced them upon, nor his willing consent.

وَأَمَّا نَحْنُ فَلَا نَعْتَرِضُ عَلَى أَحْكَامِ اللَّهِ عَزَّ وَجَلَّ وَأَحْكَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهَذِهِ الْقَضَايَا الْخَبِيثَةِ - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

L36652 As for us, we do not oppose the decrees of Allah, the Mighty and Majestic, and the decrees of His Messenger (peace and blessings of Allah be upon him) with these vile matters, and by Allah, the Exalted, we seek support.

وَأَمَّا قَوْلُهُمْ: إِنْ كَانَ لَهُ الْقَوَدُ أَوْ الدِّيَةُ فَلَا يَجُوزُ عَفْوُهُ عَنْ أَحَدِهِمَا حَتَّى يَخْتَارَهُ؟ فَقَوْلٌ سَخِيفٌ، بَلْ عَفْوُهُ عَنْ الْقَوَدِ جَائِزٌ، وَتَبْقَى لَهُ الدِّيَةُ، إِلَّا أَنَّ الْعَفْوَ عَنْهَا كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا أَنَّهُ إِذَا اخْتَارَ الْقَوَدَ: فَقَدْ أَسْقَطَ حَقَّهُ فِي الدِّيَةِ، وَإِذَا اخْتَارَ الدِّيَةَ فَقَدْ أَسْقَطَ حَقَّهُ فِي الْقَوَدِ، وَإِذَا عَفَا عَنْ الْقَوَدِ بَقِيَ حُكْمُهُ فِي الْقِسْمِ الْآخَرِ - وَهُوَ الدِّيَةُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L36653 As for their statement: "If he is entitled to retaliation (qawad) or blood money (diyah), he cannot pardon either until he chooses one?" — this is a baseless claim. Rather, his pardon of retaliation is permissible, and the diyah remains for him, except that pardoning it is as commanded by Allah, the Exalted, and His Messenger—may Allah bless him and grant him peace—just as when he chooses retaliation, he forfeits his right to diyah; when he chooses diyah, he forfeits his right to retaliation; and when he pardons retaliation, the ruling for the other category (diyah) remains. And with Allah, the Exalted, is success.

L36654 As for their statement: "Indeed, granting choice constitutes an addition to

وَأَمَّا قَوْلُهُمْ: إِنَّ التَّخْيِيرَ زِيَادَةٌ فِي النَّصِّ، وَلَا تَجُوزُ الزِّيَادَةُ فِي النَّصِّ إِلَّا بِمَا يَجُوزُ بِهِ النَّسْخُ: فَصَحِيحٌ، وَالنَّسْخُ جَائِزٌ؛ لِمَا فِي الْقُرْآنِ بِقُرْآنٍ، أَوْ سُنَّةٍ ثَابِتَةٍ بِخَبَرِ الْوَاحِدِ.

the text, and additions to the text are impermissible except by that which renders abrogation permissible"—this is correct. Abrogation is permissible because what is in the Quran may be abrogated by a Quranic text, or by an established Sunnah through a solitary report.

وَهُوَ جَائِزٌ أَيْضًا لِلسُّنَّةِ بِالْقُرْآنِ، وَبِخَبَرٍ ثَابِتٍ مِنْ طَرِيقِ الثِّقَاتِ أَيْضًا.

L36655 It is also permissible for the Sunnah through the Qur'an and through an established report via reliable narrators.

فَلَوْ أَنَّهُمْ احْتَجُّوا عَلَى أَنْفُسِهِمْ بِهَذَا الْقَوْلِ حَيْثُ زَادُوا عَلَى النَّسْخِ بِالْأَخْبَارِ الْوَاهِيَةِ لَكَانَ أَوْلَى بِهِمْ، كَالْوُضُوءِ بِالنَّبِيذِ، وَالْمَسْحِ عَلَى الْجَبَائِرِ، وَالتَّدْلِيكِ فِي الْغُسْلِ - وَكَإِيجَابِ الدِّيَاتِ فِي كَثِيرٍ مِنَ الْأَعْضَاءِ بِقِيَاسٍ، أَوْ رِوَايَةٍ سَاقِطَةٍ أَوْ تَقْلِيدٍ بِغَيْرِ نَصٍّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L36656 If only they had argued against themselves using this statement when they augmented abrogation through weak narrations—it would have been more appropriate for them—such as performing ablution with nabidh, wiping over splints, thorough rubbing during the ritual bath, and obligating blood money for many body parts based on analogy, a defective narration, or blind adherence without textual evidence—and success is by Allah, the Exalted.

وَأَمَّا رِوَايَتُهُمْ ذَلِكَ عَنْ عُمَرَ بْنِ الْخَطَّابِ فَلَا تَصِحُّ؛ لِأَنَّهَا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، عَنْ عُمَرَ بْنِ الْخَطَّابِ - وَلَمْ يُولَدْ عُمَرُ - رَحِمَهُ اللَّهُ تَعَالَى - إِلَّا بَعْدَ مَوْتِ عُمَرَ - رَضِيَ اللَّهُ تَعَالَى عَنْهُ - بِنَحْوِ سَبْعٍ وَعِشْرِينَ سَنَةً - وَلَوْ صَحَّ لَكَانَ الثَّابِتُ عَنِ ابْنِ عَبَّاسٍ خِلَافًا لَهُ.

L36657–36658 As for their narration of that from ʿUmar ibn al-Khaṭṭāb, it is invalid because it is transmitted via ʿUmar ibn ʿAbd al-ʿAzīz on the authority of ʿUmar ibn al-Khaṭṭāb – and ʿUmar ibn ʿAbd al-ʿAzīz (may Allah, Exalted, have mercy on him) was not born until approximately twenty-seven years after the death of ʿUmar ibn al-Khaṭṭāb (may Allah, Exalted, be pleased with him). Even if it were authentic, the established position from Ibn ʿAbbās would oppose it.

وَأَمَّا تَعَلُّقُهُمْ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ} [البقرة: ١٧٨] أَنَّ الضَّمِيرَ رَاجِعٌ إِلَى الْقَاتِلِ، فَدَعْوَى كَاذِبَةٌ، وَمُحَالٌ لَا يَجُوزُ؛ لِأَنَّهَا دَعْوَى بِلَا دَلِيلٍ، وَتَكَلُّفٌ ظَاهِرُ الْبُطْلَانِ - مَعَ أَنَّهُ خِلَافٌ لِقَوْلِ الْمَالِكِيِّينَ مِنْهُمْ؛ لِأَنَّ فِي الْآيَةِ: {فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ} [البقرة: ١٧٨] فَقَالُوا هُمْ: بَلْ نَتْبَعُ بِضَرْبِ مِائَةٍ سَوْطٍ وَنَفْيِ سَنَةٍ بِلَا نَصٍّ أَوْجَبَ ذَلِكَ أَصْلًا، وَلَا رِوَايَةٍ عَنْ صَاحِبٍ - وَلَا يَشُكُّ ذُو فَهْمٍ أَنَّ الْمَعْفُوَّ لَهُ مِنْ دِيَتِهِ فِي أَخِيهِ هُوَ الْقَاتِلُ، وَأَمَّا وَلِيُّ الْمَقْتُولِ فَلَمْ يُعْفَ لَهُ شَيْءٌ مِنْ أَخِيهِ، وَحَتَّى لَوْ كَانَ مَعْنَاهُ مَا تَأَوَّلُوهُ بِالْبَاطِلِ لَكَانَ مُخَالِفًا لِأَقْوَالِهِمْ؛ لِأَنَّهُ لَا يُوجِبُ

L36659 As for their argument based on Allah's statement—Exalted is He—{So whoever is pardoned by his brother for anything} [Al-Baqarah: 178], claiming the pronoun refers to the killer, this is a false claim, an impossibility, and an impermissible stance—for it is an assertion without evidence and a contrived interpretation evidently void. Moreover, it contradicts the position of the Mālikīs among their own ranks, for the verse states: {Then adherence with fairness and fulfillment to him with kindness} [Al-Baqarah: 178]. Yet they assert, "We follow by administering one hundred lashes and exiling for a year"—without any textual proof establishing this as a foundational ruling or any transmitted report from a Companion. No person of sound intellect doubts that the one pardoned from paying his blood money in relation to his brother (the killer) is the killer himself. As for the guardian of the slain, nothing from his brother (the killer) has been pardoned for him. Even if their interpretation—grounded in falsehood—were hypothetically valid, it would

still contradict their own doctrines, as it would not require consideration of the guardian's consent. Rather, the choice would then lie solely with the killer—a position no one on earth, neither they nor others, upholds. Thus, it is confirmed that their interpretation of the verse is impossible, invalid, inadmissible, and fundamentally impermissible to assert—and all praise is due to Allah, Lord of the worlds.[23]

ذَلِكَ مُرَاعَاةَ رِضَا الْوَلِيِّ، بَلْ كَانَ يَكُونُ الْخِيَارُ حِينَئِذٍ لِلْقَاتِلِ فَقَطْ - وَهَذَا لَا يَقُولُهُ أَحَدٌ عَلَى ظَهْرِ الْأَرْضِ لَا هُمْ وَلَا غَيْرُهُمْ - فَصَحَّ أَنَّ تَأْوِيلَهُمْ فِي الْآيَةِ مُحَالٌ بَاطِلٌ مُمْتَنِعٌ لَا يَحِلُّ الْقَوْلُ بِهِ أَصْلًا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L36660 As for their objection regarding the report of Abū Hurayrah—wherein he also transmitted: "Either retaliation is enacted or the slain's kin are ransomed"—this is authentic and constitutes a third legal meaning. This is our position. It denotes the unanimous agreement of all parties—the killer and the victim's guardians—to redeem the killer through a ransom exceeding the blood money. It is impermissible to disregard anything valid or to contradict some with others—for this constitutes trifling with the religion and openly plotting against Islam—and we seek refuge with Allah from such conduct.

وَأَمَّا اعْتِرَاضُهُمْ فِي خَبَرِ أَبِي هُرَيْرَةَ بِأَنَّهُ قَدْ رَوَى فِيهِ أَيْضًا: إِمَّا أَنْ يُقَادَ وَإِمَّا أَنْ يُفَادَى أَهْلُ الْقَتِيلِ: فَصَحِيحٌ، وَهُوَ مَعْنًى ثَالِثٌ، وَبِهِ نَقُولُ، وَهُوَ اتِّفَاقُهُمْ كُلُّهُمْ - الْقَاتِلُ وَأَوْلِيَاءُ الْقَتِيلِ - عَلَى فِدَاءِ الْقَاتِلِ بِأَكْثَرَ مِنْ الدِّيَةِ، وَلَا يَحِلُّ تَرْكُ شَيْءٍ مِمَّا صَحَّ، وَلَا ضَرْبُ بَعْضِهِ بِبَعْضٍ - فَهَذَا هُوَ التَّلَاعُبُ بِالدِّينِ، وَكَيْدُ الْإِسْلَامِ جِهَارًا - وَنَعُوذُ بِاَللَّهِ مِنْ ذَلِكَ.

L36661 The abandonment of the sound ruling present in that report—whether retaliation (qiṣāṣ) or blood money (diya)—is not more deserving than another opinion contradicting the truth, despite the established validity of retaliation or ransom (fidyā). Hence, discarding the Prophet's directive (peace and blessings be upon him) "to ransom" because of his statement "or pay blood money"—all such abandonment being invalid—establishes that accepting all these rulings and integrating them constitutes the binding truth that cannot lawfully be opposed.

وَلَيْسَ تَرْكُ الصَّحِيحِ مِمَّا فِي ذَلِكَ الْخَبَرِ مِنْ أَنْ يُقَادَ أَوْ يُودَى مِنْ أَجْلِ مَا قَدْ صَحَّ أَيْضًا مِنْ أَنْ يُقَادَ أَوْ يُفَادَى بِأَوْلَى مِنْ آخَرَ خَالَفَ الْحَقَّ، فَتَرَكَ قَوْلَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: أَنْ يُفَادَى مِنْ أَجْلِ قَوْلِهِ: أَوْ يُودَى - وَكُلُّ ذَلِكَ بَاطِلٌ - فَصَحَّ أَنَّ أَخْذَ كُلِّ ذَلِكَ، وَضَمَّ بَعْضِهِ إِلَى بَعْضٍ: هُوَ الْحَقُّ الَّذِي لَا يَجُوزُ خِلَافُهُ.

L36662–36664 As for their objection regarding the report of Abū Shurayḥ in the narration transmitted by Sufyān ibn Abī al-ʿAwjāʾ: Sufyān is a narrator of unknown reliability. It is not known who he is. Yet the greater astonishment lies in their citing it as evidence while contradicting its content—for it mandates retaliation (qisās) for wounds in general, whereas they recognize qisās only for the exposed bone (al-muwadiḥah). O Muslims! By what rationale can one cite evidence against an opponent using a text they themselves contradict—when the claimant deems it valid, but the opponent does not?

وَأَمَّا اعْتِرَاضُهُمْ فِي خَبَرِ أَبِي شُرَيْحٍ بِرِوَايَةِ سُفْيَانَ بْنِ أَبِي الْعَوْجَاءِ: فَسُفْيَانُ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ - ثُمَّ الْعَجَبُ كُلُّهُ مِنْ احْتِجَاجِهِمْ بِهِ، وَهُمْ مُخَالِفُونَ مَا فِيهِ، لِأَنَّ فِيهِ: إِيجَابَ الْقَوَدِ فِي الْجِرَاحِ جُمْلَةً، وَهُمْ لَا يَرَوْنَ الْقَوَدَ فِي شَيْءٍ مِنْ الْجِرَاحِ إِلَّا فِي الْمُوضِحَةِ وَحْدَهَا فَقَطْ، فَيَا لِلْمُسْلِمِينَ فِي أَيِّ بَابٍ يَقَعُ احْتِجَاجُ الْمَرْءِ عَلَى خَصْمِهِ بِمَا يُخَالِفُ - وَهُوَ يُصَحِّحُهُ وَخَصْمُهُ لَا يُصَحِّحُهُ -.

[23] **Qur'an references (L36659):** Qur'an 2:178 (Al-Baqarah); Qur'an 37:182 (As-Saffat).

L36665 Then, if it were valid, it would serve as proof for us against them, because it grants the wounded person or the guardian of the slain the choice among retaliation, blood money, or pardon without requiring the offender's consent - and this is another astonishing matter, reflecting consent to the scandalous obfuscation evident recently - and we ask Allah the Exalted for protection.

ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا عَلَيْهِمْ؛ لِأَنَّ فِيهِ التَّخْيِيرَ لِلْمَجْرُوحِ، أَوْ لِوَلِيِّ الْمَقْتُولِ بَيْنَ الْقَوَدِ، أَوْ الدِّيَةِ، أَوْ الْعَفْوِ دُونَ اشْتِرَاطِ رِضَا الْجَانِي - وَهَذَا عَجَبٌ آخَرُ، وَرِضًا بِالتَّمْوِيهِ الْمُفْتَضَحِ مِنْ قُرْبٍ - وَنَسْأَلُ اللَّهَ تَعَالَى الْعَافِيَةَ.

L36666 As for our statement—that all we have mentioned refers to whoever intentionally kills a Muslim in the Abode of War while knowing him to be a Muslim therein, just as if he had committed this in the Abode of Islam, and there is no difference—this derives from the generality of the Quranic text and the Sunnah we cited regarding this matter, which do not distinguish between the two abodes. {And your Lord is not forgetful} [Maryam: 64].[24]

وَأَمَّا قَوْلُنَا - بِأَنَّ كُلَّ مَا ذَكَرْنَا فَهُوَ مَنْ قَتَلَ عَمْدًا مُسْلِمًا فِي دَارِ الْحَرْبِ، وَهُوَ يَدْرِي أَنَّهُ مُسْلِمٌ فِي دَارِ الْحَرْبِ، كَمَا لَوْ فَعَلَ ذَلِكَ فِي دَارِ الْإِسْلَامِ وَلَا فَرْقَ، فَلِعُمُومِ نَصِّ الْقُرْآنِ، وَالسُّنَّةِ الَّتِي أَوْرَدْنَا فِي ذَلِكَ، وَلَمْ يَخُصَّ إحْدَى الدَّارَيْنِ مِنْ الْأُخْرَى {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L36667 This is the opinion of Mālik, al-Shāfiʿī, Abū Sulaymān, and all their adherents—and this is the view we adopt.

وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِهِمْ - وَبِهِ نَأْخُذُ.

L36668 As for Abū Ḥanīfah, he said: If a Muslim intentionally kills another Muslim in the land of war - if the slain was not residing in the land of war - there is absolutely no qisas (retaliation) whatsoever; only diyah (blood money) is required. If the slain Muslim was residing in the land of war, then the intentional killer - who knows he is a Muslim - must offer kaffarah (expiation) alone, with neither qisas nor diyah required.

وَأَمَّا أَبُو حَنِيفَةَ فَقَالَ: إنْ قَتَلَ مُسْلِمٌ مُسْلِمًا عَمْدًا فِي أَرْضِ الْحَرْبِ - وَكَانَ الْمَقْتُولُ غَيْرَ سَاكِنٍ فِي أَرْضِ الْحَرْبِ - فَلَا قَوَدَ فِيهِ أَصْلًا، إنَّمَا فِيهِ الدِّيَةُ - فَإِنْ كَانَ الْمُسْلِمُ الْمَقْتُولُ سَاكِنًا فِي أَرْضِ الْحَرْبِ فَعَلَى قَاتِلِهِ عَمْدًا - وَهُوَ يَدْرِي أَنَّهُ مُسْلِمٌ - الْكَفَّارَةُ فَقَطْ، وَلَا قَوَدَ فِيهِ، وَلَا دِيَةَ.

L36669 Abū Muḥammad—may Allāh be pleased with him—said: "We do not know from where he derived this absurd statement, nor who preceded him in it—what astonishes us is that those afflicted by Allāh the Exalted with blind adherence to him have falsified this matter—through what we have transmitted via Muslim's chain: I [am] Abū Bakr ibn Abī Shaybah, from Abū Khālid al-Aḥmar, from al-Aʿmash, from Abū Ẓabiyān, from Usāmah ibn Zayd, who said: "The Messenger of Allāh—peace and blessings of Allāh be upon him—sent us forth, and we raided the Ḥuraqāt of Juhaynah at dawn. I overtook a man who said: "There is no deity but Allāh," so I stabbed him. This troubled my conscience, and I mentioned it to the Messenger of Allāh—peace and

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَلَا نَدْرِي مِنْ أَيْنَ أَخْرَجَ هَذَا الْقَوْلَ السَّخِيفَ، وَلَا مَنْ تَقَدَّمَهُ إلَيْهِ - وَالْعَجَبُ أَنَّ الْمُبْتَلَيْنَ مِنْ اللَّهِ تَعَالَى بِتَقْلِيدِهِ مَوَّهُوا فِي ذَلِكَ -: بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ الْأَعْمَشِ عَنْ أَبِي ظَبْيَانَ عَنْ أُسَامَةَ بْنِ زَيْدٍ، قَالَ: «بَعَثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَصَبَّحْنَا الْحُرَقَاتِ مِنْ جُهَيْنَةَ فَأَدْرَكْتُ رَجُلًا فَقَالَ: لَا إلَهَ إلَّا اللَّهُ، فَطَعَنْتُهُ فَوَقَعَ فِي نَفْسِي مِنْ ذَلِكَ، فَذَكَرْتُهُ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ رَسُولُ اللَّهِ - صَلَّى

[24] **Qur'an references (L36666):** Qur'an 19:64 (Maryam).

blessings of Allāh be upon him. He said: ”Did he say ’There is no deity but Allāh,’ and you killed him¿‘ I replied: ”O Messenger of Allāh, he only said it out of fear of the weapon.“ He said: ”Did you not split open his heart to ascertain whether he meant it or not¿‘ He kept repeating this to me until I wished I had embraced Islam that very day.““[25]

L36670–36672 And by what has been narrated to us through the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father. He said: “The Messenger of Allah—peace and blessings of Allah be upon him—sent Khalid ibn al-Walid to Banu Jadhima. He invited them to Islam, but they failed to properly articulate, ’We have embraced Islam.’ Instead, they kept saying, ’We have apostatized, we have apostatized.’ Khalid initiated the taking of captives and carrying out killings among them, assigning each man among us a prisoner. When morning came one day, Khalid ibn al-Walid ordered every one of us to kill his prisoner. Ibn Umar declared: ’By Allah, I will not kill my prisoner, nor shall any of my companions kill theirs.’ When we returned to the Messenger of Allah—peace and blessings of Allah be upon him—Khalid’s deeds were mentioned to him. The Prophet—peace and blessings of Allah be upon him—said: ’O Allah, I disavow to You what Khalid has done.’”

L36673 Through the chain of Abu Dawud: Hannad ibn al-Sari narrated from Abu Mu’awiyah, from Isma’il ibn Abi Khalid, from Qays ibn Abi Hazim, from Jarir ibn Abdullah al-Bajali, who said: “The Messenger of Allah—peace and blessings of Allah be upon him—dispatched a military expedition to Khathʿam. They sought refuge by prostrating, but the killing was hastened against them. When this reached the Prophet—peace and blessings of Allah be upon him and his family—he ordered half the blood money to be paid for them and said: ’I disavow any Muslim who settles among the polytheists.’ They asked: ’O Messenger of Allah, why?’ He replied: ’The fires of Muslims and polytheists must not be visible to one another.’”

L36674 Abu Muhammad (may Allah be pleased with him) said: “Nothing is valid in this chapter except these hadiths. As for the hadith of al-Yamani, the father

اللَّهُ عَلَيْهِ وَسَلَّمَ - أَقَالَ: لَا إِلَهَ إِلَّا اللَّهُ وَقَتَلْتَهُ؟ قُلْتُ: يَا رَسُولَ اللَّهِ إِنَّمَا قَالَهَا خَوْفًا مِنْ السِّلَاحِ قَالَ: أَفَلَا شَقَقْتَ عَنْ قَلْبِهِ حَتَّى تَعْلَمَ أَقَالَهَا أَمْ لَا؟ فَمَا زَالَ يُكَرِّرُهَا عَلَيَّ حَتَّى تَمَنَّيْت أَنِّي أَسْلَمْتُ يَوْمَئِذٍ» .

وَبِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَالِدَ بْنَ الْوَلِيدِ إلَى بَنِي جَذِيمَةَ فَدَعَاهُمْ إلَى الْإِسْلَامِ فَلَمْ يُحْسِنُوا أَنْ يَقُولُوا: أَسْلَمْنَا - فَجَعَلُوا يَقُولُونَ: صَبَأْنَا، صَبَأْنَا، وَجَعَلَ خَالِدٌ فِيهِمْ أَسْرًا وَقَتْلًا، وَدَفَعَ إلَى كُلِّ رَجُلٍ مِنَّا أَسِيرًا، حَتَّى إذَا أَصْبَحَ يَوْمًا أَمَرَنَا خَالِدُ بْنُ الْوَلِيدِ أَنْ يَقْتُلَ كُلُّ وَاحِدٍ مِنَّا أَسِيرَهُ، فَقَالَ ابْنُ عُمَرَ: وَاَللَّهِ لَا أَقْتُلُ أَسِيرِي، وَلَا يَقْتُلُ أَحَدٌ مِنْ أَصْحَابِي أَسِيرَهُ، فَقَدِمْنَا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذُكِرَ لَهُ صَنِيعُ خَالِدٍ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اللَّهُمَّ إنِّي أَبْرَأُ إلَيْكَ مِمَّا صَنَعَ خَالِدٌ» .

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا هَنَّادُ بْنُ السَّرِيِّ أَنَا أَبُو مُعَاوِيَةَ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ الْبَجَلِيِّ قَالَ: «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَرِيَّةً إلَى خَثْعَمَ فَاعْتَصَمُوا بِالسُّجُودِ، فَأَسْرَعَ فِيهِمْ الْقَتْلَ فَبَلَغَ ذَلِكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَمَرَ لَهُمْ بِنِصْفِ الْعَقْلِ وَقَالَ: أَنَا بَرِيءٌ مِنْ كُلِّ مُسْلِمٍ يُقِيمُ بَيْنَ أَظْهُرِ الْمُشْرِكِينَ، قَالُوا: يَا رَسُولَ اللَّهِ لِمَ؟ قَالَ: لَا تَرَاءَى نَارَاهُمَا» .

[25] **Hadith references (L36669):** Riyad as-Salihin 393.

of Ḥudhayfah (may Allah be pleased with both of them)—in it is Ziyād ibn ʿAbdullāh al-Bakkāʾī, and he is not strong."

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: لَا يَصِحُّ فِي هَذَا الْبَابِ شَيْءٌ غَيْرُ هَذِهِ الْأَحَادِيثِ -: وَأَمَّا حَدِيثُ الْيَمَانِ وَالِدِ حُذَيْفَةَ - رَضِيَ اللَّهُ عَنْهُمَا - فَفِيهِ زِيَادُ بْنُ عَبْدِ اللَّهِ الْبَكَّائِيُّ - وَلَيْسَ بِالْقَوِيِّ.

L36675 As for the narration of Muljim ibn Qudāmah and his killing of ʿĀmir ibn al-Aḍbaṭ, along with the Prophet's (peace be upon him) payment of blood money in the matter while withholding legal retaliation, its chain includes Ziyād ibn Ḍumayrah—who is unknown. Rather, the narration concerning the aforementioned Muljim is authenticated via the following chain: Ḥumām ibn Aḥmad narrated to us from ʿAbbās ibn Aṣbagh from Muḥammad ibn ʿAbd al-Malik ibn Ayman from Aḥmad ibn Zuhayr ibn Ḥarb from Abū Bakr ibn Abī Shaybah from Abū Khālid al-Aḥmar from Muḥammad ibn Isḥāq from Yazīd ibn ʿAbdullāh ibn Quṣayṭ from al-Qaʿqāʿ from ʿAbdullāh ibn Abī Ḥadrad, who said: "The Messenger of Allah (peace be upon him) dispatched us to a fortified structure. We encountered ʿĀmir ibn al-Aḍbaṭ—a member of the Ashjaʿ tribe—who greeted us with the Islamic salutation. Muljim ibn Jaththāmah—a Laythī from Kinānah—rose toward him, killed him, and seized his belongings. When we came before the Messenger of Allah (peace be upon him) and informed him, the verse was revealed: 'O you who believe, when you venture forth in Allah's cause, verify thoroughly. Do not say to one who offers you peace, "You are not a believer," seeking the fleeting gains of worldly life. With Allah are abundant spoils. You yourselves were once like this, then Allah bestowed favor upon you. Therefore, verify thoroughly' (4:94)."[26]

وَأَمَّا حَدِيثُ مُلْجَمِ بْنِ قُدَامَةَ وَقَتْلُهُ عَامِرَ بْنَ الْأَضْبَطِ، وَإِعْطَاءُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الدِّيَةَ فِيهِ، وَمَنْعُهُ مِنَ الْقَوَدِ، فَفِيهِ زِيَادُ بْنُ ضُمَيْرَةَ - وَهُوَ مَجْهُولٌ - بَلْ إِنَّهُ يَصِحُّ فِي حَدِيثِ مُلْجَمٍ الْمَذْكُورِ -: مَا نَاهُ حُمَامُ بْنُ أَحْمَدَ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ عَنْ الْقَعْقَاعِ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي حَدْرَدٍ قَالَ: «بَعَثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى أُطُمٍ، فَلَقِينَا عَامِرُ بْنُ الْأَضْبَطِ - هُوَ أَشْجَعِيٌّ - فَحَيَّانَا بِتَحِيَّةِ الْإِسْلَامِ فَقَامَ إِلَيْهِ الْمُلْجَمُ بْنُ جَثَّامَةَ - هُوَ لَيْثِيٌّ كِنَانِيٌّ - فَقَتَلَهُ ثُمَّ سَلَبَهُ، فَلَمَّا قَدِمْنَا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخْبَرْنَاهُ فَنَزَلَتْ: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا ضَرَبْتُمْ فِي سَبِيلِ اللَّهِ فَتَبَيَّنُوا وَلا تَقُولُوا لِمَنْ أَلْقَى إِلَيْكُمُ السَّلامَ لَسْتَ مُؤْمِنًا تَبْتَغُونَ عَرَضَ الْحَيَاةِ الدُّنْيَا فَعِنْدَ اللَّهِ مَغَانِمُ كَثِيرَةٌ كَذَلِكَ كُنْتُمْ مِنْ قَبْلُ فَمَنَّ اللَّهُ عَلَيْكُمْ فَتَبَيَّنُوا} [النساء: ٩٤] ».

L36676–36677 Abu Muhammad—may Allah be pleased with him—said: All these reports constitute proof against them, for Khalid only killed Banī Jadhīmah based on a juristic interpretation that they were disbelievers, not realizing their statement "We have embraced Islam, we have embraced Islam" constituted valid conversion. Similarly, Usāmah—without doubt—and let it suffice you that he referred the matter to the Messenger of Allah (peace and blessings be upon him), who said: "He only uttered it out of fear of weapons." By Allah, the

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: كُلُّ هَذِهِ الْأَخْبَارِ حُجَّةٌ عَلَيْهِمْ؛ لِأَنَّ خَالِدًا لَمْ يَقْتُلْ بَنِي جَذِيمَةَ إِلَّا مُتَأَوِّلًا أَنَّهُمْ كُفَّارٌ، وَلَمْ يَعْرِفْ أَنْ قَوْلَهُمْ: صَبَأْنَا، صَبَأْنَا - إِسْلَامٌ صَحِيحٌ، وَكَذَلِكَ أُسَامَةُ بِلَا شَكٍّ، وَحَسْبُك بِمُرَاجَعَتِهِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ، وَقَوْلِهِ: إنَّمَا قَالَهَا مِنْ خَوْفِ السِّلَاحِ - وَهُوَ وَاَللَّهِ الثِّقَةُ الصَّادِقُ الَّذِي ثَبَتَ أَنَّهُ لَمْ

[26] **Qur'an references (L36675):** Qur'an 4:94 (An-Nisa).

Prophet is the trustworthy truth-teller whose established status confirms he only declared what reflected his sincere conviction. Likewise, the military detachment that hastened to kill in Khath'am while people were devoutly clinging to prostration [in prayer]—since they acted upon juristic interpretation, they were undoubtedly mistaken killers. Thus legal retribution (qiṣāṣ) was waived. Upon examining their case, we found them all residing in hostile enemy territory during warfare. Therefore, blood-money (diyah) was nullified by Quranic decree, leaving only atonement (kaffārah). Necessarily, one of two scenarios must apply: either the Prophet (peace and blessings be upon him) commanded them to perform it, and the narrator omitted this detail.

يَقُلْ إِلَّا مَا فِي نَفْسِهِ. وَكَذَلِكَ السَّرِيَّةُ الَّتِي أَسْرَعَتْ بِالْقَتْلِ فِي خَثْعَمَ وَهُمْ مُعْتَصِمُونَ بِالسُّجُودِ، وَإِذْ هُمْ مُتَأَوِّلُونَ فَهُمْ قَاتِلُو خَطَأٍ بِلَا شَكٍّ، فَسَقَطَ الْقَوَدُ. ثُمَّ نَظَرْنَا فِيهِمْ فَوَجَدْنَاهُمْ كُلَّهُمْ فِي دَارِ الْحَرْبِ فِي قَوْمٍ عَدُوٍّ لَنَا، فَسَقَطَتْ الدِّيَةُ بِنَصِّ الْقُرْآنِ، وَلَمْ يَبْقَ إِلَّا الْكَفَّارَةُ، فَلَا بُدَّ مِنْ أَحَدِ أَمْرَيْنِ ضَرُورَةً: إمَّا أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَمَرَهُمْ بِهَا فَسَكَتَ الرَّاوِي عَنْ ذَلِكَ.

L36678 Alternatively, if the verse containing: {But if he was from a people hostile to you and he was a believer, then the freeing of a slave} [An-Nisa': 92] had not yet been revealed, they would be obligated only to seek forgiveness and call upon Allah, the Exalted and Majestic.[27]

وَإِمَّا أَنَّ الْآيَةَ الَّتِي فِيهَا: {فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ} [النساء: ٩٢] لَمْ تَكُنْ نَزَلَتْ بَعْدُ، فَلَا شَيْءَ عَلَيْهِمْ إِلَّا الِاسْتِغْفَارُ وَالدُّعَاءُ إلَى اللَّهِ عَزَّ وَجَلَّ فَقَطْ.

L36679 If it is said: How can one say as an interpreter that the Messenger of Allah—peace and blessings be upon him and his family—dissociates himself before Allah the Exalted from the interpreter's action? We respond: Yes, the Messenger of Allah—peace and blessings be upon him and his family—has dissociated himself from every error contradicting the truth, and we dissociate ourselves before Allah Almighty from it, even if the one who committed it is rewarded once. The Messenger of Allah—peace and blessings be upon him and his family—never dissociated himself from Khalid whatsoever; he only dissociated himself from his action. Similarly, we say: We dissociate ourselves before Allah Almighty from every erroneous interpretation made by the interpreter, but we do not dissociate from the interpreter himself—even if the Prophet—peace and blessings be upon him—had dissociated from Khalid, he would not have commanded him afterward. Thus, our statement is valid—and all praise is to Allah, Lord of the worlds.

فَإِنْ قِيلَ: كَيْفَ يَقُولُ مُتَأَوِّلًا وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَبْرَأُ إلَى اللَّهِ تَعَالَى مِنْ فِعْلِهِ؟ قُلْنَا: نَعَمْ، قَدْ بَرِئَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ كُلِّ خَطَأٍ خَالَفَ الْحَقَّ، وَنَحْنُ نَبْرَأُ إلَى اللَّهِ عَزَّ وَجَلَّ مِنْهُ وَإِنْ كَانَ فَاعِلُهُ مَأْجُورًا أَجْرًا وَاحِدًا، وَلَمْ يَبْرَأْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ خَالِدٍ قَطُّ، إنَّمَا بَرِئَ مِنْ فِعْلِهِ، وَهَكَذَا نَقُولُ نَبْرَأُ إلَى اللَّهِ عَزَّ وَجَلَّ مِنْ كُلِّ تَأْوِيلٍ أَخْطَأَ فِيهِ الْمُتَأَوِّلُ، وَلَا نَبْرَأُ مِنْ الْمُتَأَوِّلِ - وَلَوْ بَرِئَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِنْ خَالِدٍ لَمَا أَمَرَهُ بَعْدَهَا - فَصَحَّ قَوْلُنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L36680–36681 If it is asked: What is the rationale for the Messenger of Allah—peace and blessings be upon him—granting the tribe of Khath'am half the diyah? We

[27] **Qur'an references (L36678):** Qur'an 4:92 (An-Nisa).

respond: He did this as an act of grace, to foster kinship, and solely to reconcile them to Islam. Had they been entitled to the full diyah, he—peace and blessings be upon him—would not have withheld from them even a hair's worth of it, or more.

فَإِنْ قِيلَ: فَمَا وَجْهُ إِعْطَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَثْعَمًا نِصْفَ الدِّيَةِ؟ قُلْنَا: فَعَلَ ذَلِكَ تَفَضُّلًا، وَصِلَةً وَاسْتِئْلَافًا عَلَى الْإِسْلَامِ فَقَطْ، وَلَوْ وَجَبَتْ لَهُمْ دِيَةٌ لَمَا مَنَعَهُمْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِنْهَا وَبَرَةً فَمَا فَوْقَهَا.

L36682 When the argument of the Hanafis for their vile assertion was invalidated by these reports concerning the waiver of retribution and blood money from one who intentionally kills a Muslim while knowing he is a Muslim—even if he resides in enemy territory—and their waiving of retribution alone for those who intentionally kill a Muslim within the Muslim military camp in enemy territory, given the confirmation that all such cases constitute unintentional killing rather than intentional killing, the invalidity of their opinion became evident with certainty.

فَلَمَّا بَطَلَ احْتِجَاجُ الْحَنَفِيِّينَ لِقَوْلِهِمْ الْخَبِيثِ بِهَذِهِ الْأَخْبَارِ فِي إسْقَاطِ الْقَوَدِ، وَالدِّيَةِ عَمَّنْ تَعَمَّدَ قَتْلَ مُسْلِمٍ يَدْرِي أَنَّهُ مُسْلِمٌ - وَإِنْ كَانَ سَاكِنًا فِي أَرْضِ الْحَرْبِ - وَفِي إسْقَاطِهِمْ الْقَوَدَ فَقَطْ عَنْ الْمُتَعَمِّدِ قَتْلَ الْمُسْلِمِ فِي عَسْكَرِ الْمُسْلِمِينَ فِي دَارِ الْحَرْبِ، إذْ قَدْ صَحَّ أَنَّهَا كُلُّهَا قَتْلُ خَطَأٍ لَا قَتْلُ عَمْدٍ - فَظَهَرَ فَسَادُ قَوْلِهِمْ بِيَقِينٍ.

L36683 If it is said: The Prophet—peace and blessings be upon him—has disassociated himself from every Muslim who resides among the people of the abode of war, we say: Were this a justification for intentionally killing him, your assertion regarding the obligation of expiation would be invalid. Rather, its meaning is that he is a wrongdoer against himself by this act. If someone kills him without knowing he is a Muslim, there is neither retribution nor blood money—only expiation is required, by the explicit text of the Qur'an.

فَإِنْ قِيلَ: فَقَدْ بَرِئَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِنْ كُلِّ مُسْلِمٍ سَكَنَ بَيْنَ أَهْلِ دَارِ الْحَرْبِ؟ قُلْنَا: لَوْ كَانَ هَذَا مُبِيحًا لِتَعَمُّدِ قَتْلِهِ لَبَطَلَ قَوْلُكُمْ فِي إيجَابِ الْكَفَّارَةِ فِي ذَلِكَ، وَإِنَّمَا مَعْنَاهُ: أَنَّهُ جَانٍ عَلَى نَفْسِهِ بِذَلِكَ، فَإِنْ قَتَلَهُ مَنْ لَا يَدْرِي أَنَّهُ مُسْلِمٌ فَلَا قَوَدَ، وَلَا دِيَةَ، إنَّمَا فِيهِ الْكَفَّارَةُ فَقَطْ؛ بِنَصِّ الْقُرْآنِ.

L36684 They further strayed into misguidance by invoking a rejected and fabricated report: that the Prophet—peace and blessings of Allah be upon him—said, "Hands are not amputated during travel." This was astounding, for they are the foremost violators of this very report, amputating hands during travel. Thus, we cannot comprehend how they arrived at restricting this ruling specifically to the abode of war. Even if this claim were valid for them, their dismissal of retaliatory punishment (qiṣāṣ) and blood money (diyah)—or qiṣāṣ alone—on the pretext of abandoning hand amputation would constitute manifest absurdity. Allah has indeed protected His Messenger—peace and blessings of Allah be upon him—from prohibiting retaliatory punishment and blood money for the intentional killing of a Muslim in the land of war, while neglecting to mention that and limiting himself to forbidding hand amputation during travel. None attributes this to the Messenger of Allah—

ثُمَّ زَادُوا ضَلَالًا فَاحْتَجُّوا فِي ذَلِكَ بِخَبَرٍ سَاقِطٍ مَوْضُوعٍ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا تُقْطَعُ الْأَيْدِي فِي السَّفَرِ» فَكَانَ هَذَا عَجَبًا؛ لِأَنَّهُمْ أَوَّلُ مُخَالِفٍ لِهَذَا الْخَبَرِ، فَيَقْطَعُونَ الْأَيْدِيَ فِي السَّفَرِ، فَلَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ تَخْصِيصُ دَارِ الْحَرْبِ بِذَلِكَ؟ ثُمَّ لَوْ صَحَّ لَهُمْ ذَلِكَ لَكَانَ إسْقَاطُهُمْ الْقَوَدَ، وَالدِّيَةَ، أَوْ الْقَوَدَ فَقَطْ عَلَى تَرْكِ قَطْعِ الْأَيْدِي هَوَسًا ظَاهِرًا - وَقَدْ أَعَاذَ اللَّهُ رَسُولَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِنْ أَنْ يُرِيدَ النَّهْيَ عَنْ الْقَوَدِ، وَالدِّيَةِ فِي قَتْلِ نَفْسِ الْمُسْلِمِ عَمْدًا فِي أَرْضِ الْحَرْبِ فَيَدَعَ ذِكْرَ ذَلِكَ

peace and blessings of Allah be upon him—except a cursed, deliberate liar who fabricates falsehood against him—peace and blessings of Allah be upon him.

وَيَقْتَصِرَ عَلَى النَّهْيِ عَنْ قَطْعِ الْأَيْدِي فِي السَّفَرِ - هَذَا لَا يُضِيفُهُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا كَذَّابٌ مَلْعُونٌ مُتَعَمِّدُ الْكَذِبِ عَلَيْهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L36685 Abū Muḥammad—may Allāh be pleased with him—said: As for our statement that the intentional killer is to be slain by whatever means he used to kill—people have differed regarding all of this—: a group held the same view as us—as we have been informed through the chain of Abū Bakr ibn Abī Shaybah: from Ḥafṣ—he is Ibn Ghīyāth—from Ashʿath, from al-Shaʿbī, who said: ʿAlī ibn Abī Ṭālib declared: "All intentional killing entails *qisas*."

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَأَمَّا قَوْلُنَا يُقْتَلُ قَاتِلُ الْعَمْدِ بِأَيِّ شَيْءٍ قَتَلَ بِهِ فَإِنَّهُ قَدْ اخْتَلَفَ النَّاسُ فِي كُلِّ ذَلِكَ -: فَقَالَتْ طَائِفَةٌ كَمَا قُلْنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا حَفْصٌ - هُوَ ابْنُ غِيَاثٍ - عَنْ أَشْعَثَ عَنِ الشَّعْبِيِّ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: الْعَمْدُ كُلُّهُ قَوَدٌ.

L36686–36687 And through the chain of Abū Bakr ibn Abī Shaybah: We cite ʿAbd al-Raḥīm from Ashʿath from al-Shaʿbī, al-Ḥasan, Ibn Sīrīn, and ʿAmr ibn Dīnār—all of whom said: "Intentional killing entails qawad (retaliatory punishment)." Through the chain of Wakīʿ from Sufyān al-Thawrī, from one who heard al-Shaʿbī say: "If one mutilates a man then kills him, he shall be mutilated then killed." Through the chain of Ḥammād ibn Salamah from Iyās ibn Muʿāwiyah, who said: "For any object used to kill—such as a massive stone or large wooden beam—retaliation is exacted as qawad with it." Through the chain of Ḥammād ibn Salamah from Hishām ibn ʿUrwah, who narrated: A son of Ṣuhayb seized a son of Ḥāṭib ibn Abī Baltaʿah and struck him with a wooden plank until he presumed him dead—he then related the ḥadīth—and the victim died from the blows. The Ṣuhaybī—al-Ḥasan ibn ʿUthmān—was handed over to Ḥāṭib's avenger of blood (walī al-dam), who struck the Ṣuhaybī's head with a staff until the parts of his head scattered, causing death. ʿUrwah ibn al-Zubayr witnessed this without objection. The Ḥāṭibite was named Yazīd ibn al-Mughīrah.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الرَّحِيمِ عَنْ أَشْعَثَ عَنِ الشَّعْبِيِّ، وَالْحَسَنِ، وَابْنِ سِيرِينَ، وَعَمْرِو بْنِ دِينَارٍ، قَالُوا كُلُّهُمْ: الْعَمْدُ قَوَدٌ. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَمَّنْ سَمِعَ الشَّعْبِيَّ يَقُولُ: إذَا مَثَّلَ بِالرَّجُلِ ثُمَّ قَتَلَهُ فَإِنَّهُ يُمَثَّلُ بِهِ ثُمَّ يُقْتَلُ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ إيَاسِ بْنِ مُعَاوِيَةَ قَالَ: كُلُّ شَيْءٍ يَقْتُلُهُ فَإِنَّهُ يُقَادُ بِهِ نَحْوُ الْحَجَرِ الْعَظِيمِ وَالْخَشَبَةِ الْعَظِيمَةِ الَّتِي تَقْتُلُ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ أَنَّهُ حَدَّثَهُ أَنَّ ابْنًا لِصُهَيْبٍ أَخَذَ ابْنًا لِحَاطِبِ بْنِ أَبِي بَلْتَعَةَ فَضَرَبَهُ بِخَشَبَةٍ مَعَهُ حَتَّى ظَنَّ أَنَّهُ قَدْ قَتَلَهُ - فَذَكَرَ الْحَدِيثَ - وَأَنَّهُ مَاتَ مِنْهَا، وَأَنَّ الصُّهَيْبِيَّ دُفِعَ إلَى وَلِيِّ حَاطِبٍ، فَضَرَبَهُ بِعَصًا مَعَهُ فِي الرَّأْسِ حَتَّى تَطَايَرَتْ شُؤُونُ رَأْسِهِ فَمَاتَ، وَعُرْوَةُ بْنُ الزُّبَيْرِ جَالِسٌ لَا يُنْكِرُهُ - كَانَ اسْمُ الصُّهَيْبِيِّ: الْحَسَنَ بْنَ عُثْمَانَ - وَكَانَ اسْمُ الْحَاطِبِيِّ: يَزِيدَ بْنَ الْمُغِيرَةِ.

L36688 Through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī the Judge: Sulaymān ibn Ḥarb from Ḥammād ibn Salamah from Abū Rajāʾ, who said: Qatādah said, "If one kills with a stone, he is killed with a stone; if one kills with a stick, he is killed with a stick." This is the opinion of Abān ibn ʿUthmān and Abū Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm.

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي أَنَا سُلَيْمَانُ بْنُ حَرْبٍ أَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَبِي رَجَاءٍ قَالَ: قَالَ قَتَادَةُ: إنْ قَتَلَ بِحَجَرٍ قُتِلَ بِحَجَرٍ، وَإِنْ قَتَلَ بِخَشَبَةٍ قُتِلَ بِخَشَبَةٍ. وَهُوَ قَوْلُ أَبَانَ بْنِ عُثْمَانَ، وَأَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ.

L36689 Narrated through Ḥammād ibn Salamah, from Ḥumayd, from Maymūn ibn Mihrān: A Jew was killed by a Muslim with a stone. Maymūn wrote regarding this matter to ʿUmar ibn ʿAbd al-ʿAzīz, who then instructed him to hand the Muslim over to the Jew's mother. He delivered him to her, and she killed him with a stone. This is the ruling upheld by Mālik, al-Shāfiʿī, Abū Thawr, Aḥmad ibn Ḥanbal, Isḥāq, Ibn al-Mundhir, their companions, and others.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا حُمَيْدٌ عَنْ مَيْمُونِ بْنِ مِهْرَانَ: أَنَّ يَهُودِيًّا قَتَلَهُ مُسْلِمٌ بِفِهْرٍ؟ فَكَتَبَ مَيْمُونٌ فِي ذَلِكَ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَكَتَبَ إلَيْهِ عُمَرُ يَأْمُرُهُ بِدَفْعِهِ إلَى أُمِّ الْيَهُودِيِّ، فَدَفَعَهُ إلَيْهَا، فَقَتَلَتْهُ بِفِهْرٍ. وَبِهِ يَأْخُذُ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ، وَابْنُ الْمُنْذِرِ، وَأَصْحَابُهُمْ، وَغَيْرُهُمْ.

L36690 Mālik said: If he kills him with a stone, a stick, fire, or by drowning, he is killed in the same manner, and the punishment is repeated upon him continuously until he dies.

وَقَالَ مَالِكٌ: إنْ قَتَلَهُ بِحَجَرٍ، أَوْ عَصًا، أَوْ بِالنَّارِ، أَوْ بِالتَّغْرِيقِ: قُتِلَ بِمِثْلِ ذَلِكَ، يُكَرَّرُ عَلَيْهِ أَبَدًا حَتَّى يَمُوتَ.

L36691 Al-Shafiʿi said: If one strikes another with a stone until he dies, the striker is to be struck with a stone indefinitely until he dies. If one confines him without food or drink until he dies, the confiner is confined for the same duration until death. If he does not die, he is to be killed by the sword. Similarly, if one drowns him, and similarly if one throws him from a high precipice. If one severs his hands and feet and he dies, the perpetrator's hands and feet are to be severed. If he dies—otherwise, he is to be killed by the sword.

وَقَالَ الشَّافِعِيُّ: إنْ ضَرَبَهُ بِحَجَرٍ حَتَّى مَاتَ: ضَرَبَهُ بِحَجَرٍ أَبَدًا حَتَّى يَمُوتَ، وَإِنْ حَبَسَهُ بِلَا طَعَامٍ وَلَا شَرَابٍ حَتَّى يَمُوتَ: حُبِسَ مِثْلُ تِلْكَ الْمُدَّةِ حَتَّى يَمُوتَ، فَإِنْ لَمْ يَمُتْ: قُتِلَ بِالسَّيْفِ، وَهَكَذَا إنْ غَرَّقَهُ، وَهَكَذَا إنْ أَلْقَاهُ مِنْ مَهْوَاةٍ عَالِيَةٍ - فَإِنْ قَطَعَ يَدَيْهِ وَرِجْلَيْهِ فَمَاتَ: قُطِعَتْ يَدَا الْقَاطِعِ وَرِجْلَاهُ، فَإِنْ مَاتَ وَإِلَّا قُتِلَ بِالسَّيْفِ.

L36692–36693 Abu Muhammad (may Allah be pleased with him) said: If he does not die, he is left as he is until he dies. He is not fed nor given drink. Similarly, if he is killed by hunger or thirst, he is starved and deprived of water until he dies necessarily. The time period is not taken into account at all.

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: إنْ لَمْ يَمُتْ تُرِكَ كَمَا هُوَ حَتَّى يَمُوتَ: لَا يُطْعَمُ وَلَا يُسْقَى - وَكَذَلِكَ إنْ قَتَلَهُ جُوعًا أَوْ عَطَشًا: جُوِّعَ وَعُطِّشَ حَتَّى يَمُوتَ وَلَا بُدَّ - وَلَا تُرَاعَى الْمُدَّةُ أَصْلًا.

L36694 Ibn Shubrumah said: If one immerses him in water until he dies - "I immersed him in it until he died" - and if he kills him by beating, "I beat him in the same manner as his beating, no more than what he inflicted." They used to condemn disfiguring retaliation and would say: "The sword fulfills the legal requirement for all such matters."

وَقَالَ ابْنُ شُبْرُمَةَ: إنْ غَمَسَهُ فِي الْمَاءِ حَتَّى يَمُوتَ: غَمَسْتُهُ فِيهِ حَتَّى يَمُوتَ - وَإِنْ قَتَلَهُ ضَرْبًا ضَرَبْتُهُ مِثْلَ ضَرْبِهِ لَا أَكْثَرَ مِنْ ذَلِكَ. وَقَدْ كَانُوا يَكْرَهُونَ الْمُثْلَةَ، وَيَقُولُونَ: السَّيْفُ يُجْزِئُ مِنْ ذَلِكَ كُلِّهِ.

L36695 Abu Muhammad - may Allah be pleased with him - said: "Rather, I will strike him until he dies." A group said: "One is not to be killed in any such case except by the sword" - as we have narrated through the chain of Hammad ibn Salamah from Yunus ibn Ubayd from al-Hasan al-Basri that he

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: بَلْ أَضْرِبُهُ حَتَّى يَمُوتَ، وَقَالَتْ طَائِفَةٌ: لَا يُقْتَلُ فِي كُلِّ ذَلِكَ إلَّا بِالسَّيْفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ

said: “There is no retaliation except with an iron weapon.” From the chain of Waki’: I, Sufyan, from al-Mughirah from Ibrahim al-Nakha’i regarding one who kills with a piece of wood or with something else? He said: “The sword is the proper means for that.” From the chain of Shu’bah from al-Mughirah from Ibrahim: “There is no retaliation except by the sword.” From the chain of Abu Bakr ibn Abi Shaybah: I am Waki’, from Muhammad ibn Qays from al-Sha’bi: “There is no retaliation except with an iron weapon.” Similar to this has been reported from Sufyan.

الْحَسَنِ الْبَصْرِيِّ أَنَّهُ قَالَ: لَا قَوَدَ إِلَّا بِحَدِيدَةٍ. وَمِنْ طَرِيقِ وَكِيعٍ أَنَا سُفْيَانُ عَنْ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِيمَنْ قَتَلَ بِخَشَبَةٍ أَوْ بِالشَّيْءِ؟ قَالَ: السَّيْفُ مَحَلُّ ذَلِكَ. وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ لَا قَوَدَ إِلَّا بِالسَّيْفِ. وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ مُحَمَّدِ بْنِ قَيْسٍ عَنْ الشَّعْبِيِّ لَا قَوَدَ إِلَّا بِحَدِيدَةٍ، وَرُوِيَ نَحْوُ هَذَا عَنْ سُفْيَانَ.

L36696 Abu Hanifa and his companions said: By whatever means he killed him—from those that necessitate retaliation—retaliation is only to be exacted with the sword. This is the opinion of Abu Sulaiman.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: بِأَيِّ شَيْءٍ قَتَلَهُ - مِمَّا يُوجِبُ الْقَوَدَ - فَلَا يُقَادُ إِلَّا بِالسَّيْفِ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ.

L36697 Abu Muhammad—may Allah be pleased with him—said: The apparent meaning of what has been reported to us from al-Ḥasan and al-Shaʿbī indicates the obligation of legal retribution through the sword, spear, knife, or hammer. We then examined the evidence cited by the first group and found them relying on the words of Allah, the Almighty: *“The sacred months are [governed by] legal retribution. So whoever aggresses against you, retaliate against him in like manner as he aggressed against you”* (Al-Baqarah 2:194).[28]

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: ظَاهِرُ مَا رُوِّينَا عَنْ الْحَسَنِ، وَالشَّعْبِيِّ: إيجَابُ الْقَوَدِ بِالسَّيْفِ، وَالرُّمْحِ، وَالسِّكِّينِ، وَالْمِطْرَقَةِ -: فَنَظَرْنَا فِيمَا احْتَجَّتْ بِهِ الطَّائِفَةُ الْأُولَى فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَالْحُرُمَاتُ قِصَاصٌ فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

L36698 By the words of Allah, the Exalted and Majestic: *“The recompense of an evil is an evil like it”* [Ash-Shura 42:40], and by His words, the Most High: *“If you retaliate, then retaliate with the like of what you were harmed with”* [An-Nahl 16:126].[29]

وَبِقَوْلِهِ عَزَّ وَجَلَّ: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] ، وَبِقَوْلِهِ تَعَالَى: {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] .

L36699 And by His words, the Almighty and Majestic: {And whoever retaliates after being wronged—there is no blame upon them} [42:41]. {Blame lies only on those who wrong people and act oppressively in the land without right—for them there is a grievous punishment} [42:42].[30]

وَبِقَوْلِهِ عَزَّ وَجَلَّ: {وَلَمَنِ انْتَصَرَ بَعْدَ ظُلْمِهِ فَأُولَئِكَ مَا عَلَيْهِمْ مِنْ سَبِيلٍ} [الشورى: ٤١] {إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الْأَرْضِ بِغَيْرِ الْحَقِّ أُولَئِكَ لَهُمْ عَذَابٌ أَلِيمٌ} [الشورى: ٤٢] .

وَبِقَوْلِهِ عَزَّ وَجَلَّ: {تِلْكَ حُدُودُ اللَّهِ فَلا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ} [البقرة: ٢٢٩] .

[28] **Qur’an references (L36697):** Qur’an 2:194 (Al-Baqarah).
[29] **Qur’an references (L36698):** Qur’an 42:40 (Ash-Shuraa); Qur’an 16:126 (An-Nahl).
[30] **Qur’an references (L36699):** Qur’an 42:41 (Ash-Shuraa); Qur’an 42:42 (Ash-Shuraa).

L36700–36701 And by His statement, the Almighty and Majestic: “These are the limits of Allah, so do not transgress them. Whoever transgresses the limits of Allah, those are the unjust”[Surah Al-Baqarah 2:229].[31]

وَبِقَوْلِهِ تَعَالَى: {وَلا تَعْتَدُوا إِنَّ اللَّهَ لا يُحِبُّ الْمُعْتَدِينَ} [البقرة: ١٩٠] .

L36702 And by His saying—the Most High—: “And do not transgress. Indeed, Allah does not love the transgressors.” [al-Baqarah 2:190][32]

قَالُوا: فَكَلَامُ اللَّهِ تَعَالَى كَمَا أَوْرَدْنَا: مُوجِبٌ أَنَّ الْغَرَضَ فِي الْقِصَاصِ فِي الْقَتْلِ فَمَا دُونَهُ إِنَّمَا هُوَ بِمِثْلِ مَا اعْتَدَى بِهِ، وَأَنَّهُ لَا يَحِلُّ تَعَدِّي ذَلِكَ إِلَى غَيْرِ مَا اعْتَدَى بِهِ.

L36703 They said: The speech of God, the Exalted, as we have cited necessitates that the purpose of retaliation in killing and what is below it is solely equivalence to what was transgressed, and that it is impermissible to exceed this to anything beyond what was transgressed.

قَالُوا: فَمَنْ قَتَلَ بِالسَّيْفِ مَنْ قَتَلَ مُتَعَدِّيًا بِغَيْرِ السَّيْفِ، فَقَاتِلُهُ بِمَا لَمْ يَقْتُلْ بِهِ، مُتَعَدٍّ ظَالِمٌ بِنَصِّ الْقُرْآنِ، عَاصٍ لِلَّهِ عَزَّ وَجَلَّ فِيمَا أُمِرَ بِهِ.

L36704 If someone kills with a sword a person who killed as a transgressor using a means other than the sword, then combat him with what he did not kill with—for he is a transgressor and oppressor by the explicit text of the Quran, disobeying Allah Almighty in the commands he was given.

وَاحْتَجُّوا أَيْضًا - بِمَا قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

L36705 They also cited as evidence what is authentically established from the Messenger of Allah—peace be upon him—in his statement: “Indeed, your blood, your wealth, your honor, and your bodies are sacred and forbidden for you to violate.”

قَالُوا: فَمَنْ قَتَلَ أَحَدًا بِغَيْرِ السَّيْفِ ظَالِمًا عَامِدًا: فَبَشَرَةُ غَيْرِ الْقَاتِلِ مُحَرَّمَةٌ عَلَى الْمُسْتَقِيدِ، وَغَيْرِهِ، إِذْ قَدْ صَحَّ تَحْرِيمُهَا، وَلَمْ يَأْتِ نَصٌّ، وَلَا إِجْمَاعٌ بِإِبَاحَتِهَا، إِنَّمَا حَلَّ مِنْ بَشَرَةِ الْقَاتِلِ، وَمِنْ التَّعَدِّي عَلَيْهِ مِثْلُ مَا انْتَهَكَ هُوَ مِنْ بَشَرَةِ غَيْرِهِ، وَمِثْلُ مَا تَعَدَّى عَلَيْهِ بِهِ قَطُّ - وَمَنْ خَالَفَ هَذَا فَهُوَ كَمَنْ أَفْتَى مَنْ فُقِئَتْ عَيْنَاهُ ظُلْمًا بِأَنْ يَجْدَعَ هُوَ أَشْرَفَ أُذُنَيْ فَاقِئِ عَيْنَيْهِ - وَلَا فَرْقَ.

L36706 They said: Whoever kills someone by means other than the sword wrongfully and intentionally—the person of anyone other than the killer is forbidden to the one seeking legal retribution and others, since its prohibition has been established, and no textual evidence or consensus exists to permit it. Only the killer’s person is permissible to violate, and from transgressing against him an equivalent to what he violated in another’s person, and exactly as he transgressed entirely. Whoever opposes this is like one who issues a fatwa permitting a person whose eyes were unjustly gouged out to amputate the most noble part of the ears of the one who gouged his eyes—and there is no difference.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا هَدَّابُ بْنُ خَالِدٍ أَنَا هَمَّامٌ أَنَا قَتَادَةُ عَنْ أَنَسِ بْنِ مَالِكٍ: «أَنَّ جَارِيَةً قَدْ وُجِدَ رَأْسُهَا قَدْ رُضَّ بَيْنَ حَجَرَيْنِ، فَسَأَلُوهَا مَنْ صَنَعَ هَذَا بِكِ؟ فُلَانٌ؟ فُلَانٌ؟ حَتَّى ذَكَرُوا لَهَا يَهُودِيًّا، فَأَوْمَأَتْ بِرَأْسِهَا؟ فَأُخِذَ الْيَهُودِيُّ فَأَقَرَّ، فَأَمَرَ النَّبِيُّ - صَلَّى اللَّهُ

L36707 From the chain of Muslim: Haddāb ibn Khālid reported from Hammām, who reported from Qatādah, from Anas ibn Mālik: “A girl’s head was found

[31] **Qur’an references (L36701):** Qur’an 2:229 (Al-Baqarah).

[32] **Qur’an references (L36702):** Qur’an 2:190 (Al-Baqarah); Qur’an 5:87 (Al-Ma’idah).

crushed between two stones. They questioned her: 'Who did this to you? Was it so-and-so? So-and-so?' until they mentioned a Jew to her. She nodded her head. The Jew was apprehended, and then he confessed. The Prophet (peace be upon him) commanded that his head be crushed between the stones." Shu'bah narrated it from Hishām ibn Zayd from Anas, and Ma'mar from Ayyūb al-Sakhtiyānī from Abu Qilābah from Anas.

عَلَيْهِ وَسَلَّمَ - أَنْ تُرَضَّ رَأْسُهُ بَيْنَ الْحِجَارَةِ.» وَرَوَاهُ أَيْضًا - شُعْبَةُ عَنْ هِشَامِ بْنِ زَيْدٍ عَنْ أَنَسٍ، وَمَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسٍ.

L36708–36709 From the narration of Muslim: Abu Ja'far ibn al-Ṣabbāḥ and Abū Bakr ibn Abī Shaybah—and the wording is his—narrated from Ibn 'Ulayyah from al-Ḥajjāj ibn Abī 'Uthmān from Abū Rajā', the freed slave of Abū Qilābah, who said: Anas ibn Mālik narrated to me: "Eight men from the tribe of 'Ukl came to the Messenger of Allah—peace and blessings be upon him—and pledged allegiance to Islam. They found the land's air harmful, and their bodies became ill. The Messenger of Allah—peace and blessings be upon him—said to them: 'Will you not go out with our shepherd to his camels and drink from their urine and milk?' They replied: 'Yes.' They went out, drank from their urine and milk, and recovered. Then they killed the shepherd and drove away the camels. When this news reached the Messenger of Allah—peace and blessings be upon him—he sent men in pursuit until they were apprehended. They were brought before him, and he ordered their hands and feet to be severed, their eyes cauterized with hot irons, then they were cast under the sun until they died."

وَمِنْ طَرِيقِ مُسْلِمٍ: أَنَا أَبُو جَعْفَرِ بْنِ الصَّبَّاحِ وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ - وَاللَّفْظُ لَهُ - أَنَا ابْنُ عُلَيَّةَ عَنِ الْحَجَّاجِ بْنِ أَبِي عُثْمَانَ أَنَا أَبُو رَجَاءٍ - مَوْلَى أَبِي قِلَابَةَ - حَدَّثَنِي أَنَسُ بْنُ مَالِكٍ: «أَنَّ نَفَرًا مِنْ عُكْلٍ - ثَمَانِيَةً - قَدِمُوا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَايَعُوهُ عَلَى الْإِسْلَامِ، فَاسْتَوْخَمُوا الْأَرْضَ، وَسَقِمَتْ أَجْسَامُهُمْ، فَقَالَ لَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَلَا تَخْرُجُونَ مَعَ رَاعِينَا فِي إِبِلِهِ فَتُصِيبُونَ مِنْ أَبْوَالِهَا وَأَلْبَانِهَا؟ فَقَالُوا: بَلَى: فَخَرَجُوا فَشَرِبُوا مِنْ أَبْوَالِهَا وَأَلْبَانِهَا، فَصَحُّوا، فَقَتَلُوا الرَّاعِيَ، وَطَرَدُوا الْإِبِلَ، فَبَلَغَ ذَلِكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَعَثَ فِي آثَارِهِمْ فَأُدْرِكُوا، فَجِيءَ بِهِمْ، فَأَمَرَ بِهِمْ فَقُطِعَتْ أَيْدِيهِمْ، وَأَرْجُلُهُمْ، وَسَمَلَ أَعْيُنَهُمْ، ثُمَّ نُبِذُوا فِي الشَّمْسِ حَتَّى مَاتُوا».

L36710 Muslim said: Al-Fadl ibn Sahl al-A'raj al-Marwazi reported to me: Yahya ibn Ghaylan reported to me: Yazid ibn Zuray' reported to me: Sulayman al-Taymi reported to me, from Anas ibn Malik, who said: "The Messenger of Allah (peace be upon him) only gouged out the eyes of those people because they had gouged out the eyes of the shepherds." This is the ruling of the Messenger of Allah (peace be upon him) and his command, which no one may disregard.

قَالَ مُسْلِمٌ: حَدَّثَنِي الْفَضْلُ بْنُ سَهْلٍ الْأَعْرَجُ - مَرْوَزِيٌّ - أَنَا يَحْيَى بْنُ غَيْلَانَ أَنَا يَزِيدُ بْنُ زُرَيْعٍ عَنْ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «إِنَّمَا سَمَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْيُنَ أُولَئِكَ؛ لِأَنَّهُمْ سَمَلُوا أَعْيُنَ الرِّعَاءِ» فَهَذَا حُكْمُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَمْرُهُ الَّذِي لَا يَسَعُ أَحَدًا الْخُرُوجُ عَنْهُ.

L36711 Narrated through the chain of Abū Bakr ibn Abī Shaybah: ʿAbd al-Raḥmān ibn Sulaymān reported from Ismāʿīl ibn Muslim, from ʿAmr ibn Dīnār, from Ṭāwūs, from Ibn ʿAbbās, who said: The Messenger of Allah (peace and blessings be upon him) stated, "Intentional homicide necessitates retaliation unless the slain person's guardian grants pardon."

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الرَّحْمَنِ بْنُ سُلَيْمَانَ أَنَا إسْمَاعِيلُ بْنُ مُسْلِمٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْعَمْدُ قَوَدٌ إلَّا أَنْ يَعْفُوَ وَلِيُّ الْمَقْتُولِ» .

L36712 Through the chain of Al-Bukhārī: From Abū Nuʿaym—he is Al-Faḍl ibn Dukayn—from Shaybān, from Yaḥyā—he is Ibn Abī Kathīr—from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, from Abū Hurayrah, that the Messenger of Allāh—peace and blessings of Allāh be upon him—said: "For whom someone is slain, he is entitled to the better of two options: either to be compensated with diyah or to have qiṣāṣ exacted."

وَمِنْ طَرِيقِ الْبُخَارِيِّ أَنَا أَبُو نُعَيْمٍ - هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - أَنَا شَيْبَانُ عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «وَمَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ إمَّا أَنْ يُودَى، وَإِمَّا أَنْ يُقَادَ» .

L36713–36715 Abu Muhammad—may Allah be pleased with him—said: *Al-qawd* [retribution] in the language of the Arabs is reciprocal retaliation equivalent to the initial act. There is no disagreement among anyone that cutting a hand for a hand, an eye for an eye, a nose for a nose, and a life for a life—all of this is termed "qawd" (retaliation in exact equivalence). It has been established with certainty that when the Messenger of Allah—peace be upon him—commanded us to enforce qawd, he commanded that the aggressor—in cases of murder or injuries less than murder—be subjected to the exact same action he committed, identically, identically. This is a ruling necessitated by the Sharia and the language's usage, and it is indispensable.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: الْقَوَدُ فِي لُغَةِ الْعَرَبِ: الْمُقَارَضَةُ بِمِثْلِ مَا ابْتَدَأَهُ بِهِ، لَا خِلَافَ بَيْنَ أَحَدٍ فِي أَنَّ قَطْعَ الْيَدِ بِالْيَدِ، وَالْعَيْنِ بِالْعَيْنِ، وَالْأَنْفِ بِالْأَنْفِ، وَالنَّفْسِ بِالنَّفْسِ، كُلُّ ذَلِكَ يُسَمَّى " قَوَدًا ". فَقَدْ صَحَّ يَقِينًا - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا أَمَرَنَا بِالْقَوَدِ فَإِنَّهُ إنَّمَا أَمَرَنَا بِأَنْ يُعْمَلَ بِالْمُعْتَدِي فِي الْقَتْلِ فَمَا دُونَهُ: مِثْلُ مَا عَمِلَ هُوَ سَوَاءً سَوَاءً - هَذَا أَمْرٌ تَقْتَضِيهِ الشَّرِيعَةُ وَاللُّغَةُ وَلَا بُدَّ.

L36716 Then we examined the evidence cited by the other group: we found them basing their argument on what we have narrated through the chain of Abū Bakr ibn Abī Shaybah - who said: "I [Abū Bakr] heard from ʿĪsā ibn Yūnus, from Ashʿath and ʿAmr ibn ʿUbayd, each transmitting from al-Ḥasan" - who said: "The Messenger of Allah (peace be upon him) declared: 'No legal retribution applies except in cases involving the sword.'"

ثُمَّ نَظَرْنَا فِيمَا احْتَجَّتْ بِهِ الطَّائِفَةُ الْأُخْرَى -: فَوَجَدْنَاهُمْ يُعَوِّلُونَ عَلَى مَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا عِيسَى بْنُ يُونُسَ عَنْ أَشْعَثَ، وَعَمْرِو بْنِ عُبَيْدٍ عَنْ الْحَسَنِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا قَوَدَ إلَّا بِالسَّيْفِ» .

L36717 Abu Muhammad—may Allah be pleased with him—said: This is mursal, and it is not permissible to rely on a mursal.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا مُرْسَلٌ، وَلَا يَحِلُّ الْأَخْذُ بِمُرْسَلٍ.

L36718 They said: The two narrations from Anas - regarding those who killed the shepherds and the one who crushed the girl's head - were applicable

only when mutilation was permissible. Then mutilation itself was abrogated through its prohibition.

وَقَالُوا: الْخَبَرَانِ عَنْ أَنَسٍ فِي الَّذِينَ قَتَلُوا الرِّعَاءَ، وَفِي الَّذِي رَضَخَ رَأْسَ الْجَارِيَةِ، فَإِنَّمَا كَانَا إِذْ كَانَتْ الْمُثْلَةُ مُبَاحَةً، ثُمَّ نَسَخَهَا بِتَحْرِيمِ الْمُثْلَةِ.

L36719 This is indicated in the narration of Ayyub from Abu Qilabah from Anas regarding that report: "The Messenger of Allah (peace and blessings be upon him) commanded that he be stoned until he died, and he was stoned until he died."

وَيَدُلُّ عَلَى ذَلِكَ: أَنَّ فِي رِوَايَةِ أَيُّوبَ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسٍ لِذَلِكَ الْخَبَرِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِأَنْ يُرْجَمَ حَتَّى يَمُوتَ، فَرُجِمَ حَتَّى مَاتَ» .

L36720 They said: "Stoning may not strike the head, for they killed him using a method different from the one he used to kill the girl."

قَالُوا: وَالرَّجْمُ قَدْ لَا يُصِيبُ الرَّأْسَ، فَقَدْ قَتَلَهُ بِغَيْرِ مَا قَتَلَ هُوَ بِهِ الْجَارِيَةَ.

L36721 You have narrated through the chain of Abu Dawud: Muhammad ibn al-Muthanna narrated from Mu'adh ibn Hisham al-Dastuwa'i, who narrated from his father from Qatadah from al-Hasan from al-Sabah ibn 'Imran—he being al-Burjumi—that he heard Samurah ibn Jundub and 'Imran both say: "The Messenger of Allah—peace and blessings of Allah be upon him—would urge us to give charity and forbid us from mutilation."[33]

وَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ حَدَّثَنِي أَبِي عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ الصَّبَاحِ بْنِ عِمْرَانَ - هُوَ الْبُرْجُمِيّ - أَنَّهُ سَمِعَ سَمُرَةَ بْنَ جُنْدُبٍ، وَعِمْرَانَ يَقُولَانِ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَحُثُّنَا عَلَى الصَّدَقَةِ وَيَنْهَانَا عَنْ الْمُثْلَةِ.»

L36722–36723 And a similar narration has also been narrated to us through the chain of Al-Hasan from Abu Barzah, Abu Bakrah, Anas ibn Malik, and Ma'qil ibn Yasar, all of them from the Messenger of Allah (peace and blessings of Allah be upon him).

وَرُوِّينَا نَحْوَهُ أَيْضًا: مِنْ طَرِيقِ الْحَسَنِ عَنْ أَبِي بَرْزَةَ، وَأَبِي بَكْرَةَ، وَأَنَسِ بْنِ مَالِكٍ، وَمَعْقِلِ بْنِ يَسَارٍ كُلُّهُمْ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L36724 They said: "We never heard him—upon him be prayers and peace—address us in a sermon except that he enjoined charity and prohibited mutilation." I am Ahmad ibn Umar al-Udhri; I am Ahmad ibn Ali ibn al-Hasan al-Kisai; I am Ali ibn Ghaylan al-Harrani; I am al-Mufaddal ibn Muhammad; I am Ali ibn Ziyad; Abu Qurrah narrated to us from Ibn Jurayj, who informed me: Ismail ibn Ulayyah reported from Ma'mar, from Ayyub al-Sakhtiyani, from Ikrimah, from Ibn Abbas, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said: "Whoever alters his religion or abandons his religion: execute him, and do not inflict upon anyone the pun-

قَالُوا: «مَا سَمِعْنَاهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَطُّ خَطَبَنَا إلَّا وَهُوَ يَأْمُرُ بِالصَّدَقَةِ وَيَنْهَى عَنْ الْمُثْلَةِ» : أَنَا أَحْمَدُ بْنُ عُمَرَ الْعُذْرِيُّ أَنَا أَحْمَدُ بْنُ عَلِيِّ بْنِ الْحَسَنِ الْكِسَائِيُّ أَنَا عَلِيُّ بْنُ غَيْلَانَ الْحَرَّانِيُّ أَنَا الْمُفَضَّلُ بْنُ مُحَمَّدٍ أَنَا عَلِيُّ بْنُ زِيَادٍ ثنا أَبُو قُرَّةَ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي إسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ بَدَّلَ دِينَهُ، أَوْ رَجَعَ عَنْ دِينِهِ: فَاقْتُلُوهُ وَلَا تُعَذِّبُوا بِعَذَابِ اللَّهِ أَحَدًا» يَعْنِي بِالنَّارِ، وَنَهَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَنْ الْمُثْلَةِ.

[33] **Hadith references (L36721):** Sunan Abi Dawud 2667.

ishment of Allah," meaning the Fire. He—upon him be prayers and peace—also prohibited mutilation.

قَالُوا: وَالنَّهْيُ عَنْ الْمُثْلَةِ ثَابِتٌ مِنْ طُرُقٍ. قَالُوا: وَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا مُوسَى بْنُ إسْمَاعِيلَ أَنَا هَمَّامٌ عَنْ قَتَادَةَ عَنْ أَنَسٍ فَذَكَرَ حَدِيثَ الَّذِينَ قَتَلُوا الرِّعَاءَ وَقَدْ أَوْرَدْنَاهُ آنِفًا.

L36725 They said: The prohibition against mutilation is established through multiple chains of transmission. They said: You have narrated through the chain of Al-Bukhari: I am Musa ibn Isma'il, I am Hammam, from Qatadah, from Anas—who mentioned the hadith concerning those who killed the shepherds, which we previously related.

قَالَ قَتَادَةُ: فَحَدَّثَنِي مُحَمَّدُ بْنُ سِيرِينَ أَنَّ ذَلِكَ كَانَ قَبْلَ نُزُولِ الْحُدُودِ.

L36726 Qatadah said: Muhammad ibn Sirin narrated to me that this occurred before the revelation of the divinely ordained penalties.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: لَمْ نُخَالِفْهُمْ قَطُّ فِي أَنَّ الْمُثْلَةَ لَا تَحِلُّ، لَكِنْ قُلْنَا: إنَّهُ لَا مُثْلَةَ إلَّا مَا حَرَّمَ اللَّهُ عَزَّ وَجَلَّ وَأَمَّا مَا أَمَرَ بِهِ عَزَّ وَجَلَّ لَيْسَ مُثْلَةً.

L36727 Abu Muhammad—may Allah be pleased with him—said: We have never disagreed with them that mutilation is impermissible. However, we said: Indeed, there is no mutilation except what Allah, the Mighty and Majestic, has prohibited. As for what He, the Mighty and Majestic, has commanded, it is not mutilation.

لَيْتَ شِعْرِي: مَا الْفَرْقُ عِنْدَ هَؤُلَاءِ الْقَوْمِ، بَيْنَ مَنْ قَتَلَ عَامِدًا ظَالِمًا بِالْحِجَارَةِ فَقُتِلَ هُوَ كَذَلِكَ؟ فَقَالُوا: هَذِهِ مُثْلَةٌ؟ وَبَيْنَ مَنْ زَنَى وَهُوَ مُحْصَنٌ فَقُتِلَ بِالْحِجَارَةِ؟ فَقَالُوا: لَيْسَ هُوَ مُثْلَةً، أَلَا يَسْتَحِي ذُو دِينٍ مِنْ هَذَا الْكَلَامِ الظَّاهِرِ فَسَادُهُ؟ فَإِنْ قَالُوا: إنَّ اللَّهَ عَزَّ وَجَلَّ أَمَرَ بِالرَّجْمِ فِي الزِّنَى، وَالْإِحْصَانِ، وَرَجَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L36728 I wish I knew: What is the difference according to these people between one who intentionally and unjustly kills with stones and is killed similarly? They say, "Is this mutilation?" And between one who commits adultery when he is a muḥṣan (a chaste married person) and is stoned to death? They say, "This is not mutilation." Shouldn't a person of religion feel ashamed of this speech whose evident corruption is apparent? If they say: "Allah Almighty commanded stoning for adultery when one is a muḥṣan, and the Messenger of Allah (peace be upon him) carried out stoning."

قُلْنَا: وَاَللَّهُ سُبْحَانَهُ وَتَعَالَى أَمَرَ بِالِاعْتِدَاءِ عَلَى الْمُعْتَدِي بِمِثْلِ مَا اعْتَدَى بِهِ، وَبِالْمُعَاقَبَةِ بِمِثْلِ مَا عُوقِبَ بِهِ ظَالِمًا - وَقَتَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالشَّدْخِ بِالْحَجَرِ مَنْ قَتَلَ ظَالِمًا كَذَلِكَ، فَهَلْ مِنْ فَرْقٍ؟

L36729 We said: Allah, glorified and exalted, has commanded retaliation against the aggressor equivalent to his aggression, and to punish him equivalently for his wrongful act. The Messenger of Allah—peace be upon him—killed by crushing with a stone one who had killed an oppressor using the same method. Is there any difference?

وَلَيْتَ شِعْرِي: عَلَى مَا يَعْهَدُ النَّاسُ أَيَكُونُ مُثْلَةً أَعْظَمَ مِنْ قَطْعِ الْيَدِ وَالرِّجْلِ مِنْ خِلَافٍ، وَفَقْءِ الْعَيْنَيْنِ، وَجَدْعِ الْأَنْفِ، وَالْأُذُنَيْنِ، وَبَرْدِ الْأَسْنَانِ، وَقَطْعِ الشَّفَتَيْنِ -

L36730–36731 I wish I knew: Upon what do people consider that there could be a greater punitive mutilation than amputating the hand and foot from opposite limbs (such as the right hand and left foot), gouging out both eyes, severing the nose and ears, grinding down the teeth, and cutting off the lips - while they concur with us that all these punishments must be imposed on anyone who

unjustly commits such acts against another? Would it not be more appropriate if they relinquished arbitrary judgments? They have indeed asserted: If a brigand has his hand and foot amputated from opposite sides, then resumes brigandage afterward, neither his remaining hand nor his other foot is to be amputated.

وَهُمْ مُوَافِقُونَ لَنَا عَلَى أَنَّ كُلَّ ذَلِكَ وَاجِبٌ أَنْ يُفْعَلَ بِمَنْ فَعَلَهُ بِغَيْرِهِ ظَالِمًا، فَلَوْ تَرَكُوا التَّحَكُّمَ لَكَانَ أَوْلَى؟ وَلَقَدْ قَالُوا: إِنَّ مَنْ قَطَعَ الطَّرِيقَ فَقُطِعَتْ يَدُهُ وَرِجْلُهُ مِنْ خِلَافٍ، فَإِنْ قَطَعَ بَعْدَ ذَلِكَ الطَّرِيقَ لَمْ تُقْطَعْ يَدُهُ الثَّانِيَةُ وَلَا رِجْلُهُ.

L36732 We assert that they hold the following view: "Whoever cuts off another's hand and leg - his hand and leg must be cut off." If they say this, their inconsistency is exposed; but if they do not say it, they further entrench themselves in falsehood and obstruct the truth.

وَنَظُنُّ أَنَّهُمْ يَقُولُونَ: إِنَّهُ مَنْ قَطَعَ يَدَ آخَرَ وَرِجْلَهُ: أَنَّهُ تُقْطَعُ يَدُهُ وَرِجْلُهُ فَإِنْ قَالُوا ذَلِكَ، لَاحَ تَنَاقُضُهُمْ، وَإِنْ لَمْ يَقُولُوهُ زَادُوا فِي الْبَاطِلِ وَمَنْعِ الْحَقِّ.

L36733 As for the statement of Ibn Sirīn—"This was before the revelation of the hudud"—it is mistaken, and the words of one who neither witnessed those historical events nor mentioned that someone who had witnessed them had informed him are baseless.

؟ وَأَمَّا قَوْلُ ابْنِ سِيرِينَ: كَانَ ذَلِكَ قَبْلَ نُزُولِ الْحُدُودِ خَطَأً، وَكَلَامُ مَنْ لَمْ يَحْضُرْ تِلْكَ الْمَشَاهِدَ، وَلَا ذَكَرَ أَنَّهُ أَخْبَرَهُ مَنْ شَهِدَهَا: فَهُوَ لَا شَيْءَ.

L36734 The narration of Anas, which they deceptively cited, states that the Messenger of Allah—peace and blessings be upon him—never delivered a sermon without prohibiting mutilation. This constitutes the strongest argument against their falsehood that it abrogates his action—peace and blessings be upon him—regarding those who killed the shepherds. For Anas accompanied the Messenger of Allah—peace and blessings be upon him—and remained as his servant from the time he—peace be upon him—entered Medina until his death—peace and blessings be upon him. Thus, it is established with absolute, decisive certainty beyond doubt that Anas heard his sermon—peace and blessings be upon him—and his prohibition of mutilation prior to his action—peace and blessings be upon him—against those who killed the shepherds. Consequently, it becomes impossible for the earlier to abrogate the later. By Allah, verily striking the neck with a sword is the gravest form of mutilation—we witnessed it ourselves and saw it as a horrifying spectacle, as if the body were a torso with four severed limbs.

وَحَدِيثُ أَنَسٍ الَّذِي مَوَّهُوا بِهِ لَمْ يُسْمَعْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ يَخْطُبُ إِلَّا نَهَى عَنْ الْمُثْلَةِ أَعْظَمُ حُجَّةً عَلَيْهِمْ فِي كَذِبِهِمْ أَنَّهُ نَاسِخٌ لِفِعْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالَّذِينَ قَتَلُوا الرِّعَاءَ، لِأَنَّ أَنَسًا صَحِبَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَازَمَهُ خَادِمًا لَهُ مِنْ حِينِ قَدِمَ - عَلَيْهِ السَّلَامُ - الْمَدِينَةَ إلَى حِينِ مَوْتِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَصَحَّ يَقِينًا قَطْعًا بِلَا شَكٍّ أَنَّهُ سَمِعَ أَنَسٌ خُطْبَتَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَنَهْيَهُ عَنْ الْمُثْلَةِ قَبْلَ فِعْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالَّذِينَ قَتَلُوا الرِّعَاءَ - فَبَطَلَ ضَرُورَةً أَنْ يَكُونَ الْمُتَقَدِّمُ نَاسِخًا لِلْمُتَأَخِّرِ، وَبِاَللَّهِ إنَّ ضَرْبَ الْعُنُقِ بِالسَّيْفِ لَأَعْظَمُ مُثْلَةً - وَلَقَدْ شَاهَدْنَاهُ فَرَأَيْنَاهُ مَنْظَرًا وَحْشًا، وَكَأَنَّهُ جَسَدٌ بِأَرْبَعَةِ أَنْخَاذٍ.

L36735 The invalidity of their argument based on mutilation is now evident and confirmed, for all that he (peace and blessings be upon him) commanded does not constitute mutilation. Rather, mutilation arises solely from overstepping what Allah the Exalted has prohibited, and nothing beyond that.

فَظَهَرَ فَسَادُ احْتِجَاجِهِمْ بِالْمُثْلَةِ - وَصَحَّ أَنَّ كُلَّ مَا أَمَرَ بِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَلَيْسَ هُوَ مُثْلَةً، إنَّمَا الْمُثْلَةُ مِنْ فِعْلِ مَا نَهَاهُ اللَّهُ تَعَالَى عَنْهُ مُتَعَدِّيًا وَلَا مَزِيدَ.

L36736–36738 As for their statement: “Indeed, in the narration of Ayyūb: ’The Messenger of Allah—peace and blessings be upon him—ordered him, so he was stoned with stones until he died,”’ there is no doubt, nor disagreement, that all these narrations pertain to a single incident, in a single context, regarding a single individual. The narration of Ayyūb from Abū Qilābah from Anas states: “He ordered him, so he was stoned until he died.” The narration of Shu‘bah from Hishām ibn Zayd from Anas states: “He ordered him, so his head was crushed between two stones.” The narration of Hammām from Qatādah from Anas states: “The Messenger of Allah—peace and blessings be upon him—ordered that his head be crushed between the stones.” Narrations concerning a single ruling: If his head is crushed between two stones, thus it is confirmed he was crushed with stones, and his head was stoned until he died.

وَأَمَّا قَوْلُهُمْ: إنَّ فِي رِوَايَةِ أَيُّوبَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِهِ فَرُجِمَ بِالْحِجَارَةِ حَتَّى مَاتَ» فَلَا شَكَّ، وَلَا خِلَافَ، فِي أَنَّ تِلْكَ الرِّوَايَاتِ كُلَّهَا هِيَ فِي قِصَّةٍ وَاحِدَةٍ، فِي مَقَامٍ وَاحِدٍ، فِي إنْسَانٍ وَاحِدٍ، فَقَوْلُ أَيُّوبَ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسٍ: «فَأَمَرَ بِهِ فَرُجِمَ حَتَّى مَاتَ.» وَقَوْلُ شُعْبَةَ عَنْ هِشَامِ بْنِ زَيْدٍ عَنْ أَنَسٍ: «فَأَمَرَ بِهِ فَرُضَّ رَأْسُهُ بَيْنَ حَجَرَيْنِ.» وَقَوْلُ هَمَّامٍ عَنْ قَتَادَةَ عَنْ أَنَسٍ: «فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تُرَضَّ رَأْسُهُ بَيْنَ الْحِجَارَةِ:» أَخْبَارٌ عَنْ عَمَلٍ وَاحِدٍ، وَإِذَا رُضَّ رَأْسُهُ بَيْنَ حَجَرَيْنِ فَقَدْ رُضَّ بِالْحِجَارَةِ، وَقَدْ رُجِمَ رَأْسُهُ حَتَّى مَاتَ.

L36739 Thus, their reliance on discrepancies in the narrators’ wordings is invalid, for all of them are one meaning—and all praise is due to Allah, the Exalted—and all are trustworthy. This is merely a pretext to oppose the Messenger of Allah, peace be upon him, through falsehood.

فَبَطَلَ تَعَلُّقُهُمْ بِاخْتِلَافِ أَلْفَاظِ الرُّوَاةِ، إذْ كُلُّهَا مَعْنًى وَاحِدٌ - وَلِلَّهِ تَعَالَى الْحَمْدُ - وَكُلُّهُمْ ثِقَةٌ، وَإِنَّمَا هَذَا تَعَلُّلٌ فِي مُخَالَفَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْبَاطِلِ.

L36740 They also cited as evidence what was reported through the chain of Abu Dawud: Muslim ibn Ibrahim from Shu’bah from Khalid al-Hadhdha’ from Abu Qilabah from Abu al-Ash’ath from Shaddad ibn Aws, who said: “Two traits I heard from the Messenger of Allah (peace and blessings of Allah be upon him): ’Allah has ordained proficiency upon all things. When you kill, kill in the best manner; when you slaughter, slaughter in the best manner. Let each of you sharpen his blade and let him relieve his sacrificial animal.”’[34]

وَاحْتَجُّوا أَيْضًا بِمَا رُوِيَ مِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُسْلِمُ بْنُ إبْرَاهِيمَ أَنَا شُعْبَةُ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْأَشْعَثِ عَنْ شَدَّادِ بْنِ أَوْسٍ قَالَ: «خَصْلَتَانِ سَمِعْتُهُمَا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ اللَّهَ كَتَبَ الْإِحْسَانَ عَلَى كُلِّ شَيْءٍ فَإِذَا قَتَلْتُمْ فَأَحْسِنُوا الْقِتْلَةَ وَإِذَا ذَبَحْتُمْ فَأَحْسِنُوا الذِّبْحَ وَلْيُحِدَّ أَحَدُكُمْ شَفْرَتَهُ وَلْيُرِحْ ذَبِيحَتَهُ» .

L36741 Abu Muhammad—may Allah be pleased with him—said: “This is correct. The utmost perfection in execution methods is to kill the offender in the manner he committed murder—this being the essence of justice and fairness: {Violations are subject to fair retribution} [Al-Baqarah: 194]. As for one who strikes with a sword the neck of someone who killed another by strangulation, drowning, or skull-crushing, he has not perfected the execution method—rather, he has committed the gravest mishandling by opposing

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَا صَحِيحٌ، وَغَايَةُ الْإِحْسَانِ فِي الْقِتْلَةِ هُوَ أَنْ يَقْتُلَهُ بِمِثْلِ مَا قَتَلَ هُوَ - وَهَذَا هُوَ عَيْنُ الْعَدْلِ وَالْإِنْصَافِ {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] وَأَمَّا مَنْ ضَرَبَ بِالسَّيْفِ عُنُقَ مَنْ قَتَلَ آخَرَ خَنْقًا، أَوْ تَغْرِيقًا، أَوْ شَدْخًا، فَمَا أَحْسَنَ الْقِتْلَةَ، بَلْ إنَّهُ أَسَاءَهَا أَشَدَّ الْإِسَاءَةِ، إذْ خَالَفَ مَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ بِهِ، وَتَعَدَّى حُدُودَهُ، وَعَاقَبَ بِغَيْرِ مَا عُوقِبَ بِهِ وَلِيُّهُ، وَإِلَّا فَكُلُّهُ قَتْلٌ، وَمَا الْإِيقَافُ لِضَرْبِ

[34] **Hadith references (L36740):** Sunan an-Nasai 4412.

what Allah the Almighty commanded, transgressing His boundaries, and retaliating differently than what the victim's guardian suffered. Otherwise, all forms constitute killing. Carrying out execution by striking the neck with a sword is no less severe than suffocation or strangulation—indeed, one might not die from multiple successive strikes (a matter we have witnessed ourselves—we seek Allah's protection)—thus this narration stands as proof against them."[35]

الْعُنُقِ بِالسَّيْفِ بِأَهْوَنَ مِنْ الْغَمِّ، وَالْخَنْقِ، وَقَدْ لَا يَمُوتُ مِنْ عِدَّةِ ضَرَبَاتٍ وَاحِدَةٍ بَعْدَ أُخْرَى - هَذَا أَمْرٌ قَدْ شَاهَدْنَاهُ - وَنَسْأَلُ اللَّهَ الْعَافِيَةَ - فَعَادَ هَذَا الْخَبَرُ حُجَّةً عَلَيْهِمْ.

L36742 They cited as evidence what we narrated through the chain of Abu Dawud—Abu Dawud al-Tayalisi reported: I heard from Shu'bah, who heard from Hishām ibn Zayd, who heard from Anas, that he was with him, and he said: "The Messenger of Allah—peace and blessings be upon him—forbade restraining livestock."

وَاحْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد أَنَا أَبُو دَاوُد الطَّيَالِسِيُّ أَنَا شُعْبَةُ عَنْ هِشَامِ بْنِ زَيْدٍ عَنْ أَنَسٍ: أَنَّهُ كَانَ مَعَهُ فَقَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَنْ تُصْبَرَ الْبَهَائِمُ» .

L36743 Abū Muḥammad—may Allah be pleased with him—said: This is among the strange deceptions they embellished. When we differ from them regarding their assertion that wanton interference with animals or other than animals is impermissible, is it not that they only obscure by claiming to argue while producing nothing except what they were forbidden?

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا مِنْ طَرِيفِ مَا مَوَّهُوا بِهِ - وَمَتَى خَالَفْنَاهُمْ فِي أَنَّ الْعَبَثَ بِالْبَهَائِمِ، وَبِغَيْرِ الْبَهَائِمِ لَا يَحِلُّ، إنَّمَا بِهِمْ أَنْ يُمَوِّهُوا أَنَّهُمْ يَحْتَجُّونَ وَهُمْ لَا يَأْتُونَ إلَّا بِمَا نُهُوا عَنْهُ؟ .

L36744–36746 As for falsehood—indeed, restraining animals is impermissible except where Allah the Exalted has commanded it regarding slaughtering. Slaughtering, shooting with arrows and spears at scattered game, releasing dogs, and using birds of prey—all of this is permissible and commendable by the consensus of both our jurists and theirs.

وَأَمَّا بِالْبَاطِلِ - نَعَمْ، صَبْرُ الْبَهَائِمِ لَا يَحِلُّ، إلَّا حَيْثُ أَمَرَ اللَّهُ تَعَالَى بِهِ مِنْ الذَّبْحِ، وَالنَّحْرِ وَالرَّمْيِ فِيمَا شَرَدَ بِالنَّبْلِ، وَالرِّمَاحِ، وَإِرْسَالِ الْكِلَابِ، وَسِبَاعِ الطَّيْرِ عَلَيْهَا - فَهَذَا كُلُّهُ حَلَالٌ حَسَنٌ بِإِجْمَاعٍ مِنَّا وَمِنْهُمْ.

L36747 Similarly, it is impermissible to commit wanton harm against a human being. If he commits such harm unjustly, retaliation (qisas) equivalent to his act is exacted from him—and this is a rightful and just obligation. The entire astonishment lies in the fact that beheading is undoubtedly a form of execution (ṣabr), while crucifixion is the most abhorrent form of execution. Yet they are aware of all this! If they were to return to the truth, it would be far more appropriate for them.

وَكَذَلِكَ لَا يَحِلُّ الْعَبَثُ بِابْنِ آدَمَ، فَإِذَا عَبِثَ هُوَ ظَالِمًا: اُقْتُصَّ مِنْهُ بِمِثْلِ فِعْلِهِ - وَكَانَ حَقًّا وَعَدْلًا؛ وَالْعَجَبُ كُلُّهُ أَنَّ ضَرْبَ الْعُنُقِ صَبْرٌ بِلَا شَكٍّ، وَالصَّلْبُ أَشْنَعُ الصَّبْرِ، وَهُمْ يَرَوْنَ كُلَّ ذَلِكَ، فَلَوْ رَاجَعُوا الْحَقَّ لَكَانَ أَوْلَى بِهِمْ.

L36748 Similarly, the ruling applies to what they have obscured from what we nar-

[35] **Qur'an references (L36741):** Qur'an 2:194 (Al-Baqarah).

rated through the chain of ʿAbd Allāh ibn Wahb: ʿAmr ibn al-Ḥārith reported to me from Bukayr ibn al-Ashajj from Yaʿlā, who said: "We raided with ʿAbd al-Raḥmān ibn Khālid ibn al-Walīd, and Abū Ayyūb al-Anṣārī said: I heard the Messenger of Allah—peace and blessings be upon him and his family—prohibit killing by confinement until death." They mentioned what we narrated through the chain of Abū Dāwūd: Saʿīd ibn Manṣūr reported to us, al-Mughīrah ibn ʿAbd al-Raḥmān al-Ḥidhāmī reported to us from Abū al-Zināد: Muḥammad ibn Ḥamzah al-Aslamī reported to me from his father: "The Messenger of Allah—peace and blessings be upon him and his family—put him in charge of an expedition and said: If you find so-and-so, kill him but do not burn him, for none may punish with fire except the Lord of the Fire."[36]

وَهَكَذَا الْقَوْلُ فِيمَا مَوَّهُوا بِهِ مِمَّا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ وَهْبٍ: أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ يَعْلَى قَالَ: «غَزَوْنَا مَعَ عَبْدِ الرَّحْمَنِ بْنِ خَالِدِ بْنِ الْوَلِيدِ فَقَالَ أَبُو أَيُّوبَ الْأَنْصَارِيُّ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَنْهَى عَنْ قَتْلِ الصَّبْرِ.» وَذَكَرُوا - مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا سَعِيدُ بْنُ مَنْصُورٍ نا الْمُغِيرَةُ بْنُ عَبْدِ الرَّحْمَنِ الْحِزَامِيُّ عَنْ أَبِي الزِّنَادِ حَدَّثَنِي مُحَمَّدُ بْنُ حَمْزَةَ الْأَسْلَمِيُّ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَمَّرَهُ عَلَى سَرِيَّةٍ وَقَالَ: إنْ وَجَدْتُمْ فُلَانًا فَاقْتُلُوهُ وَلَا تُحَرِّقُوهُ، فَإِنَّهُ لَا يُعَذِّبُ بِالنَّارِ إلَّا رَبُّ النَّارِ» .

We have also narrated it—through the route of Abū Dāwūd: I, Qutaybah ibn Saʿīd, narrate that al-Layth ibn Saʿd narrated to them from Bukayr ibn al-Ashajj, from Sulaymān ibn Yasār, from Abū Hurayrah, from the Messenger of Allah—peace and blessings be upon him and his family.

L36749

وَرُوِّينَاهُ أَيْضًا - مِنْ طَرِيقِ أَبِي دَاوُد أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ: أَنَّ اللَّيْثَ بْنَ سَعْدٍ حَدَّثَهُمْ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

Abū Muḥammad—may Allāh be pleased with him—said: This is authentic, and it is not permissible to burn anyone with fire as an initial punishment. Only when a person commits what Allāh the Exalted has forbidden does retaliation equivalent to his act become obligatory, as Allāh, the Mighty and Majestic, has commanded.

L36750

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَا صَحِيحٌ، وَلَا يَحِلُّ أَنْ يُحْرَقَ أَحَدٌ بِالنَّارِ ابْتِدَاءً، حَتَّى إذَا فَعَلَ الْمَرْءُ مِنْ ذَلِكَ مَا حَرَّمَهُ اللَّهُ تَعَالَى عَلَيْهِ: وَجَبَ الْقِصَاصُ عَلَيْهِ بِمِثْلِ مَا فَعَلَ، كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ.

They mentioned, what was narrated to us through the chain of Shuʿbah from ʿAdī ibn Thābit from Saʿīd ibn Jubayr from Ibn ʿAbbās: that the Prophet—peace and blessings of God be upon him and his family—said, "Do not take anything possessing a soul as a target."

L36751

وَذَكَرُوا - مَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ عَدِيِّ بْنِ ثَابِتٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «لَا تَتَّخِذُوا شَيْئًا فِيهِ الرُّوحُ غَرَضًا» .

Through the chain of Muslim: From Abu Kamil, from Abu Awanah, from Abu Bashir, from Sa'id ibn Jubayr, who said: "Ibn Umar passed by people who had set up a hen as a target they were shooting at. Ibn Umar said: 'Allah has cursed whoever does this, for the Messenger of Allah—peace be

L36752–36753

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو كَامِلٍ أَنَا أَبُو عَوَانَةَ عَنْ أَبِي بِشْرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ «مَرَّ ابْنُ عُمَرَ بِنَفَرٍ قَدْ نَصَبُوا دَجَاجَةً يَرْمُونَهَا؟ فَقَالَ ابْنُ عُمَرَ: لَعَنَ اللَّهُ مَنْ فَعَلَ هَذَا،

[36] **Hadith references (L36748):** Sunan Abi Dawud 2673.

upon him and his family—said: "Allah has cursed whoever uses a living being as a target.""

إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: لَعَنَ اللَّهُ مَنْ اتَّخَذَ شَيْئًا فِيهِ الرُّوحُ غَرَضًا» .

L36754 Abu Muhammad (may Allah be pleased with him) said: "We hold that Allah curses whoever takes any living being as a target, except where Allah the Exalted has commanded it – as in legal retribution (qisas). Thus, whoever merits Allah's curse for performing this act and for aggressing against the creature through the same transgression he committed (while they agree with us regarding shooting enemies with arrows and catapults, and using them as targets) – this exception falls outside what Allah's Messenger (peace be upon him) prohibited."

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: وَنَحْنُ نَقُولُ: لَعَنَ اللَّهُ مَنْ اتَّخَذَ شَيْئًا فِيهِ الرُّوحُ غَرَضًا إِلَّا حَيْثُ أَمَرَ اللَّهُ تَعَالَى بِهِ مِنْ الْقِصَاصِ، فَمَنْ اسْتَحَقَّ لَعْنَةَ اللَّهِ لِفِعْلِهِ ذَلِكَ، وَالِاعْتِدَاءِ عَلَيْهِ بِمِثْلِ مَا اعْتَدَى هُوَ بِهِ - وَهُمْ يُوَافِقُونَنَا فِي رَمْيِ الْعَدُوِّ بِالنَّبْلِ، وَالْمَجَانِيقِ، وَاتِّخَاذِهِمْ غَرَضًا - وَهَذَا خَارِجٌ عَنْ مَا نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L36755 Such is the ruling regarding what is established from the Messenger of Allah—peace and blessings be upon him—that he prohibited killing any creature by confinement. We know that slaughtering camels by nahr, slaughtering animals by dhabh, and execution by the sword in legal retribution all constitute forms of killing through restraint. Yet all these are excluded from the prohibited confinement forbidden by him. Likewise, all other forms of divinely ordained legal retribution follow this ruling, and there is no distinction.

هَكَذَا الْقَوْلُ فِيمَا ثَبَتَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ نَهَى أَنْ يُقْتَلَ شَيْءٌ مِنْ الدَّوَابِّ صَبْرًا - وَقَدْ عَلِمْنَا: أَنَّ نَحْرَ الْإِبِلِ، وَذَبْحَ الْحَيَوَانِ، وَالْقَتْلَ بِالسَّيْفِ فِي الْقِصَاصِ: كُلُّ ذَلِكَ قَتْلُ صَبْرٍ، وَكُلُّ ذَلِكَ خَارِجٌ عَنْ قَتْلِ الصَّبْرِ الْمَنْهِيِّ عَنْهُ وَهَكَذَا سَائِرُ وُجُوهِ الْقِصَاصِ الَّتِي أَمَرَ اللَّهُ تَعَالَى بِهِ، وَلَا فَرْقَ.

L36756 They mentioned: as narrated to us via the chain of Abū Dāwūd - Ziyād ibn Ayyūb narrated to us, Hushaym narrated to us from Simāk, from Ibrāhīm, from Hanī' ibn Nuwayrah, from 'Alqamah, from Ibn Mas'ūd, who said: The Messenger of Allāh, peace and blessings be upon him, said, "The most scrupulous in killing are the people of faith."

وَذَكَرُوا - مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا زِيَادُ بْنُ أَيُّوبَ أَنَا هُشَيْمٌ عَنْ سِمَاكٍ عَنْ إبْرَاهِيمَ عَنْ هَنِيءِ بْنِ نُوَيْرَةَ عَنْ عَلْقَمَةَ عَنْ ابْنِ مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَعَفُّ النَّاسِ قِتْلَةً أَهْلُ الْإِيمَانِ» .

L36757 Abū Muḥammad—may Allāh be pleased with him—said: Even if the wording of this is unsound, it contains [mention of] Hanī' ibn Nuwayrah—who is unknown—yet its meaning is valid. No killing is more excusable than that of one who, after killing as Allāh the Almighty commanded, then transgresses against the legal guardian of the one against whom retaliation was sought by committing injustice equivalent to what that retaliated-against party had committed. Nor is there ever a more excusable killing than one who strikes the neck of someone whose own legal guardian's neck was not struck. Rather,

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: هَذَا وَإِنْ لَمْ يَصِحَّ لَفْظُهُ، فَإِنَّ فِيهِ هَنِيءَ بْنَ نُوَيْرَةَ - وَهُوَ مَجْهُولٌ - فَمَعْنَاهُ صَحِيحٌ، وَلَا أَعَفَّ قِتْلَةً مِمَّنْ قَتَلَ كَمَا أَمَرَهُ اللَّهُ عَزَّ وَجَلَّ فَاعْتَدَى بِمِثْلِ مَا اعْتَدَى الْمُقْتَصُّ مِنْهُ عَلَى وَلِيِّهِ ظُلْمًا، وَمَا أَعَفَّ قَطُّ فِي قِتْلَةٍ مَنْ ضَرَبَ عُنُقَ مَنْ لَمْ يَضْرِبْ عُنُقَ وَلِيِّهِ، بَلْ هُوَ مُعْتَدٍ، ظَالِمٌ، فَاعِلٌ مَا لَمْ يُبِحْهُ اللَّهُ تَعَالَى قَطُّ.

such a killer is a transgressor, an oppressor, committing what Allāh the Exalted has never permitted at all.

L36758–36760 They also adulterated [the narration] with what was transmitted to us through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: I am Ḥajjāj ibn al-Minhāl, I am Ṣāliḥ al-Murrī, from Sulaymān al-Taymī, from Abu ʿUthmān, from Abu Hurayrah: "That the Messenger of..." Allah's Messenger (peace and blessings of Allah be upon him) stood over Hamza (may Allah be pleased with him) when he was martyred, and he spoke words wherein he (upon him be peace and blessings) said: "By Allah, even so, I will surely mutilate seventy of them in your place." Then Gabriel (peace be upon him) descended while the Messenger of Allah (peace and blessings of Allah be upon him) remained standing, with the concluding verses of Surah An-Nahl: "And if you punish, then punish with the like of that with which you were punished" [16:126].[37]

وَمَوَّهُوا أَيْضًا - بِمَا رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنَ إِسْحَاقَ الْقَاضِي أَنَا حَجَّاجُ بْنُ الْمِنْهَالِ أَنَا صَالِحٌ الْمُرِّيُّ عَنْ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَبِي عُثْمَانَ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَفَ عَلَى حَمْزَةَ - رَضِيَ اللَّهُ عَنْهُ - حِينَ اسْتُشْهِدَ، فَذَكَرَ كَلَامًا - وَفِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ: وَاَللَّهِ، مَعَ ذَلِكَ، لَأُمَثِّلَنَّ بِسَبْعِينَ مِنْهُمْ مَكَانَكَ، فَنَزَلَ جِبْرِيلُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاقِفٌ بَعْدُ بِخَوَاتِيمِ سُورَةِ النَّحْلِ {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] » .

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا لَوْ صَحَّ وَلَمْ يَكُنْ مِنْ طَرِيقِ صَالِحٍ الْمُرِّيِّ، وَيَحْيَى الْحِمَّانِيُّ، وَأَمْثَالِهِمَا: لَكَانَ حُجَّةً لَنَا عَلَيْهِمْ؛ لِأَنَّ فِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَمَرَ أَنْ يُعَاقَبَ بِمِثْلِ مَا عُوقِبَ بِهِ - وَهَذِهِ إبَاحَةُ التَّمْثِيلِ بِمَنْ مَثَّلَ بِحَمْزَةَ - رَضِيَ اللَّهُ عَنْهُ - فَإِنَّمَا نَهَاهُ اللَّهُ عَزَّ وَجَلَّ عَنْ أَنْ يُمَثِّلَ بِسَبْعِينَ مِنْهُمْ لَمْ يُمَثِّلُوا بِحَمْزَةَ - وَهَذَا قَوْلُنَا لَا قَوْلُهُمْ.

L36761 Abū Muḥammad—may Allāh be pleased with him—said: Had this been authentic and not transmitted through the chain of Ṣāliḥ al-Murrī, Yaḥyā al-Ḥimmānī, and their like, it would have constituted proof for us against them. For it states that the Prophet—peace and blessings be upon him—commanded that one should retaliate with the equivalent of what the victim suffered. This permits retaliatory mutilation against whoever mutilated Ḥamzah—may Allāh be pleased with him. Allāh the Exalted only forbade the Prophet from mutilating seventy among them who had not mutilated Ḥamzah. This is our doctrine, not theirs.

L36762 Abu Muhammad—may Allah be pleased with him—said: They attempted to legitimize [their position] with a weak, fabricated narration—namely, the one reported through the chain of transmission of Asad ibn Musa from Sulayman ibn Hayyan from Yahya ibn Abi Unaysah from Abu al-Zubayr from Jabir: "The Prophet—peace and blessings be upon him—commanded that a waiting period of one year be observed in cases of injury."

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَمَوَّهُوا بِخَبَرٍ سَاقِطٍ مَوْضُوعٍ، وَهُوَ -: مَا رُوِيَ مِنْ طَرِيقِ أَسَدِ بْنِ مُوسَى عَنْ سُلَيْمَانَ بْنِ حَيَّانَ عَنْ يَحْيَى بْنِ أَبِي أُنَيْسَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ أَنْ يُسْتَأْنَى بِالْجِرَاحِ سَنَةً» .

L36763 An Asad is weak [in hadith narration], and Yahya ibn Abi Unaysah is a liar.

وَأَسَدٌ ضَعِيفٌ، وَيَحْيَى بْنُ أَبِي أُنَيْسَةَ كَذَّابٌ.

L36764 Then they are the first to oppose this report, for they do not recognize

[37] **Qur'an references (L36758):** Qur'an 16:126 (An-Nahl).

retaliation for wounds requiring a year's recovery. How could any Muslim, or person of integrity, deem it permissible to cite something they are first to invalidate - being foremost in rejecting its implementation? Consider the ḥadīth transmitted through Ibn al-Mubārak's chain from 'Anbasah ibn Sa'īd, from al-Sha'bī, from Jābir, from the Prophet - peace and blessings of Allah be upon him: "Retaliation is not enforced for a wound until it heals."

ثُمَّ هُمْ أَوَّلُ مُخَالِفٍ لِهَذَا الْخَبَرِ، لِأَنَّهُمْ لَا يَرَوْنَ الِاسْتِيفَاءَ بِالْجِرَاحِ سَنَةً، فَكَيْفَ يَسْتَحِلُّ مُسْلِمٌ، أَوْ مَنْ لَهُ حَيَاءٌ: أَنْ يَحْتَجَّ بِشَيْءٍ هُوَ أَوَّلُ مُبْطِلٍ لَهُ، وَأَوَّلُ مَنْ لَا يَرَى الْعَمَلَ بِمَا فِيهِ؟ وَبِحَدِيثٍ مِنْ طَرِيقِ ابْنِ الْمُبَارَكِ عَنْ عَنْبَسَةَ بْنِ سَعِيدٍ عَنْ الشَّعْبِيِّ عَنْ جَابِرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يُسْتَقَادُ مِنْ الْجُرْحِ حَتَّى يَبْرَأَ» .

L36765 Abu Muhammad (may Allah be pleased with him) said: This is invalid because this ʿAnbasah is unknown - he is not ʿAnbasah ibn Saʿid ibn al-ʿAs, for Ibn al-Mubarak did not meet him. Rather, the contrary of this is authentically established from the Prophet (peace and blessings be upon him).

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا بَاطِلٌ، لِأَنَّ عَنْبَسَةَ هَذَا مَجْهُولٌ - وَلَيْسَ هُوَ عَنْبَسَةُ بْنُ سَعِيدِ بْنِ الْعَاصِ، لِأَنَّ ابْنَ الْمُبَارَكِ لَمْ يُدْرِكْهُ، بَلْ قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خِلَافُ هَذَا.

L36766–36767 I, Ahmad ibn Muhammad ibn al-Jasur, said: Wahb ibn Masarrah reported to us: Ibn Waddah reported to us: Abu Bakr ibn Abi Shaybah reported to us: Isma'il ibn Ulayyah reported to us from Ayyub al-Sakhtiyani from Amr ibn Dinar from Jabir ibn Abdullah, who said: "A man struck another man with a horn in his knee. The injured man came to the Prophet (peace be upon him) seeking retaliation. He was told: 'Wait until you recover.' But he refused, hastened to demand retaliation, and his leg became disabled. Meanwhile, the leg of the retaliated party healed. When he returned to the Prophet (peace be upon him), he was told: 'You have no right [to claim] now, for you refused [to wait].'"

كَمَا أَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ قَالَ: أَنَا وَهْبُ بْنُ مَسَرَّةَ نا ابْنُ وَضَّاحٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «إِنَّ رَجُلًا طَعَنَ رَجُلًا بِقَرْنٍ فِي رُكْبَتِهِ فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَسْتَقِيدُ؟ فَقِيلَ لَهُ: حَتَّى تَبْرَأَ، فَأَبَى وَعَجِلَ فَاسْتَقَادَ، فَعَنِتَتْ رِجْلُهُ وَبَرِئَتْ رِجْلُ الْمُسْتَقَادِ مِنْهُ، فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقِيلَ لَهُ: لَيْسَ لَك شَيْءٌ إنَّك أَبَيْتَ» .

L36768 It was established that hastening retaliation or delaying it is referred to the victim. These are the reports they deceptively presented.

فَصَحَّ أَنَّ تَعْجِيلَ الْقَوَدِ أَوْ تَأْخِيرَهُ إلَى الْمَجْنِيِّ عَلَيْهِ، فَهَذَا مَا مَوَّهُوا بِهِ مِنْ الْأَخْبَارِ.

L36769 They argued through analogical reasoning by stating: We find that if someone unintentionally severs another's hand, if the victim recovers, he is entitled to the diyah for the hand, but if he dies, he is entitled to the diyah for the life, and the ruling for the hand is nullified. Thus, should intentional acts be treated similarly by analogy to the unintentional act?

وَاحْتَجُّوا مِنْ طَرِيقِ النَّظَرِ بِأَنْ قَالُوا: وَجَدْنَا مَنْ قَطَعَ يَدَ آخَرَ خَطَأً أَنَّهُ إنْ بَرِئَ فَلَهُ دِيَةُ الْيَدِ، وَإِنْ مَاتَ فَلَهُ دِيَةُ النَّفْسِ وَيَسْقُطُ حُكْمُ الْيَدِ، فَوَجَبَ أَنْ يَكُونَ الْعَمْدُ كَذَلِكَ قِيَاسًا عَلَى الْخَطَأِ؟ قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ الْقِيَاسَ عِنْدَ الْقَائِلِينَ بِهِ لَا يَجُوزُ إلَّا عَلَى نَظِيرِهِ، لَا عَلَى خِلَافِهِ وَضِدِّهِ، وَالْعَمْدُ ضِدُّ الْخَطَأِ، فَلَا يَجُوزُ أَنْ يُقَاسَ عَلَيْهِ عِنْدَ مَنْ يَقُولُ بِالْقِيَاسِ،

Abū Muḥammad—may Allāh be pleased with him—responded: All analogical reasoning is invalid. Even if it were valid, this would be invalid in its very essence, for analogical reasoning—according to its proponents—is only

permissible when applied to equivalent cases, not to their opposites or contradictions. The intentional act is the opposite of the unintentional act, so it cannot be analogized to it according to those who accept analogical reasoning—how can this be, when all analogical reasoning is invalid?

They argued further: By your logic, if someone shoots another with an arrow and kills him, you must shoot him with an arrow. If he does not die, shoot him again, and so on. Similarly, if he inflicts a fatal wound, you must repeatedly inflict fatal wounds until he dies—this exceeds the original act. And this is not permissible?

We replied: This is a corrupt distortion and an absurd argument. Rather, he is struck with an identical arrow in the precise spot where his own arrow wrongfully struck, until he dies. Likewise, he is inflicted with a fatal wound certain to cause death—there is absolutely no distinction.

L36770 Then we reverse this question upon them by saying: If a sword is swung at his neck but does not sever it, or severs it partially and is then struck repeatedly - and this is more severe than your assertion and more possible - it remains an observable matter that occurs very frequently.

L36771–36772 They said: "What do you think if he were to turn his back to it with the strings?" We replied: "He would turn his back to it with the same [strings], and that is not difficult for Allah."

L36773 They said: "What if he engages in intercourse with him until death?" We replied: "He must be compelled to turn away [from the act] with a stake until death, for its equivalent is forbidden to him—and success is from Allah, the Most High."

L36774–36775 A Chapter on Quasi-Intentional Acts: The Concept of Intentional Error.

L36776 Abu Muhammad—may Allah be pleased with him—said: We have previously mentioned this matter but did not clarify the corruption of the reports they embellished, and the three schools—the Malikis, Hanafis, and Shafi'is—contradict one another regarding them. Therefore, it is imperative that we

فَكَيْفَ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ؟ وَقَالُوا: يَلْزَمُكُمْ إِنْ رَمَى إِنْسَانٌ آخَرَ بِسَهْمٍ فَقَتَلَهُ أَنْ تَرْمُوهُ بِسَهْمٍ، فَإِنْ لَمْ يَمُتْ فَبِآخَرَ، ثُمَّ بِآخَرَ - وَكَذَلِكَ إِنْ أَجَافَهُ أَنْ يُوَالِيَ عَلَيْهِ بِالْجَوَائِفِ حَتَّى يَمُوتَ - وَهَذَا أَكْثَرُ مِمَّا فَعَلَ، وَهَذَا لَا يَجُوزُ؟ فَقُلْنَا: هَذَا تَمْوِيهٌ فَاسِدٌ، وَكَلَامٌ مُحَالٌ، بَلْ يُطْعَنُ بِسَهْمٍ مِثْلِهِ، فِي الْمَوْضِعِ الَّذِي صَادَفَ فِيهِ سَهْمُهُ ظُلْمًا حَتَّى يَمُوتَ، وَكَذَلِكَ يُجَافُ بِجَائِفَةٍ مُوقَنٌ أَنَّهُ يَمُوتُ مِنْهَا - وَلَا فَرْقَ.

ثُمَّ نَعْكِسُ عَلَيْهِمْ هَذَا السُّؤَالَ، فَنَقُولُ لَهُمْ: إِنْ ضُرِبَ بِالسَّيْفِ فِي عُنُقِهِ فَلَمْ يَقْطَعْ، أَوْ قَطَعَ قَلِيلًا فَأُعِيدَ عَلَيْهِ مِرَارًا - وَهَذَا أَشَدُّ مِمَّا قُلْتُمْ وَأَمْكَنُ - فَهُوَ أَمْرٌ مُشَاهَدٌ يَقَعُ كَثِيرًا جِدًّا.

وَقَالُوا: أَرَأَيْتُمْ إِنْ اسْتَدْبَرَهُ بِالْأَوْتَارِ؟ فَقُلْنَا: يَسْتَدْبِرُهُ بِمِثْلِهَا، وَمَا ذَلِكَ عَلَى اللَّهِ بِعَزِيزٍ.

فَقَالُوا: فَإِنْ نَكَحَهُ حَتَّى يَمُوتَ؟ قُلْنَا: يَسْتَدْبِرُهُ بِوَتَدٍ حَتَّى يَمُوتَ؛ لِأَنَّ الْمِثْلَ مُحَرَّمٌ عَلَيْهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[بَابٌ مِنَ الْكَلَامِ فِي شِبْهِ الْعَمْدِ وَهُوَ عَمْدُ الْخَطَأِ]

address this omission, as we have done in other matters. And success is from Allah, the Most High.

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: وَقَدْ ذَكَرْنَاهُ قَبْلُ وَلَمْ نُوَضِّحْ فَسَادَ الْأَخْبَارِ الَّتِي مَوَّهُوا بِهَا، وَتُنَاقِضُ الطَّوَائِفُ الثَّلَاثُ الْمَالِكِيِّينَ، وَالْحَنَفِيِّينَ، وَالشَّافِعِيِّينَ فِيهَا؛ فَوَجَبَ أَنْ نَسْتَدْرِكَ ذَلِكَ، كَمَا فَعَلْنَا فِي سَائِرِ الْمَسَائِلِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L36777 Abu Muhammad said: The Hanafis and Shafi'is—those who uphold the doctrine of deliberate acts classified as error—raised vehement objections based on what we transmitted through the chain of Shuʿbah and Sufyān al-Thawrī, both of whom narrated from Jābir al-Juʿfī, from Abū ʿĀzib, from al-Nuʿmān ibn Bashīr, who said: The Messenger of Allah—peace and blessings of Allah be upon him—declared, "Every act is [considered] a mistake except intentional acts of the sword, and for every mistake there is compensation (arsh) for injury."

قَالَ أَبُو مُحَمَّد: شَغَبَ الْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ، الْقَائِلُونَ بِعَمْدِ الْخَطَأِ -: بِمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ، وَسُفْيَانَ الثَّوْرِيِّ، كِلَاهُمَا عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ أَبِي عَازِبٍ عَنْ النُّعْمَانِ بْنِ بَشِيرٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَيْءٍ خَطَأٌ إلَّا السَّيْفَ، وَفِي كُلِّ خَطَأٍ أَرْشٌ» .

L36778 Abu Muhammad—may Allah be pleased with him—said: "Jābir al-Juʿfī is a liar. The first to testify against him for lying was Abū Ḥanīfah. Yet Abū Ḥanīfah's companions disregarded this, invoking his narrations as proof wherever they desired. The greatest astonishment is that the Ḥanafīs and Shāfiʿīs oppose this report and disobey it."

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: جَابِرٌ الْجُعْفِيُّ كَذَّابٌ، وَأَوَّلُ مَنْ شَهِدَ عَلَيْهِ بِالْكَذِبِ أَبُو حَنِيفَةَ، ثُمَّ لَمْ يُبَالِ بِذَلِكَ أَصْحَابُهُ، فَاحْتَجُّوا بِرِوَايَتِهِ حَيْثُ اشْتَهَوْا، ثُمَّ الْعَجَبُ كُلُّهُ أَنَّ الْحَنَفِيِّينَ، وَالشَّافِعِيِّينَ: مُخَالِفُونَ لِهَذَا الْخَبَرِ، عَاصُونَ لَهُ.

L36779 The Shafiʿis hold that retaliation in intentional killing applies by any means that could similarly cause death. The Hanafis maintain that retaliation is due against one who slaughters with a sharpened cane blade, burns with fire, or strangles three times or more—all these methods do not involve killing by the sword. Who is more astray than one who cites evidence that itself first contradicts his own position!

فَالشَّافِعِيُّونَ: يَرَوْنَ الْقَوَدَ فِي الْعَمْدِ بِكُلِّ مَا يُمْكِنُ أَنْ يُمَاتَ مِنْ مِثْلِهِ، وَالْحَنَفِيُّونَ: يَرَوْنَ الْقَوَدَ عَلَى مَنْ ذَبَحَ بِلِيطَةِ الْقَصَبِ، وَعَلَى مَنْ أَحْرَقَ بِالنَّارِ، وَعَلَى مَنْ خَنَقَ ثَلَاثَ مَرَّاتٍ، فَصَاعِدًا - وَكُلُّ هَذَا لَيْسَ فِيهِ قَتْلٌ بِالسَّيْفِ، فَمَنْ أَضَلُّ مِمَّنْ يَحْتَجُّ بِمَا هُوَ أَوَّلُ مُخَالِفٍ لَهُ.

L36780–36782 As for the Mālikīs, they argued against the established Sunnah of the Messenger of Allah's prayer (peace and blessings be upon him) with the people while seated during his final prayer that he performed with his companions (may Allah be pleased with them), citing the *mursal* (disconnected) narration of Jābir al-Juʿfī—the aforementioned liar—also: "No one should ever lead prayer seated after me." They deemed this narration at that time a binding proof to refute. The reliable narrations of the people of Medina, supported by

وَأَمَّا الْمَالِكِيُّونَ: فَإِنَّهُمْ احْتَجُّوا بِخِلَافِ السُّنَّةِ الثَّابِتَةِ مِنْ صَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالنَّاسِ جَالِسًا آخَرَ صَلَاةٍ صَلَّاهَا بِأَصْحَابِهِ - رَضِيَ اللَّهُ عَنْهُمْ - بِرِوَايَةِ جَابِرٍ الْجُعْفِيِّ الْكَذَّابِ الْمَذْكُورِ الْمُرْسَلَةِ أَيْضًا «لَا يَؤُمَّنَّ أَحَدٌ بَعْدِي جَالِسًا» وَرَأَوْهُ حِينَئِذٍ حُجَّةً لَازِمَةً، تُرَدُّ بِهِ رِوَايَةُ أَهْلِ الْمَدِينَةِ الثِّقَاتِ، الْمُسْنَدَةِ، وَآخِرُ عَمَلِهِ - عَلَيْهِ الصَّلَاةُ

chains of narration, and his final action—peace and blessings be upon him—when they conform to Malik's opinion, yet they do not deem it serious to discredit Jabir and reject his report when it contradicts Malik's opinion—what religion remains with this? Is this not but following desires, with nothing beyond? Abu Muhammad—may Allah be pleased with him—said: "This report has also been narrated through the chain of Abd al-Baqi ibn Qani, a narrator of every fabricated report, whose hadith was eventually discarded, from Muhammad ibn Uthman ibn Abi Shaybah, from Uqbah ibn Makram, from Yunus ibn Bukayr, from Qays ibn al-Rabi', from Abu Husayn, from Ibrahim, the maternal grandson of al-Nu'man ibn Bashir, from al-Nu'man ibn Bashir, from the Messenger of Allah—peace and blessings be upon him: 'Every act is an error except the sword, and for every error there is blood money.'"

L36783 Abu Muhammad—may Allah be pleased with him—said: "Abd al-Baqi is unreliable. As for Qays ibn al-Rabi': Ibn Ma'in, Affan, and Waki' weakened him. Al-Qattan and Abd al-Rahman ibn Mahdi abandoned his hadith (which is implausible) transmitted from Ibrahim ibn Bint al-Nu'man—whose identity remains unknown. They also cited as evidence the narration we transmitted through Abu Bakr ibn Abi Shaybah's chain: from Abd al-Rahman ibn Sulayman, from Isma'il ibn Muslim, from Amr ibn Dinar, from Tawus, from Ibn Abbas, from the Messenger of Allah—peace and blessings be upon him: 'Intentional killing necessitates retaliation (qisas) by hand unless the legal guardian of the slain pardons.' The hadith states: 'Any killing by throwing [a weapon], striking with a staff, or hurling a stone entails an increased blood money penalty, determined by the maturity of camels (as gauged by their teeth).'"

L36784 We have also narrated it—via the chain of ʿAbd al-Razzāq from al-Ḥasan ibn ʿUmāra from ʿAmr ibn Dīnār from Ṭāwūs from his father from Ibn ʿAbbās—from the Prophet (peace and blessings be upon him): "Whoever is killed in the act of throwing a stone, striking with a stick, or lashing with a whip, the blood money for accidental killing applies. But whoever is killed with premeditation, then it is retribution."

L36785–36787 And via the chain of Ibn al-Aʿrabī from ʿAbd al-Razzāq, Ibn al-Aʿrabī said:

وَالسَّلَامُ - إِذَا وَافَقَ رَأْيَ مَالِكٍ، ثُمَّ لَمْ يَكْبُرْ عَلَيْهِمْ تَكْذِيبُ جَابِرٍ وَرَدُّ رِوَايَتِهِ، إِذَا خَالَفَ رَأْيَ مَالِكٍ - فَأَيُّ دِينٍ يَبْقَى مَعَ هَذَا؟ وَهَلْ هَذَا إِلَّا اتِّبَاعُ الْهَوَى، وَلَا مَزِيدَ؟ قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَقَدْ رُوِيَ هَذَا الْخَبَرُ أَيْضًا - مِنْ طَرِيقِ عَبْدِ الْبَاقِي بْنِ قَانِعٍ رَاوِي كُلِّ بَلِيَّةٍ وَتُرِكَ حَدِيثُهُ بِأُخَرَةٍ عَنْ مُحَمَّدُ بْنُ عُثْمَانَ بْنِ أَبِي شَيْبَةَ عَنْ عُقْبَةَ بْنِ مَكْرَمٍ عَنْ يُونُسَ بْنِ بُكَيْرٍ عَنْ قَيْسِ بْنِ الرَّبِيعِ عَنْ أَبِي حُصَيْنٍ عَنْ إِبْرَاهِيمَ ابْنِ بِنْتِ النُّعْمَانِ بْنِ بَشِيرٍ عَنْ النُّعْمَانِ بْنِ بَشِيرٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَيْءٍ خَطَأٌ إِلَّا السَّيْفَ وَلِكُلِّ خَطَأٍ أَرْشٌ» .

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: عَبْدُ الْبَاقِي لَا شَيْءَ، وَقَيْسُ بْنُ الرَّبِيعِ: ضَعَّفَهُ ابْنُ مَعِينٍ، وَعَفَّانُ، وَوَكِيعٌ - وَتَرَكَ حَدِيثَهُ الْقَطَّانُ، وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ - وَهُوَ بُعْدٌ - عَنْ إِبْرَاهِيمَ بْنِ بِنْتِ النُّعْمَانِ الَّذِي لَا يَدْرِي أَحَدٌ مَنْ هُوَ؟ وَاحْتَجُّوا أَيْضًا - بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ سُلَيْمَانَ عَنْ إِسْمَاعِيلَ بْنِ مُسْلِمٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْعَمْدُ قَوَدُ الْيَدِ إِلَّا أَنْ يَعْفُوَ وَلِيُّ الْمَقْتُولِ» وَفِيهِ: فَمَا كَانَ مِنْ رَمْيٍ، أَوْ ضَرْبَةٍ بِعَصَا، أَوْ رَمْيَةٍ بِحَجَرٍ، فَهُوَ مُغَلَّظٌ فِي أَسْنَانِ الْإِبِلِ.

وَرُوِّينَاهُ أَيْضًا - مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْحَسَنِ بْنِ عُمَارَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ فِي رِمِّيَّا رَمْيًا بِحَجَرٍ أَوْ ضَرْبًا بِعَصًا أَوْ سَوْطٍ، فَعَلَيْهِ عَقْلُ الْخَطَأِ، وَمَنْ قُتِلَ اعْتِبَاطًا فَهُوَ قَوَدٌ» .

"Perhaps it is from Ibn Jurayj. Ibn Ṭāwūs informed me from his father: 'There is a book in his possession which was brought by revelation to the Messenger of Allah (peace and blessings of Allah be upon him), containing: The killing of a blind woman – her blood money is that of accidental killing – the stone, the whip, and the staff – provided the killer did not carry a weapon.'" We have narrated it via the chain of Aḥmad ibn Shuʿayb: Hilāl ibn al-ʿAlāʾ informed me, from Saʿīd ibn Sulaymān, from Sulaymān ibn Kathīr, from ʿAmr ibn Dīnār, from Ṭāwūs, from Ibn ʿAbbās, from the Messenger of Allah (peace and blessings of Allah be upon him): "Whoever is killed..." In cases of unintentional harm (ʿimmiyyā) or projectile harm (rimmiyyā), if injury occurs with a stone, whip, or staff, the blood money (diya) is equivalent to that for accidental killing. Whoever is killed intentionally, retaliation (qisas) is required against the perpetrator.

وَمِنْ طَرِيقِ ابْنِ الْأَعْرَابِيِّ عَنْ عَبْدِ الرَّزَّاقِ، قَالَ ابْنُ الْأَعْرَابِيِّ: لَعَلَّهُ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ طَاوُسٍ عَنْ أَبِيهِ: «أَنَّ عِنْدَهُ كِتَابًا جَاءَ بِهِ الْوَحْيُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيهِ: قَتْلُ الْعَمِيَّةِ - دِيَتُهُ دِيَةُ الْخَطَأِ، الْحَجَرُ، وَالسَّوْطُ، وَالْعَصَا - مَا لَمْ يَحْمِلْ سِلَاحًا.» وَرُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي هِلَالُ بْنُ الْعَلَاءِ أَنَا سَعِيدُ بْنُ سُلَيْمَانَ أَنَا سُلَيْمَانُ بْنُ كَثِيرٍ أَنَا عَمْرُو بْنُ دِينَارٍ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ فِي عِمِّيَّا أَوْ رِمِّيَّا يَكُونُ بَيْنَهُمْ بِحَجَرٍ أَوْ بِسَوْطٍ أَوْ بِعَصًا فَعَقْلُهُ عَقْلُ خَطَأٍ وَمَنْ قُتِلَ عَمْدًا فَقَوَدُ يَدَيْهِ» .

From the chain of Ahmad ibn Shuʿayb: I [received it] from Muhammad ibn Maʿmar, I from Muhammad ibn Kathir, I from Sulayman ibn Kathir, from ʿAmr ibn Dinar, from Tawus, from Ibn Abbas - who elevated it to the Prophet (marfuʿ) - with similar wording.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَعْمَرٍ أَنَا مُحَمَّدُ بْنُ كَثِيرٍ أَنَا سُلَيْمَانُ بْنُ كَثِيرٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ - رَفَعَهُ - بِنَحْوِهِ.

And what we have narrated via the route of Al-Bazzar: From Muḥammad ibn Miskīn, from Bakr ibn Muḍar, from ʿAmr ibn Dīnār, who said: Ṭāwus reported from Abū Hurayrah from the Prophet—peace and blessings of Allah be upon him—: "Whoever is killed in a blind quarrel with a stone or a stick, it is accidental; his blood-money is the blood-money of an accidental killing. And whoever is killed intentionally, it is qawad."

وَمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبَزَّارِ أَنَا مُحَمَّدُ بْنُ مِسْكِينٍ أَنَا بَكْرُ بْنُ مُضَرَ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: قَالَ طَاوُسٌ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ فِي عِمِّيَّةٍ بِحَجَرٍ أَوْ عَصًا فَهُوَ خَطَأٌ عَقْلُهُ عَقْلُ خَطَأٍ وَمَنْ قُتِلَ عَمْدًا فَهُوَ قَوَدٌ» .

Abū Muḥammad—may Allāh be pleased with him—said: None of this constitutes proof for them. As for the report we introduced through Ibn Abī Shaybah's transmission, it contains Ismāʿīl ibn Muslim—a weak Meccan narrator from the Makhzūm clan. Even if it were authentic, they would all oppose it. Regarding the Ḥanafīs: this report stipulates aggravated blood money according to camel teeth for cases involving throwing, a strike with a stick, or casting a stone. Yet they assert that legal retaliation applies to injuries caused by arrows or spears, while this report does not specify one type of throwing over another in this category. Rather, it differentiates between unrestricted throwing, stone-throwing, and striking with a stick. Thus, it

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: كُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ -: أَمَّا الْخَبَرُ الَّذِي صَدَّرْنَا بِهِ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ فَفِيهِ إِسْمَاعِيلُ بْنُ مُسْلِمٍ - وَهُوَ مَخْزُومِيٌّ مَكِّيٌّ ضَعِيفٌ - ثُمَّ لَوْ صَحَّ لَكَانُوا كُلُّهُمْ مُخَالِفِينَ لَهُ -: أَمَّا الْحَنَفِيُّونَ - فَإِنَّ فِي هَذَا الْخَبَرِ مَا كَانَ مِنْ رَمْيٍ، أَوْ ضَرْبَةٍ بِعَصًا، أَوْ رَمْيَةٍ بِحَجَرٍ، فَهُوَ مُغَلَّظٌ فِي أَسْنَانِ الْإِبِلِ - وَهُمْ يَقُولُونَ: مَنْ رُمِيَ بِسَهْمٍ، أَوْ رُمْحٍ، فَفِيهِ الْقَوَدُ، وَلَمْ يَخُصَّ فِي هَذَا الْبَابِ رَمْيًا مِنْ رَمْيٍ، بَلْ فَرَّقَ بَيْنَ

is confirmed that the ruling pertains to throwing with a spear or arrow—a position they do not uphold.

الرَّمْيِ الْمُطْلَقِ، وَالرَّمْيِ بِالْحَجَرِ، وَالضَّرْبَةِ بِالْعَصَا - فَصَحَّ أَنَّهُ الرَّمْيُ بِالرُّمْحِ وَالسَّهْمِ - وَهُمْ لَا يَقُولُونَ ذَلِكَ.

L36791 Similarly, the Shāfiʿīs also differed from him regarding stoning with any object of the kind that causes death.

وَكَذَلِكَ خَالَفَهُ الشَّافِعِيُّونَ أَيْضًا فِي الرَّمْيِ مِنْ كُلِّ مَا يُمَاتُ مِنْ مِثْلِهِ.

L36792 And the Malikis oppose him as a whole.

وَالْمَالِكِيُّونَ مُخَالِفُونَ لَهُ جُمْلَةً.

L36793 As for the two reports transmitted by ʿAbd al-Razzāq—as for the first, it contains al-Ḥasan ibn ʿUmārah, who is abandoned. As for the second, it is *mursal*. Moreover, even if both were authentic, they would still have contradicted them, for both assert that the blood money (diyah) due is that of an unintentional killing—and none of them upholds this position.

وَأَمَّا خَبَرَا عَبْدِ الرَّزَّاقِ - أَمَّا الْأَوَّلُ، فَفِيهِ: الْحَسَنُ بْنُ عُمَارَةَ - وَهُوَ هَالِكٌ - وَأَمَّا الثَّانِي - فَمُرْسَلٌ، ثُمَّ إنَّهُ لَوْ صَحَّا جَمِيعًا لَكَانُوا أَيْضًا قَدْ خَالَفُوهُمَا؛ لِأَنَّ فِيهِمَا: أَنَّ عَقْلَهُ عَقْلُ الْخَطَأِ - وَلَا يَرَى هَذَا أَحَدٌ مِنْهُمْ.

L36794 As for the Ḥanafīs and Shāfiʿīs, they impose a heavier blood money (diyah) payable in camels, unlike the ʿaql (blood money) for accidental killing; whereas the Mālikīs deem retaliation (qiwad) applicable in this case.

أَمَّا الْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ - فَيُغَلِّظُونَ فِيهِ الدِّيَةَ فِي الْإِبِلِ، بِخِلَافِ عَقْلِ الْخَطَأِ؛ وَأَمَّا الْمَالِكِيُّونَ - فَيَرَوْنَ فِيهِ الْقَوَدَ.

L36795–36797 As for the two reports of Sulaymān ibn Kathīr and Bakr ibn Muḍar—they are authentic, and we uphold them, and they are... The difference in their ruling arises because in cases of *ʿimmiyyah* or *ʿimmiya* [unclear circumstances], the blood money for one killed is that of accidental killing. Therefore, this slain person's killer is unknown, and since this is the case, nothing is due except the blood money, which is the blood money for accidental killing.

وَأَمَّا خَبَرَا سُلَيْمَانَ بْنِ كَثِيرٍ، وَبَكْرِ بْنِ مُضَرَ - فَصَحِيحَانِ، وَبِهِمَا نَقُولُ، وَهُمَا خِلَافُ قَوْلِهِمْ؛ لِأَنَّ فِيهِمَا: أَنَّ مَنْ قُتِلَ فِي عِمِّيَّةٍ، أَوْ عِمِّيَّا، فَهُوَ خَطَأٌ عَقْلُهُ عَقْلُ خَطَأٍ - فَهَذَا قَتِيلٌ لَا يُعْرَفُ قَاتِلُهُ، وَإِذْ هُوَ كَذَلِكَ فَلَيْسَ فِيهِ إلَّا الدِّيَةُ، وَدِيَتُهُ دِيَةُ قَتْلِ الْخَطَأِ.

L36798 In both cases—if someone is killed intentionally, retaliation (qawd) is obligatory. The Prophet, peace and blessings be upon him, did not single out a sword over other weapons, nor an iron implement over others. Rather, he mandated retaliation with the equivalent of what the perpetrator struck with his own hand—this is our view, not the view of others. And success is from Allah, the Most High.

وَفِيهِمَا - مَنْ قُتِلَ عَمْدًا فَهُوَ قَوَدٌ، فَلَمْ يَخُصَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - سَيْفًا مِنْ غَيْرِهِ، وَلَا حَدِيدَةً مِنْ غَيْرِهَا، بَلْ أَوْجَبَ فِيهِ الْقَوَدَ بِمِثْلِ مَا أَصَابَ بِيَدِهِ - وَهُوَ قَوْلُنَا، لَا قَوْلُهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L36799 They also substantiated [their position] with a narration we reported via the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAmr ibn Shuʿayb, who said: The Messenger of Allah (peace and blessings be upon him) said, "Quasi-intentional acts incur an aggravated penalty, but their perpetrator is not

وَمَوَّهُوا أَيْضًا - بِخَبَرٍ رُوِّينَاهُ: مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «شِبْهُ الْعَمْدِ مُغَلَّظٌ وَلَا يُقْتَلُ بِهِ صَاحِبُهُ»

executed." This refers to when Satan incites discord among people, leading to blind, indiscriminate striking—done without prior enmity or carrying a weapon.

وَذَلِكَ أَنْ يَنْزِوَ الشَّيْطَانُ بَيْنَ النَّاسِ، فَيَكُونُ رَمْيًا فِي عَمْيَاءَ، عَنْ غَيْرِ ضَغِينَةٍ، وَلَا حَمْلِ سِلَاحٍ.

L36800 Abu Muhammad—may Allah be pleased with him—said: This is a mursal narration containing no valid proof, and all sects have contradicted their own foundational principles in this matter. As for the Hanafis—they forcibly included in it one who intentionally kills a Muslim by strangulation, drowning, or smashing his head with a stone of a qintar's weight—though none of this is mentioned in the narration at all.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا مُرْسَلٌ لَا حُجَّةَ فِيهِ، وَجَمِيعُ الطَّوَائِفِ نَقَضَتْ أُصُولَهَا فِيهِ -: أَمَّا الْحَنَفِيُّونَ - فَأَقْحَمُوا فِيهِ مَنْ تَعَمَّدَ قَتْلَ مُسْلِمٍ بِالْخَنْقِ، أَوْ بِالتَّغْرِيقِ، أَوْ بِشَدْخِ رَأْسِهِ بِحَجَرٍ فِيهِ قِنْطَارٌ - وَلَيْسَ هَذَا مِمَّا فُسِّرَ فِي هَذَا الْخَبَرِ فِي شَيْءٍ.

L36801 As for the Mālikīs, they say: "The *mursal* is like the *musnad*"—but this is a *mursal* they have abandoned.

وَأَمَّا الْمَالِكِيُّونَ فَهُمْ يَقُولُونَ: الْمُرْسَلُ كَالْمُسْنَدِ - وَهَذَا مُرْسَلٌ قَدْ تَرَكُوهُ.

L36802 The Shafiʿi scholars do not consider valid the acceptance of the *mursal* [hadith], yet they have adopted a *mursal* in this instance.

وَالشَّافِعِيُّونَ لَا يَرَوْنَ الْأَخْذَ بِالْمُرْسَلِ - وَأَخَذُوا هَاهُنَا بِمُرْسَلٍ.

L36803 And by what we have narrated—via the narration of Abū Dāwūd: from Muḥammad ibn Yaḥyā ibn Fāris, from Muḥammad ibn Bakkār ibn Bilāl, from Muḥammad ibn Rāshid, from Sulaymān ibn Mūsā, from ʿAmr ibn Shuʿayb, from his father, from his grandfather, from the Messenger of Allah—peace and blessings be upon him—who said: "The compensation for quasi-intentional injury is aggravated, equivalent to the compensation for intentional injury, but its perpetrator is not executed."[38]

وَبِمَا رُوِّينَاهُ - مِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُحَمَّدُ بْنُ يَحْيَى بْنُ فَارِسٍ أَنَا مُحَمَّدُ بْنُ بَكَّارِ بْنِ بِلَالٍ أَنَا مُحَمَّدُ بْنُ رَاشِدٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «عَقْلُ شِبْهِ الْعَمْدِ مُغَلَّظٌ مِثْلُ عَقْلِ الْعَمْدِ وَلَا يُقْتَلُ صَاحِبُهُ» .

L36804 Muhammad ibn Yahya ibn Faris said, adding: I am Khalil, narrating from Ibn Rashid through his chain of transmission in this report: And that is like Satan leaping among the people, turning into blood in a blind chaos—without enmity or weapon-carrying.

قَالَ مُحَمَّدُ بْنُ يَحْيَى بْنُ فَارِسٍ: وَزَادَ: أَنَا خَلِيلٌ عَنْ ابْنِ رَاشِدٍ فِي هَذَا الْخَبَرِ بِإِسْنَادِهِ: وَذَلِكَ مِثْلُ أَنْ يَنْزِوَ الشَّيْطَانُ بَيْنَ النَّاسِ فَيَكُونُ دَمًا فِي عَمْيَاءَ، فِي غَيْرِ ضَغِينَةٍ، وَلَا حَمْلِ سِلَاحٍ.

L36805–36806 Abū Muḥammad—may Allah be pleased with him—said: This is a *mursal* document; it is impermissible to cite it as evidence. Moreover, they have all contradicted what is in this report.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذِهِ صَحِيفَةٌ مُرْسَلَةٌ لَا يَجُوزُ الِاحْتِجَاجُ بِهَا - ثُمَّ إنَّهُمْ كُلَّهُمْ قَدْ خَالَفُوا مَا فِي هَذَا الْخَبَرِ.

L36807 As for Abu Hanifah and his companions, they improperly incorporate into this category a ruling contrary to the hadith, for they equate the legal judg-

[38] **Hadith references (L36803):** Sunan Abi Dawud 4565; Mishkat al-Masabih 3501.

ment of one killed due to concealed rancor while armed—and slain deliberately and intentionally with an iron rod—to those mentioned in this hadith, though this openly contradicts it.

أَمَّا أَبُو حَنِيفَةَ وَأَصْحَابُهُ فَيُقْحِمُونَ فِي هَذَا الْقِسْمِ خِلَافَ مَا فِي الْخَبَرِ؛ لِأَنَّهُمْ يَجْعَلُونَ مَنْ قُتِلَ فِي ضَغِينَةٍ وَحَمْلِ سِلَاحٍ فَقُتِلَ بِعَمُودِ حَدِيدٍ عَمْدًا قَصْدًا حُكْمُهُ حُكْمُ مَنْ ذُكِرَ فِي هَذَا الْخَبَرِ - وَهُوَ خِلَافُهُ جِهَارًا.

L36808 The Shāfiʿī jurists did not include in this category one who is intentionally killed in a blind manner by an object similar to that which may cause death, such as a stick or the like, whereas the Mālikīs disagreed with his opinion entirely.

وَلَمْ يُدْخِلْ الشَّافِعِيُّونَ فِيهِ: مَنْ قُتِلَ فِي عِمِّيَّا قَصْدًا بِمَا قَدْ يُمَاتُ مِنْ مِثْلِهِ مِنْ عَصًا وَنَحْوِهَا - وَخَالَفَهُ الْمَالِكِيُّونَ جُمْلَةً.

L36809 They also obscured by what was narrated through Shuʿbah from Ayyūb al-Sakhtiyānī, who heard al-Qāsim ibn Rabīʿah from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ from the Prophet, peace and blessings be upon him, who said: "Quasi-intentional killing - such as the killing by a whip or a stick - requires one hundred camels, forty of which are pregnant with their offspring."

وَمَوَّهُوا أَيْضًا - بِمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ سَمِعْت الْقَاسِمَ بْنَ رَبِيعَةَ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «قَتْلُ الْخَطَأِ شِبْهِ الْعَمْدِ قَتِيلُ السَّوْطِ وَالْعَصَا مِائَةٌ مِنْ الْإِبِلِ أَرْبَعُونَ مِنْهَا فِي بُطُونِهَا أَوْلَادُهَا» .

L36810 Abū Muḥammad—may Allah be pleased with him—said: This is a narration affected by tadlīs; a man between al-Qāsim ibn Rabīʿah and ʿAbdullāh ibn ʿUmar was dropped from it.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا خَبَرٌ مُدَلَّسٌ، سَقَطَ مِنْهُ بَيْنَ الْقَاسِمِ بْنِ رَبِيعَةَ وَبَيْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ رَجُلٌ -.

L36811 As we narrated it through the chain of Aḥmad ibn Shuʿayb: from Yaḥyā ibn Ḥabīb ibn ʿArabī, from Ḥammād ibn Zayd, from Khālid al-Ḥadhāʾ (the Cobbler), from al-Qāsim ibn Rabīʿah, from ʿUqbah ibn Aws, from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ, from the Prophet (peace and blessings be upon him), wherein he mentioned this identical report.

كَمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا يَحْيَى بْنُ حَبِيبِ بْنِ عَرَبِيٍّ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ الْقَاسِمِ بْنِ رَبِيعَةَ عَنْ عُقْبَةَ بْنِ أَوْسٍ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ فِيهِ هَذَا الْخَبَرَ بِعَيْنِهِ.

L36812 Uqbah ibn Aws is unknown, and his identity remains undocumented. No authentic transmission to al-Qāsim ibn Rabīʿah from ʿAbdullāh ibn ʿAmr has been established.

وَعُقْبَةُ بْنُ أَوْسٍ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ؟ وَلَا يَصِحُّ لِلْقَاسِمِ بْنِ رَبِيعَةَ سَمَاعٌ مِنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو.

L36813 We have also narrated it through another chain from al-Qasim ibn Rabi'ah contrary to this account: I am Humam, I am Abbas ibn Asbagh, I am Muhammad ibn Abd al-Malik ibn Ayman, I am Ahmad ibn Zuhayr ibn Harb - Ubay narrated to us, Ibn Ulayyah narrated to us from Khalid al-Hadhdha' from al-Qasim ibn Rabi'ah from Ya'qub ibn Aws, a man among the Companions of

وَقَدْ رُوِّينَاهُ أَيْضًا: عَنْ الْقَاسِمِ بْنِ رَبِيعَةَ بِخِلَافِ هَذَا كَمَا أَنَا حُمَامٌ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ ثنا أُبَيٌّ ثنا ابْنُ عُلَيَّةَ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ الْقَاسِمِ بْنِ رَبِيعَةَ عَنْ يَعْقُوبَ بْنِ أَوْسٍ رَجُلٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «خَطَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ فَتْحِ مَكَّةَ فَقَالَ: أَلَا إِنَّ قَتِيلَ خَطَأِ الْعَمْدِ» قَالَ خَالِدٌ: أَوْ قَالَ «قَتِيلُ الْخَطَأِ شِبْهِ الْعَمْدِ قَتِيلُ السَّوْطِ، وَالْعَصَا مِنْهَا أَرْبَعُونَ فِي بُطُونِهَا أَوْلَادُهَا» .

Allah's Messenger (peace be upon him), who said: "Allah's Messenger (peace be upon him) delivered a sermon on the Day of Mecca's Conquest and declared: 'Verily, the victim of quasi-intentional killing...'" Khalid interjected: "Or he said: 'The victim of quasi-intentional killing is one slain by a whip and staff, requiring forty [camels] as blood-money, of which are those pregnant with their offspring.'"

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: يَعْقُوبُ بْنُ أَوْسٍ مَجْهُولٌ لَا صُحْبَةَ لَهُ.

L36814 Abū Muḥammad—may Allāh be pleased with him—said: Yaʿqūb ibn Aws is unknown as a narrator and was not a Companion.

كَمَا رُوِّينَا هَذَا الْخَبَرَ نَفْسَهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إِسْمَاعِيلُ بْنُ مَسْعُودٍ - هُوَ الْجَحْدَرِيُّ - أَنَا بِشْرُ بْنُ الْمُفَضَّلِ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ الْقَاسِمِ بْنِ رَبِيعَةَ عَنْ يَعْقُوبَ بْنِ أَوْسٍ عَنْ رَجُلٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَذَكَرَ هَذَا الْخَبَرَ نَفْسَهُ.

L36815–36817 Similarly, this same report was conveyed to us through the chain of Aḥmad ibn Shuʿayb: I [heard] from Ismāʿīl ibn Masʿūd—known as al-Jaḥdarī— I am Bishr ibn al-Mufaḍḍal, from Khālid the Cobbler, from al-Qāsim ibn Rabīʿah, from Yaʿqūb ibn Aws, from a man among the Companions of the Messenger of Allah (peace and blessings be upon him and his family), and he mentioned this same report.

وَقَدْ رُوِّينَاهُ أَيْضًا - مِنْ طَرِيقٍ أَسْقَطَ مِنْ هَذِهِ.

L36818 And indeed, we have also transmitted it through a chain that omitted from this.

كَمَا رُوِّينَا - مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، قَالَ حَمَّادٌ: أَنَا عَلِيُّ بْنُ زَيْدِ بْنِ جُدْعَانَ عَنْ يَعْقُوبَ السَّدُوسِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو - هُوَ ابْنُ الْعَاصِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَطَبَ يَوْمَ الْفَتْحِ فَقَالَ أَلَا إِنَّ دِيَةَ الْعَمْدِ الْخَطَأِ بِالسَّوْطِ وَالْعَصَا: دِيَةٌ مُغَلَّظَةٌ مِائَةٌ مِنْ الْإِبِلِ فِيهَا أَرْبَعُونَ خَلِفَةً فِي بُطُونِهَا أَوْلَادُهَا» .

L36819 As we have been narrated through the chain of Hammad ibn Salamah and Sufyan ibn Uyaynah—Hammad said: **I** narrate from Ali ibn Zayd ibn Judʿan, from Yaʿqub al-Sadusi, from ʿAbdullah ibn ʿAmr (son of al-ʿĀṣ)—that the Prophet (peace be upon him) delivered a sermon on the Day of the Conquest and said: "Behold, the blood money for **intentional-but-erroneous killing** **with a whip or stick** is an enhanced blood money **of** one hundred camels, among which are forty **pregnant camels in their final trimester**."

وَقَالَ سُفْيَانُ: أَنَا ابْنُ جُدْعَانَ سَمِعَهُ مِنْ الْقَاسِمِ بْنِ رَبِيعَةَ عَنْ ابْنِ عَمْرٍو فَذَكَرَهُ - وَابْنِ جُدْعَانَ هَذَا هُوَ عَلِيُّ بْنُ زَيْدٍ ضَعِيفٌ جِدًّا - وَيَعْقُوبُ السَّدُوسِيُّ مَجْهُولٌ - وَلَمْ يَلْقَ الْقَاسِمُ بْنُ رَبِيعَةَ ابْنَ عَمْرٍو قَطُّ - فَسَقَطَ جُمْلَةً - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L36820 Sufyan said: I am Ibn Judʿan – he heard it from al-Qasim ibn Rabiʿah, from Ibn ʿAmr, and he mentioned it – and this Ibn Judʿan is ʿAli ibn Zayd, who is extremely weak – and Yaʿqub al-Sadūsī is unknown. Al-Qasim ibn Rabiʿah never met Ibn ʿAmr at all – thus, the entire chain collapses – and all praise is due to Allah, Lord of all creation.

L36821 Nevertheless, the three schools have contradicted their own principles in this matter. As for the Ḥanafīs—excluding Muḥammad ibn al-Ḥasan—they

hold the blood money for a quasi-intentional act as consisting of twenty-five _bint makhāḍ_ (one-year-old she-camels entering their second year), twenty-five _bint labūn_ (two-year-old she-camels entering their third year), twenty-five _ḥiqāq_ (four-year-old male camels), and twenty-five _jadhaʿa_ (four-year-old she-camels), contrary to what is mentioned in this narration.

وَمَعَ ذَلِكَ فَإِنَّ الطَّوَائِفَ الثَّلَاثَ نَقَضَتْ فِيهِ أُصُولَهَا -: أَمَّا الْحَنَفِيُّونَ - حَاشَا مُحَمَّدِ بْنِ الْحَسَنِ - فَلَا يَرَوْنَ دِيَةَ عَمْدِ الْخَطَأِ إِلَّا خَمْسًا وَعِشْرِينَ بِنْتَ مَخَاضٍ، وَخَمْسًا وَعِشْرِينَ بِنْتَ لَبُونٍ، وَخَمْسًا وَعِشْرِينَ حِقَاقًا وَخَمْسًا وَعِشْرِينَ جَذَعَةٍ - بِخِلَافِ مَا فِي هَذَا الْخَبَرِ.

L36822 As for the Mālikīs, they opposed him entirely.

وَأَمَّا الْمَالِكِيُّونَ - فَخَالَفُوهُ كُلَّهُ.

L36823 As for the Shāfiʿīs—they do not accept that ruling in the case of a stick where a blow of similar force would cause death, nor in intentional beating with a whip until he dies. Rather, they consider retaliation in this scenario to contradict this ḥadīth, despite their adherence to affirming only narrations with complete chains (musnad) transmitted by renowned narrators—and this ḥadīth does not belong to that pattern.

وَأَمَّا الشَّافِعِيُّونَ - فَلَا يَرَوْنَ ذَلِكَ فِي الْعَصَا الَّتِي يُمَاتُ مِنْ مِثْلِ ضَرْبَتِهَا، وَلَا فِي الضَّرْبِ بِالسَّوْطِ عَمْدًا، حَتَّى يَمُوتَ، بَلْ يَرَوْنَ فِي هَذَا الْقَوَدَ خِلَافًا لِهَذَا الْخَبَرِ، مَعَ أَنَّهُمْ لَا يَقُولُونَ إِلَّا بِالْمُسْنَدِ مِنْ رِوَايَةِ الْمَشْهُورِينَ - وَلَيْسَ هَذَا الْخَبَرُ مِنْ هَذَا النَّمَطِ.

L36824 They vehemently objected by citing the well-known, established report of the Hudhalis—in which one woman struck the other with a stone (or, in some narrations, a tent pole), causing her and her fetus to die. Thereupon, the Messenger of God (peace be upon him) ruled that the *ghurrah* (compensation for fetal death) and blood money were to be paid by the assailant's male kin responsible for compensation.

وَشَغَبُوا بِخَبَرِ الْهُذَلِيِّينَ الْمَشْهُورِ الثَّابِتِ لِمَا فِيهِ بِأَنَّ إِحْدَاهُمَا ضَرَبَتِ الْأُخْرَى بِحَجَرٍ - وَفِي بَعْضِ الرِّوَايَاتِ بِعَمُودِ فُسْطَاطٍ فَمَاتَتْ هِيَ وَجَنِينُهَا فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْغُرَّةَ وَالدِّيَةَ عَلَى عَاقِلَةِ الضَّارِبَةِ.

L36825–36827 They then split into two groups—Abū Ḥanīfah and those who followed him said: "This report contains clarification that whoever kills another with a stick shall be executed by means of its equivalent." Or by a stone from which death results, there is no retribution (qisas), but it is deemed a semi-intentional act, obligating the kinship group (al-ʿāqilah) to pay blood money.

ثُمَّ افْتَرَقُوا فِرْقَتَيْنِ -: قَالَ أَبُو حَنِيفَةَ وَمَنْ قَلَّدَهُ: فِي هَذَا الْخَبَرِ بَيَانُ أَنَّ مَنْ قَتَلَ آخَرَ بِعَصًا يُمَاتُ مِنْ مِثْلِهَا أَوْ بِحَجَرٍ يُمَاتُ مِنْهُ، فَلَا قَوَدَ، وَلَكِنَّهُ عَمْدُ خَطَأٍ عَلَى الْعَاقِلَةِ.

L36828 Abu Yusuf, Muhammad ibn al-Hasan, al-Shafi'i, and his companions said: This report demonstrates that if someone dies from a cause that would not typically kill one of his peers, the *diyah* falls upon the *ʿaqila*.

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَالشَّافِعِيُّ، وَأَصْحَابُهُ: فِي هَذَا الْخَبَرِ بَيَانُ أَنَّ مَنْ مَاتَ بِمَا لَا يُمَاتُ مِنْ مِثْلِهِ فَفِيهِ الدِّيَةُ عَلَى الْعَاقِلَةِ.

L36829 Abu Muhammad (may Allah be pleased with him) said: As for the assertion of those who claim, "That pillar and stone were among things impervious to eradication by their equivalent," this is a manifestly invalid claim. For a tent's pillar cannot possibly be among those things immune to destruction through

a strike by its equivalent in a harmful act. Thus, this claim is invalidated - and all praise belongs to Allah, Lord of the worlds.

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: أَمَّا قَوْلُ مَنْ قَالَ: إنَّ ذَلِكَ الْعَمُودَ وَالْحَجَرَ كَانَا مِمَّا لَا يُمَاتُ مِنْ مِثْلِهِ، فَقَوْلٌ ظَاهِرُ الْفَسَادِ، لِأَنَّ عَمُودَ فُسْطَاطٍ لَا يُمْكِنُ أَلْبَتَّةَ أَنْ يَكُونَ مِمَّا لَا يُمَاتُ مِنْ الضَّرْبِ - فِي الشَّرِّ - بِمِثْلِهِ، فَسَقَطَ هَذَا الْقَوْلُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L36830 As for those who claim that this report indicates there is no retribution for the pillar and the stone (which typically cause fatal injuries) - even if intentionally used to harm - but rather blood money is owed by the agnatic male relatives, this is a corrupt assumption from them. This is clarified by what we have reported through the chain of Abū Dāwūd and Aḥmad ibn Shuʿayb. Abū Dāwūd said: "I am Muḥammad ibn Masʿūd - Abū ʿĀṣim narrated to us from Ibn Jurayj, who said: ʿAmr ibn Dīnār informed me that he heard Ṭāwūs narrate from Ibn ʿAbbās that ʿUmar ibn al-Khaṭṭāb inquired about the Prophet's ruling - peace be upon him - regarding that matter. Hamal ibn Mālik ibn al-Nābighah stood up and said: 'I was between two women; one struck the other with a flat stone, killing her and her fetus.' The Messenger of Allāh - peace be upon him - ruled that a ghurrah be paid for her fetus and that she be executed." Aḥmad ibn Shuʿayb said: "Yūsuf ibn Saʿīd ibn Muslim al-Miṣṣīṣī narrated to us: Ḥajjāj - that is, ibn Muḥammad - narrated to us from Ibn Jurayj: ʿAmr ibn Dīnār informed me that he heard Ṭāwūs narrate from Ibn ʿAbbās from ʿUmar ibn al-Khaṭṭāb," and he mentioned the identical account except he stated: "The Messenger of Allāh - peace be upon him - ruled that a ghurrah be paid for her fetus and that she be executed for it." This chain of narration is of the utmost authenticity.

وَأَمَّا الْقَائِلُونَ بِأَنَّ فِي هَذَا الْخَبَرِ دَلِيلًا عَلَى أَنَّ الْعَمُودَ وَالْحَجَرَ اللَّذَيْنِ يُمَاتُ مِنْ مِثْلِهِمَا لَا قَوَدَ فِيهِمَا - وَإِنْ تَعَمَّدَ الضَّرْبَ بِهِمَا - فِي الشَّرِّ، لَكِنْ فِيهِمَا الدِّيَةُ عَلَى الْعَاقِلَةِ، فَهَذَا ظَنٌّ فَاسِدٌ مِنْهُمْ، يُبَيِّنُ ذَلِكَ - مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد، وَأَحْمَدَ بْنِ شُعَيْبٍ، قَالَ أَبُو دَاوُد -: أَنَا مُحَمَّدُ بْنُ مَسْعُودٍ أَنَا أَبُو عَاصِمٍ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ: أَنَّهُ سَمِعَ طَاوُسًا عَنْ ابْنِ عَبَّاسٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ «أَنَّهُ سَأَلَ عَنْ قَضِيَّةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ؟ فَقَامَ حَمَلُ بْنُ مَالِكِ بْنِ النَّابِغَةِ فَقَالَ: كُنْت بَيْنَ امْرَأَتَيْنِ فَضَرَبَتْ إحْدَاهُمَا الْأُخْرَى بِمِسْطَحٍ فَقَتَلَتْهَا وَجَنِينَهَا؟ فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي جَنِينِهَا بِغُرَّةٍ، وَأَنْ تُقْتَلَ.» وَقَالَ أَحْمَدُ بْنُ شُعَيْبٍ أَنَا يُوسُفُ بْنُ سَعِيدِ بْنِ مُسْلِمٍ الْمِصِّيصِيُّ أَنَا حَجَّاجٌ - هُوَ ابْنُ مُحَمَّدٍ - عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ: سَمِعَ طَاوُسًا يُحَدِّثُ عَنْ ابْنِ عَبَّاسٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ، فَذَكَرَ مِثْلَهُ سَوَاءً سَوَاءً - إلَّا أَنَّهُ قَالَ: «فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي جَنِينِهَا بِغُرَّةٍ، وَأَنْ تُقْتَلَ بِهَا.» فَهَذَا إسْنَادٌ فِي غَايَةِ الصِّحَّةِ.

L36831 They said: It has been established that the Messenger of Allah—may Allah's peace and blessings be upon him—placed the blood money for the beaten woman upon the agnatic relatives of the female killer. Is this not impermissible in cases requiring retaliation? We replied: It has equally been established that he—may peace and blessings be upon him—commanded retaliation in that matter, and all his injunctions are true. It is impermissible to disregard any of them in favor of another; rather, the objective is to synthesize all of

فَقَالُوا: قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ دِيَةَ الْمَضْرُوبَةِ عَلَى عَاقِلَةِ الْقَاتِلَةِ، وَلَا يَجُوزُ هَذَا فِيمَا فِيهِ الْقَوَدُ؟ قُلْنَا: وَقَدْ صَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَمَرَ فِي ذَلِكَ بِالْقَوَدِ، وَكُلُّ أَوَامِرِهِ حَقٌّ، وَلَا يَجُوزُ تَرْكُ شَيْءٍ مِنْهَا لِشَيْءٍ، بَلْ الْغَرَضُ الْجَمْعُ

بَيْنَ جَمِيعِهَا - وَوَجْهُ ذَلِكَ بَيِّنٌ، وَهُوَ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - حَكَمَ فِي ذَلِكَ بِحُكْمِ الْعَمْدِ، إذْ حَكَمَ بِالْقَوَدِ، ثُمَّ حَكَمَ فِيهِ.

بِحُكْمِ قَتْلِ الْخَطَأِ، إذْ حَكَمَ بِالدِّيَةِ عَلَى الْعَاقِلَةِ، فَلَا يَجُوزُ أَنْ يَكُونَ هَذَا إلَّا بِأَنَّهُ أَخْبَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنَّهَا ضَرَبَتْهَا فَقَتَلَتْهَا: فَحَكَمَ بِالْقَوَدِ عَلَى ظَاهِرِ الْأَمْرِ، ثُمَّ صَحَّ أَنَّ ضَرْبَهَا لَهَا كَانَ خَطَأً عَنْ غَيْرِ قَصْدٍ، فَرَجَعَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إلَى الْحُكْمِ بِمَا يُحْكَمُ بِهِ قَتْلُ الْخَطَأِ، إذْ لَا يَحِلُّ أَنْ يُحْمَلَ حُكْمُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إلَّا عَلَى الْحَقِّ الَّذِي لَا يَقْتَضِي مَا حَكَمَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِيهِ غَيْرَ مَا حَكَمَ بِهِ.

وَقَدْ ادَّعَى قَوْمٌ: أَنَّ ابْنَ جُرَيْجٍ أَخْطَأَ فِيهِ، وَقَالُوا: قَدْ رَوَى سُفْيَانُ بْنُ عُيَيْنَةَ هَذَا الْخَبَرَ عَنْ عَمْرِو بْنِ دِينَارٍ، فَلَمْ يَذْكُرْ فِيهِ مَا ذَكَرَ ابْنُ جُرَيْجٍ؟ فَقُلْنَا: بَلْ الْمُخْطِئُ مَنْ خَطَّأَ الْأَئِمَّةَ بِرَأْيِهِ الْفَاسِدِ، وَإِذْ لَمْ يَرْوِ ابْنُ عُيَيْنَةَ مَا رَوَى ابْنُ جُرَيْجٍ، فَكَانَ مَاذَا؟ ابْنُ جُرَيْجٍ أَجَلُّ مِنْ ابْنِ عُيَيْنَةَ - وَكِلَاهُمَا جَلِيلٌ - وَابْنُ جُرَيْجٍ زَادَ عَلَى ابْنِ عُيَيْنَةَ مَا لَمْ يَعْرِفْ ابْنُ عُيَيْنَةَ، وَزِيَادَةُ الْعَدْلِ لَا يَحِلُّ رَدُّهَا.

وَقَدْ أَتَى قَوْمٌ بِمَا يَمْلَأُ الْفَمَ، فَقَالُوا: حَمَلُ بْنُ النَّابِغَةِ لَا يُحْتَجُّ بِرِوَايَتِهِ؟ .

فَقُلْنَا: هَذَا حُكْمُ إبْلِيسَ، تُرَدُّ رِوَايَةُ حَمَلٍ - رَضِيَ اللَّهُ عَنْهُ - وَهُوَ صَاحِبٌ ثَابِتُ الصُّحْبَةِ، وَقَدْ أَخَذَ عَنْهُ عُمَرُ أَمِيرُ الْمُؤْمِنِينَ، وَكُلُّ مَنْ بِحَضْرَتِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْ جَمِيعِهِمْ.

وَيُؤْخَذُ بِتَخْلِيطِ أَبِي حَنِيفَةَ الَّذِي لَا يُسَاوِي الِاشْتِغَالَ بِهِ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

them. The rationale for this is evident: he—may peace and blessings be upon him—adjudicated this case under the ruling of intentional homicide, since he prescribed retaliation, then he ruled on it.

L36832–36834 In the judgment regarding accidental killing, since he ruled that blood money was due upon the agnatic kin, this can only be because he (peace and blessings be upon him) stated that she struck her and killed her. Thus, he ruled for retribution based on the apparent circumstances, then it was established that her striking... In that case, since it was an unintentional error, the Prophet—peace be upon him—applied the ruling applicable to accidental killing. For it is impermissible to interpret his judgment except according to the divine truth, which entails no ruling in the matter other than what he—peace be upon him—had decreed.

L36835 A group of people claimed that Ibn Jurayj erred in this matter, arguing that Sufyan ibn ʻUyaynah narrated this report from ʻAmr ibn Dinar but did not mention what Ibn Jurayj mentioned. We replied: Rather, the one who errs is he who deems the Imams to have erred based on his corrupt opinion. Since Ibn ʻUyaynah did not narrate what Ibn Jurayj narrated, so what? Ibn Jurayj is more eminent than Ibn ʻUyaynah—though both are distinguished—and Ibn Jurayj added to Ibn ʻUyaynah what Ibn ʻUyaynah himself was unaware of. The addition by a reliable narrator is impermissible to reject.

L36836 And indeed, a group came forward with speech that fills the mouth, saying: “Is Ḥamal ibn al-Nābighah’s narration not to be relied upon as proof?”

L36837 So we said: This is the judgment of Iblis. The narration of Haml (may Allah be pleased with him) is rejected, though he was a Companion of established companionship. Indeed, Umar, the Commander of the Faithful, took knowledge from him, along with all the Companions present with him (may Allah be pleased with them all).

L36838 Account is taken of the inconsistencies in Abu Hanifah’s legal methodology, which do not merit the effort devoted to them—Sufficient for us is Allah, and He is the Best Trustee.

L36839 They said: A group of the Companions—may Allah be pleased with them—Umar ibn al-Khattab, Uthman ibn Affan, Ali ibn Abi Talib, Ibn Mas'ud, Zayd ibn Thabit, and Abu Musa al-Ash'ari—have indeed held the opinion concerning quasi-intentional.

وَقَالُوا: قَدْ قَالَ بِشِبْهِ الْعَمْدِ طَائِفَةٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: عُمَرُ بْنُ الْخَطَّابِ، وَعُثْمَانُ بْنُ عَفَّانَ، وَعَلِيُّ بْنُ أَبِي طَالِبٍ، وَابْنُ مَسْعُودٍ، وَزَيْدُ بْنُ ثَابِتٍ، وَأَبُو مُوسَى الْأَشْعَرِيُّ.

L36840 They said: Such a matter is not determined by opinion, and this is also—the position of the majority of the jurists after the Companions—may Allah be pleased with them—such as al-Nakhaʿī, al-Shaʿbī, ʿAṭāʾ, Ṭāwūs, Masrūq, al-Ḥakam ibn ʿUtaybah, ʿUmar ibn ʿAbd al-ʿAzīz, and al-Ḥasan.

قَالُوا: وَمِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، وَهُوَ أَيْضًا - قَوْلُ الْجُمْهُورِ مِنْ الْفُقَهَاءِ بَعْدَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - كَالنَّخَعِيِّ، وَالشَّعْبِيِّ، وَعَطَاءٍ، وَطَاوُسٍ، وَمَسْرُوقٍ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَالْحَسَنِ.

L36841 Ibn al-Musayyib, Qatādah, al-Zuhrī, Abū al-Zinād, and Ḥammād b. Abī Sulaymān.

وَابْنِ الْمُسَيِّبِ وَقَتَادَةَ، وَالزُّهْرِيِّ، وَأَبِي الزِّنَادِ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ.

L36842 This is also the opinion of the majority of jurists: Sufyan al-Thawri, Ibn Shubrumah, Uthman al-Batti, al-Hasan ibn Hayy, al-Awza'i, Abu Hanifah, al-Shafi'i, and the followers of Abu Hanifah and al-Shafi'i.

وَهُوَ أَيْضًا - قَوْلُ جُمْهُورِ الْفُقَهَاءِ، كَسُفْيَانَ الثَّوْرِيِّ، وَابْنِ شُبْرُمَةَ، وَعُثْمَانَ الْبَتِّيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَالْأَوْزَاعِيِّ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمَا.

L36843–36844 Abu Muhammad—may Allah be pleased with him—said: There is no valid proof in anyone other than the Messenger of Allah—peace and blessings of Allah be upon him—and nothing is authentically established regarding this matter from any of the Companions—may Allah be pleased with them—except from Ali ibn Abi Talib and Zayd ibn Thabit. As for the narration from Umar ibn al-Khattab, it has a broken chain, as it is transmitted via Sufyan al-Thawri from Ibn Abi Najih from Mujahid: that Umar ibn al-Khattab ruled concerning semi-intentional killing—thirty hiqqah she-camels (five-year-old), thirty jadh'ah she-camels (four-year-old), and forty camels aged between one and two years, all of them pregnant. As for the narration from Uthman—it is transmitted via Abd al-Razzaq from Uthman ibn Matar from Sa'id ibn Abi Arubah from Qatadah from Sa'id ibn al-Musayyab: that Uthman ibn Affan ruled concerning semi-intentional killing—forty jadh'ah she-camels (four-year-old pregnant) up to the completion of their first year, thirty hiqqah she-camels (five-year-old), and thirty bint labūn (two-year-old she-camels)—and Uthman ibn Matar is a weak transmitter.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا يَصِحُّ فِي ذَلِكَ شَيْءٌ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، إلَّا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَعَنْ زَيْدِ بْنِ ثَابِتٍ. أَمَّا الرِّوَايَةُ عَنْ عُمَرَ بْنِ الْخَطَّابِ فَمُنْقَطِعَةٌ؛ لِأَنَّهَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي شِبْهِ الْعَمْدِ: ثَلَاثُونَ حِقَّةً، وَثَلَاثُونَ جَذَعَةً، وَأَرْبَعُونَ مَا بَيْنَ ثَنِيَّةٍ إلَى بَازِلِ عَامِهَا كُلُّهَا خَلِفَةٌ. وَأَمَّا عَنْ عُثْمَانَ - فَإِنَّهَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُثْمَانَ بْنِ مَطَرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ قَالَ فِي شِبْهِ الْعَمْدِ: أَرْبَعُونَ جَذَعَةً خَلِفَةً إلَى بَازِلِ عَامِهَا، وَثَلَاثُونَ حِقَّةً، وَثَلَاثُونَ بِنْتَ لَبُونٍ - وَعُثْمَانُ بْنُ مَطَرٍ ضَعِيفٌ.

وَأَمَّا عَنْ عَلِيٍّ - فَإِنَّهَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ قَالَ: شِبْهُ الْعَمْدِ: الضَّرْبَةُ بِالْخَشَبَةِ، أَوْ الْقَذْفَةُ بِالْحَجَرِ الْعَظِيمِ. وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ قَالَ: فِي الْخَطَأِ شِبْهِ الْعَمْدِ - الضَّرْبُ بِالْخَشَبَةِ، وَالْحَجَرِ الضَّخْمِ - ثَلَاثُ حِقَاقٍ، وَثَلَاثُ جِذَاعٍ، وَثَلَاثُ مَا بَيْنَ ثَنِيَّةٍ إِلَى بَازِلِ عَامِهَا. وَأَمَّا عَنْ زَيْدِ بْنِ ثَابِتٍ فَمِنْ طَرِيقِ وَكِيعٍ أَنَا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ، قَالَ: قَالَ زَيْدُ بْنُ ثَابِتٍ: فِي شِبْهِ الْعَمْدِ ثَلَاثُونَ حِقَّةً، وَثَلَاثُونَ جَذَعَةً، وَأَرْبَعُونَ مَا بَيْنَ ثَنِيَّةٍ إِلَى بَازِلِ عَامِهَا، كُلُّهَا خَلِفَةٌ. وَرُوِّينَاهُ أَيْضًا - مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ الشَّعْبِيِّ عَنْ زَيْدِ بْنِ ثَابِتٍ.

L36845 As for what is reported from Ali, it is through the chain of Wakiʿ from Sufyan al-Thawri from Abu Ishaq al-Sabiʿi from ʿAsim ibn Damrah from Ali, who said: The quasi-intentional act is a strike with a wooden implement or a throw with a large stone. Through the chain of ʿAbd al-Rahman ibn Mahdi from Sufyan al-Thawri from Abu Ishaq al-Sabiʿi from ʿAsim ibn Damrah from Ali, who said: Regarding the quasi-intentional error – striking with a wooden implement or a bulky stone – three Hiqqah, three Jadhaʿ, and three between Thaniyyah and Bazil of their year.

As for what is reported from Zayd ibn Thabit, it is through the chain of Wakiʿ: I, Ismaʿil ibn Abi Khalid, report from al-Shaʿbi, who said: Zayd ibn Thabit said: In the quasi-intentional act, thirty Hiqqah, thirty Jadhaʿ, and forty between Thaniyyah and Bazil of their year – all being pregnant she-camels. We also narrated it through the chain of ʿAbd al-Razzaq from Sufyan al-Thawri from Abu Ishaq al-Shaybani from al-Shaʿbi from Zayd ibn Thabit.

وَقَدْ صَحَّ أَيْضًا - عَنْ زَيْدِ بْنِ ثَابِتٍ عَنْ غَيْرِ هَذَا، لَكِنْ مِثْلُ مَا رُوِّينَا عَنْ عُثْمَانَ كَمَا أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ قَاسِمِ بْنِ مُحَمَّدٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْأَنْصَارِيُّ الْقَاضِي أَنَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّهُ قَالَ فِي دِيَةِ الْمُغَلَّظَةِ: أَرْبَعُونَ جَذَعَةً خَلِفَةً، وَثَلَاثُونَ حِقَّةً، وَثَلَاثُونَ بَنَاتَ لَبُونٍ. وَأَمَّا الرِّوَايَةُ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ فَمُنْقَطِعَةٌ عَنْهُ؛ لِأَنَّهَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ، وَسُلَيْمَانُ - هُوَ أَبُو إِسْحَاقَ الشَّيْبَانِيُّ - كِلَاهُمَا عَنْ الشَّعْبِيِّ: أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ قَالَ: دِيَةُ شِبْهِ الْعَمْدِ ثَلَاثُونَ حِقَّةً، وَثَلَاثُونَ جَذَعَةً، وَأَرْبَعُونَ مَا بَيْنَ ثَنِيَّةٍ إِلَى بَازِلِ عَامِهَا كُلُّهَا خَلِفَةٌ - وَالشَّعْبِيُّ لَمْ يُدْرِكْ أَبَا مُوسَى بِعَقْلِهِ.

L36846–36848 It has also been authenticated—from Zaid ibn Thabit regarding matters other than this, but resembling what has been narrated to us from Uthman—as [follows]. Narrated by Muḥammad ibn Saʿīd ibn Nubāt, from ʿAbbās ibn Aṣbagh, from Muḥammad ibn Qāsim ibn Muḥammad, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from Muḥammad ibn ʿAbd Allāh al-Anṣārī the judge, from Saʿīd ibn Abī ʿArūbah, from Qatādah, from Saʿīd ibn al-Musayyib, from Zayd ibn Thābit, who said regarding the aggravated blood money: "Forty pregnant she-camels (jadhʿah) in their fourth year, thirty she-camels in their fifth year (ḥiqqah), and thirty lactating female camels (banāt labūn)." As for the narration from Abū Mūsā al-Ashʿarī, it is disconnected from him, as it comes through the path of Ibn Wahb from Sufyān al-Thawrī from al-Mughīrah ibn Miqsam, and Sulaymān (Abū Isḥāq al-Shaybānī) – both from al-Shaʿbī: that Abū Mūsā al-Ashʿarī said: "The blood money for quasi-intentional killing is thirty she-camels in their fifth year (ḥiqqah), thirty she-camels in their fourth year (jadhʿah), and forty camels ranging in age from three-year-old she-camels (thaniyyah) to six-year-old male camels (bāzil) in their respective years – all of them pregnant she-camels (khalīfah)." Al-Shaʿbī did not meet Abū Mūsā al-Ashʿarī.

وَأَمَّا ابْنُ مَسْعُودٍ - فَرُوِّينَاهَا عَنْهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْكَرِيمِ عَنِ ابْنِ مَسْعُودٍ: أَنَّهُ قَالَ: الْعَمْدُ السِّلَاحُ، وَشِبْهُ الْعَمْدِ الْحَجَرُ، وَالْعَصَا. قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى: أَنَّ ابْنَ مَسْعُودٍ قَالَ: شِبْهُ الْعَمْدِ: الْحَجَرُ، وَالْعَصَا، وَالسَّوْطُ، وَالدَّفْعَةُ، وَكُلُّ شَيْءٍ عَمَدْته بِهِ: فَفِيهِ التَّغْلِيظُ - وَالْخَطَأُ: أَنْ يَرْمِيَ شَيْئًا فَيُخْطِئَ بِهِ. وَمِنْ طَرِيقِ وَكِيعٍ، وَسَعِيدِ بْنِ مَنْصُورٍ، قَالَ وَكِيعٌ: أَنَا إسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنِ الشَّعْبِيِّ، وَقَالَ سَعِيدُ بْنُ مَنْصُورٍ أَنَا أَبُو عَوَانَةَ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنِ النَّخَعِيِّ - ثُمَّ اتَّفَقَ الشَّعْبِيُّ، وَالنَّخَعِيُّ: أَنَّ ابْنَ مَسْعُودٍ قَالَ فِي دِيَةِ شِبْهِ الْعَمْدِ: أَرْبَاعًا: خَمْسٌ وَعِشْرُونَ جَذَعَةً، وَخَمْسٌ وَعِشْرُونَ حِقَّةً، وَخَمْسٌ وَعِشْرُونَ بَنَاتَ مَخَاضٍ، وَخَمْسٌ وَعِشْرُونَ بَنَاتَ لَبُونٍ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَلَمْ يُولَدْ الشَّعْبِيُّ، وَالنَّخَعِيُّ، وَابْنُ أَبِي لَيْلَى، وَعَبْدُ الْكَرِيمِ إلَّا بَعْدَ مَوْتِ ابْنِ مَسْعُودٍ.

L36849 As for Ibn Masʿūd—we have narrated from him through ʿAbd al-Razzāq's chain from Ibn Jurayj, who informed me that ʿAbd al-Karīm reported from Ibn Masʿūd: "Intentional killing involves weapons, while semi-intentional killing involves stones and sticks." Ibn Jurayj added: "Muḥammad ibn ʿAbd al-Raḥmān ibn Abī Laylā informed me that Ibn Masʿūd said: 'Semi-intentional acts include stones, sticks, whips, a sudden push, and anything one deliberately employs—these require aggravated compensation. Unintentional [harm] occurs when one aims at a target but accidentally strikes [a person].'" Through the chains of Wakīʿ and Saʿīd ibn Manṣūr: Wakīʿ reported via Ismāʿīl ibn Abī Khālid from al-Shaʿbī, while Saʿīd ibn Manṣūr reported via Abū ʿAwānah from Manṣūr ibn al-Muʿtamir from al-Nakhaʿī—both al-Shaʿbī and al-Nakhaʿī agreed that Ibn Masʿūd ruled regarding semi-intentional blood money: "Divided into quarters: twenty-five each of four-year-old she-camels, five-year-old she-camels, one-year-old she-camels (banāt makhāḍ), and two-year-old she-camels (banāt labūn), totaling one hundred camels." Abū Muḥammad—may Allah be pleased with him—remarked: "Al-Shaʿbī, al-Nakhaʿī, Ibn Abī Laylā, and ʿAbd al-Karīm were only born after Ibn Masʿūd's death."

وَأَمَّا التَّابِعُونَ - فَرُوِيَ عَنِ النَّخَعِيِّ، وَالشَّعْبِيِّ: رِوَايَةٌ سَاقِطَةٌ فِيهَا الْحَجَّاجُ بْنُ أَرْطَاةَ، مِثْلُ قَوْلِ عَلِيٍّ فِي دِيَةِ شِبْهِ الْعَمْدِ.

L36850 As for the Followers (Tābiʿūn)—it is narrated from al-Nakhaʿī and al-Shaʿbī: a weak narration due to al-Ḥajjāj ibn Arṭāh's presence in its chain, matching ʿAlī's ruling on the blood money for semi-intentional killing.

وَقَدْ صَحَّ - عَنْ عَطَاءٍ، وَالزُّهْرِيِّ، مِثْلُ الْقَوْلِ الَّذِي رُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَأَبِي مُوسَى، وَأَحَدِ قَوْلَيْ زَيْدِ بْنِ ثَابِتٍ.

L36851 An opinion similar to that which was narrated to us from ʿUmar ibn al-Khaṭṭāb, Abū Mūsā, and one of the two opinions of Zayd ibn Thābit has been authentically reported from ʿAṭā and al-Zuhrī.

وَصَحَّ أَيْضًا - عَنْ طَاوُسٍ، وَعَطَاءٍ، وَالْحَسَنِ الْبَصْرِيِّ، وَعَنِ الزُّهْرِيِّ مِثْلُ الْقَوْلِ الَّذِي ذَكَرْنَا عَنْ عُثْمَانَ، وَأَحَدِ قَوْلَيْ زَيْدِ بْنِ ثَابِتٍ.

L36852–36853 It has also been authentically reported from Ṭāwūs, ʿAṭāʾ, al-Ḥasan al-Baṣrī, and al-Zuhrī – the same opinion we mentioned from ʿUthmān, and one of the two opinions of Zayd ibn Thābit.

L36854 It has also been authentically reported from Abū al-Zinād through the chain of Ibn Wahb from Yūnus ibn ʿUbayd, who narrated from him, regarding one who intentionally kills another while jesting with him, strikes him with a whip or stick, punches him, or playfully hurls an object at him—this con-

stitutes semi-deliberate (shibh al-ʿamd) injury, requiring aggravated blood money increased in quarters over three years, precisely as was narrated to us earlier from Ibn Masʿūd, being wholly identical in ruling, wholly identical.

وَصَحَّ أَيْضًا - عَنْ أَبِي الزِّنَادِ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْهُ: فِيمَنْ عَمَدَ بِآخَرَ لَاعِبًا مَعَهُ، أَوْ ضَرَبَهُ بِسَوْطٍ، أَوْ عَصًا، أَوْ لَكَزَهُ، أَوْ رَمَاهُ لَاعِبًا - فَهَذَا هُوَ شِبْهُ الْعَمْدِ، فِيهِ الدِّيَةُ مُغَلَّظَةٌ أَرْبَاعًا، كَالَّذِي رُوِّينَا آنِفًا عَنْ ابْنِ مَسْعُودٍ سَوَاءً سَوَاءً.

L36855 This is all we know that has been reported from the Companions and the Followers concerning the diyah for quasi-intentional homicide, and from the Companions regarding the description of quasi-intentional homicide. As for what has been reported from the Followers regarding its description, we shall mention it if Allah the Exalted wills.

هَذَا كُلُّ مَا نَعْلَمُهُ جَاءَ عَنْ الصَّحَابَةِ وَالتَّابِعِينَ فِي دِيَةِ شِبْهِ الْعَمْدِ، وَعَنْ الصَّحَابَةِ فِي صِفَةِ شِبْهِ الْعَمْدِ - وَجَاءَ عَنْ التَّابِعِينَ فِي صِفَةِ شِبْهِ الْعَمْدِ مَا نَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى.

L36856 It has been authentically reported from Ibrahim that quasi-intentional homicide refers to any act intentionally carried out using a stone or piece of wood instead of an iron tool, and this applies solely to homicide. However, a differing opinion on this matter has also been authentically reported from Ibrahim, as we shall subsequently clarify, if Allah, the Exalted and Glorified, wills.

صَحَّ عَنْ إبْرَاهِيمَ شِبْهُ الْعَمْدِ كُلُّ شَيْءٍ يَعْمِدُ بِهِ بِغَيْرِ حَدِيدَةٍ، لَكِنْ بِالْحَجَرِ وَالْخَشَبَةِ - وَلَا يَكُونُ إلَّا فِي النَّفْسِ. وَقَدْ صَحَّ عَنْ إبْرَاهِيمَ خِلَافُ هَذَا، عَلَى مَا نَذْكُرُهُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ.

L36857 As for al-Ḥakam ibn ʿUtaybah, we have narrated from him via a weak chain regarding a man who struck another with two blows using a stick, and he died? He said, "Aggravated blood money."

وَأَمَّا الْحَكَمُ بْنُ عُتَيْبَةَ فَرُوِّينَا عَنْهُ مِنْ طَرِيقٍ سَاقِطَةٍ فِي رَجُلٍ ضَرَبَ آخَرَ ضَرْبَتَيْنِ بِعَصًا فَمَاتَ؟ قَالَ: دِيَةٌ مُغَلَّظَةٌ.

L36858 It is authentically reported from Al-Hakam ibn Utaybah through Shu'bah's narration from him: If the perpetrator repeats striking the victim with a stick and the latter dies, there is no retaliation for that. It is also authentically reported from ʿAta that intentional [homicide] is that committed with a weapon—as has reached us. Semi-intentional acts are the stone and the stick, being equivalent in rulings concerning both life and what is less than life—we know of no other ruling in that regard. And if a man were to break another's teeth with a stone or gouge his eye with a rod, he would not be subject to retaliation for it.

وَصَحَّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ مِنْ طَرِيقِ شُعْبَةَ عَنْهُ: إنْ أَعَادَ عَلَيْهِ الضَّرْبَ بِالْعَصَا فَمَاتَ فَلَا قَوَدَ فِي ذَلِكَ. وَصَحَّ عَنْ عَطَاءٍ الْعَمْدُ السِّلَاحُ، كَذَلِكَ بَلَغَنَا، وَشِبْهُ الْعَمْدِ الْحَجَرُ وَالْعَصَا سَوَاءٌ فِي ذَلِكَ النَّفْسُ، وَمَا دُونَ النَّفْسِ - مَا عَلِمْنَا غَيْرَ ذَلِكَ. وَلَوْ أَنَّ رَجُلًا كَسَرَ أَسْنَانَ آخَرَ بِحَجَرٍ، أَوْ فَقَأَ عَيْنَهُ بِعُودٍ، فَإِنَّهُ لَا يُقَادُ مِنْهُ.

L36859 Ibn Jurayj said: "And I say: Rather, retaliation is exacted from him because it is intentional, unlike one who strikes another on the head with a stone without intending to kill him, and he dies from that."

قَالَ ابْنُ جُرَيْجٍ: وَأَنَا أَقُولُ: بَلْ يُقَادُ مِنْهُ، لِأَنَّهُ عَمْدٌ، وَلَيْسَ كَمَنْ شَجَّ آخَرَ بِحَجَرٍ لَا يُرِيدُ قَتْلَهُ فَمَاتَ مِنْ ذَلِكَ.

L36860–36862 It is authentically reported from ʿAṭāʾ: A single retaliatory push by one man

against another - this does not constitute quasi-intentional [act]. It is authentically reported from Ṭāwūs: Intentionality lies with the weapon. It is authentically reported from his son ʿAbd Allāh ibn Ṭāwūs: Whoever deliberately splits another's head with a stone - this is intentional. It is transmitted to us from Saʿīd ibn al-Musayyib through ʿAbd al-Razzāq's chain from Abū Bakr ibn ʿUbayd Allāh... Amr ibn Sulaym, their client, narrated from Al-Musayyib, who said: Intentional killing is with an iron implement—even if it is a needle or anything beyond it among weapons. It was reported to us from Masruq through a chain lacking reliability: "Intentional killing is only with an iron implement." It was authentically reported from Umar ibn Abd al-Aziz: "If someone strikes another on the head with a stone, causing death, legal retribution is due. But if he throws a stone at him, there is no legal retribution." It was authentically reported from Qatadah: "Quasi-intentional homicide is striking with a massive piece of wood or an enormous stone. Involuntary [harm] is when a person aims at someone but hits another, or aims at something but misses." It was authentically reported from Al-Hasan Al-Basri: "Legal retribution is not imposed on a striker unless he strikes with an iron implement. In quasi-intentional [acts], enhanced blood money is due." It was authentically reported from Hammad ibn Abi Sulayman: "If someone strangles another to death, it is deemed involuntary; but if someone strikes another with a stick and repeats the strike with it, causing death, legal retribution is due." All these narrations were reported by Shu'bah.

وَصَحَّ عَنْ عَطَاءٍ: الدَّفْعَةُ يَسْتَقِيدُ بِهَا الرَّجُلُ غَيْرَهُ، لَيْسَ هَذَا شِبْهَ الْعَمْدِ وَصَحَّ عَنْ طَاوُسٍ: الْعَمْدُ السِّلَاحُ. وَصَحَّ عَنْ ابْنِهِ عَبْدِ اللَّهِ بْنِ طَاوُسٍ: مَنْ تَعَمَّدَ فَضْخَ رَأْسِ آخَرَ بِحَجَرٍ: هَذَا عَمْدٌ. وَرُوِّينَا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي بَكْرِ بْنِ عُبَيْدِ اللَّهِ عَنْ عَمْرِو بْنِ سُلَيْمٍ مَوْلَاهُمْ عَنْ الْمُسَيِّبِ قَالَ: الْعَمْدُ الْحَدِيدَةُ - وَلَوْ بِإِبْرَةٍ فَمَا فَوْقَهَا مِنْ السِّلَاحِ. وَرُوِّينَا عَنْ مَسْرُوقٍ مِنْ طَرِيقٍ - لَا خَيْرَ فِيهَا -: لَيْسَ الْعَمْدُ إلَّا بِحَدِيدَةٍ. وَصَحَّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: مَنْ دَمَغَ آخَرَ بِحَجَرٍ أُقِيدَ مِنْهُ، فَإِنْ رَمَاهُ بِالْحَجَرِ فَلَا قَوَدَ. وَصَحَّ عَنْ قَتَادَةَ: شِبْهُ الْعَمْدِ: الضَّرْبُ بِالْخَشَبَةِ الضَّخْمَةِ، وَالْحَجَرِ الْعَظِيمِ وَالْخَطَأُ أَنْ يَرْمِيَ إنْسَانًا فَيُصِيبَ غَيْرَهُ، أَوْ يَرْمِيَ شَيْئًا فَيُخْطِئَ بِهِ. وَصَحَّ عَنْ الْحَسَنِ الْبَصْرِيِّ لَا يُقَادُ مِنْ ضَارِبٍ إلَّا أَنْ يَضْرِبَ بِحَدِيدَةٍ، وَفِي الْخَطَأِ شِبْهِ الْعَمْدِ: دِيَةٌ مُغَلَّظَةٌ. وَصَحَّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ: مَنْ خَنَقَ آخَرَ حَتَّى يَمُوتَ فَهُوَ خَطَأٌ - وَمَنْ ضَرَبَ آخَرَ بِعَصًا فَأَعَادَ عَلَيْهِ الضَّرْبَ بِهَا فَمَاتَ فَعَلَيْهِ الْقَوَدُ - رَوَى كُلَّ ذَلِكَ عَنْهُ شُعْبَةُ.

L36863 And that which we pledged to mention from Ibrāhīm and Al-Shaʿbī—we have narrated from Al-Shaʿbī via an unreliable chain—states: If one strangles another and persists until death ensues, retaliation is mandated. If he releases him and death subsequently occurs, an aggravated ransom is required. Another narration from him states: If he resumes striking with a stone or stick, retaliation is mandated. The authenticated report from Ibrāhīm states: If one strangles another until death, or strikes him with a piece of wood until death, retaliation is mandated. If he deliberately struck him with a stone, retaliation is mandated. Abū Muḥammad—may Allah be pleased with him—said: "This is our position." As for the regional jurists, Ibn Shubrumah held: Blood money for quasi-intentional homicide is payable from the perpetra-

وَالَّذِي وَعَدْنَا أَنْ نَذْكُرَهُ عَنْ إبْرَاهِيمَ، وَالشَّعْبِيِّ -: فَرُوِّينَا عَنْ الشَّعْبِيِّ - مِنْ طَرِيقٍ لَا تَصِحُّ -: مَنْ خَنَقَ آخَرَ فَلَمْ يُقْلِعْ عَنْهُ حَتَّى يَمُوتَ أُقِيدَ مِنْهُ - فَلَوْ رَفَعَ عَنْهُ ثُمَّ مَاتَ فَدِيَةٌ مُغَلَّظَةٌ. وَرُوِيَ عَنْهُ: إذَا أَعَادَ عَلَيْهِ الضَّرْبَ بِالْحَجَرِ وَالْعَصَا: فَهُوَ قَوَدٌ. وَصَحَّ عَنْ إبْرَاهِيمَ: إذَا خَنَقَهُ حَتَّى يَمُوتَ، أَوْ ضَرَبَهُ بِخَشَبَةٍ حَتَّى يَمُوتَ: أُقِيدَ بِهِ، فَإِنْ تَعَمَّدَ ضَرْبَهُ بِحَجَرٍ، فَفِيهِ الْقَوَدُ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَا قَوْلُنَا - وَأَمَّا فُقَهَاءُ الْأَمْصَارِ، فَإِنَّ ابْنَ شُبْرُمَةَ قَالَ: الدِّيَةُ فِي شِبْهِ الْعَمْدِ فِي مَالِ الْجَانِي، فَإِنْ لَمْ يَفِ مَالُهُ بِهَا فَعَلَى

tor's wealth. If his wealth does not suffice, the collective liability group bears it. Al-Awzāʿī concurred, defining quasi-intentional homicide as: "When one strikes another with a stick or whip in a single blow resulting in death." He added: "If he strikes again and death occurs immediately, retaliation is mandated." Al-Ḥasan ibn Ḥayy expressed the same view, except he stated: "If he strikes again and death does not occur immediately, it is quasi-intentional, and the blood money for this falls upon the collective liability group."

L36864–36865 Sufyan al-Thawri said: Intentional [homicide] is that committed with a weapon, entailing qisas for life or lesser injuries. Semi-intentional act occurs when one strikes another with a single blow of a stick or whip causing death, or sharpens a stick or bone and wounds another's abdomen with it - in such cases qisas does not apply, and he holds that semi-intentional act is not recognized for offenses below homicide. Abu Hanifah said: Qisas applies only to killing by cutting with an iron weapon, with a pointed reed, or by burning someone in fire until they die.

L36866 Even if someone strangles another until death, there is no liability for *qawad* (retaliation) in that case unless the perpetrator strangles people repeatedly, in which case *qisas* is enforced against him.

L36867 If he intentionally crushes his head with an enormous stone resulting in death, or drowns him in water of unfathomable depth within a river, sea, well, or pool until death occurs, or strikes him continuously with a massive wooden beam causing death, or compulsively opens his mouth and administers lethal poison into his throat leading to death, then no qisas (retaliatory punishment) applies for any of these acts—rather, it entails the diyah (blood money) equivalent to that for intentional killing.

L36868 As it has been narrated to us from Ibn Mas'ud and Abi al-Zinad: the responsibility [for blood money] lies upon the 'aqilah (the collective kin), while the kaffārah (religious expiation) is from his wealth, as with accidental killing.

L36869 He said: If someone intentionally demolishes a structure upon another and the victim dies, there is no liability upon him unless conclusive legal proof establishes that the victim was alive during the demolition. In that case, blood money and expiation are then required. We hold his opinion likewise

الْعَاقِلَةِ. وَقَالَ الْأَوْزَاعِيُّ: كَذَلِكَ، وَفَسَّرَ شِبْهَ الْعَمْدِ: أَنَّهُ أَنْ يَضْرِبَ آخَرَ بِعَصًا أَوْ سَوْطٍ ضَرْبَةً وَاحِدَةً فَيَمُوتَ؟ قَالَ: فَإِنْ ثَنَّى عَلَيْهِ فَمَاتَ مَكَانَهُ، فَهُوَ قَوَدٌ. وَقَالَ الْحَسَنُ بْنُ حَيٍّ مِثْلَ ذَلِكَ، إِلَّا أَنَّهُ قَالَ: إِنْ ثَنَّى عَلَيْهِ فَلَمْ يَمُتْ مَكَانَهُ فَهُوَ شِبْهُ الْعَمْدِ، وَالدِّيَةُ فِي ذَلِكَ عَلَى الْعَاقِلَةِ.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: الْعَمْدُ: مَا كَانَ بِسِلَاحٍ، وَفِيهِ الْقَوَدُ فِي النَّفْسِ فَمَا دُونَهَا - وَشِبْهُ الْعَمْدِ: هُوَ أَنْ يَضْرِبَهُ بِعَصًا أَوْ سَوْطٍ ضَرْبَةً وَاحِدَةً فَيَمُوتَ، أَوْ يُحَدِّدَ عُودًا أَوْ عَظْمًا فَيَجْرَحَ بِهِ بَطْنَ آخَرَ - فَهَذَا لَا قَوَدَ فِيهِ، وَلَيْسَ فِيمَا دُونَ النَّفْسِ عِنْدَهُ شِبْهُ عَمْدٍ. وَقَالَ أَبُو حَنِيفَةَ: لَا قَوَدَ إِلَّا فِيمَا قَتَلَ بِحَدِيدَةٍ بِقَطْعٍ، أَوْ بِلِيطَةِ قَصَبٍ، أَوْ أَحْرَقَهُ فِي النَّارِ حَتَّى مَاتَ.

وَلَوْ خَنَقَهُ حَتَّى يَمُوتَ فَلَا قَوَدَ فِي ذَلِكَ إِلَّا أَنْ يَخْنُقَ النَّاسَ مِرَارًا فَيُقَادُ مِنْهُ.

فَلَوْ شَدَخَ رَأْسَهُ عَمْدًا بِحَجَرٍ عَظِيمٍ حَتَّى يَمُوتَ، أَوْ غَرَّقَهُ فِي مَاءٍ بَعِيدِ الْقَعْرِ فِي نَهْرٍ أَوْ بَحْرٍ أَوْ بِئْرٍ أَوْ بِرْكَةٍ حَتَّى مَاتَ، أَوْ ضَرَبَهُ بِخَشَبَةٍ ضَخْمَةٍ أَبَدًا حَتَّى مَاتَ، أَوْ فَتَحَ فَمَهُ كُرْهًا وَرَمَى فِي حَلْقِهِ سُمًّا قَاتِلًا فَمَاتَ، فَلَا قَوَدَ عَلَيْهِ فِي شَيْءٍ مِنْ ذَلِكَ - وَإِنَّمَا فِيهِ الدِّيَةُ، كَدِيَةِ الْعَمْدِ.

كَمَا رُوِّينَا عَنْ ابْنِ مَسْعُودٍ وَأَبِي الزِّنَادِ، عَلَى الْعَاقِلَةِ، وَفِي مَالِهِ الْكَفَّارَةُ كَقَتْلِ الْخَطَإِ.

regarding one who traps someone inside a house until he dies of starvation and exhaustion.

قَالَ: فَلَوْ هَدَمَ عَلَيْهِ هَدْمًا فَمَاتَ عَامِدًا لِذَلِكَ فَلَا شَيْءَ عَلَيْهِ، إِلَّا أَنْ تَقُومَ بَيِّنَةٌ بِأَنَّهُ كَانَ حَيًّا حِينَ الْهَدْمِ، فَفِيهِ حِينَئِذٍ الدِّيَةُ، وَالْكَفَّارَةُ - وَنَرَى قَوْلَهُ كَذَلِكَ: فِيمَنْ طَمَسَ عَلَيْهِ بَيْتًا حَتَّى مَاتَ جُوعًا وَجَهْدًا.

L36870–36872 Abū Muḥammad—may Allāh be pleased with him—said: Whoever examines Abū Ḥanīfah's opinion will know it contradicts every tradition reported on this matter and the statements of all those we have mentioned, except the unreliable narration from Ibn Masʿūd. We know of none who agreed with Abū Ḥanīfah on this except Abū al-Zināد—though he differed with him regarding the description of quasi-intentional killing. Do we know any calamity or disgrace upon Islam graver than someone who does not deem legal retaliation applicable to those who kill Muslims by crushing with boulders, drowning, or smashing with stones—then is there no retaliation upon him nor a fine? Rather, his agnatic kin are charged with the blood money in such cases, along with... The magnitude of his contradiction is evident, for he restricted semi-deliberate acts exclusively to homicide, denying their applicability to lesser offenses. Should he argue: "The transmitted rulings pertain only to homicide?" We counter: You have opposed all such texts in their substance, as we previously elucidated, and the invalidity of his categorization, which is undeniably evident, stands exposed. He restricted the application of aggravated penalties exclusively to injuries caused by camel teeth, excluding dinars and dirhams. Where then lies his analogical reasoning by which he legislates prohibitions and permissions, while neglecting the Quran and the Sunnah? Uthman al-Batti ruled that blood money in such cases is to be paid from the offender's wealth. Al-Batti himself, along with Abu Yusuf and Muhammad ibn al-Hasan, recognized semi-deliberate acts only when one strikes with an instrument not ordinarily fatal in similar circumstances. As for instruments typically causing death, they upheld retaliation (qisas) – this being the opinion of al-Shafiʿi.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: قَوْلُ أَبِي حَنِيفَةَ مَنْ تَأَمَّلَهُ عَلِمَ أَنَّهُ مُخَالِفٌ لِكُلِّ خَبَرٍ رُوِيَ فِي ذَلِكَ، وَلِقَوْلِ كُلِّ مَنْ ذَكَرْنَا، إِلَّا الرِّوَايَةَ السَّاقِطَةَ عَنْ ابْنِ مَسْعُودٍ، وَمَا نَعْلَمُ أَحَدًا وَافَقَ أَبَا حَنِيفَةَ عَلَى ذَلِكَ إِلَّا أَبَا الزِّنَادِ، وَخَالَفَهُ فِي صِفَةِ شِبْهِ الْعَمْدِ، مَا نَعْلَمُ مُصِيبَةً، وَلَا فَضِيحَةً عَلَى الْإِسْلَامِ أَشَدَّ مِمَّنْ لَمْ يَرَ الْقَوَدَ فِيمَنْ يَقْتُلُ الْمُسْلِمِينَ بِالصَّخْرِ، وَالتَّغْرِيقِ، وَالشَّدْخِ بِالْحِجَارَةِ - ثُمَّ لَا قَوَدَ عَلَيْهِ وَلَا غَرَامَةَ؟ بَلْ تُكَلَّفُ الدِّيَاتِ فِي ذَلِكَ عَاقِلَتُهُ مَعَ عَظِيمِ تَنَاقُضِهِ، إِذْ لَمْ يَرَ عَمْدَ الْخَطَأِ إِلَّا فِي النَّفْسِ، وَلَمْ يَرَهُ فِيمَا دُونَهَا؟ فَإِنْ قَالَ: لَمْ تَرِدْ الْأَخْبَارُ إِلَّا فِي النَّفْسِ؟ قُلْنَا: قَدْ خَالَفْتَهَا كُلَّهَا فِيمَا فِيهَا كَمَا بَيَّنَّا قَبْلُ، وَفَسَادُ تَقْسِيمِهِ الَّذِي لَا خَفَاءَ بِهِ، وَلَمْ يَرَ فِي ذَلِكَ تَغْلِيظًا إِلَّا فِي أَسْنَانِ الْإِبِلِ خَاصَّةً، لَا فِي الدَّنَانِيرِ، وَلَا فِي الدَّرَاهِمِ، فَأَيْنَ قِيَاسُهُ الَّذِي يُحَرِّمُ بِهِ وَيُحَلِّلُ، وَيَتْرُكُ لَهُ الْقُرْآنَ، وَالسُّنَنَ؟ وَرَأَى عُثْمَانُ الْبَتِّيُّ: الدِّيَةَ فِي ذَلِكَ فِي مَالِ الْجَانِي، وَلَمْ يَرَ هُوَ - يَعْنِي الْبَتِّيَّ - وَأَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ شِبْهَ الْعَمْدِ، إِلَّا مَنْ ضَرَبَ بِمَا لَا يُمَاتُ مِنْ مِثْلِهِ - وَأَمَّا مَا يُمَاتُ مِنْ مِثْلِهِ فَفِيهِ عِنْدَهُمْ الْقَوَدُ - وَهُوَ قَوْلُ الشَّافِعِيِّ.

L36873 The diyah in cases of quasi-intentional homicide according to them: as has been reported to us previously from ʿUmar ibn al-Khaṭṭāb, Abū Mūsā al-Ashʿarī, Zayd ibn Thābit, ʿAṭāʾ, Ṭāwus, al-Ḥasan, and al-Zuhrī.

وَالدِّيَةُ عِنْدَهُمْ فِي شِبْهِ الْعَمْدِ - كَمَا رُوِّينَا آنِفًا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَأَبِي مُوسَى الْأَشْعَرِيِّ، وَزَيْدِ بْنِ ثَابِتٍ، وَعَطَاءٍ، وَطَاوُسٍ، وَالْحَسَنِ، وَالزُّهْرِيِّ.

وَمِمَّنْ رُوِيَ عَنْهُ نَحْوُ قَوْلِنَا جَمَاعَةٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ عَنْ شَرِيكِ بْنِ عَبْدِ اللَّهِ عَنْ زَيْدِ بْنِ جُبَيْرٍ عَنْ جَرْوَةَ بْنِ حَمِيلٍ عَنْ أَبِيهِ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: يَعْمِدُ أَحَدُكُمْ إلَى أَخِيهِ فَيَضْرِبُهُ بِمِثْلِ آكِلَةِ اللَّحْمِ، لَا أُوتَى بِرَجُلٍ فَعَلَ ذَلِكَ فَقَتَلَ إلَّا أَقَدْته بِهِ. وَرُوِّينَا أَيْضًا عَنْهُ: أَنَّهُ أَقَادَ مِنْ رَجُلٍ جَبَذَ شَعْرَ آخَرَ جَبْذًا شَدِيدًا فَوَرِمَ عُنُقُهُ فَمَاتَ مِنْ يَوْمِهِ.

L36874 Among those from whom a statement resembling our position has been narrated is a group of scholars: as transmitted to us through the chain of Abū Bakr ibn Abī Shaybah from Sharīk ibn ʿAbdullāh from Zayd ibn Jubayr from Jarwah ibn Ḥumayd from his father, who said: ʿUmar ibn al-Khaṭṭāb declared, “One of you would strike his brother with an instrument akin to a meat-cutting tool. If a man does this and kills, I will not spare him—I will exact retaliation from him.” It has also been transmitted from him that he enforced retaliation against a man who forcefully pulled another’s hair, causing his neck to swell and resulting in his death that same day.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ سِمَاكِ بْنِ الْفَضْلِ: أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَقَادَ مِنْ رَجُلٍ خَنَقَ صَبِيًّا حَتَّى مَاتَ. وَصَحَّ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ الْقَوَدُ مِمَّنْ قَتَلَ بِحَجَرٍ، أَوْ عَصًا - وَهُوَ قَوْلُ رَبِيعَةَ، وَمَالِكٍ، وَعَبْدِ الْعَزِيزِ بْنِ أَبِي سَلَمَةَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L36875 Through the narration of Ma’mar from Simak ibn al-Fadl: that Umar ibn Abd al-Aziz applied qisas (retaliation) against a man who strangled a boy resulting in his death. It is reliably narrated from Ubayd ibn Umayr that qisas applies to one who kills with a stone or stick - this being the position of Rabi’ah, Malik, Abd al-Aziz ibn Abi Salamah, Abu Sulayman, and our school’s scholars.

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: أَمَّا الْمَالِكِيُّونَ فَقَدْ تَنَاقَضُوا هَاهُنَا؛ لِأَنَّ الْمُرْسَلَ عِنْدَهُمْ كَالْمُسْنَدِ، وَخَالَفُوا هَاهُنَا الْمَرَاسِيلَ، وَجُمْهُورَ الصَّحَابَةِ، وَغَيْرِهِمْ.

L36876 Abu Muhammad—may Allah be pleased with him—said: As for the Malikis, they have contradicted themselves here because, according to them, the *mursal* (hadith with an incomplete chain) is equivalent to the *musnad* (hadith with a connected chain). Yet in this matter, they have contradicted the *mursal* narrations, the majority of the Companions, and other scholars.

وَأَمَّا قَوْلُنَا “ إنْ أَبَى الْوَلِيُّ إلَّا أَكْثَرَ مِنْ الدِّيَةِ: لَمْ يَلْزَمْ الْقَاتِلَ ذَلِكَ، إلَّا بِتَرَاضٍ مِنْهُ مَعَ الْوَلِيِّ، وَإِلَّا فَلَا ” فَلِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ لِلْوَلِيِّ: قُرْآنٌ، وَلَا سُنَّةٌ، وَإِنَّمَا أَلْزَمْنَا الْقَاتِلَ ذَلِكَ إذَا رَضِيَ بِهِ هُوَ وَالْوَلِيُّ: فَلِلْأَثَرِ الصَّحِيحِ الَّذِي ذَكَرْنَا مِنْ قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: “ أَوْ يُفَادَى ” فَهَذَا فِعْلٌ مِنْ فَاعِلَيْنِ، فَهُوَ لَازِمٌ بِتَرَاضِيهِمَا.

L36877–36879 As for our statement, “If the guardian refuses to accept anything except more than the diyah, the killer is not bound to comply except by mutual agreement between him and the guardian; otherwise, there is no obligation”—this is because neither the Quran nor the Sunnah has imposed such a requirement on the guardian. We have only imposed this obligation on the killer. That is when he and the guardian consent to it, based on the authentic report we cited from his statement—peace and blessings be upon him—“or he is ransomed.” This is an act by the contracting parties, obligatory by their mutual consent.

[مَسْأَلَةُ الدِّيَةُ فِي الْعَمْدِ وَالْخَطَأِ]

The Issue of Diyah in Intentional and Accidental Killing

L36880

L36881 Issue 2028: The blood money for intentional and accidental [acts] is one

hundred camels. If unavailable, their value - determined as if available in the jurisdiction where the ruling applies, based on medium-quality camels, regardless of how high that value may be - regardless of how high that value may be - is owed. In cases of accidental [acts], this responsibility falls upon the ʿāqila (liable kin group) of the perpetrator.

L36882 In the case of intentional killing, the blood money is solely from the killer's own wealth. In both intentional and unintentional scenarios, the ruling is the same, with no specified time limit for any of it. If the perpetrator has no wealth or liable kinship group, the blood money is taken from the share allocated to debtors in zakah funds. The same applies if the killer is unknown. The blood money for both intentional and unintentional killing consists of five categories: twenty yearling she-camels (female camels in their second year), twenty male two-year-old camels, twenty female two-year-old camels, twenty three-year-old she-camels, and twenty four-year-old she-camels. These must exclusively be camels, whether from settled or nomadic herds. If the debtor opts to provide all female camels, it is commendable. Similarly, if he provides four-year-old camels, no more, that is acceptable.

L36883 As for our statement: "The blood money for intentional and unintentional killing is one hundred camels," this is due to the statement of Allah, the Mighty and Majestic: {And whoever kills a believer by mistake must free a believing slave and pay blood money in full to his family} [An-Nisa: 92].[39]

L36884 The authentic report we have previously mentioned from the Messenger of Allah—may Allah's peace and blessings be upon him—states: "If someone is killed, their family is between two choices: either to have retribution exacted (qisas) or to take the diyah (monetary compensation)."

L36885 Through the narration of Abū Hurayrah and Abū Shurayḥ al-Kaʿbī from the Messenger of Allah—peace and blessings of Allah be upon him and his family—the obligation of *diyah* in cases of intentional and unintentional killing is established. It is absolutely impossible to know the meaning of what Allah the Exalted and His Messenger—upon him be peace and blessings of

[39]**Qur'an references (L36883):** Qur'an 4:92 (An-Nisa).

٢٠٢٨ - مَسْأَلَةٌ: وَالدِّيَةُ فِي الْعَمْدِ وَالْخَطَأِ مِائَةٌ مِنْ الْإِبِلِ، فَإِنْ عُدِمَتْ فَقِيمَتُهَا لَوْ وُجِدَتْ فِي مَوْضِعِ الْحُكْمِ - بَالِغَةً مَا بَلَغَتْ - مِنْ أَوْسَطِ الْإِبِلِ - بَالِغَةً مَا بَلَغَتْ - وَهِيَ فِي الْخَطَأِ عَلَى عَاقِلَةِ الْقَاتِلِ.

وَأَمَّا فِي الْعَمْدِ فَهِيَ فِي مَالِ الْقَاتِلِ وَحْدَهُ وَهِيَ فِي كُلِّ ذَلِكَ حَالَةَ الْعَمْدِ وَالْخَطَأِ سَوَاءٌ لَا أَجَلَ فِي شَيْءٍ مِنْهَا، فَمَنْ لَمْ يَكُنْ لَهُ مَالٌ وَلَا عَاقِلَةٌ، فَهِيَ فِي سَهْمِ الْغَارِمِينَ فِي الصَّدَقَاتِ - وَكَذَلِكَ مَنْ لَمْ يُعْرَفْ قَاتِلُهُ، وَالدِّيَةُ فِي الْعَمْدِ، وَالْخَطَأِ: أَخْمَاسٌ وَلَا بُدَّ: عِشْرُونَ بِنْتَ مَخَاضٍ، وَعِشْرُونَ بَنِي لَبُونٍ، وَعِشْرُونَ بَنَاتَ لَبُونٍ، وَعِشْرُونَ حِقَّةً، وَعِشْرُونَ جَذَعَةً لَا تَكُونُ أَلْبَتَّةَ مِنْ غَيْرِ الْإِبِلِ الْحَاضِرَةِ وَالْبَادِيَةِ سَوَاءً، فَلَوْ تَطَوَّعَ الْغَارِمُ بِأَنْ يُعْطِيَهَا كُلَّهَا إنَاثًا فَحَسَنٌ، وَكَذَلِكَ إذَا أَعْطَاهَا أَرْبَاعًا لَا أَكْثَرَ.

وَأَمَّا قَوْلُنَا: " إنَّ الدِّيَةَ فِي الْعَمْدِ وَالْخَطَأِ مِائَةٌ مِنْ الْإِبِلِ فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ} [النساء: ٩٢] .

وَالْخَبَرُ الثَّابِتُ الَّذِي قَدْ أَوْرَدْنَاهُ قَبْلُ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ قُتِلَ لَهُ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيرَتَيْنِ إمَّا أَنْ يُقَادَ وَإِمَّا أَنْ يَأْخُذَ الْعَقْلَ» .

وَمِنْ طَرِيقِ أَبِي هُرَيْرَةَ، وَأَبِي شُرَيْحٍ الْكَعْبِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَصَحَّ وُجُوبُ الدِّيَةِ فِي الْعَمْدِ وَالْخَطَأِ، وَلَا يُمْكِنُ أَلْبَتَّةَ أَنْ يُعْلَمَ مَعْنَى مَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ بِهِ وَرَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إلَّا مِنْ بَيَانِ الْقُرْآنِ، أَوْ السُّنَّةِ قَالَ اللَّهُ عَزَّ وَجَلَّ: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] وَلَيْسَتْ لَفْظَةُ " الْعَقْلِ، وَالدِّيَةِ "

Allah—have commanded except through the clarification of the Quran or the Sunnah. Allah the Exalted said: *"To make clear to mankind what was sent down to them"* (16:44). The terms *al-ʿaql* and *diyah* are not among the words that have a defined measure, a restricted category, or a specified duration in the Arabic language. Therefore, it is obligatory to refer to the textual sources for all such matters. We sought this and found the well-known authentic report we narrated through Muslim: from Muḥammad ibn ʿAbdullāh ibn Numayr, from his father, from Saʿīd ibn ʿUbayd, from Bashīr ibn Yasār al-Anṣārī, from Sahl ibn Abī Ḥathmah al-Anṣārī, who informed him that a group of them went to Khaybar and dispersed there, then found one of their men slain—and he narrated the ḥadīth, which includes: *"The Messenger of Allah—peace and blessings of Allah be upon him—disapproved of nullifying his blood, so he paid one hundred camels from the charity camels as his diyah."*[40]

مِنْ الْأَلْفَاظِ الَّتِي لَهَا مِقْدَارٌ مَحْدُودٌ فِي اللُّغَةِ، أَوْ جِنْسٌ مَحْدُودٌ فِي اللُّغَةِ، أَوْ أَمَدٌ مَحْدُودٌ فِي اللُّغَةِ، فَوَجَبَ الرُّجُوعُ فِي كُلِّ ذَلِكَ إلَى النَّصِّ، فَطَلَبْنَا ذَلِكَ؟ فَوَجَدْنَا الْخَبَرَ الثَّابِتَ الْمَشْهُورَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ أَنَا أَبِي أَنَا سَعِيدُ بْنُ عُبَيْدٍ أَنَا بَشِيرُ بْنُ يَسَارٍ الْأَنْصَارِيُّ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ الْأَنْصَارِيِّ: أَنَّهُ أَخْبَرَهُ «أَنَّ نَفَرًا مِنْهُمْ انْطَلَقُوا إلَى خَيْبَرَ فَتَفَرَّقُوا فِيهَا، فَوَجَدُوا أَحَدَهُمْ قَتِيلًا وَسَاقَ الْحَدِيثَ، وَفِيهِ فَكَرِهَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُبْطِلَ دَمَهُ فَوَدَاهُ مِائَةً مِنْ إبِلِ الصَّدَقَةِ» .

L36886–36887 From the chain of narration of Malik ibn Anas, he said: Abu Layla ibn Abdullah ibn Abd al-Rahman ibn Sahl narrated to me from Sahl ibn Abi Hathmath that he informed him from men among the elders of his tribe that Abdullah ibn Sahl and Muhayyisa went out to Khaybar due to hardship that had afflicted them. Then Muhayyisa came and reported that Abdullah ibn Sahl had been killed and thrown into a spring or a dry well. He went to the Jews and said: "By Allah, you have killed him!" They replied: "By Allah, we did not kill him." He then related the account, and at its conclusion: "The Messenger of Allah (peace and blessings be upon him and his family) said: 'Either they pay the blood-money for your companion or they will be notified of war.'" He mentioned further discourse, ending with: "Thus the Messenger of Allah (peace and blessings be upon him and his family) paid one hundred she-camels as blood-money for him until the camels were brought into the courtyard of the family. Indeed, a red she-camel among them kicked me."

وَمِنْ طَرِيقِ مَالِكِ بْنِ أَنَسٍ قَالَ: حَدَّثَنِي أَبُو لَيْلَى بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ سَهْلٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ أَنَّهُ أَخْبَرَهُ عَنْ رِجَالٍ مِنْ كُبَرَاءِ قَوْمِهِ أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ وَمُحَيِّصَةَ خَرَجَا إلَى خَيْبَرَ مِنْ جَهْدٍ أَصَابَهُمْ، فَأَتَى مُحَيِّصَةُ، فَأَخْبَرَ: أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ قَدْ قُتِلَ وَطُرِحَ فِي عَيْنٍ أَوْ فَقِيرٍ فَأَتَى يَهُودَ؟ فَقَالَ: أَنْتُمْ وَاَللَّهِ قَتَلْتُمُوهُ؟ قَالُوا: وَاَللَّهِ مَا قَتَلْنَاهُ - فَذَكَرَ الْخَبَرَ، وَفِي آخِرِهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: إمَّا أَنْ يَدُوا صَاحِبَكُمْ وَإِمَّا أَنْ يُؤْذِنُوا بِحَرْبٍ فَذَكَرَ كَلَامًا، وَفِي آخِرِهِ «فَوَدَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِائَةَ نَاقَةٍ حَتَّى أُدْخِلَ عَلَيْهِمْ الدَّارَ، فَلَقَدْ رَكَضَتْنِي مِنْهَا نَاقَةٌ حَمْرَاءُ» .

L36888 Abū Muḥammad—may Allāh be pleased with him—said: It has been established that the blood money is one hundred camels. This is a ruling from him—peace and blessings be upon him—regarding the blood money of a settled person who made a claim against settled people, not in the case of a

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: فَصَحَّ أَنَّ الدِّيَةَ مِائَةٌ مِنْ الْإِبِلِ، وَهَذَا حُكْمٌ مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي دِيَةِ حَضَرِيٍّ ادَّعَى عَلَى حَضَرِيِّينَ، لَا فِي بَدْوِيٍّ، فَبَطَلَ أَنْ تَكُونَ الدِّيَةُ مِنْ غَيْرِ الْإِبِلِ.

[40] **Qur'an references (L36885):** Qur'an 16:44 (An-Nahl).

Bedouin. Thus, it is invalid for the blood money to consist of anything other than camels.

وَأَيْضًا فَقَدْ صَحَّ أَنَّ الْإِجْمَاعَ مُتَيَقَّنٌ عَلَى أَنَّ الدِّيَةَ تَكُونُ مِنْ الْإِبِلِ.

L36889 Furthermore, it is definitively established that consensus exists that *diyah* is to be paid in camels.

وَاخْتَلَفُوا فِي هَلْ تَكُونُ مِنْ غَيْرِ ذَلِكَ؟ وَالشَّرِيعَةُ لَا يَحِلُّ أَخْذُهَا بِاخْتِلَافٍ لَا نَصَّ فِيهِ.

L36890 They differed concerning whether it can be from other than that, and it is not permissible to take the Sharia based on a disagreement unsupported by textual evidence.

فَإِنْ قِيلَ: فَمَا وَجْهُ إعْطَائِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الدِّيَةَ فِي هَذَا الْخَبَرِ مِنْ إبِلِ الصَّدَقَةِ وَلَمْ يَدَّعِ الْقَتْلَ إلَّا عَلَى يَهُودٍ؟ قُلْنَا: وَجْهُ ذَلِكَ بَيِّنٌ لَا خَفَاءَ بِهِ، وَهُوَ أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ - رَضِيَ اللَّهُ عَنْهُ - قَدْ صَحَّ قَتْلُهُ بِلَا شَكٍّ، ثُمَّ لَا شَكَّ فِي أَنَّهُ قُتِلَ عَمْدًا أَوْ خَطَأً، لَا بُدَّ مِنْ أَحَدِهِمَا، وَالدِّيَةُ وَاجِبَةٌ فِي الْخَطَأِ بِكُلِّ حَالٍ بِنَصِّ الْقُرْآنِ، وَوَاجِبَةٌ فِي الْعَمْدِ إذَا بَطَلَ الْقَوَدُ لِمَا قَدَّمْنَا مِنْ أَنَّ لِوَلِيِّهِ الْقَوَدَ وَقَدْ بَطَلَ، أَوْ الدِّيَةُ وَهِيَ مُمْكِنَةٌ، وَالْقَوَدُ هَاهُنَا قَدْ بَطَلَ؛ لِأَنَّهُ لَا يُعْرَفُ قَاتِلُهُ فَصَحَّتْ الدِّيَةُ فِيهِ بِكُلِّ حَالٍ.

L36891 If it is asked: What is the rationale for him—peace and blessings of Allah be upon him—giving the diyah in this report from the zakāh camels when the accusation of killing was directed solely at Jews? We say: The rationale for this is evident and unambiguous. It is that the killing of ʿAbdullāh ibn Sahl—may Allah be pleased with him—has been confirmed without doubt. Furthermore, there is no doubt that he was killed either intentionally or unintentionally; it must be one of the two. The diyah is obligatory in cases of unintentional killing in all circumstances by the explicit text of the Quran. It is also obligatory in intentional killing if retaliation is nullified, as we earlier established—that his legal heir holds the right to retaliation (which has been nullified) or to the diyah (which remains applicable). Retaliation here is nullified because the killer is unknown. Thus, the diyah is applicable in this case without exception.

ثُمَّ لَا بُدَّ - ضَرُورَةً - مِنْ أَنْ يَكُونَ قَاتِلُهُ مُسْلِمًا أَوْ غَيْرَ مُسْلِمٍ، وَلَسْنَا عَلَى يَقِينٍ مِنْ أَنَّ قَاتِلَهُ غَيْرُ مُسْلِمٍ، وَالنَّاسُ كُلُّهُمْ مَحْمُولُونَ عَلَى الْإِسْلَامِ حَتَّى يَصِحَّ مِنْ أَحَدٍ مِنْهُمْ كُفْرٌ.

L36892 It is an absolute necessity that his killer be a Muslim or a non-Muslim. We are not certain that his killer is a non-Muslim, and all people are presumed to be Muslim until disbelief is validly proven for one of them.

لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {فَأَقِمْ وَجْهَكَ لِلدِّينِ حَنِيفًا فِطْرَتَ اللَّهِ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا} [الروم: ٣٠] .

L36893 Due to the statement of Allah, the Mighty and Majestic: *"Therefore devote your face to the religion as a ḥanīf—the innate nature of Allah upon which He has created people"* {Ar-Rum: 30}.[41]

وَلِقَوْلِهِ عَزَّ وَجَلَّ: {وَإِذْ أَخَذَ رَبُّكَ مِنْ بَنِي آدَمَ مِنْ ظُهُورِهِمْ ذُرِّيَّتَهُمْ وَأَشْهَدَهُمْ عَلَى أَنْفُسِهِمْ أَلَسْتُ بِرَبِّكُمْ قَالُوا بَلَى شَهِدْنَا أَنْ تَقُولُوا يَوْمَ الْقِيَامَةِ إِنَّا كُنَّا عَنْ هَذَا غَافِلِينَ} [الأعراف: ١٧٢] .

L36894–36895 And due to the statement of Him, the Almighty, the Majestic: {When your Lord took from the backs of the children of Adam their descendants and made them bear witness against themselves: "Am I not your Lord?" They

[41] **Qur'an references (L36893):** Qur'an 30:30 (Ar-Rum).

replied: “Yes! We testify”—lest you should say on the Day of Resurrection: “We were unaware of this.”} [Al-A’raf: 172].[42]

L36896 And [the evidence includes] the statement of Allah’s Messenger—may Allah’s peace and blessings be upon him—authentically established from him: “Every newborn is born upon the divine creed and this innate disposition (*fitrah*), until his parents make him a Jew, a Christian, a Zoroastrian, or cause him to associate partners with Allah.”

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الثَّابِتِ عَنْهُ: «كُلُّ مَوْلُودٍ يُولَدُ عَلَى الْمِلَّةِ وَعَلَى هَذِهِ الْفِطْرَةِ حَتَّى يَكُونَ أَبَوَاهُ يُهَوِّدَانِهِ وَيُنَصِّرَانِهِ وَيُمَجِّسَانِهِ وَيُشَرِّكَانِهِ» .

L36897 And for the established report from ‘Iyād ibn Himār al-Mujāshi‘ī, from the Messenger of Allah (peace be upon him), who narrated from Allah, Blessed and Exalted is He, that He said: “I created all My servants as monotheists, but the devils diverted them from their religion.”

وَلِلْخَبَرِ الثَّابِتِ عَنْ عِيَاضِ بْنِ حِمَارٍ الْمُجَاشِعِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ اللَّهِ تَبَارَكَ وَتَعَالَى أَنَّهُ قَالَ: «خَلَقْتُ عِبَادِي كُلَّهُمْ حُنَفَاءَ فَاجْتَالَتْهُمْ الشَّيَاطِينُ عَنْ دِينِهِمْ» .

L36898 We have mentioned all of that with its chain of transmission in *Kitāb al-Jihād* and others.

وَقَدْ ذَكَرْنَا كُلَّ ذَلِكَ بِإِسْنَادِهِ فِي " كِتَابِ الْجِهَادِ " وَغَيْرِهِ.

L36899 Therefore, it is obligatory to compel the killer of Abdullah to embrace Islam without exception, until certainty of the contrary is established. If the killer of Abdullah committed accidental homicide, the diyah is incumbent upon his agnatic kin. If the killing was intentional, is the diyah to be paid from his own wealth—thereby making him a debtor—or from his agnatic kin? The right of debtors to receive charitable funds is established by the Quranic text. Allah Almighty stated: “Charitable funds are only for the poor, the needy, those administering them, those whose hearts are to be reconciled, for emancipating slaves, for debtors, in the cause of Allah, and for travelers—an obligation ordained by Allah” [Quran 9:60]. Thus, what we have asserted is confirmed with certainty.[43]

فَالْوَاجِبُ أَنْ يُحْمَلَ قَاتِلُ عَبْدِ اللَّهِ عَلَى الْإِسْلَامِ وَلَا بُدَّ، حَتَّى يُوقَنَ خِلَافُهُ - ثُمَّ إنْ كَانَ قَاتِلُ عَبْدِ اللَّهِ قَتَلَهُ خَطَأً فَالدِّيَةُ عَلَى عَاقِلَتِهِ، وَإِنْ كَانَ قَتَلَهُ عَمْدًا فَالدِّيَةُ فِي مَالِهِ؟ فَهُوَ غَارِمٌ أَوْ عَاقِلَتُهُ، وَحَقُّ الْغَارِمِينَ فِي الصَّدَقَاتِ بِنَصِّ الْقُرْآنِ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِنَ اللَّهِ} [التوبة: ٦٠] فَصَحَّ بِهَذَا مَا قُلْنَاهُ يَقِينًا.

L36900 Among those from whom it has been reported that the blood money (diyah) in camels accords with our opinion—with nothing else reported from them—a group, as has been narrated to us through Waki‘’s chain: Ismā‘īl ibn Abī Khālid reported from al-Sha‘bī, who reported from Zayd ibn Thābit, ‘Alī ibn

وَمِمَّنْ رُوِيَ عَنْهُ أَنَّ الدِّيَةَ فِي الْإِبِلِ كَقَوْلِنَا، وَلَمْ يُرْوَ عَنْهُ غَيْرُ ذَلِكَ -: فَطَائِفَةٌ كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ أَنَا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ زَيْدِ بْنِ ثَابِتٍ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَعَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالُوا كُلُّهُمْ: فِي الدِّيَةِ مِائَةٌ مِنْ الْإِبِلِ.

[42] **Qur’an references (L36895):** Qur’an 7:172 (Al-A’raf).
[43] **Qur’an references (L36899):** Qur’an 9:60 (At-Tawbah).

Abī Ṭālib, and ʿAbdullāh ibn Masʿūd. All of them said: "The blood money (diyah) is one hundred camels."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: فِي الدِّيَةِ مِائَةُ بَعِيرٍ: أَوْ قِيمَةُ ذَلِكَ مِنْ عُسْرِهِ.

L36901 And through the chain of Abd al-Razzaq from Ma'mar from Abd Allah ibn Tawus from his father, who said: The blood money is one hundred camels, or its equivalent value due to the hardship thereof.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: يَعْنِي مِنْ عُسْرِهِ فِي وُجُودِ الْإِبِلِ.

L36902 Abū Muḥammad—may Allāh be pleased with him—said: It refers to his hardship due to the scarcity of camels.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَنَا ابْنُ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ كَانَ يَقُولُ عَلَى النَّاسِ أَجْمَعِينَ - أَهْلِ الْقَرْيَةِ، وَأَهْلِ الْبَادِيَةِ - مِائَةٌ مِنْ الْإِبِلِ، فَمَنْ لَمْ يَكُنْ عِنْدَهُ إبِلٌ فَعَلَى أَهْلِ الْوَرِقِ الْوَرِقُ، وَعَلَى أَهْلِ الْبَقَرِ الْبَقَرُ، وَعَلَى أَهْلِ الْغَنَمِ الْغَنَمُ، وَعَلَى أَهْلِ الْبَزِّ الْبَزُّ - يُعْطُونَ مِنْ أَيِّ صِنْفٍ كَانَ بِقِيمَةِ الْإِبِلِ مَا كَانَتْ - إنْ ارْتَفَعَتْ أَوْ انْخَفَضَتْ - قِيمَتُهَا يَوْمَئِذٍ، فَمَنْ اتَّقَى بِالْإِبِلِ مِنْ النَّاسِ فَهُوَ حَقُّ الْمَعْقُولِ لَهُ الْإِبِلُ.

L36903–36905 From the path of ʿAbd al-Razzāq: I [Ibn Jurayj] report from Ibn Ṭāwūs, from his father, who would say: All people collectively—villagers and Bedouins alike—are obligated to provide one hundred camels. For those who do not possess camels: those who own silver must give silver, those who own cattle must give cattle, those who own sheep must give sheep, and those who possess textiles must give textiles. They must give from whichever category of wealth it was, calculated according to the camels' value at the time—whether their value has risen or fallen. On that Day, whoever shows piety by means of camels among the people, the camels are rightfully his, in accordance with reasonable jurisprudential norms.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَنَّ عَطَاءَ بْنَ أَبِي رَبَاحٍ قَالَ لَهُ: كَانَتْ الدِّيَةُ الْإِبِلَ حَتَّى كَانَ عُمَرُ، قَالَ ابْنُ جُرَيْجٍ فَقُلْت لَهُ: فَإِنْ شَاءَ الْقَرَوِيُّ أَعْطَى مِائَةَ نَاقَةٍ، أَوْ مِائَتَيْ بَقَرَةٍ، أَوْ أَلْفَيْ شَاةٍ؟ فَقَالَ عَطَاءٌ: إنْ شَاءَ أَعْطَى الْإِبِلَ وَلَمْ يُعْطِ ذَهَبًا - هَذَا هُوَ الْأَمْرُ الْأَوَّلُ، لَا يَتَعَاقَلُ أَهْلُ الْقُرَى مِنْ الْمَاشِيَةِ غَيْرِ الْإِبِلِ، هُوَ عَقْلُهُمْ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L36906 From the narration of Abd al-Razzaq via Ibn Jurayj, that Ata ibn Abi Rabah said to him: "Blood money was paid in camels until the era of Umar." Ibn Jurayj said: "I asked him: If a villager wishes, can he offer one hundred she-camels, two hundred cows, or two thousand sheep?" Ata responded: "If he wishes, he may give camels instead of gold—this is the first ruling. Villagers do not use livestock other than camels for blood money payments; this was their established practice during the time of Allah's Messenger, peace and blessings be upon him."

فَهَذَا عَطَاءٌ لَمْ يَأْخُذْ قَضَاءَ عُمَرَ - وَقَدْ عَرَفَهُ - إذْ رَأَى أَنَّهُ رَأْيٌ مِنْهُ قَطُّ، لَمْ يُمْضِهِ إلَّا عَلَى مَنْ رَضِيَهُ لِنَفْسِهِ فَقَطْ.

L36907 This is 'Aṭā'—he did not adopt the judicial ruling of 'Umar, though he was aware of it—since he considered it nothing but an opinion from him. He did not enforce it except upon those who consented to it only for themselves.

L36908 From the chain of Ismaʿil ibn Ishaq: From Muhammad ibn al-Minhal, from Yazid ibn Zurayʿ, from Shuʿbah, from Qatadah, who said: In the book of

ʿUmar ibn ʿAbd al-ʿAziz, the blood money is one hundred camels (the value of each camel being one hundred dirhams); thus, this is his stipulation for the camels.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا مُحَمَّدُ بْنُ الْمِنْهَالِ أَنَا يَزِيدُ بْنُ زُرَيْعٍ أَنَا شُعْبَةُ عَنْ قَتَادَةَ، قَالَ: فِي كِتَابِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ الدِّيَةُ مِائَةُ بَعِيرٍ - قِيمَةُ كُلِّ بَعِيرٍ مِائَةُ دِرْهَمٍ - فَهَذِهِ صِفَةٌ مِنْهُ لِلْإِبِلِ.

L36909 From Muḥammad ibn Saʿīd ibn Nubāt, from Aḥmad ibn ʿAbd al-Baṣīr, from Qāsim ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from al-Mughīrah ibn Miqsam, from Ibrāhīm al-Nakhaʿī, who said: "The ruling stipulated camels as blood money, with each camel valued at twenty and one hundred dirhams." Abū Muḥammad (may Allāh be pleased with him) stated: "This is his description regarding camels—this being the opinion of al-Shāfiʿī, which he firmly upheld, and it is the view of al-Muzanī, Ibn al-Mundhir, Abū Sulaymān, and all our companions. A group opposed this position: a faction asserted, 'Blood money for camel-owners must be paid in camels, for gold-owners in gold, and for silver-owners in silver dirhams,' rejecting the validity of blood money outside these specified categories."

أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ أَنَا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ يُقْضَى بِالْإِبِلِ فِي الدِّيَةِ يُقَوَّمُ كُلُّ بَعِيرٍ عِشْرِينَ وَمِائَةَ دِرْهَمٍ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: فَهَذِهِ صِفَةٌ مِنْهُ لِلْإِبِلِ - وَهُوَ قَوْلُ الشَّافِعِيِّ الَّذِي ثَبَتَ عَلَيْهِ - وَهُوَ قَوْلُ الْمُزَنِيِّ، وَابْنِ الْمُنْذِرِ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا - وَخَالَفَ ذَلِكَ قَوْمٌ -: فَقَالَتْ طَائِفَةٌ: الدِّيَةُ عَلَى أَهْلِ الْإِبِلِ الْإِبِلُ، وَعَلَى أَهْلِ الذَّهَبِ الذَّهَبُ، وَعَلَى أَهْلِ الْوَرِقِ الْوَرِقُ - وَلَمْ يَرَوْا أَنْ تَكُونَ الدِّيَةُ مِنْ غَيْرِ هَذِهِ الْأَصْنَافِ.

L36910 Then these [scholars] disagreed: one faction maintained, "The obligation upon silver-currency holders is twelve thousand dirhams."

ثُمَّ اخْتَلَفَ هَؤُلَاءِ -: فَقَالَتْ طَائِفَةٌ: هِيَ عَلَى أَهْلِ الْوَرِقِ اثْنَا عَشَرَ أَلْفَ دِرْهَمٍ.

L36911 Another group opined, "Rather, ten thousand dirhams."

وَقَالَتْ طَائِفَةٌ: بَلْ عَشَرَةُ آلَافِ دِرْهَمٍ.

L36912–36914 The two groups concurred that one thousand dinars are obligatory upon those liable for gold. A group held that blood money is incumbent upon the people of camels to be paid in camels, upon the people of gold as one thousand dinars, upon the people of silver as silver dirhams, upon the people of cattle as two hundred cows, upon the people of sheep as two thousand sheep, and upon the people of garments as two thousand garments—with blood money being permissible only through these specified categories.

وَاتَّفَقَتْ الطَّائِفَتَانِ: عَلَى أَنَّهَا عَلَى أَهْلِ الذَّهَبِ أَلْفُ دِينَارٍ وَقَالَتْ طَائِفَةٌ: الدِّيَةُ عَلَى أَهْلِ الْإِبِلِ مِنْ الْإِبِلِ، وَعَلَى أَهْلِ الذَّهَبِ أَلْفُ دِينَارٍ، وَعَلَى أَهْلِ الْوَرِقِ الْوَرِقُ، وَعَلَى أَهْلِ الْبَقَرِ مِائَتَا بَقَرَةٍ، وَعَلَى أَهْلِ الْغَنَمِ أَلْفَا شَاةٍ، وَعَلَى أَهْلِ الْحُلَلِ أَلْفَا حُلَّةٍ - وَلَا تَكُونُ الدِّيَةُ إلَّا مِنْ هَذِهِ الْأَصْنَافِ.

L36915 A group said: In the same manner as that—and they added that the *diyah* is upon the providers of the food from the food.

وَقَالَتْ طَائِفَةٌ: بِمِثْلِ ذَلِكَ - وَزَادُوا: أَنَّ الدِّيَةَ عَلَى أَهْلِ الطَّعَامِ مِنْ الطَّعَامِ.

L36916 As for those who said, “Upon the people of gold is one thousand dinars,” it was narrated to us through the chain of Ismāʿīl ibn Isḥāq: Ibn Abī Uways → ʿAbd al-Raḥmān ibn Abī al-Zināد → his father in *The Book of the Seven Jurists* that they ruled: “The diyah upon the people of gold is one thousand dinars.”

فَأَمَّا الَّذِينَ قَالُوا: عَلَى أَهْلِ الذَّهَبِ أَلْفُ دِينَارٍ -: فَرُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا ابْنُ أَبِي أُوَيْسٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ عَنْ أَبِيهِ فِي " كِتَابِ السَّبْعَةِ " أَنَّهُمْ كَانُوا يَقُولُونَ: الدِّيَةُ عَلَى أَهْلِ الذَّهَبِ أَلْفُ دِينَارٍ.

L36917 Also via the chain of Ismaʿīl: I am Sulayman ibn Harb, [narrating] from Hammad ibn Zayd, who said: Matar al-Warraq stated: The blood money is established for camels, dinars, and dirhams—and it is waived for cows. Abu Muhammad—may Allah be pleased with him—said: The statement of the seven is confined to Ibn Abi al-Zinad—and he is weak. The first to declare him weak was Malik.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ أَيْضًا أَنَا سُلَيْمَانُ بْنُ حَرْبٍ أَنَا حَمَّادُ بْنُ زَيْدٍ قَالَ: قَالَ مَطَرٌ الْوَرَّاقُ: ثَبَتَتْ الدِّيَةُ فِي الْإِبِلِ وَالدَّنَانِيرِ وَالدَّرَاهِمِ - وَسَقَطَتْ فِي الْبَقَرِ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَقَوْلُ السَّبْعَةِ مَقْصُورٌ عَلَى ابْنِ أَبِي الزِّنَادِ - وَهُوَ ضَعِيفٌ، أَوَّلُ مَنْ ضَعَّفَهُ مَالِكٌ.

L36918 It is a disgrace and a cause of hatred for his companions to cite a narration that those whom they imitated in their religion were the first to invalidate and expose as fabricated.

فَمِنْ الْعَارِ وَالْمَقْتِ عَلَى أَصْحَابِهِ أَنْ يَحْتَجُّوا بِرِوَايَةٍ كَانَ مَنْ قَلَّدُوهُ دِينَهُمْ أَوَّلَ مَنْ أَسْقَطَ رِوَايَتَهُ، وَأَشَارَ إلَى تَكْذِيبِهِ.

L36919 As for Matar’s statement, it is utterly baseless. Would that I knew what established blood money in dinars and dirhams yet excluded it from cattle? Verily, this is indeed astonishing!

وَأَمَّا قَوْلُ مَطَرٍ فَفِي غَايَةِ السُّقُوطِ، لَيْتَ شِعْرِي مَا الَّذِي أَثْبَتَ الدِّيَةَ فِي الدَّنَانِيرِ، وَالدَّرَاهِمِ، وَأَسْقَطَهَا مِنْ الْبَقَرِ؟ إنَّ هَذَا لَعَجَبٌ -.

L36920 And it is the opinion of Abū Ḥanīfah, Zufar, Mālik, and al-Layth.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَزُفَرَ، وَمَالِكٍ، وَاللَّيْثِ.

L36921 As for their differing opinions regarding the amount of diyah in silver: a group stated that it is twelve thousand dirhams. This has been narrated to us through the chain of Ibn Abi al-Zinad from his father from the seven. It was also narrated to us through the chain of Ibn Abi Wahb from Makhramah ibn Bukayr from his father that he said that.

وَأَمَّا اخْتِلَافُهُمْ فِي مِقْدَارِ الدِّيَةِ مِنْ الْوَرِقِ -: فَطَائِفَةٌ قَالَتْ: إنَّهَا اثْنَا عَشَرَ أَلْفَ دِرْهَمٍ -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ ابْنِ أَبِي الزِّنَادِ عَنْ أَبِيهِ عَنْ السَّبْعَةِ - وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ ابْنِ أَبِي وَهْبٍ عَنْ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ أَنَّهُ قَالَ ذَلِكَ.

L36922 It has been authentically reported from Urwah ibn al-Zubayr and al-Hasan al-Basri - and this is the opinion of Malik, Ahmad, and Ishaq.

وَصَحَّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ، وَالْحَسَنِ الْبَصْرِيِّ - وَهُوَ قَوْلُ مَالِكٍ، وَأَحْمَدَ، وَإِسْحَاقَ.

L36923 As for those who said ten thousand dirhams: it was narrated to us via the chain of narration from Hammad ibn Salamah from Humaid, who said:

"Umar ibn Abd al-Aziz issued a decree setting the *diyah* at ten thousand dirhams."

وَأَمَّا الَّذِينَ قَالُوا: عَشَرَةُ آلَافِ دِرْهَمٍ -: فَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي الدِّيَةِ عَشَرَةُ آلَافِ دِرْهَمٍ -.

L36924 This is the opinion of Sufyan al-Thawri, Abu Hanifa and his companions, and Abu Thawr, the companion of al-Shafi'i.

وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَأَبِي ثَوْرٍ صَاحِبِ الشَّافِعِيِّ.

L36925 A group maintained that it is eight thousand dirhams—as we will elaborate hereafter, if Allah, the Almighty and Majestic, wills.

وَقَالَتْ طَائِفَةٌ: بَلْ هِيَ ثَمَانِيَةُ آلَافِ دِرْهَمٍ - عَلَى مَا نُورِدُ بَعْدَ هَذَا - إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ.

L36926–36927 As for those who said that blood money can also be paid in cows, sheep and goats, and garments: as reported to us through Abd al-Razzaq's chain from Ibn Jurayj, from Ata, "The blood money in cows is two hundred cows. It used to be said: 'The owners of cows must pay in cows, and the owners of sheep and goats must pay in sheep and goats.'" And via Abd al-Razzaq's chain from Ma'mar, who narrated from al-Zuhri and Qatadah—both of whom said: "The blood money in cows is two hundred cows." Qatadah added: "Cows that have reached their third year or older."

وَأَمَّا الَّذِينَ قَالُوا: إِنَّ الدِّيَةَ أَيْضًا تَكُونُ مِنَ الْبَقَرِ، وَالْغَنَمِ، وَالْحُلَلِ -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ الدِّيَةُ مِنَ الْبَقَرِ مِائَتَا بَقَرَةٍ، كَانَ يُقَالُ: عَلَى أَهْلِ الْبَقَرِ الْبَقَرُ، وَعَلَى أَهْلِ الشَّاءِ الشَّاءُ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ، وَقَتَادَةَ، قَالَا جَمِيعًا: الدِّيَةُ مِنَ الْبَقَرِ مِائَتَا بَقَرَةٍ، قَالَ قَتَادَةُ: الثَّنِيَّةُ فَصَاعِدًا -.

L36928 Qatadah said: Those who own gold must give gold, those who own silver must give silver, those who own sheep and goats must give sheep and goats, and those who own cloth must give fine garments. This constitutes a rigorously authenticated chain of transmission from al-Zuhri and Qatadah.

قَالَ قَتَادَةُ: عَلَى أَهْلِ الذَّهَبِ الذَّهَبُ، وَعَلَى أَهْلِ الْوَرِقِ الْوَرِقُ، وَعَلَى أَهْلِ الْغَنَمِ الْغَنَمُ، وَعَلَى أَهْلِ الْبَزِّ الْحُلَلُ. وَهَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ عَنِ الزُّهْرِيِّ، وَقَتَادَةَ.

L36929 And through the chain of ʿAbd al-Razzāq from Maʿmar from a man from Makhūl, concerning the diyah (blood money) being two hundred cows.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ مَكْحُولٍ فِي الدِّيَةِ مِائَتَا بَقَرَةٍ.

L36930 And through the chain of Abd al-Razzaq from Ibn Jurayj from Amr ibn Dinar, I heard Tawus say: The blood money for donkeys is three hundred sets of three garments. Ibn Jurayj said: I asked Ata: The Bedouin owner of cows and sheep—may he be given camels if he wishes, even if the liable party objects? He replied: The blood money due to him is his right. He is entitled to the liable party's livestock—whatever its form—and it cannot be diverted to other assets if he insists. Through the chain of Hammad ibn Salama from Hisham ibn Urwah from his father, he said: Owners of camels must pay in camels, owners of cows in cows, owners of sheep in sheep, and

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ دِينَارٍ سَمِعْتُ طَاوُسًا يَقُولُ: دِيَةُ الْحِمَارِ فِي ثَلَاثِمِائَةِ حُلَّةٍ مِنْ حُلَلِ الثَّلَاثِ. وَقَالَ ابْنُ جُرَيْجٍ: قُلْتُ لِعَطَاءٍ: الْبَدْوِيُّ صَاحِبُ الْبَقَرِ، وَالشَّاةِ، أَلَهُ أَنْ يُعْطَى إِبِلًا إِنْ شَاءَ، وَإِنْ كَرِهَ الْمُتْبِعُ؟ فَقَالَ: الْمَعْقُولُ لَهُ هُوَ حَقُّهُ، لَهُ مَاشِيَةُ الْعَاقِلِ - كَائِنَةً مَا كَانَتْ - لَا تُصْرَفُ إِلَى غَيْرِهَا إِنْ شَاءَ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: عَلَى أَهْلِ الْإِبِلِ الْإِبِلُ، وَعَلَى أَهْلِ

owners of garments in garments. Through the chain of Waki' from Zakariyya ibn Abi Za'idah from al-Sha'bi: Wealth owners pay in wealth, camel owners in camels, sheep owners in sheep—for a male camel fifteen sheep, and for a female camel twenty sheep. Through the chain of Waki' from Abu Hilal from Qatadah from Sa'id ibn al-Musayyab, he said: We used to take five sheep for a cow and ten sheep for a male camel. Among those who held that blood money may be paid in camels, gold, silver, sheep, cows, or garments are al-Hasan al-Basri—and this is the opinion of Sufyan al-Thawri, Abu Yusuf, and Muhammad ibn al-Hasan.

الْبَقَرِ الْبَقَرُ، وَعَلَى أَهْلِ الْغَنَمِ الْغَنَمُ، وَعَلَى أَهْلِ الْحُلَلِ الْحُلَلُ. وَمِنْ طَرِيقِ وَكِيعٍ أَنَا زَكَرِيَّا بْنُ أَبِي زَائِدَةَ عَنْ الشَّعْبِيِّ: يُعْطِي أَهْلُ الْمَالِ الْمَالَ، وَأَهْلُ الْإِبِلِ الْإِبِلَ، وَأَهْلُ الْغَنَمِ الْغَنَمَ - فِي الْبَعِيرِ الذَّكَرِ خَمْسَ عَشَرَةَ شَاةً، وَفِي النَّاقَةِ عِشْرُونَ شَاةً. وَمِنْ طَرِيقِ وَكِيعٍ أَنَا أَبُو هِلَالٍ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: كُنَّا نَأْخُذُ عَنْ الْبَقَرِ خَمْسَ شِيَاهٍ، وَعَنْ الْجَزُورِ عَشَرَ شِيَاهٍ. وَمِمَّنْ قَالَ: تَكُونُ الدِّيَةُ مِنْ الْإِبِلِ، وَمِنْ الذَّهَبِ، وَمِنْ الْفِضَّةِ، وَمِنْ الْغَنَمِ، وَمِنْ الْبَقَرِ، وَمِنْ الْحُلَلِ: الْحَسَنُ الْبَصْرِيُّ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ.

L36931–36932 Abū Muḥammad—may Allāh be pleased with him—said: As for those who restricted blood money to gold and silver alone, and did not consider it valid in cows, sheep, or sets of garments, they protested against this by saying: "The scholars have unanimously agreed that blood money is to be from gold and silver."

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: أَمَّا مَنْ اقْتَصَرَ بِالدِّيَةِ عَلَى الذَّهَبِ وَالْوَرِقِ فَقَطْ، وَلَمْ يَرَهَا فِي بَقَرٍ، وَلَا غَنَمٍ، وَلَا حُلَلٍ، فَإِنَّهُمْ شَغَبُوا فِي ذَلِكَ، بِأَنْ قَالُوا: قَدْ أَجْمَعُوا عَلَى الدِّيَةِ تَكُونُ مِنْ الذَّهَبِ، وَالْفِضَّةِ.

L36933 Through this, it becomes evident that blood money is divinely ordained rather than substitutable equivalents. For if they were substitutes, the value of camels would have to be taken into account—leading to increases and decreases—yet scholars never agreed that blood money could be paid in cattle, sheep, or garments. Moreover, blood money cannot be legally required except in forms established by unanimous scholarly agreement.

فَصَحَّ بِهَذَا أَنَّهَا تَوْقِيفٌ، وَأَنَّهَا لَيْسَتْ أَبْدَالًا، إذْ لَوْ كَانَتْ أَبْدَالًا لَوَجَبَ أَنْ تُرَاعَى قِيمَةُ الْإِبِلِ - فَتَزِيدَ وَتَنْقُصَ - وَلَمْ يُجْمِعُوا عَلَى أَنَّ الدِّيَةَ تَكُونُ مِنْ بَقَرٍ، أَوْ مِنْ غَنَمٍ، أَوْ مِنْ حُلَلٍ، وَلَمْ تَجِبْ أَنْ تَكُونَ دِيَةٌ إلَّا مَا أَجْمَعُوا عَلَيْهِ.

L36934 Abu Muhammad—may Allah be pleased with him—said: This is sheer falsehood. They have never unanimously agreed that diyah is not to be paid in silver, gold, or anything other than camels. We have already mentioned the opinions of Ali, Zayd, Ibn Mas'ud, Tawus, and 'Ata, and their view that dinars and dirhams in such cases are only assessed according to the value of camels, whether they increase or decrease, as well as the opinion of al-Shafi'i and others on this matter.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا كَذِبٌ بَحْتٌ، وَمَا أَجْمَعُوا قَطُّ، عَلَى أَنَّ الدِّيَةَ لَا تَكُونُ مِنْ فِضَّةٍ، وَلَا مِنْ ذَهَبٍ، وَلَا مِنْ غَيْرِ الْإِبِلِ، وَقَدْ ذَكَرْنَا قَوْلَ عَلِيٍّ، وَزَيْدٍ، وَابْنِ مَسْعُودٍ، وَطَاوُسٍ، وَعَطَاءٍ، وَقَوْلَهُمَا: إنَّ الدَّنَانِيرَ، وَالدَّرَاهِمَ فِي ذَلِكَ إنَّمَا تَكُونُ بِقِيمَةِ الْإِبِلِ زَادَتْ أَوْ نَقَصَتْ، وَقَوْلَ الشَّافِعِيِّ وَغَيْرِهِ فِي ذَلِكَ.

L36935 We have mentioned the discrepancy in camel valuations in the opinions of

ʿUmar ibn ʿAbd al-ʿAzīz and Ibrāhīm al-Nakhaʿī, thereby nullifying their false claim against the entire Ummah that they had reached a consensus (ijmāʿ).

وَقَدْ ذَكَرْنَا اخْتِلَافَ قِيمَةِ الْإِبِلِ فِي قَوْلِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَإِبْرَاهِيمَ النَّخَعِيِّ، فَبَطَلَ بِذَلِكَ دَعْوَاهُمْ الْكَاذِبَةُ عَلَى جَمِيعِ الْأُمَّةِ فِي دَعْوَاهُمْ أَنَّهُمْ أَجْمَعُوا.

L36936 Rather, the correct position in this matter is to say: Since the indisputable consensus and established textual evidence confirm that blood money consists of camels—and they disagreed regarding anything beyond that—it is obligatory that blood money be only from that upon which they have agreed.

بَلْ الْحَقُّ فِي هَذَا أَنْ يُقَالَ: لَمَّا صَحَّ الْإِجْمَاعُ الْمُتَيَقَّنُ، وَالنَّصُّ الثَّابِتُ: أَنَّ الدِّيَةَ تَكُونُ مِنْ الْإِبِلِ - وَاخْتَلَفُوا فِيمَا عَدَا ذَلِكَ -: وَجَبَ أَنْ لَا تَكُونَ الدِّيَةُ إلَّا مِمَّا أَجْمَعُوا عَلَيْهِ فَقَطْ.

L36937 They also obscured [the matter] by arguing: "Since the diyah was originally [established] in camels and then transferred to gold and silver as a standardized measure, and since the recognized valuation standard exists only in gold and silver, it becomes obligatory that diyah must not be [calculated] except through gold and silver."

وَمَوَّهُوا أَيْضًا - بِأَنْ قَالُوا: لَمَّا كَانَتْ الدِّيَةُ مِنْ الْإِبِلِ ثُمَّ نُقِلَتْ إلَى الذَّهَبِ وَالْفِضَّةِ عَلَى سَبِيلِ التَّقْوِيمِ، وَكَانَتْ الْقِيمَةُ الْمَعْهُودَةُ لَا تَكُونُ إلَّا مِنْ الذَّهَبِ وَالْفِضَّةِ: وَجَبَ أَنْ لَا تَكُونَ الدِّيَةُ إلَّا مِنْ الذَّهَبِ وَالْفِضَّةِ.

L36938 Abū Muḥammad—may Allāh be pleased with him—said: This second falsehood exposes their previous falsehood which they had embellished before this. For there they aimed to establish gold and silver in diyah as a scripturally determined obligation, not a substitute equivalent in value, while here they have acknowledged it is a substitute equivalent in value. If only these people felt shame from openly mixing in their support of falsehood, it would have been better for them.

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: هَذَا الْبَاطِلُ الثَّانِي يُكَذِّبُ بَاطِلَهُمْ الَّذِي مَوَّهُوا قَبْلَ هَذَا بِهِ؛ لِأَنَّ هُنَالِكَ رَامُوا أَنْ يَجْعَلُوا الذَّهَبَ، وَالْفِضَّةَ، فِي الدِّيَةِ تَوْقِيفًا لَا بَدَلًا بِقِيمَةٍ، وَهُنَا أَقَرُّوا أَنَّهَا بَدَلٌ بِقِيمَةٍ، فَلَوْ اسْتَحَى هَؤُلَاءِ الْقَوْمُ مِنْ الْمُجَاهَرَةِ بِالتَّخْلِيطِ فِي نَصْرِ الْبَاطِلِ لَكَانَ خَيْرًا لَهُمْ.

L36939 Then we say to them: Since you have acknowledged that it is a substitute based on value, it is proportionate to the extent of the value's increase and decrease, and we do not know exactly what they have agreed upon regarding the substitute and assessment.

ثُمَّ نَقُولُ لَهُمْ: إذْ قَدْ أَقْرَرْتُمْ أَنَّهَا بَدَلٌ بِقِيمَةٍ فَهِيَ عَلَى قَدْرِ ارْتِفَاعِ الْقِيمَةِ وَانْخِفَاضِهَا، وَلَا نَدْرِي أَيَّ شَيْءٍ اتَّفَقُوا عَلَيْهِ فِي الْبَدَلِ وَالتَّقْوِيمِ؟ .

L36940–36941 They also obscured the matter by arguing: Since it has been established that blood money cannot consist of horses, donkeys, or commodities, it must likewise not consist of cattle, sheep, or garments.

وَمَوَّهُوا أَيْضًا - بِأَنْ قَالُوا: لَمَّا صَحَّ أَنَّ الدِّيَةَ لَا تَكُونُ مِنْ الْخَيْلِ، وَلَا مِنْ الْحَمِيرِ، وَلَا مِنْ الْعُرُوضِ: وَجَبَ أَنْ لَا تَكُونَ أَيْضًا مِنْ الْبَقَرِ، وَلَا مِنْ الْغَنَمِ، وَلَا مِنْ الثِّيَابِ.

L36942 Abu Muhammad—may God be pleased with him—said: "This is an analogy, and the entirety of analogy is invalid. Then we reverse upon them their corrupt analogy and say to them: Since it has been established according to

you that blood money can be from other than camels, it is obligatory that it be from everything except what you have agreed cannot be from it."

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ نَعْكِسُ عَلَيْهِمْ قِيَاسَهُمْ الْفَاسِدَ فَنَقُولُ لَهُمْ: لَمَّا صَحَّ عِنْدَكُمْ أَنَّ الدِّيَةَ تَكُونُ مِنْ غَيْرِ الْإِبِلِ وَجَبَ أَنْ تَكُونَ مِنْ كُلِّ شَيْءٍ إلَّا مِمَّا اتَّفَقْتُمْ عَلَى أَنْ لَا تَكُونَ مِنْهُ.

L36943 Moreover, camels are animals upon which zakat is obligatory, and it is authentically established that diyya (blood money) may be paid using them. Therefore, cattle and sheep must be subjected to analogical reasoning (qiyas) based on camels, as they too are animals liable for zakat purification.

وَأَيْضًا - فَإِنَّ الْإِبِلَ حَيَوَانٌ تَجِبُ فِيهِ الزَّكَاةُ، وَقَدْ صَحَّ أَنَّ الدِّيَةَ تَكُونُ مِنْهَا، فَوَجَبَ أَنْ يُقَاسَ عَلَيْهَا الْبَقَرُ وَالْغَنَمُ؛ لِأَنَّهُمَا حَيَوَانٌ يُزَكَّى.

L36944 The correct position in this matter is that since it has been established that blood money cannot be in horses, donkeys, or merchandise, it must also not be in gold, silver, or anything other than what is specified by the text (naṣṣ) and agreement (ijmāʿ).

وَالْحَقُّ مِنْ هَذَا - هُوَ أَنَّهُ لَمَّا صَحَّ أَنَّ الدِّيَةَ لَا تَكُونُ مِنْ الْخَيْلِ، وَلَا مِنْ الْحَمِيرِ، وَلَا مِنْ الْعُرُوضِ، وَجَبَ أَيْضًا أَنْ لَا تَكُونَ مِنْ الذَّهَبِ، وَلَا مِنْ الْفِضَّةِ، وَلَا مِمَّا عَدَا مَا جَاءَ بِهِ النَّصُّ وَالِاتِّفَاقُ.

L36945 It is astonishing that the Ḥanafīs assert a weak narration (athar) takes precedence over qiyās, yet here they contradict this very foundational principle they had previously upheld.

وَالْعَجَبُ - أَنَّ الْحَنَفِيِّينَ يَقُولُونَ: إنَّ ضَعِيفَ الْأَثَرِ أَوْلَى مِنْ الْقِيَاسِ، وَهَا هُنَا نَقَضُوا هَذَا الْأَصْلَ الَّذِي صَحَّحُوهُ.

L36946 The Malikis among them objected by citing narrations that we shall mention, God, the Exalted, willing. Among them is a narration that was narrated to us through the chain of Zayd ibn al-Ḥubāb al-ʿUklī: Muḥammad ibn Muslim al-Ṭāʾifī, from ʿAmr ibn Dīnār, from ʿIkrimah, from Ibn ʿAbbās, from the Messenger of God—peace and blessings be upon him—"that he ruled the diyah as twelve thousand dirhams?" Abū Muḥammad—may God be pleased with him—said: Muḥammad ibn Muslim al-Ṭāʾifī is rejected; his ḥadīth is not used as evidence.

وَشَغَبَ الْمَالِكِيُّونَ مِنْهُمْ بِآثَارٍ نَذْكُرُهَا إنْ شَاءَ اللَّهُ تَعَالَى: وَهِيَ أَثَرٌ - رُوِّينَا مِنْ طَرِيقِ زَيْدِ بْنِ الْحُبَابِ الْعُكْلِيِّ أَنَا مُحَمَّدُ بْنُ مُسْلِمٍ الطَّائِفِيُّ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّهُ قَضَى بِالدِّيَةِ اثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ؟» قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: مُحَمَّدُ بْنُ مُسْلِمٍ الطَّائِفِيُّ سَاقِطٌ لَا يُحْتَجُّ بِحَدِيثِهِ.

L36947 Among them is a narration—we transmitted it through the chain of Aḥmad ibn Shuʿayb: from Muḥammad ibn Maymūn, from Sufyān ibn ʿUyaynah, from ʿAmr ibn Dīnār, from ʿIkrimah—I heard Murrah say, from Ibn ʿAbbās: "The Messenger of Allah—may Allah's peace and blessings be upon him—ruled for twelve thousand dirhams, i.e., in the diyah (blood money)."

وَمِنْهَا أَثَرٌ - رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَيْمُونٍ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عِكْرِمَةَ سَمِعْت مُرَّةَ يَقُولُ: عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِاثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ - يَعْنِي فِي الدِّيَةِ» .

L36948–36950 Abu Muhammad (may Allah be pleased with him) said: This contains no proof, because his statement in the aforementioned narration – referring to blood money – is neither from the words of the Messenger of Allah (may Allah bless him and grant him peace) nor does the narration clarify that it is from Ibn Abbas's statement. The definitive assertion that his statement constitutes a ruling based on conjecture—and conjecture is the most deceitful speech—if it originates from someone other than Ibn Abbas, then it lacks evidentiary weight. The Prophet (peace be upon him) would issue rulings of twelve thousand in debts or blood money through mutual consent between the debtor and creditor. This narration contains no textual clarification that he (peace be upon him) ruled blood money to be twelve thousand dirhams. It is therefore impermissible to introduce into the narration what it does not contain.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا لَا حُجَّةَ فِيهِ، لِأَنَّ قَوْلَهُ فِي الْخَبَرِ الْمَذْكُورِ - يَعْنِي فِي الدِّيَةِ - لَيْسَ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا فِي الْخَبَرِ بَيَانُ أَنَّهُ مِنْ قَوْلِ ابْنِ عَبَّاسٍ، فَالْقَطْعُ بِأَنَّهُ قَوْلُهُ حُكْمٌ بِالظَّنِّ، وَالظَّنُّ أَكْذَبُ الْحَدِيثِ، فَإِنْ كَانَ مِنْ قَوْلِ مَنْ دُونَ ابْنِ عَبَّاسٍ فَلَا حُجَّةَ فِيهِ، وَقَدْ يَقْضِي - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِاثْنَيْ عَشَرَ أَلْفًا فِي دَيْنٍ، أَوْ فِي دِيَةٍ بِتَرَاضِي الْغَارِمِ وَالْمَقْضِيِّ لَهُ، فَإِنْ لَيْسَ فِي هَذَا الْخَبَرِ بَيَانُ أَنَّهُ قَضَاءٌ مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنَّ الدِّيَةَ اثْنَا عَشَرَ أَلْفَ دِرْهَمٍ - فَلَا يَجُوزُ أَنْ يُقْحَمَ فِي الْخَبَرِ مَا لَيْسَ فِيهِ.

L36951 Attributing anything to the Messenger of Allah—may Allah pray upon him and grant him peace—based on conjecture is lying against him, and this necessitates Hellfire. We seek refuge in Allah from what leads to it.

وَالْقَوْلُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالظَّنِّ كَذِبٌ عَلَيْهِ، وَهَذَا يُوجِبُ النَّارَ - وَنَعُوذُ بِاللَّهِ مِمَّا أَدَّى إِلَيْهَا.

L36952 The narration transmitted by the eminent companions of Ibn ʿUyaynah from him concerning this report is solely from ʿIkrimah, with no mention of Ibn ʿAbbas in it, as we have narrated it via the chain of ʿAbd al-Razzaq from Sufyan ibn ʿUyaynah from ʿAmr ibn Dinar from ʿIkrimah, who stated: "A freed slave of Banu ʿAdi ibn Kaʿb killed a man from the Ansar, so the Prophet—peace and blessings of Allah be upon him—ruled that the blood money for him (the victim) be twelve thousand." A mursal narration does not constitute valid evidence.

وَالَّذِي رَوَاهُ مَشَاهِيرُ أَصْحَابِ ابْنِ عُيَيْنَةَ عَنْهُ فِي هَذَا الْخَبَرِ فَإِنَّمَا هُوَ عَنْ عِكْرِمَةَ لَمْ يُذْكَرْ فِيهِ ابْنُ عَبَّاسٍ، كَمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عِكْرِمَةَ قَالَ: «قَتَلَ مَوْلَى لِبَنِي عَدِيِّ بْنِ كَعْبٍ رَجُلًا مِنَ الْأَنْصَارِ فَقَضَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي دِيَتِهِ بِاثْنَيْ عَشَرَ أَلْفًا» وَالْمُرْسَلُ لَا تَقُومُ بِهِ حُجَّةٌ.

L36953 They also mentioned—what we have narrated through the chain of Al-Awzāʿī from ʿAmr ibn Saʿīd from Yazīd al-Raqāshī from Anas, who said: "The Messenger of Allah—peace and blessings of Allah be upon him—said: 'For me to sit with people who remember Allah, the Mighty and Majestic, after the ʿAṣr prayer until sunset is more beloved to me than freeing eight from the descendants of Ishmael, each of them having a blood money of twelve thousand.'"

وَذَكَرُوا أَيْضًا - مَا رُوِّينَاهُ مِنْ طَرِيقِ الْأَوْزَاعِيِّ عَنْ عَمْرِو بْنِ سَعِيدٍ عَنْ يَزِيدَ الرَّقَاشِيِّ عَنْ أَنَسٍ قَالَ: «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَأَنْ أَجْلِسَ مَعَ قَوْمٍ يَذْكُرُونَ اللَّهَ عَزَّ وَجَلَّ مِنْ بَعْدِ صَلَاةِ الْعَصْرِ إِلَى أَنْ تَغِيبَ الشَّمْسُ أَحَبُّ إِلَيَّ مِنْ أَنْ أَعْتِقَ ثَمَانِيَةً مِنْ وَلَدِ إِسْمَاعِيلَ دِيَةُ كُلِّ وَاحِدٍ مِنْهُمْ اثْنَا عَشَرَ أَلْفًا» .

L36954 Abu Muhammad (may Allah be pleased with him) said: Yazid al-Raqashi is weak; he is not to be taken as proof.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: يَزِيدُ الرَّقَاشِيُّ ضَعِيفٌ لَا يُحْتَجُّ بِهِ.

وَذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قَرَأَ بِخَمْسِمِائَةٍ إلَى أَلْفِ آيَةٍ أَصْبَحَ وَلَهُ قِنْطَارٌ فِي الْآخِرَةِ، وَالْقِنْطَارُ دِيَةُ أَحَدِكُمْ اثْنَا عَشَرَ أَلْفًا» .

L36955 They mentioned what has been narrated through our chain from Hammad ibn Salamah, from Yunus ibn ʻUbayd, from al-Hasan, who said: The Messenger of Allah—peace and blessings be upon him—said, "Whoever recites between five hundred to one thousand verses will attain a qintar in the Hereafter. The qintar is equivalent to the blood money for one of you—twelve thousand dirhams."

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا مُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ إلَّا أَنَّ الْحَنَفِيِّينَ نَقَضُوا هَاهُنَا أُصُولَهُمْ أَقْبَحَ نَقْضٍ؛ لِأَنَّهُمْ يَقُولُونَ: الْمُرْسَلُ وَالْمُسْنَدُ سَوَاءٌ، وَكِلَاهُمَا أَوْلَى مِنْ النَّظَرِ، وَتَرَكُوا هَاهُنَا هَذِهِ الْمَرَاسِيلَ، وَهُمْ يَحْتَجُّونَ فِي نَصْرِ رَأْيِ أَبِي حَنِيفَةَ بِمِثْلِهَا، وَبِأَسْقَطَ مِنْهَا.

L36956 Abū Muḥammad—may Allah be pleased with him—said: This is *mursal*, and no valid proof can be based on a *mursal*. Yet the Ḥanafīs have here undermined their own principles in the most reprehensible manner, for they assert that *mursal* and *musnad* hold equal weight, considering both preferable to speculative reasoning. Nevertheless, they discard these *mursal* reports here while citing similar—and even weaker—*mursal* reports to defend Abū Ḥanīfah's opinions.

فَصَحَّ أَنَّهُمْ مُتَلَاعِبُونَ لَا تَحْقِيقَ عِنْدَهُمْ إلَّا فِي نَصْرِ رَأْيِ أَبِي حَنِيفَةَ الَّذِي رَضُوا بِهِ بَدَلًا مِنْ الْقُرْآنِ، وَمِنْ بَيَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟

L36957 Thus, has it not become clear that they are triflers who pursue no genuine inquiry except in championing the opinion of Imam Abū Ḥanīfah—which they have adopted as a substitute for the Quran and the elucidations of the Messenger of Allah, may Allah bless him and grant him peace?

وَقَالُوا: لَعَلَّ هَذِهِ الْآثَارَ إنَّمَا أَرَادَ فِيهَا بِذِكْرِ الِاثْنَيْ عَشَرَ أَلْفًا أَنَّهَا وَزْنُ كُلِّ عَشَرَةٍ مِنْهَا وَزْنُ سِتَّةِ مَثَاقِيلَ.

L36958–36959 They said: Indeed, these narrations only intended, by the mention of twelve thousand in them, that every ten of them weigh six mithqals.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَا مِنْ أَسْخَفِ كَلَامٍ فِي الْأَرْضِ؛ لِأَنَّ الْعَشَرَةَ آلَافِ دِرْهَمٍ عِنْدَهُمْ لَا يَخْتَلِفُونَ أَنَّهَا وَزْنُ سَبْعَةِ آلَافِ مِثْقَالٍ.

L36960 Abū Muḥammad—may Allah be pleased with him—said: "This is among the basest statements on earth, for they unanimously agree that ten thousand dirhams weigh seven thousand mithqals."

وَلَا يَخْتَلِفُ الْمَالِكِيُّونَ فِي أَنَّ الِاثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ هِيَ وَزْنُ ثَمَانِيَةِ آلَافِ مِثْقَالٍ وَأَرْبَعِمِائَةٍ، فَعَادَ قَوْلُهُمْ: وَزْنُ سِتَّةِ مَثَاقِيلَ فِي الْعَشَرَةِ هَذَيَانًا لَمْ يُعْقَلْ قَطُّ قَدِيمًا وَلَا حَدِيثًا.

L36961 The Malikis do not differ in that twelve thousand dirhams equal the weight of eight thousand four hundred mithqals. Thus their assertion that "six mithqals in ten [dirhams]" constitutes absurdity has never been rationally understood, neither in ancient nor modern times.

L36962 The Malikis also objected with a report—we have transmitted it through the chain of ʿAbd Allāh ibn Aḥmad ibn Ḥanbal: from ʿAbd Allāh ibn ʿAwn al-Kharrāz, from ʿAfīf ibn Sālim al-Mawṣilī, from ʿAbd Allāh ibn al-Muʾammal,

from ʿAbd Allāh ibn Abī Mulaykah, from ʿĀʾishah bint Ṭalḥah, who said: A jinn would appear to ʿĀʾishah, the Mother of the Believers. She confronted him repeatedly, but he persisted in manifesting himself. She struck him with an iron tool and killed him. In her dream, she was approached and told: "Have you killed so-and-so? He witnessed Badr with the Messenger of Allah—peace and blessings be upon him—and never appeared to you bare-headed or unclothed. He merely listened to the Prophet's teachings—peace and blessings be upon him. Has all that preceded and all that will follow overwhelmed her?" She mentioned this to her father, who said: "Give twelve thousand dirhams in charity as his blood money." Abū Muḥammad—may Allah be pleased with him—said: This is baseless. ʿAfīf ibn Sālim is unknown—his identity is indeterminable. ʿAbd Allāh ibn al-Muʾammal, the Meccan, is weak and cannot serve as a valid proof.

وَشَغَبَ الْمَالِكِيُّونَ أَيْضًا بِخَبَرٍ -: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ أَنَا عَبْدُ اللَّهِ بْنُ عَوْنٍ الْخَرَّازُ أَنَا عَفِيفُ بْنُ سَالِمٍ الْمَوْصِلِيُّ عَنْ عَبْدِ اللَّهِ بْنِ الْمُؤَمَّلِ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي مُلَيْكَةَ عَنْ عَائِشَةَ بِنْتِ طَلْحَةَ قَالَتْ: كَانَ جَانٌّ يَطْلُعُ عَلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَخَرَجَتْ عَلَيْهِ مَرَّةً بَعْدَ مَرَّةٍ، فَأَبَى إلَّا أَنْ يَظْهَرَ فَعَدَتْ عَلَيْهِ بِحَدِيدَةٍ فَقَتَلَتْهُ، فَأُتِيَتْ فِي مَنَامِهَا، فَقِيلَ لَهَا: أَقَتَلْت فُلَانًا، أَمَا إنَّهُ قَدْ كَانَ شَهِدَ بَدْرًا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَانَ لَا يَطْلُعُ عَلَيْك لَا حَاسِرًا وَلَا مُتَجَرِّدًا إلَّا أَنَّهُ كَانَ يَسْمَعُ حَدِيثَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخَذَهَا مَا تَقَدَّمَ وَمَا تَأَخَّرَ؟ فَذَكَرَتْ ذَلِكَ لِأَبِيهَا؟ فَقَالَ: تَصَدَّقِي بِاثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ دِيَتِهِ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا لَا شَيْءَ - عَفِيفُ بْنُ سَالِمٍ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ؟ وَعَبْدُ اللَّهِ بْنُ الْمُؤَمَّلِ هُوَ الْمَكِّيُّ: ضَعِيفٌ لَا يُحْتَجُّ بِهِ.

L36963 The most similar case in this chapter is a report we transmitted through the chain of Yahyā ibn Saʿīd al-Qaṭṭān, from Abū Yūnus Ḥātim ibn Abī Ṣaghīra, from Ibn Abī Mulayka, from ʿĀʾisha bint Ṭalḥa, from ʿĀʾisha the Mother of the Believers, that she killed a jinn. She was approached in her dream and told: "By Allah, did you kill him while he was a Muslim?" She replied: "If he were a Muslim, he would not have entered upon the wives of the Prophet—peace and blessings of Allah be upon him." It was said: "Would he have entered upon you except when you were clothed?" She awoke terrified and commanded twelve thousand dirhams to be allocated for the cause of Allah, the Mighty and Majestic. Abū Muḥammad—may Allah be pleased with him—said: "There is no proof for them in this, for this report does not indicate she intended this as blood money obligated upon her. Ascribing that additional claim to her is a falsehood—it is impermissible. It was merely charity she gave."

وَأَشْبَهُ مَا فِي هَذَا الْبَابِ - فَخَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ أَنَا أَبُو يُونُسَ حَاتِمُ بْنُ أَبِي صَغِيرَةَ عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنْ عَائِشَةَ بِنْتِ طَلْحَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا قَتَلَتْ جَانًّا، فَأُتِيَتْ فِي مَنَامِهَا، وَقِيلَ لَهَا: وَاَللَّهِ لَقَدْ قَتَلْته مُسْلِمًا؟ قَالَتْ: لَوْ كَانَ مُسْلِمًا لَمْ يَدْخُلْ عَلَى أَزْوَاجِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقِيلَ: أَوَ كَانَ يَدْخُلُ عَلَيْك إلَّا وَعَلَيْك ثِيَابُك؟ فَأَصْبَحَتْ فَزِعَةً، فَأَمَرَتْ بِاثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ فَجُعِلَتْهَا فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: لَا حُجَّةَ لَهُمْ فِي هَذَا، لِأَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ أَنَّهَا قَصَدَتْ بِذَلِكَ قَصْدَ دِيَةٍ وَجَبَتْ عَلَيْهَا، فَزِيَادَةُ ذَلِكَ عَلَيْهَا كَذِبٌ لَا يَحِلُّ، وَإِنَّمَا هِيَ صَدَقَةٌ تَصَدَّقَتْ بِهَا.

L36964–36966 The Maliki jurists unanimously maintain that killing is only either inten-

tional or accidental. If her killing of him was accidental, it does not require her to expiate by freeing a slave—which is the obligation stipulated in the Quran—nor the twelve thousand. If his killing of her was intentional, they [the scholars] do not disagree that there is no blood money for intentional killing; rather, it is retaliation, forgiveness, or mutual agreement. There is no doubt she—may Allah be pleased with her—did not settle with the offender's agnatic clan on twelve thousand dirhams. Thus, blood money is invalid here. These are merely the dreams of a sleeper; religious rulings cannot be established through them. The most evident view is that this stems from personal inclinations. Therefore, it is valid that this was voluntary charity solely from her—may Allah be pleased with her—as nothing else is permissible at all.

وَلَا يَخْتَلِفُ الْمَالِكِيُّونَ فِي أَنَّ الْقَتْلَ لَيْسَ إِلَّا عَمْدًا أَوْ خَطَأً، فَإِنْ كَانَ قَتْلُهَا لَهُ خَطَأً فَلَيْسَ فِيهِ أَنَّهَا كَفَّرَتْ بِعِتْقِ رَقَبَةٍ - وَهِيَ الْمُفْتَرَضَةُ فِي الْقُرْآنِ - لَا الِاثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ -: وَإِنْ كَانَ قَتْلُهَا لَهُ عَمْدًا، فَهُمْ لَا يَخْتَلِفُونَ فِي أَنَّهُ لَا دِيَةَ فِي الْعَمْدِ، إِنَّمَا هُوَ الْقَوَدُ، أَوِ الْعَفْوُ، أَوْ مَا تَرَاضَوْا عَلَيْهِ، وَلَا شَكَّ فِي أَنَّهَا - رَضِيَ اللَّهُ عَنْهَا - لَمْ تُرَاضِ مَعَ عَصَبَةِ الْجَنِّيِّ عَلَى الِاثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ: فَبَطَلَ أَنْ يَكُونَ لِلدِّيَةِ هَاهُنَا مَدْخَلٌ، وَإِنَّمَا هِيَ أَحْلَامُ نَائِمٍ لَا يَجُوزُ أَنْ تُشَرَّعَ بِهَا الشَّرَائِعُ، وَالْأَظْهَرُ أَنَّهَا مِنْ حَدِيثِ النَّفْسِ - فَصَحَّ: أَنَّهَا صَدَقَةُ تَطَوُّعٍ مِنْهَا - رَضِيَ اللَّهُ عَنْهَا - فَقَطْ، لَا يَجُوزُ غَيْرُ ذَلِكَ أَصْلًا.

L36967 They obscured by citing what was narrated to us through the chain of Ismāʿīl ibn Isḥāq: from Ibrāhīm ibn al-Ḥajjāj, from ʿAbd al-Wārith ibn Saʿīd al-Tannūrī, from Ḥusayn al-Muʿallim, from ʿAmr ibn Shuʿayb, that ʿUmar ibn al-Khaṭṭāb established the blood money upon those using gold [as currency] at one thousand dīnārs—and this chain is disconnected.

وَمَوَّهُوا بِمَا رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا إِبْرَاهِيمُ بْنُ الْحَجَّاجِ أَنَا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ التَّنُّورِيُّ أَنَا حُسَيْنٌ الْمُعَلِّمُ عَنْ عَمْرِو بْنِ شُعَيْبٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَعَلَ الدِّيَةَ عَلَى أَهْلِ الذَّهَبِ أَلْفَ دِينَارٍ - وَهَذَا مُنْقَطِعٌ.

L36968 Through the narration of Waki': Sufyan al-Thawri → Ayyub ibn Musa → Makhul, who said: "The Messenger of Allah (peace and blessings be upon him) passed away while the diyah was eight hundred dinars. 'Umar, may Allah be pleased with him, fearing for later times, set the diyah at twelve thousand and one thousand dinars." Abu Muhammad, may Allah be pleased with him, said: "We testify by the testimony of Allah, the Almighty, the Majestic, that this is a fabrication. Allah the Exalted protected 'Umar, may Allah be pleased with him, from altering the ruling the Messenger of Allah (peace and blessings be upon him) died upon while it remained firmly established. Then Abu Bakr, may Allah be pleased with him, passed away adhering to it."

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ مَكْحُولٍ قَالَ: تُوُفِّيَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالدِّيَةُ ثَمَانُمِائَةِ دِينَارٍ، فَخَشِيَ عُمَرُ مَنْ بَعْدَهُ فَجَعَلَ الدِّيَةَ اثْنَيْ عَشَرَ أَلْفًا، وَأَلْفَ دِينَارٍ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: نَشْهَدُ بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ أَنَّ هَذَا كَذِبٌ مَوْضُوعٌ، وَقَدْ أَعَاذَ اللَّهُ تَعَالَى عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - مِنْ أَنْ يُبَدِّلَ مَا مَاتَ عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ مُسْتَقِرُّ الْحُكْمِ، ثُمَّ مَاتَ أَبُو بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - عَلَيْهِ.

L36969 The height of foolishness is the statement of one who fabricated this report: "Umar feared those after him, so he set the diyah (blood money) at one thousand dinars and twelve thousand dirhams." If only I knew what he feared from those after him! How could he fear them for leaving it at eight

وَأَحْمَقُ الْحُمْقِ قَوْلُ مَنْ وَضَعَ هَذَا الْخَبَرَ " خَشِيَ عُمَرُ مَنْ بَعْدَهُ فَجَعَلَهَا أَلْفَ دِينَارٍ وَاثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ " لَيْتَ شِعْرِي مَاذَا خَشِيَ مِمَّنْ بَعْدَهُ، وَكَيْفَ خَشِيَ مَنْ بَعْدَهُ إِنْ

hundred dinars, yet not fear them when increasing it to one thousand dinars or twelve thousand? Is there greater nonsense than these words? What Allah wills occurs. The religion of Islam has indeed been undermined in every respect, but Allah refuses except to perfect His light.

تَرَكَ الدِّيَةَ ثَمَانِمِائَةِ دِينَارٍ، وَلَمْ يَخْشَ مَنْ بَعْدَهُ إِذْ بَلَغَهَا أَلْفَ دِينَارٍ أَوْ اثْنَيْ عَشَرَ أَلْفًا؟ هَلْ فِي النُّوكِ أَكْثَرُ مِنْ هَذَا الْكَلَامِ؟ مَا شَاءَ اللَّهُ كَانَ، لَقَدْ كِيدَتْ مِلَّةُ الْإِسْلَامِ مِنْ كُلِّ وَجْهٍ، وَيَأْبَى اللَّهُ إِلَّا أَنْ يُتِمَّ نُورَهُ.

L36970 By Allah, if it had been permissible for Umar to add to what the Messenger of Allah—peace and blessings of Allah be upon him—and Abu Bakr after him had already enacted, then it would undeniably be permissible for those after Umar to add to Umar's actions. Rather, adding to Umar's ruling is less severe than adding to the ruling of the Messenger of Allah—peace and blessings of Allah be upon him—and the ruling of Abu Bakr after him. We disavow before Allah Almighty this misguidance, and this is a flaw in the transmitted ruling—so reflect upon it.

وَتَاللَّهِ لَوْ جَازَ لِعُمَرَ أَنْ يَزِيدَ فِيمَا مَضَى عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبُو بَكْرٍ بَعْدَهُ لَتُجُوِّزَنَّ لِمَنْ بَعْدَ عُمَرَ الزِّيَادَةَ عَلَى فِعْلِ عُمَرَ قَطْعًا، بَلْ الزِّيَادَةُ عَلَى حُكْمِ عُمَرَ أَخَفُّ مِنْ الزِّيَادَةِ عَلَى حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحُكْمِ أَبِي بَكْرٍ بَعْدَهُ - وَنَحْنُ نَبْرَأُ إلَى اللَّهِ تَعَالَى مِنْ هَذِهِ الضَّلَالَةِ، وَهَذَا عَيْبُ الْمُرْسَلِ، فَتَأَمَّلُوهُ؟ .

L36971–36973 And through the narration of Ḥammād ibn Salamah from Yaḥyā ibn Saʿīd al-Anṣārī that ʿUmar ibn al-Khaṭṭāb when He observed the differing compensation values for camels and declared: "I will most certainly decree concerning them a decree that will not be disputed after me." He then decreed upon the holders of gold one thousand dinars, and upon the holders of silver twelve thousand dirhams. Abu Muhammad—may Allah be pleased with him—said: "Yahya ibn Sa'id al-Ansari was not born except just over forty years after 'Umar's death."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ لَمَّا رَأَى أَثْمَانَ الْإِبِلِ تَخْتَلِفُ قَالَ: لَأَقْضِيَنَّ فِيهَا بِقَضَاءٍ لَا يُخْتَلَفُ فِيهِ بَعْدِي، فَقَضَى عَلَى أَهْلِ الذَّهَبِ أَلْفَ دِينَارٍ، وَعَلَى أَهْلِ الْوَرِقِ اثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: لَمْ يُولَدْ يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ إلَّا بَعْدَ مَوْتِ عُمَرَ بِنَحْوِ نَيِّفٍ وَأَرْبَعِينَ عَامًا.

L36974 By Allah—there is no deity but Him—Umar never once uttered these words, nor was it fitting for his noble character—may Allah be pleased with him—to pass judgment on what would occur after him, particularly when the falsehood of this statement they ascribed to Umar has become manifest. For the disagreement concerning this matter is so evident that even one with the slightest knowledge cannot be unaware of it, and this is among the flaws of the *mursal*—so beware of it?

وَبِاَللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ مَا قَالَ عُمَرُ قَطُّ هَذَا الْكَلَامَ، وَمَا كَانَ فِي فَضْلِهِ - رَضِيَ اللَّهُ عَنْهُ - لِيَقْطَعَ عَلَى مَا يَكُونُ بَعْدَهُ، لَا سِيَّمَا وَقَدْ ظَهَرَ كَذِبُ هَذَا الْقَوْلِ الَّذِي أَضَافُوهُ إلَى عُمَرَ، فَإِنَّ الْخِلَافَ فِي ذَلِكَ لَأَظْهَرُ مِنْ أَنْ يَجْهَلَهُ مَنْ لَهُ أَقَلُّ عِلْمٍ، وَهَذَا مِنْ عُيُوبِ الْمُرْسَلِ فَاحْذَرُوهُ؟ .

L36975 They mentioned—as we have narrated through the chain of Saʿīd ibn Manṣūr: Hushaym reported to us from Yūnus ibn ʿUbayd, from al-Ḥasan, that ʿUmar ibn al-Khaṭṭāb appraised camels for diyah (compensatory payment for homicide) at twenty and one hundred dirhams per camel—this is a

وَذَكَرُوا - مَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يُونُسُ بْنُ عُبَيْدٍ عَنْ الْحَسَنِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَوَّمَ الْإِبِلَ فِي الدِّيَةِ عِشْرِينَ وَمِائَةَ دِرْهَمٍ كُلَّ بَعِيرٍ - هَذَا مُرْسَلٌ،

mursal report (where the chain of narration is incomplete). Then, he merely cited a valuation, not a fixed or legislated amount. Other narrations differing from this have been transmitted from ʿUmar, as we shall mention later in this text, God willing.

ثُمَّ إِنَّمَا ذَكَرَ قِيمَةً لَا حَدًّا مَحْدُودًا، ثُمَّ قَدْ رُوِيَ عَنْ عُمَرَ غَيْرُ هَذَا عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى.

L36976 They cited what was transmitted to us through the chain of Ismāʿīl ibn Isḥāq: Sulaymān ibn Ḥarb narrated to us, Ḥammād ibn Zayd narrated to us from Ibn Abī Najīḥ from his father, that a woman was killed within the sacred sanctuary (al-Ḥaram), so ʿUthmān ibn ʿAffān established her blood money as eight thousand dirhams: equivalent to one full blood money (6,000 dirhams) plus a third. Through the chain of Ḥammād ibn Salama from Muḥammad ibn Isḥāq from Abī Najīḥ, it was narrated that a woman was killed within the sacred sanctuary (al-Ḥaram), so ʿUthmān set her blood money at six thousand dirhams and allocated two thousand dirhams to the sanctuary (al-Ḥaram).

وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا سُلَيْمَانُ بْنُ حَرْبٍ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ أَبِيهِ أَنَّ امْرَأَةً قُتِلَتْ فِي الْحَرَمِ فَجَعَلَ عُثْمَانُ بْنُ عَفَّانَ دِيَتَهَا ثَمَانِيَةَ آلَافِ دِرْهَمٍ دِيَةً وَثُلُثَ دِيَةٍ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ أَبِي نَجِيحٍ أَنَّ امْرَأَةً قُتِلَتْ فِي الْحَرَمِ فَجَعَلَ عُثْمَانُ دِيَتَهَا سِتَّةَ آلَافِ دِرْهَمٍ، وَأَلْفَيْنِ لِلْحَرَمِ.

L36977 Abu Muhammad—may Allah be pleased with him—said: Both factions oppose this ruling and nullify it. Who is more misguided and disgraced than one who obscures matters in the religion of Allah, the Almighty and Majestic, by citing as evidence something that is itself the foremost invalidator of it? We seek refuge in Allah from misguidance.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: كِلْتَا الطَّائِفَتَيْنِ مُخَالِفَةٌ لِهَذَا الْحُكْمِ مُبْطِلَةٌ لَهُ، فَمَنْ أَضَلُّ وَأَخْزَى مِمَّنْ يُمَوِّهُ فِي دِينِ اللَّهِ عَزَّ وَجَلَّ بِالِاحْتِجَاجِ بِشَيْءٍ هُوَ أَوَّلُ مُبْطِلٍ لَهُ - نَعُوذُ بِاَللَّهِ مِنْ الضَّلَالِ.

L36978 They fabricated the narration via the chain of Ismāʿīl ibn Isḥāq, from Sulaymān ibn Ḥarb, from Ḥammād ibn Salamah, from Ḥammād Abū al-Ḥasan, who said: Abū Sulaymān narrated to me that he witnessed ʿAlī ibn Abī Ṭālib ruling regarding the woman's incisor against her husband for three hundred dirhams. They said: "The three hundred dirhams are half of one-tenth of the woman's blood money." Abū Muḥammad—may Allāh be pleased with him—said: "Abū Sulaymān is unknown; no one knows his identity." It was also narrated via the chain of al-Ḥārith al-Aʿwar from ʿAlī—and al-Ḥārith is a liar.

وَمَوَّهُوا - بِمَا رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا سُلَيْمَانُ بْنُ حَرْبٍ أَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ حَمَّادٍ أَبِي الْحَسَنِ حَدَّثَنِي أَبُو سُلَيْمَانَ أَنَّهُ شَهِدَ عَلِيَّ بْنَ أَبِي طَالِبٍ قَضَى فِي ثَنِيَّةِ امْرَأَةٍ عَلَى زَوْجِهَا بِثَلَاثِمِائَةِ دِرْهَمٍ قَالُوا: وَالثَّلَاثِمِائَةِ نِصْفُ عُشْرِ دِيَةِ الْمَرْأَةِ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: أَبُو سُلَيْمَانَ مَجْهُولٌ لَا يَدْرِي أَحَدٌ مَنْ هُوَ - وَقَدْ رُوِيَ أَيْضًا مِنْ طَرِيقِ الْحَارِثِ الْأَعْوَرِ عَنْ عَلِيٍّ - وَالْحَارِثُ كَذَّابٌ.

L36979–36980 From the chain of Hammad ibn Salamah, from Muhammad ibn Ishaq, from al-Zuhri: A man in Kufah was killed unintentionally. The family of the killer said, "Take the camels from us," while camels at that time were inexpensive, priced at twenty or thirty [dirhams] each. Al-Mughirah ibn Shuʿbah wrote to Muʿawiyah regarding this matter. Muʿawiyah responded, "How should I im-

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ الزُّهْرِيِّ أَنَّ رَجُلًا بِالْكُوفَةِ قُتِلَ خَطَأً فَقَالَ أَهْلُ الْقَاتِلِ: خُذُوا مِنَّا الْإِبِلَ؟ وَكَانَتْ الْإِبِلُ يَوْمَئِذٍ رِخَاصًا بِعِشْرِينَ وَثَلَاثِينَ، فَكَتَبَ الْمُغِيرَةُ بْنُ شُعْبَةَ فِي ذَلِكَ إلَى مُعَاوِيَةَ؟ فَكَتَبَ إلَيْهِ مُعَاوِيَةُ: وَكَيْفَ أَصْنَعُ بِقَضَاءِ

plement ‘Umar’s ruling in this case?” He then ruled that they must pay twelve thousand as blood money. Abu Muhammad (may Allah be pleased with him) said: This is a mursal narration through the chain of Ibn al-Jahm: From ‘Abdullah ibn Ahmad ibn Hanbal, from his father, from Isma‘il ibn ‘Ulayyah, from Khalid—the Cobbler—from ‘Ikrimah, who said: Abu Hurayrah said, “I glorify Allah twelve thousand times daily, equivalent in value to my blood money.” Abu Muhammad said: This provides no evidence for their position, for Abu Hurayrah did not state that blood money is twelve thousand dirhams. He only said regarding twelve thousand glorifications, “equivalent in value to my blood money,” as he hoped it would serve as his ransom from the Fire—just as blood money is a ransom from killing. No one doubts that glorification is not blood money.

L36981 Moreover, there is no proof from anyone other than the Messenger of Allah (peace and blessings be upon him).

L36982 From the narration of Ḥammād ibn Salamah, from Muḥammad ibn Isḥāq, from ʿAbd al-Raḥmān ibn Abī Zayd, from Nāfiʿ ibn Jubayr, who said: “A man was killed in the Sacred City during a sacred month?” Ibn ʿAbbās said: “His blood money is twelve thousand dirhams—four thousand dirhams for the sacred month, four thousand dirhams for the Sacred City, and four thousand dirhams [as the base amount].” Abū Muḥammad (may Allah be pleased with him) said: “The Ḥanafīs and Mālikīs oppose this ruling and defy it, thus invalidating any claim of connection to the Companions (may Allah be pleased with them).” The Ḥanafīs, however, countered them, saying: “You have narrated through Wakīʿ, from Ibn Abī Laylā, from al-Shaʿbī, from ʿUbaydah al-Salmānī, who said: ’Umar ibn al-Khaṭṭāb established blood money rates, imposing one thousand dinars on those dealing in gold and ten thousand dirhams on those dealing in silver.”’ Abū Muḥammad (may Allah be pleased with him) said: “Ibn Abī Laylā is weak in memory; their report is invalid like that of the Mālikīs. The report narrated by the Mālikīs holds no greater validity than this ḥadīth. These invalid reports, due to their contradictions, must be discarded.”

عُمَرَ فِي ذَلِكَ؟ فَقَضَى عَلَيْهِمْ بِاثْنَيْ عَشَرَ أَلْفًا. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا مُرْسَلٌ مِنْ طَرِيقِ ابْنِ الْجَهْمِ أَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ أَنَا أَبِي أَنَا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ أَنَا خَالِدٌ - هُوَ الْحَذَّاءُ - عَنْ عِكْرِمَةَ قَالَ: قَالَ أَبُو هُرَيْرَةَ: إِنِّي لَأُسَبِّحُ كُلَّ يَوْمٍ ثِنْتَيْ عَشْرَةَ أَلْفَ تَسْبِيحَةٍ قَدْرَ دِيَتِي. قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ أَبَا هُرَيْرَةَ لَمْ يَقُلْ إِنَّ الدِّيَةَ اثْنَا عَشَرَ أَلْفَ دِرْهَمٍ إِنَّمَا قَالَ فِي اثْنَتَيْ عَشْرَةَ أَلْفَ تَسْبِيحَةٍ قَدْرُ دِيَتِي إِذْ أَنَّهَا يَرْجُو أَنْ تَكُونَ فِدَاءَهُ مِنْ النَّارِ - كَمَا أَنَّ الدِّيَةَ فِدَاءٌ مِنْ الْقَتْلِ، وَلَا يَشُكُّ أَحَدٌ فِي أَنَّ التَّسْبِيحَ لَيْسَ دِيَةً.

ثُمَّ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي زَيْدٍ عَنْ نَافِعِ بْنِ جُبَيْرٍ قَالَ: قُتِلَ رَجُلٌ فِي الْبَلَدِ الْحَرَامِ فِي شَهْرٍ حَرَامٍ؟ فَقَالَ ابْنُ عَبَّاسٍ: دِيَتُهُ اثْنَا عَشَرَ أَلْفَ دِرْهَمٍ، وَلِلشَّهْرِ الْحَرَامِ أَرْبَعَةُ آلَافٍ، وَلِلْبَلَدِ الْحَرَامِ أَرْبَعَةُ آلَافٍ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: الْحَنَفِيُّونَ وَالْمَالِكِيُّونَ مُخَالِفُونَ لِهَذَا الْحُكْمِ عَاصُونَ لَهُ - فَسَقَطَ أَنْ يَكُونَ لَهُمْ تَعَلُّقٌ بِأَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَعَارَضَهُمْ الْحَنَفِيُّونَ فَقَالُوا: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ وَكِيعٍ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الشَّعْبِيِّ عَنْ عَبِيدَةَ السَّلْمَانِيِّ قَالَ: وَضَعَ عُمَرُ بْنُ الْخَطَّابِ الدِّيَاتِ فَوَضَعَ عَلَى أَهْلِ الذَّهَبِ أَلْفَ دِينَارٍ، وَعَلَى أَهْلِ الْوَرِقِ عَشَرَةَ آلَافِ دِرْهَمٍ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: ابْنُ أَبِي لَيْلَى سَيِّئُ الْحِفْظِ، فَخَبَرُهُمْ سَاقِطٌ كَخَبَرِ الْمَالِكِيِّينَ، وَلَيْسَ الَّذِي رَوَاهُ الْمَالِكِيُّونَ بِأَوْلَى مِنْ هَذَا الْحَدِيثِ، فَتَدَافَعَتْ هَذِهِ الْأَخْبَارُ السَّاقِطَةُ مَعَ تَنَاقُضِهَا فَوَجَبَ إِطْرَاحُهَا.

L36983–36984 The Ḥanafīs said: “Has our consensus on ten thousand dirhams been authenticated?” We responded: “You have lied and fabricated—We have been narrated through Ḥammād ibn Salama’s chain from al-Ḥajjāj ibn Arṭā’a from Makhūl that ʿUmar ibn al-Khaṭṭāb set the blood-money at eight thousand dirhams. If you say: ‘This chain is disconnected, and al-Ḥajjāj is weak?’ We reply: ‘Ibn Abī Laylā and all other narrations reported from ʿUmar on this matter are either disconnected or weak—as we clarified earlier—and there is no distinction.’”

وَقَالَ الْحَنَفِيُّونَ: قَدْ صَحَّ إِجْمَاعُنَا عَلَى عَشَرَةِ آلَافِ دِرْهَمٍ؟ فَقُلْنَا: كَذَبْتُمْ وَأَفَكْتُمْ - قَدْ رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ مَكْحُولٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَعَلَ الدِّيَةَ ثَمَانِيَةَ آلَافِ دِرْهَمٍ، فَإِنْ قُلْتُمْ: هَذَا مُنْقَطِعٌ، وَعَنْ الْحَجَّاجِ - وَهُوَ ضَعِيفٌ؟ قُلْنَا: وَابْنُ أَبِي لَيْلَى وَسَائِرُ مَا رُوِيَ فِي ذَلِكَ عَنْ عُمَرَ مُنْقَطِعٌ، أَوْ ضَعِيفٌ - كَمَا بَيَّنَّا قَبْلُ وَلَا فَرْقَ -.

L36985 They also said: It has been established that the dinar (gold currency) in zakāh equates to ten dirhams, so must this apply similarly in diyah (blood money)? Abū Muḥammad—may Allāh be pleased with him—said: We replied: You have lied and fabricated, for Ibn Abī Laylā, Sharīk ibn ʿAbd Allāh, al-Ḥasan ibn Ḥayy, al-Shāfiʿī, and others do not recognize combining silver with gold in zakāh whatsoever. They unanimously hold that whoever possesses twenty mithqāls of gold excluding the minimum taxable amount, and two hundred dirhams of silver excluding the minimum taxable amount—with all of this remaining in their possession for a complete year—owes no zakāh on any portion of it.

وَقَالُوا أَيْضًا: قَدْ صَحَّ أَنَّ الدِّينَارَ فِي الزَّكَاةِ بِعَشَرَةِ دَرَاهِمَ فَوَجَبَ أَنْ يَكُونَ فِي الدِّيَةِ كَذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: قُلْنَا: كَذَبْتُمْ وَأَفَكْتُمْ؛ لِأَنَّ ابْنَ أَبِي لَيْلَى وَشَرِيكَ بْنَ عَبْدِ اللَّهِ، وَالْحَسَنَ بْنَ حَيٍّ، وَالشَّافِعِيَّ، وَغَيْرَهُمْ، لَا يَرَوْنَ جَمْعَ الْفِضَّةِ إلَى الذَّهَبِ فِي الزَّكَاةِ أَصْلًا، وَلَا يَخْتَلِفُونَ فِي أَنَّ مَنْ كَانَ مَعَهُ عِشْرُونَ مِثْقَالًا مِنْ ذَهَبٍ غَيْرَ حَبَّةٍ، وَمِائَتَا دِرْهَمٍ فِضَّةٍ غَيْرَ حَبَّةٍ، وَأَقَامَ كُلُّ ذَلِكَ عِنْدَهُ حَوْلًا كَامِلًا فَلَا زَكَاةَ عَلَيْهِ فِي شَيْءٍ مِنْ ذَلِكَ.

L36986 Abu Hanifah—whom you imitate in your religious practice—holds that combining gold and silver for zakāt is only valid if based on their monetary value, no matter how great, even if it entails exchanging a dirham in exchange for a dinar or a thousand dirhams in exchange for a dinar.

ثُمَّ أَبُو حَنِيفَةَ - الَّذِي قَلَّدْتُمُوهُ دِينَكُمْ - لَا يَرَى جَمْعَ الذَّهَبِ إلَى الْفِضَّةِ فِي الزَّكَاةِ إلَّا بِالْقِيمَةِ - بَالِغَةً مَا بَلَغَتْ - وَلَوْ أَنَّهَا دِرْهَمٌ بِدِينَارٍ، أَوْ أَلْفُ دِرْهَمٍ بِدِينَارٍ.

L36987 Aṭā’, al-Zuhrī, Sulaymān ibn Ḥarb, and others hold that gold is subject to zakat based on its value in silver—whatever that value may amount to.

وَعَطَاءٌ، وَالزُّهْرِيُّ، وَسُلَيْمَانُ بْنُ حَرْبٍ، وَغَيْرُهُمْ: يُزَكُّونَ الذَّهَبَ بِقِيمَةٍ مِنْ الْفِضَّةِ - بَالِغَةً مَا بَلَغَتْ -.

L36988 Thus their audacity in lying became manifest; we seek refuge in Allah from the evil inherent in their position.

فَظَهَرَتْ جُرْأَتُهُمْ عَلَى الْكَذِبِ، نَعُوذُ بِاَللَّهِ مِنْ سُوءِ مَقَامِهِمْ.

L36989 As for the Mālikīs—they contradicted themselves here in the most repugnant manner without proof, having arbitrarily fixed the dinar for blood money, the dinar for amputation in theft, and the dinar for bridal gift according to their opinion at twelve dirhams—while setting the dinar for zakāh at ten

dirhams. This is blatant manipulation and legislation in matters of religion for which Allah the Exalted granted no authority.

وَأَمَّا الْمَالِكِيُّونَ - فَتَنَاقَضُوا هَاهُنَا أَقْبَحَ تَنَاقُضٍ بِلَا بُرْهَانٍ، إِذْ قَدَّرُوا دِينَارَ الدِّيَةِ، وَدِينَارَ الْقَطْعِ فِي السَّرِقَةِ، وَدِينَارَ الصَّدَاقِ - بِرَأْيِهِمْ - بِاثْنَيْ عَشَرَ دِرْهَمًا - وَقَدَّرُوا دِينَارَ الزَّكَاةِ بِعَشَرَةِ دَرَاهِمَ؟ وَهَذَا تَلَاعُبٌ لَا خَفَاءَ بِهِ، وَشَرْعٌ فِي الدِّينِ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى.

L36990 We countered an objection by the Ḥanafīs and Mālikīs, who argued: "If dinars and dirhams were substitutes for camels, this would constitute debt for debt, since 'Umar decreed their payment within three years." We replied: "Yet 'Umar ruled the diyah immediately payable in the Mudliji tribe's case (which is more reliably attributed to him than his stipulation of a three-year period for it). So why should one narration from him that is unsound take precedence over another?"

وَاسْتَدْرَكْنَا اعْتِرَاضًا لِلْحَنَفِيَّيْنِ، وَالْمَالِكِيِّينَ، وَهُوَ أَنَّهُمْ قَالُوا: لَوْ كَانَتْ الدَّنَانِيرُ وَالدَّرَاهِمُ أَبْدَالًا مِنْ الْإِبِلِ لَكَانَتْ دَيْنًا بِدَيْنٍ، لِأَنَّ عُمَرَ قَضَى بِهَا فِي ثَلَاثِ سِنِينَ؟ قُلْنَا: وَعُمَرُ قَضَى بِالدِّيَةِ حَالَّةً فِي قِصَّةِ الْمُدْلِجِيِّ الَّتِي هِيَ أَصَحُّ عَنْهُ مِنْ تَوْقِيتِهِ فِيهَا ثَلَاثَ سِنِينَ - فَمَا الَّذِي جَعَلَ رِوَايَةً لَا تَصِحُّ أَوْلَى مِنْ رِوَايَةٍ عَنْهُ أُخْرَى؟

L36991–36992 It is astonishing that they adhere to what was narrated from him regarding substituting the *ghurrah* with fifty dinars or five hundred dirhams, yet they do not consider it a case of debt-for-debt.

وَالْعَجَبُ أَنَّهُمْ يَأْخُذُونَ بِمَا رُوِيَ عَنْهُ مِنْ إبْدَالِ خَمْسِينَ دِينَارًا أَوْ خَمْسِمِائَةِ دِرْهَمٍ مِنْ الْغُرَّةِ، وَلَمْ يَرَوْهُ دَيْنًا بِدَيْنٍ.

L36993 The Hanafis state regarding one who marries stipulating a house and a servant: she is entitled to fifty dinars in place of the house or forty dinars in place of the servant, and they did not regard this as a debt-for-debt exchange. We do not know of any text that prohibits debt-for-debt arrangements in principle; we only know of the established text prohibiting the sale of what has not been delivered.

وَيَقُولُ الْحَنَفِيُّونَ فِيمَنْ تَزَوَّجَ عَلَى بَيْتٍ وَخَادِمٍ: أَنَّ لَهَا فِي الْبَيْتِ خَمْسِينَ دِينَارًا، أَوْ فِي الْخَادِمِ أَرْبَعِينَ دِينَارًا، وَلَمْ يَرَوْهُ دَيْنًا بِدَيْنٍ - وَمَا نَدْرِي نَصًّا مَنَعَ دَيْنًا بِدَيْنٍ أَصْلًا، إنَّمَا نَدْرِي النَّصَّ الثَّابِتَ الْمَانِعَ مِنْ بَيْعِ مَا لَمْ يُقْبَضْ؟ .

L36994 Abu Muhammad said: Then we say to the two factions: If the absurd narrations you have embellished as evidence are deemed valid in your view, then you have exposed yourselves to the gravest humiliation in this matter, for some of these—and other narrations—contain rulings that contradict what you rejected, while other jurists from Medina and Kufa have upheld them, as we previously mentioned—Sa'id ibn al-Musayyib, 'Urwah ibn al-Zubayr, al-Zuhri, al-Sha'bi, Abu Yusuf, and Muhammad ibn al-Hasan—those who asserted that diyah may be paid in cattle, sheep, or robes, as we cited earlier.

قَالَ أَبُو مُحَمَّد: ثُمَّ نَقُولُ لِلطَّائِفَتَيْنِ: إنْ كَانَتْ الْآثَارُ السَّخِيفَةُ الَّتِي مَوَّهْتُمْ بِهَا حُجَّةً عِنْدَكُمْ فَإِنَّكُمْ قَدْ افْتَضَحْتُمْ فِي ذَلِكَ أَقْبَحَ فَضِيحَةٍ، لِأَنَّ بَعْضَهَا وَغَيْرَهَا قَدْ جَاءَتْ بِمَا خَالَفْتُمُوهُ، وَأَخَذَ بِهِ غَيْرُكُمْ مِنْ فُقَهَاءِ الْمَدِينَةِ وَالْكُوفَةِ، كَمَا ذَكَرْنَا - كَسَعِيدِ بْنِ الْمُسَيِّبِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَالزُّهْرِيِّ، وَالشَّعْبِيِّ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، الْقَائِلِينَ: بِأَنَّ الدِّيَةَ تَكُونُ مِنْ الْبَقَرِ، وَالْغَنَمِ، وَالْحُلَلِ، كَمَا أَوْرَدْنَا قَبْلُ.

L36995 Among what has been narrated to us through the path of Sa'īd ibn Manṣūr:

فَمِنْ ذَلِكَ - مَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا مُحَمَّدُ بْنُ إِسْحَاقَ: سَمِعْتُ عَطَاءَ بْنَ أَبِي رَبَاحٍ يُحَدِّثُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَضَ الدِّيَةَ فِي أَمْوَالِ الْمُسْلِمِينَ مَا كَانَتْ، فَجَعَلَهَا فِي الْإِبِلِ مِائَةَ بَعِيرٍ، وَفِي الْبَقَرِ مِائَتَيْ بَقَرَةٍ، وَفِي الْغَنَمِ أَلْفَيْ شَاةٍ، وَعَلَى أَهْلِ الذَّهَبِ الذَّهَبَ، وَعَلَى أَهْلِ الْوَرِقِ الْوَرِقَ - وَجَعَلَ فِي الطَّعَامِ شَيْئًا لَمْ يَحْفَظْهُ» .

I [Hushaym] narrated, I [Muḥammad ibn Isḥāq] heard ʻAṭāʾ ibn Abī Rabāḥ relate: "The Messenger of Allah—peace and blessings of Allah be upon him—imposed the blood-money upon the wealth of the Muslims according to their means. He established it as one hundred camels in camels, two hundred cows in cattle, two thousand sheep in sheep, gold for the people of gold, and silver for the people of silver. He also set something for grains, but he [the narrator] did not memorize it."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالدِّيَةِ عَلَى أَهْلِ الْإِبِلِ مِائَةَ بَعِيرٍ، وَعَلَى أَهْلِ الْحُلَلِ مِائَتَيْ حُلَّةٍ، وَعَلَى أَهْلِ الْبَقَرِ مِائَتَيْ بَقَرَةٍ، وَعَلَى أَهْلِ الشَّاءِ أَلْفَيْ شَاةٍ.» وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ كَانَ عَقْلُهُ مِنْ الشَّاءِ فَأَلْفَا شَاةٍ» .

L36996 Through the chain of Ḥammād ibn Salamah, from Muḥammad ibn Isḥāq, from ʻAṭāʾ ibn Abī Rabāḥ: "The Messenger of Allāh (peace be upon him) ruled that the blood money for camel owners is one hundred camels, for those possessing garment sets two hundred sets, for cattle owners two hundred cows, and for sheep owners two thousand sheep." Through the chain of ʻAbd al-Razzāq, from Ibn Jurayj, who said: The Messenger of Allāh (peace be upon him) declared: "Whoever's blood debt is assessed in sheep must pay two thousand sheep."

فَهَذِهِ مَرَاسِيلُ أَحْسَنُ مِمَّا ذَكَرْتُمْ، أَوْ مِثْلِهِ.

L36997 Thus, these *mursal narrations* are of superior quality to what you have mentioned, or comparable to it.

وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ: قَرَأْت عَلَى سَعِيدِ بْنِ يَعْقُوبَ الطَّالَقَانِيِّ: حَدَّثَكُمْ أَبُو تُمَيْلَةَ يَحْيَى بْنُ وَاضِحٍ أَنَا مُحَمَّدُ بْنُ إِسْحَاقَ أَنَا عَطَاءٌ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «فَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الدِّيَةَ عَلَى أَهْلِ الْإِبِلِ مِائَةَ بَعِيرٍ، وَعَلَى أَهْلِ الْحُلَلِ مِائَتَيْ حُلَّةٍ، وَعَلَى أَهْلِ الْبَقَرِ مِائَتَيْ بَقَرَةٍ، وَعَلَى أَهْلِ الشَّاءِ أَلْفَيْ شَاةٍ، وَعَلَى أَهْلِ الطَّعَامِ شَيْئًا لَا أَحْفَظُهُ» .

L36998 And from the chain of Abū Dāwūd al-Sijistānī: I recited to Saʿīd ibn Yaʿqūb al-Ṭālaqānī - he said: Abū Tumaylah Yaḥyā ibn Wāḍiḥ narrated to you all: Muḥammad ibn Isḥāq said: ʻAṭāʾ narrated to us from Jābir ibn ʻAbd Allāh: "The Messenger of Allah - may Allah bless him and grant him peace - ordained the blood-money upon camel owners as one hundred camels, upon owners of fine garments as two hundred garments, upon cow owners as two hundred cows, upon owners of small livestock (sheep and goats) as two thousand sheep, and upon those liable in food as an amount I do not retain in memory."

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: لَمْ يُسْنِدْهُ إلَّا أَبُو تُمَيْلَةَ يَحْيَى بْنُ وَاضِحٍ، وَلَيْسَ بِالْقَوِيِّ - وَلَوْ صَحَّ لَقُلْنَا بِهِ.

L36999–37000 Abū Muḥammad—may Allāh be pleased with him—said: No one narrated it with an isnad except Abū Tumaylah Yaḥyā ibn Wāḍiḥ, and he is not strong in reliability—had it been sound, we would have acted upon it.

L37001 From the path of Abu Dawud: I am a trustworthy companion of ours, I am Shayban, I am Muhammad ibn Rashid, I am Sulayman—son of Musa—from ʻAmr ibn Shuʻayb, from his father, from his grandfather, who said: "The Messenger of Allah—peace and blessings be upon him—ruled that those liable to pay blood money in cattle owe two hundred cows, and those whose blood money is assessed in sheep owe two thousand sheep. For the *ma'mumah* wound, one-third of the full blood money: thirty-three and one-third camels (33 1/3), or their equivalent value in gold, silver, cattle, or sheep. The *jā'ifah* wound is likewise assessed."

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا صَاحِبٌ لَنَا ثِقَةٌ أَنَا شَيْبَانُ أَنَا مُحَمَّدُ بْنُ رَاشِد أَنَا سُلَيْمَانُ - هُوَ ابْنُ مُوسَى - عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَهْلِ الْبَقَرِ مِائَتَيْ بَقَرَةٍ، وَمَنْ كَانَ عَقْلُهُ فِي الشَّاءِ فَأَلْفَا شَاةٍ، وَفِي الْمَأْمُومَةِ ثُلُثُ الْعَقْلِ ثَلَاثَةٌ وَثَلَاثُونَ مِنَ الْإِبِلِ وَثُلُثٌ، أَوْ قِيمَتُهَا مِنَ الذَّهَبِ، أَوْ الْوَرِقِ، أَوْ الْبَقَرِ، أَوْ الشَّاءِ، وَالْجَائِفَةُ مِثْلُ ذَلِكَ» .

L37002 From the narration of Abū Dāwūd al-Sijistānī: From Yaḥyā ibn Ḥakīm, from ʿAbd al-Raḥmān ibn ʿUthmān, from al-Ḥusayn the Teacher, from ʿAmr ibn Shuʿayb, from his father, from his grandfather, who said: "The value of blood money during the time of the Messenger of Allāh—peace and blessings be upon him—was eight hundred dinars, eight thousand dirhams—the blood money of the People of the Book at that time being half of the blood money of Muslims—and it remained so until ʿUmar ibn al-Khaṭṭāb—may Allāh be pleased with him—assumed the caliphate. He stood to deliver a sermon and said: 'Behold, camels have become expensive.' ʿUmar then fixed the blood money for the people of gold at one thousand dinars, for the people of silver at twelve thousand dirhams, for the people of cattle at two hundred cows, for the people of goats at two thousand goats, and for the people of garments at two hundred sets of garments. He left the blood money of protected non-Muslims unchanged, not increasing it as he did for the people liable to pay blood money."

وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ أَنَا يَحْيَى بْنُ حَكِيمٍ أَنَا عَبْدِ الرَّحْمَنِ بْنِ عُثْمَانَ أَنَا الْحُسَيْنُ الْمُعَلِّمُ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ «: كَانَتْ قِيمَةُ الدِّيَةِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَمَانِمَائَةِ دِينَارٍ ثَمَانِيَةَ آلَافِ دِرْهَمٍ - وَدِيَةُ أَهْلِ الْكِتَابِ يَوْمَئِذٍ عَلَى النِّصْفِ مِنْ دِيَةِ الْمُسْلِمِ - وَكَانَتْ كَذَلِكَ حَتَّى اسْتُخْلِفَ عُمَرُ بْنُ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - فَقَامَ خَطِيبًا فَقَالَ: أَلَا إِنَّ الْإِبِلَ قَدْ غَلَتْ فَفَرَضَهَا عُمَرُ عَلَى أَهْلِ الذَّهَبِ أَلْفَ دِينَارٍ، وَعَلَى أَهْلِ الْوَرِقِ اثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ، وَعَلَى أَهْلِ الْبَقَرِ مِائَتَيْ بَقَرَةٍ، وَعَلَى أَهْلِ الشَّاءِ أَلْفَيْ شَاةٍ، وَعَلَى أَهْلِ الْحُلَلِ مِائَتَيْ حُلَّةٍ - وَتَرَكَ دِيَةَ أَهْلِ الذِّمَّةِ لَمْ يَرْفَعْهَا فِيمَا رَفَعَ مِنْ أَهْلِ الدِّيَةِ.» قَالُوا: فَهَذِهِ أَحَادِيثُ أَحْسَنُ مِنَ الَّتِي مَوَّهُوا بِهَا فِي أَنَّ الدِّيَةَ تَكُونُ مِنَ الذَّهَبِ وَالْفِضَّةِ، فَمَا الَّذِي مَنَعَهُمْ مِنْ أَنْ يَأْخُذُوا بِهَا، وَهُمْ يَأْخُذُونَ بِرِوَايَةِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ إِذَا وَافَقَتْ أَهْوَاءَهُمْ فِي تَقْلِيدِ مَالِكٍ، وَأَبِي حَنِيفَةَ، كَاحْتِجَاجِهِمْ بِهَا فِي أَنَّ الْمَرْأَةَ أَوْلَى بِحَضَانَةِ وَلَدِهَا مَا لَمْ تُنْكَحْ، وَالْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ، وَفِي الْمُوضِحَةِ خَمْسٌ، وَغَيْرِ ذَلِكَ - فَأَيُّ دِينٍ يَبْقَى مَعَ هَذَا؟ وَنَسْأَلُ اللَّهَ تَعَالَى التَّوْفِيقَ وَالْعَافِيَةَ.

They said: These narrations are superior to those they deceptively cited to assert that blood money must be paid in gold and silver. What prevented them from adopting these, when they do accept the narrations of ʿAmr ibn Shuʿayb from his father from his grandfather whenever it aligns with their uncritical adherence to Mālik and Abū Ḥanīfah? Such as their reliance on these narrations to argue that a woman retains priority in custody of her child unless she remarries, that a slave under manumission contract remains enslaved until the last dirham is paid, that five camels are due for a skull

fracture exposing the bone, and similar rulings. What religion remains with this? We ask Allāh the Exalted for success and well-being.

L37003 From the narration of Abd al-Razzaq, from Ma'mar, from al-Zuhri, he said: "The blood-money during the era of Allah's Messenger - peace be upon him - was one hundred camels, with one camel equivalent to each uqiyyah (of silver), totaling four thousand. When Umar assumed authority, silver became cheaper and camels became more expensive. Umar established the rate as one and a half uqiyyahs. Then camels became cheaper and silver became more expensive, so Umar set it at two uqiyyahs, totaling eight thousand. The value of camels continued to decrease and increase until Umar fixed the blood-money at twelve thousand dirhams or one thousand dinars. For cattle, the blood-money was two hundred cows, and for sheep, one thousand sheep." From the narration of Abd al-Razzaq, from Ma'mar, from a man, from Ikrimah: Abu Bakr al-Siddiq ruled that two cows should substitute each camel - meaning in blood-money payments.

L37004–37005 From the narration of ʻAbd al-Razzāq, from Ibn Jurayj, from ʻAmr ibn Shuʻayb, who said: Abū Bakr al-Ṣiddīq said, "Whose blood money is assessed in sheep, every camel shall be equivalent to ten sheep." From the narration of Ḥammād ibn Salamah, from al-Ḥajjāj ibn Arṭāh, from Makhūl: ʻUmar ibn al-Khaṭṭāb set the blood money at eight thousand dirhams, upon the people of cattle two hundred cows, upon the people of sheep two thousand sheep, and upon the people of garments two hundred garments. From the narration of Wakīʻ: From Muḥammad ibn ʻAbd al-Raḥmān ibn Abī Laylā, from al-Shaʻbī, from ʻUbaydah al-Salmānī, who said: ʻUmar ibn al-Khaṭṭāb established the blood money rates. He set upon the people of gold one thousand dīnārs, upon the people of silver ten thousand dirhams, upon the people of camels one hundred camels, upon the people of cattle two hundred cows—two-year-old and fully mature—upon the people of sheep one thousand sheep, and upon the people of garments two hundred garments. This is the Ḥanafīs' sole narration, beyond which they have none. Do they not feel shame for this disgrace? Sufficient for us is Allah, and He is the most excellent Trustee.

L37006–37008 From the narration of Abd al-Razzaq via Ibn Jurayj, who informed me that Abdul Aziz ibn Umar ibn Abdul Aziz said: In his father's writings: Umar

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ «: كَانَتْ الدِّيَةُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِائَةَ بَعِيرٍ بِكُلِّ أُوقِيَّةٍ بَعِيرٌ: فَذَلِكَ أَرْبَعَةُ آلَافٍ، فَلَمَّا كَانَ عُمَرُ رَخُصَتْ الْوَرِقُ وَغَلَتْ الْإِبِلُ: فَجَعَلَهَا عُمَرُ أُوقِيَّةً وَنِصْفًا - ثُمَّ غَلَتْ الْإِبِلُ وَرَخُصَتْ الْوَرِقُ، فَجَعَلَهَا عُمَرُ أُوقِيَّتَيْنِ: فَذَلِكَ ثَمَانِيَةُ آلَافٍ، ثُمَّ لَمْ تَزَلْ الْإِبِلُ تَرْخُصُ وَتَغْلُو حَتَّى جَعَلَهَا عُمَرُ اثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ، أَوْ أَلْفَ دِينَارٍ - وَمِنْ الْبَقَرِ مِائَتَيْ بَقَرَةٍ، وَمِنْ الشَّاءِ أَلْفَ شَاةٍ.» وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ عِكْرِمَةَ قَضَى أَبُو بَكْرٍ الصِّدِّيقُ مَكَانَ كُلِّ بَعِيرٍ بَقَرَتَيْنِ - يَعْنِي فِي الدِّيَةِ -.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَالَ أَبُو بَكْرٍ الصِّدِّيقُ مَنْ كَانَ عَقْلُهُ فِي الشَّاءِ فَكُلُّ بَعِيرٍ بِعَشْرِ شِيَاهٍ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ مَكْحُولٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَعَلَ الدِّيَةَ ثَمَانِيَةَ آلَافٍ، وَعَلَى أَهْلِ الْبَقَرِ مِائَتَيْ بَقَرَةٍ، وَعَلَى أَهْلِ الشَّاءِ أَلْفَيْ شَاةٍ وَعَلَى أَهْلِ الْحُلَلِ مِائَتَيْ حُلَّةٍ. وَمِنْ طَرِيقِ وَكِيعٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ الشَّعْبِيِّ عَنْ عَبِيدَةَ السَّلْمَانِيِّ قَالَ: وَضَعَ عُمَرُ بْنُ الْخَطَّابِ الدِّيَاتِ فَوَضَعَ عَلَى أَهْلِ الذَّهَبِ أَلْفَ دِينَارٍ، وَعَلَى أَهْلِ الْوَرِقِ عَشَرَةَ آلَافِ دِرْهَمٍ، وَعَلَى أَهْلِ الْإِبِلِ مِائَةً مِنْ الْإِبِلِ، وَعَلَى أَهْلِ الْبَقَرِ مِائَتَيْ بَقَرَةٍ ثَنِيَّةٍ وَمُسِنَّةٍ، وَعَلَى أَهْلِ الشَّاءِ أَلْفَ شَاةٍ، وَعَلَى أَهْلِ الْحُلَلِ مِائَتَيْ حُلَّةٍ - فَهَذَا هُوَ حَدِيثُ الْحَنَفِيِّينَ الَّذِي لَا حَدِيثَ لَهُمْ غَيْرُهُ، أَفَلَا يَسْتَحْيُونَ مِنْ الْعَارِ - حَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

ibn al-Khattab consulted the early authorities when he conscripted troops, decreeing: “Upon gold owners: one thousand dinars; upon silver owners: twelve thousand dirhams; upon camel owners: one hundred camels; upon cattle owners: two hundred cows; upon sheep owners: two thousand sheep; and upon those dealing in Yemeni woven fabric: two hundred garments valued at five dinars each, or the equivalent value in non-garment commodities.” Uthman ibn Affan later ruled to increase the blood-money to four thousand dirhams.

Through another chain via Abd al-Razzaq from Ibn Jurayj, who said: Amr ibn Shu’ayb reported: “Allah’s Messenger—peace and blessings be upon him—assessed camel-based blood-money for rural dwellers at four hundred dinars or their silver equivalent, according to current camel prices. When prices rose, he raised the valuation, and when prices fell, he lowered the valuation for rural dwellers proportionally to eight hundred dirhams.” Umar ibn al-Khattab ruled blood-money for silver owners as twelve thousand dirhams, stating: “I observe how blood-money fluctuates with time—sometimes decreasing with camel values and sometimes increasing. As wealth grows abundant, I fear future rulers may mishandle rulings: if a Muslim is wronged, his blood-money might be neglected.” It is unjust to raise his blood money without right, thereby imposing it upon Muslim communities and devastating them. There is no increase in the severity of blood money imposed on the villagers, nor during the sacred month, nor in matters of sanctity. No additional severity is imposed on the villagers in this regard; it must not exceed twelve thousand dirhams. The blood money for Bedouins falls upon camel owners as one hundred camels of specified ages, as decreed by the Messenger of Allah—peace and blessings be upon him—upon cattle owners as two hundred cattle, and upon sheep owners as two thousand sheep. I have not imposed on the villagers except that their blood money be paid in gold and silver, which is levied upon them.

L37009 If the Messenger of Allah—peace and blessings be upon him—had imposed a fixed blood money amount upon the people of the villages in gold and silver,

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: فِي كِتَابِ أَبِيهِ: إِنَّ عُمَرَ بْنَ الْخَطَّابِ شَاوَرَ السَّلَفَ حِينَ جَنَّدَ الْأَجْنَادَ، فَكَتَبَ: إِنَّ عَلَى أَهْلِ الذَّهَبِ أَلْفَ دِينَارٍ، وَعَلَى أَهْلِ الْوَرِقِ اثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ، وَعَلَى أَهْلِ الْإِبِلِ مِائَةً مِنْ الْإِبِلِ، وَعَلَى أَهْلِ الْبَقَرِ مِائَتَيْ بَقَرَةٍ، وَعَلَى أَهْلِ الشَّاءِ أَلْفَيْ شَاةٍ، وَعَلَى أَهْلِ الْبَزِّ مِنْ الْبَزِّ مِنْ نَسْجِ الْيَمَنِ بِقِيمَةِ خَمْسَةِ خَمْسَةٍ - يَعْنِي دَنَانِيرَ - مِائَتَيْ حُلَّةٍ، أَوْ قِيمَةَ ذَلِكَ مِمَّا سِوَى الْحُلَلِ. وَقَضَى عُثْمَانُ بْنُ عَفَّانَ فِي تَغْلِيظِ الدِّيَةِ بِأَرْبَعَةِ آلَافِ دِرْهَمٍ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ عَمْرُو بْنُ شُعَيْبٍ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُقَيِّمُ الْإِبِلَ عَلَى أَهْلِ الْقُرَى أَرْبَعَمِائَةِ دِينَارٍ، أَوْ عِدْلَهَا مِنْ الْوَرِقِ، وَبِقِيمَتِهَا عَلَى أَثْمَانِ الْإِبِلِ، فَإِذَا غَلَتْ رَفَعَ فِي ثَمَنِهَا، وَإِذَا هَانَتْ نَقَصَ مِنْ قِيمَتِهَا عَلَى أَهْلِ الْقُرَى عَلَى ثَمَانِمائَةٍ.» وَقَضَى عُمَرُ بْنُ الْخَطَّابِ فِي الدِّيَةِ عَلَى أَهْلِ الْوَرِقِ اثْنَيْ عَشَرَ أَلْفًا، وَقَالَ: إِنِّي أَرَى الزَّمَانَ تَخْتَلِفُ فِيهِ الدِّيَةُ تَخْتَفِضُ فِيهِ مَرَّةً مِنْ قِيمَةِ الْإِبِلِ وَتَرْتَفِعُ مَرَّةً، وَإِنِّي أَرَى الْمَالَ قَدْ كَثُرَ، وَإِنِّي أَخْشَى عَلَيْكُمْ الْحُكَّامَ بَعْدِي، كَأَنْ يُصَابَ الرَّجُلُ الْمُسْلِمُ فَتَهْلِكَ دِيَتُهُ بِالْبَاطِلِ، وَأَنْ تَرْتَفِعَ دِيَتُهُ بِغَيْرِ حَقٍّ، فَتُحْمَلُ عَلَى أَقْوَامٍ مُسْلِمِينَ فَتَجْتَاحُهُمْ، وَلَيْسَ عَلَى أَهْلِ الْقُرَى زِيَادَةٌ فِي تَغْلِيظِ عَقْلٍ، وَلَا فِي الشَّهْرِ الْحَرَامِ، وَلَا فِي الْحُرْمَةِ، وَلَا عَلَى أَهْلِ الْقُرَى فِيهِ تَغْلِيظٌ، لَا يُزَادُ فِيهِ عَلَى اثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ، وَعَقْلُ أَهْلِ الْبَادِيَةِ عَلَى أَهْلِ الْإِبِلِ مِائَةٌ مِنْ الْإِبِلِ عَلَى أَسْنَانِهَا، كَمَا قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَى أَهْلِ الْبَقَرِ مِائَتَا بَقَرَةٍ، وَعَلَى أَهْلِ الشَّاءِ أَلْفَا شَاةٍ - وَلَمْ أَقْسِمْ عَلَى أَهْلِ الْقُرَى إِلَّا عَقْلَهُمْ يَكُونُ ذَهَبًا، وَوَرِقًا، فَيُقَامُ عَلَيْهِمْ.

without any increase, we would have followed the Messenger of Allah—peace and blessings be upon him—in that. However, he used to determine it according to the value of camels.

وَلَوْ كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى عَلَى أَهْلِ الْقُرَى فِي الذَّهَبِ وَالْوَرِقِ عَقْلًا مُسَمًّى لَا زِيَادَةَ فِيهِ اتَّبَعْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيهِ، وَلَكِنَّهُ كَانَ يُقِيمُهُ عَلَى أَثْمَانِ الْإِبِلِ.

L37010 Abu Muhammad—may Allah be pleased with him—said: This is in my book from Humam: "Umar ruled regarding blood money upon those liable for cattle as twelve thousand dirhams"—which is undoubtedly an error—and the correct version is: "Umar ruled regarding blood money upon those liable for silver coins." Abu Muhammad—may Allah be pleased with him—said: This is the narration of the Malikis, which they distorted by selectively citing parts of it while ignoring the remainder. If those animals that died naturally and those gored to death are considered valid evidence according to them, then these strangled animals and those beaten to death are equivalent to them in every respect, and even better than them.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَكَذَا فِي كِتَابِي عَنْ حُمَامٍ: قَضَى عُمَرُ فِي الدِّيَةِ عَلَى أَهْلِ الْبَقَرِ اثْنَيْ عَشَرَ أَلْفًا - وَهُوَ وَهْمٌ بِلَا شَكٍّ - وَإِنَّمَا هُوَ: قَضَى عُمَرُ فِي الدِّيَةِ عَلَى أَهْلِ الْوَرِقِ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا حَدِيثُ الْمَالِكِيِّينَ الَّذِي مَوَّهُوا بِبَعْضِهِ وَتَرَكُوا سَائِرَهُ، فَإِنْ كَانَتْ تِلْكَ الْمَيِّتَاتُ وَالنَّطَائِحُ حُجَّةً عِنْدَهُمْ، فَهَذِهِ الْمُنْخَنِقَاتُ وَالْمَوْقُوذَاتُ مِثْلُهَا وَبِتَمَامِهَا وَأَحْسَنُ مِنْهَا.

L37011 If they obscured [the truth] there by citing invalid matters attributed to Abū Bakr, ʿUmar, and ʿUthmān, then this [conduct] is equivalent to what is ascribed to Abū Bakr, ʿUmar, and ʿUthmān in using such [arguments] as evidence while discarding these [invalid claims] - [being] misguidance and mockery of the religion, all of which contain no good. The fabrication is manifest in every one of them.

وَإِنْ مَوَّهُوا هُنَالِكَ بِمَا لَا يَصِحُّ مِمَّا ذُكِرَ عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، فَهَذَا مِثْلُهُ عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ بِالِاحْتِجَاجِ بِذَلِكَ وَاطِّرَاحُ هَذِهِ: ضَلَالٌ وَتَلَاعُبٌ بِالدِّينِ - وَكُلُّهَا لَا خَيْرَ فِيهَا - الْوَضْعُ ظَاهِرٌ فِي جَمِيعِهَا.

L37012 They said: "Perhaps what was reported concerning the mention of cows, sheep, and textiles was based on mutual agreement between the two parties?" We replied: "Then perhaps what was reported concerning the mention of invalid gold and silver was also based on mutual agreement between the two parties, for otherwise, what difference would there be?" Thus, it is established that blood money is owed exclusively in camels—or their value if they are unavailable—only if they are found.

فَقَالُوا: لَعَلَّ مَا رُوِيَ مِنْ ذِكْرِ الْبَقَرِ، وَالشَّاءِ، وَالْحُلَلِ، إنَّمَا كَانَ عَلَى التَّرَاضِي مِنْ الْفَرِيقَيْنِ؟ قُلْنَا: فَلَعَلَّ مَا رُوِيَ مِنْ ذِكْرِ مَا لَا يَصِحُّ مِنْ الذَّهَبِ وَالْوَرِقِ إنَّمَا كَانَ عَلَى التَّرَاضِي مِنْ الْفَرِيقَيْنِ، وَإِلَّا فَمَا الْفَرْقُ؟ فَصَحَّ أَنْ لَا دِيَةَ إلَّا مِنْ الْإِبِلِ - أَوْ قِيمَتِهَا إنْ عُدِمَتْ - لَوْ وُجِدَتْ فَقَطْ.

L37013–37015 If we had wished to present a superior argument to theirs, we would have cited the hadith we previously mentioned via the transmission route of Qasim ibn Asbagh: Ahmad ibn Zuhayr reported from al-Hakam ibn Musa, who reported from Yahya ibn Hamzah, who reported from Sulayman ibn Dawud al-Jazari, from al-Zuhri, from Abu Bakr ibn Muhammad ibn Amr ibn Hazm,

وَلَوْ شِئْنَا أَنْ نَحْتَجَّ بِأَحْسَنَ مِمَّا احْتَجُّوا بِهِ لَذَكَرْنَا الْحَدِيثَ الَّذِي أَوْرَدْنَاهُ قَبْلُ مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ أَنَا أَحْمَدُ بْنُ زُهَيْرٍ أَنَا الْحَكَمُ بْنُ مُوسَى أَنَا يَحْيَى بْنُ حَمْزَةَ عَنْ سُلَيْمَانَ بْنِ

from his father. From his grandfather: “Indeed, the Messenger of Allah, peace and blessings of Allah be upon him, wrote to the people of Yemen in a letter containing inheritance laws, established practices, and blood money. He dispatched it with ʻAmr ibn Hazm, and it was read aloud in Yemen. This is a copy of it.” He mentioned therein: “And for a life: one hundred camels,” but he did not mention gold or silver. Allah forbid that we should rely on what is invalid. Success comes only from Allah, the Exalted.

دَاوُد الْجَزَرِيِّ عَنْ الزُّهْرِيِّ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَبَ إلَى أَهْلِ الْيَمَنِ بِكِتَابٍ فِيهِ الْفَرَائِضُ وَالسُّنَنُ وَالدِّيَاتُ وَبَعَثَ بِهِ مَعَ عَمْرِو بْنِ حَزْمٍ فَقُرِئَتْ بِالْيَمَنِ وَهَذِهِ نُسْخَتُهَا، فَذَكَرَ فِيهِ: وَفِي النَّفْسِ: مِائَةٌ مِنْ الْإِبِلِ، وَلَمْ يَذْكُرْ ذَهَبًا، وَلَا وَرِقًا» وَلَكِنْ مَعَاذَ اللَّهِ أَنْ نَحْتَجَّ بِمَا لَا يَصِحُّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of Diyah in Unintentional Killing

L37016–37017

[مَسْأَلَةُ الدِّيَةُ فِي قَتْلِ الْخَطَأِ]

In the name of Allah, the Most Gracious, the Most Merciful. My Lord, make easy and seal with goodness, O Generous.

L37018

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ رَبِّ يَسِّرْ وَاخْتِمْ بِخَيْرٍ يَا كَرِيمُ

Issue 2029: Abu Muhammad said: As for the blood money in accidental killing, it falls upon the agnates (al-ʿaṣabah)—meaning the liable kin group (al-ʿāqilah). There is unanimous agreement on this, except for something attributed to ʿUthmān al-Battī, who said: “I do not know what the liable kin group is.”

L37019

٢٠٢٩ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا الدِّيَةُ فِي قَتْلِ الْخَطَأِ فَعَلَى الْعَصَبَةِ وَهُمْ الْعَاقِلَةُ، وَهَذَا مِمَّا لَا خِلَافَ فِيهِ، إلَّا شَيْءٌ ذُكِرَ عَنْ عُثْمَانَ الْبَتِّيِّ أَنَّهُ قَالَ: لَا أَدْرِي مَا الْعَاقِلَةُ.

Abu Muhammad said: It is possible to argue for this view on the basis of Allah the Exalted’s statement: “No soul bears [a burden] except against itself, and no bearer of burdens shall bear the burden of another” [al-Anʻam 6:164].[1]

L37020

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ يُمْكِنُ أَنْ يُحْتَجَّ لِهَذَا الْقَوْلِ بِقَوْلِ اللَّهِ تَعَالَى {ولا تكسب كل نفس إلا عليها ولا تزر وازرة وزر أخرى} [الأنعام: ١٦٤] .

Abu Muhammad said: Were it not for what has been transmitted from the Prophet—peace and blessings of Allah be upon him—this opinion would be incontestable. However, the Messenger of Allah—peace and blessings of Allah be upon him—is the one whom Allah appointed to clarify His exalted intent, as He stated: “To make clear to mankind what has been revealed to them” [16:44]. We have found through the transmission of Abdullah ibn Rabee’ from Muhammad ibn Muʻāwiyah from Ahmad ibn Shuʻayb from Qutaybah from Al-Layth ibn Saʻd from Ibn Shihāb from Ibn al-Musayyab from Abū Hurayrah—who said: “The Messenger of Allah—peace and bless-

L37021

قَالَ أَبُو مُحَمَّدٍ: لَوْلَا أُثِرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكَانَ هَذَا الْقَوْلُ الَّذِي لَا يَجُوزُ خِلَافُهُ، وَلَكِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ الَّذِي وَلَّاهُ اللَّهُ الْبَيَانَ عَنْ مُرَادِهِ تَعَالَى، فَقَالَ {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] فَوَجَدْنَا مَا نَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا قُتَيْبَةُ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ ابْنِ شِهَابٍ عَنْ ابْنِ الْمُسَيَّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي جَنِينِ امْرَأَةٍ مِنْ بَنِي لِحْيَانَ سَقَطَ مَيِّتًا بِغُرَّةٍ عَبْدٍ أَوْ أَمَةٍ، ثُمَّ إنَّ الْمَرْأَةَ الَّتِي قَضَى عَلَيْهَا

[1] **Qur’an references (L37020):** Qur’an 6:164 (Al-An’am).

ings of Allah be upon him—ruled regarding the stillborn fetus of a woman from Banū Lihyān, imposing a ghurrah (compensation) of a male or female slave. When the woman subject to this ghurrah ruling died, the Messenger of Allah—peace and blessings of Allah be upon him—decreed that her inheritance belonged to her sons and husband, while the blood money fell upon her agnatic relatives." Thus, the Messenger of Allah—peace and blessings of Allah be upon him—ruled for the liability of blood money upon the agnates, as demonstrated here. It is therefore obligatory to adhere to this ruling—and with Allah, the Exalted, lies all success.[2][3]

بِالْغُرَّةِ تُوُفِّيَتْ، فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ مِيرَاثَهَا لِبَنِيهَا وَزَوْجِهَا، وَأَنَّ الْعَقْلَ عَلَى عَصَبَتِهَا» ، فَحَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْعَقْلِ عَلَى الْعَصَبَةِ كَمَا تَرَى فَوَجَبَ الْوُقُوفُ عِنْدَ ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L37022 Abū Muḥammad said: For whoever has no ʿaṣabah, then upon the public treasury according to what we shall mention in its dedicated chapter—God Almighty willing—and by Him we are strengthened.

قَالَ أَبُو مُحَمَّد: فَمَنْ لَمْ تَكُنْ لَهُ عَصَبَةٌ فَعَلَى بَيْتِ الْمَالِ عَلَى مَا نَذْكُرُهُ فِي بَابِهِ إنْ شَاءَ اللَّهُ تَعَالَى وَبِهِ نَتَأَيَّدُ.

L37023 An objection concerning the killing of the Muslim by the dhimmi.

اعْتِرَاضٌ فِي قَتْلِ الذِّمِّيِّ الْمُسْلِمَ

L37024–37026 Abu Muhammad said: If someone were to say, "You say that if a dhimmi intentionally kills a Muslim," His protection is invalidated, he reverts to being a belligerent, must be killed without exception, and his wealth is confiscated. What do you say regarding what Abdullah ibn Yusuf narrated to you? Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn Al-Hajjaj narrated to us, Ishaq ibn Mansur narrated to us: From Bishr ibn Umar, who said: I heard Malik ibn Anas say: Abu Layla ibn Abdullah ibn Abdul Rahman ibn Sahl related to me from Sahl ibn Abi Hathma that he informed him from men among the elders of his tribe: "Abdullah ibn Sahl and Muhayyisa set out for Khaybar due to hardship that afflicted them. Muhayyisa came and reported that Abdullah ibn Sahl had been killed and thrown into a spring or a pit. He went to the Jews and said: 'By Allah, you killed him!' They replied: 'By Allah, we did not kill him.' Then he returned to his people and informed them. Afterward, he came with his brother Huwayyisa—who was older than him—and Abdul Rahman ibn Sahl. Muhayyisa, who had

قَالَ أَبُو مُحَمَّد: فَإِنْ قَالَ قَائِلٌ: إنَّكُمْ تَقُولُونَ: إنَّ الذِّمِّيَّ إذَا قَتَلَ مُسْلِمًا عَمْدًا بَطَلَتْ ذِمَّتُهُ، وَعَادَ حَرْبِيًّا، وَقُتِلَ وَلَا بُدَّ، وَاسْتُفِيءَ مَالُهُ فَكَيْفَ تَقُولُونَ فِيمَا حَدَّثَكُمْ بِهِ عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّد نَا أَحْمَدُ بْنُ عَلِيّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا بِشْرُ بْنُ عُمَرَ قَالَ: سَمِعْت مَالِكَ بْنَ أَنَسٍ يَقُولُ: ثَنِي أَبُو لَيْلَى بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ سَهْلٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ أَنَّهُ أَخْبَرَهُ عَنْ رِجَالٍ مِنْ كُبَرَاءِ قَوْمِهِ: «أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ، وَمُحَيِّصَةَ خَرَجَا إلَى خَيْبَرَ مِنْ جَهْدٍ أَصَابَهُمَا فَأَتَى مُحَيِّصَةُ فَأَخْبَرَ أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ قَدْ قُتِلَ وَطُرِحَ فِي عَيْنٍ أَوْ فَقِيرٍ فَأَتَى يَهُودَ فَقَالَ: أَنْتُمْ وَاَللَّهِ قَتَلْتُمُوهُ؟ قَالُوا: وَاَللَّهِ مَا قَتَلْنَاهُ، ثُمَّ أَقْبَلَ حَتَّى قَدِمَ عَلَى قَوْمِهِ فَذَكَرَ ذَلِكَ لَهُمْ، ثُمَّ أَقْبَلَ هُوَ وَأَخُوهُ حُوَيِّصَةُ - وَهُوَ أَكْبَرُ مِنْهُ - وَعَبْدُ الرَّحْمَنِ بْنُ سَهْلٍ فَذَهَبَ مُحَيِّصَةُ لِيَتَكَلَّمَ، وَهُوَ الَّذِي كَانَ بِخَيْبَرَ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

[2] **Hadith references (L37021):** Sahih al-Bukhari 6740; Sunan an-Nasai 4817; Sahih Muslim 1681b.

[3] **Qur'an references (L37021):** Qur'an 16:44 (An-Nahl).

- لِمُحَيِّصَةَ: كَبِّرْ كَبِّرْ - يُرِيدُ السِّنَّ - فَتَكَلَّمَ حُوَيِّصَةُ ثُمَّ تَكَلَّمَ مُحَيِّصَةُ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إمَّا أَنْ يَدُوا صَاحِبَكُمْ، وَإِمَّا أَنْ يُؤْذِنُوا بِحَرْبٍ» وَذُكِرَ بَاقِي الْخَبَرِ فَهَذَا قَتْلُ كَافِرٍ لِمُؤْمِنٍ وَفِيهِ الدِّيَةُ.

been present in Khaybar, began to speak, but the Messenger of Allah—peace and blessings be upon him—said to Muhayyisa: 'Let the elder speak first'—referring to seniority in age. So Huwayyisa spoke, then Muhayyisa spoke. The Messenger of Allah—peace and blessings be upon him—said: 'Either they pay the blood money for your companion, or they will be declared war upon.'" The rest of the report is mentioned. This concerns the killing of a believer by a disbeliever, and in this case, the blood money applies.

L37027 قَالَ أَبُو مُحَمَّدٍ: فَجَوَابُنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - إنَّنَا عَلَى يَقِينٍ - وَلِلَّهِ الْحَمْدُ - مِنْ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُلْزِمُ أَحَدًا دِيَةً إلَّا قَاتِلًا عَمْدًا، أَوْ عَاقِلَةَ قَاتِلٍ خَطَأً أَوْ مِنْ بَيْتِ مَالِ الْمُسْلِمِينَ عَمَّنْ لَا عَاقِلَةَ لَهُ، فَإِلْزَامُهُ - عَلَيْهِ السَّلَامُ - الْيَهُودَ الدِّيَةَ لَا يَخْلُو بِيَقِينٍ لَا إشْكَالَ فِيهِ مَعَ أَحَدٍ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا أَنْ يَكُونُوا قَاتِلِي عَمْدٍ، أَوْ إمَّا أَنْ يَكُونُوا عَاقِلَةَ قَاتِلٍ خَطَأً - هَذَا مَا لَا يُمْكِنُ أَنْ يَكُونَ سِوَاهُ، فَوَجَبَ أَنْ يُنْظَرَ أَيُّ الْوَجْهَيْنِ هُوَ الْمُرَادُ فِي هَذَا الْمَكَانِ؟ فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا حُكْمَ قَاتِلِ الْعَمْدِ بَيَانٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُكْمُهُ عِنْدَ غَيْرِنَا الْقَوَدُ، أَوْ الْعَفْوُ فَقَطْ، أَوْ مَا تَصَالَحُوا بِهِ، وَحُكْمُهُ عِنْدَ طَائِفَةٍ مِنْ أَهْلِ الْعِلْمِ أَيْضًا بِتَخْيِيرِ الْوَلِيِّ بَيْنَ الْقَوَدِ، أَوْ الْعَفْوِ، أَوْ الدِّيَةِ، وَحُكْمُهُ عِنْدَنَا التَّخْيِيرُ بَيْنَ الْقَوَدِ، أَوْ الْعَفْوِ، أَوْ الدِّيَةِ، أَوْ مَا تَصَالَحُوا عَلَيْهِ، فَالْقَوَدُ عَلَى كُلِّ هَذِهِ الْأَقْوَالِ حُكْمُ قَتْلِ الْعَمْدِ وَالدِّيَةِ - بِلَا خِلَافٍ فِيهِ - فِي مَالِ الْقَاتِلِ، وَحُكْمُ قَاتِلِ الْخَطَأِ الدِّيَةُ، أَوْ الْعَفْوُ عَنْهَا فَقَطْ.

Abū Muḥammad said: Our response—and by Allah's grace, the Exalted—is that we are certain—and all praise is due to Allah—that the Messenger of Allah, peace be upon him, does not impose blood money upon anyone except an intentional killer, the kinsmen liable for blood money of an unintentional killer, or from the Muslim treasury for one who has no liable kinsmen. Therefore, his imposition—peace be upon him—of blood money upon the Jews must, with absolute certainty, conform to one of two possibilities—no third exists: either they were intentional killers or the kinsmen liable for blood money of unintentional killers—this being the sole possible interpretation. It thus becomes necessary to determine which of the two applies here. Upon examination, we found that the ruling for intentional killing is established by the Messenger of Allah, peace be upon him. According to other schools, the ruling is retaliation, pardon only, or a negotiated settlement. A group of scholars holds that the guardian may choose between retaliation, pardon, or blood money. Our position permits choosing between retaliation, pardon, blood money, or a negotiated settlement. Thus, according to all these views, the ruling for intentional killing and blood money—without disagreement—is borne by the killer's wealth. The ruling for unintentional killing entails blood money or its pardon only.

L37028–37030 فَلَمَّا وَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَذْكُرْ قَوَدًا أَصْلًا فِي هَذِهِ الرِّوَايَةِ، وَمَا كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُغْفِلَ حَقًّا لِلْحَارِثِيَّيْنِ إلَّا وَيَذْكُرُهُ لَهُمْ، وَلَا يَسْكُتَ عَنْهُ، فَيَبْطُلَ حَقُّهُمْ؟ عَلِمْنَا أَنَّ حُكْمَهُ بِالدِّيَةِ بِذَلِكَ لَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ -: مِنْ أَنْ يَكُونَ قَتْلَ عَمْدٍ وَلَا يُعْرَفُ قَاتِلُهُ، فَيُحْكَمُ فِيهِ بِحُكْمِ نَاقِضِ الذِّمَّةِ، أَوْ قَتْلِ

When we realized that the Messenger of Allah—peace and blessings be upon him—did not mention retribution (qisas) at all in this narration, and since it was impossible for the Messenger of Allah—peace be upon him—to neglect a right for the two Harithi men without informing them of it, nor would he remain silent about it, thereby invalidating their right, we concluded. The ruling concerning blood money in this matter is necessarily one of two scenarios: either an intentional killing where the perpetrator is

unknown, thereby applying the ruling pertaining to the violator of the protection covenant, or an unintentional killing. If it is an intentional killing and the perpetrator is unknown, we are certain that he (peace be upon him) does not obligate them to pay blood money, nor is it required of them.

خَطَأً - فَإِنْ كَانَ قَتْلَ عَمْدٍ لَا يُعْرَفُ قَاتِلُهُ، فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يُلْزِمُهُمْ دِيَةً لَا تَجِبُ عَلَيْهِمْ.

L37031 There is no disagreement among the present attendees from among our juristic opponents that the liable kin group (al-ʿāqila) does not pay on behalf of an intentional killer, nor has any scriptural text obligated this, thus this ruling is thereby nullified.

وَلَا خِلَافَ بَيْنَ الْحَاضِرِينَ مِنْ خُصُومِنَا فِي أَنَّ الْعَاقِلَةَ لَا تُؤَدِّي عَنْ قَاتِلِ عَمْدٍ، وَلَا أَوْجَبَ ذَلِكَ نَصٌّ، فَبَطَلَ هَذَا الْحُكْمُ.

L37032 There remains only the second opinion - which is accidental killing. This is the correct position, because the killing has been established beyond doubt, and it could have been intentional or unintentional. Therefore, it is impermissible to rule that they intended it except through conclusive proof such as witness testimony, a confession, or textual evidence that necessitates this. Thus, it remains that they did not intend it, and this constitutes accidental killing itself.

وَلَمْ يَبْقَ إِلَّا أَنَّهُ الْوَجْهُ الثَّانِي - وَهُوَ قَتْلُ الْخَطَأِ، وَهَذَا هُوَ الْحَقُّ، لِأَنَّ الْقَتْلَ قَدْ صَحَّ بِلَا شَكٍّ، وَمُمْكِنٌ أَنْ يَكُونَ بِقَصْدٍ، وَمُمْكِنٌ أَنْ لَا يَكُونَ بِقَصْدٍ، فَلَا يَجُوزُ أَنْ يُحْكَمَ عَلَيْهِمْ بِأَنَّهُمْ قَصَدُوهُ إِلَّا بِبُرْهَانٍ مِنْ بَيِّنَةٍ، أَوْ إِقْرَارٍ، أَوْ نَصٍّ مُوجِبٍ لِذَلِكَ - فَبَقِيَ أَنَّهُمْ لَمْ يَقْصِدُوهُ، وَهَذَا هُوَ الْخَطَأُ نَفْسُهُ.

L37033 Then the statement of the Prophet (peace and blessings of Allah be upon him) "or that they declare war" is evidence for the validity of what we have asserted: that by their departure from what is obligatory upon them, they violate the covenant and return to being enemies.

ثُمَّ قَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَإِمَّا أَنْ يُؤْذِنُوا بِحَرْبٍ» دَلِيلٌ عَلَى صِحَّةِ مَا قُلْنَاهُ مِنْ أَنَّهُمْ بِخُرُوجِهِمْ عَمَّا يَجِبُ عَلَيْهِمْ يَنْقُضُونَ الذِّمَّةَ وَيَعُودُونَ حَرْبِيِّينَ.

L37034 Ali said: The Prophet—peace and blessings of Allah be upon him—clarified to them the ruling regarding accidental killing in cases of actual homicide if they acknowledged it. Then he informed them of the ruling on intentional killing in a narration other than this one, and instructed them that if they swore an oath accusing a man among them who had surrendered to them, the true aspect of the hadith would become clear—and success comes only from Allah, the Exalted.

قَالَ عَلِيٌّ: فَبَيَّنَ لَهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُكْمَ الْخَطَأِ فِي الْقَتْلِ الْمَوْجُودِ إِنْ اعْتَرَفُوا بِذَلِكَ، ثُمَّ أَعْلَمَهُمْ حُكْمَ الْعَمْدِ فِي غَيْرِ هَذِهِ الرِّوَايَةِ، وَأَعْلَمَهُمْ أَنَّهُمْ إِنْ حَلَفُوا عَلَى رَجُلٍ مِنْهُمْ أَسْلَمَ إِلَيْهِمْ وَلَاحَ وَجْهُ الْحَدِيثِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37035 If he says: How do you handle the other narration transmitted to you by ʿAbdullāh ibn Yūsuf – from Aḥmad ibn Fatḥ, from ʿAbd al-Wahhāb ibn ʿĪsā, from Aḥmad ibn Muḥammad, from Aḥmad ibn ʿAlī, from Muslim ibn al-Ḥajjāj, from ʿUbaydullāh ibn ʿUmar al-Qawārīrī, from Ḥammād ibn Zayd, from Yaḥyā ibn Saʿīd al-Anṣārī, from Bashīr ibn Yasār, from Sahl ibn Abī Ḥathmah and Rāfiʿ ibn Khadīj – concerning Muḥayyiṣah ibn Masʿūd and

فَإِنْ قَالَ: فَكَيْفَ تَصْنَعُونَ بِالرِّوَايَةِ الْأُخْرَى الَّتِي حَدَّثَكُمْ بِهَا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى أَنَا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ نا حَمَّادُ بْنُ زَيْدٍ نا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ بَشِيرِ

‘Abdullāh ibn Sahl. He then mentioned the ḥadīth, which includes: “The Messenger of Allāh – peace and blessings be upon him – said to them: ‘Shall fifty of you swear against a man among them, so that he is made to pay his due?’ They replied: ‘This is a matter we did not witness – how can we swear?’” He then narrated the remainder of the report.

بْنِ يَسَارٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ، وَرَافِعِ بْنِ خَدِيجٍ: أَنْ مُحَيِّصَةَ بْنَ مَسْعُودٍ، وَعَبْدَ اللَّهِ بْنَ سَهْلٍ فَذَكَرَ الْحَدِيثَ، وَفِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُمْ: يُقْسِمُ خَمْسُونَ مِنْكُمْ عَلَى رَجُلٍ مِنْهُمْ فَيُدْفَعُ بِرُمَّتِهِ؟ قَالُوا: أَمْرٌ لَمْ نَشْهَدْهُ كَيْفَ نَحْلِفُ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

L37036 Abū Muḥammad said: Indeed, this statement is true—we seek refuge in Allah from opposing it. Rather, it is the explicit wording of our position. The Messenger of Allah—may Allah bless him and grant him peace—ruled that the killer among them should be surrendered in his entirety. This necessitates his execution and also necessitates his enslavement, as it constitutes a general ruling that cannot exclude anything falling under the scope of its literal implication except through a specific textual proof or consensus. Success comes solely from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: فَإِنَّ هَذَا الْقَوْلَ حَقٌّ، وَمَعَاذَ اللَّهِ أَنْ نُخَالِفَهُ، بَلْ هُوَ نَصُّ قَوْلِنَا، وَقَدْ حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ يُدْفَعَ الْقَاتِلُ مِنْهُمْ بِرُمَّتِهِ، وَهَذَا يَقْتَضِي قَتْلَهُ، وَيَقْتَضِي أَيْضًا اسْتِرْقَاقَهُ، لِأَنَّهُ عُمُومٌ لَا يُخْرِجُهُ مِنْهُ شَيْءٌ مِمَّا يَقَعُ عَلَيْهِ مُقْتَضَى لَفْظِهِ إِلَّا بِنَصٍّ أَوْ إِجْمَاعٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْقِصَاصَ وَاجِبٌ فِي كُلِّ مَا كَانَ بِعَمْدٍ مِنْ جُرْحٍ أَوْ كَسْرٍ]

Issue: Qisas is obligatory in every intentional case of a wound or fracture.

L37037–37038

بَابُ دِيَاتِ الْجِرَاحَةِ وَالْأَعْضَاءِ فِيمَا دُونَ النَّفْسِ فِي الْعَمْدِ وَالْخَطَأِ ٢٠٣٠ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: فَلْنَذْكُرْ الْآنَ - بِعَوْنِ اللَّهِ تَعَالَى وَتَأْيِيدِهِ - أَنَّ الْقِصَاصَ وَاجِبٌ فِي كُلِّ مَا كَانَ بِعَمْدٍ مِنْ جُرْحٍ أَوْ كَسْرٍ، لِإِيجَابِ الْقُرْآنِ ذَلِكَ فِي كُلِّ تَعَدٍّ، وَفِي كُلِّ حُرْمَةٍ، وَفِي كُلِّ عُقُوبَةٍ، وَفِي كُلِّ سَيِّئَةٍ، وَوُرُودِ السُّنَنِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L37039 Chapter on Blood Money for Injuries and Body Parts in Cases Less Than Homicide for Intentional and Accidental Acts. 2030 - Issue: Abu Muhammad said: Let us now mention—with the help of Allah, the Most High, and His support—that retribution is obligatory in every intentional wounding or fracturing, due to the Quran’s stipulation of this in every transgression, in every sanctity, in every punishment, and in every misdeed, and the presence of established Sunnahs from the Messenger of Allah, peace be upon him.

وَبَقِيَ الْكَلَامُ -: هَلْ فِي ذَلِكَ الْعَمْدِ دِيَةٌ يُخَيَّرُ الْمَجْنِيُّ عَلَيْهِ فِيهَا، أَوْ فِي الْقِصَاصِ أَمْ لَا؟ وَهَلْ فِي الْخَطَأِ فِي ذَلِكَ دِيَةٌ مُؤَقَّتَةٌ أَمْ لَا؟ قَالَ عَلِيٌّ: فَنَظَرْنَا فِي هَذَا فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥].

L37040 The remaining discussion is: In cases of intentional harm, does the victim have the choice between blood money or retaliation—or neither? And in cases of unintentional harm, is there a fixed blood money or not? Ali said: We deliberated on this and found that God Almighty states, *“There is no

blame on you for what you do unintentionally, but only for what your hearts deliberately intend”* [Quran 33:5].[4]

L37041 Ahmad ibn Umar ibn Anas narrated to us; al-Husayn ibn Abdullah al-Jurjani narrated to us: Abd al-Razzaq ibn Ahmad ibn Abd al-Hamid al-Shirazi narrated to us. Fatimah bint al-Hasan ibn al-Rayyan al-Makhzumi—scribe of Bakkar ibn Qutaybah—informed us. Al-Rabi ibn Sulayman the Muezzin narrated to us. Bishr ibn Bakr narrated to us from al-Awza’i, from Ata ibn Abi Rabah, from Ubayd ibn Umayr, from Ibn Abbas, who said: The Messenger of Allah—peace and blessings be upon him—said, “Allah has overlooked for my nation their mistakes, forgetfulness, and what they are compelled to do.”

L37042 Abu Muhammad said: This is a widely attested hadith transmitted through the chain of ar-Rabi‘ from Bishr ibn Bakr from al-Awza’i with this connected isnād—and the people have narrated it with this wording.

L37043 And Allah, the Exalted, has said: “Do not devour your wealth among yourselves unjustly, except when it is trade by mutual consent between you.” [An-Nisa 4:29][5]

L37044–37045 The Messenger of Allah said, “Your blood, your wealth, your honor, and your bodies are sacred and inviolable upon you.” Thus, it is established through all we have mentioned that all unintentional wrongs are forgiven; there is no blame on a person for it, and wealth alone is forbidden.

L37046 From this, it is valid that no liability is incurred upon anyone for an unintentional felony unless obligated by an authentic text or a definite consensus - otherwise, it is forgiven.

L37047 It is thus established that no one is obligated to pay a fine for deliberate or accidental acts unless an authentic text or indisputable consensus explicitly

نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نَا الْحُسَيْنُ بْنُ عَبْدِ اللَّهِ الْجُرْجَانِيِّ، قَالَ: نا عَبْدُ الرَّزَّاقِ بْنُ أَحْمَدَ بْنِ عَبْدِ الْحَمِيدِ الشِّيرَازِيُّ، قَالَ: أَخْبَرَتْنَا فَاطِمَةُ بِنْتُ الْحَسَنِ بْنِ الرَّيَّانِ الْمَخْزُومِيِّ - وَرَّاقِ بَكَّارِ بْنِ قُتَيْبَةَ - نا الرَّبِيعُ بْنُ سُلَيْمَانَ الْمُؤَذِّنُ نا بِشْرُ بْنُ بَكْرٍ عَنِ الْأَوْزَاعِيِّ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ اللَّهَ تَجَاوَزَ لِي عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اسْتُكْرِهُوا عَلَيْهِ» .

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا حَدِيثٌ مَشْهُورٌ مِنْ طَرِيقِ الرَّبِيعِ عَنْ بِشْرِ بْنِ بَكْرٍ عَنِ الْأَوْزَاعِيِّ بِهَذَا الْإِسْنَادِ مُتَّصِلًا - وَبِهَذَا اللَّفْظِ رَوَاهُ النَّاسُ هَكَذَا.

وَقَالَ اللَّهُ تَعَالَى {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

وَقَالَ رَسُولُ اللَّهِ «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» فَصَحَّ بِكُلِّ مَا ذَكَرْنَا أَنَّ الْخَطَأَ كُلَّهُ مَعْفُوٌّ عَنْهُ، لَا جُنَاحَ عَلَى الْإِنْسَانِ فِيهِ، وَإِنَّمَا الْأَمْوَالُ مُحَرَّمَةٌ.

فَصَحَّ مِنْ هَذَا أَنْ لَا يُوجَبَ عَلَى أَحَدٍ حُكْمٌ فِي جِنَايَةٍ خَطَأً إِلَّا أَنْ يُوجِبَ ذَلِكَ نَصٌّ صَحِيحٌ، أَوْ إِجْمَاعٌ مُتَيَقَّنٌ، وَإِلَّا فَهُوَ مَعْفُوٌّ عَنْهُ.

وَصَحَّ بِذَلِكَ أَنَّهُ لَا يَجِبُ عَلَى أَحَدٍ غَرَامَةٌ فِي عَمْدٍ وَلَا فِي خَطَأٍ إِلَّا أَنْ يُوجِبَ ذَلِكَ نَصٌّ صَحِيحٌ، أَوْ إِجْمَاعٌ مُتَيَقَّنٌ، وَإِلَّا فَالْأَمْوَالُ مُحَرَّمَةٌ وَالْغَرَامَةُ سَاقِطَةٌ، لِمَا ذَكَرْنَا

[4] **Qur’an references (L37040):** Qur’an 33:5 (Al-Ahzab).
[5] **Qur’an references (L37043):** Qur’an 4:29 (An-Nisa).

mandates it. Otherwise, wealth is inviolable and the fine is nullified, for the reasons we have mentioned.

L37048 If someone says: Allah the Exalted has mandated full diyah, the freeing of a slave, or fasting two consecutive months for those unable—in cases of accidental killing—then if this ruling applies to accidental killing, does what is lesser than killing (such as injury) in accidental harm similarly obligate diyah? We respond—and with Allah alone is success—this is qiyās, and all qiyās is invalid. Even if qiyās were valid, this instance would be the very essence of falsehood, for four reasons:

First: It is an error in analogizing according to the principles of qiyās proponents. For one would argue to them: You uphold the identification of legal causes (ʿillah). What then do you say to one who asserts by your principles: "After polytheism, no sin is graver than killing a soul in Allah's sight. Thus, its gravity is magnified, and expiation is prescribed for its accidental killing—though the accidental killer bears no sin, undisputedly. As for lesser harms, they lack the soul's sanctity and gravity before Allah. Therefore, none of what applies to the soul applies to them, since the ʿillah inherent in the soul is absent in lesser harms."

L37049 The second is that you have invalidated this analogy and abandoned it entirely, for in some offenses you have established fixed blood money amounts, while in others you have not established any blood money at all—leaving either judicial assessment, the physician's fee, or nothing whatsoever. This constitutes your nullification of your own analogy of non-fatal injuries to lethal ones, and there is no analogy more flawed than one nullified by those who uphold it.

L37050 If you say: "We only made obligatory a fixed blood money when there is a textual proof from the Messenger of Allah (peace be upon him)"?

L37051–37052 We said to them: If that text is one for which valid proof is established due to the authenticity of its chain of transmission, then adhering to it is

فَإِنْ قَالَ قَائِلٌ: قَدْ أَوْجَبَ اللَّهُ تَعَالَى فِي قَتْلِ النَّفْسِ خَطَأً الدِّيَةَ كَامِلَةً، وَتَحْرِيرَ رَقَبَةٍ، أَوْ صِيَامَ شَهْرَيْنِ مُتَتَابِعَيْنِ لِمَنْ لَمْ يَجِدْ - فَإِذَا كَانَ حُكْمُ النَّفْسِ فِي الْخَطَأِ تَجِبُ فِيهِ الدِّيَةُ فَمَا دُونَهَا فِي الْخَطَأِ كَذَلِكَ تَجِبُ أَيْضًا؟ قُلْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: هَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، وَلَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِوُجُوهٍ أَرْبَعَةٍ -: أَوَّلُهَا: أَنَّهُ خَطَأٌ فِي الْقِيَاسِ عَلَى أُصُولِ أَصْحَابِ الْقِيَاسِ، لِأَنَّهُ يُقَالُ لَهُمْ: أَنْتُمْ أَصْحَابُ تَعْلِيلٍ، فَمَاذَا تَقُولُونَ لِمَنْ قَالَ لَكُمْ عَلَى أُصُولِكُمْ: إِنَّ النَّفْسَ لَا شَيْءَ أَعْظَمُ مِنْ قَتْلِهَا بَعْدَ الشِّرْكِ عِنْدَ اللَّهِ تَعَالَى، فَلِذَلِكَ عَظُمَ أَمْرُهَا، وَجُعِلَ فِي الْخَطَأِ فِيهَا كَفَّارَةٌ - وَإِنْ كَانَ لَا ذَنْبَ لِقَاتِلِ النَّفْسِ خَطَأً بِلَا خِلَافٍ، وَأَمَّا مَا دُونَ النَّفْسِ فَلَيْسَ لَهُ عِظَمُ النَّفْسِ عِنْدَ اللَّهِ تَعَالَى، وَلَا حُرْمَتُهَا، فَلَا يَجِبُ فِي شَيْءٍ مِنْ ذَلِكَ مَا يَجِبُ فِي النَّفْسِ، إِذْ لَيْسَ فِيمَا دُونَ النَّفْسِ الْعِلَّةُ الَّتِي فِي النَّفْسِ.

وَالثَّانِي: أَنَّكُمْ قَدْ نَقَضْتُمْ هَذَا الْقِيَاسَ وَتَرَكْتُمُوهُ جُمْلَةً، فَفِي بَعْضِ الْجِنَايَاتِ جَعَلْتُمْ دِيَاتٍ مُؤَقَّتَةً، وَفِي بَعْضِهَا لَمْ تَجْعَلُوا دِيَةً أَصْلًا، إِلَّا إِمَّا حُكُومَةٌ، وَإِمَّا أَجْرُ الطَّبِيبِ، وَإِمَّا لَا شَيْءَ، وَهَذَا نَقْضٌ مِنْكُمْ لِقِيَاسِكُمْ مَا دُونَ النَّفْسِ عَلَى النَّفْسِ، وَلَا قِيَاسَ أَفْسَدُ مِنْ قِيَاسٍ نَقَضَهُ الْقَائِلُونَ بِهِ.

فَإِنْ قُلْتُمْ: إِنَّمَا أَوْجَبْنَا دِيَةً مُؤَقَّتَةً حَيْثُ جَاءَ نَصٌّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟

obligatory, and obedience to it is binding. But if it is among those that are not authentic, like the document of ʿAmr ibn Ḥazm and the document of ʿAmr ibn Shuʿayb, then no valid proof is established for any of that. The first to testify to this are none other than yourselves, for you disregard much of what is contained in those two documents.

قُلْنَا لَهُمْ: إنْ كَانَ ذَلِكَ النَّصُّ مِمَّا تَقُومُ بِهِ الْحُجَّةُ لِصِحَّةِ إسْنَادِهِ فَالْقَوْلُ بِهِ فَرْضٌ، وَالطَّاعَةُ لَهُ وَاجِبَةٌ، وَإِنْ كَانَ مِمَّا لَا يَصِحُّ كَصَحِيفَةِ عَمْرِو بْنِ حَزْمٍ وَصَحِيفَةِ عَمْرِو بْنِ شُعَيْبٍ فَلَا حُجَّةَ تَقُومُ بِشَيْءٍ مِنْ ذَلِكَ، وَأَوَّلُ مَنْ يَشْهَدُ بِهَذَا فَأَنْتُمْ، لِأَنَّكُمْ تَتْرُكُونَ كَثِيرًا مِمَّا فِي تِلْكَ الصَّحِيفَتَيْنِ.

L37053 It is impossible for you to consider some portions of a ruling that originated as a single instance to be authoritative proof while dismissing others as non-authoritative without any foundational evidence—except weakening it: on one occasion when you desire and its ruling contradicts your *taqlīd* (doctrinal adherence), and affirming it on another when you desire and its ruling aligns with your *taqlīd*. We shall clarify all this section by section hereafter, God Almighty willing.

وَمِنْ الْمُحَالِ أَنْ تَجْعَلُوا بَعْضَ حُكْمٍ جَاءَ مَجِيئًا وَاحِدًا حُجَّةً وَبَعْضَهُ لَيْسَ بِحُجَّةٍ بِلَا دَلِيلٍ أَصْلًا إلَّا تَوْهِينُ ذَلِكَ: مَرَّةً إذَا اشْتَهَيْتُمْ وَلَمْ يُوَافِقْ حُكْمُهَا تَقْلِيدَكُمْ، وَتَوْثِيقُهَا مَرَّةً إذَا اشْتَهَيْتُمْ وَوَافَقَ تَقْلِيدَكُمْ حُكْمَهَا. وَنَحْنُ نُبَيِّنُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى كُلَّ ذَلِكَ فَصْلًا فَصْلًا.

L37054 And if they say, "We only imposed the fixed blood money in the instances where the Companions imposed it (may Allah be pleased with them)."

وَإِنْ قَالُوا: إنَّمَا أَوْجَبْنَا الدِّيَةَ الْمُؤَقَّتَةَ حَيْثُ أَوْجَبَهَا الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ -.

L37055 We said: And success is from Allah, the Exalted. If all the Companions—may Allah be pleased with them—have deemed that obligatory, then listening and obeying their consensus is obligatory, for their consensus is the incontrovertible truth established as valid—originating from the Messenger of Allah—peace and blessings of Allah be upon him—as conveyed from Allah, the Exalted. If it is an opinion attributed to some Companions, then you—O assembly of our current opponents—contradict this. Verily, some Companions specified blood money for injuries below the severity of a bone-exposing wound, yet you reject this. Thus, abandoning what you have validated is erroneous and invalidates your argument.

قُلْنَا: وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنْ كَانَ أَوْجَبَ ذَلِكَ جَمِيعُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَالسَّمْعُ وَالطَّاعَةُ لِإِجْمَاعِهِمْ، لِأَنَّ إجْمَاعَهُمْ هُوَ الْحَقُّ الْمَقْطُوعُ بِهِ عَلَى صِحَّتِهِ، وَأَنَّهُ مِنْ عِنْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ اللَّهِ تَعَالَى، وَإِنْ كَانَ هُوَ قَوْلًا عَنْ بَعْضِ الصَّحَابَةِ فَأَنْتُمْ مَعْشَرَ الْحَاضِرِينَ مِنْ خُصُومِنَا مُخَالِفُونَ لِذَلِكَ، فَقَدْ جَاءَ عَنْ بَعْضِ الصَّحَابَةِ فِيمَا دُونَ الْمُوضِحَةِ تَحْدِيدُ دِيَةٍ، وَأَنْتُمْ لَا تَقُولُونَ بِذَلِكَ فَالْإِضْرَابُ عَمَّا صَحَّحْتُمُوهُ خَطَأٌ وَإِفْسَادٌ لِاحْتِجَاجِكُمْ.

L37056 Thus, it has been established that you have not relied here on analogy, nor on the opinion of a Companion, nor on an authentic text, nor on a text you are bound by—even if it is unsound. Any such opinions are undeniably invalid with absolute certainty, and indeed, they are null and void in the sight of Allah the Exalted without doubt.

فَصَحَّ أَنَّكُمْ لَمْ تَتَعَلَّقُوا هَاهُنَا بِقِيَاسٍ، وَلَا بِقَوْلِ صَاحِبٍ، وَلَا بِنَصٍّ صَحِيحٍ، وَلَا بِنَصٍّ تَلْتَزِمُونَهُ - وَإِنْ لَمْ يَصِحَّ - وَمَا كَانَ مِنْ الْأَقْوَالِ هَكَذَا فَهُوَ غَيْرُ صَحِيحٍ بِيَقِينٍ مَقْطُوعٍ، عَلَى أَنَّهُ بَاطِلٌ عِنْدَ اللَّهِ تَعَالَى بِلَا شَكٍّ.

L37057 The third is that you have invalidated this analogy as well, for the Quranic text explicitly prescribes expiation for the unintentional killing of a person through freeing a believing female slave or fasting two consecutive months for one unable to afford it along with the blood money. Among the wonders of this world is that you analogize lesser harms than taking a life to the taking of life itself by requiring expiation in some instances or partial blood money in others, yet refuse to analogize lesser harms to life by imposing expiation where full blood money is obligatory, or partial expiation where partial blood money applies. This constitutes a capricious imposition in analogical reasoning—the most baseless application ever heard of.

L37058–37059 If the analogy for obligating blood money—or a portion of it—in cases less than taking a life, based on its obligation in cases of taking a life, is certainly valid, then the analogy for obligating kaffarah, or expiation—or a portion of it—in cases less than taking a life, based on its obligation in cases of taking a life, is undoubtedly valid.

L37060 If one of the two mentioned *qiyās* (analogical reasonings) is invalid and impermissible, then the other *qiyās* is likewise invalid and impermissible. This truth is not hidden from anyone who sincerely advises himself, especially since expiation is more obligatory and binding than blood money. For Allah the Exalted did not ordain blood money in the Quran without ordaining expiation alongside it, and He has indeed mandated expiation while annulling blood money. He said: *"Whoever kills a believer by mistake must free a believing slave and pay blood money to the victim's family - unless they donate it in charity"* [4:92]. Then He stated: *"If the victim belonged to a people hostile to you but was a believer, then freeing a believing slave suffices. If he belonged to a people with whom you have a covenant, then blood money must be paid to his family along with freeing a believing slave"* [4:92]. Thus, the Exalted ordained expiation for accidental homicide mentioned in the Quran, imposed blood money in two instances, and annulled it in the third instance.[6]

وَالثَّالِثُ: أَنَّكُمْ قَدْ أَبْطَلْتُمْ هَذَا الْقِيَاسَ أَيْضًا، لِأَنَّ النَّصَّ فِي الْقُرْآنِ جَاءَ فِي كَفَّارَةِ قَتْلِ النَّفْسِ بِالْخَطَأِ بِرَقَبَةٍ مُؤْمِنَةٍ، أَوْ بِصِيَامِ شَهْرَيْنِ مُتَتَابِعَيْنِ لِمَنْ لَمْ يَجِدْ مَعَ الدِّيَةِ؛ فَمِنْ عَجَائِبِ الدُّنْيَا أَنْ تَقِيسُوا مَا دُونَ النَّفْسِ عَلَى النَّفْسِ فِي إِيجَابِ كَفَّارَةٍ فِي بَعْضِ ذَلِكَ، أَوْ إِيجَابِ بَعْضِ الدِّيَةِ فِي بَعْضِ ذَلِكَ، ثُمَّ لَا تَقِيسُوا مَا دُونَ النَّفْسِ عَلَى النَّفْسِ فِي إِيجَابِ كَفَّارَةٍ فِي بَعْضِ ذَلِكَ حَيْثُ تَجِبُ الدِّيَةُ كَامِلَةً، أَوْ بَعْضِ كَفَّارَةٍ فِي بَعْضِ ذَلِكَ حَيْثُ تَجِبُ بَعْضُ الدِّيَةِ - فَهَذَا تَحَكُّمٌ فِي الْقِيَاسِ مَا سُمِعَ بِأَسْقَطَ مِنْهُ.

وَلَئِنْ كَانَ قِيَاسُ إِيجَابِ الدِّيَةِ أَوْ بَعْضِهَا فِيمَا دُونَ النَّفْسِ عَلَى وُجُوبِ ذَلِكَ فِي النَّفْسِ حَقًّا فَإِنَّ قِيَاسَ إِيجَابِ الْكَفَّارَةِ أَوْ بَعْضِهَا فِيمَا دُونَ النَّفْسِ عَلَى وُجُوبِ ذَلِكَ فِي النَّفْسِ لَحَقٌّ.

وَلَئِنْ كَانَ أَحَدُ الْقِيَاسَيْنِ الْمَذْكُورَيْنِ بَاطِلًا لَا يَجُوزُ فَإِنَّ الْقِيَاسَ الْآخَرَ بَاطِلٌ لَا يَجُوزُ، وَهَذَا مَا لَا خَفَاءَ بِهِ عَنْ نَاصِحٍ لِنَفْسِهِ، لَا سِيَّمَا وَالْكَفَّارَةُ أَوْجَبُ وَأَوْكَدُ مِنَ الدِّيَةِ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبِ الدِّيَةَ فِي الْقُرْآنِ إِلَّا وَقَدْ أَوْجَبَ مَعَهَا الْكَفَّارَةَ، وَقَدْ أَوْجَبَ اللَّهُ تَعَالَى الْكَفَّارَةَ وَأَسْقَطَ الدِّيَةَ. قَالَ تَعَالَى {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ إِلا أَنْ يَصَّدَّقُوا} [النساء: ٩٢] ثُمَّ قَالَ تَعَالَى {فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ} [النساء: ٩٢] فَأَوْجَبَ تَعَالَى الْكَفَّارَةَ فِي قَتْلِ الْخَطَأِ الَّذِي ذُكِرَ فِي الْقُرْآنِ فَأَوْجَبَ الدِّيَةَ فِي مَوْضِعَيْنِ، وَأَسْقَطَ تَعَالَى فِي الْمَوْضِعِ الثَّالِثِ.

[6] **Qur'an references (L37060):** Qur'an 4:92 (An-Nisa).

L37061 If they say, “Consensus has indeed been established to waive expiation in that case?” we reply: If this is confirmed, consensus has invalidated this analogy. Thus, it is impermissible to apply it to blood money or expiation at all, since both belong to the same analogy and legal category.

L37062 Moreover, the majority of you do not require expiation in cases of intentional killing, and no consensus has been established to waive it. Thus, you have abandoned analogical reasoning in this matter without any consensus to prevent that.

L37063–37065 The fourth aspect is that Allah, the Exalted, has not mandated blood money for every accidental killing. Rather, there is the case of a believer being killed accidentally when he belongs to a people who are enemies to us, and no blood money is required for it. How did you arrive at the ruling by analogy regarding the killing for which Allah mandated blood money, without applying analogy to the killing for which He did not mandate it? What distinguishes you from one who says: “No blood money is required for any injury less than a life that is inflicted”? By analogy to the accidental killing of a believer from an enemy community, if your legal cause (’illah) lacks universal applicability, then analogical reasoning based on your principles is invalidated. Thus, the obligation of blood money for injuries short of death is negated—not through analogy, nor by a Companion’s opinion, nor by sound textual evidence, as none exists. Nor is there any binding textual basis for financial liability in accidental property damage—even if such a text were inauthentic.

L37066 If someone says: Allah the Exalted states, {The recompense for an evil is an evil like it} [42:40]. They replied: Injuries—even if accidental—are an evil, so their recompense must be equivalent to it. The equivalent evil could take the form of monetary compensation. So if *qisas* is not applicable, would the equivalent recompense be through monetary compensation?[7]

L37067 We said—and divine guidance is from Allah, the Exalted—: As for the statement of Allah, the Exalted, {The recompense of an evil deed is an evil deed

فَإِنْ قَالُوا: إِنَّ الْإِجْمَاعَ قَدْ صَحَّ عَلَى إِسْقَاطِ الْكَفَّارَةِ فِي ذَلِكَ؟ قُلْنَا لَهُمْ: إِذَا صَحَّ هَذَا، فَإِنَّ الْإِجْمَاعَ قَدْ أَبْطَلَ هَذَا الْقِيَاسَ فَلَا يَجُوزُ اسْتِعْمَالُهُ أَصْلًا فِي الدِّيَةِ، وَلَا فِي الْكَفَّارَةِ، إِذْ هُوَ كُلُّهُ قِيَاسٌ وَاحِدٌ وَبَابٌ وَاحِدٌ.

وَأَيْضًا: فَإِنَّ جُمْهُورَكُمْ لَا يُوجِبُونَ الْكَفَّارَةَ فِي قَتْلِ الْعَمْدِ، وَلَمْ يَأْتِ إِجْمَاعٌ بِإِسْقَاطِهَا، فَقَدْ تَرَكْتُمْ الْقِيَاسَ فِي هَذَا الْمَكَانِ دُونَ أَنْ يَمْنَعَ مِنْهُ إِجْمَاعٌ.

وَالْوَجْهُ الرَّابِعُ: أَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ دِيَةً فِي كُلِّ قَتْلٍ خَطَأً، بَلْ قَدْ جَاءَ قَتْلُ الْمُؤْمِنِ خَطَأً وَهُوَ مِنْ قَوْمٍ عَدُوٍّ لَنَا، وَلَا دِيَةَ فِيهِ، فَمِنْ أَيْنَ وَقَعَ لَكُمْ الْحُكْمُ بِالْقِيَاسِ عَلَى الْقَتْلِ الَّذِي أَوْجَبَ اللَّهُ تَعَالَى فِيهِ دِيَةً دُونَ أَنْ تَحْكُمُوا بِالْقِيَاسِ عَلَى الْقَتْلِ الَّذِي لَمْ يُوجِبْ اللَّهُ تَعَالَى فِيهِ دِيَةً؟ وَمَا الْفَرْقُ بَيْنَكُمْ وَبَيْنَ مَنْ قَالَ: بَلْ لَا تَجِبُ دِيَةٌ فِي شَيْءٍ مِمَّا دُونَ النَّفْسِ تُصَابُ خَطَأً، قِيَاسًا عَلَى قَتْلِ الْمُؤْمِنِ خَطَأً وَهُوَ مِنْ قَوْمٍ عَدُوٍّ لَنَا، فَإِذَا كَانَتْ عِلَّتُكُمْ غَيْرَ مُطَّرِدَةٍ فَالْقِيَاسُ عَلَى أُصُولِكُمْ لَا يَجُوزُ عَلَيْهَا، فَبَطَلَ أَنْ يَكُونَ فِيمَا دُونَ النَّفْسِ دِيَةٌ، لَا بِقِيَاسٍ، وَلَا بِقَوْلِ صَاحِبٍ، وَلَا بِنَصٍّ صَحِيحٍ، لِأَنَّهُ غَيْرُ مَوْجُودٍ، وَلَا لِضَمَانِ الْأَمْوَالِ فِي الْخَطَأِ بِنَصٍّ مُلْتَزَمٍ وَإِنْ لَمْ يَصِحَّ.

فَإِنْ قَالَ قَائِلٌ: قَالَ اللَّهُ تَعَالَى {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] . قَالُوا: وَالْجِرَاحُ وَإِنْ كَانَتْ خَطَأً فَهِيَ سَيِّئَةٌ فَجَزَاؤُهَا مِثْلُهَا، وَالسَّيِّئَةُ الْمُمَاثِلَةُ قَدْ تَكُونُ بِغَرَامَةِ الْمَالِ، فَإِذَا لَمْ يَكُنْ هُنَاكَ قَوَدٌ كَانَتْ الْمُمَاثَلَةُ بِالْغَرَامَةِ؟

قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: وَأَمَّا قَوْلُ اللَّهِ تَعَالَى {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] فَحَقٌّ، وَأَمَّا قَوْلُكُمْ: إِنَّ جِنَايَةَ الْخَطَأِ سَيِّئَةٌ فَبَاطِلٌ، مَا السَّيِّئَةُ إِلَّا مَا نَهَى اللَّهُ تَعَالَى

[7] **Qur’an references (L37066):** Qur’an 42:40 (Ash-Shuraa).

like it} [42:40], it is true; but your claim that the offense of inadvertence is an evil deed is false. An evil deed is nothing but what Allah, the Exalted, has prohibited, and inadvertence is not among what He has prohibited. This is because Allah, the Exalted, Himself says {Allah does not burden a soul beyond its capability} [2:286], and we know by necessity that it is not within anyone's capability to refrain from committing a mistake they neither deliberately intended nor consciously committed.[8]

عَنْهُ، وَلَيْسَ الْخَطَأُ مِمَّا نَهَى اللَّهُ تَعَالَى عَنْهُ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَبِالضَّرُورَةِ نَدْرِي أَنَّهُ لَيْسَ فِي وُسْعِ أَحَدٍ أَنْ يَمْتَنِعَ مِنْ فِعْلِ الْخَطَأِ الَّذِي لَمْ يَتَعَمَّدْهُ وَلَا قَصَدَهُ.

L37068–37070

If it is said: The Ummah has unanimously agreed on liability for property destroyed by mistake or willfully, then what differentiates liability for offenses against property from liability for offenses against limbs and wounds? We respond—and with Allah's help and guidance—this is an analogy, and all analogy is invalid. Even if analogy were valid, this would represent the very form of invalidity, for consensus has been established to invalidate this analogy. There is no disagreement among any member of the entire Ummah regarding liability for any property harmed, whether minimal or extensive, whereas this is not the case for offenses against limbs and wounds. There is no dispute that many such offenses do not entail liability through fixed [limited] blood money. Every analogy inconsistent with its analogues, and every legal cause inapplicable to its effects, are both invalid according to analogy's proponents. Equivalence between properties is attainable, guaranteed, and recognized—whether by value, measure, weight, length, or description—whereas it cannot be ascertained for limbs and wounds. Equating limbs and injuries to property absolutely—except through an explicit text from Allah the Exalted concerning that—is a matter known by necessity. Rather, equivalence is entirely invalid in this matter, because it is impermissible to analogize what may be owned with what cannot be legitimately owned. Since this is the case, there is no valid basis for ruling by equivalence here except through an explicit text or consensus. Whoever does so has certainly erred with certainty, since they rule by equivalence between two things neither of which resembles the other. Ownership of property through error is possible; recovering its actual substance is possible, and recovering equivalents—if the original substance is lost—is possible. As for limbs and injuries: the offender

فَإِنْ قِيلَ: قَدْ اجْتَمَعَتْ الْأُمَّةُ عَلَى ضَمَانِ مَا أُتْلِفَ مِنْ الْأَمْوَالِ بِالْخَطَأِ وَبِالْعَمْدِ، فَمَا الْفَرْقُ بَيْنَ ضَمَانِ الْجِنَايَاتِ فِي الْأَمْوَالِ وَبَيْنَ ضَمَانِ الْجِنَايَاتِ فِي الْأَعْضَاءِ وَالْجِرَاحَاتِ؟ قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّ هَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ الْإِجْمَاعَ قَدْ صَحَّ عَلَى إبْطَالِ هَذَا الْقِيَاسِ، لِأَنَّهُ لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ كُلِّهَا فِي تَضْمِينِ كُلِّ مَا أُصِيبَ مِنْ الْأَمْوَالِ قَلَّ أَوْ كَثُرَ، وَلَيْسَ كَذَلِكَ الْجِنَايَاتُ عَلَى الْأَعْضَاءِ وَالْجِرَاحَاتِ إذْ لَا خِلَافَ فِي أَنَّ كَثِيرًا مِنْهَا لَيْسَ فِيهِ تَضْمِينٌ بِدِيَةٍ مُؤَقَّتَةٍ [مَحْدُودَةٍ] وَكُلُّ قِيَاسٍ لَمْ يَطَّرِدْ فِي نُظَرَائِهِ، وَكُلُّ عِلَّةٍ لَمْ تَجْرِ فِي مَعْلُولَاتِهَا فَهُمَا خَطَأٌ عِنْدَ أَصْحَابِ الْقِيَاسِ، وَأَنَّ الْمُمَاثَلَةَ بَيْنَ الْأَمْوَالِ مُدْرَكَةٌ مَضْمُونَةٌ مَعْرُوفَةٌ، إمَّا بِالْقِيمَةِ وَإِمَّا بِالْكَيْلِ، وَإِمَّا بِالْوَزْنِ، وَإِمَّا بِالذَّرْعِ، وَإِمَّا بِالصِّفَةِ، وَلَا تُدْرَكُ الْمُمَاثَلَةُ بَيْنَ الْأَعْضَاءِ وَالْجِرَاحَاتِ وَبَيْنَ الْأَمْوَالِ أَبَدًا، إلَّا بِنَصٍّ وَارِدٍ مِنْ اللَّهِ تَعَالَى فِي ذَلِكَ، هَذَا أَمْرٌ يُعْلَمُ بِالضَّرُورَةِ، بَلْ الْمُمَاثَلَةُ مُمْتَنِعَةٌ فِي ذَلِكَ جُمْلَةً، لِأَنَّهُ لَا يَجُوزُ أَنْ يُمَثَّلَ مَا يُتَمَلَّكُ مِمَّا لَا يَحِلُّ تَمَلُّكُهُ، فَإِذَا الْأَمْرُ كَذَلِكَ فَلَا سَبِيلَ إلَى الْحُكْمِ بِالْمُمَاثَلَةِ فِي ذَلِكَ، إلَّا بِمَا صَحَّ فِيهِ نَصٌّ أَوْ إجْمَاعٌ، وَمَنْ فَعَلَ ذَلِكَ فَقَدْ أَخْطَأَ بِيَقِينٍ، إذْ حَكَمَ بِالْمِثْلِيَّةِ فِي شَيْئَيْنِ لَيْسَ أَحَدُهُمَا مِثْلًا لِلْآخَرِ، وَأَنَّ تَمَلُّكَ الْأَمْوَالِ بِالْخَطَأِ مُمْكِنٌ، وَاسْتِرْجَاعَهَا بِأَعْيَانِهَا مُمْكِنٌ، وَاسْتِرْجَاعُ أَمْثَالِهَا - إنْ فَاتَتْ أَعْيَانُهَا - مُمْكِنٌ، وَالْأَعْضَاءُ وَالْجِرَاحُ لَا

[8] **Qur'an references (L37067):** Qur'an 42:40 (Ash-Shuraa); Qur'an 2:286 (Al-Baqarah).

cannot lawfully own them—neither intentionally nor unintentionally—nor can they be recovered in essence at all, nor can their equivalents be recovered. Therefore, analogizing one of these two cases to the other constitutes a corrupt analogy, for it is the analogy of opposites to opposites in ruling. Proponents of analogy only permit comparing a thing to its counterpart, not its opposite. They unanimously agree on invalidating this analogy, considering it closest to what they themselves prohibit. They do not differ regarding one who usurps a free person, claims ownership over them, and enslaves them—if the person dies under their ownership, they bear no liability for blood money (diyah) or value. However, it is narrated from Mālik that if the usurper sells them and they perish beyond recovery, he must pay their diyah. Since usurping a free person cannot be analogized to usurping property—neither in cases of error nor intent, without disagreement—then injuries, breaking limbs, or amputating them are even further removed from being analogized to property. This is evident without obscurity, and all praise is due to Allah, Lord of the worlds.

يَصِحُّ لِلْجَانِي تَمَلُّكُهَا - لَا عَمْدًا وَلَا خَطَأً، وَلَا يَصِحُّ اسْتِرْجَاعُهَا أَصْلًا، وَلَا اسْتِرْجَاعُ أَمْثَالِهَا، فَقِيَاسُ أَحَدِ هَذَيْنِ الْوَجْهَيْنِ عَلَى الْآخَرِ قِيَاسٌ فَاسِدٌ، لِأَنَّهُ قِيَاسُ الضِّدِّ عَلَى ضِدِّهِ فِي الْحُكْمِ، وَإِنَّمَا يَقُولُ أَصْحَابُ الْقِيَاسِ بِقِيَاسِ الشَّيْءِ عَلَى نَظِيرِهِ لَا عَلَى ضِدِّهِ، وَأَنَّهُمْ قَدْ أَطْبَقُوا عَلَى إِبْطَالِ هَذَا الْقِيَاسِ، مِنْ حَيْثُ هُوَ أَقْرَبُ شَبَهًا بِمَا قَاسُوهُ عَلَيْهِ، وَذَلِكَ أَنَّهُمْ لَا يَخْتَلِفُونَ فِيمَنْ غَصَبَ حُرًّا فَتَمَلَّكَهُ وَاسْتَرَقَّهُ، فَمَاتَ فِي تَمَلُّكِهِ، فَإِنَّهُ لَا يَضْمَنُهُ، وَلَا يَضْمَنُ فِيهِ قِيمَةً وَلَا دِيَةً، إِلَّا أَنَّهُ رُوِيَ عَنْ مَالِكٍ إِنْ بَاعَهُ فَفَاتَ فَلَمْ يَقْدِرْ عَلَيْهِ: أَنَّهُ يُؤَدِّي دِيَتَهُ - فَإِنْ كَانَ غَصْبُ الْحُرِّ لَا يُقَاسُ عَلَى غَصْبِ الْمَالِ - لَا فِي الْخَطَأِ، وَلَا فِي الْعَمْدِ، بِلَا خِلَافٍ، فَالْجِرَاحُ، وَكَسْرُ الْعُضْوِ، وَقَطْعُهُ أَبْعَدُ مِنْ أَنْ يُقَاسَ عَلَى الْأَمْوَالِ - وَهَذَا لَا خَفَاءَ بِهِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L37071 If they mention: What was narrated to us by Abu ʿUmar Ahmad ibn Qasim in his residence at Cordoba near the Mosque of the Clothiers - he said: My father Qasim ibn Muhammad ibn Qasim narrated to me; my grandfather Qasim ibn Asbagh narrated to me; ʿAbdullah ibn Rawh narrated to us; Yazid ibn Harun narrated to us; Muhammad ibn Ishaq narrated to us from al-Harith ibn Fudayl from Sufyan ibn Abi al-ʿAwja' al-Sulami from Abu Shurayh al-Khuzaʿi, who said: The Messenger of Allah said: "Whoever is wronged by murder or injury - and injury means wounds - may choose one of three options: either to pardon, to demand legal retribution, or to accept blood money. If he takes anything from these options and then transgresses afterward, he will have Hellfire as his eternal abode."

فَإِنْ ذَكَرُوا: مَا حَدَّثَنَاهُ أَبُو عُمَرَ أَحْمَدُ بْنُ قَاسِمٍ فِي مَنْزِلِهِ بِمَدِينَةِ قُرْطُبَةَ عِنْدَ مَسْجِدِ الْقَصَّارِينَ قَالَ: حَدَّثَنِي أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ حَدَّثَنِي جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا عَبْدُ اللَّهِ بْنُ رَوْحٍ نا يَزِيدُ بْنُ هَارُونَ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنِ الْحَارِثِ بْنِ فُضَيْلٍ عَنْ سُفْيَانَ بْنِ أَبِي الْعَوْجَاءِ السُّلَمِيِّ عَنْ أَبِي شُرَيْحٍ الْخُزَاعِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ: «مَنْ أُصِيبَ بِدَمٍ أَوْ خَبْلٍ - وَالْخَبْلُ الْجِرَاحُ - فَهُوَ بِالْخِيَارِ فِي إِحْدَى ثَلَاثٍ: إِمَّا أَنْ يَعْفُوَ، وَإِمَّا أَنْ يَقْتَصَّ، وَإِمَّا أَنْ يَأْخُذَ الْعَقْلَ. فَإِنْ أَخَذَ شَيْئًا مِنْ ذَلِكَ ثُمَّ عَدَا بَعْدَ ذَلِكَ فَإِنَّ لَهُ النَّارَ خَالِدًا فِيهَا» .

L37072–37074 Abdullāh ibn Rabīʿ narrated to us, saying: ʿUmar ibn ʿAbd al-Malik narrated to us; Muḥammad ibn Bakr al-Baṣrī narrated to us; Sulaymān ibn al-Ashʿath narrated to us; Mūsā ibn Ismāʿīl narrated to us; Ḥammād ibn Salamah narrated to us; Muḥammad ibn Isḥāq narrated from... Al-Harith ibn Fudayl reported from Sufyan ibn Abi al-Awja', from Abu Shurayh al-Khuza'i that the Prophet—peace and blessings of Allah be upon him—said: "Whoever is

وَحَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ قَالَ: نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ الْبَصْرِيُّ نا سُلَيْمَانُ بْنُ الْأَشْعَثِ نا مُوسَى بْنُ إِسْمَاعِيلَ نا حَمَّادُ بْنُ سَلَمَةَ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنِ الْحَارِثِ بْنِ فُضَيْلٍ عَنْ سُفْيَانَ بْنِ أَبِي الْعَوْجَاءِ عَنْ أَبِي شُرَيْحٍ الْخُزَاعِيِّ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ

afflicted by a killing or injury may choose one of three options: either to retaliate, to pardon, or to take *diyah*. If he seeks a fourth option, restrain him, and if he transgresses after that, he will face a grievous punishment."

وَسَلَّمَ - قَالَ: «مَنْ أُصِيبَ بِقَتْلٍ أَوْ خَبْلٍ فَإِنَّهُ يَخْتَارُ إِحْدَى ثَلَاثٍ: إِمَّا أَنْ يَقْتَصَّ، وَإِمَّا أَنْ يَعْفُوَ، وَإِمَّا أَنْ يَأْخُذَ الدِّيَةَ. فَإِنْ أَرَادَ الرَّابِعَةَ فَخُذُوا عَلَى يَدَيْهِ فَإِنْ اعْتَدَى بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ» .

L37075 Hammam narrated to us, Abbas ibn Asbagh narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, Habib ibn Khalaf narrated to us, Abu Thawr Ibrahim ibn Khalid narrated to us, Yazid ibn Harun narrated to us, Muhammad ibn Ishaq narrated from al-Harith ibn Fudayl, from Sufyan, from Abu al-'Awja', from Abu Shurayh al-Khuza'i, who said: The Messenger of Allah, peace be upon him, said: "Whoever suffers a wrongful killing or injury (khabl) has the better of two considerations: if he wishes to forgive, he may forgive, and if he wishes to take the diyah (blood money), he may take it."

نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا حَبِيبُ بْنُ خَلَفٍ نا أَبُو ثَوْرٍ إِبْرَاهِيمُ بْنُ خَالِدٍ نا يَزِيدُ بْنُ هَارُونَ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ الْحَارِثِ بْنِ فُضَيْلٍ عَنْ سُفْيَانَ عَنْ أَبِي الْعَوْجَاءِ عَنْ أَبِي شُرَيْحٍ الْخُزَاعِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أُصِيبَ بِقَتْلٍ أَوْ خَبْلٍ - يَعْنِي جِرَاحًا - فَهُوَ بِخَيْرِ النَّظَرَيْنِ إِنْ أَحَبَّ أَنْ يَعْفُوَ عَفَا، وَإِنْ أَحَبَّ أَنْ يَأْخُذَ الدِّيَةَ أَخَذَ» .

L37076 We said: This is not valid, as no one narrated it except Sufyān ibn Abī al-ʿAwjāʾ al-Sulamī, who is unknown (majhul) in terms of reliability—his identity is undetermined, and nothing is known from him apart this ḥadīth. Had it been authentic, we would have adhered to it with contentment in our hearts and would not have abandoned it for the opinion of any scholar. However, since it is not authentic, it is impermissible to adopt it. Moreover, even if it were authentic, it would constitute proof against all contemporary scholars and contradict their position, for it explicitly addresses intentional injuries and mandates qisas (retaliatory punishment) for them in general terms, without making any exception. Yet all of them reject qisas for injuries below the severity of the *muwadḥaḥah* (a wound exposing the bone), and the majority reject qisas except for the *muwadḥaḥah* alone. Thus, they have opposed this ḥadīth, as you observe.

قُلْنَا: هَذَا لَا يَصِحُّ، لِأَنَّهُ لَمْ يَرْوِهِ أَحَدٌ إِلَّا سُفْيَانُ بْنُ أَبِي الْعَوْجَاءِ السُّلَمِيُّ، وَهُوَ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ وَلَا يُعْرَفُ عَنْهُ غَيْرُ هَذَا الْحَدِيثِ، فَلَوْ صَحَّ لَقُلْنَا بِهِ مُنْشَرِحَةً صُدُورُنَا بِذَلِكَ، وَلَمَا تَرَكْنَاهُ لِقَوْلِ أَحَدٍ، وَأَمَّا إِذْ لَمْ يَصِحَّ فَلَا يَجُوزُ الْأَخْذُ بِهِ، ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَى جَمِيعِ الْحَاضِرِينَ وَمُخَالِفًا لِقَوْلِهِمْ، لِأَنَّهُ إِنَّمَا جَاءَ فِي جِرَاحِ الْعَمْدِ وَفِيهِ الْقِصَاصُ مِنْهَا جُمْلَةً لَمْ يَسْتَثْنِ شَيْئًا، وَكُلُّهُمْ لَا يَرَى الْقَوَدَ مِنْهَا، فِيمَا دُونَ الْمُوضِحَةِ، وَجُمْهُورُهُمْ لَا يَرَى الْقَوَدَ مِنْهَا، إِلَّا فِي الْمُوضِحَةِ فَقَطْ فَقَدْ خَالَفُوا هَذَا الْحَدِيثَ كَمَا تَرَى.

L37077 Moreover, it has been established regarding intentional killing specifically, as we mentioned, because it involves the choice between retaliation (qisas) and blood money (diya). There is no disagreement among any of the scholars of the community that retaliation applies exclusively to intentional acts, with blood money remaining an option therein. All of them, or at least the

وَأَيْضًا - إِنَّهُ قَدْ جَاءَ فِي الْعَمْدِ فَقَطْ كَمَا ذَكَرْنَا، لِأَنَّ فِيهِ التَّخْيِيرَ بَيْنَ الْقَوَدِ وَالدِّيَةِ، وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ الْقَوَدَ لَيْسَ إِلَّا فِي الْعَمْدِ فَقَطْ وَفِيهِ الْخِيَارُ فِي الدِّيَةِ

majority, do not recognize limb amputation in cases of intentional injury as warranting anything except retaliation (qisas) alone—and they have contradicted this report in this regard.

L37078 Additionally, the Ḥanafīs and Mālikīs do not recognize a choice between qisas and diyah in cases of intentional killing.

L37079 Moreover, it does not contain any ruling pertaining to accidental injuries. If this report were sound, its conformity with us would be greater than its conformity with them, and they would contradict it in all aspects.

L37080 Abū Muḥammad said: All that they disruptively disputed in this chapter were invalidated, and all praise is due to Allah, Lord of the worlds.

L37081–37082 As for intentional offenses and their injuries, Mālik holds there is no general ruling except retaliation or pardon alone, and he does not recognize blood money in such cases—whether retaliation becomes unfeasible or not—except in a few instances where blood money applies due to the impossibility of retaliation. He affirms blood money in all accidental injuries except a limited number, where he maintains judicial assessment instead. This is the position of Abū Ḥanīfa, his followers, al-Shāfiʿī, and his school, except regarding subsidiary matters where they differed, which we will clarify, if God Almighty wills.

L37083 This is also the opinion of our companions, and we adhere to it. However, we do not recognize blood money or judicial discretion in any of these cases—whether retaliation is possible or not—unless supported by an explicit text from the Messenger of Allah (peace be upon him) or an unequivocal consensus. Even if there existed a consensus on any such matter unknown to us, we would undoubtedly be more excused, secure, and sincere before Allah, for we neither presume to judge what we do not understand nor uphold what we have no knowledge of—matters we would have affirmed had we known them.

L37084 Ali said: "We shall now mention—if Allah the Exalted wills—what has been reported from the Prophet (peace and blessings be upon him) regarding this matter, then what has been reported from the Companions (may Allah be

فِي الْعَمْدِ - وَكُلُّهُمْ أَوْ جُمْهُورُهُمْ لَا يَرَى فِي قَطْعِ الْأَعْضَاءِ فِي الْعَمْدِ إِلَّا الْقَوَدَ فَقَطْ - وَقَدْ خَالَفُوا هَذَا الْخَبَرَ فِي هَذَا الْوَجْهِ.

وَأَيْضًا - فَإِنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ لَا يَرَوْنَ خِيَارًا فِي قَوَدٍ أَوْ دِيَةٍ فِي قَتْلِ الْعَمْدِ.

وَأَيْضًا - إِنَّهُ لَيْسَ فِيهِ حُكْمُ شَيْءٍ مِنْ جِرَاحِ الْخَطَأِ، فَلَوْ صَحَّ هَذَا الْخَبَرُ لَكَانَ وِفَاقُهُ لَنَا أَكْثَرَ مِنْ وِفَاقِهِ لَهُمْ، وَلَكَانُوا مُخَالِفِينَ لَهُ مِنْ كُلِّ وَجْهٍ.

قَالَ أَبُو مُحَمَّدٍ: فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ فِي هَذَا الْبَابِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

فَأَمَّا جِنَايَاتُ الْعَمْدِ وَجِرَاحِهِ فَإِنَّ مَالِكًا لَا يَرَى فِيهَا جُمْلَةً، إِلَّا الْقَوَدَ أَوْ الْعَفْوَ فَقَطْ، وَلَا يَرَى فِيهَا دِيَةً، فَاتَ الْقَوَدُ أَوْ لَمْ يَفُتْ، إِلَّا فِي قَلِيلٍ مِنْهَا فَيَرَى فِيهَا الدِّيَةَ لِامْتِنَاعِ الْقَوَدِ وَيَرَى فِي سَائِرِ جِرَاحَاتِ الْخَطَأِ الدِّيَةَ إِلَّا قَلِيلًا مِنْهَا فَإِنَّهُ لَا يَرَى فِيهَا دِيَةً لَكِنْ حُكُومَةً - وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَالشَّافِعِيِّ وَأَصْحَابِهِ، إِلَّا فِي فُرُوعٍ اخْتَلَفُوا فِيهَا نُبَيِّنُهَا - إِنْ شَاءَ اللَّهُ تَعَالَى.

وَهُوَ أَيْضًا قَوْلُ أَصْحَابِنَا، وَبِهِ نَأْخُذُ، إِلَّا أَنَّنَا لَا نَرَى فِي شَيْءٍ مِنْ ذَلِكَ دِيَةً، وَلَا حُكُومَةً - أَمْكَنَ الْقَوَدُ، أَوْ لَمْ يُمْكِنْ - إِلَّا أَنْ يَأْتِيَ بِهِ نَصٌّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ يَثْبُتَ بِهِ إِجْمَاعٌ مُتَيَقَّنٌ، وَحَتَّى لَوْ غَابَ عَنَّا فِي شَيْءٍ مِنْ ذَلِكَ إِجْمَاعٌ لَمْ نَعْلَمْهُ، لَكُنَّا بِلَا شَكٍّ عِنْدَ اللَّهِ أَعْذَرُ وَأَسْلَمُ وَأَخْلَصُ، إِذْ لَمْ نَقْتَحِمْ مَا لَمْ نَدْرِ وَلَمْ نَقِفْ مَا لَيْسَ لَنَا بِهِ عِلْمٌ مِمَّا لَوْ عَلِمْنَاهُ لَقُلْنَا بِهِ.

قَالَ عَلِيٌّ: وَنَحْنُ ذَاكِرُونَ الْآنَ - إِنْ شَاءَ اللَّهُ تَعَالَى - مَا جَاءَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ ثُمَّ مَا جَاءَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمْ - فِي ذَلِكَ، ثُمَّ مَا

pleased with them) regarding it, then what has been reported from the Successors (may Allah have mercy on them) regarding it, followed by whatever is readily available of the jurists' opinions after them. For the foundation in religion after the Quran and the rulings of Allah's Messenger (peace and blessings be upon him) lies in the consensus of the Companions (may Allah be pleased with them) and their disagreements—unlike those who came after them. It has been narrated to us through the chain from Imam Muslim's compilation: from Abū Bakr ibn Abī Shaybah, from Affān—that is Ibn Muslim—, from Hammād ibn Salamah, from Thābit al-Bunānī, from Anas: 'The sister of ar-Rubayyi', Umm Hārithah, injured someone. When they brought the dispute to the Prophet (peace and blessings be upon him), he declared: 'Retaliation is due! Retaliation is due!' Umm ar-Rubayyi' protested: 'O Messenger of Allah! Will retaliation be taken from so-and-so? By Allah, it shall not be taken from her!' The Prophet (peace and blessings be upon him) responded: 'Glory be to Allah, Umm ar-Rubayyi'! Retaliation is ordained in Allah's Book.' She insisted: 'No, by Allah! It shall never be taken from her!' She persisted until they accepted the blood money. Thereupon Allah's Messenger (peace and blessings be upon him) remarked: 'Among Allah's servants are those whom He would honor their oath if they swore by Him.'"

جَاءَ عَنْ التَّابِعِينَ - رَحِمَهُمُ اللَّهُ - فِي ذَلِكَ، ثُمَّ مَا تَيَسَّرَ مِنْ أَقْوَالِ الْفُقَهَاءِ بَعْدَهُمْ، إذْ الْعُمْدَةُ فِي الدِّينِ بَعْدَ الْقُرْآنِ وَحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا هُوَ إجْمَاعُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَاخْتِلَافُهُمْ، وَلَيْسَ كَذَلِكَ مَنْ بَعْدَهُمْ، وَقَدْ رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَفَّانُ - هُوَ ابْنُ مُسْلِمٍ - نا حَمَّادُ بْنُ سَلَمَةَ نا ثَابِتٌ الْبُنَانِيُّ عَنْ أَنَسٍ «أَنَّ أُخْتَ الرُّبَيِّعِ أُمَّ حَارِثَةَ جَرَحَتْ إنْسَانًا فَاخْتَصَمُوا إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْقِصَاصُ الْقِصَاصُ. فَقَالَتْ أُمُّ الرَّبِيعِ: يَا رَسُولَ اللَّهِ أَيُقْتَصُّ مِنْ فُلَانَةَ؟ وَاَللَّهِ لَا يُقْتَصُّ مِنْهَا؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُبْحَانَ اللَّهِ يَا أُمَّ الرَّبِيعِ، الْقِصَاصُ كِتَابُ اللَّهِ، قَالَتْ: لَا، وَاَللَّهِ لَا يُقْتَصُّ مِنْهَا أَبَدًا، قَالَ: فَمَا زَالَتْ حَتَّى قَبِلُوا الدِّيَةَ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ مِنْ عِبَادِ اللَّهِ مَنْ لَوْ أَقْسَمَ عَلَى اللَّهِ لَأَبَرَّهُ» .

L37085–37087 Abdullah ibn Rabee' narrated to us: Muhammad ibn Ishaq ibn As-Salim narrated to us: Ibn Al-A'rabi narrated to us: Abu Dawud narrated to us: Musaddad narrated to us: Al-Mu'tamir (who is Ibn Sulayman) narrated from Humaid At-Tawil, from Anas ibn Malik, who said: "Ar-Rubayyi', the sister of Anas ibn An-Naḍr, broke the front tooth of a woman. They came to the Prophet—peace be upon him—and he ruled by the Book of Allah." Exalted is He who decreed retaliation. Anas ibn al-Nadr said: "By the One who sent you with the truth, will her front tooth not be broken today?" He replied: "O Anas, Allah's Book is retaliation." They agreed to blood money as compensation and took it. The Prophet - peace be upon him - marveled, and The Prophet - peace be upon him - said: "Indeed, among Allah's servants are those who, if he were to swear by Allah, Allah would fulfill it."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إسْحَاقَ بْنِ السَّلِيمِ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا مُسَدَّدٌ نا الْمُعْتَمِرُ - هُوَ ابْنُ سُلَيْمَانَ - عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «كَسَرَتْ الرُّبَيِّعُ أُخْتُ أَنَسِ بْنِ النَّضْرِ ثَنِيَّةَ امْرَأَةٍ، فَأَتَوْا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَضَى بِكِتَابِ اللَّهِ تَعَالَى الْقِصَاصَ، فَقَالَ أَنَسُ بْنُ النَّضْرِ: وَالَّذِي بَعَثَكَ بِالْحَقِّ لَا تُكْسَرُ ثَنِيَّتُهَا الْيَوْمَ؟ فَقَالَ: يَا أَنَسُ كِتَابُ اللَّهِ الْقِصَاصُ، فَرَضُوا بِأَرْشٍ أَخَذُوهُ، فَعَجِبَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ مِنْ عِبَادِ اللَّهِ مَنْ لَوْ أَقْسَمَ عَلَى اللَّهِ لَأَبَرَّهُ» .

L37088 Abu Dawud said: I asked Ahmad ibn Hanbal, "How is retribution exacted for a tooth?" He replied: "It is filed down."

قَالَ أَبُو دَاوُد: سَأَلْت أَحْمَدَ بْنَ حَنْبَلٍ: كَيْفَ يُقْتَصُّ مِنْ السِّنِّ؟ قَالَ: يُبْرَدُ.

L37089 It has been narrated to us through the chain of al-Bukhārī: Muḥammad al-Fazārī—he is Abū Isḥāq—from Ḥumayd al-Ṭawīl from Anas, who said: "Ar-Rubayyi'—she was the paternal aunt of Anas ibn Mālik—broke the incisor of a girl from the Anṣār. The people demanded retaliation, so they came to the Prophet—peace and blessings of Allah be upon him—and the Messenger of Allah—peace and blessings of Allah be upon him—ordered retaliation. Anas ibn an-Naḍr—the paternal uncle of Anas ibn Mālik—said: 'By Allah, her incisor shall not be broken, O Messenger of Allah!' The Messenger of Allah—peace and blessings of Allah be upon him—responded: 'O Anas, the Book of Allah prescribes retaliation.' The people were satisfied and accepted the compensatory damages (Arsh). The Messenger of Allah—peace and blessings of Allah be upon him—then said: 'Indeed, among the servants of Allah are those whom, if they were to swear by Allah, He would fulfill their oath.'"

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدٌ الْفَزَارِيّ - هُوَ أَبُو إِسْحَاقَ - عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ أَنَسٍ قَالَ: «كَسَرَتْ الرُّبَيِّعُ - وَهِيَ عَمَّةُ أَنَسِ بْنِ مَالِكٍ - ثَنِيَّةَ جَارِيَةٍ مِنْ الْأَنْصَارِ، فَطَلَبَ الْقَوْمُ الْقِصَاصَ. فَأَتَوْا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقِصَاصِ، فَقَالَ أَنَسُ بْنُ النَّضْرِ - عَمُّ أَنَسِ بْنِ مَالِكٍ -: وَاَللَّهِ لَا تُكْسَرُ ثَنِيَّتُهَا يَا رَسُولَ اللَّهِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَا أَنَسُ كِتَابُ اللَّهِ الْقِصَاصُ، فَرَضِيَ الْقَوْمُ وَقَبِلُوا الْأَرْشَ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ مِنْ عِبَادِ اللَّهِ مَنْ لَوْ أَقْسَمَ عَلَى اللَّهِ لَأَبَرَّهُ» .

L37090–37092 Abu Muhammad said: These are two differing narrations and two rulings, two in number, within two distinct cases concerning a single bondwoman. One of the two rulings regarding an injury Umm al-Rubayyiʿ inflicted upon a person was that the Prophet (peace and blessings be upon him) decreed retaliation for that wound. Umm al-Rubayyiʿ's mother swore that retaliation would not be taken from her, so they accepted the blood money. Thus Allah the Exalted fulfilled her oath.

قَالَ أَبُو مُحَمَّد: فَهُمَا حَدِيثَانِ مُتَغَايِرَانِ، وَحُكْمَانِ اثْنَانِ، فِي قَضِيَّتَيْنِ مُخْتَلِفَتَيْنِ لِجَارِيَةٍ وَاحِدَةٍ: أَحَدُ الْحُكْمَيْنِ - فِي جِرَاحَةٍ جَرَحَتْهَا أُمُّ الرُّبَيِّعِ إنْسَانًا، فَقَضَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالْقِصَاصِ مِنْ تِلْكَ الْجِرَاحَةِ، فَحَلَفَتْ أُمُّهَا أَنَّهَا لَا يُقْتَصُّ مِنْهَا، فَرَضُوا بِالدِّيَةِ، فَأَبَرَّ اللَّهُ تَعَالَى قَسَمَهَا

L37093 The second ruling concerns a woman's front tooth that was broken by Ar-Rubayyiʿ. The Messenger of Allah—may Allah bless him and grant him peace—ruled for retaliation. Her brother, Anas ibn An-Nadr, swore that retaliation should not be enacted upon her. They then agreed to accept compensatory payment, which they took, and Allah the Exalted fulfilled his oath.

وَالْحُكْمُ الثَّانِي - فِي ثَنِيَّةِ امْرَأَةٍ كَسَرَتْهَا الرُّبَيِّعُ فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقِصَاصِ فِي ذَلِكَ، فَحَلَفَ أَنَسُ بْنُ النَّضْرِ أَخُوهَا أَنْ لَا يُقْتَصَّ مِنْهَا، فَرَضُوا بِأَرْشٍ أَخَذُوهُ، وَأَبَرَّ اللَّهُ تَعَالَى قَسَمَهُ

L37094 It became evident—as you see—that they are two recent cases: an injury (جِرَاحَةٌ) requiring blood money (وَدِيَةٌ), and a front tooth injury (ثَنِيَّةٌ) requiring arsh (أَرْشٌ, compensation for injury). Her mother swore an oath in the first case, and her brother swore an oath in the second case. This occurred before the Battle of Uhud, for Anas ibn al-Nadr—may Allah be pleased with him—was killed on the day of Uhud without dispute.

فَلَاحَ - كَمَا تَرَى - أَنَّهُمَا حَدِيثَانِ: جِرَاحَةٌ، وَثَنِيَّةٌ - وَدِيَةٌ، وَأَرْشٌ، وَحَلَفَتْ أُمُّهَا فِي الْوَاحِدَةِ، وَحَلَفَ أَخُوهَا فِي الثَّانِيَةِ، وَكَانَ هَذَا قَبْلَ أُحُدٍ، لِأَنَّ أَنَسَ بْنَ النَّضْرِ - رَضِيَ اللَّهُ عَنْهُ - قُتِلَ يَوْمَ أُحُدٍ بِلَا خِلَافٍ.

L37095–37097 This hadith is clear and evident in establishing that everything the one entitled to qisas (retaliation) may claim—whether in cases of a wound or a life— It constitutes blood money, regardless of whether that is a temporary or limited thing, and they have mutually agreed upon it in forgoing the obligatory retribution in kind.

وَهَذَا الْحَدِيثُ بَيِّنٌ وَاضِحٌ أَنَّ كُلَّ مَا أَخَذَهُ مَنْ لَهُ الْقِصَاصُ مِنْ جُرْحٍ، أَوْ نَفْسٍ، فَهُوَ دِيَةٌ، سَوَاءٌ كَانَ ذَلِكَ شَيْئًا مُؤَقَّتًا مَحْدُودًا، وَكَانَ قَدْ تَرَاضَوْا بِهِ فِي تَرْكِ الْقِصَاصِ الْوَاجِبِ.

L37098 The proof of this is the statement of the Prophet—peace be upon him—that we have already mentioned in "the chapter on the diyah of the mukatab," making its repetition unnecessary. It is the diyah of a free person in proportion to what he has paid, and the diyah of a slave in proportion to what he has not paid. Thus, the Messenger of Allah—peace be upon him—termed what is given for killing a slave as diyah, which varies in amount and is not fixed.

بُرْهَانُ ذَلِكَ: قَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي قَدْ ذَكَرْنَاهُ فِي " بَابِ دِيَةِ الْمُكَاتَبِ " فَأَغْنَى عَنْ إعَادَتِهِ بِمِقْدَارِ مَا أَدَّى دِيَةَ حُرٍّ، وَبِمِقْدَارِ مَا لَمْ يُؤَدِّ دِيَةَ عَبْدٍ، فَسَمَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا يُعْطَى مِنْ قَتْلِ عَبْدٍ دِيَةً - وَهُوَ مُخْتَلِفُ الْمِقْدَارِ غَيْرُ مُؤَقَّتٍ.

L37099 For indeed, it is as such. We are certain that the one injured by Rubayyi' took property in lieu of retaliation for the wound, and it was never reported that what was taken constituted a fixed, limited number designated for that specific injury. Since this was not reported, we stand in certainty and serenity from Allah the Exalted that had there been a fixed blood money for that injury—neither increasing nor decreasing—and had such a ruling applied to one wound differing from another, Allah the Exalted would not have concealed this from us nor erased its trace so completely that none could relay it. Far is Allah above such a thing! He has guaranteed the preservation of the Reminder revealed to His Prophet—peace and blessings be upon him—being the revelation from which he—peace and blessings be upon him—utters nothing in the Law except through it.

فَإِنَّ ذَلِكَ كَذَلِكَ، فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ الَّذِي جَرَحَتْهُ الرُّبَيِّعُ قَدْ أَخَذَ مَالًا بَدَلَ اقْتِصَاصِهِ مِنْ الْجُرْحِ، وَلَمْ يَأْتِ قَطُّ: أَنَّ الَّذِي أُخِذَ كَانَ عَدَدًا مُؤَقَّتًا مَحْدُودًا فِي ذَلِكَ الْجُرْحِ، فَإِذْ لَمْ يَأْتِ ذَلِكَ فَنَحْنُ عَلَى يَقِينٍ وَثَلْجٍ مِنْ اللَّهِ تَعَالَى أَنَّهُ لَوْ كَانَ فِي تِلْكَ الْجِرَاحَةِ دِيَةٌ مُؤَقَّتَةٌ، لَا تَزِيدُ وَلَا تَنْقُصُ، وَكَانَ ذَلِكَ الْحُكْمُ فِي جِرَاحَةٍ مَا دُونَ جِرَاحَةٍ أُخْرَى، لَمَا طَمَسَ اللَّهُ تَعَالَى عَنَّا ذَلِكَ وَلَا عَفَى أَثَرَهُ حَتَّى لَا يَنْقُلَهُ أَحَدٌ، حَاشَ لِلَّهِ مِنْ هَذَا، وَقَدْ تَكَفَّلَ بِأَنَّهُ حَافِظٌ لِلذِّكْرِ الَّذِي أُنْزِلَ عَلَى نَبِيِّهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَهُوَ الْوَحْيُ الَّذِي لَا يَنْطِقُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الشَّرِيعَةِ إلَّا مِنْهُ

L37100 The blood money taken by the one whom al-Rubayyi injured served solely as compensation in place of retribution (qisas), and this is our position. Thus, it becomes clear that these two reports indicate nothing except that retaliation is permissible for every injury—including breaking a tooth—and that mutual compensation agreements in all such cases are valid based on whatever the two parties, whether the victim or his guardian and the perpetrator, mutually agree upon, because the ruling concerning the mentioned blood money is as we have stated. As for the ḥadīth of Ḥumayd regarding breaking a tooth,

فَصَحَّ أَنَّ تِلْكَ الدِّيَةَ الَّتِي أَخَذَ الَّذِي جَرَحَتْ الرُّبَيِّعُ كَانَ فِدَاءً عَنْ الْقِصَاصِ فَقَطْ، وَبِهَذَا نَقُولُ - فَوَضَحَ أَنَّهُ لَيْسَ فِي هَذَيْنِ الْخَبَرَيْنِ إلَّا أَنَّ الْقَوَدَ جَائِزٌ فِي كُلِّ جِرَاحَةٍ، وَفِي كَسْرِ السِّنِّ، وَأَنَّ الْمُفَادَاةَ فِي كُلِّ ذَلِكَ جَائِزَةٌ بِمَا تَرَاضَيَا بِهِ عَلَيْهِ - الْمَجْنِيُّ عَلَيْهِ

it solely states that they accepted taking the assured compensation (arsh). Success comes solely from Allah, the Exalted.

L37101–37103 Abdullah ibn Rabee narrated: Umar ibn Abdul-Malik narrated: Muhammad ibn Bakr narrated: Sulayman ibn al-Ashʿath narrated: Muhammad ibn Dawud ibn Sufyan narrated: Abd al-Razzaq narrated: Maʿmar narrated from al-Zuhri from Urwah from Aisha, the Mother of the Believers, that the Messenger of Allah—peace and blessings be upon him—sent Abu Jahm ibn Hudhayfa as a zakat collector. A man disputed intensely with him regarding the alms, so Abu Jahm struck him, inflicting a head wound. They came to the Prophet and demanded, "The retaliation (qisas), O Messenger of Allah!" The Prophet said, "You shall have such-and-such," but they rejected it. They insisted, "The retaliation (qisas), O Messenger of Allah!" He repeated, "You shall have such-and-such," but they refused. He then declared, "You shall have such-and-such," and they accepted. The Prophet said, "I will address the people this evening and inform them of your acceptance." They consented. The Messenger of Allah then delivered a sermon and said, "Indeed, these people..." The people of Layth came to me seeking qisas. I set terms for them, and they proposed their terms. He asked, "Are you satisfied?" They said, "No." The Muhajirun resolved to retaliate against them, but Allah's Messenger—peace and blessings be upon him—commanded them to restrain themselves. They restrained themselves. He summoned them and increased their compensation, asking, "Are you satisfied?" They replied, "Yes." He said, "I shall address from the pulpit and inform them of your satisfaction." They agreed. The Prophet—peace and blessings be upon him—delivered a sermon and asked, "Are you satisfied?" They answered, "Yes."

L37104 Abu Muhammad said: There is nothing in this hadith except what is mentioned in the hadith of Anas narrated by Thabit: namely, the compensation for a head wound that exposes the bone where retaliation is mandated - with no addition.

L37105 This narration addresses the excuse of the ignorant, indicating that one does not exit Islam by an act that—if committed by a knowledgeable person

أَوْ وَلِيُّهُ وَالْجَانِي - لِأَنَّ الْقَوْلَ فِي الدِّيَةِ الْمَذْكُورَةِ هُوَ مَا ذَكَرْنَا - وَأَمَّا حَدِيثُ حُمَيْدٍ فِي كَسْرِ السِّنِّ فَإِنَّمَا فِيهِ: أَنَّهُمْ رَضُوا بِأَرْشٍ أَخَذُوهُ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -.

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ نا سُلَيْمَانُ بْنُ الْأَشْعَثِ نا مُحَمَّدُ بْنُ دَاوُد بْنِ سُفْيَانَ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ أَبَا جَهْمِ بْنِ حُذَيْفَةَ مُصَدِّقًا فَلَاجَّهُ رَجُلٌ فِي صَدَقَتِهِ فَضَرَبَهُ أَبُو جَهْمٍ فَشَجَّهُ فَأَتَوْا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: الْقَوَدَ يَا رَسُولَ اللَّهِ، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكُمْ كَذَا وَكَذَا، فَلَمْ يَرْضَوْا، فَقَالُوا: الْقَوَدَ يَا رَسُولَ اللَّهِ، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكُمْ كَذَا وَكَذَا؟ فَلَمْ يَرْضَوْا، فَقَالَ: لَكُمْ كَذَا وَكَذَا، فَرَضُوا، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنِّي خَاطِبٌ الْعَشِيَّةَ عَلَى النَّاسِ فَمُخْبِرُهُمْ بِرِضَاكُمْ، قَالُوا: نَعَمْ، فَخَطَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إنَّ هَؤُلَاءِ اللَّيْثِيِّينَ أَتَوْنِي يُرِيدُونَ الْقَوَدَ، فَفَرَضْتُ عَلَيْهِمْ كَذَا، وَكَذَا فَرَضُوا، أَرَضِيتُمْ؟ قَالُوا: لَا، فَهَمَّ الْمُهَاجِرُونَ بِهِمْ، فَأَمَرَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَكُفُّوا عَنْهُمْ، فَكَفُّوا عَنْهُمْ، فَدَعَاهُمْ فَزَادَهُمْ، فَقَالَ: أَرَضِيتُمْ؟ قَالُوا: نَعَمْ، قَالَ: إنِّي خَاطِبٌ عَلَى الْمِنْبَرِ فَمُخْبِرُهُمْ بِرِضَاكُمْ، قَالُوا: نَعَمْ، فَخَطَبَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: أَرَضِيتُمْ؟ فَقَالُوا: نَعَمْ»

قَالَ أَبُو مُحَمَّد: فَلَيْسَ فِي هَذَا الْحَدِيثِ إلَّا مَا جَاءَ فِي حَدِيثِ أَنَسٍ الَّذِي رَوَاهُ ثَابِتٌ وَهُوَ الْمُفَادَاةُ فِي الشَّجَّةِ الَّتِي وَجَبَ فِيهَا الْقَوَدُ وَلَا مَزِيدَ.

for whom the proof has been conclusively established—would render him a disbeliever. For these Laythiyyun denied the Prophet (peace be upon him), and denying him constitutes pure disbelief without any difference of opinion. However, due to their ignorance and Bedouin disposition, they were excused on grounds of ignorance and thus did not become disbelievers.

وَفِي هَذَا الْخَبَرِ عُذْرُ الْجَاهِلِ، وَأَنَّهُ لَا يَخْرُجُ مِنَ الْإِسْلَامِ بِمَا لَوْ فَعَلَهُ الْعَالِمُ الَّذِي قَامَتْ عَلَيْهِ الْحُجَّةُ، لَكَانَ كَافِرًا، لِأَنَّ هَؤُلَاءِ اللَّيْثِيِّينَ كَذَّبُوا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَكْذِيبُهُ كُفْرٌ مُجَرَّدٌ بِلَا خِلَافٍ، لَكِنَّهُمْ بِجَهْلِهِمْ وَأَعْرَابِيَّتِهِمْ عُذِرُوا بِالْجَهَالَةِ، فَلَمْ يَكْفُرُوا

L37106 Hammam narrated to us, from Abbas ibn Asbagh, from Muhammad ibn Abd al-Malik ibn Ayman, from Muhammad ibn Sulayman al-Munqiri, from Sulayman ibn Dawud, from Yazid ibn Zurai‘, from Sa‘id ibn Abi ‘Arubah, from Qatadah, from Ikrimah, from Ibn Abbas, who said: The Messenger of Allah - peace and blessings be upon him - stated: “For the fingers, ten [camels] each as blood money.” Abu Muhammad said: This is an authentic hadith without defect. Al-Munqiri is trustworthy. Sulayman ibn Dawud al-Hashimi was one of the imams and peers of Ahmad ibn Hanbal. Yazid ibn Zurai‘ is beyond reproach. His transmission from Sa‘id is valid, because Yazid heard directly from Ayyub.

ثنا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ سُلَيْمَانَ الْمُنْقِرِيُّ نا سُلَيْمَانُ بْنُ دَاوُد نا يَزِيدُ بْنُ زُرَيْعٍ نا سَعِيدٌ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فِي الْأَصَابِعِ عَشْرٌ عَشْرٌ» قَالَ أَبُو مُحَمَّد: هَذَا حَدِيثٌ صَحِيحٌ لَا دَاخِلَةَ فِيهِ، الْمُنْقِرِيُّ ثِقَةٌ، وَسُلَيْمَانُ بْنُ دَاوُد هُوَ الْهَاشِمِيُّ أَحَدُ الْأَئِمَّةِ مِنْ نُظَرَاءِ أَحْمَدَ بْنِ حَنْبَلٍ، وَيَزِيدُ بْنُ زُرَيْعٍ لَا يُسْأَلُ عَنْهُ، وَسَمَاعُهُ مِنْ سَعِيدٍ صَحِيحٌ، لِأَنَّهُ سَمِعَ مِنْ أَيُّوبَ.

L37107 It has been transmitted to us via the chain of Ibn Waddāḥ: Mūsā ibn Mu‘āwiyah from Wakī‘, from Shu‘bah, from Qatādah, from ‘Ikrimah, from Ibn ‘Abbās, who reported that the Messenger of Allah (peace be upon him) said: “These two are equal,” and he demonstrated this by joining his thumb and little finger.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نَا وَكِيعٌ عَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «هَذِهِ وَهَذِهِ سَوَاءٌ» وَجَمَعَ بَيْنَ إِبْهَامِهِ وَخِنْصَرِهِ.

L37108–37110 From the chain of Abu Dawud: Abbas ibn Abd al-Azim al-Anbari narrated to us, Abd al-Samad ibn Abd al-Warith al-Tannuri narrated to us, Shu’bah narrated to us from Qatadah from Ikrimah from Ibn Abbas that the Messenger of Allah—peace and blessings be upon him—said: “The fingers are equal, and the teeth are equal, the incisor and the molar are equal, and this one and that one are equal.” Abu Muhammad said: We do not know of any authentic report in the blood money (diyah) rulings concerning the limbs that quantifies or clarifies them except... This and all such matters are only addressed by referring to consensus and the inferential reasoning derived from it, as well as the scriptural text pertaining to what we clarify, God the Most High willing.

وَمِنْ طَرِيقِ أَبِي دَاوُد نا عَبَّاسُ بْنُ عَبْدِ الْعَظِيمِ الْعَنْبَرِيُّ نا عَبْدُ الصَّمَدِ بْنُ عَبْدِ الْوَارِثِ التَّنُّورِيُّ نا شُعْبَةُ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْأَصَابِعُ سَوَاءٌ وَالْأَسْنَانُ سَوَاءٌ، الثَّنِيَّةُ وَالضِّرْسُ سَوَاءٌ، وَهَذِهِ وَهَذِهِ سَوَاءٌ» قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ فِي الدِّيَاتِ فِي الْأَعْضَاءِ أَثَرًا يَصِحُّ فِي تَوْقِيتِهَا وَبَيَانِهَا إِلَّا هَذَا، وَسَائِرُ ذَلِكَ إِنَّمَا يُرْجَعُ فِيهِ إِلَى الْإِجْمَاعِ وَالِاسْتِدْلَالِ مِنْهُ، وَمِنَ النَّصِّ عَلَى مَا نُبَيِّنُ إِنْ شَاءَ اللَّهُ تَعَالَى.

L37111 Aḥmad ibn Muḥammad al-Ṭalamankī narrated to us, Muḥammad ibn Aḥmad ibn Mufarrij narrated to us, Ibrāhīm ibn Aḥmad ibn Fīrās narrated to us, Muḥammad ibn ʿAlī ibn Zayd narrated to us, Saʿīd ibn Manṣūr narrated to us, Hushaym narrated to us, Ibn Abī Laylā—who is Muḥammad ibn ʿAbd al-Raḥmān—narrated from ʿIkrimah ibn Khālid al-Makhzūmī, who said: "The Messenger of Allāh, peace be upon him, ruled regarding the nose if completely severed: the full *diyah*; regarding the tongue: the full *diyah*; regarding the penis: the full *diyah*; regarding the eye: fifty; regarding the leg: fifty; regarding the wound exposing the bone: five; regarding the wound dislocating the bone: fifteen; regarding the penetrating wound: one-third of the *diyah* for a life; regarding the head wound reaching the membrane: one-third of the *diyah* for a life; regarding the teeth: five for each; and regarding the fingers in those parts: ten for each."

نا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ مُفَرِّجٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ فِرَاسٍ نا مُحَمَّدُ بْنُ عَلِيِّ بْنِ زَيْدٍ نا سَعِيدُ بْنُ مَنْصُورٍ نا هُشَيْمٌ نا ابْنُ أَبِي لَيْلَى - هُوَ مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ - عَنْ عِكْرِمَةَ بْنِ خَالِدٍ الْمَخْزُومِيِّ قَالَ «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْأَنْفِ إِذَا اُسْتُؤْصِلَ بِالدِّيَةِ، وَفِي اللِّسَانِ الدِّيَةُ، وَفِي الذَّكَرِ الدِّيَةُ، وَفِي الْعَيْنِ خَمْسِينَ، وَفِي الرِّجْلِ خَمْسِينَ، وَفِي الْمُوضِحَةِ بِخَمْسٍ مِنْ الْإِبِلِ وَفِي الْمُنَقِّلَةِ بِخَمْسَ عَشْرَةَ، وَفِي الْجَائِفَةِ ثُلُثُ دِيَةِ النَّفْسِ، وَفِي الْمَأْمُومَةِ ثُلُثُ دِيَةِ النَّفْسِ، وَفِي الْأَسْنَانِ خَمْسًا خَمْسًا، وَفِيمَا هُنَالِكَ مِنْ الْأَصَابِعِ عَشْرًا عَشْرًا» .

L37112 Ahmad ibn Qasim narrated: My father Qasim ibn Muhammad ibn Qasim narrated: My grandfather Qasim ibn Asbagh narrated: Ahmad ibn Zuhayr and Muhammad ibn Sulayman al-Munqiri both narrated together: Al-Hakam ibn Musa narrated: Yahya ibn Hamzah narrated from Sulayman ibn Dawud al-Jazari from al-Zuhri from Abu Bakr ibn Muhammad ibn Amr ibn Hazm from his father from his grandfather: "The Messenger of Allah—peace and blessings be upon him—wrote to the people of Yemen in a letter containing rulings on inheritance, Sunnahs, and blood compensations. He sent it with Amr ibn Hazm, and it was recited in Yemen. This is its copy. In his letter, he stated: Whoever kills a believer deliberately upon clear evidence must face retribution, unless the guardians of the slain accept compensation. For a life, the blood money is one hundred camels. For a nose if completely severed, the full blood money applies. For the tongue, the full blood money applies. For the two lips, the full blood money applies. For the two testicles, the full blood money applies. For the penis, the full blood money applies. For the spine, the full blood money applies. For the two eyes, the full blood money applies. For one leg, half the blood money. For a skull fracture reaching the brain membrane, one-third of the blood money. For a dislocated bone wound, fifteen camels. For a stab wound penetrating the body cavity, one-third of the blood money. For each finger of the hands and feet, ten camels.

نا أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا أَحْمَدُ بْنُ زُهَيْرٍ، وَمُحَمَّدُ بْنُ سُلَيْمَانَ الْمُنْقِرِيُّ قَالَا جَمِيعًا: نَا الْحَكَمُ بْنُ مُوسَى نا يَحْيَى بْنُ حَمْزَةَ عَنْ سُلَيْمَانَ بْنِ دَاوُد الْجَزَرِيِّ عَنْ الزُّهْرِيِّ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَبَ إِلَى أَهْلِ الْيَمَنِ بِكِتَابٍ فِيهِ الْفَرَائِضُ وَالسُّنَنُ وَالدِّيَاتُ وَبَعَثَ بِهِ مَعَ عَمْرِو بْنِ حَزْمٍ فَقُرِئَتْ بِالْيَمَنِ وَهَذِهِ نُسْخَتُهَا، وَكَانَ فِي كِتَابِهِ: مَنْ اعْتَبَطَ مُؤْمِنًا قَتْلًا عَنْ بَيِّنَةٍ، فَإِنَّهُ قَوَدٌ، إِلَّا أَنْ يَرْضَى أَوْلِيَاءُ الْمَقْتُولِ وَفِي النَّفْسِ الدِّيَةُ مِائَةٌ مِنْ الْإِبِلِ، وَفِي الْأَنْفِ إِذَا أُوعِبَ جَدْعًا الدِّيَةُ، وَفِي اللِّسَانِ الدِّيَةُ، وَفِي الشَّفَتَيْنِ الدِّيَةُ، وَفِي الْبَيْضَتَيْنِ الدِّيَةُ، وَفِي الذَّكَرِ الدِّيَةُ، وَفِي الصُّلْبِ الدِّيَةُ، وَفِي الْعَيْنَيْنِ الدِّيَةُ، وَفِي الرِّجْلِ الْوَاحِدَةِ نِصْفُ الدِّيَةِ، وَفِي الْمَأْمُومَةِ ثُلُثُ الدِّيَةِ وَفِي الْمُنَقِّلَةِ خَمْسَةَ عَشَرَ مِنْ الْإِبِلِ، وَفِي الْجَائِفَةِ ثُلُثُ الدِّيَةِ، وَفِي كُلِّ أُصْبُعٍ مِنْ الْأَصَابِعِ مِنْ الْيَدِ

For a tooth, five camels. A man is executed for [killing] a woman. For those who pay in gold, the blood money is one thousand dinars."

وَالرِّجْلِ عَشَرَةٌ مِنْ الْإِبِلِ، وَفِي السِّنِّ خَمْسٌ مِنْ الْإِبِلِ - وَإِنَّ الرَّجُلَ يُقْتَلُ بِالْمَرْأَةِ - وَعَلَى أَهْلِ الذَّهَبِ أَلْفُ دِينَارٍ الدِّيَةُ»

L37113–37115 In the hadith of Ahmad ibn Shuʿayb: ʿAmr ibn Mansur narrated to us, Al-Hakam ibn Musa—he is the son of Ṣāliḥ, a reliable narrator—narrated to us. Yaḥyā ibn Ḥamzah narrated to us from Sulaymān ibn Dāwūd. Al-Zuhrī narrated to me from Abū Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm, from his father, from his grandfather: "The Messenger of Allah (peace and blessings be upon him) wrote to the people of Yemen." From Muhammad the Prophet, in a book containing inheritance shares, sunnah practices, and blood money regulations, sent with ʿAmr ibn Ḥazm which was recited to the people of Yemen – and this is its copy: To Shuraḥbīl ibn ʿAbd Kulāl, Al-Ḥārith ibn ʿAbd Kulāl, Nuʿaym ibn ʿAbd Kulāl, the Qayl of Dhu Ruʿayn, Maʿāfir, and Hamdān. To proceed. He then mentioned the exact wording of the ḥadīth letter by letter, with no addition, omission, alteration in sequence, or delay, except that he stated regarding a single man: "killing based on clear evidence" – and in these narrations there are additional details and extended accounts in the reporting.

وَفِي حَدِيثِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ مَنْصُورٍ نا الْحَكَمُ بْنُ مُوسَى - هُوَ ابْنُ صَالِحٍ - ثِقَةٌ نا يَحْيَى بْنُ حَمْزَةَ عَنْ سُلَيْمَانَ بْنَ دَاوُد حَدَّثَنِي الزُّهْرِيُّ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَبَ إلَى أَهْلِ الْيَمَنِ بِكِتَابٍ فِيهِ الْفَرَائِضُ، وَالسُّنَنُ، وَالدِّيَاتُ، وَبَعَثَ بِهِ مَعَ عَمْرِو بْنِ حَزْمٍ فَقُرِئَتْ عَلَى أَهْلِ الْيَمَنِ، وَهَذِهِ نُسْخَتُهَا» مِنْ مُحَمَّدٍ النَّبِيِّ إلَى شُرَحْبِيلَ بْنِ عَبْدِ كُلَالٍ، وَالْحَارِثِ بْنِ عَبْدِ كُلَالٍ، وَنُعَيْمِ بْنِ عَبْدِ كُلَالٍ قَيْلِ ذِي رُعَيْنٍ، وَمَعَافِرَ، وَهَمْدَانَ، أَمَّا بَعْدُ " ثُمَّ ذَكَرَ نَصَّ الْحَدِيثِ حَرْفًا حَرْفًا، لَا زِيَادَةَ فِيهِ وَلَا نَقْصَ، وَلَا تَقْدِيمَ وَلَا تَأْخِيرَ، إلَّا أَنَّهُ قَالَ فِي الرَّجُلِ الْوَاحِدِ، وَقَالَ: قَتْلًا عَنْ بَيِّنَةٍ - وَفِي هَذِهِ الْأَحَادِيثِ زِيَادَةٌ فِي الرِّوَايَةِ وَطُولٌ

L37116 Abu Muhammad said: All of this is compiled in the book of Ibn Ḥazm, the Mursal narration of ʿIkrimah, the ḥadīth of ʿAmr ibn Shuʿayb, the ḥadīth of Zayd ibn Thābit, the ḥadīth of a man from the family of ʿUmar, and the ḥadīth of Ibn Ṭāwūs narrated from his father; as for the ḥadīth of Masrūq ibn Aws from Abū Mūsā and the ḥadīth of Abū Tumaylah from Yāsār the teacher from Yazīd al-Naḥwī from ʿIkrimah from Ibn ʿAbbās, we have no need for them, for they contain nothing except what is in the ḥadīth of Yazīd ibn Zuraiʿ from Saʿīd ibn Abī ʿArūbah from Qatādah from ʿIkrimah from Ibn ʿAbbās. The authoritative transmission relied upon is that of Shuʿbah and Saʿīd, due solely to the authenticity of the two narrations. And with Allāh, the Exalted, lies success.

قَالَ أَبُو مُحَمَّدٍ: فَيَجْمَعُ هَذَا كُلَّهُ كِتَابُ ابْنِ حَزْمٍ، وَمُرْسَلُ عِكْرِمَةَ، وَحَدِيثُ عَمْرِو بْنِ شُعَيْبٍ، وَحَدِيثُ زَيْدِ بْنِ ثَابِتٍ، وَحَدِيثُ رَجُلٍ مِنْ آلِ عُمَرَ، وَحَدِيثُ ابْنِ طَاوُسٍ عَنْ أَبِيهِ؛ فَأَمَّا حَدِيثُ مَسْرُوقِ بْنِ أَوْسٍ عَنْ أَبِي مُوسَى، وَحَدِيثُ أَبِي تُمَيْلَةَ عَنْ يَسَارٍ الْمُعَلِّمِ عَنْ يَزِيدَ النَّحْوِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ، فَلَا حَاجَةَ بِنَا إلَيْهِمَا لِأَنَّهُ لَيْسَ فِيهِمَا إلَّا مَا فِي حَدِيثِ يَزِيدَ بْنِ زُرَيْعٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ - وَالْمُعْتَمَدُ عَلَيْهِ رِوَايَةُ شُعْبَةَ، وَسَعِيدٍ، لِصِحَّتِهِمَا فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37117 As for the ḥadīth of Shuʿbah: Narrated by Muḥammad ibn Saʿīd ibn Nabāt,

narrated by ʿAbdullāh ibn Naṣr, narrated by Qāsim ibn Aṣbagh, narrated by Ibn Waḍḍāḥ, narrated by Mūsā ibn Muʿāwiyah, narrated by Wakīʿ, narrated by Shuʿbah from Ghālib al-Tammār from Masrūq ibn Aws ibn Masrūq from Abū Mūsā, who said: "The Messenger of Allah (peace be upon him) ruled that the blood money for fingers is equal."

أَمَّا حَدِيثُ شُعْبَةَ نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا شُعْبَةُ عَنْ غَالِبٍ التَّمَّارِ عَنْ مَسْرُوقِ بْنِ أَوْسِ بْنِ مَسْرُوقٍ عَنْ أَبِي مُوسَى قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي دِيَةِ الْأَصَابِعِ سَوَاءً»

L37118 Abu Muhammad said: Ghalib did not hear it from Masruq.

قَالَ أَبُو مُحَمَّدٍ: لَمْ يَسْمَعْهُ غَالِبٌ مِنْ مَسْرُوقٍ.

L37119 Abdullah ibn Rabiʿ narrated: Muhammad ibn Muʿawiyah narrated: Ahmad ibn Shuʿayb narrated: Amr ibn Ali narrated: Muhammad ibn Jaʿfar, known as Ghundar, narrated: Saʿid ibn Abi Arubah narrated from Ghalib al-Tammar from Humaid ibn Hilal from Masruq from Abu Musa from the Prophet (peace be upon him), who said: "The fingers are equal, ten." As for the narrations of Ibn Hazm, Zayd ibn Thabit, a man from the lineage of ʿUmar, Ibn Tawus from his father, the narration of Makhul, and the mursal narration of Ikrimah, none of them are authentic.

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا عَمْرُو بْنُ عَلِيٍّ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ غَالِبٍ التَّمَّارِ عَنْ حُمَيْدِ بْنِ هِلَالٍ عَنْ مَسْرُوقٍ عَنْ أَبِي مُوسَى عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْأَصَابِعُ سَوَاءٌ عَشْرٌ» وَأَمَّا حَدِيثُ ابْنِ حَزْمٍ، وَزَيْدِ بْنِ ثَابِتٍ، وَرَجُلٍ مِنْ آلِ عُمَرَ، وَابْنِ طَاوُسٍ عَنْ أَبِيهِ، وَخَبَرُ مَكْحُولٍ، وَمُرْسَلُ عِكْرِمَةَ، فَإِنَّهُ لَا يَصِحُّ مِنْهَا شَيْءٌ.

L37120–37122 As for the ḥadīth of Ibn Ḥazm, it is a manuscript—and its chain of transmission lacks merit—because he did not provide a chain for it except... Sulayman ibn Dawud al-Jazari and Sulayman ibn Qarm—both are unreliable. Yahya ibn Ma'in was asked about Sulayman al-Jazari, who transmits from al-Zuhri and from whom Yahya ibn Hamzah transmitted. He replied, "He is not reliable."

أَمَّا حَدِيثُ ابْنِ حَزْمٍ فَإِنَّهُ صَحِيفَةٌ - وَلَا خَيْرَ فِي إِسْنَادِهِ - لِأَنَّهُ لَمْ يَسْنُدْهُ إِلَّا سُلَيْمَانُ بْنُ دَاوُد الْجَزَرِيُّ، وَسُلَيْمَانُ بْنُ قَرْمٍ - وَهُمَا لَا شَيْءَ - وَقَدْ سُئِلَ يَحْيَى بْنَ مَعِينٍ عَنْ سُلَيْمَانَ الْجَزَرِيِّ الَّذِي يُحَدِّثُ عَنِ الزُّهْرِيِّ وَرَوَى عَنْهُ يَحْيَى بْنُ حَمْزَةَ؟ فَقَالَ: لَيْسَ بِشَيْءٍ.

L37123 As for Sulaymān ibn Qarm, he is wholly dismissed.

وَأَمَّا سُلَيْمَانُ بْنُ قَرْمٍ فَسَاقِطٌ بِالْجُمْلَةِ.

L37124 Similarly, via Mālik from ʿAbd Allāh ibn Abī Bakr: There is no valid proof in a *Mursal*, and thus that book was abandoned as a whole.

وَكَذَلِكَ مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ وَلَا حُجَّةَ فِي مُرْسَلٍ فَسَقَطَ ذَلِكَ الْكِتَابُ جُمْلَةً.

L37125 Abu Muhammad said: It has become clear—and these reports all [support

this]—. As for what has been narrated concerning this matter from the Companions (may Allah be pleased with them), the Followers, and those after them: We were narrated through the chain of al-Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salamah, from Yaḥyā ibn Saʿīd al-Anṣārī, from Saʿīd ibn al-Musayyib, that ʿUmar ibn al-Khaṭṭāb determined the compensation for front teeth as five camels, and for each molar a camel. When Muʿāwiyah assumed authority, his molars fell out, so he said: "Do I know more about molars than ʿUmar?" He then standardized their compensation as equal.

قَالَ أَبُو مُحَمَّد: فَظَهَرَ وَهِيَ هَذِهِ الْأَخْبَارُ كُلُّهَا - وَأَمَّا مَا جَاءَ فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَالتَّابِعِينَ وَمَنْ بَعْدَهُمْ -: رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا حَمَّادُ بْنُ سَلَمَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِيمَا أَقْبَلَ مِنْ الْأَسْنَانِ بِخَمْسَةِ أَبْعِرَةٍ، وَفِي الْأَضْرَاسِ بَعِيرًا بَعِيرًا، فَلَمَّا كَانَ مُعَاوِيَةُ وَقَعَتْ أَضْرَاسُهُ فَقَالَ: أَنَا أَعْلَمُ بِالْأَضْرَاسِ مِنْ عُمَرَ؟ فَجَعَلَهُنَّ سَوَاءً.

L37126 Yusuf ibn Abdullah an-Namari narrated to us: Ahmad ibn Muhammad ibn al-Jasur narrated to us: Qasim ibn Asbagh narrated to us: Mutarrif ibn Qays narrated to us: Yahya ibn Bukayr narrated to us: Malik reported from Zayd ibn Aslam from Muslim ibn Jundub from Aslam, the freed slave of Umar ibn al-Khattab, that Umar ruled regarding the molar [to be compensated with] a camel.

نا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا قَاسِمُ بْنُ أَصْبَغَ نَا مُطَرِّفُ بْنُ قَيْسٍ نا يَحْيَى بْنُ بُكَيْرٍ نا مَالِكٌ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ مُسْلِمِ بْنِ جُنْدُبٍ عَنْ أَسْلَمَ مَوْلَى لِعُمَرَ بْنِ الْخَطَّابِ عَنْ عُمَرَ أَنَّهُ قَضَى فِي الضِّرْسِ بِجَمَلٍ

L37127 Through him [the chain] to Malik, from Yahya ibn Saʿid, who heard Saʿid ibn al-Musayyab say: "Umar ibn al-Khattab ruled that for each molar, [the compensation is] one camel, one camel. Muʿawiyah ibn Abi Sufyan ruled that for each molar, [the compensation is] five camels, five camels." Saʿid remarked: "Thus, the diyah is diminished under Umar's ruling and amplified under Muʿawiyah's. Were I to decide, I would assign two camels, two camels for each molar, thereby balancing the diyah equally."

وَبِهِ إِلَى مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ أَنَّهُ سَمِعَ سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ: قَضَى عُمَرُ بْنُ الْخَطَّابِ فِي الْأَضْرَاسِ بِبَعِيرٍ بَعِيرٍ. وَقَضَى مُعَاوِيَةُ بْنُ أَبِي سُفْيَانَ فِي الْأَضْرَاسِ بِخَمْسَةِ أَبْعِرَةٍ خَمْسَةِ أَبْعِرَةٍ، قَالَ سَعِيدٌ: فَالدِّيَةُ تَنْقُصُ فِي قَضَاءِ عُمَرَ وَتَزِيدُ فِي قَضَاءِ مُعَاوِيَةَ، فَلَوْ كُنْت أَنَا لَجَعَلْت فِي الْأَضْرَاسِ بَعِيرَيْنِ بَعِيرَيْنِ، فَتِلْكَ الدِّيَةُ سَوَاءٌ.

L37128 There has also come from ʿUmar other than this—as narrated via the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from Jābir from al-Shaʿbī from Shurayḥ, that ʿUmar wrote to him: "The teeth are to be considered equal."

وَقَدْ جَاءَ عَنْ عُمَرَ غَيْرُ هَذَا - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ أَنَّ عُمَرَ كَتَبَ إلَيْهِ أَنَّ الْأَسْنَانَ سَوَاءٌ.

L37129–37131 Also through the chain of Abd al-Razzaq, from Ma'mar, from Ibn Shubrumah: Umar ibn al-Khattab assigned five camels per tooth. Via the narration chain of Waki', who narrated to us: Sufyān reported from Abī Isḥāq al-Sabīʿī from ʿĀṣim ibn Ḍamrah from ʿAlī ibn Abī Ṭālib, who stated in *al-Sunan*: "Five camels are subject to zakat."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَيْضًا عَنْ مَعْمَرٍ عَنْ ابْنِ شُبْرُمَةَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَعَلَ فِي كُلِّ ضِرْسٍ خَمْسًا مِنْ الْإِبِلِ وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ فِي السُّنَنِ: خَمْسٌ مِنْ الْإِبِلِ.

L37132 From Waki', from Mālik ibn Anas, from Dāwūd ibn al-Ḥuṣayn, from

وَعَنْ وَكِيعٍ نا مَالِكُ بْنُ أَنَسٍ عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: الْأَسْنَانُ سَوَاءٌ اعْتَبِرُوهَا بِالْأَصَابِعِ عَقْلُهَا سَوَاءٌ.

'Ikrimah, from Ibn 'Abbās that he said: "The teeth are equal; consider them in relation to the fingers. Their blood money is the same."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَالِكٍ عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ أَبِي غَطَفَانَ: أَنَّ مَرْوَانَ أَرْسَلَهُ إلَى ابْنِ عَبَّاسٍ يَسْأَلُهُ مَاذَا جَعَلَ فِي الضِّرْسِ؟ قَالَ: فِيهِ خَمْسٌ مِنْ الْإِبِلِ، قَالَ: فَرَدَّنِي إلَى ابْنِ عَبَّاسٍ قَالَ: أَتَجْعَلُ مُقَدَّمَ الْفَمِ كَالْأَضْرَاسِ قَالَ: لَوْ لَمْ نَعْتَبِرْ ذَلِكَ إلَّا بِالْأَصَابِعِ عَقْلُهَا سَوَاءٌ.

L37133 From the chain of transmission of Abd al-Razzaq, from Malik, from Dawud ibn al-Husayn, from Abu Ghutafan: Marwan sent him to Ibn Abbas to ask, "What blood money is set for a molar?" He replied: "Five camels." Marwan then sent me back to Ibn Abbas, asking: "Do you consider the front teeth equal to the molars?" He responded: "If we only determined this by analogy to the fingers, their blood money would be equal."

قَالَ أَبُو مُحَمَّد: ادَّعَى قَوْمٌ أَنَّ مَعْنَى قَوْلِ ابْنِ عَبَّاسٍ اعْتَبِرُوهَا بِالْأَصَابِعِ إنَّمَا هُوَ قِيسُوهَا بِالْأَصَابِعِ، وَهَذَا بَاطِلٌ، لِأَنَّا قَدْ ذَكَرْنَا قَبْلَ هَذَا بِنَحْوِ وَرَقَتَيْنِ فِي الْآثَارِ الرِّوَايَةَ الثَّابِتَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّ الْأَصَابِعَ سَوَاءٌ، وَأَنَّ الْأَضْرَاسَ سَوَاءٌ، وَأَنَّ الثَّنَايَا سَوَاءٌ» .

L37134 Abu Muhammad said: A group claimed that the meaning of Ibn Abbas's statement "Apply analogy using the fingers" was "Measure it with the fingers." This is false, for we have previously mentioned in approximately two pages of the earlier reports the authentically transmitted narration from Ibn Abbas from the Prophet (peace be upon him): "The fingers are equal in compensatory value, the molars are equal in compensatory value, and the incisors are equal in compensatory value."

وَقَدْ ذَكَرْنَا آنِفًا اخْتِلَافَ الصَّحَابَةِ فِي التَّفْضِيلِ بَيْنَ الْأَسْنَانِ وَسَنَذْكُرُ فِي بَابِ الْأَصَابِعِ اخْتِلَافَهُمْ فِي الْأَصَابِعِ، فَمِنْ الْبَاطِلِ الْبَحْتِ: أَنْ يَأْمُرَ ابْنُ عَبَّاسٍ بِقِيَاسِ الْأَضْرَاسِ عَلَى الْأَصَابِعِ، وَالنَّصُّ قَدْ جَاءَ فِيهِمَا مَعًا مَجِيئًا وَاحِدًا، وَالْخِلَافُ فِيهِمَا مَعًا مَوْجُودٌ، وَإِنَّمَا مَعْنَى قَوْلِ ابْنِ عَبَّاسٍ " اعْتَبِرُوهَا بِالْأَصَابِعِ " إنَّمَا هُوَ أَنَّهُ كَانُوا يُخَالِفُونَهُ، فَيَرَوْنَ الْمُفَاضَلَةَ بَيْنَ الْأَسْنَانِ وَالْأَضْرَاسِ، لِتَفَاضُلِ مَنَافِعِهِمَا، وَلَا يَرَوْنَ ذَلِكَ فِي الْأَصَابِعِ - وَإِنْ كَانَتْ مُخْتَلِفَةَ الْمَنَافِعِ - فَكَانَ يُبَكِّتُهُمْ ابْنُ عَبَّاسٍ بِذَلِكَ، وَيُرِيهِمْ تَنَاقُضَهُمْ فِي تَعْلِيلِهِمْ وَيُبْطِلُ تَعْلِيلَهُمْ بِذَلِكَ، وَيَأْمُرُهُمْ بِأَنْ يَتَفَكَّرُوا فِيهَا بِقَوْلِهِمْ فِي الْأَصَابِعِ، لِأَنَّ الْعِبْرَةَ فِي كَلَامِ الْعَرَبِ إنَّمَا هُوَ التَّفَكُّرُ، وَالتَّعَجُّبُ وَالتَّدَبُّرُ فَقَطْ.

L37135 We previously mentioned the Companions' disagreement concerning gradation between teeth, and we will mention in the chapter on fingers their disagreement regarding fingers. It is absolute falsehood to claim Ibn Abbas instructed the analogizing of molars to fingers, when the textual ruling addressed both simultaneously in the same manner, and disagreement exists concerning both. The meaning of Ibn Abbas's statement "Analogize them to the fingers" is that they opposed him, believing in gradation between teeth and molars due to the varying degrees of their benefits, while rejecting this for fingers—despite the fingers' varying benefits. Thus, Ibn Abbas reproached them by exposing their contradictory reasoning, invalidating their rationale, and commanding them to reflect using their own reasoning about the fingers. For the lesson in Arabic discourse lies solely in reflection, wonder, and contemplation.

L37136 As for the Successors: Muḥammad ibn Saʿīd ibn Nabāt narrated to us:

ʿAbdullāh ibn Naṣr narrated to us: Qāsim ibn Aṣbagh narrated to us: Ibn Waḍḍāḥ narrated to us: Mūsā ibn Muʿāwiyah narrated to us: Wakīʿ narrated to us: Hishām ibn ʿUrwah reported from his father, that he equalized all teeth in diyah, stating: "If the incisor has beauty, the molar has a benefit."

وَأَمَّا التَّابِعُونَ - فَحَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ: أَنَّهُ كَانَ يُسَوِّي بَيْنَ الْأَسْنَانِ فِي الدِّيَةِ، وَيَقُولُ: إِنْ كَانَ لِلثَّنِيَّةِ جَمَالٌ فَإِنَّ لِلضِّرْسِ مَنْفَعَةً.

L37137–37139 And through him to Waki', Shu'bah narrated from Salamah ibn Kuhayl, from Shurayh, who said: "The teeth are equivalent." And through the chain of Abd al-Razzaq from Ma'mar, from al-Zuhri and Qatadah, they both declared collectively: For every tooth, five camels are due - molars and front teeth are considered equal.

وَبِهِ إِلَى وَكِيعٍ نَا شُعْبَةُ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ شُرَيْحٍ قَالَ: الْأَسْنَانُ سَوَاءٌ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ، وَقَتَادَةَ، قَالَا جَمِيعًا: فِي كُلِّ سِنٍّ خَمْسٌ مِنَ الْإِبِلِ - الْأَضْرَاسُ وَالْأَسْنَانُ سَوَاءٌ.

L37140 From [Muḥammad ibn Rāshid], transmitted through him to 'Abd al-Razzāq, who said: I heard Makḥūl say, "The fingers are equal, and the teeth are equal."

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ [عَنْ مُحَمَّدِ بْنِ رَاشِدٍ] قَالَ سَمِعْت مَكْحُولًا يَقُولُ: الْأَصَابِعُ سَوَاءٌ وَالْأَسْنَانُ سَوَاءٌ.

L37141 And through him to 'Abd al-Razzāq from Ibn Jurayj from Sulaymān ibn Mūsā, who said in a book by 'Umar ibn 'Abd al-'Azīz: "For teeth [as compensation], five camels for each tooth?" Abū Muḥammad said: This is the opinion of Abū Ḥanīfah, Mālik, al-Shāfi'ī, Aḥmad, Abū Sulaymān, their companions, Sufyān al-Thawrī, and Isḥāq ibn Rāhawayh.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى قَالَ فِي كِتَابٍ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ: فِي الْأَسْنَانِ خَمْسٌ خَمْسٌ مِنَ الْإِبِلِ؟ قَالَ أَبُو مُحَمَّدٍ: وَبِهَذَا يَقُولُ أَبُو حَنِيفَةَ - وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ، وَسُفْيَانُ الثَّوْرِيُّ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ.

L37142 And here is another statement—as has been narrated to us—through the chain of Abd al-Razzaq from Sufyan ibn Uyaynah from Abdullah ibn Tawus from his father: "that the Prophet, peace and blessings be upon him, ruled that the compensation for a tooth is five camels."

وَهُنَا قَوْلٌ آخَرُ - كَمَا رُوِّينَا - مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِي السِّنِّ بِخَمْسٍ مِنَ الْإِبِلِ» .

L37143 Tawus said: Each age surpasses the one that follows it, according to the judgment of the people of opinion and consultation.

قَالَ طَاوُسٌ: وَتَفْضُلُ كُلُّ سِنٍّ عَلَى الَّتِي تَلِيهَا بِمَا يَرَى أَهْلُ الرَّأْيِ وَالْمَشُورَةِ.

L37144 And via him to Abd al-Razzaq, from Ibn Jurayj, from Ibn Tawus, who said: I asked my father, "Where should one begin?" He responded, "Starting with the two incisors is preferable to the other teeth."

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنِ ابْنِ طَاوُسٍ قَالَ: قُلْت لِأَبِي: مِنْ أَيْنَ يُبْدَأُ؟ قَالَ: الثَّنِيَّتَانِ خَيْرٌ مِنَ الْأَسْنَانِ.

L37145 Ibn Jurayj said: ʿAmr ibn Muslim reported to me that he heard Ṭāwūs say, "The canine teeth in the upper and lower jaw are preferable to the molars." He said, "And for the molars, young camels are required."

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عَمْرُو بْنُ مُسْلِمٍ أَنَّهُ سَمِعَ طَاوُسًا يَقُولُ: يُفَضَّلُ النَّابُ فِي أَعْلَى الْفَمِ وَأَسْفَلِهِ عَلَى الْأَضْرَاسِ، قَالَ: وَفِي الْأَضْرَاسِ صِغَارُ الْإِبِلِ.

L37146 Abu Muhammad—may Allah be pleased with him—said: We have been narrated through the chain of Abd al-Razzaq from Ibn Jurayj, who said: I asked Ata ibn Abi Rabah: "The teeth [in compensation]?" Ata replied: "For the two incisors, the two canines, and the two canines—five five. For the remaining teeth, two two—the upper jaw and lower jaw being equal—all these are equal, and the molars are equal." Ibn Jurayj said: I asked Ata: "If a woman's teeth are wholly struck?" He answered: "Fifty."

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءِ بْنِ أَبِي رَبَاحٍ: الْأَسْنَانُ؟ قَالَ عَطَاءٌ: فِي الثَّنِيَّتَيْنِ وَالرَّبَاعِيَتَيْ نِ وَالنَّابَيْنِ خَمْسٌ خَمْسٌ، وَفِيمَا بَقِيَ بَعِيرَانِ بَعِيرَانِ - أَعْلَى الْفَمِ وَأَسْفَلُهُ سَوَاءٌ - كُلُّ ذَلِكَ سَوَاءٌ، وَالْأَضْرَاسُ سَوَاءٌ، قَالَ ابْنُ جُرَيْجٍ: قُلْت لِعَطَاءٍ: أَسْنَانُ الْمَرْأَةِ تُصَابُ جَمِيعًا؟ قَالَ: خَمْسُونَ.

L37147 Ali said: These statements, as we have cited, are statements from Umar, Ali, Muawiyah, and Ibn Abbas—may Allah be pleased with them—that the blood money for a front tooth and a molar is equal, five each.

قَالَ عَلِيٌّ: فَهَذِهِ الْأَقْوَالُ كَمَا أَوْرَدْنَا قَوْلٌ عَنْ عُمَرَ، وَعَلِيٍّ، وَمُعَاوِيَةَ، وَابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمْ -: أَنَّ دِيَةَ السِّنِّ وَالضِّرْسِ سَوَاءٌ خَمْسٌ خَمْسٌ.

L37148–37149 This is also the view of Urwah ibn al-Zubayr, Shurayḥ, al-Zuhrī, Qatādah, Makḥūl, and ʿUmar ibn ʿAbd al-ʿAzīz.

وَهُوَ قَوْلُ عُرْوَةَ بْنِ الزُّبَيْرِ، وَشُرَيْحٍ، وَالزُّهْرِيِّ، وَقَتَادَةَ، وَمَكْحُولٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

L37150 Another opinion is that the incisors, premolars, and canines are each valued at five camels, while the rest of the molars—which are the grinders—are each valued at one camel. This is the ruling confirmed by Umar ibn al-Khattab.

وَقَوْلٌ آخَرُ - أَنَّ الثَّنَايَا وَالرَّبَاعِيَّاتِ وَالْأَنْيَابِ خَمْسٌ خَمْسٌ، وَفِي سَائِرِ الْأَضْرَاسِ - وَهِيَ الطَّوَاحِنُ - بَعِيرٌ بَعِيرٌ - وَهُوَ الثَّابِتُ عَنْ عُمَرَ بْنِ الْخَطَّابِ.

L37151 Another opinion is that the molars are preferred over the incisors and premolars. This is a view soundly narrated from Muʿāwiyah, as we have cited.

وَقَوْلٌ آخَرُ - إنَّ الطَّوَاحِنَ مُفَضَّلَةٌ عَلَى الثَّنَايَا وَالرَّبَاعِيَاتِ. وَهُوَ قَوْلٌ صَحَّ عَنْ مُعَاوِيَةَ، كَمَا أَوْرَدْنَا.

L37152 A fourth opinion—held by Saʿīd ibn al-Musayyib, Mujāhid, and ʿAṭāʾ—states that five camels are due for each tooth and two camels for each molar.

وَقَوْلٌ رَابِعٌ - وَهُوَ قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ، وَمُجَاهِدٍ، وَعَطَاءٍ: إنَّ فِي الْأَسْنَانِ خَمْسًا خَمْسًا، وَفِي الْأَضْرَاسِ بَعِيرَانِ بَعِيرَانِ.

L37153 Another opinion states that for an incisor, five camels are due as compensation. Then each subsequent tooth exceeds the one preceding it, and the next exceeds the one before it, continuing in this manner until the last tooth in the mouth. This is the view held by Tāwus.

وَقَوْلٌ آخَرُ - وَهُوَ أَنَّ فِي الثَّنِيَّةِ خَمْسًا مِنْ الْإِبِلِ، ثُمَّ تَفْضُلُ عَلَى الَّتِي تَلِيهَا وَتَفْضُلُ الَّتِي تَلِيهَا عَلَى الَّتِي تَلِيهَا، وَهَكَذَا إلَى آخِرِ الْفَمِ وَهُوَ قَوْلُ طَاوُسٍ.

قَالَ عَلِيٌّ: فَلَمْ يُحْصَلْ مِنْ هَذِهِ الْمَسْأَلَةِ إِلَّا عَلَى أَخْبَارٍ مُرْسَلَةٍ لَا تَصِحُّ، وَلَوْ صَحَّتْ لَكَانَ الْحَاضِرُونَ مِنْ خُصُومِنَا مُخَالِفِينَ لَهَا كَمَا ذَكَرْنَا - وَمِنَ الْبَاطِلِ احْتِجَاجُ الْمَرْءِ بِخَبَرٍ لَا يَرَاهُ عَلَى نَفْسِهِ حُجَّةً، وَهُوَ عِنْدَهُ حُجَّةٌ، لَا حُجَّةَ عَلَى مَنْ لَا يَرَاهُ حُجَّةً فِي شَيْءٍ أَصْلًا.

L37154 Ali said: Nothing has been established concerning this issue except reports with incomplete chains of transmission that lack authenticity. Even if they were authentic, those present among our opponents would contradict them as we have stated. It is invalid for a person to argue using a report he does not consider binding upon himself while deeming it a proof, for there is no proof against one who does not regard it as a proof in any matter whatsoever.

قَالَ أَبُو مُحَمَّدٍ: لَكِنَّا نَقُولُ - قَوْلَ مَنْ يَدْرِي وَيُوقِنُ أَنَّ قَوْلَهُ وَكِتَابَهُ مَعْرُوضَانِ عَلَيْهِ [فِي] يَوْمِ الْقِيَامَةِ، وَهُوَ مَسْئُولٌ عَنْهُمَا -: إِنَّ الْخَطَأَ فِي السُّكُوتِ بِالْجَهْلِ أَسْلَمُ مِنَ الْخَطَأِ فِي الْحُكْمِ فِي الدِّينِ بِالْجَهْلِ، بَلِ السُّكُوتُ لِمَنْ لَمْ يَعْلَمْ فَرْضٌ عَلَيْهِ وَاجِبٌ، وَالْقَوْلُ بِمَا لَا يَعْلَمُ حَرَامٌ عَلَى النَّاسِ.

L37155 Abu Muhammad said: We affirm—the position of one who knows and is certain that his speech and writings will be presented to him on the Day of Resurrection, and he will be questioned about them—that erring in silence due to ignorance is more sound than erring in religious judgment due to ignorance. Rather, silence is an obligatory duty for one who does not know, while speaking without knowledge is forbidden for people.

فَنَقُولُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: وَإِنَّهُ إِنْ لَمْ يَصِحَّ فِي إِيجَابِ الدِّيَةِ فِي الْخَطَأِ فِي السِّنِّ إِجْمَاعٌ مُتَيَقَّنٌ، فَلَا يَجِبُ فِي ذَلِكَ شَيْءٌ أَصْلًا، لِمَا قَدْ ذَكَرْنَاهُ مِنْ قَوْلِ اللَّهِ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

L37156 We say—and with Allah, the Exalted, is success—that if no certain consensus exists regarding the obligation of diyah for error concerning age, then nothing is obligatory in that matter at all, due to what we have cited from the verse of Allah, the Exalted: “There is no blame on you for what you have done in error, but only for what your hearts have intended” [Al-Ahzab: 5].[9]

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَحِلُّ لِأَحَدٍ إِيجَابُ غَرَامَةٍ عَلَى أَحَدٍ إِلَّا أَنْ يُوجِبَهَا نَصٌّ صَحِيحٌ، أَوْ إِجْمَاعٌ مُتَيَقَّنٌ - فَأَمَّا النَّصُّ الصَّحِيحُ فَقَدْ أَمِنَّا وُجُودَهُ بِيَقِينٍ هَاهُنَا، فَكُلُّ مَا رُوِيَ فِي ذَلِكَ مُنْذُ أَرْبَعمِائَةِ عَامٍ وَنَيِّفٍ وَأَرْبَعِينَ عَامًا مِنْ شَرْقِ الْأَرْضِ إِلَى غَرْبِهَا قَدْ جَمَعْنَاهُ فِي الْكِتَابِ الْكَبِيرِ الْمَعْرُوفِ بِ " كِتَابِ الْإِيصَالِ " وَلِلَّهِ الْحَمْدُ - وَهُوَ الَّذِي أَوْرَدْنَا مِنْهُ مَا شَاءَ اللَّهُ تَعَالَى، فَإِنْ وُجِدَ شَيْءٌ غَيْرُ ذَلِكَ فَمَا لَا خَيْرَ فِيهِ أَصْلًا، لَكِنْ مِمَّا لَعَلَّهُ مَوْضُوعٌ مُحْدَثٌ.

L37157–37159 And due to the saying of the Messenger of Allah (peace be upon him): “Indeed, your blood and your wealth are inviolable to you.” It is not permissible for anyone to impose compensation upon another unless mandated by a sound textual evidence or a definite scholarly consensus. As for the sound textual evidence, we have ascertained its existence with certainty here. All that has been transmitted regarding this matter over four hundred and forty years, from the eastern to the western regions of the earth, we have compiled in the major work known as *The Book of Transmission* (Kitāb al-Īṣāl)—and all praise belongs to Allah. From this work, we have cited what Allah the Exalted willed. Should anything beyond this be found, it is utterly without merit, being perhaps a fabricated and baselessly innovated matter.

وَأَمَّا الْإِجْمَاعُ - فَلَسْنَا نَعْرِفُهُ، وَقَدْ قَالَتِ الْمَلَائِكَةُ {لا عِلْمَ لَنَا إِلا مَا عَلَّمْتَنَا} [البقرة: ٣٢] وَلَوْ صَحَّ عِنْدَنَا فِي ذَلِكَ إِجْمَاعٌ لَبَادَرْنَا إِلَى الطَّاعَةِ لَهُ، وَمَا تَرَدَّدْنَا فِي ذَلِكَ طَرْفَةَ

L37160 As for consensus (ijmāʿ), we do not acknowledge it. The angels said, “We have no knowledge except what You have taught us” [Al-Baqarah: 32]. If an

[9] **Qur’an references (L37156):** Qur’an 33:5 (Al-Ahzab).

established consensus were confirmed to us regarding that, we would hasten to obey it and would not hesitate for even the blink of an eye. Therefore, whoever has an established consensus confirmed to him regarding that, let him be mindful of Allah and not oppose it. And whoever does not have an established consensus or explicit text confirmed to him, his obligation is to abstain, and it is not permissible for him to lie and claim a consensus.[10]

L37161 Abū Muḥammad said: Then we say—and success comes only from Allāh, the Exalted—if a consensus were established that the incisor incurs five camels, the ruling in such a case would be: if a definitive consensus were established that five camels are due as compensation for the incisor, then it would become obligatory to assign five for every tooth and five for every molar. This is because it has been authentically established that the Messenger of Allāh—peace and blessings be upon him—said: "Teeth are equal in compensation; the incisor and the molar are equally the same."

L37162 This universality is not permissible for anyone to oppose or specify exceptions to; it is obligatory to apply it according to its apparent meaning, as it pertains to the qisas which Allah the Exalted commanded in the Quran and which he (the Prophet) commanded—peace and blessings be upon him—without any doubt.

L37163 As for intentional injury, it is permissible for the fracturer and the one whose tooth was fractured, and the extractor and the one whose tooth was extracted, to mutually agree upon compensation (diyah) for it, as authenticated and established in the hadith of al-Rubayyiʿ.

L37164 And with Allah, the Exalted, is success.

L37165 **Issue: The blood money for a molar tooth that blackens and trembles.**

L37166–37168 The molar blackens and shakes. Ali said: It was narrated to us through the chain of Abd al-Razzaq from al-Hajjaj ibn Arṭāṭ from Makhul from Zayd ibn Thabit, who said regarding the tooth: One must wait with it for a year. If it blackens completely, the full compensation is due for it. Otherwise,

[10] **Qur'an references (L37160):** Qur'an 2:32 (Al-Baqarah).

عَيْنٍ، فَمَنْ صَحَّ عِنْدَهُ فِي ذَلِكَ إِجْمَاعٌ فَلْيَتَّقِ اللَّهَ وَلَا يُخَالِفْهُ، وَمَنْ لَمْ يَصِحَّ عِنْدَهُ إِجْمَاعٌ وَلَا نَصٌّ، فَفَرْضُهُ التَّوَقُّفُ، وَلَا يَحِلُّ لَهُ أَنْ يَكْذِبَ فَيَدَّعِيَ إِجْمَاعًا.

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَقُولُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: إِنَّهُ لَوْ صَحَّ فِي ذَلِكَ إِجْمَاعٌ بِأَنَّ فِيهَا خَمْسًا، فَوَجْهُ الْعَمَلِ فِي ذَلِكَ أَنَّهُ لَوْ صَحَّ الْإِجْمَاعُ الْمُتَيَقَّنُ عَلَى أَنَّ فِي الثَّنِيَّةِ خَمْسًا مِنْ الْإِبِلِ، فَوَاجِبٌ كَانَ أَنْ يَكُونَ فِي كُلِّ سِنٍّ، وَكُلِّ ضِرْسٍ خَمْسٌ خَمْسٌ، لِأَنَّهُ قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْأَسْنَانُ سَوَاءٌ، الثَّنِيَّةُ وَالضِّرْسُ سَوَاءٌ» .

وَهَذَا الْعُمُومُ لَا يَحِلُّ لِأَحَدٍ خِلَافُهُ، وَلَا تَخْصِيصُهُ، فَوَاجِبٌ حَمْلُهُ عَلَى ظَاهِرِهِ، وَأَنَّهُ فِي الْقِصَاصِ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ فِي الْقُرْآنِ، وَأَمَرَ هُوَ بِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِلَا شَكٍّ.

وَأَمَّا فِي الْعَمْدِ فَجَائِزٌ تَرَاضِي الْكَاسِرِ وَالْمَكْسُورِ سِنُّهُ، وَالْقَالِعِ وَالْمَقْلُوعِ سِنُّهُ عَلَى الْفِدَاءِ فِي ذَلِكَ، عَلَى مَا صَحَّ وَثَبَتَ فِي حَدِيثِ الرُّبَيِّعِ.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ دِيَةِ الضِّرْسِ تَسْوَدّ وَتَرْجُفُ]

الضِّرْسُ تَسْوَدُّ وَتَرْجُفُ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ فِي السِّنِّ: يُسْتَأْنَى بِهَا سَنَةً، فَإِنْ اسْوَدَّتْ فَفِيهَا الْعَقْلُ كَامِلًا، وَإِلَّا فَمَا اسْوَدَّ مِنْهَا فَبِالْحِسَابِ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ

compensation is calculated proportionally based on the portion that blackens. Abd al-Karim narrated to me through the chain of Ibn Jurayj from Abd al-Razzaq that Ali ibn Abi Talib said regarding a tooth that is damaged and they fear it may blacken: It is to be observed for a year. If it blackens, its full value is due, but if it does not blacken, nothing is due. Abd al-Karim said: And they say: If it blackens after a year, nothing is due.

أَخْبَرَنِي عَبْدُ الْكَرِيمِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي السِّنِّ تُصَابُ فَيَخْشَوْنَ أَنْ تَسْوَدَّ: يُنْتَظَرُ بِهَا سَنَةً، فَإِنْ اسْوَدَّتْ فَفِيهَا قَدْرُهَا وَافِيًا، وَإِنْ لَمْ تَسْوَدَّ فَلَيْسَ فِيهَا شَيْءٌ. قَالَ عَبْدُ الْكَرِيمِ: وَيَقُولُونَ: فَإِنْ اسْوَدَّتْ بَعْدَ سَنَةٍ فَلَيْسَ فِيهَا شَيْءٌ.

L37169 From the transmission of Abd al-Razzaq, from Ibn Jurayj: Abd al-Aziz informed me that in a document of Umar ibn Abd al-Aziz from Umar ibn al-Khattab, it states: For a tooth - five camels, or their equivalent in gold or silver. If it blackens, the full compensation is owed. If a part of it is broken (since it has not blackened), then the compensation is calculated accordingly.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ: أَنَّ فِي كِتَابٍ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ عُمَرَ بْنِ الْخَطَّابِ: فِي السِّنِّ خَمْسٌ مِنَ الْإِبِلِ، أَوْ عَدْلُهَا مِنَ الذَّهَبِ، أَوْ الْوَرِقِ، فَإِنْ اسْوَدَّتْ فَقَدْ تَمَّ عَقْلُهَا، فَإِنْ كُسِرَ مِنْهَا - إِذْ لَمْ تَسْوَدَّ - فَبِحِسَابِ ذَلِكَ.

L37170 From Saʿīd ibn al-Musayyib: When a tooth turns black, the full compensation becomes due. If it is knocked out afterward, the compensation remains obligatory in full.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ إِذَا اسْوَدَّتِ السِّنُّ فَقَدْ تَمَّ عَقْلُهَا، فَإِنْ طُرِحَتْ بَعْدَ ذَلِكَ، فَفِيهَا الْعَقْلُ أَيْضًا كَامِلًا.

L37171 Ibn Wahb said: Yunus reported to me from Rabīʿah with a similar narration.

[قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي يُونُسُ عَنْ رَبِيعَةَ بِمِثْلِهِ] .

L37172 Ibn Wahb said: I heard Hanzala ibn Abi Sufyan say: I heard al-Qasim ibn Muhammad ask about a tooth that was shaking but had not turned black. He said: The full liability is required for it.

قَالَ ابْنُ وَهْبٍ: وَسَمِعْتُ حَنْظَلَةَ بْنَ أَبِي سُفْيَانَ يَقُولُ: سَمِعْتُ الْقَاسِمَ بْنَ مُحَمَّدٍ يَسْأَلُ عَنْ سِنٍّ كَانَتْ تَرْجُفُ وَلَمْ تَسْوَدَّ؟ قَالَ: فَفِيهَا الْعَقْلُ كَامِلًا.

L37173 It is narrated from ʿUmar ibn ʿAbd al-ʿAzīz that he wrote to the troops: “When a tooth blackens, the full blood money for it is established. Any tooth broken thereafter shall be assessed proportionally [based on that amount].”

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، أَنَّهُ كَتَبَ إِلَى الْأَجْنَادِ: أَنَّ السِّنَّ إِذَا اسْوَدَّتْ فَقَدْ تَمَّ عَقْلُهَا وَمَا كُسِرَ مِنْهَا بَعْدَ ذَلِكَ فَبِحِسَابِ ذَلِكَ.

L37174 On the authority of Ibn Wahb, who said: ’Umar ibn Qays informed me from ’Aṭā’ ibn Abī Rabāḥ that a man asked him about a case where someone broke another man’s tooth, so retaliation was exacted from him. The offender then took the tooth and replaced it, and it became fixed. The other party subsequently brought a legal case against him, but ’Aṭā’ ruled: “He has no right to anything.”

وَعَنِ ابْنِ وَهْبٍ أَنَّهُ قَالَ: أَخْبَرَنِي عُمَرُ بْنُ قَيْسٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ أَنَّهُ سَأَلَهُ رَجُلٌ عَنْ رَجُلٍ كَسَرَ سِنَّ رَجُلٍ فَأُقِيدَ مِنْهُ فَأَخَذَ سِنَّهُ فَرَدَّهَا فَثَبَتَتْ، فَخَاصَمَهُ الْآخَرُ، فَقَالَ: لَيْسَ لَهُ شَيْءٌ.

L37175 From Shurayh: He ruled regarding a fractured tooth that the assessment

is deferred for one year. If it blackens, the full blood money is due; if not, blood money is owed proportionally to the damage sustained by it.

وَعَنْ شُرَيْحٍ أَنَّهُ قَالَ فِي السِّنِّ إذَا كُسِرَتْ: يُؤَجَّلُ صَاحِبُهَا سَنَةً، فَإِنْ اسْوَدَّتْ فَدِيَتُهَا كَامِلَةٌ، وَإِنْ لَمْ تَسْوَدَّ فَبِقَدْرِ مَا نَقَصَ مِنْهَا.

L37176 From Ata, he said: If a tooth falls out, becomes blackened, or becomes loose, blood money is assessed. Ibn Juraij said: Ibn Shihab told me: Regarding the tooth, if it becomes blackened, the full blood money for it is due.

وَعَنْ عَطَاءٍ قَالَ: إنْ سَقَطَتْ سِنٌّ، أَوْ اسْوَدَّتْ، أَوْ رَجَفَتْ قُوِّمَتْ - قَالَ ابْنُ جُرَيْجٍ: وَقَالَ لِي ابْنُ شِهَابٍ: فِي السِّنِّ إذَا اسْوَدَّتْ فَقَدْ تَمَّ عَقْلُهَا.

L37177–37179 Abdul Aziz ibn Abi Salamah and Al-Layth said: If a tooth is struck and turns black, then its blood money (diya) is due. The full compensation is due. If the tooth is dislodged again afterward, the full indemnity applies once more. And Mālik said: When a tooth blackens, the full compensation for it becomes due. If it is dislodged again, the indemnity remains complete. And here is another opinion—narrated from Ibn ʿAbbās—that ʿUmar ibn al-Khaṭṭāb said: For a blackened tooth that is removed, a third of its blood money (diyah) is owed.

وَقَالَ عَبْدُ الْعَزِيزِ بْنُ أَبِي سَلَمَةَ، وَاللَّيْثُ: إذَا ضُرِبَتْ السِّنُّ فَاسْوَدَّتْ فَفِيهَا عَقْلُهَا كَامِلًا، فَإِنْ طُرِحَتْ بَعْدَ ذَلِكَ فَفِيهَا الْعَقْلُ كَامِلًا مَرَّةً أُخْرَى وَقَالَ مَالِكٌ: إذَا اسْوَدَّتْ السِّنُّ فَقَدْ تَمَّ عَقْلُهَا، فَإِنْ طُرِحَتْ مَرَّةً أُخْرَى فَعَقْلُهَا أَيْضًا تَامٌّ وَهَاهُنَا قَوْلٌ آخَرُ - عَنْ ابْنِ عَبَّاسٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: فِي السِّنِّ السَّوْدَاءِ إذَا سَقَطَتْ ثُلُثُ دِيَتِهَا.

L37180 Abū Muḥammad said: This is established from ʿUmar ibn al-Khaṭṭāb due to the continuity of its chain, the reliability of its narration, and its unbroken transmission. Yunus ibn ʿAbd Allāh narrated to us: Aḥmad ibn ʿAbd al-Raḥīm narrated to us, Aḥmad ibn Khālid narrated to us, Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us, Muḥammad ibn Bashshār narrated to us, Yaḥyā ibn Saʿīd al-Qaṭṭān narrated to us, Hishām al-Dastuwāʾī narrated to us, Qatādah narrated from ʿAbd Allāh ibn Buraydah from Yaḥyā ibn Yaʿmur from Ibn ʿAbbās: That ʿUmar ibn al-Khaṭṭāb - and this is the position upheld by Aḥmad ibn Ḥanbal and Isḥāq ibn Rāhawayh.

قَالَ أَبُو مُحَمَّد: وَهَذَا هُوَ الثَّابِتُ عَنْ عُمَرَ بْنِ الْخَطَّابِ لِاتِّصَالِ سَنَدِهِ، وَجَوْدَةِ رِوَايَتِهِ وَاتِّصَالِهِ حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ الرَّحِيمِ نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا هِشَامٌ الدَّسْتُوَائِيُّ نا قَتَادَةُ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ عَنْ يَحْيَى بْنِ يَعْمُرَ عَنْ ابْنِ عَبَّاسٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ - وَبِهِ يَقُولُ أَحْمَدُ بْنُ حَنْبَلٍ وَإِسْحَاقُ بْنُ رَاهْوَيْهِ.

L37181 It is narrated from Saʿīd ibn al-Musayyib that he said: “For [the loss of] a molar tooth, one-third of the *diyah* [is due].”

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: فِي السِّنِّ السَّوْدَاءِ ثُلُثُ الدِّيَةِ.

L37182 Narrated from Mujāhid that he said: If a tooth becomes blackened or loose and then falls out, is the compensatory value half, even if its full value was in it initially?

وَعَنْ مُجَاهِدٍ أَنَّهُ قَالَ: إذَا اسْوَدَّتْ السِّنُّ، أَوْ رَجَفَتْ ثُمَّ طُرِحَتْ فَنِصْفُ قَدْرِهَا - وَإِنْ كَانَ فِيهَا قَدْرُهَا أَوَّلَ مَرَّةٍ؟ .

L37183 Ibn Abī Najīḥ narrated from Mujāhid that concerning the black tooth, its *diyah* (blood money) is a quarter.

وَذَكَرَ ابْنُ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ فِي السِّنِّ السَّوْدَاءِ رُبْعَ دِيَتِهَا.

L37184 On the authority of Yazīd ibn ʿAbdillāh ibn Quṣayṭ that he said: Regarding the black tooth - if it is broken, a fifth of its diyah (blood money) is owed, and likewise for every limb.

وَعَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ أَنَّهُ قَالَ: فِي السِّنِّ السَّوْدَاءِ إِذَا كُسِرَتْ خُمْسُ دِيَتِهَا، وَفِي كُلِّ عُضْوٍ.

L37185 Abū Muḥammad said: Thus, regarding its blackening—as is evident—therein has been disagreement.

قَالَ أَبُو مُحَمَّدٍ: فَفِي اسْوِدَادِهَا - كَمَا تَرَى - أَقْوَالٌ اُخْتُلِفَ فِيهَا.

L37186 As for specifying [the amount] as one-third of the diyah (blood money), half of it, or a quarter of it, this constitutes an opinion unsupported by the Quran, Sunnah, or scholarly consensus. Such a position is invalid and cannot be endorsed.

أَمَّا التَّوْقِيتُ بِثُلُثِ الدِّيَةِ وَنِصْفِهَا وَرُبْعِهَا، فَقَوْلٌ لَا يُعَضِّدُهُ قُرْآنٌ وَلَا سُنَّةٌ وَلَا إجْمَاعٌ، وَمَا كَانَ هَكَذَا فَلَا يَجُوزُ الْقَوْلُ بِهِ.

L37187–37189 If the blackening, discoloration, reddening, yellowing, cracking, or fracture of the tooth occurred unintentionally—given that no Quranic text stipulates compensation for it, nor any authentic (sahih) or weak (da'if) Sunnah, nor any Consensus (Ijmaʿ) at all regarding any of these matters—then it is impermissible to mandate any compensation whatsoever for it, because... Mistakes are nullified by the explicit text of the Quran, and wealth is inviolable by the Quran and the Sunnah. Therefore, it is absolutely impermissible to impose any penalty (gharāmah) in such matters, as this would entail imposing a Sharia injunction. Sharia rulings can only be established based on an explicit text or consensus, and this is beyond any doubt or hesitation. All praise is due to Allah, the Lord of all the worlds.

فَإِذَا كَانَ سَوَادُ السِّنِّ وَاخْضِرَارُهَا وَاحْمِرَارُهَا وَاصْفِرَارُهَا وَصَدْعُهَا وَكَسْرُهَا - إذَا كَانَ كُلُّ ذَلِكَ خَطَأً: لَا قُرْآنَ جَاءَ فِيهِ بِإِيجَابِ غَرَامَةٍ، وَلَا سُنَّةَ صَحِيحَةَ، وَلَا سَقِيمَةَ، وَلَا إجْمَاعَ عَلَى شَيْءٍ مِنْ ذَلِكَ أَصْلًا: لَمْ يَجُزْ أَنْ يُوجَبَ فِي ذَلِكَ شَيْءٌ أَصْلًا، لِأَنَّ الْخَطَأَ مَرْفُوعٌ بِنَصِّ الْقُرْآنِ، وَالْأَمْوَالُ مُحَرَّمَةٌ بِالْقُرْآنِ وَبِالسُّنَّةِ، فَلَا يَجُوزُ أَلْبَتَّةَ إيجَابُ غَرَامَةٍ فِي ذَلِكَ، لِأَنَّهُ إيجَابُ شَرْعٍ وَالشَّرْعُ لَا يَجِبُ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ، وَهَذَا مِمَّا لَا يُشَكُّ فِيهِ وَلَا يُتَرَدَّدُ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ. .

L37190 It has been reported to us through the chain of Abd al-Razzaq from Ibn Jurayj from Makhul, who said: Zayd ibn Thabit stated regarding the extra tooth, "One-third of its *diyah*." And from al-Hasan al-Basri, who said: "A ruling applies to it." This is the opinion held by al-Thawri, Abu Hanifah, Malik, al-Shafi'i, and their companions.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ مَكْحُولٍ قَالَ: قَالَ زَيْدُ بْنُ ثَابِتٍ فِي السِّنِّ الزَّائِدَةِ ثُلُثُ دِيَتِهَا. وَعَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: فِيهَا حُكْمٌ. وَبِهَذَا يَقُولُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمْ.

L37191 As for the age of the minor—it was narrated to us through the chain of Al-Ḥajjāj ibn Al-Minhāl who reported: Ḥammād ibn Salamah narrated to us → Al-Ḥajjāj ibn Arṭā'ah → Al-Walīd ibn Abī Mālik → his brother: that ʿUmar ibn Al-Khaṭṭāb ruled regarding the developmental stage of a minor whose tooth was broken before the eruption of his permanent incisors (i.e., pre-puberty), with compensation equivalent to [the value of] a camel.

وَأَمَّا سِنُّ الصَّغِيرِ - فَرُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ الْوَلِيدِ بْنِ أَبِي مَالِكٍ عَنْ أَخِيهِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي سِنِّ صَبِيٍّ كُسِرَتْ قَبْلَ أَنْ يُثْغِرَ بِبَعِيرٍ.

L37192 And it was narrated to us through the chain of Abd al-Razzaq from Abu Hanifah, who said: Zaid ibn Thabit ruled regarding the boy whose molars have not erupted: ten dinars.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي حَنِيفَةَ قَالَ: قَالَ زَيْدُ بْنُ ثَابِتٍ فِي سِنِّ الصَّبِيِّ الَّذِي لَمْ يُثْغِرْ عَشَرَةُ دَنَانِيرَ.

L37193 Abū Muḥammad said: “It is the value of the camel among them in the diyah”—ʿAbd al-Razzāq reported from Maʿmar that—“and this is the opinion of some scholars of Kufa.” It is related from al-Ḥasan that he said regarding the age of a boy who has not grown molars: “Should two upright assessors evaluate him? If hair has grown, something is allocated to him; but if it has not grown, he is assessed as equivalent to an adult.”

قَالَ أَبُو مُحَمَّدٍ: وَهِيَ قِيمَةُ الْبَعِيرِ عِنْدَهُمْ فِي الدِّيَةِ - قَالَ عَبْدُ الرَّزَّاقِ قَالَ مَعْمَرٌ - وَهُوَ قَوْلُ بَعْضِ عُلَمَاءِ الْكُوفَةِ وَعَنْ الْحَسَنِ قَالَ فِي سِنِّ الصَّبِيِّ إذَا لَمْ يُثْغِرْ، قَالَ: يَنْظُرُ فِيهِ ذَوَا عَدْلٍ؟ فَإِنْ نَبَتَتْ جُعِلَ لَهُ شَيْءٌ وَإِنْ لَمْ تَنْبُتْ كَانَ كَسِنِّ الرَّجُلِ.

L37194 And from Sulaymān ibn Yasār that he asked for a legal opinion regarding a boy who had not reached puberty whose tooth was injured—is there any blood money for it? He said: No. Abū Ḥanīfa said: There is a discretionary assessment [by the judge]. Mālik and al-Shāfiʿī said: If it grew, there is no blood money for it. Mālik said: If it grew partially, blood money is owed proportionate to its deficiency compared to the next in the hierarchy. If it did not grow, then five fixed portions of blood money are owed.

وَعَنْ سُلَيْمَانَ بْنِ يَسَارٍ أَنَّهُ اسْتَفْتَى فِي غُلَامٍ لَمْ يُثْغِرْ أُصِيبَتْ سِنُّهُ هَلْ فِيهَا مِنْ عَقْلٍ؟ قَالَ: لَا، وَقَالَ أَبُو حَنِيفَةَ: فِيهَا حُكُومَةٌ - وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: إنْ نَبَتَتْ فَلَا شَيْءَ فِيهَا، وَقَالَ مَالِكٌ: إنْ نَبَتَتْ نَاقِصَةً أُعْطِيَ بِقَدْرِ نَقْصِهَا عَنْ الَّتِي تَلِيهَا، فَإِنْ لَمْ تَنْبُتْ فَفِيهَا خَمْسُ فَرَائِضَ.

L37195–37197 This is among the matters in which Abū Ḥanīfah, Mālik, and al-Shāfiʿī each differed from ʿUmar ibn al-Khaṭṭāb. And Zayd ibn Thabit - may Allah be pleased with them both - regarding what has been narrated from them in this chapter, with no opposing opinion from the Companions - may Allah be pleased with them - being known. Abu Muhammad said: Since authentic disagreement exists in this matter, it is impermissible to obligate any compensation except through textual evidence or consensus. As there is neither textual evidence nor consensus requiring anything regarding the age of a child, no obligation whatsoever exists for an error in that matter - and success is from Allah alone.

وَهَذَا مِمَّا خَالَفَ فِيهِ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: عُمَرَ بْنَ الْخَطَّابِ، وَزَيْدَ بْنَ ثَابِتٍ - رَضِيَ اللَّهُ عَنْهُمَا - فِيمَا رُوِيَ عَنْهُمَا فِي هَذَا الْبَابِ، وَلَا يُعْرَفُ لَهُمَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - قَالَ أَبُو مُحَمَّدٍ: فَإِذْ قَدْ صَحَّ الْخِلَافُ فِي ذَلِكَ فَلَا يَجُوزُ أَنْ يُكَلَّفَ أَحَدٌ غَرَامَةً إلَّا بِنَصٍّ أَوْ إجْمَاعٍ، وَلَا نَصَّ وَلَا إجْمَاعَ فِي إيجَابِ شَيْءٍ فِي سِنِّ الصَّبِيِّ فَلَا يَجُوزُ أَنْ يَجِبَ فِي الْخَطَأِ فِي ذَلِكَ شَيْءٌ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

Issue regarding the diyah of the eye.

[مَسْأَلَةٌ دِيَةِ الْعَيْنِ]

L37198 The eye. Abū Muḥammad said: We have previously clarified that the blood money for one eye or both eyes is only attested in the document of ʿAmr ibn Ḥazm, the report of a man from the clan of ʿUmar, the narration of Makhūl, and Ṭāwūs—none of which are reliable, as we have explained. We shall now

. الْعَيْنُ قَالَ أَبُو مُحَمَّدٍ: قَدْ ذَكَرْنَا أَنَّ دِيَةَ الْعَيْنِ وَالْعَيْنَيْنِ لَمْ يَأْتِ إلَّا فِي صَحِيفَةِ عَمْرِو بْنِ حَزْمٍ، وَخَبَرِ رَجُلٍ مِنْ آلِ عُمَرَ، وَخَبَرِ مَكْحُولٍ، وَطَاوُسٍ وَكُلُّهَا لَا يَصِحُّ مِنْهَا شَيْءٌ،

relate, if Allah—the Exalted—wills, what Allah—the Almighty and Majestic—has facilitated for us to recount from the transmissions of the Companions—may Allah be pleased with them—and the Successors—may Allah have mercy on them.

لِمَا ذَكَرْنَا وَنَذْكُرُ إِنْ شَاءَ اللَّهُ تَعَالَى مَا يَسَّرَ اللَّهُ عَزَّ وَجَلَّ لِذِكْرِهِ مِمَّا جَاءَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَعَنْ التَّابِعِينَ رَحْمَةُ اللَّهِ عَلَيْهِمْ.

L37200 Hummam narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrabī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq narrated **to us** from Sufyān al-Thawrī and Maʿmar, both of them from Abū Isḥāq al-Sabīʿī from ʿĀṣim ibn Ḍamrah from ʿAlī ibn Abī Ṭālib, who said: Regarding the eye, half.

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ، كِلَاهُمَا عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: فِي الْعَيْنِ النِّصْفُ.

L37201 And through him to Abd al-Razzaq from Ibn Jurayj from Abd al-Aziz ibn Umar ibn Abd al-Aziz from Umar ibn al-Khattab, who said: The compensation for an eye is half the *diyah*, or the equivalent of that in gold or silver. The compensation for a woman's eye is half her *diyah*, or the equivalent of that in gold or silver.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: فِي الْعَيْنِ نِصْفُ الدِّيَةِ، أَوْ عَدْلُ ذَلِكَ مِنْ الذَّهَبِ أَوْ الْوَرِقِ، وَفِي عَيْنِ الْمَرْأَةِ نِصْفُ دِيَتِهَا، أَوْ عَدْلُ ذَلِكَ مِنْ الذَّهَبِ أَوْ الْوَرِقِ.

L37202 As for the eye of the one-eyed man—in that regard, ʿAbdullāh ibn Rabīʿ narrated to us from ʿAbdullāh ibn ʿUthmān, who narrated from Aḥmad ibn Khālid, who narrated from ʿAlī ibn ʿAbd al-ʿAzīz, who narrated from al-Ḥajjāj ibn al-Minhāl, who narrated from Ḥammād ibn Salamah, from Qatādah, from Abū Mijlaz, who said: A man asked Ibn ʿUmar about a one-eyed man whose [remaining] eye was unintentionally gouged out. ʿAbdullāh ibn Ṣafwān said: "'Umar ruled full blood money for it." The man replied: "I am not asking *you*—I am asking Ibn ʿUmar!" Ibn Ṣafwān retorted: "He [Ibn ʿUmar] narrates to you from ʿUmar—and you ask *me*?"

وَأَمَّا عَيْنُ الْأَعْوَرِ - فَفِي ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ عَنْ أَبِي مِجْلَزٍ قَالَ: إنَّ رَجُلًا سَأَلَ ابْنَ عُمَرَ عَنْ أَعْوَرَ فُقِئَتْ عَيْنُهُ خَطَأً؟ فَقَالَ عَبْدُ اللَّهِ بْنُ صَفْوَانَ: قَضَى فِيهَا عُمَرُ بِالدِّيَةِ كَامِلَةً، فَقَالَ الرَّجُلُ: إنِّي لَسْت إيَّاكَ أَسْأَلُ، إنَّمَا أَسْأَلُ ابْنَ عُمَرَ؟ فَقَالَ: ابْنُ عُمَرَ يُحَدِّثُك عَنْ عُمَرَ وَتَسْأَلُنِي.

L37203 And through him to Hammad ibn Salamah, we narrated from Qatadah from Abd Rabbihi from Abu Iyad that he was asked about a one-eyed man who intentionally gouged out the eye of a man with two sound eyes. He said: The commander—meaning Uthman—ruled that the full diyah must be paid for it, because retaliation cannot be exacted from the one-eyed man.

وَبِهِ إِلَى حَمَّادِ بْنِ سَلَمَةَ نا قَتَادَةُ عَنْ عَبْدِ رَبِّهِ عَنْ أَبِي عِيَاضٍ أَنَّهُ قَالَ فِي رَجُلٍ أَعْوَرَ فَقَأَ عَيْنَ صَحِيحِ الْعَيْنَيْنِ عَمْدًا؟ فَقَالَ: قَضَى فِيهَا الْأَمِيرُ بِالدِّيَةِ كَامِلَةً - يَعْنِي عُثْمَانَ - لِأَنَّهُ لَا يُقْتَصُّ مِنْ الْأَعْوَرِ.

L37204–37206 Narrated to us by Abdullah ibn Rabiʿ, Ibn Mufarrij narrated to us, Qasim ibn Asbagh narrated to us, Ibn Waddah narrated to us, Sahnun narrated to us, narrated to us. Ibn Wahb narrated from Ibn Samʿān from Ibn ʿAbbās,

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونَ نا ابْنُ وَهْبٍ عَنْ ابْنِ سَمْعَانَ عَنْ ابْنِ عَبَّاسٍ قَالَ: دِيَةُ عَيْنِ الْأَعْوَرِ أَلْفُ دِينَارٍ.

who said: The diyah (blood money) for the loss of the remaining eye of a one-eyed person is one thousand dinars.

L37207 Malik reported to me on the authority of Ibn Shihāb that he used to say: "The full diyah is due for the eye of a one-eyed person." Malik said: "I have been informed that Sulaymān ibn Yasār used to say that."

وَأَخْبَرَنِي مَالِكٌ عَنْ ابْنِ شِهَابٍ أَنَّهُ كَانَ يَقُولُ: فِي عَيْنِ الْأَعْوَرِ الدِّيَةُ كَامِلَةٌ قَالَ مَالِكٌ: بَلَغَنِي عَنْ سُلَيْمَانَ بْنِ يَسَارٍ أَنَّهُ كَانَ يَقُولُ ذَلِكَ.

L37208 Ibn Wahb said: Yunus and Malik reported to me from Rabiʿah ibn Abi ʿAbd al-Raḥmān the same report.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي يُونُسُ، وَمَالِكٌ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ مِثْلَهُ.

L37209 Ibn Wahb said: It was reported to me by ʿUmar ibn Qays, Yazīd ibn ʿIyāḍ, and Ibn Lahīʿah. ʿUmar ibn Qays reported from ʿAṭāʾ, from ʿAlī ibn Abī Ṭālib. Ibn Lahīʿah reported from Yazīd ibn Abī Ḥabīb, from Muḥammad ibn Jaʿfar ibn al-Zubayr, from ʿUrwah ibn al-Zubayr. Yazīd ibn ʿIyāḍ said, reporting from ʿAbd al-Malik ibn ʿUbayd, from Saʿīd ibn al-Musayyib. They all said the same as that.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي عُمَرُ بْنُ قَيْسٍ، وَيَزِيدُ بْنُ عِيَاضٍ، وَابْنُ لَهِيعَةَ قَالَ عُمَرُ بْنُ قَيْسٍ: عَنْ عَطَاءٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَقَالَ ابْنُ لَهِيعَةَ: عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ مُحَمَّدِ بْنِ جَعْفَرِ بْنِ الزُّبَيْرِ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ، وَقَالَ يَزِيدُ بْنُ عِيَاضٍ: عَنْ عَبْدِ الْمَلِكِ بْنِ عُبَيْدٍ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، قَالُوا كُلُّهُمْ مِثْلَ ذَلِكَ.

L37210 Ibn Wahb said: Al-Layth ibn Sa'd informed me from Yahya ibn Sa'id al-Ansari that he said: The Sunnah and the opinion of the righteous people is that if a one-eyed man's eye is gouged out, the value of the one-eyed man's eye is one thousand dinars. And if the one-eyed man gouges out the eye of a person with two sound eyes, he must pay him one thousand dinars.

وَقَالَ ابْنُ وَهْبٍ: أَخْبَرَنِي اللَّيْثُ بْنُ سَعْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّهُ قَالَ: السُّنَّةُ، وَرَأْيُ الصَّالِحِينَ: أَنَّ الْأَعْوَرَ إِذَا فُقِئَتْ عَيْنُهُ ثَمَنُ عَيْنِ الْأَعْوَرِ أَلْفُ دِينَارٍ، وَأَنَّهُ إِذَا فَقَأَ الْأَعْوَرُ عَيْنَ صَحِيحِ الْعَيْنَيْنِ غَرِمَ لَهُ أَلْفَ دِينَارٍ.

L37211 It has been reported to us through the chain of Abd al-Razzaq from Ma'mar from Qatāda regarding the eye of a one-eyed person: one thousand dinars. Ma'mar said: Qatāda and al-Zuhrī both stated: If a one-eyed person deliberately gouges out the eye of a sighted individual, he must pay blood money of one thousand dinars. If done unintentionally, he must pay blood money of five hundred dinars. Al-Zuhrī also addressed the case of a man who had whiteness in one eye and whose healthy eye was injured. He said: We hold that the blood money for both eyes should be increased by the amount the other, uninjured eye had already lost in value due to its pre-existing impairment.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي عَيْنِ الْأَعْوَرِ أَلْفُ دِينَارٍ قَالَ مَعْمَرٌ: وَقَالَ قَتَادَةُ، وَالزُّهْرِيُّ مَعًا: إِذَا فَقَأَ الْأَعْوَرُ عَيْنَ صَحِيحِ الْعَيْنَيْنِ عَمْدًا أُغْرِمَ أَلْفَ دِينَارٍ، وَإِذَا فَقَأَهَا خَطَأً أُغْرِمَ خَمْسَمِائَةِ دِينَارٍ وَقَالَ الزُّهْرِيُّ فِي رَجُلٍ فِي إِحْدَى عَيْنَيْهِ بَيَاضٌ فَأُصِيبَتْ عَيْنُهُ الصَّحِيحَةُ، قَالَ: نَرَى أَنْ يُزَادَ فِي عَقْلِ عَيْنَيْهِ مَا نَقَصَ مِنْ الْأُخْرَى الَّتِي لَمْ تُصَبْ.

L37212 And with it adopt Al-Ḥasan al-Baṣrī, Mālik, al-Layth, Aḥmad ibn Ḥanbal, and Isḥāq ibn Rāhwayh.

وَبِهِ يَأْخُذُ الْحَسَنُ الْبَصْرِيُّ، وَمَالِكٌ، وَاللَّيْثُ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ.

وَقَالَ آخَرُونَ: فِيهَا نِصْفُ الدِّيَةِ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ بَعْضِ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «فِي عَيْنِ الْأَعْوَرِ خَمْسُونَ» .

L37213 Others said: In it is half the diyah, as we were narrated via Abd al-Razzaq's chain from Ibn Jurayj - Abd al-Aziz informed me from al-Hakam ibn Utaybah from one of the companions of the Prophet (peace be upon him) who said: "For the eye of the one-eyed person is fifty."

وَعَنْ مَسْرُوقٍ أَنَّهُ قَالَ: فِي عَيْنِ الْأَعْوَرِ نِصَابٌ، أَنَا أَدِي قَتِيلَ اللَّهِ فِيهَا نِصْفَ الدِّيَةِ - وَبِهِ يَقُولُ الشَّعْبِيُّ وَعَنْ عَبْدِ اللَّهِ بْنِ مُغَفَّلٍ أَنَّهُ سُئِلَ عَنْ الرَّجُلِ يَفْقَأُ عَيْنَ الْأَعْوَرِ قَالَ: مَا أَنَا فَقَأْت عَيْنَهُ الْأُخْرَى فِيهَا نِصْفُ الدِّيَةِ.

L37214–37216 Masruq stated: For the eye of a one-eyed person, the standard diyya applies. If an injury to it results in death, half the diyya is owed for the killing of a human being under God's protection. This is also the opinion of Al-Sha'bi. From Abdullah ibn Mughaffal: He was asked about a man who gouges out the eye of a one-eyed person. He said, "I did not gouge his other eye; in this case, half the diyah is owed."

وَعَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: فِي عَيْنِ الْأَعْوَرِ نِصْفُ الدِّيَةِ، [وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ فِي عَيْنِ الْأَعْوَرِ تُفْقَأُ عَيْنُهُ خَطَأً قَالَ: نِصْفُ الدِّيَةِ] .

L37217 It is narrated from 'Ata ibn Abi Rabah that he said: For the eye of a one-eyed person, half the *diyah* is due. [It is narrated from Ibrahim al-Nakha'i that he said regarding the eye of a one-eyed person whose eye is gouged out by mistake: Half the *diyah* is due].

قَالَ أَبُو مُحَمَّدٍ: قَوْلُنَا فِي الْعَيْنِ هُوَ قَوْلُنَا فِي السِّنِّ سَوَاءً سَوَاءً، وَأَنَّهُ إنَّمَا جَاءَتْ فِي دِيَةِ الْعَيْنِ بِالْخَطَأِ آثَارٌ، وَقَدْ تَقَصَّيْنَاهَا - وَلِلَّهِ الْحَمْدُ - لَيْسَ مِنْهَا شَيْءٌ يَصِحُّ.

L37218 Abu Muhammad said: Our ruling regarding the eye is exactly the same as our ruling regarding the tooth. Only traditions concerning blood money for the eye in cases of accidental injury have been transmitted—and we have scrutinized them thoroughly, all praise is due to Allah—but none of them is sound.

وَأَمَّا قَوْلُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ فَإِنَّمَا جَاءَ ذَلِكَ عَنْ عُمَرَ، وَعَلِيٍّ، وَعُثْمَانَ، وَابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ، وَبَعْضِ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، وَعَنْ نَفَرٍ مِنْ التَّابِعِينَ نَحْوَ الْعَشَرَةِ، وَمِثْلُ هَذَا لَا يَجُوزُ أَنْ يُقْطَعَ بِهِ عَلَى جَمِيعِ الْأُمَّةِ إلَّا غَافِلٌ، أَوْ مُسْتَسْهِلٌ لِلْكَذِبِ وَالْقَطْعِ بِمَا لَا عِلْمَ لَهُ بِهِ فَإِنْ صَحَّ إجْمَاعٌ مُتَيَقَّنٌ فِي دِيَةِ الْعَيْنِ، فَنَحْنُ قَائِلُونَ بِهِ، وَإِلَّا فَقَدْ حَصَلْنَا عَلَى السَّلَامَةِ، فَالْإِجْمَاعُ الْمُتَيَقَّنُ فِي هَذَا بَعِيدٌ مُمْتَنِعٌ أَنْ يُوجَدَ فِي مِثْلِ هَذَا، لِأَنَّ الْإِجْمَاعَ حُجَّةٌ مِنْ حُجَجِ اللَّهِ تَعَالَى الْمُتَيَقَّنَةِ الظَّاهِرَةِ الَّتِي قَدْ قَطَعَ اللَّهُ تَعَالَى بِهَا الْعُذْرَ، وَأَبَانَ بِهَا الْحُجَّةَ، وَحَسَمَ فِيهَا الْعِلَّةَ، وَمِثْلُ هَذَا

L37219 As for the statements of the Companions—may Allah be pleased with them—regarding this matter, such reports came only from Umar, Ali, Uthman, Ibn Umar, Ibn Abbas, and some of the Prophet's Companions—peace and blessings of Allah be upon him—along with around ten of the Successors. Such [reports] cannot justify imposing a decisive ruling upon the entire Ummah except by one who is negligent or who trivializes falsehood and asserts matters without knowledge. If an indisputable consensus regarding diyah for the eye (blood-money) were established, we would uphold it. Otherwise, we have secured acquittal [from error]. An indisputable consensus in this matter is far-fetched and impossible to establish, for consensus constitutes one of Allah's certain, manifest proofs through which He has eliminated excuses, clarified arguments, and removed pretexts. Such matters cannot remain hidden from scholars of rigorous inquiry, and truth is not established through

unsubstantiated claims. Since no consensus exists on this issue, nothing is obligatory for unintentional acts, in accordance with Allah's statement: "There is no blame on you for what you do unintentionally, but only for what your hearts deliberately intend" [Al-Ahzab 33:5].[11]

لَا يَسْتَتِرُ عَلَى أَهْلِ الْبَحْثِ، وَالْحَقَائِقُ لَا تُؤْخَذُ بِالدَّعَاوَى، فَإِذْ لَا إِجْمَاعَ فِي ذَلِكَ فَلَا يَجِبُ فِي الْخَطَأِ شَيْءٌ، لِقَوْلِ اللَّهِ تَعَالَى {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

L37220 Abu Muhammad said: As for Malik's ruling that the full diyah is due for [injuring] the eye of a one-eyed person—although he based his opinion on what was reported and authenticated from some Companions—he contradicted the principles of legal analogy (qiyas).

قَالَ أَبُو مُحَمَّد: فَأَمَّا قَوْلُ مَالِكٍ فِي أَنَّ فِي عَيْنِ الْأَعْوَرِ الدِّيَةَ فَإِنَّهُ وَإِنْ تَعَلَّقَ بِمَا جَاءَ وَصَحَّ عَنْ بَعْضِ الصَّحَابَةِ، فَإِنَّهُ قَدْ تَنَاقَضَ فِي الْقِيَاسِ.

L37221–37223 It is astonishing that some of his followers attribute to him the view that analogical reasoning holds greater weight than a solitary report, yet here he has abandoned the analogy—which, if any analogy in the world were to hold true, this would be the one that holds true—by making a distinction between the auditory capacity of someone who hears only with one ear, the hand of someone with an amputated hand, and the foot of someone with an amputated foot, in all of which he ruled only half the blood money, while he deemed the full blood money for the eye of a one-eyed person. They cannot claim consensus in this matter, for there exists disagreement concerning it, which we will mention if God the Exalted wills. In the chapter *On the Amputee's Hand and the Hearing of a Person Lacking One Ear* – and by Allah, the Exalted, we seek aid.

وَالْعَجَبُ - أَنَّ قَوْلًا يَنْسُبُهُ بَعْضُ أَصْحَابِهِ إِلَيْهِ مِنْ أَنَّهُ يَرَى أَنَّ الْقِيَاسَ أَقْوَى مِنْ خَبَرِ الْوَاحِدِ، ثُمَّ هَاهُنَا قَدْ تَرَكَ الْقِيَاسَ الَّذِي لَوْ صَحَّ قِيَاسٌ فِي الْعَالَمِ لَكَانَ هَذَا هُوَ ذَلِكَ الَّذِي يَصِحُّ وَهُوَ أَنَّهُ فَرَّقَ بَيْنَ سَمْعِ امْرِئٍ لَا يَسْمَعُ إِلَّا بِأُذُنٍ وَاحِدَةٍ وَيَدِ إِنْسَانٍ أَقْطَعَ وَرِجْلِ أَقْطَعَ فَلَمْ يَرَ فِي كُلِّ ذَلِكَ إِلَّا نِصْفَ الدِّيَةِ، وَرَأَى فِي عَيْنِ الْأَعْوَرِ الدِّيَةَ كَامِلَةً، وَلَيْسَ لَهُمْ أَنْ يَدَّعُوا فِي هَذَا إِجْمَاعًا، لِأَنَّ فِي هَذَا اخْتِلَافًا سَنَذْكُرُهُ إِنْ شَاءَ اللَّهُ تَعَالَى فِي " بَابِ يَدِ الْأَقْطَعِ، وَسَمْعِ ذِي الْأُذُنِ الْوَاحِدَةِ " وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

L37224 If they say: "We only said that because the one-eyed person's eye constitutes their entire sight - does the obligation in this case equal what is required for the entire sight?" We would reply: This is invalidated against you on two grounds. First: If it were as you claim, you would be obligated to exact retaliation by taking both eyes of the sound-eyed person together, because it is 'sight for sight' - contrary to your own position which you yourselves do not affirm.

فَإِنْ قَالُوا: إِنَّمَا قُلْنَا ذَلِكَ، لِأَنَّ عَيْنَ الْأَعْوَرِ - هِيَ بَصَرُهُ كُلُّهُ - فَالْوَاجِبُ فِي ذَلِكَ مَا يَجِبُ فِي الْبَصَرِ كُلِّهِ؟ قُلْنَا لَهُمْ: هَذَا يَبْطُلُ عَلَيْكُمْ مِنْ وَجْهَيْنِ: أَحَدُهُمَا: أَنَّهُ إِنْ كَانَ كَمَا تَقُولُونَ فَيَجِبُ عَلَيْكُمْ أَنْ تُقِيدُوهُ مِنْ عَيْنَيْ الصَّحِيحِ مَعًا، لِأَنَّهُ بَصَرٌ بِبَصَرٍ، لَا عَلَى قَوْلِكُمْ وَأَنْتُمْ لَا تَقُولُونَ ذَلِكَ.

L37225 The second: It may be said to you - the hearing of one with a single deaf ear constitutes his entire hearing capacity, being more beneficial, stronger, and nearer to complete hearing than the sight of a one-eyed person. For

وَالثَّانِي: أَنَّهُ يُقَالُ لَكُمْ: وَسَمْعُ ذِي الْأُذُنِ الْوَاحِدَةِ الصَّمَّاءِ هُوَ سَمْعُهُ كُلُّهُ، وَهُوَ لَهُ أَنْفَعُ وَأَقْوَى، وَأَقْرَبُ مِنْ تَمَامِ السَّمْعِ مِنْ عَيْنِ الْأَعْوَرِ، فَإِنَّ الْأَعْوَرَ لَا يَرَى إِلَّا مِنْ جِهَةٍ

[11] **Qur'an references (L37219):** Qur'an 33:5 (Al-Ahzab).

the one-eyed sees only from one direction alone, thereby possessing half his vision. Similarly, the hand of an amputee serves as the site of his use, and likewise the leg of an amputee. So assign blood money for all these cases, yet you do not do so?

وَاحِدَةٍ فَقَطْ، فَإِنَّمَا هُوَ نِصْفُ بَصَرِهِ، وَكَذَلِكَ يَدُ الْأَقْطَعِ هِيَ مَحَلُّ تَصَرُّفِهِ، وَرِجْلُ الْأَقْطَعِ أَيْضًا، فَاجْعَلُوا فِي كُلِّ ذَلِكَ دِيَةً، وَأَنْتُمْ لَا تَفْعَلُونَ ذَلِكَ؟

L37226 A third perspective is that, according to your foundational principle, you are not obligated to exact retaliation against a one-eyed person who gouges out one eye of a sighted individual, as this would entail retaliating against the one-eyed person. There is no consensus here, for you would thereby exact retaliation for a complete eye with half an eye. It has been narrated through Abd al-Razzaq's chain from Uthman ibn Sa'id, from Qatadah, from Abu Iyad, that Uthman ibn Affan ruled regarding a one-eyed man who gouged out the eye of a sighted person: "No retaliation applies against him, but he must pay the full diyah for the eye." Sa'id ibn al-Musayyib said: "Retaliation is not exacted from the one-eyed person, but he owes a complete diyah even if the act was intentional." From Abd al-Razzaq, from Ibn Jurayj: I asked 'Ata', "If a one-eyed person intentionally strikes another's eye, is retaliation exacted from him?" He replied: "I do not deem retaliation permissible against him; he must pay the full diyah." From Abd al-Razzaq, who narrated from Ibn Jurayj, from Muhammad ibn Abi Iyad: Umar and Uthman concurred that if a one-eyed person gouges out another's eye, he must pay diyah equivalent to the value of both eyes [of the victim].

وَوَجْهٌ ثَالِثٌ: وَهُوَ أَنَّهُ لَا يَجِبُ عَلَى أَصْلِكُمْ هَذَا أَنْ تُقِيدُوا ذَا عَيْنَيْنِ فَقَأَ إِحْدَاهُمَا أَعْوَرُ فَأَنْتُمْ تُقِيدُونَ مِنَ الْأَعْوَرِ، وَلَا إِجْمَاعَ فِي هَذَا، فَقَدْ أَقَدْتُمْ بَصَرًا كَامِلًا بِنِصْفِ بَصَرٍ؟ وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُثْمَانَ بْنِ سَعِيدٍ عَنْ قَتَادَةَ عَنْ أَبِي عِيَاضٍ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ قَضَى فِي رَجُلٍ أَعْوَرَ فَقَأَ عَيْنَ صَحِيحٍ قَالَ: لَا قَوَدَ عَلَيْهِ وَعَلَيْهِ دِيَةُ عَيْنِهِ وَقَالَ سَعِيدُ بْنُ الْمُسَيِّبِ: لَا يُقَادُ مِنَ الْأَعْوَرِ وَعَلَيْهِ دِيَةٌ كَامِلَةٌ وَإِنْ كَانَ عَمْدًا - وَعَنْ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: الْأَعْوَرُ يُصِيبُ عَيْنَ إِنْسَانٍ عَمْدًا أَيُقَادُ مِنْهُ؟ قَالَ: مَا أَرَى أَنْ يُقَادَ مِنْهُ، أَرَى لَهُ الدِّيَةَ وَافِيَةً وَعَنْ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ مُحَمَّدِ بْنِ أَبِي عِيَاضٍ أَنَّ عُمَرَ، وَعُثْمَانَ اجْتَمَعَا عَلَى أَنَّ الْأَعْوَرَ إِذَا فَقَأَ عَيْنَ آخَرَ فَعَلَيْهِ مِثْلُ دِيَةِ عَيْنَيْهِ.

L37227 And Ali ibn Abi Talib said: Allah the Exalted has established retribution in His Book - "an eye for an eye," as this is known. Thus retribution is required of the offender, for Allah the Exalted does not forget anything.

وَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: أَقَامَ اللَّهُ تَعَالَى الْقِصَاصَ فِي كِتَابِهِ الْعَيْنَ بِالْعَيْنِ وَقَدْ عُلِمَ هَذَا، فَعَلَيْهِ الْقِصَاصُ، فَإِنَّ اللَّهَ تَعَالَى لَمْ يَكُنْ لِيَنْسَى شَيْئًا.

L37228–37229 Abu Muhammad said: As for the Hanafis and Shafi'is, they greatly emphasize the disagreement of a companion when no opposing view is known. Yet here they have deviated from the positions of Umar, Ibn Umar, Ali, and Ibn Abbas—may Allah be pleased with them—with no known opponent among the companions—may Allah be pleased with them—except a weak narration we previously mentioned from an unspecified source. Thus, every group undermines its own foundations and demolishes what it builds. Should any pious person accept this for himself? We praise Allah the Exalted for the

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا الْحَنَفِيُّونَ وَالشَّافِعِيُّونَ فَإِنَّهُمْ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ، وَهُمْ قَدْ خَالَفُوا هَاهُنَا: عُمَرَ، وَابْنَ عُمَرَ، وَعَلِيًّا، وَابْنَ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُمْ فِي هَذَا مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ، إِلَّا رِوَايَةٌ ضَعِيفَةٌ قَدْ ذَكَرْنَاهَا عَمَّنْ لَمْ يُسَمَّ فَكُلُّ طَائِفَةٍ تَنْقُضُ أَصْلَهَا وَتَهْدِمُ مَا تَبْنِي، وَمَا يَنْبَغِي

أَنْ يَرْضَى لِنَفْسِهِ بِهَذَا ذُو وَرَعٍ؟ وَنَحْمَدُ اللَّهَ تَعَالَى عَلَى عَظِيمِ نِعَمِهِ وَأَمَّا الْعَيْنُ الْعَوْرَاءُ - قَالَ عَلِيٌّ: نَذْكُرُ الْآنَ حَدِيثَ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْعَيْنِ الْقَائِمَةِ السَّادَّةِ لِمَكَانِهَا بِثُلُثِ الدِّيَةِ» وَقَالَ بِهَذَا طَائِفَةٌ مِنْ السَّلَفِ الطَّيِّبِ.

greatness of His favors. As for the blind eye—Ali said: We now cite the hadith of Amr ibn Shu'ayb from his father through his grandfather: "Allah's Messenger—peace and blessings be upon him—ruled regarding an existing eye afflicted by a cataract in its place to be compensated with one-third of the diyah." A group of the righteous predecessors held this opinion.[12]

L37230 كَمَا حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ الرَّحِيمِ نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ نا قَتَادَةُ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ عَنْ يَحْيَى بْنِ يَعْمُرَ عَنْ ابْنِ عَبَّاسٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي الْعَيْنِ الْعَوْرَاءِ إِذَا فُضِخَتْ وَالْيَدِ الشَّلَّاءِ إِذَا قُطِعَتْ وَالسِّنِّ السَّوْدَاءِ إِذَا سَقَطَتْ ثُلُثَ دِيَتِهَا وَعَنْ ابْنِ عَبَّاسٍ فِي الْعَيْنِ الْعَوْرَاءِ إِذَا خُسِفَتْ ثُلُثُ الدِّيَةِ.

As narrated to us by Yunus ibn Abdullah, who narrated to us Ahmad ibn Abd al-Rahim, who narrated to us Ahmad ibn Khalid, who narrated to us Muhammad ibn Abd al-Salam al-Khushani, who narrated to us Muhammad ibn Bashshar, who narrated to us Yahya ibn Sa'id al-Qattan, who narrated to us Hisham—that is, al-Dastuwa'i—who narrated to us Qatadah, from Abdullah ibn Buraydah, from Yahya ibn Ya'mur, from Ibn Abbas, that Umar ibn al-Khattab ruled that for a blind eye if ruptured, a paralyzed hand if severed, and a blackened tooth if dislodged: a third of its *diyah*. And from Ibn Abbas regarding a blind eye if sunken: a third of the *diyah*.

L37231 وَقَوْلٌ آخَرُ رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ يَحْيَى بْنِ سَعِيدٍ - هُوَ الْأَنْصَارِيُّ - عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: قَضَى زَيْدُ بْنُ ثَابِتٍ فِي الْعَيْنِ الْقَائِمَةِ إِذَا بُخِصَتْ بِمِائَةِ دِينَارٍ.

Another opinion has been narrated to us through the chain of Waki'—Sufyan al-Thawri—Yahya ibn Sa'id (al-Ansari)—Bukayr ibn 'Abd Allah ibn al-Ashajj—Sulayman ibn Yasar, who said: Zayd ibn Thabit ruled regarding the sound eye - when gouged out - to be compensated with one hundred dinars.

L37232–37234 وَعَنْ سَعِيدِ بْنِ الْمُسَيَّبِ يَقُولُ فِي الْعَيْنِ الْقَائِمَةِ تُبْخَصُ عُشْرُ الدِّيَةِ - وَقَالَ بِهِ غَيْرُهُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا حَمَّادُ بْنُ سَلَمَةَ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ أَنَّهُ قَالَ فِي الْعَيْنِ الْقَائِمَةِ إِذَا بُخِصَتْ خُمْسُ دِيَتِهَا - وَبِهِ يَقُولُ اللَّيْثُ بْنُ سَعْدٍ وَغَيْرُهُ.

And from Sa'īd ibn al-Musayyab, who said concerning the blind eye that remains intact: a tenth of the *diyah* is assessed—and others ruled likewise—as narrated to us through the chain of al-Ḥajjāj ibn al-Minhāl, narrated to us from Ḥammād ibn Salamah, who narrated from Muḥammad ibn Isḥāq. Narrated from Yazid ibn Abdullah ibn Qusayt that he said regarding a sound eye: if its vision is partially impaired, one-fifth of its *diyah* is owed. This ruling is upheld by al-Layth ibn Sa'd and others.

L37235 وَقَوْلٌ آخَرُ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ، وَمَعْمَرٍ قَالَا جَمِيعًا: نا ابْنُ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ فِي الْعَيْنِ الْقَائِمَةِ الَّتِي لَا تُبْصِرُ: إِنْ ثُقِبَتْ، أَوْ بُخِصَتْ فَفِيهَا

Another opinion—as transmitted to us through Abd al-Razzaq's chain from Ibn Jurayj and Ma'mar, both of whom jointly stated: Ibn Abi Najih narrated to us from Mujahid, who ruled regarding an intact eye that cannot see: If

[12] **Hadith references (L37229):** Sunan Abi Dawud 4567; Mishkat al-Masabih 3502.

it is pierced or enucleated, half the value of the diyah for the eye is due—twenty-five camels—even if the assessment had been made initially.

نِصْفُ قَدْرِ الْعَيْنِ - خَمْسٌ وَعِشْرُونَ بَعِيرًا مِنْ الْإِبِلِ - وَإِنْ كَانَ قَدْ أُخِذَ نَذْرُهَا أَوَّلَ مَرَّةٍ.

L37236 Another opinion—as transmitted to us through the chain of Abd al-Razzaq, from Ibn Jurayj, from Abd al-Aziz ibn Umar ibn Abd al-Aziz—states in the book of Umar ibn Abd al-Aziz: If an eye is struck and produces tears that cannot be stopped, two-thirds of the diyah for the eye is owed. If it sheds a tear that does not dry—being a less severe case than the first—half the diyah for the eye is owed. If the eye sheds a tear that flows intermittently, and at times causes loss of vision during the tearing, the compensation is five hundred dinars. From Ibrahim al-Nakhaʿi: For the functional eye of a one-eyed person if injured, the diyah applies. If the eye is gouged out and collapses inward while remaining intact, the compensation requires an amicable settlement.

وَقَوْلٌ آخَرُ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نا عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ فِي كِتَابِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: إنْ كَانَ لُطِمَتْ الْعَيْنُ فَدَمَعَتْ دُمُوعًا لَا تُرْقَأُ، فَلَهَا ثُلُثَا دِيَةِ الْعَيْنِ، وَإِنْ كَانَتْ دَمْعَةً لَا تَجِفُّ دَمْعُهَا - وَهِيَ دُونَ الدَّمْعَةِ الْأُولَى - فَنِصْفُ دِيَةِ الْعَيْنِ، وَإِنْ كَانَتْ دَمْعَةً مِنْ الْعَيْنِ تَسْحَلُ أَحْيَانًا، وَأَحْيَانًا يَذْهَبُ فِيهَا بَصَرُهُ - فَفِيهَا خَمْسُمِائَةِ دِينَارٍ وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: فِي الْعَيْنِ الْعَوْرَاءِ الْقَائِمَةِ إذَا أُصِيبَتْ الدِّيَةُ، فَإِذَا كَانَتْ مَفْقُوءَةً قَائِمَةً نُخْسِفَتْ فَفِيهَا صُلْحٌ.

L37237 And from Ibrāhīm al-Nakhaʿī, via the chain of Jābir al-Juʿfī, there is a ruling concerning the defective eye.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ فِي الْعَيْنِ الْعَوْرَاءِ حُكْمٌ.

L37238 This is also the view of Abū Ḥanīfah, Mālik, al-Shāfiʿī, and their respective schools.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمْ.

L37239 This is the statement of al-Zuhrī. We have transmitted it through the chain of Ibn Wahb. Abū Muḥammad said: This is among the marvels of the world that the Ḥanafīs and Mālikīs claim to follow the report of ʿAmr ibn Shuʿayb from his father from his grandfather when it aligns with their inclinations, yet here they contradict the report of ʿAmr ibn Shuʿayb from his father from his grandfather from the Prophet—peace and blessings of Allah be upon him—and oppose a well-established saying from ʿUmar ibn al-Khaṭṭāb and Ibn ʿAbbās regarding it. ʿAlī said: Muḥammad ibn Saʿīd ibn Nabāt narrated to us, from ʿAbd Allāh ibn Naṣr, from Qāsim ibn Aṣbagh [from Ibn Waḍḍāḥ], from Mūsā ibn Muʿāwiyah, from Wakīʿ, from Hishām al-Dastuwāʾī, from Qatādah, from Saʿīd ibn al-Musayyab, who said concerning a blind eye if it is gouged out: one-third of the diyah is owed.

وَهُوَ قَوْلُ الزُّهْرِيِّ، رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ قَالَ أَبُو مُحَمَّدٍ: هَذَا مِنْ عَجَائِبِ الدُّنْيَا أَنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ: يَدَّعُونَ أَنَّهُمْ يَقُولُونَ بِرِوَايَةِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ إذَا وَافَقَ أَهْوَاءَهُمْ، وَهُمْ هَاهُنَا قَدْ خَالَفُوا رِوَايَةَ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعُمَرَ بْنِ الْخَطَّابِ، وَابْنِ عَبَّاسٍ فِي قَوْلٍ ثَابِتٍ عَنْهُمَا قَالَ عَلِيٌّ: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ [نا ابْنُ وَضَّاحٍ] نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا هِشَامٌ الدَّسْتُوَائِيُّ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ فِي الْعَيْنِ الْعَوْرَاءِ إذَا تَشَتَّرَتْ ثُلُثُ الدِّيَةِ.

L37240–37241 Hummam narrated to us: Ibn Mufarrij narrated to us, Ibn al-A’rabi narrated to us, al-Dabari narrated to us, Abd al-Razzāq narrated to us, Ibn Jurayj

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ إلَى أُمَرَاءِ الْأَجْنَادِ أَنْ يَكْتُبُوا إلَيْهِ بِعِلْمِ عُلَمَائِهِمْ، قَالَ: مِمَّا اجْتَمَعَ عَلَيْهِ فُقَهَاؤُهُمْ: فِي شَتْرِ الْعَيْنِ ثُلُثُ الدِّيَةِ وَرُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ قَالَ: فِي التَّشَتُّرِ فِي الْعَيْنِ رُبْعُ الدِّيَةِ.

informed me from Abd al-Azīz ibn Umar ibn Abd al-Azīz, who said: Umar ibn Abd al-Azīz wrote to the commanders of the military districts instructing them to write to him with the knowledge of their scholars. He said: Among the matters their jurists unanimously agreed upon is that cutting the eyelid requires a third of the diyah. It was narrated to us through the chain of al-Ḥajjāj ibn al-Minhāl: Ḥammād ibn Salamah narrated to us from Qatādah, who said: Splitting of the eyelid requires a quarter of the diyah.

L37242 قَالَ أَبُو مُحَمَّدٍ: لَوْ وَجَدَ الْمَالِكِيُّونَ وَالْحَنَفِيُّونَ أَقَلَّ مِنْ هَذَا لَمَا تَرَدَّدُوا؟ وَأَيُّ إجْمَاعٍ عَلَى أُصُولِهِمْ يَكُونُ أَقْوَى مِنْ هَذَا الْإِجْمَاعِ بِهَذَا السَّنَدِ الثَّابِتِ إلَى أَمِيرِ الْمُؤْمِنِينَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ يَكْتُبُ إلَى أُمَرَاءِ الْأَجْنَادِ يَسْأَلُهُمْ عَنْ إجْمَاعِهِمْ - وَهُوَ خَلِيفَةٌ - لَا يَشِذُّ عَنْ طَاعَتِهِ مُسْلِمٌ فِي شَيْءٍ مِنْ أَقْطَارِ الْأَرْضِ كُلِّهَا أَوَّلِهَا عَنْ آخِرِهَا، مِنْ آخِرِ الْأَنْدَلُسِ، وَطَنْجَةَ، إلَى بِلَادِ السُّودَانِ إلَى آخِرِ السِّنْدِ، وَآخِرِ خُرَاسَانَ، وَآخِرِ أَرْمِينِيَةَ، وَآخِرِ الْيَمَنِ، فَمَا بَيْنَ ذَلِكَ يُجْمِعُ لَهُ فُقَهَاؤُهُمْ: عَلَى أَنَّ فِي شَتْرِ الْعَيْنِ ثُلُثُ الدِّيَةِ - وَلَكِنْ مَا عَلَى الْمُهَوِّلِينَ بِالْإِجْمَاعِ مُؤْنَةٌ فِي خِلَافِ هَذَا الْإِجْمَاعِ فَلَا يَرَوْنَ فِي ذَلِكَ إلَّا حُكُومَةً؟ وَلَكِنْ لِلَّهِ دَرُّ الْإِمَامِ أَبِي عَبْدِ اللَّهِ أَحْمَدَ بْنِ حَنْبَلٍ - رَضِيَ اللَّهُ عَنْهُ - إذْ يَقُولُ: مَا حَدَّثَنَا بِهِ حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ قَالَ: سَمِعْت أَبِي يَقُولُ فِيمَا يَدَّعِي فِيهِ الْإِجْمَاعَ: هَذَا الْكَذِبُ، مَنْ ادَّعَى الْإِجْمَاعَ فَهُوَ كَاذِبٌ، لَعَلَّ النَّاسَ اخْتَلَفُوا، وَلَمْ يَنْتَهِ إلَيْهِ، فَيَقُولُ: لَا نَعْلَمُ النَّاسَ اخْتَلَفُوا، هَذَا دَعْوَى بِشْرٍ الْمَرِيسِيِّ، وَالْأَصَمِّ - وَلَكِنْ نَقُولُ: لَا نَعْلَمُ النَّاسَ اخْتَلَفُوا، وَلَمْ يَبْلُغْنِي ذَلِكَ قَالَ أَبُو مُحَمَّدٍ: هَذَا هُوَ الدِّينُ وَالْوَرَعُ لَا الْجُسْرُ بِلَا عِلْمٍ، كَمَا كَانَ يَقُولُ الشَّعْبِيُّ -

Abu Muhammad said: Had the Malikis and Hanafis found even less than this, would they have hesitated? What consensus on their foundational principles could be stronger than this consensus with its verified chain linking to the Commander of the Faithful Umar ibn Abd al-Aziz? While he was caliph—with no Muslim in any region of the entire earth, from the farthest ends of Andalusia and Tangier to the lands of the Sudan, the extremities of Sindh, Khurasan, Armenia, and Yemen, diverging from his obedience—he wrote to military commanders asking about their consensus. Their jurists unanimously agreed that one-third of blood money applies to the gashing of the eye. Yet those who rashly invoke consensus feel no burden in opposing this consensus—do they not see in this except arbitrary judgment? How magnificent is Allah's gift of Imam Abu Abdullah Ahmad ibn Hanbal—may Allah be pleased with him—when he said, as reported by Humam, reported by Abbas ibn Asbagh, reported by Muhammad ibn Abd al-Malik ibn Ayman, reported by Abdullah ibn Ahmad ibn Hanbal: "I heard my father say regarding those who falsely claim consensus: This is a lie. Whoever claims consensus is a liar. Perhaps people disagreed without his knowledge. Let him instead say: 'We are unaware of people disagreeing.' This is the baseless claim of Bishr al-Marisi and al-Asamm. Rather, we say: We know of no disagreement, nor has any reached us." Abu Muhammad said: This constitutes true religion and scrupulousness—not boldness without knowledge—as al-Sha'bi, may Allah have mercy on him, would respond when asked about a legal ruling: "What did that flawed judgment say? You reckless questioner! I will call you Fisfas (a term of contempt) unless you stop!"

رَحِمَهُ اللَّهُ - إذَا سُئِلَ عَنْ مَسْأَلَةٍ مَاذَا قَالَ فِيهَا الْحُكْمُ الْبَائِسُ أَجْسَرُ جَسَّارًا سَمَّيْتُك الْفِسْفَاسَ إنْ لَمْ تَقْطَعْ.

L37243–37245 Ali said: “Except in matters where two Muslims do not differ—for whoever opposes it is not a Muslim—this...” A sound consensus, such as the consensus on the statement: “There is no god but Allah, Muhammad is the Messenger of Allah,” and the five daily prayers, the month of Ramadan, the Hajj, the comprehensive obligation of Zakat, and matters of this nature—what is known with certainty without doubt, namely the knowledge of all the Companions and their affirmation of it. And with Allah, the Most High, lies all success.

قَالَ عَلِيٌّ: إلَّا مَا لَا يَخْتَلِفُ فِيهِ مُسْلِمَانِ فِي أَنَّ مَنْ خَالَفَهُ فَلَيْسَ مُسْلِمًا - فَهَذَا إجْمَاعٌ صَحِيحٌ، كَالْإِجْمَاعِ عَلَى قَوْلِ: لَا إلَهَ إلَّا اللَّهُ مُحَمَّدٌ رَسُولُ اللَّهِ، وَكَالصَّلَوَاتِ الْخَمْسِ وَشَهْرِ رَمَضَانَ، وَالْحَجِّ، وَجُمْلَةِ الزَّكَاةِ، وَمَا كَانَ هَكَذَا وَمَا تُيُقِّنَ بِلَا شَكٍّ عِلْمُ جَمِيعِ الصَّحَابَةِ وَقَوْلُهُمْ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37246 An issue concerning the diyah for the eyelid.

[مَسْأَلَةٌ دِيَةِ شَفْرِ الْعَيْنِ]

L37247 The margin of the eyelid. As for the margin of the eyelid - it has been transmitted to us through the chain of ʿAbd al-Razzāq, from Muḥammad ibn Rāshid, from Makhūl, from Qabīṣa ibn Dhuʾayb, from Zayd ibn Thābit, that he said: “For the eyelid - a quarter of the diyah.”

شَفْرُ الْعَيْنِ وَأَمَّا شَفْرُ الْعَيْنِ - فَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ رَاشِدٍ عَنْ مَكْحُولٍ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّهُ قَالَ: فِي جَفْنِ الْعَيْنِ رُبْعُ الدِّيَةِ.

L37248 From al-Ḥasan al-Baṣrī: A quarter of the *diyya* applies for each incised wound exposing the bone.

وَعَنْ الْحَسَنِ الْبَصْرِيِّ: فِي كُلِّ شَفْرٍ رُبْعُ الدِّيَةِ.

L37249 From Ḥumām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz, who said: Consensus was reached under ʿUmar ibn ʿAbd al-ʿAzīz regarding the upper eyelid if plucked: half the *diyah* of the eye, and regarding the lower eyelid if plucked: a third of the *diyah* of the eye. ʿAbd al-ʿAzīz ibn ʿUmar said: My father wrote to the commanders of the military districts to write to him with the knowledge of their scholars. He said: Their jurists unanimously agreed that regarding the eye socket, a third of the *diyah* is warranted.

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نَا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: اجْتَمَعَ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي شَفْرِ الْعَيْنِ الْأَعْلَى إذَا نُتِفَ: نِصْفُ دِيَةِ الْعَيْنِ، وَفِي شَفْرِ الْعَيْنِ الْأَسْفَلِ إذَا نُتِفَ: ثُلُثُ دِيَةِ الْعَيْنِ، قَالَ عَبْدُ الْعَزِيزِ بْنُ عُمَرَ: وَكَتَبَ أَبِي إلَى أُمَرَاءِ الْأَجْنَادِ أَنْ يَكْتُبُوا إلَيْهِ بِعِلْمِ عُلَمَائِهِمْ قَالَ: وَمَا اجْتَمَعَ عَلَيْهِ فُقَهَاؤُهُمْ فِي حَجَاجِ الْعَيْنِ ثُلُثُ الدِّيَةِ.

L37250 And through him to Abd al-Razzaq from Ma’mar from Qatada, who said: For every labia, a quarter of the diyah is due if it is severed and the hair in that area does not grow back.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: فِي كُلِّ شَفْرٍ رُبْعُ الدِّيَةِ إذَا قُطِعَ وَلَمْ يَنْبُتْ شَعْرُهُ.

وَبِهِ إِلَى مَعْمَرٍ عَنْ بَعْضِ أَصْحَابِهِ عَنِ الشَّعْبِيِّ قَالَ فِي كُلِّ شَفْرٍ: رُبْعُ دِيَةِ الْعِوَضِ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا دَاوُد بْنُ أَبِي هِنْدٍ قَالَ: قَالَ الشَّعْبِيُّ: فِي الْجَفْنِ الْأَعْلَى ثُلُثُ دِيَةِ الْعَيْنِ، وَفِي الْجَفْنِ الْأَسْفَلِ: ثُلُثَا دِيَةٍ، لِأَنَّهَا تَرُدُّ الْحَدَقَةَ وَمَا قُطِعَ مِنْهَا، فَيُقَدَّرُ ذَلِكَ.

L37251 And through him to Ma’mar from some of his companions from al-Sha‘bi, who said regarding each eyelid: a quarter of the diyah of the eye. Abdullah ibn Rabi‘ narrated to us: Abdullah ibn Muhammad ibn Uthman, Ahmad ibn Khalid, Ali ibn Abdulaziz, al-Hajjaj ibn al-Minhal, Hammad ibn Salamah, Dawud ibn Abi Hind said: al-Sha‘bi said: In the upper eyelid is a third of the diyah of the eye, and in the lower eyelid: two-thirds of the diyah of the eye, because it restrains the eyeball and what is severed from it, and this is taken into account.

وَعَنِ الشَّعْبِيِّ قَالَ: كَانُوا لَا يُوقِنُونَ فِي الشَّعْرِ شَيْئًا.

L37252 And from al-Sha‘bī, he said: They held no certainty whatsoever in poetry.

وَقَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ الثَّوْرِيُّ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمْ: فِي كُلِّ جَفْنٍ مِنْ أَجْفَانِ الْعَيْنِ نِصْفُ دِيَةِ الْعَيْنِ قَالَ الشَّافِعِيُّ: فَإِنْ نُتِفَتْ الْأَهْدَابُ فَلَمْ تَنْبُتْ فَفِيهَا حُكُومَةٌ.

L37253–37254 Abu Hanifa, Sufyan al-Thawri, al-Shafi’i, and their companions said: For each eyelid of the eye, half the diyah of the eye is due. Al-Shafi’i said: If the eyelashes are plucked out and fail to regrow, assessed compensation is required.

وَقَالَ مَالِكٌ، وَأَصْحَابُهُ: لَيْسَ فِي شَفْرِ الْعَيْنِ وَحَاجِبِهَا إِلَّا اجْتِهَادُ الْإِمَامِ. قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مَالِكٍ فَمُخَالِفٌ لِأُصُولِ أَصْحَابِهِ، لِأَنَّهُمْ يُعَظِّمُونَ عَلَى خُصُومِهِمْ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ إِذَا وَافَقَ تَقْلِيدَهُمْ، وَهَاهُنَا خَالَفُوا قَوْلَ زَيْدِ بْنِ ثَابِتٍ، وَلَا يُعْرَفُ لَهُ مِنَ الصَّحَابَةِ مُخَالِفٌ.

L37255 Malik and his followers said: There is nothing regarding the eyelid and its covering except the Imam’s independent reasoning. Abu Muhammad said: As for Malik’s statement, it contradicts the principles of his own school members, because they stress to their opponents the disagreement of a Companion—who has no known dissenter—when the Companion’s opinion aligns with their practice of emulation. Yet here they opposed the ruling of Zayd ibn Thābit, though no dissenter among the Companions is known to have contradicted him.

وَيَحْتَجُّونَ بِقَوْلِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ إِذَا خَالَفَ قَوْلَ خُصُومِهِمْ وَوَافَقَهُمْ - وَهَاهُنَا خَالَفُوا حُكْمَهُ، وَقَوْلَهُ، وَإِجْمَاعَ فُقَهَاءِ الْأَمْصَارِ، وَأَهْلِ عَصْرِهِ لَهُ بِأَصَحِّ إِسْنَادٍ يُمْكِنُ أَنْ يَكُونَ، ثُمَّ أَوْجَبُوا غَرَامَةَ حُكُومَةٍ فِي ذَلِكَ - وَلَا يُعْرَفُ هَذَا الْقَوْلُ عَنْ أَحَدٍ قَبْلَهُمْ.

L37256 They cite as evidence the statement of Umar ibn Abd al-Aziz when his opinion contradicted the opinion of their opponents and aligned with them—yet here they opposed his legal ruling, his statement, the consensus of the jurists of the major cities, and the scholars of his time who supported him with the most authentic chain of transmission possible. Then they imposed a judicially assessed fine in that matter—a view not known to have been held by anyone before them.

L37257 Ali said: As for us, there is no authoritative evidence in our view in anyone’s statement apart from the words of Allah the Exalted and the words of His

Messenger, peace be upon him. Otherwise, wealth would be forbidden. Thus, there is no obligation here for error, based on the words of Allah the Exalted: "There is no blame upon you for what you do by mistake, but only for what your hearts deliberately intend" [al-Ahzab: 5], and the words of the Messenger of Allah, peace be upon him: "Your blood and your wealth are forbidden to you."[13]

قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ - فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ كَلَامِ اللَّهِ تَعَالَى، وَكَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِلَّا فَالْأَمْوَالُ مُحَرَّمَةٌ، فَلَا يَجِبُ هَاهُنَا فِي الْخَطَأِ شَيْءٌ، لِقَوْلِ اللَّهِ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] ، وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L37258 He gouged out the eye of a person, then the one who gouged died.

فَقَأَ عَيْنَ إِنْسَانٍ ثُمَّ مَاتَ الْفَاقِئُ

L37259 Ali said: Abdullah ibn Rabee narrated to us, from Ibn Mufarrij, from Qasim ibn Asbagh, from Ibn Waddah, from Sahnun, from Ibn Wahb, who informed me: Yunus ibn Yazid reported to me from Rabīʿah ibn Abi Abd al-Rahman, who said regarding a man who gouged out another man's eye, whereupon the victim's cousin rose and killed the gouger out of anger for his cousin: "The killer is killed in retribution for the one he killed, and nothing is due to the one whose eye was gouged out - as the right to retribution has lapsed."

قَالَ عَلِيٌّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونَ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ أَنَّهُ قَالَ فِي رَجُلٍ فَقَأَ عَيْنَ رَجُلٍ فَقَامَ ابْنُ عَمٍّ لَهُ فَقَتَلَ الْفَاقِئَ غَضَبًا لِابْنِ عَمِّهِ؟ قَالَ: يُقْتَلُ الْقَاتِلُ بِمَنْ قَتَلَ، وَلَا شَيْءَ لِلْمَفْقُوءَةِ عَيْنُهُ - وَقَدْ فَاتَهُ الْقَوَدُ.

L37260 Ibn Wahb said: It was reported to me from Rabiʿah that he ruled regarding a blind person who gouged out the eye(s) of a sighted person - whether one eye or both eyes: There is no grounds for retaliation here: he must pay blood money. ʿAli stated: These are two contradictory legal opinions, for he mandated blood money for an intentionally gouged eye in one case because retaliation was impossible, yet did not obligate blood money in the other case due to the same impossibility of retaliation. This constitutes an evident contradiction unsupported by any textual authority, legal analogy, or a report from a Companion.

قَالَ ابْنُ وَهْبٍ: وَبَلَغَنِي عَنْ رَبِيعَةَ: أَنَّهُ قَالَ فِي أَعْمَى فَقَأَ عَيْنَ صَحِيحٍ، أَوْ عَيْنَيْهِ جَمِيعًا؟ قَالَ: مَا فِيهِ مَأْخَذٌ لِقَوَدٍ: عَلَيْهِ الدِّيَةُ قَالَ عَلِيٌّ: هَاتَانِ فُتْيَانِ مُتَنَاقِضَتَانِ، لِأَنَّهُ أَوْجَبَ الدِّيَةَ فِي عَيْنٍ فُقِئَتْ عَمْدًا لِأَجْلِ امْتِنَاعِ الْقَوَدِ فِي إِحْدَى الْمَسْأَلَتَيْنِ، وَلَمْ يُوجِبْ فِي الْأُخْرَى دِيَةً لِأَجْلِ امْتِنَاعٍ مِنْ الْقَوَدِ أَيْضًا - هَذَا تَنَاقُضٌ ظَاهِرٌ، لَا يُؤَيِّدُهُ نَصٌّ، وَلَا قِيَاسٌ، وَلَا خَبَرٌ عَنْ صَاحِبٍ.

L37261–37262 The valid ruling in this matter is that retaliation in kind is obligatory when feasible, as Allah the Exalted has commanded, stating: *"Retaliation is ordained in sacred months"* (Quran 2:194). If retaliation becomes impossible due to death, lack of the [corresponding] limb, refusal, or flight, then if there

وَالْحَقُّ مِنْ هَذَا: أَنَّ الْقَوَدَ وَاجِبٌ مَا أَمْكَنَ، كَمَا أَمَرَ اللَّهُ تَعَالَى، إِذْ يَقُولُ {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] فَإِذَا تَعَذَّرَ الْقِصَاصُ بِمَوْتٍ، أَوْ بِعَدَمِ الْعُضْوِ، أَوْ بِامْتِنَاعٍ، أَوْ بِفِرَارٍ، فَإِنْ كَانَ فِي ذَلِكَ دِيَةٌ مُؤَقَّتَةٌ ثَابِتَةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهِيَ

[13] **Qur'an references (L37257):** Qur'an 33:5 (Al-Ahzab).

exists specified blood money established from the Messenger of Allah—peace and blessings be upon him—it becomes obligatory for whoever seeks it, as a substitute for the unfulfilled retaliation, because the textual proof obligates it for them. If no such specified blood money established from the Messenger of Allah—peace and blessings be upon him—exists, then nothing is owed, for rulings are only ordained by Allah the Exalted through the words of His Messenger—peace and blessings be upon him—or through an indisputable consensus.[14]

وَاجِبَةٌ لِمَنْ أَرَادَهَا، مَكَانَ قِصَاصِهِ الْفَائِتِ، لِأَنَّ النَّصَّ أَوْجَبَهَا لَهُ - وَإِنْ لَمْ تَكُنْ هُنَاكَ دِيَةٌ مُؤَقَّتَةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَابِتَةٌ فَلَا شَيْءَ لَهُ، لِأَنَّ الْأَحْكَامَ لَا يُوجِبُهَا إِلَّا اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ إِجْمَاعٍ مُتَيَقَّنٍ.

L37263 Given that this is so—as we have mentioned—one of the two legal opinions of Rabi'ah is correct, and the other is erroneous. As for the correct opinion: his ruling concerning the case where someone gouged another's eye, and the paternal cousin of the injured party retaliated by killing the perpetrator, is that the killer is liable for Retaliation [while the blinded person is entitled to nothing, since Retaliation is no longer attainable for him, and he had no alternative recourse except Retaliation].

فَإِذْ ذَلِكَ كَذَلِكَ - كَمَا ذَكَرْنَا - فَإِحْدَى فُتْيَا رَبِيعَةَ صَوَابٌ، وَالْأُخْرَى خَطَأٌ فَأَمَّا الصَّوَابُ - فَفُتْيَاهُ فِي الَّذِي فَقَأَ عَيْنَ آخَرَ فَوَثَبَ ابْنُ عَمِّ الْمَفْقُوءَةِ عَيْنُهُ فَقَتَلَ الْفَاقِئَ: أَنَّ عَلَى الْقَاتِلِ الْقَوَدَ [وَلَا شَيْءَ لِلْمَفْقُوءَةِ عَيْنُهُ، لِأَنَّهُ قَدْ فَاتَهُ الْقَوَدُ، وَلَمْ يَكُنْ لَهُ غَيْرُ الْقَوَدِ] .

L37264 As for the error—his ruling regarding a blind person who gouges out the eye of a sighted individual, or both eyes: that qisas is not applicable, only blood money—this constitutes error because he imposed blood money which neither Allah the Exalted nor His Messenger (peace be upon him) ordained, nor is supported by any valid analogy or sound explicit text, while denying the qisas that Allah the Exalted mandated in the explicit text of the Quran. True success in correct judgment comes only from Allah, the Exalted.

وَأَمَّا الْخَطَأُ - فَقَوْلُهُ فِي أَعْمَى فَقَأَ عَيْنَ صَحِيحٍ، أَوْ عَيْنَيْهِ: أَنَّهُ لَا قَوَدَ عَلَيْهِ، وَإِنَّمَا عَلَيْهِ الدِّيَةُ؟ وَذَلِكَ: أَنَّهُ أَوْجَبَ دِيَةً لَمْ يُوجِبْهَا اللَّهُ تَعَالَى، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا قِيَاسٌ، وَلَا نَصٌّ صَحِيحٌ، وَمَنَعَ الْقَوَدَ الَّذِي أَوْجَبَهُ اللَّهُ تَعَالَى فِي نَصِّ الْقُرْآنِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ جَنَى عَلَى عَيْنٍ ثُمَّ فُقِئَتْ]

A case concerning liability for injuring an eye that subsequently ruptured.

L37265

L37266 2031 - Issue: If someone causes injury to an eye, then it is subsequently gouged out? ʿAlī said: ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn ʿAbdullāh ibn Muḥammad ibn ʿUthmān narrated to us via Aḥmad ibn Khālid, via ʿAlī ibn ʿAbd al-ʿAzīz, via al-Ḥajjāj ibn al-Minhāl, via Ḥammād ibn Salamah from al-Ḥajjāj ibn Arṭāʾa, that Masrūq, Shurayḥ, al-Shaʿbī, and Ibrāhīm al-Nakhaʿī ruled regarding a man whose eye was gouged out after

٢٠٣١ - مَسْأَلَةٌ: جَنَى عَلَى عَيْنٍ ثُمَّ فُقِئَتْ؟ قَالَ عَلِيٌّ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نَا حَمَّادُ بْنُ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ أَنَّ مَسْرُوقًا، وَشُرَيْحًا، وَالشَّعْبِيَّ، وَإِبْرَاهِيمَ النَّخَعِيّ

[14] **Qur'an references (L37262):** Qur'an 2:194 (Al-Baqarah).

part of it had previously been impaired: The compensation owed by him is deducted by the proportion of vision already lost from it.

L37267–37269 Ali said: This contains neither Quran, nor Sunnah, nor consensus. This narration is invalid because it comes from al-Ḥajjāj ibn Arṭāʾah. Even if it were authentic, no authority lies in anyone's statement apart from the Messenger of Allah (peace be upon him). We have stated: Wealth is prohibited except through textual evidence or consensus. If all we have mentioned was unintentional, there is no liability. But if intentional, retaliation applies to the extent possible. If it is feasible to cause a loss of eyesight equivalent to what he caused, as he lost it, this should be enforced as a substitute or to the possible extent. If this proves unattainable, Allah the Exalted has said: "Allah does not burden a soul beyond its capacity" (2:286). Therefore, the obligatory duty in this matter is to uphold due etiquette, as the Messenger of Allah (peace be upon him) said: "Whoever among you sees an evil act, let him correct it by physically intervening if he is able," and as Allah, the Most High, says: "And the recompense for an evil deed is an evil like it" (Quran 42:40).[15]

L37270 If we are incapable of attaining the most precise equivalent, we must strive for the closest possible equivalence to the mentioned verse within our capacity. Disciplinary punishment and imprisonment are an evil; thus, they serve as retribution for another evil of a lesser kind that we were unable to match. And with Allah, the Most High, lies success.

L37271 **A juristic question: A person inflicted a head wound on another, causing the victim's sight to be lost. The perpetrator then said, "He was blind."**

L37272 2032 - Issue: A man struck another, causing him to lose his sight. The question arose: "Was he already blind?" Ali said: It was narrated to us through the chain of Abu Bakr ibn Abi Shaybah, via Zayd ibn al-Hubab, via Sufyan al-Thawri, via Khalid al-Nili, from al-Hakam ibn ʻUtaybah and Hammad ibn

[15] **Qur'an references (L37267):** Qur'an 2:286 (Al-Baqarah); Qur'an 42:40 (Ash-Shuraa).

قَالُوا فِي رَجُلٍ فُقِئَتْ عَيْنُهُ، وَقَدْ كَانَ ذَهَبَ مِنْهَا شَيْءٌ: إنَّهُ يُلْقَى عَنْهُ بِقَدْرِ مَا ذَهَبَ مِنْهَا.

قَالَ عَلِيٌّ: هَذَا لَيْسَ فِيهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، وَهَذِهِ رِوَايَةٌ سَاقِطَةٌ، لِأَنَّهَا عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ، وَلَوْ صَحَّتْ فَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ قُلْنَا: إنَّ الْأَمْوَالَ مُحَرَّمَةٌ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ، فَإِنْ كَانَ كُلُّ مَا ذَكَرْنَا خَطَأً فَلَا شَيْءَ فِيهِ، وَإِنْ كَانَ عَمْدًا فَالْقَوَدُ مَا أَمْكَنَ، وَإِنْ أَمْكَنَ ذَهَابُ شَيْءٍ مِنْ قُوَّةِ الْبَصَرِ كَمَا ذَهَبَ هُوَ أُنْفِذَ ذَلِكَ بُدُوءًا، أَوْ بِمَا أَمْكَنَ، وَإِنْ لَمْ يَكُنْ ذَلِكَ، فَقَدْ قَالَ اللَّهُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إلا وُسْعَهَا} [البقرة: ٢٨٦] فَالْوَاجِبُ فِي ذَلِكَ الْأَدَبُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ» ، وَلِقَوْلِ اللَّهِ تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] .

فَإِذَا عَجَزْنَا عَنْ الْمِثْلِ الْأَخَصِّ لَزِمَنَا أَنْ نَأْتِيَ بِأَقْصَى مَا نَقْدِرُ عَلَيْهِ مِنْ التَّمَاثُلِ لِلْآيَةِ الْمَذْكُورَةِ، وَالْأَدَبُ وَالسِّجْنُ سَيِّئَةٌ، فَهُمَا جَزَاءُ سَيِّئَةٍ أُخْرَى عَجَزْنَا عَنْ مِثْلِهَا مِنْ نَوْعِهَا الْأَدْنَى - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ شَجَّ إنْسَانًا فَذَهَبَ بَصَرُهُ فَقَالَ كَانَ أَعْمَى]

٢٠٣٢ - مَسْأَلَةٌ: شَجَّ إنْسَانًا فَذَهَبَ بَصَرُهُ فَقَالَ: كَانَ أَعْمَى؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا زَيْدُ بْنُ الْحُبَابِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ خَالِدٍ النِّيلِيِّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، أَنَّهُمَا قَالَا فِي رَجُلٍ شَجَّ رَجُلًا فَذَهَبَتْ عَيْنُهُ - مِنْ

Abi Sulayman, that they both ruled regarding a man who inflicted a head injury on another, resulting in the loss of his eye—which was unrelated to that head injury. Al-Hakam said: "If witnesses testify that the eye was lost due to the strike, it is acceptable." Hammad said: "If witnesses testify that he struck him on the day he inflicted the injury while the eye was sound, it is acceptable."

غَيْرِ تِلْكَ الشَّجَّةِ - فَقَالَ الْحَكَمُ: إنْ شَهِدُوا أَنَّهَا ذَهَبَتْ مِنْ الضَّرْبَةِ فَهُوَ جَائِزٌ، وَقَالَ حَمَّادٌ: إنْ شَهِدُوا أَنَّهُ ضَرَبَهُ - يَوْمَ ضَرَبَهُ - وَهِيَ صَحِيحَةٌ، فَهُوَ جَائِزٌ.

L37273 Ali stated: Even if he was sound, it is possible that his eye was lost due to a cause other than that specific wound, so testimony is necessary for that, as Al-Ḥakam stated that the eye was lost due to that wound. If the witnesses testified to that—and it was intentional—then retaliation in kind is required in both cases: for the eye, he must lose his eye, and for the wound, he must be inflicted with a wound as he inflicted.

قَالَ عَلِيٌّ: وَإِنْ كَانَ صَحِيحًا فَقَدْ يُمْكِنُ أَنْ تَذْهَبَ عَيْنُهُ مِنْ غَيْرِ تِلْكَ الشَّجَّةِ فَلَا بُدَّ مِنْ الشَّهَادَةِ فِي ذَلِكَ كَمَا قَالَ الْحَكَمُ إنَّهَا ذَهَبَتْ مِنْ تِلْكَ الشَّجَّةِ، فَإِنْ شَهِدَ الشُّهُودُ بِذَلِكَ - وَكَانَ عَمْدًا - فَالْقَوَدُ فِي ذَلِكَ مِنْ كِلَا الْأَمْرَيْنِ، وَمِنْ الْعَيْنِ، فَلَا بُدَّ مِنْ إذْهَابِ عَيْنِهِ، وَمِنْ شَجِّهِ كَمَا شَجَّ.

L37274 Ali said: The proof of that is the word of Allah the Most High: "So whoever commits aggression against you, retaliate against him in the same manner as he aggressed against you" [Al-Baqarah: 194]. This is an aggression involving two acts on his part: inflicting a head wound and destroying an eye. Therefore, both acts of retribution must necessarily be enforced.[16]

قَالَ عَلِيٌّ: بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] وَهَذَا اعْتِدَاءٌ مِنْهُ بِفِعْلَيْنِ: شَجِّهِ، وَإِذْهَابِ عَيْنِهِ، فَلَا بُدَّ مِنْ الْقَوَدَيْنِ كِلَيْهِمَا.

L37275–37277 If they argue using what we have narrated through the chain of Abū Bakr ibn Abī Shaybah—who narrated from Ismāʿīl ibn ʿUlayyah, from Ayyūb al-Sakhtiyānī, from ʿAmr ibn Dīnār, from Jābir ibn ʿAbdullāh—regarding "a man who struck another man with a horn in his knee. The injured man came to the Prophet—peace and blessings be upon him—seeking retaliation. He was told: 'Wait until he recovers.' But he refused and hastened. Consequently, his leg became disabled, while the leg of the one against whom retaliation was taken healed. When he returned to the Prophet—peace and blessings be upon him—he said: 'You have no claim—since you refused.'" We maintain: This report is our decisive evidence and mainstay, for the Messenger of Allah—peace and blessings be upon him—explicitly commanded him to delay. Until he recovers so that retaliation may be exacted from him to the extent of the condition he reaches upon recovery. But he refused to wait, so the

فَإِنْ احْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا إسْمَاعِيلُ بْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَجُلًا طَعَنَ رَجُلًا بِقَرْنٍ فِي رُكْبَتِهِ فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَسْتَقِيدُ، فَقِيلَ لَهُ: حَتَّى تَبْرَأَ، فَأَبَى وَعَجَّلَ، فَاسْتَقَادَ فَعَنِتَتْ رِجْلُهُ وَبَرِئَتْ رِجْلُ الْمُسْتَقَادِ مِنْهُ، فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ: لَيْسَ لَكَ شَيْءٌ، قَدْ أَبَيْتَ» ؟ قُلْنَا: هَذَا الْخَبَرُ هُوَ حُجَّتُنَا وَعُمْدَتُنَا، وَذَلِكَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ أَمَرَهُ بِالتَّأْخِيرِ حَتَّى يَبْرَأَ فَيُقَادَ لَهُ بِمَا تَبْلُغُهُ تِلْكَ الْحَالُ الَّتِي يَبْرَأُ عَلَيْهَا، فَأَبَى، فَأَعْطَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَقَّهُ، فَلَمَّا عَنِتَتْ رِجْلُهُ - وَالْعَنَتُ: الْبُرْءُ عَلَى عِوَجٍ لَمْ يُمْكِنْ أَنْ يَسْتَقِيدَ مِنْ الْعِوَجِ أَصْلًا فَلَا

[16] **Qur'an references (L37274):** Qur'an 2:194 (Al-Baqarah).

Messenger of Allah—peace and blessings of Allah be upon him—granted him his right. When his leg healed with a deformity causing hardship—and "hardship" here refers to recovery with a deformity that makes retaliation entirely impossible, and thus he is entitled to nothing. Were it not for the obligation to enforce retaliation in all possible instances, there would be no justification for delaying it. And success is from Allah, the Exalted.

L37278 **A jurisprudential case regarding a criminal injury to one limb that results from it in the invalidity of another limb.**

L37279 Issue 2033: The opinion of later scholars regarding an injury to one limb causing permanent disablement of another limb. Ali said: Abū Ḥanīfah said: If someone inflicts a *muwaddiḥah* wound (one that exposes the bone) on another, causing the loss of both eyes; or if his finger is severed and another finger becomes disabled; or if one of his hands is severed and the other becomes disabled - whichever of the two it may be; or if his finger is severed and his hand becomes disabled; or if part of his finger is severed and the entire finger is rendered useless; or if he inflicts a *muwaddiḥah* wound on him which develops into a displaced fracture - there is no retaliation for any of these, and the perpetrator is liable for *arsh* (fixed compensation).

L37280 Abū Yūsuf and Muḥammad ibn al-Ḥasan—his two companions—said: For a single limb, an injury such as a muwāḍiḥah wound (exposing bone) that becomes a transferring wound, or cutting off a fingertip resulting in paralysis of the finger. They stated: If one inflicts a muwāḍiḥah head wound (exposing bone) causing the loss of an eye, or severs a finger leading to the impairment of another finger or another hand, retaliation (qiṣāṣ) is due for the first injury and prescribed compensation (arsh) is due for the second.

L37281 It has been reported from Abū Yūsuf, Muḥammad, and Abū Ḥanīfah as well: that if he cuts off his fingertip and the finger detaches from the joint, or his entire hand detaches from the joint, or part of his tooth is fractured and the entire tooth dislodges, retaliation was applicable for the whole tooth, the entire hand, or all the fingers. And if he cuts off his finger and the palm is severed from the mid-forearm and he healed, no retaliation is due from him - as though he began cutting it from the mid-forearm.

شَيْءَ لَهُ، وَلَوْلَا وُجُوبُ الْقَوَدِ مِنْ كُلِّ مَا يُمْكِنُ لَمَا كَانَ لِتَأْخِيرِهِ مَعْنًى - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ جِنَايَةٍ عَلَى عُضْوٍ بَطَلَ مِنْهُ عُضْوٌ آخَرُ]

٢٠٣٣ - مَسْأَلَةٌ: قَوْلُ الْمُتَأَخِّرِينَ فِي جِنَايَةٍ عَلَى عُضْوٍ بَطَلَ مِنْهُ عُضْوٌ آخَرُ؟ قَالَ عَلِيٌّ: قَالَ أَبُو حَنِيفَةَ: إذَا شَجَّ آخَرَ مُوضِحَةً فَذَهَبَتْ عَيْنَاهُ، أَوْ قُطِعَتْ أُصْبُعُهُ فَشُلَّتْ أُصْبُعٌ لَهُ أُخْرَى، أَوْ قُطِعَتْ إحْدَى يَدَيْهِ فَشُلَّتْ الْأُخْرَى - أَيَّتُهُمَا كَانَتْ - أَوْ قُطِعَتْ أُصْبُعُهُ فَشُلَّتْ يَدُهُ، أَوْ قُطِعَ بَعْضُ أُصْبُعِهِ فَبَطَلَتْ الْأُصْبُعُ كُلُّهَا، أَوْ شَجَّهُ مُوضِحَةً فَصَارَتْ مُنْقَلَةً، فَلَا قِصَاصَ فِي شَيْءٍ مِنْ ذَلِكَ، وَعَلَيْهِ الْأَرْشُ.

وَقَالَ أَبُو يُوسُفَ وَمُحَمَّدُ بْنُ الْحَسَنِ صَاحِبَاهُ: مِثْلَ هَذَا فِي الْعُضْوِ الْوَاحِدِ كَالْمُوضِحَةِ تَصِيرُ مُنْقَلَةً، أَوْ قَطَعَ أُنْمُلَةً فَشُلَّتْ أُصْبُعُهُ، قَالَا: وَأَمَّا إذَا شَجَّ مُوضِحَةً فَبَطَلَتْ عَيْنُهُ، أَوْ قَطَعَ أُصْبُعَهُ فَبَطَلَتْ أُصْبُعٌ أُخْرَى، أَوْ يَدٌ أُخْرَى، فَعَلَيْهِ الْقِصَاصُ فِي الْأُولَى، وَعَلَيْهِ الْأَرْشُ فِي الْأُخْرَى.

وَقَدْ رُوِيَ عَنْ أَبِي يُوسُفَ، وَمُحَمَّدٍ، وَأَبِي حَنِيفَةَ أَيْضًا: أَنَّهُ إنْ قَطَعَ لَهُ أُنْمُلَةً فَسَقَطَتْ مِنْ الْمَفْصِلِ أُصْبُعُهُ، أَوْ يَدُهُ كُلُّهَا مِنْ الْمَفْصِلِ أَوْ كُسِرَ بَعْضُ سِنِّهِ فَسَقَطَتْ السِّنُّ كُلُّهَا: كَانَ الْقِصَاصُ فِي السِّنِّ كُلِّهَا، وَفِي جَمِيعِ الْيَدِ، وَفِي جَمِيعِ الْأَصَابِعِ، وَأَنَّهُ إنْ

قَطَعَ أُصْبُعَهُ فَسَقَطَتْ الْكَفُّ مِنْ نِصْفِ السَّاعِدِ وَبَرِئَ فَلَا قِصَاصَ لَهُ، كَأَنَّهُ ابْتَدَأَ قَطْعَهَا مِنْ نِصْفِ السَّاعِدِ.

L37282 They distinguished between disablement and the extinction of obligations.

وَفَرَّقُوا بَيْنَ الشَّلَلِ وَالسُّقُوطِ.

L37283–37285 Uthman al-Batti said: If someone intentionally gouges out another's eye and the other eye is lost, retaliation (qisas) is enforced by gouging out both eyes of the perpetrator. Malik said: If someone cuts off another's finger, causing their hand to become paralyzed, the perpetrator is liable for retribution (qisas) for the finger, and the victim is entitled to prescribed indemnity (arsh) for the hand. In his view, both monetary compensation (diya) and retribution can be applied together to a single limb.

وَقَالَ عُثْمَانُ الْبَتِّيُّ: إذَا فَقَأَ عَيْنَهُ عَمْدًا فَذَهَبَتْ الْعَيْنُ الْأُخْرَى اُقْتُصَّ مِنْهُ وَفُقِئَتْ عَيْنَا الْفَاقِئِ جَمِيعًا وَقَالَ مَالِكٌ إذَا قَطَعَ أُصْبُعَهُ فَشُلَّتْ يَدُهُ فَعَلَيْهِ الْقِصَاصُ مِنْ الْأُصْبُعِ، وَلَهُ الْأَرْشُ فِي الْيَدِ - وَيَجْتَمِعُ فِي قَوْلِهِ الْعَقْلُ وَالْقِصَاصُ جَمِيعًا فِي عُضْوٍ وَاحِدٍ.

L37286 Al-Shafi'i said: If someone cuts one of the two testicles and the other is destroyed, retaliation is exacted from him for the one he cut, and he is liable for the monetary compensation for the other.

وَقَالَ الشَّافِعِيُّ: إنْ قَطَعَ إحْدَى أُنْثَيَيْهِ فَذَهَبَتْ الْأُخْرَى اُقْتُصَّ مِنْهُ فِي الَّتِي قَطَعَ، وَعَلَيْهِ الدِّيَةُ فِي الْأُخْرَى.

L37287 Abu Muhammad said: The ruling concerning all of this is what is confirmed to have originated from an intentional crime. By necessity, we know that it is entirely intentional crime and aggression. Therefore, retaliation or compensation is obligatory in such cases, applying equally to loss of life and lesser injuries.

قَالَ أَبُو مُحَمَّد: الْحُكْمُ فِي هَذَا كُلِّهِ مَا تَيَقَّنَ أَنَّهُ تَوَلَّدَ مِنْ جِنَايَةِ الْعَمْدِ فَبِالضَّرُورَةِ نَدْرِي أَنَّهُ كُلَّهُ جِنَايَةُ عَمْدٍ وَعُدْوَانٍ، فَالْوَاجِبُ فِي ذَلِكَ الْقَوَدُ أَوْ الْمُفَادَاةُ، سَوَاءٌ فِي ذَلِكَ النَّفْسُ وَمَا دُونَهَا.

L37288 The height of astonishment is that they all claim to be proponents of analogy—as they purport—yet they unanimously agree that if one severs another's finger, resulting in death, qisas for the life is obligatory. But those among them who prohibit qisas argue that when severing a finger results in the loss of the palm, retaliation for the palm cannot be enforced. Is there a more egregious contradiction than this? As for when another criminal act arises not stemming from the first—such as severing someone's hand, causing his other hand to become paralyzed—there is no liability here, neither qisas nor anything else. If it is not conclusively established that the second act originated from the first criminal injury, we cannot affirm any obligation upon the perpetrator. Since we lack certainty that anything binds him, it is im-

وَالْعَجَبُ كُلُّهُ أَنَّهُمْ كُلُّهُمْ أَصْحَابُ قِيَاسٍ - بِزَعْمِهِمْ - وَهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ مَنْ قَطَعَ أُصْبُعَ آخَرَ فَمَاتَ مِنْهَا، فَإِنَّ عَلَيْهِ الْقَوَدَ فِي النَّفْسِ، ثُمَّ يَمْنَعُ - مَنْ مَنَعَ مِنْهُمْ - فِيمَنْ قَطَعَ أُصْبُعَ آخَرَ فَذَهَبَتْ كَفُّهُ مِنْهَا: أَنْ يُقَادَ مِنْهُ فِي الْكَفِّ - فَهَلْ فِي التَّنَاقُضِ أَفْحَشُ مِنْ هَذَا؟ وَأَمَّا إذَا أَمْكَنَ أَنْ تَتَوَلَّدَ الْجِنَايَةُ الْأُخْرَى مِنْ غَيْرِ الْأُولَى فَلَا شَيْءَ فِيهَا، لَا قَوَدَ وَلَا غَيْرَهُ، مِثْلُ أَنْ يَقْطَعَ لَهُ يَدًا فَتُشَلَّ لَهُ الْأُخْرَى، فَهَذَا إنْ لَمْ يُتَيَقَّنْ أَنَّهُ تَوَلَّدَ مِنْ الْجِنَايَةِ الْأُولَى فَلَسْنَا عَلَى يَقِينٍ مِنْ وُجُوبِ شَيْءٍ عَلَى الْجَانِي، وَإِذَا لَمْ نَكُنْ عَلَى يَقِينٍ

permissible to hold him liable for anything—whether against his body or his wealth—due to the saying of Allah's Messenger (peace be upon him): "Your blood, your wealth, your honor, and your bodies are inviolable among you."

مِنْ أَنَّهُ يَلْزَمُهُ شَيْءٌ فَلَا يَجُوزُ أَنْ يَلْزَمَ شَيْئًا، لَا فِي بَشَرَتِهِ وَلَا فِي مَالِهِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ».

L37289 Ali said: There was among our companions a young man named Yabqā ibn ʿAbd al-Malik. His teacher struck him with a pen on his cheek during his childhood, causing his eye to atrophy. This constitutes an intentional act necessitating legal retribution (qawad for injury), because the strike was on the nerve bundle connected to vision. And with Allah, the Exalted, is success.

قَالَ عَلِيٌّ: وَكَانَ فِي أَصْحَابِنَا فَتًى اسْمُهُ: يَبْقَى بْنُ عَبْدِ الْمَلِكِ ضَرَبَهُ مُعَلِّمُهُ فِي صِبَاهُ بِقَلَمٍ فِي خَدِّهِ فَيَبِسَتْ عَيْنُهُ، فَهَذَا عَمْدٌ يُوجِبُ الْقَوَدَ، لِأَنَّ الضَّرْبَةَ كَانَتْ فِي الْعَصَبَةِ الْمُتَّصِلَةِ بِالنَّاظِرِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L37290 **Issue: If someone detains another until their eye is gouged out or their limb is severed.**

[مَسْأَلَةٌ أَمْسَكَ آخَرَ حَتَّى فُقِئَتْ عَيْنُهُ أَوْ قُطِعَ عُضْوُهُ]

L37291–37293 2034 - Issue: If someone restrains another until his eye is gouged, his limb severed, or he is beaten, ʿAlī said: ʿAbdullāh ibn Rabīʿ narrated from Ibn Mufarrij, Qāsim ibn Aṣbagh narrated from Ibn Waḍḍāḥ, who narrated from Sahnūn, who narrated from Ibn Wahb. Ibn Wahb reported from Yūnus ibn Yazīd, on the authority of Ibn Shihāb, that he ruled regarding a group who collectively restrain a man - while one among them gouges his eye, breaks his legs or hands, knocks out his teeth, or inflicts injuries of this nature - that legal retaliation (qisas) is applied against the one who physically perpetrated the act. As for the others who restrained him, they shall be punished with a painful and humiliating punishment. If the victim opts for diyya, the diyya becomes obligatory upon all of them - they are held financially responsible to pay it in full, jointly and equally liable.

٢٠٣٤ - مَسْأَلَةٌ: مَنْ أَمْسَكَ آخَرَ حَتَّى فُقِئَتْ عَيْنُهُ، أَوْ قُطِعَ عُضْوُهُ، أَوْ ضُرِبَ قَالَ عَلِيٌّ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونَ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنِ ابْنِ شِهَابٍ أَنَّهُ كَانَ يَقُولُ فِي الرَّهْطِ يَجْتَمِعُونَ عَلَى الرَّجُلِ فَيُمْسِكُونَهُ فَيَفْقَأُ أَحَدُهُمْ عَيْنَهُ، أَوْ يَكْسِرُ رِجْلَيْهِ، أَوْ يَدَيْهِ، أَوْ أَسْنَانَهُ، أَوْ نَحْوَ هَذَا: أَنَّهُ يُقَادُ مِنَ الَّذِي بَاشَرَ ذَلِكَ مِنْهُ وَأَمَّا الْآخَرُونَ الَّذِينَ أَمْسَكُوهُ فَيُعَاقَبُونَ عُقُوبَةً مُوجِعَةً مُنَكِّلَةً، فَإِنْ اسْتَحَبَّ الْمُصَابُ الدِّيَةَ كَانَتِ الدِّيَةُ عَلَيْهِمْ كُلِّهِمْ يَغْرَمُونَهَا جَمِيعًا سَوَاءً.

Yunus reported: Rabiʿah said, "If the one whose eyes were gouged desires diyah, he is entitled to twelve thousand dirhams for his eyes. If those who restrained him did so solely to gouge his eyes, the diyah is collectively incumbent upon all of them. But if they restrained him to slap or beat him without intending to gouge his eyes, diyah is only incumbent upon the one who gouged his eyes, excluding his accomplices."

قَالَ يُونُسُ: وَقَالَ رَبِيعَةُ إِنْ أَحَبَّ الَّذِي فُقِئَتْ عَيْنَاهُ الدِّيَةَ فَلَهُ اثْنَا عَشَرَ أَلْفَ دِرْهَمٍ فِي عَيْنَيْهِ - فَإِنْ كَانَ الَّذِي أَمْسَكُوهُ إِنَّمَا أَمْسَكُوهُ لِيَفْقَأَ عَيْنَيْهِ فَعَلَيْهِمُ الدِّيَةُ جَمِيعًا - وَإِنْ كَانُوا أَمْسَكُوهُ لِيَصُكَّهُ، أَوْ لِيَضْرِبَهُ، لَا يُرِيدُونَ بِذَلِكَ فَقْءَ عَيْنَيْهِ، فَالدِّيَةُ عَلَى الَّذِي فَقَأَ عَيْنَيْهِ دُونَ أَصْحَابِهِ.

L37295 Ibn Wahb said: Ibn Samʿān said: Rabīʿah said: If he seeks retaliation for mur-

der, retaliation shall be applied to all of them: those who directly committed the act and those who restrained the victim.

قَالَ ابْنُ وَهْبٍ: قَالَ ابْنُ سَمْعَانَ: قَالَ رَبِيعَةُ: إِنْ أَرَادَ الْقَوَدَ أُقِيدَ مِنْهُمْ جَمِيعًا، مِمَّنْ بَاشَرَ ذَلِكَ، وَمِمَّنْ أَمْسَكَهُ.

L37296 Abū Muḥammad said: As for obligating blood money upon all of them and prohibiting qisas (retaliation) against all of them, this is undoubtedly an error and a manifest contradiction. This is because they must either have all gouged both his eyes, or not all of them did so—only those who directly perpetrated it, as there is no third possibility. If they all gouged both his eyes, then qisas (retaliation) is obligatory upon all of them, just as blood money is obligatory upon all of them, with no distinction. If not all of them gouged it, but only the direct perpetrator specifically, then imposing blood money on those who neither gouged, broke, nor severed is an error—and this is undeniably clear.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا إِيجَابُ الدِّيَةِ عَلَيْهِمْ كُلِّهِمْ، وَالْمَنْعُ مِنْ الْقَوَدِ مِنْهُمْ كُلِّهِمْ: فَخَطَأٌ لَا إشْكَالَ فِيهِ، وَتَنَاقُضٌ ظَاهِرٌ، لِأَنَّهُمْ لَا يَخْلُو مِنْ أَنْ يَكُونُوا كُلُّهُمْ فَقَأَهُ أَوْ لَمْ يَفْقَأْهُ كُلُّهُمْ، لَكِنْ مَنْ بَاشَرَهُ خَاصَّةً، لَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ - فَإِنْ كَانُوا كُلُّهُمْ فَقَأَ عَيْنَيْهِ فَالْقَوَدُ عَلَيْهِمْ كُلِّهِمْ، كَمَا الدِّيَةُ عَلَيْهِمْ كُلِّهِمْ وَلَا فَرْقَ - وَإِنْ كَانُوا لَيْسَ كُلُّهُمْ فَقَأَهُ، لَكِنَّ الْمُبَاشِرَ خَاصَّةً، فَإِلْزَامُ الدِّيَةِ فِي ذَلِكَ مَنْ لَمْ يَفْقَأْ وَلَا كَسَرَ وَلَا قَطَعَ خَطَأٌ - وَهَذَا لَا خَفَاءَ بِهِ.

L37297 As for Rabīʿah's statement regarding imposing retaliation upon all of them or blood money upon all of them, it is not contradictory but erroneous. This is because the restrainer—another person—intending to gouge out his eyes, cut off his hand, castrate him, commit a wrong against him, or strike him, is never referred to in linguistic or legal (sharīʿah) terms as "the gouger," "the cutter," "the breaker," or "the striker." If he is not designated by any of these terms, then retaliation does not apply to him for that act, since Allah the Exalted has said: "So whoever transgresses against you, retaliate against him in the same manner as he transgressed against you" [Al-Baqarah: 194]. Thus, this opinion is invalid without doubt.[17]

وَأَمَّا قَوْلُ رَبِيعَةَ فِي إيجَابِ الْقَوَدِ عَلَى جَمِيعِهِمْ، أَوْ الدِّيَةِ عَلَى جَمِيعِهِمْ، فَلَمْ يَتَنَاقَضْ وَلَكِنَّهُ خَطَأٌ، لِأَنَّ الْمُمْسِكَ آخَرَ لِيَفْقَأَ عَيْنَيْهِ، أَوْ لِيَقْطَعَ يَدَهُ، أَوْ لِيَخْصِيَ، أَوْ لِيَجْنِيَ عَلَيْهِ، أَوْ لِيَضْرِبَ، لَا يَقَعُ عَلَيْهِ أَلْبَتَّةَ فِي اللُّغَةِ، وَلَا فِي الشَّرِيعَةِ اسْمُ " فَاقِئٍ " وَلَا اسْمُ " قَاطِعٍ " وَلَا اسْمُ " كَاسِرٍ " وَلَا اسْمُ " ضَارِبٍ " وَإِذَا لَمْ يَكُنْ شَيْئًا مِنْ هَذَا فَلَا قَوَدَ عَلَيْهِ فِي ذَلِكَ، لِأَنَّ اللَّهَ تَعَالَى إنَّمَا قَالَ {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] فَبَطَلَ هَذَا الْقَوْلُ بِلَا شَكٍّ.

L37298 This is among the matters in which Mālik disagreed with his two teachers, Rabiʿah and al-Zuhrī, for they held that in cases of intentional injury to the eye, the choice lies between qawad or diyah—whereas he maintained that only qawad applies. They were the two rams of Madinah.

وَهَذَا مِمَّا خَالَفَ فِيهِ مَالِكٌ شَيْخَيْهِ: رَبِيعَةَ، وَالزُّهْرِيَّ، لِأَنَّهُمَا جَعَلَا فِي جِنَايَةِ الْعَمْدِ فِي الْعَيْنِ الْخِيَارَ بَيْنَ الْقَوَدِ، أَوْ الدِّيَةِ - وَهُوَ لَا يَرَى فِيهَا إلَّا الْقَوَدَ فَقَطْ - وَهُمَا كَبْشَا الْمَدِينَةِ.

L37299–37301 Ali said: The judgment in this is that *qisas* is applied to the gouger,

[17] **Qur'an references (L37297):** Qur'an 2:194 (Al-Baqarah).

the bone-breaker, and the limb-severer. As for the one who strikes similarly to what was done, the one who withholds action shall be disciplined through discretionary punishment and imprisoned—according to what the judge deems appropriate—in compliance with the statement of Allah's Messenger (peace be upon him): "Whoever among you witnesses evil, let him rectify it with his hand."

L37302 Regarding his command—peace and blessings be upon him—to administer discretionary punishment for offenses below the prescribed penalty, which are punishable by ten lashes or fewer, as we will mention in the "Chapter on Discretionary Punishment," God, the Exalted willing, in the "Book of Prescribed Penalties."

L37303 If someone says: "You assert that concerning one who detains another for killing and he is killed, he must be imprisoned until he dies. Is this contrary to what you have stated here, or not?"

L37304 Our response—and success is from Allah, the Most High—is that this does not contradict anything from it, for the ruling in this matter is Allah's statement: *"So whoever aggressed against you, retaliate against him in like manner to his aggression"* [Al-Baqarah: 194]. Thus, whoever commits an act described as aggression—thereby becoming an aggressor—must have retaliation exacted upon him in like manner by Allah's command. Therefore, one who detains another until they die must be detained in the same manner, and one who confines until death occurs—this does not constitute killing. Hence, it is obligatory to confine him until he dies, as this constitutes equivalence to his aggression. We disregard whether the duration is long or short, since neither a textual proof nor consensus exists that requires consideration of this—and success is from Allah, the Most High.[18]

L37305 **A legal issue regarding the diyah (compensation) for an animal's eye.**

L37306 Issue 2035: The eye of an animal? Ali said: Abu Umar Ahmad ibn Qasim narrated to us: My father Qasim ibn Muhammad ibn Qasim in-

[18] **Qur'an references (L37304):** Qur'an 2:194 (Al-Baqarah).

قَالَ عَلِيٌّ: وَالْحُكْمُ فِي هَذَا هُوَ أَنْ يُقْتَصَّ مِنْ الْفَاقِئِ، وَالْكَاسِرِ، وَالْقَاطِعِ وَالضَّارِبِ بِمِثْلِ مَا فَعَلَ، وَيُعَزَّرُ الْمُمْسِكُ، وَيُسْجَنُ، عَلَى مَا يَرَاهُ الْحَاكِمُ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ» .

وَلِأَمْرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالتَّعْزِيرِ فِي كُلِّ مَا دُونَ الْحَدِّ عَشَرَةَ أَسْوَاطٍ فَأَقَلَّ، عَلَى مَا نَذْكُرُهُ فِي " بَابِ التَّعْزِيرِ " إنْ شَاءَ اللَّهُ تَعَالَى مِنْ " كِتَابِ الْحُدُودِ ".

فَإِنْ قَالَ قَائِلٌ: إنَّكُمْ تَقُولُونَ فِيمَنْ أَمْسَكَ آخَرَ لِلْقَتْلِ فَقُتِلَ: إنَّهُ يُسْجَنُ حَتَّى يَمُوتَ، فَهَذَا خِلَافٌ لِمَا قُلْتُمْ هَاهُنَا أَمْ لَا؟

فَجَوَابُنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّهُ لَيْسَ ذَلِكَ مُخَالِفًا لِشَيْءٍ مِنْهُ، لِأَنَّ الْحُكْمَ فِي هَذَا قَوْلُ اللَّهِ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] فَكُلُّ مَنْ فَعَلَ فِعْلًا يُوصَفُ بِهِ - وَكَانَ بِهِ مُتَعَدِّيًا - فَإِنَّهُ يَجِبُ أَنْ يُتَعَدَّى عَلَيْهِ بِمِثْلِهِ بِأَمْرِ اللَّهِ تَعَالَى، فَالْمُمْسِكُ آخَرَ حَتَّى قُتِلَ، مُمْسِكٌ لَهُ، وَحَابِسٌ حَتَّى مَاتَ، وَلَيْسَ قَاتِلًا، فَالْوَاجِبُ أَنْ يُحْبَسَ حَتَّى يَمُوتَ، فَهُوَ مِثْلُ مَا اعْتَدَى بِهِ، وَلَا نُبَالِي بِطُولِ الْمُدَّةِ مِنْ قِصَرِهَا إذْ لَمْ يَأْتِ بِمُرَاعَاةِ ذَلِكَ نَصٌّ وَلَا إجْمَاعٌ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ دِيَةُ عَيْنُ الدَّابَّةِ]

٢٠٣٥ - مَسْأَلَةٌ: عَيْنُ الدَّابَّةِ؟ قَالَ عَلِيٌّ: نا أَبُو عُمَرَ أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ أَخْبَرَنِي جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا زَكَرِيَّا بْنُ يَحْيَى النَّاقِدُ نا سَعِيدُ بْنُ سُلَيْمَانَ عَنْ

formed me, reporting from my grandfather Qasim ibn Asbagh who narrated to us: Zakariyya ibn Yahya al-Naqid narrated to us, from Sa'id ibn Sulayman, from Abu Umayyah ibn Ya'la, from Abu al-Zinad, from Amr ibn Wahb, from his father, from Zayd ibn Thabit: "The Prophet—peace and blessings be upon him—did not rule regarding head injuries except in three cases: the bone-displacing wound (al-munaqqilah), the bone-exposing wound (al-muwaddihah), and the extensive wound (al-ammah). As for the eye of a horse: a quarter of its value is due." Muhammad ibn Sa'id ibn Nabat narrated to us: Abdullah ibn Nasr narrated to us, Qasim ibn Asbagh narrated to us, Ibn Waddah narrated to us, Musa ibn Mu'awiyah narrated to us, Waki' narrated to us, from Abu Janab—who is Yahya ibn Abi Hayyah al-Kalbi—from Abu Awn Muhammad ibn Ubaydullah al-Thaqafi, from Shurayh: Umar ibn al-Khattab wrote to him concerning a horse whose eye was gouged out, instructing to appraise the horse's value, then a quarter of its value is due for the eye.

أَبِي أُمَيَّةَ بْنِ يَعْلَى نا أَبُو الزِّنَادِ عَنْ عَمْرِو بْنِ وَهْبٍ عَنْ أَبِيهِ عَنْ زَيْدِ بْنِ ثَابِتٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقْضِ فِي الرَّأْسِ إِلَّا فِي ثَلَاثٍ: الْمُنَقِّلَةِ، وَالْمُوضِحَةِ، وَالْآمَّةِ - وَفِي عَيْنِ الْفَرَسِ بِرُبْعِ ثَمَنِهِ» : نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا أَبُو جَنَابٍ - هُوَ يَحْيَى بْنُ أَبِي حَيَّةَ الْكَلْبِيُّ - عَنْ أَبِي عَوْنٍ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ الثَّقَفِيِّ عَنْ شُرَيْحٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَتَبَ إِلَيْهِ فِي فَرَسٍ فُقِئَتْ عَيْنُهُ: أَنْ يُقَوِّمَ الْفَرَسَ، ثُمَّ يَكُونُ فِي عَيْنِهِ رُبْعُ قِيمَتِهِ.

L37307–37309 Narrated to us Abdullah ibn Rabee, narrated to us Abdullah ibn Muhammad ibn Uthman, narrated to us Ahmad ibn Khalid, narrated to us Ali ibn Abd al-Aziz. Al-Ḥajjāj ibn al-Minhāl reported to us from Ḥammād ibn Salamah, from ʿAbd al-Malik ibn ʿUmayr, who said: A dihqān gouged out the eye of a horse belonging to ʿUrwah ibn al-Jaʿd. Saʿd ibn Abī Waqqāṣ wrote to ʿUmar ibn al-Khaṭṭāb seeking his ruling. ʿUmar wrote back: "Offer the dihqān a choice: if he wishes to take the horse and pay al-sharwā, or pay a quarter of its price." The horse was appraised at twenty thousand, so the dihqān paid five thousand.

نَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نَا حَمَّادُ بْنُ سَلَمَةَ أَنَا عَبْدُ الْمَلِكِ بْنُ عُمَيْرٍ قَالَ: إِنَّ دِهْقَانًا فَقَأَ عَيْنَ فَرَسٍ لِعُرْوَةَ بْنِ الْجَعْدِ، فَكَتَبَ سَعْدُ بْنُ أَبِي وَقَّاصٍ إِلَى عُمَرَ بْنِ الْخَطَّابِ يَسْأَلُهُ عَنْ ذَلِكَ، فَكَتَبَ عُمَرُ إِلَيْهِ: أَنْ خَيِّرِ الدِّهْقَانَ، فَإِنْ شَاءَ أَخَذَ الْفَرَسَ، وَأَعْطَى الشَّرْوَى، وَإِنْ شَاءَ أَعْطَى رُبْعَ ثَمَنِهِ، فَقُوِّمَ الْفَرَسُ عِشْرِينَ أَلْفًا، فَغَرِمَ خَمْسَةَ آلَافٍ.

L37310 On the authority of Abd al-Razzaq from Ibn Jurayj from Abd al-Karim that Ali ibn Abi Talib said: One-fourth is owed for the eye of a beast of burden - meaning from its price.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْكَرِيمِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: فِي عَيْنِ الدَّابَّةِ الرُّبْعُ - يَعْنِي مِنْ ثَمَنِهَا.

L37311 From Muhammad ibn Sirin that Shuraih said regarding a beast of burden whose eye is gouged out: Its owner holds the option (al-sharwa). If he agrees, he may receive compensation amounting to a quarter of its value.

وَعَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ شُرَيْحًا قَالَ فِي الدَّابَّةِ إِذَا فُقِئَتْ عَيْنُهَا لِصَاحِبِهَا الشَّرْوَى، فَإِنْ رَضِيَ جَبَرَهَا بِرُبْعِ ثَمَنِهَا.

L37312 From Ibn Jurayj: I asked 'Aṭā', "The actual animal [as compensation]?" He replied, "A quarter," as they claimed.

وَعَنِ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: عَيْنُ الدَّابَّةِ، قَالَ: الرُّبْعَ، زَعَمُوا.

L37313 And through the chain of Abd al-Razzaq from Sufyan ibn Uyayna from Mujalid from al-Sha'bi: Umar ibn al-Khattab ruled regarding a camel's eye that was injured for half its value. Then he examined it afterward and said: "I see no diminishment in its strength nor in its guidability," whereupon he ruled for a quarter of its value.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مُجَالِدٍ عَنْ الشَّعْبِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي عَيْنِ جَمَلٍ أُصِيبَتْ بِنِصْفِ ثَمَنِهِ - ثُمَّ نَظَرَ إلَيْهِ بَعْدُ فَقَالَ: مَا أَرَاهُ نَقَصَ مِنْ قُوَّتِهِ، وَلَا مِنْ هِدَايَتِهِ، فَقَضَى فِيهِ بِرُبْعِ ثَمَنِهِ.

L37314 From Al-Ḥasan ibn Ḥayy concerning the eye of an animal: a quarter of its value is owed. If its tail is cut off, liability is imposed for the decrease in its value.

وَعَنْ الْحَسَنِ بْنِ حَيٍّ فِي عَيْنِ الدَّابَّةِ رُبْعُ ثَمَنِهَا، فَإِنْ قُطِعَ ذَنَبُهَا أُغْرِمَ مَا نَقَصَهَا.

L37315 Abu Hanifah and Zufar said: For a horse, camel, or cow whose eye is destroyed, the compensation is a quarter of their price. If the eye of a sheep is destroyed, there is no compensation except the decrease in its value. Malik, Al-Shafi'i, and Zufar – in one of his two opinions – said: There is no compensation for any of these except the decrease in price alone. This is the opinion of Abu Sulayman and our companions.

وَقَالَ أَبُو حَنِيفَةَ، وَزُفَرُ: فِي الْفَرَسِ، وَالْبَعِيرِ، وَالْبَقَرَةِ تُفْقَأُ عَيْنُ كُلِّ وَاحِدٍ مِنْهُمْ: رُبْعُ ثَمَنِهِ، فَإِنْ فَقَأَ عَيْنَ شَاةٍ فَلَيْسَ فِي ذَلِكَ [إلَّا مَا نَقَصَهَا - وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ، وَزُفَرُ - فِي أَحَدِ قَوْلَيْهِ - لَيْسَ فِي كُلِّ ذَلِكَ] إلَّا مَا نَقَصَ مِنْ الثَّمَنِ فَقَطْ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا -.

L37316 Al-Layth said: If someone gouges the eye of a beast, breaks its leg, or severs its tail, he must pay its full price or provide its equivalent.

وَقَالَ اللَّيْثُ: إنْ فَقَأَ عَيْنَ دَابَّةٍ، أَوْ كَسَرَ رِجْلَهَا، أَوْ قَطَعَ ذَنَبَهَا، فَعَلَيْهِ ثَمَنُهَا كُلُّهَا، أَوْ مِثْلُهَا.

L37317 Abū Muḥammad said: As for the mentioned ḥadīth, it is unsound, for it is transmitted through Abū Umayyah Ismāʿīl ibn Yaʿlā al-Thaqafī—who is considered unreliable.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْحَدِيثُ الْمَذْكُورُ فَلَا يَصِحُّ، لِأَنَّهُ مِنْ رِوَايَةِ أَبِي أُمَيَّةَ إسْمَاعِيلِ بْنِ يَعْلَى الثَّقَفِيِّ - وَلَيْسَ بِشَيْءٍ.

L37318–37319 As for the narration concerning this matter from ʿUmar ibn al-Khaṭṭāb, Saʿd ibn Abī Waqqāṣ, Shurayḥ, and ʿAṭā: it is established.

وَأَمَّا الرِّوَايَةُ فِي ذَلِكَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَسَعْدِ بْنِ أَبِي وَقَّاصٍ، وَشُرَيْحٍ، وَعَطَاءٍ: فَثَابِتَةٌ.

L37320 As for the narration ascribed to Ali ibn Abi Talib—that he ruled in that matter with half the value—and the similar report from Umar, these are two weak ḥadīths. Regarding the one attributed to Ali, it is transmitted from an unknown narrator, from Muhammad ibn Jabir al-Yamami—an abandoned (matrūk) transmitter—from Jabir al-Ju'fi, a discarded narrator.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّهُ قَضَى فِي ذَلِكَ بِنِصْفِ الْقِيمَةِ - وَعَنْ عُمَرَ بِمِثْلِ ذَلِكَ، فَوَاهِيَتَانِ: أَمَّا الَّتِي عَنْ عَلِيٍّ - فَهِيَ عَمَّنْ لَا يُدْرَى عَنْ مُحَمَّدِ بْنِ جَابِرٍ الْيَمَامِيِّ - وَهُوَ هَالِكٌ - عَنْ جَابِرٍ الْجُعْفِيِّ - وَهُوَ مَفْرُوغٌ مِنْهُ.

L37321 As for the narration attributed to Umar ibn al-Khattab, the same applies, for it comes through Mujalid—a weak narrator—narrating from al-Sha'bi, who is cited as narrating from Umar, though al-Sha'bi was not born until approximately ten years after Umar's death.

وَأَمَّا الَّتِي عَنْ عُمَرَ بْنِ الْخَطَّابِ فَمِثْلُ ذَلِكَ، لِأَنَّهَا عَنْ مُجَالِدٍ - وَهُوَ ضَعِيفٌ - عَنْ الشَّعْبِيِّ عَنْ عُمَرَ، وَلَمْ يُولَدْ الشَّعْبِيُّ إلَّا بَعْدَ مَوْتِ عُمَرَ بِنَحْوِ عَشَرَةِ أَعْوَامٍ.

L37322 Abu Muhammad said: However, the Malikis may cite as evidence a hadith weaker than this one when it aligns with their school's doctrine, just as they cite the narration: "No one should lead the prayer sitting after me."

قَالَ أَبُو مُحَمَّدٍ: إلَّا أَنَّ الْمَالِكِيِّينَ قَدْ يَحْتَجُّونَ بِأَسْقَطَ مِنْ هَذَا الْحَدِيثِ - إذَا وَافَقَ تَقْلِيدَهُمْ - كَاحْتِجَاجِهِمْ بِـ «لَا يَؤُمَّنَّ أَحَدٌ بَعْدِي جَالِسًا» .

L37323 And with a ḥadīth prohibiting istizhār (seeking clarity/memorization), and with very many [matters]—we have previously mentioned them in scattered contexts—and we will compile them, if Allah, the Exalted, wills.

وَبِحَدِيثِ حَرَامٍ فِي الِاسْتِظْهَارِ، وَبِكَثِيرٍ جِدًّا - قَدْ ذَكَرْنَاهُ مُفَرَّقًا - وَسَنَجْمَعُهُ إنْ شَاءَ اللَّهُ تَعَالَى.

L37324 Ali said: "As for us, there is no valid proof in our view except in the explicit text of the Quran, an established Sunnah from the Messenger of Allah (peace and blessings be upon him), or an indisputable consensus—one with no disagreement from anyone. None of these evidences apply to this matter."

قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ، فَإِنَّهُ لَا حُجَّةَ عِنْدَنَا إلَّا فِي نَصِّ قُرْآنٍ، أَوْ سُنَّةٍ ثَابِتَةٍ، عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ إجْمَاعٍ مُتَيَقَّنٍ، لَا خِلَافَ فِيهِ مِنْ أَحَدٍ، وَلَيْسَ فِي هَذِهِ الْمَسْأَلَةِ شَيْءٌ مِنْ هَذِهِ الْبَرَاهِينِ.

L37325 Since that is the case, the Messenger of Allah - May Allah's peace and blessings be upon him - said: "Your blood and your wealth are sacred and must not be violated." Therefore, it is impermissible to hold liable the one who gouges an animal's eye except for what is obligated by explicit textual evidence or consensus.

فَإِذْ ذَلِكَ كَذَلِكَ، فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَجُوزُ إلْزَامُ فَاقِئِ عَيْنِ الدَّابَّةِ إلَّا مَا أَوْجَبَهُ نَصٌّ أَوْ إجْمَاعٌ.

L37326 Allah the Exalted has said: {So whoever transgresses against you, transgress against him in the same manner as he has transgressed against you} [Al-Baqarah: 194]. Therefore, it is obligatory according to this verse to make him liable only for the value of the loss incurred—and success comes from Allah alone.[19]

وَقَدْ قَالَ اللَّهُ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] فَوَاجِبٌ بِهَذِهِ الْآيَةِ إلْزَامُهُ قِيمَةَ مَا نَقَصَ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37327 A legal issue regarding the eyelid if it is injured, resulting in the loss of its hair.

[مَسْأَلَةٌ الْحَاجِبِ إذَا أُصِيبَ حَتَّى يَذْهَبَ شَعْرُهُ]

L37328 2036 - Issue: Abū Muḥammad said: People have differed regarding both

[19] **Qur'an references (L37326):** Qur'an 2:194 (Al-Baqarah).

eyebrows. Narrated by Ḥammām ibn Mufarrij from Ibn al-Aʿrābī from al-Dabarī from ʿAbd al-Razzāq from Ibn Jurayj from ʿAmr ibn Shuʿayb, who said: Abū Bakr al-Ṣiddīq ruled that if both eyebrows are injured until their hair is lost, the compensation shall be two muwadiḥat (equivalent to ten camels).

٢٠٣٦ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: قَدْ اخْتَلَفَ النَّاسُ فِي الْحَاجِبَيْنِ: نا حُمَامُ بْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَضَى أَبُو بَكْرٍ الصِّدِّيقُ فِي الْحَاجِبِ إذَا أُصِيبَ حَتَّى يَذْهَبَ شَعْرُهُ، فَقَضَى فِيهِ مُوضِحَتَيْنِ عَشْرًا مِنْ الْإِبِلِ.

L37329–37330 Others held a different opinion, as transmitted through the mentioned chain from Abd al-Razzaq via Ibn Jurayj: Abdul Karim informed us that it reached him from the Companions of the Prophet - peace and blessings of Allah be upon him - concerning an eyebrow experiencing partial hair loss, that a quarter of the diyah applies to it, with compensation for the lost portion calculated proportionally. If the eyebrow is injured in a manner that exposes the bone and removes its hair, the diyah applies solely to the eyebrow itself without compensation for the bone-exposing wound (al-mūḍiḥah). If injured by a dislocated bone (al-manqūlah), the diyah applies to both the eyebrow and the dislocation. It is reported from Zayd ibn Thabit that one-third of the diyah applies to a single eyebrow. Al-Shaʻbi said: The full diyah applies for both eyebrows.

وَقَالَ آخَرُونَ: غَيْرَ هَذَا: كَمَا رُوِّينَا بِالْإِسْنَادِ الْمَذْكُورِ إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنَا عَبْدُ الْكَرِيمِ أَنَّهُ بَلَغَهُ عَنْ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْحَاجِبِ يَتَحَصَّصُ شَعْرُهُ أَنَّ فِيهِ الرُّبُعَ، وَفِيمَا ذَهَبَ مِنْهُ بِالْحِسَابِ، فَإِنْ أُصِيبَ الْحَاجِبُ بِمَا يُوضِحُ وَيُذْهِبُ شَعْرَهُ: كَانَ قَدْرَ الْحَاجِبِ فَقَطْ، وَلَمْ يَكُنْ لِلْمُوضِحَةِ قَدْرٌ، فَإِنْ أُصِيبَ بِمَنْقُولَةٍ: كَانَ قَدْرَ الْحَاجِبِ وَالْمَنْقُولَةِ جَمِيعًا وَرُوِيَ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّ فِي الْحَاجِبِ الْوَاحِدِ ثُلُثُ الدِّيَةِ وَقَالَ الشَّعْبِيُّ: فِي الْحَاجِبَيْنِ الدِّيَةُ.

L37331 From Saʻīd ibn al-Musayyab, who said: For the two eyebrows - if they necessitate full diyah, full diyah is due for both; and for one of the two, half the diyah is due.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: فِي الْحَاجِبَيْنِ إذَا اسْتَوْعَبَا الدِّيَةَ - وَفِي أَحَدِهِمَا نِصْفُ الدِّيَةِ.

L37332 From Ibrahim al-Nakhāʿī, he said: It was said, "For two [parts/instances] of a human, the full diyah is due, and for one, half." I asked: "Two parts?" He replied: "Perhaps that is the case." Then he said: "But for each single [part/instance] of a human, the full diyah is due."

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ يُقَالُ فِي كُلِّ اثْنَيْنِ مِنْ الْإِنْسَانِ الدِّيَةُ، وَفِي كُلِّ وَاحِدٍ النِّصْفُ؟ قُلْت: الثِّنْتَيْنِ؟ قَالَ: لَعَلَّ ذَلِكَ، قَالَ: وَفِي كُلِّ وَاحِدٍ مِنْ الْإِنْسَانِ الدِّيَةُ.

L37333 From al-Shaʻbi, he said: For every two in a human, the diyah applies. ʻAbdullāh ibn Rabīʻ reported from ʻAbdullāh ibn Muḥammad ibn ʻUthmān, who reported from Aḥmad ibn Khālid, who reported from ʻAlī ibn ʻAbd al-ʻAzīz, who reported from al-Ḥajjāj ibn al-Minhāl, who reported from Ḥammād ibn Salamah, who reported from al-Ḥajjāj ibn Arṭāh, from al-Ḥakam ibn ʻUtaybah, that Shurayḥ said: For the two eyebrows, two lips, two hands, and two

وَعَنْ الشَّعْبِيِّ قَالَ: فِي كُلِّ اثْنَيْنِ مِنْ الْإِنْسَانِ الدِّيَةُ نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا الْحَجَّاجُ بْنُ أَرْطَاةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّ شُرَيْحًا قَالَ: فِي الْحَاجِبَيْنِ، وَالشَّفَتَيْنِ، وَالْيَدَيْنِ، وَالرِّجْلَيْنِ: نِصْفُ الدِّيَةِ يَعْنِي فِي كُلِّ وَاحِدٍ مِنْهُمَا - وَفِي كُلِّ فَرْدٍ فِي الْإِنْسَانِ

legs—half the diyah applies, meaning for each individual one of them—and for each individual part in a human, the diyah applies. This is the opinion of al-Ḥasan al-Baṣrī, Qatādah, Abū Ḥanīfah, Aḥmad ibn Ḥanbal, and their followers. Others said: Only arbitration by experts applies in such cases. This is the opinion of Mālik, al-Shāfiʿī, and their followers.

الدِّيَةُ - وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَقَتَادَةَ، وَأَبِي حَنِيفَةَ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَصْحَابِهِمْ وَقَالَ آخَرُونَ: فِيهَا حُكُومَةٌ فَقَطْ. وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمَا.

L37334–37336 Others said: There is nothing regarding it, as we have narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: I asked ʿAṭāʾ ibn Abī Rabāḥ: "Is the eyelash to be purchased?" He replied: "I have not heard anything about it." Abū Muḥammad said: As for the Ḥanafīs, Mālikīs, and Shāfiʿīs, they have contradicted their own principles here by overemphasizing the severity of disagreeing with the Companion when it aligns with their adherence—yet here they have opposed what... It has been narrated from Abu Bakr al-Siddiq, Zayd ibn Thabit, and other Companions of the Messenger of Allah—peace and blessings be upon him—attributing to them statements that were never preserved from any Companion, and this is utterly blameworthy.

وَقَالَ آخَرُونَ: لَا شَيْءَ فِيهَا، كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءِ بْنِ أَبِي رَبَاحٍ: الْحَاجِبُ يُشْتَرُ؟ قَالَ: لَمْ أَسْمَعْ فِيهِ بِشَيْءٍ. قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، فَقَدْ نَقَضُوا هَاهُنَا أُصُولَهُمْ فِي تَهْوِيلِهِمْ بِخِلَافِ الصَّاحِبِ إذَا وَافَقَ تَقْلِيدَهُمْ - وَهُمْ هَاهُنَا قَدْ خَالَفُوا مَا رُوِيَ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ، وَزَيْدِ بْنِ ثَابِتٍ، وَسَائِرِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى أَقْوَالٍ لَمْ تُحْفَظْ قَطُّ عَنْ صَاحِبٍ - وَهَذَا قَبِيحٌ جِدًّا.

L37337 As for the Ḥanafīs, they rejected qiyās here while assigning diyah to every two [organs] in humans by extending the analogy from the two hands - the eyebrows, for instance, being two.

فَأَمَّا الْحَنَفِيُّونَ، فَإِنَّهُمْ طَرَدُوا الْقِيَاسَ هَاهُنَا، إذْ جَعَلُوا فِي كُلِّ اثْنَيْنِ فِي الْإِنْسَانِ الدِّيَةَ، قِيَاسًا عَلَى الْيَدَيْنِ، وَالْحَاجِبَانِ اثْنَانِ.

L37338 As for the position of Mālik and al-Shāfiʿī, their followers face no difficulty in asserting the Ummah's consensus regarding matters in which they know no disagreement exists. Indeed, they go so far as to claim consensus even in cases where disagreement is widely recognized, as seen in their ruling on the wound that exposes the bone (al-mawḍiḥah) - as per what we will mention after this, God, the Exalted, willing.

وَأَمَّا قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، فَإِنَّ أَصْحَابَهُمَا لَا مُؤْنَةَ عَلَيْهِمْ فِي ادِّعَاءِ الْإِجْمَاعِ مِنْ الْأُمَّةِ، فِيمَا لَا يَعْرِفُونَ فِيهِ خِلَافًا، نَعَمْ، حَتَّى إنَّهُمْ لَيَدَّعُونَهُ فِيمَا فِيهِ الْخِلَافُ مَشْهُورٌ، كَفِعْلِهِمْ فِي الْمُوضِحَةِ عَلَى مَا نَذْكُرُ بَعْدَ هَذَا - إنْ شَاءَ اللَّهُ تَعَالَى.

L37339 We do not know of anyone before Mālik who held his opinion regarding a ruling on the two eyebrows. This view was not supported by any Quranic text, nor a sound Sunnah, nor a weak one, nor qiyās (analogical reasoning). Therefore, they should not disapprove of those who held an opinion based on following the Quran and the Sunnah of the Messenger of Allah (peace and blessings be upon him). For Allah the Exalted never at all permitted to

وَلَا نَعْلَمُ أَحَدًا قَالَ قَبْلَ مَالِكٍ بِقَوْلِهِ: فِي الْحَاجِبَيْنِ حُكُومَةٌ هَذَا وَلَمْ يُتَّبَعْ فِيهِ نَصُّ قُرْآنٍ، وَلَا سَنَةٌ صَحِيحَةٌ، وَلَا سَقِيمَةٌ، وَلَا قِيَاسٌ، فَيَنْبَغِي لَهُمْ أَنْ لَا يُنْكِرُوا عَلَى مَنْ قَالَ بِقَوْلٍ اتَّبَعَ فِيهِ الْقُرْآنَ، وَسُنَّةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَا أَبَاحَ اللَّهُ تَعَالَى قَطُّ لِمَالِكٍ، وَلَا لِأَبِي حَنِيفَةَ، وَلَا لِلشَّافِعِيِّ شَيْئًا حَرَّمَهُ اللَّهُ تَعَالَى عَلَى غَيْرِهِمْ.

Mālik, Abū Ḥanīfah, or al-Shāfiʿī anything He had forbidden to others apart from them.

L37340 Ali said: Since there is no valid text regarding the two eyebrows, nor any consensus in matters that are ascertained, the ruling is that nothing is obligatory in cases of intentional acts concerning them except retaliation or ransom.

L37341 As for unintentional harm, there is no liability, for property is inviolable except through explicit textual evidence or scholarly consensus. Since a judicial ruling imposes a penalty, it is impermissible to obligate anyone to it without such evidence or consensus - this being the opinion of ʿAṭāʾ, as we have mentioned.

L37342 ## The Rulings on the Diyah of the Nose

L37343 Issue 2037: ʿAlī said: Muḥammad ibn Saʿīd ibn Nabāt narrated to us: ʿAbdullāh ibn Naṣr narrated to us: Qāsim ibn Aṣbaġ narrated to us: Ibn Waḍḍāḥ narrated to us: Mūsā ibn Muʿāwiyah narrated to us: Wakīʿ narrated to us: Sufyān al-Thawrī narrated from Abū Isḥāq al-Sabīʿī, from ʿĀṣim ibn Ḍamrah, from ʿAlī ibn Abī Ṭālib that he said: "For the nose, the diyah."

L37344 Through him to Wakīʿ, Isrāʾīl reported to us from Jābir from al-Shaʿbī, who ruled that the *diyah* applies to the *ʿirnīn*. Through the same chain to Wakīʿ, Salām reported to us from al-Mughīrah from Ibrāhīm al-Nakhaʿī, who ruled that the *diyah* applies to the *mārin*.

L37345 On the authority of Yazīd ibn ʿAbdullāh ibn Quṣayṭ, who said: In a human being, five parts entail blood money: the nose, the tongue, the penis, the spine, and the heart.

L37346–37347 From the chain of ʿAbd al-Razzāq, from Maʿmar, from ʿIkrimah, who said regarding rawthah [dung as fuel]: "Half [a wasq]." ʿAbd al-Razzāq said: "I think he attributed it to ʿUmar."

L37348 From Ma'mar, from Ibn Abi Najih, from Mujāhid and Makḥūl - [Mujāhid] said regarding a nasal fracture (rawthah): "One-third of the *diyah* [is due]."

قَالَ عَلِيٌّ: فَإِذْ لَا نَصَّ فِي الْحَاجِبَيْنِ يَصِحُّ، وَلَا إجْمَاعَ فِيمَا يُتَيَقَّنُ، فَالْوَاجِبُ أَنْ لَا يَجِبَ فِيهِمَا فِي الْعَمْدِ إلَّا الْقَوَدُ أَوْ الْمُفَادَاةُ.

وَأَمَّا فِي الْخَطَأِ فَلَا شَيْءَ، لِأَنَّ الْأَمْوَالَ مُحَرَّمَةٌ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ، وَالْحُكُومَةُ غَرَامَةٌ فَلَا يَجُوزُ إلْزَامُهَا أَحَدًا بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ - وَهُوَ قَوْلُ عَطَاءٍ، كَمَا أَوْرَدْنَا.

[مَسْأَلَةٌ أَحْكَامُ دِيَةُ الْأَنْف]

٢٠٣٧ - مَسْأَلَةٌ: قَالَ عَلِيٌّ: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ: فِي الْأَنْفِ الدِّيَةُ.

وَبِهِ إلَى وَكِيعٍ نا إسْرَائِيلُ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ قَالَ فِي الْعِرْنِينِ الدِّيَةُ وَبِهِ إلَى وَكِيعٍ نا سَلَامٌ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: فِي الْمَارِنِ الدِّيَةُ.

وَعَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ أَنَّهُ قَالَ: فِي الْإِنْسَانِ خَمْسُ دِيَاتٍ: الْأَنْفُ، وَاللِّسَانُ، وَالذَّكَرُ، وَالصُّلْبُ، وَالْفُؤَادُ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عِكْرِمَةَ قَالَ فِي الرَّوْثَةِ النِّصْفُ قَالَ عَبْدُ الرَّزَّاقِ: أَحْسَبُهُ ذَكَرَهُ عَنْ عُمَرَ.

وَعَنْ مَعْمَرٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ، وَمَكْحُولٍ قَالَ فِي رَوْثَةِ الْأَنْفِ ثُلُثُ الدِّيَةِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ أَنَّهُ كَانَ يَقُولُ: فِي الرَّوْثَةِ الثُّلُثُ، فَإِذَا بَلَغَ مِنْ الْمَارِنِ الْعَظْمَ فَالدِّيَةُ وَافِيَةٌ، فَإِنْ أُصِيبَ مِنْ الرَّوْثَةِ الْأَرْنَبَةُ، أَوْ غَيْرُهَا لَمْ يَبْلُغْ الْعَظْمَ فَبِحِسَابِ الرَّوْثَةِ.

L37349 From the narration of Abd al-Razzaq, from Ibn Jurayj, from Ibn Abi Najih, from Mujahid, who said: For a superficial wound (rawthah), one-third [of the diyah] is due. If the injury extends from the nasal cartilage to the bone, the full diyah is owed. If the tip of the nose or another part within the area of the rawthah is injured without reaching the bone, it is assessed proportionally based on the rawthah.

وَعَنْ ابْنِ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ قَالَ: فِي الْأَنْفِ إذَا أَوْعَى جَدْعُهُ الدِّيَةُ كَامِلَةٌ، فَمَا أُصِيبَ مِنْ الْأَنْفِ دُونَ ذَلِكَ فَبِحِسَابِ ذَلِكَ.

L37350 From Ibn Jurayj, narrated by Sulayman ibn Musa, that Umar ibn Abd al-Aziz said: If the nose is completely severed, the full *diyah* is due. As for any injury to the nose less than that, it is assessed proportionally according to the full *diyah*.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِيهِ عَنْ الشَّعْبِيِّ قَالَ: مَا ذَهَبَ مِنْ الْأَنْفِ فَبِحِسَابِهِ.

L37351 And through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from his father from al-Shaʿbī, who said: Whatever is removed from the nose is compensated proportionally.

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نَا حَمَّادُ بْنُ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ مَكْحُولٍ أَنَّهُ قَالَ: فِي رَوْثَةِ الْأَنْفِ ثُلُثُ دِيَةِ الْأَنْفِ، وَفِي الْجَنَّابَتَيْنِ إذَا خُرِمَتَا - ثُمَّ لَمْ تَلْتَئِمَا - فِي كُلِّ وَاحِدٍ مِنْهُمَا ثُلُثُ دِيَةِ الْأَنْفِ، وَفِي الرَّوْثَةِ ثُلُثُ دِيَةِ الْأَنْفِ، وَفِي قَصَبَةِ الْأَنْفِ إذَا انْكَسَرَتْ - ثُمَّ انْجَبَرَتْ - ثَلَاثَةُ أَبْعِرَةٍ.

L37352 Abdullah ibn Rabee' narrated from Abdullah ibn Muhammad ibn Uthman, who narrated from Ahmad ibn Khalid, who narrated from Ali ibn Abdulaziz, who narrated from Al-Hajjaj ibn Al-Minhal, who narrated from Hammad ibn Salamah from Al-Hajjaj ibn Artah from Makhul that he said: For an injury to the fleshy tip of the nose, one-third of the blood money for the nose is due. For the two alae of the nose if they are lacerated and then do not heal, one-third of the blood money for the nose is due for each of them. For the fleshy tip of the nose, one-third of the blood money for the nose is due. For the bridge of the nose if it is broken and then heals, three camels are due.

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ عُثْمَانَ بْنِ سُلَيْمَانَ أَنَّ عَبْدًا كَسَرَ إحْدَى قَصَبَتَيْ أَنْفِ رَجُلٍ، فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَقَالَ عُمَرُ: وَجَدْنَا فِي كِتَابٍ لِعُمَرَ بْنِ الْخَطَّابِ أَيُّمَا عَظْمٍ كُسِرَ ثُمَّ جُبِرَ كَمَا كَانَ فَفِيهِ حِقَّتَانِ، فَرَاجَعَهُ ابْنُ سُرَاقَةَ؟ فَقَالَ: أَيُّمَا كَسْرٍ أُخِذَ مِنْ الْقَصَبَتَيْنِ؟ فَأَبَى عُمَرُ إلَّا أَنْ يَجْعَلَ فِيهِ الْحِقَّتَيْنِ.

L37353 From Humaam, from Ibn Mufarrij, from Ibn al-A'raabi, from al-Dabari, from Abd al-Razzaq, from Ibn Jurayj, from Uthman ibn Sulayman: A slave broke one of the two nasal bones of a man, and the matter was raised to Umar ibn Abd al-Aziz. Umar said: "We found in a written ruling of Umar ibn al-Khattab: 'For any bone that is broken, then set and heals properly, two compensations are owed.'" Ibn Suraqah questioned him: "Which of the two nasal bones was broken?" But Umar maintained that the two compensations must apply.

L37354–37356 And through him to Ibn Jurayj from Abd al-Aziz ibn Umar ibn Abd al-Aziz,

who said: If the nose is fractured in a manner causing disfigurement, one-sixth of his diyah is due. If the disfigurement is in both nostrils, one-third of the diyah for them is due. If the tip of the nose is lacerated with a tear, one-third of the diyah is due. And if it is crushed. If the voice becomes impaired like the eye, half the diyah is due for his eyes, and the compensation for the voice impairment is five hundred dinars. If there is no defect, adulteration, or odor detectable from it, he is owed a quarter of the diyah. If the nasal cartilage is injured and dries up, leaving a blemish - with no odor or any smell whatsoever - the diyah amounts to one hundred and twenty-five dinars. If his nose is struck and heals, but he cannot detect pleasant odors or any odor whatsoever, he is owed a tenth of the diyah.

وَبِهِ إِلَى ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: إِنْ كُسِرَ الْأَنْفُ كَسْرًا يَكُونُ شَيْنًا، فَسُدُسُ دِيَتِهِ، وَإِنْ كَانَ الْمَنْخِرَانِ مِنْهُمَا الشَّيْنُ، فَثُلُثُ دِيَةِ الْمَنْخِرَيْنِ، وَإِنْ كَانَ مَارِنُ الْأَنْفِ مَهْبُورًا هَبْرَةً، فَلَهُ ثُلُثُ الدِّيَةِ، وَإِنْ كَانَ مَهْشُومًا مُلْتَطِيًا يُبِحُّ صَوْتُهُ كَالْعَيْنِ، فَنِصْفُ الدِّيَةِ لِعَيْنَيْهِ، وَبَحَّتُهُ خَمْسُمِائَةِ دِينَارٍ، فَإِنْ كَانَ لَيْسَ فِيهِ عَيْبٌ، وَلَا غِشٌّ، وَلَا رِيحٌ تُوجَدُ مِنْهُ، فَلَهُ رُبْعُ الدِّيَةِ، فَإِنْ أُصِيبَ قَصَبَةُ الْأَنْفِ فَجَافَتْ، وَفِيهِ شَيْنٌ - وَلَا رِيحَ وَلَا يُوجَدُ رِيحُ شَيْءٍ - فَالدِّيَةُ مِائَةٌ وَخَمْسَةٌ وَعِشْرُونَ دِينَارًا - وَإِنْ ضَرَبَ أَنْفَهُ فَبَرَأَ - غَيْرَ أَنَّهُ لَا يَجِدُ رِيحًا طَيِّبَةً وَلَا رِيحَ شَيْءٍ - فَلَهُ عُشْرُ الدِّيَةِ.

L37357 I heard a freed slave affiliated with Sulaymān ibn Ḥabīb narrate, saying: Sulaymān ibn Ḥabīb ruled that for a nose injury, if twisted, the compensation is ten dinars; and if broken, one hundred dinar.

سَمِعْت مَوْلًى لِسُلَيْمَانَ بْنِ حَبِيبٍ يُحَدِّثُ قَالَ: قَضَى سُلَيْمَانُ بْنُ حَبِيبٍ فِي الْأَنْفِ إِذَا وُثِنَ بِعَشَرَةِ دَنَانِيرَ، وَإِذَا كُسِرَ بِمِائَةِ دِينَارٍ.

L37358 And through him to Ibn Jurayj, who said: I asked ʿAṭāʾ about a penetrating wound of the nose. He said: Yes. Ibn Jurayj said: Ibn Abī Najīḥ informed me from Mujāhid that he said: For a penetrating wound of the nose, one-third of the *diyah* is due. If it penetrates completely, two-thirds [of the *diyah*] are owed. And through him to ʿAbd al-Razzāq from Maʿmar from ʿAṭāʾ al-Khurāsānī: For the nose, if perforated, one hundred dinars.

وَبِهِ إِلَى ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ فِي الْأَنْفِ جَائِفَةٌ؟ قَالَ: نَعَمْ، قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي ابْنُ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ أَنَّهُ كَانَ يَقُولُ: فِي جَائِفَةِ الْأَنْفِ ثُلُثُ الدِّيَةِ فَإِنْ نَفَذَتْ فَالثُّلُثَانِ - وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَطَاءٍ الْخُرَاسَانِيِّ: فِي الْأَنْفِ إِذَا خُرِمَ مِائَةُ دِينَارٍ.

L37359–37361 Abu Muhammad said: It is established from Ali that the diyah applies to the nose—and likewise from Al-Shaʿbi, Umar ibn Abd al-Aziz, Ibn Qusayt, and Ibrahim. From Mujahid: the diyah applies to the marin (the entire fleshy part beneath the bone). From Umar ibn Abd al-Aziz: the marin incurs one-third of the diyah of the nose. From Al-Shaʿbi: the diyah applies to the ʿirnin (the part beneath the marin). From Mujahid: one-third of the diyah applies to the rawtha (the part beneath the ʿirnin)—and this is the view of Ibn Hanbal, Ishaq, and Qatadah. For the arnaba (the tip of the nose), compensation is calculated based on that proportion. From Mujahid and Makhul: one-third of the diyah applies to the rawtha. If the two sides of the nose are perforated

قَالَ أَبُو مُحَمَّد: فَحَصَلَ مِنْ هَذَا عَنْ عَلِيٍّ أَنَّ فِي الْأَنْفِ الدِّيَةَ - وَكَذَلِكَ عَنْ الشَّعْبِيِّ - وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ - وَعَنْ ابْنِ قُسَيْطٍ وَعَنْ إبْرَاهِيمَ، وَمُجَاهِدٍ فِي الْمَارِنِ الدِّيَةُ - وَهُوَ كُلُّ مَا دُونَ الْعَظْمِ وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي الْمَارِنِ ثُلُثُ دِيَةِ الْأَنْفِ وَعَنْ الشَّعْبِيِّ فِي الْعِرْنِينِ الدِّيَةُ - وَهُوَ مَا دُونَ الْمَارِنِ. وَعَنْ مُجَاهِدٍ فِي الرَّوْثَةِ الثُّلُثُ - وَهِيَ دُونَ الْعِرْنِينِ - وَهُوَ قَوْلُ ابْنِ حَنْبَلٍ وَإِسْحَاقَ، وَقَتَادَةَ - وَفِي الْأَرْنَبَةِ بِحِسَابِ ذَلِكَ - وَهُوَ

and do not heal, one-third of the diyah of the nose is due for each perforation. From Makhul and Ishaq: one-third of the diyah of the nose applies to the watrah (the partition between the two nostrils). The nose: If the bridge of the nose is broken and then heals, three camels are due.

طَرَفُ الْأَنْفِ وَعَنْ مُجَاهِدٍ وَمَكْحُولٍ فِي الرَّوْثَةِ ثُلُثُ الدِّيَةِ، وَفِي خَرْمِ جَنْبَتَيْ الْأَنْفِ إذَا لَمْ يَلْتَئِمَا فِي كُلِّ وَاحِدٍ مِنْ الْخُرْمَيْنِ ثُلُثُ دِيَةِ الْأَنْفِ وَعَنْ مَكْحُولٍ، وَإِسْحَاقَ فِي الْوَتْرَةِ ثُلُثُ دِيَةِ الْأَنْفِ - وَهِيَ الْحَاجِزَةُ بَيْنَ ثُقْبَتَيْ الْأَنْفِ - وَفِي قَصَبَةِ الْأَنْفِ إذَا كُسِرَتْ ثُمَّ انْجَبَرَتْ ثَلَاثَةُ أَبْعِرَةٍ.

L37362 From ʿUmar ibn al-Khaṭṭāb and ʿUmar ibn ʿAbd al-ʿAzīz regarding this matter: two five-year-old she-camels (ḥiqqatān). Concerning the fracture of the two incisors, from ʿUmar ibn ʿAbd al-ʿAzīz: one-sixth of the *diyah* for the nose. If the injury affects both nostrils, it constitutes one-third of the *diyah* for the nose. If the nose is crushed until flattened, resulting in a hoarse voice, half the full blood money for a life is owed. If there is no foul odor or discharge, it is a quarter of the full blood money for a life. For a deep wound in the nose: one-tenth plus one-fortieth of the *diyah*. Concerning a penetrating nasal wound, from Mujāhid: one-third of the full blood money for a life. If it perforates completely, two-thirds are owed. From ʿAṭāʾ al-Khurāsānī regarding nasal perforation: one-tenth of the *diyah*.

وَعَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي ذَلِكَ بَعِيرَانِ حِقَّتَانِ - وَفِي كَسْرِ الثَّنِيَّتَيْنِ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ سُدُسُ دِيَةِ الْأَنْفِ، فَإِنْ كَانَ فِي كِلَا الْمَنْخِرَيْنِ، فَثُلُثُ دِيَةِ الْأَنْفِ - وَفِي هَشْمِ الْأَنْفِ حَتَّى يَكُونَ لَاطِيًا يَبِحُّ صَوْتُهُ نِصْفُ دِيَةِ النَّفْسِ، وَإِنْ لَمْ يَكُنْ فِيهِ رِيحٌ مُنْتِنَةٌ وَلَا رَشْحٌ، فَرُبْعُ دِيَةِ النَّفْسِ - وَفِي جَائِفَتِهِ عُشْرُ دِيَةٍ وَرُبْعُ عُشْرِ دِيَةٍ - وَفِي جَائِفَةِ الْأَنْفِ عَنْ مُجَاهِدٍ ثُلُثُ دِيَةِ النَّفْسِ، فَإِنْ نَفَذَتْ فَالثُّلُثَانِ وَعَنْ عَطَاءٍ الْخُرَاسَانِيِّ فِي خَرْمِ الْأَنْفِ عُشْرُ الدِّيَةِ.

L37363 Mālik ruled regarding what is less than al-Mārin from all that we have mentioned, and al-Shāfiʿī and Abū Ḥanīfah held the same view.

وَقَالَ مَالِكٌ فِيمَا دُونَ الْمَارِنِ مِنْ كُلِّ مَا ذَكَرْنَا حُكْمٌ وَبِهِ قَالَ الشَّافِعِيُّ، وَأَبُو حَنِيفَةَ.

L37364 Abu Muhammad said: All of this contains nothing valid from him. As for what we maintain—and success is from Allah the Exalted—there is fundamentally no way to find an authentic report from the Messenger of Allah (peace be upon him) regarding this matter. Scholars have exhaustively searched for it from the farthest bounds of Khurasan to its nearest regions, including Persia, Isfahan, Kerman, Sijistan, Sind, the Mountains, Rayy, Iraq, Baghdad, Basra, Kufa, all their towns, Azerbaijan, Armenia, Ahwaz, Mecca, Medina, Yemen, the Arabian Peninsula, Egypt, Syria, and Andalusia. They have found nothing for four hundred and forty years except what we mentioned—none of which is considered valid by any scholar of hadith. Thus, it is baseless to claim any established report here that provides conclusive evidence, nor is there any Quranic basis whatsoever. We are certain that Allah the Exalted has established proof through the Quran, the Sunnah, and

قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ هَذَا لَا يَصِحُّ مِنْهُ شَيْءٌ، وَالَّذِي نَقُولُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّهُ لَا سَبِيلَ إلَى أَنْ يُوجَدَ فِي هَذَا خَبَرٌ صَحِيحٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَصْلًا، فَقَدْ بَحَثَ عَنْهُ الْبُحَّاثُ مِنْ أَقْصَى خُرَاسَانَ إلَى أَدْنَاهَا، وَأَهْلِ فَارِسَ، وَأَصْبَهَانَ، وَكَرْمَانَ، وَسِجِسْتَانَ وَالسِّنْدِ، وَالْجِبَالِ، وَالرَّيِّ، وَالْعِرَاقِ، وَبَغْدَادَ، وَالْبَصْرَةِ، وَالْكُوفَةِ، وَسَائِرِ مُدُنِهَا، وَأَذْرَبِيجَانَ وَأَرْمِينِيَةَ، وَالْأَهْوَازِ، وَمَكَّةَ، وَالْمَدِينَةِ، وَالْيَمَنِ، وَالْجَزِيرَةِ، وَمِصْرَ، وَالشَّامِ، وَالْأَنْدَلُسِ -: فَمَا وَجَدُوا شَيْئًا مُذْ أَرْبَعمِائَةِ عَامٍ وَأَرْبَعِينَ سَنَةً - غَيْرَ مَا ذَكَرْنَا مِمَّا لَا يَصِحُّ عِنْدَ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ بِالْحَدِيثِ، فَبَطَلَ أَنْ يَكُونَ

the clearest consensus—explained with such clarity that no one can miss it from start to end. Yet this very quality is entirely absent here.

هُنَا خَبَرٌ ثَابِتٌ تَقُومُ بِهِ الْحُجَّةُ، وَلَا قُرْآنَ فِي ذَلِكَ أَصْلًا، وَنَحْنُ نُوقِنُ أَنَّ اللَّهَ تَعَالَى قَدْ أَقَامَ الْحُجَّةَ مِنْ الْقُرْآنِ وَالسُّنَنِ وَأَوْضَحِ الْإِجْمَاعِ إيضَاحًا لَا يَخْفَى عَلَى أَحَدٍ مِنْ مُبْتَدَاهُ إلَى مُنْتَهَاهُ، وَهَذِهِ الصِّفَةُ مَعْدُومَةٌ هَاهُنَا

L37365 Ali said: Our statement here—by which we devote ourselves to Allah the Exalted and meet Him in accordance with it—is that if a reliable narration from the predecessors were verified to us regarding that matter, we would uphold it without opposition. If a consensus were authenticated to us regarding it, we would uphold it without hesitation in obedience to it.

قَالَ عَلِيٌّ: فَقَوْلُنَا هَاهُنَا - الَّذِي نَدِينُ اللَّهَ تَعَالَى بِهِ وَنَلْقَاهُ عَلَيْهِ - أَنَّهُ لَوْ صَحَّ عِنْدَنَا فِي ذَلِكَ أَثَرٌ لَقُلْنَا بِهِ، وَلَمَا خَالَفْنَاهُ، وَلَوْ صَحَّ عِنْدَنَا فِي ذَلِكَ إجْمَاعٌ لَقُلْنَا بِهِ، وَلَمَا تَرَدَّدْنَا فِي الطَّاعَةِ لَهُ.

L37366 Since there is no established Sunnah regarding this matter, nor scholarly consensus, there remains only retaliation (qisas) for intentional harm or negotiated compensation (mufādāh), with no liability for accidental harm, in accordance with Allah's statement, the Most High: *"There is no blame upon you for that which you do unintentionally, but only for what your hearts deliberately intend"* (Quran 33:5). And with Allah, the Most High, lies all success.[20]

فَإِذْ لَا سُنَّةَ فِي ذَلِكَ، وَلَا إجْمَاعَ، فَلَيْسَ فِيهِ إلَّا الْقَوَدُ فِي الْعَمْدِ، أَوْ الْمُفَادَاةُ، وَلَا شَيْءَ فِي الْخَطَأِ، لِقَوْلِ اللَّهِ تَعَالَى {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Legal Issue: The Rulings on the Diyah of the Hair

L37367–37368

[مَسْأَلَةٌ أَحْكَامُ دِيَةُ الشَّعْرِ]

L37369 A legal issue: Abū Muḥammad said: Narrated from Muḥammad ibn Saʿīd ibn Nabāt, narrated from ʿAbdullāh ibn Naṣr, narrated from Qāsim ibn Aṣbagh, narrated from Ibn Waḍḍāḥ, narrated from Mūsā ibn Muʿāwiyah, narrated from Wakīʿ, narrated from Minhāl ibn Khalīfah al-ʿIjlī, from Abū ʿAbdillāh Salamah ibn Tammām al-Shaqrī, who said: A man passed by a cooking pot, and it fell from him onto a man's head and burned his hair. The matter was raised to ʿAlī ibn Abī Ṭālib, who decreed a one-year delay. When it did not regrow, ʿAlī ruled against him to pay the diyah.

مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا مِنْهَالُ بْنُ خَلِيفَةَ الْعِجْلِيّ عَنْ أَبِي عَبْدِ اللَّهِ سَلَمَةَ بْنِ تَمَّامٍ الشَّقَرِيِّ قَالَ: مَرَّ رَجُلٌ بِقِدْرٍ فَوَقَعَتْ مِنْهُ عَلَى رَأْسِ رَجُلٍ فَأَحْرَقَتْ شَعْرَهُ، فَرَفَعَ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ، فَأَجَّلَهُ سَنَةً، فَلَمْ يَنْبُتْ، فَقَضَى عَلِيٌّ عَلَيْهِ فِيهِ بِالدِّيَةِ.

L37370 Via the route of Saʿīd ibn Manṣūr: Abū Muʿāwiyah—the blind one—narrated

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ - هُوَ الضَّرِيرُ - نا حَجَّاجٌ عَنْ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: فِي الشَّعْرِ الدِّيَةُ، إذَا لَمْ يَنْبُتْ.

[20] **Qur'an references (L37366):** Qur'an 33:5 (Al-Ahzab).

to us, from Ḥajjāj, from Makhūl, from Zayd ibn Thābit, who said: Diyah is owed for hair if it fails to grow.

L37371 They have cited this very narration as proof in many of these chapters, and this narration itself is the statement of Al-Shaʿbi.

L37372 Sufyan al-Thawri, Abu Hanifah, al-Hasan ibn Hiyy, Ahmad ibn Hanbal, and Ishaq ibn Rahuyah said: If the hair of the head does not grow, the diyah is owed. If the hair of the beard does not grow, the diyah is owed.

L37373 As for the Mālikīs and Shāfiʿīs, their only stance on this matter is arbitration. This constitutes one of the issues wherein they contradicted their own foundational principles through their condemnation of opposing a Companion whose position had no known challenger. Here we find reports from ʿAlī ibn Abī Ṭālib and Zayd ibn Thābit that are not known to have been opposed by any Companion or Follower. This shows that they adhere to no foundational principle. When some of them asked: "Does poetry have any basis in the Sunnah to be referenced?" it is countered: "Nor does any bodily limb for which you have obligated blood money - except the fingers alone - have a sound basis in the Sunnah."

L37374 **A legal inquiry on the rulings of diyah (blood money) pertaining to the two mustache regions.**

L37375–37377 2039 - Issue: ʿAlī narrated: Ḥumām reported to us, Ibn al-Aʿrabī reported to us, al-Ḍabarī reported to us, ʿAbd al-Razzāq reported to us. From Ibn Jurayj, he said: It was established for Umar ibn Abd al-Aziz that whoever overgrows his mustache must pay sixty dinars. If both [sides] are overgrown, the fine is one hundred and twenty dinars.

L37378 Abd al-Razzaq reported that Ma'mar said: It has been reported to me regarding both sides of the mustache: one hundred and twenty dinars, sixty dinars for each side.

L37379 Ali said: Our pact with them is that they cite Umar ibn Abd al-Aziz concerning al-battah and other matters—so why do they not follow him in what has

وَقَدْ احْتَجُّوا فِي كَثِيرٍ مِنْ هَذِهِ الْأَبْوَابِ بِهَذِهِ الرِّوَايَةِ نَفْسِهَا، وَهُوَ قَوْلُ الشَّعْبِيِّ.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَحْمَدُ بْنُ حَنْبَلٍ وَإِسْحَاقُ بْنُ رَاهْوَيْهِ: فِي شَعْرِ الرَّأْسِ إِذَا لَمْ يَنْبُتْ: الدِّيَةُ. وَفِي شَعْرِ اللِّحْيَةِ إِذَا لَمْ يَنْبُتْ: الدِّيَةُ.

وَأَمَّا الْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، فَلَيْسَ عِنْدَهُمْ فِي ذَلِكَ إِلَّا حُكُومَةٌ، وَهَذَا مِمَّا نَقَضُوا فِيهِ أُصُولَهُمْ فِي تَشْنِيعِهِمْ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ، وَقَدْ جَاءَ هَاهُنَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَزَيْدِ بْنِ ثَابِتٍ: مَا لَا يُعْرَفُ عَنْ أَحَدٍ مِنَ الصَّحَابَةِ، وَلَا مِنَ التَّابِعِينَ مُخَالِفٌ - وَهَذَا يُرِيكَ أَنَّهُمْ لَا يَضْبِطُونَ أَصْلًا وَقَدْ قَالَ بَعْضُهُمْ: لَيْسَ لِلشَّعْرِ أَصْلٌ يُرْجَعُ عَلَيْهِ فِي السُّنَّةِ؟ فَيُقَالُ لَهُمْ: وَلَا فِي شَيْءٍ مِمَّا أَوْجَبْتُمْ فِيهِ الدِّيَةَ، مِنَ الْأَعْضَاءِ أَصْلٌ مِنَ السُّنَّةِ يَصِحُّ، حَاشَا الْأَصَابِعِ فَقَطْ.

[مَسْأَلَةٌ أَحْكَامُ دِيَةُ الشَّارِبَانِ]

٢٠٣٩ - مَسْأَلَةٌ: قَالَ عَلِيٌّ نا حُمَامٌ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: اجْتَمَعَ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّ مَنْ مَرَطَ الشَّارِبَ فَفِيهِ سِتُّونَ دِينَارًا - فَإِنْ مَرَطَا جَمِيعًا، فَفِيهِمَا مِائَةٌ وَعِشْرُونَ دِينَارًا.

قَالَ عَبْدُ الرَّزَّاقِ وَقَالَ مَعْمَرٌ: بَلَغَنِي فِي الشَّارِبَيْنِ مِائَةٌ وَعِشْرُونَ دِينَارًا فِي كُلِّ وَاحِدٍ سِتُّونَ دِينَارًا.

been collectively agreed upon here regarding him? Yet they rarely agree on any opinion except in rare instances, and there is nothing in either of these two matters according to us concerning error, for there is no revealed text on that matter, nor is there consensus—except regarding retaliation (qisas) for intentional killings alone. And by Allah, the Exalted, is success attained.

قَالَ عَلِيٌّ: عَهْدِنَا بِهِمْ يَحْتَجُّونَ بِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي أَلْبَتَّةَ وَغَيْرِهَا، فَمَا لَهُمْ لَا يَتَّبِعُونَهُ فِيمَا اجْتَمَعَ لَهُ عَلَيْهِ هَاهُنَا؟ وَلَكِنَّهُمْ لَا يَتَّفِقُ لَهُمْ قَوْلٌ إِلَّا فِي النَّادِرِ، وَلَيْسَ فِيهِمَا شَيْءٌ عِنْدَنَا فِي الْخَطَأِ، لِأَنَّهُ لَا نَصَّ فِي ذَلِكَ، وَلَا إِجْمَاعَ إِلَّا الْقَوَدَ فِي الْعَمْدِ فَقَطْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L37380 **A Question Concerning the Rulings on Blood Money for Mental Impairment.**

[مَسْأَلَةٌ أَحْكَامُ دِيَةُ الْعَقْلُ]

L37381 Issue 2040: Muḥammad ibn Saʿīd ibn Nabāt narrated to us, ʿAbdullāh ibn Naṣr narrated to us, Qāsim ibn Aṣbagh narrated to us, Ibn Waḍḍāḥ narrated to us, Mūsā ibn Muʿāwiyah narrated to us, Wakīʿ narrated to us, Sufyān—that is, al-Thawrī—from ʿAwf, who said: I heard a shaykh narrating in the mosque, so I seated him. They said: That is Abū al-Muhallab, the uncle of Abū Qilābah. He said: A man threw a stone at another man's head, causing his hearing, tongue, and intellect to be lost—and his penis withered? ʿUmar ruled against him for four diyāt (while the victim was still alive). And through him to Sufyān from Ibn Abī Najīḥ from Mujāhid, who said: For the intellect, the diyah is due.

٢٠٤٠ - مَسْأَلَةٌ: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ - هُوَ الثَّوْرِيُّ - عَنْ عَوْفٍ قَالَ: سَمِعْت شَيْخًا يُحَدِّثُ فِي الْمَسْجِدِ فَجَلَسْته، فَقَالُوا: ذَاكَ أَبُو الْمُهَلَّبِ عَمُّ أَبِي قِلَابَةَ، قَالَ: رَمَى رَجُلٌ رَجُلًا بِحَجَرٍ فِي رَأْسِهِ، فَذَهَبَ سَمْعُهُ، وَلِسَانُهُ، وَعَقْلُهُ، وَيَبِسَ ذَكَرُهُ؟ فَقَضَى فِيهِ عُمَرُ بِأَرْبَعِ دِيَاتٍ - وَهُوَ حَيٌّ، وَبِهِ إلَى سُفْيَانَ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: فِي الْعَقْلِ الدِّيَةُ.

L37382 From the chain of Abd al-Razzaq, through Muhammad ibn Rashid, through Makhul, through Qabisa ibn Dhu'ayb, through Zayd ibn Thabit, who said: For Ar-Rābiʿah (a wound exposing bone), one camel is due; for Al-Bāḍiʿah (a wound splitting the bone), two camels; for Al-Mutalāḥimah (a wound fracturing the bone), three camels from the camels; for As-Simḥāq (a wound penetrating the skull), four camels; for Al-Mūḍiḥah (a wound exposing the brain), five camels; for Al-Hāshimah (a wound shattering the skull), ten camels; for Al-Munaqqilah (a dislocated bone), fifteen camels; for Al-Ma'mūmah (a wound reaching the brain), one-third of the full diyah is due. If a man is struck until he loses his sanity, the full diyah is due; or if he is struck until he babbles incoherently and does not understand, the full diyah is due; or if he is struck until he becomes mute and cannot communicate, the full diyah

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ رَاشِدٍ عَنْ مَكْحُولٍ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: فِي الرَّابِيَةِ بَعِيرٌ، وَفِي الْبَاضِعَةِ بَعِيرَانِ، وَفِي الْمُتَلَاحِمَةِ ثَلَاثَةُ أَبْعِرَةٍ، مِنْ الْإِبِلِ، وَفِي السِّمْحَاقِ أَرْبَعٌ، وَفِي الْمُوضِحَةِ خَمْسٌ، وَفِي الْهَاشِمَةِ عَشْرٌ، وَفِي الْمُنَقِّلَةِ خَمْسَ عَشَرَةَ، وَفِي الْمَأْمُومَةِ ثُلُثُ الدِّيَةِ، وَفِي الرَّجُلِ يُضْرَبُ حَتَّى يَذْهَبَ عَقْلُهُ الدِّيَةُ كَامِلَةً - أَوْ يُضْرَبُ حَتَّى يَغَنَّ فَلَمْ يُفْهَمْ: الدِّيَةُ كَامِلَةٌ، أَوْ حَتَّى يُبَحَّ فَلَا يُفْهِمُ: الدِّيَةُ كَامِلَةٌ - وَفِي جَفْنِ الْعَيْنِ رُبْعُ الدِّيَةِ - وَفِي حَلَمَةِ الثَّدْيِ رُبْعُ الدِّيَةِ.

is due. For the eyelid, a quarter of the diyah is due; and for the nipple of the breast, a quarter of the diyah is due.

قَالَ أَبُو مُحَمَّد: وَبِهِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ وَأَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَابْنُ حَنْبَلٍ، وَأَصْحَابُهُمْ - وَهَذَا كَالَّذِي قَبْلَهُ وَمَا فِيهِ عَنْ أَحَدِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إِلَّا أَقَلَّ مِمَّا فِي الْعَيْنِ الْعَوْرَاءِ.

L37383–37385 Abū Muḥammad said: Sufyān al-Thawrī, Abū Ḥanīfah, Mālik, and al-Shāfiʿī concur with this view... Ibn Hanbal and his companions—and this is like the one before it, with nothing in it from any of the Companions (may Allah be pleased with them) except less than what is in the blind eye.

وَقَدْ خَالَفَهُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، فَلَيْتَ شِعْرِي أَيُّ فَرْقٍ بَيْنَ الْأَمْرَيْنِ إِلَّا الدَّعْوَى الْكَاذِبَةَ الْمُفْتَضِحَةَ فِي الْإِجْمَاعِ؟ وَقَدْ خَالَفَ الْمَالِكِيُّونَ فِي هَذَا الْخَبَرِ زَيْدَ بْنَ ثَابِتٍ فِي الدَّامِيَةِ، وَالْبَاضِعَةِ وَالْمُتَلَاحِمَةِ، وَالسِّمْحَاقِ، وَالْهَاشِمَةِ، وَفِي جَفْنِ الْعَيْنِ، وَحَلَمَةِ الثَّدْيِ، فَمَا الَّذِي جَعَلَ بَعْضَ قَوْلِهِ حُجَّةً وَبَعْضَهُ لَا حُجَّةً؟ إِنَّ هَذَا لَعَجَبٌ.

L37386 Abu Hanifah, Malik, and al-Shafi'i have opposed him. If only I knew: what distinction exists between the two matters except the scandalously exposed claim within the consensus? The Malikis, in this report, opposed Zayd ibn Thabit's rulings concerning the bleeding wound, the gaping wound, the adhering wound, the periosteal wound, the fractured bone, the eyelid, and the nipple. What then causes some of his statements to be authoritative proofs while others are not? Verily, this is astonishing!

فَإِنْ قَالُوا: أَخَذْنَا بِقَوْلِ عُمَرَ فِي ذَلِكَ؟ قِيلَ لَهُمْ: فَهَلَّا أَخَذْتُمْ بِقَوْلِ عُمَرَ فِي الْعَيْنِ الْعَوْرَاءِ، وَالسِّنِّ السَّوْدَاءِ، وَسَائِرِ مَا ذَكَرْنَاهُ قَبْلُ؟ فَمَرَّةً يَكُونُ قَوْلُ عُمَرَ بْنِ الْخَطَّابِ، وَزَيْدٍ حُجَّةً، وَمَرَّةً يَكُونُ قَوْلُهُمَا لَا حُجَّةَ فِيهِ - وَنَعُوذُ بِاللَّهِ مِنْ التَّدَيُّنِ بِمِثْلِ هَذِهِ الْأَقْوَالِ.

L37387 If they say: "We have adopted the opinion of ʿUmar concerning this?" It is said to them: "Then why did you not adopt the opinion of ʿUmar regarding the defective eye, the blackened tooth, and all the other matters we previously mentioned? Sometimes the opinion of ʿUmar ibn al-Khaṭṭāb and Zayd is taken as authoritative evidence, and at other times their opinions hold no evidence in them—and we seek refuge in Allah from adhering to such statements in matters of religion."

قَالَ أَبُو مُحَمَّد: فَإِذْ لَا نَصَّ فِي الْعَقْلِ وَلَا إجْمَاعَ يَثْبُتُ فِيهِ فَلَا شَيْءَ فِي ذَهَابِهِ بِالْخَطَأِ، وَأَمَّا بِالْعَمْدِ فَإِنَّمَا هِيَ ضَرْبَةٌ كَضَرْبَةٍ، وَلَا مَزِيدَ - فَإِنْ لَمْ يَذْهَبْ عَقْلُ الْمُقْتَصِّ مِنْهُ فَلَا شَيْءَ عَلَيْهِ، فَقَدْ اعْتَدَى بِمِثْلِ مَا اُعْتُدِيَ بِهِ عَلَيْهِ.

L37388 Abu Muhammad said: Since there is no textual ruling or established Consensus regarding mental capacity, there is no liability for its loss due to error. As for intentional acts, it is strictly retaliation in kind—blow equivalent to blow, with absolutely no increase. If the mental capacity of the retaliated party is not impaired, then nothing is incumbent upon him, for he transgressed by retaliating with the equivalent of what was inflicted upon him.

وَأَيْضًا - فَالْخَبَرُ فِي هَذَا عَنْ عُمَرَ لَا يَصِحُّ، لِأَنَّ أَبَا الْمُهَلَّبِ عَبْدَ الرَّحْمَنِ بْنَ عَمْرٍو لَمْ يُدْرِكْ عُمَرَ بْنَ الْخَطَّابِ فَزَادَ الْأَمْرُ وَهَنًا عَلَى وَهَنٍ.

L37389 Moreover, the narration attributed to Umar in this matter is inauthentic, as Abu al-Muhallab, Abd al-Rahman ibn Amr, was not a contemporary of Umar ibn al-Khattab, thus compounding weakness upon weakness.

A juridical question on the rulings of blood money for the

L37390

two jawbones and the chin.

L37391 2041 - Issue: Narrated by Abdullah ibn Rabee' from Abdullah ibn Muhammad ibn Uthman, who narrated from Ahmad ibn Khalid, who narrated from Ali ibn Abd al-Aziz, who narrated from Al-Hajjaj ibn al-Minhal, who narrated from Hammad ibn Salamah, from Makhul that he said: "Regarding the two jawbones: if they are fractured and then knit together, the compensation is seven camels."

L37392 And through the chain of ʿAbd al-Razzāq—who narrated from both Maʿmar and Ibn Jurayj, each transmitting from an unnamed man who reported from al-Shaʿbī—regarding [injuries to] the jaw: if fractured, forty dinars [are owed].

L37393–37395 From ʿAbd al-Razzāq, from Maʿmar, from Ibn Jurayj, from a man, from Saʿīd ibn al-Musayyib who said: In the case of a mouth injury to a person, he said: He bends his thumb, then their lower grip is formed, and his mouth is opened. He places it between his jaws. Whatever shortens the opening of his mouth relative to the length of his lower thumb is calculated. ʿAlī said: This also conforms to all previous rulings, with no distinction. Nothing therein is due to error, and it entails retribution (qisas) for intentional harm.

L37396 **Issue: rulings on blood money for finger injuries**

L37397 2042. Issue: We have mentioned what is established from the Messenger of Allah—peace and blessings be upon him—at the outset of our discussion in the chapter on limbs. It is authentically reported that he—peace and blessings be upon him—said: "The fingers are equal; these [fingers] and these are equal," referring to the little finger and the thumb. It is also authentically reported that he—peace and blessings be upon him—said: "The fingers are ten, ten each." This constitutes an explicit text that none may contravene. Abu Muhammad said: We know with certainty that this matter pertains solely to intentional acts or mistakes. It is authentically reported from the Messenger of Allah—peace and blessings be upon him—that he said: "Mistakes are lifted from my nation." The statement of Allah the Exalted remains established: "There is no blame upon you for that in which you have erred,

[مَسْأَلَةٌ أَحْكَامُ دِيَةُ اللَّحْيَانِ وَالذَّقَنُ]

٢٠٤١ - مَسْأَلَةٌ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ مَكْحُولٍ أَنَّهُ قَالَ: فِي اللَّحْيَيْنِ إذَا كُسِرَ ثُمَّ انْجَبَرَ: سَبْعَةُ أَبْعِرَةٍ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَابْنِ جُرَيْجٍ، كِلَاهُمَا عَنْ رَجُلٍ عَنْ الشَّعْبِيِّ: فِي اللَّحْيِ إذَا كُسِرَ أَرْبَعُونَ دِينَارًا.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ جُرَيْجٍ عَنْ رَجُلٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ فِي فَقَمِ الْإِنْسَانِ قَالَ: يُثْنِي إبْهَامَهُ، ثُمَّ تُجْعَلُ قَبْضَتُهُمَا السُّفْلَى، وَيُفْتَحُ فَاهُ، فَيَجْعَلُهَا بَيْنَ لَحْيَيْهِ فَمَا نَقَصَ مِنْ فَتْحَةِ فَاهُ مِنْ قَصَبَةِ إبْهَامِهِ السُّفْلَى، فَبِالْحِسَابِ قَالَ عَلِيٌّ: وَهَذَا أَيْضًا كَسَائِرِ مَا سَلَفَ، وَلَا فَرْقَ وَلَا شَيْءَ فِي ذَلِكَ بِالْخَطَأِ، وَفِيهِ الْقَوَدُ بِالْعَمْدِ.

[مَسْأَلَةٌ أَحْكَامُ دِيَةُ الْأَصَابِعُ]

٢٠٤٢ - مَسْأَلَةٌ: قَدْ ذَكَرْنَا الثَّابِتَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ابْتِدَاءِ كَلَامِنَا فِي بَابِ الْأَعْضَاءِ، وَأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - صَحَّ عَنْهُ أَنَّهُ قَالَ «الْأَصَابِعُ سَوَاءٌ، هَذِهِ وَهَذِهِ سَوَاءٌ» يَعْنِي الْخِنْصَرَ وَالْإِبْهَامَ وَأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ: «الْأَصَابِعُ عَشْرٌ عَشْرٌ» فَهَذَا نَصٌّ لَا يَسَعُ أَحَدًا الْخُرُوجُ عَنْهُ قَالَ أَبُو مُحَمَّدٍ: وَبِالْيَقِينِ نَدْرِي أَنَّهُ لَيْسَ هَاهُنَا إلَّا عَمْدٌ أَوْ خَطَأٌ وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «رُفِعَ عَنْ أُمَّتِي الْخَطَأُ» . وَصَحَّ قَوْلُ اللَّهِ تَعَالَى {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا

but only for what your hearts have intended" (33:5). These two texts have been reported—though each could have been an exception to the other. The intended meaning could be: "There is no blame upon you for that in which you have erred," and "Mistakes are lifted from my nation"—except in the diyah for fingers.[21]

L37398 It was possible that the intended meaning was: ten ten per finger in cases of intentional harm specifically, not accidental harm. No one may adopt either exception except through certainty of an explicit text or consensus, for this constitutes a report about Allah—the Exalted—and His Messenger (peace and blessings be upon him). It is not permissible to report about Allah—the Exalted—except through an established text in the Qur'an or through His Messenger (peace and blessings be upon him) who clarifies from Him.

L37399–37401 We are upon clear vision and certainty from Allah, the Most High—Who does not leave us in blindness concerning this ruling in religion—for He says: "an explanation of all things and guidance" [An-Nahl: 89]. And He, the Exalted, said: {to make clear to the people what has been sent down to them} [An-Nahl: 44]. So we examined that in humble entreaty to Allah the Exalted, that He might manifest the truth to us in that matter, for there is no guidance except from Him, the Exalted. Thus, we began with premeditated acts, and we found the people in disagreement.[22]

L37402 A group of scholars said: In cases of intentional killing, only qawd applies, and no blood money is owed therein.

L37403 A group has stated: In it is retaliation (al-qawd) or diyah.

L37404 We found disagreement concerning the obligation of blood money in intentional acts in that matter. Then we referred back to unintentional acts in that matter and found no conclusive consensus on its obligation in such cases.

L37405 Then we found that those who opine on blood money differed regarding

أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] فَوَرَدَ هَذَانِ النَّصَّانِ - وَكَانَ مُمْكِنًا أَنْ يُسْتَثْنَى كُلُّ وَاحِدٍ مِنْهُمَا مِنْ الْآخَرِ. يُمْكِنُ أَنْ يَكُونَ الْمُرَادُ: لَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ، وَرُفِعَ عَنْ أُمَّتِي الْخَطَأُ إلَّا فِي دِيَةِ الْأَصَابِعِ.

وَكَانَ مُمْكِنًا أَنْ يَكُونَ الْمُرَادُ: فِي الْأَصَابِعِ عَشْرٌ عَشْرٌ فِي الْعَمْدِ خَاصَّةً، لَا فِي الْخَطَأِ - وَلَمْ يَجُزْ لِأَحَدٍ أَنْ يَصِيرَ إلَى أَحَدِ الِاسْتِثْنَاءَيْنِ إلَّا بِيَقِينِ نَصٍّ أَوْ إجْمَاعٍ، لِأَنَّهُ خَبَرٌ عَنْ اللَّهِ تَعَالَى، وَعَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا يَحِلُّ الْخَبَرُ عَنْ اللَّهِ تَعَالَى إلَّا بِنَصٍّ ثَابِتٍ فِي الْقُرْآنِ، أَوْ عَنْ رَسُولِهِ الْمُبِينِ عَنْهُ - عَلَيْهِ السَّلَامُ -.

وَنَحْنُ عَلَى بَصِيرَةٍ وَيَقِينٍ مِنْ اللَّهِ تَعَالَى لَا يَدَعُنَا فِي عَمًى مِنْ هَذَا الْحُكْمِ فِي الدِّينِ، لِأَنَّهُ تَعَالَى يَقُولُ {تِبْيَانًا لِكُلِّ شَيْءٍ وَهُدًى} [النحل: ٨٩] وَقَالَ تَعَالَى {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إلَيْهِمْ} [النحل: ٤٤] فَنَظَرْنَا فِي ذَلِكَ ضَارِعِينَ إلَى اللَّهِ تَعَالَى فِي أَنْ يُلِيحَ لَنَا الْحَقَّ فِي ذَلِكَ، فَلَا هُدًى إلَّا مِنْ قِبَلِهِ تَعَالَى، فَابْتَدَأْنَا بِالْعَمْدِ، فَوَجَدْنَا النَّاسَ مُخْتَلِفِينَ.

فَطَائِفَةٌ قَالَتْ: لَا شَيْءَ فِي الْعَمْدِ إلَّا الْقَوَدُ فَقَطْ، وَلَا دِيَةَ هُنَالِكَ.

وَقَالَتْ طَائِفَةٌ: فِيهِ الْقَوَدُ أَوْ الدِّيَةُ.

فَوَجَدْنَا الِاخْتِلَافَ فِي وُجُوبِ الدِّيَةِ فِي الْعَمْدِ فِي ذَلِكَ - ثُمَّ رَجَعْنَا إلَى الْخَطَأِ فِي ذَلِكَ، فَلَمْ نَجِدْ إجْمَاعًا مُتَيَقَّنًا عَلَى وُجُوبِ الدِّيَةِ فِي الْخَطَأِ فِي ذَلِكَ.

ثُمَّ وَجَدْنَا الْقَائِلِينَ بِالدِّيَةِ فِي ذَلِكَ مُخْتَلِفِينَ فِيمَا دُونَ الثُّلُثِ: فَطَائِفَةٌ قَالَتْ: هِيَ فِي مَالِ الْجَانِي.

[21] **Qur'an references (L37397):** Qur'an 33:5 (Al-Ahzab).
[22] **Qur'an references (L37399):** Qur'an 16:89 (An-Nahl); Qur'an 16:44 (An-Nahl).

cases involving less than a third. One faction held that the compensation is to be borne by the perpetrator's property.

L37406 A group said: It is upon his kinsmen. However, we did not find consensus among them regarding this matter either. It is impermissible to impose a financial liability upon the offender that neither a textual ruling nor consensus has obligated him to pay. Indeed, Allah the Exalted has with certainty removed sin from him in this matter. It is also impermissible to impose a financial liability upon his kinsmen in such cases without a textual ruling or consensus. Rather, the textual ruling absolves them of this by Allah's statement: "No soul earns except against itself, nor does any bearer of sins bear the sins of another" [Al-An'ām 6:164].[23]

L37407–37409 It is definitively invalid to deem anything obligatory for an error in this matter, as there exists no revealed text specifying: "Upon whom are these ten [obligations] incumbent?" When neither textual evidence nor consensus clarifies upon whom they are incumbent, it is certainly false to claim that Allah the Exalted would obligate a penalty on one whom He has not clarified to us as being liable for it. We categorically affirm that Allah the Exalted has never subjected us to such a practice. He, the Exalted, is the One who declared graciously: *"He has not placed upon you any hardship in religion"* [Al-Hajj: 78], and who commanded us when He said: *"Do not burden us with obligations as You burdened those before us"* [Al-Baqarah: 286]—up to His words—*"what we cannot bear"* [Al-Baqarah: 286]. Allah, the Exalted, says: "Allah does not burden any soul beyond its capacity" [2:286]. With certainty, we know that it is not within anyone's capacity nor ability to comprehend Allah's intent without Allah, the Exalted, enabling them to understand it. Thus, there is absolutely no compensation for error in cases involving injuries short of death. Consequently, no blood money is due for such errors. We then examined cases of intentional harm, where it became legally necessary to impose blood money for finger injuries, in accordance with the command of the Messenger of Allah (peace be upon him) - whether imposed on the intentional perpetrator, the mistaken party, or the mistaken party's liable kin (ʿāqilah). Since the Quranic texts we cited nullify any obli-

وَطَائِفَةٌ قَالَتْ: هِيَ عَلَى عَاقِلَتِهِ، فَلَمْ نَجِدْ إجْمَاعًا مِنْهُمْ أَيْضًا فِي هَذَا، وَلَمْ يَجُزْ أَنْ يُلْزَمَ الْجَانِي غَرَامَةً لَمْ يُوجِبْهَا عَلَيْهِ نَصٌّ، وَلَا إجْمَاعٌ، بَلْ قَدْ أَسْقَطَ اللَّهُ تَعَالَى عَنْهُ الْجُنَاحَ بِيَقِينٍ فِي ذَلِكَ، وَلَمْ يَجُزْ أَيْضًا - أَنْ تُلْزَمَ عَاقِلَتُهُ غَرَامَةً فِي ذَلِكَ بِغَيْرِ نَصٍّ، وَلَا إجْمَاعٍ، بَلْ النَّصُّ مُسْقِطٌ عَنْهُمْ ذَلِكَ بِقَوْلِ اللَّهِ تَعَالَى {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

فَبَطَلَ بِيَقِينٍ أَنْ يَجِبَ فِي الْخَطَأِ فِي ذَلِكَ شَيْءٌ، لِأَنَّهُ لَا نَصَّ يُبَيِّنُ هَذِهِ الْعَشَرَةَ عَلَى مَنْ هِيَ؟ وَإِذَا لَمْ يُبَيِّنْ النَّصُّ، وَلَا الْإِجْمَاعُ عَلَى مَنْ هِيَ، فَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يَكُونَ اللَّهُ تَعَالَى يُلْزِمُ غَرَامَةَ مَنْ لَا يُبَيِّنُ لَنَا مَنْ هُوَ الْمُلْزَمُ إيَّاهَا؟ هَذَا أَمْرٌ نَقْطَعُ وَنَبُتُّ أَنَّ اللَّهَ تَعَالَى لَمْ يَفْعَلْ بِنَا ذَلِكَ قَطُّ وَهُوَ تَعَالَى الْقَائِلُ مُتَفَضِّلًا عَلَيْنَا {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] وَالْآمِرُ تَعَالَى لَنَا إذْ يَقُولُ: {وَلا تَحْمِلْ عَلَيْنَا إصْرًا كَمَا حَمَلْتَهُ عَلَى الَّذِينَ مِنْ قَبْلِنَا} [البقرة: ٢٨٦]- إلَى قَوْله تَعَالَى - {مَا لا طَاقَةَ لَنَا بِهِ} [البقرة: ٢٨٦] وَالْقَائِلُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إلا وُسْعَهَا} [البقرة: ٢٨٦] وَبِيَقِينٍ نَدْرِي أَنَّهُ لَيْسَ فِي وُسْعِ أَحَدٍ، وَلَا فِي طَاقَتِهِ: أَنْ يَفْهَمَ مُرَادَ اللَّهِ تَعَالَى مِنْ غَيْرِ أَنْ يُفْهِمَهُ اللَّهُ تَعَالَى إيَّاهُ؟ فَسَقَطَ أَنْ يَكُونَ فِي الْخَطَأِ غَرَامَةٌ أَصْلًا فِيمَا دُونَ النَّفْسِ. فَسَقَطَ أَنْ يَكُونَ فِي الْخَطَأِ فِي ذَلِكَ دِيَةٌ أَصْلًا فَرَجَعْنَا إلَى الْعَمْدِ فَلَمْ يَكُنْ بُدٌّ مِنْ إيجَابِ دِيَةِ الْأَصَابِعِ كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إمَّا عَلَى الْعَامِدِ، وَإِمَّا عَلَى الْمُخْطِئِ، أَوْ عَلَى عَاقِلَةِ الْمُخْطِئِ وَقَدْ سَقَطَ أَنْ يَجِبَ فِي ذَلِكَ عَلَى الْمُخْطِئِ، أَوْ عَلَى

[23] **Qur'an references (L37406):** Qur'an 6:164 (Al-An'am).

gation upon the mistaken party or their liable kin, nothing remains in this regard except the intentional perpetrator. Thus, blood money is undoubtedly obligatory on the intentional perpetrator, since nothing remains except him.[24]

L37410 Moreover, Allah the Exalted says, "The recompense for an evil deed is an evil deed like it" (42:40). Since the intentional offender is a wrongdoer by his evil deed, it is obligatory—by the explicit text of the Quran—that he be subjected to an equivalent harm. As for blood money, when Allah the Exalted ordains it as conveyed by His Messenger—peace and blessings be upon him—in the case of harm caused by a wrongdoer, it is equivalent to the evil deed of that wrongdoer without doubt. Similarly, when Allah the Exalted commands the prescribed punishments, if equivalence through retaliation becomes unattainable regarding fingers, equivalence through blood money becomes obligatory in that matter.[25]

[A Jurisprudential Issue Regarding the Blood Money (Diyah) for Fingers]

L37411

L37412 Issue 2043: Abu Muhammad said: Abdullah ibn Rabīʿ narrated to us that Abdullah ibn Muhammad ibn Uthman narrated to us, Ahmad ibn Khalid narrated to us, Ali ibn Abd al-Aziz narrated to us, Al-Hajjaj ibn Al-Minhal narrated to us, Hammad ibn Salamah narrated to us from Yahya ibn Saʿid, from Saʿid ibn Al-Musayyab: That Umar ibn Al-Khattab ruled that the thumb and the index finger are equivalent to half the *diyah* (blood money) of the hand, for the middle finger ten camels, for the ring finger nine camels, and for the little finger six camels.

L37413–37415 And through him to al-Ḥajjāj ibn al-Minhāl, from Hammām ibn Yaḥyā from Qatādah from Saʿīd ibn al-Musayyab that ʿUmar ibn al-Khaṭṭāb ruled: fifteen camels for the thumb; ten for the index finger; ten for the middle finger; nine for the al-banṣir; and six for the little finger. Others have concurred with him on that, as we have reported - through the aforementioned chain of transmission - from Ḥammād ibn Salamah, from Hishām ibn ʿUrwah, from

عَاقِلَتِه شَيْءٌ بِنُصُوصِ الْقُرْآنِ الَّتِي أَوْرَدْنَا فَلَمْ يَبْقَ فِي ذَلِكَ إلَّا الْعَامِدُ، فَالدِّيَةُ فِي ذَلِكَ وَاجِبَةٌ عَلَى الْعَامِدِ بِلَا شَكٍّ، إذْ لَمْ يَبْقَ إلَّا هُوَ.

أَيْضًا - فَإِنَّ اللَّهَ تَعَالَى يَقُولُ {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] وَكَانَ الْعَامِدُ مُسِيئًا بِسَيِّئَتِه، فَالْوَاجِبُ - بِنَصِّ الْقُرْآنِ - أَنْ يُسَاءَ إلَيْهِ بِمِثْلِهَا، وَالدِّيَةُ إذَا أَوْجَبَهَا اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي إسَاءَةِ مُسِيءٍ، فَهِيَ مِثْلُ سَيِّئَةِ ذَلِكَ الْمُسِيءِ بِلَا شَكٍّ - وَكَذَلِكَ الْحُدُودُ إذَا أَمَرَ اللَّهُ تَعَالَى بِهَا أَيْضًا، فَإِذَا فَاتَتْ الْمُمَاثَلَةُ بِالْقَوَدِ فِي الْأَصَابِعِ وَجَبَتْ الْمُمَاثَلَةُ بِالدِّيَةِ فِي ذَلِكَ.

[مَسْأَلَةٌ فِي دِيَةِ الْأَصَابِعِ]

٢٠٤٣ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي الْإِبْهَامِ وَالَّتِي تَلِيهَا نِصْفَ دِيَةِ الْيَدِ، وَفِي الْوُسْطَى عَشَرَةُ أَبْعِرَةٍ، وَفِي الْبِنْصِرِ تِسْعَةُ أَبْعِرَةٍ، وَفِي الْخِنْصَرِ سِتَّةُ أَبْعِرَةٍ.

وَبِهِ إلَى الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي الْإِبْهَامِ خَمْسَةَ عَشَرَ بَعِيرًا، وَفِي السَّبَّابَةِ عَشْرًا، وَفِي الْوُسْطَى عَشْرًا، وَفِي الْبِنْصِرِ تِسْعًا، وَفِي الْخِنْصَرِ سِتًّا وَقَدْ وَافَقَهُ عَلَى ذَلِكَ غَيْرُهُ: كَمَا رُوِّينَا - بِالسَّنَدِ الْمَذْكُورِ - إلَى حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ أَنَّهُ قَالَ فِي الْإِبْهَامِ وَالَّتِي تَلِيهَا نِصْفُ الدِّيَةِ.

[24] **Qur'an references (L37407):** Qur'an 22:78 (Al-Hajj); Qur'an 2:286 (Al-Baqarah).
[25] **Qur'an references (L37410):** Qur'an 42:40 (Ash-Shuraa).

his father, that he said regarding the thumb and the finger that follows it: half of the *diyah*.

وَجَاءَ عَنْ عُرْوَةَ بَيَانٌ زَائِدٌ عَنْ أَبِيهِ، قَالَ: إِذَا قُطِعَتْ الْإِبْهَامُ وَالَّتِي تَلِيهَا فَفِيهَا نِصْفُ دِيَةِ الْيَدِ - وَإِذَا قُطِعَتْ إِحْدَاهُمَا فَفِيهَا عَشْرٌ مِنْ الْإِبِلِ.

L37416 Urwah reported an additional clarification from his father, stating: If the thumb and the index finger are severed, half the *diyah* of the hand is due; if one of them is severed, ten camels are due.

وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: الْأَصَابِعُ عَشْرٌ عَشْرٌ.

L37417 On the authority of Ali ibn Abi Talib, who said: “The fingers are ten (in total).”

وَعَنْ الشَّعْبِيِّ أَنَّهُ قَالَ: جَاءَ رَجُلٌ مِنْ مُرَادٍ إلَى شُرَيْحٍ فَقَالَ: يَا أَبَا أُمَيَّةَ مَا تَقُولُ فِي دِيَةِ الْأَصَابِعِ؟ قَالَ: سَوَاءٌ فِي كُلِّ أُصْبُعٍ - مِمَّا هُنَالِكَ - عَشْرٌ مِنْ الْإِبِلِ، فَجَمَعَ الْمُرَادِيُّ بَيْنَ إبْهَامَيْهِ وَخِنْصَرَيْهِ وَقَالَ: يَا سُبْحَانَ اللَّهِ، سَوَاءٌ هَاتَانِ؟ فَقَالَ شُرَيْحٌ: نَتَّبِعُ وَلَا نَبْتَدِعُ، فَإِنَّك لَنْ تَضِلَّ مَا أَخَذْت بِالْأَثَرِ يَدَك وَأُذُنَك - فِي الْيَدِ النِّصْفُ، وَفِي الْأُذُنِ النِّصْفُ، وَالْأُذُنُ يُوَارِيهَا الشَّعْرُ وَالْقَلَنْسُوَةُ وَالْعِمَامَةُ.

L37418 From Al-Sha’bi: A man from Murad came to Shurayh and asked: “O Abu Umayyah, what is your ruling regarding blood money for fingers?” He answered: “Ten camels each for every finger - for each of those fingers there.” The Muradi man then pressed together both his thumbs and little fingers and exclaimed: “Glory be to Allah! Are these two equal?” Shurayh replied: “We follow precedent without innovating. You will never stray if you hold fast to tradition with your hand and ear - half [the diyah] for the hand, half [the diyah] for the ear. The ear is concealed by hair, a cap, or a turban.”

وَعَنْ الشَّعْبِيِّ قَالَ: أَشْهَدُ عَلَى مَسْرُوقٍ وَشُرَيْحٍ، أَنَّهُمَا قَالَا: الْأَصَابِعُ سَوَاءٌ، عَشْرٌ عَشْرٌ مِنْ الْإِبِلِ.

L37419 Al-Sha‘bī narrated: I testify that Masruq and Shurayh both said, “The fingers are equal: ten camels are due for each.”

وَقَدْ رُوِّينَا هَذَا الْقَوْلَ عَنْ ابْنِ عَبَّاسٍ قَبْلُ وَعَنْ زَيْدِ بْنِ ثَابِتٍ - رَضِيَ اللَّهُ عَنْهُمْ - قَالَ أَبُو مُحَمَّد: وَلْيَعْلَمْ الْعَالِمُونَ أَنَّهُ لَمْ يَأْتِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّ هَذِهِ الدِّيَةَ فِي الْخَطَأِ، وَأَعْجَبُ مِنْ ذَلِكَ مَنْ لَا يَرَى هَذِهِ الدِّيَةَ فِي الْعَمْدِ أَصْلًا، وَلَا يَرَاهَا إلَّا فِي الْخَطَأِ، فَعَكَسَ الْحَقَّ عَكْسًا، وَنَحْمَدُ اللَّهَ عَلَى السَّلَامَةِ.

L37420 It has been narrated to us that this opinion was reported from Ibn Abbas and Zayd ibn Thabit (may Allah be pleased with them). Abu Muhammad said: Let the scholars know that no statement has come from any of the Companions (may Allah be pleased with them) indicating that this diyah applies to unintentional killing. More astonishing is the view of those who do not recognize this diyah in intentional killing at all, limiting it only to unintentional killing—thus completely inverting the truth. We praise Allah for preservation.

قَالَ عَلِيٌّ: وَأَمَّا مَفَاصِلُ الْأَصَابِعِ - فَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، وَعَنْ رَجُلٍ عَنْ عِكْرِمَةَ عَنْ عُمَرَ بْنِ الْخَطَّابِ: فِي كُلِّ أُنْمُلَةٍ ثُلُثُ دِيَةِ الْأُصْبُعِ.

L37421 Ali said: As for the joints of the fingers: it has been narrated to us through the chain of Abd al-Razzaq from Ma’mar from Qatadah, and from a man, from Ikrimah, from Umar ibn al-Khattab: For each phalanx, one-third of the *diyah* (blood money) of a finger.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى قَالَ فِي كِتَابِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ إلَى الْأَجْنَادِ فِي كُلِّ قَصَبَةٍ مِنْ قَصَبِ الْأَصَابِعِ قُطِعَتْ أَوْ شُلَّتْ ثُلُثُ دِيَةِ الْأَصَابِعِ إلَّا مَا كَانَ مِنْ إبْهَامِهَا فَإِنَّمَا هِيَ قَصَبَتَانِ، فَفِي كُلِّ قَصَبَةٍ مِنْ الْإِبْهَامِ نِصْفُ دِيَتِهَا.

L37422 From Abd al-Razzaq, from Ibn Jurayj, from Sulayman ibn Musa, who mentioned in Umar ibn Abd al-Aziz's letter to the troops: "For each phalanx of the fingers that is severed or paralyzed, a third of the fingers' *diya* is owed, except for the thumb, which has two phalanges. Thus, for each phalanx of the thumb, half of its *diya* is due."

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، قَالَ: فِي كُلِّ مَفْصِلٍ مِنْ الْأَصَابِعِ ثُلُثُ دِيَةِ الْأُصْبُعِ إلَّا الْإِبْهَامَ فَإِنَّهَا مِفْصَلَانِ فِي كُلِّ مِفْصَلٍ النِّصْفُ.

L37423–37425 On the authority of ʿAbd al-Razzāq, on the authority of Sufyān al-Thawrī, on the authority of Manṣūr, on the authority of Ibrāhīm al-Nakhaʿī, who said concerning... Every joint of the fingers constitutes one-third of the diyah of a finger, except the thumb, which has two joints—each being half of the thumb's total diyah.

قَالَ عَلِيٌّ: لَا نَعْرِفُ فِي هَذَا خِلَافًا، وَالَّذِي نَقُولُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: هُوَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ فِي كُلِّ أُصْبُعٍ بِعَشْرٍ مِنْ الْإِبِلِ، فَوَاجِبٌ بِلَا شَكٍّ أَنَّ الْعَشْرَ الْمَذْكُورَةَ مُقَابِلَةٌ لِلْأُصْبُعِ فَفِي كُلِّ جُزْءٍ مِنْ الْأُصْبُعِ جُزْءٌ مِنْ الْعَشْرِ، فَعَلَى هَذَا فِي نِصْفِ الْأُصْبُعِ نِصْفُ الْعَشْرِ، وَفِي ثُلُثِ الْأُصْبُعِ ثُلُثُ الْعَشْرِ - وَهَكَذَا فِي كُلِّ جُزْءٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37426 Ali said: "We know of no disagreement regarding this. What we hold - and with Allah the Exalted is success - is that the Prophet (peace be upon him) ruled ten camels for every finger. Therefore, it is obligatory without doubt that the mentioned ten corresponds to the finger. Thus, for every portion of the finger is a portion of the ten. Accordingly, half the finger requires half of the ten, a third of the finger requires a third of the ten - and so on for every part - and with Allah the Exalted is success."

وَأَمَّا الْأُصْبُعُ تُشَلُّ: فَقَدْ جَاءَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْأَصَابِعِ عَشْرٌ عَشْرٌ - فَهَذَا عُمُومٌ لَا يَخْرُجُ عَنْهُ إلَّا مَا أَخْرَجَهُ نَصٌّ أَوْ إجْمَاعٌ، وَقَدْ قِيلَ: إنَّ فِي شَلَلِ الْأُصْبُعِ دِيَتَهُ كَامِلَةً، فَالْوَاجِبُ الْقَوْلُ بِذَلِكَ، لِعُمُومِ النَّصِّ الَّذِي ذَكَرْنَا وَأَمَّا كَسْرُهُ فَيُفِيقُ عَنَتًا أَوْ صَحِيحًا، إلَّا أَنَّهُ لَمْ يَبْطُلْ، فَلَا شَيْءَ فِي ذَلِكَ عِنْدَنَا؟ قَالَ أَبُو مُحَمَّدٍ: فَهَذَا النَّصُّ الَّذِي ذَكَرْنَا يَقْتَضِي أَنَّ أَصَابِعَ الْيَدَيْنِ، وَالرِّجْلَيْنِ: سَوَاءٌ، لِعُمُومِ ذِكْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْأَصَابِعَ.

L37427 As for a paralyzed finger: It has been narrated from the Prophet—peace and blessings of Allah be upon him—regarding fingers: "Ten for each finger." This constitutes a general ruling from which nothing is exempt except what is excluded by explicit text or consensus. Some have stated that full *diyah* applies to a paralyzed finger, and it is obligatory to uphold this ruling due to the general nature of the prophetic text we cited. Regarding a fractured finger that heals with hardship or recovers fully but did not become dysfunctional—is there then no compensation due for this in our view? Abu Muḥammad said: This text we referenced demonstrates that the fingers of both hands and both feet are equivalent, due to the general scope of the Prophet's mention—peace and blessings of Allah be upon him—of "fingers" without specification.

L37428 It has been narrated to us through the chain of ʿAbd al-Razzāq, from Ibn

Jurayj, from a man, from Makḥūl, from Zayd ibn Thābit, that he said: “For a supernumerary finger, one-third of the diyah for a finger is payable.”

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ رَجُلٍ عَنْ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّهُ قَالَ: فِي الْأُصْبُعِ الزَّائِدَةِ ثُلُثُ دِيَةِ الْأُصْبُعِ.

L37429 Ma’mar said: I have been informed that a third of their blood money is due for the extra finger and the extra tooth.

وَقَالَ مَعْمَرٌ: بَلَغَنِي أَنَّ فِي الْأُصْبُعِ الزَّائِدَةِ، وَالسِّنِّ الزَّائِدَةِ: ثُلُثُ دِيَتِهَا.

L37430 Others said: In it [there is] arbitration.

وَقَالَ آخَرُونَ: فِيهَا حُكُومَةٌ.

L37431 Others said: “There is nothing for it.” We considered and found the authentic text from the Prophet—peace and blessings be upon him—establishes that ten camels are for the finger. The term “finger” applies to an extra finger, and he—peace and blessings be upon him—did not distinguish an extra finger from others. {And your Lord is not forgetful} [19:64]. Had He intended such a distinction, He would have clarified it. Therefore, the same ruling that applies to all fingers must apply to the extra finger. And with Allah, the Most High, is success.[26]

وَقَالَ آخَرُونَ: لَا شَيْءَ فِيهَا. فَنَظَرْنَا فَوَجَدْنَا النَّصَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ صَحَّ بِأَنَّ فِي الْأُصْبُعِ عَشْرًا مِنْ الْإِبِلِ. وَاسْمُ أُصْبُعٍ يَقَعُ عَلَى زَائِدَةٍ، وَلَمْ يَخُصَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أُصْبُعًا زَائِدَةً مِنْ غَيْرِهَا {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَلَوْ أَرَادَ ذَلِكَ لَبَيَّنَهُ فَوَاجِبٌ أَنْ يَكُونَ فِيهَا مَا فِي سَائِرِ الْأَصَابِعِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَا جَاءَ فِي الْيَدِ تُشَلُّ أَوْ تُقْطَعُ]

A juristic ruling pertaining to cases where a hand is paralyzed or amputated.

مَسْأَلَةٌ: قَالَ عَلِيٌّ: قَدْ ذَكَرْنَا مَا جَاءَ فِي الْيَدِ تُشَلُّ، أَوْ تُقْطَعُ فِي كِتَابِ ابْنِ حَزْمٍ، وَتِلْكَ الصَّحِيفَةُ وَأَنَّهُ لَا يَصِحُّ شَيْءٌ مِنْ ذَلِكَ.

L37434 Issue: Ali said: We have mentioned what is reported regarding the hand being paralyzed or amputated in Ibn Hazm’s book and that document, and that none of those reports are authentic.

رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا حَمَّادُ بْنُ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: كَانَ فِي كِتَابِ أَبِي بَكْرٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - أَنَّ فِي الرِّجْلِ إذَا يَبِسَتْ فَلَمْ يَسْتَطِعْ أَنْ يَبْسُطَهَا، أَوْ بَسَطَهَا فَلَمْ يَسْتَطِعْ أَنْ يَقْبِضَهَا، أَوْ لَمْ تَنَلْ الْأَرْضَ: فَفِيهَا نِصْفُ الدِّيَةِ، فَإِنْ نَالَ مِنْهَا شَيْءٌ الْأَرْضَ فَبِقَدْرِ مَا نَقَصَ مِنْهَا - وَفِي الْيَدِ إذَا لَمْ يَأْكُلْ بِهَا، وَلَمْ يَشْرَبْ بِهَا، وَلَمْ يَأْتَزِرْ بِهَا وَلَمْ يَسْتَصْلِحْ بِهَا: فَفِيهَا نِصْفُ الدِّيَةِ.

L37435 We have been narrated through the chain of Al-Ḥajjāj ibn Al-Minhāl who narrated to us: Ḥammād ibn Salamah narrated to us from Muḥammad ibn Isḥāq from ʿAmr ibn Shuʿayb, who said: It was recorded in the ruling of Abū Bakr and ʿUmar—may Allah be pleased with them—that regarding the leg: if it stiffens so that one cannot extend it, or if it is extended and cannot be flexed, or if it fails to reach the ground, then half the blood money is due. If any part of it touches the ground, a portion of the blood money is due proportionate to the impairment. Regarding the hand: if one cannot eat with

[26] **Qur’an references (L37431):** Qur’an 19:64 (Maryam).

it, drink with it, gird himself with it, or use it for maintenance, then half the blood money is due.

L37436 Muhammad ibn Saʿīd ibn Nabāt reported from ʿAbdullāh ibn Naṣr, who reported from Qāsim ibn Aṣbagh, who reported from Ibn Waḍḍāḥ, who reported from Mūsā ibn Muʿāwiyah, who reported from Wakīʿ, who reported from Sufyān al-Thawrī, from Abū Isḥāq al-Sabīʿī, from ʿĀṣim, from ʿAlī ibn Abī Ṭālib, who said: "Regarding the hand, half is due."

نَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نَا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: فِي الْيَدِ النِّصْفُ.

L37437 Hammam narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrabī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz, from his father ʿUmar ibn ʿAbd al-ʿAzīz, from ʿUmar ibn al-Khaṭṭāb, who said: "The hand entails half the diyah (blood money). Whatever portion has been reduced [from the injury] shall be determined through proportional calculation."

وَحَدَّثَنَا حُمَامٌ نَا ابْنُ مُفَرِّجٍ نَا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِيهِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: فِي الْيَدِ نِصْفُ الدِّيَةِ فَمَا نَقَصَتْ فَبِالْحِسَابِ.

L37438 And through him to Abd al-Razzaq from Ma'mar from al-Zuhri from Qatadah. And from a man from Ikrimah: If the hand is paralyzed, its blood money is full.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ قَتَادَةَ. وَعَنْ رَجُلٍ عَنْ عِكْرِمَةَ: فِي الْيَدِ إِذَا شُلَّتْ: دِيَتُهَا كَامِلَةً.

L37439 An Issue Concerning the Position of Hand Cutting in Qisas.

[مَسْأَلَةٌ مَوْضِعِ قَطْعِ الْيَدِ فِي الْقِصَاصِ]

L37440 2045. Issue: Regarding their disagreement on the site of cutting of the hand.

٢٠٤٥ - مَسْأَلَةٌ: فِي اخْتِلَافِهِمْ فِي مَوْضِعِ قَطْعِ الْيَدِ

L37441 Abu Muhammad said: Yunus ibn Abd Allah ibn Mughith narrated to us from Ahmad ibn Abd Allah ibn Abd al-Rahim, who narrated from Ahmad ibn Khalid, who narrated from Muhammad ibn Abd al-Salam al-Khushani, who narrated from Muhammad ibn Bashshar, who narrated from Yahya ibn Saʿid al-Qattan, who narrated from Abu ʿAwanah, from Mughirah ibn Miqsam al-Dabbi, from Ibrahim al-Nakhaʿi, who said: If the hand is severed from the wrist, half the diyah is owed, and if it is severed from the shoulder, the full diyah is owed.

قَالَ أَبُو مُحَمَّدٍ: نا يُونُسُ بْنُ عَبْدِ اللَّهِ بْنِ مُغِيثٍ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدَ الرَّحِيمِ نَا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا أَبُو عَوَانَةَ عَنْ مُغِيرَةَ بْنِ مِقْسَمٍ الضَّبِّيِّ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: إِنْ قُطِعَتِ الْيَدُ مِنَ الْكَفِّ فَنِصْفُ الدِّيَةِ، وَإِنْ قُطِعَتْ مِنَ الْمَنْكِبِ فَالدِّيَةُ.

L37442 From Amr al-Sha'bi, as narrated by Jabir al-Ju'fi, he said, "If the hand is severed at the wrist joint, half the diyah is due; if severed at the elbow, the full diyah is due."

وَعَنْ عَامِرٍ الشَّعْبِيِّ مِنْ رِوَايَةِ جَابِرٍ الْجُعْفِيِّ قَالَ: إِذَا قُطِعَتِ الْيَدُ مِنَ الْمِفْصَلِ فَفِيهَا نِصْفُ الدِّيَةِ، وَمِنَ الْمِرْفَقِ فَفِيهَا الدِّيَةُ.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: فِي الْيَدِ إِذَا قُطِعَتْ مِنْ الْبَرَاجِمِ: فَفِيهَا الدِّيَةُ وَكَذَلِكَ لَوْ قُطِعَتْ مِنْ الرُّسْغِ أَوْ مِنْ الْمِرْفَقِ أَوْ مِنْ الْمَنْكِبِ كُلُّ ذَلِكَ الدِّيَةُ فَقَطْ.

L37443–37444 And from Ibrāhīm al-Nakhaʿī, who said: If the hand is severed at the knuckles, the full diyah is due. Likewise, if it is severed at the wrist, elbow, or shoulder - in all such cases, only the full diyah is due.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ أَنَّهُ قَالَ: فِي الْيَدِ تُسْتَأْصَلُ خَمْسُونَ مِنْ الْإِبِلِ إِذَا قُطِعَتْ مِنْ الْمَنْكِبِ، وَالرِّجْلُ مِثْلُ ذَلِكَ قَالَ ابْنُ جُرَيْجٍ قُلْت لَهُ: مِنْ أَيْنَ؟ أَمِنَ الْمَنْكِبِ أَوْ مِنْ الْكَفِّ؟ قَالَ: بَلْ مِنْ الْمَنْكِبِ.

L37445 Via the chain of transmission (isnad) of Abd al-Razzaq from Ibn Jurayj from Ata, who said: “If a hand is amputated from the shoulder joint, fifty camels are due. The leg is likewise.” Ibn Jurayj said: “I asked him: From which part? From the shoulder joint or the palm?” He replied: “Rather, from the shoulder joint.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: سَوَاءٌ قُطِعَتْ الْيَدُ مِنْ الْمَنْكِبِ أَوْ مِمَّا دُونَهُ إلَى مَوْضِعِ السِّوَارِ.

L37446 From the narration of ʿAbd al-Razzāq, from Maʿmar, from Qatādah, who said: The ruling is the same whether the arm is amputated as a legal punishment from the shoulder or from below it to the place of the bracelet (i.e., the wrist).

قَالَ أَبُو مُحَمَّدٍ: وَهَؤُلَاءِ الْحَاضِرُونَ مِنْ الْمُخَالِفِينَ مِنْ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ وَالشَّافِعِيِّينَ، لَا يَقُولُونَ بِهَذَا الَّذِي جَاءَ عَمَّنْ ذَكَرْنَا مِنْ الصَّحَابَةِ وَالتَّابِعِينَ، فَصَحَّ أَنَّهُ لَا حُجَّةَ فِي قَوْلِهِمْ، وَلَا فِي قَوْلِ غَيْرِهِمْ، إلَّا مَا صَحَّ بِهِ النَّصُّ، أَوْ تَيَقَّنَ فِيهِ الْإِجْمَاعُ فَقَطْ وَقَالَ مَالِكٌ: إنْ قُطِعَتْ أُصْبُعٌ أَوْ ذَهَبَتْ، ثُمَّ قُطِعَتْ الْكَفُّ: فَلَهُ دِيَةُ مَا بَقِيَ مِنْ الْأَصَابِعِ فَقَطْ فَإِنْ قُطِعَتْ أُنْمُلَةٌ، ثُمَّ قُطِعَتْ الْكَفُّ: فَلَهُ دِيَةُ الْأَصَابِعِ كُلِّهَا قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ ظَاهِرٌ، لِأَنَّ الْأُنْمُلَةَ عِنْدَهُ لَهَا حَظُّهَا مِنْ الْعَقْلِ، كَمَا لِلْأُصْبُعِ، فَلِأَيِّ شَيْءٍ حَظَّ الْأُصْبُعَ وَلَمْ يَحُظَّ الْأُنْمُلَةَ؟

L37447 Abū Muḥammad said: These contemporary dissenters among the Ḥanafīs, Mālikīs, and Shāfiʿīs do not uphold the rulings transmitted from the Companions and Followers we mentioned. Thus, it is confirmed that there is no proof in their opinions nor in the opinions of others, except what is validated by an authentic textual source or a definitively established consensus alone. Mālik said: If a finger is severed or destroyed, then the hand is amputated: one is entitled only to the *diyah* for the remaining fingers. But if a fingertip is severed, then the hand is amputated: one is entitled to the *diyah* for all fingers. ʿAlī said: This is an evident error, for according to his own principle, the fingertip has its due compensation (*diyah*), just as the finger does. Why then should the finger receive its share while the fingertip is denied?

فَإِنْ قَالُوا: لِقِلَّتِهَا؟ قِيلَ لَهُمْ: الْقَلِيلُ وَالْكَثِيرُ مِنْ الْحَرَامِ حَرَامٌ [وَالْكَبِيرُ مِنْ الْكَثِيرِ حَرَامٌ] وَلَا يَحِلُّ مِنْ أَمْوَالِ النَّاسِ قَلِيلٌ وَلَا كَثِيرٌ إلَّا بِحَقٍّ، لَا سِيَّمَا إنْ كَانَ الَّذِي أَصَابَ الْأُنْمُلَةَ فَقَضَى عَلَيْهِ بِعَقْلِهَا هُوَ الَّذِي أَصَابَ الْكَفَّ بَعْدَ ذَلِكَ، فَقَدْ أَغْرَمُوهُ فِي الْكَفِّ دِيَةً كَامِلَةً وَثُلُثَ خُمْسِ الدِّيَةِ.

L37448 If they say: “Due to its small amount?” It is said to them: “The minor and major portions of forbidden matters remain forbidden, [and even a substantial portion from a larger quantity is forbidden]. It is impermissible to take anything from people’s possessions - whether insignificant or substantial - except through lawful entitlement.” This applies particularly when the one who inflicted the fingertip injury and was adjudged to pay its compensation subsequently caused the hand injury. In such a case, they have penalized him

for the hand injury by requiring payment of a complete blood money plus one-third of one-fifth of the blood money (1/15th).

A Jurisprudential Case: Breaking of the Hand and Ulna

L37449–37450

[مَسْأَلَةٌ كَسْرُ الْيَدِ وَالزَّنْدِ]

L37451 A legal issue: Abu Muḥammad said: Ḥumām from Ibn Mufarrij from Ibn al-Aʻrabī from al-Dabarī from ʻAbd al-Razzāq from Ibn Jurayj: Ikrimah ibn Khālid informed me that Nāfiʻ ibn ʻAlqamah was approached concerning a man's broken leg. He said: "We used to rule five hundred dirhams for such cases until ʻĀṣim ibn Sufyān informed me that Sufyān ibn ʻAbdullāh wrote to ʻUmar ibn al-Khaṭṭāb?" He wrote: "Five awāq are to be paid for a hand that is broken, then set and becomes straight." I asked Ikrimah: "So there is no deformity or paralysis in it?" He replied: "Yes." I said: "Then Ibn ʻAlqamah ruled two hundred dirhams for it."

مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي عِكْرِمَةُ بْنُ خَالِدٍ أَنَّ نَافِعَ بْنَ عَلْقَمَةَ أُتِيَ فِي رِجْلِ رَجُلٍ كُسِرَتْ، فَقَالَ: كُنَّا نَقْضِي فِيهَا بِخَمْسمِائَةِ دِرْهَمٍ، حَتَّى أَخْبَرَنِي عَاصِمُ بْنُ سُفْيَانَ أَنَّ سُفْيَانَ بْنَ عَبْدِ اللَّهِ كَتَبَ إِلَى عُمَرَ بْنِ الْخَطَّابِ؟ فَكَتَبَ بِخَمْسِ أَوَاقٍ فِي الْيَدِ تُكْسَرُ ثُمَّ تُجْبَرُ وَتَسْتَقِيمُ، قُلْتُ لِعِكْرِمَةَ: فَلَا يَكُونُ فِيهَا عِوَجٌ وَلَا شَلَلٌ، قَالَ: نَعَمْ، قُلْت: فَقَضَى فِيهَا ابْنُ عَلْقَمَةَ بِمِائَتَيْ دِرْهَمٍ.

L37452 Narrated by Abd al-Razzaq from Sufyan al-Thawri from Ibn Abi Layla from Ikrimah ibn Khalid from a man from Umar that he said: For a leg or arm - when it breaks, then heals straight without protrusion - twenty dinars or two two-year-old female horses.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ أَبِي لَيْلَى عَنْ عِكْرِمَةَ بْنِ خَالِدٍ عَنْ رَجُلٍ عَنْ عُمَرَ أَنَّهُ قَالَ: فِي السَّاقِ أَوْ الذِّرَاعِ إذَا انْكَسَرَتْ ثُمَّ جُبِرَتْ فَاسْتَوَتْ فِي غَيْرِ عَثْمٍ عِشْرُونَ دِينَارًا، أَوْ حِقَّتَانِ.

L37453 From him to ʿAbd al-Razzāq: Ibn Jurayj narrated to us from ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz, from his father ʿUmar ibn ʿAbd al-ʿAzīz, who said: Sufyān ibn ʿAbd Allāh wrote to ʿUmar ibn al-Khaṭṭāb—while Sufyān was his governor in Ṭāʾif—seeking his counsel regarding a man's hand that had been broken. ʿUmar ibn al-Khaṭṭāb wrote back to him: "If it was set correctly, he has a right to two shares."

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِيهِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: كَتَبَ سُفْيَانُ بْنُ عَبْدِ اللَّهِ إِلَى عُمَرَ بْنِ الْخَطَّابِ - وَهُوَ عَامِلُهُ بِالطَّائِفِ - يَسْتَشِيرُهُ فِي يَدِ رَجُلٍ كُسِرَتْ، فَكَتَبَ إلَيْهِ عُمَرُ بْنُ الْخَطَّابِ: إنْ كَانَتْ جُبِرَتْ صَحِيحَةً فَلَهُ حِقَّتَانِ.

L37454 And through him to ʻAbd al-Razzāq, from Maʻmar, from Qatādah, who said: If the hand or leg is broken, or if the forearm, upper arm, thigh, or shin is broken, then is set and heals straight, twenty dinars are due for each. And if there remains a permanent deformity in the limb, forty dinars are due.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: إذَا كُسِرَتْ الْيَدُ أَوْ الرِّجْلُ وَإِذَا كُسِرَتْ الذِّرَاعُ أَوْ الْعَضُدُ أَوْ الْفَخِذُ أَوْ السَّاقُ ثُمَّ جُبِرَتْ فَاسْتَوَتْ فَفِي كُلِّ وَاحِدٍ عِشْرُونَ دِينَارًا، فَإِنْ كَانَ فِيهَا عَثْمٌ فَأَرْبَعُونَ دِينَارًا.

L37455 And through him to ʻAbd al-Razzāq from Ibn Jurayj, who said: ʻAṭāʼ said to me regarding the breaking of a leg, hand, or collarbone: "If it is broken then set, something is due in that case—but I have not been informed of what it is." Shurayḥ used to say: "If it is set, nothing is due."

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ لِي عَطَاءٌ فِي كَسْرِ الرِّجْلِ وَالْيَدِ وَالتَّرْقُوَةِ ثُمَّ تُجْبَرُ فِي ذَلِكَ شَيْءٌ، وَمَا بَلَغَنِي مَا هُوَ؟ وَكَانَ شُرَيْحٌ يَقُولُ: إِذَا جُبِرَتْ فَلَيْسَ فِيهَا شَيْءٌ

L37456 And through the chain of Al-Ḥajjāj ibn Al-Minhāl, Ḥammād ibn Salamah narrated to us from Al-Ḥajjāj from Makḥūl, who said regarding the leg: If one of its two forearm bones is fractured and subsequently heals, ten camels are due for it.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنِ الْحَجَّاجِ عَنْ مَكْحُولٍ قَالَ فِي الرِّجْلِ إِذَا كُسِرَ أَحَدُ زَنْدَيْهِ ثُمَّ انْجَبَرَ: فَفِيهِ عَشَرَةُ أَبْعِرَةٍ.

L37457–37459 This is among the matters in which the Hanafis, Malikis, and Shafiʻis differed regarding the position narrated from Umar ibn al-Khattab—may Allah be pleased with him. They condemn by the Companion's dissent when it aligns with their *taqlīd*—and success is from Allah, the Exalted.

وَهَذَا مِمَّا خَالَفَ فِيهِ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ الرِّوَايَةَ عَنْ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - وَهُمْ يُشَنِّعُونَ بِخِلَافِ الصَّاحِبِ إِذَا وَافَقَ تَقْلِيدَهُمْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L37460 The legal case of one whose hand was severed in the path of Allah or in other circumstances.

[مَسْأَلَةٌ قُطِعَتْ يَدُهُ فِي سَبِيلِ اللَّهِ أَوْ فِي غَيْرِهِ]

L37461 2047 - Issue: One whose hand was cut off in the cause of Allah or otherwise.

٢٠٤٧ - مَسْأَلَةٌ: مَنْ قُطِعَتْ يَدُهُ فِي سَبِيلِ اللَّهِ، أَوْ فِي غَيْرِهِ

L37462 Narrated by Ḥumām, narrated by Ibn Mufarrij, narrated by Ibn al-Aʿrābī, narrated by al-Dabarī, narrated by ʿAbd al-Razzāq, narrated by Maʿmar, narrated by Qatādah, who said: If someone's hand was severed in the cause of Allah the Exalted, then another person severs their remaining hand, the offender is liable to pay them two diyahs. If their hand was severed as a legal punishment and another person severs their remaining hand, the offender must pay them the diyah for the hand he severed.

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: مَنْ قُطِعَتْ يَدُهُ فِي سَبِيلِ اللَّهِ تَعَالَى ثُمَّ قَطَعَ إِنْسَانٌ يَدَهُ الْأُخْرَى: غَرِمَ لَهُ دِيَتَيْنِ فَإِنْ قُطِعَتْ يَدُهُ فِي حَدٍّ وَقَطَعَ إِنْسَانٌ يَدَهُ الْأُخْرَى غَرِمَ لَهُ دِيَةَ الَّتِي قَطَعَ.

L37463 And through him to ʻAbd al-Razzāq from Maʿmar from al-Zuhrī regarding a man whose hand was cut off, then the other was cut off after that? He said: If he were given blood money in lieu of a debt, I would consider that not far from being sound, and I have not heard any Sunnah in this matter.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ فِي رَجُلٍ مَقْطُوعِ الْيَدِ قُطِعَتِ الْأُخْرَى، بَعْدَ ذَلِكَ؟ قَالَ: لَوْ أُعْطِيَ عَقْلَ بِدَيْنٍ رَأَيْت ذَلِكَ غَيْرَ بَعِيدٍ مِنَ السَّدَادِ، وَلَمْ أَسْمَعْ فِيهِ سُنَّةً.

L37464 Abu Muhammad said: It was incumbent upon those who upheld Malik's

opinion—that in the eye of the one-eyed [person] is the diyah of two eyes—to uphold al-Zuhri's opinion. But they contradict themselves.

L37465 As for us, we do not add to what the Messenger of Allah—peace and blessings be upon him—said regarding diyah for fingers: "It is the same whether the other finger was cut in the cause of Allah the Exalted or in a Ḥadd punishment." ("And your Lord is not forgetful" [19:64].) Had Allah the Exalted intended that, He would not have neglected it, nor overlooked it, and He would have clarified it.[27]

L37466 **A jurisprudential issue regarding the compensation for a woman's fingers under diyah (blood money) rulings.**

L37467 Issue 2048: We have previously mentioned the differing opinions among people on this matter, including those who held that the compensation for one of her fingers is ten camels, for two fingers twenty camels, for three fingers thirty camels, and for four fingers twenty-four camels.

L37468 And the opinion of those who hold that she is entitled to half of the man's share in all such cases.

L37469 Ali said: "It became obligatory upon us to act upon what Allah Almighty had ordained in cases of dispute—to refer back to the Book of Allah Almighty and the Sunnah of His Prophet (peace and blessings of Allah be upon him). So we did, and we found that he (peace and blessings of Allah be upon him) had said: 'The fingers are equal—these [fingers] and those [fingers] are equal.'"

L37470–37472 Thus, it is conclusively established that a woman's fingers are equal in value—by the explicit ruling of the Prophet (peace and blessings be upon him)—and that a man's fingers are likewise equal in value, by his explicit ruling (peace and blessings be upon him). Since that is the case, and consensus has been established that for four fingers of a woman and above, there is half the compensation prescribed for a man in the same case without disagreement,

[27] **Qur'an references (L37465):** Qur'an 19:64 (Maryam).

قَالَ أَبُو مُحَمَّد: كَانَ يَلْزَمُ مَنْ قَالَ بِقَوْلِ مَالِكٍ فِي أَنَّ فِي عَيْنِ الْأَعْوَرِ دِيَةَ عَيْنَيْنِ أَنْ يَقُولَ بِقَوْلِ الزُّهْرِيِّ، وَلَكِنَّهُمْ يَتَنَاقَضُونَ.

وَأَمَّا نَحْنُ فَلَا نَزِيدُ عَلَى مَا قَالَ رَسُولُ اللَّهِ «- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي دِيَةِ الْأَصَابِعِ - سَوَاءٌ قُطِعَتْ الْأُخْرَى فِي سَبِيلِ اللَّهِ تَعَالَى أَوْ فِي حَدٍّ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] » وَلَوْ أَنَّ اللَّهَ تَعَالَى أَرَادَ ذَلِكَ لَمَا أَهْمَلَهُ، وَلَا أَغْفَلَهُ، وَلَبَيَّنَهُ

[مَسْأَلَةٌ أَصَابِعُ الْمَرْأَةِ فِي الدِّيَةِ]

٢٠٤٨ - مَسْأَلَةٌ: وَقَدْ ذَكَرْنَا قَبْلُ اخْتِلَافَ النَّاسِ فِي هَذَا وَأَنَّ فِيهِمْ مَنْ رَأَى فِي أُصْبُعِهَا عَشْرًا مِنْ الْإِبِلِ، وَفِي اثْنَيْنِ عِشْرِينَ مِنْ الْإِبِلِ، وَفِي الثَّلَاثَةِ ثَلَاثِينَ مِنْ الْإِبِلِ، وَفِي الْأَرْبَعَةِ عِشْرِينَ مِنْ الْإِبِلِ.

وَقَوْلُ مَنْ رَأَى أَنَّهَا فِي كُلِّ ذَلِكَ عَلَى النِّصْفِ مِنْ الرَّجُلِ.

قَالَ عَلِيٌّ: فَوَجَبَ عَلَيْنَا مَا افْتَرَضَهُ اللَّهُ تَعَالَى عِنْدَ التَّنَازُعِ مِنْ الرَّدِّ إلَى كِتَابِ اللَّهِ تَعَالَى، وَسُنَّةِ نَبِيِّهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَفَعَلْنَا فَوَجَدْنَاهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ: «الْأَصَابِعُ سَوَاءٌ هَذِهِ وَهَذِهِ سَوَاءٌ» .

فَصَحَّ يَقِينًا أَنَّ أَصَابِعَ الْمَرْأَةِ سَوَاءٌ، نَصُّ حُكْمِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَأَنَّ أَصَابِعَ الرَّجُلِ سَوَاءٌ، بِنَصِّ حُكْمِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِذْ ذَلِكَ كَذَلِكَ، وَقَدْ صَحَّ الْإِجْمَاعُ عَلَى أَنَّ فِي أَرْبَعَةِ أَصَابِعَ مِنْ الْمَرْأَةِ فَصَاعِدًا: نِصْفُ مَا فِي ذَلِكَ مِنْ الرَّجُلِ بِلَا خِلَافٍ، فَإِذْ بِلَا شَكٍّ فِي هَذَا وَقَدْ حَكَمَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّ أَصَابِعَهَا سَوَاءٌ: فَوَاجِبٌ

then—as there is no doubt in this matter, and the Prophet (peace and blessings be upon him) ruled that her fingers are treated equally in compensation—it is required that in two fingers there is half the compensation of four without doubt, and in one finger half of what is in two. And success is from Allah, the Most High.

[Legal Case:] Diyah for the Permanently Disabled Hand

L37473

L37474 Issue 2049: Yunus ibn Abdullah narrated from Ahmad ibn Abdullah ibn Abd al-Rahim, who narrated from Ahmad ibn Khalid, who narrated from Muhammad ibn Abd al-Salam al-Khushani, who narrated from Muhammad ibn Bashshar, who narrated from Yahya ibn Sa'id al-Qattan, who narrated from Hisham al-Dastuwa'i, who narrated from Qatadah from Abdullah ibn Buraidah from Yahya ibn Ya'mur from Ibn Abbas that Umar ibn al-Khattab said: For a blind eye if it is destroyed, a paralyzed hand if it is severed, and a blackened tooth - if it falls out - one-third of the blood money for each.

L37475 Through the chain of Waki', Abu Hilal Muhammad ibn Sulaym al-Rasibi narrated **to us** from Abdullah ibn Buraidah from Yahya ibn Ya'mur from Ibn Abbas, who said: If a **paralyzed** hand is amputated, one-third of the diyah is owed.

L37476 From the narration of Abd al-Razzaq via Ibn Jurayj, Dawud ibn Abi Asim, and Sa'id ibn al-Musayyab: Umar ibn al-Khattab ruled regarding a withered hand (if severed) that its blood money is one-third of the full amount, and regarding a withered foot (if severed) that its blood money is one-third of the full amount.

L37477 From Mujāhid, who said: "Regarding the paralyzed arm: its diyah is one-third of the full blood money."

L37478 The same [opinion] is reported from Sa'īd ibn al-Musayyib — and this is the view of Ibn Shubrumah.

L37479 Abd al-Razzaq stated: Regarding a paralyzed finger, the ruling is: half its diyah is prescribed.

أَنْ يَكُونَ فِي أُصْبُعَيْنِ نِصْفُ مَا فِي الْأَرْبَعِ بِلَا شَكٍّ - وَفِي الْأُصْبُعِ الْوَاحِدَةِ نِصْفُ مَا فِي الِاثْنَيْنِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ دِيَةَ الْيَدِ الشَّلَّاءِ]

٢٠٤٩ - مَسْأَلَةٌ: نَا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدَ الرَّحِيمِ نَا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا هِشَامٌ الدَّسْتُوَائِيُّ نا قَتَادَةَ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ عَنْ يَحْيَى بْنِ يَعْمُرَ عَنْ ابْنِ عَبَّاسٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: فِي الْعَيْنِ الْعَوْرَاءِ إِذَا فُضِخَتْ وَالْيَدِ الشَّلَّاءِ إِذَا قُطِعَتْ وَالسِّنِّ السَّوْدَاءِ - إِذَا سَقَطَتْ - ثُلُثُ دِيَتِهَا.

وَمِنْ طَرِيقِ وَكِيعٍ نا أَبُو هِلَالٍ مُحَمَّدُ بْنُ سُلَيْمٍ الرَّاسِبِيُّ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ عَنْ يَحْيَى بْنِ يَعْمُرَ عَنْ ابْنِ عَبَّاسٍ قَالَ: فِي الْيَدِ الشَّلَّاءِ إِذَا قُطِعَتْ: ثُلُثُ الدِّيَةِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ دَاوُد بْنِ أَبِي عَاصِمٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي الْيَدِ الشَّلَّاءِ - إِذَا قُطِعَتْ -: ثُلُثَ دِيَتِهَا، وَفِي الرِّجْلِ الشَّلَّاءِ -: ثُلُثَ دِيَتِهَا.

وَعَنْ مُجَاهِدٍ قَالَ: فِي الْيَدِ الشَّلَّاءِ -: ثُلُثُ دِيَتِهَا.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مِثْلُ ذَلِكَ - وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ.

وَعَنْ عَبْدِ الرَّزَّاقِ أَنَّهُ قَالَ: فِي الْأُصْبُعِ الشَّلَّاءِ تُقْطَعُ: نِصْفُ دِيَتِهَا.

وَقَالَ آخَرُونَ غَيْرَ ذَلِكَ. كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ قَالَ: فِي الْيَدِ الشَّلَّاءِ - إِذَا قُطِعَتْ -: خُمْسُ دِيَتِهَا.

L37480 Others held a differing opinion, as narrated through the chain of Al-Ḥajjāj ibn Al-Minhāl, who reported from Ḥammād ibn Salamah, from Muḥammad ibn Isḥāq, from Yazīd ibn ʿAbdullāh ibn Quṣayṭ, who said: For a paralyzed hand, if severed, one-fifth of the full diyah is owed.

وَعَنْ مَسْرُوقٍ قَالَ: فِي الْيَدِ الشَّلَّاءِ -: حُكْمٌ.

L37481 From Masruq, he said: "There is a legal ruling concerning the paralyzed hand."

وَعَنْ النَّخَعِيِّ مِثْلُ ذَلِكَ -: حُكْمٌ.

L37482 And from Al-Nakhaʿī similarly — a legal ruling.

وَعَنْ ابْنِ جُرَيْجٍ قَالَ: فِي الْأُصْبُعِ الشَّلَّاءِ تُقْطَعُ: شَيْءٌ، لِجَمَالِهَا وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمْ.

L37483–37485 And from Ibn Jurayj, he said: Regarding the paralyzed finger, something is amputated for its beauty. And according to this, Abū Ḥanīfah, Mālik, al-Shāfiʿī, and their adherents maintain.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ جَاءَ هَذَا أَثَرٌ -: كَمَا رُوِّينَا - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا أَحْمَدُ بْنُ إِبْرَاهِيمَ بْنِ مُحَمَّدٍ نا ابْنُ عَائِذٍ نا الْهَيْثَمُ بْنُ جَمِيلٍ نا الْعَلَاءُ - هُوَ ابْنُ الْحَارِثِ - عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِي الْعَيْنِ الْعَوْرَاءِ - السَّادَةِ لِمَكَانِهَا - إِذَا طُمِسَتْ: ثُلُثَ دِيَتِهَا - وَفِي الْيَدِ الشَّلَّاءِ - إِذَا قُطِعَتْ: ثُلُثَ دِيَتِهَا - وَفِي السِّنِّ السَّوْدَاءِ - إِذَا نُزِعَتْ: ثُلُثَ دِيَتِهَا» .

L37486 Abū Muḥammad said: This report has been transmitted—as has been narrated to us—via ʿAbdullāh ibn Rabīʿ, from Muḥammad ibn Muʿāwiyah, from Aḥmad ibn Shuʿayb, from Aḥmad ibn Ibrāhīm ibn Muḥammad, from Ibn ʿĀʾidh, from al-Haytham ibn Jamīl, from al-ʿAlāʾ, who is Ibn al-Ḥārith, from ʿAmr ibn Shuʿayb, from his father, from his grandfather: "The Messenger of Allāh—peace and blessings of Allāh be upon him—ruled concerning the sightless eye with a cataract in its socket: if it is obliterated, [the compensation is] one-third of its *diyah*; concerning the paralyzed hand: if it is severed, one-third of its *diyah*; and concerning the tooth blackened by decay: if it is extracted, one-third of its *diyah*."

قَالَ عَلِيٌّ: فَجَاءَ هَذَا الْخَبَرُ كَمَا ذَكَرْنَا، وَالْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، يَحْتَجُّونَ بِهِ إِذَا وَافَقَ أَهْوَاءَهُمْ وَجَاءَ بِمِثْلِ مَا فِيهِ الْأَثَرُ الصَّحِيحُ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا - وَلَا يُعْرَفُ لَهُمَا مُخَالِفٌ مِنْ الصَّحَابَةِ أَصْلًا - وَقَالَ بِذَلِكَ سَعِيدُ بْنُ الْمُسَيِّبِ، وَمُجَاهِدٌ - وَهُمْ يُهَوِّلُونَ وَيُشَنِّعُونَ بِخِلَافِ الصَّاحِبِ إِذَا وَافَقَ تَقْلِيدَهُمْ.

L37487 Ali said: This report came as we mentioned, and the Hanafis, Malikis, and Shafi'is cite it as evidence when it aligns with their inclinations and corresponds to the authentic reports from Umar ibn al-Khattab and Ibn Abbas—may Allah be pleased with them both—with no known opposition to them from any of the Companions at all. Sa'id ibn al-Musayyib and Mujahid also held this view. Yet, they exaggerate the gravity and harshly condemn disagreement with the Companion when such disagreement aligns with their own *taqlīd*.

[مَسْأَلَةُ الدِّيَةِ فِي أَصَابِعِ الرِّجْلِ]

L37488 **A Jurisprudential Issue Regarding the *Diyah* for the Toes**

L37489 2050. Legal Question: We have mentioned the reports transmitted regarding this matter, and that none of it is valid except what has been established concerning the fingers - with the ruling on toes being identical to that of the fingers in every respect, as we have stated. No aspect of the legal ruling differs in any of these matters due to the generality of his statement (peace be upon him): "The fingers are equal in compensatory rulings, and ten [units] for each finger," meaning each individual finger.

٢٠٥٠ - مَسْأَلَةٌ: وَقَدْ ذَكَرْنَا مَا جَاءَ عَنْ ذَلِكَ فِي الْأَثَرِ، وَأَنَّهُ لَا يَصِحُّ مِنْ ذَلِكَ شَيْءٌ إِلَّا مَا جَاءَ فِي الْأَصَابِعِ بِالْقَوْلِ فِي أَصَابِعِ الرِّجْلِ كَمَا قُلْنَا فِي أَصَابِعِ الْيَدِ سَوَاءٌ سَوَاءٌ، لَا يَفْتَرِقُ شَيْءٌ مِنْ الْحُكْمِ فِي ذَلِكَ فِي جَمِيعِ الْمَسَائِلِ لِعُمُومِ قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «الْأَصَابِعُ سَوَاءٌ وَفِي الْأَصَابِعِ عَشْرٌ عَشْرٌ» يَعْنِي كُلَّ وَاحِدَةٍ.

L37490–37492 Abdullah ibn Rabiʿ narrated to us on the authority of Abdullah ibn Muhammad ibn Uthman, who narrated from Ahmad ibn Khalid, from Ali ibn Abdulaziz, from al-Hajjaj ibn al-Minhal, from Abu Awanah, from Asim ibn Ḍamrah, from Ali ibn Abi Talib, who said: "For the nose, the full diyah is due; for the tongue, the full diyah is due; for the male organ, the full diyah is due; for the eye, half the diyah is due; for the ear, half the diyah is due; for the hand, half the diyah is due; and for the leg, half the diyah is due." And through him to Al-Ḥajjāj ibn al-Minhāl, narrated to us Ḥammād ibn Salamah from Muḥammad ibn Isḥāq from ʿAmr ibn Shuʿayb, who said: It was in the legal register of Abū Bakr and ʿUmar that regarding the leg—if it becomes rigid and he is unable to extend it; or if he extends it but cannot flex it; or if it fails to touch the ground—then [compensation is due] according to the extent of its deficiency.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: فِي الْأَنْفِ، وَفِي اللِّسَانِ الدِّيَةُ، وَفِي الذَّكَرِ الدِّيَةُ، وَفِي الْعَيْنِ النِّصْفُ، وَفِي الْأُذُنِ النِّصْفُ، وَفِي الْيَدِ النِّصْفُ، وَفِي الرِّجْلِ النِّصْفُ وَبِهِ إلَى الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: كَانَ فِي كِتَابِ أَبِي بَكْرٍ، وَعُمَرَ: أَنَّ فِي الرِّجْلِ إذَا يَبِسَتْ فَلَمْ يَسْتَطِعْ أَنْ يَبْسُطَهَا، أَوْ يَبْسُطُهَا فَلَمْ يَسْتَطِعْ أَنْ يَقْبِضَهَا، أَوْ لَمْ تَنَلْ الْأَرْضَ فَبِقَدْرِ مَا نَقَصَ مِنْهَا.

L37493 From the narration of Abd al-Razzaq, from Ibn Jurayj, from Abd al-Aziz ibn Umar ibn Abd al-Aziz, from his father, from Umar ibn al-Khattab, who said: "For the leg, [the compensation is] half the diyah (blood money), or its equivalent in gold or silver. If the amount is reduced, it is calculated proportionally."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: وَفِي الرِّجْلِ نِصْفُ الدِّيَةِ، أَوْ عِدْلُ ذَلِكَ مِنْ الذَّهَبِ أَوْ الْوَرِقِ، فَإِذَا نَقَصَتْ، فَبِالْحِسَابِ.

L37494 From Ibn Jurayj, from ʿAṭāʾ regarding the hand: if it is completely amputated from the shoulder joint, fifty camels. And the leg is likewise.

وَعَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِي الْيَدِ تُسْتَأْصَلُ خَمْسُونَ مِنْ الْإِبِلِ إذَا قُطِعَتْ مِنْ الْمَنْكِبِ، وَالرِّجْلُ كَذَلِكَ.

L37495 Ali said: The diyah in that case applies solely to the fingers—just as we have stated regarding the hand, alike, alike—and divine success is from Allah, the Exalted.

قَالَ عَلِيٌّ: الدِّيَةُ فِي ذَلِكَ لِلْأَصَابِعِ فَقَطْ - عَلَى مَا قُلْنَا فِي الْيَدِ سَوَاءٌ سَوَاءٌ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A Question Regarding Diyya (Blood Money) Pertaining to the Tongue/Speech

2051 - Issue: We have previously mentioned the narration concerning this matter and that it is not authentic. Narrated by Ḥumām from Ibn Mufarrij from Ibn al-Aʿrābī from al-Dabarī from ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAmr ibn Shuʿayb, who said: Abū Bakr al-Ṣiddīq - may God be pleased with him - ruled regarding the tongue: if it is severed with full diyah when extracted from its root. And if it is cut from its extremity while the person retains speech, then half the diyah is owed.

And through him to ʿAbd al-Razzāq from Maʿmar from a man from ʿIkrimah, who said: Abū Bakr ruled concerning the tongue that if it is severed, the full blood-money is owed. But if its root is severed—such that some speech becomes clear while some remains unclear—then half the blood-money is owed.

And through him to Abd al-Razzaq, from Ibn Jurayj, from Abd al-Aziz ibn Umar ibn Abd al-Aziz, from his father, from Umar ibn al-Khattab, who said: Regarding the tongue - if it is completely uprooted, the full diyah is due. As for any injury to the tongue that reaches the point of preventing speech, the full diyah is required for it.

[مَسْأَلَةٌ الدِّيَة فِي اللِّسَانِ]

٢٠٥١ - مَسْأَلَةٌ: قَدْ ذَكَرْنَا الْأَثَرَ فِي ذَلِكَ وَأَنَّهُ لَا يَصِحُّ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَضَى أَبُو بَكْرٍ الصِّدِّيقُ - رَضِيَ اللَّهُ عَنْهُ - فِي اللِّسَانِ إذَا قُطِعَ بِالدِّيَةِ - إذَا نُزِعَ مِنْ أَصْلِهِ - فَإِنْ قُطِعَ مِنْ أَسَلَتِهِ فَتَكَلَّمَ صَاحِبُهُ: فَفِيهِ نِصْفُ الدِّيَةِ.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ عِكْرِمَةَ قَالَ: قَضَى أَبُو بَكْرٍ فِي اللِّسَانِ إذَا قُطِعَ الدِّيَةُ، فَإِنْ قُطِعَتْ أَسَلَتُهُ - فَبَيَّنَ بَعْضَ الْكَلَامِ وَلَمْ يُبَيِّنْ بَعْضَهُ - فَنِصْفُ الدِّيَةِ.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: فِي اللِّسَانِ إذَا اُسْتُؤْصِلَ دِيَةٌ كَامِلَةٌ، وَمَا أُصِيبَ مِنْ اللِّسَانِ - فَبَلَغَ أَنْ يَمْنَعَ الْكَلَامَ - فَفِيهِ الدِّيَةُ كَامِلَةً.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ قَالَ: فِي اللِّسَانِ الدِّيَةُ - وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ مِثْلُ ذَلِكَ وَعَنْ سُلَيْمَانَ بْنِ مُوسَى أَنَّهُ قَالَ فِي كِتَابِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي الْأَجْنَادِ مَا قُطِعَ مِنْ اللِّسَانِ فَبَلَغَ أَنْ يَمْنَعَ الْكَلَامَ كُلَّهُ - فَفِيهِ الدِّيَةُ كَامِلَةً، وَمَا نَقَصَ دُونَ ذَلِكَ فَبِحِسَابِهِ.

L37500–37502 And from the path of Al-Ḥajjāj ibn Al-Minhāl: Abū ʻAwanah narrated to us from Abū Isḥāq, from ʻĀṣim ibn Ḍamrah, from ʻAlī, who said: The diyah (blood money) is prescribed for [injuring] the tongue. And from Ibrāhīm an-Nakhaʻī: the same as that. Narrated from Sulaymān ibn Mūsā that he said in the written decree of ʻUmar ibn ʻAbd al-ʻAzīz concerning the troops: Whatever part of the tongue is severed to the extent that it entirely prevents speech—the full *diyah* is required for it. Whatever injury does not reach that severity is compensated proportionally.

وَعَنْ مُجَاهِدٍ قَالَ: فِي اللِّسَانِ الدِّيَةُ كَامِلَةً فَإِنْ قُطِعَتْ أَسَلَتُهُ فَتَبَيَّنَ بَعْضُ الْكَلَامِ، فَإِنَّهُ بِحَسَبِهِ بِالْحُرُوفِ - إِنْ بَيَّنَ نِصْفَ الْحُرُوفِ: فَنِصْفُ الدِّيَةِ - وَإِنْ بَيَّنَ الثُّلُثَ: فَثُلُثُ الدِّيَةِ.

L37503 From Mujāhid it is reported: For [injury to] the tongue, the full diyah (blood-money) is required. If its tip is severed and he can articulate some speech, the compensation is proportionally assessed according to the letters [he can pronounce]—if he articulates half the letters, half the diyah is due; and if he articulates a third of the letters, a third of the diyah is due.

وَعَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: اللِّسَانُ يُقْطَعُ كُلُّهُ، قَالَ: الدِّيَةُ، قُلْت: فَقُطِعَ مِنْهُ مَا يُذْهِبُ الْكَلَامَ، وَيَبْقَى مِنْ اللِّسَانِ، قَالَ: مَا أَرَى إلَّا أَنَّ فِيهِ الدِّيَةَ إذَا ذَهَبَ الْكَلَامُ.

L37504 It is reported from Ibn Jurayj that he said: I asked ʻAta': "Is the entire tongue to be cut off?" He replied: "The blood money is due." I said: "If part of it is cut such that speech is lost, while some of the tongue remains." He said: "In my view, the only ruling is that blood money is required in that case when speech is lost."

وَعَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ أَبِي نَجِيحٍ أَنَّ اللِّسَانَ إذَا قُطِعَ مِنْهُ مَا يُذْهِبُ الْكَلَامَ: أَنَّ فِيهِ الدِّيَةَ، قُلْت: عَمَّنْ؟ قَالَ: هُوَ قَوْلُ الْقِيَاسِ، قَالَ: فَإِنْ ذَهَبَ بَعْضُ الْكَلَامِ وَبَقِيَ بَعْضٌ: فَبِحِسَابِ الْكَلَامِ - وَالْكَلَامُ مِنْ ثَمَانِيَةٍ وَعِشْرِينَ حَرْفًا، قُلْت: عَمَّنْ؟ قَالَ: لَا أَدْرِي.

L37505 From Ibn Jurayj: Ibn Abi Najih informed me that if the part of the tongue responsible for speech is severed, thereby eliminating speech, the full diyah is incurred. I asked: "From whom [is this ruling]?" He said: "It is the ruling based on qiyas (analogical reasoning)." He said: "If some speech is lost while some remains, compensation is proportionate to the speech lost—and speech consists of twenty-eight phonetic units." I asked: "From whom [is this]?" He said: "I do not know."

قَالَ أَبُو مُحَمَّد: وَبِإِيجَابِ الدِّيَةِ فِي اللِّسَانِ وَفِي الْكَلَامِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَصْحَابُهُمْ.

L37506 Abu Muhammad said: Abu Hanifah, Malik, al-Shafi'i, Ahmad, and their followers affirm the obligation of diyah pertaining to the tongue and speech.

وَأَمَّا الْأَثَرُ فِي ذَلِكَ فَلَا يَصِحُّ.

L37507 As for the tradition concerning that matter, it is not authentic.

L37508 As for the narration from Abū Bakr and ʻUmar – may Allah be pleased with

them – if later scholars authenticated it, they still disregarded Abū Bakr's individual ruling, for he – may Allah be pleased with him – ruled that the loss of the tongue's tip incurs half the *diyya*.

L37509 A ruling such as this cannot be conclusively established as a consensus, for it contains only two interrupted narrations from Abū Bakr and ʿUmar, and a third from ʿAlī—and yet they have contradicted far more instances than this in numerous cases.

L37510 Among these are the rulings of Umar and Ibn Abbas regarding the blind eye and the paralyzed hand.

L37511–37513 The opinion of ʿAlī regarding the clitoris, the opinions of Abū Bakr, ʿUmar, and others concerning retribution (qiwād) for a slap, and other such cases are exceedingly numerous. Thus, in cases involving the tongue if intentional, only retribution (qiwād) or compensation is obligatory, as it constitutes a wound with no further penalty. As for error, accountability is lifted by the explicit text of the Quran, and success comes only from Allah, the Exalted.

L37514 **A legal issue concerning the blood money for the loss of speech pertaining to a foreigner and a mute person.**

L37515 2052 - Issue: On the speech of the non-Arab and the mute.

L37516 Abu Muhammad said: Ahmad ibn ʿUmar narrated to us, from ʿAbdullah ibn al-Ḥusayn ibn ʿIqāl, from Ibrāhīm ibn Muḥammad al-Dīnawarī, from Ibn al-Jahm, from Mūsā ibn Isḥāq al-Anṣārī, from Abū Bakr ibn Abī Shaybah, from Muḥammad ibn Bakr, from Ibn Jurayj, from Qatādah, who said: For the tongue of a mute person, it is one-third of that for the tongue of a healthy person.

L37517 Narrated by Hammam, narrated by Ibn Mufarrij, narrated by Ibn al-A'rabi, narrated by al-Dabari, narrated by Abd al-Razzaq from Ibn Jurayj from a man from Makhul, who said: Umar ibn al-Khattab ruled that severing the tongue of a mute person incurs a third of the diyah as compensation.

L37518 And via him to Abd al-Razzaq, narrated by Ma'mar from Qatadah, who said

وَأَمَّا الرِّوَايَةُ عَنْ أَبِي بَكْرٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - فَإِنْ صَحَّحُوهَا: فَرِوَايَةُ أَبِي بَكْرٍ قَدْ خَالَفُوهَا، لِأَنَّهُ - رَضِيَ اللَّهُ عَنْهُ - جَعَلَ فِي ذَهَابِ أَسَلَةِ اللِّسَانِ نِصْفَ الدِّيَةِ.

وَمِثْلُ هَذَا لَا يَجُوزُ أَنْ يُقْطَعَ فِيهِ عَلَى أَنَّهُ إجْمَاعٌ، إذْ لَيْسَ فِيهِ إلَّا أَثَرَانِ عَنْ أَبِي بَكْرٍ، وَعُمَرَ مُنْقَطِعَانِ - وَثَالِثٌ عَنْ عَلِيٍّ، وَهُمْ قَدْ خَالَفُوا أَضْعَافَ هَذَا فِي غَيْرِ مَا مَوْضِعٍ.

مِنْ ذَلِكَ قَوْلُ عُمَرَ، وَابْنِ عَبَّاسٍ، فِي الْعَيْنِ الْعَوْرَاءِ، وَالْيَدِ الشَّلَّاءِ.

وَقَوْلُ عَلِيٍّ فِي السِّمْحَاقِ، وَقَوْلُ أَبِي بَكْرٍ، وَعُمَرَ، وَغَيْرُهُمَا، فِي الْقَوَدِ مِنْ اللَّطْمَةِ، وَغَيْرُ ذَلِكَ كَثِيرٌ جِدًّا، فَالْوَاجِبُ أَنْ لَا يَجِبَ فِي اللِّسَانِ - إذَا كَانَ عَمْدًا - إلَّا الْقَوَدُ أَوْ الْمُفَادَاةُ، لِأَنَّهُ جُرْحٌ، وَلَا مَزِيدَ وَأَمَّا الْخَطَأُ - فَمَرْفُوعٌ بِنَصِّ الْقُرْآنِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ دِيَةِ لِسَانِ الْأَعْجَمِ وَالْأَخْرَسِ]

٢٠٥٢ - مَسْأَلَةٌ: فِي لِسَانِ الْأَعْجَمِ وَالْأَخْرَسِ.

قَالَ أَبُو مُحَمَّدٍ: حَدَّثَنَا أَحْمَدُ بْنُ عُمَرَ نا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ نا إبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ نا ابْنُ الْجَهْمِ نا مُوسَى بْنُ إسْحَاقَ الْأَنْصَارِيُّ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ بَكْرٍ عَنْ ابْنِ جُرَيْجٍ عَنْ قَتَادَةَ قَالَ: فِي لِسَانِ الْأَخْرَسِ الثُّلُثُ مِمَّا فِي لِسَانِ الصَّحِيحِ.

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ رَجُلٍ عَنْ مَكْحُولٍ قَالَ: قَضَى عُمَرُ بْنُ الْخَطَّابِ فِي لِسَانِ الْأَخْرَسِ يُسْتَأْصَلُ بِثُلُثِ الدِّيَةِ. .

regarding the tongue of a non-Arab [if injured]: "It is a third of the diyah." This is the opinion of Ibn Shubrumah. It has been narrated from Ibrahim al-Nakha'i that the full diyah is required for it.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ فِي لِسَانِ الْأَعْجَمِيِّ ثُلُثُ الدِّيَةِ وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ - وَقَدْ رُوِيَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّ فِيهِ الدِّيَةَ كُلَّهَا. .

L37519 Abu Hanifah, Malik, al-Shafi'i, and their companions said: There is nothing in it except arbitration.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمْ: لَيْسَ فِيهِ إِلَّا حُكُومَةٌ.

L37520 Abu Muhammad said: This is among the matters in which they contradicted the narration from Umar by citing as evidence one weaker than it - when it aligns with their opinions. No disagreement from any of the Companions (may Allah be pleased with them) is reported regarding this matter that contradicts what was narrated from Umar. Yet they magnify such things when it aligns with their opinions.

قَالَ أَبُو مُحَمَّد: وَهَذَا مِمَّا خَالَفُوا فِيهِ الرِّوَايَةَ عَنْ عُمَرَ الَّتِي يَحْتَجُّونَ بِأَضْعَفَ مِنْهَا - إِذَا وَافَقَ آرَاءَهُمْ - وَلَا يُرْوَى فِي ذَلِكَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافٌ لِمَا جَاءَ فِيهِ عَنْ عُمَرَ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إِذَا وَافَقَ آرَاءَهُمْ.

L37521 Ali said: The tongue of a mute person is like that of others—the harm is equivalent, and qisas (retaliation) is obligatory, based on Allah's statement, the Exalted: "Sacred ordinances are subject to retaliation" [Al-Baqarah: 194], either through retaliation or compensation. The same ruling applies to the tongue of a minor. And success is from Allah, the Exalted.[1]

قَالَ عَلِيٌّ: لِسَانُ الْأَخْرَسِ كَغَيْرِهِ، وَالْأَلَمُ وَاحِدٌ، وَالْقَوَدُ وَاجِبٌ، لِقَوْلِ اللَّهِ تَعَالَى {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] أَوْ الْمُفَادَاةُ، وَكَذَلِكَ لِسَانُ الصَّغِيرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37522 **A legal issue: If one amputates a hand with gangrene, extracts a painful molar, or extracts a decayed molar without the owner's consent.**

[مَسْأَلَةٌ قَطَعَ يَدًا فِيهَا أَكَلَةٌ أَوْ قَلَعَ ضِرْسًا وَجِعَةً أَوْ مُتَأَكِّلَةً بِغَيْرِ إِذْنِ صَاحِبِهَا]

L37523 Issue 2053: Concerning one who amputates a hand afflicted with an ulcer, extracts an aching tooth or a decayed tooth without the person's permission.

٢٠٥٣ - مَسْأَلَةٌ: فِيمَنْ قَطَعَ يَدًا فِيهَا أَكَلَةٌ، أَوْ قَلَعَ ضِرْسًا وَجِعَةً، أَوْ مُتَأَكِّلَةً بِغَيْرِ إِذْنِ صَاحِبِهَا.

L37524–37526 Abu Muhammad said: Allah, the Exalted, said: "And cooperate in righteousness and piety, and do not cooperate in sin and aggression" [Al-Ma'idah 5:2]. And He, the Exalted, said: "So whoever transgresses against you, retaliate in the same manner he has transgressed against you" [Al-Baqarah: 194].[2]

قَالَ أَبُو مُحَمَّد: قَالَ اللَّهُ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَقَالَ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

L37527 The obligation is to apply these two texts from the speech of Allah the

فَالْوَاجِبُ اسْتِعْمَالُ هَذَيْنِ النَّصَّيْنِ مِنْ كَلَامِ اللَّهِ تَعَالَى، فَيُنْظَرُ، فَإِنْ قَامَتْ بَيِّنَةٌ، أَوْ عَلِمَ الْحَاكِمُ أَنَّ تِلْكَ الْيَدَ لَا يُرْجَى لَهَا بُرْءٌ، وَلَا تَوَقُّفٌ، وَأَنَّهَا مُهْلِكَةٌ وَلَا بُدَّ، وَلَا دَوَاءَ لَهَا إِلَّا

[1] **Qur'an references (L37521):** Qur'an 2:194 (Al-Baqarah).
[2] **Qur'an references (L37524):** Qur'an 5:2 (Al-Ma'idah); Qur'an 2:194 (Al-Baqarah).

Exalted. The case is then evaluated: if clear evidence is presented, or the judge determines that the hand has no hope of healing, no possibility of halting the harm's progression, that it is inevitably fatal, and that no treatment exists except amputation, then there is no liability upon the amputator. He has acted rightly, for this constitutes treatment. Indeed, the Messenger of Allah—peace and blessings be upon him—commanded seeking treatment.

الْقَطْعُ، فَلَا شَيْءَ عَلَى الْقَاطِعِ، وَقَدْ أَحْسَنَ، لِأَنَّهُ دَوَاءٌ، وَقَدْ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمُدَاوَاةِ.

L37528 And likewise, the ruling applies to a tooth causing severe pain that prevents him from his prayer and attending to his necessary matters, for this is cooperation in righteousness and God-consciousness.

وَهَكَذَا الْقَوْلُ فِي الضِّرْسِ إِذَا كَانَ شَدِيدَ الْأَلَمِ قَاطِعًا بِهِ عَنْ صَلَاتِهِ، وَمَصَالِحِ أُمُورِهِ، فَهَذَا تَعَاوُنٌ عَلَى الْبِرِّ وَالتَّقْوَى.

L37529 Muhammad ibn Umar al-Udhri narrated to us: Abu Dharr al-Harawi narrated to us: Abdullah ibn Muhammad al-Saydalani (in Balkh) narrated to us: Abd al-Rahman ibn Abi Hatim narrated to us: al-Hasan ibn Arafah narrated to us: Waki' narrated to us from Mis'ar ibn Kidam and Sufyan al-Thawri from Ziyad ibn Ilaqah from Yahya ibn Usamah ibn Sharik, who said: The Messenger of Allah, peace and blessings be upon him, said, "Seek treatment, for Allah has not created a disease without creating a cure for it, except one disease." They asked, "What is it, O Messenger of Allah?" He replied, "Old age."

نا مُحَمَّدُ بْنُ عُمَرَ الْعُذْرِيُّ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الصَّيْدَلَانِيُّ بِبَلْخٍ نا عَبْدُ الرَّحْمَنِ بْنُ أَبِي حَاتِمٍ نا الْحَسَنُ بْنُ عَرَفَةَ نا وَكِيعٌ عَنْ مِسْعَرِ بْنِ كِدَامٍ وَسُفْيَانَ الثَّوْرِيِّ عَنْ زِيَادِ بْنِ عِلَاقَةَ عَنْ يَحْيَى بْنِ أُسَامَةَ بْنِ شَرِيكٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «تَدَاوَوْا فَإِنَّ اللَّهَ لَمْ يَضَعْ دَاءً إِلَّا وَضَعَ لَهُ شِفَاءً، غَيْرَ دَاءٍ وَاحِدٍ؟ قَالُوا: وَمَا هُوَ يَا رَسُولَ اللَّهِ؟ قَالَ: الْهَرَمُ» .

L37530 Ali said: "Whoever treats his Muslim brother medically as Allah the Exalted has commanded through the tongue of His Prophet (blessings and peace be upon him) has indeed done good. Allah the Exalted says: 'There is no blame upon those who do good' [At-Tawbah: 91]."[3]

قَالَ عَلِيٌّ: فَمَنْ دَاوَى أَخَاهُ الْمُسْلِمَ كَمَا أَمَرَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ نَبِيِّهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَقَدْ أَحْسَنَ، قَالَ اللَّهُ تَعَالَى {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] .

L37531 If the decayed tooth is expected to heal or cease progression, and the molar occasionally stops [causing pain] without fully disrupting his prayers or essential matters, then retaliation (qisas) is mandated for the one who cuts or extracts it, for he is then a transgressor. Allah the Exalted has ordained qisas for deliberate physical injury (qawd).

وَأَمَّا إِذَا كَانَ يُرْجَى لِلْأَكَلَةِ بُرْءٌ أَوْ تَوَقُّفٌ، وَكَانَ الضِّرْسُ تَتَوَقَّفُ أَحْيَانًا، وَلَا يَقْطَعُ شُغْلُهُ عَنْ صَلَاتِهِ، وَمَصَالِحِ أُمُورِهِ، فَعَلَى الْقَاطِعِ وَالْقَالِعِ: الْقَوَدُ، لِأَنَّهُ حِينَئِذٍ مُتَعَدٍّ، وَقَدْ أَمَرَ اللَّهُ تَعَالَى بِالْقِصَاصِ فِي الْقَوَدِ.

[مَسْأَلَةٌ دِيَةُ الْبَحَحِ وَالْغَنَنِ وَالصَّعَرِ وَالْحَدَبِ]

L37532 **A question regarding the blood money (diyah) for hoarseness, nasal speech, twisted neck, and hunchback.**

[3] **Qur'an references (L37530):** Qur'an 9:91 (At-Tawbah).

L37533–37535 2054. Issue: Abū Muḥammad said: Al-baḥaḥ - a coarseness arising from excess fluid descending within the tubes of the lung - causes speech not to become - entirely - clear, and it may intensify until speech becomes wholly unintelligible. Al-Ghunnah is the nasal emission of speech originating in the nostrils.

٢٠٥٤ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: الْبَحَحُ - هُوَ خُشُونَةٌ تَعْرِضُ مِنْ فَضْلٍ نَازِلٍ فِي أَنَابِيبِ الرِّئَةِ، فَلَا يَتَبَيَّنُ الْكَلَامُ - كُلَّ الْبَيَانِ - وَقَدْ يَزِيدُ حَتَّى لَا يَتَبَيَّنَ أَصْلًا وَالْغَنَنُ - هُوَ خُرُوجُ الْكَلَامِ مِنْ الْمَنْخَرَيْنِ.

L37536 Torticollis is the tilting of the entire face to one side due to a visible twisting.

وَالصَّعَرُ - هُوَ مِيلُ الْوَجْهِ كُلِّهِ إلَى نَاحِيَةٍ وَاحِدَةٍ بِانْفِتَالٍ ظَاهِرٍ.

L37537 Al-hadab (kyphosis) is a curvature and bending in the spinal or thoracic vertebrae, and both curvatures may occur together. It may affect the elderly just as it may affect the young. We ask Allah for well-being.

وَالْحَدَبُ - تَقَوُّسٌ، وَانْحَاءٌ فِي فَقَرَاتِ الصُّلْبِ، أَوْ فَقَرَاتِ الصَّدْرِ، وَقَدْ يَجْتَمِعَانِ مَعًا، وَقَدْ يَعْرِضُ لِلْكَبِيرِ كَمَا يَعْرِضُ لِلصَّغِيرِ - نَسْأَلُ اللَّهَ الْعَافِيَةَ.

L37538 Abdullah ibn Rabi' narrated to us from Abdullah ibn Muhammad ibn Uthman, from Ahmad ibn Khalid, from Ali ibn Abd al-Aziz, from al-Hajjaj ibn al-Minhal, from Hammad ibn Salamah, from al-Hajjaj, from Makḥūl, that Zayd ibn Thabit said: For spinal curvature, the full blood money is due; for hoarseness, the full blood money is due; for a tilted neck, half the blood money is due; and for nasal speech impairment, blood money is proportionate to the extent of the impairment.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا الْحَجَّاجُ عَنْ مَكْحُولٍ أَنَّ زَيْدَ بْنَ ثَابِتٍ قَالَ: فِي الْحَدَبِ الدِّيَةُ كَامِلَةٌ، وَفِي الْبَحَحِ الدِّيَةُ كَامِلَةٌ وَفِي الصَّعَرِ نِصْفُ الدِّيَةِ، وَفِي الْغَنَنِ بِقَدْرِ مَا غَنَّنَ.

L37539 Narrated by Humaam from Ibn Mufarrij from Ibn al-A'rabi from al-Dabari from Abd al-Razzaq from more than one transmitter from al-Hajjaj from Makhul from Zayd ibn Thabit, who said: Regarding torticollis - if it cannot be turned - the full diyah is due.

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ غَيْرِ وَاحِدٍ عَنْ الْحَجَّاجِ عَنْ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: فِي الصَّعَرِ - إذَا لَمْ يُلْتَفَتْ - الدِّيَةُ كَامِلَةٌ.

L37540–37541 And through him, from Ibn Jurayj to Abd al-Razzaq, Abd al-Aziz ibn Umar ibn Abd al-Aziz reported to me, saying: Umar ibn Abd al-Aziz ruled regarding torticollis (al-sa'ar)—if a man cannot turn his head except by tilting it—that half the blood money amounts to five hundred dinars. Ma'mar also concurs with this ruling.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: قَالَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي الصَّعَرِ - إذَا لَمْ يَلْتَفِتْ الرَّجُلُ إلَّا مُنْحَرِفًا - نِصْفُ الدِّيَةِ خَمْسُمِائَةِ دِينَارٍ - وَبِهِ يَقُولُ مَعْمَرٌ.

L37542 Aḥmad ibn Ḥanbal said: The *diyah* applies to wryneck.

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: فِي الصَّعَرِ الدِّيَةُ.

L37543 Abu Muhammad said: Abu Hanifah, Malik, and Al-Shafi'i said: There is nothing in that except arbitration. This is among what they opposed in the

قَالَ أَبُو مُحَمَّد: وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: لَيْسَ فِي ذَلِكَ إلَّا حُكُومَةٌ - وَهَذَا مِمَّا خَالَفُوا فِيهِ الرِّوَايَةَ عَنْ زَيْدِ بْنِ ثَابِتٍ، وَلَا يُعْرَفُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ خِلَافُهُ.

narration from Zayd ibn Thabit, and no disagreement with it from any of the Companions is known.

أَمَّا نَحْنُ فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - إنَّهُ إنْ حَدَثَ كُلُّ ذَلِكَ مِنْ ضَرْبٍ عَمْدٍ

L37544 As for us, we say—and success is from Allah, the Exalted—if all of that occurs through an intentional strike, retaliation is exacted in kind to whatever extent it reaches. If the same occurs, then proceed; otherwise, there is nothing more upon the offender than being retaliated against with the same manner he perpetrated—and it is not permissible to retaliate against him with that which he did not perpetrate. If we were capable of making him reach the same extent he reached through his injustice, we would do so. But since we are incapable of that, what cannot be achieved is no longer incumbent upon us.

أُقْتُصَّ بِمِثْلِ ذَلِكَ بَالِغًا مَا بَلَغَ، فَإِنْ حَدَثَ مِثْلُ ذَلِكَ، وَإِلَّا فَلَا شَيْءَ عَلَى الْجَانِي أَكْثَرَ مِنْ أَنْ يُعْتَدَى عَلَيْهِ بِمِثْلِ مَا اعْتَدَى - وَلَا يَجُوزُ أَنْ يُعْتَدَى عَلَيْهِ بِمَا لَمْ يَعْتَدِ هُوَ بِهِ - وَلَوْ قَدَرْنَا عَلَى أَنْ نُبَلِّغَهُ حَيْثُ بَلَغَهُ هُوَ بِظُلْمِهِ لَفَعَلْنَا، وَلَكِنْ إذْ عَجَزْنَا عَنْ ذَلِكَ فَقَدْ سَقَطَ عَنَّا مَا لَا يُقْدَرُ عَلَيْهِ.

L37545 As Allah, the Most High, states: “Allah does not charge a soul except according to its capacity” [Al-Baqarah: 286].[4]

لِقَوْلِ اللَّهِ تَعَالَى {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

L37546 Due to the statement of the Messenger of Allah (peace and blessings be upon him), “When I command you with a matter, act upon it to the best of your ability,” and he has indeed commanded us to uphold _qisas_ [retaliation in kind] as a general principle.

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» وَقَدْ أَمَرَنَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالْقِصَاصِ جُمْلَةً.

[مَسْأَلَةُ الدِّيَةِ فِي الظُّفْرِ]

The Ruling on Diyah Pertaining to the Nail

L37547

٢٠٥٥ - مَسْأَلَةٌ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ الْحَجَّاجِ عَنْ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: فِي الظُّفْرِ إذَا أَعْوَرَ بَعِيرٌ، وَإِذَا ثَبَتَ: خُمُسَا بَعِيرٍ، وَفِي كُلِّ مِفْصَلٍ مِنْ مَفَاصِلِ الْأُصْبُعِ إذَا انْكَسَرَ ثُمَّ انْجَبَرَ: ثُلُثَا بَعِيرٍ، وَفِي قَصَبَةِ الْأَنْفِ إذَا انْكَسَرَتْ ثُمَّ انْجَبَرَتْ: ثَلَاثَةُ أَبْعِرَةٍ.

L37548 Reported by Abdullah ibn Rabi’, via Abdullah ibn Muhammad ibn Uthman, via Ahmad ibn Khalid, via Ali ibn Abdulaziz, via Al-Hajjaj ibn Al-Minhal, via Hammad ibn Salamah, from Al-Hajjaj, from Makhul, from Zayd ibn Thabit, who said: If a hoof injury causes a camel to lose an eye and the injury is confirmed, the compensation is two-fifths of a camel. For every joint in the toe—if it breaks and heals—the compensation is two-thirds of a camel. For a broken nasal bone that heals, the compensation is three camels.

وَعَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: فِي الظُّفْرِ إذَا أَعْوَرَ: خُمُسُ دِيَةِ الْأُصْبُعِ. .

L37549 Ibn Abbas said: For a nail, if it is destroyed, the compensation is one-fifth of the diyah for the finger.

[4] **Qur’an references (L37545):** Qur’an 2:286 (Al-Baqarah).

وَبِهِ يَقُولُ أَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ.

L37550 And with this say Aḥmad ibn Ḥanbal and Isḥāq.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَابْنِ جُرَيْجٍ، قَالَ مَعْمَرٌ: عَنْ رَجُلٍ عَنْ عِكْرِمَةَ، وَقَالَ ابْنُ جُرَيْجٍ: عَنْ عَمْرِو بْنِ شُعَيْبٍ، ثُمَّ اتَّفَقَ عِكْرِمَةُ، وَعَمْرٌو: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: فِي الظُّفْرِ إِذَا اعْرَنْجَمَ وَفَسَدَ: قَلُوصٌ.

L37551–37553 And from the chain of ʿAbd al-Razzāq from Maʿmar, and from Ibn Jurayj. Maʿmar said: From a man from… From ʿIkrimah, and Ibn Jurayj reported from ʿAmr ibn Shuʿayb. Then ʿIkrimah and ʿAmr concurred that ʿUmar ibn al-Khattab said regarding the fingernail when it becomes deformed and decayed: "A qalūṣ (young she-camel)."

وَبِهِ إِلَى ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ اجْتَمَعَ لَهُ فِي الظُّفْرِ إِذَا نُزِعَ فَعُرَّ أَوْ سَقَطَ أَوْ اسْوَدَّ: الْعُشْرُ مِنْ الدِّيَةِ عَشْرَةُ دَنَانِيرَ.

L37554 And through him to Ibn Jurayj from ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz: that it was established for ʿUmar ibn ʿAbd al-ʿAzīz concerning the nail—if it is extracted and becomes exposed, or detaches, or blackens—the tenth of the diyah is ten dinars.

قَالَ أَبُو مُحَمَّدٍ: هَذَا الْقَلُوصُ عَلَى أَصْلِهِمْ، لِأَنَّهُ عُشْرُ دِيَةِ الْأُصْبُعِ مِنْ الْإِبِلِ.

L37555 Abu Muhammad said: This five-year-old she-camel conforms to their established principle, as it is one-tenth of the blood money for a finger from the camels.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ قَالَ: قَالَ الْحَجَّاجُ عَنْ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ فِي الظُّفْرِ يُقْلَعُ إِنْ خَرَجَ أَسْوَدَ أَوْ لَمْ يَخْرُجْ: فَفِيهِ عَشْرَةُ دَنَانِيرَ، وَإِنْ خَرَجَ أَبْيَضَ خَمْسَةُ دَنَانِيرَ.

L37556 And by him to ʿAbd al-Razzāq, who said: al-Ḥajjāj narrated from Makḥūl from Zayd ibn Thābit regarding a fingernail that is torn out—if it comes out black or is not removed, the compensation is ten dinars; and if it comes out white, the compensation is five dinars.

وَعَنْ مُجَاهِدٍ أَنَّهُ قَالَ: إِنْ اسْوَدَّ الظُّفْرُ أَوْ اعْوَرَّ: فَنَاقَةٌ.

L37557 And from Mujāhid that he said: If the hoof turns black or becomes defective, then a she-camel is due.

وَعَنْ مُجَاهِدٍ أَنَّهُ كَانَ يَقُولُ: إِنْ لَمْ يَنْبُتْ الظُّفْرُ: فَنَاقَةٌ.

L37558 And from Mujāhid that he used to say: "If the nail does not regrow, then a she-camel is owed as compensation."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نا مُحَمَّدُ بْنُ الْحَارِثِ بْنِ سُفْيَانَ عَنْ أُذَيْنَةَ أَنَّهُ كَانَ يَقُولُ: فِي الظُّفْرِ إِذَا طُرِحَتْ، فَلَمْ تَنْبُتْ: بِنْتُ مَخَاضٍ، فَإِنْ لَمْ يَكُنْ: فَابْنُ لَبُونٍ.

L37559 From the chain of ʿAbd al-Razzāq → Ibn Jurayj → Muḥammad ibn al-Ḥārith ibn Sufyān → Udhaynah, who said: "Regarding [compensation for] a hoof that is detached and does not regrow: a *bint makhāḍ* (she-camel that has entered its second year). If none [of this category] is available, then an *ibn labūn* (male camel that has entered its third year)."

وَعَنْ عَطَاءٍ قَالَ: سَمِعْت فِي الظُّفْرِ شَيْئًا لَا أَدْرِي مَا هُوَ؟ وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: فِيهِ حُكُومَةٌ.

L37560 Ata reported: "I heard something about the nail, but I do not know what it is?" Malik and Al-Shafi'i said: "It entails compensation assessment."

L37561 Ali said: We do not know of anyone before Mālik from whom a statement

endorsing arbitration in such cases was transmitted.

L37562 As for us, we do not accept any proof in the words of anyone apart from the Messenger of Allah—may Allah bless him and grant him peace. Therefore, since there is no textual evidence or consensus on this matter, there is nothing [in it] except qisāṣ (retaliation) in cases of intentional harm alone, or ransom, for it is a wound. As for accidental harm, nothing is due. And success comes only from Allah, the Exalted.

L37563 **An issue concerning the diyah (blood money) pertaining to the two lips.**

L37564–37566 2056 – Question: Narrated by ʿAbdullāh ibn Rabīʿ, via ʿAbdullāh ibn Muḥammad ibn ʿUthmān, on the authority of Aḥmad ibn Khālid. Ali ibn Abd al-Aziz narrated from Al-Hajjaj ibn Al-Minhal, who narrated from Hammad ibn Salamah, who said: **I** heard from Al-Hajjaj ibn Makḥūl, who reported from Zayd ibn Thabit, who said: For the **eyelid**, one-third of the *diyah* is due; for the upper lip, one-third of the *diyah* is due; and for the lower lip, two-thirds of the *diyah* is due, because it **prevents** food and drink from spilling.

L37567 And from Sa'id ibn al-Musayyib, the like of that.

L37568 And through the chain of Abd al-Razzaq from Ibn Jurayj from Amr ibn Shu'ayb, who said: Abu Bakr ruled that the diyah for both lips is one hundred camels.

L37569 Via the chain of al-Ḥajjāj ibn al-Minhāl: Abū ʿAwāna narrated to us from Abū Isḥāq from ʿĀṣim ibn Ḍamra from ʿAlī, who said: "For one of the lips: half" (meaning half the diyya).

L37570 And from the narration chain of Abd al-Razzaq, from Ibn Jurayj who said: I asked Ata', "The two lips?" He replied, "Fifty camels."

L37571 Narrated via Abd al-Razzaq, from Ma'mar, from Qatadah, who said: For an

قَالَ عَلِيٌّ: وَمَا نَعْلَمُ أَحَدًا قَبْلَ مَالِكٍ رُوِيَ عَنْهُ الْقَوْلُ بِالْحُكُومَةِ هَاهُنَا.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِذْ لَا نَصَّ فِي هَذَا، وَلَا إجْمَاعَ: فَلَا شَيْءَ فِيهِ إلَّا الْقَوَدُ فِي الْعَمْدِ - فَقَطْ، أَوْ الْمُفَادَاةِ، فَإِنَّهُ جُرْحٌ - وَأَمَّا فِي الْخَطَأِ فَلَا شَيْءَ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الدِّيَةِ فِي الشَّفَتَيْنِ]

٢٠٥٦ - مَسْأَلَةٌ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ أَنَا الْحَجَّاجُ بْنُ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: فِي الْحَاجِبِ ثُلُثُ الدِّيَةِ، وَفِي الشَّفَةِ الْعُلْيَا ثُلُثُ الدِّيَةِ، وَفِي الشَّفَةِ السُّفْلَى ثُلُثَا الدِّيَةِ، لِأَنَّهَا تَرُدُّ الطَّعَامَ وَالشَّرَابَ.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مِثْلُ ذَلِكَ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَضَى أَبُو بَكْرٍ فِي الشَّفَتَيْنِ الدِّيَةُ مِائَةٌ مِنْ الْإِبِلِ.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ قَالَ: فِي إحْدَى الشَّفَتَيْنِ النِّصْفُ - يَعْنِي: نِصْفَ الدِّيَةِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: الشَّفَتَانِ؟ قَالَ: خَمْسُونَ مِنْ الْإِبِلِ.

injury to one of the lips, half the *diyah* is due.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: فِي إحْدَى الشَّفَتَيْنِ نِصْفُ الدِّيَةِ.

L37572 It has also been narrated to us - from Al-Shaʿbī and from Mujāhid, who said: "The two lips are equal, but the lower lip is given preference in the case of camels."

وَرُوِّينَا أَيْضًا - عَنْ الشَّعْبِيِّ، وَعَنْ مُجَاهِدٍ قَالَ: الشَّفَتَانِ سَوَاءٌ، وَإِنَّمَا تُفَضَّلُ السُّفْلَى فِي الْإِبِلِ.

L37573 Ali said: "This is a matter on which Ali and Zaid differed, as we have conveyed. There exists no definitive textual proof regarding rulings on the lips, nor any consensus whatsoever, nor is there any valid proof in the opinion of anyone apart from the Messenger of Allah—may Allah bless him and grant him peace—and ill-gotten wealth is inherently prohibited."

قَالَ عَلِيٌّ: هَذَا مَكَانٌ اخْتَلَفَ فِيهِ عَلِيٌّ، وَزَيْدٌ، كَمَا أَوْرَدْنَا، وَلَا يَصِحُّ فِي الشَّفَتَيْنِ نَصٌّ، وَلَا إجْمَاعٌ أَصْلًا، وَلَا حُجَّةٌ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْأَمْوَالُ مُحَرَّمَةٌ.

L37574 The followers of Abū Ḥanīfah, Mālik, and Al-Shāfiʿī opposed Zayd ibn Thābit on this issue and opposed [other positions] in many preceding chapters. They opposed Companions for whom no dissent is known from their peers, doing so without any valid proof from the Qur'ān, the Sunnah, or consensus. The obligatory ruling for injuries to the lips is retribution in cases of intentional harm or blood money, because the injury is classified as a wound.

وَأَصْحَابُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، قَدْ خَالَفُوا هَاهُنَا زَيْدَ بْنَ ثَابِتٍ وَخَالَفُوا فِي كَثِيرٍ مِنْ الْأَبْوَابِ الْمُتَقَدِّمَةِ: صَحَابَةً لَا يُعْرَفُ لَهُمْ مُخَالِفٌ مِنْهُمْ بِلَا حُجَّةٍ، مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ إجْمَاعٍ، فَالْوَاجِبُ فِي الشَّفَتَيْنِ: الْقَوَدُ فِي الْعَمْدِ، أَوْ الْمُفَادَاةُ، لِأَنَّهُ جُرْحٌ.

L37575 In the case of error, nothing is required, because blame is removed from the one who errs and property is inviolable except by definitive textual proof or consensus—and with Allah, the Most High, is success.

وَأَمَّا فِي الْخَطَأِ فَلَا شَيْءَ، لِرَفْعِ الْجَنَاحِ عَنْ الْمُخْطِئِ، وَتَحْرِيمِ الْأَمْوَالِ إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of Diyah Related to Hearing

[مَسْأَلَةُ الدِّيَةِ فِي السَّمْعِ]

L37576–37577

L37578 Issue: Muḥammad ibn Saʿīd ibn Nubāt narrated to us from ʿAbdullāh ibn Naṣr from Qāsim ibn Aṣbagh from Ibn Waḍḍāḥ from Mūsā ibn Muʿāwiyah from Wakīʿ from Sufyān, who reported from ʿAwf, who said: I heard a shaykh narrating in the mosque, so I seated him. They said, "That is Abū'l-Muhallab, the uncle of Abū Qilābah." He said: A man threw a stone at another man's head, causing him to lose his hearing, speech, and sanity, and his penis to wither. ʿUmar ibn al-Khaṭṭāb ruled that four diyāt were owed for this.

مَسْأَلَةٌ: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ عَنْ عَوْفٍ قَالَ: سَمِعْت شَيْخًا يُحَدِّثُ فِي الْمَسْجِدِ فَجَلَسْته، فَقَالُوا: ذَاكَ أَبُو الْمُهَلَّبِ عَمُّ أَبِي قِلَابَةَ قَالَ: رَمَى رَجُلٌ رَجُلًا بِحَجَرٍ فِي رَأْسِهِ، فَذَهَبَ سَمْعُهُ، وَلِسَانُهُ، وَعَقْلُهُ، وَيَبِسَ ذَكَرُهُ فَقَضَى فِيهِ عُمَرُ بْنُ الْخَطَّابِ بِأَرْبَعِ دِيَاتٍ.

L37579 Ali said: There is nothing from any of the Companions—may Allah be pleased with them—regarding hearing except this, and it is not valid, for Abu al-Muhallab never met Umar at all. There is no narration from the Prophet—peace and blessings of Allah be upon him—concerning hearing—neither authentic nor weak—nor is it known that any of the Successors made blood money obligatory for it except Qatada alone, though others disagreed with him.

قَالَ عَلِيٌّ: لَيْسَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - شَيْءٌ فِي السَّمْعِ غَيْرَ هَذَا، وَهُوَ لَا يَصِحُّ، لِأَنَّ أَبَا الْمُهَلَّبِ لَمْ يُدْرِكْ عُمَرَ أَصْلًا، وَلَا فِي السَّمْعِ أَثَرٌ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا صَحِيحٌ وَلَا سَقِيمٌ، وَلَا يُعْرَفُ فِيهِ إيجَابُ الدِّيَةِ عَنْ أَحَدٍ مِنْ التَّابِعِينَ، إلَّا قَتَادَةَ وَحْدَهُ - وَقَدْ خَالَفَهُ غَيْرُهُ -.

L37580 As narrated to us by Hummam, from Ibn Mufarrij, from Ibn al-A'rabi, from al-Dabari, from Abd al-Razzaq, from Ibn Jurayj, from Ibn Abi Najih, from Mujahid, who said: In the loss of hearing, fifty.

كَمَا حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ عَنْ ابْنِ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: فِي ذَهَابِ السَّمْعِ خَمْسُونَ.

L37581 And through him to Ibn Jurayj from 'Aṭā', who said: Nothing has reached me concerning hearing. It has only been reported from 'Umar ibn 'Abd al-'Azīz, Ibrāhīm al-Nakha'ī, and Ibn 'Ulātha: his preferred claim is that his hearing was merely lost, with no liability for diyah at all. We mention this to preempt deceptive distortions by those who might obscure it, as we have been narrated through the chain of 'Abd al-Razzāq from Ibn Jurayj, who said: What was agreed upon for 'Umar ibn 'Abd al-'Azīz is that he said: I have not heard [any ruling] for injuries to the mouth and nostrils being generalized. But if a ringing sound is heard in the ear, then there is no harm.

وَبِهِ إلَى ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: لَمْ يَبْلُغْنِي فِي السَّمْعِ شَيْءٌ وَإِنَّمَا جَاءَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَابْنِ عُلَاثَةَ: اخْتِيَارُ دَعْوَاهُ فِي أَنَّهُ ذَهَبَ سَمْعُهُ فَقَطْ، لَا إيجَابَ دِيَةٍ أَصْلًا، وَنَذْكُرُهُ لِئَلَّا يُمَوِّهُ بِهِ مُمَوِّهٌ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: مَا اُجْتُمِعَ عَلَيْهِ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنْ قَالَ: لَا أَسْمَعُ فِي شَيْءٍ يُصَابُ بِهِ، عَمَمٌ بِهِ فَاهُ، وَمِنْخَرَيْهِ، فَإِنْ سُمِعَ صَرِيرٌ فِي الْأُذُنِ فَلَا بَأْسَ.

L37582 A man came to Umar ibn Abd al-Aziz and said: "So-and-so struck me until one of my ears became deaf." Umar asked him: "How do you know that?" The man said: "Summon the physicians." Umar summoned them, and they smelled it. They then said: "This is the deaf one."

وَجَاءَ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ رَجُلٌ فَقَالَ: ضَرَبَنِي فُلَانٌ حَتَّى صُمَّتْ إحْدَى أُذُنَيْ، فَقَالَ لَهُ: كَيْفَ تَعْلَمُ ذَلِكَ؟ قَالَ: اُدْعُ الْأَطِبَّةَ؟ فَدَعَاهُمْ، فَشَمُّوهَا، فَقَالُوا لِلصَّمَّاءِ: هَذِهِ الصَّمَّاءُ.

L37583 From the chain of Abd al-Razzaq, from Sufyan al-Thawri, who said: It has reached me from Ibrahim and others that he said: He is examined, then it is observed whether he can hear or not.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ قَالَ: بَلَغَنِي عَنْ إبْرَاهِيمَ، وَغَيْرِهِ قَالَ: يُخْتَبَرُ، فَيُنْظَرُ هَلْ يَسْمَعُ أَمْ لَا؟

L37584–37586 From Abd al-Razzaq, from Ma'mar: I asked Ibn 'Ulātha the judge: "If a man claims against another that he deafened him by striking him, how can he establish that?" He said: "He must seek lapses [in his account]. If he is able to..." If there is a claim—otherwise he is made to swear an oath and then

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ سَأَلْتُ ابْنَ عُلَاثَةَ الْقَاضِي قُلْت: الرَّجُلُ يَدَّعِي عَلَى الرَّجُلِ أَنَّهُ أَصَمَّهُ مَنْ ضَرَبَهُ، كَيْفَ لَهُ أَنْ يَعْلَمَ ذَلِكَ؟ قَالَ: يَلْتَمِسُ - غَفَلَاتِهِ فَإِنْ قَدَرَ عَلَى

granted [the claim]—if he alleges deafness in one ear but not the other, it has reached me that the ear claimed not to be deaf is stuffed, and his lapses of attention are tested for.

L37587 Abu Hanifah, Malik, al-Shafi'i, and their respective followers stated that the *diyah* is due for the loss of hearing, as there is no explicit text or consensus on this matter due to the valid existence of disagreement, as we previously mentioned. Abu Hanifah also held that the *diyah* applies to the loss of smell.

L37588 Abu Muhammad said: This is the establishment of a Sharia obligation – and Sharia rulings are only established by Allah, the Exalted, in the Quran or through the tongue of His Messenger (peace and blessings be upon him). No weight is given to testimony invalidated by error, for wealth is prohibited unless justified by a textual proof or consensus.

L37589 As for intentional injury, if *qisas* can be exacted from him in the same manner he inflicted harm, it is obligatory. A substance that causes deafness—selected from those that ensure his death does not occur—must be poured into his ear. This constitutes *qisas*.

L37590 **[The Issue of Diyah Regarding the Ear]**

L37591 2058 - Issue: We have mentioned in the manuscript of Ibn Hazm and the narration of Makhul regarding the ears - the diyah applies. Reports concerning this have been transmitted from the Salaf. It has been narrated to us through Sa'id ibn Mansur: Sufyān ibn 'Uyaynah narrated from 'Abdullāh ibn Ṭāwūs, from his father, that Abū Bakr al-Ṣiddīq ruled fifteen camels as the prescribed diyah for an ear, with none having issued such a ruling before him. He said: "The hair, turban, and cap cover it."

L37592 It was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from Ayyūb al-Sikhtiyānī from ʿIkrimah that Abū Bakr al-Ṣiddīq ruled fifteen [camels] from the camels for an ear [injury], saying: "It is merely an injury

شَيْءٍ وَإِلَّا اسْتَحْلَفَ ثُمَّ أَعْطِي، فَإِنْ ادَّعَى صَمَمًا فِي إحْدَى أُذُنَيْهِ دُونَ الْأُخْرَى، فَإِنَّهُ بَلَغَنِي أَنَّهُ تُحْشَى الَّتِي لَمْ تُصَمَّ، وَتُلْتَمَسُ غَفَلَاتُهُ.

وَقَالَ أَبُو حَنِيفَةَ وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمْ: فِي ذَهَابِ السَّمْعِ الدِّيَةُ - وَهَذَا لَا نَصَّ فِيهِ، وَلَا إجْمَاعَ، لِصِحَّةِ وُجُودِ الْخِلَافِ كَمَا ذَكَرْنَا، وَقَالَ أَبُو حَنِيفَةَ: فِي ذَهَابِ الشَّمِّ الدِّيَةُ.

قَالَ أَبُو مُحَمَّد: وَهَذَا إيجَابُ شَرِيعَةٍ - وَالشَّرَائِعُ لَا يُوجِبُهَا إلَّا اللَّهُ تَعَالَى فِي الْقُرْآنِ، أَوْ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَلَا شَيْءَ فِي ذَهَابِ السَّمْعِ بِالْخَطَأِ، لِأَنَّ الْأَمْوَالَ مُحَرَّمَةٌ، إلَّا بِنَصٍّ أَوْ إجْمَاعٍ.

وَأَمَّا فِي الْعَمْدِ، فَإِنْ أَمْكَنَ الْقِصَاصُ مِنْهُ بِمِثْلِ مَا ضَرَبَ فَوَاجِبٌ، وَيُصَبُّ فِي أُذُنِهِ مَا يُبْطِلُ سَمْعَهُ، مِمَّا يُؤْمَنُ مَعَهُ مَوْتُهُ، فَهَذَا هُوَ الْقِصَاصُ.

[مَسْأَلَةُ الدِّيَةِ فِي الْأُذُنِ]

٢٠٥٨ - مَسْأَلَةٌ: قَدْ ذَكَرْنَا فِي صَحِيفَةِ ابْنِ حَزْمٍ وَحَدِيثِ مَكْحُولٍ: فِي الْأُذُنَيْنِ الدِّيَةُ، وَجَاءَ فِي ذَلِكَ عَنْ السَّلَفِ: وَقَدْ رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ قَضَى فِي الْأُذُنِ بِخَمْسَ عَشْرَةَ فَرِيضَةً وَلَمْ يَقْضِ فِيهَا أَحَدٌ قَبْلَهُ، وَقَالَ: يُوَارِيهَا الشَّعْرُ وَالْعِمَامَةُ وَالْقَلَنْسُوَةُ.

that neither impairs hearing nor diminishes strength, which are concealed by the hair and turban."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ قَضَى فِي الْأُذُنِ خَمْسَةَ عَشَرَ مِنْ الْإِبِلِ، وَقَالَ: إنَّمَا هُوَ شَيْءٌ لَا يَضُرُّ سَمْعًا، وَلَا يَنْقُصُ قُوَّةً يُغَيِّبُهَا الشَّعْرُ وَالْعِمَامَةُ.

L37593 And through him—(to Maʿmar) from Qatādah, who said: "If an ear is severed, Abū Bakr ruled for it fifteen camels." Thus, this is a ruling.

وَبِهِ - إلَى مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: إذَا قُطِعَتْ الْأُذُنُ قَضَى فِيهَا أَبُو بَكْرٍ بِخَمْسَةَ عَشَرَ مِنْ الْإِبِلِ - فَهَذَا قَوْلٌ.

L37594 From Abd al-Razzaq, from Maʿmar, from Ibn Tawus, from his father: Umar ibn al-Khattab ruled that if an ear is completely removed, the compensation is half the diyah. Abd al-Razzaq said: And the people uphold it.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي الْأُذُنِ إذَا اُسْتُؤْصِلَتْ بِنِصْفِ الدِّيَةِ - قَالَ عَبْدُ الرَّزَّاقِ: وَالنَّاسُ عَلَيْهِ.

L37595–37597 And via the chain of ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAmr ibn Shuʿayb, who said that ʿUmar ibn al-Khaṭṭāb judged... For the ear, the compensation is half the *diyah*, or the equivalent in gold and silver.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَضَى عُمَرُ بْنُ الْخَطَّابِ فِي الْأُذُنِ بِنِصْفِ الدِّيَةِ، أَوْ عِدْلِ ذَلِكَ مِنْ الذَّهَبِ وَالْوَرِقِ.

L37598 Through the chain of al-Ḥajjāj ibn al-Minhāl: Abū ʿAwānah reported to us from Abū Isḥāq from ʿĀṣim ibn Ḍamrah from ʿAlī ibn Abī Ṭālib, who said: The full *diyah* is due for the nose, the tongue, and the male organ; half the *diyah* is due for the eye, the ear, the hand, the leg, and one lip.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: فِي الْأَنْفِ الدِّيَةُ، وَفِي اللِّسَانِ الدِّيَةُ، وَفِي الذَّكَرِ الدِّيَةُ، وَفِي الْعَيْنِ النِّصْفُ، وَفِي الْأُذُنِ النِّصْفُ، وَفِي الْيَدِ النِّصْفُ، وَفِي الرِّجْلِ النِّصْفُ، وَفِي إحْدَى الشَّفَتَيْنِ النِّصْفُ.

L37599 And from Ash-Shaʿbī, from Shurayḥ, who said: For the ear, half the diyah.

وَعَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ قَالَ: فِي الْأُذُنِ نِصْفُ الدِّيَةِ.

L37600 Through the chain of ʿAbd al-Razzāq, from Ibn Jurayj, who said: ʿAṭāʾ ruled regarding the ear - if it is completely removed - that the compensation is fifty camels.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ عَطَاءٌ فِي الْأُذُنِ - إذَا اُسْتُؤْصِلَتْ - خَمْسُونَ مِنْ الْإِبِلِ.

L37601 Narrated from Mujāhid: If extirpated, half the *diyah* is due.

وَعَنْ مُجَاهِدٍ إذَا اُسْتُؤْصِلَتْ: نِصْفُ الدِّيَةِ.

L37602 Through the chain of ʻAbd al-Razzāq from Ibn Jurayj from ʻAlqamah ibn

Qays, who said: Ibn Masʿūd said: For every two paired [body parts], the full blood money is due, and for each single [part], the full blood money is likewise due.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَلْقَمَةَ بْنِ قَيْسٍ قَالَ: قَالَ ابْنُ مَسْعُودٍ: كُلُّ زَوْجَيْنِ فَفِيهِمَا الدِّيَةُ، وَكُلُّ وَاحِدٍ فَفِيهِ الدِّيَةُ.

L37603 And according to this ruling state Ibrāhīm al-Nakhaʿī, Abū Ḥanīfah, Mālik, al-Shāfiʿī, Aḥmad, and their companions. Through the chain of Abū Bakr ibn Abī Shaybah—ʿAbd al-Raḥīm (who is Ibn Sulaymān) and ʿUbayd Allāh ibn Numayr—both narrating from Ḥajjāj from Makhūl from Zayd ibn Thābit, who said: "The earlobe constitutes one-third of the *diyah* of the ear."

وَبِهِ يَقُولُ إِبْرَاهِيمُ النَّخَعِيُّ، وَأَبُو حَنِيفَةَ، وَمَالِكٌ، الشَّافِعِيُّ، وَأَحْمَدُ وَأَصْحَابُهُمْ: وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدُ الرَّحِيمِ هُوَ ابْنُ سُلَيْمَانَ - وَعُبَيْدُ اللَّهِ بْنُ نُمَيْرٍ كِلَاهُمَا عَنْ حَجَّاجٍ عَنْ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: فِي شَحْمَةِ الْأُذُنِ ثُلُثُ دِيَةِ الْأُذُنِ

L37604 Abu Muhammad said: We know that the Mālikīs emphasize the Companion's differing opinion when it aligns with their taqlīd. However, in this case, they have contradicted Abū Bakr, ʿUmar, ʿAlī ibn Abī Ṭālib, Ibn Masʿūd, and Zayd ibn Thābit, accepting none of what was reported from them, and they contradicted their own foundational principles.

قَالَ أَبُو مُحَمَّدٍ: وَعَهْدُنَا بِالْمَالِكِيِّينَ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ إِذَا وَافَقَ تَقْلِيدَهُمْ، وَهُمْ هَاهُنَا قَدْ خَالَفُوا أَبَا بَكْرٍ، وَعُمَرَ، وَعَلِيَّ بْنَ أَبِي طَالِبٍ، وَابْنَ مَسْعُودٍ وَزَيْدَ بْنَ ثَابِتٍ فَلَمْ يَقْبَلُوا بِشَيْءٍ مِمَّا رُوِيَ عَنْهُمْ، وَنَقَضُوا أُصُولَهُمْ.

L37605 We have presented this solely to prevent them from saying to us: "They only intended *hearing* (as-samʿ) by the word *ear* (al-udhun) in reference to those about whom these narrations are reported," for they frequently presume to make such claims. Thus, we have shown them that which they have no grounds for.

وَإِنَّمَا أَوْرَدْنَا هَذَا لِئَلَّا يَقُولُوا لَنَا: إِنَّمَا عَنَى هَؤُلَاءِ الَّذِينَ جَاءَتْ عَنْهُمْ هَذِهِ الرِّوَايَاتُ بِالْأُذُنِ السَّمْعَ، فَإِنَّهُمْ كَثِيرًا مَا يَقْتَحِمُونَ مِثْلَ هَذَا فَأَرَيْنَاهُمْ مَا لَا عَمَلَ لَهُمْ بِهِ.

L37606–37608 It is said to them: "That which has been narrated from Ali concerning the nose—that the blood money is due—perhaps he also meant only the sense of smell, not the external nose." And the narration from Zayd regarding the lobe of the ear invalidates this interpretation of yours. Ali said: "As for us, we accept no authoritative evidence except in the words of Allah the Exalted or the words of the Messenger of Allah (peace be upon him)." Or a definitively established consensus that admits no doubt. None of that applies here. Thus, there is nothing for the ears except retaliation or compensation in cases of intentional harm, because it is a wound. There is no liability for accidental harm in such cases, for the reasons we have mentioned.

وَيُقَالُ لَهُمْ: الَّذِي رُوِيَ عَنْ عَلِيٍّ فِي الْأَنْفِ الدِّيَةُ، لَعَلَّهُ أَيْضًا إِنَّمَا عَنَى الشَّمَّ فَقَطْ، لَا الْأَنْفَ الظَّاهِرَ - وَالرِّوَايَةُ عَنْ زَيْدٍ فِي شَحْمَةِ الْأُذُنِ تُبْطِلُ تَأْوِيلَكُمْ هَذَا. قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا إِلَّا فِي كَلَامِ اللَّهِ تَعَالَى، أَوْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ إِجْمَاعٍ مُتَيَقَّنٍ لَا مَدْخَلَ لِلشَّكِّ فِيهِ، وَلَيْسَ هَاهُنَا شَيْءٌ مِنْ ذَلِكَ، فَلَا شَيْءَ فِي الْأُذُنَيْنِ إِلَّا الْقَوَدُ، أَوْ الْمُفَادَاةُ فِي الْعَمْدِ، لِأَنَّهُ جُرْحٌ وَلَا شَيْءَ فِي الْخَطَأِ فِي ذَلِكَ لِمَا ذَكَرْنَا.

L37609 **Issue: The blood money for a male and two females is equal.**

[مَسْأَلَةٌ دِيَةُ الذَّكَرِ وَالْأُنْثَيَيْنِ]

L37610 2059 - Issue: We have mentioned what has been reported on this matter in the document of ʿAmr ibn Ḥazm, the document of ʿAmr ibn Shuʿayb, the report of Makḥūl, and a man from the family of ʿUmar, and that none of it is authentic. We will mention—Allah the Exalted willing—what has been reported from the righteous predecessors (may Allah be pleased with them): Narrated by ʿAbd Allāh ibn Rabīʿ via ʿAbd Allāh ibn Muḥammad ibn ʿUthmān via Aḥmad ibn Khālid via ʿAlī ibn ʿAbd al-ʿAzīz via al-Ḥajjāj ibn al-Minhāl via Abū ʿAwānah from Abū Isḥāq from ʿĀṣim ibn Ḍamrah from ʿAlī ibn Abī Ṭālib, who said: "Regarding the penis, the Diyah is due." Narrated by Muḥammad ibn Saʿīd ibn Nabāt via ʿAbd Allāh ibn Naṣr via Qāsim ibn Aṣbagh via Ibn Waḍḍāḥ via Mūsā ibn Muʿāwiyah via Wakīʿ from Sufyān from ʿAwf from an elder from ʿUmar—a similar report.

٢٠٥٩ - مَسْأَلَةٌ: قَدْ ذَكَرْنَا مَا جَاءَ فِي ذَلِكَ فِي صَحِيفَةِ عَمْرِو بْنِ حَزْمٍ وَصَحِيفَةِ عَمْرِو بْنِ شُعَيْبٍ، وَخَبَرِ مَكْحُولٍ، وَرَجُلٍ مِنْ آلِ عُمَرَ، وَأَنَّ كُلَّ ذَلِكَ لَا يَصِحُّ مِنْهُ شَيْءٌ - وَنَحْنُ ذَاكِرُونَ - إنْ شَاءَ اللَّهُ تَعَالَى - مَا جَاءَ فِي ذَلِكَ عَنْ السَّلَفِ الطَّيِّبِ - رَضِيَ اللَّهُ عَنْهُمْ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: فِي الذَّكَرِ الدِّيَةُ، نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ عَنْ سُفْيَانَ عَنْ عَوْفٍ عَنْ شَيْخٍ عَنْ عُمَرَ مِثْلَهُ

L37611 And through him to Wakee', Sufyan narrated from Abu Ishaq from Asim ibn Damrah from Ali regarding one of the two testicles: half of the full diya. And through him to Wakee', Sufyan narrated from Awf, who said: I heard an elder narrating in the mosque, so I seated him. They said: That is Abu al-Muhallab, the paternal uncle of Abu Qilabah's father. He said: A man struck another man with a stone on his head, causing him to lose his hearing, speech, and reason, and his penis atrophied. Umar ruled in that case with four diyat.

وَبِهِ إلَى وَكِيعٍ نا سُفْيَانُ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ فِي إحْدَى الْبَيْضَتَيْنِ النِّصْفُ، وَبِهِ وَإِلَى وَكِيعٍ نا سُفْيَانُ عَنْ عَوْفٍ قَالَ: سَمِعْت شَيْخًا يُحَدِّثُ فِي الْمَسْجِدِ فَجَلَّسْتُهُ، فَقَالُوا: ذَاكَ أَبُو الْمُهَلَّبِ عَمُّ أَبِي قِلَابَةَ قَالَ: رَمَى رَجُلٌ رَجُلًا بِحَجَرٍ فِي رَأْسِهِ فَذَهَبَ سَمْعُهُ لِسَانُهُ وَعَقْلُهُ وَيَبِسَ ذَكَرُهُ فَقَضَى عُمَرُ فِي ذَلِكَ بِأَرْبَعِ دِيَاتٍ

L37612 From Ḥumām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAmr ibn Shuʿayb, who said: Abū Bakr ruled that the diyah for injury to a man's genitalia is one hundred camels.

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَضَى أَبُو بَكْرٍ فِي ذَكَرِ رَجُلٍ مِائَةٌ مِنْ الْإِبِلِ.

L37613 And through him to ʿAbd al-Razzāq from Maʿmar from Abū Isḥāq al-Sabīʿī from ʿĀṣim ibn Ḍamrah from ʿAlī, that he ruled that an injury to the glans penis necessitates the full diyah as an obligatory compensation.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ أَنَّهُ قَضَى فِي الْحَشَفَةِ بِالدِّيَةِ كَامِلَةٍ

L37614–37616 From ʿAmr ibn Shuʿayb, from his father, from his grandfather ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ, from ʿUmar ibn al-Khaṭṭāb that he... It was ruled regarding

وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ حَكَمَ فِي الْبَيْضَةِ يُصَابُ صَافِنُهَا الْأَعْلَى بِسُدُسِ الدِّيَةِ.

the egg (al-bayḍah) that if its upper solid part is damaged, it entails one-sixth of the diyah (blood money).

L37617 Narrated from Makhūl: Umar ruled regarding a paralyzed hand, the loss of speech in a mute person, and the penis of a eunuch that their permanent disablement requires one-third of the diyya.

وَعَنْ مَكْحُولٍ يَقُولُ: قَضَى عُمَرُ فِي الْيَدِ الشَّلَّاءِ، وَلِسَانِ الْأَخْرَسِ، وَذَكَرِ الْخَصِيِّ يُسْتَأْصَلُ بِثُلُثِ الدِّيَةِ.

L37618 Amr ibn Shu’ayb reported that Amr ibn al-As wrote to Umar ibn al-Khattab asking about a woman who seized her husband’s testicles and then yanked them, tearing the skin but not the tunica albuginea. Umar ruled that she was obligated to pay a sixth of the diyah.

وَعَنْ عَمْرِو بْنِ شُعَيْبٍ أَنَّ عَمْرَو بْنَ الْعَاصِ كَتَبَ إِلَى عُمَرَ بْنِ الْخَطَّابِ يَسْأَلُهُ عَنْ امْرَأَةٍ أَخَذَتْ بِأُنْثَيَيْ زَوْجِهَا فَجَبَذَتْهُ فَخَرَقَتْ الْجِلْدَ - وَلَمْ تَخْرِقْ الصِّفَاقَ فَقَضَى عَلَيْهَا بِسُدُسِ الدِّيَةِ

L37619 And through the chain of Abū Bakr ibn Abī Shaybah, Muḥammad ibn Fuḍayl narrated from Layth from ʿAmr ibn Shuʿayb, who said: ʿAmr ibn Shuʿayb consulted ʿUmar ibn al-Khaṭṭāb regarding a woman who seized her husband’s testicles and tore the skin—without rupturing the tunica vaginalis. ʿUmar asked his companions, “What is your opinion on this?” They replied, “Assign it the ruling of a gaping wound.” ʿUmar said, “But I hold a different view. I believe it merits half of what is in the gaping wound.”

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ لَيْثٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: كَتَبَ إِلَى عُمَرَ بْنِ الْخَطَّابِ فِي امْرَأَةٍ أَخَذَتْ بِأُنْثَيَيْ زَوْجِهَا فَخَرَقَتْ الْجِلْدَ - وَلَمْ تَخْرِقْ الصِّفَاقَ، فَقَالَ عُمَرُ لِأَصْحَابِهِ: مَا تَرَوْنَ فِي هَذَا؟ قَالُوا: اجْعَلْهَا فِي مَنْزِلَةِ الْجَائِفَةِ. قَالَ عُمَرُ: لَكِنِّي أَرَى غَيْرَ ذَلِكَ، أَرَى أَنَّ فِيهَا نِصْفَ مَا فِي الْجَائِفَةِ.

L37620 It is reported from Ibn Masʿud that he said: For every pair [bound by a contract], the *diyah* (blood money) applies to both, and for each individual, it applies singly.

وَعَنْ ابْنِ مَسْعُودٍ قَالَ: كُلُّ زَوْجَيْنِ فَفِيهِمَا الدِّيَةُ، وَكُلُّ وَاحِدٍ فَفِيهِ الدِّيَةُ.

L37621 From Al-Shaʿbi, from Ibn Masʿud, who said: “Two females are equivalent.”

وَعَنْ الشَّعْبِيِّ عَنْ ابْنِ مَسْعُودٍ قَالَ: الْأُنْثَيَانِ سَوَاءٌ.

L37622 From Zayd ibn Thabit: The two eggs are treated the same.

وَعَنْ زَيْدِ بْنِ ثَابِتٍ: الْبَيْضَتَانِ سَوَاءٌ

L37623 As for the Successors [generation]: Narrated via the chain of al-Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salamah, from Qatādah, from Saʿīd ibn al-Musayyib, who said: “One-third of the *diyah* is owed for the right testicular egg, and two-thirds of the *diyah* for the left testicular egg, because the child is formed from it.”

وَأَمَّا التَّابِعُونَ: فَرُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، قَالَ: فِي الْبَيْضَةِ الْيُمْنَى ثُلُثُ الدِّيَةِ، وَفِي الْيُسْرَى ثُلُثَا الدِّيَةِ، لِأَنَّ الْوَلَدَ يَكُونُ مِنْهَا

L37624 From Ash-Shaʿbī, from Masrūq, who said: “The two testicles are equal; thus, the full diyah is owed for both.”

وَعَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ قَالَ: الْبَيْضَتَانِ سَوَاءٌ، فَفِيهِمَا الدِّيَةُ.

L37625 And from Ibrāhīm al-Nakhaʿī: For the glans, the Diyah is due.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ: فِي الْحَشَفَةِ الدِّيَةُ.

L37626 It is reported from Ṭāwus: The diyah [blood money] is prescribed for males.

وَعَنْ طَاوُسٍ: فِي الذَّكَرِ الدِّيَةُ.

L37627 From ʻAta', he said: "Is there diyah for the glans if it is injured?" I asked: "What if the penis is completely removed?" He said: "Then the full diyah." I asked: "What if the glans is removed and then part of the remaining organ is later injured?" He said: "A concurrent wound accompanies it." I asked: "What about the penis of one who does not approach women?" He said: "The same as the penis of one who does approach women." I asked: "An old man who has lost that ability - is he not granted his full worth, meaning his diyah?" He said: "Yes." I asked: "And the two testicles - fifty for each?" Mujahid said: "They are not distinguished - compensation is not split between them."

وَعَنْ عَطَاءٍ أَنَّهُ قَالَ: فِي الْحَشَفَةِ الدِّيَةُ إِذَا أُصِيبَتْ؟ قُلْتُ: فَاسْتُؤْصِلَ الذَّكَرُ؟ قَالَ: فَالدِّيَةُ، قُلْتُ: أَرَأَيْت إِنْ اُسْتُؤْصِلَتْ الْحَشَفَةُ ثُمَّ أُصِيبَ شَيْءٌ مِمَّا بَقِيَ بَعْدُ؟ قَالَ: جُرْحٌ يُرَافِيهِ، قُلْتُ: فَذَكَرُ الَّذِي لَا يَأْتِي النِّسَاءَ؟ قَالَ: مِثْلُ مَا فِي ذَكَرِ الَّذِي يَأْتِي النِّسَاء. قُلْت: الْكَبِيرُ الَّذِي قَدْ ذَهَبَ ذَلِكَ مِنْهُ أَلَيْسَ يُوَفَّى قَدْرَهُ - يَعْنِي دِيَتَهُ؟ قَالَ: بَلَى، قُلْت: وَالْبَيْضَتَانِ فِي كُلِّ بَيْضَةٍ خَمْسُونَ خَمْسُونَ؟ قَالَ مُجَاهِدٌ: لَا يُفْصَلُ بَيْنَهُمَا.

L37628–37629 From Qatādah regarding the male organ incapable of intercourse: its diyah is one-third of that of one that does. He analogizes this to the tongue of a mute person, a decayed tooth, and an intact eye.

وَعَنْ قَتَادَةَ فِي ذَكَرِ الَّذِي لَا يَأْتِي النِّسَاءَ ثُلُثُ دِيَةِ ذَكَرِ الَّذِي يَأْتِي النِّسَاءَ، وَكَذَلِكَ يَقِيسُهُ عَلَى لِسَانِ الْأَخْرَسِ، وَالسِّنِّ السَّوْدَاءِ. وَالْعَيْنِ الْقَائِمَةِ.

L37630 It is narrated from Ibrāhīm [al-Nakhaʿī]: A legal ruling applies to the eunuch.

وَعَنْ إِبْرَاهِيمَ: فِي ذَكَرِ الْخَصِيِّ حُكْمٌ

L37631 In this chapter, there are narrations from Abu Bakr, Umar, Ali, Ibn Masʻud, and Zayd stating that the diyah applies to the male organ—except that Umar is reported to have ruled: the male organ of a eunuch is valued at a third of the diyah, the scrotum of the testicles at a sixth of the diyah, and from those present with him among the Companions: a third of the diyah.

فَفَصَلَ فِي هَذَا الْبَابِ رِوَايَاتٌ عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَعَلِيٍّ، وَابْنِ مَسْعُودٍ وَزَيْدٍ أَنَّ فِي الذَّكَرِ الدِّيَةَ - إلَّا أَنَّ عُمَرَ جَاءَ عَنْهُ: وَذَكَرُ الْخَصِيِّ ثُلُثُ دِيَةٍ، وَفِي صِفَاقِ الْبِيضِ سُدُسُ دِيَةٍ، وَعَمَّنْ بِحَضْرَتِهِ مِنْ الصَّحَابَةِ: ثُلُثُ الدِّيَةِ.

L37632 It has been reported from ʿAlī, Ibn Masʿūd, and Zayd: equal compensation for both testicles.

وَجَاءَ عَنْ عَلِيٍّ وَابْنِ مَسْعُودٍ وَزَيْدٍ: التَّسْوِيَةُ بَيْنَ الْبَيْضَتَيْنِ.

L37633 And what we have mentioned has been reported from the Followers.

وَجَاءَ عَنْ التَّابِعِينَ مَا ذَكَرْنَاهُ

L37634 Mālik, al-Thawrī, and Abū Ḥanīfah held that compensation applies for injuries to a boy's penis.

وَقَالَ مَالِكٌ: وَالثَّوْرِيُّ، وَأَبُو حَنِيفَةَ: فِي ذَكَرِ الصَّبِيِّ حُكُومَةٌ.

L37635 Abu Hanifa and his companions said: Arbitration [is prescribed] for a husband who does not engage in sexual intercourse with his wife.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: فِي ذَكَرِ [الَّذِي لَا يَأْتِي النِّسَاءَ حُكُومَةٌ.

L37636 Al-Shafi'ī said: For the eunuch, the boy, the decrepit old man, and the impotent man, the full diyah applies.

قَالَ الشَّافِعِيُّ:] فِي ذَكَرِ الْخَصِيِّ، وَالصَّبِيِّ، وَالْهَرِمِ، وَالْعِنِّينِ الدِّيَةُ كَامِلَةً.

L37637 Abu Muhammad said: There is nothing in this chapter except from five Companions—may Allah be pleased with them—and nothing from them in that matter is valid except what comes from Ali exclusively. Those who claim consensus here are foremost in lying against the entire ummah.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ فِي هَذَا الْبَابِ شَيْءٌ إلَّا عَنْ خَمْسَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يَصِحُّ عَنْ أَحَدٍ مِنْهُمْ شَيْءٌ مِنْ ذَلِكَ إلَّا عَنْ عَلِيٍّ وَحْدَهُ - وَمُدَّعِي الْإِجْمَاعَ هَاهُنَا مُقَدَّمٌ عَلَى الْكَذِبِ عَلَى جَمِيعِ الْأُمَّةِ.

L37638 If they cite in this regard what Ḥumām narrated to us—via Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Ibn Jurayj, who informed me that Ibn Ṭāwūs reported from his father that he possessed a document from the Prophet (peace be upon him) stating: "If a penis is severed, the diyah [financial compensation] is one hundred camels (of specified value)—on condition that his sexual function has ceased and his progeny is lost"—this is a disconnected chain. Even if they authenticate it, it would necessitate that diyah is not owed for severing the penis of a man incapable of procreation or an aged man past procreation, though the jurists do not uphold this view.

فَإِنْ ذَكَرُوا فِي ذَلِكَ مَا حَدَّثَنَاهُ -: حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ طَاوُسٍ عَنْ أَبِيهِ أَنَّ عِنْدَهُ كِتَابًا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا قُطِعَ الذَّكَرُ فَفِيهِ مِائَةُ نَاقَةٍ - قَدْ انْقَطَعَتْ شَهْوَتُهُ وَذَهَبَ نَسْلُهُ» فَهَذَا مُنْقَطِعٌ، وَإِنْ صَحَّحُوهُ فَإِنَّهُ يَلْزَمُ بِهِ أَنَّ الدِّيَةَ لَا تَجِبُ فِي ذَكَرِ الْعَقِيمِ، وَلَا فِي ذَكَرِ الشَّيْخِ الْكَبِيرِ - وَهُمْ لَا يَقُولُونَ بِهَذَا.

L37639 They differed from Umar regarding the penis of the castrated male, the blind eye, and the paralyzed hand: one-third of the diyah.

وَقَدْ خَالَفُوا عُمَرَ فِي ذَكَرِ الْخَصِيِّ، وَالْعَيْنِ الْعَوْرَاءِ، وَالْيَدِ الشَّلَّاءِ: ثُلُثُ الدِّيَةِ.

L37640–37642 They differed from Sa'id ibn al-Musayyib regarding his statement: "In the left testicle are two-thirds of the diyah, and in the right testicle is one-third of the diyah." Had this been a matter of consensus, Ibn al-Musayyib would not have permitted himself to contradict it. Ali said: As for his statement, "The child originates from the left testicle," Ahmad ibn Sa'id ibn Hassan ibn Haddaj al-Amiri—a trustworthy, reliable, and virtuous man—informed me that he developed an abscess in the left testicle that nearly caused his death. The entire testicle discharged completely, leaving no trace whatsoever. He then recovered and subsequently fathered a son and a daughter. Later, he developed another abscess in the right testicle, resulting in the loss of most of it. After recovering again, he fathered no more children. Since no valid ruling exists—neither textual nor consensus-based—regarding compensation for impairing the capacity to father male and female offspring, the obligation

وَخَالَفُوا سَعِيدَ بْنَ الْمُسَيِّبِ فِي قَوْلِهِ " إنَّ فِي الْبَيْضَةِ الْيُسْرَى ثُلُثَيْ الدِّيَةِ، وَفِي الْيُمْنَى ثُلُثُ الدِّيَةِ " وَلَوْ كَانَ هَذَا إجْمَاعًا لَمَا اسْتَجَازَ ابْنُ الْمُسَيِّبِ خِلَافَهُ قَالَ عَلِيٌّ: وَأَمَّا قَوْلُهُ " إنَّ الْوَلَدَ مِنْ الْيُسْرَى " فَقَدْ أَخْبَرَنِي أَحْمَدُ بْنُ سَعِيدِ بْنِ حَسَّانَ بْنِ هَدَّاجٍ الْعَامِرِيُّ - وَكَانَ ثِقَةً مَأْمُونًا فَاضِلًا - أَنَّهُ أَصَابَهُ خُرَاجٌ فِي الْبَيْضَةِ الْيُسْرَى أَشْرَفَ مِنْهُ عَلَى الْهَلَاكِ، وَسَالَتْ كُلُّهَا، وَلَمْ يَبْقَ لَهَا أَثَرٌ أَصْلًا، ثُمَّ بَرِئَ، وَوُلِدَ لَهُ بَعْدَ ذَلِكَ ذَكَرٌ وَأُنْثَى، ثُمَّ أَصَابَهُ خُرَاجٌ أَيْضًا فِي الْيُمْنَى فَذَهَبَ أَكْثَرُهَا، ثُمَّ بَرِئَ، وَلَمْ يُولَدْ لَهُ بَعْدَهَا شَيْءٌ - فَإِذْ لَا يَصِحُّ فِي الدِّيَةِ فِي الذَّكَرِ وَالْأُنْثَيَيْنِ شَيْءٌ، لَا نَصٌّ وَلَا إجْمَاعٌ، فَالْوَاجِبُ أَنْ لَا يَجِبَ فِي ذَلِكَ

is that no compensation is required for accidental harm. However, retaliation or negotiated compensation becomes obligatory in cases of intentional injury, as it constitutes a physical wound. Success comes only from Allah, the Exalted.

L37643 **An issue regarding the blood money for the spine and vertebrae.**

L37644 Issue 2060: Hammām narrated from Ibn Mufarrij, who narrated from Ibn al-Aʿrabī, who narrated from al-Dabarī, who narrated from ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAmr ibn Shuʿayb, who said: Abū Bakr ruled regarding a man's spine: if it is fractured and then set, [he is liable] with the full *diyah* if it does not bear weight for him, and with half the *diyah* if it bears weight for him.

L37645 And through him to Ibn Jurayj and Maʿmar, both of whom narrate from a man from ʿIkrimah: that Abu Bakr and ʿUmar ruled regarding spinal injuries—if no child was born to the injured person, the full diyah is due, but if a child was born to him, then half the diyah is due.

L37646 And from him to Ibn Jurayj: Muḥammad ibn al-Ḥārith ibn Sufyān informed me that Muḥammad ibn ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Abī Rabīʿah said: I was present when ʿAbd Allāh ibn al-Zubayr issued a ruling concerning a man whose spine was broken. He became hunched, could not sit, and walked while bent over, with two-thirds of the diyah due.

L37647 And through him to Abd al-Razzaq from Ibn Jurayj, who said: Al-Sha'bi said: Zayd ibn Thabit ruled that the entire blood money—one thousand dinars—applies to all vertebrae of the back, which number thirty-two. For each vertebra, thirty-one and a quarter dinars are owed if it is fractured and heals without lasting impairment. If it heals with lasting impairment, thirty-one and a quarter dinars are owed for the fracture itself, while the impairment incurs separate compensation according to the subsequent ruling applicable to it, distinct from the fracture compensation.

L37648–37650 It is narrated from Makḥūl that he said: For every vertebra, the amount is

شَيْءٌ فِي الْخَطَأِ، وَأَنْ يَجِبَ فِي ذَلِكَ الْقَوَدُ فِي الْعَمْدِ أَوْ الْمُفَادَاةُ، لِأَنَّهُ جُرْحٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ دِيَةِ الصُّلْبِ وَالْفَقَارَاتِ]

٢٠٦٠ - مَسْأَلَةٌ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَضَى أَبُو بَكْرٍ فِي صُلْبِ الرَّجُلِ إذَا كُسِرَ ثُمَّ جُبِرَ بِالدِّيَةِ كَامِلَةً إذَا كَانَ لَا يَحْمِلُ لَهُ، وَبِنِصْفِ الدِّيَةِ إنْ كَانَ يَحْمِلُ لَهُ.

وَبِهِ إلَى ابْنِ جُرَيْجٍ، وَمَعْمَرٍ، كِلَاهُمَا عَنْ رَجُلٍ عَنْ عِكْرِمَةَ: أَنَّ أَبَا بَكْرٍ، وَعُمَرَ قَضَيَا فِي الصُّلْبِ إذَا لَمْ يُولَدْ لَهُ بِالدِّيَةِ، وَإِنْ وُلِدَ لَهُ فَنِصْفُ الدِّيَةِ.

وَبِهِ إلَى ابْنِ جُرَيْجٍ أَخْبَرَنِي مُحَمَّدُ بْنُ الْحَارِثِ بْنِ سُفْيَانَ أَنَّ مُحَمَّدَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي رَبِيعَةَ قَالَ: حَضَرْت عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ قَضَى فِي رَجُلٍ كُسِرَ صُلْبُهُ، فَاحْدَوْدَبَ هُوَ وَلَمْ يَقْعُدْهُ، وَهُوَ يَمْشِي مُحْدَوْدِبًا بِثُلُثَيْ الدِّيَةِ.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ الشَّعْبِيُّ: قَضَى زَيْدُ بْنُ ثَابِتٍ فِي فَقَارِ الظَّهْرِ كُلِّهِ بِالدِّيَةِ كُلِّهَا - وَهِيَ أَلْفُ دِينَارٍ - وَهِيَ اثْنَتَانِ وَثَلَاثُونَ فَقَارَةً، فِي كُلِّ فَقَارَةٍ إحْدَى وَثَلَاثُونَ دِينَارًا وَرُبْعُ دِينَارٍ إذَا كُسِرَتْ ثُمَّ بَرِئَتْ عَلَى غَيْرِ عَثْمٍ فَإِنْ بَرِئَتْ عَلَى عَثْمٍ فَفِي كَسْرِهَا أَحَدٌ وَثَلَاثُونَ دِينَارًا وَرُبْعُ دِينَارٍ وَفِي الْعَثْمِ مَا فِيهِ مِنْ الْحُكْمِ الْمُسْتَقْبَلِ سِوَى ذَلِكَ.

thirty-one dinars and a quarter of a dinar. From Az-Zuhri, he said: If the spine is fractured, the full *diyah* is owed.

وَعَنْ مَكْحُولٍ أَنَّهُ قَالَ: فِي كُلِّ فَقَارٍ أَحَدٌ وَثَلَاثُونَ دِينَارًا وَرُبْعُ دِينَارٍ وَعَنْ الزُّهْرِيِّ قَالَ: فِي الصُّلْبِ إذَا كُسِرَ الدِّيَةُ كَامِلَةً.

L37651 The same is narrated from ʻAṭāʼ – and the same is narrated from Saʿīd ibn Jubayr.

وَعَنْ عَطَاءٍ مِثْلُ ذَلِكَ - وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ مِثْلُ ذَلِكَ.

L37652 This is the view of al-Ḥasan al-Baṣrī and Yazīd ibn Quṣayṭ.

وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَيَزِيدَ بْنِ قُسَيْطٍ.

L37653 Al-Thawri and al-Shāfiʿī say this by it if he is prevented from walking.

وَبِهِ يَقُولُ الثَّوْرِيُّ، وَالشَّافِعِيُّ إذَا مَنَعَهُ الْمَشْيُ.

L37654 And with this, Ahmad and Isḥāq hold the opinion if no child was born to him. A tradition exists regarding this matter, as Ḥammām ibn Aḥmad narrated to us: Ibn Mufarrij narrated to us, Ibn al-Aʿrabī narrated to us, al-Dabarī narrated to us, ʿAbd al-Razzāq narrated to us, Maʿmar narrated to us from Ibn Abī Najīḥ from Mujāhid, who said: "Concerning the spinal column - if it is fractured and his semen is discharged, the full *diyah* is owed. If the semen is not discharged, half the *diyah* is owed." The Messenger of Allah - peace and blessings be upon him - decreed this.

وَبِهِ يَقُولُ أَحْمَدُ، وَإِسْحَاقُ إذَا لَمْ يُولَدْ لَهُ: وَقَدْ جَاءَ فِي هَذَا أَثَرٌ: كَمَا حَدَّثَنَا حُمَامُ بْنُ أَحْمَدَ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: فِي الصُّلْبِ إذَا كُسِرَ فَذَهَبَ مَاؤُهُ الدِّيَةُ كَامِلَةً، فَإِنْ لَمْ يَذْهَبْ الْمَاءُ فَنِصْفُ الدِّيَةِ - قَضَى بِذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L37655 Abu Muhammad said: This is a narration from four of the Companions—may Allah be pleased with them—with no dissenter among the Companions known to have opposed them: Abu Bakr, Umar, Ibn az-Zubayr, and Zayd—though the narration from Zayd is not authentic.

قَالَ أَبُو مُحَمَّدٍ: فَهَذِهِ رِوَايَةٌ عَنْ أَرْبَعَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْلَمُ لَهُمْ مِنْ الصَّحَابَةِ مُخَالِفٌ: أَبُو بَكْرٍ، وَعُمَرُ، وَابْنُ الزُّبَيْرِ، وَزَيْدٌ - وَهِيَ عَنْ زَيْدٍ غَيْرُ صَحِيحَةٍ.

L37656 The Hanafis and Malikis do not uphold this view—a contradiction—as they do not consider striking the back (which severs the fetus) to entail any legal consequence. They likewise reject the reports concerning spinal injuries transmitted from Zayd ibn Thābit, nor is any opposition to him on this matter known among the Companions. This position is also narrated from a group of the Successors, with no distinction between this issue and the other matters we previously mentioned.

وَلَا يَقُولُ بِهَذَا الْحَنَفِيُّونَ، وَلَا الْمَالِكِيُّونَ - وَهُوَ تَنَاقُضٌ - فَلَا يَرَوْنَ فِي ضَرْبِ الصُّلْبِ يَقْطَعُ الْوَلَدَ شَيْئًا - وَلَا يَرَوْنَ فِي الْفَقَارَاتِ أَيْضًا مَا جَاءَ عَنْ زَيْدِ بْنِ ثَابِتٍ فِيهَا، وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ فِي هَذَا مُخَالِفٌ - وَهُوَ أَيْضًا عَنْ جَمَاعَةٍ مِنْ التَّابِعِينَ، وَلَا فَرْقَ بَيْنَ سَائِرِ مَا ذَكَرْنَا قَبْلُ.

L37657 In this matter, there is also a *mursal* report—as we have cited—stipulating full *diyah* (even if the deceased left no offspring) and half the *diyah* (if he had offspring). Yet they assert their reliance on *mursal* reports, showing no

وَفِي هَذَا أَيْضًا خَبَرٌ مُرْسَلٌ - كَمَا أَوْرَدْنَا - بِالدِّيَةِ وَإِنْ لَمْ يُولَدْ لَهُ، وَبِنِصْفِ الدِّيَةِ إنْ وُلِدَ لَهُ - وَهُمْ يَدَّعُونَ الْأَخْذَ بِالْمُرْسَلِ، وَلَا يُبَالُونَ بِالتَّنَاقُضِ وَالتَّشْنِيعِ عَلَى خُصُومِهِمْ.

regard for the inherent contradictions nor minding the condemnation they incur for vilifying their opponents.

L37658–37659 They assign blood money for each single tooth by analogy to a life, blood money for every two teeth, blood money for every four teeth, and blood money for every ten teeth. Why then do they not apply the same ruling for the vertebrae—as reported from Zayd? This is among the matters where they contradicted analogy. Ali said: "As for us, we accept no proof through mursal reports nor through anyone's opinion apart from the Messenger of Allah—peace and blessings be upon him. There is no authentic narration from the Prophet—peace and blessings be upon him—in this chapter, nor any definitive consensus. Property is forbidden except what is permitted by an explicit text or consensus. There is no liability for accidental injury—as previously established—thus no compensation applies for the spine or vertebrae in cases of error. As for intentional injury, only retaliation applies, with no ransom required, because it is not a wound. If it were considered a wound, then retaliation or ransom would apply, as we have explained."

وَهُمْ يَجْعَلُونَ فِي كُلِّ وَاحِدٍ فِي الْأَسْنَانِ الدِّيَةُ قِيَاسًا عَلَى النَّفْسِ، وَفِي كُلِّ اثْنَيْنِ الدِّيَةُ، وَفِي كُلِّ أَرْبَعٍ الدِّيَةُ، وَفِي كُلِّ عَشْرَةٍ الدِّيَةُ، فَمَا بَالُهُمْ لَا يَجْعَلُونَ فِي الْفَقَارَاتِ كَذَلِكَ - كَمَا جَاءَ عَنْ زَيْدٍ - وَهَذَا مِمَّا نَقَضُوا فِيهِ الْقِيَاسَ قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي مُرْسَلٍ، وَلَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَيْسَ فِي هَذَا الْبَابِ خَبَرٌ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَصِحُّ، وَلَا إجْمَاعٌ مُتَيَقَّنٌ، وَالْأَمْوَالُ مُحَرَّمَةٌ، إلَّا مَا أَبَاحَهُ نَصٌّ، أَوْ إجْمَاعٌ، وَالْخَطَأُ مَرْفُوعٌ - كَمَا قَدْ تَقَدَّمَ - فَلَيْسَ فِي الصُّلْبِ، وَلَا فِي الْفَقَارَاتِ فِي الْخَطَأِ شَيْءٌ، وَأَمَّا فِي الْعَمْدِ فَالْقَوَدُ فَقَطْ، وَلَا مُفَادَاةَ فِيهِ، لِأَنَّهُ لَيْسَ جُرْحًا - فَإِنْ كَانَ ذَلِكَ جُرْحًا، فَفِيهِ الْقَوَدُ، أَوْ الْمُفَادَاةُ، عَلَى مَا ذَكَرْنَا

The Issue of Diyah for the Rib.

[مَسْأَلَةُ الدِّيَةِ فِي الضِّلْعِ]

L37660

L37661 2061 - Chapter: Ahmad ibn Muḥammad ibn al-Jasūr narrated to us via Aḥmad ibn Saʿīd ibn Ḥazm via ʿUbaydullāh ibn Yaḥyā via his father via Mālik via Zayd ibn Aslam via Muslim ibn Jundub via Aslam, the client of ʿUmar ibn al-Khaṭṭāb, who said: He ruled that the compensation for a molar is a camel, a camel for the collarbone, and a camel for the rib.

٢٠٦١ - مَسْأَلَةٌ: حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا أَحْمَدُ بْنُ سَعِيدِ بْنِ حَزْمٍ نا عُبَيْدُ اللَّهِ بْنُ يَحْيَى نا أَبِي نا مَالِكٌ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ مُسْلِمِ بْنِ جُنْدُبٍ عَنْ أَسْلَمَ مَوْلَى عُمَرَ بْنِ الْخَطَّابِ قَالَ: قَضَى فِي الضِّرْسِ بِجَمَلٍ، وَفِي التَّرْقُوَةِ بِجَمَلٍ، وَفِي الضِّلْعِ بِجَمَلٍ.

L37662 From the transmission of Wakīʿ: Sufyān reported to us from Zayd ibn Aslam from Muslim ibn Jundub from Aslam, the freed slave of ʿUmar ibn al-Khaṭṭāb, who said: I heard ʿUmar say upon the pulpit: "In the rib is a camel, in the tooth is a camel, and in the collarbone is a camel."

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ مُسْلِمِ بْنِ جُنْدُبٍ عَنْ أَسْلَمَ مَوْلَى عُمَرَ بْنِ الْخَطَّابِ قَالَ: سَمِعْت عُمَرَ يَقُولُ عَلَى الْمِنْبَرِ: فِي الضِّلْعِ جَمَلٌ، وَفِي الضِّرْسِ جَمَلٌ، وَفِي التَّرْقُوَةِ جَمَلٌ.

L37663 And via the chain of Abd al-Razzaq from Ma'mar from Ibn Abi Najih from Mujahid, who said: Regarding [compensation for] the rib—if a camel sustains a fracture.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: فِي الضِّلْعِ إِذَا كُسِرَ بَعِيرٌ

L37664 Ibn Jurayj reported to me from ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz, from his father, that ʿUmar ibn al-Khaṭṭāb decreed a camel for the rib.

وَعَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَضَى فِي الضِّلْعِ بِبَعِيرٍ.

L37665–37667 Through the chain of Al-Ḥajjāj ibn Al-Minhāl: from Ḥammād ibn Salamah, from Al-Ḥajjāj ibn Arṭāʾah, from Dāwūd ibn Abī ʿĀṣim, from Saʿīd ibn Al-Musayyab that he said: For the collarbone, a camel [is due]; and for the rib, a camel [is due]. Hammad said: Qatadah informed us that ʿAbd al-Malik ibn Marwān ruled concerning a rib injury that a camel is owed as compensation. If expenses [for treatment] were incurred, then two camels are required.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ دَاوُد بْنِ أَبِي عَاصِمٍ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ أَنَّهُ قَالَ: فِي التَّرْقُوَةِ بَعِيرٌ، وَفِي الضِّلْعِ بَعِيرٌ - قَالَ حَمَّادٌ: وَأَخْبَرَنَا قَتَادَةُ أَنَّ عَبْدَ الْمَلِكِ بْنَ مَرْوَانَ قَضَى فِي الضِّلْعِ بِبَعِيرٍ، فَإِنْ كَانَ فِيهَا أُجُورٌ فَبَعِيرَانِ.

L37668 From the transmission of ʿAbd al-Razzāq, from Maʿmar, from Qatādah regarding the rib: If it is broken and then heals, [the compensation is] twenty dinars. If it heals with a deformity, [it is] forty dinars. For a woman's rib, if broken, [the compensation is] ten dinars.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي الضِّلْعِ إِذَا كُسِرَتْ ثُمَّ جُبِرَتْ عِشْرُونَ دِينَارًا، فَإِنْ كَانَ فِيهَا عَثْمٌ فَأَرْبَعُونَ دِينَارًا - وَفِي ضِلْعِ الْمَرْأَةِ إِذَا كُسِرَتْ عَشْرَةُ دَنَانِيرَ.

L37669 On the authority of Masruq: There is a legal ruling concerning the rib.

وَعَنْ مَسْرُوقٍ: فِي الضِّلْعِ حُكْمٌ.

L37670 Al-Shāfiʿī (in one of his two opinions), Aḥmad ibn Ḥanbal, and Isḥāq ibn Rāhawayh said: A camel is due for the rib and one for the clavicle.

قَالَ الشَّافِعِيُّ - فِي أَحَدِ قَوْلَيْهِ - وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ: فِي الضِّلْعِ بَعِيرٌ، وَفِي التَّرْقُوَةِ بَعِيرٌ.

L37671 Malik, Abu Hanifah, their companions, and Al-Shafi'i—in one of his two opinions—said: There is nothing in that except a judgment.

وَقَالَ مَالِكٌ، وَأَبُو حَنِيفَةَ، وَأَصْحَابُهُمَا، وَالشَّافِعِيُّ - فِي أَحَدِ قَوْلَيْهِ لَيْسَ فِي ذَلِكَ إِلَّا حُكْمٌ.

L37672 Abū Muḥammad said: This is a chain of transmission of the utmost authenticity from ʿUmar ibn al-Khaṭṭāb, who addressed this matter from the pulpit in the presence of the Companions—may Allah be pleased with them—with none opposing him, establishing that the obligatory blood money for a rib is a camel, and for a molar tooth is a camel. Every Successor known to

قَالَ أَبُو مُحَمَّدٍ: هَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ عَنْ عُمَرَ بْنِ الْخَطَّابِ يَخْطُبُ بِهِ عَلَى الْمِنْبَرِ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُوجَدُ لَهُ مِنْهُمْ مُخَالِفٌ بِأَنَّ الْوَاجِبَ فِي الضِّلْعِ جَمَلٌ، وَفِي الضِّرْسِ جَمَلٌ قَالَ بِهِ كُلُّ مَنْ عُرِفَ لَهُ قَوْلٌ فِي ذَلِكَ مِنَ التَّابِعِينَ حَاشَ

have expressed an opinion on this matter upheld it, save for Masrūq and Qatādah. As for Qatādah, he diminished the blood money for it, exceeding ʿUmar's ruling, though he did not oppose the obligation of blood money in such cases. Yet the Mālikīs and Ḥanafīs considered it trivial to oppose all this based on their opinions.

مَسْرُوقًا، وَقَتَادَةَ، فَإِنَّ قَتَادَةَ أَضْعَفَ فِيهِ الدِّيَةَ، فَزَادَ عَلَى قَوْلِ عُمَرَ، وَلَمْ يُخَالِفْهُ فِي إِيجَابِ دِيَةٍ فِي ذَلِكَ، فَاسْتَسْهَلَ الْمَالِكِيُّونَ وَالْحَنَفِيُّونَ خِلَافَ كُلِّ ذَلِكَ بِآرَائِهِمْ.

L37673 As for us, we do not accept any opinion as authoritative evidence except that of the Messenger of Allah (peace and blessings be upon him).

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L37674 A narration of this kind does not constitute consensus (Ijmaʿ), for a Companion may remain silent due to certain considerations, and a small number of them may be absent. There is no consensus except that which one is certain that every single one of them knew, practiced, and upheld—such as prayer, Zakāt, Hajj, fasting during Ramadan, and all other religious ordinances about which we are certain they reached consensus.

وَمِثْلُ هَذِهِ الرِّوَايَةِ لَيْسَتْ إِجْمَاعًا، لِأَنَّهُ قَدْ يَسْكُتُ الصَّاحِبُ لِبَعْضِ الْمَعَانِي، وَقَدْ يَغِيبُ النَّفَرُ مِنْهُمْ - وَلَا إِجْمَاعَ إِلَّا مَا تَيَقَّنَ أَنَّ كُلَّ وَاحِدٍ مِنْهُمْ عَلِمَهُ، وَدَانَ بِهِ، كَالصَّلَاةِ، وَالزَّكَاةِ، وَالْحَجِّ، وَصَوْمِ رَمَضَانَ، وَسَائِرِ الشَّرَائِعِ الَّتِي قَدْ تَيَقَّنَّا إِجْمَاعَهُمْ عَلَيْهَا.

L37675–37677 Since there is no textual evidence or consensus here, there is no ruling concerning the rib in cases of error, because error... It is lifted by the explicit texts of the Quran and the Sunnah, and wealth is prohibited by the explicit texts of the Quran and the Sunnah. If it is intentional, then qisas alone applies—unless it is with a wound, in which case qisas applies, or ransom as we previously mentioned. And with Allah, the Most High, is success.

فَإِذْ لَا نَصَّ، وَلَا إِجْمَاعَ هَاهُنَا فَلَا شَيْءَ فِي الضِّلْعِ إِذَا كَانَ خَطَأً لِأَنَّ الْخَطَأَ مَرْفُوعٌ بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ، وَالْأَمْوَالُ مُحَرَّمَةٌ بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ فَإِنْ كَانَ عَمْدًا فَفِيهِ الْقَوَدُ فَقَطْ، إِلَّا أَنْ يَكُونَ بِجُرْحٍ فَفِيهِ الْقَوَدُ، أَوْ الْمُفَادَاةُ عَلَى مَا ذَكَرْنَا قَبْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37678 A Question on the Diyah (Blood Money) for the Collarbone

[مَسْأَلَةٌ فِي التَّرْقُوَةِ الدِّيَةَ]

L37679 2062 - Issue: We have already mentioned the statement of ʿUmar - "The collarbone entails a camel" - in the chapter immediately preceding this one, connected to it, and his sermon regarding that from the pulpit, which suffices to avoid its repetition.

٢٠٦٢ - مَسْأَلَةٌ: قَدْ ذَكَرْنَا قَوْلَ عُمَرَ: فِي التَّرْقُوَةِ جَمَلٌ - فِي الْبَابِ الَّذِي قَبْلَ هَذَا مُتَّصِلًا بِهِ وَخُطْبَتُهُ بِذَلِكَ عَلَى الْمِنْبَرِ فَأَغْنَى عَنْ إِعَادَتِهِ.

L37680 And the legal view of Sa'id ibn al-Musayyib aligns with the aforementioned position.

وَقَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ بِمِثْلِ ذَلِكَ.

L37681 This was the opinion of Aḥmad and Isḥāq, and al-Shāfiʿī maintained it in one of his two positions.

وَبِهِ يَقُولُ أَحْمَدُ، وَإِسْحَاقُ، وَقَالَ بِهِ الشَّافِعِيُّ فِي أَحَدِ قَوْلَيْهِ.

L37682 And another statement—we have narrated it through the chain of Al-Ḥajjāj

ibn al-Minhāl: Al-Ḥajjāj narrated to us from Makḥūl, from Zayd ibn Thābit, that he said: For the collarbone, four camels.

وَقَوْلٌ آخَرَ - رُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا الْحَجَّاجُ عَنْ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّهُ قَالَ: فِي التَّرْقُوَةِ أَرْبَعَةُ أَبْعِرَةٍ.

L37683 Al-Sha'bi and Mujahid both ruled that if the collarbone is broken, forty dinars are due. According to Abd al-Razzaq, twenty dinars are due for the collarbone.

وَعَنْ الشَّعْبِيِّ، وَمُجَاهِدٍ، قَالَا جَمِيعًا: فِي التَّرْقُوَةِ إنْ كُسِرَتْ أَرْبَعُونَ دِينَارًا، وَعَنْ عَبْدِ الرَّزَّاقِ فِي التَّرْقُوَةِ عِشْرُونَ دِينَارًا.

L37684 Abd al-Malik ibn Marwan ruled in the matter with two camels. If she heals but the injury involved exposed bones, then four camels.

وَقَضَى فِيهَا عَبْدُ الْمَلِكِ بْنُ مَرْوَانَ بِبَعِيرَيْنِ، فَإِنْ بَرِئَتْ وَفِيهَا أُجُورٌ فَأَرْبَعَةُ أَبْعِرَةٍ

L37685 From Sa'īd ibn Jubayr: For every body part there is a prescribed valuation, except the clavicle—for it there are two camels.

وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ: فِي كُلِّ شَيْءٍ مِنْ الْأَعْضَاءِ حُكُومَةٌ إلَّا التَّرْقُوَةَ فَفِيهَا بَعِيرَانِ.

L37686 Abū Muḥammad said: This is an existing and established disagreement regarding the absence of fixed diyah for any bodily organs. The two eyes and the teeth are organs - thus invalidating the claim of consensus in that matter. From Masrūq: There is a ruling concerning the collarbone, and there is a ruling concerning the molar.

قَالَ أَبُو مُحَمَّد: وَهَذَا خِلَافٌ مَوْجُودٌ ثَابِتٌ فِي أَنَّهُ لَيْسَ فِي شَيْءٍ مِنْ الْأَعْضَاءِ دِيَةٌ مُؤَقَّتَةٌ: وَالْعَيْنَانِ، وَالْأَسْنَانِ أَعْضَاءٌ - فَبَطَلَ دَعْوَى الْإِجْمَاعِ فِي ذَلِكَ - وَعَنْ مَسْرُوقٍ: فِي التَّرْقُوَةِ حُكْمٌ، وَفِي الضِّرْسِ حُكْمٌ

L37687 And with this, Abu Hanifah, Malik, al-Shafi'i—in one of his two opinions—and their companions each hold the position.

وَبِهِ يَأْخُذُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ - فِي أَحَدِ قَوْلَيْهِ - وَأَصْحَابُهُمْ.

L37688 As for the narration from Zayd—it is weak because it is the transmission of Al-Ḥajjāj ibn Arṭāʾa—who is weak—then via Makhul from Zayd, and Makhul did not meet Zayd.

أَمَّا الرِّوَايَةُ عَنْ زَيْدٍ - فَوَاهِيَةٌ، لِأَنَّهُ نَقْلُ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ ضَعِيفٌ - ثُمَّ عَنْ مَكْحُولٍ عَنْ زَيْدٍ، وَمَكْحُولٌ لَمْ يُدْرِكْ زَيْدًا.

L37689 As for the narration from Umar—it is established. He stated it from the pulpit in the presence of the Companions—may Allah be pleased with them—and the Malikis and Hanafis opposed him based on their juristic reasoning.

وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ - فَثَابِتَةٌ، قَالَهَا عَلَى الْمِنْبَرِ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهَذَا قَدْ خَالَفَهُ الْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ بِآرَائِهِمْ.

L37690–37692 Ali said: "As for us, we do not accept the words of anyone as proof except those of the Messenger of Allah (peace and blessings be upon him), nor is..." Here is the explicit ruling: No liability whatsoever is incurred for accidental injury to the collarbone due to what we have previously explained. As for intentional injury—the obligation in such cases is retribution (qisas) alone, unless the injury constitutes a wound, in which case either equivalence (qawd)

قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَيْسَ هَاهُنَا نَصٌّ، فَلَا يَجِبُ فِي التَّرْقُوَةِ شَيْءٌ فِي الْخَطَأِ لِمَا ذَكَرْنَا وَأَمَّا فِي الْعَمْدِ -

or negotiated compensation applies, as we earlier elaborated. And success is from Allah, the Most High.

فَالْوَاجِبُ فِي ذَلِكَ الْقِصَاصُ فَقَطْ، إِلَّا إِنْ كَانَ جُرْحًا فَالْقَوَدُ، أَوْ الْمُفَادَاةُ لِمَا ذَكَرْنَا قَبْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A Legal Inquiry Concerning the Diyah for Injury to the Breast.

[مَسْأَلَةٌ فِي الثَّدْيِ الدِّيَةَ]

Issue 2063: Reported through the chain of ʿAbdullāh ibn Rabīʿ → ʿAbdullāh ibn Muḥammad ibn ʿUthmān → Aḥmad ibn Khālid → ʿAlī ibn ʿAbd al-ʿAzīz → al-Ḥajjāj ibn al-Minhāl → Ḥammād ibn Salamah → al-Ḥajjāj ibn Arṭāh → Makḥūl: That Zayd ibn Thābit ruled regarding the nipple of a man's breast - if severed, the compensation equals the full diyah prescribed for the areola. As for the nipple of a woman's breast - if severed, the compensation equals one-fourth of the diyah prescribed for her breast.

٢٠٦٣ - مَسْأَلَةٌ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ مَكْحُولٍ: أَنَّ زَيْدَ بْنَ ثَابِتٍ قَالَ: فِي حَلَمَةِ ثَدْيِ الرَّجُلِ إذَا قُطِعَتْ ثَمَنُ دِيَةِ الثَّنْدُوَةِ، وَفِي حَلَمَةِ ثَدْيِ الْمَرْأَةِ إذَا قُطِعَتْ رُبْعُ دِيَةِ ثَدْيِهَا.

From Hammam, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabari, from ʿAbd al-Razzāq, from Muḥammad ibn Rāshid, from Makḥūl, from Qabīṣah ibn Dhuʾayb, from Zayd ibn Thābit, who said: A quarter of the diyah is prescribed for injury to the nipple of the breast.

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ رَاشِدٍ عَنْ مَكْحُولٍ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: فِي حَلَمَةِ الثَّدْيِ رُبْعُ الدِّيَةِ.

It has been reported to us through the aforementioned chain leading to Abd al-Razzaq, from Ma'mar, from a man, from Ikrimah: That Abu Bakr al-Siddiq assigned fifty dinars for the nipple of a man's breast and one hundred dinars for the nipple of a woman's breast. Ma'mar said: I heard Aṭā' al-Khurasani saying the same.

وَرُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ عِكْرِمَةَ: أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ جَعَلَ فِي حَلَمَةِ ثَدْيِ الرَّجُلِ خَمْسِينَ دِينَارًا، وَفِي حَلَمَةِ ثَدْيِ الْمَرْأَةِ مِائَةَ دِينَارٍ، قَالَ مَعْمَرٌ: سَمِعْت عَطَاءً الْخُرَاسَانِيَّ يَقُولُ مِثْلَ ذَلِكَ.

In his chain—to Abd al-Razzaq from Ibn Jurayj from Amr ibn Shu'ayb, who said: Abu Bakr ruled that ten camels are due for injury to a woman's breast if only the nipple is affected. If it is severed from its base, fifteen camels are owed.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَضَى أَبُو بَكْرٍ فِي ثَدْيِ الْمَرْأَةِ بِعَشْرَةٍ مِنْ الْإِبِلِ إذَا لَمْ يُصِبْ إلَّا حَلَمَةَ ثَدْيِهَا فَإِذَا قُطِعَ مِنْ أَصْلِهِ فَخَمْسَةَ عَشَرَ مِنْ الْإِبِلِ.

From al-Zuhri, he said: The blood money (diyah) for the nipple of a man's breast is five camels.

وَعَنْ الزُّهْرِيِّ قَالَ فِي حَلَمَةِ ثَدْيِ الرَّجُلِ خَمْسٌ مِنْ الْإِبِلِ.

And from ʿAṭāʾ that he said: "What is the ruling for a man's wet dream?" He said: "I do not know."

وَعَنْ عَطَاءٍ قَالَ: كَمْ فِي حَلَمَةِ الرَّجُلِ؟ قَالَ: لَا أَدْرِي

From Ash-Shaʿbī, who said: Half of the woman's diyah is assessed for one

of her two breasts.

وَعَنْ الشَّعْبِيِّ قَالَ: فِي أَحَدِ ثَدْيَيْ الْمَرْأَةِ نِصْفُ دِيَتِهَا

L37701–37703 From Ibrāhīm al-Nakhaʿī, he said: Regarding a woman's breast, the diyah applies, and regarding a man's breast, a discretionary assessment (ḥukūmah). Through the transmission of ʿAbd al-Razzāq: Sufyān al-Thawrī reported to us from Sulaymān al-Shaybānī from al-Shaʿbī, who said: Regarding a woman's breast, the diyah applies—a position held by Sufyān al-Thawrī, Mālik, Abū Ḥanīfah, and al-Shāfiʿī. Ahmad and his companions said: There is a ruling concerning a man's chest.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: فِي ثَدْيِ الْمَرْأَةِ الدِّيَةُ وَفِي ثَدْيِ الرَّجُلِ حُكُومَةٌ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ عَنْ سُلَيْمَانَ الشَّيْبَانِيِّ عَنْ الشَّعْبِيِّ قَالَ فِي ثَدْيِ الْمَرْأَةِ الدِّيَةُ - وَبِهِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَمَالِكٌ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَصْحَابُهُمْ - وَقَالَ هَؤُلَاءِ: فِي ثَدْيِ الرَّجُلِ حُكُومَةٌ.

L37704 Ahmad and Isḥāq said: The full diyah applies in both of them.

وَقَالَ أَحْمَدُ، وَإِسْحَاقُ: فِيهِمَا الدِّيَةُ كَامِلَةً.

L37705 Abū Muḥammad said: When they differed—as we mentioned—it became obligatory to turn to what Allah the Exalted has commanded us to rely on from the Quran and the Sunnah in cases of dispute. We did so, yet found no explicit text in the Quran, nor any Sunnah—neither sound nor weak—nor any definitive consensus. Every ruling not found in these foundational principles is invalid [with certainty].

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ الرُّجُوعُ إلَى مَا أَمَرَ اللَّهُ تَعَالَى بِهِ الرُّجُوعَ إلَيْهِ مِنْ الْقُرْآنِ، وَالسُّنَّةِ عِنْدَ التَّنَازُعِ. فَفَعَلْنَا، فَلَمْ نَجِدْ فِي ذَلِكَ نَصَّ قُرْآنٍ، وَلَا سُنَّةً لَا صَحِيحَةً، وَلَا سَقِيمَةً، وَلَا إجْمَاعًا مُتَيَقَّنًا، وَكُلُّ حُكْمٍ لَمْ يَكُنْ فِي هَذِهِ الْعُمْدِ فَهُوَ بَاطِلٌ [بِيَقِينٍ] .

L37706 As for us, there is no authoritative evidence for us in the words of anyone other than the Messenger of Allah—peace and blessings of Allah be upon him.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L37707 In the statements of the aforementioned Companions or Followers, there is no basis in the Sunnah, the Qur'an, or consensus. We have established that wealth is inviolable as per the statement of Allah the Exalted: "And do not consume one another's wealth unjustly" [Al-Baqarah: 188], and as per the statement of the Messenger of Allah—peace and blessings be upon him—"Indeed, your blood and your wealth are inviolable to you."[5]

وَلَيْسَ فِي أَقْوَالِ مَنْ ذَكَرْنَا مِنْ صَاحِبٍ أَوْ تَابِعٍ سُنَّةٌ، وَلَا قُرْآنٌ، وَلَا إجْمَاعٌ، وَقَدْ ذَكَرْنَا أَنَّ الْأَمْوَالَ مُحَرَّمَةٌ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ»

L37708 It is therefore established that no financial penalty is incurred for the two breasts whatsoever. If the two breasts are harmed unintentionally, nothing is due in that case, as we have stated. But if the harm is intentional, retaliation

فَوَجَبَ أَنْ لَا يَجِبَ فِي الثَّدْيَيْنِ غَرَامَةٌ أَصْلًا، فَإِنْ أُصِيبَا خَطَأً فَلَا شَيْءَ فِي ذَلِكَ، لِمَا ذَكَرْنَا، وَإِنْ كَانَ عَمْدًا فَفِيهِ الْقَوَدُ - وَهَذَا قَوْلُ أَبِي سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا - وَبِهِ نَأْخُذُ.

[5] **Qur'an references (L37707):** Qur'an 2:188 (Al-Baqarah).

(*qisas*) applies. This is the opinion of Abū Sulaymān and all scholars of our school, and it is the position we adopt.

L37709 Ali said: If a man cuts off the nipple of a woman's breast, his entire breast must be cut off, because his entire breast is treated as a nipple (as he lacks a distinct breast). If she cuts off his breast, her nipple must be cut off. If he intentionally cuts off her entire breast—an equal measure of skin surrounding his breast must be cut off—in accordance with Allah's statement: "So whoever transgresses against you, retaliate against him with the equivalent of what he transgressed against you." [Al-Baqarah: 194].[6]

قَالَ عَلِيٌّ: فَإِنْ قَطَعَ الرَّجُلُ حَلَمَةَ ثَدْيِ الْمَرْأَةِ قُطِعَ ثَدْيُهُ كُلُّهُ، لِأَنَّهُ كُلُّهُ حَلَمَةٌ لَا ثَدْيَ لَهُ، فَإِنْ قَطَعَتْ هِيَ ثَدْيَهُ قُطِعَتْ حَلَمَتُهَا، فَإِنْ قَطَعَ جَمِيعَ ثَدْيِهَا عَمْدًا - قُطِعَ مِنْ جِلْدِهِ مَا حَوَالَيَّ ثَدْيِهِ مِقْدَارُ ذَلِكَ - لِقَوْلِ اللَّهِ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

L37710 The issue of diyah (blood money) for a man's ifḍāʾ (traumatic intercourse causing vaginal-anal perforation) of a woman.

[مَسْأَلَةُ دِيَةُ إِفْضَاءِ الرَّجُلِ الْمَرْأَةَ]

L37711–37713 2064 - Issue: Hammam reported to us from Abdullah ibn Muhammad ibn Ali Al-Bajiyy, who reported to us from Abdullah ibn Yunus Al-Murādiyy. Narrated by Baqiyy ibn Makhlad from Abu Bakr ibn Abi Shaybah from Hushaym from Dawud from Amr ibn Shu'ayb: A man coerced a woman and deflowered her, whereupon Umar ibn al-Khattab applied the ḥadd punishment to him and fined him one-third of her diyah.

٢٠٦٤ - مَسْأَلَةٌ: نا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ الْمُرَادِيُّ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا هُشَيْمٌ عَنْ دَاوُد عَنْ عَمْرِو بْنِ شُعَيْبٍ أَنَّ رَجُلًا اسْتَكْرَهَ امْرَأَةً فَأَفْضَاهَا فَضَرَبَهُ عُمَرُ بْنُ الْخَطَّابِ الْحَدَّ، وَغَرَّمَهُ ثُلُثَ دِيَتِهَا

L37714 Narrated Humaam, narrated Ibn Mufarrij, narrated Ibn al-A'rabi, narrated al-Dabari, narrated Abd al-Razzaq from a man from Ikrimah who said: Umar ibn al-Khattab ruled concerning the woman who was forcibly overpowered and either raped or had her virginity taken: she is entitled to a third of her diyah, and no prescribed punishment is imposed upon her.

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ رَجُلٍ عَنْ عِكْرِمَةَ قَالَ: قَضَى عُمَرُ بْنُ الْخَطَّابِ فِي الْمَرْأَةِ إِذَا غُلِبَتْ عَلَى نَفْسِهَا فَأُفْضِيَتْ أَوْ ذَهَبَتْ عُذْرَتُهَا بِثُلُثِ دِيَتِهَا وَلَا حَدَّ عَلَيْهَا

L37715 And from him—to ʿAbd al-Razzāq from Maʿmar from a man from Qatādah regarding a man who fornicates with a woman, thereby deflowering her. He said, "One-third of the *diyah*."

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ قَتَادَةَ فِي الرَّجُلِ يُصِيبُ الْمَرْأَةَ فَيُفْضِيهَا؟ قَالَ ثُلُثُ الدِّيَةِ.

L37716 Another opinion—as we have been narrated through the aforementioned chain to ʿAbd al-Razzāq from ʿAbd Allāh ibn Muḥriz from Qatādah—that Zayd ibn Thābit said regarding a woman penetrated anally by her husband:

[6] **Qur'an references (L37709):** Qur'an 2:194 (Al-Baqarah).

If she retains the ability to control urination, defecation, and childbirth capability, then one-third of the diyah; but if she loses control of urination, defecation, and childbirth capability, then the diyah is complete.

وَقَوْلٌ آخَرَ - كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ عَبْدِ اللَّهِ بْنِ مُحَرِّزٍ عَنْ قَتَادَةَ أَنَّ زَيْدَ بْنَ ثَابِتٍ قَالَ: فِي الْمَرْأَةِ يُفْضِيهَا زَوْجُهَا، إِنْ حَبَسَتْ الْحَاجَتَيْنِ وَالْوَلَدَ فَثُلُثُ الدِّيَةِ، وَإِنْ لَمْ تَحْبِسْ الْحَاجَتَيْنِ وَالْوَلَدَ فَالدِّيَةُ كَامِلَةً

L37717 And through him to Abd al-Razzaq, from Ibn Jurayj, from Abd al-Aziz ibn Umar ibn Abd al-Aziz, that Umar ibn Abd al-Aziz said concerning the woman's joining of the circumcision scars, the full blood money is due because it prevents pleasure and intercourse.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّ عُمَرَ بْنَ عَبْدَ الْعَزِيزِ قَالَ فِي إفْضَاءِ الْمَرْأَةِ الدِّيَةُ كَامِلَةً مِنْ أَجْلِ أَنَّهَا تَمْنَعُ اللَّذَّةَ وَالْجِمَاعَ.

L37718–37720 From the chain of al-Ḥajjāj ibn al-Minhāl, through Ḥammād ibn Salamah, through Hishām ibn ʿAmr al-Fazārī, who said: I witnessed ʿUmar ibn ʿAbd al-ʿAzīz when a letter came to him from his governor in Najrān. After reading it, he said: "What is your view regarding a man of wealth and means who proposed marriage to the daughter of a destitute man, and the father married her to him? The groom said: 'Hand her over to me, for I will expand her provision in what I spend on her.' The father replied: 'I fear you might violate her.' He swore: 'Do not fear—I will not approach her.' Yet he took her, violated her, tore her, spilled her blood, and she died." ʿAbdullāh ibn Maʿqil ibn Muqarrin said: "By Allah, he is liable!" ʿAbdullāh ibn ʿAmr ibn ʿUthmān ibn ʿAffān said: "By Allah, he is liable!" ʿUmar ibn ʿAbd al-ʿAzīz then repeated: "Is it diyah and mahr? Diyah and mahr?" Abān ibn ʿUthmān ibn ʿAffān said: "If she had reached the age when women menstruate, no diyah is due. If she had not reached that age, her diyah is owed." ʿUmar then wrote this ruling to al-Walīd ibn ʿAbd al-Malik. From the narration of Abu Bakr ibn Abi Shaybah: Zayd ibn al-Hubab reported to us, from Khalid ibn Abdullah, from Khalid al-Hadhdha', from Aban ibn Uthman, that a case was presented to him concerning a man who married a young girl and consummated the marriage. He, along with Umar ibn Abd al-Aziz, ruled: If she is among those whose peers are considered suitable for intercourse, there is no liability upon him. But if she is among those whose peers are not considered suitable for intercourse, he must pay one-third of the diyah.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا هِشَامُ بْنُ عَمْرٍو الْفَزَارِيّ قَالَ: شَهِدْت عُمَرَ بْنَ عَبْدِ الْعَزِيزِ إذْ جَاءَهُ كِتَابٌ مِنْ عَامِلِهِ بِنَجْرَانَ، فَلَمَّا قَرَأَهُ قَالَ: مَا تَرَوْنَ فِي رَجُلٍ ذِي جِدَةٍ وَسَعَةٍ خَطَبَ إلَى رَجُلٍ ذِي فَاقَةٍ بِنْتَهُ فَزَوَّجَهُ إيَّاهَا، فَقَالَ: ادْفَعْهَا إلَيَّ فَإِنِّي أُوسِعُ لَهَا فِيمَا أُنْفِقُ عَلَيْهَا، فَقَالَ: إنِّي أَخَافُك عَلَيْهَا أَنْ تَقَعَ بِهَا، فَقَالَ: لَا تَخَفْ، لَا أَقْرَبُهَا، فَدَفَعَهَا إلَيْهِ، فَوَقَعَ بِهَا فَخَرَقَهَا، فَهُرِيقَتْ دَمًا وَمَاتَتْ. فَقَالَ عَبْدُ اللَّهِ بْنُ مَعْقِلِ بْنِ مُقَرِّنٍ: غَرِمَ وَاَللَّهِ وَقَالَ عَبْدُ اللَّهِ بْنُ عَمْرِو بْنِ عُثْمَانَ بْنِ عَفَّانَ: غَرِمَ وَاَللَّهِ، فَقَالَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَعَقْلًا وَصَدَاقًا، أَعَقْلًا وَصَدَاقًا؟ وَقَالَ أَبَانُ بْنُ عُثْمَانَ بْنِ عَفَّانَ: إنْ كَانَتْ أَدْرَكَتْ مَا أَدْرَكَ النِّسَاءَ فَلَا دِيَةَ لَهَا، وَإِنْ لَمْ تَكُنْ أَدْرَكَتْ مَا أَدْرَكَ النِّسَاءَ فَلَهَا الدِّيَةُ. فَكَتَبَ عُمَرُ بِذَلِكَ إلَى الْوَلِيدِ بْنِ عَبْدِ الْمَلِكِ وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا زَيْدُ بْنُ الْحُبَابِ عَنْ خَالِدِ بْنِ عَبْدِ اللَّهِ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبَانَ بْنِ عُثْمَانَ أَنَّهُ رُفِعَ إلَيْهِ رَجُلٌ تَزَوَّجَ جَارِيَةً فَأَفْضَاهَا فَقَالَ فِيهَا هُوَ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ: إنْ كَانَتْ مِمَّنْ يُجَامَعُ مِثْلُهَا فَلَا شَيْءَ عَلَيْهِ وَإِنْ كَانَتْ مِمَّنْ لَا يُجَامَعُ مِثْلُهَا فَعَلَيْهِ ثُلُثُ الدِّيَةِ.

L37721 Narrated by Ibn Jurayj: If one cannot retain feces, he must pay the full *diyah*.

وَعَنْ ابْنِ جُرَيْجٍ إذَا كَانَ لَا يَسْتَمْسِكُ الْغَائِطُ فَعَلَيْهِ الدِّيَةُ كَامِلَةً

L37722 And by it, Sufyān al-Thawrī and Abū Thawr maintain their position.

وَبِهِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَأَبُو ثَوْرٍ.

L37723 Abu Hanifa held the same opinion and added: When there is retention of fecal matter, one-third of the blood money (diyah) is owed.

وَقَالَ أَبُو حَنِيفَةَ: مِثْلَ ذَلِكَ، وَزَادَ: فَإِذَا كَانَ الْغَائِطُ يُسْتَمْسَك فَثُلُثُ الدِّيَةِ.

L37724 No opinion is known from Mālik or al-Shāfiʿī regarding this matter. Abū Muḥammad said: As for what is transmitted concerning this from ʿUmar ibn al-Khaṭṭāb and Zayd ibn Thābit—may Allah be pleased with them both—it is textually stipulated (tawqīf), and such rulings can only be derived from Allah the Exalted through the tongue of His Prophet—peace and blessings be upon him.

وَلَا يُعْرَفُ لِمَالِكٍ، وَلَا لِلشَّافِعِيِّ فِيهَا قَوْلٌ. قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْمَأْثُورُ فِي ذَلِكَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَزَيْدِ بْنِ ثَابِتٍ - رَضِيَ اللَّهُ عَنْهُمَا - فَإِنَّهُ تَوْقِيفٌ، وَالتَّوْقِيفُ لَا يُؤْخَذُ إلَّا عَنْ اللَّهِ تَعَالَى عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L37725 Indeed, it was incumbent upon the Malikis—those who censure deviations by adhering to the Companion's opinion for which no dissent is known—to adopt here the positions of Umar and Zaid. Yet this is among the contradictions they exhibited. As for the Hanafis, they applied their principle consistently and adopted here what was narrated from Umar and Zaid. Why then did they not do so regarding suckling at the nipple of a man's or the woman's breast? This exposes the contradictions of the school and their failure to establish any legal principle.

وَلَقَدْ كَانَ يَلْزَمُ الْمَالِكِيِّينَ الْمُشَنِّعِينَ بِقَوْلِ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ أَنْ يَقُولُوا هَاهُنَا بِقَوْلِ عُمَرَ، وَزَيْدٍ، وَلَكِنْ هَذَا مِمَّا تَنَاقَضُوا فِيهِ. وَأَمَّا الْحَنَفِيُّونَ - فَإِنَّهُمْ طَرَدُوا أَصْلَهُمْ وَقَالُوا هَاهُنَا بِمَا رُوِيَ عَنْ عُمَرَ، وَزَيْدٍ، فَهَلَّا فَعَلُوا ذَلِكَ فِي حَلَمَةِ ثَدْيِ الرَّجُلِ وَالْمَرْأَةِ؟ وَلَكِنْ هَذَا يُرِيكُمْ تَنَاقُضَ الْقَوْمِ، وَأَنَّهُمْ لَا يُحَقِّقُونَ أَصْلًا

L37726 Ali said: As for us, we maintain that if such harm occurs from him toward his wife unintentionally, and she survives and recovers, there is no liability in this, for he is in error, and God Almighty has permitted him to have intercourse with his wife; thus he did not transgress God's boundaries in this matter. But if he did this intentionally—while knowing she cannot conceive—or if he did this to a slave woman similarly, or to a woman not lawfully related to him: then retaliation is incumbent upon him. He is to be incised with an iron instrument equivalent to the injury he inflicted upon her in equal measure as a transgressor. For the woman not lawfully related to him, the fixed punishment applies in addition to that. There is no financial compensation required in any of these cases whatsoever—except if he caused this unintentionally and she died, in which case the full diyah is due, for it concerns a life. And with God Almighty lies all success.

قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَنَقُولُ: إنْ كَانَ ذَلِكَ وَقَعَ مِنْهُ فِي زَوْجَتِهِ مِنْ غَيْرِ قَصْدٍ فَعَاشَتْ وَبَرِئَتْ فَلَا شَيْءَ فِي ذَلِكَ، لِأَنَّهُ مُخْطِئٌ، وَقَدْ أَبَاحَ اللَّهُ تَعَالَى لَهُ وَطْءَ زَوْجَتِهِ، فَلَمْ يَتَعَدَّ حُدُودَ اللَّهِ تَعَالَى فِي ذَلِكَ، وَإِنْ كَانَ فَعَلَ ذَلِكَ عَامِدًا - وَهُوَ يَدْرِي أَنَّهَا لَا تَحْمِلُ - أَوْ فَعَلَ ذَلِكَ بِأَمَةٍ كَذَلِكَ، أَوْ بِأَجْنَبِيَّةٍ: فَعَلَيْهِ الْقِصَاصُ، وَيُفْتَقُ مِنْهُ بِحَدِيدَةٍ مِقْدَارُ مَا فُتِقَ مِنْهَا مُتَعَدِّيًا، وَعَلَيْهِ فِي الْأَجْنَبِيَّةِ - مَعَ ذَلِكَ - الْحَدُّ، وَلَا غَرَامَةَ فِي شَيْءٍ مِنْ ذَلِكَ أَصْلًا، إلَّا إنْ فَعَلَ ذَلِكَ مُخْطِئًا فَمَاتَتْ، فَالدِّيَةُ كَامِلَةٌ، لِأَنَّهَا نَفْسٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ دِيَةَ مَنْ قُطِعَ مِنْ جِلْدِهِ شَيْءٌ]

L37727–37728 **Legal Question: The Blood Money for Someone Whose**

Skin Was Partially Cut Off

L37729 Issue: ʻAbdullāh ibn Rabīʻ narrated: ʻAbdullāh ibn Muḥammad ibn ʻUthmān narrated: Aḥmad ibn Khālid narrated: ʻAlī ibn ʻAbd al-ʻAzīz narrated: al-Ḥajjāj narrated from Makhūl, who said: "If skin the size of a dirham is detached from the face or the head, three camels are owed; if from the body, one and a half camels are owed."

L37730 Abū Muḥammad said: This is a specification not established by a Quranic text, nor a Sunnah, nor consensus; thus, nothing is obligatory in that matter. As for the Ḥanafīs, the Mālikīs, and the Shāfiʻīs, they are proponents of analogy by their assertion, and this is a case where—based on their principles—they must analogize it to their ruling regarding al-muwāḍiḥah (the wound exposing the bone). Yet they contradicted themselves herein. As for us, retaliation applies in this case for intentional acts, and there is no obligation for accidental acts, per Allah the Exalted's statement: "There is no blame on you for what you do by mistake, but only for what your hearts intend" [Al-Aḥzāb: 5]. And by Allah the Exalted is success.[7]

The issue of the diyah of the fracture when it has healed

L37731

L37732 2066 – Issue: From Abdullah ibn Rabi', from Abdullah ibn Muhammad ibn Uthman, from Ahmad ibn Khalid, from Ali ibn Abd al-Aziz, from al-Hajjaj ibn al-Minhāl, from Hammad ibn Salamah, from Qatadah, from Sulayman ibn Yasar: That Umar ibn al-Khattab ruled concerning a man whose hand, leg, or thigh was broken and then set, awarding him two hiqqatayn.

L37733 Narrated by Hammad ibn Salamah, who informed us from Amr ibn Dinar, who said: A man had one of his forearms broken, then it healed. Umar adjudicated a compensation of two hundred dirhams for the injury.

[7] **Qur'an references (L37730):** Qur'an 33:5 (Al-Ahzab).

مَسْأَلَةٌ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ عَنْ مَكْحُولٍ قَالَ: إذَا اخْتَلَفَ مِنْ جِلْدَةِ الْوَجْهِ وَالرَّأْسِ مِثْلُ الدِّرْهَمِ، فَفِيهِ ثَلَاثَةُ أَبْعِرَةٍ - وَإِنْ اخْتَلَفَ مِنْ الْجَسَدِ، فَبَعِيرٌ وَنِصْفٌ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا تَحْدِيدٌ لَمْ يَأْتِ بِهِ نَصُّ قُرْآنٍ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، فَلَا يَجِبُ فِي ذَلِكَ شَيْءٌ - وَأَمَّا الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ فَإِنَّهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ وَهَذَا مَكَانٌ يَجِبُ عَلَيْهِمْ عَلَى أُصُولِهِمْ أَنْ يَقِيسُوهُ عَلَى قَوْلِهِمْ فِي الْمُوضِحَةِ وَلَكِنَّهُ مِمَّا تَنَاقَضُوا فِيهِ - وَأَمَّا نَحْنُ فَالْقِصَاصُ فِي ذَلِكَ فِي الْعَمْدِ وَلَيْسَ فِي الْخَطَإِ فِي ذَلِكَ شَيْءٌ لِقَوْلِ اللَّهِ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ دِيَةِ الْكَسْرِ إذَا انْجَبَرَ]

٢٠٦٦ - مَسْأَلَةٌ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا قَتَادَةُ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي رَجُلٍ كُسِرَتْ يَدُهُ، أَوْ رِجْلُهُ، أَوْ فَخِذُهُ، ثُمَّ انْجَبَرَتْ: فَقَضَى فِيهَا بِحِقَّتَيْنِ.

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ نا عَمْرُو بْنُ دِينَارٍ قَالَ: إنَّ رَجُلًا كُسِرَ أَحَدُ زَنْدَيْهِ، ثُمَّ انْجَبَرَ: فَقَضَى فِيهِ عُمَرُ بِمِائَتَيْ دِرْهَمٍ

L37734 From Hammad ibn Salama, from al-Hajjaj, from Ikrimah ibn Khalid al-Makhzumi: Umar ibn al-Khattab ruled that two camels—valued at one hundred dirhams—be given, as part of a calculation based on ten thousand dirhams.

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ عَنْ عِكْرِمَةَ بْنِ خَالِدٍ الْمَخْزُومِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِيهِ بِبَعِيرَيْنِ - وَالْبَعِيرَانِ بِإِزَاءِ الْمِائَةِ دِرْهَمٍ مِنْ حِسَابِ عَشَرَةِ آلَافِ دِرْهَمٍ.

L37735 From Hammad ibn Salama, on the authority of Ayyub al-Sikhtiyani, Hisham ibn Hassan, and Habib ibn al-Shahid—all of them from Muhammad ibn Sirin—that Shuraih ruled regarding a fracture that had healed, stating: "This only increases it [the fracture] in severity. The physician's fees must be given, along with compensation for the time the injured person was prevented from practicing his occupation."

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ نا أَيُّوبُ السِّخْتِيَانِيُّ وَهِشَامُ بْنُ حَسَّانَ، وَحَبِيبُ بْنُ الشَّهِيدِ كُلُّهُمْ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ شُرَيْحًا قَضَى فِي الْكَسْرِ إذَا انْجَبَرَ، قَالَ: لَا يَزِيدُهُ ذَلِكَ إلَّا شِدَّةً يُعْطَى أَجْرَ الطَّبِيبِ، وَقَدْرَ مَا شُغِلَ عَنْ صَنْعَتِهِ.

L37736–37737 From Makhūl: Regarding a fracture in the upper arm that heals - eight camels. If one of the two forearm bones breaks and then heals - ten camels. For every joint of a finger that breaks and then heals - two-thirds of a camel. For the nail: if it is impaired - one-fifth of a camel. If it regrows - two-fifths of a camel.

وَعَنْ مَكْحُولٍ - أَنَّهُ قَالَ: فِي الصَّدْعِ فِي الْعَضُدِ إذَا انْجَبَرَ ثَمَانِيَةُ أَبْعِرَةٍ، فَإِذَا انْكَسَرَ أَحَدُ زَنْدَيْهِ، ثُمَّ انْجَبَرَ: فَعَشَرَةُ أَبْعِرَةٍ. وَفِي كُلِّ مِفْصَلٍ مِنْ مَفَاصِلِ الْأُصْبُعِ إذَا انْكَسَرَ ثُمَّ انْجَبَرَ ثُلُثَا بَعِيرٍ. وَفِي الظُّفْرِ - إذَا أَعْوَرَ بَعِيرٌ، فَإِذَا نَبَتَ خُمُسَا بَعِيرٍ.

L37738 These are precedents reported from ʿUmar ibn al-Khaṭṭāb, Shurayḥ, and Makhūl—the Ḥanafīs, Mālikīs, and Shāfiʿīs have opposed what came from ʿUmar based on their own opinions.

فَهَذِهِ آثَارٌ جَاءَتْ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَنْ شُرَيْحٍ، وَعَنْ مَكْحُولٍ - وَالْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، قَدْ خَالَفُوا مَا جَاءَ عَنْ عُمَرَ بِآرَائِهِمْ.

L37739 Abu Muhammad said: In our view, there is nothing in that regard except retaliation in intentional cases only.

قَالَ أَبُو مُحَمَّدٍ: وَلَيْسَ فِي ذَلِكَ عِنْدَنَا إلَّا الْقِصَاصُ فِي الْعَمْدِ فَقَطْ.

L37740 As for unintentional errors, there is nothing [required], due to what we have previously cited from the words of Allah the Most High and the words of His Messenger (peace be upon him).

وَأَمَّا فِي الْخَطَأِ فَلَا شَيْءَ، لِمَا قَدْ ذَكَرْنَا مِنْ قَوْلِ اللَّهِ تَعَالَى، وَمِنْ قَوْلِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

[مَسْأَلَةٌ دِيَةِ الْمَثَانَةِ إذَا انْفَتَقَتْ]

An issue regarding the diyah of the bladder when it ruptures.

L37741 2067 - Issue: Abdullah ibn Rabi' narrated to us, from Abdullah ibn Muhammad ibn Uthman, from Ahmad ibn Khalid, from Ali ibn Abd al-Aziz, from al-Hajjaj ibn al-Minhal, from Hammad ibn Salamah, from Qatadah, from Abi Mijlaz that he said regarding the bladder when it is ruptured: one-third of the *diyah*.

٢٠٦٧ - مَسْأَلَةٌ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا قَتَادَةُ عَنْ أَبِي مِجْلَزٍ أَنَّهُ قَالَ فِي الْمَثَانَةِ إذَا فُتِقَتْ: ثُلُثُ الدِّيَةِ.

L37743 From the chain of Waki‘, who narrated from Sufyan al-Thawri, from Azhar, from Abu Awn Muhammad ibn Ubayd Allah al-Thaqafi, from Shurayh, who said: For a gaping wound (fatq), one-third of the diyah (blood money) is due.

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَزْهَرَ عَنْ أَبِي عَوْنٍ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ الثَّقَفِيِّ عَنْ شُرَيْحٍ قَالَ: فِي الْفَتْقِ ثُلُثُ الدِّيَةِ.

L37744 Narrated by Humaam, from Ibn Mufarrij, from Ibn al-Aʿrabī, from al-Dabarī, from ʿAbd al-Razzāq, from Maʿmar, from a man, from al-Shaʿbī, who said: “For a ruptured bladder: one-third of the *diyah*.”

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ الشَّعْبِيِّ قَالَ: فِي الْمَثَانَةِ إذَا خُرِقَتْ: ثُلُثُ الدِّيَةِ.

L37745 Abd al-Razzaq said: Ibn Jurayj said—and I [myself] say—that in it—if one fails to retain urine—the full blood-money applies. This was said by the people of Syria, and Sufyan al-Thawri said the same.

قَالَ عَبْدُ الرَّزَّاقِ: قَالَ ابْنُ جُرَيْجٍ: وَأَنَا أَقُولُ: إنَّ فِيهَا - إذَا لَمْ تُمْسِكْ الْبَوْلَ - الدِّيَةَ كَامِلَةً قَالَهُ أَهْلُ الشَّامِ - وَقَالَ سُفْيَانُ الثَّوْرِيُّ مِثْلَ ذَلِكَ.

L37746 Ali said: There is nothing in that except retaliation for intentional acts or blood money, because it is a wound—and there is no liability for unintentional acts as we have mentioned.

قَالَ عَلِيٌّ: لَيْسَ فِي ذَلِكَ إلَّا الْقِصَاصُ فِي الْعَمْدِ أَوْ الْمُفَادَاةُ، لِأَنَّهُ جُرْحٌ - وَلَيْسَ فِي الْخَطَأِ شَيْءٌ لِمَا ذَكَرْنَا.

[مَسْأَلَةٌ دِيَةُ الْوِرْكِ إذَا انْكَسَرَتْ ثُمَّ انْجَبَرَتْ]

L37747 **Issue: The diyah for a fractured hip that heals.**

L37748–37750 2068 – Issue: It has been narrated to us through the chain of al-Ḥajjāj ibn al-Minhāl, who informed us: Ḥammād ibn Salamah from... Al-Ḥajjaj reported from Makḥūl from Zayd ibn Thābit regarding the hip when fractured and set: ten camels [as blood money] – this being the opinion of a Companion, with no dissenting view known among the Companions – while the Ḥanafīs, Mālikīs, and Shāfiʿīs vehemently condemn any opposition to the Companion’s position when it aligns with their adherence to precedent. As for our position, we uphold only qisas (retaliation) in cases of intentional injury – whereas in cases of accidental injury, there is no liability.

٢٠٦٨ - مَسْأَلَةٌ: رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ الْحَجَّاجِ عَنْ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ فِي الْوِرْكِ إذَا انْكَسَرَتْ ثُمَّ انْجَبَرَتْ: عَشْرَةُ أَبْعِرَةٍ - وَهُوَ قَوْلُ صَاحِبٍ لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - وَالْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، يُشَنِّعُونَ خِلَافَ الصَّاحِبِ إذَا وَافَقَ تَقْلِيدَهُمْ - وَأَمَّا نَحْنُ فَلَيْسَ عِنْدَنَا إلَّا الْقَوَدُ فِي الْعَمْدِ فَقَطْ - وَأَمَّا فِي الْخَطَأِ فَلَا شَيْءَ فِيهِ.

[مَسْأَلَةٌ دِيَةُ الْمَقْعَدَةِ وَالشُّفْرَانِ وَالْأَلْيَتَانِ وَالْعَفَلَةِ وَالْمَنْكِبِ]

L37751 **Issue: The diyah (financial compensation) for injuries to the anus, the labia majora, the buttocks, the clitoral prepuce, and the shoulder.**

L37752 Issue 2069: Narrated by Ḥammām, narrated by Ibn Mufarrij, narrated by Ibn al-Aʿrābī, narrated by al-Dabarī, narrated by ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAbd al-Karīm that he said regarding injury to the buttocks: If

one becomes unable to control his excretion, the blood money is due - and this is the opinion upheld by al-Thawrī.

٢٠٦٩ - مَسْأَلَةٌ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْكَرِيمِ أَنَّهُ قَالَ فِي الْمَقْعَدَةِ إِذَا لَمْ يَسْتَطِعْ أَنْ يُمْسِكَ خَلَاهُ فَالدِّيَةُ - وَبِهِ يَقُولُ الثَّوْرِيُّ

L37753 And through him—to ʻAbd al-Razzāq, from Ibn Jurayj, from ʻAbd al-Karīm, from ʻAmr ibn Shuʻayb, who said: Full blood money is due for the two buttocks if they are severed until the bone becomes exposed; for one of them, half the blood money is due.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْكَرِيمِ عَنْ عَمْرِو بْنِ شُعَيْبٍ أَنَّهُ قَالَ: فِي الْأَلْيَتَيْنِ إِذَا قُطِعَتَا حَتَّى يَبْدُوَ الْعَظْمُ الدِّيَةُ كَامِلَةً، وَفِي إِحْدَاهُمَا نِصْفُ الدِّيَةِ.

L37754 And from Ibrāhīm al-Nakhaʻī: the diyah applies to the two buttocks.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي الْأَلْيَتَيْنِ الدِّيَةُ.

L37755 And through him—to ʿAbd al-Razzāq from Ibn Jurayj: Muḥammad ibn al-Ḥārith ibn Sufyān informed me, saying: The ruling for a woman's labium of the vulva, if entirely severed to the bone, requires half her *diyah*. For both labia severed to the bone, her full *diyah* is due. If she is barren and cannot conceive? Ibn Jurayj said: It was established by consensus for ʿUmar ibn ʿAbd al-ʿAzīz that severing a woman's clitoris entails the full *diyah* because it prevents her from experiencing the pleasure of intercourse.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي مُحَمَّدُ بْنُ الْحَارِثِ بْنِ سُفْيَانَ، قَالَ: يُقْضَى فِي شُفْرِ قُبُلِ الْمَرْأَةِ إِذَا أَوْعَبَ حَتَّى يَبْلُغَ الْعَظْمَ نِصْفُ دِيَتِهَا، وَفِي شُفْرَيْهَا بِدِيَتِهَا إِذَا بَلَغَ الْعَظْمَ - فَإِنْ كَانَتْ عَاقِرًا لَا تَحْمِلُ؟ قَالَ ابْنُ جُرَيْجٍ: وَاجْتَمَعَ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي رَكْبِ الْمَرْأَةِ إِذَا قُطِعَ بِالدِّيَةِ مِنْ أَجْلِ أَنَّهَا تَمْتَنِعُ مِنْ لَذَّةِ الْجِمَاعِ.

L37756–37760 Aṭāʾ said: "Do I not know anything concerning the woman's vaginal opening in our land?" Ibn Jurayj said: ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz informed me, saying: "The scholars convened with my father during his caliphate and agreed that for injuries to the vaginal opening caused by a blow, the full blood-money is obligatory because it prevents [procreation]." The compensation for pleasure and intercourse is forty dinars each, and the compensation for a shoulder fracture that is set without bone involvement is forty dinars. Ali said: Al-Shafiʻi stated regarding the ʿafala (clitoral hood): If intercourse is invalidated, the diyah is obligatory, and the same applies to the loss of both labia majora.

وَقَالَ عَطَاءٌ: مَا عَلِمْت فِي قُبُلِ الْمَرْأَةِ شَيْئًا بِبِلَادِنَا؟ قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: اجْتَمَعَ الْعُلَمَاءُ لِأَبِي فِي خِلَافَتِهِ عَلَى أَنَّ فِي الْعَفَلَةِ تَكُونُ مِنَ الضَّرْبَةِ الدِّيَةُ كَامِلَةً، لِأَنَّهَا تَمْنَعُ اللَّذَّةَ وَالْجِمَاعَ، وَعَلَى أَنَّ فِي الْمَنْكِبِ إِذَا كُسِرَ ثُمَّ جُبِرَ فِي غَيْرِ عَثْمٍ أَرْبَعُونَ دِينَارًا قَالَ عَلِيٌّ: وَقَالَ الشَّافِعِيُّ - فِي الْعَفَلَةِ إِذَا بَطَلَ الْجِمَاعُ الدِّيَةُ، وَفِي ذَهَابِ الشُّفْرَيْنِ كَذَلِكَ.

L37761 Abu Hanifah, al-Shafi'i, Ahmad, and their companions held that the diyah is owed for both buttocks.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَصْحَابُهُمْ: فِي الْأَلْيَتَيْنِ الدِّيَةُ.

L37762–37763 All of this has neither an explicit textual basis nor consensus; thus, there is nothing established in such matters regarding unintentional harm. As for

intentional acts: retaliation where possible, or financial compensation (diya) in cases involving wounds. And success is from Allah, the Most High.

A Legal Issue on Diyah (Compensation) for the Neck

Issue 2070: Reported by Ḥammām, from Ibn Mufarrij, from Ibn al-Aʿrabī, from al-Dabarī, from ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Azhar, from Abū ʿAwn, from Shurayḥ, who said: "One-third of the diyah is prescribed for injuries to the neck."

Ali said: There is no liability in that matter regarding unintentional acts. As for intentional acts, retaliation (qawd) applies, and it is absolutely imperative.

A legal issue: The ruling [requires abstaining] from another pregnancy until [the child] is weaned.

2071 – Issue: From Ḥammām, from ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bājī, from ʿAbdullāh ibn Yūnus, from Baqī ibn Makhlad, from Abū Bakr ibn Abī Shaybah, from Yazīd ibn Hārūn, from Yaḥyā ibn Saʿīd al-Anṣārī: Two men disputed in Medina during the reign of ʿUmar ibn ʿAbd al-ʿAzīz. One said to his opponent, "I struck him until he discharged semen due to injury." The other responded, "Bear witness, for by Allah, he has spoken truthfully." ʿUmar ibn ʿAbd al-ʿAzīz sent to Saʿīd ibn al-Musayyab, inquiring whether any precedent or Sunnah had been established regarding a man who struck another until he discharged semen. Saʿīd replied, "'Uthmān ruled that a third of the *diyah* is due in such a case." Sufyān added: "This is not incumbent upon the *ʿāqilah*."

It has been narrated from 'Uthmān regarding this matter in another report: As transmitted to us via the chain of al-Ḥajjāj ibn al-Minhāl—Ḥammād ibn Salamah narrated to us from 'Umar ibn 'Abd Allāh ibn Ṭalḥah al-Khuzāʿī, who said: There was a man called Ibn 'Iqāb, who was large and obese. A short man seized him and trampled his stomach until he defecated. 'Umar ibn 'Abd al-'Azīz sent to Saʿīd ibn al-Musayyab inquiring about the ruling.

وَكُلُّ هَذَا لَا نَصَّ فِيهِ وَلَا إِجْمَاعَ، فَلَا شَيْءَ فِي ذَلِكَ فِي الْخَطَأِ، أَمَّا فِي الْعَمْدِ: فَالْقِصَاصُ فِيمَا أَمْكَنَ أَوْ الْمُفَادَاةُ فِيمَا كَانَ جُرْحًا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ دِيَةِ الْعُنُقِ]

٢٠٧٠ - مَسْأَلَةٌ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَزْهَرَ عَنْ أَبِي عَوْنٍ عَنْ شُرَيْحٍ قَالَ: فِي الْعُنُقِ ثُلُثُ الدِّيَةِ.

قَالَ عَلِيٌّ: لَا شَيْءَ فِي ذَلِكَ فِي الْخَطَأِ. وَالْقَوَدُ فِي الْعَمْدِ وَلَا بُدَّ.

[مَسْأَلَةٌ الدَّرْسُ لِبَطْنِ آخَرَ حَتَّى يُسْلَحَ]

٢٠٧١ - مَسْأَلَةٌ: نا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّ رَجُلَيْنِ اخْتَصَمَا بِالْمَدِينَةِ فِي زَمَنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَقَالَ أَحَدُهُمَا لِصَاحِبِهِ: ضَرَبْته حَتَّى سَلَحَ، فَقَالَ: اشْهَدُوا فَقَدْ وَاَللَّهِ صَدَقَ، فَأَرْسَلَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ إلَى سَعِيدِ بْنِ الْمُسَيِّبِ يَسْأَلُ عَنْ رَجُلٍ ضَرَبَ رَجُلًا حَتَّى سَلَحَ، هَلْ مَضَى فِي ذَلِكَ أَثَرٌ أَوْ سُنَّةٌ؟ فَقَالَ سَعِيدٌ: قَضَى فِيهَا عُثْمَانُ بِثُلُثِ الدِّيَةِ - قَالَ سُفْيَانُ: وَلَيْسَ ذَلِكَ عَلَى الْعَاقِلَةِ.

وَقَدْ رُوِيَ عَنْ عُثْمَانَ فِي ذَلِكَ غَيْرُ هَذَا: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ عُمَرَ بْنِ عَبْدِ اللَّهِ بْنِ طَلْحَةَ الْخُزَاعِيُّ قَالَ: كَانَ رَجُلٌ يُقَالُ لَهُ: ابْنُ عِقَابٍ كَانَ عَظِيمًا سَمِينًا فَأَخَذَهُ رَجُلٌ قَصِيرٌ فَوَطِئَ فِي بَطْنِهِ حَتَّى خَرِيَ، فَأَرْسَلَ عُمَرُ بْنُ

Sa'īd ibn al-Musayyab replied: 'Uthmān ibn 'Affān ruled in this case with forty dinars or forty prescribed compensations.

L37770–37771 From Hammad ibn Salamah from Abu al-Khattab from Humayd ibn Yazid from Nafi' that Uthman ibn Affan ruled in that matter with forty camels—referring to the one who struck [another] until the bone was exposed.

L37772 Ali said: As for us, we do not consider anyone's statement as proof, nor do we accept anyone's judgment over that of the Messenger of Allah (peace be upon him). In such matters, we recognize nothing but retaliation: a blow equivalent to a blow with no excess. The incident is not the striker's action against the struck party, thus no transgression is incurred in such a case. Physical constitutions differ in severity and leniency—and with Allah, the Exalted, lies all success.

L37773 ## The Issue of Diyah for Flatulence

L37774 Issue 2072: Hammam narrated to us, Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabari narrated to us, Abd al-Razzaq reported from Ma'mar from Isma'il ibn Umayyah: A man used to trim the mustache of Umar ibn al-Khattab. Umar startled him, causing the man to break wind. Umar said, "We did not intend this, but we will pay blood money for it," and he gave him forty dirhams. He said: "I believe he mentioned a goat or a young female goat."

L37775 Ali said: "Umar ibn al-Khattab, who provided [a ruling] in that matter, termed it 'compensation' ('aql), and the Shafi'is, Malikis, and Hanafis oppose this and do not regard it as a foundational principle."

L37776 This is arbitrary imposition and mockery in religion, which is impermissible. If what is reported from the Companion – with no known opposition to it – is considered valid evidence, then they must adhere to all of this and everything we have cited. If they do so, they would abandon most of their school's doctrines and part ways with those they imitate in their religion. But

عَبْد الْعَزِيزِ إِلَى سَعِيد بْنِ الْمُسَيِّبِ يَسْأَلُهُ عَنْ ذَلِكَ؟ فَقَالَ سَعِيدُ بْنُ الْمُسَيِّبِ: قَضَى فِيهِ عُثْمَانُ بْنُ عَفَّانَ بِأَرْبَعِينَ دِينَارًا، أَوْ بِأَرْبَعِينَ فَرِيضَةً.

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي الْخَطَّابِ عَنْ حُمَيْدِ بْنِ يَزِيدَ عَنْ نَافِعٍ أَنَّ عُثْمَانَ بْنَ عَفَّانَ قَضَى فِي ذَلِكَ بِأَرْبَعِينَ بَعِيرًا - يَعْنِي الَّذِي ضَرَبَ حَتَّى سَلَحَ.

قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ، وَلَا حُكْمُهُ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَيْسَ عِنْدَنَا فِي ذَلِكَ إِلَّا الْقِصَاصُ: ضَرْبٌ كَضَرْبٍ وَلَا مَزِيدَ، وَالْحَدَثُ لَيْسَ فِعْلَ الضَّارِبِ بِالْمَضْرُوبِ، فَلَا اعْتِدَاءَ عَلَيْهِ فِي ذَلِكَ، وَالطَّبَائِعُ تَخْتَلِفُ فِي الشِّدَّةِ وَالِاسْتِرْخَاءِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ دِيَةُ الضَّرْطَةِ]

٢٠٧٢ - مَسْأَلَةٌ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ أَنَّ رَجُلًا كَانَ يَقُصُّ شَارِبَ عُمَرَ بْنِ الْخَطَّابِ فَأَفْزَعَهُ عُمَرُ، فَضَرِطَ الرَّجُلُ، فَقَالَ: أَمَا إِنَّا لَمْ نُرِدْ هَذَا، وَلَكِنْ سَنَعْقِلُهَا، فَأَعْطَاهُ أَرْبَعِينَ دِرْهَمًا - قَالَ: وَأَحْسِبُهُ قَالَ: شَاةً أَوْ عَنَاقًا.

قَالَ عَلِيٌّ: قَدْ سَمَّى عُمَرُ بْنُ الْخَطَّابِ الَّذِي أَعْطَى فِي ذَلِكَ " عَقْلًا " وَالشَّافِعِيُّونَ، وَالْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ، يُخَالِفُونَ هَذَا وَلَا يَرَوْنَهُ أَصْلًا

وَهَذَا تَحَكُّمٌ وَتَلَاعُبٌ فِي الدِّينِ لَا يَحِلُّ، فَإِنْ كَانَ مَا رُوِيَ عَنْ الصَّاحِبِ مِمَّا لَا يُعْرَفُ لَهُ مُخَالِفٌ حُجَّةً فَلْيَلْتَزِمُوا كُلَّ هَذَا، وَكُلَّ مَا أَوْرَدْنَا، فَإِنْ فَعَلُوا ذَلِكَ تَرَكُوا أَكْثَرَ مَذَاهِبِهِمْ، وَفَارَقُوا مَنْ قَلَّدُوا دِينَهُمْ - وَإِنْ كَانَ مَا رُوِيَ عَنْ الصَّاحِبِ لَا يُعْرَفُ لَهُ مِنْهُمْ مُخَالِفٌ

if what is reported from the Companion – with no known opposition among them – is not considered valid evidence, then this is our position. Let them cease intimidating those who oppose it and abandon their argumentation based on such reports.

L37777 ## A Jurisprudential Matter Regarding Diyah for the Forehead

L37778–37780 2073 - Issue: Hammam reported from Ibn Mufarrij, who reported from Ibn al-Aʿrabī, who reported from al-Dabari, who reported from ʿAbd al-Razzāq, from Ibn Jurayj, who informed me that ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz reported from ʿUmar ibn ʿAbd al-ʿAzīz that he said: For the forehead - if it is crushed with an internal indentation: one hundred and fifty dinars. If there is a fracture between the eyebrows that disfigures the face and the bones are not displaced, a quarter of the blood money is due. If what lies between... If an injury affects the ears and the molars of the jaws, and a hair enters the wound without aggravating it, and no bone is removed: the liability is 100 dinars.

L37781 Ali said: This is the most authentic chain of transmission, as you see, leading to ʿUmar ibn ʿAbd al-ʿAzīz—may Allah have mercy on him. If it is an opinion—as it unquestionably is—then by my life, the opinion of ʿUmar ibn ʿAbd al-ʿAzīz has a far greater claim to correctness without doubt than the opinions of Abū Ḥanīfa, Mālik, and al-Shāfiʿī. And if this [ruling] is applied to a person of merit who speaks thus—and it cannot be said to be based on opinion—then it is textually grounded. For ʿUmar ibn ʿAbd al-ʿAzīz is indeed more entitled to this legal derivation than those we have mentioned.

L37782 As for us, we say: Indeed, ʻUmar—may Allah have mercy on him—and others among the predecessors are excused for their errors and rewarded for their *ijtihad*. No one's opinion constitutes proof except that of the Messenger of Allah—peace and blessings be upon him. In this matter, there is neither an explicit text nor consensus; thus, issuing rulings on it is impermissible. Nothing is prescribed except *qisas* (retaliation) for intentional killing, except in

لَيْسَ حُجَّةً - فَهَذَا قَوْلُنَا، فَلْيَتْرُكُوا التَّهْوِيلَ عَلَى مَنْ خَالَفَ ذَلِكَ، وَلْيُسْقِطُوا الِاحْتِجَاجَ بِمَا احْتَجُّوا بِهِ مِنْ ذَلِكَ.

[مَسْأَلَةُ دِيَةِ الْجَبْهَةِ]

٢٠٧٣ - مَسْأَلَةٌ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ قَالَ: فِي الْجَبْهَةِ إِذَا هُشِّمَتْ وَفِيهَا غَوْصٌ مِنْ دَاخِلٍ مِائَةٌ وَخَمْسُونَ دِينَارًا، فَإِنْ كَانَ بَيْنَ الْحَاجِبَيْنِ كَسْرٌ شَانَ الْوَجْهَ، وَلَمْ تَنْتَقِلْ مِنْهُ الْعِظَامُ فَرُبْعُ الدِّيَةِ، وَإِنْ كُسِرَ مَا بَيْنَ الْأُذُنَيْنِ يُصِيبُ مَاضِغَ اللَّحْيَيْنِ وَقَدْ آذَاهُ الشَّعْرُ فِي تَخَوُّصٍ لَمْ يَضُرَّ فِي الْجُرْحِ، وَلَمْ يُنْقَلْ مِنْهُ عَظْمٌ: فَفِيهِ مِائَةُ دِينَارٍ.

قَالَ عَلِيٌّ: هَذَا أَصَحُّ سَنَدٍ كَمَا تَرَى إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ - رَحِمَهُ اللَّهُ - فَلَئِنْ كَانَ رَأْيًا - كَمَا هُوَ رَأْيٌ بِلَا شَكٍّ - فَلَعَمْرِي أَنَّ رَأْيَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ لَأَحَقُّ بِالسَّدَادِ بِلَا شَكٍّ مِنْ رَأْيِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَلَئِنْ كَانَ يُطْلَقُ فِي ذِي فَضْلٍ يَقُولُ مِثْلَ هَذَا، لَا يُقَالُ بِالرَّأْيِ، فَهُوَ تَوْقِيفٌ، فَإِنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ لَأَحَقُّ بِهَذِهِ الْمُخْرِجَةِ مِمَّنْ ذَكَرْنَا

وَأَمَّا نَحْنُ فَنَقُولُ: إِنَّ عُمَرَ - رَحِمَهُ اللَّهُ - وَغَيْرَهُ مِمَّنْ سَلَفَ مَعْذُورُونَ فِيمَا أَخْطَئُوا فِيهِ، وَمَأْجُورُونَ فِي اجْتِهَادِهِمْ، وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا لَا نَصَّ فِيهِ وَلَا إِجْمَاعَ، فَلَا يَجُوزُ الْقَوْلُ فِيهِ، وَلَيْسَ فِيهِ إِلَّا الْقَوَدُ فِي

cases of wounding where mutual compensation (*mufādāh*) applies. There is nothing [prescribed] in it for unintentional harm—and success comes only from Allah, the Exalted.

الْعَمْدِ فَقَطْ، إِلَّا أَنْ يَكُونَ جُرْحًا فَتَكُونَ فِيهِ الْمُفَادَاةُ، وَلَا شَيْءَ فِيهِ فِي الْخَطَأِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

A Jurisprudential Issue Concerning the Diyah (Blood Money) for the Slap.

[مَسْأَلَةُ دِيَةِ اللَّطْمَةِ]

2074. Issue: Hammam narrated, Ibn Mufarrij narrated, Ibn al-A'rabi narrated, al-Dabari narrated, 'Abd al-Razzaq said: I heard a freed slave of Sulayman ibn Habib report from Ma'mar, who said: Sulayman ibn Habib ruled that for a strike injury that turns red, black, or green, six dinars are required.

٢٠٧٤ - مَسْأَلَةٌ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ قَالَ: سَمِعْت مَوْلًى لِسُلَيْمَانَ بْنِ حَبِيبٍ يُخْبِرُ عَنْ مَعْمَرٍ قَالَ: إنَّ سُلَيْمَانَ بْنَ حَبِيبٍ قَضَى فِي الصَّكَّةِ إذَا احْمَرَّتْ، أَوْ اسْوَدَّتْ، أَوْ اخْضَرَّتْ بِسِتَّةِ دَنَانِيرَ.

Abu Muhammad said: This is like the previous matter, and there is nothing in this except qisas alone. If evidence proves that, in any of the aforementioned cases, he intended something other than what was permissible for him, then it is an error and invalid.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كَالَّذِي قَبْلَهُ وَلَا شَيْءَ فِي هَذَا إلَّا الْقِصَاصُ فَقَطْ، فَلَوْ قَامَتْ بَيِّنَةٌ فِي شَيْءٍ مِمَّا ذَكَرْنَا أَنَّهُ أَرَادَ غَيْرَهُ مِمَّا أُبِيحَ لَهُ، فَهُوَ خَطَأٌ لَا شَيْءَ فِيهِ.

Injuries and Their Classifications

[الْجِرَاحُ وَأَقْسَامُهَا]

A Legal Question Regarding the Types of Wounds

[مَسْأَلَةٌ أَنْوَاعُ الْجِرَاحِ]

Injuries and their categories 2075 - Issue: Abu Muhammad said: The first is al-Harisah (the grazing injury) — then al-Damiyah (the bleeding injury) — then al-Dāmiʿah (the tear-inducing injury) — then al-Bāḍiʿah (the incising injury) — then al-Mutalāḥimah (the cohering injury) — then al-Simḥāq (the membrane-piercing injury), which is also called al-Milṭā.

الْجِرَاحُ وَأَقْسَامُهَا ٢٠٧٥ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: أَوَّلُهَا الْحَارِصَةُ - ثُمَّ الدَّامِيَةُ - ثُمَّ الدَّامِعَةُ - ثُمَّ الْبَاضِعَةُ - ثُمَّ الْمُتَلَاحِمَةُ - ثُمَّ السِّمْحَاقُ - وَهِيَ أَيْضًا: الْمِلْطَا.

The bone-exposing wound, then the bone-fracturing wound, then the bone-displacing wound, then the brain-exposing wound, which is also known as Al-Ammah.

ثُمَّ الْمُوضِحَةُ - ثُمَّ الْهَاشِمَةُ - ثُمَّ الْمُنَقِّلَةُ - ثُمَّ الْمَأْمُومَةُ - وَهِيَ الْآمَّةُ أَيْضًا.

And in the cavity specifically: the al-ja'ifah - which is that which penetrates into the cavity.

وَفِي الْجَوْفِ وَحْدَهُ: الْجَائِفَةُ - وَهِيَ الَّتِي نَفَذَتْ إلَى الْجَوْفِ.

The splitting wound *(al-Ḥārisah)* is that which lightly splits the skin. It is said: "The fuller split the garment" when he splits it slightly. The blood-

visible wound *(al-Dāmiyah)* is that in which some blood appears but does not flow. The tear-flowing wound *(al-Dāmiʿah)* is that from which blood flows like a teardrop. The penetrating wound *(al-Bāḍiʿah)* is that which splits the skin and reaches the flesh. The initially penetrating wound *(al-Mutalāḥimah)* is that which splits the skin and begins to enter the flesh. The membrane-penetrating wound *(al-Simḥāq)*, known as *al-Milṭā*, is that which cuts through all the skin and flesh and reaches the thin membrane covering the bone. The bone-exposing wound *(al-Mūḍiḥah)* is that which splits the skin, flesh, and that membrane, thereby exposing the bone. The bone-shattering wound *(al-Hāshimah)* is that which cuts through the skin, flesh, and membrane, affects the bone, and causes fragmentation within it. The bone-displacing wound *(al-Munaqqilah)*, also referred to as *al-Manqūlah*, is that which accomplishes all of this, breaks the bone, and results in bone expulsion. The dura mater-piercing wound *(al-Maʾmūmah)* is that which penetrates all these layers, splits the entire bone, and reaches the brain's dura mater.

وَالْحَارِصَةُ - الَّتِي تَشُقُّ الْجِلْدَ شَقًّا خَفِيفًا - يُقَالُ: حَرَصَ الْقَصَّارُ الثَّوْبَ إذَا شَقَّهُ شَقًّا لَطِيفًا. وَالدَّامِيَةُ - هِيَ الَّتِي ظَهَرَ فِيهَا شَيْءٌ مِنْ دَمٍ وَلَمْ يَسِلْ. وَالدَّامِعَةُ - هِيَ الَّتِي سَالَ مِنْهَا شَيْءٌ مِنْ دَمٍ كَالدَّمْعِ. وَالْبَاضِعَةُ - هِيَ الَّتِي شَقَّتْ الْجِلْدَ وَوَصَلَتْ إلَى اللَّحْمِ وَالْمُتَلَاحِمَةُ - هِيَ الَّتِي شَقَّتْ الْجِلْدَ وَشَرَعَتْ فِي اللَّحْمِ. وَالسِّمْحَاقُ - هِيَ الْمِلْطَا: وَهِيَ الَّتِي قَطَعَتْ الْجِلْدَ وَاللَّحْمَ كُلَّهُ وَوَصَلَتْ إلَى الْقِشْرَةِ الرَّقِيقَةِ الَّتِي عَلَى الْعَظْمِ. وَالْمُوضِحَةُ - الَّتِي شَقَّتْ الْجِلْدَ وَاللَّحْمَ وَتِلْكَ الْقِشْرَةَ وَأَوْضَحَتْ عَنْ الْعَظْمِ. وَالْهَاشِمَةُ - الَّتِي قَطَعَتْ الْجِلْدَ وَاللَّحْمَ وَالْقِشْرَةَ وَأَثَّرَتْ فِي الْعَظْمِ فَهَشَّمَتْ فِيهِ. وَالْمُنَقِّلَةُ وَهِيَ الْمَنْقُولَةُ - أَيْضًا - الَّتِي فَعَلَتْ ذَلِكَ كُلَّهُ وَكَسَرَتْ الْعَظْمَ فَصَارَ يَخْرُجُ مِنْهَا الْعِظَامُ. وَالْمَأْمُومَةُ - الَّتِي نَفَذَتْ ذَلِكَ كُلَّهُ وَشَقَّتْ الْعَظْمَ كُلَّهُ، فَبَلَغَتْ أُمَّ الدِّمَاغِ

L37793 The entirety of this narration is transmitted as follows: Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Muḥammad ibn ʿĪsā ibn Rifāʿah reported to us: ʿAlī ibn ʿAbd al-ʿAzīz reported to us from Abū ʿUbayd, from al-Aṣmaʿī and others—and he mentioned it just as we have mentioned.

هَذَا الْكَلَامُ كُلُّهُ هَكَذَا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ قَالَ: نا مُحَمَّدُ بْنُ عِيسَى بْنِ رِفَاعَةَ قَالَ: نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا أَبُو عُبَيْدٍ عَنْ الْأَصْمَعِيِّ، وَغَيْرِهِ، فَذَكَرَ كَمَا ذَكَرْنَا

L37794 Abū Muḥammad said: Some of the predecessors—as we earlier stated—held that there is no retaliation for intentional acts in any of them except in *al-muwḍiḥah* (the wound exposing the bone) alone, and they maintained that exact equivalence in such matters is unattainable. Others said: Rather, retaliation applies to all of them, and equivalence is achievable as Allah the Exalted has commanded.

قَالَ أَبُو مُحَمَّدٍ: فَقَالَ بَعْضُ السَّلَفِ - كَمَا قَدَّمْنَا -: لَا قِصَاصَ فِي الْعَمْدِ فِي شَيْءٍ مِنْهَا إلَّا فِي الْمُوضِحَةِ وَحْدَهَا، وَادَّعَوْا أَنَّ الْمُمَاثَلَةَ فِي ذَلِكَ مُتَعَذِّرَةٌ. وَقَالَ آخَرُونَ: بَلْ الْقِصَاصُ فِي كُلِّهَا، وَالْمُمَاثَلَةُ مُمْكِنَةٌ كَمَا أَمَرَ اللَّهُ تَعَالَى.

L37795 We have previously invalidated the position of those who prohibited retaliation (qisās) in this matter based on their personal opinion, making its repetition unnecessary.

وَقَدْ ذَكَرْنَا بُطْلَانَ قَوْلِ مَنْ مَنَعَ مِنْ الْقِصَاصِ فِيهَا بِرَأْيِهِ قَبْلُ، فَأَغْنَى عَنْ إعَادَتِهِ.

L37796–37798 It suffices in this regard the generality of Allah's statement—the Exalted—"And for wounds there is retaliation in kind" (Al-Māʾidah: 45), due to the ḥāʾ being in the nominative. And He, the Exalted, said: "Sacred matters are subject to retaliation. So whoever transgresses against you, retaliate against

him in the same measure as he transgressed against you" [Al-Baqarah: 194]. "And your Lord is not forgetful" [Maryam: 64].[8]

وَيَكْفِي مِنْ ذَلِكَ عُمُومُ قَوْلِ اللَّهِ تَعَالَى: {وَالْجُرُوحَ قِصَاصٌ} [المائدة: ٤٥] بِرَفْعِ الْحَاءِ وَقَالَ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

L37799 If Allah, the Exalted, had known that any aspect of this matter permits no equivalence, He would not have outlined for us the ruling of retaliation for wounds in general terms, nor would He have specified anything. We testify by Allah's complete, truthful testimony, and affirm with the unyielding certainty of the believer who confirms his Lord's words: that our Lord, Mighty and Majestic, had He intended to specify any wound for prohibition of retaliation in cases of deliberate harm, He would have clarified them for us—just as He declared about His Book that He revealed it as an exposition of every matter. Since He did not do so, we swear by Allah, the Exalted, a righteous oath: He never intended to specify any wound for prohibition of retaliation, except in cases of transgression through it. And success is by Allah, the Exalted.

فَلَوْ عَلِمَ اللَّهُ تَعَالَى أَنَّ شَيْئًا مِنْ ذَلِكَ لَا تُمْكِنُ فِيهِ مُمَاثَلَةٌ لَمَا أَجْمَلَ لَنَا أَمْرَهُ بِالْقِصَاصِ فِي الْجُرُوحِ جُمْلَةً، وَلَمْ يَخُصَّ شَيْئًا - فَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى التَّامَّةِ الصَّادِقَةِ، وَنَقْطَعُ قَطْعَ الْمُوقِنِ الْمُصَدِّقِ بِكَلَامِ رَبِّهِ تَعَالَى: أَنَّ رَبَّنَا عَزَّ وَجَلَّ لَوْ أَرَادَ تَخْصِيصَ شَيْءٍ مِنْ الْجُرُوحِ بِالْمَنْعِ مِنْ الْقِصَاصِ فِي الْعَمْدِ لَبَيَّنَهَا لَنَا كَمَا أَخْبَرَ تَعَالَى عَنْ كِتَابِهِ أَنَّهُ أَنْزَلَهُ تِبْيَانًا لِكُلِّ شَيْءٍ، فَإِذْ لَمْ يَفْعَلْ ذَلِكَ، فَنَحْنُ نُقْسِمُ بِاَللَّهِ تَعَالَى قَسَمًا بِرًّا: أَنَّهُ مَا أَرَادَ قَطُّ تَخْصِيصَ شَيْءٍ مِنْ الْجُرُوحِ بِالْمَنْعِ مِنْ الْقِصَاصِ مِنْهُ، إلَّا فِي الِاعْتِدَاءِ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَتَلَ عَمْدًا فَعُفِيَ عَنْهُ وَأُخِذَ مِنْهُ الدِّيَةَ أَوْ الْمُفَادَاةَ]

A juristic issue where one intentionally killed [another], was pardoned, and the diyah or ransom settlement was taken from him.

L37801 Issue 2076: What is the ruling for one who commits intentional murder, is pardoned, and has blood money (diyah) or ransom (mufādāh) taken from him? Abū Muḥammad said: People differed regarding this matter. One group ruled he should be flogged one hundred lashes and exiled for a year, as narrated through Humaam, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Ibn Jurayj, who reported from ʿAbbās ibn ʿAbdullāh that ʿUmar ibn al-Khaṭṭāb said concerning intentional killers: "Retaliation (qiṣāṣ) is not imposed on him by [merely] flogging one hundred lashes." I asked: "How so?" He replied: "For a free person who kills intentionally, or in similar cases to that."

٢٠٧٦ - مَسْأَلَةٌ: مَنْ قَتَلَ عَمْدًا فَعُفِيَ عَنْهُ وَأُخِذَ مِنْهُ الدِّيَةَ، أَوْ الْمُفَادَاةَ؟ قَالَ أَبُو مُحَمَّدٍ: اخْتَلَفَ النَّاسُ فِي هَذَا فَقَالَتْ طَائِفَةٌ: يُجْلَدُ مِائَةً وَيُنْفَى سَنَةً كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبَّاسُ بْنُ عَبْدِ اللَّهِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي الَّذِي يَقْتُلُ عَمْدًا: أَنَّهُ لَا يَقَعُ الْقِصَاصُ عَلَيْهِ بِجَلْدِ مِائَةٍ، قُلْت: كَيْفَ؟ قَالَ - فِي الْحُرِّ يَقْتُلُ عَمْدًا، أَوْ فِي أَشْبَاهِ ذَلِكَ.

[8] **Qur'an references (L37796):** Qur'an 2:194 (Al-Baqarah); Qur'an 19:64 (Maryam); Qur'an 5:45 (Al-Ma'idah).

وَبِهِ - إِلَى ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ: أَنَّ عُمَرَ جَلَدَ حُرًّا قَتَلَ عَبْدًا مِائَةً وَنَفَاهُ عَامًا

L37802 From him [the previous narrator], via Ibn Jurayj on the authority of Amr ibn Shu'ayb: that Umar flogged a free man a hundred lashes for killing a slave and banished him for a year.

وَبِهِ - إِلَى ابْنِ جُرَيْجٍ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ قَالَ: سَمِعْت أَنَّ الَّذِي يَقْتُلُ عَبْدًا يُسْجَنُ سَنَةً وَيُضْرَبُ مِائَةً.

L37803 And through him, to Ibn Jurayj who narrates from Ismāʿīl ibn Umayyah, who said: "I heard that one who kills a slave is imprisoned for a year and lashed one hundred times."

وَبِهِ - إِلَى ابْنِ جُرَيْجٍ عَنْ ابْنِ شِهَابٍ قَالَ: إنْ قَتَلَ الْحُرُّ عَبْدًا عُوقِبَ بِجَلْدٍ وَجِيعٍ، وَسِجْنٍ، وَبِعِتْقِ رَقَبَةٍ، فَإِنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ، وَلَمْ تَكُنْ عَلَيْهِ عُقُوبَةٌ

L37804 And through him—to Ibn Jurayj, from Ibn Shihāb, who said: If a free person kills a slave, he is punished with flogging that is severe, imprisonment, and the freeing of a slave. If he cannot find [a slave to free], then fasting two consecutive months is incumbent upon him, and no punishment remains upon him.

وَقَالَ الْأَوْزَاعِيُّ، وَاللَّيْثُ. وَمَالِكٌ: مَنْ قَتَلَ عَمْدًا فَعَفَا عَنْهُ الْأَوْلِيَاءُ، أَوْ فَادَوْهُ بِالدِّيَةِ، فَإِنَّهُ يُجْلَدُ مِائَةَ سَوْطٍ مَعَ ذَلِكَ، وَيُنْفَى سَنَةً - إلَى أَنْ قَالَ مَالِكٌ: فِي الْقَسَامَةِ يُدْعَى عَلَى جَمَاعَةٍ أَنَّهُمْ لَا يُقْسِمُونَ إلَّا عَلَى وَاحِدٍ فَإِنْ أَقْسَمُوا عَلَيْهِ قَتَلُوهُ، وَضَرَبَ الْبَاقُونَ كُلَّ وَاحِدٍ مِائَةَ سَوْطٍ، وَيُنْفَوْا كُلُّهُمْ سَنَةً سَنَةً.

L37805 Al-Awza'i, Al-Layth, and Malik said: Whoever kills intentionally and is pardoned by the guardians [of the victim] or compensated with *diyah* is to be lashed one hundred times in addition to that and exiled for a year. Moreover, Malik said regarding the *qasāmah* (collective oath procedure): If a group is called to take an oath but refuses to swear except against one individual, then if they swear against him, he is to be executed. The remaining members are each lashed one hundred times, and all of them are exiled for a full year, each of them.

وَقَالَ آخَرُونَ: لَا شَيْءَ عَلَيْهِ: كَمَا نا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: كَانَ فِي بَنِي إسْرَائِيلَ الْقِصَاصُ وَلَمْ تَكُنْ فِيهِمْ الدِّيَةُ - قَالَ اللَّهُ تَعَالَى: {كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالأُنْثَى بِالأُنْثَى فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ} [البقرة: ١٧٨] فَالْعَفْوُ: أَنْ تَقْبَلَ الدِّيَةَ فِي الْعَمْدِ ذَلِكَ تَخْفِيفٌ مِنْ رَبِّكُمْ وَرَحْمَةٌ.

L37806–37807 Others said: There is nothing upon him. As narrated to us by Hammām; narrated to us by ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bājī; narrated to us by ʿAbdullāh ibn Yūnus; narrated to us by Baqī ibn Makhlad; narrated to us by Abū Bakr ibn Abī Shaybah; narrated to us by Sufyān ibn ʿUyaynah from ʿAmr ibn Dīnār from Mujāhid from Ibn ʿAbbās, who said: "Among the Children of Israel, *qisas* (retaliation) was enforced, but *diyah* (blood money) did not exist among them. Allah the Exalted said: 'Retaliation is prescribed for you in cases of killing: the free for the free, the slave for the slave, and the female for the female. But if something is pardoned by his brother...' [2:178]. Thus, pardoning means accepting *diyah* for intentional killing. That is an alleviation from your Lord and a mercy."[9]

[9] **Qur'an references (L37807):** Qur'an 2:178 (Al-Baqarah).

L37808 He said: Therefore, it is incumbent upon this one to act in accordance with customary norms, and upon that one to fulfill it with kindness [Al-Baqarah: 178]. “So whoever transgresses after that, for him is a painful punishment” [Al-Baqarah: 178].[10]

قَالَ: فَعَلَى هَذَا أَنْ يَتْبَعَ بِالْمَعْرُوفِ، وَعَلَى ذَلِكَ أَنْ يُؤَدِّيَ {إِلَيْهِ بِإِحْسَانٍ} [البقرة: ١٧٨] {فَمَنِ اعْتَدَى بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ} [البقرة: ١٧٨]

L37809 And this is the view held by Abū Ḥanīfah, Al-Shāfiʿī, Aḥmad Ibn Ḥanbal, Abū Suleiman, and their followers.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L37810 And with this say Isḥāq ibn Rāhawayh and all the companions of Hadith.

وَبِهِ يَقُولُ إِسْحَاقُ بْنُ رَاهْوَيْهِ وَسَائِرُ أَصْحَابِ الْحَدِيثِ.

L37811 When they disagreed, as we mentioned, we examined the evidence presented by the faction mandating disciplinary measures and exile in that context. We found them—or those among them who held this view—citing Allah’s words: “They do not kill the soul Allah has forbidden except by right, nor commit adultery. Whoever does this will bear a penalty—his punishment will be doubled on the Day of Resurrection, and he will abide therein eternally disgraced—except those who repent” (Quran 25:68-70).[11]

فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا نَظَرْنَا فِيمَا احْتَجَّتْ بِهِ الطَّائِفَةُ الْمُوجِبَةُ لِلْأَدَبِ وَالنَّفْيِ فِي ذَلِكَ، فَوَجَدْنَاهُمْ يَقُولُونَ - أَوْ مَنْ قَالَ مِنْهُمْ -: قَالَ اللَّهُ تَعَالَى: {وَلا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلا بِالْحَقِّ وَلا يَزْنُونَ وَمَنْ يَفْعَلْ ذَلِكَ يَلْقَ أَثَامًا} [الفرقان: ٦٨] {يُضَاعَفْ لَهُ الْعَذَابُ يَوْمَ الْقِيَامَةِ وَيَخْلُدْ فِيهِ مُهَانًا} [الفرقان: ٦٩] {إِلا مَنْ تَابَ} [الفرقان: ٧٠]

L37812 He said: Allah, the Exalted, likened the killing to the sexual immorality.

قَالَ: فَشَبَّهَ اللَّهُ تَعَالَى الْقَتْلَ بِالزِّنَى.

L37813 We have established that adultery in this case entails stoning for the chaste married person. If he is not a chaste married person, the penalty is waived from him, and he is to be given one hundred lashes and exiled for a year.

وَوَجَدْنَا الزِّنَى فِيهِ الرَّجْمُ عَلَى الْمُحْصَنِ، فَإِذَا لَمْ يَكُنْ مُحْصَنًا سَقَطَ عَنْهُ الْعَقْلُ وَوَجَبَ عَلَيْهِ مِائَةُ جَلْدَةٍ وَنَفْيُ سَنَةٍ.

L37814 They said: The prescribed punishment upon one who killed, where the death penalty is waived from him, is likewise one hundred lashes and exile for one year.

قَالُوا: فَالْوَاجِبُ عَلَى مَنْ قَتَلَ فَسَقَطَ عَنْهُ الْقَتْلُ مِثْلُ ذَلِكَ أَيْضًا جَلْدُ مِائَةٍ وَنَفْيُ سَنَةٍ.

L37815–37817 They mentioned: What was narrated to us by Aḥmad ibn ʿUmar ibn Anas al-ʿUdhri: ʿAbd Allāh ibn al-Ḥusayn ibn ʿIqāl narrated to us: Ibrāhīm ibn Muḥammad narrated to us: Muḥammad ibn Aḥmad ibn al-Jahm narrated to us: Muḥammad ibn ʿAbdūs narrated to us: Abū Bakr ibn Abī Shaybah narrated to us: Ismāʿīl ibn ʿAyyāsh narrated from Isḥāq ibn ʿAbd Allāh ibn Abī Farwah, from ʿAmr ibn Shuʿayb and Ibrāhīm ibn ʿAbd Allāh ibn Ḥunayn.

وَذَكَرُوا: مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ نا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ نا إِبْرَاهِيمُ بْنُ مُحَمَّدِ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ نا مُحَمَّدُ بْنُ عَبْدُوسٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا إِسْمَاعِيلُ بْنُ عَيَّاشٍ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي فَرْوَةَ عَنْ عَمْرِو بْنِ شُعَيْبٍ، وَإِبْرَاهِيمَ بْنِ عَبْدِ اللَّهِ بْنِ حُنَيْنٍ، قَالَ: عَمْرٌو عَنْ أَبِيهِ عَنْ جَدِّهِ، وَقَالَ إِبْرَاهِيمُ عَنْ أَبِيهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - ثُمَّ اتَّفَقَ عَلِيٌّ، وَجَدُّ عَمْرِو بْنِ شُعَيْبٍ كِلَاهُمَا قَالَ: «أُتِيَ النَّبِيُّ - صَلَّى

[10] **Qur’an references (L37808):** Qur’an 2:178 (Al-Baqarah); Qur’an 5:94 (Al-Ma’idah).

[11] **Qur’an references (L37811):** Qur’an 25:68 (Al-Furqan); Qur’an 25:69 (Al-Furqan); Qur’an 19:60 (Maryam); Qur’an 25:70 (Al-Furqan).

ʿAmr narrated from his father, from his grandfather, and Ibrāhīm narrated from his father, from ʿAlī ibn Abī Ṭālib. Then the chains of narration from both ʿAlī and the grandfather of ʿAmr ibn Shuʿayb agreed. He said: "The Prophet (peace be upon him) was brought a man who had intentionally killed his slave. He flogged him one hundred times, exiled him for a year, erased his share of spoils from the Muslims, and did not enforce retribution against him."

اللَّهُ عَلَيْهِ وَسَلَّمَ - بِرَجُلٍ قَتَلَ عَبْدَهُ مُتَعَمِّدًا، فَجَلَدَهُ مِائَةً، وَنَفَاهُ سَنَةً، وَمَحَا سَهْمَهُ مِنْ الْمُسْلِمِينَ، وَلَمْ يُقِدْ مِنْهُ.»

L37818 Abu Muhammad said: They have no doubt other than this, except what we previously mentioned at the outset of this chapter from Umar ibn al-Khattab—may Allah be pleased with him—and there is no valid argument for them in any of this.

قَالَ أَبُو مُحَمَّدٍ: مَا لَهُمْ شُبْهَةٌ غَيْرَ هَذَا إلَّا مَا ذَكَرْنَا آنِفًا فِي صَدْرِ هَذَا الْبَابِ عَنْ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ.

L37819 As for their condemnation through invoking Allah's words, the Exalted: {And they do not kill the soul which Allah has forbidden except by right, nor do they commit adultery} [Al-Furqān: 68], and their analogizing what is obligatory upon the killer to what is obligatory upon the adulterer—this is utterly invalid, a distortion of Allah's speech, a displacement of His ruling from its proper contexts, and a pure error in multiple respects.[12]

أَمَّا تَشْنِيعُهُمْ بِذِكْرِ اللَّهِ تَعَالَى {وَلا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إلا بِالْحَقِّ وَلا يَزْنُونَ} [الفرقان: ٦٨] الْآيَةَ. وَتَنْظِيرُهُمْ مَا يَجِبُ عَلَى الْقَاتِلِ بِمَا يَجِبُ عَلَى الزَّانِي فَفَاسِدٌ جِدًّا وَتَحْرِيفٌ لِكَلَامِ اللَّهِ تَعَالَى وَحُكْمُهُ عَنْ مَوَاضِعِهِ خَطَأٌ بَحْتٌ مِنْ عِدَّةِ وُجُوهٍ:

L37820 The first of them—that it is *qiyas*, and all *qiyas* is invalid.

أَوَّلُهَا - أَنَّهُ قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

L37821 The second point is that if analogy were valid, this would be the very essence of falsehood, because Allah the Exalted never equated the killer and the adulterer in the legal ruling. Rather, He equated them only in the threat of punishment in the Hereafter. The rulings of this world are not like the rulings of the Hereafter, for whoever repents from all such sins has the threat of punishment removed from him in the Hereafter, yet the worldly ruling is not lifted from him by their agreement with us.

وَالثَّانِي - أَنَّهُ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُسَوِّ قَطُّ بَيْنَ الْقَاتِلِ وَالزَّانِي فِي الْحُكْمِ، وَإِنَّمَا سَوَّى بَيْنَهُمَا فِي وَعِيدِ الْآخِرَةِ فَقَطْ، وَلَيْسَتْ أَحْكَامُ الدُّنْيَا كَأَحْكَامِ الْآخِرَةِ، لِأَنَّ مَنْ تَابَ مِنْ كُلِّ ذَلِكَ فَقَدْ سَقَطَ عَنْهُ الْوَعِيدُ فِي الْآخِرَةِ، وَلَمْ يَسْقُطْ عَنْهُ حُكْمُ الدُّنْيَا بِاتِّفَاقِهِمْ مَعَنَا.

L37822 The third point is that there is no disagreement that the ruling on the adulterer takes into account their status of iḥṣān (being lawfully married) or lack thereof in this matter, and there is no disagreement that this consideration does not apply in cases of homicide.

وَالثَّالِثُ - أَنَّهُ لَا خِلَافَ [فِي أَنَّ حُكْمَ الزَّانِي يُرَاعِي الْإِحْصَانَ فِي ذَلِكَ وَعَدَمَ الْإِحْصَانِ، وَلَا خِلَافَ] فِي أَنَّهُ لَا يُرَاعَى ذَلِكَ فِي الْقَتْلِ.

L37823 The fourth [point] is that the ruling for the fornicator—when capital pun-

[12] **Qur'an references (L37819):** Qur'an 25:68 (Al-Furqan).

ishment (specifically stoning) is unanimously mandated by recognized authorities—differs from the ruling for the killer when retaliation (qisas) is unanimously enforced against him, unless the killer used a stone to commit the murder.

وَالرَّابِعُ - أَنَّ حُكْمَ الزَّانِي إِذَا وَجَبَ عَلَيْهِ الْقَتْلُ بِلَا خِلَافٍ مِمَّنْ يَعْتَدُّ بِهِ الْقَتْلُ بِالرَّجْمِ خَاصَّةً، وَلَيْسَ ذَلِكَ حُكْمَ الْقَاتِلِ إِذَا اُسْتُقِيدَ مِنْهُ بِلَا خِلَافٍ، إِلَّا أَنْ يَكُونَ قَتَلَ بِحَجَرٍ.

L37824–37826 The fifth [point] is that Allah, the Exalted, stated at the beginning of this verse—which they obfuscated by citing a portion while omitting the rest—{And those who do not invoke another deity alongside Allah, nor kill the soul Allah has forbidden except by right, nor commit adultery} [Al-Furqān: 68]. If they equate the rulings of the killer and the adulterer—since Allah mentioned them together in this verse—it necessarily obliges them to also treat the unbeliever, the killer, and the adulterer equally. For Allah has mentioned them all together and equated them in the threat of the Hereafter, except for those who repent. Thus, if they... The disbeliever who embraces Islam and the apostate who returns to Islam are to be lashed one hundred times and exiled for a year, because the death penalty is waived for them, just as it is waived for a pardoned murderer and a non-muḥṣan fornicator.[13]

وَالْخَامِسُ - أَنَّ اللَّهَ تَعَالَى قَالَ فِي أَوَّلِ هَذِهِ الْآيَةِ الَّتِي مَوَّهُوا بِإِيرَادِ بَعْضِهَا دُونَ بَعْضٍ {وَالَّذِينَ لا يَدْعُونَ مَعَ اللَّهِ إِلَهًا آخَرَ وَلا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلا بِالْحَقِّ وَلا يَزْنُونَ} [الفرقان: ٦٨] فَيَلْزَمُهُمْ إِذَا سَاوَوْا بَيْنَ حُكْمِ الْقَاتِلِ وَالزَّانِي، لِأَنَّ اللَّهَ تَعَالَى قَدْ ذَكَرَهُمَا مَعًا فِي هَذِهِ الْآيَةِ أَنْ يُسَاوُوا أَيْضًا بَيْنَ الْكَافِرِ، وَالْقَاتِلِ، وَالزَّانِي، لِأَنَّ اللَّهَ تَعَالَى قَدْ ذَكَرَهُمْ كُلَّهُمْ مَعًا، وَسَاوَى بَيْنَهُمْ فِي وَعِيدِ الْآخِرَةِ إِلَّا مَنْ تَابَ، فَيَلْزَمُهُمْ إِذَا أَسْلَمَ الْكَافِرُ، وَالْمُرْتَدُّ، فَرَاجَعُ الْإِسْلَامِ أَنْ يُجْلَدَ مِائَةَ سَوْطٍ وَيُنْفَى سَنَةً، لِأَنَّ الْقَتْلَ قَدْ سَقَطَ عَنْهُ كَمَا قَدْ سَقَطَ عَنِ الْقَاتِلِ الْمَعْفُوِّ عَنْهُ، وَعَنِ الزَّانِي غَيْرِ الْمَحْصَنِ.

L37827 If they say, "Consensus has prohibited that," respond to them: "Then you have indeed admitted that consensus has prohibited your invalid analogy and invalidated it."

فَإِنْ قَالُوا: الْإِجْمَاعُ مَنَعَ ذَلِكَ. قِيلَ لَهُمْ: فَقَدْ أَقْرَرْتُمْ بِأَنَّ الْإِجْمَاعَ مَنَعَ مِنْ قِيَاسِكُمُ الْفَاسِدِ وَأَبْطَلَهُ.

L37828 Thus, the invalidity of this statement of theirs has become evident, and with Allah, the Exalted, is success.

فَظَهَرَ فَسَادُ كَلَامِهِمْ هَذَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L37829 As for the narration they relied upon, it is utterly baseless and rejected, for it comes through Ismāʿīl ibn ʿAyyāsh—who is profoundly weak—and this weakness is particularly intensified in what is reported from the Hijazi narrators. It holds no merit in the estimation of any scholar among the people of knowledge.

وَأَمَّا الْخَبَرُ - الَّذِي تَعَلَّقُوا بِهِ - فَفِي غَايَةِ الْبُطْلَانِ وَالسُّقُوطِ، لِأَنَّهُ عَنْ إِسْمَاعِيلَ بْنِ عَيَّاشٍ - وَهُوَ ضَعِيفٌ جِدًّا - وَلَا سِيَّمَا مَا رُوِيَ عَنِ الْحِجَازِيِّينَ، فَلَا خَيْرَ فِيهِ عِنْدَ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ.

L37830 Then the narration is from Isḥāq ibn ʿAbdullāh ibn Farwah—a narrator abandoned in ḥadīth transmission. They had no recourse except to cling to what has been narrated to us regarding that matter from ʿUmar, may Allah

ثُمَّ هُوَ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ فَرْوَةَ وَهُوَ مَتْرُوكُ الْحَدِيثِ - وَلَمْ يَبْقَ لَهُمْ إِلَّا التَّعَلُّقُ بِمَا رُوِّينَا فِي ذَلِكَ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فَنَظَرْنَا فِيهِ، فَوَجَدْنَاهُ لَا حُجَّةَ لَهُمْ فِيهِ،

[13] **Qur'an references (L37824):** Qur'an 25:68 (Al-Furqan).

be pleased with him. We examined it and found no proof for their position within it, for it is entirely unauthentic from ʿUmar. This is because it is either narrated from ʿAmr ibn Shuʿayb that ʿUmar, or from al-ʿAbbās ibn ʿAbdullāh that ʿUmar—yet both of them were only born after ʿUmar's death, may Allah be pleased with him, by a substantial span of time.

لِأَنَّهُ لَا يَصِحُّ عَنْ عُمَرَ أَبَدًا، لِأَنَّهُ إِمَّا عَنْ عَمْرِو بْنِ شُعَيْبٍ: أَنَّ عُمَرَ، وَإِمَّا عَنْ الْعَبَّاسِ بْنِ عَبْدِ اللَّهِ أَنَّ عُمَرَ، وَكِلَاهُمَا لَمْ يُولَدْ إِلَّا بَعْدَ مَوْتِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - بِدَهْرٍ طَوِيلٍ.

L37831 Moreover, the differing opinion of Ibn Abbas has been authentically reported. When disagreement is authentically reported from the Companions (may Allah be pleased with them), the statement of some of them is not more worthy than the statement of others. Therefore, it becomes obligatory at that point to revert to what Allah the Exalted has commanded in the event of dispute, as He says: "If you disagree over anything, refer it to Allah and the Messenger" [An-Nisa: 59].[14]

وَأَيْضًا - فَقَدْ صَحَّ عَنْ ابْنِ عَبَّاسٍ خِلَافُهُ، وَإِذَا صَحَّ الْخِلَافُ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَيْسَ قَوْلُ بَعْضِهِمْ أَوْلَى مِنْ قَوْلِ بَعْضٍ، فَالْوَاجِبُ حِينَئِذٍ الرُّجُوعُ إلَى مَا أَمَرَ اللَّهُ تَعَالَى بِهِ عِنْدَ التَّنَازُعِ، إذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩]

L37832 Every statement stripped of legal evidences is invalid with certainty. Allah, the Exalted, says: "Produce your conclusive evidence if you are truthful" [al-Baqarah 111].[15]

فَكُلُّ قَوْلٍ عَرِيٍّ مِنْ الْأَدِلَّةِ فَهُوَ بَاطِلٌ بِيَقِينٍ، قَالَ اللَّهُ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١]

L37833–37835 Then we examined the opinion of those who do not deem flogging or exile obligatory upon the pardoned individual in cases involving blood money, ransom, or unconditional pardon, and found them declaring: Allah the Exalted said, "Whoever is granted pardon by his brother for an offense, let there be adherence to customary fairness and fulfillment of obligations with goodwill. This is an alleviation from your Lord and a mercy. Whoever transgresses thereafter - there awaits him a painful punishment" [Al-Baqarah: 178]. Allah, the Exalted, has ordained a clear text without ambiguity: that whoever kills intentionally, retaliation becomes obligatory upon him for the killing. Then if he is pardoned in exchange for compensation, it is incumbent upon the pardoning guardian to pursue the pardoned killer in a proper manner. Allah, the Exalted, has obligated the pardoned killer to fulfill the compensation for which he was pardoned with excellence. Striking with

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ لَمْ يَرَ عَلَى الْمَعْفُوِّ عَنْهُ بِالدِّيَةِ، أَوْ الْمُفَادَاةِ، أَوْ الْعَفْوِ الْمُطْلَقِ جَلْدًا وَلَا نَفْيًا - فَوَجَدْنَاهُمْ يَقُولُونَ: قَالَ اللَّهُ تَعَالَى {فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِنْ رَبِّكُمْ وَرَحْمَةٌ فَمَنِ اعْتَدَى بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ} [البقرة: ١٧٨] فَأَوْجَبَ اللَّهُ تَعَالَى نَصًّا لَا خَفَاءَ بِهِ: أَنَّ مَنْ قَتَلَ عَمْدًا فَوَجَبَ عَلَيْهِ الْقِصَاصُ فِي الْقَتْلِ، ثُمَّ عُفِيَ عَنْهُ عَلَى مَالٍ، فَوَاجِبٌ عَلَى الْوَلِيِّ الْعَافِي أَنْ يَتْبَعَ الْقَاتِلَ الْمَعْفُوَّ عَنْهُ بِالْمَعْرُوفِ، وَأَوْجَبَ اللَّهُ تَعَالَى عَلَى الْقَاتِلِ الْمَعْفُوِّ عَنْهُ أَنْ يُؤَدِّيَ مَا عُفِيَ عَنْهُ عَلَيْهِ بِإِحْسَانٍ وَلَيْسَ مِنْ الْمَعْرُوفِ وَالْإِحْسَانِ الضَّرْبُ بِالسِّيَاطِ، وَالنَّفْيُ عَنْ الْأَوْطَانِ سَنَةً.

[14] **Qur'an references (L37831):** Qur'an 4:59 (An-Nisa).

[15] **Qur'an references (L37832):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

whips and banishment from homelands for a year are not part of what is proper or excellent.[16]

L37836 We observed that they also mention the statement of the Messenger of Allah (peace be upon him): “Your blood, wealth, honor, and skins are sacred upon you.”

L37837 Thus, it is established that the killer’s skin is inviolable due to the sanctity decreed by Allah the Exalted; therefore, it is not permissible to flog him or exile him, as neither the Quran, the Sunnah, consensus, nor any evidence from the proofs has mandated this in any way.

L37838–37840 They mentioned—as narrated to us by Abdullah ibn Yusuf from Ahmad ibn Fath from Abdul Wahhab ibn Isa from Ahmad ibn Muhammad from Ahmad ibn Ali from Muslim ibn Al-Hajjaj from Muhammad ibn Hatim from Sa’id ibn Sulayman from Hushaym from Ismail ibn Salim from Alqamah ibn Wa’il ibn Al-Awza’i from his father, who said: “A man who had killed another was brought to the Messenger of Allah—peace and blessings be upon him—and the slain’s next of kin exacted retribution from him. He was led away with a halter around his neck dragging it. When the man began to leave, the Messenger of Allah—peace and blessings be upon him—said, ’The killer and the slain are in Hellfire.’ A man then approached the killer and conveyed the Prophet’s—peace and blessings be upon him—statement, so the next of kin released him.” Ismail ibn Salim said: “I mentioned this to Habib ibn Abi Thabit, and he said: Ibn Ashwa’ narrated to me that the Prophet—peace and blessings be upon him—had asked him to forgive the killer, but he refused.” Narrated by Abdullah ibn Rabi’ from Muhammad ibn Mu’awiyah from Ahmad ibn Shu’ayb from Muhammad ibn Bashshar from Yahya ibn Sa’id Al-Qattan from Awf ibn Abi Jamilah and Jami’ ibn Matar Al-Habati. Awf said: “Hamzah Al-A’idhi Abu Umar narrated to me,” then their chains converged via Alqamah ibn Wa’il ibn Hujr from Wa’il, who said: “I witnessed the Prophet—peace and blessings be upon him—when the killer was brought forward, led by the slain’s next of kin with a halter around his neck. The Messenger of Allah—peace and blessings be upon him—asked the slain’s next

[16] **Qur’an references (L37833):** Qur’an 2:178 (Al-Baqarah).

وَوَجَدْنَاهُمْ أَيْضًا - يَذْكُرُونَ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ»

فَصَحَّ أَنَّ بَشَرَةَ الْقَاتِلِ مُحَرَّمَةٌ بِتَحْرِيمِ اللَّهِ تَعَالَى فَلَا يَحِلُّ جَلْدُهُ، وَلَا نَفْيُهُ؛ إذْ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، وَلَا دَلِيلٌ مِنْ الْأَدِلَّةِ أَصْلًا

وَذَكَرُوا - مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا مُحَمَّدُ بْنُ حَاتِمٍ نا سَعِيدُ بْنُ سُلَيْمَانَ نا هُشَيْمٌ نا إسْمَاعِيلُ بْنُ سَالِمٍ عَنْ عَلْقَمَةَ بْنِ وَائِلِ بْنِ الْأَوْزَاعِيِّ عَنْ أَبِيهِ قَالَ: «أُتِيَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِرَجُلٍ قَدْ قَتَلَ رَجُلًا فَأَقَادَ وَلِيَّ الْمَقْتُولِ مِنْهُ، فَانْطَلَقَ بِهِ وَفِي عُنُقِهِ نِسْعَةٌ يَجُرُّهَا، فَلَمَّا أَدْبَرَ الرَّجُلُ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْقَاتِلُ وَالْمَقْتُولُ فِي النَّارِ» فَأَتَى رَجُلٌ إلَى الرَّجُلِ فَقَالَ لَهُ مَقَالَةَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَخَلَّى عَنْهُ - قَالَ إسْمَاعِيلُ بْنُ سَالِمٍ: فَذَكَرْت ذَلِكَ لِحَبِيبِ بْنِ أَبِي ثَابِتٍ. فَقَالَ: حَدَّثَنِي ابْنُ أَشْوَعَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا سَأَلَهُ أَنْ يَعْفُوَ عَنْهُ فَأَبَى:» نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ عَوْفِ بْنِ أَبِي جَمِيلَةَ وَجَامِعِ بْنِ مَطَرٍ الْحَبَطِيِّ قَالَ عَوْفٌ: حَدَّثَنِي حَمْزَةُ الْعَائِذِيُّ أَبُو عُمَرَ، ثُمَّ اتَّفَقَ جَامِعٌ، وَحَمْزَةُ، كِلَاهُمَا عَنْ عَلْقَمَةَ بْنِ وَائِلِ بْنِ حُجْرٍ عَنْ وَائِلٍ قَالَ: «شَهِدْت النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَ جِيءَ بِالْقَاتِلِ يَقُودُهُ وَلِيُّ الْمَقْتُولِ فِي نِسْعَتِهِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِوَلِيِّ الْمَقْتُولِ أَتَعْفُو عَنْهُ؟

of kin, 'Will you forgive him?' He said, 'No.' He asked, 'Will you accept blood money?' He said, 'No.' He asked, 'Will you kill him?' He said, 'Yes.' He said, 'Take him away.' When he turned to leave, the Prophet called him back and asked, 'Will you forgive him?' He said, 'No.' He asked, 'Will you accept blood money?' He said, 'No.' He asked, 'Will you kill him?' He said…" Yes, he said: "Go." Then the Messenger of Allah (peace and blessings be upon him) said: "Verily, if you pardon him, he will bear his sin and the sin of your companion." So he pardoned him and left him. He said: "Then I saw him dragging its strap."[17]

قَالَ: لَا، قَالَ لَهُ: أَتَأْخُذُ الدِّيَةَ؟ قَالَ: لَا، قَالَ: فَتَقْتُلُهُ؟ قَالَ: نَعَمْ، قَالَ: اذْهَبْ بِهِ. فَلَمَّا تَوَلَّى مِنْ عِنْدِهِ دَعَاهُ قَالَ لَهُ: أَتَعْفُو عَنْهُ؟ قَالَ: لَا، قَالَ لَهُ: فَتَأْخُذُ الدِّيَةَ؟ قَالَ: لَا، قَالَ: فَتَقْتُلُهُ؟ قَالَ: نَعَمْ، قَالَ: اذْهَبْ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِنْدَ ذَلِكَ: أَمَا إِنَّكَ إِنْ عَفَوْتَ عَنْهُ يَبُوءُ بِإِثْمِهِ وَإِثْمِ صَاحِبِكَ، فَعَفَا عَنْهُ وَتَرَكَهُ، قَالَ: فَأَنَا رَأَيْتُهُ يَجُرُّ نِسْعَتَهُ»

L37841 Yahya ibn Sa'id al-Qattan, after mentioning these two hadiths, said about the comprehensive hadith: "It is better than Hamza's hadith," meaning it is superior to the hadith transmitted by Hamza.

قَالَ يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ وَقَدْ ذَكَرَ هَذَيْنِ الْحَدِيثَيْنِ فَقَالَ عَنْ حَدِيثٍ جَامِعٍ: هُوَ أَحْسَنُ مِنْهُ: يَعْنِي: أَنَّهُ أَحْسَنُ مِنْ حَدِيثِ حَمْزَةَ

L37842 Ali said: And it is as such, because Hamzah al-'A'idhī is an unknown narrator, unrecognized. Ibn Ma'īn said, "No one we know has authenticated him." As for Jāmi' ibn Maṭar, Ahmad ibn Hanbal said regarding him: "There is no issue with him, and we know of none who criticized him." Leading scholars have narrated from him: Yaḥyā, 'Abd al-Ṣamad ibn 'Abd al-Wārith, Ḥafṣ ibn 'Umar al-Hawḍī, and others.

قَالَ عَلِيٌّ: وَهُوَ كَذَلِكَ، لِأَنَّ حَمْزَةَ الْعَائِذِيَّ شَيْخٌ مَجْهُولٌ لَا يُعْرَفُ - قَالَ ابْنُ مَعِينٍ، وَلَمْ يُوَثِّقْهُ أَحَدٌ نَعْلَمُهُ، وَأَمَّا جَامِعُ بْنُ مَطَرٍ فَقَالَ فِيهِ أَحْمَدُ بْنُ حَنْبَلٍ: لَا بَأْسَ بِهِ وَمَا عَلِمْنَا أَحَدًا جَرَحَهُ وَقَدْ رَوَى عَنْهُ أَئِمَّةٌ: يَحْيَى، وَعَبْدُ الصَّمَدِ بْنُ عَبْدِ الْوَارِثِ، وَحَفْصُ بْنُ عُمَرَ الْحَوْضِيُّ، وَغَيْرُهُمْ.

L37843 Abdullah ibn Rabi' narrated from Muhammad ibn Mu'awiyah from Ahmad ibn Shu'ayb from Amr ibn Mansur from Hafs ibn Umar—he is Al-Hawdiyy—from Jaami' ibn Matar from Alqamah ibn Wa'il from his father, who said: "I was sitting with the Messenger of Allah—peace be upon him—when a man came with a palm-fiber rope around his neck and said, 'O Messenger of Allah, this man and my brother were digging a cistern. He raised the pickaxe and struck my brother's head with it, killing him.' The Messenger of Allah—peace be upon him—said, 'Pardon him,' but the man refused. He stood and said, 'O Prophet of Allah, this man and my brother were digging a well. He raised the pickaxe and struck my brother's head with it, killing him.' The Prophet said, 'Pardon him,' but he refused. The man repeated, 'O Messenger of Allah, this man and my brother were digging a cistern. He raised the

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا عَمْرُو بْنُ مَنْصُورٍ نا حَفْصُ بْنُ عُمَرَ - هُوَ الْحَوْضِيُّ - نا جَامِعُ بْنُ مَطَرٍ عَنْ عَلْقَمَةَ بْنِ وَائِلٍ عَنْ أَبِيهِ قَالَ: «كُنْتُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَاعِدًا عِنْدَهُ إِذْ جَاءَهُ رَجُلٌ فِي عُنُقِهِ نِسْعَةٌ فَقَالَ يَا رَسُولَ اللَّهِ إِنَّ هَذَا وَأَخِي كَانَا فِي جُبٍّ يَحْفِرَانِهَا، فَرَفَعَ الْمِنْقَارَ فَضَرَبَ بِهِ رَأْسَ صَاحِبِهِ فَقَتَلَهُ؟ فَقَالَ، رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اُعْفُ عَنْهُ، فَأَبَى وَقَامَ فَقَالَ: يَا نَبِيَّ اللَّهِ إِنَّ هَذَا وَأَخِي كَانَا فِي بِئْرٍ يَحْفِرَانِهَا فَرَفَعَ الْمِنْقَارَ فَضَرَبَ بِهَا رَأْسَ صَاحِبِهِ فَقَتَلَهُ؟ قَالَ: اُعْفُ عَنْهُ فَأَبَى، ثُمَّ قَالَ فَقَالَ: يَا رَسُولَ اللَّهِ هَذَا وَأَخِي

[17] **Hadith references (L37838):** Sahih Muslim 1680b.

كَانَا فِي جُبٍّ يَحْفِرَانِهَا فَرَفَعَ الْمِنْقَارَ - أُرَاهُ قَالَ: فَضَرَبَ بِهِ رَأْسَ صَاحِبِهِ فَقَتَلَهُ، قَالَ: أُعْفُ عَنْهُ فَأَبَى، قَالَ: اذْهَبْ إِنْ قَتَلْتَهُ كُنْتَ مِثْلَهُ، فَخَرَجَ بِهِ حَتَّى جَاوَزَ، فَنَادَيْنَاهُ: أَمَا تَسْمَعُ مَا يَقُولُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَجَعَ فَقَالَ: إِنْ قَتَلْتُهُ كُنْتُ مِثْلَهُ؟ قَالَ: نَعَمْ، أُعْفُ عَنْهُ، فَخَرَجَ يَجُرُّ نِسْعَتَهُ حَتَّى خَفِيَ عَلَيْنَا»

"pickaxe—I believe he added—and struck my brother's head with it, killing him.' The Prophet said, 'Pardon him,' but he refused. The Prophet then said, 'Go. If you kill him, you will be like him.' The man left with him, dragging him by the rope until they passed by. We called out, 'Do you not hear what the Messenger of Allah—peace be upon him—is saying?' He returned and asked, 'If I kill him, I will be like him?' The Prophet said, 'Yes. Pardon him.' The man left, dragging him by the palm-fiber rope until they vanished from our sight."

L37844 حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا عِيسَى بْنُ يُونُسَ الْفَاخُورِيُّ نا ضَمْرَةُ عَنْ عَبْدِ اللَّهِ بْنِ شَوْذَبَ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسٍ «أَنَّ رَجُلًا أَتَى بِقَاتِلِ وَلِيِّهِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ النَّبِيُّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: أُعْفُ عَنْهُ فَأَبَى، فَقَالَ: خُذْ الدِّيَةَ فَأَبَى، قَالَ: اذْهَبْ فَاقْتُلْهُ فَإِنَّكَ مِثْلُهُ، فَخَلَّى سَبِيلَهُ، فَمَرَّ الرَّجُلُ وَهُوَ يَجُرُّ نِسْعَتَهُ»

L37844 Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Isa ibn Yunus al-Fakhoori narrated to us: Damrah narrated from Abdullah ibn Shawdhab from Thabit al-Bunani from Anas that a man came to the Messenger of Allah (peace and blessings be upon him) with the killer of his legal guardian. The Prophet (peace and blessings be upon him) said to him, "Pardon him," but he refused. He said, "Take the blood money," but he refused. He said, "Go and kill him, for you would be like him." So the legal guardian released him, and the killer departed dragging his sandal strap.

قَالَ أَبُو مُحَمَّد: أَمَّا حَدِيثُ إِسْمَاعِيلَ بْنِ سَالِمٍ، وَجَامِعِ بْنِ مَطَرٍ، كِلَاهُمَا عَنْ عَلْقَمَةَ، فَجَيِّدَانِ تَقُومُ الْحُجَّةُ بِهِمَا - وَفِي كِلَيْهِمَا إِطْلَاقُ الْقَاتِلِ الْمَعْفُوِّ عَنْهُ، وَمَسِيرُهُ حَتَّى غَابَ عَنْهُمْ، وَخَفِيَ عَنْهُمْ، لَا ضَرْبَ وَلَا نَفْيَ.

L37845–37847 Abu Muhammad said: As for the narration of Ismāʿīl ibn Sālim and Jāmiʿ ibn Maṭar, both of them transmit from... From Alqamah: two authentic narrations that establish the jurisprudential evidence—in both of them is the release of the pardoned killer, his departure until he vanished from their sight and was entirely concealed from them, with neither beating nor exile.

فَصَحَّ قَوْلُ مَنْ رَأَى أَنْ لَا جَلْدَ عَلَى الْقَاتِلِ وَلَا نَفْيَ إِذَا عُفِيَ عَنْهُ.

L37848 The correct position is that of those who maintain that no flogging is imposed upon the killer nor exile if he is pardoned.

وَهُوَ قَوْلُ ابْنِ عَبَّاسٍ، وَلَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافٌ لَهُ أَصْلًا - وَهَذَا مِمَّا يَسْتَشْنِعُهُ الْمَالِكِيُّونَ إِذَا وَافَقَ تَقْلِيدَهُمْ، وَإِذَا خَالَفَهُ لَمْ يُبَالُوا بِهِ.

L37849 This is the view of Ibn Abbas, and no authentic disagreement from any of the Companions—may Allah be pleased with them—is reported against it whatsoever. The Malikis consider this objectionable when it aligns with their school of thought, but when it contradicts their school, they pay no heed to it.

وَأَمَّا قَوْلُ مَالِكٍ بِذَلِكَ فِي الْقَسَامَةِ فَمَا عُرِفَ قَطُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37850 As for Mālik's position on this matter within qasāmah (oath-based liability in homicide cases), it has never at all been attributed to any of the Compan-

ions, may Allah be pleased with them. Success comes solely from Allah, the Exalted.

The meaning of the Prophet's saying: "The killer and the killed are in the Fire."

Issue 2077: Regarding the meaning of the Prophet's statement - peace be upon him - in these reports: "The killer and the killed one are in the Fire, and if you kill the killed one, you would be like him."

Ali said: We have become certain—and all praise is due to Allah—that the Messenger of Allah—peace and blessings of Allah be upon him—only speaks the certain truth, and we are certain that he—peace and blessings of Allah be upon him—does not judge by falsehood while knowing it to be false. Since there is no doubt regarding these two aspects, it is obligatory upon us to seek the basis of his ruling—peace and blessings of Allah be upon him—concerning qisas in these reports and his unrestricted application of it to killing in that context, despite his truthful statement: "If he kills him, he becomes his equal, and the killer and the slain are both in the Fire." The questioner may then say: How could the Messenger of Allah—peace and blessings of Allah be upon him—rule for him qisas that is not permissible for him while knowing it is not permissible for him? Allah is far above such a thing. Since this is not permissible, how can the one who demands qisas as the Messenger of Allah—peace and blessings of Allah be upon him—commanded him—and the one who seeks retribution by right—be in the Fire and equivalent to the killer?

Abu Muhammad said: As for the interpretation of Ibn Ashwa', which we previously mentioned through Muslim's narration from him—that this occurred because the Messenger of Allah—peace and blessings of Allah be upon him—asked him to pardon but he refused—this is an invalid interpretation that is entirely impermissible. This is because the Prophet—peace and blessings of Allah be upon him—in that situation must fall into one of two scenarios with no third: either he was interceding for pardon or he was commanding pardon. If he was interceding, then the one who declines to respond to his intercession—peace and blessings of Allah be upon him—is not disobey-

[مَعْنَى قَوْلِ النَّبِيِّ الْقَاتِلُ وَالْمَقْتُولُ فِي النَّارِ]

٢٠٧٧ - مَسْأَلَةٌ: فِي مَعْنَى قَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي هَذِهِ الْأَخْبَارِ «الْقَاتِلُ وَالْمَقْتُولُ فِي النَّارِ وَإِنْ قَتَلْتَهُ كُنْتَ مِثْلَهُ»

قَالَ عَلِيٌّ: قَدْ أَيْقَنَّا - وَلِلَّهِ الْحَمْدُ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَقُولُ إلَّا الْحَقَّ الْمُتَيَقَّنَ، وَأَيْقَنَّا أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَقْضِي بِبَاطِلٍ - وَهُوَ يَدْرِي أَنَّهُ بَاطِلٌ - فَإِذْ لَا شَكَّ فِي هَذَيْنِ الْوَجْهَيْنِ، فَالْوَاجِبُ عَلَيْنَا طَلَبُ وَجْهِ حُكْمِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالْقَوَدِ فِي هَذِهِ الْأَخْبَارِ، وَإِطْلَاقِهِ عَلَى الْقَتْلِ فِي ذَلِكَ، مَعَ قَوْلِهِ الصَّادِقِ «وَإِنْ قَتَلَهُ كَانَ مِثْلَهُ، وَالْقَاتِلُ وَالْمَقْتُولُ فِي النَّارِ» فَإِنَّ لِلسَّائِلِ أَنْ يَقُولَ: كَيْفَ يَقْضِي لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَوَدٍ لَا يَحِلُّ لَهُ - وَهُوَ يَدْرِي أَنَّهُ لَا يَحِلُّ لَهُ - حَاشَ لِلَّهِ مِنْ هَذَا. وَإِذْ لَا يَجُوزُ هَذَا فَكَيْفَ يَكُونُ فِي النَّارِ، وَمِثْلًا لِلْقَاتِلِ، مَنْ اسْتَقَادَ كَمَا أَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَنْ اقْتَصَّ بِالْحَقِّ قَالَ أَبُو مُحَمَّدٍ: أَمَّا تَفْسِيرُ ابْنِ أَشْوَعَ الَّذِي ذَكَرْنَاهُ آنِفًا مِنْ طَرِيقِ مُسْلِمٍ عَنْهُ أَنَّ ذَلِكَ كَانَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَأَلَهُ الْعَفْوَ عَنْهُ فَأَبَى، فَإِنَّهُ تَفْسِيرٌ فَاسِدٌ لَا يَجُوزُ أَلْبَتَّةَ؛ لِأَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَخْلُو فِي ذَلِكَ مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا أَنْ يَكُونَ شَافِعًا فِي الْعَفْوِ، وَإِمَّا أَنْ يَكُونَ آمِرًا بِالْعَفْوِ، فَإِنْ كَانَ شَافِعًا فَلَيْسَ الْمُمْتَنِعُ مِنْ إسْعَافِ شَفَاعَتِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَاصِيًا لِلَّهِ تَعَالَى كَمَا فَعَلَتْ بَرِيرَةُ إذْ قَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ خَيَّرَهَا فِي الْبَقَاءِ مَعَ زَوْجِهَا أَوْ فِرَاقِهِ فَاخْتَارَتْ

فِرَاقَهُ «لَوْ رَاجَعْتِيهِ فَإِنَّهُ أَبُو وَلَدِكِ. فَقَالَتْ: أَتَأْمُرُنِي يَا رَسُولَ اللَّهِ؟ قَالَ: لَا، إِنَّمَا أَنَا شَافِعٌ. فَقَالَتْ: لَا أَرْجِعُ إِلَيْهِ أَبَدًا» فَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ أَنَّ بَرِيرَةَ - رَضِيَ اللَّهُ عَنْهَا - لَمْ تَكُنْ عَاصِيَةً بِذَلِكَ.

ing Allah the Exalted, as was the case with Barirah when the Messenger of Allah—peace and blessings of Allah be upon him—said to her after giving her the choice to remain with her husband or divorce him, and she chose divorce: "What if you were to return to him, for he is the father of your child?" She said: "Are you commanding me, O Messenger of Allah?" He said: "No, I am merely interceding." She said: "I will never return to him." There is no disagreement among anyone in the Ummah that Barirah—may Allah be pleased with her—was not disobedient in that.

فَإِنْ كَانَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - شَافِعًا فِي هَذَا الْقَاتِلِ، فَلَيْسَ الْمُمْتَنِعُ عَاصِيًا فَإِذْ لَيْسَ عَاصِيًا فَلَيْسَ فِي النَّارِ، وَلَا هُوَ مِثْلُ الْقَاتِلِ الظَّالِمِ، وَإِنْ كَانَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - آمِرًا فَهُوَ بِيَقِينٍ لَا يَأْمُرُ إلَّا بِوَاجِبٍ فَرْضٍ.

L37854–37856 If he—peace and blessings be upon him—was interceding for this killer, then the refuser is not sinful; when... He who is not a sinner is not in the Fire, nor is he like the oppressive killer. And if he—may Allah bless him and grant him peace—commands, he commands with certainty nothing but an obligatory duty that is compulsory.

وَمِنْ الْبَاطِلِ أَنْ يَأْمُرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِشَيْءٍ وَيُطْلِقُ عَلَى خِلَافِهِ، وَلَا يَمْنَعُ مِنْ الْحَرَامِ الَّذِي هُوَ خِلَافُ أَمْرٍ - وَهَذَا هُوَ الْقَضَاءُ بِالْبَاطِلِ، وَقَدْ أَبْعَدَهُ اللَّهُ تَعَالَى عَنْ هَذَا.

L37857 And from falsehood is that he—peace and blessings be upon him—would command something then act contrary to it, and not forbid the forbidden that is contrary to a command. This is judging by falsehood, and Allah the Exalted has distanced him from this.

فَإِنْ قَالُوا: هُوَ أَمْرٌ عَلَى النَّدْبِ. قُلْنَا: لَا رَاحَةَ لَكُمْ فِي هَذَا، لِأَنَّ مَنْ تَرَكَ قَبُولَ الْأَمْرِ بِالنَّدْبِ الَّذِي لَيْسَ فَرْضًا فَلَيْسَ فِي النَّارِ، وَلَا هُوَ مِثْلُ الْقَاتِلِ الظَّالِمِ - فَبَطَلَ تَفْسِيرُ ابْنِ أَشْوَعَ.

L37858 If they say, "It is a command indicating recommendation," we reply: "This offers you no excuse, for one who neglects a recommended command—which is not obligatory—is neither in Hell nor comparable to the unjust killer." Thus, the interpretation of Ibn Ashwaʿ is rendered void.

وَهَكَذَا الْقَوْلُ فِيمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ أَنَا عَلِيُّ بْنُ الْحَكَمِ الْبُنَانِيُّ عَنْ مُحَمَّدِ بْنِ زَيْدٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ «إنَّ الرَّجُلَ قَالَ: يَا رَسُولَ اللَّهِ قَتَلَ أَخِي فَدَخَلَ النَّارَ، وَإِنْ قَتَلْتُهُ دَخَلْتُ النَّارَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّهُ قَتَلَ أَخَاكَ فَدَخَلَ النَّارَ بِقَتْلِهِ إيَّاهُ، وَإِنِّي نَهَيْتُك عَنْ قَتْلِهِ، فَإِنْ قَتَلْتَهُ دَخَلْتَ النَّارَ

L37859 The same applies to the narration conveyed to us by ʿAbdullāh ibn Rabīʿ, who narrated from ʿAbdullāh ibn Muḥammad ibn ʿUthmān, who narrated from Aḥmad ibn Khālid, who narrated from ʿAlī ibn ʿAbd al-ʿAzīz, who narrated from al-Ḥajjāj ibn al-Minhāl, who narrated from Ḥammād ibn Salamah, who narrated from ʿAlī ibn al-Ḥakam al-Bunānī, from Muḥammad ibn Zayd, from Saʿīd ibn Jubayr, who said: A man said, "O Messenger of God, he killed my brother and entered the Fire. If I kill him, will I enter the Fire?" The Messenger of God—peace and blessings be upon him—said, "He killed your brother and entered the Fire because he killed him. I forbade you from killing

him. If you kill him, you will enter the Fire due to your disobedience to me." Abū Muḥammad said: This is a disconnected narration, and a disconnected narration does not constitute proof. The ruling invalidating it is the same as that applied to the ḥadīth of Ibn Ashwaʿ, with no distinction.

L37860 And through him—to Hammad from Humayd from al-Hasan—that he meant by this report, "If you kill him, you are like him," he viewed this ruling as universally applicable. Similarly, what was narrated to us by Abdullah ibn Rabiʿ: narrated to us Ibn al-Salim, narrated to us Ibn al-Aʿrabi, narrated to us Abu Dawud, narrated to us Musa ibn Ismaʿil, narrated to us Abdullah ibn Bakr ibn Abdullah al-Muzani, narrated to us ʿAta ibn Abi Maymunah, from Anas ibn Malik, who said: "I never witnessed the Messenger of Allah (peace and blessings be upon him) having a case requiring legal retaliation presented to him without him enjoining forgiveness in it." He said: Were this an obligation and mandate, retaliation would be wholly prohibited—this being a matter of certainty that no Muslim would assert. If it is a recommended practice, then one who forsakes it without aversion does not enter the Fire nor become unjust. But if he abandons it out of aversion, he is a transgressor and may even fall into disbelief.

L37861–37863 Ali said: The ruling on this matter, according to our school, is what we found in another report—the one that was narrated to us. Abdullah ibn Rabi' narrated to us from Muhammad ibn Mu'awiyah, who narrated to us from Ahmad ibn Shu'ayb, who narrated to us from Abu Kurayb Muhammad ibn al-'Ala' al-Hamdani al-Kufi and Ahmad ibn Harb—and the wording is Ahmad ibn Harb's—they said: Abu Mu'awiyah narrated to us from al-A'mash from Abu Salih from Abu Hurayrah, who said: "A man was killed during the time of the Messenger of Allah—may Allah bless him and grant him peace—and the killer was brought to the Prophet—may Allah bless him and grant him peace. He handed him over to the slain man's legal guardian. The killer said, 'O Messenger of Allah, no, by Allah, I did not intend to kill him.' The Messenger of Allah—may Allah bless him and grant him peace—said to the legal guardian, 'If he is truthful **and you kill him**, you will enter the Fire.' So he released him—and he had been bound—and he went out dragging his

بِمَعْصِيَتِكَ إِيَّايَ.» قَالَ أَبُو مُحَمَّد: وَهَذَا مُرْسَلٌ، وَالْمُرْسَلُ لَا تَقُومُ بِهِ حُجَّةٌ، وَالْقَوْلُ فِي إِبْطَالِهِ كَالْقَوْلِ فِي حَدِيثِ ابْنِ أَشْوَعَ وَلَا فَرْقَ

وَبِهِ - إِلَى حَمَّادٍ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ أَنَّهُ كَانَ يَعْنِي بِهَذَا الْخَبَرِ «إِنْ قَتَلْتَهُ فَأَنْتَ مِثْلُهُ» " كَانَ يَرَى ذَلِكَ عَامًّا - وَكَذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ السَّلِيمِ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا مُوسَى بْنُ إِسْمَاعِيلَ نا عَبْدُ اللَّهِ بْنُ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيِّ عَنْ عَطَاءِ بْنِ أَبِي مَيْمُونَةَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «مَا رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رُفِعَ إِلَيْهِ شَيْءٌ فِيهِ قِصَاصٌ إِلَّا أَمَرَ فِيهِ بِالْعَفْوِ» . قَالَ: فَلَوْ كَانَ هَذَا أَمْرَ فَرْضٍ وَإِيجَابٍ لَحَرُمَ الْقِصَاصُ جُمْلَةً - وَهَذَا أَمْرٌ مُتَيَقَّنٌ أَنَّهُ لَا يَقُولُهُ أَحَدٌ مِنْ أَهْلِ الْإِسْلَامِ، فَإِنْ كَانَ أَمْرَ نَدْبٍ فَلَا يَدْخُلُ النَّارَ، وَلَا يَكُونُ ظَالِمًا مَنْ تَرَكَ النَّدْبَ غَيْرَ رَاغِبٍ عَنْهُ، فَإِنْ تَرَكَهُ رَاغِبًا عَنْهُ فَهُوَ فَاسِقٌ وَرُبَّمَا كَفَرَ.

قَالَ عَلِيٌّ: وَالْقَوْلُ فِي هَذَا عِنْدَنَا هُوَ مَا وَجَدْنَاهُ فِي خَبَرٍ آخَرَ - وَهُوَ الَّذِي حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ الْهَمْدَانِيُّ الْكُوفِيُّ، وَأَحْمَدُ بْنُ حَرْبٍ - وَاللَّفْظُ لَهُ - قَالَا: نا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: «قُتِلَ رَجُلٌ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرُفِعَ الْقَاتِلُ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَدَفَعَهُ إِلَى وَلِيِّ الْمَقْتُولِ فَقَالَ الْقَاتِلُ: يَا رَسُولَ اللَّهِ لَا، وَاَللَّهِ مَا أَرَدْتُ قَتْلَهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِوَلِيِّ الْمَقْتُولِ: أَمَا إِنَّهُ إِنْ كَانَ صَادِقًا ثُمَّ قَتَلْتَهُ دَخَلْتَ النَّارَ، فَخَلَّى سَبِيلَهُ - وَكَانَ مَكْتُوفًا - فَخَرَجَ يَجُرُّ نِسْعَتَهُ، فَسُمِّيَ: ذَا النِّسْعَةِ» .

hobble rope. Thus, he was called Dhū al-Nisʿah (the Possessor of the Hobble Rope)."

L37864 Abu Muhammad said: This is the clarification of the reports concerning this ruling. Nothing else is permissible whatsoever: he (peace and blessings be upon him) ruled for qisas—retaliation in kind—through killing as retribution, based on clear evidence or an unequivocal confession.

قَالَ أَبُو مُحَمَّد: فَهَذَا بَيَانُ الْأَخْبَارِ الْوَارِدَةِ فِي هَذَا الْحُكْمِ، لَا يَجُوزُ غَيْرُ ذَلِكَ أَلْبَتَّةَ، وَهُوَ أَنَّهُ حَكَمَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالْقَوَدِ وَالْقَتْلِ قِصَاصًا بِظَاهِرِ الْبَيِّنَةِ، أَوْ الْإِقْرَارِ التَّامِّ.

L37865 This is the certain truth incumbent upon the rulers—which Allah the Exalted has commanded them—without burdening them with knowledge of the unseen. The Prophet, peace and blessings be upon him, judged with truth in that matter. When he said, "I did not intend to kill him"—and that was possible—the Prophet, peace and blessings be upon him, informed him that if it were so, then his killer is in the Fire and he is like him, because it is not permissible for him to kill him at that point. Thus, his ruling, peace and blessings be upon him, was truth, and his word was truth.

وَهَذَا هُوَ الْحَقُّ الْمُفْتَرَضُ عَلَى الْحُكَّامِ الْمُتَيَقَّنُ أَنَّ اللَّهَ تَعَالَى أَمَرَهُمْ بِهِ، وَلَمْ يُكَلِّفْهُمْ عِلْمَ الْغَيْبِ، فَحَكَمَ النَّبِيُّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالْحَقِّ فِي ذَلِكَ، فَلَمَّا قَالَ: إنِّي لَمْ أُرِدْ قَتْلَهُ - وَكَانَ ذَلِكَ مُمْكِنًا - أَخْبَرَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنَّهُ إنْ كَانَ كَذَلِكَ فَقَاتِلُهُ فِي النَّارِ وَهُوَ مِثْلُهُ، لِأَنَّهُ لَا يَحِلُّ لَهُ قَتْلُهُ حِينَئِذٍ، فَصَارَ حُكْمُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - حَقًّا، وَقَوْلُهُ حَقًّا.

L37866 As he also said—peace and blessings be upon him—"Whoever I decreed to receive something from his brother's rightful share, let him not take it, for verily I am cutting off for him a piece of the Hellfire."

كَمَا قَالَ أَيْضًا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «فَمَنْ قَضَيْتُ لَهُ بِشَيْءٍ مِنْ حَقِّ أَخِيهِ فَلَا يَأْخُذْهُ، فَإِنَّمَا أَقْطَعُ لَهُ قِطْعَةً مِنْ النَّارِ» .

L37867 And he—peace and blessings be upon him—in the outward aspect of ruling through evidence, confession, or oath, judges by the certainly known truth rather than conjecture, but rather by that which Allah the Exalted has commanded him to judge by necessity, even if the hidden reality contradicts it—from that which, if he had known it (peace and blessings be upon him), he would neither have enforced it nor allowed it to take effect in the first place. And success is from Allah the Exalted.

وَهُوَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي ظَاهِرِ الْحُكْمِ بِالْبَيِّنَةِ، أَوْ الْإِقْرَارِ، أَوْ الْيَمِينِ حَاكِمٌ بِالْحَقِّ الْمُتَيَقَّنِ لَا بِالظَّنِّ، لَكِنْ بِمَا أَمَرَهُ اللَّهُ تَعَالَى أَنْ يَحْكُمَ بِهِ وَلَا بُدَّ، وَإِنْ كَانَ الْبَاطِنُ بِخِلَافِ ذَلِكَ مِمَّا لَوْ عَلِمَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يُنَفِّذْهُ، وَلَا تَرَكَهُ يَمْضِي أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37868–37870 If it is asked: This is the method of reconciling the ruling of the Prophet (peace and blessings be upon him) with his statement on the matter - then what explains his judgment (peace and blessings be upon him) that both the killer and the slain are in the Fire, and that he is like him? How could one who kills without intending murder be in the Fire? We respond - and success comes only from Allah, the Exalted -: This is a report from the Prophet

فَإِنْ قِيلَ: هَذَا وَجْهُ الْجَمْعِ بَيْنَ حُكْمِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَقَوْلِهِ فِي ذَلِكَ فَمَا وَجْهُ حُكْمِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنَّ الْقَاتِلَ وَالْمَقْتُولَ فِي النَّارِ، وَأَنَّهُ مِثْلُهُ؟ وَكَيْفَ يَكُونُ مَنْ قَتَلَ غَيْرَ مُرِيدٍ لِلْقَتْلِ فِي النَّارِ؟ قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: هَذَا إخْبَارٌ مِنْ

(peace and blessings be upon him) concerning unseen matters which Allah, the Exalted, informed him of. Him alone [the Prophet], for he (peace be upon him) never speaks except the truth, nor does he speak based on conjecture while intending it. Whoever makes this claim against him or attributes it to him is an unbeliever. We therefore say: Indeed, that killer who did not intentionally commit murder was a wicked transgressor among the denizens of the Fire due to deeds other than this killing. Allah the Exalted informed His Prophet (peace be upon him) of his ultimate fate in this matter, and his blood was not lawful for the one seeking retaliation, because he did not intentionally kill his brother. Had he killed him under these circumstances, he would have become a killer without right, deserved the Fire, and been an oppressor like the slain - for not every oppressor deserves to be killed. Success comes solely from Allah the Exalted.

L37871 **A legal question: If someone is killed in a crowd, or it is not known who killed him.**

L37872 2078 - Issue: Whoever was killed in a crowd, or the killer remains unidentified, or the person was struck by an arrow or stone where it is not known who shot or threw it, or the killer fled:

L37873 Ali said: Hammam narrated to us via Abdullah ibn Muhammad ibn Ali al-Bājī, via Abdullah ibn Yunus, via Baqi ibn Makhled, via Abu Bakr ibn Abi Shaybah, via Waki', via Shu'bah from al-Hakam ibn Utaybah from Ibrahim al-Nakha'i: A man was killed during *ṭawāf*, so Umar consulted the people. Ali said, "His *diyah* is either upon the Muslims or in the public treasury."

L37874 And by his chain: via Wakīʿ, Wahb ibn ʿUqbah and Muslim ibn Yazīd ibn Madhkūr narrated from Yazīd ibn Madhkūr, who said: "People crowded intensely in the Grand Mosque of Kufa on Friday, then they parted to reveal a slain man. ʿAlī ibn Abī Ṭālib then paid his blood-money from the public treasury."

L37875 From Ḥumām, from Ibn Mufarrij, from Ibn al-Aʿrabī, from al-Dabarī, from

النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِغَيْبٍ أَعْلَمَهُ اللَّهُ تَعَالَى إيَّاهُ، لِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَا يَقُولُ أَلْبَتَّةَ إلَّا الْحَقَّ، وَلَا يَقُولُ بِالظَّنِّ قَاصِدًا إلَى ذَلِكَ - وَمَنْ قَالَ هَذَا عَلَيْهِ وَنَسَبَهُ إلَيْهِ: فَهُوَ كَافِرٌ، فَنَقُولُ: إنَّ ذَلِكَ الْقَاتِلَ الَّذِي لَمْ يَعْمِدْ الْقَتْلَ كَانَ فَاسِقًا مِنْ أَهْلِ النَّارِ بِعَمَلٍ لَهُ غَيْرَ هَذَا الْقَتْلِ، أَطْلَعَ اللَّهُ تَعَالَى نَبِيَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى عَاقِبَتِهِ فِيهِ، وَلَمْ يَكُنْ دَمُهُ يَحِلُّ لِهَذَا الْمُسْتَقِيدِ، لِأَنَّهُ لَمْ يَعْمِدْ قَتْلَ أَخِيهِ، فَلَوْ قَتَلَهُ عَلَى هَذَا الْوَجْهِ لَكَانَ قَاتِلًا بِغَيْرِ الْحَقِّ، وَلَاسْتَحَقَّ النَّارَ، وَلَكَانَ ظَالِمًا كَالْمَقْتُولِ، إذْ لَيْسَ كُلُّ ظَالِمٍ يَسْتَحِقُّ الْقَتْلَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قُتِلَ فِي الزِّحَامِ أَوْ لَمْ يُعْرَفْ مَنْ قَتَلَهُ]

٢٠٧٨ - مَسْأَلَةٌ: مَنْ قُتِلَ فِي الزِّحَامِ، أَوْ لَمْ يُعْرَفْ مَنْ قَتَلَهُ، أَوْ أَصَابَهُ سَهْمٌ، أَوْ حَجَرٌ، لَا يُدْرَى مَنْ رَمَاهُ، أَوْ هَرَبَ قَاتِلُهُ:

قَالَ عَلِيٌّ: نا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا وَكِيعٌ نا شُعْبَةُ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّ رَجُلًا قُتِلَ فِي الطَّوَافِ، فَاسْتَشَارَ عُمَرُ النَّاسَ. فَقَالَ عَلِيٌّ: دِيَتُهُ عَلَى الْمُسْلِمِينَ، أَوْ فِي بَيْتِ الْمَالِ.

وَبِهِ: إلَى وَكِيعٍ نا وَهْبُ بْنُ عُقْبَةَ، وَمُسْلِمُ بْنُ يَزِيدَ بْنِ مَذْكُورٍ - سَمِعَاهُ مِنْ يَزِيدَ بْنِ مَذْكُورٍ قَالَ: إنَّ النَّاسَ ازْدَحَمُوا فِي الْمَسْجِدِ الْجَامِعِ بِالْكُوفَةِ يَوْمَ الْجُمُعَةِ، فَأَفْرَجُوا عَنْ قَتِيلٍ، فَوَدَاهُ عَلِيُّ بْنُ أَبِي طَالِبٍ مِنْ بَيْتِ الْمَالِ.

ʿAbd al-Razzāq, from Sufyān al-Thawrī, from al-Ḥakam ibn ʿUtaybah, from Ibrāhīm al-Nakhaʿī, from al-Aswad: If a man was killed in the Kaaba, ʿUmar consulted ʿAlī, who said: “From the *Bayt al-Māl* (the treasury)”—referring to his *diyah* (blood money).

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ الْأَسْوَدِ إنْ رَجُلٌ قُتِلَ فِي الْكَعْبَةِ فَسَأَلَ عُمَرُ عَلِيًّا، فَقَالَ: مِنْ بَيْتِ الْمَالِ - يَعْنِي دِيَتَهُ.

L37876 Narrated via the chain of Ibn Wahb: Saʿīd ibn ʿAbdillāh al-Thaqafī reported to me from his father from ʿUmar ibn ʿAbd al-ʿAzīz that he ruled regarding two men who died in a stampede: that blood money for both should be paid from the treasury, for they were killed by a hand or foot (of an unidentified person).

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ حَدَّثَنِي سَعِيدُ بْنُ عَبْدِ اللَّهِ الثَّقَفِيُّ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ كَتَبَ فِي رَجُلَيْنِ مَاتَا فِي الزِّحَامِ: أَنْ يُودَيَا مِنْ بَيْتِ الْمَالِ، فَإِنَّمَا قَتَلَهُ يَدٌ، أَوْ رِجْلٌ.

L37877 This has also been narrated from Saʿīd ibn al-Musayyib as well, and ʿUrwah ibn al-Zubayr.

وَقَدْ رُوِيَ هَذَا أَيْضًا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَيْضًا، وَعُرْوَةَ بْنِ الزُّبَيْرِ.

L37878 “Other narrations have been reported besides this. As it was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī, who said: ’Whoever is killed in a crowd, their diya (blood money) is incumbent upon the people—specifically those present at the time, whether during Friday or otherwise.”’

وَقَدْ رُوِيَ غَيْرُ هَذَا: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: مَنْ قُتِلَ فِي زِحَامٍ فَإِنَّ دِيَتَهُ عَلَى النَّاسِ - مَنْ حَضَرَ ذَلِكَ فِي جُمُعَةٍ، أَوْ غَيْرِهَا

L37879–37881 Ali said: When they differed as we mentioned, it became obligatory to examine the evidence each faction cites as proof. We found the proponents of the first opinion citing as evidence the narration conveyed to us by Humam, who narrated from Ibn Mufarrij, who narrated from Ibn al-A’rabi, who narrated from ad-Dabbari, who narrated from Abd ar-Razzaq, from Ibn Jurayj, from Abd al-Aziz ibn Umar ibn Abd al-Aziz, from a book of Umar ibn al-Aziz, who said: “It has reached us that the Messenger of Allah (peace and blessings be upon him) ruled regarding one slain on Eid al-Adha or Eid al-Fitr - his blood money is incumbent upon the people collectively.”

قَالَ عَلِيٌّ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِيمَا تَحْتَجُّ بِهِ كُلُّ طَائِفَةٍ فَوَجَدْنَا أَهْلَ الْقَوْلِ الْأَوَّلِ يَحْتَجُّونَ بِمَا حَدَّثَنَاهُ حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ كِتَابٍ لِعُمَرَ بْنِ الْعَزِيزِ قَالَ: بَلَغَنَا «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِيمَنْ قُتِلَ يَوْمَ أَضْحَى، أَوْ يَوْمَ فِطْرٍ، فَإِنَّ دِيَتَهُ عَلَى النَّاسِ جَمَاعَةً» .

L37882 Because it is not known who killed him; this is a *mursal* report, and no conclusive proof exists in a *mursal* report.

لِأَنَّهُ لَا يُدْرَى مَنْ قَتَلَهُ - وَهَذَا خَبَرٌ مُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ.

L37883 The ruling we uphold is that if someone is crushed in a crowd until they die from that pressure, we affirm that the entire group involved in that specific incident collectively caused their death, as all pressed together until

وَالَّذِي نَقُولُ بِهِ: إنَّ مَنْ ضُغِطَ فِي زِحَامٍ حَتَّى مَاتَ مِنْ ذَلِكَ الضَّغْطِ فَقَدْ عَرَفْنَا أَنَّ الْجَمَاعَةَ تِلْكَ بِعَيْنِهَا كُلَّهُمْ قَتَلَهُ، إذْ كُلُّهُمْ تَضَاغَطُوا حَتَّى مَاتَ مِنْ ضَغْطِهِمْ، فَإِذْ قَدْ

عُرِفَ قَاتِلُوهُ فَالدِّيَةُ وَاجِبَةٌ عَلَى عَوَاقِلِهِمْ بِلَا شَكٍّ، فَإِنْ قَدَرَ عَلَى ذَلِكَ فَهُوَ عَلَيْهِمْ، وَإِنْ جَهِلُوهُ فَهُمْ غَارِمُونَ حَيْثُ كَانُوا، وَحَقُّ الْغَارِمِينَ وَاجِبٌ فِي صَدَقَاتِ الْمُسْلِمِينَ، وَفِي سَائِرِ الْأَمْوَالِ الْمَوْقُوفَةِ لِجَمِيعِ مَصَالِحِ الْمُسْلِمِينَ.

the person died from their collective pressure. Since those responsible for the killing have been identified, the blood money is undoubtedly obligatory upon their male relatives responsible for blood money. If the responsible kin are capable of paying it, it is their responsibility. If they are unaware of it, they become debtors wherever they may be, and the right of these debtors is obligatory to fulfill from the alms of Muslims and from all waqf properties designated for all the interests of Muslims.

لِقَوْلِ اللَّهِ تَعَالَى {إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ} [التوبة: ٦٠] الْآيَةَ.

L37884 Based on the words of Allah, the Exalted: "Indeed, *Zakat* is only for the poor, the needy, those employed to collect it, and those whose hearts are to be reconciled..." [At-Tawbah 9:60] the verse.[18]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ تَرَكَ دَيْنًا أَوْ ضَيَاعًا فَإِلَيَّ وَعَلَيَّ» .

L37885 The Messenger of Allah (peace and blessings be upon him) said, "Whoever leaves behind a debt or dependents [without support], then to me is their recourse, and upon me is their provision."

وَإِنْ كَانَ مَاتَ مِنْ أَمْرٍ لَا يُدْرَى مَنْ أَصَابَهُ فَدِيَتُهُ وَاجِبَةٌ عَلَى جَمِيعِ الْأَمْوَالِ الْمَوْقُوفَةِ لِمَصَالِحِ الْمُسْلِمِينَ، لِأَنَّ مُصِيبَهُ غَارِمٌ، أَوْ عَاقِلَتِهِ، وَلَا بُدَّ.

L37886 If the death resulted from an unknown cause, the blood money is obligatory upon all dedicated funds allocated for the public interests of Muslims, as liability is incumbent upon the public treasury *ghārim* or his responsible kin group *ʿāqila*, and this is imperative.

وَهَذَا هُوَ نَصُّ الْخَبَرِ - وَإِنْ كَانَ لَا يُحْتَجُّ بِهِ بِإِرْسَالِهِ لَكِنْ مَعْنَاهُ صَحِيحٌ بِالنُّصُوصِ الَّتِي ذَكَرْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L37887 This is the text of the narration—though it cannot be cited as authoritative due to its being *Mursal* (with an incomplete chain), yet its meaning is authentic according to the texts we have cited—and with Allah alone is all success.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ حَدَّثَنَاهُ حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: قَضَى هِشَامُ بْنُ سُلَيْمَانَ فِي قَوْمٍ كَانُوا فِي مَاءٍ فَتَمَاقَلُوا فَمَاتَ وَاحِدٌ مِنْهُمْ فِي الْمَاءِ، فَشَهِدَ اثْنَانِ عَلَى ثَلَاثَةٍ، وَثَلَاثَةٌ عَلَى اثْنَيْنِ، فَقَضَى بِدِيَتِهِ عَلَى جَمِيعِهِمْ.

L37888 Abu Muhammad said: Hammam narrated to us: Ibn Mufarrij narrated to us: Ibn al-A'rabi narrated to us: al-Dabari narrated to us: Abd al-Razzaq narrated to us, from Ma'mar, who said: Hisham ibn Sulayman issued a judgment concerning people who were in water and quarreled, resulting in one of them dying in the water. Two witnesses testified against three individuals, and three witnesses testified against two. He ruled that the blood money for the deceased must be borne by all of them collectively.

L37889–37891 Hummam narrated to us; ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bajiyy narrated to us; ʿAbdullāh ibn Yūnus narrated to us; Baqiyy ibn Makhlad narrated

[18] **Qur'an references (L37884):** Qur'an 9:60 (At-Tawbah).

to us; Abū Bakr ibn Abī Shaybah narrated to us; Muḥammad ibn Abī ʿAdiyy narrated from Ashʿath from al-Ḥasan that he said: Regarding a group of people who exchanged arrows and struck someone, and it is not known which of them struck him. He ruled: The blood money is due upon them.

حَدَّثَنَا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنْ أَشْعَثَ عَنِ الْحَسَنِ أَنَّهُ قَالَ فِي قَوْمٍ تَنَاضَلُوا فَأَصَابُوا إِنْسَانًا، لَا يُدْرَى أَيُّهُمْ أَصَابَهُ. قَالَ: الدِّيَةُ عَلَيْهِمْ.

L37892 We have narrated it through the chain of al-Ḥajjāj ibn al-Minhāl, who reported from Ḥammād ibn Salamah, who reported from Salamah ibn Kuhayl and Ḥammād ibn Abī Sulaymān that ʿAlī ibn Abī Ṭālib ruled regarding six youths who were struggling in the river, causing one of them to drown. Two witnesses testified against three that they had drowned him, while three witnesses testified against two that they had drowned him. ʿAlī ibn Abī Ṭālib obligated three-fifths of the blood money upon the two and two-fifths of the blood money upon the three. ʿAlī said: "As for the narration from ʿAlī ibn Abī Ṭālib, it is not authentic. Were it authentic, all present from our opponents would have opposed his ruling in this matter."

وَرُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ أَنَا سَلَمَةُ بْنُ كُهَيْلٍ وَحَمَّادُ بْنُ أَبِي سُلَيْمَانَ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَضَى فِي سِتَّةِ غِلْمَةٍ كَانُوا يَتَغَاطُّونَ فِي النَّهْرِ فَغَرِقَ أَحَدُهُمْ، فَشَهِدَ اثْنَانِ عَلَى ثَلَاثَةٍ أَنَّهُمْ غَرَّقُوهُ، وَشَهِدَ ثَلَاثَةٌ عَلَى اثْنَيْنِ أَنَّهُمَا غَرَّقَاهُ - فَجَعَلَ عَلِيُّ بْنُ أَبِي طَالِبٍ ثَلَاثَةَ أَخْمَاسِ الدِّيَةِ عَلَى الِاثْنَيْنِ، وَخُمُسَيِّ الدِّيَةِ عَلَى الثَّلَاثَةِ قَالَ عَلِيٌّ: أَمَّا الرِّوَايَةُ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ فَلَا تَصِحُّ، وَلَوْ صَحَّتْ لَكَانَ جَمِيعُ الْحَاضِرِينَ مِنْ خُصُومِنَا مُخَالِفِينَ لِحُكْمِهِ فِيهَا.

L37893 In our position, Allah the Exalted has prohibited [the unlawful acquisition of] wealth except with the certainty of a legitimate right, as He stated: "And do not consume your properties among yourselves wrongfully" [Al-Baqarah: 188].[19]

وَأَمَّا الْقَوْلُ عِنْدَنَا فَهُوَ أَنَّ اللَّهَ تَعَالَى حَرَّمَ الْأَمْوَالَ إِلَّا بِيَقِينِ الْحَقِّ، لِقَوْلِهِ تَعَالَى {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨]

L37894 The Messenger of Allah, peace and blessings be upon him, said, "Indeed, your blood, your wealth, and your honor are inviolable to you." Therefore, it is not valid to pass a judgment requiring blood money on anyone except where an explicit text [from the Quran or the Sunnah of the Messenger of Allah] obligates it.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَصِحُّ قَضَاءٌ بِدِيَةٍ عَلَى أَحَدٍ إِلَّا حَيْثُ أَوْجَبَهَا نَصٌّ [قُرْآنٌ أَوْ سُنَّةٌ] عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L37895 If a person dies in drowning, struggle, or while seeking water, it is impermissible to impose any portion of his blood money on those present or their agnatic relatives, for we do not know: Did all of them kill him or only some? Since the killer remains unidentified, there is no distinction between those present and passersby on the path. Obliging them or their agnatic relatives to pay his blood money is injustice without doubt. Indeed, we are certain that

فَإِذَا مَاتَ إِنْسَانٌ فِي تَغَاطٍّ، أَوْ نِضَالٍ، أَوْ فِي وَجْهِ مَاءٍ، فَإِنَّهُ لَا يَحِلُّ أَنْ يَغْرَمَ مَنْ حَضَرَ شَيْئًا مِنْ دِيَتِهِ، وَلَا عَوَاقِلُهُمْ، لِأَنَّنَا لَا نَدْرِي أَجَمِيعُهُمْ قَتَلَهُ أَمْ بَعْضُهُمْ؟ وَإِذْ لَا نَدْرِي مَنِ الْقَاتِلُ لَهُ، فَلَا فَرْقَ بَيْنَ الْحَاضِرِينَ وَبَيْنَ الْعَابِرِينَ عَلَى السَّبِيلِ، وَإِلْزَامُهُمْ دِيَتَهُ، أَوْ عَوَاقِلُهُمْ ظُلْمٌ لَا شَكَّ، بَلْ نُوقِنُ أَنَّ جَمِيعَهُمْ لَمْ يَقْتُلْهُ، فَنَحْنُ عَلَى يَقِينٍ مِنْ

[19] **Qur'an references (L37893):** Qur'an 2:188 (Al-Baqarah).

all of them did not kill him, thus compelling them all to pay the blood money is injustice without doubt. The rightful course is for this blood money to be paid from the share for debtors or from charitable endowments designated for the welfare of all Muslims, as Allah the Exalted decreed blood money in His words: {Whoever kills a believer by mistake must free a believing slave and deliver blood money to his family} [4:92]. Therefore, blood money must assuredly be given to his family.[20]

أَنَّ إِلْزَامَ جَمِيعِهِمْ الدِّيَةَ ظُلْمٌ لَا شَكَّ فِيهِ - فَحَقُّ هَذَا أَنْ يُؤَدِّيَ مِنْ سَهْمِ الْغَارِمِينَ، أَوْ مِنْ الْأَمْوَالِ الْمَوْقُوفَةِ لِمَصَالِحِ جَمِيعِ الْمُسْلِمِينَ، لِأَنَّ اللَّهَ تَعَالَى افْتَرَضَ دِيَتَهُ بِقَوْلِهِ تَعَالَى {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ} [النساء: ٩٢] فَلَا بُدَّ مِنْ دِيَةٍ مُسَلَّمَةٍ إلَى أَهْلِهِ.

L37896 And by the statement of the Messenger of Allah—may Allah's peace and blessings be upon him—which we have cited with its chain of transmission in multiple sections of our book, and all praise is due to Allah: "For whom a killing has occurred after this very statement of mine, his family has two good choices: to retaliate or to accept blood money," or as he—peace and blessings be upon him—said.

وَبِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي قَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِي مَوَاضِعَ مِنْ كِتَابِنَا هَذَا وَلِلَّهِ الْحَمْدُ " مَنْ قُتِلَ لَهُ قَتِيلٌ بَعْدَ مَقَالَتِي هَذِهِ فَأَهْلُهُ بَيْنَ خِيرَتَيْنِ بَيْنَ أَنْ يَقْتُلُوا أَوْ يَأْخُذُوا الْعَقْلَ " أَوْ كَمَا قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L37897–37898 Liability is obligatory in all cases, whether intentional or accidental, and no slain person exists outside these two categories. Abu Muhammad said: Likewise, if someone is struck by a stone whose thrower is unknown, or an arrow similarly with no distinction—even if a man were pursued by an enemy on a path who killed him, with a group of trustworthy individuals observing this yet unable to identify the killer. When the killer saw them, he fled behind a mound, into a house, or into a caravanserai. The group pursued him and found behind the mound, caravanserai, or house a number of people—two or more—among whom were trustworthy and untrustworthy individuals. They asked them: "Who entered here moments ago?" Each person among them replied: "We do not know; each of us was occupied with his own affairs." As for the Malikis, they assert that everyone present in the caravanserai, everyone in the house, and everyone behind the mound must be imprisoned for an indefinitely long duration until death becomes preferable to them than life. This is undeniably a grave injustice and unquestionably a sin before Allah the Exalted, for they are certain that all but one among them are wronged. Thus, they knowingly wrong a thousand people with certainty, aware they are unjustly harming them out of fear that a single unidentified wrongdoer might escape. Abu Muhammad said: By this logic, one would inevitably be

فَالْعَقْلُ وَاجِبٌ عَلَى كُلِّ حَالٍ فِي الْعَمْدِ وَالْخَطَأِ، وَلَا يَخْلُو قَتِيلٌ مِنْ أَحَدِ هَذَيْنِ الْوَجْهَيْنِ. قَالَ أَبُو مُحَمَّد: وَهَكَذَا مَنْ أَصَابَهُ حَجَرٌ لَا يُدْرَى مَنْ رَمَاهُ، أَوْ سَهْمٌ كَذَلِكَ وَلَا فَرْقَ - وَلَوْ أَنَّ امْرَأً خَرَجَ إلَيْهِ عَدُوٌّ فِي طَرِيقٍ فَقَتَلَهُ، وَجَمَاعَةٌ ثِقَاتٌ يَنْظُرُونَ إلَى ذَلِكَ، إلَّا أَنَّهُمْ لَا يَعْرِفُونَ الْقَاتِلَ مَنْ هُوَ؟ فَلَمَّا رَآهُمْ الْقَاتِلُ هَرَبَ وَصَارَ خَلْفَ رَبْوَةٍ، أَوْ فِي بَيْتٍ، أَوْ فِي خَانٍ، فَاتَّبَعَتْهُ الْجَمَاعَةُ فَوَجَدُوا خَلْفَ الرَّابِيَةِ أَوْ الْخَانِ أَوْ الْبَيْتِ: جَمَاعَةً مِنْ النَّاسِ، أَوْ اثْنَيْنِ فَصَاعِدًا، فِيهِمْ ثِقَاتٌ وَغَيْرُ ثِقَاتٍ، فَسَأَلُوهُمْ: مَنْ دَخَلَ عِنْدَكُمْ السَّاعَةَ؟ فَقَالَ كُلُّ امْرِئٍ مِنْهُمْ: لَا نَدْرِي، كُلُّ امْرِئٍ مِنَّا مَشْغُولٌ بِأَمْرِهِ. فَأَمَّا الْمَالِكِيُّونَ يَقُولُونَ: يُقْذَفُ كُلُّ مَنْ كَانَ فِي الْخَانِ، وَكُلُّ مَنْ كَانَ فِي الْبَيْتِ، وَكُلُّ مَنْ كَانَ خَلْفَ الرَّابِيَةِ فِي السِّجْنِ الدَّهْرَ الطَّوِيلَ، حَتَّى يَكُونَ مَوْتُهُمْ خَيْرًا لَهُمْ مِنْ الْحَيَاةِ - وَهَذَا ظُلْمٌ عَظِيمٌ مُتَيَقَّنٌ، وَخَطَأٌ عِنْدَ اللَّهِ تَعَالَى بِلَا شَكٍّ، لِأَنَّهُمْ عَلَى يَقِينٍ مِنْ أَنَّهُمْ كُلُّهُمْ مَظْلُومُونَ إلَّا وَاحِدًا، فَقَدْ أَقْدَمُوا عَلَى ظُلْمِ أَلْفِ إنْسَانٍ بِيَقِينٍ، وَهُمْ يَدْرُونَ أَنَّهُمْ ظَالِمُونَ لَهُمْ خَوْفَ

[20] **Qur'an references (L37895):** Qur'an 4:92 (An-Nisa).

obliged to apprehend the people of every marketplace and imprison them, since we know with certainty that among them are practitioners of usury and consumers of intoxicants.

أَنْ يُفْلِتَ ظَالِمٌ وَاحِدٌ لَا يَعْرِفُونَهُ بِعَيْنِهِ. قَالَ أَبُو مُحَمَّدٍ: وَيَلْزَمُ مَنْ قَالَ بِهَذَا الْقَوْلِ عَلَى كُلِّ حَالٍ أَنْ يَقْصِدَ إلَى أَهْلِ كُلِّ سُوقٍ فَيَقْذِفَهُمْ فِي الْحَبْسِ، لِأَنَّنَا نَدْرِي أَنَّ فِيهِمْ آكِلَ رِبًا بِيَقِينٍ، وَشَارِبَ خَمْرٍ بِيَقِينٍ.

L37899 Similarly, in the case of a slain person found in a city or island, it is incumbent upon them to imprison all the people of that city or the people of the island; otherwise, they have contradicted themselves in the most severe manner.

وَكَذَلِكَ يَلْزَمُهُمْ فِي قَتِيلٍ وُجِدَ فِي مَدِينَةٍ أَوْ جَزِيرَةٍ أَنْ يَسْجُنُوا جَمِيعَ أَهْلِ تِلْكَ الْمَدِينَةِ، وَأَهْلَ الْجَزِيرَةِ، وَإِلَّا فَقَدْ تَنَاقَضُوا أَفْحَشَ تَنَاقُضٍ.

L37900–37902 The Messenger of Allah—peace and blessings be upon him—nullified this corrupt ruling through his action concerning the people of Khaybar, when Abdullah ibn Sahl—may Allah be pleased with him—was killed among them. None of them were imprisoned; rather, he accepted only oaths—either from those making claims against them or by their own oaths. Abu Muhammad said: This also nullifies the saying of Allah the Exalted: “They follow nothing but conjecture and what their souls desire” [53:23]. And the saying of the Most High: “They follow nothing but conjecture, and indeed conjecture avails nothing against the truth.” [An-Najm: 28][21]

وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ أَبْطَلَ هَذَا الْحُكْمَ الْفَاسِدَ بِفِعْلِهِ فِي أَهْلِ خَيْبَرَ، إذْ قُتِلَ فِيهِمْ عَبْدُ اللَّهِ بْنُ سَهْلٍ - رَضِيَ اللَّهُ عَنْهُ - فَمَا سُجِنَ أَحَدٌ مِنْهُمْ، بَلْ قَنَعَ مِنْهُمْ بِالْأَيْمَانِ فَقَطْ عَلَى مَنْ ادَّعَى عَلَيْهِ مِنْهُمْ أَوْ بِأَيْمَانِهِمْ. قَالَ أَبُو مُحَمَّدٍ: وَيُبْطِلُ هَذَا أَيْضًا قَوْلُ اللَّهِ تَعَالَى {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَمَا تَهْوَى الأَنْفُسُ} [النجم: ٢٣] وقَوْله تَعَالَى {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨]

L37903 The Messenger of Allah (peace be upon him) said: “Beware of suspicion, for suspicion is the most deceitful speech.” Thus, it is not lawful for anyone to take action against another based on suspicion. How, then, can they proceed here with sheer injustice and certain oppression?

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» فَلَا يَحِلُّ لِأَحَدٍ الْإِقْدَامُ عَلَى أَحَدٍ بِالظَّنِّ، فَكَيْفَ وَهُمْ هَاهُنَا قَدْ أَقْدَمُوا بِالْجَوْرِ الْمَحْضِ وَالظُّلْمِ الْمُتَيَقَّنِ.

L37904 The obligation in this matter is that none of them should be imprisoned. However, for the one against whom a claim is made, the claimants swear an oath under the ruling of *qasāmah*. If the claimants refuse, he then swears a single oath.

وَالْوَاجِبُ فِي هَذَا أَنْ لَا يُسْجَنَ وَاحِدٌ مِنْهُمْ، لَكِنْ مَنْ أُدُّعِيَ عَلَيْهِ حَلَفَ الْمُدَّعُونَ عَلَى حُكْمِ الْقَسَامَةِ، فَإِنْ نَكَلُوا حَلَفَ هُوَ يَمِينًا وَاحِدَةً.

L37905 Similarly, if a claim is made against a group of individuals individually identified by their persons, each of them must swear one oath and thereby be cleared. This is based on the statement of the Messenger of Allah (peace

[21] **Qur’an references (L37900):** Qur’an 53:23 (An-Najm); Qur’an 53:28 (An-Najm).

and blessings be upon him): “If people were granted what they claim based solely on their allegations, one group would lay claim to the blood and wealth of another group. But the oath is incumbent upon the one against whom the claim is made.”

وَكَذَلِكَ لَوْ ادَّعُوا عَلَى جَمَاعَةٍ بِأَعْيَانِهِمْ كُلُّ وَاحِدٍ مِنْهُمْ يَحْلِفُ يَمِينًا وَاحِدَةً وَيَبْرَأُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَوْ أُعْطِي النَّاسُ بِدَعْوَاهُمْ لَادَّعَى قَوْمٌ دِمَاءَ قَوْمٍ وَأَمْوَالَهُمْ وَلَكِنَّ الْيَمِينَ عَلَى مَنْ أُدُّعِيَ عَلَيْهِ»

L37906 And if it was also found in the dwelling of a community, the ruling of *qasāma* was applied.

وَإِنْ كَانَ وُجِدَ فِي دَارِ قَوْمٍ أَيْضًا حُكِمَ هُنَالِكَ بِحُكْمِ الْقَسَامَةِ

L37907 And with Allah, the Exalted, lies all success.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L37908 **A legal issue: if someone orders another to amputate their own hand, kill their own child or slave, kill the commander, or kill themselves.**

[مَسْأَلَةٌ أَمَرَ آخَرَ بِقَطْعِ يَدِهِ أَوْ بِقَتْلِ وَلَدِهِ أَوْ عَبْدِهِ أَوْ بِقَتْلِهِ نَفْسَهُ]

L37909 2079 - Issue: Concerning one who orders another to cut off his hand, kill his child, his slave, or to kill himself: ʿAbdullāh ibn Rabīʿ narrated to us, ʿAbdullāh ibn Muḥammad ibn ʿUthmān narrated to us, Aḥmad ibn Khālid narrated to us, ʿAlī ibn ʿAbd al-ʿAzīz narrated to us, al-Ḥajjāj ibn al-Minhāl narrated to us, Ḥammād ibn Salamah narrated from ʿAmr ibn Dīnār, who said: A man said to a slave, “Cut off my ear, and you will be my partner in liability for the diyah,” so the slave did it. They brought their dispute to Ibn al-Zubayr, and conclusive evidence confirmed the man’s statement, so he nullified the man’s diyah. ʿAlī said: Allah the Exalted has ordained diyah for a life—if the legal guardian of the slain demands it—through the words of His Prophet (ﷺ).

٢٠٧٩ - مَسْأَلَةٌ: فِيمَنْ أَمَرَ آخَرَ بِقَطْعِ يَدِهِ أَوْ بِقَتْلِ وَلَدِهِ، أَوْ عَبْدِهِ أَوْ بِقَتْلِهِ نَفْسَهُ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: إنَّ رَجُلًا قَالَ لِعَبْدِ: اقْطَعْ أُذُنِي وَأَنْتَ شَرِيكِي فِي الدِّيَةِ فَفَعَلَ. فَاخْتَصَمُوا إلَى ابْنِ الزُّبَيْرِ فَقَامَتْ الْبَيِّنَةُ عَلَى قَوْلِهِ فَأَبْطَلَ دِيَتَهُ، قَالَ عَلِيٌّ: قَدْ أَوْجَبَ اللَّهُ تَعَالَى فِي النَّفْسِ الدِّيَةَ - إنْ أَرَادَهَا وَلِيُّ الْمَقْتُولِ - عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L37910 Allah, the Exalted, has also made obligatory the blood money for the fingers, according to what we have previously mentioned.

وَأَوْجَبَ اللَّهُ تَعَالَى أَيْضًا كَذَلِكَ دِيَةَ الْأَصَابِعِ عَلَى مَا ذَكَرْنَا قَبْلُ.

L37911 Allah has forbidden obedience to anyone in disobedience to Allah, the Exalted, and we have mentioned all of that with its chain of transmission in the previous volumes of our dīwān.

وَحَرَّمَ اللَّهُ طَاعَةَ أَحَدٍ مِنْ النَّاسِ فِي مَعْصِيَةِ اللَّهِ تَعَالَى -، وَقَدْ ذَكَرْنَا كُلَّ ذَلِكَ بِإِسْنَادِهِ فِيمَا سَلَفَ مِنْ دِيوَانِنَا.

L37912–37914 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath informed us, Abdul Wahhab ibn Isa informed us, Ahmad ibn Muhammad informed us. Aḥmad ibn ʿAlī narrated to us: Muslim ibn al-Ḥajjāj narrated to us: Quṭaybah nar-

rated to us: Layth — that is, Ibn Saʿd — narrated to us: ʿUbayd Allāh — that is, Ibn ʿUmar — narrated to us, from Nāfiʿ, from Ibn ʿUmar, from the Prophet — peace and blessings of Allāh be upon him — that he said: "It is incumbent upon a Muslim to listen and obey in matters he loves or hates, unless he is commanded to commit a sin, for then there is no listening nor obedience."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا قُتَيْبَةُ نا لَيْثٌ - هُوَ ابْنُ سَعْدٍ - عَنْ عُبَيْدِ اللَّهِ - هُوَ ابْنُ عُمَرَ - عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «عَلَى الْمَرْءِ الْمُسْلِمِ السَّمْعُ وَالطَّاعَةُ فِيمَا أَحَبَّ أَوْ كَرِهَ، إلَّا أَنْ يُؤْمَرَ بِمَعْصِيَةٍ فَلَا سَمْعَ وَلَا طَاعَةَ»

L37915 And through him to [the book] Ṣaḥīḥ Muslim: Muḥammad ibn al-Muthannā narrated to us, Muḥammad ibn Jaʿfar Ghundar narrated to us, Shuʿbah narrated from Zubayd, from Saʿd ibn ʿUbayd, from Abū ʿAbd al-Raḥmān al-Sulamī, from ʿAlī ibn Abī Ṭālib that the Messenger of Allah—peace and blessings be upon him—said, "Obedience is only in that which is good."

وَبِهِ إلَى مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرَ غُنْدَرٌ نا شُعْبَةُ عَنْ زُبَيْدٍ عَنْ سَعْدِ بْنِ عُبَيْدٍ عَنْ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إنَّمَا الطَّاعَةُ فِي الْمَعْرُوفِ»

L37916 Abu Muhammad said: It is forbidden for anyone commanded to commit disobedience to comply with it. If he does so, he becomes a transgressor - defiantly disobedient to Allah the Exalted - and has no excuse for this.

قَالَ أَبُو مُحَمَّدٍ: فَحَرَامٌ عَلَى كُلِّ مَنْ أُمِرَ بِمَعْصِيَةٍ أَنْ يَأْتَمِرَ لَهَا، فَإِنْ فَعَلَ فَهُوَ فَاسِقٌ عَاصٍ لِلَّهِ تَعَالَى وَلَيْسَ لَهُ بِذَلِكَ عُذْرٌ.

L37917 Similarly, the one who commands on his own initiative what Allah the Exalted has not permitted is disobedient to Allah the Exalted—a transgressor—and there is no justification for the subordinate in obeying him. Rather, the commander and the commanded are equal in this regard. It is obligatory that the commander, as a person, incurs liability for amputating his own hand without legitimate authority, killing his slave, or killing his son, just as he would be liable for retaliation (qisāṣ) or diyah had he not issued the command. For the existence of his command in such matters is invalid and has no legal effect in rendering [the act] permissible whatsoever.

وَكَذَلِكَ الْآمِرُ فِي نَفْسِهِ بِمَا لَمْ يُبِحْ اللَّهُ تَعَالَى لَهُ فَهُوَ عَاصٍ لِلَّهِ تَعَالَى فَاسِقٌ وَلَا عُذْرَ لِلْمَأْمُورِ فِي طَاعَتِهِ، بَلْ الْآمِرُ وَالَّذِي يُؤْمَرُ سَوَاءٌ فِي ذَلِكَ، فَالْوَاجِبُ أَنْ يَجِبَ لِلْآمِرِ إنْسَانًا بِقَطْعِ يَدِ الْآمِرِ نَفْسِهِ بِغَيْرِ حَقٍّ، أَوْ بِقَتْلِ عَبْدِهِ، أَوْ بِقَتْلِ ابْنِهِ، مَا يَجِبُ لَهُ لَوْ لَمْ يَأْمُرْ بِذَلِكَ مِنْ الْقَوَدِ أَوْ الدِّيَةِ، لِأَنَّ وُجُودَ أَمْرِهِ بِذَلِكَ بَاطِلٌ لَا حُكْمَ لَهُ فِي الْإِبَاحَةِ أَصْلًا

L37918 And similarly, if someone permits another to kill him and the latter does so, the legal guardians of the slain are entitled to qawad (retaliation) or diyah (blood money).

وَكَذَلِكَ مَنْ أَبَاحَ لِآخَرَ أَنْ يَقْتُلَهُ فَفَعَلَ فَلِأَوْلِيَاءِ الْمَقْتُولِ الْقَوَدُ أَوْ الدِّيَةُ.

L37919 Malik said: If a person orders someone else to kill his slave and he kills him, then nothing is upon the commanded one.

وَقَدْ قَالَ مَالِكٌ: مَنْ أَمَرَ آخَرَ بِقَتْلِ عَبْدِهِ فَقَتَلَهُ فَلَا شَيْءَ عَلَى الْمَأْمُورِ.

L37920 Al-Shafi'i said: "If someone orders another to amputate the hand of the orderer, there is nothing upon the amputator."

وَقَالَ الشَّافِعِيُّ: مَنْ أَمَرَ آخَرَ بِقَطْعِ يَدِ الْآمِرِ فَلَا شَيْءَ عَلَى الْقَاطِعِ.

L37921 Ali said: These two opinions are utterly corrupt due to what we have mentioned. It is astonishing that they—who claim to be proponents of analogy—do not differ regarding someone who commands another person to commit adultery with his own female slave and it is carried out, that the ḥadd punishment applies to him.

قَالَ عَلِيٌّ: وَهَذَانِ الْقَوْلَانِ فِي غَايَةِ الْفَسَادِ لِمَا ذَكَرْنَا، وَالْعَجَبُ أَنَّهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَهُمْ لَا يَخْتَلِفُونَ فِيمَنْ أَمَرَ إنْسَانًا بِأَنْ يَزْنِيَ بِأَمَةِ نَفْسِهِ فَفَعَلَ أَنَّ الْحَدَّ عَلَيْهِ.

L37922 If they say: "He has the right to pardon after the amputation of the offender's hand, the killing of his [the pardoner's] father, and his male servant, but he may not pardon after [someone commits] fornication with his female slave?" It is said to them: "The time for pardon has not yet arrived, so he may not pardon." They do not disagree that if someone declares: "Whoever kills my cousin, Fulān ibn Fulān, I have pardoned him," and then a killer slays him, the heir retains the right to retaliation (qisas). Thus their analogy is invalidated—and success comes only from Allah, the Exalted.

فَإِنْ قَالُوا: إنَّ لَهُ بَعْدَ قَطْعِ يَدِهِ، وَقَتْلِ أَبِيهِ، وَغُلَامِهِ: أَنْ يَعْفُوَ وَلَيْسَ لَهُ أَنْ يَعْفُوَ بَعْدَ الزِّنَى بِأَمَتِهِ؟ قِيلَ لَهُمْ: إنَّ وَقْتَ الْعَفْوِ لَمْ يَأْتِ بَعْدُ، فَلَيْسَ لَهُ أَنْ يَعْفُوَ، وَهُمْ لَا يَخْتَلِفُونَ فِيمَنْ قَالَ: مَنْ قَتَلَ ابْنَ عَمِّي فُلَانَ بْنَ فُلَانٍ فَقَدْ عَفَوْتُ عَنْهُ فَقَتَلَهُ قَاتِلٌ، فَإِنَّ لَهُ الْقَوَدَ، فَبَطَلَ تَنْظِيرُهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فِي قَوْلِ اللَّهِ تَعَالَى فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ]

A question regarding the statement of Allah, the Exalted: "Whoever gives it in charity, then it is an expiation for him."[22]

L37923–37924

L37925 Allah the Exalted said: "And We prescribed for them therein: a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds retaliation applies. Whoever forgoes retaliation as charity, it will serve as expiation for him" (Al-Ma'idah 45). Ali, may Allah be pleased with him, said: "Whoever recites 'an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds retaliation applies' with all these terms in the nominative case - not grammatically conjoined to 'a life for a life' - then this constitutes a ruling established upon us and binding for us. Whoever recites them all in the accusative case, it is conjoined to 'a life for a life,' and that this is from the rulings of the Torah."[23]

قَالَ اللَّهُ تَعَالَى {وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالأَنْفَ بِالأَنْفِ وَالأُذُنَ بِالأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] ، قَالَ عَلِيٌّ: مَنْ قَرَأَ {وَالْعَيْنَ بِالْعَيْنِ وَالأَنْفَ بِالأَنْفِ وَالأُذُنَ بِالأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ} [المائدة: ٤٥] بِالرَّفْعِ فِي ذَلِكَ كُلِّهِ، لَا بِالْعَطْفِ عَلَى النَّفْسَ بِالنَّفْسِ، فَهُوَ حُكْمٌ ثَابِتٌ عَلَيْنَا لَازِمٌ لَنَا، وَمَنْ قَرَأَهَا بِالنَّصْبِ فِي كُلِّ ذَلِكَ، فَهُوَ مَعْطُوفٌ عَلَى أَنَّ النَّفْسَ بِالنَّفْسِ وَأَنَّ ذَلِكَ مِنْ حُكْمِ التَّوْرَاةِ.

L37926 Abu Muhammad said: Both Qira'at are a well-known truth originating from Allah, the Exalted, therefore both meanings are valid, as recorded in the Torah.

قَالَ أَبُو مُحَمَّد: وَكِلْتَا الْقِرَاءَتَيْنِ حَقٌّ مَشْهُورٌ مِنْ عِنْدِ اللَّهِ تَعَالَى، فَكِلَا الْمَعْنَيَيْنِ حَقٌّ، فَكَانَ ذَلِكَ مَكْتُوبًا فِي التَّوْرَاةِ.

[22] **Qur'an references (L37924):** Qur'an 5:45 (Al-Ma'idah).
[23] **Qur'an references (L37925):** Qur'an 5:45 (Al-Ma'idah).

كُلُّ ذَلِكَ أَيْضًا مَكْتُوبٌ عَلَيْنَا بِحَقٍّ، فَإِذْ ذَلِكَ كَذَلِكَ فَوَاجِبٌ أَنْ يُنْظَرَ فِي مَعْنَى قَوْلِه تَعَالَى {فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] ، فَوَجَدْنَا مَا ناه حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ الْمُرَادِيُّ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ عَنْ الْهَيْثَمِ بْنِ الْأَسْوَدِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو فِي قَوْلِه تَعَالَى {فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] قَالَ: هُدِمَ عَنْهُ مِنْ ذُنُوبِهِ مِثْلُ ذَلِكَ.

L37927 All of that is also decreed upon us in truth. Since that is the case, it becomes obligatory to examine the meaning of Allah's statement: {Whoever donates it [the penalty] as charity, it will be an atonement for him} [Al-Mā'idah: 45]. We found that Ḥumām narrated to us from ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bājī, from ʿAbdullāh ibn Yūnus al-Murādī, from Baqī ibn Makhlad, from Abū Bakr ibn Abī Shaybah, from Wakīʿ, from Sufyān al-Thawrī, from Qays ibn Muslim, from Ṭāriq ibn Shihāb, from al-Haytham ibn al-Aswad, from ʿAbdullāh ibn ʿAmr regarding Allah's statement: {Whoever donates it as charity, it will be an atonement for him} [Al-Mā'idah: 45]. He said: "The equivalent of that is demolished from his sins."[24]

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا يَدُلُّ عَلَى أَنَّهُ كَفَّارَةٌ لِذُنُوبِ الْمَجْرُوحِ الْمُتَصَدِّقِ بِحَقِّهِ.

L37928 Abu Muhammad said: This indicates that it is an expiation for the sins of the injured party - the one who donates his rightful due as charity.

وَبِهِ: إِلَى أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا هُشَيْمٌ عَنْ مُغِيرَةَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي قَوْلِه تَعَالَى {فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] قَالَ: لِلْمَجْرُوحِ.

L37929 And through him up to Abu Bakr ibn Abi Shaybah: Hushaym narrated to us from Mughīrah from Ibrāhīm al-Nakhaʿī regarding Allah's statement {Whoever gives it in charity, it will be an expiation for him} [5:45]. He said: "For the injured party."[25]

وَبِهِ: إِلَى أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ عَنْ سُفْيَانَ بْنِ حُسَيْنٍ عَنْ الْحَسَنِ قَالَ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ قَالَ: لِلْمَجْرُوحِ،

L37930 And through him: From Abu Bakr ibn Abi Shaybah, who narrated to us from Yazid ibn Harun, from Sufyan ibn Husayn, from Al-Hasan, who said: "Whoever donates it as charity, it will serve as expiation for him." It was said: "For the criticized narrator."

وَعَنْ الشَّعْبِيِّ قَالَ: لِلَّذِي تَصَدَّقَ بِهِ.

L37931 It belongs to the one who gave it in charity.

قَالَ عَلِيٌّ: وَقِيلَ غَيْرُ هَذَا: كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا الْفَضْلُ بْنُ دُكَيْنٍ، وَيَحْيَى بْنُ آدَمَ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ فِي قَوْلِه تَعَالَى {فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] قَالَ: لِلْمَجْرُوحِ، وَأَجْرُ الْمُتَصَدِّقِ عَلَى اللَّهِ تَعَالَى.

L37932–37934 Ali said: Other than this has also been stated, as narrated to us through the mentioned chain to Abu Bakr ibn Abi Shaybah - who received it from Al-Fadl ibn Dukayn and Yahya ibn Adam - from Sufyan al-Thawri, from Ata' ibn al-Sa'ib, from... Sa'id ibn Jubayr reported from Ibn Abbas concerning the words of Allah, the Exalted, *"Then it is an expiation for him"* [5:45]. Ibn Abbas said: "[This applies] to the injured party, and the reward of the charitable person is guaranteed by Allah, the Exalted."[26]

[24] **Qur'an references (L37927):** Qur'an 5:45 (Al-Ma'idah).
[25] **Qur'an references (L37929):** Qur'an 5:45 (Al-Ma'idah).
[26] **Qur'an references (L37932):** Qur'an 5:45 (Al-Ma'idah).

وَعَنْ جَابِرِ بْنِ زَيْدٍ قَالَ: لِلْمَجْرُوحِ - وَعَنْ مُجَاهِدٍ فِي قَوْلِهِ تَعَالَى {فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] وَأَجْرُ الْمُتَصَدِّقِ عَلَى اللَّهِ.

L37935 It is reported from Jabir ibn Zayd that he said: "For the injured person." It is also reported from Mujahid concerning Allah's statement {Then it is an expiation for him} [Al-Mā'idah 5:45]: "The reward of the charitable person is incumbent upon Allah."[27]

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ عَنْ زَيْدِ بْنِ أَسْلَمَ أَنَّهُ سَمِعَهُ يَقُولُ: إنْ عَفَا عَنْهُ، أَوْ اقْتَصَّ مِنْهُ، أَوْ قَبِلَ مِنْهُ الدِّيَةَ فَهُوَ كَفَّارَةٌ لَهُ.

L37936 From the chain of Waki', who reported from Sufyān, from Zayd ibn Aslam, that he heard him saying: "If he pardons him, exacts retaliation (qiṣāṣ) from him, or accepts the diyah from him, then each of these acts serves as an expiation for him."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرٌ، وَوَكِيعٌ، قَالَ وَكِيعٌ: عَنْ سُفْيَانَ، ثُمَّ اتَّفَقَ جَرِيرٌ، وَسُفْيَانُ كِلَاهُمَا عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَفَّارَةٌ لِلَّذِي تَصَدَّقَ عَلَيْهِ، وَأَجْرُ الَّذِي أُصِيبَ عَلَى اللَّهِ تَعَالَى.

L37937 From the chain of Ibn Abi Shaybah: Narrated to us by Jarīr and Wakīʿ. Wakīʿ said: From Sufyān. Then Jarīr (directly) and Sufyān (via Wakīʿ) both report from Manṣūr from Ibrāhīm al-Nakhaʿī, who said: "Atonement for the recipient of charity, and the reward for the one who suffered a loss rests with Allah, the Exalted."

قَالَ أَبُو مُحَمَّدٌ: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا وَجَبَ أَنْ نَفْعَلَ مَا أَمَرَنَا اللَّهُ تَعَالَى بِهِ إذْ يَقُولُ {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ؟ فَفَعَلْنَا، فَوَجَدْنَا نَصَّ قَوْلِهِ تَعَالَى {فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] جَاءَ بِلُغَةِ الْعَرَبِ.

L37938 Abū Muḥammad said: When they differed—as we mentioned—was it not obligatory for us to act upon what Allah the Exalted commanded us when He says: {If you dispute over any matter, refer it to Allah and the Messenger} [Quran 4:59]? We did so and found the explicit text of Allah the Exalted's statement {Whoever offers it as charity, it shall serve as an expiation for him} [Quran 5:45] came in the Arabic language.[28]

كَمَا قَالَ تَعَالَى {بِلِسَانٍ عَرَبِيٍّ مُبِينٍ} [الشعراء: ١٩٥] . وَوَجَدْنَا فِي لُغَةِ الْعَرَبِ الضَّمِيرَ رَاجِعًا - وَلَا بُدَّ - إلَى أَقْرَبِ مَذْكُورٍ إلَّا بِدَلِيلٍ. وَوَجَدْنَا أَقْرَبَ مَذْكُورٍ إلَى {فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] الضَّمِيرَ الَّذِي فِي {تَصَدَّقَ بِهِ} [المائدة: ٤٥] وَهُوَ ضَمِيرُ الْمَجْنِيِّ عَلَيْهِ الْمُتَصَدِّقِ، فَلَا يَجُوزُ إخْرَاجُهُ عَنْ هَذَا إلَّا بِدَلِيلٍ، وَلَا دَلِيلَ عَلَى ذَلِكَ.

L37939 As the Almighty has said, {in a clear Arabic tongue} [Ash-Shu'ara: 195]. We find in the Arabic language that the pronoun necessarily refers back to the nearest antecedent unless there is evidence [to the contrary]. We find that the nearest antecedent to {then it shall be an expiation for him} [Al-Ma'idah: 45] is the pronoun in {who gave it in charity} [Al-Ma'idah: 45], which is the pronoun referring to the victim—the one upon whom the offense was committed who gave charity. Thus, it is impermissible to remove it from this [reference] without evidence; there is no evidence for that.[29]

وَأَمَّا الْمُتَصَدَّقُ عَلَيْهِ فَإِنَّ الْجَانِيَ فِيمَا دُونَ النَّفْسِ إذَا عَفَا عَنْهُ الْمَجْنِيُّ عَلَيْهِ فَإِنْ غَفَرَ لَهُ، وَتَصَدَّقَ بِحَقِّهِ عَلَيْهِ، فَلَا شَكَّ فِي أَنَّهُ مَغْفُورٌ لَهُ، وَمُكَفَّرٌ عَنْهُ، لِأَنَّ صَاحِبَ الْحَقِّ قَدْ أَسْقَطَ حَقَّهُ قِبَلَهُ.

L37940 As for the one to whom the right is relinquished as charity, regarding offenses less than homicide—if the victim pardons him for the offense and grants him

[27] **Qur'an references (L37935):** Qur'an 5:45 (Al-Ma'idah).
[28] **Qur'an references (L37938):** Qur'an 4:59 (An-Nisa); Qur'an 5:45 (Al-Ma'idah).
[29] **Qur'an references (L37939):** Qur'an 26:195 (Ash-Shu'ara); Qur'an 5:45 (Al-Ma'idah).

forgiveness for the sin, and waives his right as an act of charity toward him, there is no doubt that the offender is pardoned and his sin is expiated, for the right-holder has nullified his claim against him.

L37941 As for when He does not forgive him but postpones his claim to the Hereafter and waives it in this world, then without doubt we know that his right remains a valid claim against him, and that he will exact retribution on the Day of Resurrection from the debtor's good deeds.

L37942–37944 As for one who kills another, two rights are incumbent upon them: the right of the slain for the injustice done to them, and the right of the guardian to exact qisas. If the guardian pardons, they only relinquish their own right; they have no authority to pardon the right owed to others... For a slain person, the right of the slain remains upon the killer unchanged, based on Allah's statement: "And no soul bears except against itself" [al-An'am 6:164], and as the Prophet—peace and blessings be upon him—conveyed.[30]

L37945 We have been narrated through the chain of Muslim: Qutaybah and Ibn Ḥajar both narrated to us, saying: Ismāʿīl—who is Ibn Jaʿfar—narrated to us from al-ʿAlāʾ—who is Ibn ʿAbd al-Raḥmān—from his father, from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him and his family—said, "Do you know who the bankrupt one is?" They replied, "The bankrupt among us is one who has no dirham nor possessions." He said, "The bankrupt of my Ummah will come on the Day of Resurrection with prayers, fasting, and zakah—yet he will come having insulted this one, slandered that one, consumed the wealth of this one, shed the blood of that one, and struck another. Then, this one will be given from his good deeds, and that one from his good deeds. If his good deeds are exhausted before he fulfills what is due, the sins of those he wronged will be taken and loaded onto him, then he will be cast into the Fire. You shall most assuredly settle the rights to their rightful owners on the Day of Resurrection—until retribution is exacted for the hornless sheep from the horned sheep."[31]

وَأَمَّا إِذَا لَمْ يَغْفِرْ لَهُ، وَلَكِنَّهُ أَخَّرَ طَلَبَهُ إِلَى الْآخِرَةِ، وَأَسْقَطَهُ فِي الدُّنْيَا، فَبِلَا شَكٍّ نَدْرِي أَنَّ حَقَّهُ بَاقٍ لَهُ قِبَلَهُ، وَأَنَّهُ سَيَقْتَصُّ يَوْمَ الْقِيَامَةِ مِنْ حَسَنَاتِهِ.

وَأَمَّا مَنْ قَتَلَ آخَرَ - فَعَلَيْهِ حَقَّانِ: حَقُّ الْمَقْتُولِ فِي ظُلْمِهِ إِيَّاهُ، وَحَقُّ الْوَلِيِّ فِي أَخْذِ الْقَوَدِ - فَإِنْ عَفَا الْوَلِيُّ فَإِنَّمَا عَفَا عَنْ حَقِّ نَفْسِهِ، وَلَا عَفْوَ لَهُ فِي حَقِّ غَيْرِهِ - وَهُوَ لِلْمَقْتُولِ - فَحَقُّ الْمَقْتُولِ بَاقٍ عَلَيْهِ كَمَا كَانَ، لِقَوْلِ اللَّهِ تَعَالَى {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَكَمَا أَخْبَرَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ، وَابْنُ حَجَرٍ، قَالَا جَمِيعًا: نا إِسْمَاعِيلُ - هُوَ ابْنُ جَعْفَرٍ - عَنْ الْعَلَاءِ - هُوَ ابْنُ عَبْدِ الرَّحْمَنِ - عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَتَدْرُونَ مَنْ الْمُفْلِسُ؟ قَالُوا: الْمُفْلِسُ فِينَا مَنْ لَا دِرْهَمَ لَهُ وَلَا مَتَاعَ، فَقَالَ: إِنَّ الْمُفْلِسَ مِنْ أُمَّتِي يَأْتِي يَوْمَ الْقِيَامَةِ بِصَلَاةٍ وَصِيَامٍ وَزَكَاةٍ - وَيَأْتِي قَدْ شَتَمَ هَذَا وَقَذَفَ هَذَا وَأَكَلَ مَالَ هَذَا وَسَفَكَ دَمَ هَذَا وَضَرَبَ هَذَا - فَيُعْطَى هَذَا مِنْ حَسَنَاتِهِ، وَهَذَا مِنْ حَسَنَاتِهِ فَإِنْ فَنِيَتْ حَسَنَاتُهُ - قَبْلَ أَنْ يَقْضِيَ مَا عَلَيْهِ - أُخِذَ مِنْ خَطَايَاهُمْ فَطُرِحَتْ عَلَيْهِ ثُمَّ طُرِحَ فِي النَّارِ، لَتُؤَدُّنَّ الْحُقُوقَ إِلَى أَهْلِهَا يَوْمَ الْقِيَامَةِ، حَتَّى يُقَادَ لِلشَّاةِ الْجَلْحَاءِ مِنْ الشَّاةِ الْقَرْنَاءِ» .

[30] **Qur'an references (L37942):** Qur'an 6:164 (Al-An'am).

[31] **Hadith references (L37945):** Sahih Muslim 2581; Sahih Muslim 2582; Riyad as-Salihin 218.

L37946 Through Al-Bukhari's transmission: 'Umar ibn Hafs ibn Ghiyath informed us, his father informed us, Al-A'mash informed us, who narrated to me from Shaqiq, who said: "I heard 'Abdullah ibn Mas'ud say: 'The Prophet—peace and blessings be upon him—said: "The first matter to be adjudicated among people will be cases of bloodshed."'"""

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ نا أَبِي نا الْأَعْمَشُ حَدَّثَنِي شَقِيقٌ قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ مَسْعُودٍ يَقُولُ " قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَوَّلُ مَا يُقْضَى بَيْنَ النَّاسِ فِي الدِّمَاءِ» .

L37947 And through him to Al-Bukhari: Ismāʿīl—he is Ibn Abī Uways—narrated to us, Mālik narrated to us from Saʿīd ibn Abī Saʿīd al-Maqburī from Abū Hurayrah that the Messenger of Allah—peace be upon him and his family—said: "Whoever has wronged his brother, let him seek absolution from him, for there will be neither dinar nor dirham. Before some of his good deeds are taken for his brother—if he has no good deeds, some of the bad deeds of his brother will be taken and cast upon him."

وَبِهِ إلَى الْبُخَارِيِّ نا إسْمَاعِيلُ - هُوَ ابْنُ أَبِي أُوَيْسٍ - نا مَالِكٌ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «مَنْ كَانَتْ لَهُ مَظْلِمَةٌ لِأَخِيهِ فَلْيَتَحَلَّلْهُ مِنْهَا فَإِنَّهُ لَيْسَ ثَمَّ دِينَارٌ وَلَا دِرْهَمٌ مِنْ قَبْلِ أَنْ يُؤْخَذَ لِأَخِيهِ مِنْ حَسَنَاتِهِ فَإِنْ لَمْ تَكُنْ لَهُ حَسَنَاتٌ يُؤْخَذُ مِنْ سَيِّئَاتِ صَاحِبِهِ فَطُرِحَتْ عَلَيْهِ» .

L37948 From the path of al-Bukhārī, reported to us al-Ṣalt ibn Muḥammad, reported to us Yazīd ibn Zurai', reported to us Saʿīd ibn Abī ʿArūbah from Qatādah from Abū al-Mutawakkil al-Nājī that Abū Saʿīd al-Khudrī said: The Messenger of Allah—peace and blessings of Allah be upon him—said, "The believers will be rescued from the Fire and detained on a bridge between Paradise and Hell. Retribution will be exacted among them for injustices they committed against one another in the world until they are refined and purified. Then permission will be granted for them to enter Paradise. By the One in whose Hand lies the soul of Muhammad, each will find their way to their Paradise abode more easily than they did to their worldly homes." ʿAlī said: As for when someone is slain in lawful retaliation, justice has been served against him as Allah the Exalted commanded, so no liability remains upon him. And success is from Allah the Exalted.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا الصَّلْتُ بْنُ مُحَمَّدٍ نا يَزِيدُ بْنُ زُرَيْعٍ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ أَبِي الْمُتَوَكِّلِ النَّاجِي أَنَّ أَبَا سَعِيدٍ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يَخْلُصُ الْمُؤْمِنُونَ مِنْ النَّارِ فَيُحْبَسُونَ عَلَى قَنْطَرَةٍ بَيْنَ الْجَنَّةِ وَالنَّارِ فَيُقْتَصُّ لِبَعْضِهِمْ مِنْ بَعْضٍ مَظَالِمُ كَانَتْ بَيْنَهُمْ فِي الدُّنْيَا حَتَّى إذَا هُذِّبُوا وَنُقُّوا أُذِنَ لَهُمْ فِي دُخُولِ الْجَنَّةِ، فَوَالَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ لَأَحَدُهُمْ أَهْدَى إلَى مَنْزِلِهِ فِي الْجَنَّةِ مِنْهُ بِمَنْزِلِهِ كَانَ فِي الدُّنْيَا» . قَالَ عَلِيٌّ: وَأَمَّا إذَا قُتِلَ قَوَدًا فَقَدْ انْتَصَفَ مِنْهُ كَمَا أَمَرَ اللَّهُ تَعَالَى فَلَا تَبِعَةَ عَلَيْهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37949 **A legal case concerning a woman who slept near her son or another individual, and the individual was found dead.**

[مَسْأَلَةٌ امْرَأَةٍ نَامَتْ بِقُرْبِ ابْنِهَا أَوْ غَيْرِهِ فَوُجِدَ مَيِّتًا]

L37950–37952 Case 2081: Concerning a woman who slept near her son or another male, and he was found dead. Ali narrated: Muḥammad ibn Saʿīd ibn Nabāt narrated to us, Aḥmad ibn ʿAbd al-Baṣīr narrated to us, Qāsim ibn Aṣbagh narrated to us, Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us, Muḥammad ibn al-Muthannā narrated to us, ʿAbd al-Raḥmān ibn Mahdī nar-

٢٠٨١ - مَسْأَلَةٌ: فِي امْرَأَةٍ نَامَتْ بِقُرْبِ ابْنِهَا أَوْ غَيْرِهِ فَوُجِدَ مَيِّتًا قَالَ عَلِيٌّ: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ

rated to us, Sufyān al-Thawrī narrated to us from al-Mughīra ibn Miqsam from Ibrāhīm al-Nakhaʿī regarding a woman who drank a medicinal substance and miscarried her child. He said: "She must atone." He was questioned about a woman who placed her child to sleep beside her, covered him with a garment, and awoke in the morning to find him dead. He said: "It is most preferable to us that she atones."

L37953 Muhammad ibn Sa'id ibn Nabaat narrated to us: Abdullah ibn Nasr narrated to us, Qasim ibn Asbagh narrated to us, Ibn Waḍḍāḥ narrated to us, Musa ibn Mu'awiyah narrated to us, Waki' narrated to us, Mughirah narrated from Ibrahim that he was asked about a woman who covered her child's face during sleep, causing his death. Then he said: She must free a slave.

L37954 Abū Muḥammad said: If he dies due to her action—such as when she pulls the blanket over his face, then he sleeps, turns over, and dies of suffocation; or her arm falls upon his mouth; or her breast falls upon his mouth; or she unintentionally lies upon him—there is no doubt that she has killed him accidentally. Thus, expiation is obligatory upon her, and blood money is obligatory upon her agnatic relatives or the public treasury. If he did not die from her action, then she bears no responsibility for that, or no blood money at all. If she doubts whether he died from her action or not, then there is no blood money in that case and no expiation, for we are certain of her innocence regarding his death, yet uncertain whether he died from her action. Property is inviolable except with certainty, and expiation is a legally mandated obligation. The law is only established through textual evidence or consensus—thus it is impermissible to impose a financial penalty, fasting, or to obligate her agnatic relatives to pay blood money based on baseless suspicion. And success is by Allah, the Exalted.

L37955 **Legal Issue: Does legal retribution (Qisas) apply between a worker and their employer?**

L37956 2082 - Issue: Is there retribution between a hired worker and his employer? Ali said: It is reported from some of the Tabi'in: There is no retribution between a hired worker and his employer unless he transgresses, in which case diya becomes obligatory after the oath-taking—this [opinion] is erroneous,

نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ فِي امْرَأَةٍ شَرِبَتْ دَوَاءً فَأَلْقَتْ وَلَدَهَا قَالَ: تُكَفِّرُ. وَقَالَ فِي امْرَأَةٍ أَنَامَتْ صَبِيَّهَا إلَى جَنْبِهَا فَطَرَحَتْ عَلَيْهِ ثَوْبًا فَأَصْبَحَتْ وَقَدْ مَاتَ؟ قَالَ: أَحَبُّ إلَيْنَا أَنْ تُكَفِّرَ.

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا مُغِيرَةُ عَنْ إبْرَاهِيمَ أَنَّهُ قَالَ فِي امْرَأَةٍ غَطَّتْ وَجْهَ صَبِيٍّ لَهَا فَمَاتَ فِي نَوْمِهِ؟ فَقَالَ: تُعْتِقُ رَقَبَةً.

قَالَ أَبُو مُحَمَّدٍ: إنْ مَاتَ مِنْ فِعْلِهَا مِثْلَ - أَنْ تَجُرَّ اللِّحَافَ عَلَى وَجْهِهِ ثُمَّ يَنَامَ فَيَنْقَلِبَ فَيَمُوتَ غَمًّا، أَوْ وَقَعَ ذِرَاعُهَا عَلَى فَمِهِ، أَوْ وَقَعَ ثَدْيُهَا عَلَى فَمِهِ، أَوْ رَقَدَتْ عَلَيْهِ - وَهِيَ لَا تَشْعُرُ - فَلَا شَكَّ أَنَّهَا قَاتِلَتُهُ خَطَأً فَعَلَيْهَا الْكَفَّارَةُ، وَعَلَى عَاقِلَتِهَا الدِّيَةُ، أَوْ عَلَى بَيْتِ الْمَالِ، وَإِنْ كَانَ لَمْ يَمُتْ مِنْ فِعْلِهَا فَلَا شَيْءَ عَلَيْهَا فِي ذَلِكَ، أَوْ لَا دِيَةَ أَصْلًا، فَإِنْ شَكَّتْ أَمَاتَ مِنْ فِعْلِهَا أَمْ مِنْ غَيْرِ فِعْلِهَا؟ فَلَا دِيَةَ فِي ذَلِكَ، وَلَا كَفَّارَةَ، لِأَنَّنَا عَلَى يَقِينٍ مِنْ بَرَاءَتِهَا مِنْ دَمِهِ، ثُمَّ عَلَى شَكٍّ أَمَاتَ مِنْ فِعْلِهَا أَمْ لَا؟ وَالْأَمْوَالُ مُحَرَّمَةٌ إلَّا بِيَقِينٍ، وَالْكَفَّارَةُ إيجَابُ شَرْعٍ، وَالشَّرْعُ لَا يَجِبُ إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ - فَلَا يَحِلُّ أَنْ تُلْزَمَ غَرَامَةٌ، وَلَا صِيَامًا، وَلَا أَنْ تُلْزَمَ عَاقِلَتُهَا دِيَةً بِالظَّنِّ الْكَاذِبِ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ هَلْ بَيْنَ الْأَجِيرِ وَمُسْتَأْجِرِهِ قِصَاصٌ]

٢٠٨٢ - مَسْأَلَةٌ: هَلْ بَيْنَ الْأَجِيرِ وَمُسْتَأْجِرِهِ قِصَاصٌ؟ قَالَ عَلِيٌّ: رُوِيَ عَنْ بَعْضِ التَّابِعِينَ: لَيْسَ بَيْنَ الْأَجِيرِ وَمُسْتَأْجِرِهِ قِصَاصٌ إلَّا أَنْ يَتَعَدَّى فَيَجِبُ الْعَقْلُ بَعْدَ الْقَسَامَةِ

because Allah, the Exalted, did not differentiate between the employer and others. There is only an unintentional act or intentional act. Therefore, in the case of an unintentional act, there is nothing except what Allah, the Exalted, has ordained regarding a life [taken].

L37957 As for intentional homicide—retaliation applies equally to the hired person and the hirer, as Allah the Exalted says: "So whoever attacks you, retaliate in the same manner as they attacked you" [Al-Baqarah 2:194].[32]

L37958 An Issue in the Inheritance of the Diyah

L37959–37961 2083 - Ali said: People have disagreed about how diyah (blood money) is inherited.

L37962 A group said: The blood money is for the male agnatic heirs (al-ʿaṣabah).

L37963 Others said: It is for all the heirs. As narrated to us by Muḥammad ibn Saʿīd ibn Nabāt, from ʿAbd Allāh ibn Naṣr, from Qāsim ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from Abū Muʿāwiyah Muḥammad ibn Khāzim al-Ḍarīr, from Layth ibn Abī Sulaym, from Abū ʿAmr al-ʿAbdī, from ʿAlī ibn Abī Ṭālib, who said: "The blood money is divided according to the manner in which the inheritance is divided."

L37964 Through him to Qāsim ibn Aṣbagh: Ibn Waḍḍāḥ narrated to us, Mūsā ibn Muʿāwiyah narrated to us, Wakīʿ narrated to us, Sufyān narrated from ʿAmmār from one who heard ʿAlī say: "He has indeed wronged those who deprived the maternal brothers of their share of the diyah."

L37965 From the transmission of Abū Bakr ibn Abī Shaybah, narrated by ʿAbd al-Raḥīm ibn Sulaymān from Muḥammad ibn Sālim from al-Shaʿbī from ʿUmar ibn al-Khaṭṭāb, who said: All heirs, including the husband and wife, inherit from the diyah (blood money) in cases of khaṭaʾ, unintentional, and ʿamd, intentional.

[32] **Qur'an references (L37957):** Qur'an 2:194 (Al-Baqarah).

- وَهَذَا خَطَأٌ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُفَرِّقْ بَيْنَ الْمُسْتَأْجِرِ وَغَيْرِهِ، وَلَيْسَ إِلَّا خَطَأٌ أَوْ عَمْدٌ، فَلَا شَيْءَ فِي الْخَطَأِ إِلَّا مَا أَوْجَبَهُ اللَّهُ تَعَالَى فِي النَّفْسِ.

وَأَمَّا الْعَمْدُ - فَفِيهِ الْقِصَاصُ سَوَاءٌ الْأَجِيرُ وَالْمُسْتَأْجِرُ، كَمَا قَالَ اللَّهُ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤]

[مَسْأَلَةٌ فِي مِيرَاثِ الدِّيَةِ]

٢٠٨٣ - قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي كَيْفَ تُوَرَّثُ الدِّيَةُ.

فَقَالَتْ طَائِفَةٌ: الدِّيَةُ لِلْعَصَبَةِ.

وَقَالَ آخَرُونَ: هِيَ لِجَمِيعِ الْوَرَثَةِ - كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا أَبُو مُعَاوِيَةَ مُحَمَّدُ بْنُ خَازِمٍ الضَّرِيرُ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ أَبِي عَمْرٍو الْعَبْدِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: تُقَسَّمُ الدِّيَةُ عَلَى مَا يُقَسَّمُ عَلَيْهِ الْمِيرَاثُ.

وَبِهِ - إِلَى قَاسِمِ بْنِ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ عَنْ عَمَّارٍ عَمَّنْ سَمِعَ عَلِيًّا يَقُولُ: لَقَدْ ظَلَمَ مَنْ مَنَعَ الْإِخْوَةَ مِنَ الْأُمِّ نَصِيبَهُمْ مِنَ الدِّيَةِ.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدُ الرَّحِيمِ بْنُ سُلَيْمَانَ عَنْ مُحَمَّدِ بْنِ سَالِمٍ عَنِ الشَّعْبِيِّ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ: يَرِثُ مِنَ الدِّيَةِ كُلُّ وَارِثٍ، وَالزَّوْجُ، وَالزَّوْجَةُ، فِي الْخَطَأِ وَالْعَمْدِ.

وَبِهِ - إِلَى أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا جَرِيرٌ عَنْ مُغِيرَةَ عَنْ إِبْرَاهِيمَ قَالَ فِي الرَّجُلِ يُقْتَلُ عَمْدًا فَيَعْفُو بَعْضُ الْوَرَثَةِ؟ قَالَ: لِامْرَأَتِهِ مِيرَاثُهَا مِنْ الدِّيَةِ.

L37966 And through him, up to Abu Bakr ibn Abi Shaybah: Jarir narrated to us from Mughira from Ibrahim, who said concerning a man killed intentionally and some of the heirs pardon. He said: "His wife inherits her share of the diyyah."

مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا أَسْبَاطُ بْنُ مُحَمَّدٍ عَنْ هِشَامٍ عَنْ الْحَسَنِ قَالَ: تَرِثُ الْمَرْأَةُ مِنْ دَمِ زَوْجِهَا.

L37967 Through the chain of Abu Bakr ibn Abi Shaybah, who narrated to us from Asbat ibn Muhammad, from Hisham, from Al-Hasan, who said: "The woman inherits from her husband's blood money."

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا مَعْنُ بْنُ عِيسَى عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ الزُّهْرِيِّ قَالَ: إذَا قُبِلَ الْعَقْلُ فِي الْعَمْدِ كَانَ مِيرَاثًا تَرِثُهُ الزَّوْجَةُ وَغَيْرُهَا.

L37968 And from the chain of Abū Bakr ibn Abī Shaybah: Maʿn ibn ʿĪsá narrated from Ibn Abī Dhiʾb from al-Zuhrī, who said: If blood money (diya) is accepted in cases of intentional homicide, it becomes part of the inheritance, which the wife and other heirs inherit.

وَعَنْ أَبِي قِلَابَةَ أَنَّهُ كَانَ يَتَحَدَّثُ أَنَّ الدِّيَةَ سَبِيلُهَا سَبِيلُ الْمِيرَاثِ.

L37969 It is narrated from Abu Qilabah that he used to mention that the diyah (compensation) follows the same method as inheritance.

وَعَنْ الشَّعْبِيِّ قَالَ: الدِّيَةُ لِلْمِيرَاثِ.

L37970 From Al-Shaʿbī, who said: The diyah is part of the inheritance.

وَعَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: الْعَقْلُ كَهَيْئَةِ الْمِيرَاثِ؟ قَالَ: نَعَمْ، قُلْت: وَتَرِثُ الْإِخْوَةُ مِنْ الْأُمِّ مِنْهُ؟ قَالَ: نَعَمْ.

L37971 Ibn Jurayj said: I asked ʿAṭāʾ, "Is the diya structured like inheritance?" He replied, "Yes." I asked, "Do uterine brothers inherit from it?" He said, "Yes."

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ كَتَبَ فِي الْإِخْوَةِ مِنْ الْأُمِّ يَرِثُونَ فِي الدِّيَةِ، وَكُلُّ وَارِثٍ.

L37972 It is reported from Umar ibn Abd al-Aziz that he wrote regarding maternal brothers inheriting a share of the diya (blood money), and this applies to every heir.

قَالَ أَبُو مُحَمَّدٍ: وَالْقَوْلُ الثَّانِي - كَمَا حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ ابْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: مَا أَرَى الدِّيَةَ إلَّا لِلْعَصَبَةِ، لِأَنَّهُمْ يَعْقِلُونَ عَنْهُ، فَهَلْ سَمِعَ أَحَدٌ مِنْكُمْ فِي ذَلِكَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَيْئًا؟ فَقَالَ الضَّحَّاكُ بْنُ سُفْيَانَ الْكِلَابِيُّ - وَكَانَ النَّبِيُّ -

L37973–37974 Abu Muhammad said: The second opinion—as narrated to us by Ḥumām from Ibn Mufarrij, from Ibn al-Aʿrabī, from al-Ḍabarī, from ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from Ibn al-Musayyab—who said: ʿUmar ibn al-Khaṭṭāb declared: "I hold that the diya belongs solely to the agnates, for they are the ones who pay it on his behalf. Has any of you heard anything from the Messenger of Allah—peace and blessings of Allah be upon him—concerning this?" Al-Ḍaḥḥāk ibn Sufyān al-Kilābī (whom the Prophet—peace and blessings of Allah be upon him—had appointed over the Bedouin) replied: "The Messenger of Allah—peace and blessings of Allah be upon him—wrote

to me commanding that the wife of Ashaym al-Ḍabābī inherit from her husband's diya." Thereupon, ʿUmar accepted this ruling.[33]

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَعْمَلَهُ عَلَى الْأَعْرَابِ -: «كَتَبَ إِلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ أُوَرِّثَ امْرَأَةَ أَشْيَمَ الضَّبَابِيِّ مِنْ دِيَةِ زَوْجِهَا -» فَأَخَذَ عُمَرُ بِذَلِكَ.

L37975 And via him to ʿAbd al-Razzāq: Maʿmar narrated to us from Yaḥyā ibn Abī Kathīr from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf that he did not allocate any portion of the diyah as inheritance to the maternal brothers.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَّهُ كَانَ لَا يُوَرِّثُ الْإِخْوَةَ مِنْ الْأُمِّ مِنْ الدِّيَةِ شَيْئًا.

L37976 Abū Muḥammad said: When they differed—as we have mentioned—it became incumbent upon us to examine the matter of their disagreement, so that we may ascertain the proof of each faction among them and thereby follow the truth wherever it may be—by the assistance of Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِيمَا اخْتَلَفُوا فِيهِ لِنَعْلَمَ حُجَّةَ كُلِّ طَائِفَةٍ مِنْهُمْ فَنَتَّبِعَ الْحَقَّ حَيْثُ كَانَ - بِعَوْنِ اللَّهِ تَعَالَى.

L37977 We found the argument of those who held that only male agnates inherit from the blood money valid, as they cited the narration transmitted to us by ʿAbd Allāh ibn Rabīʿ: Muḥammad ibn Isḥāq narrated to us, from Ibn al-Aʿrābī, from Abū Dāwūd, from Musaddad, from Yaḥyā ibn Saʿīd al-Qaṭṭān, from Ibn Abī Dhiʾb, from Saʿīd ibn Abī Saʿīd al-Maqburī, who said: I heard Abū Shurayḥ al-Kaʿbī say: The Messenger of Allah—may Allah bless him and grant him peace—said: "If someone belonging to a person is killed after this statement of mine, his family is presented with two good options: to accept the monetary compensation or to seek retribution."

فَوَجَدْنَا حُجَّةَ مَنْ قَالَ: لَا يَرِثُ مِنْ الدِّيَةِ إلَّا الْعَصَبَةُ: أَنْ ذَكَرُوا مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا مُسَدَّدٌ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا ابْنُ أَبِي ذِئْبٍ نا سَعِيدُ بْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ قَالَ: سَمِعْت أَبَا شُرَيْحٍ الْكَعْبِيَّ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فَمَنْ قُتِلَ لَهُ بَعْدَ مَقَالَتِي هَذِهِ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيَرَتَيْنِ، بَيْنَ أَنْ يَأْخُذُوا الْعَقْلَ وَبَيْنَ أَنْ يَقْتُلُوا» .

L37978 Ali said: We found that this report contains no valid proof for them, for the Prophet—may God's blessings and peace be upon him—assigned the diyah (blood money) to those entitled to demand retribution, and he stated that they are his ahl (legal kin), maternal brothers, husband, and wife—all of whom fall under the term ahl (legal kin), as we will clarify, God willing, in the chapter *On Those Entitled to Pardon or Demand Retaliation*.

قَالَ عَلِيٌّ: فَوَجَدْنَا هَذَا الْخَبَرَ لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ الدِّيَةَ لِمَنْ لَهُ أَنْ يَسْتَقِيدَ، وَأَخْبَرَ أَنَّهُمْ أَهْلُهُ وَالْإِخْوَةُ لِلْأُمِّ وَالزَّوْجُ وَالزَّوْجَةُ يَقَعُ عَلَيْهِمْ اسْمُ " أَهْلٍ " عَلَى مَا نَذْكُرُ إنْ شَاءَ اللَّهُ تَعَالَى فِي " بَابِ مَنْ لَهُ عَنْ الْقَوَدِ الْعَفْوُ أَوْ الْقِصَاصُ ".

L37979 An authenticated text has been established from the Messenger of Allah—peace and blessings be upon him—contrary to your claim, as narrated in Ṣaḥīḥ Muslim through the chain: Qutaybah ibn Saʿīd narrated to us, Layth—

وَقَدْ صَحَّ النَّصُّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِخِلَافِ مَا قُلْتُمْ: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا لَيْثٌ - هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ سَعِيدِ

[33] **Hadith references (L37974):** Sunan Abi Dawud 2927.

Ibn Saʿd—narrated to us, from Ibn Shihāb, from Saʿīd ibn al-Musayyab, from Abū Hurayrah, that the Messenger of Allah—peace and blessings be upon him—ruled regarding the dead fetus of a woman from Banū Lihyān, mandating a ghurrah (a male or female slave) as compensation. However, when the woman against whom the ghurrah was ruled died, the Messenger of Allah—peace and blessings be upon him—judged that her inheritance belongs to her children and husband, and that the blood money is incumbent upon her male agnatic relatives.

بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي جَنِينِ امْرَأَةٍ مِنْ بَنِي لِحْيَانَ سَقَطَ مَيِّتًا بِغُرَّةٍ عَبْدٍ، أَوْ أَمَةٍ، غَيْرَ أَنَّ الْمَرْأَةَ الَّتِي قُضِيَ عَلَيْهَا بِالْغُرَّةِ تُوُفِّيَتْ، فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ مِيرَاثَهَا لِبَنِيهَا وَزَوْجِهَا وَأَنَّ الْعَقْلَ عَلَى عَصَبَتِهَا» .

L37980–37981 Abu Muhammad said: It has been established that the Messenger of Allah—may Allah's blessings and peace be upon him—decreed the inheritance to be awarded to someone other than the one against whom blood money was adjudged, thus nullifying their claim with certainty.

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالْمِيرَاثِ لِغَيْرِ مَنْ قُضِيَ عَلَيْهِ بِالْعَقْلِ - فَبَطَلَ قَوْلُهُمْ بِيَقِينٍ.

L37982 The Messenger of Allah—peace and blessings of Allah be upon him—ruled regarding accidental killing that the diyah must be given to the family of the slain, and that in intentional killing, the diyah is an obligatory right for the family of the slain if they choose to claim it. It has been established that there is no category of killing except intentional or accidental, thus the diyah is definitively established for the family of the slain, and the wife is part of his family.

وَقَدْ حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي قَتْلِ الْخَطَأِ بِأَنَّ الدِّيَةَ لِأَهْلِ الْمَقْتُولِ مُسَلَّمَةٌ وَأَنَّ الدِّيَةَ فِي الْعَمْدِ لِأَهْلِ الْمَقْتُولِ وَاجِبَةٌ لَهُمْ - إنْ أَرَادُوا أَخْذَهَا - وَصَحَّ أَنَّهُ لَيْسَ لِلْقَتْلِ نَوْعٌ إلَّا عَمْدٌ أَوْ خَطَأٌ، فَصَحَّتْ الدِّيَةُ بِيَقِينٍ لِأَهْلِ الْمَقْتُولِ وَالزَّوْجَةُ مِنْ أَهْلِهِ.

L37983 As narrated through the chain of Al-Bukhari: Al-Uwaysī narrated to us, Ibrāhīm (who is Ibn Saʿd) narrated to us from Ṣāliḥ ibn Kaysān from Ibn Shihāb, who said: ʿUrwah, Ibn Al-Musayyab, ʿAlqamah ibn Waqqāṣ, and ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah informed me regarding ʿĀ'ishah when the people of the Slander uttered what they uttered. She said: When the revelation was delayed, the Messenger of Allāh—peace and blessings be upon him—summoned ʿAlī ibn Abī Ṭālib (may Allāh be pleased with him) and Usāmah ibn Zayd (may Allāh be pleased with him), questioning them and seeking their counsel concerning separating from his household. As for Usāmah, he advised based on his certainty of her innocence. As for ʿAlī, he said: "Allāh has not constrained you, and there are many women besides her. Ask the servant girl [Barirah]—she will tell you the truth." He then asked her: "Have you noticed anything suspicious?" She replied: "I have seen nothing except that she is a young girl who neglects the dough of her household [while sleep-

كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا الْأُوَيْسِيُّ نا إبْرَاهِيمُ - هُوَ ابْنُ سَعْدٍ - عَنْ صَالِحِ بْنِ كَيْسَانَ عَنْ ابْنِ شِهَابٍ قَالَ أَخْبَرَنِي عُرْوَةُ، وَابْنُ الْمُسَيِّبِ، وَعَلْقَمَةُ بْنُ وَقَّاصٍ، وَعُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ «عَنْ عَائِشَةَ حِينَ قَالَ لَهَا أَهْلُ الْإِفْكِ مَا قَالُوا، قَالَتْ: وَدَعَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلِيَّ بْنَ أَبِي طَالِبٍ، وَأُسَامَةَ بْنَ زَيْدٍ حِينَ اسْتَلْبَثَ الْوَحْيُ يَسْأَلُهُمَا، وَهُوَ يَسْتَشِيرُهُمَا فِي فِرَاقِ أَهْلِهِ. فَأَمَّا أُسَامَةُ - فَأَشَارَ بِالَّذِي يَعْلَمُ مِنْ بَرَاءَةِ أَهْلِهِ. وَأَمَّا عَلِيٌّ - فَقَالَ: لَمْ يُضَيِّقْ اللَّهُ عَلَيْكَ، وَالنِّسَاءُ سِوَاهَا كَثِيرٌ، وَاسْأَلْ الْجَارِيَةَ تَصْدُقْكَ، فَقَالَ: هَلْ رَأَيْتِ مِنْ شَيْءٍ يَرِيبُكِ؟ قَالَتْ: مَا رَأَيْتُ شَيْئًا أَكْثَرَ مِنْ

أَنَّهَا جَارِيَةٌ حَدِيثَةُ السِّنِّ تَنَامُ عَنْ عَجِينِ أَهْلِهَا، فَتَأْتِي الدَّاجِنُ فَتَأْكُلُهُ. فَقَامَ عَلَى الْمِنْبَرِ فَقَالَ: يَا مَعْشَرَ الْمُسْلِمِينَ مَنْ يَعْذِرُنِي مِنْ رَجُلٍ بَلَغَنِي أَذَاهُ فِي أَهْلِي وَأَنَّهُ مَا عَلِمْتُ مِنْ أَهْلِي إِلَّا خَيْرًا» .

ing], so the domestic animal comes and eats it." He then ascended the pulpit and proclaimed: "O assembly of Muslims, who will vindicate me against a man whose harm toward my family has reached me? I have known nothing but goodness from my household."

وَمِنْ طَرِيقِ عُرْوَةَ قَالَ: «لَمَّا أُخْبِرَتْ عَائِشَةُ بِالْأَمْرِ، قَالَتْ: يَا رَسُولَ اللَّهِ أَتَأْذَنُ لِي أَنْ أَنْطَلِقَ إِلَى أَهْلِي؟ فَأَذِنَ لَهَا وَأَرْسَلَ مَعَهَا الْغُلَامَ» .

L37984 From the narration of ʿUrwah, he said: "When ʿĀ'ishah was informed of the matter, she said: 'O Messenger of Allah, do you permit me to go to my family?' So he permitted her and sent the young servant with her."[34]

فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ سَمَّى زَوْجَتَهُ " أَهْلًا " وَأَخْبَرَ أَنَّهَا " أَهْلُهُ ".

L37985 The Messenger of Allah—may the peace and blessings of Allah be upon him—referred to his wife as his "family" and affirmed that she is indeed his family.

وَقَدْ قَالَتْ لَهُ بَرِيرَةُ: تَنَامُ عَنْ عَجِينِ " أَهْلِهَا ".

L37986 And Bareerah said to him: "You sleep away from the dough of 'her family'."

وَبِلَا شَكٍّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ لَهُ فِي ذَلِكَ الْعَجِينِ نَصِيبٌ فَهُوَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - " أَهْلُهَا " أَيْضًا.

L37987 And without a doubt, the Messenger of Allah (peace and blessings of Allah be upon him) had a portion in that dough, so he (upon him be prayers and peace) is also deserving of it.

وَقَدْ أَسْتَأْذَنَتْهُ فِي الِانْطِلَاقِ إِلَى " أَهْلِهَا " وَقَدْ كَانَ لَهَا أَخٌ لِأُمٍّ مَعْرُوفٌ فَصَحَّ أَنَّ هَؤُلَاءِ كُلَّهُمْ دَاخِلُونَ فِي " الْأَهْلِ ".

L37988–37989 She had sought his permission to depart for her "family," and she had an acknowledged maternal half-brother. Thus, it was confirmed that all of them are considered part of "the family."

فَإِذْ الدِّيَةُ بِنَصِّ الْقُرْآنِ، وَنَصِّ السُّنَّةِ لِلْأَهْلِ، وَالزَّوْجَةِ، وَالزَّوْجِ، وَالْإِخْوَةِ لِلْأُمِّ " أَهْلٌ " فَحَظُّهُمْ فِي الدِّيَةِ وَاجِبٌ كَسَائِرِ الْوَرَثَةِ، وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ كُلِّهَا فِي أَنَّ الدِّيَةَ مَوْرُوثَةٌ عَلَى حَسَبِ الْمَوَارِيثِ لِمَنْ وَجَبَتْ لَهُ، وَعَلَى هَذَا اعْتِمَادُنَا فِي تَوْرِيثِ مَنْ ذَكَرْنَا مِنْ الدِّيَةِ.

L37990 Therefore, since the blood money (diyah) is explicitly stipulated by the Qur'an and the Sunnah for the "family"—the wife, husband, and maternal siblings—their share in the diyah is obligatory like all other heirs. There is no disagreement whatsoever among the entire Ummah that the diyah is inherited according to inheritance shares for those to whom it is due. This forms the basis of our position in applying inheritance rules to the diyah for those we have mentioned.

L37991 As for the other hadiths reported concerning this matter apart from what we have mentioned, they are weak. The best of them is the hadith of al-Ḍaḥḥāk

[34] **Hadith references (L37984):** Sahih al-Bukhari 7370.

ibn Sufyān al-Ḍabābī al-Kilābī which we cited earlier - yet it is disconnected, as Saʿīd ibn al-Musayyib did not hear it from him.

وَأَمَّا الْأَحَادِيثُ الْوَارِدَةُ فِي ذَلِكَ غَيْرُ مَا ذَكَرْنَا فَوَاهِيَةٌ لَا تَصِحُّ، وَأَحْسَنُ مَا فِيهَا حَدِيثُ الضَّحَّاكِ بْنِ سُفْيَانَ الضَّبَابِيِّ الْكِلَابِيِّ الَّذِي ذَكَرْنَا آنِفًا وَهُوَ مُنْقَطِعٌ - لَمْ يَسْمَعْهُ مِنْهُ سَعِيدُ بْنُ الْمُسَيِّبِ.

L37992 Abū Muḥammad said: If a person vows to God Almighty to give all that he inherits from so-and-so as charity, and then that so-and-so is killed—whether intentionally or unintentionally—he is not obligated to give the blood money he receives (for unintentional killing) as charity, for he did not inherit it from him.

قَالَ أَبُو مُحَمَّدٍ: فَلَوْ أَنَّ امْرَأً نَذَرَ نَذْرًا لِلَّهِ تَعَالَى أَنْ يَتَصَدَّقَ بِكُلِّ مَا وَرِثَ عَنْ فُلَانٍ ثُمَّ قُتِلَ ذَلِكَ الْفُلَانُ خَطَأً أَوْ عَمْدًا فَإِنَّهُ لَا يَلْزَمُهُ أَنْ يَتَصَدَّقَ بِمَا يَقَعُ لَهُ مِنْ دِيَتِهِ فِي الْعَمْدِ، وَالْخَطَأِ، لِأَنَّهُ لَمْ يَرِثْهُ عَنْهُ.

L37993 **A Legal Issue on the Detention of Combatants.**

[مَسْأَلَةٌ فِي الْمُقْتَتِلِينَ أَنْ يُحْتَجَزُوا]

L37994 2084 - Issue: Regarding what has been narrated from the Prophet—peace and blessings be upon him—concerning separating the combatants: Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us; Aḥmad ibn Shuʿayb narrated to us; Isḥāq ibn Ibrāhīm—that is, Ibn Rāhwayh—narrated to us; Al-Walīd ibn Muslim narrated to us from Al-Awzāʿī, who said: Ḥiṣn narrated to me, from Abū Salamah, from ʿĀʾishah, that the Messenger of Allah—peace and blessings be upon him—said: "The combatants must be separated, starting with the first and proceeding in order—even if one of them is a woman."

٢٠٨٤ - مَسْأَلَةٌ: فِي ذِكْرِ مَا رُوِيَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمُقْتَتِلِينَ أَنْ يُحْتَجَزُوا: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - نا الْوَلِيدُ بْنُ مُسْلِمٍ عَنِ الْأَوْزَاعِيِّ حَدَّثَنِي حِصْنٌ حَدَّثَنِي أَبُو سَلَمَةَ عَنْ عَائِشَةَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «وَعَلَى الْمُقْتَتِلِينَ أَنْ يُحْتَجَزُوا الْأَوَّلَ فَالْأَوَّلَ - وَإِنْ كَانَتْ امْرَأَةً» .

L37995 Abu Muhammad said: "Did the people become perplexed over the interpretation of this narration?" Ahmad ibn Muhammad al-Tahawi reported that he asked Muhammad ibn Abdullah ibn Abd al-Hakam, Ahmad ibn Abi Imran, and Ibrahim al-Muzani about the interpretation of this narration.

قَالَ أَبُو مُحَمَّدٍ: فَمَاجَ النَّاسُ فِي تَفْسِيرِ هَذَا الْخَبَرِ؟ وَحَكَى أَحْمَدُ بْنُ مُحَمَّدٍ الطَّحَاوِيُّ أَنَّهُ سَأَلَ عَنْ تَفْسِيرِ هَذَا الْخَبَرِ مُحَمَّدَ بْنَ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ، وَأَحْمَدَ بْنَ أَبِي عِمْرَانَ وَإِبْرَاهِيمَ الْمُزَنِيَّ.

L37996 As for Muhammad ibn Abdullah ibn Abd al-Hakam, he did not answer him with anything and acknowledged to him that he did not know its meaning.

فَأَمَّا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ فَلَمْ يُجِبْهُ بِشَيْءٍ وَاعْتَرَفَ لَهُ بِأَنَّهُ لَا يَدْرِي مَا مَعْنَاهُ.

L37997 As for Aḥmad ibn Abī ʿImrān, he stated: This leads to the permissibility of women relinquishing their right to blood money (diyah).

وَأَمَّا أَحْمَدُ بْنُ أَبِي عِمْرَانَ فَقَالَ لَهُ: هَذَا يَخْرُجُ مِنْهُ جَوَازُ عَفْوِ النِّسَاءِ عَنِ الدَّمِ.

L37998 As for Al-Muzani, he said: Its meaning is the prohibition of fighting without

just cause.

وَأَمَّا الْمُزَنِيّ فَقَالَ لَهُ: مَعْنَاهُ النَّهْيُ عَنْ الْقِتَالِ فِي غَيْرِ الْحَقِّ.

L37999–38000 Abu Muhammad said: As for Ibn Abd al-Hakam, he acted rightly by remaining silent about something whose reasoning was not evident to him.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا ابْنُ عَبْدِ الْحَكَمِ فَأَحْسَنَ، إذْ سَكَتَ عَنْ شَيْءٍ لَمْ يَتَبَيَّنْ لَهُ وَجْهُهُ.

L38001 As for Ibn Abī ʿImrān, he advanced a corrupt opinion, because no one can understand from someone's statement "combatants must be detained—the first then the first, even if she is a woman"—whether women's pardon in bloodshed is permissible or not. This is utterly crude, for nothing prevents anyone from asserting whatever they wish on any matter they please if not restrained by piety or shame.

وَأَمَّا ابْنُ أَبِي عِمْرَانَ فَقَالَ قَوْلًا فَاسِدًا، لِأَنَّهُ لَا يَفْهَمُ أَحَدٌ مِنْ قَوْلِ قَائِلٍ " عَلَى الْمُقْتَتِلِينَ أَنْ يُحْتَجَزُوا الْأَوَّلَ فَالْأَوَّلَ - وَإِنْ كَانَتْ امْرَأَةً " أَنَّهُ يَجُوزُ عَفْوُ النِّسَاءِ مِنْ الدَّمِ أَوْ لَا يَجُوزُ، وَهَذَا سَمِجٌ جِدًّا، وَمَا يَعْجِزُ أَحَدٌ مِنْ أَنْ يَدَّعِيَ فِيمَا شَاءَ مَا شَاءَ إذَا لَمْ يَحْجِزْهُ وَرَعٌ أَوْ حَيَاءٌ

L38002 As for Al-Muzani, he articulated the correct position that no one may oppose, which derives from the implication of the narration's wording and its unequivocal meaning. This entails that combatants must withdraw from one another and cease fighting, with the obligation to withdraw applying first to each preceding combatant in turn. This is because the initial combatants clash before those behind them, making withdrawal incumbent first upon each preceding combatant—even if it were a woman—since fighting among us is forbidden. This ruling is based on the narration being unauthenticated, and Hisn is an unknown narrator.

وَأَمَّا الْمُزَنِيّ فَإِنَّهُ قَالَ الْكَلَامَ الصَّحِيحَ الَّذِي لَا يَجُوزُ لِأَحَدٍ أَنْ يَقُولَ غَيْرَهُ، وَهُوَ مُقْتَضَى لَفْظِ الْخَبَرِ وَمَفْهُومُهُ الَّذِي لَا يُفْهَمُ مِنْهُ غَيْرُهُ، وَهُوَ أَنَّهُ وَاجِبٌ عَلَى الْمُقْتَتِلِينَ أَنْ يَحْجِزَ بَعْضُهُمْ عَنْ بَعْضٍ فَلَا يَقْتَتِلُونَ، وَأَنْ يَبْدَأَ بِالِانْحِجَازِ الْأَوَّلُ فَالْأَوَّلُ، لِأَنَّ الْأَوَّلِينَ مِنْ الْمُقْتَتِلِينَ هُمْ الْمُتَصَادِمُونَ قَبْلَ الَّذِينَ مِنْ خَلْفِهِمْ - فَعَرَضُ الِانْحِجَازِ وَاقِعٌ عَلَى الْأَوَّلِ فَالْأَوَّلِ - مِنْ الْمُقْتَتِلِينَ - وَلَوْ أَنَّهُ امْرَأَةٌ - لِأَنَّ الْقِتَالَ فِيمَا بَيْنَنَا مُحَرَّمٌ. هَذَا عَلَى أَنَّ الْخَبَرَ لَا يَصِحُّ، وَحِصْنٌ: مَجْهُولٌ.

[مَسْأَلَةٌ مَنْ لَهُ الْعَفْوُ عَنْ الدَّمِ وَمَنْ لَا عَفْوَ لَهُ]

A Legal Issue Concerning Those Entitled to Pardon in Cases of Homicide and Those Without Such a Right.

L38004 2085 - Issue: Concerning those entitled to pardon regarding blood and those not entitled. People have differed regarding this matter. A group held: Pardon is permissible for all heirs, including the wife, the husband, and others beyond them. If any of those we mentioned pardons, then retaliation (qisas) is prohibited, and diyah (blood money) becomes obligatory upon the perpetrator to be paid to those who did not pardon.

٢٠٨٥ - مَسْأَلَةٌ: فِيمَنْ لَهُ الْعَفْوُ عَنْ الدَّمِ وَمَنْ لَا عَفْوَ لَهُ؟ اخْتَلَفَ النَّاسُ فِي هَذَا فَقَالَتْ طَائِفَةٌ: الْعَفْوُ جَائِزٌ لِكُلِّ أَحَدٍ مِمَّنْ يَرِثُ، وَلِلزَّوْجَةِ، وَالزَّوْجِ، وَغَيْرِهِمَا، فَإِنْ عَفَا أَحَدٌ مِمَّنْ ذَكَرْنَا فَقَدْ حُرِّمَ الْقِصَاصُ وَوَجَبَتْ الدِّيَةُ لِمَنْ لَمْ يَعْفُ.

L38005 Others said: Pardon is exclusively for men, not women.

وَقَالَ آخَرُونَ: الْعَفْوُ لِلرِّجَالِ خَاصَّةً دُونَ النِّسَاءِ.

L38006 A group said: Whoever seeks retaliation, that is for him, and no attention is paid to those who seek blood money or pardon unless they agree on it.

وَقَالَتْ طَائِفَةٌ: مَنْ أَرَادَ الْقِصَاصَ فَذَلِكَ لَهُ، وَلَا يُلْتَفَتُ إلَى مَنْ أَرَادَ الدِّيَةَ أَوْ الْعَفْوَ، مَا لَمْ يَتَّفِقُوا عَلَى ذَلِكَ.

L38007 The first opinion—as narrated to us through the chain of Saʿīd ibn Manṣūr

from Hushaym from al-Aʿmash from Zayd ibn Wahb—is that a man killed his wife, who had brothers. One of them pardoned [the killer], so ʿUmar ibn al-Khaṭṭāb approved this ruling. He exempted the killer from liability for the pardoning brother's share and held him liable for the share of the brother who did not pardon.

فَالْقَوْلُ الْأَوَّلُ - كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الْأَعْمَشُ عَنْ زَيْدِ بْنِ وَهْبٍ أَنَّ رَجُلًا قَتَلَ امْرَأَتَهُ وَلَهَا إِخْوَةٌ فَعَفَا أَحَدُهُمْ فَأَجَازَ ذَلِكَ عُمَرُ بْنُ الْخَطَّابِ وَرَفَعَ عَنْ الْقَاتِلِ نَصِيبَ الَّذِي عَفَا وَغَرَّمَهُ نَصِيبَ الَّذِي لَمْ يَعْفُ.

L38008 Saʿīd said: Sufyān ibn ʿUyaynah and Abū ʿAwānah narrated to us, both of them transmitting from al-Aʿmash, from Zayd ibn Wahb, in a similar manner.

قَالَ سَعِيدٌ: ونا سُفْيَانُ بْنُ عُيَيْنَةَ، وَأَبُو عَوَانَةَ، كِلَاهُمَا عَنْ الْأَعْمَشِ عَنْ زَيْدِ بْنِ وَهْبٍ بِمِثْلِهِ.

L38009–38010 It has been narrated to us through the chain of Abū Bakr ibn Abī Shaybah, from Wakīʿ, from al-Aʿmash, from Zayd ibn Wahb, who said: A man saw another man with his wife, so he killed her? The case was brought to ʿUmar ibn al-Khaṭṭāb. One of her brothers waived his share of the blood money to the killer, so ʿUmar ordered the remaining brothers to accept their portions of the blood money.

وَرُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا الْأَعْمَشُ عَنْ زَيْدِ بْنِ وَهْبٍ قَالَ: رَأَى رَجُلٌ مَعَ امْرَأَتِهِ رَجُلًا فَقَتَلَهَا؟ فَرُفِعَ إلَى عُمَرَ بْنِ الْخَطَّابِ، فَوَهَبَ بَعْضُ إخْوَتِهَا نَصِيبَهُ لَهُ، فَأَمَرَ عُمَرُ سَائِرَهُمْ أَنْ يَأْخُذُوا الدِّيَةَ.

L38011 And from Ibrahim al-Nakha'i regarding a man who intentionally killed another man, so some guardians pardoned. The matter was raised as a question to Umar ibn al-Khattab? He said to Abdullah ibn Mas'ud: "Speak on it." He replied: "You are more deserving to speak, O Commander of the Faithful." Then Abdullah said: "When some guardians pardon, there is no retaliation. The liability is reduced from him by the share of the pardoning guardian, and they retain the remainder of the blood money." Umar said: "That is the opinion - you have agreed with what I had in mind."

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ فِي رَجُلٍ قَتَلَ رَجُلًا مُتَعَمِّدًا فَعَفَا بَعْضُ الْأَوْلِيَاءِ، فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ الْخَطَّابِ؟ فَقَالَ لِعَبْدِ اللَّهِ بْنِ مَسْعُودٍ: قُلْ فِيهَا، فَقَالَ: أَنْتَ أَحَقُّ أَنْ تَقُولَ يَا أَمِيرَ الْمُؤْمِنِينَ، فَقَالَ عَبْدُ اللَّهِ: إذَا عَفَا بَعْضُ الْأَوْلِيَاءِ فَلَا قَوَدَ، يُحَطُّ عَنْهُ بِحِصَّةِ الَّذِي عَفَا وَلَهُمْ بَقِيَّةُ الدِّيَةِ، فَقَالَ عُمَرُ: ذَلِكَ الرَّأْيُ، وَافَقْتَ مَا فِي نَفْسِي.

L38012 From the narration of Abd al-Razzaq, from Ma'mar, from al-A'mash, from Zayd ibn Wahb: A man who killed another was brought before Umar ibn al-Khattab. The relatives of the slain man came seeking to execute him. The sister of the slain man (who was the killer's wife) said: "I have forgiven my share against my husband." Umar then declared: "The man is exempted from execution."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الْأَعْمَشِ عَنْ زَيْدِ بْنِ وَهْبٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ رُفِعَ إلَيْهِ رَجُلٌ قَتَلَ رَجُلًا، فَجَاءَ أَوْلِيَاءُ الْمَقْتُولِ، فَأَرَادُوا قَتْلَهُ، فَقَالَتْ أُخْتُ الْمَقْتُولِ - وَهِيَ امْرَأَةُ الْقَاتِلِ: قَدْ عَفَوْت عَنْ حِصَّتِي مِنْ زَوْجِي، فَقَالَ عُمَرُ: عَتَقَ الرَّجُلُ مِنْ الْقَتْلِ.

L38013 Ibrāhīm said: The relinquishment by every shareholder is permissible.

وَعَنْ إبْرَاهِيمَ قَالَ: عَفْوُ كُلِّ ذِي سَهْمٍ جَائِزٌ.

L38014 And from Ibn Jurayj, he said: ʿAṭāʾ said regarding a man who killed another

intentionally, if one of the slain man's sons forgave and the other refused, then half the *diyah* is given to the one who did not forgive.

وَعَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ عَطَاءٌ فِي رَجُلٍ قَتَلَ رَجُلًا عَمْدًا فَعَفَا أَحَدُ بَنِي الْمَقْتُولِ، وَأَبَى الْآخَرُ: فَإِنَّهُ يُعْطَى الَّذِي لَمْ يَعْفُ شَطْرَ الدِّيَةِ.

L38015 From Qatadah: If one of the legal guardians pardons, the pardon becomes blood money, and the killer's liability is reduced by the share of the pardoning guardian.

وَعَنْ قَتَادَةَ - إِذَا عَفَا أَحَدُ الْأَوْلِيَاءِ فَإِنَّمَا تَكُونُ دِيَةً، وَيَسْقُطُ عَنْ الْقَاتِلِ بِقَدْرِ حِصَّةِ الَّذِي عَفَا.

L38016 From Umar ibn Abd al-Aziz: If one of them pardons, then the diyah.

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ إِذَا عَفَا أَحَدُهُمْ فَالدِّيَةُ.

L38017 As for the second opinion - as was narrated to us via the route of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī - he said: The pardon belongs to the guardians; the woman has no pardon.

وَأَمَّا الْقَوْلُ الثَّانِي - فَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: الْعَفْوُ إلَى الْأَوْلِيَاءِ، لَيْسَ لِلْمَرْأَةِ عَفْوٌ.

L38018 And through the chain of Abū Bakr ibn Abī Shaybah: Abū Khālid narrated to us, on the authority of al-Ashʿath, from al-Zuhrī, who said: The owner of the blood has the foremost right to pardon.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا أَبُو خَالِدٍ عَنْ أَشْعَثَ عَنْ الزُّهْرِيِّ قَالَ: صَاحِبُ الدَّمِ أَوْلَى بِالْعَفْوِ.

L38019 From Qatādah: Women have no right to pardon; but if blood money is due, she is entitled to her share.

وَعَنْ قَتَادَةَ: لَا عَفْوَ لِلنِّسَاءِ، فَإِذَا كَانَتْ الدِّيَةُ فَلَهَا نَصِيبُهَا.

L38020 And from Al-Hasan Al-Basri: Women do not have the right to forgo retribution.

وَعَنْ الْحَسَنِ الْبَصْرِيِّ: لَيْسَ لِلنِّسَاءِ عَفْوٌ.

L38021 From Umar ibn Abd al-Aziz: There is no forgiveness for a woman in cases of intentional crimes.

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، لَا عَفْوَ لِلْمَرْأَةِ فِي الْعَمْدِ.

L38022–38023 And from Ibrāhīm al-Nakhaʿī: There is no right to waive [retribution] for the husband nor for the wife.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ: لَيْسَ لِلزَّوْجِ وَلَا لِلْمَرْأَةِ عَفْوٌ.

L38024 From Az-Zuhri, Rabi'ah, and Abu Az-Zinad: Rabi'ah said: A mother has no right to pardon. The guardian retains guardianship wherever he may be. A daughter may pardon alongside the blood guardians, and the guardians may not pardon without her.

وَعَنْ الزُّهْرِيِّ، وَرَبِيعَةَ، وَأَبِي الزِّنَادِ، قَالَ رَبِيعَةُ: لَيْسَ لِلْأُمِّ عَفْوٌ، وَالْوَلِيُّ وَلِيٌّ حَيْثُ كَانَ، وَالْبِنْتُ تَعْفُو مَعَ وُلَاةِ الدَّمِ، وَلَا تَعْفُو الْوُلَاةُ دُونَهَا.

L38025 Az-Zuhri said, "His wali (guardian) has the foremost right to that."

وَقَالَ الزُّهْرِيُّ: وَلِيُّهُ أَوْلَى بِذَلِكَ.

L38026 Abū al-Zināad said: As for pardoning, it is the right of the slain person's legal

heir—he may either demand retribution or grant pardon, as he wishes.

وَقَالَ أَبُو الزِّنَادِ: أَمَّا الْعَفْوُ فَلِوَلِيِّ الْمَقْتُولِ إِنْ شَاءَ قَتَلَ وَإِنْ شَاءَ عَفَا.

L38027 As for the later scholars—Abū Ḥanīfah, Sufyān al-Thawrī, al-Ḥasan ibn Ṣāliḥ ibn Ḥayy, al-Awzāʿī, and al-Shāfiʿī—they upheld the opinion transmitted from ʿUmar ibn al-Khaṭṭāb and Ibn Masʿūd: that each heir holds the right to pardon, and the killer is not executed unless all heirs unanimously agree to his execution.

أَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ أَبَا حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيَّ، وَالْحَسَنَ بْنَ حَيٍّ، وَالْأَوْزَاعِيَّ، وَالشَّافِعِيَّ، قَالُوا بِمَا رُوِيَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ مَسْعُودٍ: أَنَّ لِكُلِّ وَارِثٍ عَفْوًا وَلَا يُقْتَلُ إِلَّا بِاجْتِمَاعِهِمْ عَلَى قَتْلِهِ.

L38028 Ibn Shubrumah and Al-Layth said: Women do not possess the legal authority to waive retributive punishments.

وَقَالَ ابْنُ شُبْرُمَةَ، وَاللَّيْثُ: لَيْسَ لِلنِّسَاءِ عَفْوٌ.

L38029 Ibn Abi Layla said: Every heir has a surplus except the husband and wife, for they receive no surplus.

وَقَالَ ابْنُ أَبِي لَيْلَى: لِكُلِّ وَارِثٍ عَفْوٌ إِلَّا الزَّوْجَ وَالزَّوْجَةَ فَلَا عَفْوَ لَهُمَا.

L38030 Malik said: The consensus ruling among us concerning a man intentionally killed who has no guardians except women and agnates—if these two groups wish to pardon the bloodshed, but the slain man's daughters refuse—is that the agnates hold no right to pardon, and his killer is consequently executed.

قَالَ مَالِكٌ: الْأَمْرُ الْمُجْتَمَعُ عَلَيْهِ عِنْدَنَا فِي الرَّجُلِ يُقْتَلُ عَمْدًا وَلَيْسَ لَهُ وُلَاةٌ إِلَّا النِّسَاءَ وَالْعَصَبَةَ فَأَرَادَا أَنْ يَعْفُوَا عَنْ الدَّمِ، وَأَبَى بَنَاتُ الْمَقْتُولِ فَإِنَّهُ لَا عَفْوَ لِلْعَصَبَةِ، يُقْتَلُ بِهِ قَاتِلُهُ.

L38031 If the daughters of the slain wish to pardon [the killer] but the male agnates refuse, the daughters' pardon holds no validity. The ruling is determined by what the male agnates declare, and the killer is to be executed if no agreement is reached regarding pardon.

فَإِنْ أَرَادَ بَنَاتُ الْمَقْتُولِ أَنْ يَعْفُونَ وَأَبَى الْعَصَبَةُ فَلَا عَفْوَ لِلْبَنَاتِ، وَالْقَوْلُ مَا قَالَ الْعَصَبَةُ، وَيُقْتَلُ الْقَاتِلُ إِذَا لَمْ يُجْتَمَعْ عَلَى الْعَفْوِ.

L38032 Similarly, if he has one daughter and she demands qisas (retaliation), and the agnates pardon [the offender], he is to be executed, and the agnates' pardon is void.

وَكَذَلِكَ إِنْ كَانَتْ لَهُ ابْنَةٌ وَاحِدَةٌ فَأَرَادَتْ الْقَتْلَ وَعَفَا الْعَصَبَةُ فَيُقْتَلُ وَلَا عَفْوَ لِلْعَصَبَةِ.

L38033 Another opinion is that if the murdered person has a son and a daughter, the daughter's pardon is invalid alongside the son. However, if the son pardons, the daughter's pardon becomes valid.

وَرَأْيٌ: إِذَا كَانَ لِلْمَقْتُولِ ابْنٌ وَابْنَةٌ: أَنَّهُ لَا عَفْوَ لِلِابْنَةِ مَعَ الِابْنِ، وَلَكِنْ إِنْ عَفَا الِابْنُ جَازَ عَلَى الِابْنَةِ.

L38034 Another opinion: The waiver of the nearest, then the next nearest, among the agnatic heirs, is valid over the more distant ones.

وَرَأْيٌ: عَفْوُ الْأَقْرَبِ فَالْأَقْرَبِ مِنْ الْعَصَبَةِ جَائِزٌ عَلَى الْأَبْعَدِ مِنْهُمْ.

L38035–38037 Abū Muḥammad said: When they differed as we have mentioned, it became obligatory for us to examine the evidence each faction cited to support their position, so we might discern the truth in this matter. We therefore

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا لِنَعْلَمَ الْحَقَّ مِنْ ذَلِكَ: فَنَظَرْنَا فِيمَا قَالَتْ بِهِ الطَّائِفَةُ الْقَائِلَةُ بِأَنَّ عَفْوَ كُلِّ ذِي سَهْمٍ

scrutinized the doctrine of the group that asserts the permissibility of every heir entitled to a fixed share relinquishing their right, and we found them [...] They cite the words of Allah the Exalted: {And to pardon is closer to righteousness, and do not neglect kindness between you} [Al-Baqarah: 237]. Since pardoning is closer to righteousness, it is obligatory that whoever advocates for what is closer to righteousness, their argument is more deserving [of acceptance].[1]

جَائِزٌ، فَوَجَدْنَاهُمْ يَقُولُونَ بِقَوْلِ اللَّهِ تَعَالَى {وَأَنْ تَعْفُوا أَقْرَبُ لِلتَّقْوَى وَلا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ} [البقرة: ٢٣٧] فَلَمَّا كَانَ الْعَفْوُ أَقْرَبَ لِلتَّقْوَى وَجَبَ أَنَّ مَنْ دَعَى إِلَى مَنْ هُوَ أَقْرَبُ لِلتَّقْوَى كَانَ قَوْلُهُ أَوْلَى.

L38038 They mentioned in that context what was narrated from Anas ibn Mālik, that he said: "I never saw the Messenger of Allah (peace and blessings be upon him) have any matter involving retaliation (qiṣāṣ) presented to him except that he enjoined forgiveness." They said: "This shows the Messenger of Allah (peace and blessings be upon him) enjoined forgiveness in every case of retaliation brought before him. Therefore, forgiveness must be given precedence over retaliation (qawd)."

وَذَكَرُوا فِي ذَلِكَ مَا رُوِيَ عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّهُ قَالَ: مَا رَأَيْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رُفِعَ إلَيْهِ شَيْءٌ فِيهِ قِصَاصٌ إلَّا أَمَرَ بِالْعَفْوِ؟ قَالُوا: فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ أَمَرَ فِي كُلِّ قِصَاصٍ رُفِعَ إلَيْهِ بِالْعَفْوِ، فَوَجَبَ أَنْ يَكُونَ الْعَفْوُ مُغَلَّبًا عَلَى الْقَوَدِ.

L38039 This too is a ruling reported from ʿUmar and Ibn Masʿūd in the presence of the Companions—may Allah be pleased with them—with no dissenter against them known.

وَهَذَا أَيْضًا حُكْمٌ قَدْ جَاءَ عَنْ عُمَرَ، وَابْنِ مَسْعُودٍ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا يُعْرَفُ لَهُمَا مُخَالِفٌ.

L38040 Thus, this is all they have cited as evidence; we know of nothing else besides it on their part whatsoever.

فَهَذَا كُلُّ مَا احْتَجُّوا بِهِ، مَا نَعْرِفُ لَهُمْ شَيْئًا غَيْرَهُ أَصْلًا.

L38041 Then we examined the statement of those who claim: "The pardon [for blood money liability] applies to all heirs except the husband and wife," and we found no plausible grounds for their argument except their assertion that these two are not among the agnatic heirs, nor do they pay blood money alongside the ʾaqilah (agnatic group responsible for diyah).

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: الْعَفْوُ لِجَمِيعِ الْوَرَثَةِ إلَّا الزَّوْجَ وَالزَّوْجَةَ فَلَمْ نَجِدْ لَهُمْ شُبْهَةً إلَّا أَنْ يَقُولُوا لَيْسَا مِنْ الْعَصَبَةِ، وَلَا يَعْقِلَانِ مَعَ الْعَاقِلَةِ.

L38042 We examined the opinion of those who claim that the waiver is exclusive to men to the exclusion of women, and found they possess no semblance of an argument whatsoever, except that they argue: "Women do not inherit rights of clientage nor guardianship in marriage, so similarly, there is no waiver for them?" As for those who distinguish between spouses and other heirs on

وَنَظَرْنَا فِي قَوْلِ مَنْ قَالَ: الْعَفْوُ لِلرِّجَالِ خَاصَّةً دُونَ النِّسَاءِ، فَلَمْ نَجِدْ لَهُمْ شُبْهَةً أَصْلًا، إلَّا أَنْ يَقُولُوا: إنَّهُنَّ لَا يَرِثْنَ الْوَلَاءَ، وَلَا الْوِلَايَةَ فِي الْإِنْكَاحِ فَكَذَلِكَ لَا عَفْوَ لَهُنَّ؟ وَأَمَّا مَنْ قَالَ بِالْفَرْقِ بَيْنَ الزَّوْجَيْنِ وَبَيْنَ سَائِرِ الْوَرَثَةِ مِنْ أَجْلِ أَنَّ الزَّوْجَيْنِ لَيْسَا مِنْ الْعَصَبَةِ، فَقَوْلٌ فِي غَايَةِ الْفَسَادِ.

[1] **Qur'an references (L38035):** Qur'an 2:237 (Al-Baqarah).

the grounds that spouses are not among the agnatic heirs – this is an utterly baseless view.

L38043 And from where did they derive that this matter belongs to the agnate relatives? For this ruling—what has not come as a command from Allah the Exalted nor from the Messenger of Allah (may Allah bless him and grant him peace)—is invalid.

L38044 As for the assertion that these two do not pay blood money alongside the liable kinship group? Indeed, but what does that entail? What rationale introduces the ruling of kinship liability into the ruling of waiver concerning blood money? Kinship liability applies solely to unintentional killing, while waiver pertains exclusively to intentional killing. What then justifies merging the rulings for intentional and unintentional killing? We then considered the opinion of those who restrict waiver to men and exclude women, finding it invalid, for it is *qiyas*—and all *qiyas* is inherently null.

L38045–38046 Then we examined Mālik's opinion and found it utterly contradictory without any evidence whatsoever, for he sometimes favored those advocating killing, as in the case of the daughter alongside the agnates: he held that if the agnates called for killing while the daughter pardoned, the decision would follow the agnates. He argued that her husband might influence her toward pardoning and that her position was weak. Yet if the agnates pardoned and the daughter called for killing, the decision would follow the daughter, arguing that she was the one aggrieved by her father's loss. At times, he accounted for her vulnerability and her husband's influence toward pardoning, yet ignored her status as the aggrieved party? At other times, he favored those advocating pardon, as when one son pardoned while others did not. And at another time, he prioritized men over women, as in the case of daughters alongside a son? These are manifestly contradictory statements, each nullifying the others, with no proof for any of them—neither in the Quran, nor in a sound or weak Sunnah, nor in analogy, nor in consensus, nor in the opinion of a Companion. Thus, this opinion is the most untenable of all opinions.

L38047 Then we examined the argument of those who permit any heir's pardon and

وَمِنْ أَيْنَ خَرَجَ لَهُمْ أَنَّ هَذَا الْأَمْرَ لِلْعَصَبَةِ، وَهَذَا حُكْمٌ مَا جَاءَ بِهِ مِنْ عِنْدِ اللَّهِ تَعَالَى أَمْرٌ، وَلَا مِنْ عِنْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ بَاطِلٌ.

وَأَمَّا أَنَّهُمَا لَا يَعْقِلَانِ مَعَ الْعَاقِلَةِ؟ فَنَعَمْ، فَكَانَ مَاذَا؟ وَمَا الَّذِي أَدْخَلَ حُكْمَ الْعَاقِلَةِ فِي حُكْمِ الْعَفْوِ مِنْ الدَّمِ؟ وَالْعَاقِلَةُ إنَّمَا هِيَ فِي الْقَتْلِ فِي الْخَطَأِ خَاصَّةً وَالْعَفْوُ إنَّمَا هُوَ فِي الْعَمْدِ خَاصَّةً، فَمَا الَّذِي جَمَعَ بَيْنَ حُكْمِ الْعَمْدِ وَالْخَطَأِ؟ ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ رَأَى الْعَفْوَ لِلرِّجَالِ دُونَ النِّسَاءِ، فَوَجَدْنَاهُ أَيْضًا فَاسِدًا، لِأَنَّهُ قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَالِكٍ - فَوَجَدْنَاهُ فِي غَايَةِ التَّنَاقُضِ بِلَا دَلِيلٍ أَصْلًا، لِأَنَّهُ مَرَّةً غَلَّبَ مَنْ دَعَا إلَى الْقَتْلِ، وَذَلِكَ فِي الِابْنَةِ مَعَ الْعَصَبَةِ " فَرَأَى: إنْ دَعَا الْعَصَبَةُ إلَى الْقَتْلِ وَعَفَتْ الِابْنَةُ أَنَّ الْقَوْلَ قَوْلُ الْعَصَبَةِ - وَاحْتَجَّ بِأَنَّهَا قَدْ يُدْخِلُهَا زَوْجُهَا إلَى الْعَفْوِ، وَأَمْرُهَا إلَى الضَّعْفِ، وَإِنْ عَفَا الْعَصَبَةُ وَدَعَتْ الِابْنَةُ إلَى الْقَتْلِ فَالْقَوْلُ قَوْلُ الِابْنَةِ - وَاحْتَجَّ بِأَنَّهَا الْمُصَابَةُ بِأَبِيهَا؟ فَمَرَّةً رَاعَى ضَعْفَهَا، وَإِدْخَالَ زَوْجِهَا لَهَا إلَى الْعَفْوِ، وَلَمْ يُرَاعِ مُصِيبَتَهَا؟ وَمَرَّةً غَلَّبَ مَنْ دَعَا إلَى الْعَفْوِ، وَذَلِكَ فِي الْبَنِينَ يَعْفُو أَحَدُهُمْ دُونَ الْآخَرِينَ وَمَرَّةً غَلَّبَ الرِّجَالَ عَلَى النِّسَاءِ وَذَلِكَ فِي الْبَنَاتِ مَعَ الِابْنِ؟ وَهَذِهِ أَقْوَالٌ ظَاهِرَةُ التَّنَاقُضِ يَهْدِمُ بَعْضُهَا بَعْضًا، لَا حُجَّةَ لِشَيْءٍ مِنْهَا، لَا فِي قُرْآنٍ وَلَا سُنَّةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا قِيَاسٍ، وَلَا فِي إجْمَاعٍ، وَلَا فِي قَوْلِ صَاحِبٍ - فَكَانَ هَذَا الْقَوْلُ أَسْقَطَ مِنْ سَائِرِ الْأَقْوَالِ.

prioritize it. We found them arguing: Allah the Exalted said, *"To pardon is nearer to piety"* [Al-Baqarah: 237], and He said, *"In retaliation there is life for you"* [Al-Baqarah: 179]. The highest objective of this view's proponents is that pardoning yields greater reward, while retaliation (undeniably permissible) is lawful. Since both are permissible, it is unanimously impermissible to compel someone who neither desires nor consents to adopt the superior option. Therefore, it is invalid to cite this verse as proof for the lapse of the right of those demanding retaliation when one heir pardons.[2]

ثُمَّ نَظَرْنَا فِي حُجَّةِ مَنْ أَجَازَ عَفْوَ كُلِّ وَارِثٍ وَغَلَبَهُ، فَوَجَدْنَاهُمْ يَقُولُونَ: قَالَ اللَّهُ تَعَالَى {وَأَنْ تَعْفُوا أَقْرَبُ لِلتَّقْوَى} [البقرة: ٢٣٧] ، وَقَالَ تَعَالَى {وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ} [البقرة: ١٧٩] فَأَعْلَى مَا يُرِيدُهُ أَهْلُ هَذَا الْقَوْلِ أَنْ يَكُونَ الْعَفْوُ أَعْظَمَ أَجْرًا، وَالْقِصَاصُ - بِلَا شَكٍّ مُبَاحٌ - وَإِذَا كَانَ كِلَاهُمَا مُبَاحًا فَلَا يَجُوزُ بِلَا خِلَافٍ أَنْ يُجْبَرَ عَلَى الْأَفْضَلِ مَنْ لَا يُرِيدُهُ غَيْرَ رَاغِبٍ - فَبَطَلَ أَنْ يَكُونَ فِي هَذِهِ الْآيَةِ دَلِيلٌ عَلَى سُقُوطِ حَقِّ مَنْ أَرَادَ الْقِصَاصَ إذَا عَفَا أَحَدُ الْوَرَثَةِ.

L38048 And such is the case regarding the ḥadīth of Anas—if authentic—that "the Messenger of Allah (peace be upon him) was never presented with a matter involving legal retribution without enjoining forgiveness." This is because no two members of the Ummah have differed that if authentic, it constitutes a recommended injunction, not a binding obligation. Given this, there is no dispute that one who does not desire the preferable course—yet is not averse to it, provided they intend what is permissible for them—may not be compelled to adopt it. Thus, any reliance upon this report is rendered void.

وَهَكَذَا الْقَوْلُ فِي حَدِيثِ أَنَسٍ إنْ صَحَّ أَنَّهُ «لَمْ يُرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ رُفِعَ إلَيْهِ شَيْءٌ فِيهِ قِصَاصٌ إلَّا أَمَرَ فِيهِ بِالْعَفْوِ -» لِأَنَّهُ لَمْ يَخْتَلِفْ اثْنَانِ مِنْ الْأُمَّةِ فِي أَنَّهُ إنْ صَحَّ فَإِنَّهُ أَمْرُ نَدْبٍ لَا أَمْرُ إلْزَامٍ، فَإِذْ ذَلِكَ كَذَلِكَ فَلَا خِلَافَ فِي أَنَّهُ لَا يَجُوزُ أَنْ يُجْبَرَ عَلَى الْأَفْضَلِ مَنْ لَا يُرِيدُهُ غَيْرَ رَاغِبٍ عَنْهُ - إذَا أَرَادَ مَا أُبِيحَ لَهُ - فَبَطَلَ أَنْ يَكُونَ لَهُمْ فِي هَذَا الْخَبَرِ تَعَلُّقٌ.

L38049–38051 Abu Muhammad said: When all these arguments were discredited and stripped of evidence, it became incumbent upon us since... They disputed whether we should return to what Allah the Exalted obligated us to revert to in cases of dispute, for He says: "If you disagree over something, refer it to Allah and the Messenger" [4:59]. So we did that. We found Allah the Exalted had decreed: "In qisas there is life for you" [2:179], and the Messenger of Allah—peace and blessings be upon him—said: "Whoever has a slain relative, their family chooses between two options: either to accept diya or to demand retaliation." Thus Allah the Exalted established qisas as a right, and the Messenger of Allah—peace and blessings be upon him—placed the slain's

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا سَقَطَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا وَتَعَرَّتْ مِنْ الْأَدِلَّةِ وَجَبَ عَلَيْنَا إذْ تَنَازَعُوا أَنْ نَرْجِعَ إلَى مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا الرُّجُوعَ إلَيْهِ عِنْدَ التَّنَازُعِ إذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ، فَفَعَلْنَا؟ فَوَجَدْنَا اللَّهَ تَعَالَى قَدْ قَالَ {وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ} [البقرة: ١٧٩] ، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ لَهُ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيَرَتَيْنِ بَيْنَ أَنْ يَأْخُذُوا الْعَقْلَ وَبَيْنَ أَنْ يَقْتُلُوا» فَجَعَلَ اللَّهُ تَعَالَى الْقِصَاصَ حَقًّا، وَجَعَلَ رَسُولُ اللَّهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَهْلَ الْقَتِيلِ بَيْنَ خِيَرَتَيْنِ - إمَّا أَخْذُ الْعَقْلِ، وَإِمَّا الْقَتْلُ، فَسَاوَى بَيْنَ الْأَمْرَيْنِ أَيَّهُمَا شَاءُوا؟

[2] **Qur'an references (L38047):** Qur'an 2:237 (Al-Baqarah); Qur'an 2:179 (Al-Baqarah).

family before two choices: either to take diya or to kill. Did He thereby equate both options, leaving them free to choose whichever they will?[3]

L38052 As related to us through Muslim's chain: Isḥāq ibn Manṣūr reported to us that Bishr ibn ʻUmar al-Zahrānī said: I heard Mālik ibn Anas say: Abū Laylā ibn ʻAbdullāh ibn ʻAbd al-Raḥmān ibn Sahl ibn Abī Ḥathma narrated to me that he was informed by prominent men of his tribe: "'Abdullāh ibn Sahl and Muḥayyiṣah set out for Khaybar due to hardship that had afflicted them. Muḥayyiṣah came to the Messenger of Allāh (peace be upon him) and informed him that 'Abdullāh ibn Sahl had been killed and thrown into a spring or a pit. Muḥayyiṣah went to the Jews and said: 'By Allāh, you killed him!' They replied: 'By Allāh, we did not kill him.' He then returned to his people and informed them of what had happened. Thereafter, he and his brother Muḥayyiṣah—who was older than him—and 'Abd al-Raḥmān ibn Sahl went back [to the Prophet]. Muḥayyiṣah (who had been in Khaybar) began to speak, but the Messenger of Allāh (peace be upon him) said: 'Let the elder speak! Let the elder speak!' He then declared: 'Either they pay the diyah for your companion, or war will be declared against them.' The Messenger of Allāh (peace be upon him) wrote to them concerning this matter, and they wrote back: 'By Allāh, we did not kill him.' The Messenger of Allāh (peace be upon him) asked: 'Will you swear an oath and claim entitlement to your companion's blood?' They replied: 'No.'"

L38053 He cited the hadith through the chain of ʿUbayd Allāh ibn ʿUmar al-Qawārīrī who reported to us: Ḥammād ibn Zayd reported to us, Yaḥyā ibn Saʿīd reported from Bashīr ibn Yasār from Sahl ibn Abī Ḥathma and Rāfiʿ ibn Khadīj: "Muḥayyiṣah ibn Masʿūd and ʿAbd Allāh ibn Sahl set out toward Khaybar and separated among the palm trees. ʿAbd Allāh ibn Sahl was killed, and they accused the Jews. His brother ʿAbd al-Raḥmān (the youngest among them) and his cousins Ḥuwayyiṣah and Muḥayyiṣah came to the Messenger of Allāh (peace and blessings be upon him). When ʿAbd al-Raḥmān spoke about his brother's matter, the Messenger of Allāh (peace and blessings be upon him) said: 'Let the eldest speak first—or should the eldest begin?' The two

[3] **Qur'an references (L38049):** Qur'an 4:59 (An-Nisa); Qur'an 2:179 (Al-Baqarah).

وَكَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا بِشْرُ بْنُ عُمَرَ - هُوَ الزَّهْرَانِيُّ - سَمِعْت مَالِكَ بْنَ أَنَسٍ يَقُولُ: حَدَّثَنِي أَبُو لَيْلَى بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ سَهْلِ بْنِ أَبِي حَثْمَةَ: أَنَّهُ أَخْبَرَهُ عَنْ رِجَالٍ مِنْ كُبَرَاءِ قَوْمِهِ: «أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ، وَمُحَيِّصَةَ خَرَجَا إلَى خَيْبَرَ مِنْ جُهْدٍ أَصَابَهُمَا فَأَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُحَيِّصَةُ وَأَخْبَرَ: أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ قُتِلَ وَطُرِحَ فِي عَيْنٍ أَوْ فَقِيرٍ فَأَتَى يَهُودَ فَقَالَ: أَنْتُمْ وَاَللَّهِ قَتَلْتُمُوهُ، قَالُوا: وَاَللَّهِ مَا قَتَلْنَاهُ، ثُمَّ أَقْبَلَ حَتَّى قَدِمَ عَلَى قَوْمِهِ فَذَكَرَ لَهُمْ ذَلِكَ، ثُمَّ أَقْبَلَ هُوَ وَأَخُوهُ مُحَيِّصَةُ - وَهُوَ أَكْبَرُ مِنْهُ - وَعَبْدُ الرَّحْمَنِ بْنُ سَهْلٍ، فَذَهَبَ مُحَيِّصَةُ لِيَتَكَلَّمَ - وَهُوَ الَّذِي كَانَ بِخَيْبَرَ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْكُبْرَ، الْكُبْرَ، إمَّا أَنْ يَدُوا صَاحِبَكُمْ، وَإِمَّا أَنْ يُؤْذَنُوا بِحَرْبٍ، فَكَتَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَيْهِمْ فِي ذَلِكَ، فَكَتَبُوا: إنَّا وَاَللَّهِ مَا قَتَلْنَاهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَتَحْلِفُونَ وَتَسْتَحِقُّونَ دَمَ صَاحِبِكُمْ؟ قَالُوا: لَا» .

وَذَكَرَ الْحَدِيثَ وَبِهِ: إلَى مُسْلِمٍ حَدَّثَنِي عُبَيْدُ اللَّهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ نا حَمَّادُ بْنُ زَيْدٍ نا يَحْيَى بْنُ سَعِيدٍ عَنْ بَشِيرِ بْنِ يَسَارٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ، وَرَافِعِ بْنِ خَدِيجٍ «أَنَّ مُحَيِّصَةَ بْنَ مَسْعُودٍ، وَعَبْدَ اللَّهِ بْنَ سَهْلٍ انْطَلَقَا قِبَلَ خَيْبَرَ فَتَفَرَّقَا فِي النَّخْلِ، فَقُتِلَ عَبْدُ اللَّهِ بْنُ سَهْلٍ، فَاتَّهَمُوا الْيَهُودَ، فَجَاءَ أَخُوهُ عَبْدُ الرَّحْمَنِ، وَابْنَا عَمِّهِ حُوَيِّصَةُ، وَمُحَيِّصَةُ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَتَكَلَّمَ عَبْدُ الرَّحْمَنِ فِي أَمْرِ أَخِيهِ - وَهُوَ أَصْغَرُ مِنْهُمْ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَبِّرْ، الْكُبْرَ، أَوْ قَالَ: لِيَبْدَأْ الْأَكْبَرُ؟ فَتَكَلَّمَا

cousins then spoke about their companion's case. The Messenger of Allāh (peace and blessings be upon him) said: 'Shall fifty of you swear against a man from them, causing his blood money to be paid?' They replied: 'How can we swear about a matter we did not witness?'" He then mentioned the remainder of the report.

فِي أَمْرِ صَاحِبِهِمَا، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُقْسِمُ خَمْسُونَ مِنْكُمْ عَلَى رَجُلٍ عَنْهُمْ فَيُدْفَعُ بِرُمَّتِهِ؟ فَقَالُوا: أَمْرٌ لَمْ نَشْهَدْهُ كَيْفَ نَحْلِفُ؟» وَذَكَرَ بَاقِيَ الْخَبَرِ.

L38054–38055 In this established hadith—that the Messenger of Allah, peace and blessings be upon him, assigned the right to demand *qisas* (retribution) for bloodshed to the paternal cousin [of the same degree], just as he assigned it to the paternal uncle, the inheriting heir, to the exclusion of the paternal cousin—and that he, peace be upon him, prioritized the paternal cousin [of the same degree] first, this invalidates the claim of those who maintain that the right belongs to the closest relative then the next closest, or to the heir to the exclusion of others.

فَفِي هَذَا الْخَبَرِ الثَّابِتِ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ الْحَقَّ فِي طَلَبِ الدَّمِ لِابْنِ الْعَمِّ [لِسِنِّهِ] كَمَا جَعَلَهُ لِلْأَخِ لِلْأَبِ الْوَارِثِ دُونَ ابْنِ الْعَمِّ، وَأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَدَأَ ابْنُ الْعَمِّ لِسِنِّهِ - فَبَطَلَ بِهَذَا قَوْلُ مَنْ رَاعَى أَنَّ الْحَقَّ لِلْأَقْرَبِ فَالْأَقْرَبِ، أَوْ لِلْوَارِثِ دُونَ غَيْرِهِ.

L38056 It has been established that the right belongs to the kin, as stated in the Qur'an and the authentic Sunnah. The paternal cousin is undoubtedly among the kin in Arabic linguistic usage—and this constitutes the valid consensus, because it occurred with the knowledge of the Companions in Medina. The occurrence of a case like the killing of 'Abdullāh ibn Sahl and the Banū Ḥārithah's pursuit of blood retaliation could not have been concealed from any of his people or the Muhājirīn. Therefore, the right belongs to all equally. It is invalid to prioritize any one of them over others without explicit textual evidence or consensus—and there exists neither textual evidence nor consensus in this matter.

وَصَحَّ أَنَّ الْحَقَّ " لِلْأَهْلِ " كَمَا جَاءَ فِي الْقُرْآنِ، وَالسُّنَّةِ الصَّحِيحَةِ، وَابْنُ الْعَمِّ مِنْ " الْأَهْلِ " بِلَا شَكٍّ فِي لُغَةِ الْعَرَبِ - وَهَذَا هُوَ الْإِجْمَاعُ الصَّحِيحُ، لِأَنَّهُ كَانَ بِعِلْمِ الصَّحَابَةِ بِالْمَدِينَةِ، إذْ قَتْلُ مِثْلِ عَبْدِ اللَّهِ بْنِ سَهْلٍ، وَقِيَامُ بَنِي حَارِثَةَ فِي طَلَبِ دَمِهِ لَا يُمْكِنُ اسْتِتَارُ مِثْلِهِ عَنْ أَحَدٍ مِنْ قَوْمِهِ، وَعَنْ الْمُهَاجِرِينَ، فَإِذَا الْحَقُّ لِلْجَمِيعِ سَوَاءٌ، فَمِنْ الْبَاطِلِ أَنْ يُغَلِّبَ أَحَدُهُمْ عَلَى الْآخَرِينَ مِنْهُمْ إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ - وَلَا نَصَّ، وَلَا إجْمَاعَ فِي ذَلِكَ.

L38057 Then we considered the case where one of the family members pardoned while others did not after the validity of the agreement—based on the consensus of the *Ummah* [community of believers] that if they all agree on *qisas* [retribution], it is enacted; if they unanimously agree on pardon, it is enacted—and the established proof that if they agree on *diyah* [blood money] or *mufādāh* [compensation], it is enacted. We found that *qisas* and *diyah* were presented as equally valid options, neither prioritized over the other. Thus, it is impermissible to allow the pardon of the pardoning family member to override the will of those who sought *qisas* [retribution] in favor of the pardon, except through a textual ruling or consensus.

ثُمَّ نَظَرْنَا إذَا عَفَا أَحَدُ " الْأَهْلِ " وَلَمْ يَعْفُ غَيْرُهُ مِنْهُمْ بَعْدَ صِحَّةِ الِاتِّفَاقِ مِنْ إجْمَاعِ الْأُمَّةِ عَلَى أَنَّهُمْ كُلَّهُمْ إنْ اتَّفَقُوا عَلَى الْقَوَدِ نَفَذَ، وَإِنْ اتَّفَقُوا عَلَى الْعَفْوِ نَفَذَ - وَقِيَامُ الْبُرْهَانِ عَلَى أَنَّهُمْ إنْ اتَّفَقُوا عَلَى الدِّيَةِ أَوْ الْمُفَادَاةِ نَفَذَ ذَلِكَ فَوَجَدْنَا الْقَوَدَ وَالدِّيَةَ قَدْ وَرَدَ التَّخْيِيرُ فِيهِمَا وُرُودًا وَاحِدًا لَيْسَ أَحَدُهُمَا مُقَدَّمًا عَلَى الْآخَرِ، فَلَمْ يَجُزْ أَنْ يُغَلَّبَ عَفْوُ الْعَافِي [عَلَى إرَادَةِ مَنْ أَرَادَ الْقِصَاصَ عَلَى عَفْوِ الْعَافِي] إلَّا بِنَصٍّ " أَوْ إجْمَاعٍ -

Yet there is neither a textual ruling nor consensus granting precedence to the pardoning party. Reflecting on this, we found Allah the Exalted stating: *"No soul bears the burden of another, and no bearer shall bear another's load"* (6:164). By this verse, it became obligatory that the pardon of the pardoning family member cannot apply to those who did not pardon.[4]

L38058–38060 We found that it becomes lawful to shed the killer's blood by the very act of killing: As narrated to us by Abdullah ibn Rabee'ah from Umar ibn Abd al-Malik from Muhammad ibn Bakr from Abu Dawud Sulayman ibn Harb from Hammad ibn Zayd from Yahya ibn Sa'eed al-Ansari from Abu Umamah ibn Sahl ibn Hunayf, who said: We were with Uthman ibn Affan—may Allah be pleased with him—during his siege. He emerged before us with his face pale and said: "They have just threatened to kill me. But for what reason would they kill me? I heard Allah's Messenger—peace and blessings be upon him—say: 'It is unlawful to shed a Muslim person's blood except in one of three [cases]: a man who disbelieves after accepting Islam, or..." If one commits zinā after attaining legal immunity (iḥṣān) or kills a soul without [lawful] retaliation for a soul, he is to be killed. By Allah, I did not commit zinā in the pre-Islamic era nor after embracing Islam, nor have I ever desired to replace my faith with anything else since Allah the Exalted first guided me, and I have not killed any soul.

L38061 Abu Muhammad said: The statement of the Prophet—peace and blessings of Allah be upon him—validated that whoever kills a soul, his blood transitions from inviolability to permissibility through the killer's own act of killing. Since this is established, the killer's blood is conclusively deemed permissible, and the advocate for enforcing qisas advocates for what has been incontrovertibly confirmed as a rightful claim. The one who relinquishes [the right to qisas] seeks to prohibit blood whose permissibility has been decisively established—a right he possesses only through explicit textual evidence or juristic consensus. Whoever demands diyah without the agreement of the other entitled parties seeks to legitimize the appropriation of wealth, though wealth remains inviolable by the decree of Allah's Messenger—peace and blessings of Allah be upon him—who declared: "Your blood and your wealth are sa-

وَلَا نَصَّ، وَلَا إجْمَاعَ فِي تَغْلِيبِ الْعَافِي - فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] فَوَجَبَ بِهَذِهِ الْآيَةِ أَنْ لَا يَجُوزَ عَفْوُ الْعَافِي عَمَّنْ لَمْ يَعْفُ.

وَوَجَدْنَا الْقَاتِلَ قَدْ حَلَّ دَمُهُ بِنَفْسِ الْقَتْلِ: كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ نا أَبُو دَاوُد سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ أَبِي أُمَامَةَ بْنِ سَهْلِ بْنِ حُنَيْفٍ قَالَ: كُنَّا مَعَ عُثْمَانَ بْنِ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُ - وَهُوَ مَحْصُورٌ - فَخَرَجَ إلَيْنَا وَهُوَ مُتَغَيِّرٌ لَوْنُهُ فَقَالَ: يَتَوَاعَدُونِي بِالْقَتْلِ آنِفًا، وَبِمَ يَقْتُلُونَنِي؟ سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إلَّا بِإِحْدَى ثَلَاثٍ: رَجُلٌ كَفَرَ بَعْدَ إسْلَامِهِ، أَوْ زَنَا بَعْدَ إحْصَانٍ، أَوْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ، فَيُقْتَلُ -» فَوَاَللَّهِ مَا زَنَيْت فِي جَاهِلِيَّةٍ وَلَا إسْلَامٍ قَطُّ، وَلَا أَحْبَبْتُ أَنَّ لِي بِدِينِي بَدَلًا مُذْ هَدَانِي اللَّهُ تَعَالَى، وَلَا قَتَلْتُ نَفْسًا ".

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ بِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ مَنْ قَتَلَ نَفْسًا خَرَجَ دَمُهُ مِنْ التَّحْرِيمِ إلَى التَّحْلِيلِ بِنَفْسِ قَتْلِهِ مَنْ قَتَلَ، فَإِذْ صَحَّ هَذَا فَالْقَاتِلُ مُتَيَقَّنٌ تَحْلِيلُ دَمِهِ وَالدَّاعِي إلَى أَخْذِ الْقَوَدِ دَاعٍ إلَى مَا قَدْ صَحَّ بِيَقِينٍ وَذَلِكَ لَهُ، وَالْعَافِي مُرِيدٌ تَحْرِيمَ دَمٍ قَدْ صَحَّ تَحْلِيلُهُ بِيَقِينٍ فَلَيْسَ لَهُ ذَلِكَ، إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ، وَمُرِيدُ أَخْذِ الدِّيَةِ دُونَ مَنْ مَعَهُ مُرِيدٌ إبَاحَةَ أَخْذِ مَالٍ، وَالْأَمْوَالُ مُحَرَّمَةٌ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَالنَّصُّ قَدْ جَاءَ بِإِبَاحَةِ دَمِ الْقَاتِلِ، كَمَا قُلْنَا بِيَقِينٍ قَتْلِهِ، وَلَمْ يَأْتِ نَصٌّ بِإِبَاحَةِ الدِّيَةِ إلَّا بِأَخْذِ " الْأَهْلِ " لَهَا، وَهَذَا لَفْظٌ يَقْتَضِي

[4] **Qur'an references (L38057):** Qur'an 6:164 (Al-An'am).

cred to you." The textual evidence explicitly permits the killer's blood, as we affirmed regarding the certainty of his guilt, but no text permits diyah except through the family's collective acceptance. This wording entails their unanimous agreement to receive it. Thus, diyah—unless the family unanimously agrees to accept it, given the absence of textual or juristic consensus permitting it—is conclusively nullified.

إِجْمَاعَهُمْ عَلَى أَخْذِهَا فَالدِّيَةُ مَا لَمْ يُجْمِعْ " الْأَهْلُ " عَلَى أَخْذِهَا، إِذْ لَمْ يُجْهَا نَصٌّ، وَلَا إِجْمَاعٌ - فَبَطَلَ بِيَقِينٍ.

L38062 It is legally affirmed that whoever demands retaliation is entitled to it—this is Mālik's ruling concerning daughters alongside male agnatic heirs, though he contradicted this ruling in cases involving sons and daughters together, and among certain sons relative to others.

وَصَحَّ أَنَّ مَنْ دَعَا إِلَى الْقَوَدِ فَهُوَ لَهُ - وَهُوَ قَوْلُ مَالِكٍ فِي الْبَنَاتِ مَعَ الْعَصَبَةِ، إِلَّا أَنَّهُ نَاقَضَ فِي ذَلِكَ مَعَ الْبَنِينَ وَالْبَنَاتِ، وَفِي بَعْضِ الْبَنِينَ مَعَ بَعْضٍ.

L38063 Abu Muhammad said: The position we uphold is that all of this is the same, and that the right to decide belongs to the family—those to whom the slain person is recognized by affiliation, just as Abdullah ibn Sahl was recognized by his affiliation to Banu Harithah. They are the ones the Prophet—may Allah's blessings and peace be upon him—directly commanded that fifty of them must swear an oath, and they are entitled to demand retribution or blood money. Whoever among them seeks retribution—be it a child, paternal male cousin, daughter, sister, mother, husband, wife, paternal female cousin, or paternal aunt—retribution becomes obligatory. No regard is given to the forgiveness of those who pardon, whether they are closer in kinship, more distant, or greater in number, for the reason we have mentioned.

قَالَ أَبُو مُحَمَّد: وَالَّذِي نَقُولُ بِهِ أَنَّ كُلَّ ذَلِكَ سَوَاءٌ وَأَنَّ الْحُكْمَ لِلْأَهْلِ وَهُمْ الَّذِينَ يُعْرَفُ الْمَقْتُولُ بِالِانْتِمَاءِ إلَيْهِمْ، كَمَا كَانَ يُعْرَفُ عَبْدُ اللَّهِ بْنُ سَهْلٍ بِالِانْتِمَاءِ إلَى بَنِي حَارِثَةَ وَهُمْ الَّذِينَ أَمَرَهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ يُقْسِمَ مِنْهُمْ خَمْسُونَ وَيَسْتَحِقُّونَ الْقَوَدَ أَوْ الدِّيَةَ، وَأَنَّ مَنْ أَرَادَ مِنْهُمْ الْقَوَدَ سَوَاءٌ كَانَ وَلَدًا أَوْ ابْنَ عَمٍّ [أَوْ ابْنَةً] أَوْ أُخْتًا، أَوْ غَيْرَ ذَلِكَ مِنْ أُمٍّ، أَوْ زَوْجٍ، أَوْ زَوْجَةٍ، أَوْ بِنْتِ عَمٍّ، أَوْ عَمَّةٍ - فَالْقَوَدُ وَاجِبٌ، وَلَا يُلْتَفَتُ إلَى عَفْوِ مَنْ عَفَا مِمَّنْ هُوَ أَقْرَبُ، أَوْ أَبْعَدُ، أَوْ أَكْثَرُ فِي الْعَدَدِ لِمَا ذَكَرْنَا.

L38064 If all heirs unanimously agree to pardon retaliation, they are entitled to the blood money, and retaliation becomes prohibited. If an heir wishes to relinquish their claim to blood money, they may do so—specifically regarding their share—as it is wealth from their own possession. And with Allah, the Exalted, lies success.

فَإِنْ اتَّفَقَ الْوَرَثَةُ كُلُّهُمْ عَلَى الْعَفْوِ فَلَهُمْ الدِّيَةُ حِينَئِذٍ وَيُحَرَّمُ الدَّمُ، فَإِنْ أَرَادَ أَحَدُ الْوَرَثَةِ الْعَفْوَ عَنْ الدِّيَةِ فَلَهُ ذَلِكَ، فِي حِصَّتِهِ خَاصَّةً، إذْ هُوَ مَالٌ مِنْ مَالِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38065 A case where among the slain person's guardians there were those who were absent, minor, or insane.

[مَسْأَلَةٌ مَقْتُولٌ كَانَ فِي أَوْلِيَائِهِ غَائِبٌ أَوْ صَغِيرٌ أَوْ مَجْنُونٌ]

L38066 2086 - Issue: If a slain person has among his guardians someone absent, a minor, or insane—what is the ruling? Scholars differed on this. Abū Ḥanīfah said: If the slain has sons among whom one is an adult and the rest are

minors, the sole adult may carry out retribution and need not await the minors' attainment of puberty.

٢٠٨٦ - مَسْأَلَةٌ: مَقْتُولٌ كَانَ فِي أَوْلِيَائِهِ غَائِبٌ، أَوْ صَغِيرٌ، أَوْ مَجْنُونٌ؟ اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَ أَبُو حَنِيفَةَ: إِذَا كَانَ لِلْمَقْتُولِ بَنُونَ وَفِيهِمْ وَاحِدٌ كَبِيرٌ وَغَيْرُهُمْ صِغَارٌ: إِنَّ لِلْوَاحِدِ الْكَبِيرِ أَنْ يَقْتُلَ، وَلَا يَنْتَظِرَ بُلُوغَ الصِّغَارِ.

L38067–38068 قَالَ: فَإِنْ كَانَ فِيهِمْ غَائِبٌ لَمْ يَكُنْ لِلْحَاضِرِينَ أَنْ يَقْتُلُوا حَتَّى يَقْدَمَ الْغَائِبُ - وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ - وَبِهِ يَقُولُ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ.

L38069 وَقَالَ مَالِكٌ مِثْلَ ذَلِكَ، سَوَاءٌ سَوَاءٌ - وَزَادَ أَنَّ الْمَقْتُولَ إِذَا كَانَ لَهُ وَلَدٌ صَغِيرٌ، وَأَخٌ كَبِيرٌ، أَوْ أُخْتٌ كَبِيرَةٌ، فَلِلْأَخِ، أَوْ لِلْأُخْتِ أَنْ يَقْتُلَا قَوَدًا، وَلَا يَنْتَظِرُ بُلُوغُ الصَّغِيرِ، وَكَذَلِكَ لِلْعَصَبَةِ أَيْضًا - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ.

L38070 وَرَأَى مَالِكٌ: لِلْعَصَبَةِ - إِذْ كَانَ الْوَلَدُ صَغِيرًا - أَنْ يُصَالِحُوا عَلَى الدِّيَةِ، وَيَنْفُذَ حُكْمُهُمْ.

L38071 وَقَالَ ابْنُ أَبِي لَيْلَى، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو يُوسُفَ، وَمُحَمَّدٌ، وَالشَّافِعِيُّ: لَا يَسْتَقِيدُ الْكَبِيرُ مِنْ الْبَنِينَ حَتَّى يَبْلُغَ الصَّغِيرُ - وَرُوِيَ هَذَا الْقَوْلُ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

L38072 قَالَ أَبُو مُحَمَّدٍ: وَالظَّاهِرُ مِنْ قَوْلِهِمْ: أَنَّ الْمَجْنُونَ كَالصَّغِيرِ، فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ: فَنَظَرْنَا فِي قَوْلِ أَبِي حَنِيفَةَ فَوَجَدْنَاهُ ظَاهِرَ التَّنَاقُضِ إِذْ فَرَّقَ بَيْنَ الْغَائِبِ وَالصَّغِيرِ، وَوَجَدْنَا حُجَّتَهُمْ فِي هَذَا: أَنَّ الْغَائِبَ لَا يُوَلَّى عَلَيْهِ، وَالصَّغِيرُ يُوَلَّى عَلَيْهِ.

L38073 قَالُوا: وَكَمَا كَانَ أَحَدُ الْوَلِيَّيْنِ يُزَوِّجُ إِذَا كَانَ هُنَالِكَ صَغِيرٌ مِنْ الْأَوْلِيَاءِ، فَكَذَلِكَ يَقْتُلُ - وَقَالُوا: قَدْ قَتَلَ الْحَسَنُ بْنُ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمَا - عَبْدَ الرَّحْمَنِ بْنِ مُلْجَمٍ قَاتِلَ عَلِيٍّ،

the Companions—may Allah be pleased with them—with no known dissenter among them.

وَلِعَلِيٍّ بَنُونَ صِغَارٌ وَهُمْ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - دُونَ مُخَالِفٍ يُعْرَفُ لَهُ مِنْهُمْ.

L38074 Ali said: As for their argument based on the action of al-Hasan ibn Ali, it is applicable to the Shafiʿis and those Hanafis who agreed - Abu Yusuf and Muhammad ibn al-Hasan - because they act similarly when it conforms to their doctrinal adherence.

قَالَ عَلِيٌّ: أَمَّا احْتِجَاجُهُمْ بِفِعْلِ الْحَسَنِ بْنِ عَلِيٍّ فَهُوَ لَازِمٌ لِلشَّافِعِيِّينَ، وَلِمَنْ وَافَقَ مِنْ الْحَنَفِيِّينَ: أَبَا يُوسُفَ، وَمُحَمَّدَ بْنَ الْحَسَنِ، لِأَنَّهُمْ مِثْلُ هَذَا إذَا وَافَقَ تَقْلِيدَهُمْ.

L38075–38077 Abu Muhammad said: If something like this is deemed consensus, then the Ḥanafīs have indeed testified against their own scholar contrary to consensus. Should they declare both of them disbelievers for this, or accuse them of innovation, it would be unlawful for them to accept blood money for them from a disbeliever. Nor from an innovator—even if they excused them both in that—then we have a share of the excuse akin to that of Ya'qub and Muhammad. Indeed, the condemnation of both has been rendered void forever by something like this, and this is clear. And all praise belongs to Allah.

قَالَ أَبُو مُحَمَّد: فَلَئِنْ كَانَ مِثْلُ هَذَا إجْمَاعًا فَلَقَدْ شَهِدَ الْحَنَفِيُّونَ عَلَى شَيْخِهِمْ بِخِلَافِ الْإِجْمَاعِ، فَإِنْ كَفَّرُوهُمَا بِهَذَا، أَوْ بَدَّعُوهُمَا فَمَا يَحِلُّ لَهُمْ أَخْذُ دِيَتِهِمْ عَنْ كَافِرٍ، وَلَا عَنْ مُبْتَدِعٍ - وَإِنْ عَذَرُوهُمَا فِي ذَلِكَ - فَلَنَا مِنْ الْعُذْرِ مَا لِيَعْقُوبَ، وَمُحَمَّدٍ - وَقَدْ بَطَلَ تَشْنِيعُهُمْ فِي الْأَبَدِ بِمِثْلِ هَذَا، وَهَذَا وَاضِحٌ. وَلِلَّهِ الْحَمْدُ.

L38078 Abū Muḥammad said: Among the objections raised by the Shāfiʿīs was their claim: "Al-Ḥasan ibn ʿAlī—may Allah be pleased with them both—was an Imam, so he examined this matter by the right of the Imamate, or his killer killed him under the pretext of warfare, not as lawful retaliation (qisas)." This is invalid, for ʿAbd al-Raḥmān ibn Muljam neither engaged in warfare nor endangered the road.

وَقَالَ أَبُو مُحَمَّد: فَكَانَ مِنْ اعْتِرَاضِ الشَّافِعِيِّينَ أَنْ قَالُوا: إنَّ الْحَسَنَ بْنَ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمَا - كَانَ إمَامًا فَنَظَرَ فِي ذَلِكَ بِحَقِّ الْإِمَامَةِ، أَوْ قَتَلَهُ بِالْمُحَارَبَةِ لَا قَوَدًا - وَهَذَا لَيْسَ بِشَيْءٍ، لِأَنَّ عَبْدَ الرَّحْمَنِ بْنَ مُلْجَمٍ لَمْ يُحَارِبْ، وَلَا أَخَافَ السَّبِيلَ.

L38079 According to the Shāfiʿīs, neither the Imam nor the guardian may exact retaliation for a minor until he reaches adulthood. Thus, their vilification is invalidated, except that this case rebounds upon the Ḥanafīs in the same manner they denounced the Shāfiʿīs—exactly the same, exactly the same—because they and the Mālikīs unanimously hold that whoever kills another based on juristic interpretation incurs no retaliation for it.

وَلَيْسَ لِلْإِمَامِ - عِنْدَ الشَّافِعِيِّينَ - وَلَا لِلْوَصِيِّ، أَنْ يَأْخُذَ الْقَوَدَ لِصَغِيرٍ حَتَّى يَبْلُغَ - فَبَطَلَ تَشْنِيعُهُمْ إلَّا أَنَّ هَذِهِ الْقِصَّةَ عَائِدَةٌ عَلَى الْحَنَفِيِّينَ بِمِثْلِ مَا شَغَبُوا بِهِ عَلَى الشَّافِعِيِّينَ سَوَاءً سَوَاءً، لِأَنَّهُمْ وَالْمَالِكِيُّونَ لَا يَخْتَلِفُونَ فِي أَنَّ مَنْ قَتَلَ آخَرَ عَلَى تَأْوِيلٍ فَلَا قَوَدَ فِي ذَلِكَ.

L38080 There is no disagreement between any members of the Ummah that ʿAbd al-Raḥmān ibn Muljam did not kill ʿAlī—may Allah be pleased with him—except as someone interpreting (ta'wīl), exercising independent legal reasoning (ijtihād), and considering he was correct.

وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ عَبْدَ الرَّحْمَنِ بْنَ مُلْجَمٍ لَمْ يَقْتُلْ عَلِيًّا - رَضِيَ اللَّهُ عَنْهُ - إلَّا مُتَأَوِّلًا مُجْتَهِدًا مُقَدِّرًا أَنَّهُ عَلَى صَوَابٍ.

وَفِي ذَلِكَ يَقُولُ عِمْرَانُ بْنُ حِطَّانَ شَاعِرُ الصِّفْرِيَّةِ:

يَا ضَرْبَةً مِنْ تَقِيٍّ مَا أَرَادَ بِهَا ... إِلَّا لِيَبْلُغَ مِنْ ذِي الْعَرْشِ رِضْوَانًا

إِنِّي لَأَذْكُرُهُ حِينًا فَأَحْسَبُهُ ... أَوْفَى الْبَرِيَّةِ عِنْدَ اللَّهِ مِيزَانًا

L38081 And in that, Imran ibn Ḥiṭṭān, the poet of the Ṣufriyya, says:

L38082 What a strike from a devout one! He intended nothing by it but to attain the pleasure of the Possessor of the Throne.

L38083 Verily, there are times I recall him, and I deem him the most faithful of creation in God's Scale.

أَيْ لَا أُفَكِّرُ فِيهِ ثُمَّ أَحْسِبُهُ - فَقَدْ حَصَلَ الْحَنَفِيُّونَ مِنْ خِلَافِ الْحَسَنِ بْنِ عَلِيٍّ عَلَى مِثْلِ مَا شَغَبُوا بِهِ عَلَى الشَّافِعِيِّينَ، وَمَا يَنْقُلُونَ أَبَدًا مِنْ رُجُوعِ سِهَامِهِمْ عَلَيْهِمْ، وَمِنَ الْوُقُوعِ فِيمَا حَفَرُوهُ.

L38084 That is, I do not contemplate it and then calculate it—for the Ḥanafīs, due to al-Ḥasan ibn ʿAlī's disagreement with them, have incurred the same consequence they criticized the Shāfiʿīs for. They ceaselessly report the return of their own arrows upon themselves, and their falling into what they themselves dug.

فَظَهَرَ تَنَاقُضُ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ فِي الْفَرْقِ بَيْنَ الْغَائِبِ وَالصَّغِيرِ.

L38085 Thus, the contradiction of the Ḥanafīs and the Mālikīs became evident in the distinction between the absent person and the minor.

وَأَمَّا قَوْلُهُمْ: إِنَّ الصَّغِيرَ يُوَلَّى عَلَيْهِ، وَالْغَائِبَ لَا يُوَلَّى عَلَيْهِ، فَلَا شُبْهَةَ [لَهُمْ] فِي هَذَا، لِأَنَّ الْغَائِبَ يُوَكَّلُ لَهُ أَيْضًا كَمَا يُوَلَّى عَلَى الصَّغِيرِ.

L38086 As for their statement that guardianship is appointed over a minor but not over an absent person, there is no ambiguity for them in this matter, for an absent person similarly has a *wakīl* (agent) appointed on his behalf, just as guardianship is established over a minor.

وَأَيْضًا - فَإِنَّ الْوَصِيَّ عِنْدَهُمْ لَا يَقْتَصُّ لِلصَّغِيرِ - فَبَطَلَ تَمْوِيهُهُمْ جُمْلَةً.

L38087–38088 Moreover, since the guardian, according to them, cannot pursue qisas (legal retaliation) on behalf of the minor, their misrepresentation is nullified entirely.

قَالَ أَبُو مُحَمَّدٍ: وَالَّذِي نَقُولُ بِهِ قَدْ قَدَّمْنَا فِي الْبَابِ الَّذِي قَبْلَ هَذَا أَنَّ الْقَوْلَ قَوْلُ مَنْ دَعَا إِلَى الْقَوَدِ فَلِلْكَبِيرِ، وَلِلْحَاضِرِ الْعَاقِلِ: أَنْ يَقْتُلَ وَلَا يَسْتَأْنِي بُلُوغَ الصَّغِيرِ، وَلَا إِفَاقَةَ الْمَجْنُونِ، وَلَا قُدُومَ الْغَائِبِ فَإِنْ عَفَا الْحَاضِرُونَ الْبَالِغُونَ لَمْ يَجُزْ ذَلِكَ عَلَى الصَّغِيرِ، وَلَا عَلَى الْغَائِبِ، وَلَا عَلَى الْمَجْنُونِ، بَلْ هُمْ عَلَى حَقِّهِمْ فِي الْقَوَدِ حَتَّى يَبْلُغَ الصَّغِيرُ، وَيُفِيقَ الْمَجْنُونُ، فَإِذَا كَانَ ذَلِكَ فَإِنْ طَلَبَ أَحَدُهُمُ الْقَوَدَ؟ قُضِيَ لَهُ بِهِ، وَإِنِ اتَّفَقُوا كُلُّهُمْ عَلَى الْعَفْوِ جَازَ ذَلِكَ حِينَئِذٍ، لِمَا ذَكَرْنَا فِي الْبَابِ الَّذِي قَبْلَ هَذَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L38089 Abū Muḥammad said: Regarding the position we uphold, we have previously stated in the chapter preceding this one that the authority to demand retaliation lies with the adult and the present individual of sound mind. He may carry out retaliation without awaiting the minor's coming of age, the insane person's recovery, or the absentee's return. If the present adults pardon, this pardon is not valid for the minor, the absentee, or the insane person. Rather, their right to retaliation remains intact until the minor reaches adulthood and the insane person recovers. When that occurs, if one of them seeks retaliation, it must be granted. If they all collectively agree to pardon at that point, it becomes permissible, as we elaborated in the preceding chapter—and success is from Allah, the Exalted.

L38090 Ali said: If the minor, the absent one, or the insane person dies, the matter then reverts to the remaining legal heirs. That pardon which has been nullified does not bind the pardoning party (since the pardon was ineffective); rather, they may retract it, for there is no legal ruling pertaining to such a pardon in an explicit text or consensus. A binding pardon is solely one validated by a ratified text or consensus, in accordance with the Prophet's saying—peace and blessings be upon him: "Whoever performs an action not in accordance with our command, it is rejected."[5]

قَالَ عَلِيٌّ: فَإِنْ مَاتَ الصَّغِيرُ أَوْ الْغَائِبُ أَوْ الْمَجْنُونُ كَانَ حِينَئِذٍ رُجُوعُ الْأَمْرِ إلَى مَنْ بَقِيَ مِنْ الْوَرَثَةِ، وَلَا يَلْزَمُ مَنْ عَفَا - فَلَمْ يَنْفُذْ عَفْوُهُ - ذَلِكَ الْعَفْوُ الَّذِي قَدْ بَطَلَ، بَلْ لَهُ الرُّجُوعُ فِيهِ، لِأَنَّهُ لَا حُكْمَ لَهُ فِي نَصٍّ، وَلَا إجْمَاعٍ، وَإِنَّمَا الْعَفْوُ اللَّازِمُ عَفْوٌ صَحَّ بِإِمْضَائِهِ نَصٌّ، أَوْ إجْمَاعٌ فَقَطْ، لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L38091 Whoever pardons while excluding the rest of the family has done an action not based on the command of the Messenger of Allah (peace be upon him), and such an action is rejected.

وَمَنْ عَفَا دُونَ سَائِرِ " الْأَهْلِ " فَقَدْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ رَدٌّ.

L38092 Ali said: "If any of the family members dies, the option is not inherited from them, for the option belongs to the family by the explicit ruling of the Messenger of Allah (peace be upon him). Thus, whoever is among the family has the option, while whoever is not among the family has no option whatsoever, as neither an explicit text nor consensus mandates this. The option is not property to be inherited. Allah has ordained inheritance only for what the deceased leaves behind, and the option is not inherited property."

قَالَ عَلِيٌّ: وَمَنْ مَاتَ مِنْ " الْأَهْلِ " لَمْ يُورَّثْ عَنْهُ الْخِيَارُ، لِأَنَّ الْخِيَارَ لِلْأَهْلِ بِنَصِّ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَنْ كَانَ مِنْ الْأَهْلِ فَلَهُ الْخِيَارُ، وَمَنْ لَمْ يَكُنْ مِنْ الْأَهْلِ فَلَا خِيَارَ لَهُ أَصْلًا، إذْ لَمْ يُوجِبْ ذَلِكَ نَصٌّ، وَلَا إجْمَاعٌ، وَالْخِيَارُ لَيْسَ مَالًا فَيُورَّثُ، وَإِنَّمَا جَعَلَ اللَّهُ الْمِيرَاثَ فِيمَا تَرَكَ الْمَوْرُوثُ وَالْخِيَارُ لَيْسَ مَالًا مَوْرُوثًا.

L38093 If the discretionary portion were inherited property, the right of the testamentary beneficiaries to up to a third of it or less would be obligatory.

وَلَوْ كَانَ الْخِيَارُ مَالًا مَوْرُوثًا لَوَجَبَ فِيهِ حَقُّ أَهْلِ الْوَصِيَّةِ بِالثُّلُثِ فَدُونَهُ.

L38094 Abu Muhammad said: If the heir is a minor, insane, or absent—and there is no other heir in such a situation—then retribution is undoubtedly obligatory. Neither the blood money nor the compensation are required except with the heir's consent or by mutual consent between him and the killer.

قَالَ أَبُو مُحَمَّد: فَإِنْ كَانَ الْوَارِثُ صَغِيرًا، أَوْ مَجْنُونًا، أَوْ غَائِبًا - وَلَا وَارِثَ هُنَالِكَ غَيْرُهُ -: فَقَدْ وَجَبَ الْقَوَدُ بِلَا شَكٍّ، وَلَا تَجِبُ الدِّيَةُ، وَلَا الْمُفَادَاةُ، إلَّا بِرِضَا الْوَارِثِ، أَوْ بِتَرَاضٍ مِنْهُ، وَمِنْ الْقَاتِلِ.

L38095–38097 We know that minors and those lacking legal discernment cannot consent, and qisas (legal retribution) is a right rightfully incumbent upon both. With certainty, taking it is obligatory in all circumstances; the guardian or the

وَقَدْ عَلِمْنَا أَنَّ الصَّغِيرَ، وَالْأَحْمَقَ، لَا رِضَا لَهُمَا، وَالْقَوَدُ حَقٌّ قَدْ وَجَبَ لَهُمَا بِيَقِينٍ، فَأَخْذُهُ وَاجِبٌ عَلَى كُلِّ حَالٍّ، يَأْخُذُهُ لَهُمَا الْوَلِيُّ أَوْ السُّلْطَانُ، وَهَكَذَا الْغَائِبُ، وَلَا فَرْقَ بَيْنَ أَخْذِ حَظِّهِمْ فِي الْقَوَدِ، وَأَخْذِ حَظِّهِمْ فِي الْأَمْوَالِ وَالْعَفْوُ جَائِزٌ وَالْإِبْرَاءُ لِلْغَائِبِ

[5] **Hadith references (L38090):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

authority takes it for both of them, and similarly for the absent party. There is no distinction between taking their share in retaliation (qisas) and taking their share in monetary compensation. Pardoning is permissible, and waiver for the absent party is equally permissible in both matters, as all of that is a right one may abandon. The same ruling applies equally to minors and the mentally incompetent. This is not an analogy—Allah forbid such a thing—but rather a single ruling for two rights, both of which are obligated equally. It is obligatory for the authorized person to pardon both precisely the same. Neither is a fundamental principle while the other is a derivative; rather, both are fundamental together. Neither is explicitly mentioned while the other is not; rather, both are explicitly mentioned, due to the obligation of exacting justice through retaliation (qisas) and monetary compensation—and success is from Allah.

L38098 **A legal issue regarding the father's waiver of compensation for the wounding inflicted upon his minor son.**

L38099 2087 – Issue: A father's pardon of retaliation for an injury inflicted on his minor son, his claiming retaliation for him, or similarly in the case of an insane person. It has been narrated to us via the chain of Abū Bakr ibn Abī Shaybah, from Ḥafṣ ibn Ghiyāth, from Abū Isḥāq al-Shaybānī, from al-Shaʿbī, who said: If a father pardons a minor wound inflicted on his son, the waiver is binding on him.

L38100 Ali said: Al-Shabi's distinction—may Allah have mercy on him—between minor and major head injuries has no basis, for Allah the Exalted has stated: *"No soul earns [sin] except against itself"* (al-Anʿām 6:164). The right of the minor and the insane is an established obligation; thus, it is impermissible for another to nullify it on their behalf, because it constitutes a sin against them. This is a matter with no difficulty.[6]

L38101 They have unanimously agreed that the father and the guardian may demand and exact every right for the minor and the insane within their [the father and guardian's] property, and that neither the father nor the guardian may pardon

[6] **Qur'an references (L38100):** Qur'an 6:164 (Al-An'am).

فِي كِلَا الْأَمْرَيْنِ جَوَازًا وَاحِدًا، إِذْ كُلُّ ذَلِكَ حَقٌّ لَهُ تَرْكُهُ، وَكَذَلِكَ الْقَوْلُ فِي الصَّغِيرِ، وَالْمَجْنُونِ سَوَاءٌ سَوَاءٌ، وَلَيْسَ هَذَا قِيَاسًا - وَمَعَاذَ اللَّهِ مِنْ ذَلِكَ - لَكِنَّهُ حُكْمٌ وَاحِدٌ فِي حَقَّيْنِ وَجَبَا وُجُوبًا وَاحِدًا، وَوَجَبَ لِمَنْ يَجُوزُ أَمْرُهُ الْعَفْوُ عَنْهُمَا سَوَاءٌ سَوَاءٌ، وَلَيْسَ أَحَدُهُمَا أَصْلًا وَالثَّانِي فَرْعًا، بَلْ هُمَا أَصْلَانِ مَعًا، وَلَا أَحَدُهُمَا مَنْصُوصًا عَلَيْهِ وَالْآخَرُ غَيْرُ مَنْصُوصٍ عَلَيْهِ، بَلْ كِلَاهُمَا مَنْصُوصٌ عَلَيْهِ، لِوُجُوبِ الِانْتِصَافِ مِنْ الْقَوَدِ وَمِنْ الْمَالِ - وَبِاَللَّهِ التَّوْفِيقُ.

[مَسْأَلَةٌ عَفْوُ الْأَبِ عَنْ جُرْحِ ابْنِهِ الصَّغِيرِ]

٢٠٨٧ - مَسْأَلَةٌ: عَفْوُ الْأَبِ عَنْ جُرْحِ ابْنِهِ الصَّغِيرِ، أَوْ اسْتِقَادَتُهُ لَهُ أَوْ فِي الْمَجْنُونِ كَذَلِكَ: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ الشَّعْبِيِّ قَالَ: إذَا وَهَبَ الشَّجَّةَ الصَّغِيرَةَ الَّتِي تُصِيبُ ابْنَهُ جَازَتْ عَلَيْهِ.

قَالَ عَلِيٌّ: تَفْرِيقُ الشَّعْبِيِّ - رَحِمَهُ اللَّهُ - بَيْنَ الشَّجَّةِ الصَّغِيرَةِ وَالْكَبِيرَةِ لَا مَعْنَى لَهُ، وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] ، وَحَقُّ الصَّغِيرِ وَالْمَجْنُونِ قَدْ وَجَبَ، فَلَا يَجُوزُ أَنْ يُسْقِطَهُ لَهُ غَيْرُهُ، لِأَنَّهُ كَسْبٌ عَلَيْهِ، وَهَذَا مَا لَا إشْكَالَ فِيهِ.

or waive any such right. Why then do they not apply analogy (qiyas) to qisas [retaliation in kind] for them [the father and guardian], as they do regarding property? Yet they neither properly apply analogy (qiyas) nor adhere to the revealed texts (nass).

L38102 Abu Muhammad said: The ruling concerning that is that Allah the Exalted said: “An eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and wounds are subject to retaliation. Whoever pardons it as charity, it shall be an expiation for him” [Al-Ma’idah: 45]. He also said: “Violations of sacred ordinances warrant retaliation” [Al-Baqarah: 194]. And He said: “The recompense for an evil deed is an equivalent evil deed” [Ash-Shura: 40].[7]

L38103–38104 Thus, it is established by these texts that retribution is necessarily obligatory, and that forgiveness is valid only with the consent of the injured party. The minor and the mentally incompetent possess no valid consent, no capacity to forgive, and no enforceable order regarding blood money. Consequently, this aspect is invalidated, leaving only the retribution conclusively established as obligatory. The father, guardian, or executor must necessarily enforce retribution on behalf of the injured party. If they neglect this until the minor reaches maturity or the mentally incompetent regains sanity, the retribution—which had been conclusively established as obligatory—becomes his right to claim, and he may then choose to forgive if he wishes. Neither the father nor the guardian may accept blood money or negotiate settlements for any injuries, for all such actions interfere with the obligation of retribution. Forgiveness is valid only with the consent of the injured party or through mutual agreement between the offender and the injured party.

L38105 **[A legal issue concerning the pardon granted by the victim of a criminal act that causes his death]**

L38106 2088. Issue:

وَقَدْ أَجْمَعُوا عَلَى أَنَّ لِلْأَبِ وَالْوَلِيِّ أَنْ يَطْلُبَا، وَأَنْ يَقْتَصَّا كُلَّ حَقٍّ لِلصَّغِيرِ وَالْمَجْنُونِ، فِي مَالِهِمَا، وَأَنَّهُ لَيْسَ لِلْأَبِ، وَلَا لِلْوَلِيِّ، فِي ذَلِكَ عَفْوٌ، وَلَا إِبْرَاءٌ - فَهَلَّا قَاسُوا أَمْرَ الْقِصَاصِ لَهُمَا عَلَى أَمْرِ الْمَالِ؟ وَلَكِنَّهُمْ لَا الْقِيَاسَ يُحْسِنُونَ وَلَا النَّصَّ يَتْبَعُونَ

قَالَ أَبُو مُحَمَّد: وَالْقَوْلُ فِي ذَلِكَ أَنَّ اللَّهَ تَعَالَى قَالَ: {وَالْعَيْنَ بِالْعَيْنِ وَالأَنْفَ بِالأَنْفِ وَالأُذُنَ بِالأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] وَقَالَ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] وَقَالَ تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] .

فَصَحَّ بِهَذِهِ النُّصُوصِ أَنَّ الْقَوَدَ قَدْ وَجَبَ وَلَا بُدَّ، وَأَنَّ الْعَفْوَ لَا يَصِحُّ إِلَّا بِرِضَا الْمَجْنِيِّ عَلَيْهِ، وَالصَّبِيُّ وَالْمَجْنُونُ لَا رِضَا لَهُمَا، وَلَا عَفْوَ، وَلَا أَمْرَ نَافِذٌ بِصَدَقَةٍ - فَسَقَطَ هَذَا الْوَجْهُ، وَبَقِيَ الَّذِي وَجَبَ بِيَقِينٍ مِنْ الْقَوَدِ، فَيَسْتَقِيدُ لَهُ أَبُوهُ، أَوْ وَلِيُّهُ، أَوْ وَصِيُّهُ وَلَا بُدَّ، فَإِنْ أَغْفَلَ ذَلِكَ حَتَّى بَلَغَ الصَّبِيُّ، وَعَقَلَ الْمَجْنُونُ، كَانَ لَهُ الْقَوَدُ الَّذِي قَدْ وَجَبَ أَخْذُهُ لَهُ بَعْدُ، وَحَدَثَ لَهُ جَوَازُ الْعَفْوِ إِنْ شَاءَ، وَلَيْسَ لِلْأَبِ، وَلَا لِلْوَلِيِّ أَخْذُ الدِّيَةِ، وَلَا أَنْ يُفَادِيَ فِي شَيْءٍ مِنْ الْجُرُوحِ، لِأَنَّ كُلَّ هَذَا دَاخِلٌ عَلَى وُجُوبِ الْقَوَدِ [وَالْعَفْوُ] لَا يَكُونُ إِلَّا بِرِضَا الْمَجْنِيِّ عَلَيْهِ أَوْ بِتَرَاضٍ مِنْ الْجَانِي وَالْمَجْنِيِّ عَلَيْهِ.

[مَسْأَلَةٌ عَفْوُ الْمَجْنِيِّ عَلَيْهِ جِنَايَةً يَمُوتُ مِنْهَا]

٢٠٨٨ - مَسْأَلَةٌ:

[7] **Qur’an references (L38102):** Qur’an 5:45 (Al-Ma’idah); Qur’an 42:40 (Ash-Shuraa); Qur’an 2:194 (Al-Baqarah).

L38107 Is it permissible for the victim of a felony resulting in death—whether unintentional or intentional—to pardon concerning their diyah (blood money) and other matters pertaining to their blood, or not?

هَلْ يَجُوزُ عَفْوُ الْمَجْنِيِّ عَلَيْهِ جِنَايَةً يَمُوتُ مِنْهَا خَطَأً أَوْ عَمْدًا عَنْ دِيَتِهِ وَغَيْرِهَا عَنْ دَمِهِ أَمْ لَا؟

L38108 It was narrated to us through Abu Bakr ibn Abi Shaybah, from Hafs ibn Ghiyath, from Ashʿath ibn Sawwar, from Abu Bakr ibn Hafs, who said: There was fighting between a group from Banu ʿAdiyy and another clan, involving stone-throwing and striking with sandals. A boy from the family of ʿUmar was struck and met his end. As his soul was about to depart, he said: "I have pardoned, hoping for reward and reconciliation among my people." Ibn ʿUmar then approved it.

رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ أَشْعَثَ بْنِ سَوَّارٍ عَنْ أَبِي بَكْرِ بْنِ حَفْصٍ قَالَ: كَانَ بَيْنَ قَوْمٍ مِنْ بَنِي عَدِيٍّ وَبَيْنَ حَيٍّ مِنْ الْأَحْيَاءِ قِتَالٌ، وَرَمْيٌ بِالْحِجَارَةِ، وَضَرْبٌ بِالنِّعَالِ، فَأُصِيبَ غُلَامٌ مِنْ آلِ عُمَرَ، فَأَتَى عَلَى نَفْسِهِ، فَلَمَّا كَانَ قَبْلَ خُرُوجِ نَفْسِهِ قَالَ: إنِّي قَدْ عَفَوْت رَجَاءَ الثَّوَابِ وَالْإِصْلَاحِ بَيْنَ قَوْمِي، فَأَجَازَهُ ابْنُ عُمَرَ.

L38109 And through him to Abu Bakr ibn Abi Shaybah, it was narrated to us by Hushaym from Yunus ibn ʿUbayd from al-Hasan al-Basri, who said: If a man pardons his killer for intentional killing before he dies, then it is permissible.

وَبِهِ - إلَى أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا هُشَيْمٌ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: إذَا عَفَا الرَّجُلُ عَنْ قَاتِلِهِ فِي الْعَمْدِ قَبْلَ أَنْ يَمُوتَ فَهُوَ جَائِزٌ.

L38110 From Ibn Ṭāwūs: I asked my father, "If one is slain intentionally or accidentally, does one forgive his blood?" He answered, "Yes."

وَعَنْ ابْنِ طَاوُسٍ قُلْت لِأَبِي: يُقْتَلُ عَمْدًا أَوْ خَطَأً فَيَعْفُو عَنْ دَمِهِ؟ قَالَ: نَعَمْ.

L38111 On the authority of al-Shaʿbī: If a man is killed and he forgave [the claim to] his blood, then the heirs are not entitled to kill [in retaliation].

وَعَنْ الشَّعْبِيِّ قَالَ: إذَا قُتِلَ الرَّجُلُ فَعَفَا عَنْ دَمِهِ فَلَيْسَ لِلْوَرَثَةِ أَنْ يَقْتُلُوا.

L38112 From Ibn Jurayj: I said to ʿAṭāʾ, "If the one killed unintentionally were to donate his diya to his killer, the killer would only be entitled to a third of it, for it is property to be bequeathed."

وَعَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: إنْ وَهَبَ الَّذِي يُقْتَلُ خَطَأً دِيَتَهُ لِمَنْ قَتَلَهُ، فَإِنَّمَا لَهُ مِنْهَا ثُلُثُهَا، إنَّمَا هُوَ مَالٌ يُوصِي بِهِ.

L38113–38115 From the chain of ʿAbd al-Razzāq, from Maʿmar, from Simāk ibn al-Faḍl, who said: ʿUmar ibn ʿAbd al-ʿAzīz wrote that no one is to give charity. A man is liable for his diya (blood money). If he is killed accidentally, one-third of it is permissible to be paid, provided he possesses no other wealth.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ سِمَاكِ بْنِ الْفَضْلِ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ أَنْ لَا يَتَصَدَّقَ الرَّجُلُ بِدِيَتِهِ فَإِنْ قُتِلَ خَطَأً فَالثُّلُثُ مِنْ ذَلِكَ جَائِزٌ إذَا لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ.

L38116 From the transmission of ʿAbd al-Razzāq from Sufyān al-Thawrī from Yūnus ibn ʿUbayd from al-Ḥasan regarding one who is intentionally struck with

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ فِيمَنْ يُضْرَبُ بِالسَّيْفِ عَمْدًا ثُمَّ يَعْفُو عَنْهُ قَبْلَ أَنْ يَمُوتَ؟ قَالَ: هُوَ جَائِزٌ، وَلَيْسَ فِي الثُّلُثِ.

a sword and then pardons [the perpetrator] before dying: He said, "It is permissible, and the third does not apply."

L38117 And he said—Hishām reported from al-Ḥasan that he said, "If it was an unintentional error, it applies to the third."

وَقَالَ - هِشَامٌ عَنْ الْحَسَنِ: إذَا كَانَ خَطَأً فَهُوَ فِي الثُّلُثِ.

L38118 From the chain of Abū Bakr ibn Abī Shaybah: Qabīṣah ibn ʿUqbah narrated to us, Sufyān narrated to us from Ibn Jurayj from Abū ʿUbayd Allāh from Ibn ʿAbbās regarding a man whose hand was cut off, who reached a settlement concerning it, then the settlement was annulled against him and he died? He said: The settlement is invalid, and the *diyah* must be paid.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا قَبِيصَةُ بْنُ عُقْبَةَ نا سُفْيَانُ عَنْ ابْنِ جُرَيْجٍ عَنْ أَبِي عُبَيْدِ اللَّهِ عَنْ ابْنِ عَبَّاسٍ فِي رَجُلٍ قُطِعَتْ يَدُهُ فَصَالَحَ عَلَيْهَا، ثُمَّ انْتَقَضَتْ بِهِ فَمَاتَ؟ قَالَ: الصُّلْحُ مَرْدُودٌ: وَيُؤْخَذُ بِالدِّيَةِ.

L38119 Abu Muhammad said: As for the later scholars: Abu Hanifah and Zufar stated: If one waives the right to claim compensation for a deliberate injury or skull fracture, and for whatever arises from it, this is legally valid, and nothing is incumbent upon the killer. But if he waives the right to claim compensation for the injury, amputation, or skull fracture, then dies, the diyah (blood money) becomes obligatory upon the killer.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ أَبَا حَنِيفَةَ، وَزُفَرَ قَالَا: إذَا عَفَا عَنْ الْجِرَاحَةِ الْعَمْدِ، أَوْ الشَّجَّةِ، وَعَمَّا يَحْدُثُ مِنْهَا فَهُوَ جَائِزٌ، وَلَا شَيْءَ عَلَى الْقَاتِلِ، فَإِنْ عَفَا عَنْ الْجِرَاحَةِ، أَوْ الْقَطْعِ، أَوْ الشَّجَّةِ، ثُمَّ مَاتَ فَعَلَيْهِ الدِّيَةُ.

L38120 Abu Yusuf and Muhammad said: The killer bears no liability in any of these cases. They said: If the victim's family forgoes the killer's blood money in accidental killing, this applies to the third.

قَالَ أَبُو يُوسُفَ، وَمُحَمَّدٌ: لَا شَيْءَ عَلَى الْقَاتِلِ فِي كُلِّ ذَلِكَ - قَالُوا: فَإِنْ عَفَا عَنْ دِيَتِهِ فِي الْخَطَأِ فَذَلِكَ فِي الثُّلُثِ.

L38121 Mālik said: If someone settles regarding a wound or amputation and subsequently dies, the settlement is invalidated and retaliation becomes obligatory. If he forgave his right to blood money for an accidental injury, this applies only to a third of his estate.

وَقَالَ مَالِكٌ: مَنْ صَالَحَ مِنْ جِرَاحَةٍ، أَوْ مِنْ قَطْعٍ ثُمَّ مَاتَ: بَطَلَ الصُّلْحُ وَوَجَبَ الْقَوَدَ - فَإِنْ عَفَا عَنْ دِيَتِهِ فِي الْخَطَأِ فَذَلِكَ فِي ثُلُثِهِ.

L38122 Sufyan al-Thawri said: If the injured party pardons the injury and then dies, there is no retribution, but the offender is liable to pay the blood money (diyah) after the arsh (fixed compensation) for the injury is subtracted from it.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: إذَا عَفَا عَنْ الْجِرَاحَةِ ثُمَّ مَاتَ فَلَا قَوَدَ، لَكِنْ يُغَرَّمُ الْجَانِي الدِّيَةَ بَعْدَ أَنْ يَسْقُطَ مِنْهَا أَرْشُ الْجِرَاحَةِ.

L38123 Al-Shafiʿi said: If the victim pardons the injury and whatever may ensue from it of blood money (diyah) or retaliation (qisas), then dies, no retaliation (qisas) applies. His position differed regarding the blood money (diyah) – at times he held the view of Sufyan al-Thawri as we mentioned previously, and at times he stated that the full blood money (diyah) is due.

وَقَالَ الشَّافِعِيُّ: إذَا عَفَا عَنْ الْجِرَاحَةِ وَعَمَّا يَحْدُثُ مِنْهَا مِنْ عَقْلٍ، أَوْ قَوَدٍ ثُمَّ مَاتَ فَلَا قَوَدَ - ثُمَّ اخْتَلَفَ قَوْلُهُ فِي الدِّيَةِ، فَمَرَّةً قَالَ كَقَوْلِ سُفْيَانَ الثَّوْرِيِّ الَّذِي ذَكَرْنَا قَبْلُ وَمَرَّةً قَالَ: يُؤْخَذُ بِجَمِيعِ الدِّيَةِ.

وَقَالَ الشَّافِعِيُّ فِي أَحَدِ قَوْلَيْهِ - وَبِهِ يَقُولُ أَبُو ثَوْرٍ، وَأَحْمَدُ، وَإِسْحَاقُ: لَا عَفْوَ لَهُ فِي الْعَمْدِ.

L38124 Al-Shāfiʿī stated in one of his two opinions—a position held by Abū Thawr, Aḥmad, and Isḥāq—that there is no pardon for him in intentional acts.

قَالَ أَبُو مُحَمَّد: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَنَظَرْنَا فِي ذَلِكَ، لِنَعْلَمَ الْحَقَّ فَنَتْبَعَهُ، فَوَجَدْنَاهُمْ يَقُولُونَ: قَالَ اللَّهُ تَعَالَى {وَالْجُرُوحَ قِصَاصٌ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] ، وَقَالَ تَعَالَى {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: ٤٠] ، وَقَالَ تَعَالَى {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] الْآيَةَ.

L38125–38126 Abu Muhammad said: When they differed (as we mentioned) and we examined the matter to know the truth so that we may thereby follow it, we found them saying: Allah the Exalted said, “And for wounds there is retaliation in kind. So whoever forgoes it, it becomes an expiation for him” (Al-Mā’idah 5:45). He also said, “The recompense of an evil is an evil like it. But whoever pardons and makes reconciliation, his reward lies with Allah” (Ash-Shūrā 42:40). He also said, “If you decide to punish, then punish with the like of what you were afflicted with” (An-Naḥl 16:126), the verse.[8]

وَذَكَرُوا مَا حَدَّثَنَا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ بِشْرٍ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ «أَنَّ عُرْوَةَ بْنَ مَسْعُودٍ الثَّقَفِيَّ دَعَا قَوْمَهُ إِلَى اللَّهِ وَرَسُولِهِ فَرَمَاهُ رَجُلٌ مِنْهُمْ بِسَهْمٍ فَمَاتَ فَعَفَا عَنْهُ فَرُفِعَ ذَلِكَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَجَازَ عَفْوَهُ، وَقَالَ: هُوَ كَصَاحِبِ يَاسِينَ» .

L38127 They mentioned what Hammam narrated to us from Abdullah ibn Muhammad ibn Ali al-Baji, from Abdullah ibn Yunus, from Baqi ibn Makhlad, from Abu Bakr ibn Abi Shaybah, from Muhammad ibn Bishr, from Sa’id ibn Abi Arubah, from Qatadah, “Urwah ibn Mas’ud al-Thaqafi called his people to Allah and His Messenger, and a man among them shot him with an arrow, so he died. He forgave him, and this matter was raised to the Messenger of Allah (peace be upon him), who validated his pardon and said, ’He is like the companion of Ya-Sin.’”

نا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ نا أَحْمَدُ بْنُ دُحَيْمٍ نا إِبْرَاهِيمُ بْنُ حَمَّادٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا عِمْرَانُ بْنُ ظَبْيَانَ عَنْ عَدِيِّ بْنِ ثَابِتٍ قَالَ: قَالَ رَجُلٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: سَمِعْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ تَصَدَّقَ بِدَمٍ فَمَا دُونَهُ كَانَ كَفَّارَةً لَهُ مِنْ يَوْمِ وُلِدَ إِلَى يَوْمِ تَصَدَّقَ بِهِ» .

L38128 Yahya ibn ʿAbd al-Raḥmān ibn Masʿūd narrated: Aḥmad ibn Duhaym narrated: Ibrāhīm ibn Ḥammād narrated: Ismāʿīl ibn Isḥāq narrated: ʿAlī ibn ʿAbd Allāh narrated: ʿImrān ibn Ẓabyān narrated from ʿAdī ibn Thābit, who said: A man from the companions of the Messenger of Allah—peace be upon him—said: I heard the Prophet—peace be upon him—say: “Whoever gives charity with blood (i.e., a sacrifice) or less than that, it will atone for his sins from the day he was born until the day he performed this act of charity.”

قَالَ عَلِيٌّ: وَقَالُوا: هَذَا حُكْمُ ابْنِ عُمَرَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا يُعْرَفُ لَهُ مِنْهُمْ مُخَالِفٌ - وَقَالُوا: هَذَا هُوَ الْمَجْنِيُّ عَلَيْهِ فَهُوَ أَوْلَى بِنَفْسِهِ.

L38129 Ali said: They said, “This is the ruling of Ibn Umar in the presence of the Companions—may Allah be pleased with them—and no dissenter from among them is known.” They said, “This is the victim, so he has the foremost right regarding himself.”

[8] **Qur’an references (L38126):** Qur’an 5:45 (Al-Ma’idah); Qur’an 42:40 (Ash-Shuraa); Qur’an 16:126 (An-Nahl).

L38130 So, is this all they have presented on the matter? We then examined what they cited as evidence and found it contains no proof for them in any of it whatsoever.

L38131–38133 As for the statement of Allah, the Exalted: {But whoever forgoes it as charity, it will be an expiation for him} [Al-Ma'idah: 45], He, the Exalted, said this after His statement {And the eye for the eye} [Al-Ma'idah: 45] up to His words {it will be an expiation for him} [Al-Ma'idah: 45]. This entire passage is a new passage following the completion of His, the Exalted's, statement {And We ordained for them therein that a life is for a life} [Al-Ma'idah: 45]. Thus, the definitive text of Allah, the Exalted, establishes charity in lieu of retaliation for wounds and limbs. Similarly, we say: The victim has the right to give in charity the blood money he is entitled to in such cases, thereby nullifying retribution entirely. This verse does not contain a ruling regarding giving blood money as charity for the soul, for "a soul for a soul" — this ruling is only in the Torah as stated in the text of the verse.[9]

L38134 That is not an address to us. Rather, we are addressed by what follows it when all of that is recited specifically in the nominative case. If it is recited in the accusative case, then it is not an address to us. Both Recitations are true as originating from Allah, the Exalted. Therefore, their reliance on this verse is rendered invalid.

L38135 As for the statement of Allah the Exalted: _"And the recompense of an evil deed is an evil like it, but whoever pardons and reforms, his reward rests with Allah"_ [Ash-Shūrā 42:40], and His statement the Exalted: _"If you decide to punish, then punish with the equivalent of what you were punished with"_ [An-Naḥl 16:126] — these verses, by their explicit wording, clearly indicate that they pertain only to offenses not involving loss of life. This is because the one addressed in them—who is commanded to punish with the equivalent of what he was punished with—is the one who was personally

[9] **Qur'an references (L38131):** Qur'an 5:45 (Al-Ma'idah).

فَهَذَا كُلُّ مَا أَوْرَدُوهُ فِي ذَلِكَ؟ فَنَظَرْنَا فِي الَّذِي احْتَجُّوا بِهِ، فَوَجَدْنَاهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ أَصْلًا.

أَمَّا قَوْلُ اللَّهِ تَعَالَى: {فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] فَإِنَّمَا قَالَ تَعَالَى ذَلِكَ عَقِبَ قَوْله تَعَالَى {وَالْعَيْنَ بِالْعَيْنِ} [المائدة: ٤٥] إلَى قَوْله تَعَالَى {فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] ، وَهَذَا كُلُّهُ كَلَامٌ مُبْتَدَأٌ بَعْدَ تَمَامِ قَوْله تَعَالَى {وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ} [المائدة: ٤٥] فَإِنَّمَا جَاءَ نَصُّ اللَّهِ تَعَالَى عَلَى الصَّدَقَةِ بِالْجُرُوحِ بِالْأَعْضَاءِ وَهَكَذَا نَقُولُ: إنَّ لِلْمَجْنِيِّ عَلَيْهِ أَنْ يَتَصَدَّقَ بِمَا أُصِيبَ بِهِ مِنْ ذَلِكَ، فَيَبْطُلُ الْقَوَدُ جُمْلَةً فِي ذَلِكَ، وَلَيْسَ فِي هَذِهِ الْآيَةِ حُكْمُ الصَّدَقَةِ بِالدَّمِ فِي النَّفْسِ، لِأَنَّ النَّفْسَ بِالنَّفْسِ، إنَّمَا هُوَ فِي التَّوْرَاةِ بِنَصِّ الْآيَةِ.

وَلَيْسَ ذَلِكَ خِطَابًا لَنَا، وَإِنَّمَا خُوطِبْنَا بِمَا بَعْدَهُ إذَا قُرِئَ كُلُّ ذَلِكَ بِالرَّفْعِ خَاصَّةً، فَإِذَا قُرِئَ بِالنَّصْبِ فَلَيْسَ خِطَابًا لَنَا، وَكِلَا الْقِرَاءَتَيْنِ حَقٌّ مِنْ عِنْدِ اللَّهِ تَعَالَى - فَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْآيَةِ.

وَأَمَّا قَوْله تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: ٤٠] وقَوْله تَعَالَى {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] الْآيَةَ، فَهِيَ بِنَصِّهَا بَيَانٌ جَلِيٌّ بِأَنَّهَا إنَّمَا هِيَ فِيمَا دُونَ النَّفْسِ، لِأَنَّ الْمُخَاطَبَ فِيهَا بِأَنْ يُعَاقِبَ بِمِثْلِ مَا عُوقِبَ بِهِ، هُوَ الَّذِي عُوقِبَ نَفْسُهُ - هَذَا هُوَ ظَاهِرُ الْآيَةِ الَّذِي لَا يَحِلُّ صَرْفُهَا عَنْهُ بِالدَّعْوَى، وَهَكَذَا نَقُولُ.

subjected to punishment. This is the apparent meaning of the verse, which it is impermissible to divert from by mere claim. This is our position.[10]

وَلَيْسَ فِيهَا جَوَازُ الْعَفْوِ عَنْ النَّفْسِ أَصْلًا، وَإِنَّمَا فِيهَا جَوَازُ الصَّبْرِ عَنْ أَنْ يُعَاقِبَ بِمِثْلِ مَا عُوقِبَ بِهِ فَقَطْ.

L38136 It does not permit self-forgiveness whatsoever. Rather, it only permits restraining oneself from retaliating in kind for the harm one has endured.

وَأَمَّا قَوْله تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] إلَى قَوْلِهِ {فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: ٤٠] فَهُوَ عُمُومٌ يَدْخُلُ فِيهِ الْعَفْوُ عَنْ النَّفْسِ وَمَا دُونَهَا وَعَفْوُ الْوَلِيِّ أَيْضًا دَاخِلٌ فِيهَا فَإِنْ وَجَدْنَا مِنْهَا دَلِيلًا يَخُصُّ مِنْهَا مَا ذَكَرُوهُ وَجَبَ الْمَصِيرُ إلَيْهِ، وَإِلَّا فَقَدْ صَحَّ قَوْلُهُمْ.

L38137 As for the words of Allah Almighty: {The recompense of an evil is an evil like it} [42:40] up to His statement {then his reward is with Allah} [42:40], this constitutes a general principle encompassing pardoning wrongs against oneself and lesser offenses. The legal guardian's pardon is also included within it. If we find evidence specifying from this general principle what they have mentioned, it becomes obligatory to adhere to it; otherwise, their opinion is sound.[11]

وَأَمَّا حَدِيثُ عُرْوَةَ بْنِ مَسْعُودٍ - رَضِيَ اللَّهُ عَنْهُ - فَإِنَّمَا قَامَ بِدَعْوَةِ قَوْمِهِ إلَى الْإِسْلَامِ وَهُمْ كُفَّارٌ حَرْبِيُّونَ قَدْ حَارَبَهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرَجَعَ عَنْهُمْ - وَهُمْ أَطْغَى مَا كَانُوا - فَتَوَجَّهَ إلَيْهِمْ عُرْوَةُ دَاعِيًا إلَى الْإِسْلَامِ كَمَا فِي نَصِّ الْحَدِيثِ الْمَذْكُورِ - فَرَمَوْهُ فَقَتَلُوهُ - وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّهُ لَا قَوَدَ عَلَى قَاتِلِهِ إذَا أَسْلَمَ وَلَا دِيَةَ، فَأَيُّ مَعْنًى لِلْعَفْوِ هَاهُنَا؟ وَهَكَذَا شَبَّهَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِصَاحِبِ يَاسِينَ فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ بِهِ أَصْلًا وَإِنَّمَا هِيَ تَمْوِيهَاتٌ يُرْسِلُونَهَا لَا يُفَكِّرُونَ فِي الْمَخْرَجِ مِنْهَا يَوْمَ الْمَوْقِفِ بَيْنَ يَدَيْ اللَّهِ تَعَالَى.

L38138 As for the narration of Urwah ibn Mas'ud—may Allah be pleased with him—he undertook calling his people to Islam while they were belligerent disbelievers whom the Prophet—peace and blessings be upon him—had fought and withdrawn from, while they were at the height of their transgression. Urwah went to them inviting them to Islam as in the text of the hadith, but they threw at him and killed him. There is no disagreement among any in the Ummah that neither retribution nor blood money applies to his killer if he embraces Islam. What meaning does pardon have here? Similarly, the Prophet—peace and blessings be upon him—likened him to the companion mentioned in Surah Yasin, thus invalidating any basis for them to rely on it at all. These are merely deceptions they propagate without reflecting on how they will escape them on the Day they stand before Allah the Exalted.

وَأَمَّا حَدِيثُ عَدِيِّ بْنِ ثَابِتٍ - فَعَهْدُنَا بِإِسْمَاعِيلَ يَرُدُّ الْمُسْنَدَ الصَّحِيحَ عَنْ عَدِيِّ بْنِ ثَابِتٍ إذَا خَالَفَ رَأْيُهُ فِيمَنْ سَمِعَ الْأَذَانَ فَارِغًا صَحِيحًا فَلَمْ يُجِبْ فَلَا صَلَاةَ لَهُ إلَّا مِنْ عُذْرٍ، وَيُوهِنُ رِوَايَتَهُ بِأَنَّهُ مُنْكَرُ الْحَدِيثِ، وَمَنْ أَيْقَنَ أَنَّهُ مَسْئُولٌ عَنْ كَلَامِهِ، لَا سِيَّمَا فِي الدِّينِ وَيُفَكِّرُ فِي قَوْله تَعَالَى {مَا يَلْفِظُ مِنْ قَوْلٍ إلا لَدَيْهِ رَقِيبٌ عَتِيدٌ} [ق: ١٨]

L38139–38140 As for the ḥadīth of ʿAdī ibn Thābit—our understanding of Ismāʿīl's stance is that he rejects the rigorously authenticated report from ʿAdī ibn Thābit when it contradicts his view regarding one who hears the call to prayer while free and healthy yet fails to respond: their prayer is invalid unless excused. He weakens its narration by deeming it a discredited ḥadīth. Whoever is certain

[10] **Qur'an references (L38135):** Qur'an 42:40 (Ash-Shuraa); Qur'an 16:126 (An-Nahl).
[11] **Qur'an references (L38137):** Qur'an 42:40 (Ash-Shuraa).

they will be accountable for their speech—particularly in matters of religion—and contemplates Allah's words, {Not a word does he utter without a vigilant observer present, prepared [to record]} [50:18], would never dare such audacity. To those familiar with their statements, this immediate disgrace is nearer—and praise be to Allah for what He has granted of submission to the truth—and abandoning partisan zeal for opinions that neither benefit us before Allah, nor the opinions themselves, nor those who uphold them.[12]

لَمْ يَجْتَرِئْ عَلَى مِثْلِ هَذَا، وَأَقْرَبُ مِنْ هَذِهِ الْفَضِيحَةِ الْعَاجِلَةِ عِنْدَ مَنْ طَالَعَ أَقْوَالَهُمْ - وَالْحَمْدُ لِلَّهِ عَلَى مَا مَنَّ بِهِ مِنَ الْإِذْعَانِ لِلْحَقِّ - وَتَرْكِ الْعَصَبِيَّةِ لِلْأَقْوَالِ الَّتِي لَا تُغْنِي عَنَّا مِنَ اللَّهِ شَيْئًا، لَا هِيَ، وَلَا الْقَائِلُ بِهَا.

L38141 Then we return to the aforementioned hadith and say (and divine enablement is from Allah, the Exalted): Indeed, there are defects in it that preclude citing it as proof.

ثُمَّ نَرْجِعُ إِلَى الْحَدِيثِ الْمَذْكُورِ فَنَقُولُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ -: إِنَّ فِيهِ عِلَلًا تَمْنَعُ مِنَ الِاحْتِجَاجِ بِهِ:

L38142 One [reason] is that the narration comes from ʿImrān ibn Ẓabyān—who is not recognized as reliable. Aḥmad said: "He is subject to scrutiny."

أَحَدُهَا: أَنَّهُ مِنْ رِوَايَةِ عِمْرَانَ بْنِ ظَبْيَانَ - وَلَيْسَ مَعْرُوفَ الْعَدَالَةِ - قَالَ أَحْمَدُ: فِيهِ نَظَرٌ.

L38143 Secondly, the chain is broken because ʿAdī ibn Thābit did not mention hearing it from the Companion.

وَالثَّانِي: أَنَّهُ مُنْقَطِعٌ لِأَنَّ عَدِيَّ بْنَ ثَابِتٍ لَمْ يَذْكُرْ سَمَاعَهُ إِيَّاهُ مِنَ الصَّاحِبِ.

L38144 And the third is that we do not know whether that companion's companionship was valid or not.

وَالثَّالِثُ: أَنَّنَا لَا نَدْرِي ذَلِكَ الصَّاحِبَ أَصَحَّتْ صُحْبَتُهُ أَمْ لَا؟

L38145 Fourthly: If it were valid, it would be treated as a general principle, as we stated concerning the words of the Almighty: {The recompense of an evil deed is an evil deed like it, but whoever pardons and reconciles, his reward lies with Allah} [Ash-Shura: 40]. If evidence is found that specifies this generality, it takes precedence; otherwise, it is obligatory to apply both in their general sense - and success comes only through Allah, the Exalted.[13]

وَالرَّابِعُ: أَنَّهُ لَوْ صَحَّ لَكَانَ عُمُومًا كَمَا قُلْنَا فِي قَوْلِهِ تَعَالَى {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: ٤٠] ، فَإِنْ وُجِدَ دَلِيلٌ يَخُصُّ مِنْ هَذَا الْعُمُومِ لَهُ وَإِلَّا فَوَاجِبٌ حَمْلُهُمَا عَلَى عُمُومِهِمَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L38146 As for their claim—that this was Ibn Umar's view in the presence of the Companions, may Allah be pleased with them—they have no argument for this, for several reasons:

وَأَمَّا قَوْلُهُمْ - أَنَّهُ قَوْلُ ابْنِ عُمَرَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَا حُجَّةَ لَهُمْ فِي هَذَا، لِوُجُوهٍ:

L38147 The first is that we have mentioned matters in which they opposed the majority of the Companions—among whom no dissenter is known—if it did not conform to their opinions. The closest example is the ruling of ʿUmar ibn al-Khaṭṭāb and Ibn ʿAbbās (may Allah be pleased with them) concerning the

أَوَّلُهَا: أَنَّنَا قَدْ ذَكَرْنَا مَا خَالَفُوا فِيهِ جُمْهُورَ الصَّحَابَةِ الَّذِينَ لَا يُعْرَفُ لَهُ مِنْهُمْ مُخَالِفٌ إِذَا لَمْ يُوَافِقْ آرَاءَهُمْ، أَقْرَبُ ذَلِكَ حُكْمُ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمْ - فِي الْيَدِ الشَّلَّاءِ تُقْطَعُ، وَالسِّنِّ السَّوْدَاءِ تُكْسَرُ، بِثُلُثِ دِيَةٍ.

[12] **Qur'an references (L38140):** Qur'an 50:18 (Qaf).

[13] **Qur'an references (L38145):** Qur'an 42:40 (Ash-Shuraa).

amputation of a withered hand and the breaking of a black tooth, entailing a third of the diyah (blood-money).

L38148 When a Companion's statement aligns with their desires, they treat it as incontrovertible proof that cannot be opposed. But when it contradicts their desires and blind imitation, they dismiss it as no proof at all, deeming its contradiction permissible. And this is a judgment whose proponent has no claim to piety or moral integrity.

L38149–38150 The second is that it is narrated from Ashʿath ibn Sawwār, and he is weak.

L38151 The third [issue] is that the chain is also disconnected—because it is narrated through Abū Bakr ibn Ḥafṣ, who did not contemporize with Ibn ʿUmar.

L38152 The fourth is that the matter was not as such—this being a well-known incident concerning him. Rather, conflict and fighting had arisen among the sons of al-Jahm ibn Ḥudhayfah al-ʿAdawī, leading households of Banū ʿAdī to take sides among them. The aforementioned youth—who was Zayd ibn ʿUmar ibn al-Khaṭṭāb, his mother being Umm Kulthūm bint ʿAlī ibn Abī Ṭālib (may Allah be pleased with them all)—came at night while fighting had broken out between them in the darkness. A stone struck him, with none knowing its thrower. It was conjectured that Khālid ibn Aslam—brother of Zayd ibn Aslam, the freed slave of ʿUmar ibn al-Khaṭṭāb—was the one who struck him, though he did not recognize whom he was striking in the darkness. His brother Ibn ʿUmar said to him as he lay dying: "Fear Allah, O Zayd! You do not know who struck you, for it occurred in darkness and chaos." Such was the account of his case.

L38153 As for their statement, "Indeed, he is the one against whom the crime was committed, so he has the foremost right over himself"—this is a feeble obfuscation. For the criminal act against him, over which he has priority, pertains only to what he has jurisdiction over after it has befallen him. This is valid, but only applies if he survives it, so he may choose what he is entitled to choose. However, after his death—since, in our view, he ceases to exist—he has no choice regarding a criminal act that has not yet occurred.

فَقَوْلُ الصَّاحِبِ إِذَا وَافَقَ أَهْوَاءَهُمْ كَانَ عِنْدَهُمْ حُجَّةً لَا يَحِلُّ خِلَافُهَا وَإِذَا خَالَفَ أَهْوَاءَهُمْ وَتَقْلِيدَهُمْ لَمْ يَكُنْ عِنْدَهُمْ حُجَّةً وَحَلَّ خِلَافُهُ - وَهَذَا حُكْمٌ لَا طَرِيقَ لِلتَّقْوَى وَلَا لِلْحَيَاءِ إِلَى قَائِلِهِ.

وَثَانِيهَا: أَنَّهُ عَنْ أَشْعَثَ بْنِ سَوَّارٍ، وَهُوَ ضَعِيفٌ.

وَثَالِثُهَا: أَنَّهُ مُنْقَطِعٌ أَيْضًا - لِأَنَّهُ عَنْ أَبِي بَكْرِ بْنِ حَفْصٍ وَلَمْ يُدْرِكْ ابْنَ عُمَرَ.

وَرَابِعُهَا: أَنَّ الْأَمْرَ لَمْ يَكُنْ كَذَلِكَ وَهِيَ قِصَّةٌ مَشْهُورَةٌ لَهُ وَإِنَّمَا كَانَ بَيْنَ أَوْلَادِ الْجَهْمِ بْنِ حُذَيْفَةَ الْعَدَوِيِّ شَرٌّ وَمُقَاتَلَةٌ فَتَعَصَّبَتْ بُيُوتَاتُ بَنِي عَدِيٍّ بَيْنَهُمْ فَأَتَى الْغُلَامُ الْمَذْكُورُ لَيْلًا وَالضَّرْبُ قَدْ وَقَعَ بَيْنَهُمْ فِي الظَّلَامِ - وَهَذَا الْغُلَامُ هُوَ زَيْدُ بْنُ عُمَرَ بْنِ الْخَطَّابِ - وَأُمُّهُ أُمُّ كُلْثُومٍ بِنْتُ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُمْ - فَأَصَابَهُ حَجَرٌ لَا يُدْرَى مَنْ رَمَاهُ وَقَدْ قِيلَ - ظَنًّا -: إِنَّ خَالِدَ بْنَ أَسْلَمَ أَخَا زَيْدِ بْنِ أَسْلَمَ مَوْلَى عُمَرَ بْنِ الْخَطَّابِ هُوَ الَّذِي ضَرَبَهُ - وَهُوَ لَا يَعْرِفُ مَنْ هُوَ فِي الظُّلْمَةِ - وَكَانَ ابْنُ عُمَرَ أَخُوهُ يَقُولُ لَهُ عِنْدَ الْمَوْتِ: اتَّقِ اللَّهَ يَا زَيْدُ فَإِنَّك لَا تَعْرِفُ مَنْ أَصَابَك، فَإِنَّك كُنْت فِي ظُلْمَةٍ وَاخْتِلَاطٍ - فَهَكَذَا كَانَتْ قِصَّتُهُ.

وَأَمَّا قَوْلُهُمْ: إنَّهُ هُوَ الْمَجْنِيُّ عَلَيْهِ فَهُوَ أَوْلَى بِنَفْسِهِ: فَتَمْوِيهٌ ضَعِيفٌ - لِأَنَّ الْجِنَايَةَ عَلَيْهِ الَّتِي هُوَ أَوْلَى بِهَا إنَّمَا هِيَ مَا كَانَ حَاكِمًا فِيهَا بَعْدَ حُلُولِهَا بِهِ، وَهَذَا حَقٌّ، وَإِنَّمَا ذَلِكَ فِيمَا عَاشَ بَعْدَهَا، فَاخْتَارَ مَا لَهُ أَنْ يَخْتَارَ، وَأَمَّا بَعْدَ مَوْتِهِ فَهُوَ غَيْرُ مَوْجُودٍ عِنْدَنَا بَعْدَ الْمَوْتِ، وَلَا خِيَارَ لَهُ فِي جِنَايَةٍ لَمْ تَحْدُثْ بَعْدُ.

L38154 Abu Muhammad said: When no basis remained for them except the Exalted's statement regarding accidental killing: "The recompense of an evil deed is an equivalent evil" [Ash-Shura 42:40], and whoever forgoes retaliation for bloodshed, we consider that matter.[14]

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا لَمْ يَبْقَ لَهُمْ مُتَعَلَّقٌ إِلَّا قَوْله تَعَالَى فِي قَتْلِ الْخَطَأِ {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] وَمَنْ تَصَدَّقَ بِدَمٍ نَظَرْنَا فِي ذَلِكَ.

L38155 We found the words of the Exalted concerning accidental killing: {And whoever kills a believer by mistake must free a believing slave} [An-Nisa': 92] as far as His statement {and blood money to be paid to his family} [An-Nisa': 92].[15]

فَوَجَدْنَا قَوْله تَعَالَى فِي قَتْلِ الْخَطَأِ {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ} [النساء: ٩٢] إلَى قَوْله تَعَالَى {وَدِيَةٌ مُسَلَّمَةٌ إلَى أَهْلِهِ} [النساء: ٩٢]

L38156–38158 We find Him, Exalted be He, stating regarding intentional killing: {And whoever is slain unjustly - We have granted his guardian authority} [Al-Isrā': 33] up to His statement, Exalted be He: {Indeed, he shall be avenged} [Al-Isrā': 33]. There is no killing except intentional or accidental. Thus, it is established that the blood money for accidental killing is an obligation to be delivered to the perpetrator's family. Since this is the case, it is forbidden for the slain person's guardian to nullify its delivery except to those whom Allah, Exalted be He, has ordained it to be delivered. It is also forbidden for anyone to enforce the guardian's ruling in nullifying the delivery of blood money to the perpetrator's family. This is a clear explanation without ambiguity. It is established by the explicit text of Allah's speech and His irrevocable decree that Allah, Exalted be He, has granted the guardian of the slain person authority, has entrusted him with the right to retribution, and has forbidden him from excess. Thus, it is undeniably false that... It is permissible for the slain to have a ruling concerning the nullification of the authority God Almighty granted to his guardian. Enforcing the slain's judgment contrary to God's command is sheer falsehood—this is the injustice and sin stemming from the testamentary bequest.[16]

وَوَجَدْنَاهُ تَعَالَى يَقُولُ فِي قَتْلِ الْعَمْدِ {وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لِوَلِيِّهِ سُلْطَانًا} [الإسراء: ٣٣] إلَى قَوْله تَعَالَى {إِنَّهُ كَانَ مَنْصُورًا} [الإسراء: ٣٣] وَلَا قَتْلَ إلَّا عَمْدٌ أَوْ خَطَأٌ. فَصَحَّ أَنَّ الدِّيَةَ فِي الْخَطَأِ فَرْضٌ أَنْ تُسَلَّمَ إلَى أَهْلِهِ، فَإِذْ ذَلِكَ كَذَلِكَ فَحَرَامٌ عَلَى الْمَقْتُولِ أَنْ يُبْطِلَ تَسْلِيمَهَا إلَّا مَنْ أَمَرَ اللَّهُ تَعَالَى بِتَسْلِيمِهَا إلَيْهِمْ، وَحَرَامٌ عَلَى كُلِّ أَحَدٍ أَنْ يُنَفِّذَ حُكْمَ الْمَقْتُولِ فِي إبْطَالِ تَسْلِيمِ الدِّيَةِ إلَى أَهْلِهِ - فَهَذَا بَيَانٌ لَا إشْكَالَ فِيهِ. وَصَحَّ بِنَصِّ كَلَامِ اللَّهِ تَعَالَى وَحُكْمِهِ الَّذِي لَا يُرَدُّ أَنَّ اللَّهَ تَعَالَى جَعَلَ لِوَلِيِّ الْمَقْتُولِ - سُلْطَانًا، وَجَعَلَ إلَيْهِ الْقَوَدَ، وَحَرَّمَ عَلَيْهِ أَنْ يُسْرِفَ، فَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يَجُوزَ لِلْمَقْتُولِ حُكْمٌ فِي إبْطَالِ السُّلْطَانِ الَّذِي جَعَلَهُ اللَّهُ تَعَالَى لِوَلِيِّهِ، وَمِنْ الْبَاطِلِ الْبَحْتِ إنْفَاذُ حُكْمِ الْمَقْتُولِ فِي خِلَافِ أَمْرِ اللَّهِ تَعَالَى، وَهَذَا هُوَ الْحَيْفُ وَالْإِثْمُ مِنْ الْوَصِيَّةِ.

L38159 In the same manner, Allah the Exalted has ordained through the words of His Messenger—may Allah's blessings and peace be upon him—that the family of the slain are given the choice between retribution, blood money, or ransom. We testify by Allah's witness, conveyed through His Messenger's words—

وَكَذَلِكَ جَعَلَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَهْلِ الْمَقْتُولِ الْخِيَارَ فِي الْقَوَدِ، أَوْ الدِّيَةِ، أَوْ الْمُفَادَاةِ، فَنَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ لَا يَحِلُّ لِلْمَقْتُولِ أَنْ يُبْطِلَ خِيَارًا جَعَلَهُ اللَّهُ وَرَسُولُهُ - عَلَيْهِ

[14] **Qur'an references (L38154):** Qur'an 42:40 (Ash-Shuraa).
[15] **Qur'an references (L38155):** Qur'an 4:92 (An-Nisa).
[16] **Qur'an references (L38156):** Qur'an 17:33 (Al-Isra).

may Allah's blessings and peace be upon him—that it is not permissible for the slain to invalidate a choice granted by Allah and His Messenger—may Allah's blessings and peace be upon him—to his family after his death, nor is it permissible for anyone to enforce the slain's legal ruling in this matter, and that this is a certain error in the sight of Allah the Exalted.

الصَّلَاةُ وَالسَّلَامُ - لِأَهْلِهِ بَعْدَ مَوْتِهِ، وَأَنَّهُ لَا يَحِلُّ لِأَحَدٍ إنْفَاذُ حُكْمِ الْمَقْتُولِ فِي ذَلِكَ، وَأَنَّ هَذَا خَطَأٌ مُتَيَقَّنٌ عِنْدَ اللَّهِ تَعَالَى.

L38160 Thus, it was certain that the slain's pardon regarding blood money—which Allah the Exalted designated for his family after him, not for himself—was invalid. Allah the Exalted said, "And no soul bears [sin] except against itself" (6:164). Therefore, the slain's pardon concerning blood money, which Allah the Exalted obligated to deliver to his family, or concerning retribution for blood or financial compensation—matters over which He granted his family after him the choice—constitutes a burden upon his family. This is invalid by the explicit text of the Quran.[17]

فَكَانَ بِيَقِينٍ عَفْوُ الْمَقْتُولِ عَنْ دِيَةٍ جَعَلَهَا اللَّهُ تَعَالَى لِأَهْلِهِ بَعْدَهُ لَا لَهُ، قَالَ اللَّهُ تَعَالَى {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] ، فَكَانَ عَفْوُ الْمَقْتُولِ عَنْ دِيَةٍ أَوْجَبَ اللَّهُ تَعَالَى تَسْلِيمَهَا إلَى أَهْلِهِ، وَعَنْ دَمٍ، أَوْ مَالٍ، خَيَّرَ اللَّهُ تَعَالَى فِيهِمَا أَهْلَهُ بَعْدَهُ: كَسْبًا عَلَى أَهْلِهِ - وَهَذَا بَاطِلٌ بِنَصِّ الْقُرْآنِ.

L38161 Similarly, the Messenger of Allah—may Allah bless him and grant him peace—said, "Verily, your blood and your wealth are forbidden upon you." The blood money is only by the explicit text of the Quran and the words of the Messenger of Allah—may Allah bless him and grant him peace—for the family of the slain. Therefore, it is forbidden for the slain to dispose of any part of that, for it is the property of his family.

وَكَذَلِكَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَالدِّيَةُ إنَّمَا هِيَ، بِنَصِّ الْقُرْآنِ، وَكَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَهْلِ الْمَقْتُولِ، فَحَرَامٌ عَلَى الْمَقْتُولِ التَّصَرُّفُ فِي، شَيْءٍ مِنْ ذَلِكَ، لِأَنَّهَا مَالُ أَهْلِهِ.

L38162 Abu Muhammad said: No text has ever come from Allah, the Exalted, nor from His Messenger (peace be upon him) stating that the slain person possesses the right to demand retaliation for himself, nor that he has the choice between monetary compensation or retaliation, nor that obligatory monetary compensation is due to him.

قَالَ أَبُو مُحَمَّد: وَلَمْ يَأْتِ قَطُّ نَصٌّ مِنْ اللَّهِ تَعَالَى، وَلَا مِنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَنَّ لِلْمَقْتُولِ سُلْطَانًا فِي الْقَوَدِ فِي نَفْسِهِ، وَلَا أَنَّ لَهُ خِيَارًا فِي دِيَةٍ، أَوْ قَوَدٍ، وَلَا أَنَّ لَهُ دِيَةً وَاجِبَةً.

L38163 Thus, he is thereby barred from having any right, opinion, oversight, or authority in anything pertaining to that.

فَبَطَلَ أَنْ يَكُونَ لَهُ فِي شَيْءٍ مِنْ ذَلِكَ حَقٌّ، أَوْ رَأْيٌ، أَوْ نَظَرٌ، أَوْ أَمْرٌ.

L38164 Since that is undeniably the case, the statement of the Exalted - "The recompense for an evil deed is an evil deed like it; but whoever pardons and reforms, his reward lies with Allah" [42:40] - applies only to offenses committed against a person in matters less than life, and to cases where those whom Allah the Exalted and His Messenger (peace and blessings be upon

فَإِذْ ذَلِكَ كَذَلِكَ بِلَا شَكٍّ فَقَوْلُهُ تَعَالَى {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: ٤٠] إنَّمَا هُوَ فِيمَا جُنِيَ عَلَيْهِ فِيمَا دُونَ النَّفْسِ، وَفِيمَا عَفَا عَنْهُ

[17] **Qur'an references (L38160):** Qur'an 6:164 (Al-An'am).

him) have entrusted the right of pardon - namely the legal heirs - choose to forgive after the slain person's death. Similarly, the ruling would apply to the aforementioned report if it were authentic.[18]

مَنْ جَعَلَ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْعَفْوَ إلَيْهِ - وَهُمْ الْأَهْلُ - بَعْدَ مَوْتِ الْمَقْتُولِ وَهَكَذَا يَكُونُ الْقَوْلُ فِي الْخَبَرِ الْمَذْكُورِ لَوْ صَحَّ.

L38165 Another proof is that blood money is a substitute for retaliation without doubt in intentional [killing] and a substitute for the life with certainty in accidental [killing]. There is no disagreement among anyone in the Ummah that as long as the victim is alive, he has no right to retaliation. Therefore, since he has no right in that matter, there can be no pardon from him, nor any authority in what he holds no right to.

وَبُرْهَانٌ آخَرُ - أَنَّ الدِّيَةَ عِوَضٌ مِنْ الْقَوَدِ بِلَا شَكٍّ فِي الْعَمْدِ وَعِوَضٌ مِنْ النَّفْسِ فِي الْخَطَأِ بِيَقِينٍ، وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ الْمَقْتُولَ مَا دَامَ حَيًّا فَلَيْسَ لَهُ حَقٌّ فِي الْقَوَدِ، فَإِذْ لَا حَقَّ لَهُ فِي ذَلِكَ، فَلَا عَفْوَ لَهُ، وَلَا أَمْرَ فِيمَا لَا حَقَّ لَهُ فِيهِ.

L38166–38167 Similarly, one whose soul has not yet departed, because blood money in cases of unintentional homicide serves as compensation thereof, nothing has yet become obligatory. Thus, he has no right to what is not yet legally binding. With certainty, every person of sound mind knows that neither retribution (qawad) nor blood money (diyah) becomes obligatory except after death. If he does not die, then neither retribution, nor blood money, nor any obligation upon the ʿāqilah has yet become due.

وَكَذَلِكَ مَنْ لَمْ تَذْهَبْ نَفْسُهُ بَعْدُ، لِأَنَّ الدِّيَةَ فِي الْخَطَأِ عِوَضٌ مِنْهَا، فَلَمْ يَجِبْ بَعْدُ شَيْءٌ، فَلَا حَقَّ لَهُ فِيمَا لَمْ يَجِبْ بَعْدُ، وَبِيَقِينٍ يَدْرِي كُلُّ ذِي عَقْلٍ أَنَّ الْقَوَدَ لَا يَجِبُ، وَلَا الدِّيَةُ، إلَّا بَعْدَ الْمَوْتِ، وَهُوَ إذَا لَمْ يَمُتْ فَلَمْ يَجِبْ لَهُ بَعْدُ عَلَى الْقَاتِلِ لَا قَوَدٌ، وَلَا دِيَةٌ، وَلَا عَلَى الْعَاقِلَةِ.

L38168 With certainty, every person of sound perception knows that no one has a right to anything not yet established as obligatory. When all such obligations take effect upon his death, the ruling at that time devolves upon the family, not him.

وَبِيَقِينٍ يَدْرِي كُلُّ ذِي حِسٍّ سَلِيمٍ أَنَّهُ لَا حَقَّ لِأَحَدٍ فِي شَيْءٍ لَمْ يَجِبْ بَعْدُ، فَإِذَا وَجَبَ كُلُّ ذَلِكَ بِمَوْتِهِ فَالْحُكْمُ حِينَئِذٍ لِلْأَهْلِ لَا لَهُ.

L38169 Abū Muḥammad said: It is invalidated that the slain person—whether killed by mistake or intentionally—could have pardon, legal ruling, or a will concerning retribution or blood money. Since this is the case, it is merely property that became the family's after his death, which they never inherited from him, as none of it was ever owed to him during his lifetime. Therefore, it is invalid to settle his debt from the heirs' property—which he never owned in his lifetime—or to carry out his will regarding it. Although this property became due to them because of his death, it is like the property of a mawlā who dies following his death: it is owed to the heirs due to the deceased's death, and it was never owed to the deceased himself. And success is with Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: فَبَطَلَ أَنْ يَكُونَ لِلْمَقْتُولِ خَطَأً، أَوْ عَمْدًا: عَفْوٌ، أَوْ حُكْمٌ، أَوْ وَصِيَّةٌ فِي الْقَوَدِ، أَوْ فِي الدِّيَةِ، فَإِذْ ذَلِكَ كَذَلِكَ فَإِنَّمَا هِيَ مَالٌ لِلْأَهْلِ حَدَثَ لَهُمْ بَعْدَ مَوْتِهِ، وَلَمْ يَرِثُوهُ قَطُّ عَنْهُ، إذْ لَمْ يَجِبْ لَهُ قَطُّ شَيْءٌ مِنْهُ فِي حَيَاتِهِ، فَمِنْ الْبَاطِلِ أَنْ يُقْضَى دَيْنُهُ مِنْ مَالِ الْوَرَثَةِ الَّذِي لَمْ يَمْلِكْهُ هُوَ قَطُّ فِي حَيَاتِهِ، وَأَنْ يُنَفَّذَ فِيهِ وَصِيَّتُهُ، وَهُوَ وَإِنْ كَانَ إنَّمَا وَجَبَ لَهُمْ مِنْ أَجْلِ مَوْتِهِ، فَهُوَ كَمَالِ مَوْلًى لَهُ مَاتَ إثْرَ مَوْتِهِ، فَوَجَبَ لِلْوَرَثَةِ مِنْ أَجْلِ الْمَيِّتِ، وَلَمْ يَجِبْ لِلْمَيِّتِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[18] **Qur'an references (L38164):** Qur'an 42:40 (Ash-Shuraa).

L38170 Abū Muḥammad said: If the heirs or one of them forgive their share of the accidental homicide's diyah before the death of the slain person, or if they all forgive qisas before the death of the slain person, all of this is invalid. This is because nothing from that had yet become obligatory for them, as it only becomes obligatory for them upon his death. Since this is the case, their forgiveness amounts to nothing and does not bind them. The diyah is obligatory for them, or the one who forgives does so after the death of the slain person. Similarly, qisas is also obligatory for them—and this is the opinion of Abū Ḥanīfah and his companions. We find no view except that of the Mālikīs and Shāfiʿīs as well. Among the world's wonders is that they invalidate the heirs' forgiveness before qisas or diyah becomes obligatory for them—though they are undeniably the entitled claimants—yet they permit the slain person's forgiveness of something never obligatory for him during his lifetime (namely diyah and qisas), nor does it become obligatory for him after his death. This is the extent of their reasoning. And success comes only from Allah, the Most High.

قَالَ أَبُو مُحَمَّد: فَلَوْ عَفَا الْوَرَثَةُ أَوْ أَحَدُهُمْ عَنْ نَصِيبِهِ مِنْ دِيَةِ الْخَطَأِ قَبْلَ مَوْتِ الْمَقْتُولِ، أَوْ عَفَوْا كُلُّهُمْ عَنْ الْقَوَدِ قَبْلَ مَوْتِ الْمَقْتُولِ، فَهُوَ كُلُّهُ بَاطِلٌ، وَذَلِكَ لِأَنَّهُ لَمْ يَجِبْ لَهُمْ بَعْدُ شَيْءٌ مِنْ ذَلِكَ، وَإِنَّمَا يَجِبُ لَهُمْ بِمَوْتِهِ، فَإِذْ ذَلِكَ كَذَلِكَ فَعَفْوُهُمْ لَا شَيْءَ، وَلَا يَلْزَمُهُمْ، وَالدِّيَةُ وَاجِبَةٌ لَهُمْ، أَوْ الْعَافِي بَعْدَ مَوْتِ الْمَقْتُولِ، وَكَذَلِكَ الْقَوَدُ وَاجِبٌ لَهُمْ أَيْضًا - وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَمَا نَرَاهُ إلَّا قَوْلَ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ أَيْضًا، فَمِنْ عَجَائِبِ الدُّنْيَا أَنْ يُسْقِطُوا عَفْوَ الْوَرَثَةِ قَبْلَ أَنْ يَجِبَ لَهُمْ الْقَوَدُ أَوْ الدِّيَةُ - وَهُمْ أَهْلُ ذَلِكَ وَمُسْتَحِقُّوهُ بِلَا خِلَافٍ - ثُمَّ يُجِيزُونَ عَفْوَ الْمَقْتُولِ فِي شَيْءٍ لَمْ يَجِبْ لَهُ قَطُّ فِي حَيَاتِهِ - وَهِيَ الدِّيَةُ وَالْقَوَدُ - وَلَا يَجِبُ لَهُ أَيْضًا بَعْدَ وَفَاتِهِ - فَهَذَا مِقْدَارُ نَظَرِهِمْ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38171 Abu Muhammad said: As for one upon whom a wound, cutting off, or fracture is inflicted, and he forgives him solely for it, or forgives him and what ensues from it, then his forgiveness concerning what ensues from it is void - as we previously established - because it has not yet become legally obligatory.

قَالَ أَبُو مُحَمَّد: وَأَمَّا مَنْ جُنِيَ عَلَيْهِ جُرْحٌ، أَوْ قَطْعٌ، أَوْ كَسْرٌ، فَعَفَا عَنْهُ فَقَطْ، أَوْ عَنْهُ وَعَمَّا يَحْدُثُ عَنْهُ، فَعَفْوُهُ عَمَّا يَحْدُثُ مِنْهُ بَاطِلٌ كَمَا قَدَّمْنَا لِأَنَّهُ لَمْ يَجِبْ لَهُ بَعْدُ.

L38172–38174 As for his pardoning the harm inflicted upon him, it is permissible and binding. This is because retaliation for the fracture or compensation for the wound had become a right owed to him. If he pardons, he only relinquishes the right that had subsequently been established in his favor. If the victim dies from that injury or another limb is rendered useless as a consequence, the right to qisas (retaliation) for the additional limb belongs to him and his heirs. This is because the right to execute the perpetrator by sword—not by the same method he used to kill their slain kin—now becomes obligatory for them. The reason is that the perpetrator previously held liability for qisas regarding those injuries, but they pardoned him, thereby suspending those rights. Only the homicide itself remains unresolved. The perpetrator cannot pardon this offense, as the right to retaliation belongs solely to the

وَأَمَّا عَفْوُهُ عَمَّا جُنِيَ عَلَيْهِ فَهُوَ جَائِزٌ، وَهُوَ لَهُ لَازِمٌ، وَذَلِكَ لِأَنَّهُ قَدْ وَجَبَ لَهُ الْقَوَدُ فِي الْكَسْرِ، أَوْ الْمُفَادَاةُ فِي الْجِرَاحَةِ، فَإِنْ عَفَا فَإِنَّمَا عَفَا عَنْ حَقِّهِ الَّذِي وَجَبَ لَهُ بَعْدُ، فَإِنْ مَاتَ مِنْ ذَلِكَ أَوْ حَدَثَ عَنْهُ بُطْلَانُ عُضْوٍ آخَرَ، فَلَهُ الْقَوَدُ فِي الْعُضْوِ الْآخَرِ، لِأَنَّهُ الْآنَ وَجَبَ لَهُ وَلِأَوْلِيَائِهِ الْقَتْلُ بِالسَّيْفِ خَاصَّةً - لَا بِمِثْلِ مَا جَنَى عَلَى مَقْتُولِهِمْ - لِأَنَّ تِلْكَ الْجِنَايَاتِ كَانَ لَهُ الْقَوَدُ فِيهَا فَعَفَا عَنْهَا فَسَقَطَتْ وَبَقِيَ قَتْلُ النَّفْسِ فَقَطْ، وَلَا عَفْوَ لَهُ فِيهِ، فَهُوَ لِلْوَرَثَةِ، فَلَهُمْ قَتْلُهُ، وَإِذْ لَهُمْ قَتْلُهُ، وَبَطَلَ أَنْ يُقْتَصَّ مِنْهُ بِمِثْلِ مَا جَنَى عَلَيْهِ، فَلَا خِلَافَ فِي أَنَّ الْجِنَايَةَ لَمْ يُقَدْ مِنْهَا، فَإِنَّمَا الْقَتْلُ بِالسَّيْفِ فَقَطْ.

heirs. They may therefore execute him. Once their right to execute him is established, it becomes invalid to retaliate in the same manner he committed the crime. There is unanimous agreement that qisas remains unfulfilled for the original offense, as execution must occur exclusively by sword.

L38175 And likewise, if the victim exacted retaliation from the offender for the harm inflicted upon him and then died, the offender is to be put to death by the sword alone, because retaliation was already exacted from him for the offense, so no further retaliation shall be imposed upon him.

L38176 Ali said: If a perpetrator commits a criminal act against a person—whether it is one from which survival is possible, or impossible—and the guardian of the victim retaliates by killing the perpetrator before the victim dies, then the heirs of the slain perpetrator may kill the retaliating guardian. If the victim subsequently dies, no liability applies, for any offense where the victim survives the perpetrator incurs no liability. This is because the right to retaliation is nullified by the perpetrator's death, and the financial compensation (*diya*) becomes due during the victim's lifetime to parties other than the perpetrator—namely, the victim's heirs. Thus, it becomes part of their wealth, and the perpetrator holds no claim to it. Moreover, the perpetrator possesses no wealth at all, so his offense is invalidated. Allah the Exalted says, "No soul bears the burden of another" (Quran 6:164, al-Anʿām). And success is from Allah, the Exalted.[19]

L38177 **A legal issue: If the guardian pardons [the offender] or accepts the diyah (blood money) and then proceeds to kill them.**

L38178 2089 - Issue: The guardian pardons or takes the blood money, then kills [him]? ʿAlī said: People differed regarding this. A group said: He is to be killed - as narrated to us by ʿAbdullāh ibn Rabīʿ via Ibn Mufarrij via Qāsim ibn Aṣbagh via Ibn Waḍḍāḥ via Sahnūn via Ibn Wahb via Yūnus, who said: I asked Ibn Shihāb about a man who killed someone, then settled by paying the blood money, then killed him. He said: We hold that he should be executed

[19] **Qur'an references (L38176):** Qur'an 6:164 (Al-An'am).

وَهَكَذَا لَوْ اسْتَقَادَ الْمَجْنِيُّ عَلَيْهِ مِمَّا جَنَى عَلَيْهِ الْجَانِي ثُمَّ مَاتَ الْمَجْنِيُّ عَلَيْهِ، فَإِنَّ الْجَانِيَ يُقْتَلُ بِالسَّيْفِ فَقَطْ، لِأَنَّهُ قَدْ اُسْتُقِيدَ مِنْهُ فِي الْجِنَايَةِ فَلَا يُعْتَدَى عَلَيْهِ بِأُخْرَى.

قَالَ عَلِيٌّ: وَلَوْ أَنَّ جَانِيًا جَنَى عَلَى إنْسَانٍ جِنَايَةً قَدْ يُعَاشُ مِنْهَا، أَوْ لَا سَبِيلَ إلَى الْعَيْشِ مِنْهَا، فَقَامَ وَلِيُّ هَذَا الْمَجْنِيِّ عَلَيْهِ فَقَتَلَ الْجَانِي قَبْلَ مَوْتِ الْمَجْنِيِّ عَلَيْهِ، فَلِأَوْلِيَاءِ الْجَانِي الْمَقْتُولِ قَتْلُ قَاتِلِ وَلِيِّهِمْ، ثُمَّ إنْ مَاتَ الْجَانِي عَلَيْهِ فَلَا شَيْءَ فِي ذَلِكَ، لِأَنَّ كُلَّ جِنَايَةٍ لَمْ يَمُتْ صَاحِبُهَا حَتَّى مَاتَ الْجَانِي فَلَا شَيْءَ فِيهَا، لِأَنَّ الْقَوَدَ قَدْ بَطَلَ بِمَوْتِهِ، وَقَدْ صَارَ الْمَالُ فِي حَيَاةِ الْمَجْنِيِّ عَلَيْهِ لِغَيْرِ الْجَانِي، وَهُمْ الْوَرَثَةُ، فَهُوَ مَالٌ مِنْ مَالِهِمْ، وَلَا حَقَّ لَهُ عِنْدَهُمْ، وَلَا مَالَ لِلْجَانِي أَصْلًا، فَجِنَايَتُهُ بَاطِلٌ، قَالَ تَعَالَى {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْوَلِيُّ يَعْفُو أَوْ يَأْخُذُ الدِّيَةَ ثُمَّ يَقْتُلُ]

٢٠٨٩ - مَسْأَلَةٌ: وَالْوَلِيُّ يَعْفُو أَوْ يَأْخُذُ الدِّيَةَ ثُمَّ يَقْتُلُ؟ قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: يُقْتَلُ - كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ نا يُونُسُ قَالَ: سَأَلْت ابْنَ شِهَابٍ عَنْ رَجُلٍ قَتَلَ

in retribution while degraded, and the guardian retains the right to pardon him if he wishes.

L38179 Hammam narrated to us: Abdullah ibn Muhammad ibn Ali al-Bājiyy narrated to us: Abdullah ibn Yunus narrated to us: Baqī ibn Makhlad narrated to us: Abu Bakr ibn Abi Shaybah narrated to us: Abd al-Rahman ibn Mahdi narrated to us from al-Qasim ibn al-Fadl, from Harun, from Ikrimah regarding a man who killed after receiving the diyah (blood money). He said: "He must be executed. Have you not heard the words of the Exalted: {But whoever transgresses after that will have a painful punishment} [Al-Baqarah 2:178]."[20]

L38180–38181 A group held that the killer is not to be killed, as has been narrated to us through the mentioned chain of transmission to Abū Bakr ibn Abī Shaybah: ʿAbd al-Raḥmān ibn Mahdī narrated to us from Ḥammād ibn Salamah from Yūnus ibn ʿUbayd from al-Ḥasan regarding one who has killed after the blood money was taken. He said: "The blood money is taken from him, and the killer is not to be killed."

L38182 Abū Muḥammad said: When they differed—as we have mentioned—it became obligatory for us to examine this matter to know the truth so that we may follow it—with the aid of Allah, the Exalted, and from Him. We examined it and found that the Messenger of Allah—peace and blessings of Allah be upon him—had said: "Whoever has a slain person after this statement of mine, his family has two choices: either to take the blood money or to seek retaliation," or words to this effect.

L38183 Thus, it is established that the Messenger of Allah—peace and blessings be upon him—permitted the family only one of two options: either blood money or retaliation, and he did not allow both together. Therefore, if he is executed [in retaliation], there is no blood money for him; and if they accept the blood money, there is no retaliation against him—this is the explicit ruling of his decree—peace and blessings be upon him.

L38184 We found that when the family of the slain person pardoned [the offender]

رَجُلًا ثُمَّ صَالَحَ، فَأَدَّى الدِّيَةَ ثُمَّ قَتَلَهُ؟ قَالَ: نَرَى أَنْ يُقَادَ بِهِ صَاغِرًا، وَلِوَلِيِّهِ أَنْ يَعْفُوَ عَنْهُ إِنْ شَاءَ.

حَدَّثَنَا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ الْقَاسِمِ بْنِ الْفَضْلِ عَنْ هَارُونَ عَنْ عِكْرِمَةَ فِي رَجُلٍ قَتَلَ بَعْدَ أَخْذِ الدِّيَةِ، قَالَ: يُقْتَلُ، أَمَا سَمِعْت قَوْله تَعَالَى {فَمَنِ اعْتَدَى بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ} [البقرة: ١٧٨] .

وَقَالَتْ طَائِفَةٌ: لَا يُقْتَلُ - كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إلَى أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ فِيمَنْ قَتَلَ بَعْدَ أَخْذِ الدِّيَةِ، قَالَ: تُؤْخَذُ مِنْهُ الدِّيَةُ وَلَا يُقْتَلُ.

قَالَ أَبُو مُحَمَّد: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى وَمِنْهُ - فَنَظَرْنَا فِي ذَلِكَ: فَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ «مَنْ قُتِلَ لَهُ بَعْدَ مَقَالَتِي هَذِهِ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيَرَتَيْنِ إمَّا أَنْ يَأْخُذُوا الْعَقْلَ وَإِمَّا أَنْ يَقْتُلُوا» أَوْ كَلَامًا هَذَا مَعْنَاهُ.

فَصَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَجْعَلْ لِلْأَهْلِ إلَّا أَحَدَ الْأَمْرَيْنِ: إمَّا الدِّيَةُ، وَإِمَّا الْقَوَدُ وَلَمْ يَجْعَلْ الْأَمْرَيْنِ مَعًا، فَإِذَا قَتَلَ فَلَا دِيَةَ لَهُ، وَإِذَا أَخَذَ الدِّيَةَ فَلَا قَتْلَ لَهُ - هَذَا نَصُّ حُكْمِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

[20] **Qur'an references (L38179):** Qur'an 2:178 (Al-Baqarah); Qur'an 5:94 (Al-Ma'idah).

and accepted the blood money, it became permissible for them and became their right, while their entitlement to qisas was nullified. They are not entitled to both rights simultaneously according to the textual ruling. Thus, when their right to qisas is nullified by this action, qisas becomes prohibited and blood money becomes permissible.

فَوَجَدْنَا أَهْلَ الْمَقْتُولِ لَمَّا عَفَوْا وَأَخَذُوا الدِّيَةَ حَلَّتْ لَهُمْ، وَصَارَتْ حَقَّهُمْ، وَبَطَلَ مَا كَانَ لَهُمْ مِنْ الْقَوَدِ، لَيْسَ لَهُمْ جَمِيعُ الْأَمْرَيْنِ بِالنَّصِّ، فَإِذَا بَطَلَ حَقُّهُمْ فِي الْقَوَدِ بِذَلِكَ حُرِّمَ الْقَوَدُ وَحَلَّتْ الدِّيَةُ.

L38185 And were it not that retaliation had been forbidden, blood money would not have been permissible. When retaliation is forbidden, they have killed a soul whose killing Allah, the Exalted, has forbidden. When they kill a soul whose killing is forbidden by Allah, retaliation becomes obligatory in that case, according to the statement of the Messenger of Allah (peace be upon him): "It is not lawful to shed the blood of a Muslim except for one of three: a man who apostatizes after having believed, commits adultery after being lawfully married, or kills a soul without [just] retaliation."

وَلَوْلَا أَنَّ الْقَوَدَ حُرِّمَ لَمَّا حَلَّتْ الدِّيَةُ، فَإِذَا حُرِّمَ الْقَوَدُ فَقَدْ قَتَلُوا نَفْسًا مُحَرَّمَةً حَرَّمَهَا اللَّهُ تَعَالَى، وَإِذْ قَتَلُوا نَفْسًا مُحَرَّمَةً فَالْقَوَدُ وَاجِبٌ فِي ذَلِكَ، بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إلَّا بِإِحْدَى ثَلَاثٍ: رَجُلٌ كَفَرَ بَعْدَ إيمَانِهِ، أَوْ زَنَى بَعْدَ إحْصَانِهِ، أَوْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ» .

L38186 If it is said: "This one has killed a person in retaliation for a person?" The reply would be: "A person may not be lawfully taken for a person except where Allah the Exalted has ordained it through the tongue of His Prophet—peace and blessings of Allah be upon him. Allah has only ordained this when they choose retaliation instead of diyah. As for when they choose diyah, Allah has forbidden them that person, for He has not granted them except one of the two options."

فَإِنْ قِيلَ: هَذَا قَتَلَ نَفْسًا بِنَفْسٍ؟ قِيلَ لَهُ: لَا تَحِلُّ النَّفْسُ بِالنَّفْسِ إلَّا حَيْثُ أَحَلَّهَا اللَّهُ تَعَالَى عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا أَحَلَّهَا اللَّهُ تَعَالَى إذَا اخْتَارُوا ذَلِكَ دُونَ الدِّيَةِ، وَأَمَّا إذَا اخْتَارُوا الدِّيَةَ فَقَدْ حَرَّمَ اللَّهُ تَعَالَى عَلَيْهِمْ تِلْكَ النَّفْسَ، إذْ لَمْ يَجْعَلْ لَهُمْ إلَّا أَحَدَ الْأَمْرَيْنِ.

L38187–38189 And whoever claims that legalizing what was prohibited is valid, his claim is invalid unless he brings forth... His claim thereof is based on a primary textual source or consensus, and it has been established with certainty that the blood money is permissible for them as lawful property from their own assets when they take it. It has also been established with certainty that retaliation (qisas) is thereby prohibited for them without any differing opinion, since no jurist asserts that they may claim both the blood money and retaliation simultaneously.

وَمَنْ ادَّعَى فِي ذَلِكَ شَيْئًا صَحَّ تَحْلِيلُهُ أَنَّهُ حُرِّمَ فَهُوَ مُبْطِلٌ، إلَّا أَنْ يَأْتِيَ فِي دَعْوَاهُ ذَلِكَ بِنَصٍّ، أَوْ إجْمَاعٍ، وَقَدْ صَحَّ بِيَقِينٍ كَوْنُ الدِّيَةِ لَهُمْ حَلَالًا، وَمَالًا مِنْ مَالِهِمْ إذَا أَخَذُوهَا، وَصَحَّ تَحْرِيمُ الْقَوَدِ عَلَيْهِمْ بِذَلِكَ بِلَا خِلَافٍ، إذْ لَا يَقُولُ أَحَدٌ فِي الْأَرْضِ، إنَّهُمْ يَجْمَعُونَ الْأَمْرَيْنِ مَعًا الدِّيَةَ وَالْقَوَدَ.

L38190 Since there is no doubt regarding what we have mentioned, whoever claims that the blood whose prohibition was confirmed for them has again become lawful and that the blood money they took—which became lawful for them—has now been prohibited shall not be accepted unless by Quran or Sunnah.

فَإِذْ لَا شَكَّ فِيمَا ذَكَرْنَا فَمَنْ ادَّعَى أَنَّ الدَّمَ الَّذِي قَدْ صَحَّ تَحْرِيمُهُ عَلَيْهِمْ عَادَ حَلَالًا لَهُمْ، وَأَنَّ الدِّيَةَ الَّتِي أَخَذُوا فَحَلَّتْ لَهُمْ قَدْ حُرِّمَتْ عَلَيْهِمْ، لَمْ يُصَدَّقْ إلَّا بِقُرْآنٍ أَوْ سُنَّةٍ، وَلَا سَبِيلَ لَهُمْ إلَى وُجُودِ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

They have no means of producing such evidence, and with Allah, the Exalted, is success.

L38191 **Issue: Whether retaliation is to be enforced within the Haram?**

L38192 2090 - The Issue: Is legal retaliation enforced within the sacred precinct? ʿAlī said: "People have differed on this. A group said: Legal retaliation is not carried out within the sacred precinct." As narrated to us by Ḥammām from Ibn Mufarrij from Ibn al-Aʿrābī from al-Dabarī from ʿAbd al-Razzāq from Maʿmar from Ibn Ṭāwūs from his father from Ibn ʿAbbās, who said: "Whoever kills or steals within the sacred precinct or outside it, then enters, he is not to be sat with, spoken to, or harmed. He is to be called upon repeatedly until he exits, so that the *ḥadd* punishment may be carried out against him."

L38193 And whoever kills or steals and is apprehended in the non-sanctified area, then is brought into the sanctuary, and they intend to execute the punishment he deserves, they must remove him from the sanctuary to the non-sanctified area. And if he killed within the sanctuary or stole within the sanctuary, the punishment is carried out upon him within the sanctuary.

L38194 Ibn Abbas censured Ibn al-Zubayr regarding a man whom he seized in al-Ḥill, then brought into al-Ḥaram, later took him back to al-Ḥill, and killed him there.

L38195 And through him: To ʿAbd al-Razzāq – Ibn ʿUyaynah narrated to me from Ibrāhīm ibn Maysarah from Ṭāwūs from Ibn ʿAbbās concerning one who kills in a non-sacred area then enters the sacred precinct. He said: He is not to be sat with, nor spoken to, nor traded with, nor harmed. He is to be summoned and told: "O so-and-so, fear Allah concerning the bloodshed of so-and-so. Depart from the sacred precincts."

L38196–38198 From Yaḥyā ibn ʿAbd al-Raḥmān ibn Masʿūd, from Aḥmad ibn Duḥaym, from Ibrāhīm ibn Ḥammād, from Ismāʿīl ibn Isḥāq, from ʿAlī ibn ʿAbd Allāh ibn al-Madīnī, from Sufyān ibn ʿUyaynah, who reported to me. Ibrahim ibn Maysarah - a trustworthy and reliable narrator - said: I heard Tawus

[مَسْأَلَةٌ هَلْ يُسْتَقَادُ فِي الْحَرَمِ]

٢٠٩٠ - الْمَسْأَلَةُ: وَهَلْ يُسْتَقَادُ فِي الْحَرَمِ؟ قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَتْ طَائِفَةٌ: لَا يُقَادُ فِي الْحَرَمِ: كَمَا حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنِ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنِ ابْنِ عَبَّاسٍ قَالَ: مَنْ قَتَلَ أَوْ سَرَقَ فِي الْحَرَمِ، أَوْ فِي الْحِلِّ، ثُمَّ دَخَلَ، فَإِنَّهُ لَا يُجَالَسُ، وَلَا يُكَلَّمُ، وَلَا يُؤْذَى، وَيُنَاشَدُ حَتَّى يَخْرُجَ فَيُقَامَ عَلَيْهِ الْحَدُّ.

وَمَنْ قَتَلَ أَوْ سَرَقَ فَأَخَذَ فِي الْحِلِّ ثُمَّ أُدْخِلَ الْحَرَمَ، فَأَرَادُوا أَنْ يُقِيمُوا عَلَيْهِ مَا أَصَابَ أَخْرَجُوهُ مِنَ الْحَرَمِ إِلَى الْحِلِّ، فَإِنْ قَتَلَ فِي الْحَرَمِ أَوْ سَرَقَ أُقِيمَ عَلَيْهِ فِي الْحَرَمِ.

وَعَابَ ابْنُ عَبَّاسٍ عَلَى ابْنِ الزُّبَيْرِ فِي رَجُلٍ أَخَذَهُ فِي الْحِلِّ ثُمَّ أَدْخَلَهُ الْحَرَمَ ثُمَّ أَخْرَجَهُ إِلَى الْحِلِّ فَقَتَلَهُ.

وَبِهِ: إِلَى عَبْدِ الرَّزَّاقِ حَدَّثَنِي ابْنُ عُيَيْنَةَ عَنْ إِبْرَاهِيمَ بْنِ مَيْسَرَةَ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ فِيمَنْ قَتَلَ فِي الْحِلِّ ثُمَّ أُدْخِلَ الْحَرَمَ، قَالَ: لَا يُجَالَسُ، وَلَا يُكَلَّمُ، وَلَا يُبَايَعُ، وَلَا يُؤْذَى - يُؤْتَى إِلَيْهِ فَيُقَالُ: يَا فُلَانُ اتَّقِ اللَّهَ فِي دَمِ فُلَانٍ اُخْرُجْ مِنَ الْمَحَارِمِ.

نا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ نا أَحْمَدُ بْنُ دُحَيْمٍ نا إِبْرَاهِيمُ بْنُ حَمَّادٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ بْنِ الْمَدِينِيِّ نا سُفْيَانُ بْنُ عُيَيْنَةَ أَخْبَرَنِي إِبْرَاهِيمُ بْنُ مَيْسَرَةَ -

وَكَانَ ثِقَةً مَأْمُونًا - قَالَ: سَمِعْت طَاوُسًا يَقُولُ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ: مَنْ أَصَابَ حَدًّا ثُمَّ دَخَلَ الْحَرَمَ، لَمْ يُجَالَسْ، وَلَمْ يُبَايَعْ، وَيَأْتِيه الَّذِي يَطْلُبُهُ، فَيَقُولُ: أَيْ فُلَانُ اتَّقِ اللَّهَ فِي دَمِ فُلَانٍ، اُخْرُجْ عَنْ الْمَحَارِمِ، فَإِذَا خَرَجَ أُقِيمَ عَلَيْهِ الْحَدُّ.

وَبِهِ: إلَى إسْمَاعِيلَ نا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ ابْنِ عَبَّاسٍ فِي قَوْلِ اللَّهِ تَعَالَى: {مَقَامُ إِبْرَاهِيمَ وَمَنْ دَخَلَهُ كَانَ آمِنًا} [آل عمران: ٩٧] . قَالَ: إذَا أَحْدَثَ الرَّجُلُ حَدَثًا ثُمَّ دَخَلَ الْحَرَمَ، لَمْ يُجَالَسْ، وَلَمْ يُبَايَعْ، وَلَمْ يُطْعَمْ، وَلَمْ يُسْقَ، حَتَّى يَخْرُجَ مِنْ الْحَرَمِ، فَيُؤْخَذَ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ قَالَ: قَالَ ابْنُ جُرَيْجٍ: سَمِعْت ابْنَ أَبِي حُسَيْنٍ يُحَدِّثُ عَنْ عِكْرِمَةَ بْنِ خَالِدٍ، قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَوْ وَجَدْت فِيهِ - يَعْنِي حَرَمَ مَكَّةَ - قَاتِلَ الْخَطَّابِ مَا مَسِسْته حَتَّى يَخْرُجَ مِنْهُ.

قَالَ ابْنُ جُرَيْجٍ: وَحَدَّثَنِي أَبُو الزُّبَيْرِ قَالَ: قَالَ ابْنُ عُمَرَ: لَوْ وَجَدْت فِيهِ - يَعْنِي حَرَمَ مَكَّةَ - قَاتِلَ عُمَرَ مَا نَدَهْته.

وَعَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَوْ وَجَدْت قَاتِلَ أَبِي فِي الْحَرَمِ مَا عَرَضْته.

قَالَ عَطَاءٌ: وَالشَّهْرُ الْحَرَامُ كَذَلِكَ مِثْلُ الْحَرَمِ فِي ذَلِكَ كُلِّهِ.

وَقَالَ الزُّهْرِيُّ: مَنْ قَتَلَ فِي الْحَرَمِ قُتِلَ فِي الْحَرَمِ، وَمَنْ قَتَلَ فِي الْحِلِّ ثُمَّ دَخَلَ الْحَرَامَ أُخْرِجَ إلَى الْحِلِّ فَقُتِلَ فِي الْحِلِّ - قَالَ الزُّهْرِيُّ: تِلْكَ السُّنَّةُ.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ.

say: I heard Ibn Abbas say: Whoever incurs a ḥadd punishment then enters the sacred sanctuary should not be associated with, nor should allegiance be pledged to him. The one pursuing him comes to him and says: O so-and-so, fear Allah regarding the bloodshed of so-and-so. Leave the sacred boundaries. When he exits, the ḥadd punishment is carried out against him.

L38199 And through him, up to Ismail: Sulayman ibn Harb narrated to us from Hammad ibn Salama from Amr ibn Dinar from Ibn Abbas regarding Allah's statement: {The standing place of Abraham, and whoever enters it shall be safe} [3:97]. He said, "If a man commits a crime and enters the sanctuary, he is not to be kept company with, pledged allegiance to, fed, or given drink until he leaves the sanctuary, at which point he is to be seized."[21]

L38200 Narrated through the chain of ʿAbd al-Razzāq, who said: Ibn Jurayj said: I heard Ibn Abī Ḥusayn narrating from ʿIkrimah ibn Khālid, who said: ʿUmar ibn al-Khaṭṭāb said: "If I found within it—meaning the Sacred Precinct of Mecca—the killer of al-Khaṭṭāb, I would not harm him until he exits from it."

L38201 Ibn Jurayj said: Abu al-Zubayr narrated to me, saying: Ibn Umar said: If I found within it—meaning the Sanctuary of Mecca—the killer of Umar, I would not have struck him.

L38202 From 'Aṭā' on the authority of Ibn 'Abbās, who said: "If I were to find my father's killer within the sacred precinct, I would not confront him."

L38203 'Aṭā' said: The sacred month is like al-Ḥaram (the sacred sanctuary) in all of that.

L38204 Al-Zuhri said: Whoever kills within the sacred precincts is to be executed within the sacred precincts, and whoever kills in the non-sacred area then enters the sacred precincts is to be expelled to the non-sacred area and executed there. Al-Zuhri said: That is the Sunnah.

L38205 And by this, Abu Hanifah, Ahmad ibn Hanbal, and Ishaq ibn Rahwayh state.

[21] **Qur'an references (L38199):** Qur'an 3:97 (Ali 'Imran).

L38206–38208 Abū Muḥammad said: It has been narrated from certain people that there are contrary opinions to this [and matters presumed to contradict this], as transmitted to us by Yaḥyā ibn ʿAbd al-Raḥmān ibn Masʿūd, who narrated from Aḥmad ibn Duhaym, who narrated from Ibrāhīm ibn Ḥammād, who narrated from Ismāʿīl ibn Isḥāq, who narrated from ʿAbd Allāh ibn Muʿādh, who narrated from his father, who narrated from Ashʿath [Ibn ʿAbd al-Malik], from al-Ḥasan regarding Allah's statement: {Whoever enters it is safe} [Āl ʿImrān 3:97]. He said: A man would be in... In the Age of Ignorance, a man would kill another, then hang a woollen cord around his neck, then enter the Haram. The slain man's son or father would encounter him yet would not move against him.[22]

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ رُوِيَ عَنْ قَوْمٍ خِلَافُ هَذَا [وَشَيْءٌ يُظَنُّ أَنَّهُ خِلَافُ هَذَا] وَهُوَ كَمَا حَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ نا أَحْمَدُ بْنُ دُحَيْمٍ نا إِبْرَاهِيمُ بْنُ حَمَّادٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ نا عَبْدُ اللَّهِ بْنُ مُعَاذٍ نا أَبِي نا أَشْعَثُ - هُوَ ابْنُ عَبْدِ الْمَلِكِ - عَنْ الْحَسَنِ فِي قَوْلِ اللَّهِ تَعَالَى {وَمَنْ دَخَلَهُ كَانَ آمِنًا} [آل عمران: ٩٧] قَالَ: كَانَ الرَّجُلُ فِي الْجَاهِلِيَّةِ يَقْتُلُ الرَّجُلَ، ثُمَّ يُعَلِّقُ فِي رَقَبَتِهِ الصُّوفَةَ، ثُمَّ يَدْخُلُ الْحَرَمَ فَيَلْقَاهُ ابْنُ الْمَقْتُولِ أَوْ أَبُوهُ فَلَا يُحَرِّكُهُ.

L38209 From Qatadah regarding the statement of Allah, the Exalted: {And whoever enters it is safe} [Āl ʿImrān: 97], he said: That was during the pre-Islamic era. But now, if someone steals within it, he is cut off; if he kills, he is killed; and if polytheists are apprehended within it, they are killed.[23]

وَعَنْ قَتَادَةَ فِي قَوْلِ اللَّهِ تَعَالَى {وَمَنْ دَخَلَهُ كَانَ آمِنًا} [آل عمران: ٩٧] قَالَ: كَانَ ذَلِكَ فِي الْجَاهِلِيَّةِ، فَأَمَّا الْيَوْمَ فَلَوْ سَرَقَ فِيهِ أَحَدٌ قُطِعَ، وَإِنْ قَتَلَ قُتِلَ، وَلَوْ قُدِرَ عَلَى الْمُشْرِكِينَ فِيهِ قُتِلُوا.

L38210 It is narrated from Rabiʿah ibn Abī ʿAbd al-Raḥmān that he said regarding a man who wounds another within the sacred precincts: he is retaliated against there. Likewise, if he were to wound someone outside the sacred precincts, retaliation is to be carried out against him within the sacred precincts, and wherever he is found.

وَعَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ أَنَّهُ قَالَ فِي رَجُلٍ جَرَحَ رَجُلًا فِي الْحَرَمِ: أَنَّهُ يُقَادُ بِهِ، وَكَذَلِكَ لَوْ جَرَحَ فِي الْحِلِّ أُقِيدَ بِهِ فِي الْحَرَمِ، وَحَيْثُ وُجِدَ.

L38211 And by this say Mālik, al-Shāfiʿī, Abū Sulaymān, and their respective followers.

وَبِهِ يَقُولُ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L38212 Abu Muhammad said: Among the Companions are these: ʿUmar ibn al-Khaṭṭāb, his son ʿAbd Allāh, Ibn ʿAbbās, Ibn al-Zubayr, and Abū Shurayḥ—according to what we will mention after this, if Allah the Exalted wills—with no dissenter among the Companions—may Allah be pleased with them—.

قَالَ أَبُو مُحَمَّدٍ: فَهَؤُلَاءِ مِنْ الصَّحَابَةِ عُمَرُ بْنُ الْخَطَّابِ، وَابْنُهُ عَبْدِ اللَّهِ، وَابْنُ عَبَّاسٍ، وَابْنُ الزُّبَيْرِ، وَأَبُو شُرَيْحٍ - عَلَى مَا نَذْكُرُ بَعْدَ هَذَا، إنْ شَاءَ اللَّهُ تَعَالَى - وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L38213 Among the Successors—ʿAṭāʾ, ʿUbayd ibn ʿUmayr, Mujāhid, Saʿīd ibn Jubayr, al-Zuhrī, and others—they report this from their scholars, who were the

[22] **Qur'an references (L38206):** Qur'an 3:97 (Ali 'Imran).
[23] **Qur'an references (L38209):** Qur'an 3:97 (Ali 'Imran).

Successors from the people of Medina. They further report that the Sunnah was established in this manner. As for those who adhered to a contrary opinion, this was only permissible through a narration from Rabiʿah.

وَمِنْ التَّابِعِينَ - عَطَاءٌ، وَعُبَيْدُ بْنُ عُمَيْرٍ، وَمُجَاهِدٌ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَالزُّهْرِيُّ، وَغَيْرُهُمْ، وَيُخْبِرُ بِذَلِكَ عَنْ عُلَمَائِهِمْ، وَهُمْ التَّابِعُونَ مِنْ أَهْلِ الْمَدِينَةِ، وَيُخْبِرُ: أَنَّ السُّنَّةَ مَضَتْ بِذَلِكَ فِيمَا تَعَلَّقَ مَنْ تَعَلَّقَ بِخِلَافِ ذَلِكَ إلَّا بِرِوَايَةٍ عَنْ رَبِيعَةَ.

L38214 As for Qatādah and Al-Ḥasan, their statements do not contradict those we have mentioned. Al-Ḥasan only narrated [practices] of those in the pre-Islamic era and did not assert that Islam inherently opposes this except by its own rulings. As for Qatādah, he did not state that one who commits homicide in non-sanctified land should be subject to retaliation for it within the sanctified precincts.

وَأَمَّا قَتَادَةُ، وَالْحَسَنُ، فَلَيْسَ فِي قَوْلِهِمَا خِلَافٌ لِمَنْ ذَكَرْنَا، لِأَنَّ الْحَسَنَ إنَّمَا أَخْبَرَ عَمَّنْ كَانَ فِي الْجَاهِلِيَّةِ، وَلَمْ يَقُلْ إنَّ الْإِسْلَامَ جَاءَ بِخِلَافِ ذَلِكَ إلَّا بِهِ، وَأَمَّا قَتَادَةُ فَلَمْ يَقُلْ: إنَّ مَنْ أَصَابَ فِي الْحِلِّ دَمًا أُقِيدَ بِهِ فِي الْحَرَمِ.

L38215 Thus, their attachment to Qatādah and al-Ḥasan was nullified.

فَبَطَلَ تَعَلُّقُهُمْ بِقَتَادَةَ، وَالْحَسَنِ.

L38216–38218 Abū Muḥammad said: Some of them openly professed the most disgraceful declaration. He mentioned the narration transmitted by Aḥmad ibn ʿUmar, who narrated to us from ʿAbdullāh ibn al-Ḥusayn, who narrated to us from Ibrāhīm ibn Muḥammad, who narrated to us from Muḥammad ibn al-Jahm, who narrated to us from Aḥmad ibn al-Haytham, who narrated to us from ʿAbbād ibn al-ʿAwwām, from Sufyān ibn al-Ḥusayn, from al-Ḥakam, from Mujāhid, from Ibn ʿAbbās, who said: "Two verses were abrogated from this surah—referring to al-Mā'idah—the verse of the qalā'id (garland-markers)." "If they come to you, judge between them or turn away from them" [Al-Mā'idah: 42]. He concealed by claiming this was a difference in the statement of Ibn Abbas.[24]

وَقَالَ أَبُو مُحَمَّد: وَجَاهَرَ بَعْضُهُمْ أَقْبَحَ مُجَاهِرَةٍ، فَذَكَرَ: مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ عُمَرَ نا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ نا إبْرَاهِيمُ بْنُ مُحَمَّدٍ نا مُحَمَّدُ بْنُ الْجَهْمِ نا أَحْمَدُ بْنُ الْهَيْثَمِ نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ سُفْيَانَ بْنِ الْحُسَيْنِ عَنْ الْحَكَمِ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: آيَتَانِ نُسِخَتَا مِنْ هَذِهِ السُّورَةِ - يَعْنِي الْمَائِدَةَ - آيَةُ الْقَلَائِدِ {فَإِنْ جَاءُوكَ فَاحْكُمْ بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ} [المائدة: ٤٢] فَمَوَّهَ بِأَنَّ هَذَا اخْتِلَافٌ مِنْ قَوْلِ ابْنِ عَبَّاسٍ.

L38219 Abū Muḥammad said: This is an outright falsehood and sheer lie. Yes, it has been said that only "the garlands" from His Exalted's statement, *"Do not violate the rites of Allah, nor the sacred month, nor the sacrificial animals, nor the garlands, nor those coming to the Sacred House seeking the bounty and pleasure of their Lord"* (5:2), were abrogated—as narrated by Abū Saʿīd al-Jaʿfarī from Muḥammad ibn ʿAlī al-Maqburī from Abū Jaʿfar Aḥmad ibn Muḥammad ibn Ismāʿīl from Abū Jaʿfar al-Ṭaḥāwī from Salamah ibn Shabīb

قَالَ أَبُو مُحَمَّد: وَهَذَا الْبَهْتُ الْفَاضِحُ وَالْكَذِبُ الْمُجَرَّدُ، وَنَعَمْ: إنْ قَوْله تَعَالَى {لا تُحِلُّوا شَعَائِرَ اللَّهِ وَلا الشَّهْرَ الْحَرَامَ وَلا الْهَدْيَ وَلا الْقَلائِدَ وَلا آمِّينَ الْبَيْتَ الْحَرَامَ يَبْتَغُونَ فَضْلا مِنْ رَبِّهِمْ وَرِضْوَانًا} [المائدة: ٢] قَدْ قِيلَ: إنَّهُ نُسِخَ مِنْهُ " الْقَلَائِدُ " فَقَطْ: كَمَا حَدَّثَنَا أَبُو سَعِيدٍ الْجَعْفَرِيُّ نا مُحَمَّدُ بْنُ عَلِيٍّ الْمَقْبُرِيُّ نا أَبُو جَعْفَرٍ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ إسْمَاعِيلَ نا أَبُو جَعْفَرٍ الطَّحَاوِيُّ نا سَلَمَةُ بْنُ شَبِيبٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ قَتَادَةَ - وَذَكَرَ هَذِهِ

[24] **Qur'an references (L38216):** Qur'an 5:42 (Al-Ma'idah).

from ʿAbd al-Razzāq from Maʿmar, who reported from Qatādah (mentioning this verse). He said: "It is abrogated. In the pre-Islamic era, when a man departed for Hajj, he would wear a garland made of hair, and no one would confront him. If he wore a hair garland, no one would confront him. At that time, polytheists were not expelled from the House. Allah the Exalted had initially commanded that polytheists not be fought during the sacred month or near the House. This ruling was later abrogated by Allah's statement, *'So kill the polytheists wherever you find them'* (9:5)." This is the explicit statement of Qatādah.[25]

الْآيَةَ - فَقَالَ: مَنْسُوخٌ، كَانَ الرَّجُلُ فِي الْجَاهِلِيَّةِ إِذَا خَرَجَ إِلَى الْحَجِّ يُقَلِّدُ مِنْ الشَّعْرِ، فَلَا يَعْرِضُ لَهُ أَحَدٌ، وَإِذَا تَقَلَّدَ قِلَادَةَ شَعْرٍ لَمْ يَعْرِضْ لَهُ أَحَدٌ، وَكَانَ الْمُشْرِكُ يَوْمَئِذٍ لَا يُصْدَرُ عَنْ الْبَيْتِ، فَأَمَرَ اللَّهُ تَعَالَى أَنْ لَا يُقَاتَلَ الْمُشْرِكُونَ فِي الشَّهْرِ الْحَرَامِ، وَلَا عِنْدَ الْبَيْتِ، ثُمَّ نَسَخَهَا قَوْلُ اللَّهِ تَعَالَى {فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ} [التوبة: ٥] وَهَذَا نَصُّ قَوْلِ قَتَادَةَ.

L38220 Suppose, then, that the abrogation of "the collars" has been established—how does this imply that whoever asserts the abrogation of "the collars" thereby contradicts, through his own statement, those who say: "Prescribed punishments are not enforced in the Sacred Precinct, nor is anyone killed therein"? Indeed, anyone who holds faith should feel ashamed of embracing such blindness and pursuing false desires to this extent! As for "the collars" here, they are strictly literal—"the collars of sacrificial animals"—whose removal is impermissible.

فَهَبْكَ أَنَّهُ قَدْ صَحَّ نَسْخُ " الْقَلَائِدِ " فَأَيُّ شَيْءٍ فِي ذَلِكَ مِمَّا يُوجِبُ أَنَّ مَنْ قَالَ بِنَسْخِ " الْقَلَائِدِ " فَقَدْ خَالَفَ ذَلِكَ مِنْ قَوْلِهِ قَوْلَ مَنْ قَالَ: لَا يُقَامُ الْحَدُّ فِي الْحَرَمِ، وَلَا يُقْتَلُ أَحَدٌ فِي الْحَرَمِ، لَقَدْ كَانَ يَنْبَغِي لِمَنْ كَانَ لَهُ دِينٌ أَنْ يَسْتَحْيِيَ مِنْ أَنْ يَعْمَى هَذَا الْعَمَى؟ وَأَنْ يَتَّبِعَ هَوَاهُ فِي الْبَاطِلِ هَذَا الِاتِّبَاعِ، وَ " الْقَلَائِدُ " هَاهُنَا إِنَّمَا هِيَ عَلَى ظَاهِرِهَا " قَلَائِدُ الْهَدْيِ " الَّتِي لَا يَحِلُّ إِحْلَالُهَا.

L38221 Abu Muhammad said: Our experience with the Malikis and Shafiʿis is that they honor the disagreement of a Companion when it aligns with their school's doctrine. Yet here they have opposed five Companions, with no known dissent from any of the Companions against them.

قَالَ أَبُو مُحَمَّدٍ: وَعَهْدُنَا بِالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ إِذَا وَافَقَ تَقْلِيدَهُمْ، وَهُمْ قَدْ خَالَفُوا هَاهُنَا خَمْسَةً مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ.

L38222 And they contradicted the Qur'an and the established Sunnah—as we shall elaborate later, if Allah, the Exalted, wills.

وَخَالَفُوا الْقُرْآنَ وَالسُّنَّةَ الثَّابِتَةَ - عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى.

L38223 And more astonishing than all of this is their citing as evidence Ibn Khatal—who was clinging to the curtains of the Kaaba—for this is an incident that the Messenger of Allah—peace and blessings be upon him—explicitly stated that it was exclusively for him, and it is not permissible for anyone after him, as we will clarify hereafter, if Allah the Exalted wills.

وَأَعْجَبُ مِنْ هَذَا كُلِّهِ: احْتِجَاجُهُمْ بِابْنِ خَطَلٍ - وَهُوَ مُتَعَلِّقٌ بِأَسْتَارِ الْكَعْبَةِ - فَهَذِهِ قِصَّةٌ نَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَنَّهَا لَهُ خَاصَّةً، وَلَا تَحِلُّ لِأَحَدٍ بَعْدَهُ، كَمَا نُبَيِّنُ بَعْدَ هَذَا، إِنْ شَاءَ اللَّهُ تَعَالَى.

L38224–38226 Ali said: Allah, the Most High, said, "The Station of Ibrahim, and whoever enters it shall be secure" (3:97), and this. A command from Allah, the Exalted,

قَالَ عَلِيٌّ: قَالَ اللَّهُ تَعَالَى {مَقَامُ إِبْرَاهِيمَ وَمَنْ دَخَلَهُ كَانَ آمِنًا} [آل عمران: ٩٧] وَهَذَا أَمْرٌ مِنْ اللَّهِ تَعَالَى مَخْرَجُهُ مَخْرَجُ الْخَبَرِ - هَذَا لَا يَخْلُو الْقَوْلُ مِنْ أَنْ يَكُونَ خَبَرًا أَوْ أَمْرًا

[25] **Qur'an references (L38219):** Qur'an 5:2 (Al-Ma'idah); Qur'an 9:5 (At-Tawbah).

structured like a declarative statement—since this [utterance] cannot but be either a statement or a command—it thus cannot be a declarative statement. For we have observed that the disbelieving Qarmatians—may Allah curse them—killed the Muslims therein.[26]

- فَبَطَلَ أَنْ يَكُنْ خَبَرًا، لِأَنَّنَا قَدْ وَجَدْنَا " الْقَرَامِطَةَ " الْكَفَرَةَ لَعَنَهُمْ اللَّهُ قَدْ قَتَلُوا فِيهِ أَهْلَ الْإِسْلَامِ.

L38227 We found Yazīd ibn Muʿāwiyah and the transgressor al-Ḥajjāj had killed the inviolable souls in it, so it was confirmed with certainty that this was a decree from Allah the Exalted, since none other than Him remained.

وَوَجَدْنَا يَزِيدَ بْنَ مُعَاوِيَةَ، وَالْفَاسِقَ الْحَجَّاجَ قَدْ قَتَلَا فِيهِ النُّفُوسَ الْمُحَرَّمَةَ - فَصَحَّ يَقِينًا أَنَّهُ أَمْرٌ مِنْ اللَّهِ تَعَالَى، إذْ لَمْ يَبْقَ غَيْرُهُ.

L38228 And that whoever claims this is nothing but a report from Allah, the Exalted, about the pre-Islamic era has lied, for he has attributed to Allah, the Exalted, what He never said at all.

وَأَنَّ مَنْ ادَّعَى أَنَّ هَذَا إنَّمَا هُوَ خَبَرٌ مِنْ اللَّهِ تَعَالَى عَنْ الْجَاهِلِيَّةِ فَقَدْ كَذَبَ، لِأَنَّهُ أَخْبَرَ عَنْ اللَّهِ تَعَالَى، بِمَا لَمْ يَقُلْهُ قَطُّ.

L38229 And He, the Exalted, has said: "And to associate with Allah that for which He has not sent down any proof, and to say about Allah what you do not know" [Al-Aʿraf 7:33]. And He, the Exalted, has said: "He only commands you to evil and immorality and to say about Allah what you do not know" [Al-Baqarah 2:169]. Far be it from Allah that the Sacred Sanctuary would possess a merit in the Age of Ignorance which Allah, the Exalted, deprived it of in Islam. Rather, Allah, the Exalted, has only increased the Sacred Sanctuary in Islam but by bestowing veneration, sanctity, and honor.[27]

وَقَدْ قَالَ تَعَالَى {وَأَنْ تُشْرِكُوا بِاللَّهِ مَا لَمْ يُنَزِّلْ بِهِ سُلْطَانًا وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لا تَعْلَمُونَ} [الأعراف: ٣٣] ، وَقَالَ تَعَالَى {إِنَّمَا يَأْمُرُكُمْ بِالسُّوءِ وَالْفَحْشَاءِ وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لا تَعْلَمُونَ} [البقرة: ١٦٩] ، حَاشَ لِلَّهِ أَنْ يَكُونَ الْحَرَمُ لَهُ فَضْلٌ فِي الْجَاهِلِيَّةِ بَخَسَهُ اللَّهُ تَعَالَى إيَّاهُ فِي الْإِسْلَامِ، بَلْ مَا زَادَ اللَّهُ تَعَالَى الْحَرَمَ فِي الْإِسْلَامِ إلَّا تَعْظِيمًا، وَحُرْمَةً، وَإِكْرَامًا.

L38230 It has been narrated to us via Al-Bukhārī's chain: Ubayd ibn Ismāʿīl narrated to us, Usāmah narrated to us from Hishām ibn ʿUrwah from his father, who mentioned the ḥadīth of the Conquest. In it: "Saʿd ibn ʿUbādah said to Abū Sufyān: 'O Abū Sufyān, today is the day of massacre. Today the inviolability of the sanctified Kaaba will be violated!' When the Messenger of Allah (peace be upon him) passed by Abū Sufyān, he said: 'Have you not learned what Saʿd ibn ʿUbādah said?' He replied: 'What did he say?' He answered: 'He said such-and-such.' The Messenger of Allah (peace be upon him) responded: 'Saʿd lied. Rather, this is a day in which Allah glorifies the Kaaba, and a day when the Kaaba is adorned.'" He mentioned the ḥadīth.[28]

وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عُبَيْدُ بْنُ إسْمَاعِيلَ نا أُسَامَةُ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ فَذَكَرَ حَدِيثَ الْفَتْحِ، وَفِيهِ «إنَّ سَعْدَ بْنَ عُبَادَةَ قَالَ لِأَبِي سُفْيَانَ: يَا أَبَا سُفْيَانَ الْيَوْمَ يَوْمُ الْمَلْحَمَةِ، الْيَوْمَ تُسْتَحَلُّ الْكَعْبَةُ الْمُحَرَّمَةُ، فَلَمَّا مَرَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَبِي سُفْيَانَ قَالَ: أَلَمْ تَعْلَمْ مَا قَالَ سَعْدُ بْنُ عُبَادَةَ؟ قَالَ: مَا قَالَ؟ قَالَ: قَالَ كَذَا وَكَذَا. فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَذَبَ سَعْدٌ، وَلَكِنَّ هَذَا يَوْمٌ يُعَظِّمُ اللَّهُ فِيهِ الْكَعْبَةَ، وَيَوْمٌ تُكْسَى فِيهِ الْكَعْبَةُ» وَذَكَرَ الْحَدِيثَ.

[26] **Qur'an references (L38224):** Qur'an 3:97 (Ali 'Imran).
[27] **Qur'an references (L38229):** Qur'an 7:33 (Al-A'raf); Qur'an 2:169 (Al-Baqarah).
[28] **Hadith references (L38230):** Sahih al-Bukhari 4280.

وَاحْتَجَّ بَعْضُهُمْ: بِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدُ بْنُ مُقَاتِلٍ أَنَا عَبْدُ اللَّهِ - هُوَ ابْنُ الْمُبَارَكِ - نا يُونُسُ عَنِ الزُّهْرِيِّ أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ قَالَ «إِنَّ امْرَأَةً سَرَقَتْ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي غَزْوَةِ الْفَتْحِ فَفَزِعَ قَوْمُهَا إِلَى أُسَامَةَ بْنِ زَيْدٍ يَسْتَشْفِعُونَ بِهِ قَالَ عُرْوَةُ: فَلَمَّا كَلَّمَهُ أُسَامَةُ فِيهَا تَلَوَّنَ وَجْهُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: تُكَلِّمُنِي فِي حَدٍّ مِنْ حُدُودِ اللَّهِ؟ قَالَ أُسَامَةُ: فَاسْتَغْفِرْ لِي يَا رَسُولَ اللَّهِ - فَلَمَّا كَانَ الْعَشِيُّ قَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَطِيبًا فَأَثْنَى عَلَى اللَّهِ تَعَالَى بِمَا هُوَ أَهْلُهُ، ثُمَّ قَالَ: أَمَّا بَعْدُ، فَإِنَّمَا هَلَكَ النَّاسُ قَبْلَكُمْ أَنَّهُمْ كَانُوا إِذَا سَرَقَ فِيهِمُ الشَّرِيفُ تَرَكُوهُ، وَإِذَا سَرَقَ فِيهِمُ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ، وَالَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ لَوْ أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ لَقَطَعْتُ يَدَهَا - ثُمَّ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِتِلْكَ الْمَرْأَةِ فَقُطِعَتْ يَدُهَا» وَذَكَرَتْ عَائِشَةُ الْحَدِيثَ.

L38231–38233 Some of them argued by citing what was reported to us via al-Bukhārī's narration: Muḥammad ibn Muqātil reported to us that 'Abdullāh—meaning Ibn al-Mubārak—reported to us from Yūnus, from al-Zuhrī, who informed me that 'Urwah ibn al-Zubayr said: "A woman committed theft during the era of Allah's Messenger—peace and blessings be upon him—in the Conquest campaign. Her kinspeople urgently approached Usāmah ibn Zayd to seek his intercession." 'Urwah continued: "When Usāmah pleaded with him regarding her, the countenance of Allah's Messenger—peace and blessings be upon him—altered. He responded: 'Do you intervene with me concerning a *hadd* punishment?'" Usama said, "Is this among the boundaries ordained by Allah? Seek forgiveness for me, O Messenger of Allah!" When evening came, the Messenger of Allah—peace and blessings be upon him—rose to deliver a sermon. He praised Allah the Exalted as He deserves, then said: "To proceed, those before you were destroyed solely because when a nobleman among them stole, they spared him, but when a lowly person among them stole, they enforced the ḥadd punishment upon him. By the One in Whose Hand is the soul of Muḥammad, if Fāṭimah, daughter of Muḥammad, were to steal, I would cut off her hand." Then the Messenger of Allah—peace and blessings be upon him—ordered that woman's hand to be cut off. 'Ā'ishah narrated the ḥadīth.[29]

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا مُتَعَلَّقَ لَهُمْ فِيهِ، لِأَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ أَنَّهَا قُطِعَتْ يَدُهَا فِي الْحَرَمِ، فَإِذْ لَيْسَ ذَلِكَ فِيهِ لَا يَجُوزُ أَنْ يُعْتَرَضَ عَلَى نَصِّ الْقُرْآنِ، وَنَصِّ بَيَانِ السُّنَنِ بِظَنٍّ لَا حَقِيقَةَ فِيهِ - وَلَعَلَّ أَمْرَهَا كَانَ فِي غَيْرِ الْحَرَمِ أَوْ فِي الطَّرِيقِ. قَالَ اللَّهُ تَعَالَى {إِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [يونس: ٣٦] ، وَأَيْضًا - فَإِنَّ هَذَا الْخَبَرَ ظَاهِرُهُ الْإِرْسَالُ.

L38234 Abu Muhammad said: They have no valid basis in this matter, because this report does not state that her hand was amputated within the sacred precinct. Since this is not mentioned, it is impermissible to oppose the explicit text of the Quran and the clarifying texts of the Sunnah with mere conjecture devoid of truth – and perhaps her case occurred outside the sacred precinct or on the road. Allah the Exalted said: {Indeed, conjecture avails nothing against the truth} [Yunus: 36]. Moreover, this report is ostensibly mursal (a disconnected chain of narration).[30]

وَقَالَ بَعْضُ مَنْ لَا يُبَالِي بِمَا أَطْلَقَ بِهِ لِسَانَهُ: إِنَّمَا مَعْنَى قَوْلِهِ تَعَالَى {مَقَامُ إِبْرَاهِيمَ وَمَنْ دَخَلَهُ كَانَ آمِنًا} [آل عمران: ٩٧] إِنَّمَا عَنَى الصَّيْدَ - وَهَذَا مَعَ أَنَّهُ كَذِبٌ عَلَى اللَّهِ

L38235 Some of those who carelessly let their tongues speak freely said: "The meaning of Allah the Exalted's statement {The Station of Abraham, and whoever

[29] **Hadith references (L38231):** Sunan an-Nasai 4903.
[30] **Qur'an references (L38234):** Qur'an 10:36 (Yunus).

enters it shall be secure} [3:97] refers only to hunting." This claim - being a lie against Allah the Exalted, an audacious falsehood, and a scandal in grammatical error - is flawed because in the Arabic language, the term 'whoever' (man) does not inform except about rational beings, not non-human animals.[31]

L38236 If someone asks: "Does this apply solely to 'the Station' alone by the explicit text of the verse?" He is told: Allah the Exalted does not address His servants with the impossible nor with what cannot be. Every person of sound perception knows with certainty that 'the Station of Abraham' is a single stone no one enters, nor is anyone able to do so. Rather, 'the Station of Abraham' is the entire Haram, as Mujahid stated, saying: "The Station of Abraham is the entire Haram."

L38237–38239 If someone were to say: "Indeed, Allah the Exalted has said: {And do not fight them at the Sacred Mosque unless they fight you there. But if they fight you, then kill them} [Al-Baqarah: 191]," we would respond: "Yes, thus has Allah the Exalted said, and this is our stance. It is not permissible to fight anyone—neither a polytheist nor..." As for others within the Sanctuary of Mecca, we expel them from it. If they leave and enter non-sacred territory, we enforce upon them what is due upon them - whether killing, captivity, or punishment. If they resist and fight us, we then fight them within the Sanctuary - as Allah the Exalted has commanded - and fight them therein. This is how we treat every rebellious and oppressive Muslim without any distinction.[32]

L38240 If they say, "Allah the Exalted has said {So kill the polytheists wherever you find them} [Quran 9:5]," we reply: He who said this also said {And do not fight them at the Sacred Mosque unless they fight you there} [Quran 2:191]. All His words and binding obligations are obligatory, and it is impermissible to abandon any part of His speech for another except through definitively established abrogation. Thus, it is obligatory upon us to apply such texts collectively, making exceptions for the lesser from the greater, since nothing else is permissible.[33]

تَعَالَى وَجُرْأَةٌ عَلَى الْبَاطِلِ فَضِيحَةٌ فِي اللَّحْنِ، لِأَنَّهُ لَا يُخْبِرُ فِي لُغَةِ الْعَرَبِ لَفْظَةُ " مَنْ " إِلَّا عَمَّنْ يَعْقِلُ، لَا عَنْ الْحَيَوَانِ غَيْرِ الْآدَمِيِّ.

فَإِنْ قَالَ قَائِلٌ: إِنَّمَا هَذَا فِي " الْمَقَامِ " وَحْدَهُ بِنَصِّ الْآيَةِ؟ قِيلَ لَهُ: إِنَّ اللَّهَ تَعَالَى لَا يُكَلِّمُ عِبَادَهُ بِالْمُحَالِ، وَلَا بِمَا لَا يُمْكِنُ، وَبِالْيَقِينِ يَدْرِي كُلُّ ذِي حِسٍّ سَلِيمٍ أَنَّ " مَقَامَ إِبْرَاهِيمَ " حَجَرٌ وَاحِدٌ لَا يَدْخُلُهُ أَحَدٌ، وَلَا يَقْدِرُ أَحَدٌ عَلَى ذَلِكَ، وَإِنَّمَا " مَقَامُ إِبْرَاهِيمَ " الْحَرَمُ كُلُّهُ، كَمَا قَالَ مُجَاهِدٌ، إِنَّهُ قَالَ " مَقَامُ إِبْرَاهِيمَ " الْحَرَمُ كُلُّهُ.

فَإِنْ قَالَ قَائِلٌ: إِنَّ اللَّهَ تَعَالَى قَالَ {وَلا تُقَاتِلُوهُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ حَتَّى يُقَاتِلُوكُمْ فِيهِ فَإِنْ قَاتَلُوكُمْ فَاقْتُلُوهُمْ} [البقرة: ١٩١] . قُلْنَا: نَعَمْ، هَكَذَا قَالَ اللَّهُ تَعَالَى وَبِهَذَا نَقُولُ، وَلَا يَحِلُّ قِتَالُ أَحَدٍ لَا مُشْرِكٍ وَلَا غَيْرِهِ فِي حَرَمِ مَكَّةَ، لَكِنَّنَا نُخْرِجُهُمْ مِنْهُ، فَإِنْ خَرَجُوا وَصَارُوا فِي الْحِلِّ نَفَّذْنَا عَلَيْهِمْ مَا يَجِبُ عَلَيْهِمْ مِنْ قَتْلٍ، أَوْ أَسْرٍ، أَوْ عُقُوبَةٍ، فَإِنْ امْتَنَعُوا وَقَاتَلُونَا قَاتَلْنَاهُمْ حِينَئِذٍ فِي الْحَرَمِ - كَمَا أَمَرَ اللَّهُ تَعَالَى - وَقَاتَلْنَاهُمْ فِيهِ، وَهَكَذَا نَفْعَلُ بِكُلِّ بَاغٍ وَظَالِمٍ مِنْ الْمُسْلِمِينَ وَلَا فَرْقَ.

فَإِنْ قَالُوا: فَقَدْ قَالَ اللَّهُ تَعَالَى {فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ} [التوبة: ٥] الْآيَةَ؟ قُلْنَا: الَّذِي قَالَ هَذَا قَالَ {وَلا تُقَاتِلُوهُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ حَتَّى يُقَاتِلُوكُمْ فِيهِ} [البقرة: ١٩١] وَكَلَامُهُ كُلُّهُ وَعُهُودُهُ كُلُّهَا فَرْضٌ، وَلَا يَحِلُّ تَرْكُ شَيْءٍ مِنْ كَلَامِهِ لِشَيْءٍ آخَرَ إِلَّا بِنَسْخٍ مُتَيَقَّنٍ - فَوَاجِبٌ عَلَيْنَا أَنْ نَسْتَعْمِلَ مِثْلَ هَذِهِ النُّصُوصِ وَنَجْمَعَهَا، وَنَسْتَثْنِيَ الْأَقَلَّ مِنْهَا مِنْ الْأَكْثَرِ، إِذْ لَا يَحِلُّ غَيْرُ ذَلِكَ.

[31] **Qur'an references (L38235):** Qur'an 3:97 (Ali 'Imran).
[32] **Qur'an references (L38237):** Qur'an 2:191 (Al-Baqarah).
[33] **Qur'an references (L38240):** Qur'an 9:5 (At-Tawbah); Qur'an 2:191 (Al-Baqarah).

فَنَحْنُ نَقْتُلُ الْمُشْرِكِينَ حَيْثُ وَجَدْنَاهُمْ إِلَّا عِنْدَ الْمَسْجِدِ الْحَرَامِ. فَنَحْنُ إِذَا فَعَلْنَا هَذَا كُنَّا عَلَى يَقِينٍ مِنْ أَنَّا قَدْ أَطَعْنَا اللَّهَ تَعَالَى فِي كُلِّ مَا أَمَرَنَا بِهِ، وَمَنْ خَالَفَ هَذَا الْعَمَلَ فَقَدْ عَصَى اللَّهَ تَعَالَى فِي إِحْدَى الْآيَتَيْنِ؟ وَهَذَا لَا يَحِلُّ أَصْلًا.

L38241 We kill the idolaters wherever we find them except in the vicinity of the Sacred Mosque. By doing so, we are certain that we have obeyed God Almighty in all He has commanded us. Whoever opposes this action has disobeyed God Almighty in one of the two Quranic verses. This is fundamentally impermissible.

وَكَمَا قُلْنَا - فَعَلَ أَمِيرُ الْمُؤْمِنِينَ عَبْدُ اللَّهِ بْنُ الزُّبَيْرِ - رَضِيَ اللَّهُ عَنْهُ - فَإِنَّهُ لَمَّا ابْتَدَأَهُ الْفُسَّاقُ بِالْقِتَالِ فِي حَرَمِ مَكَّةَ: يَزِيدُ، وَعَمْرُو بْنُ سَعِيدٍ، وَالْحُصَيْنُ بْنُ نُمَيْرٍ، وَالْحَجَّاجُ، وَمَنْ بَعَثَهُ وَمَنْ كَانَ مَعَهُمْ - مِنْ جُنُودِ السُّلْطَانِ - قَاتَلَهُمْ مُدَافِعًا لِنَفْسِهِ وَأَحْسَنَ فِي ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L38242 Just as we have said, the Commander of the Faithful Abdullah ibn al-Zubayr—may Allah be pleased with him—responded when the immoral ones—Yazid, Amr ibn Sa'id, al-Husayn ibn Numayr, al-Hajjaj, those sent by the Sultan, and those who accompanied them from the Sultan's soldiers—initiated fighting against him within Mecca's sacred precincts. He fought them while defending himself and performed excellently in doing so—and success is by Allah, the Exalted.

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا جَرِيرٌ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ مُجَاهِدٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ افْتَتَحَ مَكَّةَ لَا هِجْرَةَ، وَلَكِنْ جِهَادٌ وَنِيَّةٌ، وَإِذَا اسْتُنْفِرْتُمْ فَانْفِرُوا، فَإِنَّ هَذَا بَلَدٌ حَرَّمَهُ اللَّهُ تَعَالَى يَوْمَ خَلَقَ السَّمَاوَاتِ وَالْأَرْضَ، فَهُوَ حَرَامٌ بِحُرْمَةِ اللَّهِ تَعَالَى إِلَى يَوْمِ الْقِيَامَةِ، وَإِنَّهُ لَمْ يَحِلَّ الْقِتَالُ فِيهِ لِأَحَدٍ قَبْلِي، وَلَمْ يَحِلَّ لِي إِلَّا سَاعَةً مِنْ نَهَارٍ، فَهُوَ حَرَامٌ بِحُرْمَةِ اللَّهِ إِلَى يَوْمِ الْقِيَامَةِ، لَا يُعْضَدُ شَوْكُهُ، وَلَا يُنَفَّرُ صَيْدُهُ، وَلَا يَلْتَقِطُ لُقَطَتَهُ إِلَّا مَنْ عَرَّفَهَا، وَلَا يُخْتَلَى خَلَاهَا - قَالَ الْعَبَّاسُ: يَا رَسُولَ اللَّهِ إِلَّا الْإِذْخِرَ فَإِنَّهُ لِقَيْنِهِمْ وَلِبُيُوتِهِمْ؟ قَالَ: إِلَّا الْإِذْخِرَ» .

L38243 Abd al-Rahman ibn Abd Allah ibn Khalid reported to us: Ibrahim ibn Ahmad reported to us: al-Farbari reported to us: al-Bukhari reported to us: Uthman ibn Abi Shaybah reported to us: Jarir reported from Mansur ibn al-Mu'tamir from Mujahid from Tawus from Ibn Abbas, who said: The Messenger of Allah (peace and blessings of Allah be upon him) said on the day Mecca was conquered: "There is no migration, but jihad and intention. When you are summoned to mobilize, then mobilize. Verily, this is a city Allah the Exalted made sacred on the day He created the heavens and the earth. It is sacred by the sanctity of Allah the Exalted until the Day of Resurrection. Fighting was never permitted in it for anyone before me, nor was it permitted for me except for a short period of the day. It is sacred by the sanctity of Allah the Exalted until the Day of Resurrection. Its thorny trees shall not be cut, its game shall not be disturbed, and lost items found there shall not be picked up except by one who announces them publicly. Its fresh grass shall not be cut." Al-Abbas said: "O Messenger of Allah, except for the *idhkhir* plant, for it is used by their blacksmiths and for their homes." He replied: "Except for the *idhkhir*."

وَمِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا زُهَيْرُ بْنُ حَرْبٍ نا الْوَلِيدُ بْنُ مُسْلِمٍ نا الْأَوْزَاعِيُّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ حَدَّثَنِي أَبُو سَلَمَةَ بْنُ عَوْفٍ نا أَبُو هُرَيْرَةَ قَالَ «لَمَّا فَتَحَ اللَّهُ تَعَالَى عَلَى رَسُولِ

L38244–38245 And through the chain of Muslim ibn al-Hajjaj: Zuhayr ibn Harb narrated to us, al-Walid ibn Muslim narrated to us, al-Awza'i narrated to us from Yahya ibn Abi Kathir, who said: Abu Salama ibn 'Awf narrated to me from Abu Hurayra, who said: "When Allah the Exalted granted victory to the

Messenger of Allah (peace and blessings be upon him) over Mecca, he stood among the people, praised Allah, and extolled Him. Then he said: 'Allah the Exalted restrained the elephant from Mecca and granted authority over it to His Messenger and the believers. Indeed, it was not lawful for anyone before me, and it was made lawful for me for a period of the day. It will never be lawful for anyone after me. Therefore, its game is not to be scared away, its thorny plants are not to be cut, and its fallen items are not permissible except for a proclaimer.'" He mentioned the remainder of the hadith with the mention of al-idhkhir.

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَكَّةَ قَامَ فِي النَّاسِ فَحَمِدَ اللَّهَ وَأَثْنَى عَلَيْهِ، ثُمَّ قَالَ: إِنَّ اللَّهَ تَعَالَى حَبَسَ الْفِيلَ عَنْ مَكَّةَ وَسَلَّطَ عَلَيْهَا رَسُولَهُ وَالْمُؤْمِنِينَ، وَإِنَّهَا لَمْ تَحِلَّ لِأَحَدٍ كَانَ قَبْلِي، وَإِنَّهَا حَلَّتْ لِي سَاعَةً مِنْ نَهَارٍ، وَإِنَّهَا لَنْ تَحِلَّ لِأَحَدٍ بَعْدِي، فَلَا يُنَفَّرُ صَيْدُهَا، وَلَا يُخْتَلَى شَوْكُهَا، وَلَا تَحِلُّ سَاقِطَتُهَا إِلَّا لِمُنْشِدٍ» وَذَكَرَ بَاقِيَ الْحَدِيثَ بِذِكْرِ الْإِذْخِرِ.

L38246 It has been narrated to us through the chain of Muslim: Qutaybah ibn Layth narrated to us - he is the son of Sa'd - from Sa'id ibn Abi Sa'id, from Abu Shurayh al-'Adawi that he said to 'Amr ibn Sa'id - while he was dispatching troops to Mecca: "Grant me permission, O Leader, to relate to you words proclaimed by the Messenger of Allah (peace be upon him) on the day after the Conquest, which my ears heard, my heart preserved, and my eyes witnessed when he uttered them: He praised Allah the Exalted and extolled Him, then said: 'Indeed Allah has sanctified Mecca - not the people. Therefore, it is not lawful for any person who believes in Allah and the Last Day to shed blood therein or cut down its trees. Should anyone presume to fight the Messenger of Allah (peace be upon him) within it, say: Allah permitted His Messenger but has not permitted you. He only granted me permission therein for an hour during the day, and its sanctity has now been restored today as it was sacred yesterday. Let those present convey to those absent.'"

وَقَدْ رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ لَيْثٍ - هُوَ ابْنُ سَعْدٍ - عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ عَنْ أَبِي شُرَيْحٍ الْعَدَوِيِّ أَنَّهُ قَالَ لِعَمْرِو بْنِ سَعِيدٍ - وَهُوَ يَبْعَثُ الْبُعُوثَ إِلَى مَكَّةَ: ائْذَنْ لِي أَيُّهَا الْأَمِيرُ أُحَدِّثْكَ قَوْلًا قَامَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْغَدَ مِنْ يَوْمِ الْفَتْحِ، سَمِعَتْهُ أُذُنَايَ، وَوَعَاهُ قَلْبِي، وَأَبْصَرَتْهُ عَيْنَايَ حِينَ تَكَلَّمَ بِهِ: أَنَّهُ حَمِدَ اللَّهَ تَعَالَى، وَأَثْنَى عَلَيْهِ، ثُمَّ قَالَ «إِنَّ مَكَّةَ حَرَّمَهَا اللَّهُ وَلَمْ يُحَرِّمْهَا النَّاسُ فَلَا يَحِلُّ لِامْرِئٍ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ يَسْفِكَ بِهَا دَمًا، وَلَا يَعْضِدَ بِهَا شَجَرَةً، فَإِنْ أَحَدٌ تَرَخَّصَ بِقِتَالِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيهَا فَقُولُوا: إِنَّ اللَّهَ أَذِنَ لِرَسُولِهِ وَلَمْ يَأْذَنْ لَكُمْ، وَإِنَّمَا أَذِنَ لِي فِيهَا سَاعَةً مِنْ نَهَارٍ، وَقَدْ عَادَتْ حُرْمَتُهَا الْيَوْمَ كَحُرْمَتِهَا بِالْأَمْسِ، وَلْيُبَلِّغْ الشَّاهِدُ الْغَائِبَ» .

L38247 Abu Shuraih was asked, "What did Amr say to you?" He replied, "Amr said: 'I know more about this than you, O Abu Shuraih. Indeed, the Sanctuary does not grant protection to a sinner, nor to one fleeing with ruin.'"

قِيلَ لِأَبِي شُرَيْحٍ: مَاذَا قَالَ لَك عَمْرٌو؟ قَالَ: قَالَ: أَنَا أَعْلَمُ بِذَلِكَ مِنْك يَا أَبَا شُرَيْحٍ، إنَّ الْحَرَمَ لَا يُعِيذُ عَاصِيًا، وَلَا فَارًّا بِخَرِبَةٍ.

L38248–38250 Abu Muhammad said: There is no honor for Satan's cursed enforcer—the sinful Amr ibn Sa'id—who seeks to be more knowledgeable than the Companion of Allah's Messenger (peace be upon him) regarding what that Companion (may Allah be pleased with him) heard directly from the mouth of Allah's Messenger (peace be upon him). Truly, to Allah we belong and to

قَالَ أَبُو مُحَمَّدٍ: وَلَا كَرَامَةَ لِلَطِيمِ الشَّيْطَانِ شُرْطِيِّ الْفَاسِقِ يُرِيدُ أَنْ يَكُونَ أَعْلَمَ مِنْ صَاحِبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَا سَمِعَهُ ذَلِكَ الصَّاحِبُ - رَضِيَ اللَّهُ عَنْهُ - مِنْ فَمِ

Him we return—for the immense calamity in Islam, then for the multiplied tragedy from those who witnessed him arguing in this very matter by citing the words of the sinful Amr ibn Sa'id, thereby opposing Allah's Messenger (peace be upon him). He then speaks about the religion of Allah the Exalted, deceiving the weak by posing as a scholar. None disobeys Allah the Exalted and His Messenger (peace be upon him) except the sinful Amr ibn Sa'id, those who appoint him, entrust him, authorize him, support him, and approve his speech. None bears the burden of ruin in this world and the Hereafter except him and those who appoint or endorse him.

Abu Muhammad said: This is a consecutively transmitted narration from three Companions of Allah's Messenger (peace be upon him)—Abu Hurayrah, Ibn 'Abbas, and Abu Shurayh—all of whom report from Allah's Messenger (peace be upon him) that he said: "Allah the Exalted has sanctified Mecca." Thus, we know with certainty that Allah's Messenger (peace be upon him) did not specifically designate fighting as a prohibition unique to Mecca's sanctity. Due to injustice—for it is forbidden in every place on earth—yet he (peace and blessings be upon him) specified that the commanded warfare is only prohibited outside Makkah, since he (PBUH) fought within Makkah, where no killing is permitted except by rightful justification. He explicitly prohibited that specific fighting itself while permitting other than it, forbade using it as a pretext in similar cases, affirmed that cutting hands therein is bloodshed, and retribution is likewise [prohibited]. Thus, it is not permissible there at all.

L38251 Some people have become obsessed with what we narrated through Muslim's chain: Yahya ibn Yahya narrated to us: I said to Malik, who narrated from Ibn Shihab from Anas: "The Prophet (PBUH) entered Mecca wearing a helmet. When he removed it, a man came and said: 'Ibn Khatal is clinging to the Kaaba's curtains.' He responded: 'Kill him.'" He said: "Yes." This provides no valid evidence for their stance, for this occurred during his entry to Mecca in the Year of Conquest—the specific time when Allah the Exalted had sanctioned it for him. Then the Prophet (PBUH) informed them on the following day that its sanctity had been restored until the Day of Resurrection.

رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّا لِلَّهِ وَإِنَّا إِلَيْهِ رَاجِعُونَ، عَلَى عَظِيمِ الْمُصَابِ فِي الْإِسْلَامِ ثُمَّ عَلَى تَضَاعُفِ الْمُصِيبَةِ مِمَّنْ شَاهِدُهُ يَحْتَجُّ فِي هَذِهِ الْقِصَّةِ بِعَيْنِهَا بِقَوْلِ الْفَاسِقِ عَمْرِو بْنِ سَعِيدٍ مُعَارِضَةً لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ يَتَكَلَّمُ فِي دِينِ اللَّهِ تَعَالَى، وَيَغُرُّ الضُّعَفَاءَ بِأَنَّهُ عَالِمٌ، وَمَا الْعَاصِي لِلَّهِ تَعَالَى وَلِرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا الْفَاسِقُ عَمْرُو بْنُ سَعِيدٍ، وَمَنْ وَلَّاهُ وَقَلَّدَهُ، وَمَا حَامِلُ الْخَرِبَةِ فِي الدُّنْيَا وَالْآخِرَةِ إِلَّا هُوَ، وَمَنْ أَمَّرَهُ وَأَيَّدَهُ، وَصَوَّبَ قَوْلَهُ؟ قَالَ أَبُو مُحَمَّد: فَهَذَا نَقْلٌ تَوَاتَرَ ثَلَاثَةٍ مِنْ الصَّحَابَةِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبُو هُرَيْرَةَ وَابْنُ عَبَّاسٍ، وَأَبُو شُرَيْحٍ، كُلُّهُمْ يَرْوِي عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «إِنَّ مَكَّةَ حَرَّمَهَا اللَّهُ تَعَالَى» فَبِيَقِينٍ نَدْرِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُحَرِّمْ مَكَّةَ خُصُوصًا الْقِتَالَ الْمُحَرَّمَ بِالظُّلْمِ، لِأَنَّهُ مُحَرَّمٌ فِي كُلِّ مَكَانٍ فِي الْأَرْضِ، لَكِنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - نَصَّ عَلَى أَنَّهُ إنَّمَا حُرِّمَ الْقِتَالُ الْمَأْمُورُ بِهِ فِي غَيْرِهَا، لِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْمُقَاتِلُ فِي مَكَّةَ، وَلَا قَتْلَ إلَّا بِحَقٍّ، وَنَهَى عَنْ ذَلِكَ الْقِتَالِ بِعَيْنِهِ غَيْرَهُ، وَحَرَّمَ أَنْ يُحْتَجَّ بِهِ فِي مِثْلِهِ، وَقَطْعُ الْأَيْدِي فِيهِ سَفْكُ دَمٍ، وَالْقِصَاصُ كَذَلِكَ، فَلَا يَحِلُّ فِيهَا أَلْبَتَّةَ.

وَقَدْ شَغَفَ قَوْمٌ: بِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا يَحْيَى بْنُ يَحْيَى قُلْت لِمَالِكٍ: نا ابْنُ شِهَابٍ عَنْ أَنَسٍ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَخَلَ مَكَّةَ عَلَى رَأْسِهِ الْمِغْفَرُ، فَلَمَّا نَزَعَهُ جَاءَهُ رَجُلٌ فَقَالَ: إنَّ ابْنَ خَطَلٍ مُتَعَلِّقٌ بِأَسْتَارِ الْكَعْبَةِ؟ فَقَالَ: اُقْتُلُوهُ.» قَالَ: نَعَمْ، وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ هَذَا كَانَ حِينَ دُخُولِهِ مَكَّةَ عَامَ الْفَتْحِ - وَهِيَ السَّاعَةُ الَّتِي أَحَلَّهَا اللَّهُ تَعَالَى لَهُ - ثُمَّ أَخْبَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي الْيَوْمِ الثَّانِي أَنَّهَا قَدْ عَادَتْ إلَى حُرْمَتِهَا إلَى يَوْمِ الْقِيَامَةِ.

L38252 Since the ambiguity has been resolved, it is obligatory to grant comprehensive immunity to anyone entering Mecca from all killing, retaliation (qisas), and prescribed punishments (hudud)—and success is by Allah, the Exalted.

فَإِذْ قَدْ ارْتَفَعَ الْإِشْكَالُ وَجَبَ تَأْمِينُ مَنْ دَخَلَ مَكَّةَ جُمْلَةً مِنْ كُلِّ قَتْلٍ وَقِصَاصٍ وَحَدٍّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L38253 If one advocating this view argues: "Allah the Exalted states {Sanctities are subject to retaliation} [2:194]. Does this mean whoever violates a sanctity within the Sanctuary must have the same [violation] inflicted upon them therein?" We respond: This general principle is restricted by Allah's decree {Whoever enters it shall be secure} [3:97], further restricted by the Messenger of Allah—peace and blessings be upon him—who prohibited bloodshed therein entirely except for polytheists who combat us within it, and by juristic consensus permitting self-defense against injustice.[34]

فَإِنْ قَالَ قَائِلٌ مِمَّنْ يَحْتَجُّ لِهَذَا الْقَوْلِ: إنَّ اللَّهَ تَعَالَى يَقُولُ {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] فَمَنْ انْتَهَكَ حُرْمَةً فِي الْحَرَمِ وَجَبَ أَنْ يُنْتَهَكَ مِنْهُ مِثْلُ ذَلِكَ فِي الْحَرَمِ؟ قُلْنَا لَهُ: هَذَا عُمُومٌ يَخُصُّهُ قَوْلُ اللَّهِ تَعَالَى {وَمَنْ دَخَلَهُ كَانَ آمِنًا} [آل عمران: ٩٧] ، وَيَخُصُّهُ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِتَحْرِيمِهَا أَنْ لَا يُسْفَكَ فِيهَا دَمٌ أَصْلًا، إلَّا مَنْ قَاتَلَنَا فِيهِ مِنْ الْمُشْرِكِينَ، وَبِالْإِجْمَاعِ فِي الدِّفَاعِ عَنْ النَّفْسِ الظُّلْمَ.

L38254 Thus, it is established that Allah, the Exalted, has never intended that we should also violate the sanctity of the Sacred Precinct as retaliation against whoever transgresses it, and that the punishment is not imposed upon him until he exits into the non-sanctified area, *al-Hill*.

فَصَحَّ أَنَّ اللَّهَ تَعَالَى لَمْ يُرِدْ قَطُّ أَنَّ مَنْ انْتَهَكَ حُرْمَةَ الْحَرَمِ أَنْ نَنْتَهِكَهَا نَحْنُ أَيْضًا قِصَاصًا مِنْهُ، وَأَنَّهُ لَا يُقَامُ عَلَيْهِ حَتَّى يَخْرُجَ إلَى الْحِلِّ.

L38255 And this is the opinion of Umar ibn al-Khattab, Abdullah ibn Umar, Ibn Abbas, al-Sha'bi, Sa'id ibn Jubayr, and al-Hakam ibn 'Utaybah—and it is also narrated from 'Ata'—and this is the opinion we follow.

وَهَذَا قَوْلُ عُمَرَ بْنِ الْخَطَّابِ، وَعَبْدِ اللَّهِ بْنِ عُمَرَ، وَابْنِ عَبَّاسٍ، وَالشَّعْبِيِّ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَالْحَكَمِ بْنِ عُتَيْبَةَ - وَرُوِيَ أَيْضًا عَنْ عَطَاءٍ - وَبِهِ نَأْخُذُ.

L38256 As for prohibiting people from his trading or his speaking, Allah the Exalted says: "Allah has permitted trade and forbidden usury" [Al-Baqarah: 275]. Thus, it is impermissible to prevent him from selling unless based on textual evidence or consensus.[35]

وَأَمَّا نَهْيُ النَّاسِ عَنْ مُبَايَعَتِهِ وَمُكَالَمَتِهِ، فَإِنَّ اللَّهَ تَعَالَى يَقُولُ {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥] فَلَا يَجُوزُ مَنْعُهُ مِنْ الْبَيْعِ بِغَيْرِ نَصٍّ، وَلَا إجْمَاعٍ.

L38257–38258 Similarly, Allah the Exalted has commanded the spreading of the greeting of peace (salam), so it is not permissible to prohibit it except by textual evidence or scholarly consensus.

وَكَذَلِكَ أَمَرَ اللَّهُ تَعَالَى بِإِفْشَاءِ السَّلَامِ فَلَا يَجُوزُ مَنْعُهُ، إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ.

L38259 If they cite as evidence the statement of Abd al-Rahman ibn Farrukh, who said: Nafi' ibn Abd al-Harith, the governor of Mecca appointed by Umar ibn al-Khattab, bought the prison house from Safwan ibn Umayyah ibn Khalaf

فَإِنْ احْتَجُّوا بِقَوْلِ عَبْدِ الرَّحْمَنِ بْنِ فَرُّوخَ، قَالَ: اشْتَرَى نَافِعُ بْنُ عَبْدِ الْحَارِثِ عَامِلُ عُمَرَ بْنِ الْخَطَّابِ عَلَى مَكَّةَ مِنْ صَفْوَانَ بْنِ أُمَيَّةَ بْنِ خَلَفٍ دَارَ السِّجْنِ بِأَرْبَعَةِ آلَافٍ، فَإِنْ رَضِيَ عُمَرُ فَالْبَيْعُ لَهُ، وَإِنْ لَمْ يَرْضَ عُمَرُ فَلِصَفْوَانَ أَرْبَعُ مِائَةٍ؟ .

[34] **Qur'an references (L38253):** Qur'an 3:97 (Ali 'Imran); Qur'an 2:194 (Al-Baqarah).
[35] **Qur'an references (L38256):** Qur'an 2:275 (Al-Baqarah).

for four thousand—if Umar consents, the sale is valid for him; but if Umar does not consent, then Safwan is entitled to four hundred.

L38260 We said: Some of the Salaf have expressed a difference of opinion regarding this, as narrated from Ṭāwus that he disapproved of imprisonment in Mecca, stating: “It is unfitting that a House of Punishment should exist within the House of Mercy”—and this is the position we adopt.

L38261 If they object to our disagreement with ’Umar, Nāfi’, and Ṣafwān regarding this matter, we respond: We do not reject this position if established by the Quran or Sunnah. However, since you yourselves reject this ruling while deeming it impermissible according to your principles, how then do you justify opposing ’Umar in this very report containing his explicit verdict: “He retains the right to sell it; if dissatisfied, four hundred belong to Ṣafwān”? Yet all present opponents consider this to constitute pure usury. Thus, the sin and disgrace revert to them due to their opposition—forbidding dissent against him while themselves opposing ’Umar, his son, Abū Shurayḥ, Ibn ’Abbās, and Ibn al-Zubayr in their position that retribution is categorically not enforced in Mecca, with no opponent to them among the Companions (may Allah be pleased with them). The Quran and Sunnah support their position, as does the Messenger of Allah (peace be upon him), who announced this to the people on the second day of the Conquest.

L38262 So this is the established, indisputable consensus among all the Companions that they held this view.

L38263 As for us, we hold no argument against the words of Allah the Exalted, the words of the Messenger of Allah—may Allah bless him and grant him peace—and his rulings. And with Allah alone is success.

L38264 **Question: Are retributive punishments (Qiṣāṣ) or the fixed penalties (Ḥudūd) carried out during the Sacred Month?**

L38265 Issue 2091: Is retribution (qisas) or the fixed punishments (hudud) carried out during the sacred month or not?

L38266–38268 Ali said: Allah the Exalted declared {The sacred month is for the sacred month, and violations of sanctities require retaliation. So whoever trans-

قُلْنَا: قَدْ جَاءَ لِبَعْضِ السَّلَفِ خِلَافٌ لِهَذَا، كَمَا رُوِيَ عَنْ طَاوُسٍ أَنَّهُ كَرِهَ السِّجْنَ بِمَكَّةَ، وَقَالَ: لَا يَنْبَغِي أَنْ يَكُونَ بَيْتُ عَذَابٍ فِي بَيْتِ رَحْمَةٍ - وَبِهَذَا نَأْخُذُ.

فَإِنْ أَنْكَرُوا عَلَيْنَا خِلَافَ عُمَرَ، وَنَافِعٍ، وَصَفْوَانَ فِي ذَلِكَ. قُلْنَا لَهُمْ: نَحْنُ لَا نُنْكِرُ هَذَا إذَا أَوْجَبَهُ قُرْآنٌ أَوْ سُنَّةٌ، وَلَكِنْ إذْ تُنْكِرُونَ هَذَا وَلَا يَحِلُّ عِنْدَكُمْ فَكَيْفَ اسْتَجَزْتُمْ خِلَافَهُ فِي هَذَا الْخَبَرِ نَفْسِهِ، فِي أَنَّهُ نَصُّ عُمَرَ " فَلَهُ بَيْعُهُ وَإِنْ لَمْ يَرْضَ فَلِصَفْوَانَ أَرْبَعُ مِائَةٍ "؟ وَهَذَا عِنْدَ جَمِيعِ الْحَاضِرِينَ مِنْ الْمُخَالِفِينَ رِبًا مَحْضٌ، فَعَادَ الْإِثْمُ عَلَيْهِمْ وَالْعَارُ أَيْضًا فِي خِلَافِهِمْ مَا لَا يَسْتَحِلُّونَ خِلَافَهُ إلَى خِلَافِهِمْ: عُمَرَ، وَابْنِهِ، وَأَبِي شُرَيْحٍ، وَابْنِ عَبَّاسٍ، وَابْنِ الزُّبَيْرِ، فِي أَنْ لَا يُقَامَ قَوَدٌ بِمَكَّةَ أَصْلًا، وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَالْقُرْآنُ مَعَهُمْ، وَالسُّنَّةُ، وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعَهُمْ يَهْتِفُ بِذَلِكَ عَلَى النَّاسِ ثَانِيَ يَوْمِ الْفَتْحِ.

فَهَذَا هُوَ الْإِجْمَاعُ الثَّابِتُ الْمَقْطُوعُ بِهِ عَلَى جَمِيعِ الصَّحَابَةِ أَنَّهُمْ قَالُوا بِهِ.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ اللَّهِ تَعَالَى، وَقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحُكْمِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ هَلْ يُقَامُ الْقِصَاصُ أَوْ الْحُدُودُ فِي الشَّهْرِ الْحَرَامِ]

٢٠٩١ - مَسْأَلَةٌ: هَلْ يُقَامُ الْقِصَاصُ أَوْ الْحُدُودُ فِي الشَّهْرِ الْحَرَامِ أَمْ لَا؟

gresses against you, then retaliate against him in the same manner as he transgressed against you} [Al-Baqarah: 194]. He the Exalted also stated {They ask you about fighting during the sacred month. Say: 'Fighting during it is a major sin'} [Al-Baqarah: 217] up to His Exalted's statement {And persecution is greater than killing} [Al-Baqarah: 217]. Abu Muhammad said: We have been narrated through the narration of Abd al-Razzaq from Ibn Jurayj: I said to Ata: What is the ruling for a man killed in the Sacred Precinct—where should his killer be slain? He said: Wherever the slain man's heirs choose. He said: If he was killed in profane territory and not in the Sacred Precinct—'Aṭā' said: The same applies to the sacred month.[36]

قَالَ عَلِيٌّ: قَالَ اللَّهُ تَعَالَى {الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ وَالْحُرُمَاتُ قِصَاصٌ فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] وَقَالَ تَعَالَى {يَسْأَلُونَكَ عَنِ الشَّهْرِ الْحَرَامِ قِتَالٍ فِيهِ قُلْ قِتَالٌ فِيهِ كَبِيرٌ} [البقرة: ٢١٧] إلَى قَوْله تَعَالَى: {وَالْفِتْنَةُ أَكْبَرُ مِنَ الْقَتْلِ} [البقرة: ٢١٧] . قَالَ أَبُو مُحَمَّد: وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: أَرَأَيْت الرَّجُلَ يُقْتَلُ فِي الْحَرَمِ أَيْنَ يُقْتَلُ قَاتِلُهُ؟ قَالَ: حَيْثُ شَاءَ أَهْلُ الْمَقْتُولِ؟ قَالَ: فَإِنْ قُتِلَ فِي الْحِلِّ وَلَمْ يُقْتَلْ فِي الْحَرَمِ؟ قَالَ عَطَاءٌ: وَكَذَلِكَ الشَّهْرُ الْحَرَامُ.

L38269 And through his chain: from 'Abd al-Razzāq from Ma'mar from al-Zuhrī, who said: "The Deaf Month of Allah is Rajab. Muslims revered the sacred months because wrongdoing therein is graver." He added: "Whoever kills in a non-sacred month or inflicts injury is not to be killed in a sacred month until a non-sacred month arrives." Allah the Exalted said: *"The sacred month for the sacred month"* [Al-Baqarah 2:194].[37]

وَبِهِ: إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: شَهْرُ اللَّهِ الْأَصَمُّ رَجَبٌ، قَالَ - فَكَانَ الْمُسْلِمُونَ يُعَظِّمُونَ الْأَشْهُرَ الْحُرُمَ، لِأَنَّ الظُّلْمَ فِيهَا أَعْظَمُ قَالَ: وَمَنْ قَتَلَ فِي شَهْرٍ حَلَالٍ أَوْ جَرَحَ لَمْ يُقْتَلْ فِي شَهْرٍ حَرَامٍ حَتَّى يَجِيءَ شَهْرٌ حَلَالٌ، قَالَ اللَّهُ تَعَالَى {الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ} [البقرة: ١٩٤] .

L38270 And through him—to Abd al-Razzaq from Ibn Jurayj, who said: Ata' informed me that a man was wounded during an ordinary month. Uthman ibn Muhammad ibn Abi Sufyan—who was the governor during a sacred month—sought to carry out retaliation against him. Ubayd ibn Umayr—while present with a contingent in the residence—sent word to him: "Do not carry out retaliation against him until an ordinary month begins." Abu Muhammad said: This is Ubayd ibn Umayr and Al-Zuhri—they do not consider it permissible to carry out retaliation in a sacred month against one who committed an offense during an ordinary month.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ أَخْبَرَنِي عَطَاءٌ أَنَّ رَجُلًا جُرِحَ فِي شَهْرٍ حَلَالٍ فَأَرَادَ عُثْمَانُ بْنُ مُحَمَّدِ بْنِ أَبِي سُفْيَانَ أَنْ يُقِيدَهُ - وَهُوَ أَمِيرٌ فِي شَهْرٍ حَرَامٍ - فَأَرْسَلَ إلَيْهِ عُبَيْدُ بْنُ عُمَيْرٍ - وَهُوَ فِي طَائِفَةٍ مِنْ الدَّارِ: لَا تُقِدْهُ حَتَّى يَدْخُلَ شَهْرٌ حَلَالٌ؟ قَالَ أَبُو مُحَمَّد: فَهَذَا عُبَيْدُ بْنُ عُمَيْرٍ، وَالزُّهْرِيُّ لَا يَرَيَانِ أَنْ يُقَادَ فِي شَهْرٍ حَرَامٍ مَنْ جَنَى فِي شَهْرٍ حَلَالٍ.

L38271 Aṭā' ibn Abī Rabāḥ maintains the view that whoever kills during a sacred month must be executed in a sacred month. If the killing occurs in a non-

[36] **Qur'an references (L38266):** Qur'an 2:194 (Al-Baqarah); Qur'an 2:217 (Al-Baqarah).
[37] **Qur'an references (L38269):** Qur'an 2:194 (Al-Baqarah).

sacred month, retaliation should not be carried out against him during a sacred month. These scholars are among the greatest of the Successors and the jurists of Mecca and Medina.

وَعَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ يَرَى مَنْ قَتَلَ فِي شَهْرٍ حَرَامٍ أَنْ يُقْتَلَ فِي شَهْرٍ حَرَامٍ فَإِنْ قَتَلَ فِي شَهْرٍ حَلَالٍ لَمْ يُقَدْ مِنْهُ فِي شَهْرٍ حَرَامٍ. فَهَؤُلَاءِ مِنْ أَكَابِرِ التَّابِعِينَ وَفُقَهَاءِ مَكَّةَ وَالْمَدِينَةِ.

L38272 Ali said: Allah the Exalted has said, {Indeed, the number of months with Allah is twelve months in the Book of Allah, on the day He created the heavens and the earth; of these, four are sacred. That is the upright religion, so do not wrong yourselves during them} [At-Tawbah: 36]. Indeed, Allah the Exalted forbade injustice in them, so injustice in them is graver than injustice in other months. It is not permissible to attribute to Allah the Exalted what He has not decreed.[38]

قَالَ عَلِيٌّ: قَالَ اللَّهُ تَعَالَى {إِنَّ عِدَّةَ الشُّهُورِ عِنْدَ اللَّهِ اثْنَا عَشَرَ شَهْرًا فِي كِتَابِ اللَّهِ يَوْمَ خَلَقَ السَّمَاوَاتِ وَالأَرْضَ مِنْهَا أَرْبَعَةٌ حُرُمٌ ذَلِكَ الدِّينُ الْقَيِّمُ فَلا تَظْلِمُوا فِيهِنَّ أَنْفُسَكُمْ} [التوبة: ٣٦] فَإِنَّمَا نَهَى اللَّهُ تَعَالَى فِيهَا عَنْ الظُّلْمِ، فَكَانَ الظُّلْمُ فِيهَا أَوْكَدَ مِنْ الظُّلْمِ فِي غَيْرِهَا، وَلَا يَحِلُّ أَنْ يُزَادَ عَلَى اللَّهِ تَعَالَى مَا لَمْ يَقُلْ.

L38273 Then we considered the statement of Allah, the Exalted: "The sacred month for the sacred month" [Al-Baqarah: 194]. The requirement of this verse is that if someone kills or injures during a sacred month but is not apprehended until a non-sacred month, the guardian authorized to seek retaliation for bloodshed or injury is given a choice: if he wishes to delay retaliation until a sacred month, this is permissible for him by the explicit text of the verse. If he does not desire this, it is part of his right, which he may forgo out of forbearance, and the verse does not prohibit him from doing so—and this is the position we uphold. Success comes only from Allah, the Exalted.[39]

ثُمَّ نَظَرْنَا فِي قَوْلِهِ تَعَالَى {الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ} [البقرة: ١٩٤] فَكَانَ مُوجَبُ هَذِهِ الْآيَةِ أَنَّ مَنْ قَتَلَ أَوْ جَرَحَ فِي شَهْرٍ حَرَامٍ فَلَمْ يُظْفَرْ بِهِ إِلَّا فِي شَهْرٍ حَلَالٍ، فَإِنَّ وَلِيَّ الِاسْتِقَادَةِ مِنْ الدَّمِ، أَوْ الْجُرْحِ مُخَيَّرٌ: إِنْ شَاءَ تَأْخِيرَهُ إِلَى شَهْرٍ حَرَامٍ فَذَلِكَ لَهُ بِنَصِّ الْآيَةِ، وَإِنْ لَمْ يُرِدْ ذَلِكَ فَهُوَ بَعْضُ حَقِّهِ تَجَافَى عَنْهُ وَلَمْ تَمْنَعْهُ الْآيَةُ مِنْ ذَلِكَ - وَبِهَذَا نَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38274 As for the statement of the Exalted, {They ask you about the Sacred Month—fighting in it} [Al-Baqarah: 217], is this [ruling] specific to fighting and in no way applicable to retaliatory punishment?[40]

وَأَمَّا قَوْلُهُ تَعَالَى {يَسْأَلُونَكَ عَنِ الشَّهْرِ الْحَرَامِ قِتَالٍ فِيهِ} [البقرة: ٢١٧] إِنَّمَا هَذَا فِي الْقِتَالِ، وَلَيْسَ فِي الْقَوَدِ فِي شَيْءٍ؟

L38275–38276 Abu Muhammad said: The one liable for qisas (legal retribution) is to be detained if the victim or the blood heir delays its enforcement until a sacred month arrives, because it is obligatory to exact retribution from him for his crime. It is impermissible to release him; rather, he is to be detained unanimously pending the enforcement of qisas and prevented from departing.

قَالَ أَبُو مُحَمَّدٍ: وَيُحْبَسُ الَّذِي وَجَبَ عَلَيْهِ الْقَوَدُ فَأَخَّرَهُ الْمَجْنِيُّ عَلَيْهِ أَوْ وَلِيُّ الدَّمِ حَتَّى يَأْتِيَ شَهْرٌ حَرَامٌ، لِأَنَّهُ قَدْ وَجَبَ أَخْذُهُ بِمَا جَنَى، فَلَا يَنْبَغِي تَسْرِيحُهُ، بَلْ يُوقَفُ بِلَا خِلَافٍ لِلْقَوَدِ، وَيُمْنَعُ مِنْ الِانْطِلَاقِ.

[38] **Qur'an references (L38272):** Qur'an 9:36 (At-Tawbah).
[39] **Qur'an references (L38273):** Qur'an 2:194 (Al-Baqarah).
[40] **Qur'an references (L38274):** Qur'an 2:217 (Al-Baqarah).

L38277 Abu Muhammad said: As for the prescribed punishments, all of them—including stoning and others—are to be enforced during the sacred month, for neither Allah the Exalted nor His Messenger—peace and blessings be upon him—have provided any textual prohibition against this. Hastening the obligatory compliance in enforcing prescribed punishments is binding with certainty. We know that had Allah the Exalted willed to delay this beyond the sacred month, He would have clarified it through His Messenger—peace and blessings of Allah be upon him—just as He clarified that regarding the Haram in Mecca. Since He did not do so, we testify by Allah the Exalted's own testimony that He never intended prescribed punishments to be enforced only during the sacred months. The same ruling applies to the Haram of Medina. *"And your Lord is never forgetful"* [19:64]. And success is by Allah the Exalted.[41]

L38278 **Issue: The permissibility of fighting those who pass in front of a worshipper [during prayer].**

L38279 **Issue:** Fighting someone who passes in front of a person praying. Ali said: "If someone intends to pass in front of a worshiper—whether toward a prayer screen or elsewhere—and another person seeks to pass between the worshiper and his screen, or in front of him if there is no screen, the worshiper should repel him. If the passer desists, well and good; otherwise, the worshiper should fight him. If the worshiper repels him and the passer's death coincides [with the act], the passer's blood is forfeited. There is no liability—no retaliation, blood money, or expiation. The same applies if a limb is broken, without distinction. If the worshiper's death coincides [with the act], however, retaliation, blood money, or ransom applies."

L38280 The evidence for this is what we have narrated as transmitted through Abu Dawud's chain: Musa ibn Isma'il reported to us, Sulayman (Ibn al-Mughirah) narrated from Humayd, who said: Abu Salih stated, "I will relate to you what I observed of Abu Sa'id and heard from him: Abu Sa'id came to Marwan and said, 'I heard the Messenger of Allah—peace and blessings be upon him—declare: "When any of you prays toward an object screening him

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا الْحُدُودُ فَتُقَامُ فِي الشَّهْرِ الْحَرَامِ كُلُّهَا مِنْ رَجْمٍ وَغَيْرِهِ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَأْتِ عَنْهُ نَصٌّ بِالْمَنْعِ مِنْ ذَلِكَ، وَلَا مِنْ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَتَعْجِيلُ الطَّاعَةِ الْمُفْتَرَضَةِ فِي إقَامَةِ الْحُدُودِ وَاجِبٌ بِيَقِينٍ، نَدْرِي أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ تَأْخِيرَ ذَلِكَ عَنْ الشَّهْرِ الْحَرَامِ لَبَيَّنَهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا بَيَّنَ ذَلِكَ فِي الْحَرَمِ بِمَكَّةَ، فَإِذَا لَمْ يَفْعَلْ فَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى أَنَّهُ مَا أَرَادَ قَطُّ أَنْ لَا تُقَامَ الْحُدُودُ إلَّا فِي الْأَشْهُرِ الْحُرُمِ. وَهَكَذَا الْقَوْلُ فِي حَرَمِ الْمَدِينَةِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مُقَاتَلَةُ مَنْ مَرَّ أَمَامَ الْمُصَلِّي]

٢٠٩٢ - مَسْأَلَةٌ: مُقَاتَلَةُ مَنْ مَرَّ أَمَامَ الْمُصَلِّي؟ قَالَ عَلِيٌّ: مَنْ أَرَادَ الْمُرُورَ أَمَامَ الْمُصَلِّي إلَى سُتْرَةٍ أَوْ غَيْرِ سُتْرَةٍ، فَأَرَادَ إنْسَانٌ أَنْ يَمُرَّ بَيْنَهُ وَبَيْنَ سُتْرَتِهِ، أَوْ بَيْنَ يَدَيْهِ، وَإِنْ لَمْ يَكُنْ إلَى سُتْرَةٍ فَلْيَدْفَعْهُ، فَإِنْ انْدَفَعَ وَإِلَّا فَلْيُقَاتِلْهُ، فَإِنْ دَفَعَهُ فَوَافَقَتْ مَنِيَّةُ الْمُرِيدِ لِلْمُرُورِ فَدَمُهُ هَدَرٌ، وَلَا شَيْءَ فِيهِ، لَا قَوَدَ، وَلَا دِيَةَ، وَلَا كَفَّارَةَ، وَكَذَا إنْ كُسِرَ لَهُ عُضْوٌ وَلَا فَرْقَ، فَإِنْ وَافَقَ فِي ذَلِكَ مَنِيَّةَ الْمُصَلِّي: فَفِيهِ الْقَوَدُ، أَوْ الدِّيَةُ أَوْ الْمُفَادَاةُ.

بُرْهَانُ ذَلِكَ: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا مُوسَى بْنُ إسْمَاعِيلَ نا سُلَيْمَانُ - هُوَ ابْنُ الْمُغِيرَةِ - عَنْ حُمَيْدٍ قَالَ: قَالَ أَبُو صَالِحٍ: أُحَدِّثُك عَمَّا رَأَيْت مِنْ أَبِي سَعِيدٍ، وَسَمِعْته مِنْهُ: دَخَلَ أَبُو سَعِيدٍ عَلَى مَرْوَانَ فَقَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ

[41] **Qur'an references (L38277):** Qur'an 19:64 (Maryam).

from people, and someone attempts to pass before him, let him push against his throat. If he resists, let him fight him, for he is indeed a devil.’”’

«إِذَا صَلَّى أَحَدُكُمْ إِلَى مَا يَسْتُرُهُ مِنْ النَّاسِ فَأَرَادَ أَحَدٌ أَنْ يَجْتَازَ بَيْنَ يَدَيْهِ فَلْيَدْفَعْ فِي نَحْرِهِ، فَإِنْ أَبَى فَلْيُقَاتِلْهُ، فَإِنَّمَا هُوَ شَيْطَانٌ» .

L38281–38283 It has been narrated to us through the chain of Ahmad ibn Shu‘ayb: from Muḥammad ibn Muḥammad ibn Muṣ‘ab al-Ṣūrī, from Muḥammad ibn al-Mubārak [al-Ṣūrī], from ‘Abd al-‘Azīz ibn Muḥammad [al-Darāwardī], from Ṣafwān ibn Sulaym, from ‘Aṭā’ ibn Yasār, from Abū Sa‘īd al-Khudrī: He was praying when a son of Marwān attempted to pass in front of him. He pushed him back, but he did not retreat, so he struck him. The boy went out crying until he came to Marwan and informed him. Marwan said to Abu Sa‘id, “Why did you strike your nephew?” He replied, “I did not strike him; rather, I struck the Shaytan. I heard the Messenger of Allah—peace and blessings be upon him—say, ’When any of you is in prayer and someone wishes to pass in front of him, he should prevent him as much as he can. If he refuses, let him fight him, for he is indeed a Shaytan.’”

وَرُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مُحَمَّدِ بْنِ مُصْعَبٍ الصُّورِيُّ نا مُحَمَّدُ بْنُ الْمُبَارَكِ - هُوَ الصُّورِيُّ - نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ - هُوَ الدَّرَاوَرْدِيُّ - عَنْ صَفْوَانَ بْنِ سُلَيْمٍ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ: أَنَّهُ كَانَ يُصَلِّي فَأَرَادَ ابْنُ لِمَرْوَانَ أَنْ يَمُرَّ بَيْنَ يَدَيْهِ فَدَرَأَهُ فَلَمْ يَرْجِعْ، فَضَرَبَهُ، فَخَرَجَ الْغُلَامُ يَبْكِي حَتَّى أَتَى مَرْوَانَ فَأَخْبَرَهُ؟ فَقَالَ مَرْوَانُ لِأَبِي سَعِيدٍ: لِمَ ضَرَبْتَ ابْنَ أَخِيكَ؟ قَالَ: مَا ضَرَبْتُهُ، إِنَّمَا ضَرَبْتُ الشَّيْطَانَ، سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «إِذَا كَانَ أَحَدُكُمْ فِي صَلَاتِهِ فَأَرَادَ إِنْسَانٌ أَنْ يَمُرَّ بَيْنَ يَدَيْهِ فَيَدْرَؤُهُ مَا اسْتَطَاعَ فَإِنْ أَبَى فَلْيُقَاتِلْهُ، فَإِنَّمَا هُوَ شَيْطَانٌ» .

L38284 And from the narration of Muslim, from the Messenger of Allah—peace and blessings be upon him—he said: “If he refuses, then let him fight him, for indeed with him is the devil companion.”

وَمِنْ طَرِيقِ مُسْلِمٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «فَإِنْ أَبَى فَلْيُقَاتِلْهُ فَإِنَّ مَعَهُ الْقَرِينَ» .

L38285 Whoever fights in the manner commanded by the Messenger of Allah (peace and blessings be upon him) is a doer of good. Allah the Exalted said, “There is no blame upon the doers of good” [Quran 9:91]. Thus, since he is a doer of good, he is not a transgressor; and since he is not a transgressor, there is no retaliation (qawd) against him nor diyya.[42]

وَمَنْ قَاتَلَ كَمَا أَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ مُحْسِنٌ، قَالَ اللَّهُ تَعَالَى {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] ، فَإِذْ هُوَ مُحْسِنٌ فَلَيْسَ مُتَعَدِّيًا، وَإِذْ لَيْسَ مُتَعَدِّيًا فَلَا قَوَدَ عَلَيْهِ وَلَا دِيَةَ.

L38286 The unintentional killer does not incur expiation. If he could have prevented the death but deliberately killed, he becomes liable for retaliation, for he is then deemed an aggressor by what he was not commanded [to do]. As for one who passes before a praying person, he is an aggressor by passing, an aggressor by fighting, thus requiring retaliation against him. Success comes solely from Allah, the Exalted.

وَلَيْسَ قَاتِلُ خَطَأٍ فَتَكُونَ عَلَيْهِ كَفَّارَةٌ، فَلَوْ أَمْكَنَهُ دَفْعُهُ فَعَمَدَ قَتْلَهُ أُقِيدَ بِهِ، لِأَنَّهُ مُعْتَدٍ حِينَئِذٍ بِمَا لَمْ يُؤْمَرْ - وَأَمَّا الْمَارُّ بَيْنَ يَدَيْ الْمُصَلِّي فَمُعْتَدٍ بِالْمُرُورِ مُعْتَدٍ بِالْمُقَاتَلَةِ، فَعَلَيْهِ الْقَوَدُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[42] **Qur’an references (L38285):** Qur’an 9:91 (At-Tawbah).

[مَسْأَلَةٌ الْجَمَاعَةُ تَضْرِبُ الْوَاحِدَ فَيُقْتَلُ وَلَا يُدْرَى مَنْ أَصَابَهُ مِنْهُمْ]

٢٠٩٣ - مَسْأَلَةٌ: الْجَمَاعَةُ تَضْرِبُ الْوَاحِدَ فَيُقْتَلُ وَلَا يُدْرَى مَنْ أَصَابَهُ مِنْهُمْ، وَالْمُصْطَدِمَانِ، وَمَنْ وَقَعَ عَلَى آخَرَ، وَمَنْ تَعَلَّقَ بِآخَرَ فَسَقَطَ، وَالْحَفَّارُونَ، وَالْمُتَصَارِعَانِ، وَالْمُتَلَاعِبَانِ

قَالَ أَبُو مُحَمَّد: أَمَّا الْجَمَاعَةُ تَضْرِبُ الْوَاحِدَ فَيَمُوتُ وَلَا يُدْرَى مَنْ مِنْهُمْ أَصَابَهُ؟ فَإِنَّهُ إنْ وُجِدَ مَقْتُولًا فِي دَارِ قَوْمٍ فَادَّعَى أَهْلُهُ عَلَى أَهْلِ تِلْكَ الدَّارِ - وَكَانَ الَّذِينَ ضَرَبُوهُ مِنْ أَهْلِ تِلْكَ الدَّارِ -: فَفِيهِ الْقَسَامَةُ عَلَى مَا نَذْكُرُهُ بَعْدَ هَذَا - إنْ شَاءَ اللَّهُ تَعَالَى وَإِنْ كَانَ الَّذِينَ ضَرَبُوهُ مِنْ غَيْرِ أَهْلِ تِلْكَ الدَّارِ -: فَلَيْسَ هَاهُنَا حُكْمُ الْقَسَامَةِ، وَلَكِنْ حُكْمُ التَّدَاعِي فَالْبَيِّنَةُ هَاهُنَا عَلَى مُدَّعِي الدَّمِ، فَإِنْ جَاءَ بِهَا فَلَهُ الْقَوَدُ، وَإِنْ لَمْ يَأْتِ بِهَا حَلَفُوا لَهُ، إنْ ادَّعَى عَلَى جَمِيعِهِمْ؛ أَوْ حَلَفَ لَهُ مَنْ ادَّعَى عَلَيْهِ مِنْهُمْ، وَبَرِئُوا، وَسَنَذْكُرُ هَذَا كُلَّهُ فِي " بَابِ الْقَسَامَةِ ".

[مَسْأَلَةٌ اقْتَتَلَ اثْنَانِ فَقَتَلَ أَحَدُهُمَا الْآخَرَ]

٢٠٩٤ - مَسْأَلَةٌ: وَإِذَا اقْتَتَلَ اثْنَانِ، فَقَتَلَ أَحَدُهُمَا الْآخَرَ؟ فَقَدْ قَالَ قَوْمٌ: عَلَى الْحَيِّ نِصْفُ الدِّيَةِ، لِأَنَّهُ مَاتَ الْمَقْتُولُ مِنْ فِعْلِهِ وَفِعْلِ غَيْرِهِ وَهَذَا لَيْسَ بِشَيْءٍ، لِأَنَّ الْمَقْتُولَ - وَإِنْ كَانَ عَاصِيًا لِلَّهِ تَعَالَى، وَفِي النَّارِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا الْتَقَى الْمُسْلِمَانِ بِسَيْفَيْهِمَا فَالْقَاتِلُ وَالْمَقْتُولُ فِي النَّارِ» فَإِنَّهُ لَيْسَ كُلُّ عَاصٍ يَحِلُّ دَمُهُ وَلَا يُغَرَّمُ دِيَةً، لَكِنَّ الْقَاتِلَ الْحَيَّ هُوَ قَاتِلُ الْآخَرِ بِلَا شَكٍّ، فَإِذْ هُوَ قَاتِلُهُ بِيَقِينٍ عَلَيْهِ مَا

An issue: A group collectively strikes an individual, causing his death, and it cannot be determined which of them inflicted the fatal injury.

2093. Issue: A group strikes a single person, resulting in his death where the specific assailant is unknown; two people colliding; one who falls upon another; one who clings to another and falls; diggers; two wrestlers; and two play-fighters.

Abū Muḥammad said: Regarding a group striking a single person who then dies—with uncertainty as to which struck the fatal blow—if the slain is found in a household and his heirs accuse its residents, and the assailants were indeed from that household, then the qasamah oath-swearing applies here, as we shall later clarify—God Almighty willing. If the assailants were from outside that household, the ruling of qasamah does not apply. Instead, the ruling pertains to reciprocal allegations. Here, the burden of proof lies with the blood claimant. If he produces evidence, he is entitled to retaliation. If he fails, the accused must swear: if he accuses all collectively, they all swear; if he accuses specific individuals, only those swear—thereby acquitting themselves. We shall elaborate on this in the "Chapter on Qasamah."

A case in which two individuals fought each other, so one of them killed the other.

Issue 2094: If two men engage in combat and one kills the other, some scholars have ruled that the survivor is liable for half the *diyah* (blood money), because the deceased died as a result of his own action and the action of the killer. This is baseless, because the killed person—even if he is disobedient to Allah the Exalted and will be in the Fire, according to the statement of the Messenger of Allah, peace and blessings be upon him: "When two Muslims confront each other with their swords, both the killer and the killed are in the Fire"—does not mean that every disobedient person's blood may be shed freely, nor is he exempt from paying blood money. However, the living killer is undoubtedly the killer of the other. Thus, he is

his killer with certainty, bearing what is incumbent upon a killer. For what was narrated to us through the chain of Abd al-Razzaq from Ibn Jurayj, who said: Ibn Shihab was asked about the first one who imposed half of his blood money on the two combatants. Ibn Shihab replied: "We hold that the full blood money is due from the remaining one, and that was the Sunnah in what we have witnessed."[43]

L38294 Abu Muhammad said: If the slain person inflicts an injury upon his killer from which the killer dies after the slain's death, retaliation must be promptly executed against the living party (whether both were wrongful together, or only the living one was wrongful while the slain was wronged). Retaliation is thus enforced against the living party for taking the slain's life and for the wounds he inflicted upon them—or blood money is taken from him or his estate, whether he dies or survives. No liability is imposed on the deceased's estate (neither blood money nor any other liability), except if the slain had severed a finger [of the killer], fingers, hand, or foot, in which case the blood money for that injury is due from the deceased's estate.

L38295 The proof of this is: whatever blood money became due during the offender's lifetime remains obligatory thereafter, so his death does not nullify it, for what is established with certainty is not nullified by mere claims. As for what had not yet become due during his lifetime, we know with certainty that his wealth has passed upon his death to his heirs or creditors without doubt.

L38296 When it becomes their property, it forms part of their wealth. Diyah is only obligatory upon the death of the slain. If it becomes obligatory due to their death—while the offender possesses no property—then demanding diyah from the property of one who neither killed nor committed an offense against the victim constitutes absolute, definitive invalidity. Similarly, the diyah owed by a killer who died before this obligation took effect—since legal rulings do not apply to the deceased but only to the living—and with

[43] **Hadith references (L38291):** Sahih al-Bukhari 31; Sahih al-Bukhari 6875; Sahih Muslim 2888b.

عَلَى الْقَاتِلِ: لِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: سُئِلَ ابْنُ شِهَابٍ عَنْ أَوَّلِ مَنْ جَعَلَ عَلَى الْمُصْطَدِمَيْنِ نِصْفَ عَقْلِهِ؟ فَقَالَ ابْنُ شِهَابٍ: نَرَى أَنَّ الْعَقْلَ تَامًّا عَلَى الْبَاقِي مِنْهُمَا، وَتِلْكَ السُّنَّةُ فِيمَا أَدْرَكْنَا.

قَالَ أَبُو مُحَمَّدٍ: فَإِنْ جَنَى الْمَقْتُولُ عَلَى قَاتِلِهِ جِنَايَةً مَاتَ مِنْهَا بَعْدَ مَوْتِ الْمَقْتُولِ؟ فَالْقَوَدُ وَاجِبٌ تَعْجِيلُهُ عَلَى الْحَيِّ، إذْ كَانَا ظَالِمَيْنِ مَعًا، أَوْ كَانَ الْحَيُّ مِنْهُمَا ظَالِمًا وَالْمَقْتُولُ مَظْلُومًا؟ فَيُسْتَقَادُ مِنْ الْحَيِّ فِي نَفْسِهِ، وَفِي الْجِرَاحِ الَّتِي جَرَحَ الْمَقْتُولَ بِهَا - أَوْ تُؤْخَذُ الدِّيَةُ مِنْهُ، أَوْ مِنْ مَالِهِ - مَاتَ أَوْ عَاشَ - وَلَا شَيْءَ فِي مَالِ الْمَقْتُولِ - لَا دِيَةَ وَلَا غَيْرَهَا - إلَّا إنْ كَانَ قَطَعَ لَهُ أُصْبُعًا، أَوْ أَصَابِعَ، أَوْ يَدًا، أَوْ رِجْلًا، فَالدِّيَةُ فِي ذَلِكَ فِي مَالِ الْمَيِّتِ.

بُرْهَانُ ذَلِكَ: أَنَّ مَا وَجَبَ فِي حَيَاةِ الْجَانِي مِنْ دِيَةٍ فَهِيَ وَاجِبَةٌ بَعْدُ، فَلَا يُسْقِطُهَا مَوْتُهُ، إذْ مَا صَحَّ بِيَقِينٍ فَلَا يَسْقُطُ بِالدَّعْوَى - وَأَمَّا مَا لَمْ يَجِبْ فِي حَيَاتِهِ بَعْدُ، فَبِيَقِينٍ نَدْرِي أَنَّ مَالَهُ قَدْ صَارَ بِمَوْتِهِ لِوَرَثَتِهِ، أَوْ لِلْغُرَمَاءِ بِلَا شَكٍّ.

فَإِذْ صَارَ لَهُمْ، فَهُوَ مَالٌ مِنْ مَالِهِمْ، وَالدِّيَةُ لَا تَجِبُ إلَّا بِمَوْتِ الْمَقْتُولِ، فَإِذَا وَجَبَتْ بِمَوْتِهِ - وَلَا مَالَ لِلْجَانِي - فَمِنْ الْبَاطِلِ الْبَحْتِ الْمَقْطُوعِ بِهِ: أَنْ تُؤْخَذَ دِيَةٌ مِنْ مَالِ مَنْ لَمْ يَقْتُلْهُ، وَلَا جَنَى عَلَيْهِ - وَكَذَلِكَ دِيَةُ الْقَاتِلِ الَّذِي قَدْ مَاتَ قَبْلَ وُجُوبِ الدِّيَةِ عَلَيْهِ، وَالْأَحْكَامُ لَا تَلْحَقُ الْمَوْتَى، وَإِنَّمَا تَلْحَقُ الْأَحْيَاءَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - فَهَذَا حُكْمُ الظَّالِمَيْنِ.

Allah, the Exalted, lies all success—this constitutes the ruling pertaining to the two transgressors in this case.

وَأَمَّا إِنْ كَانَ الْقَاتِلُ الْحَيُّ مَظْلُومًا وَالْمَقْتُولُ ظَالِمًا، فَقَدْ مَضَى إِلَى لَعْنَةِ اللَّهِ تَعَالَى وَلَا شَيْءَ عَلَى الْقَاتِلِ الْجَارِحِ - لَا قَوَدَ، وَلَا دِيَةَ - لِمَا سَنَذْكُرُهُ فِي " كِتَابِ أَهْلِ الْبَغْيِ ".

L38297 If the living killer is the wronged party and the slain is the oppressor, the slain has entered the curse of Allah the Exalted. Nothing is incumbent upon the injuring killer—neither qisas (retaliation) nor diyah (blood money)—as we will elaborate in *The Book of the People of Baghy (Rebellion)*.

قَالَ أَبُو مُحَمَّد: وَأَمَّا الْمُصْطَدِمَانِ: رَاجِلَيْنِ، أَوْ عَلَى دَابَّتَيْنِ، أَوْ السَّفِينَتَيْنِ يَصْطَدِمَانِ، فَرُوِيَ عَنْ الشَّعْبِيِّ: فِي السَّفِينَتَيْنِ يَصْطَدِمَانِ لَا ضَمَانَ فِي شَيْءٍ مِنْ ذَلِكَ.

L38298–38299 Abu Muhammad said: As for the two colliding parties—whether two pedestrians, two riding animals, or two ships—it was narrated from Al-Sha'bi regarding the two ships colliding that there is no liability in any of such cases.

وَقَالَ الشَّافِعِيُّ: لَا يَجُوزُ فِيهِ إلَّا أَحَدُ قَوْلَيْنِ: إمَّا أَنَّهُ يَضْمَنُ مُدَبِّرُ السَّفِينَةِ نِصْفَ مَا أَصَابَتْ سَفِينَتُهُ لِغَيْرِهِ، أَوْ أَنَّهُ لَا يَضْمَنُ أَلْبَتَّةَ، إلَّا أَنْ يَكُونَ قَادِرًا عَلَى صَرْفِهَا بِنَفْسِهِ، أَوْ بِمَنْ يُطِيعُهُ فَلَا يَفْعَلُ فَيَضْمَنُ، وَالْقَوْلُ قَوْلُهُ مَعَ يَمِينِهِ: أَنَّهُ مَا قَدَرَ عَلَى صَرْفِهَا، وَضَمَانُ الْأَمْوَالِ إذَا ضَمِنَ فِي ذِمَّتِهِ، وَضَمَانُ النُّفُوسِ عَلَى عَاقِلَتِهِ.

L38300 Al-Shafi'i said: Only two opinions are permissible in this matter: either the ship's operator is liable for half of what his ship caused to others, or he bears no liability whatsoever unless he was capable of averting it himself or through someone under his authority yet failed to do so, thereby incurring liability. The ruling is based on his assertion, provided he swears that he could not avert it. Liability for property falls upon his personal obligation, while liability for loss of life rests upon his ʿāqilah (agnatic kin group).

قَالَ أَبُو مُحَمَّد: وَقَالَ بَعْضُ أَصْحَابِنَا: إذَا اصْطَدَمَتْ السَّفِينَتَانِ بِغَيْرِ قَصْدٍ مِنْ رُكَّابِهِمَا، لَكِنْ بِغَلَبَةٍ، أَوْ غَفْلَةٍ فَلَا ضَمَانَ فِي ذَلِكَ أَصْلًا.

L38301 Abu Muhammad said: Some of our companions stated: If two ships collide without intent from their passengers or crew, but rather due to force majeure or inadvertence, there is no financial liability whatsoever in that matter.

فَإِنْ حَمَلَا سَفِينَتَهُمَا عَلَى التَّصَادُمِ فَهَلَكَتَا: ضَمِنَ كُلُّ وَاحِدٍ نِصْفَ قِيمَةِ السَّفِينَةِ الْأُخْرَى، لِأَنَّهَا هَلَكَتْ مِنْ فِعْلِهَا، وَمِنْ فِعْلِ رُكَّابِهَا.

L38302 If they steered their two ships toward collision and both were destroyed, each party is liable for half the value of the other's ship, because they were destroyed by the action of both and the action of their passengers.

وَأَمَّا الْفَارِسَانِ يَصْطَدِمَانِ - فَإِنَّ أَبَا حَنِيفَةَ، وَمَالِكًا، وَالْأَوْزَاعِيَّ، وَالْحَسَنَ بْنَ حَيٍّ، قَالُوا: إنْ مَاتَا فَعَلَى عَاقِلَةِ كُلِّ وَاحِدٍ مِنْهُمَا دِيَةُ الْآخَرِ كَامِلَةً.

L38303 As for two horsemen colliding: Abū Ḥanīfah, Mālik, al-Awzāʿī, and al-Ḥasan ibn Ḥayy held the opinion that if both die, the kinship group of each must pay the full blood money of the other.

وَقَالَ عُثْمَانُ الْبَتِّيُّ وَزُفَرُ، وَالشَّافِعِيُّ: عَلَى كُلِّ وَاحِدٍ مِنْهُمَا نِصْفُ دِيَةِ صَاحِبِهِ.

L38304 Uthman al-Batti, Zufar, and al-Shafi'i said: Each of the two individuals is obligated to pay half the *diyah* of his companion.

L38305 Some of our companions held—in accordance with Al-Shāfiʿī's opinion on

this matter—and likewise obligated that if the two diyats (or one of them) perish, half of their value is also obligatory.

وَقَالَ بَعْضُ أَصْحَابِنَا - بِمِثْلِ قَوْلِ الشَّافِعِيِّ فِي ذَلِكَ - وَكَذَلِكَ أَوْجَبُوا إِنْ هَلَكَتْ الدِّيَتَانِ - أَوْ إِحْدَاهُمَا - فَنِصْفُ قِيمَتِهَا أَيْضًا.

L38306 Similarly, if they launched a stone with a catapult and it rebounded, striking and killing one of them, the blood money (diyah) falls upon their agnates. The share attributable to the deceased's agnates is excluded from it, as his death resulted from his own action combined with others'.

كَذَلِكَ - لَوْ رَمَوْا بِالْمَنْجَنِيقِ فَعَادَ الْحَجَرُ عَلَى أَحَدِهِمْ فَمَاتَ، فَإِنَّ الدِّيَةَ عَلَى عَوَاقِلِهِمْ، وَتَسْقُطُ مِنْهَا حِصَّةُ الْمَقْتُولِ، لِأَنَّهُ مَاتَ مِنْ فِعْلِهِ وَفِعْلِ غَيْرِهِ.

L38307 If one of them merely collides with the other, and the struck person dies, his blood money is incumbent upon the agnatic kin of the striker if the act was accidental, and upon the assets of the killer if the death resulted from intentional homicide.

قَالُوا: فَلَوْ صَدَمَ أَحَدُهُمَا الْآخَرَ فَقَطْ، فَمَاتَ الْمَصْدُومُ فَدِيَتُهُ عَلَى عَاقِلَةِ الصَّادِمِ إِنْ كَانَ خَطَأً، وَفِي مَالِ الْقَاتِلِ إِنْ قُتِلَتْ فِي الْعَمْدِ.

L38308–38310 Abu Muhammad said: The ruling on this matter—and success comes from Allah, the Exalted—is that if two ships collide due to force majeure winds or inadvertence, no liability is incurred, as it was not caused by those operating the ships. Actions are fundamentally so, and they have not incurred anything upon themselves; their wealth and the wealth of their male kin responsible for blood money is prohibited, except by explicit text or consensus.

قَالَ أَبُو مُحَمَّد: وَالْقَوْلُ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - أَنَّ السَّفِينَتَيْنِ إذَا اصْطَدَمَتَا بِغَلَبَةِ رِيحٍ أَوْ غَفْلَةٍ، فَلَا شَيْءَ فِي ذَلِكَ، لِأَنَّهُ لَمْ يَكُنْ مِنْ الرُّكَّبَانِ فِي ذَلِكَ عَمَلٌ أَصْلًا وَلَمْ يَكْسِبُوا عَلَى أَنْفُسِهِمْ شَيْئًا، وَأَمْوَالُهُمْ وَأَمْوَالُ عَوَاقِلِهِمْ مُحَرَّمَةٌ، إلَّا بِنَصٍّ أَوْ إجْمَاعٍ.

L38311 If they collided while sailing—with each ship's crew unaware of the other's position due to darkness, seeing nothing—this constitutes a criminal offense, and the property is liable for compensation, as they initiated the act of damage. Allah says, *"The recompense for an evil deed is its equivalent"* (Quran 42:40). As for loss of life, it falls upon all their kin, as it is considered unintentional killing. If they acted deliberately, the property remains liable—as previously mentioned—and those exempt from liability among them face retaliation (qisas) or full diya (blood money). The ruling applies similarly to two riders or two men colliding in the same manner. Likewise, catapult operators: the diya is divided between the shooter and the others involved, with the shooter's kin and the others' kin equally bearing the payment.[44]

فَإِنْ كَانُوا تَصَادَمُوا وَحَمَلُوا - وَكُلُّ أَهْلِ سَفِينَةٍ غَيْرُ عَارِفَةٍ بِمَكَانِ الْأُخْرَى لَكِنْ فِي ظُلْمَةٍ لَمْ يَرُوا شَيْئًا - فَهَذِهِ جِنَايَةٌ، وَالْأَمْوَالُ مَضْمُونَةٌ، لِأَنَّهُمْ تَوَلَّوْا إفْسَادَهَا، وَقَالَ تَعَالَى {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] ، وَأَمَّا الْأَنْفُسُ - فَعَلَى عَوَاقِلِهِمْ كُلِّهِمْ، لِأَنَّهُ قَتْلُ خَطَأٍ، وَإِنْ كَانُوا تَعَمَّدُوا فَالْأَمْوَالُ مَضْمُونَةٌ - كَمَا ذَكَرْنَا - وَعَلَى مَنْ سَلِمَ مِنْهُمْ الْقَوَدُ أَوْ الدِّيَةُ كَامِلَةً، وَالْقَوْلُ فِي الْفَارِسَيْنِ، أَوْ الرَّجُلَيْنِ يَصْطَدِمَانِ كَذَلِكَ، وَكَذَلِكَ - أَيْضًا - الرُّمَاةُ بِالْمَنْجَنِيقِ تُقَسَّمُ الدِّيَةُ عَلَيْهِ وَعَلَيْهِمْ، وَتُؤَدِّي عَاقِلَتُهُ وَعَاقِلَتُهُمْ دِيَتَهُ سَوَاءً.

L38312 The proof of this is that in cases of unintentional killing, the one who kills himself shares liability with the killer of the soul. We previously stated that *diyah* is incumbent upon the one who kills himself, based on the explicit

[44] **Qur'an references (L38311):** Qur'an 42:40 (Ash-Shuraa).

text of Allah the Exalted regarding the unintentional killer. Thus, the Exalted has encompassed all instances of killing and did not limit it to unintentional acts, *“And your Lord is not forgetful”* [Maryam 19:64].[45]

بُرْهَانُ ذَلِكَ: أَنَّهُ فِي الْخَطَأِ قَاتِلٌ نَفْسَهُ مَعَ مَنْ قَتَلَهَا وَقَدْ ذَكَرْنَا قَبْلُ: أَنَّ فِي قَاتِلِ نَفْسِهِ الدِّيَةَ بِنَصِّ قَوْلِ اللَّهِ تَعَالَى فِي قَاتِلِ الْخَطَأِ، فَعَمَّ تَعَالَى كُلَّ مَقْتُولٍ، وَلَمْ يَخُصَّ خَطَأً {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L38313 Abu Muhammad said: Then we return to our question and say: As for their statement regarding the two colliding parties—that the deceased died from his own action and from the action of another—this is incorrect. The action is solely the direct engagement of the doer and what he does in it. For he did not directly engage in the collision of another upon himself in any way.

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَرْجِعُ إِلَى مَسْأَلَتِنَا فَنَقُولُ: أَمَّا قَوْلُهُمْ فِي الْمُصْطَدِمَيْنِ إِنَّ الْمَيِّتَ مَاتَ مِنْهُمَا مِنْ فِعْلِ نَفْسِهِ، وَمِنْ فِعْلِ غَيْرِهِ - فَهُوَ خَطَأٌ، وَالْفِعْلُ إِنَّمَا هُوَ مُبَاشَرَةُ الْفَاعِلِ وَمَا يَفْعَلُهُ فِيهِ - وَهُوَ لَمْ يُبَاشِرْ بِصَدْمَةِ غَيْرِهِ فِي نَفْسِهِ شَيْئًا.

L38314 They do not differ concerning one who hands over a wrongdoer to another wrongdoer to fight him, resulting in one of them killing the other: that the killer among them is liable for qisas or the full diyah—if qisas is rendered unattainable due to some impediments—for he caused his own death by initiating combat, just as he would cause his own death through intentional striking, since there is no distinction between the two—this constitutes a contradiction in their position.

وَلَا يَخْتَلِفُونَ فِيمَنْ دَفَعَ ظَالِمًا إِلَى ظَالِمٍ آخَرَ لِيُقَاتِلَهُ فَقَتَلَ أَحَدُهُمَا الْآخَرَ: أَنَّ عَلَى الْقَاتِلِ مِنْهُمَا الْقَوَدَ، أَوْ الدِّيَةَ كُلَّهَا - إِنْ فَاتَ الْقَوَدُ بِبَعْضِ الْعَوَارِضِ - وَهُوَ قَدْ تَسَبَّبَ فِي مَوْتِ نَفْسِهِ بِابْتِدَاءِ الْقِتَالِ، كَمَا تَسَبَّبَ فِي مَوْتِ نَفْسِهِ فِي الصَّدْمِ، وَلَا فَرْقَ - وَهَذَا تَنَاقُضٌ مِنْهُمْ.

L38315 Abu Muhammad said: The same ruling applies to wrestlers and those engaged in playful combat, and there is no difference. What Allah the Exalted has permitted in play, He does not prohibit in earnestness.

قَالَ أَبُو مُحَمَّدٍ: وَكَذَلِكَ الْقَوْلُ فِي الْمُتَصَارِعَيْنِ، وَالْمُتَلَاعِبَيْنِ، وَلَا فَرْقَ وَمَا أَبَاحَ اللَّهُ تَعَالَى فِي اللَّعِبِ شَيْئًا حَظَرَهُ فِي الْجِدِّ.

L38316–38318 As for one who falls from a height onto a person, resulting in both their deaths; or the death of either the one who fell or the one fallen upon, then the one who fell is undoubtedly the direct cause of the death of the one fallen upon, as observed, because the fall... The act resulted in the death of the victim without any action from the deceased: the blood money for the victim—if death occurs—is incumbent upon the agnatic kin of the one who committed the act, provided the act was unintentional, as this constitutes accidental homicide. If the act was intentional, qisas (retaliatory punishment) applies against the perpetrator if he survives, otherwise blood money is owed.

وَأَمَّا مَنْ سَقَطَ مِنْ عُلُوٍّ عَلَى إِنْسَانٍ فَمَاتَا جَمِيعًا، أَوْ مَاتَ الْوَاقِعُ، أَوْ الْمَوْقُوعُ عَلَيْهِ، فَإِنَّ الْوَاقِعَ هُوَ الْمُبَاشِرُ لِإِتْلَافِ الْمَوْقُوعِ عَلَيْهِ بِلَا شَكٍّ، وَبِالْمُشَاهَدَةِ، لِأَنَّ الْوَقْعَةَ قَتَلَتْ الْمَوْقُوعَ عَلَيْهِ، وَلَمْ يَعْمَلْ الْمَوْقُوعُ عَلَيْهِ شَيْئًا: فَدِيَةُ الْمَوْقُوعِ عَلَيْهِ - إِنْ هَلَكَ - عَلَى عَاقِلَةِ الْوَاقِعِ - إِنْ لَمْ يَتَعَمَّدْ الْوُقُوعَ عَلَيْهِ - لِأَنَّهُ قَاتِلُ خَطَأٍ، فَإِنْ تَعَمَّدَ، فَالْقَوَدُ وَاقِعٌ عَلَيْهِ إِنْ سَلِمَ، أَوْ الدِّيَةُ - وَكَذَلِكَ الدِّيَةُ فِي مَالِهِ إِنْ مَاتَ الْمَوْقُوعُ عَلَيْهِ قَبْلَهُ.

[45] **Qur’an references (L38312):** Qur’an 19:64 (Maryam).

Similarly, blood money is owed from the perpetrator's own wealth if the victim dies before him.

فَإِنْ مَاتَا مَعًا، أَوْ مَاتَ الْوَاقِعُ قَبْلُ، فَلَا شَيْءَ فِي ذَلِكَ، لِمَا ذَكَرْنَا مِنْ أَنَّ الدِّيَةَ إِنَّمَا تَجِبُ بِمَوْتِ الْمَقْتُولِ الْمَجْنِيِّ عَلَيْهِ لَا قَبْلَ ذَلِكَ. فَإِذَا مَاتَ فِي حَيَاةِ قَاتِلَةٍ فَقَدْ وَجَبَتْ الدِّيَةُ أَوْ الْقَوَدُ فِي مَالِ الْقَاتِلِ. وَإِذَا مَاتَ مَعَ قَاتِلِهِ أَوْ بَعْدَ قَاتِلِهِ، فَلَمْ يَجِبْ لَهُ بَعْدُ شَيْءٌ - لَا قَوَدَ وَلَا دِيَةَ - فِي حَيَاةِ الْقَاتِلِ، فَإِذَا مَاتَ فَالْقَاتِلُ غَيْرُ مَوْجُودٍ، وَالْمَالُ قَدْ صَارَ لِلْوَرَثَةِ، وَهَذَا لَا حَقَّ لَهُ عِنْدَهُمْ - وَلَيْسَ هَكَذَا قَتْلُ الْخَطَأِ، لِأَنَّ الدِّيَةَ لَا تَجِبُ فِي مَالِ الْجَانِي، وَإِنَّمَا تَجِبُ عَلَى عَاقِلَتِهِ، فَسَوَاءٌ مَاتَ الْقَاتِلُ قَبْلَ الْمَقْتُولِ، أَوْ مَعَهُ، أَوْ بَعْدَهُ: لَا يَسْقُطُ بِذَلِكَ وُجُوبُ الدِّيَةِ - إِمَّا عَلَى الْعَاقِلَةِ إِنْ عُلِمَتْ، وَإِمَّا فِي كُلِّ مَالِ الْمُسْلِمِينَ، كَمَا جَاءَ فِي سَهْمِ الْغَارِمِينَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38319 If they both die simultaneously, or the perpetrator dies first, there is no liability in that case, due to what we mentioned—that blood money is only obligatory upon the death of the victim of the offense, not before. If the victim dies during the female killer's lifetime, blood money or retribution becomes incumbent on the killer's property. If the victim dies simultaneously with his killer or after his killer's death, nothing is owed—neither retribution nor blood money—for during the killer's lifetime, no obligation had yet arisen. When the victim dies, the killer no longer exists, the property has been transferred to the heirs, and the victim holds no valid claim against them. This differs from cases of accidental killing, for blood money is not incumbent on the perpetrator's personal wealth but rather on his agnatic relatives. Thus, whether the killer dies before, simultaneously with, or after the victim, the obligation of blood money does not lapse—either upon the agnatic relatives if established, or from the collective wealth of Muslims, as stipulated in the debtors' share. And with Allah, the Exalted, is success.

وَلَا شَيْءَ لِوَارِثِ الْوَاقِعِ إِنْ مَاتَ فِي جَمِيعِ هَذِهِ الْوُجُوهِ - لَا دِيَةَ وَلَا غَيْرَهَا - لِأَنَّهُ لَمْ يَجْنِ أَحَدٌ عَلَيْهِ شَيْئًا، وَسَوَاءٌ وَقَعَ عَلَى سِكِّينٍ بِيَدِ الْمَدْفُوعِ عَلَيْهِ، أَوْ عَلَى رُمْحٍ، أَوْ غَيْرِ ذَلِكَ، لَا شَيْءَ فِي ذَلِكَ أَصْلًا، لِأَنَّهُ إِنْ عَمَدَ فَهُوَ قَاتِلُ نَفْسِهِ عَمْدًا، وَلَا شَيْءَ فِي ذَلِكَ بِلَا خِلَافٍ - وَإِنْ كَانَ لَمْ يَعْمِدْ فَلَمْ يُبَاشِرْ فِي نَفْسِهِ جِنَايَةً، وَإِنَّمَا هُوَ قَتِيلُ حَجَرٍ أَوْ حَدِيدَةٍ أَوْ نَحْوِ ذَلِكَ، وَمَا كَانَ هَكَذَا فَلَا شَيْءَ فِي ذَلِكَ كُلِّهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38320 The heir of the deceased [who caused their own death] is entitled to nothing if they die in any of these scenarios—neither blood money nor other compensations—because no one has committed any criminal act against them. This applies equally whether they fall onto a knife held by the person being pushed against, a spear, or any other object. There is absolutely no liability in such cases, for if they acted intentionally, they intentionally killed themselves, and there is no liability in this matter by unanimous agreement. If they did not act intentionally, then they did not perpetrate any criminal act against themselves; rather, they are killed by a stone, an iron object, or the like. In all such instances, there is no liability whatsoever. And success is from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا الْمُتَمَاقِلُونَ فِي الْمَاءِ فَإِنْ عُرِفَ أَيُّهُمْ غَطَّسَهُ فِي الْمَاءِ حَتَّى مَاتَ، فَإِنْ كَانَ عَمْدًا فَالْقَوَدُ، وَإِنْ كَانَ غَيْرَ قَاصِدٍ لَكِنْ غَطَسَ أَحَدُهُمْ، فَلَمَّا جَاءَ لِيَخْرُجَ لَقِيَ سَاقَيْ آخَرَ فَمَنَعَتَاهُ الْخُرُوجَ غَيْرَ قَاصِدٍ لِذَلِكَ: فَالدِّيَةُ عَلَى عَاقِلَتِهِ وَعَلَيْهِ الْكَفَّارَةُ، لِأَنَّهُ

L38321 Abū Muḥammad said: As for those struggling in water, if it is determined who submerged him until he died, then if intentional, qiṣās (retaliatory punishment) applies. If unintentional—such as when someone submerged him, and when he came to exit, encountered another's two legs which inadvertently prevented his exit—then diyah (blood money) is owed by his ʿāqi-

lah (agnatic kin) along with obligatory expiation, for he directly caused this without intent, constituting accidental killing. If he submerged him with a submersion that by its very nature would never cause death—yet coincided with his appointed time—there is no liability here, for he neither killed him intentionally nor accidentally, but rather he died at his predetermined term (ajal), a natural death (ḥatf anfih).

بَاشَرَ ذَلِكَ فِيهِ غَيْرَ قَاصِدٍ فَهُوَ قَتْلُ خَطَأٍ، فَإِنْ كَانَ غَطَّسَهُ تَغْطِيسَةً - لَا يُمَاتُ أَلْبَتَّةَ مِنْ مِثْلِهَا - فَوَافَقَ مَنِيَّتَهُ، فَهَذَا لَا شَيْءَ فِيهِ، لِأَنَّهُ لَمْ يَقْتُلْهُ - لَا عَمْدًا وَلَا خَطَأً - بَلْ مَاتَ بِأَجَلِهِ حَتْفَ أَنْفِهِ.

L38322 If the perpetrator is unknown, the claimant is made to swear an oath, and the accused is absolved. If no clear evidence is established against him—and there is no *qasamah* (collective oath-swearing) applicable here—as it is not among the matters in which the Messenger of Allah, peace be upon him and his family, ruled by *qasamah*.

فَإِنْ جُهِلَ مَنْ عَمِلَ ذَلِكَ بِهِ، فَمَنْ ادَّعَى عَلَيْهِ أُحْلِفَ وَبُرِّئَ، وَإِنْ لَمْ تَقُمْ عَلَيْهِ بَيِّنَةٌ - وَلَا قَسَامَةَ هَاهُنَا، لِأَنَّهُ لَيْسَ مِمَّا حَكَمَ فِيهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِالْقَسَامَةِ.

L38323–38324 Abu Muhammad said: The position we uphold is that the ruling of *qasāmah* is obligatory in this case, for it is what the Messenger of Allah (peace and blessings be upon him) applied through *qasāmah*. This is because both scenarios involve a killed person who was found, and he (peace and blessings be upon him) did not state, "I ruled with *qasāmah* due to the House," nor did he say it was for reasons unrelated to the House. It is therefore impermissible to ascribe to him (peace and blessings be upon him) what he did not say. Rather, we rule in such circumstances according to the judgment he established for them. And success comes from Allah alone. The same applies to one killed in the turmoil of combat, at night, or wherever they were killed. And success comes from Allah alone.

قَالَ أَبُو مُحَمَّدٍ: وَالَّذِي نَقُولُ بِهِ إِنَّ حُكْمَ الْقَسَامَةِ وَاجِبٌ هَاهُنَا، لِأَنَّهُ هُوَ الَّذِي حَكَمَ فِيهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقَسَامَةِ، لِأَنَّ كِلْتَا الْحَالَتَيْنِ قَتِيلٌ وُجِدَ، وَلَمْ يَقُلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إِنِّي حَكَمْت بِالْقَسَامَةِ مِنْ أَجْلِ الدَّارِ، وَلَا مِنْ غَيْرِ أَجْلِ الدَّارِ، فَلَا يَجُوزُ أَنْ يَقُولَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَا لَمْ يَقُلْ، لَكِنْ نَحْكُمُ فِي نَوْعِ تِلْكَ الْحَالِ مِثْلَ حُكْمِهِ فِيهَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَكَذَلِكَ مَنْ قُتِلَ فِي اخْتِلَاطِ قِتَالٍ، أَوْ لَيْلًا، أَوْ أَيْنَ قُتِلَ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38325 If a group of people dug in a wall—whether rightfully or wrongfully—or in a mine or well, and the wall or embankment collapsed upon them, causing their death or the death of some of them: if they acted deliberately, intending to cause its collapse on themselves, then this constitutes intentional killing. Retribution (qisas) applies to the survivors [as perpetrators], or full blood money (diyah) is owed for each deceased individual, because each is considered to have caused their own death. This is the ruling for one who intentionally kills a person.

وَلَوْ أَنَّ قَوْمًا حَفَرُوا فِي حَائِطٍ - بِحَقٍّ أَوْ بِبَاطِلٍ - أَوْ فِي مَعْدِنٍ، أَوْ بِئْرٍ فَتَرَدَّى عَلَيْهِمْ الْحَائِطُ، أَوْ الْجُرُفُ فَمَاتُوا، أَوْ مَاتَ بَعْضُهُمْ؟ فَإِنْ كَانُوا عَامِدِينَ قَاصِدِينَ إلَى هَدْمِهِ عَلَى أَنْفُسِهِمْ: فَهُوَ قَتْلُ عَمْدٍ، وَالْقَوَدُ عَلَى مَنْ عَاشَ، أَوْ دِيَةٌ كَامِلَةٌ، لِجَمِيعِ مَنْ مَاتَ لِكُلِّ وَاحِدٍ مِنْهُمْ دِيَةٌ، لِأَنَّ كُلَّ وَاحِدٍ مِنْهُمْ قَاتِلُ نَفْسٍ، وَهَذَا حُكْمُ قَاتِلِ النَّفْسِ عَمْدًا.

L38326 If they did not intend except the act itself, not its destruction upon themselves, then they are considered unintentional killers. A diyah is due for each person who died only, incumbent upon all their responsible male kin. If they

have no responsible male kin, it is to be paid from the share allocated for debtors or from every property belonging to all Muslims.

وَإِنْ كَانُوا لَمْ يَقْصِدُوا إِلَّا الْعَمَلَ لَا هَدْمَهُ عَلَى أَنْفُسِهِمْ، فَهُمْ قَتَلَةُ خَطَأٍ عَلَى عَوَاقِلِهِمْ كُلِّهِمْ دِيَةٌ دِيَةٌ لِكُلِّ مَنْ مَاتَ فَقَطْ - فَإِنْ لَمْ يَكُنْ لَهُمْ عَوَاقِلُ فَمِنْ سَهْمِ الْغَارِمِينَ، أَوْ مِنْ كُلِّ مَالٍ لِجَمِيعِ الْمُسْلِمِينَ.

L38327 If a group of people were standing on a cliff edge and it collapsed beneath one of them, causing him to cling to someone nearby, and that person clung to another, leading them to fall and die, then the one who clung to his companion is considered an accidental killer. Consequently, the blood money is owed by the agnatic kin of the one who clung. For example, if Zaid clung to Khalid, and Khalid clung to Muhammad, then the blood money for Khalid is owed by Zaid's agnatic kin, and the blood money for Muhammad is owed solely by Khalid's agnatic kin. This principle applies forever, because clinging to someone in a manner leading to their demise constitutes accidental killing—unless it is done intentionally without any doubt, in which case it is intentional killing. In such a scenario, the only recourse is retaliation, blood money, or ransom if the falling person is rescued.

وَلَوْ أَنَّ قَوْمًا وَقَفُوا عَلَى جُرُفٍ فَانْهَارَ بِأَحَدِهِمْ فَتَعَلَّقَ بِمَنْ يَقْرُبُهُ، وَتَعَلَّقَ ذَلِكَ بِآخَرَ فَسَقَطُوا فَمَاتُوا، فَالْمُتَعَلِّقُ بِصَاحِبِهِ قَاتِلُ خَطَأٍ، فَالدِّيَةُ عَلَى عَاقِلَةِ الْمُتَعَلِّقِ - فَكَأَنَّ زَيْدًا تَعَلَّقَ بِخَالِدٍ، وَتَعَلَّقَ خَالِدٌ بِمُحَمَّدٍ، فَعَلَى عَاقِلَةِ زَيْدٍ دِيَةُ خَالِدٍ، وَعَلَى عَاقِلَةِ خَالِدٍ دِيَةُ مُحَمَّدٍ فَقَطْ، وَكَذَلِكَ أَبَدًا، لِأَنَّ الْمُتَعَلِّقَ بِإِنْسَانٍ إِلَى مَهْلَكَةٍ قَاتِلُ خَطَأٍ، إِلَّا أَنْ يَتَعَمَّدَ بِلَا شُبْهَةٍ فَهُوَ قَاتِلُ عَمْدٍ، لَيْسَ فِيهِ إِلَّا - لَوْ خُلِّصَ الْمُتَرَدِّي - الْقَوَدُ، أَوْ الدِّيَةُ، أَوْ الْمُفَادَاةُ.

L38328–38330 If they were to attack in such a manner and fell upon a lion or snake, and it killed them—then if this occurred accidentally, there is no liability, for he is not liable as the killing was accidental (by the animal). But if it was intentional, retaliation is due against him—if proven—and he is to be thrown to a similar animal so that it kills him, just as he did to his brother, according to the words of Allah, the Exalted. Sacred ordinances warrant equitable retribution. So whoever transgresses against you, retaliate against them to the extent of their transgression.[46]

فَلَوْ تَعَلَّقُوا هَكَذَا فَوَقَعُوا عَلَى أَسَدٍ، أَوْ ثُعْبَانٍ فَقَتَلَهُمْ؟ فَإِنْ كَانَ خَطَأً فَلَا شَيْءَ فِي ذَلِكَ، لِأَنَّهُ لَيْسَ قَاتِلَ خَطَأٍ، وَإِنَّمَا قَتَلَتْ الْبَهِيمَةُ - وَإِنْ كَانَ عَمْدًا فَعَلَيْهِ الْقَوَدُ - إِنْ خُلِّصَ - وَيُرْمَى إِلَى مِثْلِ الْبَهِيمَةِ حَتَّى تَقْتُلَهُ، كَمَا فَعَلَ هُوَ بِأَخِيهِ لِقَوْلِ اللَّهِ تَعَالَى {وَالْحُرُمَاتُ قِصَاصٌ فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤]

L38331 Abu Muhammad said: It has been narrated to us through the chain of Abu Bakr ibn Abi Shaybah, from Ali ibn Mushir, from Sa'id ibn Abi Arubah, from Qatadah, from Khilas, who said: A man hired four men to dig a well for him. They dug it, but the well collapsed on them, causing one of them to die. This case was referred to Ali ibn Abi Talib, who ruled that the three

قَالَ أَبُو مُحَمَّدٍ: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَلِيُّ بْنُ مُسْهِرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ خِلَاسٍ قَالَ: اسْتَأْجَرَ رَجُلٌ أَرْبَعَةَ رِجَالٍ لِيَحْفِرُوا لَهُ بِئْرًا لِيَحْفِرُوهَا فَانْخَسَفَتْ بِهِمْ الْبِئْرُ فَمَاتَ أَحَدُهُمْ؟ فَرُفِعَ ذَلِكَ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَضَمِنَ الثَّلَاثَةُ ثَلَاثَةَ أَرْبَاعِ الدِّيَةِ وَطُرِحَ عَنْهُ رُبْعُ الدِّيَةِ.

[46] **Qur'an references (L38328):** Qur'an 2:194 (Al-Baqarah).

[surviving workers] were liable for three-quarters of the blood money, while one-quarter of the blood money was waived from them.

L38332 Ali said: As for the narration concerning Ali's imposition of blood money in the incident of the excavators, it is firmly established from him and aligns with the opinion of al-Shāfiʿī and the scholars of our school. Yet how can they condemn those who oppose the Companion when it aligns with their views, while here they contradict the well-established report from Ali—with no opposing stance from any of the Companions—may Allah be pleased with them—known in this matter? This exposes the great contradiction in their position. Success comes from Allah, the Exalted.

L38333 As for us, we recognize no juristic argument in anyone's statement except that of the Messenger of Allah—may Allah bless him and grant him peace. All the diggers directly participated in the demolition that buried those who perished among them. Thus, the blood money is incumbent upon their entire ʿaqīlah—the male agnatic kin of all [the diggers], whether living or deceased.

L38334 Similarly, if all of them were to die, a diyah, a diyah is due for each one who dies—meaning that for each deceased person, only one diyah is paid to the collective male agnates of all of them, with the deceased's agnatic group being among their collective—and success is from Allah, the Exalted alone.

L38335 Through the narration of Abu Bakr ibn Abi Shaybah, from ʿAbd al-Aʿla, from Maʿmar, from al-Zuhri: He was asked about workers hired to demolish a wall that collapsed on them, causing some of them to die. He ruled that the survivors are mutually liable to pay the diyah for those who died, with the burden falling upon those who remained.

L38336 Through the chain of transmission of Abu Bakr ibn Abi Shaybah: Wakiʿ narrated to us from Musa ibn ʿAli ibn Rabah, from his father, who said: A blind man approached, petitioning the people during the time of ʿUmar, saying:

L38337 O people, I have encountered an evil— Can the blind comprehend the healthy and seeing?

L38338–38340 The two collapsed as one, shattered utterly. Wakīʿ said: They ruled that if a

قَالَ عَلِيٌّ: أَمَّا الْأَثَرُ فِي وَضْعِ عَلِيٍّ الدِّيَةَ فِي قِصَّةِ الْحَفَّارِينَ فَهِيَ ثَابِتَةٌ عَنْهُ، وَهِيَ مُوَافِقَةٌ لِقَوْلِ الشَّافِعِيِّ، وَأَصْحَابِنَا - وَهُمْ يُشَنِّعُونَ عَلَى مَنْ خَالَفَ الصَّاحِبَ إِذَا وَافَقَ آرَاءَهُمْ؟ وَهُمْ قَدْ خَالَفُوا هَاهُنَا الرِّوَايَةَ الثَّابِتَةَ عَنْ عَلِيٍّ وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهَذَا يُوضِحُ عَظِيمَ تَنَاقُضِهِمْ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْحَفَّارُونَ كُلُّهُمْ بَاشَرَ هَدْمَ مَا انْهَارَ عَلَى الَّذِي هَلَكَ مِنْهُمْ، فَعَلَى عَوَاقِلِهِمْ كُلِّهِمْ عَوَاقِلِ الْأَحْيَاءِ وَالْأَمْوَاتِ.

وَكَذَلِكَ لَوْ مَاتُوا كُلُّهُمْ دِيَةٌ دِيَةٌ لِكُلِّ مَنْ مَاتَ - يَعْنِي أَنَّ فِي كُلِّ مَيِّتٍ دِيَةٌ وَاحِدَةٌ فَقَطْ تُؤَدَّى إِلَى عَوَاقِلِ جَمِيعِهِمْ وَعَاقِلَةُ الْمَيِّتِ فِي جُمْلَتِهِمْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدُ الْأَعْلَى عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ أَنَّهُ سُئِلَ عَنْ أُجَرَاءَ اُسْتُؤْجِرُوا لِيَهْدِمُوا حَائِطًا فَخَرَّ عَلَيْهِمْ فَمَاتَ بَعْضُهُمْ: أَنَّهُ يَغْرَمُ بَعْضُهُمْ لِبَعْضٍ الدِّيَةَ عَلَى مَنْ بَقِيَ.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا مُوسَى بْنُ عَلِيِّ بْنِ رَبَاحٍ عَنْ أَبِيهِ قَالَ: جَاءَ أَعْمَى يُنْشِدُ النَّاسَ فِي زَمَانِ عُمَرَ يَقُولُ:

يَا أَيُّهَا النَّاسُ لَقِيت مُنْكَرَا ... هَلْ يَعْقِلُ الْأَعْمَى الصَّحِيحَ الْمُبْصِرَا

خَرَّا مَعًا كِلَاهُمَا تَكَسَّرَا قَالَ وَكِيعٌ: كَانُوا يَرُونَ أَنَّ رَجُلًا صَحِيحًا كَانَ يَقُودُ أَعْمَى فَوَقَعَا فِي بِئْرٍ فَخَرَّ عَلَيْهِ؟ فَإِمَّا قَتَلَهُ، وَإِمَّا جَرَحَهُ، فَضَمِنَ الْأَعْمَى.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ نا اللَّيْثُ بْنُ سَعْدٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي رَجُلٍ أَعْمَى قَادَهُ رَجُلٌ فَخَرَّا مَعًا فِي بِئْرٍ فَمَاتَ الصَّحِيحُ وَلَمْ يَمُتْ الْأَعْمَى؟ فَقَضَى عُمَرُ عَلَى عَاقِلَةِ الْأَعْمَى بِالدِّيَةِ، فَكَانَ الْأَعْمَى يَتَمَثَّلُ بِأَبْيَاتِ شَعْرٍ قَالَهَا، وَهِيَ الَّتِي ذَكَرْنَاهَا آنِفًا قَبْلَ هَذَا.

وَقَالَ ابْنُ وَهْبٍ: سَمِعْت مَالِكًا يَقُولُ فِي الْبَصِيرِ يَقُودُ الْأَعْمَى فَيَقَعُ الْبَصِيرُ فِي بِئْرٍ، وَيَقَعُ الْأَعْمَى عَلَى الْبَصِيرِ، فَيَمُوتُ الْبَصِيرُ؟ فَإِنَّ دِيَةَ الْبَصِيرِ عَلَى عَاقِلَةِ الْأَعْمَى.

قَالَ أَبُو مُحَمَّد: الرِّوَايَةُ عَنْ عُمَرَ لَا تَصِحُّ فِي أَمْرِ الْأَعْمَى، لِأَنَّهُ عَنْ عَلِيِّ بْنِ رَبَاحٍ، وَاللَّيْثِ، وَكِلَاهُمَا لَمْ يُدْرِكْ عُمَرَ أَصْلًا.

وَالْقَوْلُ فِي هَذَا عِنْدَنَا أَنَّ مَنْ وَقَعَ عَلَى آخَرَ فَلَا يَخْلُو مِنْ أَحَدِ ثَلَاثَةِ أَوْجُهٍ: إمَّا أَنْ يَكُونَ دَفَعَهُ غَيْرُهُ فَمَاتَ الْوَاقِعُ أَوْ الْمَوْقُوعُ عَلَيْهِ وَإِمَّا أَنْ يَكُونَ الْمَوْقُوعُ عَلَيْهِ هُوَ الَّذِي جَرَّ الْوَاقِعَ فَوَقَعَ عَلَيْهِ، كَبَصِيرٍ يَقُودُ أَعْمَى - وَهُوَ يُمْسِكُهُ - فَوَقَعَ الْبَصِيرُ، وَانْجَبَذَ بِجَبْذِهِ الْأَعْمَى، أَوْ الْمَرِيضُ فَوَقَعَ عَلَيْهِ فَمَاتَ الْأَسْفَلُ، أَوْ الْأَعْلَى - أَوْ يَكُونَ وَقَعَ مِنْ غَيْرِ فِعْلِ أَحَدٍ، لَكِنْ عَمَدَ رَمْيَ نَفْسِهِ أَوْ لَمْ يَعْمِدْ، لَكِنْ عَثَرَ إذْ خَرَّ فَإِنْ دَفَعَهُ غَيْرُهُ، فَالدَّافِعُ هُوَ الْقَاتِلُ، فَإِنْ كَانَ عَمْدًا فَعَلَيْهِ الْقَوَدُ، أَوْ الدِّيَةُ، أَوْ الْمُفَادَاةُ، فِي أَيِّهِمَا مَاتَ فَإِنْ كَانَ خَطَأً فَعَلَى عَاقِلَتِهِ الدِّيَةُ وَعَلَيْهِ الْكَفَّارَةُ، إذْ هُوَ الْقَاتِلُ خَطَأً - وَالْمَدْفُوعُ حِينَئِذٍ وَالْحَجَرُ سَوَاءٌ - فَهَذَا وَجْهٌ.

healthy man were guiding a blind man, and they both fell into a well—and the blind man collapsed onto him, causing either death or injury—would the blind man be liable?

L38341 And from the chain of Ibn Wahb, Al-Layth ibn Saʿd narrated that ʿUmar ibn al-Khaṭṭāb ruled regarding a blind man whom a sighted man led, and they both fell into a well, resulting in the death of the sighted man while the blind man survived. ʿUmar obligated the blind man's agnatic kin to pay the blood money. The blind man would often recite poetic verses he had uttered, those we had mentioned earlier.

L38342 Ibn Wahb said: I heard Malik say regarding a sighted person leading a blind person - if the sighted one falls into a well and the blind person falls upon him, causing the sighted person's death - then the blood money for the sighted person is owed by the male kin of the blind person.

L38343 Abu Muhammad said: The narration from Umar is not authentic regarding the matter of the blind person, as it is from Ali ibn Rabah and al-Layth—neither of whom met Umar at all.

L38344 The ruling in this matter according to our school is that when a person falls upon another, it must conform to one of three scenarios: First, that another person pushed the faller, causing the death of either the faller or the one fallen upon. Second, that the one fallen upon pulled the faller onto himself—such as a sighted person leading a blind man while holding him, where the sighted person falls and drags the blind man due to the faller's pull—or a sick person falls upon someone, causing the death of either the lower one or the upper one. Third, that the fall occurred without anyone's direct action, whether through deliberate self-leaping or unintentional stumbling. If another person pushed the faller, the pusher is considered the killer. If intentional, retribution, blood money, or redemption payment applies to whichever party died. If accidental, blood money is incumbent upon his agnatic relatives along with atonement, since he is an unintentional killer—the pushed person in this case being treated as equivalent to a stone. This constitutes the first scenario.

وَإِنْ كَانَ الْمَدْفُوعُ عَلَيْهِ هُوَ جَبَذَ الْوَاقِعَ فَإِنْ كَانَ عَامِدًا فَهُوَ قَاتِلُ عَمْدٍ، فَإِنْ مَاتَ الْمَجْبُوذُ فَعَلَيْهِ الْقَوَدُ، أَوْ الدِّيَةُ، أَوْ الْمُفَادَاةُ - وَإِنْ مَاتَ هُوَ فَهُوَ قَاتِلُ نَفْسِهِ، وَلَا شَيْءَ عَلَى الْمَجْبُوذِ، لِأَنَّهُ لَمْ يَعْمِدْ، وَلَا أَخْطَأَ، فَإِنْ كَانَ لَمْ يَعْمِدْ جَبْذَهُ - وَلَكِنْ اسْتَمْسَكَ بِهِ - فَوَقَعَ فَمَاتَ، فَعَلَى عَاقِلَةِ الْجَابِذِ دِيَةُ الْمَجْبُوذِ إنْ مَاتَ، وَالْكَفَّارَةُ، لِأَنَّهُ قَاتِلُ خَطَأٍ - فَإِنْ مَاتَ هُوَ فَلَيْسَ عَلَى الْمَجْبُوذِ شَيْءٌ، وَلَا عَلَى عَاقِلَتِهِ، لِأَنَّهُ لَيْسَ عَامِدًا وَلَا مُخْطِئًا، لَكِنْ عَلَى عَاقِلَةِ الْجَابِذِ دِيَةُ نَفْسِهِ، لِأَنَّهُ قَاتِلُ نَفْسِهِ خَطَأً - فَهَذَا وَجْهٌ ثَانٍ.

L38345 If the person being pushed is the one who pulled the fallen individual, then if he acted intentionally, he is considered an intentional killer. If the pulled person dies, the puller becomes liable for either retribution, blood money, or compensation. If the puller dies, he is deemed to have intentionally killed himself, with no liability upon the pulled person, as he neither acted deliberately nor erred. If the puller did not intend to pull him but merely held onto him, resulting in a fatal fall, the puller's relatives must pay the blood money of the pulled person if he dies, along with mandatory expiation, because this constitutes accidental killing. If the puller dies, neither the pulled person nor his relatives bear any liability, since he was neither deliberate nor negligent. However, the puller's relatives must pay the blood money for his death, as he is considered to have accidentally killed himself. This constitutes a second legal perspective.

وَإِنْ كَانَ وَقَعَ مِنْ غَيْرِ فِعْلِ أَحَدٍ، فَإِنْ كَانَ عَمْدًا فَهُوَ قَاتِلُ عَمْدٍ - إنْ سَلِمَ فَالْقَوَدُ، أَوْ الدِّيَةُ، أَوْ الْمُفَادَاةُ - وَإِنْ مَاتَ فَهُوَ قَاتِلُ نَفْسِهِ عَمْدًا، وَلَا شَيْءَ عَلَى الْمَوْقُوعِ عَلَيْهِ، وَإِنْ كَانَ لَمْ يَعْمِدْ فَهُوَ قَاتِلُ خَطَأٍ إمَّا نَفْسَهُ وَإِمَّا الْآخَرَ، فَالدِّيَةُ عَلَى عَاقِلَتِهِ وَلَا بُدَّ، وَعَلَيْهِ إنْ سَلِمَ هُوَ وَمَاتَ الْآخَرُ: كَفَّارَةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - وَالْأَعْمَى وَالْبَصِيرُ فِي ذَلِكَ سَوَاءٌ.

L38346–38348 And if harm occurred without any human action, then if it was intentional, he is an intentional killer. If [the accused] is acquitted [of unintentional harm], qisas (retaliation) is due. Or the blood money, or the compensatory payment. If he dies, he is an intentional killer of himself (suicide), and nothing is required of the affected party. If he did not act intentionally, he is an accidental killer - either of himself or the other person. The blood money is inescapably obligatory upon his agnatic kin. If he survives while the other dies, expiation is required of him. And success is from Allah, the Most High. The blind and the sighted are equal in this ruling.

[مَسْأَلَةٌ قَالَ إنَّ صَوْمَ الشَّهْرَيْنِ فِي كَفَّارَةِ قَتْلِ الْخَطَأِ عِوَضٌ مِنْ الدِّيَةِ وَالْعِتْقِ]

Issue: He [the jurist] stated that fasting two months as expiation for unintentional killing serves as a substitute for the diyah (monetary compensation) and freeing a slave.

٢٠٩٥ - مَسْأَلَةٌ: مَنْ قَالَ إنَّ صَوْمَ الشَّهْرَيْنِ فِي كَفَّارَةِ قَتْلِ الْخَطَأِ عِوَضٌ مِنْ الدِّيَةِ وَالْعِتْقِ إنْ لَمْ يَجِدْ؟ قَالَ عَلِيٌّ: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا زَكَرِيَّا عَنْ الشَّعْبِيِّ قَالَ: سُئِلَ مَسْرُوقٌ عَمَّنْ {قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إلَى أَهْلِهِ}

L38349 **Issue: He [the jurist] stated that fasting two months as expiation for unintentional killing serves as a substitute for the diyah (monetary compensation) and freeing a slave.**

L38350 2095 - Issue: If someone says that fasting two months in expiation for accidental killing serves as a substitute for both the blood money and manumission when one cannot afford it, what is the ruling? Ali said: Narrated from Muḥammad ibn Saʿīd ibn Nabāt, narrated from ʿAbdullāh ibn Naṣr, narrated from Qāsim ibn Aṣbagh, narrated from Ibn Waḍḍāḥ, narrated from Sahnūn, narrated from Mūsā ibn Muʿāwiyah, narrated from Wakīʿ, narrated from Zakariyyā, from al-Shaʿbī, who said: Masrūq was asked about [the

verse], {If anyone kills a believer by mistake, he must free a believing slave and pay delivered blood money to the victim's family} [Quran 4:92] up to God's words, {If anyone cannot afford [it], he must fast for two consecutive months} [Quran 4:92]: does the fasting substitute for freeing the slave alone or for both the blood money and freeing the slave? He replied: If one cannot afford, it substitutes for both the blood money and freeing the slave.[47]

[النساء: ٩٢] إِلَى قَوْله تَعَالَى {فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ} [النساء: ٩٢] عَنْ الرَّقَبَةِ وَحْدَهَا، أَمْ عَنْ الدِّيَةِ وَالرَّقَبَةِ قَالَ: مَنْ لَمْ يَجِدْ فَعَنْ الدِّيَةِ وَالرَّقَبَةِ.

L38351 And through him (up to Wakiʿ), Isrāʾīl narrated to us from Jabr, from ʿĀmir, who said: Whoever does not find [the means], then it is incumbent upon him [to provide] blood money or free a slave.

وَبِهِ - إلَى وَكِيعٍ نا إسْرَائِيلُ عَنْ جَبْرٍ عَنْ عَامِرٍ قَالَ: مَنْ لَمْ يَجِدْ فَعَنْ الدِّيَةِ وَالرَّقَبَةِ.

L38352 Ali said: Masruq and al-Shaʿbī here cited the words of the Almighty, {But whoever cannot find [the means] must fast for two consecutive months} [4:92], meaning—if its meaning is sound—"whoever cannot find" refers to one who cannot find the diyya (blood money) and [free] a slave. Ali said: Were it not for an evidence we shall cite—God willing—their opinion would have been correct, for it is a general statement that cannot be restricted except by evidence. However, since we know that the diyya for accidental killing is not upon the killer but upon his ʿāqila (kin-group liable for diyya), the view of Masruq and al-Shaʿbī is invalidated, for we do not concern ourselves with whether the killer finds the diyya or not. Thus, it is confirmed that what Allah the Almighty intended by {whoever cannot find} [4:92] pertains only to what depends on the obligated person's capacity [to fulfill it], not to what does not depend on his capacity. This applies solely to freeing a slave, which is an obligation from his own wealth. If he cannot fulfill this, then fasting is required, as commanded by Allah the Almighty.[48]

قَالَ عَلِيٌّ: ذَهَبَ مَسْرُوقٌ، وَالشَّعْبِيُّ هَاهُنَا إلَى قَوْله تَعَالَى {فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ} [النساء: ٩٢] إنْ صَحَّ مَعْنَاهُ فَمَنْ لَمْ يَجِدْ الدِّيَةَ وَالرَّقَبَةَ؟ قَالَ عَلِيٌّ: وَلَوْلَا دَلِيلٌ نَذْكُرُهُ - إنْ شَاءَ اللَّهُ تَعَالَى - لَكَانَ الْقَوْلُ قَوْلَهُمَا، وَذَلِكَ لِأَنَّهُ عُمُومٌ لَا يَجُوزُ أَنْ يُخَصَّ إلَّا بِدَلِيلٍ، لَكِنْ لَمَّا عَلِمْنَا أَنَّ الدِّيَةَ فِي قَتْلِ الْخَطَأِ لَيْسَتْ عَلَى الْقَاتِلِ وَإِنَّمَا هِيَ عَلَى عَاقِلَتِهِ بَطَلَ مَا قَالَ مَسْرُوقٌ، وَعَامِرٌ، لِأَنَّ الدِّيَةَ لَا نُبَالِي وَجَدَهَا الْقَاتِلُ أَوْ لَمْ يَجِدْهَا - فَصَحَّ بِذَلِكَ أَنَّ مُرَادَ اللَّهِ تَعَالَى بِقَوْلِهِ {فَمَنْ لَمْ يَجِدْ} [النساء: ٩٢] إنَّمَا هُوَ فِيمَا يُنْظَرُ فِيهِ إلَى وُجُودِ الْمُكَلَّفِ لَا فِيمَا لَا يُنْظَرُ فِيهِ إلَى وُجُودِهِ، وَلَيْسَ ذَلِكَ إلَّا فِي الرَّقَبَةِ الَّتِي هِيَ وَاجِبَةٌ عَلَيْهِ فِي صُلْبِ مَالِهِ، فَإِنْ لَمْ يَجِدْهَا فَالصِّيَامُ، كَمَا أَمَرَ اللَّهُ تَعَالَى.

L38353 Abu Muhammad said: As for one who has no responsible kin group, the diya is obligatory in such cases upon the wealth of all Muslims, for Allah the Exalted has ordained in cases of accidental killing a diya to be handed over to the family of the slain.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا مَنْ لَا عَاقِلَةَ لَهُ فَالدِّيَةُ وَاجِبَةٌ فِي ذَلِكَ عَلَى كُلِّ مَالٍ لِجَمِيعِ الْمُسْلِمِينَ، لِأَنَّ اللَّهَ تَعَالَى افْتَرَضَ فِي قَتْلِ الْخَطَأِ دِيَةً مُسَلَّمَةً إلَى أَهْلِ الْمَقْتُولِ.

L38354 And He, the Exalted, has said, "There is no sin upon you in that wherein

وَقَدْ قَالَ تَعَالَى {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ} [الأحزاب: ٥] .

[47] **Qur'an references (L38350):** Qur'an 4:92 (An-Nisa); Qur'an 58:4 (Al-Mujadila).
[48] **Qur'an references (L38352):** Qur'an 4:92 (An-Nisa); Qur'an 58:4 (Al-Mujadila).

you have erred” [Al-Ahzab 33:5].[49]

L38355–38356 The Messenger of Allah (peace be upon him) said, “The error and forgetfulness have been lifted from my Ummah.”

L38357 We observed that people have differed: Is the diya (blood money) for accidental killing obligatory on the killer or not? The verse of Allah, the Exalted, *“There is no blame on you for what you do by mistake”* [Al-Ahzab 33:5] necessitates that the diya is not incumbent upon him.[50]

L38358 Furthermore, since Allah the Exalted mandated the blood money (diyah) in such a case but did not impose it on the killer himself, there is no justification for obligating him to pay a diyah that Allah the Exalted did not impose, nor by His Messenger (peace be upon him), nor by the consensus of the Ummah. Indeed, the textual evidence and consensus have been soundly established in imposing the expiation (kaffarah) upon him through freeing a slave or fasting. Thus, we limit ourselves strictly to the textual evidence and consensus in this matter, imposing the diyah on the ʻaqilah (liable kinship group) based on the explicit text pertaining to it—as we will elaborate in the chapters on the ʻaqilah, Allah the Exalted willing—and we have obligated it in all forms of property.

L38359 **A legal issue: he ordered another to kill a person.**

L38360 Question 2096: If someone instructs another to kill a person, and the one commanded carries out the killing, ʿAlī said: People have differed concerning this matter. A group stated: Only the instructing party is to be executed.

L38361 A group of jurists held: Only the commanded individual is to be killed.

L38362 A group said: They are both to be killed together.

L38363 A group said: Not one of the two is to be killed. The first view - as narrated to us by Abdullah ibn Rabee‘, narrated to us by Abdullah ibn Muhammad ibn

[49] **Qur’an references (L38354):** Qur’an 33:5 (Al-Ahzab).
[50] **Qur’an references (L38357):** Qur’an 33:5 (Al-Ahzab).

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «رُفِعَ عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ» .

وَوَجَدْنَا النَّاسَ قَدْ اخْتَلَفُوا: هَلْ دِيَةُ الْخَطَأِ عَلَى الْقَاتِلِ الْمُخْطِئِ أَمْ لَا؟ فَوَجَبَ بِقَوْلِ اللَّهِ تَعَالَى {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ} [الأحزاب: ٥] أَنَّهُ لَا يَلْزَمُهُ الدِّيَةُ.

وَأَيْضًا - فَإِنَّ اللَّهَ تَعَالَى إذْ أَوْجَبَ الدِّيَةَ فِي ذَلِكَ لَمْ يُلْزِمْهَا الْقَاتِلَ، فَلَا سَبِيلَ إلَى إلْزَامِهِ دِيَةً لَمْ يُلْزِمْهُ اللَّهُ تَعَالَى إيَّاهَا، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا إجْمَاعُ الْأُمَّةِ، وَقَدْ صَحَّ النَّصُّ، وَالْإِجْمَاعُ عَلَى: إلْزَامِهِ الْكَفَّارَةَ بِالْعِتْقِ، أَوْ الصِّيَامِ، فَوَقَفْنَا عِنْدَ النَّصِّ، وَالْإِجْمَاعِ فِي ذَلِكَ وَأَلْزَمْنَا الدِّيَةَ الْعَاقِلَةَ بِالنَّصِّ الْوَارِدِ فِي ذَلِكَ عَلَى مَا نَذْكُرُ فِي أَبْوَابِ الْعَاقِلَةِ - إنْ شَاءَ اللَّهُ تَعَالَى - وَأَلْزَمْنَاهَا فِي كُلِّ مَالٍ.

[مَسْأَلَةٌ أَمَرَ غَيْرَهُ بِقَتْلِ إنْسَانٍ]

٢٠٩٦ - مَسْأَلَةٌ: مَنْ أَمَرَ غَيْرَهُ بِقَتْلِ إنْسَانٍ فَقَتَلَهُ الْمَأْمُورُ؟ قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: يُقْتَلُ الْآمِرُ وَحْدَهُ.

وَقَالَتْ طَائِفَةٌ: يُقْتَلُ الْمَأْمُورُ وَحْدَهُ.

وَقَالَتْ طَائِفَةٌ: يُقْتَلَانِ جَمِيعًا.

وَقَالَتْ طَائِفَةٌ: لَا يُقْتَلُ وَاحِدٌ مِنْهُمَا: فَالْقَوْلُ الْأَوَّلُ - كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ

Uthman, narrated to us by Ahmad ibn Khalid, narrated to us by Ali ibn Abdul Aziz, narrated to us by Al-Hajjaj ibn Al-Minhal, narrated to us by Hammad ibn Salamah from Qatadah from Khilas - is that Ali ibn Abi Talib said: If a man orders his slave to kill a man and he kills him, then the slave is like his sword and whip.

نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ عَنْ خِلَاسٍ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: إِذَا أَمَرَ الرَّجُلُ عَبْدَهُ أَنْ يَقْتُلَ رَجُلًا فَقَتَلَهُ، فَهُوَ كَسَيْفِهِ وَسَوْطِهِ.

L38364 As for the free person, he is to be executed; as for the slave, he is to be confined indefinitely in prison.

أَمَّا السَّيِّدُ فَيُقْتَلُ - وَأَمَّا الْعَبْدُ فَيُسْتَوْدَعُ فِي السِّجْنِ.

L38365 And through the chain of narration via ʿAbd al-Razzāq from Ibn Jurayj, who said: I asked ʿAṭāʾ: "What if a man orders his slave to kill a man?" He replied: "The punishment lies with the one who ordered. I heard Abū Hurayrah say: 'The free person who issues the order is to be executed, but the slave is not to be executed.'" Abū Hurayrah said: "Consider if a man sent a gift with his slave to another—who is deemed to have offered it?" Ibn Jurayj said: I asked: "What about his hired worker?" He responded: "Is that not like his slave?" I asked: "What if he orders a free man or a slave he does not own, and they are not hired workers?" He replied: "The punishment lies with the one commanded—if he does not own them—for if he orders a free man to kill a man, the killer is to be executed, and no liability falls upon the one who ordered."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: رَجُلٌ أَمَرَ عَبْدَهُ فَقَتَلَ رَجُلًا؟ فَقَالَ: عَلَى الْآمِرِ، سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: يُقْتَلُ الْحُرُّ الْآمِرُ، وَلَا يُقْتَلُ الْعَبْدُ، قَالَ أَبُو هُرَيْرَةَ: أَرَأَيْت لَوْ أَنَّ رَجُلًا بَعَثَ بِهَدِيَّةٍ مَعَ عَبْدِهِ إلَى رَجُلٍ، مَنْ أَهْدَاهَا؟ قَالَ ابْنُ جُرَيْجٍ: فَقُلْت: فَأَجِيرُهُ؟ قَالَ: ذَلِكَ مِثْلُ عَبْدِهِ؟ قُلْت: فَأَمَرَ رَجُلًا حُرًّا أَوْ عَبْدًا لَا يَمْلِكُهُ، وَلَيْسَا بِأَجِيرَيْنِ، قَالَ: عَلَى الْمَأْمُورِ - إذَا لَمْ يَمْلِكْهُمَا - إذَا أَمَرَ حُرًّا فَقَتَلَ رَجُلًا، فَإِنَّهُ يُقْتَلُ الْقَاتِلُ وَلَيْسَ عَلَى الْآمِرِ شَيْءٌ.

L38366–38367 The second opinion—as reported to us through the chain of Ibn Waḍḍāḥ: Mūsā ibn Muʿāwiyah narrated to us, Wakīʿ narrated to us, Shuʿbāh said: I asked al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān about a man who commands another man to kill, and he kills. They both responded together: The killer is to be executed, and no retributive punishment (qiṣāṣ) is imposed on the commander.

وَالْقَوْلُ الثَّانِي - كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا شُعْبَةُ قَالَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَنْ الرَّجُلِ يَأْمُرُ الرَّجُلَ فَيَقْتُلُ؟ فَقَالَا جَمِيعًا: يُقْتَلُ الْقَاتِلُ، وَلَيْسَ عَلَى الْآمِرِ قَوَدٌ.

L38368 And with him—to Wakīʿ—Sufyān al-Thawrī narrated to us from Jābir from ʿĀmir al-Shaʿbī regarding one who commands his slave to kill a man. He said: "Is the slave to be killed?" Al-Shaʿbī has another additional statement: And the master is punished.

وَبِهِ - إلَى وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ جَابِرٍ عَنْ عَامِرٍ الشَّعْبِيِّ فِي الَّذِي يَأْمُرُ عَبْدَهُ فَيَقْتُلُ رَجُلًا قَالَ: يُقْتَلُ الْعَبْدُ؟ وَلِلشَّعْبِيِّ كَلَامٌ آخَرُ زَائِدٌ وَيُعَاقَبُ السَّيِّدُ.

L38369 The third opinion—that of Qatādah—is: both of them are to be killed together.

وَالْقَوْلُ الثَّالِثُ - هُوَ قَوْلُ قَتَادَةَ: أَنَّهُمَا يُقْتَلَانِ جَمِيعًا.

L38370 The fourth opinion—it was narrated to us from Sulaymān ibn Mūsā, who

said: If a man commands his slave to kill someone, the commander is not executed, but his hands, and he is punished and imprisoned. If he commands a free person, then the free person may choose to obey or refuse; thus, the commander is not executed.

وَالْقَوْلُ الرَّابِعُ - رُوِّينَا عَنْ سُلَيْمَانَ بْنِ مُوسَى قَالَ: لَوْ أَمَرَ رَجُلٌ عَبْدًا لَهُ فَقَتَلَ رَجُلًا لَمْ يُقْتَلْ الْآمِرُ، وَلَكِنْ يَدِيهِ، وَيُعَاقَبُ، وَيُحْبَسُ - فَإِنْ أَمَرَ حُرًّا فَإِنَّ الْحُرَّ إنْ شَاءَ أَطَاعَهُ، وَإِنْ شَاءَ لَا، فَلَا يُقْتَلُ الْآمِرُ.

L38371 As for the later scholars, Sufyan al-Thawri stated: The slave is to be killed, and the master who issued the command is to be punished. If a man orders a boy to kill a person and the boy kills him, the blood money is to be paid from the boy's funds, and recovered from the one who commanded him. The one who gave the order is not to be killed.

وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ سُفْيَانَ الثَّوْرِيَّ قَالَ: يُقْتَلُ الْعَبْدُ، وَيُعَاقَبُ السَّيِّدُ الْآمِرُ - وَلَوْ أَمَرَ رَجُلٌ صَبِيًّا بِقَتْلِ إنْسَانٍ فَقَتَلَهُ الصَّبِيُّ، فَالدِّيَةُ فِي مَالِ الصَّبِيِّ، وَيُرْجَعُ بِهَا عَلَى الَّذِي أَمَرَهُ وَلَا يُقْتَلُ الْآمِرُ.

L38372 Ahmad ibn Hanbal said: If a master orders his slave to kill a person, the master is to be executed, and the slave is to be disciplined. But if he orders a free man and he kills him, then only the one who was ordered is executed. Ishaq concurred with this ruling.

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: إنْ أَمَرَ عَبْدَهُ بِقَتْلِ إنْسَانٍ قُتِلَ الْآمِرُ، وَيُؤَدَّبُ الْعَبْدُ - فَإِنْ أَمَرَ حُرًّا فَقَتَلَهُ قُتِلَ الْمَأْمُورُ وَحْدَهُ - وَبِهِ قَالَ إِسْحَاقُ.

L38373 Abu Hanifa and Muhammad ibn al-Hasan ruled regarding an interdicted slave who commanded another interdicted slave to kill a man, and he killed him: The master of the killer has the choice. If he wishes, he may surrender his slave to the legal guardians of the slain, or if he wishes, pay blood money to the heirs. If the commanding slave is emancipated, the master of the commanded slave may reclaim from the emancipated commanding slave the value of his slave whom he surrendered or for whom he paid blood money.

وَقَالَ أَبُو حَنِيفَةَ، وَمُحَمَّدُ بْنُ الْحَسَنِ فِي عَبْدٍ مَحْجُورٍ عَلَيْهِ أَمَرَ عَبْدًا مَحْجُورًا عَلَيْهِ أَنْ يَقْتُلَ رَجُلًا فَقَتَلَهُ، فَسَيِّدُ الْقَاتِلِ بِالْخِيَارِ إنْ شَاءَ دَفَعَ عَبْدَهُ إلَى أَوْلِيَاءِ الْمَقْتُولِ، وَإِنْ شَاءَ فَدَاهُ، فَإِنْ أُعْتِقَ الْعَبْدُ الْآمِرُ رَجَعَ سَيِّدُ الْمَأْمُورِ عَلَيْهِ، فَأَخَذَ مِنْهُ قِيمَةَ عَبْدِهِ الَّذِي أَسْلَمَ، أَوْ الَّذِي فَدَاهُ.

L38374 Abu Yusuf said: If a slave commands another slave to kill someone or destroy property, and the commanding slave is later emancipated, he becomes liable for the destruction of property ordered by him but not for the killing he instigated. This is similar to when a slave acknowledges a debt or criminal liability while enslaved and is then freed: the debt remains binding upon him, but the criminal liability does not.

وَقَالَ أَبُو يُوسُفَ: إذَا أَمَرَ عَبْدٌ عَبْدًا بِإِتْلَافِ نَفْسٍ أَوْ مَالٍ، فَإِنَّهُ إذَا أُعْتِقَ الْآمِرُ لَزِمَهُ الْمَالُ الْمُتْلَفُ بِأَمْرِهِ، وَلَمْ يَلْزَمْهُ الدَّمُ الْمُتْلَفُ بِأَمْرِهِ، كَمَا لَوْ أَقَرَّ بِجِنَايَةٍ، أَوْ دَيْنٍ فِي رَقَبَةٍ ثُمَّ أُعْتِقَ فَإِنَّ الدَّيْنَ يَلْزَمُهُ وَلَا تَلْزَمُهُ الْجِنَايَةُ.

L38375–38377 Zufar and al-Ḥasan ibn Ziyād ruled concerning a slave who commanded a child to kill a person, and he killed him: the liability lies with the ʿāqilah. The blood money is owed to the minor. Then the minor's _ʿāqila_ (agnatic responsible kin) reclaim it from the slave's master. The master is instructed:

وَقَالَ زُفَرُ، وَالْحَسَنُ بْنُ زِيَادٍ، فِي عَبْدٍ أَمَرَ صَبِيًّا بِقَتْلِ إنْسَانٍ فَقَتَلَهُ، فَعَلَى عَاقِلَةِ الصَّبِيِّ الدِّيَةُ، ثُمَّ تَرْجِعُ بِهَا عَاقِلَةُ الصَّبِيِّ عَلَى سَيِّدِ الْعَبْدِ، فَيُقَالُ لَهُ: ادْفَعْ الْعَبْدَ إلَى الْعَاقِلَةِ أَوْ افْدِهِ بِالدِّيَةِ.

"Hand over the slave to the _ʿāqila_ or redeem him by paying the blood money."

L38378 Al-Shafiʿi said: If a free man orders another's slave to kill a person and he kills him, or orders a minor not under his guardianship to do so and he kills him, then if the slave or minor can discern that the orderer is a stranger and that obedience to him is not obligatory for them, the orderer is punished, but neither retaliation nor blood money is imposed on him. The killer in this case is the slave or the minor. If they cannot discern that he is a stranger and that obedience to him is not obligatory, then the orderer is subject to retaliation.

وَقَالَ الشَّافِعِيُّ: إنْ أَمَرَ حُرٌّ عَبْدَ غَيْرِهِ بِقَتْلِ إنْسَانٍ فَقَتَلَهُ، أَوْ أَمَرَ بِذَلِكَ صَبِيًّا أَجْنَبِيًّا فَقَتَلَ، فَإِنْ كَانَ الْعَبْدُ وَالصَّبِيُّ يُمَيِّزَانِ أَنَّهُ أَجْنَبِيٌّ، وَأَنَّ طَاعَتَهُ لَيْسَتْ عَلَيْهِمَا: عُوقِبَ الْآمِرُ وَلَا قَوَدَ عَلَيْهِ، وَلَا دِيَةَ، وَالْقَاتِلُ هَاهُنَا هُوَ الْعَبْدُ أَوْ الصَّبِيُّ، قَالَ: فَإِنْ كَانَا لَا يُمَيِّزَانِ ذَلِكَ فَعَلَى الْآمِرِ الْقَوَدُ.

L38379 Abu Muhammad said: When they differed as we have mentioned, it became incumbent upon us to examine this matter. So should we consider the opinions of Abu Hanifah and his companions? We found they possessed no valid evidence in any of their claims - rather, their assertions were feeble and contradictory.

قَالَ أَبُو مُحَمَّد: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ عَلَيْنَا أَنْ نَنْظُرَ فِي ذَلِكَ: فَنَظَرْنَا فِي قَوْلِ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ؟ فَوَجَدْنَا لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ، بَلْ هِيَ أَقْوَالٌ مُتَخَاذِلَةٌ.

L38380 Then we examined Sufyan's statement and found it also to be erroneous, because he distinguished between a master who orders his slave to kill a person and the slave executes his command - thus considering the slave alone as the killer while not regarding the commanding master as a co-killer.

ثُمَّ نَظَرْنَا فِي قَوْلِ سُفْيَانَ فَوَجَدْنَاهُ أَيْضًا خَطَأً، لِأَنَّهُ فَرَّقَ بَيْنَ السَّيِّدِ يَأْمُرُ عَبْدَهُ بِقَتْلِ إنْسَانٍ فَيُنَفِّذُ أَمْرَهُ، فَجَعَلَ الْعَبْدَ هُوَ الْقَاتِلَ، وَلَمْ يَرَ السَّيِّدَ الْآمِرَ قَاتِلًا.

L38381 As for the statements of Al-Shāfiʿī, Aḥmad, and Abū Sulaymān, they are encompassed within the opinions of the Companions and Followers we previously mentioned. We therefore deemed it unnecessary to specify them separately, as our discourse on those four opinions suffices - and with Allāh, the Exalted, lies success.

وَأَمَّا قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ، فَدَاخِلَةٌ فِي أَقْوَالِ مَنْ ذَكَرْنَا قَبْلُ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ، فَتَرَكْنَا أَنْ نَخُصَّهَا بِالذِّكْرِ اكْتِفَاءً بِكَلَامِنَا فِي تِلْكَ الْأَقْوَالِ الْأَرْبَعَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38382 As for the statement of Sulaymān ibn Mūsā that "the orderer and the one who is ordered are not to be killed," this is erroneous, for in this case there is intentional killing, and Allah, the Exalted, has mandated qisas (retributive punishment) for it.

وَأَمَّا قَوْلُ سُلَيْمَانَ بْنِ مُوسَى " لَا يُقْتَلُ الْآمِرُ وَلَا الْمَأْمُورُ " فَخَطَأٌ، لِأَنَّ هَاهُنَا قَتْلَ عَمْدٍ، وَقَدْ أَوْجَبَ اللَّهُ تَعَالَى فِيهِ الْقَوَدَ.

L38383 As for the statements of al-Hakam, Hammad, al-Sha'bi, Ibrahim, and Abu Sulayman, they argued that the killer is the one responsible for the killing and directly carries it out, and thus retribution applies exclusively to him.

وَأَمَّا قَوْلُ الْحَكَمِ، وَحَمَّادٍ، وَالشَّعْبِيِّ، وَإِبْرَاهِيمَ، وَأَبِي سُلَيْمَانَ، فَإِنَّهُمْ احْتَجُّوا بِأَنَّ الْقَاتِلَ هُوَ الْمُتَوَلِّي لِلْقَتْلِ الْمُبَاشِرُ لِلْقَتْلِ، فَهُوَ الَّذِي عَلَيْهِ الْقَوَدُ خَاصَّةً.

وَأَمَّا قَوْلُ عَلِيٍّ، وَأَبِي هُرَيْرَةَ - رَضِيَ اللَّهُ عَنْهُمَا - فَإِنَّهُمَا جَعَلَا الْآمِرَ هُوَ الْقَاتِلَ، فَهُوَ الَّذِي عَلَيْهِ الْقَوَدُ، وَجَعَلُوا الْمَأْمُورَ آلَةً لَهُ مُصَرَّفَةً - هَذِهِ حُجَّتُهُمْ؟ قَالَ أَبُو مُحَمَّدٍ: وَقَدَّمُوهُ أَصْحَابُ الْقِيَاسِ هَاهُنَا بِأَنَّ هَذَا الْقَوْلَ مِنْ عَلِيٍّ، وَأَبِي هُرَيْرَةَ قِيَاسٌ - يَعْنِي قَوْلَ عَلِيٍّ: إنَّ الْمَأْمُورَ هُوَ كَسَيْفِ الْآمِرِ وَسَوْطِهِ.

L38384 As for the statement of Ali and Abu Hurairah—may Allah be pleased with them both—they deemed the commander to be the actual killer, he being the one upon whom the qawad is due, and considered the commanded one as an instrument directed by him—is this their argument? Abu Muhammad said: The proponents of analogy advanced it here, asserting that this statement of Ali and Abu Hurairah constitutes analogy—referring to Ali's saying: "The commanded one is like the commander's sword or his whip."

وَقَوْلُ أَبِي هُرَيْرَةَ " أَرَأَيْت لَوْ أَرْسَلَ مَعَهُ هَدِيَّةً، مَنْ الْمُهْدِي لَهَا؟ ".

L38385 And the statement of Abū Hurayrah: "Have you considered—if he were to send a gift with him, who would be the one presenting it to her?"

وَهَذَا لَا مُتَعَلَّقَ لَهُمْ بِهِ، وَلَا هُوَ مِنْ الْقِيَاسِ، لَا فِي وِرْدٍ وَلَا فِي صَدْرٍ، لِأَنَّ الْقِيَاسَ عِنْدَ جَمِيعِ الْقَائِلِينَ بِهِ إنَّمَا هُوَ حُكْمٌ لِمَسْكُوتٍ عَنْهُ بِحُكْمٍ مَنْصُوصٍ عَلَيْهِ، أَوْ بِحُكْمٍ مُخْتَلَفٍ فِيهِ بِحُكْمٍ مُجْمَعٍ عَلَيْهِ، وَأَنْ يُرَدَّ الْفَرْعَ إلَى الْأَصْلِ بِنَوْعٍ مِنْ الشَّبَهِ، وَلَيْسَ هَاهُنَا شَيْءٌ مِنْ هَذِهِ الْوُجُوهِ أَصْلًا - فَبَطَلَ بِإِقْرَارِهِمْ أَنْ يَكُونَ قِيَاسًا، إذْ بِيَقِينٍ نَدْرِي أَنَّ الْمَأْمُورَ لَيْسَ حُكْمُهُ حُكْمَ السَّيْفِ، وَالسَّوْطِ، لِأَنَّ عَلِيًّا رَأَى عَلَى الْمَأْمُورِ السَّجْنَ، وَلَا خِلَافَ فِي أَنَّهُ لَا سَجْنَ عَلَى السَّيْفِ، وَلَا السَّوْطِ.

L38386–38388 And this is something they have no basis for, nor does it relate to analogy (qiyās)—neither prospectively nor retrospectively—because... According to all proponents of analogy, it is solely a ruling for an unaddressed matter derived from a textually established ruling, or for a disputed matter derived from a consensus-backed ruling, entailing the subordination of the subsidiary case to the root case through a form of resemblance. None of these aspects exist here whatsoever—thereby invalidating it as an analogy by their own acknowledgment. For we know with certainty that the ruling for the obligated person differs from that of the sword or the whip, since Ali decreed imprisonment for the obligated person, and there is no dispute that imprisonment is not prescribed for the sword or the whip.

فَصَحَّ أَنَّهُ لَمْ يَحْكُمْ عَلِيٌّ قَطُّ لِلْمَأْمُورِ بِالْحُكْمِ فِي السَّيْفِ، وَالسَّوْطِ، فَبَطَلَ الْإِيهَامُ جُمْلَةً.

L38389 Thus, it is established that 'Alī never ruled for the one commanded to pass judgment regarding the sword and the whip, thereby nullifying any ambiguity altogether.

وَأَمَّا قَوْلُ أَبِي هُرَيْرَةَ " أَرَأَيْت لَوْ أَهْدَى مَعَهُ هَدِيَّةً، مَنْ الَّذِي أَهْدَاهَا؟ " فَكَذَلِكَ أَيْضًا، وَمَا حُكْمُ أَبِي هُرَيْرَةَ قَطُّ لِلْقَاتِلِ الْمَأْمُورِ بِمِثْلِ الْحُكْمِ فِي حَامِلِ الْهَدِيَّةِ، بَلْ الْحُكْمُ فِيهِمَا مُخْتَلَفٌ بِلَا خِلَافٍ، لِأَنَّ حَامِلَ الْهَدِيَّةِ، وَمُهْدِيَهَا: يُشْكَرَانِ، وَالْآمِرُ، وَالْقَاتِلُ: يُقْتَلُ، وَيُلَامَانِ - وَهَذَا لَوْ كَانَ قِيَاسًا لَكَانَ قِيَاسًا لِلشَّيْءِ عَلَى ضِدِّهِ، وَلَوْ كَانَ قِيَاسًا لَا يُوجِبُ اتِّفَاقًا فِي الْحُكْمِ - وَهَذَا هُوَ تَرْكُ الْقِيَاسِ حَقًّا، وَإِنَّمَا هُوَ تَشْبِيهٌ فَقَطْ؟ قَالَ أَبُو مُحَمَّدٍ: ثُمَّ

L38390 As for the statement of Abū Hurayrah: "Have you considered if he had sent a gift with him—who would be considered its sender?" The same applies here. Abū Hurayrah never applied the same ruling to the commanded killer as to the bearer of the gift. Rather, their rulings are undoubtedly distinct, for the bearer of the gift and its sender are to be commended, while the commander and killer are to be executed and condemned. If this were analogy, it would equate a thing to its opposite. Even if deemed analogy, it would not necessitate uniformity in ruling—this constitutes the true abandonment of analogical reasoning, being merely a superficial resemblance.

Abū Muḥammad said: We then return to the original matter and state: Since they differed—as we mentioned—it became obligatory upon us to act upon what Allah the Exalted has ordained, as He says: "If you dispute over any matter, refer it to Allah and the Messenger" [4:59]. We did so and found the narration transmitted to us via Muslim's chain: Abū al-Ṭāhir and Ḥarmalah both narrated: Ibn Wahb reported to us, Yunus narrated from Ibn Shihāb, who reported that 'Ubaydullāh ibn 'Abdillāh ibn 'Utbah heard 'Abdullāh ibn 'Abbās say: 'Umar ibn al-Khaṭṭāb—while seated on the pulpit of Allah's Messenger (peace and blessings be upon him)—declared: "Allah sent Muḥammad with the truth, revealed the Book to him, and among what He revealed was the Verse of Stoning. We recited it, memorized it, and comprehended it. Allah's Messenger (peace and blessings be upon him) carried out stoning, and we did so after him."

In another narration in Ṣaḥīḥ Muslim: From Abū Hurayrah that "a man from the Muslims came to Allah's Messenger (peace and blessings be upon him) and said: 'O Messenger of Allah, I have committed adultery.' He related the ḥadīth—in which the Messenger of Allah (peace and blessings be upon him) asked him: 'Are you a muḥṣan (a married person)?' He replied: 'Yes.' The Messenger of Allah (peace and blessings be upon him) then said: 'Take him forth and stone him.'"[51]

L38391–38393 From Ibrāhīm al-Nakhaʿī, who said: Al-Ḍaḥḥāk ibn Qays sought to appoint Masrūq to a position. ʿUmārah ibn ʿUqbah said to him: "Are you appointing a man from the remnants of ʿUthmān's killers?" Masrūq responded: "He narrated to us..." Abdullah ibn Mas'ud narrated that when the Messenger of Allah—peace and blessings be upon him—commanded the killing of your father, someone asked, "Who will care for the children?" He replied, "They are destined for Hellfire." Masruq said, "I am content for you with what the Messenger of Allah—peace and blessings be upon him—has decreed."

L38394 And via Muslim's chain of transmission: "The Messenger of Allah (peace be upon him) ordered that the hand of the woman who stole be severed, and her hand was severed."

نَرْجِعُ إِلَى الْمَسْأَلَةِ الَّتِي كُنَّا فِيهَا فَنَقُولُ: إِنَّهُمْ لَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ عَلَيْنَا أَنْ نَفْعَلَ مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا، إِذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] فَفَعَلْنَا فَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو الطَّاهِرِ، وَحَرْمَلَةُ، قَالَا جَمِيعًا: نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنِ ابْنِ شِهَابٍ أَخْبَرَنِي عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ عَبَّاسٍ يَقُولُ: قَالَ عُمَرُ بْنُ الْخَطَّابِ - وَهُوَ جَالِسٌ عَلَى مِنْبَرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّ اللَّهَ بَعَثَ مُحَمَّدًا بِالْحَقِّ، فَأَنْزَلَ عَلَيْهِ الْكِتَابَ، وَكَانَ مِمَّا أَنْزَلَ اللَّهُ عَلَيْهِ آيَةَ الرَّجْمِ، قَرَأْنَاهَا وَوَعَيْنَاهَا وَعَقَلْنَاهَا، فَرَجَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرَجَمْنَا بَعْدَهُ. وَمِنْ طَرِيقِ مُسْلِمٍ - أَيْضًا - عَنْ أَبِي هُرَيْرَةَ " أَنَّهُ «أَتَى رَجُلٌ مِنَ الْمُسْلِمِينَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ يَا رَسُولَ اللَّهِ إِنِّي زَنَيْت فَذَكَرَ الْحَدِيثَ - وَفِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: هَلْ أَحْصَنْتَ؟ قَالَ: نَعَمْ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اذْهَبُوا بِهِ فَارْجُمُوهُ» .

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ أَرَادَ الضَّحَّاكُ بْنُ قَيْسٍ أَنْ يَسْتَعْمِلَ مَسْرُوقًا، فَقَالَ لَهُ عُمَارَةُ بْنُ عُقْبَةَ: أَتَسْتَعْمِلُ رَجُلًا مِنْ بَقَايَا قَتَلَةِ عُثْمَانَ؟ فَقَالَ مَسْرُوقٌ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مَسْعُودٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا أَمَرَ بِقَتْلِ أَبِيك قَالَ: مَنْ لِلصِّبْيَةِ؟ قَالَ: النَّارُ، قَالَ مَسْرُوقٌ: فَرَضِيتُ لَكَ مَا جَعَلَ لَكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

وَمِنْ طَرِيقِ مُسْلِمٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِقَطْعِ يَدِ الْمَرْأَةِ الَّتِي سَرَقَتْ فَقُطِعَتْ يَدُهَا» .

[51] **Qur'an references (L38390):** Qur'an 4:59 (An-Nisa).

L38395 Ali said: In these reports, it is established that the one who commands is linguistically termed a “doer” under certain circumstances - in accordance with the conventions of the language [in which the Quran was revealed]. Thus, Umar ibn al-Khattab, in the presence of the Companions - who are the authoritative source for the language - referred to someone who ordered the stoning of another and then carried it out as “the stoner of the stoned.” He also called himself “a stoner” and termed the Messenger of Allah - peace and blessings be upon him - “a stoner,” even though he did not attend a stoning. This is as narrated by Abdullah ibn Rabi’ from Muhammad ibn Mu’awiyah, from Ahmad ibn Shu’ayb, from Hamad ibn Sulayman al-Rahawi, from Yazid ibn Harun, from Muhammad ibn ’Amr, from Abu Salamah, from Abu Hurairah, who said:

Ma’iz ibn Malik came to the Messenger of Allah - peace and blessings be upon him - and said, “O Messenger of Allah, I have committed adultery.” He related the hadith, in which the Messenger of Allah - peace and blessings be upon him - said, “Take him away and stone him.” They took him, and when the stones touched him, he turned and fled in haste. A man met him carrying a camel’s jawbone, struck him, and knocked him down. When the Prophet - peace and blessings be upon him - was informed of his fleeing after the stones touched him, he said, “Why did you not leave him?”

قَالَ عَلِيٌّ: فَفِي هَذِهِ الْأَخْبَارِ: أَنَّ الْآمِرَ يُسَمَّى فِي اللُّغَةِ [الَّتِي بِهَا نَزَلَ الْقُرْآنُ] فَاعِلًا فِي بَعْضِ الْأَحْوَالِ - عَلَى حَسَبِ مَا جَاءَتْ بِهِ اللُّغَةُ - فَسَمَّى عُمَرُ بْنُ الْخَطَّابِ بِحَضْرَةِ الصَّحَابَةِ - وَهُمْ الْحُجَّةُ فِي اللُّغَةِ - مَنْ أَمَرَ بِرَجْمِ آخَرَ فَرَجَمَ - رَاجِمًا لِلْمَرْجُومِ. وَسَمَّى أَيْضًا نَفْسَهُ - رَاجِمًا - وَسَمَّى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَاجِمًا - وَهُوَ لَمْ يَحْضُرْ رَجْمًا -: كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا حَمَدُ بْنُ سُلَيْمَانَ الرَّهَاوِيُّ نا يَزِيدُ بْنُ هَارُونَ نا مُحَمَّدُ بْنُ عَمْرٍو عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ: «جَاءَ مَاعِزُ بْنُ مَالِكٍ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إنِّي قَدْ زَنَيْتُ؟ فَذَكَرَ الْحَدِيثَ - وَفِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: انْطَلِقُوا بِهِ فَارْجُمُوهُ، فَانْطَلَقُوا بِهِ، فَلَمَّا مَسَّتْهُ الْحِجَارَةُ أَدْبَرَ يَشْتَدُّ، فَلَقِيَهُ رَجُلٌ فِي يَدِهِ لَحْيُ جَمَلٍ فَضَرَبَهُ فَصَرَعَهُ، فَذُكِرَ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَارُهُ حِينَ مَسَّتْهُ الْحِجَارَةُ؟ فَقَالَ: فَهَلَّا تَرَكْتُمُوهُ؟» .

L38396 Abu Muhammad said: The Messenger of Allah—peace and blessings of Allah be upon him—referred to himself as “the cutter of the thief’s hand,” though the amputation was carried out by another. There is no disagreement between two persons that the Messenger of Allah—peace and blessings of Allah be upon him—killed ’Uqbah ibn Abi Mu’ayt, though the killing was executed by another by the command of the Messenger of Allah—peace and blessings of Allah be upon him.

قَالَ أَبُو مُحَمَّد: وَسَمَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَفْسَهُ - قَاطِعًا يَدَ السَّارِقِ - وَإِنَّمَا تَوَلَّى الْقَطْعَ غَيْرُهُ - وَلَا يَخْتَلِفُ اثْنَانِ فِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَتَلَ عُقْبَةَ بْنَ أَبِي مُعَيْطٍ، وَإِنَّمَا تَوَلَّى قَتْلَهُ غَيْرُهُ بِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L38397 Similarly, it is reported from Ali (may Allah be pleased with him) as was narrated to us from Al-Sha‘bi that Ali flogged Shurahah on Thursday and stoned her on Friday, saying: “I flogged you according to the Book of Allah, and I stoned you according to the Sunnah of the Messenger of Allah—peace and blessings of Allah be upon him—.”

وَهَكَذَا جَاءَ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - كَمَا رُوِّينَا عَنْ الشَّعْبِيِّ أَنَّ عَلِيًّا جَلَدَ شُرَاحَةَ يَوْمَ الْخَمِيسِ، وَرَجَمَهَا يَوْمَ الْجُمُعَةِ، وَقَالَ: جَلَدْتُكِ بِكِتَابِ اللَّهِ، وَرَجَمْتُكِ بِسُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L38398 Ali said: When someone orders killing, and the executor carrying out the killing obeys the commander and implements his order—and had the commander not ordered him, he would not have killed—both are termed in language and Islamic law as "killer" and "amputator." It is established that they are both killers, amputators, and floggers. Since this is the case, both are equally liable for qisas (legal retaliation) as the killer, amputator, and flogger. In this matter, the coercer, the commander, and the subordinate are equal. This constitutes an irrefutable axiomatic proof.

قَالَ عَلِيٌّ: فَإِذْ مَنْ أَمَرَ بِالْقَتْلِ وَكَانَ مُتَوَلِّي الْقَتْلِ مُطِيعًا لِلْآمِرِ مُنَفِّذًا لِأَمْرِهِ، وَلَوْلَا أَمْرُهُ إيَّاهُ لَمْ يَقْتُلْهُ يُسَمَّى فِي اللُّغَةِ وَالشَّرِيعَةِ - قَاتِلًا - وَقَاطِعًا - صَحَّ أَنَّهُمَا جَمِيعًا قَاتِلَانِ، وَقَاطِعَانِ، وَجَالِدَانِ، فَإِذْ ذَلِكَ كَذَلِكَ فَعَلَيْهِمَا جَمِيعًا مَا عَلَى الْقَاتِلِ، وَالْقَاطِعِ، وَالْجَالِدِ، مِنْ الْقَوَدِ، وَسَوَاءٌ فِي ذَلِكَ الْمُكْرِهُ، وَالْآمِرُ، وَالْمُنْطَاعُ - وَهَذَا بُرْهَانٌ ضَرُورِيٌّ لَا مَحِيدَ عَنْهُ.

L38399–38400 Abū Muḥammad said: It is the same whether he commands his own slave, another's slave, a minor, an adult, or an insane person—if the one undertaking the killing, the offense involving amputation, bone-breaking, striking, or taking property did so solely by the orderer's command—for without his command, he would not have done it—then both the orderer and the direct actor are jointly liable for all these actions collectively.

قَالَ أَبُو مُحَمَّد: فَسَوَاءٌ أَمَرَ عَبْدَهُ، أَوْ عَبْدَ غَيْرِهِ، أَوْ صَبِيًّا، أَوْ بَالِغًا، أَوْ مَجْنُونًا - إذَا كَانَ مُتَوَلِّي الْقَتْلِ، أَوْ الْجِنَايَةِ بِالْقَطْعِ، أَوْ الْكَسْرِ، أَوْ الضَّرْبِ أَوْ أَخْذِ الْمَالِ: إنَّمَا فَعَلَ ذَلِكَ بِأَمْرِ الْآمِرِ - وَلَوْلَا أَمْرُهُ لَمْ يَفْعَلْهُ - فَالْآمِرُ، وَالْمُبَاشِرُ: فَاعِلَانِ لِكُلِّ ذَلِكَ جَمِيعًا.

L38401 As for when someone commands another, and the latter performs the act by his own choice in willing obedience to the commander: the direct perpetrator alone—the killer, amputator, one who fractures bones, eye-gouger, or offender—is solely liable for qisas (retaliatory punishment), and nothing is incumbent upon the commander. This is because there is no dispute that the commander is not termed here as a killer, amputator, lasher, bone-fracturer, or eye-gouger. Indeed, legal rulings pertain only to these specific terms.

وَأَمَّا إذَا أَمَرَهُ فَفَعَلَ ذَلِكَ بِاخْتِيَارِهِ طَاعَةً لِلْآمِرِ: فَالْمُبَاشِرُ وَحْدَهُ: الْقَاتِلُ، وَالْقَاطِعُ وَالْكَاسِرُ، وَالْفَاقِئُ، وَالْجَانِي: فَعَلَيْهِ الْقَوَدُ وَحْدَهُ، وَلَا شَيْءَ عَلَى الْآمِرِ، لِأَنَّهُ لَا خِلَافَ فِي أَنَّهُ لَا يَقَعُ عَلَيْهِ هَاهُنَا اسْمُ - قَاتِلٍ، وَلَا قَاطِعٍ، وَلَا جَالِدٍ، وَلَا كَاسِرٍ وَلَا فَاقِئٍ - وَإِنَّمَا الْأَحْكَامُ لِلْأَسْمَاءِ فَقَطْ.

L38402 As for the child and the insane person: nothing is required of them. The one who commands - being the killer, the amputator, the flogger, the bone-breaker, or the blinder: retaliation falls upon him alone.

أَمَّا الصَّبِيُّ، وَالْمَجْنُونُ: فَلَا شَيْءَ عَلَيْهِمَا، وَالْآمِرُ - هُوَ الْقَاتِلُ، الْقَاطِعُ، الْجَالِدُ، الْكَاسِرُ، الْفَاقِئُ: فَالْقَوَدُ عَلَيْهِ وَحْدَهُ.

L38403 As for one who commands his own slave, another's slave, or a free person, while they are unknowing and unaware of the prohibition of what they are commanded to do: the commander alone is the guilty killer in all such cases, and legal retribution is incumbent upon him, while the unknowing person bears no responsibility. Allah the Exalted said: "To warn you thereby and those to whom the warning reaches" [Al-An'am 6:19].[52]

وَأَمَّا مَنْ أَمَرَ عَبْدًا لَهُ، أَوْ لِغَيْرِهِ، أَوْ حُرًّا، وَكَانُوا جُهَّالًا لَا يَدْرُونَ تَحْرِيمَ مَا أَمَرَهُمْ بِهِ: فَالْآمِرُ وَحْدَهُ هُوَ الْقَاتِلُ الْجَانِي فِي كُلِّ ذَلِكَ - وَعَلَيْهِ الْقَوَدُ، وَلَا شَيْءَ عَلَى الْجَاهِلِ، قَالَ اللَّهُ تَعَالَى {لِأُنْذِرَكُمْ بِهِ وَمَنْ بَلَغَ} [الأنعام: ١٩] .

[52] **Qur'an references (L38403):** Qur'an 6:19 (Al-An'am).

L38404 Abu Muhammad said: There is no distinction between His commanding His servant and His commanding others besides Him—nor any difference between the command of the Sultan and the command of someone other than the Sultan. For Allah the Exalted has only obligated obedience to the ruler and obedience to masters in what constitutes obedience to Allah the Exalted, and He has forbidden obedience to created beings in disobedience to the Creator, as the Messenger of Allah—peace and blessings of Allah be upon him—said: "Obedience is solely required in matters of obedience. When any of you is commanded to commit disobedience, there is no hearing nor obedience."

قَالَ أَبُو مُحَمَّدٍ: وَلَا فَرْقَ بَيْنَ أَمْرِهِ عَبْدَهُ، وَبَيْنَ أَمْرِهِ غَيْرَهُ - وَلَا فَرْقَ بَيْنَ أَمْرِ السُّلْطَانِ وَبَيْنَ أَمْرِ غَيْرِ السُّلْطَانِ، لِأَنَّ اللَّهَ تَعَالَى إنَّمَا افْتَرَضَ طَاعَةَ السُّلْطَانِ وَطَاعَاتِ السَّادَاتِ فِيمَا هُوَ طَاعَةٌ لِلَّهِ تَعَالَى، وَحَرَّمَ طَاعَةَ الْمَخْلُوقِينَ فِي مَعْصِيَةِ الْخَالِقِ، كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّمَا الطَّاعَةُ فِي الطَّاعَةِ، فَإِذَا أُمِرَ أَحَدُكُمْ بِمَعْصِيَةٍ فَلَا سَمْعَ وَلَا طَاعَةَ» .

L38405 We have cited it with its isnād in multiple places.

وَقَدْ أَوْرَدْنَاهُ بِإِسْنَادِهِ فِي غَيْرِ مَا مَوْضِعٍ.

L38406 Ali said: "Whoever commands another to kill himself, and the commanded person kills himself by his command—if he did so in obedience to the command, and had it not been for that, he would not have killed himself—then the commander is a killer, and retaliation in kind (qisas) is obligatory upon him, as we stated regarding killing another person, there being no distinction. Thus, if he commanded him, saying, 'Kill me,' and the commanded person killed the commander in compliance with his command, then he is also a killer, and retaliation in kind (qisas) is obligatory upon him. And success comes only from Allah, the Most High."

قَالَ عَلِيٌّ: وَمَنْ أَمَرَ آخَرَ بِقَتْلِ نَفْسِهِ فَقَتَلَ نَفْسَهُ بِأَمْرِهِ فَإِنْ كَانَ فَعَلَ ذَلِكَ مُطِيعًا لِلْأَمْرِ وَلَوْلَا ذَلِكَ لَمْ يَقْتُلْ نَفْسَهُ فَالْآمِرُ قَاتِلٌ وَعَلَيْهِ الْقَوَدُ كَمَا قُلْنَا فِي قَتْلِ غَيْرِهِ وَلَا فَرْقَ - فَلَوْ أَمَرَهُ فَقَالَ: اُقْتُلْنِي، فَقَتَلَهُ مُؤْتَمِرًا لِأَمْرِهِ فَهُوَ أَيْضًا قَاتِلٌ، وَعَلَيْهِ الْقَوَدُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْمُمْسِكِ لِلْقَتْلِ]

An issue concerning the one who restrains for the purpose of killing.

L38408 2097 - Issue: Is qisas (retribution) mandated for the one who restrains [a victim] to enable killing, or not? Similarly [what is the ruling for] the bystander, the one who aims [the weapon], the one who directs [to the victim], the pursuer, and the aggressor?

٢٠٩٧ - مَسْأَلَةٌ: هَلْ عَلَى الْمُمْسِكِ لِلْقَتْلِ قَوَدٌ؟ أَمْ لَا؟ وَكَذَلِكَ الْوَاقِفُ وَالْمُصَوِّبُ وَالدَّالُّ، وَالْمُتَّبِعُ وَالْبَاغِي؟

L38409–38410 Ali said: People have differed regarding this matter. A group held that only the withholder should be correctively disciplined.

قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: يُؤَدَّبُ الْمُمْسِكُ فَقَطْ.

L38411 A group said: The killer is to be executed, and the one who withholds is to be imprisoned until he dies.

وَقَالَتْ طَائِفَةٌ: يُقْتَلُ الْقَاتِلُ وَيُسْجَنُ الْمُمْسِكُ حَتَّى يَمُوتَ.

L38412 Some jurists said: The one who withholds is also to be executed.

قَالَتْ طَائِفَةٌ: يُقْتَلُ الْمُمْسِكُ أَيْضًا.

L38413 Those who hold the opinion of imprisoning him until death. As transmitted to us through the chain of Abū Bakr ibn Abī Shaybah, who narrated from ʿĪsā ibn Yūnus, from al-Awzāʿī, from Yaḥyā ibn Abī Kathīr, who said: “Two men were brought before ʿAlī ibn Abī Ṭālib. One had killed, while the other had apprehended. He executed the killer and said to the apprehending man: ’You apprehended for death, so I will imprison you in the prison until you die.”’

فَالْقَائِلُونَ بِحَبْسِهِ حَتَّى يَمُوتَ: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عِيسَى بْنُ يُونُسَ عَنْ الْأَوْزَاعِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: إنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أُتِيَ بِرَجُلَيْنِ قَتَلَ أَحَدُهُمَا وَأَمْسَكَ الْآخَرُ، فَقَتَلَ الَّذِي قَتَلَ، وَقَالَ لِلَّذِي أَمْسَكَ: أَمْسَكْت لِلْمَوْتِ، فَأَنَا أَحْبِسُك فِي السِّجْنِ حَتَّى تَمُوتَ. .

L38414 The second opinion—as was narrated to us from Al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān regarding the detainer and the killer?—they both said: “The killer shall be killed.”

وَالْقَوْلُ الثَّانِي - كَمَا رُوِّينَا عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ الْمُمْسِكِ وَالْقَاتِلِ؟ فَقَالَا جَمِيعًا: يُقْتَلُ الْقَاتِلُ.

L38415 Ibn Shihab ruled that if a group collectively seizes and restrains a man, then one among them gouges out his eyes, breaks his legs, hands, teeth, or commits similar harm against him: retaliation (*qisas*) is enforced against the one who directly perpetrates the act, while the others who restrained him are punished with a severe penalty. If the injured party opts for compensation instead of retaliation, the *diyah* (blood money) is imposed on all of them equally, to be paid in full collectively.

وَعَنْ ابْنِ شِهَابٍ أَنَّهُ كَانَ يَقُولُ فِي الرَّهْطِ يَجْتَمِعُونَ عَلَى الرَّجُلِ فَيُمْسِكُونَهُ، فَيَفْقَأُ أَحَدُهُمْ عَيْنَيْهِ، أَوْ يَكْسِرُ رِجْلَيْهِ، أَوْ يَدَيْهِ، أَوْ أَسْنَانَهُ، أَوْ نَحْوَ هَذَا مِنْهُ: إنَّهُ يُقَادُ مِنْ الَّذِي يُبَاشِرُ ذَلِكَ مِنْهُ، وَيُعَاقَبُ الْآخَرُونَ الَّذِينَ أَمْسَكُوهُ عُقُوبَةً مُوجِعَةً - فَإِنْ اسْتَحَبَّ الْمُصَابُ كَانَتْ الدِّيَةُ عَلَيْهِمْ كُلِّهِمْ يَغْرَمُونَهَا جَمِيعًا سَوَاءً.

L38416 Abu Hanifah and al-Shafiʿi said: The killer shall be executed, and one who unlawfully detains shall be punished.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: يُقْتَلُ الْقَاتِلُ، وَيُعَاقَبُ الْمُمْسِكُ.

L38417 As for the third opinion - it has been transmitted to us through the chain of Abū Bakr ibn Abī Shaybah, from Muḥammad ibn Bakr, from Ibn Jurayj, who said: I heard Sulaymān ibn Mūsā state: “The collaborative act in our judgment concerning the slain is that if one man restrains him while another strikes him, they are both partners in the crime of his bloodshed according to us, and they shall be executed together.”

وَأَمَّا الْقَوْلُ الثَّالِثُ - فَكَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ بَكْرٍ عَنْ ابْنِ جُرَيْجٍ قَالَ: سَمِعْت سُلَيْمَانَ بْنَ مُوسَى يَقُولُ: الِاجْتِمَاعُ فِينَا عَلَى الْمَقْتُولِ هُوَ أَنْ يُمْسِكَ الرَّجُلُ وَيَضْرِبَهُ الْآخَرُ، فَهُمَا شَرِيكَانِ عِنْدَنَا فِي دَمِهِ: يُقْتَلَانِ جَمِيعًا.

L38418 And from Rabiʿah that he said regarding a group who gather against a man, restrain him, and then one of them gouges out his eyes, breaks his legs, hands, or teeth, or inflicts similar harm upon him: retaliation is taken from the one who directly committed the act and from the one who restrained him; it is taken from both of them.

وَعَنْ رَبِيعَةَ أَنَّهُ قَالَ فِي الرَّهْطِ يَجْتَمِعُونَ عَلَى الرَّجُلِ فَيُمْسِكُونَهُ فَيَفْقَأُ أَحَدُهُمْ عَيْنَيْهِ، أَوْ يَكْسِرُ رِجْلَيْهِ، أَوْ يَدَيْهِ، أَوْ أَسْنَانَهُ، أَوْ نَحْوَ هَذَا مِنْهُ: أَنَّهُ يُقَادُ مِنْ الَّذِي بَاشَرَ، وَمِنْ الَّذِي أَمْسَكَ، يُقَادُ مِنْهُمَا جَمِيعًا.

وَبِهِ يَقُولُ مَالِكٌ فِي الْقَتْلِ إنْ أَمْسَكَهُ - وَهُوَ يَدْرِي أَنَّهُ يُرِيدُ قَتْلَهُ - فَقَتَلَهُ: فَالْقَوَدُ عَلَيْهِمَا جَمِيعًا - وَبِهِ يَقُولُ اللَّيْثُ بْنُ سَعْدٍ.

L38419 And with this, Mālik states regarding killing: If he restrains him—while knowing that he intends to kill him—then killed him, *qisas* is required against both of them collectively. Al-Layth ibn Saʿd also states this.

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْرِفَ صَوَابَ ذَلِكَ مِنْ خَطَئِهِ: فَوَجَدْنَا مَنْ قَالَ بِقَتْلِ الْمُمْسِكِ يَقُولُ: قَدْ جَاءَ عَنْ عُمَرَ: لَوْ تَمَالَأَ عَلَيْهِ أَهْلُ صَنْعَاءَ لَقَتَلْتُهُمْ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَيْسَ فِيهِ ذِكْرٌ لِلْمُمْسِكِ أَصْلًا، وَنَعَمْ، وَنَحْنُ نَقُولُ: لَوْ بَاشَرَ قَتْلَهُ أَهْلُ صَنْعَاءَ لَوَجَبَ قَتْلُهُمْ

L38420–38421 Abu Muhammad said: When they differed—as we mentioned—it became necessary for us to examine this matter to discern what is correct from what is erroneous. We found those who argue for killing the withholder citing Umar's statement: "If the people of Sana'a conspired against him, I would kill them." Abu Muhammad responded: This provides no evidence for their position, as it contains no mention whatsoever of the withholder. Indeed, but we hold: If the people of Sana'a had directly carried out his killing, it would then be obligatory to kill them.

وَالثَّانِي - أَنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L38422 The second is that no statement constitutes authoritative evidence except that of the Messenger of Allah—peace be upon him.

وَالثَّالِثُ - أَنَّا قَدْ ذَكَرْنَا مِنْ أَقْوَالِ عُمَرَ الَّتِي خَالَفُوهُ فِيهَا عَشَرَاتٍ: كَخُطْبَتِهِ عَلَى الْمِنْبَرِ فِي الضِّرْسِ جَمَلًا، وَفِي الضِّلْعِ جَمَلًا، وَفِي التَّرْقُوَةِ جَمَلًا وَحُكْمِهِ فِي الْعَيْنِ الْعَوْرَاءِ بِثُلُثِ دِيَتِهَا وَفِي السِّنِّ السَّوْدَاءِ بِثُلُثِ دِيَتِهَا وَفِي الْيَدِ الشَّلَّاءِ بِثُلُثِ دِيَتِهَا كُلُّ ذَلِكَ عَنْهُ بِأَصَحِّ إسْنَادٍ، وَأَوْضَحِ بَيَانٍ.

L38423 The third [point] is that we have mentioned dozens of ʿUmar's rulings in which they opposed him, such as his sermon on the pulpit regarding the molar being [compensated with] a camel, the rib being [compensated with] a camel, and the collarbone being [compensated with] a camel; his ruling concerning the blind eye as one-third of its blood money, the blackened tooth as one-third of its blood money, and the disabled hand as one-third of its blood money, all of this transmitted from him through the most authentic transmission chains and clearest exposition.

فَمِنْ عَجَائِبِ الدُّنْيَا: أَنْ يَكُونَ مَا قَالَ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - وَخَطَبَ بِهِ، وَحَكَمَ بِهِ بِحَضْرَةِ الصَّحَابَةِ، لَا يُعْرَفُ لَهُ عَنْهُمْ مُخَالِفٌ فِيهِ لَا يَكُونُ: حُجَّةً، وَيَكُونُ مَا لَمْ يَقُلْ، وَلَا دَلَّ عَلَيْهِ، وَلَا أَشَارَ إلَيْهِ: حُجَّةً.

L38424 Among the wonders of the worldly life is this: that what ʿUmar—may Allah be pleased with him—declared, publicly addressed, and adjudicated in the presence of the Companions—with no opposition known from them—is not deemed authoritative evidence, while what he did not state, indicate, or allude to is deemed authoritative evidence.

وَقَدْ خَالَفَهُ فِي ذَلِكَ غَيْرُهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَوْ صَحَّ ذَلِكَ عَنْهُ، فَكَيْفَ وَهُوَ لَا يَصِحُّ؟ فَإِنْ قَالُوا: إنَّ الْمُمْسِكَ مُعِينٌ؟ قُلْنَا: نَعَمْ، وَمَا جَاءَتْ قَطُّ سُنَّةٌ، وَلَا

L38425 Other Companions—may Allah be pleased with them—opposed him in that matter if it were authentically reported from him. So how could this hold true when it is not authentic? If they say: "The restrainer is an aider," we reply: Yes, but there has never been established a Sunnah, nor Qur'an, nor analogy, nor any statement from a Companion that an aider is to be killed. Thus, this claim is invalidated due to its being devoid of proofs.

قُرْآنٌ، وَلَا قِيَاسٌ، وَلَا قَوْلُ صَاحِبٍ: بِأَنَّ الْمُعِينَ يُقْتَلُ - فَبَطَلَ هَذَا الْقَوْلُ لِتَعَرِّيهِ مِنْ الْحُجَجِ.

L38426 Then we found it invalidated by definitive proof, namely that the Prophet—peace and blessings of Allah be upon him—explicitly stated: “A Muslim’s blood is not lawful except for one of three [reasons]: a man who abandons his religion, commits adultery while married, or kills a soul.” Moreover, one who withholds [life-sustaining provisions] is not termed a “killer” linguistically or in Islamic law.

ثُمَّ وَجَدْنَاهُ يُبْطِلُهُ الْبُرْهَانُ: وَذَلِكَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ نَصَّ: عَلَى أَنْ «لَا يَحِلَّ دَمُ امْرِئٍ مُسْلِمٍ إلَّا بِإِحْدَى ثَلَاثٍ: رَجُلٌ تَرَكَ دِينَهُ، أَوْ زَنَى بَعْدَ إحْصَانٍ، أَوْ قَتَلَ نَفْسًا» وَالْمُمْسِكُ لَا يُسَمَّى فِي اللُّغَةِ، وَلَا فِي الشَّرِيعَةِ " قَاتِلًا ".

L38427 Then we asked them about the one who detains a woman until another commits adultery with her—is the prescribed punishment for adultery imposed upon him, and is he designated as an “adulterer,” or not? There is no disagreement among them that he is not an “adulterer,” nor is he designated as one, nor is the punishment for adultery applied to him. Thus, it is confirmed that the detainer is not labeled with the name of the perpetrator for the act he detained her to enable another.

ثُمَّ سَأَلْنَاهُمْ عَنْ الْمُمْسِكِ لِلْمَرْأَةِ حَتَّى يَزْنِيَ بِهَا غَيْرُهُ أَعَلَيْهِ حَدُّ الزِّنَا وَيُسَمَّى " زَانِيًا " أَمْ لَا؟ فَلَا خِلَافَ مِنْهُمْ فِي أَنَّهُ لَيْسَ " زَانِيًا " وَلَا يُسَمَّى " زَانِيًا " وَلَا عَلَيْهِ حَدُّ زِنًى - فَصَحَّ أَنَّهُ لَا يُسَمَّى الْمُمْسِكُ بِاسْمِ الْفَاعِلِ عَلَى مَا أَمْسَكَ لَهُ.

L38428–38429 Then if they mentioned the statement of al-Walīd ibn ʿUqbah:

فَإِنْ ذَكَرُوا قَوْلَ الْوَلِيدِ بْنِ عُقْبَةَ:

L38430 If you are not his killers, then... it is indifferent to us whether [it be] those who seize him or the one who strikes him.

فَإِنْ لَمْ تَكُونُوا قَاتِلِيهِ فَإِنَّهُ ... سَوَاءٌ عَلَيْنَا مُمْسِكُوهُ وَضَارِبُهُ

L38431 They were told: This is an unjust and transgressive statement, merely revealing its intention—not about the language, nor about the religion.

قِيلَ لَهُمْ: هَذَا قَوْلٌ جَائِرٌ مُتَعَدٍّ، مُخْبِرٌ عَنْ نِيَّتِهِ فَقَطْ، لَا عَنْ اللُّغَةِ، وَلَا عَنْ الدِّيَانَةِ.

L38432 And the proof of this is his statement in this poem following this line:

وَبُرْهَانُ هَذَا: قَوْلُهُ فِي هَذَا الشِّعْرِ بَعْدَ هَذَا الْبَيْتِ:

L38433 O Banū Hāshim, return the weapon of your sister’s son, And do not plunder him—his forcible takings are impermissible.

بَنِي هَاشِمٍ رُدُّوا سِلَاحَ ابْنِ أُخْتِكُمْ ... وَلَا تَنْهَبُوهُ لَا تَحِلَّ مَنَاهِبُهُ

L38434 O Banū Hāshim, how can truce be spoken of between us, while with Ali lie his armor and noble she-camels?

بَنِي هَاشِمٍ كَيْفَ الْهَوَادَةُ بَيْنَنَا ... وَعِنْدَ عَلِيٍّ دِرْعُهُ وَنَجَائِبُهُ

L38435 If you were not his killers, then indeed... it is the same to us whether they fought him or his despoiler.

فَإِنْ لَمْ تَكُونُوا قَاتِلِيهِ فَإِنَّهُ ... سَوَاءٌ عَلَيْنَا قَاتَلُوهُ وَسَالِبُهُ

L38436 They killed him to take his place - never did Kisra’s marzbans ever betray him one day.

هُمُو قَتَلُوهُ كَيْ يَكُونُوا مَكَانَهُ ... مَا غَدَرَتْ يَوْمًا بِكِسْرَى مَرَازِبُهُ

L38437 Abu Muhammad said: Far be it from Allah—Allah forbid—and Allah refused that Ali would possess Uthman's spoils, his armor, or his she-camels, as the lying Walid claimed. Allah forbid that Ali would kill Uthman to take his place or for any worldly gain, for Ali was too God-fearing to kill Uthman, and Uthman was too God-fearing to be killed by Ali.

قَالَ أَبُو مُحَمَّدٍ: حَاشَ لِلَّهِ، وَمَعَاذَ اللَّهِ، وَأَبَى اللَّهُ أَنْ يَكُونَ عِنْدَ عَلِيٍّ سَلَبُ عُثْمَانَ وَدِرْعُهُ وَنَجَائِبُهُ، كَمَا قَالَ الْوَلِيدُ الْكَاذِبُ، وَمَعَاذَ اللَّهِ أَنْ يَكُونَ عَلِيٌّ قَتَلَ عُثْمَانَ لَأَنْ يَكُونَ مَكَانَهُ، أَوْ لِشَيْءٍ فِي الدُّنْيَا، وَعَلِيٌّ أَتْقَى لِلَّهِ مِنْ أَنْ يَقْتُلَ عُثْمَانَ، وَعُثْمَانَ أَتْقَى لِلَّهِ مِنْ أَنْ يَقْتُلَهُ عَلِيٌّ.

L38438 Then, if we were to cite this couplet as evidence, it would serve as a proof in our favor against them, for it states: "If you are not his killers, then those who detain him and those who strike him are the same to us." This informs that those who detain are not killers. Thus, this constitutes an argument against them - and success is from Allah, the Exalted.

ثُمَّ لَوْ احْتَجَجْنَا بِهَذَا الْبَيْتِ لَكَانَ حُجَّةً لَنَا عَلَيْهِمْ، لِأَنَّ فِيهِ: فَإِنْ لَمْ تَكُونُوا قَاتِلِيهِ فَإِنَّهُ سَوَاءٌ عَلَيْنَا مُمْسِكُوهُ وَضَارِبُهُ فَقَدْ أَخْبَرَ أَنَّ الْمُمْسِكِينَ لَيْسُوا قَاتِلِينَ، فَهَذَا حُجَّةٌ عَلَيْهِمْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L38439 Abu Muhammad said: Then we examined other aspects of it and found that the detainer is not a killer, but he detained a person until he died.

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَظَرْنَا فِي غَيْرِهِ فَوَجَدْنَا الْمُمْسِكَ لَيْسَ قَاتِلًا، لَكِنَّهُ حَبَسَ إنْسَانًا حَتَّى مَاتَ.

L38440 Allah the Exalted has said, {Violation of sacred ordinances is subject to retaliation} [Al-Baqarah: 194]. Thus, the one who prevents retaliation for killing becomes a means [of harm] and a transgressor. Therefore, retaliation in kind is incumbent upon him. He must face the equivalent of what he committed: he shall be imprisoned until death. This is our position.[53]

وَقَدْ قَالَ اللَّهُ تَعَالَى {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] ، فَكَانَ الْمُمْسِكُ لِلْقَتْلِ سَبَبًا وَمُتَعَدِّيًا، فَعَلَيْهِ مِثْلُ مَا فَعَلَ، فَوَاجِبٌ أَنْ يُفْعَلَ بِهِ مِثْلُ مَا فَعَلَ، فَيُمْسَكَ مَحْبُوسًا حَتَّى يَمُوتَ - وَبِهَذَا نَقُولُ.

L38441 And it is the view of ʿAlī ibn Abī Ṭālib (may Allah be pleased with him), with no opposition recorded from any of the Companions (may Allah be pleased with them). A mursal report (which lacks a complete chain of transmission) has been narrated regarding this matter.

وَهُوَ قَوْلُ عَلِيِّ بْنِ أَبِي طَالِبٍ وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَقَدْ رُوِيَ فِي ذَلِكَ أَثَرٌ مُرْسَلٌ.

L38442–38443 As narrated by Muhammad ibn Sa'id ibn Nabaat, from Abdullah ibn Nasr, from Qasim ibn Asbagh, from Ibn Waḍḍāḥ, from Musa ibn Mu'awiyah, from Waki', who said: Sufyan narrated from Isma'il ibn Umayyah, who said: "The Messenger of Allah (peace be upon him) ruled concerning a man whom a man restrains and another kills that the killer is to be executed and the restrainer is to be imprisoned."

كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ، قَالَ: نا سُفْيَانُ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ قَالَ «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي رَجُلٍ يُمْسِكُهُ رَجُلٌ وَقَتَلَهُ آخَرُ بِأَنْ يُقْتَلَ الْقَاتِلُ وَيُحْبَسَ الْمُمْسِكُ» .

[53] **Qur'an references (L38440):** Qur'an 2:194 (Al-Baqarah).

L38444 And through the chain of Abd al-Razzaq from Ibn Jurayj, Isma'il ibn Umayyah informed me of a confirmed report that the Messenger of Allah (peace be upon him) said: "The one who is patient toward death will be detained as he detained, and the killer will be killed."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي إِسْمَاعِيلُ بْنُ أُمَيَّةَ خَبَرًا أَثْبَتُه " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يُحْبَسُ الصَّابِرُ لِلْمَوْتِ كَمَا حَبَسَ وَيُقْتَلُ الْقَاتِلُ» .

L38445 Abu Muhammad said: The distinction made by the Messenger of Allah (peace be upon him) between the ruling on the withholder and the ruling on the killer is a clear clarification.

قَالَ أَبُو مُحَمَّدٍ: تَفْرِيقُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ حُكْمِ الْحَابِسِ وَبَيْنَ حُكْمِ الْقَاتِلِ: بَيَانٌ جَلِيٌّ.

L38446 We have observed that the Hanafis and Malikis assert the equivalence between the *mursal* and *musnad* - though this is a *mursal* hadith among the finest *marasil*, they contradict it. Yet they condemn those who oppose a Companion's opinion when it aligns with their desires - and with Allah, the Exalted, lies success.

وَعَهِدْنَا بِالْحَنَفِيِّينَ وَالْمَالِكِيِّينَ، يَقُولُونَ: إنَّ الْمُرْسَلَ وَالْمُسْنَدَ سَوَاءٌ - وَهَذَا مُرْسَلٌ مِنْ أَحْسَنِ الْمَرَاسِيلِ، وَقَدْ خَالَفُوهُ، وَيُشَنِّعُونَ عَلَى مَنْ خَالَفَ قَوْلَ الصَّاحِبِ إذَا وَافَقَ أَهْوَاءَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ هَلْ فِي قَتْلِ الْعَمْدِ كَفَّارَةٌ أَمْ لَا]

Issue: Is there expiation for intentional killing or not?

L38447

L38448 2098 – Issue: Is there an expiation for intentional killing or not? Ali said: Scholars have differed regarding this. A faction of scholars said: Expiation is incumbent upon the intentional killer, just as it is incumbent upon the accidental killer. This is the opinion of al-Hakam ibn Utaibah and al-Shafi'i.

٢٠٩٨ - مَسْأَلَةٌ: هَلْ فِي قَتْلِ الْعَمْدِ كَفَّارَةٌ أَمْ لَا؟ قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: عَلَى قَاتِلِ الْعَمْدِ كَفَّارَةٌ، كَمَا هِيَ عَلَى قَاتِلِ الْخَطَأِ، وَهُوَ قَوْلُ الْحَكَمِ بْنِ عُتَيْبَةَ، وَالشَّافِعِيِّ.

L38449 Mālik and al-Layth said: He should free a slave or fast two months, and seek closeness to God Almighty by doing as much good as he can.

وَقَالَ مَالِكٌ، وَاللَّيْثُ: يُعْتِقُ رَقَبَةً أَوْ يَصُومُ شَهْرَيْنِ، وَيَتَقَرَّبُ إلَى اللَّهِ تَعَالَى بِمَا أَمْكَنَهُ مِنْ الْخَيْرِ.

L38450 Abu Hanifa, Abu Sulayman, and our associates said: There is no atonement for that, but he should seek forgiveness from Allah the Exalted, repent to Him, and abound in performing good deeds.

وَقَالَ أَبُو حَنِيفَةَ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُنَا: لَا كَفَّارَةَ فِي ذَلِكَ، وَلَكِنْ يَسْتَغْفِرُ اللَّهَ تَعَالَى، وَيَتُوبُ إلَيْهِ، وَيُكْثِرُ مِنْ فِعْلِ الْخَيْرِ.

L38451 Abū Muḥammad said: When they differed as we have mentioned, it became necessary for us to examine the matter so that the truth might become evident from it. We thus considered the opinions of Mālik and al-Layth, and found that they must have necessarily held one of two positions: either they deemed it obligatory or not. If they did not consider it obligatory, then what meaning

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِيَلُوحَ الْحَقُّ مِنْ ذَلِكَ؟ فَنَظَرْنَا فِي قَوْلِ مَالِكٍ، وَاللَّيْثِ، فَوَجَدْنَاهُمَا لَا يَخْلُوَانِ مِنْ أَنْ يَكُونَا رَأَيَا ذَلِكَ وَاجِبًا

could there be in their specifying the manumission of a slave or fasting two months—to the exclusion of other aspects of righteousness such as jihad, remembrance of God Almighty, and charity?

L38452–38453 If they both deemed it obligatory, they have given him the choice between manumission and fasting. This does not reflect the characteristic of the expiation that Allah the Exalted commanded for accidental killing, for that is sequential, whereas they have granted him a choice. Thus, this opinion is invalidated—and with Allah the Exalted lies all success.

L38454 Then we examined those who deemed expiation obligatory in that matter, and found them citing as evidence the narration relayed by Abdullah ibn Rabīʿ: Muhammad ibn Muʿāwiyah narrated to us from Aḥmad ibn Shuʿayb, who narrated to us: Muḥammad ibn ʿAbdillāh ibn Yazīd al-Muqrī said: My father narrated to us from Ibn al-Mubārak, who narrated from Ibrāhīm ibn ʿUlayyah, from al-Gharif ibn ʿAyyāsh, from Wāthilah ibn al-Asqaʿ, who said: "A group from Banū Sulaym came to the Prophet (peace be upon him) and said, 'Our companion has incurred the obligation of expiation.' He responded, 'Let him emancipate a slave, and Allāh will ransom each limb of his from the Fire with a limb of hers.'"

L38455 Aḥmad ibn Shuʿayb said: Al-Rabīʿ ibn Sulaymān—the muʾadhdhin (the caller to prayer) and companion of al-Shāfiʿī—narrated to us: ʿAbd Allāh ibn Yūsuf narrated to us: ʿAbd Allāh ibn Sālim reported to me: Ibrāhīm ibn Abī ʿUlayyah said: I was sitting in Jericho when Wāthilah ibn al-Asqaʿ passed by me, leaning on ʿAbd Allāh ibn al-Daylamī. He seated him, then came to me and said: "I marveled at what the Shaykh—meaning Wāthilah ibn al-Asqaʿ—narrated to me." I asked: "What did he narrate?" He said: "We were with the Prophet—peace and blessings of Allāh be upon him—during the Tabūk campaign when a group from Banū Sulaym came to him and said: 'Our companion has incurred an obligation [requiring expiation].' The Messenger of Allāh—peace and blessings of Allāh be upon him—said: 'Free a slave on his behalf, and Allāh will free a limb of his from the Fire for every limb of hers.'"

L38456 And it was narrated to us by Aḥmad ibn Muḥammad ibn ʿAbd Allāh al-

أَمْ لَا؟ فَإِنْ كَانَا لَمْ يَرَيَاهُ وَاجِبًا، فَأَيُّ مَعْنًى لِتَخْصِيصِهِمَا عِتْقَ رَقَبَةٍ، أَوْ صَوْمَ شَهْرَيْنِ دُونَ سَائِرِ وُجُوهِ الْبِرِّ مِنْ الْجِهَادِ، وَذِكْرِ اللَّهِ تَعَالَى، وَالصَّدَقَةِ.

وَإِنْ كَانَا رَأَيَاهُ وَاجِبًا، فَقَدْ خَيَّرَاهُ بَيْنَ الْعِتْقِ، وَالصَّوْمِ، وَلَيْسَتْ هَذِهِ صِفَةَ الْكَفَّارَةِ الَّتِي أَمَرَ اللَّهُ تَعَالَى بِهَا فِي الْقَتْلِ الْخَطَأِ، لِأَنَّ تِلْكَ مُرَتَّبَةٌ، وَهُمْ قَدْ خَيَّرُوهُ، فَسَقَطَ هَذَا الْقَوْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

ثُمَّ نَظَرْنَا فِيمَنْ أَوْجَبَ الْكَفَّارَةَ فِي ذَلِكَ؟ فَوَجَدْنَاهُمْ يَحْتَجُّونَ: بِمَا ثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي نا أَبِي نا ابْنُ الْمُبَارَكِ نا إبْرَاهِيمُ بْنُ عُلَيَّةَ عَنْ الْغَرِيفِ بْنِ عَيَّاشٍ عَنْ وَاثِلَةَ بْنِ الْأَسْقَعِ قَالَ «أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَفَرٌ مِنْ بَنِي سُلَيْمٍ فَقَالُوا: إنَّ صَاحِبًا لَنَا قَدْ أَوْجَبَ؟ قَالَ: فَلْيُعْتِقْ رَقَبَةً يَفُكَّ اللَّهُ بِكُلِّ عُضْوٍ مِنْهَا عُضْوًا مِنْهُ مِنْ النَّارِ» .

قَالَ أَحْمَدُ بْنُ شُعَيْبٍ: وَأَرَنَا الرَّبِيعُ بْنُ سُلَيْمَانَ - الْمُؤَذِّنُ صَاحِبُ الشَّافِعِيِّ - نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا عَبْدُ اللَّهِ بْنُ سَالِمٍ حَدَّثَنِي إبْرَاهِيمُ بْنُ أَبِي عُلَيَّةَ قَالَ: كُنْت جَالِسًا بِأَرِيحَاءَ فَمَرَّ بِي وَاثِلَةُ بْنُ الْأَسْقَعِ مُتَوَكِّئًا عَلَى عَبْدِ اللَّهِ بْنِ الدَّيْلَمِيِّ فَأَجْلَسَهُ، ثُمَّ جَاءَ إلَيَّ فَقَالَ: عَجِبْت مِمَّا حَدَّثَنِي الشَّيْخُ - يَعْنِي وَاثِلَةَ بْنَ الْأَسْقَعِ - قُلْت: مَا حَدَّثَك؟ قَالَ: «كُنَّا مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي غَزْوَةِ تَبُوكَ فَأَتَاهُ نَفَرٌ مِنْ بَنِي سُلَيْمٍ، فَقَالُوا: إنَّ صَاحِبًا لَنَا قَدْ أَوْجَبَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: اعْتِقُوا عَنْهُ رَقَبَةً يُعْتِقْ اللَّهُ بِكُلِّ عُضْوٍ مِنْهَا عُضْوًا مِنْهُ مِنْ النَّارِ» .

Ṭalamankī, from Ibn Mufarrij, from Muḥammad ibn Ayyūb al-Ṣamūt al-Raqqī, from Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār, from al-Ḥasan ibn Mahdī, from ʿAbd al-Razzāq, from Isrāʾīl, from al-Nuʿmān, from ʿUmar ibn al-Khaṭṭāb, who said: "Qays ibn ʿĀṣim came to the Messenger of Allāh, peace and blessings of Allāh be upon him, and said: 'O Messenger of Allāh, I buried my daughters alive during the Age of Ignorance.' He replied: 'Free a slave for each.' Qays said: 'O Messenger of Allāh, I am a camel owner.' He said: 'Then sacrifice a sacrificial camel for each.'"

وَبِمَا حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ الرَّقِّيِّ نا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا الْحَسَنُ بْنُ مَهْدِيٍّ نا عَبْدُ الرَّزَّاقِ نا إِسْرَائِيلُ عَنِ النُّعْمَانِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: «جَاءَ قَيْسُ بْنُ عَاصِمٍ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي وَأَدْتُ بَنَاتٍ لِي فِي الْجَاهِلِيَّةِ؟ فَقَالَ اعْتِقْ عَنْ كُلِّ وَاحِدَةٍ مِنْهُنَّ رَقَبَةً؟ قَالَ: يَا رَسُولَ اللَّهِ إِنِّي صَاحِبُ إِبِلٍ؟ قَالَ: فَانْحَرْ عَنْ كُلِّ وَاحِدَةٍ مِنْهُنَّ بَدَنَةً» .

L38457–38458 And they said: Since Allah, the Exalted, imposed upon the unintentional killer—who bears no sin—an expiation for that act, the intentional sinner is more deserving of expiation.

وَقَالُوا: لَمَّا أَوْجَبَ اللَّهُ تَعَالَى عَلَى قَاتِلِ الْخَطَأِ - وَلَا ذَنْبَ لَهُ - كَفَّارَةً فِي ذَلِكَ، كَانَ الْعَامِدُ الْمُذْنِبُ أَحَقَّ بِالْكَفَّارَةِ.

L38459 Abu Muhammad said: As for the hadith of Wathilah—it is not authentic, because al-Gharīf is unknown. Some people assumed that he was Abdullah ibn Fayruz al-Daylami—but this is a mistake, because Ibn al-Mubarak attributed al-Gharīf's narration to Ibn ʿUlayyah. Ibn Ayyash said: "There was no one among the descendants of Abdullah ibn Fayruz named Ayyash"—and Ibn al-Mubarak is more reliable and precise than Abdullah ibn Salim.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا حَدِيثُ وَاثِلَةَ - فَلَا يَصِحُّ، لِأَنَّ الْغَرِيفَ مَجْهُولٌ، وَقَدْ ظَنَّ قَوْمٌ أَنَّهُ عَبْدُ اللَّهِ بْنُ فَيْرُوزَ الدَّيْلَمِيُّ - وَهَذَا خَطَأٌ، لِأَنَّ ابْنَ الْمُبَارَكِ نَسَبَ الْغَرِيفَ عَنِ ابْنِ عُلَيَّةَ فَقَالَ ابْنُ عَيَّاشٍ: وَلَمْ يَكُنْ فِي بَنِي عَبْدِ اللَّهِ بْنِ فَيْرُوزَ أَحَدٌ يُسَمَّى عَيَّاشًا - وَابْنُ الْمُبَارَكِ أَوْثَقُ وَأَضْبَطُ مِنْ عَبْدِ اللَّهِ بْنِ سَالِمٍ.

L38460 Moreover, if this report were valid, they would have no argument in it, because there is nothing in it indicating that he had killed intentionally. Therefore, since that is not in it, there is no doubt at all for them in this hadith.

ثُمَّ لَوْ صَحَّ هَذَا الْخَبَرُ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ أَنَّهُ كَانَ قَتَلَ عَمْدًا، فَإِذْ لَيْسَ فِيهِ ذَلِكَ: فَلَا شُبْهَةَ لَهُمْ فِي هَذَا الْحَدِيثِ أَصْلًا.

L38461 The issue here is whether it merely means that one of our scholars has deemed [it] obligatory, when it is not known in the language that "awjaba" signifies intentional killing. Thus, this interpretation becomes sheer falsehood—a baseless assertion against the language that lacks any foundation.

وَإِنَّمَا فِيهِ - أَنَّ صَاحِبًا لَنَا قَدْ أَوْجَبَ؟ وَلَا يُعْرَفُ فِي اللُّغَةِ أَنَّ " أَوْجَبَ " بِمَعْنَى قَتَلَ عَمْدًا، فَصَارَ هَذَا التَّأْوِيلُ كَذِبًا مُجَرَّدًا، وَدَعْوَى عَلَى اللُّغَةِ لَا تُعْرَفُ.

L38462 The meaning of "أوجب" could be that he has obligated the Fire for himself due to his numerous sins, while the meaning of "قد أوجب" could be that his

death has come. Thus, one might say: “Is this the obligation of so-and-so?” meaning “he has died”—thereby invalidating their argument.

وَقَدْ يَكُون مَعْنَى " أَوْجَبَ " أَيْ أَوْجَبَ لِنَفْسِه النَّارَ بِكَثْرَةِ مَعَاصِيهِ، وَيَكُونُ مَعْنَى " قَدْ أَوْجَبَ " أَيْ قَدْ حَضَرَتْ مَنِيَّتُهُ فَقَدْ يُقَالُ: هَذَا أَوْجَبُ فُلَانٍ؟ بِمَعْنَى مَاتَ - فَبَطَلَ قَوْلُهُمْ.

L38463 A group of people have said: The Prophet’s silence—peace and blessings be upon him—in this report regarding the mention of “freeing a slave” being a believer and regarding the prescribing of two months [of fasting] serves as evidence to invalidate the opinion of those who obligate expiation in intentional killing.

وَقَدْ قَالَ قَوْمٌ: إنَّ سُكُوتَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي هَذَا الْخَبَرِ عَنْ ذِكْرِ " الرَّقَبَةِ " أَنْ تَكُونَ مُؤْمِنَةً، وَعَنْ تَعْوِيضِ الشَّهْرَيْنِ: دَلِيلٌ عَلَى بُطْلَانِ قَوْلِ مَنْ أَوْجَبَ الْكَفَّارَةَ فِي قَتْلِ الْعَمْدِ.

L38464 Abu Muhammad said: As for the report of Umar ibn al-Khattab, it is not authentic, because its chain of transmission includes Isra’il—who is weak—and Simak ibn Harb—who was prone to prompting.

قَالَ أَبُو مُحَمَّد: وَأَمَّا خَبَرُ عُمَرَ بْنِ الْخَطَّابِ، فَلَا يَصِحُّ، لِأَنَّ فِي طَرِيقِهِ إسْرَائِيلَ - وَهُوَ لَيْسَ بِالْقَوِيِّ - وَسِمَاكُ بْنُ حَرْبٍ - وَكَانَ يَقْبَلُ التَّلْقِينَ -.

L38465 Moreover, this would obligate every ḥarbī disbeliever [combatant from a non-Muslim polity] who killed a person during the pre-Islamic era—as was Qays ibn ʿĀṣim, the one commanded to perform this expiation in the hadith—whereas they do not uphold this view at all. Thus, their reliance on this report is nullified.

وَأَيْضًا - فَكَانَ يَكُونُ فِي إيجَابِ ذَلِكَ عَلَى كُلِّ مَنْ قَتَلَ نَفْسًا فِي الْجَاهِلِيَّةِ وَهُوَ كَافِرٌ حَرْبِيٌّ كَمَا كَانَ قَيْسُ بْنُ عَاصِمٍ الْمَأْمُورُ بِهَذِهِ الْكَفَّارَةِ فِي هَذَا الْحَدِيثِ وَهُمْ لَا يَقُولُونَ بِهَذَا أَصْلًا - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ.

L38466 As for Al-Shafiʿī—though he rejected their opinions due to the error in their statements—he also erred with them in this matter, for among their principles is that a thing is only analogized to its equivalent and what resembles it, not to its opposite nor to what does not resemble it. Thus, the error here lies in applying analogy between intentional action and the unintentional act, which is its opposite.

وَأَمَّا الشَّافِعِيُّ - فَإِنَّهُ وَإِنْ كَانَ أَطْرَدَ مِنْهُمْ لِلْخَطَأِ فِي قَوْلِهِمْ، فَقَدْ أَخْطَأَ مَعَهُمْ فِيهِ أَيْضًا، لِأَنَّ مِنْ أَصْلِهِمْ أَنْ لَا يُقَاسَ الشَّيْءُ إلَّا عَلَى نَظِيرِهِ، وَمَا يُشْبِهُهُ لَا عَلَى ضِدِّهِ، وَمَا لَا يُشْبِهُهُ، فَالْخَطَأُ هَاهُنَا فِي قِيَاسِ الْعَمْدِ عَلَى الْخَطَأِ وَهُوَ ضِدُّهُ.

L38467–38469 All of them, along with him, also erred in their flawed analogy concerning hunting: that killing game while in a state of iḥrām (consecration) is permissible. If a pilgrim in the sacred state of iḥrām intentionally kills someone, the jurists also drew an analogy there between the accidental killing and the intentional killing - even though they are opposites.

وَأَخْطَئُوا - أَيْضًا - كُلُّهُمْ مَعَهُ فِي قِيَاسِهِمْ الْمُخْطِئَ فِي الصَّيْدِ يَقْتُلُهُ مُحْرِمًا عَلَى الْمُحْرِمِ يَقْتُلُهُ عَامِدًا، فَقَاسُوا - أَيْضًا - هُنَالِكَ الْخَطَأَ عَلَى الْعَمْدِ، وَهُوَ ضِدُّهُ.

L38470 All of them also erred with him in their analogy of the intentional neglect

وَأَخْطَئُوا - أَيْضًا - مَعَهُ كُلُّهُمْ فِي قِيَاسِهِمْ تَرْكَ الصَّلَاةِ عَمْدًا عَلَى تَرْكِهَا نِسْيَانًا.

of prayer to its unintentional neglect.

L38471 Al-Shafi'i also committed another error alongside them in this chapter—their collective assertion that one who intentionally says the salām to conclude the prayer before completing it should not be analogized, regarding the obligation of the two prostrations upon him, to one who concludes the prayer before completing it out of forgetfulness. This is the nature of analogy and of all their statements in their analogies: each part demolishes another and invalidates another? Abu Muhammad said: Since there is no evidence—neither from the Qur'an nor from the Sunnah—for imposing expiation on an intentional killer, then indeed Allah the Exalted says, "We have omitted nothing in the Book" (6:38), and He says, "This day I have perfected for you your religion and completed My favor upon you and have approved for you Islam as religion" (5:3), and the Messenger of Allah (peace and blessings be upon him) said, "Your blood and your wealth are sacred to you."[54]

L38472 Thus, it is established that the entire religion has indeed been perfected, and Allah, the Exalted, and His Messenger, peace be upon him, have clarified it.

L38473 And with certainty, we are convinced that if there were a specified expiation for intentional killing, Allah the Most High would have ordained it, just as He has ordained for us the expiation in cases of involuntary homicide.

L38474 As the Messenger of Allah (peace and blessings be upon him) has clarified to us, retaliation, blood money (diyah), or compensation apply in such cases.

L38475 Since God Almighty did not inform us of any of that, nor did He or His Messenger—peace be upon him—make it obligatory, we testify by God's testimony that He never at any point intended a specified expiation for it. Rather, God Almighty says, "We will set up the scales of justice on the Day of Resurrection" [Al-Anbiyā' 21:47] up to His words, "and sufficient are We as reckoners" [Al-Anbiyā' 21:47]. He also says, "Indeed, good deeds erase misdeeds" [Hūd 11:114]. Thus, whoever is tested by committing the intentional

وَقَدْ شَارَكَهُمَا الشَّافِعِيُّ - أَيْضًا - فِي خَطَأٍ آخَرَ فِي هَذَا الْبَابِ، وَهُوَ قَوْلُهُمْ كُلُّهُمْ: أَنْ لَا يُقَاسَ مُتَعَمِّدُ التَّسْلِيمِ مِنْ الصَّلَاةِ قَبْلَ إتْمَامِهَا فِي إيجَابِ السَّجْدَتَيْنِ عَلَيْهِ عَلَى الْمُسَلِّمِ مِنْ الصَّلَاةِ قَبْلَ إتْمَامِهَا نِسْيَانًا فَهَذِهِ صِفَةُ الْقِيَاسِ، وَصِفَةُ أَقْوَالِهِمْ فِي قِيَاسَاتِهِمْ كُلِّهَا: يَهْدِمُ بَعْضُهَا بَعْضًا، وَيَنْقُضُ بَعْضُهَا بَعْضًا؟ قَالَ أَبُو مُحَمَّدٍ: فَإِذْ لَا حُجَّةَ فِي إيجَابِ الْكَفَّارَةِ عَلَى قَاتِلِ الْعَمْدِ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، فَإِنَّ اللَّهَ تَعَالَى يَقُولُ {مَا فَرَّطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ} [الأنعام: ٣٨] ، وَقَالَ تَعَالَى {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتْمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيتُ لَكُمُ الإِسْلامَ دِينًا} [المائدة: ٣] ، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَصَحَّ أَنَّ الدِّينَ كُلَّهُ قَدْ كَمُلَ وَبَيَّنَهُ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَبِيَقِينٍ نَدْرِي أَنَّهُ لَوْ كَانَ فِي قَتْلِ الْعَمْدِ كَفَّارَةٌ مَحْدُودَةٌ لَبَيَّنَهَا اللَّهُ تَعَالَى، كَمَا بَيَّنَ لَنَا الْكَفَّارَةَ فِي قَتْلِ الْخَطَأِ.

وَكَمَا بَيَّنَ لَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وُجُودَ الْقَوَدِ، أَوْ الدِّيَةِ، أَوْ الْمُفَادَاةِ، فِي ذَلِكَ.

فَإِذْ لَمْ يُخْبِرْنَا اللَّهُ تَعَالَى بِشَيْءٍ مِنْ ذَلِكَ، وَلَا أَوْجَبَهُ هُوَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى: أَنَّهُ مَا أَرَادَ قَطُّ كَفَّارَةً مَحْدُودَةً فِي ذَلِكَ، وَلَكِنَّ اللَّهَ تَعَالَى يَقُولُ {وَنَضَعُ الْمَوَازِينَ الْقِسْطَ لِيَوْمِ الْقِيَامَةِ} [الأنبياء: ٤٧] إلَى قَوْله تَعَالَى {وَكَفَى بِنَا حَاسِبِينَ} [الأنبياء: ٤٧] ، وَقَالَ تَعَالَى: {إنَّ الْحَسَنَاتِ يُذْهِبْنَ السَّيِّئَاتِ} [هود: ١١٤] ، فَمَنْ ابْتُلِيَ بِقَتْلِ مُسْلِمٍ عَمْدًا فَقَدْ ابْتُلِيَ بِأَكْبَرِ الْكَبَائِرِ بَعْدَ الشِّرْكِ، وَتَرْكِ

[54] **Qur'an references (L38471):** Qur'an 6:38 (Al-An'am); Qur'an 5:3 (Al-Ma'idah).

killing of a Muslim has committed the gravest major sins after polytheism, namely abandoning prayer. It is incumbent upon him to strive for his deliverance from the Fire. Let him increase his acts of goodness: freeing slaves, giving charity, engaging in jihad, performing pilgrimage, fasting, praying, and remembering God Almighty—so that he may bring forth from these deeds an equivalent measure to his sin of killing, thereby expiating it.[55]

L38476–38477 We ask Allah for well-being and protection.

A current case where a woman's condition nullifies the menstrual/postpartum excuse of another woman, or a man who nullifies it through sexual intercourse or other means.

L38478

L38479 Issue: A female slave caused another to lose her virginity, or a man did so through intercourse or other means? Abū Muḥammad said: Narrated by ʿAbdullāh ibn Rabīʿ → ʿAbdullāh ibn Muḥammad ibn ʿUthmān → Aḥmad ibn Khālid → ʿAlī ibn ʿAbd al-ʿAzīz → al-Ḥajjāj ibn al-Minhāl → Ḥammād ibn Salamah → Jaʿfar ibn Abī Waḥshiyyah → al-Shaʿbī: Some young girls from Ḥimṣ used to visit one another and exchange gifts. They were shown something and gestured in response, then played the mock-fighting game. One girl climbed onto another, and a third jabbed her sharply, causing her to fall and lose her virginity. ʿAbd al-Malik ibn Marwān asked Qabīṣah ibn Dhuʾayb and Faḍālah ibn ʿUbayd about this. They both said: The blood money is divided into thirds, and her share of liability remains, because she contributed to her own harm. He wrote to Iraq and asked ʿAbdullāh ibn Maʿqil ibn Muqarrin about it. He said: They are absolved of responsibility except the one who jabbed her. Al-Shaʿbī concurred with ʿAbdullāh's opinion. Al-Shaʿbī added: She is entitled to the blood money for the injury.

L38480 Narrated by Ḥammād ibn Dāwūd from ʿAbdullāh ibn Qays: Three slave girls were disputing—one declared "I am the husband," another "I am the wife," and the third "I am the father." The one claiming to be the husband prodded the one claiming to be the wife, resulting in the loss of her virginity. ʿAbd al-

الصَّلَاةِ: فَفَرْضٌ عَلَيْهِ أَنْ يَسْعَى فِي خَلَاصِ نَفْسِهِ مِنْ النَّارِ فَلْيُكْثِرْ مِنْ فِعْلِ الْخَيْرِ: الْعِتْقِ، وَالصَّدَقَةِ، وَالْجِهَادِ، وَالْحَجِّ، وَالصَّوْمِ وَالصَّلَاةِ، وَذِكْرِ اللَّهِ تَعَالَى - فَلَعَلَّهُ يَأْتِي مِنْ ذَلِكَ بِمِقْدَارٍ يُوَازِي إسَاءَتَهُ فِي الْقَتْلِ، فَيَسْقُطَ عَنْهُ.

وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

[مَسْأَلَةٌ جَارِيَةٌ أَذْهَبَتْ عُذْرَةَ أُخْرَى أَوْ رَجُلٌ فَعَلَ ذَلِكَ بِجِمَاعٍ أَوْ غَيْرِهِ]

٢٠٩٩ - مَسْأَلَةٌ: جَارِيَةٌ أَذْهَبَتْ عُذْرَةَ أُخْرَى، أَوْ رَجُلٌ فَعَلَ ذَلِكَ بِجِمَاعٍ، أَوْ غَيْرِهِ؟ قَالَ أَبُو مُحَمَّدٍ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ أَنَا جَعْفَرُ بْنُ أَبِي وَحْشِيَّةَ عَنْ الشَّعْبِيِّ: أَنَّ جَوَارِيَ مِنْ أَهْلِ حِمْصَ كُنَّ يَتَزَاوَرْنَ، وَيَتَهَادَيْنَ، فَأُرِينَ، وَأَشَرْنَ، فَلَعِبْنَ الْأَخْرِقَةَ فَرَكِبَتْ وَاحِدَةٌ عَلَى الْأُخْرَى، وَنَخَسَتْهَا الثَّالِثَةُ، فَوَقَعَتْ: فَذَهَبَتْ عُذْرَتُهَا، فَسَأَلَ عَبْدُ الْمَلِكِ بْنُ مَرْوَانَ قَبِيصَةَ بْنَ ذُؤَيْبٍ، وَفَضَالَةَ بْنَ عُبَيْدٍ عَنْ ذَلِكَ؟ فَقَالَا جَمِيعًا: الدِّيَةُ ثَلَاثَةُ أَثْلَاثٍ، وَتَبْقَى حِصَّتُهَا، لِأَنَّهَا أَعَانَتْ عَلَى نَفْسِهَا؟ فَكَتَبَ إلَى الْعِرَاقِ: فَسَأَلَ عَبْدَ اللَّهِ بْنَ مَعْقِلِ بْنِ مُقَرِّنٍ عَنْ ذَلِكَ؟ فَقَالَ: بُرِينَ مِنْ نَطْفِهَا إلَّا مَنْ نَخَسَتْهَا - وَقَالَ الشَّعْبِيُّ مِثْلَ قَوْلِ عَبْدِ اللَّهِ - وَقَالَ الشَّعْبِيُّ: لَهَا الْعُقْرُ.

وَبِهِ - إلَى حَمَّادِ بْنِ دَاوُد عَنْ عَبْدِ اللَّهِ بْنِ قَيْسٍ أَنَّ ثَلَاثَ جَوَارٍ قَالَتْ إحْدَاهُنَّ: أَنَا الزَّوْجُ، وَقَالَتْ الْأُخْرَى: أَنَا الزَّوْجَةُ، وَقَالَتْ الْأُخْرَى: أَنَا الْأَبُ، فَنَخَسَتْ الَّتِي قَالَتْ:

[55] **Qur'an references (L38475):** Qur'an 21:47 (Al-Anbya); Qur'an 11:114 (Hud).

Malik ibn Marwān ruled that blood money was collectively due from them. Al-Shaʿbī said: "She is entitled to *al-ʿuqr* (compensation for reproductive injury)."

أَنَا الزَّوْجُ الَّتِي قَالَتْ: أَنَا الزَّوْجَةُ، فَذَهَبَتْ عُذْرَتُهَا، فَقَضَى عَبْدُ الْمَلِكِ بْنُ مَرْوَانَ، بِالدِّيَةِ عَلَيْهِنَّ - وَقَالَ الشَّعْبِيُّ: لَهَا الْعُقْرُ.

L38481 From Hammad, who narrated to us through Humaid from Bakr ibn Abdullah: Two female servants entered the bathhouse, and one pushed the other, causing the loss of her virginity. Shurayh ruled: She is entitled to her *uqr*.

وَبِهِ - إِلَى حَمَّادٍ نا حُمَيْدٌ عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ: أَنَّ جَارِيَتَيْنِ دَخَلَتَا الْحَمَّامَ فَدَفَعَتْ إِحْدَاهُمَا الْأُخْرَى، فَذَهَبَتْ عُذْرَتُهَا؟ فَقَالَ شُرَيْحٌ: لَهَا عُقْرُهَا.

L38482 And through him (from Hammad): Dawud ibn Abi Hind narrated to us from Amr ibn Shuʿayb that a man coerced a female slave and deflowered her. Umar ibn al-Khattab said, "This is a penetrating wound (jāʾifah)," and he ruled she was entitled to one-third of the blood money (diyah).

وَبِهِ - إِلَى حَمَّادٍ نا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ: أَنَّ رَجُلًا اسْتَكْرَهَ جَارِيَةً فَافْتَضَّهَا؟ فَقَالَ عُمَرُ بْنُ الْخَطَّابِ هِيَ جَائِفَةٌ، فَقَضَى لَهَا عُمَرُ بِثُلُثِ الدِّيَةِ.

L38483 Abu Muhammad said: These are two issues: in one of them is the statement of Fadalah ibn ʿUbayd—who was a Companion from among the judges of the Companions (may Allah be pleased with them)—with no dissenter among them known to oppose his position on that matter.

قَالَ أَبُو مُحَمَّدٍ: هَاتَانِ مَسْأَلَتَانِ: فِي إِحْدَاهُمَا - قَوْلُ فَضَالَةَ بْنِ عُبَيْدٍ - وَهُوَ صَاحِبٌ مِنْ قُضَاةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْهُمْ.

L38484 And the other [issue] contains the statement of ʿUmar ibn al-Khaṭṭāb, and no dissenter against him from the Companions is known in that matter, either.

وَالْأُخْرَى - فِيهَا قَوْلُ عُمَرَ بْنِ الْخَطَّابِ، وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ أَيْضًا.

L38485–38487 All dissenting attendees from among the Maliki, Hanafi, and Shafi'i jurists: They oppose them in this matter—do they magnify the disagreement of a Companion when it aligns with their taqlīd, yet disregard it when it contradicts their taqlīd? Ali said: As for a woman who removes the hymen of another woman through piercing or similar means, this constitutes aggression. Retaliation is exacted from her in the same manner if she is a virgin. If she is non-virgin, there remains no basis for retaliation in this matter, leaving only disciplinary correction. The evidence for this is Allah's statement: "So whoever transgresses against you, retaliate against him in the same manner he transgressed against you" [Al-Baqarah: 194], and the declaration of Allah's Messenger (peace be upon him): "Whoever among you witnesses a reprehensible act, let him rectify it with his hand if he is able."[56]

وَجَمِيعُ الْحَاضِرِينَ الْمُخَالِفِينَ مِنْ الْمَالِكِيِّينَ، وَالْحَنَفِيِّينَ، وَالشَّافِعِيِّينَ: مُخَالِفُونَ لَهُمَا فِي ذَلِكَ، وَهُمْ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ إذَا وَافَقَ تَقْلِيدَهُمْ، وَلَا يُبَالُونَ بِهِ إذَا خَالَفَ تَقْلِيدَهُمْ؟ قَالَ عَلِيٌّ: أَمَّا الْمَرْأَةُ تُذْهِبُ عُذْرَةَ الْمَرْأَةِ بِنَخْسَةٍ، أَوْ نَحْوِ ذَلِكَ فَإِنَّهُ عُدْوَانٌ يُقْتَصُّ مِنْهَا بِمِثْلِ ذَلِكَ إنْ كَانَتْ بِكْرًا، فَإِنْ كَانَتْ ثَيِّبًا فَقَدْ عَدِمَتْ مَا يُقْتَصُّ مِنْهَا فِيهِ، فَلَيْسَ إلَّا الْأَدَبُ؟ بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] ، وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ» .

[56] **Qur'an references (L38485):** Qur'an 2:194 (Al-Baqarah).

L38488 Thus, the obligation of qisas is established in what one is capable of, and disciplinary punishment by hand is valid as a rebuke and elimination of the reprehensible in cases where qisas cannot be enforced, and with Allah, the Exalted, is success. There is no financial penalty in this matter at all, because wealth is protected; thus, no fine may be legitimately imposed without scriptural evidence or consensus.

L38489 Similarly, *ʿuqr* has no relevance here, because *ʿuqr* is the dower, and the dower applies exclusively to marriage, not to anything else. By Allah, Allah the Exalted certainly knew that this issue would occur and come to pass.

L38490 And we swear by Allah: If Allah the Exalted had willed that there be any financial penalty in that matter, He would have clarified it and He would not have neglected it. Since He, the Exalted, did not do so, He did not intend to impose any liability in it whatsoever—and no one's statement constitutes a valid proof except the Messenger of Allah, peace and blessings be upon him. And divine enablement is from Allah, the Exalted.

L38491 ## The Issue of Virtuous Rivalry

L38492 2100 - Issue: Competing Claims? ʿAlī said: Humām narrated to us: ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bājī narrated to us: ʿAbdullāh ibn Yūnus narrated to us: Baqī ibn Makhlad narrated to us: Abū Bakr ibn Abī Shaybah narrated to us: Wakīʿ narrated to us: al-Masʿūdī reported from al-Qāsim ibn ʿAbd al-Raḥmān, who said: A man approached with a slave girl from al-Qādisiyyah and passed by a man standing on a mount. The man prodded the mount, causing it to lift its leg and strike the girl's eye directly without missing. The case was brought before Salmān ibn Rabīʿah al-Bāhilī, who ruled the man on the mount liable for compensation. When Ibn Masʿūd learned of this, he said: "The liability rests upon the man—only the prodder is liable."

L38493–38494 From Shuraih: The piercer is liable for it – and from Ash-Sha'bi: the same as that.

L38495 Abū Muḥammad said: This is an issue wherein they differed as you observe: Salmān ibn Rabīʿah imposed liability on the rider, while Ibn Masʿūd imposed

فَصَحَّ وُجُوبُ الْقَوَدِ فِيمَا قَدَرَ عَلَيْهِ، وَصَحَّ الْأَدَبُ بِالْيَدِ إنْكَارًا وَتَغْيِيرًا لِلْمُنْكَرِ فِيمَا عَجَزَ عَنْ الْقَوَدِ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَلَا غَرَامَةَ فِي ذَلِكَ أَصْلًا، لِأَنَّ الْأَمْوَالَ مَحْظُورَةٌ، فَلَا تَحِلُّ غَرَامَةٌ بِغَيْرِ نَصٍّ وَلَا إجْمَاعَ.

وَكَذَلِكَ لَا مَدْخَلَ لِلْعُقْرِ هَاهُنَا، لِأَنَّ الْعُقْرَ هُوَ الْمَهْرُ، وَالْمَهْرُ إنَّمَا هُوَ فِي النِّكَاحِ لَا فِيمَا عَدَاهُ - وَبِاَللَّهِ لَقَدْ عَلِمَ اللَّهُ تَعَالَى أَنَّ هَذِهِ الْمَسْأَلَةَ سَتَقَعُ وَتَكُونُ.

وَنَحْنُ نُقْسِمُ بِاَللَّهِ: لَوْ أَرَادَ اللَّهُ تَعَالَى أَنْ تَكُونَ فِي ذَلِكَ غَرَامَةٌ لَبَيَّنَهَا، وَلَمَا أَغْفَلَهَا، فَإِذْ لَمْ يَفْعَلْ تَعَالَى ذَلِكَ فَمَا أَرَادَ أَنْ يَجْعَلَ فِيهَا غُرْمًا أَصْلًا - وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ التَّنَافُسُ]

٢١٠٠ - مَسْأَلَةٌ: التَّنَافُسُ؟ قَالَ عَلِيٌّ: نا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا وَكِيعٌ نا الْمَسْعُودِيُّ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: أَقْبَلَ رَجُلٌ بِجَارِيَةٍ مِنْ الْقَادِسِيَّةِ فَمَرَّ عَلَى رَجُلٍ وَاقِفٍ عَلَى دَابَّةٍ، فَنَخَسَ الرَّجُلُ الدَّابَّةَ، فَرَفَعَتْ الدَّابَّةُ رِجْلَهَا فَلَمْ تُخْطِئْ عَيْنَ الْجَارِيَةِ، فَرُفِعَ إلَى سَلْمَانَ بْنِ رَبِيعَةَ الْبَاهِلِيِّ، فَضَمَّنَ الرَّاكِبَ، فَبَلَغَ ذَلِكَ ابْنَ مَسْعُودٍ، فَقَالَ: عَلَى الرَّجُلِ، إنَّمَا يَضْمَنُ النَّاخِسُ.

عَنْ شُرَيْحٍ: يَضْمَنُهَا النَّاخِسُ - وَعَنْ الشَّعْبِيِّ مِثْلُ ذَلِكَ.

liability on the prodder? ʿAlī said: The prodder is the one directly involved in spurring the animal, thus he bears liability for whatever harm it causes. Therefore, liability applies to property. As for persons – if he intended to spur it to strike a specific individual or some members of a group whose presence the prodder was aware of, he is an intentional killer and wrongdoer, subject to retaliation (qiwād) in all such cases – he is liable for the blood money or ransom for the life. If he did not know anyone was present there, he is an unintentional killer – the blood money falls upon the liable kin-group (ʿāqilah), and he must perform expiation (kaffārah). Success comes solely from Allāh, the Exalted.

قَالَ أَبُو مُحَمَّد: فَهَذِهِ مَسْأَلَةٌ اخْتَلَفُوا فِيهَا كَمَا تَرَى: سَلْمَانَ بْنَ رَبِيعَةَ ضَمَّنَ الرَّاكِبَ، وَابْنُ مَسْعُودٍ ضَمَّنَ النَّاخِسَ؟ قَالَ عَلِيٌّ: النَّاخِسُ هُوَ الْمُبَاشِرُ لِتَحْرِيكِ الدَّابَّةِ، فَهُوَ ضَامِنٌ مَا أَصَابَتْ، فَفِي الْمَالِ الضَّمَانُ. وَأَمَّا فِي الرَّجُلِ - فَإِنْ كَانَ قَصَدَ إلَى تَحْرِيكِهَا لِتَضْرِبَ إنْسَانًا بِعَيْنِهِ، أَوْ بَعْضَ جَمَاعَةٍ عَلِمَ بِهَا النَّاخِسُ: فَهُوَ قَاتِلٌ عَمْدٌ، وَجَانٍ، عَلَيْهِ الْقَوَدُ فِي ذَلِكَ كُلِّهِ، وَعَلَيْهِ فِي النَّفْسِ الدِّيَةُ، أَوْ الْمُفَادَاةُ - وَإِنْ كَانَ لَا يَدْرِي أَنَّ هُنَالِكَ أَحَدًا: فَهُوَ قَاتِلٌ خَطَأً، وَالدِّيَةُ عَلَى الْعَاقِلَةِ، وَعَلَيْهِ الْكَفَّارَةُ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A legal case: killing a person who willingly surrenders himself to death.

[مَسْأَلَةٌ قَتَلَ إنْسَانًا يَجُودُ بِنَفْسِهِ لِلْمَوْتِ]

Question 2101: Concerning one who kills a person in the act of surrendering his soul to death. Ali said: We received a narration via the chain of Abu Bakr ibn Abi Shaybah – Yahya ibn Azhar – Zuhayr – Jabir – al-Sha'bi regarding a man who killed another whose soul had left half his body. He said: He is liable for his blood money (diyah).

٢١٠١ - مَسْأَلَةٌ: فِيمَنْ قَتَلَ إنْسَانًا يَجُودُ بِنَفْسِهِ لِلْمَوْتِ؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ أَزْهَرَ نا زُهَيْرٌ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ فِي رَجُلٍ قَتَلَ رَجُلًا قَدْ ذَهَبَتْ الرُّوحُ مِنْ نِصْفِ جَسَدِهِ؟ قَالَ: يَضْمَنُهُ.

Ali said: No two individuals from the entire Ummah disagree that whoever nears the departure of his soul due to illness, injury, intentional offense, or unintentional harm—and a deceased person [for whom he is entitled to inherit] dies—he inherits him. If he was a slave who was emancipated, he inherits him, then his free heirs inherit from him. If he was capable of speech and embraced Islam while previously being a disbeliever—while retaining discernment thereafter—he is considered a Muslim, and his Muslim family members inherit him. If he witnesses [his condition] and perceives [reality], even if only a single breath separates him from death, and the legatee to whom he bequeathed a legacy dies, the legacy becomes rightfully due, and the legatee's heirs inherit it from him.

قَالَ عَلِيٌّ: لَا يَخْتَلِفُ اثْنَانِ مِنْ الْأُمَّةِ كُلِّهَا فِي أَنَّ مَنْ قَرُبَتْ نَفْسُهُ مِنْ الزَّهُوقِ بِعِلَّةٍ، أَوْ بِجِرَاحَةٍ، أَوْ بِجِنَايَةٍ بِعَمْدٍ، أَوْ خَطَأٍ، فَمَاتَ لَهُ مَيِّتٌ، فَإِنَّهُ يَرِثُهُ - وَإِنْ كَانَ عَبْدًا فَأُعْتِقَ، فَإِنَّهُ يَرِثُهُ وَرَثَتُهُ مِنْ الْأَحْرَارِ - وَأَنَّهُ إنْ قَدَرَ عَلَى الْكَلَامِ فَأَسْلَمَ - وَكَانَ كَافِرًا - وَهُوَ يُمَيِّزُ بَعْدُ - فَإِنَّهُ مُسْلِمٌ يَرِثُهُ أَهْلُهُ مِنْ الْمُسْلِمِينَ، وَأَنَّهُ إنْ عَايَنَ وَشَخَّصَ وَلَوْ يَكُنْ بَيْنَهُ وَبَيْنَ الْمَوْتِ إلَّا نَفَسٌ وَاحِدٌ، فَمَاتَ مَنْ أَوْصَى لَهُ بِوَصِيَّةٍ، فَإِنَّهُ قَدْ اسْتَحَقَّ الْوَصِيَّةَ، وَيَرِثُهَا عَنْهُ وَرَثَتُهُ.

Thus, it is confirmed that he remains alive without doubt, for no two people among the people of the Sharia or others disagree that there are only two states: alive or dead, with no third option. Since this is established, and

we are certain that Allah the Exalted has prohibited hastening his death, causing him distress, or depriving him of breath, we know with absolute certainty and necessity that his killer is unquestionably a killer of a person. Therefore, whoever intentionally kills him in that state is an intentional killer, and whoever kills him unintentionally is an unintentional killer. For the intentional killer: retribution (qisas), blood money, or ransom apply. For the unintentional killer: expiation is required, with blood money imposed on his agnatic relatives. Similarly, retribution (qisas) applies to injuries against limbs in cases of intentional harm. And with Allah, the Exalted, is success.

فَصَحَّ أَنَّهُ حَيٌّ بَعْدُ بِلَا شَكٍّ، إذْ لَا يَخْتَلِفُ اثْنَانِ مِنْ أَهْلِ الشَّرِيعَةِ وَغَيْرِهِمْ، فِي أَنَّهُ لَيْسَ إلَّا حَيٌّ أَوْ مَيِّتٌ، وَلَا سَبِيلَ إلَى الْقَسَمِ، فَإِذْ هُوَ كَذَلِكَ، وَكُنَّا عَلَى يَقِينٍ مِنْ أَنَّ اللَّهَ تَعَالَى قَدْ حَرَّمَ إعْجَالَ مَوْتِهِ وَغَمِّهِ، وَمَنْعَهُ النَّفَسَ: فَبِيَقِينٍ وَضَرُورَةٍ نَدْرِي أَنَّ قَاتِلَهُ قَاتِلُ نَفْسٍ بِلَا شَكٍّ، فَمَنْ قَتَلَهُ فِي تِلْكَ الْحَالِ عَمْدًا: فَهُوَ قَاتِلُ نَفْسٍ عَمْدًا، وَمَنْ قَتَلَهُ خَطَأً فَهُوَ قَاتِلٌ خَطَأً - وَعَلَى الْعَامِدِ: الْقَوَدُ، أَوْ الدِّيَةُ، أَوْ الْمُفَادَاةُ، وَعَلَى الْمُخْطِئِ الْكَفَّارَةُ، وَالدِّيَةُ عَلَى عَاقِلَتِهِ، وَكَذَلِكَ فِي أَعْضَائِهِ الْقَوَدُ فِي الْعَمْدِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ هَلْ لِلْوَلِيِّ عَفْوٌ فِي قَتْلِ الْغِيلَةِ أَوْ الْحِرَابَةِ]

مَسْأَلَةٌ:

هَلْ لِلْوَلِيِّ عَفْوٌ فِي قَتْلِ الْغِيلَةِ، أَوْ الْحِرَابَةِ؟ قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: لَا عَفْوَ فِي ذَلِكَ لِلْوَلِيِّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ نا ابْنُ أَبِي الزِّنَادِ عَنْ أَبِيهِ أَنَّهُ قَالَ فِي قَتْلِ الْغِيلَةِ: إذَا بُلِّــغَ الْإِمَامُ، فَلَيْسَ لِوَلِيِّ الْمَقْتُولِ أَنْ يَعْفُوَ، وَلَيْسَ لِلْإِمَامِ أَنْ يَعْفُوَ، وَإِنَّمَا هُوَ حَدٌّ مِنْ حُدُودِ اللَّهِ تَعَالَى.

قَالَ عَلِيٌّ: وَبِهَذَا يَقُولُ مَالِكٌ، وَرَأَى ذَلِكَ أَيْضًا فِي قَاتِلِ الْحِرَابَةِ حَتَّى إنَّهُ رَأَى فِي ذَلِكَ أَنْ يُقْتَلَ الْمُؤْمِنَ بِالْكَافِرِ.

وَقَالَ آخَرُونَ: بَلْ لِوَلِيِّهِ مَا لِوَلِيِّ غَيْرِهِ مِنْ الْقَتْلِ، أَوْ الْعَفْوِ، أَوْ الدِّيَةِ.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سِمَاكِ بْنِ الْفَضْلِ: أَنَّ عُرْوَةَ كَتَبَ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي رَجُلٍ خَنَقَ صَبِيًّا عَلَى أَوْضَاحٍ لَهُ حَتَّى قَتَلَهُ، فَوَجَدُوهُ وَالْحَبْلُ فِي يَدِهِ، فَاعْتَرَفَ بِذَلِكَ، فَكَتَبَ: أَنْ ادْفَعُوهُ إلَى أَوْلِيَاءِ الصَّبِيِّ، فَإِنْ شَاءُوا قَتَلُوهُ.

وَبِهَذَا يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِيَلُوحَ الصَّوَابُ فِي ذَلِكَ مِنْ الْخَطَأِ؟ فَوَجَدْنَا الْقَائِلِينَ فِي ذَلِكَ بِأَنَّهُ لَيْسَ لِلْوَلِيِّ عَفْوٌ فِي ذَلِكَ يَحْتَجُّونَ: بِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا عَبْدُ بْنُ حُمَيْدٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي

Issue: Is the heir entitled to pardon in cases of ghilah (premeditated ambush killing) or ḥirābah (banditry/unlawful warfare)?

Issue:

Does the legal guardian have the right to pardon in cases of stealth killing (al-ghīlah) or banditry/terrorism (al-ḥirābah)? ʿAlī said: "People have differed on this matter. A school of thought held that there is no pardon for the legal guardian in such cases." ʿAbdullāh ibn Rabīʿ narrated to us; Ibn Mufarrij narrated to us; Qāsim ibn Aṣbagh narrated to us; Ibn Waḍḍāḥ narrated to us; Saḥnūn narrated to us; Ibn Wahb narrated to us; Ibn Abī al-Zinād reported from his father regarding stealth killing: "Once the Imam has been notified, the legal guardian of the slain may not pardon, nor may the Imam pardon. It is solely a ḥadd among the ḥudūd of Allah the Exalted."

Ali said: Malik also holds this opinion, and he further maintained this view concerning the killer in ḥirābah, even to the extent that he held that a believer should be executed for [the killing of] a disbeliever.

Others have said: Rather, the guardian has the same options as the guardian of another—retribution, pardon, or blood money.

As it was narrated to us through the chain of Abd al-Razzaq from Simak ibn al-Fadl: Urwah wrote to Umar ibn Abd al-Aziz concerning a man who strangled a boy over his belongings until he killed him. They found him with the rope in his hand, and he confessed to that. Umar wrote: "Hand him over to the boy's guardians; if they wish, they may kill him."

And with this, Abu Hanifah, al-Shafi'i, Abu Sulayman, and their companions said.

Abu Muhammad said: When they differed as we have mentioned, it became incumbent upon us to examine this matter so that correctness in it might become distinguished from error? We found those who assert that the guardian holds no right to pardon in such cases citing as evidence what was narrated to us through the chain of transmission of Imam Muslim: Abdullah ibn Hu-

maid reported to us; Abd al-Razzaq reported to us; Ma’mar narrated from Ayyub al-Sikhtiyani from Abu Qilabah from Anas: “A Jewish man killed a girl from the Ansar over jewelry she possessed, then threw her into a well and crushed her head with stones. He was seized and brought to the Messenger of Allah (peace and blessings be upon him), where he confessed. The Prophet ordered him to be stoned, and he was stoned to death.”

قِلَابَةَ عَنْ أَنَسٍ «أَنَّ رَجُلًا مِنَ الْيَهُودِ قَتَلَ جَارِيَةً مِنَ الْأَنْصَارِ عَلَى حُلِيٍّ لَهَا، ثُمَّ أَلْقَاهَا فِي الْقَلِيبِ، وَرَضَخَ رَأْسَهَا بِالْحِجَارَةِ، فَأُخِذَ وَأُتِيَ بِهِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَقَرَّ، فَأَمَرَ بِهِ أَنْ يُرْجَمَ، فَرُجِمَ حَتَّى مَاتَ» .

L38509 Through the chain of Muslim: Haddab ibn Khalid narrated to us, from Hammam, from Qatadah, from Anas ibn Malik: “A young girl was found with her head crushed between two stones. They asked her: ’Who did this to you? Was it so-and-so? So-and-so?’ until they mentioned a Jew. She nodded her head. The Jew was seized and confessed. The Messenger of Allah (peace be upon him) then commanded that his head be crushed with stones.”

وَمِنْ طَرِيقِ مُسْلِمٍ نا هَدَّابُ بْنُ خَالِدٍ نا هَمَّامٌ نا قَتَادَةُ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ جَارِيَةً وُجِدَتْ قَدْ رُضَّ رَأْسُهَا بَيْنَ حَجَرَيْنِ فَسَأَلُوهَا مَنْ صَنَعَ هَذَا بِكِ؟ فُلَانٌ، فُلَانٌ؟ حَتَّى ذَكَرُوا يَهُودِيًّا، فَأَوْمَأَتْ بِرَأْسِهَا، فَأُخِذَ الْيَهُودِيُّ فَأَقَرَّ فَأَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُرَضَّ رَأْسُهُ بِالْحِجَارَةِ» .

L38510–38511 And from the narration of Muslim in the hadith of al-ʿUrayniyyīn, he mentioned the hadith: “Their hands and feet were cut off, their eyes were gouged out, then they were abandoned under the sun until they died.”

وَمِنْ طَرِيقِ مُسْلِمٍ فِي حَدِيثِ الْعُرَنِيِّينَ فَذَكَرَ الْحَدِيثَ - وَفِيهِ “ فَقُطِعَتْ أَيْدِيهِمْ وَأَرْجُلُهُمْ وَسُمِلَ أَعْيُنُهُمْ، ثُمَّ نُبِذُوا فِي الشَّمْسِ حَتَّى مَاتُوا.

L38512 They mentioned what Ahmad ibn Umar narrated to us: al-Husayn ibn Yaʿqub narrated to us, Saʿd ibn Falḥūn narrated to us, Yusuf ibn Yahya al-Maʿafiri narrated to us, ʿAbd al-Malik ibn Habib narrated from Muṭarrif from Ibn Abi Dhi’b from Muslim ibn Habib al-Hudhali: that ʿAbdullah ibn ʿAmir wrote to ʿUthman ibn ʿAffan asking about a Muslim man who attacked a landowner (dihqan) and killed him for his wealth—what should be done? ʿUthman wrote back to him: “Execute him as retribution—for this man killed treacherously in an act of highway robbery (ḥirābah).”

وَذَكَرُوا مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ عُمَرَ نا الْحُسَيْنُ بْنُ يَعْقُوبَ نا سَعْدُ بْنُ فَلْحُونٍ نا يُوسُفُ بْنُ يَحْيَى الْمَعَافِرِيُّ نا عَبْدُ الْمَلِكِ بْنُ حَبِيبٍ عَنْ مُطَرِّفٍ عَنِ ابْنِ أَبِي ذِئْبٍ عَنْ مُسْلِمِ بْنِ حَبِيبٍ الْهُذَلِيِّ: أَنَّ عَبْدَ اللَّهِ بْنَ عَامِرٍ كَتَبَ إِلَى عُثْمَانَ بْنِ عَفَّانَ: أَنَّ رَجُلًا مِنَ الْمُسْلِمِينَ عَدَا عَلَى دِهْقَانٍ فَقَتَلَهُ عَلَى مَالِهِ؟ فَكَتَبَ إِلَيْهِ عُثْمَانُ: أَنْ اقْتُلْهُ بِهِ - فَإِنَّ هَذَا قَتَلَ غِيلَةً عَلَى الْحِرَابَةِ.

L38513 And through him—to ʿAbd al-Malik ibn Habib from Mutarrif from his maternal uncle al-Harith ibn ʿAbd al-Rahman: A Muslim man during the time of Aban ibn ʿUthman ibn ʿAffan killed a Nabaṭī at Dhu Humaid over wealth he had. I saw Aban ibn ʿUthman order the Muslim to be executed in retaliation for the Nabaṭī, as he had killed him treacherously. I witnessed this until the Muslim’s neck was struck.

وَبِهِ - إِلَى عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ عَنْ مُطَرِّفٍ عَنْ خَالِهِ الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ: أَنَّ رَجُلًا مُسْلِمًا فِي زَمَانِ أَبَانَ بْنِ عُثْمَانَ بْنِ عَفَّانَ قَتَلَ نَبَطِيًّا بِذِي حُمَيْتٍ عَلَى مَالٍ مَعَهُ، فَرَأَيْتُ أَبَانَ بْنَ عُثْمَانَ أَمَرَ بِالْمُسْلِمِ فَقُتِلَ بِالنَّبَطِيِّ، لِقَتْلِهِ إِيَّاهُ غِيلَةً فَرَأَيْتُه حَتَّى ضُرِبَتْ عُنُقُهُ.

وَعَنْ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ عَنْ مُطَرِّفٍ عَنْ ابْنِ أَبِي الزِّنَادِ عَنْ أَبِيهِ أَنَّهُ شَهِدَ أَبَانَ بْنَ عُثْمَانَ، إذْ قَتَلَ مُسْلِمًا بِنَصْرَانِيٍّ قَتَلَهُ قَتْلَ غِيلَةً.

L38514 From Abdul-Malik ibn Habib, from Mutarrif, from Ibn Abi al-Zinad, from his father, that he witnessed Aban ibn Uthman kill a Muslim in retribution for a Christian whom he killed by treacherous killing.

قَالَ عَلِيٌّ: فَقَالُوا: هَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَتَلَ الْيَهُودِيَّ، وَلَمْ يَجْعَلْ ذَلِكَ خِيَارًا لِأَوْلِيَاءِ الْجَارِيَةِ.

L38515 Ali said: They said, "This is the Messenger of Allah (may Allah's blessings and peace be upon him); he killed the Jew, yet he did not grant that option to the heirs of the female slave."

وَكَذَلِكَ قَتَلَ الْعُرَنِيِّينَ الَّذِينَ قَتَلُوا الرِّعَاءَ قَتْلَ حِرَابَةٍ وَغِيلَةٍ - وَلَمْ يَذْكُرُوا أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - جَعَلَ فِي ذَلِكَ خِيَارًا لِأَوْلِيَاءِ الرِّعَاءِ.

L38516 Similarly, he killed the al-ʿUrayniyyīn who killed the shepherds in the manner of highway robbery (ḥirābah) and treacherous ambush (ghīlah)—and they did not mention that he (peace and blessings be upon him) gave the shepherds' kinsmen entitled to retribution an option regarding that matter.

قَالُوا: وَهَذَا عُثْمَانُ - رَضِيَ اللَّهُ تَعَالَى عَنْهُ - قَدْ قَتَلَ الْمُسْلِمَ بِالْكَافِرِ، إذْ قَتَلَهُ غِيلَةً، وَلَمْ يَجْعَلْ فِي ذَلِكَ خِيَارًا لِوَلِيِّهِ، وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ؟ قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ لَهُمْ شَيْئًا يَشْغَبُونَ بِهِ إلَّا هَذَا، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ: أَمَّا حَدِيثُ الْيَهُودِيِّ الَّذِي رَضَخَ رَأْسَ الْجَارِيَةِ عَلَى أَوْضَاحِهَا فَلَيْسَ فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُشَاوِرْ وَلِيَّهَا، وَلَا أَنَّهُ شَاوَرَهُ، وَلَا أَنَّهُ قَالَ " اخْتَرْ " لِوَلِيِّ الْمَقْتُولِ فِي الْغِيلَةِ، أَوْ الْحِرَابَةِ، فَإِذَا لَمْ يَقُلْ ذَلِكَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَلَا يَحِلُّ لِمُسْلِمٍ أَنْ يَنْسِبَ ذَلِكَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيَكْذِبَ عَلَيْهِ، وَيَقُولَ عَلَيْهِ مَا لَمْ يَقُلْ.

L38517–38519 They said: "And this is Uthmān—may Allah the Exalted be pleased with him—who killed a Muslim in place of a disbeliever by slaying him treacherously, without granting his legal guardian the option in that matter, nor is any opposition to him known regarding this?" Abū Muḥammad said: "We know of nothing they dispute except this, and none of it contains any valid proof for them. As for the account of the Jew who crushed the girl's head for her jewelry, it does not state that..." The Messenger of Allah (peace and blessings of Allah be upon him) did not consult the slain's guardian, nor did he consult the guardian, nor did he say "choose" to the guardian of the slain in cases of stealth killing or highway robbery. Since he (peace and blessings of Allah be upon him) did not say this, it is not permissible for any Muslim to attribute such a statement to the Messenger of Allah (peace and blessings of Allah be upon him), thereby falsely attributing to him and ascribing to him what he did not say.

فَكَيْفَ وَهَذَا الْخَبَرُ حُجَّةٌ عَلَيْهِمْ فَإِنَّهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ قَاتِلَ الْغِيلَةِ، أَوْ الْحِرَابَةِ لَا يَجُوزُ أَلْبَتَّةَ أَنْ يُقْتَلَ رَضْخًا فِي الرَّأْسِ بِالْحِجَارَةِ، وَلَا رَجْمًا، وَهَذَا مَا لَا يَقُولُهُ أَحَدٌ مِنْ النَّاسِ.

L38520 How then, when this narration is a proof against them? For they unanimously agree that it is impermissible for the killer in treachery or highway robbery to be killed by crushing the head with stones or by stoning, and this is something no one among the scholars asserts.

فَصَحَّ يَقِينًا إذْ قَتَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَضْخًا بِالْحِجَارَةِ أَنَّهُ إنَّمَا قَتَلَهُ قَوَدًا بِالْحِجَارَةِ وَإِذْ قَتَلَهُ قَوَدًا بِهَا، فَحُكْمُ قَتْلِ الْقَوَدِ أَنْ يَكُونَ بِالْخِيَارِ فِي ذَلِكَ، أَوْ الْعَفْوِ لِلْوَلِيِّ،

L38521 It was firmly established with certainty that when the Messenger of Allah—peace and blessings of Allah be upon him—killed him by crushing him with stones, he did so solely as retaliation (qawd) through stoning. When

he carried out this retaliation with stones, the ruling for retaliatory killing dictates that the guardian holds the choice in this matter—to retaliate or pardon. Since this is undeniably established, it is authentically reported from the Prophet—peace and blessings of Allah be upon him—that he said: "Whoever is slain, their family has two options..." and so on.

وَإِذْ ذَلِكَ كَذَلِكَ بِلَا شَكٍّ، فَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «مَنْ قُتِلَ لَهُ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيرَتَيْنِ» إلَى آخِرِهِ.

L38522 We are certain that it is obligatory upon everyone to incorporate this ruling with this report. The narrators' silence about the Messenger of Allah—peace and blessings be upon him—granting the guardian the choice does not nullify what he—peace and blessings be upon him—established regarding murder concerning the guardian's choice. Without doubt, he—peace and blessings be upon him—did not contradict what he commanded, nor is this matter devoid of what we mentioned about accepting the transmitted addition in other texts entirely—for had this action been a specification or abrogation, he—peace and blessings be upon him—would have clarified it. Thus their argument collapses—and success comes solely from Allah, the Exalted.

فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ فَرْضًا عَلَى كُلِّ أَحَدٍ أَنْ يَضُمَّ هَذَا الْحُكْمَ إلَى هَذَا الْخَبَرِ وَلَيْسَ سُكُوتُ الرُّوَاةِ عَنْ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيَّرَ وَلِيَّهَا بِمُسْقِطٍ مَا أَوْجَبَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْقَتْلِ مِنْ تَخْيِيرِ وَلِيِّهِ، بَلْ بِلَا شَكٍّ فِي أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يُخَالِفْ مَا أَمَرَ بِهِ، وَلَا يَخْلُو هَذَا مِمَّا ذَكَرْنَا مِنْ قَبُولِ الزِّيَادَةِ الْمَرْوِيَّةِ فِي سَائِرِ النُّصُوصِ أَصْلًا - وَلَوْ كَانَ هَذَا الْفِعْلُ تَخْصِيصًا أَوْ نَسْخًا لَبَيَّنَهُ - عَلَيْهِ السَّلَامُ -، فَبَطَلَ تَعَلُّقُهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38523 As for the ḥadīth of the ʿUrānīyīn, there is no proof for them in it either—due to what we have mentioned concerning this report. It is the same, it is the same—in that it does not contain any indication that he (peace and blessings be upon him) did not consult the guardians of the shepherds (if they had guardians), nor that he said: "There is no choice in this for the guardian of the slain one." Since none of this is present within it, there is no proof for them nor for us in this report specifically pertaining to this issue. Therefore, we are obligated to seek its ruling from another place.

وَأَمَّا حَدِيثُ الْعُرَنِيِّينَ - فَلَا حُجَّةَ لَهُمْ فِيهِ أَيْضًا، لِمَا ذَكَرْنَا فِي هَذَا الْخَبَرِ - سَوَاءٌ سَوَاءٌ - مِنْ أَنَّهُ لَيْسَ فِيهِ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يُشَاوِرْ أَوْلِيَاءَ الرِّعَاءِ - إنْ كَانَ لَهُمْ أَوْلِيَاءُ - وَلَا أَنَّهُ قَالَ: لَا خِيَارَ فِي هَذَا لِوَلِيِّ الْمَقْتُولِ، فَإِذْ لَيْسَ فِيهِ شَيْءٌ مِنْ هَذَا فَلَا حُجَّةَ لَهُمْ وَلَا لَنَا بِهَذَا الْخَبَرِ فِي هَذِهِ الْمَسْأَلَةِ خَاصَّةً - فَوَجَبَ عَلَيْنَا طَلَبُ حُكْمِهَا بِمَوْضِعٍ آخَرَ.

L38524–38526 Then, this narration stands as evidence against them, based on what we transmitted through Muslim's chain: Yahyā ibn Yahyā al-Tamīmī reported to us from Hushaym, from ʿAbd al-ʿAzīz ibn Ṣuhayb and Ḥumayd, from Anas: that some men from ʿUraynah arrived — and he mentioned the ḥadīth — and in it: "They killed the shepherds, apostatized from Islam, and drove the herd of camels." The Messenger of Allah - may Allah bless him and grant him peace - sent after them, and they were brought to him. He cut off their hands and feet, gouged out their eyes, and left them in al-Harrah until they died.

ثُمَّ إنَّ هَذَا الْخَبَرَ حُجَّةٌ عَلَيْهِمْ، لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا يَحْيَى بْنُ يَحْيَى التَّمِيمِيُّ نا هُشَيْمٌ عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ، وَحُمَيْدٍ عَنْ أَنَسٍ: أَنَّ نَاسًا مِنْ عُرَيْنَةَ قَدِمُوا - وَذَكَرَ الْحَدِيثَ، وَفِيهِ: «أَنَّهُمْ قَتَلُوا الرِّعَاءَ، وَارْتَدُّوا عَنْ الْإِسْلَامِ، وَسَاقُوا ذَوْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَعَثَ فِي آثَارِهِمْ فَأُتِيَ بِهِمْ، فَقَطَعَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ وَسَمَلَ أَعْيُنَهُمْ وَتَرَكَهُمْ فِي الْحَرَّةِ حَتَّى مَاتُوا» .

L38527 Abu Muhammad said: These people apostatized from Islam, and the Malikis disagree with this ruling on three grounds:

قَالَ أَبُو مُحَمَّدٍ: فَهَؤُلَاءِ ارْتَدُّوا عَنْ الْإِسْلَامِ، وَالْمَالِكِيُّونَ هُمْ عَلَى خِلَافِ هَذَا الْحُكْمِ مِنْ وُجُوهٍ ثَلَاثَةٍ:

L38528 One of them is that the apostate is not to be killed in their view nor in our view; this type of killing is fundamentally impermissible at all.

أَحَدُهَا - أَنَّهُ لَا يُقْتَلُ الْمُرْتَدُّ عِنْدَهُمْ وَلَا عِنْدَنَا هَذِهِ الْقِتْلَةَ أَصْلًا.

L38529 The second ruling is that retribution (qisas) is not applied to the apostate in their view; rather, the punishment is either execution or sparing [him] if he repents.

وَالثَّانِي - أَنَّهُ لَا يُقْتَصُّ عِنْدَهُمْ مِنْ الْمُرْتَدِّ، وَإِنَّمَا هُوَ عِنْدَهُمْ الْقَتْلُ أَوْ التَّرْكُ، إنْ تَابَ.

L38530 The third [point] is that they assert the necessity of seeking repentance from the apostate, yet this hadith makes absolutely no mention of seeking his repentance whatsoever. Thus, it becomes evidence against them and contradicts their doctrine on this issue and others.

وَالثَّالِثُ - أَنَّهُمْ يَقُولُونَ بِاسْتِتَابَةِ الْمُرْتَدِّ، وَلَيْسَ فِي هَذَا الْحَدِيثِ ذِكْرُ اسْتِتَابَتِهِ أَلْبَتَّةَ، فَعَادَ حُجَّةً عَلَيْهِمْ، وَمُخَالِفًا لِقَوْلِهِمْ فِي هَذِهِ الْمَسْأَلَةِ وَغَيْرِهَا.

L38531 Ali said: As for the narration from Uthman—it is very weak—because it is from Abdul Malik ibn Habib, and he is utterly abandoned in narration, then from Muslim ibn Jundub—and Muslim ibn Jundub did not meet Uthman.

قَالَ عَلِيٌّ: وَأَمَّا الرِّوَايَةُ عَنْ عُثْمَانَ - فَضَعِيفَةٌ جِدًّا - لِأَنَّهَا عَنْ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ وَهُوَ سَاقِطُ الرِّوَايَةِ جِدًّا - ثُمَّ عَنْ مُسْلِمِ بْنِ جُنْدُبٍ - وَلَمْ يُدْرِكْ عُثْمَانَ.

L38532 Moreover, there is no proof in the statement of anyone apart from the Messenger of Allah—peace and blessings be upon him. How many cases exist where they opposed Uthman—may Allah be pleased with him—with a chain of narration stronger than this? Such as his ruling regarding one-third of the blood money for someone who struck another until they discharged fluid, with no known opposition from the Companions—may Allah be pleased with them. It is inconceivable that what is not authentically attributed to him could serve as proof for permitting bloodshed, while what is authentically attributed to him would not serve as proof in other matters. Abu Muhammad said: Since their reliance on the two narrations has been invalidated by what we have mentioned, and because the Ansari woman might have a guardian who is a minor with no right to choose, the Prophet—peace and blessings be upon him and his family—chose qisas (retaliation). This would apply if it were authentic that he—peace and blessings be upon him—did not grant the guardian a choice, but how could that be when it is never authenticated?

وَأَيْضًا - فَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَمْ قِصَّةٍ خَالَفُوا فِيهَا عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - بِأَصَحَّ مِنْ هَذَا السَّنَدِ؟ كَقَضَائِهِ فِي ثُلُثِ الدِّيَةِ فِيمَنْ ضَرَبَ آخَرَ حَتَّى سَلَحَ وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَمِنْ الْمُحَالِ أَنْ يَكُونَ مَا لَمْ يَصِحَّ عَنْهُ حُجَّةً فِي إبَاحَةِ الدِّمَاءِ، وَلَا يَكُونُ مَا صَحَّ عَنْهُ حُجَّةً فِي غَيْرِ ذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ: فَإِذْ قَدْ بَطَلَ تَعَلُّقُهُمْ بِالْخَبَرَيْنِ بِمَا ذَكَرْنَا، وَبِأَنَّهُ قَدْ يَكُونُ لِلْأَنْصَارِيَّةِ وَلِيٌّ صَغِيرٌ لَا خِيَارَ لَهُ؟ فَاخْتَارَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الْقَوَدَ - هَذَا لَوْ صَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يُخَيِّرْ الْوَلِيَّ فَكَيْفَ وَهُوَ لَا يَصِحُّ أَبَدًا.

L38533–38535 Similarly, it is possible that wards are strangers who have no guardian.

وَكَذَلِكَ الرِّعَاءُ قَدْ يُمْكِنُ أَنْ يَكُونُوا غُرَبَاءَ لَا وَلِيَّ لَهُمْ فَالْوَاجِبُ الرُّجُوعُ إلَى قَوْلِهِ تَعَالَى، وَقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ، فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى} [البقرة: ١٧٨] إلَى قَوْله تَعَالَى {ذَلِكَ تَخْفِيفٌ مِنْ رَبِّكُمْ وَرَحْمَةٌ} [البقرة: ١٧٨] فَعَمَّ تَعَالَى كُلَّ قَتْلٍ، كَمَا ذَكَرَ تَعَالَى، وَجَعَلَ الْعَفْوَ فِي ذَلِكَ لِلْوَلِيِّ.

Therefore, the obligatory act is to refer to the statement of Allah the Exalted and the statement of the Messenger of Allah—peace and blessings be upon him and his family—when He says: {If you disagree about anything, refer it to Allah and the Messenger} [An-Nisa: 59]. We find that Allah the Exalted states: {Retaliation in kind is ordained for you concerning the slain} [Al-Baqarah: 178] up to the verse where He says: {That is a relief from your Lord and a mercy} [Al-Baqarah: 178]. The Most High has encompassed all killings, as He, the Exalted, mentioned, and He assigned forgiveness in this matter to the legal guardian.[1]

L38536 وَصَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ: «وَمَنْ قُتِلَ لَهُ قَتِيلٌ بَعْدَ مَقَالَتِي هَذِهِ فَأَهْلُهُ بَيْنَ خِيَرَتَيْنِ» فَذَكَرَ الدِّيَةَ، أَوْ الْقَوَدَ، أَوْ الْمُفَادَاةَ - وَالدِّيَةُ لَا تَكُونُ إلَّا بِالْعَفْوِ عَنْ الْقَوَدِ بِلَا شَكٍّ، فَعَمَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَلَمْ يَخُصَّ.

It has been authentically reported from the Messenger of Allah—peace and blessings be upon him and his family—that he said: "Whoever has a relative killed after this statement of mine, their family must choose between two options." He mentioned [either] blood money or retaliation, or [the third scenario of] ransom—for blood money only becomes applicable, without doubt, when retaliation is waived. Thus, the Prophet—peace and blessings be upon him—spoke in general terms without specifying [exceptions].

L38537 وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى: أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ أَنْ يَخُصَّ مِنْ ذَلِكَ قَتْلَ غِيلَةٍ، أَوْ حِرَابَةٍ، لَمَا أَغْفَلَهُ وَلَا أَهْمَلَهُ وَلَبَيَّنَهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

And we bear witness by the testimony of Allah, the Most High, that had Allah, the Most High, willed to specify among such acts the killing by stealth or banditry, He would not have neglected nor disregarded it and would have certainly made it clear—peace and blessings be upon him and his family.

L38538 وَوَجَدْنَا اللَّهَ تَعَالَى قَدْ حَدَّ الْحِرَابَةَ {أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلافٍ أَوْ يُنْفَوْا مِنَ الأَرْضِ} [المائدة: ٣٣] ، فَلَا تَخْلُو هَذِهِ الْآيَةُ مِنْ أَنْ تَكُونَ عَلَى التَّرْتِيبِ، أَوْ التَّخْيِيرِ، فَإِنْ كَانَتْ عَلَى التَّرْتِيبِ، فَالْمَالِكِيُّونَ لَا يَقُولُونَ بِهَذَا " وَإِنْ كَانَتْ عَلَى التَّخْيِيرِ - وَهُوَ قَوْلُهُمْ - فَلَيْسَ فِي الْآيَةِ مَا يَدَّعُونَهُ مِنْ أَنَّ قَاتِلَ الْحِرَابَةِ، وَالْغِيلَةِ لَا خِيَارَ فِيهِ لِوَلِيِّ الْقَتِيلِ - فَخَرَجَ قَوْلُهُمْ عَنْ أَنْ يَكُونَ لَهُ مُتَعَلَّقٌ، أَوْ سَبَبٌ يَصِحُّ، فَبَطَلَ مَا قَالُوهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38538 We found that Allah, the Exalted, has prescribed the punishment for ḥirābah (highway robbery) as "being killed, crucified, having their hands and feet amputated crosswise, or exiled from the land" [Quran 5:33]. This verse must necessarily be interpreted as either indicating an ordered sequence or offering a choice. If it is taken to indicate an ordered sequence—a position the Malikis do not uphold—then this is invalid. If it is taken to indicate choice (which is their doctrine), the verse contains no basis for their claim that the guardian of the slain has no option regarding killers in ḥirābah (highway robbery) or ghīlah (treacherous ambush). Thus, their argument lacks any

[1] **Qur'an references (L38533):** Qur'an 4:59 (An-Nisa); Qur'an 2:178 (Al-Baqarah).

valid connection or legitimate reason to stand, rendering their claim void. And success comes solely from Allah, the Exalted.[2]

The Issue of Khulʿ from a Wrongdoing Spouse

L38539

L38540–38542 2103 - An Issue: The Expulsion of the Offender? Abū Muḥammad said: ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid al-Hamadānī narrated to us, Ibrāhīm ibn Aḥmad narrated to us, al-Farabarī narrated to us, al-Bukhārī narrated to us, Qutaybah ibn Saʿīd narrated to us, Abū Bishr Ismāʿīl ibn Ibrāhīm al-Asadī narrated to us, al-Ḥajjāj ibn Abī ʿUthmān narrated to me: Abū Rajāʾ—from the family of Abī Qilābah—narrated to us, Abū Qilābah said: ʿUmar ibn ʿAbd al-ʿAzīz gathered the people—among them was Abū Qilābah—and mentioned a ḥadīth, in which it was stated that Abū Qilābah said to ʿUmar ibn ʿAbd al-ʿAzīz: "Hudhayl had expelled an outcast of theirs in the pre-Islamic era. He came upon a Yemeni household by night at al-Baṭḥāʾ, and a man from them awoke to his presence and struck him with a sword, killing him. Hudhayl came and seized the Yemeni, bringing him to ʿUmar ibn al-Khaṭṭāb during the pilgrimage season, saying: 'He killed our companion.' ʿUmar said: 'They have expelled him.' ʿUmar then ruled: 'Fifty men from Hudhayl must swear they expelled him.' Forty-nine from Hudhayl swore, and a man from them arrived from Syria. They asked him to swear, but he ransomed his oath from them for a thousand dirhams. They replaced him with another man. ʿUmar handed the Yemeni over to the brother of the slain man, and the Yemeni's hand was bound to the brother's hand." He said: "The two bound men departed with the fifty who had sworn. When they reached Nakhlah, a storm struck them. They took refuge in a mountain cave, and the cave collapsed upon the fifty who had sworn, killing them all. The two bound men alone survived." A stone pursued them both and broke the leg of the slain man's brother, whereupon he survived for an entire year before dying.

L38543 From the narration of Abd al-Razzaq, from Umar, from Ayyub al-Sikhtiyani, from Abu Qilabah, who said: A group from Hudhayl disowned a thief of

[2]**Qur'an references (L38538):** Qur'an 5:33 (Al-Ma'idah).

[مَسْأَلَةٌ خَلْعُ الْجَانِي]

٢١٠٣ - مَسْأَلَةٌ: خَلْعُ الْجَانِي؟ قَالَ أَبُو مُحَمَّدٍ: نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ الْهَمْدَانِيُّ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا أَبُو بِشْرٍ إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ الْأَسَدِيُّ نا الْحَجَّاجُ بْنُ أَبِي عُثْمَانَ حَدَّثَنِي أَبُو رَجَاءٍ - مِنْ آلِ أَبِي قِلَابَةَ - نا أَبُو قِلَابَةَ: أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ جَمَعَ النَّاسَ - وَفِيهِمْ أَبُو قِلَابَةَ - فَذَكَرَ حَدِيثًا - وَفِيهِ: أَنَّ أَبَا قِلَابَةَ قَالَ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ: وَقَدْ كَانَتْ هُذَيْلٌ خَلَعَتْ خَلِيعًا لَهُمْ فِي الْجَاهِلِيَّةِ فَطَرَقَ أَهْلَ بَيْتٍ مِنَ الْيَمَنِ بِالْبَطْحَاءِ فَانْتَبَهَ لَهُ رَجُلٌ مِنْهُمْ فَخَذَفَهُ بِالسَّيْفِ فَقَتَلَهُ، فَجَاءَتْ هُذَيْلٌ فَأَخَذُوا الْيَمَانِيَّ فَرَفَعُوهُ إِلَى عُمَرَ بْنِ الْخَطَّابِ بِالْمَوْسِمِ، وَقَالُوا: قَتَلَ صَاحِبَنَا، فَقَالَ: إِنَّهُمْ قَدْ خَلَعُوهُ، فَقَالَ عُمَرُ: يُقْسِمُ خَمْسُونَ مِنْ هُذَيْلٍ مَا خَلَعُوهُ، فَأَقْسَمَ تِسْعَةٌ وَأَرْبَعُونَ مِنْ هُذَيْلٍ، وَقَدِمَ رَجُلٌ مِنْهُمْ مِنَ الشَّامِ فَسَأَلُوهُ أَنْ يُقْسِمَ، فَافْتَدَى يَمِينَهُ مِنْهُمْ بِأَلْفِ دِرْهَمٍ، فَأَدْخَلُوا مَكَانَهُ رَجُلًا آخَرَ، فَدَفَعَهُ عُمَرُ إِلَى أَخِي الْمَقْتُولِ فَقُرِنَتْ يَدُهُ بِيَدِهِ - قَالَ: فَانْطَلَقَا وَالْخَمْسُونَ الَّذِينَ أَقْسَمُوا حَتَّى إِذَا كَانُوا بِنَخْلَةَ أَخَذَتْهُمُ السَّمَاءُ فَدَخَلُوا فِي غَارٍ فِي جَبَلٍ، فَانْهَدَمَ الْغَارُ عَلَى الْخَمْسِينَ الَّذِينَ أَقْسَمُوا، فَمَاتُوا جَمِيعًا، وَأَفْلَتَ الْقَرِينَانِ، فَاتَّبَعَهُمَا حَجَرٌ فَكَسَرَ رِجْلَ أَخِي الْمَقْتُولِ، فَعَاشَ حَوْلًا ثُمَّ مَاتَ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُمَرَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ قَالَ: خَلَعَ قَوْمٌ مِنْ هُذَيْلٍ سَارِقًا لَهُمْ كَانَ يَسْرِقُ الْحَجِيجَ، فَقَالُوا: قَدْ خَلَعْنَاهُ، فَمَنْ وَجَدَهُ بِسَرِقَةٍ فَدَمُهُ

هَدَرٌ؟ فَوَجَدَتْهُ رُفْقَةٌ مِنْ أَهْلِ الْيَمَنِ يَسْرِقُهُمْ فَقَتَلُوهُ، فَجَاءَ قَوْمُهُ عُمَرَ بْنَ الْخَطَّابِ فَحَلَّفُوا: بِاللَّهِ مَا خَلَعْنَاهُ، وَلَقَدْ كَذَبَ النَّاسُ عَلَيْنَا، فَأَحْلَفَهُمْ عُمَرُ خَمْسِينَ يَمِينًا، ثُمَّ أَخَذَ عُمَرُ بِيَدِ رَجُلٍ مِنْ الرُّفْقَةِ فَقَالَ: أَقْرِنُوا هَذَا إلَى أَحَدِكُمْ حَتَّى يُؤَدِّيَ دِيَةَ صَاحِبِكُمْ، فَانْطَلَقُوا حَتَّى إذَا دَنَوَا مِنْ أَرْضِهِمْ أَصَابَهُمْ مَطَرٌ شَدِيدٌ وَاسْتَتَرُوا بِجَبَلٍ طَوِيلٍ وَقَدْ أَمْسَوْا فَلَمَّا نَزَلُوا كُلُّهُمْ انْقَضَّ عَلَيْهِمْ الْجَبَلُ، فَلَمْ يَنْجُ مِنْهُمْ أَحَدٌ، وَلَا مِنْ رِكَابِهِمْ إلَّا الشَّرِيدَ، وَصَاحِبَهُ، فَكَانَ يُحَدِّثُ بِمَا لَقِيَ قَوْمُهُ.

theirs who used to steal from pilgrims. They declared, “We have disowned him, so whoever finds him stealing – his blood is lawful (without penalty).” A group from Yemen encountered him stealing from them and killed him. His people came to Umar ibn al-Khattab, swearing, “By Allah, we did not disown him, and people have falsely accused us.” Umar compelled them to swear fifty oaths. Then Umar took the hand of a man from the group and said, “Assign this man to one of you until he pays the blood money for your companion.” They departed, and when they neared their land, they were struck by heavy rain. They sought shelter under a tall mountain as night fell. When they settled, the mountain collapsed upon them. None of the people or their mounts survived except the fugitive and his companion. The fugitive would later recount what befell his people.

قَالَ أَبُو مُحَمَّد: وَعَهْدُنَا بِالْمَالِكِيِّينَ، وَالْحَنَفِيِّينَ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ - إذَا وَافَقَ أَهْوَاءَهُمْ - وَيَقُولُونَ: إنَّ الْمُرْسَلَ كَالْمُسْنَدِ، وَهَذَا مِنْ أَحْسَنِ الْمَرَاسِيلِ إلَى عُمَرَ بْنِ الْخَطَّابِ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا مُخَالِفَ لَهُ مِنْهُمْ، وَلَا نَكِيرَ مِنْ أَحَدِهِمْ، فَيَلْزَمُهُمْ عَلَى أُصُولِهِمْ أَنْ يُجِيزُوا خَلْعَ عَشِيرَةِ الرَّجُلِ لَهُ، فَلَا يَكُونُ لَهُمْ طَلَبٌ بِدَمِهِ إنْ قُتِلَ - وَهَذَا مَا لَا يَقُولُونَهُ أَصْلًا - فَقَدْ هَانَ عَلَيْهِمْ خِلَافُ هَذَا الْأَصْلِ.

L38544 Abu Muhammad said: We have observed that the Malikis and Hanafis exaggerate the solitary opinion of a Companion for whom no opposition is recorded—when it suits their personal inclinations—while claiming that the *mursal* (uncorroborated report) holds the status of the *musnad* (authenticated report). This is among the most elevated *mursal* reports, attributed to ʿUmar ibn al-Khaṭṭāb in the presence of the Companions—may Allah be pleased with them—with none opposing him or objecting. By their own principles, they must logically concede that a man’s clan may legally disavow him, thereby forfeiting any claim to his *diyah* (blood money) if he is killed—a ruling they categorically reject. Thus, they casually disregard the contradiction of this foundational principle.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، فَإِذْ لَمْ يَأْتِ عَنْهُ إجَازَةُ خَلْعٍ، فَالْخَلْعُ بَاطِلٌ لَا مَعْنَى لَهُ، فَكُلُّ جَانٍ بِعَمْدٍ فَلَيْسَ عَلَى عَشِيرَتِهِ مِنْ جِنَايَتِهِ تَبِعَةٌ، وَكُلُّ جَانٍ بِخَطَأٍ فَكَذَلِكَ، إلَّا مَا أَوْجَبَهُ نَصٌّ أَوْ إجْمَاعٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38545 As for us, we recognize no binding authority in the words of anyone apart from the Messenger of Allah (may Allah bless him and his family and grant him peace). Since no endorsement of *khulʿ* has been transmitted from him, *khulʿ* is invalid and meaningless. Thus, for every intentional offender, his clan bears no responsibility for his offense, and likewise for every unintentional offender—except what is mandated by an explicit text or consensus. Success lies with Allah, the Most High.

[مَسْأَلَةٌ اسْتَسْقَى قَوْمًا فَلَمْ يَسْقُوهُ حَتَّى مَاتَ]

L38546 **A jurisprudential issue: someone asked a group for drinking water, but they refused until he died.**

L38547–38549 Issue 2104: If a man requests water from a people and they refuse to give him water until he died. Ali said: It was narrated to us through the chain of narration of Abu Bakr Ibn Abi Shaybah – narrated by Hafs Ibn Ghiyath, from al-Ashʿath, from al-Hasan – that a man sought water at the door of a people. They refused to give him water, thirst overtook him, and he died. So Umar Ibn al-Khattab held them liable for his *diyah*. Abu Muhammad said: The ruling according to our school – and success comes only from Allah, the Exalted – is that those who withheld water from him shall be liable if they knew he possessed absolutely no water except what they held, and that he had no means whatsoever to attain it until... If he dies, they have killed him intentionally, and retaliation (qisas) is incumbent upon them by denying them water until they die—whether they are numerous or few. Those unaware of the situation or unable to provide him water are excluded. If they did not know this and presumed he would reach water, they are unintentional killers: expiation (kaffārah) is obligatory upon them, and the blood money (diyah) must necessarily be paid by their ʿāqilah (liable male kin) without fail.

٢١٠٤ - مَسْأَلَةٌ: مَنْ اسْتَسْقَى قَوْمًا فَلَمْ يَسْقُوهُ حَتَّى مَاتَ؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ الْأَشْعَثِ عَنْ الْحَسَنِ أَنَّ رَجُلًا اسْتَسْقَى عَلَى بَابِ قَوْمٍ؟ فَأَبَوْا أَنْ يَسْقُوهُ، فَأَدْرَكَهُ الْعَطَشُ فَمَاتَ، فَضَمَّنَهُمْ عُمَرُ بْنُ الْخَطَّابِ عَنْ دِيَتِهِ؟ قَالَ أَبُو مُحَمَّدٍ: الْقَوْلُ فِي هَذَا عِنْدَنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - هُوَ أَنَّ الَّذِينَ لَمْ يَسْقُوهُ إنْ كَانُوا يَعْلَمُونَ أَنَّهُ لَا مَاءَ لَهُ أَلْبَتَّةَ إلَّا عِنْدَهُمْ، وَلَا يُمْكِنُهُ إدْرَاكُهُ أَصْلًا حَتَّى يَمُوتَ، فَهُمْ قَتَلُوهُ عَمْدًا وَعَلَيْهِمْ الْقَوَدُ بِأَنْ يُمْنَعُوا الْمَاءَ حَتَّى يَمُوتُوا - كَثُرُوا أَوْ قَلُّوا - وَلَا يَدْخُلُ فِي ذَلِكَ مَنْ لَمْ يَعْلَمْ بِأَمْرِهِ، وَلَا مَنْ لَمْ يُمْكِنْهُ أَنْ يَسْقِيَهُ، فَإِنْ كَانُوا لَا يَعْلَمُونَ ذَلِكَ وَيُقَدِّرُونَ أَنَّهُ سَيُدْرِكُ الْمَاءَ، فَهُمْ قَتَلَةُ خَطَأٍ، وَعَلَيْهِمْ الْكَفَّارَةُ، وَعَلَى عَوَاقِلِهِمْ الدِّيَةُ وَلَا بُدَّ.

L38550 The proof of this is Allah Almighty's statement: "And cooperate in righteousness and piety, and do not cooperate in sin and aggression" [Al-Mā'idah: 2], and His statement: "So whoever transgresses against you, then transgress against him in the same manner as he transgressed against you" [Al-Baqarah: 194], and His statement: "Retaliation is ordained for violations during the sacred months" [Al-Baqarah: 194]. With certainty, every Muslim in the world knows that if a Muslim asks another for water—while the latter is capable of giving it—but deliberately withholds it until the seeker dies of thirst, then he has indeed transgressed against him, without any disagreement from anyone in the Ummah. When such transgression occurs, it becomes obligatory—by the explicit decree of the Quran—to transgress against the transgressor in the same manner as he transgressed. Thus, our statement stands confirmed with unequivocal certainty.[3]

بُرْهَانُ ذَلِكَ: قَوْله تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] ، وَقَالَ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] ، وَقَالَ تَعَالَى {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] ، وَبِيَقِينٍ يَدْرِي كُلُّ مُسْلِمٍ - فِي الْعَالَمِ - أَنَّ مَنْ اسْتَقَاهُ مُسْلِمٌ - وَهُوَ قَادِرٌ عَلَى أَنْ يَسْقِيَهُ - فَتَعَمَّدَ أَنْ لَا يَسْقِيَهُ إلَى أَنْ مَاتَ عَطَشًا فَإِنَّهُ قَدْ اعْتَدَى عَلَيْهِ، بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ الْأُمَّةِ، وَإِذَا اعْتَدَى فَوَاجِبٌ - بِنَصِّ الْقُرْآنِ - أَنْ يُعْتَدَى عَلَى الْمُعْتَدِي بِمِثْلِ مَا اعْتَدَى بِهِ - فَصَحَّ قَوْلُنَا بِيَقِينٍ لَا إشْكَالَ فِيهِ.

L38551 If he did not know that, he has killed him by depriving him of that without which life cannot exist. Thus, he is a killer by mistake, and upon him is what is incumbent upon a killer by mistake.

وَأَمَّا إذَا لَمْ يَعْلَمْ بِذَلِكَ فَقَدْ قَتَلَهُ، إذْ مَنَعَهُ مَا لَا حَيَاةَ لَهُ إلَّا بِهِ، فَهُوَ قَاتِلٌ خَطَأً، فَعَلَيْهِ مَا عَلَى قَاتِلِ الْخَطَأِ.

[3] **Qur'an references (L38550):** Qur'an 5:2 (Al-Ma'idah); Qur'an 2:194 (Al-Baqarah).

L38552 Abu Muhammad said: Such is the ruling regarding the starving person and the unclothed person—there is no difference, for all of that constitutes aggression. This case differs from one whom predators pursued but they failed to protect him until a predator devoured him, for the predator itself is the killer. He did not die due to their criminal act nor from consequences generated by their criminal act. However, if they abandoned him and a predator seized him while they were capable of saving him, they are deliberate murderers, for his death arose purely from their action. This is equivalent to those who confined him in a house and restrained him until he died—there is no difference. All these cases constitute a single legal principle. Success comes from Allah, the Exalted.

قَالَ أَبُو مُحَمَّد: وَهَكَذَا الْقَوْلُ، فِي الْجَائِعِ، وَالْعَارِي، وَلَا فَرْقَ - وَكُلُّ ذَلِكَ عُدْوَانٌ، وَلَيْسَ هَذَا كَمَنْ اتَّبَعَهُ سَبُعٌ فَلَمْ يؤْوِهِ حَتَّى أَكَلَهُ السَّبُعُ، لِأَنَّ السَّبُعَ هُوَ الْقَاتِلُ لَهُ، وَلَمْ يَمُتْ فِي جِنَايَتِهِمْ، وَلَا مِمَّا تَوَلَّدَ مِنْ جِنَايَتِهِمْ، وَلَكِنْ لَوْ تَرَكُوهُ فَأَخَذَهُ السَّبُعُ - وَهُمْ قَادِرُونَ عَلَى إِنْقَاذِهِ - فَهُمْ قَتَلَةُ عَمْدٍ، إِذْ لَمْ يَمُتْ مِنْ شَيْءٍ إِلَّا مِنْ فِعْلِهِمْ - وَهَذَا كَمَنْ أَدْخَلُوهُ فِي بَيْتٍ وَمَنَعُوهُ حَتَّى مَاتَ، وَلَا فَرْقَ وَهَذَا كُلُّهُ وَجْهٌ وَاحِدٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Legal Issue of Compensation for a Dog

[مَسْأَلَةٌ دِيَةُ الْكَلْبِ]

L38553

L38554–38556 Abu Muhammad said: Ahmad ibn ‘Umar reported to us: Abu Dharr al-Harawi reported to us: Ahmad ibn ‘Abdan, al-Hafiz al-Naysaburi, reported to us in his home in al-Ahwaz. Muhammad ibn Sahl al-Muqri reported to us: Muhammad ibn Isma’il al-Bukhari reported to us: Abu Nu’aym – who is al-Fadl ibn Dukayn – said to me: Qutaybah narrated to us: Hushaym reported from Ya’la ibn ’Ata’ from Isma’il – who is Ibn Jassas – that he heard ’Abdullah ibn ’Amr issue the ruling: “The compensation for a hunting dog is forty Dirhams.”

قَالَ أَبُو مُحَمَّد: نا أَحْمَدُ بْنُ عُمَرَ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا أَحْمَدُ بْنُ عَبْدَانَ الْحَافِظُ النَّيْسَابُورِيُّ فِي دَارِهِ بِالْأَهْوَازِ نا مُحَمَّدُ بْنُ سَهْلٍ الْمُقْرِئُ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ الْبُخَارِيُّ نا أَبُو نُعَيْمٍ - هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - قَالَ لِي قُتَيْبَةُ: نا هُشَيْمٌ عَنْ يَعْلَى بْنِ عَطَاءٍ عَنْ إِسْمَاعِيلَ - هُوَ ابْنُ جَسَّاسٍ - أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ عَمْرٍو: قَضَى فِي كَلْبِ الصَّيْدِ أَرْبَعِينَ دِرْهَمًا.

L38557 From the path of Abd al-Razzaq, from Sufyan al-Thawri, from Ya’la ibn Ata, from Ismail ibn Jassas, who said: I was with Abdullah ibn Amr when a man asked him, “What is the compensation for a hunting dog?” He replied: “Forty dirhams.” The man asked: “What is the compensation for a sheepdog?” He said: “A sheep from the flock.” He asked: “What is the compensation for a crop-guarding dog?” He answered: “A measure (farq) of the crop.” He inquired: “What is the compensation for a house dog?” He responded: “A measure (farq) of soil. It is an obligation upon the killer to pay it, and an obligation upon its owner to accept it, though this payment reduces the owed compensation. As for the dog that barks but does not guard crops or a house—if its owner demands compensation—then a measure of soil. By Allah, we indeed find this ruling in the Book of Allah, the Exalted.” Abu

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يَعْلَى بْنِ عَطَاءٍ عَنْ إِسْمَاعِيلَ بْنِ جَسَّاسٍ قَالَ: كُنْت عِنْدَ عَبْدِ اللَّهِ بْنِ عَمْرٍو فَسَأَلَهُ رَجُلٌ مَا عَقْلُ كَلْبِ الصَّيْدِ؟ قَالَ: أَرْبَعُونَ دِرْهَمًا، قَالَ: فَمَا عَقْلُ كَلْبِ الْغَنَمِ؟ قَالَ شَاةٌ مِنْ الْغَنَمِ، قَالَ: فَمَا عَقْلُ كَلْبِ الزَّرْعِ؟ قَالَ: فَرَقٌ مِنْ الزَّرْعِ قَالَ: فَمَا عَقْلُ كَلْبِ الدَّارِ؟ قَالَ: فَرَقٌ مِنْ تُرَابٍ حَقٌّ عَلَى الْقَاتِلِ أَنْ يُؤَدِّيَهُ، وَحَقٌّ عَلَى صَاحِبِهِ أَنْ يَقْبَلَهُ، وَهُوَ يُنْقِصُ مِنْ الْأَجْرِ - وَفِي الْكَلْبِ الَّذِي يَنْبَحُ، وَلَا يَمْنَعُ زَرْعًا، وَلَا دَارًا - إِنْ طَلَبَهُ صَاحِبُهُ؟ فَفَرَقٌ مِنْ تُرَابٍ، وَاَللَّهِ

Muhammad remarked: This is the ruling of a companion—with no known opposition from other companions, may Allah be pleased with them, except regarding the hunting dog specifically—not other categories. As narrated to us from Uqbah ibn Amir, who said: During Uthman's caliphate, a man killed a hunting dog unparalleled among dogs, and its value was assessed at eight hundred dirhams. Uthman legally mandated him to pay that valuation.

إِنَّا لَنَجِدُ هَذَا فِي كِتَابِ اللَّهِ تَعَالَى؟ قَالَ أَبُو مُحَمَّد: فَهَذَا حُكْمُ صَاحِبٍ لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُ - مُخَالِفٌ إلَّا فِي الصَّائِدِ خَاصَّةً لَا فِيمَا سِوَاهُ كَمَا رُوِّينَا عَنْ عُقْبَةَ بْنِ عَامِرٍ قَالَ: قَتَلَ رَجُلٌ فِي خِلَافَةِ عُثْمَانَ كَلْبًا لِصَيْدٍ لَا يُعْرَفُ مِثْلُهُ فِي الْكِلَابِ، فَقُوِّمَ بِثَمَانِمِائَةِ دِرْهَمٍ، فَأَلْزَمَهُ عُثْمَانُ تِلْكَ الْقِيمَةَ.

L38558 Abu Muhammad said: There remain the sheepdog, the farm dog, and the guard dog. We know of no opposition to any part of Abdullah ibn Amr ibn al-As's position, though they regard differing from a Companion—whose view is not known to have been contradicted by other Companions, especially in a matter such as this—as grave. Yet here they have contradicted Abdullah ibn Amr, as is evident, without any hesitation.

قَالَ أَبُو مُحَمَّد: وَبَقِيَ كَلْبُ الْغَنَمِ، وَكَلْبُ الزَّرْعِ، وَكَلْبُ الدَّارِ، لَا نَعْرِفُ مُخَالِفًا فِي شَيْءٍ مِنْهُ لِعَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ، وَهُمْ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ وَلَا سِيَّمَا مِثْلُ هَذَا، وَهُمْ قَدْ خَالَفُوا هَاهُنَا عَبْدَ اللَّهِ بْنَ عَمْرٍو كَمَا تَرَى بِلَا مَئُونَةٍ.

L38559 As for us, we accept no proof in the words of anyone apart from the Messenger of Allah (peace and blessings be upon him and his family). No compensation is due for killing a dog unless it is a dog of similar kind, as He the Exalted said: "The recompense for an evil is an evil like it" [42:40]—except if it is a black dog with two spots, in which case no compensation is due at all. Indeed, whoever kills it has done well.[4]

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -. وَلَيْسَ فِي الْكَلْبِ إلَّا كَلْبٌ مِثْلُهُ، قَالَ تَعَالَى {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] ، إلَّا أَنْ يَكُونَ أَسْوَدَ ذَا نُقْطَتَيْنِ فَلَا شَيْءَ فِيهِ أَصْلًا، وَقَدْ أَحْسَنَ مَنْ قَتَلَهُ.

L38560–38561 Similarly, if it is a dog that does not benefit crops, livestock, or hunting, there is nothing concerning it at all, because these two are wholly forbidden to be kept—and with Allah alone is success.

وَكَذَلِكَ إنْ كَانَ كَلْبًا لَا يُغْنِي زَرْعًا، وَلَا ضَرْعًا، وَلَا صَيْدًا، فَلَا شَيْءَ فِيهِ أَصْلًا، لِأَنَّ هَذَيْنِ يُنْهَى عَنْ اتِّخَاذِهِمَا جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38562 **The ruling on the mutual rescission of his error by a person of standing.**

[مَسْأَلَةٌ إقَالَةُ ذِي الْهَيْئَةِ عَثْرَتَهُ]

L38563 2106 - Issue: Should the slip of a person of good demeanor be pardoned? Ali said: Yūsuf ibn ʿAbdullāh al-Namarī narrated to us, Yūsuf ibn Aḥmad narrated to us, al-ʿUqaylī narrated to us, al-Ḥasan ibn ʿAlī narrated to us, Saʿīd ibn Abī Maryam narrated to us, al-ʿAṭṭāf narrated to us, ʿAbd al-Raḥmān ibn Muḥammad ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm narrated

٢١٠٦ - مَسْأَلَةٌ: إقَالَةُ ذِي الْهَيْئَةِ عَثْرَتَهُ؟ قَالَ عَلِيٌّ: نا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نا يُوسُفُ بْنُ أَحْمَدَ نا الْعُقَيْلِيُّ نا الْحَسَنُ بْنُ عَلِيٍّ نا سَعِيدُ بْنُ أَبِي مَرْيَمَ نا الْعَطَّافُ ثني عَبْدُ

[4] **Qur'an references (L38559):** Qur'an 42:40 (Ash-Shuraa).

to us from his father, from ʿAmrah, from ʿĀ'ishah, who said: The Messenger of Allah (peace and blessings be upon him and his family) said, "Pardon the slips of those of good demeanor."

الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ عَمْرَةَ عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَقِيلُوا ذَوِي الْهَيْئَاتِ عَثَرَاتِهِمْ» .

L38564 Aḥmad ibn ʿUmar ibn Anas narrated to us: Aḥmad ibn ʿAlī al-Kisā'ī the Grammarian narrated to us: Aḥmad ibn Ibrāhīm ibn Muḥammad al-Sarī narrated to us: Ismāʿīl ibn Muḥammad ibn Qīrāṭ narrated to us: Sulaymān ibn ʿAbd al-Raḥmān narrated to us: ʿUthmān narrated: ʿAbd al-ʿAzīz ibn ʿAbd Allāh ibn ʿAbd Allāh ibn ʿUmar ibn al-Khaṭṭāb narrated from Abu Bakr ibn ʿAmr ibn Ḥazm from ʿAmrah from ʿĀ'ishah from the Messenger of Allāh—peace and blessings be upon him and his family—who said: "Excuse the stumbles of people of dignity."

نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نا أَحْمَدُ بْنُ عَلِيٍّ الْكِسَائِيُّ النَّحْوِيُّ نا أَحْمَدُ بْنُ إِبْرَاهِيمَ بْنِ مُحَمَّدٍ السَّرِيُّ نا إِسْمَاعِيلُ بْنُ مُحَمَّدِ بْنِ قِيرَاطٍ نا سُلَيْمَانُ بْنُ عَبْدِ الرَّحْمَنِ نا عُثْمَانُ نا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ عَنْ أَبِي بَكْرِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَمْرَةَ عَنْ عَائِشَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «أَقِيلُوا ذَوِي الْهَيْئَاتِ عَثَرَاتِهِمْ» .

L38565 Ali said: From Al-ʻUqaylī – "Nothing is authentically established regarding this matter; Al-ʻAṭṭāf is weak, and ʿAbd al-Raḥmān ibn Muḥammad is unknown and weak" – and likewise the other chain is also weak.

قَالَ عَلِيٌّ: عَنْ الْعُقَيْلِيِّ - لَا يَصِحُّ فِي هَذَا شَيْءٌ، وَالْعَطَّافُ ضَعِيفٌ، وَعَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدٍ مَجْهُولٌ ضَعِيفٌ - وَكَذَلِكَ الْإِسْنَادُ الْآخَرُ أَيْضًا ضَعِيفٌ.

L38566 Ali said: There is no nullification of a prescribed penalty nor does it permit qiṣāṣ. The Messenger of Allah (peace and blessings be upon him and his family) said: "The blood of believers is of equal worth," and Allah the Exalted said: "The believers are but brothers" (Quran 49:10). If they are brothers, then they are peers in all legal judgments.[5]

قَالَ عَلِيٌّ: وَلَيْسَ فِيهِ إسْقَاطُ حَدٍّ، وَلَا قِصَاصٍ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «الْمُؤْمِنُونَ تَتَكَافَأُ دِمَاؤُهُمْ» ، وَقَالَ اللَّهُ تَعَالَى {إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ} [الحجرات: ١٠] فَإِذَا كَانُوا إخْوَةً فَهُمْ نُظَرَاءُ فِي الْحُكْمِ كُلِّهِ.

L38567 The Messenger of Allah (peace be upon him) said: "They are just like the Children of Israel. When a nobleman among them stole, they would let him go, but when a weak person stole, they would apply the ḥadd to him. By Him in whose hand is my soul, if Fāṭimah bint Muḥammad were to steal, I would cut off her hand"—or as he (peace be upon him) said—as we have mentioned with its chain of transmission in earlier sections. Success is from Allah alone.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّمَا هُمْ كَذَلِكَ بَنُو إسْرَائِيلَ كَانُوا إذَا سَرَقَ فِيهِمْ الشَّرِيفُ تَرَكُوهُ وَإِذَا سَرَقَ فِيهِمْ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ، وَالَّذِي نَفْسِي بِيَدِهِ لَوْ سَرَقَتْ فَاطِمَةُ بِنْتُ مُحَمَّدٍ لَقَطَعْتُ يَدَهَا» أَوْ كَمَا قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِمَّا ذَكَرْنَاهُ بِإِسْنَادِهِ فِيمَا خَلَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38568 Abū Muḥammad said: If this were sound—and it is not sound—then this would be interpreted according to its apparent meaning regarding a minor

قَالَ أَبُو مُحَمَّدٍ: فَلَوْ صَحَّ هَذَا - وَهُوَ لَا يَصِحُّ - لَكَانَ ذَلِكَ مَحْمُولًا عَلَى ظَاهِرِهِ فِي الْعَثْرَةِ تَكُونُ مِمَّا لَا يُوجِبُ حَدًّا وَلَا حُكْمًا فِي قَوَدٍ، أَوْ قِصَاصٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[5]**Qur'an references (L38566):** Qur'an 49:10 (Al-Hujurat).

lapse that does not necessitate a prescribed punishment (ḥadd) nor a legal ruling pertaining to qawd (retribution) or qiṣāṣ (retaliation in kind)—and with Allāh, the Exalted, lies all success.

[مَسْأَلَةٌ قَوْمٌ أَقَرَّ كُلُّ وَاحِدٍ مِنْهُمْ بِقَتْلِ قَتِيلٍ وَبَرَّأَ أَصْحَابَهُ]

Issue: A group where each individual confessed to killing a victim but absolved their companions.

L38569–38570

L38571 ؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي رَجُلٍ اُتُّهِمَ بِقَتْلِهِ رَجُلَانِ أَخَوَانِ فَخَافَ أَبُوهُمَا أَنْ يُقْتَلَا، فَقَالَ أَبُوهُمَا: أَنَا قَتَلْته؟ فَقَالَ كُلُّ وَاحِدٍ مِنْ الْأَخَوَيْنِ: أَنَا قَتَلْتُهُ؟ وَبَرَّأَ بَعْضُهُمْ بَعْضًا؟ فَقَالَ الزُّهْرِيُّ فِي ذَلِكَ إلَى أَوْلِيَاءِ الْمَقْتُولِ فَيَحْلِفُونَ قَسَامَةَ الدَّمِ عَلَى أَحَدِهِمْ.

L38572 قَالَ أَبُو مُحَمَّدٍ: لَسْنَا نَقُولُ هَذَا، بَلْ نَقُولُ: إنَّ أَوْلِيَاءَ الْمَقْتُولِ إنْ صَدَّقُوهُمْ كُلَّهُمْ فَلَهُمْ الْقَوَدُ مِنْ جَمِيعِهِمْ، أَوْ مِمَّنْ شَاءُوا، وَلَهُمْ الدِّيَةُ عَلَى مَا قَدَّمْنَا أَوْ الْمُفَادَاةُ فَإِنْ كَذَّبُوا بَعْضَهُمْ وَصَدَّقُوا بَعْضَهُمْ فَلَهُمْ عَلَى مَنْ صَدَّقُوهُ الْقَوَدُ، أَوْ الدِّيَةُ، أَوْ الْمُفَادَاةُ، وَقَدْ بَرِئَ مَنْ كَذَّبُوهُ.

L38573 بُرْهَانُ ذَلِكَ: أَنَّهُمْ إذَا صَدَّقُوهُمْ كُلَّهُمْ فَقَدْ صَحَّ لَهُمْ حَقُّ الْقَوَدِ أَوْ الدِّيَةِ، بِإِقْرَارِ كُلِّ وَاحِدٍ مِنْهُمْ، وَكُلُّ حَقٍّ وَجَبَ فَلَا يَسْقُطُ إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ، وَمَنْ أَقَرَّ بِحَقٍّ فَلَا يَجُوزُ تَحْلِيفُ الْمُقَرِّ لَهُ بِالْحَقِّ، إذْ إنَّمَا يَحْلِفُ الْمُدَّعَى عَلَيْهِ إذَا أَنْكَرَ لَا الْمُدَّعِي، فَلَا يَجُوزُ هَاهُنَا تَحْلِيفُ مَنْ صُدِّقَتْ دَعْوَاهُ.

L38574 وَأَمَّا إذَا كَذَّبُوا مِنْهُمْ بَعْضًا فَقَدْ بَرَّءُوا مَنْ أَكْذَبُوهُ وَسَقَطَ حُكْمُ الْإِقْرَارِ إذَا لَمْ يُصَدِّقْهُ الْمُقَرُّ لَهُ، كَسَائِرِ الْحُقُوقِ وَلَا فَرْقَ.

L38575 Similarly, if all [the others] reject their admissions, then those who have

admitted are absolved and their admission becomes invalid, since the one to whom the admission was made has waived the admitters' right in that matter. And success is from Allah, the Most High.

وَكَذَلِكَ لَوْ كَذَّبُوهُمْ كُلُّهُمْ فَقَدْ بَرِئَ الْمُقِرُّونَ وَبَطَلَ إِقْرَارُهُمْ، إِذْ قَدْ أَسْقَطَ الْمَقَرُّ لَهُمْ حَقَّهُمْ فِي ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L38576 Ali said: The case of the confessor who states, "I alone killed so-and-so, and this person with me did not kill him," while the other denies the acquittal [the confessor] granted him yet admits to killing the slain individual—it is obligatory to hold each accountable for what they confessed to, as each is a complete confession. His absolution of the one he acquitted is invalid, for he is not a credible witness whose testimony would therefore be accepted. Even if he were a credible witness, his testimony could not be accepted here, as testimony is only admissible for affirming claims, not for negating them.

قَالَ عَلِيٌّ: وَقَوْلُ الْمُقِرِّ: أَنَا وَحْدِي قَتَلْت فُلَانًا وَلَمْ يَقْتُلْهُ هَذَا مَعِي، وَالْآخَرُ مُنْكِرٌ لِتَبْرِئَتِهِ إيَّاهُ، وَمُقِرٌّ بِقَتْلِ ذَلِكَ الْمَقْتُولِ، فَوَاجِبٌ أَنْ يَلْزَمَ كُلَّ وَاحِدٍ مِنْهُمَا مَا أَقَرَّ بِهِ عَلَى نَفْسِهِ، لِأَنَّهُ إقْرَارٌ تَامٌّ، وَتَكُونُ تَبْرِئَتُهُ لِمَنْ أَبْرَأَ بَاطِلًا، لِأَنَّهُ لَيْسَ عَدْلًا فَتُقْبَلُ شَهَادَتُهُ، وَحَتَّى لَوْ كَانَ عَدْلًا لَمَا جَازَ هَاهُنَا قَبُولُ شَهَادَتِهِ، لِأَنَّ الشَّهَادَةَ إنَّمَا تُقْبَلُ فِي الْإِيجَابِ لَا فِي النَّفْيِ.

L38577–38579 There is no disagreement between two people that if a man were to claim against Zaid regarding money or a right, and upright witnesses testified that nothing of his is held by him (Zaid), their testimony would be invalid and inadmissible, nor would it absolve the one testified for (the claimant) unless... they add to their testimony an affirmation, such as by saying: "This is because we affirm he has released him from the obligation, or that he has paid it to him," or something like this. And success is from Allah, the Most High.

وَلَا يَخْتَلِفُ اثْنَانِ فِي أَنَّ رَجُلًا لَوْ ادَّعَى عَلَى زَيْدٍ مَالًا أَوْ حَقًّا فَشَهِدَ لَهُ عُدُولٌ بِأَنَّهُ لَا شَيْءَ لَهُ عِنْدَهُ لَكَانَتْ شَهَادَتُهُ فَاسِدَةً لَا تُقْبَلُ، وَلَا تُبْرِئُ الْمَشْهُودَ لَهُ بِهَا إلَّا بِأَنْ يَزِيدُوا فِي شَهَادَتِهِمْ إيجَابًا، مِثْلَ أَنْ يَقُولُوا: وَذَلِكَ أَنَّنَا نَدْرِي أَنَّهُ أَبْرَأَهُ مِنْ الْحَقِّ، أَوْ قَدْ أَدَّاهُ إلَيْهِ أَوْ نَحْوَ هَذَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ إخْرَاجُ شَيْءٍ فِي طَرِيقِ الْمُسْلِمِينَ]

The issue of removing something from the public thoroughfare of Muslims.

L38580

٢١٠٨ - مَسْأَلَةٌ: الْخَشَبَةُ تَخْرُجُ مِنْ الْحَائِطِ - وَالْقَصَّارُ يَنْضَحُ - وَالْقَصَّابُ كَذَلِكَ - وَإِخْرَاجُ شَيْءٍ فِي طَرِيقِ الْمُسْلِمِينَ، وَالرَّحَى، وَالْخُفَّانِ، وَالنَّعْلَانِ فِي الْمَسْجِدِ، وَالْقَاعِدُ فِيهِ، وَالْقِنْدِيلُ، وَظِلَالُ السُّوقِ، وَمَنْ رَشَّ أَمَامَ بَابِهِ؟ قَالَ أَبُو مُحَمَّدٍ: رُوِّينَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ: إذَا أَخْرَجَ الرَّجُلُ الصَّلَايَةَ أَوْ الْخَشَبَةَ، فِي حَائِطِهِ ضَمِنَ.

L38581 Issue 2108: A wooden beam protruding from a wall, a dyer sprinkling water, a butcher doing likewise, extending something into the Muslims' pathway, a millstone, two leather socks and two shoes in the mosque, someone sitting there, a lantern, shaded structures in the market, and one who sprinkles before his door. Abū Muḥammad said: It has been narrated to us from Ibrāhīm al-Nakhaʿī: "If a man extends a prayer mat or wooden beam from his wall, he bears liability."

وَعَنْ وَكِيعٍ نا سُفْيَانُ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ شُرَيْحٍ أَنَّهُ كَانَ يُضَمِّنُ بُورِيَّ السُّوقِ وَعُمُودَهُ.

L38582 And from Waki', from Sufyan, from 'Ata' ibn al-Sa'ib, from Shurayh, that he would hold liable for damage to the market's palm-leaf mats and its support beams.

وَعَنْ وَكِيعٍ نا سُفْيَانُ عَنْ جَابِرٍ عَنْ عَامِرٍ قَالَ: إِذَا نَضَحَ الْقَصَّارُ، أَوْ الْقَصَّابُ ضَمِنَ.

L38583 From Waki‘, reported to us from Sufyan, from Jabir, from Amir, who said: If the launderer or the butcher splashes, they are liable.

وَعَنْ الْحَسَنِ أَبِي مُسَافِرٍ قَالَ: إِنَّ كَنِيفًا وَقَعَ عَلَى صَبِيٍّ فَقَتَلَهُ أَوْ جَرَحَهُ؟ قَالَ شُرَيْحٌ: لَوْ أُتِيتُ بِهِ لَضَمَّنْتُهُ.

L38584 It is narrated from Al-Hasan Abu Musafir that he said: “A latrine fell on a boy, killing or injuring him.” Shurayh said: “If it were presented to me, I would impose liability for it.”

وَعَنْ مُحَمَّدٍ النُّفَيْلِيِّ: أَنَّ رَجُلًا أَخْرَجَ صَلَايَةً فِي حَائِطِهِ فَمَزَّقَتْ مَزَادَةً مِنْ أُدْمٍ؟ فَضَمَّنَهُ شُرَيْحٌ.

L38585 From Muhammad al-Nufayli: A man removed a prayer niche from his wall, and it tore a tanned leather waterskin. Shuraih ruled him liable to compensate.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: مَنْ أَخْرَجَ رَحًى مِنْ رُكْنِ دَارِهِ فَعَقَرَتْ رَجُلًا ضَمِنَ.

L38586 From the narration of Al-Ḥajjāj ibn Arṭāʾah, from Al-Ḥakam ibn ʿUtaybah, from ʿAlī ibn Abī Ṭālib, who said: “Whoever removes a millstone from the corner of their house, and it injures a person, they are liable.”

وَعَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ قَتَادَةَ عَنْ شُرَيْحٍ مِثْلَهُ.

L38587 And from Al-Ḥajjāj ibn Arṭāṭah, from Qatādah, from Shurayḥ: the like of it (to the foregoing).

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ مُجَاهِدٍ عَنْ أَبِيهِ قَالَ: قَالَ عَلِيٌّ: مَنْ حَفَرَ بِئْرًا، أَوْ فَرَضَ غَوْرًا ضَمِنَ.

L38588 Through the chain of ʿAbd al-Razzāq, from Ibn Mujāhid, from his father, who said: ʿAlī said, “Whoever digs a well or establishes a deep pit incurs liability.”

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَطَاءِ بْنِ السَّائِبِ قَالَ: ضَمَّنَ شُرَيْحٌ الْبَادِيَ، وَظِلَالَ أَهْلِ السُّوقِ، إذَا لَمْ يَكُنْ فِي مِلْكِهِمْ، وَضَمَّنَ أَهْلَ الْعَمُودِ.

L38589 From Abd al-Razzaq, from Sufyan al-Thawri, from Ata ibn al-Sa’ib, who said: Shuraih held the Bedouin liable, held the market people liable for their awnings when they were not within their ownership, and held the people of the columns liable.

وَعَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ رَجُلٍ تَوَضَّأَ وَصَبَّ مَاءَهُ فِي الطَّرِيقِ؟ قَالَ حَمَّادٌ: يُضَمَّنُ - وَقَالَ الْحَكَمُ: لَا يُضَمَّنُ.

L38590 Narrated through Al-Hakam ibn ‘Utaybah, via Hammad ibn Abi Sulayman, from a man who performed ablution and poured his water onto the road. Hammad said: “He is liable”—and Al-Hakam said: “He is not liable.”

وَعَنْ شُعْبَةَ عَنْ الْحَكَمِ، وَحَمَّادٍ فِي الرَّجُلِ السُّوقِيِّ يَنْضَحُ بَيْنَ يَدَيْ بَابِهِ مَاءً فَيَمُرُّ بِهِ إنْسَانٌ فَيُزَلَقُ؟ قَالَ حَمَّادٌ: يَضْمَنُ - وَقَالَ الْحَكَمُ: لَا يَضْمَنُ.

L38591–38592 From Shu’bah, from al-Ḥakam and Ḥammād regarding a man in the marketplace who sprinkles water in front of his door, whereupon a passerby slips. [What is the ruling?] Ḥammād said: “He is liable” - while al-Ḥakam said: “He is not liable.”

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا عَنْ عَلِيٍّ، وَشُرَيْحٍ، وَالنَّخَعِيِّ، وَحَمَّادٍ.

L38593 Abu Muhammad said: Thus, this is transmitted from ʿAlī, Shurayḥ, al-Nakhaʿī, and Ḥammād.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: مَنْ أَحْدَثَ فِي الطَّرِيقِ حَدَثًا مِنْ نَضْحٍ، أَوْ مَاءٍ، أَوْ حَجَرٍ، أَوْ شَيْئًا أَخْرَجَهُ مِنْ دَارِهِ فِي الطَّرِيقِ مِنْ ظُلَّةٍ، أَوْ جَنَاحٍ: فَهُوَ ضَامِنٌ لِمَا عَطِبَ فِيهِ.

L38594 Al-Ḥasan ibn Ḥayy said: Whoever causes an occurrence on the road - whether through sprinkling, water, a stone, or anything they remove from their home onto the road from an awning or projection - is liable for any damage resulting from it.

وَقَالَ الْأَوْزَاعِيِّ: مَنْ أَخْرَجَ كَنِيفًا أَوْ جِذْعًا إِلَى الطَّرِيقِ فَأَعْنَتَ أَحَدًا ضَمِنَ ذَلِكَ.

L38595 Al-Awzaʿī said: Whoever places a latrine or a palm trunk onto the road and thereby causes harm to someone is liable for it.

وَقَالَ اللَّيْثُ: إِنْ أَخْرَجَ عُودًا، أَوْ حَجَرًا، أَوْ خَشَبَةً، مِنْ جِدَارِهِ، فَمَرَّ بِهِ إِنْسَانٌ فَجَرَحَهُ، أَوْ قَتَلَهُ، فَإِنْ كَانَ لَا يُعْرَفُ مِنْ صَنِيعِ النَّاسِ ضَمِنَ بِهِ.

L38596 Al-Layth said: If someone removes a stick, a stone, or a piece of wood from his wall, and a person passes by it and it injures or kills them, then if it is not attributable to human action, he is liable for it.

وَقَالَ الشَّافِعِيُّ: وَاضِعُ الْحَجَرِ فِي أَرْضٍ لَا يَمْلِكُهَا ضَامِنٌ.

L38597 Al-Shāfiʿī said: Anyone who places a boundary marker on land they do not own is financially liable.

وَأَمَّا أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، فَلَهُمْ هَاهُنَا أَقْوَالٌ طَرِيفَةٌ نَذْكُرُ مِنْهَا مَا يَسَّرَ اللَّهُ تَعَالَى: فَمِنْهَا - أَنَّهُ قَالَ: مَنْ قَعَدَ فِي مَسْجِدٍ فِي غَيْرِ صَلَاةٍ فَعَطِبَ بِهِ إِنْسَانٌ ضَمِنَ، فَإِنْ كَانَ فِي صَلَاةٍ لَمْ يَضْمَنْ، وَإِنْ كَانَ فِي غَيْرِ صَلَاةٍ ضَمِنَ.

L38598 As for Abū Ḥanīfah and his companions, they hold distinctive rulings here, from which we mention what Allah, the Exalted, has graciously enabled. Among these is his statement: If someone sits in a mosque without praying and someone is harmed because of it, he is financially responsible. If he is praying, he incurs no liability, but if he is not praying, he is obligated to compensate.

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدٌ: لَا يَضْمَنُ فِي كِلَا الْوَجْهَيْنِ.

L38599 Abū Yūsuf and Muḥammad said: There is no financial liability in either opinion.

وَقَالُوا كُلُّهُمْ: مَنْ أَخْرَجَ مِنْ دَارِهِ مِيزَابًا فَسَقَطَ عَلَى إِنْسَانٍ فَقَتَلَهُ، فَإِنْ أَصَابَهُ مَا كَانَ خَارِجًا مِنْ الْحَائِطِ ضَمِنَ، وَإِنْ أَصَابَهُ مَا كَانَ فِي الْحَائِطِ فَلَا شَيْءَ عَلَيْهِ، فَإِنْ جَهِلَ مَا أَصَابَهُ فَالْقِيَاسُ أَنْ لَا يَضْمَنَ - وَلَكِنْ قَالُوا: نَدَعُ الْقِيَاسَ وَنَسْتَحْسِنُ فَنُضَمِّنُهُ.

L38600 They all said: Whoever projects a gutter from his house, and it falls on a person and kills him—if that which struck him was projecting beyond the wall, he is liable. But if that which struck him was within the wall, there is no liability. If he does not know which part struck him, the analogy dictates no liability. However, they said: “We set aside analogy and invoke juristic preference, thus imposing liability.”

وَإِنْ وَضَعَ فِي الطَّرِيقِ حَجَرًا ضَمِنَ مَا أَصَابَهُ.

L38601 And if he places a stone on the road, he is liable for the harm it causes.

قَالُوا: فَإِنْ اسْتَأْجَرَ رَجُلًا عَلَى شَيْءٍ يُحْدِثُهُ فِي فِنَائِهِ، فَعَطِبَ بِهِ إِنْسَانٌ ضَمِنَ، الْمُسْتَأْجِرُ - فَلَوْ اسْتَأْجَرَهُ لِيَحْفُرَ فِي غَيْرِ فِنَائِهِ، فَإِنَّ الضَّامِنَ لِمَا يُتْلَفُ بِذَلِكَ الْأَجِيرُ.

L38602 They said: If a man hires someone to perform a task he commissions in his courtyard, and a person is harmed thereby, the hirer is liable. But if he hires him to dig outside his courtyard, then the worker is liable for what is damaged through that digging.

L38603 Abu Muhammad said: As for the position of our companions, none is held liable for any of that according to their judgment. When they disagreed as we have mentioned, it became incumbent upon us to investigate this matter, so that we may discern the truth therein and thereby follow it.

قَالَ أَبُو مُحَمَّد: أَمَّا عِنْدَ أَصْحَابِنَا فَلَا يَضْمَنُ عِنْدَهُمْ أَحَدٌ فِي شَيْءٍ مِنْ ذَلِكَ، فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ عَلَيْنَا أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ مِنْ ذَلِكَ فَنَتْبَعَهُ.

L38604–38606 We examined the statements of those who upheld compensation and found them mentioning the following narration: “What has been transmitted to us through the chain of ʿAbd al-Razzāq...” From Ibn ʻUyaynah, from ʻAmr, from Al-Ḥasan, who said: The Messenger of Allah (peace be upon him) said, “Whoever exceeds a prescribed limit and thereby harms a person is liable.”

فَنَظَرْنَا فِي قَوْلِ مَنْ قَالَ بِالتَّضْمِينِ فَوَجَدْنَاهُمْ يَذْكُرُونَ: مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ عُيَيْنَةَ عَنْ عَمْرٍو عَنْ الْحَسَنِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أَخْرَجَ مِنْ حَدِّهِ شَيْئًا فَأَصَابَ إنْسَانًا فَهُوَ ضَامِنٌ» .

L38607 Ahmad ibn Muhammad al-Talamanki narrated to us: Ibn Mufarrij narrated to us: Muhammad ibn Ayyub al-Raqqi narrated to us: Ahmad ibn Amr ibn Abd al-Khaliq al-Bazzar narrated to us: Amr ibn Malik al-Sa’igh narrated from al-Hasan from Abu Bakrah from the Prophet—peace and blessings be upon him—who said: “Whoever exceeds the limit in something and thereby harms a person is liable.”

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الرَّقِّيّ نا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا عَمْرُو بْنُ مَالِكٍ الصَّائِغُ عَنْ الْحَسَنِ عَنْ أَبِي بَكْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ أَخْرَجَ عَنْ حَدِّهِ شَيْئًا فَأَصَابَ بِهِ إنْسَانًا فَهُوَ ضَامِنٌ» .

L38608 This has been reported from Ali, and no opposing Companion—may Allah be pleased with them—is known.

وَقَدْ رُوِيَ ذَلِكَ عَنْ عَلِيٍّ، وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L38609 Abu Muhammad said: We know nothing for them besides this, and all of this amounts to nothing. As for the mentioned narration, it is not valid because it is a mursal narration from Al-Hasan, and a mursal narration cannot be used as evidence. No one transmitted it with a complete chain except Hammad ibn Malik, who is not strong, according to Al-Bazzar and others. Thus, reliance upon it is invalidated.

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ هَذَا، وَكُلُّ هَذَا لَا شَيْءَ: أَمَّا الْخَبَرُ الْمَذْكُورُ فَلَا يَصِحُّ، لِأَنَّهُ مُرْسَلٌ عَنْ الْحَسَنِ، وَالْمُرْسَلُ لَا حُجَّةَ فِيهِ، وَلَمْ يُسْنِدْهُ أَحَدٌ إلَّا حَمَّادُ بْنُ مَالِكٍ، وَلَيْسَ بِالْقَوِيِّ، قَالَهُ الْبَزَّارُ وَغَيْرُهُ - فَسَقَطَ التَّعَلُّقُ بِهِ.

L38610 As for the narration attributed to ʿAlī, it is invalid because it is transmitted through al-Ḥajjāj ibn Arṭāʾa and ʿAbd al-Wahhāb ibn Mujāhid (both of whom are extremely weak), then from al-Ḥakam and Mujāhid (neither of whom met ʿAlī ibn Abī Ṭālib). Thus the report is wholly invalidated, except narrations from Ibrāhīm, Shurayḥ, and Ḥammād. A statement attributed to al-Shāfiʿī is unauthentic. It has been claimed to be authentically reported from al-Ḥakam regarding some aspects of this matter that he incurs no liability.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ فَبَاطِلَةٌ، لِأَنَّهَا عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ، وَعَبْدِ الْوَهَّابِ بْنِ مُجَاهِدٍ - وَكِلَاهُمَا فِي غَايَةِ السُّقُوطِ - ثُمَّ عَنْ الْحَكَمِ، وَمُجَاهِدٍ - وَكِلَاهُمَا لَمْ يُدْرِكْ عَلِيَّ بْنَ أَبِي طَالِبٍ - فَسَقَطَ الْخَبَرُ جُمْلَةً، إلَّا عَنْ إبْرَاهِيمَ، وَشُرَيْحٍ، وَحَمَّادٍ، وَقَوْلٌ عَنْ الشَّافِعِيِّ لَا يَصِحُّ - وَقَدْ صَحَّ عَنْ الْحَكَمِ فِي بَعْضِ ذَلِكَ أَنَّهُ لَا يَضْمَنُ.

L38611 Ali said: Thus, there remains no argument whatsoever for those who impose

liability—since it has been established that wealth is inviolable, it is impermissible to impose a fine on anyone unless mandated by a text or scholarly consensus (ijmaʿ). Therefore, no liability shall apply in any such matters—and success is from Allah, the Exalted.

قَالَ عَلِيٌّ: فَلَمْ يَبْقَ لِلْمُضَمِّنِينَ حُجَّةٌ أَصْلًا - وَقَدْ صَحَّ أَنَّ الْأَمْوَالَ مُحَرَّمَةٌ، فَلَا يَحِلُّ إِلْزَامُ أَحَدٍ غَرَامَةً لَمْ يُوجِبْهَا نَصٌّ، أَوْ إِجْمَاعٌ، فَوَجَبَ أَنْ لَا ضَمَانَ فِي شَيْءٍ مِنْ ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

A legal issue: If a wall collapses and causes damage to a person or property...

[مَسْأَلَةٌ الْحَائِطُ يَقَعُ فَيُتْلِفُ نَفْسًا أَوْ مَالًا]

L38613 Legal Case 2109: If a wall collapses and causes loss of life or property, what is the ruling? Ali said: It was narrated to us via ʿAbd al-Razzāq from Sufyān from Jābir al-Juʿfī from al-Shaʿbī from Shurayḥ regarding the wall if it is leaning. He said: If they testify regarding it [the wall], he is liable.

٢١٠٩ - مَسْأَلَةٌ: الْحَائِطُ يَقَعُ فَيُتْلِفُ نَفْسًا أَوْ مَالًا؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ عَنْ جَابِرٍ الْجُعْفِيِّ عَنِ الشَّعْبِيِّ عَنْ شُرَيْحٍ فِي الْحَائِطِ إِذَا كَانَ مَائِلًا، قَالَ: إِنْ شَهِدُوا عَلَيْهِ ضَمِنَ.

L38614 From Abd al-Razzaq, from Ma’mar, from Qatadah regarding a leaning wall: If witnesses testify against its owner, and it collapses on a person and kills him, then he is liable.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي الْجِدَارِ إِذَا كَانَ مَائِلًا إِذَا شَهِدُوا عَلَى صَاحِبِهِ فَوَقَعَ عَلَى إِنْسَانٍ فَقَتَلَهُ، فَإِنَّهُ يَضْمَنُ.

L38615 And from Ibrāhīm al-Nakhāʿī comes an opinion similar to that of Shurayḥ regarding the leaning wall.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ مِثْلُ قَوْلِ شُرَيْحٍ فِي الْجِدَارِ الْمَائِلِ.

L38616–38618 And others said other than this, as narrated to us through Ibn Waḍḍāḥ’s chain: from Sahnun, from Ibn Wahb. Yunus—that is, Ibn Yazid—narrated to me from Ibn Shihab, who said regarding a man whose neighbor’s wall tilted or cracked: He said to him, “Demolish this wall of yours, for we fear it!” But the man refused. Then the wall collapsed and killed a slave belonging to the one who had warned him, or a free member of his household. He said, “We deem no liability upon him, and he was negligent and committed a wrongful act.”

وَقَالَ آخَرُونَ غَيْرَ هَذَا: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ - هُوَ ابْنُ يَزِيدَ - عَنِ ابْنِ شِهَابٍ أَنَّهُ قَالَ فِي رَجُلٍ مَالَ جِدَارٌ لِجَارِهِ، أَوْ انْصَدَعَ، فَقَالَ لَهُ: اكْسِرْ جِدَارَكَ هَذَا فَإِنَّا نَخَافُهُ؟ فَأَبَى عَلَيْهِ، ثُمَّ إِنَّ الْجِدَارَ سَقَطَ فَقَتَلَ عَبْدَ الَّذِي نَهَاهُ، أَوْ حُرًّا مِنْ أَهْلِهِ؟ قَالَ: لَا نَرَى عَلَيْهِ شَيْئًا، وَقَدْ فَرَّطَ وَأَسَاءَ.

L38619 As for the later jurists, Ibn Abī Laylā stated: If the owner of the wall knew of its leaning and weakness and neglected it, he bears liability. If he did not know, he did not bear liability. Abū Thawr also holds this opinion.

وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ ابْنَ أَبِي لَيْلَى قَالَ: إِنْ عَلِمَ صَاحِبُ الْجِدَارِ بِمَيْلِهِ وَضَعْفِهِ فَتَرَكَهُ فَهُوَ ضَامِنٌ، وَإِنْ لَمْ يَعْلَمْ لَمْ يَضْمَنْ - وَبِهِ يَقُولُ أَبُو ثَوْرٍ.

L38620 Sufyan al-Thawri said: If they do not call witnesses against him, he is not

held responsible. Even if it is properly aligned - and it is split - he cannot be compelled to demolish it.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: إِنْ لَمْ يُشْهِدُوا عَلَيْهِ لَمْ يَضْمَنْ، وَإِنْ كَانَ مُعْتَدِلًا - وَهُوَ مَشْقُوقٌ - لَمْ يُجْبَرْ عَلَى نَقْضِهِ.

L38621 Ishaq ibn Rahwayh said: He is liable for any damage caused by his wall, whether he had witnesses attest to it or not.

وَقَالَ إِسْحَاقُ بْنُ رَاهْوَيْهِ: يَضْمَنُ مَا أَصَابَ جِدَارُهُ - أَشْهَدَ عَلَيْهِ أَوْ لَمْ يُشْهِدْ.

L38622 Abu Hanifah, Malik, their companions, and al-Ḥasan ibn Ḥayyin said: If he testifies against him in this matter, he is liable; if he does not testify, he incurs no liability.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَأَصْحَابُهُمَا، وَالْحَسَنُ بْنُ حَيٍّ: إِنْ أَشْهَدَ عَلَيْهِ بِهَذَا ضَمِنَ، وَإِنْ لَمْ يُشْهِدْ عَلَيْهِ لَمْ يَضْمَنْ.

L38623 Al-Shāfiʿī, Abū Sulaymān, and their adherents said: There is no financial responsibility incumbent upon him—whether he demands a witness [to testify] against him or not.

وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا: لَا ضَمَانَ عَلَيْهِ - أَشْهَدَ عَلَيْهِ أَوْ لَمْ يُشْهِدْ عَلَيْهِ.

L38624 Ali said: When they differed as we mentioned, it became imperative to examine this matter so the truth might become evident from it, enabling us to follow it—by the help of Allah, the Exalted. We then considered those who distinguished between the ruling of requiring attestation against him and the ruling of not requiring attestation. We found no basis for this distinction in the Quran, an authentic or weak Sunnah, consensus, a Companion's opinion, analogy, or rational consideration—except that they said: "It has been reported from a group of the Successors." This, however, holds no weight, for we have presented instances where these Successors contradicted groups of the Companions—may Allah be pleased with them—among whom no widespread opposition to them is recognized. How then can the disagreement of a few Successors merit consideration? Earlier, we cited Al-Zuhri's statement that there is no liability upon a person—even though these people, by their own assertion, are proponents of analogy? They do not dispute that if someone places an animal on his property and it escapes, causing death without his direct action, there is no liability on him—whether he attested or not. What then distinguishes this from a wall collapsing without his action? Thus, this opinion is nullified, its corruption becomes evident, and success is granted by Allah, the Exalted.

قَالَ عَلِيٌّ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِيَلُوحَ الْحَقُّ مِنْ ذَلِكَ فَنَتْبَعَهُ - بِعَوْنِ اللَّهِ تَعَالَى - فَنَظَرْنَا فِيمَنْ فَرَّقَ بَيْنَ حُكْمِ الْإِشْهَادِ عَلَيْهِ وَحُكْمِ تَرْكِ الْإِشْهَادِ عَلَيْهِ، فَلَمْ نَجِدْ لَهُمَا مُتَعَلَّقًا لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا إِجْمَاعٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا نَظَرٍ إِلَّا أَنَّهُمْ قَالُوا: قَدْ رُوِيَ عَنْ جَمَاعَةٍ مِنْ التَّابِعِينَ - وَهَذَا لَيْسَ بِشَيْءٍ، لِأَنَّنَا قَدْ أَوْرَدْنَا مِمَّا خَالَفُوا فِيهِ الطَّوَائِفَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ كَثِيرًا جِدًّا، فَكَيْفَ مَا اخْتَلَفَ فِيهِ نَفَرٌ مِنْ التَّابِعِينَ؟ وَقَدْ أَوْرَدْنَا آنِفًا قَوْلَ الزُّهْرِيِّ: أَنَّهُ لَا ضَمَانَ عَلَيْهِ - مَعَ أَنَّ الْقَوْمَ بِزَعْمِهِمْ أَصْحَابُ قِيَاسٍ؟ وَلَا يَخْتَلِفُونَ فِيمَنْ وَضَعَ دَابَّةً فِي مِلْكِهِ فَخَرَجَتْ فَقَتَلَتْ مِنْ غَيْرِ فِعْلِهِ أَنَّهُ لَا ضَمَانَ عَلَيْهِ - أَشْهَدَ أَوْ لَمْ يُشْهِدْ عَلَيْهِ - فَمَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ الْجِدَارِ يَنْهَدِمُ مِنْ غَيْرِ فِعْلِهِ؟ فَبَطَلَ هَذَا الْقَوْلُ وَظَهَرَ فَسَادُهُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38625–38626 There remains only the opinion of those who imposed liability for what the wall caused—whether testimony was presented against him or not—or the

opinion of those who did not impose liability for what it caused—whether testimony was presented against him or not—since it has been definitively established that distinguishing between cases with testimony and those without testimony is entirely devoid of any meaning whatsoever.

وَلَمْ يَبْقَ إِلَّا قَوْلُ مَنْ ضَمَّنَ مَا أَصَابَ الْجِدَارُ - أَشْهَدَ عَلَيْهِ أَوْ لَمْ يُشْهِدْ عَلَيْهِ - أَوْ قَوْلُ مَنْ لَمْ يُضَمِّنْهُ مَا أَصَابَ - أَشْهَدَ عَلَيْهِ أَوْ لَمْ يُشْهِدْ - إِذْ قَدْ صَحَّ أَنَّ التَّفْرِيقَ بَيْنَ الْإِشْهَادِ وَغَيْرِ الْإِشْهَادِ: لَا مَعْنَى لَهُ أَلْبَتَّةَ.

L38627 We examined this matter and found that the owner of the leaning wall is not termed a “killer” in the Arabic language for one killed by the wall. He might be in the farthest east while the wall is in the farthest west. Since he is not called an intentional killer nor an unintentional killer, there is no blood money, no expiation, and no liability for property destroyed—for property is inviolable. It is impermissible to impose a fine on anyone unless required by an explicit text or consensus. Success is from Allah, the Most High.

فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا صَاحِبَ الْجِدَارِ الْمَائِلِ لَا يُسَمَّى " قَاتِلًا " لِمَنْ قَتَلَهُ الْجِدَارُ فِي لُغَةِ الْعَرَبِ؟ وَقَدْ يَكُونُ غَائِبًا بِأَقْصَى الْمَشْرِقِ وَالْحَائِطُ بِأَقْصَى الْمَغْرِبِ، فَإِذْ لَا يُسَمَّى قَاتِلَ عَمْدٍ، وَلَا قَاتِلَ خَطَأٍ فَلَا دِيَةَ فِي ذَلِكَ، وَلَا كَفَّارَةَ، وَلَا ضَمَانَ لِمَا تَلِفَ مِنْ مَالٍ، إِذْ الْأَمْوَالُ مُحَرَّمَةٌ، وَلَا يَجُوزُ الْحُكْمُ بِغَرَامَةٍ عَلَى أَحَدٍ لَمْ يُوجِبْهَا عَلَيْهِ نَصٌّ وَلَا إِجْمَاعٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْجَرَّةُ تُوضَعُ إِلَى بَابٍ أَوْ إِنْسَانٌ يَسْتَنِدُ إِلَى بَابٍ فَيَفْتَحُ الْبَابَ فَاتِحٌ فَيَقَعُ الْإِنْسَانُ فَيَمُوتُ]

L38628 **Jurisprudential Issue: If a jar is placed near a door and a person opens the door, causing someone to fall and die; or if a person leans against a door and someone opens it, causing that person to fall and die.**

٢١١٠ - مَسْأَلَةٌ: الْجَرَّةُ تُوضَعُ إِلَى بَابٍ، أَوْ إِنْسَانٍ يَسْتَنِدُ إِلَى بَابٍ، فَيَفْتَحُ الْبَابَ فَاتِحٌ فَيُفْسِدُ الْمَتَاعَ، أَوْ يَقَعُ الْإِنْسَانُ فَيَمُوتُ؟ قَالَ عَلِيٌّ: قَالَ قَوْمٌ بِالتَّضْمِينِ فِي هَذَا، وَأَسْقَطَ قَوْمٌ فِيهِ الضَّمَانَ، وَالظَّاهِرُ عِنْدَنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - أَنَّهُ ضَامِنٌ لِلْمَتَاعِ، وَالدِّيَةُ عَلَى عَاقِلَتِهِ، وَالْكَفَّارَةُ عَلَيْهِ، لِأَنَّهُ مُبَاشِرٌ لِإِسْقَاطِ الْمَتَاعِ، وَإِسْقَاطِ الْمُسْنَدِ قَاصِدًا إِلَى ذَلِكَ - وَإِنْ لَمْ يَعْلَمْ - بِخِلَافِ مَا ذَكَرْنَا قَبْلُ مِمَّا لَمْ يُبَاشِرْ الْإِتْلَافَ فِيهِ، وَلَوْ أَنَّهُ فَعَلَ هَذَا عَمْدًا لَكَانَ عَلَيْهِ الْقَوَدُ، وَهَذَا وَالَّذِي يُزْحِمُ دَابَّتَهُ فِي الطَّرِيقِ فَيَدْفَعُهَا عَنْ طَرِيقِهِ فَتَدُوسُ إِنْسَانًا، أَوْ تُفْسِدُ مَتَاعًا، فَإِنَّهُ يَضْمَنُ، لِأَنَّهُ مُبَاشِرٌ لِلْإِفْسَادِ، وَلَا نُبَالِي بِتَعَدِّي مُسْنِدِ الْجَرَّةِ، وَالْمُتَّكِئِ إِلَى الْبَابِ لَوْ كَانَا مُتَعَدِّيَيْنِ فَكَيْفَ وَلَا عُدْوَانَ فِي هَذَا.

L38629 2110 - Issue: If a jar is placed near a door, or a person leans against a door, and someone opens the door, causing the property to fall or the person to fall and die? ʿAlī said: Some scholars upheld liability in this case, while others nullified it. The apparent ruling according to us—and success comes only from Allah, the Exalted—is that the opener is liable for the property, the blood money (diyah) falls upon his agnatic relatives, and the expiation (kaffarah) is incumbent upon him, because he directly caused the property’s fall and the collapse of the one leaning [against the door], intending the act itself—even if unaware—unlike the previous cases we mentioned where there was no direct causation of harm. Had he done this intentionally, retaliation (qisas) would apply. This is analogous to one who forces his mount into a crowded path, pushing it aside, causing it to trample a person or damage property—he is liable, as he directly caused the harm. We disregard any transgression by the one who leaned the jar or the one who reclined against

the door, even if they were transgressors—how much more so when there is no transgression in this case.

L38630 If a person were to sleep at night in a pathway and someone were to tread on him, killing him, then the treader is undoubtedly an accidental killer.

L38631 Similarly, if someone enters a person's home to steal, and the homeowner tramples him and kills him, he is the direct perpetrator of the killing, thus subject to qisas in cases of intentional killing, because he did not kill him while [the thief] was fighting him. Blood money applies in such a case, and expiation is required of the agnatic kin in cases of unintentional killing. And with Allah alone is success, the Most High.

L38632–38633 A legal case wherein a mentally incompetent person was provoked to anger by a cause that warrants provocation, then threw stones and killed either the one who provoked him or another person.

L38634 Issues from this chapter: One issue. Abu Muhammad said: If someone provokes a foolish person with something that would incite anger, and he then hurls stones that kill the one who provoked him or another person, or if someone gives a foolish person a sword and he kills people with it, there is no liability in any of these cases, because he did not directly commit any crime, nor is he called a killer in linguistic terms.

L38635 If he were to command a fool to kill a specific individual and the fool kills him, then if the fool acted in obedience to him and this obedience was acknowledged, the one who ordered is liable and subject to retaliation (qisas). But if the fool did not act in obedience to him, there is no liability, because the act did not occur due to his command or his own action.

L38636 If he threw a stone that struck another stone, dislodging it, and this dislodged stone tumbled down, causing death and damage, there is no liability for that, because only the dislodging of the stone resulted from his throw. He is liable to restore it only if it had been positioned for a specific purpose. A person is liable solely for what results directly from his action, and not for what results from the consequences of his action.

وَلَوْ أَنَّ امْرَأً رَقَدَ لَيْلًا فِي طَرِيقٍ فَدَاسَهُ إِنْسَانٌ فَقَتَلَهُ فَإِنَّهُ قَاتِلُ خَطَأٍ بِلَا شَكٍّ.

وَكَذَلِكَ لَوْ دَخَلَ دَارَ إِنْسَانٍ لِيَسْرِقَ فَدَاسَهُ صَاحِبُ الْمَنْزِلِ فَقَتَلَهُ فَهُوَ مُبَاشِرٌ لِقَتْلِهِ، فَعَلَيْهِ الْقَوَدُ فِي الْعَمْدِ، لِأَنَّهُ لَمْ يَقْتُلْهُ مُحَارِبًا لَهُ، وَالدِّيَةُ فِي ذَلِكَ، وَالْكَفَّارَةُ عَلَى الْعَاقِلَةِ فِي غَيْرِ الْعَمْدِ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ أَغْضَبَ أَحْمَقَ بِمَا يُغْضَبُ مِنْهُ فَقَذَفَ بِالْحِجَارَةِ فَقَتَلَ الْمُغْضِبَ لَهُ أَوْ غَيْرَهُ]

مَسَائِلُ مِنْ هَذَا الْبَابِ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: مَنْ أَغْضَبَ أَحْمَقَ بِمَا يُغْضَبُ مِنْهُ فَقَذَفَ بِالْحِجَارَةِ فَقَتَلَ الْمُغْضِبَ لَهُ أَوْ غَيْرَهُ، أَوْ أَعْطَى أَحْمَقَ سَيْفًا فَقَتَلَ بِهِ قَوْمًا، فَلَا شَيْءَ فِي كُلِّ ذَلِكَ، لِأَنَّهُ لَمْ يُبَاشِرْ شَيْئًا مِنْ الْجِنَايَةِ، وَلَا يُسَمَّى فِي اللُّغَةِ قَاتِلًا.

فَلَوْ أَنَّهُ أَمَرَ الْأَحْمَقَ بِقَتْلِ إِنْسَانٍ بِعَيْنِهِ فَقَتَلَهُ، فَإِنْ كَانَ الْأَحْمَقُ فَعَلَ ذَلِكَ طَاعَةً لَهُ، وَكَانَ ذَلِكَ مَعْرُوفًا فَهُوَ آمِرٌ، فَالْآمِرُ عَلَيْهِ الْقَوَدُ، وَإِنْ كَانَ لَمْ يَفْعَلْ طَائِعًا لَهُ فَلَا شَيْءَ فِي ذَلِكَ، لِأَنَّهُ لَمْ يَكُنْ، لَا عَنْ أَمْرِهِ وَلَا عَنْ فِعْلِهِ.

فَلَوْ رَمَى حَجَرًا فَأَصَابَ ذَلِكَ الْحَجَرُ حَجَرًا فَقَلَعَهُ، فَتَدَهْدَهَ ذَلِكَ الْحَجَرُ فَقَتَلَ وَأَفْسَدَ: فَلَا شَيْءَ فِي ذَلِكَ، لِأَنَّهُ إِنَّمَا تَوَلَّدَ عَنْ رَمْيِهِ انْقِلَاعُ الْحَجَرِ فَقَطْ، فَهُوَ ضَامِنٌ لِرَدِّهِ إِنْ كَانَ

مَوْضُوعًا لِمَعْنًى مَا فَقَطْ، وَإِنَّمَا يَضْمَنُ الْمَرْءُ مَا تَوَلَّدَ عَنْ فِعْلِهِ، وَلَا يَضْمَنُ مَا تَوَلَّدَ عَمَّا تَوَلَّدَ عَنْ فِعْلِهِ.

L38637 There is no disagreement between any two members of the Ummah that if someone shoots an arrow intending to hunt game but strikes a person or property and destroys it, he is liable. However, if the arrow encounters a running wild donkey and kills a person, or if the donkey—when struck by the arrow—falls and kills a person, he bears no liability at all.

وَلَا يَخْتَلِفُ اثْنَانِ مِنْ الْأُمَّةِ فِي أَنَّ مَنْ رَمَى سَهْمًا يُرِيدُ صَيْدًا فَأَصَابَ إنْسَانًا أَوْ مَالًا فَأَتْلَفَهُ فَإِنَّهُ يَضْمَنُ، وَلَوْ أَنَّهُ صَادَفَ حِمَارَ وَحْشٍ يَجْرِي فَقَتَلَ إنْسَانًا أَوْ سَقَطَ الْحِمَارُ - إذْ أَصَابَهُ السَّهْمُ فَقَتَلَ إنْسَانًا فَإِنَّهُ لَا يَضْمَنُ شَيْئًا.

L38638 If a man is working inside a well while another draws water, and the rope snaps, causing the bucket to fall and kill the one in the well, then if this occurred due to the rope's weakness, the one drawing water is liable for unintentional homicide. The diyah is incumbent upon his agnatic relatives, and he must perform expiation, as he directly caused the killing. However, if he was overpowered and unable to hold the bucket, releasing his grip, he bears no liability in that instance, since he neither directly caused the killing nor performed any action.

وَلَوْ أَنَّ إنْسَانًا يَعْمَلُ فِي بِئْرٍ وَآخَرَ يَسْتَقِي فَانْقَطَعَ الْحَبْلُ فَوَقَعَتْ الدَّلْوُ فَقَتَلَتْ الَّذِي فِي الْبِئْرِ، فَإِنْ كَانَ ذَلِكَ لِضَعْفِ الْحَبْلِ فَهُوَ قَاتِلٌ خَطَأً وَالدِّيَةُ عَلَى الْعَاقِلَةِ، وَعَلَيْهِ الْكَفَّارَةُ، لِأَنَّهُ مُبَاشِرٌ لِقَتْلِهِ، فَلَوْ غُلِبَ فَلَمْ يَقْدِرْ عَلَى إمْسَاكِهِ الدَّلْوَ ففَتَحَ يَدَيْهِ فَلَا شَيْءَ عَلَيْهِ فِي ذَلِكَ، لِأَنَّهُ لَمْ يُبَاشِرْ قَتْلَهُ وَلَا عَمِلَ شَيْئًا.

L38639–38641 Narrated to us ʿAbdullāh ibn Rabīʿ from Ibn Mufarrij from Qāsim ibn Aṣbagh from Ibn Waḍḍāḥ from Saḥnūn from Ibn Wahb. Ibn Lahīʿah narrated from ʿAbd Allāh ibn Hubayrah al-Sabāʾī: "A man shot a kite, and the kite fell onto a child, killing him." He said: "The liability lies with the shooter, for everything resulting from a man's action is his responsibility." He said: "I was informed that Yaḥyā ibn Saʿīd ruled regarding a man who passed by another carrying a stone on his back which then fell and struck a man, killing him: 'The stone-carrier owes the blood money for the slain.'" Saḥnūn said: "Is this a reprehensible case?" Ibn Wahb said: "I heard Mālik say regarding a man holding a rope for another clinging to it in a well: 'If the rope breaks, he bears no liability. But if it slips from the holder's hand, causing the clinging man to fall and die, he is liable for him.'"

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي ابْنُ لَهِيعَةَ عَنْ عَبْدِ اللَّهِ بْنِ هُبَيْرَةَ السَّبَائِيِّ أَنَّ رَجُلًا رَمَى حِدَأَةً فَخَرَّتْ الْحِدَأَةُ عَلَى صَبِيٍّ فَقَتَلَتْهُ؟ قَالَ: هُوَ عَلَى الَّذِي رَمَى، وَكُلُّ شَيْءٍ يَكُونُ مِنْ فِعْلِ رَجُلٍ فَهُوَ عَلَيْهِ - قَالَ: وَبَلَغَنِي عَنْ يَحْيَى بْنِ سَعِيدٍ أَنَّهُ قَالَ فِي رَجُلٍ مَرَّ بِرَجُلٍ وَهُوَ يَحْمِلُ عَلَى ظَهْرِهِ حَجَرًا فَسَقَطَ مِنْهُ فَأَصَابَ رَجُلًا فَقَتَلَهُ؟ فَعَلَيْهِ دِيَةُ الْمَقْتُولِ - قَالَ سَحْنُونٌ: هَذِهِ مَسْأَلَةُ سُوءٍ؟ قَالَ ابْنُ وَهْبٍ: وَسَمِعْت مَالِكًا يَقُولُ فِي الرَّجُلِ يُمْسِكُ الْحَبْلَ لِلرَّجُلِ يَتَعَلَّقُ بِهِ فِي الْبِئْرِ؟ قَالَ: إنْ انْقَطَعَ الْحَبْلُ فَلَا شَيْءَ عَلَيْهِ، وَإِنْ انْفَلَتَ مِنْ يَدِ الْمُمْسِكِ فَسَقَطَ الْمُتَعَلِّقُ فَمَاتَ فَهُوَ ضَامِنٌ لَهُ.

L38642 Ali said: We do not assert anything of all this. As for the kite's landing, the

one who released it did not directly carry out its release, as we previously stated.

قَالَ عَلِيٌّ: لَسْنَا نَقُولُ بِشَيْءٍ مِنْ هَذَا كُلِّهِ: أَمَّا الْحِدَأَةُ تَقَعُ، فَإِنَّ الرَّامِيَ بِهَا لَمْ يُبَاشِرْ إلْقَاءَهَا كَمَا ذَكَرْنَا.

L38643 As for the one from whose back the stone fell—not because he threw it, but due to weakness or stumbling—there is no liability in that. If he intentionally threw it and caused a person's death, then if it was deliberate and he was aware, he is an intentional killer, and retaliation (qisas) is obligatory upon him. If he did not know a person was present, he is an accidental killer, obligated to perform expiation (kaffarah), with the blood money (diyah) due from his agnatic kin, because he directly caused the death without doubt.

وَأَمَّا الَّذِي سَقَطَ الْحَجَرُ عَنْ ظَهْرِهِ دُونَ أَنْ يَكُونَ هُوَ أَلْقَاهُ لَكِنْ ضَعُفَ أَوْ عَثَرَ فَلَا شَيْءَ فِي ذَلِكَ - وَلَوْ أَنَّهُ هُوَ تَعَمَّدَ إلْقَاءَهُ فَمَاتَ بِهِ إنْسَانٌ، فَإِنْ كَانَ عَمْدًا - وَهُوَ يَدْرِي - فَقَاتِلُ عَمْدٍ، وَعَلَيْهِ الْقَوَدُ، وَإِنْ كَانَ لَمْ يَعْرِفْ أَنَّ هُنَالِكَ إنْسَانًا فَهُوَ قَاتِلُ خَطَأٍ وَعَلَيْهِ الْكَفَّارَةُ، وَعَلَى عَاقِلَتِهِ الدِّيَةُ، لِأَنَّهُ مُبَاشِرٌ قَتْلَهُ بِلَا شَكٍّ.

L38644 As for a man holding onto a rope that another person is grasping, there is no liability—neither if the rope breaks nor if the holder lacks strength to maintain their grip. If the rope breaks, the man becomes a wrongdoer against himself through pulling it, for indeed its severance results solely from his own action, not from the action of the one standing by the well. If the rope slips, the one standing at the well's edge did not take responsibility for securing it but lacked the capacity to control it and did not engage in any action whatsoever. It has been narrated to us through Ibn Waḍḍāḥ's chain: Sahnun narrated to us from Ibn Wahb, who informed me: Yazīd ibn Iyāḍ and Ibn Lahīʿah narrated from Ibn Abī Jaʿfar from Bukayr ibn al-Ashajj that ʿAbdullāh ibn ʿAmr—and Yazīd ibn Iyāḍ said: from ʿAbd al-Malik ibn ʿUbayd from Mujāhid from Ibn ʿAbbās—then the two chains converge: whoever brandishes a sword at a woman or child to frighten them, causing their death, incurs the blood money (diyah) for unintentional homicide.

وَأَمَّا تَعَلُّقُ الرَّجُلِ بِحَبْلٍ يُمْسِكُ عَلَيْهِ آخَرُ فَلَا شَيْءَ فِي ذَلِكَ، لَا فِي انْقِطَاعِ الْحَبْلِ، وَلَا فِي ضَعْفِ الْمُمْسِكِ عَنْ إمْسَاكِهِ، لِأَنَّهُ فِي انْقِطَاعِ الْحَبْلِ جَانٍ عَلَى نَفْسِهِ بِجَذْبِ الْحَبْلِ، فَإِنَّمَا انْقَطَعَ مِنْ فِعْلِهِ لَا مِنْ فِعْلِ الْوَاقِفِ عَلَى الْبِئْرِ فَأَمَّا انْفِلَاتُ الْحَبْلِ فَلَمْ يَتَوَلَّ الْوَاقِفُ عَلَى رَأْسِ الْبِئْرِ إبْقَاءَهُ، لَكِنْ غَلَبَ عَلَيْهِ فَلَمْ يُبَاشِرْ فِيهِ شَيْئًا أَصْلًا: رُوِّينَا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي يَزِيدُ بْنُ عِيَاضٍ، وَابْنُ لَهِيعَةَ عَنْ ابْنِ أَبِي جَعْفَرٍ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ أَنَّ عَبْدَ اللَّهِ بْنَ عَمْرٍو وَقَالَ يَزِيدُ بْنُ عِيَاضٍ: عَنْ عَبْدِ الْمَلِكِ بْنِ عُبَيْدٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ، ثُمَّ اتَّفَقَا: أَنَّ مَنْ سَلَّ سَيْفًا عَلَى امْرَأَةٍ، أَوْ صَبِيٍّ، لِيُفْزِعَهُمَا بِهِ، فَمَاتَا مِنْهُ فَفِيهِ دِيَةُ الْخَطَأِ.

L38645–38647 Ali said: "This is invalid and not valid." [Ibn Lahīʿah is extremely weak, and Yazīd ibn Iyāḍ is known for lying.] "They do not differ that whoever performs this action without intending to..." If he startles the two of them, and they are frightened and die, there is no liability upon him. There is no disagreement that intention and knowledge are not considered in cases of error; rather, they are disregarded therein. There is no disagreement that if the killer acts with deliberate intent, then it is intentional homicide.

قَالَ عَلِيٌّ: وَهَذَا بَاطِلٌ لَا يَصِحُّ - وَابْنُ لَهِيعَةَ فِي غَايَةِ الضَّعْفِ، وَيَزِيدُ بْنُ عِيَاضٍ مَذْكُورٌ بِالْكَذِبِ - وَهَذَا الْعَمَلُ لَا يَخْتَلِفُونَ فِي أَنَّ مَنْ فَعَلَهُ غَيْرُ قَاصِدٍ إلَى إفْزَاعِهِمَا فَفَزِعَا فَمَاتَا فَلَا شَيْءَ عَلَيْهِ - وَلَا خِلَافَ فِي أَنَّ النِّيَّةَ، وَالْمَعْرِفَةَ لَا يُرَاعَى شَيْءٌ مِنْهُمَا فِي الْخَطَأِ، بَلْ هُمَا مُطَّرَحَانِ فِيهِ، وَلَا خِلَافَ فِي أَنَّ الْقَاتِلَ إذَا قَصَدَ بِهِ وَنَوَى فَإِنَّهُ عَمْدٌ.

L38648 As for one who brandishes a sword against a woman or child intending to

frighten them, and they die, every sound-minded person is certain he acted with deliberate intent toward them through this deed. Since there is no dispute that he incurs neither qisas nor the ruling of intentional homicide—which is the closest legal characterization to his act—it becomes absolutely and utterly impossible to judge this as accidental, for his action has no basis in accidental killing whatsoever. This is perfectly clear. Success comes from Allah, the Exalted. Only disciplinary correction applies in this case.

وَالَّذِي سَلَّ سَيْفًا عَلَى امْرَأَةٍ أَوْ صَبِيٍّ يُرِيدُ بِذَلِكَ إِفْزَاعَهُمَا فَمَاتَا، فَبِيَقِينٍ يَدْرِي كُلُّ ذِي عَقْلٍ سَلِيمٍ أَنَّهُ عَامِدٌ قَاصِدٌ إِلَيْهِمَا بِهَذَا الْفِعْلِ، فَإِذْ لَا خِلَافَ فِي أَنَّهُ لَيْسَ عَلَيْهِ قَوَدٌ، وَلَا لَهُ حُكْمُ الْعَمْدِ الَّذِي هُوَ أَقْرَبُ الصِّفَاتِ إِلَى فِعْلِهِ فَمِنَ الْمُحَالِ الْمُمْتَنِعِ أَنْ يَكُونَ عَلَيْهِ حُكْمُ الْخَطَأِ الَّذِي لَيْسَ لِفِعْلِهِ فِيهِ مَدْخَلٌ أَصْلًا - وَهَذَا فِي غَايَةِ الْبَيَانِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ - وَلَيْسَ فِيهِ إِلَّا الْأَدَبُ فَقَطْ.

A case: If someone causes a person to enter a house, and harm befalls them.

[مَسْأَلَةٌ أَدْخَلَ إِنْسَانًا دَارًا فَأَصَابَهُ شَيْءٌ]

2112 - Issue: If a man brings another man into his home and something befalls him? Ali said: It was narrated to us through the chain of Ibn Waḍḍāḥ, from Musa ibn Mu'awiyah, from Waki', from Muhammad ibn Qays, from Al-Sha'bi, who said: When a man brings another man into his home, he remains liable until he removes him as he brought him in.

٢١١٢ - مَسْأَلَةٌ: مَنْ أَدْخَلَ إِنْسَانًا دَارًا فَأَصَابَهُ شَيْءٌ؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا مُحَمَّدُ بْنُ قَيْسٍ عَنِ الشَّعْبِيِّ، قَالَ: إِذَا أَدْخَلَ الرَّجُلُ الرَّجُلَ دَارِهِ فَهُوَ ضَامِنٌ حَتَّى يُخْرِجَهُ كَمَا أَدْخَلَهُ.

It has been reported to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī regarding a man who entered another man's house where there was a knife. He stepped on it, and it killed him. Al-Zuhrī said: "There is nothing upon the owner of the house, is there?" ʿAlī said: "We hold to the opinion of al-Zuhrī, for the Prophet (peace and blessings of Allah be upon him) said: 'Your blood and your wealth are inviolable upon you.' Therefore, it is impermissible to obligate anyone to pay a financial penalty without an explicit text or consensus. If it is not definitively established that this person committed it intentionally or through negligence, there is no liability upon him, for his blood and wealth are inviolable. If a slain person is found in his home, the ruling of _qasāmah_ applies to him."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ فِي رَجُلٍ دَخَلَ بَيْتَ رَجُلٍ، وَفِي الْبَيْتِ سِكِّينٌ فَوَطِئَ عَلَيْهَا فَقَتَلَتْهُ، قَالَ: لَيْسَ عَلَى صَاحِبِ الْبَيْتِ شَيْءٌ؟ قَالَ عَلِيٌّ: وَبِقَوْلِ الزُّهْرِيِّ نَقُولُ، لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَحِلُّ إِلْزَامُ أَحَدٍ غَرَامَةَ مَالٍ بِغَيْرِ نَصٍّ، أَوْ إِجْمَاعٍ وَمَا لَمْ يُتَيَقَّنْ أَنَّ هَذَا الْإِنْسَانَ جَنَاهُ بِعَمْدٍ، أَوْ بِخَطَأٍ، فَلَا شَيْءَ عَلَيْهِ، لِأَنَّ دَمَهُ وَمَالَهُ حَرَامٌ، فَإِنْ وُجِدَ فِي دَارِهِ مَقْتُولًا فَلَهُ حُكْمُ الْقَسَامَةِ.

If he makes a claim—while alive—against the property owner, the ruling of mutual claim applies. If he is found dead with no visible traces on him—since death comes and goes unpredictably, leaving no indication except the mutual claim itself—for it is possible he was overcome without showing signs, then this falls under mutual claim if such a possibility exists. Even if we were

وَإِنْ ادَّعَى - وَهُوَ حَيٌّ - عَلَى صَاحِبِ الدَّارِ فَعَلَيْهِ حُكْمُ التَّدَاعِي، وَإِنْ لَمْ يَخْرُجْ إِلَّا مَيِّتًا لَا أَثَرَ فِيهِ، فَالْمَوْتُ يَغْدُو وَيَرُوحُ، وَلَا شَيْءَ بِهِ إِلَّا التَّدَاعِيَ، إِذْ قَدْ يُمْكِنُ أَنْ يُغَمَّ

certain he died of natural causes (lit. 'by the tip of his nose'), there would be no basis for action whatsoever. Success comes solely from Allah the Exalted.

فَلَا يَظْهَرَ فِيهِ أَثَرٌ، فَإِذَا أَمْكَنَ فَهُوَ مِنْ بَابِ التَّدَاعِي - وَلَوْ أَيْقَنَّا أَنَّهُ مَاتَ حَتْفَ أَنْفِهِ لَمْ يَكُنْ هُنَالِكَ شَيْءٌ أَصْلًا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of Harmful Acts by Animals

[مَسْأَلَةُ جِنَايَاتُ الْحَيَوَانِ]

L38653

2113 - Issue: Criminal offenses involving animals, including the rider, the groom, and the handler.

٢١١٣ - مَسْأَلَةُ - جِنَايَاتُ الْحَيَوَانِ، وَالرَّاكِبِ، وَالسَّائِسِ، وَالْقَائِدِ.

L38654

Ali said: We have mentioned the established [teachings] from the Messenger of Allah—peace and blessings be upon him—from his statement, "The injury caused by a dumb animal is without liability."

قَالَ عَلِيٌّ: قَدْ ذَكَرْنَا الثَّابِتَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ «الْعَجْمَاءُ جُرْحُهَا جُبَارٌ» .

L38655

It was narrated to us via Ibn Waḍḍāḥ: Mūsā ibn Muʿāwiyah narrated to us, Ismāʿīl ibn Abī Khālid narrated to us from al-Shaʿbī, who said: A man said to Shurayḥ, "This sheep damaged my spun yarn." He asked, "By night or by day? If by day, he is absolved; if by night, he is liable." Then Shurayḥ recited: {"When their sheep grazed in it"} [21:78], and said, "The grazing occurred only at night."[6]

رُوِّينَا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: قَالَ رَجُلٌ لِشُرَيْحٍ إنَّ شَاةَ هَذَا قَطَعَتْ غَزْلِي؟ فَقَالَ: لَيْلًا أَوْ نَهَارًا، فَإِنْ كَانَ نَهَارًا فَقَدْ بَرِئَ، وَإِنْ كَانَ لَيْلًا فَقَدْ ضَمِنَ، ثُمَّ قَرَأَ {إِذْ نَفَشَتْ فِيهِ غَنَمُ الْقَوْمِ} [الأنبياء: ٧٨] قَالَ: إنَّمَا كَانَ النَّفْشُ بِاللَّيْلِ.

L38656–38657

Ali reported that Malik and Al-Shafiʿī said: If livestock cause damage at night, their owners are financially responsible; but if they cause damage during the day, there is no financial liability.

قَالَ عَلِيٌّ: قَالَ مَالِكٌ، وَالشَّافِعِيُّ: مَا أَفْسَدَتْ الْمَوَاشِي لَيْلًا فَهُوَ مَضْمُونٌ عَلَى أَهْلِهَا، وَمَا أَفْسَدَتْ نَهَارًا فَلَا ضَمَانَ فِيهِ.

L38658

It was narrated from Sufyan al-Thawri [a report] similar to the opinion of Abu Hanifah.

وَرُوِيَ عَنْ سُفْيَانَ الثَّوْرِيِّ مِثْلُ قَوْلِ أَبِي حَنِيفَةَ.

L38659

Abu Hanifah, Abu Sulayman, and their companions held that livestock owners bear no liability for damage caused by their animals, whether by night or by day.

وَقَالَ أَبُو حَنِيفَةَ: وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا: لَا ضَمَانَ عَلَى أَرْبَابِ الْمَاشِيَةِ فِيمَا أَفْسَدَتْ لَيْلًا أَوْ نَهَارًا.

L38660

And they are not liable for more than the value of the livestock—and it has been narrated from him that they are liable for what it caused during the daytime.

وَلَا يَضْمَنُونَ أَكْثَرَ مِنْ قِيمَةِ الْمَاشِيَةِ - وَرُوِيَ عَنْهُ أَنَّهُمْ يَضْمَنُونَ مَا أَصَابَتْ نَهَارًا.

L38661

[6] **Qur'an references (L38657):** Qur'an 21:78 (Al-Anbya).

L38662 Al-Layth said: The owners of livestock are liable for the damage their animals cause at night, but their liability does not exceed the market value of the livestock.

وَقَالَ اللَّيْثُ: يَضْمَنُ أَهْلُ الْمَاشِيَةِ مَا أَصَابَتْ لَيْلًا، وَلَا يَضْمَنُونَ أَكْثَرَ مِنْ قِيمَةِ الْمَاشِيَةِ.

L38663 Ali said: Those held liable for nighttime damages cited as evidence what was transmitted to us through the chain of Abu Bakr ibn Abi Shaybah from Muʻawiyah ibn Hisham from Sufyan from ʻAbdullah ibn ʻIsa from al-Zuhri from Ḥarām ibn Muḥayyiṣah from al-Bara' ibn ʻAzib: "A she-camel belonging to al-Bara's family caused damage at night. The Messenger of Allah—peace and blessings be upon him—ruled that crop protection during daytime falls upon their owners, while livestock owners bear liability for damages caused by their animals during the night."

قَالَ عَلِيٌّ: احْتَجَّ الْمُضَمِّنُونَ مَا جَنَتْ لَيْلًا: بِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا مُعَاوِيَةُ بْنُ هِشَامٍ نا سُفْيَانُ عَنْ عَبْدِ اللَّهِ بْنِ عِيسَى عَنْ الزُّهْرِيِّ عَنْ حَرَامِ بْنِ مُحَيِّصَةُ عَنْ الْبَرَاءِ بْنِ عَازِبٍ «أَنَّ نَاقَةً لِأَهْلِ الْبَرَاءِ أَفْسَدَتْ شَيْئًا فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ حِفْظَ الثِّمَارِ عَلَى أَهْلِهَا بِالنَّهَارِ، وَضَمَّنَ أَهْلَ الْمَاشِيَةِ مَا أَفْسَدَتْ مَاشِيَتُهُمْ بِاللَّيْلِ» .

L38664 It has been reported to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from Ḥarām ibn Muḥayyiṣah from his father that a camel belonging to al-Barāʾ ibn ʿĀẓib entered a walled garden and caused damage therein. The Prophet (peace be upon him) judged that property owners are responsible for guarding their properties during the day, while livestock owners are responsible for guarding their animals during the night.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ حَرَامِ بْنِ مُحَيِّصَةُ عَنْ أَبِيهِ أَنَّ «نَاقَةً لِلْبَرَاءِ بْنِ عَازِبٍ دَخَلَتْ حَائِطًا فَأَفْسَدَتْ فِيهِ، فَقَضَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَهْلِ الْأَمْوَالِ بِحِفْظِهَا بِالنَّهَارِ وَعَلَى أَهْلِ الْمَوَاشِي حِفْظَهَا بِاللَّيْلِ» .

L38665 From the narration of ʿAbd al-Razzāq, from Ibn Jurayj, who said: Ibn Shihāb related to me that Abū Umāmah ibn Sahl reported, "A she-camel entered the walled garden of a people and damaged it. The owners of the garden went to the Prophet (peace be upon him). The Messenger of Allah (peace be upon him) said: 'Property owners are responsible for safeguarding their property during the day, and livestock owners are responsible for safeguarding their livestock during the night. They bear responsibility for whatever damage it causes.'"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ ابْنُ شِهَابٍ حَدَّثَنِي أَبُو أُمَامَةَ بْنُ سَهْلٍ «أَنَّ نَاقَةً دَخَلَتْ فِي حَائِطِ قَوْمٍ فَأَفْسَدَتْهُ فَذَهَبَ أَصْحَابُ الْحَائِطِ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَهْلِ الْأَمْوَالِ حِفْظُ أَمْوَالِهِمْ بِالنَّهَارِ، وَعَلَى أَهْلِ الْمَاشِيَةِ حِفْظُ مَوَاشِيهِمْ بِاللَّيْلِ وَعَلَيْهِمْ مَا أَفْسَدَتْهُ» .

L38666 Some people mentioned that al-Walīd ibn Muslim narrated this ḥadīth from al-Zuhrī, from Ḥarām ibn Muḥayyiṣah, that al-Barā' informed him.

وَذَكَرَ بَعْضُ النَّاسِ: أَنَّ الْوَلِيدَ بْنَ مُسْلِمٍ رَوَى هَذَا الْحَدِيثَ عَنْ الزُّهْرِيِّ عَنْ حَرَامِ بْنِ مُحَيِّصَةَ: أَنَّ الْبَرَاءَ أَخْبَرَهُ.

L38667–38668 Ali said: This is a *mursal* narration. The strongest of its chains is through Malik and Ma'mar, who narrated from Sufyan, from al-Zuhri, from Sa'id ibn al-Musayyab: that a she-camel belonged to al-Barā'.

قَالَ عَلِيٌّ: هَذَا خَبَرٌ مُرْسَلٌ، أَحْسَنُ طُرُقِهِ: مَا رَوَاهُ مَالِكٌ، وَمَعْمَرٌ عَنْ سُفْيَانَ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ نَاقَةً لِلْبَرَاءِ.

L38669 And what Ibn Jurayj reported from al-Zuhri from Abu Umamah ibn Sahl: that a she-camel entered. No one ever established an isnād for these two chains which—had an isnād been established from them or from either of them—would have constituted a valid proof requiring adherence. Rather, it was transmitted through the chain of Haram ibn Sa'd ibn Muḥayyiṣah once from his father (his father had no companionship) and once solely from al-Barā'. Haram ibn Sa'd ibn Muḥayyiṣah is an unknown narrator (majhūl); none narrated from him except al-Zuhri, and we know of no report from al-Zuhri through him other than this ḥadīth. Al-Zuhri did not authenticate him, though he does narrate from those not authenticated, such as his narration from Sulaymān ibn Qarm, Nabhān the freed slave of Umm Salamah, and others among the unknown and rejected narrators. It is impermissible to definitively ascribe any religious ruling to the Messenger of Allah (peace be upon him) except through narrators of established reliability. Thus, this report cannot be relied upon.

وَمَا رَوَاهُ ابْنُ جُرَيْجٍ عَنِ الزُّهْرِيِّ عَنْ أَبِي أُمَامَةَ بْنِ سَهْلٍ: أَنَّ نَاقَةً دَخَلَتْ. فَلَمْ يُسْنِدْ أَحَدٌ قَطُّ مِنْ هَاتَيْنِ الطَّرِيقَتَيْنِ اللَّتَيْنِ لَوْ أُسْنِدَ مِنْهُمَا، أَوْ مِنْ إِحْدَاهُمَا لَكَانَ حُجَّةً يَجِبُ الْأَخْذُ بِهَا، وَإِنَّمَا أُسْتُنِدَ مِنْ طَرِيقِ حَرَامِ بْنِ سَعْدِ بْنِ مُحَيِّصَةَ مَرَّةً عَنْ أَبِيهِ - وَلَا صُحْبَةَ لِأَبِيهِ - وَمَرَّةً عَنِ الْبَرَاءِ فَقَطْ، وَحَرَامُ بْنُ سَعْدِ بْنِ مُحَيِّصَةَ - مَجْهُولٌ - لَمْ يَرْوِ عَنْهُ أَحَدٌ إِلَّا الزُّهْرِيُّ، وَمَا نَعْلَمُ لِلزُّهْرِيِّ عَنْهُ غَيْرَ هَذَا الْحَدِيثِ، وَلَمْ يُوَثِّقْهُ الزُّهْرِيُّ - وَهُوَ قَدْ يَرْوِي عَمَّنْ لَا يُوَثَّقُ، كَرِوَايَتِهِ عَنْ سُلَيْمَانَ بْنِ قَرْمٍ، وَنَبْهَانَ مَوْلَى أُمِّ سَلَمَةَ، وَغَيْرِهِمَا مِنَ الْمَجَاهِيلِ، وَالْهَلْكَى. وَلَا يَحِلُّ أَنْ يُقْطَعَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الدِّينِ إِلَّا بِمَنْ تُعْرَفُ عَدَالَتُهُ - فَسَقَطَ التَّعَلُّقُ بِهَذَا الْخَبَرِ؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ الْأَوْدِيُّ عَنْ حُصَيْنِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَامِرٍ الشَّعْبِيِّ، قَالَ: اُخْتُصِمَ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فِي ثَوْرٍ نَطَحَ حِمَارًا فَقَتَلَهُ، فَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: إِنْ كَانَ الثَّوْرُ دَخَلَ عَلَى الْحِمَارِ فَقَتَلَهُ فَقَدْ ضَمِنَ - وَإِنْ كَانَ الْحِمَارُ دَخَلَ عَلَى الثَّوْرِ فَقَتَلَهُ فَلَا ضَمَانَ عَلَيْهِ.

Ali said: It was narrated to us through the chain of Abu Bakr ibn Abi Shaybah, from 'Abdullāh ibn Idrīs al-Awdī, from Ḥuṣayn ibn 'Abd al-Raḥmān ibn 'Āmir al-Sha'bī, who said: A dispute was brought before Ali ibn Abi Talib regarding an ox that gored and killed a donkey. Ali ibn Abi Talib ruled: "If the ox entered upon the donkey and killed it, its owner bears liability. But if the donkey entered upon the ox and was killed, there is no liability."

L38670 Ali said: This is a ruling from Ali ibn Abi Talib—may Allah be pleased with him—and our position regarding all of this accords with what the Messenger of Allah—peace and blessings be upon him—judged and established: "An animal's injury incurs no liability, and its action incurs no liability." Thus, there is no liability for harm to persons or property caused by an animal, whether by night or by day—and success comes only from Allah, the Exalted. However, if someone brings an animal, drives it toward something, and releases it upon that thing: he is held liable at that point, for this constitutes his own action, whether by night or by day.

قَالَ عَلِيٌّ: فَهَذَا حُكْمٌ مِنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - وَالْقَوْلُ عِنْدَنَا فِي هَذَا كُلِّهِ هُوَ مَا حَكَمَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَثَبَتَ عَنْهُ مِنْ أَنَّ «الْعَجْمَاءُ جُرْحُهَا جُبَارٌ وَعَمَلُهَا جُبَارٌ» فَلَا ضَمَانَ فِيمَا أَفْسَدَهُ الْحَيَوَانُ مِنْ دَمٍ أَوْ مَالٍ لَا لَيْلًا وَلَا نَهَارًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. فَإِنْ أَتَى بِهَا وَحَمَلَهَا عَلَى شَيْءٍ، وَأَطْلَقَهَا فِيهِ: ضَمِنَ حِينَئِذٍ، لِأَنَّهُ فِعْلُهُ لَيْلًا كَانَ أَوْ نَهَارًا.

L38671 As for grazing animals, there are transmitted reports concerning them, as we have narrated through the chain of 'Abd al-Razzāq from Ibn Jurayj, who reported that 'Abd al-Karīm said: "Umar ibn al-Khattāb used to rule that

camels, cows, donkeys, or grazing animals must be returned to their owners three times when the enclosure is secured, after which they must be hamstrung."

وَأَمَّا الْحَيَوَانُ الضَّارِيَةُ فَقَدْ جَاءَتْ فِيهَا آثَارٌ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْكَرِيمِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَانَ يَقُولُ بِرَدِّ الْبَعِيرِ، أَوْ الْبَقَرَةِ، أَوْ الْحِمَارِ، أَوْ الضَّوَارِي، إلَى أَهْلِهِنَّ ثَلَاثًا إذَا حُظِرَ الْحَائِطُ، ثُمَّ يُعْقَرْنَ.

L38672–38674 Ibn Jurayj said: Someone who examined the book of Umar ibn Abd al-Aziz during his caliphate informed me that it directed al-Hajjaj ibn Dhu'ayb to fortify the wall so that it would reach approximately the height of a camel. Ibn Jurayj said: I heard Abd al-Aziz ibn Abdullah ibn Abdullah ibn Umar that Umar ibn al-Khattab... He would order that the wall be protected, enforcing the restriction against the persistent aggressor. Then it would be returned to its owners three times, after which it would be destroyed.

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي مَنْ نَظَرَ فِي كِتَابِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي خِلَافَتِهِ إلَى الْحَجَّاجِ بْنِ ذُؤَيْبٍ أَنْ يُحَصَّنَ الْحَائِطُ حَتَّى يَكُونَ إلَى نَحْوِ الْبَعِيرِ. قَالَ ابْنُ جُرَيْجٍ: وَسَمِعْت عَبْدَ الْعَزِيزِ بْنَ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَانَ يَأْمُرُ بِالْحَائِطِ أَنْ تُحْظَرَ وَيُسَدَّ الْحَظْرُ مِنْ الضَّارِي الْمُدِلِّ، ثُمَّ يُرَدَّ إلَى أَهْلِهِ ثَلَاثَ مَرَّاتٍ، ثُمَّ يُعْقَرَ.

L38675 Ibn Jurayj said: I said to ʿAṭāʾ: The barrier is blocked and fortified on the wall, yet it fails to repel the overbearing predator. Has anything reached you regarding this? He said: No.

قَالَ ابْنُ جُرَيْجٍ: وَقُلْت لِعَطَاءٍ: الْحَظْرُ يُسَدُّ، وَيُحَصَّنُ عَلَى الْحَائِطِ، ثُمَّ لَا يُمْتَنَعُ مِنْ الضَّارِي الْمُدِلِّ، أَبَلَغَك فِيهِ شَيْءٌ؟ قَالَ: لَا.

L38676 Abu Muhammad said: This is the ruling of Umar ibn al-Khattab (may Allah be pleased with him): the trained predatory animal is returned to its owner three times without liability, without specifying night or day, then it is hamstrung. Yet they opposed both rulings from the judgment of Umar ibn al-Khattab, while they revere matters far lesser than this when they conform to their uncritical following.

قَالَ أَبُو مُحَمَّد: فَهَذَا حُكْمُ عُمَرَ بْنِ الْخَطَّابِ: يُرَدُّ الضَّارِي ثَلَاثَ مَرَّاتٍ إلَى صَاحِبِهِ دُونَ تَضْمِينٍ، وَلَمْ يَخُصَّ لَيْلًا وَلَا نَهَارًا ثُمَّ يُعْقَرُ. فَخَالَفُوا كِلَا الْحُكْمَيْنِ مِنْ حُكْمِ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - وَهُمْ يُعَظِّمُونَ أَقَلَّ مِنْ هَذَا إذَا وَافَقَ تَقْلِيدَهُمْ.

L38677 From the narration of Abd al-Razzaq through Ma'mar, who said: Ismail ibn Abi Sa'id al-San'ani narrated to me that he heard Ikrimah, the freedman of Ibn Abbas, relate: The Messenger of Allah—peace and blessings be upon him—said: "The least punished among Hell's inhabitants is a man who treads on an ember causing his brains to boil." Abu Bakr asked: "What was his crime, O Messenger of Allah?" He replied: "He owned livestock that trampled crops and caused harm. Allah has forbidden [trespassing on] crops and their surrounding areas within an arrow's throw. Beware lest one squander his wealth in this world, thereby ruining himself in the Hereafter. Therefore, do not squander your wealth in this world and destroy yourselves in the Hereafter."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، قَالَ: أَخْبَرَنِي إسْمَاعِيلُ بْنُ أَبِي سَعِيدٍ الصَّنْعَانِيُّ: أَنَّهُ سَمِعَ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ يُحَدِّثُ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ أَهْوَنَ أَهْلِ النَّارِ عَذَابًا رَجُلٌ يَطَأُ جَمْرَةً يَغْلِي مِنْهَا دِمَاغُهُ، قَالَ أَبُو بَكْرٍ: وَمَا كَانَ ذَنْبُهُ يَا رَسُولَ اللَّهِ؟ قَالَ: كَانَتْ لَهُ مَاشِيَةٌ يَعِيثُ بِهَا الزَّرْعَ وَيُؤْذِيهِ، وَحَرَّمَ اللَّهُ الزَّرْعَ وَمَا حَوْلَهُ غُلَاةَ سَهْمٍ، فَاحْذَرُوا أَنْ لَا يَسْحَبَ الرَّجُلُ مَالَهُ فِي الدُّنْيَا وَيُهْلِكَ نَفْسَهُ فِي الْآخِرَةِ، فَلَا تَسْحَبُوا أَمْوَالَكُمْ فِي الدُّنْيَا وَتُهْلِكُوا أَنْفُسَكُمْ فِي الْآخِرَةِ» .

L38678 Ali said: This is a Mursal report, and no valid proof exists in Mursal reports. Our position is that any animal—regardless of type—that causes harm by ruining crops or fruits obligates its owner to be disciplined with whipping and imprisoned if he neglects it. If he restrains it, he has fulfilled his obligation. But if he returns to neglecting it, the animal must be sold on his behalf or slaughtered with its meat sold, whichever course proves more beneficial—that measure shall be enforced against him.

قَالَ عَلِيٌّ: وَهَذَا مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ، وَالْقَوْلُ عِنْدَنَا فِي هَذَا أَنَّ الْحَيَوَانَ - أَيَّ حَيَوَانٍ كَانَ - إذَا أَضَرَّ فِي إفْسَادِ الزَّرْعِ أَوْ الثِّمَارِ، فَإِنَّ صَاحِبَهُ يُؤَدَّبُ بِالسَّوْطِ وَيُسْجَنُ، إنْ أَهْمَلَهُ، فَإِنْ ثَقَّفَهُ فَقَدْ أَدَّى مَا عَلَيْهِ، وَإِنْ عَادَ إلَى إهْمَالِهِ بِيعَ عَلَيْهِ وَلَا بُدَّ، أَوْ ذُبِحَ وَبِيعَ لَحْمُهُ، أَيُّ ذَلِكَ كَانَ أَعْوَدَ عَلَيْهِ أُنْفِذَ عَلَيْهِ ذَلِكَ.

L38679 The proof for this is the statement of Allah, the Most High: "And cooperate in righteousness and piety, and do not cooperate in sin and transgression" [Al-Mā'idah: 2]. Among the acts of righteousness and piety is preventing harm to people's crops and fruits. Among the acts of sin and transgression is neglecting that.[7]

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى {وتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] ، وَمِنْ الْبِرِّ وَالتَّقْوَى: الْمَنْعُ مِنْ أَذَى النَّاسِ فِي زَرْعِهِمْ وَثِمَارِهِمْ. وَمِنْ الْإِثْمِ وَالْعُدْوَانِ: إهْمَالُ ذَلِكَ.

L38680 An assessment is made regarding measures that ensure the protection of the Muslims' wealth—from options causing no harm to the animal owner, to the extent he cannot adopt a more suitable alternative—as Allah the Exalted has commanded.

فَيُنْظَرُ فِي ذَلِكَ بِمَا فِيهِ حِمَايَةُ أَمْوَالِ الْمُسْلِمِينَ - مِمَّا لَا ضَرَرَ فِيهِ عَلَى صَاحِبِ الْحَيَوَانِ بِمَا لَا يَقْدِرُ عَلَى أَصْلَحَ مِنْ ذَلِكَ - كَمَا أَمَرَ اللَّهُ تَعَالَى.

L38681–38683 As for one who sows in barren land, pastures, or plants there, he is held liable. That restrictions be imposed on his crops and cultivations by measures such as construction or similar safeguards, as he incurs no harm from these restrictions. The boundary wall is his right, and this serves to avert the waste of his property.

وَأَمَّا مَنْ زَرَعَ فِي الشَّعْوَاءِ، أَوْ حَيْثُ الْمَسْرَحُ، أَوْ غَرَسَ هُنَالِكَ غَرْسًا فَإِنَّهُ يُكَلَّفُ أَنْ يُحْظَرَ عَلَى زَرْعِهِ وَغَرْسِهِ بِمَا يَدْفَعُ عَنْ ذَلِكَ مِنْ بِنَاءٍ أَوْ غَيْرِهِ إذْ لَا ضَرَرَ عَلَيْهِ فِي ذَلِكَ، بَلْ الْحَائِطُ لَهُ، وَدَفْعُ الْإِضَاعَةِ عَنْ مَالِهِ.

L38684 It is not permissible to prevent people from grazing their livestock there, just as it is not permissible to prevent someone from reviving dead land they are capable of revitalizing. No one can reasonably be expected to keep livestock away from crops or fruits within grazing areas. Since this is impossible (being beyond human capacity), it becomes invalid to obligate people to restrain their animals or prevent grazing, in accordance with Allah's statement: "No soul is burdened beyond its capacity" (Qur'an 2:233). The same ruling applies when livestock owners find it impossible to prevent their animals from accessing crops or fruits while passing along pathways bordered by people's cultivated lands on their way to pastures. In such cases, the owners of crops

وَلَا يَجُوزُ أَنْ يَمْنَعَ النَّاسَ عَنْ إرْعَاءِ مَوَاشِيهِمْ هُنَالِكَ، كَمَا لَا يَجُوزُ أَنْ يَمْنَعَ هُوَ مِنْ إحْيَاءِ مَا قَدَرَ عَلَى إحْيَائِهِ مِنْ ذَلِكَ الْمَوَاتِ، وَلَيْسَ فِي طَاقَةِ أَحَدٍ مَنْعُ الْمَوَاشِي عَنْ زَرْعٍ، أَوْ ثَمَرٍ فِي وَسَطِ الْمَسْرَحِ، فَإِذْ ذَلِكَ مُمْتَنِعٌ - لَيْسَ فِي الْوُسْعِ - فَقَدْ بَطَلَ أَنْ يُكَلَّفُوا ضَبْطَهَا، أَوْ مَنْعَهَا: بِقَوْلِ اللَّهِ تَعَالَى {لا تُكَلَّفُ نَفْسٌ إلا وُسْعَهَا} [البقرة: ٢٣٣] ، وَهَكَذَا الْقَوْلُ فِيمَا تَعَذَّرَ عَلَى أَهْلِ الْمَاشِيَةِ مَنْعُ مَاشِيَتِهِمْ مِنْهُ فِي مُرُورِهَا فِي طَرِيقِهَا إلَى

[7] **Qur'an references (L38679):** Qur'an 5:2 (Al-Ma'idah).

and fruits are obligated to erect barriers around the portions of their produce bordering the pathways.[8]

L38685 As for attached crops and planted trees where there is no grazing area, the owners are not obligated to erect enclosures. If one intentionally or carelessly releases his livestock there, he shall be given a severe disciplinary punishment. His livestock shall be sold if he repeats the act, and he is liable for direct damages caused by releasing them onto the crops. Success is from Allah, the Most High.

L38686 Predatory animals must not be maimed at all, for the Messenger of Allah—peace and blessings be upon him—prohibited slaughtering animals except for their consumption, and he prohibited the squandering of wealth. Maiming constitutes squandering, whether its meat is [lawfully] consumed or not—and with Allah lies all success.

L38687 As for the handler, rider, and drover – Yahya ibn Abd al-Rahman ibn Mas'ud said: Ahmad ibn Duhaym narrated to us, Ibrahim ibn Hammad narrated to us, Isma'il ibn Ishaq narrated to us, Ibrahim al-Harawi narrated to us, Hushaym narrated to us, Ash'ath narrated to us from Muhammad ibn Sirin from Shuraih: He would hold the rider (among the handler, rider, and drover) liable for damage caused by his mount's trampling with its front legs or hind legs, but absolve him from injuries caused by goring.

L38688 Hushaym said: Yunus and al-Mughīrah—Yunus said, reporting from al-Ḥasan al-Baṣrī, and al-Mughīrah said, reporting from Ibrāhīm—that they both held liable for damage caused by an animal's treading with a limb or leg, but did not hold liable for a kick.

L38689 It is reported from Ibrāhīm and Shurayh that they said: If an animal swishes its leg [in a harmless motion], its owner is not liable.

L38690–38691 Al-Ḥakam and Al-Sha'bī said: He is financially liable, and the blood of a Muslim must not be left unavenged.

L38692 From Muhammad ibn Sirin: A man had two camels that escaped. Another

الْمَسْرَحِ بَيْنَ زَرْعِ النَّاسِ وَثِمَارِهِمْ، فَإِنَّ أَهْلَ الزَّرْعِ وَالثِّمَارِ يُكَلَّفُونَ هَاهُنَا بِحَظِيرِ مَا وَلِيَ الطَّرِيقَ مِنْ زُرُوعِهِمْ وَثِمَارِهِمْ.

وَأَمَّا الثِّمَارُ الْمُتَّصِلَةُ مِنَ الزَّرْعِ وَالْغَرْسِ الَّتِي لَا مَسْرَحَ فِيهَا فَلَيْسَ عَلَيْهِمْ تَكْلِيفُ الْحَظْرِ، فَإِنْ أَطْلَقَ مَوَاشِيَهُ هُنَالِكَ عَامِدًا، أَوْ مُهْمِلًا: أُدِّبَ الْأَدَبَ الْمُوجِعَ، وَبِيعَتْ عَلَيْهِ مَوَاشِيهِ إِنْ عَادَ، وَضَمِنَ مَا بَاشَرَ إِطْلَاقَهَا عَلَيْهِ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَلَا يُعْقَرُ الْحَيَوَانُ الضَّارِي أَلْبَتَّةَ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ ذَبْحِ الْحَيَوَانِ إِلَّا لِمَأْكَلِهِ، وَنَهَى عَنْ إِضَاعَةِ الْمَالِ، وَالْعَقْرُ إِضَاعَةٌ فِيمَا يُؤْكَلُ لَحْمُهُ، وَفِيمَا لَا يُؤْكَلُ لَحْمُهُ - وَبِاللَّهِ التَّوْفِيقُ.

وَأَمَّا الْقَائِدُ، وَالرَّاكِبُ، وَالسَّائِقُ - فَإِنَّ يَحْيَى بْنَ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ قَالَ: نا أَحْمَدُ بْنُ دُحَيْمٍ نا إِبْرَاهِيمُ بْنُ حَمَّادٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ نا إِبْرَاهِيمُ الْهَرَوِيُّ نا هُشَيْمٌ نا أَشْعَثُ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ شُرَيْحٍ: أَنَّهُ كَانَ يُضَمِّنُ الْفَارِسَ مَا أَوْطَأَتْ دَابَّتُهُ بِيَدٍ أَوْ رِجْلٍ، وَيُبَرِّئُهُ مِنَ النَّفْحَةِ.

قَالَ هُشَيْمٌ: ونا يُونُسُ، وَالْمُغِيرَةُ، قَالَ يُونُسُ عَنِ الْحَسَنِ الْبَصْرِيِّ، وَقَالَ الْمُغِيرَةُ عَنْ إِبْرَاهِيمَ أَنَّهُمَا كَانَا يُضَمِّنَانِ مَا أَوْطَأَتِ الدَّابَّةُ بِيَدٍ أَوْ رِجْلٍ، وَلَا يُضَمِّنَانِ مِنَ النَّفْحَةِ.

وَعَنْ إِبْرَاهِيمَ، وَشُرَيْحٍ أَنَّهُمَا قَالَا: إِذَا نَفَحَتِ الدَّابَّةُ بِرِجْلِهَا فَإِنَّ صَاحِبَهَا لَا يَضْمَنُ.

وَقَالَ الْحَكَمُ وَالشَّعْبِيُّ: يَضْمَنُ وَلَا يُطَلُّ دَمُ الْمُسْلِمِ.

[8] **Qur'an references (L38684):** Qur'an 2:233 (Al-Baqarah).

man took them, yoked them together with a rope, and choked one of them until it died. Shurayh ruled: “He merely intended to do good. Liability only applies to one who is leading [an animal] or riding it.”

وَعَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ رَجُلًا شَرَدَ لَهُ بَعِيرَانِ فَأَخَذَهُمَا رَجُلٌ فَقَرَنَهُمَا فِي حَبْلٍ فَأَخْنَقَ أَحَدَهُمَا فَمَاتَ؟ فَقَالَ شُرَيْحٌ: إِنَّمَا أَرَادَ الْإِحْسَانَ، لَا يَضْمَنُ إِلَّا قَائِدٌ أَوْ رَاكِبٌ.

L38693 Muhammad ibn Sirin said regarding an animal that is startled and thereby tramples: its owner is liable. But if it kicks with its leg without being startled, the owner is not liable.

وَقَالَ مُحَمَّدُ بْنُ سِيرِينَ فِي الدَّابَّةِ أُفْزِعَتْ فَوَطِئَتْ يَضْمَنُ صَاحِبُهَا، وَإِذَا نَفَحَتْ بِرِجْلِهَا مِنْ غَيْرِ أَنْ تُفْزَعَ لَمْ يَضْمَنْ.

L38694 It is reported from Al-Sha‘bi that he was asked about a man who tied a biting horse on a public thoroughfare, and it maimed. Al-Sha‘bi replied: He is liable; he has no right to tie a biting horse on the public thoroughfare of the Muslims.

وَعَنِ الشَّعْبِيِّ أَنَّهُ سُئِلَ عَنْ رَجُلٍ أَوْثَقَ عَلَى الطَّرِيقِ فَرَسًا عَضُوضًا فَعَقَرَ؟ فَقَالَ الشَّعْبِيُّ: يَضْمَنُ، لَيْسَ لَهُ أَنْ يَرْبِطَ كَلْبًا عَضُوضًا عَلَى طَرِيقِ الْمُسْلِمِينَ.

L38695 Narrated from Ibrāhīm al-Nakha‘ī and Shurayḥ, both of whom said: The rider, the driver, and the handler are liable.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَشُرَيْحٍ قَالَا جَمِيعًا: يَضْمَنُ الرَّاكِبُ، وَالسَّائِقُ، وَالْقَائِدُ.

L38696 From Abu Awn al-Thaqafi: Two men were spreading out a garment when a man passed by, and another pushed him, causing him to fall onto the garment and tear it. They brought the case to Shurayh, who held the pusher liable and absolved the pushed man, treating him as an inanimate object (like a stone).

وَعَنْ أَبِي عَوْنٍ الثَّقَفِيِّ أَنَّ رَجُلَيْنِ كَانَا يَنْشُرَانِ ثَوْبًا فَمَرَّ رَجُلٌ فَدَفَعَهُ آخَرُ فَوَقَعَ عَلَى الثَّوْبِ فَخَرَقَهُ، فَارْتَفَعُوا إِلَى شُرَيْحٍ فَضَمَّنَ الدَّافِعَ، وَأَبْرَأَ الْمَدْفُوعَ، بِمَنْزِلَةِ الْحَجَرِ.

L38697 And it is reported from Al-Sha’bi that he said: They are two partners - meaning the rider and the second rider.

وَعَنِ الشَّعْبِيِّ قَالَ: هُمَا شَرِيكَانِ - يَعْنِي الرَّاكِبَ وَالرَّدِيفَ.

L38698 It is also reported from Al-Sha‘bi that he said: Whoever leaves his animal in a public pathway or places something [there] is liable for its harmful act.

وَعَنِ الشَّعْبِيِّ أَيْضًا قَالَ: مَنْ أَوْقَفَ دَابَّتَهُ فِي طَرِيقِ الْمُسْلِمِينَ أَوْ وَضَعَ شَيْئًا فَهُوَ ضَامِنٌ بِجِنَايَتِهِ.

L38699 From Ibrahim al-Nakha’i and al-Sha’bi, both of whom said: “Whoever ties his animal on a road is financially liable.” From Ibrahim, regarding a man who borrowed a horse from another and urged it to gallop until it died, he said: “He is not liable, because a man urges his horse to gallop.”

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ، قَالَا جَمِيعًا: مَنْ رَبَطَ دَابَّتَهُ فِي طَرِيقٍ فَهُوَ ضَامِنٌ - وَعَنْ إِبْرَاهِيمَ فِي رَجُلٍ اسْتَعَارَ مِنْ رَجُلٍ فَرَسًا فَرَكَضَهُ حَتَّى قَتَلَهُ، قَالَ: لَيْسَ عَلَيْهِ ضَمَانٌ، لِأَنَّ الرَّجُلَ يُرَكِّضُ فَرَسَهُ.

L38700 From ’Ata’, he said: “The handler and the rider are held liable for damages caused by its foreleg in situations where they would not be liable for its hind leg.” I asked: “If the animal was habitually aggressive and struck with its

foreleg while being led?" He replied: "Yes, and the handler is liable." I asked: "Is the handler held liable for both the foreleg and hind leg?" He said: "They supposed so," so I repeated the question. He responded: "He says: 'Make way! Make way!'"

وَعَنْ عَطَاءٍ قَالَ: يُغَرَّمُ الْقَائِدُ، وَالرَّاكِبُ، عَنْ يَدِهَا مَا لَا يُغَرَّمَانِ عَنْ رِجْلَهَا، قُلْت: كَانَتْ الدَّابَّةُ عَادِيَةً فَضَرَبَتْ بِيَدِهَا إنْسَانًا وَهِيَ تُقَادُ؟ قَالَ: نَعَمْ، وَيُغَرَّمُ الْقَائِدُ، قُلْت: السَّائِقُ يُغَرَّمُ عَنْ الْيَدِ وَالرِّجْلِ، قَالَ: زَعَمُوا، فَرَادَدْته؟ قَالَ: يَقُولُ: الطَّرِيقَ الطَّرِيقَ.

L38701–38702 From Qatadah, he said: The person leading the animal is liable to pay compensation for whatever it tramples with its front or hind legs. If it causes harm by striking, the leader is not liable. The rider is similarly responsible, except when the animal is under rein control yet still strikes, in which case compensation becomes due.

وَعَنْ قَتَادَةَ قَالَ: يُغَرَّمُ الْقَائِدُ مَا أَوْطَأَتْ بِيَدٍ أَوْ رِجْلٍ، فَإِذَا نَفَحَتْ لَمْ يُغَرَّمْ، وَالرَّاكِبُ كَذَلِكَ، إلَّا أَنْ تَكُونَ بِالْعَنَانِ فَتَنْفَحُ فَيُغَرَّمُ.

L38703 And from Ash-Sha'bī, he said: The pillion rider is held liable alongside his companion.

وَعَنْ الشَّعْبِيِّ قَالَ: يُضَمَّنُ الرَّدِيفُ مَعَ صَاحِبِهِ.

L38704 And from Shurayḥ, he said: The handler, the driver, and the rider are held liable, but the beast of burden is not held liable if it retaliates. I asked, "What is 'retaliates'?" He said, "If a man strikes it and it strikes him back." And from Mujāhid, he said: A young servant girl rode another girl, then another girl prodded her, causing her to fall and die. So 'Alī ibn Abī Ṭālib held accountable both the one who prodded and the one who was prodded.

وَعَنْ شُرَيْحٍ قَالَ: يُضَمَّنُ الْقَائِدُ، وَالسَّائِقُ، وَالرَّاكِبُ، وَلَا يُضَمَّنُ الدَّابَّةُ إذَا عَاقَبَتْ، قُلْت: وَمَا عَاقَبَتْ؟ قَالَ: إذَا ضَرَبَهَا رَجُلٌ فَأَصَابَتْهُ. وَعَنْ مُجَاهِدٍ قَالَ: رَكِبَتْ جَارِيَةٌ جَارِيَةً فَنَخَسَتْهَا أُخْرَى فَوَقَعَتْ فَمَاتَتْ؟ فَضَمَّنَ عَلِيُّ بْنُ أَبِي طَالِبٍ النَّاخِسَةَ وَالْمَنْخُوسَةَ.

L38705 Malik and al-Shāfi'ī said: The goader, conductor, and rider are financially liable for any harm caused by the animal, unless it acts uncontrollably without their provocation - in which case, they bear no liability.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: يُضَمَّنُ السَّائِقُ، وَالْقَائِدُ، وَالرَّاكِبُ مَا أَصَابَتْ الدَّابَّةُ، إلَّا أَنْ تَرْمَحَ مِنْ غَيْرِ فِعْلِهِمْ، فَلَا ضَمَانَ عَلَيْهِمْ.

L38706 Malik and Abū Ḥanīfah said: The passenger rider bears financial responsibility jointly with the main rider.

وَقَالَ مَالِكٌ، وَأَبُو حَنِيفَةَ: يَضْمَنُ الرَّدِيفُ مَعَ الرَّاكِبِ.

L38707 Ishaq ibn Rahawayh said: The pillion rider does not incur liability.

وَقَالَ إسْحَاقُ بْنُ رَاهْوَيْهِ لَا يَضْمَنُ الرَّدِيفُ.

L38708 Aḥmad said: "I hold that there is no responsibility upon him if someone with him is holding the reins."

وَقَالَ أَحْمَدُ: أَرْجُو أَنْ لَا شَيْءَ عَلَيْهِ إذَا كَانَ أَمَامَهُ مَنْ يُمْسِكُ الْعَنَانَ.

L38709 Abū Muḥammad said: Therefore, what is obligatory upon us when people disagree is what Allah the Exalted has obligated upon us, as He states: *"If you dispute over anything, refer it to Allah and the Messenger if you believe in Allah and the Last Day"* [4:59]. We examined the case of the rider and found him steering his mount and managing it. For harm caused by his control of

قَالَ أَبُو مُحَمَّدٍ: فَالْوَاجِبُ عَلَيْنَا عِنْدَ تَنَازُعِهِمْ مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا، إذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ إنْ كُنْتُمْ تُؤْمِنُونَ بِاَللَّهِ وَالْيَوْمِ الآخِرِ}

the animal: if he acts intentionally, he is liable for qisas (retaliation) in cases of homicide or lesser injuries, because he is a transgressor directly committing the offense—even if the act itself does not normally incur liability. If this occurs while he is unaware of what lies ahead, it constitutes unintentional injury: he is liable for financial compensation, with diyah (blood money) for loss of life incumbent upon his ʿāqilah (kinship group), and expiation required from him, as he is liable for unintentional homicide. For harm caused by the animal's head, bite, tail, kick with its leg, or a limb movement unrelated to walking: this is not attributable to his action, thus he bears no liability. This is based on the ruling of the Messenger of Allah—peace be upon him: *"Injuries caused by animals entail no liability."*[9]

[النساء: ٥٩] ، فَنَظَرْنَا فِي الرَّاكِبِ فَوَجَدْنَاهُ مُصَرِّفًا لِدَابَّتِهِ حَامِلًا لَهَا فَمَا أَصَابَتْ مِمَّا حَمَلَهَا عَلَيْهِ، فَإِنْ عَمَدَ فَعَلَيْهِ الْقِصَاصُ فِي النَّفْسِ فَمَا دُونَهَا، لِأَنَّهُ مُتَعَدٍّ مُبَاشِرٌ لِلْجِنَايَةِ - وَإِنْ كَانَ مِمَّا لَا يَضْمَنُهُ، فَإِنْ كَانَ ذَلِكَ - وَهُوَ لَا يَعْلَمُ بِمَا بَيْنَ يَدَيْهِ - فَهُوَ إِصَابَةُ خَطَأٍ يَضْمَنُ الْمَالَ، وَعَلَى عَاقِلَتِهِ الدِّيَةُ فِي النَّفْسِ وَعَلَيْهِ الْكَفَّارَةُ، لِأَنَّهُ قَاتِلُ خَطَأٍ، وَمَا أَصَابَتْ بِرَأْسِهَا، أَوْ بِعَضَّتِهَا، أَوْ بِذَنَبِهَا، أَوْ بِنَفْحَتِهَا بِالرِّجْلِ، أَوْ ضَرَبَتْ بِيَدِهَا فِي غَيْرِ الْمَشْيِ: فَلَيْسَ مِنْ فِعْلِهِ فَلَا ضَمَانَ عَلَيْهِ فِيهِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْعَجْمَاءُ جُرْحُهَا جُبَارٌ» .

As for the animal handler: if he holds the reins or halter, he is responsible for the animal's movement. If he acts deliberately, *qisas* (retaliation in kind) applies—as we mentioned—along with monetary compensation. If he does not act deliberately, he is considered liable for unintentional killing. The blood money is incumbent upon the male agnates (al-ʿāqila), while the expiation remains his personal obligation from his wealth, and he is liable for the property. If the animals are tethered together in sequence, the same ruling applies, with no distinction. It makes no difference whether the led animal has a rider or not: no liability falls upon the rider unless he urges it onward or assists, in which case he and the leader share liability; otherwise, none applies. If the leader holds neither rein nor halter, there is no liability whatsoever upon him, for he assumed no responsibility and had no direct involvement whatsoever in causing loss of life or property. The Prophet (peace and blessings be upon him) said, "The wound caused by a free-roaming animal is non-compensable (jubār)."

L38710–38712

وَأَمَّا الْقَائِدُ: فَإِنْ كَانَ يُمْسِكُ الرَّسَنَ أَوْ الْخِطَامَ فَهُوَ حَامِلٌ لِلدَّابَّةِ عَلَى مَا مَشَتْ عَلَيْهِ، فَإِنْ عَمَدَ فَالْقَوَدُ - كَمَا قُلْنَا - وَالضَّمَانُ فِي الْمَالِ، وَإِنْ لَمْ يَعْمِدْ فَهُوَ قَاتِلُ خَطَأٍ، فَالدِّيَةُ عَلَى الْعَاقِلَةِ، وَالْكَفَّارَةُ عَلَيْهِ فِي مَالِهِ، وَيَضْمَنُ الْمَالَ، فَإِنْ كَانَتْ الدَّوَابُّ مَقْصُورَةً بَعْضُهَا إلَى بَعْضٍ كَذَلِكَ، فَكَذَلِكَ أَيْضًا وَلَا فَرْقَ. وَسَوَاءٌ كَانَ عَلَى الدَّابَّةِ الْمَقُودَةِ رَاكِبٌ أَوْ لَمْ يَكُنْ: لَا ضَمَانَ عَلَى الرَّاكِبِ، إلَّا إنْ حَمَلَهَا أَوْ أَعَانَ، فَهُوَ وَالْقَائِدُ شَرِيكَانِ، وَإِلَّا فَلَا، فَإِنْ كَانَ الْقَائِدُ لَا رَسَنَ بِيَدِهِ، وَلَا عِقَالَ، فَلَا ضَمَانَ عَلَيْهِ أَلْبَتَّةَ؛ لِأَنَّهُ لَمْ يَتَوَلَّ شَيْئًا، وَلَا بَاشَرَ فِيمَا أَتْلَفَ مِنْ دَمٍ، أَوْ مَالٍ شَيْئًا أَصْلًا - وَقَدْ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «وَالْعَجْمَاءُ جُرْحُهَا جُبَارٌ» .

As for the rear rider: if he alone is holding the reins and the rider in front does not hold them at all, then the one restraining the reins bears sole liability. In cases of intentional harm, retaliation (qisas) applies; in cases of accidental harm, expiation (kaffarah) is required, and the blood money is incumbent

L38713

وَأَمَّا الرَّدِيفُ - فَإِنْ كَانَ يُمْسِكُ الْعِنَانَ هُوَ وَحْدَهُ وَلَا يُمْسِكُهُ الْمُتَقَدِّمُ: فَحَابِسُ الْعِنَانِ هُوَ الضَّامِنُ وَحْدَهُ، وَعَلَيْهِ فِي الْعَمْدِ الْقَوَدُ، وَفِي الْخَطَأِ الْكَفَّارَةُ، وَالدِّيَةُ عَلَى الْعَاقِلَةِ، وَلَا ضَمَانَ، وَلَا شَيْءَ عَلَى الْمُتَقَدِّمِ، إلَّا أَنْ يُعِينَ فِي ذَلِكَ.

[9] **Qur'an references (L38709):** Qur'an 4:59 (An-Nisa).

upon the agnatic kin. No liability or obligation rests on the rider in front unless he assisted in causing the harm.

L38714 As for the animal herder—if he drives the animal by striking, prodding, or shouting to make it act, then if he acts intentionally, retribution and compensation are required. If he does not act intentionally, he is considered an unintentional killer as we stated. If he does not compel it to act, there is no liability upon him, for he did not directly cause [the harm]. The Messenger of Allah—peace and blessings be upon him—said: "No liability is incurred for injuries caused by animals."

L38715 Whoever tethers his animal on the public pathway incurs no liability. Likewise, if he releases it while he is walking. Not every wrongdoer is held liable.

L38716 We know, and every Muslim knows, that the manufacturer of weapons and their seller during times of civil strife are transgressors, oppressors, and wrongdoers who thereby aid in the killing of people. There is no disagreement that no liability is incumbent upon them.

L38717 If it is argued that someone else is the responsible party, they are told: "The animal is likewise the responsible party, and its injury is non-compensable. Similarly, whoever releases an animal or a bird from its restraint bears no liability for the harm it causes, as he neither intended [the harm], nor directly caused it, nor assumed responsibility."

L38718 As for one who rides his mount that has a young offspring following it, and the offspring harms a person or damages property, the rider is liable for its actions. If the rider acted intentionally, retaliation (qisas) applies; if unintentional, he is deemed responsible for unintentional killing (requiring diya).

L38719–38721 The evidence for this is that if someone urges him to walk behind his mother when she departs, he is immediately obligated to do so. To keep it close, if the colt stops following its mother to play or strays away, there is no liability in principle upon the rider of its mother.

وَأَمَّا السَّائِقُ - فَإِنْ حَمَلَهَا بِضَرْبٍ، أَوْ نَخْسٍ، أَوْ زَجْرٍ عَلَى شَيْءٍ مَا، فَإِنْ عَمَدَ فَالْقَوَدُ وَالضَّمَانُ، وَإِنْ لَمْ يَعْمِدْ فَهُوَ قَاتِلٌ خَطَأً كَمَا قُلْنَا، فَإِنْ لَمْ يَحْمِلْهَا عَلَى شَيْءٍ فَلَا ضَمَانَ عَلَيْهِ، لِأَنَّهُ لَمْ يُبَاشِرْ - وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «جُرْحُ الْعَجْمَاءِ جُبَارٌ» .

وَمَنْ أَوْثَقَ دَابَّتَهُ عَلَى طَرِيقِ الْمُسْلِمِينَ فَلَا ضَمَانَ عَلَيْهِ، وَكَذَلِكَ لَوْ أَرْسَلَهَا وَهُوَ يَمْشِي، وَلَيْسَ كُلُّ مُسِيءٍ ضَامِنًا.

وَقَدْ عَلِمْنَا وَعَلِمَ كُلُّ مُسْلِمٍ: أَنَّ عَامِلَ السِّلَاحِ، وَبَائِعَهَا فِي الْفِتَنِ: فَمُخَالِفٌ ظَالِمٌ، وَمُسِيءٌ، وَمُعِينٌ بِذَلِكَ عَلَى قَتْلِ النَّاسِ، وَلَا خِلَافَ فِي أَنَّهُ لَا ضَمَانَ عَلَيْهِ.

فَإِنْ قِيلَ: إنَّ غَيْرَهُ هُوَ الْمُتَوَلِّي؟ قِيلَ لَهُمْ: وَالدَّابَّةُ هِيَ الْمُتَوَلِّيَةُ أَيْضًا، وَجُرْحُهَا جُبَارٌ، وَكَذَلِكَ مَنْ حَلَّ دَابَّةً، أَوْ طَائِرًا عَنْ رِبَاطِهَا: فَلَا ضَمَانَ عَلَيْهِ فِيمَا أَصَابَتْ، لِأَنَّهُ لَمْ يَعْمِدْ، وَلَا بَاشَرَ، وَلَا تَوَلَّى.

وَأَمَّا مَنْ رَكِبَ دَابَّتَهُ وَلَهَا فِلْوٌ يَتْبَعُهَا فَأَصَابَ الْفِلْوُ إنْسَانًا، أَوْ مَالًا: فَهُوَ الْحَامِلُ لَهُ عَلَى ذَلِكَ، فَإِنْ عَمَدَ فَالْقَوَدُ، وَإِنْ لَمْ يَعْمِدْ فَهُوَ قَاتِلٌ خَطَأً.

بُرْهَانُ ذَلِكَ: أَنَّهُ فِي إزَالَتِهِ أُمَّهُ عِنْدَ مُسْتَدْعٍ لَهُ إلَى الْمَشْيِ وَرَاءَهَا، فَهُوَ مُبَاشِرٌ لِاسْتِجْلَابِهِ، فَلَوْ تَرَكَ الْفِلْوُ اتِّبَاعَ أُمِّهِ، وَأَخَذَ يَلْعَبُ، أَوْ خَرَجَ عَنْ اتِّبَاعِهَا، فَلَا ضَمَانَ عَلَى رَاكِبِ أُمِّهِ أَصْلًا.

L38722 Similarly, if someone lures an animal with something it would eat while knowing that in its path there is property it would damage or a sleeping person, and it comes to him and destroys something along its path, then retaliation (qisas) applies in cases of intent. If he did not intend it, he is deemed an unintentional killer.

وَكَذَلِكَ مَنْ اسْتَدْعَى بَهِيمَةً بِشَيْءٍ تَأْكُلُهُ وَهُوَ يَدْرِي أَنَّ فِي طَرِيقِهَا مَتَاعًا تُتْلِفُهُ، أَوْ إنْسَانًا رَاقِدًا فَأَتَتْهُ، فَأَتْلَفَتْ فِي طَرِيقِهَا شَيْئًا، فَالْقَوَدُ فِي الْعَمْدِ، وَهُوَ قَاتِلٌ خَطَأً إنْ لَمْ يَعْمِدْ.

L38723 Similarly, whoever unleashes a lion or a venomous snake toward a person is held accountable. However, this does not apply to one who merely releases them without intending them to harm a person.

وَكَذَلِكَ مَنْ أَشْلَى أَسَدًا عَلَى إنْسَانٍ أَوْ حَنَشًا - وَلَيْسَ كَذَلِكَ مَنْ أَطْلَقَهُمَا دُونَ أَنْ يَقْصِدَ بِهِمَا إنْسَانًا.

L38724 Because in releasing both of them against a human, he is directly engaged in causing his harm while intending to do so, and in their release there exists no perpetrator of even the slightest harm toward anyone whatsoever.

لِأَنَّهُ فِي إطْلَاقِهِمَا عَلَى الْإِنْسَانِ مُبَاشِرٌ لِإِتْلَافِهِ، قَاصِدٌ لِذَلِكَ - وَلَيْسَ فِي إطْلَاقِهِمَا جَانِيًا عَلَى أَحَدٍ شَيْئًا أَصْلًا.

L38725 As for what Shurayh stated concerning the joining of two camels, it is sound, and one who does what he is lawfully permitted is not liable unless a textual evidence or scholarly consensus obliges it.

وَأَمَّا مَا قَالَهُ شُرَيْحٌ فِي قَارِنِ الْبَعِيرَيْنِ فَصَحِيحٌ وَلَا ضَمَانَ عَلَى مَنْ فَعَلَ مَا أُبِيحَ لَهُ فِعْلُهُ، إلَّا أَنْ يُوجِبَ ذَلِكَ نَصٌّ أَوْ إجْمَاعٌ.

L38726 As for what has been reported from ʿAlī—may Allah be pleased with him—regarding the liability of the goader, it is sound, because she is the one who causes the other to fall to the ground. And success comes from Allah, the Exalted, alone.

وَأَمَّا مَا جَاءَ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - فِي تَضْمِينِ النَّاخِسَةِ فَصَحِيحٌ، لِأَنَّهَا هِيَ الْمُلْقِيَةُ لِلْأُخْرَى فِي الْأَرْضِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38727 And others, and the bolting of the animal.

[٠ وَغَيْرِهِ وَنِفَارِ الدَّابَّةِ]

L38728 2114 - Issue: Concerning criminal liability for injury caused by a dog or similar cases, and the bolting of mounts or comparable incidents - does this fall under the chapter preceding this one? Ali said: It was narrated by Ibn Waddāḥ from Saḥnūn, from Ibn Wahb, from Al-Ḥārith ibn Nabḥān, from Muḥammad ibn ʿUbayd Allāh al-ʿArzamī, from Anas ibn Sīrīn: A man was traveling at night with his mother mounted on a donkey. Another man came galloping on a horse, causing the donkey to bolt at the sound of the horse's hooves. The donkey leaped, throwing the woman to her death. The man sought a ruling from ʿUmar ibn al-Khaṭṭāb. ʿUmar - may Allah be pleased with him - asked: "Did the donkey strike anything?" He answered: "No." ʿUmar asked: "Did the horse cause any injury to the donkey?" He replied:

٢١١٤ - مَسْأَلَةٌ: مِنْ جِنَايَةِ الْكَلْبِ وَغَيْرِهِ، وَنِفَارِ الدَّابَّةِ وَغَيْرِ ذَلِكَ، مِنْ الْبَابِ الَّذِي قَبْلَ هَذَا؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي الْحَارِثُ بْنُ نَبْهَانَ عَنْ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ الْعَرْزَمِيِّ عَنْ أَنَسِ بْنِ سِيرِينَ أَنَّ رَجُلًا كَانَ يَسْرِي بِأُمِّهِ فَجَاءَ رَجُلٌ عَلَى فَرَسٍ يَرْكُضُ فَنَفَرَ الْحِمَارُ مِنْ وَقْعِ حَافِرِ الْفَرَسِ فَوَثَبَ فَوَقَعَتْ الْمَرْأَةُ فَمَاتَتْ؟ فَاسْتَأْذَنَ عُمَرَ بْنَ الْخَطَّابِ؟ فَقَالَ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ -: ضَرَبَ الْحِمَارُ؟

"No." ʿUmar concluded: "Your mother has met her predestined end. Accept this as a [divinely] accounted loss."

فَقَالَ: لَا، فَقَالَ: أَصَابَ الْحِمَارَ مِنْ الْفَرَسِ شَيْءٌ؟ قَالَ: لَا، قَالَ: أُمُّك أَتَتْ عَلَى أَجَلِهَا فَاحْتَسِبْهَا.

L38729–38731 Ibn Wahb said: Yunus informed me that he asked Abu al-Zinād about the blood money (diya) for [harm caused by] a dog, a cheetah, a domesticated lion, a ram known for butting, a bull's goring, a camel, or a biting horse that injures someone - whether a poor person, a musician, or someone engaged in worship. Abu al-Zinād replied: If any of these animals kills a person, breaks a hand or leg, gouges an eye, or causes any such injury to anyone, the owner is [liable for blood money]. The Messenger of Allah (ﷺ) ruled that "injuries caused by livestock are divinely absorbed [without liability]," unless the owner had been ordered by the authority to restrain the animal yet failed to do so. In such a case, the owner must compensate for the harm inflicted on others. As for damage caused to the animal itself, if the authority had not previously instructed its owner to restrain it, the one who caused the injury bears liability for the harm he inflicted upon it.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي يُونُسُ أَنَّهُ سَأَلَ أَبَا الزِّنَادِ عَنْ عَقْلِ الْكَلْبِ، أَوْ الْفَهْدِ، أَوْ السَّبُعِ الدَّاجِنِ، أَوْ الْكَبْشِ النَّطَّاحِ، أَوْ نَطْحِ الثَّوْرِ، أَوْ الْبَعِيرِ، أَوْ الْفَرَسِ الَّذِي يَعَضُّ، فَيَعْقُرُ مِسْكِينًا، أَوْ زَامِرًا، أَوْ عَابِدًا؟ فَقَالَ أَبُو الزِّنَادِ: إنْ قَتَلَ وَاحِدٌ مِنْ هَذِهِ الدَّوَابِّ، أَوْ أَصَابَ كَسْرَ يَدٍ، أَوْ رِجْلٍ، أَوْ فَقَأَ عَيْنًا، أَوْ أَيَّ أَمْرٍ جَرَحَ مِنْ ذَلِكَ بِأَحَدٍ مِنْ النَّاسِ فَهُوَ هَدْرٌ قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ «الْعَجْمَاءَ جُرْحُهَا جُبَارٌ» إلَّا أَنْ يَكُونَ قَدْ اسْتَعْدَى فِي شَيْءٍ مِنْ ذَلِكَ، فَأَمَرَهُ السُّلْطَانُ بِإِيثَاقِ ذَلِكَ فَلَمْ يَفْعَلْ، فَإِنَّ عَلَيْهِ أَنْ يَغْرَمَ مَا جَرَحَ بِالنَّاسِ - فَأَمَّا مَا أُصِيبَ بِهِ الدَّابَّةُ أَوْ بِشَيْءٍ مِنْهَا، فَلَمْ يَكُنْ السُّلْطَانُ يَتَقَدَّمُ إلَى صَاحِبِهِ، فَإِنَّ عَلَى مَنْ أَصَابَهَا غُرْمُ مَا أَصَابَهَا بِهِ.

L38732 Malik said regarding one who keeps a dog in a desert dwelling and the dog then mauled a person: If he kept it while knowing that it mauls people, and it did maul them, he is liable for whatever the dog has mauled.

وَقَالَ مَالِكٌ: فِيمَنْ اقْتَنَى كَلْبًا فِي دَارِ الْبَادِيَةِ فَعَقَرَ ذَلِكَ الْكَلْبُ إنْسَانًا: إنَّهُ إنْ اقْتَنَاهُ - وَهُوَ يَدْرِي أَنَّهُ يَفْتَرِسُ النَّاسَ فَعَقَرَهُمْ - فَهُوَ ضَامِنٌ لِمَا فَرَسَ الْكَلْبُ.

L38733 Abu Muhammad said: As for the narration attributed to Umar - though unauthenticated in its chain of transmission - its meaning is sound, and we adopt this position. For whoever neither physically acts nor commands [an action] bears no liability. When an animal startles, is the one who caused its fright blameworthy? Unless he intentionally provoked it: then he incurs legal retribution (qisas) for the death caused if he intended thereby to make it trample the victim. If he lacked such intent, it constitutes accidental killing - the blood money (diyah) falls upon the male agnates, expiation obligations rest upon him, and he bears financial liability in both scenarios when he deliberately provoked the animal, for he is the one who set it in motion.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا الرِّوَايَةُ عَنْ عُمَرَ - فَهِيَ وَإِنْ لَمْ تَصِحَّ - مِنْ طَرِيقِ النَّقْلِ فَمَعْنَاهَا صَحِيحٌ - وَبِهِ نَأْخُذُ، لِأَنَّ مَنْ لَمْ يُبَاشِرْ وَلَا أَمَرَ: فَلَا ضَمَانَ عَلَيْهِ، وَالدَّابَّةُ إذَا نَفَرَتْ فَلَيْسَ لِلَّذِي نَفَرَتْ مِنْهُ ذَنْبٌ؟ إلَّا أَنْ يَكُونَ نَفَّرَهَا عَامِدًا: فَإِنَّ عَلَيْهِ الْقَوَدَ فِيمَا قَتَلَتْ إذَا قَصَدَ بِذَلِكَ أَنْ تَطَأَ الَّذِي أَصَابَتْ، فَإِنْ لَمْ يَكُنْ قَصَدَ ذَلِكَ فَهُوَ قَاتِلٌ خَطَأً، وَالدِّيَةُ عَلَى الْعَاقِلَةِ، وَالْكَفَّارَةُ عَلَيْهِ، وَيَضْمَنُ الْمَالَ فِي كِلْتَا الْحَالَتَيْنِ، إذَا تَعَمَّدَ تَنْفِيرَهَا، لِأَنَّهُ الْمُحَرِّكُ لَهَا.

L38734 As for the statement of Abū al-Zinād—it is entirely valid, because injuries

caused by beasts entail no liability by the judgment of the Messenger of Allah—peace and blessings be upon him—and the owner did not intentionally cause any harm in that regard.

وَأَمَّا قَوْلُ أَبِي الزِّنَادِ - فَصَحِيحٌ كُلُّهُ، لِأَنَّ جُرْحَ الْعَجْمَاءِ جُبَارٌ بِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ لَمْ يَتَعَمَّدْ إشْلَاءَ شَيْءٍ مِنْ ذَلِكَ.

L38735 As for his statement "unless the Sultan has issued a prior command regarding that," this is baseless. The Sultan's prior command does not impose a penalty that Allah the Exalted or His Messenger—may Allah bless him and grant him peace—has not ordained. The Sultan is only an enforcer of divinely mandated obligations against those who refuse [to comply], and he is not a legislator of new divine law.

وَأَمَّا قَوْلُهُ «إلَّا أَنْ يَتَقَدَّمَ إلَيْهِ السُّلْطَانُ فِي ذَلِكَ» فَلَيْسَ بِشَيْءٍ، وَتَقَدُّمُ السُّلْطَانِ لَا يُوجِبُ غَرَامَةً لَمْ يُوجِبْهَا اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا السُّلْطَانُ مُنَفِّذٌ لِلْوَاجِبِ عَلَى مَنْ امْتَنَعَ فَقَطْ، وَلَيْسَ شَارِعًا شَرِيعَةً.

L38736 As for Mālik's statement, it is also erroneous because the owner's knowledge that the dog mauls people does not constitute a legal basis for imposing compensation upon him—a ruling neither the Quran nor the Sunnah has imposed. Even if he transgressed by keeping the dog, he did not directly participate in what the dog destroyed.

وَأَمَّا قَوْلُ مَالِكٍ خَطَأً أَيْضًا، لِأَنَّهُ لَيْسَ عِلْمُ الْمُقْتَنِي لِلْكَلْبِ بِأَنَّهُ يَفْتَرِسُ النَّاسَ بِمُوجِبٍ عَلَيْهِ غَرَامَةً لَمْ يُوجِبْهَا الْقُرْآنُ وَلَا السُّنَّةُ، وَهُوَ وَإِنْ كَانَ مُتَعَدِّيًا بِاقْتِنَائِهِ فَإِنَّهُ لَمْ يُبَاشِرْ شَيْئًا فِي الَّذِي أَتْلَفَهُ الْكَلْبُ.

L38737 Similarly, whoever shelters a combatant engaged in warfare who commits a criminal offense, he—even if he was transgressing by sheltering him—is not directly committing aggression in the harm.

وَهَكَذَا مَنْ آوَى رَجُلًا قَتَّالًا مُحَارِبًا فَجَنَى جِنَايَةً، فَهُوَ وَإِنْ كَانَ مُتَعَدِّيًا بِإِيوَائِهِ إيَّاهُ فَلَيْسَ مُبَاشِرًا عُدْوَانًا فِي الْمُصَابِ.

L38738–38740 All of this constitutes a single chapter, and it is not analogical reasoning. However, our opponents adhere to his opinion yet contradict him in [...] That very action itself, when we compile both opinions for them, their contradiction in these matters becomes evident—thus, we present such issues not as proof standing on its own, for the proof in this matter is the statement of the Messenger of Allah: "The injury caused by an animal entails no liability." And success is from Allah, the Most High.

وَكُلُّ هَذَا بَابٌ وَاحِدٌ، وَلَيْسَ قِيَاسًا، وَلَكِنَّ خُصُومَنَا يَقُولُونَ بِقَوْلِهِ وَيُخَالِفُونَهُ فِي ذَلِكَ الْعَمَلِ نَفْسِهِ، فَإِذَا جَمَعْنَا لَهُمْ الْقَوْلَيْنِ لَاحَ لَهُمْ تَنَاقُضُهُمْ فِيهَا - فَعَلَى هَذَا نُورِدُ مِثْلَ هَذِهِ الْمَسَائِلِ لَا عَلَى أَنَّهَا حُجَّةٌ قَائِمَةٌ بِنَفْسِهَا، وَإِنَّمَا الْحُجَّةُ فِي هَذَا قَوْلُ رَسُولِ اللَّهِ «جُرْحُ الْعَجْمَاءِ جُبَارٌ» . وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38741 It was narrated to us through the chain of Abū Bakr ibn Abī Shaybah: ʿAbbād ibn al-ʿAwwām narrated from Ḥajjāj, from Qatādah, from Kaʿb ibn Sawwār: A man riding a donkey encountered another man on a camel in a narrow alley. The donkey bolted, causing the rider to fall and suffer harm? Kaʿb ibn Sawwār did not hold the camel's owner liable for anything. Abū Muḥammad said: "This is as we have stated."

رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ حَجَّاجٍ عَنْ قَتَادَةَ عَنْ كَعْبِ بْنِ سَوَّارٍ: أَنَّ رَجُلًا كَانَ عَلَى حِمَارٍ فَاسْتَقْبَلَهُ رَجُلٌ عَلَى بَعِيرٍ فِي زُقَاقٍ فَنَفَرَ الْحِمَارُ فَصُرِعَ الرَّجُلُ فَأَصَابَهُ شَيْءٌ؟ فَلَمْ يُضَمِّنْ كَعْبُ بْنُ سَوَّارٍ صَاحِبَ الْبَعِيرِ شَيْئًا؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كَمَا قُلْنَا - وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ طَارِقٍ قَالَ: كُنْت عِنْدَ شُرَيْحٍ فَأَتَاهُ سَائِلٌ

From Sufyān al-Thawrī, from Ṭāriq, who said: "I was with Shurayḥ when a petitioner came and stated: 'I entered a people's property, and their dog attacked me, tearing my sack?' Shurayḥ ruled: 'If you entered with their consent, they are liable. If you entered without their consent, they bear no liability.'"

فَقَالَ: إِنِّي دَخَلْت دَارَ قَوْمٍ فَعَقَرَنِي كَلْبُهُمْ وَخَرَقَ جِرَابِي؟ فَقَالَ: إِنْ كُنْت دَخَلْت بِإِذْنِهِمْ فَهُمْ ضَامِنُونَ، وَإِنْ كُنْت دَخَلْت بِغَيْرِ إِذْنِهِمْ فَلَيْسَ عَلَيْهِمْ شَيْءٌ.

L38742 From Al-Sha'bi: If a dog is in a house and the residents permit a man to enter, then if the dog attacks him, they are liable. But if he enters without permission and the dog attacks him, there is no liability upon them. If any group trespasses upon a flock of sheep in their enclosures and the dogs attack them, there is no liability upon the sheep owners. However, if the dogs confront them on the road and attack them there, they are liable.

وَعَنْ الشَّعْبِيِّ قَالَ: إذَا كَانَ الْكَلْبُ فِي الدَّارِ فَأَذِنَ أَهْلُ الدَّارِ لِلرَّجُلِ فَعَقَرَهُ الْكَلْبُ ضَمِنُوا، وَإِنْ دَخَلَ بِغَيْرِ إذْنٍ فَعَقَرَهُ فَلَا ضَمَانَ عَلَيْهِمْ - وَأَيُّمَا قَوْمٍ غَشَوْا غَنَمًا فِي مَرَابِضِهَا فَعَقَرَتْهُمْ الْكِلَابُ فَلَا ضَمَانَ عَلَى أَصْحَابِ الْغَنَمِ، وَإِنْ عَرَضَتْ لَهُمْ الْكِلَابُ فِي الطَّرِيقِ فَعَقَرَتْهُمْ الْكِلَابُ فِي الطَّرِيقِ ضَمِنُوا.

L38743 As for the later jurists—Abū Ḥanīfah, Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, al-Shāfiʿī, and Abū Sulaymān—they said: If a person keeps a dog in his house and someone enters—whether with his permission or without it—and the dog kills the person, there is no financial liability for this. Ibn Abī Dhi'b likewise stated the same.

وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ أَبَا حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيَّ، وَالْحَسَنَ بْنَ حَيٍّ، وَالشَّافِعِيَّ، وَأَبَا سُلَيْمَانَ، قَالُوا: مَنْ كَانَ فِي دَارِهِ كَلْبٌ فَدَخَلَ إنْسَانٌ بِإِذْنِهِ أَوْ بِغَيْرِ إذْنِهِ فَقَتَلَهُ الْكَلْبُ فَلَا ضَمَانَ فِي ذَلِكَ - وَكَذَلِكَ قَالَ ابْنُ أَبِي ذِئْبٍ.

L38744 Al-Wāqidī narrated a similar account from Mālik. Ibn Wahb reported from him that he said: If someone acquires a dog while knowing that it mauls people, he is liable; but if he was unaware of this, he is not liable—unless the authority has previously warned him. Abū Muḥammad said: The stipulation of prior action by the authority or his knowledge that the dog is vicious has no basis, as this is not established by any explicit Quranic text, Sunnah, or consensus.

وَقَدْ رَوَى الْوَاقِدِيُّ نَحْوَ هَذَا عَنْ مَالِكٍ - وَرَوَى عَنْهُ ابْنُ وَهْبٍ: أَنَّهُ قَالَ: إنْ اتَّخَذَ الْكَلْبَ وَهُوَ يَدْرِي أَنَّهُ يَعْقِرُ النَّاسَ ضَمِنَ - وَأَنَّهُ إنْ لَمْ يَعْلَمْ ذَلِكَ لَمْ يَضْمَنْ - إلَّا أَنْ يَتَقَدَّمَ إلَيْهِ السُّلْطَانُ؟ قَالَ أَبُو مُحَمَّدٍ: اشْتِرَاطُ تَقَدُّمِ السُّلْطَانِ، أَوْ عِلْمِهِ بِأَنَّهُ عَقُورٌ لَا مَعْنَى لَهُ، لِأَنَّهُ لَمْ يُوجِبْ هَذَا نَصُّ قُرْآنٍ وَلَا سُنَّةٍ وَلَا إجْمَاعٌ.

L38745 If it is said, "He transgresses by keeping the vicious dog"—then similarly, he transgresses by keeping it because he is not legally permitted to do so.

فَإِنْ قِيلَ: إنَّهُ بِاتِّخَاذِهِ الْكَلْبَ الْعَقُورَ مُتَعَدٍّ - وَكَذَلِكَ هُوَ بِاتِّخَاذِهِ حَيْثُ لَمْ يُبَحْ لَهُ اتِّخَاذُهُ مُتَعَدٍّ أَيْضًا؟

L38746–38747 We said: He is a wrongdoer in his act of keeping the dog—in both cases—yet he is not transgressing in the destruction caused by the dog. Neither Allah the Exalted nor His Messenger (peace and blessings be upon him) has ever obligated absolute financial liability upon a wrongdoer.

قُلْنَا: هُوَ مُتَعَدٍّ فِي اتِّخَاذِهِ - فِي كِلْتَا الْحَالَتَيْنِ - ظَالِمٌ إلَّا أَنَّهُ لَيْسَ مُتَعَدِّيًا فِي إتْلَافِ مَا أَتْلَفَ الْكَلْبُ، وَلَا أَوْجَبَ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ عَلَى ظَالِمٍ غَرَامَةً مُطْلَقَةً.

L38748 We have stated that transgression necessitating liability, retaliation, or blood money is that for which a person is termed “a killer” or “a corrupter,” and this applies exclusively through direct action or explicit command. This principle applies to one who owns a dog—akin to someone who fashions a sword and gives it to a wrongdoer—or to one who acquired wine stored in a concealed jar; then, when a person sat near it, the jar broke and killed the person. All such cases do not designate this wrongdoer as “a killer” or “one who causes loss,” and thus there is no liability in any of these matters.

وَقَدْ قُلْنَا: إنَّ التَّعَدِّيَ الْمُوجِبَ لِلضَّمَانِ، أَوْ لِلْقَوَدِ، أَوْ لِلدِّيَةِ، هُوَ مَا سُمِّيَ بِهِ الْمَرْءُ " قَاتِلًا، أَوْ مُفْسِدًا " وَلَيْسَ كَذَلِكَ، إلَّا بِالْمُبَاشَرَةِ، أَوْ بِالْأَمْرِ، وَهِيَ فِي اتِّخَاذِهِ الْكَلْبَ، كَمَنْ عَمِلَ سَيْفًا وَأَعْطَاهُ لِظَالِمٍ، أَوْ اقْتَنَى خَمْرًا فِي خَابِيَةٍ فَجَلَسَ إنْسَانٌ إلَيْهَا فَانْكَسَرَتْ فَقَتَلَتْ الْإِنْسَانَ؟ فَكُلُّ هَذَا لَيْسَ يُسَمِّي هَذَا الظَّالِمَ " قَاتِلًا، وَلَا مُتْلِفًا " فَلَا ضَمَانَ فِي شَيْءٍ مِنْ ذَلِكَ.

L38749 It is reported from Ibrāhīm al-Nakhāʿī concerning a man whose horse bolted with him and killed a man: “He is financially liable. He is equivalent to one who shot his arrow at a bird but struck a man and killed him.”

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ فِي رَجُلٍ جَمَحَ بِهِ فَرَسُهُ فَقَتَلَ رَجُلًا، قَالَ: يَضْمَنُ، هُوَ بِمَنْزِلَةِ الَّذِي رَمَى بِسَهْمِهِ طَائِرًا فَأَصَابَ رَجُلًا فَقَتَلَهُ.

L38750 Abu Muhammad said: If his horse bolts with him, and he is the one moving it and overpowering it, then he is liable for all the harm it causes by his act of moving it—for intentional [acts], *qisas*, retaliation in kind, applies, and for what he did not intend, liability for error applies. But if his mount overpowers him and he does not direct it to do anything, then he bears no liability at all in any respect for any harm it causes.

قَالَ أَبُو مُحَمَّد: إذَا جَمَحَ بِهِ فَرَسُهُ، فَإِنْ كَانَ هُوَ الْمُحَرِّكُ لَهُ، الْمُغَالِبُ لَهُ، فَإِنَّهُ يَضْمَنُ كُلَّ مَا جَنَى بِتَحْرِيكِهِ إيَّاهُ، فِي الْقَصْدِ الْقَوَدُ وَفِيمَا لَمْ يَقْصِدْهُ ضَمَانُ الْخَطَأِ - وَأَمَّا إذَا غَلَبَتْهُ دَابَّتُهُ فَلَمْ يُحْمِلْهَا عَلَى شَيْءٍ فَلَا شَيْءَ عَلَيْهِ أَصْلًا فِي كُلِّ مَا أَصَابَتْ.

L38751 If a person pursues an animal to capture it, then whatever damage the animal causes during its flight—due to the pursuer’s instigation, in cases where it is certain that the animal perceives him and flees—the pursuer is liable for what he intentionally and purposefully aimed at in retaliation (qisas). For unintended harm, the blood money (diyah) is owed by the ʿāqila (agnatic kin group), and the expiation obligation rests upon him. As for whatever that animal destroys during its flight while it does not perceive him, there is no liability upon the pursuer. And with Allah the Exalted is success.

وَلَوْ أَنَّ امْرَأً اتَّبَعَ حَيَوَانًا لِيَأْخُذَهُ؟ فَكُلُّ مَا أَفْسَدَ الْحَيَوَانُ فِي هُرُوبِهِ ذَلِكَ، مِمَّا هُوَ حَامِلُهُ عَلَيْهِ، مِمَّا يُوقِنُ أَنَّ ذَلِكَ الْحَيَوَانَ إنَّمَا يَرَاهُ وَيَهْرُبُ عَنْهُ: فَهُوَ ضَامِنٌ لَهُ مَا عَمَدَ وَقَصَدَ بِالْقَوَدِ، وَمَا لَمْ يَقْصِدْ: فَالدِّيَةُ عَلَى الْعَاقِلَةِ وَالْكَفَّارَةُ عَلَيْهِ - وَأَمَّا مَا أَتْلَفَ ذَلِكَ الْحَيَوَانُ فِي جَرْيِهِ - وَهُوَ لَا يَرَاهُ - فَلَا ضَمَانَ عَلَى مُتَّبِعِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38752 **A legal issue: If someone provokes a dog, releases a lion, or**

[مَسْأَلَةٌ هَيَّجَ كَلْبًا أَوْ أَطْلَقَ أَسَدًا أَوْ أَعْطَى أَحْمَقَ سَيْفًا فَقَتَلَ رَجُلًا]

٢١١٥ - مَسْأَلَةٌ: وَلَوْ أَنَّ إِنْسَانًا هَيَّجَ كَلْبًا، أَوْ أَطْلَقَ أَسَدًا، أَوْ أَعْطَى أَحْمَقَ سَيْفًا فَقَتَلَ رَجُلًا: كُلُّ مَنْ ذَكَرْنَا فَلَا ضَمَانَ عَلَى الْمُهَيِّجِ، وَلَا عَلَى الْمُطْلِقِ، وَلَا عَلَى الْمُعْطِي السَّيْفَ؛ لِأَنَّهُمْ لَمْ يُبَاشِرُوا الْجِنَايَةَ، وَلَا أَمَرُوا بِهَا مَنْ يُطِيعُهُمْ.

L38753 Issue 2115: If a person incites a dog, releases a lion, or gives a sword to a fool, and a man is killed as a result, none of the aforementioned parties—the inciter, the releaser, or the one who gave the sword—is liable. This is because they neither directly perpetrated the wrongful act nor commanded someone under their authority to commit it.

فَلَوْ أَنَّهُ أَشْلَى الْكَلْبَ عَلَى إِنْسَانٍ، أَوْ حَيَوَانٍ فَقَتَلَهُ: ضَمِنَ الْمَالَ وَعَلَيْهِ الْقَوَدُ مِثْلُ ذَلِكَ، وَيُطْلَقُ عَلَيْهِ كَلْبٌ مِثْلُهُ حَتَّى يَفْعَلَ بِهِ مِثْلَ مَا فَعَلَ الْكَلْبُ بِإِطْلَاقِهِ، لِأَنَّهُ هَاهُنَا هُوَ الْجَانِي الْقَاصِدُ إِلَى إِتْلَافِ مَا أَتْلَفَ الْكَلْبُ بِإِغْرَائِهِ.

L38754 If he unleashes a dog upon a human or an animal, causing its death, he must pay financial compensation and is subject to equivalent qisas. A dog equivalent to it shall be released upon him until it inflicts upon him the same harm his dog caused by his unleashing, for he is here the deliberate perpetrator who intended the destruction that the dog caused through his incitement.

وَلَوْ أَنَّ امْرَأً حَفَرَ حُفْرَةً وَغَطَّاهَا، وَأَمَرَ إِنْسَانًا أَنْ يَمْشِيَ عَلَيْهَا، فَمَشَى عَلَيْهَا ذَلِكَ الْإِنْسَانُ مُخْتَارًا لِلْمَشْيِ - عَالِمًا، أَوْ غَيْرَ عَالِمٍ -: فَلَا ضَمَانَ عَلَى آمِرِهِ بِالْمَشْيِ، وَلَا عَلَى الْحَافِرِ، وَلَا عَلَى الْمُعْطِي، لِأَنَّهُمْ لَمْ يُمْشُوهُ، وَلَا بَاشَرُوا إِتْلَافَهُ، وَإِنَّمَا هُوَ بَاشَرَ شَيْئًا بِاخْتِيَارِهِ - وَلَا فَرْقَ بَيْنَ هَذَا بَيْنَ مَنْ غَرَّ إِنْسَانًا فَقَالَ لَهُ: طَرِيقُ كَذَا أَمْنٌ هُوَ؟ فَقَالَ لَهُ: نَعَمْ، هُوَ فِي غَايَةِ الْأَمْنِ - وَهُوَ يَدْرِي أَنَّ فِي الطَّرِيقِ الْمَذْكُورِ أَسَدًا هَائِجًا، أَوْ جَمَلًا هَائِجًا، أَوْ كِلَابًا عَقَّارَةً، أَوْ قَوْمًا قُطَّاعِينَ لِلطَّرِيقِ، يَقْتُلُونَ النَّاسَ - فَنَهَضَ السَّائِلُ مُغْتَرًّا بِخَبَرِ هَذَا الْغَارِ لَهُ، فَقُتِلَ وَذَهَبَ مَالُهُ.

L38755–38757 If a person digs a pit, covers it, and instructs someone to walk upon it, and that individual then walks upon it of his own volition - whether aware or unaware of the pit - no liability is incurred by the one who instructed him to walk, nor... There is no liability upon the digger of the pit nor upon the giver, for they neither compelled him to proceed nor directly engaged in its destruction. Rather, he engaged in something by his own choice. This case is equivalent to one where a person deceives another by saying to him: "Is such-and-such path safe?" then confirming to him: "Yes, it is perfectly secure," while knowing the mentioned path contains an aggressive lion, a frenzied camel, vicious biting dogs, or bandits who waylay and kill people. Consequently, the questioner advances—deceived by the information about this pit for him—and is killed, losing his property.

وَكَذَلِكَ: مَنْ رَأَى أَسَدًا فَأَرَادَ الْهُرُوبَ عَنْهُ؟ فَقَالَ لَهُ إِنْسَانٌ مَنْ غَرَّ بِهِ: لَا تَخَفْ، فَإِنَّهُ مُقَيَّدٌ؟ فَاغْتَرَّ بِقَوْلِهِ وَمَشَى، فَقَتَلَهُ الْأَسَدُ - فَهَذَا كُلُّهُ لَا قَوَدَ عَلَى الْغَارِّ، وَلَا ضَمَانَ أَصْلًا فِي دَمٍ وَلَا مَالٍ، لِأَنَّهُ لَمْ يُبَاشِرْ شَيْئًا، وَلَا أَكْرَهَ؟ فَلَوْ أَنَّهُ أَكْرَهَهُ عَلَى الْمَشْيِ عَلَى الْحُفْرَةِ فَهَلَكَ فِيهَا، أَوْ طَرَحَهُ إِلَى الْأَسَدِ أَوْ إِلَى الْكَلْبِ؟ فَعَلَيْهِ الْقَوَدُ.

L38758 Similarly, if someone sees a lion and wants to flee from it, but a person who deludes him says, "Do not fear, for it is chained," and he is deluded by his words and proceeds, then the lion killed him—in all these cases, there is no qisas against the deluder, nor any liability whatsoever for loss of life or property, because he neither physically acted nor compelled. However, if he compelled him to walk into a pit and he perished in it, or threw him to the lion or to a dog, then qisas is obligatory upon him.

L38759 If someone throws another person to combatants or rebels, and they kill him, then they are the killers—not the thrower. This differs from throwing him to one lacking legal capacity, for such a person is merely an instrument of the thrower.

L38760 Similarly, if he restrained him for a lion resulting in the lion killing him, or for an insane person resulting in the insane person killing him, then the restrainer in this case is considered the killer—unlike restraining him for the killing of a sane person. And success is by Allah's grace, the Most High.

L38761 **A legal case: A man was pursuing an animal and called out to a man, "Restrain it for me!" Then it struck him, causing his death.**

L38762 2116 - Issue: It has been reported to us through the chain of Ibn Waḍḍāḥ: Sahnūn narrated to us; Ibn Wahb narrated to us. [Ibn Wahb] informed me from Yūnus ibn Yazīd, from Ibn Shihāb concerning a man who sought an animal and called to another man: "Restrain it for me!" Then, either the animal collided with him and killed him, or he threw something at it and killed it. Ibn Shihāb said: "In both cases, he is liable for damages."

L38763 And to him—to Ibn Wahb—Al-Layth ibn Sa'd and Ibn Lahi'ah reported: That Hisham issued a ruling regarding a man who embraced a female slave to himself from a mount, and the mount caused her to fall into his lap: "The man bears liability for her blood money." Ibn Lahi'ah said: "But the man is our freed slave?" Tawbah ibn Namir—the judge of the people of Egypt—wrote to Hisham about this matter, and he ruled with this, placing the blood money liability on us [the patrons].

L38764 Ibn Wahb said: Al-Layth ibn Sa'd informed me that Hisham wrote concerning a man who carried a child, then the child plunged into a deep pit and died: that the blood money liability rests upon the one who carried [the child]. Al-Layth said: People act upon this legal opinion. Ibn Wahb said: It was conveyed to me from Rabi'ah that he said the same. Rabi'ah said: If both perish, then no blood money is due for them.

L38765–38766 Abu Muhammad said: There is no authoritative proof in the statement of

فَلَوْ طَرَحَهُ إِلَى أَهْلِ الْحَرْبِ، أَوْ الْبُغَاةِ فَقَتَلُوهُ: فَهُمْ الْقَتَلَةُ لَا الطَّارِحُ - بِخِلَافِ طَرْحِهِ إِلَى مَنْ لَا يَعْقِلُ، لِأَنَّ مَنْ لَا يَعْقِلُ آلَةٌ لِلطَّارِحِ.

وَكَذَلِكَ - لَوْ أَمْسَكَهُ لِأَسَدٍ فَقَتَلَهُ، أَوْ لِمَجْنُونٍ فَقَتَلَهُ، فَالْمُمْسِكُ هَاهُنَا هُوَ الْقَاتِلُ - بِخِلَافِ إمْسَاكِهِ إيَّاهُ لِقَتْلِ مَنْ يَعْقِلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ طَلَبَ دَابَّةً فَنَادَى رَجُلًا احْبِسْهَا عَلَيَّ فَصَدَمَتْهُ فَقَتَلَتْهُ]

٢١١٦ - مَسْأَلَةٌ: رُوِّينَا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ ابْنِ شِهَابٍ أَنَّهُ قَالَ فِي رَجُلٍ طَلَبَ دَابَّةً فَنَادَى رَجُلًا: احْبِسْهَا عَلَيَّ، فَصَدَمَتْهُ فَقَتَلَتْهُ، أَوْ رَمَاهَا فَقَتَلَهَا؟ فَقَالَ ابْنُ شِهَابٍ: كِلَاهُمَا يُغَرَّمُ.

وَبِهِ - إلَى ابْنِ وَهْبٍ أَخْبَرَنِي اللَّيْثُ بْنُ سَعْدٍ وَابْنُ لَهِيعَةَ: أَنَّ هِشَامًا كَتَبَ فِي رَجُلٍ ضَمَّ جَارِيَةً إلَيْهِ مِنْ دَابَّةٍ فَضَرَبَتْهَا فِي حِجْرِهِ: أَنَّ عَلَى الرَّجُلِ دِيَتَهَا - قَالَ ابْنُ لَهِيعَةَ: وَالرَّجُلُ مَوْلًى لَنَا؟ كَتَبَ تَوْبَةُ بْنُ نَمِرٍ - قَاضِي أَهْلِ مِصْرَ - إلَى هِشَامٍ فِي ذَلِكَ؟ فَكَتَبَ بِهَذَا، فَجَعَلَ الدِّيَةَ عَلَيْنَا

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي اللَّيْثُ بْنُ سَعْدٍ: أَنَّ هِشَامًا كَتَبَ فِي رَجُلٍ حَمَلَ صَبِيًّا فَخَرَّ فِي مَهْوَاةٍ، فَمَاتَ الصَّبِيُّ: أَنَّ ضَمَانَهُ عَلَى الْحَامِلِ، قَالَ اللَّيْثُ: وَعَلَى هَذِهِ الْفُتْيَا النَّاسُ - قَالَ ابْنُ وَهْبٍ: وَبَلَغَنِي عَنْ رَبِيعَةَ أَنَّهُ قَالَ مِثْلَ ذَلِكَ قَالَ: فَإِنْ هَلَكَا جَمِيعًا فَلَا عَقْلَ لَهُمَا.

any creature other than the Messenger of Allah—peace and blessings be upon him.

L38767 As for the one who instructed a man: "Restrain the animal for me," and it collided with him causing his death: there is no liability upon the one who ordered its restraint, because he neither transgressed against him nor directly participated in causing the destruction. If the commanded person tasked with restraining the animal were to strike it causing its death, or commit an offense against it, he would be fully liable in all circumstances, for he performed acts of destruction or criminal offenses against it that Allah the Exalted did not permit. Thus, he becomes a destroyer without right and a transgressor without right, while being directly responsible for it. Allah the Exalted said: "The requital of a misdeed is a misdeed like it" [42:40]. Similarly, if he ordered him to kill it or commit an offense against it and he complied, the commander would be liable, for he commanded what is unlawful and what he had no authority to order. He transgressed through the command, and the commanded one also transgressed through compliance. Therefore, the commander bears liability for the commanded person's direct execution of the criminal act.[10]

L38768 As for one who attaches a young female animal to another beast, and the latter kicks it, thereby killing it: there is no liability upon him, for he did not directly cause its destruction, as "injuries caused by beasts entail no liability."

L38769 As for the one carrying a child who fell into a pit, causing the child's death: If the death occurred due to the bearer collapsing onto the child, he is liable. The blood money (diyah) is incumbent upon his male agnatic relatives (aqilah), and he must perform religious expiation (kaffarah) for unintentional homicide. If the death resulted from the fall into the pit itself rather than the bearer's body collapsing onto the child, no liability is incurred.

L38770 If the pregnant woman dies at the time of the culpable act upon the boy or before the act occurs, there is no financial liability upon his aqilah (responsible male kin), because no liability is imposed on a deceased person. And success is with Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ فِي قَوْلِ مَخْلُوقٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

فَأَمَّا الَّذِي قَالَ لِلرَّجُلِ: احْبِسْ لِي الدَّابَّةَ فَصَدَمَتْهُ فَقَتَلَتْهُ: فَلَا ضَمَانَ عَلَى الَّذِي أَمَرَهُ بِحَبْسِهَا، لِأَنَّهُ لَمْ يَتَعَدَّ عَلَيْهِ، وَلَا بَاشَرَ فِيهِ إتْلَافَهُ. فَلَوْ أَنَّ الْمَأْمُورَ بِحَبْسِ الدَّابَّةِ رَمَاهَا فَقَتَلَهَا، أَوْ جَنَى عَلَيْهَا فَهُوَ ضَامِنٌ عَلَى كُلِّ حَالٍ، لِأَنَّهُ فَعَلَ مِنْ إتْلَافِهَا، وَمِنْ الْجِنَايَةِ عَلَيْهَا مَا لَمْ يُبِحْ اللَّهُ تَعَالَى لَهُ فِعْلَهُ، فَهُوَ مُتْلِفٌ بِغَيْرِ حَقٍّ وَجَانٍ بِغَيْرِ حَقٍّ، وَمُبَاشِرٌ لِذَلِكَ، قَالَ اللَّهُ تَعَالَى {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] ، وَكَذَلِكَ - لَوْ أَمَرَهُ بِقَتْلِهَا، أَوْ الْجِنَايَةِ عَلَيْهَا فَفَعَلَ لَضَمِنَ، لِأَنَّهُ أَمَرَهُ بِمَا لَا يَحِلُّ، وَبِمَا لَيْسَ لَهُ أَنْ يَأْمُرَهُ بِهِ، فَهُوَ مُتَعَدٍّ بِالْأَمْرِ، وَالْمَأْمُورُ أَيْضًا مُتَعَدٍّ بِالِائْتِمَارِ، فَهُوَ ضَامِنٌ لِمُبَاشَرَتِهِ الْجِنَايَةَ.

وَأَمَّا مَنْ ضَمَّ صَبِيَّةً مِنْ دَابَّةٍ فَرَمَحَتْهَا الدَّابَّةُ فَقَتَلَتْهَا: فَلَا ضَمَانَ عَلَيْهِ، لِأَنَّهُ لَمْ يُبَاشِرْ إتْلَافَهَا، وَ " جُرْحُ الْعَجْمَاءِ جُبَارٌ ".

وَأَمَّا الَّذِي حَمَلَ صَبِيًّا فَسَقَطَ فِي مَهْوَاةٍ فَمَاتَ الصَّبِيُّ، فَإِنْ كَانَ مَوْتُهُ مِنْ وُقُوعِ حَامِلِهِ عَلَيْهِ فَهُوَ ضَامِنٌ، وَالضَّمَانُ عَلَى الْعَاقِلَةِ، وَعَلَيْهِ الْكَفَّارَةُ، لِأَنَّهُ قَاتِلٌ خَطَأً - وَإِنْ كَانَ مَاتَ مِنْ الْوَقْعَةِ لَا مِنْ وُقُوعِ حَامِلِهِ عَلَيْهِ، فَلَا ضَمَانَ فِي ذَلِكَ.

فَلَوْ مَاتَ الْحَامِلُ حِينَ وُقُوعِهِ عَلَى الصَّبِيِّ، أَوْ قَبْلَ وُقُوعِهِ عَلَيْهِ: فَلَا ضَمَانَ عَلَى عَاقِلَتِهِ، لِأَنَّهُ لَا جِنَايَةَ عَلَى مَيِّتٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[10] **Qur'an references (L38767):** Qur'an 42:40 (Ash-Shuraa).

[مَسْأَلَةٌ اللِّصُّ يَدْخُلُ عَلَى الْإِنْسَانِ هَلْ لَهُ قَصْدُ قَتْلِهِ]

٢١١٧ - مَسْأَلَةٌ: اللِّصُّ يَدْخُلُ عَلَى الْإِنْسَانِ هَلْ لَهُ قَصْدُ قَتْلِهِ؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ إدْرِيسَ الْأَوْدِيُّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ قَالَ: أَصْلَتَ ابْنُ عُمَرَ عَلَى لِصٍّ بِالسَّيْفِ، فَلَوْ تَرَكْنَاهُ لَقَتَلَهُ.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَيْضًا نا ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ حُمَيْدِ بْنِ هِلَالٍ عَنْ حُجَيْرِ بْنِ الرَّبِيعِ قَالَ: قُلْت لِعِمْرَانَ بْنِ الْحُصَيْنِ أَرَأَيْت إنْ دَخَلَ عَلَيَّ دَاخِلٌ يُرِيدُ نَفْسِي وَمَالِي؟ قَالَ عِمْرَانُ: لَوْ دَخَلَ عَلَيَّ دَاخِلٌ يُرِيدُ نَفْسِي وَمَالِي لَرَأَيْت أَنْ قَدْ حَلَّ لِي قَتْلُهُ.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبَّادُ بْنُ عَوَّامٍ - هُوَ ابْنُ أَبِي جَمِيلَةَ - عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: اُقْتُلْ اللِّصَّ، وَالْحَرُورِيَّ، وَالْمُسْتَعْرِضَ.

وَعَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ قَالَ: مَا عَلِمْت أَنَّ أَحَدًا مِنْ الْمُسْلِمِينَ تَرَكَ قِتَالَ رَجُلٍ يَقْطَعُ عَلَيْهِ الطَّرِيقَ أَوْ يَطْرُقُهُ فِي بَيْتِهِ تَأَثُّمًا مِنْ ذَلِكَ.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إذَا دَخَلَ اللِّصُّ دَارَ الرَّجُلِ فَقَتَلَهُ فَلَا ضِرَارَ عَلَيْهِ.

وَعَنْ الشَّعْبِيِّ قَالَ: الرَّجُلُ مُحَارِبٌ لِلَّهِ وَرَسُولِهِ فَاقْتُلْهُ، فَمَا أَصَابَك مِنْ شَيْءٍ فَعَلَيَّ.

وَعَنْ ابْنِ سِيرِينَ أَنَّهُ قَالَ: قُلْت لِعُبَيْدَةَ: أَرَأَيْت إنْ دَخَلَ عَلَيَّ رَجُلٌ يُرِيدُ بَيْتِي؟ قَالَ: إنَّ الَّذِي يَدْخُلُ عَلَيْك بَيْتَك لَا يَحِلُّ لَهُ مِنْك مَا حَرَّمَ اللَّهُ تَعَالَى عَلَيْهِ، وَلَكِنْ يَحِلُّ لَك نَفْسُهُ.

A legal question: If a thief breaks into a person's dwelling, does he intend to kill him?

2117 - Issue: If a thief enters a person's home, does he intend to kill him? Ali said: "It was narrated to us through the chain of Abu Bakr ibn Abi Shaybah – from Abdullah ibn Idris al-Awdi – from Ubaydullah ibn Umar – from Nafi', who said: Ibn Umar brandished his sword at a thief. Had we not intervened, he would have killed him."

And via the chain of Abu Bakr ibn Abi Shaybah as well, narrated to us Ibn 'Ulayyah from Ayyub al-Sikhtiyānī from Humaid ibn Hilal from Hujayr ibn al-Rabi', who said: I said to Imran ibn al-Husayn, "What is your view if someone intrudes upon me intending my life and property?" Imran said: "If someone were to intrude upon me intending my life and property, I would hold that killing him is lawful."

And through the chain of Abū Bakr ibn Abī Shaybah, from ʿAbbād ibn ʿAwf (son of Abī Jamīlah), from al-Ḥasan al-Baṣrī, who said: Kill the thief, the Kharijite dissident (Ḥarūrī), and the highway robber (mustaʿriḍ).

And from Muhammad ibn Sirin that he said: I do not know of any Muslim who refrained from fighting a man who waylaid him on the road or raided his home out of fear of sinning thereby.

It is narrated from Ibrāhīm al-Nakhaʿī that he said: If a thief enters a man's home and he kills him, no liability is upon him.

From Al-Sha'bī, who said: "A man who wages war against Allah and His Messenger - kill him, and whatever thing befalls you, it is upon me."

From Ibn Sīrīn that he said: I asked 'Ubaydah, "What if a man enters my house intending to enter it?" He replied, "Whoever enters your house is not permitted to take from you anything Allah the Exalted has forbidden upon him. However, he himself is permissible for you."

From Mansur: He asked Ibrahim about a man who confronts another man

intending to take his wealth—should he fight him? Ibrahim replied: "If he refrains [from fighting], the aggressor would kill him." Abu Muhammad said: We were narrated through the chain of Muslim ibn al-Hajjaj → Abu Kurayb Muhammad ibn al-Ala' → Khalid ibn Makhlad → Muhammad ibn Ja'far → al-'Ala' ibn 'Abd al-Rahman → Abu Hurayrah, who said:

A man came to the Messenger of Allah (peace be upon him) and asked: "O Messenger of Allah, what if a man comes intending to take my wealth?" He replied: "Do not surrender your wealth to him." The man asked: "What if he attacks me?" He said: "Fight him." The man asked: "What if he kills me?" He answered: "You would be a martyr." The man asked: "What if I kill him?" He said: "He would be in the Fire."

L38781 Ali said: If someone intends to seize a person's property unjustly—whether a thief or others—and if it is feasible for him to drive him away from himself and prevent him, then it is not permissible for him to kill him. If he kills him in that case, qisas (retaliatory punishment) is incumbent upon him. But if he anticipates—even the slightest expectation—that the thief will immediately assault him, then he may kill him, and there is no liability upon him, for he is defending himself.

L38782 If it is said: "The thief is one who wages war (against society), so does the ruling for such a one apply to him?" We respond: If he acts defiantly and prevails, then he is one who wages war. The discretion to execute the one who wages war rests with the Imam, not others, or with whoever administers justice if there is no Imam present. But if he does not act defiantly nor prevail, but steals stealthily, he is not one who wages war, and it is categorically impermissible to kill him. Success is from Allah, the Most High.

L38783–38784 **Case: The owner of the crossing uses beasts of burden to operate the crossing, and the beasts drowned.**

L38785 The owner of the ferry transports animals, and they drowned. ʿAlī said: Ḥammām → ʿAbdullāh ibn Muḥammad ibn ʿAlī → ʿAbdullāh ibn Yūnus → Baqī ibn Makhlad → Abū Bakr ibn Abī Shaybah → Ḥumayd ibn ʿAbd al-Raḥmān → Ḥasan → Jābir → ʿĀmir, who said to me: "If the ferry owner

وَعَنْ مَنْصُورٍ أَنَّهُ سَأَلَ إِبْرَاهِيمَ عَنْ الرَّجُلِ يَعْرِضُ لِلرَّجُلِ يُرِيدُ مَالَهُ أَيُقَاتِلُهُ؟ فَقَالَ إِبْرَاهِيمُ: لَوْ تَرَكَهُ لَقَتَلَهُ؟ قَالَ أَبُو مُحَمَّدٍ: رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ نا خَالِدٌ - يَعْنِي ابْنَ مَخْلَدٍ - نا مُحَمَّدُ بْنُ جَعْفَرٍ عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ قَالَ: «جَاءَ رَجُلٌ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ يَا رَسُولَ اللَّهِ: أَرَأَيْتَ إنْ جَاءَ رَجُلٌ يُرِيدُ أَنْ يَأْخُذَ مَالِي؟ قَالَ: فَلَا تُعْطِهِ مَالَكَ، قَالَ: أَرَأَيْتَ إنْ قَاتَلَنِي؟ قَالَ: قَاتِلْهُ. قَالَ: أَرَأَيْتَ إنْ قَتَلَنِي، قَالَ: فَأَنْتَ شَهِيدٌ، قَالَ: أَرَأَيْتَ إنْ قَتَلْتُهُ؟ قَالَ: هُوَ فِي النَّارِ» .

قَالَ عَلِيٌّ: فَمَنْ أَرَادَ أَخْذَ مَالِ إنْسَانٍ ظُلْمًا مِنْ لِصٍّ، أَوْ غَيْرِهِ، فَإِنْ تَيَسَّرَ لَهُ طَرْدُهُ مِنْهُ وَمَنْعُهُ: فَلَا يَحِلُّ لَهُ قَتْلُهُ، فَإِنْ قَتَلَهُ حِينَئِذٍ: فَعَلَيْهِ الْقَوَدُ - وَإِنْ تَوَقَّعَ - أَقَلَّ تَوَقُّعٍ - أَنْ يُعَاجِلَهُ اللِّصُّ: فَلْيَقْتُلْهُ وَلَا شَيْءَ عَلَيْهِ، لِأَنَّهُ مُدَافِعٌ عَنْ نَفْسِهِ.

فَإِنْ قِيلَ: اللِّصُّ مُحَارِبٌ فَعَلَيْهِ مَا عَلَى الْمُحَارِبِ؟ قُلْنَا: فَإِنْ كَابَرَ وَغَلَبَ فَهُوَ مُحَارِبٌ، وَاخْتِيَارُ الْقَتْلِ فِي الْمُحَارِبِ إلَى الْإِمَامِ لَا إلَى غَيْرِهِ، أَوْ إلَى مَنْ قَامَ بِالْحَقِّ إنْ لَمْ يَكُنْ هُنَالِكَ إمَامٌ، وَإِنْ لَمْ يُكَابِرْ وَلَا غَلَبَ، لَكِنْ تَلَصَّصَ: فَلَيْسَ مُحَارِبًا، وَلَا يَحِلُّ قَتْلُهُ أَصْلًا. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ صَاحِبُ الْمَعْبَرِ يَعْبُرُ بِدَوَابَّ فَغَرِقَتْ.]

صَاحِبُ الْمَعْبَرِ يَعْبُرُ بِدَوَابَّ فَغَرِقَتْ. قَالَ عَلِيٌّ: نا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ

transports animals and they drown - what is the ruling?" He stated: "There is no liability upon him."

حَسَنٍ عَنْ جَابِرٍ عَنْ عَامِرٍ، قَالَ لِي: صَاحِبُ الْمَعْبَرِ يَعْبُرُ بِدَوَابَّ فَغَرِقَتْ؟ قَالَ: فَلَا ضَمَانَ عَلَيْهِ.

L38786 Ali said: "It is as he stated, unless he personally causes damage to the crossing point or the ship, in which case he is liable—and success is by Allah, the Exalted."

قَالَ عَلِيٌّ: وَهُوَ كَمَا قَالَ إِلَّا أَنْ يُبَاشِرَ تَعْطِيبَ الْمَعْبَرِ، أَوْ تَعْطِيبَ السَّفِينَةِ، فَيَضْمَنُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ اسْتَعَانَ صَبِيًّا أَوْ عَبْدًا بِغَيْرِ إِذْنِ أَهْلِهِ فَتَلِفَ]

L38787 **A case where someone enlisted the assistance of a minor or a slave without the permission of their guardians, resulting in damage.**

L38788 2118 - Issue: If someone enlists the aid of a minor or a slave without their respective guardian's permission, resulting in [the entrusted item's] destruction, [what is the ruling?] Muḥammad ibn Saʿīd ibn Nubāt narrated to us from ʿAbdullāh ibn Naṣr from Qāsim ibn Aṣbagh from Ibn Waḍḍāḥ from Mūsā ibn Muʿāwiyah from Wakīʿ from Isrāʾīl from Jābir from al-Shaʿbī that he said regarding a man who gave a minor a horse, and the minor caused its death: The man is liable to compensate.

٢١١٨ - مَسْأَلَةٌ: مَنْ اسْتَعَانَ صَبِيًّا أَوْ عَبْدًا بِغَيْرِ إِذْنِ أَهْلِهِ فَتَلِفَ؟ حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا إِسْرَائِيلُ عَنْ جَابِرٍ عَنِ الشَّعْبِيِّ أَنَّهُ قَالَ فِي رَجُلٍ أَعْطَى صَبِيًّا فَرَسًا فَقَتَلَهُ؟ قَالَ: يَضْمَنُ الرَّجُلُ.

L38789 Through the same chain up to Wakīʿ: Sufyān narrated to us from Ashʿath from al-Ḥakam from Ibrāhīm, who said: Whoever uses the services of a slave without the permission of his master and thereby causes harm, he is liable.

وَبِهِ - إِلَى وَكِيعٍ نا سُفْيَانُ عَنْ أَشْعَثَ عَنِ الْحَكَمِ عَنْ إِبْرَاهِيمَ قَالَ: مَنِ اسْتَعَانَ عَبْدًا بِغَيْرِ إِذْنِ أَهْلِهِ فَعَنِتَ فَهُوَ ضَامِنٌ.

L38790 And from Al-Shaʿbī regarding the slave of a man whom another man compelled to mount [an animal], so he caused the animal to tread on a man and killed him: he said, "The one who compelled the slave to mount must pay the diya."

وَعَنِ الشَّعْبِيِّ فِي عَبْدِ رَجُلٍ أَكْرَهَهُ رَجُلٌ فَحَمَلَهُ عَلَى دَابَّةٍ فَأَوْطَأَ رَجُلًا فَقَتَلَهُ؟ قَالَ: يَغْرَمُ الَّذِي حَمَلَ الْعَبْدَ.

L38791 Abu Muḥammad said: Whoever seeks the help of a minor—whether free or enslaved—and hardship ensues, he is liable.

قَالَ أَبُو مُحَمَّدٍ: مَنِ اسْتَعَانَ صَغِيرًا حُرًّا أَوْ عَبْدًا فَعَنِتَ، فَهُوَ ضَامِنٌ.

L38792 Whoever enlists the help of a free person of legal majority or a slave, and it (the horse) perishes, he is not liable. It was narrated to us through the chain of Abū Bakr ibn Abī Shaybah, who narrated to us from Wakīʿ, from Isrāʾīl, from Jābir, from al-Shaʿbī, that he said regarding a man who gave another

وَمَنِ اسْتَعَانَ كَبِيرًا حُرًّا أَوْ عَبْدًا فَعَنِتَ فَهُوَ غَيْرُ ضَامِنٍ: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا إِسْرَائِيلُ عَنْ جَابِرٍ عَنِ الشَّعْبِيِّ أَنَّهُ قَالَ فِي رَجُلٍ أَعْطَى رَجُلًا فَرَسًا فَقَتَلَهُ: أَنَّهُ لَا يَضْمَنُ، إِلَّا أَنْ يَكُونَ عَبْدًا أَوْ صَبِيًّا.

man a horse and the latter killed it: he is not liable, except if the enlisted individual was a slave or a prepubescent child.

L38793 On the authority of Awf ibn Abi Jamilah, who said: Umar ibn Hayyan al-Himmani used to breed horses. He placed his son on a horse, which threw him off; he fell from it and died. The blood money for his death was assigned to his ʿāqila (kinship group) during the time of Ziyad in Basra.

وَعَنْ عَوْفِ بْنِ أَبِي جَمِيلَةَ، قَالَ: كَانَ عُمَرُ بْنُ حَيَّانَ الْحِمَّانِيُّ يَصْنَعُ الْخَيْلَ، وَأَنَّهُ حَمَلَ ابْنَهُ عَلَى فَرَسٍ نَفَّرَ، فَتَقَطَّرَ مِنْ الْفَرَسِ فَمَاتَ، فَجُعِلَتْ دِيَتُهُ عَلَى عَاقِلَتِهِ زَمَانَ زِيَادٍ بِالْبَصْرَةِ.

L38794 From Bukayr ibn al-Ashajj that Ibn ʿUmar said: Whoever takes away a boy who has not reached puberty without the permission of his family, and the boy dies from the fall, he is thereby liable to pay blood money.

وَعَنْ بُكَيْرِ بْنِ الْأَشَجِّ أَنَّ ابْنَ عُمَرَ قَالَ: مَنْ حَمَلَ غُلَامًا لَمْ يَبْلُغْ الْحُلُمَ بِغَيْرِ إذْنِ أَهْلِهِ فَسَقَطَ فَمَاتَ، فَقَدْ غَرِمَ.

L38795–38796 From Mujāhid, from Ibn ʿAbbās: Is this [opinion] akin to Ibn ʿUmar's statement? He [Ibn ʿAbbās] said, "He must pay his diyah if he injures him."

وَعَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ مِثْلُ قَوْلِ ابْنِ عُمَرَ هَذَا؟ وَقَالَ: يَغْرَمُ دِيَتَهُ لَوْ جَرَحَهُ.

L38797 From Rabi'ah and Abu al-Zinad, both of whom said jointly: Whoever employs a boy who has not reached puberty is liable for any harm the boy causes. They said concerning a free person with full legal capacity: There is no liability on anyone for seeking assistance in any matter if the act is done willingly. Rabi'ah added: Unless the person is deceived through negligence or exploited for perceived ignorance.

وَعَنْ رَبِيعَةَ، وَأَبِي الزِّنَادِ أَنَّهُمَا قَالَا جَمِيعًا: مَنْ اسْتَعَانَ غُلَامًا لَمْ يَبْلُغْ الْحُلُمَ فَهُوَ لِمَا أَصَابَهُ ضَامِنٌ - وَقَالَا فِي الْحُرِّ يَمْلِكُ نَفْسَهُ: لَيْسَ عَلَى أَحَدٍ اسْتِعَانَةُ شَيْءٍ إذَا أَتَى ذَلِكَ طَائِعًا؟ قَالَ رَبِيعَةُ: إلَّا أَنْ يُسْتَغْفَلَ، أَوْ يُسْتَجْهَلَ.

L38798 Ibn Wahb said: I heard al-Layth say the same as the statement of Abī al-Zināḍ.

قَالَ ابْنُ وَهْبٍ: وَسَمِعْت اللَّيْثَ يَقُولُ مِثْلَ قَوْلِ أَبِي الزِّنَادِ.

L38799 From Qatadah, from Khilās ibn 'Amr, that 'Alī ibn Abī Ṭālib said regarding a boy – who has not reached five spans in age – when a man enlists his assistance: "He [the man] is liable until the boy returns." But if he enlists his assistance with the permission of his family, there is no liability upon him.

وَعَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الْغُلَامِ يَسْتَعِينُهُ رَجُلٌ - وَلَمْ يَبْلُغْ خَمْسَةَ أَشْبَارٍ -: فَهُوَ ضَامِنٌ حَتَّى يَرْجِعَ -، وَإِنْ اسْتَعَانَهُ بِإِذْنِ أَهْلِهِ فَلَا ضَمَانَ عَلَيْهِ.

L38800 From Ibrāhīm al-Nakhaʿī, who said: Whoever uses the service of a slave without the permission of their owners is liable.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: مَنْ اسْتَعَانَ مَمْلُوكًا بِغَيْرِ إذْنِ مَوَالِيهِ ضَمِنَ.

L38801 Abu Muhammad said: From these statements attributed to Ali ibn Abi Talib, it emerges that whoever employs a boy who has not attained five hand spans in height without his guardians' permission is financially liable for him. If he has attained five spans, there is no liability. If he employs him with his

قَالَ أَبُو مُحَمَّد: فَحَصَلَ مِنْ هَذِهِ الْأَقْوَالِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ مَنْ اسْتَعَانَ غُلَامًا - لَمْ يَبْلُغْ خَمْسَةَ أَشْبَارٍ - بِغَيْرِ إذْنِ أَهْلِهِ فَهُوَ لَهُ ضَامِنٌ، فَإِنْ بَلَغَ خَمْسَةَ أَشْبَارٍ فَلَا ضَمَانَ

guardians' permission—and this ruling is reliably transmitted from Ali ibn Abi Talib, may Allah be pleased with him. As for Ibn Abbas and Ibn Umar, may Allah be pleased with them both—whoever transports a boy without his guardians' permission, and he falls and dies, is financially liable—though this narration is not authentically established from them.

عَلَيْهِ -، وَإِنْ اسْتَعَانَهُ بِإِذْنِ أَهْلِهِ -، وَهَذَا صَحِيحٌ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ -. وَعَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - مَنْ حَمَلَ غُلَامًا بِغَيْرِ إِذْنِ أَهْلِهِ فَسَقَطَ فَمَاتَ فَقَدْ غَرِمَ، إِلَّا أَنَّهُ لَا يَصِحُّ عَنْهُمَا.

L38802 As for Ibn ʿUmar, it was narrated by Ibn Lahīʿah—and this is unreliable—while as for Ibn ʿAbbās, it was narrated from him by Yazīd ibn Iyāḍ—who is known for lying.

أَمَّا عَنْ ابْنِ عُمَرَ فَرَوَاهُ ابْنُ لَهِيعَةَ - وَلَيْسَ بِشَيْءٍ، وَأَمَّا ابْنُ عَبَّاسٍ فَرَوَاهُ عَنْهُ يَزِيدُ بْنُ عِيَاضٍ - وَهُوَ مَذْكُورٌ بِالْكَذِبِ.

L38803 It has been reported from al-Shaʿbī: If a person gives a horse to a minor and the minor kills it, the giver is liable. A similar ruling is transmitted from Rabīʿah and Abū al-Zināد.

وَحَصَلَ عَنْ الشَّعْبِيِّ: مَنْ أَعْطَى صَبِيًّا فَرَسًا فَقَتَلَهُ، فَالْمُعْطِي ضَامِنٌ وَعَنْ رَبِيعَةَ، وَأَبِي الزِّنَادِ، نَحْوُ ذَلِكَ.

L38804 And from Ḥammād ibn Abī Sulaymān, similar to that.

وَعَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، نَحْوُ ذَلِكَ.

L38805 Thus, these individuals did not distinguish between the permission of his family and the absence of their permission.

فَلَمْ يُفَرِّقْ هَؤُلَاءِ بَيْنَ إِذْنِ أَهْلِهِ، وَلَا بَيْنَ غَيْرِ إِذْنِهِمْ.

L38806 It is established from the statement of al-Shaʿbī: "Whoever enlists an adult slave without his master's permission bears no legal liability if the slave is harmed." A similar position is reported from al-Zuhrī and ʿAṭāʾ.

وَحَصَلَ مِنْ قَوْلِ الشَّعْبِيِّ: مَنْ اسْتَعَانَ عَبْدًا بَالِغًا بِغَيْرِ إِذْنِ سَيِّدِهِ، فَلَا ضَمَانَ عَلَيْهِ إِنْ تَلِفَ - وَعَنْ الزُّهْرِيِّ، وَعَطَاءٍ، نَحْوُهُ.

L38807–38808 As for the latter jurists, Abū Ḥanīfa, Abū Yūsuf, and Muḥammad ibn al-Ḥasan ruled: If one seizes a free minor and the child dies of fever or sudden causes while with him, he bears no liability. But if the child is struck by lightning or bitten by a snake, the blood money is owed by the agnatic kin of the one who seized him. Zufar would say: "He incurs no liability in any of these cases."

وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ أَبَا حَنِيفَةَ، وَأَبَا يُوسُفَ، وَمُحَمَّدَ بْنَ الْحَسَنِ، قَالُوا: مَنْ غَصَبَ صَبِيًّا حُرًّا فَمَاتَ عِنْدَهُ بِحُمَّى أَوْ فُجَاءَةً فَلَا شَيْءَ عَلَيْهِ - فَإِنْ أَصَابَتْهُ صَاعِقَةٌ، أَوْ نَهَشَتْهُ حَيَّةٌ: فَدِيَتُهُ عَلَى عَاقِلَةِ الْغَاصِبِ، وَكَانَ زُفَرُ يَقُولُ: لَا يَضْمَنُ فِي شَيْءٍ مِنْ ذَلِكَ.

L38809 Sufyan al-Thawri said: If someone sends a child on an errand and the child commits an offense, the sender bears no responsibility for his offense. He said: If someone sends a slave on an errand and he commits an offense, then the offense is upon the sender. He said: If one employs a minor hired worker for an errand and a wolf eats him, the employer bears no liability.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: إِذَا أَرْسَلَ صَبِيًّا فِي حَاجَةٍ فَجَنَى الصَّبِيُّ جِنَايَةً، قَالَ: فَلَيْسَ عَلَى الَّذِي أَرْسَلَهُ شَيْءٌ مِنْ جِنَايَتِهِ، قَالَ: فَإِذَا أَرْسَلَ مَمْلُوكًا فِي حَاجَةٍ فَجَنَى، فَإِنَّ الْجِنَايَةَ عَلَى الَّذِي أَرْسَلَهُ، قَالَ: فَإِنْ اسْتَعْمَلَ أَجِيرًا صَغِيرًا فِي حَاجَةٍ فَأَكَلَهُ الذِّئْبُ فَلَا شَيْءَ عَلَيْهِ.

L38810 Al-Ḥasan ibn Ḥayy said: If someone instructs a minor or another's slave to

provide him drinking water or hand him water for ablution, there is no blame in that. He said: If they suffer harm in doing so, he is liable to compensate them.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: مَنْ أَمَرَ صَغِيرًا، أَوْ مَمْلُوكًا لِغَيْرِهِ بِأَنْ يَسْقِيَهُ مَاءً، أَوْ يُنَاوِلَهُ وَضُوءًا فَلَا بَأْسَ بِذَلِكَ، قَالَ: فَإِنْ عَنِتَا فِي ذَلِكَ فَعَلَيْهِ ضَمَانُهُمَا.

L38811 Mālik said: The position agreed upon among the jurists is that when a man enlists the help of a minor or an owned slave in a consequential matter without permission, he is liable for any harm that befalls them. If a man orders a free minor to descend into a well or climb a palm tree, and the minor perishes in doing so, the orderer is liable for the harm incurred. If he enlists the help of a free adult who assists him, there is no liability unless the adult is deceived due to gullibility or presumed ignorance.

وَقَالَ مَالِكٌ: الْأَمْرُ الَّذِي عَلَيْهِ الْفُقَهَاءُ مِنْهُمْ: أَنَّ الرَّجُلَ إِذَا اسْتَعَانَ صَغِيرًا، أَوْ عَبْدًا مَمْلُوكًا فِي شَيْءٍ لَهُ بَالٌ، فَإِنَّهُ ضَامِنٌ لِمَا أَصَابَهُمَا - إِذَا كَانَ ذَلِكَ بِغَيْرِ إِذْنٍ - وَإِذَا أَمَرَ الرَّجُلُ الصَّبِيَّ الْحُرَّ أَنْ يَنْزِلَ فِي بِئْرٍ، أَوْ يَرْقَى فِي نَخْلَةٍ، فَهَلَكَ فِي ذَلِكَ: أَنَّ الَّذِي أَمَرَهُ ضَامِنٌ لِمَا أَصَابَهُ - فَإِنْ اسْتَعَانَ كَبِيرًا حُرًّا فَأَعَانَهُ، فَلَا شَيْءَ عَلَيْهِ إِلَّا أَنْ يُسْتَغْفَلَ أَوْ يُسْتَجْهَلَ.

L38812 Abū Muḥammad said: It has been narrated to us from Mālik that if someone unlawfully seizes a free person, then sells him, and [if] the victim is sought but cannot be found, the usurper is liable for his diyah. As for al-Shāfiʿī, we know of no legal opinion from him on this matter.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ رُوِّينَا عَنْ مَالِكٍ: أَنَّ مَنْ غَصَبَ حُرًّا فَبَاعَهُ فَطُلِبَ؟ فَلَمْ يُوجَدْ: أَنَّهُ يَضْمَنُ دِيَتَهُ - وَأَمَّا الشَّافِعِيُّ - فَلَا نَعْلَمُ لَهُ فِي هَذَا قَوْلًا.

L38813–38815 It has been narrated from Umm Salamah, the Mother of the Believers—may God be pleased with her—that she sent a message to the teacher of the Book: “Send me boys to card wool, and do not send me a free person.” Abu Muhammad said: When they differed—as we mentioned—it became obligatory for us to examine this matter so that the truth might become evident from it, and we might follow it—with the help of God Almighty and His grace. We began with what was narrated concerning this from the Companions—may God be pleased with them. As for the narration from Umm Salamah—may God be pleased with her—regarding her request for boys to card wool for her, and her stipulation that there be no free person among them, there is no ruling on liability—neither minor nor major—in it. Thus, it has no place in this legal chapter—and God knows best what her intention was. Perhaps the carding of wool was done in her presence. She disliked that a free boy among the youths—and perhaps he had approached puberty, making it impermissible for him—might see her, while the sight of slaves seeing her is permissible. Carding wool can only be managed by those with strength among the boys—and God knows best—nor do we assert this

وَقَدْ رُوِيَ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - أَنَّهَا بَعَثَتْ إِلَى مُعَلِّمِ الْكُتَّابِ، ابْعَثْ لِي غِلْمَانًا يَنْفُشُونَ صُوفًا وَلَا تَبْعَثْ إِلَيَّ حُرًّا؟ قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِيَلُوحَ الْحَقُّ مِنْ ذَلِكَ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى وَمَنِّهِ - فَابْتَدَأْنَا بِمَا رُوِيَ فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: فَأَمَّا الرِّوَايَةُ - عَنْ أُمِّ سَلَمَةَ - رَضِيَ اللَّهُ عَنْهَا - فِي طَلَبِهَا غِلْمَانًا يَنْفُشُونَ لَهَا الصُّوفَ، وَاشْتَرَطَتْ: أَنْ لَا يَكُونَ فِيهِمْ حُرٌّ؟ فَلَيْسَ فِيهِ مِنْ حُكْمِ التَّضْمِينِ قَلِيلٌ وَلَا كَثِيرٌ، فَلَا مَدْخَلَ لَهُ فِي هَذَا الْبَابِ - وَاَللَّهُ أَعْلَمُ بِمُرَادِهَا - وَلَعَلَّ نَفْشَ الصُّوفِ كَانَ بِحَضْرَتِهَا فَكَرِهَتْ أَنْ يَرَاهَا حُرٌّ مِنْ الصِّبْيَانِ - وَلَعَلَّهُ قَدْ قَارَبَ الْبُلُوغَ فَلَا يَحِلُّ لَهُ ذَلِكَ - وَرُؤْيَةُ الْعَبِيدِ لَهَا مُبَاحٌ، وَنَفْشُ

definitively, except that we definitively assert her account is not part of the ruling on guarantee.

الصُّوفِ لَا يُطِيقُهُ إِلَّا مَنْ لَهُ قُوَّةٌ مِنْ الْغِلْمَانِ - وَاَللَّهُ أَعْلَمُ - وَلَا نَقْطَعُ بِهَذَا أَيْضًا إِلَّا أَنَّا نَقْطَعُ أَنَّهُ لَيْسَ خَبَرُهَا هَذَا مِنْ حُكْمِ التَّضْمِينِ؟ .

L38816 Abu Muhammad said: Then we examined the statement of Ali ibn Abi Talib—may Allah be pleased with him—as no other narration from a Companion on this topic has been reliably established except his. We found that he determined the measure for the child's obligation in that matter at five spans. Yet the Hanafis, Malikis, and Shafi'is opposed him in this. It is baseless for them to cite as evidence against their opponents a position they themselves have opposed.

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَظَرْنَا فِي قَوْلِ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - الَّذِي لَمْ يَصِحَّ عَنْ صَاحِبٍ فِي هَذَا الْبَابِ شَيْءٌ غَيْرُهُ، فَوَجَدْنَاهُ حَدَّ مِقْدَارَ الصَّبِيِّ فِي ذَلِكَ بِخَمْسَةِ أَشْبَارٍ - وَقَدْ خَالَفَهُ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ فِي ذَلِكَ، وَمِنْ الْبَاطِلِ أَنْ يَحْتَجُّوا عَلَى خُصُومِهِمْ بِقَوْلٍ قَدْ خَالَفُوهُ هُمْ.

L38817 Abu Muhammad said: There remained other opinions, which are divided into three categories. The first is imposing liability on one who employs a slave or minor without the permission of their respective guardians, and exempting the employer from liability if both were employed with the guardians' permission.

قَالَ أَبُو مُحَمَّدٍ: وَبَقِيَتْ الْأَقْوَالُ غَيْرُهَا، وَهِيَ تَنْقَسِمُ ثَلَاثَةَ أَقْسَامٍ: أَحَدُهَا - تَضْمِينُ مَنْ اسْتَعَانَ عَبْدًا أَوْ صَغِيرًا بِغَيْرِ إذْنِ أَهْلِهِمَا وَتَرْكُ تَضْمِينِهِ، إنْ اسْتَعْنَاهُمَا بِإِذْنِ أَهْلِهِمَا.

L38818 The second [point] is his financial liability for enlisting their assistance, whether with the permission of their guardians or without it.

وَالثَّانِي - تَضْمِينُهُ كَيْفَمَا اسْتَعَانَهُمَا بِإِذْنِ أَهْلِهِمَا، أَوْ بِغَيْرِ إذْنِهِمَا.

L38819 The third [opinion] is that of al-Shaʿbī: If someone enlists the assistance of an adult male enslaved person, the enlistment does not incur liability upon the enlister, but if they enlist a young enslaved person, liability is incurred upon the enlister.

وَالثَّالِثُ - قَوْلُ الشَّعْبِيِّ: أَنَّ الْعَبْدَ الْكَبِيرَ لَا يَضْمَنُ مَنْ اسْتَعَانَهُ، لَكِنْ مَنْ اسْتَعَانَ الصَّغِيرَ ضَمِنَ.

L38820 Then we examined the statement of Abū Ḥanīfa and his companions, and found it utterly corrupt, for he makes distinctions regarding a wrongfully seized minor between cases where the child dies a natural death, from fever, or suddenly - in which the usurper bears no liability - and cases where the child dies from a lightning strike that burns him or a snake bite, where the usurper becomes liable for his blood-money. This is an astonishing matter unprecedented in juristic discourse.

ثُمَّ نَظَرْنَا فِي قَوْلِ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ، فَوَجَدْنَاهُ فِي غَايَةِ الْفَسَادِ؛ لِأَنَّهُ فَرَّقَ فِي الصَّغِيرِ يُغْصَبُ بَيْنَ أَنْ يَمُوتَ حَتْفَ أَنْفِهِ، أَوْ بِحُمَّى، أَوْ فَجْأَةً، فَلَا يَضْمَنُ غَاصِبُهُ شَيْئًا، وَبَيْنَ أَنْ يَمُوتَ بِصَاعِقَةٍ تَحْرِقُهُ، أَوْ حَيَّةٍ تَنْهَشُهُ فَيَضْمَنُ دِيَتَهُ - وَهَذَا عَجَبٌ لَا نَظِيرَ لَهُ.

L38821 This is an opinion unsupported by the Quran, nor by an authentic Sunnah, nor a correct Sunnah, nor consensus, nor the view of a Companion, nor analogy, nor sound opinion, nor rational justification, nor precaution—and

we know of no one who held this opinion before him, as this is something he uniquely asserted. Thus, this opinion is undoubtedly invalidated.

وَهَذَا قَوْلٌ لَا يَعْضُدُهُ قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا مُسْتَقِيمَةٌ، وَلَا إجْمَاعٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ سَدِيدٌ، وَلَا مَعْقُولٌ، وَلَا احْتِيَاطٌ - وَمَا نَعْلَمُ أَحَدًا قَالَ هَذَا الْقَوْلَ قَبْلَهُ، وَهَذَا مِمَّا انْفَرَدَ بِهِ - فَسَقَطَ هَذَا الْقَوْلُ بِلَا مِرْيَةٍ.

L38822–38824 Then we examined Mālik's statement and found it also erroneous, for he differentiated between seeking assistance from a minor or slave in a significant matter (where the one who seeks their assistance becomes liable) and seeking their help in an insignificant matter (where he incurs no liability). This distinction too lacks support from the Quran, any sound or weak Sunnah, consensus, or any opinion. There is no established precedent, nor analogy, nor sound independent reasoning, nor rational basis—and the legally incompetent minor seeking assistance inevitably either transgresses in doing so or does not transgress.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَالِكٍ فَوَجَدْنَاهُ أَيْضًا خَطَأً، لِأَنَّهُ فَرَّقَ بَيْنَ اسْتِعَانَةِ الصَّغِيرِ وَالْعَبْدِ فِي الْأَمْرِ ذِي الْبَالِ فَيَضْمَنُ، وَمَنْ اسْتَعَانَهُمَا فِي الْأَمْرِ غَيْرِ ذِي الْبَالِ فَلَا يَضْمَنُ - وَهَذَا أَيْضًا تَقْسِيمٌ لَا يُؤَيِّدُهُ قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا سَقِيمَةٌ، وَلَا إجْمَاعٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ سَدِيدٌ وَلَا مَعْقُولٌ - وَلَا يَخْلُو مُسْتَعِينُ الصَّغِيرِ مِنْ أَنْ يَكُونَ مُتَعَدِّيًا بِذَلِكَ، أَوْ لَا يَكُونَ مُتَعَدِّيًا.

L38825 If the act involved transgression, the ruling applies equally to small and large amounts. If there was no transgression, acts - whether small or large - that do not involve transgression are treated equally. Similarly, how could blood money be obligated upon one who sold a free person who was subsequently not found? This has no justification, as he did not kill him.

-: فَإِنْ كَانَ مُتَعَدِّيًا فَحُكْمُ الْعُدْوَانِ فِي الْقَلِيلِ وَالْكَثِيرِ سَوَاءٌ - وَإِنْ كَانَ لَيْسَ مُتَعَدِّيًا، فَالْقَلِيلُ وَالْكَثِيرُ مِمَّا لَيْسَ عُدْوَانًا سَوَاءٌ -، وَكَذَلِكَ إيجَابُ الدِّيَةِ عَلَى مَنْ بَاعَ حُرًّا فَلَمْ يُوجَدْ الْحُرُّ؟ فَهَذَا لَا وَجْهَ لَهُ، لِأَنَّهُ لَمْ يَقْتُلْهُ.

L38826 As for the statement of al-Ḥasan ibn Ḥayyin, it is also incorrect because he saw no harm in a person requesting a minor and a slave belonging to someone else to fetch water for him, or tasking them to carry ablution water—yet he deemed him liable for them if they perished in doing so. How can liability be imposed for what occurred from an act he permitted its doer to perform, from that which he did not directly commit that wrongdoing himself? This is clear injustice.

وَأَمَّا قَوْلُ الْحَسَنِ بْنِ حَيٍّ فَخَطَأٌ أَيْضًا، لِأَنَّهُ لَمْ يَرَ بَأْسًا أَنْ يَسْتَسْقِيَ الْمَرْءُ الصَّبِيَّ، وَعَبْدَ غَيْرِهِ الْمَاءَ، أَوْ يُكَلِّفَهُمَا أَنْ يَحْمِلَا لَهُ وُضُوءًا - ثُمَّ رَأَى عَلَيْهِ ضَمَانَهُمَا إنْ تَلِفَا فِي ذَلِكَ، فَكَيْفَ يُجْعَلُ الضَّمَانُ فِيمَا حَدَثَ مِنْ فِعْلٍ قَدْ أَبَاحَهُ لِفَاعِلِهِ مِمَّا لَمْ يُبَاشِرْ هُوَ تِلْكَ الْجِنَايَةَ هَذَا ظُلْمٌ ظَاهِرٌ.

L38827 As for Sufyan's opinion, it is also erroneous in several aspects. The first is that he differentiated between a man sending a minor and a slave to another person for his own need without the permission of the minor's guardians or the slave's owner, and each commits an offense, so the sender is liable for the adult slave's offense but not for the free minor's offense—an opinion unsupported by any evidence.

وَأَمَّا قَوْلُ سُفْيَانَ فَخَطَأٌ أَيْضًا مِنْ وُجُوهٍ: أَوَّلُهَا - أَنَّهُ فَرَّقَ بَيْنَ الرَّجُلِ يُرْسِلُ الصَّغِيرَ وَالْعَبْدَ لِغَيْرِهِ فِي حَاجَتِهِ بِغَيْرِ إذْنِ أَهْلِهِمَا فَجَنَى كُلُّ وَاحِدٍ مِنْهُمَا جِنَايَةً فَيَضْمَنُ الْمُرْسِلُ

جِنَايَةَ الْعَبْدِ الْكَبِيرِ، وَلَا يَضْمَنُ جِنَايَةَ الْحُرِّ الصَّغِيرِ - وَهُوَ قَوْلٌ لَا يَعْضُدُهُ شَيْءٌ مِنْ الدَّلَائِلِ.

L38828 The second opinion is that if someone sends a minor for his task and a wolf eats the child, there is no liability upon him.

وَالْقَوْلُ الثَّانِي - مَنْ أَرْسَلَ صَغِيرًا فِي حَاجَتِهِ فَأَكَلَهُ الذِّئْبُ فَلَا شَيْءَ عَلَيْهِ.

L38829 If someone hires a minor for strenuous work and the child is harmed in it, the employer is liable. But if the hired worker is an adult, the employer is not liable. Are these distinctions unsupported by any scriptural text or scholarly consensus? Abu Muhammad said: We examined whether we could find any evidence from the Messenger of Allah—peace be upon him—regarding this matter. We discovered as narrated in al-Bukhari's collection via the chain: Amr ibn Zurarah → Ismail ibn Ibrahim → Abd al-Aziz → Anas, who said: "When the Messenger of Allah—peace be upon him—arrived in Medina, Abu Talha took my hand and brought me to the Messenger of Allah—peace be upon him—saying: 'O Messenger of Allah, Anas is a capable lad—let him serve you.' I served him during journeys and at home. By Allah, he never once asked me about anything I did: 'Why did you do it this way?' Nor about anything I neglected: 'Why didn't you do it that way?'"

فَإِنْ اسْتَأْجَرَ أَجِيرًا صَغِيرًا فِي عَمَلٍ شَاقٍّ فَتَلِفَ فِيهِ ضَمِنَ - وَإِنْ كَانَ الْأَجِيرُ كَبِيرًا لَمْ يَضْمَنْ - فَهَذِهِ فُرُوقٌ لَمْ يَأْتِ بِهَا نَصٌّ وَلَا إجْمَاعٌ؟ قَالَ أَبُو مُحَمَّدٍ: فَنَظَرْنَا، هَلْ نَجِدُ فِي شَيْءٍ مِنْ هَذَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَوَجَدْنَا - مِنْ طَرِيقِ الْبُخَارِيِّ نا عَمْرُو بْنُ زُرَارَةَ نا إسْمَاعِيلُ بْنُ إبْرَاهِيمَ عَنْ عَبْدِ الْعَزِيزِ عَنْ أَنَسٍ قَالَ: «لَمَّا قَدِمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَدِينَةَ أَخَذَ أَبُو طَلْحَةَ بِيَدِي فَانْطَلَقَ بِي إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إنَّ أَنَسًا غُلَامٌ كَيِّسٌ فَلْيَخْدُمْكَ، فَخَدَمْتُهُ فِي السَّفَرِ وَالْحَضَرِ، فَوَاَللَّهِ مَا قَالَ لِي لِشَيْءٍ صَنَعْتُهُ: لِمَ صَنَعْتَهُ هَكَذَا؟ وَلَا لِشَيْءٍ لَمْ أَصْنَعْهُ: لِمَ لَمْ تَصْنَعْ هَذَا هَكَذَا»

L38830 We found the Messenger of Allah (peace and blessings of Allah be upon him) had taken Anas ibn Mālik into his service when he was a ten-year-old orphan, engaging him in distant and nearby journeys, awe-inspiring military campaigns, and periods of settled residence.

فَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ اسْتَخْدَمَ أَنَسَ بْنَ مَالِكٍ وَهُوَ يَتِيمُ ابْنُ عَشْرِ سِنِينَ فِي الْأَسْفَارِ الْبَعِيدَةِ، وَالْقَرِيبَةِ، وَالْغَزَوَاتِ الْمُخِيفَةِ، وَفِي الْحَضَرِ.

L38831–38832 If someone were to say: "Indeed, that was with the permission of his mother, her husband (i.e., the boy's stepfather), and his family?" We would respond to him—and success comes from Allah, the Exalted—: Yes, this did occur, yet the Messenger of Allah (peace be upon him) did not state, "I only employed him because his family permitted me in that matter." Since he (peace be upon him) did not say this, their permission or lack thereof carries equal weight. The sole criterion in this matter is exercising sound judgment regarding the boy's welfare. If the task for which a stranger seeks his assistance involves due diligence for his benefit, it constitutes a virtuous act—whether his family

فَإِنْ قَالَ قَائِلٌ: إنَّ ذَلِكَ كَانَ بِإِذْنِ أُمِّهِ وَزَوْجِهَا وَأَهْلِهِ؟ قُلْنَا لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: نَعَمْ، قَدْ كَانَ هَذَا، وَلَمْ يَقُلْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنِّي إنَّمَا اسْتَخْدَمْته لِإِذْنِ أَهْلِهِ لِي فِي ذَلِكَ، فَإِذَا لَمْ يَقُلْ ذَلِكَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَإِذْنُهُمْ وَتَرْكُ إذْنِهِمْ عَلَى السَّوَاءِ وَإِنَّمَا الْمُرَاعَى فِي ذَلِكَ حُسْنُ النَّظَرِ لِلْغُلَامِ، فَإِنْ كَانَ مَا اسْتَعَانَهُ فِي

and his guardian permit it or not. If it lacks such consideration for him, it is injustice—whether his family permits it or not.

L38833 The proof of that is the statement of Allah, the Most High: “Be upholders of justice” (*An-Nisā’* 4:135).[11]

L38834 And the statement of the Exalted: *“And cooperate in righteousness and piety”* [Al-Mā’idah: 2]—He did not mention the consideration of the permission of the boy’s family. There is neither a Quranic verse, nor authentic Sunnah, nor consensus. Thus, the consideration of their permission is definitively nullified. The matter depends solely on whether the person employing the boy is looking out for the boy’s welfare in that employment or not. If he is looking out for his welfare, he is a doer of good. When he is a doer of good, he bears no liability for harm that occurs without his own wrongdoing, according to the Exalted’s statement: *“There is no blame upon the doers of good”* [At-Tawbah: 91]. If he is not looking out for the boy’s welfare in that matter, he wrongs him. However, not every wrongdoer is liable for the blood money of the wronged party.[12]

L38835 Do you not see them unanimously agreeing about one who wrongs a free person by compelling him to a distant place, leading to his death there? For the oppressor incurs no liability for his death, and no distinction is made here between minor or grave wrongdoing.

L38836 We have stated: There is no blood money except upon a killer, and the unjust assistant does not cause harm to the one assisted in that act. Indeed, the one who sought assistance is not considered his killer nor a direct perpetrator of his killing. Therefore, there is no liability upon him whatsoever—whether he is a minor or an adult—unless he directly perpetrates it, orders others to coerce him by casting him into a well, or forces him to ascend a precipice where he is trapped unwillingly with no choice in the matter. In such a case, this constitutes intentional killing requiring qisas (retaliation). Thus,

عَمَلِهِ لِلْأَجْنَبِيِّ نَظَرًا لَهُ فَهُوَ فِعْلُ خَيْرٍ - أَذِنَ أَهْلُهُ وَوَلِيُّهُ أَمْ لَمْ يَأْذَنُوا - وَإِنْ كَانَ لَيْسَ لَهُ نَظَرٌ لَهُ فَهُوَ ظُلْمٌ -: أَذِنَ أَهْلُهُ فِي ذَلِكَ أَمْ لَمْ يَأْذَنُوا.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] .

وقَوْله تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢] وَلَمْ يَأْتِ بِمُرَاعَاةِ إذْنِ أَهْلِ الْغُلَامِ: لَا قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا إجْمَاعٌ - فَبَطَلَ مُرَاعَاةُ إذْنِهِمْ بِيَقِينٍ، وَلَمْ يَبْقَ إلَّا أَنْ يَكُونَ الْمُسْتَعِينُ بِالْغُلَامِ نَاظِرًا لِلْغُلَامِ فِي تِلْكَ الِاسْتِعَانَةِ أَوْ غَيْرَ نَاظِرٍ لَهُ -: فَإِنْ كَانَ نَاظِرًا لَهُ فَهُوَ مُحْسِنٌ، وَإِذَا هُوَ مُحْسِنٌ فَلَا ضَمَانَ عَلَيْهِ فِيمَا أَصَابَهُ مِمَّا لَمْ يَجْنِهِ هُوَ، لِقَوْلِهِ تَعَالَى {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] وَإِنْ كَانَ غَيْرَ نَاظِرٍ لَهُ فِي ذَلِكَ فَهُوَ ظَالِمٌ لَهُ، وَلَكِنْ لَيْسَ كُلُّ ظَالِمٍ يَضْمَنُ دِيَةَ الْمَظْلُومِ.

أَلَا تَرَاهُمْ لَا يَخْتَلِفُونَ فِيمَنْ ظَلَمَ إنْسَانًا حُرًّا يُسَخِّرُهُ إلَى مَكَانٍ بَعِيدٍ فَتَلِفَ هُنَالِكَ؟ فَإِنَّهُ لَا يَضْمَنُهُ الظَّالِمُ لَهُ، وَلَا فَرْقَ هَاهُنَا بَيْنَ ظُلْمٍ صَغِيرٍ أَوْ كَبِيرٍ.

وَقَدْ قُلْنَا: إنَّهُ لَا دِيَةَ إلَّا عَلَى قَاتِلٍ، وَالْمُسْتَعِينُ الظَّالِمُ لَمْ يُتْلِفْ الْمُسْتَعَانَ فِي ذَلِكَ الْعَمَلِ، فَإِنَّ الْمُسْتَعِينَ لَهُ لَا يُسَمَّى قَاتِلًا لَهُ، وَلَا مُبَاشِرَ قَتْلِهِ، فَلَا ضَمَانَ عَلَيْهِ أَصْلًا - صَغِيرًا كَانَ أَوْ كَبِيرًا - إلَّا أَنْ يُبَاشِرَ، أَوْ يَأْمُرَ بِإِكْرَاهِهِ وَإِدْخَالِهِ الْبِئْرَ، أَوْ تَطْلِيعِهِ فِي مَهْوَاةٍ فَيَطَّلِعُ كَرْهًا لَا اخْتِيَارَ لَهُ فِي ذَلِكَ - فَهَذَا قَاتِلُ عَمْدٍ عَلَيْهِ الْقَوَدُ، فَظَهَرَ أَمْرُ الصَّغِيرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[11] **Qur’an references (L38833):** Qur’an 4:135 (An-Nisa).

[12] **Qur’an references (L38834):** Qur’an 5:2 (Al-Ma’idah); Qur’an 9:91 (At-Tawbah).

the ruling regarding the minor is clarified—and success is from Allah, the Exalted.

L38837 As for a slave utilized by someone other than his master: If the employer did not coerce him but sought his assistance through incentive, and the slave complied then perished, there is absolutely no liability upon the employer, as he neither directly caused the destruction nor appropriated the slave by force. However, he must pay a rental fee equivalent to that of a comparable slave, for he benefited from using another's property without the owner's consent. It is impermissible to derive benefit from another's property without the owner's permission.

L38838–38839 Allah, the Exalted, said: "And do not consume your wealth among yourselves unlawfully" (2:188).[13]

L38840 The Messenger of Allah—peace be upon him—said, "Indeed, your blood and your property are inviolable to you."

L38841 If someone usurps a slave and employs him or coerces him through intimidation, they have indeed also committed usurpation. The coercer is liable for everything that occurs to the slave while in their possession - regardless of its nature - even if he dies a natural death unrelated to the tasks he was forced into or because of those tasks. The usurper is also liable to pay compensation equivalent to the fair wage for his labor, for the coercer has transgressed against another's property. They are obligated to return the slave to his owner without exception or provide replacement value if he is no longer available, as they are transgressors. Allah the Exalted says: "So whoever transgresses against you, transgress against them in the same manner as they transgressed against you" [Al-Baqarah 2:194]. However, if the owner permitted his use, there is no liability since no transgression occurred. This differs from the case of a minor whose guardians lack authority to permit actions except those exclusively benefiting the child; otherwise, such permission holds no validity. Success comes solely from Allah the Exalted.[14]

L38842 **A question regarding the statement of Allah, the Exalted:**

وَأَمَّا الْعَبْدُ - يُسَخِّرُهُ غَيْرُ سَيِّدِهِ، فَإِنْ كَانَ لَمْ يُكْرِهْهُ لَكِنْ اسْتَعَانَهُ بِرَغْبَةٍ فَأَعَانَهُ فَتَلِفَ، فَإِنَّهُ أَيْضًا لَمْ يُبَاشِرْ إتْلَافَهُ، وَلَا ضَمَّهُ بِغَصْبٍ، فَلَا غَرَامَةَ فِيهِ أَصْلًا، وَلَكِنْ عَلَيْهِ إجَارَةُ مِثْلِهِ؛ لِأَنَّهُ انْتَفَعَ بِهِ فِي ذَلِكَ الْعَمَلِ - وَهُوَ مَالُ غَيْرِهِ - فَلَا يَحِلُّ لَهُ الِانْتِفَاعُ بِمَالِ غَيْرِهِ إلَّا بِإِذْنِ رَبِّ الْمَالِ.

قَالَ اللَّهُ تَعَالَى {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَإِنْ غَصَبَ الْعَبْدَ فَاسْتَعْمَلَهُ، أَوْ أَكْرَهَهُ بِالتَّهْدِيدِ، فَقَدْ غَصَبَ أَيْضًا، وَقَدْ ضَمِنَ مُغْتَصِبُهُ كُلَّ مَا أَصَابَهُ عِنْدَهُ مِنْ أَيِّ شَيْءٍ كَانَ، وَإِنْ مَاتَ حَتْفَ أَنْفِهِ مِنْ غَيْرِ مَا سَخَّرَهُ فِيهِ، أَوْ مِمَّا سَخَّرَهُ فِيهِ، وَعَلَيْهِ مَعَ ذَلِكَ أُجْرَةُ مِثْلِهِ؛ لِأَنَّهُ مَالُ تَعَدَّى عَلَيْهِ هَذَا الْمُكْرِهُ، فَلَزِمَهُ رَدُّهُ إلَى صَاحِبِهِ وَلَا بُدَّ، أَوْ مِثْلِهِ إنْ فَاتَ، لِأَنَّهُ مُتَعَدٍّ - وَاَللَّهُ تَعَالَى يَقُولُ: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] ، وَإِنْ كَانَ بِإِذْنِ أَهْلِهِ فَلَا شَيْءَ فِي ذَلِكَ، لِأَنَّهُ لَمْ يَعْتَدِّ، بِخِلَافِ الصَّغِيرِ الَّذِي لَا إذْنَ لَهُمْ فِيهِ، إلَّا فِيمَا هُوَ حَظٌّ لِلصَّبِيِّ فَقَطْ، وَإِلَّا فِي غَيْرِهِ سَوَاءٌ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فِي قَوْلِ اللَّهِ تَعَالَى وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا]

[13] **Qur'an references (L38839):** Qur'an 2:188 (Al-Baqarah).

“Whoever revives it [a soul], it is as though he has revived all of mankind.”[15]

L38843 2119 - Issue: Concerning the statement of Allah the Exalted, {And whoever gives life to a soul—it is as though he has given life to all mankind} [Al-Mā’idah: 32]? It was narrated to us through the chain of Abū Bakr ibn Abī Shaybah: from Wakīʿ, from Sufyān al-Thawrī, from Khuṣayf, from Mujāhid, from Ibn ʿAbbās regarding Allah’s statement, {Whoever kills a soul without [just cause of] a soul or corruption in the land—it is as though he slays all mankind} [Al-Mā’idah: 32]. He said: Whoever causes a soul to perish. {And whoever gives life to a soul—it is as though he has given life to all mankind} [Al-Mā’idah: 32]. He said: Whoever refrains from killing it.[16]

L38844 And with him (narrated by Sufyan, from Mansur, from Mujahid) regarding {Whoever saves a life, it is as though he has saved all mankind} [5:32], he said: Whoever saves a soul from drowning or burning has indeed given it life.[17]

L38845 And through him, Al-Ala ibn Abd al-Karim reported to us from Waki‘, who said: I heard Mujahid say regarding {And whoever revives it - it is as if he has revived all of mankind} [5:32]: “Whoever refrains from killing it has indeed revived it.”[18]

L38846 Ali said, “There is nothing in its interpretation from the Messenger of Allah—may Allah bless him and grant him peace—that can be reliably attributed to him. The narration from Ibn Abbas is transmitted through Khuṣayf, and he is not strong.”

L38847–38848 C:AH,AQ Abu Muhammed said: This is a ruling which Allāh, has only decreed for the Children of Israel and has not decreed for us. Allāh said, ‘For that reason,

[14]**Qur’an references (L38841):** Qur’an 2:194 (Al-Baqarah).
[15]**Qur’an references (L38842):** Qur’an 5:32 (Al-Ma’idah).
[16]**Qur’an references (L38843):** Qur’an 5:32 (Al-Ma’idah).
[17]**Qur’an references (L38844):** Qur’an 5:32 (Al-Ma’idah).
[18]**Qur’an references (L38845):** Qur’an 5:32 (Al-Ma’idah).

٢١١٩ - مَسْأَلَةٌ: فِي قَوْلِ اللَّهِ تَعَالَى {وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا} [المائدة: ٣٢] ؟ رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ خُصَيْفٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ فِي قَوْلِ اللَّهِ تَعَالَى {أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا} [المائدة: ٣٢] قَالَ: مَنْ أَوْبَقَهَا {وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا} [المائدة: ٣٢] قَالَ: مَنْ كَفَّ عَنْ قَتْلِهَا.

وَبِهِ - إلَى سُفْيَانَ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ {وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا} [المائدة: ٣٢] قَالَ: مَنْ أَنْجَاهَا مِنْ غَرَقٍ أَوْ حَرْقٍ فَقَدْ أَحْيَاهَا.

وَبِهِ - إلَى وَكِيعٍ نا الْعَلَاءُ بْنُ عَبْدِ الْكَرِيمِ قَالَ: سَمِعْت مُجَاهِدًا يَقُولُ {وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا} [المائدة: ٣٢] قَالَ: مَنْ كَفَّ عَنْ قَتْلِهَا فَقَدْ أَحْيَاهَا.

قَالَ عَلِيٌّ هَذَا لَيْسَ فِي تَفْسِيرِهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَيْءٌ فَيَسْلَمُ لَهُ، وَالرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ فِيهَا خُصَيْفٌ، وَلَيْسَ بِالْقَوِيِّ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا حُكْمٌ إنَّمَا كَتَبَهُ اللَّهُ تَعَالَى عَلَى بَنِي إسْرَائِيلَ وَلَمْ يَكْتُبْهُ عَلَيْنَا، قَالَ اللَّهُ تَعَالَى {مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الأَرْضِ} [المائدة: ٣٢] .

We decreed upon the Children of Israel that whoever kills a soul not in retaliation of murder, or for spreading corruption upon the land…' [5:32][19]

قَالَ عَلِيٌّ: فَهَذَا أَمْرٌ قَدْ كُفِينَاهُ - وَلِلَّهِ الْحَمْدُ - إِذْ لَوْ كَتَبَهُ اللَّهُ تَعَالَى عَلَيْنَا لَأَعْلَمَنَا بِذَلِكَ، فَلَهُ الْحَمْدُ كَثِيرًا، وَهَذَا - وَاللَّهُ أَعْلَمُ - إِذْ كَتَبَهُ اللَّهُ عَلَى بَنِي إِسْرَائِيلَ فَهُوَ مِنْ الْإِصْرِ الَّذِي حَمَلَهُ عَلَى مَنْ قَبْلَنَا.

L38849 C:AH,AQ Ali said: This is a matter that we have been spared from, and all praise is for Allāh. If Allāh had decreed it upon us, He would have made it known to us, so all praise is due to Him abundantly. And this - and Allāh knows best - as Allāh decreed it upon the Children of Israel, is part of the burden that was placed upon those before us.

وَأَمَرَنَا تَعَالَى أَنْ نَدْعُوَهُ فِي أَنْ لَا يَحْمِلَهُ عَلَيْنَا إِذْ يَقُولُ تَعَالَى {وَلا تَحْمِلْ عَلَيْنَا إِصْرًا كَمَا حَمَلْتَهُ عَلَى الَّذِينَ مِنْ قَبْلِنَا} [البقرة: ٢٨٦] فَإِذْ لَمْ يَكْتُبْهُ اللَّهُ تَعَالَى عَلَيْنَا فَلَمْ نُكَلَّفْ مَعْرِفَةَ كَيْفِيَّتِهِ، إِلَّا أَنَّ الَّذِي كَتَبَ اللَّهُ تَعَالَى عَلَيْنَا: هُوَ تَحْرِيمُ الْقَتْلِ، وَالْوَعِيدُ الشَّدِيدُ فِيهِ، فَفَرَضَ عَلَيْنَا اجْتِنَابَهُ، وَاعْتِقَادَ أَنَّهُ مِنْ أَكْبَرِ الْكَبَائِرِ بَعْدَ الشِّرْكِ، وَهُوَ مَعَ تَرْكِ الصَّلَاةِ أَوْ بَعْدَهُ.

L38850 Our Exalted Lord has commanded us to supplicate Him concerning His not imposing it upon us, as He, the Exalted, says: *"And do not burden us with a burden as You imposed upon those before us"* [Al-Baqarah 2:286]. Since Allah has not ordained it upon us, we are not required to know its specifics. However, what He has ordained upon us is the prohibition of killing and the severe warning against it. Thus, He has enjoined us to avoid it and to believe that it is among the gravest major sins after polytheism, alongside abandoning prayer or ranking after it.[20]

وَمِمَّا كَتَبَهُ اللَّهُ تَعَالَى أَيْضًا عَلَيْنَا اسْتِنْقَاذَ كُلِّ مُتَوَرِّطٍ مِنْ الْمَوْتِ إِمَّا بِيَدِ ظَالِمٍ كَافِرٍ، أَوْ مُؤْمِنٍ مُتَعَدٍّ، أَوْ حَيَّةٍ أَوْ سَبُعٍ، أَوْ نَارٍ أَوْ سَيْلٍ، أَوْ هَدْمٍ أَوْ حَيَوَانٍ، أَوْ مِنْ عِلَّةٍ صَعْبَةٍ نَقْدِرُ عَلَى مُعَانَاتِهِ مِنْهَا، أَوْ مِنْ أَيِّ وَجْهٍ كَانَ، فَوَعَدَنَا عَلَى ذَلِكَ الْأَجْرَ الْجَزِيلَ الَّذِي لَا يُضَيِّعُهُ رَبُّنَا تَعَالَى، الْحَافِظُ عَلَيْنَا صَالِحَ أَعْمَالِنَا وَسَيِّئَهُ.

L38851 Among what Allah the Exalted has decreed upon us is rescuing every imperiled person from death—whether by the hand of an oppressive disbeliever, a transgressing believer, a snake, a predatory beast, fire, a flood, a collapse, an animal, a severe ailment we are capable of relieving him from, or from any cause whatsoever. He has promised us immense reward for this, which our Lord the Exalted—the Preserver over us, guarding the good of our deeds and their evil aspects—will not diminish.

فَفَرْضٌ عَلَيْنَا أَنْ نَأْتِيَ مِنْ كُلِّ ذَلِكَ مَا افْتَرَضَهُ اللَّهُ تَعَالَى عَلَيْنَا، وَأَنْ نَعْلَمَ أَنَّهُ قَدْ أَحْصَى أَجْرَنَا عَلَى ذَلِكَ مَنْ يُجَازِي عَلَى مِثْقَالِ الذَّرَّةِ مِنْ الْخَيْرِ وَالشَّرِّ.

L38852 It is incumbent upon us to fulfill of all that which Allah, the Exalted, has decreed upon us, and to know that He has indeed precisely recorded our reward for that—He is the One who recompenses for even an atom's weight of good or evil deeds.

نَسْأَلُ اللَّهَ تَعَالَى التَّوْفِيقَ لِمَا يُرْضِيهِ بِمَنِّهِ آمِينَ، وَبِاللَّهِ تَعَالَى نَعْتَصِمُ.

L38853 We ask Allah, the Most High, by His boundless favor, for success in what pleases Him. Amen, and in Allah, the Most High, we seek refuge.

[مَسْأَلَةُ شَقَّ نَهْرًا فَغَرَّقَ نَاسًا]

L38854 **Issue: One who dug a river and thereby drowned people.**

[19] **Qur'an references (L38848):** Qur'an 5:32 (Al-Ma'idah).
[20] **Qur'an references (L38850):** Qur'an 2:286 (Al-Baqarah).

L38855–38857 2120 - Issue: If someone digs a canal thereby drowning people, or starts a fire, or demolishes a building and kills someone? Ali said: Whoever digs a canal and drowns people—if he did so intentionally to drown them, then retribution (qisas) and blood monies (diyah) for killing multiple people are obligatory upon him. But if he dug it for a benefit or without benefit, while unaware that it would harm anyone, then those who perish due to it make him an unintentional killer. The diyah payments fall upon his male kin, and expiation is obligatory. He must provide a kaffarah (expiation) for each person and is liable in all such cases for what he destroyed of the property. The same ruling applies to one who starts a fire or demolishes a building, with no distinction made.

٢١٢٠ - مَسْأَلَةٌ: مَنْ شَقَّ نَهْرًا فَغَرَّقَ نَاسًا، أَوْ طَرَحَ نَارًا، أَوْ هَدَمَ بِنَاءً فَقَتَلَ؟ قَالَ عَلِيٌّ: مَنْ شَقَّ نَهْرًا فَغَرَّقَ قَوْمًا، فَإِنْ كَانَ فَعَلَ ذَلِكَ عَامِدًا لِيُغْرِقَهُمْ فَعَلَيْهِ الْقَوَدُ وَالدِّيَاتُ مِنْ قَتْلِ جَمَاعَةٍ، وَإِنْ كَانَ شَقَّهُ لِمَنْفَعَةٍ أَوْ لِغَيْرِ مَنْفَعَةٍ - وَهُوَ لَا يَدْرِي أَنَّهُ لَا يُصِيبُ بِهِ أَحَدًا - فَمَا هَلَكَ بِهِ فَهُوَ قَاتِلُ خَطَأٍ، وَالدِّيَاتُ عَلَى عَاقِلَتِهِ، وَالْكَفَّارَةُ عَلَيْهِ؛ لِكُلِّ نَفْسٍ كَفَّارَةٌ، وَيَضْمَنُ فِي كُلِّ ذَلِكَ مَا أَتْلَفَ مِنْ الْمَالِ وَهَكَذَا الْقَوْلُ فِيمَنْ أَلْقَى نَارًا أَوْ هَدَمَ بِنَاءً وَلَا فَرْقَ.

L38858 If he intentionally burns a group of people or kills them by causing collapse, he is liable to retribution (qawad). If he did not intend this, he is deemed an unintentional killer.

وَإِنْ عَمَدَ إحْرَاقَ قَوْمٍ أَوْ قَتْلَهُمْ بِالْهَدْمِ فَعَلَيْهِ الْقَوَدُ، وَإِنْ لَمْ يَعْمِدْ ذَلِكَ فَهُوَ قَاتِلُ خَطَأٍ.

L38859 If someone channels water that flows over a wall, causing the water to demolish the wall and result in a death, then—as we have stated—the ruling is equal, equal, with no distinction. This is because all those we have mentioned are directly responsible for the destruction of what was destroyed. Should a death occur due to this after the wrongdoer's death, or should property be destroyed by it after his death, there is no liability for that, since the wrongful act occurred posthumously, and no legal liability is imposed upon a deceased person.

وَلَوْ سَاقَ مَاءً فَمَرَّ عَلَى حَائِطٍ فَهَدَمَ الْمَاءُ الْحَائِطَ فَقَتَلَ: فَكَمَا قُلْنَا أَيْضًا سَوَاءً سَوَاءً وَلَا فَرْقَ؛ لِأَنَّ كُلَّ مَنْ ذَكَرْنَا مُبَاشِرٌ لِإِتْلَافِ مَا تَلِفَ، فَإِنْ مَاتَ أَحَدٌ بِذَلِكَ بَعْدَ مَوْتِ الْجَانِي، أَوْ تَلِفَ بِهِ مَالٌ بَعْدَ مَوْتِهِ، فَلَا ضَمَانَ فِي ذَلِكَ لِأَنَّ الْجِنَايَةَ حَدَثَتْ بَعْدَهُ، وَلَا جِنَايَةَ عَلَى مَيِّتٍ.

L38860 If a person throws a stone or an arrow and dies immediately after its release, and the stone or arrow strikes someone—whether he intended it or not—there is no liability upon him or his ʿāqilah. This is because the offense occurred only when he was among those incapable of acting, unlike a case where the projectile is unintentionally released and he subsequently dies, for the offense took place while he was alive. If he becomes insane immediately after throwing the arrow or stone, it is treated as if he had died, with no distinction. The same ruling applies if he loses consciousness.

وَلَوْ أَنَّ إنْسَانًا رَمَى حَجَرًا أَوْ سَهْمًا ثُمَّ مَاتَ إثْرَ خُرُوجِ السَّهْمِ أَوْ الْحَجَرِ فَأَصَابَ الْحَجَرُ أَوْ السَّهْمُ إنْسَانًا - عَمَدَهُ أَوْ لَمْ يَعْمِدْهُ - فَلَا ضَمَانَ عَلَيْهِ، وَلَا عَلَى عَاقِلَتِهِ؛ لِأَنَّ الْجِنَايَةَ لَمْ تَكُنْ إلَّا وَهُوَ مِمَّنْ لَا فِعْلَ لَهُ، بِخِلَافِ مَا خَرَجَ خَطَأً ثُمَّ مَاتَ؛ لِأَنَّ الْجِنَايَةَ قَدْ وَقَعَتْ وَهُوَ حَيٌّ، فَلَوْ جُنَّ إثْرَ رَمْيِ السَّهْمِ أَوْ الْحَجَرِ فَكَمَوْتِهِ وَلَا فَرْقَ، وَكَذَلِكَ لَوْ أُغْمِيَ عَلَيْهِ.

L38861 As for the sleeper, he differs from the unconscious and the insane, for he remains legally responsible while they are not. However, his act is uninten-

tional. If a sleeper were to turn over in his sleep onto someone and kill them, the blood money is the responsibility of his male paternal relatives, while the expiation is his personal obligation, to be paid from his own wealth. And success is from Allah, the Exalted.

وَأَمَّا النَّائِمُ فَبِخِلَافِ الْمُغْمَى عَلَيْهِ، وَالْمَجْنُونِ، لِأَنَّهُ مُخَاطَبٌ، وَهُمَا غَيْرُ مُخَاطَبِينَ، إِلَّا أَنَّهُ لَا عَمْدَ لَهُ، فَلَوْ أَنَّ نَائِمًا انْقَلَبَ فِي نَوْمِهِ عَلَى إِنْسَانٍ فَقَتَلَهُ فَالدِّيَةُ عَلَى عَاقِلَتِهِ، وَالْكَفَّارَةُ عَلَيْهِ فِي مَالِهِ، لِأَنَّهُ مُخَاطَبٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

A case where a person lit a fire to warm himself, and the fire blazed, resulting in the destruction of property and injury to people.

[مَسْأَلَةٌ أَوْقَدَ نَارًا لِيَصْطَلِيَ فَاشْتَعَلَتْ تِلْكَ النَّارُ فَأَتْلَفَتْ أَمْتِعَةً وَنَاسًا]

2121 - Issue: Ali said: As for one who lights a fire to warm himself, to cook something, or lights a lamp, then falls asleep, and that fire ignites and destroys property and people, there is no legal responsibility upon him whatsoever.

٢١٢١ - مَسْأَلَةٌ: قَالَ عَلِيٌّ: وَأَمَّا مَنْ أَوْقَدَ نَارًا لِيَصْطَلِيَ، أَوْ لِيَطْبُخَ شَيْئًا، أَوْ أَوْقَدَ سِرَاجًا ثُمَّ نَامَ، فَاشْتَعَلَتْ تِلْكَ النَّارُ فَأَتْلَفَتْ أَمْتِعَةً وَنَاسًا، فَلَا شَيْءَ عَلَيْهِ فِي ذَلِكَ أَصْلًا.

In this issue, there are narrations: As transmitted through the chain of Abū Bakr ibn Abī Shaybah, who narrated to us from Wakīʿ, from Shuʿbah, who said, “I asked Al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān about a man who set fire to a people’s dwelling, causing them to burn.” They both said, “There is no retaliation (qiṣāṣ) against him, nor is he to be executed.”

وَقَدْ جَاءَتْ فِي هَذَا آثَارٌ: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ شُعْبَةَ قَالَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَنْ رَجُلٍ رَمَى نَارًا فِي دَارِ قَوْمٍ فَاحْتَرَقُوا، قَالَا جَمِيعًا: لَيْسَ عَلَيْهِ قَوَدٌ وَلَا يُقْتَلُ.

And by him—to Wakīʿ, from ʿAbd al-ʿAzīz ibn Ḥuṣayn, from Yaḥyā ibn Yaḥyā al-Ghassānī, who said: A man burned hay in his cultivated plots, and an ember from the fire flew out and burned something belonging to his neighbor. So I wrote concerning it to— Regarding Umar ibn Abd al-Aziz, he wrote to me that the Messenger of Allah (may Allah bless him and grant him peace) said, “Injuries caused by animals are without liability,” and I hold that fire is without liability.

وَبِهِ - إِلَى وَكِيعٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ حُصَيْنٍ عَنْ يَحْيَى بْنِ يَحْيَى الْغَسَّانِيِّ قَالَ: أَحْرَقَ رَجُلٌ تِبْنًا فِي فَرَاجٍ لَهُ فَخَرَجَتْ شَرَرَةٌ مِنْ نَارٍ فَأَحْرَقَتْ شَيْئًا لِجَارِهِ؟ فَكَتَبْت فِيهِ إلَى عُمَرَ بْنُ عَبْدِ الْعَزِيزِ؟ فَكَتَبَ إلَيَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الْعَجْمَاءُ جُرْحُهَا جُبَارٌ» وَأَرَى أَنَّ النَّارَ جُبَارٌ.

Ali—may Allah be pleased with him—said: “He spoke truthfully: ’Is the Fire mute, so is it overpowering?”’ Ali said: We then examined whether anything had been transmitted regarding this from the Messenger of Allah—peace and blessings be upon him. We found what Ahmad ibn Abdullah aṭ-Ṭalamankī reported. He said: Ibn Mufarrij narrated to us; Muḥammad ibn Ayyūb ar-Raqqī aṣ-Ṣamūt narrated to us; Aḥmad ibn ʿAmr ibn ʿAbdil-Khāliq al-Bazzār narrated to us; Salamah ibn Shabīb and Aḥmad ibn Manṣūr narrated [from] ʿAbdur-Razzāq, who narrated to us; Maʿmar narrated from Hammām ibn

قَالَ عَلِيٌّ: صَدَقَ - رَضِيَ اللَّهُ عَنْهُ -: النَّارُ عَجْمَاءُ فَهِيَ جُبَارٌ؟ قَالَ عَلِيٌّ: فَنَظَرْنَا، هَلْ رُوِيَ فِي ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَيْءٌ؟ فَوَجَدْنَا - مَا ناه أَحْمَدُ بْنُ عَبْدِ اللَّهِ الطَّلَمَنْكِيُّ قَالَ: نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الرَّقِّيُّ الصَّمُوتُ نا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا سَلَمَةُ بْنُ شَبِيبٍ، وَأَحْمَدُ بْنُ مَنْصُورٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ

Munabbih from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said: “The Fire is overpowering.”

عَنْ هَمَّامِ بْنِ مُنَبِّهٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «النَّارُ جُبَارٌ» .

L38869 Abdullah ibn Rabi’ narrated from Umar ibn Abd al-Malik, who narrated from Muhammad ibn Bakr, who narrated from Abu Dawud, who narrated from Ja’far ibn Musafir, who narrated from Zayd ibn al-Mubarak, who narrated from Abd al-Malik as-San’ani, from Ma’mar, from Hammam ibn Munabbih, from Abu Hurairah, who said: The Messenger of Allah (may Allah’s prayers and peace be upon him) said, “The Fire is irresistible.”

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ نا أَبُو دَاوُد نا جَعْفَرُ بْنُ مُسَافِرٍ نا زَيْدُ بْنُ الْمُبَارَكِ نا عَبْدُ الْمَلِكِ الصَّنْعَانِيُّ عَنْ مَعْمَرٍ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «النَّارُ جُبَارٌ» .

L38870 Ali said: This is an authentic report that constitutes definitive evidence, and it is impermissible to contradict it. Therefore, it is established by this that every property destroyed by fire is considered an irrecoverable loss, except in cases where there is unanimous scholarly agreement to hold liable the one who intentionally started the fire. This exception applies exclusively when a person deliberately ignites it for the purpose of mischief and destruction. Such an individual is a direct perpetrator who has overstepped legal bounds, making retaliation (qisas) obligatory for any persons he intentionally kills, while blood money (diyah) becomes payable by his agnatic relatives in cases of accidental killing.

قَالَ عَلِيٌّ: وَهَذَا خَبَرٌ صَحِيحٌ تَقُومُ بِهِ الْحُجَّةُ، وَلَا يَحِلُّ خِلَافُهُ، فَوَجَبَ بِهَذَا أَنَّ كُلَّ مَا تَلِفَ بِالنَّارِ فَهُوَ هَدْرٌ، إلَّا نَارًا اتَّفَقَ الْجَمِيعُ عَلَى تَضْمِينِ طَارِحِهَا، وَلَيْسَ ذَلِكَ إلَّا مَا تَعَمَّدَ الْإِنْسَانُ طَرْحَهَا لِلْإِفْسَادِ، وَالْإِتْلَافِ، فَهَذَا مُبَاشِرٌ مُتَعَدٍّ فَعَلَيْهِ الْقَوَدُ فِيمَا عَمَدَ قَتْلَهُ، وَالدِّيَةُ عَلَى الْعَاقِلَةِ فِي الْخَطَأِ.

L38871 As for a fire ignited without transgression, it is non-liable, as the Messenger of Allah (peace be upon him) stated. This is a general principle that cannot be particularized except by a text or consensus, and there is no consensus except in what we mentioned of intention—and success is by Allah, the Exalted.

وَأَمَّا نَارٌ أَوْقَدَهَا غَيْرَ مُتَعَدٍّ فَهِيَ جُبَارٌ، كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا عُمُومٌ لَا يَجُوزُ تَخْصِيصُهُ إلَّا مَا خَصَّهُ نَصٌّ أَوْ إجْمَاعٌ، وَلَا إجْمَاعَ إلَّا فِيمَا ذَكَرْنَا مِنْ الْقَصْدِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38872 [2122 - Issue: On What Is Mentioned About the Foot]

[٢١٢٢ - مَسْأَلَةٌ مَا جَاءَ فِي الرِّجْلِ]

L38873 Ali said: There is a report regarding the foot that we will cite, and we will mention what has been said about it, if Allah the Exalted wills. Ahmad ibn Muḥammad ibn ʿAbd Allāh al-Ṭalamankī reported to us via Ibn Mufarrij, via Muḥammad ibn Ayyūb al-Ṣamūt, via Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār, via ʿAbd Allāh ibn Asad al-Bāhilī, via ʿAbbād ibn al-ʿAwwām, from Sufyān ibn Ḥusayn al-Zuhrī, from Saʿīd ibn al-Musayyib, from Abū Hurayrah,

؟ قَالَ عَلِيٌّ: جَاءَ فِي الرِّجْلِ أَثَرٌ نَذْكُرُهُ، وَنَذْكُرُ مَا قِيلَ فِيهِ إنْ شَاءَ اللَّهُ تَعَالَى: نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ نا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا عَبْدُ اللَّهِ بْنُ أَسَدٍ الْبَاهِلِيُّ نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ سُفْيَانَ بْنِ حُسَيْنٍ

who said: The Messenger of Allah—peace and blessings be upon him—said, “The foot is subject to fixed compensation.”

الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الرِّجْلُ جُبَارٌ» .

L38874–38875 Abdullah ibn Rabee’ narrated to us: Umar ibn Abdul-Malik narrated to us: Muhammad ibn Bakr narrated to us: Abu Dawud narrated to us: Uthman ibn Abi Shaybah narrated to us: Muhammad ibn Yazid narrated to us: Sufyan ibn Husayn reported from Az-Zuhri from Sa’eed ibn Al-Musayyib from Abu Hurairah from the Prophet (peace and blessings of Allah be upon him) who said: “The foot is oppressive.”

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ نا أَبُو دَاوُد نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ يَزِيدَ نا سُفْيَانُ بْنُ حُسَيْنٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الرِّجْلُ جُبَارٌ» .

L38876 Abū Muḥammad said: This has also been transmitted from some of the Salaf, as narrated to us by Muḥammad ibn Saʿīd ibn Nubāt from Ismāʿīl ibn Isḥāq al-Naṣrī from ʿĪsā ibn Ḥabīb from ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Muḥammad ibn ʿAbd Allāh ibn Yazīd al-Muqrī from my grandfather Muḥammad ibn ʿAbd Allāh ibn Yazīd from Sufyān ibn ʿUyaynah from Abū Farwah—who is ʿUrwah ibn al-Ḥārith—from al-Shaʿbī, who said: “The man is a tyrant.”

قَالَ أَبُو مُحَمَّدٍ: وَجَاءَ هَذَا أَيْضًا عَنْ بَعْضِ السَّلَفِ، كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ النَّصْرِيُّ نا عِيسَى بْنُ حَبِيبٍ نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي نا جَدِّي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ يَزِيدَ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا أَبُو فَرْوَةَ - هُوَ عُرْوَةُ بْنُ الْحَارِثِ - عَنْ الشَّعْبِيِّ قَالَ: الرِّجْلُ جُبَارٌ.

L38877 Ali said: Then a group said, “Sufyan ibn Husayn is weak in al-Zuhri.”

قَالَ عَلِيٌّ: فَقَالَ قَوْمٌ: سُفْيَانُ بْنُ حُسَيْنٍ ضَعِيفٌ فِي الزُّهْرِيِّ.

L38878 Ali said, “How do we not know the reason for this?” Sufyān ibn Ḥusayn is trustworthy; whoever claims he erred, let him substantiate it? Otherwise, his narration constitutes authoritative evidence, and this is an unbroken chain owing to the continuity of trustworthy narrators in it.

قَالَ عَلِيٌّ وَمَا نَدْرِي وَجْهَ هَذَا؟ وَسُفْيَانُ بْنُ حُسَيْنٍ ثِقَةٌ، فَمَنْ ادَّعَى عَلَيْهِ خَطَأً فَلْيُبَيِّنْهُ؟ وَإِلَّا فَرِوَايَتُهُ حُجَّةٌ، وَهَذَا إسْنَادٌ مُسْتَقِيمٌ لِاتِّصَالِ الثِّقَاتِ فِيهِ.

L38879 Abū Muḥammad said: People held differing opinions about this narration. One group stated: The meaning of “the hoof is exempt from liability” refers specifically to what an animal strikes with its hoof. Others said: It denotes harm caused by the foot unintentionally during tawāf or other acts.

قَالَ أَبُو مُحَمَّدٍ: فَاخْتَلَفَ النَّاسُ فِي هَذَا الْخَبَرِ: فَقَالَتْ طَائِفَةٌ: مَعْنَى " الرِّجْلُ جُبَارٌ ": إنَّمَا هُوَ مَا أَصَابَتْ الدَّابَّةُ بِرِجْلِهَا. وَقَالَ آخَرُونَ: هُوَ مَا أُصِيبَ بِالرِّجْلِ عَنْ غَيْرِ قَصْدٍ فِي الطَّوَافِ وَغَيْرِهِ.

L38880 Ali said: Both interpretations are correct, as they both conform to the wording of the Prophet (peace and blessings be upon him). It is not permissible to specify one of them over the other, for that would be a specification without proof and a claim without evidence.

قَالَ عَلِيٌّ: وَكِلَا التَّفْسِيرَيْنِ حَقٌّ؛ لِأَنَّهُمَا مُوَافِقَانِ لِلَفْظِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا يَجُوزُ أَنْ يَخُصَّ أَحَدَهُمَا دُونَ الْآخَرِ؛ لِأَنَّهُ تَخْصِيصٌ بِلَا بُرْهَانٍ [وَدَعْوَى] بِلَا دَلِيلٍ.

L38881 It has been established that any harm caused by the leg of a human or animal is invalid, requiring no compensation, retribution (qisas), or expiation—except what consensus has ruled by retribution (qisas), such as deliberate intent in the act. And with Allah alone is success.

فَصَحَّ أَنَّ كُلَّ مَا جُنِيَ بِرِجْلٍ مِنْ إنْسَانٍ، أَوْ حَيَوَانٍ، فَهُوَ هَدْرٌ لَا غَرَامَةَ فِيهِ، وَلَا قَوَدَ، وَلَا كَفَّارَةَ، إلَّا مَا صَحَّ الْإِجْمَاعُ بِهِ بِأَنَّهُ مَحْكُومٌ فِيهِ بِالْقَوَدِ، كَالتَّعَمُّدِ لِذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْجَانِي يُسْتَقَادُ مِنْهُ فَيَمُوتُ أَحَدُهُمَا]

L38882 **A jurisprudential issue: When *qisas* is enforced against the offender, resulting in the death of one of the two [parties].**

٢١٢٣ - مَسْأَلَةٌ: الْجَانِي يُسْتَقَادُ مِنْهُ فَيَمُوتُ أَحَدُهُمَا؟ قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي هَذَا - فَقَالَتْ طَائِفَةٌ: إذَا مَاتَ الْمُسْتَقِيدُ، فَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: رَجُلٌ اسْتَقَادَ مِنْ رَجُلٍ قَبْلَ أَنْ يَبْرَأَ ثُمَّ مَاتَ الْمُسْتَقِيدُ مِنْ الَّذِي أَصَابَهُ، قَالَ أَرَى: أَنْ يُودَى؟ قُلْت: فَمَاتَ الْمُسْتَقَادُ مِنْهُ، قَالَ: أَرَى أَنْ يُودَى، قَالَ ابْنُ جُرَيْجٍ: قَالَ عَمْرُو بْنُ دِينَارٍ: أَظُنُّ أَنَّهُ سَيُودَى.

L38883 2123 - Issue: What if retribution is exacted from an offender resulting in the death of one of them? ʿAlī said: People differed regarding this. A group said: If the claimant dies, then as we have been narrated through ʿAbd al-Razzāq's transmission from Ibn Jurayj: I asked ʿAṭāʾ, "A man exacted retribution from another before the victim recovered, then the claimant died from the inflicted injury." He said, "I hold that *diyah* must be paid." I said, "What if the defendant dies?" He said, "I hold that *diyah* must be paid." Ibn Jurayj said: ʿAmr ibn Dīnār remarked, "I think *diyah* will be paid."

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: لَوْ أَنَّ رَجُلًا اسْتَقَادَ مِنْ آخَرَ ثُمَّ مَاتَ الْمُسْتَقَادُ مِنْهُ غَرِمَ دِيَتَهُ.

L38884–38885 And from ʿAbd al-Razzāq from Maʿmar from Ibn Ṭāwūs from his father, who said: If a man demands retaliation against another, and the latter dies before enforcement, his estate becomes liable for paying his blood money.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَابْنِ جُرَيْجٍ عَنْ ابْنِ شِهَابٍ قَالَ: السُّنَّةُ أَنْ يُودَى - يَعْنِي الْمُسْتَقَادَ مِنْهُ.

L38886 From the chain of ʿAbd al-Razzāq via Maʿmar, and Ibn Jurayj via Ibn Shihāb, who said: The Sunnah is that retaliation be exacted - meaning the one from whom it is taken.

L38887 Narrated through Maʿmar from al-Zuhrī concerning a man who disabled

another's finger: He said, "The victim may seek retaliation. If his finger becomes disabled, that suffices; otherwise, he must pay him the diyah."

وَبِهِ - إِلَى مَعْمَرٍ عَنِ الزُّهْرِيِّ فِي رَجُلٍ أَشَلَّ أُصْبُعَ رَجُلٍ؟ قَالَ يَسْتَقِيدُ مِنْهُ، فَإِنْ شُلَّتْ أُصْبُعُهُ، وَإِلَّا غَرِمَ لَهُ الدِّيَةَ.

L38888 From ʻAbd al-Razzāq from Hushaym from Abū Isḥāq al-Shaybānī or another - ʻAbd al-Razzāq expressed uncertainty about this - al-Shaʿbī ruled regarding a man who injured another man. When retaliation (qiṣāṣ) was enforced against the perpetrator, and the subjected person subsequently died, he said: The blood money (ʿaql) for his death rests upon the person subjected to retaliation. The blood money (diyah) for the victim's injury is deducted from that amount. Whatever remains outstanding becomes his liability.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ هُشَيْمٍ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ أَوْ غَيْرِهِ - شَكَّ عَبْدُ الرَّزَّاقِ فِي ذَلِكَ - الشَّعْبِيُّ فِي رَجُلٍ جَرَحَ رَجُلًا فَاقْتَصَّ مِنْهُ ثُمَّ هَلَكَ الْمُسْتَقَادُ؟ قَالَ: عَقْلُهُ عَلَى الْمُسْتَقَادِ مِنْهُ وَيُطْرَحُ عَنْهُ دِيَةُ جُرْحِهِ مِنْ ذَلِكَ فَمَا فَضَلَ فَهُوَ عَلَيْهِ.

L38889 And through the chain of Abd al-Razzaq from Ma'mar from Ibn Shubruma from al-Harith al-Uqayli regarding the one who is subject to retaliation and then dies, he said: He must pay his blood money because the act against the life was unintentional.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ ابْنِ شُبْرُمَةَ عَنِ الْحَارِثِ الْعُقَيْلِيِّ فِي الَّذِي يُسْتَقَادُ مِنْهُ ثُمَّ يَمُوتُ، قَالَ: يَغْرَمُ دِيَتَهُ؛ لِأَنَّ النَّفْسَ خَطَأٌ.

L38890 From Ibrāhīm al-Nakhāʿī, from ʿAlqamah: He said concerning the claimant of retaliation: "Whichever of the two dies, blood money is to be paid."

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ: أَنَّهُ قَالَ فِي الْمُقْتَصِّ مِنْهُ: أَيُّهُمَا مَاتَ وُدِيَ.

L38891 Through the narration chain of Abu Bakr ibn Abi Shaybah: Waki' narrated to us from Shuʻbah from al-Hakam ibn 'Utaybah, who said: "I sought permission from Ziyad ibn Jarir regarding Hajj. He asked me about a man who inflicted a head wound on another man, where retaliation was exacted from him for the victim. Then the one subjected to retaliation died. I said: 'The blood money is incumbent upon him, with the head wound's value subtracted from his liability.' Later I forgot this matter. When Ibrahim came, I asked him, and he replied: 'The blood money is incumbent upon him.'"

Shuʻbah said: "I then asked al-Hakam and Hammad about this." They both responded: "The blood money is incumbent upon him." Hammad added: "With the head wound's value subtracted from his liability."

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ شُعْبَةَ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: اسْتَأْذَنْت زِيَادَ بْنَ جَرِيرٍ فِي الْحَجِّ فَسَأَلَنِي عَنْ رَجُلٍ شَجَّ رَجُلًا فَاقْتُصَّ لَهُ مِنْهُ فَمَاتَ الْمُقْتَصُّ مِنْهُ فَقُلْت: عَلَيْهِ الدِّيَةُ وَيُرْفَعُ عَنْهُ بِقَدْرِ الشَّجَّةِ، ثُمَّ نَسِيتُ ذَلِكَ، فَجَاءَ إِبْرَاهِيمُ فَسَأَلْته فَقَالَ: عَلَيْهِ الدِّيَةُ، قَالَ شُعْبَةُ فَسَأَلْت الْحَكَمَ وَحَمَّادًا عَنْ ذَلِكَ؟ فَقَالَا جَمِيعًا: عَلَيْهِ الدِّيَةُ. وَقَالَ حَمَّادٌ: وَيُرْفَعُ عَنْهُ بِقَدْرِ الشَّجَّةِ.

L38892 Abu Hanifa, Sufyan al-Thawri, and Ibn Abi Layla said: If retaliation is exacted for a hand or scalp wound, and the one subjected to retaliation dies, his blood money is incumbent upon the agnatic kin of the one for whom retaliation was sought.

وَقَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ الثَّوْرِيُّ، وَابْنُ أَبِي لَيْلَى: إِذَا اقْتَصَّ مِنْ يَدٍ، أَوْ شَجَّةٍ، فَمَاتَ الْمُقْتَصُّ مِنْهُ فَدِيَتُهُ عَلَى عَاقِلَةِ الْمُقْتَصِّ لَهُ.

L38893 And indeed, that has been reported from Ibn Masʿūd, and from Ibrāhīm al-Nakhaʿī, from Ibn Masʿūd.

وَقَدْ رُوِيَ ذَلِكَ عَنْ ابْنِ مَسْعُودٍ، وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ ابْنِ مَسْعُودٍ.

L38894 Abu Muhammad said: The blood money of the one from whom retaliation is enforced is owed to the claimant, except that the claimant deducts the blood money for his own injury from it.

قَالَ أَبُو مُحَمَّدٍ: الَّذِي يُقْتَصُّ مِنْهُ دِيَتُهُ عَلَى الْمُقْتَصِّ لَهُ غَيْرَ أَنَّهُ يَطْرَحُ عَنْهُ دِيَةَ جُرْحِهِ.

L38895 Others said: There is nothing applicable to the killing of the one from whom retribution is taken.

وَقَالَ آخَرُونَ: لَا شَيْءَ فِي هَلَاكِ الْمُقْتَصِّ مِنْهُ.

L38896–38897 As reported to us by Muḥammad ibn Saʿīd ibn Nubāt, who reported to us from ʿAbdullāh ibn Naṣr, who reported to us from Qāsim ibn Aṣbagh, who reported to us from Ibn Waḍḍāḥ, who reported to us from Mūsā ibn Muʿāwiyah, who reported to us from Wakīʿ, who reported to us from Saʿīd ibn Abī ʿArūbah, from Qatādah, from Ibn al-Musayyib, who said: ʿUmar ibn al-Khaṭṭāb said regarding a man who dies as a result of legal retribution: “He was killed by the Book of Allah, the Exalted, or [by] a rightful claim. No diyah (blood money) is due for him.”

كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنِ ابْنِ الْمُسَيِّبِ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ فِي الرَّجُلِ يَمُوتُ فِي الْقِصَاصِ: قَتَلَهُ كِتَابُ اللَّهِ تَعَالَى، أَوْ حَقٌّ، لَا دِيَةَ لَهُ.

L38898 Through the chain of Al-Ḥajjāj ibn Al-Minhāl: Ḥammād ibn Salamah narrated to us, Qatādah narrated to us from Khilāṣ ibn ʿAmr from ʿAlī ibn Abī Ṭālib and ʿUmar ibn Al-Khaṭṭāb, who collectively said: Whoever dies during retribution (qiṣāṣ) or a prescribed punishment (ḥadd), no blood money is due for him.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا قَتَادَةُ عَنْ خِلَاسِ بْنِ عَمْرٍو عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَعُمَرَ بْنِ الْخَطَّابِ، قَالَا جَمِيعًا: مَنْ مَاتَ فِي قِصَاصٍ أَوْ حَدٍّ، فَلَا دِيَةَ لَهُ.

L38899 On his authority—from Qatādah, who narrated from al-Ḥasan: If someone dies as a result of qiṣāṣ or ḥadd, no diyah is due to them.

وَبِهِ - إِلَى قَتَادَةَ عَنِ الْحَسَنِ مَنْ مَاتَ فِي قِصَاصٍ أَوْ حَدٍّ، فَلَا دِيَةَ لَهُ.

L38900 From the chain of Ibn Waḍḍāḥ: Mūsā ibn Muʿāwiyah narrated to us from Wakīʿ, from Misʿar ibn Kidām and Sufyān, from Abī Ḥuṣayn, from ʿUmayr ibn Saʿd, who said: ʿAlī ibn Abī Ṭālib declared: “I would never impose a ḥadd punishment on a man—only for him to die and leave me uneasy—except in the case of the wine-drinker. Were he to die, I would pay his diyah.”

وَمِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا مِسْعَرُ بْنُ كِدَامٍ وَسُفْيَانُ عَنْ أَبِي حُصَيْنٍ عَنْ عُمَيْرِ بْنِ سَعْدٍ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: مَا كُنْت لِأُقِيمَ عَلَى رَجُلٍ حَدًّا فَيَمُوتُ فَأَجِدُ فِي نَفْسِي مِنْهُ شَيْئًا إِلَّا صَاحِبَ الْخَمْرِ، لَوْ مَاتَ وَدَيْتُهُ.

L38901 From Al-Ḥasan al-Baṣrī, from Al-Aḥnaf ibn Qays, from ʿUmar ibn al-Khaṭṭāb and ʿAlī ibn Abī Ṭālib, who both said regarding the death of one subjected to retaliation: “He was killed by the rightful judgment, and there is no diyah for him.”

وَعَنِ الْحَسَنِ الْبَصْرِيِّ عَنِ الْأَحْنَفِ بْنِ قَيْسٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، قَالَا جَمِيعًا فِي الْمُقْتَصِّ مِنْهُ يَمُوتُ؟ قَالَا جَمِيعًا: قَتَلَهُ الْحَقُّ وَلَا دِيَةَ لَهُ.

L38902 And from Sa’id ibn al-Musayyib a similar ruling: he was killed by the lawful punishment—he is not entitled to *diyah*.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مِثْلُ ذَلِكَ: قَتَلَهُ الْحَقُّ، لَا دِيَةَ لَهُ.

L38903 It is reported from Abu Sa‘id that Abu Bakr and ‘Umar said: Whoever is killed by a ḥadd punishment, there is no blood money for him.

وَعَنْ أَبِي سَعِيدٍ أَنَّ أَبَا بَكْرٍ، وَعُمَرَ، قَالَا: مَنْ قَتَلَهُ حَدٌّ فَلَا عَقْلَ لَهُ.

L38904 Ibn Wahb said: Al-Layth ibn Sa‘d reported to me from Yaḥyā ibn Sa‘īd al-Anṣārī that he stated: When lawful retribution is exacted from someone for harm equivalent to what he inflicted upon people, resulting in his execution, no blood money is due for him. Even if every individual lawfully subject to retribution had a valid claim of the people against him, and he died from it, the one who exacted retribution would owe his blood money - this would mean people would have abandoned their rights.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي اللَّيْثُ بْنُ سَعْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّهُ قَالَ: مَنْ اُسْتُقِيدَ مِنْهُ بِمِثْلِ مَا دَخَلَ عَلَى النَّاسِ مِنْهُ فَقَتَلَهُ الْقَوَدُ، فَلَيْسَ لَهُ عَقْلٌ - وَلَوْ أَنَّ كُلَّ مَنْ اُسْتُقِيدَ مِنْهُ حَقٌّ قِبَلَهُ لِلنَّاسِ فَمَاتَ مِنْهُ غَرِمَهُ الْمُسْتَقِيدُ: رَفَضَ النَّاسُ حُقُوقَهُمْ.

L38905 Ibn Wahb said: Yunus said: Rabi’ah said: If the first dies—he being the one seeking qisas—the injurer from whom retaliation is sought is killed for him. If the other dies—he being the one from whom qisas is sought—then it is by right taken from him, and the loss is borne by him.

قَالَ ابْنُ وَهْبٍ: قَالَ يُونُسُ: قَالَ رَبِيعَةُ: إِنْ مَاتَ الْأَوَّلُ - وَهُوَ الْمُقْتَصُّ - قُتِلَ بِهِ الْجَارِحُ الْمُقْتَصُّ مِنْهُ - وَإِنْ مَاتَ الْآخَرُ - وَهُوَ الْمُقْتَصُّ مِنْهُ - فَبِحَقٍّ أُخِذَ مِنْهُ كَانَ مِنْهُ التَّلَفُ.

L38906 And with it – says Mālik, ‘Abd al-‘Azīz ibn Abī Salama, al-Shāfi‘ī, Abū Yūsuf, Muḥammad ibn al-Ḥasan, and Abū Sulaymān.

وَبِهِ - يَقُولُ مَالِكٌ، وَعَبْدُ الْعَزِيزِ بْنُ أَبِي سَلَمَةَ، وَالشَّافِعِيُّ، وَأَبُو يُوسُفَ وَمُحَمَّدُ بْنُ الْحَسَنِ، وَأَبُو سُلَيْمَانَ.

L38907 Abu Muhammad said: These are three opinions. The first is that if the claimant for retribution dies, diya (blood money) is owed; and if the one subject to retribution dies, diya is owed, and the penalty corresponding to his crime is lifted from him.

قَالَ أَبُو مُحَمَّد: فَهَذِهِ ثَلَاثَةُ أَقْوَالٍ. أَحَدُهَا - أَنَّهُ إِنْ مَاتَ الْمُقْتَصُّ وُدِيَ، وَإِنْ مَاتَ الْمُقْتَصُّ مِنْهُ وُدِيَ، وَرُفِعَ عَنْهُ قَدْرُ جِنَايَتِهِ.

L38908–38909 And it is a position transmitted from Ibn Mas‘ūd, as we have reported from Ibrāhīm al-Nakha‘ī, al-Sha‘bī, and Ḥammād ibn Abī Sulaymān—and by it say ‘Uthmān al-Battī and Ibn Abī Laylā.

وَهُوَ قَوْلٌ رُوِيَ عَنْ ابْنِ مَسْعُودٍ، كَمَا أَوْرَدْنَا عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ - وَبِهِ يَقُولُ عُثْمَانُ الْبَتِّيُّ، وَابْنُ أَبِي لَيْلَى.

L38910 Another opinion is that blood-money is to be paid, and nothing of the penalty for his offense is waived—this is the opinion of ‘Aṭā’ and Ṭāwus. It is also reported from al-Ḥakam ibn ‘Utaybah—and this is the opinion of al-Zuhrī—as well as from ‘Amr ibn Dīnār, Abū Ḥanīfah, and Sufyān al-Thawrī.

وَقَوْلٌ آخَرُ: أَنَّهُ يُودَى، وَلَا يُرْفَعُ عَنْهُ لِجِنَايَتِهِ شَيْءٌ - وَهُوَ قَوْلُ عَطَاءٍ، وَطَاوُسٍ - وَرُوِيَ أَيْضًا عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَعَنْ عَمْرِو بْنِ دِينَارٍ، وَأَبِي حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيِّ.

L38911 A third opinion states that no *diyah* is due from the one from whom retaliation is taken. This is narrated from Abū Bakr and ʿUmar (may Allah be pleased with them) and is authentically established from ʿAlī ibn Abī Ṭālib (may Allah be pleased with him).

وَقَوْلٌ ثَالِثٌ -: أَنَّهُ لَا دِيَةَ لِلْمُقْتَصِّ مِنْهُ - وَرُوِيَ عَنْ أَبِي بَكْرٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - وَصَحَّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ -.

L38912 This is the opinion of al-Ḥasan, Ibn Sīrīn, al-Qāsim, Sālim, Saʿīd ibn al-Musayyib, Yaḥyā ibn Saʿīd al-Anṣārī, and Rabīʿah.

وَهُوَ قَوْلُ الْحَسَنِ، وَابْنِ سِيرِينَ، وَالْقَاسِمِ، وَسَالِمٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَرَبِيعَةَ.

L38913 This is the position of Mālik, al-Shāfiʿī, Abū Yūsuf, Muḥammad ibn al-Ḥasan, and Abū Sulaymān. Abū Muḥammad said: When they differed as we mentioned, it became necessary to examine this matter so the truth may emerge and we may follow it with the help of God Almighty. We found those who stated that it must be paid in full: either the obligation is lifted from him in proportion to his offense, or it is not lifted in proportion to his offense.

وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَأَبِي سُلَيْمَانَ؟ قَالَ أَبُو مُحَمَّد: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِيَلُوحَ الْحَقُّ فَنَتْبَعَهُ بِعَوْنِ اللَّهِ تَعَالَى فَوَجَدْنَا مَنْ قَالَ: أَنَّهُ يُودَى جُمْلَةً، فَإِمَّا يُرْفَعُ عَنْهُ بِقَدْرِ جِنَايَتِهِ، وَإِمَّا لَا يُرْفَعُ عَنْهُ بِقَدْرِ جِنَايَتِهِ.

L38914 They say: Indeed, Allah the Exalted has mandated qiṣāṣ exclusively upon the amputator, the wounder, the bone-breaker, the eye-gouger, or the striker for their specific acts alone, and He has not imposed killing upon them. Thus, their blood remains inviolable. There is no dispute that if the one subjected to qiṣāṣ for any such act intentionally commits killing, qiṣāṣ becomes obligatory upon him. If this is so, then should the one subjected to qiṣāṣ die as a consequence of the lawfully enacted retaliation against him, his blood has been taken unintentionally, and diyah is thereby due.

يَقُولُونَ: إنَّ اللَّهَ تَعَالَى إنَّمَا أَوْجَبَ عَلَى الْقَاطِعِ، وَالْجَارِحِ، وَالْكَاسِرِ، وَالْفَاقِئِ، وَالضَّارِبِ: الْقَوَدَ مِمَّا فَعَلُوا فَقَطْ، وَلَمْ يُوجِبْ عَلَيْهِمْ قَتْلًا، فَدِمَاؤُهُمْ مُحَرَّمَةٌ، وَلَا خِلَافَ فِي أَنَّ الْمُقْتَصَّ مِنْ شَيْءٍ مِنْ هَذَا لَوْ تَعَمَّدَ الْقَتْلَ فَلَزِمَهُ الْقَوَدُ، فَإِذْ هُوَ كَذَلِكَ فَمَاتَ الْمُقْتَصُّ مِنْهُ مِمَّا فَعَلَ بِهِ بِحَقٍّ، فَقَدْ أُصِيبَ دَمُهُ خَطَأً، فَفِيهِ الدِّيَةُ.

L38915 They also said: If a man disciplines his wife and she dies from it, diyah is due - though he only performed a permissible act. Why then is qisas enforced against him? If death results from a permissible act, is diyah incurred in such a case? Ali said: Do we know any argument for them other than these two? We examined the position of those who waived diyah in this matter.

وَقَالُوا أَيْضًا: إنَّ مَنْ أَدَّبَ امْرَأَتَهُ فَمَاتَتْ فِيهَا الدِّيَةُ، وَهُوَ إنَّمَا فَعَلَ مُبَاحًا، فَهَذَا الْمُقْتَصُّ مِنْهُ، وَإِنْ مَاتَ مِنْ مُبَاحٍ فَفِيهِ الدِّيَةُ؟ قَالَ عَلِيٌّ: مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَاتَيْنِ؟ فَنَظَرْنَا فِي قَوْلِ مَنْ أَسْقَطَ الدِّيَةَ فِي ذَلِكَ، فَكَانَ مِنْ حُجَّتِهِمْ أَنْ قَالُوا: إنَّ الْقِصَاصَ مَأْمُورٌ بِهِ،

Their proof was that qisas is commanded, and whoever performs what is commanded has done well. Since he did well, Allah the Exalted said: “There is no blame upon those who do good” [9:91]. As no blame attaches to him, no financial liability falls upon him or his ʿāqilah.[21]

وَمَنْ فَعَلَ مَا أُمِرَ بِهِ فَقَدْ أَحْسَنَ، وَإِذْ أَحْسَنَ فَقَدْ قَالَ اللَّهُ تَعَالَى {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] وَإِذْ لَا سَبِيلَ عَلَيْهِ فَلَا غَرَامَةَ تَلْحَقُهُ، وَلَا عَلَى عَاقِلَتِهِ مِنْ أَهْلِهِ.

L38916–38918 As for the analogy of the one seeking qisas regarding his wife’s death, it is invalid. Furthermore, even if it were valid, this analogy itself would constitute the very essence of invalidity due to two grounds: One of the two [arguments] is that this constitutes a deceptively framed analogy: whoever disciplines his wife must necessarily either be a transgressor—by imposing discipline in an inappropriate context—or acting within permissible bounds.

وَأَمَّا قِيَاسُ الْمُقْتَصِّ عَلَى مَوْتِ امْرَأَتِهِ فَالْقِيَاسُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِوَجْهَيْنِ: أَحَدُهُمَا - أَنَّهُ قِيَاسٌ مُمَوَّهٌ وَذَلِكَ مَنْ أَدَّبَ امْرَأَتَهُ فَلَا يَخْلُو مِنْ أَنْ يَكُونَ مُتَعَدِّيًا - وَضَعَ الْأَدَبَ فِي غَيْرِ مَوْضِعِهِ - أَوْ غَيْرَ مُتَعَدٍّ.

L38919 If he transgressed, then retribution (qawad) applies. If he administered discipline appropriately, there is no possibility that death results from such permitted discipline, as he was never permitted to discipline her in a manner whereby death occurs with discipline of this kind. Whoever imposes this type of discipline is an unjust transgressor, and retribution for homicide or lesser injuries applies to him, for no one may administer flogging beyond ten lashes except in cases of prescribed legal punishments—as authentically reported from the Prophet (peace and blessings be upon him).

فَإِنْ كَانَ مُتَعَدِّيًا فَفِيهِ الْقَوَدُ، وَإِنْ كَانَ وَضَعَ الْأَدَبَ مَوْضِعَهُ، فَلَا سَبِيلَ إِلَى أَنْ يَمُوتَ مِنْ ذَلِكَ الْأَدَبِ الَّذِي أُبِيحَ لَهُ، إِذْ لَمْ يُبَحْ لَهُ قَطُّ أَنْ يُؤَدِّبَهَا أَدَبًا يَمُوتُ مَعَ مِثْلِهِ، وَمَنْ أَدَّبَ هَذَا النَّوْعَ مِنْ الْأَدَبِ فَهُوَ ظَالِمٌ مُتَعَدٍّ، وَالْقَوَدُ عَلَيْهِ فِي النَّفْسِ فَمَا دُونَهَا، لِأَنَّهُ لَا يَجُوزُ لِأَحَدٍ أَنْ يَجْلِدَ فِي غَيْرِ حَدٍّ أَكْثَرَ مِنْ عَشْرِ جَلَدَاتٍ - عَلَى مَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L38920 As was narrated to us through the chain of Al-Bukhārī: ʿAbdullāh ibn Yūsuf narrated to us, Al-Layth ibn Saʿd narrated to us, Yazīd ibn Abī Ḥabīb narrated to me from Bukayr ibn ʿAbdullāh ibn Al-Ashajj from Sulaymān ibn Yasār from ʿAbdur-Raḥmān ibn Jābir from ʿAbdullāh from Abū Burdah, who said: The Prophet—peace and blessings of Allāh be upon him—used to say, “No one is to be flogged more than ten lashes except in a ḥadd punishment among the ḥudūd prescribed by Allāh the Exalted.”

كَمَا رُوِّينَا - مِنْ طَرِيقِ الْبُخَارِيِّ نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا اللَّيْثُ بْنُ سَعْدٍ حَدَّثَنِي يَزِيدُ بْنُ أَبِي حَبِيبٍ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ جَابِرٍ عَنْ عَبْدِ اللَّهِ عَنْ أَبِي بُرْدَةَ قَالَ كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «لَا يُجْلَدُ فَوْقَ عَشْرِ جَلَدَاتٍ إِلَّا فِي حَدٍّ مِنْ حُدُودِ اللَّهِ تَعَالَى» .

L38921 They said: He is not permitted in number to exceed ten lashes, nor is he permitted to lash her with anything that breaks a bone, lacerates the skin, or causes the flesh to rot, for all of this constitutes other than lashing, and he is permitted nothing except lashing alone.

قَالُوا: فَلَمْ يُبَحْ لَهُ فِي الْعَدَدِ أَكْثَرُ مِنْ عَشْرِ جَلَدَاتٍ، وَلَا أُبِيحَ لَهُ جَلْدُهَا بِمَا يَكْسِرُ عَظْمًا، وَيَجْرَحُ جِلْدًا، أَوْ يُعَفِّنُ لَحْمًا، لِأَنَّ كُلَّ هَذَا هُوَ غَيْرُ الْجَلْدِ، وَلَمْ يُبَحْ لَهُ إلَّا الْجَلْدُ وَحْدَهُ.

[21] **Qur’an references (L38915):** Qur’an 9:91 (At-Tawbah).

وَبِيَقِينٍ يَدْرِي كُلُّ ذِي حِسٍّ سَلِيمٍ أَنَّ عَشْرَ جَلَدَاتٍ لِامْرَأَةٍ صَحِيحَةٍ غَيْرِ مَرِيضَةٍ، وَلَا ضَعِيفَةٍ، وَلَا صَغِيرَةٍ: لَا تَجْرَحُ، وَلَا تَكْسِرُ، وَأَنَّهُ لَا يَمُوتُ مِنْهَا أَحَدٌ.

L38922 And with certainty, every person of sound perception knows that ten lashes administered to a healthy woman (one who is neither sick, weak, nor a minor) do not wound or break, and that no one dies from them.

فَإِنْ وَافَقَتْ مَنِيَّةً فِي خِلَالِ ذَلِكَ أَوْ بَعْدَهُ: فَبِأَجَلِهَا مَاتَتْ، وَلَا دِيَةَ فِي ذَلِكَ، وَلَا قَوَدَ، لِأَنَّنَا عَلَى يَقِينٍ مِنْ أَنَّهَا لَمْ تَمُتْ مِنْ فِعْلِهِ أَصْلًا.

L38923 If her death coincides with that period or afterward, her death is due to that [injury/action], and neither diyah nor retaliation is required, because it is certain that her death did not result from his action at all.

وَإِنْ تَعَدَّى فِي الْعَدَدِ أَوْ ضَرَبَ بِمَا يَكْسِرُ، أَوْ يَجْرَحُ، أَوْ يُعَفِّنُ فَعَفَنَ، أَوْ جَرَحَ أَوْ كَسَرَ، فَالْقَوَدُ فِي كُلِّ ذَلِكَ فِي الْعَمْدِ، فِي النَّفْسِ فَمَا دُونَهَا، أَوْ الدِّيَةُ فِيمَا لَمْ يَعْمِدْهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38924 If he exceeds the prescribed number, strikes with an object that breaks, wounds, causes decay and it does decay, or wounds or breaks, then qisas (retaliation) applies in all such cases of intentional harm—for loss of life or lesser injuries, or diyah (blood money) for what he did not intend. And success is from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا قَوْلُهُمْ: إنَّ الْمُقْتَصَّ مِنْهُ إنَّمَا أُبِيحَ عُضْوُهُ، أَوْ بَشَرَتُهُ وَلَمْ يُبَحْ دَمُهُ - فَصَحَّ أَنَّهُ إنْ مَاتَ مِنْ ذَلِكَ، فَإِنَّهُ مَقْتُولٌ خَطَأً، فَفِيهِ الدِّيَةُ - فَإِنَّ هَذَا قَوْلٌ غَيْرُ صَحِيحٍ؛ لِأَنَّ الْقِصَاصَ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِأَخْذِهِ لَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ: إمَّا أَنْ يَكُونَ مِمَّا يُمَاتُ مِنْ مِثْلِهِ، كَقَطْعِ الْيَدِ، أَوْ شَقِّ الرَّأْسِ، أَوْ كَسْرِ الْفَخِذِ، أَوْ غَيْرِ ذَلِكَ.

L38925–38927 Abu Muhammad said: As for their statement that when retaliation is taken against someone, only his limb or skin is permitted to be harmed while his blood is not—then it is correct that if he dies from that injury, he is considered killed by mistake, requiring the payment of *diyah*—verily, this is an invalid statement. It is valid because the retaliatory punishment mandated by Allah the Exalted must fall into one of two categories: either it is an injury from which death results due to its like—such as severing a hand, splitting the head, fracturing the thigh, or similar injuries—or it belongs to the second category.

أَوْ يَكُونَ مِمَّا لَا يُمَاتُ مِنْ مِثْلِهِ، كَاللَّطْمَةِ، وَضَرْبَةِ السَّوْطِ، وَنَحْوِ ذَلِكَ.

L38928 Or it is an act that does not cause death from the like of it, such as a slap, a whip strike, and the like thereof.

فَإِنْ كَانَ مِمَّا يُمَاتُ مِنْ مِثْلِهِ فَذَلِكَ الَّذِي قَصَدَ فِيهِ، لِأَنَّهُ قَدْ تَعَدَّى بِمَا قَدْ يُمَاتُ مِنْ مِثْلِهِ، فَوَجَبَ أَنْ يُتَعَدَّى عَلَيْهِ بِمَا قَدْ يُمَاتُ مِنْ مِثْلِهِ، فَإِنْ مَاتَ فَعَلَى ذَلِكَ بَنَى فِيهِ، وَعَلَى ذَلِكَ بَنَى هُوَ فِيمَا تَعَدَّى فِيهِ.

L38929 If it is from that which may result in death in similar cases, then that is the ruling intended therein; because he transgressed through an act from which death may occur in similar cases, thus it becomes obligatory that retaliation be enacted against him by means of that which may cause death in similar cases. If death occurs, then the ruling is established upon that principle, and upon this basis the ruling is determined in the matter wherein he transgressed.

L38930 The aspect from which death resulted is what Allah the Exalted has commanded us to perform intentionally. Since this is established, it is not a

transgression. As it is not a transgression against him, there is no retaliation nor blood money, for this was not an unintentional killing. If death resulted from an intentional act that Allah the Exalted has commanded us to perform, He has not obligated us to ensure survival from it—for had Allah the Exalted willed such prevention, He would not have neglected it, overlooked it, nor allowed it to be disregarded. Since He the Exalted has not clarified this to us, we know with certainty that He the Exalted did not will it at all.

وَالْوَجْهُ الَّذِي مَاتَ مِنْهُ أَمَرَنَا اللَّهُ تَعَالَى أَنْ نَتَعَمَّدَهُ فِيهِ، فَإِذْ ذَلِكَ كَذَلِكَ فَلَيْسَ عُدْوَانًا، وَإِذْ لَيْسَ عُدْوَانًا عَلَيْهِ فَلَا قَوَدَ، وَلَا دِيَةَ؛ لِأَنَّهُ لَمْ يَقْتُلْ خَطَأً، فَإِنْ مَاتَ مِنْ عَمْدٍ أَمَرَنَا اللَّهُ تَعَالَى أَنْ نَتَعَمَّدَهُ فِيهِ، وَلَمْ يُكَلِّفْنَا أَنْ لَا يَمُوتَ مِنْ ذَلِكَ - وَلَوْ أَنَّ اللَّهَ تَعَالَى أَرَادَ ذَلِكَ لَمَا أَهْمَلَهُ، وَلَا أَغْفَلَهُ، وَلَا ضَيَّعَهُ، فَإِذْ لَمْ يُبَيِّنْ لَنَا تَعَالَى ذَلِكَ فَبِيَقِينٍ نَدْرِي أَنَّهُ تَعَالَى لَمْ يُرِدْهُ قَطُّ.

L38931 If the act by which he exacted retribution from him was inherently non-fatal by nature, and it coincided with his appointed time of death, then he died at his destined term and not due to the act he committed. There is neither qisas nor diyah.

وَإِنْ كَانَ الَّذِي اقْتَصَّ بِهِ مِنْهُ مِمَّا لَا يُمَاتُ مِنْهُ أَصْلًا فَوَافَقَ مَنِيَّتَهُ فَإِنَّمَا مَاتَ بِأَجَلِهِ، وَلَمْ يَمُتْ مِمَّا عَمِلَ بِهِ، لَا قَوَدَ، وَلَا دِيَةَ.

L38932 If the one seeking qisas intentionally transgresses the permitted bounds against the person subject to qisas, he becomes a transgressor. He is liable for qawad (retaliation) for life or injuries less than death. If he errs by committing an act not legally permitted, it is a mistake: the blood money falls upon his agnatic relatives, and expiation is obligatory upon him in cases involving death—and with Allah, the Exalted, lies all success.

فَإِنْ تَعَمَّدَ الْمُقْتَصُّ فَتَعَدَّى عَلَى الْمُقْتَصِّ مِنْهُ مَا لَمْ يُبَحْ لَهُ، فَهُوَ مُتَعَدٍّ، وَعَلَيْهِ الْقَوَدُ فِي النَّفْسِ فَمَا دُونَهَا، وَإِنْ أَخْطَأَ فَأَتَى بِمَا لَمْ يُبَحْ لَهُ عَمْلُهُ: فَهُوَ خَطَأٌ الدِّيَةُ عَلَى عَاقِلَتِهِ، وَعَلَيْهِ الْكَفَّارَةُ فِي النَّفْسِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ أَفْزَعَهُ السُّلْطَانُ فَتَلِفَ]

A legal case wherein the ruler terrified him, causing him to perish.

L38933

٢١٢٤ - مَسْأَلَةٌ: مَنْ أَفْزَعَهُ السُّلْطَانُ فَتَلِفَ؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ مَطَرٍ الْوَرَّاقِ وَغَيْرِهِ عَنْ الْحَسَنِ قَالَ: أَرْسَلَ عُمَرُ إلَى امْرَأَةٍ مُغَنِّيَةٍ كَانَ يُدْخَلُ عَلَيْهَا، فَأَنْكَرَ ذَلِكَ، فَقِيلَ لَهَا: أَجِيبِي عُمَرَ؟ فَقَالَتْ: يَا وَيْلَهَا مَالَهَا وَلِعُمَرَ؟ قَالَ: فَبَيْنَمَا هِيَ فِي الطَّرِيقِ فَزِعَتْ، فَضَمَّهَا الطَّلْقُ، فَدَخَلَتْ دَارًا فَأَلْقَتْ وَلَدَهَا فَصَاحَ الصَّبِيُّ صَيْحَتَيْنِ فَمَاتَ؟ فَاسْتَشَارَ عُمَرُ أَصْحَابَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَشَارَ عَلَيْهِ بَعْضُهُمْ: أَنْ لَيْسَ عَلَيْك شَيْءٌ، إنَّمَا أَنْتَ وَالٍ، وَمُؤَدِّبٌ، قَالَ: وَصَمَتَ عَلِيٌّ فَأَقْبَلَ

2124. Issue: If someone is frightened by the ruler and perishes? Ali said: It was narrated to us through the chain of Abd al-Razzaq, from Ma'mar, from Matar al-Warraq and others, from al-Hasan, who said: Umar sent for a female singer whom people frequented, disapproving of this. She was told: "Respond to Umar's summons!" She cried: "Woe to her! What concern is this of Umar?" While she was on the way, she panicked and was seized by labor pains. She entered a house and gave birth prematurely. The infant cried twice and then died. Umar sought counsel from the Companions of the Prophet (peace be upon him). Some advised him: "You bear no liability, for you are only a ruler acting in authority." A scholar said: Ali remained silent, so Umar turned to him and asked, "What do you say?" He replied, "If

L38934–38936

عَلَيْهِ عُمَرُ فَقَالَ: مَا تَقُولُ؟ فَقَالَ: إنْ كَانُوا قَالُوا بِرَأْيِهِمْ فَقَدْ أَخْطَأَ رَأْيُهُمْ، وَإِنْ كَانُوا قَالُوا فِي هَوَاكَ؟ فَلَمْ يَنْصَحُوا لَك، أَرَى أَنَّ دِيَتَهُ عَلَيْك لِأَنَّكَ أَنْتَ أَفْزَعْتَهَا، وَأَلْقَتْ وَلَدَهَا فِي سَبِيلِك، فَأَمَرَ عَلِيًّا أَنْ يَقْسِمَ عَقْلَهُ عَلَى قُرَيْشٍ - يَعْنِي: يَأْخُذَ عَقْلَهُ مِنْ قُرَيْشٍ؛ لِأَنَّهُ أَخْطَأَ. قَالَ أَبُو مُحَمَّدٍ: فَالصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - قَدْ اخْتَلَفُوا، فَالْوَاجِبُ الرُّجُوعُ إلَى مَا أَمَرَ اللَّهُ تَعَالَى بِهِ بِالرُّجُوعِ إلَيْهِ عِنْدَ التَّنَازُعِ إذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] .

they spoke based on their own opinion, their opinion was mistaken. If they spoke to appease your desire, they did not advise you sincerely. I hold that her blood money is your responsibility, for you frightened her, causing her to miscarry her child in your pursuit." Umar then ordered Ali to apportion the blood money from Quraysh—meaning he should take the blood money from Quraysh, because he erred. Abu Muhammad said: The Companions—may Allah be pleased with them—differed in opinion, so it is obligatory to refer back to what Allah Almighty commanded by returning to His judgment when disputes arise, as He says: "If you disagree over something, refer it to Allah and the Messenger" (Quran 4:59).[22]

فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] ، {وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ} [آل عمران: ١٠٤] .

L38937 We have ascertained Allah, the Exalted, declaring: *"Stand firm in justice"* [4:135], and *"Let there arise from you a community inviting to good and enjoining recognized virtue"* [3:104].[23]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ» .

L38938 The Messenger of Allah (peace be upon him) said, "Whoever among you witnesses an evil, let him rectify it with his hand if he is able; if he is unable, then with his tongue."

فَصَحَّ أَنَّ فَرْضًا عَلَى كُلِّ مُسْلِمٍ قَدَرَ عَلَى الْأَمْرِ بِالْمَعْرُوفِ وَالنَّهْيِ عَنْ الْمُنْكَرِ أَنْ يَأْمُرَ بِالْمَعْرُوفِ وَيَنْهَى عَنْ الْمُنْكَرِ.

L38939 Thus, it is confirmed that there is an obligation upon every Muslim capable of enjoining good and forbidding evil to enjoin good and forbid evil.

وَمِنْ الْمُحَالِ أَنْ يَفْتَرِضَ اللَّهُ تَعَالَى عَلَى الْأَئِمَّةِ أَوْ غَيْرِهِمْ أَمْرًا إنْ لَمْ يَعْمَلُوهُ عَصَوْا اللَّهَ تَعَالَى ثُمَّ يُؤَاخِذُهُمْ فِي ذَلِكَ؟ وَوَجَدْنَا هَذِهِ الْمَبْعُوثُ فِيهَا: بُعِثَ فِيهَا بِحَقٍّ، وَلَمْ يُبَاشِرْ الْبَاعِثُ فِيهَا شَيْئًا أَصْلًا فَلَا شَيْءَ عَلَيْهِ، وَإِنَّمَا كَانَ يَكُونُ عَلَيْهِ دِيَةُ وَلَدِهَا لَوْ بَاشَرَ ضَرْبَهَا أَوْ نَطْحَهَا - وَأَمَّا إذَا لَمْ يُبَاشِرْ فَلَمْ يَجْنِ شَيْئًا أَصْلًا.

L38940 It is inconceivable that Allah, the Exalted, would impose upon the Imams or others a command which, if they do not act upon it, they would have disobeyed Him, and He would then hold them accountable for it. We found that this envoy was sent truthfully in the matter, and the One who sent him did not personally carry out any act whatsoever—thus he bears no liability. The only liability he could incur would be the blood money for her child if he had personally struck or butted her. But if he did not act directly, he incurred no liability whatsoever.

وَلَا فَرْقَ بَيْنَ هَذَا، وَبَيْنَ مَنْ رَمَى حَجَرًا إلَى الْعَدُوِّ فَفَزِعَ مِنْ هُوِيِّهِ إنْسَانٌ فَمَاتَ، فَهَذَا لَا شَيْءَ عَلَيْهِ - وَكَذَلِكَ مَنْ بَنَى حَائِطًا فَانْهَدَمَ، فَفَزِعَ إنْسَانٌ فَمَاتَ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38941 There is no distinction between this case and one where a person threw

[22] **Qur'an references (L38934):** Qur'an 4:59 (An-Nisa).
[23] **Qur'an references (L38937):** Qur'an 4:135 (An-Nisa); Qur'an 3:104 (Ali 'Imran).

a stone toward enemies, then a human was frightened by its descent and died - in such a case, nothing is incumbent upon him. Similarly, if someone built a wall that collapsed, then a human was frightened and died, nothing is incumbent upon him. And success is from Allah, the Exalted.

Issue: Designating Food for a Person

Issue 2125: If someone poisons food intended for a person, then invites them to eat it, and the person consumes it and dies - what the ruling? Ali said: Some scholars held that whoever poisons food, serves it to someone while saying "Eat," and if the person eats it and dies, then retaliation (qisas) is required against the poisoner. This is Mālik's opinion.

Other scholars said: He is not liable for retaliation, but his agnatic kin are responsible for the blood money.

Others said: There is no retaliation, blood money, or expiation required. Rather, he is only liable to compensate for the food he spoiled—if it belonged to someone else—and to receive disciplinary punishment, unless he had hired him to do it: then retaliation is obligatory. This is the opinion of our school's scholars. Al-Shafi'i's ruling did not differ regarding the case where one hires him for it—while knowing he would kill—stating that retaliation applies. As for when he did not hire him for it, he has two opinions: one following Malik's view, and the other following our school's scholars' opinion.

Ali said: When they differed as we mentioned, it became necessary for us to examine this matter—could there be a practiced Sunnah regarding it? And we found one.

From Abdullah ibn Rabee', from Muhammad ibn Ishaq, from Ibn al-A'rabī, from Abu Dawud, from Makhlad ibn Khalid, from Abd al-Razzaq, from Ma'mar via al-Zuhri via Ibn Ka'b ibn Malik from his father: "Umm Mubashshir said to the Prophet—peace and blessings of Allah be upon him—during the illness from which he died: 'We do not hold anyone responsible for you, O Messenger of Allah, for I blame none for my son's death except the poisoned sheep he ate with you at Khaybar.' The Prophet—peace and

[مَسْأَلَةٌ سَمَّ طَعَامًا لِإِنْسَانٍ]

٢١٢٥ - مَسْأَلَةٌ: مَنْ سَمَّ طَعَامًا لِإِنْسَانٍ، ثُمَّ دَعَاهُ إلَى أَكْلِهِ، فَأَكَلَهُ، فَمَاتَ؟ قَالَ عَلِيٌّ: ذَهَبَ قَوْمٌ إلَى أَنَّ مَنْ سَمَّ طَعَامًا وَقَدَّمَهُ إلَى إنْسَانٍ وَقَالَ لَهُ: كُلْ فَأَكَلَ فَمَاتَ، فَإِنَّ عَلَيْهِ الْقَوَدَ - وَهُوَ قَوْلُ مَالِكٍ.

وَقَالَ آخَرُونَ: لَيْسَ عَلَيْهِ الْقَوَدُ، لَكِنْ عَلَى عَاقِلَتِهِ الدِّيَةُ.

قَالَ آخَرُونَ: لَا قَوَدَ فِيهِ وَلَا دِيَةَ وَلَا كَفَّارَةَ، وَإِنَّمَا عَلَيْهِ ضَمَانُ الطَّعَامِ الَّذِي أَفْسَدَ - إنْ كَانَ لِغَيْرِهِ - وَالْأَدَبُ، إلَّا أَنْ يُؤَجِّرَهُ إيَّاهُ: فَعَلَيْهِ الْقَوَدُ - وَهُوَ قَوْلُ أَصْحَابِنَا وَلَمْ يَخْتَلِفْ قَوْلُ الشَّافِعِيِّ فِي إيجَارِهِ إيَّاهُ - وَهُوَ يَدْرِي - أَنَّهُ يَقْتُلُ: أَنَّ فِيهِ الْقَوَدَ - وَلَهُ فِي إذَا لَمْ يُؤَجِّرْهُ إيَّاهُ قَوْلَانِ: أَحَدُهُمَا: كَقَوْلِ مَالِكٍ، وَالْآخَرُ: كَقَوْلِ أَصْحَابِنَا.

قَالَ عَلِيٌّ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ [لَعَلَّ] فِي ذَلِكَ سُنَّةً جَرَتْ؟ فَوَجَدْنَا.

مَا ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا مَخْلَدُ بْنُ خَالِدٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ " عَنْ ابْنِ كَعْبِ بْنِ مَالِكٍ عَنْ أَبِيهِ «أَنَّ أُمَّ مُبَشِّرٍ قَالَتْ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي مَرَضِهِ الَّذِي مَاتَ فِيهِ: مَا نَتَّهِمُ بِكَ يَا رَسُولَ

blessings of Allah be upon him—replied: 'Nor do I hold anyone responsible for myself except that very thing. Now is the time for the severing of my aortas.'"

L38949 Abū Dāwūd said: Sometimes ʿAbd al-Razzāq narrated this ḥadīth as *mursal* from Maʿmar, from al-Zuhrī, from the Prophet (peace and blessings of Allāh be upon him). At other times, he narrated it from al-Zuhrī, from ʿAbd al-Raḥmān ibn Kaʿb. ʿAbd al-Razzāq mentioned that Maʿmar would narrate the ḥadīth to them at times as *mursal*, and they would record it, while at other times he would narrate it with an *isnād*, and they would record it. When Ibn al-Mubārak came to him, Maʿmar provided *isnāds* for ḥadīths he had previously transmitted as *mawqūf* (attributed to a Companion).

L38950 And by the same chain—to Abū Dāwūd: Aḥmad ibn Ḥanbal narrated to us, from Ibrāhīm ibn Khālid, from Rabāḥ, from Maʿmar, from al-Zuhrī, from ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Kaʿb ibn Mālik, from his mother Umm Mubashshir, who said: "I visited the Prophet (peace and blessings of Allāh be upon him)," and he related the version of the ḥadīth of Makhlad ibn Khālid. Ibn al-Aʿrābī noted: "He reported it thus from his mother, though the correct chain is from his father."

L38951–38953 And through him, via Abū Dāwūd: Sulaymān ibn Dāwūd al-Mahrī narrated to us → Ibn Wahb narrated to us → Yūnus informed me from... Ibn Shihab said: Jabir ibn Abdullah used to narrate that a Jewish woman from Khaybar poisoned a sheep. He then narrated the story at length—and in it: The Messenger of Allah (peace and blessings be upon him) said to her, "Did you poison this sheep?" She replied, "Yes." Thereupon, the Messenger of Allah (peace and blessings be upon him) pardoned her and did not punish her, while some of his companions who had eaten from the sheep died.

L38954 And through him to Abu Dawud: From Harun ibn Abdullah, from Sa'id ibn Sulayman, from 'Abbad ibn al-'Awwam, from Sufyan ibn Husayn, from al-Zuhri, from Sa'id ibn al-Musayyib and Abu Salamah ibn 'Abd al-Rahman

اللَّهِ، فَإِنِّي لَا أَتَّهِمُ بِابْنِي إِلَّا الشَّاةَ الْمَسْمُومَةَ الَّتِي أَكَلَ مَعَكَ بِخَيْبَرَ؟ قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَا لَا أَتَّهِمُ بِنَفْسِي إِلَّا ذَلِكَ فَهَذَا أَوَانُ قَطْعِ أَبْهَرِي» .

قَالَ أَبُو دَاوُد: وَرُبَّمَا حَدَّثَ عَبْدُ الرَّزَّاقِ بِهَذَا الْحَدِيثِ مُرْسَلًا عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرُبَّمَا حَدَّثَ بِهِ عَنِ الزُّهْرِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ كَعْبٍ - وَذَكَرَ عَبْدُ الرَّزَّاقِ: أَنَّ مَعْمَرًا كَانَ يُحَدِّثُهُمْ بِالْحَدِيثِ مَرَّةً مُرْسَلًا فَيَكْتُبُونَهُ، وَيُحَدِّثُهُمْ مَرَّةً فَيُسْنِدُهُ فَيَكْتُبُونَهُ، فَلَمَّا قَدِمَ عَلَيْهِ ابْنُ الْمُبَارَكِ أَسْنَدَ لَهُ مَعْمَرٌ أَحَادِيثَ كَانَ يُوقِفُهَا.

وَبِهِ - إِلَى أَبِي دَاوُد نا أَحْمَدُ بْنُ حَنْبَلٍ أَنَا إِبْرَاهِيمُ بْنُ خَالِدٍ نا رَبَاحٌ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ كَعْبِ بْنِ مَالِكٍ عَنْ أُمِّهِ أُمِّ مُبَشِّرٍ قَالَ: دَخَلْت عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ مَعْنَى حَدِيثِ مَخْلَدِ بْنِ خَالِدٍ، قَالَ ابْنُ الْأَعْرَابِيِّ: هَكَذَا قَالَ عَنْ أُمِّهِ، وَإِنَّمَا الصَّوَابُ عَنْ أَبِيهِ.

وَبِهِ إِلَى أَبِي دَاوُد نا سُلَيْمَانُ بْنُ دَاوُد الْمَهْرِيُّ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنِ ابْنِ شِهَابٍ قَالَ: كَانَ جَابِرُ بْنُ عَبْدِ اللَّهِ يُحَدِّثُ «أَنَّ يَهُودِيَّةً مِنْ أَهْلِ خَيْبَرَ سَمَّتْ شَاةً، ثُمَّ سَاقَ الْقِصَّةَ بِطُولِهَا - وَفِيهَا: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهَا: أَسَمَمْتِ هَذِهِ الشَّاةَ؟ قَالَتْ: نَعَمْ، فَعَفَا عَنْهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يُعَاقِبْهَا، وَتُوُفِّيَ بَعْضُ أَصْحَابِهِ الَّذِينَ أَكَلُوا مِنْ الشَّاةِ» .

وَبِهِ - إِلَى أَبِي دَاوُد نا هَارُونُ بْنُ عَبْدِ اللَّهِ نا سَعِيدُ بْنُ سُلَيْمَانَ نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ سُفْيَانَ بْنِ حُسَيْنٍ عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ

ibn ‘Awf, from Abu Hurayrah: “A Jewish woman presented a poisoned sheep as a gift to the Messenger of Allah (peace be upon him).”

عَوْفٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ امْرَأَةً مِنَ الْيَهُودِ أَهْدَتْ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَاةً مَسْمُومَةً» .

L38955 From him (the chain) up to Abu Dawud: From Yahya ibn Habib ibn Adi, from Khalid ibn al-Harith, from Shu’bah, from Hisham ibn Zayd, from Anas ibn Malik: “A Jewish woman came to the Messenger of Allah—peace and blessings be upon him—with a poisoned sheep, and he ate from it. She was then brought to the Messenger of Allah—peace and blessings be upon him—and he asked her about that? She said: ‘I intended to kill you.’ He replied: ‘Allah would not grant you power over that,’ or he said, ‘over me.’ They asked: ‘Should we not kill her?’ He said: ‘No.’ Anas said: ‘I continued to recognize it in the uvula of the Messenger of Allah—peace and blessings be upon him.’”

وَبِهِ - إِلَى أَبِي دَاوُد نا يَحْيَى بْنُ حَبِيبِ بْنِ عَدِيٍّ نا خَالِدُ بْنُ الْحَارِثِ نا شُعْبَةُ نا هِشَامُ بْنُ زَيْدٍ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ امْرَأَةً يَهُودِيَّةً أَتَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِشَاةٍ مَسْمُومَةٍ فَأَكَلَ مِنْهَا، فَجِيءَ بِهَا إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَأَلَهَا عَنْ ذَلِكَ؟ فَقَالَتْ: أَرَدْتُ لِأَقْتُلَكَ؟ قَالَ: مَا كَانَ اللَّهُ لِيُسَلِّطَكِ عَلَى ذَلِكَ، أَوْ قَالَ عَلَيَّ، فَقَالُوا: أَلَا نَقْتُلُهَا؟ قَالَ: لَا. قَالَ أَنَسٌ: فَمَا زِلْتُ أَعْرِفُهَا فِي لَهْوَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

L38956 Abu Muhammad said: These authentic reports have come forth: “A Jewish woman—may Allah curse her—prepared a sheep for the Messenger of Allah (peace and blessings of Allah be upon him), intending to kill him. He (peace be upon him) ate from it along with some of his companions, and they died from that. When it was said to the Messenger of Allah (peace and blessings of Allah be upon him), ’Will you not kill her?’ he replied, ’No.’” This constituted decisive proof that there is no retribution for one who poisons food intending to kill another and feeds it to them [if death results], nor is there blood money upon him, his male kin, or anything whatsoever. For the Messenger of Allah (peace and blessings of Allah be upon him) would never invalidate the blood claim of a companion if retribution or blood money were rightfully required. We then examined whether the opposing party had any objection. We found the narration transmitted by Abdullah ibn Rabi‘ from Umar ibn Abd al-Malik from Muhammad ibn Bakr from Abu Dawud from Wahb ibn Baqiyyah from Khalid from Muhammad ibn Amr from Abu Salama from Abu Hurairah, who said: “The Messenger of Allah (peace and blessings of Allah be upon him) accepted gifts but did not consume charity.”[24]

قَالَ أَبُو مُحَمَّد: فَجَاءَتْ هَذِهِ الْآثَارُ الصِّحَاحُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَمَّتْ لَهُ الْيَهُودِيَّةُ - لَعَنَهَا اللَّهُ - شَاةً وَأَهْدَتْهَا لَهُ مُرِيدَةً بِذَلِكَ قَتْلَهُ، فَأَكَلَ مِنْهَا - عَلَيْهِ السَّلَامُ - وَقَوْمٌ مِنْ أَصْحَابِهِ فَمَاتُوا مِنْ ذَلِكَ، وَقِيلَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَلَا تَقْتُلُهَا؟ قَالَ: لَا» فَكَانَتْ هَذِهِ حُجَّةً قَاطِعَةً، وَأَنْ لَا قَوَدَ عَلَى مَنْ سَمَّ طَعَامًا لِأَحَدٍ مُرِيدًا قَتْلَهُ فَأَطْعَمَهُ إِيَّاهُ [فَمَاتَ مِنْهُ] وَلَا دِيَةَ عَلَيْهِ، وَلَا عَلَى عَاقِلَتِهِ، وَلَا شَيْءَ - وَمَا كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُبْطِلَ دَمَ رَجُلٍ مِنْ أَصْحَابِهِ قَدْ وَجَبَ فِيهِ قَوَدٌ وَدِيَةٌ فَنَظَرْنَا: هَلْ لِلطَّائِفَةِ الْأُخْرَى اعْتِرَاضٌ أَمْ لَا؟ فَوَجَدْنَا: مَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ نا أَبُو دَاوُد نا وَهْبُ بْنُ بَقِيَّةَ عَنْ خَالِدٍ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقْبَلُ الْهَدِيَّةَ وَلَا يَأْكُلُ الصَّدَقَةَ» .

[24] **Hadith references (L38956):** Sunan Abi Dawud 4512.

قَالَ أَبُو دَاوُد: ونا وَهْبُ بْنُ بَقِيَّةَ فِي مَوْضِعٍ آخَرَ عَنْ خَالِدٍ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي سَلَمَةَ، وَلَمْ يَذْكُرْ أَبَا هُرَيْرَةَ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْكُلُ الْهَدِيَّةَ وَلَا يَأْكُلُ الصَّدَقَةَ» زَادَ «فَأَهْدَتْ لَهُ يَهُودِيَّةٌ بِخَيْبَرَ شَاةً مَصْلِيَّةً سَمَّتْهَا فَأَكَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْهَا، وَأَكَلَ الْقَوْمُ، فَقَالَ: ارْفَعُوا أَيْدِيَكُمْ، فَإِنَّهَا أَخْبَرَتْنِي: أَنَّهَا مَسْمُومَةٌ - فَمَاتَ بِشْرُ بْنُ الْبَرَاءِ بْنِ مَعْرُورٍ الْأَنْصَارِيُّ، فَأَرْسَلَ إِلَى الْيَهُودِيَّةِ: مَا حَمَلَكِ عَلَى الَّذِي صَنَعْتِ؟ قَالَتْ: إِنْ كُنْتَ نَبِيًّا لَمْ يَضُرَّكَ، وَإِنْ كُنْتَ مَلِكًا أَرَحْتُ النَّاسَ مِنْكَ؟ فَأَمَرَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُتِلَتْ، ثُمَّ قَالَ فِي وَجَعِهِ الَّذِي مَاتَ مِنْهُ: فَمَا زِلْتُ أَجِدُ مِنَ الْأَكْلَةِ الَّتِي أَكَلْتُ بِخَيْبَرَ، فَهَذَا أَوَانُ قَطْعِ أَبْهَرِي» .

L38957–38959 Abu Dawud said: And Wahb ibn Baqiyyah reported to us elsewhere from Khalid from Muhammad ibn Amr. From Abu Salama, who did not mention Abu Hurairah: “The Messenger of Allah (peace and blessings of Allah be upon him) would accept gifts but not eat from charity.” He added: “A Jewish woman in Khaybar presented him with a roasted sheep she had poisoned. The Prophet ate from it, and his companions ate too. He then declared: ’Lift your hands, for it has been revealed to me that this is poisoned.’ When Bishr ibn al-Bara’ ibn Ma‘rur al-Ansari died, the Prophet sent for the Jewish woman and demanded: ’What compelled you to do this?’ She replied: ’If you were a prophet, it would not harm you. If you were a king, I would have relieved people from you.’ The Messenger of Allah then ordered her execution, and she was killed. Later, during the illness that caused his death, he said: ’I have never ceased to feel the effect of that meal I ate at Khaybar. Now has come the time when my aorta is severed.’”

وَمَا حَدَّثَنَاهُ أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ إِبْرَاهِيمَ بْنِ نُعْمَانَ - لَقِيتُهُ بِقَيْرَوَانَ إِفْرِيقِيَّةَ ثنا إِبْرَاهِيمُ بْنُ مُوسَى الْبَزَّازُ أَوْ الْبَزَّارُ - شَكَّ قَاسِمُ بْنُ أَصْبَغَ - نا أَبُو هَمَّامٍ نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَتَلَهَا يَعْنِي: الَّتِي سَمَّتْهُ» .

L38960 What was narrated to us by Ahmad ibn Qasim—narrated to us his father Qasim ibn Muhammad ibn Qasim—narrated to us my grandfather Qasim ibn Asbagh—narrated to us Muhammad ibn Ibrahim ibn Nu’man (I met him in Qayrawan in Ifriqiya)—narrated to us Ibrahim ibn Musa al-Bazzaz or al-Bazzar (Qasim ibn Asbagh doubted)—narrated to us Abu Hammad—narrated to us ’Abbad ibn al-’Awwam—from Muhammad ibn ’Amr—from Abu Salama—from Abu Hurayrah: “That the Messenger of Allah (peace be upon him) killed her, meaning the one who poisoned him.”

قَالَ أَبُو مُحَمَّدٍ: فَنَظَرْنَا فِي الرِّوَايَةِ فَوَجَدْنَاهَا مَعْلُولَةً: أَمَّا رِوَايَةُ وَهْبِ بْنِ بَقِيَّةَ، فَإِنَّهَا مُرْسَلَةٌ، وَلَمْ يُسْنِدْ مِنْهَا وَهْبٌ فِي الْمَرَّةِ الَّتِي أَسْنَدَ إِلَّا أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَأْكُلُ الْهَدِيَّةَ وَلَا يَأْكُلُ الصَّدَقَةَ، فَقَطْ.

L38961 Abū Muḥammad said: We examined the narration and found it defective. As for the narration of Wahb ibn Baqiyyah, it is a *mursal* narration. Wahb did not provide a chain of transmission for it except in the instance where he did, and even then, it only mentioned that the Prophet (peace be upon him) would eat gifts but not eat charity. Nothing more.

وَأَمَّا سَائِرُ الْخَبَرِ، فَإِنَّهُ أَرْسَلَهُ وَلَا مَزِيدَ - هَكَذَا فِي نَصِّ الْخَبَرِ الَّذِي أَوْرَدْنَا لِمَا انْتَهَى إِلَى آخِرِ لَفْظِهِ «وَلَا يَأْكُلُ الصَّدَقَةَ» .

L38962 As for the remainder of the report, he transmitted it as mursal (a report with an incomplete chain) without addition—thus, this is how it appears in the text of the report we presented, ending with its final wording: “and he does not consume ṣadaqah (charity).”

قَالَ: وَزَادَ فَأَتَى بِخَبَرِ الشَّاةِ مُرْسَلًا فَقَطْ، وَلَا حُجَّةَ فِي مُرْسَلٍ.

L38963 He said: And he added, then he cited the report about the sheep solely in a

mursal form, and there is no authoritative evidence for a *mursal*.

L38964 As for the narration transmitted by Qāsim, it is reported through unknown men: Ibn Nuʿmān al-Qayrawānī—we do not recognize him; Ibrāhīm ibn Mūsā al-Bazzāz—similarly unknown; Abū Hammām—there are many [by this name], and we do not know which one he is; and Saʿīd ibn Sulaymān, who narrates via the chain of ʿAbbād ibn al-ʿAwwām with a musnad chain traced back to Abū Hurayrah—that the Messenger of Allah—peace and blessings be upon him—did not retaliate against the Jewish woman who poisoned him. Yet this very al-Qayrawānī narrates through the chain of ʿAbbād ibn al-ʿAwwām that the Prophet—peace and blessings be upon him—killed her. Thus, this narration is discarded in its entirety due to the obscurity of its transmitters.

وَأَمَّا رِوَايَةُ قَاسِمٍ، فَإِنَّهَا عَنْ رِجَالٍ مَجْهُولِينَ: ابْنِ نُعْمَانَ الْقَيْرَوَانِيِّ لَا نَعْرِفُهُ - وَإِبْرَاهِيمُ بْنُ مُوسَى الْبَزَّازُ كَذَلِكَ - وَأَبُو هَمَّامٍ كَثِيرٌ لَا نَدْرِي أَيُّهُمْ هُوَ - وَسَعِيدُ بْنُ سُلَيْمَانَ يَرْوِي مِنْ طَرِيقِ عَبَّادِ بْنِ الْعَوَّامِ مُسْنَدًا إِلَى أَبِي هُرَيْرَةَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَعْرِضْ لِلْيَهُودِيَّةِ الَّتِي سَمَّتْهُ - وَهَذَا الْقَيْرَوَانِيُّ يَرْوِي مِنْ طَرِيقِ عَبَّادِ بْنِ الْعَوَّامِ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَتَلَهَا، فَسَقَطَتْ هَذِهِ الرِّوَايَةُ جُمْلَةً؛ لِجَهَالَةِ نَاقِلِيهَا.

L38965–38967 Then, even if it were authentic, there would be no authoritative evidence in it, as it is narrated from Abū Hurayrah as we have cited, and it has been authentically established from... From Abu Hurairah: that the Prophet (peace and blessings of Allah be upon him) did not confront her. The narration attributed to Abu Hurairah—even if hypothetically authentic, though it is invalid—contains contradictions: one occasion claiming he killed her, and another stating he did not confront her. If the report from Abu Hurairah asserting that he (peace and blessings of Allah be upon him) killed her were valid—while it is authentically established from Abu Hurairah that he (peace and blessings of Allah be upon him) did not confront her—the discussion would inevitably revolve around one of three juristic considerations with no fourth possibility: either both narrations are rejected entirely due to their mutual contradiction, since one must undoubtedly be erroneous, given this concerns a single incident involving one woman arising from a single cause; or preference is given to the accounts of those whose narrations remain consistent—namely Jabir and Anas, who agree that he (peace and blessings of Allah be upon him) did not kill her. This constitutes the first consideration.

ثُمَّ لَوْ صَحَّتْ لَمَا كَانَ فِيهَا حُجَّةٌ؛ لِأَنَّهَا عَنْ أَبِي هُرَيْرَةَ كَمَا أَوْرَدْنَا، وَقَدْ صَحَّ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَعْرِضْ لَهَا، وَكَانَتْ الرِّوَايَةُ لَوْ صَحَّتْ - وَهِيَ لَا تَصِحُّ - مُضْطَرِبَةً عَنْ أَبِي هُرَيْرَةَ: مَرَّةً أَنَّهُ قَتَلَهَا، وَمَرَّةً أَنَّهُ لَمْ يَعْرِضْ لَهَا - فَلَوْ صَحَّتْ الرِّوَايَةُ عَنْ أَبِي هُرَيْرَةَ فِي أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَتَلَهَا، كَمَا قَدْ صَحَّ عَنْ أَبِي هُرَيْرَةَ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَعْرِضْ لَهَا، لَكَانَ الْكَلَامُ فِي ذَلِكَ لَا يَخْلُو مِنْ أَحَدِ ثَلَاثَةِ أَوْجُهٍ لَا رَابِعَ لَهَا: إمَّا أَنْ تُتْرَكَ الرِّوَايَتَانِ مَعًا لِتَعَارُضِهِمَا؛ وَلِأَنَّ إحْدَاهُمَا وَهْمٌ، بِلَا شَكٍّ، لِأَنَّهَا قِصَّةٌ وَاحِدَةٌ، فِي امْرَأَةٍ وَاحِدَةٍ، فِي سَبَبٍ وَاحِدٍ، وَيَرْجِعُ إلَى رِوَايَةِ مَنْ لَمْ يَضْطَرِبْ عَنْهُ، وَهُمَا: جَابِرٌ وَأَنَسٌ، اللَّذَانِ اتَّفَقَا عَلَى أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَقْتُلْهَا - فَهَذَا وَجْهٌ.

L38968 The second view is that both narrations are valid together, such that the Prophet (peace and blessings be upon him) did not kill her since she named him because she named him. Thus, this narration from Abū Hurayrah is valid and consistent with the narration of Jābir and the narration of Anas

ibn Mālik, and that the Prophet (peace and blessings be upon him) killed her for another reason. And Allah knows best.

وَالْوَجْهُ الثَّانِي: وَهُوَ أَنْ تَصِحَّ الرِّوَايَتَانِ مَعًا فَيَكُونَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَقْتُلْهَا إذْ سَمَّتْهُ مِنْ أَجْلِ أَنَّهَا سَمَّتْهُ، فَتَصِحُّ هَذِهِ عَنْ أَبِي هُرَيْرَةَ، وَتَكُونُ مُوَافِقَةً لِرِوَايَةِ جَابِرٍ، وَأَنَسِ بْنِ مَالِكٍ، وَيَكُونُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَتَلَهَا لِأَمْرٍ آخَرَ، وَاَللَّهُ أَعْلَمُ بِهِ.

L38969 Alternatively, the ruling may be considered through a third perspective—the soundest of the opinions—which asserts that both statements of Abū Hurayrah (may Allah be pleased with him): "Allah's Messenger (peace be upon him) ordered her execution" and "Allah's Messenger (peace be upon him) did not adjudicate her case," are his own explicit words. It is not improbable that an error arose from the Companion (may Allah be pleased with him).

أَوْ يَكُونُ الْحُكْمُ عَلَى وَجْهٍ ثَالِثٍ - وَهُوَ أَصَحُّ الْوُجُوهِ - وَهُوَ أَنَّ قَوْلَ أَبِي هُرَيْرَةَ - رَضِيَ اللَّهُ عَنْهُ -: قَتَلَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَوْلُهُ: لَمْ يَعْرِضْ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُمَا جَمِيعًا لَفْظُ أَبِي هُرَيْرَةَ، لَا يَبْعُدُ الْوَهْمُ عَنْ الصَّاحِبِ.

L38970 The narration of Anas constitutes the precise wording of the Messenger of Allah—peace and blessings be upon him—whom falsehood cannot approach from before or behind, and whom his Lord, Exalted is He, does not permit to remain in any misconception or religious error whatsoever. This refers to a report where a man stated that someone asked the Prophet: "O Messenger of Allah, will you not kill her?" He replied: "No." This constitutes the definitive ruling that must not be opposed—a judgment impermissible to contradict. Thus, it is established that if someone feeds another poison resulting in the latter's death, neither retaliation nor diyah is mandated against the feeder or his kinsmen, for he performed no direct lethal act. Rather, the deceased himself directly ingested the poison. There is no distinction between this case and one who deceives another by directing him to a perilous path or inviting him to a lion's den which kills him.[25]

وَحَدِيثُ أَنَسٍ هُوَ لَفْظُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي لَا يَأْتِيهِ الْبَاطِلُ مِنْ بَيْنِ يَدَيْهِ، وَلَا مِنْ خَلْفِهِ، وَلَا يُقِرُّهُ رَبُّهُ تَعَالَى عَلَى الْوَهْمِ، وَلَا عَلَى الْخَطَأِ فِي الدِّينِ أَصْلًا وَهَذَا أَنَّ إنْسَانًا ذَكَرَ أَنَّهُ قِيلَ لَهُ: يَا رَسُولَ اللَّهِ أَلَا تَقْتُلُهَا؟ فَقَالَ: لَا، فَهَذَا هُوَ الْمُغَلَّبُ الْمَحْكُومُ بِهِ الَّذِي لَا يَحِلُّ خِلَافُهُ - فَصَحَّ أَنَّ مَنْ أَطْعَمَ آخَرَ سُمًّا فَمَاتَ مِنْهُ: أَنَّهُ لَا قَوَدَ عَلَيْهِ، وَلَا دِيَةَ عَلَيْهِ، وَلَا عَلَى عَاقِلَتِهِ؛ لِأَنَّهُ لَمْ يُبَاشِرْ فِيهِ شَيْئًا أَصْلًا، بَلْ الْمَيِّتُ هُوَ الْمُبَاشِرُ فِي نَفْسِهِ، وَلَا فَرْقَ بَيْنَ هَذَا وَبَيْنَ مَنْ غَرَّ آخَرَ يُورِي لَهُ طَرِيقًا أَوْ دَعَاهُ إلَى مَكَانٍ فِيهِ أَسَدٌ فَقَتَلَهُ.

L38971 And the report has been authenticated that the Messenger of Allah—may Allah bless him and grant him peace—did not impose retaliation or blood money upon the woman who poisoned him and his companions, so some of them died from that poison. Thus, juristic reasoning is invalidated in light of this text.

وَقَدْ صَحَّ الْخَبَرُ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُوجِبْ عَلَى الَّتِي سَمَّتْهُ وَأَصْحَابَهُ فَمَاتَ مِنْ ذَلِكَ السُّمِّ بَعْضُهُمْ: قَوَدًا وَلَا دِيَةً - فَبَطَلَ النَّظَرُ مَعَ هَذَا النَّصِّ.

L38972–38974 Another perspective is that the ruling is not applied to one who designates food for another, and the intended one then eats it. So, he did not die except

[25] **Qur'an references (L38970):** Qur'an 41:42 (Fussilat).

metaphorically, not in actuality, nor is it recognized in the Arabic language that he is a "killer." Rather, it is the laypeople who employ this term, and the definitive evidence is only in the language and the Sharia. And success is by Allah, the Exalted.

وَوَجْهٌ آخَرُ وَهُوَ أَنَّهُ لَا يُطْلَقُ عَلَى مَنْ سَمَّ طَعَامًا لِآخَرَ، فَأَكَلَهُ ذَلِكَ الْمَقْصُودُ فَمَاتَ أَنَّهُ قَتَلَهُ، إِلَّا مَجَازًا لَا حَقِيقَةً، وَلَا يُعْرَفُ فِي لُغَةِ الْعَرَبِ أَنَّهُ " قَاتِلٌ " وَإِنَّمَا يَسْتَعْمِلُ هَذَا الْعَوَامُّ، وَلَيْسَ الْحُجَّةُ إِلَّا فِي اللُّغَةِ، وَفِي الشَّرِيعَةِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L38975 As for when one compels another and makes him drink poison, or orders someone to make him drink it: he is undoubtedly a killer, directly perpetrates his killing, and is termed a "killer" in linguistic usage and in the prophetic traditions. As narrated to us by Humām, who narrated to us from ʿAbbās ibn Aṣbagh, who narrated to us from Muḥammad ibn ʿAbd al-Malik ibn Ayman, who narrated to us from Bakr ibn Ḥammād, who narrated to us from Musaddad, who narrated to us from Abū ʿAwānah, from al-Aʿmash, from Abī Ṣāliḥ, from Abī Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him) said: "Whoever kills himself with a blade, his blade will be in his hand, thrusting it into his belly in the Fire of Hell, abiding therein eternally, forever. Whoever drinks poison and thereby kills himself, his poison will be in his hand, sipping it in the Fire of Hell, abiding therein eternally, forever. And whoever hurls himself from a mountain and kills himself, he will be hurling himself in the Fire of Hell, abiding therein eternally, forever."

وَأَمَّا إِذَا أَكْرَهَهُ وَأَوْجَرَهُ السُّمَّ، أَوْ أَمَرَ مَنْ يُوجِرُهُ: فَهُوَ قَاتِلٌ بِلَا شَكٍّ، وَمُبَاشِرٌ لِقَتْلِهِ، وَيُسَمَّى " قَاتِلًا " فِي اللُّغَةِ، وَفِي الْأَثَرِ: كَمَا نا حُمَامٌ حَدَّثَنَا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا بَكْرُ بْنُ حَمَّادٍ نا مُسَدَّدٌ نا أَبُو عَوَانَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قَتَلَ نَفْسَهُ بِحَدِيدَةٍ فَحَدِيدَتُهُ فِي يَدِهِ يَجَأُ بِهَا فِي بَطْنِهِ فِي نَارِ جَهَنَّمَ خَالِدًا فِيهَا مُخَلَّدًا أَبَدًا، وَمَنْ شَرِبَ سُمًّا فَقَتَلَ نَفْسَهُ فَسُمُّهُ فِي يَدِهِ يَتَحَسَّاهُ فِي نَارِ جَهَنَّمَ خَالِدًا فِيهَا، مُخَلَّدًا فِيهَا أَبَدًا، وَمَنْ تَرَدَّى مِنْ جَبَلٍ فَقَتَلَ نَفْسَهُ فَهُوَ يَتَرَدَّى فِي نَارِ جَهَنَّمَ خَالِدًا فِيهَا مُخَلَّدًا أَبَدًا» .

L38976 Ali said: The Messenger of Allah—peace and blessings be upon him—referred to one who drinks **the** poison intending to die by it as "a killer of himself." Thus, qisas (retribution) is mandated **upon** him, and the error of those who abolished **qisas** in this case is evident. And success comes only from Allah, the Exalted.

قَالَ عَلِيٌّ: فَقَدْ سَمَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ شَرِبَ السُّمَّ لِيَمُوتَ بِهِ " قَاتِلًا لِنَفْسِهِ ": فَوَجَبَ أَنْ يَكُونَ عَلَيْهِ الْقَوَدُ، وَظَهَرَ خَطَأُ مَنْ أَسْقَطَ هَاهُنَا الْقَوَدَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L38977–38978 The Rulings on the Fetus: A case in which a pregnant woman was killed, whether she delivered her fetus dead or did not deliver it.

[أَحْكَامُ الْجَنِينِ] [مَسْأَلَةٌ قُتِلَتْ حَامِلٌ سَوَاءٌ طَرَحَتْ جَنِينَهَا مَيِّتًا أَوْ لَمْ تَطْرَحْهُ]

L38979 Issue: The rulings concerning the fetus. Ali said: There are rulings concerning the fetus, and they are: the financial penalties associated with the fetus.

مَسْأَلَةٌ: أَحْكَامُ الْجَنِينِ؟ قَالَ عَلِيٌّ: فِي الْجَنِينِ أَحْكَامٌ، وَهِيَ: مَا فِي الْجَنِينِ مِنْ الْغَرَامَةِ.

L38980 And matters concerning the description of the fetus.

وَمَا فِي صِفَةِ الْجَنِينِ.

L38981 The legal ruling pertains both before the soul is breathed into it and after it has been breathed into it.

وَحُكْمُهُ قَبْلَ نَفْخِ الرُّوحِ فِيهِ، أَوْ بَعْدَ نَفْخِهِ فِيهِ.

L38982 The woman induces an abortion by herself.

وَالْمَرْأَةُ تُولِدُ عَلَى نَفْسِهَا الْإِسْقَاطَ.

L38983 And if the fetus is more than one [...]

وَإِنْ كَانَ الْجَنِينُ أَكْثَرَ مِنْ وَاحِدٍ.

L38984 And if he exited alive and then died.

وَإِنْ خَرَجَ حَيًّا ثُمَّ مَاتَ.

L38985 The fetus is expelled from the woman with whom intercourse was performed after her death.

وَالْمَجْنِيُّ عَلَيْهَا تُلْقِي الْجَنِينَ بَعْدَ مَوْتِهَا.

L38986 And a woman administered treatment to a pregnant woman's abdomen, causing her to miscarry the fetus.

وَامْرَأَةٌ دَاوَتْ بَطْنَ حَامِلٍ فَأَلْقَتْ جَنِينًا.

L38987 Is there expiation for the fetus, or not? And [the case of] the fetus of an enslaved woman.

وَهَلْ فِي الْجَنِينِ كَفَّارَةٌ أَمْ لَا؟ وَجَنِينُ الْأَمَةِ.

L38988 The fetus of a Kitābīyyah (female People of the Book).

وَجَنِينُ الْكِتَابِيَّةِ.

L38989 A portion of the fetus emerged, but none of the rest did.

خَرَجَ بَعْضُ الْجَنِينِ وَلَمْ يَخْرُجْ كُلُّهُ.

L38990 The fetus of an animal.

وَجَنِينُ الدَّابَّةِ.

L38991 And we - if Allah, the Exalted, wills - will expound on all of this chapter by chapter, and with Allah, the Exalted, lies all tawfīq (divine enabling).

وَنَحْنُ - إِنْ شَاءَ اللَّهُ تَعَالَى - ذَاكِرُونَ كُلَّ ذَلِكَ بَابًا بَابًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L38992–38994 Issue 2127: Should a pregnant woman be executed? Ali said: If a woman with clear evidence of pregnancy is executed, it is irrelevant whether she expels the fetus dead or does not expel it at all. In it, a compensatory payment (ghurrah) is mandatory due to what we mentioned—that it is a destroyed fetus. People have disagreed about this, as narrated: Ḥammām narrated, from ʿAbd Allāh ibn Muḥammad ibn ʿAlī al-Bājī, who narrated from ʿAbd Allāh Yūnus, who narrated from Baqī ibn Makhlad, who narrated from Abū Bakr ibn Abī Shaybah, who narrated from al-Aʿlā, from Maʿmar, from al-Zuhrī—who used to say: If a woman is killed while pregnant, he [al-Zuhrī] said: "There is nothing [owed] for her fetus until she expels it." This is the opinion upheld by Mālik.

٢١٢٧ - مَسْأَلَةٌ - الْحَامِلُ تُقْتَلُ؟ قَالَ عَلِيٌّ: إِنْ قُتِلَتْ حَامِلٌ بَيِّنَةُ الْحَمْلِ، فَسَوَاءٌ طَرَحَتْ جَنِينَهَا مَيِّتًا أَوْ لَمْ تَطْرَحْهُ: فِيهِ غُرَّةٌ وَلَا بُدَّ، لِمَا ذَكَرْنَا مِنْ أَنَّهُ جَنِينٌ أُهْلِكَ - وَهَذَا قَدْ اخْتَلَفَ النَّاسُ فِيهِ: كَمَا نا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ نا عَبْدُ اللَّهِ يُونُسُ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَبْدُ الْأَعْلَى عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ أَنَّهُ كَانَ يَقُولُ: إِذَا قُتِلَتِ الْمَرْأَةُ وَهِيَ حَامِلٌ، قَالَ: لَيْسَ فِي جَنِينِهَا شَيْءٌ حَتَّى تَقْذِفَهُ - وَبِهَذَا يَقُولُ مَالِكٌ.

قَالَ عَلِيٌّ: لَمْ يَشْتَرِطْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْجَنِينِ إلْقَاءَهُ، وَلَكِنَّهُ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «فِي الْجَنِينِ غُرَّةُ عَبْدٍ أَوْ أَمَةٍ» كَيْفَمَا أُصِيبَ - أُلْقِيَ أَوْ لَمْ يُلْقَ - فَفِيهِ الْغُرَّةُ الْمَذْكُورَةُ.

L38995 Ali said: The Messenger of Allah, peace and blessings be upon him, did not stipulate the expulsion of the fetus, but he, upon him be peace and blessings, said: "For the fetus, there is a ghurrah—a compensation equivalent to the value of a male or female slave—regardless of how it is killed, whether expelled or not, for in it is the aforementioned ghurrah."

وَإِذَا قُتِلَتْ الْحَامِلُ فَقَدْ تَلِفَ جَنِينُهَا بِلَا شَكٍّ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38996 And when a pregnant woman is killed, her fetus has perished without doubt, and with Allah, the Most High, is divine enablement.

[مَسْأَلَةٌ هَلْ فِي الْجَنِينِ كَفَّارَةٌ أَمْ لَا]

Issue: Is expiation required in the case of a fetus, or not?

٢١٢٨ - مَسْأَلَةٌ - هَلْ فِي الْجَنِينِ كَفَّارَةٌ أَمْ لَا؟ قَالَ عَلِيٌّ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ أَنَا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: مَا عَلَى مَنْ قَتَلَ مَنْ لَمْ يَسْتَهِلَّ؟ قَالَ: أَرَى أَنْ يُعْتِقَ أَوْ يَصُومَ.

L38998 2128 - Issue: Is there an expiation for a fetus or not? ʿAlī said: Ḥammām reported to us; Ibn Mufarrij reported to us; Ibn al-Aʿrābī reported to us. I am al-Dabarī: ʿAbd al-Razzāq reported to us from Ibn Jurayj, who said: I asked ʿAṭāʾ, "What is incumbent upon one who kills a fetus/newborn that has not cried out at birth?" He said, "I hold that he should emancipate a slave or fast [as expiation]."

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي رَجُلٍ ضَرَبَ امْرَأَتَهُ فَأَسْقَطَتْ؟ قَالَ: يَغْرَمُ غُرَّةً، وَعَلَيْهِ عِتْقُ رَقَبَةٍ، وَلَا يَرِثُ مِنْ تِلْكَ الْغُرَّةِ شَيْئًا، هِيَ لِوَارِثِ الصَّبِيِّ غَيْرِهِ.

L38999 And with it—from ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī—regarding a man who struck his wife, causing her to miscarry. Al-Zuhrī said: He must pay a ghurrah [compensatory payment], emancipate a slave, and he inherits nothing from that ghurrah. It belongs to the heir of the miscarried child, excluding him.

L39000 And through him: To ʻAbd al-Razzāq, from Sufyān al-Thawrī, from al-Mughīrah, from Ibrāhīm al-Nakhaʻī. He ruled concerning a woman who drinks medicine or inserts something, thereby causing her child to miscarry: "She must perform expiation (kaffārah) and pay a ghurrah (compensatory payment)."

وَبِهِ: إِلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ فِي الْمَرْأَةِ تَشْرَبُ الدَّوَاءَ أَوْ تَسْتَدْخِلُ الشَّيْءَ فَيَسْقُطُ وَلَدُهَا؟ قَالَ: تُكَفِّرُ وَعَلَيْهَا غُرَّةٌ.

L39001 Abu Muhammad said: We inquired, "Is this statement a valid legal proof or not?" We found them citing what was narrated through the aforementioned chain to Abd al-Razzaq, from Umar ibn Dhar, who said: I heard Mujahid say, "A woman massaged the abdomen of a pregnant woman, so she miscarried a fetus." The matter was brought to Umar ibn al-Khattab, and he ordered her to perform expiation by freeing a slave—meaning: the one who massaged.

قَالَ أَبُو مُحَمَّدٍ: فَطَلَبْنَا: هَلْ هَذَا الْقَوْلُ حُجَّةٌ أَمْ لَا؟ فَوَجَدْنَاهُمْ يَذْكُرُونَ: مَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إلَى عَبْدِ الرَّزَّاقِ عَنْ عُمَرَ بْنِ ذَرٍّ قَالَ: سَمِعْت مُجَاهِدًا يَقُولُ: مَسَحَتْ امْرَأَةٌ بَطْنَ امْرَأَةٍ حَامِلٍ فَأَسْقَطَتْ جَنِينًا؟ فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ الْخَطَّابِ فَأَمَرَهَا أَنْ تُكَفِّرَ بِعِتْقِ رَقَبَةٍ - يَعْنِي: الَّتِي مَسَحَتْ.

L39002–39004 Ali said: This is a narration from Umar – may Allah be pleased with him – and no opposing view from the Companions – may Allah be pleased with them – is known regarding this matter. In our time, the Ḥanafīs, Mālikīs, and Shāfiʻīs venerate. The disagreement of the Companion when it aligns with their *taqlīd*—this being a ruling issued by the Caliph Umar ibn al-Khattab (may Allah be pleased with him) in the presence of the Companions, with no record of any rejection from them—[demonstrates that] when they encounter such a matter, they eagerly uphold it and vehemently condemn their opponents for opposing him.

قَالَ عَلِيٌّ: هَذِهِ رِوَايَةٌ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَلَا يُعْرَفُ لَهُ فِي هَذَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَعَهْدُنَا بِالْحَنَفِيِّينَ، وَالْمَالِكِينَ، وَالشَّافِعِيِّينَ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ إذَا وَافَقَ تَقْلِيدَهُمْ، وَهَذَا حُكْمُ إمَامٍ - وَهُوَ عُمَرُ بْنُ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - بِحَضْرَةِ الصَّحَابَةِ، لَا يُعْرَفُ أَنَّهُ أَنْكَرَهُ أَحَدٌ مِنْهُمْ - وَهُمْ إذَا وَجَدُوا مِثْلَ هَذَا طَارُوا بِهِ، وَشَنَّعُوا عَلَى خُصُومِهِمْ مُخَالَفَتَهُ.

L39005 As you see, they have deemed it trivial to oppose him here. They treated a ruling attributed to ʻUmar concerning the installment payment of blood money over three years—which has no authentic basis from him whatsoever—as definitive evidence, rejecting any contradiction of it. They similarly treated his ruling applying the principle of collective liability (al-ʻāqilah) to administrative departments as definitive evidence, rejecting any contradiction of it. Yet they did not treat his ruling here imposing expiation—through the emancipation of a slave—on a woman who rubbed a pregnant woman's abdomen causing her to abort a dead fetus as definitive evidence they would adhere to here. This amounts to arbitrary imposition in religious matters that no God-conscious person would permit, and with Allah the Exalted lies all success.

وَهُمْ كَمَا تَرَى قَدْ اسْتَسْهَلُوا خِلَافَهُ هَاهُنَا، وَقَدْ جَعَلُوا حُكْمًا مَأْثُورًا عَنْ عُمَرَ فِي تَنْجِيمِ الدِّيَةِ فِي ثَلَاثِ سِنِينَ لَا يَصِحُّ عَنْهُ أَصْلًا: حُجَّةً يُنْكِرُونَ خِلَافَهَا، وَجَعَلُوا حُكْمَهُ بِالْعَاقِلَةِ عَلَى الدَّوَاوِينِ: حُجَّةً يُنْكِرُونَ خِلَافَهَا، وَلَمْ يَجْعَلُوا إيجَابَهُ هَاهُنَا كَفَّارَةً عَلَى الَّتِي مَسَحَتْ بَطْنَ حَامِلٍ فَأَلْقَتْ جَنِينًا مَيِّتًا بِعِتْقِ رَقَبَةٍ: حُجَّةً هَاهُنَا يَقُولُونَ بِهَا، وَهَذَا تَحَكُّمٌ فِي الدِّينِ لَا يَسْتَحِلُّهُ ذُو وَرَعٍ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39006 Abū Muḥammad said: As for us, we hold no valid proof in the words of anyone other than the Messenger of Allah—peace be upon him. If no explicit text from the Messenger of Allah—peace be upon him—establishing the obligation of expiation in such cases exists as a universal ruling, then it is impermissible to make a general statement about it. However, we affirm—and success comes only from Allah, the Exalted—that Allah, the Exalted, says: *"Whoever kills a believer by mistake must free a believing slave and pay blood money to the victim's family"* [al-Nisā' 4:92].[1]

قَالَ أَبُو مُحَمَّدٍ: أَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنْ لَمْ يَأْتِ بِإِيجَابِ الْكَفَّارَةِ فِي ذَلِكَ نَصٌّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْعُمُومِ، فَلَا يَجُوزُ أَنْ يُطْلَقَ - عَلَى الْعُمُومِ - الْقَوْلُ بِهَا، لَكِنَّا نَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: إنَّ اللَّهَ تَعَالَى يَقُولُ {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إلَى أَهْلِهِ} [النساء: ٩٢] .

L39007 The Messenger of Allah (peace be upon him) narrated from his Lord, the Most High, who said: "I created all My slaves inherently inclined to monotheism."

«وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ رَبِّهِ تَعَالَى خَلَقْتُ عِبَادِي كُلَّهُمْ حُنَفَاءَ» .

L39008 Allah the Exalted said, "Set your face uprightly toward the religion, [adhering to] the natural disposition of Allah upon which He created mankind" [Ar-Rum: 30]. The Messenger of Allah (peace be upon him) said, "Every newborn is born upon this *millah* (way)." We previously mentioned this with its chain of transmission. Thus, every newborn is upon the natural disposition and upon the *millah* of Islam.[2]

وَقَالَ تَعَالَى {فَأَقِمْ وَجْهَكَ لِلدِّينِ حَنِيفًا فِطْرَتَ اللَّهِ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا} [الروم: ٣٠] وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ مَوْلُودٍ يُولَدُ عَلَى هَذِهِ الْمِلَّةِ» وَقَدْ ذَكَرْنَاهُ قَبْلُ بِإِسْنَادِهِ، فَكُلُّ مَوْلُودٍ فَهُوَ عَلَى الْفِطْرَةِ، وَعَلَى مِلَّةِ الْإِسْلَامِ.

L39009 It has been established that if someone strikes a pregnant woman and causes her to miscarry a fetus before the completion of four months, no expiation is required. However, only the ghurrah is obligatory, because the Messenger of Allah—peace be upon him—ruled thus. He did not kill anyone, but only caused her to miscarry a fetus.

فَصَحَّ أَنَّ مَنْ ضَرَبَ حَامِلًا فَأَسْقَطَتْ جَنِينًا، فَإِنْ كَانَ قَبْلَ الْأَرْبَعَةِ الْأَشْهُرِ قَبْلَ تَمَامِهَا فَلَا كَفَّارَةَ فِي ذَلِكَ، لَكِنَّ الْغُرَّةَ وَاجِبَةٌ فَقَطْ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ بِذَلِكَ، وَلَمْ يَقْتُلْ أَحَدًا، لَكِنْ أَسْقَطَهَا جَنِينًا فَقَطْ.

L39010 And since he did not kill anyone—neither by mistake nor intentionally—there is no expiation for that, as there is no expiation except in accidental killing. Furthermore, no human possessing a soul is killed except [in such cases], and this [fetus] has not yet had the soul breathed into it.

وَإِذْ لَمْ يَقْتُلْ أَحَدًا - لَا خَطَأً وَلَا عَمْدًا - فَلَا كَفَّارَةَ فِي ذَلِكَ، إذْ لَا كَفَّارَةَ إلَّا فِي قَتْلِ الْخَطَأِ، وَلَا يُقْتَلُ إلَّا ذُو رُوحٍ، وَهَذَا لَمْ يُنْفَخْ فِيهِ الرُّوحُ بَعْدُ.

L39011–39013 If it was after the completion of four months, and she ascertained its movement without any doubt, and four [witnesses] attested to that. Competent and just witnesses, for the ruling entails compensation equivalent to the value

وَإِنْ كَانَ بَعْدَ تَمَامِ الْأَرْبَعَةِ الْأَشْهُرِ، وَتَيَقَّنَتْ حَرَكَتَهُ بِلَا شَكٍّ، وَشَهِدَ بِذَلِكَ أَرْبَعُ قَوَابِلَ عُدُولٍ، فَإِنَّ فِيهِ: غُرَّةَ عَبْدٍ أَوْ أَمَةٍ فَقَطْ، لِأَنَّهُ جَنِينٌ قُتِلَ، فَهَذِهِ هِيَ دِيَتُهُ، وَالْكَفَّارَةُ

[1] **Qur'an references (L39006):** Qur'an 4:92 (An-Nisa).
[2] **Qur'an references (L39008):** Qur'an 30:30 (Ar-Rum).

of a male or female slave exclusively, as it concerns a killed fetus. This is its blood money. The expiation is obligatory through freeing a slave. *"But whoever cannot afford it must fast two consecutive months"* [an-Nisā': 92], because he unintentionally killed a believer.[3]

L39014 It has been authentically reported from the Prophet—peace and blessings be upon him—that the soul is breathed into it after one hundred and twenty nights—as we have previously mentioned—and this is the explicit text of the Quran. Umar ibn al-Khattab—may Allah be pleased with him—agreed with us on this.

L39015 If someone were to say: "The Messenger of Allah (peace and blessings be upon him) did not prescribe expiation in this case?" We reply: The mention of expiation does not occur in the ḥadīth regarding the fetus, and not all aspects of the Sunnah are derived from a single verse, a single surah, or a single ḥadīth. Since Allah the Exalted has mandated expiation for the accidental killing of a believer, and the Messenger of Allah (peace and blessings be upon him) informed us that He created all His servants by their primordial nature as inherently monotheistic, then when Allah places the soul within the fetus, it becomes—by the Qur'an's explicit ruling—a believing monotheistic being. Therefore, expiation applies in this case.

L39016 This verse is an additional legal provision beyond what is mentioned in the hadith concerning the fetus. All commandments of Allah the Exalted must be accepted in their entirety; it is impermissible at all to reject any of them in favor of another. Whoever contradicts this has indeed disobeyed Allah the Exalted in what He has commanded.

L39017 If it is said: Then impose in it a hundred camels, since that is the diyah according to you?

L39018 We said—and with Allah, the Exalted, lies success—this is not permissible, for Allah, the Exalted, only stated, *{A ransom to be delivered to his family}* [An-Nisa: 92], and He did not specify in the Quran the measure of that blood money. Rather, He, the Exalted, entrusted its clarification to His Messenger—peace and blessings be upon him—who fulfilled this, peace and blessings be

[3] **Qur'an references (L39011):** Qur'an 4:92 (An-Nisa); Qur'an 58:4 (Al-Mujadila).

وَاجِبَةٌ بِعِتْقِ رَقَبَةٍ {فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ} [النساء: ٩٢] ؛ لِأَنَّهُ قَتَلَ مُؤْمِنًا خَطَأً.

وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ الرُّوحَ يُنْفَخُ فِيهِ بَعْدَ مِائَةِ لَيْلَةٍ وَعِشْرِينَ لَيْلَةً - وَقَدْ ذَكَرْنَاهُ قَبْلُ وَهَذَا نَصُّ الْقُرْآنِ، وَقَدْ وَافَقَنَا عَلَيْهِ عُمَرُ بْنُ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ -.

فَإِنْ قَالَ قَائِلٌ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُوجِبْ هَاهُنَا كَفَّارَةً؟ قُلْنَا: لَمْ يَأْتِ لَهَا ذِكْرٌ فِي حَدِيثِ الْجَنِينِ، وَلَيْسَتْ السُّنَنُ كُلُّهَا مَأْخُوذَةً مِنْ آيَةٍ وَاحِدَةٍ، وَلَا مِنْ سُورَةٍ وَاحِدَةٍ، وَلَا مِنْ حَدِيثٍ وَاحِدٍ، وَإِذْ أَوْجَبَ اللَّهُ تَعَالَى فِي قَتْلِ الْمُؤْمِنِ خَطَأً كَفَّارَةً، وَأَخْبَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ تَعَالَى خَلَقَ عِبَادَهُ حُنَفَاءَ كُلَّهُمْ فَهُوَ إذْ خَلَقَ اللَّهُ فِيهِ الرُّوحَ فَهُوَ مُؤْمِنٌ حَنِيفٌ بِنَصِّ الْقُرْآنِ، فَفِيهِ الْكَفَّارَةُ.

وَهَذِهِ الْآيَةُ زَائِدَةُ شَرْعٍ عَلَى مَا فِي حَدِيثِ الْجَنِينِ، وَأَوَامِرُ اللَّهِ تَعَالَى مَقْبُولَةٌ كُلُّهَا، لَا يَحِلُّ رَدُّ شَيْءٍ لِشَيْءٍ مِنْهَا أَصْلًا - وَمَنْ خَالَفَ هَذَا فَقَدْ عَصَى اللَّهَ تَعَالَى فِيمَا أَمَرَ بِهِ.

فَإِنْ قِيلَ: فَأَوْجِبُوا فِيهِ حِينَئِذٍ مِائَةً مِنْ الْإِبِلِ، إذْ هِيَ الدِّيَةُ عِنْدَكُمْ؟ .

قُلْنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - لَا يَجُوزُ هَذَا، لِأَنَّ اللَّهَ تَعَالَى إنَّمَا قَالَ {فَدِيَةٌ مُسَلَّمَةٌ إلَى أَهْلِهِ} [النساء: ٩٢] وَلَمْ يُبَيِّنْ لَنَا تَعَالَى فِي الْقُرْآنِ مِقْدَارَ تِلْكَ الدِّيَةِ، لَكِنْ وَكَّلَ تَعَالَى ذَلِكَ إلَى بَيَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَفَعَلَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَبَيَّنَ لَنَا -

upon him. He, peace and blessings be upon him, made clear to us that the blood money for one who comes into the world and is slain is one hundred camels, as established in the authentic narration when he paid blood money for Abdullah ibn Sahl—may Allah be pleased with him—in that manner.[4]

L39019 And he clarified to us—peace and blessings be upon him—that the diyah for a fetus, by his explicit wording, is a ghurrah (a male or female slave), and he explicitly termed it "diyah."

L39020–39022 As we previously mentioned through the narration of Abū Hurayrah—may Allāh be pleased with him—with the most authentic chain of transmission, the blood-money varied to demonstrate the Messenger of Allāh's—peace and blessings be upon him—clarification for us, while the expiation remained uniform because the Messenger of Allāh—peace and blessings be upon him—did not differentiate between the rulings of expiation in that matter. If Allāh the Exalted had intended for the rulings of expiations to be in... That disputed matter has been made clear to us through the words of the Messenger of Allah—peace and blessings of Allah be upon him. If he had not done so, would Allah the Exalted have ever intended for the rulings regarding any of that to differ? These are essential matters that no one is permitted to oppose. We require the testimony of midwives solely to confirm that she has exceeded four months, one hundred and twenty complete nights. Otherwise, if we knew she had surpassed them by any amount—whether small or large—we would not need anyone's testimony regarding movement, for the most reliable witnesses, the most truthful people, and the most upright witnesses have testified to us that the soul is breathed into it after one hundred and twenty nights. After his testimony—peace and blessings be upon him—there is no need for anyone else's testimony. And all praise is due to Allah, Lord of the worlds.

L39023 If someone were to ask: What is your ruling regarding a woman who intentionally killed her fetus after it had unequivocally exceeded 120 nights—thereby killing it—or if a stranger intentionally killed it within her womb? Our position is that retribution (qisas) is absolutely obligatory in such a case,

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ دِيَةَ مَنْ خَرَجَ إِلَى الدُّنْيَا فَقُتِلَ، مِائَةٌ مِنْ الْإِبِلِ فِي الْخَبَرِ الثَّابِتِ إِذْ وَدَى بِذَلِكَ عَبْدَ اللَّهِ بْنَ سَهْلٍ - رَضِيَ اللَّهُ عَنْهُ -.

وَبَيَّنَ لَنَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّ دِيَةَ الْجَنِينِ بِنَصِّ لَفْظِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - " غُرَّةٌ " مِنْ الْعَبِيدِ أَوْ الْإِمَاءِ، وَسَمَّاهُ " دِيَةً ".

كَمَا أَوْرَدْنَا آنِفًا مِنْ طَرِيقِ أَبِي هُرَيْرَةَ - رَضِيَ اللَّهُ عَنْهُ - بِأَصَحِّ إسْنَادٍ يَكُونُ فَكَانَتْ الدِّيَةُ مُخْتَلِفَةً لِبَيَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ لَنَا وَكَانَتْ الْكَفَّارَةُ وَاحِدَةً، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُفَرِّقْ بَيْنَ أَحْكَامِ الْكَفَّارَةِ فِي ذَلِكَ؟ فَلَوْ أَرَادَ اللَّهُ تَعَالَى أَنْ يَكُونَ حُكْمُ الْكَفَّارَاتِ فِي ذَلِكَ مُخْتَلِفًا لَبَيَّنَ لَنَا ذَلِكَ عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِذَا لَمْ يَفْعَلْ ذَلِكَ فَمَا أَرَادَ اللَّهُ تَعَالَى قَطُّ أَنْ يَخْتَلِفَ حُكْمُ شَيْءٍ مِنْ ذَلِكَ؟ وَهَذِهِ أُمُورٌ ضَرُورِيَّةٌ لَا يَسَعُ أَحَدًا مُخَالَفَتُهَا، وَإِنَّمَا احْتَجْنَا إلَى شَهَادَةِ الْقَوَابِلِ لِيَثْبُتَ عِنْدَنَا أَنَّهَا قَدْ تَجَاوَزَتْ أَرْبَعَةَ أَشْهُرٍ مِائَةً وَعِشْرِينَ لَيْلَةً تَامَّةً - وَإِلَّا فَلَوْ عَلِمْنَا أَنَّهَا قَدْ تَجَاوَزَتْهَا - بِمَا قَلَّ أَوْ كَثُرَ - لَمَا احْتَجْنَا إلَى شَهَادَةِ أَحَدٍ بِالْحَرَكَةِ، لِأَنَّ أَوْثَقَ الشُّهُودِ، وَأَصْدَقَ النَّاسِ، وَأَثْبَتَ الْعُدُولِ: شَهِدَ عِنْدَنَا أَنَّ الرُّوحَ يُنْفَخُ فِيهِ بَعْدَ الْمِائَةِ وَعِشْرِينَ لَيْلَةً، فَمَا يَحْتَاجُ بَعْدَ شَهَادَتِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إلَى شَهَادَةِ أَحَدٍ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

فَإِنْ قَالَ قَائِلٌ: فَمَا تَقُولُونَ فِيمَنْ تَعَمَّدَتْ قَتْلَ جَنِينِهَا وَقَدْ تَجَاوَزَتْ مِائَةَ لَيْلَةٍ وَعِشْرِينَ لَيْلَةً بِيَقِينٍ: فَقَتَلَتْهُ، أَوْ تَعَمَّدَ أَجْنَبِيٌّ قَتْلَهُ فِي بَطْنِهَا فَقَتَلَهُ؟ فَمِنْ قَوْلِنَا: أَنَّ الْقَوَدَ وَاجِبٌ فِي ذَلِكَ وَلَا بُدَّ، وَلَا غُرَّةَ فِي ذَلِكَ حِينَئِذٍ، إلَّا أَنْ يَعْفِيَ عَنْهُ فَتَجِبُ الْغُرَّةُ فَقَطْ، لِأَنَّهَا

[4] **Qur'an references (L39018):** Qur'an 4:92 (An-Nisa).

and no ghurrah (a form of blood money) is due unless the heirs grant pardon, in which case only the ghurrah becomes obligatory. This is because the ghurrah constitutes blood money (diyah), and no expiation applies here, as the killing was deliberate. Retribution is obligatory because it involves the intentional killing of a believing soul—a life for a life. The heirs must choose between two options: either retribution or [accepting] blood money or ransom, as the Messenger of Allah—peace and blessings be upon him—ruled regarding the killing of a believer. And success comes solely from Allah, the Exalted.

L39024 **The issue of a woman intentionally inducing the miscarriage of her fetus.**

L39025 Issue 2129: A woman intentionally causes the miscarriage of her child? Ali said: Abdullah ibn Rabi‘ reported to us, Abdullah ibn Muhammad ibn Uthman reported to us, Ahmad ibn Khalid reported to us, Ali ibn Abdulaziz reported to us, al-Hajjaj ibn al-Minhal reported to us, Hammad ibn Salamah reported from al-Hajjaj from Abdah al-Dabbi that a pregnant woman attempted to induce an abortion, resulting in the miscarriage of her child. Ibrahim al-Nakha‘i said: She must emancipate a slave from her husband’s possession and pay a ghurrah: a male or female slave.

L39026 From Muḥammad ibn Sa‘īd ibn Nubāt, from ‘Abd al-‘Azīz ibn Naṣr, from Qāsim ibn Aṣbagh, from Ibn Waḍḍāḥ, from Mūsā ibn Mu‘āwiyah, from Wakī‘, from Sufyān al-Thawrī, from al-Mughīrah ibn Miqsam, from Ibrāhīm al-Nakha‘ī, who said regarding a woman who drank medicine and miscarried: “She must free a slave and give the child’s father a ghurrah [as compensation].”

L39027 Abu Muhammad said: This is a narration (athar) of the highest authenticity.

L39028–39029 Ali said: “If the soul has not been breathed into him, she is liable for the ghurrah [compensation for fetal loss]. But if the soul has been breathed into him: then, if she did not deliberately kill him, she is liable for blood money.”

L39030 The ghurra (indemnity) also falls upon her agnatic kin, and the expiation falls upon her.

دِيَةٌ، وَلَا كَفَّارَةَ فِي ذَلِكَ، لِأَنَّهُ عَمْدٌ، وَإِنَّمَا وَجَبَ الْقَوَدُ، لِأَنَّهُ قَاتِلُ نَفْسٍ مُؤْمِنَةٍ عَمْدًا، فَهُوَ نَفْسٌ بِنَفْسٍ، وَأَهْلُهُ بَيْنَ خِيرَتَيْنِ: إِمَّا الْقَوَدُ، وَإِمَّا الدِّيَةُ، أَوْ الْمُفَادَاةُ، كَمَا حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَنْ قَتَلَ مُؤْمِنًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْمَرْأَةُ تَتَعَمَّدُ إسْقَاطَ وَلَدِهَا]

٢١٢٩ - مَسْأَلَةٌ: الْمَرْأَةُ تَتَعَمَّدُ إسْقَاطَ وَلَدِهَا؟ قَالَ عَلِيٌّ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ الْحَجَّاجِ عَنْ عَبْدَةَ الضَّبِّيِّ أَنَّ امْرَأَةً كَانَتْ حُبْلَى فَذَهَبَتْ تَسْتَدْخِلُ فَأَلْقَتْ وَلَدَهَا؟ فَقَالَ إبْرَاهِيمُ النَّخَعِيُّ: عَلَيْهَا عِتْقُ رَقَبَةٍ لِزَوْجِهَا عَلَيْهَا غُرَّةٌ: عَبْدٍ، أَوْ أَمَةٍ.

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا عَبْدُ الْعَزِيزِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ فِي امْرَأَةٍ شَرِبَتْ دَوَاءً فَأَسْقَطَتْ؟ قَالَ: تُعْتِقُ رَقَبَةً، وَتُعْطِي أَبَاهُ غُرَّةً.

قَالَ أَبُو مُحَمَّدٍ: هَذَا أَثَرٌ فِي غَايَةِ الصِّحَّةِ.

قَالَ عَلِيٌّ: إنْ كَانَ لَمْ يُنْفَخْ فِيهِ الرُّوحُ فَالْغُرَّةُ عَلَيْهَا، وَإِنْ كَانَ قَدْ نُفِخَ فِيهِ الرُّوحُ: فَإِنْ كَانَتْ لَمْ تَعْمِدْ قَتْلَهُ.

فَالْغُرَّةُ أَيْضًا عَلَى عَاقِلَتِهَا، وَالْكَفَّارَةُ عَلَيْهَا.

L39031 If she intentionally killed him, she is liable for qisas (retaliation) or obligated to pay diya (blood money) from her wealth.

L39032 If she dies in all such cases before delivering the fetus and the fetus is then expelled afterward, the *ghurra* is obligatory in all such cases: in unintentional harm upon the agnatic kin of the offender—whether she was the one or another—and likewise in intentional harm before the soul is breathed into the fetus.

L39033 If the soul has been blown into it, retribution for homicide is required of the perpetrator provided they are someone other than the mother.

L39034 If it is her, then there is no retaliation (qisās), no ghurrah [compensatory payment], and nothing, because no ruling applies to a deceased person, and their wealth has already devolved to others—and success is from Allah, the Exalted.

L39035 **A case where a woman miscarries two or more fetuses.**

L39036 Issue 2130: Concerning a woman who aborts two fetuses or more. Ali said: Hammam narrated to us from Abdullah ibn Muhammad ibn Ali al-Baji, from Abdullah ibn Yunus, from Baqi ibn Makhlad, from Abu Bakr ibn Abi Shaybah, from Ma'n ibn Isa, from Ibn Abi Dhi'b, from al-Zuhri regarding a woman who was struck and aborted three fetuses. He said: "I hold that a ghurrah (compensatory payment) is due for each fetus, just as the full diya (blood-money) applies to each fetus."

L39037 From the transmission of Ibn Waddāḥ: Saḥnūn reported to us, Ibn Wahb reported to us from Yūnus ibn Yazīd that Rabī'ah said regarding a woman who was struck and miscarried two fetuses: "The liability for each of them is a ghurrah (compensation, typically a slave or its value) or a female slave."

L39038 Az-Zuhri said: If she miscarries three, a ghurrah is due for each one—whether its creation is discernible or not—as it is a pregnancy.

L39039 And through him: Al-Layth ibn Sa'd al-Ansari informed me through Ibn

وَإِنْ كَانَتْ عَمَدَتْ قَتْلَهُ فَالْقَوَدُ عَلَيْهَا، أَوْ الْمُفَادَاةُ فِي مَالِهَا.

فَإِنْ مَاتَتْ هِيَ فِي كُلِّ ذَلِكَ قَبْلَ إلْقَاءِ الْجَنِينِ ثُمَّ أَلْقَتْهُ: فَالْغُرَّةُ وَاجِبَةٌ فِي كُلِّ ذَلِكَ، فِي الْخَطَأِ عَلَى عَاقِلَةِ الْجَانِي - هِيَ كَانَتْ أَوْ غَيْرَهَا - وَكَذَلِكَ فِي الْعَمْدِ قَبْلَ أَنْ يُنْفَخَ فِيهِ الرُّوحُ.

وَأَمَّا إنْ كَانَ قَدْ نُفِخَ فِيهِ الرُّوحُ فَالْقَوَدُ عَلَى الْجَانِي إنْ كَانَ غَيْرَهَا.

وَأَمَّا إنْ كَانَتْ هِيَ فَلَا قَوَدَ، وَلَا غُرَّةَ، وَلَا شَيْءَ؛ لِأَنَّهُ لَا حُكْمَ عَلَى مَيِّتٍ، وَمَالُهُ قَدْ صَارَ لِغَيْرِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ أَلْقَتْ جَنِينَيْنِ فَصَاعِدًا]

٢١٣٠ - مَسْأَلَةٌ: فِيمَنْ أَلْقَتْ جَنِينَيْنِ فَصَاعِدًا؟ قَالَ عَلِيٌّ: حَدَّثَنَا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا مَعْنُ بْنُ عِيسَى عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ الزُّهْرِيِّ فِي امْرَأَةٍ ضُرِبَتْ فَأَسْقَطَتْ ثَلَاثَةَ أَسْقَاطٍ؟ قَالَ: أَرَى أَنَّ فِي كُلِّ وَاحِدٍ مِنْهُمْ غُرَّةً، كَمَا أَنَّ فِي كُلِّ وَاحِدٍ مِنْهُمْ الدِّيَةَ.

وَمِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ أَنَّ رَبِيعَةَ قَالَ فِي امْرَأَةٍ ضُرِبَتْ فَأَلْقَتْ جَنِينَيْنِ: أَنَّهُ يَدِي كُلَّ وَاحِدٍ مِنْهُمَا بِغُرَّةٍ: أَوْ أَمَةٍ.

وَقَالَ الزُّهْرِيُّ: إنْ أَسْقَطَتْ ثَلَاثَةً فَفِي كُلِّ وَاحِدٍ مِنْهُمْ غُرَّةٌ - تَبَيَّنَ خَلْقُهُ أَوْ لَمْ يَتَبَيَّنْ: أَنَّهُ حَمْلٌ.

Wahb that he said regarding a fetus miscarried dead, the compensation is a ghurrah (the value of a male or female slave). If there are two fetuses, two ghurrahs are required.

وَبِهِ: إِلَى ابْنِ وَهْبٍ أَخْبَرَنِي اللَّيْثُ بْنُ سَعْدٍ الْأَنْصَارِيُّ أَنَّهُ قَالَ فِي الْجَنِينِ إِذَا طُرِحَ مَيِّتًا غُرَّةٌ: عَبْدٍ أَوْ وَلِيدَةٍ - فَإِنْ كَانَ اثْنَيْنِ فَفِيهِمَا غُرَّتَانِ.

L39040 Ali said: This is what we say, for the Messenger of Allah—peace and blessings of Allah be upon him—stated: "The blood money for her fetus is a male or female slave." Every fetus—even if they were ten—constitutes her fetus. Thus, a ghurrah—a male or female slave—is due for each fetus. If they are killed after attaining life, then full blood money and atonement apply to each one. Success comes from Allah, the Most High.

قَالَ عَلِيٌّ: وَبِهَذَا نَقُولُ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «دِيَةُ جَنِينِهَا عَبْدٌ، أَوْ أَمَةٌ» وَكُلُّ جَنِينٍ - وَلَوْ أَنَّهُمْ عَشَرَةٌ - فَهُوَ جَنِينٌ لَهَا، فَفِي كُلِّ جَنِينٍ غُرَّةٌ: عَبْدٍ أَوْ أَمَةٍ، فَلَوْ قُتِلُوا بَعْدَ الْحَيَاةِ فَفِي كُلِّ وَاحِدٍ دِيَةٌ، وَكَفَّارَةٌ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

A legal issue: Who inherits the obligatory ghurra (prescribed compensation) pertaining to a fetus?

[مَسْأَلَةٌ مَنْ يَرِثُ الْغُرَّةَ الْوَاجِبَةَ فِي الْجَنِينِ]

L39041–39042

L39043 Issue: Who inherits the ghurrah? Ali said: People have differed regarding those entitled to the obligatory ghurrah for the fetus. Muhammad ibn Saʿīd ibn Nabāt narrated to us: from ʿAbdullāh ibn Naṣr: from Qāsim ibn Aṣbagh: from Ibn Waḍḍāḥ: from Mūsā ibn Muʿāwiyah: from Wakīʿ: from Sufyān al-Thawrī: from al-Mughīrah: from Ibrāhīm al-Nakhaʿī regarding a woman who drank medicine and miscarried. He said: She must free a slave and give the father the ghurrah.

مَسْأَلَةٌ: مَنْ يَرِثُ الْغُرَّةَ؟ قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِيمَنْ تَجِبُ لَهُ الْغُرَّةُ الْوَاجِبَةُ فِي الْجَنِينِ: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي امْرَأَةٍ شَرِبَتْ دَوَاءً فَأَسْقَطَتْ؟ قَالَ: تُعْتِقُ رَقَبَةً وَتُعْطِي أَبَاهُ غُرَّةً.

L39044 Abdullah ibn Rabīʿ narrated from Ibn Mufarrij, who narrated from Qāsim ibn Aṣbagh, who narrated from Ibn Waḍḍāḥ, who narrated from Saḥnūn, who narrated from Ibn Wahb, who informed me: Yūnus ibn Yazīd informed me from Ibn Shihāb that he was asked about a man who struck his wife, causing her to miscarry. To whom does the diyah for the miscarriage belong? He said: "It has reached us through the Sunnah that the killer inherits nothing from the diyah. The fidya is according to Allah's ordained shares. The one who killed him [the fetus] has no right to any portion of it in this matter." This is the opinion of ʿAbd al-ʿAzīz ibn Abī Salama, Abū Ḥanīfa, Mālik, and al-Shāfiʿī.

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ ابْنِ شِهَابٍ أَنَّهُ سُئِلَ فِي رَجُلٍ ضَرَبَ امْرَأَتَهُ فَأَسْقَطَتْ لِمَنْ دِيَةُ السِّقْطِ؟ قَالَ: بَلَغَنَا فِي السُّنَّةِ أَنَّ الْقَاتِلَ لَا يَرِثُ مِنْ الدِّيَةِ شَيْئًا، فِدْيَةٌ عَلَى فَرَائِضِ اللَّهِ تَعَالَى، لَيْسَ لِلَّذِي قَتَلَهُ فِي ذَلِكَ شَيْءٌ - وَهُوَ قَوْلُ عَبْدِ الْعَزِيزِ بْنِ أَبِي سَلَمَةَ، وَأَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ.

L39045 Others held a differing opinion, as transmitted by Muḥammad ibn Saʿīd ibn Nubāt from ʿAbd Allāh ibn Naṣr from Qāsim ibn Aṣbagh from Ibn Waḍḍāḥ from Mūsā ibn Muʿāwiyah from Wakīʿ from Muḥammad ibn Qays from al-

وَقَالَ آخَرُونَ - غَيْرَ ذَلِكَ: كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا مُحَمَّدُ بْنُ قَيْسٍ عَنْ الشَّعْبِيِّ أَنَّهُ قَالَ

Shaʿbī, who said regarding a man who struck his wife until she miscarried: "He is liable for a *ghurrah* (a compensatory payment for fetal loss) that he inherits, and his hands are to be amputated." This is the opinion upheld by Abū Sulaymān and all our fellow scholars.

فِي رَجُلٍ ضَرَبَ امْرَأَتَهُ حَتَّى أَسْقَطَتْ، قَالَ الشَّعْبِيُّ: عَلَيْهِ غُرَّةٌ يَرِثُهَا، وَيَدِيهِ - وَبِهَذَا الْقَوْلِ يَقُولُ أَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا.

L39046 Ali said: When they disagreed—as we mentioned—it became obligatory for us to examine the matter to discern the truth from it so that we may follow it. We thus considered the view of those who held that the *ghurrah* is inherited as the entirety of the estate left by the deceased. We found them asserting that the *ghurrah* is classified as *diyah* (blood money) and thus follows its ruling. Since it is established that *diyah* is inherited according to the fixed shares of inheritance under Islamic law, the *ghurrah* is likewise.

قَالَ عَلِيٌّ: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ مِنْ ذَلِكَ فَنَتْبَعَهُ: فَنَظَرْنَا فِي قَوْلِ مَنْ رَأَى أَنَّ الْغُرَّةَ مَوْرُوثَةٌ، كَمَالِ تَرَكَهُ الْمَيِّتُ؟ فَوَجَدْنَاهُمْ يَقُولُونَ: إنَّ الْغُرَّةَ دِيَةٌ، فَهِيَ كَحُكْمِ الدِّيَةِ، وَالدِّيَةُ قَدْ صَحَّ أَنَّهَا مَوْرُوثَةٌ عَلَى فَرَائِضِ الْمَوَارِيثِ، فَالْغُرَّةُ كَذَلِكَ.

L39047 They said: The Messenger of Allah—peace and blessings be upon him—distinguished the compensation owed for the fetus from that owed for its mother: he ordained blood money for the mother and ghurrah (monetary compensation equivalent to a slave's value) for the fetus. Thus, it is valid that the ruling of the ghurrah is akin to the ruling of homicide compensation, not the ruling of compensation for bodily injuries.

وَقَالُوا: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَفْرَدَ مَا يَجِبُ فِي الْجَنِينِ عَمَّا يَجِبُ فِي أُمِّهِ: فَجَعَلَ فِي الْأُمِّ دِيَةً، وَجَعَلَ فِي الْجَنِينِ غُرَّةً - فَصَحَّ أَنَّ حُكْمَ الْغُرَّةِ كَحُكْمِ دِيَةِ النَّفْسِ، لَا كَحُكْمِ دِيَةِ الْأَعْضَاءِ.

L39048 They said: It has been validly established by consensus that if a man were harmed by an act necessitating diyah (blood money) and then died, the diyah is inherited from him. Similarly, the fetus is entitled to the diyah owed for the harm inflicted upon him.

وَقَالُوا: قَدْ صَحَّ الِاتِّفَاقُ عَلَى أَنَّ امْرَأً لَوْ جُنِيَ عَلَيْهِ مَا يُوجِبُ دِيَةً فَمَاتَ؟ فَإِنَّهُ مَوْرُوثُهُ عَنْهُ، فَكَذَلِكَ الْجَنِينُ فِيمَا وَجَبَ فِي الْجِنَايَةِ لَهُ.

L39049 They argued: If it were obligatory that a right belong to the mother, then if she were wrongfully killed and subsequently miscarried a fetus, nothing would be owed concerning the fetus—since the deceased is not entitled to anything after her death?

وَقَالُوا: لَوْ كَانَ وَاجِبًا أَنْ تَكُونَ لِلْأُمِّ لَوَجَبَ إذَا جُنِيَ عَلَيْهَا فَمَاتَتْ، ثُمَّ أَلْقَتْ جَنِينًا: أَنْ لَا يَجِبَ فِيهِ شَيْءٌ؛ لِأَنَّ الْمَيِّتَ لَا يَسْتَحِقُّ شَيْئًا بَعْدَ مَوْتِهِ؟

L39050–39051 Abū Muḥammad said: This is all they have cited as proof; we know of no other argument for them besides this. None of this constitutes proof for them, as we shall clarify—God, Exalted is He, willing. As for their statement that the *ghurrah* is blood money and thus follows its rulings—since it is established that blood money is inherited according to the shares of inheritance, and the *ghurrah* should likewise be inherited—this is analogy, and all analogy is invalid. Even if analogy were ever valid, this instance would

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّ مَا احْتَجُّوا بِهِ، لَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا، وَكُلُّ هَذَا لَيْسَ لَهُمْ فِيهِ حُجَّةٌ، لِمَا نَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى: أَمَّا قَوْلُهُمْ: إنَّ الْغُرَّةَ دِيَةٌ فَهِيَ كَحُكْمِ الدِّيَةِ، وَقَدْ صَحَّ أَنَّ الدِّيَةَ مَوْرُوثَةٌ عَلَى فَرَائِضِ الْمَوَارِيثِ، فَالْغُرَّةُ كَذَلِكَ - فَإِنَّ هَذَا قِيَاسٌ، وَالْقِيَاسُ

remain invalid, for proponents of analogy hold that it applies only where textual evidence is absent, not where such evidence exists.

كُلُّهُ فَاسِدٌ، ثُمَّ لَوْ صَحَّ الْقِيَاسُ يَوْمًا مَا لَكَانَ هَذَا مِنْهُ بَاطِلًا؛ لِأَنَّ حُكْمَ الْقِيَاسِ عِنْدَ الْقَائِلِينَ بِهِ إنَّمَا يَرَوْنَهُ فِيمَا عُدِمَ فِيهِ النَّصُّ، لَا فِيمَا فِيهِ النَّصُّ.

L39052 As for the textual ruling—it pertains solely to inherited blood money prescribed for cases where one killed intentionally or accidentally, not to someone who has not killed anyone. The fetus in which ensoulment has not occurred has never been killed at all. Therefore, the analogy between blood money for someone not killed and someone killed is invalid (even if analogy were valid, because it constitutes an analogy of something to its opposite). Thus, this analogy is invalid. And success comes only from Allah, the Exalted.

وَأَمَّا النَّصُّ - فَإِنَّمَا جَاءَ فِي الدِّيَةِ الْمَوْرُوثَةِ فِيمَنْ قَتَلَ عَمْدًا أَوْ خَطَأً، لَا فِيمَنْ لَمْ يَقْتُلْ أَحَدًا، وَالْجَنِينُ الَّذِي لَمْ يُنْفَخْ فِيهِ الرُّوحُ لَمْ يُقْتَلْ قَطُّ، فَقِيَاسُ دِيَةِ مَنْ لَمْ يُقْتَلْ، عَلَى دِيَةِ مَنْ قُتِلَ: بَاطِلٌ - لَوْ كَانَ الْقِيَاسُ حَقًّا؛ لِأَنَّهُ قِيَاسُ الشَّيْءِ عَلَى ضِدِّهِ - فَبَطَلَ هَذَا الْقِيَاسُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39053 Abū Muḥammad said: As for us, our position—and we seek support from Allah the Exalted—is that if we are certain the fetus has surpassed a gestation period of one hundred and twenty nights, the *ghurrah* is inherited by his heirs who would have inherited from him had he been born alive and died, in accordance with the rules of inheritance. But if it is not ascertained that the gestation period has surpassed one hundred and twenty nights, the *ghurrah* belongs solely to his mother.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا نَحْنُ فَإِنَّ الْقَوْلَ عِنْدَنَا - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ - هُوَ أَنَّ الْجَنِينَ إنْ تَيَقَّنَّا أَنَّهُ قَدْ تَجَاوَزَ الْحَمْلَ بِهِ مِائَةً وَعِشْرِينَ لَيْلَةً، فَإِنَّ الْغُرَّةَ مَوْرُوثَةٌ لِوَرَثَتِهِ الَّذِينَ كَانُوا يَرِثُونَهُ لَوْ خَرَجَ حَيًّا فَمَاتَ، عَلَى حُكْمِ الْمَوَارِيثِ، وَإِنْ لَمْ يُوقِنْ أَنَّهُ تَجَاوَزَ الْحَمْلُ بِهِ مِائَةَ لَيْلَةٍ وَعِشْرِينَ لَيْلَةً فَالْغُرَّةُ لِأُمِّهِ فَقَطْ.

L39054 Our proof for that is that Allah, the Exalted, said: {Whoever kills a believer by mistake, then he must free a believing female slave and deliver diyah to his family} [An-Nisa: 92].[5]

بُرْهَانُنَا عَلَى ذَلِكَ: أَنَّ اللَّهَ تَعَالَى قَالَ {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ} [النساء: ٩٢] .

L39055 The Messenger of Allah—peace and blessings be upon him—said, "Whoever has a slain person after this statement of mine, their family may choose between two good alternatives." He—peace and blessings be upon him—mentioned retaliation, blood money, or ransom—as we have mentioned before. Thus, it is established by the Quran and Sunnah that the blood money for a slain person—whether in cases of accidental or intentional killing—is rightfully granted to the slain person's family. A slain person must necessarily have been a living being: the killing transfers them from life to death, without any disagreement among the scholars of the language in which the Quran

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ لَهُ بَعْدَ مَقَالَتِي هَذِهِ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيرَتَيْنِ» فَذَكَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْقَوَدَ، أَوْ الدِّيَةَ، أَوْ الْمُفَادَاةَ - عَلَى مَا ذَكَرْنَا قَبْلُ - فَصَحَّ بِالْقُرْآنِ، وَالسُّنَّةِ: أَنَّ دِيَةَ الْقَتِيلِ فِي الْخَطَأِ وَالْعَمْدِ مُسَلَّمَةٌ لِأَهْلِ الْقَتِيلِ، وَالْقَتِيلُ لَا يَكُونُ إلَّا فِي حَيٍّ: نَقَلَهُ الْقَتْلُ عَنْ الْحَيَاةِ إلَى الْمَوْتِ، بِلَا خِلَافٍ مِنْ أَهْلِ اللُّغَةِ الَّتِي بِهَا نَزَلَ الْقُرْآنُ، وَبِهَا خَاطَبَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[5] **Qur'an references (L39054):** Qur'an 4:92 (An-Nisa).

was revealed and with which the Messenger of Allah—peace and blessings be upon him—addressed us.

L39056 The fetus after one hundred and twenty nights is alive by the explicit text of the narration of the truthful and trustworthy Messenger—peace and blessings be upon him. Since it is alive, it is a killed being that has been killed without doubt. Since it is undeniably a killed being, the *ghurrah*, which is its blood money, must be handed over to its family by the explicit text of the Quran. The Ummah has unanimously agreed that the heirs to whom the blood money is delivered must divide it according to the established norms of inheritance without any disagreement.

L39057–39058 If it is not certain that the fetus has exceeded one hundred and twenty nights, we are certain that it had never lived. If it had never lived, possessed no soul yet, and was not killed—being merely water, a blood clot, a morsel of flesh, or bones and meat—then in all these states, it is a part of the mother. Since it is undoubtedly not alive, it was not killed, for the lifeless or dead cannot be killed. Since it was not killed, it is not a killed being, and thus its diyah does not follow the ruling of a killed person's diyah. This is analogy, and all analogy is invalid. Even if analogy were valid, this would be the very essence of invalidity. The people of analogy compare a thing to its equivalent, not its opposite. What is not killed bears no resemblance to a killed person, so analogy here is impermissible according to the principles of the proponents of analogy. Since it is not a killed being, it is a part of her parts, blood of her blood, flesh of her flesh, and undoubtedly a portion of her entrails. Thus, the injury is against her, and the ghurrah is undoubtedly owed to her. If she dies and then the fetus is expelled without certainty that it completed one hundred and twenty nights, the fetus belongs to the mother's heirs, for it was owed to her by virtue of the injury itself, and her heirs inherit from her.

L39059 Abū Muḥammad said: The astonishment indeed grows great regarding those who consider the newborn's first cry as a criterion. If it does not cry, they neither offer a sacrifice for it nor does it inherit from anyone, yet they assign

وَالْجَنِينُ بَعْدَ مِائَةِ لَيْلَةٍ وَعِشْرِينَ لَيْلَةً: حَيٌّ بِنَصِّ خَبَرِ الرَّسُولِ الصَّادِقِ الْمَصْدُوقِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِذْ هُوَ حَيٌّ، فَهُوَ قَتِيلٌ قَدْ قُتِلَ بِلَا شَكٍّ، وَإِذْ هُوَ قَتِيلٌ بِلَا شَكٍّ، فَالْغُرَّةُ الَّتِي هِيَ دِيَتُهُ وَاجِبَةٌ أَنْ تُسَلَّمَ إلَى أَهْلِهِ بِنَصِّ الْقُرْآنِ، وَقَدْ اتَّفَقَتْ الْأُمَّةُ عَلَى أَنَّ الْوَرَثَةَ الَّذِينَ يُسَلَّمُ لَهُمْ الدِّيَةَ أَنَّهُمْ يَقْتَسِمُونَهَا عَلَى سُنَّةِ الْمَوَارِيثِ بِلَا خِلَافٍ.

وَأَمَّا إذَا لَمْ يُوقِنْ أَنَّهُ تَجَاوَزَ مِائَةَ لَيْلَةٍ وَعِشْرِينَ لَيْلَةً، فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهُ لَمْ يَحْيَا قَطُّ، فَإِذَا لَمْ يَحْيَا قَطُّ، وَلَا كَانَ لَهُ رُوحٌ بَعْدُ، وَلَا قُتِلَ، وَإِنَّمَا هُوَ مَاءٌ، أَوْ عَلَقَةٌ مِنْ دَمٍ، أَوْ مُضْغَةٌ مِنْ عَضَلٍ، أَوْ عِظَامٌ، وَلَحْمٌ: فَهُوَ فِي كُلِّ ذَلِكَ بَعْضُ أُمِّهِ، فَإِذْ لَيْسَ حَيًّا بِلَا شَكٍّ، فَلَمْ يُقْتَلْ، لِأَنَّهُ لَا يُقْتَلُ مَوَاتٌ، وَلَا مَيِّتٌ، وَإِذْ لَمْ يُقْتَلْ، فَلَيْسَ قَتِيلًا، فَلَيْسَ لِدِيَتِهِ حُكْمُ دِيَةِ الْقَتِيلِ؛ لِأَنَّ هَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، وَلَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، وَإِنَّمَا يُقَاسُ عِنْدَ أَهْلِ الْقِيَاسِ الشَّيْءُ عَلَى نَظِيرِهِ، لَا عَلَى ضِدِّهِ - وَمَنْ لَيْسَ قَتِيلًا فَهُوَ غَيْرُ مُشْبِهٍ لِلْقَتِيلِ، فَلَا يَجُوزُ الْقِيَاسُ هَاهُنَا عَلَى أُصُولِ أَصْحَابِ الْقِيَاسِ، وَإِذْ لَيْسَ قَتِيلًا، فَهُوَ بَعْضٌ مِنْ أَبْعَاضِهَا، وَدَمٌ مِنْ دَمِهَا، وَلَحْمٌ مِنْ لَحْمِهَا، وَبَعْضُ حَشْوَتِهَا بِلَا شَكٍّ، فَهِيَ الْمَجْنِيُّ عَلَيْهَا، فَالْغُرَّةُ لَهَا بِلَا شَكٍّ، فَإِنْ مَاتَتْ ثُمَّ طَرَحَتْ الْجَنِينَ - وَلَمْ يُوقِنْ أَنَّهُ أَتَمَّ عِشْرِينَ وَمِائَةَ لَيْلَةٍ - فَالْجَنِينُ لِوَرَثَةِ الْأُمِّ؛ لِأَنَّهُ بِنَفْسِ الْجِنَايَةِ وَجَبَ لَهَا، فَهِيَ مَوْرُوثَةٌ عَنْهَا.

the ghurrah for it - though it never lived at all. How then could it have cried? We ask them about a child born who suckles and moves without crying, then is killed intentionally or unintentionally: What is your opinion regarding this? Is it ghurrah or diyah? If they say "ghurrah," they have introduced a method unsupported by any prior authority. If they say "the diyah of its mother," they nullify their own principles by deeming full diyah or qisas applicable for killing one already dead.

L39060 If they say, "He is not dead?" We respond to them, "How astonishing it is that you do not grant inheritance to a living person!" All these assertions contradict one another. And success is by Allah, the Exalted.

L39061 We have been narrated via the compilation of Muslim: Abū Bakr ibn Abī Shaybah and Muḥammad ibn ʿAbdillāh ibn Numayr narrated to us—each of them said: Wakīʿ and Abū Muʿāwiyah narrated to us—both said: Al-Aʿmash narrated to us from Zayd ibn Wahb from ʿAbdullāh ibn Masʿūd, who said: "Allah's Messenger—peace and blessings be upon him, who is the Truthful, the Confirmed in Truth—narrated to us, saying: 'The creation of each of you is gathered in his mother's womb for forty days, then becomes a clot for a similar period, then becomes a chewed lump for a similar period. Then an angel is sent to him to breathe the soul into him, and he is commanded with four matters: his provision, his lifespan, his deeds, and whether he will be doomed or blessed.'" He then mentioned the remainder of the ḥadīth.

L39062–39063 Ali said: "What has not been ascertained to complete the 120 nights including all their days remains according to what we have ascertained about its death. It is not permissible to affirm definitively that it has transitioned to life from the ascertained death except with certainty. As for conjectures, it is not permissible." And success is from Allah, the Exalted.

L39064 **A legal question regarding the fetus of a female slave from her free master.**

L39065 2132: Issue: The fetus of a female slave by her master? Ali said: There is

قَالَ أَبُو مُحَمَّد: وَإِنَّ الْعَجَبَ لَيَكْثُرُ مِمَّنْ يُرَاعِي فِي الْمَوْلُودِ الِاسْتِهْلَالَ، فَإِنْ لَمْ يَسْتَهِلَّ لَمْ يُقَدْ بِهِ، وَلَا وَرِثَ مِنْهُ، ثُمَّ يُورِّثُ مِنْهُ الْغُرَّةَ - وَهُوَ لَمْ يَحْيَا قَطُّ، فَكَيْفَ أَنْ يَسْتَهِلَّ؟ وَنَسْأَلُهُمْ - عَنْ مَوْلُودٍ وُلِدَ فَرَضَعَ وَتَحَرَّكَ وَلَمْ يَسْتَهِلَّ، ثُمَّ قُتِلَ عَمْدًا أَوْ خَطَأً مَاذَا تَرَوْنَ فِيهِ؟ أَغُرَّةٌ أَمْ دِيَةٌ؟ فَإِنْ قَالُوا: غُرَّةٌ، أَتَوْا بِطَرِيقَةٍ لَهُ لَمْ يَقُلْهَا أَحَدٌ قَبْلَهُمْ - وَإِنْ قَالُوا: بَلْ دِيَةُ أُمِّهِ، نَقَضُوا أُصُولَهُمْ، إِذْ جَعَلُوا فِي قَتْلِ مَيِّتٍ دِيَةً كَامِلَةً أَوْ قَوَدًا.

فَإِنْ قَالُوا: لَيْسَ مَيِّتًا؟ قُلْنَا لَهُمْ: قَوِيَ الْعَجَبُ أَنْ لَا تُوَرِّثُوا حَيًّا وَكُلُّ هَذِهِ أَقْوَالٌ يَنْقُضُ بَعْضُهَا بَعْضًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ قَالَ كُلُّ وَاحِدٍ مِنْهُمَا: نا وَكِيعٌ، وَأَبُو مُعَاوِيَةَ، قَالَا جَمِيعًا: نا الْأَعْمَشُ عَنْ زَيْدِ بْنِ وَهْبٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: «حَدَّثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ الصَّادِقُ الْمَصْدُوقُ، قَالَ يُجْمَعُ أَحَدُكُمْ خَلْقُهُ فِي بَطْنِ أُمِّهِ أَرْبَعِينَ يَوْمًا، ثُمَّ يَكُونُ عَلَقَةً مِثْلَ ذَلِكَ، ثُمَّ يَكُونُ فِي ذَلِكَ مُضْغَةً مِثْلَ ذَلِكَ، ثُمَّ يُرْسَلُ إِلَيْهِ الْمَلَكُ فَيَنْفُخُ فِيهِ الرُّوحَ وَيُؤْمَرُ بِأَرْبَعِ كَلِمَاتٍ: رِزْقُهُ وَأَجَلُهُ وَعَمَلُهُ وَشَقِيٌّ أَوْ سَعِيدٌ» وَذَكَرَ بَاقِيَ الْحَدِيثِ.

قَالَ عَلِيٌّ: وَمَا لَمْ يُوقَنْ تَمَامَ الْمِائَةِ وَالْعِشْرِينَ لَيْلَةً بِجَمِيعِ أَيَّامِهَا فَهُوَ عَلَى مَا تَيَقَّنَّاهُ مِنْ مُوَاتَيَتِهِ، وَلَا يَجُوزُ أَنْ نَقْطَعَ لَهُ بِانْتِقَالِهِ إِلَى الْحَيَاةِ عَنْ الْمُوَاتِيَةِ الْمُتَيَقَّنَةِ إِلَّا بِيَقِينٍ، وَأَمَّا بِالظُّنُونِ فَلَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ جَنِينِ الْأَمَةِ مِنْ سَيِّدِهَا الْحُرِّ]

no difference of opinion that the fetus of a female slave by her free master is like the fetus of a free woman, and there is no distinction.

٢١٣٢ - مَسْأَلَةٌ: جَنِينُ الْأَمَةِ مِنْ سَيِّدِهَا؟ قَالَ عَلِيٌّ: لَا خِلَافَ فِي أَنَّ جَنِينَ الْأَمَةِ مِنْ سَيِّدِهَا الْحُرِّ مِثْلُ جَنِينِ الْحُرَّةِ، وَلَا فَرْقَ.

L39066 Then they differed regarding the fetus of a slave woman conceived by someone other than her free master. A group ruled that it requires payment of one-tenth of its mother's market value - as transmitted by Muḥammad ibn Saʿīd ibn Nabāt from Aḥmad ibn ʿAbd al-Baṣīr from Qāsim ibn Aṣbagh from Muḥammad ibn ʿAbd al-Salām al-Khushanī from Muḥammad ibn al-Muthannā from ʿAbd al-Raḥmān ibn Mahdī from Muḥammad ibn Salamah from Yūnus ibn ʿUbayd from al-Ḥasan al-Baṣrī, who stated regarding the slave woman's fetus: "One-tenth of its mother's price." This ruling is upheld by Mālik, al-Shāfiʿī, Abū Thawr, the companions of these scholars, Aḥmad, his companions, and Isḥāq ibn Rāhwayh.

ثُمَّ اخْتَلَفُوا فِي جَنِينِ الْأَمَةِ مِنْ غَيْرِ سَيِّدِهَا الْحُرِّ: فَقَالَتْ طَائِفَةٌ: فِيهِ عُشْرُ قِيمَةِ أُمِّهِ - كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ أَنَا مُحَمَّدُ بْنُ سَلَمَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ، قَالَ فِي جَنِينِ الْأَمَةِ عُشْرُ ثَمَنِ أُمِّهِ - وَبِهِ يَقُولُ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَصْحَابُهُمْ، وَأَحْمَدُ، وَأَصْحَابُهُ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ.

L39067 A group said: The compensation for it is from the market price of its mother, equivalent to the portion allocated in the *diyah* of the free woman's mother's fetus - as narrated by Hammam from Ibn Mufarrij from Ibn Al-Aʿrabi from Ad-Dabari from ʿAbdur-Razzāq from Maʿmar from Az-Zuhrī, who said: "The fetus of a slave woman is assessed according to her market price, just as the fetus of a free woman is assessed according to the *diyah* of its mother." He was asked: "If a man emancipates the fetus of his slave woman, then the slave woman is killed?" He replied: "He must pay blood money for the slave woman and pay blood money for her fetus as a slave, whichever the case may be. The emancipation is only valid if it is born and cries out."

وَقَالَتْ طَائِفَةٌ: فِيهِ مِنْ ثَمَنِ أُمِّهِ كَقَدْرِ مَا فِي جَنِينِ الْحُرَّةِ مِنْ دِيَةِ أُمِّهِ - كَمَا حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ، قَالَ: جَنِينُ الْأَمَةِ فِي ثَمَنِ أُمِّهِ بِقَدْرِ جَنِينِ الْحُرَّةِ فِي دِيَةِ أُمِّهِ، قَالَ: فَلَوْ أَعْتَقَ رَجُلٌ جَنِينَ وَلِيدَتِهِ ثُمَّ قُتِلَتْ الْوَلِيدَةُ؟ قَالَ: يَعْقِلُ الْوَلِيدَةَ وَيَعْقِلُ جَنِينَهَا عَبْدًا، أَيَّمَا كَانَ تَمَامُ عِتْقِهِ أَنْ يُولَدَ وَيَسْتَهِلَّ صَارِخًا.

L39068 A group said: In it is half of one-tenth of the value of its mother, as narrated by Muḥammad ibn Saʿīd ibn Nubāt from Aḥmad ibn ʿAbd al-Baṣīr from Qāsim Aṣbagh from Muḥammad ibn al-Muthannā from ʿAbd al-Raḥmān ibn Mahdī and Yaḥyā ibn Saʿīd al-Qaṭṭān—both of them from Sufyān al-Thawrī from al-Mughīra ibn Miqsam from Ibrāhīm al-Nakhaʿī, who said regarding the fetus of a female slave: "Half of one-tenth of the value of its mother"—this being the view of Ibn Abī Laylā and al-Ḥajjāj ibn Arṭāʾa. This is also the view of Qatāda.

وَقَالَتْ طَائِفَةٌ: فِيهِ نِصْفُ عُشْرِ ثَمَنِ أُمِّهِ، كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ، نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ، نا قَاسِمُ أَصْبَغَ، نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، وَيَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ، كِلَاهُمَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ فِي جَنِينِ الْأَمَةِ: نِصْفُ عُشْرِ ثَمَنِ أُمِّهِ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَالْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ أَيْضًا قَوْلُ قَتَادَةَ.

وَقَالَتْ طَائِفَةٌ: فِيهِ نِصْفُ عُشْرِ قِيمَتِهِ إِنْ خَرَجَ مَيِّتًا، فَإِنْ خَرَجَ حَيًّا فَثَمَنُهُ كُلُّهُ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ - وَهُوَ قَوْلُ الْحَسَنِ بْنِ حَيٍّ.

L39069–39071 A group said: If extracted dead, it incurs one-twentieth of its value; but if extracted alive, its full value is due. All of it — and this is the opinion of Sufyan al-Thawri, we have narrated it via the transmission of Abd al-Razzaq — and this is the opinion of al-Ḥasan ibn Ḥayy.

وَقَالَ أَبُو حَنِيفَةَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَزُفَرُ بْنُ الْهُذَيْلِ: إِنْ كَانَ جَنِينُ الْأَمَةِ ذَكَرًا فَفِيهِ نِصْفُ عُشْرِ قِيمَتِهِ لَوْ كَانَ حَيًّا - وَإِنْ كَانَ أُنْثَى فَفِيهَا عُشْرُ قِيمَتِهَا لَوْ كَانَتْ حَيَّةً - قَالَ زُفَرُ: وَعَلَيْهِ مَعَ ذَلِكَ مَا نَقَصَ أُمَّهُ - وَقَالَ أَبُو يُوسُفَ: لَا شَيْءَ فِي جَنِينِ الْأَمَةِ إِلَّا أَنْ يَكُونَ نَقَصَ أُمَّهُ، فَفِيهِ مَا نَقَصَهَا.

L39072 Abu Hanifa, Muhammad ibn al-Hasan, and Zufar ibn al-Hudhayl said: If the fetus of a slave woman is male, the liability is half of one-tenth of his value had he been alive; if female, the liability is one-tenth of her value had she been alive. Zufar added: The responsible party is also liable for the reduction in her mother's value. Abu Yusuf said: There is no liability for the fetus of a slave woman unless it caused a reduction in her mother's value, in which case the liability equals the reduction incurred.

وَقَالَتْ طَائِفَةٌ: فِيهِ عَشَرَةُ دَنَانِيرَ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَابْنِ جُرَيْجٍ، قَالَ مَعْمَرٌ عَنِ الزُّهْرِيِّ، وَقَالَ ابْنُ جُرَيْجٍ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ - ثُمَّ اتَّفَقَ الزُّهْرِيُّ، وَإِسْمَاعِيلُ، كِلَاهُمَا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، قَالَ: فِي جَنِينِ الْأَمَةِ عَشَرَةُ دَنَانِيرَ.

L39073 A group said: In it are ten dinars: as informed by Ḥammām, informed by Ibn Mufarrij, informed by Ibn al-Aʿrābī, informed by al-Dabarī, informed by ʿAbd al-Razzāq from Maʿmar and Ibn Jurayj. Maʿmar reported from al-Zuhrī, while Ibn Jurayj reported from Ismāʿīl ibn Umayyah. Then the chains converge—both al-Zuhrī and Ismāʿīl ultimately narrating from Saʿīd ibn al-Musayyib, who said: Regarding the fetus of a female slave, the compensation is ten dinars.

وَقَالَتْ طَائِفَةٌ: فِيهِ حُكُومَةٌ - كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ قَالَ: يَنْظُرُ مَا بَلَغَ ثَمَنُ جَنِينِ الْحُرَّةِ مِنْ جَمِيعِ ثَمَنِهَا، فَإِنْ كَانَتْ عُشْرًا أُعْطِيَتِ الْأَمَةُ عَشَرَةً، وَإِنْ كَانَتْ خُمْسًا، وَإِنْ كَانَتْ سُبْعًا، وَإِنْ كَانَتْ ثُمُنًا - يَعْنِي: فَكَذَلِكَ.

L39074 A group said: There is an assessment in it—as narrated to us by ʿAbdullāh ibn Rabīʿ, from ʿAbdullāh ibn Muḥammad ibn ʿUthmān, from Aḥmad ibn Khālid, from ʿAlī ibn ʿAbd al-ʿAzīz, from al-Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salamah, from Ḥammād ibn Abī Sulaymān, who said: "One should assess the value of the free woman's fetus relative to her full value. If it constitutes a tenth of her value, the enslaved woman is given ten; if a fifth, five; if a seventh, seven; if an eighth, eight—meaning the same principle applies."

وَقَالَتْ طَائِفَةٌ: فِي جَنِينِ الْأَمَةِ غُرَّةُ عَبْدٍ أَوْ أَمَةٍ، كَمَا فِي جَنِينِ الْحُرَّةِ وَلَا فَرْقَ -: كَمَا رُوِّينَا قَبْلُ عَنِ ابْنِ سِيرِينَ، وَعُرْوَةَ، وَمُجَاهِدٍ، وَطَاوُسٍ، وَشُرَيْحٍ، وَالشَّعْبِيِّ، فَإِنَّهُمْ ذَكَرُوا الْجَنِينَ وَمَا فِيهِ، وَلَمْ يَخُصُّوا جَنِينَ حُرَّةٍ مِنْ أَمَةٍ، وَلَوْ كَانَ عِنْدَهُمْ فِي ذَلِكَ فَرْقٌ لَبَيَّنُوهُ؟

L39075 A group of scholars stated: Regarding the fetus of a slave woman, the compensation is the ghurrah [compensation in the form] of a male or female slave—just as in the case of a free woman's fetus, with no distinction. This is as we previously transmitted from Ibn Sīrīn, ʿUrwah, Mujāhid, Ṭāwūs, Shurayḥ, and al-Shaʿbī. They mentioned the fetus and its ruling without

specifying whether it belonged to a free woman or a slave. Had they recognized a distinction in this matter, would they not have clarified it? Whoever claims they intended only the free woman has falsely attributed to them what they did not say, reporting about them what they never stated about themselves. Whoever interprets their statement according to their actual words does so rightly and obligatorily, thereby including the fetus of a slave woman and others under the same ruling without distinction, since their statement necessitates: "There is nothing except what diminishes her value only."

وَمَنْ ادَّعَى أَنَّهُمْ أَرَادُوا الْحُرَّةَ خَاصَّةً فَقَدْ كَذَبَ عَلَيْهِمْ، وَحَكَى عَنْهُمْ مَا لَمْ يَقُولُوا، وَلَا أَخْبَرُوا بِهِ عَنْ أَنْفُسِهِمْ، وَمَنْ حَمَلَ قَوْلَهُمْ عَلَى مَا قَالُوهُ فَبِحَقٍّ وَاجِبٍ يَدْخُلُ فِيهِ جَنِينُ الْأَمَةِ، وَغَيْرُهُ، وَلَا فَرْقَ، إذْ هُوَ مُقْتَضَى قَوْلِهِمْ: لَيْسَ فِيهِ إلَّا مَا يَنْقُصُهَا فَقَطْ.

L39076–39077 Abu Muhammad said: When they disagreed as we have mentioned, it became necessary for us to examine this matter so we may discern the truth and follow it, by the aid of Allah the Most High and His grace.

قَالَ أَبُو مُحَمَّد: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ مِنْ ذَلِكَ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى وَمَنِّهِ.

L39078 We examined the opinion of those who held that a tenth of the mother's value is due in this case, but found no valid argument for their position except their claim: "We found the ghurrah (compensation for a fetus) decreed for the fetus of the Hudhaliyyah woman was valued at fifty dinars - being a tenth of the value of her mother's diyah." It therefore became necessary to apply a tenth of the value of her mother's diyah to the fetus of a slave woman, since the diyah of a slave woman equals her value. This analogy led Mālik to rule that a tenth of an animal's value applies to its fetus, and for an ostrich egg by a muhrim (one in ritual consecration), a tenth of the value of a sacrificial camel.

فَنَظَرْنَا فِي قَوْلِ مَنْ رَأَى فِيهِ عُشْرَ قِيمَةِ أُمِّهِ - فَلَمْ نَجِدْ لَهُمْ حُجَّةً إلَّا أَنَّهُمْ قَالُوا: وَجَدْنَا الْغُرَّةَ الْمَحْكُومَ بِهَا فِي جَنِينِ الْهُذَلِيَّةِ وَقُوِّمَ بِخَمْسِينَ دِينَارًا - وَهُوَ عُشْرُ دِيَةِ أُمِّهِ فَوَجَبَ أَنْ يَكُونَ فِي جَنِينِ الْأَمَةِ عُشْرُ قِيمَةِ دِيَةِ أُمِّهِ أَيْضًا لِأَنَّ دِيَةَ الْأَمَةِ قِيمَتُهَا، حَتَّى أَنَّ مَالِكًا حَمَلَهُ هَذَا الْقِيَاسُ عَلَى أَنْ جَعَلَ فِي جَنِينِ الدَّابَّةِ عُشْرَ قِيمَتِهَا - وَفِي بَيْضَةِ النَّعَامَةِ عَلَى الْمُحْرِمِ عُشْرَ الْبَدَنَةِ.

L39079 Ali said: This argument is invalid, for valuing the *ghurrah* at fifty dinars or in dirhams is a mistaken and impermissible act, as it has not been made obligatory by the Quran, the Sunnah, consensus, nor authentically reported from a Companion.

قَالَ عَلِيٌّ: فَكَانَ هَذَا الِاحْتِجَاجُ سَاقِطًا، لِأَنَّ تَقْوِيمَ الْغُرَّةِ بِخَمْسِينَ دِينَارًا أَوْ بِالدَّرَاهِمِ خَطَأٌ لَا يَجُوزُ، لِأَنَّهُ لَمْ يُوجِبْهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ - وَلَا صَحَّ عَنْ صَاحِبٍ.

L39080 Then we considered the position of Ibrāhīm al-Nakhaʿī and Qatādah that concerning the fetus of a female slave, there is half of one-tenth of her mother's value, but we found no substantiating basis for their view. Therefore, this opinion becomes invalid due to its complete absence of evidentiary supports.

ثُمَّ نَظَرْنَا فِي قَوْلِ إبْرَاهِيمَ النَّخَعِيِّ، وَقَتَادَةَ: أَنَّ فِي جَنِينِ الْأَمَةِ نِصْفَ عُشْرِ ثَمَنِ أُمِّهِ، لَمْ نَجِدْ لَهُمْ مُتَعَلَّقًا - فَسَقَطَ هَذَا الْقَوْلُ لِتَعَرِّيهِ عَنْ الْأَدِلَّةِ.

L39081 Then we examined the statements of Sufyān and al-Ḥasan ibn Ḥayy and

found they also had no proof whatsoever - therefore, their argument too is invalidated.

ثُمَّ نَظَرْنَا فِي قَوْلِ سُفْيَانَ وَالْحَسَنِ بْنِ حَيٍّ فَوَجَدْنَاهُ أَيْضًا لَا حُجَّةَ لَهُمْ أَصْلًا - فَسَقَطَ أَيْضًا.

L39082 Then we examined the statements of Abū Ḥanīfa, Zufar, and Muḥammad ibn al-Ḥasan. We found them stating: Since the ghurra (monetary compensation) for the fetus of a free woman is fixed at fifty dinars, this constitutes one-twentieth of his diyah had he been born alive as a male, or a tenth of her diyah had she been born alive as a female. Thus, the same ruling applies to the fetus of the female slave, for if it were alive and then killed, its market value would have been owed.

ثُمَّ نَظَرْنَا فِي قَوْلِ أَبِي حَنِيفَةَ، وَزُفَرَ، وَمُحَمَّدِ بْنِ الْحَسَنِ؟ فَوَجَدْنَاهُمْ يَقُولُونَ: لَمَّا كَانَتْ الْغُرَّةُ فِي جَنِينِ الْحُرَّةِ مُقَدَّرَةً بِخَمْسِينَ دِينَارًا كَانَ ذَلِكَ نِصْفَ عُشْرِ دِيَتِهِ لَوْ خَرَجَ حَيًّا - وَكَانَ ذَكَرًا - أَوْ عُشْرَ دِيَتِهَا - لَوْ كَانَتْ أُنْثَى - وَخَرَجَتْ حَيَّةً، فَوَجَبَ فِي جَنِينِ الْأَمَةِ مِثْلُ ذَلِكَ أَيْضًا؛ لِأَنَّهُ لَوْ حَيًّا فَقُتِلَ لَكَانَتْ فِيهِ الْقِيمَةُ؟ .

L39083 Abu Muhammad said: This is all they have embellished, and all of this is invalid according to what we will explain—if Allah, the Exalted, wills.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا مَوَّهُوا بِهِ، وَهَذَا كُلُّهُ بَاطِلٌ عَلَى مَا نَذْكُرُ - إنْ شَاءَ اللَّهُ تَعَالَى.

L39084–39086 We say—and with Allah, the Exalted, lies all success—their claim that "since the price of the ghurrah for the fetus of a free woman was fifty dinars, being half of one-tenth of his blood money if he had been born alive as a male, and one-tenth of her blood money if she had been born alive as a female, the same must necessarily apply to the fetus of an enslaved woman" is invalid for several reasons: The first of them is that it is qiyas, and all qiyas is invalid.

فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّ قَوْلَهُمْ: لَمَّا كَانَ ثَمَنُ الْغُرَّةِ فِي جَنِينِ الْحُرَّةِ خَمْسِينَ دِينَارًا وَهُوَ نِصْفُ عُشْرِ دِيَتِهِ، لَوْ خَرَجَ حَيًّا - وَكَانَ ذَكَرًا - وَعُشْرُ دِيَتِهَا، لَوْ خَرَجَتْ حَيَّةً - وَكَانَتْ أُنْثَى - فَوَجَبَ أَنْ يَكُونَ مَا فِي جَنِينِ الْأَمَةِ كَذَلِكَ، فَبَاطِلٌ مِنْ وُجُوهٍ: أَوَّلُهَا - أَنَّهُ قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

L39087 The second [point] is that if analogy were valid, this would epitomize falsehood, because valuing the *ghurrah* (compensation for involuntary manslaughter) at fifty dinars is baseless. It has never been established at all in the Qur'an, the Sunnah, or by any of the Companions—may Allah be pleased with them. Thus, their analogy here becomes an analogy of error upon error.

الثَّانِي - أَنَّهُ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّ تَقْوِيمَ الْغُرَّةِ بِخَمْسِينَ دِينَارًا بَاطِلٌ، لَمْ يَصِحَّ قَطُّ فِي قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَصَارَ قِيَاسُهُمْ هَذَا قِيَاسًا لِلْخَطَأِ عَلَى الْخَطَأِ.

L39088 The third point is that even if their valuation of the *ghurrah* as fifty dinars were valid, how do they determine that the intended relation in this matter derives specifically from his *diyah* or his mother's *diyah*? It is asked of them: What is your basis for this? Why do you not say it is a temporary enforceable valuation—like the *ghurrah*—with no difference? Yet they persist in reiterating invalid claims without evidence.

وَالثَّالِثُ - أَنَّهُ لَوْ صَحَّ لَهُمْ تَقْوِيمُ الْغُرَّةِ بِخَمْسِينَ دِينَارًا فَمِنْ أَيْنَ لَهُمْ أَنَّ الْمَقْصُودَ فِي ذَلِكَ هُوَ أَنْ يَكُونَ نِسْبَتُهُ مِنْ دِيَتِهِ، أَوْ مِنْ دِيَةِ أُمِّهِ؟ وَيُقَالُ لَهُمْ: مِنْ أَيْنَ لَكُمْ هَذَا؟ وَهَلَّا قُلْتُمْ: إنَّهَا قِيمَةٌ نَافِذَةٌ مُؤَقَّتَةٌ: كَالْغُرَّةِ وَلَا فَرْقَ؟ وَلَكِنْ أَبَوْا إلَّا التَّرْدِيدَ مِنْ الدَّعَاوَى الْفَاسِدَةِ بِلَا بُرْهَانٍ.

وَالرَّابِعُ - أَنْ يُعَارَضَ قِيَاسُهُمْ بِمِثْلِهِ، فَيُقَالُ لَهُمْ: مَا الْفَرْقُ بَيْنَكُمْ وَبَيْنَ مَا رُوِيَ عَنْ مَالِكٍ، وَالْحَسَنِ: مِنْ أَنَّ الْخَمْسِينَ دِينَارًا الَّتِي قُوِّمَتْ بِهَا الْغُرَّةُ فِي جَنِينِ الْحُرَّةِ إِنَّمَا اُعْتُبِرَ بِهَا مِنْ دِيَةِ أُمِّهِ، لَا مِنْ دِيَةِ نَفْسِهِ؟ فَقَالُوا: إِنْ كَانَ جَنِينُ الْأَمَةِ - ذَكَرًا أَوْ أُنْثَى - فَفِيهِ عُشْرُ قِيمَةِ أُمِّهِ، كَمَا فِي جَنِينِ الْحُرَّةِ - ذَكَرًا كَانَ أَوْ أُنْثَى - عُشْرُ دِيَةِ أُمِّهِ، فَهَلْ هَاهُنَا إِلَّا دَعْوَى مُقَابَلَةً بِمِثْلِهَا؟ وَتَحَكُّمٌ بِلَا دَلِيلٍ؟ ثُمَّ نَظَرْنَا فِي قَوْلِ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ أَنَّ فِيهِ حُكْمًا، فَوَجَدْنَاهُ أَيْضًا قَوْلًا عَارِيًا مِنْ الْأَدِلَّةِ، فَوَجَبَ تَرْكُهُ، إِذْ مَا لَا دَلِيلَ عَلَى صِحَّتِهِ، فَهِيَ دَعْوَى سَاقِطَةٌ.

L39089 The fourth is that their analogy be countered with its equivalent. Thus, they are asked: What distinguishes your position from what is reported from Mālik and al-Ḥasan concerning the fifty dinars set as the *ghurra* (compensation for a fetus) of a free woman's unborn child, which they deemed based on the blood money of the mother, not that of the fetus itself? They responded: If the fetus of an enslaved woman—male or female—entails a tenth of her mother's value, just as the fetus of a free woman—male or female—entails a tenth of her mother's blood money, is this anything but a claim countered by its equivalent? Or an arbitrary judgment without proof? We then examined the opinion of Ḥammād ibn Abī Sulaymān that it contains a legal ruling, but we found it to be a statement entirely devoid of evidence. Thus, it must be discarded, for any claim lacking proof to validate it is invalid.

ثُمَّ نَظَرْنَا فِي قَوْلِ سَعِيدِ بْنِ الْمُسَيِّبِ، فَوَجَدْنَاهُ أَيْضًا لَا دَلِيلَ عَلَى صِحَّتِهِ، فَلَمْ يَجُزْ الْقَوْلُ بِهِ؛ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] فَمَنْ لَا بُرْهَانَ لَهُ فَلَا يَجُوزُ الْأَخْذُ بِقَوْلِهِ.

L39090 Then we examined the statement of Sa'id ibn al-Musayyib and found no evidence to support its validity; thus, it is impermissible to adopt his statement, for Allah the Exalted says: *"Produce your proof, if you are truthful"* [Al-Baqarah: 111]. Therefore, it is impermissible to act upon the statement of anyone who lacks proof.[6]

ثُمَّ نَظَرْنَا فِي قَوْلِ أَبِي يُوسُفَ، وَبَعْضِ أَصْحَابِنَا: أَنَّهُ لَا شَيْءَ فِي جَنِينِ الْأَمَةِ إِلَّا مَا نَقَصَهَا، فَوَجَدْنَاهُ أَيْضًا قَوْلًا لَا دَلِيلَ عَلَى صِحَّتِهِ، وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْجَنِينِ مَا قَدْ ذَكَرْنَاهُ.

L39091 Then we examined the statement of Abū Yūsuf and some of our companions that there is nothing pertaining to the fetus of a bondwoman except what diminishes her value, and we found this too to be a statement lacking evidence to substantiate it, while it has been authentically narrated from the Prophet—peace and blessings of Allah be upon him—regarding the fetus what we have already cited.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا سَقَطَتْ هَذِهِ الْأَقْوَالُ [كُلُّهَا] وَجَبَ أَنْ نَنْظُرَ عِنْدَ اخْتِلَافِ الْقَائِلِينَ بِهَا مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا إِذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] فَفَعَلْنَا.

L39092–39094 Abū Muḥammad (may Allah have mercy on him) said: Once these statements [all of them] were dismissed, it became incumbent upon us to scrutinize... When those who assert it disagree about what Allah has obligated upon us—as He says, "If you dispute over anything, return it to Allah and the Messenger" [An-Nisa: 59]—we have done so.[7]

فَوَجَدْنَا - مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَأَبُو كُرَيْبٍ قَالَا: أَنَا وَكِيعٌ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ الْمِسْوَرِ بْنِ مَخْرَمَةَ قَالَ: اسْتَشَارَ عُمَرُ

L39095 We found—as transmitted through Muslim ibn al-Hajjaj's chain—that Abu Bakr ibn Abi Shaybah and Abu Kurayb narrated to us, both saying: "Waki'

[6] **Qur'an references (L39090):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).
[7] **Qur'an references (L39092):** Qur'an 4:59 (An-Nisa).

narrated to us from Hisham ibn Urwah, from his father, from al-Miswar ibn Makhramah," who said: "Umar ibn al-Khattab sought counsel regarding causing a woman's miscarriage." Al-Mughirah ibn Shu'bah said: "I witnessed the Messenger of Allah—peace and blessings be upon him—rule in such a case by requiring compensation equivalent to the value of a male or female slave." Umar said to him: "Bring me someone who can testify alongside you." So Muhammad ibn Maslamah testified for him.

بْنُ الْخَطَّابِ فِي إِمْلَاصِ الْمَرْأَةِ فَقَالَ الْمُغِيرَةُ بْنُ شُعْبَةَ: شَهِدْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِيهِ بِغُرَّةِ عَبْدٍ أَوْ أَمَةٍ، فَقَالَ لَهُ عُمَرُ: ائْتِنِي بِمَنْ يَشْهَدُ مَعَك؟ فَشَهِدَ لَهُ مُحَمَّدُ بْنُ مَسْلَمَةَ.

L39096 Ahmad ibn Muhammad ibn Abdullah al-Ṭalmanakī narrated to us, from Ibn Mufarrij, from Muhammad ibn Ayyub al-Ṣamūt al-Raqqī, from Ahmad ibn Amr ibn Abd al-Khāliq al-Bazzār, from Muhammad ibn Maʿmar al-Baḥrānī, from Uthman ibn Umar, from Yunus ibn Yazīd, from al-Zuhrī, from Saʿīd ibn al-Musayyib, from Abu Hurayrah, who said: "Two women from Hudhayl fought, and one of them threw a stone at the other, killing her and what was in her womb. They brought their dispute to the Messenger of Allah (peace be upon him). He (peace be upon him) ruled: 'The diyah for her fetus is a male slave or a female slave,' and he decreed that the diyah must be paid by her ʿāqilah, and her child inherits her."

وَمَا ناه أَحْمَدُ بْنُ مُحَمَّدِ عَبْدِ اللَّهِ الطَّلْمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ الرَّقِّيُّ نا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا مُحَمَّدُ بْنُ مَعْمَرٍ الْبَحْرَانِيُّ نا عُثْمَانَ بْنُ عُمَرَ نا يُونُسُ بْنُ يَزِيدَ نا الزُّهْرِيُّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ: «اقْتَتَلَتْ امْرَأَتَانِ مِنْ هُذَيْلٍ، فَرَمَتْ إحْدَاهُمَا الْأُخْرَى بِحَجَرٍ فَقَتَلَتْهَا وَمَا فِي بَطْنِهَا، فَاخْتَصَمُوا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ - عَلَيْهِ السَّلَامُ -: دِيَةُ جَنِينِهَا عَبْدٌ أَوْ أَمَةٌ وَقَضَى بِالدِّيَةِ عَلَى عَاقِلَتِهَا وَوَرِثَهَا وَلَدُهَا» .

L39097 Abu Muhammad said: The hadith of Al-Mughīrah and Muḥammad ibn Maslamah establishes a general ruling regarding blood money for any woman's caused miscarriage—as explicitly stated in the words of the Messenger of Allah—peace and blessings be upon him—in the hadith of Abū Hurayrah, that the blood money for her fetus is a male or female slave. The Messenger of Allah—peace and blessings be upon him—did not say that this applies solely to the fetus of a free woman. Therefore, it is impermissible for anyone to ascribe to the Messenger of Allah—peace and blessings be upon him—statements he did not make or to report from him what he did not declare about himself. Whoever does this has ascribed to him what he did not say, and this necessitates the Fire.

قَالَ أَبُو مُحَمَّد: فَحَدِيثُ الْمُغِيرَةِ، وَمُحَمَّدِ بْنِ مَسْلَمَةَ عُمُومُ إمْلَاصِ كُلِّ امْرَأَةٍ - وَكَذَلِكَ نَصُّ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثِ أَبِي هُرَيْرَةَ بِأَنَّ دِيَةَ جَنِينِهَا عَبْدٌ أَوْ وَلِيدَةٌ - وَلَمْ يَقُلْ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ هَذَا إنَّمَا هُوَ فِي جَنِينِ الْحُرَّةِ، فَلَا يَحِلُّ لِأَحَدٍ أَنْ يُقَوِّلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِلْمَ مَا لَمْ يَقُلْ، وَلَا أَنْ يُخْبِرَ عَنْهُ بِمَا لَمْ يُخْبِرْ بِهِ عَنْ نَفْسِهِ، وَمَنْ فَعَلَ هَذَا فَقَدْ قَالَ عَلَيْهِ مَا لَمْ يَقُلْ، وَهَذَا يُوجِبُ النَّارَ.

L39098 If it is said: "The Messenger of Allah, peace and blessings be upon him, ruled thus only regarding the fetus of a free woman," it is replied to them: "The Messenger of Allah, peace and blessings be upon him, ruled thus regarding the fetus of a Hudhali-Lihyani woman named Mulaykah, whom her co-wife

فَإِنْ قِيلَ: إنَّمَا حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ فِي جَنِينِ حُرَّةٍ؟ قِيلَ لَهُمْ: إنَّمَا حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ فِي جَنِينِ هُذَلِيَّةٍ لِحْيَانِيَّةٍ تُسَمَّى

Umm ’Afif killed. The distinction between your claim that this ruling applies because it was the fetus of a free woman, and one who says: ’Rather, because it was the fetus of a Hudhali woman,’ or ’because it was the fetus of a woman named Mulaykah,’ or ’because her co-wife killed her,’ or ’because the killer’s name is Umm ’Afif’—all of this is invalid and confused mixing. And success comes from Allah, the Most High.”

مُلَيْكَةَ قَتَلَتْهَا ضَرَّتُهَا أُمُّ عَفِيفٍ، الْفَرْقُ بَيْنَكُمْ فِي دَعْوَاكُمْ بِذَلِكَ لِأَنَّهُ جَنِينُ حُرَّةٍ، وَبَيْنَ مَنْ قَالَ: بَلْ لِأَنَّهُ جَنِينُ هُذَلِيَّةٍ؟ أَوْ لِأَنَّهُ جَنِينُ امْرَأَةٍ تُسَمَّى مُلَيْكَةَ، أَوْ لِأَنَّ ضَرَّتَهَا قَتَلَتْهَا، أَوْ لِأَنَّ الْقَاتِلَةَ اسْمُهَا أُمُّ عَفِيفٍ - هَذَا كُلُّهُ بَاطِلٌ وَتَخْلِيطٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

An issue concerning the fetus of a dhimmi woman: one-tenth of her *diyah*.

L39099–39100

[مَسْأَلَةٌ فِي جَنِينِ الذِّمِّيَّةِ عُشْرُ دِيَتِهَا]

L39101 Issue: The fetus of a dhimmi woman? Abu Muhammad—may Allah be pleased with him—said: Some have stated regarding the fetus of a dhimmi woman that its diyah amounts to one-tenth of her diyah. This opinion is solely based on their analogy to their view valuing the ghurrah—the compensation for a fetus—at fifty dinars, and this is a clearly erroneous opinion.

مَسْأَلَةٌ: جَنِينُ الذِّمِّيَّةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: قَالَ قَائِلُونَ فِي جَنِينِ الذِّمِّيَّةِ عُشْرُ دِيَتِهَا - وَهَذَا قَوْلٌ إنَّمَا قَاسُوهُ عَلَى قَوْلِهِمْ فِي تَقْوِيمِ الْغُرَّةِ بِخَمْسِينَ دِينَارًا - وَهُوَ قَوْلٌ ظَاهِرُ الْخَطَأِ.

L39102 The ruling according to our school is that for the fetus of a dhimmi woman, a male or female slave (ghurrah) must also be paid as compensation, imposed upon the responsible kin group of the striker. They must seek both a male and female slave—the slaves being non-Muslim—and deliver them to the rightful claimant. If neither is found, the compensation becomes the value of one such slave if available. The valuation in this matter—and for the ghurrah generally when unavailable—is set at the minimum possible worth, for it is impermissible to impose any monetary penalty except through explicit textual evidence or consensus, in accordance with the Prophet’s saying—peace be upon him: “Your blood and property are inviolable.” Thus, the minimum value the ghurrah would hold if a slave were available becomes obligatory upon the kin group by textual mandate. Any amount exceeding this is not obligatory, as neither text nor consensus supports it. Therefore, such excess is null and void, and ruling by it is impermissible.

وَالْقَوْلُ عِنْدَنَا أَنَّ فِي جَنِينِ الذِّمِّيَّةِ أَيْضًا غُرَّةَ عَبْدٍ أَوْ أَمَةٍ يُقْضَى عَلَى عَاقِلَةِ الضَّارِبِ بِهِ، فَيَطْلُبُونَ غُلَامًا أَوْ أَمَةً - كَافِرَيْنِ - فَيَدْفَعَانِهِ، أَوْ يَدْفَعَانِهَا إلَى مَنْ تَجِبُ لَهُ، فَإِنْ لَمْ يُوجَدَا فَبِقِيمَةِ أَحَدِهِمَا - لَوْ وُجِدَ - وَالْقِيمَةُ فِي هَذَا - وَفِي الْغُرَّةِ جُمْلَةً إذَا عُدِمَتْ أَقَلُّ مَا يُمْكِنُ، إذْ لَا يَجُوزُ أَنْ يَلْزَمَ أَحَدٌ غَرَامَةً، إلَّا بِنَصٍّ أَوْ إجْمَاعٍ؛ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَأَقَلُّ مَا كَانَتْ تُسَاوِي الْغُرَّةُ - لَوْ وُجِدَتْ - وَاجِبٌ عَلَى الْعَاقِلَةِ بِالنَّصِّ، وَمَا زَادَ عَلَى ذَلِكَ غَيْرُ وَاجِبٍ، لَا بِنَصٍّ وَلَا إجْمَاعٍ - فَهُوَ سَاقِطٌ لَا يَجُوزُ الْحُكْمُ بِهِ.

L39103 If a dhimmī accidentally strikes a Muslim woman, causing her to miscarry, his liable kin (‘āqilah) must free a non-Muslim male slave or non-Muslim female slave—it is invalid to free a Muslim male or female slave. This emancipation of a non-Muslim slave fulfills the mandated ghurrah (compensation for miscarriage), regardless of whether the offender and his liable kin are

وَلَوْ أَنَّ ذِمِّيًّا ضَرَبَ امْرَأَةً مُسْلِمَةً خَطَأً فَأَسْقَطَتْ جَنِينًا: يُكَلَّفُ أَنْ تَبْتَاعَ عَاقِلَتُهُ عَبْدًا كَافِرًا أَوْ أَمَةً كَافِرَةً وَلَا بُدَّ - وَلَا يَجُوزُ أَنْ يَبْتَاعَ عَبْدًا مُسْلِمًا وَلَا أَمَةً مُسْلِمَةً - وَالرَّقَبَةُ الْكَافِرَةُ تُجْزِي فِي الْغُرَّةِ الْمَذْكُورَةِ - سَوَاءٌ كَانَ الْجَانِي وَعَاقِلَتُهُ: مُسْلِمِينَ، أَوْ كَانُوا كُفَّارًا

Muslims or non-believers. The obligatory compensation is strictly limited to freeing one male or female slave, as ruled by the Messenger of God—peace and blessings upon him—who "does not speak from personal desire. It is nothing but revelation sent down" (53:3-4), and "your Lord is never forgetful" (19:64).[8]

L39104 If Allah the Exalted had willed that the ghurrah be a believing [slave], the Messenger of Allah—may Allah bless him and grant him peace—would not have overlooked clarifying that matter, just as he did not neglect to clarify other matters, or he made clear that a male or female suffices for this. And success is from Allah the Exalted.

L39105 Abū Muḥammad—may Allah have mercy on him—said: As for the diminishment of the female slave's value due to causing a miscarriage, it is necessarily obligatory upon the wrongdoer to pay from his property in addition to the *ghurra*. This is because he impaired property, and he is liable for it as we have previously mentioned—and success is from Allah, the Exalted. [٢١٣٤]

L39106 A Jurisprudential Issue Regarding the Fetus of Livestock

L39107–39109 Abū Muḥammad—may Allah have mercy on him—said: From ʿAbdullāh ibn Rabīʿ, from Ibn Mufarrij, from Qāsim ibn Aṣbagh, from... Ibn Waddāḥ reported from Sahnūn, who reported from Ibn Wahb, who informed me from Yūnus ibn Yazīd from Abū al-Zinād, al-Zuhrī, and Rabīʿah. Abū al-Zinād said regarding the fetus of a livestock animal: "We hold that the livestock animal should be valued while carrying its offspring in its womb, then valued again after delivering its fetus. The difference between these two valuations constitutes what is owed to the one harmed until it had delivered its fetus." Al-Zuhrī said: "We hold that the fetus of a livestock animal is subject to a ruling based on its value, for the livestock animal is merely a commodity." Rabīʿah said: "I do not see regarding the fetus of a livestock animal anything broader than the Imam's ijtihād." Abū Muḥammad said: "The ruling on this

[8] **Qur'an references (L39103):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 19:64 (Maryam).

- وَإِنَّمَا الْوَاجِبُ عَبْدٌ أَوْ أَمَةٌ فَقَطْ، كَمَا حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

فَلَوْ أَرَادَ اللَّهُ تَعَالَى أَنْ تَكُونَ الْغُرَّةُ مُؤْمِنَةً لَمَا أَغْفَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِلْمَ بَيَانِ ذَلِكَ - كَمَا لَمْ يَغْفُلْ، أَوْ بَيَّنَ أَنَّهُ يُجْزِي فِي ذَلِكَ ذَكَرٌ أَوْ أُنْثَى، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا مَا نَقَصَ الْأَمَةَ إلْقَاءُ الْجَنِينِ، فَهُوَ الْوَاجِبُ عَلَى الْجَانِي فِي مَالِهِ وَلَا بُدَّ، زِيَادَةً عَلَى الْغُرَّةِ، لِأَنَّهُ مَالٌ أَفْسَدَهُ فَعَلَيْهِ ضَمَانُهُ عَلَى مَا قَدْ ذَكَرْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. ٢١٣٤ -

[مَسْأَلَةٌ جَنِينُ الْبَهِيمَةِ]

؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ أَبِي الزِّنَادِ، وَالزُّهْرِيِّ، وَرَبِيعَةَ، قَالَ أَبُو الزِّنَادِ فِي جَنِينِ الْبَهِيمَةِ: نَرَى أَنْ تُقَامَ الْبَهِيمَةُ فِي بَطْنِهَا وَلَدُهَا، ثُمَّ تُقَامَ بَعْدَ أَنْ تَطْرَحَ جَنِينَهَا، فَيَكُونُ فَضْلُ مَا بَيْنَ ذَلِكَ عَلَى الَّذِي أَصَابَهَا حَتَّى طَرَحَتْ جَنِينَهَا - وَقَالَ الزُّهْرِيُّ: نَرَى جَنِينَ الْبَهِيمَةِ إلَى الْحُكْمِ بِقِيمَةٍ إنَّمَا الْبَهِيمَةُ سِلْعَةٌ مِنْ السِّلَعِ - وَقَالَ رَبِيعَةُ: لَا أَرَى فِي جَنِينِ الْبَهِيمَةِ شَيْئًا أَوْسَعَ مِنْ اجْتِهَادِ الْإِمَامِ؟ قَالَ أَبُو مُحَمَّدٍ: الْقَوْلُ فِي هَذَا عِنْدَنَا هُوَ قَوْلُ أَبِي الزِّنَادِ، لِأَنَّهَا جِنَايَةٌ عَلَى مَالٍ فَقِيمَةُ مِثْلِهِ.

matter according to us is the view of Abū al-Zināد, because it constitutes a financial injury, thus the value of its equivalent."

L39110 As for the statement of Az-Zuhri and Rabi'ah that this matter involves the *ijtihād* of the Imam or the ruler: this is an invalid opinion, because there is no evidence that necessitates it. Neither Allah the Most High nor His Messenger—may peace and blessings be upon him—has granted the Imams the authority to exercise *ijtihād* regarding the taking of property from one person and giving it to another. Rather, Allah the Most High has prohibited this through the tongue of His Messenger—may peace and blessings be upon him. Therefore, no one is permitted to take from one person what he gives to another, except by definitive text or consensus. And success comes only from Allah, the Most High.

L39111 It has been narrated from Mālik and al-Ḥasan ibn Ḥayyin that the value of the fetus of a horse is one-tenth of its mother's value. Mālik stated regarding the fetus of livestock: "One-tenth of its mother's value." All of this is baseless; as it constitutes analogy, and all analogy is null and void.

L39112 **Issue: A non-Muslim dhimmi killed another dhimmi, then the killer embraced Islam.**

L39113 2135 - Issue: Abu Muhammad—may Allah have mercy on him—said: If a disbelieving dhimmi kills a dhimmi, then the killer embraces Islam after his killing of the victim or before the victim's death, no retribution (qisas) is imposed upon the killer whatsoever. This is based on the statement of Allah's Messenger—peace and blessings be upon him: "A believer is not to be executed in retaliation for a disbeliever."

L39114 They said: The blood money of the slain - if they chose compensation before the killer or their guardian embraced Islam, or accepted blood money from him and he later embraced Islam - the financial liability remained due to them from him, for it is property they rightfully claimed from him. Believers owe financial obligations to disbelievers, and disbelievers to believers. Verily, "Allah's Messenger (peace and blessings of Allah be upon him) died while

وَأَمَّا قَوْلُ الزُّهْرِيِّ، وَرَبِيعَةَ: إنَّ فِي ذَلِكَ اجْتِهَادَ الْإِمَامِ، أَوْ الْحَاكِمِ: فَقَوْلٌ لَا يَصِحُّ؛ لِأَنَّهُ لَا دَلِيلَ يُوجِبُهُ، وَلَمْ يَجْعَلْ اللَّهُ تَعَالَى، وَلَا رَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لِأَحَدٍ مِنْ الْأَئِمَّةِ اجْتِهَادًا فِي أَخْذِ مَالِ مِنْ إنْسَانٍ وَإعْطَائِهِ آخَرَ، بَلْ قَدْ حَرَّمَ اللَّهُ تَعَالَى ذَلِكَ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ -، فَلَيْسَ لِأَحَدٍ أَنْ يَأْخُذَ مِنْ أَحَدٍ مَا يُعْطِيهِ لِآخَرَ، إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَدْ رُوِيَ عَنْ مَالِكٍ، وَالْحَسَنِ بْنِ حَيٍّ: أَنَّ فِي جَنِينِ الْفَرَسِ عُشْرَ قِيمَةِ أُمِّهِ، وَقَالَ مَالِكٌ فِي جَنِينِ الْبَهِيمَةِ عُشْرُ قِيمَةِ أُمِّهَا، وَهَذَا كُلُّهُ لَيْسَ بِشَيْءٍ؛ لِأَنَّهُ قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

[مَسْأَلَةٌ كَافِرٌ ذِمِّيٌّ قَتَلَ ذِمِّيًّا ثُمَّ أَسْلَمَ الْقَاتِلُ]

٢١٣٥ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَوْ أَنَّ كَافِرًا ذِمِّيًّا قَتَلَ ذِمِّيًّا ثُمَّ أَسْلَمَ الْقَاتِلُ بَعْدَ قَتْلِهِ الْمَقْتُولَ، أَوْ قَبْلَ مَوْتِ الْمَقْتُولِ: فَلَا قَوَدَ عَلَى الْقَاتِلِ أَصْلًا؛ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ» .

قَالُوا: وَدِيَةُ الْمَقْتُولِ - إنْ اخْتَارُوا الدِّيَةَ قَبْلَ إسْلَامِ قَاتِلِ وَلِيِّهِمْ، أَوْ فَادُوهُ ثُمَّ أَسْلَمَ: بَقِيَتْ الْغَرَامَةُ لَهُمْ عَلَيْهِ؛ لِأَنَّهُ مَالٌ اسْتَحَقُّوهُ عِنْدَهُ، وَالْأَمْوَالُ تَجِبُ لِلْكَافِرِ عَلَى الْمُؤْمِنِ، وَلِلْمُؤْمِنِ عَلَى الْكَافِرِ - وَقَدْ «مَاتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَدِرْعُهُ مَرْهُونَةٌ

his armor remained pledged with a Jew for thirty ṣāʿ (a dry measure) of barley which he had taken to provide sustenance for his household." We have previously mentioned this with its chain of transmission before this.

عِنْدَ يَهُودِيٍّ فِي ثَلَاثِينَ صَاعًا مِنْ شَعِيرٍ أَخَذَهَا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِقُوتِ أَهْلِهِ» وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ قَبْلَ هَذَا.

L39115–39116 If the injured person also converted to Islam and then died—while he was a Muslim—retaliation (qisas) is obligatory for his heirs, because it involves a believer [killed] in relation to a believer. The Messenger of Allah (peace and blessings be upon him) said, "Believers' lives are equal in sanctity."

فَلَوْ أَنَّ الْمَجْرُوحَ أَسْلَمَ أَيْضًا ثُمَّ مَاتَ - وَهُوَ مُسْلِمٌ - فَالْقَوَدُ لَهُ وَاجِبٌ؛ لِأَنَّهُ مُؤْمِنٌ بِمُؤْمِنٍ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُؤْمِنُونَ تَتَكَافَأُ دِمَاؤُهُمْ» .

L39117 Abū Muḥammad—may Allah have mercy on him—said: If a Muslim deliberately wounds a protected non-Muslim unjustly, then the non-Muslim embraces Islam and subsequently dies from that injury, retribution (qisas) in this case is specifically by the sword. There is no retribution for the wound itself—since it occurred while he was a disbeliever—nor does retribution apply to injuries inflicted upon a disbeliever, as Allah states: "Allah will never grant the disbelievers a means over the believers" [4:141]. When he embraced Islam and died as a Muslim—from an act of wrongful aggression that would cause death if similarly inflicted—he is considered intentionally slain while being a Muslim. Thus, the ruling applies as Allah the Exalted and His Messenger—peace be upon him—have ordained for one who kills a believer. And success is from Allah alone.[9]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَلَوْ أَنَّ مُسْلِمًا جَرَحَ ذِمِّيًّا عَمْدًا ظَالِمًا فَأَسْلَمَ الذِّمِّيُّ ثُمَّ مَاتَ مِنْ ذَلِكَ الْجُرْحِ فَالْقَوَدُ فِي ذَلِكَ بِالسَّيْفِ خَاصَّةً، وَلَا قَوَدَ فِي الْجُرْحِ لِأَنَّ الْجُرْحَ حَصَلَ، وَلَا قَوَدَ فِيهِ لِلْكَافِرِ {وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلا} [النساء: ١٤١] فَلَمَّا أَسْلَمَ ثُمَّ مَاتَ مُسْلِمًا مِنْ جِنَايَةِ ظُلْمٍ يُمَاتُ مِنْ مِثْلِهَا: حَصَلَ مَقْتُولًا عَمْدًا - وَهُوَ مُسْلِمٌ - فَفِيهِ مَا جَعَلَ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَنْ قَتَلَ مُؤْمِنًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39118 If a child or an insane person were to injure someone, then the insane person regained sanity and the child reached puberty, and subsequently the injured party died, there is nothing due in this case—no diyah (blood money) and no qisas (retaliation)—because the death resulted from a legally null offense, which has no legal ruling.

فَلَوْ أَنَّ صَبِيًّا، أَوْ مَجْنُونًا جَرَحَا إنْسَانًا، ثُمَّ عَقَلَ الْمَجْنُونُ وَبَلَغَ الصَّبِيُّ، ثُمَّ مَاتَ الْمَجْرُوحُ، فَلَا شَيْءَ فِي ذَلِكَ، لَا دِيَةَ، وَلَا قَوَدَ، لِأَنَّهُ مَاتَ مِنْ جِنَايَةِ هَدَرٍ لَا حُكْمَ لَهَا.

L39119 If it is said: You have ruled regarding one who shoots a combatant (ḥarbī) then embraces Islam and dies that blood money (diyah) is incumbent upon his agnatic kin (ʿāqilah). How then do you impose blood money for one killed by an offense its perpetrator was commanded to commit, yet do not impose blood money for this individual's offense? We have said—and by Allah's grace—thus: We have said this because the offender commanded to commit that act is a legally addressed, obligated individual, bound to atone (kaffārah)

فَإِنْ قِيلَ: قَدْ قُلْتُمْ فِي الَّذِي يَرْمِي حَرْبِيًّا ثُمَّ يُسْلِمُ، ثُمَّ يَمُوتُ: إنَّ فِيهِ الدِّيَةَ عَلَى الْعَاقِلَةِ، فَكَيْفَ تَجْعَلُونَ الدِّيَةَ فِيمَنْ مَاتَ مِنْ جِنَايَةٍ مَأْمُورٍ بِهَا، وَلَا تَجْعَلُونَ الدِّيَةَ فِيمَنْ مَاتَ مِنْ جِنَايَةِ هَذَا؟ فَقَدْ قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: هَكَذَا قُلْنَا؛ لِأَنَّ الْجَانِيَ الْمَأْمُورَ بِتِلْكَ الْجِنَايَةِ مُخَاطَبٌ مُكَلَّفٌ مُلْزَمٌ فِي قَتْلِ الْخَطَأِ كَفَّارَةً أَوْ كَفَّارَةً وَدِيَةً عَلَى عَاقِلَتِهِ،

[9] **Qur'an references (L39117):** Qur'an 4:141 (An-Nisa).

or to atone combined with blood money upon his agnatic kin in cases of accidental killing. The insane and the minor, however, are not addressed by the law at all, nor are they legally obligated in intentional killing or accidental killing. Thus, the rulings pertaining to all their actions are nullified, as they hold no legal standing in the Sharīʿah. What the legally addressed, obligated individual—subject to divine commands and prohibitions—has done is not nullified.

L39120 If a sane person commits murder or inflicts a wound, then becomes insane, and the victim subsequently dies from that injury: qisas applies to the insane perpetrator, or diyah is taken from his wealth—is no ransom applicable there? This is because qisas became obligatory when he committed the offense, and the ruling for that crime remains binding upon him. It is waived due to his loss of sanity, as no Quranic text, Sunnah, or consensus requires it. Similarly, a hadd punishment that became obligatory during his sanity is executed upon him even in insanity, but any hadd punishment incurred during insanity is not executed upon him in sanity—without disagreement within the Ummah. Is the intoxicated person considered insane?

An Issue Regarding the Breaking of a Deceased Person's Bone

L39121–39122

L39123 Abū Muḥammad—may Allah be pleased with him—said: ʿAbdullāh ibn Rabīʿ narrated to us, Muḥammad ibn Isḥāq narrated to us, Ibn al-Aʿrābī narrated to us, Abū Dāwūd narrated to us, al-Qaʿnabī narrated to us, ʿAbd al-ʿAzīz ibn Muḥammad (i.e., al-Darāwardī) narrated to us, from Saʿd (i.e., Ibn Saʿīd), from ʿAmrah bint ʿAbd al-Raḥmān, from ʿĀ'ishah that the Messenger of Allah, peace be upon him, said: "Breaking the bone of a dead person is akin to breaking it while alive."

L39124 Abū Muḥammad—may Allāh have mercy on him—said: This is only narrated through the chain of Saʿd ibn Saʿīd al-Anṣārī, the brother of Yaḥyā ibn Saʿīd. They were three brothers: Yaḥyā ibn Saʿīd, a trustworthy imam; ʿAbd Rabbihi ibn Saʿīd—there is no harm in him, though he does not reach the same stature in narration; and Saʿd ibn Saʿīd, who is extremely weak and cannot be relied upon as evidence. There is no disagreement on this. Therefore, it is invalid

وَلَيْسَ الْمَجْنُونُ وَالصَّبِيُّ مُخَاطَبَيْنِ أَصْلًا، وَلَا مُكَلَّفَيْنِ شَرِيعَةً فِي قَتْلِ عَمْدٍ، وَلَا فِي قَتْلِ خَطَأٍ: فَسَقَطَ حُكْمُ كُلِّ مَا عَمِلَا، وَلَمْ يَكُنْ لَهُ فِي الشَّرْعِ دُخُولٌ، وَلَمْ يَسْقُطْ مَا فَعَلَهُ الْمُخَاطَبُ الْمُكَلَّفُ الْمَأْمُورُ الْمَنْهِيُّ.

وَلَوْ أَنَّ عَاقِلًا قَتَلَ أَوْ جَرَحَ ثُمَّ جُنَّ فَمَاتَ الْمَجْرُوحُ مِنْ تِلْكَ الْجِنَايَةِ: فَالْقَوَدُ عَلَى الْمَجْنُونِ، أَوْ الدِّيَةُ فِي مَالِهِ، وَلَا مُفَادَاةَ هُنَالِكَ؟ ؛ وَذَلِكَ لِأَنَّ الْقَوَدَ قَدْ وَجَبَ عَلَيْهِ حِينَ جَنَى، وَحُكْمُ تِلْكَ الْجِنَايَةِ لَازِمٌ لَهُ، وَقَدْ يَسْقُطُ عَنْهُ بِذَهَابِ عَقْلِهِ، إذْ لَمْ يُوجِبْ ذَلِكَ نَصُّ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إجْمَاعٍ - وَكَذَلِكَ يُقَامُ عَلَيْهِ فِي جُنُونِهِ حَدٌّ لَزِمَهُ فِي حَالِ عَقْلِهِ، وَلَا يُقَامُ عَلَيْهِ فِي حَالِ عَقْلِهِ كُلُّ حَدٍّ كَانَ مِنْهُ فِي حَالِ جُنُونِهِ، بِلَا خِلَافٍ مِنْ الْأُمَّةِ، وَالسَّكْرَانُ مَجْنُونٌ؟ .

[مَسْأَلَةٌ كَسْرُ عَظْمِ الْمَيِّتِ]

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا الْقَعْنَبِيُّ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ - هُوَ الدَّرَاوَرْدِيُّ - عَنْ سَعْدٍ - هُوَ ابْنُ سَعِيدٍ - عَنْ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «كَسْرُ عَظْمِ الْمَيِّتِ كَكَسْرِهِ حَيًّا» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا لَا يُسْنَدُ إلَّا مِنْ طَرِيقِ سَعْدِ بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَخِي يَحْيَى بْنِ سَعِيدٍ - وَهُمْ ثَلَاثَةُ إخْوَةٍ: يَحْيَى بْنُ سَعِيدٍ إمَامٌ ثِقَةٌ، وَعَبْدُ رَبِّهِ بْنُ سَعِيدٍ لَا بَأْسَ بِهِ وَلَيْسَ بِالْمُنَالِكَ فِي الْإِمَامَةِ، وَسَعْدُ بْنُ سَعِيدٍ وَهُوَ ضَعِيفٌ جِدًّا لَا يُحْتَجُّ بِهِ -

to depend upon this ḥadīth. Even if it were authentic, we would only apply it to the specific case of bone-breaking. As for those who claim this pertains to prohibition, such an assertion would constitute a baseless claim without evidence and an arbitrary specification without proof.

لَا خِلَافَ فِي ذَلِكَ، فَبَطَلَ أَنْ يَتَعَلَّقَ بِهَذَا الْحَدِيثِ، وَلَوْ صَحَّ لَقُلْنَا بِهِ فِي كَسْرِ الْعَظْمِ خَاصَّةً، وَلَمَّا كَانَ لِقَوْلِ مَنْ قَالَ: إنَّ هَذَا فِي الْحُرْمَةِ مَعْنًى؛ لِأَنَّهُ كَانَ يَكُونُ دَعْوَى بِلَا دَلِيلٍ، وَتَخْصِيصًا بِلَا بُرْهَانٍ.

L39125 Abū Muḥammad—may God have mercy on him—said: Whoever injures a deceased person, breaks his bone, or burns him bears no liability for that. As for killing, there is no doubt about it, because it does not constitute killing. As for injury and bone-breaking, if disagreement were found regarding it, retaliation would be obligatory, as it is a transgression. If the consensus is validated that there is no retaliation for such acts, it becomes obligatory to adhere to the consensus. Otherwise, the Almighty has said, "And for wounds is retaliation" [Al-Mā'idah 45], for in this case, there is both a wound and a perpetrator.[10]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَمَنْ جَرَحَ مَيِّتًا، أَوْ كَسَرَ عَظْمَهُ، أَوْ أَحْرَقَهُ، فَلَا شَيْءَ عَلَيْهِ فِي ذَلِكَ - أَمَّا الْقَتْلُ فَلَا شَكَّ فِيهِ، لِأَنَّهُ لَيْسَ قَاتِلًا - وَأَمَّا الْجُرْحُ وَالْكَسْرُ، فَلَوْ وُجِدَ فِيهِ خِلَافٌ لَوَجَبَ الْقِصَاصُ، لِأَنَّهُ عُدْوَانٌ - وَإِنْ صَحَّ الْإِجْمَاعُ فِي أَنْ لَا قَوَدَ فِي ذَلِكَ وَجَبَ الْوُقُوفُ عِنْدَ الْإِجْمَاعِ، وَإِلَّا فَقَدْ قَالَ تَعَالَى {وَالْجُرُوحَ قِصَاصٌ} [المائدة: ٤٥] وَهَذَا جُرْحٌ وَجَارِحٌ.

L39126 And He—Exalted is He—said: *The recompense for an evil deed is an evil like it* [Ash-Shura 42:40], and He—Exalted is He—said: *So whoever transgresses against you, respond against him in the same manner as he transgressed against you* [Al-Baqarah 2:194]. This action toward the deceased is an evil deed and a transgression; thus, qisas is obligatory in this case unless there is a scholarly consensus preventing it.[11]

وَقَالَ تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] ، وَقَالَ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] ، وَهَذَا الْفِعْلُ بِالْمَيِّتِ سَيِّئَةٌ وَاعْتِدَاءٌ، فَالْقِصَاصُ وَاجِبٌ فِي ذَلِكَ إلَّا أَنْ يَمْنَعَ مِنْهُ إجْمَاعٌ.

L39127 If it is said: Indeed, Allah the Exalted has stated, {And for wounds there is retaliation; so whoever forgoes it as a charitable act, it shall be an atonement for him} [Al-Mā'idah: 45], and He the Exalted has said, {The recompense for an evil act is an evil act of the same kind; but whoever pardons and seeks reconciliation, his reward is upon Allah} [Ash-Shūrā: 40]. Does this not indicate that all of this is for the living person?[12]

فَإِنْ قِيلَ: إنَّ اللَّهَ تَعَالَى قَالَ {وَالْجُرُوحَ قِصَاصٌ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] وَقَالَ تَعَالَى {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: ٤٠] فَدَلَّ هَذَا عَلَى أَنَّ ذَلِكَ كُلَّهُ لِلْحَيِّ؟

L39128–39129 We said—and with Allah, the Exalted, is success—this offers you no valid argument for two reasons: First: The injunction regarding legal retribution for transgression is general in scope. However, some of the victims may be

قُلْنَا، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: هَذَا لَا حُجَّةَ لَكُمْ فِيهِ لِوَجْهَيْنِ: أَحَدُهُمَا -: أَنَّ الْأَمْرَ بِالْقِصَاصِ وَالِاعْتِدَاءِ عُمُومٌ، ثُمَّ قَدْ يَخُصُّ بِالْعَفْوِ وَالصَّدَقَةِ بَعْضُ الْمُعْتَدَى عَلَيْهِمْ دُونَ بَعْضٍ.

[10] **Qur'an references (L39125):** Qur'an 5:45 (Al-Ma'idah).
[11] **Qur'an references (L39126):** Qur'an 42:40 (Ash-Shuraa); Qur'an 2:194 (Al-Baqarah).
[12] **Qur'an references (L39127):** Qur'an 5:45 (Al-Ma'idah); Qur'an 42:40 (Ash-Shuraa).

specified [for exclusion from retribution] through pardon or charity, while others are not.

L39130 The second consideration is that He, the Exalted, did not preclude—through His truthful decree {Whoever offers it as blood money, it will be an expiation for him} [5:45] or His truthful decree {Whoever pardons and reconciles, his reward is with Allah} [42:40]—that retaliation remains obligatory for those incapable of pardoning or offering blood money, such as the insane or the minor. Thus, the deceased is included within this general ruling.[13]

L39131 The third perspective is that Allah the Exalted said: *"So whoever pardons and sets right"* (42:40), and said: *"So whoever gives it as charity"* (5:45). He did not state, "If the wronged party alone gives charity," nor say, "Whoever pardens from those exclusively entitled to pardon," but rather left the matter general. Thus, the pardon and charity of the wronged party are permissible if they are among those entitled to pardon and give charity. Is the guardian's pardon permissible when the victim's right to pardon has ceased and there is no hope for it? Most contemporary opponents advocate hand amputation for stealing a deceased's shroud—a ruling we endorse—and for slandering a deceased person.[14]

L39132 Among the people are those who hold the view of imposing the prescribed punishment (ḥadd) upon one who fornicates with a corpse. Whoever differentiates between their assessment of such acts and the retaliation (qiṣāṣ) for wounds or fractures—this is not analogical reasoning (qiyās), since none of these matters serve as foundational bases for others. Rather, all of it constitutes a single category: whoever performs an act for which the scriptural text stipulates a specific legal ruling—then, is it obligatory to enforce that ruling upon whoever commits such an act?

L39133 Abū Muḥammad—may Allāh have mercy on him—said: This opinion is strengthened by rational analysis, and the Qur'ān and authentic Sunnah testify to its validity. Here, we know of no statement from any Companion—

وَالْوَجْهُ الثَّانِي - أَنَّهُ تَعَالَى لَمْ يَمْنَعْ بِقَوْلِهِ تَعَالَى الصَّادِقِ {فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] وَلَا بِقَوْلِهِ الصَّادِقِ {فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: ٤٠] مِنْ أَنْ يَكُونَ الْقِصَاصُ وَاجِبًا لِمَنْ لَا عَفْوَ لَهُ وَلَا صَدَقَةَ، كَالْمَجْنُونِ وَالصَّبِيِّ، فَيَكُونُ الْمَيِّتُ دَاخِلًا فِي هَذَا الْعُمُومِ.

وَوَجْهٌ ثَالِثٌ - وَهُوَ: أَنَّ اللَّهَ تَعَالَى قَالَ {فَمَنْ عَفَا وَأَصْلَحَ} [الشورى: ٤٠] وَقَالَ تَعَالَى {فَمَنْ تَصَدَّقَ بِهِ} [المائدة: ٤٥] وَلَمْ يَقُلْ تَعَالَى فَإِنْ تَصَدَّقَ الْمَجْرُوحُ وَحْدَهُ، وَلَا قَالَ فَمَنْ عَفَا مِنْ الَّذِينَ الْعَفْوُ إلَيْهِمْ خَاصَّةً، وَلَكِنْ أَجْمَلَ - عَزَّ وَجَلَّ - الْأَمْرَ، فَجَائِزٌ عَفْوُ الْمَجْنِيِّ عَلَيْهِ وَصَدَقَتُهُ إذَا كَانَ مِمَّنْ لَهُ عَفْوٌ وَصَدَقَةٌ، وَجَائِزٌ عَفْوُ الْوَلِيِّ إذَا بَطَلَ أَنْ يَكُونَ لِلْمَجْنِيِّ عَلَيْهِ عَفْوٌ وَيَئِسَ مِنْ ذَلِكَ؟ وَأَكْثَرُ الْحَاضِرِينَ مِنْ خُصُومِنَا يَرَوْنَ الْقَطْعَ عَلَى مَنْ سَرَقَ مِنْ مَيِّتٍ كَفَنَهُ - وَبِهِ نَأْخُذُ، وَعَلَى مَنْ قَذَفَ مَيِّتًا.

وَمِنْ النَّاسِ مَنْ يَرَى الْحَدَّ عَلَى مَنْ زَنَى بِمَيِّتَةٍ، فَإِنَّ مَنْ فَرَّقَ بَيْنَ مَا رَأَوْهُ مِنْ ذَلِكَ وَبَيْنَ الْقَوَدِ لَهُ مِنْ الْجُرْحِ وَالْكَسْرِ - وَلَيْسَ هَذَا قِيَاسًا؛ لِأَنَّهُ لَيْسَ بَعْضُ ذَلِكَ أَصْلًا لِبَعْضٍ، بَلْ كُلُّهُ بَابٌ وَاحِدٌ، مَنْ عَمِلَ عَمَلًا جَاءَ النَّصُّ بِإِيجَابِ حُكْمٍ عَلَى عَامِلِ ذَلِكَ الْعَمَلِ، فَوَاجِبٌ إنْفَاذُ ذَلِكَ الْحُكْمِ عَلَى مَنْ عَمِلَ ذَلِكَ الْعَمَلَ؟ .

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا قَوْلٌ يُؤَيِّدُهُ النَّظَرُ، وَيَشْهَدُ لَهُ الْقُرْآنُ وَالسُّنَنُ بِالصِّحَّةِ، وَمَا نَعْلَمُ هَاهُنَا قَوْلًا لِأَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - يَمْنَعُ مِنْهُ، فَكَيْفَ أَنْ يَصِحَّ الْإِجْمَاعُ مِنْ جَمِيعِهِمْ عَلَى الْمَنْعِ مِنْهُ؟ هَذَا أَمْرٌ لَا سَبِيلَ إلَى وُجُودِهِ أَبَدًا، وَلَوْ

[13] **Qur'an references (L39130):** Qur'an 5:45 (Al-Ma'idah); Qur'an 42:40 (Ash-Shuraa).
[14] **Qur'an references (L39131):** Qur'an 42:40 (Ash-Shuraa); Qur'an 5:45 (Al-Ma'idah).

may Allāh be pleased with them—that prohibits it. How then could a consensus from all of them to prohibit it be valid? This is a matter that can never exist. Were it true, it would undoubtedly exist without doubt and not remain concealed. Therefore, it is obligatory to adhere to what the Qur'ān and Sunnah have mandated—even if no one is known to have held that opinion—provided no confirmed consensus exists to specify or abrogate the text. And success comes solely from Allāh, the Most High.

كَانَ حَقًّا لَوُجِدَ بِلَا شَكٍّ، وَلَمَا اخْتَفَى، فَالْوَاجِبُ الْمَصِيرُ إِلَى مَا أَوْجَبَهُ الْقُرْآنُ وَالسُّنَّةُ - وَإِنْ لَمْ يُعْلَمْ قَائِلٌ بِذَلِكَ - إِذَا لَمْ يَصِحَّ إِجْمَاعٌ مُتَيَقَّنٌ بِتَخْصِيصِ النَّصِّ، أَوْ بِنَسْخِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of Agency in Qisas.

L39134

L39135–39136 Abū Muḥammad—may Allah have mercy on him—said: The legal guardian's command to seek qisas on his behalf is permissible, supported by proofs. The first of these is the statement of Allah, the Most High: "And cooperate in righteousness and piety" [Al-Mā'idah 5:2]. The qisas is righteousness and piety; thus, cooperating in it is obligatory.[15]

[مَسْأَلَةُ الْوَكَالَةُ فِي الْقَوَدِ]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمْرُ الْوَلِيِّ بِأَنْ يُؤْخَذَ لَهُ الْقَوَدُ جَائِزٌ لِبَرَاهِينَ: أَوَّلُهَا: قَوْلُ اللَّهِ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢] وَالْقَوَدُ: بِرٌّ وَتَقْوَى، فَالتَّعَاوُنُ فِيهِ وَاجِبٌ.

L39137 The second is what has been authentically established from the Messenger of Allah (peace be upon him) regarding his command to enforce *qisas* against the Jew who smashed the young girl's head with a stone. His ruling (peace be upon him) constituted a universal ruling applicable to all.

وَثَانِيهَا: مَا قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَمْرِهِ بِالْقَوَدِ مِنْ الْيَهُودِيِّ الَّذِي رَضَخَ رَأْسَ الْجَارِيَةِ بِالْحَجَرِ، فَكَانَ أَمْرُهُ - عَلَيْهِ السَّلَامُ - عُمُومًا لِكُلِّ مَنْ حَضَرَ.

L39138 And the third [point]: The consensus of the Ummah holds that if the ruler obligates for himself the authority a guardian holds in matters of killing, he orders someone to kill. The ruler is one of the guardians, so it is impermissible to restrict this authority to him alone, excluding the other guardians.

وَثَالِثُهَا: إِجْمَاعُ الْأُمَّةِ أَنَّ السُّلْطَانَ إِذَا أَوْجَبَ لَهُ مَا لِوَلِيٍّ مِنْ الْقَتْلِ فَإِنَّهُ يَأْمُرُ مَنْ يَقْتُلُ، وَالسُّلْطَانُ وَلِيٌّ مِنْ الْأَوْلِيَاءِ، فَلَا يَجُوزُ تَخْصِيصُهُ بِذَلِكَ دُونَ سَائِرِ الْأَوْلِيَاءِ.

L39139 Abū Muḥammad—may Allāh have mercy on him—said: Since this is the case, it is permissible if the legal guardian appoints someone to exact retribution on his behalf and subsequently becomes absent, allowing the appointed person to carry it out during the guardian's absence. This is because retribution has been made obligatory by the certain command of Allāh, the Exalted, and the command of His Messenger—may Allāh's blessings and peace be upon him—and the legal guardian has not stipulated any condition regarding absence in this matter. *"And your Lord is never forgetful"* (19:64).[16]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذَا كَانَ ذَلِكَ كَذَلِكَ، فَجَائِزٌ، إِذَا أَمَرَ الْمُولَى مَنْ يَأْخُذُ لَهُ الْقَوَدَ أَنْ يَغِيبَ فَيَسْتَقِيدَ الْمَأْمُورُ، وَهُوَ غَائِبٌ، إِذْ قَدْ وَجَبَ الْقَوَدُ بِيَقِينِ أَمْرِ اللَّهِ تَعَالَى، وَأَمْرِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَشْتَرِطْ الْوَلِيُّ فِي ذَلِكَ مِنْ مَغِيبٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

[15] **Qur'an references (L39136):** Qur'an 5:2 (Al-Ma'idah).

فَإِنْ غَابَ الْوَلِيُّ ثُمَّ عَفَا، فَلَيْسَ عَفْوُهُ بِشَيْءٍ، وَلَا شَيْءَ عَلَى الْقَاتِلِ - وَلَا يَصِحُّ عَفْوُ الْوَلِيِّ إِلَّا بِأَنْ يَبْلُغَ ذَلِكَ الْمَأْمُورَ بِالْقَوَدِ وَيَصِحَّ عِنْدَهُ.

L39140 If the guardian is absent and then pardons, his pardon is invalid, and the killer incurs no liability. The guardian's pardon is valid only if it reaches the one appointed to execute retaliation and is acknowledged by him.

بُرْهَانُ ذَلِكَ: أَنَّ اللَّهَ تَعَالَى قَدْ أَبَاحَ لِلْمَأْمُورِ بِأَخْذِ الْقَوَدِ، وَأَنْ يَأْتَمِرَ لِلْآمِرِ لَهُ بِذَلِكَ، وَأَبَاحَ لَهُ دَمَ الْمُسْتَقَادِ مِنْهُ، وَأَعْضَاءَهُ بِيَقِينٍ لَا شَكَّ بِهِ، فَإِذَا عَفَا الْوَلِيُّ فِي غَيْرِ عِلْمِ الْمَأْمُورِ بِالْقَوَدِ فَهُوَ مُضَارٌّ، وَالْمُضَارُّ مُتَعَدٍّ، وَالْمُتَعَدِّي ظَالِمٌ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَيْسَ لِعِرْقٍ ظَالِمٍ حَقٌّ» فَلَا حَقَّ لِذَلِكَ الْعَفْوِ الَّذِي هُوَ مُضَارَّةٌ مَحْضَةٌ، وَهُوَ غَيْرُ الْعَفْوِ الَّذِي حَضَّ اللَّهُ تَعَالَى عَلَيْهِ وَرَسُولُهُ - عَلَيْهِ السَّلَامُ -؛ لِأَنَّ الْعَفْوَ الَّذِي حَضَّ اللَّهُ تَعَالَى عَلَيْهِ وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ طَاعَةٌ، وَعَفْوُ الْمُضَارَّةِ مَعْصِيَةٌ، وَالْمَعْصِيَةُ غَيْرُ الطَّاعَةِ، وَهَذَا الْعَفْوُ بَعْدَ الْأَمْرِ: هُوَ عَفْوٌ بِخِلَافِ الْعَفْوِ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ نَادِبًا إِلَيْهِ، وَإِذْ هُوَ غَيْرُهُ، فَهُوَ بَاطِلٌ؛ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» فَهُوَ غَيْرُ لَازِمٍ لِذَلِكَ الْعَافِي، وَهُوَ بَاقٍ عَلَى قَوَدِهِ.

L39141 The proof for this is that Allah the Exalted has permitted the one commanded to carry out retaliation to obey the one ordering him to do so. He has made lawful for him the blood and limbs of the person subject to retaliation with certainty free from doubt. If the legal guardian pardons without the awareness of the one commanded to execute retaliation, this constitutes detriment. The one causing detriment is a transgressor, and the transgressor is unjust. Allah's Messenger—peace and blessings be upon him—said: "There is no right for an unjust claim." Therefore, such a pardon, being purely detrimental, has no validity, being distinct from the pardon Allah the Exalted and His Messenger—peace and blessings be upon him—encouraged. For the pardon they encouraged constitutes obedience, while detrimental pardon constitutes disobedience. Disobedience is not obedience. This pardon after being commanded contradicts the recommended pardon Allah the Exalted has urged, and being distinct from it, becomes invalid according to the saying of Allah's Messenger—peace and blessings be upon him: "Whoever performs an act not in accordance with our injunction, it is rejected." Thus, such pardon does not bind the pardoning guardian, and the right to retaliation remains in effect.[17]

فَلَوْ بَعَثَ رَسُولًا إِلَى الْمَأْمُورِ بِالْقَوَدِ فَلَا حُكْمَ لَهُ إِلَّا حَتَّى يَبْلُغَ إِلَيْهِ، فَحِينَئِذٍ يَصِحُّ وَيَلْزَمُ الْعَافِيَ، فَإِنْ قَتَلَهُ الْمَأْمُورُ بِالْقَوَدِ بَعْدَ صِحَّةِ الْخَبَرِ عِنْدَهُ بِعَفْوِ الْوَلِيِّ فَهُوَ قَاتِلُ عَمْدٍ، أَوْ خَائِنُ عَهْدٍ، وَعَلَيْهِ الْقَوَدُ، وَكَذَلِكَ لَوْ جُنَّ الْآمِرُ وَلَا فَرْقَ، فَالْأَخْذُ بِالْقَوَدِ وَاجِبٌ، كَمَا أَمَرَ بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L39142–39144 If he were to send a messenger to the person commanded with qisas (retaliation), the ruling does not apply to him until the message reaches him. Only then does it become valid. The pardoning guardian remains obligated. If the one commanded to enforce qisas kills him after confirming the validity of the report regarding the guardian's pardon to his satisfaction, he is deemed an intentional killer or a breaker of the covenant, and qisas becomes incumbent upon him. The ruling applies equally if the commanding authority becomes

[16] **Qur'an references (L39139):** Qur'an 19:64 (Maryam).

[17] **Hadith references (L39141):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

insane, with no distinction. Thus, enforcing qisas is obligatory, as He has decreed—and with Allah, the Exalted, lies all success.

L39145 **A juristic issue concerning the severing of the penis of a hermaphrodite of indeterminate sex and his two ovaries.**

L39146 Issue 2138: If someone severs the male genital and two female genital parts of an ambiguous hermaphrodite of uncertain gender, it makes no difference whether the person declares "I am a woman" or declares "I am a man": retaliation in kind is obligatory, as these are organs termed a male genital and two female parts. Similarly, if a woman severs both of her labia, there is no difference.

L39147 If someone has an extra tooth or an extra finger and another cuts it off, retaliation is exacted by removing the tooth closest to that tooth and the finger closest to that finger from the offender. This is because it is a tooth and a finger, with no distinction between a case where the defendant is left with four fingers while the claimant retains five fingers, and a case where the defendant has only the index finger remaining—the index finger of a person with otherwise intact fingers. There is no disagreement that retaliation applies in such cases, even if the claimant ends up with four fingers while the defendant is left with no finger. The same ruling applies to teeth without distinction. And success comes from Allah, the Exalted.

L39148 **A legal case in which the guardians competed to carry out the execution of the killer of their kinsman.**

L39149 2139 - Issue: Abu Muhammad—may Allah have mercy on him—said: When guardians dispute over undertaking the execution of their relative's murderer, it is said to them: If you agree upon one among yourselves or an outsider, that is permissible for you. Otherwise, we cast lots between you. Whichever of you draws the lot shall undertake the qisas—and this is the opinion of Al-Shafi'i, may Allah have mercy on him. Abu Muhammad—may Allah have mercy on him—said: The proof for this is that none of them holds greater entitlement than another, nor can two jointly undertake the qawad. Since one of them or a third party must necessarily perform it by their autho-

[مَسْأَلَةٌ قَطَعَ ذَكَرَ خُنْثَى مُشْكِلٍ وَأُنْثَيَيْهِ]

٢١٣٨ - مَسْأَلَةٌ: مَنْ قَطَعَ ذَكَرَ خُنْثَى مُشْكِلٍ وَأُنْثَيَيْهِ؟ فَسَوَاءٌ قَالَ: أَنَا امْرَأَةٌ، أَوْ قَالَ: أَنَا ذَكَرٌ: الْقَوَدُ وَاجِبٌ؛ لِأَنَّهُ عُضْوٌ يُسَمَّى ذَكَرًا وَأُنْثَيَيْنِ - وَكَذَلِكَ لَوْ قَطَعَتْ امْرَأَةٌ شَفْرَيْهِ وَلَا فَرْقَ.

وَمَنْ كَانَتْ لَهُ سِنٌّ زَائِدَةٌ أَوْ إِصْبَعٌ زَائِدَةٌ فَقَطَعَهَا قَاطِعٌ اُقْتُصَّ لَهُ مِنْهُ، مِنْ أَقْرَبِ سِنٍّ إِلَى تِلْكَ السِّنِّ، وَأَقْرَبِ إِصْبَعٍ إِلَى تِلْكَ الْإِصْبَعِ؛ لِأَنَّهَا سِنٌّ وَأُصْبُعٌ وَلَا فَرْقَ بَيْنَ أَنْ يَبْقَى الْمُقْتَصُّ مِنْهُ لَيْسَ لَهُ إِلَّا أَرْبَعُ أَصَابِعَ، وَيَبْقَى لِمُقْتَصٍّ لَهُ خَمْسُ أَصَابِعَ، وَبَيْنَ أَنْ يُقْطَعَ مَنْ لَيْسَتْ لَهُ إِلَّا السَّبَّابَةُ وَحْدَهَا - سَبَّابَةُ سَالِمِ الْأَصَابِعِ؟ لَا خِلَافَ فِي أَنَّ الْقِصَاصَ فِي ذَلِكَ، وَيَبْقَى الْمُقْتَصُّ ذَا أَرْبَعِ أَصَابِعَ وَيَبْقَى الْمُقْتَصُّ مِنْهُ لَا أُصْبُعَ لَهُ، وَهَكَذَا الْقَوْلُ فِي الْأَسْنَانِ وَلَا فَرْقَ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَشَاحَّ الْأَوْلِيَاءُ فِي تَوَلِّي قَتْلِ قَاتِلِ وَلِيِّهِمْ]

٢١٣٩ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَإِذَا تَشَاحَّ الْأَوْلِيَاءُ فِي تَوَلِّي قَتْلِ قَاتِلِ وَلِيِّهِمْ؟ قِيلَ لَهُمْ: إنْ اتَّفَقْتُمْ عَلَى أَحَدِكُمْ أَوْ عَلَى أَجْنَبِيٍّ، فَذَلِكَ لَكُمْ وَإِلَّا أَقْرَعْنَا بَيْنَكُمْ، فَأَيُّكُمْ خَرَجَتْ قُرْعَتُهُ تَوَلَّى الْقِصَاصَ - وَهَذَا قَوْلُ الشَّافِعِيِّ - رَحِمَهُ اللَّهُ -؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: بُرْهَانُ هَذَا: أَنَّهُ لَيْسَ بَعْضُهُمْ أَوْلَى مِنْ بَعْضٍ، وَلَا يُمْكِنُ أَنْ يَتَوَلَّى الْقَوَدَ اثْنَانِ مَعًا، فَإِذْ لَا بُدَّ مِنْ أَحَدِهِمَا، أَوْ مِنْ غَيْرِهِمَا بِأَمْرِهِمَا - وَلَا سَبِيلَ إِلَى ثَالِثٍ، فَأَمْرُ

غَيْرِهِمَا بِالْقَوَدِ إِسْقَاطٌ لِحَقِّهِمَا مَعًا فِي تَوَلِّي ذَلِكَ الْحُكْمِ، وَالْحُكْمُ هَاهُنَا بِالْقُرْعَةِ إِسْقَاطٌ لِحَقِّ أَحَدِهِمَا، وَإِبْقَاءٌ لِحَقِّ الْآخَرِ - وَلَا يَجُوزُ إِسْقَاطُ حَقِّ ذِي حَقٍّ إِلَّا لِضَرُورَةٍ مَانِعَةٍ لَا سَبِيلَ مَعَهَا إِلَى تَوْفِيَةِ الْحَقِّ، فَإِذَا كَانَ ذَلِكَ سَقَطَ الْحَقُّ؛ لِقَوْلِ اللَّهِ تَعَالَى {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] .

rization—with no third alternative—entrusting someone else to execute the ruling would waive both guardians' right to undertake this judgment. Resorting to lot-casting here waives one guardian's right while preserving the other's. It is impermissible to nullify a rightful claimant's entitlement except under constraining necessity that prevents fulfilling the right. When such necessity arises, the right is waived, in accordance with Allah's saying: "He has detailed for you what He has forbidden to you, except what you are compelled to" (Quran 6:119).[18]

وَنَحْنُ مُحَرَّمٌ عَلَيْنَا مَنْعُهُمَا مِنْ حَقِّهِمَا، وَنَحْنُ مُضْطَرُّونَ إِلَى إِسْقَاطِ حَقِّ أَحَدِهِمَا، إِذْ لَا سَبِيلَ إِلَى غَيْرِ ذَلِكَ، وَلَسْنَا مُضْطَرِّينَ إِلَى إِسْقَاطِ حَقِّهِمَا جَمِيعًا فَلَا يَجُوزُ لَنَا مَا لَمْ نَضْطَرَّ إِلَيْهِ فَقَدْ بَطَلَ أَنْ نَأْمُرَ غَيْرَهُمَا بِغَيْرِ رِضَاهُمَا، وَلَا يَجُوزُ أَنْ نَقْصِدَ إِلَى أَحَدِهِمَا فَنُسْقِطَ حَقَّهُ هَكَذَا مُطَارَفَةً فَيَكُونُ جَوْرًا وَمُحَابَاةً، فَوَجَبَتْ الْقُرْعَةُ وَلَا بُدَّ؛ لِأَنَّ الضَّرُورَةَ دَفَعَتْ إِلَيْهَا وَلَا يَحِلُّ إِيقَافُ الْأَمْرِ حَتَّى يَتَّفِقَا؛ لِأَنَّ فِي ذَلِكَ مَنْعَهُمَا جَمِيعًا مِنْ حَقِّهِمَا، وَهَذَا لَا يَجُوزُ، بِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39150–39152 It is forbidden for us to withhold their rights from them, and we are compelled to relinquish the right of one of them, as no alternative exists. We are not compelled to relinquish the rights of both entirely. Therefore, we may not act without compulsion, for it is rendered invalid to direct others contrary to their consent, nor is it permissible for us to intend. To alternately forfeit the right of one of them in this manner would result in oppression and bias, thus necessitating the obligatory use of drawing lots without exception, as compelled by unavoidable need. It is impermissible to suspend the matter until mutual agreement is reached, for this would deprive both parties of their rightful claims—a practice deemed unlawful. Success is granted by Allah, the Exalted.

[مَسْأَلَةٌ أَخَافَ إِنْسَانًا فَقَطَعَ سَاقَهُ وَمَنْكِبَهُ وَأَنْفَهُ وَقَتَلَهُ]

L39153

A juristic issue: A person, fearing another, severed his leg, shoulder, and nose, then killed him.

٢١٤٠ - مَسْأَلَةٌ: مَنْ أَخَافَ إِنْسَانًا فَقَطَعَ سَاقَهُ وَمَنْكِبَهُ وَأَنْفَهُ وَقَتَلَهُ، فَلِوَلِيِّ الْمَقْتُولِ أَنْ يَفْعَلَ بِهِ كُلَّ ذَلِكَ، وَيَقْتُلَهُ - وَلَهُ أَنْ يَقْتُلَهُ دُونَ أَنْ يَفْعَلَ بِهِ شَيْئًا مِنْ ذَلِكَ، وَلَهُ أَنْ يَفْعَلَ بِهِ كُلَّ ذَلِكَ أَوْ بَعْضَهُ، وَلَا يَقْتُلَهُ، لَكِنْ يَعْفُوَ عَنْهُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: بُرْهَانُ ذَلِكَ: أَنَّ كُلَّ هَذِهِ الْأَفْعَالِ قَدْ وَجَبَ لَهُ أَنْ يَفْعَلَهَا قِصَاصًا عَلَى مَا قَدَّمْنَا قَبْلُ، وَهَذَا أَيْضًا مَنْدُوبٌ إِلَى الْعَفْوِ عَنْ كُلِّ ذَلِكَ وَعَنْ بَعْضِهِ، فَأَيَّ حَقِّهِ فَعَلَ فَذَلِكَ لَهُ، وَأَيَّ حَقِّهِ تَرَكَ فَذَلِكَ لَهُ.

L39154 2140. Issue: If someone frightened a person, then cut his leg, shoulder, and nose, and killed him, the legal guardian of the slain may inflict all these injuries upon the perpetrator and then kill him. He may kill him without inflicting any of those injuries, or inflict all or some of those injuries without killing him—or may he pardon him? Abū Muḥammad—may Allah have mercy on him—said: The proof for this is that each of these acts is obligated for him to enact as retribution based on what we have presented earlier. This is also recommended to pardon—whether all or some of these acts. Therefore, whichever entitlement he acts upon is permissible for him, and whichever entitlement he relinquishes is likewise permissible for him.

[18] **Qur'an references (L39149):** Qur'an 6:119 (Al-An'am).

وَقَالَ الشَّافِعِيُّ: لَهُ أَنْ يَقْطَعَ ذِرَاعَهُ وَيُخِيفَهُ عَلَى أَنْ يَقْتُلَهُ، وَأَمَّا عَلَى أَنْ لَا يَقْتُلَهُ فَلَا.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا خَطَأٌ؛ لِأَنَّهُ تَخْصِيصٌ لَا بُرْهَانَ لَهُ بِهِ.

فَإِنْ قَالَ: فِي ذَلِكَ تَعْذِيبٌ لَهُ؟ قُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ وَإِذَا أَبَاحَ لَهُ تَعْذِيبَهُ فَأَتَى بِبَعْضِ مَا أُبِيحَ لَهُ وَعَفَا عَنْ الْبَعْضِ، فَقَدْ أَحْسَنَ فِي كُلِّ ذَلِكَ، وَلَمْ يَتَعَدَّ - وَمَا وَجَدْنَا اللَّهَ تَعَالَى قَطُّ أَلْزَمَ اسْتِيفَاءَ الْحَقِّ كُلِّهِ وَمَنَعَ مِنْ الْعَفْوِ عَنْ بَعْضِهِ.

بَلْ قَدْ صَحَّ النَّصُّ بِخِلَافِ قَوْلِ الشَّافِعِيِّ جُمْلَةً وَهُوَ «فِعْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْعُرَنِيِّينَ إذْ قَطَعَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ وَسَمَلَ أَعْيُنَهُمْ قِصَاصًا بِمَا فَعَلُوا بِالرُّعَاةِ وَتَرَكَهُمْ بِالْحَرَّةِ يَسْتَسْقُونَ فَلَا يُسْقَوْنَ حَتَّى مَاتُوا» .

وَقَدْ قَالَ اللَّهُ تَعَالَى {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] وَقَدْ ذَكَرْنَا هَذَا الْحَدِيثَ بِإِسْنَادِهِ فِيمَا سَلَفَ مِنْ كِتَابِنَا هَذَا فَأَغْنَى عَنْ تَرْدَادِهِ وَأَبْطَلْنَا قَوْلَ مَنْ قَالَ كَاذِبًا: إنَّ هَذَا كَانَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ كَانَتْ الْمُثْلَةُ مُبَاحَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَطَعَ أُصْبُعَ آخَرَ عَمْدًا فَسَأَلَ الْقَوَدَ]

٢١٤١ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: مَنْ قَطَعَ أُصْبُعَ آخَرَ عَمْدًا فَسَأَلَ الْقَوَدَ؟ أَقَدْنَا لَهُ مِنْ حِينِهِ عَلَى مَا ذَكَرْنَا قَبْلُ فَإِنْ تَآكَلَتْ الْيَدُ فَذَهَبَتْ وَبَرِئَ، فَلَهُ الْقَوَدُ مِنْ الْيَدِ؛ لِأَنَّهَا تَلِفَتْ بِعُدْوَانٍ وَظُلْمٍ.

L39155 Al-Shafi'i said: He may cut off his arm and intimidate him to compel him to kill, but as for compelling him not to kill, it is not permissible.

L39156 Abū Muḥammad—may Allāh have mercy on him—said: This is an error because it entails a specification without any proof to support it.

L39157 If it is said: "In that there is punishment for him?" We say: "Yes, so what?" And if God has permitted the person to punish him and he carries out some of what was permitted to him while forgoing the rest, he has indeed done well in all that and has not transgressed. We have never found God Almighty to ever enforce the full claiming of all rights or prohibit forgoing some of them.

L39158 Rather, the text has been authenticated contrary to al-Shāfiʿī's opinion in its entirety, and it is: "The action of the Messenger of Allah (peace be upon him) toward the ʿUrayniyyūn when he cut off their hands and feet, gouged their eyes as legal retaliation for what they did to the shepherds, and left them in Ḥarrah seeking water but were denied it until they died."

L39159 Allah the Exalted has said, "There has certainly been for you in the Messenger of Allah an excellent example" [Al-Ahzab 33:21]. We have already cited this Hadith with its chain of transmission earlier in our book, rendering its repetition unnecessary. We have refuted the claim of those who falsely assert: "This action of the Messenger of Allah (may Allah bless him and grant him peace) occurred **because** corpse mutilation was permissible"—and success is attained only through Allah, the Exalted.[19]

L39160 **A case: He intentionally cut another person's finger and demanded qisas.**

L39161–39163 Issue 2141: Abū Muḥammad—may Allāh be pleased with him—said: Whoever intentionally cut off another's finger and then asked... As for retaliation (qawad), we exacted it for him immediately according to what we previously stated. If the hand decays and is lost, and the injury heals, he is entitled to retaliation from the hand, for it was destroyed through wrongful aggression and injustice.

[19] **Qur'an references (L39159):** Qur'an 33:21 (Al-Ahzab).

L39164 Similarly, if he intentionally inflicts a wound exposing the bone upon him, resulting in the loss of both eyes, qisas is exacted from the perpetrator for the victim, corresponding to the wound and both eyes collectively. This principle applies universally—if the victim dies from these injuries, the perpetrator is subjected to retaliatory execution, as all consequences stem from a criminal act of aggression.

وَكَذَلِكَ لَوْ جَرَحَهُ مُوضِحَةً عَمْدًا فَذَهَبَتْ مِنْهَا عَيْنَاهُ اُقْتُصَّ لَهُ مِنْ الْمُوضِحَةِ وَمِنْ الْعَيْنَيْنِ مَعًا وَهَكَذَا فِي كُلِّ شَيْءٍ - فَلَوْ مَاتَ مِنْهَا قُتِلَ بِهِ؛ لِأَنَّ كُلَّ ذَلِكَ تَوَلَّدَ مِنْ جِنَايَةِ عُدْوَانٍ.

L39165 Al-Shafi'i said: "As for expediting retaliation for [injuries to] the finger and the exposed tooth? Yes. If the victim dies afterward, retaliation for the life is also obligatory."

وَقَالَ الشَّافِعِيُّ: أَمَّا تَعْجِيلُ الْقِصَاصِ مِنْ الْأُصْبُعِ وَالْمُوضِحَةِ؟ فَنَعَمْ، فَإِنْ مَاتَ بَعْدَ ذَلِكَ فَالْقَوَدُ فِي النَّفْسِ وَاجِبٌ أَيْضًا.

L39166 As for the loss of both eyes and a hand only, there is only diyah in such a case.

وَأَمَّا ذَهَابُ الْعَيْنَيْنِ وَالْيَدِ فَقَطْ فَإِنَّمَا فِي ذَلِكَ الدِّيَةُ فَقَطْ.

L39167 Abū Muḥammad—may Allāh have mercy on him—said: This is an error and a manifest contradiction. There is no distinction between what results from his offense—whether the loss of a life or the loss of a limb—for neither the text of the Qur'ān, nor a Sunnah, nor consensus, nor independent reasoning, nor analogy, nor the opinion of a Companion has differentiated between any aspect of this.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا خَطَأٌ وَمُنَاقَضَةٌ ظَاهِرَةٌ، وَلَا فَرْقَ بَيْنَ مَا تَوَلَّدَ عَنْ جِنَايَتِهِ مِنْ ذَهَابِ نَفْسٍ، أَوْ ذَهَابِ عُضْوٍ؟ إذْ لَمْ يُفَرِّقْ بَيْنَ شَيْءٍ مِنْ ذَلِكَ نَصُّ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إجْمَاعٍ، وَلَا نَظَرٍ، وَلَا قِيَاسٍ، وَلَا قَوْلِ صَاحِبٍ.

L39168 If the victim amputates his own hand out of fear that the ulcer might spread, no liability falls upon the perpetrator, because the loss of the hand resulted from the victim's voluntary choice, not the perpetrator's act. Had he left it, it might have healed. If someone severs a finger segment containing two phalanxes, and each segment is severed at its base, two equivalent segments shall be amputated from his hand. If the severing occurs on the finger before the point where the two segments diverge, retaliation is limited to that exact spot, no further. No fixed compensation applies to the second segment, for Allah the Exalted says: *"So whoever transgresses against you, retaliate in kind proportionate to his transgression"* (2:194).[20]

فَلَوْ أَنَّ الْمَجْنِيَّ عَلَيْهِ قَطَعَ كَفَّ نَفْسِهِ، خَوْفَ سِرَايَةِ الْأَكَلَةِ فَلَا ضَمَانَ عَلَى الْجَانِي؛ لِأَنَّ ذَهَابَ الْيَدِ كَانَ بِاخْتِيَارِ قَاطِعِهَا، لَا مِنْ فِعْلِهِ، وَلَعَلَّهَا لَوْ تَرَكَهَا تَبْرَأُ - فَلَوْ قَطَعَ إنْسَانٌ أُنْمُلَةً لَهَا طَرَفَانِ، فَإِنْ قَطَعَ كُلَّ طَرَفٍ فِي أَصْلِهِ قُطِعَ مِنْ يَدِهِ أُنْمُلَتَانِ كَذَلِكَ، فَلَوْ قَطَعَ فِي الْأُصْبُعِ قَبْلَ افْتِرَاقِ الْأُنْمُلَتَيْنِ: قُطِعَ لَهُ مِنْ ذَلِكَ الْمَوْضِعِ فَقَطْ، وَلَا مَزِيدَ، وَلَا أَرْشَ لَهُ فِي الْأُنْمُلَةِ الثَّانِيَةِ؛ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

L39169 The obligatory ruling is that iron is taken from him in the same manner he applied it, and he is made to suffer pain equal to what he caused without excess. Allah the Exalted said: "And do not transgress. Indeed, Allah does

فَالْوَاجِبُ أَنْ يُوضَعَ مِنْهُ الْحَدِيدُ حَيْثُ وُضِعَ، وَيُذَاقَ مِنْ الْأَلَمِ مَا أَذَاقَ وَلَا مَزِيدَ، قَالَ اللَّهُ تَعَالَى {وَلا تَعْتَدُوا إِنَّ اللَّهَ لا يُحِبُّ الْمُعْتَدِينَ} [البقرة: ١٩٠] وَقَالَ الشَّافِعِيُّ:

[20] **Qur'an references (L39168):** Qur'an 2:194 (Al-Baqarah).

not love transgressors” [Al-Baqarah: 190]. Al-Shāfiʿī said: “Retaliation applies for the finger, and estimated compensation for the extra finger?” Abū Muḥammad—may Allah have mercy on him—said: “Estimated compensation means a financial penalty, and taking wealth is prohibited except by textual evidence or consensus.”[21]

L39170 **A juristic case: If someone collapses a house upon a person [who is asleep] or strikes him with a sword while he is asleep, thereby cutting off his head.**

L39171–39173 2142 - Issue: Abū Muḥammad—may Allah have mercy on him—said: Whoever demolishes a house onto a person or strikes him with a sword—while he is asleep—and cuts off his head, or says, “Did I demolish the house?” and the person had died afterward, or... He said: If someone strikes a dead person with a sword, no consideration is given to his act, nor is an oath required from the deceased’s guardians regarding this matter. Retribution (qisas) equivalent to his action becomes obligatory upon him, because the deceased’s life is legally established as valid—thus, he remains under the presumption of life until his death is conclusively proven. The claimant of his death makes a false claim implying a change of status, and such a claim is disregarded unless supported by evidence. And success is from Allah, the Exalted.

L39174 **A case where a person sustained a mortal wound from which one dies, then treated himself with poison and died.**

L39175 **Issue 2143:** If someone is wounded with a fatal injury and then self-administers poison as treatment, resulting in death, retributive equivalence (qisas) is incumbent upon the killer. This is because although death occurred through his own action and the action of another, both are killers, and retributive equivalence applies to the killer—even if another caused it. If they opt for blood money (diyah), the full diyah remains obligatory upon him as we previously outlined. Success is from Allah the Exalted, and He suffices us.

لَهُ فِي الْأُصْبُعِ الْقَوَدُ، وَلَهُ فِي الْأُصْبُعِ الزَّائِدَةِ حُكُومَةٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: الْحُكُومَةُ غَرَامَةُ مَالٍ وَالْأَمْوَالُ مُحَرَّمَةٌ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ.

[مَسْأَلَةٌ هَدَمَ بَيْتًا عَلَى إنْسَانٍ أَوْ ضَرَبَهُ بِسَيْفٍ وَهُوَ رَاقِدٌ فَقَطَعَ رَأْسَهُ]

٢١٤٢ - مَسْأَلَةٌ - قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَنْ هَدَمَ بَيْتًا عَلَى إنْسَانٍ أَوْ ضَرَبَهُ بِسَيْفٍ - وَهُوَ رَاقِدٌ - فَقَطَعَ رَأْسَهُ، أَوْ قَالَ: هَدَمْت الْبَيْتَ؟ وَهُوَ قَدْ كَانَ مَاتَ بَعْدُ، أَوْ قَالَ: ضَرَبْته بِالسَّيْفِ وَهُوَ مَيِّتٌ: لَمْ يُلْتَفَتْ لَهُ، وَلَا يَمِينَ عَلَى أَوْلِيَائِهِ فِي ذَلِكَ، وَوَجَبَ الْقَوَدُ عَلَيْهِ بِمِثْلِ مَا فَعَلَ؛ لِأَنَّ الْمَيِّتَ قَدْ صَحَّتْ حَيَاتُهُ بِيَقِينٍ، فَهُوَ عَلَى الْحَيَاةِ حَتَّى يَصِحَّ مَوْتُهُ، وَمُدَّعِي مَوْتِهِ مُدَّعِي بَاطِلٍ، وَانْتِقَالُ حَالٍ، وَالدَّعْوَى لَا يُلْتَفَتُ إلَيْهَا إلَّا بِبَيِّنَةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ جُرِحَ جُرْحًا يَمُوتُ مِنْ مِثْلِهِ فَتَدَاوَى بِسُمٍّ فَمَاتَ]

٢١٤٣ - مَسْأَلَةٌ: وَمَنْ جُرِحَ جُرْحًا يَمُوتُ مِنْ مِثْلِهِ فَتَدَاوَى بِسُمٍّ فَمَاتَ؟ فَالْقَوَدُ عَلَى الْقَاتِلِ؛ لِأَنَّهُ وَإِنْ مَاتَ مِنْ فِعْلِ نَفْسِهِ، وَفِعْلِ غَيْرِهِ: فَكِلَاهُمَا قَاتِلٌ، وَعَلَى الْقَاتِلِ الْقَوَدُ - وَإِنْ طَرَحَهُ غَيْرُهُ؟ فَإِنْ اخْتَارُوا الدِّيَةَ، فَالدِّيَةُ كُلُّهَا أَيْضًا لَازِمَةٌ لَهُ عَلَى مَا ذَكَرْنَا قَبْلُ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ، وَهُوَ حَسْبُنَا.

[21] **Qur’an references (L39169):** Qur’an 2:190 (Al-Baqarah); Qur’an 5:87 (Al-Ma’idah).

AL-MUHALLA

كِتَابُ الْعَوَاقِلِ وَالْقَسَامَةِ وَقَتْلِ أَهْلِ الْبَغْيِ

The Book of Liable Kin Groups, Collective Oaths and Rebellion

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْعَوَاقِلِ وَالْقَسَامَةِ وَقَتْلِ أَهْلِ الْبَغْيِ] [مَسْأَلَةُ الْعَوَاقِلِ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَعَلَى آلِهِ وَصَحْبِهِ وَسَلَّمَ تَسْلِيمًا كِتَابُ الْعَوَاقِلِ، وَالْقَسَامَةِ، وَقَتْلِ أَهْلِ الْبَغْيِ ٢١٤٣ - (مُكَرَّرٌ) - مَسْأَلَةٌ: الْعَوَاقِلِ؟ قَالَ الْفَقِيهُ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا مُحَمَّدُ بْنُ رَافِعٍ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «كَتَبَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى كُلِّ بَطْنٍ عُقُولَهُ، ثُمَّ كَتَبَ اللَّهُ: أَنَّهُ لَا يَحِلُّ أَنْ يُتَوَالَى مَوْلَى رَجُلٍ بِغَيْرِ إِذْنِهِ» .

L39176–39177 **The Book of Liable Kin Groups, Collective Oaths, and the Killing of Rebellious Factions The Section on Liable Kin Groups**

L39178 In the name of Allah, the Most Gracious, the Most Merciful, and may Allah send blessings and grant him abundant peace upon Muhammad, his family, and his companions. The Book of Collective Liability of Kin, Collective Oaths in Homicide Cases, and the Killing of Rebels. 2143 (repeated) – Question: Regarding collective liability? The jurist Abū Muḥammad – may Allah have mercy on him – said: From ʿAbdullāh ibn Yūsuf, from Aḥmad ibn Fatḥ, from ʿAbd al-Wahhāb ibn ʿĪsā, from Aḥmad ibn Muḥammad, from Aḥmad ibn ʿAlī, from Muslim ibn al-Ḥajjāj, from Muḥammad ibn Rāfiʿ, from ʿAbd al-Razzāq, from Ibn Jurayh, who informed me from Abū al-Zubayr, that he heard Jābir ibn ʿAbdillāh say: "The Prophet – peace and blessings of Allah be upon him – decreed that each tribe is responsible for their blood money. Then Allah ordained: It is unlawful for a patron to be inherited by a freed slave without the latter's permission."

وَبِهِ: إِلَى مُسْلِمٍ نا قُتَيْبَةُ نا اللَّيْثُ عَنِ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي جَنِينِ امْرَأَةٍ مِنْ بَنِي لِحْيَانَ سَقَطَ مَيِّتًا بِغُرَّةٍ عَبْدٍ أَوْ أَمَةٍ، ثُمَّ إِنَّ الَّتِي قَضَى عَلَيْهَا بِالْغُرَّةِ تُوُفِّيَتْ فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ مِيرَاثَهَا لِبَنِيهَا وَزَوْجِهَا، وَأَنَّ الْعَقْلَ عَلَى عَصَبَتِهَا» .

L39179 In Ṣaḥīḥ Muslim: Qutaybah narrated to us, Al-Layth narrated to us from Ibn Shihāb from Saʿīd ibn al-Musayyab from Abū Hurayrah that he said: "The Messenger of Allah (peace and blessings of Allah be upon him) ruled regarding a woman from the Banū Liḥyān whose fetus was delivered stillborn with a ghurrah [compensation for a fetus] of a male or female slave. When the woman upon whom the ghurrah was ruled died, the Messenger of Allah decreed that her inheritance should go to her sons and husband, and that the liability for blood money (ʿaql) rests upon her male agnates."

وَبِهِ: إِلَى مُسْلِمٍ نا إِسْحَاقُ بْنُ إِبْرَاهِيمَ الْحَنْظَلِيُّ نا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عُبَيْدِ بْنِ نَضْلَةَ عَنِ الْمُغِيرَةِ بْنِ شُعْبَةَ قَالَ «ضَرَبَتْ امْرَأَةٌ ضَرَّتَهَا بِعَمُودِ فُسْطَاطٍ - وَهِيَ حُبْلَى - فَقَتَلَتْهَا وَإِحْدَاهُمَا لِحْيَانِيَّةٌ، فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دِيَةَ الْمَقْتُولَةِ عَلَى عَصَبَةِ الْقَاتِلَةِ، وَغُرَّةً لِمَا فِي بَطْنِهَا، فَقَالَ رَجُلٌ مِنْ عَصَبَةِ الْقَاتِلَةِ: أَنَغْرَمُ دِيَةَ مَنْ لَا أَكَلَ وَلَا نَطَقَ وَلَا اسْتَهَلَّ، فَمِثْلُ ذَلِكَ يُطَلُّ؟

L39180–39182 And by his chain to Muslim: Isḥāq ibn Ibrāhīm al-Ḥanẓalī narrated to us; Jarīr ibn ʿAbd al-Ḥamīd narrated to us, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm al-Nakhaʿī, from ʿUbayd ibn Naḍlah, from al-Mughīrah ibn Shuʿbah. He said, "A woman struck her co-wife with a tent pole—while the victim was pregnant—killing her. One of them was a Lihyānī woman. The Messenger of Allah—peace and blessings be upon him—ruled that the blood money for the slain woman be paid by the agnates of the killer and imposed a *ghurrah* for what was in her womb. A man from the killer's agnates said, 'Shall we pay

blood money for one who neither ate, spoke, nor uttered a birth cry? Should such a thing be waived?' The Messenger of Allah—peace and blessings be upon him—responded, 'Is this rhymed prose like that of the Bedouins?' He then imposed the blood money ruling upon them."

فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَسَجْعٌ كَسَجْعِ الْأَعْرَابِ؟ قَالَ: وَجَعَلَ عَلَيْهِمْ الدِّيَةَ» .

L39183 Abu Muhammad—may Allah have mercy on him—said: It is thus established that the blood money for accidental killing and the ghurrah (compensation) mandated for a fetus are obligations upon the killer's liable male agnatic relatives (aqilah) by the ruling of the Messenger of Allah. It is also confirmed that the Messenger of Allah—peace be upon him—clarified who the liable male agnatic relatives (aqilah) responsible for paying the blood money for accidental killing and the ghurrah for the fetus are. They are the offender's male agnatic kin, his agnatic relatives, extending to the clan from which he originates—as we previously mentioned—since the Messenger of Allah—peace be upon him—assigned the blood money responsibilities to each clan.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَصَحَّ أَنَّ الدِّيَةَ فِي قَتْلِ الْخَطَأِ وَفِي الْغُرَّةِ الْوَاجِبُ فِي الْجَنِينِ عَلَى عَاقِلَةِ الْقَاتِلِ، وَالْجَانِي، بِحُكْمِ رَسُولِ اللَّهِ، وَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيَّنَ مَنْ هُمْ الْعَاقِلَةُ الْغَارِمَةُ لِدِيَةِ الْخَطَأِ، وَلِغُرَّةِ الْجَنِينِ، وَأَنَّهُمْ أَوْلِيَاءُ الْجَانِي الَّذِينَ هُمْ عَصَبَتُهُ وَمُنْتَهَاهُمْ الْبَطْنُ الَّذِي هُوَ مِنْهُمْ - عَلَى مَا أَوْرَدْنَا آنِفًا - مِنْ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَبَ عَلَى كُلِّ بَطْنٍ عُقُولَهُ؟ .

L39184 Abū Muḥammad—may Allāh have mercy on him—said: The majority of scholars hold that the aforementioned kinsmen are liable for the blood money. However, there are conflicting reports attributed to 'Uthmān al-Battī regarding this matter. It is narrated from him that he said, "I do not know what the kinsmen are," and it is also narrated from him that he affirmed our position. The majority of scholars hold that these narrations are relied upon due to their authenticity. Other narrations exist beyond these—there is no harm in mentioning some of them, even though they are not authoritative, but mentioned so that they may be known: Narrated by Muḥammad ibn Nubāt from 'Abdullāh ibn Naṣr from Qāsim ibn Aṣbagh from Ibn Waḍḍāḥ from Mūsā ibn Mu'āwiyah from Wakī' from Ibn Abī Laylā, who reported from al-Sha'bī that he said: "The Messenger of Allāh—peace and blessings be upon him—assigned the blood money liability of Quraysh upon Quraysh and the blood money liability of the Anṣār upon the Anṣār."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَجُمْهُورُ النَّاسِ يَقُولُونَ: تَغْرَمُ الْعَاقِلَةُ الْمَذْكُورَةُ الدِّيَةَ، إلَّا أَنَّهُ قَدْ اخْتَلَفَ عَنْ عُثْمَانَ الْبَتِّيِّ فِي ذَلِكَ، فَرُوِيَ عَنْهُ أَنَّهُ قَالَ: لَا أَدْرِي مَا الْعَاقِلَةُ؟ وَرُوِيَ عَنْهُ أَنَّهُ قَالَ بِمَا قُلْنَا - وَجُمْهُورُ النَّاسِ يَقُولُونَ: هَذِهِ الْآثَارُ الْمُعْتَمَدُ عَلَيْهَا لِصِحَّتِهَا - وَقَدْ جَاءَتْ آثَارٌ غَيْرُ هَذِهِ - لَا بَأْسَ بِذِكْرِ بَعْضِهَا - وَإِنْ كَانَتْ لَا حُجَّةَ فِيهَا لَكِنْ لِتُعْرَفَ: نا مُحَمَّدُ بْنُ نُبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا ابْنُ أَبِي لَيْلَى عَنْ الشَّعْبِيِّ قَالَ: «جَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَقْلَ قُرَيْشٍ عَلَى قُرَيْشٍ، وَعَقْلَ الْأَنْصَارِ عَلَى الْأَنْصَارِ» .

L39185 Hammam narrated from Abdullah ibn Muhammad ibn Ali al-Baji from Abdullah ibn Yunus from Baqi ibn Makhlad from Abu Bakr ibn Abi Shaybah from Hafs ibn Ghiyath from al-Hajjaj ibn Artah from al-Hakam ibn Miqsam from Ibn Abbas, who said: "The Messenger of Allah (peace and blessings be upon him) wrote a document between the Muhajireen and the Ansar stipu-

نا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ الْحَكَمِ بْنِ مِقْسَمٍ عَنْ ابْنِ عَبَّاسٍ، قَالَ: «كَتَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كِتَابًا بَيْنَ الْمُهَاجِرِينَ

lating that they fulfill their blood money obligations, ransom their captives in a fair manner, and reconcile among people." The first chain is disconnected and includes Ibn Abi Layla, who was poor in memorization.

L39186 The second [chain]: In it is Ḥajjāj ibn Arṭāh—who is rejected—and Miqsam—who is weak.

L39187–39188 Abu Muhammad said: If someone were to say, "How is it permissible to rule that the liable kin group pays a fine for the wrongdoing of another? And Allah the Exalted has said, *No soul bears a burden except its own, and no bearer of burdens bears another's* [Surah Al-An'am 6:164]."[1]

L39189 And He, the Exalted, said: "Every soul is held as a pledge for what it has earned" [Al-Muddaththir:38].[2]

L39190 The Messenger of Allah—peace and blessings be upon him—said regarding that: 'Abdullah ibn Rabee' al-Tameemi narrated to us, Muhammad ibn Mu'awiyah al-Hashimi narrated to us, Ahmad ibn Shu'ayb informed me, Harun ibn 'Abdullah narrated to us, Shaqiq narrated to me from 'Abd al-Malik ibn Abjar, from Ziyad ibn Laqīṭ, from Abu Rimthah, who said: "I came to the Messenger of Allah—peace and blessings be upon him—with my father. He said: 'Who is this with you?' He replied: 'My son—I testify to his lineage.' He said: 'Indeed, you shall not harm him, nor shall he harm you.'"

L39191 Abdullah ibn Rabee' narrated: Muhammad narrated: Ahmad ibn Mu'awiyah narrated: Ahmad ibn Shu'ayb narrated: Mahmud ibn Ghaylan narrated: Bishr ibn As-Sarī narrated: Sufyan narrated from Ash'ath – he is Ibn Abi Ash-Sha'tha – from Al-Aswad ibn Hilal from Tha'labah ibn Zuhdam Al-Yarbū'ī, who said: "The Prophet – peace and blessings be upon him – was delivering a sermon when some people from the Ansar came and said, 'O Messenger of Allah, these are Banu Tha'labah ibn Yarbū'—did they kill so-and-so in the pre-Islamic era?' The Prophet – peace and blessings be upon

وَالْأَنْصَارِ: أَنْ يَعْقِلُوا مَعَاقِلَهُمْ، وَيَفْدُوا عَانِيَهُمْ بِالْمَعْرُوفِ، وَالْإِصْلَاحِ بَيْنَ النَّاسِ» : فَالْأَوَّلُ: مُنْقَطِعٌ، وَفِيهِ ابْنُ أَبِي لَيْلَى، وَهُوَ سَيِّئُ الْحِفْظِ.

وَالثَّانِي: فِيهِ حَجَّاجُ بْنُ أَرْطَاةَ - وَهُوَ سَاقِطٌ - وَفِيهِ مِقْسَمٌ وَهُوَ ضَعِيفٌ.

قَالَ أَبُو مُحَمَّدٍ: فَإِنْ قَالَ قَائِلٌ: كَيْفَ يَجُوزُ الْحُكْمُ بِأَنْ تَغْرَمَ الْعَاقِلَةُ جَرِيرَةَ غَيْرِهَا؟ وَقَدْ قَالَ اللَّهُ تَعَالَى {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

وَقَالَ تَعَالَى {كُلُّ نَفْسٍ بِمَا كَسَبَتْ رَهِينَةٌ} [المدثر: ٣٨] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ: مَا ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ التَّمِيمِيُّ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ الْهَاشِمِيُّ نا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي هَارُونُ بْنُ عَبْدِ اللَّهِ نا شَقِيقٌ نِي عَبْدُ الْمَلِكِ بْنُ أَبْجَرَ عَنْ زِيَادِ بْنِ لَقِيطٍ عَنْ أَبِي رِمْثَةَ قَالَ: «أَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعَ أَبِي فَقَالَ: مَنْ هَذَا مَعَكَ؟ فَقَالَ: ابْنِي أَشْهَدُ بِهِ، قَالَ: أَمَا إِنَّكَ لَا تَجْنِي عَلَيْهِ وَلَا يَجْنِي عَلَيْكَ» .

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدٌ نا أَحْمَدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مَحْمُودُ بْنُ غَيْلَانَ نا بِشْرُ بْنُ السَّرِيِّ نا سُفْيَانُ عَنْ أَشْعَثَ - هُوَ ابْنُ أَبِي الشَّعْثَاءِ - عَنِ الْأَسْوَدِ بْنِ هِلَالٍ عَنْ ثَعْلَبَةَ بْنِ زَهْدَمٍ الْيَرْبُوعِيِّ قَالَ «كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَخْطُبُ فَجَاءَ نَاسٌ مِنَ الْأَنْصَارِ فَقَالُوا: يَا رَسُولَ اللَّهِ هَؤُلَاءِ بَنُو ثَعْلَبَةَ بْنِ يَرْبُوعٍ قَتَلُوا فُلَانًا فِي الْجَاهِلِيَّةِ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَتَفَ بِصَوْتِهِ: أَلَا لَا تَجْنِي نَفْسٌ عَلَى أُخْرَى» .

[1] **Qur'an references (L39188):** Qur'an 6:164 (Al-An'am).
[2] **Qur'an references (L39189):** Qur'an 74:38 (Al-Muddaththir).

him – declared loudly in his voice: 'Listen! No soul shall bear the sin of another!'"

L39192 And through him: To Mahmud ibn Ghaylan, narrated to us Abu Dawud al-Tayalisi, narrated to us Shu'bah from Ash'ath ibn Abi al-Sha'tha', who said: I heard al-Aswad ibn Hilal narrating from a man of Banu Tha'labah ibn Yarbu': "That some people from Banu Tha'labah ibn Yarbu' came to the Prophet—peace and blessings of Allah be upon him. A man said: 'O Messenger of Allah, these are Banu Tha'labah ibn Yarbu'; they killed so-and-so, a man from the Companions of the Messenger of Allah—peace and blessings of Allah be upon him.' The Prophet—peace be upon him—said: 'No soul bears the sin of another.'"

L39193 Abu Muhammad—may Allah have mercy on him—said: Our response—and with Allah alone is success—is that these ḥadīths, even if their chains of narration are criticized, their meaning is sound. The verses you cited are sufficient, for they encompass the meaning of these ḥadīths.

L39194–39196 Then we say—and with Allah, the Exalted, is divine success—: Verily, Allah, the Exalted, has decreed that "No soul earns except against itself, and no bearer of burdens shall bear the burden of another" [Al-An'am: 164] and that "Every person is bound by what he has earned" [At-Tur: 21]. And indeed, no one bears the sin of another, nor does any soul bear another's burden. However, the One who said all this and decreed it is also He who said, "There is no blame upon you for what you have erred in, but only what your hearts have deliberately intended" (al-Aḥzāb 33:5).[3]

L39197 He is the One who informed us through His servant and Messenger—peace and blessings be upon him—that He has pardoned us for mistakes and forgetfulness. Yet despite this, He the Exalted has obligated blood money (diyah) for accidental killing, along with expiation (kaffarah) of freeing a slave or fasting two consecutive months for those unable to perform the kaffarah.

وَبِهِ: إِلَى مَحْمُودِ بْنِ غَيْلَانَ نا أَبُو دَاوُد الطَّيَالِسِيُّ نا شُعْبَةُ عَنْ أَشْعَثَ بْنِ أَبِي الشَّعْثَاءِ قَالَ: سَمِعْت الْأَسْوَدَ بْنَ هِلَالٍ يُحَدِّثُ عَنْ رَجُلٍ مِنْ بَنِي ثَعْلَبَةَ بْنِ يَرْبُوعٍ: «أَنَّ نَاسًا مِنْ بَنِي ثَعْلَبَةَ بْنِ يَرْبُوعٍ أَتَوْا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ هَؤُلَاءِ بَنُو ثَعْلَبَةَ بْنِ يَرْبُوعٍ قَتَلُوا فُلَانًا رَجُلًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - لَا تَجْنِي نَفْسٌ عَلَى أُخْرَى» .

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَجَوَابُنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: أَنَّ هَذِهِ الْأَحَادِيثَ - وَإِنْ كَانَ فِي أَسَانِيدِهَا مُعْتَرَضٌ - فَإِنَّ مَعْنَاهَا صَحِيحٌ، وَفِي الْآيَاتِ الَّتِي ذَكَرْتُمْ كِفَايَةٌ؛ لِأَنَّهَا مُنْتَظِمَةٌ لِمَعْنَى هَذِهِ الْأَحَادِيثِ.

ثُمَّ نَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: نَعَمْ إنَّ اللَّهَ تَعَالَى حَكَمَ بِأَنْ {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] وَأَنَّ {كُلُّ امْرِئٍ بِمَا كَسَبَ رَهِينٌ} [الطور: ٢١] وَنَعَمْ، لَا يَجْنِي أَحَدٌ عَلَى أَحَدٍ، وَلَا تَجْنِي نَفْسٌ عَلَى أُخْرَى، وَلَكِنَّ الَّذِي قَالَ هَذَا كُلَّهُ، وَحَكَمَ بِهِ، هُوَ أَيْضًا الْقَائِلُ {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

وَهُوَ الْمُخْبِرُ لَنَا عَلَى لِسَانِ عَبْدِهِ وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَدْ عَفَا لَنَا عَنْ الْخَطَأِ وَالنِّسْيَانِ - وَهُوَ تَعَالَى مَعَ ذَلِكَ الْمُوجِبُ فِي قَتْلِ الْخَطَأِ دِيَةً، وَكَفَّارَةَ عِتْقِ رَقَبَةٍ، أَوْ صِيَامَ شَهْرَيْنِ مُتَتَابِعَيْنِ لِمَنْ لَمْ يَقْدِرْ عَلَى الْكَفَّارَةِ.

[3] **Qur'an references (L39194):** Qur'an 6:164 (Al-An'am); Qur'an 52:21 (At-Tur); Qur'an 33:5 (Al-Ahzab).

وَهُوَ الْمُوجِبُ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - عَلَى عَصَبَةِ قَاتِلِ الْخَطَأِ وَأَهْلِ بَطْنِهِ الَّذِي يَنْتَمِي إلَيْهِمْ دِيَةَ قَتْلِ الْمُؤْمِنِ خَطَأً، وَالْغُرَّةَ الْوَاجِبَةَ فِي الْجَنِينِ، وَكُلُّ قَوْلُ حَقٍّ، وَكُلُّ حُكْمُهُ وَاجِبٌ، يُضَمُّ بَعْضُ ذَلِكَ إلَى بَعْضٍ، وَيُسْتَثْنَى الْأَقَلُّ مِنْ الْأَكْثَرِ.

L39198 He is the One who obligates through the words of His Messenger - peace be upon him - upon the agnatic relatives of an unintentional killer and the members of his paternal clan to whom he belongs: the *diyah* for the unintentional killing of a believer, and the obligatory *ghurrah* for the fetus. Each constitutes a true ruling, and each ruling is obligatory. These obligations are combined with one another, and the lesser amount is excluded from the greater.

وَلَا يَحِلُّ لِأَحَدٍ أَخْذُ بَعْضِ أَوَامِرِهِ دُونَ بَعْضٍ، وَلَا ضَرْبُ أَحْكَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْضِهَا بِبَعْضٍ، إذْ كُلُّهَا فَرْضٌ وَحَقٌّ، وَلَيْسَ شَيْءٌ مِنْهَا أَوْلَى بِالطَّاعَةِ لَهُ مِنْ شَيْءٍ آخَرَ، وَلَمْ يَأْتِ نَصٌّ وَلَا إجْمَاعٌ فِي قَتْلِ الْعَمْدِ، وَلَا يَجُوزُ تَكْلِيفُ أَحَدٍ غَرَامَةً عَنْ أَحَدٍ إلَّا أَنْ يُوجِبَهَا نَصٌّ أَوْ إجْمَاعٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَاجِبٌ أَنْ نَنْظُرَ مَنْ الْعَصَبَةُ، وَالْبَطْنُ، وَالْأَوْلِيَاءُ - الَّذِينَ أَوْجَبَ اللَّهُ تَعَالَى عَلَيْهِمْ الدِّيَةَ فِي قَتْلِ الْخَطَأِ - وَالْغُرَّةَ فِي الْجَنِينِ - فَوَجَدْنَا النَّاسَ قَدْ اخْتَلَفُوا فِي ذَلِكَ: فَقَالَتْ طَائِفَةٌ: الْعَاقِلَةُ هُمْ مَنْ كَانَ مَعَهُ فِي دِيوَانٍ وَاحِدٍ فِي الْعَطَاءِ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: سَمِعْت الزُّهْرِيَّ - أَوْ بَلَغَنِي عَنْهُ - أَنَّهُ قَالَ: الثُّلُثُ فِيمَا دُونَهُ، فِي خَاصَّةِ مَالِهِ - يَعْنِي: مَالَ الْجَانِي، وَمَا زَادَ عَلَى ذَلِكَ عَلَى أَهْلِ الدِّيوَانِ.

L39199 It is not permissible for anyone to adopt some of the Prophet's commands while neglecting others, nor to contradict the rulings of Allah's Messenger—peace and blessings be upon him—against one another, for all of them are obligations and truths. No part of them is more deserving of obedience than another. No text or consensus exists concerning intentional killing, nor is it permissible to impose compensation on one person for another unless a text or consensus mandates it. Abu Muhammad—may Allah have mercy on him—said: "It is obligatory to examine who the agnatic relatives, lineage group, and legal guardians are—those whom Allah the Exalted has obligated to pay blood money in cases of accidental killing and the ghurrah (compensation for a fetus). We have found that people disagreed on this: a group said, 'The al-ʿāqilah [responsible kin group] are those registered together in a single state register.'" Narrated by Humaam, on the authority of Ibn Mufarrij, who narrated from Ibn al-Aʿrabī, who narrated from al-Dabarī, who narrated from ʿAbd al-Razzāq, from Maʿmar, who said: "I heard al-Zuhrī—or it reached me from him—state: 'A third [is paid] from his personal wealth for what is below that threshold,' and anything exceeding that falls upon those listed in the state register."

وَبِهِ: قَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: الدِّيَةُ فِي قَتْلِ الْخَطَأِ عَلَى الْعَاقِلَةِ فِي ثَلَاثِ سِنِينَ مِنْ يَوْمِ يُقْضَى بِهَا - وَالْعَاقِلَةُ: هُمْ أَهْلُ دِيوَانِهِ، يُؤْخَذُ ذَلِكَ مِنْ أُعْطِيَاتِهِمْ، حَتَّى يُصِيبَ الرَّجُلُ مِنْهُمْ مِنْ الدِّيَةِ أَرْبَعَةَ دَرَاهِمَ أَوْ ثَلَاثَةً، فَإِنْ أَصَابَهُ أَكْثَرُ ضَمَّ إلَيْهِمْ أَقْرَبَ الْقَبَائِلِ إلَيْهِمْ فِي النَّسَبِ مِنْ أَهْلِ الدِّيوَانِ.

L39200 And by him: Abū Ḥanīfah and his companions stated: The blood money for accidental killing is incumbent upon the ʿāqilah (responsible kin group) over three years from the day the ruling [on it] is issued—the ʿāqilah being those registered in the state register (dīwān). It is collected from their stipends until each man among them is assessed a share of three or four dirhams from the blood money. If his share exceeds this, they add to them the closest tribes related by lineage among those registered in the state register.

L39201–39202 If the killer is not enrolled in the state registry, the blood money is imposed

upon his paternal male relatives—the closest then the next closest—over three years. The nearest clans related to them by lineage are joined until each man receives three or four silver dirhams.

وَإِنْ كَانَ الْقَاتِلُ لَيْسَ مِنْ أَهْلِ الدِّيوَانِ، فُرِضَتْ الدِّيَةُ عَلَى عَاقِلَتِهِ - الْأَقْرَبِ فَالْأَقْرَبِ - فِي ثَلَاثِ سِنِينَ وَيُضَمُّ إلَيْهِمْ أَقْرَبُ الْقَبَائِلِ إلَيْهِمْ فِي النَّسَبِ حَتَّى يُصِيبَ الرَّجُلُ مِنْ الدِّيَةِ ثَلَاثَةَ دَرَاهِمَ أَوْ أَرْبَعَةً.

L39203 Sufyan al-Thawri said: The diyah (blood money) is incumbent upon the men at the time of its allocation.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: الدِّيَةُ تَكُونُ عِنْدَ الْأَعْطِيَةِ عَلَى الرِّجَالِ.

L39204 Al-Hasan ibn Hayy said: Blood money rests upon the heads of men as obligatory compensation for the fighters.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: الْعَقْلُ عَلَى رُءُوسِ الرِّجَالِ فِي عَطِيَّةِ الْمُقَاتِلَةِ.

L39205 Al-Layth ibn Sa'd said: Blood money is incumbent upon the killer and the group with whom he shares the stipend, and his tribe bears no responsibility for it whatsoever.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ: الْعَقْلُ عَلَى الْقَاتِلِ، وَعَلَى الْقَوْمِ الَّذِينَ يَأْخُذُ مَعَهُمْ الْعَطَاءَ، وَلَا يَكُونُ عَلَى قَوْمِهِ مِنْهُ شَيْءٌ.

L39206 Mālik said: The blood money is incumbent upon the tribes, with the wealthy paying according to their capacity and those of lesser means according to theirs. The liability for clients' blood money falls upon the responsible kin group—whether they consent or refuse, be they people registered in the *diwan* (state stipend system) or those without tribal ties. People mutually upheld this responsibility during the time of the Messenger of Allah (peace and blessings be upon him) and Abū Bakr, whereas the *diwan* was only instituted in the era of ʿUmar ibn al-Khaṭṭāb. If a man from the desert dwellers relocates to settled areas such as Medina or similar major towns, inhabiting and settling there, I hold that his blood money liability should be assigned to his people within the village community. If no one from his people in the village can bear his liability, it transfers to the closest members of his tribe among the tribal groups.

وَقَالَ مَالِكٌ: الدِّيَةُ عَلَى الْقَبَائِلِ عَلَى الْغَنِيِّ قَدَرُهُ، وَمَنْ دُونَهُ عَلَى قَدْرِهِ، وَعَقْلُ الْمَوَالِي يَلْتَزِمُهُ أَهْلُ الْعَاقِلَةِ - شَاءُوا أَمْ أَبَوْا، كَانُوا أَهْلَ دِيوَانٍ، أَوْ مُنْقَطِعِينَ - قَدْ تَعَاقَلَ النَّاسُ زَمَنَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبِي بَكْرٍ، وَإِنَّمَا كَانَ الدِّيوَانُ فِي زَمَانِ عُمَرَ بْنِ الْخَطَّابِ، فَإِذَا انْقَطَعَ الرَّجُلُ مِنْ أَهْلِ الْبَادِيَةِ إلَى الْقُرَى، إلَى الْمَدِينَةِ، وَمَا يُشْبِهُهَا مِنْ أُمَّهَاتِ الْقُرَى فَسَكَنَهَا وَثَوَى بِهَا: رَأَيْت أَنْ يَضُمَّ عَقْلَهُ إلَى قَوْمِهِ مِنْ أَهْلِ الْقُرَى، فَإِنْ لَمْ يَكُنْ فِي الْقَرْيَةِ مَنْ يَحْمِلُ عَقْلَهُ مِنْ قَوْمِهِ ضُمَّ إلَى أَقْرَبِ النَّاسِ بِقَبِيلَتِهِ مِنْ الْقَبَائِلِ.

L39207 Al-Shāfiʿī, Abū Sulaymān, and their companions maintained that blood money liability rests with agnatic relatives, not those listed in the state register or sworn allies. The order of responsibility proceeds from the closest to the next closest among the father's male descendants, then the grandfather's male descendants, followed by the male descendants of the father's grandfather.

وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا: الْعَقْلُ عَلَى ذَوِي الْأَنْسَابِ دُونَ أَهْلِ الدِّيوَانِ، وَالْحُلَفَاءِ: الْأَقْرَبُ فَالْأَقْرَبُ مِنْ بَنِي أَبِيهِ، ثُمَّ مِنْ بَنِي جَدِّهِ، ثُمَّ مِنْ بَنِي جَدِّ أَبِيهِ.

L39208 Abū Muḥammad—may Allāh have mercy on him—said: When they dif-

fered—as we mentioned—it became necessary to examine the evidence each group cited for their position regarding that matter, after the opinions on it were reduced to only three. One is the opinion of Abū Ḥanīfa and those with him: that the liable kinship group (al-ʿāqila) rests upon the people of the state register, not upon the offender's agnatic relatives.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا بَعْدَ أَنْ رَجَعَتْ الْأَقْوَالُ فِي ذَلِكَ إلَى ثَلَاثَةِ أَقْوَالٍ فَقَطْ: أَحَدُهَا - قَوْلُ أَبِي حَنِيفَةَ وَمَنْ مَعَهُ: عَلَى أَنَّ الْعَاقِلَةَ عَلَى أَهْلِ الدِّيوَانِ، لَا عَلَى عَصَبَةِ الْجَانِي.

L39209 The other opinion is that of Mālik and those with him: the responsible kin group is incumbent upon his tribe who are in the city and the like thereof, not upon those of them who are in rural regions.

وَالْآخَرُ - قَوْلُ مَالِكٍ وَمَنْ مَعَهُ: أَنَّ الْعَاقِلَةَ عَلَى قَوْمِهِ الَّذِينَ مَعَهُ فِي الْمَدِينَةِ وَنَحْوِهَا، لَا عَلَى مَنْ كَانَ مِنْهُمْ فِي الْبَادِيَةِ.

L39210–39212 The third opinion is the view of al-Shāfiʿī, Abū Sulaymān, and those who concur with them: that the ʿāqila are the closest agnates then the next closest among them, beginning with the sons of the father, then the sons of his paternal grandfathers, ascending generation by generation through the paternal line. We found those who assigned the ʿāqilah (collective liability group) specifically to those enrolled in the diwan [state registry], arguing that blood money had been the responsibility of the tribes during the time of the Messenger of Allah (peace and blessings be upon him) until ʿUmar assigned it to the diwan.

وَالثَّالِثُ - قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَمَنْ مَعَهُمَا: أَنَّ الْعَاقِلَةَ عَلَى الْأَقْرَبِ فَالْأَقْرَبِ مِنْ عَصَبَتِهِ، مِنْ بَنِي أَبِيهِ، ثُمَّ مِنْ بَنِي أَجْدَادِهِ أَبًا فَأَبًا فَوَجَدْنَا مَنْ جَعَلَ الْعَاقِلَةَ عَلَى أَهْلِ الدِّيوَانِ خَاصَّةً يَقُولُونَ: إنَّ الدِّيَةَ كَانَتْ عَلَى الْقَبَائِلِ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى جَعَلَهَا عُمَرُ عَلَى الدِّيوَانِ.

L39213 They said: "If the administrative register becomes invalid, would the matter revert to its state during the time of the Messenger of Allah—peace and blessings of Allah be upon him—and Abu Bakr—may Allah be pleased with him? Have we found no doubt for them except this?" Abu Muhammad—may Allah have mercy on him—said: "This claim of theirs is false. What they allege—that Umar ibn al-Khattab nullified the ruling of the ʿāqilah (collective liability) which the Messenger of Allah—peace and blessings of Allah be upon him—had established and Abu Bakr subsequently upheld, then introduced a new legal ruling—is utterly baseless, without any foundation, and a fabricated lie."

قَالُوا: فَإِنْ بَطَلَ الدِّيوَانُ رَجَعَ الْأَمْرُ إلَى مَا كَانَ عَلَيْهِ فِي زَمَنِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - لَمْ نَجِدْ لَهُمْ شُبْهَةً غَيْرَ هَذِهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا الَّذِي قَالُوهُ بَاطِلٌ - إنَّ الَّذِي ادَّعَوْهُ مِنْ أَنَّ عُمَرَ بْنَ الْخَطَّابِ أَبْطَلَ حُكْمَ الْعَاقِلَةِ الَّذِي حَكَمَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ جَرَى عَلَيْهِ أَبُو بَكْرٍ بَعْدَهُ، وَأَحْدَثَ حُكْمًا آخَرَ، فَإِنَّهُ بَاطِلٌ لَا أَصْلَ لَهُ، وَكَذِبٌ مُفْتَرَى.

L39214 Perhaps a fabricator might attempt to distort this by citing the narration transmitted by Muḥammad ibn Saʿīd ibn Nubāt, who narrated from ʿAbdullāh ibn Naṣr, who narrated from Qāsim ibn Aṣbagh, who narrated from Ibn Waḍḍāḥ, who narrated from Mūsā ibn Muʿāwiyah, who narrated from Wakīʿ, who narrated from Sufyān al-Thawrī, who narrated from an unnamed source

وَلَعَلَّ مُمَوِّهًا أَنْ يُمَوِّهَ فِي ذَلِكَ -: بِمَا ناه مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَمَّنْ

that heard al-Shaʿbī say: "'Umar imposed the blood money on the responsible kin group in the grants." Thus, this is something they have no basis for, as it is transmitted from an unknown narrator.

سَمِعَ الشَّعْبِيَّ يَقُولُ: جَعَلَ عُمَرُ الدِّيَةَ عَلَى الْعَاقِلَةِ فِي الْأَعْطِيَةِ فَهَذَا مِمَّا لَا مُتَعَلَّقَ لَهُمْ بِهِ؛ لِأَنَّهُ عَمَّنْ لَا يُدْرَى.

L39215 It has been narrated to us from Yaḥyā ibn Saʿīd that he said regarding the one whom al-Thawrī did not name: "Had there been any merit in al-Thawrī's authority, it would have been evident in him." Then this is attributed to al-Shaʿbī—though al-Shaʿbī was not born until after ʿUmar's death. We have exerted ourselves to find any basis for what they ascribed to ʿUmar—may Allah be pleased with him—but found nothing whatsoever, nor any foundation at all. May Allah have mercy on the one who said: "The chain of transmission is integral to religion. Were it not for chains of narration, whoever wished could say whatever they wished." And indeed, what is reliably preserved from ʿUmar contradicts this.

وَقَدْ رُوِّينَا عَنْ يَحْيَى بْنِ سَعِيدٍ: أَنَّهُ قَالَ فِيمَنْ لَمْ يُسَمِّهِ الثَّوْرِيُّ: لَوْ كَانَ فِي شَيْخِ الثَّوْرِيِّ خَيْرٌ لَبَرِحَ بِهِ - ثُمَّ هُوَ عَنْ الشَّعْبِيِّ - وَلَمْ يُولَدْ الشَّعْبِيُّ إلَّا بَعْدَ مَوْتِ عُمَرَ؟ وَقَدْ جَهَدْنَا أَنْ نَجِدَ هَذَا الَّذِي قَالُوهُ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فَمَا وَجَدْنَاهُ وَلَا لَهُ أَصْلٌ أَلْبَتَّةَ - وَرَحِمَ اللَّهُ الْقَائِلَ: الْإِسْنَادُ مِنْ الدِّينِ، وَلَوْلَا الْإِسْنَادُ لَقَالَ مَنْ شَاءَ مَا شَاءَ، وَأَنَّ الْمَحْفُوظَ عَنْ عُمَرَ خِلَافُ هَذَا.

L39216 As narrated by Muḥammad ibn Saʿīd ibn Nubāt, from ʿAbdullāh ibn Naṣr, from Qāsim ibn Aṣbagh, from Ibn Waḍḍāḥ, from Mūsā ibn Muʿāwiyah, from Wakīʿ, from al-Rabīʿ ibn Ṣabīḥ, from al-Ḥasan al-Baṣrī: ʿUmar ibn al-Khaṭṭāb said to ʿAlī ibn Abī Ṭālib regarding an offense ʿUmar had committed, "I insist that you divide the blood money among your father's clan," so he divided it upon Quraysh. This was the ruling of ʿUmar and ʿAlī in the presence of the Companions—may Allah be pleased with them—among the Emigrants and the Helpers, with no objection recorded from them concerning the division of what the agnatic kin are liable to pay by the tribe, not upon the people of the state register, nor upon the people of Medina specifically, as Mālik said. Yet they would use even weaker evidence than this if it were available to them.

كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا عَبْدُ عَبْدِ اللَّهِ بْنِ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا الرَّبِيعُ بْنُ صَبِيحٍ عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ لِعَلِيِّ بْنِ أَبِي طَالِبٍ فِي جِنَايَةٍ جَنَاهَا عُمَرُ: عَزَمْت عَلَيْك إلَّا قَسَمْت الدِّيَةَ عَلَى بَنِي أَبِيك فَقَسَمَهَا؟ عَلَى قُرَيْشٍ، فَهَذَا حُكْمُ عُمَرَ، وَعَلِيٍّ، بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مِنْ الْمُهَاجِرِينَ وَالْأَنْصَارِ، وَلَا يُعْرَفُ عَلَيْهِمَا مُنْكِرٌ مِنْهُمْ فِي قَسْمِ مَا تَغْرَمُهُ الْعَاقِلَةُ عَلَى الْقَبِيلَةِ، لَا عَلَى أَهْلِ الدِّيوَانِ، وَلَا عَلَى أَهْلِ الْمَدِينَةِ خَاصَّةً كَمَا قَالَ مَالِكٌ، وَهُمْ يَحْتَجُّونَ بِأَقَلَّ مِنْ هَذَا لَوْ وَجَدُوهُ.

L39217 As for ʿUmar—may Allah be pleased with him—would Allah the Exalted have purified him from invalidating the ruling of the Messenger of Allah—peace and blessings be upon him—and instituting another ruling? Abu Muhammad—may Allah have mercy on him—said: "This claim has collapsed, its corruption has become evident, and the weakness of its root and branches has been exposed."

وَأَمَّا عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - فَقَدْ نَزَّهَهُ اللَّهُ تَعَالَى عَنْ أَنْ يُبْطِلَ حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَيُحْدِثَ حُكْمًا آخَرَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَسَقَطَ هَذَا الْقَوْلُ، وَلَاحَ فَسَادُهُ، وَضَعْفُ أَصْلِهِ وَفَرْعِهِ.

L39218–39219 Then we examined Mālik's statement and found that he had argued against

those who assigned blood money liability to the people of the state register, citing the conclusive evidence from what we have previously mentioned. This very argument stands as evidence against him in his assertion: "If a Bedouin relocates from nomadic regions to a mother city such as Medina, the liable kin group for him is the townspeople, while his original kin remain in the Bedouin areas."

ثُمَّ نَظَرْنَا فِي قَوْلِ مَالِكٍ، فَوَجَدْنَاهُ قَدْ احْتَجَّ عَلَى مَنْ جَعَلَ الدِّيَةَ عَلَى أَهْلِ الدِّيوَانِ بِمَا فِيهِ الْكِفَايَةُ مِمَّا قَدْ ذَكَرْنَا، وَتِلْكَ الْحُجَّةُ بِعَيْنِهَا حُجَّةٌ عَلَيْهِ، فِي قَوْلِهِ " إنَّ مَنْ نَزَعَ مِنْ أَهْلِ الْبَدْوِ إلَى قَرْيَةٍ مِنْ أُمَّهَاتِ الْقُرَى، كَالْمَدِينَةِ وَغَيْرِهَا، فَإِنَّ الْعَاقِلَةَ عَنْهُ: أَهْلُ الْقُرَى، وَأَهْلُهُ بِالْبَادِيَةِ ".

L39220 This is baseless, as it is not supported by any authentic or weak Sunnah, nor by consensus, nor by the statement of a companion. We know of no one who held this opinion before Mālik, nor is this supported by sound reasoning or analogy: so is it invalid? Abū Muḥammad—may Allah have mercy on him—said: Since these two opinions are invalid, only the third opinion remains—the view of our companions, which is the truth. It aligns with the decisive proof: the statement of Allah's Messenger—peace and blessings be upon him—on this matter. We are therefore obligated to examine what Allah's Messenger—peace and blessings be upon him—said and to refer new legal cases to his rulings, as Allah the Exalted has commanded. We find that he—peace and blessings be upon him—decreed that each clan's blood money responsibilities be assigned to them. His ruling—peace and blessings be upon him—regarding blood money and the ghurra (compensation for fetal loss), as we previously mentioned, along with his ruling—peace be upon him—that the liable kin (al-ʿāqilah) are the guardians and agnates, confirms the validity of what we have stated.

وَهَذَا لَيْسَ بِشَيْءٍ؛ لِأَنَّهُ لَمْ يَأْتِ بِهِ سُنَّةٌ صَحِيحَةٌ، وَلَا سَقِيمَةٌ، وَلَا إجْمَاعٌ، وَلَا قَوْلُ صَاحِبٍ، وَمَا عَلِمْنَاهُ قَالَ بِهِ أَحَدٌ قَبْلَ مَالِكٍ، وَلَيْسَ هَذَا مِمَّا يُؤَيِّدُهُ نَظَرٌ، وَلَا قِيَاسٌ: فَبَطَلَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمْ يَبْقَ - إذْ بَطَلَ هَذَانِ الْقَوْلَانِ - إلَّا الْقَوْلُ الثَّالِثُ، وَهُوَ قَوْلُ أَصْحَابِنَا، وَهُوَ الْحَقُّ؛ لِمُوَافَقَتِهِ مَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ الَّذِي هُوَ الْحُجَّةُ، فَوَجَبَ عَلَيْنَا أَنْ نَنْظُرَ فِيمَا قَالَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنَرُدَّ إلَيْهِ النَّوَازِلَ فِي ذَلِكَ، كَمَا أَمَرَ اللَّهُ تَعَالَى: فَوَجَدْنَاهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ كَتَبَ عَلَى كُلِّ بَطْنٍ عُقُولَهُ، وَجَاءَ حُكْمُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الدِّيَةِ، وَفِي الْغُرَّةِ كَمَا قَدْ قَدَّمْنَا وَجَاءَ حُكْمُهُ - عَلَيْهِ السَّلَامُ -: أَنَّ الْعَاقِلَةَ هُمْ الْأَوْلِيَاءُ وَهُمْ الْعَصَبَةُ - فَصَحَّ بِهَذَا مَا قُلْنَاهُ.

L39221 As for the narration stating that he—may Allah's blessings and peace be upon him—assigned to Quraysh their blood money (ʿuqūl) and to the Ansar their blood money, it is mursal as we have mentioned, and there is no proof in a mursal narration.

وَأَمَّا الْأَثَرُ - الَّذِي فِيهِ أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَبَ عَلَى قُرَيْشٍ عُقُولَهُ، وَعَلَى الْأَنْصَارِ عُقُولَهُ فَإِنَّهُ مُرْسَلٌ كَمَا أَوْرَدْنَاهُ وَلَا حُجَّةَ فِي مُرْسَلٍ.

L39222 It is obligatory that we begin with the agnates in blood money as the Messenger of Allah—peace and blessings be upon him—commanded, and that we do not extend beyond the closest male relatives, as the Messenger of Allah—peace and blessings be upon him—delimited. No consideration is to be given to the dīwān registry or the inhabitants of a city, for neither a Qur'anic text, nor a Sunnah, nor consensus, nor a companion's opinion, nor analogy has

فَوَجَبَ أَنْ نَبْدَأَ فِي الْعَقْلِ بِالْعَصَبَةِ كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنْ لَا نَتَجَاوَزَ الْبَطْنَ، كَمَا حَدَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنْ لَا يُلْتَفَتَ إلَى دِيوَانٍ، وَلَا إلَى أَهْلِ مَدِينَةٍ، إذْ لَمْ يُوجِبْ ذَلِكَ نَصُّ قُرْآنٍ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، وَلَا قَوْلُ

established this. However, those agnates are obligated wherever they exist up to the closest male relatives. If they are unknown or their responsibility becomes unmanageable due to people's dispersal across regions, then the agnates and closest relatives at that point are among the debtors and those bound by that financial liability, which is incumbent upon their wealth. Thus, they are counted among the debtors, and their due is fulfilled through the zakāh funds allocated to the debtors' share, thereby settling their liability from it. This is the ruling concerning the ʿāqilah—the agnatic liability group—which we have clarified and elucidated.

صَاحِبٍ، وَلَا قِيَاسٌ، لَكِنْ يُكَلَّفُ ذَلِكَ الْعَصَبَةُ حَيْثُ كَانُوا إِلَى الْبَطْنِ، فَإِنْ جَهِلُوا أَوْ تَعَذَّرَ أَمْرُهُمْ لِافْتِرَاقِ النَّاسِ فِي الْبِلَادِ، الْعَصَبَةُ وَالْبَطْنُ حِينَئِذٍ مِنْ الْغَارِمِينَ، وَمِمَّنْ قَدْ لَزِمَتْهُمْ تِلْكَ الْغَرَامَةُ، وَوَجَبَتْ فِي أَمْوَالِهِمْ، فَإِذْ هُمْ مِنْ الْغَارِمِينَ فَيُؤَدَّى حَقُّهُمْ فِي الصَّدَقَاتِ فِي سَهْمِ الْغَارِمِينَ فَيُؤَدَّى عَنْهُمْ مِنْ ذَلِكَ - فَهَذَا حُكْمُ الْعَاقِلَةِ قَدْ بَيَّنَّاهُ وَأَوْضَحْنَاهُ.

[مَسْأَلَة هَلْ تَحْمِلُ الْعَاقِلَةُ الصُّلْحَ فِي الْعَمْدِ أَوْ الِاعْتِرَافِ بِقَتْلِ الْخَطَأِ]

L39223

Issue: Is the ʿāqila (liable kin group) responsible for undertaking the settlement in cases of intentional homicide or when there is a confession regarding accidental killing?

L39224–39226

2144 - Issue: Does the responsible kin group undertake the settlement in cases of intentional killing, in the acknowledgment of accidental killing, or in the case of a slave killed accidentally? Abu Muhammad—may Allah have mercy on him—said: People have differed regarding this. Intentional homicide, the slave, settlement, and confession are from the offender's property; the agnatic kin do not bear them.

٢١٤٤ - مَسْأَلَةٌ: هَلْ تَحْمِلُ الْعَاقِلَةُ الصُّلْحَ فِي الْعَمْدِ، أَوْ الِاعْتِرَافِ بِقَتْلِ الْخَطَأِ؟ أَوْ الْعَبْدِ الْمَقْتُولِ فِي الْخَطَأِ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ: نا مُوسَى بْنُ مُعَاوِيَةَ، نا وَكِيعٌ، نا عَبْدُ الْمَلِكِ بْنُ حُسَيْنٍ أَبُو مَالِكٍ: عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ عَنْ الشَّعْبِيِّ عَنْ عُمَرَ بْنِ الْخَطَّابِ، قَالَ: الْعَمْدُ، وَالْعَبْدُ، وَالصُّلْحُ، وَالِاعْتِرَافُ فِي مَالِ الْجَانِي لَا تَحْمِلُهُ الْعَاقِلَةُ.

L39227

From Al-Shaʿbī, who said: The Muslim jurists agreed that they would not pay blood money for intentional acts, slaves, settlements, or admissions [of guilt].

وَعَنْ الشَّعْبِيِّ - قَالَ: اصْطَلَحَ الْمُسْلِمُونَ عَلَى أَنْ لَا يَعْقِلُوا عَمْدًا وَلَا عَبْدًا، وَلَا صُلْحًا، وَلَا اعْتِرَافًا.

L39228

And from Ibrāhīm al-Nakhaʿī, he said: The kinship group is not liable for intentional killing, nor for a slave, nor for a settlement, nor for a confession. And from ʿUmar ibn ʿAbd al-ʿAzīz: unless the kinship group so wills.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَا تَحْمِلُ الْعَاقِلَةُ عَمْدًا وَلَا عَبْدًا، وَلَا صُلْحًا وَلَا اعْتِرَافًا - وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: إلَّا أَنْ يَشَاءُوا.

L39229

From Abu Hanifa, from Hammad, from Ibrahim al-Nakha'i, who said: The

ʿĀqilah does not pay blood money for intentional acts, nor reconciliation, nor confessions, nor a slave.

وَعَنْ أَبِي حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَا تَعْقِلُ الْعَاقِلَةُ الْعَمْدَ وَلَا الصُّلْحَ، وَلَا الِاعْتِرَافَ، وَلَا الْعَبْدَ.

L39230 On the authority of Ibn Shihāb, he said: The Sunnah holds that the ʿāqilah (kinsmen responsible for blood money) do not bear liability for intentional acts unless they willingly assist the perpetrator. Mālik said: Yaḥyā ibn Saʿīd narrated the same to me.

وَعَنْ ابْنِ شِهَابٍ قَالَ: مَضَتْ السُّنَّةُ أَنَّ الْعَاقِلَةَ لَا تَحْمِلُ شَيْئًا مِنْ الْعَمْدِ إِلَّا أَنْ تُعِينَهُ عَنْ طِيبِ نَفْسٍ - قَالَ مَالِكٌ: وَحَدَّثَنِي يَحْيَى بْنُ سَعِيدٍ مِثْلَ ذَلِكَ.

L39231 From Malik, from Hisham ibn Urwah, from his father, who said: The ʿāqilah (agnatic kin group) bears no blood money for intentional acts unless they willingly agree to it. Their obligation is solely for blood money in cases of unintentional harm.

وَعَنْ مَالِكٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: لَيْسَ عَلَى الْعَاقِلَةِ عَقْلٌ مِنْ قِبَلِ الْعَمْدِ إِلَّا أَنْ يَشَاءُوا ذَلِكَ، إِنَّمَا عَلَيْهِمْ عَقْلُ الْخَطَأِ.

L39232 Abu Hanifah, Al-Shafi'i, Ibn Shubrumah, Sufyan Al-Thawri, Al-Awza'i, Malik, Abu Sulayman, and their adherents said: The liable agnatic group does not bear anything from all of this.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَابْنُ شُبْرُمَةَ، وَسُفْيَانُ الثَّوْرِيُّ، وَالْأَوْزَاعِيُّ وَمَالِكٌ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ: لَا تَحْمِلُ الْعَاقِلَةُ شَيْئًا مِنْ هَذَا كُلِّهِ.

L39233 A group said: The responsible kin group does not bear any of this liability at all, but rather assists him. This is based on what was narrated that 'Umar ibn al-Khaṭṭāb said: "They have no right to abandon him in any matter that occurred as a result of the reconciliation agreement." It is also reported from al-Zuhrī: "They are obligated to assist him."

وَقَالَتْ طَائِفَةٌ: لَا تَحْمِلُ الْعَاقِلَةُ شَيْئًا مِنْ هَذَا كُلِّهِ وَلَكِنْ تُعِينُهُ؛ لِمَا رُوِيَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: لَيْسَ لَهُمْ أَنْ يَخْذُلُوهُ عَنْ شَيْءٍ أَصَابَهُ فِي الصُّلْحِ - وَعَنْ الزُّهْرِيِّ: وَعَلَيْهِمْ أَنْ يُعِينُوهُ.

L39234 Another group disagreed based on what was narrated from Shu'bah, who said: "I asked al-Ḥakam ibn 'Utaybah and Ḥammād ibn Abī Sulaymān about a free man who encountered a slave by chance, and both died together?" They both responded: "The diyah for the slave falls upon the free man's agnatic kin, and no liability is incurred for the slave."

وَقَالَتْ طَائِفَةٌ غَيْرَ هَذَا لِمَا رُوِيَ عَنْ شُعْبَةَ قَالَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَنْ رَجُلٍ حُرٍّ اسْتَقْبَلَ مَمْلُوكًا فَتَصَادَفَا فَمَاتَا جَمِيعًا؟ فَقَالَا جَمِيعًا: دِيَةُ الْعَبْدِ عَلَى عَاقِلَةِ الْحُرِّ وَلَيْسَ عَلَى الْعَبْدِ شَيْءٌ.

L39235–39236 It is narrated from ʿAṭāʾ that he said: If a man kills a slave unintentionally, the liability falls upon his ʿāqilah, and if he kills a beast of burden unintentionally, the liability falls upon his ʿāqilah.

وَرُوِيَ عَنْ عَطَاءٍ قَالَ: إِنْ قَتَلَ رَجُلٌ عَبْدًا خَطَأً فَهُوَ عَلَى عَاقِلَتِهِ، وَإِنْ قَتَلَ دَابَّةً خَطَأً فَهُوَ عَلَى عَاقِلَتِهِ.

L39237 From Ibn Jurayj: Muhammad ibn Nasr and al-Ṣalt informed me that a man in Basra shot someone he assumed was a dog and killed him, but it turned out to be a human! The people did not know who the killer was. Then ʿAdī

وَعَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي مُحَمَّدُ بْنُ نَصْرٍ، وَالصَّلْتُ: أَنَّ رَجُلًا بِالْبَصْرَةِ رَمَى إِنْسَانًا ظَنَّ أَنَّهُ كَلْبٌ فَقَتَلَهُ، فَإِذَا هُوَ إِنْسَانٌ؟ فَلَمْ يَدْرِ النَّاسُ مَنْ قَاتِلُهُ، فَجَاءَ عَدِيُّ بْنُ أَرْطَاةَ فَأَخْبَرَهُ:

أَنَّهُ قَتَلَهُ فَسَجَنَهُ، وَكَتَبَ فِيهِ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَكَتَبَ إلَيْهِ: إنَّك بِئْسَ مَا صَنَعْت إذْ سَجَنْتَهُ وَقَدْ جَاءَ مِنْ قِبَلِ نَفْسِهِ، فَخَلِّ سَبِيلَهُ وَاجْعَلْ دِيَتَهُ عَلَى الْعَشِيرَةِ.

ibn Arṭāʿa arrived, and the man informed him (ʿAdī) that he had killed the victim. ʿAdī imprisoned him and wrote to ʿUmar ibn ʿAbd al-ʿAzīz about the matter. ʿUmar wrote back: "You have done a terrible thing by imprisoning him when he came forward voluntarily! Release him and impose the blood money upon his clan."

وَزَعَمَ الصَّلْتُ: أَنَّهُ مِنْ الْأَزْدِ - الْقَاتِلُ وَالْمَقْتُولُ - وَأَنَّ الْقَاتِلَ كَانَ عَاسًّا يَعُسُّ.

L39238 Al-Salt claimed that both the killer and the slain were from the Azd tribe, and that the killer was a goat-herder who practiced herding.

وَقَالَ الزُّهْرِيُّ: الْعَبْدُ تَحْمِلُ قِيمَتَهُ الْعَاقِلَةُ.

L39239 Az-Zuhri said: The ʻaqilah (male agnatic relatives liable for blood money) assumes responsibility for the slave's compensatory value.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ: فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ قَالَ: لَا تَحْمِلُ الْعَاقِلَةُ عَمْدًا، وَلَا عَبْدًا، وَلَا صُلْحًا، وَلَا اعْتِرَافًا؟ فَوَجَدْنَاهُمْ يَقُولُونَ: إنَّ هَذَا قَوْلٌ رُوِيَ عَنْ عُمَرَ، وَابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا - وَلَا يُعْرَفُ لَهُمَا مُخَالِفٌ مِنْ الصَّحَابَةِ - وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، إذْ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L39240 Abū Muḥammad—may Allah have mercy on him—said: When they differed as we mentioned, it became obligatory for us to examine the evidence presented by each group to ascertain the truth and follow it. We then examined the evidence of those who argued: "The *ʿāqila* [kinsmen liable for blood money] is not responsible for intentional injury, nor for a slave, nor for reconciliation (*ṣulḥ*), nor for legal confessions?" We found them claiming: "This is the view narrated from ʿUmar and Ibn ʿAbbās (may Allah be pleased with them), and no dissenting opinion from the Companions is recorded." This provides no proof for their position, for there is no proof in the opinion of anyone apart from the Messenger of Allah—peace and blessings be upon him.

ثُمَّ نَظَرْنَا فِيمَا احْتَجَّ بِهِ أَهْلُ الْقَوْلِ الثَّانِي: فَوَجَدْنَاهُمْ يَذْكُرُونَ مَا رُوِيَ عَنْ الزُّهْرِيِّ، قَالَ: بَلَغَنِي أَنَّ «النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي الْكِتَابِ الَّذِي كَتَبَهُ بَيْنَ قُرَيْشٍ وَالْأَنْصَارِ: لَا تَتْرُكُوا مُفْرَجًا أَنْ تُعِينُوهُ فِي فِكَاكٍ أَوْ عَقْلٍ» وَالْمُفْرِجُ: كُلُّ مَا لَا تَحْمِلُهُ الْعَاقِلَةُ - وَهَذَا مُرْسَلٌ يُوجِبُ أَنْ تُعِينَ الْعَاقِلَةُ فِيمَا لَمْ تَحْمِلْ جَمِيعَهُ - وَقَدْ رُوِيَ أَيْضًا مِنْ عُمَرَ كَمَا ذَكَرْنَا.

L39241 Then we examined the evidence cited by proponents of the second opinion. We found them referencing what was reported from al-Zuhri, who said: "It reached me that the Prophet—peace and blessings of Allah be upon him—stated in the document he wrote between Quraysh and the Ansar: 'Do not abandon any mufraj without assisting in ransom or diya.'" The mufraj refers to any obligation the responsible kin group cannot bear. This mursal narration obligates the responsible kin group to assist in obligations they cannot cover in full. A similar report has also been transmitted from Umar, as we mentioned.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي مُرْسَلٍ، فَلَمَّا لَمْ يَكُنْ فِيمَا احْتَجُّوا بِهِ حُجَّةٌ وَجَبَ أَنْ نَنْظُرَ فِيمَا اخْتَلَفُوا فِيهِ مِنْ ذَلِكَ، فَبَدَأْنَا بِالْعَمْدِ مَا أُلْزِمَ فِيهِ دِيَةٌ، أَوْ صُولِحَ فِيهِ، فَوَجَدْنَا

L39242 As for us, we do not consider any proof valid in a mursal report. Since there is no evidence in what they cited as proof, we must examine the matters over which they disagreed. We began with intentional killing where blood money

النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَمْ يَجُزْ أَنْ نُكَلِّفَ عَاقِلَةً غَرَامَةً حَيْثُ لَمْ يُوجِبْهَا اللَّهُ تَعَالَى وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -، وَلَمْ يُوجِبْهَا قَطُّ نَصٌّ ثَابِتٌ فِي الْعَمْدِ، فَوَجَبَ أَنْ لَا تَحْمِلَ الْعَاقِلَةُ الْعَمْدَ، وَلَا الصُّلْحَ فِي الْعَمْدِ.

was imposed or a settlement was reached. We found the Prophet (peace be upon him) stating: "Your blood and your property are inviolable among you." Thus, it is impermissible to impose compensation on the *ʿāqilah* when neither Allah the Exalted nor His Messenger (peace be upon him) has mandated it, nor has any established authentic textual evidence ever mandated it in intentional killing. Therefore, it is obligatory that the *ʿāqilah* not bear responsibility for intentional killing or settlement in intentional killing.

ثُمَّ نَظَرْنَا فِي الِاعْتِرَافِ بِقَتْلِ الْخَطَأِ، فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

L39243–39244 Then we examined the confession of unintentional killing, and we found Allah, the Exalted, states: "No soul earns [a sin] except upon itself, and no burdened soul bears the burden of another" [Quran 6:164].[4]

وَوَجَدْنَا الْمُقِرَّ بِقَتْلِ الْخَطَأِ لَيْسَ مُقِرًّا عَلَى نَفْسِهِ، لِأَنَّ الدِّيَةَ فِيمَا أَقَرَّ بِهِ عَلَى الْعَاقِلَةِ، لَا عَلَيْهِ، فَإِذْ لَيْسَ مُقِرًّا عَلَى نَفْسِهِ فَوَاجِبٌ أَنْ لَا يُصَدَّقَ عَلَيْهِمْ، إِلَّا أَنَّنَا نَقُولُ: إِنَّهُ إِنْ كَانَ عَدْلًا حَلَفَ أَوْلِيَاءُ الْقَتِيلِ مَعَهُ وَاسْتَحَقُّوا الدِّيَةَ عَلَى الْعَاقِلَةِ، فَإِنْ نَكَلُوا فَلَا شَيْءَ لَهُمْ.

L39245 We hold that one who admits to accidental killing is not confessing against himself, for the blood money arising from his admission falls upon the liable kinsmen, not upon himself. Therefore, since he does not confess against himself, his testimony against them must not be accepted. However, we maintain: If he is a credible person, the slain's guardians must swear an oath along with him, thereby establishing their right to claim blood money from the liable kinsmen. If they refuse to swear, they are not entitled to anything.

فَلَوْ أَقَرَّ اثْنَانِ عَدْلَانِ بِقَتْلِ خَطَأٍ وَجَبَتْ الدِّيَةُ عَلَى عَوَاقِلِهِمَا بِلَا يَمِينٍ، لِأَنَّهُمَا شَاهِدَا عَدْلٍ عَلَى الْعَاقِلَةِ.

L39246 If two upright individuals confess to an accidental killing, the blood money is incumbent upon their agnates without requiring an oath, as their testimony serves as proof of the agnates' liability.

وَقَدْ اخْتَلَفَ [النَّاسُ] فِي هَذَا: فَقَالَ أَبُو حَنِيفَةَ: وَالشَّافِعِيُّ، وَالْأَوْزَاعِيُّ، وَالثَّوْرِيُّ: الدِّيَةُ عَلَى الْمُقِرِّ فِي مَالِهِ.

L39247 Scholars have differed regarding this: Abū Ḥanīfah, al-Shāfiʿī, al-Awzāʿī, and al-Thawrī said: The diyah, or blood money, is incumbent upon the admitting party from his wealth.

وَقَالَ مَالِكٌ: لَا شَيْءَ عَلَيْهِ، قَالَ: وَإِنْ لَمْ يُتَّهَمْ بِمَنْ أَقَرَّ لَهُ أَقْسَمَ أَوْلِيَاءُ الْمَقْتُولِ، وَوَجَبَتْ الدِّيَةُ عَلَى الْعَاقِلَةِ.

L39248 Mālik said: There is nothing incumbent upon him. He said: Even if he is not suspected of involvement with the one who confessed to him, the heirs of the slain must swear an oath, and the blood money is incumbent upon the agnatic male kin.

ثُمَّ نَظَرْنَا فِي الْعَبْدِ يُقْتَلُ خَطَأً، هَلْ تَحْمِلُ قِيمَتَهُ الْعَاقِلَةُ أَمْ لَا؟ فَوَجَدْنَا مَنْ لَمْ تَحْمِلْهُ الْعَاقِلَةُ لَا حُجَّةَ لَهُمْ إِلَّا مَا ذَكَرْنَا مِنْ أَنَّهُ رُوِيَ ذَلِكَ عَنْ عُمَرَ.

L39249 Then we looked into [the case of] a slave killed unintentionally: does the *ʿāqila* bear his value or not? We found that those who hold the *ʿāqila*

[4] **Qur'an references (L39244):** Qur'an 6:164 (Al-An'am).

does not bear it have no proof except what we mentioned—that this was narrated from ʿUmar.

L39250 And from Ibn Abbas—and this is a statement not authentically reported from Umar, as we mentioned, because it is transmitted through Al-Shaʿbi from Umar, and Al-Shaʿbi was not born except years after the death of Umar—may Allah be pleased with him—nor do we know it to be authentically transmitted from Ibn Abbas. We have mentioned major rulings from a group of the Companions—may Allah be pleased with them—that they contradicted, as we have cited elsewhere. Therefore, it is obligatory to refer to what Allah the Exalted has obligated in cases of dispute, as He says: "If you disagree over something, refer it to Allah and the Messenger" [Quran 4:59], so we have done.[5]

وَعَنْ ابْنِ عَبَّاسٍ - وَهُوَ قَوْلٌ لَمْ يَصِحَّ عَنْ عُمَرَ كَمَا ذَكَرْنَا، لِأَنَّهُ عَنْ الشَّعْبِيِّ عَنْ عُمَرَ وَلَمْ يُولَدْ الشَّعْبِيُّ إلَّا بَعْدَ مَوْتِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - بِسِنِينَ وَلَا نَعْلَمُهُ أَيْضًا يَصِحُّ عَنْ ابْنِ عَبَّاسٍ وَقَدْ ذَكَرْنَا قَضَايَا عَظِيمَةً عَنْ جَمَاعَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خَالَفُوهَا، قَدْ ذَكَرْنَاهَا فِي غَيْرِ مَوْضِعٍ، فَالْوَاجِبُ الرُّجُوعُ إلَى مَا أَوْجَبَ اللَّهُ تَعَالَى عِنْدَ التَّنَازُعِ، إذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ، فَفَعَلْنَا.

L39251 We found what ʿAbdullāh ibn Rabīʿ narrated, from Muḥammad ibn Muʿāwiyah, from Aḥmad ibn Shuʿayb, from al-Qāsim ibn Zakariyyā, from Saʿīd ibn ʿAmr, from Ḥammād ibn Zayd, from Ayyūb al-Sakhtiyānī, from ʿIkrimah, from Ibn ʿAbbās: "A mukātab was killed during the time of Allah's Messenger - peace and blessings be upon him - so the Prophet - peace be upon him - ordered that the portion he had paid be compensated as a free person's diyah, and the remainder as a slave's diyah."

فَوَجَدْنَا مَا ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا الْقَاسِمُ بْنُ زَكَرِيَّا نا سَعِيدُ بْنُ عَمْرٍو نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: «أَنَّ مُكَاتَبًا قُتِلَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَ - عَلَيْهِ السَّلَامُ - أَنْ يُودَى مَا أَدَّى دِيَةَ الْحُرِّ، وَمَا لَا دِيَةَ الْمَمْلُوكِ» .

L39252–39253 It has been narrated from Yahya ibn Abi Kathir that he said: Ali ibn Abi Talib and Marwan held the opinion regarding the mukatab that the blood money of a free person is paid proportionally to the amount he has contributed toward his emancipation, while the remaining portion is subject to the blood money of a slave.

وَقَدْ رُوِيَ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: إنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ، وَمَرْوَانَ كَانَا يَقُولَانِ فِي الْمُكَاتَبِ أَنَّهُ يُودَى مِنْهُ دِيَةَ الْحُرِّ بِقَدْرِ مَا أَدَّى، وَمَا رُقَّ مِنْهُ دِيَةَ الْعَبْدِ.

L39254 We found the Messenger of Allah—may Allah bless him and grant him peace—who is the authority in religion, having termed what is paid in the killing of **the** slave as "diyah," and Ali ibn Abi Talib—who is the authority in language—also termed it "diyah."

فَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ الْحُجَّةُ فِي الدِّينِ سَمَّى مَا يُودَى فِي قَتْلِ الْعَبْدِ " دِيَةً " وَسَمَّاهُ أَيْضًا عَلِيُّ بْنُ أَبِي طَالِبٍ - وَهُوَ حُجَّةٌ - فِي اللُّغَةِ " دِيَةً ".

L39255 It has been authentically reported from the Prophet (peace be upon him) that the blood money for accidental killing is incumbent upon the ʿāqilah.

وَقَدْ صَحَّ عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ - أَنَّ الدِّيَةَ فِي النَّفْسِ فِي الْخَطَأِ عَلَى الْعَاقِلَةِ - وَصَحَّ الْإِجْمَاعُ عَلَى أَنَّ فِي قَتْلِ الْعَبْدِ الْمُؤْمِنِ خَطَأً: كَفَّارَةً بِعِتْقِ رَقَبَةٍ، أَوْ صِيَامِ شَهْرَيْنِ مُتَتَابِعَيْنِ

[5] **Qur'an references (L39250):** Qur'an 4:59 (An-Nisa).

A consensus has also been established that accidentally killing an enslaved believer necessitates expiation through freeing a slave or fasting two consecutive months for one who cannot find a slave. Thus, it is established by textual evidence and consensus that what is paid for an enslaved person is blood money, and this blood money falls upon the ʿāqilah. This is our doctrine.

لِمَنْ لَمْ يَجِدْ رَقَبَةً - فَصَحَّ بِالنَّصِّ، وَالْإِجْمَاعِ: أَنَّ مَا يُودَى فِي الْعَبْدِ دِيَةٌ، وَالدِّيَةُ عَلَى الْعَاقِلَةِ - وَبِهَذَا نَقُولُ.

L39256 As for the diyah and other forms of wealth, they are not [considered diyah], because none of those are termed "diyah." Wealth is prohibited unless established by a textual ruling or consensus. And divine facilitation is with Allah, the Exalted.

وَأَمَّا الدِّيَةُ وَسَائِرُ الْأَمْوَالِ فَلَا، لِأَنَّهُ لَا يُسَمَّى شَيْءٌ مِنْ ذَلِكَ " دِيَةً " وَالْأَمْوَالُ مَحْظُورَةٌ إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39257 **The Issue of the Measure Borne by the ʿĀqilah (Responsible Kin Group).**

[مَسْأَلَة مِقْدَارُ مَا تَحْمِلُهُ الْعَاقِلَةُ]

L39258 **2145 – Issue:** What is the extent of the _ʿāqilah's_ liability? Abū Muḥammad—may Allah have mercy on him—said: A school of jurists held that the _ʿāqilah_ is only liable for unintentional offenses if the amount exceeds one-third of the _diyah_ (blood money). If the amount is less than or equal to one-third, it is paid from the perpetrator's own wealth.

٢١٤٥ - مَسْأَلَةٌ: مِقْدَارُ مَا تَحْمِلُهُ الْعَاقِلَةُ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: قَالَتْ طَائِفَةٌ: لَا تَحْمِلُ الْعَاقِلَةُ مِنْ جِنَايَاتِ الْخَطَأِ إلَّا مَا كَانَ أَكْثَرَ مِنْ ثُلُثِ الدِّيَةِ فَصَاعِدًا، فَإِنْ كَانَ أَقَلَّ مِنْ الثُّلُثِ أَوْ كَانَ الثُّلُثَ، فَهُوَ فِي مَالِ الْجَانِي.

L39259 A group stated that the male agnatic kin (al-ʿāqila) are only liable for a third of the diya (blood money) or more. Any amount less than a third of the diya must be paid from the offender's own wealth.

وَقَالَتْ طَائِفَةٌ: لَا تَحْمِلُ الْعَاقِلَةُ إلَّا مَا كَانَ ثُلُثَ الدِّيَةِ فَصَاعِدًا، فَمَا كَانَ أَقَلَّ مِنْ ثُلُثِ الدِّيَةِ فَهُوَ فِي مَالِ الْجَانِي.

L39260 A faction holds that amounts of one-third or more are borne by the male agnates, while any amount less than one-third is borne exclusively by his immediate male kin.

وَقَالَتْ طَائِفَةٌ: الثُّلُثُ فَصَاعِدًا عَلَى الْعَاقِلَةِ، وَمَا كَانَ أَقَلَّ مِنْ الثُّلُثِ فَعَلَى قَوْمِهِ خَاصَّةً.

L39261 A group maintained that the kinship group is responsible only for amounts equivalent to half of a tenth of the blood money or higher, while anything less than that is borne by the offender's personal wealth.

وَقَالَتْ طَائِفَةٌ: لَا تَحْمِلُ الْعَاقِلَةُ إلَّا مَا كَانَ نِصْفَ عُشْرِ الدِّيَةِ فَصَاعِدًا، وَمَا كَانَ أَقَلَّ فَهُوَ فِي مَالِ الْجَانِي.

L39262 A group held that if a woman causes injury to a man or a woman, and the compensation reaches one-third of the victim's *diyah*, it is borne by her *ʿāqila*. If it amounts to less than that, it is payable from her wealth.

وَقَالَتْ طَائِفَةٌ: إنْ جَنَتْ امْرَأَةٌ عَلَى رَجُلٍ أَوْ امْرَأَةٍ، فَبَلَغَتْ ثُلُثَ دِيَتِهَا كَانَ عَلَى عَاقِلَتِهِ، وَإِنْ بَلَغَ أَقَلَّ فَفِي مَالِهِ.

وَقَالَتْ طَائِفَةٌ: الْمُرَاعَى فِي ذَلِكَ الْمَجْنِيِّ عَلَيْهِ، فَإِنْ كَانَ امْرَأَةً فَبَلَغَ نِصْفَ عُشْرِ دِيَتِهَا حَمَلَتْهُ عَاقِلَةُ الْجَانِي - رَجُلًا كَانَ أَوْ امْرَأَةً - وَإِنْ كَانَ الْمَجْنِيُّ عَلَيْهِ رَجُلًا فَبَلَغَ نِصْفَ عُشْرِ دِيَتِهِ فَإِنَّهُ عَلَى عَاقِلَةِ الْجَانِي - رَجُلًا كَانَ أَوْ امْرَأَةً - وَمَا كَانَ دُونَ ذَلِكَ فَفِي مَالِ الْجَانِي.

L39263–39265 A group said: What is considered in this matter is the victim. If the victim is a woman and the amount reaches one-twentieth of her blood money, the offender's agnatic kin (whether the offender is male or female) bear responsibility for it. If the victim is a man and the amount reaches... Half of one-tenth of the blood money is the responsibility of the perpetrator's agnatic kin (whether the perpetrator is male or female), and whatever is less than that is from the perpetrator's wealth.

وَقَالَتْ طَائِفَةٌ: تَحْمِلُ الْعَاقِلَةُ مَا قَلَّ أَوْ كَثُرَ.

L39266 And a group said: The agnatic kin bear what is little or much.

وَقَالَتْ طَائِفَةٌ: الْحُكْمُ فِي ذَلِكَ عَلَى مَا اتَّفَقُوا عَلَيْهِ، فَإِنْ كَانَ تَآلَفُوا عَلَى الْكَثِيرِ فَقَطْ حَمَلُوا الْكَثِيرَ فَقَطْ - وَلَمْ تَحُدَّ لِلْقَلِيلِ وَلَا لِلْكَثِيرِ حَدًّا -.

L39267 A group held: The ruling in this matter is based on what they mutually agreed upon. If they settled on the large amount exclusively, they are only liable for the large amount - with no prescribed penalty established for either the small or the large amount.

قَالَ أَبُو مُحَمَّد: فَالْقَوْلُ الْأَوَّلُ كَمَا رُوِيَ عَنْ الزُّهْرِيِّ، قَالَ: الثُّلُثُ فَمَا دُونَهُ فِي خَاصَّةِ مَالِهِ وَمَا زَادَ فَهُوَ عَلَى الْعَاقِلَةِ.

L39268 Abu Muhammad said: The first opinion is as reported from Al-Zuhri, who said: Up to one-third is from his personal wealth, and anything exceeding that is the responsibility of al-aqilah.

وَالْقَوْلُ الثَّانِي - كَمَا رُوِيَ عَنْ ابْنِ وَهْبٍ، قَالَ: أَخْبَرَنِي ابْنُ سَمْعَانَ قَالَ: سَمِعْت رِجَالًا مِنْ عُلَمَائِنَا يَقُولُونَ: قَضَى عُمَرُ بْنُ الْخَطَّابِ فِي الدِّيَةِ أَنْ لَا يُحْمَلَ مِنْهَا شَيْءٌ عَلَى الْعَاقِلَةِ حَتَّى تَبْلُغَ ثُلُثَ الدِّيَةِ فَإِنَّهَا عَلَى الْعَاقِلَةِ - عَقْلُ الْمَأْمُومَةِ وَالْجَائِفَةِ - فَإِذَا بَلَغَتْ ذَلِكَ فَصَاعِدًا حُمِلَتْ عَلَى الْعَاقِلَةِ.

L39269 The second opinion—as narrated from Ibn Wahb, who said: Ibn Sam'ān informed me, saying: I heard some of our scholars state: 'Umar ibn al-Khaṭṭāb ruled regarding blood money that no portion of it is to be borne by the agnatic clan until it reaches a third thereof, for the compensation for a skull fracture exposing the brain membrane and a penetrating wound to the body cavity is upon the agnatic clan. When it reaches that amount or beyond, it is borne by the agnatic clan.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَسُلَيْمَانَ بْنِ يَسَارٍ مِثْلُهُ - وَعَنْ الزُّهْرِيِّ مِثْلُهُ.

L39270 And from Sa'īd ibn al-Musayyib and Sulaymān ibn Yasār, a similar narration—and from al-Zuhrī, the like of it.

وَقَالَ عُرْوَةُ بْنُ الزُّبَيْرِ: مَا كَانَ مِنْ خَطَأٍ فَلَيْسَ عَلَى الْعَاقِلَةِ مِنْهُ شَيْءٌ حَتَّى يَبْلُغَ ثُلُثَ الدِّيَةِ - عَلَى ذَلِكَ أَمْرُ السُّنَّةِ -.

L39271 Urwah ibn al-Zubayr said: Whatever act occurs by mistake does not fall upon the ʿāqilah [liable kinship group] until it amounts to one-third of the blood money—this is the ruling established by the Sunnah.

وَعَنْ اللَّيْثِ بْنِ سَعْدٍ أَنَّهُ سَمِعَ يَحْيَى بْنَ سَعِيدٍ يَقُولُ: إنَّ مِنْ الْأَمْرِ - الْقَدِيمِ عِنْدَنَا - أَنْ لَا يَكُونَ عَلَى الْعَاقِلَةِ عَقْلٌ حَتَّى يَبْلُغَ الْجُرْحُ ثُلُثَ الدِّيَةِ.

L39272 And from al-Layth ibn Saʿd that he heard Yaḥyā ibn Saʿīd say: Among the long-established principles in our tradition is that no liability (ʿaql) is

incumbent on the ʿāqilah (liable kin group) until the injury reaches one-third of the full diyah (blood money).

وَعَنْ رَبِيعَةَ لَا تَحْمِلُ الْعَاقِلَةُ مَا دُونَ الثُّلُثِ إِلَّا أَنْ يَصْطَلِحُوا عَلَى شَيْءٍ.

L39273 And from Rabi'ah: The 'aqila (the kinship group responsible for blood money payments) is not liable for what is less than a third of the blood money unless they settle by mutual agreement upon something.

وَعَنْ ابْنِ جُرَيْجٍ، وَمَعْمَرٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ قَالَ: نَحْنُ مُجْتَمِعُونَ أَوْ قَدْ كِدْنَا أَنْ نَجْتَمِعَ: أَنَّ مَا دُونَ الثُّلُثِ فِي مَالِهِ خَاصَّةً.

L39274 From Ibn Jurayj and Ma'mar, from 'Ubayd Allāh ibn 'Umar, who said: We have reached consensus, or we had nearly attained it, that anything less than a third of one's wealth pertains specifically.

وَعَنْ يَحْيَى بْنِ سَعِيدٍ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ قَضَى فِي مَوْلًى جُرِحَ، فَكَانَ دُونَ الثُّلُثِ مِنْ الدِّيَةِ وَلَمْ يَكُنْ لَهُ شَيْءٌ أَنْ يَكُونَ دَيْنًا يُتْبَعُ بِهِ - وَبِهَذَا يَقُولُ عَبْدُ الْعَزِيزِ بْنُ أَبِي سَلَمَةَ.

L39275 And from Yahya ibn Sa'id that 'Umar ibn 'Abd al-'Aziz ruled regarding a client who was wounded, where the compensation amounted to less than a third of the *diyah* and he possessed no assets, thus it becomes a debt to be pursued. This is the position of 'Abd al-'Aziz ibn Abi Salama.

وَالْقَوْلُ الثَّالِثُ - قَالَ مَالِكٌ: مَا بَلَغَ ثُلُثَ الدِّيَةِ مِنْ الرَّجُلِ مِنْ جِنَايَةِ الرَّجُلِ جَرَحَ رَجُلًا أَوْ امْرَأَةً فَعَلَى الْعَاقِلَةِ فَإِنْ كَانَ أَقَلَّ مِنْ ذَلِكَ فَفِي مَالِهِ، وَمَا بَلَغَ ثُلُثَ دِيَةِ الْمَرْأَةِ فَعَلَى الْعَاقِلَةِ فَمَا كَانَ أَقَلَّ فَفِي مَالِهِ سَوَاءٌ جَرَحَتْ رَجُلًا أَوْ امْرَأَةً.

L39276–39278 The third opinion—Mālik said: If a man's offense against a man or a woman results in compensation reaching a third of a man's _diyah_, it falls upon the _ʿāqilah_. If the amount is less than that, it is paid from his own wealth. And what reaches a third of a woman's _diyah_... Thus, the liability lies on the ʿāqila (liable male kin group); whatever lesser amount [is due] is to be paid from his wealth, equally, whether the injury was sustained by a man or a woman.

وَالْقَوْلُ الرَّابِعُ - كَمَا رُوِيَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ قَالَ: لَا تَعْقِلُ الْعَاقِلَةُ مَا دُونَ الْمُوضِحَةِ.

L39279 The fourth opinion—as reported from Ḥammād ibn Abī Sulaymān, on the authority of Ibrāhīm, who said: The liable kin (al-ʿāqila) are not responsible for blood money (al-ʿaql) for injuries below the bone-exposing wound (al-mūḍiḥah).

قَالَ وَكِيعٌ: وَسَمِعْت سُفْيَانَ الثَّوْرِيَّ يَقُولُ: لَا تَعْقِلُ الْعَاقِلَةُ مُوضِحَةَ الْمَرْأَةِ إِلَّا فِي قَوْلِ مَنْ رَآهَا كَمُوضِحَةِ الرَّجُلِ - وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ.

L39280 Waki' said: I heard Sufyan al-Thawri say: The male liable kin group does not pay compensation for a woman's front tooth except according to those who equate it to a man's front tooth—and this is the opinion of Ibn Shubrumah.

وَأَمَّا الْقَوْلُ الْخَامِسُ - فَإِنَّ أَبَا حَنِيفَةَ وَأَصْحَابَهُ قَالُوا بِهِ فَرَاعَوْا الْمَجْنِيَّ عَلَيْهِ، قَالُوا: فَإِنْ كَانَ الْمَجْنِيُّ عَلَيْهِ امْرَأَةً فَبَلَغَتْ الْجِنَايَةُ نِصْفَ عُشْرِ دِيَتِهَا فَصَاعِدًا فَهِيَ عَلَى الْعَاقِلَةِ، فَإِنْ

L39281 As for the fifth opinion, Abū Ḥanīfah and his companions held it, considering the victim's status. They stated: If the victim is a woman and the liability reaches one-twentieth (5%) of her blood money (diyah) or more, the responsibility falls upon the male kin group (ʿāqila). If it is less, it is paid from the perpetrator's wealth—whether the perpetrator is male or female. If

بَلَغَتْ أَقَلَّ فَهِيَ فِي مَالِ الْجَانِي - رَجُلًا كَانَ أَوْ امْرَأَةً - فَإِنْ كَانَ الْمَجْنِيُّ عَلَيْهِ رَجُلًا فَبَلَغَتْ الْجِنَايَةُ نِصْفَ عُشْرِ دِيَتِهِ فَصَاعِدًا فَهِيَ عَلَى الْعَاقِلَةِ، فَإِنْ بَلَغَتْ أَقَلَّ فَفِي مَالِ الْجَانِي - رَجُلًا كَانَ أَوْ امْرَأَةً.

the victim is a man and the liability reaches one-twentieth of his diyah or more, the responsibility falls upon the ʿāqila. If it is less, it is paid from the perpetrator's wealth—whether the perpetrator is male or female.

L39282 وَالْقَوْلُ السَّادِسُ - كَمَا رَوَى عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ، قَالَ: إذَا بَلَغَ الثُّلُثَ فَهُوَ عَلَى الْعَاقِلَةِ، وَقَالَ لِي ذَلِكَ ابْنُ أَيْمَنَ، وَلَا أَشُكُّ أَنَّهُ قَالَ: فَمَا لَمْ يَبْلُغْ الثُّلُثَ فَعَلَى قَوْمِ الرَّجُلِ خَاصَّةً.

L39282 The sixth opinion—as reported by ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ, who said: "If it reaches a third, it is upon the ʿāqilah (the collective liable for blood money)." Ibn Ayman related this to me, and I have no doubt he said, "Any amount that does not reach a third is exclusively upon the man's paternal kin."

L39283 وَالْقَوْلُ السَّابِعُ - كَمَا رُوِيَ عَنْ ابْنِ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ أَبِي الزِّنَادِ قَالَ: كُلُّ شَيْءٍ مِنْ جِرَاحٍ أَوْ دَمٍ كَانَ خَطَأً، فَإِنَّ عَقْلَ مَا ائْتَلَفَتْ عَلَيْهِ الْقَبِيلَةُ مِنْ الْخَطَأِ عَلَى مَا ائْتَلَفُوا عَلَيْهِ إنْ كَانَتْ إلْفَتُهُمْ عَلَى الْكَثِيرِ، وَلَيْسَتْ عَلَى الْقَلِيلِ، فَإِنَّ عَقْلَ مَا ائْتَلَفُوا عَلَيْهِ عَلَى الْعَاقِلَةِ وَعَقْلَ مَا لَمْ يَأْتَلِفُوا عَلَيْهِ عَلَى الْجَارِحِ فِي مَالِهِ - وَلَيْسَ بِشَيْءٍ مِنْ ذَلِكَ - اصْطَلَحَتْ عَلَيْهِ الْقَبِيلَةُ - بَأْسٌ.

L39283 The seventh opinion—as narrated from Ibn Wahb, who informed me from Yunus, from Abū al-Zinād, who said: Every instance of injury or bloodshed occurring unintentionally—the blood money for what the tribe has agreed upon as unintentional shall be determined by their agreement, provided their agreement applies to the majority of cases rather than the minority. Thus, the blood money for what they have agreed upon falls upon the agnatic kin, while the blood money for what they have not agreed upon is borne by the injuring party from his wealth. None of this holds validity unless the tribe has mutually agreed upon it—otherwise, there is harm.

L39284 وَقَدْ كَانَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ أَلَّفَ مُعَقِّلَةَ قُرَيْشٍ، إذْ كَانَ أَمِيرًا عَلَى الْمَدِينَةِ: عَلَى أَنَّهُمْ يَعْقِلُونَ ثُلُثَ الدِّيَةِ فَمَا فَوْقَهَا، وَأَنَّ مَا دُونَ ذَلِكَ يَكُونُ عَلَى الْجَارِحِ فِي مَالِهِ.

L39284 Umar ibn Abd al-Aziz established the muʿaqqilah of Quraysh when he was governor of Medina, stipulating that they would pay a third of the blood money *diyah* or more, while anything below that would be borne by the injurer from his own wealth.

L39285 وَالْقَوْلُ الثَّامِنُ - قَالَهُ عُثْمَانُ الْبَتِّيُّ، وَالشَّافِعِيُّ: أَنَّ الْعَاقِلَةَ تَحْمِلُ مَا قَلَّ أَوْ كَثُرَ - كَمَا ذَكَرْنَا فِي الْبَابِ الَّذِي قَبْلَ هَذَا قَوْلَ عَطَاءٍ وَغَيْرِهِ: أَنَّ الْعَاقِلَةَ تَحْمِلُ ثَمَنَ الْعَبْدِ - وَلَمْ يَخُصَّ قَلِيلًا مِنْ كَثِيرٍ - وَهُوَ قَوْلُ الْحَكَمِ بْنِ عُتَيْبَةَ وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَغَيْرِهِمْ.

L39285 The eighth opinion—stated by ʿUthmān al-Battī and al-Shāfiʿī—is that al-ʿaqilah bear the payment, whether small or large, as we mentioned in the chapter preceding this one: the opinion of ʿAṭāʾ and others that al-ʿaqilah bear the price of the slave—without distinguishing between a small or large amount. This is the opinion of al-Ḥakam ibn ʿUtaybah, Ḥammād ibn Abī Sulaymān, and others.

L39286–39288 قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ تَعَالَى -: فَنَظَرْنَا فِي قَوْلِ مَنْ قَالَ: إنَّهُ إلَى الثُّلُثِ فَمَا فَوْقَهُ... إلَخْ الْجَارِحُ: فَإِنْ كَانَ الْعَقْلُ أَكْثَرَ مِنْ الْعَاقِلَةِ

L39286–39288 Abu Muhammad (may Allah have mercy on him) said: We examined the view of those who stated, "Indeed, up to one-third of the estate..." The perpetrator: and if the compensation exceeds the ʿāqilah (liable kin group)?

We found they have no proof whatsoever that we fundamentally recognize. Thus, this opinion is dismissed, for any opinion without proof is invalid, and it is impermissible to uphold it.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي قَوْلِ مَنْ قَالَ: إنَّ الثُّلُثَ فَمَا دُونَهُ فِي مَالِ الْجَانِي، وَإِنَّ مَا زَادَ عَلَى الْعَاقِلَةِ؟ فَوَجَدْنَاهُ لَا حُجَّةَ لَهُمْ نَعْلَمُهَا أَصْلًا - فَسَقَطَ هَذَا الْقَوْلُ، إذْ كُلُّ قَوْلٍ لَا حُجَّةَ لَهُ، فَهُوَ سَاقِطٌ لَا يَجُوزُ الْقَوْلُ بِهِ.

L39289 Then we examined the second opinion and found them citing what Yunus ibn Yazid narrated from Rabi'ah, that he said: "The Messenger of Allah—peace and blessings of Allah be upon him—organized people according to their clan-based liability units. Banu Sa'idah, though separate, were grouped into a single unit jointly paying one-third of the blood money or more, while anything below that amount fell upon the one who incurred liability through his deliberate act or committed the offense."

ثُمَّ نَظَرْنَا فِي الْقَوْلِ الثَّانِي - فَوَجَدْنَاهُمْ يَذْكُرُونَ: مَا رَوَاهُ يُونُسُ بْنُ يَزِيدَ عَنْ رَبِيعَةَ أَنَّهُ قَالَ: «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَلَّفَ بَيْنَ النَّاسِ فِي مَعَاقِلِهِمْ فَكَانَتْ بَنُو سَاعِدَةَ فُرَادَى عَلَى مَعْقُلَةٍ يَتَعَاقَلُونَ ثُلُثَ الدِّيَةِ فَصَاعِدًا، وَيَكُونُ مَا دُونَ ذَلِكَ عَلَى مَنْ اكْتَسَبَ وَجَنَى» .

L39290 Ibn Wahb said: 'Abd al-Jabbar ibn 'Umar narrated to me from Rabi'ah that he said: "The Messenger of Allah (peace and blessings be upon him) mediated the blood money between Quraysh and the Ansar, setting the diya between them up to one-third of the full amount."

وَقَالَ ابْنُ وَهْبٍ: وَحَدَّثَنِي عَبْدُ الْجَبَّارِ بْنُ عُمَرَ عَنْ رَبِيعَةَ أَنَّهُ قَالَ: «عَاقَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ قُرَيْشٍ وَالْأَنْصَارِ: فَجَعَلَ الْعَقْلَ بَيْنَهُمْ إلَى ثُلُثِ الدِّيَةِ» .

L39291 Hammam narrated to us, Abbas ibn Asbagh narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, al-Harith ibn Abi Usamah narrated to us, Muhammad ibn Umar al-Waqidi narrated to us, Musa ibn Shaybah narrated from Kharijah ibn Abdullah ibn Ka'b ibn Malik, from his father, from his grandfather, who said: "During our Age of Ignorance, we only bore a portion of the collective liability equivalent to a third of the *diya*, and we were required to pay it immediately. If it was unavailable to us, it was treated as a deferred obligation. When Allah Almighty brought Islam, we were among those for whom the Messenger of Allah (peace and blessings be upon him) instituted the pre-Islamic system of collective liability between Quraysh and the Ansar: a third of the *diya*. This was reported from Umar, and no disagreement from any of the Companions—may Allah be pleased with them—is known regarding this matter."

وَمَا ناه حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا الْحَارِثُ بْنُ أَبِي أُسَامَةَ نا مُحَمَّدُ بْنُ عُمَرَ الْوَاقِدِيُّ نا مُوسَى بْنُ شَيْبَةَ عَنْ خَارِجَةَ بْنِ عَبْدِ اللَّهِ بْنِ كَعْبِ بْنِ مَالِكٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ: كُنَّا فِي جَاهِلِيَّتِنَا وَإِنَّمَا نَحْمِلُ مِنْ الْعَقْلِ مَا بَلَغَ ثُلُثَ الدِّيَةِ، وَنُؤْخَذُ بِهِ حَالًّا، فَإِنْ لَمْ يُوجَدْ عِنْدَنَا كَانَ بِمَنْزِلَةِ الَّذِي يَتَجَازَى، فَلَمَّا جَاءَ اللَّهُ تَعَالَى بِالْإِسْلَامِ كُنَّا فِيمَنْ سَنَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ الْمَعَاقِلِ بَيْنَ قُرَيْشٍ وَالْأَنْصَارِ: ثُلُثَ الدِّيَةِ - رُوِيَ عَنْ عُمَرَ - وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L39292 Abu Muhammad—may Allah have mercy on him—said: We examined this argument and found that it does not constitute a valid proof, for the two reports from Rabi'ah are mursal.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي هَذَا الِاحْتِجَاجِ، فَوَجَدْنَاهُ لَا تَقُومُ بِهِ حُجَّةٌ، لِأَنَّ الْخَبَرَيْنِ عَنْ رَبِيعَةَ مُرْسَلَانِ.

L39293 As for the *Musnad*—it is completely invalid, for it is narrated by Al-Ḥārith ibn Abī Usāmah, a narrator denounced for unreliable hadiths who was abandoned in the end. It is also narrated by Al-Wāqidī, who is charged with fabrication.

أَمَّا الْمُسْنَدُ - فَهَالِكٌ أَلْبَتَّةَ؛ لِأَنَّهُ عَنْ الْحَارِثِ بْنِ أَبِي أُسَامَةَ وَهُوَ مُنْكَرُ الْحَدِيثِ، تُرِكَ بِأَخَرَةٍ - وَهُوَ أَيْضًا عَنْ الْوَاقِدِيِّ، وَهُوَ مَذْكُورٌ بِالْكَذِبِ.

L39294 Then from Khārijah ibn ʿAbd Allāh ibn Kaʿb ibn Mālik—and he is unknown.

ثُمَّ عَنْ خَارِجَةَ بْنِ عَبْدِ اللَّهِ بْنِ كَعْبِ بْنِ مَالِكٍ - وَهُوَ مَجْهُولٌ.

L39295 And they have abandoned many a mursal report more authentic than this one, such as the mursal report concerning the blind eye: one-third of its blood money, and other such cases—thus this opinion has been invalidated.

وَرُبَّ مُرْسَلٍ أَصَحَّ مِنْ هَذَا قَدْ تَرَكُوهُ، كَالْمُرْسَلِ فِي: أَنَّ فِي الْعَيْنِ الْعَوْرَاءِ: ثُلُثَ دِيَتِهَا وَغَيْرِ ذَلِكَ - فَسَقَطَ هَذَا الْقَوْلُ.

L39296 As for it being from ʿUmar—may Allah be pleased with him—it is a mursal narration via Ibn Samʿān, and Ibn Samʿān is accused of lying. Moreover, even if it were authentic, the statement of anyone other than the Messenger of Allah—peace and blessings be upon him—could not serve as authoritative evidence.

وَأَمَّا كَوْنُهُ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فَهُوَ مُرْسَلٌ عَنْ ابْنِ سَمْعَانَ وَابْنِ سَمْعَانَ مَذْكُورٌ بِالْكَذِبِ - ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُجَّةٌ.

L39297–39299 It has been authentically reported from ʿUmar—in a ruling more sound than his own—that for an animal's eye, a quarter of its value is due, as recorded in his written ruling. He thereby informed the judges across the land, and in his sermon to the Companions (may Allah be pleased with them), he said: "There is a camel in the rib and a camel in the collarbone."

وَقَدْ جَاءَ عَنْ عُمَرَ بِمَا هُوَ أَصَحُّ مِنْ حُكْمِهِ: فِي عَيْنِ الدَّابَّةِ رُبُعُ ثَمَنِهَا، وَكِتَابُهُ بِذَلِكَ إلَى الْقُضَاةِ فِي الْبِلَادِ، وَمِنْ خُطْبَتِهِ عَلَى الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّ فِي الضِّلْعِ جَمَلًا، وَفِي التَّرْقُوَةِ جَمَلًا.

L39300 It is invalid that a statement authentically established from ʿUmar should not be a valid proof, while a fabricated statement unauthenticated from him is considered a valid proof—thus collapsing all the evidence they have cited.

وَمِنْ الْبَاطِلِ أَنْ يَكُونَ قَوْلُ عُمَرَ قَدْ صَحَّ عَنْهُ لَيْسَ حُجَّةً، وَيَكُونَ قَوْلٌ مَكْذُوبٌ لَمْ يَصِحَّ عَنْهُ حُجَّةً - فَسَقَطَ كُلُّ مَا احْتَجُّوا بِهِ.

L39301 Then we considered the statement of those who assert: "The responsible kin group does not bear compensation amounting to less than half of a tenth of the diyah," but we found no evidence supporting their position except their claim that wealth is not borne by the responsible kin group because it entails no fixed injury compensation with a non-exceeding limit. However, we established that the responsible kin group does bear a third of the diyah because it involves an established injury compensation with a defined limit. Hence, it is incumbent that the same principle applies: all cases entailing a precisely defined injury compensation are borne by the responsible kin

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: لَا تَحْمِلُ الْعَاقِلَةُ مَا دُونَ نِصْفِ الْعُشْرِ مِنْ الدِّيَةِ فَلَمْ نَجِدْ لَهُمْ حُجَّةً إلَّا أَنْ قَالُوا: إنَّ الْأَمْوَالَ لَا تَحْمِلُهَا الْعَاقِلَةُ؛ لِأَنَّهُ لَيْسَ فِيهَا أَرْشٌ مُؤَقَّتٌ لَا يَتَعَدَّى - وَوَجَدْنَا ثُلُثَ الدِّيَةِ تَحْمِلُهَا الْعَاقِلَةُ؛ لِأَنَّ فِيهَا أَرْشًا مَعْلُومًا لَا يَتَعَدَّى، فَوَجَبَ أَنْ يَكُونَ كَذَلِكَ كُلُّ مَا لَهُ أَرْشٌ مَحْدُودٌ فَتَحَمَّلُهُ الْعَاقِلَةُ، وَمَا لَا أَرْشَ لَهُ مَحْدُودًا فَلَا تَحْمِلُهُ الْعَاقِلَةُ؟ .

group, whereas those lacking a defined injury compensation are not borne by them.

L39302 Abū Muḥammad—may God have mercy on him—said: "This is baseless, a false statement, and a fabricated falsehood. We do not know where they found this—except through conjectures?" God Almighty said: *They follow nothing but conjecture, and indeed, conjecture avails nothing against the truth* [53:28].[6]

L39303 Then we examined the division of Abū Ḥanīfa and Mālik: Mālik's consideration of one-third of the woman's diyah when she is the perpetrator, or one-third of the man's diyah when he is the perpetrator; and Abū Ḥanīfa's consideration of half of one-tenth of the diyah specifically in the case of the victim—whether male or female. We found that no one known to us had preceded Abū Ḥanīfa in these divisions regarding that matter, nor had anyone known to us preceded Mālik in this division of his. If it is permissible for Abū Ḥanīfa and Mālik to state an opinion based on their personal reasoning—a view unattributed to anyone before them—then God Almighty has never prohibited this for others besides them, nor permitted them anything He did not permit for every Muslim other than them. This applies especially to one who upholds what the Quran and the Sunnah of God's Messenger—peace and blessings be upon him—have made obligatory. To approve of Mālik and Abū Ḥanīfa for an opinion based on reasoning unattested before them, while rejecting those who follow the speech of God Almighty and His Messenger—peace and blessings be upon him—in stating a position unreported from any predecessor, with no valid consensus opposing it—what room does this leave for falsehood to argue? We then examined the view of those who assert: "Whatever equals a third of the diyah or more falls upon the male kin liable for collective compensation (ʿāqilah), while anything less than a third rests solely on the perpetrator's tribe." Finding no evidence for this, it is dismissed.

L39304–39305 Then we considered what Abū al-Zināد related - that the ruling in this matter is based solely on what the tribes have collectively agreed upon and

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا لَيْسَ بِشَيْءٍ، وَقَوْلٌ كَاذِبٌ، وَبَاطِلٌ مَوْضُوعٌ، وَلَا نَدْرِي أَيْنَ وَجَدُوا هَذَا إِلَّا بِظُنُونٍ؟ قَالَ اللَّهُ تَعَالَى {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨] .

ثُمَّ نَظَرْنَا فِي تَقْسِيمِ أَبِي حَنِيفَةَ، وَمَالِك، وَمُرَاعَاةِ مَالِك ثُلُثَ دِيَةِ الْمَرْأَةِ إذَا كَانَتْ هِيَ الْجَانِيَةَ، أَوْ ثُلُثَ دِيَةِ الرَّجُلِ إذَا كَانَ هُوَ الْجَانِيَ، وَمُرَاعَاةِ أَبِي حَنِيفَةَ نِصْفَ عُشْرِ الدِّيَةِ فِي الْمَجْنِيِّ عَلَيْهِ خَاصَّةً - رَجُلًا كَانَ أَوْ امْرَأَةً - فَوَجَدْنَاهُمَا تَقْسِيمَيْنِ لَمْ يَسْبِقْ أَبَا حَنِيفَةَ إلَى تَقْسِيمِهِ فِي ذَلِكَ أَحَدٌ نَعْلَمُهُ، وَلَا سَبَقَ مَالِكًا فِي تَقْسِيمِهِ هَذَا أَحَدٌ نَعْلَمُهُ، وَلَئِنْ جَازَ لِأَبِي حَنِيفَةَ، وَمَالِك أَنْ يَقُولَا قَوْلًا بِرَأْيِهِمَا لَا يُعْرَفُ لَهُ قَائِلٌ قَبْلَهُمَا، فَمَا حَظَرَ اللَّهُ تَعَالَى قَطُّ ذَلِكَ عَلَى غَيْرِهِمَا، وَلَا أَبَاحَ لَهُمَا مِنْ ذَلِكَ مَا لَمْ يُبِحْهُ لِكُلِّ مُسْلِمٍ دُونَهُمَا، لَا سِيَّمَا مَنْ قَالَ بِمَا أَوْجَبَهُ الْقُرْآنُ، وَسُنَّةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّ مَنْ صَوَّبَ لِمَالِك، وَلِأَبِي حَنِيفَةَ قَوْلًا بِالرَّأْيِ لَمْ يُعْرَفْ أَنَّ أَحَدًا قَالَ بِهِ قَبْلَهُمَا ثُمَّ أَنْكَرَ عَلَى مَنْ قَالَ مُتَّبِعًا لِكَلَامِ اللَّهِ تَعَالَى، وَكَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَوْلًا لَمْ يَأْتِ عَنْ أَحَدٍ قَبْلَهُ أَنَّهُ قَالَ بِهِ، وَلَا صَحَّ إجْمَاعٌ بِخِلَافِهِ - فَمَا تَرَكَ لِلْبَاطِلِ شَغَبًا؟ ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: مَا كَانَ ثُلُثَ الدِّيَةِ فَصَاعِدًا فَعَلَى الْعَاقِلَةِ، وَمَا كَانَ أَقَلَّ مِنْ ثُلُثِ الدِّيَةِ فَعَلَى قَوْمِ الْجَانِي خَاصَّةً - فَوَجَدْنَاهُ لَا حُجَّةَ لَهُ فِيهِ - فَسَقَطَ.

ثُمَّ نَظَرْنَا فِيمَا حَكَاهُ أَبُو الزِّنَادِ مِنْ أَنَّ الْحُكْمَ فِي ذَلِكَ إنَّمَا هُوَ عَلَى مَا ائْتَلَفَتْ عَلَيْهِ الْقَبَائِلُ وَتَرَاضَتْ بِهِ فَقَطْ، فَوَجَدْنَاهُ مُخْبِرًا عَنْ حَقِيقَةِ الْحُكْمِ فِي هَذِهِ الْمَسْأَلَةِ.

[6] **Qur'an references (L39302):** Qur'an 53:28 (An-Najm).

mutually ratified - and we found it to reveal the true nature of the legal ruling regarding this issue.

وَصَحَّ بِإِخْبَارِ أَبِي الزِّنَادِ أَنَّ هَذَا أَمْرٌ لَا سُنَّةَ فِيهِ، وَإِنَّمَا هُوَ تَرَاضٍ فَقَطْ فَهَذَا لَا يَجُوزُ الْحُكْمُ بِهِ قَطْعًا فِي دِينِ اللَّهِ تَعَالَى.

L39306 It has been authenticated through the reports of Abū al-Zināد that this is a matter in which there is no established Sunnah, and it is merely mutual consent. Therefore, ruling on this is categorically impermissible in the religion of Allāh, the Exalted.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: إنَّ الْعَاقِلَةَ تَحْمِلُ الْقَلِيلَ وَالْكَثِيرَ فَوَجَدْنَا حُجَّتَهُمْ أَنْ قَالُوا: لَمَّا حَمَلَتْ الدِّيَةَ بِالنَّصِّ وَالْإِجْمَاعِ كَانَ حَمْلُهَا لِبَعْضِ الدِّيَةِ وَلِلْقَلِيلِ أَوْلَى، إذْ مَنْ حَمَلَ الْكَثِيرَ وَجَبَ أَنْ يَحْمِلَ الْقَلِيلَ - وَهَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

L39307 Then we examined the position of those who say: "The liable kinship group bears both minor and major [compensation]." We found their evidence to be: Since they have borne the blood-money by scriptural injunction and consensus, their bearing a portion of the blood-money or a lesser amount is even more incumbent - for whoever bears the greater must necessarily bear the lesser. This constitutes analogy, and all analogy is invalid.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا وَصَحَّ أَنَّهَا آرَاءٌ مُجَرَّدَةٌ لَا سُنَّةَ فِي شَيْءٍ مِنْ ذَلِكَ وَلَا إجْمَاعَ وَجَبَ الرُّجُوعُ إلَى مَا افْتَرَضَ اللَّهُ تَعَالَى عِنْدَ التَّنَازُعِ فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤] الْآيَةَ.

L39308 Abū Muḥammad—may Allah have mercy on him—said: When they differed, and it was confirmed that these were mere opinions with neither an established Sunnah nor consensus in any of that, it became obligatory to return to what Allah the Exalted has prescribed in cases of dispute. We found Allah the Exalted saying, "No soul earns except against itself"—the verse [al-Anʿam 6:164].[7]

وَقَالَ تَعَالَى {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

L39309 And He, the Exalted, said: "Do not consume one another's wealth unjustly" [Al-Baqarah: 188].[8]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L39310 The Messenger of Allah—peace and blessings be upon him—said: "Verily, your blood and your wealth are inviolable for you."

فَوَجَبَ أَنْ لَا تَلْزَمَ الْعَاقِلَةَ غَرَامَةٌ أَصْلًا إلَّا حَيْثُ أَوْجَبَهَا النَّصُّ وَالْإِجْمَاعُ وَقَدْ صَحَّ النَّصُّ بِإِيجَابِ دِيَةِ النَّفْسِ فِي الْخَطَأِ عَلَيْهَا وَصَحَّ النَّصُّ بِإِيجَابِ الْغُرَّةِ الْوَاجِبَةِ فِي الْجَنِينِ عَلَى الْعَاقِلَةِ أَيْضًا، لَمْ يَأْتِ نَصٌّ وَلَا إجْمَاعٌ بِأَنْ تَلْزَمَ غَرَامَةٌ فِي غَيْرِ مَا ذَكَرْنَا فَوَجَبَ أَنْ لَا يَجِبَ عَلَيْهَا غَرَامَةٌ لَمْ يُوجِبْهَا اللَّهُ تَعَالَى وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - وَلَا يَصِحُّ

L39311 It is thus established that the *ʿāqilah* (liable kin group) bears no indemnity whatsoever except where mandated by textual evidence or consensus. Authentic texts have established their obligation to pay the *diyah* (blood money) for accidental homicide, and authentic texts likewise confirm their liability for the obligatory *ghurrah* (indemnity for a fetus). No textual evidence or consensus exists requiring them to bear indemnity beyond these specified cases. Therefore, it is established that no indemnity not mandated

[7] **Qur'an references (L39308):** Qur'an 6:164 (Al-An'am).
[8] **Qur'an references (L39309):** Qur'an 2:188 (Al-Baqarah).

by Allah the Exalted or His Messenger—peace be upon him—is obligatory upon them. Nor is there any valid statement from a single Companion on this matter at all. Rather, there exist only narrations from twelve Successors, holding divergent opinions without consensus. This confirms that these are juristic opinions whose proponents are excused due to their independent legal reasoning and pursuit of righteousness. And success comes from Allah, the Exalted.

Question: Does the perpetrator pay [financial compensation] alongside the ʿāqilah (responsible kin group)?

Issue 2146: Is the unintentional killer required to pay alongside his agnatic kin (ʿāqilah) or not? Abu Muhammad—may Allah have mercy on him—said: People have differed regarding this matter. Abu Hanifah, Malik, Al-Layth, and Ibn Shubrumah stated: The unintentional killer must pay the blood money alongside his agnatic kin.

Al-Awzāʿī, al-Ḥasan, Abū Sulaymān, and our companions said: He does not share liability for the penalty with them.

Al-Shāfiʿī said: It is upon the agnatic group. Whatever the agnatic group is unable to cover is to be covered from his wealth.

Abū Muḥammad—may God have mercy on him—said: When they differed, it became obligatory for us to examine the evidence each group cited for its position. We found that those who hold the killer in error liable to pay blood money in addition to his clan cite as evidence: Saʿd ibn Ṭāriq reported from Nuʿaym ibn Abī Hind from Salamah ibn Nuʿaym that he said: "I killed a man during the Battle of Yamāmah, assuming he was a disbeliever. He said: 'O God, I am a Muslim, innocent of what Musaylimah brought.'" He said: "I informed ʿUmar ibn al-Khaṭṭāb of this, and he declared: 'The blood money is incumbent upon you and your clan.'"

They said: This has been narrated from ʿUmar ibn ʿAbd al-ʿAzīz, and no dissenting opinion from the Salaf regarding him is known.

They said: "The blood money liability falls upon the extended family (ʿaqilah) who pay on his behalf as an act of support, since he is foremost in bearing

فِيهَا كَلِمَةٌ عَنْ صَاحِبٍ أَصْلًا، وَإِنَّمَا فِيهَا آثَارٌ عَنْ اثْنَيْ عَشَرَ مِنْ التَّابِعِينَ مُخْتَلِفِينَ غَيْرَ مُتَّفِقِينَ - فَصَحَّ أَنَّهَا أَقْوَالٌ عُذِرَ قَائِلُهَا بِالِاجْتِهَادِ وَقَصْدِ الْخَيْرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة هَلْ يَغْرَمُ الْجَانِي مَعَ الْعَاقِلَةِ]

٢١٤٦ - مَسْأَلَةٌ: هَلْ يَغْرَمُ الْجَانِي مَعَ الْعَاقِلَةِ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَاللَّيْثُ، وَابْنُ شُبْرُمَةَ: يَغْرَمُ الْقَاتِلُ خَطَأً مَعَ عَاقِلَتِهِ.

وَقَالَ الْأَوْزَاعِيّ، وَالْحَسَنُ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُنَا: لَا يَدْخُلُ مَعَهُمْ فِي الْغَرَامَةِ.

وَقَالَ الشَّافِعِيُّ: هِيَ عَلَى الْعَاقِلَةِ، فَمَا عَجَزَتْ عَنْهُ الْعَاقِلَةُ فَهُوَ فِي مَالِهِ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا -: فَوَجَدْنَا الْمُوجِبِينَ عَلَى الْقَاتِلِ خَطَأً أَنْ يَغْرَمَ مَعَ عَاقِلَتِهِ يَقُولُونَ: إنَّ سَعْدَ بْنَ طَارِقٍ رَوَى عَنْ نُعَيْمِ بْنِ أَبِي هِنْدٍ عَنْ سَلَمَةَ بْنِ نُعَيْمٍ أَنَّهُ قَالَ: قَتَلْتُ يَوْمَ الْيَمَامَةِ رَجُلًا ظَنَنْته كَافِرًا، فَقَالَ: اللَّهُمَّ إنِّي مُسْلِمٌ بَرِيءٌ مِمَّا جَاءَ بِهِ مُسَيْلِمَةُ، قَالَ: فَأَخْبَرْتُ بِذَلِكَ عُمَرَ بْنَ الْخَطَّابِ، فَقَالَ: الدِّيَةُ عَلَيْك وَعَلَى قَوْمِك.

قَالُوا: وَرُوِيَ هَذَا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَلَا يُعْرَفُ لَهُمَا مِنْ السَّلَفِ مُخَالِفٌ.

this responsibility himself." We know of no valid proof for their position besides this, nor is there any valid proof in the words of anyone other than the Messenger of Allah (peace be upon him).

وَقَالُوا: إِنَّمَا الْغُرْمُ عَلَى الْعَاقِلَةِ تَغْرَمُ عَنْهُ عَلَى وَجْهِ النُّصْرَةِ لَهُ، فَهُوَ أَوْلَى بِذَلِكَ فِي نَفْسِهِ - مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا، وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L39320 Then we examined the statement of Al-Shāfiʿī and found it entirely devoid of any valid evidence—neither from the Quran, nor the Sunnah, nor the saying of a Companion, nor a Successor (Tābiʿī), nor qiyas (analogical reasoning). Nor did we find it upheld by any scholar before him—thus it is invalidated. And success is attained only through Allah, the Most High.

ثُمَّ نَظَرْنَا فِي قَوْلِ الشَّافِعِيِّ، فَوَجَدْنَاهُ لَا حُجَّةَ لَهُ أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا قِيَاسٍ، وَلَا وَجَدْنَاهُ لِأَحَدٍ قَبْلَهُ - فَسَقَطَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L39321 Then we examined the statements of al-Awzāʿī, al-Ḥasan ibn Ḥayy, and Abū Sulaymān, and found that the Messenger of Allah—peace and blessings be upon him—had ruled blood money to be incumbent upon the liable male agnates (al-ʿāqilah). As narrated by Muslim ibn al-Ḥajjāj: Qutaybah ibn Saʿīd narrated to us; al-Layth ibn Saʿd narrated to us from Ibn Shihāb from Saʿīd ibn al-Musayyib from Abū Hurayrah, who said: "The Messenger of Allah—peace and blessings be upon him—ruled regarding the fetus of a woman from Banū Liḥyān that fell dead as a miscarriage, requiring a ghurrah (compensation equivalent to the value of a male or female slave). Then the woman for whom the ghurrah was imposed died, so the Messenger of Allah—peace and blessings be upon him—ruled that her inheritance belongs to her sons and husband, and that the liability for the blood money (diyah) is upon her agnates."

ثُمَّ نَظَرْنَا فِي قَوْلِ الْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي سُلَيْمَانَ، فَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ حَكَمَ بِالدِّيَةِ عَلَى عَصَبَةِ الْعَاقِلَةِ: كَمَا رُوِّينَاهُ عَنْ مُسْلِمِ بْنِ الْحَجَّاجِ نا قُتَيْبَةُ - هُوَ ابْنُ سَعِيدٍ - نا اللَّيْثُ بْنُ سَعْدٍ عَنِ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي جَنِينِ امْرَأَةٍ مِنْ بَنِي لِحْيَانَ سَقَطَ مَيِّتًا بِغُرَّةٍ عَبْدٍ أَوْ أَمَةٍ، ثُمَّ إِنَّ الَّتِي قَضَى عَلَيْهَا بِالْغُرَّةِ تُوُفِّيَتْ، فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ مِيرَاثَهَا لِبَنِيهَا وَزَوْجِهَا وَأَنَّ الْعَقْلَ عَلَى عَصَبَتِهَا» .

L39322–39324 Through the chain of Muslim: Isḥāq ibn Ibrāhīm narrated to us, Jarīr ibn ʿAbd al-Ḥamīd narrated to us, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm al-Nakhaʿī, from ʿUbayd ibn Naḍla, from al-Mughīra ibn Shuʿba, who said: "A woman struck her co-wife with a tent pole, killing her. One of them was a Lihyāniyyah woman, whereupon the Messenger of Allah—peace and blessings be upon him—assigned the diyah." The blood money for the slain woman falls upon the male paternal kin of the female killer, along with a compensatory payment for the fetus in her womb. A man from the female killer's paternal kin protested: "Must we pay blood money for one who never ate, spoke, or cried? Is such a thing a mere clot?" The Messenger of Allah

وَمِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ إِبْرَاهِيمَ نا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عُبَيْدِ بْنِ نَضْلَةَ عَنِ الْمُغِيرَةِ بْنِ شُعْبَةَ قَالَ: «ضَرَبَتْ امْرَأَةٌ ضَرَّتَهَا بِعَمُودِ فُسْطَاطٍ فَقَتَلَتْهَا وَإِحْدَاهُمَا لِحْيَانِيَّةٌ، فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دِيَةَ الْمَقْتُولَةِ عَلَى عَصَبَةِ الْقَاتِلَةِ، وَغُرَّةً لِمَا فِي بَطْنِهَا، فَقَالَ رَجُلٌ مِنْ عَصَبَةِ الْقَاتِلَةِ: أَنَغْرَمُ دِيَةَ مَنْ لَا أَكَلَ وَلَا نَطَقَ وَلَا اسْتَهَلَّ، فَمِثْلُ ذَلِكَ يُطَلُّ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ

(peace be upon him) responded: “Is this rhyming speech like the Bedouins’ verses?” and ruled the blood money obligatory upon them. This constitutes the definitive ruling of Allah’s Messenger (peace be upon him) that the female perpetrator is fully absolved of the blood money, that her inheritance belongs to her husband and male sons - with no basis for penalty therein - and that the blood money rests upon her male paternal kin. She herself cannot be considered an agnatic relative under divine law or linguistic convention.

L39325 Is it thus established with certainty that an offender causing harm unintentionally owes nothing from the blood money for a life or the compensation for a fetus? Abū Muḥammad—may Allah have mercy on him—said: If the _ʿāqilah_ is unable [to pay], then the blood money and the compensation for the fetus are incumbent upon all Muslims from the debtors’ share of zakāt, because they are debtors, and their right to the debtors’ share is established by the explicit text of the Quran, and because the Messenger of Allah—peace and blessings be upon him—ruled that the blood money is upon their responsible kin.

L39326 Another proof is that wealth is inviolable except by explicit text or consensus. The text and the consensus of the people of truth have been established, affirming that the responsible kin group is liable to pay the blood money. There is no text or consensus stating that the killer must pay anything alongside them. Therefore, it is impermissible to remove anything from his wealth. And success is from Allah, the Most High.

L39327 Abū Muḥammad—may God have mercy on him—said: “The wonder is their citing ʿUmar—may God be pleased with him—as proof, while they opposed him in this very instance itself and in others. Among what has been recounted to us of this is the report we narrated from Maʿmar, from Qatādah: A man accidentally gouged out his own eye, so ʿUmar ibn al-Khaṭṭāb ruled that the blood money for it is incumbent upon the collective kin (al-ʿāqilah)—yet they do not hold this opinion?”

L39328 **Issue: What amount is each man in the liable kin group obligated to pay?**

L39329 2147 - Issue: How much must each man from the ʿāqilah pay? Abū Muḥam-

عَلَيْهِ وَسَلَّمَ - أَسَجْعٌ كَسَجْعِ الْأَعْرَابِ وَجَعَلَ عَلَيْهِمْ الدِّيَةَ» فَهَذَا نَصُّ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِبَرَاءَةِ الْجَانِيَةِ مِنْ الدِّيَةِ جُمْلَةً، وَأَنَّ مِيرَاثَهَا لِزَوْجِهَا وَبَنِيهَا، لَا مَدْخَلَ لِلْغَرَامَةِ فِيهِ، وَالدِّيَةُ عَلَى عَصَبَتِهَا، وَهِيَ لَيْسَتْ عَصَبَةً لِنَفْسِهَا، لَا فِي شَرِيعَةٍ، وَلَا فِي لُغَةٍ.

فَصَحَّ يَقِينًا أَنَّهُ لَا يَغْرَمُ الْجَانِي خَطَأً مِنْ دِيَةِ النَّفْسِ، وَلَا مِنْ الْغُرَّةِ شَيْئًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ عَجَزَتْ الْعَاقِلَةُ: فَالدِّيَةُ، وَالْغُرَّةُ عَلَى جَمِيعِ الْمُسْلِمِينَ فِي سَهْمِ الْغَارِمِينَ مِنْ الزَّكَاةِ؛ لِأَنَّهُمْ غَارِمُونَ، فَحَقُّهُمْ فِي سَهْمِ الْغَارِمِينَ بِنَصِّ الْقُرْآنِ وَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ بِالدِّيَةِ عَلَى أَوْلِيَائِهَا.

وَبُرْهَانٌ آخَرُ: وَهُوَ أَنَّ الْأَمْوَالَ مُحَرَّمَةٌ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ، وَقَدْ صَحَّ النَّصُّ وَإِجْمَاعُ أَهْلِ الْحَقِّ عَلَى أَنَّ الْعَاقِلَةَ تَغْرَمُ الدِّيَةَ، وَلَمْ يَأْتِ نَصٌّ وَلَا إجْمَاعٌ بِأَنَّ الْقَاتِلَ يَغْرَمُ مَعَهُمْ شَيْئًا، فَلَمْ يَحِلَّ أَنْ يُخْرَجَ مِنْ مَالِهِ شَيْءٌ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ - وَالْعَجَبُ مِنْ احْتِجَاجِهِمْ بِعُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَهُمْ قَدْ خَالَفُوهُ فِي هَذَا الْمَكَانِ نَفْسِهِ، وَفِي غَيْرِهِ، فَمِمَّا حَضَرَنَا ذِكْرُهُ مِنْ ذَلِكَ: مَا رُوِّينَاهُ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ: أَنَّ رَجُلًا فَقَأَ عَيْنَ نَفْسِهِ خَطَأً، فَقَضَى لَهُ عُمَرُ بْنُ الْخَطَّابِ بِالدِّيَةِ فِيهَا عَلَى الْعَاقِلَةِ - وَهُمْ لَا يَقُولُونَ بِهَذَا؟ .

[مَسْأَلَةٌ كَمْ يَغْرَمُ كُلُّ رَجُلٍ مِنْ الْعَاقِلَةِ]

mad—may Allāh have mercy on him—said: We have said: From the ʿāqilah.

٢١٤٧ - مَسْأَلَةٌ: كَمْ يَغْرَمُ كُلُّ رَجُلٍ مِنْ الْعَاقِلَةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَدْ قُلْنَا: مِنْ الْعَاقِلَةِ.

L39330–39332 Then it is obligatory to examine: Are boys, the insane, women, and the poor included in this obligation or not? We investigated this with the help of Allah (Exalted is He) and found the Prophet (peace and blessings of Allah be upon him) only ruled for blood money to be imposed upon the male agnates (ʿaṣabah). Women are not agnates in any sense, nor does this term apply to them. Property is forbidden except through a textual evidence or... There is no consensus, textual evidence, or established agreement obligating the women of the tribe to bear responsibility for the blood money (diyah) that the agnatic kinship group (ʿāqilah) is required to pay.

ثُمَّ وَجَبَ النَّظَرُ: أَيَدْخُلُ فِيهَا: الصِّبْيَانُ، وَالْمَجَانِينُ، وَالنِّسَاءُ، وَالْفُقَرَاءُ أَمْ لَا؟ فَنَظَرْنَا فِي ذَلِكَ بِعَوْنِ اللَّهِ تَعَالَى فَوَجَدْنَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا قَضَى بِالدِّيَةِ عَلَى الْعَصَبَةِ، وَلَيْسَ النِّسَاءُ عَصَبَةً أَصْلًا، وَلَا يَقَعُ عَلَيْهِنَّ هَذَا الِاسْمُ، وَالْأَمْوَالُ مُحَرَّمَةٌ إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ، وَلَا نَصَّ وَلَا إجْمَاعَ فِي إيجَابِ الْغُرْمِ عَلَى نِسَاءِ الْقَوْمِ فِي الدِّيَةِ الَّتِي تَغْرَمُهَا الْعَاقِلَةُ.

L39333 Then we looked into the condition of the poor, and we found that Allah the Exalted says: {He does not burden any soul beyond its capacity} [Al-Baqarah: 286].[9]

ثُمَّ نَظَرْنَا فِي الْفُقَرَاءِ، فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {لا يُكَلِّفُ اللَّهُ نَفْسًا إلا وُسْعَهَا} [البقرة: ٢٨٦] .

L39334 "And let those of ample means spend from their means..." up to His words "...except what He has granted it" [Qur'an 65:7].[10]

وَ {لِيُنْفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ} [الطلاق: ٧] إلَى قَوْلِهِ: {إلا مَا آتَاهَا} [الطلاق: ٧] .

L39335 This is a general principle regarding every expenditure in righteousness that a person is obligated to fulfill. It is not permissible to restrict this ruling to one expenditure—to the exclusion of another—because it is an independent matter in itself. Therefore, it is impermissible for anyone to definitively assert that Allah the Exalted intended by this only what preceded it. Thus, it is confirmed with certainty that the poor are excluded from what the *ʿaqilah* is required to provide.

فَهَذَا عُمُومٌ فِي كُلِّ نَفَقَةٍ فِي بِرٍّ، يُكَلَّفُهَا الْمَرْءُ، لَا يَجُوزُ أَنْ يُخَصَّ بِهَذَا الْحُكْمِ نَفَقَةٌ - دُونَ نَفَقَةٍ - لِأَنَّهَا قَضِيَّةٌ قَائِمَةٌ بِنَفْسِهَا، فَلَا يَحِلُّ الْقَطْعُ لِأَحَدٍ: بِأَنَّ اللَّهَ تَعَالَى إنَّمَا أَرَادَ بِذَلِكَ مَا قَبْلَهَا خَاصَّةً فَصَحَّ يَقِينًا أَنَّ الْفُقَرَاءَ خَارِجُونَ مِمَّا تُكَلَّفُهُ الْعَاقِلَةُ.

L39336 Then we examined the case of minors and the insane, and found that the term "agnatic relatives" applies to them. We found neither textual evidence nor scholarly consensus exempting them from this obligation. Rather, we established that rulings concerning financial penalties and property obligations—such as Zakat, for which an authentic text has validated its obligation upon them—are binding. The opposing scholars present among us unani-

ثُمَّ نَظَرْنَا فِي الصِّبْيَانِ وَالْمَجَانِينِ، فَوَجَدْنَا اسْمَ " عَصَبَةٍ " يَقَعُ عَلَيْهِمْ، وَلَمْ نَجِدْ نَصًّا وَلَا إجْمَاعًا عَلَى إخْرَاجِهِمْ عَنْ هَذِهِ الْكُلْفَةِ، بَلْ قَدْ وَجَدْنَا أَحْكَامَ غَرَامَاتِ الْأَمْوَالِ تَلْزَمُهُمْ، كَالزَّكَاةِ الَّتِي قَدْ صَحَّ النَّصُّ بِإِيجَابِهَا عَلَيْهِمْ، وَأَجْمَعَ الْحَاضِرُونَ مِنْ الْمُخَالِفِينَ مَعَنَا عَلَى

[9] **Qur'an references (L39333):** Qur'an 2:286 (Al-Baqarah).
[10] **Qur'an references (L39334):** Qur'an 65:7 (At-Talaq).

mously agreed that Zakat on what the earth produces and Zakat on fruits, along with Zakat al-Fitr, are their obligation, and that the financial support provided by guardians and mothers is incumbent upon them.

أَنَّ زَكَاةَ مَا أَخْرَجَتْ الْأَرْضُ، وَالثِّمَارِ عَلَيْهِمْ، وَأَنَّ زَكَاةَ الْفِطْرِ عَلَيْهِمْ، وَأَنَّ النَّفَقَاتِ عَلَى الْأَوْلِيَاءِ وَالْأُمَّهَاتِ عَلَيْهِمْ.

L39337 We did not employ this argument for ourselves, but rather against our opponents, for they claim to adhere to analogy, yet they unanimously affirm the obligation of all we have mentioned regarding the wealth of minors and the insane. What, then, distinguishes the obligation of maintenance and zakāh upon them from the obligation of blood money upon them alongside the collective liability of the agnate relatives? This is especially pertinent since they deem blood money payable from the wealth of a minor or insane person if he kills, and they likewise deem compensation for injuries (*arsh*) payable from them—a contradiction so evident it cannot be concealed. If they retort: "You yourselves do not hold blood money to be due from them or against them for their own offenses, yet you impose it upon them for offenses committed by others?" We respond: Indeed, for we do not base our rulings on analogies in matters of religion, nor do we hold that the Sharīʿah is founded upon human opinions. Rather, we deem such a claim tantamount to disbelief and disavow it before Allah, the Exalted.

وَلَمْ نَحْتَجَّ بِهَذَا لِأَنْفُسِنَا، لَكِنْ عَلَى الْمُخَالِفِينَ لَنَا، لِأَنَّهُمْ يَزْعُمُونَ أَنَّهُمْ أَصْحَابُ قِيَاسٍ، وَقَدْ أَجْمَعُوا عَلَى وُجُوبِ كُلِّ مَا ذَكَرْنَاهُ فِي أَمْوَالِ الصِّبْيَانِ، وَالْمَجَانِينِ، فَمَا الْفَرْقُ بَيْنَ لُزُومِ النَّفَقَاتِ وَالزَّكَوَاتِ لَهُمْ، وَبَيْنَ لُزُومِ الدِّيَةِ مَعَ سَائِرِ الْعَصَبَةِ لَهُمْ؟ لَا سِيَّمَا وَهُمْ يَرَوْنَ الدِّيَةَ فِي مَالِ الصَّبِيِّ وَالْمَجْنُونِ، إذَا قَتَلَ، وَيَرَوْنَ أُرُوشَ الْجِرَاحَاتِ عَلَيْهِمْ أَيْضًا - وَهَذَا تَنَاقُضٌ لَا خَفَاءَ بِهِ؟ فَإِنْ قَالُوا: فَأَنْتُمْ لَا تَرَوْنَ الدِّيَةَ عَلَيْهِمْ وَلَا عَنْهُمْ فِيمَا جَنَوْهُ، ثُمَّ تَرَوْنَهَا عَلَيْهِمْ فِيمَا جَنَاهُ غَيْرُهُمْ؟ قُلْنَا نَعَمْ، لِأَنَّنَا لَا نَقُولُ بِالْمَقَايِيسِ فِي الدِّينِ، وَلَا أَنَّ الشَّرِيعَةَ مَوْضُوعَةٌ عَلَى مَا تُوجِبُهُ الْآرَاءُ، بَلْ نَكْفُرُ بِهَذَا الْقَوْلِ، وَنَبْرَأُ إلَى اللَّهِ تَعَالَى مِنْهُ.

L39338–39340 We have found that when a killer unjustly kills a number of Muslims, and their guardians pardon him, retaliation becomes prohibited. His blood is spared, and he departs unscathed with no liability upon him. Then he steals a dinar or commits adultery with a black female slave, and the owner of the dinar and the master of the black [female slave] forgive him. Yet neither the amputation [for theft] nor the stoning to death—if he is married—is waived for him. How does a dinar compare to the killing of an inviolable soul? Furthermore, we find you claiming that the obligation of Zakat al-Fitr lies upon the woman, yet she does not pay it herself. Rather, someone else—her husband—pays it on her behalf.

وَقَدْ وَجَدْنَا الْقَاتِلَ يَقْتُلُ عَدَدًا مِنْ الْمُسْلِمِينَ ظُلْمًا فَيَعْفُو عَنْهُ أَوْلِيَاؤُهُمْ، فَيُحَرَّمُ دَمُهُ، وَيَمْضِي سَالِمًا لَا شَيْءَ عَلَيْهِ، ثُمَّ يَسْرِقُ دِينَارًا، أَوْ يَزْنِي بِأَمَةٍ سَوْدَاءَ فَيَعْفُو عَنْهُ رَبُّ الدِّينَارِ، وَسَيِّدُ السَّوْدَاءِ، فَلَا يَسْقُطُ عَنْهُ الْقَطْعُ، وَلَا الْقَتْلُ بِالْحِجَارَةِ - إنْ كَانَ مُحْصَنًا - وَأَيْنَ هَذَا وَالدِّينَارُ مِنْ قَتْلِ النَّفْسِ الْمُحَرَّمَةِ؟ وَوَجَدْنَاكُمْ تَقُولُونَ: إنَّ زَكَاةَ الْفِطْرِ عَلَى الْمَرْأَةِ، وَلَا تُؤَدِّيهَا عَنْ نَفْسِهَا، بَلْ يُؤَدِّيهَا عَنْهَا غَيْرُهَا - وَهُوَ زَوْجُهَا.

L39341 The Hanafis say: The Udhiyah is obligatory upon the woman, therefore she does not perform it herself; rather, her husband performs it on her behalf. If you assert this when Allah—the Exalted—and His Messenger (peace be upon him) have not obligated it—and you are people who rely on opinion and

وَيَقُولُ الْحَنَفِيُّونَ: الْأُضْحِيَّةُ فَرْضٌ عَلَى الْمَرْأَةِ فَلَا تُؤَدِّيهَا هِيَ، لَكِنْ يُؤَدِّيهَا عَنْهَا زَوْجُهَا، فَإِذَا قُلْتُمْ هَذَا حَيْثُ لَمْ يُوجِبْهُ اللَّهُ سُبْحَانَهُ وَتَعَالَى وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -، وَأَنْتُمْ

analogy in religion—then are we not more entitled to affirm what Allah the Exalted and His Messenger (peace be upon him) have obligated? All praise belongs to Allah, Lord of the worlds.

أَهْلُ آرَاءٍ وَقِيَاسٍ فِي الدِّينِ؟ فَنَحْنُ أَوْلَى بِأَنْ نَقُولَ مَا أَوْجَبَهُ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L39342 If it is objected: "Your argument relies on the Messenger of Allah's saying (peace be upon him), 'The pen is lifted from three—and he mentioned—the child until he reaches puberty, the insane until he regains sanity, and the sleeper until he awakens.'"

فَإِنْ قِيلَ: فَإِنَّ احْتِجَاجَكُمْ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ - فَذَكَرَ - الصَّبِيِّ حَتَّى يَبْلُغَ، وَالْمَجْنُونَ حَتَّى يُفِيقَ» .

L39343 We say—and all praise is due to Allah—that we uphold this ruling and exempt the minor and the insane from every ruling conveyed through addressing those subject to it, for they are undeniably not among the legally accountable. They lie outside the scope of those addressed by such rulings. However, we obligate them for every financial liability pertaining to property when the ruling concerns that property without addressing those responsible for it. Here, the ruling states that the Prophet—peace and blessings be upon him—judged that the blood money (*diyah*) and compensation for fetal loss (*ghurrah*) are incumbent upon the male agnates of the female killer, without addressing the agnates themselves. He did not turn—peace and blessings be upon him—to consider the objections raised by any among them, but enforced the ruling upon them. Thus, we enforce the ruling by obligating blood money from the agnates' wealth, irrespective of whether they are minors, insane, absent, or present. We do not impose this obligation for offenses committed by a minor or an insane person, as blood money is only mandated by the Quranic text for those liable for expiation (*kaffārah*), and this attribute does not apply to minors or the insane—and all praise is due to Allah, Lord of the worlds.

قُلْنَا: نَحْنُ - وَلِلَّهِ الْحَمْدُ - قَائِلُونَ بِهِ، وَمُسْقِطُونَ عَنْ الصَّبِيِّ وَالْمَجْنُونِ كُلَّ حُكْمٍ وَرَدَ بِخِطَابِ أَهْلِ ذَلِكَ الْحُكْمِ، لِأَنَّهُمَا غَيْرُ مُخَاطَبِينَ بِيَقِينٍ لَا شَكَّ فِيهِ، فَهُمَا خَارِجَانِ عَمَّنْ خُوطِبَ بِذَلِكَ الْحُكْمِ، وَنَحْنُ نُلْزِمُهُمَا كُلَّ غَرَامَةٍ فِي مَالٍ جَاءَ الْحُكْمُ فِي ذَلِكَ الْمَالِ بِغَيْرِ خِطَابٍ لِأَهْلِهِ، وَالْحُكْمُ هَاهُنَا جَاءَ بِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ بِأَنَّ الدِّيَةَ وَالْغُرَّةَ عَلَى عَصَبَةِ الْقَاتِلَةِ وَلَمْ يُخَاطِبْ الْعَصَبَةَ، وَلَا الْتَفَتَ - عَلَيْهِ السَّلَامُ - إلَى اعْتِرَاضِ مَنْ اعْتَرَضَ مِنْهُمْ، بَلْ أَنْفَذَ الْحُكْمَ عَلَيْهِمْ، فَنَحْنُ نُنْفِذُ الْحُكْمَ بِإِيجَابِ الدِّيَةِ فِي مَالِ الْعَصَبَةِ وَلَا نُبَالِي صِبْيَانًا كَانُوا أَوْ مَجَانِينَ أَوْ غُيَّبًا أَوْ حَاضِرِينَ، وَلَمْ نُوجِبْ ذَلِكَ فِيمَا جَنَاهُ صَبِيٌّ أَوْ مَجْنُونٌ، لِأَنَّ الدِّيَةَ إنَّمَا وَجَبَتْ بِنَصِّ الْقُرْآنِ فِيمَا قَتَلَهُ مُخَاطَبُ الْكَفَّارَةِ، وَلَيْسَ هَذَا مِنْ صِفَاتِ الصِّبْيَانِ وَالْمَجَانِينِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L39344 Abu Muhammad—may Allah have mercy on him—said: Then we examined the measure to be taken from each individual among the agnates. We found a group who stated: "Nothing is taken from any one of them except four or three dirhams."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ثُمَّ نَظَرْنَا فِي مِقْدَارِ مَا يُؤْخَذُ مِنْ كُلِّ إنْسَانٍ مِنْ الْعَصَبَةِ؟ فَوَجَدْنَا قَوْمًا قَالُوا: لَا يُؤْخَذُ مِنْ كُلِّ وَاحِدٍ إلَّا أَرْبَعَةُ دَرَاهِمَ أَوْ ثَلَاثَةٌ.

L39345–39347 And a group held that half a dinar should be taken from the affluent, and a quarter dinar from the less affluent. These were set as limits not supported by any ruling from Allah the Exalted nor His Messenger—peace be upon

وَقَوْمًا قَالُوا: يُؤْخَذُ مِنْ الْغَنِيِّ نِصْفُ دِينَارٍ، وَمِنْ الْمُقِلِّ رُبُعُ دِينَارٍ - فَكَانَتْ هَذِهِ حُدُودًا لَمْ يَأْتِ بِهَا حُكْمٌ مِنْ اللَّهِ تَعَالَى وَلَا مِنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَجَبَ أَنْ لَا

him—thus it is obligatory to disregard them. And it became obligatory to consider: What is obligatory in this matter? We found that Allah, the Exalted, says: “Allah does not burden any soul beyond its capacity” (Quran 2:286).[11]

L39348 And He, the Exalted, said: “He has not imposed any hardship upon you in the religion.” [Al-Hajj: 78][12]

L39349 The Most High says, “Allah intends ease for you, not hardship” (Quran 2:185).[13]

L39350 The Messenger of Allah—peace and blessings of Allah be upon him—ruled regarding blood money and the ghurra (compensation for the unborn child), imposing it upon the agnate relatives. It became obligatory for them to bear from that what they can manage, what does not burden them, and what does not leave them in financial destitution afterward. Indeed, Allah the Exalted never intended that—I mean hardship upon us—at all. Thus, nothing is taken from a person’s wealth that would leave them impoverished afterward, or else fairness must be enforced among them in this matter. Whoever’s wealth can sustain many camels without it being oppressive to them is required to bear this responsibility. And whoever can only manage a portion of a camel must jointly contribute with others from their group toward the camel. This continues until the blood money is fully settled. The same ruling applies to the ghurra. Success is from Allah the Exalted.

L39351 Consideration is given solely to the wealth of the individual among them and his dependents. The diyah and ghurra are imposed upon the surplus from their wealth that remains after providing for their dependents—such that if [the surplus] were depleted, [the liable individuals] would remain financially secure. Equity is thus maintained among them in this matter, as the Exalted stated: “Be just; that is nearer to piety” [Al-Mā’idah: 8].[14]

L39352 Justice is acting according to the Sunnah, not by equating between one with little surplus and one with much surplus—so that an equal amount is taken

يُلْتَفَتَ إِلَيْهَا وَوَجَبَ أَنْ نَنْظُرَ مَا الْوَاجِبُ فِي ذَلِكَ؟ فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

وَقَالَ تَعَالَى {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] .

وَقَالَ تَعَالَى {يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلا يُرِيدُ بِكُمُ الْعُسْرَ} [البقرة: ١٨٥] .

وَحَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالدِّيَةِ، وَبِالْغُرَّةِ عَلَى الْعَاقِلَةِ، فَوَجَبَ أَنْ يَحْمِلُوا مِنْ ذَلِكَ مَا يُطِيقُونَ، وَمَا لَا حَرَجَ عَلَيْهِمْ فِيهِ، وَمَا لَا يَبْقَوْنَ بَعْدَهُ فِي عُسْرٍ، فَإِنَّ اللَّهَ تَعَالَى لَمْ يُرِدْ ذَلِكَ - أَعْنِي الْعُسْرَ بِنَا - قَطُّ، فَيُؤْخَذُ مِنْ مَالِ الْمَرْءِ مَا لَا يَبْقَى بَعْدَهُ مُعْسِرًا، أَوْ يُعْدَلُ بَيْنَهُمْ فِي ذَلِكَ، فَمَنْ احْتَمَلَ مَالُهُ أَبْعِرَةً كَثِيرَةً، وَلَمْ يُجْحِفْ ذَلِكَ بِهِ كُلِّفَ ذَلِكَ - وَمَنْ لَمْ يَحْتَمِلْ إِلَّا جُزْءًا مِنْ بَعِيرٍ كَذَلِكَ: أَشْرَكَ بَيْنَ الْجَمَاعَةِ مِنْهُمْ فِي الْبَعِيرِ، هَكَذَا حَتَّى تَتِمَّ الدِّيَةُ - وَهَكَذَا فِي حُكْمِ الْغُرَّةِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

إِنَّمَا يُنْظَرُ إِلَى مَالِ الْمَرْءِ مِنْهُمْ وَعِيَالِهِ، فَتُفْرَضُ الدِّيَةُ، وَالْغُرَّةُ عَلَى الْفَضَلَاتِ مِنْ أَمْوَالِهِمْ - الَّتِي يَبْقَوْنَ بَعْدَهَا - لَوْ ذَهَبَتْ - أَغْنِيَاءَ - فَيُعْدَلُ بَيْنَهُمْ فِي ذَلِكَ، كَمَا قَالَ تَعَالَى {اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَى} [المائدة: ٨] .

وَالْعَدْلُ: هُوَ الْأَخْذُ بِالسُّنَّةِ، لَا بِأَنْ يُسَاوَى بَيْنَ ذِي الْفَضْلَةِ الْقَلِيلَةِ، وَالْفَضْلَةِ الْكَثِيرَةِ - فَيُؤْخَذَ مِنْهُمْ سَوَاءً - لَكِنْ يُؤْخَذُ مِنْ الْكَثِيرِ كَثِيرٌ، وَمِنْ الْقَلِيلِ قَلِيلٌ - وَهَذَا قَوْلُ أَصْحَابِنَا وَهُوَ الْحَقُّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[11] **Qur’an references (L39345):** Qur’an 2:286 (Al-Baqarah).
[12] **Qur’an references (L39348):** Qur’an 22:78 (Al-Hajj).
[13] **Qur’an references (L39349):** Qur’an 2:185 (Al-Baqarah).
[14] **Qur’an references (L39351):** Qur’an 5:8 (Al-Ma’idah).

from both—but rather by taking much from those with abundance and little from those with scarcity. This is the position of our school's jurists, and it is the truth. Success comes only from Allah, the Most High.

L39353 **Issue: Is blood money payable on behalf of the confederate, the patron, and the slave, or is it not?**

L39354–39356 2148. Issue: Is blood money (ʿaql) owed by a confederate? By a client from below or a patron from above? By a slave or not? Is it owed by one who embraced Islam under his responsibility or not? Does patronage (walāʾ) transfer via the blood money (ʿaql) or not? Abū Muḥammad—may Allāh have mercy on him—said: A group of scholars held: Blood money is owed by the manumitting patron who holds superior patronage (from above) over his freed clients. As transmitted by Muḥammad ibn Saʿīd ibn Nubāt; ʿAbdullāh ibn Naṣr; Qāsim ibn Aṣbagh; Ibn Waḍḍāḥ; Mūsā ibn Muʿāwiyah; Wakīʿ; Sufyān al-Thawrī from Ḥammād ibn Abī Sulaymān from... Ibrāhīm said: "'Alī and al-Zubayr disputed regarding the clients of Ṣafiyyah." ʿUmar ibn al-Khaṭṭāb ruled that the inheritance belonged to al-Zubayr, and the blood-money fell upon ʿAlī.

L39357 From Ibrāhīm al-Nakhaʿī concerning a man emancipated by one group and his father emancipated by others: He said, "They inherit from one another based on kinship ties, and blood money is the responsibility of the patrons."

L39358 And from Abu Musa: He wrote to Umar ibn al-Khattab, "A man dies before us without any blood relatives or legal guardian?" Umar wrote back: "If he leaves a blood relative, then the blood relative [inherits]. Otherwise, the right of patronage. Otherwise, the state treasury inherits him and it pays blood money (diya) on his behalf."

L39359 On the authority of Mujāhid, he said: A man came to ʿUmar ibn al-Khaṭṭāb and said: "A man accepted Islam at my hands, then died and left a thousand dirhams. I felt religiously uneasy about them, so I referred the matter to you." Umar asked: "What do you think? If he had incurred a debt, who would be liable?" The man replied: "Me?" Umar said: "Then his inheritance is yours."

[مَسْأَلَة هَلْ يُعْقَلُ عَنْ الْحَلِيفِ وَعَنْ الْمَوْلَى وَعَنْ الْعَبْدِ أَمْ لَا]

٢١٤٨ - مَسْأَلَةٌ: هَلْ يُعْقَلُ عَنْ الْحَلِيفِ؟ وَعَنْ الْمَوْلَى مِنْ أَسْفَلَ؟ أَوْ مِنْ فَوْقُ؟ وَعَنْ الْعَبْدِ أَمْ لَا؟ وَهَلْ يُعْقَلُ عَمَّنْ أَسْلَمَ عَنْ يَدَيْهِ أَمْ لَا؟ وَهَلْ يَنْتَقِلُ الْوَلَاءُ بِالْعَقْلِ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ قَوْمٌ: يَعْقِلُ عَنْ الْمَوْلَى الْمُعْتِقِ مَوَالِيهِ مِنْ فَوْقُ: كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ، قَالَ: اخْتَصَمَ عَلِيٌّ، وَالزُّبَيْرُ، فِي مَوَالٍ لِصَفِيَّةَ؟ فَقَضَى عُمَرُ بْنُ الْخَطَّابِ بِأَنَّ الْمِيرَاثَ لِلزُّبَيْرِ، وَالْعَقْلَ عَلَى عَلِيٍّ.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ فِي رَجُلٍ أَعْتَقَهُ قَوْمٌ، وَأَعْتَقَ أَبَاهُ آخَرُونَ؟ قَالَ: يَتَوَارَثُونَ بِالْأَرْحَامِ، وَالْعَقْلُ عَلَى الْمَوَالِي.

وَعَنْ أَبِي مُوسَى أَنَّهُ كَتَبَ إلَى عُمَرَ بْنِ الْخَطَّابِ أَنَّ رَجُلًا يَمُوتُ قَبْلَنَا، وَلَيْسَ لَهُ رَحِمٌ وَلَا وَلِيٌّ؟ فَكَتَبَ إلَيْهِ عُمَرُ: إنْ تَرَكَ ذَا رَحِمٍ، فَالرَّحِمُ، وَإِلَّا فَالْوَلَاءُ، وَإِلَّا فَبَيْتُ الْمَالِ يَرِثُونَهُ وَيَعْقِلُونَ عَنْهُ.

وَعَنْ مُجَاهِدٍ قَالَ: إنَّ رَجُلًا أَتَى عُمَرَ بْنَ الْخَطَّابِ فَقَالَ: إنَّ رَجُلًا أَسْلَمَ عَلَى يَدَيْ فَمَاتَ وَتَرَكَ أَلْفَ دِرْهَمٍ، فَتَحَرَّجْت مِنْهَا فَرَفَعْتهَا إلَيْك؟ فَقَالَ: أَرَأَيْت لَوْ جَنَى جِنَايَةً عَلَى مَنْ كَانَتْ تَكُونُ؟ قَالَ عَلَيَّ؟ قَالَ: فَمِيرَاثُهُ لَكَ.

وَعَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ، قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: إذَا وَالَى الرَّجُلُ رَجُلًا فَلَهُ مِيرَاثُهُ، وَعَلَى عَاقِلَتِهِ عَقْلُهُ.

L39360 Narrated Ma'mar from al-Zuhrī, who said: 'Umar ibn al-Khaṭṭāb said: "If a man takes another as his client, the client inherits from him, and the patron's agnatic kin are liable for the client's blood money."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: أَبَى الْقَوْمُ أَنْ يَعْقِلُوا عَنْ مَوْلَاهُمْ، أَيَكُونُ مَوْلَى مَنْ عَقَلَ عَنْهُ؟ فَقَالَ: قَالَ مُعَاوِيَةُ: إمَّا أَنْ يَعْقِلُوا عَنْهُ، وَإِمَّا أَنْ نَعْقِلَ عَنْهُ، وَهُوَ مَوْلَانَا، قَالَ عَطَاءٌ فَإِنْ أَبَى أَهْلُهُ أَنْ يَعْقِلُوا عَنْهُ، وَأَبَى النَّاسُ، فَهُوَ مَوْلَى الْمُصَابِ.

L39361 And from the narration of Abd al-Razzaq, from Ibn Jurayj, who said: I asked Ata: "The people refused to pay blood money on behalf of their patron. Would he then become the patron of whoever assumes liability for him?" He replied: "Muawiya said: 'Either they pay blood money for him, or we pay for him, and he is our patron.'" Ata said: "If his family refuses to pay blood money for him, and the people refuse, then he is the patron of the victim."

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، قَالَ: إذَا أَبَتْ الْعَاقِلَةُ أَنْ يَعْقِلُوا عَنْ مَوْلَاهُمْ أُجْبِرُوا عَلَى ذَلِكَ.

L39362 From 'Abd al-Razzāq, from Sufyān al-Thawrī, who said: If the ʿāqilah (agnatic kin) refuse to pay the diya on behalf of their dependent, they are obligated to do so.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ: إذَا أَسْلَمَ الرَّجُلُ عَلَى يَدَيْ الرَّجُلِ فَلَهُ مِيرَاثُهُ وَيَعْقِلُ عَنْهُ وَعَنْ الْحَكَمِ بْنِ عُتَيْبَةَ فِي رَجُلٍ تَوَلَّى قَوْمًا قَالَ: إذَا عَقَلَ عَنْهُمْ فَهُوَ مِنْهُمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَالَتْ طَائِفَةٌ: غَيْرَ هَذَا - كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ حُمَيْدٍ أَنَّ مَوْلًى لِبَنِي جَشْمٍ قَتَلَ رَجُلًا خَطَأً فَسَأَلَ عَدِيُّ بْنُ أَرْطَاةَ الْحَسَنَ الْبَصْرِيَّ عَنْ ذَلِكَ؟ فَقَالَ: لَا تَعْقِلُ الْعَرَبُ عَنْ الْمَوَالِي.

L39363 From Ibrahim al-Nakhai: If a man embraces Islam through the hands of another man, the convert inherits from him, and the latter pays blood money on his behalf. From al-Hakam ibn Utaybah concerning a man who assumes patronage over a people: He said, "If he pays blood money for them, does this make him one of them?" Abu Muhammad - may Allah have mercy on him - said: A group stated otherwise, as narrated through the chain of al-Hajjaj ibn al-Minhal, who narrated to us from Hammad ibn Salama from Humayd: A freed slave of Banu Jashm accidentally killed a man. Adiy ibn Arta'ah asked al-Hasan al-Basri about this matter, to which he replied: "Arabs do not pay blood money for freed slaves."

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: تَعْقِلُ الْعَاقِلَةُ عَنْ الْمَوْلَى وَالْحَلِيفِ وَقَالَ أَبُو حَنِيفَةَ: مَنْ وَالَى غَيْرَ مَنْ أَعْتَقَهُ لَكِنْ مَنْ أَسْلَمَ عَلَى أَيْدِيهِمْ فَلَهُ أَنْ يَنْتَقِلَ عَنْهُمْ وَيُوَالِيَ غَيْرَهُمْ مَا لَمْ يَعْقِلُوا عَنْهُ، فَإِذَا عَقَلُوا عَنْهُ فَلَا يُمْكِنُهُ الِانْتِقَالُ عَنْهُمْ بِوِلَايَةٍ أَبَدًا.

L39364–39366 Abū Ḥanīfa and Mālik said: The ʿāqila (liable kinship group) pays the blood money for the patron (*mawlā*) and the confederate (*ḥalīf*). Abu Hanifah said: Whoever pledges clientage to someone other than their emancipator—however, if someone embraced Islam under their authority, they may transfer allegiance to others provided they [the guardians] have not paid blood money on his behalf. But if blood money has been paid for him, they can never sever ties through clientage, ever.

L39367 Abu Sulayman and our companions stated: The agnatic kin group does

not pay blood money on behalf of clients from below, patrons from above, confederates, or slaves.

وَقَالَ أَبُو سُلَيْمَانَ وَأَصْحَابُنَا: لَا تَعْقِلُ الْعَاقِلَةُ عَنْ الْمَوَالِي مِنْ أَسْفَلَ، وَلَا عَنْ الْمَوْلَى مِنْ فَوْقُ، وَلَا عَنْ الْحَلِيفِ، وَلَا عَنْ الْعَبْدِ.

L39368 When they disagreed, it became necessary for us to clarify their statements, then present all the evidence each faction cited for their position so the truth might become evident, enabling us to follow it with Allah's assistance and grace. The ruling derived from ʿUmar ibn al-Khaṭṭāb's statement—may Allah be pleased with him—is that higher-ranking patrons are responsible for paying blood money (ʿaql) on behalf of the patrons who manumitted [the freed slave] or those from their own lineage who manumitted him. Blood relatives hold priority in inheritance over the manumitting patrons, followed by [other] manumitters, then the public treasury (Bayt al-Māl).

فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نُخَلِّصَ أَقْوَالَهُمْ ثُمَّ نَذْكُرَ كُلَّ مَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا، لِيَظْهَرَ الْحَقُّ مِنْ ذَلِكَ فَنَتَّبِعَهُ بِعَوْنِ اللَّهِ تَعَالَى وَمَنِّهِ: فَكَانَ الْحَاصِلُ - مِنْ قَوْلِ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - أَنَّ الْمَوَالِيَ مِنْ فَوْقُ يَعْقِلُونَ عَنْ الْمَوَالِي الَّذِينَ أَعْتَقُوهُ، أَوْ أَعْتَقَهُ مَنْ هُوَ مِنْهُمْ، وَأَنَّ ذَوِي الرَّحِمِ أَوْلَى بِالْمِيرَاثِ مِنْ الْمَوَالِي الَّذِينَ أَعْتَقُوهُ، ثُمَّ الْمُعْتِقُونَ، ثُمَّ الْمُسْلِمُونَ.

L39369 The apparent meaning of this is that all those we mentioned are responsible for paying blood money on each other's behalf, and whoever embraces Islam through the agency of a person - their allegiance belongs to that patron, so the patron inherits from them and pays blood money on their behalf.

وَظَاهِرُ هَذَا: أَنَّ كُلَّ مَنْ ذَكَرْنَا يَعْقِلُ عَنْهُ، وَأَنَّ مَنْ أَسْلَمَ عَلَى يَدِ إنْسَانٍ فَوَلَاؤُهُ لَهُ يَرِثُهُ وَيَعْقِلُ عَنْهُ.

L39370 It is authentically reported from Muʿāwiyah's statement that higher-ranking patrons are obligated to pay blood money on behalf of those they manumitted. If they refuse, the imam pays on their behalf, and the freed slave's clientage shifts from the manumitters to the one who paid the blood money. This is an authentic report from Muʿāwiyah, as ʿAṭā ibn Abī Rabāḥ was his contemporary.

وَصَحَّ مِنْ قَوْلِ مُعَاوِيَةَ أَنَّ الْمَوَالِيَ مِنْ فَوْقُ يَعْقِلُونَ عَمَّنْ أَعْتَقُوهُ، فَإِنْ أَبَوْا عَقَلَ عَنْهُمْ الْإِمَامُ وَزَالَ وَلَاؤُهُ عَنْ الَّذِينَ أَعْتَقُوهُ إلَى الَّذِي عَقَلَ عَنْهُ - وَهَذَا صَحِيحٌ عَنْ مُعَاوِيَةَ ثَابِتٌ؛ لِأَنَّ عَطَاءَ بْنَ أَبِي رَبَاحٍ أَدْرَكَهُ.

L39371 It is authentically reported from Ibrahim al-Nakhai that emancipators are responsible for paying blood money on behalf of their emancipated slave and for anyone who embraced Islam under the guardianship of a man among them. It is also authentically reported from al-Hasan that emancipators do not pay blood money for those they emancipated. Abu Muhammad—may Allah have mercy on him—said: We are obligated to seek evidence in these disputed matters from what Allah has enjoined upon us—which are the Quran and the Sunnah. We found those who assert that emancipators pay blood money for their emancipated slaves saying: The Messenger of Allah—peace

وَصَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّ الْمُعْتِقِينَ يَعْقِلُونَ عَنْ مَوْلَاهُمْ الَّذِي أَعْتَقُوهُ، وَعَمَّنْ أَسْلَمَ عَلَى يَدَيْ رَجُلٍ مِنْهُمْ - وَصَحَّ عَنْ الْحَسَنِ: أَنَّهُ لَا يَعْقِلُ الْمُعْتِقُونَ عَمَّنْ أَعْتَقُوا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَجَبَ أَنْ نَنْظُرَ فِي طَلَبِ الْبُرْهَانِ فِيمَا اخْتَلَفُوا فِيهِ مِنْ ذَلِكَ مِمَّا أَوْجَبَ اللَّهُ تَعَالَى عَلَيْنَا - وَهُوَ الْقُرْآنُ وَالسُّنَّةُ - فَوَجَدْنَا مَنْ يَقُولُ: إنَّ الْمُعْتِقِينَ يَعْقِلُونَ عَمَّنْ أَعْتَقُوهُ يَقُولُونَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَوْلَى الْقَوْمِ مِنْهُمْ» .

and blessings be upon him—stated: "The freed slave is part of the community that freed him."

L39372 The Prophet (peace be upon him) said, "Every pact that existed in the pre-Islamic era—Islam did not increase it except in strength."

L39373–39375 As was narrated to us through the chain of Muslim: Abu Bakr ibn Abi Shaybah reported to us, Abdullah ibn Numayr and Abu Usamah from Zakariyya, from Sa'd ibn Ibrahim, from his father, from Jubayr ibn Mut'im, who said: The Messenger of Allah (peace be upon him) said, "Do not..." A pact in Islam, and any pact that existed during the pre-Islamic era: Islam only intensified their binding force.

L39376 From the path of Muslim: Zuhayr ibn Harb reported to us via Muslim, Isma'il ibn Ibrahim—he is Ibn Ulayyah—narrated to us, Ayyub al-Sakhtiyani narrated from Abu Qilabah from Abu al-Muhallab from Imran ibn al-Husayn, who said: "Thaqif were allies of Banu Aqil. Thaqif captured a man from the companions of the Messenger of Allah (peace be upon him), while the companions of the Messenger of Allah (peace be upon him) captured a man from Banu Aqil and seized al-Adhba along with him. The Messenger of Allah (peace be upon him) passed by him while he was bound. The man called out: 'O Muhammad?' The Messenger of Allah (peace be upon him) approached him and said: 'What is your matter?' He replied: 'For what have you seized me and taken the leading she-camel of the pilgrims?' He said: 'Out of gravity for that, I seized you for the crime of your allies, Thaqif.' Then he turned away. The man called out again: 'O Muhammad! O Muhammad!'—and the Messenger of Allah (peace be upon him) was gentle—so he returned to him and said: 'What is your matter?' He said: 'I am a Muslim.' He replied: 'Had you declared it while you had control over your affairs, you would have attained all success.'" He related the remainder of the hadith. They said: "If the client is from the people, and the ally is from the people—and they are held accountable for his offense—then the blood money is upon him."

L39377 Abu Muhammad—may Allah have mercy on him—said: These reports are of the utmost authenticity, yet they possess no valid proof in any of them. As for

وَقَالَ - عَلَيْهِ السَّلَامُ - «كُلُّ حِلْفٍ كَانَ فِي الْجَاهِلِيَّةِ فَلَمْ يَزِدْهُ الْإِسْلَامُ إلَّا شِدَّةً» .

كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ، وَأَبُو أُسَامَةَ عَنْ زَكَرِيَّا عَنْ سَعْدِ بْنِ إبْرَاهِيمَ عَنْ أَبِيهِ عَنْ جُبَيْرِ بْنِ مُطْعِمٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا حِلْفَ فِي الْإِسْلَامِ وَأَيُّمَا حِلْفٍ كَانَ فِي الْجَاهِلِيَّةِ فَلَمْ يَزِدْهُ الْإِسْلَامُ إلَّا شِدَّةً» .

وَمِنْ طَرِيقِ مُسْلِمٍ نِي زُهَيْرُ بْنُ حَرْبٍ نا إسْمَاعِيلُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ عُلَيَّةَ - نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ قَالَ: «كَانَتْ ثَقِيفُ حُلَفَاءَ لِبَنِي عَقِيلٍ فَأَسَرَتْ ثَقِيفُ رَجُلًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَسَرَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَجُلًا مِنْ بَنِي عَقِيلٍ وَأَصَابُوا مَعَهُ الْعَضْبَاءَ، فَأَتَى عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ فِي الْوَثَاقِ فَقَالَ: يَا مُحَمَّدُ؟ فَأَتَاهُ فَقَالَ: مَا شَأْنُكَ؟ فَقَالَ: بِمَ أَخَذْتَنِي وَأَخَذْتَ سَابِقَةَ الْحَاجِّ؟ قَالَ: إعْظَامًا لِذَلِكَ أَخَذْتُكَ بِجَرِيرَةِ حُلَفَائِكَ ثَقِيفَ، ثُمَّ انْصَرَفَ، فَنَادَاهُ: يَا مُحَمَّدُ، يَا مُحَمَّدُ، يَا مُحَمَّدُ - وَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَفِيقًا - فَرَجَعَ إلَيْهِ فَقَالَ: مَا شَأْنُكَ؟ فَقَالَ: إنِّي مُسْلِمٌ، قَالَ: لَوْ قُلْتَهَا وَأَنْتَ تَمْلِكُ أَمْرَكَ أَفْلَحْتَ كُلَّ الْفَلَاحِ» وَذَكَرَ بَاقِيَ الْحَدِيثِ - قَالُوا: فَإِذَا كَانَ الْمَوْلَى مِنْ الْقَوْمِ، وَالْحَلِيفُ مِنْ الْقَوْمِ - وَهُمْ مَأْخُوذُونَ بِجَرِيرَتِهِ - فَالْعَقْلُ عَلَيْهِ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذِهِ الْأَخْبَارُ فِي غَايَةِ الصِّحَّةِ، إلَّا أَنَّهُمْ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهَا: أَمَّا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَوْلَى الْقَوْمِ مِنْهُمْ» فَحَقٌّ لَا شَكَّ فِيهِ، وَلَيْسَ كَوْنُهُ مِنْهُمْ مُوجِبًا أَنْ يَعْقِلُوا عَنْهُ؛ لِأَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ أَيْضًا «ابْنُ أُخْتِ الْقَوْمِ مِنْهُمْ» وَلَمْ يَكُنْ ذَلِكَ مُوجِبًا عِنْدَهُمْ أَنْ يَعْقِلُوا عَنْهُ: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرٍ - هُوَ غُنْدَرٌ - نا شُعْبَةُ قَالَ: سَمِعْت قَتَادَةَ يُحَدِّثُ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «جَمَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْأَنْصَارَ وَقَالَ: أَفِيكُمْ أَحَدٌ مِنْ غَيْرِكُمْ؟ قَالُوا: لَا، إلَّا ابْنَ أُخْتٍ لَنَا، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ ابْنَ أُخْتِ الْقَوْمِ مِنْهُمْ» وَذَكَرَ الْحَدِيثَ.

L39378 فَبَطَلَ أَنْ يَكُونَ قَوْلُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَوْلَى الْقَوْمِ مِنْهُمْ» أَنْ يَكُونَ مُوجِبًا لَأَنْ يَعْقِلَ عَنْهُمْ، أَوْ يَعْقِلُوا عَنْهُ إذْ لَا يَقْتَضِي قَوْلُهُ - عَلَيْهِ السَّلَامُ - «مَوْلَى الْقَوْمِ مِنْهُمْ» أَنْ يَعْقِلُوا عَنْهُ.

L39379–39381 وَأَمَّا حَدِيثُ عِمْرَانَ بْنِ الْحُصَيْنِ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِلْعُقَيْلِيِّ «أَخَذْتُكَ بِجَرِيرَةِ حُلَفَائِكَ مِنْ ثَقِيفَ» فَلَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا لِوُجُوهٍ -: أَحَدُهَا - أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَأْخُذْ مِنْهُ - إذْ أَخَذَهُ مُسْلِمًا حَرَامٌ أَخْذُهُ - لَوْلَا جَرِيرَةُ حُلَفَائِهِ، بَلْ أَخَذَ كَافِرًا حَلَالًا أَخْذُهُ، وَدَمُهُ، وَمَالُهُ عَلَى كُلِّ حَالٍ، إلَّا أَنَّهُ تَأَكَّدَ أَمْرُهُ مِنْ أَجْلِ جَرِيرَةِ حُلَفَائِهِ فَقَطْ - وَلَسْنَا فِي هَذِهِ الْمَسْأَلَةِ - إنَّمَا نَحْنُ فِي مُسْلِمِينَ حَرَامٌ دِمَاؤُهُمْ وَأَمْوَالُهُمْ، هَلْ يُؤْخَذُونَ بِجَرِيرَةِ حُلَفَائِهِمْ أَمْ لَا؟ .

the statement of the Messenger of Allah—peace and blessings be upon him—"The client of a people is one of them," it is undeniably true. However, his being counted among them does not necessitate their liability for his blood-money, for the Prophet—peace and blessings be upon him—also said, "The maternal nephew of a people is one of them," yet this did not obligate them to pay blood-money on his behalf. This is as we have been narrated through Imam Muslim's transmission: Muhammad ibn al-Muthannā narrated to us, Muhammad ibn Ja'far—known as Ghundar—narrated to us, Shu'bah narrated to us, saying: I heard Qatādah narrating from Anas ibn Mālik, who said: "The Messenger of Allah—peace and blessings be upon him—gathered the Ansār and asked, 'Is there anyone among you not of your kin?' They replied, 'No, except a maternal nephew of ours.' The Messenger of Allah—peace and blessings be upon him—then said, 'The maternal nephew of a people is indeed one of them,'" and he related the hadith.

L39378 Thus, it is invalidated that the Prophet's statement—peace be upon him (PBUH)—"the client of a people is from among them" should necessitate that he pay blood money on their behalf or that they pay on his behalf, for his statement—(PBUH)—"the client of a people is from among them" does not entail that they pay blood money on his behalf.

L39379–39381 As for the narration of 'Imrān ibn al-Ḥuṣayn that the Messenger of Allāh—peace and blessings be upon him—said to al-'Uqaylī: «I took you» "Due to the crime of your allies from Thaqif." They have no valid argument in this matter whatsoever, for several reasons. The first is that the Prophet (peace be upon him) did not seize him, since seizing him as a Muslim would have been unlawful. Rather, he seized a non-Muslim whose seizure was permissible, for his blood and wealth were lawful under all circumstances. His liability was merely intensified due to the crime of his allies. However, this is not the issue at hand here. Our discussion concerns Muslims whose blood and wealth are sacrosanct: can they be seized for the crimes of their allies or not?

L39382 The second of them is that regarding such a crime, no two people among the Muslims would differ in holding it impermissible to seize a Muslim for [the offense of] another Muslim—even if a person's allies, brothers, father,

or son were to capture a Muslim man or commit highway robbery. It is not permissible for anyone to take his ally, brother, son, or father in his stead.

وَثَانِيهَا: أَنَّ مِثْلَ تِلْكَ الْجَرِيرَةِ لَا يَخْتَلِفُ اثْنَانِ مِنْ أَهْلِ الْإِسْلَامِ فِي أَنَّهُ لَا يَحِلُّ أَنْ يُؤْخَذَ بِهَا مُسْلِمٌ عَنْ مُسْلِمٍ وَلَوْ أَنَّ حُلَفَاءَ الْإِنْسَانِ أَوْ إِخْوَانَهُ أَوْ أَبَاهُ أَوْ وَلَدَهُ: يَأْسِرُ رَجُلًا مِنْ الْمُسْلِمِينَ، أَوْ يَقْطَعُ الطَّرِيقَ: لَمْ يَحِلَّ لِأَحَدٍ أَنْ يَأْخُذَ حَلِيفَهُ، وَلَا أَخَاهُ، وَلَا ابْنَهُ، وَلَا أَبَاهُ عَنْهُ.

L39383 The third is that this constitutes an analogy, and all analogy is invalid, for it is an analogy of a thing to its opposite: an analogy of a believer to a disbeliever, or an analogy of the offense of accidental killing to a believer's capture of disbelievers. This confusion stems from those who have distorted this report, thereby diverting it from its proper context.

وَثَالِثُهَا: أَنَّ هَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ؛ لِأَنَّهُ قِيَاسُ الشَّيْءِ عَلَى ضِدِّهِ، وَقِيَاسُ مُؤْمِنٍ عَلَى كَافِرٍ، وَجِنَايَةِ قَتْلٍ خَطَأً عَلَى أَسْرِ كُفَّارٍ لِمُؤْمِنٍ - وَهَذَا تَخْلِيطٌ مِمَّنْ مَوَّهَ بِهَذَا الْخَبَرِ فَحَرَّفَهُ عَنْ مَوْضِعِهِ.

L39384 As for the ḥadīth of Jubayr ibn Muṭʿim: "There is no alliance in Islam, and every alliance from the pre-Islamic era—Islam did not increase it except in strength"—they have no ground to rely on this, for we do not disagree with them regarding the continuation of pre-Islamic alliances and the invalidation of alliances in Islam, so that they might use this report to argue against us. The discussion, rather, is whether allies are financially liable for one another or not. This report contains nothing pertaining to that meaning. As for the question: "What is the meaning of the alliance's continuation if we say its meaning is apparent?" It is that they are with them as though they are part of them: if they raid, they raid with them; if they have a need, they speak about it as family would, and the like. However, this does not entail imposing financial liability.

وَأَمَّا حَدِيثُ - جُبَيْرِ بْنِ مُطْعِمٍ: «لَا حِلْفَ فِي الْإِسْلَامِ، وَكُلُّ حِلْفٍ كَانَ فِي الْجَاهِلِيَّةِ فَلَمْ يَزِدْهُ الْإِسْلَامُ إلَّا شِدَّةً» فَلَا مُتَعَلَّقَ لَهُمْ بِهِ؛ لِأَنَّنَا لَمْ نُخَالِفْهُمْ فِي بَقَاءِ حِلْفِ الْجَاهِلِيَّةِ وَإِبْطَالِ الْحِلْفِ فِي الْإِسْلَامِ فَيَحْتَجُّوا عَلَيْنَا بِهَذَا الْخَبَرِ، وَإِنَّمَا الْكَلَامُ هَلْ يَعْقِلُ الْحُلَفَاءُ بَعْضُهُمْ عَنْ بَعْضٍ أَمْ لَا؟ وَلَيْسَ فِي هَذَا الْخَبَرِ شَيْءٌ مِنْ هَذَا الْمَعْنَى وَمَا مَعْنَى بَقَاءِ الْحِلْفِ إذَا قُلْنَا: مَعْنَاهُ ظَاهِرٌ، وَهُوَ أَنْ يَكُونُوا مَعَهُمْ كَأَنَّهُمْ مِنْهُمْ، فَإِذَا غَزَوْا غَزَوْا مَعَهُمْ، وَإِذَا كَانَتْ لَهُمْ حَاجَةٌ تَكَلَّمُوا فِيهَا كَمَا يَتَكَلَّمُ الْأَهْلُ، وَمَا أَشْبَهَ ذَلِكَ - وَأَمَّا إيجَابُ غَرَامَةٍ فَلَا.

L39385 We have been narrated through the chain of Muslim: Muslim narrated to us, from Abu Jaʿfar ibn Muhammad ibn al-Sabah, from Hafs ibn Ghiyath, from ʿAsim al-Ahwal, who said: It was said to Anas ibn Malik, "We have heard that the Messenger of Allah (peace be upon him) concluded a pact between Quraysh and the Ansar in his home."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو جَعْفَرِ بْنُ مُحَمَّدِ بْنِ الصَّبَّاحِ نا حَفْصُ بْنُ غِيَاثٍ نا عَاصِمٌ الْأَحْوَلُ قَالَ: قِيلَ لِأَنَسِ بْنِ مَالِكٍ: بَلَغَنَا «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَالَفَ بَيْنَ قُرَيْشٍ وَالْأَنْصَارِ فِي دَارِهِ» .

L39386–39388 In another hadith reported by Muslim from Anas: "In his home in Medina?" ʿAlī—may Allah have mercy on him—said: "This constitutes the most deci-

sive evidence invalidating the notion that an ally may pay blood money on behalf of his ally, for 'the Messenger of Allah—peace and blessings of Allah be upon him—established a pact between Quraysh and the Anṣār,' and no pact is stronger or more binding than one he contracted." The Messenger of Allah—peace be upon him—said: "If allies were to pay blood money on behalf of their ally, it would become obligatory for Quraysh to pay blood money for the Ansar and the Ansar for Quraysh"—but would they ever say this? Abu Muhammad—may Allah have mercy on him—said: "It is obligatory upon us to determine the time when the Messenger of Allah—peace be upon him—abolished pre-Islamic alliances in Islam." It was narrated from Umar ibn al-Khattab through the chain of Abd al-Aziz ibn Umar ibn Abd al-Aziz ibn Umar ibn Abd al-Rahman ibn Awf, who said: "Every alliance formed before Hudaybiyah remains valid, and every alliance formed after Hudaybiyah is annulled. For when the Messenger of Allah—peace be upon him—made peace with Quraysh at Hudaybiyah, he—peace be upon him—drafted a treaty between himself and them stating: 'Whoever wishes to enter into the covenant and pact of Quraysh may do so, and whoever wishes to enter into the covenant and pact of Muhammad—peace be upon him—may do so.'"

وَفِي حَدِيثٍ آخَرَ لِمُسْلِمٍ عَنْ أَنَسٍ: «فِي دَارِهِ بِالْمَدِينَةِ» ؟ قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: فَهَذَا أَعْظَمُ حُجَّةٍ فِي إبْطَالِ أَنْ يَعْقِلَ الْحَلِيفُ عَنْ حَلِيفِهِ؛ لِأَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَالَفَ بَيْنَ قُرَيْشٍ وَالْأَنْصَارِ» ، وَلَا حِلْفَ أَقْوَى وَأَشَدَّ مِنْ حِلْفٍ عَقَدَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَوْ عَقَلَ الْحُلَفَاءُ عَنْ الْحَلِيفِ لَوَجَبَ أَنْ تَعْقِلَ قُرَيْشٌ عَنْ الْأَنْصَارِ، وَالْأَنْصَارُ عَنْ قُرَيْشٍ - وَهَذَا مَا لَا يَقُولُونَهُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَاجِبٌ أَنْ نَطْلُبَ مَعْرِفَةَ الْوَقْتِ الَّذِي قَطَعَ فِيهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْحِلْفَ فِي الْإِسْلَامِ -: فَذُكِرَ عَنْ عُمَرَ بْنِ الْخَطَّابِ مِنْ طَرِيقِ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، قَالَ: إنَّ كُلَّ حِلْفٍ كَانَ قَبْلَ الْحُدَيْبِيَةِ فَهُوَ مَشْدُودٌ، وَكُلَّ حِلْفٍ كَانَ بَعْدَ الْحُدَيْبِيَةِ فَهُوَ مَنْقُوضٌ؛ لِأَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَ وَادَعَ قُرَيْشًا يَوْمَ الْحُدَيْبِيَةِ كَتَبَ - عَلَيْهِ السَّلَامُ - حِينَئِذٍ بَيْنَهُ وَبَيْنَهُمْ: أَنَّهُ مَنْ أَحَبَّ أَنْ يَدْخُلَ فِي عَهْدِ قُرَيْشٍ وَعَقْدِهَا دَخَلَ، وَمَنْ أَحَبَّ أَنْ يَدْخُلَ فِي عَهْدِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَقْدِهِ دَخَلَ» .

L39389 Uthman ruled that every alliance established before the Hijrah remains a valid pre-Islamic covenant, while every alliance formed after the Hijrah belongs to Islam but is annulled. He issued this ruling regarding a case involving the Banu Bahz clan of the Banu Sulaym tribe. Ali ibn Abi Talib ruled that every alliance concluded before the revelation of *"For the accustomed security of Quraysh"* (Surah Quraysh 106:1) remains a valid pre-Islamic covenant, while every alliance formed after its revelation is Islamic and annulled. This is because anyone who formed an alliance to gain membership within Quraysh after the revelation of *"For the accustomed security of Quraysh"* (Surah Quraysh 106:1), despite not originally belonging to them, did not thereby become part of them. He issued this ruling concerning the alliance of Rabi'ah al-'Uqayli, specifically regarding Ju'fi, who was the grandfather of Ishaq ibn

وَقَضَى عُثْمَانُ: أَنَّ كُلَّ حِلْفٍ كَانَ قَبْلَ الْهِجْرَةِ فَهُوَ جَاهِلِيٌّ ثَابِتٌ، وَكُلَّ حِلْفٍ كَانَ بَعْدَ الْهِجْرَةِ فَهُوَ فِي الْإِسْلَامِ، وَهُوَ مَفْسُوخٌ، قَضَى بِذَلِكَ فِي قَوْمٍ مِنْ بَنِي بَهْزٍ مِنْ بَنِي سُلَيْمٍ. وَقَضَى عَلِيُّ بْنُ أَبِي طَالِبٍ: أَنَّ كُلَّ حِلْفٍ كَانَ قَبْلَ نُزُولِ {لِإِيلَافِ قُرَيْشٍ} [قريش: ١] فَهُوَ جَاهِلِيٌّ ثَابِتٌ وَكُلَّ حِلْفٍ كَانَ بَعْدَ نُزُولِهَا فَهُوَ إسْلَامِيٌّ مَفْسُوخٌ؛ لِأَنَّ مَنْ حَالَفَ لِيَدْخُلَ فِي قُرَيْشٍ بَعْدَ نُزُولِ {لِإِيلَافِ قُرَيْشٍ} [قريش: ١] مِمَّنْ لَمْ يَكُنْ مِنْهُمْ لَمْ يَكُنْ بِذَلِكَ دَاخِلًا فِيهِمْ، قَضَى فِي ذَلِكَ فِي حِلْفِ رَبِيعَةَ الْعُقَيْلِيِّ، فِي جُعْفِيٍّ،

Muslim al-ʻUqayli. Ibn Abbas stated: Every alliance established before the revelation of *"To each We have appointed heirs/kinsmen for what is left by parents and relatives"* (Surah an-Nisāʼ 4:33) up to His words *"then give them their share"* (Surah an-Nisāʼ 4:33) remains binding, while every alliance formed after its revelation is annulled. It is therefore necessary to examine the soundness of these positions. As for Uthman's assertion—may Allah be pleased with him—that the cessation boundary for alliances is the beginning of the Hijrah, this is not valid, for Anas narrated, as we mentioned, that "the Messenger of Allah—peace be upon him—established an alliance between Quraysh and the Ansar in Medina," and no one disputes that this alliance occurred after the Hijrah.[15]

وَهُوَ جَدُّ إِسْحَاقَ بْنِ مُسْلِمٍ الْعُقَيْلِيِّ، وَقَالَ ابْنُ عَبَّاسٍ: كُلُّ حِلْفٍ كَانَ قَبْلَ نُزُولِ {وَلِكُلٍّ جَعَلْنَا مَوَالِيَ مِمَّا تَرَكَ الْوَالِدَانِ وَالأَقْرَبُونَ} [النساء: ٣٣] إِلَى قَوْلِهِ {فَآتُوهُمْ نَصِيبَهُمْ} [النساء: ٣٣] فَهُوَ مَشْدُودٌ، وَكُلُّ حِلْفٍ كَانَ بَعْدَ نُزُولِهَا فَهُوَ مَفْسُوخٌ، فَوَجَبَ أَنْ نَنْظُرَ فِي الصَّحِيحِ مِنْ ذَلِكَ -: فَأَمَّا قَوْلُ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - إِنَّ حَدَّ انْقِطَاعِ الْحِلْفِ إِنَّمَا هُوَ أَوَّلُ وَقْتِ الْهِجْرَةِ، فَلَا يَصِحُّ، لِأَنَّ أَنَسًا رَوَى - كَمَا ذَكَرْنَا - أَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَالَفَ بَيْنَ قُرَيْشٍ وَالْأَنْصَارِ بِالْمَدِينَةِ» ، وَلَا يَشُكُّ أَحَدٌ فِي أَنَّ هَذَا الْحِلْفَ كَانَ بَعْدَ الْهِجْرَةِ.

L39390–39392 As for the statement of ʻUmar (may Allah be pleased with him) regarding his specification that the alliance had ceased on the Day of Ḥudaybiyya, this... This issue is also suspended; because the Prophet's alliance (peace and blessings of Allah be upon him) between Quraysh and the Ansar occurred after the Hijrah, and we do not know whether it was before al-Hudaybiyah or after it.

وَأَمَّا قَوْلُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فِي تَحْدِيدِهِ انْقِطَاعَ الْحِلْفِ بِيَوْمِ الْحُدَيْبِيَةِ فَهَذَا أَيْضًا مُتَوَقِّفٌ، لِأَنَّ حِلْفَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ قُرَيْشٍ وَالْأَنْصَارِ كَانَ بَعْدَ الْهِجْرَةِ، وَلَا نَدْرِي أَقَبْلَ الْحُدَيْبِيَةِ أَمْ بَعْدَهَا.

L39393 As for the revelation of {For the accustomed security of Quraysh} [Quraysh: 1] and the other verse, we do not know when they were revealed. This is because Jubayr ibn Muṭʻim—the narrator of "Every alliance formed during the *Jāhiliyyah* was only strengthened by Islam"—did not accept Islam until the day of the Conquest. Therefore, this report can only be understood as pertaining to the day of the Conquest. And Allah knows best. Thus, their reliance on these reports is entirely invalidated.[16]

فَأَمَّا نُزُولُ {لِإِيلافِ قُرَيْشٍ} [قريش: ١] وَالْآيَةِ الْأُخْرَى فَمَا نَدْرِي مَتَى نَزَلَتَا؟ لِأَنَّ جُبَيْرَ بْنَ مُطْعِمٍ - رَاوِي «كُلُّ حِلْفٍ كَانَ فِي الْجَاهِلِيَّةِ فَلَمْ يَزِدْهُ الْإِسْلَامُ إِلَّا شِدَّةً» لَمْ يُسْلِمْ إِلَّا يَوْمَ الْفَتْحِ، فَلَا يُحْمَلُ هَذَا الْخَبَرُ إِلَّا عَلَى يَوْمِ الْفَتْحِ، وَاللَّهُ أَعْلَمُ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْأَخْبَارِ جُمْلَةً.

L39394 Abū Muḥammad—may Allāh have mercy on him—said: It thus became incumbent upon us to seek the ruling on these issues from sources other than these reports. We ascertained that the Messenger of Allāh—peace and blessings of Allāh be upon him—had ruled blood money to be incumbent upon the agnates—as explicitly stated—in the report concerning blood money owed

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَجَبَ عَلَيْنَا أَنْ نَطْلُبَ حُكْمَ هَذِهِ الْمَسَائِلِ مِنْ غَيْرِ هَذِهِ الْأَخْبَارِ، فَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَضَى بِالدِّيَةِ عَلَى الْعَصَبَةِ - هَكَذَا جَاءَ النَّصُّ - فِي خَبَرِ دِيَةِ الْقَاتِلَةِ، فَوَجَبَ أَنْ تَكُونَ الدِّيَةُ عَلَى الْعَصَبَةِ، وَمَنْ هُمْ الْعَصَبَةُ؟ فَوَجَدْنَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ حَكَمَ بِمِيرَاثِ الْقَاتِلَةِ لِبَنِيهَا

[15] **Qur'an references (L39389):** Qur'an 106:1 (Quraysh); Qur'an 4:33 (An-Nisa).
[16] **Qur'an references (L39393):** Qur'an 106:1 (Quraysh).

by a female killer. Therefore, blood money must necessarily fall upon the agnates. Who are the agnates? We ascertained that the Prophet—peace and blessings of Allāh be upon him—had ruled the inheritance of a female killer passes to her sons and husband, while ruling blood money incumbent upon her agnates. Thus, it is invalid for the heirs to be the agnates—contrary to al-Shaʿbī's assertion. He said: Blood money is incumbent upon those who receive the inheritance. Since this is the case, perhaps a disputant might cite as evidence the statement of the Messenger of Allāh—peace and blessings of Allāh be upon him—: "Assign the ordained shares to their rightful recipients. Whatever remains after the ordained shares belongs to the nearest male relative."

وَزَوْجِهَا وَحَكَمَ بِالدِّيَةِ عَلَى عَصَبَتِهَا - فَبَطَلَ أَنْ تَكُونَ الْوَرَثَةُ هُمْ الْعَصَبَةُ؟ بِخِلَافِ مَا قَالَ الشَّعْبِيُّ، قَالَ: الْعَقْلُ عَلَى مَنْ لَهُ الْمِيرَاثُ، فَإِذْ ذَلِكَ كَذَلِكَ فَلَعَلَّ مُحْتَجًّا يَحْتَجُّ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا فَمَا أَبْقَتْ الْفَرَائِضُ فَلِأَوْلَى رَجُلٍ ذَكَرٍ» .

L39395 He will say: "Is this the ruling of the patron from above?" It will be said to him: "Yes, this is correct. This is the ruling of inheritance, not the ruling of the *ʿaqilah*; because a woman may inherit through *wala'* if she manumits her client, and the woman is not among the *ʿaṣabah*?"

فَيَقُولُ: إنَّ هَذَا حُكْمُ الْمَوْلَى مِنْ فَوْقُ؟ فَيُقَالُ لَهُ: نَعَمْ، هَذَا صَحِيحٌ، وَهَذَا حُكْمُ الْمَوَارِيثِ لَا حُكْمُ الْعَاقِلَةِ؛ لِأَنَّهُ قَدْ تَرِثُ بِالْوَلَاءِ الْمَرْأَةُ إذَا أَعْتَقَتْ مَوْلًى لَهَا وَلَيْسَتْ الْمَرْأَةُ مِنْ الْعَصَبَةِ؟ .

L39396 The Issue of Collective Liability Among Dhimmis.

[مَسْأَلَة تَعَاقُلُ أَهْلِ الذِّمَّةِ]

L39397 It has been narrated to us through the chain of Abū Bakr ibn Abī Shaybah, from Ḥafṣ ibn Ghiyāth, from ʿAmr—who is Ibn ʿUbayd—that al-Ḥasan would rule regarding the covenanted non-Muslim that he is to be killed. He said: "If they engage in the ʿāqilah system, then upon the ʿāqilah. If they do not, it becomes a debt against his wealth and his dhimma."

رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ نا عَمْرٌو - هُوَ ابْنُ عُبَيْدٍ - أَنَّ الْحَسَنَ كَانَ يَقُولُ فِي الْمُعَاهِدِ يَقْتُلُ، قَالَ: إنْ كَانُوا يَتَعَاقَلُونَ فَعَلَى الْعَوَاقِلِ، وَإِنْ كَانَ لَا، فَدَيْنٌ عَلَيْهِ فِي مَالِهِ وَذِمَّتِهِ.

L39398 And through the chain of Abū Bakr ibn Abī Shaybah as well, Ḥafṣ ibn Ghiyāth narrated from Ashʿath from Al-Shaʿbī regarding the treaty-bound combatant who is killed: he said, "His blood money belongs to the Muslims, and the liability for it rests upon them."

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَيْضًا نا حَفْصُ بْنُ غِيَاثٍ عَنْ أَشْعَثَ عَنْ الشَّعْبِيِّ فِي الْمُعَاهِدِ يَقْتُلُ، قَالَ: دِيَتُهُ لِلْمُسْلِمِينَ، وَعَقْلُهُ عَلَيْهِمْ.

L39399 And through the chain of Abū Bakr ibn Abī Shaybah as well, narrated Muḥammad ibn Bishr from Saʿīd ibn Abī ʿArūbah from Qatādah concerning a dhimmi who gouged out the eye of a Muslim man, Qatādah said: "His blood money falls upon the people of his administrative district (ṭasūjihi)."

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَيْضًا نا مُحَمَّدُ بْنُ بِشْرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ فِي رَجُلٍ مِنْ أَهْلِ الذِّمَّةِ فَقَأَ عَيْنَ رَجُلٍ مُسْلِمٍ قَالَ: دِيَتُهُ عَلَى أَهْلِ طسوجه.

L39400–39401 Among these statements is that the people of his region pay the blood money

on his behalf—but this is baseless, as there is unanimous agreement that the people of Ṭusūjah are not considered his agnatic relatives.

فَهَذِهِ أَقْوَالٌ مِنْهَا -: أَنَّ أَهْلَ إِقْلِيمِهِ يَعْقِلُونَ عَنْهُ - وَهُوَ لَيْسَ بِشَيْءٍ، لِأَنَّ أَهْلَ طسوجه لَا يُسَمَّوْنَ عَصَبَةً لَهُ بِلَا خِلَافٍ.

L39402 Another opinion is that his blood money is upon the Muslims, and this applies if he has no agnate relatives. If he has agnate relatives, then the blood money for accidental killing and the fetal compensation (ghurra) are obligatory upon the killer and his agnate relatives, as ruled by the Messenger of Allah—peace and blessings be upon him—who did not restrict this to Arabs over non-Arabs. Rather, he established blood monies for every clan, thus he generalized it {Nor does he speak from [his own] inclination} [53:3] {And your Lord is not forgetful} [19:64].[17]

وَقَوْلٌ آخَرُ - أَنَّ عَقْلَهُ عَلَى الْمُسْلِمِينَ، وَهَذَا كَذَلِكَ إِذَا لَمْ تَكُنْ لَهُ عَصَبَةٌ فَإِنْ كَانَ لَهُ عَصَبَةٌ فَعَقْلُ مَنْ قَتَلَ خَطَأً وَالْغُرَّةُ تَجِبُ عَلَيْهِ وَعَلَى عَصَبَتِهِ كَمَا حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَخُصَّ بِذَلِكَ عَرَبًا مِنْ عَجَمٍ بَلْ جَعَلَ عَلَى كُلِّ بَطْنٍ عُقُولَهُ فَعَمَّ {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

The Issue of the Slave's Penal Offense

[مَسْأَلَة جِنَايَة الْعَبْد]

L39404 Issue 2150: The ruling regarding what a slave is liable for in such cases: If a slave, a mudabbar, an umm al-walad, or a mukatab accidentally kills a Muslim, or they cause harm to a pregnant woman resulting in the loss of her fetus, we have clarified that the Messenger of Allah—peace and blessings be upon him—judged in such matters (and his judgment is from the judgment of Allah the Exalted) that the diyah and ghurrah fall upon the agnatic relatives of the perpetrator in that case, and that each clan bears its compensatory payments. He did not make a distinction between a free person and a slave.

٢١٥٠ - مَسْأَلَةٌ: حُكْمُ مَا جَنَى الْعَبْدُ فِي ذَلِكَ: إِنْ قَتَلَ الْعَبْدُ أَوْ الْمُدَبَّرُ أَوْ أُمُّ الْوَلَدِ، أَوْ الْمُكَاتَبُ مُسْلِمًا خَطَأً، أَوْ جَنَوْا عَلَى حَامِلٍ فَأُصِيبَ جَنِينُهَا، فَقَدْ بَيَّنَّا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِي ذَلِكَ - وَهُوَ الَّذِي قَضَاؤُهُ مِنْ قَضَاءِ اللَّهِ تَعَالَى أَنَّ الدِّيَةَ وَالْغُرَّةَ عَلَى عَصَبَةِ الْجَانِي فِي ذَلِكَ، وَأَنَّ عَلَى كُلِّ بَطْنٍ عُقُولَهُ وَلَمْ يَخُصَّ حُرًّا مِنْ عَبْدٍ.

L39405 Nor does he speak from [his own] whim. It is but a revelation revealed [An-Najm 53:3-4]. And your Lord is not forgetful [Maryam 19:64].[18]

{وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] . {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L39406 We bear witness—by the testimony of Allah, the Most High—that if Allah, the Most High, had intended to distinguish a free person from a slave, He would have made it clear and would not have neglected or overlooked it.

وَنَحْنُ نَشْهَدُ - بِشَهَادَةِ اللَّهِ تَعَالَى - أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ أَنْ يَخُصَّ حُرًّا مِنْ عَبْدٍ لَبَيَّنَهُ وَلَمَا أَهْمَلَهُ وَلَا أَغْفَلَهُ، وَقَدْ قَالَ تَعَالَى {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] فَكُلُّ

[17] **Qur'an references (L39402):** Qur'an 53:3 (An-Najm); Qur'an 19:64 (Maryam).

[18] **Qur'an references (L39405):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 19:64 (Maryam).

He, the Most High, has said: “To make clear to mankind what has been sent down to them” [Quran 16:44]. Thus, everything the Messenger—peace be upon him—did not clarify or elaborate is invalid; Allah, the Most High, did not intend it at all, and the Messenger—peace be upon him—has judged each tribe according to their intellects.[19]

L39407 The sub-lineages—which are successive generations traced father after father—apply among non-Arab communities as they do among Arabs, and among slaves as they do among free persons. It is therefore obligatory that if a slave with a known lineage and paternal relatives—whether Qurayshī, Arab, or non-Arab—marries a slave woman, their child’s lineage is distinguished through him and separated from her, making the blood money incumbent upon his paternal relatives.

L39408 If it is said, “They do not inherit him,” we respond, “Indeed,” for we have clarified that blood money is incumbent upon the agnates, not the heirs, by the textual ruling of the Prophet—peace and blessings be upon him—and this is the definitive truth in the sight of Allah, the Exalted, and that he never intended anything other than this for matters not addressed by the Quran or Sunnah.

The issue of differing opinions regarding one who lacks an ʿāqilah [male kin group liable for blood money].

L39409–39410

L39411 Issue: Regarding one who has no liable kin (aqila)? People have differed on this matter. A group said: The responsibility lies upon the Muslims, as we have been narrated that Abū Mūsā al-Ashʿarī wrote to ʿUmar ibn al-Khaṭṭāb regarding a man who dies among us without any blood relatives, client, or agnates. ʿUmar wrote back to him: If he leaves blood relatives, then they are responsible; if not, then the client; if neither, then the Muslim public treasury (Bayt al-Mal) – it inherits from him and pays blood money on his behalf.

L39412 A group said: His blood money is incumbent on his maternal relatives—as we have transmitted that when Ali ibn Abi Talib stoned the woman, he said

[19] **Qur’an references (L39406):** Qur’an 16:44 (An-Nahl).

مَا لَمْ يُبَيِّنْهُ الرَّسُولُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا فَصَّلَهُ فَهُوَ بَاطِلٌ، مَا أَرَادَهُ اللَّهُ تَعَالَى قَطُّ - وَقَدْ حَكَمَ - عَلَيْهِ السَّلَامُ - عَلَى كُلِّ بَطْنٍ عُقُولَهُ.

وَالْبُطُونُ - هِيَ الْوِلَادَاتُ أَبًا بَعْدَ أَبٍ، فَهِيَ فِي الْعَجَمِ، كَمَا هِيَ فِي الْعَرَبِ وَفِي الْأَحْرَارِ، كَمَا هِيَ فِي الْعَبِيدِ، فَوَاجِبٌ أَنَّ كُلَّ مَنْ كَانَ مِنْ الْعَبِيدِ يُعْرَفُ نَسَبُهُ وَلَهُ عَصَبَةٌ، كَقُرَشِيٍّ، أَوْ عَرَبِيٍّ، أَوْ عَجَمِيٍّ، تَزَوَّجَ أَمَةً فَرَقَّ وَلَدُهَا مِنْهَا، فَإِنَّ الدِّيَةَ عَلَى عَصَبَتِهِ.

فَإِنْ قِيلَ: إنَّهُمْ لَا يَرِثُونَهُ قُلْنَا: نَعَمْ، وَقَدْ بَيَّنَّا أَنَّ الدِّيَةَ عَلَى الْعَصَبَةِ لَا عَلَى الْوَرَثَةِ بِنَصِّ حُكْمِ النَّبِيِّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَهُوَ الْحَقُّ الْمَقْطُوعُ بِهِ عِنْدَ اللَّهِ تَعَالَى، وَأَنَّهُ لَمْ يُرِدْ قَطُّ غَيْرَهُ مِمَّا لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ.

[مَسْأَلَة الِاخْتِلَاف فِيمَنْ لَا عَاقِلَة لَهُ]

مَسْأَلَةٌ: مَنْ لَا عَاقِلَةَ لَهُ؟ اخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَتْ طَائِفَةٌ: عَلَى الْمُسْلِمِينَ -: كَمَا رُوِّينَا أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ كَتَبَ إلَى عُمَرَ بْنِ الْخَطَّابِ أَنَّ الرَّجُلَ يَمُوتُ بَيْنَنَا لَيْسَ لَهُ رَحِمٌ وَلَا مَوْلًى وَلَا عَصَبَةٌ؟ فَكَتَبَ إلَيْهِ عُمَرُ: إنْ تَرَكَ رَحِمًا فَرَحِمٌ، وَإِلَّا فَالْمَوْلَى، وَإِلَّا فَلْيَبِتْ مَالُ الْمُسْلِمِينَ: يَرِثُونَهُ، وَيَعْقِلُونَ عَنْهُ.

وَقَالَتْ طَائِفَةٌ: عَقْلُهُ عَلَى عَصَبَةِ أُمِّهِ -: كَمَا رُوِّينَا أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ لَمَّا رَجَمَ الْمَرْأَةَ قَالَ لِأَوْلِيَائِهَا: هَذَا ابْنُكُمْ تَرِثُونَهُ وَيَرِثُكُمْ، وَإِنْ جَنَى جِنَايَةً فَعَلَيْكُمْ.

to her guardians: “This is your son; you inherit him, and he inherits you. If he commits an offense requiring compensation, it becomes your obligation.”

L39413 When a man invokes liʿān against his wife, they are separated permanently and may never reunite. The child is affiliated with the mother’s agnatic relatives, the mother inherits from the child, and the mother’s agnatic kin assume liability for his blood money.

وَعَنْ إِبْرَاهِيمَ قَالَ: إِذَا لَاعَنَ الرَّجُلُ امْرَأَتَهُ: فُرِّقَ بَيْنَهُمَا وَلَا يَجْتَمِعَانِ أَبَدًا، وَأُلْحِقَ الْوَلَدُ بِعَصَبَةِ أُمِّهِ، وَتَرِثُهُ، وَيَعْقِلُونَ عَنْهُ.

L39414 From Ibrāhīm al-Nakhaʿī concerning the child of liʿān: His entire inheritance devolves upon his mother, and her agnatic kin are liable for his blood money. This ruling likewise applies to the child of unlawful intercourse and the child of a Christian [father] with a Muslim mother.

وَعَنْ إِبْرَاهِيمَ أَيْضًا - وَهُوَ النَّخَعِيُّ - فِي وَلَدِ الْمُلَاعَنَةِ قَالَ: مِيرَاثُهُ كُلُّهُ لِأُمِّهِ، وَيَعْقِلُ عَنْهُ عَصَبَتُهَا، كَذَلِكَ وَلَدُ الزِّنَى، وَوَلَدُ النَّصْرَانِيِّ وَأُمُّهُ مُسْلِمَةٌ.

L39415 A group said: “The liability falls upon one like him.” As narrated to us from Maymūn ibn Mihrān: A man from the people of Al-Jazīrah embraced Islam while having no kinsmen. He killed a man unintentionally, so ʿUmar ibn ʿAbd al-ʿAzīz wrote: “Assign the blood-money upon his equivalents among those who embraced Islam.”

وَقَالَتْ طَائِفَةٌ: عَلَى مَنْ كَانَ مِثْلَهُ -: كَمَا رُوِّينَا عَنْ مَيْمُونِ بْنِ مِهْرَانَ أَنَّ رَجُلًا مِنْ أَهْلِ الْجَزِيرَةِ أَسْلَمَ وَلَيْسَ لَهُ مَوَالٍ، فَقَتَلَ رَجُلًا خَطَأً؟ فَكَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَنْ اجْعَلُوهَا دِيَةً عَلَى نَحْوِهِ مِمَّنْ أَسْلَمَ.

L39416 And a faction said: “The obligation is incumbent upon whoever is like him.”

وَقَالَتْ طَائِفَةٌ: عَلَى مَنْ كَانَ مِثْلَهُ.

L39417 A group held: “There is no liability in that matter,” as we have narrated through the chain of Abd al-Razzaq from Ibn Jurayj, who said: Ata’ claimed that an animal dedicated through pre-Islamic ritual among Mecca’s consecrated animals injured a man. The injured party came to Umar ibn al-Khattab, who told him: “You have no right. Suppose I had wounded his head—what then?” The man replied: “Would I take his due compensation from you, while you do not take mine from him?” Umar said: “No.” The man retorted: “Is this then the speckled snake—that you force me to endure harm while letting them kill me, and I would seek vengeance?” Umar concluded: “Then it is the speckled snake.”

وَقَالَتْ طَائِفَةٌ: لَا شَيْءَ فِي ذَلِكَ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ، قَالَ: زَعَمَ عَطَاءٌ أَنَّ سَائِبَةً مِنْ سُيَّبِ مَكَّةَ أَصَابَتْ إِنْسَانًا فَجَاءَ إِلَى عُمَرَ بْنِ الْخَطَّابِ، فَقَالَ لَهُ عُمَرُ: لَيْسَ لَكَ شَيْءٌ، أَرَأَيْتَ لَوْ شَجَجْتَه؟ قَالَ: آخُذُ لَهُ مِنْكَ حَقَّهُ، وَلَا تَأْخُذُ لِي مِنْهُ؟ قَالَ: لَا، قَالَ: هُوَ إِذًا الْأَرْقَمُ أَنْ يَتْرُكَنِي أُلْقِمُ وَأَنْ يَقْتُلُونِي أَنْقِمُ، قَالَ عُمَرُ: فَهُوَ الْأَرْقَمُ.

L39418 Abū Muḥammad—may Allah have mercy on him—said: We deliberated on this? We found Allah, Glorified and Exalted is He, says the verse: {Whoever kills a believer unintentionally...} [al-Nisā’: 92], the verse.[20]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي هَذَا؟ فَوَجَدْنَا اللَّهَ سُبْحَانَهُ وَتَعَالَى يَقُولُ {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً} [النساء: ٩٢] الْآيَةَ.

[20]**Qur’an references (L39418):** Qur’an 4:92 (An-Nisa).

وَوَجَدْنَا «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَضَى مُجْمَلًا فِي الْجَنِينِ بِغُرَّةِ عَبْدٍ أَوْ أَمَةٍ» ، فَكَانَ هَذَانِ النَّصَّانِ عَامَّيْنِ لِكُلِّ مَنْ لَهُ عَاقِلَةٌ، وَلِكُلِّ مَنْ لَا عَاقِلَةَ لَهُ وَلَا عَصَبَةَ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ قَضَى بِالدِّيَةِ وَالْغُرَّةِ عَلَى الْعَصَبَةِ لَمْ يَقُلْ: إنَّهُ لَا يَجِبُ مِنْ ذَلِكَ شَيْءٌ عَلَى مَنْ لَا عَصَبَةَ لَهُ - فَإِذْ لَمْ يَقُلْ، وَقَضَى بِالْغُرَّةِ جُمْلَةً، وَقَضَى اللَّهُ تَعَالَى بِدِيَةٍ مُسَلَّمَةٍ إلَى أَهْلِ الْمَقْتُولِ خَطَأً عُمُومًا: كَانَ ذَلِكَ وَاجِبًا فِيمَنْ قَتَلَهُ خَطَأً مَنْ لَهُ عَصَبَةٌ، وَمَنْ لَا عَصَبَةَ لَهُ، وَكَذَلِكَ الْغُرَّةُ - فَوَجَبَ أَنْ لَا تَسْقُطَ الدِّيَةُ، وَلَا الْغُرَّةُ هَاهُنَا أَيْضًا، إذْ لَمْ يُسْقِطْهَا نَصٌّ مِنْ اللَّهِ تَعَالَى، وَلَا مِنْ رَسُولِهِ - عَلَيْهِ السَّلَامُ -.

L39419–39421 We found that the Messenger of Allah—peace and blessings of Allah be upon him—had issued a general ruling regarding the fetus, mandating a ghurrah of a male or female slave. These two texts constituted general rulings applying to all who possess a liable kinship group (*ʿāqilah*), and to all who lack both liable kin and male agnatic relatives (*ʿaṣabah*). This is because when the Messenger of Allah—peace and blessings of Allah be upon him—ruled that diyah and the ghurrah were obligations upon the *ʿaṣabah*, he did not exempt those without [liable kin] from this obligation. Since it was not specified and a comprehensive ruling was made for the ghurra, and since Allah the Exalted has decreed blood money to be delivered to the family of the one slain by mistake as a general ruling—this obligation applies whether the perpetrator has agnates or not, and likewise the ghurra—it becomes obligatory that neither the blood money nor the ghurra be invalidated here, as neither Allah the Exalted nor His Messenger—peace be upon him—has abrogated them through a textual ruling.

فَنَظَرْنَا فِي هَذِهِ الْأَقْوَالِ فَوَجَدْنَا مَنْ جَعَلَهَا فِي مَالِ الْجَانِي، أَوْ عَلَى عَصَبَةِ أُمِّهِ، أَوْ عَلَى مِثْلِهِ مِمَّنْ أَسْلَمَ: قَدْ خَصَّ بِالْغَرَامَةِ قَوْمًا دُونَ سَائِرِ النَّاسِ - وَهَذَا لَا يَجُوزُ؛ لِأَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَمْ يَجُزْ أَنْ يَغْرَمَ أَحَدٌ غَرَامَةً لَمْ يَأْتِ بِإِيجَابِهَا نَصٌّ وَلَا إجْمَاعٌ، وَلَمْ يَقُلْ اللَّهُ تَعَالَى، وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - إنَّ الدِّيَةَ يَغْرَمُهَا الْأَخْوَالُ، وَلَا الْجَانِي، وَلَا مَنْ أَسْلَمَ مَعَ الْجَانِي - فَلَا يَجُوزُ تَخْصِيصُهُمْ؛ لِأَنَّهُمْ وَغَيْرَهُمْ سَوَاءٌ فِي تَحْرِيمِ أَمْوَالِهِمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمْ يَبْقَ إلَّا قَوْلُ مَنْ قَالَ: إنَّ الدِّيَةَ وَالْغُرَّةَ فِي سَهْمِ الْغَارِمِينَ مِنْ الصَّدَقَاتِ، أَوْ بَيْتِ مَالِ الْمُسْلِمِينَ فِي كُلِّ مَالٍ مَوْقُوفٍ لِجَمِيعِ مَصَالِحِهِمْ - فَوَجَبَ الْقَوْلُ بِهَذَا؛ لِأَنَّ اللَّهَ تَعَالَى أَوْجَبَ الدِّيَةَ فِي كُلِّ مُؤْمِنٍ قُتِلَ خَطَأً، وَأَوْجَبَ الْغُرَّةَ فِي كُلِّ جَنِينٍ أُصِيبَ عُمُومًا، إلَّا وَلَدَ الزِّنَى وَحْدَهُ، وَمَنْ لَا يَلْحَقُ بِمَنْ حَمَلَتْ بِهِ أُمُّهُ مِنْهُ فَقَطْ؛ لِأَنَّ الْوِلَادَاتِ مُتَّصِلَةٌ

L39422 We examined these opinions and found that those who assigned the compensatory fine (*gharāmah*) to the offender's wealth, the maternal agnates, or those like him among who converted to Islam have unjustly specified certain groups for liability to the exclusion of others. This is impermissible, for the Prophet (peace be upon him) stated, "Your blood and wealth are inviolable to you." Thus, it is unlawful to impose any compensatory obligation without a textual proof or consensus. Neither Allah the Exalted nor His Messenger (peace be upon him) decreed that blood money (*diyah*) must be paid by maternal agnates, the offender, or those like him who embraced Islam. Therefore, singling them out is invalid, as they and others share equal protection regarding their wealth. Abu Muhammad (may Allah have mercy on him) remarked: Consequently, only the opinion remains valid which holds that blood money and fetal compensation (*ghurrah*) are drawn from the share of *zakāt* funds allocated to debtors, the Muslim treasury, or any endowment designated for communal welfare. This view is obligatory to uphold, for Allah has universally mandated blood money for every believer killed unintentionally and fetal compensation for every unborn child harmed—except solely the child of adultery and a child not legally affiliated

with the father of the mother who bore him. This exception arises because lineage extends continuously from Adam (peace be upon him) through successive fathers until the end of time. Every descendant of Adam on earth has agnatic relatives known to Allah—necessarily, even if distantly removed—except those explicitly excluded.

مِنْ آدَمَ - عَلَيْهِ السَّلَامُ - إلَيْنَا، وَإِلَى انْقِرَاضِ الدُّنْيَا - أَبًا بَعْدَ أَبٍ - فَكُلُّ مَنْ عَلَى ظَهْرِ الْأَرْضِ مِنْ وَلَدِ آدَمَ فَلَهُ عَصَبَةٌ يَعْلَمُهَا اللَّهُ تَعَالَى - وَإِنْ بَعِدُوا عَنْهُ وَلَا بُدَّ - إلَّا مَنْ ذَكَرْنَا.

L39423 If the agnatic relatives are unknown or impoverished, we know with certainty (yaqīn) that since Allah the Exalted has obligated them to pay the blood money (diyah) and the compensation (ghurrah)—while their circumstances remain obscure—they are, in Allah's sight, among the debt-ridden (gharimīn). Thus, their right to the share designated for the indebted in obligatory alms (ṣadaqāt) is obligatory, and it must be discharged on their behalf from those funds.

فَإِنْ كَانَتْ الْعَصَبَةُ مَجْهُولَةً، أَوْ كَانُوا فُقَرَاءَ، فَبِيَقِينٍ نَدْرِي أَنَّ اللَّهَ تَعَالَى إذْ أَوْجَبَ عَلَيْهِمْ الدِّيَةَ، وَالْغُرَّةَ - وَخَفِيَ أَمْرُهُمْ - فَهُمْ عِنْدَ اللَّهِ تَعَالَى مِنْ الْغَارِمِينَ، فَحَقُّهُمْ فِي سَهْمِ الْغَارِمِينَ مِنْ الصَّدَقَاتِ وَاجِبٌ، فَتُؤَدَّى عَنْهُمْ مِنْ ذَلِكَ.

L39424 As for one who has no father—such as a child of adultery, a child of liʿān (mutual cursing), one to whom a woman other than his wife is unlawfully given in marriage, the child of a woman raped by an insane person, and the like—such a person has no agnatic relatives whatsoever, with certainty. However, Allah the Exalted has obligated blood money for accidental killing and ghurrah for the fetus upon the entire Muslim community collectively, not some of them to the exclusion of others. Therefore, it is not permissible to specify some of them to the exclusion of others.

وَأَمَّا مَنْ لَمْ يَكُنْ لَهُ أَبٌ - كَوَلَدِ الزِّنَى، وَابْنِ الْمُلَاعَنَةِ، وَمَنْ زُفَّتْ إلَيْهِ غَيْرُ امْرَأَتِهِ، وَوَلَدِ الْمَرْأَةِ مِنْ الْمَجْنُونِ يَغْتَصِبُهَا، وَنَحْوِ ذَلِكَ، فَهَذَا لَا عَصَبَةَ لَهُ بِيَقِينٍ أَصْلًا، لَكِنَّ اللَّهَ تَعَالَى قَدْ أَوْجَبَ فِي قَتْلِ الْخَطَأِ الدِّيَةَ، وَفِي الْجَنِينِ الْغُرَّةَ، عَلَى جَمِيعِ أَهْلِ الْإِسْلَامِ عَامًّا، لَا بَعْضَهُمْ دُونَ بَعْضٍ، فَلَا يَجُوزُ أَنْ يَخُصَّ بَعْضَهُمْ دُونَ بَعْضٍ.

L39425–39427 And thus we hold that the Messenger of Allah (peace be upon him) did so by compensating for Abdullāh ibn Sahl (may Allah be pleased with him). Among the zakāt obligations is one hundred camels. We have cited this with its chain of transmission in the *Book of Qasāmah* when it was not known who killed him. And success is with Allah, the Most High.

وَهَكَذَا وَجَدْنَا «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَعَلَ، إذْ وَدَى عَبْدَ اللَّهِ بْنَ سَهْلٍ - رَضِيَ اللَّهُ عَنْهُ - مِنْ الصَّدَقَاتِ مِائَةً مِنْ الْإِبِلِ» ، وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِي " كِتَابِ الْقَسَامَةِ " إذْ لَمْ يُعْرَفْ مَنْ قَتَلَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39428 **Qasāmah (a juridical procedure of collective oath-swearing in unresolved homicide cases).**

[الْقَسَامَةُ]

L39429 **An Issue of Disagreement Among the People Regarding the *Qasāmah***

[مَسْأَلَةُ اخْتِلَافُ النَّاسُ فِي الْقَسَامَةِ]

L39430 Qasāmah (Oath-Swearing) – A Legal Issue: Abū Muḥammad—may Allah have mercy on him—said: People have differed regarding Qasāmah in various

opinions. We shall mention—from what Allah has facilitated of them, if Allah wills—some of these opinions according to what has been transmitted from those from whom reports concerning this matter have been narrated: from the Companions (may Allah be pleased with them), then from the Successors (may Allah have mercy on them), then from those who came after them—if Allah, the Exalted, wills.

الْقَسَامَةُ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي الْقَسَامَةِ عَلَى أَقْوَالٍ نَذْكُرُ مِنْهَا - مَا يَسَّرَ اللَّهُ تَعَالَى مِنْهَا إنْ شَاءَ اللَّهُ تَعَالَى عَلَى حَسَبِ مَا وَرَدَتْ عَمَّنْ جَاءَ عَنْهُ فِي ذَلِكَ أَثَرٌ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - ثُمَّ عَنْ التَّابِعِينَ - رَحِمَهُمُ اللَّهُ - ثُمَّ عَمَّنْ بَعْدَهُمْ إنْ شَاءَ اللَّهُ تَعَالَى.

L39431 Then we mention the evidence of each group for their statement—by the assistance of Allah, the Exalted, and His favor—so that the truth may become evident from this. As it was narrated to us via the chain of transmission of ʿAbd al-Razzāq from Maʿmar from ʿAbd Allāh ibn ʿUmar, who said: "Abū Bakr did not practice *qasamah*, nor did ʿUmar."

ثُمَّ نَذْكُرُ حُجَّةَ كُلِّ طَائِفَةٍ لِقَوْلِهَا - بِعَوْنِ اللَّهِ تَعَالَى وَمَنِّهِ، لِيَلُوحَ مِنْ ذَلِكَ الْحَقُّ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: لَمْ يَقُدْ أَبُو بَكْرٍ، وَلَا عُمَرُ بِالْقَسَامَةِ.

L39432 It was narrated to us via Abū Bakr ibn Abī Shaybah, from ʿAbd al-Salām ibn Ḥarb, from ʿAmr—who is Ibn ʿUbayd—from al-Ḥasan al-Baṣrī that Abū Bakr and the First Community did not impose qiṣāṣ (retaliation) based on qasāmah (oath-swearing).

رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدُ السَّلَامِ بْنُ حَرْبٍ عَنْ عَمْرٍو - هُوَ ابْنُ عُبَيْدٍ - عَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّ أَبَا بَكْرٍ وَالْجَمَاعَةَ الْأُولَى لَمْ يَكُونُوا يَقِيدُونَ بِالْقَسَامَةِ.

L39433–39435 From the narration of Abu Bakr ibn Abi Shaybah: Waki' narrated to us from al-Mas'udi, from al-Qasim ibn 'Abd al-Rahman ibn 'Abd Allah ibn Mas'ud, who said: Two men from the people of Kufa went to 'Umar ibn al-Khattab and found him having departed from the Kaaba while intending to go to Mina. He performed Tawaf around the House, then they caught up with him and related their story, saying: "O Commander of the Faithful, our cousin was killed, and we are equally entitled to his blood." He remained silent, giving them no response, until they adjured him by Allah. Then he charged at them, but when they reminded him of Allah, he restrained himself. 'Umar ibn al-Khattab then said: "Woe to us if we fail to remind others of Allah, and woe to us if we are not reminded of Allah! If there are two just witnesses among you who bring forth evidence against the one who killed him, we will exact retaliation for you from him. Otherwise, the accused must swear an oath." Who can exonerate you? By Allah, we did not kill, nor do we know who the killer is. If they refuse to swear, fifty of you must swear, then the diyah (blood money) becomes due to you. Indeed, diyah is owed through compurgation oaths, but retribution is not enforced through them.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا الْمَسْعُودِيُّ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: انْطَلَقَ رَجُلَانِ مِنْ أَهْلِ الْكُوفَةِ إلَى عُمَرَ بْنِ الْخَطَّابِ فَوَجَدَاهُ قَدْ صَدَرَ عَنْ الْبَيْتِ عَامِدًا إلَى مِنًى فَطَافَ بِالْبَيْتِ ثُمَّ أَدْرَكَاهُ فَقَصَّا عَلَيْهِ قِصَّتَهُمَا، فَقَالَا: يَا أَمِيرَ الْمُؤْمِنِينَ إنَّ ابْنَ عَمٍّ لَنَا قُتِلَ، نَحْنُ إلَيْهِ شَرَعٌ سَوَاءٌ فِي الدَّمِ - وَهُوَ سَاكِتٌ لَا يُرْجِعُ إلَيْهِمَا شَيْئًا - حَتَّى نَاشَدَاهُ اللَّهَ، فَحَمَلَ عَلَيْهِمَا، ثُمَّ ذَكَّرَاهُ اللَّهَ؟ فَكَفَّ عَنْهُمَا، ثُمَّ قَالَ عُمَرُ بْنُ الْخَطَّابِ: وَيْلٌ لَنَا إذَا لَمْ نُذَكِّرْ بِاَللَّهِ، وَوَيْلٌ لَنَا إذَا لَمْ نُذَكَّرْ اللَّهَ: فِيكُمْ شَاهِدَانِ ذَوَا عَدْلٍ، يَجِيئَانِ بِهِ عَلَى مَنْ قَتَلَهُ فَنُقِيدُكُمْ مِنْهُ، وَإِلَّا حَلَفَ مَنْ يَدْرَؤُكُمْ: بِاَللَّهِ مَا قَتَلْنَا وَلَا عَلِمْنَا قَاتِلًا؟ فَإِنْ نَكَلُوا حَلَفَ مِنْكُمْ خَمْسُونَ، ثُمَّ كَانَتْ لَكُمْ الدِّيَةُ، إنَّ الْقَسَامَةَ تُسْتَحَقُّ بِهَا الدِّيَةُ وَلَا يُقَادُ بِهَا.

L39436 It has been narrated to us through the chain of ʿAbd al-Razzāq, from Maʿmar, from Abū al-Zināد, from Saʿīd ibn al-Musayyib, that ʿUmar ibn al-Khaṭṭāb obligated a woman to swear fifty oaths, then established them as diyah.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي الزِّنَادِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ اسْتَحْلَفَ امْرَأَةً خَمْسِينَ يَمِينًا، ثُمَّ جَعَلَهَا دِيَةً.

L39437 And through the chain of Abd al-Razzaq from Abu Bakr ibn Abdullah from Abu al-Zinad from Sa'id ibn al-Musayyib that Umar ibn al-Khattab said regarding a slain person found within a tribe: "Fifty members of the tribe in which he was found take an oath by Allah: 'Verily, our blood is among you!' Then they are liable to pay the blood money."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِي الزِّنَادِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنْ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي الْقَتِيلِ يُوجَدُ فِي الْحَيِّ يُقْسِمُ خَمْسُونَ مِنْ الْحَيِّ الَّذِي وُجِدَ فِيهِ: بِاَللَّهِ إنَّ دَمَنَا فِيكُمْ ثُمَّ يَغْرَمُونَ الدِّيَةَ.

L39438 We have been narrated via the chain of Al-Bukhari → Qutaybah → Abū Bishr Ismāʿīl ibn Ibrāhīm al-Asadī → Ḥajjāj ibn Abī ʿUthmān → Abū Rajāʾ from the family of Abū Qilābah, who narrated: Abū Qilābah said to ʿUmar ibn ʿAbd al-ʿAzīz: "During the Age of Ignorance, the Hudhayl tribe had expelled their ally. He raided a Yemeni household in Al-Baṭḥāʾ. A man from them noticed him and struck him with a sword, killing him. Hudhayl came and seized the Yemeni. They brought him to ʿUmar ibn al-Khaṭṭāb during the pilgrimage season, claiming: 'He killed our companion.' ʿUmar said: 'They had expelled him.' They replied: 'Shall fifty men of Hudhayl swear they did not expel him?' Forty-nine men swore. A man from Syria arrived, and they asked him to swear. He redeemed his oath from them for a thousand dirhams, so they substituted another in his place. ʿUmar handed him over to the slain man's brother. Their hands were bound together as they departed"—and he mentioned the full account.

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا قُتَيْبَةُ نا أَبُو بِشْرٍ إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ الْأَسَدِيُّ نا حَجَّاجُ بْنُ أَبِي عُثْمَانَ نِي أَبُو رَجَاءٍ مِنْ آلِ أَبِي قِلَابَةَ حَدَّثَنِي أَبُو قِلَابَةَ أَنَّهُ قَالَ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ: كَانَتْ هُذَيْلٌ خَلَعُوا حَلِيفًا لَهُمْ فِي الْجَاهِلِيَّةِ، وَطَرَقَ أَهْلَ بَيْتٍ مِنْ الْيَمَنِ بِالْبَطْحَاءِ فَانْتَبَهَ لَهُ رَجُلٌ مِنْهُمْ فَحَذَفَهُ بِالسَّيْفِ فَقَتَلَهُ؟ فَجَاءَتْ هُذَيْلٌ فَأَخَذُوا الْيَمَانِيَّ فَرَفَعُوهُ إلَى عُمَرَ بْنِ الْخَطَّابِ بِالْمَوْسِمِ، وَقَالُوا: قَتَلَ صَاحِبَنَا، قَالَ: إنَّهُمْ خَلَعُوهُ، قَالَ: يُقْسِمُ خَمْسُونَ مِنْ هُذَيْلٍ مَا خَلَعُوا؟ فَأَقْسَمَ مِنْهُمْ تِسْعَةٌ وَأَرْبَعُونَ رَجُلًا، وَقَدِمَ رَجُلٌ مِنْ الشَّامِ فَسَأَلُوهُ أَنْ يُقْسِمَ؟ فَافْتَدَى يَمِينَهُ مِنْهُمْ بِأَلْفِ دِرْهَمٍ، فَأَدْخَلُوا مَكَانَهُ آخَرَ، فَدَفَعَهُ عُمَرُ إلَى أَخِي الْمَقْتُولِ، فَقُرِنَتْ يَدُهُ بِيَدِهِ فَانْطَلَقَا - وَذَكَرَ الْخَبَرَ.

L39439–39440 From Al-Ḍaḥḥāk, from Muḥammad ibn al-Muntashir, who said: A man was slain in Yemen between two tribes. ʿUmar ibn al-Khaṭṭāb commanded them to apply qiyas (analogical reasoning) between the two tribes, and the analogy was closer to Wadaʿah. ʿUmar then ordered them to take an oath and then pay the diya (blood money).

وَعَنْ الضَّحَّاكِ عَنْ مُحَمَّدِ بْنِ الْمُنْتَشِرِ قَالَ: إنَّ قَتِيلًا قُتِلَ بِالْيَمَنِ بَيْنَ حَيَّيْنِ فَأَمَرَهُمْ عُمَرُ بْنُ الْخَطَّابِ أَنْ يَقِيسُوا بَيْنَ الْحَيَّيْنِ، فَكَانَ إلَى وَدَاعَةَ أَقْرَبَ، فَأَمَرَهُمْ عُمَرُ: أَنْ يُقْسِمُوا ثُمَّ يَدُوا.

L39441 From Al-Sha'bi regarding a slain man found under communal responsibility in Yemen: Umar ibn al-Khattab confined fifty men from among them to al-Hatim [adjacent to the Kaaba in Mecca]. He then administered individual oaths to each man: "By Allah, we neither killed him nor know the killer." He commanded them: "Pay the blood money and transfer the liability." They

وَعَنْ الشَّعْبِيِّ فِي قَتِيلٍ وُجِدَ فِي وَدَاعَةَ بِالْيَمَنِ: فَأَدْخَلَ عُمَرُ بْنُ الْخَطَّابِ الْحَطِيمَ مِنْهُمْ خَمْسِينَ رَجُلًا مِنْهُمْ، ثُمَّ اسْتَحْلَفَهُمْ رَجُلًا رَجُلًا: بِاَللَّهِ مَا قَتَلْنَا، وَلَا عَلِمْنَا قَاتِلًا، فَقَالَ لَهُمْ: أَدُّوا وَحَوِّلُوا، فَقَالُوا: يَا أَمِيرَ الْمُؤْمِنِينَ تُغَرِّمُنَا وَتُحَلِّفُنَا؟ قَالَ: نَعَمْ.

protested: “O Commander of the Faithful, do you hold us collectively liable for blood money while binding us by oath?” He affirmed: “Yes.”

L39442 And through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: Ismāʿīl ibn Abī Uways narrated to us: My brother narrated to us from Sulaymān ibn Bilāl from Ṣāliḥ ibn Kaysān: Ibn Shihāb informed me that ʿUmar ibn ʿAbd al-ʿAzīz asked him about the Qasāmah. He said: I replied to him, “It was a matter from the days of Jāhiliyyah which the Messenger of Allah—peace and blessings be upon him and his family—ratified. However, it is part of our tradition and what has reached us: that if the slain person speaks, his family is absolved; if he does not speak, the defendants must take an oath. That was the practice of ʿUmar ibn al-Khaṭṭāb, and it is what we have witnessed the people upholding.”

L39443 From Ibn Shihab, from Sa’id ibn al-Musayyab, from Umar ibn al-Khattab that he ruled the claimant must present evidence and the defendant must take an oath, except in blood-related cases. This is from what was narrated of Umar—may Allah be pleased with him.

L39444 From the narration of Abd al-Razzaq, from Ma’mar, from al-Zuhri, who said: Sulayman ibn Hisham wrote to me asking about a man found killed in the home of a group. They claimed: “He intruded upon us to steal,” while his relatives countered: “They lied. Rather, they invited him to their home, then killed him.” Al-Zuhri said: I wrote to him: “Fifty of the slain man’s relatives must swear: ’They are lying—he did not come to steal from them, nor did they invite him except as an invitation before killing him.’ If they swear, they receive the right to qisas. If they refuse, fifty of the accused must swear by Allah: ’He intruded upon us to steal.’ Then they owe the blood money.” Al-Zuhri said: “Uthman ibn Affan—may Allah be pleased with him—had ruled thus in the case of Ibn Baqirah al-Taghlibi when the accused’s kinsmen refused to swear, so he obligated them to pay the blood money. This is what is reported from Uthman—may Allah be pleased with him.”

L39445–39446 It has been narrated to us through the chain of Abū Bakr ibn Abī Shaybah: narrated by ʿAbd al-Raḥmān ibn Sulaymān, narrated by Muḥammad ibn Isḥāq, narrated by Abū Jaʿfar Muḥammad ibn ʿAlī ibn al-Ḥusayn that ʿAlī

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنَ إِسْحَاقَ الْقَاضِي نا إِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ نا أَخِي عَنْ سُلَيْمَانَ بْنِ بِلَالٍ عَنْ صَالِحِ بْنِ كَيْسَانَ أَخْبَرَنِي ابْنُ شِهَابٍ: أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ سَأَلَهُ عَنْ الْقَسَامَةِ؟ قَالَ: فَقُلْت لَهُ: كَانَتْ مِنْ أَمْرِ الْجَاهِلِيَّةِ أَقَرَّهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَلَكِنْ مِنْ سُنَّتِنَا، وَمَا بَلَغَنَا: أَنَّ الْقَتِيلَ إذَا تَكَلَّمَ بَرِئَ أَهْلُهُ، إنْ لَمْ يَتَكَلَّمْ حَلَفَ الْمُدَّعَى عَلَيْهِمْ، وَذَلِكَ فِعْلُ عُمَرَ بْنِ الْخَطَّابِ، وَالَّذِي أَدْرَكْنَا عَلَيْهِ النَّاسَ.

وَعَنْ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَضَى بِالْبَيِّنَةِ عَلَى الطَّالِبِ، وَالْأَيْمَانِ عَلَى الْمَطْلُوبِ، إلَّا فِي الدَّمِ فَهَذَا مِمَّا رُوِيَ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ -.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ، قَالَ: كَتَبَ إلَيَّ سُلَيْمَانُ بْنُ هِشَامٍ يَسْأَلُ عَنْ رَجُلٍ وُجِدَ مَقْتُولًا فِي دَارِ قَوْمٍ، فَقَالُوا: طَرَقَنَا لِيَسْرِقَنَا، وَقَالَ أَوْلِيَاؤُهُ: كَذَبُوا بَلْ دَعَوْهُ إلَى مَنْزِلِهِمْ، ثُمَّ قَتَلُوهُ. قَالَ الزُّهْرِيُّ: فَكَتَبَ إلَيْهِ: يَحْلِفُ مِنْ أَوْلِيَاءِ الْمَقْتُولِ خَمْسُونَ: إنَّهُمْ لَكَاذِبُونَ مَا جَاءَ لِيَسْرِقَهُمْ، وَمَا دَعَوْهُ إلَّا دُعَاءً، ثُمَّ قَتَلُوهُ - فَإِنْ حَلَفُوا أُعْطُوا الْقَوَدَ، وَإِنْ نَكَلُوا حَلَفَ مِنْ أُولَئِكَ خَمْسُونَ: بِاَللَّهِ لَطَرَقَنَا لِيَسْرِقَنَا، ثُمَّ عَلَيْهِمْ الدِّيَةُ. قَالَ الزُّهْرِيُّ: وَقَدْ قَضَى بِذَلِكَ عُثْمَانُ بْنُ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُ - فِي ابْنِ بَاقِرَةَ التَّغْلِبِيِّ أَبَى قَوْمُهُ أَنْ يَحْلِفُوا، فَأَغْرَمَهُمْ الدِّيَةَ فَهَذَا مَا جَاءَ عَنْ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ -.

وَرُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدُ الرَّحْمَنِ بْنُ سُلَيْمَانَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ أَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ إذَا وَجَدَ الْقَتِيلَ بَيْنَ قَرْيَتَيْنِ قَاسَ مَا بَيْنَهُمَا.

ibn Abī Ṭālib, whenever he found a slain person between two villages, would measure the distance between them.

L39447 From the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Muḥammad ibn Isḥāq, from Abū Jaʿfar Muḥammad ibn ʿAlī ibn al-Ḥusayn ibn ʿAlī ibn Abī Ṭālib, who said: "'Alī ibn Abī Ṭālib said: 'Any man killed in a desolate area of the earth—his blood money is from the public treasury, so that no blood is left unavenged in Islam. As for any slain person found between two villages, it [the blood money] is incumbent upon the more responsible of them—that is, the nearer one.'"

L39448 And from Ali ibn Abi Talib – that he made the accused swear an oath and forty-nine others with him, completing fifty – this is what has been reported on the matter from Ali ibn Abi Talib, may Allah be pleased with him.

L39449 And through the chain of Abu Bakr ibn Abi Shaybah: Abu Muʿāwiyah narrated to us from Muṭīʿ, from Fuḍayl ibn ʿUmar, and from Ibn ʿAbbās: that he decreed qasāmah against the accused.

L39450 From the path of Abd al-Razzaq from Ibrahim—he is the son of Yahya—from Dawud ibn al-Husayn from Ikrimah from Ibn Abbas, who said: There is no qasāmah except if there be clear evidence. And he says: No one is to be killed based on qasāmah, nor should a Muslim's blood be left unavenged.

L39451 This is the text of the ḥadīth, which has been reported from Ibn ʿAbbās—may Allāh be pleased with him—.

L39452 It is reported from Ibn al-Zubayr that he applied qisas (retaliation) through qasamah. And from Abdullah ibn Abi Mulaikah, who said: Umar ibn Abd al-Aziz asked me about qasamah? So I informed him that Abdullah ibn al-Zubayr applied qisas through it, while Muawiyah did not apply qisas through it.

L39453–39455 From Al-Musayyab: The collective oath (qasāmah) in blood cases had traditionally required fifty men. If their oath fell short in number, or if a single man among them withdrew from swearing, their oath would be rejected.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ أَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ بْنِ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: أَيُّمَا رَجُلٍ قُتِلَ بِفَلَاةٍ مِنْ الْأَرْضِ فَدِيَتُهُ مِنْ بَيْتِ الْمَالِ؛ لِكَيْ لَا يُطَلَّ دَمٌ فِي الْإِسْلَامِ، وَأَيُّمَا قَتِيلٍ وُجِدَ بَيْنَ قَرْيَتَيْنِ فَهُوَ عَلَى أَصْقَبِهِمَا - يَعْنِي أَقْرَبَهُمَا.

وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - أَنَّهُ اسْتَحْلَفَ الْمُتَّهَمَ، وَتِسْعَةً وَأَرْبَعِينَ مَعَهُ تَمَامَ خَمْسِينَ - فَهَذَا مَا جَاءَ فِي ذَلِكَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ -.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا أَبُو مُعَاوِيَةَ عَنْ مُطِيعٍ عَنْ فُضَيْلِ بْنِ عُمَرَ، وَعَنْ ابْنِ عَبَّاسٍ - أَنَّهُ قَضَى بِالْقَسَامَةِ عَلَى الْمُدَّعَى عَلَيْهِمْ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إبْرَاهِيمَ - هُوَ ابْنُ يَحْيَى - عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا قَسَامَةَ، إلَّا أَنْ تَكُونَ بَيِّنَةٌ. وَيَقُولُ: لَا يُقْتَلُ بِالْقَسَامَةِ، وَلَا يُطَلُّ دَمُ مُسْلِمٍ

- هَذَا نَصُّ الْحَدِيثِ. فَهَذَا مَا جَاءَ عَنْ ابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُ -.

وَعَنْ ابْنِ الزُّبَيْرِ - أَنَّهُ أَقَادَ بِالْقَسَامَةِ، وَعَنْ عَبْدِ اللَّهِ بْنِ أَبِي مُلَيْكَةَ قَالَ: سَأَلَنِي عُمَرُ بْنُ عَبْدِ الْعَزِيزِ عَنْ الْقَسَامَةِ؟ فَأَخْبَرْته أَنَّ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ أَقَادَ بِهَا، وَأَنَّ مُعَاوِيَةَ لَمْ يَقُدْ بِهَا.

This persisted until Mu‘āwiyah performed Hajj, at which time Banū Asad (the tribe of Asad ibn ‘Abd al-‘Uzzā) accused Muṣ‘ab ibn ‘Abd al-Raḥmān ibn ‘Awf al-Zuhrī, Mu‘ādh ibn ‘Ubayd Allāh ibn Ma‘mar al-Taymī, and ‘Uqbah ibn Ja‘wanah ibn Sha‘ūb al-Laythī of killing Ismā‘īl ibn Habbār? They appealed to Mu‘āwiyah for judgment during his Hajj, while ‘Abd Allāh ibn al-Zubayr presented no evidence except the accusation itself. Mu‘āwiyah ruled that the oath should be sworn by the accused and their kinsmen. Banū Zuhrah, Banū Taym, and Banū Layth refused to swear on their behalf. Mu‘āwiyah then said to Banū Asad, “Swear,” but Ibn al-Zubayr responded, “We will swear against the three.” Do we all deserve it? But Mu’awiyah refused to let them swear except upon one - so he restricted the qasamah, confining it to the three who were claimed against. They swore fifty oaths between the Corner [of the Black Stone] and the Station of Ibrahim, and thus were acquitted. This was the first time the qasamah was restricted. Later, Marwan and Abd al-Malik issued rulings following this. Then the qasamah was restored to its original practice.

وَعَنْ الْمُسَيِّبِ: أَنَّ الْقَسَامَةَ فِي الدَّمِ لَمْ تَزَلْ عَلَى خَمْسِينَ رَجُلًا، فَإِنْ نَقَصَتْ قَسَامَتُهُمْ، أَوْ نَكَلَ مِنْهُمْ رَجُلٌ وَاحِدٌ: رُدَّتْ قَسَامَتُهُمْ، حَتَّى حَجَّ مُعَاوِيَةُ فَاتَّهَمَتْ بَنُو أَسَدِ بْنُ عَبْدِ الْعُزَّى مُصْعَبَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ الزُّهْرِيَّ، وَمُعَاذَ بْنَ عُبَيْدِ اللَّهِ بْنِ مَعْمَرٍ التَّيْمِيَّ، وَعُقْبَةَ بْنَ جَعْوَنَةَ بْنِ شَعُوبٍ اللَّيْثِيَّ: بِقَتْلِ إِسْمَاعِيلَ بْنِ هَبَّارٍ؟ فَاخْتَصَمُوا إِلَى مُعَاوِيَةَ إِذْ حَجَّ - وَلَمْ يُقِمْ عَبْدُ اللَّهِ بْنُ الزُّبَيْرِ بَيِّنَةً إِلَّا بِالتُّهَمَةِ، فَقَضَى مُعَاوِيَةُ بِالْقَسَامَةِ عَلَى الْمُدَّعَى عَلَيْهِمْ، وَعَلَى أَوْلِيَائِهِمْ، فَأَبَى بَنُو زُهْرَةَ، وَبَنُو تَيْمٍ، وَبَنُو لَيْثٍ: أَنْ يَحْلِفُوا عَنْهُمْ؟ فَقَالَ مُعَاوِيَةُ لِبَنِي أَسَدٍ: احْلِفُوا؟ فَقَالَ ابْنُ الزُّبَيْرِ: نَحْلِفُ نَحْنُ عَلَى الثَّلَاثَةِ جَمِيعًا فَنَسْتَحِقُّ؟ فَأَبَى مُعَاوِيَةُ أَنْ يُقْسِمُوا إِلَّا عَلَى وَاحِدٍ - فَقَصَرَ مُعَاوِيَةُ الْقَسَامَةَ فَرَدَّهَا عَلَى الثَّلَاثَةِ الَّذِينَ اُدُّعِيَ عَلَيْهِمْ، فَحَلَفُوا خَمْسِينَ يَمِينًا بَيْنَ الرُّكْنِ وَالْمَقَامِ، فَبَرِئُوا - وَكَانَ ذَلِكَ أَوَّلَ مَا قُصِرَتْ الْقَسَامَةُ، ثُمَّ قَضَى بِذَلِكَ مَرْوَانُ، وَعَبْدُ الْمَلِكِ - ثُمَّ رُدَّتْ الْقَسَامَةُ إِلَى الْأَمْرِ الْأَوَّلِ.

L39456 As for the unification of oaths—it is narrated from Sufyan al-Thawri, from Abdullah ibn Zayd, from Abu Malih: that Umar ibn al-Khattab administered the oaths to them one after another. Regarding the Successors—it is narrated through the chain of Abu Bakr ibn Abi Shaybah, who narrated from Abdul-A’la, from Yunus ibn Ubayd, from al-Hasan concerning a slain person found killed by ambush: He said: Fifty of the accused must swear: “We neither killed nor knew the killer.” If they swear, they are absolved. If they refuse, fifty of the claimants must swear: “Our blood is your responsibility,” then they pay the diyah.

وَأَمَّا تَوْحِيدُ الْأَيْمَانِ - فَرُوِيَ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ زَيْدٍ عَنْ أَبِي مَلِيحٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ رَدَّدَ الْأَيْمَانَ عَلَيْهِمْ، الْأَوَّلَ فَالْأَوَّلَ، وَأَمَّا التَّابِعُونَ - فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ حَدَّثَنَا عَبْدُ الْأَعْلَى عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ فِي الْقَتِيلِ يُوجَدُ غِيلَةً؟ قَالَ: يُقْسِمُ مِنْ الْمُدَّعَى عَلَيْهِمْ خَمْسُونَ: مَا قَتَلْنَا، وَلَا عَلِمْنَا قَاتِلًا، فَإِنْ حَلَفُوا فَقَدْ بَرِئُوا، وَإِنْ نَكَلُوا أَقْسَمَ مِنْ الْمُدَّعِينَ خَمْسُونَ: أَنَّ دَمَنَا قِبَلَكُمْ، ثُمَّ يُودُوا.

L39457 It is reported from al-Ḥasan that they are entitled, by means of *qasāmah*, to the *diyah*, but they are not entitled through it to blood [i.e., *qiṣāṣ*].

وَعَنْ الْحَسَنِ - يَسْتَحِقُّونَ بِالْقَسَامَةِ الدِّيَةَ، وَلَا يَسْتَحِقُّونَ بِهَا الدَّمَ.

L39458 From Abdullah ibn Umar - that he heard some of his companions narrating

that Umar ibn Abd al-Aziz exonerated the defendants through their oath, then held them liable for the diya (blood money).

وَعَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ - أَنَّهُ سَمِعَ أَصْحَابًا لَهُ يُحَدِّثُونَ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ بَرَّأَ الْمُدَّعَى عَلَيْهِمْ بِالْيَمِينِ ثُمَّ ضَمَّنَهُمْ الْعَقْلَ.

L39459 And from Ibn Abi Mulaykah that ʻUmar ibn ʻAbd al-ʻAziz enforced qisas through qasamah during his governorship in Medina.

وَعَنْ ابْنِ أَبِي مُلَيْكَةَ - أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَقَادَ بِالْقَسَامَةِ فِي إمَارَتِهِ بِالْمَدِينَةِ.

L39460 From Yahya ibn Saʻid al-Ansari: When Umar ibn Abd al-Aziz observed people swearing oaths regarding the qasāmah without valid knowledge, he compelled them to take the oath, obligated them to pay the diyah, and prevented the execution.

وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ - لَمَّا رَأَى النَّاسَ يَحْلِفُونَ عَلَى الْقَسَامَةِ - بِغَيْرِ عِلْمٍ - اسْتَحْلَفَهُمْ، وَأَلْزَمَهُمْ الدِّيَةَ، وَدَرَأَ عَنْ الْقَتْلِ.

L39461 From Abd al-Rahman ibn Abdullah ibn Dhakwan, from his father, from Umar ibn Abd al-Aziz—that he administered the oaths repeatedly to seven men, one of whom was a culprit. And from Shurayh, who said: The oaths are reiterated upon them, starting with the first each time.

وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ ذَكْوَانَ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ - أَنَّهُ رَدَّدَ الْأَيْمَانَ عَلَى سَبْعَةِ نَفَرٍ أَحَدُهُمْ جَانٍ، وَعَنْ شُرَيْحٍ - قَالَ: تُرَدَّدُ الْأَيْمَانُ عَلَيْهِمْ، الْأَوَّلَ فَالْأَوَّلَ.

L39462 From Muhammad ibn Sirin: A group of people accused another group of harboring a murder victim. Shurayh required fifty of them to take an oath. Each man among them swore: “By Allah, I did not kill, nor do I know of any killer.” He then demanded the oath from them. Shurayh said: “Complete the oaths, even though I know [the truth].” When they failed to complete fifty men, he compelled a few among them to repeat their oaths to fulfill the fifty. From Ibrahim: He said: “Retaliation through collective oaths is an injustice. Blood money becomes obligatory through it, but retaliation cannot be enforced through it.”

وَعَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ قَوْمًا ادَّعَوْا عَلَى قَوْمٍ قَتِيلًا؟ فَاسْتَحْلَفَ شُرَيْحٌ خَمْسِينَ مِنْهُمْ، فَحَلَفَ كُلُّ رَجُلٍ مِنْهُمْ: بِاَللَّهِ مَا قَتَلْت، وَلَا عَلِمْت قَاتِلًا، فَاسْتَحْلَفَهُمْ، فَقَالَ شُرَيْحٌ: أَتَمَّهُمْ وَأَنَا أَعْلَمُ، فَلَمْ يُتِمُّوا خَمْسِينَ رَجُلًا، فَرَدَّدَ عَلَيْهِمْ أَيْمَانَ نَفَرٍ مِنْهُمْ تَمَامَ الْخَمْسِينَ، وَعَنْ إبْرَاهِيمَ، قَالَ: الْقَوَدُ بِالْقَسَامَةِ جَوْرٌ يُسْتَحَقُّ بِهَا الدِّيَةُ وَلَا يُقَادُ بِهَا.

L39463–39464 Through the chain of Abu Bakr ibn Abi Shaybah: Ibn Ulayyah narrated to us from Yahya ibn Abi Ishaq, who said: I heard Salim ibn Abdullah ibn Umar say—when some people from Banu Layth prepared themselves to swear oaths the next day in the Qasamah [collective oath]—he exclaimed: “O servants of Allah! Such people are those who swear regarding what they did not see, were not present for, and did not witness! If I had any authority in this matter, I would punish them, deter them, and set them as a warning, and I would not accept their testimony.”

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ - حَدَّثَنَا ابْنُ عُلَيَّةَ عَنْ يَحْيَى بْنِ أَبِي إِسْحَاقَ، قَالَ: سَمِعْت سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ يَقُولُ - وَقَدْ تَيَسَّرَ قَوْمٌ مِنْ بَنِي لَيْثٍ لِيَحْلِفُوا الْغَدَ فِي الْقَسَامَةِ - فَقَالَ: يَا لِعِبَادِ اللَّهِ لَقَوْمٌ يَحْلِفُونَ عَلَى مَا لَمْ يَرَوْهُ، وَلَمْ يَحْضُرُوهُ، وَلَمْ يَشْهَدُوهُ، وَلَوْ كَانَ لِي مِنْ الْأَمْرِ شَيْءٌ لَعَاقَبْتُهُمْ، وَلَنَكَّلْتُهُمْ، وَلَجَعَلْتُهُمْ نَكَالًا، وَمَا قَبِلْت لَهُمْ شَهَادَةً.

L39465 From the path of Al-Bukhari: Qutaybah Abu Bishr Isma’il ibn Ibrahim Al-

وَمِنْ طَرِيقِ الْبُخَارِيِّ - نا قُتَيْبَةُ أَبُو بِشْرٍ إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ الْأَسَدِيُّ نا حَجَّاجُ بْنُ أَبِي عُثْمَانَ نِي أَبُو رَجَاءٍ مِنْ آلِ بَنِي قِلَابَةَ أَنَا أَبُو قِلَابَةَ: «أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَبْرَزَ سَرِيرَهُ يَوْمًا لِلنَّاسِ، ثُمَّ أَذِنَ لَهُمْ، فَدَخَلُوا، فَقَالَ: مَا تَقُولُونَ فِي الْقَسَامَةِ؟ فَقَالُوا: الْقَوَدُ بِهَا حَقٌّ، وَقَدْ أَقَادَتْ بِهَا الْخُلَفَاءُ، فَقَالَ لِي: مَا تَقُولُ يَا أَبَا قِلَابَةَ؟ فَقُلْتُ: يَا أَمِيرَ الْمُؤْمِنِينَ عِنْدَكَ رُءُوسُ الْأَخْيَارِ وَأَشْرَافُ الْعَرَبِ، أَرَأَيْتَ لَوْ أَنَّ خَمْسِينَ مِنْهُمْ شَهِدُوا عَلَى رَجُلٍ مُحْصَنٍ بِدِمَشْقَ أَنَّهُ قَدْ زَنَى لَمْ يَرَوْهُ، أَكُنْتَ تَرْجُمُهُ؟ قَالَ: لَا، قُلْتُ: أَرَأَيْتَ لَوْ أَنَّ خَمْسِينَ مِنْهُمْ شَهِدُوا عَلَى رَجُلٍ بِحِمْصَ أَنَّهُ سَرَقَ، أَكُنْتَ تَقْطَعُهُ وَلَمْ يَرَوْهُ؟ قَالَ: لَا، قُلْتُ: فَوَاللَّهِ مَا قَتَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَحَدًا قَطُّ إِلَّا فِي إِحْدَى ثَلَاثِ خِصَالٍ: رَجُلٌ قَتَلَ بِجَرِيرَةِ نَفْسِهِ فَقُتِلَ أَوْ رَجُلٌ زَنَى بَعْدَ إِحْصَانٍ، أَوْ رَجُلٌ حَارَبَ اللَّهَ وَرَسُولَهُ وَارْتَدَّ عَنْ الْإِسْلَامِ» .

Asadi narrated to us: Hajjaj ibn Abi Uthman reported to us from Abu Raja' of the family of Banu Qilabah—I am Abu Qilabah—who said: "Umar ibn Abd al-Aziz once displayed his throne publicly for the people, then permitted them to enter. They entered, and he said: 'What do you say regarding qasamah?' They replied: 'Retaliation through it is a right, and the caliphs have enacted qisas by it.' He said to me: 'What do you say, O Abu Qilabah?' I said: 'O Commander of the Faithful, you have before you the leaders of the righteous and the nobles of the Arabs. Suppose fifty of them testified against a married man in Damascus that he committed adultery without witnessing it—would you stone him?' He said: 'No.' I said: 'Suppose fifty of them testified against a man in Homs that he stole without witnessing it—would you amputate his hand?' He said: 'No.' I said: 'By Allah, the Messenger of Allah—peace and blessings be upon him—never killed anyone except in one of three circumstances: a man who killed [another] for a crime he himself committed, so he was killed; a man who committed adultery after being married; or a man who waged war against Allah and His Messenger and apostatized from Islam.'"

قَالَ الزُّهْرِيُّ: وَدَعَانِي عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فَقَالَ: يَا بُنَيَّ أُرِيدُ أَنْ أَدَعَ الْقَسَامَةَ، يَأْتِي رَجُلٌ مِنْ أَرْضِ كَذَا، وَآخَرُ مِنْ أَرْضِ كَذَا، فَيَحْلِفُونَ، فَقُلْت لَهُ: لَيْسَ ذَلِكَ لَك، قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْخُلَفَاءُ بَعْدَهُ، وَإِنَّك إنْ تَرَكْتَهَا أَوْشَكَ رَجُلٌ أَنْ يُقْتَلَ عِنْدَ بَابِك فَيُطَلُّ دَمُهُ، وَإِنَّ لِلنَّاسِ فِي الْقَسَامَةِ حَيَاةً.

L39466 Al-Zuhri said: 'Umar ibn 'Abd al-'Azīz summoned me and said, "O my son, I intend to abolish the *qasamah*. Men come from such-and-such a land and another land, and they swear oaths." I replied: "This is not within your authority. The Messenger of Allah – peace and blessings of Allah be upon him – and the caliphs after him established this practice. If you abandon it, it is imminent that a man will be killed at your doorstep and his blood will go unavenged. Truly, the *qasamah* safeguards the people's lives."

وَقَالَ الزُّهْرِيُّ فِي رَجُلٍ اُتُّهِمَ بِقَتْلِهِ أَخَوَانِ فَخَافَ أَبُوهُمَا أَنْ يُقْتَلَا، فَقَالَ: أَنَا قَتَلْت صَاحِبَكُمْ، فَقَالَ كُلُّ وَاحِدٍ مِنْ الْأَخَوَيْنِ: أَنَا قَتَلْته - وَبَرَّأَ بَعْضُهُمْ بَعْضًا، قَالَ الزُّهْرِيُّ: أَرَى ذَلِكَ إلَى أَوْلِيَاءِ الْمَيِّتِ، فَيَحْلِفُونَ قَسَامَةَ الدَّمِ عَلَى أَحَدِهِمْ.

L39467 Al-Zuhri commented regarding a man accused of killing two brothers. Their father feared the two would be killed, so he said: "I killed your companion." Thereupon each of the two brothers declared: "I killed him"—thereby exonerating one another. Al-Zuhri said: "I hold that the matter rests with the heirs of the deceased; they must swear the qasāmah oath against one of them."

L39468 From Ibn Shihāb: He said concerning three cases where each individual confessed to killing a person while exonerating their companion: The legal

guardians swear an oath against one, while the other two are each flogged a hundred lashes and imprisoned for a year.

وَعَنْ ابْنِ شِهَابٍ - قَالَ فِي ثَلَاثَةٍ اعْتَرَفَ كُلُّ وَاحِدٍ مِنْهُمْ بِقَتْلِ إِنْسَانٍ، وَبَرَّأَ صَاحِبَهُ: إِنَّ الْأَوْلِيَاءَ يُقْسِمُونَ عَلَى وَاحِدٍ، وَيُجْلَدُ الْآخَرَانِ مِائَةً مِائَةً، وَيُسْجَنَانِ سَنَةً.

L39469–39470 If they agree upon the blood money, it is incumbent upon all of them collectively; every one of them is to be lashed one hundred lashes and imprisoned for a year.

فَإِنْ اصْطَلَحُوا عَلَى الدِّيَةِ فَهِيَ عَلَيْهِمْ كُلِّهِمْ، يُجْلَدُونَ كُلُّهُمْ مِائَةً مِائَةً، وَيُسْجَنُونَ سَنَةً.

L39471 And from Sa‘id ibn al-Musayyab—he informed them that Rabi‘ah ibn Ya‘qub, the client of Banu Siba‘, was beaten and carried to his family. When asked, “Who beat you?” he replied: “The two sons of Bilsanah and the two sons of Tawlamānah beat me.” This statement was preserved from his words, and testimony was provided regarding his statement. Rabi‘ah then died. Sa‘id ibn al-‘As seized that group and imprisoned them. When Marwan arrived as governor of Medina, they brought their dispute to him. He demanded evidence for Rabi‘ah’s statement and the identification of the group he had named. They produced evidence for this, and Marwan compelled ‘Abdullah ibn Siba‘, his son Muhammad, ‘Ata’ ibn Ya‘qub, and nearly ten members of the group from the family of Siba‘ to swear fifty repeated oaths administered to them near the pulpit of the Messenger of Allah—peace and blessings be upon him—concerning the killing of Rabi‘ah ibn Ya‘qub by the two sons of Bilsanah and the two sons of Tawlamānah. They swore the oaths, and Marwan then handed over the two sons of Bilsanah and the two sons of Tawlamānah to the heirs of the slain man, who executed them.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ - أَخْبَرَهُمْ أَنَّ رَبِيعَةَ بْنَ يَعْقُوبَ مَوْلَى بَنِي سِبَاعٍ ضُرِبَ، فَاحْتُمِلَ إِلَى أَهْلِهِ فَسُئِلَ مَنْ ضَرَبَهُ؟ فَقَالَ: ضَرَبَنِي ابْنَا بِلْسَانَةَ وَابْنَا تَوْلَمَانَةَ - فَحُفِظَ ذَلِكَ مِنْ قَوْلِهِ، وَشَهِدَ عَلَيْهِ، وَمَاتَ رَبِيعَةُ، فَأَخَذَ سَعِيدُ بْنُ الْعَاصِ أُولَئِكَ الرَّهْطَ فَسَجَنَهُمْ، وَقَدِمَ مَرْوَانُ أَمِيرًا عَلَى الْمَدِينَةِ، قَالَ: فَاخْتَصَمُوا إِلَيْهِ، فَسَأَلَهُمُ الْبَيِّنَةَ عَلَى كَلَامِ رَبِيعَةَ، وَتَسْمِيَةِ الرَّهْطِ الَّذِينَ سَمَّى، فَجَاءُوا بِالْبَيِّنَةِ عَلَى ذَلِكَ، فَأَحْلَفَ عَبْدَ اللَّهِ بْنَ سِبَاعٍ، وَابْنَهُ مُحَمَّدًا، وَعَطَاءَ بْنَ يَعْقُوبَ فِي قَرِيبٍ مِنْ عَشَرَةِ رَهْطٍ مِنْ آلِ سِبَاعٍ عِنْدَ مِنْبَرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَمْسِينَ يَمِينًا مُرَدَّدَةً عَلَيْهِمْ؛ لِقَتْلِ ابْنَا بِلْسَانَةَ، وَابْنَا تَوْلَمَانَةَ رَبِيعَةُ بْنُ يَعْقُوبَ، فَحَلَفُوا، فَدَفَعَ مَرْوَانُ ابْنَيْ بِلْسَانَةَ، وَابْنَيْ تَوْلَمَانَةَ، إِلَى أَوْلِيَاءِ الْمَقْتُولِ فَقَتَلُوهُمْ.

L39472 Abu Muhammad—may Allah have mercy on him—said: Among the Companions—may Allah be pleased with them—are Abu Bakr, Umar, Uthman, Ali, Ibn Abbas, Al-Mughirah ibn Shu‘bah, Ibn al-Zubayr, Mu‘awiyah, Abdullah ibn Amr ibn al-‘As, and a group of the Companions in Medina—listed thus in summary. As for those named, they are nine.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَمِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ، وَابْنُ عَبَّاسٍ، وَالْمُغِيرَةُ بْنُ شُعْبَةَ، وَابْنُ الزُّبَيْرِ، وَمُعَاوِيَةُ، وَعَبْدُ اللَّهِ بْنُ عَمْرِو بْنِ الْعَاصِ، وَجُمْلَةُ الصَّحَابَةِ بِالْمَدِينَةِ - هَكَذَا مُجْمَلًا - فَأَمَّا الْمُسَمَّوْنَ فَهُمْ تِسْعَةٌ.

L39473 Among the Followers (Tabi’un) are al-Hasan, Umar ibn Abd al-Aziz, Shurayh, Ibrahim al-Nakha’i, al-Sha’bi, Sa’id ibn al-Musayyib, Qatadah, Salim ibn Abd Allah ibn Umar, Abu Qilabah, al-Zuhri, Urwah ibn al-Zubayr, Marwan ibn al-Hakam, Abd al-Malik ibn Marwan, and others, along with the majority of scholars in Medina—those from whom the Followers narrated in this

وَمِنْ التَّابِعِينَ - الْحَسَنُ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ، وَشُرَيْحٌ، وَإِبْرَاهِيمُ النَّخَعِيُّ، وَالشَّعْبِيُّ، وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَقَتَادَةُ، وَسَالِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ، وَأَبُو قِلَابَةَ، وَالزُّهْرِيُّ، وَعُرْوَةُ

concisely transmitted manner. All of them held differing views, and the Companions likewise. Most of what we have mentioned is not established as authentic, as we shall clarify if Allah, the Exalted, wills.

بْنُ الزُّبَيْرِ، وَمَرْوَانُ بْنُ الْحَكَمِ، وَعَبْدُ الْمَلِكِ بْنُ مَرْوَانَ وَغَيْرُهُمْ، وَجُمْهُورُ الْعُلَمَاءِ بِالْمَدِينَةِ - الَّذِينَ رَوَى عَنْهُمْ التَّابِعُونَ هَكَذَا مُجْمَلًا - كُلُّهُمْ مُخْتَلِفُونَ، وَالصَّحَابَةُ أَيْضًا كَذَلِكَ، وَأَكْثَرُ مَا ذَكَرْنَا لَا يَصِحُّ عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى.

L39474 Abu Muhammad—may Allah have mercy on him—said: The transmitted report from Abu Bakr al-Siddiq—may Allah be pleased with him—is that he did not implement *qasamah*, except that it is not valid because it is *mursal*. It is only narrated through Ubayd Allah ibn Umar ibn Hafs and al-Hasan. In the chain of transmission of al-Hasan is Abd al-Salam ibn Harb—and he is deemed weak.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَالْمَأْثُورُ مِنْ ذَلِكَ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ لَمْ يُقِدْ بِالْقَسَامَةِ، إلَّا أَنَّهُ لَا يَصِحُّ؛ لِأَنَّهُ مُرْسَلٌ، إنَّمَا هُوَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ بْنِ حَفْصٍ، وَعَنْ الْحَسَنِ، وَفِي طَرِيقِ الْحَسَنِ عَبْدِ السَّلَامِ بْنِ حَرْبٍ - وَهُوَ ضَعِيفٌ.

L39475 It is reported from ʿUmar—may Allah be pleased with him—that he did not adjudicate via *qasāmah* (collective oath procedure in homicide cases), and it is *mursal* (a narration with an incomplete chain, as defined in ḥadīth criticism) and not authentic, as we have previously mentioned.

وَعَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ لَمْ يُقِدْ بِالْقَسَامَةِ - وَهُوَ مُرْسَلٌ لَا يَصِحُّ كَمَا ذَكَرْنَا.

L39476–39477 It has also been reported from him that he sought evidence from the guardians of the slain person. If they could not produce it, the accused would take an oath and no liability would be imposed upon them. But if they refused to swear, the plaintiffs would take the oath and become entitled to the blood money.

وَرُوِيَ عَنْهُ أَيْضًا أَنَّهُ طَلَبَ الْبَيِّنَةَ مِنْ أَوْلِيَاءِ الْمَقْتُولِ، فَإِنْ لَمْ يَجِدُوهَا حَلَفَ الْمُدَّعَى عَلَيْهِمْ، وَلَا شَيْءَ عَلَيْهِمْ، فَإِنْ نَكَلُوا حَلَفَ الْمُدَّعُونَ وَاسْتَحَقُّوا الدِّيَةَ

L39478 This is a *mursal* narration from him—because it is from al-Qāsim ibn ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Masʿūd, from ʿUmar—and al-Qāsim's father was not born until after ʿUmar's death. It is also narrated from him: "The burden of proof lies upon the claimants; otherwise, the defendants must swear an oath [to] thereby be acquitted," except that it is *mursal*.

- وَهَذَا مُرْسَلٌ عَنْهُ - لِأَنَّهُ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ عُمَرَ - وَلَمْ يُولَدْ وَالِدُ الْقَاسِمِ إلَّا بَعْدَ مَوْتِ عُمَرَ - وَرُوِيَ عَنْهُ أَيْضًا: الْبَيِّنَةُ عَلَى الْمُدَّعِينَ، وَإِلَّا حَلَفَ الْمُدَّعَى عَلَيْهِمْ وَبَرُّوا فَقَطْ، إلَّا أَنَّهُ مُرْسَلٌ.

L39479 It is narrated from him regarding a slain person found between two communities or villages that the distance is measured to determine which of them he is closer to. The community closer to it must swear fifty oaths and pay the blood money in addition. A similar ruling is reported from Al-Mughīrah ibn Shuʿbah, except it is a disconnected narration (mursal), as it is attributed to ʿUmar and Al-Mughīrah through the chain of Al-Shaʿbī—who was not born

وَرُوِيَ عَنْهُ - فِي قَتِيلٍ وُجِدَ بَيْنَ حَيَّيْنِ، أَوْ قَرْيَتَيْنِ - أَنْ يُذْرَعَ إلَى أَيِّهِمَا هُوَ أَقْرَبُ فَالَّذِي هُوَ أَقْرَبُ إلَيْهَا حَلَفُوا خَمْسِينَ يَمِينًا وَغَرِمُوا الدِّيَةَ مَعَ ذَلِكَ. وَمِثْلُ هَذَا عَنْ الْمُغِيرَةِ بْنِ شُعْبَةَ إلَّا أَنَّهُ مُرْسَلٌ؛ لِأَنَّهُ عَنْ عُمَرَ، وَالْمُغِيرَةِ، مِنْ طَرِيقِ الشَّعْبِيِّ - وَلَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ عُمَرَ بِأَزْيَدَ مِنْ عَشَرَةِ أَعْوَامٍ أَوْ نَحْوِهَا وَقَبْلَ الشَّعْبِيِّ.

until over ten years or thereabouts after ʿUmar's death and before Al-Shaʿbī (text unclear)—thereby rendering the chain disconnected.

L39480 In the report of al-Mughīrah, Ashʿath—who is deemed weak—it is narrated that he compelled a female claimant to swear fifty oaths regarding the blood of her freed slave, then ruled in her favor for the blood money. This narration is mursal—a report with an incomplete chain—as it is transmitted from Abū al-Zināد and Ibn al-Musayyib, both citing him [Ashʿath].

وَفِي خَبَرِ الْمُغِيرَةِ أَشْعَثُ - وَهُوَ ضَعِيفٌ - وَرُوِيَ عَنْهُ: أَنَّهُ حَلَّفَ امْرَأَةً مُدَّعِيَةً مِنْ دَمِ مَوْلًى لَهَا خَمْسِينَ يَمِينًا، ثُمَّ قَضَى لَهَا بِالدِّيَةِ - وَهَذَا مُرْسَلٌ - لِأَنَّهُ عَنْ أَبِي الزِّنَادِ عَنْهُ، وَعَنْ ابْنِ الْمُسَيِّبِ عَنْهُ.

L39481 As for ʿUthmān—may Allāh be pleased with him—it is narrated concerning a slain person found in the dwelling of a people who confessed to killing him after he came to steal from them: the legal guardians of the slain must swear an oath while possessing the right to qisas (retribution). If they refuse to swear, the residents of the dwelling swear and pay the diyah (prescribed compensation). But this ruling is invalid as it is mursal (a narration with interrupted chain), for it comes through al-Zuhrī—who was not born until after ʿUthmān's death, making the transmission impossible.

وَأَمَّا عُثْمَانُ - رَضِيَ اللَّهُ عَنْهُ - فَإِنَّهُ رُوِيَ عَنْهُ فِي قَتِيلٍ وُجِدَ فِي دَارِ قَوْمٍ فَأَقَرُّوا بِقَتْلِهِ، وَأَنَّهُ جَاءَهُمْ لِيَسْرِقَهُمْ: أَنْ يَحْلِفَ أَوْلِيَاءُ الْمَقْتُولِ، وَلَهُمْ الْقَوَدُ، فَإِنْ نَكَلُوا: حَلَفَ أَهْلُ الدَّارِ وَغَرِمُوا الدِّيَةَ، إلَّا أَنَّهُ لَا يَصِحُّ؛ لِأَنَّهُ مُرْسَلٌ؛ لِأَنَّهُ مِنْ طَرِيقِ الزُّهْرِيِّ: أَنَّ عُثْمَانَ - وَلَمْ يُولَدْ الزُّهْرِيُّ، إلَّا بَعْدَ مَوْتِهِ - أَعْنِي بَعْدَ مَوْتِ عُثْمَانَ -.

L39482 As for Ali—may Allah be pleased with him—if a slain person is found between two villages, he would measure the distance between them and hold the nearest village responsible. If the slain person is found in an open area of land, the blood money is to be paid from the public treasury. He also required the defendant in a murder case to take an oath along with forty-nine oath-helpers. However, this ruling is invalid because it is reported from Abu Jaʿfar, who was not born until ten to nineteen years after Ali's death.

وَأَمَّا عَلِيٌّ - رَضِيَ اللَّهُ عَنْهُ -: إذَا وُجِدَ الْقَتِيلُ بَيْنَ قَرْيَتَيْنِ قَاسَ مَا بَيْنَهُمَا وَجَعَلَهُ عَلَى أَقْرَبِهِمَا وَإِنْ وُجِدَ بِفَلَاةٍ مِنْ الْأَرْضِ فَدِيَتُهُ عَلَى بَيْتِ الْمَالِ وَأَنَّهُ أَحْلَفَ الْمُدَّعَى عَلَيْهِ الدَّمَ، وَتِسْعَةً وَأَرْبَعِينَ مَعَهُ - إلَّا أَنَّهُ لَا يَصِحُّ؛ لِأَنَّهُ عَنْ أَبِي جَعْفَرٍ - وَلَمْ يُولَدْ أَبُو جَعْفَرٍ إلَّا بَعْدَ مَوْتِ عَلِيٍّ بِبِضْعَةِ عَشَرَ عَامًا.

L39483 And through another chain involving Al-Ḥārith al-Aʿwar—and he is a liar—and al-Ḥajjāj ibn Arṭāʾah—and he is abandoned.

وَمِنْ طَرِيقٍ أُخْرَى فِيهَا الْحَارِثُ الْأَعْوَرُ - وَهُوَ كَذَّابٌ - وَالْحَجَّاجُ بْنُ أَرْطَاةَ - وَهُوَ هَالِكٌ.

L39484–39486 As for Ibn Abbas, it is reported that he ruled to impose oaths upon the defendants in cases of *qasāmah* (collective oath-taking), that retaliation should not be enacted through it, and that the blood of a Muslim should not be released. However, this ruling is invalid because one of the two chains of transmission from him [...] Muṭīʿ—who is a majhūl (unknown narrator)—and the other from Ibrāhīm ibn Abī Yaḥyā—who is categorically rejected.

وَأَمَّا ابْنُ عَبَّاسٍ - فَجَاءَ عَنْهُ أَنَّهُ قَضَى بِالْأَيْمَانِ عَلَى الْمُدَّعَى عَلَيْهِمْ فِي الْقَسَامَةِ وَأَنْ لَا يُقَادَ بِهَا، وَأَنْ لَا يُطَلَّ دَمُ مُسْلِمٍ، إلَّا أَنَّهُ لَا يَصِحُّ؛ لِأَنَّ إحْدَى الطَّرِيقَيْنِ عَنْ مُطِيعٍ - وَهُوَ مَجْهُولٌ - وَالْأُخْرَى عَنْ إبْرَاهِيمَ بْنِ أَبِي يَحْيَى - وَهُوَ هَالِكٌ.

L39487 As for Ibn al-Zubayr, it is authentically reported through the most eminent chain of transmission that he enforced retaliation based on collective oath-taking, held that retaliation applied through this method in the case of a slain person found dead, maintained that the legal judgment belonged to the claimants by oaths, and affirmed that retaliation could be exacted from among a group for an individual. The most reliable authority among people, Saʿīd ibn al-Musayyab—who had witnessed the entire incident—transmitted this from him.

وَأَمَّا ابْنُ الزُّبَيْرِ - فَصَحَّ عَنْهُ مِنْ أَجَلِّ إِسْنَادٍ أَنَّهُ أَقَادَ بِالْقَسَامَةِ، وَأَنَّهُ رَأَى الْقَوَدَ بِهَا فِي قَتِيلٍ وُجِدَ، وَأَنَّهُ رَأَى الْحُكْمَ لِلْمُدَّعِينَ بِالْأَيْمَانِ، وَأَنَّهُ رَأَى أَنْ يُقَادَ بِهَا مِنْ الْجَمَاعَةِ لِلْوَاحِدِ: رَوَى ذَلِكَ عَنْهُ أَوْثَقُ النَّاسِ سَعِيدُ بْنُ الْمُسَيِّبِ - وَقَدْ شَاهَدَ تِلْكَ الْقِصَّةَ كُلَّهَا.

L39488 Abdullah ibn Abi Mulaykah, the judge of Ibn al-Zubayr.

وَعَبْدُ اللَّهِ بْنُ أَبِي مُلَيْكَةَ قَاضِي ابْنِ الزُّبَيْرِ.

L39489 As for Muʿāwiyah, it is narrated from him that the legal guardians of those accused in *qasāmah* cases are absolved through oaths. If the defendants' legal guardians refuse to swear, the claimants swear against only one individual, and retribution is enforced against him alone, not against multiple parties. If the claimants refuse to swear, the accused themselves swear fifty oaths, with the oaths reiterated among them. Muʿāwiyah's act of transporting the defendants from Medina to Mecca for administering the oaths is of utmost authenticity, as it was narrated by Saʿīd ibn al-Musayyab, who witnessed the event.

وَأَمَّا مُعَاوِيَةُ - فَرُوِيَ عَنْهُ تَبْرِئَةُ أَوْلِيَاءِ الْمُدَّعَى عَلَيْهِمْ بِالْأَيْمَانِ فِي الْقَسَامَةِ، فَإِنْ نَكَلُوا حَلَفَ الْمُدَّعُونَ عَلَى وَاحِدٍ فَقَطْ، وَأُقِيدُوا بِهِ لَا عَلَى أَكْثَرَ، فَإِنْ نَكَلُوا حَلَفَ الْمُدَّعَى عَلَيْهِمْ بِأَنْفُسِهِمْ خَمْسِينَ يَمِينًا، تُرَدَّدُ الْأَيْمَانُ عَلَيْهِمْ، وَحَمْلُهُ إيَّاهُمْ لِلتَّحْلِيفِ مِنْ الْمَدِينَةِ إلَى مَكَّةَ - وَهَذَا فِي غَايَةِ الصِّحَّةِ؛ لِأَنَّهُ رَوَاهُ عَنْهُ سَعِيدُ بْنُ الْمُسَيِّبِ، وَقَدْ شَهِدَ الْأَمْرَ.

L39490 It has also been narrated from him that he began by administering oaths to the claimants and executed them, with more than a thousand Companions - may Allah be pleased with them - concurring with him on this. However, this narration is unsound because its chain includes ʿAbd al-Raḥmān ibn Abī al-Zināḍ, who is deemed a weak narrator.

وَرُوِيَ عَنْهُ أَيْضًا: أَنَّهُ بَدَأَ الْمُدَّعِينَ بِالْأَيْمَانِ وَأَقَادَ بِهَا، وَوَافَقَهُ عَلَى ذَلِكَ أَزْيَدُ مِنْ أَلْفٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إلَّا أَنَّ هَذَا لَا يَصِحُّ؛ لِأَنَّ فِي الطَّرِيقِ عَبْدَ الرَّحْمَنِ بْنَ أَبِي الزِّنَادِ، وَهُوَ ضَعِيفٌ.

L39491 As for ʿAbdullāh ibn ʿAmr, it is narrated from him that in every legal claim, the defendant must take the oath first, except in bloodshed cases. If the victim claims that a specific person killed him, his kinsmen initiate the oath. However, this ruling is invalid because it is transmitted through Ibn Samʿān—who is notorious for lying and deemed unreliable. It is also narrated from the earlier scholars that no retribution (qisas) is enacted through qasāmah, but this too is invalid because it is a mursal narration from al-Ḥasan.

وَأَمَّا عَبْدُ اللَّهِ بْنُ عَمْرٍو - فَإِنَّهُ رُوِيَ عَنْهُ أَنَّ كُلَّ دَعْوَى فَإِنَّ الْمُدَّعَى عَلَيْهِ يَبْدَأُ بِالْيَمِينِ، إلَّا فِي الدَّمِ، فَإِنَّ الْمُصَابَ إذَا ادَّعَى أَنَّ فُلَانًا قَتَلَهُ، فَأَوْلِيَاؤُهُ مُبْدِئُونَ، إلَّا أَنَّ هَذَا لَا يَصِحُّ؛ لِأَنَّهُ مِنْ طَرِيقِ ابْنِ سَمْعَانَ - وَهُوَ مَذْكُورٌ بِالْكَذِبِ هَالِكٌ - وَرُوِيَ عَنْ الْجَمَاعَةِ الْأُولَى، أَنْ لَا قَوَدَ بِالْقَسَامَةِ، إلَّا أَنَّهُ لَا يَصِحُّ؛ لِأَنَّهُ مُرْسَلٌ عَنْ الْحَسَنِ.

L39492 And in the chain (of transmission) is ʿAbdus-Salām ibn Ḥarb—who is weak.

وَفِي الطَّرِيقِ عَبْدُ السَّلَامِ بْنُ حَرْبٍ - وَهُوَ ضَعِيفٌ.

L39493 It has been narrated that the matter was pre-existing before Mu‘āwiyah, that oaths should not be repeated, and that if even one is missing from the fifty, the qasāmah is nullified—and this is authentic. It was narrated by Sa‘īd ibn al-Musayyib, who lived during the time of ‘Uthmān and ‘Alī—may Allah be pleased with them both. All that has been narrated from the Companions—may Allah be pleased with them—is disputed and lacks consensus, and none of it is reliable except what was narrated from Ibn al-Zubayr and Mu‘āwiyah, and what was narrated regarding the nullification of the qasāmah if the fifty are not completed: this is authentic.

وَرُوِيَ: أَنَّ الْأَمْرَ كَانَ قَدِيمًا قَبْلَ مُعَاوِيَةَ، أَلَّا تُرَدَّدَ الْأَيْمَانُ، وَأَنَّهُ إِنْ نَقَصَ مِنْ الْخَمْسِينَ وَاحِدٌ بَطَلَتْ الْقَسَامَةُ - وَهُوَ صَحِيحٌ - رَوَاهُ سَعِيدُ بْنُ الْمُسَيِّبِ وَقَدْ أَدْرَكَ أَيَّامَ عُثْمَانَ، وَعَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمَا - فَهَذَا كُلُّ مَا رُوِيَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - كُلُّهُ مُخْتَلَفٌ فِيهِ غَيْرُ مُتَّفَقٍ، وَكُلُّهُ لَا يَصِحُّ، إلَّا مَا رُوِيَ عَنْ ابْنِ الزُّبَيْرِ، وَمُعَاوِيَةَ، وَعَنْ إبْطَالِ الْقَسَامَةِ إذَا لَمْ يَتِمَّ الْخَمْسُونَ: فَهُوَ صَحِيحٌ.

L39494 As for the Successors (Tābiʿūn)—may Allah have mercy on them—Al-Ḥasan is authentically established to have ruled that retaliation (qiṣāṣ) is not carried out through qasāmah. Rather, the defendants must swear: “By Allah, we did not do it,” and they are acquitted. If they refuse to swear, the claimants swear and claim the blood money (diyah). This applies when the slain person is found.

وَأَمَّا التَّابِعُونَ - رَحِمَهُمُ اللَّهُ -: فَأَمَّا الْحَسَنُ: فَصَحَّ عَنْهُ أَنْ لَا يُقَادَ بِالْقَسَامَةِ لَكِنْ يَحْلِفُ الْمُدَّعَى عَلَيْهِمْ: بِاَللَّهِ مَا فَعَلْنَا، وَيُبَرَّءُونَ - فَإِنْ نَكَلُوا حَلَفَ الْمُدَّعُونَ وَأَخَذُوا الدِّيَةَ - هَذَا فِي الْقَتِيلِ يُوجَدُ.

L39495–39496 As for ʿUmar ibn ʿAbd al-ʿAzīz, it is reported from him: “I begin with the defendants, then impose the blood money upon them along with their oaths”—and this is authentically reported from him. It is also authentically reported that he reverted to this opinion. Furthermore, it is authentically established that he enforced retaliation through the qasamah with validity that has no flaw in it, that he began with the claimants by administering the oaths in the qasamah, and that he reiterated the oaths. It is likewise authentically reported that he entirely abandoned the qasamah and discontinued ruling by it.

وَأَمَّا عُمَرُ بْنُ عَبْدِ الْعَزِيزِ - فَجَاءَ عَنْهُ: يَبْدَأُ الْمُدَّعَى عَلَيْهِمْ، ثُمَّ أُغَرِّمُهُمْ الدِّيَةَ مَعَ أَيْمَانِهِمْ - وَهَذَا عَنْهُ صَحِيحٌ، وَأَنَّهُ رَجَعَ إلَى هَذَا الْقَوْلِ - وَصَحَّ عَنْهُ: أَنَّهُ أَقَادَ بِالْقَسَامَةِ صِحَّةً لَا مَغْمَزَ فِيهَا، وَأَنَّهُ بَدَأَ الْمُدَّعِينَ بِالْأَيْمَانِ فِي الْقَسَامَةِ، وَرَدَّدَ الْأَيْمَانَ - وَصَحَّ عَنْهُ: أَنَّهُ رَجَعَ عَنْ الْقَسَامَةِ جُمْلَةً وَتَرَكَ الْحُكْمَ بِهَا.

L39497 It has been authentically established from him, akin to the ruling of ʿUmar ibn al-Khaṭṭāb in explicitly obligating payment of the blood money due to the refusal of both the claimants and the defendants to take the oaths jointly.

وَصَحَّ عَنْهُ مِثْلُ حُكْمِ عُمَرَ بْنِ الْخَطَّابِ فِي إغْرَامِهِ نَصًّا الدِّيَةَ فِي نُكُولِ الْمُدَّعِينَ وَنُكُولِ الْمُدَّعَى عَلَيْهِمْ عَنْ الْأَيْمَانِ مَعًا.

L39498 As for Shurayh, it is authentically transmitted from him that multiple oaths are to be reiterated. He held that when a slain person is found in the dwelling of a people, and his heirs accuse someone other than the inhabitants of that dwelling, the qasāma becomes nullified. They consequently have no legal claim against anyone unless they produce conclusive proof.

وَأَمَّا شُرَيْحٌ - فَصَحَّ عَنْهُ تَرَدُّدُ الْأَيْمَانِ، وَأَنَّ الْقَتِيلَ إذَا وُجِدَ فِي دَارِ قَوْمٍ فَادَّعَى أَهْلُهُ عَلَى غَيْرِ تِلْكَ الدَّارِ فَقَدْ بَطَلَتْ الْقَسَامَةُ وَلَا شَيْءَ لَهُمْ عَلَى أَحَدٍ إلَّا بِبَيِّنَةٍ.

L39499 As for Ibrāhīm al-Nakhaʿī, it is authentically reported from him that he invalidated retribution through collective oaths. However, the process begins with the accused; they then swear fifty oaths, after which they pay the blood money—despite this—alongside that. He also endorsed the reiteration of oaths.

وَأَمَّا إبْرَاهِيمُ النَّخَعِيُّ - فَصَحَّ عَنْهُ إبْطَالُ الْقَوَدِ بِالْقَسَامَةِ لَكِنْ يُبْدَأُ بِالْمُدَّعَى عَلَيْهِمْ فَيَحْلِفُونَ خَمْسِينَ يَمِينًا ثُمَّ يَغْرَمُونَ الدِّيَةَ - مَعَ ذَلِكَ - وَرَأَى تَرْدِيدَ الْأَيْمَانِ.

وَأَمَّا الشَّعْبِيُّ - فَرُوِيَ عَنْهُ فِي الْقَتِيلِ يُوجَدُ بَيْنَ قَرْيَتَيْنِ: أَنَّهُ عَلَى أَقْرَبِهِمَا إلَيْهِ وَفِيهِ الدِّيَةُ، لَهُ إنْ وُجِدَ بَدَنُهُ فِي دَارِ قَوْمٍ فَعَلَيْهِمْ دَمُهُ، وَإِنْ وُجِدَ رَأْسُهُ فِي دَارِ قَوْمٍ فَلَا شَيْءَ فِيهِ - وَلَا دِيَةَ وَلَا غَيْرَهَا - إلَّا أَنَّهُ لَا يَصِحُّ عَنْهُ؛ لِأَنَّهُ عَمَّنْ لَمْ يُسَمَّ، أَوْ عَنْ صَاعِدٍ الْيَشْكُرِيِّ، وَلَا نَعْرِفُهُ.

L39500 As for Al-Shaʿbī—it is narrated from him regarding a slain person found between two villages that the responsibility falls upon the nearest of them to him, and the blood money is incumbent upon them. If his body is found in the land of a community, the blood money is owed to his heirs and they are liable for it. If his head is found in the land of a people, there is no liability—neither blood money nor anything else. However, this ruling is not authentically established from him, as it is attributed to an unnamed source or to Saʿīd al-Yashkuri, whom we do not recognize.

وَأَمَّا سَعِيدُ بْنُ الْمُسَيِّبِ - فَصَحَّ عَنْهُ أَنَّ الْقَسَامَةَ عَلَى الْمُدَّعَى عَلَيْهِمْ - وَرُوِيَ عَنْهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِهَا، وَلَوْ عَلِمَ أَنَّ النَّاسَ يَجْتَرِئُونَ عَلَيْهَا لَمْ يَقْضِ بِهَا - وَهَذَا كَلَامُ سَوْءٍ قَدْ أَعَاذَ اللَّهُ تَعَالَى سَعِيدَ بْنَ الْمُسَيِّبِ عَنْهُ.

L39501 As for Saʿīd ibn al-Musayyib, it is soundly established from him that the qasāmah oath is imposed upon the accused parties. It is narrated from him that the Messenger of Allah, peace and blessings of Allah be upon him, ruled by it, though if he had known people would dare to resort to it, he would not have ruled by it. This is a reprehensible statement, and Allah the Exalted has protected Saʿīd ibn al-Musayyib from being attributed to it.

وَرِوَايَةٌ عَنْ يُونُسَ بْنِ يُوسُفَ - وَهُوَ مَجْهُولٌ - وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَحْكُمُ مِنْ عِنْدِهِ.

L39502 A narration transmitted by Yunus ibn Yusuf—a narrator of unknown status—and the Messenger of Allah—may the peace and blessings of Allah be upon him—does not judge based on his own opinion.

L39503 He does not speak from [his own] whim. It is not but a revelation that is revealed. [An-Najm 53:3-4][1]

نَفْسِهِ {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] .

وَلَقَدْ عَلِمَ اللَّهُ تَعَالَى إذْ أَوْحَى إلَيْهِ بِأَنْ يَحْكُمَ فِي الْقَسَامَةِ بِمَا حَكَمَ بِهِ مِنْ الْحَقِّ أَنَّ النَّاسَ سَيَجْتَرِئُونَ عَلَى الْكُفْرِ، وَعَلَى الدِّمَاءِ، فَكَيْفَ عَلَى الْأَيْمَانِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L39504 Allah, the Most High, certainly knew - when He revealed to him to judge in the matter of qasamah with what He decreed of the truth - that people would dare to commit acts of disbelief and bloodshed; how much more so with oaths? {And your Lord is never forgetful} [Maryam 19:64].[2]

وَأَمَّا قَتَادَةُ - فَصَحَّ عَنْهُ أَنَّ الْقَسَامَةَ تُسْتَحَقُّ بِهَا الدِّيَةُ، وَلَا يُقَادُ بِهَا.

L39505 As for Qatādah, it has been authentically reported from him that the qasāmah (collective oath) entitles to blood money, but qisās (retributive punishment) is not imposed through it.

وَأَمَّا سَالِمٌ - فَصَحَّ عَنْهُ إنْكَارُ الْقَسَامَةِ جُمْلَةً، وَأَنَّ مَنْ حَلَفَ فِيهَا يَسْتَحِقُّ أَنْ يُنَكَّلَ، وَأَنْ لَا تُقْبَلَ لَهُ شَهَادَةٌ.

L39506 As for Sālim—it is reliably transmitted that he rejected qasāmah in its entirety, maintaining that whoever takes an oath in such a procedure deserves disciplinary punishment and that no testimony from them may be accepted.

[1] **Qur'an references (L39503):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).
[2] **Qur'an references (L39504):** Qur'an 19:64 (Maryam).

وَأَمَّا أَبُو قِلَابَةَ - فَصَحَّ عَنْهُ إِنْكَارُ الْقَسَامَةِ جُمْلَةً.

L39507–39508 As for Abū Qilābah, it is reliably transmitted from him that he categorically rejected al-qasāmah (oaths of collective liability) in its entirety.

وَأَمَّا الزُّهْرِيُّ - فَصَحَّ عَنْهُ أَنَّ الْقَسَامَةَ إِذَا لَمْ تَتِمَّ الْخَمْسُونَ عَدَدُ الْمُدَّعِينَ بَطَلَتْ، وَلَا تُرَدَّدُ الْأَيْمَانُ فِيهَا وَأَنَّ تَرْدِيدَهَا مُحْدَثٌ.

L39509 As for Al-Zuhri, it is authentically reported from him that if the number of claimants in qasamah does not reach fifty, the qasamah becomes invalid. The oaths are not repeated in such a case, and their repetition constitutes a blameworthy innovation.

أَمَّا عُرْوَةُ بْنُ الزُّبَيْرِ، وَأَبُو بَكْرِ بْنُ عَمْرِو بْنِ حَزْمٍ، وَأَبَانُ بْنُ عُثْمَانَ، فَإِنَّهُ رُوِيَ عَنْهُمْ: إِنْ ادَّعَى الْمُصَابُ عَلَى إِنْسَانٍ أَنَّهُ قَتَلَهُ، أَوْ عَلَى جَمَاعَةٍ، فَإِنَّ أَوْلِيَاءَ الْمُدَّعِي يَبْدَءُونَ فَيَحْلِفُونَ خَمْسِينَ يَمِينًا عَلَى وَاحِدٍ، وَتُرَدَّدُ عَلَيْهِمْ الْأَيْمَانُ إِنْ لَمْ يُتِمُّوا خَمْسِينَ يَمِينًا، فَإِذَا حَلَفُوا دُفِعَ إِلَيْهِمْ الْوَاحِدُ فَيَقْتُلُوهُ، وَجُلِدَ الْآخَرُونَ مِائَةً مِائَةً، وَسُجِنُوا سَنَةً.

L39510 As for Urwah ibn al-Zubayr, Abu Bakr ibn Amr ibn Hazm, and Aban ibn Uthman, it has been reported from them: If the aggrieved party accuses a person or a group of having killed him, the claimant's guardians begin by swearing fifty oaths against one individual. If they fail to complete fifty oaths, the oaths are repeated to them. When they swear, the accused individual is handed over to them to kill him. Each of the others is flogged one hundred lashes and imprisoned for a year.

وَأَنَّ عَبْدَ الْمَلِكِ بْنَ مَرْوَانَ أَوَّلُ مَنْ قَضَى بِأَنْ لَا يُقْتَلَ فِي الْقَسَامَةِ إِلَّا وَاحِدٌ، وَكَانَ مَنْ قَبْلَهُ يَقْتُلُونَ فِيهَا الرَّهْطَ بِالْوَاحِدِ.

L39511 And that ʿAbd al-Malik ibn Marwān was the first to decree that only one person should be executed in cases of qasāmah (a procedure of collective oath-swearing to establish liability in unresolved killings), whereas his predecessors used to execute a raht (small group) in retaliation for the death of one person.

وَهَذَا كُلُّهُ خَبَرٌ وَاحِدٌ سَاقِطٌ، لَا يَصِحُّ؛ لِأَنَّهُ انْفَرَدَ بِرِوَايَتِهِ عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ، وَابْنُ سَمْعَانَ مَعًا - وَهُمَا سَاقِطَانِ؛ وَأَمَّا أَبُو الزِّنَادِ - فَرُوِيَ عَنْهُ: أَنَّهُ يَبْدَأُ فِي الْقَسَامَةِ مَنْ لَهُ بَعْضُ بَيِّنَةٍ أَوْ شُبْهَةٌ، صَحَّ ذَلِكَ عَنْهُ.

L39512 This entire report is a single rejected narration, inauthentic, because it was solely transmitted by ʿAbd al-Raḥmān ibn Abī al-Zinād and Ibn Samʿān—both of whom are rejected. As for Abū al-Zinād, it is reported that he begins the qasāmah for someone with some evidence or suspicion, and this is soundly attributed to him.

وَأَمَّا رَبِيعَةُ - فَصَحَّ عَنْهُ: أَنَّ شَهَادَةَ الْيَهُودِ، وَالنَّصَارَى، وَالْمَجُوسِ، أَوْ الصِّبْيَانِ أَوْ الْمَرْأَةِ: يُؤْخَذُ بِهَا فِي الْقَتْلِ، وَيَبْدَأُ مَعَهَا أَوْلِيَاءُ الْمَقْتُولِ، وَذَلِكَ دَعْوَى الْمُصَابِ دُونَ بَيِّنَةٍ أَصْلًا - بَالِغًا كَانَ أَوْ غَيْرَ بَالِغٍ - هَكَذَا رَوَى عَنْهُ ابْنُ وَهْبٍ فَيَبْدَأُ أَوْلِيَاؤُهُ فَيَحْلِفُونَ خَمْسِينَ يَمِينًا وَتُرَدَّدُ عَلَيْهِمْ الْأَيْمَانُ إِنْ لَمْ يُتِمُّوا خَمْسِينَ، وَيَسْتَحِقُّونَ الْقَوَدَ، فَإِنْ نَكَلُوا حَلَفَ أَوْلِيَاءُ الْمُدَّعَى عَلَيْهِ خَمْسِينَ يَمِينًا، تُرَدَّدُ أَيْضًا عَلَيْهِمْ، وَيَبْرَءُونَ وَيَبْرَأُ الْمُدَّعَى

L39513 As for Rabiʿah—it is authentically reported from him that the testimony of Jews, Christians, Zoroastrians, boys, or women is accepted in cases of murder. The legal guardians of the deceased initiate the claim in conjunction with such testimony, which constitutes the legal claim of the aggrieved party without requiring evidence—regardless of whether the deceased was of age or not. This is how Ibn Wahb narrated from him. Thus, the legal guardians of the deceased begin by swearing fifty oaths, and the oaths are administered again to them if they fail to complete fifty. They then become entitled to retribution. If they refuse to swear, the legal guardians of the accused swear

عَلَيْهِ، فَلَا قَوَدَ وَلَا دِيَةَ، فَإِنْ نَكَلُوا وَجَبَ لِأَوْلِيَاءِ الْمَقْتُولِ الْقَوَدُ عَلَى مَنْ ادَّعَوْا عَلَيْهِ دُونَ يَمِينٍ.

وَأَمَّا مَرْوَانُ - فَرُوِيَ عَنْهُ: إِذَا ادَّعَى الْجَرِيحُ عَلَى قَوْمٍ، فَإِنَّ أَوْلِيَاءَهُ يَبْدَءُونَ فَيَحْلِفُونَ خَمْسِينَ يَمِينًا، وَتُكَرَّرُ عَلَيْهِمُ الْأَيْمَانُ، ثُمَّ يُدْفَعُ إِلَيْهِمْ كُلُّ مَنِ ادَّعَوْا عَلَيْهِ - وَإِنْ كَانُوا جَمَاعَةً فَيَقْتُلُونَ - إِنْ شَاءُوا - وَلَمْ يَصِحَّ هَذَا، لِأَنَّهُ مِنْ رِوَايَةِ ابْنِ سَمْعَانَ.

وَأَمَّا السَّالِفُونَ مِنْ عُلَمَاءِ أَهْلِ الْمَدِينَةِ جُمْلَةً - فَإِنَّهُ رُوِيَ عَنْهُمْ: أَنَّ مَنِ ادَّعَى - وَهُوَ مُصَابٌ - أَنَّ فُلَانًا قَتَلَهُ، فَإِنَّ أَوْلِيَاءَهُ يَبْدَءُونَ فِي الْقَسَامَةِ، فَإِنْ لَمْ يَدَّعِ عَلَى أَحَدٍ بَرِئَ الْمُدَّعَى عَلَيْهِمْ، فَإِنْ حَلَفَ الْأَوْلِيَاءُ مَعَ دَعْوَى الْمُصَابِ كَانَ لَهُمُ الْقَوَدُ، فَإِنْ عَفَوْا عَنِ الدَّمِ وَأَرَادُوا الدِّيَةَ قُضِيَ لَهُمْ بِذَلِكَ، وَجُلِدَ الْمَعْفُوُّ عَنْهُمْ مِائَةً مِائَةً، وَحُبِسُوا سَنَةً، وَإِنْ عَفَا الْأَوْلِيَاءُ عَنِ الْقَوَدِ وَعَنِ الدِّيَةِ: فَلَا ضَرْبَ عَلَى الْمَعْفُوِّ عَنْهُمْ، وَلَا سَجْنَ، فَإِنْ نَكَلُوا حَلَفَ الْمُدَّعَى عَلَيْهِ مَعَ أَوْلِيَائِهِ خَمْسِينَ يَمِينًا، فَإِنْ نَكَلُوا غَرِمَ الْمُدَّعَى عَلَيْهِ الدِّيَةَ فِي مَالِهِ خَاصَّةً.

وَأَنَّ الْقَسَامَةَ تَكُونُ مَعَ شَهَادَةِ الصِّبْيَانِ، أَوِ النِّسَاءِ، أَوِ الْيَهُودِ، أَوِ النَّصَارَى كَمَا قُلْنَا فِي دَعْوَى الْقَتِيلِ سَوَاءً سَوَاءً وَلَا فَرْقَ.

وَأَنَّ الْأَيْمَانَ تُرَدَّدُ فِي ذَلِكَ إِنْ لَمْ يُتِمُّوا خَمْسِينَ، فَإِنْ كَانَ دَعْوَى قَتْلِ عَمْدٍ لَمْ يَجُزْ أَنْ يَحْلِفَ فِي ذَلِكَ أَقَلُّ مِنْ ثَلَاثَةٍ، وَإِنْ كَانَتْ دَعْوَى قَتْلِ خَطَأٍ: حَلَفَ فِي ذَلِكَ وَاحِدٌ - إِنْ لَمْ يُوجَدْ غَيْرُهُ - خَمْسِينَ يَمِينًا وَأَخَذَ الدِّيَةَ.

fifty oaths, which are likewise administered again to them. They are thereby exonerated, and the accused is acquitted, so neither retribution nor blood money is due. If they too refuse to swear, the legal guardians of the deceased become entitled to retribution against the accused without an oath.

L39514 As for Marwān, it is reported from him: If an injured person accuses a group, his guardians must initiate by swearing fifty oaths, then these oaths are repeated upon them. Thereafter, all those they accused are surrendered to them—even if they are a collective—so they kill them if they so choose. However, this ruling is not valid, as it derives from the narration of Ibn Samʿān.

L39515–39517 As for the early scholars of the people of Medina collectively, it has been reported from them that if a victim accuses a specific individual of killing him, his next of kin must begin the qasamah. If he did not accuse anyone. The defendants are acquitted. If the guardians swear alongside the victim's claim, they are entitled to retribution. If they forgo the bloodshed and seek blood money, it is granted to them; the pardoned individuals are flogged one hundred each and imprisoned for one year. If the guardians pardon both retribution and blood money, there shall be no flogging or imprisonment for the pardoned individuals. If the guardians refuse to swear, the defendant swears fifty oaths with the victim's guardians. If they refuse, the defendant is obligated to pay the blood money from his wealth specifically.

L39518 And that the *qasāmah* (oath-swearing) applies with the testimony of children, women, Jews, or Christians, just as we stated regarding the legal case of homicide—wholly equal, with no distinction.

L39519 And that oaths are administered in that matter if fifty oaths are not completed. If the claim is one of intentional killing, it is not permissible for fewer than three individuals to swear an oath in that regard. If the claim is one of accidental killing, a single individual (if no one else is available) must swear fifty oaths himself in that matter and receive the *diyah*.

L39520 In a claim of intentional killing (ʿamd), the one seeking legal retribution (qiṣāṣ) must swear an oath - even if not an heir - while in a claim of accidental

killing (khaṭaʾ), only an heir may swear an oath. All of this is invalid as a legal ruling, for it is narrated by Ibn Sam'ān, who is described as a liar.

وَيَحْلِفُ فِي دَعْوَى الْعَمْدِ مَنْ أَرَادَ الْقَوَدَ - وَإِنْ لَمْ يَكُنْ وَارِثًا - وَلَا يَحْلِفُ فِي دَعْوَى الْخَطَأِ إِلَّا مَنْ يَرِثُ - وَكُلُّ هَذَا لَا يَصِحُّ؛ لِأَنَّهُ مِنْ رِوَايَةِ ابْنِ سَمْعَانَ وَهُوَ مَوْصُوفٌ بِالْكَذِبِ.

L39521 Abū Muḥammad—may Allah have mercy on him—said: This is all that has come to us to mention regarding what has been transmitted from any of the Followers on this matter. We have cited them—and they are differing, as you see, not in agreement. As for the later scholars, we shall also mention—Allah the Exalted willing—from their statements what He has facilitated.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَهَذَا كُلُّ مَا حَضَرَنَا ذِكْرُهُ: أَنَّهُ رُوِيَ عَنْ أَحَدٍ مِنْ التَّابِعِينَ فِي ذَلِكَ وَقَدْ ذَكَرْنَاهُمْ - وَهُمْ مُخْتَلِفُونَ - كَمَا تَرَى غَيْرُ مُتَّفِقِينَ؟ وَأَمَّا الْمُتَأَخِّرُونَ - فَنَذْكُرُ أَيْضًا - إنْ شَاءَ اللَّهُ تَعَالَى - مِنْ أَقْوَالِهِمْ مَا يَسَّرَ.

L39522 As for Sufyan al-Thawri, it is reliably established that he said: If a slain person is found among a tribe, the evidence lies upon the legal heirs of the slain. If they produce it, qisas is decreed for them; otherwise, the accused must swear fifty oaths, and they are obligated to pay the blood money in addition to that.

فَأَمَّا سُفْيَانُ الثَّوْرِيُّ - فَإِنَّهُ صَحَّ عَنْهُ: أَنَّهُ قَالَ: إنْ وُجِدَ الْقَتِيلُ فِي قَوْمٍ فَالْبَيِّنَةُ عَلَى أَوْلِيَاءِ الْقَتِيلِ فَإِنْ أَتَوْا بِهَا قُضِيَ لَهُمْ بِالْقَوَدِ، وَإِلَّا حَلَفَ الْمُدَّعَى عَلَيْهِمْ خَمْسِينَ يَمِينًا، وَغَرِمُوا الدِّيَةَ مع ذَلِكَ.

L39523 Ma'mar said: If someone is struck, sustains an injury, survives bedridden, then dies, the qasāmah becomes applicable at that point. The claimants must swear: "He did not die from being struck by him." If they swear fifty oaths to this effect, they become entitled to the diyah. If they refuse to swear, the defendants must swear fifty oaths: "He did not die from being struck by him," and they must pay the diyah regardless. This ruling applies specifically to injury, not homicide. If both parties refuse to swear, the defendants must pay half the diyah. This position follows what was narrated from 'Umar.

وَقَالَ مَعْمَرٌ: مَنْ ضُرِبَ فَجُرِحَ فَعَاشَ صِمِّيتًا ثُمَّ مَاتَ فَالْقَسَامَةُ تَكُونُ حِينَئِذٍ، فَيَحْلِفُ الْمُدَّعُونَ: لَمَاتَ مِنْ ضَرْبِهِ إيَّاهُ، فَإِنْ حَلَفُوا خَمْسِينَ يَمِينًا كَذَلِكَ اسْتَحَقُّوا الدِّيَةَ، وَإِنْ نَكَلُوا حَلَفَ مِنْ الْمُدَّعَى عَلَيْهِمْ خَمْسُونَ: مَا مَاتَ مِنْ ضَرْبِهِ إيَّاهُ، وَيَغْرَمُونَ الدِّيَةَ مَعَ ذَلِكَ فَالْجُرْحُ خَاصَّةً لَا فِي النَّفْسِ، فَإِنْ نَكَلَ الْفَرِيقَانِ جَمِيعًا غَرِمَ الْمُدَّعَى عَلَيْهِمْ نِصْفَ الدِّيَةِ - ذَهَبَ إلَى مَا رُوِيَ عَنْ عُمَرَ.

L39524 Ma'mar said: I said to 'Ubayd Allah ibn 'Umar: Are you not aware that the Messenger of Allah, peace be upon him, exacted retaliation through *qasāmah*? He said, "No." I said: What about Abu Bakr? He said: "No." I said: And 'Umar? He said: "No." I said: Then how do you dare to prescribe it? So he remained silent.

وَقَالَ مَعْمَرٌ: قُلْت لِعُبَيْدِ اللَّهِ بْنِ عُمَرَ: أَمَا عَلِمْت أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَقَادَ بِالْقَسَامَةِ؟ قَالَ، لَا، قُلْت: فَأَبُو بَكْرٍ، قَالَ: لَا، قُلْت: فَعُمَرُ، قَالَ: لَا، قُلْت: فَكَيْفَ تَجْتَرِئُونَ عَلَيْهَا؟ فَسَكَتَ.

L39525–39526 Ma'mar said: "I said that to Malik." He replied: "Do not base the command of the Messenger of Allah—peace and blessings be upon him—on legal artifices. If he were afflicted with them [as a trial], he would be led by them."

قَالَ مَعْمَرٌ: فَقُلْت ذَلِكَ لِمَالِكٍ؟ فَقَالَ: لَا تَضَعُ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْحِيَلِ، لَوْ ابْتُلِيَ بِهَا أَقَادَ بِهَا.

L39527 وَقَالَ عُثْمَانُ الْبَتِّيُّ فِيمَنْ ادُّعِيَ عَلَيْهِمْ بِقَتِيلٍ وُجِدَ فِيهِمْ: فَالْبَيِّنَةُ عَلَى الْمُدَّعِينَ وَيُقْضَى لَهُمْ، فَإِنْ لَمْ يَكُنْ لَهُمْ بَيِّنَةٌ حَلَفَ خَمْسُونَ رَجُلًا مِنْ الْمُدَّعَى عَلَيْهِمْ، وَبَرِئُوا، وَلَا غَرَامَةَ فِي ذَلِكَ، وَلَا دِيَةَ، وَلَا قَوَدَ.

L39528 وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا تَكُونُ الْقَسَامَةُ بِدَعْوَى الْمُصَابِ أَصْلًا، وَلَا قَوَدَ فِي ذَلِكَ، وَلَا دِيَةَ، لَكِنْ إنْ وُجِدَ قَتِيلٌ فِي مَحَلَّةٍ وَبِهِ أَثَرٌ، وَادَّعَى الْوَلِيُّ عَلَى أَهْلِ الْمَحَلَّةِ أَنَّهُمْ قَتَلُوهُ، وَادَّعَوْا عَلَى وَاحِدٍ بِعَيْنِهِ مِنْهُمْ؟ فَإِنْ كَانَتْ لَهُمْ بَيِّنَةُ عَدْلٍ قُضِيَ لَهُمْ بِهَا، وَإِنْ لَمْ تَكُنْ لَهُمْ بَيِّنَةٌ حَلَفَ الْمُدَّعَى عَلَيْهِمْ خَمْسُونَ رَجُلًا مِنْ أَهْلِ الْخِطَّةِ، لَا مِنْ السُّكَّانِ، وَلَا مِنْ الَّذِينَ انْتَقَلَ إلَيْهِمْ مِلْكُ الْخِطَّةِ بِالشِّرَاءِ، لَكِنْ عَلَى الَّذِينَ كَانُوا مَالِكِينَ لَهَا فِي الْأَصْلِ، يَخْتَارُهُمْ الْوَلِيُّ، فَإِنْ نَقَصَ مِنْهُمْ رُدَّتْ عَلَيْهِمْ الْأَيْمَانُ - فَإِذَا حَلَفُوا غَرِمُوا الدِّيَةَ مَعَ ذَلِكَ، فَإِنْ نَكَلُوا سُجِنُوا أَبَدًا حَتَّى يُقِرُّوا أَوْ يَحْلِفُوا.

L39529 وَقَالَ مَالِكٌ: لَا تَكُونُ الْقَسَامَةُ إلَّا بِأَنْ يَقُولَ الْمُصَابُ: فُلَانٌ قَتَلَنِي عَمْدًا، فَإِذَا قَالَ ذَلِكَ ثُمَّ مَاتَ قَبْلَ أَنْ يُفِيقَ: حَلَفَ خَمْسُونَ مِنْ أَوْلِيَائِهِ قِيَامًا فِي الْمَسْجِدِ الْجَامِعِ، مُسْتَقْبِلِينَ الْقِبْلَةَ: لَقَدْ قَتَلَهُ فُلَانٌ عَمْدًا؟ فَإِذَا حَلَفُوا، فَإِنْ حَلَفُوا عَلَى وَاحِدٍ فَلَهُمْ الْقَوَدُ مِنْهُ، وَإِنْ حَلَفُوا عَلَى جَمَاعَةٍ لَمْ يَكُنْ لَهُمْ الْقَوَدُ إلَّا مِنْ وَاحِدٍ، وَيُضْرَبُ الْبَاقُونَ مِائَةً مِائَةً، وَيُسْجَنُونَ سَنَةً - فَإِنْ شَهِدَ شَاهِدٌ وَاحِدٌ عَدْلٌ: بِأَنَّ فُلَانًا قَتَلَ فُلَانًا كَانَتْ الْقَسَامَةُ أَيْضًا كَمَا ذَكَرْنَا.

Uthman al-Batti ruled concerning those against whom a claim is made regarding a slain person found among them: The burden of proof lies upon the claimants, and judgment is rendered in the claimants' favor. If they have no proof, fifty men from the accused must swear an oath, and they are absolved, with no fine, blood money, or retaliation in such a case.

Abu Hanifa and his companions said: Qasamah (collective oath) cannot be initiated through the victim's claim at all, nor does retaliation (qisas) or blood money (diyah) apply in such cases. However, if a slain person is found in a district bearing traces [of violence], and the legal guardian claims that the residents of that district killed him—or if the residents accuse a specific individual among them—then if the claimants provide testimony from upright witnesses, judgment is rendered in their favor. If they lack evidence, fifty men from the original landowners of the district—excluding current residents or those who acquired ownership through purchase, but only those who held primary ownership—must take an oath, selected by the guardian. If their number is insufficient, the oaths are repeated by the remaining men. Upon swearing, they are nevertheless obligated to pay the blood money. If they refuse to swear, they are imprisoned perpetually until they confess or take the oath.

Mālik said: The qasāmah is only valid if the injured person states: "So-and-so intentionally killed me." If he utters this and then dies before regaining consciousness, fifty of his male agnate relatives must swear while standing in the congregational mosque, facing the qiblah: "Indeed, so-and-so intentionally killed him." If they swear—and if they swear against one individual, they are entitled to retaliate against him. If they swear against a group, retaliation is only permissible against one among them, while the remaining accused shall each receive one hundred lashes and be imprisoned for a year. If a single just witness testifies that so-and-so killed so-and-so, the qasāmah is likewise applied as we have mentioned.

وَكَذَلِكَ إِنْ شَهِدَ لَوْثٌ مِنْ نِسَاءٍ أَوْ غَيْرِ عُدُولٍ، فَإِنْ لَمْ يَكُونُوا خَمْسِينَ رُدَّتْ عَلَيْهِمْ الْأَيْمَانُ حَتَّى يَتِمَّ خَمْسِينَ - وَلَا يَحْلِفُ فِي الْقَسَامَةِ أَقَلُّ مِنْ اثْنَيْنِ فَإِنْ كَانَ الْقَائِلُ: فُلَانٌ قَتَلَنِي، غَيْرَ بَالِغٍ، فَلَا قَسَامَةَ فِي ذَلِكَ، وَلَا قَوَدَ، وَلَا غَرَامَةَ: قَالَ: فَإِنْ نَكَلَ جَمِيعُ أَوْلِيَاءِ الْقَتِيلِ حَلَفَ الْمُدَّعَى عَلَيْهِمْ خَمْسِينَ يَمِينًا، فَإِنْ لَمْ يَبْلُغُوا خَمْسِينَ رُدَّتْ الْأَيْمَانُ عَلَيْهِمْ، فَإِنْ لَمْ يُوجَدْ إلَّا الْمُدَّعَى عَلَيْهِ وَحْدَهُ حَلَفَ خَمْسِينَ يَمِينًا وَبَرِئَ، فَإِنْ نَكَلَ أَحَدٌ مِمَّنْ لَهُ الْعَفْوُ مِنْ الْأَوْلِيَاءِ: بَطَلَتْ الْقَسَامَةُ وَوَجَبَتْ الْأَيْمَانُ عَلَى الْمُدَّعَى عَلَيْهِمْ - وَلَا قَسَامَةَ فِي قَتِيلٍ وُجِدَ فِي دَارِ قَوْمٍ، وَلَا غَرَامَةَ، وَلَا فِي دَعْوَى عَبْدٍ: أَنَّ فُلَانًا قَتَلَهُ.

L39530–39532 Similarly, if presumptive evidence is provided by women or non-upright individuals, and if they are not fifty in number, the oaths are returned to them until fifty are completed. No oath in qasāmah is sworn by fewer than two. If the declarant stating, “A certain person killed me,” is not of legal age, then there is no qasāmah, no qisas (retaliation), and no diyya (blood money). If all the legal guardians of the slain refuse to swear, the defendants swear fifty oaths. If they do not reach fifty, the oaths are returned to them. If none is found except the accused alone, he swears fifty oaths and is absolved. If any guardian entitled to pardon refuses, the qasāmah is invalidated and the prescribed penalty is incurred. Oaths are incumbent on the defendants. There is no collective oath (qasāma) for a slain person found in a tribe’s dwelling, no financial liability, and no validity to a slave’s claim that so-and-so killed him.

وَفِي دَعْوَى الْمَرِيضِ: أَنَّ فُلَانًا قَتَلَنِي خَطَأً رِوَايَتَانِ: إحْدَاهُمَا: أَنَّ فِي ذَلِكَ الْقَسَامَةَ - وَالْأُخْرَى: لَا قَسَامَةَ فِي ذَلِكَ وَلَا فِي كَافِرٍ.

L39533 Regarding the claim of a sick person that so-and-so killed him unintentionally, there are two narrations: one states that the legal procedure of *qasāmah* (collective oath-swearing) applies in that case, and the other states that there is no *qasāmah* in that case nor in cases involving a non-Muslim.

وَقَالَ الشَّافِعِيُّ: لَا قَسَامَةَ فِي دَعْوَى إنْسَانٍ: أَنَّ فُلَانًا قَتَلَنِي أَصْلًا سَوَاءٌ قَالَ عَمْدًا أَوْ خَطَأً - وَلَا غَرَامَةَ فِي ذَلِكَ - وَإِنَّمَا الْقَسَامَةُ فِي قَتِيلٍ وُجِدَ بَيْنَ دُورِ قَوْمٍ كُلُّهُمْ عَدُوٌّ لِلْمَقْتُولِ، فَادَّعَى أَوْلِيَاؤُهُ عَلَيْهِمْ، فَإِنَّ أَوْلِيَاءَ الْقَتِيلِ يَبْدَءُونَ فَيَحْلِفُ مِنْهُمْ خَمْسُونَ رَجُلًا يَمِينًا يَمِينًا: أَنَّهُمْ قَتَلُوهُ عَمْدًا أَوْ خَطَأً، فَإِنْ نَقَصَ عَدَدُهُمْ رُدَّتْ الْأَيْمَانُ، فَإِنْ لَمْ يَكُنْ إلَّا وَاحِدٌ حَلَفَ خَمْسِينَ يَمِينًا، وَاسْتُحِقَّتْ الدِّيَةُ عَلَى سُكَّانِ تِلْكَ الدُّورِ، وَلَا يُسْتَحَقُّ بِالْقَسَامَةِ قَوَدٌ أَصْلًا - وَإِنْ شَهِدَ وَاحِدٌ عَدْلٌ، أَوْ جَمَاعَةٌ مُتَوَاتِرَةٌ غَيْرُ عُدُولٍ أَنَّ فُلَانًا قَتَلَ فُلَانًا، فَتَجِبُ الْقَسَامَةُ كَمَا ذَكَرْنَا، وَالدِّيَةُ - أَوْ وُجِدَ قَتِيلٌ فِي زِحَامٍ فَالْقَسَامَةُ أَيْضًا، وَالدِّيَةُ، كَمَا ذَكَرْنَا.

L39534 Al-Shafi’i said: There is no oath-swearing whatsoever in a person’s claim that so-and-so killed him—whether he alleges intentional or accidental killing—nor is there any penalty in that matter. Oath-swearing applies only to a slain person found among the dwellings of a community entirely hostile to the deceased. If the kinsmen of the slain accuse them, the kinsmen of the slain must initiate by having fifty men from them each swear an oath that they killed him intentionally or accidentally. If their number is insufficient, the oaths are repeated proportionally. If there is only one man, he swears fifty oaths, and the blood money becomes obligatory upon the inhabitants of those dwellings. Retaliation is never incurred through oath-swearing. If a single upright witness or a large number of consistent but inadmissible witnesses testify that so-and-so killed so-and-so, oath-swearing becomes obligatory as we described, along with the blood money. If a slain person is found in a public gathering, oath-swearing and blood money also apply as we mentioned.

L39535 Our companions said: If a slain person is found in the dwelling of a people

who are his enemies, and his relatives accuse one of them, fifty of them must swear an oath. They become entitled to qisas - retaliation in kind - or diyah - blood money. There is no qasāmah - oath of collective liability - except in the case of a free Muslim.

L39536–39538 Abū Muḥammad—may Allah have mercy on him—said: These are the statements of the later jurists. We have cited from them what Allah the Exalted has facilitated. We now present the authentic, established narrations from the Messenger of Allah—peace and blessings be upon him—regarding qasāmah, all of them compiled exhaustively in one place and thoroughly investigated, so that truth may become clear from error through them. They stand as evidence for whoever adheres to their contents that he has been guided to truth—by Allah's grace—and testify against whoever opposes them that he has been facilitated toward error: as a mujtahid—if he was among the predecessors—or as a disobedient—if he was a follower—with the proof established against him. We have compiled the statements of the Companions—may Allah be pleased with them—the Successors—may Allah have mercy on them—and the subsequent jurists. We then presented the authentic ḥadīths—as Allah enabled from them—pertaining to this subject, for the rulings of qasāmah are interwoven within all these matters. It has been narrated to us through al-Bukhārī's chain: Abū Nuʿaym al-Faḍl ibn Dukayn narrated to us; Saʿīd ibn ʿUbayd narrated to us from Bashīr ibn Yasār, who asserted: A man from the Anṣār—named Sahl ibn Abī Ḥathmah—informed him... That a group from his people departed to Khaybar and dispersed there, and one of them was found slain. They said to those among whom he was discovered: "Did you kill our companion?" They replied: "We neither killed him nor know the killer." They went to the Prophet (peace be upon him) and said: "O Messenger of Allah, we went to Khaybar and found one of us slain." He declared: "The greater oath! The greater oath [al-Kasamah]!" Then he asked them: "Can you produce evidence against his killer?" They answered: "We have no evidence." He said: "Then fifty of you must swear oaths to claim compensation for your slain companion or demand retribution against his killer." They objected: "How can we swear when we witnessed nothing?" He responded: "Shall the Jews then swear fifty oaths to exonerate themselves?"

وَقَالَ أَصْحَابُنَا: إنْ وُجِدَ قَتِيلٌ فِي دَارِ قَوْمٍ أَعْدَاءٍ لَهُ، وَادَّعَى أَوْلِيَاؤُهُ عَلَى وَاحِدٍ مِنْهُمْ: حَلَفَ خَمْسُونَ مِنْهُمْ، وَاسْتَحَقُّوا الْقَوَدَ أَوْ الدِّيَةَ - وَلَا قَسَامَةَ، إلَّا فِي مُسْلِمٍ حُرٍّ.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَهَذِهِ أَقْوَالُ الْفُقَهَاءِ الْمُتَأَخِّرِينَ قَدْ ذَكَرْنَا مِنْهَا مَا يَسَّرَ اللَّهُ تَعَالَى - وَنَذْكُرُ الْآنَ الْأَخْبَارَ الصِّحَاحَ الثَّابِتَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْقَسَامَةِ مَجْمُوعَةً كُلَّهَا فِي مَكَان وَاحِد، مُسْتَقْصَاةً، لِيَلُوحَ الْحَقُّ بِهَا مِنْ الْخَطَأِ، وَلِتَكُونَ شَاهِدَةً لِمَنْ أَصَابَ مَا فِيهَا بِأَنَّهُ وُفِّقَ لِلصَّوَابِ - بِمَنِّ اللَّهِ تَعَالَى وَشَاهِدَةً لِمَنْ خَالَفَ مَا فِيهَا بِأَنَّهُ يُسِّرَ لِلْخَطَأِ مُجْتَهِدًا - إنْ كَانَ مِمَّنْ سَلَفَ، وَعَاصِيًا إنْ كَانَ مُقَلِّدًا - وَقَامَتْ الْحُجَّةُ عَلَيْهِ، وَإِنَّمَا جَمَعْنَا مَا ذَكَرْنَا مِنْ أَقْوَالِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَمِنْ أَقْوَالِ التَّابِعِينَ - رَحِمَهُمُ اللَّهُ - وَمِنْ أَقْوَالِ الْفُقَهَاءِ بَعْدَهُمْ، ثُمَّ أَتَيْنَا بِالْأَحَادِيثِ الصِّحَاحِ مَا يَسَّرَ اللَّهُ تَعَالَى مِنْهَا، الْوَارِدَةِ فِي ذَلِكَ، لِأَنَّ أَحْكَامَ الْقَسَامَةِ مُتَدَاخِلَةٌ فِي كُلِّ ذَلِكَ: وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ - نا أَبُو نُعَيْمٍ الْفَضْلُ بْنُ دُكَيْنٍ نا سَعِيدُ بْنُ عُبَيْدٍ «عَنْ بَشِيرِ بْنِ يَسَارٍ، زَعَمَ: أَنَّ رَجُلًا مِنْ الْأَنْصَارِ - يُقَالُ لَهُ: سَهْلُ بْنُ أَبِي حَثْمَةَ - أَخْبَرَهُ أَنَّ نَفَرًا مِنْ قَوْمِهِ انْطَلَقُوا إلَى خَيْبَرَ فَتَفَرَّقُوا فِيهَا، وَوُجِدَ أَحَدُهُمْ قَتِيلًا، وَقَالُوا لِلَّذِينَ وُجِدَ فِيهِمْ: قَتَلْتُمْ صَاحِبَنَا؟ قَالُوا: مَا قَتَلْنَا، وَلَا عَلِمْنَا قَاتِلًا، فَانْطَلَقُوا إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: يَا رَسُولَ اللَّهِ انْطَلَقْنَا إلَى خَيْبَرَ فَوَجَدْنَا أَحَدَنَا قَتِيلًا، فَقَالَ: الْكُبْرَ الْكُبْرَ فَقَالَ لَهُمْ: تَأْتُونَ بِالْبَيِّنَةِ عَلَى مَنْ قَتَلَهُ؟ قَالُوا: مَا لَنَا بَيِّنَةٌ. قَالَ: فَتَحْلِفُونَ خَمْسِينَ يَمِينًا فَتَسْتَحِقُّونَ صَاحِبَكُمْ أَوْ قَاتِلَكُمْ. قَالُوا: كَيْفَ نَحْلِفُ وَلَمْ نَشْهَدْ؟ قَالَ: فَتُبْرِيكُمْ يَهُودُ بِخَمْسِينَ يَمِينًا؟ قَالُوا: وَكَيْفَ نَقْبَلُ أَيْمَانَ قَوْمٍ كُفَّارٍ؟ قَالُوا: لَا نَرْضَى بِأَيْمَانِ الْيَهُودِ،

They protested: "How can we accept oaths from disbelievers? We reject the oaths of Jews!" The Messenger of Allah (peace be upon him) disliked leaving the bloodshed unresolved, so he compensated it with a hundred camels from the Zakat fund.

فَكَرِهَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُبْطِلَ دَمَهُ فَوَدَاهُ بِمِائَةٍ مِنْ إِبِلِ الصَّدَقَةِ» .

L39539 Through the chain of Muslim: Qutaybah ibn Saʿīd narrated to us, al-Layth ibn Saʿd narrated to us from Yaḥyā—he is Ibn Saʿīd al-Anṣārī—from Bashīr ibn Yasār from Sahl ibn Abī Ḥathmah. Yaḥyā said: "I considered he said: And from Rāfiʿ ibn Khadīj, that they both said: ʿAbdullāh ibn Sahl ibn Zayd and Muḥayyiṣah ibn Masʿūd ibn Zayd set out until they reached Khaybar, where they parted ways in that vicinity. Then, Muḥayyiṣah found ʿAbdullāh ibn Sahl slain, so he buried him. He then came to the Messenger of Allāh—peace and blessings be upon him—along with Ḥuwayyiṣah ibn Masʿūd and ʿAbd al-Raḥmān ibn Sahl—who was the youngest of the group. ʿAbd al-Raḥmān began to speak before his two companions, but the Messenger of Allāh—peace and blessings be upon him—said: 'Give precedence to the eldest in age.' So he fell silent, and his two companions spoke, and he spoke along with them. They related to the Messenger of Allāh—peace and blessings be upon him—the killing of ʿAbdullāh ibn Sahl. He said to them: 'Will you swear fifty oaths to establish your right regarding your companion or his killer?' They replied: 'How can we swear when we did not witness it?' He said: 'Then would the Jews exonerate you with fifty oaths?' They said: 'How can we accept the oaths of a disbelieving people?' When the Messenger of Allāh saw this, he gave him his blood money."

وَمِنْ طَرِيقِ مُسْلِمٍ - نا قُتَيْبَةُ بْنُ سَعِيدٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْأَنْصَارِيُّ - عَنْ بُشَيْرِ بْنِ يَسَارٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ، قَالَ يَحْيَى: وَحَسِبْته قَالَ: وَعَنْ رَافِعِ بْنِ خَدِيجٍ أَنَّهُمَا قَالَا: «خَرَجَ عَبْدُ اللَّهِ بْنُ سَهْلِ بْنِ زَيْدٍ وَمُحَيِّصَةُ بْنُ مَسْعُودِ بْنِ زَيْدٍ حَتَّى إذَا كَانَا بِخَيْبَرَ تَفَرَّقَا فِي بَعْضِ مَا هُنَالِكَ، ثُمَّ إذَا مُحَيِّصَةُ يَجِدُ عَبْدَ اللَّهِ بْنَ سَهْلٍ قَتِيلًا فَدَفَنَهُ - ثُمَّ أَقْبَلَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ وَحُوَيِّصَةُ بْنُ مَسْعُودٍ، وَعَبْدُ الرَّحْمَنِ بْنُ سَهْلٍ - وَكَانَ أَصْغَرَ الْقَوْمِ - فَذَهَبَ عَبْدُ الرَّحْمَنِ لِيَتَكَلَّمَ قَبْلَ صَاحِبَيْهِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَبِّرْ الْكُبْرَ فِي السِّنِّ فَصَمَتَ وَتَكَلَّمَ صَاحِبَاهُ وَتَكَلَّمَ مَعَهُمَا فَذَكَرُوا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَقْتَلَ عَبْدِ اللَّهِ بْنِ سَهْلٍ فَقَالَ لَهُمْ: أَتَحْلِفُونَ خَمْسِينَ يَمِينًا فَتَسْتَحِقُّونَ صَاحِبَكُمْ أَوْ قَاتِلَكُمْ؟ قَالُوا: كَيْفَ نَحْلِفُ وَلَمْ نَشْهَدْ؟ قَالَ: فَتُبْرِيكُمْ يَهُودُ بِخَمْسِينَ يَمِينًا؟ قَالُوا: وَكَيْفَ نَقْبَلُ أَيْمَانَ قَوْمٍ كُفَّارٍ؟ فَلَمَّا رَأَى ذَلِكَ رَسُولُ اللَّهِ أَعْطَاهُ عَقْلَهُ» .

L39540–39542 From the narration of Muslim: Abdullah ibn Umar al-Qawariri reported to us, Hammad ibn Zayd reported to us, Yahya ibn Sa'id reported to us from Bashir ibn Yasar from Sahl ibn Abi Hathmah and Rafi' ibn Khadij that Muḥayyiṣah ibn Mas'ud and Abdullah ibn Sahl set out toward Khaybar and separated among the palm trees. Abdullah ibn Sahl was killed, and they accused the Jews. The kinsmen of Abd al-Rahman - his cousin Ḥuwayyiṣah and Muḥayyiṣah - came to the Prophet, peace and blessings be upon him. Abd al-Rahman spoke about his brother's matter - he being the youngest among them - so Allah's Messenger said, "Give precedence to the elder," or he said, "Let the eldest begin." Then the two of them spoke about their

وَمِنْ طَرِيقِ مُسْلِمٍ - نا عَبْدُ اللَّهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ نا حَمَّادُ بْنُ زَيْدٍ نا يَحْيَى بْنُ سَعِيدٍ عَنْ بُشَيْرِ بْنِ يَسَارٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ، وَرَافِعِ بْنِ خَدِيجٍ «أَنَّ مُحَيِّصَةَ بْنَ مَسْعُودٍ، وَعَبْدَ اللَّهِ بْنَ سَهْلٍ انْطَلَقَا قِبَلَ خَيْبَرَ فَتَفَرَّقَا فِي النَّخْلِ فَقُتِلَ عَبْدُ اللَّهِ بْنُ سَهْلٍ، فَاتَّهَمُوا الْيَهُودَ فَجَاءَ إخْوَةُ عَبْدِ الرَّحْمَنِ، وَابْنُ عَمِّهِ حُوَيِّصَةُ، وَمُحَيِّصَةَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَتَكَلَّمَ عَبْدُ الرَّحْمَنِ فِي أَمْرِ أَخِيهِ - وَهُوَ أَصْغَرُ الْقَوْمِ - فَقَالَ رَسُولُ اللَّهِ كَبِّرْ الْكُبْرَ، أَوْ

companion's case. The Messenger of Allah, peace and blessings be upon him, said, "Shall fifty of you take an oath implicating a man among them, requiring him to pay blood money?" They replied, "A matter we did not witness - how can we swear?" He said, "Then the Jews will exonerate themselves before you." "They asked, 'By the oaths of fifty of them?' They said, 'O Messenger of Allah, how can we accept the oaths of disbelievers?' The Messenger of Allah—may Allah bless him and grant him peace—then paid the blood money for him from his own resources: one hundred camels." Sahl said, "I went intending to approach them, and a she-camel from those camels kicked me with her leg." Hammad said, "This, or something similar."

قَالَ: لِيَبْدَأْ الْأَكْبَرُ؟ فَتَكَلَّمَا فِي أَمْرِ صَاحِبِهِمْ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُقْسِمُ خَمْسُونَ مِنْكُمْ عَلَى رَجُلٍ مِنْهُمْ فَيُدْفَعُ بِرُمَّتِهِ؟ فَقَالُوا: أَمْرٌ لَمْ نَشْهَدْهُ كَيْفَ نَحْلِفُ؟ قَالَ: فَتُبْرِيكُمْ يَهُودُ بِأَيْمَانِ خَمْسِينَ مِنْهُمْ؟ قَالُوا: يَا رَسُولَ اللَّهِ وَكَيْفَ نَقْبَلُ بِأَيْمَانِ قَوْمٍ كُفَّارٍ؟ قَالَ: فَوَدَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قِبَلِهِ مِائَةً مِنْ الْإِبِلِ، قَالَ سَهْلٌ: فَدَخَلْت مُرِيدًا لَهُمْ فَرَكَضَتْنِي نَاقَةٌ مِنْ تِلْكَ الْإِبِلِ رَكْضَةً بِرِجْلِهَا» ، قَالَ حَمَّادٌ: هَذَا، أَوْ نَحْوَهُ.

L39543 Abu Muhammad—may Allah have mercy on him—said: Yahya doubted regarding Al-Layth's narration—whether he mentioned Bashir ibn Yasar and Rafiʿ ibn Khadij alongside Sahl ibn Abi Hathmah or not. However, he did not doubt Hammad ibn Zayd's narration from him, which states that Bashir narrated this report from Rafiʿ. Each of the two men is trustworthy and a memorizer, and Hammad is more precise in memorization than Al-Layth. Both narrations are authentic when considered together.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَشَكَّ يَحْيَى فِي رِوَايَةِ اللَّيْثِ: هَلْ ذَكَرَ بَشِيرَ بْنَ يَسَارٍ، وَرَافِعَ بْنَ خَدِيجٍ مَعَ سَهْلِ بْنِ أَبِي حَثْمَةَ أَوْ لَمْ يَذْكُرْ؟ وَلَمْ يَشُكَّ فِي رِوَايَةِ حَمَّادِ بْنِ زَيْدٍ عَنْهُ فِي أَنَّ رَافِعًا رَوَى عَنْهُ هَذَا الْخَبَرَ بَشِيرٌ، وَكِلَا الرَّجُلَيْنِ ثِقَةٌ، حَافِظٌ، وَحَمَّادٌ أَحْفَظُ مِنْ اللَّيْثِ، وَالرِّوَايَتَانِ مَعًا صَحِيحَتَانِ.

L39544 It was established as sound that Yahyā once doubted whether Bashīr mentioned Rāfiʿ alongside Sahl or not. And Yahyā concluded decisively on another occasion that Bashīr did mention Rāfiʿ with Sahl, and he did not doubt. This constitutes a ziyādah (addition) from Ḥammād, and the ziyādah of a trustworthy narrator (ʿadl) is accepted.

فَصَحَّ - أَنَّ يَحْيَى شَكَّ مَرَّةً: هَلْ ذَكَرَ بَشِيرٌ رَافِعًا مَعَ سَهْلٍ أَمْ لَا؟ وَقَطَعَ يَحْيَى مَرَّةً فِي أَنَّ بَشِيرًا ذَكَرَ رَافِعًا مَعَ سَهْلٍ، وَلَمْ يَشُكَّ؟ فَهِيَ زِيَادَةٌ مِنْ حَمَّادٍ، وَزِيَادَةُ الْعَدْلِ مَقْبُولَةٌ.

L39545 And through the chain (ṭarīq) of Muslim, Isḥāq ibn Manṣūr narrated to us, Bashīr ibn ʿUmar narrated to us, who said: I heard Mālik ibn Anas.

وَمِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ مَنْصُورٍ نا بَشِيرُ بْنُ عُمَرَ قَالَ: سَمِعْت مَالِكَ بْنَ أَنَسٍ.

L39546–39548 Abdullah ibn Rabīʿah also narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: Aḥmad ibn ʿAmr ibn al-Sarḥ and Muḥammad ibn Maslamah. Aḥmad said: Muḥammad ibn Wahb narrated to us, and Muḥammad said: Ibn al-Qāsim narrated to us. Then Ibn Wahb, Ibn al-Qāsim, and Bashīr ibn ʿUmar concurred, all stating: Mālik ibn Anas narrated to us: Abū Laylā ibn ʿAbdullāh ibn ʿAbd al-Raḥmān ibn Sahl narrated to us from Sahl ibn Abī Ḥathmah that he informed him from men among the elders of his tribe: ʿAbdullāh ibn Sahl and Muḥayyiṣah went out

وَنَاهُ أَيْضًا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ، وَمُحَمَّدُ بْنُ مَسْلَمَةَ، قَالَ أَحْمَدُ: نا مُحَمَّدُ بْنُ وَهْبٍ، وَقَالَ مُحَمَّدٌ: نا ابْنُ الْقَاسِمِ، ثُمَّ اتَّفَقَ ابْنُ وَهْبٍ، وَابْنُ الْقَاسِمِ، وَبَشِيرُ بْنُ عُمَرَ، كُلُّهُمْ يَقُولُ: نا مَالِكُ بْنُ أَنَسٍ نا أَبُو لَيْلَى بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ سَهْلٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ أَنَّهُ أَخْبَرَهُ عَنْ رِجَالٍ مِنْ كُبَرَاءِ قَوْمِهِ: «أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ، وَمُحَيِّصَةَ، خَرَجَا إِلَى خَيْبَرَ مِنْ جُهْدٍ أَصَابَهُمَا فَأَتَى

مُحَيِّصَةُ فَأَخْبَرَ: أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ قَدْ قُتِلَ وَطُرِحَ فِي عَيْنٍ أَوْ فِي فَقِيرٍ، فَأَتَى يَهُودَ فَقَالَ: أَنْتُمْ وَاللَّهِ قَتَلْتُمُوهُ، قَالُوا: وَاللَّهِ مَا قَتَلْنَاهُ، ثُمَّ أَقْبَلَ حَتَّى قَدِمَ عَلَى قَوْمِهِ، فَذَكَرَ لَهُمْ ذَلِكَ، ثُمَّ أَقْبَلَ هُوَ وَأَخُوهُ حُوَيِّصَةُ - وَهُوَ أَكْبَرُ مِنْهُ - وَعَبْدُ الرَّحْمَنِ بْنُ سَهْلٍ فَذَهَبَ مُحَيِّصَةُ لِيَتَكَلَّمَ - وَهُوَ الَّذِي كَانَ بِخَيْبَرَ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِمُحَيِّصَةَ: كَبِّرْ كَبِّرْ - يُرِيدُ السِّنَّ - فَتَكَلَّمَ حُوَيِّصَةُ، ثُمَّ تَكَلَّمَ مُحَيِّصَةُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِمَّا أَنْ يَدُوا صَاحِبَكُمْ وَإِمَّا أَنْ يُؤْذَنُوا بِحَرْبٍ، فَكَتَبَ رَسُولُ اللَّهِ إِلَيْهِمْ فِي ذَلِكَ، فَكَتَبُوا: إِنَّا وَاللَّهِ مَا قَتَلْنَاهُ، فَقَالَ رَسُولُ اللَّهِ أَتَحْلِفُونَ؟ وَتَسْتَحِقُّونَ دَمَ صَاحِبِكُمْ؟ قَالُوا: لَا قَالَ: فَتَحْلِفُ لَكُمْ يَهُودُ؟ قَالُوا: لَيْسُوا مُسْلِمِينَ، فَوَدَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ عِنْدِهِ، فَبَعَثَ إِلَيْهِمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِائَةَ نَاقَةٍ، حَتَّى دَخَلَتْ عَلَيْهِمْ الدَّارَ، قَالَ سَهْلٌ: فَلَقَدْ رَكَضَنِي مِنْهَا نَاقَةٌ حَمْرَاءُ» .

to Khaybar due to hardship that afflicted them. Muḥayyiṣah arrived and reported that ʿAbdullāh ibn Sahl had been killed and thrown into a spring or a dry well. He confronted the Jews, declaring: “By Allah, you killed him!” They responded: “By Allah, we did not kill him.” He then returned to his people and informed them. Afterward, he set out with his brother Ḥuwayyiṣah (the elder) and ʿAbd al-Raḥmān ibn Sahl. When Muḥayyiṣah—who had been in Khaybar—began to speak, the Messenger of Allah (peace be upon him) directed him: “Let the elder speak, let the elder speak”—intending age. Ḥuwayyiṣah spoke, followed by Muḥayyiṣah. The Messenger of Allah (peace be upon him) ruled: “Either they pay the blood money (diyah) for your companion, or they will face a declaration of war.” The Messenger wrote to them concerning this, and they replied: “By Allah, we did not kill him.” The Messenger of Allah asked: “Will you swear an oath? And do you assert your entitlement to your companion’s blood?” They refused. He inquired: “Shall the Jews swear to you?” They countered: “They are not Muslims.” Thereupon the Messenger of Allah (peace be upon him) paid the blood money (diyah) from... The Messenger of Allah—peace and blessings be upon him—sent from his possession a hundred camels to them until they reached their dwelling. Sahl said: “A red she-camel among them struck me.”

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ نا يَحْيَى بْنُ سَعِيدٍ عَنْ بَشِيرِ بْنِ يَسَارٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ قَالَ: «وُجِدَ عَبْدُ اللَّهِ بْنُ سَهْلٍ قَتِيلًا فَجَاءَ أَخُوهُ، وَحُوَيِّصَةُ، وَمُحَيِّصَةُ، وَهُمَا عَمَّا عَبْدِ اللَّهِ بْنِ سَهْلٍ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَهَبَ عَبْدُ الرَّحْمَنِ يَتَكَلَّمُ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْكُبْرَ الْكُبْرَ، قَالُوا: يَا رَسُولَ اللَّهِ إِنَّا وَجَدْنَا عَبْدَ اللَّهِ بْنَ سَهْلٍ قَتِيلًا فِي قَلِيبٍ - يَعْنِي مِنْ قُلُبِ خَيْبَرَ - قَالَ النَّبِيُّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: مَنْ تَتَّهِمُونَ؟ قَالُوا: نَتَّهِمُ يَهُودَ، قَالَ: فَتُقْسِمُونَ خَمْسِينَ يَمِينًا: أَنَّ الْيَهُودَ قَتَلَتْهُ، قَالُوا: وَكَيْفَ نُقْسِمُ عَلَى مَا لَمْ نَرَ؟ قَالَ: فَتُبْرِيكُمْ الْيَهُودُ بِخَمْسِينَ يَمِينًا: أَنَّهُمْ

L39549 From the narration of Sufyan ibn ’Uyaynah, Yahya ibn Sa’id reported from Bashir ibn Yasar from Sahl ibn Abi Hathma, who said: “Abdullah ibn Sahl was found slain. His brother, along with Huwayyisah and Muḥayyiṣah (the two uncles of Abdullah ibn Sahl), came to the Messenger of Allah (peace be upon him). His brother began to speak, but the Messenger of Allah (peace be upon him) said to him, ’Let the elder speak first!’ They said, ’O Messenger of Allah, we found Abdullah ibn Sahl slain in a well—one of the wells of Khaybar.’ The Prophet (peace be upon him) asked, ’Whom do you accuse?’ They replied, ’We accuse the Jews.’ He said, ’Will you swear fifty oaths that the Jews killed him?’ They said, ’How can we swear to what we did not witness?’ He said, ’Then let the Jews absolve themselves by swearing fifty oaths that they did not kill him.’ They said, ’How can we accept their oaths when they are disbelievers?’ So the Messenger of Allah (peace be upon him) paid his blood money from his own means.”

لَمْ يَقْتُلُوهُ، قَالُوا: وَكَيْفَ نَرْضَى بِأَيْمَانِهِمْ وَهُمْ مُشْرِكُونَ؟ فَوَدَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ عِنْدِهِ» .

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو الطَّاهِرِ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ قَالَ: حَدَّثَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ، وَسُلَيْمَانُ بْنُ يَسَارٍ مَوْلَى مَيْمُونَةَ زَوْجِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - عَنْ رَجُلٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ الْأَنْصَارِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَقَرَّ الْقَسَامَةَ عَلَى مَا كَانَتْ عَلَيْهِ فِي الْجَاهِلِيَّةِ» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ هَاشِمٍ الْبَعْلَبَكِّيُّ نا الْوَلِيدُ بْنُ مُسْلِمٍ نا الْأَوْزَاعِيّ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَسُلَيْمَانَ بْنِ يَسَارٍ عَنْ أُنَاسٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَّ الْقَسَامَةَ كَانَتْ فِي الْجَاهِلِيَّةِ فَأَقَرَّهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَا كَانَتْ عَلَيْهِ، وَقَضَى بِهَا بَيْنَ أُنَاسٍ مِنْ الْأَنْصَارِ فِي قَتِيلٍ ادَّعَوْهُ عَلَى يَهُودَ خَيْبَرَ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذِهِ الْأَخْبَارُ مِمَّا صَحَّتْ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْقَسَامَةِ، لَمْ يَصِحَّ عَنْهُ إلَّا هِيَ أَصْلًا.

[مَسْأَلَةٌ هَلْ يَجِبُ الْحُكْمُ بِالْقَسَامَةِ]

٢١٥٣ - مَسْأَلَةٌ: هَلْ يَجِبُ الْحُكْمُ بِالْقَسَامَةِ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَذَكَرْنَا قَوْلَ ابْنِ عَبَّاسٍ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ، فَنَظَرْنَا فِيمَا يُمْكِنُ أَنْ يُحْتَجَّ بِهِ؟

L39550 Via the chain of Muslim: Abu al-Tahir narrated to us, Ibn Wahb narrated to us, Yunus informed me from Ibn Shihab, who said: Abu Salama ibn Abd al-Rahman and Sulayman ibn Yasar, the freed slave of Maymunah, the wife of the Prophet (peace be upon him), narrated to me from a man among the Companions of the Messenger of Allah (peace and blessings be upon him) from the Ansar: "That the Messenger of Allah (peace and blessings be upon him) confirmed al-qasamah as it was during the Age of Ignorance."[3]

L39551 From the path of Ahmad ibn Shu'ayb: Muhammad ibn Hashim al-Ba'labakkī reported to us, from al-Walid ibn Muslim who reported to us from al-Awzā'ī, from Ibn Shihāb, from Abū Salamah ibn 'Abd al-Raḥmān ibn 'Awf and Sulaymān ibn Yasār, from some Companions of the Messenger of Allah (peace and blessings be upon him): "The practice of qasāmah existed in the pre-Islamic era, and the Messenger of Allah (peace and blessings be upon him) affirmed it as it was. He ruled with it between some people of the Ansar concerning a slain person whom they accused the Jews of Khaybar of killing."

L39552 Abū Muḥammad—may Allah have mercy on him—said: "These reports are from what has been authenticated of the Prophet—peace and blessings be upon him—regarding *qasāmah*; none have been authentically established from him at all except these fundamentally."

L39553 ## The Issue: Is Ruling by *Qasāmah* Obligatory?

L39554 2153 - Issue: Is judgment by *qasāmah* obligatory or not? Abu Muhammad, may Allah have mercy on him, said: We mentioned the statement of Ibn Abbas and Salim ibn Abdullah ibn Umar ibn al-Khattab, and then examined what could be cited as evidence.

[3] **Hadith references (L39550):** Sunan an-Nasai 4707; Sahih Muslim 1670a.

فَوَجَدْنَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو الطَّاهِرِ نا ابْنُ وَهْبٍ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنْ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَوْ يُعْطَى النَّاسُ بِدَعْوَاهُمْ لَادَّعَى نَاسٌ دِمَاءَ رِجَالٍ وَأَمْوَالَهُمْ وَلَكِنَّ الْيَمِينَ عَلَى الْمُدَّعَى عَلَيْهِ» . وَقَوْلُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» . وَقَوْلُهُ - عَلَيْهِ السَّلَامُ - لِلْمُدَّعِي «بَيِّنَتُكَ أَوْ يَمِينُهُ لَيْسَ لَكَ إلَّا ذَلِكَ» .

L39555–39556 We found through the chain narrated by Muslim: Abu al-Tahir narrated to us, from Ibn Wahb, from Ibn Jurayj, from Ibn Abi Mulaykah, from Ibn Abbas that the Prophet - peace be upon him - said: "If people were ruled in favor of merely based on their claims, some would falsely claim the lives of men and seize their wealth. But the oath rests upon the defendant." And his statement - peace be upon him - "Your blood and your wealth are sacred to you." And his statement - peace be upon him - to the claimant: "Either present your proof or [require] his oath; you have no other option."[4]

قَالُوا: فَقَدْ سَوَّى اللَّهُ تَعَالَى عَلَى لِسَانِ نَبِيِّهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَيْنَ تَحْرِيمِ الدِّمَاءِ وَالْأَمْوَالِ، وَبَيْنَ الدَّعْوَى فِي الدِّمَاءِ وَالْأَمْوَالِ، وَأَبْطَلَ كُلَّ ذَلِكَ، وَلَمْ يَجْعَلْهُ إلَّا بِالْبَيِّنَةِ أَوْ الْيَمِينِ عَلَى الْمُدَّعَى عَلَيْهِ، فَوَجَبَ أَنْ يَكُونَ الْحُكْمُ فِي كُلِّ ذَلِكَ سَوَاءً لَا يَفْتَرِقُ فِي شَيْءٍ أَصْلًا: لَا فِي مَنْ يَحْلِفُ، وَلَا فِي عَدَدِ يَمِينٍ، وَلَا فِي إسْقَاطِ الْغَرَامَةِ، إلَّا بِالْبَيِّنَةِ وَلَا مَزِيدَ.

L39557 They said: Indeed, Allah the Exalted has established through the words of His Prophet—peace and blessings be upon him—an equivalence between the prohibition of bloodshed and wealth, and claims regarding bloodshed and wealth. He nullified all that, ordaining its establishment solely through evidence or the oath of the defendant. Thus, the ruling must be uniform in all such matters without divergence in any respect: neither regarding the one who must swear, nor the number of oaths, nor the waiver of the penalty—except through evidence and nothing more.

وَهَذَا كُلُّهُ حَقٌّ، إلَّا أَنَّهُمْ تَرَكُوا مَا لَا يَجُوزُ تَرْكُهُ مِمَّا فَرَضَ اللَّهُ تَعَالَى عَلَى النَّاسِ إضَافَتَهُ إلَى مَا ذَكَرُوا، وَهُوَ أَنَّ الَّذِي حَكَمَ بِمَا ذَكَرُوا، وَهُوَ الْمُرْسَلُ إلَيْنَا مِنْ اللَّهِ تَعَالَى هُوَ الَّذِي حَكَمَ بِالْقَسَامَةِ، وَفَرَّقَ بَيْنَ حُكْمِهَا وَبَيْنَ سَائِرِ الدِّمَاءِ وَالْأَمْوَالِ الْمُدَّعَاةِ، وَلَا يَحِلُّ أَخْذُ شَيْءٍ مِنْ أَحْكَامِهِ وَتَرْكُ سَائِرِهَا، إذْ كُلُّهَا مِنْ عِنْدِ اللَّهِ تَعَالَى، وَكُلُّهَا حَقٌّ، وَفَرَضَ الْوُقُوفَ عِنْدَهُ، وَالْعَمَلَ بِهِ وَلَيْسَ بَعْضُ أَحْكَامِهِ - عَلَيْهِ السَّلَامُ - أَوْلَى بِالطَّاعَةِ مِنْ بَعْضٍ، وَمَنْ خَالَفَ هَذَا فَقَدْ دَخَلَ تَحْتَ الْمَعْصِيَةِ، وَتَحْتَ قَوْله تَعَالَى {أَفَتُؤْمِنُونَ بِبَعْضِ الْكِتَابِ وَتَكْفُرُونَ بِبَعْضٍ} [البقرة: ٨٥] .

L39558 All of this is true, except that they neglected what Allah Almighty has mandated people to ascribe to Him—that which He obligated them to uphold alongside what they mentioned. This refers to the fact that the One who decreed what they mentioned—the Messenger sent to us by Allah—is the same who instituted qasāmah (collective oaths in homicide cases), distinguishing its ruling from other claimed cases of bloodshed and property disputes. It is impermissible to adopt part of his rulings while abandoning others, for all of them originate from Allah Almighty, all are true, and He has mandated adherence to them and implementation of them. No part of the rulings of the Prophet—peace be upon him—holds greater claim to obedience than another. Whoever contravenes this has entered into disobedience and fallen under the condemnation of Allah's words: *"Do you believe in part of the Scripture and disbelieve in another part?"* [Al-Baqarah: 85].[5]

[4] **Hadith references (L39556):** Sahih Muslim 1711a; Bulugh al-Maram 1423; Mishkat al-Masabih 3758.

[5] **Qur'an references (L39558):** Qur'an 2:85 (Al-Baqarah).

وَلَا فَرْقَ بَيْنَ مَنْ تَرَكَ حَدِيثَ «بَيِّنَتُكَ أَوْ يَمِينُهُ» لِحَدِيثِ الْقَسَامَةِ، وَبَيْنَ مَنْ تَرَكَ حَدِيثَ الْقَسَامَةِ لِتِلْكَ الْأَحَادِيثِ. فَإِنْ قَالُوا: الدِّمَاءُ حُدُودٌ، وَلَا يَمِينَ فِي الْحُدُودِ؟ قِيلَ لَهُمْ: مَا هِيَ مِنَ الْحُدُودِ، لِأَنَّ الْحُدُودَ لَيْسَتْ مَوْكُولَةً إِلَى اخْتِيَارِ أَحَدٍ - إِنْ شَاءَ أَقَامَهَا، وَإِنْ شَاءَ عَطَّلَهَا - بَلْ هِيَ وَاجِبَةٌ لِلَّهِ تَعَالَى وَحْدَهُ، لَا خِيَارَ فِيهَا لِأَحَدٍ، وَلَا حُكْمَ.

L39559–39561 There is no distinction between one who disregards the narration "your evidence or his oath" in favor of the narration on qasāmah (collective oaths) and one who disregards the narration on qasāmah in favor of those narrations. If they say: "Cases involving bloodshed are Hudūd (prescribed punishments), and an oath is not applicable in Hudūd," they are told: "These are not part of Hudūd, for Hudūd are not left to the discretion of anyone—if..." If He wills, He establishes it, and if He wills, He nullifies it—rather, it is an obligation mandated by Allah, the Exalted, alone; no one has any choice, nor any right to legislate.

وَأَمَّا الدِّمَاءُ فَهِيَ مَوْكُولَةٌ إِلَى اخْتِيَارِ الْوَلِيِّ - إِنْ شَاءَ اسْتَقَادَ، وَإِنْ شَاءَ عَفَا - فَبَطَلَ أَنْ تَكُونَ مِنَ الْحُدُودِ، وَصَحَّ أَنَّهَا مِنْ حُقُوقِ النَّاسِ - وَفَسَدَ قَوْلُ مَنْ فَرَّقَ بَيْنَهَا وَبَيْنَ حُقُوقِ النَّاسِ مِنَ الْأَمْوَالِ وَغَيْرِهَا، لَا حَيْثُ فَرَّقَ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ السَّلَامُ - بَيْنَ الدِّمَاءِ وَالْحُقُوقِ وَغَيْرِهَا، وَلَيْسَ ذَلِكَ إِلَّا حَيْثُ الْقَسَامَةُ فَقَطْ.

L39562 As for bloodshed, it is entrusted to the guardian's discretion—if he wills, he may demand retribution, and if he wills, he may pardon—thus invalidating its inclusion among the prescribed punishments (Hudud) and establishing it as part of people's rights. The claim of those who differentiate between bloodshed and the rights of people concerning wealth and other matters is invalid, for this differentiation does not occur in the cases where Allah the Exalted and His Messenger—peace be upon him—distinguished between bloodshed, people's rights, and other matters. This distinction applies solely in the context of Qasamah (collective oaths).

وَأَمَّا مَنْ جَعَلَ الْيَمِينَ فِي دَعْوَى الدَّمِ خَمْسِينَ يَمِينًا وَلَا بُدَّ - وَلَا أَقَلَّ - فَلَا حُجَّةَ لَهُمْ، إِلَّا أَنَّهُمْ قَاسُوا كُلَّ دَعْوَى فِي الدَّمِ عَلَى الْقَسَامَةِ - وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، لِأَنَّهُمْ لَمْ يَحْكُمُوا لِلدَّعْوَى الْمُجَرَّدَةِ فِي الدَّمِ بِحُكْمِ الْقَسَامَةِ فِي غَيْرِ هَذَا الْمَوْضِعِ، لِأَنَّ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ يَرَوْنَ فِي الْقَسَامَةِ تَبْرِئَةَ الْمُدَّعِينَ، وَلَا يَرَوْنَ تَبْرِئَتَهُمْ فِي دَعْوَى الدَّمِ الْمُجَرَّدَةِ، وَالْحَنَفِيُّونَ يَرَوْنَ إِيجَابَ الْغَرَامَةِ مَعَ الْأَيْمَانِ فِي الْقَسَامَةِ، وَلَا يَرَوْنَ ذَلِكَ فِي دَعْوَى الدَّمِ الْمُجَرَّدَةِ - فَصَحَّ أَنَّهُمْ قَدْ تَرَكُوا قِيَاسَ دَعْوَى الدَّمِ الْمُجَرَّدَةِ عَلَى الْقَسَامَةِ فِي شَيْءٍ مِنْ أَحْكَامِهَا، إِلَّا فِي عَدَدِ الْأَيْمَانِ فَقَطْ - فَظَهَرَ بِذَلِكَ بَاطِلُ قَوْلِهِمْ.

L39563 As for those who set the oath in a blood claim as fifty oaths necessarily—with no fewer—they have no valid proof except that they analogized every blood claim to sworn collective testimony (qasāmah). All analogy in its entirety is invalid, for they never applied the rulings of qasāmah to mere blood claims in other contexts. The Mālikīs and Shāfiʿīs hold that qasāmah results in the claimants' absolution, yet do not consider their absolution valid in mere blood claims. The Ḥanafīs hold that financial liability is imposed alongside oaths in qasāmah, yet do not apply this in mere blood claims. Thus it is confirmed that they rejected the analogy of mere blood claims to qasāmah in all its rulings except solely the number of oaths—thereby exposing the falsity of their claim.

L39564 In our school, the position is as we have stated: evidence in all claims—whether involving bloodshed or otherwise—is entirely equal, and the oath in all such matters is the same—a single oath only—upon the defendant, except

in cases of adultery and *qasāmah*. For adultery, four witnesses or more are required, no fewer, due to the explicit textual ruling specific to this matter. For *qasāmah*, fifty oaths are required, no fewer, similarly due to an explicit textual ruling.

وَالْقَوْلُ عِنْدَنَا هُوَ مَا قُلْنَاهُ مِنْ أَنَّ الْبَيِّنَةَ فِي الدَّعَاوَى كُلِّهَا دِمَاءً كَانَتْ أَوْ غَيْرَهَا سَوَاءٌ سَوَاءٌ، وَالْيَمِينُ فِي كُلِّ ذَلِكَ سَوَاءٌ - يَمِينٌ وَاحِدَةٌ فَقَطْ - عَلَى مَنْ ادُّعِيَ عَلَيْهِ إلَّا فِي الزِّنَى، وَالْقَسَامَةِ، فَفِي الزِّنَى أَرْبَعَةٌ مِنْ الشُّهُودِ فَصَاعِدًا، لَا أَقَلُّ؛ لِلنَّصِّ الْوَارِدِ فِي ذَلِكَ خَاصَّةً، وَفِي الْقَسَامَةِ خَمْسُونَ يَمِينًا لَا أَقَلُّ لِلنَّصِّ الْوَارِدِ فِي ذَلِكَ.

L39565 Everything else besides that remains under the general scope of the statement of the Messenger of Allah (peace be upon him): "Your evidence or the defendant's oath—there is no other option for you," and his statement (peace be upon him): "If people were granted their demands based solely on their claims, some would falsely claim men's lives and wealth, but the oath is incumbent upon the defendant." Therefore, nothing is exempt from this principle except what is excluded by scriptural evidence.

وَبَقِيَ كُلُّ مَا عَدَا ذَلِكَ عَلَى عُمُومِ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «بَيِّنَتُك أَوْ يَمِينُهُ لَيْسَ لَكَ إلَّا ذَلِكَ» . وَعَلَى قَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَوْ يُعْطَى النَّاسُ بِدَعْوَاهُمْ لَادَّعَى قَوْمٌ دِمَاءَ رِجَالٍ وَأَمْوَالَهُمْ وَلَكِنَّ الْيَمِينَ عَلَى مَنْ ادُّعِيَ عَلَيْهِ» فَلَا يَخْرُجُ مِنْ هَذَا إلَّا مَا أَخْرَجَهُ النَّصُّ.

L39566–39568 Then we examined the statement of those who claim that qasāmah (collective oath-swearing) applies based on a sick person's allegation that a specific individual killed him, but we found no valid basis whatsoever for their position; except the narration transmitted by Aḥmad ibn ʿUmar, from ʿAbdullāh ibn al-Ḥusayn ibn ʿIqāl, from Ibrāhīm ibn Muḥammad al-Dīnawarī, from Muḥammad ibn Aḥmad ibn al-Jahm, from Ismāʿīl ibn Isḥāq, from Ibn Abī Uways, from his brother, from Sulaymān ibn Bilāl, from Ṣāliḥ ibn Kayṣān, from Ibn Shihāb, who narrated to me that... Umar ibn Abd al-Aziz summoned him and said: "What is your opinion regarding this oath of collective liability?" I replied: "It was a practice from the pre-Islamic era, and the Messenger of Allah—peace and blessings be upon him—upheld it to emphasize the sanctity of blood, establishing it as a safeguard for their lives. However, according to its established precedent and what has been transmitted to us about it: If the slain person speaks, his family is absolved; but if he does not speak, the defendants must swear an oath—and that was the practice of Umar ibn al-Khattab. This is what we have found people acting upon."

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: إنَّ الْقَسَامَةَ تَكُونُ بِدَعْوَى الْمَرِيضِ أَنَّ فُلَانًا قَتَلَهُ، فَلَمْ نَجِدْ لَهُمْ شُبْهَةً أَصْلًا، إلَّا مَا ناه أَحْمَدُ بْنُ عُمَرَ نا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ نا إبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ نا إسْمَاعِيلُ بْنُ إسْحَاقَ نا ابْنُ أَبِي أُوَيْسٍ نا أَخِي عَنْ سُلَيْمَانَ بْنِ بِلَالٍ عَنْ صَالِحِ بْنِ كَيْسَانَ أَخْبَرَنِي ابْنُ شِهَابٍ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ دَعَاهُ فَقَالَ لَهُ: مَا عِنْدَك فِي هَذِهِ الْقَسَامَةِ؟ فَقُلْت لَهُ: كَانَتْ مِنْ أَمْرِ الْجَاهِلِيَّةِ فَأَقَرَّهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَعْظِيمًا لِلدِّمَاءِ، وَجَعَلَهَا سُتْرَةً لِدِمَائِهِمْ، وَلَكِنْ مِنْ سُنَّتِهَا وَمَا بَلَغَنَا فِيهَا: أَنَّ الْقَتِيلَ إذَا تَكَلَّمَ بَرِئَ أَهْلُهُ، وَإِنْ لَمْ يَتَكَلَّمْ حَلَفَ الْمُدَّعَى عَلَيْهِمْ - وَذَلِكَ فِعْلُ عُمَرَ بْنِ الْخَطَّابِ، وَأَنَّ ذَلِكَ الَّذِي أَدْرَكْنَا النَّاسَ عَلَيْهِ.

L39569 Abu Muhammad said: The proponents of this statement have exceeded in number and brought forth matters whose latter part makes one forget the former, to the extent that the ignorant one is deluded into thinking they have

produced something—while they have produced nothing at all. This is an invalid chain, for it is mursal.

قَالَ أَبُو مُحَمَّد: إِنَّ أَهْلَ هَذِهِ الْمَقَالَةِ أَكْثَرُوا وَأَتَوْا بِمَا يُنْسِي آخِرُهُ أَوَّلَهُ، حَتَّى يَغْتَرَّ الْجَاهِلُ فَيَظُنَّ أَنَّهُمْ أَتَوْا بِشَيْءٍ، وَهُمْ لَمْ يَأْتُوا بِشَيْءٍ أَصْلًا، وَهَذَا سَنَدٌ فَاسِدٌ، لِأَنَّهُ مُرْسَلٌ.

L39570 In its chain of transmission is Abu Bakr ibn Abi Uways, and Al-Bukhari cited him in his collection. However, Al-Mawsili, the Ḥāfiẓ (memorizer) Al-Asadi, mentioned: "Yusuf ibn Muhammad reported to him that Ibn Abi Uways used to fabricate hadiths, and this is a grave matter." Nevertheless, the mursal transmission suffices for this report.

وَفِي إِسْنَادِهِ أَبُو بَكْرِ بْنُ أَبِي أُوَيْسٍ وَقَدْ خَرَّجَ عَنْهُ الْبُخَارِيُّ، إِلَّا أَنَّ الْمَوْصِلِيَّ الْحَافِظَ الْأَسَدِيَّ ذَكَرَ: أَنَّ يُوسُفَ بْنَ مُحَمَّدٍ أَخْبَرَهُ أَنَّ ابْنَ أَبِي أُوَيْسٍ كَانَ يَضَعُ الْحَدِيثَ، وَهَذِهِ عَظِيمَةٌ، إِلَّا أَنَّ الْإِرْسَالَ يَكْفِي فِي هَذَا الْخَبَرِ.

L39571 Even if it were authentically transmitted, they would have no basis for it, for it contains nothing from the Prophet—peace be upon him—indicating that he ruled by qasamah regarding claims made on behalf of the slain. Rather, it states that this was a practice from the pre-Islamic era which Allah's Messenger—peace be upon him—upheld to honor the sanctity of blood, and we do not deny this. Since it is not established from the Prophet—peace be upon him—it holds no authority. Moreover, the Maliki school opposes this ruling and do not recognize qasamah at all if no one speaks.

وَلَوْ صَحَّ مُسْنَدًا لَمْ يَكُنْ لَهُمْ فِيهِ مُتَعَلَّقٌ، لِأَنَّهُ لَيْسَ فِيهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَضَى بِالْقَسَامَةِ فِيمَا يَدَّعِيهِ الْمَقْتُولُ، وَإِنَّمَا فِيهِ: أَنَّهَا كَانَتْ مِنْ أَمْرِ الْجَاهِلِيَّةِ فَأَقَرَّهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَعْظِيمًا لِلدِّمَاءِ - وَنَحْنُ لَا نُنْكِرُ هَذَا، فَإِذَا لَمْ يَكُنْ عَنِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - فَلَا حُجَّةَ فِيهِ - وَأَنَّ الْمَالِكِيِّينَ مُخَالِفُونَ لِهَذَا الْحُكْمِ، وَلَا يَرَوْنَ فِيهِ قَسَامَةً أَصْلًا إِذَا لَمْ يَتَكَلَّمْ.

L39572–39574 They recounted—as transmitted by Hishām ʿAbdullāh ibn Rabīʿ, from Muḥammad ibn Rabīʿ, from Muḥammad ibn Muʿāwiyah, from Aḥmad ibn Shuʿayb, from Muḥammad ibn Yaḥyā ibn ʿAbdillāh, from Abū Maʿmar al-Baṣrī, from ʿAbd al-Wārith, from Fiṭr, Abū al-Haytham, from Abū Yazīd al-Madanī, from ʿIkrimah, from Ibn ʿAbbās, who said: The first instance of qasāmah occurred in the pre-Islamic era. A man from Banū Hāshim was hired by a man from Quraysh of another clan. He traveled with him among his camels. A man from Banū Hāshim passed by, the strap of his saddlebag having snapped. He pleaded, "Give me a hobble to secure the strap of my saddlebag, to prevent the camels from scattering." So he gave him a hobble to fasten his saddlebag. When they halted, all camels were tethered except one. The employer asked, "Why is this camel untethered among the others?" He replied, "It has no hobble." He demanded, "Where is its hobble?" He explained, "A man from Banū Hāshim passed by me—his saddlebag's strap had torn—and sought help. He said, 'Give me a hobble to secure my saddle-

وَذَكَرُوا - مَا نَاهِ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ يَحْيَى بْنِ عَبْدِ اللَّهِ نا أَبُو مَعْمَرٍ الْبَصْرِيُّ نا عَبْدُ الْوَارِثِ نا فِطْرٌ أَبُو الْهَيْثَمِ نا أَبُو يَزِيدَ الْمَدَنِيُّ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: أَوَّلُ الْقَسَامَةِ كَانَتْ فِي الْجَاهِلِيَّةِ، كَانَ رَجُلٌ مِنْ بَنِي هَاشِمٍ اسْتَأْجَرَهُ رَجُلٌ مِنْ قُرَيْشٍ مِنْ نَخْذٍ أُخْرَى فَانْطَلَقَ مَعَهُ فِي إِبِلِهِ، فَمَرَّ رَجُلٌ مِنْ بَنِي هَاشِمٍ قَدْ انْقَطَعَتْ عُرْوَةُ جُوَالِقِهِ؟ فَقَالَ: أَعْثِنِي بِعِقَالٍ أَشُدُّ بِهِ عُرْوَةَ جُوَالِقِي لَا تَنْفِرُ الْإِبِلُ، فَأَعْطَاهُ عِقَالًا يَشُدُّ بِهِ جُوَالِقَهُ، فَلَمَّا نَزَلُوا عُقِلَتْ الْإِبِلُ إِلَّا بَعِيرًا وَاحِدًا، فَقَالَ الَّذِي اسْتَأْجَرَهُ: مَا شَأْنُ هَذَا الْبَعِيرِ لَمْ يُعْقَلْ مِنْ بَيْنِ الْإِبِلِ؟ قَالَ: لَيْسَ لَهُ عِقَالٌ، قَالَ فَأَيْنَ عِقَالُهُ؟ قَالَ: مَرَّ بِي رَجُلٌ مِنْ بَنِي هَاشِمٍ قَدْ انْقَطَعَتْ عُرْوَةُ

bag's strap, to prevent the camels from scattering,' so I gave him his hobble." Then he struck him with a stick that carried his destined death. A Yemeni man passed by and asked, "Will you attend the pilgrimage gathering?" He answered, "I do not plan to attend, but I might." The Yemeni said, "Will you convey a timeless message on my behalf?" He agreed. The Yemeni instructed, "If you attend the gathering, proclaim: 'O clan of Quraysh!' When they respond..." Then call out: "O clan of Banu Hashim!" When they answer, ask for Abu Talib and inform him: "So-and-so killed me over a blood-money guarantee, and the hired man died." When the one who had hired him arrived, Abu Talib came to him and said: "What happened to our companion?" He replied: "He fell ill and I cared for him properly, then died and I undertook his burial." Abu Talib asked: "Did you do this?" After some time had passed, the Yamani man entrusted with delivering the message arrived during the pilgrimage season. He called: "O people of Quraysh!" They responded: "Here are Quraysh." He called: "O Banu Hashim!" They said: "Here are Banu Hashim." He asked: "Where is Abu Talib?" They replied: "This is Abu Talib." He said: "So-and-so commanded me to convey his message: 'So-and-so killed him over a blood-money guarantee.'" Abu Talib approached him and said: "Choose one of three options: If you wish, pay a diyah of one hundred camels, for you killed our companion by mistake. If you prefer, let fifty of your tribesmen swear they did not kill him. If you refuse, we will kill you in retaliation." The man went to his people and informed them. They asked: "Should we swear?" A woman from Banu Hashim married to one of them came to Abu Talib and said: "O Abu Talib, I wish you would count my son as one of the fifty men, and not subject his oath to where oaths are formally administered." He agreed. A man from them approached and said: "O Abu Talib, you seek fifty men to swear instead of accepting one hundred camels—each man substituting for two camels. Here are two camels—accept them from me and do not subject my oath to where oaths are formally administered." He accepted them. Forty-eight men came forward to swear. Ibn Abbas said: "By Him in whose Hand my soul rests, before a year had passed, not a single one of the forty-eight remained with an eye that could blink." Abu Muhammad—may Allah have mercy on him—added: They linked this account to the hadith we previously mentioned in the chapter on

جُوَالِقِهِ فَاسْتَغَاثَنِي؟ فَقَالَ: أَغِثْنِي بِعِقَالٍ أَشُدُّ بِهِ عُرْوَةَ جُوَالِقِي لَا تَنْفِرُ الْإِبِلُ، فَأَعْطَيْته عِقَالَهُ، فَخَذَفَهُ بِعَصًا كَانَ فِيهِ أَجَلُهُ، فَمَرَّ بِهِ رَجُلٌ مِنْ أَهْلِ الْيَمَنِ فَقَالَ: أَتَشْهَدُ الْمَوْسِمَ؟ قَالَ: مَا أَشْهَدُ وَرُبَّمَا أَشْهَدُ. قَالَ: هَلْ أَنْتَ عَنِّي مُبَلِّغٌ رِسَالَةً مِنْ الدَّهْرِ؟ قَالَ: نَعَمْ، قَالَ: إذَا شَهِدْت الْمَوْسِمَ فَنَادِ: يَا آلَ قُرَيْشٍ، فَإِذَا أَجَابُوكَ فَنَادِ: يَا آلَ بَنِي هَاشِمٍ، فَإِذَا أَجَابُوك، فَسَلْ عَنْ أَبِي طَالِبٍ فَأَخْبِرْهُ: أَنَّ فُلَانًا قَتَلَنِي فِي عِقَالٍ وَمَاتَ الْمُسْتَأْجَرُ. فَلَمَّا قَدِمَ الَّذِي اسْتَأْجَرَهُ أَتَاهُ أَبُو طَالِبٍ، فَقَالَ: مَا فَعَلَ صَاحِبُنَا؟ قَالَ: مَرِضَ فَأَحْسَنْت الْقِيَامَ عَلَيْهِ، ثُمَّ مَاتَ فَوَلَّيت دَفْنَهُ، فَقَالَ: أَهَلْ ذَلِكَ مِنْك؟ فَمَكَثَ حِينًا - ثُمَّ إنَّ الرَّجُلَ الْيَمَانِيَّ الَّذِي كَانَ أَوْصَى إلَيْهِ أَنْ يُبَلِّغَ عَنْهُ وَافَى الْمَوْسِمَ، قَالَ: يَا آلَ قُرَيْشٍ؟ فَقَالُوا: هَذِهِ قُرَيْشٌ، قَالَ: يَا بَنِي هَاشِمٍ، قَالُوا: هَذِهِ بَنُو هَاشِمٍ، قَالَ: أَيْنَ أَبُو طَالِبٍ؟ قَالُوا: هَذَا أَبُو طَالِبٍ، قَالَ: أَمَرَنِي فُلَانٌ أَنْ أُبَلِّغَك رِسَالَتَهُ: أَنَّ فُلَانًا قَتَلَهُ فِي عِقَالٍ، فَأَتَاهُ أَبُو طَالِبٍ فَقَالَ: اخْتَرْ مِنَّا إحْدَى ثَلَاثٍ إنْ شِئْت أَنْ تُودِيَ مِائَةً مِنْ الْإِبِلِ فَإِنَّك قَتَلْت صَاحِبَنَا خَطَأً، وَإِنْ شِئْت حَلَفَ خَمْسُونَ مِنْ قَوْمِك أَنَّك لَمْ تَقْتُلْهُ، فَإِنْ أَبَيْت قَتَلْنَاك بِهِ، فَأَتَى قَوْمَهُ فَذَكَرَ ذَلِكَ لَهُمْ، فَقَالُوا: نَحْلِفُ؟ فَأَتَتْهُ امْرَأَةٌ مِنْ بَنِي هَاشِمٍ كَانَتْ تَحْتَ رَجُلٍ مِنْهُمْ قَدْ وَلَدَتْ لَهُ، فَقَالَتْ: يَا أَبَا طَالِبٍ أُحِبُّ أَنْ تُجِيزَ ابْنِي هَذَا بِرَجُلٍ مِنْ الْخَمْسِينَ، وَلَا تُصْبِرْ يَمِينَهُ حَيْثُ تُصْبَرُ الْأَيْمَانُ؟ فَفَعَلَ، فَأَتَاهُ رَجُلٌ مِنْهُمْ فَقَالَ: يَا أَبَا طَالِبٍ أَرَدْت خَمْسِينَ رَجُلًا أَنْ يَحْلِفُوا مَكَانَ مِائَةٍ مِنْ الْإِبِلِ يُصِيبُ كُلُّ رَجُلٍ بَعِيرَانِ، فَهَذَانِ بَعِيرَانِ فَاقْبَلْهُمَا عَنِّي وَلَا تُصْبِرْ يَمِينِي حَيْثُ تُصْبَرُ الْأَيْمَانُ؟ فَقَبِلَهُمَا، وَجَاءَ ثَمَانِيَةٌ وَأَرْبَعُونَ رَجُلًا حَلَفُوا - قَالَ ابْنُ عَبَّاسٍ: فَوَالَّذِي نَفْسِي بِيَدِهِ مَا حَالَ الْحَوْلُ وَمِنْ الثَّمَانِيَةِ

authenticated narrations from the Messenger of Allah regarding qasāmah—that qasāmah existed in the pre-Islamic era and the Prophet upheld it as it was, ruling with it between some Ansar claimants and the Jews of Khaybar regarding a slain person they alleged was killed by them. This provides no proof for their position—rather, it is proof against them, for the qasāmah the Prophet applied concerned a discovered corpse, not an unsubstantiated claim that so-and-so killed someone. Thus, this refutes their argument.

وَأَرْبَعِينَ عَيْنٌ تَطْرِفُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَأَضَافُوا إِلَى هَذَا الْخَبَرِ الْحَدِيثَ الَّذِي قَدْ ذَكَرْنَاهُ قَبْلَ هَذَا بِأَوْرَاقٍ فِي بَابِ الْأَحَادِيثِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْقَسَامَةِ، وَهُوَ أَنَّ الْقَسَامَةَ كَانَتْ فِي الْجَاهِلِيَّةِ فَأَقَرَّهَا رَسُولُ اللَّهِ عَلَى مَا كَانَتْ عَلَيْهِ فِي الْجَاهِلِيَّةِ وَقَضَى بِهَا بَيْنَ نَاسٍ مِنْ الْأَنْصَارِ فِي قَتِيلٍ ادَّعَوْهُ عَلَى يَهُودَ خَيْبَرَ - وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، بَلْ هُوَ حُجَّةٌ عَلَيْهِمْ؛ لِأَنَّ صِفَةَ الْقَسَامَةِ الَّتِي حَكَمَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ نَاسٍ مِنْ الْأَنْصَارِ فِي قَتِيلٍ - ادَّعَوْهُ عَلَى يَهُودَ قَدْ ذَكَرْنَاهَا وَإِنَّمَا هِيَ فِي قَتِيلٍ وُجِدَ، لَا فِي مُصَابٍ ادَّعَى أَنَّ فُلَانًا قَتَلَهُ - فَهَذَا حُجَّةٌ عَلَيْهِمْ.

L39575 As for this hadith of Ibn Abbas, all of it stands against them, not in their favor. Even if that narration were considered authoritative evidence, they have contradicted it in three instances, and there is absolutely no authoritative evidence in it for them in any respect.

وَأَمَّا حَدِيثُ ابْنِ عَبَّاسٍ هَذَا، فَهُوَ كُلُّهُ عَلَيْهِمْ، لَا لَهُمْ، وَلَئِنْ كَانَ ذَلِكَ الْخَبَرُ حُجَّةً، فَلَقَدْ خَالَفُوهُ فِي ثَلَاثَةِ مَوَاضِعَ، وَمَا فِيهِ لَهُمْ حُجَّةٌ أَصْلًا فِي شَيْءٍ.

L39576 Because the statement of that slain person was not substantiated by two witnesses; it was presented by a single man, and they do not accept *qasāmah* in such a case.

لِأَنَّ قَوْلَ ذَلِكَ الْمَقْتُولِ لَمْ يَتَبَيَّنْ بِشَاهِدَيْنِ، وَإِنَّمَا أَتَى بِهِ رَجُلٌ وَاحِدٌ - وَهُمْ لَا يَرَوْنَ الْقَسَامَةَ فِي مِثْلِ هَذَا.

L39577–39578 And that Abū Ṭālib initiated the case by imposing oaths upon the defendants—and they do not support this.

وَأَنَّ أَبَا طَالِبٍ بَدَأَ الْمُدَّعَى عَلَيْهِمْ بِالْأَيْمَانِ - وَهُمْ لَا يَقُولُونَ بِهَذَا.

L39579 And that Abu Talib affirmed that the Qurayshi man had killed the Hashimi man by mistake, then said to him: “If you refuse to pay the blood money or refuse the option of fifty men from your tribe swearing an oath, we will kill you in retaliation for it”—though they do not recognize lethal retribution for accidental killing.

وَأَنَّ أَبَا طَالِبٍ أَقَرَّ: أَنَّ ذَلِكَ الْقُرَشِيَّ قَتَلَ الْهَاشِمِيَّ خَطَأً، ثُمَّ قَالَ لَهُ: فَإِنْ أَبَيْت مِنْ الدِّيَةِ، أَوْ مِنْ أَنْ يَحْلِفَ خَمْسُونَ مِنْ قَوْمِك قَتَلْنَاك بِهِ - وَهُمْ لَا يَرَوْنَ الْقَوَدَ فِي قَتْلِ الْخَطَأِ.

L39580 It is astonishing that they cite a report as evidence—they are the first to oppose it. As for us, we do not deny that qasāmah existed in the pre-Islamic era in the case where a slain person is found, and that the Messenger of Allah—peace and blessings be upon him—sanctioned it as such. Rather, this

is a truth in our view due to the report's authenticity regarding that matter, and success is from Allah, the Exalted.

فَمِنْ الْعَجَبِ احْتِجَاجُهُمْ بِخَبَرٍ: هُمْ أَوَّلُ مُخَالِفٍ لَهُ، وَأَمَّا نَحْنُ فَلَا نُنْكِرُ أَنْ تَكُونَ الْقَسَامَةُ كَانَتْ فِي الْجَاهِلِيَّةِ فِي الْقَتِيلِ يُوجَدُ فَأَقَرَّهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى ذَلِكَ، بَلْ هَذَا حَقٌّ عِنْدَنَا لِصِحَّةِ الْخَبَرِ بِذَلِكَ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39581 They also mentioned—and this being among the obscure contrivances they devised—the saying of Allah the Exalted after His command to the Children of Israel to slaughter a cow: "And when you killed a soul and disputed concerning it—while Allah brought forth what you were concealing" [Al-Baqarah: 72]. "So We said: 'Strike it with part of it.' Thus does Allah revive the dead" [Al-Baqarah: 73].[6]

وَذَكَرُوا أَيْضًا - وَهُوَ مِنْ غَامِضِ اخْتِرَاعِهِمْ - قَوْلَ اللَّهِ تَعَالَى بَعْدَ أَمْرِهِ بَنِي إِسْرَائِيلَ بِذَبْحِ الْبَقَرَةِ {وَإِذْ قَتَلْتُمْ نَفْسًا فَادَّارَأْتُمْ فِيهَا وَاللَّهُ مُخْرِجٌ مَا كُنْتُمْ تَكْتُمُونَ} [البقرة: ٧٢] {فَقُلْنَا اضْرِبُوهُ بِبَعْضِهَا كَذَلِكَ يُحْيِي اللَّهُ الْمَوْتَى} [البقرة: ٧٣] .

L39582 In connection with this verse, they cited the narration transmitted by Ahmad ibn Umar ibn Anas al-Udhri from Abdullah ibn al-Husayn ibn Iqal al-Zubayri, who narrated from Ibrahim ibn Muhammad al-Dinawari, who narrated from Muhammad ibn al-Jahm, who narrated from Abu Bakr al-Wazzan, who narrated from Ali ibn Abdullah—known as Ibn al-Madini—who narrated from Yahya ibn Sa'id al-Qattan, who narrated from Rabi'ah ibn Kulthum, who narrated from his father, from Sa'id ibn Jubayr: That Ibn Abbas said, "The people of a city among the Children of Israel found an old man slain at the outskirts of their city. Then inhabitants of another city came and said: 'You killed our companion!' A young nephew of the deceased stood weeping, crying: 'You killed my uncle?' They sought Moses—peace be upon him—whereupon Allah the Exalted revealed to him: 'Allah commands you to slaughter a cow.'" He then recounted the full narrative of the cow. He continued: "They brought the cow until they reached the old man's grave—situated between the two cities, his nephew standing beside it weeping—and slaughtered it. They struck the grave with a portion of its flesh, whereupon the old man rose shaking his head, declaring: 'My nephew killed me! He grew weary of my long life and coveted my wealth.' Then he died."[7]

وَذَكَرُوا - مَعَ هَذِهِ الْآيَةِ -: مَا ناه أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ عَنْ عَبْدِ اللَّهِ بْنِ الْحُسَيْنِ بْنِ عِقَالٍ الزُّبَيْرِيِّ نا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ نا مُحَمَّدُ بْنُ الْجَهْمِ نا أَبُو بَكْرٍ الْوَزَّانُ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ - وَهُوَ ابْنُ الْمَدِينِيُّ - نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا رَبِيعَةُ بْنُ كُلْثُومٍ نا أَبِي عَنْ سَعِيدِ بْنِ جُبَيْرٍ: أَنَّ ابْنَ عَبَّاسٍ قَالَ: إِنَّ أَهْلَ مَدِينَةٍ مِنْ بَنِي إِسْرَائِيلَ وَجَدُوا شَيْخًا قَتِيلًا فِي أَصْلِ مَدِينَتِهِمْ، فَأَقْبَلَ أَهْلُ مَدِينَةٍ أُخْرَى فَقَالُوا: قَتَلْتُمْ صَاحِبَنَا، وَابْنُ أَخٍ لَهُ شَابٌّ يَبْكِي وَيَقُولُ: قَتَلْتُمْ عَمِّي؟ فَأَتَوْا مُوسَى - عَلَيْهِ السَّلَامُ -، فَأَوْحَى اللَّهُ تَعَالَى إِلَيْهِ: إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تَذْبَحُوا بَقَرَةً؟ فَذَكَرَ حَدِيثَ الْبَقَرَةِ بِطُولِهِ، قَالَ: فَأَقْبَلُوا بِالْبَقَرَةِ حَتَّى انْتَهَوْا بِهَا إِلَى قَبْرِ الشَّيْخِ - وَهُوَ بَيْنَ الْمَدِينَتَيْنِ، وَابْنُ أَخِيهِ قَائِمٌ عِنْدَ قَبْرِهِ يَبْكِي - فَذَبَحُوهَا، فَضَرَبَ بِبِضْعَةٍ مِنْ لَحْمِهَا الْقَبْرَ؟ فَقَامَ الشَّيْخُ يَنْفُضُ رَأْسَهُ وَيَقُولُ: قَتَلَنِي ابْنُ أَخِي، طَالَ عَلَيْهِ عُمُرِي، وَأَرَادَ أَكْلَ مَالِي؟ وَمَاتَ.

L39583–39585 And through him—to Ibn al-Jahm: Muḥammad ibn Salamah narrated to us,

وَبِهِ - إِلَى ابْنِ الْجَهْمِ نا مُحَمَّدُ بْنُ سَلَمَةَ نا يَزِيدُ بْنُ هَارُونَ نا هِشَامٌ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبِيدَةَ السَّلْمَانِيِّ قَالَ: كَانَ فِي بَنِي إِسْرَائِيلَ عَقِيمٌ لَا يُولَدُ لَهُ، وَكَانَ لَهُ مَالٌ كَثِيرٌ وَكَانَ

[6] **Qur'an references (L39581):** Qur'an 2:72 (Al-Baqarah); Qur'an 2:73 (Al-Baqarah).
[7] **Qur'an references (L39582):** Qur'an 2:67 (Al-Baqarah).

Yazīd ibn Hārūn narrated to us, Hishām narrated to us from Muḥammad ibn Sīrīn from ʿUbaydah al-Salmānī, who said: Among the Children of Israel was an infertile man who had no children, and he possessed abundant wealth. His nephew was his heir. The man killed his nephew, then carried him by night until he brought him to another tribe and placed him at the door of a man among them. Then, in the morning, he accused them. They came to Moses, peace be upon him. He said: "Indeed, Allah commands you to slaughter a cow"—then he mentioned the story of the cow—so they slaughtered it and struck him with a part of it. He stood up, and they asked: "Who killed you?" He replied: "This one"—pointing to his nephew—then he fell dead. Consequently, the nephew was not given anything from the deceased's wealth, and a killer was thereafter barred from inheritance.

ابْنُ أَخِيهِ وَارِثُهُ فَقَتَلَهُ، ثُمَّ احْتَمَلَهُ لَيْلًا حَتَّى أَتَى بِهِ حَيَّ آخَرِينَ، فَوَضَعَهُ عَلَى بَابِ رَجُلٍ مِنْهُمْ، ثُمَّ أَصْبَحَ يَدَّعِيهِ عَلَيْهِمْ، فَأَتَوْا مُوسَى - عَلَيْهِ السَّلَامُ -، فَقَالَ: إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تَذْبَحُوا بَقَرَةً - فَذَكَرَ حَدِيثَ الْبَقَرَةِ - فَذَبَحُوهَا فَضَرَبُوهُ بِبَعْضِهَا، فَقَامَ، فَقَالُوا: مَنْ قَتَلَكَ؟ فَقَالَ: هَذَا - لِابْنِ أَخِيهِ - ثُمَّ مَالَ مَيِّتًا، فَلَمْ يُعْطَ ابْنُ أَخِيهِ مِنْ مَالِهِ شَيْئًا، وَلَمْ يُوَرَّثْ قَاتِلٌ بَعْدُ.

L39586 And through him—to Ibn al-Jahm—al-Wazzān reported to us—ʿAlī ibn ʿAbdullāh reported to us—Sufyān ibn Sūqah said: I heard ʿIkrimah say: The Children of Israel had a mosque with twelve gates, each tribe assigned a gate. They found a slain man killed at one gate, so they dragged him to another gate. They disputed his killing, and Satan sowed discord. They sought judgment from Moses—peace be upon him—and he said, "Allah commands you to slaughter a cow" [Al-Baqarah: 67]. They slaughtered it and struck him with its thigh. He said, "So-and-so killed me"—the slain man was a man of abundant wealth—and his nephew had killed him. In the narration of the cow, there are additional details I have abbreviated.[8]

وَبِهِ - إِلَى ابْنِ الْجَهْمِ نا الْوَزَّانُ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا سُفْيَانُ بْنُ سُوقَةَ، قَالَ: سَمِعْت عِكْرِمَةَ يَقُولُ: كَانَ لِبَنِي إِسْرَائِيلَ مَسْجِدٌ لَهُ اثْنَا عَشَرَ بَابًا، لِكُلِّ سَبْطٍ بَابٌ فَوَجَدُوا قَتِيلًا قُتِلَ عَلَى بَابٍ فَجَرُّوهُ إِلَى بَابٍ آخَرَ، فَتَدَاعَوْا قَتْلَهُ، وَتَدَارَى الشَّيْطَانُ فَتَحَاكَمُوا إِلَى مُوسَى - عَلَيْهِ السَّلَامُ - فَقَالَ {إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تَذْبَحُوا بَقَرَةً} [البقرة: ٦٧] فَذَبَحُوهَا، فَضَرَبُوهُ بِفَخِذِهَا، فَقَالَ: قَتَلَنِي فُلَانٌ - وَكَانَ رَجُلًا لَهُ مَالٌ كَثِيرٌ - وَكَانَ ابْنُ أَخِيهِ قَتَلَهُ - وَفِي حَدِيثِ الْبَقَرَةِ زِيَادَةٌ اقْتَصَرْتهَا.

L39587 Abū Muḥammad—may Allāh have mercy on him—said: Every argument they have cited from this is mere illusion and deception directed at misleading the distant. As for the verse, it is true, but there is absolutely nothing in it that corresponds to what is mentioned in these reports. It merely states that Allāh the Exalted commanded the Children of Israel to slaughter a yellow cow, intensely bright in color, pleasing to beholders—sound, unblemished, neither trained to till the earth nor irrigate the field, neither aged nor a young heifer, but in its prime between those two states. They had killed a man and disputed among themselves about it, so Allāh the Exalted commanded them

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَكُلُّ مَا احْتَجُّوا بِهِ مِنْ هَذَا فَإِيهَامٌ وَتَمْوِيهٌ عَلَى الْمُغْتَرِبِينَ: أَمَّا الْآيَةُ فَحَقٌّ، وَلَيْسَ فِيهَا شَيْءٌ مِمَّا فِي هَذِهِ الْأَخْبَارِ الْبَتَّةَ، وَإِنَّمَا فِيهَا: أَنَّ اللَّهَ تَعَالَى أَمَرَ بَنِي إِسْرَائِيلَ بِذَبْحِ بَقَرَةٍ صَفْرَاءَ فَاقِعٍ لَوْنُهَا تَسُرُّ النَّاظِرِينَ، مُسَلَّمَةٍ لَا شِيَةَ فِيهَا غَيْرِ ذَلُولٍ تُثِيرُ الْأَرْضَ وَلَا تَسْقِي الْحَرْثَ لَا فَارِضٍ وَلَا بِكْرٍ عَوَانٍ بَيْنَ ذَلِكَ وَأَنَّهُمْ كَانُوا قَتَلُوا قَتِيلًا فَتَدَارَءُوا فِيهِ، فَأَمَرَهُمْ اللَّهُ تَعَالَى أَنْ يَضْرِبُوهُ بِبَعْضِهَا، إذْ ذَبَحُوهَا {كَذَلِكَ يُحْيِي اللَّهُ الْمَوْتَى وَيُرِيكُمْ آيَاتِهِ} [البقرة: ٧٣] .

[8] **Qur'an references (L39586):** Qur'an 2:67 (Al-Baqarah).

to strike him with a part of it when they slaughtered it: *"Thus does Allāh revive the dead and show you His signs."* [Al-Baqarah: 73].[9]

L39588 The verse contains nothing more than this—not that the slain person accused anyone, nor that he was thereby killed, nor that there was a collective oath procedure in it. Thus, whatever Allah the Exalted has declared is the truth, and whatever they have forcibly inserted through their opinions into the verse is null and void. Therefore, any claim they have to a foundational basis in the verse is invalid.

وَلَيْسَ فِي الْآيَةِ أَكْثَرُ مِنْ هَذَا، لَا أَنَّ الْمَقْتُولَ ادَّعَى عَلَى أَحَدٍ، وَلَا أَنَّهُ قُتِلَ بِهِ، وَلَا أَنَّهُ كَانَتْ فِيهِ قَسَامَةٌ، فَكُلُّ مَا أَخْبَرَ اللَّهُ تَعَالَى بِهِ فَهُوَ حَقٌّ، وَكُلُّ مَا أَقْحَمُوهُ بِآرَائِهِمْ فِي الْآيَةِ فَهُوَ بَاطِلٌ - فَبَطَلَ أَنْ يَكُونَ لَهُمْ فِي الْآيَةِ مُتَعَلَّقٌ أَصْلًا.

L39589–39591 Then we examined the reports we mentioned and found them all to be disconnected narrations, none of which provide authoritative evidence except the one we introduced initially - which is a narration attributed solely to Ibn Abbas. No authoritative evidence can be derived from anyone below the Messenger of Allah (peace and blessings be upon him), thereby invalidating any basis for their reliance on these reports. Even if the mentioned reports from the Messenger of Allah (peace and blessings be upon him and his family) were authentic, all of them would still lack authoritative evidence for them due to several reasons: The first being that this ruling applied to the Children of Israel, and we are not obligated to follow what applied to them, for indeed it was. Among them are the Sabbath [as ordained for earlier communities], the prohibition of prohibited fats, and other such matters—and we are bound only by what our Prophet—peace be upon him—has commanded us.

ثُمَّ نَظَرْنَا فِي الْأَخْبَارِ الَّتِي ذَكَرْنَا فَوَجَدْنَاهَا كُلَّهَا مُرْسَلَةً، لَا حُجَّةَ فِي شَيْءٍ مِنْهَا، إلَّا الَّذِي صَدَّرْنَا بِهِ فَهُوَ مَوْقُوفٌ عَلَى ابْنِ عَبَّاسٍ وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَطَلَ أَنْ يَكُونَ لَهُمْ فِي شَيْءٍ مِنْهَا مُتَعَلَّقٌ ثُمَّ لَوْ صَحَّتْ الْأَخْبَارُ الْمَذْكُورَةُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَكَانَتْ كُلُّهَا لَا حُجَّةَ لَهُمْ فِيهَا لِوُجُوهٍ: أَوَّلُهَا - أَنَّ ذَلِكَ حُكْمٌ كَانَ فِي بَنِي إسْرَائِيلَ، وَلَا يَلْزَمُنَا مَا كَانَ فِيهِمْ، فَقَدْ كَانَ فِيهِمْ السَّبْتُ، وَتَحْرِيمُ الشُّحُومِ، وَغَيْرُ ذَلِكَ - وَلَا يَلْزَمُنَا إلَّا مَا أَمَرَنَا بِهِ نَبِيُّنَا - عَلَيْهِ السَّلَامُ -.

L39592 Allah the Exalted said: "To each [community] among you We have prescribed a law and a path" [5:48]. The Messenger of Allah—may Allah send blessings upon him and his family and grant him peace—said: "I have been favored over the prophets with six distinctions"—among which he mentioned: "Those before him were sent only to their specific people, whereas he—peace be upon him—was sent to the Red and the Black."[10]

قَالَ اللَّهُ تَعَالَى {لِكُلٍّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا} [المائدة: ٤٨] وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «فُضِّلْتُ عَلَى الْأَنْبِيَاءِ بِستٍّ - فَذَكَرَ فِيهَا -: أَنَّ مَنْ كَانَ قَبْلَهُ: إنَّمَا كَانَ يُبْعَثُ إلَى قَوْمِهِ خَاصَّةً، وَبُعِثَ هُوَ - عَلَيْهِ السَّلَامُ - إلَى الْأَحْمَرِ وَالْأَسْوَدِ» .

L39593 Thus, it is established with certainty that Moses—peace be upon him—and the rest of the prophets before Muhammad—peace be upon him—were not

[9] **Qur'an references (L39587):** Qur'an 2:73 (Al-Baqarah).
[10] **Qur'an references (L39592):** Qur'an 5:48 (Al-Ma'idah).

فَصَحَّ يَقِينًا أَنَّ مُوسَى - عَلَيْهِ السَّلَامُ - وَسَائِرَ الْأَنْبِيَاءِ قَبْلَ مُحَمَّدٍ - عَلَيْهِ السَّلَامُ - لَمْ يُبْعَثُوا إلَيْنَا، فَبِيَقِينٍ نَدْرِي أَنَّ شَرَائِعَ مَنْ لَمْ يُبْعَثْ إلَيْنَا لَيْسَتْ لَازِمَةً لَنَا، وَإِنَّمَا يَلْزَمُنَا الْإِقْرَارُ بِنُبُوَّتِهِمْ فَقَطْ.

sent to us. Therefore, we know with certainty that the laws of those who were not sent to us are not binding upon us; rather, only the acknowledgment of their prophethood is obligatory upon us.

وَثَانِيهَا - أَنَّهُ لَا يَخْتَلِفُ اثْنَانِ مِنْ الْمُسْلِمِينَ فِي أَنَّهُ لَا يَلْزَمُنَا فِي شَيْءٍ مِنْ دَعْوَى الدِّمَاءِ ذَبْحُ بَقَرَةٍ - وَصَحَّ بُطْلَانُ احْتِجَاجِهِمْ بِتِلْكَ الْأَخْبَارِ، إذْ لَيْسَ فِيهَا أَنْ يُسْمَعَ مِنْ الْمَقْتُولِ بَعْدَ: أَنْ تُذْبَحَ بَقَرَةٌ وَيُضْرَبَ بِهَا.

L39594 The second is that no two Muslims differ regarding the fact that we are not obligated in any matter of blood money claims to slaughter a cow. The invalidity of their argument through those narrations has been established, as they do not state that testimony is heard from the slain person after slaughtering a cow and striking with it.

وَثَالِثُهَا - أَنَّ تِلْكَ الْأَخْبَارَ فِيهَا مُعْجِزَةُ نَبِيٍّ وَإِحَالَةُ الطَّبِيعَةِ مِنْ إحْيَاءِ مَيِّتٍ - فَهُمْ يُرِيدُونَ أَنْ نُصَدِّقَ حَيًّا قَدْ حَرَّمَ اللَّهُ تَعَالَى عَلَيْنَا تَصْدِيقَهُ عَلَى غَيْرِ نَفْسِهِ مُمْكِنًا مِنْهُ الْكَذِبُ مِنْ أَجْلِ أَنْ صَدَّقَ بَنُو إسْرَائِيلَ مَيِّتًا أَحْيَاهُ اللَّهُ تَعَالَى بَعْدَ مَوْتِهِ - وَهَذَا ضِدُّ الْقِيَاسِ بِلَا شَكٍّ، وَضِدُّ مَا فِي هَذِهِ الْأَخْبَارِ بِلَا شَكٍّ.

L39595 And the third is that those reports contain the miracle of a prophet and the alteration of natural laws through reviving a dead person. Thus, they want us to believe a living person—whom Allah the Exalted has forbidden us to believe regarding matters beyond himself, and from whom lying is possible—merely because the Children of Israel believed a dead person whom Allah the Exalted revived after his death. This is unquestionably contrary to analogy and unquestionably contrary to what is in these reports.

وَالْأَمْرُ بَيْنَنَا وَبَيْنَهُمْ فِي هَذِهِ الْمَسْأَلَةِ قَرِيبٌ، فَلْيُرُونَا مَقْتُولًا رَدَّ اللَّهُ تَعَالَى رُوحَهُ إلَيْهِ بِحَضْرَةِ نَبِيٍّ أَوْ بِغَيْرِ حَضْرَتِهِ وَيُخْبِرُنَا بِالشَّيْءِ وَنَحْنُ حِينَئِذٍ نُصَدِّقُهُ، وَأَمَّا أَنْ نُصَدِّقَ حَيًّا يَدَّعِي عَلَى غَيْرِهِ، فَهُوَ أَبْطَلُ الْبَاطِلِ بِعَيْنِهِ، فَذِكْرُهُمْ لِهَذِهِ الْآيَةِ وَهَذِهِ الْأَخْبَارِ: قَبِيحٌ، لَوْ تَوَرَّعَ عَنْهُمْ لَكَانَ أَسْلَمَ، وَنَسْأَلُ اللَّهَ تَعَالَى الْعَافِيَةَ.

L39596 The matter between us and them in this issue is comparable. Let them show us a slain person to whom Allah the Exalted has restored his soul—whether in the presence of a prophet or otherwise—and inform us of it; then we will believe it. As for accepting the testimony of a living person who alleges against another, that is the very epitome of falsehood. Their citation of this verse and these reports is reprehensible. Had they shown piety by avoiding such claims, it would have been more upright. We ask Allah the Exalted for well-being.

وَذَكَرُوا - مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا يَحْيَى بْنُ الْحَارِثِيِّ، وَمُحَمَّدُ بْنُ الْمُثَنَّى، قَالَ يَحْيَى: نا خَالِدُ بْنُ الْحَارِثِ، وَقَالَ ابْنُ الْمُثَنَّى: نا مُحَمَّدُ بْنُ جَعْفَرٍ ثُمَّ اتَّفَقَ خَالِدٌ، وَمُحَمَّدٌ: كِلَاهُمَا عَنْ شُعْبَةَ عَنْ هِشَامِ بْنِ زَيْدٍ عَنْ أَنَسِ بْنِ مَالِكٍ: «أَنَّ يَهُودِيًّا قَتَلَ جَارِيَةً عَلَى أَوْضَاحٍ لَهَا فَقَتَلَهَا بِحَجَرٍ فَجِيءَ بِهَا إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِهَا رَمَقٌ، فَقَالَ لَهَا: أَقَتَلَكِ

L39597–39599 They mentioned—as we have narrated via the isnād (chain) of Imam Muslim from Yaḥyā ibn al-Ḥārithī and Muḥammad ibn al-Muthannā. Yaḥyā said: Khālid ibn al-Ḥārith narrated to us, while Ibn al-Muthannā said: Muḥammad ibn Jaʿfar narrated to us. Then their chains converged—both Khālid and Muḥammad narrating from Shuʿbah from Hishām ibn Zayd from Anas ibn Mālik: “That a Jew killed a girl over her jewelry, striking her with a stone. She was brought to the Prophet—peace and blessings be upon him—while

still clinging to her last breath." He said to her: "Did so-and-so kill you?" She gestured 'no' with her head. Then he asked her a second time, and she gestured 'no' with her head. He asked her a third time, whereupon she said: "Yes," nodding her head in confirmation. The Messenger of Allah - peace and blessings of Allah be upon him - then killed him by crushing him between two stones. Abu Muhammad (may Allah have mercy on him) said: "This provides no valid proof for their claim, for this is a report we have transmitted via the mentioned chain reaching Muslim: From 'Abd ibn Ḥumayd, from 'Abd al-Razzāq, from Ma'mar, from Ayyūb al-Sikhtiyānī, from Abū Qilābah, from Anas: 'A Jewish man killed a girl from the Ansar over her ornaments, threw her into a well, and crushed her head with stones. He was apprehended and brought to the Messenger of Allah - peace and blessings of Allah be upon him - who commanded that he be stoned to death.'" Similarly, it was narrated by Sa'īd ibn Abī 'Arūbah and Abbān ibn Yazīd al-'Aṭṭār, both from Qatādah, from Anas.

فُلَانٌ؟ فَأَشَارَتْ بِرَأْسِهَا: أَنْ لَا، ثُمَّ قَالَ لَهَا الثَّانِيَةَ، فَأَشَارَتْ بِرَأْسِهَا: أَنْ لَا، سَأَلَهَا الثَّالِثَةَ؟ فَقَالَتْ: نَعَمْ، وَأَشَارَتْ بِرَأْسِهَا، فَقَتَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ حَجَرَيْنِ» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ هَذَا خَبَرٌ رُوِّينَاهُ بِالسَّنَدِ الْمَذْكُورِ إلَى مُسْلِمٍ نا عَبْدُ بْنُ حُمَيْدٍ نا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسٍ: «أَنَّ رَجُلًا مِنْ الْيَهُودِ قَتَلَ جَارِيَةً مِنْ الْأَنْصَارِ عَلَى حُلِيٍّ لَهَا ثُمَّ أَلْقَاهَا فِي قَلِيبٍ وَرَضَخَ رَأْسَهَا بِالْحِجَارَةِ؟ وَأُخِذَ فَأُتِيَ بِهِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَ بِهِ أَنْ يُرْجَمَ حَتَّى يَمُوتَ» وَهَكَذَا رَوَاهُ سَعِيدُ بْنُ أَبِي عَرُوبَةَ، وَأَبَانُ بْنُ يَزِيدَ الْعَطَّارُ، كِلَاهُمَا عَنْ قَتَادَةَ عَنْ أَنَسٍ.

L39600 If they say: Indeed, Shu'bah added the mention of the slain woman's claim in this narrative, and the addition of a reliable narrator is acceptable? We reply: You have spoken truthfully, for Hammām ibn Yaḥyā added from Qatādah from Anas—in this report—an addition that it is impermissible to omit: as we have been informed via the chain of Muslim: Haddāb ibn Khālid narrated, Hammām narrated from Qatādah from Anas: "A girl was found whose head had been crushed between two stones. They asked her, 'Who did this to you?' So-and-so, so-and-so—until they mentioned a Jew, and she gestured with her head. The Jew was seized, and he confessed. The Messenger of Allah—peace and blessings be upon him—then ordered that his head be crushed with stones." Thus, it is confirmed that he—peace and blessings be upon him—did not kill the Jew except based on his confession, not due to the claim of the slain woman.

فَإِنْ قَالُوا: إنَّ شُعْبَةَ زَادَ ذِكْرَ دَعْوَى الْمَقْتُولَةِ فِي هَذِهِ الْقِصَّةِ وَزِيَادَةُ الْعَدْلِ مَقْبُولَةٌ؟ قُلْنَا: صَدَقْتُمْ، وَقَدْ زَادَ هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ أَنَسٍ - فِي هَذَا الْخَبَرِ زِيَادَةً لَا يَحِلُّ تَرْكُهَا: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا هَدَّابُ بْنُ خَالِدٍ نا هَمَّامٌ عَنْ قَتَادَةَ عَنْ أَنَسٍ: «أَنَّ جَارِيَةً وُجِدَ رَأْسُهَا قَدْ رُضَّ بَيْنَ حَجَرَيْنِ فَسَأَلُوهَا مَنْ صَنَعَ هَذَا بِكِ؟ فُلَانٌ، فُلَانٌ، حَتَّى ذَكَرُوا يَهُودِيًّا فَأَوْمَأَتْ بِرَأْسِهَا، فَأُخِذَ الْيَهُودِيُّ فَأَقَرَّ؟ فَأَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُرَضَّ رَأْسُهُ بِالْحِجَارَةِ» ، فَصَحَّ أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقْتُلْ الْيَهُودِيَّ إلَّا بِإِقْرَارِهِ، لَا بِدَعْوَى الْمَقْتُولَةِ.

L39601 Another aspect is that if they were to validate what can never be valid—namely, that the Prophet (peace be upon him) killed the man solely based on the claim of the killed woman—then this report would constitute a proof against them. They would thereby oppose his ruling, for it contains no mention whatsoever of *qasāmah* (collective oath-swearing). Yet they cat-

وَوَجْهٌ آخَرُ - وَهُوَ أَنَّهُ لَوْ صَحَّ لَهُمْ مَا لَا يَصِحُّ أَبَدًا مِنْ أَنَّهُ - عَلَيْهِ السَّلَامُ - إنَّمَا قَتَلَهُ بِدَعْوَاهَا لَكَانَ هَذَا الْخَبَرُ حُجَّةً عَلَيْهِمْ، وَلَكَانُوا مُخَالِفِينَ لَهُ، لِأَنَّهُ لَيْسَ فِيهِ ذِكْرُ قَسَامَةٍ

egorically refrain from executing anyone based on the claim of the killed woman unless at least two guardians must swear fifty oaths without fail.

أَصْلًا، وَهُمْ لَا يَقْتُلُونَ بِدَعْوَى الْمَقْتُولَةِ أَلْبَتَّةَ إلَّا حَتَّى يَحْلِفَ اثْنَانِ فَصَاعِدًا مِنْ الْأَوْلِيَاءِ خَمْسِينَ يَمِينًا وَلَا بُدَّ.

L39602 Moreover, they do not accept *qasamah* on the claim of someone who has not reached puberty.

وَأَيْضًا - فَهُمْ لَا يَرَوْنَ الْقَسَامَةَ بِدَعْوَى مَنْ لَمْ يَبْلُغْ.

L39603 The most apparent interpretation in this report is that she had not reached puberty, because he mentioned a girl with clear features. This description among the Arabs—whose language Anas used—is only applied to a young girl, not to a mature woman.

وَالْأَظْهَرُ فِي هَذَا الْخَبَرِ أَنَّهَا كَانَتْ لَمْ تَبْلُغْ، لِأَنَّهُ ذَكَرَ جَارِيَةً ذَاتَ أَوْضَاحٍ، وَهَذِهِ الصِّفَةُ عِنْدَ الْعَرَبِ الَّذِينَ بِلُغَتِهِمْ تَكَلَّمَ أَنَسٌ، إنَّمَا يُوقِعُونَهَا عَلَى الصَّبِيَّةِ، لَا عَلَى الْمَرْأَةِ الْبَالِغِ.

L39604–39605 Thus, their reliance on this narration has been invalidated in every respect, and their disagreement in that matter has become apparent. Therefore, it is obligatory to uphold this position, and it is not permissible for anyone to deviate from it.

فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ بِكُلِّ وَجْهٍ، وَلَاحَ خِلَافُهُمْ فِي ذَلِكَ، فَوَجَبَ الْقَوْلُ بِهِ، وَلَا يَحِلُّ لِأَحَدٍ الْعُدُولُ عَنْهُ.

L39606 The Malikis and those who do not recognize qasāmah in this matter objected by saying: "What if the slain person could be killed, then his killer carries him and throws him at someone's door or in a people's dwelling?" Our response—and by Allah's exalted facilitation—is that this is possible, but one cannot oppose the ruling of Allah, the Exalted, and the ruling of His Messenger—peace be upon him—by claiming such a scenario is possible. Every Muslim knows with certainty that a witness might lie, an oath-taker might lie, and a claimant might lie [by saying], "So-and-so killed him." This reality no one can deny. By this argument through which they rejected the ruling of the Messenger of Allah—peace and blessings be upon him—and opposed him, they should consequently not kill anyone based on two witnesses' testimony, for they might lie. Retaliation based on two witnesses is not established by consensus, so it cannot be relied upon, since Al-Ḥasan states: "Retaliation is not accepted except with four witnesses."

وَاعْتَرَضَ الْمَالِكِيُّونَ، وَمَنْ لَا يَرَى الْقَسَامَةَ فِي هَذَا، بِأَنْ قَالُوا: وَالْقَتِيلُ قَدْ يُقْتَلُ ثُمَّ يَحْمِلُهُ قَاتِلُهُ فَيُلْقِيهِ عَلَى بَابِ إنْسَانٍ أَوْ فِي دَارِ قَوْمٍ؟ فَجَوَابُنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: أَنَّ هَذَا مُمْكِنٌ، وَلَكِنْ لَا يُعْتَرَضُ عَلَى حُكْمِ اللَّهِ تَعَالَى، وَحُكْمِ رَسُولِهِ - عَلَيْهِ السَّلَامُ -: بِأَنَّهُ يُمْكِنُ أَمْرُ كَذَا، وَبِيَقِينٍ يَدْرِي كُلُّ مُسْلِمٍ أَنَّهُ قَدْ يُمْكِنُ أَنْ يَكْذِبَ الشَّاهِدُ، وَيَكْذِبَ الْحَالِفُ، وَيَكْذِبَ الْمُدَّعِي: أَنَّ فُلَانًا قَتَلَهُ - هَذَا أَمْرٌ لَا يَقْدِرُ أَحَدٌ عَلَى دَفْعِهِ، فَيَنْبَغِي عَلَى هَذَا الْقَوْلِ الَّذِي رَدُّوا بِهِ حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَخَالَفُوهُ: أَنْ لَا يَقْتُلُوا أَحَدًا بِشَهَادَةِ شَاهِدَيْنِ، فَقَدْ يَكْذِبَانِ، وَلَيْسَ الْقَوَدُ بِالشَّاهِدَيْنِ إجْمَاعًا فَيَتَعَلَّقُ بِهِ؛ لِأَنَّ الْحَسَنَ يَقُولُ: لَا يُقْبَلُ فِي الْقَوَدِ إلَّا أَرْبَعَةٌ.

L39607 Then we return to our issue and say (and with Allah the Exalted is divine guidance): It is not permissible for a Muslim who knows that Allah's promise is true to object to what the Messenger of Allah (peace and blessings be upon him) ruled by saying, "This ruling is invalid, because his killer might throw him at another person's door—and yes, this is possible."

ثُمَّ نَرْجِعُ إلَى مَسْأَلَتِنَا فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّهُ لَا يَحِلُّ لِمُسْلِمٍ - يَدْرِي أَنَّ وَعْدَ اللَّهِ حَقٌّ - أَنْ يَعْتَرِضَ عَلَى مَا حَكَمَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ

يَقُولَ: لَا يَجُوزُ هَذَا الْحُكْمُ، لِأَنَّهُ قَدْ يُمْكِنُ أَنْ يَرْمِيَهُ قَاتِلُهُ عَلَى بَابِ غَيْرِهِ - وَنَعَمْ، - هَذَا مُمْكِنٌ.

أَتَرَى لَوْ أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَتْلِ أَهْلِ مَدِينَةٍ بِأَسْرِهَا أَوْ بِقَتْلِ أُمَّهَاتِنَا وَآبَائِنَا وَأَنْفُسِنَا، كَمَا أَمَرَ مُوسَى - عَلَيْهِ السَّلَامُ - قَوْمَهُ بِقَتْلِ أَنْفُسِهِمْ إِذْ أَخْبَرَ اللَّهُ تَعَالَى بِذَلِكَ فِي قَوْلِهِ {فَاقْتُلُوا أَنْفُسَكُمْ ذَلِكُمْ خَيْرٌ لَكُمْ عِنْدَ بَارِئِكُمْ} [البقرة: ٥٤] أَكَانَ يَكُونُ فِي الْإِسْلَامِ نَصِيبٌ لِمَنْ يَعْنِدُ عَنْ ذَلِكَ؟ إِنَّ هَذَا لَعَظِيمٌ جِدًّا.

L39608 Do you think that if the Messenger of Allah—may Allah bless him and grant him peace—commanded us to kill the inhabitants of an entire city, or to kill our mothers, fathers, and ourselves, as Moses, peace be upon him, commanded his people to kill themselves when Allah the Exalted informed them of this in His verse, *Kill yourselves; that is better for you all in the sight of your Creator* [Surah Al-Baqarah, 2:54], would there remain any place in Islam for one who stubbornly refuses this? Truly, this is an immensely grave matter.[11]

وَالْعَجَبُ كُلُّهُ أَنَّ ذَلِكَ الْحُكْمَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُكْمٌ ظَاهِرٌ مُعَلَّقٌ فِي دَمِ رَجُلٍ مِنْ بَنِي حَارِثَةَ مِنْ الْأَنْصَارِ عَلَى يَهُودَ خَيْبَرَ، وَبَيْنَهُمَا مِنْ الْمَسَافَةِ سِتَّةٌ وَتِسْعُونَ مِيلًا مِائَةُ مِيلٍ غَيْرَ أَرْبَعَةِ أَمْيَالٍ تَتَرَدَّدُ فِي ذَلِكَ الرُّسُلُ، وَتَخْتَلِفُ الْكُتُبُ، وَيَقَعُ فِي ذَلِكَ التَّوَعُّدُ بِالْحَرْبِ.

L39609 The most astonishing thing is that this ruling from the Messenger of Allah (peace and blessings be upon him) was a clear judgment dependent on the blood of a man from Banu Harithah of the Ansar against the Jews of Khaybar. The distance between them was ninety-six miles (equivalent to a hundred miles less four), over which envoys traveled back and forth regarding this matter. The letters contained conflicting accounts, and in this context threats of war arose.

كَمَا صَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - أَنَّهُ قَالَ «إمَّا أَنْ يَدُوا صَاحِبَكُمْ أَوْ يُؤْذِنُوا بِحَرْبٍ» .

L39610 As authentically reported from him (peace be upon him): “Either they pay the blood money for your companion or declare war.”

فَهَذَا أَمْرٌ لَا يَشُكُّ ذُو حِسٍّ سَلِيمٍ - مِنْ مُؤْمِنٍ أَوْ كَافِرٍ - فِي أَنَّهُ لَمْ تَخْفَ هَذِهِ الْقِصَّةُ، وَلَا هَذَا الْحُكْمُ عَلَى أَحَدٍ مِنْ الْمُسْلِمِينَ بِالْمَدِينَةِ، وَلَا عَنْ الْيَهُودِ، وَلَا إسْلَامَ يَوْمَئِذٍ فِي غَيْرِ الْمَدِينَةِ، إلَّا مَنْ كَانَ مُهَاجِرًا بِالْحَبَشَةِ، أَوْ مُسْتَضْعَفًا بِمَكَّةَ؛ لِأَنَّ ذَلِكَ كَانَ قَبْلَ فَتْحِ خَيْبَرَ.

L39611–39613 This is a matter that no person of sound judgment—whether believer or disbeliever—doubts: neither this incident nor this ruling concerning any of the Muslims in Medina was hidden, nor hidden from the Jews, nor was Islam hidden. At that time, in other than Medina except those who had migrated to Abyssinia or were oppressed in Mecca, since this was before the conquest of Khaybar.

لِأَنَّ فِي الْحَدِيثِ الثَّابِتِ الَّذِي أَوْرَدْنَاهُ قَبْلُ مِنْ طَرِيقِ سُلَيْمَانَ بْنِ بِلَالٍ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ بَشِيرِ بْنِ يَسَارٍ: أَنَّ خَيْبَرَ كَانَتْ يَوْمَئِذٍ صُلْحًا وَلَمْ تَكُنْ قَطُّ صُلْحًا بَعْدَ فَتْحِهَا

L39614 This is because in the authentic ḥadīth we previously cited through the chain of Sulaymān ibn Bilāl, from Yaḥyā ibn Saʿīd, from Bashīr ibn Yasār: Khaybar was under a peace agreement at that time. No peace agreement was ever established after its conquest by force. Rather, they were dhimmah, with

[11] **Qur’an references (L39608):** Qur’an 2:54 (Al-Baqarah).

subjugation applied to them. They were not termed a peace agreement, nor were they permitted to initiate war.

عَنْوَةً، بَلْ كَانُوا ذِمَّةً تَجْرِي عَلَيْهِمْ الصَّغَارُ، لَا يُسَمُّونَ صُلْحًا، وَلَا يُمَكَّنُونَ مِنْ أَنْ يَأْذَنُوا بِحَرْبٍ.

L39615 It was definitively established with certainty that this ruling from the Messenger of Allah (peace be upon him) constitutes a consensus by all the Companions (may Allah be pleased with them, the first and last among them) - a certainty leaving no room for doubt.

فَصَحَّ يَقِينًا أَنَّ ذَلِكَ الْحُكْمَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إجْمَاعٌ مِنْ جَمِيعِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَوَّلِهِمْ وَآخِرِهِمْ بِيَقِينٍ لَا مَجَالَ لِلشَّكِّ فِيهِ.

L39616 Abū Muḥammad—may Allāh have mercy on him—said: If someone were to ask, “What is your ruling regarding a slain person found with a faint sign of life, who is then carried away and dies in another place, on the way, or dies immediately after being found with life still in him?” Our response is: There is no oath of collective liability (qasāmah) in this case. It involves only mutual claims. The legal guardians of the deceased are obligated to provide evidence, regardless of whether the deceased accused someone or not. If they present evidence, the ruling is issued in accordance with their testimony. If they fail to provide evidence, the defendants—if there is only one—must take a single oath. If there are multiple defendants, all of them must take an oath individually without exception, and they are compelled to do so indefinitely.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ قَالَ قَائِلٌ: فَمَا تَقُولُونَ فِي قَتِيلٍ يُوجَدُ وَفِيهِ رَمَقٌ، فَيُحْمَلُ فَيَمُوتُ فِي مَكَانٍ آخَرَ، أَوْ فِي الطَّرِيقِ، أَوْ يَمُوتُ إثْرَ وُجُودِهِمْ لَهُ وَفِيهِ حَيَاةٌ؟ فَجَوَابُنَا: أَنَّهُ لَا قَسَامَةَ فِي هَذَا، وَإِنَّمَا فِيهِ التَّدَاعِي فَقَطْ، يُكَلَّفُ أَوْلِيَاؤُهُ الْبَيِّنَةَ، سَوَاءٌ ادَّعَى هُوَ عَلَى أَحَدٍ أَوْ لَمْ يَدَّعِ، فَإِنْ جَاءُوا بِالْبَيِّنَةِ قَضَى لَهُمْ بِمَا شَهِدَتْ بِهِ بَيِّنَتُهُمْ، وَإِنْ لَمْ يَأْتُوا بِالْبَيِّنَةِ حَلَفَ الْمُدَّعَى عَلَيْهِمْ يَمِينًا وَاحِدَةً - إنْ كَانَ وَاحِدًا - فَإِنْ كَانُوا أَكْثَرَ مِنْ وَاحِدٍ حَلَفُوا كُلُّهُمْ يَمِينًا يَمِينًا وَلَا بُدَّ وَيُجْبَرُونَ عَلَى ذَلِكَ أَبَدًا.

L39617 Our proof for this is that the universally established principle in Islam regarding every legal claim—whether pertaining to bloodshed, property, or other rights, without exception—is: “The burden of proof rests on the claimant, and the oath of denial rests on the accused.”

وَبُرْهَانُنَا عَلَى ذَلِكَ: هُوَ أَنَّ الْأَصْلَ الْمُطَّرِدَ فِي كُلِّ دَعْوَى فِي الْإِسْلَامِ مِنْ دَمٍ أَوْ مَالٍ أَوْ غَيْرِ ذَلِكَ مِنْ الْحُقُوقِ، وَلَا نُحَاشِ شَيْئًا - هُوَ " أَنَّ الْبَيِّنَةَ عَلَى الْمُدَّعِي وَالْيَمِينَ عَلَى مَنْ ادُّعِيَ عَلَيْهِ ".

L39618 As the Messenger of Allah (peace be upon him) taught when he said: “If people were granted their claims based on their assertions, some would claim the blood of men and their wealth. But the oath lies upon the respondent.”

كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ يَقُولُ «لَوْ أُعْطِيَ النَّاسُ بِدَعْوَاهُمْ لَادَّعَى قَوْمٌ دِمَاءَ رِجَالٍ وَأَمْوَالَهُمْ وَلَكِنَّ الْيَمِينَ عَلَى الْمُدَّعَى عَلَيْهِ» .

L39619 His statement (may Allah’s peace and blessings be upon him and his family), “Your proof or his oath,” and these two are general. It is not permissible for anyone to exclude anything from them except what is excluded by an explicit text or consensus. There is no explicit text except regarding the slain person

وَقَوْلُهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «بَيِّنَتُك أَوْ يَمِينُهُ» ، وَهَذَانِ عَامَّانِ، وَلَا يَصِحُّ لِأَحَدٍ أَنْ يُخْرِجَ عَنْهُمَا شَيْئًا، إلَّا مَا أَخْرَجَهُ نَصٌّ أَوْ إجْمَاعٌ، وَلَا نَصَّ إلَّا فِي الْقَتِيلِ يُوجَدُ فَقَطْ، فَمَتَى وَجَدَهُ حَيًّا أَحَدٌ مِنْ النَّاسِ فَلَا قَسَامَةَ فِيهِ أَلْبَتَّةَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

when he is found. Thus, if someone finds the slain person alive, there is no qasāmah whatsoever in the matter—and success is from Allah, the Exalted.

فَإِنْ وُجِدَ لَا أَثَرَ فِيهِ؟ فَقَدْ قُلْنَا: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا حَكَمَ فِي مَقْتُولٍ، وَلَيْسَ كُلُّ مَيِّتٍ مَقْتُولًا، فَإِنْ تَيَقَّنَّا أَنَّهُ قُتِلَ بِأَثَرٍ وُجِدَ فِيهِ مِنْ: ضَرْبٍ أَوْ شَدْخٍ أَوْ خَنْقٍ، أَوْ ذَبْحٍ أَوْ طَعْنٍ، أَوْ جُرْحٍ أَوْ كَسْرٍ، أَوْ سُمٍّ - فَهُوَ مَقْتُولٌ وَالْقَسَامَةُ فِيهِ.

L39620–39621 If no trace was found in him, we have stated that the Messenger of Allah—peace and blessings be upon him—ruled specifically regarding a slain person, and not every deceased person is slain. If we ascertain that he was killed through a trace found in him resulting from striking, skull-crushing, strangling, throat-cutting, stabbing, wounding, bone-breaking, or poison—then he is slain, and the qasāmah (oath-swearing procedure for homicide) applies in his case.

وَإِنْ تَيَقَّنَّا أَنَّهُ مَيِّتٌ حَتْفَ أَنْفِهِ لَا أَثَرَ فِيهِ أَلْبَتَّةَ فَلَا قَسَامَةَ؛ لِأَنَّهُ لَيْسَتْ هِيَ الْحَالَ الَّتِي حَكَمَ فِيهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقَسَامَةِ.

L39622 And if we are certain that he died a natural death with no trace in him whatsoever, then there is no oath of collective liability (qasāmah), because this is not the case in which the Messenger of Allah—may Allah's blessings and peace be upon him—ruled on the qasāmah.

إنْ أَشْكَلَ أَمْرُهُ فَأَمْكَنَ أَنْ يَكُونَ مَيِّتًا حَتْفَ أَنْفِهِ، وَأَمْكَنَ أَنْ يَكُونَ مَقْتُولًا، غَمَّهُ بِشَيْءٍ وَضَعَهُ عَلَى فِيهِ فَقَطَعَ نَفَسَهُ فَمَاتَ: فَالْقَسَامَةُ فِيهِ.

L39623 If the matter is ambiguous where it is possible he died by natural causes and possible he was killed—such as being overwhelmed by something placed over his mouth, cutting off his breath and causing death—then the qasāmah applies.

فَإِنْ قِيلَ: لِمَ قُلْتُمْ هَذَا وَالْأَصْلُ أَنَّ مَنْ مَاتَ غَيْرَ مَقْتُولٍ فَلَا قَسَامَةَ فِيهِ؟ قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّ الْمَقْتُولَ أَيْضًا مُمْكِنٌ أَنْ يَكُونَ قَتَلَ نَفْسَهُ أَوْ قَتَلَهُ سَبُعٌ، فَلَمَّا كَانَ إمْكَانُ مَا ذَكَرْنَا لَا يَمْنَعُ مِنْ الْقَسَامَةِ لِإِمْكَانِ أَنْ يَكُونَ قَدْ قَتَلَهُ مَنْ ادَّعَى عَلَيْهِ أَنَّهُ قَتَلَهُ، وَوَجَبَتْ الْقَسَامَةُ؛ لِإِمْكَانِ أَنْ يَكُونَ قَتَلَهُ مَنْ ادَّعَى عَلَيْهِ أَنَّهُ قَتَلَهُ - فَلَيْسَ هَذَا قِيَاسًا، فَلَا تَكُنْ غَافِلًا مُتَعَسِّفًا أَنَّنَا قَدْ قِسْنَا أَحَدَهُمَا عَلَى الْآخَرِ - وَمَعَاذَ اللَّهِ مِنْ ذَلِكَ، لَكِنَّهُ بَابٌ وَاحِدٌ كُلُّهُ، إنَّمَا هُوَ مَنْ وُجِدَ مَيِّتًا وَادَّعَى أَوْلِيَاؤُهُ عَلَى قَوْمٍ أَنَّهُمْ قَتَلُوهُ، أَوْ عَلَى وَاحِدٍ أَنَّهُ قَتَلَهُ وَكَانَ قَتْلُهُمْ لَهُ الَّذِي ادَّعَى أَوْلِيَاؤُهُ عَلَيْهِمْ مُمْكِنًا - فَهَذِهِ هِيَ الْقِصَّةُ الَّتِي حَكَمَ فِيهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِعَيْنِهَا بِالْقَسَامَةِ، فَفَرْضٌ عَلَيْنَا أَنْ نَحْكُمَ فِيهَا بِالْقَسَامَةِ إذَا أَمْكَنَ أَنْ يَكُونَ مَنْ ادَّعَى أَوْلِيَاؤُهُ حَقًّا، وَإِنَّمَا يَبْطُلُ الْحُكْمُ

L39624 If it is said: Why do you hold this position when the foundational principle states that if someone dies without being slain, there is no qasāmah in his case? We respond—and success comes only from Allah, the Exalted—that even the slain person could have killed himself or been killed by a predatory beast. However, this possibility does not preclude qasāmah, as it remains plausible that the accused killed him—thereby obligating qasāmah. This is not an analogy, so do not be heedless and stubbornly insist that we have analogized one case to another—Allah forbid! Rather, it constitutes a single legal category: whenever a deceased is found and their heirs accuse a group or individual of killing them—provided the accused could plausibly have committed the killing—this is precisely the scenario in which Allah's Messenger (peace and blessings be upon him) ruled with qasāmah. Thus, we are obligated to rule with qasāmah if the heirs' claim could be valid. The ruling through qasāmah is invalidated only when we are undeniably certain their claim is false. Abū Muḥammad (may Allah have mercy on him) said: It

is irrelevant whether the slain is found in the abode of hostile disbelievers, hostile believers, allied disbelievers, allied believers, in his brother's abode, his son's abode, or wherever he is found—qasāmah applies. This is the view of Ibn al-Zubayr and Muʿāwiyah, established in the presence of the Companions (may Allah be pleased with them), with no authentic disagreement from any Companion reported. They ruled with qasāmah in the case of Ismāʿīl ibn Hibbār, who was found slain in Medina. A group accused three men from disparate tribes—Zuhra, Taymī, and Laythī Kinānī, residing in separate dwellings—of killing him, though the slain was not found in their midst. This is our position—and success comes only from Allah, the Exalted.

بِالْقَسَامَةِ إِذَا أَيْقَنَّا أَنَّ الَّذِي يَدَّعُونَهُ بَاطِلٌ بِيَقِينٍ لَا شَكَّ فِيهِ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَسَوَاءٌ وُجِدَ الْقَتِيلُ فِي دَارِ أَعْدَاءٍ كُفَّارٍ، أَوْ أَعْدَاءٍ مُؤْمِنِينَ، أَوْ أَصْدِقَاءٍ كُفَّارٍ، أَوْ أَصْدِقَاءٍ مُؤْمِنِينَ، أَوْ فِي دَارِ أَخِيهِ، أَوْ ابْنِهِ أَوْ حَيْثُمَا وُجِدَ، فَالْقَسَامَةُ فِي ذَلِكَ - وَهُوَ قَوْلُ ابْنِ الزُّبَيْرِ وَمُعَاوِيَةَ، بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يَصِحُّ خِلَافُهُمَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ؛ لِأَنَّهُمَا حَكَمَا بِالْقَسَامَةِ فِي إسْمَاعِيلَ بْنِ هَبَّارٍ وُجِدَ مَقْتُولًا بِالْمَدِينَةِ، وَادَّعَى قَوْمٌ قَتْلَهُ عَلَى ثَلَاثَةٍ مِنْ قَبَائِلَ شَتَّى - مُفْتَرِقَةِ الدُّورِ - وَلَمْ يُوجَدْ الْمَقْتُولُ بَيْنَ أَظْهُرِهِمْ وَهُمْ: زُهْرَى، وَتَيْمِيٌّ، وَلَيْثِيٌّ كِنَانِيٌّ، وَبِهَذَا نَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39625–39626 Abū Muḥammad—may Allāh have mercy on him—said: It is equally applicable whether the slain is found in a mosque, or in his own home, or in the congregational mosque, or in a marketplace, or in a desert, or on a ship, or in a river with flowing water, or in the sea, or on a person's neck, or on a roof, or in a tree, or in a cave, or on a stationary or moving animal—all of that is equivalent, as we have stated.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَسَوَاءٌ وُجِدَ الْمَقْتُولُ فِي مَسْجِدٍ، أَوْ فِي دَارِهِ نَفْسِهِ، أَوْ فِي الْمَسْجِدِ الْجَامِعِ، أَوْ فِي السُّوقِ، أَوْ بِالْفَلَاةِ، أَوْ فِي سَفِينَةٍ، أَوْ نَهْرٍ يَجْرِي فِيهِ الْمَاءُ، أَوْ فِي بَحْرٍ، أَوْ عَلَى عُنُقِ إنْسَانٍ، أَوْ فِي سَقْفٍ، أَوْ فِي شَجَرَةٍ، أَوْ فِي غَارٍ، أَوْ عَلَى دَابَّةٍ وَاقِفَةٍ، أَوْ سَائِرَةٍ - كُلُّ ذَلِكَ سَوَاءٌ كَمَا قُلْنَا.

L39627 And whenever his guardians bring a claim against anyone in such matters, the oath-swearing (qasāmah) therein is as ruled by the Messenger of Allah (peace be upon him), and success is by Allah, the Most High.

وَمَتَى ادَّعَى أَوْلِيَاؤُهُ - فِي كُلِّ ذَلِكَ - عَلَى أَحَدٍ فَالْقَسَامَةُ فِي ذَلِكَ كَمَا حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39628 As for their statement: If he was found between two villages, the distance between them is measured, and whichever he was closer to, they swore an oath and paid a fine—alongside their statement: If he was found within a village, they swore an oath and paid blood money.

وَأَمَّا قَوْلُهُمْ: إنْ وُجِدَ بَيْنَ قَرْيَتَيْنِ فَإِنَّهُ يُذْرَعُ مَا بَيْنَهُمَا فَإِلَى أَيِّهِمَا كَانَ أَقْرَبَ: حَلَفُوا وَغَرِمُوا مَعَ قَوْلِهِمْ: إنْ وُجِدَ فِي قَرْيَةٍ حَلَفُوا وَوَدَوْا.

L39629 If they cite in that regard what Yūsuf ibn ʿAbd Allāh al-Namarī narrated—from ʿAbd Allāh ibn Muḥammad ibn Yūsuf al-Azdī, from Yūsuf ibn Aḥmad, from Abū Jaʿfar al-ʿUqaylī, from Muḥammad ibn Ismāʿīl, from Ismāʿīl ibn Abān al-Warrāq, from Abū Isrāʾīl al-Mulāʾī, from ʿAṭiyyah (al-ʿAwfī)—from Abū Saʿīd al-Khudrī, who said: "A slain man was found between two villages.

فَإِنْ تَعَلَّقُوا فِي ذَلِكَ مِمَّا نَاهِ يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ يُوسُفَ الْأَزْدِيُّ نا يُوسُفُ بْنُ أَحْمَدَ نا أَبُو جَعْفَرٍ الْعُقَيْلِيُّ نا مُحَمَّدُ بْنُ إسْمَاعِيلَ نا إسْمَاعِيلُ بْنُ أَبَانَ الْوَرَّاقُ نا أَبُو إسْرَائِيلَ الْمُلَائِيُّ نا عَطِيَّةُ - هُوَ الْعَوْفِيُّ - عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ

«وُجِدَ قَتِيلٌ بَيْنَ قَرْيَتَيْنِ فَأَمَرَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - فَقِيسَ إِلَى أَيَّتِهِمَا أَقْرَبُ؟ فَوُجِدَ أَقْرَبَ إِلَى إِحْدَاهُمَا بِشِبْرٍ، فَكَأَنِّي أَنْظُرُ إِلَى شِبْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَضَمَّنَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - مَنْ كَانَتْ أَقْرَبَ إِلَيْهِ» .

The Prophet (peace be upon him) ordered that the distance be measured to determine which was nearer. It was found closer to one of them by a handspan—it is as though I can still see the handspan of Allah's Messenger (peace be upon him). Thus the Prophet (peace be upon him) obligated those who were nearer to it."

L39630 وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: «كَانَتْ أُمُّ عَمْرِو بْنِ سَعْدٍ عِنْدَ الْجُلَاسِ بْنِ سُوَيْدٍ - هُوَ ابْنُ الصَّامِتِ - فَقَالَ الْجُلَاسُ فِي غَزْوَةِ تَبُوكَ: إِنْ كَانَ مَا يَقُولُ مُحَمَّدٌ حَقًّا لَنَحْنُ شَرٌّ مِنَ الْحَمِيرِ؟ فَسَمِعَهَا عُوَيْمِرٌ، فَقَالَ: وَاللَّهِ إِنِّي لَا شَيْءَ إِنْ لَمْ أَرْفَعْهَا إِلَى النَّبِيِّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنْ يَنْزِلَ الْقُرْآنُ فِيهِ، وَأَنْ أَخْلِطَ بِخُطْبَتِهِ، وَلَنِعْمَ الْأَبُ هُوَ لِي فَأَخْبَرَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَكَتُوا، فَدَعَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْجُلَاسَ فَعَرَفَهُ - وَهُمْ يَتَرَحَّلُونَ - فَلَمْ يَتَحَرَّكْ أَحَدٌ، كَذَلِكَ كَانُوا يَفْعَلُونَ، لَا يَتَحَرَّكُونَ إِذَا نَزَلَ الْوَحْيُ، فَرُفِعَ عَنِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - فَقَالَ {يَحْلِفُونَ بِاللَّهِ مَا قَالُوا وَلَقَدْ قَالُوا كَلِمَةَ الْكُفْرِ} [التوبة: ٧٤] إِلَى قَوْلِهِ {فَإِنْ يَتُوبُوا يَكُ خَيْرًا لَهُمْ} [التوبة: ٧٤] فَقَالَ الْجُلَاسُ: اسْتَتَبْ إِلَيَّ رَبِّي، فَإِنِّي أَتُوبُ إِلَى اللَّهِ، وَأَشْهَدُ لَهُ بِصِدْقِ {وَمَا نَقَمُوا إِلا أَنْ أَغْنَاهُمُ اللَّهُ وَرَسُولُهُ} [التوبة: ٧٤] قَالَ عُرْوَةُ: كَانَ مَوْلَى الْجُلَاسِ قُتِلَ فِي بَنِي عَمْرِو بْنِ عَوْفٍ، فَأَبَى بَنُو عَمْرِو بْنِ عَوْفٍ: أَنْ يَعْقِلُوهُ، فَلَمَّا قَدِمَ - النَّبِيُّ - عَلَيْهِ السَّلَامُ - جَعَلَ عَقْلَهُ عَلَى عَمْرِو بْنِ عَوْفٍ، قَالَ عُرْوَةُ: فَمَا زَالَ عُمَيْرٌ مِنْهَا بِعَلِيًّا حَتَّى مَاتَ» .

From the narration of Abd al-Razzaq, from Ibn Jurayj, from Hisham ibn Urwah, from his father, who said: "The mother of Amr ibn Sa'd was married to Julas ibn Suwayd—he was the son of al-Samit—and Julas said during the expedition of Tabuk: 'If what Muhammad claims is true, then we are worse than donkeys!' Uwaymir overheard this and declared: 'By Allah, I am nothing if I do not report this to the Prophet—peace and blessings be upon him—so that Quran may be revealed concerning it, and so I may involve myself in his affair. How excellent a brother he has been to me!' He informed the Prophet—peace and blessings be upon him—at which point they fell silent. The Prophet—peace and blessings be upon him—summoned Julas, and he recognized him while they were breaking camp—but no one moved. That was their practice: they would not move when revelation descended. When the revelation ceased from the Prophet—peace and blessings be upon him—he recited: 'They swear by Allah that they said nothing, yet they certainly uttered the word of disbelief...' [Quran 9:74] up to '...but if they repent, it will be better for them' [Quran 9:74]. Julas then said: 'My Lord has granted me repentance. I repent to Allah and testify to His truthfulness: "They resented nothing except that Allah and His Messenger had enriched them..." [Quran 9:74].' Urwah said: Julas's freed slave was killed among the Banu Amr ibn Awf, but the Banu Amr ibn Awf refused to pay the diya (blood money). When the Prophet—peace and blessings be upon him—arrived, he obligated them to pay the diya upon the tribe of Amr ibn Awf. Urwah added: 'Umayr remained steadfastly with Ali concerning it until he died.'"[12]

L39631–39632 ونا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الشُّعَيْبِيُّ عَنْ مَكْحُولٍ «أَنَّ قَتِيلًا وُجِدَ فِي

Muhammad ibn Sa'id ibn Nubat narrated from Abdullah ibn Nasr, who narrated from Qasim ibn Asbagh, who narrated from Muhammad ibn Waddah, who narrated from Musa ibn Mu'awiyah, who narrated from Waki', who

[12] **Qur'an references (L39630):** Qur'an 9:74 (At-Tawbah).

narrated from Muhammad ibn Abdullah al-Shu'aybi, from Makhul: "A slain man was found among the tribe of Hudhayl, so they came to the Prophet (peace be upon him) and informed him. He summoned fifty of them and made each man swear an oath by Allah the Exalted about himself: 'I did not kill him, nor do I know a killer.' Then he imposed the diyah (blood money) on them collectively."

هُذَيْلٍ، فَأَتَوْا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرُوهُ فَدَعَا خَمْسِينَ مِنْهُمْ، فَأَحْلَفَهُمْ، كُلَّ رَجُلٍ عَنْ نَفْسِهِ يَمِينًا: بِاللَّهِ تَعَالَى مَا قَتَلْنَا وَلَا عَلِمْنَا قَاتِلًا، ثُمَّ أَغْرَمَهُمْ الدِّيَةَ» .

L39633 From Muḥammad ibn Saʿīd ibn Nubāt, from Aḥmad ibn ʿAwn Allāh, from Qāsim ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn Bashshār, from Muḥammad ibn Jaʿfar Ghundar, from Shuʿbah, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī, who said: "The qasāmah (oath-based procedure) in the pre-Islamic era was such that when a slain person was found among a tribe, fifty of them would swear: 'We did not kill him, nor do we know the killer.' If the oaths fell short, they were returned to them, and they would pay the diya (blood money)."

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا مُحَمَّدُ بْنُ جَعْفَرَ غُنْدَرٌ نا شُعْبَةُ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، قَالَ: إنَّمَا كَانَتْ الْقَسَامَةُ فِي الْجَاهِلِيَّةِ إذَا وُجِدَ الْقَتِيلُ بَيْنَ ظَهْرَانَيْ قَوْمٍ أَقْسَمَ مِنْهُمْ خَمْسُونَ: مَا قَتَلْنَا، وَلَا عَلِمْنَا قَاتِلًا - فَإِنْ عَجَزَتْ الْأَيْمَانُ رُدَّتْ عَلَيْهِمْ، ثُمَّ عَقَلُوا.

L39634 We have been narrated through the chain of Ismāʿīl al-Tirmidhī who narrated to us: Saʿīd ibn ʿAmr Abū ʿUthmān narrated to us: Ismāʿīl ibn ʿAyyāsh narrated to us, from al-Shaʿbī, from Makhūl who narrated: "'Amr ibn Abī Khuzaʿah reported that a man was killed among them during the time of the Messenger of Allah (peace and blessings be upon him). He imposed the qasāmah oath on Khuzāʿah, and they swore by Allah: 'We did not kill him, nor do we know the killer.' Each of them swore individually, and they were held liable to pay the blood money." It is mentioned: "We have previously cited this ruling from ʿUmar and ʿAlī."

وَرُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ التِّرْمِذِيِّ نا سَعِيدُ بْنُ عَمْرٍو أَبُو عُثْمَانَ نا إسْمَاعِيلُ بْنُ عَيَّاشٍ عَنْ الشَّعْبِيِّ عَنْ مَكْحُولٍ «نا عَمْرُو بْنُ أَبِي خُزَاعَةَ أَنَّهُ قُتِلَ فِيهِمْ قَتِيلٌ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَعَلَ الْقَسَامَةَ عَلَى خُزَاعَةَ: بِاللَّهِ مَا قَتَلْنَا وَلَا نَعْلَمُ قَاتِلًا، وَحَلَفَ كُلٌّ مِنْهُمْ عَنْ نَفْسِهِ، وَغَرِمُوا الدِّيَةَ» . قَالُوا: وَقَدْ ذَكَرْنَا هَذَا عَنْ عُمَرَ، وَعَلِيٍّ قَبْلُ.

L39635 Abū Muḥammad—may Allah have mercy on him—said: None of these statements require engagement based on what we shall clarify—if Allah Almighty wills. As for the ḥadīth we introduced initially, it is invalid, for it was solely transmitted by ʿAṭiyyah ibn Saʿd al-ʿAwfī, who is profoundly weak. Hushaym, Sufyān al-Thawrī, Yaḥyā ibn Maʿīn, and Aḥmad ibn Ḥanbal all deemed him weak. We do not know of anyone who declared him reliable. Aḥmad ibn Ḥanbal mentioned that it reached him that ʿAṭiyyah would approach al-Kalbī, the notorious liar, take ḥadīths from him, assign him the *kunyah* Abū Saʿīd, and narrate them as if they came from Abū Saʿīd, thereby misleading people

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَكُلُّ هَذِهِ الْأَقَاوِيلِ فَلَا يَجِبُ الِاشْتِغَالُ بِهَا عَلَى مَا نُبَيِّنُ - إنْ شَاءَ اللَّهُ تَعَالَى: أَمَّا الْحَدِيثُ الَّذِي صَدَّرْنَا بِهِ: فَهَالِكٌ؛ لِأَنَّهُ انْفَرَدَ بِهِ عَطِيَّةُ بْنُ سَعْدٍ الْعَوْفِيُّ وَهُوَ ضَعِيفٌ جِدًّا ضَعَّفَهُ هُشَيْمٌ، وَسُفْيَانُ الثَّوْرِيُّ، وَيَحْيَى بْنُ مَعِينٍ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَمَا نَدْرِي أَحَدًا وَثَّقَهُ - وَذَكَرَ عَنْهُ أَحْمَدُ بْنُ حَنْبَلٍ أَنَّهُ بَلَغَهُ عَنْهُ أَنَّهُ كَانَ يَأْتِي الْكَلْبِيَّ الْكَذَّابَ فَيَأْخُذُ عَنْهُ الْأَحَادِيثَ، ثُمَّ يُكَنِّيهِ بِأَبِي سَعِيدٍ وَيُحَدِّثُ بِهَا عَنْ

into believing he was Abū Saʿīd al-Khudrī. This ḥadīth is among such [weak] ḥadīths—and Allah knows best—and is thus discarded.

أَبِي سَعِيدٍ، فَيُوهِمُ النَّاسَ أَنَّهُ الْخُدْرِيِّ، وَهَذَا مِنْ تِلْكَ الْأَحَادِيثِ - وَاَللَّهُ أَعْلَمُ - فَهُوَ سَاقِطٌ.

L39636 Moreover, it is also from the narration of Abū Isrāʾīl al-Mulāʾī—Ismāʿīl ibn Abī Isḥāq—a defect compounded by another defect, for this al-Mulāʾī is extremely weak. There is absolutely no report whatsoever concerning the cubit measurement between the two villages apart from this one—neither a musnad (a report with a continuous chain) nor a mursal (a report with an interrupted chain).

ثُمَّ هُوَ أَيْضًا مِنْ رِوَايَةِ أَبِي إِسْرَائِيلَ الْمُلَائِيِّ - هُوَ إِسْمَاعِيلُ بْنُ أَبِي إِسْحَاقَ، فَهُوَ بَلِيَّةٌ عَنْ بَلِيَّةٍ، وَالْمُلَائِيُّ هَذَا ضَعِيفٌ جِدًّا - وَلَيْسَ فِي الذَّرْعِ بَيْنَ الْقَرْيَتَيْنِ خَبَرٌ غَيْرُ هَذَا الْبَتَّةَ، لَا مُسْنَدٌ وَلَا مُرْسَلٌ.

L39637–39639 As for the ḥadīth of al-Julās ibn Suwayd ibn al-Ṣāmit and Umayr ibn Saʿd, for it is mursal from... Urwah ibn al-Zubayr reported: The Messenger of Allah (peace be upon him) — since the narration merely states that the freed slave of Julas was killed among Banu Amr ibn Awf, and that when the Messenger of Allah (peace be upon him) migrated, he assigned the blood money liability to Banu Amr ibn Awf. This does not indicate that a slain person was discovered among them, nor that he (peace be upon him) imposed the qasāmah oath in this matter — which contradicts their assertion. Rather, it only states that the killing occurred among them, so the killer was from their ranks. If the killer was among them, the blood money is incumbent upon them — this pertains to accidental killing, and this is our ruling. Thus, their misuse of this narration is refuted. Success comes only from Allah, the Exalted.

وَأَمَّا حَدِيثُ الْجُلَاسِ بْنِ سُوَيْدِ بْنِ الصَّامِتِ، وَعُمَيْرِ بْنِ سَعْدٍ، فَإِنَّهُ مُرْسَلٌ عَنْ عُرْوَةُ بْنُ الزُّبَيْرِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّهُ إِنَّمَا فِيهِ: أَنَّ مَوْلَى الْجُلَاسِ قُتِلَ فِي بَنِي عَمْرِو بْنِ عَوْفٍ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا هَاجَرَ جَعَلَ عَقْلَهُ عَلَى بَنِي عَمْرِو بْنِ عَوْفٍ، وَلَيْسَ فِي هَذَا أَنَّهُ وُجِدَ مَقْتُولًا فِيهِمْ، وَلَا أَنَّهُ - عَلَيْهِ السَّلَامُ - أَوْجَبَ فِيهِ قَسَامَةً - وَهَذَا خِلَافُ قَوْلِهِمْ - وَإِنَّمَا فِيهِ: أَنَّهُ قُتِلَ فِيهِمْ، فَقَاتِلُهُ مِنْهُمْ، وَإِذَا كَانَ قَاتِلُهُ مِنْهُمْ فَالْعَقْلُ عَلَيْهِمْ - فَهَذِهِ صِفَةُ قَتْلِ الْخَطَأِ - وَبِهِ نَقُولُ - فَبَطَلَ تَمْوِيهِهِمْ بِهَذَا الْخَبَرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39640 As for the ḥadīth of ʿAmr ibn Abī Khuzaʿah, it involves an unverified narrator (majhūl) and is mursal, thereby invalidating it.

وَأَمَّا حَدِيثُ عَمْرِو بْنِ أَبِي خُزَاعَةَ فَهُوَ مَجْهُولٌ وَمُرْسَلٌ - فَبَطَلَ.

L39641 As for what they mentioned from ʿUmar ibn al-Khaṭṭāb and ʿAlī ibn Abī Ṭālib, we have previously stated that the narration from ʿAlī is entirely unauthentic. This is because it is transmitted via Abū Jaʿfar from him—constituting an interrupted chain—and via al-Ḥārith al-Aʿwar, whom al-Shaʿbī described as a liar. The chain also includes al-Ḥajjāj ibn Arṭāʾ.

وَأَمَّا مَا ذَكَرُوهُ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ فَقَدْ قَدَّمْنَا أَنَّهُ عَنْ عَلِيٍّ لَا يَصِحُّ أَلْبَتَّةَ؛ لِأَنَّهُ عَنْ أَبِي جَعْفَرٍ عَنْهُ - فَهُوَ مُنْقَطِعٌ، وَعَنْ الْحَارِثِ الْأَعْوَرِ، وَقَدْ وَصَفَهُ الشَّعْبِيُّ بِالْكَذِبِ - وَفِيهِ أَيْضًا: الْحَجَّاجُ بْنُ أَرْطَاةَ.

L39642 As for the narration attributed to Umar, we have clarified that it is unsound. We know of no evidence in the Qur'an, the established Sunnah of Allah's Messenger (peace and blessings be upon him), consensus, or analogy requir-

وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ فَقَدْ بَيَّنَّا أَنَّهَا لَا تَصِحُّ، وَمَا نَعْلَمُ فِي الْقُرْآنِ، وَلَا فِي السُّنَّةِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا فِي الْإِجْمَاعِ، وَلَا فِي الْقِيَاسِ: أَنْ يَحْلِفَ

ing a defendant to both swear an oath and pay a fine. These people claim to be adherents of analogy; why then do they not analogize claims involving bloodshed with claims pertaining to wealth and other matters? They have neither correctly followed the Sunnah nor properly applied analogy.

The issue of *qasāmah* concerning the slave found murdered.

Issue 2154: Concerning sworn oaths (qasāmah) for a slain slave found dead - scholars have disagreed on this matter. Abū Ḥanīfah and Muḥammad ibn al-Ḥasan ruled: Sworn oaths apply to a slain slave just as they apply to a free man. The oath-takers must pay his market value over three years, though this sum does not reach the blood money owed for a free person. It is narrated from Abū Yūsuf: There are no sworn oaths or financial liabilities for his death, and no compensation is due - this is also the view of Mālik, his disciples, and Ibn Shubruma.

And Al-Awzāʿī said: There is no collective oath-liability in it; rather, they are liable to pay its price (as blood money).

He said: Zufar and al-Shafiʿi stated: The case involves qasāmah (oath-swearing) and qīmah (monetary value). However, Zufar said: They swear the oath and pay its qīmah (value). Al-Shafiʿi said: The slave swears the oath, and the community pays his qīmah (value).

Abu Muhammad said: Our position is that the *qasāmah* in this matter is like a free man—exactly equal, exactly equal—in every legal ruling pertaining to it? When they disagreed, it became incumbent upon us to examine the evidence each faction presented to support their position.

We found those who said, "There is no collective oath [qasāmah] for a slave," arguing, "The Messenger of Allah—may Allah bless him and grant him peace—only judged." The oath of qasāmah applies to a free person, not a slave, and we may not rule by it except where the Messenger of Allah (peace and blessings be upon him) ruled by it.

Some of them said: A slave is property like an animal, and there is no collective oath for animals nor for other properties—and what argument do

مُدَّعًى عَلَيْهِ وَيَغْرَمَ - وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، فَهَلَّا قَاسُوا الدَّعْوَى فِي الدَّمِ عَلَى الدَّعْوَى فِي الْمَالِ، وَغَيْرِ ذَلِكَ، وَلَكِنْ لَا السُّنَّةَ أَصَابُوا، وَلَا الْقِيَاسَ أَحْسَنُوا.

[مَسْأَلَةُ الْقَسَامَةُ فِي الْعَبْدِ يُوجَدُ مَقْتُولًا]

٢١٥٤ - مَسْأَلَةٌ: وَأَمَّا الْقَسَامَةُ فِي الْعَبْدِ يُوجَدُ مَقْتُولًا؟ فَإِنَّ النَّاسَ اخْتَلَفُوا فِي ذَلِكَ: فَقَالَ أَبُو حَنِيفَةَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: الْقَسَامَةُ فِي الْعَبْدِ يُوجَدُ قَتِيلًا كَمَا هِيَ فِي الْحُرِّ، وَعَلَيْهِمْ قِيمَتُهُ فِي ثَلَاثِ سِنِينَ، لَا يُبْلِغُ بِهَا دِيَةَ حُرٍّ - وَرُوِيَ عَنْ أَبِي يُوسُفَ: لَا قَسَامَةَ فِيهِ، وَلَا غَرَامَةَ وَهُوَ هَدَرٌ - وَهُوَ قَوْلُ مَالِكٍ، وَأَصْحَابِهِ، وَابْنِ شُبْرُمَةَ.

وَقَالَ الْأَوْزَاعِيُّ: لَا قَسَامَةَ فِيهِ، وَلَكِنْ يَغْرَمُونَ ثَمَنَهُ.

وَقَالَ: زُفَرُ، وَالشَّافِعِيُّ: فِيهِ الْقَسَامَةُ وَالْقِيمَةُ، إِلَّا أَنَّ زُفَرَ قَالَ: يُقْسِمُونَ وَيَغْرَمُونَ قِيمَتَهُ - وَقَالَ الشَّافِعِيُّ: يَحْلِفُ الْعَبْدُ وَيَغْرَمُ الْقَوْمُ قِيمَتَهُ.

قَالَ أَبُو مُحَمَّدٍ: وَقَوْلُنَا فِيهِ إِنَّ الْقَسَامَةَ فِيهِ كَالْحُرِّ - سَوَاءً سَوَاءً - فِي كُلِّ حُكْمٍ مِنْ أَحْكَامِهِ؟ فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا.

فَوَجَدْنَا مَنْ قَالَ: لَا قَسَامَةَ فِي الْعَبْدِ يَقُولُونَ: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا حَكَمَ بِالْقَسَامَةِ فِي حُرٍّ لَا فِي عَبْدٍ، فَلَا يَجُوزُ أَنْ نَحْكُمَ بِهَا إِلَّا حَيْثُ حَكَمَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

we know they have besides this? When we examined this matter, we found these two arguments of theirs to have no valid foundation. As for their claim that the Messenger of God—peace be upon him—only ruled by the collective oath in the case of a free person: we have said enough regarding this. Did the Prophet—peace be upon him—ever state: "I ruled this way only because he was free"? Thus we would be attributing to him what he did not say, and asserting intentions he never expressed—peace be upon him. This amounts to conjecture and baseless fabrication, which are fundamentally impermissible. The collective oath applies to a slain slave, as the Messenger of God—peace be upon him—ruled, with nothing added.

وَقَالَ بَعْضُهُمْ: الْعَبْدُ مَالٌ كَالْبَهِيمَةِ وَلَا قَسَامَةَ فِي الْبَهِيمَةِ، وَلَا فِي سَائِرِ الْأَمْوَالِ - وَمَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا؟ فَلَمَّا نَظَرْنَا فِي ذَلِكَ وَجَدْنَا هَاتَيْنِ الْحُجَّتَيْنِ لَا مُتَعَلَّقَ لَهُمْ فِيهِمَا: أَمَّا قَوْلُهُمْ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَحْكُمْ بِالْقَسَامَةِ إلَّا فِي حُرٍّ؟ فَقَدْ قُلْنَا: فِي هَذَا مَا كَفَى، وَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ - إنِّي إنَّمَا حَكَمْتُ بِهَذَا، لِأَنَّهُ كَانَ حُرًّا؟ فَنَقُولُ عَلَيْهِ مَا لَمْ يَقُلْ، وَنُخْبِرُ عَنْ مُرَادِهِ بِمَا لَمْ يُخْبِرْ - عَلَيْهِ السَّلَامُ - عَنْ نَفْسِهِ وَهَذَا تَكَهُّنٌ وَتَخَرُّصٌ بِالْبَاطِلِ، وَهَذَا لَا يَحِلُّ أَصْلًا، وَالْعَبْدُ قَتِيلٌ فَفِيهِ الْقَسَامَةُ كَمَا حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا مَزِيدَ.

L39652 As for the statement of those who claim: "The slave is property, therefore no collective oath (qasāmah) applies to him, just as it does not apply to an animal"—this is a corrupt argument, for it constitutes analogical reasoning, and all analogical reasoning is invalid. Though the slave may be property, they seek to assign him the legal status of properties and animals merely because he is classified as property. Yet the free person is also a living being, just as an animal is a living being. By this logic, we would have to invalidate qasāmah for free persons through analogy to its invalidity for other animals. Furthermore, there is no disagreement that the sin incurred before Allah Almighty for killing a slave is equivalent to that of killing a free person, for both constitute inviolable souls falling under His decree: *"Whoever intentionally kills a believer, his recompense is Hell"* [4:93]. But this is not the case for one who kills an animal.[13]

وَأَمَّا قَوْلُ مَنْ قَالَ: إنَّ الْعَبْدَ مَالٌ فَلَا قَسَامَةَ فِيهِ كَمَا لَا قَسَامَةَ فِي الْبَهِيمَةِ؟ فَقَوْلٌ فَاسِدٌ، لِأَنَّهُ قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، فَالْعَبْدُ - وَإِنْ كَانَ مَالًا فَأَرَادُوا أَنْ يَجْعَلُوا لَهُ حُكْمَ الْأَمْوَالِ وَالْبَهَائِمِ مِنْ أَجْلِ أَنَّهُ مَالٌ، فَإِنَّ الْحُرَّ أَيْضًا حَيَوَانٌ كَمَا أَنَّ الْبَهِيمَةَ حَيَوَانٌ، فَيَنْبَغِي أَنْ نُبْطِلَ الْقَسَامَةَ فِي الْحُرِّ قِيَاسًا عَلَى بُطْلَانِهَا فِي سَائِرِ الْحَيَوَانِ؟ وَأَيْضًا - فَلَا خِلَافَ فِي أَنَّ الْإِثْمَ عِنْدَ اللَّهِ عَزَّ وَجَلَّ فِي قَتْلِ الْعَبْدِ، كَالْإِثْمِ فِي قَتْلِ الْحُرِّ، لِأَنَّهُمَا جَمِيعًا نَفْسٌ مُحَرَّمَةٌ، وَدَاخِلَانِ تَحْتَ قَوْلِهِ تَعَالَى {وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ} [النساء: ٩٣] وَلَيْسَ كَذَلِكَ قَاتِلُ الْبَهِيمَةِ.

L39653 According to their foundational principles, it is incumbent that we rule for a slave found slain in the same manner as for a free person found slain—not as for an animal—particularly in the Hanafis' position mandating qisas between a free person and a slave in cases of intentional killing. This establishes a valid equivalence between them. Similarly, the Malikis and Shafiis—who obligate expiation for the accidental killing of a slave, just as they obligate it for the accidental killing of a free person, unlike the accidental killing of an

فَوَجَبَ عَلَى أُصُولِهِمْ - أَنْ نَحْكُمَ لِلْعَبْدِ إذَا وُجِدَ مَقْتُولًا بِمِثْلِ الْحُكْمِ فِي الْحُرِّ إذَا وُجِدَ مَقْتُولًا، لَا بِمِثْلِ الْحُكْمِ فِي الْبَهِيمَةِ - لَا سِيَّمَا فِي قَوْلِ الْحَنَفِيِّينَ الْمُوجِبِينَ لِلْقَوَدِ بَيْنَ الْحُرِّ وَالْعَبْدِ فِي الْعَمْدِ - فَهَذِهِ تَسْوِيَةٌ بَيْنَهُمَا صَحِيحَةٌ، وَكَذَلِكَ فِي قَوْلِ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ: الْمُوجِبِينَ لِلْكَفَّارَةِ فِي قَتْلِ الْعَبْدِ خَطَأً، كَمَا يُوجِبُونَهَا فِي قَتْلِ الْحُرِّ خَطَأً بِخِلَافِ قَتْلِ

[13] **Qur'an references (L39652):** Qur'an 4:93 (An-Nisa).

animal, is it not?—thereby all their specious claims are nullified. It is thus confirmed that the oath of compurgation is obligatory for a slave, as it is for a free person, based on the ruling of the Messenger of God (peace be upon him), not by analogy.

L39654–39656 As for the statement of those who obligated the one found among them to pay the value of the slave without qasāmah (a procedure of collective oaths), it is a view lacking supporting evidence. Neither the Qur'an, nor the Sunnah, nor consensus, nor analogy, nor independent legal reasoning—since this constitutes wrongful consumption of wealth and imposing an obligated payment on those from whom no valid right has been established. Allah the Exalted said: *"Do not consume one another's wealth unjustly"* (al-Baqarah 2:188). There is no collective oath (qasāmah) for an animal found slain, nor for any properties found invalidated, because an animal is not termed "slain" linguistically or legally. The Messenger of Allah (peace be upon him) ruled by collective oath only for a slain human. Thus, transgressing His ruling is impermissible: *"Whoever transgresses Allah's limits has wronged themselves"* (al-Ṭalāq 65:1), *"He does not speak from desire; it is nothing but revelation revealed"* (al-Najm 53:3-4). Wealth remains inviolable except by explicit textual proof or consensus. Therefore, the obligation regarding an animal found slain or destroyed, and all properties, is what Allah the Exalted mandated through His Messenger (PBUH) when he said: *"Present your evidence or require his oath—you have no recourse beyond this."*[14]

L39657 The obligation in such a case—when the owner of a beast claims it was found slain, or the owner of property claims its destruction against someone—is to require the claimant to produce evidence. If he provides it, the judge must rule in his favor. If he fails to provide it, the defendant must necessarily take an oath. Liability in such matters arises only through evidence or confession. This ruling applies to all claims involving homicide, property, or other matters—except when a slain person is discovered, in which case the collective oath (qasāmah) applies, as the Messenger of Allah (peace and blessings be upon him) specifically prescribed.

[14] **Qur'an references (L39654):** Qur'an 2:188 (Al-Baqarah); Qur'an 65:1 (At-Talaq); Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).

الْبَهِيمَةِ خَطَأً؟ فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ، وَصَحَّ أَنَّ الْقَسَامَةَ وَاجِبَةٌ فِي الْعَبْدِ كَمَا هِيَ فِي الْحُرِّ مِنْ طَرِيقِ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا طَرِيقِ الْقِيَاسِ.

وَأَمَّا قَوْلُ مَنْ أَلْزَمَ قِيمَةَ الْعَبْدِ مَنْ وُجِدَ بَيْنَ أَظْهُرِهِمْ دُونَ قَسَامَةٍ، فَقَوْلٌ لَا يُؤَيِّدُهُ قُرْآنٌ وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ وَلَا قِيَاسٌ، وَلَا نَظَرٌ - وَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ وَإِغْرَامُ قَوْمٍ لَمْ يَثْبُتْ قِبَلَهُمْ حَقٌّ؟ قَالَ اللَّهُ تَعَالَى {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] وَلَا قَسَامَةَ فِي بَهِيمَةٍ وُجِدَتْ مَقْتُولَةً، وَلَا فِي شَيْءٍ وُجِدَ مِنْ الْأَمْوَالِ مَفْسُودًا؛ لِأَنَّ الْبَهِيمَةَ لَا تُسَمَّى " قَتِيلًا " فِي اللُّغَةِ، وَلَا فِي الشَّرِيعَةِ، وَإِنَّمَا حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقَسَامَةِ فِي الْقَتِيلِ، فَلَا يَحِلُّ تَعَدِّي حُكْمِهِ {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] ، {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] وَالْأَمْوَالُ مُحَرَّمَةٌ إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ؟ فَالْوَاجِبُ فِي الْبَهِيمَةِ - تُوجَدُ مَقْتُولَةً أَوْ تُتْلَفُ - وَفِي الْأَمْوَالِ كُلِّهَا: مَا أَوْجَبَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - إذْ يَقُولُ «بَيِّنَتُكَ أَوْ يَمِينُهُ لَيْسَ لَكَ إلَّا ذَلِكَ» .

فَالْوَاجِبُ فِي ذَلِكَ إنْ ادَّعَى صَاحِبُ الْبَهِيمَةِ تُوجَدُ مَقْتُولَةً أَوْ صَاحِبُ الْمَالِ إتْلَافَ مَالِهِ عَلَى أَحَدٍ أَنْ يُكَلِّفَهُ الْبَيِّنَةَ؟ فَإِنْ أَتَى بِهَا قَضَى لَهُ بِهَا، وَإِنْ لَمْ يَأْتِ بِهَا حَلَفَ الْمُدَّعَى عَلَيْهِ وَلَا بُدَّ، وَلَا ضَمَانَ فِي ذَلِكَ إلَّا بِبَيِّنَةٍ أَوْ إقْرَارٍ - وَهَذَا حُكْمُ كُلِّ دَعْوَى فِي دَمٍ، أَوْ مَالٍ، أَوْ غَيْرِ ذَلِكَ، حَاشَا الْقَتِيلَ يُوجَدُ، فَفِيهِ الْقَسَامَةُ كَمَا خَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L39658 People have differed regarding the case of a slain Dhimmi being found. A group said, “There is no qasāmah [oath-swearing] here,” while Abū Ḥanīfah held the opinion that qasāmah applies in such cases.

وَاخْتَلَفَ النَّاسُ فِي الذِّمِّيِّ يُوجَدُ قَتِيلًا؟ فَقَالَتْ طَائِفَةٌ: لَا قَسَامَةَ فِيهِ - وَرَأَى أَبُو حَنِيفَةَ فِيهِ الْقَسَامَةَ.

L39659 Abū Muḥammad—may Allāh have mercy on him—said: The ruling in this matter is as we stated regarding the slave, because although the Messenger of Allāh—peace and blessings be upon him—applied the oath-swearing procedure in the case of a Muslim who made a claim against the Jews of Khaybar, he—peace and blessings be upon him—did not say, “Did I rule this way because a Muslim made a claim against a Jew?” It is impermissible to ascribe to him—peace and blessings be upon him—what he did not say. Rather, he—peace and blessings be upon him—applied it in the case of a slain person who was found, and he—peace and blessings be upon him—did not specify any particular circumstance. A protected non-Muslim is a slain person; thus, oath-swearing is obligatory in his case if his guardians demand it against a protected non-Muslim or group of protected non-Muslims. For if they were to claim it against a Muslim—even if their claim were valid—there would be no retaliation or blood money due. However, if they wish to swear the oaths and have the Imam pay the blood money, that is permissible for them, for what we have mentioned.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالْقَوْلُ فِيهِ كَمَا قُلْنَا فِي الْعَبْدِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنْ كَانَ إنَّمَا حَكَمَ بِالْقَسَامَةِ فِي مُسْلِمٍ ادَّعَى عَلَى يَهُودِ خَيْبَرَ فَلَمْ يَقُلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: إنَّمَا حَكَمْت بِهَا، لِأَنَّهُ مُسْلِمٌ ادَّعَى عَلَى يَهُودِيٍّ؟ فَلَا يَجُوزُ أَنْ يُقَوَّلَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَا لَمْ يَقُلْهُ، لَكِنَّهُ - عَلَيْهِ السَّلَامُ - حَكَمَ بِهَا فِي قَتِيلٍ وُجِدَ، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - حَالًا مِنْ حَالٍ، وَالذِّمِّيُّ قَتِيلٌ، فَالْقَسَامَةُ فِيهِ وَاجِبَةٌ إذَا ادَّعَاهَا أَوْلِيَاؤُهُ عَلَى ذِمِّيٍّ أَوْ ذِمِّيِّينَ، لِأَنَّهُ إنْ ادَّعَوْهَا عَلَى مُسْلِمٍ - فَحَتَّى لَوْ صَحَّ مَا ادَّعَوْهُ بِالْبَيِّنَةِ - فَلَا قَوَدَ فِيهِ وَلَا دِيَةَ، وَلَكِنْ إنْ أَرَادُوا أَنْ يُقْسِمُوا وَيُودِيَهُ الْإِمَامُ، فَذَلِكَ لَهُمْ، لِمَا ذَكَرْنَا.

L39660–39662 Those who uphold qasamah unanimously agree that while the Messenger of Allah—peace and blessings be upon him—ruled by it regarding a Muslim who brought a claim against Jews, the obligation to apply qasamah lies in cases where a Muslim claims against fellow Muslims. This differs from the circumstance in which the Messenger of Allah—peace and blessings be upon him—ruled by qasamah for a Muslim claimant according to their juristic principles, nor... There is a distinction between applying it [the prescribed punishment] to a Muslim against Muslims, and applying it to a protected non-Muslim against protected non-Muslims or against Muslims, due to the general applicability of his ruling (peace be upon him) and because he (peace be upon him) did not specify any particular category. All success comes from Allah, the Most High.

وَقَدْ اتَّفَقَ الْقَائِلُونَ بِالْقَسَامَةِ عَلَى أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنْ كَانَ - حَكَمَ بِهَا فِي مُسْلِمٍ ادَّعَى عَلَى يَهُودَ؟ فَإِنَّ الْحُكْمَ بِهَا وَاجِبٌ فِي مُسْلِمٍ ادَّعَى - عَلَى مُسْلِمِينَ، وَهَذِهِ غَيْرُ الْحَالِ الَّتِي حَكَمَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي مُسْلِمٍ ادَّعَى بِالْقَسَامَةِ عَلَى أُصُولِهِمْ، وَلَا فَرْقَ بَيْنَ الْحُكْمِ بِهَا فِي مُسْلِمٍ عَلَى مُسْلِمِينَ، وَبَيْنَ الْحُكْمِ بِهَا فِي ذِمِّيٍّ عَلَى ذِمِّيِّينَ أَوْ عَلَى مُسْلِمِينَ، لِعُمُومِ حُكْمِهِ - عَلَيْهِ السَّلَامُ - وَإِنَّهُ لَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - صِفَةً مِنْ صِفَةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39663 **An issue concerning one who swears by al-qasāmah.**

[مَسْأَلَة فِيمَنْ يَحْلِفُ بِالْقَسَامَةِ]

L39664 2155 - Issue: Regarding those who swear by qasāmah (collective oath). Abū Muḥammad—may Allāh have mercy on him—said: Those who affirm qasāmah agree that the oath is sworn by free, adult, sane agnates of the slain person who are his heirs. They differ beyond this in several aspects, including: Does an agnate who does not inherit swear or not? Does a slave swear among them or not? Does a woman swear among them or not? Does the superior patron swear or not? Does the inferior patron swear among them or not? Does an ally swear or not? Thus, when they disputed, what Allāh the Exalted obligated upon us in cases of dispute became binding, as He says: {If you disagree over something, refer it to Allāh and the Messenger} [4:59] the verse. We complied—and found the Messenger of Allāh—peace and blessings be upon him—saying in the ḥadīth of qasāmah (the only authentic one from him), as we previously detailed: "You swear and claim your right, and fifty of you swear." So the Prophet—peace and blessings be upon him—addressed the Banū Ḥārithah, the agnates of the slain.[15]

٢١٥٥ - مَسْأَلَةٌ: فِيمَنْ يَحْلِفُ بِالْقَسَامَةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اتَّفَقَ الْقَائِلُونَ بِالْقَسَامَةِ عَلَى أَنَّهُ يَحْلِفُ فِيهَا الرِّجَالُ الْأَحْرَارُ الْبَالِغُونَ الْعُقَلَاءُ مِنْ عَشِيرَةِ الْمَقْتُولِ الْوَارِثِينَ لَهُ، وَاخْتَلَفُوا فِيمَا وَرَاءَ ذَلِكَ فِي وُجُوهٍ، مِنْهَا: هَلْ يَحْلِفُ مَنْ لَا يَرِثُ مِنْ الْعَصَبَةِ أَمْ لَا؟ وَهَلْ يَحْلِفُ الْعَبْدُ فِي جُمْلَتِهِمْ أَمْ لَا؟ وَهَلْ تَحْلِفُ الْمَرْأَةُ فِيهِمْ أَمْ لَا؟ وَهَلْ يَحْلِفُ الْمَوْلَى مِنْ فَوْقُ أَمْ لَا؟ وَهَلْ يَحْلِفُ الْمَوْلَى الْأَسْفَلُ فِيهِمْ أَمْ لَا؟ وَهَلْ يَحْلِفُ الْحَلِيفُ أَمْ لَا؟ فَوَجَبَ لَمَّا تَنَازَعُوا مَا أَوْجَبَهُ اللَّهُ تَعَالَى عَلَيْنَا عِنْدَ التَّنَازُعِ، إذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ؟ فَفَعَلْنَا - فَوَجَدْنَا رَسُولَ اللَّهِ - عَلَيْهِ السَّلَامُ - قَالَ فِي حَدِيثِ الْقَسَامَةِ - الَّذِي لَا يَصِحُّ عَنْهُ غَيْرُهُ - كَمَا قَدْ تَقَصَّيْنَاهُ قَبْلُ «تَحْلِفُونَ وَتَسْتَحِقُّونَ وَيَحْلِفُ خَمْسُونَ مِنْكُمْ» فَخَاطَبَ النَّبِيُّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَنِي حَارِثَةَ عَصَبَةَ الْمَقْتُولِ.

L39665 And with certainty, every possessor of knowledge knows that the heirs of ʿAbd Allāh ibn Sahl—may Allāh be pleased with him—were not fifty, and he had no heir except his brother ʿAbd al-Raḥmān alone. Those required to swear the oath were his two paternal cousins, Muḥayyiṣah and Ḥuwayyiṣah—and are they not his non-inheriting kin? Thus, it is established that agnates take the oath even if they are not heirs.

وَبِيَقِينٍ يَدْرِي كُلُّ ذِي مَعْرِفَةٍ: أَنَّ وَرَثَةَ عَبْدِ اللَّهِ بْنِ سَهْلٍ - رَضِيَ اللَّهُ عَنْهُ - لَمْ يَكُونُوا خَمْسِينَ، وَمَا كَانَ لَهُ وَارِثٌ إلَّا أَخُوهُ عَبْدُ الرَّحْمَنِ وَحْدَهُ، وَكَانَ الْمُخَاطَبُ بِالتَّحْلِيفِ ابْنَيْ عَمِّهِ مُحَيِّصَةُ، وَحُوَيِّصَةَ، وَهُمَا غَيْرُ وَارِثِينَ لَهُ؟ فَصَحَّ - أَنَّ الْعَصَبَةَ يَحْلِفُونَ، وَإِنْ لَمْ يَكُونُوا وَارِثِينَ.

L39666 It is established that whoever among them was prepared to swear the oath, it was valid for him—whether he was closer in relation to the slain or farther from him—because the Messenger of Allah, peace and blessings be upon him, addressed the two paternal cousins just as he addressed the brother with equal regard, without prioritizing any of them.

وَصَحَّ - أَنَّ مَنْ نَشِطَ لِلْيَمِينِ مِنْهُمْ كَانَ ذَلِكَ لَهُ - سَوَاءٌ كَانَ بِذَلِكَ أَقْرَبَ إلَى الْمَقْتُولِ أَوْ أَبْعَدَ مِنْهُ - لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَاطَبَ ابْنَيْ الْعَمِّ، كَمَا خَاطَبَ الْأَخَ خِطَابًا مُسْتَوِيًا، لَمْ يُقَدِّمْ أَحَدًا مِنْهُمْ.

L39667–39668 Similarly, the oath-taking applied only to the sub-tribe to which the slain person was known by lineage, because the Messenger of Allah—peace and

وَكَذَلِكَ لَمْ يَدْخُلْ فِي التَّحْلِيفِ إلَّا الْبَطْنُ الَّذِي يُعْرَفُ الْمَقْتُولُ بِالِانْتِسَابِ إلَيْهِ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُخَاطِبْ بِذَلِكَ إلَّا بَنِي حَارِثَةَ الَّذِي كَانَ الْمَقْتُولُ

[15] **Qur'an references (L39664):** Qur'an 4:59 (An-Nisa).

blessings be upon him—addressed none but Banū Ḥārithah, among whom the slain person was known through lineage. He did not address the remaining sub-tribes of the Anṣār—such as Banū ʿAbd al-Ashhal, Banū Ẓafar, and Banū Zaʿwar, who were the brother tribes of Banū Ḥārithah. Thus, it is not permissible to include among them anyone whom the Messenger of Allah—peace and blessings be upon him—did not include.

L39669 Abu Muhammad—may Allah have mercy on him—said: If there is among the agnates a slave of pure lineage within their kinship, except that his father married a slave woman belonging to a people—resulting in his enslavement for that reason—then he may swear with them if he wishes, for he is from them. The Prophet—peace be upon him—did not specify exclusion when he said: "Fifty free men among you, not counting a slave"—if he is from them—just as Ammar ibn Yasir—may Allah be pleased with him—was of their origin: affiliated with Anas, yet enslavement befell him through Banu Makhzum. Similarly, Amir ibn Fuhayrah was an Azdi of pure lineage, yet enslavement befell him because his father married Fuhayrah—the slave woman of Abu Bakr—may Allah be pleased with him. Likewise, Miqdad ibn Amr was a Bahrani of pure lineage, yet enslavement befell him through his mother. And with Allah—the Exalted—lies all success.

L39670 As for women, we previously mentioned that ʿUmar ibn al-Khaṭṭāb—may Allah be pleased with him—required a woman seeking redress in a case of qasāmah (oath-based collective liability in homicide) to swear an oath. She swore, and he ruled the blood money obligation upon her male guardian. Later scholars claimed women cannot swear oaths at all, arguing that "only those obligated to provide support swear oaths." This constitutes a fallacy buttressed by another fallacy, for providing support is incumbent upon every Muslim, as we have narrated through Bukhārī's chain: Musaddad narrated to us, Muʿtamir ibn Sulaymān narrated to us, from Ḥumayd, from Anas, who said: Allah's Messenger—peace be upon him—declared, "Support your brother whether he is an oppressor or oppressed." They asked, "O Messenger of Allah, we support him if oppressed—but how if he is an oppressor?" He replied, "By restraining his hand."

L39671 We reported through the chain of Muslim: Ahmad ibn Abdullah ibn Yunus

مَعْرُوفًا بِالنَّسَبِ فِيهِمْ، وَلَمْ يُخَاطِبْ بِذَلِكَ سَائِرَ بُطُونِ الْأَنْصَارِ - كَبَنِي عَبْدِ الْأَشْهَلِ وَبَنِي ظَفَرٍ، وَبَنِي زَعْوَرٍ، وَهُمْ إِخْوَةُ بَنِي حَارِثَةَ - فَلَا يَجُوزُ أَنْ يَدْخُلَ فِيهِمْ مَنْ لَمْ يُدْخِلْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ كَانَ فِي الْعَصَبَةِ عَبْدٌ صَرِيحُ النَّسَبِ فِيهِمْ، إلَّا أَنَّ أَبَاهُ تَزَوَّجَ أَمَةً لِقَوْمٍ فَلَحِقَهُ الرِّقُّ لِذَلِكَ، فَإِنَّهُ يَحْلِفُ مَعَهُمْ إنْ شَاءَ؛ لِأَنَّهُ مِنْهُمْ، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - إذْ قَالَ: خَمْسُونَ مِنْكُمْ حُرًّا مِنْ عَبْدٍ - إذَا كَانَ مِنْهُمْ - كَمَا كَانَ عَمَّارُ بْنُ يَاسِرٍ - رَضِيَ اللَّهُ عَنْهُ - مِنْ طِينَتِهِ: عَنَسٌ، وَلَحِقَهُ الرِّقُّ لِبَنِي مَخْزُومٍ - وَكَمَا كَانَ عَامِرُ بْنُ فُهَيْرَةَ أَزْدِيًّا صَرِيحًا فَلَحِقَهُ الرِّقُّ؛ لِأَنَّ أَبَاهُ تَزَوَّجَ فُهَيْرَةَ أَمَةَ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - وَكَمَا كَانَ الْمِقْدَادُ بْنُ عَمْرٍو بَهْرَانِيًّا حُرًّا، وَلَحِقَهُ الرِّقُّ مِنْ قِبَلِ أُمِّهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا الْمَرْأَةُ - فَقَدْ ذَكَرْنَا قَبْلُ أَنَّ عُمَرَ بْنَ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - أَحْلَفَ امْرَأَةً فِي الْقَسَامَةِ - وَهِيَ طَالِبَةٌ - فَحَلَفَتْ، وَقَضَى لَهَا بِالدِّيَةِ عَلَى مَوْلًى لَهَا. وَقَالَ الْمُتَأَخِّرُونَ: لَا تَحْلِفُ الْمَرْأَةُ أَصْلًا - وَاحْتَجُّوا بِأَنَّهُ إنَّمَا يَحْلِفُ مَنْ تَلْزَمُهُ لَهُ النُّصْرَةُ، وَهَذَا بَاطِلٌ مُؤَيَّدٌ بِبَاطِلٍ؛ لِأَنَّ النُّصْرَةَ وَاجِبَةٌ عَلَى كُلِّ مُسْلِمٍ. بِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسَدَّدٌ نا مُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ حُمَيْدٍ عَنْ أَنَسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «انْصُرْ أَخَاكَ ظَالِمًا كَانَ أَوْ مَظْلُومًا، قَالُوا: يَا رَسُولَ اللَّهِ هَذَا نَنْصُرُهُ مَظْلُومًا فَكَيْفَ نَنْصُرُهُ ظَالِمًا؟ قَالَ: تَأْخُذُ فَوْقَ يَدَيْهِ» .

narrated to us, Zuhayr (the son of Mu'awiyah) narrated to us, Ash'ath (the son of Abi Ash-Sha'atha) narrated to us from Mu'awiyah ibn Suwayd ibn Muqarrin, who said: We entered upon Al-Bara' ibn Azib, and I heard him say, "The Messenger of Allah—peace and blessings be upon him—commanded us with seven things and forbade us from seven. He commanded us: [1] to visit the sick, [2] to follow funeral processions, [3] to say 'Yarḥamuk Allāh' to one who sneezes, [4] to honor the oath or the one who swears, [5] to support the oppressed, [6] to respond to invitations, and [7] to spread the salām."

وَرَوَيْنَا مِنْ طَرِيقِ مُسْلِمٍ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ يُونُسَ نا زُهَيْرٌ - هُوَ ابْنُ مُعَاوِيَةَ - نا أَشْعَثُ - هُوَ ابْنُ أَبِي الشَّعْثَاءِ - نِي مُعَاوِيَةُ بْنُ سُوَيْدِ بْنِ مُقَرِّنٍ قَالَ: دَخَلْنَا عَلَى الْبَرَاءِ بْنِ عَازِبٍ فَسَمِعْتُهُ يَقُولُ «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِسَبْعٍ، وَنَهَانَا عَنْ سَبْعٍ أَمَرَنَا: بِعِيَادَةِ الْمَرِيضِ، وَاتِّبَاعِ الْجَنَائِزِ، وَتَشْمِيتِ الْعَاطِسِ، وَإِبْرَارِ الْقَسَمِ - أَوْ الْمُقْسِمِ - وَنَصْرِ الْمَظْلُومِ، وَإِجَابَةِ الدَّاعِي، وَإِفْشَاءِ السَّلَامِ» .

L39672–39673 Allah the Exalted has obligated the support of our brethren. Allah the Exalted said, "The believers are but brothers" [Al-Hujurāt 49:10]. Indeed, supporting the dhimmis is an obligation. Allah the Exalted said, "And if they seek your aid in religion, then upon you is the support, except against a people with whom you have a covenant" [Al-Anfāl 8:72].[16]

فَقَدْ افْتَرَضَ اللَّهُ تَعَالَى نَصْرَ إخْوَانِنَا. قَالَ اللَّهُ تَعَالَى {إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ} [الحجرات: ١٠] . نَعَمْ، وَنَصْرُ أَهْلِ الذِّمَّةِ فَرْضٌ، قَالَ اللَّهُ تَعَالَى {وَإِنِ اسْتَنْصَرُوكُمْ فِي الدِّينِ فَعَلَيْكُمُ النَّصْرُ إلا عَلَى قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ} [الأنفال: ٧٢] .

L39674 It is authentically established that no one among the people of Islam has a greater right to support than another. Therefore, a woman must swear an oath if she so wishes. The statement of the Messenger of Allah—peace and blessings be upon him—"Fifty among you are to swear" is a wording that encompasses both men and women.

فَقَدْ صَحَّ أَنَّهُ لَيْسَ أَحَدٌ أَوْلَى بِالنُّصْرَةِ مِنْ غَيْرِهِ مِنْ أَهْلِ الْإِسْلَامِ - فَوَجَبَ أَنْ تَحْلِفَ الْمَرْأَةُ إنْ شَاءَتْ - وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يَحْلِفُ خَمْسُونَ مِنْكُمْ» وَهَذَا لَفْظٌ يَعُمُّ النِّسَاءَ وَالرِّجَالَ.

L39675 We have only mentioned the ruling of 'Umar to prevent them from claiming consensus on our behalf.

وَإِنَّمَا ذَكَرْنَا حُكْمَ عُمَرَ لِئَلَّا يَدَّعُوا لَنَا الْإِجْمَاعَ.

L39676 As for children and the insane, they are not addressed at all in matters of religion. The Prophet, peace be upon him, said, "The pen is lifted from three [categories]"—mentioning the child and the insane… Even though there is a certain and undoubted consensus that the two of them cannot take oaths in the *qasāmah*.

فَأَمَّا الصِّبْيَانُ وَالْمَجَانِينُ، فَغَيْرُ مُخَاطَبِينَ أَصْلًا بِشَيْءٍ مِنْ الدِّينِ - قَالَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ. فَذَكَرَ: الصَّبِيَّ وَالْمَجْنُونَ» مَعَ أَنَّهُ إجْمَاعٌ أَنْ لَا يَحْلِفَا فِي الْقَسَامَةِ مُتَيَقَّنٌ لَا شَكَّ فِيهِ.

L39677 As for the patron from above, the patron from below, and the confederate, some people have said: It is established that the Messenger of Allah (peace be upon him and his family) stated, "The patron of a people is from among them, and the patron of a people is one of their own."

وَأَمَّا الْمَوْلَى مِنْ فَوْقُ، وَالْمَوْلَى مِنْ أَسْفَلَ، وَالْحَلِيفُ، فَإِنَّ قَوْمًا قَالُوا: قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «مَوْلَى الْقَوْمِ مِنْهُمْ - وَمَوْلَى الْقَوْمِ مِنْ أَنْفُسِهِمْ» .

[16] **Qur'an references (L39673):** Qur'an 49:10 (Al-Hujurat); Qur'an 8:72 (Al-Anfal).

وَأَثْبَتَ الْحَلَفَ فِي الْجَاهِلِيَّةِ - قَالُوا: وَنَحْنُ نَعْلَمُ يَقِينًا - أَنَّهُ قَدْ كَانَ لِبَنِي حَارِثَةَ مَوَالٍ مِنْ أَسْفَلَ، وَحُلَفَاءُ، لَا شَكَّ فِي ذَلِكَ، وَلَا مِرْيَةَ، فَوَجَبَ أَنْ يَحْلِفُوا مَعَهُمْ.

L39678 He affirmed the oath from the pre-Islamic era. They said: "We know with certainty that Banū Ḥārithah had allies from the lower regions and pact-bound partners—there is no doubt or ambiguity about this—thus it became obligatory for them to swear the oath alongside them."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَوْلَى الْقَوْمِ مِنْهُمْ - وَمِنْ أَنْفُسِهِمْ» فَصَحِيحٌ - وَكَذَلِكَ كَوْنُ بَنِي حَارِثَةَ لَهُمْ الْحُلَفَاءُ وَالْمَوَالِي مِنْ أَسْفَلَ بِلَا شَكٍّ؟ إلَّا أَنَّنَا لَسْنَا عَلَى يَقِينٍ مِنْ أَنَّ بَنِي حَارِثَةَ إذْ قَالَ لَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «تَحْلِفُونَ وَتَسْتَحِقُّونَ وَيَحْلِفُ خَمْسُونَ مِنْكُمْ» حَضَرَ ذَلِكَ الْقَوْلَ فِي ذَلِكَ الْمَجْلِسِ حَلِيفٌ لَهُمْ، أَوْ مَوْلًى لَهُمْ - وَلَوْ أَيْقَنَّا أَنَّهُ حَضَرَ هَذَا الْخِطَابَ مَوْلًى لَهُمْ، أَوْ حَلِيفٌ لَهُمْ، لَقُلْنَا بِأَنَّ الْحَلِيفَ وَالْمَوْلَى يَحْلِفُونَ مَعَهُمْ، وَإِذْ لَا يَقِينَ عِنْدَنَا أَنَّهُ حَضَرَ هَذَا الْخِطَابَ حَلِيفٌ وَمَوْلًى؟ فَلَا يَجُوزُ أَنْ يَحْلِفَ فِي حُكْمٍ مُنْفَرِدٍ بِرَسْمِهِ، إلَّا مَنْ نَحْنُ عَلَى يَقِينٍ مِنْ لُزُومِ ذَلِكَ الْحُكْمِ لَهُ.

L39679 Abu Muhammad—may Allah have mercy on him—said: As for the statement of the Messenger of Allah—peace and blessings be upon him—"The client of a people is from among them, and from their own selves," it is authentic. Similarly, is the fact that Banu Harithah have allies and clients from subordinate groups not without doubt? However, we are not certain that when the Messenger of Allah—peace and blessings be upon him—said to Banu Harithah, "You swear and are entitled, and fifty among you swear," an ally or client of theirs was present in that gathering during that statement. If we were certain that a client or ally of theirs was present during this address, we would affirm that the ally and the client swear alongside them. But since we lack certainty that an ally or client was present during this address, is it permissible for a client or ally to swear separately under an established ruling except for those we are certain are bound by that ruling?

فَإِنْ قِيلَ: قَدْ قَالَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَوْلَى الْقَوْمِ مِنْهُمْ» يُغْنِي عَنْ حُضُورِ الْمَوَالِي هُنَالِكَ، وَالْحَلِيفُ أَيْضًا - يُسَمَّى فِي لُغَةِ الْعَرَبِ " مَوْلًى " كَمَا قَالَ - عَلَيْهِ السَّلَامُ - لِلْأَنْصَارِ أَوَّلَ مَا لَقِيَهُمْ «أَمِنَ مَوَالِي يَهُودَ» يُرِيدُ مِنْ حُلَفَائِهِمْ؟ قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: قَدْ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَا ذَكَرْتُمْ.

L39680–39681 If it is said: The Prophet (peace and blessings of Allah be upon him) stated, "The mawla (client/ally) of a people is among them," which dispenses with the need for the mawālī's presence there—and the ḥalīf (ally) is also termed "mawla" in Arabic, as he (peace and blessings of Allah be upon him) said to the Anṣār upon first meeting them: "Are you the protected mawālī of the Jews?" meaning their confederates? We say—and success comes only from Allah, the Exalted—: He (peace and blessings of Allah be upon him) indeed uttered what you cited.

وَقَالَ أَيْضًا «ابْنُ أُخْتِ الْقَوْمِ مِنْهُمْ» ، وَقَدْ أَوْرَدْنَاهُ قَبْلُ بِإِسْنَادِهِ فِي " كِتَابِ الْعَاقِلَةِ " وَلَا خِلَافَ فِي أَنَّهُ لَا يَحْلِفُ مَعَ أَخْوَالِهِ؟ فَنَحْنُ نَقُولُ: إنَّ ابْنَ أُخْتِ الْقَوْمِ مِنْهُمْ: حَقٌّ؛ لِأَنَّهُ مُتَوَلَّدٌ مِنْ امْرَأَةٍ هِيَ مِنْهُمْ بِحَقِّ الْوِلَادَةِ، وَالْحَلِيفُ وَالْمَوْلَى أَيْضًا مِنْهُمْ؛ لِأَنَّهُمَا مِنْ

L39682 He also said, "The sister's son of the clan is among them as a rightful member," and we previously cited this with its chain of transmission in *The Book of Collective Blood-Money Liability*. There is no disagreement that he does not swear an oath alongside his maternal uncles. Thus, we assert: The sister's son of the clan is among them as a rightful member because he is born from a woman who belongs to them by right of birth. Similarly, the ally and the client are also among them, as they are part of their group. However, this

statement from him, peace be upon him, does not entail granting the client and the ally every legal ruling that applies to the clan.

L39683 The consensus of the people of truth is soundly established that the caliphate is not entitled to a client of Quraysh, nor their ally, nor the sister's son of the tribe—even if he is from among them—

L39684 The oath-swearing procedure (qasāmah) applies equally to intentional and unintentional acts—as previously discussed—concerning those who swear the oaths in such cases, with no distinction between them.

L39685 **The issue of the number who swear in the *qasamah*.**

L39686 2156 - Issue: How many must swear in the Qasāmah? Scholars have differed regarding this. A group held: Only fifty must swear. If the number falls short by one or more, the ruling of Qasāmah is invalidated, and the matter reverts to mutual claims.

L39687 Others said: If the number is reduced by one or more, the oaths are re-iterated upon them until they number two. If the legal guardians are only two, the qasamah (oath ritual for homicide) becomes invalid in cases of intentional killing. As for unintentional killing, a single individual swears fifty oaths. This is an opinion narrated from the earlier scholars among the people of Medina.

L39688 Others said: Fifty must swear. If their number decreases by one or more, the oaths are to be reinstated against them until they return to one. If the slain person has only one heir, the qasāma becomes invalid, and the judgment returns to mutual claims. This is the opinion of Mālik.

L39689 Other scholars held: The oaths are to be repeated. Even if there is only one [oath], he must swear fifty oaths individually—and this is the opinion of al-Shāfiʿī.

جُمْلَتِهِمْ - وَلَيْسَ فِي هَذَا الْقَوْلِ مِنْهُ - عَلَيْهِ السَّلَامُ - مَا يُوجِبُ أَنْ يُحْكَمَ لِلْمَوْلَى وَالْحَلِيفِ بِكُلِّ حُكْمٍ وَجَبَ لِلْقَوْمِ.

وَقَدْ صَحَّ إجْمَاعُ أَهْلِ الْحَقِّ عَلَى أَنَّ الْخِلَافَةَ لَا يَسْتَحِقُّهَا مَوْلَى قُرَيْشٍ، وَلَا حَلِيفُهُمْ، وَلَا ابْنُ أُخْتِ الْقَوْمِ، وَإِنْ كَانَ مِنْهُمْ -.

وَالْقَسَامَةُ فِي الْعَمْدِ وَالْخَطَأِ سَوَاءٌ - فِيمَا ذَكَرْنَا - فِيمَنْ يَحْلِفُ فِيهَا، وَلَا فَرْقَ.

[مَسْأَلَة كَمْ يَحْلِفُ فِي الْقَسَامَةِ.]

٢١٥٦ - مَسْأَلَةٌ: كَمْ يَحْلِفُ فِي الْقَسَامَةِ؟ اخْتَلَفَ النَّاسُ فِي هَذَا؟ فَقَالَتْ طَائِفَةٌ: لَا يَحْلِفُ إلَّا خَمْسُونَ، فَإِنْ نَقَصَ مِنْ هَذَا الْعَدَدِ وَاحِدٌ فَأَكْثَرُ: بَطَلَ حُكْمُ الْقَسَامَةِ، وَعَادَ الْأَمْرُ إلَى التَّدَاعِي.

وَقَالَ آخَرُونَ: إنْ نَقَصَ وَاحِدٌ فَصَاعِدًا: رُدِّدَتْ الْأَيْمَانُ عَلَيْهِمْ حَتَّى يَبْلُغُوا اثْنَيْنِ، فَإِنْ كَانَ الْأَوْلِيَاءُ اثْنَيْنِ فَقَطْ بَطَلَتْ الْقَسَامَةُ فِي الْعَمْدِ - وَأَمَّا فِي الْخَطَأِ فَيَحْلِفُ فِيهِ وَاحِدٌ خَمْسِينَ - وَهُوَ قَوْلٌ رُوِيَ عَنْ عُلَمَاءِ أَهْلِ الْمَدِينَةِ الْمُتَقَدِّمِينَ مِنْهُمْ.

وَقَالَ آخَرُونَ: يَحْلِفُ خَمْسُونَ، فَإِنْ نَقَصَ مِنْ عَدَدِهِمْ وَاحِدٌ فَصَاعِدًا: رُدَّتْ الْأَيْمَانُ عَلَيْهِمْ، حَتَّى يَرْجِعُوا إلَى وَاحِدٍ، فَإِنْ لَمْ يَكُنْ لِلْمَقْتُولِ إلَّا وَلِيٌّ وَاحِدٌ: بَطَلَتْ الْقَسَامَةُ، وَعَادَ الْحُكْمُ إلَى التَّدَاعِي - وَهَذَا قَوْلُ مَالِك.

وَقَالَ آخَرُونَ: تُرَدَّدُ الْأَيْمَانُ، وَإِنْ لَمْ يَكُنْ إلَّا وَاحِدٌ فَإِنَّهُ يَحْلِفُ خَمْسِينَ يَمِينًا وَحْدَهُ - وَهُوَ قَوْلُ الشَّافِعِيِّ.

وَهَكَذَا قَالُوا فِي أَيْمَانِ الْمُدَّعَى عَلَيْهِمْ: أَنَّهَا تُرَدَّدُ عَلَيْهِمْ وَإِنْ لَمْ يَبْقَ إِلَّا وَاحِدٌ وَيُجْبَرُ الْكَسْرُ عَلَيْهِمْ - فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ: فَوَجَدْنَا مَنْ قَالَ بِتَرْدِيدِ الْأَيْمَانِ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّ فِي كِتَابٍ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِي الْأَيْمَانِ أَنْ يَحْلِفَ الْأَوْلِيَاءُ، فَإِنْ لَمْ يَكُنْ عَدَدُ عَصَبَتِهِ تَبْلُغُ خَمْسِينَ رُدِّدَتْ الْأَيْمَانُ عَلَيْهِمْ بَالِغًا مَا بَلَغُوا» .

L39690–39691 Similarly, they stated concerning the oaths of defendants: the oaths are reiterated upon them even if only a single individual remains, and the numerical shortfall is compensated by them. When they differed, we were obliged to investigate. We discovered those who advocated the repetition of oaths through the transmission of ʿAbd al-Razzāq from Ibn Jurayj from ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz, who reported that in a written ruling of ʿUmar ibn ʿAbd al-ʿAzīz, it is recorded: "The Prophet—peace and blessings of Allah be upon him—judged regarding oaths that the guardians must swear. If the number of his agnatic male relatives does not reach fifty, the oaths are repeatedly administered among them to the extent of their number."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ عَمْرٍو عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ، قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِخَمْسِينَ يَمِينًا، ثُمَّ يَحِقُّ دَمُ الْمَقْتُولِ إِذَا حُلِفَ عَلَيْهِ، ثُمَّ يُقْتَلُ قَاتِلُهُ، أَوْ تُؤْخَذُ دِيَتُهُ، وَيَحْلِفُ عَلَيْهِ أَوْلِيَاؤُهُ - مَنْ كَانُوا قَلِيلًا أَوْ كَثِيرًا - فَمَنْ تَرَكَ مِنْهُمْ الْيَمِينَ ثَبَتَتْ عَلَى مَنْ بَقِيَ مِمَّنْ يَحْلِفُ - فَإِنْ نَكَلُوا كُلُّهُمْ: حَلَفَ الْمُدَّعَى عَلَيْهِمْ خَمْسِينَ يَمِينًا: مَا قَتَلْنَاهُ، ثُمَّ بَطَلَ دَمُهُ - وَإِنْ نَكَلُوا كُلُّهُمْ: عَقَلَهُ الْمُدَّعَى عَلَيْهِمْ - وَلَا يُطَلُّ دَمُ مُسْلِمٍ إِذَا ادُّعِيَ إِلَّا بِخَمْسِينَ يَمِينًا» .

L39692 Via the chain of Ibn Wahb, Muḥammad ibn ʻAmr informed me from Ibn Jurayj from ʻAmr ibn Shuʻayb, who said: "Allah's Messenger (peace be upon him) ruled with fifty oaths. The slain person's blood claim becomes due if sworn upon, whereupon the killer is executed or his blood money (*diya*) is taken. The heirs – whether few or many – must swear the oath. Whoever among them abandons the oath, it remains binding upon those remaining who swear. If they all refuse, those against whom the claim is made must swear fifty oaths: 'We did not kill him,' whereupon his blood claim is annulled. If they all refuse, the accused party must pay the blood money (*diya*). The blood of a Muslim is not shed without redress when claimed except through fifty oaths."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا لَا شَيْءَ؛ لِأَنَّهُمَا مُرْسَلَانِ، وَالْمُرْسَلُ لَا تَقُومُ بِهِ حُجَّةٌ: أَمَّا حَدِيثُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَفِيهِ: أَنْ يَحْلِفَ الْأَوْلِيَاءُ، وَهَذَا لَا يَقُولُ بِهِ الْحَنَفِيُّونَ؛ فَإِنْ تَعَلَّقَ بِهِ الْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ. قِيلَ لِلْمَالِكِيِّينَ: هُوَ أَيْضًا حُجَّةٌ عَلَيْكُمْ؛ لِأَنَّهُ لَيْسَ فِيهِ: أَنْ لَا يَحْلِفَ إِلَّا اثْنَانِ.

L39693 Abū Muḥammad—may Allah have mercy on him—said: This is invalid because both are *mursal* hadiths; a *mursal* hadith does not constitute valid proof. As for the ḥadīth of ʿUmar ibn ʿAbd al-ʿAzīz, it states that the guardians must swear an oath, but this is not upheld by the Ḥanafīs. If the Mālikīs and Shāfiʿīs rely on it, it was said to the Mālikīs: "It is also a valid proof against you, for it does not specify that the oath is restricted to two."

وَأَيْضًا - فَلَيْسَ هُوَ بِأَوْلَى مِنْ الْمُرْسَلِ الَّذِي بَعْدَهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ، وَهُوَ مُخَالِفٌ لِقَوْلِ جَمِيعِهِمْ؛ لِأَنَّ فِيهِ: إنْ نَكَلَ الْفَرِيقَانِ عَقَلَهُ الْمُدَّعَى عَلَيْهِمْ وَلَا يَقُولُ بِهِ مَالِكِيٌّ، وَلَا

L39694 Moreover, the ruling is not more authoritative than the subsequent unattributed report transmitted through Ibn Wahb, for it contradicts all their positions. It contains the provision that if both parties refuse to swear, the blood money is paid by the defendants—a view no Mālikī or Shāfiʿī scholar upholds. It also prescribes legal retribution through collective oaths

(qasāmah)—a position no Ḥanafī or Shāfiʿī endorses. Furthermore, it mandates the collective repetition of oaths without specifying their number as two—contrary to Mālik's explicit assertion requiring two oaths.

L39695–39697 Abū Muḥammad—may Allāh have mercy on him—said: Moreover, those who uphold the repetition of oaths in collective oath-swearing (qasāmah) have differed about the manner of repetition. It has been narrated to us from ʿUmar that he had the oaths repeated by the two parties—the first group then the same group again—meaning: as if they were forty men who swore forty oaths, leaving ten oaths unfulfilled. Thus, the ten who had sworn first swore those ten oaths only. Another narration differs, stating that the oaths are repeated by two individuals at a time, as narrated to us through Ibn Wahb's chain: Ibn Samʿān said: I heard from those I met among... Our scholars state regarding qasāmah (oaths of compurgation) that it applies in cases of accidental killing to the heirs. If the slain person has no heir in the case of accidental killing except a single heir, he must swear fifty reiterated oaths, then the diyah (blood money) is given to him. If there are two sons or two brothers, with no other heirs besides them, and one of them consents to the qasāmah while the other refuses, the one who consents must swear twenty-five reiterated oaths, then half the diyah is given to him, and the other receives nothing. If the heirs are three individuals, the qasāmah is divided into thirds among them. If the oaths do not suffice for them, the remaining oaths are distributed among the pairs in succession. Indeed, the qasāmah is imposed upon the heirs according to their inheritance shares. We have mentioned through a connected chain of transmission from Saʿīd ibn al-Musayyab and al-Zuhrī that the reiteration of oaths in qasāmah is impermissible, and that it is an innovation that did not exist before, and that the first to reiterate oaths in qasāmah was Muʿāwiyah. There exists an unauthenticated report on this matter; had they found its like, they would have been overjoyed.

L39698 It is valid that there is no collective oath (qasāmah) except with fifty men swearing: that so-and-so killed our companion intentionally or by mistake, in whatever way they knew it. If they are short by one or more, the collective oath becomes void and the matter reverts to the ruling of mutual litigation. They must swear in the judge's assembly while seated, regardless of their

شَافِعِيٌّ، وَفِيهِ الْقَوَدُ بِالْقَسَامَةِ - وَلَا يَقُولُ بِهِ حَنَفِيٌّ، وَلَا شَافِعِيٌّ، وَفِيهِ تَرْدِيدُ الْأَيْمَانِ جُمْلَةً دُونَ تَخْصِيصٍ أَنْ يَكُونَا اثْنَيْنِ كَمَا يَقُولُ مَالِكٌ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَيْضًا - فَإِنَّ الْقَائِلِينَ بِتَرْدِيدِ الْأَيْمَانِ فِي الْقَسَامَةِ قَدْ اخْتَلَفُوا فِي التَّرْدِيدِ، فَرُوِّينَا عَنْ عُمَرَ: أَنَّهُ رَدَّدَ الْأَيْمَانَ عَلَيْهِمَا الْأَوَّلَ فَالْأَوَّلَ مَعْنَاهُ: كَأَنَّهُمْ كَانُوا أَرْبَعِينَ فَحَلَفُوا أَرْبَعِينَ يَمِينًا، فَبَقِيَتْ عَشَرَةُ أَيْمَانٍ، فَحَلَفَ الْعَشَرَةُ الَّذِينَ حَلَفُوا أَوَّلًا فَقَطْ، وَرُوِيَ غَيْرُ ذَلِكَ وَأَنَّهَا تُرَدَّدُ عَلَى الِاثْنَيْنِ فَالِاثْنَيْنِ: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ قَالَ: قَالَ ابْنُ سَمْعَانَ: سَمِعْت مَنْ أَدْرَكْت مِنْ عُلَمَائِنَا يَقُولُونَ فِي الْقَسَامَةِ تَكُونُ فِي الْخَطَأِ عَلَى الْوَارِثِ، فَإِنْ لَمْ يَكُنْ لِلْمَقْتُولِ خَطَأً إلَّا وَارِثٌ وَاحِدٌ حَلَفَ خَمْسِينَ يَمِينًا مُرَدَّدَةً ثُمَّ يُدْفَعُ إلَيْهِ الدِّيَةَ: فَإِنْ كَانُوا ابْنَيْنِ أَوْ أَخَوَيْنِ، لَيْسَ لَهُ وَارِثٌ غَيْرُهُمَا فَطَاعَ أَحَدُهُمَا بِالْقَسَامَةِ وَأَبَى الْآخَرُ، فَعَلَى الَّذِي طَاعَ بِالْقَسَامَةِ خَمْسَةٌ وَعِشْرُونَ مُرَدَّدَةً عَلَيْهِ ثُمَّ يَدْفَعُ إلَيْهِ نِصْفَ الدِّيَةِ وَلَيْسَ لِلْآخَرِ شَيْءٌ: فَإِنْ كَانَ الْوَرَثَةُ ثَلَاثَةَ رَهْطٍ كَانَتْ الْقَسَامَةُ عَلَيْهِمْ أَثْلَاثًا، فَإِنْ لَمْ تَنْفُقْ الْأَيْمَانُ عَلَيْهِمْ جُعِلَ الْفَضْلُ عَلَى الِاثْنَيْنِ فَالِاثْنَيْنِ وَأَنَّ الْقَسَامَةَ عَلَى الْوَرَثَةِ بِقَدْرِ الْمِيرَاثِ، وَقَدْ ذَكَرْنَا بِالْإِسْنَادِ الْمُتَّصِلِ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، وَالزُّهْرِيِّ: أَنَّ تَرْدِيدَ الْأَيْمَانِ فِي الْقَسَامَةِ لَا يَجُوزُ، وَأَنَّهُ أَمْرٌ حَدَثٌ لَمْ يَكُنْ قَبْلُ، وَأَنَّ أَوَّلَ مَنْ رَدَّدَ الْأَيْمَانَ مُعَاوِيَةُ فِي الْقَسَامَةِ، وَقَدْ جَاءَ فِي هَذَا خَبَرٌ مُرْسَلٌ لَوْ وَجَدُوا مِثْلَهُ لَطَارُوا بِهِ.

فَصَحَّ أَنْ لَا قَسَامَةَ إلَّا بِخَمْسِينَ يَحْلِفُونَ: أَنَّ فُلَانًا قَتَلَ صَاحِبَنَا عَمْدًا أَوْ خَطَأً كَيْفَمَا عَلِمُوا مِنْ ذَلِكَ، فَإِنْ نَقَصَ مِنْهُمْ وَاحِدٌ فَصَاعِدًا بَطَلَتْ الْقَسَامَةُ وَعَادَ الْأَمْرُ إلَى حُكْمِ

facing direction, using only the phrase “By Allah the Exalted” - they are not required to add anything beyond the name of Allah the Exalted, in accordance with the Prophet’s (peace be upon him) saying: “Whoever takes an oath must swear by Allah or remain silent.” There is no distinction between adding “the One besides whom there is no deity” and adding “the Sovereign, the Holy, the Source of Peace, the Believer, the Overseer, the Almighty, the Compeller, the Supreme.” All of this constitutes rulings not established by any explicit text from Allah the Exalted, nor from His Messenger (peace and blessings be upon him), nor from any Companions (may Allah be pleased with them). These rulings are neither made obligatory by analogical reasoning nor derived from juristic discretion.[17]

التَّدَاعِي، وَيَحْلِفُونَ فِي مَجْلِسِ الْحَاكِمِ وَهُمْ قُعُودٌ حَيْثُ كَانَتْ وُجُوهُهُمْ: بِاللَّهِ تَعَالَى فَقَطْ، لَا يُكَلَّفُونَ زِيَادَةً عَلَى اسْمِ اللَّهِ تَعَالَى لِقَوْلِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - «مَنْ كَانَ حَالِفًا فَلْيَحْلِفْ بِاللَّهِ أَوْ لِيَصْمُتْ» وَلَا فَرْقَ بَيْنَ زِيَادَةِ " الَّذِي لَا إِلَهَ إِلَّا هُوَ " وَزِيَادَةِ " الْمَلِكِ الْقُدُّوسِ السَّلَامِ الْمُؤْمِنِ الْمُهَيْمِنِ الْعَزِيزِ الْجَبَّارِ الْمُتَكَبِّرِ " وَكُلُّ هَذَا حُكْمٌ لَمْ يَأْتِ بِهِ عَنْ اللَّهِ تَعَالَى نَصٌّ، وَلَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا أَوْجَبَهُ قِيَاسٌ، وَلَا نَظَرٌ.

L39699 Similarly, they are not obligated to stand at the right side, nor to turn their faces toward the *qiblah*, nor to remove their cloaks or their *ṭaylasān*. None of these rulings is established by any Quranic text, nor any *Sunnah*—neither sound nor weak—nor the statement of a Companion, nor consensus, nor analogy, nor juristic reasoning.

وَكَذَلِكَ لَا يُكَلَّفُونَ الْوُقُوفَ عِنْدَ الْيَمِينِ، وَلَا صَرْفَ وُجُوهِهِمْ إلَى الْقِبْلَةِ، وَلَا يَنْزِعُوا أَرْدِيَتَهُمْ أَوْ طَيَالِسَتَهُمْ - وَكُلُّ هَذِهِ أَحْكَامٌ لَمْ يَأْتِ بِهَا نَصُّ قُرْآنٍ، وَلَا سُنَّةٌ لَا صَحِيحَةٌ، وَلَا سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا إجْمَاعٌ، وَلَا قِيَاسٌ، وَلَا نَظَرٌ.

L39700–39702 If they say: “It is deterrence through awe to make the liar desist?” Respond to them: “But it is public exposure. If you intend deterrence, then make him ascend the minaret, or raise him upon the minaret, or bind his waist with a rope and strip him in undergarments”—all of this is meaningless, utterly meaningless. To swear in the mosque is impermissible unless it houses the judge’s court or entails no burden of movement for the oath-taker, for neither Allah the Exalted, nor His Messenger (peace and blessings be upon him), nor any Companion commanded this. Rather, this is reported from Umar ibn al-Khattab and Muawiyah. For instance, Umar summoned defendants in the qasamah from Yemen to Mecca and from Kufa to Mecca to have them swear oaths there.

فَإِنْ قَالُوا: هُوَ تَهْيِيبٌ لِيَرْتَدِعَ الْكَاذِبُ؟ قِيلَ لَهُمْ: وَهُوَ تَشْهِيرٌ وَإِنْ أَرَدْتُمْ التَّهْيِيبَ فَأَصْعِدُوهُ الْمَنَارَ، أَوْ ارْفَعُوهُ عَلَى الْمَنَارِ، أَوْ شُدُّوا وَسَطَهُ بِحَبْلٍ وَجَرِّدُوهُ فِي سَرَاوِيلَ - وَكُلُّ هَذَا لَا مَعْنَى لَهُ، وَلَا مَعْنَى لِأَنْ يَحْلِفَ فِي الْجَامِعِ إلَّا إنْ كَانَ مَجْلِسُ الْحَاكِمِ فِيهِ، أَوْ لَمْ يَكُنْ فِيهِ عَلَى الْمُحَلَّفِ كُلْفَةُ حَرَكَةٍ؛ لِأَنَّهُ لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِذَلِكَ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا أَحَدٌ مِنْ الصَّحَابَةِ، بَلْ إنَّمَا جَاءَ ذَلِكَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَمُعَاوِيَةَ أَنَّ عُمَرَ جَلَبَ الْمُدَّعَى عَلَيْهِمْ فِي الْقَسَامَةِ مِنْ الْيَمَنِ إلَى مَكَّةَ وَمِنْ الْكُوفَةِ إلَى مَكَّةَ لِيَحْلِفُوا فِيهَا.

L39703 And from Muʿāwiyah, Thābit reported: that he transported them from Medina to Mecca to have oaths administered at al-Ḥaṭīm or between the Corner

وَعَنْ مُعَاوِيَةَ ثَابِتٌ: أَنَّهُ حَمَلَهُمْ مِنْ الْمَدِينَةِ إلَى مَكَّةَ لِلتَّحْلِيفِ فِي الْحَطِيمِ أَوْ بَيْنَ الرُّكْنِ وَالْمَقَامِ، وَالْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ مُخَالِفُونَ لَهُمَا - رَضِيَ اللَّهُ عَنْهُمَا - فِي

[17] **Qur’an references (L39698):** Qur’an 20:98 (Taha); Qur’an 59:22 (Al-Hashr); Qur’an 59:23 (Al-Hashr).

and the Maqām. The Mālikīs, Ḥanafīs, and Shāfiʿīs oppose both of them—may Allah be pleased with them—in this matter. Yet they now invoke both as evidence against us regarding the very matter in which they themselves have also opposed their stance. And with Allah the Exalted lies all success.

ذَلِكَ، وَهُمْ الْآنَ يَحْتَجُّونَ عَلَيْنَا بِهِمَا فِي التَّرْدِيدِ الَّذِي قَدْ خَالَفُوهُمَا أَيْضًا فِيهِ نَفْسِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L39704 We compile here the ruling of qasāmah—if Allah, the Exalted, wills—then we say—and with Allah, the Exalted, is all success.

وَنَجْمَعُ هَاهُنَا حُكْمَ الْقَسَامَةِ - إنْ شَاءَ اللَّهُ تَعَالَى - فَنَقُولُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L39705 If a slain person is found in the home of a people, a wilderness, a mosque, a market, or his own home.

إذَا وُجِدَ قَتِيلٌ فِي دَارِ قَوْمٍ، أَوْ فِي صَحْرَاءَ، أَوْ فِي مَسْجِدٍ، أَوْ فِي سُوقٍ، أَوْ فِي دَارِهِ.

L39706 Or wherever the body is found, and the legal guardians of the slain claim against one individual or multiple individuals from the inhabitants of that residence or others, and their assertion and claim could plausibly be true—provided it is not certain they are lying—then fifty sane adult agnatic relatives of the slain, whether heirs or non-heirs, are to be made to swear, each stating: "I swear by Allah the Exalted that so-and-so killed him," or "so-and-so, so-and-so, and so-and-so collaborated in his killing."

أَوْ حَيْثُ وُجِدَ، فَادَّعَى أَوْلِيَاؤُهُ عَلَى وَاحِدٍ، أَوْ عَلَى جَمَاعَةٍ مِنْ أَهْلِ تِلْكَ الدَّارِ، أَوْ مِنْ غَيْرِهِمْ، وَأَمْكَنَ أَنْ يَكُونَ مَا قَالُوهُ وَادَّعَوْهُ حَقًّا، وَلَمْ يُتَيَقَّنْ كَذِبُهُمْ فِي ذَلِكَ فَإِنَّهُ يُحَلَّفُونَ خَمْسِينَ بَالِغًا، عَاقِلًا، مِنْ رَجُلٍ أَوْ امْرَأَةٍ مِنْ عَصَبَةِ الْمَقْتُولِ، لَا نُبَالِي وَرَثَةً أَوْ غَيْرَ وَرَثَةٍ بِاَللَّهِ تَعَالَى أَنَّ فُلَانًا قَتَلَهُ، أَوْ أَنَّ فُلَانًا وَفُلَانًا وَفُلَانًا اشْتَرَكُوا فِي قَتْلِهِ ".

L39707 Then they are liable for retribution (qisas), blood money (diyah), or ransom. If they refuse to swear and say, "We do not know who specifically killed him," fifty members of that district or tribe must swear, each declaring, "By Allah, I did not kill him," and they are not burdened further—thereby absolving them. If they refuse, all are compelled to take the oath—willingly or unwillingly—until fifty swear as stipulated.

ثُمَّ لَهُمْ الْقَوَدُ، أَوْ الدِّيَةُ، أَوْ الْمُفَادَاةُ، فَإِنْ أَبَوْا أَنْ يَحْلِفُوا، وَقَالُوا: لَا نَدْرِي مَنْ قَتَلَهُ بِعَيْنِهِ: حَلَفَ مِنْ أَهْلِ تِلْكَ الْمَحَلَّةِ خَمْسُونَ كَذَلِكَ، أَوْ مِنْ أَهْلِ تِلْكَ الْقَبِيلَةِ، يَقُولُ كُلُّ حَالِفٍ مِنْهُمْ " بِاَللَّهِ مَا قَتَلْتُ " وَلَا يُكَلَّفُ أَكْثَرَ وَيُبَرَّءُونَ - فَإِنْ نَكَلُوا أُجْبِرُوا كُلُّهُمْ عَلَى الْيَمِينِ - أَحَبُّوا أَمْ كَرِهُوا - حَتَّى يَحْلِفَ خَمْسُونَ مِنْهُمْ كَمَا قُلْنَا.

L39708 It is not permissible to require them to state "nor have we known a killer," because a person's knowledge of who killed so-and-so constitutes testimony alone. If they deliver it, they have discharged their obligation.

وَلَا يَجُوزُ أَنْ يُكَلَّفُوا أَنْ يَقُولُوا " وَلَا عَلِمْنَا قَاتِلًا "؛ لِأَنَّ عِلْمَ الْمَرْءِ بِمَنْ قَتَلَ فُلَانًا إنَّمَا هِيَ شَهَادَةٌ، فَإِنْ أَدَّاهَا أَدَّى مَا عَلَيْهِ.

L39709 If he accepts: it is accepted, and that suffices; and if he does not accept, there is no sin upon him.

فَإِنْ قَبِلَ: قُبِلَ، فَذَلِكَ، وَإِنْ لَمْ يَقْبَلْ فَلَا حَرَجَ عَلَيْهِ.

L39710 It is not permissible for anyone to swear an oath concerning a testimony in their possession in order to present it without contradiction.

وَلَا يَجُوزُ أَنْ يَحْلِفَ أَحَدٌ شَهَادَةً عِنْدَهُ لِيُؤَدِّيَهَا بِلَا خِلَافٍ.

L39711 If the male relatives of the slain decrease by one or more from fifty, or the

victim presumed dead is found alive, or the fifty refuse to swear oaths and do not accept the oaths of the accused, then the *qasāmah* becomes invalid.

فَإِنْ نَقَصَ عَصَبَةَ الْمَقْتُولِ وَاحِدٌ فَأَكْثَرُ مِنْ خَمْسِينَ، أَوْ وُجِدَ الْقَتِيلُ وَفِيهِ حَيَاةٌ، أَوْ لَمْ يُرِدْ الْخَمْسُونَ أَنْ يَحْلِفُوا وَلَا رَضُوا بِأَيْمَانِ الْمُدَّعَى عَلَيْهِمْ، فَقَدْ بَطَلَتْ الْقَسَامَةُ.

L39712–39714 As for a deficiency in the number below fifty, and the slain being found alive, there is nothing in this except... The ruling regarding the claim is that the defendant(s)—whether one or multiple—must swear only a single oath each. If they refuse, they are compelled to take their oaths regardless of willingness.

فَأَمَّا فِي نُقْصَانِ الْعَدَدِ عَنْ خَمْسِينَ، وَفِي وُجُودِ الْقَتِيلِ حَيًّا، فَلَيْسَ فِي هَذَا إلَّا حُكْمُ الدَّعْوَى، وَيَحْلِفُ الْمُدَّعَى عَلَيْهِ وَاحِدًا - كَانَ أَوْ أَكْثَرَ - يَمِينًا وَاحِدَةً فَقَطْ، فَإِنْ نَكَلَ، أَوْ نَكَلُوا: أُجْبِرُوا عَلَى الْأَيْمَانِ أَحَبُّوا أَمْ كَرِهُوا.

L39715 Similarly, if the number of inhabitants in the locality against whom the claim is made is insufficient, then there is no qasāma at all. Likewise, if the guardians of the slain and his agnates do not prove their claim, the ruling is the same: diyah must be paid for the slain, whether he was free or enslaved, from the treasury of the Muslims or from the share of debtors among the alms, as Allah the Exalted has commanded: *"And whoever kills a believer by mistake must free a believing slave and pay diyah to his family"* (Quran 4:92).[18]

وَهَكَذَا إنْ نَقَصَ عَدَدُ أَهْلِ الْمَحَلَّةِ الْمُدَّعَى عَلَيْهِمْ فَلَا قَسَامَةَ أَصْلًا، وَكَذَلِكَ إنْ لَمْ يُحَقِّقْ أَوْلِيَاءُ الْمَقْتُولِ دَعْوَاهُمْ وَعَصَبَتُهُ، فَإِنَّ الْحُكْمَ فِي ذَلِكَ وَاحِدٌ، وَهُوَ أَنْ لَا بُدَّ أَنْ يُودَى الْمَقْتُولُ - حُرًّا كَانَ أَوْ عَبْدًا - مِنْ بَيْتِ مَالِ الْمُسْلِمِينَ، أَوْ مِنْ سَهْمِ الْغَارِمِينَ مِنْ الصَّدَقَاتِ كَمَا أَمَرَ اللَّهُ تَعَالَى {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إلَى أَهْلِهِ} [النساء: ٩٢] .

L39716 Just as the Prophet—peace be upon him—said: "Whoever has someone killed after this declaration of mine, their family has two choices: either to seek retaliation (qisas) or to accept blood money (diya)."

وَكَمَا قَالَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - «مَنْ قُتِلَ لَهُ بَعْدَ مَقَالَتِي هَذِهِ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيرَتَيْنِ إمَّا أَنْ يُقَادَ أَوْ أَنْ يُعْقَلَ» .

L39717 The killing that occurs among people is only accidental or intentional. In both cases, the blood money is prescribed by the ruling of Allah the Exalted and that of His Messenger—peace and blessings be upon him.

وَلَيْسَ الْقَتْلُ الْوَاقِعُ بَيْنَ النَّاسِ إلَّا خَطَأً أَوْ عَمْدًا فَقَطْ، وَفِي كِلَيْهِمَا الدِّيَةُ بِحُكْمِ اللَّهِ تَعَالَى، وَحُكْمِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L39718 Moreover, the compensation for accidental killing falls upon the responsible male relatives of the killer from among those liable for compensatory obligations, while in intentional killing, the killer becomes bound by compensatory obligations if blood money is accepted from him. Thus, their right to a share from the compensatory obligations is mandatory, or from every waqf property designated for all beneficial matters pertaining to Muslims. This ruling

وَأَيْضًا - فَإِنَّ الْخَطَأَ يَكُونُ عَلَى عَاقِلَةِ قَاتِلِ الْخَطَأِ مِنْ الْغَارِمِينَ، وَفِي الْعَمْدِ يَكُونُ الْقَاتِلُ إذَا قُبِلَتْ مِنْهُ الدِّيَةُ غَارِمًا مِنْ الْغَارِمِينَ، فَحَظُّهُمْ فِي سَهْمِ الْغَارِمِينَ وَاجِبٌ، أَوْ فِي كُلِّ مَالٍ مَوْقُوفٍ لِجَمِيعِ مَصَالِحِ أُمُورِ الْمُسْلِمِينَ فَهَذَا حُكْمُ كُلِّ مَقْتُولٍ بِلَا شَكٍّ، حَتَّى يَثْبُتَ

[18] **Qur'an references (L39715):** Qur'an 4:92 (An-Nisa).

applies to every slain person without doubt, until it is established that he was killed neither intentionally nor accidentally, but rather due to the action of an animal, or someone with the legal status of an animal among the insane or children, or that he intentionally killed himself - and with Allah, the Exalted, lies all success.

أَنَّهُ قُتِلَ، لَا عَمْدًا وَلَا خَطَأً، لَكِنْ بِفِعْلِ بَهِيمَةٍ، أَوْ مَنْ لَهُ حُكْمُ الْبَهِيمَةِ مِنْ الْمَجَانِينِ، أَوْ الصِّبْيَانِ، أَوْ أَنَّهُ قَتَلَ نَفْسَهُ عَمْدًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39719 Abū Muḥammad—may Allāh have mercy on him—said: There remains in the matter of qasāmah a report we will present, Allāh willing, so that no one—deceived due to ignorance of its weakness—is misled by it, nor due to the presumption of one who assumes it was overlooked and unmentioned, thereby resulting in a deficiency in the Sunnah's ruling on qasāmah.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَبَقِيَ فِي الْقَسَامَةِ خَبَرٌ نُورِدُهُ - إنْ شَاءَ اللَّهُ تَعَالَى - لِئَلَّا يَغْتَرَّ بِهِ مُغْتَرٌّ بِجَهْلِ ضَعْفِهِ، أَوْ بِظَنِّ ظَانٍّ أَنَّهُ أُغْفِلَ وَلَمْ يُذْكَرْ، فَيَكُونُ نَقْصًا مِنْ حُكْمِ السُّنَّةِ فِي الْقَسَامَةِ.

L39720–39722 It is as informed to us by ʿAbdullāh ibn Rabīʿ: from Ibn Mufarrij, from Qāsim ibn Aṣbagh, from Ibn Waḍḍāḥ, from Sahnūn, from Ibn Wahb, who said: I heard Ibn Samʿān saying: Ibn Shihāb reported to me from ʿAbdullāh ibn Mawhab, from Qabīṣah ibn Dhuʾayb al-Kaʿbī that he said: "The Messenger of Allah (peace and blessings be upon him) dispatched a military detachment. They encountered the polytheists at Iḍam or near it. The polytheists were routed. Muhallim ibn Jaththāmah al-Laythī launched a surprise attack." Amir ibn al-Adbat al-Ashjaʿi. When he caught up with him, Amir declared: "I bear witness that there is no god but Allah." Yet the attacker did not desist despite his declaration until he killed him. When this was reported to the Messenger of Allah (peace be upon him), he summoned Muhallim and asked: "Did you kill him after he said 'There is no god but Allah'?" He replied: "O Messenger of Allah, even if he uttered it, he only sought refuge with it while being a disbeliever." The Messenger of Allah (peace be upon him) said: "Why did you not probe his heart?" By this, he meant – and Allah knows best – that the tongue merely articulates what the heart contains.

Uyaynah ibn Badr then came forward among his people, inflamed with tribal zeal and anger for Qays, saying: "O Messenger of Allah, our companion was killed while he was a believer. Grant us retribution!" The Messenger of Allah (peace be upon him) responded: "Will fifty men from among you each swear one oath by Allah that your companion was killed while he was a believer whose faith was audible?" They complied. After they swore, the Messenger

وَهُوَ كَمَا نَاهِ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ قَالَ: سَمِعْت ابْنَ سَمْعَانَ يَقُولُ: أَخْبَرَنِي ابْنُ شِهَابٍ عَنْ عَبْدِ اللَّهِ بْنِ مَوْهَبٍ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ الْكَعْبِيِّ أَنَّهُ قَالَ: «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَرِيَّةً فَلَقُوا الْمُشْرِكِينَ بِإِضَمٍ أَوْ قَرِيبًا مِنْهُ فَهُزِمَ الْمُشْرِكُونَ وَغَشِيَ مُحَلِّمُ بْنُ جَثَّامَةَ اللَّيْثِيُّ عَامِرَ بْنَ الْأَضْبَطِ الْأَشْجَعِيَّ، فَلَمَّا لَحِقَهُ، قَالَ عَامِرٌ: أَشْهَدُ أَنْ لَا إلَهَ إلَّا اللَّهُ، فَلَمْ يَنْتَهِ عَنْهُ لِكَلِمَتِهِ حَتَّى قَتَلَهُ، فَذُكِرَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَرْسَلَ إلَى مُحَلِّمٍ فَقَالَ: أَقَتَلْتَهُ بَعْدَ أَنْ قَالَ لَا إلَهَ إلَّا اللَّهُ؟ فَقَالَ: يَا رَسُولَ اللَّهِ إنْ كَانَ قَالَهَا فَإِنَّمَا تَعَوَّذَ بِهَا وَهُوَ كَافِرٌ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَلَّا ثَقَبْتَ عَنْ قَلْبِهِ؟ يُرِيدُ بِذَلِكَ - وَاَللَّهُ أَعْلَمُ - إنَّمَا يُعْرِبُ اللِّسَانُ عَنْ الْقَلْبِ - وَأَقْبَلَ عُيَيْنَةُ بْنُ بَدْرٍ فِي قَوْمِهِ حَمِيَّةً وَغَضَبًا لِقَيْسٍ فَقَالَ: يَا رَسُولَ اللَّهِ قُتِلَ صَاحِبُنَا وَهُوَ مُؤْمِنٌ، فَأَقِدْنَا؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَحْلِفُونَ بِاَللَّهِ خَمْسِينَ يَمِينًا عَلَى خَمْسِينَ رَجُلًا مِنْكُمْ أَنْ كَانَ صَاحِبُكُمْ قُتِلَ وَهُوَ مُؤْمِنٌ قَدْ سُمِعَ إيمَانُهُ؟ فَفَعَلُوا، فَلَمَّا حَلَفُوا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْفُوا عَنْهُ وَاقْبَلُوا الدِّيَةَ، فَقَالَ عُيَيْنَةُ بْنُ حِصْنٍ إنَّا نَسْتَحِي أَنْ تَسْمَعَ الْعَرَبُ

of Allah (peace be upon him) said: “Pardon the killer and accept the blood money.”

Uyaynah ibn Hisn protested: “We would be shamed if the Arabs heard we accepted blood money for our companion.” Al-Aqra‘ ibn Habis al-Tamimi, burning with tribal fervor for Khindaf, challenged Uyaynah ibn Hisn: “By what justification do you demand this man’s blood?” He answered: “Fifty of our men swore our companion was killed as a believer.” Al-Aqra‘ retorted: “Did the Messenger of Allah (peace be upon him) not bid you pardon the killing and accept blood money, yet you refused? By Allah, you will surely accept what the Messenger of Allah (peace be upon him) proposes, or I shall bring a hundred men from Banu Tamim to swear by Allah that your companion was killed while a disbeliever!”

At this they relented: “Hold on! We shall accept what the Messenger of Allah (peace be upon him) has urged upon us.” Returning to the Messenger of Allah (peace be upon him), they said: “O Messenger of Allah, we accept the blood money you proposed. Is this the blood money prescribed for your father Abdullah ibn Abdul-Muttalib?” The Messenger of Allah (peace be upon him) then paid his blood money in camels.

L39723 Abū Muḥammad, may Allāh have mercy on him, said: This is a narration that is entirely unsupported by any reliable chain of transmission. It was solely narrated by Ibn Samʿān - who is noted for falsehood in his claim about the oath of fifty men affirming that he was killed as a Muslim - and it is also a disconnected chain (mursal). Had it been authentic, we would have adhered to it. Since it is not authentic, it is impermissible to rely on it. And success comes only from Allāh, the Exalted.

L39724 **A problematic case concerning blood matters.**

L39725–39727 2157 – Legal Question: A complex legal issue pertaining to blood. Abū Muḥammad—may Allāh have mercy on him—said: Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Aḥmad ibn al-Faḍl ibn Bahrām al-Dīnawarī narrated to us: Muḥammad ibn Jarīr al-Ṭabarī narrated to us: ‘Ubayd Allāh ibn Sa‘d ibn Ibrāhīm al-Zuhrī narrated to us: My uncle Ya‘qūb ibn Ibrāhīm ibn

أَنَّا أَكَلْنَا ثَمَنَ صَاحِبِنَا؟ وَوَاثَبَهُ الْأَقْرَعُ بْنُ حَابِسٍ التَّمِيمِيُّ فِي قَوْمِهِ غَضَبًا وَحَمِيَّةً لِخِنْدَفَ فَقَالَ لِعُيَيْنَةَ بْنِ حِصْنٍ: بِمَاذَا اسْتَطَلْتُمْ دَمَ هَذَا الرَّجُلِ؟ فَقَالَ: أَقْسَمَ مِنَّا خَمْسُونَ رَجُلًا: أَنَّ صَاحِبَنَا قُتِلَ وَهُوَ مُؤْمِنٌ، فَقَالَ الْأَقْرَعُ: فَسَأَلَكُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تَعْفُوا عَنْ قَتْلِهِ وَتَقْبَلُوا الدِّيَةَ فَأَبَيْتُمْ؟ فَأُقْسِمُ: بِاللَّهِ لَتَقْبَلُنَّ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي دَعَاكُمْ إِلَيْهِ، أَوْ لَآتِيَنَّ بِمِائَةٍ مِنْ بَنِي تَمِيمٍ فَيُقْسِمُونَ بِاللَّهِ لَقَدْ قُتِلَ صَاحِبُكُمْ وَهُوَ كَافِرٌ؟ فَقَالُوا عِنْدَ ذَلِكَ: عَلَى رِسْلِكَ، بَلْ نَقْبَلُ مَا دَعَانَا إِلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَجَعُوا إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالُوا: يَا رَسُولَ اللَّهِ نَقْبَلُ الَّذِي دَعَوْتَنَا إِلَيْهِ مِنَ الدِّيَةِ، فَدِيَةُ أَبِيكَ عَبْدِ اللَّهِ بْنِ عَبْدِ الْمُطَّلِبِ؟ فَوَدَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنَ الْإِبِلِ» .

قَالَ أَبُو مُحَمَّد رَحِمَهُ اللَّهُ: فَهَذَا خَبَرٌ لَا يَنْسَنِدُ أَلْبَتَّةَ مِنْ طَرِيقٍ يُعْتَدُّ بِهَا - وَانْفَرَدَ بِهِ ابْنُ سَمْعَانَ - وَهُوَ مَذْكُورٌ بِالْكَذِبِ - بِذِكْرِ قَسَامَةِ خَمْسِينَ عَلَى أَنَّهُ قُتِلَ مُسْلِمًا، وَهُوَ أَيْضًا مُرْسَلٌ - وَلَوْ صَحَّ لَقُلْنَا بِهِ، فَإِذْ لَمْ يَصِحَّ فَلَا يَجُوزُ الْأَخْذُ بِهِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فِي الدِّمَاءِ مُشْكِلٌ]

٢١٥٧ - مَسْأَلَةٌ: فِي الدِّمَاءِ مُشْكِلٌ. قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا أَحْمَدُ بْنُ الْفَضْلِ بْنِ بَهْرَامَ الدِّينَوَرِيُّ نا مُحَمَّدُ بْنُ جَرِيرٍ الطَّبَرِيُّ نا عُبَيْدُ اللَّهِ بْنُ سَعْدِ بْنِ إِبْرَاهِيمَ الزُّهْرِيُّ نا عَمِّي - هُوَ يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ

Saʿd ibn Ibrāhīm ibn ʿAbd al-Raḥmān ibn al-ʿAwf narrated to us: Shuʿbah ibn al-Ḥajjāj reported from ʿAbd Allāh ibn Abī al-Safar from ʿĀmir al-Shaʿbī from ʿAbd Allāh ibn Muṭīʿ ibn al-Aswad from his father Muṭīʿ, brother of Banū ʿAdī ibn Kaʿb—whose name was al-ʿĀṣ before the Messenger of Allāh renamed him. He obediently said: I heard the Messenger of Allah - peace be upon him - in Mecca saying: "Mecca shall not be invaded after this year ever again, and no man from Quraysh shall be killed after being taken captive following this year ever again."

الرَّحْمَنِ بْنِ عَوْفٍ - نا شُعْبَةُ بْنُ الْحَجَّاجِ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ عَنْ عَامِرٍ الشَّعْبِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مُطِيعِ بْنِ الْأَسْوَدِ عَنْ أَبِيهِ «مُطِيعٍ أَخِي بَنِي عَدِيِّ بْنِ كَعْبٍ - وَكَانَ اسْمُهُ الْعَاصِ فَسَمَّاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُطِيعًا - قَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَكَّةَ يَقُولُ: لَا تُغْزَى مَكَّةُ بَعْدَ هَذَا الْعَامِ أَبَدًا، وَلَا يُقْتَلُ رَجُلٌ مِنْ قُرَيْشٍ بَعْدَ هَذَا الْعَامِ صَبْرًا أَبَدًا» .

L39728 Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Aḥmad ibn al-Faḍl narrated to us: Muḥammad ibn Jarīr narrated to us: ʿAbd Allāh ibn Muḥammad al-Zuhrī narrated to me: Sufyān ibn ʿUyaynah narrated from Zakariyyā (who is ibn Abī Zāʾidah) from al-Shaʿbī, who said: Al-Ḥārith ibn Mālik ibn al-Barṣāʾ said: The Messenger of Allāh—peace and blessings be upon him—said: "Mecca will never be invaded after this year."

نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا أَحْمَدُ بْنُ الْفَضْلِ نا مُحَمَّدُ بْنُ جَرِيرٍ نِي عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الزُّهْرِيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ الشَّعْبِيِّ قَالَ: قَالَ الْحَارِثُ بْنُ مَالِكِ بْنِ الْبَرْصَاءِ: قَالَ " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَا تُغْزَى مَكَّةُ بَعْدَ هَذَا الْعَامِ أَبَدًا» .

L39729 Aḥmad ibn Muḥammad narrated to us: Aḥmad ibn al-Faḍl narrated to us: Muḥammad ibn Jarīr reported to us: Naṣr ibn ʿAbd al-Raḥmān al-Awdī narrated to us: Muḥammad ibn ʿUbayd reported from Zakariyyā, from al-Shaʿbī, from al-Ḥārith ibn Mālik ibn al-Barṣā, who said: "I heard the Messenger of Allah—peace and blessings be upon him—say on the day of Mecca's conquest: 'Mecca shall not be invaded after this until the Day of Resurrection.'"

ʿAlī—may Allah have mercy on him—said: "The first is an authentic ḥadīth. As for the other, if al-Shaʿbī's direct hearing from al-Ḥārith ibn Mālik is established, then both are authentic. This al-Ḥārith is al-Ḥārith ibn Qays ibn ʿAwn, ibn Jābir, ibn ʿAbd Manāf, ibn Kinānah, ibn Ashjaʿ, ibn ʿĀmir, ibn Layth, ibn Bakr, ibn ʿAbd Manāf, ibn Kinānah, ibn Khuzaymah, ibn Mudrikah, ibn Ilyās, ibn Muḍar, ibn Nizār, ibn Maʿadd, ibn ʿAdnān."

نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ الْفَضْلِ أَنَا مُحَمَّدُ بْنُ جَرِيرٍ نا نَصْرُ بْنُ عَبْدِ الرَّحْمَنِ الْأَوْدِيُّ نا مُحَمَّدُ بْنُ عُبَيْدٍ عَنْ زَكَرِيَّا عَنْ الشَّعْبِيِّ عَنْ الْحَارِثِ بْنِ مَالِكِ بْنِ الْبَرْصَاءِ قَالَ «سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ فَتْحِ مَكَّةَ وَهُوَ يَقُولُ: لَا تُغْزَى مَكَّةُ بَعْدَهَا إِلَى يَوْمِ الْقِيَامَةِ» قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: الْأَوَّلُ حَدِيثٌ صَحِيحٌ، وَالْآخَرُ إِنْ صَحَّ سَمَاعُ الشَّعْبِيِّ مِنْ الْحَارِثِ بْنِ مَالِكٍ فَهُمَا صَحِيحَانِ - وَالْحَارِثُ هَذَا: هُوَ الْحَارِثُ بْنُ قَيْسِ بْنِ عَوْنِ بْنِ جَابِرِ بْنِ عَبْدِ مَنَافِ بْنِ كِنَانَةَ بْنِ أَشْجَعَ بْنِ عَامِرِ بْنِ لَيْثِ بْنِ بَكْرِ بْنِ عَبْدِ مَنَافِ بْنِ كِنَانَةَ بْنِ خُزَيْمَةَ بْنِ مُدْرِكَةَ بْنِ إِلْيَاسَ بْنِ مُضَرَ بْنِ نِزَارِ بْنِ مَعْدِ بْنِ عَدْنَانَ.

L39730 Abū Muḥammad—may Allah have mercy on him—said: The meaning of these ḥadīths is clear, which is that the Messenger of Allah—peace and blessings be upon him—specifically stated this about himself: that he would never conquer Mecca thereafter, and that he would never kill any man from

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَوَجْهُ هَذِهِ الْأَحَادِيثِ بَيِّنٌ، وَهُوَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا أَخْبَرَ بِهَذَا عَنْ نَفْسِهِ: أَنَّهُ لَا يَغْزُو مَكَّةَ بَعْدَهَا أَبَدًا، وَأَنَّهُ لَا يَقْتُلُ

Quraysh after capture thereafter. This occurred exactly as he—peace be upon him—declared, for he did not kill any Qurayshī after that.

بَعْدَهَا رَجُلًا مِنْ قُرَيْشٍ صَبْرًا أَبَدًا، وَكَانَ هَذَا كَمَا قَالَ - عَلَيْهِ السَّلَامُ -، فَمَا قَتَلَ بَعْدَهَا قُرَشِيًّا.

L39731 The evidence for this is that he—peace be upon him—had forewarned of the killing of Uthmān ibn ʿAffān—may Allah be pleased with him—and forewarned of the assault on the Kaʿba. This is as we have been narrated through Muslim's chain: Muḥammad ibn al-Muthannā narrated to us, from Ibn Abī ʿAdī, from ʿUthmān, from Ghiyāth, from Abū ʿUthmān al-Nahdī, from Abū Mūsā al-Ashʿarī, who mentioned the ḥadīth. And in it: "A man sought permission to enter, so Allah's Messenger—peace and blessings be upon him—sat and said: 'Open for him and give him glad tidings of Paradise despite an impending trial.' I went and found ʿUthmān ibn ʿAffān. I opened for him, conveyed the glad tidings, and repeated what he had said. He responded: 'O Allah, grant me patience—and Allah is the One sought for help.'"

بُرْهَانُ هَذَا: أَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ أَنْذَرَ بِقَتْلِ عُثْمَانَ بْنِ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُ - وَأَنْذَرَ بِغَزْوِ الْكَعْبَةِ - وَهُوَ كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا ابْنُ أَبِي عَدِيٍّ عَنْ عُثْمَانَ عَنْ غِيَاثٍ عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ فَذَكَرَ الْحَدِيثَ، وَفِيهِ «أَنَّ رَجُلًا اسْتَفْتَحَ فَجَلَسَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ: افْتَحْ لَهُ وَبَشِّرْهُ بِالْجَنَّةِ عَلَى بَلْوَى تَكُونُ قَالَ: فَذَهَبْتُ فَإِذَا عُثْمَانُ بْنُ عَفَّانَ ففَتَحْتُ لَهُ وَبَشَّرْتُهُ بِالْجَنَّةِ، وَقُلْتُ الَّذِي قَالَ، فَقَالَ: اللَّهُمَّ صَبْرًا، وَاَللَّهُ الْمُسْتَعَانُ» .

L39732–39734 And through the chain (*ṭarīq*) of Muslim, Abū Bakr ibn Abī Shaybah, Ibn Abī ʿUmar, and Ḥarmalah ibn Yaḥyā narrated to us. Abū Bakr and Ibn Abī ʿUmar said: Sufyān ibn ʿUyaynah narrated to us from Ziyād ibn Saʿd. Ḥarmalah said: Ibn Wahb narrated to us. Yunus—that is, Ibn Yazid—reported to me, then both Ziyad and Yunus's chains converged via Al-Zuhri, from Saʿid ibn al-Musayyib, from Abu Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said, "The Kaʿbah will be destroyed by the man with two small shins from the Ethiopians." Abu Muhammad—may Allah have mercy on him—said: Thus, it is established that a group from Quraysh will be killed in cold blood.

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَابْنُ أَبِي عُمَرَ، وَحَرْمَلَةُ بْنُ يَحْيَى، قَالَ أَبُو بَكْرٍ، وَابْنُ أَبِي عُمَرَ: نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ زِيَادِ بْنِ سَعْدٍ، وَقَالَ حَرْمَلَةُ: نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ - هُوَ ابْنُ يَزِيدَ - ثُمَّ اتَّفَقَ زِيَادٌ، وَيُونُسُ كِلَاهُمَا عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يُخَرِّبُ الْكَعْبَةَ ذُو السُّوَيْقَتَيْنِ مِنَ الْحَبَشَةِ» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَصَحَّ أَنَّ قَوْمًا مِنْ قُرَيْشٍ سَيُقْتَلُونَ صَبْرًا.

L39735 There is no disagreement among any of the entire Ummah that if a Qurayshi were to kill, he would be executed; if he committed adultery while being a lawfully married person (muḥṣan), he would be stoned until death. Similarly, we state concerning him: if he apostatizes, wages war, or was punished for wine consumption three times then drinks a fourth—just as Allah the Exalted said: *"Do not fight them at the Sacred Mosque unless they fight you there. But if they fight you, then kill them"* [Al-Baqarah: 191].[19]

وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنَ الْأُمَّةِ كُلِّهَا فِي أَنَّ قُرَشِيًّا لَوْ قَتَلَ لَقُتِلَ، وَلَوْ زَنَى وَهُوَ مُحْصَنٌ لَرُجِمَ حَتَّى يَمُوتَ - وَهَكَذَا نَقُولُ فِيهِ: لَوِ ارْتَدَّ، أَوْ حَارَبَ أَوْ حُدَّ فِي الْخَمْرِ ثَلَاثًا ثُمَّ شَرِبَ الرَّابِعَةَ - وَكَذَلِكَ قَالَ اللَّهُ تَعَالَى {وَلا تُقَاتِلُوهُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ حَتَّى يُقَاتِلُوكُمْ فِيهِ فَإِنْ قَاتَلُوكُمْ فَاقْتُلُوهُمْ} [البقرة: ١٩١] .

[19] **Qur'an references (L39735):** Qur'an 2:191 (Al-Baqarah).

L39736 There is no disagreement among any of the Ummah that if disbelievers, combatants, or rebels were to seize control of Mecca - may Allah honor and protect it - preventing the manifestation of truth therein, it becomes obligatory upon the Ummah to fight them rather than attack Mecca itself. If they submit or depart, that suffices. If they neither resist nor depart, they must be expelled from it. Should they resist and fight, there is no disagreement that they must be combated within Mecca and near the Kaaba. These points of consensus, textual evidences, and the Prophet's warning (peace be upon him) about the demolition of the Kaaba by Dhu al-Suwayqatayn (the prophesied destroyer) all affirm this ruling.

وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ مَكَّةَ - أَعَزَّهَا اللَّهُ وَحَرَسَهَا - لَوْ غَلَبَ عَلَيْهَا الْكُفَّارُ، أَوْ الْمُحَارِبُونَ، أَوْ الْبُغَاةُ، فَمَنَعُوا فِيهَا مِنْ إظْهَارِ الْحَقِّ - أَنَّ فَرْضًا عَلَى الْأُمَّةِ غَزْوُهُمْ لَا غَزْوُ مَكَّةَ، فَإِنْ انْقَادُوا، أَوْ خَرَجُوا فَذَلِكَ، وَإِنْ لَمْ يَمْتَنِعُوا وَلَا خَرَجُوا: أَنَّهُمْ يُخْرَجُونَ مِنْهَا، فَإِنْ هُمْ امْتَنَعُوا وَقَاتَلُوا، فَلَا خِلَافَ فِي أَنَّهُمْ يُقَاتَلُونَ فِيهَا وَعِنْدَ الْكَعْبَةِ - فَكَانَتْ هَذِهِ الْإِجْمَاعَاتُ، وَهَذِهِ النُّصُوصُ وَإِنْذَارُ النَّبِيِّ - عَلَيْهِ السَّلَامُ - بِهَدْمِ ذِي السُّوَيْقَتَيْنِ لِلْكَعْبَةِ.

L39737 By necessity, we know that this will never occur except after its invasion—and it was invaded by Al-Ḥusayn ibn Numayr, Al-Ḥajjāj ibn Yūsuf, and Sulaymān ibn al-Ḥasan al-Jayyānī—may Allah curse them all—who committed sacrilege therein and violated the sanctity of the House. Among them is the sinful Al-Ḥajjāj, who launched catapults at the Kaʿba, killed within the Sacred Mosque the Commander of the Believers ʿAbdullāh ibn al-Zubayr and ʿAbdullāh ibn Ṣafwān ibn Umayya—may Allah be pleased with them both—while the latter clung to the Kaʿba's curtains. Among them too is the cursed disbeliever Sulaymān ibn al-Ḥasan al-Qarmaṭī, who wrenched out the Black Stone and plundered the slain Muslims around it. All this confirms the truth of the Messenger of Allah's—peace and blessings be upon him and his family—prophecy in the narrations of Muṭīʿ ibn al-Aswad and al-Ḥārith ibn al-Barṣāʾ, and that he—peace be upon him—spoke this solely from his own knowledge. This is among the signs of his prophethood—peace and blessings be upon him—for he foretold that none would invade it until the Day of Resurrection, and that he—peace be upon him—would never execute a captive from Quraysh after capture. Thus it was.

وَبِالضَّرُورَةِ نَدْرِي أَنَّ ذَلِكَ لَا يَكُونُ أَلْبَتَّةَ إلَّا بَعْدَ غَزْوٍ مِنْهُ - وَقَدْ غَزَاهَا الْحُصَيْنُ بْنُ نُمَيْرٍ، وَالْحَجَّاجُ بْنُ يُوسُفَ، وَسُلَيْمَانُ بْنُ الْحَسَنِ الْجَيَّانِيُّ - لَعَنَهُمْ اللَّهُ أَجْمَعِينَ - وَأَلْحَدُوا فِيهَا وَهَتَكُوا حُرْمَةَ الْبَيْتِ، فَمِنْ رَامٍ لِلْكَعْبَةِ بِالْمَنْجَنِيقِ - وَهُوَ الْفَاسِقُ الْحَجَّاجُ - وَقَتَلَ دَاخِلَ الْمَسْجِدِ الْحَرَامِ أَمِيرَ الْمُؤْمِنِينَ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ، وَقَتَلَ عَبْدَ اللَّهِ بْنَ صَفْوَانَ بْنِ أُمَيَّةَ - رَضِيَ اللَّهُ عَنْهُمَا - وَهُوَ مُتَعَلِّقٌ بِأَسْتَارِ الْكَعْبَةِ، وَمِنْ قَالِعٍ لِلْحَجَرِ الْأَسْوَدِ، وَسَالِبِ الْمُسْلِمِينَ الْمَقْتُولِينَ حَوْلَهَا - وَهُوَ الْكَافِرُ الْمَلْعُونُ - سُلَيْمَانُ بْنُ الْحَسَنِ الْقُرْمُطِيُّ، فَكَانَ هَذَا كُلُّهُ مُبَيِّنًا إخْبَارَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِمَا أَخْبَرَ فِي حَدِيثِ مُطِيعِ بْنِ الْأَسْوَدِ، وَالْحَارِثِ بْنِ الْبَرْصَاءِ، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - إنَّمَا أَخْبَرَ بِذَلِكَ عَنْ نَفْسِهِ فَقَطْ - وَهَذَا مِنْ أَعْلَامِ نُبُوَّتِهِ - عَلَيْهِ السَّلَامُ - أَنْ أَخْبَرَ بِأَنَّهُ لَا يَغْزُوهَا إلَى يَوْمِ الْقِيَامَةِ، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يَقْتُلُ أَبَدًا رَجُلًا مِنْ قُرَيْشٍ صَبْرًا، فَكَانَ كَذَلِكَ.

L39738 It is not permissible to confine oneself to portions of his speech—may Allah's blessings and peace be upon him and his family—while disregarding others, for this is a corrupt arbitrariness. Rather, his teachings—peace be upon him—must all be combined, each part with the others, for all of them are true.

وَلَا يَجُوزُ أَنْ يَقْتَصِرَ عَلَى بَعْضِ كَلَامِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - دُونَ بَعْضٍ، فَهَذَا تَحَكُّمٌ فَاسِدٌ، بَلْ تُضَمُّ أَقْوَالُهُ - عَلَيْهِ السَّلَامُ - كُلُّهَا بَعْضُهَا إلَى بَعْضٍ، فَكُلُّهَا حَقٌّ.

L39739–39740 It is not permissible to interpret his statement—peace be upon him—"Mecca shall not be invaded after this year until the Day of Resurrection, and no Qurayshī shall be killed in captivity after this day" as a command. How can this align with the established consensus on the obligation to kill a Qurayshī in retaliation (qisas) or by stoning for adultery—if he is a lawfully married person (muḥṣan)—and on the obligation to invade those who seek refuge in Mecca among the people of disbelief, armed rebellion, and oppression? If it is argued: "This merely prohibits invading Mecca unjustly and killing a Qurayshī in captivity unjustly," we respond—and success comes only from Allah, the Exalted—: These rulings apply uniformly to Mecca and other lands, and to Quraysh and others alike. Without disagreement, it is impermissible to unjustly invade any territory or unjustly kill any member of the community. This would render the statement devoid of benefit, which is impermissible—and success comes only from Allah, the Exalted.

The killing of the rebellious faction (ahl al-baghy).

L39741–39742

L39743 Question 2158: On killing transgressors. Abu Muhammad—may Allah have mercy on him—said: Allah the Exalted stated, "If two groups of believers fight, reconcile between them. But if one transgresses against the other, fight the transgressors until they return to Allah's command" [Surah Al-Hujurat 49:9], the verse.[20]

L39744 The fighting among Muslims occurred in two forms: fighting against rebels (al-bughāt) and fighting against combatants (al-muḥāribīn). Rebels are of two categories with no third: either a group that revolted based on a religious interpretation in which they erred, such as the Kharijites and those who follow their path from the rest of deviant desires contradicting the truth.

L39745 And another faction who sought worldly gains for themselves and rose against a rightful imam or against one whose conduct resembles theirs. If this faction transgresses by terrorizing travelers, seizing property from those they encounter, or shedding blood indiscriminately, their legal ruling transitions

[20] **Qur'an references (L39743):** Qur'an 49:9 (Al-Hujurat).

وَلَا يَجُوزُ أَنْ يُحْمَلَ قَوْلُهُ - عَلَيْهِ السَّلَامُ - «لَا تُغْزَى مَكَّةُ بَعْدَ هَذَا الْعَامِ إِلَى يَوْمِ الْقِيَامَةِ، وَلَا يُقْتَلُ قُرَشِيٌّ صَبْرًا بَعْدَ هَذَا الْيَوْمِ» عَلَى الْأَمْرِ، لِمَا ذَكَرْنَا مِنْ صِحَّةِ الْإِجْمَاعِ عَلَى وُجُوبِ قَتْلِ الْقُرَشِيِّ قَوَدًا أَوْ رَجْمًا فِي الزِّنَى - وَهُوَ مُحْصَنٌ - عَلَى وُجُوبِ غَزْوِ مَنْ لَاذَ بِمَكَّةَ مِنْ أَهْلِ الْكُفْرِ وَالْحِرَابَةِ وَالْبَغْيِ؟ فَإِنْ قِيلَ: إِنَّمَا مَنَعَ بِذَلِكَ مِنْ غَزْوِهَا ظُلْمًا، وَمِنْ قَتْلِ قُرَشِيٍّ صَبْرًا ظُلْمًا؟ قُلْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: هَذِهِ أَحْكَامٌ لَا يَخْتَلِفُ فِيهَا حُكْمُ مَكَّةَ وَغَيْرِهَا، وَلَا حُكْمُ قُرَيْشٍ وَغَيْرِهِمْ، فَلَا يَحِلُّ بِلَا خِلَافٍ: أَنْ تُغْزَى بَلَدٌ مِنْ الْبُلَادِ ظُلْمًا، وَلَا أَنْ يُقْتَلَ أَحَدٌ مِنْ الْأُمَّةِ ظُلْمًا، وَكَأَنْ يَكُونَ الْكَلَامُ حِينَئِذٍ عَارِيًّا مِنْ الْفَائِدَةِ، وَهَذَا لَا يَجُوزُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[قَتْلُ أَهْلِ الْبَغْيِ]

٢١٥٨ - مَسْأَلَةٌ: قَتْلُ أَهْلِ الْبَغْيِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ اللَّهُ تَعَالَى {وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الأُخْرَى فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ} [الحجرات: ٩] الْآيَةَ.

فَكَانَ قِتَالُ الْمُسْلِمِينَ فِيمَا بَيْنَهُمْ عَلَى وَجْهَيْنِ: قِتَالِ الْبُغَاةِ، وَقِتَالِ الْمُحَارِبِينَ - فَالْبُغَاةُ قِسْمَانِ لَا ثَالِثَ لَهُمَا: إِمَّا قِسْمٌ خَرَجُوا عَلَى تَأْوِيلٍ فِي الدِّينِ فَأَخْطَئُوا فِيهِ، كَالْخَوَارِجِ وَمَا جَرَى مَجْرَاهُمْ مِنْ سَائِرِ الْأَهْوَاءِ الْمُخَالِفَةِ لِلْحَقِّ.

وَإِمَّا قِسْمٌ أَرَادُوا لِأَنْفُسِهِمْ دُنْيَا فَخَرَجُوا عَلَى إِمَامِ حَقٍّ، أَوْ عَلَى مَنْ هُوَ فِي السِّيرَةِ مِثْلُهُمْ، فَإِنْ تَعَدَّتْ هَذِهِ الطَّائِفَةُ إِلَى إِخَافَةِ الطَّرِيقِ، أَوْ إِلَى أَخْذِ مَالِ مَنْ لَقُوا، أَوْ سَفْكِ الدِّمَاءِ هَمَلًا: انْتَقَلَ حُكْمُهُمْ إِلَى حُكْمِ الْمُحَارِبِينَ، وَهُمْ مَا لَمْ يَفْعَلُوا ذَلِكَ فِي حُكْمِ الْبُغَاةِ.

to that of muḥāribīn (brigands). And they, as long as they refrain from such acts, remain under the ruling of bughāt (rebellious factions).

L39746 The first category concerning the rebels clarifies their ruling: From Hisham ibn Sa‘d al-Khayr; from ‘Abd al-Jabbar ibn Ahmad al-Muqri’; from al-Hasan ibn al-Husayn al-Bujayrami; from Ja‘far ibn Muhammad al-Asbahani; from Yunus ibn Habib; from Abu Dawud al-Tayalisi; from Shu‘bah, who narrated to me from Ayyub al-Sikhtiyani and Khalid al-Hadhdhā’—both of whom said: From al-Hasan al-Basri, who narrated to us from Umm Hani, from Umm Salamah: “The Messenger of Allah (peace be upon him) said regarding ‘Ammar: ’The rebellious faction will kill you.”’ Abu Muhammad (may Allah have mercy on him) said: Verily, ‘Ammar (may Allah be pleased with him) was killed by the companions of Mu‘awiyah (may Allah be pleased with him). Though they erred in understanding the truth, they acted upon their interpretive reasoning in this matter and are granted a single reward for their intent toward good.

L39747–39748 Among those who engage in interpretation are a people who are not excused, and they will have no reward. As we have been narrated through the chain of Al-Bukhārī: from ‘Umar ibn Ḥafṣ ibn Ghiyāth, from his father, from Al-Aʿmash, from Khaythamah, from Suwayd ibn Ghaflah, who said: ‘Alī said: I heard the Messenger of Allah, peace be upon him, say: “There will emerge at the end of time a people, young in years and feeble in intellect, who utter the words of the best of creation, yet their faith does not surpass their throats. They will dart out of the religion as an arrow passes through the target. Wherever you encounter them, kill them, for in their killing lies a reward on the Day of Resurrection for those who slay them.”

L39749 We have been narrated from the path of Muslim: Muḥammad ibn al-Muthannā narrated to us, Muḥammad ibn Abī ʿAdiyy narrated to us from Sulaymān—he is al-Aʿmash—from Abū Nadrah from Abū Saʿīd al-Khudrī: “That the Messenger of Allah—peace and blessings of Allah be upon him—mentioned a people who would arise within his nation, emerging as part of a faction among the people. Their distinguishing mark is head-shaving. They

فَالْقِسْمُ الْأَوَّلُ مِنْ أَهْلِ الْبَغْيِ يُبَيِّنُ حُكْمَهُمْ: مَا نا هِشَامُ بْنُ سَعْدِ الْخَيْرِ نا عَبْدُ الْجَبَّارِ بْنُ أَحْمَدَ الْمُقْرِئُ نا الْحَسَنُ بْنُ الْحُسَيْنِ الْبُجَيْرَمِيُّ نا جَعْفَرُ بْنُ مُحَمَّدٍ الْأَصْبَهَانِيُّ نا يُونُسُ بْنُ حَبِيبٍ نا أَبُو دَاوُد الطَّيَالِسِيُّ نا شُعْبَةُ أَخْبَرَنِي أَيُّوبُ السِّخْتِيَانِيُّ، وَخَالِدٌ الْحَذَّاءُ، كِلَاهُمَا قَالَ: عَنِ الْحَسَنِ الْبَصْرِيِّ أَخْبَرَتْنَا أُمُّنَا عَنْ أُمِّ سَلَمَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي عَمَّارٍ تَقْتُلُكَ الْفِئَةُ الْبَاغِيَةُ» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَإِنَّمَا قَتَلَ عَمَّارَ - رَضِيَ اللَّهُ عَنْهُ - أَصْحَابُ مُعَاوِيَةَ - رَضِيَ اللَّهُ عَنْهُ - وَكَانُوا مُتَأَوِّلِينَ تَأْوِيلَهُمْ فِيهِ - وَإِنْ أَخْطَئُوا الْحَقَّ - مَأْجُورُونَ أَجْرًا وَاحِدًا: لِقَصْدِهِمْ الْخَيْرَ.

وَيَكُونُ مِنْ الْمُتَأَوِّلِينَ قَوْمٌ لَا يُعْذَرُونَ، وَلَا أَجْرَ لَهُمْ: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ نا أَبِي نا الْأَعْمَشُ نا خَيْثَمَةَ نا سُوَيْدُ بْنُ غَفَلَةَ قَالَ قَالَ عَلِيٌّ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «سَيَخْرُجُ قَوْمٌ فِي آخِرِ الزَّمَانِ، أَحْدَاثُ الْأَسْنَانِ، سُفَهَاءُ الْأَحْلَامِ، يَقُولُونَ مِنْ قَوْلِ خَيْرِ الْبَرِيَّةِ، لَا يُجَاوِزُ إيمَانُهُمْ حَنَاجِرَهُمْ، يَمْرُقُونَ مِنْ الدِّينِ كَمَا يَمْرُقُ السَّهْمُ مِنْ الرَّمِيَّةِ، فَأَيْنَمَا لَقِيتُمُوهُمْ فَاقْتُلُوهُمْ، فَإِنَّ فِي قَتْلِهِمْ أَجْرًا لِمَنْ قَتَلَهُمْ يَوْمَ الْقِيَامَةِ» .

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنْ سُلَيْمَانَ هُوَ الْأَعْمَشُ - عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَكَرَ قَوْمًا يَكُونُونَ فِي أُمَّتِهِ يَخْرُجُونَ فِي فُرْقَةٍ مِنْ النَّاسِ، سِيمَاهُمْ التَّحَالُقُ، هُمْ شَرُّ الْخَلْقِ، أَوْ مِنْ شَرِّ الْخَلْقِ، تَقْتُلُهُمْ أَدْنَى الطَّائِفَتَيْنِ إلَى الْحَقِّ» وَذَكَرَ الْحَدِيثَ.

are the worst of creation—or among the worst of creation—and the nearer of the two factions to the truth will kill them." And he mentioned the hadith.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَفِي هَذَا الْحَدِيثِ نَصٌّ جَلِيٌّ بِمَا قُلْنَا، وَهُوَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَكَرَ هَؤُلَاءِ الْقَوْمَ فَذَمَّهُمْ أَشَدَّ الذَّمِّ، وَأَنَّهُمْ مِنْ شَرِّ الْخَلْقِ، وَأَنَّهُمْ يَخْرُجُونَ فِي فُرْقَةٍ مِنْ النَّاسِ.

L39750 Abū Muḥammad (may Allāh have mercy on him) said: In this ḥadīth there is a clear text confirming what we have stated—that the Prophet (peace and blessings of Allāh be upon him) mentioned these people, condemned them most severely, and that they are among the worst of creation, and that they emerge within a faction from among the people.

فَصَحَّ أَنَّ أُولَئِكَ أَيْضًا: مُفْتَرِقُونَ، وَأَنَّ الطَّائِفَةَ الْمَذْمُومَةَ تَقْتُلُهَا أَدْنَى الطَّائِفَتَيْنِ الْمُفْتَرِقَتَيْنِ إلَى الْحَقِّ، فَجَعَلَ - عَلَيْهِ السَّلَامُ - فِي الِافْتِرَاقِ تَفَاضُلًا، وَجَعَلَ إحْدَى الطَّائِفَتَيْنِ الْمُفْتَرِقَتَيْنِ لَهَا دُنُوٌّ مِنْ الْحَقِّ - وَإِنْ كَانَتْ الْأُخْرَى أَوْلَى بِهِ - وَلَمْ يَجْعَلْ لِلثَّالِثَةِ شَيْئًا مِنْ الدُّنُوِّ إلَى الْحَقِّ.

L39751 Thus, it becomes evident that they too are divided, and that the blameworthy group is destroyed by the lesser of the two divergent groups in proximity to the truth. He (peace be upon him) thereby established a hierarchy of merit in division, ascribing to one of the two divergent groups a measure of proximity to the truth—even if the other is more entitled to it—while granting the blameworthy third group no share of nearness to the truth.

فَصَحَّ أَنَّ التَّأْوِيلَ يَخْتَلِفُ، فَأَيُّ طَائِفَةٍ تَأَوَّلَتْ فِي بُغْيَتِهَا طَمْسًا لِشَيْءٍ مِنْ السُّنَّةِ، كَمَنْ قَامَ بِرَأْيِ الْخَوَارِجِ لِيُخْرِجَ الْأَمْرَ عَنْ قُرَيْشٍ، أَوْ لِيَرُدَّ النَّاسَ إلَى الْقَوْلِ بِإِبْطَالِ الرَّجْمِ، أَوْ تَكْفِيرِ أَهْلِ الذُّنُوبِ، أَوْ اسْتِقْرَاضِ الْمُسْلِمِينَ، أَوْ قَتْلِ الْأَطْفَالِ وَالنِّسَاءِ، وَإِظْهَارِ الْقَوْلِ بِإِبْطَالِ الْقَدَرِ، أَوْ إبْطَالِ الرُّؤْيَةِ، أَوْ إلَى أَنَّ اللَّهَ تَعَالَى لَا يَعْلَمُ شَيْئًا إلَّا حَتَّى يَكُونَ، أَوْ إلَى الْبَرَاءَةِ عَنْ بَعْضِ الصَّحَابَةِ، أَوْ إبْطَالِ الشَّفَاعَةِ، أَوْ إلَى إبْطَالِ الْعَمَلِ بِالسُّنَنِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَدَعَا إلَى الرَّدِّ إلَى مَنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ إلَى الْمَنْعِ مِنْ الزَّكَاةِ، أَوْ مِنْ أَدَاءِ حَقٍّ مِنْ مُسْلِمٍ، أَوْ حَقٍّ لِلَّهِ تَعَالَى: فَهَؤُلَاءِ لَا يُعْذَرُونَ بِالتَّأْوِيلِ الْفَاسِدِ، لِأَنَّهَا جَهَالَةٌ تَامَّةٌ.

L39752 It has thus been established that interpretations differ. Any faction that interprets through their rebellious aims to obscure any aspect of the Sunnah - such as those who adopted the Kharijite doctrine to remove authority from Quraysh, to lead people to nullify stoning, to declare sinners as disbelievers, to borrow from Muslims, to kill children and women, to propagate the nullification of divine decree, to deny the vision of Allah, to claim Allah the Exalted knows nothing until it occurs, to disavow certain Companions, to nullify intercession, to reject established Sunnahs transmitted from Allah's Messenger (pbuh), to call people to refer to those below the Messenger (pbuh), to prohibit zakah, to prevent Muslims from fulfilling their obligations, or to withhold rights due to Allah the Exalted - such people cannot be excused by their corrupt interpretations, for they are utter ignorance.

L39753–39754 As for one who calls to an interpretation by which a Sunnah is not violated—such as Mu'āwiyah's interpretation regarding exacting retribution from 'Uthmān's killers before the pledge of allegiance to 'Alī—such a person is excused, for there is no alteration of any aspect of the religion in this.

Rather, it is a specific error confined to that particular incident, having no broader implications.

وَأَمَّا مَنْ دَعَا إِلَى تَأْوِيلٍ لَا يَحِلُّ بِهِ سُنَّةٌ، لَكِنْ مِثْلَ تَأْوِيلِ مُعَاوِيَةَ فِي أَنْ يَقْتَصَّ مِنْ قَتَلَةِ عُثْمَانَ قَبْلَ الْبَيْعَةِ لِعَلِيٍّ: فَهَذَا يُعْذَرُ، لِأَنَّهُ لَيْسَ فِيهِ إِحَالَةُ شَيْءٍ مِنَ الدِّينِ، وَإِنَّمَا هُوَ خَطَأٌ خَاصٌّ فِي قِصَّةٍ بِعَيْنِهَا لَا تَتَعَدَّى.

L39755 And those who rose solely for worldly pursuits, as did Yazid ibn Mu'awiyah, Marwan ibn al-Hakam, and 'Abd al-Malik ibn Marwan in rising against Ibn al-Zubayr, and as Marwan ibn Muhammad did in rising against Yazid ibn al-Walid, and those who likewise rose against Marwan—these are not excused, for they have no legitimate interpretive basis whatsoever, and it is sheer transgression.

وَمَنْ قَامَ لِعَرَضِ دُنْيَا فَقَطْ، كَمَا فَعَلَ يَزِيدُ بْنُ مُعَاوِيَةَ، وَمَرْوَانُ بْنُ الْحَكَمِ، وَعَبْدُ الْمَلِكِ بْنُ مَرْوَانَ فِي الْقِيَامِ عَلَى ابْنِ الزُّبَيْرِ، وَكَمَا فَعَلَ مَرْوَانُ بْنُ مُحَمَّدٍ فِي الْقِيَامِ عَلَى يَزِيدَ بْنِ الْوَلِيدِ، وَكَمَنْ قَامَ أَيْضًا عَنْ مَرْوَانَ، فَهَؤُلَاءِ لَا يُعْذَرُونَ، لِأَنَّهُمْ لَا تَأْوِيلَ لَهُمْ أَصْلًا، وَهُوَ بَغْيٌ مُجَرَّدٌ.

L39756 As for one who calls to righteousness, forbids evil, manifests the Quran and the Sunnahs, and judges with justice—he is not a transgressor. Rather, the transgressor is whoever opposes him. Success lies with Allah, the Exalted.

وَأَمَّا مَنْ دَعَا إِلَى أَمْرٍ بِمَعْرُوفٍ، أَوْ نَهْيٍ عَنْ مُنْكَرٍ، وَإِظْهَارِ الْقُرْآنِ، وَالسُّنَنِ، وَالْحُكْمِ بِالْعَدْلِ: فَلَيْسَ بَاغِيًا، بَلْ الْبَاغِي مَنْ خَالَفَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39757 And likewise, if wrongdoing was intended against someone and he defends himself against it—whether the ruler or another intended it—this is an instance where people have differed. A faction said: "The ruler in this regard differs from others [i.e., non-rulers], and the ruler is not to be fought even if he intended wrongdoing."

وَهَكَذَا إِذَا أُرِيدَ بِظُلْمٍ فَمَنَعَ مِنْ نَفْسِهِ - سَوَاءٌ أَرَادَهُ الْإِمَامُ أَوْ غَيْرُهُ - وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ: فَقَالَتْ طَائِفَةٌ: إِنَّ السُّلْطَانَ فِي هَذَا بِخِلَافِ غَيْرِهِ، وَلَا يُحَارَبُ السُّلْطَانُ وَإِنْ أَرَادَ ظُلْمًا.

L39758 As it has been narrated to us through the chain of Abd al-Razzaq from Ma'mar from Ayyub al-Sikhtiyani: Some men asked Ibn Sirin, saying: "We approached the Kharijites during such-and-such time—they ask about nothing except that they kill those they meet?" Ibn Sirin replied: "I do not know of anyone who refrained from killing these people out of fear of sinning, nor from killing anyone who intends to fight you except the ruler. For the ruler has a distinct consideration."

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ أَنَّ رِجَالًا سَأَلُوا ابْنَ سِيرِينَ فَقَالُوا: أَتَيْنَا الْحَرُورِيَّةَ زَمَانَ كَذَا وَكَذَا، لَا يَسْأَلُونَ عَنْ شَيْءٍ غَيْرَ أَنَّهُمْ يَقْتُلُونَ مَنْ لَقُوا؟ فَقَالَ ابْنُ سِيرِينَ: مَا عَلِمْت أَنَّ أَحَدًا كَانَ يَتَحَرَّجُ مِنْ قَتْلِ هَؤُلَاءِ تَأَثُّمًا، وَلَا مِنْ قَتْلِ مَنْ أَرَادَ قِتَالَك إِلَّا السُّلْطَانَ، فَإِنَّ لِلسُّلْطَانِ نَحْوًا.

L39759 Others differed with them, saying: "The ruler and others are equal," as we have related through the narration chain of ʿAbd al-Razzāq from Maʿmar from Ayyūb from Abī Qilābah, who said: "Muʿāwiyah ibn Abī Sufyān sent

وَخَالَفَهُمْ آخَرُونَ فَقَالُوا: السُّلْطَانُ وَغَيْرُهُ سَوَاءٌ، كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ أَبِي قِلَابَةَ قَالَ: «أَرْسَلَ مُعَاوِيَةُ بْنُ أَبِي سُفْيَانَ إِلَى عَامِلٍ لَهُ أَنْ

to one of his governors ordering him to seize al-Waḥṭ. When this reached ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ, he donned his weapon along with his freed slaves and servants, saying: 'I heard Allah's Messenger - may Allah's peace and blessings be upon him - say: Whoever is killed defending his property (while being wronged) is a martyr.'"

L39760 From the narration of 'Abd al-Razzāq, from Ibn Jurayj, who informed me that 'Amr ibn Dīnār said: "'Abdullāh ibn 'Amr ibn al-'Āṣ prepared himself for battle in defense of al-Waḥṭ, then said: 'Why should I not fight for it? I heard the Messenger of Allāh—peace and blessings be upon him and his family—say: "Whoever is killed defending his property is a martyr."'"

L39761–39762 Ibn Jurayj said: Sulayman al-Ahwal informed me that Thabit, the freed slave of Umar ibn Abd al-Rahman, informed him, saying: When a dispute arose between Abdullah ibn Amr ibn al-As and Anbasa ibn Abi Sufyan, and they prepared for combat, Khalid ibn al-As—who was of the lineage of Hisham ibn al-Mughirah al-Makhzumi—rode to Abdullah ibn Amr and counseled him. Abdullah ibn Amr ibn al-As responded: "Do you not know that the Messenger of Allah (peace be upon him and his family) said, 'Whoever is slain defending his property is a martyr'?" Abu Muhammad (may Allah have mercy on him) remarked: Here was Abdullah ibn Amr ibn al-As, a remaining Companion among his peers (may Allah be pleased with them), intending to fight Anbasa ibn Abi Sufyan, the governor appointed by his brother Muʿawiyah, Commander of the Faithful, when he ordered him to seize "al-Waht." Abdullah ibn Amr viewed its confiscation as unlawful, though Muʿawiyah (may Allah have mercy on him) would not have committed outright injustice but rather acted on an interpretation he undoubtedly deemed valid. Abdullah ibn Amr judged the act itself illegitimate, took up arms for battle, and none of the other Companions (may Allah be pleased with them) opposed him. Similarly, it is related from Abu Hanifah, al-Shafiʿi, Abu Sulayman, and their adherents that when a rebellious faction rises against the Imam, they are questioned about their revolt. If they cite grievances, justice is secured for them; otherwise, they are summoned to desist. If they comply, no penalty is imposed, but if they refuse, they are fought. We do not consider this position except as the opinion of Malik as well.

يَأْخُذَ الْوَهْطَ فَبَلَغَ ذَلِكَ عَبْدَ اللَّهِ بْنَ عَمْرِو بْنِ الْعَاصِ فَلَبِسَ سِلَاحَهُ هُوَ وَمَوَالِيهِ وَغِلْمَتُهُ، وَقَالَ: إِنِّي سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: مَنْ قُتِلَ دُونَ مَالِهِ - مَظْلُومًا - فَهُوَ شَهِيدٌ» .

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ، قَالَ: «إِنَّ عَبْدَ اللَّهِ بْنَ عَمْرِو بْنِ الْعَاصِ تَيَسَّرَ لِلْقِتَالِ دُونَ الْوَهْطِ، ثُمَّ قَالَ: مَالِي لَا أُقَاتِلُ دُونَهُ وَقَدْ سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ» .

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي سُلَيْمَانُ الْأَحْوَلُ أَنَّ ثَابِتًا مَوْلَى عُمَرَ بْنِ عَبْدِ الرَّحْمَنِ أَخْبَرَهُ، قَالَ: لَمَّا كَانَ بَيْنَ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ، وَبَيْنَ عَنْبَسَةَ بْنِ أَبِي سُفْيَانَ مَا كَانَ وَتَيَسَّرُوا لِلْقِتَالِ رَكِبَ خَالِدُ بْنُ الْعَاصِ - هُوَ ابْنُ هِشَامِ بْنِ الْمُغِيرَةِ الْمَخْزُومِيّ - إِلَى عَبْدِ اللَّهِ بْنِ عَمْرٍو فَوَعَظَهُ، فَقَالَ لَهُ عَبْدُ اللَّهِ بْنُ عَمْرِو بْنِ الْعَاصِ: أَمَا عَلِمْتَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «مَنْ قُتِلَ عَلَى مَالِهِ فَهُوَ شَهِيدٌ» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا عَبْدُ اللَّهِ بْنُ عَمْرِو بْنِ الْعَاصِ بَقِيَّةُ الصَّحَابَةِ وَبِحَضْرَةِ سَائِرِهِمْ - رَضِيَ اللَّهُ عَنْهُمْ - يُرِيدُ قِتَالَ عَنْبَسَةَ بْنِ أَبِي سُفْيَانَ عَامِلَ أَخِيهِ مُعَاوِيَةَ أَمِيرِ الْمُؤْمِنِينَ إِذْ أَمَرَهُ بِقَبْضِ " الْوَهْطِ " وَرَأَى عَبْدُ اللَّهِ بْنُ عَمْرٍو أَنَّ أَخْذَهُ مِنْهُ غَيْرُ وَاجِبٍ، وَمَا كَانَ مُعَاوِيَةُ - رَحِمَهُ اللَّهُ - لِيَأْخُذَ ظُلْمًا صُرَاحًا، لَكِنْ أَرَادَ ذَلِكَ بِوَجْهٍ تَأَوَّلَهُ بِلَا شَكٍّ، وَرَأَى عَبْدُ اللَّهِ بْنُ عَمْرٍو أَنَّ ذَلِكَ لَيْسَ بِحَقٍّ، وَلَبِسَ السِّلَاحَ لِلْقِتَالِ، وَلَا مُخَالِفَ لَهُ فِي ذَلِكَ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهَكَذَا جَاءَ عَنْ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ: أَنَّ الْخَارِجَةَ عَلَى الْإِمَامِ إِذَا خَرَجَتْ سُئِلُوا عَنْ خُرُوجِهِمْ؟ فَإِنْ

ذَكَرُوا مَظْلَمَةً ظُلِمُوهَا أُنْصِفُوا، وَإِلَّا دُعُوا إِلَى الْفَيْئَةِ، فَإِنْ فَاءُوا فَلَا شَيْءَ عَلَيْهِمْ، وَإِنْ أَبَوْا قُوتِلُوا، وَلَا نَرَى هَذَا إِلَّا قَوْلَ مَالِكٍ أَيْضًا.

L39763 When they disagreed as we mentioned, it became obligatory for us to refer their disagreement to what Allah, the Exalted, has obligated us to refer to, as He says: "If you disagree over anything, refer it to Allah and the Messenger" (Quran 4:59).[21]

فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَرُدَّ مَا اخْتَلَفُوا فِيهِ إِلَى مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا الرَّدَّ إِلَيْهِ، إِذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] .

L39764 We did: We found that Allah, the Exalted, did not differentiate between a ruler and others regarding fighting a rebellious faction against another. Rather, He commanded - in general terms - to fight whoever rebels against their Muslim brother until they return to the command of Allah, the Exalted: (And your Lord is never forgetful) [Maryam: 64]. Similarly, the statement of the Prophet, peace be upon him, "Whoever is killed defending his property is a martyr," is also general, not specifying a ruler over others. There is no distinction in the Quran, the Hadith, consensus, or analogy between one whose property is targeted, whose life is targeted, whose wife's sexual honor is targeted, or if such harm is sought from all Muslims.[22]

فَفَعَلْنَا: فَلَمْ نَجِدْ اللَّهَ تَعَالَى فَرَّقَ فِي قِتَالِ الْفِئَةِ الْبَاغِيَةِ عَلَى الْأُخْرَى بَيْنَ سُلْطَانٍ وَغَيْرِهِ، بَلْ أَمَرَ تَعَالَى بِقِتَالِ مَنْ بَغَى عَلَى أَخِيهِ الْمُسْلِمِ - عُمُومًا - حَتَّى يَفِيءَ إِلَى أَمْرِ اللَّهِ تَعَالَى {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَكَذَلِكَ قَوْلُهُ - عَلَيْهِ السَّلَامُ - «مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ» أَيْضًا - عُمُومٌ - لَمْ يَخُصَّ مَعَهُ سُلْطَانًا مِنْ غَيْرِهِ، وَلَا فَرْقَ فِي قُرْآنٍ، وَلَا حَدِيثٍ، وَلَا إجْمَاعٍ وَلَا قِيَاسٍ: بَيْنَ مَنْ أُرِيدَ مَالُهُ، أَوْ أُرِيدَ دَمُهُ، أَوْ أُرِيدَ فَرْجُ امْرَأَتِهِ، أَوْ أُرِيدَ ذَلِكَ مِنْ جَمِيعِ الْمُسْلِمِينَ.

L39765–39766 Unrestricted application in this matter leads to the corruption of the religion and its people, and this is unanimously unlawful—and all success comes from Allah, the Exalted.

وَفِي الْإِطْلَاقِ عَلَى هَذَا هَلَاكُ الدِّينِ وَأَهْلِهِ، وَهَذَا لَا يَحِلُّ بِلَا خِلَافٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39767 Abū Muḥammad—may Allāh have mercy on him—said: "As for those captured from the rebels, people have differed concerning them: should they be killed or not? Some companions of Abū Ḥanīfah stated: 'So long as combat continues, captives taken from them are to be killed. When the conflict subsides, no captive from them is to be killed.'"

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَمَنْ أُسِرَ مِنْ أَهْلِ الْبَغْيِ، فَإِنَّ النَّاسَ قَدْ اخْتَلَفُوا فِيهِ: أَيُقْتَلُ أَمْ لَا؟ فَقَالَ بَعْضُ أَصْحَابِ أَبِي حَنِيفَةَ: مَا دَامَ الْقِتَالُ قَائِمًا فَإِنَّهُ يُقْتَلُ أَسَرَاهُمْ، فَإِذَا انْجَلَتْ الْحَرْبُ فَلَا يُقْتَلُ مِنْهُمْ أَسِيرٌ.

L39768 Abū Muḥammad—may Allah have mercy on him—said: These people argued that ʿAlī—may Allah be pleased with him—killed Ibn Yathribi when he was

[21] **Qur'an references (L39763):** Qur'an 4:59 (An-Nisa).
[22] **Qur'an references (L39764):** Qur'an 19:64 (Maryam).

brought as a captive. Al-Shāfiʿī said: "It is fundamentally impermissible to kill any captive among them, whether while the war is ongoing or after its conclusion"—and this is our view.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَاحْتَجَّ هَؤُلَاءِ بِأَنَّ عَلِيًّا - رَضِيَ اللَّهُ عَنْهُ - قَتَلَ ابْنَ يَثْرِبِيٍّ - وَقَدْ أُتِيَ بِهِ أَسِيرًا وَقَالَ الشَّافِعِيُّ: لَا يَحِلُّ أَنْ يُقْتَلَ مِنْهُمْ أَسِيرٌ أَصْلًا مَا دَامَتْ الْحَرْبُ قَائِمَةً، وَلَا بَعْدَ تَمَامِ الْحَرْبِ - وَبِهَذَا نَقُولُ.

L39769 The proof of this is that it has been authentically established from the Prophet—peace and blessings be upon him—that he said: "It is not lawful to shed the blood of a Muslim except for one of three things: apostasy after faith, adultery after being in a state of lawful marriage, or a life for a life."

بُرْهَانُ ذَلِكَ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ صَحَّ عَنْهُ أَنَّهُ قَالَ «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إلَّا بِإِحْدَى ثَلَاثٍ: كُفْرٌ بَعْدَ إيمَانٍ، أَوْ زِنًى بَعْدَ إحْصَانٍ، أَوْ نَفْسٌ بِنَفْسٍ» .

L39770 Allah the Exalted has sanctioned the execution of those who wage war against society, and the Messenger of Allah—may Allah bless him and grant him peace—has sanctioned the execution of one who was subjected to the ḥadd punishment for consuming intoxicants and then drank it a fourth time.

وَأَبَاحَ اللَّهُ تَعَالَى دَمَ الْمُحَارِبِ، وَأَبَاحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَمَ مَنْ حُدَّ فِي الْخَمْرِ ثُمَّ شَرِبَهَا فِي الرَّابِعَةِ.

L39771 Every person for whom there exists an explicit text permitting their blood, their blood is permitted. As for every person whose blood neither God Almighty nor His Messenger—may God's blessings and peace be upon him—have permitted, their blood is forbidden by the words of God Almighty: "Do not kill yourselves" [4:29], and the words of the Messenger of God—may God's blessings and peace be upon him: "Your blood and your wealth are sacred to you." As for their argument citing the action of Ali—may God be pleased with him—it holds no validity for several reasons: The first is that no proof can be derived from the words of anyone other than the Messenger of God—may God's blessings and peace be upon him.[23]

فَكُلُّ مَنْ وَرَدَ نَصٌّ بِإِبَاحَةِ دَمِهِ: مُبَاحُ الدَّمِ، وَكُلُّ مَنْ لَمْ يُبِحْ اللَّهُ تَعَالَى دَمَهُ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَرَامُ الدَّمِ بِقَوْلِ اللَّهِ تَعَالَى {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] ، وَبِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَأَمَّا احْتِجَاجُهُمْ بِفِعْلِ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - فَلَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ: أَحَدُهَا - أَنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L39772 The second [point] is that it cannot be authentically ascribed to ʿAlī—may Allah be pleased with him.

وَالثَّانِي - أَنَّهُ لَا يَصِحُّ مُسْنَدًا إلَى عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ -.

L39773–39775 The third point is that if it were valid, it would constitute an authoritative proof against them rather than in their favor. This is because the report in question pertains specifically to a man from Yathrib, who recited rajaz poetry on that day, saying: I am for whoever disavows me, the son of the Yathribi... the killer of Ali and Hind of the Battle of the Camel.

وَالثَّالِثُ - أَنَّهُ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ لَا لَهُمْ؛ لِأَنَّ ذَلِكَ الْخَبَرَ إنَّمَا هُوَ فِي ابْنِ يَثْرِبِيٍّ ارْتَجَزَ يَوْمَ ذَلِكَ، فَقَالَ: أَنَا لِمَنْ يُنْكِرُنِي ابْنُ يَثْرِبِيّ ... قَاتِلُ عَلِيًّا وَهِنْدَ الْجَمَلِ

[23] **Qur'an references (L39771):** Qur'an 4:29 (An-Nisa).

L39776 Then the son of Ṣuḥān was upon the religion of ʿAlī.

ثُمَّ ابْنَ صُوحَانَ عَلَى دِينِ عَلِيٍّ

L39777 He was captured and brought to Ali ibn Abi Talib. He pleaded, “Spare me!” Ali said to him, “After your confession to killing three Muslims—Ali, Hind, and Ibn Ṣuḥān—should you be spared?” He then ordered his neck to be struck. Ali killed him as qawd (retributive killing) by the explicit wording of his own statement—though they themselves do not recognize qawd in such a case? Thus their own argument became evidence against them, revealing their contradiction of Ali’s statement and action in this matter. Fourthly, it is authentically established that Ali prohibited killing captives during the Battles of al-Jamal and Ṣiffīn—as we shall mention, if Allah the Exalted wills. Therefore, their reliance on Ali’s action in this matter was invalidated, and we know they never objected to anything other than this.

فَأُسِرَ، فَأُتِيَ بِهِ عَلِيَّ بْنَ أَبِي طَالِبٍ، فَقَالَ لَهُ: اسْتَبْقِنِي؟ فَقَالَ لَهُ عَلِيٌّ: أَبَعْدَ إِقْرَارِكَ بِقَتْلِ ثَلَاثَةٍ مِنْ الْمُسْلِمِينَ: عَلِيًّا، وَهِنْدًا، وَابْنَ صُوحَانَ - وَأَمَرَ بِضَرْبِ عُنُقِهِ - فَإِنَّمَا قَتَلَهُ عَلِيٌّ قَوَدًا بِنَصِّ كَلَامِهِ - وَهُمْ لَا يَرَوْنَ الْقَوَدَ فِي مِثْلِ هَذَا؟ فَعَادَ احْتِجَاجُهُمْ بِهِ حُجَّةً عَلَيْهِمْ، وَلَاحَ أَنَّهُمْ مُخَالِفُونَ لِقَوْلِ عَلِيٍّ فِي ذَلِكَ وَلِفِعْلِهِ وَالرَّابِعُ - أَنَّهُ قَدْ صَحَّ عَنْ عَلِيٍّ النَّهْيُ عَنْ قَتْلِ الْأُسَرَاءِ فِي الْجَمَلِ وَصِفِّينَ - عَلَى مَا نَذْكُرُ إِنْ شَاءَ اللَّهُ تَعَالَى - فَبَطَلَ تَعَلُّقُهُمْ بِفِعْلِ عَلِيٍّ فِي ذَلِكَ، وَمَا نَعْلَمُهُمْ شَغَبُوا بِشَيْءٍ غَيْرَ هَذَا.

L39778 If they say: “His killing was permissible without disagreement before captivity, so it remains permissible afterward unless prevented by a text or consensus,” we respond: This is invalid. His killing was never unconditionally permissible before captivity, but rather permissible only while he was a rebel actively fighting. When he is no longer a rebel or actively fighting, his killing becomes forbidden. Once captured, he is neither a rebel nor actively fighting; thus, his blood is forbidden.

فَإِنْ قَالُوا: قَدْ كَانَ قَتْلُهُ - بِلَا خِلَافٍ - مُبَاحًا قَبْلَ الْإِسَارِ، فَهُوَ عَلَى ذَلِكَ بَعْدَ الْإِسَارِ حَتَّى يَمْنَعَ مِنْهُ نَصٌّ، أَوْ إِجْمَاعٌ؟ قُلْنَا لَهُمْ: هَذَا بَاطِلٌ، وَمَا حَلَّ قَتْلُهُ قَطُّ قَبْلَ الْإِسَارِ مُطْلَقًا، لَكِنْ حَلَّ قَتْلُهُ مَا دَامَ بَاغِيًا مُدَافِعًا، فَإِذَا لَمْ يَكُنْ بَاغِيًا مُدَافِعًا: حَرُمَ قَتْلُهُ - وَهُوَ إِذَا أُسِرَ فَلَيْسَ حِينَئِذٍ بَاغِيًا، وَلَا مُدَافِعًا: فَدَمُهُ حَرَامٌ.

L39779 Similarly, if he abandons fighting, remains in his place, and does not defend himself, his blood becomes inviolable—even if he is not captured. And success comes from Allah, the Exalted.

وَكَذَلِكَ لَوْ تَرَكَ الْقِتَالَ وَقَعَدَ مَكَانَهُ وَلَمْ يُدَافِعْ لَحَرُمَ دَمُهُ - وَإِنْ لَمْ يُؤْسَرْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39780 Allah the Exalted said, “Fight the faction that transgresses until they return to the command of Allah” [Al-Hujurat: 9], and He did not say: “Fight those who remain.” Fighting and combat are actions involving two parties. Thus, only fighting the transgressor and combating him are permissible, but it is never permissible to kill him outside the context of combat and fighting. This is the text of the Quran—and success comes from Allah, the Exalted.[24]

وَإِنَّمَا قَالَ اللَّهُ تَعَالَى {فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ} [الحجرات: ٩] وَلَمْ يَقُلْ: قَاتِلُوا الَّتِي تَبْقَى، وَالْقِتَالُ وَالْمُقَاتَلَةُ فِعْلٌ مِنْ فَاعِلَيْنِ، فَإِنَّمَا حَلَّ قِتَالُ الْبَاغِي، وَمُقَاتَلَتُهُ، وَلَمْ يَحِلَّ قَتْلُهُ قَطُّ فِي غَيْرِ الْمُقَاتَلَةِ، وَالْقِتَالِ، فَهَذَا نَصُّ الْقُرْآنِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39781 If they say, “Do we analogize him to the muḥārib?” We reply: The subdued

فَإِنْ قَالُوا نَقِيسُهُ عَلَى الْمُحَارِبِ؟ قُلْنَا: الْمُحَارِبُ الْمَقْدُورُ عَلَيْهِ يُقْتَلُ إِنْ رَأَى الْإِمَامُ ذَلِكَ قَبْلَ تَمَامِ الْحَرْبِ وَبَعْدَهَا بِلَا خِلَافٍ فِي أَنَّ حُكْمَهُ فِي كِلَا الْأَمْرَيْنِ سَوَاءٌ - وَأَيْضًا

[24] **Qur’an references (L39780):** Qur’an 49:9 (Al-Hujurat).

muḥārib is to be killed if the Imam deems it necessary, whether before the war's conclusion or after, without disagreement that his ruling is identical in both scenarios. Moreover, no one disputes that the ruling for the bāghī differs from the ruling of the muḥārib, and the Quran came with the differentiation between their rulings.

فَلَيْسَ يَخْتَلِفُ أَحَدٌ فِي أَنَّ حُكْمَ الْبَاغِي غَيْرُ حُكْمِ الْمُحَارِبِ، وَبِالتَّفْرِيقِ بَيْنَ حُكْمِهِمَا جَاءَ الْقُرْآنُ.

L39782–39784 Abu Muhammad—may Allah have mercy on him—said: They also differed concerning finishing off their wounded, and the opinion is... The ruling concerning them is identical to that regarding captives without exception, because if a wounded person is overpowered, he becomes a captive. As for one who cannot be overpowered and remains resistant, he is a rebel like the rest of his companions.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَاخْتَلَفُوا أَيْضًا فِي الْإِجْهَازِ عَلَى جَرْحَاهُمْ، وَالْقَوْلُ فِيهِمْ كَالْقَوْلِ فِي الْأُسَرَاءِ سَوَاءً، لِأَنَّ الْجَرِيحَ إذَا قُدِرَ عَلَيْهِ فَهُوَ أَسِيرٌ، وَأَمَّا مَا لَمْ يُقْدَرْ عَلَيْهِ وَكَانَ مُمْتَنِعًا فَهُوَ بَاغٍ كَسَائِرِ أَصْحَابِهِ.

L39785 It has been narrated to us through the chain of ʻAbd al-Razzāq from Ibn Jurayj, who said: Jaʻfar ibn Muḥammad informed me from his father Muḥammad ibn ʻAlī ibn al-Ḥusayn ibn ʻAlī ibn Abī Ṭālib, who said: ʻAlī ibn Abī Ṭālib stated: "Do not finish off the wounded, do not kill captives, and do not pursue those who flee." He would not seize the property of a slain person, saying: "Whoever acknowledges something, let him take it."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي جَعْفَرُ بْنُ مُحَمَّدٍ عَنْ أَبِيهِ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ بْنِ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: لَا يُذَفَّفُ عَلَى جَرِيحٍ، وَلَا يُقْتَلُ أَسِيرٌ، وَلَا يُتْبَعُ مُدْبِرٌ - وَكَانَ لَا يَأْخُذُ مَالًا لِمَقْتُولٍ، يَقُولُ: مَنْ اعْتَرَفَ شَيْئًا فَلْيَأْخُذْهُ.

L39786 From the chain of Abd al-Razzaq, from Yahya ibn al-Ala', from Juwaybir, who said: A woman from Banu Asad reported to me, saying: I heard Ammar, after Ali had concluded with the Companions of the Camel, proclaiming: "Do not kill anyone retreating or advancing, nor finish off a wounded person, nor enter a house. Whoever lays down his weapon is safe, like a prisoner. We have ordained to reconcile between him and the one against whom aggression is committed through equitable arbitration, which is to prevent him from aggression by restraining the aggressor and not allowing him to fight."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ يَحْيَى بْنِ الْعَلَاءِ عَنْ جُوَيْبِرٍ قَالَ: أَخْبَرَتْنِي امْرَأَةٌ مِنْ بَنِي أَسَدٍ قَالَتْ: سَمِعْت عَمَّارًا بَعْد مَا فَرَغَ عَلِيٌّ مِنْ أَصْحَابِ الْجَمَلِ يُنَادِي: لَا تَقْتُلُنَّ مُدْبِرًا وَلَا مُقْبِلًا، وَلَا تُذَفِّفُوا عَلَى جَرِيحٍ، وَلَا تَدْخُلُوا دَارًا، وَمَنْ أَلْقَى السِّلَاحَ فَهُوَ آمِنٌ، كَالْمَأْسُورِ، قَدْ قَدَرْنَا أَنْ نُصْلِحَ بَيْنَهُ وَبَيْنَ الْمَبْغِيِّ عَلَيْهِ بِالْعَدْلِ، وَهُوَ أَنْ نَمْنَعَهُ مِنْ الْبَغْيِ، بِأَنْ نُمْسِكَهُ وَلَا نَدَعَهُ يُقَاتِلَ.

L39787 Similarly, the wounded when overpowered. The text of this verse establishes the prohibition of killing captives and those overpowered, for it obligates reconciliation between the two parties—the transgressor and the wronged—and reconciliation is impermissible between a living and a deceased individual, but is valid only between two living parties. Thus, the prohibition of killing

وَكَذَلِكَ الْجَرِيحُ إذَا قَدَرْنَا عَلَيْهِ، وَنَصُّ هَذِهِ الْآيَةِ يَقْتَضِي تَحْرِيمَ دَمِ الْأَسِيرِ، وَمَنْ قُدِرَ عَلَيْهِ؛ لِأَنَّ فِيهَا إيجَابَ الْإِصْلَاحِ بَيْنَهُمَا - نَعْنِي الْبَاغِيَ وَالْمَبْغِيَّ عَلَيْهِ - وَلَا يَجُوزُ أَنْ

captives and those overpowered among the rebels is conclusively established with certainty.

يُصْلَحَ بَيْنَ حَيٍّ وَمَيِّتٍ، وَإِنَّمَا يُصْلَحُ بَيْنَ حَيَّيْنِ - فَصَحَّ تَحْرِيمُ دَمِ الْأَسِيرِ، وَمَنْ قُدِرَ عَلَيْهِ مِنْ أَهْلِ الْبَغْيِ بِيَقِينٍ.

L39788 They differed regarding whether it is permissible to follow those among them who turn away. A group asserted: Those among them who turn away are not to be followed in any respect.

وَاخْتَلَفُوا هَلْ يَجُوزُ اتِّبَاعُ مُدْبِرِهِمْ؟ فَقَالَتْ طَائِفَةٌ: لَا يُتْبَعُ الْمُدْبِرُ مِنْهُمْ أَصْلًا.

L39789 Others said: If they have entirely abandoned fighting, withdrawing to their homes, it is impermissible to pursue them under any circumstance. But if they have aligned with a faction, taken refuge in a fortress where they hold out, withdrawn from those from the people of justice who have prevailed over them to a place where they secure themselves until nightfall, or retreated due to the distance and hardship of the journey then return to their state—they are to be pursued.

وَقَالَ آخَرُونَ: إنْ كَانُوا تَارِكِينَ لِلْقِتَالِ جُمْلَةً، مُنْصَرِفِينَ إلَى بُيُوتِهِمْ، فَلَا يَحِلُّ اتِّبَاعُهُمْ أَصْلًا، وَإِنْ كَانُوا مُنْحَازِينَ إلَى فِئَةٍ أَوْ لَائِذِينَ بِمَعْقِلٍ يَمْتَنِعُونَ فِيهِ، أَوْ زَائِلِينَ عَنْ الْغَالِبِينَ لَهُمْ مِنْ أَهْلِ الْعَدْلِ إلَى مَكَانٍ يَأْمَنُونَهُمْ فِيهِ لِمَجِيءِ اللَّيْلِ، أَوْ بِبُعْدِ الشُّقَّةِ ثُمَّ يَعُودُونَ إلَى حَالِهِمْ: فَيُتْبَعُونَ.

L39790–39792 Abū Muḥammad—may Allāh have mercy on him—said: This is our position, for it is the text of the Quran. Allāh the Exalted has obligated us to fight them until they return to the command of Allāh. When they return, it becomes forbidden for us to kill them or fight them. Thus, if they retreat—abandoning their aggression, returning to their dwellings, or dispersing from what they were upon—their abandonment of transgression makes them those who return to Allāh's command. When they return to Allāh's command, their killing becomes unlawful. If their killing is unlawful, then there is no... The reason for their adherence; we have nothing with them at that time.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَبِهَذَا نَقُولُ، لِأَنَّهُ نَصُّ الْقُرْآنِ، لِأَنَّ اللَّهَ تَعَالَى افْتَرَضَ عَلَيْنَا قِتَالَهُمْ حَتَّى يَفِيئُوا إلَى أَمْرِ اللَّهِ تَعَالَى، فَإِذَا فَاءُوا حَرُمَ عَلَيْنَا قَتْلُهُمْ وَقِتَالُهُمْ، فَهُمْ إذَا أَدْبَرُوا تَارِكِينَ لِبَغْيِهِمْ، رَاجِعِينَ إلَى مَنَازِلِهِمْ، أَوْ مُتَفَرِّقِينَ عَمَّا هُمْ عَلَيْهِ، فَبِتَرْكِهِمْ الْبَغْيَ صَارُوا فَائِئِينَ إلَى أَمْرِ اللَّهِ، فَإِذَا فَاءُوا إلَى أَمْرِ اللَّهِ فَقَدْ حَرُمَ قَتْلُهُمْ، وَإِذَا حَرُمَ قَتْلُهُمْ فَلَا وَجْهَ لِاتِّبَاعِهِمْ، وَلَا شَيْءَ لَنَا عِنْدَهُمْ حِينَئِذٍ.

L39793 As for when their retreat is to free themselves from the dominance of the people of truth—while they persist in their transgression—fighting them remains our obligation afterward, because they have not yet returned to compliance with the command of Allah, the Most High.

وَأَمَّا إذَا كَانَ إدْبَارُهُمْ لِيَتَخَلَّصُوا مِنْ غَلَبَةِ أَهْلِ الْحَقِّ - وَهُمْ بَاقُونَ عَلَى بَغْيِهِمْ - فَقِتَالُهُمْ بَاقٍ عَلَيْنَا بَعْدُ، لِأَنَّهُمْ لَمْ يَفِيئُوا بَعْدُ إلَى أَمْرِ اللَّهِ تَعَالَى.

L39794 If someone were to argue using what was transmitted by ʿAbdullāh ibn Aḥmad al-Ṭalamankī, who narrated from Aḥmad ibn Mufarrij, who narrated from Muḥammad ibn Ayyūb al-Ṣamūt al-Raqqī, who narrated from Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār, who narrated from Muḥammad ibn Maʿmar, who narrated from ʿAbd al-Malik ibn ʿAbd al-ʿAzīz, who narrated from Kawthar ibn Ḥakīm, from Nāfiʿ, from Ibn ʿUmar, who said: The Mes-

فَإِنْ احْتَجَّ مُحْتَجٌّ بِمَا ناه عَبْدُ اللَّهِ بْنُ أَحْمَدَ الطَّلَمَنْكِيُّ نا أَحْمَدُ بْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ الرَّقِّيُّ نا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا مُحَمَّدُ بْنُ مَعْمَرٍ نا عَبْدُ الْمَلِكِ بْنُ عَبْدِ الْعَزِيزِ نا كَوْثَرُ بْنُ حَكِيمٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى

senger of Allah—peace and blessings be upon him—said, “O son of Umm ʿAbd, do you know how Allah has judged concerning those who rebel from this Ummah?” He replied, “Allah and His Messenger know best.” He said, “Their wounded are not to be finished off, their captives are not to be killed, those who flee are not to be pursued, and their booty is not to be distributed.” However, Kawthar ibn Ḥakīm is entirely unreliable and abandoned in ḥadīth narration. Even if it were authentic, it would be proof for us, because “the fleeing” refers to one who abandons their cause, whereas one who extricates themselves to return is not considered fleeing. And with Allah, the Exalted, is success.

اللَّهُ عَلَيْهِ وَسَلَّمَ - «يَا ابْنَ أُمِّ عَبْدٍ هَلْ تَدْرِي كَيْفَ حَكَمَ اللَّهُ فِيمَنْ بَغَى مِنْ هَذِهِ الْأُمَّةِ؟ قَالَ: اللَّهُ وَرَسُولُهُ أَعْلَمُ، قَالَ: لَا يُجْهَزُ عَلَى جَرِيحِهَا، وَلَا يُقْتَلُ أَسِيرُهَا، وَلَا يُطْلَبُ هَارِبُهَا، وَلَا يُقَسَّمُ فَيْئُهَا» فَإِنَّ كَوْثَرَ بْنَ حَكِيمٍ سَاقِطٌ أَلْبَتَّةَ مَتْرُوكُ الْحَدِيثِ - وَلَوْ صَحَّ لَكَانَ حُجَّةً لَنَا، لِأَنَّ الْهَارِبَ: هُوَ التَّارِكُ لِمَا هُوَ فِيهِ، فَأَمَّا الْمُتَخَلِّصُ؛ لِيَعُودَ فَلَيْسَ هَارِبًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39795 Abu Muhammad (may Allah have mercy on him) said: They also differed regarding fighting rebels. Some scholars of Hadith said: Their wealth should be divided and subject to khums. This is also the opinion of Al-Ḥasan ibn Ḥayy, who stated: The wealth of brigands who wage war is considered spoils subject to khums, including whatever wealth they possessed in their camp.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَاخْتَلَفُوا أَيْضًا فِي قِتَالِ أَهْلِ الْبَغْيِ؟ فَقَالَ بَعْضُ أَصْحَابِ الْحَدِيثِ: تُقَسَّمُ أَمْوَالُهُمْ وَتُخَمَّسُ - وَبِهِ قَالَ الْحَسَنُ بْنُ حَيٍّ: أَمْوَالُ اللُّصُوصِ الْمُحَارِبِينَ مَغْنُومَةٌ مُخَمَّسَةٌ، مَا كَانَ مِنْهَا فِي عَسْكَرِهِمْ.

L39796 Abu Yusuf, the companion of Abu Hanifah, said: Whatever weapons and cavalry mounts are found in the possession of rebels constitute *fay’* (spoils acquired without combat), which is divided with one-fifth taken [as *khums*]—and he did not hold this opinion regarding anything other than weapons and mounts.

وَقَالَ أَبُو يُوسُفَ صَاحِبُ أَبِي حَنِيفَةَ: مَا وُجِدَ فِي أَيْدِي أَهْلِ الْبَغْيِ مِنْ السِّلَاحِ وَالْكُرَاعِ فَإِنَّهُ فَيْءٌ يُقَسَّمُ وَيُخَمَّسُ - وَلَمْ يَرَ ذَلِكَ فِي غَيْرِ السِّلَاحِ وَالْكُرَاعِ.

L39797 Abu Hanifa and all his companions said: As long as hostilities persist, it is permissible to use captured weapons and *kurāʿ* specifically for combatting them. If any such items are destroyed during warfare, no compensation is due. When hostilities cease, nothing may be taken from their possessions—neither weapons, nor *kurāʿ*, nor anything else. Whatever remains of their weapons and *kurāʿ* used in battle must be restored to them. Malik, Al-Shafi’i, and our companions said: Nothing from their possessions becomes lawful for us—neither weapons, nor *kurāʿ*, nor anything else—whether during warfare or after its conclusion. Abu Muhammad—may Allah have mercy on him—said: Since they differed as we have mentioned, it became obligatory to examine this matter to discern the truth and follow it, with the aid of Allah the Exalted.

وَقَالَ أَبُو حَنِيفَةَ وَسَائِرُ أَصْحَابِهِ: أَمَّا مَا دَامَتْ الْحَرْبُ قَائِمَةً فَإِنَّهُ يُسْتَعَانُ فِي قِتَالِهِمْ بِمَا أُخِذَ مِنْ سِلَاحِهِمْ وَكُرَاعِهِمْ خَاصَّةً؛ فَإِذَا تَلِفَ مِنْ ذَلِكَ شَيْءٌ فِي حَالِ الْحَرْبِ فَلَا ضَمَانَ فِيهِ، فَإِذَا وَضَعَتْ الْحَرْبُ أَوْزَارَهَا لَمْ يُؤْخَذْ شَيْءٌ مِنْ أَمْوَالِهِمْ لَا سِلَاحٌ، وَلَا كُرَاعٌ، وَلَا غَيْرُ ذَلِكَ - يُرَدُّ عَلَيْهِمْ مَا بَقِيَ مِمَّا قَاتَلُوا بِهِ فِي الْحَرْبِ مِنْ سِلَاحِهِمْ وَكُرَاعِهِمْ وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُنَا: لَا يَحِلُّ لَنَا شَيْءٌ مِنْ أَمْوَالِهِمْ: لَا سِلَاحٌ، وَلَا كُرَاعٌ، وَلَا غَيْرُ ذَلِكَ - لَا فِي حَالِ الْحَرْبِ وَلَا بَعْدَهَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ، بِعَوْنِ اللَّهِ تَعَالَى.

فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، بِأَنْ يَسْتَعْمِلَ سِلَاحَهُمْ، وَكُرَاعَهُمْ مَا دَامَتْ الْحَرْبُ قَائِمَةً - فَلَمْ نَجِدْ لَهُمْ فِي ذَلِكَ حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا إجْمَاعٍ - وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ بِلَا شَكٍّ، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَالسِّلَاحُ وَالْكُرَاعُ مَالٌ مِنْ مَالِهِمْ فَهُوَ مُحَرَّمٌ عَلَى غَيْرِهِمْ، لَكِنَّ الْوَاجِبَ أَنْ يُحَالَ بَيْنَهُمْ وَبَيْنَ كُلِّ مَا يَسْتَعِينُونَ بِهِ عَلَى بَاطِلِهِمْ؛ لِقَوْلِ اللَّهِ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L39798–39799 We examined the argument put forth by Abū Ḥanīfah and his followers justifying their use of weapons and mounts as long as warfare continues, but found no valid proof whatsoever to support this—neither from the Qur'an, nor from an authentic or weak Sunnah, nor from the statement of a Companion, nor from consensus. Whatever is based on such grounds is undoubtedly invalid. The Messenger of Allah—peace and blessings of Allah be upon him—said, "Your blood and wealth are inviolable upon you." Weapons and mounts are part of their wealth, thus they are forbidden to others. However, it is obligatory to block all means they use to promote their falsehood, in accordance with Allah's decree: "Cooperate in righteousness and piety, and do not cooperate in sin and aggression" [al-Mā'idah 5:2].[25]

فَصَحَّ بِهَذَا يَقِينًا أَنَّ تَخْلِيَتَهُمْ يَسْتَعْمِلُونَ السِّلَاحَ فِي دِمَاءِ أَهْلِ الْعَدْلِ وَالْكُرَاعَ فِي قِتَالِهِمْ تَعَاوُنٌ عَلَى الْإِثْمِ وَالْعُدْوَانِ فَهُوَ مُحَرَّمٌ بِنَصِّ الْقُرْآنِ.

L39800 Thus, it is established with certainty through this that their forsaking [justice], their employing weapons to shed the blood of the people of justice, and their use of cavalry to fight against them constitute cooperation in sin and transgression—and this is prohibited by the explicit text of the Quran.

وَصَحَّ أَنَّ الْحَيْلُولَةَ بَيْنَهُمْ وَبَيْنَ السِّلَاحِ وَالْكُرَاعِ فِي حَالِ الْبَغْيِ: تَعَاوُنٌ عَلَى الْبِرِّ وَالتَّقْوَى، وَأَمَّا اسْتِعْمَالُهُ فَلَا يَحِلُّ؛ لِمَا ذَكَرْنَا، إلَّا أَنْ يُضْطَرَّ إلَيْهِ فَيَجُوزُ حِينَئِذٍ، وَمَنْ اُضْطُرَّ إلَى الدِّفَاعِ عَنْ نَفْسِهِ بِحَقٍّ فَفَرْضٌ عَلَيْهِ أَنْ يَدْفَعَ الظُّلْمَ عَنْ نَفْسِهِ، وَعَنْ غَيْرِهِ، بِمَا أَمْكَنَهُ مِنْ سِلَاحِ نَفْسِهِ أَوْ سِلَاحِ غَيْرِهِ، فَإِنْ لَمْ يَفْعَلْ فَهُوَ مُلْقٍ بِيَدِهِ إلَى التَّهْلُكَةِ، وَهَذَا حَرَامٌ عَلَيْهِ - فَسَقَطَ قَوْلُ أَبِي حَنِيفَةَ وَأَصْحَابِهِ.

L39801 It has been established that preventing rebels from access to weapons and mounts during a state of rebellion constitutes cooperation in righteousness and piety. However, using it is impermissible for the reasons we mentioned, except when compelled by necessity, in which case it becomes permissible. Whoever is compelled to rightfully defend himself is obligated to repel injustice from himself and others using whatever weapons he possesses or others' weapons. If he fails to do so, he is throwing himself into ruin, and this is prohibited for him. Thus, the opinion of Abū Ḥanīfah and his companions is invalidated.

ثُمَّ نَظَرْنَا فِي قَوْلِ أَبِي يُوسُفَ فَلَمْ نَجِدْ لَهُمْ شُبْهَةً إلَّا خَبَرًا رَوَاهُ فِطْرُ بْنُ خَلِيفَةَ عَنْ مُحَمَّدِ بْنِ الْحَنَفِيَّةِ: أَنَّ عَلِيًّا قَسَّمَ يَوْمَ الْجَمَلِ فِيهِمْ بَيْنَ أَصْحَابِهِ مَا قُوتِلَ بِهِ مِنْ الْكُرَاعِ وَالسِّلَاحِ - وَهَذَا خَبَرٌ فَاسِدٌ، لِأَنَّ فِطْرًا ضَعِيفٌ.

L39802 Then we examined the statement of Abū Yūsuf and found no basis for their argument except a report narrated by Fiṭr ibn Khalīfah from Muḥammad ibn al-Ḥanafiyyah: that ʿAlī distributed among his companions on the Day of the Camel the livestock and weapons used in battle. And this is an unsound report, for Fiṭr is a weak narrator.

L39803–39805 They also mentioned what was written to Yusuf ibn Abd al-Barr al-Namari,

[25] **Qur'an references (L39799):** Qur'an 5:2 (Al-Ma'idah).

who said: Ahmad ibn Muhammad ibn al-Jasur narrated to us, from Muhammad ibn Isa ibn Rifa'ah al-Khulani, from Bakr ibn Sahl, from Nu'aym ibn Hammad, from Muhammad ibn Fudayl, from Ata ibn al-Sa'ib, from Abu al-Bakhtari, al-Sha'bi, and the companions of Ali—from Ali—that when he prevailed over the People of the Camel in Basra on the Day of the Camel, he assigned to them the weapons in the enemy's camp. They said: "How can their blood be lawful for us while their wealth and women remain unlawful?" He responded: "Bring your arrows and cast lots concerning Aisha." They said: "We seek Allah's forgiveness." Ali—may Allah be pleased with him—refuted them and clarified that if she was not lawful, her offspring would not be lawful either. This narration is also weak, as its foundation rests on Nu'aym ibn Hammad, who narrated the same report via a stronger chain from the Prophet. Peace and blessings be upon him: "My nation will split into seventy-three sects. The most harmful among them to my nation are those who apply analogical reasoning in matters, thereby permitting the forbidden and forbidding the lawful. If they permit it here, let them permit it there."

وَذَكَرُوا أَيْضًا مَا كَتَبَ بِهِ إِلَى يُوسُفَ بْنِ عَبْدِ الْبَرِّ النَّمَرِيِّ قَالَ: نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا مُحَمَّدُ بْنُ عِيسَى بْنِ رِفَاعَةَ الْخَوْلَانِيُّ نا بَكْرُ بْنُ سَهْلٍ نا نُعَيْمُ بْنُ حَمَّادٍ نا مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي الْبَخْتَرِيِّ، وَالشَّعْبِيِّ، وَأَصْحَابِ عَلِيٍّ " عَنْ عَلِيٍّ أَنَّهُ لَمَّا ظَهَرَ عَلَى أَصْحَابِ الْجَمَلِ بِالْبَصْرَةِ يَوْمَ الْجَمَلِ جَعَلَ لَهُمْ مَا فِي عَسْكَرِ الْقَوْمِ مِنَ السِّلَاحِ، فَقَالُوا: كَيْفَ تَحِلُّ لَنَا دِمَاؤُهُمْ وَلَا تَحِلُّ لَنَا أَمْوَالُهُمْ وَلَا نِسَاؤُهُمْ؟ قَالَ: هَاتُوا سِهَامَكُمْ فَأَقْرِعُوا عَلَى عَائِشَةَ، فَقَالُوا: نَسْتَغْفِرُ اللَّهَ، فَخَصَمَهُمْ عَلِيٌّ - رَضِيَ اللَّهُ عَنْهُ - وَعَرَّفَهُمْ أَنَّهَا إِذَا لَمْ تَحِلَّ لَمْ يَحِلَّ بَنُوهَا " وَهَذَا أَيْضًا أَثَرُهُ ضَعِيفٌ، وَمَدَارُهُ عَلَى نُعَيْمِ بْنِ حَمَّادٍ وَهُوَ الَّذِي رَوَى بِإِسْنَادٍ أَحْسَنَ مِنْ هَذَا عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «تَفْتَرِقُ أُمَّتِي عَلَى بِضْعٍ وَسَبْعِينَ فِرْقَةً أَشَدُّهَا فِتْنَةً عَلَى أُمَّتِي قَوْمٌ يَقِيسُونَ الْأُمُورَ بِرَأْيِهِمْ فَيُحِلُّونَ الْحَرَامَ وَيُحَرِّمُونَ الْحَلَالَ» فَإِنْ أَجَازُوهُ هُنَا فَلْيُجِيزُوهُ هُنَالِكَ.

L39806 Moreover, even if it were valid, they would have no authoritative evidence in it, for there is no authoritative evidence for anyone besides the Messenger of Allah (may Allah bless him and grant him peace). And how many of Ali's sayings (may Allah be pleased with him) have they opposed with their own opinions.

ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَمْ قَوْلَةٍ لِعَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - قَدْ خَالَفُوهَا بِآرَائِهِمْ.

L39807 Then we examined the position held by al-Ḥasan ibn Ḥayy and found no basis for them except through ʿAbd al-Razzāq's transmission from Ibn ʿUyaynah, from his companions, from Ḥakīm ibn Jubayr, from ʿIṣmah al-Asadī, who said: The people crowded around ʿAlī and said, "Apportion their women and children among us." ʿAlī responded, "The men troubled me, so I troubled them with it. These are offspring of a people who are Muslims in their land. You have no legal claim over them. Whatever wealth the dwelling contains belongs to them, and whatever they brought against you in their military encampment becomes your spoils."

ثُمَّ نَظَرْنَا فِيمَا ذَهَبَ إِلَيْهِ الْحَسَنُ بْنُ حَيٍّ فَلَمْ نَجِدْ لَهُمْ عَلَقَةً إِلَّا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ عُيَيْنَةَ عَنْ أَصْحَابِهِ عَنْ حَكِيمِ بْنِ جُبَيْرٍ عَنْ عِصْمَةَ الْأَسَدِيِّ قَالَ: بَهَشَ النَّاسُ إِلَى عَلِيٍّ فَقَالُوا: اقْسِمْ بَيْنَنَا نِسَاءَهُمْ وَذَرَارِيَّهُمْ، فَقَالَ عَلِيٌّ: عَنَّتْنِي الرِّجَالُ فَعَنَّيْتُهَا وَهَذِهِ ذُرِّيَّةُ قَوْمٍ مُسْلِمِينَ فِي دَارِهِمْ، لَا سَبِيلَ لَكُمْ عَلَيْهِمْ مَا أَوَتِ الدَّارُ مِنْ مَالٍ فَهُوَ لَهُمْ، وَمَا أَجْلَبُوا بِهِ عَلَيْكُمْ فِي عَسْكَرِهِمْ فَهُوَ لَكُمْ مَغْنَمٌ.

L39808 Abū Muḥammad—may Allāh have mercy on him—said: This is a report of

utmost invalidity, because Ibn ʿUyaynah—may Allāh have mercy on him—narrated it through his unidentified narrators, then through Ḥakīm ibn Jubayr—a condemned liar. Thus, there remained only those who asserted that "all their wealth is subject to khums and classified as spoils" and those who declared "nothing from it is permissible." We therefore examined those.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا خَبَرٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّ ابْنَ عُيَيْنَةَ - رَحِمَهُ اللَّهُ - رَوَاهُ عَنْ أَصْحَابِهِ الَّذِينَ لَا يُدْرَى مَنْ هُمْ، ثُمَّ عَنْ حَكِيمِ بْنِ جُبَيْرٍ - وَهُوَ هَالِكٌ كَذَّابٌ فَلَمْ يَبْقَ إِلَّا مَنْ قَالَ: إِنَّ جَمِيعَ أَمْوَالِهِمْ مُخَمَّسَةٌ مَغْنُومَةٌ، وَقَوْلُ مَنْ قَالَ: لَا يَحِلُّ مِنْهَا شَيْءٌ فَنَظَرْنَا فِي تِلْكَ.

L39809 We found them citing the narration reported by Ḥumām ibn Aḥmad, who said: From ʿAbbās ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Malik ibn Ayman, from Aḥmad ibn Zuhayr ibn Ḥarb, from ʿAffān ibn Muslim, from Muḥammad ibn Maymūn, from Muḥammad ibn Sīrīn, from his brother Maʿbad ibn Sīrīn, from Abū Saʿīd al-Khudrī, from the Prophet—peace and blessings of Allah be upon him—who said: "A people will emerge from the East who recite the Quran, but it does not go beyond their throats. They will pass through the religion as an arrow pierces through its target, and they will not return to it until the arrow returns to its notch. Their distinguishing mark will be shaving their heads and closely cropping their hair."

فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِمَا نا بِهِ حُمَامُ بْنُ أَحْمَدَ قَالَ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ نا عَفَّانُ بْنُ مُسْلِمٍ نا مُحَمَّدُ بْنُ مَيْمُونٍ نا مُحَمَّدُ بْنُ سِيرِينَ عَنْ أَخِيهِ مَعْبَدِ بْنِ سِيرِينَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يَخْرُجُ نَاسٌ مِنْ قِبَلِ الْمَشْرِقِ يَقْرَءُونَ الْقُرْآنَ لَا يُجَاوِزُ تَرَاقِيَهُمْ يَمْرُقُونَ مِنَ الدِّينِ كَمَا يَمْرُقُ السَّهْمُ مِنَ الرَّمِيَّةِ ثُمَّ لَا يَعُودُونَ فِيهِ حَتَّى يَعُودَ السَّهْمُ إِلَى فُوقِهِ سِيمَاهُمُ التَّحْلِيقُ وَالتَّسْبِيدُ» .

L39810 And through the chain of Muslim: Muhammad ibn al-Muthannā reported to us, Muhammad ibn Abī ʿAdiyy reported from Sulaymān (al-Aʿmash) from Abū Naḍrah from Abū Saʿīd al-Khudrī that the Messenger of Allah—peace and blessings of Allah be upon him—mentioned a people who would arise within his nation, emerging as a faction among the people. Their distinguishing mark is shaving their heads, and they are the worst of creation or among the worst of creation. The closer of the two factions to the truth will kill them. He then related the rest of the narration.

وَمِنْ طَرِيقِ مُسْلِمٍ نِي مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنْ سُلَيْمَانَ - هُوَ الْأَعْمَشُ - عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَكَرَ قَوْمًا يَكُونُونَ فِي أُمَّتِهِ يَخْرُجُونَ فِي فُرْقَةٍ مِنَ النَّاسِ سِيمَاهُمُ التَّحَالُقُ وَهُمْ شَرُّ الْخَلْقِ أَوْ مِنْ شَرِّ الْخَلْقِ تَقْتُلُهُمْ أَدْنَى الطَّائِفَتَيْنِ إِلَى الْحَقِّ» ، وَذَكَرَ بَاقِيَ الْخَبَرِ.

L39811–39812 They said: And indeed, Allah the Exalted has said: "Those who disbelieve among the People of the Scripture and the polytheists will be in the Fire of Hell; they will abide therein eternally. They themselves are the worst of creatures" [Al-Bayyinah: 6]. "Those who believe and do righteous deeds—they themselves are the best of creatures" [Al-Bayyinah: 7].[26]

قَالُوا: وَقَدْ قَالَ اللَّهُ تَعَالَى {إِنَّ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ وَالْمُشْرِكِينَ فِي نَارِ جَهَنَّمَ خَالِدِينَ فِيهَا أُولَئِكَ هُمْ شَرُّ الْبَرِيَّةِ} [البينة: ٦] {إِنَّ الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ أُولَئِكَ هُمْ خَيْرُ الْبَرِيَّةِ} [البينة: ٧] .

[26] **Qur'an references (L39812):** Qur'an 98:6 (Al-Bayyinah); Qur'an 98:7 (Al-Bayyinah).

L39813 They said: It is certain falsehood that they could be Muslims while the Messenger of Allah (peace be upon him) states: "They are the worst of creation" or "among the worst of creation"—for "creation" and "created beings" are equivalent. They said: Since they, by the testimony of the Messenger of Allah (peace be upon him and his family), are among the worst of creation, and have apostatized from the religion as an arrow pierces through prey, never to return to it, they are unquestionably polytheists—those whom Allah the Exalted described as "the worst of created beings" [98:6], not of those who believed whom Allah the Exalted testified are among "the best of created beings" [98:7]. Thus, their wealth constitutes spoils subject to khums (one-fifth levy), like the wealth of disbelievers.[27]

قَالُوا: فَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يَكُونُوا مُسْلِمِينَ وَيَقُولَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إنَّهُمْ شَرُّ الْخَلْقِ، أَوْ مِنْ شَرِّ الْخَلْقِ، فَالْخَلْقُ وَالْبَرِيَّةُ سَوَاءٌ، قَالُوا: فَإِذْ هُمْ بِشَهَادَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ شَرِّ الْخَلْقِ، وَقَدْ مَرَقُوا مِنْ الدِّينِ كَمَا يَمْرُقُ السَّهْمُ مِنْ الرَّمِيَّةِ ثُمَّ لَا يَعُودُونَ فِيهِ أَبَدًا، فَهُمْ بِيَقِينٍ مِنْ الْمُشْرِكِينَ، الَّذِينَ قَالَ اللَّهُ تَعَالَى: إنَّهُمْ {شَرُّ الْبَرِيَّةِ} [البينة: ٦] لَا مِنْ الَّذِينَ آمَنُوا الَّذِينَ شَهِدَ اللَّهُ تَعَالَى لَهُمْ أَنَّهُمْ مِنْ {خَيْرُ الْبَرِيَّةِ} [البينة: ٧] فَأَمْوَالُهُمْ مَغْنُومَةٌ مُخَمَّسَةٌ كَأَمْوَالِ الْكُفَّارِ.

L39814 Abū Muḥammad—may Allah have mercy on him—said: "This is a sound statement and a truthful argument, except that it is general and unorganized. The correct approach in this matter is the collection of verses and ḥadīths. Whoever diverges through an erroneous interpretation—having not opposed consensus, nor intending to contradict the Qur'ān or the ruling of Allah's Messenger (peace and blessings be upon him and his family) while deliberately opposing both of them, nor obstinately persisting against them after the proof has been established against him, nor rebelling seeking worldly supremacy without fearing the proper path, nor shedding blood indiscriminately, nor seizing wealth unjustly—such is the rebel who must be reconciled with those against whom he has rebelled, in accordance with the verse on rebels and the Prophet's statement (peace be upon him) concerning the emergence of the deviant faction between two groups of his nation: one being the aggressor—the one that kills Ammar as foretold by the Prophet—and the other being more entitled to the truth. He (peace be upon him) praised those who reconcile between them."

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا قَوْلٌ صَحِيحٌ، وَاحْتِجَاجٌ صَادِقٌ، إلَّا أَنَّهُ مُجْمَلٌ غَيْرُ مُرَتَّبٍ، وَالصَّحِيحُ مِنْ هَذَا هُوَ جَمْعُ الْآيَاتِ وَالْأَحَادِيثِ، فَمَنْ خَرَجَ بِتَأْوِيلٍ هُوَ فِيهِ مُخْطِئٌ، لَمْ يُخَالِفْ فِيهِ الْإِجْمَاعَ، وَلَا قَصَدَ فِيهِ خِلَافَ الْقُرْآنِ وَحُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهُوَ يَتَعَمَّدُ خِلَافَهُمَا، أَوْ يَعْنِدُ عَنْهُمَا بَعْدَ قِيَامِ الْحُجَّةِ عَلَيْهِ، أَوْ خَرَجَ طَالِبًا غَلَبَةً فِي دُنْيَا، وَلَمْ يَخَفْ طَرِيقًا، وَلَا سَفَكَ الدَّمَ جِزَافًا، وَلَا أَخَذَ الْمَالَ ظُلْمًا، فَهَذَا هُوَ الْبَاغِي الَّذِي يُصْلَحُ بَيْنَهُ وَبَيْنَ مَنْ بَغَى عَلَيْهِ، عَلَى مَا فِي آيَةِ الْبُغَاةِ وَعَلَى مَا قَالَ - عَلَيْهِ السَّلَامُ - مِنْ خُرُوجِ الْمَارِقَةِ بَيْنَ الطَّائِفَتَيْنِ مِنْ أُمَّتِهِ، إحْدَاهُمَا بَاغِيَةٌ، وَهِيَ الَّتِي تَقْتُلُ عَمَّارًا، وَالْأُخْرَى أَوْلَى بِالْحَقِّ، وَحَمِدَ - عَلَيْهِ السَّلَامُ - مَنْ أَصْلَحَ بَيْنَهُمَا.

L39815 As we have narrated through the chain of al-Bukhārī: Ṣadaqah from Ibn ʿUyaynah from Abū Mūsā, from al-Ḥasan, who heard Abā Bakrah say: "I heard the Messenger of Allah—may the peace and blessings of Allah be upon him and his family—on the pulpit, while al-Ḥasan was beside him, glancing at the people once and at him another time, saying: 'This son of mine is a noble,

كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا صَدَقَةُ نا ابْنُ عُيَيْنَةَ نا أَبُو مُوسَى عَنْ الْحَسَنِ سَمِعَ أَبَا بَكْرَةَ قَالَ «سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَلَى الْمِنْبَرِ، وَالْحَسَنُ إلَى جَنْبِهِ يَنْظُرُ إلَى النَّاسِ مَرَّةً، وَإِلَيْهِ مَرَّةً، وَيَقُولُ: ابْنِي هَذَا سَيِّدٌ، وَلَعَلَّ اللَّهَ يُصْلِحُ بِهِ بَيْنَ فِئَتَيْنِ مِنْ الْمُسْلِمِينَ» فَإِنْ زَادَ الْأَمْرُ حَتَّى يُخِيفُوا السَّبِيلَ، وَيَأْخُذُوا مَالَ الْمُسْلِمِينَ

[27] **Qur'an references (L39813):** Qur'an 98:6 (Al-Bayyinah); Qur'an 98:7 (Al-Bayyinah).

and perhaps Allah will reconcile through him two factions of Muslims.'" If the matter escalates to the point where they endanger travelers on the road, seize the wealth of Muslims by force without any pretext, or similarly shed blood, then these are combatants subject to the legal rulings of warfare. If the matter further escalates to the point where they violate the consensus, then they are apostates: all their wealth is seized as spoils at that point, with a fifth allocated and the remainder distributed. And success is from Allah, the Most High.

L39816–39817 The property of a highway robber or a rebel is not permissible, nor is any portion of it, for though they have committed injustice, they remain Muslims. Nothing from a Muslim's property is permissible except by due right. However, the Muslim's blood may be lawfully shed while their property remains inviolable, as in the case of a married adulterer or an intentional murderer. Conversely, their property may become permissible while their blood remains inviolable, as in the case of a usurper or similar circumstances. The ruling follows the scriptural texts: whatever Allah the Exalted and His Messenger—peace and blessings of Allah be upon him—have permitted concerning blood or property is permissible, and whatever they have prohibited remains forbidden. The foundational principle is prohibition until permissibility is established, in accordance with the statement of Allah's Messenger—peace and blessings of Allah be upon him: "Verily, your blood and your wealth are sacrosanct to you." And success comes only from Allah, the Exalted.

L39818 **The legal issue concerning bloodshed or property [damage] inflicted by the transgressor.**

L39819 2159 - Issue: What is the ruling on the bloodshed or property damage perpetrated by rebels? People have differed concerning what they caused during combat—whether bloodshed, property damage, or sexual violation. Abū Ḥanīfah, Mālik, al-Shāfiʿī, and some of our companions stated: They are not held accountable for any of that. There is no retaliation (qisas) for bloodshed, no blood money, and no liability for the property they destroyed—

غَلَبَةً، بِلَا تَأْوِيلٍ، أَوْ يَسْفِكُوا دَمًا كَذَلِكَ، فَهَؤُلَاءِ مُحَارِبُونَ لَهُمْ حُكْمُ الْمُحَارَبَةِ، فَإِنْ زَادَ الْأَمْرُ حَتَّى يَخْرِقُوا الْإِجْمَاعَ فَهُمْ مُرْتَدُّونَ: تُغْنَمُ أَمْوَالُهُمْ كُلُّهَا حِينَئِذٍ وَتُخَمَّسُ وَتُقَسَّمُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَلَا يَحِلُّ مَالُ الْمُحَارِبِ، وَلَا مَالُ الْبَاغِي وَلَا شَيْءٌ مِنْهُ؛ لِأَنَّهُمَا وَإِنْ ظَلَمَا فَهُمَا مُسْلِمَانِ - وَلَا يَحِلُّ شَيْءٌ مِنْ مَالِ الْمُسْلِمِ، إلَّا بِحَقٍّ، وَقَدْ يَحِلُّ دَمُهُ، وَلَا يَحِلُّ مَالُهُ، كَالزَّانِي الْمُحْصَنِ، وَالْقَاتِلِ عَمْدًا - وَقَدْ يَحِلُّ مَالُهُ وَلَا يَحِلُّ دَمُهُ، كَالْغَاصِبِ وَنَحْوِ ذَلِكَ، وَإِنَّمَا يُتْبَعُ النَّصُّ، فَمَا أَحَلَّ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِنْ دَمٍ أَوْ مَالٍ حَلَّ، وَمَا حَرَّمَا مِنْ دَمٍ أَوْ مَالٍ فَهُوَ حَرَامٌ، وَالْأَصْلُ فِي ذَلِكَ التَّحْرِيمُ حَتَّى يَأْتِيَ إحْلَالٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنْ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مَا أَصَابَهُ الْبَاغِي مِنْ دَمٍ أَوْ مَالٍ]

٢١٥٩ - مَسْأَلَةٌ: مَا أَصَابَهُ الْبَاغِي مِنْ دَمٍ أَوْ مَالٍ؟ اخْتَلَفَ النَّاسُ فِيمَا أَصَابُوهُ فِي حَالِ الْقِتَالِ مِنْ دَمٍ أَوْ مَالٍ أَوْ فَرْجٍ، فَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَبَعْضُ أَصْحَابِنَا: لَا يُؤَاخَذُونَ بِشَيْءٍ مِنْ ذَلِكَ، وَلَا قَوَدَ فِي الدِّمَاءِ وَلَا دِيَةَ، وَلَا ضَمَانَ فِيمَا أَتْلَفُوهُ مِنْ الْأَمْوَالِ، إلَّا أَنْ يُوجَدَ بِأَيْدِيهِمْ شَيْءٌ قَائِمٌ مِمَّا أَخَذُوهُ فَيُرَدُّ إلَى أَصْحَابِهِ.

unless they are found in possession of something intact they took, in which case it is to be returned to its rightful owners.

L39820 Al-Awzaʿī said: If the two factions are such that one is rebellious and the other is just within the main body of the common people, the leader of the community who reconciles between them takes from the rebellious faction against the other what they inflicted upon them through retaliation for the slain and the wounded, just as the case of those two factions about whom the Quran was revealed to the Messenger of Allah—peace and blessings be upon him—was brought, and [whose ruling applies] to the rulers.

L39821 Abū Muḥammad—may Allāh have mercy on him—said: Some of our companions held that legal retaliation applies to them, and they are liable to compensate for what they damaged like others. When they disagreed, it became imperative for us to examine this matter to discern the truth and follow it—by Allāh's grace and bounty. We found those who asserted they bear no liability, citing as proof a transmission from ʻAbd al-Razzāq via Maʻmar: Al-Zuhrī informed me that Sulaymān ibn Hishām wrote to him inquiring about a woman who left her husband, accused her people of polytheism, joined the Khārijites, and married among them. Then she returned to her people a second time? He wrote back: "As for what follows: The first upheaval arose, and many of the Messenger of Allāh's Companions—those who had witnessed Badr—unanimously agreed not to enforce any prescribed punishment for sexual violations committed under Quranic interpretation, unless identifiable property was found, which should be returned to its owner. I hold that she must be returned to her husband, and whoever falsely accused her should receive the ḥadd punishment."

L39822–39824 And through the narration chain of Abū Bakr ibn Abī Shaybah: ʿĪsā ibn Yūnus reported to us from Maʿmar, from al-Zuhrī. He said: The winds of discord arose while the Companions of the Messenger of Allah—may Allah bless him and grant him peace—were numerous. They reached a consensus that neither retaliation nor blood money applies for harm incurred in the course of interpreting the Quran, except what is found in its actual form.

L39825 It is narrated from Sa'id ibn al-Musayyab that he said: When two factions

وَقَالَ الْأَوْزَاعِيّ: إنْ كَانَتْ الْفِئَتَانِ إحْدَاهُمَا بَاغِيَةٌ وَالْأُخْرَى عَادِلَةٌ فِي سَوَادِ الْعَامَّةِ، فَإِمَامُ الْجَمَاعَةِ الْمُصْلِحُ بَيْنَهُمَا يَأْخُذُ مِنْ الْبَاغِيَةِ عَلَى الْأُخْرَى مَا أَصَابَتْ مِنْهَا بِالْقِصَاصِ فِي الْقَتْلَى، وَالْجِرَاحَةِ، كَمَا كَانَ أَمْرُ تِينِكَ الْفِئَتَيْنِ اللَّتَيْنِ نَزَلَ فِيهِمَا الْقُرْآنُ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِلَى الْوُلَاةِ.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَقَالَ بَعْضُ أَصْحَابِنَا: الْقِصَاصُ عَلَيْهِمْ، وَضَمَانُ مَا أَتْلَفُوا كَغَيْرِهِمْ، فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعُهُ - بِمَنِّ اللَّهِ تَعَالَى وَطَوْلِهِ - فَوَجَدْنَا مَنْ قَالَ: لَا يُؤَاخَذُونَ بِشَيْءٍ، يَحْتَجُّونَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ أَخْبَرَنِي الزُّهْرِيُّ: أَنَّ سُلَيْمَانَ بْنَ هِشَامٍ كَتَبَ إلَيْهِ يَسْأَلُهُ عَنْ امْرَأَةٍ خَرَجَتْ مِنْ عِنْدِ زَوْجِهَا، وَشَهِدَتْ عَلَى قَوْمِهَا بِالشِّرْكِ، وَلَحِقَتْ بِالْحَرُورِيَّةِ، فَتَزَوَّجَتْ فِيهِمْ: ثُمَّ إنَّهَا رَجَعَتْ إلَى قَوْمِهَا ثَانِيَةً؟ فَكَتَبَ إلَيْهِ: أَمَّا بَعْدُ فَإِنَّ الْفِتْنَةَ الْأُولَى ثَارَتْ وَأَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِمَّنْ شَهِدَ بَدْرًا كَثِيرٌ، فَاجْتَمَعَ رَأْيُهُمْ عَلَى أَنْ لَا يُقِيمُوا عَلَى أَحَدٍ حَدًّا فِي فَرْجٍ اسْتَحَلُّوهُ بِتَأْوِيلِ الْقُرْآنِ، إلَّا أَنْ يُوجَدَ شَيْءٌ بِعَيْنِهِ فَيُرَدُّ إلَى صَاحِبِهِ وَإِنِّي أَرَى أَنْ تُرَدَّ إلَى زَوْجِهَا، وَأَنْ يُحَدَّ مَنْ افْتَرَى عَلَيْهَا.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ: حَدَّثَنَا عِيسَى بْنُ يُونُسَ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: هَاجَتْ رِيحُ الْفِتْنَةِ وَأَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُتَوَافِرُونَ، فَاجْتَمَعَ رَأْيُهُمْ عَلَى أَنَّهُ لَا يُقَادُ وَلَا يُودَى مَا أُصِيبَ عَلَى تَأْوِيلِ الْقُرْآنِ إلَّا مَا يُوجَدُ بِعَيْنِهِ.

clash, any bloodshed or injury occurring between them is not subject to blood money. Do you not hear the words of Allah the Exalted: “If two factions of believers fight, then reconcile between them” [Al-Hujurat:9], the entire verse, until he finished reciting it? He said: Each faction views the other as transgressors.[28]

L39826 Abu Muhammad—may Allah have mercy on him—said: We know of no doubt on their part other than this; this is baseless due to two aspects.

L39827–39829 The first is that the chain is interrupted because al-Zuhri—may Allah have mercy on him—did not witness that turmoil, nor was he born until several years after it. The second is that even if it were authentic, as he claimed, this would only represent the opinion of some Companions—neither a definitive text nor their consensus. There is no proof in the opinion of some of them against others. Allah the Exalted has obligated us, the Muslim community, to follow the Quran, what is authentically reported from the Prophet—peace and blessings be upon him and his family, and grant him peace—or what the Ummah unanimously agrees upon. Allah the Exalted has never commanded us to follow what some of our leaders unanimously agree upon. When that turmoil occurred, there is no doubt that those who had died among the Companions of Allah’s Messenger—peace and blessings be upon him and his family, and grant him peace—were more numerous than those who remained. Indeed, the Companions who fought at Badr numbered three hundred and over ten men. When ‘Abd al-Rahman ibn ‘Awf—may Allah be pleased with him—died, only exactly one hundred of them remained alive. Thus, reliance on al-Zuhri’s narration—even if authentic—is invalidated. How much more so when it is fundamentally unauthentic?

Through the chain of ‘Abd al-Razzaq, from Ma‘mar, who said: More than one person from the tribe of ‘Abd al-Qays informed me through Humayd ibn Hilal from his father, who said: “I approached the Kharijites when they were the most beloved people on earth to me. I stayed among them until they disagreed. It was said to ‘Ali ibn Abi Talib: ’Fight them,’ but he replied: ’No, not until they kill [someone].’ A man whose appearance they disapproved of

[28] **Qur’an references (L39825):** Qur’an 49:9 (Al-Hujurat).

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: إذَا الْتَقَتْ الْفِئَتَانِ فَمَا كَانَ بَيْنَهُمَا مِنْ دَمٍ أَوْ جِرَاحَةٍ فَهُوَ هَدَرٌ، أَلَا تَسْمَعُ إلَى قَوْلِهِ تَعَالَى {وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا} [الحجرات: ٩] الْآيَةَ، حَتَّى فَرَغَ مِنْهَا؟ قَالَ: فَكُلُّ طَائِفَةٍ تَرَى الْأُخْرَى بَاغِيَةً.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا نَعْلَمُ لَهُمْ شُبْهَةً غَيْرَ هَذَا، وَهَذَا لَيْسَ بِشَيْءٍ لِوَجْهَيْنِ.

أَحَدُهُمَا - أَنَّهُ مُنْقَطِعٌ لِأَنَّ الزُّهْرِيَّ - رَحِمَهُ اللَّهُ - لَمْ يُدْرِكْ تِلْكَ الْفِتْنَةَ وَلَا وُلِدَ إلَّا بَعْدَهَا بِبِضْعِ عَشْرَةَ سَنَةً وَالثَّانِي - أَنَّهُ لَوْ صَحَّ - كَمَا قَالَ - لَمَا كَانَ هَذَا إلَّا رَأْيًا مِنْ بَعْضِ الصَّحَابَةِ لَا نَصًّا وَلَا إجْمَاعًا مِنْهُمْ، وَلَا حُجَّةً فِي رَأْيِ بَعْضِهِمْ دُونَ بَعْضٍ، وَإِنَّمَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا أَهْلَ الْإِسْلَامِ اتِّبَاعَ الْقُرْآنِ، وَمَا صَحَّ عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ -، أَوْ مَا أَجْمَعَتْ عَلَيْهِ الْأُمَّةُ، وَلَمْ يَأْمُرْ اللَّهُ تَعَالَى قَطُّ بِاتِّبَاعِ مَا أَجْمَعَ عَلَيْهِ بَعْضُ أُولِي الْأَمْرِ مِنَّا، وَإِذَا وَقَعَتْ تِلْكَ الْفِتْنَةُ فَبِلَا شَكٍّ أَنَّ الْمَاضِينَ بِالْمَوْتِ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانُوا أَكْثَرَ مِنْ الْبَاقِينَ، وَلَقَدْ كَانَ أَصْحَابُ بَدْرٍ ثَلَاثَمِائَةٍ وَبِضْعَةَ عَشَرَ رَجُلًا، وَعُدُّوا، إذْ مَاتَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ - رَضِيَ اللَّهُ عَنْهُ - فَمَا وُجِدَ مِنْهُمْ فِي الْحَيَاةِ إلَّا نَحْوُ مِائَةٍ وَاحِدَةٍ فَقَطْ، فَبَطَلَ التَّعَلُّقُ بِمَا رَوَاهُ الزُّهْرِيُّ لَوْ صَحَّ، فَكَيْفَ وَهُوَ لَا يَصِحُّ أَصْلًا؟ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ أَخْبَرَنِي غَيْرُ وَاحِدٍ مِنْ عَبْدِ الْقَيْسِ عَنْ حُمَيْدِ بْنِ هِلَالٍ عَنْ أَبِيهِ، قَالَ: لَقَدْ أَتَيْتُ الْخَوَارِجَ وَإِنَّهُمْ لَأَحَبُّ قَوْمٍ عَلَى وَجْهِ الْأَرْضِ إلَيَّ فَلَمْ أَزَلْ فِيهِمْ حَتَّى اخْتَلَفُوا، فَقِيلَ لِعَلِيِّ بْنِ أَبِي طَالِبٍ قَاتِلْهُمْ، فَقَالَ: لَا، حَتَّى يَقْتُلُوا، فَمَرَّ بِهِمْ رَجُلٌ اسْتَنْكَرُوا هَيْئَتَهُ، فَثَارُوا إلَيْهِ، فَإِذَا هُوَ عَبْدُ اللَّهِ بْنُ خَبَّابٍ، فَقَالُوا: حَدِّثْنَا مَا سَمِعْتَ أَبَاكَ يُحَدِّثُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ

عَلَيْهِ وَسَلَّمَ - فَقَالَ: سَمِعْتُهُ يَقُولُ: سَمِعْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «تَكُونُ فِتْنَةٌ الْقَاعِدُ فِيهَا خَيْرٌ مِنْ الْقَائِمِ، وَالْقَائِمُ خَيْرٌ مِنْ الْمَاشِي، وَالْمَاشِي خَيْرٌ مِنْ السَّاعِي وَالسَّاعِي فِي النَّارِ» قَالَ: فَأَخَذُوهُ وَأُمَّ وَلَدِهِ فَذَبَحُوهُمَا جَمِيعًا عَلَى شَطِّ النَّهْرِ فَلَقَدْ رَأَيْتُ دَمَاهُمَا فِي النَّهْرِ كَأَنَّهُمَا شَرِيكَانِ فَأُخْبِرَ بِذَلِكَ عَلِيُّ بْنُ أَبِي طَالِبٍ فَقَالَ: أَقِيدُونِي مِنْ ابْنِ خَبَّابٍ؟ قَالُوا: كُلُّنَا قَتَلْنَاهُ فَحِينَئِذٍ اسْتَحَلَّ قِتَالَهُمْ، فَقَتَلَهُمْ.

passed by them. They rushed toward him and found him to be ʻAbdullah ibn Khabbab. They demanded: ”Tell us what you heard your father narrate from the Prophet—peace and blessings be upon him and his family, and grant him peace.’ He said: ’I heard him say: I heard the Prophet—peace and blessings be upon him and his family, and grant him peace—say: ”There will be a turmoil where the one sitting is better than the one standing, the one standing better than the walking, the walking better than the running, and the runner is in the Fire.“’ They seized him and his umm walad, slaughtered them both on the riverbank. I saw their blood in the river as if they were two partners. When ʻAli ibn Abi Talib was informed of this, he said...” “Exact retribution from Ibn Khabbāb for me?” They said: “We all killed him.” Thereupon he deemed it lawful to combat them, and then he killed them.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا أَثَرٌ أَصَحُّ مِنْ أَثَرِ الزُّهْرِيِّ، أَوْ مِثْلُهُ، بِأَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ رَأَى الْقَوَدَ عَلَى الْخَوَارِجِ فِيمَنْ قَتَلُوهُ بِتَأْوِيلِ الْقُرْآنِ، بِخِلَافِ مَا ذَكَرَ الزُّهْرِيُّ مِنْ إجْمَاعِهِمْ.

L39830 Abu Muhammad—may Allah have mercy on him—said: This is a narration more authentic than, or equivalent to, the narration of al-Zuhri, demonstrating that Ali ibn Abi Talib upheld legal retaliation against the Kharijites for those they killed under their Quranic interpretation, contrary to al-Zuhri’s report of their consensus.

فَصَحَّ الْخِلَافُ فِي ذَلِكَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَبِلَا شَكٍّ نَدْرِي أَنَّ الْقَائِلِينَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لِأَبِي بَكْرٍ الصِّدِّيقِ أَنْ لَا يُقَاتِلَ أَهْلَ الرِّدَّةِ أَكْثَرُ عَدَدًا وَأَتَمُّ فَضْلًا، مِنْ الَّذِينَ ذَكَرَ الزُّهْرِيُّ عَنْهُ أَنَّهُ إجْمَاعٌ لَا يَصِحُّ عَلَى أَنْ لَا يُؤْخَذَ أَحَدٌ بِدَمٍ أَصَابَهُ عَلَى تَأْوِيلِ الْقُرْآنِ.

L39831 Thus, the valid disagreement among the Companions—may Allah be pleased with them—regarding that matter became evident. Without doubt, we know that those among the Companions—may Allah be pleased with them—who advised Abū Bakr al-Ṣiddīq not to fight the apostates were greater in number and more complete in virtue than those from whom al-Zuhrī narrated an invalid consensus that no one should be held accountable for bloodshed they committed based on an interpretation of the Quran.

لَا بِقَوَدٍ وَلَا بِدِيَةٍ، وَأَنْ لَا يَضْمَنَ أَحَدٌ مَالًا أَصَابَهُ عَلَى تَأْوِيلِ الْقُرْآنِ، وَلَمْ يَكُنْ قَوْلُهُمْ ذَلِكَ حُجَّةً يَسُوغُ الْأَخْذُ بِمِثْلِ مَا قَالُوا، وَإِنَّمَا رَجَعَ الْأَمْرُ فِيمَا ذَكَرَ الزُّهْرِيُّ إجْمَاعًا إلَى حُكْمِ الْوَالِي، وَلَمْ يَكُنْ إلَّا عَلِيًّا، وَالْأَشْهَرُ عَنْهُ إيجَابُ الْقَوَدِ كَمَا ذَكَرْنَا، أَوْ مُعَاوِيَةَ، وَإِنَّمَا

L39832 There is neither retaliation nor blood money, and no one is liable for property acquired based on an interpretation of the Quran. Their statement in that regard is not a valid proof permitting the adoption of a similar ruling. Rather, the matter mentioned by Al-Zuhri reverts by consensus to the judgment of the ruler, and this was none other than Ali. The most well-known opinion from him is the obligation of retaliation, as we mentioned; whereas Muʻawiyah held a different view. However, the rightful authority in that

matter lay with Ali, not with Muawiyah. Mu'awiyah was an erring mujtahid who is nonetheless rewarded—and success is from Allah, the Exalted.

كَانَ الْحَقُّ فِي ذَلِكَ بِيَدِ عَلِيٍّ لَا بِيَدِهِ، وَإِنَّمَا كَانَ مُعَاوِيَةُ مُجْتَهِدًا مُخْطِئًا مَأْجُورًا فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39833 As for Ibn al-Musayyib's argument that "each faction considers the other to be transgressors," it holds no weight, for Allah the Exalted has not left us to rely on the judgment of the two factions. Rather, He commanded whoever ascertains the transgression of one of them to fight the transgressing faction. If what Sa'īd—may Allah be pleased with him—said were true, neither faction would have a greater right to be fought than the other, and the verse would be rendered void, which is impermissible.

وَأَمَّا احْتِجَاجُ ابْنِ الْمُسَيِّبِ " بِأَنَّ كُلَّ طَائِفَةٍ تَرَى الْأُخْرَى بَاغِيَةً " فَلَيْسَ بِشَيْءٍ؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يَكِلْنَا إلَى رَأْيِ الطَّائِفَتَيْنِ، لَكِنْ أَمَرَ مَنْ صَحَّ عَنْدَهُ بَغْيُ إحْدَاهُمَا بِقِتَالِ الْبَاغِيَةِ، وَلَوْ كَانَ مَا قَالَهُ سَعِيدٌ - رَضِيَ اللَّهُ عَنْهُ - لَمَا كَانَتْ إحْدَاهُمَا أَوْلَى بِالْمُقَاتَلَةِ مِنْ الْأُخْرَى، وَلَبَطَلَتْ الْآيَةُ وَهَذَا لَا يَجُوزُ.

L39834 Abū Muḥammad—may Allāh have mercy on him—said: Our position is that the rebels, as we previously stated at the outset of our discussion, are of three categories: A category who advanced an interpretation whose basis is obscure to many scholars, such as those who clung to a verse particularized by another verse, a ḥadīth restricted by another, or a text abrogated by another. These individuals, as we stated, are deemed excused. Their ruling is equivalent to that of a mujtahid judge who errs—such as one who mistakenly orders an execution, destroys property, or issues an erroneous judgment regarding illicit sexual intercourse through ijtihād—provided definitive proof has not been established against him in that matter. In such cases, blood money is owed by the public treasury, not by the rebel or his kinsmen. Whoever causes property damage is liable to compensate for it, all their judgments are nullified, and no punishment is imposed for engaging in illicit sexual intercourse if they were ignorant of its prohibition, provided they were unaware of it. The same also applies to one who adopts an interpretation that flagrantly violates scholarly consensus due to ignorance, provided definitive proof has not been established against him and he was unaware of it, nor had it been conveyed to him.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالْقَوْلُ عِنْدَنَا أَنَّ الْبُغَاةَ كَمَا قَدَّمْنَا فِي صَدْرِ كَلَامِنَا ثَلَاثُ أَصْنَافٍ: صِنْفٌ تَأَوَّلُوا تَأْوِيلًا يَخْفَى وَجْهُهُ عَلَى كَثِيرٍ مِنْ أَهْلِ الْعِلْمِ، كَمَنْ تَعَلَّقَ بِآيَةٍ خَصَّتْهَا أُخْرَى، أَوْ بِحَدِيثٍ قَدْ خَصَّهُ آخَرُ، أَوْ نَسَخَهَا نَصٌّ آخَرُ، فَهَؤُلَاءِ كَمَا قُلْنَا مَعْذُورُونَ، حُكْمُهُمْ حُكْمُ الْحَاكِمِ الْمُجْتَهِدِ يُخْطِئُ فَيَقْتُلُ مُجْتَهِدًا، أَوْ يُتْلِفُ مَالًا مُجْتَهِدًا، أَوْ يَقْضِي فِي فَرْجٍ خَطَأً مُجْتَهِدًا، وَلَمْ تَقُمْ عَلَيْهِ الْحُجَّةُ فِي ذَلِكَ، فَفِي الدَّمِ دِيَةٌ عَلَى بَيْتِ الْمَالِ، لَا عَلَى الْبَاغِي، وَلَا عَلَى عَاقِلَتِهِ وَيَضْمَنُ الْمَالَ كُلُّ مَنْ أَتْلَفَهُ، وَنَسَخَ كُلَّ مَا حَكَمُوا بِهِ، وَلَا حَدَّ عَلَيْهِ فِي وَطْءِ فَرْجٍ جَهِلَ تَحْرِيمَهُ مَا لَمْ يَعْلَمْ بِالتَّحْرِيمِ - وَهَكَذَا أَيْضًا مَنْ تَأَوَّلَ تَأْوِيلًا خَرَقَ بِهِ الْإِجْمَاعَ بِجَهَالَةٍ وَلَمْ تَقُمْ عَلَيْهِ الْحُجَّةُ وَلَا بَلَغَتْهُ.

L39835–39837 As for the one who advances a corrupt interpretation - in which he is not excused - but breaches the consensus (whatever it may be)... He did not base his argument on the Quran or Sunnah, nor was definitive proof established against him that he understood. If he offered a valid interpretation, but after

وَأَمَّا مَنْ تَأَوَّلَ تَأْوِيلًا فَاسِدًا لَا يُعْذَرُ فِيهِ، لَكِنْ خَرَقَ الْإِجْمَاعَ - أَيَّ شَيْءٍ كَانَ - وَلَمْ يَتَعَلَّقْ بِقُرْآنٍ وَلَا سُنَّةٍ، وَلَا قَامَتْ عَلَيْهِ الْحُجَّةُ وَفَهِمَهَا، وَتَأَوَّلَ تَأْوِيلًا يَسُوغُ، وَقَامَتْ

proof was established against him he obstinately persisted, then qisās (retaliation for homicide) becomes obligatory for whoever kills in this manner—applying to homicide or lesser injuries—the prescribed punishment for what he committed through unlawful intercourse, and compensation for wealth he unlawfully destroyed.

عَلَيْهِ الْحُجَّةُ وَعَنَدَ، فَعَلَى مَنْ قَتَلَ هَكَذَا الْقَوَدُ فِي النَّفْسِ فَمَا دُونَهَا، وَالْحَدُّ فِيمَا أَصَابَ بِوَطْءٍ حَرَامٍ، وَضَمَانِ مَا اسْتَهْلَكَ مِنْ مَالٍ.

L39838 Similarly, one who devotes themselves solely to pursuing worldly matters without any valid justification is not excused at all, for he deliberately engages in what he knows to be forbidden—and success is from Allah, the Most High.

وَهَكَذَا مَنْ قَامَ فِي طَلَبِ دُنْيَا مُجَرَّدًا بِلَا تَأْوِيلٍ، وَلَا يُعْذَرُ هَذَا أَصْلًا، لِأَنَّهُ عَامِدٌ لِمَا يَدْرِي أَنَّهُ حَرَامٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L39839 Similarly, whoever rises in partisan solidarity—with no distinction—and the two factions may both be transgressors if they rise together in falsehood. In such a case, retribution (qawd) applies to the killer, regardless of which faction he belongs to. The same ruling applies to those who wage unlawful warfare when they kill one another.

وَهَكَذَا مِنْ قَامَ عَصَبِيَّةً وَلَا فَرْقَ - وَقَدْ تَكُونُ الْفِئَتَانِ بَاغِيَتَيْنِ إِذَا قَامَتَا مَعًا فِي بَاطِلٍ، فَإِذَا كَانَ هَكَذَا فَالْقَوَدُ أَيْضًا عَلَى الْقَاتِلِ، مِنْ أَيِّ الطَّائِفَتَيْنِ كَانَ - وَهَكَذَا الْقَوْلُ فِي الْمُحَارِبِينَ يَقْتُلُ بَعْضُهُمْ بَعْضًا.

L39840 Abu Muhammad—may Allah have mercy on him—said: We will present the evidence for each of these matters section by section. As for our statement, “Upon whom the proof has not been established bears no liability for retaliation or hadd punishment,” this is based on Allah’s words: *“That I may warn you thereby and whomever it reaches”* (6:19). Thus, the proof is only binding upon those to whom it has been conveyed. Indeed, the Messenger of Allah—peace and blessings be upon him—was in Medina, while Jaʿfar ibn Abī Ṭālib and those with him from the eminent Companions—may Allah be pleased with them—were in the land of Abyssinia, separated by vast deserts, distant lands, and the depths of the sea. Religious obligations were revealed in Medina, and these rulings did not reach them except after a year or many years. Nevertheless, they were not held blameworthy before Allah—Exalted is He—nor before His Messenger—peace and blessings be upon him and his family—nor before anyone in the Ummah.[29]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَنَذْكُرُ الْبُرْهَانَ فِي كُلِّ هَذَا فَصْلًا فَصْلًا: أَمَّا قَوْلُنَا: مَنْ لَمْ تَقُمْ عَلَيْهِ الْحُجَّةُ فَلَا قَوَدَ عَلَيْهِ وَلَا حَدَّ، فَلِقَوْلِ اللَّهِ تَعَالَى {لِأُنْذِرَكُمْ بِهِ وَمَنْ بَلَغَ} [الأنعام: ١٩] فَلَا حُجَّةَ إِلَّا عَلَى مَنْ بَلَغَتْهُ الْحُجَّةُ، وَقَدْ كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمَدِينَةِ وَجَعْفَرُ بْنُ أَبِي طَالِبٍ وَمَنْ مَعَهُ مِنْ أَفَاضِلِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بِأَرْضِ الْحَبَشَةِ، بَيْنَهُمْ الْمَهَامِهُ الْفِيحُ، وَالْبِلَادُ الْبَعِيدَةُ، وَلُجَّةُ الْبَحْرِ - وَالْفَرَائِضُ تَنْزِلُ بِالْمَدِينَةِ وَلَا تَبْلُغُهُمْ إِلَّا بَعْدَ عَامٍ أَوْ أَعْوَامٍ كَثِيرَةٍ، وَمَا لَزِمَتْهُمْ مَلَامَةٌ عِنْدَ اللَّهِ تَعَالَى، وَلَا عِنْدَ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَا عِنْدَ أَحَدٍ مِنْ الْأُمَّةِ.

L39841 Thus, it is established with certainty that whoever is ignorant of a ruling in the Sharīʿah is not held accountable for it, except only for liability regarding property he destroyed, because he destroyed it without rightful claim. There-

فَصَحَّ يَقِينًا: أَنَّ مَنْ جَهِلَ حُكْمَ شَيْءٍ مِنْ الشَّرِيعَةِ فَهُوَ غَيْرُ مُؤَاخَذٍ بِهِ إِلَّا فِي ضَمَانِ مَا أَتْلَفَ مِنْ مَالٍ فَقَطْ، لِأَنَّهُ اسْتَهْلَكَهُ بِغَيْرِ حَقٍّ، فَعَلَيْهِ مَتَى عَلِمَ أَنْ يُؤَدِّيَهُ إِلَى صَاحِبِهِ إِنْ أَمْكَنَ، وَأَنْ لَا يُصِرَّ عَلَى مَا فَعَلَ وَهُوَ يَعْلَمُ -.

[29] **Qur’an references (L39840):** Qur’an 6:19 (Al-An’am).

fore, upon learning [the ruling], he must restore it to its owner if possible, and he must not persist in what he did while knowing [the ruling].

L39842 As for the obligation of the blood money in this matter being specifically incumbent upon the public treasury, this is due to what we have mentioned in "The Book of Blood Money and Retaliation," and due to what we narrated through the chain of Abu Dawud: Musaddad reported to us, narrated by Yahya ibn Sa'id al-Qattan, narrated by Ibn Abi Dhib, reported by Sa'id—who is Ibn Abi Sa'id al-Maqburi—who said: I heard Abu Shurayh al-Ka'bi say: The Messenger of Allah—peace and blessings be upon him—said: "O tribe of Khuza'ah, you have killed this slain man from Hudhayl, and I am responsible for his blood money. Whoever is killed after this statement of mine, his family has two valid options: either to take the blood money or to seek retribution." They killed him while acting on a misinterpretation of the law on the day of the Conquest of Mecca.

وَأَمَّا وُجُوبُ الدِّيَةِ فِي ذَلِكَ عَلَى بَيْتِ الْمَالِ خَاصَّةً فَلِمَا ذَكَرْنَاهُ فِي " كِتَابِ الدِّمَاءِ وَالْقِصَاصِ " وَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد ثنا مُسَدَّدٌ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ ثنا ابْنُ أَبِي ذِئْبٍ نِي سَعِيدٌ - هُوَ ابْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ - قَالَ سَمِعْت أَبَا شُرَيْحٍ الْكَعْبِيَّ يَقُول: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّكُمْ مَعْشَرَ خُزَاعَةَ قَتَلْتُمْ هَذَا الْقَتِيلَ مِنْ هُذَيْلٍ وَإِنِّي عَاقِلُهُ فَمَنْ قُتِلَ لَهُ بَعْدَ مَقَالَتِي هَذِهِ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيرَتَيْنِ بَيْنَ أَنْ يَأْخُذُوا الْعَقْلَ وَبَيْنَ أَنْ يَقْتُلُوا» وَإِنَّمَا قَتَلُوهُ مُتَأَوِّلِينَ يَوْمَ الْفَتْحِ.

L39843–39845 As for the one against whom the proof has been established, and to whom the rulings of Allah, the Exalted, the rulings of His Messenger—peace and blessings of Allah be upon him—and his understanding have reached, yet he did not... He has nothing but obstinacy and clinging—whether to mere imitation, isolated opinion, or analogy—thus he bears no excuse. He is liable for either qisas (legal retribution) or diyah (blood money), compensation for what he destroyed, and the hadd punishment in the private parts, according to Allah's statement: "So whoever transgressed against you, then transgress against him in the same manner as he transgressed against you" [Quran 2:194]. These are undoubtedly transgressors, so upon them falls the same as what they transgressed with—and with Allah alone is success.[30]

وَأَمَّا مَنْ قَامَتْ عَلَيْهِ الْحُجَّةُ وَبَلَغَهُ حُكْمُ اللَّهِ تَعَالَى وَحُكْمُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفَهْمُهُ وَلَمْ يَكُنْ عِنْدَهُ إلَّا الْعِنَادُ وَالتَّعَلُّقُ: إمَّا بِتَقْلِيدٍ مُجَرَّدٍ، أَوْ بِرَأْيٍ مُفْرَدٍ أَوْ بِقِيَاسٍ، فَلَيْسَ مَعْذُورًا أَوْ عَلَيْهِ الْقَوَدُ أَوْ الدِّيَةُ، وَضَمَانُ مَا أَتْلَفَ، وَالْحَدُّ فِي الْفَرْجِ، لِقَوْلِ اللَّهِ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] وَهَؤُلَاءِ مُعْتَدُونَ بِلَا شَكٍّ فَعَلَيْهِمْ مِثْلُ مَا اعْتَدَوْا بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39846 Abu Muhammad (may Allah have mercy on him) said: As for those killed by others, some scholars held that he is a martyr who should not be washed nor prayed over, but buried as he is. Others held he should be washed, shrouded, and prayed over—and this is the position we adopt. For even though they are martyrs—as established through the transmission chain of Ahmad ibn Shu'ayb from 'Amr ibn 'Ali from 'Abd al-Raḥmān ibn Mahdī

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا مَنْ قَتَلُوهُ فَقَدْ قَالَ قَوْمٌ: إنَّهُ شَهِيدٌ فَلَا يُغَسَّلُ وَلَا يُصَلَّى عَلَيْهِ، لَكِنْ يُدْفَنُ كَمَا هُوَ وَقَالَ آخَرُونَ: بَلْ يُغَسَّلُ وَيُكَفَّنُ وَيُصَلَّى عَلَيْهِ - وَبِهَذَا نَأْخُذُ، لِأَنَّهُمْ، وَإِنْ كَانُوا شُهَدَاءَ - كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ عَلِيٍّ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا إبْرَاهِيمُ بْنُ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِيهِ عَنْ

[30] **Qur'an references (L39843):** Qur'an 2:194 (Al-Baqarah).

from Ibrāhīm ibn Sa‘d ibn Ibrāhīm ibn ‘Abd al-Raḥmān ibn ‘Awf from his father from Abū ‘Ubaydah ibn Muḥammad ibn ‘Ammār ibn Yāsir from Ṭalḥah ibn ‘Ubayd Allāh ibn ‘Awf from Sa‘īd ibn Zayd ibn ‘Amr ibn Nufayl—who reported the Messenger of Allah (peace and blessings of Allah be upon him) said: “Whoever is slain defending his property is a martyr; whoever is slain defending his life is a martyr; and whoever is slain defending his family is a martyr.”

أَبِي عُبَيْدَةَ بْنِ مُحَمَّدِ بْنِ عَمَّارِ بْنِ يَاسِرٍ عَنْ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ بْنِ عَوْفٍ عَنْ سَعِيدِ بْنِ زَيْدِ بْنِ عَمْرِو بْنِ نُفَيْلٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ وَمَنْ قُتِلَ دُونَ دَمِهِ فَهُوَ شَهِيدٌ وَمَنْ قُتِلَ دُونَ أَهْلِهِ فَهُوَ شَهِيدٌ» .

L39847 From the transmission of Aḥmad ibn Shu’ayb: Muḥammad ibn Rāfi‘ and Muḥammad ibn Ismā‘īl ibn Ibrāhīm informed me. They said: Sulaymān—he is the son of Dāwūd al-Hāshimī—narrated to us. Ibrāhīm—he is the son of Sa‘d—narrated from his father from Abū ‘Ubaydah ibn Muḥammad ibn ‘Ammār ibn Yāsir from Ṭalḥah ibn ‘Ubaydullāh ibn ‘Awf from Sa‘īd ibn Zayd, who said: The Messenger of Allāh—peace and blessings of Allāh be upon him—said, “Whoever is killed defending his property is a martyr; whoever is killed defending his family is a martyr; whoever is killed defending his religion is a martyr; and whoever is killed defending his blood is a martyr.”[31]

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ رَافِعٍ، وَمُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ إِبْرَاهِيمَ قَالَا: نا سُلَيْمَانُ - هُوَ ابْنُ دَاوُد الْهَاشِمِيُّ نا إِبْرَاهِيمُ - هُوَ ابْنُ سَعْدٍ - عَنْ أَبِيهِ عَنْ أَبِي عُبَيْدَةَ بْنِ مُحَمَّدِ بْنِ عَمَّارِ بْنِ يَاسِرٍ عَنْ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ بْنِ عَوْفٍ عَنْ سَعِيدِ بْنِ زَيْدٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ وَمَنْ قُتِلَ دُونَ أَهْلِهِ فَهُوَ شَهِيدٌ وَمَنْ قُتِلَ دُونَ دِينِهِ فَهُوَ شَهِيدٌ وَمَنْ قُتِلَ دُونَ دَمِهِ فَهُوَ شَهِيدٌ» .

L39848 And through the chain of Aḥmad ibn Shuʿayb conveying it up to the Prophet - peace be upon him -: “Whoever is killed defending himself against injustice is a martyr.” Abū Muḥammad - may God have mercy on him - said: It is authenticated that whoever is killed by the rebels is only killed under one of these grounds; he is outwardly a martyr, though not every martyr is buried without ritual washing or funeral prayer.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ يَبْلُغُ بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَمَنْ قُتِلَ دُونَ مَظْلِمَتِهِ فَهُوَ شَهِيدٌ» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَصَحَّ أَنَّ مَنْ قَتَلَهُ مِنْ الْبُغَاةِ فَإِنَّمَا قُتِلَ عَلَى أَحَدِ هَذِهِ الْوُجُوهِ، فَهُوَ فِي ظَاهِرِ الْأَمْرِ شَهِيدٌ، وَلَيْسَ كُلُّ شَهِيدٍ يُدْفَنُ دُونَ غُسْلٍ وَلَا صَلَاةٍ.

L39849 It has been authentically reported that the one who dies of an abdominal ailment is a martyr, the plague victim is a martyr, the drowned is a martyr, the one afflicted with pleuritic ailment is a martyr, the woman who dies during childbirth is a martyr, and the one afflicted by a collapsing structure is a martyr. There is no disagreement that all of these individuals are to be washed, shrouded, and have the funeral prayer offered for them.

وَقَدْ صَحَّ: أَنَّ الْمَبْطُونَ شَهِيدٌ، وَالْمَطْعُونَ شَهِيدٌ، وَالْغَرِيقَ شَهِيدٌ، وَصَاحِبَ ذَاتِ الْجَنْبِ شَهِيدٌ، وَالْمَرْأَةَ تَمُوتُ بِجُمْعٍ شَهِيدٌ، وَصَاحِبَ الْهَدْمِ شَهِيدٌ - وَكُلُّ هَؤُلَاءِ لَا خِلَافَ فِي أَنَّهُمْ يُغَسَّلُونَ وَيُكَفَّنُونَ وَيُصَلَّى عَلَيْهِمْ.

L39850–39851 The fundamental ruling for every Muslim is to be washed, shrouded, and have the funeral prayer performed over him, except those excluded by a

وَالْأَصْلُ فِي كُلِّ مُسْلِمٍ أَنْ يُغَسَّلَ وَيُكَفَّنَ وَيُصَلَّى عَلَيْهِ، إلَّا مَنْ خَصَّهُ نَصٌّ أَوْ إجْمَاعٌ، وَلَا نَصَّ، وَلَا إجْمَاعَ، إلَّا فِيمَنْ قَتَلَهُ الْكُفَّارُ فِي الْمُعْتَرَكِ وَمَاتَ فِي مَصْرَعِهِ - فَهَؤُلَاءِ

[31] **Hadith references (L39847):** Sunan an-Nasai 4095.

textual ruling or consensus. There is no textual ruling or consensus except regarding those killed by disbelievers in battle who die where they were struck down. These are the ones whom the Messenger of Allah (peace be upon him) commanded to be wrapped in their blood-stained garments and buried as they were, without washing or shrouding, and no obligatory funeral prayer is required for them. All other martyrs and the deceased remain subject to the Islamic rulings concerning washing, shrouding, and funeral prayer. And success is from Allah, the Most High.

هُمْ الَّذِينَ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُزَمَّلُوا بِدِمَائِهِمْ فِي ثِيَابِهِمْ وَيُدْفَنُوا كَمَا هُمْ دُونَ غُسْلٍ وَلَا تَكْفِينٍ - وَلَا يَجِبُ فَرْضًا عَلَيْهِمْ صَلَاةٌ، فَبَقِيَ سَائِرُ الشُّهَدَاءِ، وَالْمَوْتَى، عَلَى حُكْمِ الْإِسْلَامِ فِي الْغُسْلِ، وَالتَّكْفِينِ وَالصَّلَاةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39852 **Issue: Is it permissible for the just individual to intentionally kill his rebel father, or not?**

[مَسْأَلَةَ هَلْ لِلْعَادِلِ أَنْ يَعْمِدَ قَتْلَ أَبِيهِ الْبَاغِي أَمْ لَا]

L39853 2160. Issue: Is it permissible for a just person to intentionally kill his rebellious father, or not? Abū Muḥammad—may Allah have mercy on him—said: Some scholars have stated that it is unlawful for adherents of justice to intentionally kill their father, brother, or kin among the rebels. However, if he subdues him to prevent him from obstructing the enforcement of what is rightfully due, there is no blame on him for that.

٢١٦٠ - مَسْأَلَةٌ: هَلْ لِلْعَادِلِ أَنْ يَعْمِدَ قَتْلَ أَبِيهِ الْبَاغِي أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ قَائِلُونَ: لَا يَحِلُّ لِمَنْ كَانَ مِنْ أَهْلِ الْعَدْلِ قَتْلُ أَبِيهِ، أَوْ أَخِيهِ، أَوْ ذِي رَحِمٍ مِنْ أَهْلِ الْبَغْيِ عَمْدًا، لَكِنْ إنْ ضَرَبَهُ لِيَصِيرَ بِذَلِكَ غَيْرَ مُمْتَنِعٍ مِنْ أَخْذِ الْحَقِّ مِنْهُ، فَلَا حَرَجَ عَلَيْهِ فِي ذَلِكَ.

L39854 Abu Muhammad—may Allah have mercy on him—said: We do not hold this view, for dutifulness to parents and maintaining kinship ties are only commanded by Allah the Exalted as long as there is no disobedience to Him in those acts; otherwise, it is not. It is authentically reported from the Prophet—peace and blessings of Allah be upon him—that he said, "There is no obedience to anyone in disobedience to Allah the Exalted." Allah has commanded fighting the rebellious faction without distinguishing between one's son and a stranger; He similarly commanded the enforcement of Ḥudūd punishments. Allah the Exalted said in the verse: "Allah does not forbid you from those who did not fight you in religion" [Al-Mumtahanah: 8].[32]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَسْنَا نَقُولُ بِهَذَا، فَإِنَّ بِرَّ الْوَالِدَيْنِ وَصِلَةَ الرَّحِمِ إنَّمَا أَمَرَ اللَّهُ تَعَالَى بِهِمَا مَا لَمْ يَكُنْ فِي ذَلِكَ مَعْصِيَةٌ لِلَّهِ تَعَالَى وَإِلَّا فَلَا، وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «لَا طَاعَةَ لِأَحَدٍ فِي مَعْصِيَةِ اللَّهِ تَعَالَى» وَقَدْ أَمَرَ اللَّهُ تَعَالَى بِقِتَالِ الْفِئَةِ الْبَاغِيَةِ وَلَمْ يَخُصَّ بِذَلِكَ ابْنًا مِنْ أَجْنَبِيٍّ، وَأَمَرَ بِإِقَامَةِ الْحُدُودِ كَذَلِكَ قَالَ اللَّهُ تَعَالَى {لا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ} [الممتحنة: ٨] الْآيَةَ.

L39855 Allah only forbids you concerning those who fought you in religion [Al-Mumtahanah: 9] up to His saying, the Exalted, "and whoever takes them as allies, then those are the wrongdoers" [Al-Mumtahanah: 9]. And Allah, the Exalted, said, "You will not find a people who believe in Allah and the Last

{إِنَّمَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ قَاتَلُوكُمْ فِي الدِّينِ} [الممتحنة: ٩] إلَى قَوْله تَعَالَى {وَمَنْ يَتَوَلَّهُمْ فَأُولَئِكَ هُمُ الظَّالِمُونَ} [الممتحنة: ٩] وَقَالَ تَعَالَى {لا تَجِدُ قَوْمًا يُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ يُوَادُّونَ مَنْ حَادَّ اللَّهَ وَرَسُولَهُ} [المجادلة: ٢٢] الْآيَةَ.

[32] **Qur'an references (L39854):** Qur'an 60:8 (Al-Mumtahanah).

Day befriending those who oppose Allah and His Messenger" [Al-Mujadilah: 22] the verse.[33]

وَقِتَالُ أَهْلِ الْبَغْيِ قِتَالٌ فِي الدِّينِ، إِلَّا أَنَّنَا لَا نَخْتَارُ أَنْ يَعْمِدَ الْمَرْءُ إِلَى أَبِيهِ - خَاصَّةً - أَوْ جَدِّهِ، مَا دَامَ يَجِدُ غَيْرَهُمَا، فَإِنْ لَمْ يَفْعَلْ فَلَا حَرَجَ.

L39856 The fighting against rebels (ahl al-baghy) is combat in the cause of religion. However, we do not approve that a person deliberately turn to his father (especially) or his grandfather, as long as he can find others besides them. If he does not do so, there is no blame.

وَهَكَذَا الْقَوْلُ فِي إِقَامَةِ الْحَدِّ عَلَيْهِمَا، وَعَلَى الْأُمِّ وَالْجَدَّةِ فِي الْقَتْلِ، وَالْقَطْعِ وَالْقِصَاصِ، وَالْجَلْدِ، وَلَا فَرْقَ.

L39857 Such is the ruling regarding establishing the ḥadd punishment upon them both, and upon the mother and grandmother in cases of killing, amputation, retaliation, and flogging, without any distinction.

فَأَمَّا إِذَا رَأَى الْعَادِلُ أَبَاهُ الْبَاغِيَ، أَوْ جَدَّهُ، يَقْصِدُ إِلَى مُسْلِمٍ يُرِيدُ قَتْلَهُ، أَوْ ظُلْمَهُ، فَفَرْضٌ عَلَى الِابْنِ حِينَئِذٍ أَنْ لَا يَشْتَغِلَ بِغَيْرِهِ عَنْهُ، وَفَرْضٌ عَلَيْهِ دَفْعُهُ عَنْ الْمُسْلِمِ - بِأَيِّ وَجْهٍ أَمْكَنَهُ - وَإِنْ كَانَ فِي ذَلِكَ قَتْلُ الْأَبِ، وَالْجَدِّ، وَالْأُمِّ.

L39858–39859 If a righteous person sees his aggressing father or grandfather intent on killing or oppressing a Muslim, it becomes obligatory for the son at that moment to not occupy himself with anything else besides this. It is obligatory upon him to repel the aggressor from the Muslim by whatever means possible—even if that involves killing the father, grandfather, or mother.

بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا سَعِيدُ بْنُ الرَّبِيعِ نا شُعْبَةُ عَنْ الْأَشْعَثِ بْنِ سُلَيْمٍ قَالَ: سَمِعْتُ مُعَاوِيَةَ بْنَ سُوَيْدِ بْنِ مُقَرِّنٍ يَقُولُ: سَمِعْتُ الْبَرَاءَ بْنَ عَازِبٍ قَالَ: «أَمَرَنَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِسَبْعٍ وَنَهَانَا عَنْ سَبْعٍ - فَذَكَرَ - عِيَادَةَ الْمَرِيضِ، وَاتِّبَاعَ الْجَنَائِزِ، وَتَشْمِيتَ الْعَاطِسِ، وَرَدَّ السَّلَامِ، وَنَصْرَ الْمَظْلُومِ، وَإِجَابَةَ الدَّاعِي، وَإِبْرَارَ الْمُقْسِمِ» وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «انْصُرْ أَخَاكَ ظَالِمًا أَوْ مَظْلُومًا، قِيلَ: يَا رَسُولَ اللَّهِ هَذَا نَنْصُرُهُ مَظْلُومًا فَكَيْفَ نَنْصُرُهُ ظَالِمًا؟ قَالَ: تَمْنَعُهُ، تَأْخُذُ فَوْقَ يَدِهِ» وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ» فَهَذَا أَمْرٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ لَا يُسْلِمَ الْمَرْءُ أَخَاهُ الْمُسْلِمَ لِظُلْمٍ ظَالِمٍ، وَأَنْ يَأْخُذَ فَوْقَ يَدِ كُلِّ ظَالِمٍ، وَأَنْ يَنْصُرَ كُلَّ مَظْلُومٍ، فَإِذَا رَأَى الْمُسْلِمُ أَبَاهُ الْبَاغِيَ، أَوْ ذَا رَحِمِهِ - كَذَلِكَ - يُرِيدُ ظُلْمَ مُسْلِمٍ، أَوْ ذِمِّيٍّ، فَفَرْضٌ عَلَيْهِ مَنْعُهُ مِنْ

L39860 The evidence for this is what has been narrated to us through Al-Bukhārī's chain of transmission: Saʿīd ibn Ar-Rabīʿ reported to us, Shuʿbah reported to us from Al-Ashʿath ibn Sulaym, who said: I heard Muʿāwiyah ibn Suwayd ibn Muqarrin say: I heard Al-Barāʾ ibn ʿĀzib say: "The Prophet—peace and blessings of Allah be upon him—commanded us with seven matters and forbade us from seven matters." He then mentioned: visiting the sick, attending funerals, invoking mercy for the sneezer, returning greetings, aiding the oppressed, accepting invitations, and fulfilling sworn oaths. The Messenger of Allah—peace and blessings of Allah be upon him—said: "Support your brother whether he is an oppressor or oppressed." It was asked: "O Messenger of Allah, we understand supporting him when oppressed, but how do we support him as an oppressor?" He replied: "By seizing him by the upper hand." The Messenger of Allah—peace and blessings of Allah be upon him—also said: "A Muslim is a brother to another Muslim; he neither wrongs him nor surrenders him." This constitutes a command from the Messenger of Al-

[33] **Qur'an references (L39855):** Qur'an 60:9 (Al-Mumtahanah); Qur'an 58:22 (Al-Mujadila).

lah—peace and blessings of Allah be upon him—that one must not abandon a Muslim brother to an oppressor's injustice, that one must restrain every oppressor by seizing his upper hand, and that one must support every oppressed person. Therefore, if a Muslim witnesses his father transgressing, or a relative similarly intending to wrong a Muslim or a protected non-Muslim, it becomes obligatory upon him to prevent this by all necessary means, including combat or killing if required to stop it, and by lesser measures as indicated by the general scope of these narrations. Allah the Exalted has obligated kindness to parents—not to harshly repel them and to lower for them the wing of humility through mercy—but only in matters that do not entail any disobedience to Allah the Exalted.

ذَلِكَ، بِكُلِّ مَا لَا يَقْدِرُ عَلَى مَنْعِهِ إِلَّا بِهِ مِنْ قِتَالٍ أَوْ قَتْلٍ، فَمَا دُونَ ذَلِكَ عَلَى عُمُومِ هَذِهِ الْأَحَادِيثِ وَإِنَّمَا افْتَرَضَ اللَّهُ تَعَالَى الْإِحْسَانَ إِلَى الْأَبَوَيْنِ، وَأَنْ لَا يُنْهَرَا، وَأَنْ يُخْفَضَ لَهُمَا جَنَاحُ الذُّلِّ مِنَ الرَّحْمَةِ، فِيمَا لَيْسَ فِيهِ مَعْصِيَةُ اللَّهِ تَعَالَى فَقَطْ.

L39861 Similarly, we state that it is not permissible for a Muslim who has a disbelieving father or disbelieving mother to guide them to the path of the church, nor to transport them there, nor to obtain sacrificial offerings for them, nor to procure wine for them in accordance with their corrupt religious laws, nor to assist them in any acts of disobedience to Allah the Exalted - such as adultery, theft, or other sins - and that he must not let either parent commit such acts if he is capable of preventing them. Allah the Exalted said: "Cooperate in righteousness and piety, and do not cooperate in sin and aggression" [Al-Mā'idah 5:2]. This is a comprehensive injunction encompassing all good in the world.[34]

وَهَكَذَا نَقُولُ: أَنَّهُ لَا يَحِلُّ لِمُسْلِمٍ لَهُ أَبٌ كَافِرٌ أَوْ أُمٌّ كَافِرَةٌ، أَنْ يُهْدِيَهُمَا إِلَى طَرِيقِ الْكَنِيسَةِ، وَلَا أَنْ يَحْمِلَهُمَا إِلَيْهَا، وَلَا أَنْ يَأْخُذَ لَهُمَا قُرْبَانًا، وَلَا أَنْ يَسْعَى لَهُمَا فِي خَمْرٍ لِشَرِيعَتِهِمَا الْفَاسِدَةِ، وَلَا أَنْ يُعِينَهُمَا عَلَى شَيْءٍ مِنْ مَعَاصِي اللَّهِ تَعَالَى مِنْ زِنًى، أَوْ سَرِقَةٍ، أَوْ غَيْرِ ذَلِكَ، وَأَنْ لَا يَدَعَهُ يَفْعَلُ شَيْئًا مِنْ ذَلِكَ - وَهُوَ قَادِرٌ عَلَى مَنْعِهِ، قَالَ اللَّهُ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَهَذِهِ وَصِيَّةٌ جَامِعَةٌ لِكُلِّ خَيْرٍ فِي الْعَالَمِ.

L39862–39863 Abu Muhammad—may Allah have mercy on him—said: As for the two mutually transgressing rebellious factions, it is not permissible for Muslims except to restrain them and fight them collectively, for each of them is transgressing against the other. Whoever is incapable of this is permitted to practice taqiyya (concealment) and must adhere to remaining in his home, attending his mosque, and maintaining his livelihood—with nothing beyond that. Neither of them calls to commanding good or forbidding evil.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا الْفِئَتَانِ الْبَاغِيَتَانِ مَعًا فَلَا يَحِلُّ لِلْمُسْلِمِينَ إِلَّا مَنْعُهُمَا وَقِتَالُهُمْ جَمِيعًا، لِأَنَّ كُلَّ وَاحِدَةٍ مِنْهُمَا بَاغِيَةٌ عَلَى الْأُخْرَى، فَمَنْ عَجَزَ عَنْ ذَلِكَ وَسِعَتْهُ التَّقِيَّةُ وَأَنْ يَلْزَمَ مَنْزِلَهُ، وَمَسْجِدَهُ، وَمَعَاشَهُ، وَلَا مَزِيدَ، وَكِلَاهُمَا لَا يَدْعُو إِلَى الْأَمْرِ بِالْمَعْرُوفِ وَالنَّهْيِ عَنِ الْمُنْكَرِ.

L39864 The evidence for this is what we have narrated through the chain of Muslim: 'Amr al-Nāqid narrated to us, Sufyān ibn 'Uyaynah narrated to us from Ayyūb

بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نِي عَمْرٌو النَّاقِدُ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: قَالَ أَبُو الْقَاسِمِ - صَلَّى اللَّهُ

[34] **Qur'an references (L39861):** Qur'an 5:2 (Al-Ma'idah).

al-Sikhtiyānī, from Muḥammad ibn Sīrīn, who said: I heard Abū Hurayrah say: Abū al-Qāsim—peace and blessings of Allāh be upon him—said, "Whoever points an iron weapon at his brother, the angels curse him, even if he were his brother through both his father and mother." And through another chain of Muslim: Muḥammad ibn Rāfiʿ narrated to us, ʿAbd al-Razzāq narrated to us, Maʿmar narrated to us from Hammām ibn Munabbih, who said: This is what Abū Hurayrah narrated to us from the Messenger of Allāh—peace and blessings of Allāh be upon him and his family—and he mentioned several ḥadīths, among them: The Messenger of Allāh—peace and blessings of Allāh be upon him and his family—said, "Let none of you point a weapon at his brother, for none of you knows whether Satan might incite his hand, so he falls into a pit of the Fire."

عَلَيْهِ وَسَلَّمَ - «مَنْ أَشَارَ إِلَى أَخِيهِ بِحَدِيدَةٍ فَإِنَّ الْمَلَائِكَةَ تَلْعَنُهُ، وَحَتَّى إِنْ كَانَ أَخَاهُ لِأَبِيهِ وَأُمِّهِ» وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رَافِعٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ قَالَ: هَذَا مَا نا أَبُو هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ أَحَادِيثَ: مِنْهَا: وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَا يُشِرْ أَحَدُكُمْ إِلَى أَخِيهِ بِالسِّلَاحِ فَإِنَّهُ لَا يَدْرِي أَحَدُكُمْ لَعَلَّ الشَّيْطَانَ يَنْزِغُ فِي يَدِهِ فَيَقَعُ فِي حُفْرَةٍ مِنْ النَّارِ» .

L39865 From the path of Ahmad ibn Shu'ayb: Mahmud ibn Ghaylan narrated to us; Abu Dawud al-Tayalisi narrated to us from Shu'bah. Mansur (that is, Ibn al-Mu'tamir) informed me, saying: "I heard Rib'i (that is, Ibn Hirash) narrating from Abu Bakrah, who said: The Messenger of Allah—peace and blessings be upon him and his family (ﷺ)—said: 'If a Muslim points a weapon at his fellow Muslim, they are both on the edge of Hell. If he kills him, they both will plunge into it together.'"

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مَحْمُودُ بْنُ غَيْلَانَ نا أَبُو دَاوُد الطَّيَالِسِيُّ عَنْ شُعْبَةَ أَخْبَرَنِي مَنْصُورٌ - هُوَ ابْنُ الْمُعْتَمِرِ - قَالَ: سَمِعْت رِبْعِيًّا - هُوَ ابْنُ حِرَاشٍ - يُحَدِّثُ عَنْ أَبِي بَكْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إذَا أَشَارَ الْمُسْلِمُ عَلَى أَخِيهِ بِالسِّلَاحِ فَهُمَا عَلَى حَرْفِ جَهَنَّمَ فَإِذَا قَتَلَهُ خَرَّا فِيهَا جَمِيعًا» .

L39866 This is the description of the two factions when they are both transgressing, and it is impossible for both to be just together. We ask Allah, the Exalted, for well-being.

فَهَذِهِ صِفَةُ الطَّائِفَتَيْنِ إذَا كَانَتَا بَاغِيَتَيْنِ، وَلَا يُمْكِنُ أَنْ تَكُونَا مَعًا عَادِلَتَيْنِ وَنَسْأَلُ اللَّهَ تَعَالَى الْعَافِيَةَ.

L39867 We have stated that retaliation against the transgressor applies only when fighting is undertaken so that he may return to Allah's command. We have not permitted this through any other means. Thus, whoever kills a transgressor so that he may return to the command of Allah the Exalted has killed him as Allah has commanded him. Similarly, if one severs his limb in battle, hamstrings the horse beneath him, or damages his garment during combat, there is no liability for any of these acts, for all were done in obedience to Allah's command. Whoever acts according to what Allah the Exalted has commanded him has done rightly, and no blame falls upon those who do

وَإِنَّمَا قُلْنَا: أَنْ يُقَادَ لِلْبَاغِي إذَا قُوتِلَ لِيَفِيءَ إلَى أَمْرِ اللَّهِ فَقَطْ، وَلَمْ نُحِلَّهُ بِغَيْرِ هَذَا الْوَجْهِ، فَمَنْ قَتَلَ بَاغِيًا لِيَفِيءَ إلَى أَمْرِ اللَّهِ تَعَالَى فَقَدْ قَتَلَهُ كَمَا أَمَرَهُ اللَّهُ تَعَالَى - وَكَذَلِكَ لَوْ قَطَعَ لَهُ عُضْوًا فِي الْحَرْبِ، أَوْ عَقَرَ تَحْتَهُ فَرَسًا، أَوْ أَفْسَدَ لَهُ لِبَاسًا فِي الْمُضَارَبَةِ، فَلَا ضَمَانَ فِي شَيْءٍ مِنْ ذَلِكَ، لِأَنَّهُ فَعَلَ كُلَّ ذَلِكَ كَمَا أَمَرَهُ اللَّهُ تَعَالَى، وَمَنْ فَعَلَ كَمَا أَمَرَهُ اللَّهُ تَعَالَى فَقَدْ أَحْسَنَ، وَمَنْ أَحْسَنَ فَلَا شَيْءَ عَلَيْهِ، لِقَوْلِهِ تَعَالَى {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١]

good, as stated by the Exalted: “There is no blame upon those who do good” [at-Tawbah 9:91].[35]

L39868 **Issue: The Rulings on Rebels**

L39869–39871 2161 – Issue: What are the rulings pertaining to rebels? People differed regarding the rulings concerning rebels. Abū Ḥanīfah and his companions maintained—except... Al-Tahawi stated that whatever judgment a judge of the rebellious faction issues, it is not permissible for a judge of the just faction to validate it or accept his written ruling. They said: Any alms they collected should not be taken again by the Imam. However, it is preferable for those from whom they took the alms to give them again.

L39872 They said: As for any trader who passed by them, they levied a tenth on him, since the Imam collects it again from the traders.

L39873 Al-Shafi’i said: Every judgment they passed is valid if it conforms to the truth, the zakat they collected is valid, and the hudud punishments they enforced are valid. This is also the opinion of Malik.

L39874 Abu Sulayman said—and our associates hold that none of their judicial rulings are to be implemented, and it is necessary to redo them. What they have collected in Zakah does not suffice, nor the prescribed punishments they have enforced. It is necessary to collect the Zakah anew and to enforce the prescribed punishments a second time.

L39875 Abū Muḥammad—may Allāh have mercy on him—said: So when they differed, it became incumbent upon us to investigate the matter so that we may know the truth and follow it by the help of Allāh, the Exalted.

L39876 We examined the statement of Abū Ḥanīfah and found them arguing by saying: “The collection of alms becomes obligatory [on the Imam] only when his neglect occurs, thus requiring him to enforce their payment. As for those who pass by the collectors, they have risked their wealth’s destruction.” Abū Muḥammad—may Allah have mercy on him—said: “We know of no argu-

[35] **Qur’an references (L39867):** Qur’an 9:91 (At-Tawbah).

[مَسْأَلَةٌ أَحْكَامُ أَهْلِ الْبَغْيِ]

٢١٦١ - مَسْأَلَةٌ: أَحْكَامُ أَهْلِ الْبَغْيِ؟ اخْتَلَفَ النَّاسُ فِي أَحْكَامِ أَهْلِ الْبَغْيِ فَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ - حَاشَا الطَّحَاوِيَّ - أَنَّهُ مَا حَكَمَ بِهِ قَاضِي أَهْلِ الْبَغْيِ فَلَا يَجُوزُ لِقَاضِي أَهْلِ الْعَدْلِ أَنْ يُجِيزَ ذَلِكَ، وَلَا أَنْ يَقْبَلَ كِتَابَهُ قَالُوا: وَمَا أَخَذُوهُ مِنْ صَدَقَةٍ فَلَا يَأْخُذُهَا الْإِمَامُ ثَانِيَةً، لَكِنَّ الْأَفْضَلَ لِمَنْ أَخَذُوهَا مِنْهُ أَنْ يُؤَدِّيَهَا مَرَّةً أُخْرَى.

قَالُوا: وَأَمَّا مَنْ مَرَّ عَلَيْهِمْ مِنْ التُّجَّارِ فَعَشَّرُوهُ فَإِنَّ الْإِمَامَ يَأْخُذُهُ ثَانِيَةً مِنْ التُّجَّارِ.

وَقَالَ الشَّافِعِيُّ: يَنْفُذُ كُلُّ قَضِيَّةٍ قَضَوْهَا إذَا وَافَقَتْ الْحَقَّ، وَيَجْزِي مَا أَخَذُوهُ مِنْ الزَّكَاةِ، وَمَا أَقَامُوا مِنْ الْحُدُودِ - وَهُوَ قَوْلُ مَالِكٍ.

وَقَالَ أَبُو سُلَيْمَانَ - وَأَصْحَابُنَا لَا يَنْفُذُ شَيْءٌ مِنْ قَضَايَاهُمْ، وَلَا بُدَّ مِنْ إعَادَتِهَا وَلَا يُجْزِئُ مَا أَخَذُوهُ مِنْ الصَّدَقَاتِ، وَلَا مَا أَقَامُوا مِنْ الْحُدُودِ، وَلَا بُدَّ مِنْ أَخْذِ الصَّدَقَاتِ، وَمِنْ إقَامَةِ الْحُدُودِ ثَانِيَةً.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتْبَعُهُ بِعَوْنِ اللَّهِ تَعَالَى.

فَنَظَرْنَا فِي قَوْلِ أَبِي حَنِيفَةَ، فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِأَنْ قَالُوا: إنَّ أَخْذَ الصَّدَقَاتِ إنَّمَا جَاءَ التَّضْيِيعُ مِنْ قِبَلِ الْإِمَامِ فَقَدْ يَجِبُ عَلَيْهِ دَفْعُهُمْ، وَأَمَّا مَنْ مَرَّ عَلَيْهِمْ فَقَدْ عَرَّضَ مَالَهُ لِلتَّلَفِ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا نَعْلَمُ لَهُمْ شُبْهَةً غَيْرَ هَذَا وَهَذَا لَا شَيْءَ؛

ment for them other than this, and this is baseless; for no textual evidence or consensus states that the Imam's negligence nullifies the obligatory rights due to Allah Almighty. Moreover, just as they collected the tithe a second time from those whose sin was risking their wealth's destruction, they are likewise bound to collect zakāh a second time, attributing the sin to the owners for risking their wealth's destruction. Indeed, they could have fled the rebels' territory or presented valid excuses to the tax collectors."

L39877 Then we examined the evidence relied upon by Mālik and al-Shāfiʿī, and found them asserting: When they judge by the truth as Allah the Exalted has commanded, when they collect zakāh as Allah the Exalted has commanded, and when they enforce the hudud as Allah the Exalted has commanded - then all of this has been fulfilled in accordance with Allah's command. Once fulfilled as Allah the Exalted has commanded, it is impermissible to enforce these obligations again upon those bound by them, for this would constitute oppression.

L39878–39880 Some of them said: Just as they are not held accountable for harm to life or property they incurred, so too are they not... They, and none others—by what they have judged, or imposed a ḥadd punishment, or taken from wealth of alms or others, whether rightfully or wrongfully—and there is no distinction.

L39881 Abū Muḥammad—may God have mercy on him—said: All of this is not as they have claimed. We ask them: What do you say? If the Imam is present, empowered, and just, is it permissible to collect alms without him, enforce prescribed penalties without him, or judge between two parties without him—or is this impermissible? There is no third option. If they say all of this is permissible, they violate the consensus, abandon their own position, nullify the divine trust God Almighty has obligated, and thereby necessitate that people have no need for an Imam—and this contradicts both consensus and revealed texts. If they say it is impermissible to engage in any of these acts as long as the Imam is in authority, then it is confirmed that none may judge except those the Imam appoints to judge, none may enforce prescribed penalties except those the Imam appoints for that, and none may be an authorized collector of alms except those the Imam appoints to collect them. Thus,

لِأَنَّهُ لَمْ يَأْتِ نَصٌّ وَلَا إجْمَاعٌ بِأَنَّ تَضْيِيعَ الْإِمَامِ يُسْقِطُ الْحُقُوقَ الْوَاجِبَاتِ لِلَّهِ تَعَالَى وَأَيْضًا - فَكَمَا أَخَذُوا الْعُشْرَ ثَانِيَةً مِمَّنْ جَعَلُوا ذَنْبَهُ أَنَّهُ عَرَّضَ مَالَهُ لِلتَّلَفِ فَكَذَلِكَ يَلْزَمُهُمْ أَنْ يَأْخُذُوا الزَّكَاةَ ثَانِيَةً، وَيَجْعَلُوا ذَنْبَ أَهْلِهَا أَنَّهُمْ عَرَّضُوا أَمْوَالَهُمْ لِلتَّلَفِ، فَقَدْ كَانَ يُمْكِنُهُمْ الْهَرَبُ عَنْ مَوْضِعِ الْبُغَاةِ، أَوْ يُعَذِّرُوا الْمُعَشِّرِينَ.

ثُمَّ نَظَرْنَا فِيمَا احْتَجَّ بِهِ مَالِكٌ، وَالشَّافِعِيُّ، فَوَجَدْنَاهُمْ يَقُولُونَ: إنَّهُمْ إذَا حَكَمُوا بِالْحَقِّ كَمَا أَمَرَ اللَّهُ تَعَالَى، وَإِذَا أَخَذُوا الزَّكَاةَ كَمَا أَمَرَ اللَّهُ تَعَالَى، وَأَقَامُوا الْحُدُودَ كَمَا أَمَرَ اللَّهُ تَعَالَى، فَقَدْ تَأَدَّى كُلُّ ذَلِكَ كَمَا أَمَرَ اللَّهُ تَعَالَى، وَإِذَا تَأَدَّى كَمَا أَمَرَ اللَّهُ تَعَالَى، فَلَا يَجُوزُ أَنْ يُقَامَ ذَلِكَ عَلَى أَهْلِهِ ثَانِيَةً، فَيَكُونُ ذَلِكَ ظُلْمًا.

وَقَالَ بَعْضُهُمْ: كَمَا لَا يُؤَاخَذُونَ بِمَا أَصَابُوا مِنْ دَمٍ أَوْ مَالٍ، فَكَذَلِكَ لَا يُؤَاخَذُونَ - هُمْ وَلَا غَيْرُهُمْ - بِمَا حَكَمُوا أَوْ أَقَامُوا مِنْ حَدٍّ، أَوْ أَخَذُوا مِنْ مَالِ صَدَقَةٍ، أَوْ غَيْرِهَا - بِحَقٍّ أَوْ بِبَاطِلٍ - وَلَا فَرْقَ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا كُلُّهُ لَيْسَ كَمَا قَالُوا، وَذَلِكَ أَنَّا نَسْأَلُهُمْ، فَنَقُولُ لَهُمْ: مَاذَا تَقُولُونَ: إذَا كَانَ الْإِمَامُ حَاضِرًا مُمَكَّنًا عَدْلًا، أَيَحِلُّ أَنْ يَأْخُذَ صَدَقَةً دُونَهُ، أَوْ يُقِيمَ حَدًّا دُونَهُ، أَوْ يَحْكُمَ بَيْنَ اثْنَيْنِ دُونَهُ، أَمْ لَا يَحِلُّ ذَلِكَ؟ وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ؟ فَإِنْ قَالُوا: هَذَا كُلُّهُ مُبَاحٌ: خَرَقُوا الْإِجْمَاعَ، وَتَرَكُوا قَوْلَهُمْ، وَأَبْطَلُوا الْأَمَانَةَ الَّتِي افْتَرَضَهَا اللَّهُ تَعَالَى، وَأَوْجَبُوا أَنْ لَا حَاجَةَ بِالنَّاسِ إلَى إمَامٍ - وَهَذَا خِلَافُ الْإِجْمَاعِ وَالنَّصِّ. وَإِنْ قَالُوا: بَلْ لَا يَحِلُّ أَخْذُ شَيْءٍ مِنْ ذَلِكَ كُلِّهِ مَا دَامَ الْإِمَامُ قَائِمًا فَقَدْ صَحَّ أَنْ لَا يَحِلَّ أَنْ يَكُونَ حَاكِمًا إلَّا مَنْ وَلَّاهُ الْإِمَامُ الْحُكْمَ، وَلَا أَنْ يَكُونَ آخِذًا لِلْحُدُودِ إلَّا مَنْ وَلَّاهُ

anyone who enforces a penalty, collects alms, or adjudicates a case without being among those God has authorized through the Imam's appointment has not judged as God Almighty commanded, nor enforced penalties as He commanded, nor collected alms as He commanded. Since they did not act as commanded, they acted illegitimately. If their actions lacked legitimacy, they thus acted unjustly. By acting unjustly, they transgressed. God Almighty says: *"Whoever transgresses the bounds set by God has wronged themselves"* (65:1). The Messenger of God—peace and blessings be upon him—said: *"Whoever does an act not in accordance with our command, it is rejected."* Since this is wrongdoing, such wrongdoing must be rejected and annulled. It is thus confirmed that whoever among them collects alms must return them, for they took them unlawfully and are transgressors. They are liable for what they took unless they deliver it to the categories specified in the Quran. If they deliver it to them, the zakat has reached its rightful recipients—and success is by God Almighty.[36][37]

الْإِمَامُ ذَلِكَ، وَلَا أَنْ يَكُونَ مُصَدِّقًا إِلَّا مَنْ وَلَّاهُ الْإِمَامُ أَخْذَهَا، فَإِنَّ ذَلِكَ كَذَلِكَ فَكُلُّ مَنْ أَقَامَ - حَدًّا، أَوْ أَخَذَ صَدَقَةً، أَوْ قَضَى قَضِيَّةً، وَلَيْسَ مِمَّنْ جَعَلَ اللَّهُ ذَلِكَ لَهُ بِتَقْدِيمِ الْإِمَامِ، فَلَمْ يَحْكُمْ كَمَا أَمَرَهُ اللَّهُ تَعَالَى، وَلَا أَقَامَ الْحَدَّ كَمَا أَمَرَهُ اللَّهُ تَعَالَى، وَلَا أَخَذَ الصَّدَقَةَ كَمَا أَمَرَهُ اللَّهُ تَعَالَى؛ فَإِذْ لَمْ يَفْعَلْ ذَلِكَ كَمَا أُمِرَ، فَلَمْ يَفْعَلْ شَيْئًا مِنْ ذَلِكَ بِحَقٍّ، وَإِذَا لَمْ يَفْعَلْ ذَلِكَ بِحَقٍّ، فَإِنَّمَا فَعَلَهُ بِبَاطِلٍ، وَإِذْ فَعَلَهُ بِبَاطِلٍ فَقَدْ تَعَدَّى؛ وَقَالَ تَعَالَى {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» فَإِذْ هُوَ ظُلْمٌ، فَالظُّلْمُ لَا حُكْمَ لَهُ إِلَّا رَدُّهُ وَنَقْضُهُ فَصَحَّ مِنْ هَذَا أَنَّ كُلَّ مَنْ أَخَذَ مِنْهُمْ صَدَقَةً فَعَلَيْهِ رَدُّهَا؛ لِأَنَّهُ أَخَذَهَا بِغَيْرِ حَقٍّ، فَهُوَ مُتَعَدٍّ، فَعَلَيْهِ ضَمَانُ مَا أَخَذَ، إِلَّا أَنْ يُوَصِّلَهُ إِلَى الْأَصْنَافِ الْمَذْكُورَةِ فِي الْقُرْآنِ فَإِذَا أَوْصَلَهَا إِلَيْهِمْ فَقَدْ تَأَدَّتْ الزَّكَاةُ إِلَى أَهْلِهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L39882 It is established from this that every hadd punishment they enforced is an injustice and invalid. The punishments must be reapplied a second time without exception, the diyah (blood money) must be taken from the wealth of those they executed under qisas (retribution), and every judgment they issued must be annulled without exception.

وَصَحَّ مِنْ هَذَا أَنَّ كُلَّ حَدٍّ أَقَامُوهُ فَهُوَ مَظْلَمَةٌ لَا يُعْتَدُّ بِهِ، وَتُعَادُ الْحُدُودُ ثَانِيَةً وَلَا بُدَّ، وَتُؤْخَذُ الدِّيَةُ مِنْ مَالِ مَنْ قَتَلُوهُ قَوَدًا، وَأَنْ يُفْسَخَ كُلُّ حُكْمٍ حَكَمُوهُ وَلَا بُدَّ.

L39883–39885 And he clarifies what we have stated explicitly: what was narrated to us via the chain (isnad) of Muslim—Muḥammad ibn Numayr narrated to us, who narrated from ʿAbdullāh (he is Ibn Idrīs), who narrated from Ibn ʿIjlān, Yaḥyā ibn Saʿīd al-Anṣārī, and ʿUbaydullāh ibn ʿUmar—all of them. From Ubadah ibn al-Walid ibn Ubadah ibn al-Samit, from his father, from his grandfather, who said: "We pledged allegiance to the Messenger of Allah,

وَيُبَيِّنُ مَا قُلْنَاهُ نَصًّا: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ: نا مُحَمَّدُ بْنُ نُمَيْرٍ نا عَبْدُ اللَّهِ - هُوَ ابْنُ إِدْرِيسَ - نا ابْنُ عِجْلَانَ، وَيَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ، وَعُبَيْدُ اللَّهِ بْنُ عُمَرَ، كُلُّهُمْ عَنْ عُبَادَةَ بْنِ الْوَلِيدِ بْنِ عُبَادَةَ بْنِ الصَّامِتِ عَنْ أَبِيهِ عَنْ جَدِّهِ، قَالَ: «بَايَعْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَلَى السَّمْعِ وَالطَّاعَةِ فِي الْعُسْرِ وَالْيُسْرِ وَالْمَنْشَطِ وَالْمَكْرَهِ،

[36] **Hadith references (L39881):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[37] **Qur'an references (L39881):** Qur'an 65:1 (At-Talaq).

peace and blessings of Allah be upon him and his family, to hear and obey in hardship and ease, willingness and compulsion, to accept preference being given over us, to not contend with the people in command, and to uphold the truth wherever we may be, fearing no blame in Allah from any blamer."

وَعَلَى أَثَرَةٍ عَلَيْنَا، وَأَنْ لَا نُنَازِعَ الْأَمْرَ أَهْلَهُ، وَعَلَى أَنْ نَقُولَ بِالْحَقِّ أَيْنَمَا كُنَّا، لَا نَخَافُ فِي اللَّهِ لَوْمَةَ لَائِمٍ» .

L39886 Through Muslim's transmission: Abū Bakr ibn Nāfiʿ narrated to us, Gundar narrated to us, Shuʿbah narrated to us from Ziyād ibn ʿIlāqah, who said: I heard ʿArfajah say: I heard the Messenger of Allah—may Allah bless him and his family and grant him peace—say: "There will indeed be calamities upon calamities, so whoever seeks to divide the affair of this community, while it is whole, strike him with the sword, whoever he may be."[38]

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ نَافِعٍ ثنا غُنْدَرٌ ثنا شُعْبَةُ عَنْ زِيَادِ بْنِ عِلَاقَةَ قَالَ: سَمِعْتُ عَرْفَجَةَ، قَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ «إِنَّهُ سَيَكُونُ هَنَاتٌ وَهَنَاتٌ فَمَنْ أَرَادَ أَنْ يُفَرِّقَ أَمْرَ هَذِهِ الْأُمَّةِ - وَهِيَ جَمِيعٌ - فَاضْرِبُوهُ بِالسَّيْفِ، كَائِنًا مَنْ كَانَ» .

L39887 Abu Muhammad—may Allah have mercy on him—said: It has been established that this matter belongs to its qualified people, and it is impermissible for anyone to contest them over it; likewise, splitting this Ummah after its unity is impermissible.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَصَحَّ أَنَّ لِهَذَا الْأَمْرِ أَهْلًا لَا يَحِلُّ لِأَحَدٍ أَنْ يُنَازِعَهُمْ إيَّاهُ، وَأَنَّ تَفْرِيقَ هَذِهِ الْأُمَّةِ بَعْدَ اجْتِمَاعِهَا لَا يَحِلُّ.

L39888 It has thus become clear that those who dispute sovereignty and leadership intend to split the unity of this nation's community, that they challenge those in authority regarding their command, and that they are disobedient in all these matters.

فَصَحَّ أَنَّ الْمُنَازِعِينَ فِي الْمُلْكِ وَالرِّيَاسَةِ مُرِيدُونَ تَفْرِيقَ جَمَاعَةِ هَذِهِ الْأُمَّةِ، وَأَنَّهُمْ مُنَازِعُونَ أَهْلَ الْأَمْرِ أَمْرَهُمْ، فَهُمْ عُصَاةٌ بِكُلِّ ذَلِكَ.

L39889 Thus, it is confirmed that the people of rebellion are defiant in their contestation of the imam whose obedience is obligatory. Given that they are defiant in this, every judgment they pass from what is due to the imam, every zakāh they collect whose collection is incumbent upon the imam, and every ḥadd punishment they enforce whose enforcement is reserved for the imam—all these actions of theirs are oppression and encroachment.

فَصَحَّ أَنَّ أَهْلَ الْبَغْيِ عُصَاةٌ فِي مُنَازَعَتِهِمْ الْإِمَامَ الْوَاجِبَ الطَّاعَةَ، وَإِذْ هُمْ فِيهِ عُصَاةٌ، فَكُلُّ حُكْمٍ حَكَمُوهُ مِمَّا هُوَ إلَى إمَامٍ، وَكُلُّ زَكَاةٍ قَبَضُوهَا مِمَّا قَبْضُهَا إلَى الْإِمَامِ، وَكُلُّ حَدٍّ أَقَامُوهُ مِمَّا إقَامَتُهُ إلَى الْإِمَامِ - فَكُلُّ ذَلِكَ مِنْهُمْ ظُلْمٌ وَعُدْوَانٌ.

L39890 Among the false notions is that disobedience to Allah the Exalted should stand in the place of obedience to Him, that injustice should compensate for justice, that falsehood should occupy the position of truth, and that aggression should supplant fairness.

وَمِنْ الْبَاطِلِ أَنْ تَنُوبَ مَعْصِيَةُ اللَّهِ تَعَالَى عَنْ طَاعَتِهِ، وَأَنْ يُجْزِيَ الظُّلْمُ عَنْ الْعَدْلِ، وَأَنْ يَقُومَ الْبَاطِلُ مَقَامَ الْحَقِّ، وَأَنْ يُغْنِيَ الْعُدْوَانُ عَنْ الْإِنْصَافِ.

L39891 Thus, what we have stated is textually sound, and it is obligatory to reject all they have enacted in that regard, based on the Prophet's declaration—

[38] **Hadith references (L39886):** Mishkat al-Masabih 3677.

peace be upon him—"Whoever performs an act not in accordance with our command, it is rejected." If there is no established Imam for the people, we have stated: Verily, whoever upholds the truth at that time, their rulings are effective. As for the rebels—if they are Muslims—all they enact in that context remains effective. But if they are disbelievers, nothing from a disbeliever's judgment holds effect in the religion of Allah, the Exalted, whatsoever. And with Allah, the Exalted, is all success.[39]

فَصَحَّ مَا قُلْنَا نَصًّا وَوَجَبَ رَدُّ كُلِّ مَا عَمِلُوا مِنْ ذَلِكَ لِقَوْلِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» فَإِنْ لَمْ يَكُنْ لِلنَّاسِ إمَامٌ مُمَكَّنٌ فَقَدْ قُلْنَا: إنَّ كُلَّ مَنْ قَامَ بِالْحَقِّ حِينَئِذٍ فَهُوَ نَافِذٌ، فَالْبُغَاةُ - إنْ كَانُوا مُسْلِمِينَ - فَكُلُّ مَا فَعَلُوهُ فِي ذَلِكَ فَهُوَ نَافِذٌ - وَأَمَّا إنْ كَانُوا كُفَّارًا فَلَا يَنْفُذُ مِنْ حُكْمِ الْكَافِرِ فِي دِينِ اللَّهِ تَعَالَى شَيْءٌ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39892 **Issue: Is it permissible to seek assistance against the rebellious faction by means of ahl al-ḥarb (those at war) or others besides them?**

[مَسْأَلَةٌ هَلْ يُسْتَعَانُ عَلَى أَهْلِ الْبَغْيِ بِأَهْلِ الْحَرْبِ أَوْ غَيْرِهِمْ]

L39893 2162 - Issue: Is it permissible to seek assistance against rebels from the people of war, Dhimmis (non-Muslim subjects), or other rebel factions?

٢١٦٢ - مَسْأَلَةٌ: هَلْ يُسْتَعَانُ عَلَى أَهْلِ الْبَغْيِ بِأَهْلِ الْحَرْبِ؟ أَوْ بِأَهْلِ الذِّمَّةِ؟ أَوْ بِأَهْلِ بَغْيٍ آخَرِينَ؟ .

L39894–39895 Abū Muḥammad—may Allāh have mercy on him—said: People have differed regarding this matter. A group held that it is impermissible to seek assistance against them through those in a state of war, dhimmīs, or those who consider fighting them lawful as deserters—this being the opinion of al-Shāfiʿī, may Allāh be pleased with him. The adherents of Abū Ḥanīfah maintained: There is no objection to seeking aid against them from people of war, people under covenant, or their equivalents among rebels. We have previously mentioned this in the "Book of Jihād" regarding the statement of the Messenger of Allāh—peace and blessings be upon him and his family—"We do not seek assistance from polytheists." This constitutes a general prohibition against seeking their help in governance, warfare, or any affair—except where valid consensus has been established permitting their assistance in matters such as tending to animals, hiring, attending to necessities, or similar tasks wherein they remain confined to a state of humiliation.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ أَنْ يُسْتَعَانَ عَلَيْهِمْ بِحَرْبِيٍّ، وَلَا بِذِمِّيٍّ، وَلَا بِمَنْ يَسْتَحِلُّ قِتَالَهُمْ، مُدْبِرِينَ - وَهَذَا قَوْلُ الشَّافِعِيِّ - رَضِيَ اللَّهُ عَنْهُ - وَقَالَ أَصْحَابُ أَبِي حَنِيفَةَ: لَا بَأْسَ بِأَنْ يُسْتَعَانَ عَلَيْهِمْ بِأَهْلِ الْحَرْبِ، وَبِأَهْلِ الذِّمَّةِ، وَبِأَمْثَالِهِمْ مِنْ أَهْلِ الْبَغْيِ، وَقَدْ ذَكَرْنَا هَذَا فِي " كِتَابِ الْجِهَادِ " مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّا لَا نَسْتَعِينُ بِمُشْرِكٍ» وَهَذَا عُمُومٌ مَانِعٌ مِنْ أَنْ يُسْتَعَانَ بِهِ فِي وِلَايَةٍ، أَوْ قِتَالٍ، أَوْ شَيْءٍ مِنْ الْأَشْيَاءِ، إلَّا مَا صَحَّ الْإِجْمَاعُ عَلَى جَوَازِ الِاسْتِعَانَةِ بِهِ فِيهِ: كَخِدْمَةِ الدَّابَّةِ، أَوْ الِاسْتِئْجَارِ، أَوْ قَضَاءِ الْحَاجَةِ، وَنَحْوِ ذَلِكَ مِمَّا لَا يَخْرُجُونَ فِيهِ عَنْ الصَّغَارِ.

وَالْمُشْرِكُ: اسْمٌ يَقَعُ عَلَى الذِّمِّيِّ وَالْحَرْبِيِّ.

[39] **Hadith references (L39891):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

L39896 The term *mushrik* (disbeliever/non-Muslim) applies to both the *dhimmi* (protected non-Muslim) and the *harbi* (belligerent non-Muslim).

L39897 Abū Muḥammad—may Allah have mercy on him—said: In our view, as long as the people of justice possess the means of defense, [it remains impermissible]. But if they are on the brink of destruction, compelled by necessity, and have no recourse, there is no harm in them seeking refuge with the people of war or seeking protection with the dhimmis—provided they are certain that in seeking support from them, [the allies] will not harm a Muslim or a dhimmi in life, wealth, or honor through any means that is inherently unlawful.

L39898 The proof of this is the statement of Allah, the Most High: "And He has explicitly detailed what He has forbidden to you, except that to which you are compelled." [Al-An'ām 6:119] This constitutes a generality applicable to everyone compelled to it, unless excluded by a scriptural text or scholarly consensus.[40]

L39899 If a Muslim—whether an individual or a group—knows that those among the people of war or protected non-Muslims (dhimmis) **who seek his help** are wrongfully harming a Muslim or a dhimmi, it is forbidden for him to assist **either of them**, even if he perishes. He must instead patiently endure in compliance with Allah's decree—even if his life, family, or wealth are destroyed—or fight until he dies as a noble martyr. Death is inevitable, and no one's appointed term can be exceeded.

L39900 The evidence for this is that it is impermissible for anyone to repel injustice from oneself by means of an injustice that transfers it to others. This is a matter of unanimous agreement.

L39901 As for seeking help against them through transgressors akin to them—some have forbidden this, citing as evidence the words of Allah, the Most High: "And I would not take those who lead astray as assistants" [Al-Kahf: 51].[41]

L39902–39904 Others deemed it permissible—and this is the position we adopt—because

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا عِنْدَنَا - مَا دَامَ فِي أَهْلِ الْعَدْلِ مَنَعَةٌ - فَإِنْ أَشْرَفُوا عَلَى الْهَلَكَةِ وَاضْطُرُّوا وَلَمْ تَكُنْ لَهُمْ حِيلَةٌ، فَلَا بَأْسَ بِأَنْ يَلْجَئُوا إلَى أَهْلِ الْحَرْبِ، وَأَنْ يَمْتَنِعُوا بِأَهْلِ الذِّمَّةِ، مَا أَيْقَنُوا أَنَّهُمْ فِي اسْتِنْصَارِهِمْ: لَا يُؤْذُونَ مُسْلِمًا وَلَا ذِمِّيًّا - فِي دَمٍ أَوْ مَالٍ أَوْ حُرْمَةٍ مِمَّا لَا يَحِلُّ.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] وَهَذَا عُمُومٌ لِكُلِّ مَنْ اُضْطُرَّ إلَيْهِ، إلَّا مَا مَنَعَ مِنْهُ نَصٌّ، أَوْ إجْمَاعٌ.

فَإِنْ عَلِمَ الْمُسْلِمُ - وَاحِدًا كَانَ أَوْ جَمَاعَةً - أَنَّ مَنْ اسْتَنْصَرَ بِهِ مِنْ أَهْلِ الْحَرْبِ، أَوْ الذِّمَّةِ يُؤْذُونَ مُسْلِمًا، أَوْ ذِمِّيًّا فِيمَا لَا يَحِلُّ، فَحَرَامٌ عَلَيْهِ أَنْ يَسْتَعِينَ بِهِمَا، وَإِنْ هَلَكَ، لَكِنْ يَصْبِرُ لِأَمْرِ اللَّهِ تَعَالَى - وَإِنْ تَلِفَتْ نَفْسُهُ وَأَهْلُهُ وَمَالُهُ - أَوْ يُقَاتِلُ حَتَّى يَمُوتَ شَهِيدًا كَرِيمًا، فَالْمَوْتُ لَا بُدَّ مِنْهُ، وَلَا يَتَعَدَّى أَحَدًا أَجَلُهُ.

بُرْهَانُ هَذَا: أَنَّهُ لَا يَحِلُّ لِأَحَدٍ أَنْ يَدْفَعَ ظُلْمًا عَنْ نَفْسِهِ بِظُلْمٍ يُوصِلُهُ إلَى غَيْرِهِ - هَذَا مَا لَا خِلَافَ فِيهِ.

وَأَمَّا الِاسْتِعَانَةُ عَلَيْهِمْ بِبُغَاةٍ أَمْثَالِهِمْ - فَقَدْ مَنَعَ مِنْ ذَلِكَ قَوْمٌ - وَاحْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى {وَمَا كُنْتُ مُتَّخِذَ الْمُضِلِّينَ عَضُدًا} [الكهف: ٥١] .

[40] **Qur'an references (L39898):** Qur'an 6:119 (Al-An'am).
[41] **Qur'an references (L39901):** Qur'an 18:51 (Al-Kahf).

we do not take them as allies (Allah forbid!), but rather set them against their own kind to protect the people of justice, as Allah, the Exalted, said: "And thus We make some wrongdoers dominate others" (Quran 6:129). If it is possible for us to instigate discord among the combatant disbelievers so that they fight one another, and there enters among them someone from the Muslims who uses them as a means to harm others of their group, this is good.[42]

وَأَجَازَهُ آخَرُونَ - وَبِهِ نَأْخُذُ، لِأَنَّنَا لَا نَتَّخِذُهُمْ عَضُدًا، وَمَعَاذَ اللَّهِ، وَلَكِنْ نَضْرِبُهُمْ بِأَمْثَالِهِمْ صِيَانَةً لِأَهْلِ الْعَدْلِ كَمَا قَالَ اللَّهُ تَعَالَى {وَكَذَلِكَ نُوَلِّي بَعْضَ الظَّالِمِينَ بَعْضًا} [الأنعام: ١٢٩] وَإِنْ أَمْكَنَنَا أَنْ نَضْرِبَ بَيْنَ أَهْلِ الْحَرْبِ مِنَ الْكُفَّارِ، حَتَّى يُقَاتِلَ بَعْضُهُمْ بَعْضًا، وَيَدْخُلَ إِلَيْهِمْ مِنَ الْمُسْلِمِينَ مَنْ يَتَوَصَّلُ بِهِمْ إِلَى أَذَى غَيْرِهِمْ، بِذَلِكَ حَسَنٌ.

L39905 The Messenger of Allah—peace be upon him and his family—said: "Indeed Allah aids this religion through people without merit." As narrated to us by Abdullah ibn Rabi'; Muhammad ibn Mu'awiyah; Ahmad ibn Shu'ayb; Imran ibn Bakkar ibn Rashid informed me; Abu al-Yaman narrated to us; Shu'ayb—who is the son of Abi Hamzah—narrated to us from al-Zuhri; Sa'id ibn al-Musayyab informed me; Abu Hurayrah narrated to us, saying: The Messenger of Allah—peace be upon him and his family—said: "Indeed Allah strengthens this religion through a wicked man."

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إِنَّ اللَّهَ يَنْصُرُ هَذَا الدِّينَ بِقَوْمٍ لَا خَلَاقَ لَهُمْ» كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي عِمْرَانُ بْنُ بَكَّارِ بْنِ رَاشِدٍ ثنا أَبُو الْيَمَانِ نا شُعَيْبٌ - هُوَ ابْنُ أَبِي حَمْزَةَ - عَنِ الزُّهْرِيِّ أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيَّبِ نا أَبُو هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إِنَّ اللَّهَ لَيُؤَيِّدُ هَذَا الدِّينَ بِالرَّجُلِ الْفَاجِرِ» .

L39906 Abdullah ibn Rabeeʿ narrated to us, Muhammad ibn Muʿawiyah narrated to us, Ahmad ibn Shuʿayb narrated to us, Muhammad ibn Sahl ibn ʿAskar narrated to us, Abd al-Razzaq narrated to us, from Riyāḥ ibn Zayd, from Maʿmar ibn Rashid, from Ayyub al-Sikhtiyānī, from Abu Qilabah, from Anas ibn Malik, who said: The Messenger of Allah (peace and blessings be upon him and his family) said, "Verily, Allah indeed supports this religion through people who have no share in the Hereafter."

وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ سَهْلِ بْنِ عَسْكَرٍ ثنا عَبْدُ الرَّزَّاقِ أَنَا رِيَاحُ بْنُ زَيْدٍ عَنْ مَعْمَرِ بْنِ رَاشِدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إِنَّ اللَّهَ لَيُؤَيِّدُ هَذَا الدِّينَ بِأَقْوَامٍ لَا خَلَاقَ لَهُمْ» .

L39907 Abu Muhammad (may Allah have mercy on him) said: This permits seeking assistance against the people of war by means of those similar to them, and against the rebels by means of their likes from among the Muslims—specifically the transgressors who have no share of reward.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا يُبِيحُ الِاسْتِعَانَةَ عَلَى أَهْلِ الْحَرْبِ بِأَمْثَالِهِمْ، وَعَلَى أَهْلِ الْبَغْيِ بِأَمْثَالِهِمْ مِنَ الْمُسْلِمِينَ الْفُجَّارِ الَّذِينَ لَا خَلَاقَ لَهُمْ.

L39908 Moreover, the transgressor has an obligation imposed upon him to engage in jihad and to repel the aggressors, just as the obligation imposed upon the virtuous believer. Therefore, it is not permissible to prevent them from that;

[42] **Qur'an references (L39902):** Qur'an 6:129 (Al-An'am).

rather, the obligation is to urge them to it—and success is from Allah, the Exalted.

وَأَيْضًا - فَإِنَّ الْفَاسِقَ مُفْتَرَضٌ عَلَيْهِ مِنْ الْجِهَادِ، وَمِنْ دَفْعِ أَهْلِ الْبَغْيِ، كَالَّذِي افْتُرِضَ عَلَى الْمُؤْمِنِ الْفَاضِلِ، فَلَا يَحِلُّ مَنْعُهُمْ مِنْ ذَلِكَ، بَلْ الْفَرْضُ أَنْ يَدْعُوَ إلَى ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة قَتْلَ رَجُل رَجُلًا فِي الْحَرْب ثُمَّ قَالَ حسبته مِنْ أَهْل الْبَغْي]

L39909 **The jurisprudential issue of a man killing another during war, after which the killer said, "I thought he was from the rebellious faction (*baghy*)."**

٢١٦٣ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَوْ أَنَّ رَجُلًا مِنْ أَهْلِ الْعَدْلِ قَتَلَ فِي الْحَرْبِ رَجُلًا مِنْ أَهْلِ الْعَدْلِ، ثُمَّ قَالَ: حَسِبْتُهُ مِنْ أَهْلِ الْبَغْيِ، فَإِنْ كَانَ مَا يَقُولُ مُمْكِنًا، فَالْقَوْلُ قَوْلُهُ مَعَ يَمِينِهِ، ثُمَّ يَضْمَنُ دِيَتَهُ فِي مَالِهِ؛ لِأَنَّهُ لَمْ يَقْتُلْهُ خَطَأً بَلْ قَتَلَهُ عَمْدًا قَصْدًا إلَى قَتْلِهِ إلَّا أَنَّهُ لَمْ يَعْلَمْ أَنَّهُ حَرَامُ الدَّمِ، فَلِذَلِكَ لَمْ يُقَدْ مِنْهُ - وَإِنْ لَمْ يُمْكِنْ مَا قَالَ فَعَلَيْهِ الْقَوَدُ، أَوْ الدِّيَةُ بِاخْتِيَارِ أَوْلِيَاءِ الْمَقْتُولِ وَهَكَذَا الْقَوْلُ - سَوَاءٌ سَوَاءٌ، إذَا قَتَلَهُ فِي أَرْضِ الْحَرْبِ، وَلَا فَرْقَ.

L39910 Issue 2163: Abū Muḥammad—may Allah have mercy on him—said: If a man from the just party kills another man from the just party during war, then says, "I presumed him to be from the faction of rebellion," if his claim is possible, his statement is accepted upon his oath. He must then pay the *diyah* from his wealth, for he killed him not unintentionally but intentionally and deliberately, except that he did not know the victim's blood was legally protected. For this reason, retaliatory punishment (*qisas*) is not exacted from him. If his claim is impossible, then *qisas* or *diyah* becomes obligatory, based on the choice of the legal guardians of the slain. This ruling applies uniformly and without exception whether the killing occurred in the land of war—there is absolutely no distinction.

وَكَذَلِكَ لَوْ رَجَعَ إلَيْنَا بَعْضُ أَهْلِ الْبَغْيِ تَائِبًا فَقَتَلَهُ رَجُلٌ مِنْ أَهْلِ الْعَدْلِ وَقَالَ: إنِّي ظَنَنْتُهُ دَخَلَ لِيَطْلُبَ غِرَّةً، فَإِنْ نَكَلَ هَؤُلَاءِ عَنْ الْيَمِينِ حُبِسُوا حَتَّى يَحْلِفُوا وَلَا بُدَّ؛ لِأَنَّ الْيَمِينَ قَدْ وَجَبَتْ عَلَيْهِمْ، وَلَا قَوَدَ أَصْلًا؛ لِأَنَّهُ لَمْ يَثْبُتْ عَلَيْهِمْ مَا يُوجِبُ الْقَوَدَ مِنْ التَّعَمُّدِ وَهُمْ عَالِمُونَ.

L39911–39912 Similarly, if some of the rebels were to return to us repentant, and a man from the upholders of justice killed him, saying, "I suspected he entered to exploit a lapse in vigilance," then if these individuals refuse to take the oath, they must be detained until they swear it without fail, for the oath is obligatory upon them. There is absolutely no retaliation, because what necessitates retaliation - intentional action and their conscious intent - has not been proven against them.

وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: إذَا كَانَتْ جَمَاعَةٌ مِنْ أَهْلِ الْعَدْلِ وَالسُّنَّةِ فِي عَسْكَرِ الْخَوَارِجِ وَأَهْلِ الْبَغْيِ، فَقَتَلَ بَعْضُهُمْ بَعْضًا عَمْدًا، وَجَرَحَ بَعْضُهُمْ بَعْضًا عَمْدًا، وَأَخَذَ بَعْضُهُمْ مَالَ بَعْضٍ عَمْدًا، فَلَا شَيْءَ فِي ذَلِكَ: لَا قَوَدَ، وَلَا دِيَةَ - غَلَبَ أَهْلُ الْجَمَاعَةِ وَالْإِمَامُ الْعَدْلُ

L39913 Abu Hanifa and his disciples said: If there exists a group of just people adhering to the Sunnah within the army of the Kharijites or rebels, and they intentionally kill one another, intentionally wound one another, or intentionally seize one another's wealth, there is no legal consequence for this—no retaliation, no blood money—whether the united community and the just Imam ultimately prevail over them or not. Abu Muhammad—may Allah have

mercy on him—said: The only response to this statement is that it constitutes the ruling of Satan. By Allah, we cannot comprehend how any Muslim's conscience could accept this claim that opposes Allah the Exalted and His Messenger—peace be upon him—nor how any believer's tongue could utter this absurd pronouncement while knowing that Allah has already commanded and prohibited him, yet he employs this frivolous statement to justify commandments. We beseech Allah the Exalted for complete protection. It is as though the proponents of this view have never heard Allah's revelations in the Quran—nor the teachings conveyed through His Messenger, may Allah bless him and his family and grant him peace—regarding the obligation of retribution for lives and injuries, and the prohibition against seizing wealth.

L39914 This is a statement for which we know no precedent from Abu Hanifah—neither from a companion nor a successor—and we absolve ourselves before Allah the Exalted from this claim. They obscured the truth using what was narrated in the report of Ubayd Allah ibn Umar: As narrated from Hammam, who narrated from Ibn Mufarrij, who narrated from Ibn al-A'rabi, who narrated from al-Dabari, who narrated from Abd al-Razzaq, from Ma'mar, from al-Zuhri—who mentioned the killing of Umar. He said: Sa'id ibn al-Musayyib informed me that Abd al-Rahman ibn Abi Bakr al-Siddiq (and we never knew him to tell a lie) said: "When Umar ibn al-Khattab was killed, I came upon Hurmuzan, Jufaynah, and Abu Lu'lu'ah while they were still alive. I pursued them, and they fled, dropping a dagger with two edges, its hilt in the middle." Abd al-Rahman added: "Examine what Umar was killed with," and they found it to be a dagger matching the description he had given. Ubayd Allah ibn Umar then emerged, concealing his sword beneath his garment, until he approached Hurmuzan and said: "Accompany me to inspect a horse of mine" (Hurmuzan was an expert on horses). As Hurmuzan walked ahead, Ubayd Allah struck him with the sword. When he felt the sword's bite, he cried: "There is no god but Allah," and Ubayd Allah killed him.

L39915–39916 Then he went to Jufaynah—who was a Christian—and when he confronted him, he struck him with the sword, cleaving the space between his eyes.

عَلَيْهِمْ بَعْدَ ذَلِكَ: أَوْ لَمْ يَغْلِبُوا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا لِهَذَا الْقَوْلِ جَوَابٌ إِلَّا أَنَّهُ حُكْمُ إِبْلِيسَ، وَاَللَّهِ مَا نَدْرِي كَيْفَ انْشَرَحَتْ نَفْسُ مُسْلِمٍ لِاعْتِقَادِ هَذَا الْقَوْلِ الْمُعَانِدِ لِلَّهِ تَعَالَى، وَلِرَسُولِهِ - عَلَيْهِ السَّلَامُ -، أَوْ كَيْفَ انْطَلَقَ لِسَانُ مُؤْمِنٍ يَدْرِي أَنَّ اللَّهَ تَعَالَى أَمَرَهُ وَنَهَاهُ بِهَذَا الْقَوْلِ السَّخِيفِ - وَنَسْأَلُ اللَّهَ تَعَالَى عَافِيَةً شَامِلَةً - كَأَنَّ أَصْحَابَ هَذَا الْقَوْلِ لَمْ يَسْمَعُوا مَا أَنْزَلَ اللَّهُ تَعَالَى مِنْ وُجُوبِ الْقِصَاصِ فِي النُّفُوسِ، وَالْجِرَاحِ، وَمِنْ تَحْرِيمِ الْأَمْوَالِ، فِي الْقُرْآنِ، وَعَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

وَهَذَا قَوْلٌ مَا نَعْلَمُ فِيهِ لِأَبِي حَنِيفَةَ سَلَفًا: لَا مِنْ صَاحِبٍ وَلَا مِنْ تَابِعٍ، وَنَبْرَأُ إِلَى اللَّهِ تَعَالَى مِنْ هَذَا الْقَوْلِ، فَإِنَّمَا مَوَّهُوا بِمَا رُوِيَ مِنْ حَدِيثِ عُبَيْدِ اللَّهِ بْنِ عُمَرَ: كَمَا ثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ، وَذَكَرَ قَتْلَ عُمَرَ، قَالَ: فَأَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيِّبِ أَنْ عَبْدَ الرَّحْمَنِ بْنَ أَبِي بَكْرٍ الصِّدِّيقَ وَلَمْ نُجَرِّبْ عَلَيْهِ كَذِبَةً قَطُّ، قَالَ: حِينَ قُتِلَ عُمَرُ بْنُ الْخَطَّابِ انْتَهَيْتُ إِلَى الْهُرْمُزَانِ، وَجُفَيْنَةَ، وَأَبِي لُؤْلُؤَةَ - وَهُمْ بِحَيٍّ - فَتَبِعْتُهُمْ فَثَارُوا وَسَقَطَ مِنْ بَيْنِهِمْ خَنْجَرٌ لَهُ رَأْسَانِ نِصَابُهُ فِي وَسَطِهِ. وَقَالَ عَبْدُ الرَّحْمَنِ فَانْظُرُوا بِمَا قُتِلَ بِهِ عُمَرُ فَوَجَدُوهُ خِنْجَرًا عَلَى النَّعْتِ الَّذِي نَعَتَ عَبْدُ الرَّحْمَنِ، فَخَرَجَ عُبَيْدُ اللَّهِ بْنُ عُمَرَ بْنِ الْخَطَّابِ مُشْتَمِلًا عَلَى السَّيْفِ حَتَّى أَتَى الْهُرْمُزَانَ فَقَالَ: اصْحَبْنِي نَنْظُرُ إِلَى فَرَسٍ لِي - وَكَانَ الْهُرْمُزَانُ بَصِيرًا بِالْخَيْلِ - فَخَرَجَ بَيْنَ يَدَيْهِ، فَعَلَاهُ عُبَيْدُ اللَّهِ بِالسَّيْفِ، فَلَمَّا وَجَدَ حَدَّ السَّيْفِ قَالَ: لَا إِلَهَ إِلَّا اللَّهُ، فَقَتَلَهُ.

ثُمَّ أَتَى جُفَيْنَةَ - وَكَانَ نَصْرَانِيًّا - فَلَمَّا أَشْرَفَ لَهُ عَلَاهُ بِالسَّيْفِ فَضَرَبَهُ فَصَلَبَ مَا بَيْنَ عَيْنَيْهِ - ثُمَّ أَتَى ابْنَةَ أَبِي لُؤْلُؤَةَ - جَارِيَةً صَغِيرَةً تَدَّعِي الْإِسْلَامَ - فَقَتَلَهَا، فَأَظْلَمَتْ الْأَرْضُ يَوْمَئِذٍ عَلَى أَهْلِهَا. - ثُمَّ أَقْبَلَ بِالسَّيْفِ صَلْتًا فِي يَدِهِ وَهُوَ يَقُولُ: وَاَللَّهِ لَا أَتْرُكُ فِي الْمَدِينَةِ سَبْيًا إلَّا قَتَلْته وَغَيْرَهُمْ؟ كَأَنَّهُ يُعَرِّضُ بِنَاسٍ مِنْ الْمُهَاجِرِينَ، فَجَعَلُوا يَقُولُونَ لَهُ: أَلْقِ السَّيْفَ، فَأَبَى - وَيَهَابُونَهُ أَنْ يَقْرَبُوا مِنْهُ - حَتَّى أَتَاهُ عَمْرُو بْنُ الْعَاصِ فَقَالَ: أَعْطِنِي السَّيْفَ يَا ابْنَ أَخِي؟ فَأَعْطَاهُ إيَّاهُ، ثُمَّ ثَارَ إلَيْهِ عُثْمَانُ فَأَخَذَ بِرَأْسِهِ، فَتَنَاصَبَا حَتَّى حَجَزَ النَّاسُ بَيْنَهُمَا. - فَلَمَّا وَلِيَ عُثْمَانُ قَالَ: أَشِيرُوا عَلَيَّ فِي هَذَا الرَّجُلِ الَّذِي فَتَقَ فِي الْإِسْلَامِ مَا فَتَقَ - يَعْنِي عُبَيْدَ اللَّهِ بْنَ عُمَرَ - فَأَشَارَ عَلَيْهِ الْمُهَاجِرُونَ أَنْ يَقْتُلَهُ، وَقَالَ جَمَاعَةٌ مِنْ النَّاسِ: قُتِلَ عُمَرُ بِالْأَمْسِ وَتُرِيدُونَ أَنْ تُتْبِعُوهُ ابْنَهُ الْيَوْمَ، أَبْعَدَ اللَّهُ الْهُرْمُزَانَ، وَجُفَيْنَةَ؟ فَقَامَ عَمْرُو بْنُ الْعَاصِ فَقَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ، إنَّ اللَّهَ قَدْ أَعْفَاك أَنْ يَكُونَ هَذَا الْأَمْرُ وَلَك عَلَى النَّاسِ مِنْ سُلْطَانٍ، إنَّمَا كَانَ هَذَا الْأَمْرُ وَلَا سُلْطَانَ لَك، فَاصْفَحْ عَنْهُ يَا أَمِيرَ الْمُؤْمِنِينَ قَالَ: فَتَفَرَّقَ النَّاسُ عَلَى خُطْبَةِ عَمْرٍو، وَوَدَى عُثْمَانُ الرَّجُلَيْنِ وَالْجَارِيَةَ.

Next, he approached the daughter of Abī Lu'lu'ah—a young girl who claimed to profess Islam—and killed her. The earth darkened upon its inhabitants that day. He then advanced with the bare sword in his hand, declaring: "By Allah, I will not leave any captive in the city without killing them and others!"—as though alluding to some of the Emigrants. They kept urging him: "Drop the sword!" but he refused, and they feared approaching him until 'Amr ibn al-'Āṣ came and said: "Hand me the sword, O nephew!" He complied. 'Uthmān then rushed at him, seizing his head, and they grappled until the people separated them. When 'Uthmān assumed leadership, he said: "Advise me regarding this man who caused such division in Islam"—referring to 'Ubayd Allāh ibn 'Umar. The Emigrants advised execution, but a group protested: "'Umar was slain yesterday, and you would kill his son today? May Allah banish Hurmuzān and Jufaynah!" 'Amr ibn al-'Āṣ stood and said: "O Commander of the Faithful, Allah has absolved you of responsibility, for this occurred when you held no authority over the people. Pardon him, O Commander of the Faithful." The people dispersed following 'Amr's counsel, and 'Uthmān paid blood money for the two men and the girl.

L39917 قَالَ الزُّهْرِيُّ: وَأَخْبَرَنِي حَمْزَةُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ أَنَّ أَبَاهُ قَالَ: فَيَرْحَمُ اللَّهُ حَفْصَةَ أَنْ كَانَتْ لَمِنْ شَيَّعَ عُبَيْدَ اللَّهِ عَلَى قَتْلِ الْهُرْمُزَانِ، وَجُفَيْنَةَ - قَالَ مَعْمَرٌ: قَالَ غَيْرُ الزُّهْرِيِّ: قَالَ عُثْمَانُ: أَنَا وَلِيُّ الْهُرْمُزَانِ، وَجُفَيْنَةَ، وَالْجَارِيَةِ، وَإِنِّي قَدْ جَعَلْتُهَا دِيَةً.

Al-Zuhri said: Hamzah ibn Abdullah ibn Umar ibn al-Khattab informed me that his father said: May Allah have mercy on Hafsah, for she was among those who supported Ubaydullah regarding the killing of Hurmuzan and Jufaynah. Ma'mar reported that a narrator other than al-Zuhri stated: Uthman said, "I am the legal guardian of Hurmuzan, Jufaynah, and the maidservant, and I have designated the blood money for her [death]."

L39918 قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَقَدْ رُوِّينَا عَنْ أَحْمَدَ بْنِ مُحَمَّدٍ عَنْ أَحْمَدَ بْنِ الْفَضْلِ عَنْ مُحَمَّدِ بْنِ جَرِيرٍ بِإِسْنَادٍ لَا يَحْضُرُنِي الْآنَ ذِكْرُهُ: أَنَّ عُثْمَانَ أَقَادَ وَلَدَ الْهُرْمُزَانِ مِنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ، وَأَنَّ وَلَدَ الْهُرْمُزَانِ عَفَا عَنْهُ.

Abu Muhammad—may Allah have mercy on him—said: It has been narrated to us from Ahmad ibn Muhammad from Ahmad ibn al-Fadl from Muhammad ibn Jarir through a chain of transmission whose specifics I cannot recall at the moment: that Uthman carried out qisas against Ubayd Allah ibn Umar ibn al-Khattab on behalf of the son of al-Hurmuzan, and that the son of al-Hurmuzan pardoned him.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَيُّ ذَلِكَ كَانَ فَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ؛ لِأَنَّ عُبَيْدَ اللَّهِ بْنَ عُمَرَ لَمْ يَقْتُلْ مَنْ قَتَلَ فِي عَسْكَرِ أَهْلِ الْبَغْيِ، وَلَا فِي وَقْتٍ كَانَ فِيهِ بَاغٍ مِنْ الْمُسْلِمِينَ عَلَى وَجْهِ الْأَرْضِ يُعْرَفُ فِي دَارِ الْهِجْرَةِ، وَمَحَلَّةِ الْجَمَاعَةِ وَصِحَّةِ الْأُلْفَةِ، وَفِي أَفْضَلِ عِصَابَةٍ وَأَعْدَلِهَا.

L39919 Abū Muḥammad—may Allah have mercy on him—said: "Whichever of those scenarios it may be, they have no valid argument in any of it. This is because Ubayd Allāh ibn ʿUmar did not kill anyone from the camp of the rebellious faction, nor during a time when a known rebel from among the Muslims existed on the face of the earth—one recognized in the Abode of Migration, the center of the united community and the bastion of harmony—and not among the best group of people or the most just of them."

وَهَذَا خِلَافُ قَوْلِهِمْ فِي الْمَسْأَلَةِ الَّتِي نَحْنُ فِيهَا مَنْ قَتَلَ فِي عَسْكَرِ أَهْلِ الْبَغْيِ وَهُمْ لَا يَقُولُونَ بِإِهْدَارِ الْقَوَدِ عَمَّنْ قَتَلَ فِي الْجَمَاعَةِ بَيْنَ مَوْتِ إمَامٍ وَوِلَايَةِ آخَرَ، فَقَدْ خَالَفُوا عُثْمَانَ وَمَنْ مَعَهُ فِي هَذِهِ الْقِصَّةِ.

L39920–39922 And this contradicts their position on the issue we are discussing regarding one who kills within the rebel army while they [text cut off]... They do not uphold invalidating retribution for one who kills within the community during the period between the death of an imam and the appointment of another, for they opposed ʿUthmān and his supporters on this matter.

وَأَيْضًا - فَإِنَّ فِي هَذَا الْخَبَرِ: أَنَّ عُثْمَانَ جَعَلَهَا دِيَةً - وَهَذَا خِلَافُ قَوْلِهِمْ؛ لِأَنَّهُمْ لَا يَرَوْنَ فِي ذَلِكَ دِيَةً، وَالْوَاجِبُ أَنْ نَحْكُمَ فِي كُلِّ ذَلِكَ كَمَا نَحْكُمُ فِي مَحَلَّةِ الْجَمَاعَةِ وَلَا فَرْقَ؛ لِأَنَّ دِينَ اللَّهِ تَعَالَى وَاحِدٌ فِي كُلِّ مَكَانٍ، وَكُلِّ زَمَانٍ، وَعَلَى كُلِّ لِسَانٍ، وَمَا خَصَّ اللَّهُ تَعَالَى بِإِيجَابِ الْقَوَدِ، وَأَخْذِ الْحُدُودِ، وَضَمَانِ الْأَمْوَالِ وَإِقَامِ الصَّلَاةِ، وَإِيتَاءِ الزَّكَاةِ وَصَوْمِ رَمَضَانَ، وَسَائِرِ شَرَائِعِ الْإِسْلَامِ مَكَانًا دُونَ مَكَانٍ، وَلَا زَمَانًا دُونَ زَمَانٍ، وَلَا حَالًا دُونَ حَالٍ، وَلَا أُمَّةً دُونَ أُمَّةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39923 Moreover, in this report, it is stated that Uthman deemed it blood money—contrary to their view, as they do not recognize blood money in that matter. We must rule in all such cases as we rule in the place of the community, without distinction, for the religion of Allah the Exalted is one in every place, every time, and upon every tongue. Allah the Exalted has not restricted the obligation of qisas, enforcement of prescribed penalties, safeguarding property, establishing prayer, paying zakat, fasting Ramadan, or any other ordinances of Islam to one place over another, one time over another, one condition over another, or one community over another. And success is from Allah alone.

[مَسْأَلَة إذَا كَانَ فِي الْبَاغِينَ غُلَامٌ لَمْ يَبْلُغْ أَوْ امْرَأَةٌ فَقَاتَلَا]

Issue: If among the rebels there is a boy who has not reached puberty or a woman, and they fought...

٢١٦٤ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَوْ كَانَ فِي الْبَاغِينَ غُلَامٌ لَمْ يَبْلُغْ أَوْ امْرَأَةٌ فَقَاتَلَا دُوفِعَا، فَإِنْ أَدَّى ذَلِكَ إلَى قَتْلِهِمَا فِي حَالِ الْمُقَاتَلَةِ فَهُمَا هَدَرٌ؛ لِأَنَّ فَرْضًا عَلَى كُلِّ مَنْ أَرَادَهُ مُرِيدٌ بِغَيْرِ حَقٍّ أَنْ يَدْفَعَ عَنْ نَفْسِهِ الضُّرَّ كَيْفَ أَمْكَنَهُ - وَلَا دِيَةَ فِي ذَلِكَ، وَلَا قَوَدَ.

L39924 L39925 Issue 2164: Abū Muḥammad—may God have mercy on him—said: If among the rebels is a minor boy or a woman, and they fight, they must be fought back. If this leads to their killing during combat, their lives are legally forfeit, because it is obligatory for anyone wrongfully targeted to repel harm from themselves by any means possible. There is no blood money nor retaliation in such a case.

L39926 Allah, the Most High, said, “And do not throw yourselves by your own hands into destruction” (Al-Baqarah 2:195).[43]

قَالَ اللَّهُ تَعَالَى {وَلا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ} [البقرة: ١٩٥] .

L39927 Abū Muḥammad—may Allāh have mercy on him—said: If the rebellious faction requests a delay to reconsider their stance, and this is not a deceptive ploy, it becomes incumbent upon the ruler to grant them a period adequate solely for deliberation. This duration corresponds strictly to the time required for earnest appeal and presentation of evidence. Any extension beyond this is impermissible, as Allāh the Exalted states: *“If two groups of believers clash, make peace between them. But if one faction persists in aggression against the other, fight the aggressors until they submit to Allāh’s decree”* (49:9). Allāh only permits suspending combat against them during reconciliation efforts. Whoever refuses [to cease aggression] is to be fought.[44]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَلَوْ أَنَّ أَهْلَ الْبَغْيِ سَأَلُوا النَّظْرَةَ حَتَّى يَنْظُرُوا فِي أُمُورِهِمْ؟ فَإِنْ لَمْ يَكُنْ ذَلِكَ مَكِيدَةً، فَعَلَيْهِ أَنْ يُنْظِرَهُمْ مُدَّةً يُمْكِنُ فِي مِثْلِهَا النَّظَرُ فَقَطْ - وَهَذَا مِقْدَارُ الدُّعَاءِ، وَبَيَانُ الْحُجَّةِ فَقَطْ، وَأَمَّا مَا زَادَ عَلَى ذَلِكَ فَلَا يَجُوزُ، لِقَوْلِ اللَّهِ تَعَالَى {وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الأُخْرَى فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ} [الحجرات: ٩] فَلَمْ يُفْسِحْ اللَّهُ تَعَالَى فِي تَرْكِ قِتَالِهِمْ إلَّا مُدَّةَ الْإِصْلَاحِ، فَمَنْ أَبَى قُوتِلَ.

L39928 Moreover, it is an obligation upon the Imam to enforce the rights [that are due] from them, to secure the people from all among them, and to compel them to disperse toward attending to the interests of their religion and their worldly life.

وَأَيْضًا - فَإِنَّ فَرْضًا عَلَى الْإِمَامِ إنْفَاذُ الْحُقُوقِ عَلَيْهِمْ وَتَأْمِينُ النَّاسِ مِنْ جَمِيعِهِمْ، وَأَنْ يَأْخُذُوهُمْ بِالِافْتِرَاقِ إلَى مَصَالِحِ دِينِهِمْ وَدُنْيَاهُمْ.

L39929 Whoever states other than this, we will ask him: What would he say if they requested postponement for a day, two days, or three days—and thus we progressively increase it hour by hour and day by day until that reaches the expiration of their lifetimes? In this lies the destruction of religion and worldly affairs, along with preoccupation with guarding against them, just as it is his obligation to deliberate on this matter. If he sets a specific limit in this—three days or otherwise—he must provide evidence for it from the Qur’an or from the prescribed limit of the Messenger of Allah (peace be upon him) regarding this matter, and he has no means to do so.

وَمَنْ قَالَ غَيْرَ هَذَا سَأَلْنَاهُ: مَاذَا يَقُولُ، إنْ اسْتَنْظَرُوهُ يَوْمًا أَوْ يَوْمَيْنِ أَوْ ثَلَاثَةً، وَهَكَذَا نَزِيدُهُ سَاعَةً سَاعَةً، وَيَوْمًا يَوْمًا حَتَّى يَبْلُغَ ذَلِكَ إلَى انْقِضَاءِ أَعْمَارِهِمْ، وَفِي هَذَا إهْلَاكُ الدِّينِ وَالدُّنْيَا وَالِاشْتِغَالُ بِالتَّحَفُّظِ عَنْهُمْ، كَمَا هُوَ فَرْضٌ عَلَيْهِ النَّظَرُ فِيهِ، فَإِنْ حَدَّ فِي ذَلِكَ حَدًّا مِنْ ثَلَاثَةِ أَيَّامٍ أَوْ غَيْرِ ذَلِكَ كُلِّفَ أَنْ يَأْتِيَ بِالدَّلِيلِ عَلَى ذَلِكَ مِنْ الْقُرْآنِ أَوْ مِنْ تَحْدِيدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ، وَلَا سَبِيلَ لَهُ إلَيْهِ.

L39930–39931 If they argue that the Messenger of Allah—peace and blessings of Allah be upon him and his family—stipulated in his treaty with Quraysh to remain in Mecca for three days, stipulated a three-day period for the animal with a tied udder, granted the defrauded party in a sale a three-day option period, and that Allah the Exalted granted Thamud a respite of three days, we respond:

فَإِنْ ذَكَرُوا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدْ قَاضَى قُرَيْشًا عَلَى أَنْ يُقِيمَ بِمَكَّةَ ثَلَاثًا وَجَعَلَ أَجَلَ الْمُصَرَّاةِ ثَلَاثًا، وَخِيَارَ الْمَخْدُوعِ فِي الْبَيْعِ ثَلَاثًا، وَأَنَّ اللَّهَ تَعَالَى أَجَّلَ ثَمُودَ ثَلَاثَةَ أَيَّامٍ؟ قُلْنَا لَهُمْ: نَعَمْ، هَذَا حَقٌّ، وَقَدْ جَعَلَ اللَّهُ تَعَالَى أَجَلَ الْمُولِي أَرْبَعَةَ أَشْهُرٍ، وَأَجَلَ الْمُتَوَفَّى عَنْهَا زَوْجُهَا فِي الْعِدَّةِ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا فَمَا الَّذِي جَعَلَ بَعْضَ

[43] **Qur’an references (L39926):** Qur’an 2:195 (Al-Baqarah).
[44] **Qur’an references (L39927):** Qur’an 49:9 (Al-Hujurat).

Yes, this is true. For Allah the Exalted has set the oath of abstinence at four months, and the waiting period for a widow at four months and ten days. What then makes some of these legal excuses more valid than others? What Allah the Exalted has decreed is the truth. As for one who intends to augment Allah's decree through personal opinion or analogy—this is falsehood. And by Allah, the Exalted, is success.

Issue concerning rebels taking refuge in a fortress where there are women or male children.

2165 - Issue: If the rebels fortify themselves in a fortress containing women and children, it is impermissible to cut off their essential provisions. However, they should be granted from it an amount sufficient for the women, children, and those who are not among the rebels exclusively, while the rebels are denied anything beyond that.

It is permissible to fight them using mangonels and projectiles, but it is not permissible to fight them with fire that burns those within it who are not among the people of rebellion, nor by drowning that would drown them in the same manner, due to the words of Allah, the Most High: {No soul earns except against itself, and no bearer of burdens will bear the burden of another} [al-Anʿām 6:164].[45]

As for when none remain but the rebels alone, it is obligatory to cut off their water and food until they submit to the truth. Otherwise, they are the killers of their own selves through their refusal to accept what is right.

Similarly, it is permissible to light fires around them and to leave for them a place from which they can escape to the camp of the people of truth, because this is a fire we have kindled, and we have not set it loose; they are capable of escaping from it if they wish. It is not permissible to burn them or drown them unless they escape, because Allah, the Exalted, did not command that, nor did His Messenger—may Allah bless him and his family and grant him peace—but rather He has commanded fighting only.

[45] **Qur'an references (L39934):** Qur'an 6:164 (Al-An'am).

هَذِهِ الْأَعْذَارِ أَوْلَى مِنْ بَعْضٍ، فَكَانَ مَا حَكَمَ اللَّهُ تَعَالَى بِهِ، فَهُوَ الْحَقُّ، وَكَانَ مَا أَرَادَهُ مُرِيدٌ أَنْ يَزِيدَهُ فِي حُكْمِ اللَّهِ تَعَالَى بِرَأْيِهِ وَقِيَاسِهِ فَهُوَ الْبَاطِلُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة تحصن البغاة فِي حصن فِيهِ نِسَاء أَوْ صبيان]

٢١٦٥ - مَسْأَلَةٌ: فَإِنْ تَحَصَّنَ الْبُغَاةُ فِي حِصْنٍ فِيهِ النِّسَاءُ وَالصِّبْيَانُ، فَلَا يَحِلُّ قَطْعُ الْمِيرِ عَنْهُمْ، لَكِنْ يُطْلَقُ لَهُمْ مِنْهُ بِمِقْدَارِ مَا يَسَعُ النِّسَاءَ وَالصِّبْيَانَ، وَمَنْ لَمْ يَكُنْ مِنْ أَهْلِ الْبَغْيِ فَقَطْ، وَيُمْنَعُونَ مَا وَرَاءَ ذَلِكَ.

وَجَائِزٌ قِتَالُهُمْ بِالْمَنْجَنِيقِ وَالرَّمْيِ، وَلَا يَحِلُّ قِتَالُهُمْ بِنَارٍ تُحْرِقُ مَنْ فِيهِ مِنْ غَيْرِ أَهْلِ الْبَغْيِ، وَلَا بِتَغْرِيقٍ يُغْرِقُهُمْ كَذَلِكَ؛ لِقَوْلِ اللَّهِ تَعَالَى {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

وَأَمَّا إذَا لَمْ يَكُنْ فِيهِ إلَّا الْبُغَاةُ فَقَطْ فَفَرْضٌ أَنْ يُمْنَعُوا الْمَاءَ وَالطَّعَامَ حَتَّى يَنْزِلُوا إلَى الْحَقِّ، وَإِلَّا فَهُمْ قَاتِلُو أَنْفُسِهِمْ بِامْتِنَاعِهِمْ مِنْ الْحَقِّ.

وَكَذَلِكَ يَجُوزُ أَنْ تُوقَدَ النِّيرَانُ حَوَالَيْهِمْ، وَيُتْرَكُ لَهُمْ مَكَانٌ يَتَخَلَّصُونَ مِنْهُ إلَى عَسْكَرِ أَهْلِ الْحَقِّ؛ لِأَنَّ هَذِهِ نَارٌ أَوْقَدْنَاهَا، وَمَا أَطْلَقْنَاهُ هُمْ قَادِرُونَ عَلَى الْخَلَاصِ مِنْهَا - إنْ أَحَبُّوا - وَلَا يَحِلُّ - إحْرَاقُهُمْ، وَلَا تَغْرِيقُهُمْ دُونَ أَنْ يَتَخَلَّصُوا؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يَأْمُرْ بِذَلِكَ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَإِنَّمَا أَمَرَ بِالْمُقَاتَلَةِ فَقَطْ.

L39937 It is not permissible for them to spend the night unless we arrest them. As for those who do not fight, it is not permissible to kill them—and success comes only from Allah, the Exalted.

L39938 **A question regarding the security of the slave, the woman, and the free man.**

L39939 2166 - Issue: Abu Muhammad (may Allah have mercy on him) said: A group held that a guarantee of safety issued by a slave, woman, or free man is permissible for the rebels (ahl al-baghy).

L39940–39942 In our view, this holds no validity because the rebels' amnesty is in their hands; whenever they abandon fighting, combat against them becomes prohibited. Their blood is inviolable, for they are our brothers. As long as they remain aggressors and rebels, it is unlawful for any Muslim to grant them *aman* (safe conduct) on that account. In such cases, *aman* and *ijarah* (pledge of protection) are null and void. *Aman* and *ijarah* apply exclusively to the disbeliever whom the Imam may lawfully kill—if captured—or spare. These rulings do not pertain to a Muslim. If he abandons his rebellion, he then becomes one who may be granted *aman* and afforded protection.

L39943 If someone from the rebellious faction grants safe conduct to a disbeliever, his protection is valid like that of others, with no distinction—due to the statement of Allah's Messenger (peace and blessings be upon him): "The lowest-ranking among them may grant protection on behalf of the Muslims."

L39944 If rebels were to enter as combatants into the territory of war and coincided with the just party, fighting alongside them and acquiring spoils, the spoils are to be distributed equally among them, for they are all Muslims.

L39945 If a rebel kills a combatant from the enemy forces, he is entitled to the spoils, for he is among those addressed by that ruling.

L39946 If the disbelievers' combatants and the Muslim combatants are left confronting a group of rebels, then it is obligatory upon all Muslims and upon

وَلَا يَحِلُّ بِأَنْ يَبِيتُوا إِلَّا بِأَنْ نَقْبِضَ عَلَيْهِمْ، وَأَمَّا مَنْ لَمْ يُقَاتِلْ فَلَا يَحِلُّ قَتْلُهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ أَمَانَ الْعَبْدِ وَالْمَرْأَةِ وَالرَّجُلِ الْحُرِّ]

٢١٦٦ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ قَوْمٌ: إنَّ أَمَانَ الْعَبْدِ، وَالْمَرْأَةِ، وَالرَّجُلِ الْحُرِّ جَائِزٌ لِأَهْلِ الْبَغْيِ.

وَهَذَا عِنْدَنَا لَيْسَ بِشَيْءٍ؛ لِأَنَّ أَمَانَ أَهْلِ الْبَغْيِ بِأَيْدِيهِمْ، مَتَى تَرَكُوا الْقِتَالَ حَرُمَتْ دِمَاؤُهُمْ، وَكَانُوا إخْوَانَنَا، وَمَا دَامُوا مُقَاتِلِينَ بَاغِينَ فَلَا يَحِلُّ لِمُسْلِمٍ إعْطَاؤُهُمْ الْأَمَانَ عَلَى ذَلِكَ، فَالْأَمَانُ وَالْإِجَارَةُ هَاهُنَا هَدَرٌ وَلَغْوٌ، وَإِنَّمَا الْأَمَانُ وَالْإِجَارَةُ لِلْكَافِرِ الَّذِي يَحِلُّ لِلْإِمَامِ قَتْلُهُ - إذَا أَسَرُوهُ - وَاسْتِبْقَاؤُهُ، لَا فِي مُسْلِمٍ - إنْ تَرَكَ بَغْيَهُ - كَانَ هُوَ مِمَّنْ يُعْطَى الْأَمَانَ وَيُجَارُ.

وَلَوْ أَنَّ أَحَدًا مِنْ أَهْلِ الْبَغْيِ أَجَارَ كَافِرًا جَازَتْ إجَارَتُهُ، كَإِجَارَةِ غَيْرِهِ، وَلَا فَرْقَ؛ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يُجِيرُ عَلَى الْمُسْلِمِينَ أَدْنَاهُمْ» .

وَلَوْ أَنَّ أَهْلَ الْبَغْيِ دَخَلُوا غُزَاةً إلَى دَارِ الْحَرْبِ فَوَافَقُوا أَهْلَ الْعَدْلِ فَقَاتَلُوا مَعَهُمْ فَغَنِمُوا، فَالْغَنِيمَةُ بَيْنَهُمْ عَلَى السَّوَاءِ؛ لِأَنَّهُمْ كُلَّهُمْ مُسْلِمُونَ.

وَمَنْ قَتَلَ مِنْ أَهْلِ الْبَغْيِ قَتِيلًا مِنْ أَهْلِ الْحَرْبِ فَلَهُ سَلَبُهُ؛ لِأَنَّهُ مِنْ جُمْلَةِ الْمُخَاطَبِينَ بِذَلِكَ الْحُكْمِ.

the Imam to render aid to the rebels and rescue them from the disbelievers and from the people of war, for the rebels are Muslims.

وَلَوْ تُرِكَ أَهْلُ الْحَرْبِ مِنْ الْكُفَّارِ، وَأَهْلُ الْمُحَارَبَةِ مِنْ الْمُسْلِمِينَ عَلَى قَوْمٍ مِنْ أَهْلِ الْبَغْيِ، فَفَرْضٌ عَلَى جَمِيعِ أَهْلِ الْإِسْلَامِ، وَعَلَى الْإِمَامِ عَوْنُ أَهْلِ الْبَغْيِ وَإِنْقَاذُهُمْ مِنْ أَهْلِ الْكُفْرِ، وَمِنْ أَهْلِ الْحَرْبِ؛ لِأَنَّ أَهْلَ الْبَغْيِ مُسْلِمُونَ.

L39947 Allah the Exalted has said: {The believers are but brothers} [Al-Hujurat: 10]. He also said: {Humble toward the believers, mighty against the disbelievers} [Al-Ma'idah: 54]. Furthermore, He said: {Severe against the disbelievers, compassionate among themselves} [Al-Fath: 29]. As for the Muslims who engage in warfare, they seek to wrong the transgressors by seizing their wealth, and preventing injustice is obligatory—Allah the Exalted said: {Cooperate in righteousness and piety, and do not cooperate in sin and transgression} [Al-Ma'idah: 2]. Thus, whoever refrains from confronting the aggressor and neglects to aid the oppressed party has indeed assisted him in his sin and transgression, and this is forbidden.[46]

وَقَدْ قَالَ اللَّهُ تَعَالَى {إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ} [الحجرات: ١٠] وَقَالَ تَعَالَى {أَذِلَّةٍ عَلَى الْمُؤْمِنِينَ أَعِزَّةٍ عَلَى الْكَافِرِينَ} [المائدة: ٥٤] وَقَالَ تَعَالَى {أَشِدَّاءُ عَلَى الْكُفَّارِ رُحَمَاءُ بَيْنَهُمْ} [الفتح: ٢٩] وَأَمَّا أَهْلُ الْمُحَارَبَةِ مِنْ الْمُسْلِمِينَ فَإِنَّهُمْ يُرِيدُونَ ظُلْمَ أَهْلِ الْبَغْيِ فِي أَخْذِ أَمْوَالِهِمْ، وَالْمَنْعُ مِنْ الظُّلْمِ وَاجِبٌ - قَالَ اللَّهُ تَعَالَى {وتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] فَمَنْ تَرَكَ الْمُحَارِبَ، لَمْ يُعِنْ الْمَطْلُوبَ فَقَدْ أَعَانَ الْمُحَارِبَ عَلَى إثْمِهِ وَعُدْوَانِهِ، وَهَذَا حَرَامٌ.

L39948–39950 If the just rulers and the transgressors were to mutually cease hostilities and exchange pledges, such an agreement is impermissible unless the just rulers are incapable of combat, in accordance with Allah's decree: *"Then fight those who rebel until they return to Allah's command"* (Quran 49:9). As long as we retain the capacity to confront them, no alternative course is permissible for us at all, and we are not... We are capable of abandoning it for an hour or longer. If we are unable to do so, then Allah, the Exalted, has said: "Allah does not burden a soul beyond its capacity" [Al-Baqarah: 286].[47]

وَلَوْ أَنَّ أَهْلَ الْعَدْلِ وَأَهْلَ الْبَغْيِ تَوَادَعُوا وَتَعَاطَوْا الرِّهَانَ فَهَذَا لَا يَجُوزُ، إلَّا مَعَ ضَعْفِ أَهْلِ الْعَدْلِ عَلَى الْمُقَاتَلَةِ؛ لِقَوْلِ اللَّهِ تَعَالَى {فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ} [الحجرات: ٩] فَمَا دُمْنَا قَادِرِينَ عَلَى الْمُقَاتَلَةِ لَهُمْ لَمْ يَحِلَّ لَنَا غَيْرُهَا أَصْلًا، وَلَسْنَا فِي سِعَةٍ مِنْ تَرْكِهَا سَاعَةً فَمَا فَوْقَهَا، فَإِنْ ضَعُفْنَا عَنْ ذَلِكَ، فَقَدْ قَالَ اللَّهُ تَعَالَى {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

L39951 The Messenger of Allah (peace be upon him) said, "If I command you to do something, do as much of it as you are able." Therefore, if they kill the captives held by the people of justice, it is not permissible for us to retaliate by killing their captives, because they are Muslims who are not combatants and have not killed anyone from our side. Rather, others killed the captives,

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» فَإِنْ قَتَلُوا رَهْنَ أَهْلِ الْعَدْلِ لَمْ يَحِلَّ لَنَا قَتْلُ رَهْنِهِمْ؛ لِأَنَّهُمْ مُسْلِمُونَ غَيْرُ مُقَاتِلِينَ، وَلَمْ يَقْتُلُوا لَنَا أَحَدًا وَإِنَّمَا قَتَلَ الرَّهْنَ غَيْرُهُمْ، وَقَدْ قَالَ اللَّهُ تَعَالَى {وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

[46] **Qur'an references (L39947):** Qur'an 49:10 (Al-Hujurat); Qur'an 5:54 (Al-Ma'idah); Qur'an 48:29 (Al-Fath); Qur'an 5:2 (Al-Ma'idah).

[47] **Qur'an references (L39948):** Qur'an 49:9 (Al-Hujurat); Qur'an 2:286 (Al-Baqarah).

and Allah, the Most High, has said, "No soul burdened with sin will bear the burden of another" [Al-An'ām 6:164].[48]

[48] **Qur'an references (L39951):** Qur'an 6:164 (Al-An'am); Qur'an 17:15 (Al-Isra); Qur'an 35:18 (Fatir); Qur'an 39:7 (Az-Zumar).



AL-MUHALLA

كِتَابُ الْحُدُودِ

The Book of Prescribed Penalties (Hudud)

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْحُدُودِ] [مَسْأَلَةٌ الْحُدُودُ فِي غَيْرِ النَّفْسِ وَالْأَعْضَاءِ سَبْعَةُ أَشْيَاءٍ]

٢١٦٧ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَمْ يَصِفْ اللَّهُ تَعَالَى حَدًّا مِنْ الْعُقُوبَةِ مَحْدُودًا لَا يَتَجَاوَزُ فِي النَّفْسِ، أَوْ الْأَعْضَاءِ، أَوْ الْبَشَرَةِ، إلَّا فِي سَبْعَةِ أَشْيَاءَ: وَهِيَ: الْمُحَارَبَةُ، وَالرِّدَّةُ، وَالزِّنَى، وَالْقَذْفُ بِالزِّنَى، وَالسَّرِقَةُ، وَجَحْدُ الْعَارِيَّةِ، وَتَنَاوُلُ الْخَمْرِ فِي شُرْبٍ أَوْ أَكْلٍ فَقَطْ - وَمَا عَدَا ذَلِكَ فَلَا حَدَّ لِلَّهِ تَعَالَى مَحْدُودًا فِيهِ - وَلَا حَوْلَ وَلَا قُوَّةَ إلَّا بِاَللَّهِ.

وَنَحْنُ - إنْ شَاءَ اللَّهُ - ذَاكِرُونَ مَا فِيهِ الْحُدُودُ مِمَّا ذَكَرْنَا بَابًا بَابًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - ثُمَّ نَذْكُرُ - إنْ شَاءَ اللَّهُ تَعَالَى - أَشْيَاءَ لَا حَدَّ فِيهَا، وَادَّعَى قَوْمٌ: أَنَّ فِيهَا حُدُودًا - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

ثُمَّ نَذْكُرُ - إنْ شَاءَ اللَّهُ تَعَالَى - قَبْلَ ذَلِكَ أَبْوَابًا تَدْخُلُ فِي جَمِيعِ الْحُدُودِ، أَوْ فِي أَكْثَرِهَا، فَإِنَّ جَمْعَهَا فِي كِتَابٍ وَاحِدٍ أَوْلَى مِنْ تَكْرَارِهَا فِي كُلِّ كِتَابٍ مِنْ كُتُبِ الْحُدُودِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَهُوَ أَيْضًا - حَصْرُهَا لِمَنْ يَطْلُبُهَا، وَأَبْيَنُ لِاجْتِمَاعِهَا فِي مَكَانٍ وَاحِدٍ، إذْ لَيْسَ كِتَابٌ مِنْ كُتُبِ الْحُدُودِ أَوْلَى بِهَذِهِ الْأَبْوَابِ مِنْ سَائِرِ كُتُبِ الْحُدُودِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَهِيَ: الْحَدِيثُ الْوَارِدُ «لَا يَزْنِي الزَّانِي حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ» مَعَ سَائِرِ مَا ذُكِرَ فِيهِ مِنْ الْخَمْرِ، وَالسَّرِقَةِ، وَالنُّهْبَةِ.

وَهَلْ تُقَامُ الْحُدُودُ فِي الْمَسَاجِدِ أَمْ لَا؟ .

The Book of Ḥudūd Issue: The Ḥudūd other than those pertaining to life and limbs are seven in number.

Issue 2167: Abu Muhammad (may Allah have mercy on him) said: Allah the Exalted has not prescribed a defined punishment that must not be transgressed for offenses involving life, limbs, or skin except in seven matters: ḥirābah (waging war), apostasy, zinā (illicit intercourse), qadhf (false accusation of zinā), theft, denial of a loaned item, and consuming intoxicants solely by drinking or eating. Beyond these, there is no defined punishment prescribed by Allah the Exalted in such matters. There is no might nor power except with Allah.

And we—if Allah wills—will mention what pertains to the Hudud (prescribed punishments) from what we have mentioned, chapter by chapter—and success is from Allah, the Exalted—then we shall discuss—if Allah, the Exalted, wills—matters in which there is no prescribed punishment, though some people claim there are prescribed punishments in them—and in Allah, the Exalted, do we seek support.

Then we will mention—if Allah, the Exalted, wills—before that chapters that apply to all prescribed punishments or most of them, for compiling them in one book is preferable to repeating them in every book on prescribed punishments—and success comes only from Allah, the Exalted.

And it [the book] is also—due to its restriction of these chapters to those who seek them and its clarity in compiling them in one place—since no book on ḥudūd is more deserving of these chapters than all other books on ḥudūd. And with Allah, the Exalted, is success.

It is the reported ḥadīth, “An adulterer does not commit adultery while he is a believer,” along with the other sins mentioned therein concerning khamr (intoxicants), theft, and plunder.

Are the prescribed punishments (hudud) enforced in mosques or not?

Are the prescribed punishments expiation or not?

وَهَلْ الْحُدُودُ كَفَّارَةٌ أَمْ لَا؟ .

L39962–39964 وَاجْتِمَاعُ الْحُدُودِ مَعَ الْقَتْلِ، وَالتَّوْكِيلِ فِي إقَامَةِ الْحُدُودِ؟ وَهَلْ تُقَامُ الْحُدُودُ بِعِلْمِ الْحَاكِمِ أَمْ لَا؟ وَالسِّجْنُ فِي التُّهَمَةِ، وَالِامْتِحَانُ بِالضَّرْبِ، وَالِاعْتِرَافُ بِالْإِكْرَاهِ، وَمَا الْإِكْرَاهُ وَالِاسْتِتَابَةُ فِي الْحُدُودِ؟ وَمَتَى يُقَامُ الْحَدُّ عَلَى الْجَارِيَةِ وَالْغُلَامِ؟ وَاعْتِرَافُ الْعَبْدِ بِالْحَدِّ، وَالشَّهَادَةُ فِي الْحُدُودِ، وَالتَّأْجِيلُ فِي الْحَدِّ وَالتَّعَافِي فِي الْحُدُودِ قَبْلَ بُلُوغِهَا إلَى السُّلْطَانِ وَالتَّرْغِيبُ فِي إمَامَةِ مَنْ قَالَ: لَا يُؤَاخِذُ اللَّهُ عَبْدًا بِأَوَّلِ ذَنْبٍ - ادْرَءُوا الْحُدُودَ بِالشُّبُهَاتِ - الرُّجُوعُ عَنْ الِاعْتِرَافِ بِالْحَدِّ؟ الِاعْتِرَاضُ عَلَى الْحَاكِمِ فِي حُكْمِهِ بِالْحَدِّ، هَلْ يُكْشَفُ وَيُسْأَلُ مَنْ ذُكِرَ عَنْهُ حَدٌّ أَمْ لَا؟ هَلْ تُقَامُ الْحُدُودُ عَلَى الْكُفَّارِ أَمْ لَا؟ كَيْفَ حَدُّ الْعَبْدِ مِنْ حَدِّ الْحُرِّ؟ كَيْفَ حَدُّ الْمُكَاتَبِ؟ ٢١٦٨ - مَسْأَلَةٌ: لَا يَزْنِي الزَّانِي حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا تَرْجِعُوا بَعْدِي كُفَّارًا؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ أَنَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا حَرْمَلَةُ بْنُ يَحْيَى بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ التُّجِيبِيُّ حَدَّثَنِي ابْنُ وَهْبٍ حَدَّثَنِي يُونُسُ بْنُ يَزِيدَ عَنْ ابْنِ شِهَابٍ قَالَ: سَمِعْت أَبَا سَلَمَةَ بْنَ عَبْدِ الرَّحْمَنِ، وَسَعِيدُ بْنُ الْمُسَيِّبِ يَقُولَانِ قَالَ أَبُو هُرَيْرَةَ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا يَزْنِي الزَّانِي حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ السَّارِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ الْخَمْرَ حِينَ يَشْرَبُهَا وَهُوَ مُؤْمِنٌ» .

L39965 وَبِهِ - إلَى مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى، وَمُحَمَّدُ بْنُ رَافِعٍ، قَالَ ابْنُ رَافِعٍ: نا عَبْدُ الرَّزَّاقِ نا سُفْيَانُ بْنُ عُيَيْنَةَ، وَقَالَ ابْنُ الْمُثَنَّى: أَنَا ابْنُ أَبِي عَدِيٍّ عَنْ شُعْبَةَ، ثُمَّ اتَّفَقَ شُعْبَةُ، وَسُفْيَانُ كِلَاهُمَا عَنْ سُلَيْمَانَ - هُوَ الْأَعْمَشُ - عَنْ ذَكْوَانَ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ: أَنَّ النَّبِيَّ -

The combination of hudud punishments with capital punishment; delegation in implementing hudud; whether hudud punishments require the ruler's knowledge; imprisonment based on accusation; interrogation through beating; confessions under coercion; definitions of compulsion and exhortation to repent in hudud cases; circumstances for applying punishments to enslaved women and prepubescent males; a slave's confession regarding hudud offenses; testimony in hudud cases; postponement of punishments and mutual pardon in hudud matters before reaching authorities; encouraging adherence to the leadership of those who say: "Allah does not hold a servant accountable for a first sin"—"Avert hudud punishments in cases of ambiguity"; retracting hudud confessions; objecting to a judge's hudud ruling—whether to investigate and question the accused; applicability of hudud to non-Muslims; differences between slave and free persons' punishments; sentencing guidelines for mukatab slaves.

Issue 2168: The statements: "A fornicator does not fornicate while he is a believer" and "Do not revert to disbelief after me"—Abu Muhammad (Allah have mercy on him) narrated: Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Harmalah ibn Yahya ibn Ubaydillah ibn Umar al-Tujibi narrated to me, Ibn Wahb narrated to me, Yunus ibn Yazid narrated to me. From Ibn Shihāb, he said: I heard Abū Salamah ibn ʿAbd al-Raḥmān and Saʿīd ibn al-Musayyib both say that Abū Hurayrah reported: The Messenger of Allāh (peace be upon him) said, "The fornicator is not a believer at the time of committing fornication, the thief is not a believer at the time of stealing, and the drinker of intoxicants is not a believer at the time of drinking them."[1]

And with him—[narrated] in Muslim's Ṣaḥīḥ—Muhammad ibn al-Muthannā and Muhammad ibn Rāfiʿ reported. Ibn Rāfiʿ said: ʿAbd al-Razzāq narrated to us: Sufyān ibn ʿUyaynah narrated to us. Ibn al-Muthannā said: I narrate

[1] **Hadith references (L39962):** Sunan an-Nasai 4870; Sunan an-Nasai 5660; Sahih Muslim 57a.

via Ibn Abī ʿAdī, from Shuʿbah. Then Shuʿbah and Sufyān concurred—both transmitting from Sulaymān (al-Aʿmash)—from Dhakwān Abī Ṣāliḥ, from Abū Hurayrah: that the Prophet (peace be upon him) said, "The adulterer does not commit adultery at the moment he commits it while being a believer, the thief does not steal at the moment he steals while being a believer, and the drinker does not drink intoxicants at the moment he drinks them while being a believer—yet repentance remains available afterward." This is the wording of Shuʿbah.[2]

عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ «لَا يَزْنِي الزَّانِي حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ السَّارِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ الْخَمْرَ حِينَ يَشْرَبُهَا وَهُوَ مُؤْمِنٌ، وَالتَّوْبَةُ مَعْرُوضَةٌ بَعْدُ» هَذَا لَفْظُ شُعْبَةَ.

L39966 Sufyan said in his narration, attributing it to the Prophet: Ahmad ibn Muhammad ibn Abdullah al-Talmanaki narrated to us; Muhammad ibn Ahmad ibn Mufarrij narrated to us; Muhammad ibn Ayyub al-Raqqi narrated to us; Ahmad ibn Amr ibn Abd al-Khaliq al-Bazzar narrated to us; Muhammad ibn Umar ibn Hayyaj narrated to us; Abdullah ibn Musa al-Qaysi narrated to us; Mubarak ibn Hassan narrated from Ata', who narrated to us Abu Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said: "A killer is not a believer at the moment of killing, nor is a drinker a believer at the moment of drinking wine, nor is an adulterer a believer at the moment of committing adultery, nor is a thief a believer at the moment of stealing, nor is one who surreptitiously steals a believer at the moment of theft. Faith is stripped from him as a garment is stripped from his body. If he returns to faith, it returns to him; and when he returns, faith returns to him."

وَقَالَ سُفْيَانُ فِي حَدِيثِهِ، رَفَعَهُ: نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الطَّلْمَنْكِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ مُفَرِّجٍ ثنا مُحَمَّدُ بْنُ أَيُّوبَ الرَّقِّيُّ ثنا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ ثنا مُحَمَّدُ بْنُ عُمَرَ بْنِ هَيَّاجٍ نا عَبْدُ اللَّهِ بْنُ مُوسَى الْقَيْسِيُّ نا مُبَارَكُ بْنُ حَسَّانَ عَنْ عَطَاءٍ نا أَبُو هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَقْتُلُ الْقَاتِلُ حِينَ يَقْتُلُ وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ الْخَمْرَ حِينَ يَشْرَبُهَا وَهُوَ مُؤْمِنٌ، وَلَا يَزْنِي الزَّانِي حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ السَّارِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ، وَلَا يَخْتَلِسُ خِلْسَةً وَهُوَ مُؤْمِنٌ، يُخْلَعُ مِنْهُ الْإِيمَانُ كَمَا يُخْلَعُ مِنْهُ سِرْبَالُهُ، فَإِذَا رَجَعَ إِلَى الْإِيمَانِ رَجَعَ إِلَيْهِ، وَإِذَا رَجَعَ رَجَعَ إِلَيْهِ الْإِيمَانُ» .

L39967–39969 Abdullah ibn Rabīʿ reported to us: Muḥammad ibn Muʿāwiyah reported to us: Aḥmad ibn Shuʿayb reported to us: ʿĪsā ibn Ḥammād ibn Zughbah reported to us: al-Layth—that is, Ibn Saʿd—from ʿUqayl ibn Khālid from al-Zuhrī from Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām from Abū Hurayrah that the Messenger of Allah—peace and blessings be upon him—said: "An adulterer does not commit adultery while he is a believer at the time of the act, nor does a drinker consume wine while he is a believer at the time of drinking it, nor [...]." A thief steals at the moment of stealing while he is a believer, nor does he plunder in such a way that people raise their eyes toward him during the plundering while he is a believer.

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا عِيسَى بْنُ حَمَّادِ بْنِ زُغْبَةَ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنِ الزُّهْرِيِّ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا يَزْنِي الزَّانِي حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ الْخَمْرَ شَارِبُهَا حِينَ يَشْرَبُهَا وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ السَّارِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ وَلَا يَنْتَهِبُ نُهْبَةً فَيَرْفَعُ النَّاسُ فِيهَا إِلَيْهِ أَبْصَارَهُمْ حِينَ يَنْتَهِبُهَا وَهُوَ مُؤْمِنٌ» .

[2] **Hadith references (L39965):** Sahih Muslim 57a.

L39970 From the chain of Aḥmad ibn Shuʿayb: I was informed by Isḥāq ibn Manṣūr and Muḥammad ibn Yaḥyā ibn ʿAbd Allāh al-Naysābūrī—and the wording is his—from Muḥammad ibn Kathīr from al-Awzāʿī from al-Zuhrī from Ḥumayd ibn ʿAbd al-Raḥmān [and Abū Salama ibn ʿAbd al-Raḥmān] and Saʿīd ibn al-Musayyab from Abū Hurayra, who said: The Messenger of Allah—peace and blessings be upon him—said, "A fornicator is not a believer at the moment he fornicates, a thief is not a believer at the moment he steals, a drinker is not a believer at the moment he drinks wine, and a plunderer is not a believer at the moment he seizes loot where people raise their eyes."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ مَنْصُورٍ، وَمُحَمَّدُ بْنُ يَحْيَى بْنِ عَبْدِ اللَّهِ النَّيْسَابُورِيُّ - وَاللَّفْظُ لَهُ - عَنْ مُحَمَّدِ بْنِ كَثِيرٍ عَنِ الْأَوْزَاعِيِّ عَنِ الزُّهْرِيِّ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ [وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ] وَسَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَزْنِي الزَّانِي وَهُوَ حِينَ يَزْنِي مُؤْمِنٌ، وَلَا يَسْرِقُ السَّارِقُ وَهُوَ حِينَ يَسْرِقُ مُؤْمِنٌ، وَلَا يَشْرَبُ الْخَمْرَ وَهُوَ حِينَ يَشْرَبُهَا مُؤْمِنٌ، وَلَا يَنْتَهِبُ نُهْبَةً يَرْفَعُ النَّاسُ فِيهَا أَبْصَارَهُمْ وَهُوَ حِينَ يَنْتَهِبُهَا مُؤْمِنٌ» .

L39971 From the narration of Ahmad ibn Shu'ayb: I am 'Abd al-Rahman ibn Muhammad ibn Salam; Ishaq al-Azraq informed us from al-Fadl ibn Ghazwan, from 'Ikrimah, from Ibn 'Abbas, who said: The Messenger of Allah—peace and blessings be upon him—said, "A servant does not commit adultery while being a believer at the time of doing so, nor drink wine while being a believer at the time of drinking it, nor steal while being a believer at the time of stealing." I said to Ibn 'Abbas: "How is faith stripped away from him?" He interlaced his fingers, then separated them, and said: "Like this. When he repents, faith returns to him like this"—and he interlaced his fingers again.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ سَلَامٍ نا إِسْحَاقُ الْأَزْرَقُ عَنِ الْفَضْلِ بْنِ غَزْوَانَ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَزْنِي الْعَبْدُ حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ الْخَمْرَ حِينَ يَشْرَبُهَا وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ. فَقُلْتُ لِابْنِ عَبَّاسٍ: كَيْفَ يُنْتَزَعُ الْإِيمَانُ مِنْهُ؟ فَشَبَّكَ أَصَابِعَهُ، ثُمَّ أَخْرَجَهَا، فَقَالَ: هَكَذَا، فَإِذَا تَابَ عَادَ إِلَيْهِ هَكَذَا، وَشَبَّكَ أَصَابِعَهُ» .

L39972 From the path of 'Abd al-Razzāq, from Ma'mar, from Hammām ibn Munabbih that he heard Abū Hurayrah say: "No thief steals while committing theft as a believer, nor does an adulterer commit adultery while performing the act as a believer, nor does any of you incur the punishment [for drinking wine] by drinking it while being a believer. By the One in whose hand is Muḥammad's soul, none of you plunders a coveted spoil on which believers have set their eyes while seizing it as a believer, nor does any of you misappropriate while doing so as a believer." Then Abū Hurayrah said: "Beware, beware!"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ «لَا يَسْرِقُ سَارِقٌ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ وَلَا يَزْنِي زَانٍ حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ الْحُدُودَ - يَعْنِي الْخَمْرَ - أَحَدُكُمْ حِينَ يَشْرَبُهَا وَهُوَ مُؤْمِنٌ وَالَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ لَا يَنْتَهِبُ أَحَدُكُمْ نُهْبَةً ذَاتَ شَرَفٍ يَرْفَعُ إِلَيْهِ الْمُؤْمِنُونَ أَعْيُنَهُمْ فِيهَا وَهُوَ حِينَ يَنْتَهِبُهَا مُؤْمِنٌ، وَلَا يَغُلُّ أَحَدُكُمْ حِينَ يَغُلُّ وَهُوَ مُؤْمِنٌ ثُمَّ قَالَ أَبُو هُرَيْرَةَ إِيَّاكُمْ إِيَّاكُمْ» .

L39973 From Abu Bakr ibn Abi Shaybah, who narrated from Yazid ibn Harun, from Muhammad ibn Ishaq, from Yahya ibn 'Abbad ibn 'Abdullah ibn al-Zubayr, from his father, who said: "We were with 'Aisha when a noisy crowd passed

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ يَحْيَى بْنِ عَبَّادِ بْنِ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ قَالَ: «كُنَّا عِنْدَ عَائِشَةَ فَمَرَّ جَلَبَةٌ عَلَى بَابِهَا فَسَمِعَتْ

by her door. She heard the noise and said: 'What is this?' They replied: 'A man was flogged for drinking wine.' She said: 'Glory be to Allah! I heard the Messenger of Allah—peace and blessings be upon him—say: "The adulterer does not commit adultery while he is a believer at the time of committing it, the thief does not steal while he is a believer at the time of stealing, and the drinker (meaning wine) does not drink while he is a believer at the time of drinking it. Beware, beware of such acts¡'"'[3]

L39974–39975 Abū Muḥammad—may Allāh have mercy on him—said: This is a sound and firmly established narration, devoid of any hidden defect. It was transmitted from the Prophet—peace be upon him—by ʻĀ'ishah, Mother of the Believers, Ibn ʻAbbās, and Abū Hurayrah through the complete chains of transmission we have mentioned.

L39976 It was narrated from Abu Huraira by Sa'id ibn al-Musayyab, Abu Bakr ibn Abd al-Rahman ibn al-Harith ibn Hisham, Abu Salama, Humayd the two sons of Abd al-Rahman ibn Awf, Ata' ibn Yasar the brother of Sulayman ibn Yasar, Ata' ibn Abi Rabah, and Hammam ibn Munabbih.

L39977 Ikrimah narrated it from Ibn Abbas, and ʿAbbād ibn ʿAbdullāh narrated it from Umm al-Mu'minīn (the Mother of the Believers).

L39978 And it was narrated from the people, constituting a *mutawātir* transmission that necessitates the soundness of knowledge. Mentioned within it are: killing, adultery, wine, theft, plunder, and misappropriation of war spoils.

L39979 People have differed in interpreting the nature of this faith that departs from him when he commits these sins. It has been narrated through the chain of ʿAṭāʾ from Abū Hurayrah in a musnad report, as we mentioned earlier, that faith is stripped from him like his tunic is stripped away. When he returns, faith returns to him.

L39980 And it has been narrated to us from Ibn Abbas, as we have cited, that he interpreted the removal of faith from a person by interlocking his fingers

الصَّوْتَ، فَقَالَتْ: مَا هَذَا؟ فَقَالُوا: رَجُلٌ ضُرِبَ فِي الْخَمْرِ، فَقَالَتْ: سُبْحَانَ اللَّهِ سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: لَا يَزْنِي الزَّانِي حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ - يَعْنِي الْخَمْرَ - حِينَ يَشْرَبُ وَهُوَ مُؤْمِنٌ، فَإِيَّاكُمْ وَإِيَّاكُمْ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا أَثَرٌ صَحِيحٌ ثَابِتٌ، لَا مَغْمَزَ فِيهِ، رَوَاهُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَائِشَةُ أُمُّ الْمُؤْمِنِينَ، وَابْنِ عَبَّاسٍ، وَأَبُو هُرَيْرَةَ، بِالْأَسَانِيدِ التَّامَّةِ الَّتِي ذَكَرْنَا.

وَرَوَاهُ عَنْ أَبِي هُرَيْرَةَ سَعِيدُ بْنُ الْمُسَيِّبِ، وَأَبُو بَكْرِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ، وَأَبُو سَلَمَةَ، وَحُمَيْدٌ: ابْنَا عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَعَطَاءُ بْنُ يَسَارٍ أَخُو سُلَيْمَانَ بْنِ يَسَارٍ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ، وَهَمَّامُ بْنُ مُنَبِّهٍ.

وَرَوَاهُ عَنْ ابْنِ عَبَّاسٍ عِكْرِمَةُ، وَعَنْ أُمِّ الْمُؤْمِنِينَ عَبَّادُ بْنُ عَبْدِ اللَّهِ.

وَرَوَاهُ عَنْ هَؤُلَاءِ: النَّاسُ، فَهُوَ نَقْلٌ تَوَاتَرَ يُوجِبُ صِحَّةَ الْعِلْمِ، وَذُكِرَ فِيهِ كَمَا أَوْرَدْنَا: الْقَتْلُ، وَالزِّنَى، وَالْخَمْرُ، وَالسَّرِقَةُ، وَالنُّهْبَةُ، وَالْغُلُولُ.

فَاخْتَلَفَ النَّاسُ فِي تَأْوِيلِهِ، وَمَا هُوَ هَذَا الْإِيمَانُ الَّذِي يُزَايِلُهُ حِينَ مُوَاقَعَتِهِ هَذِهِ الذُّنُوبَ: فَرُوِّينَا مِنْ طَرِيقِ عَطَاءٍ عَنْ أَبِي هُرَيْرَةَ مُسْنَدًا كَمَا أَوْرَدْنَا آنِفًا أَنَّهُ يُخْلَعُ مِنْهُ الْإِيمَانُ كَمَا يُخْلَعُ سِرْبَالُهُ فَإِذَا رَجَعَ رَجَعَ إلَيْهِ الْإِيمَانُ.

وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ كَمَا أَوْرَدْنَا أَنَّهُ فَسَّرَ انْتِزَاعَ الْإِيمَانِ مِنْهُ: بِأَنْ شَبَّكَ أَصَابِعَ يَدَيْهِ بَعْضَهَا فِي بَعْضٍ، ثُمَّ زَايَلَهَا قَالَ: وَهَكَذَا، ثُمَّ رَدَّهَا وَقَالَ: فَإِذَا تَابَ عَادَ إلَيْهِ.

[3] **Hadith references (L39973):** Sahih al-Bukhari 6782.

- some into others - then separating them. He said: “In this manner,” then restored them to their original position and said: “When he repents, it returns to him.”

L39981 We have also narrated this from Ibn Abbas through the chain of Abd al-Razzaq from Sufyan al-Thawri from Ibrahim ibn Muhajir from Mujahid from Ibn Abbas that he would present the means of marriage to his slave and say: “Whoever among you desires marriage, I will arrange it for him, for no one commits fornication except that Allah removes the knot of faith from him. If He wills, He will restore it to him afterward, and if He wills, He will withhold it.”

وَرُوِّينَاهُ أَيْضًا فِي ذَلِكَ عَنْ ابْنِ عَبَّاسٍ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إِبْرَاهِيمَ بْنِ مُهَاجِرٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ يَعْرِضُ عَلَى مَمْلُوكِهِ الْبَاءَةَ، وَيَقُولُ: مَنْ أَرَادَ مِنْكُمْ الْبَاءَةَ زَوَّجْته؟ فَإِنَّهُ لَا يَزْنِي زَانٍ إِلَّا نَزَعَ اللَّهُ مِنْهُ رِبْقَةَ الْإِيمَانِ، فَإِنْ شَاءَ أَنْ يَرُدَّهُ إِلَيْهِ رَدَّهُ بَعْدُ، وَإِنْ شَاءَ أَنْ يَمْنَعَهُ مَنَعَهُ.

L39982 It has been narrated to us through the chain of ʻAbd al-Razzāq who informed us via Ibn Jurayj, who said: I heard ʻAṭā’ say: I heard Abū Hurayrah say: The one who commits adultery does not do so while believing during the act, nor does the one who steal do so while believing during the act, nor does the one who drinks wine do so while believing during the act. He said: I know nothing except that he added: When he abandons his sin, faith returns to him. He said: So I pressed him further. He replied: I know nothing except that he stated: Thus faith is withdrawn from him as long as he persists in his sin, but when he abandons it, faith returns to him.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ قَالَ: سَمِعْت عَطَاءً يَقُولُ: سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: لَا يَزْنِي الزَّانِي وَهُوَ مُؤْمِنٌ حِينَ يَزْنِي، وَلَا يَسْرِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ الْخَمْرَ وَهُوَ مُؤْمِنٌ حِينَ يَشْرَبُ - قَالَ: لَا أَعْلَمُهُ إلَّا قَالَ: وَإِذَا اعْتَزَلَ خَطِيئَتَهُ رَجَعَ إلَيْهِ الْإِيمَانُ - قَالَ: فَرَاجَعْته؟ فَقَالَ: لَا أَعْلَمُهُ إلَّا قَالَ: فَيُنْتَزَعُ مِنْهُ الْإِيمَانُ مَا دَامَ عَلَى خَطِيئَتِهِ، فَإِذَا فَارَقَهَا رَجَعَ إلَيْهِ الْإِيمَانُ.

L39983–39985 Ibn Jurayj said: And Uthman ibn Abi Sulayman informed me that he heard Nāfiʻ ibn Jubayr ibn Muṭʻim. He says: One does not commit adultery while having faith at the moment of committing it. When he ceases to act upon it, his faith is restored – not when he repents from it, but when he stops the deed. He said: I considered that he related this from Ibn Abbas.

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عُثْمَانُ بْنُ أَبِي سُلَيْمَانَ أَنَّهُ سَمِعَ نَافِعَ بْنَ جُبَيْرِ بْنِ مُطْعِمٍ يَقُولُ: لَا يَزْنِي وَهُوَ مُؤْمِنٌ حِينَ يَزْنِي، فَإِذَا زَايَلَهُ رَجَعَ إلَيْهِ الْإِيمَانُ لَيْسَ إذَا تَابَ مِنْهُ، وَلَكِنْ إذَا أَخَّرَ عَنْ الْعَمَلِ بِهِ - قَالَ: وَحَسِبْته أَنَّهُ ذَكَرَ ذَلِكَ عَنْ ابْنِ عَبَّاسٍ.

L39986 From ʻAbd al-Razzāq from Maʻmar: Abdullah ibn Ṭāwus narrated to me from his father. He then mentioned this hadith and said, “If he does that, faith departs from him. It is said: Faith is like a shadow.”

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ طَاوُسٍ عَنْ أَبِيهِ، فَذَكَرَ هَذَا الْحَدِيثَ، وَقَالَ: فَإِذَا فَعَلَ ذَلِكَ زَالَ عَنْهُ الْإِيمَانُ، يُقَالُ: الْإِيمَانُ كَالظِّلِّ.

L39987 Ma’mar also mentioned this hadith from al-Zuhri; Qatadah; a man via ‘Ikrimah via Abu Hurayrah; and Abu Harun al-‘Abdi via Abu Sa‘id al-Khudri, from the Prophet, peace and blessings be upon him, who said: “This is a prohibition: While he is a believer, he must certainly not do—that is, let him not steal, commit adultery, or misappropriate war booty.”

وَذَكَرَ أَيْضًا مَعْمَرٌ هَذَا الْحَدِيثَ عَنْ الزُّهْرِيِّ، وَقَتَادَةَ، وَعَنْ رَجُلٍ عَنْ عِكْرِمَةَ عَنْ أَبِي هُرَيْرَةَ، وَعَنْ أَبِي هَارُونَ الْعَبْدِيِّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ

وَسَلَّمَ - قَالَ: هَذَا نَهْيٌ، يَقُولُ: حِينَ هُوَ مُؤْمِنٌ فَلَا يَفْعَلَنَّ - يَعْنِي: لَا يَسْرِقُ، وَلَا يَزْنِي، وَلَا يَغُلُّ» .

L39988 Abu Muhammad—may Allah have mercy on him—said: All these exegeses contain nothing except that faith departs from the doer at the time of the act, then returns to him in some of them if he repents and desists.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذِهِ التَّفَاسِيرُ كُلُّهَا لَيْسَ فِيهَا إِلَّا مُزَايَلَةُ الْإِيمَانِ لِلْفَاعِلِ حِينَ الْفِعْلِ، ثُمَّ رُجُوعُهُ فِي بَعْضِهَا إِلَيْهِ إِذَا تَابَ، وَإِذَا تَرَكَ.

L39989 None of these commentaries clarify what constitutes the fleeting faith that ceases to exist while committing these sins. We know that everything the Messenger of Allah - peace and blessings of Allah be upon him - stated is the clear truth, with no truth existing except it. Indeed, whoever commits an act while not being a believer at the moment of committing it has undoubtedly had faith depart from him, as stated by the Messenger of Allah - peace and blessings of Allah be upon him.

وَلَيْسَ فِي شَيْءٍ مِنْ هَذِهِ التَّفَاسِيرِ بَيَانُ مَا هُوَ الْإِيمَانُ الزَّائِلُ حِينَ هَذِهِ الْمَعَاصِي؟ وَقَدْ عَلِمْنَا أَنَّ كُلَّ مَا قَالَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ الْحَقُّ الْوَاضِحُ، الَّذِي لَا حَقِيقَةَ فِي غَيْرِهِ، وَأَنَّ مَنْ فَعَلَ شَيْئًا لَمْ يَكُنْ حِينَ فِعْلِهِ إِيَّاهُ مُؤْمِنًا، فَإِنَّ الْإِيمَانَ قَدْ فَارَقَهُ بِلَا شَكٍّ، كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L39990 However, it is incumbent upon us to know: what is this faith that is removed from him at the time of that action? This is so we may determine the legal ruling pertaining to such an actor—with the help of Allah, the Exalted, and by His grace. Thus, we examined this matter and found that people have diverged into four opinions regarding the interpretation of the term "faith." The orthodox school stated: Faith is a name that applies to three meanings: (1) affirmation by the heart, (2) utterance with the tongue, and (3) performing all acts of obedience—its obligatory and supererogatory acts—and abstaining from all prohibitions.

لَكِنْ يَجِبُ عَلَيْنَا أَنْ نَعْرِفَ مَا هَذَا الْإِيمَانُ الَّذِي يَزُولُ عَنْهُ فِي حِينِ ذَلِكَ الْفِعْلِ؟ لِنَعْلَمَ مِنْ ذَلِكَ حُكْمَ ذَلِكَ الْفَاعِلِ - بِعَوْنِ اللَّهِ تَعَالَى وَمِنْهُ: فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَا النَّاسَ فِي تَفْسِيرِ لَفْظَةِ " الْإِيمَانِ " قَدْ افْتَرَقُوا عَلَى أَرْبَعَةِ أَقْوَالٍ: فَقَالَ أَهْلُ الْحَقِّ: الْإِيمَانُ اسْمٌ وَاقِعٌ عَلَى ثَلَاثَةِ مَعَانٍ -: أَحَدُهَا: الْعَقْدُ بِالْقَلْبِ - وَالْآخَرُ: النُّطْقُ بِاللِّسَانِ - وَالثَّالِثُ: عَمَلٌ بِجَمِيعِ الطَّاعَاتِ - فَرْضِهَا وَنَفْلِهَا - وَاجْتِنَابُ الْمُحَرَّمَاتِ.

L39991 A faction—mistaken—has said: "Faith is a term that applies only to two meanings: belief in the heart and utterance with the tongue. Acts of obedience and avoidance of prohibitions are but the laws of faith, not faith itself." This statement—though flawed—its proponent is not deemed a disbeliever.

وَقَالَتْ طَائِفَةٌ - مُخْطِئَةٌ -: إِنَّ الْإِيمَانَ اسْمٌ وَاقِعٌ عَلَى مَعْنَيَيْنِ، وَهُمَا: الْعَقْدُ بِالْقَلْبِ، وَالنُّطْقُ بِاللِّسَانِ فَقَطْ، وَأَنَّ أَعْمَالَ الطَّاعَاتِ، وَاجْتِنَابَ الْمُحَرَّمَاتِ: إِنَّمَا هِيَ شَرَائِعُ الْإِيمَانِ، وَلَيْسَتْ إِيمَانًا، وَهَذِهِ مَقَالَةٌ - وَإِنْ كَانَتْ فَاسِدَةً - فَصَاحِبُهَا لَا يُكَفَّرُ.

L39992 And two factions adopted two doctrinal positions through which they exited into unequivocal disbelief.

وَقَالَتْ طَائِفَتَانِ قَوْلَيْنِ خَرَجَا بِهِمَا إِلَى الْكُفْرِ صُرَاحًا:

L39993–39995 One of the two is Jahm ibn Ṣafwān al-Samarqandī and those who followed him in doctrine and trusted his authority, for indeed they asserted: "Faith

is...” It is belief with the heart alone, even if one openly declares disbelief, rejects prophethood, professes the Trinity, and worships through the Cross in the land of Islam without dissimulation.

أَحَدُهُمَا: جَهْمُ بْنُ صَفْوَانَ السَّمَرْقَنْدِيُّ، وَمَنْ قَلَّدَهُ وَائْتَمَّ بِهِ فَإِنَّهُمْ قَالُوا: الْإِيمَانُ هُوَ التَّصْدِيقُ بِالْقَلْبِ فَقَطْ، وَإِنْ أَعْلَنَ الْكُفْرَ، وَجَحَدَ النُّبُوَّةَ، وَصَرَّحَ بِالتَّثْلِيثِ، وَعَبَدَ الصَّلِيبَ فِي دَارِ الْإِسْلَامِ، دُونَ تَقِيَّةٍ.

L39996 The other is Muḥammad ibn Kirām as-Sijistānī and those who followed him and emulated him, for they stated: “Faith is affirmation with the tongue alone, even if one holds disbelief in his heart.”

وَالْآخَرُ: مُحَمَّدُ بْنُ كِرَامٍ السِّجِسْتَانِيُّ، وَمَنْ اتَّبَعَهُ وَاقْتَدَى بِهِ، فَإِنَّهُمْ قَالُوا: الْإِيمَانُ التَّصْدِيقُ بِاللِّسَانِ فَقَطْ، وَإِنْ اعْتَقَدَ الْكُفْرَ بِقَلْبِهِ.

L39997 It necessarily follows for the first group that Iblis is a believer, and that the Jews and Christians who fought against the Messenger of God—peace and blessings be upon him—are believing allies of God Almighty from among the people of Paradise, because all of these knew God Almighty in their hearts and affirmed the validity of His Messenger’s prophethood—peace and blessings be upon him—finding it written in their Torah and Gospel, or else God’s declaration regarding the soundness of Iblis’s knowledge of Him and the prophethood of the prophets—peace be upon them—would be falsely denied.

فَلَزِمَ الطَّائِفَةَ الْأُولَى: أَنَّ إِبْلِيسَ مُؤْمِنٌ، وَأَنَّ الْيَهُودَ وَالنَّصَارَى الَّذِينَ حَارَبُوا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُؤْمِنُونَ أَوْلِيَاءُ اللَّهِ تَعَالَى مِنْ أَهْلِ الْجَنَّةِ، لِأَنَّ كُلَّ هَؤُلَاءِ عَرَفُوا اللَّهَ تَعَالَى بِقُلُوبِهِمْ، وَعَرَفُوا صِحَّةَ نُبُوَّةِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقُلُوبِهِمْ، وَجَدُوهُ مَكْتُوبًا عِنْدَهُمْ فِي التَّوْرَاةِ، وَالْإِنْجِيلِ، أَوْ أَنْ يُكَذِّبَ اللَّهُ تَعَالَى فِي إِخْبَارِهِ بِصِحَّةِ عِلْمِ إِبْلِيسَ بِاللَّهِ تَعَالَى وَبِنُبُوَّةِ الْأَنْبِيَاءِ - عَلَيْهِمْ السَّلَامُ -.

L39998 It necessarily follows for the second group to assert that the hypocrites - about whom Allah the Exalted testified they are among the people of the Fire - are believers, friends of Allah the Exalted, and among the people of Paradise. This is sheer disbelief.

وَلَزِمَ الطَّائِفَةَ الثَّانِيَةَ: أَنَّ الْمُنَافِقِينَ الَّذِي شَهِدَ اللَّهُ تَعَالَى بِأَنَّهُمْ مِنْ أَهْلِ النَّارِ مُؤْمِنُونَ، أَوْلِيَاءُ اللَّهِ تَعَالَى، مِنْ أَهْلِ الْجَنَّةِ - وَهَذَا كُفْرٌ مُجَرَّدٌ.

L39999 Both statements constitute a breach of scholarly consensus and a contradiction of the people of Islam.

وَكِلَا الْقَوْلَيْنِ خَرْقٌ لِلْإِجْمَاعِ، وَمُخَالَفَةٌ لِأَهْلِ الْإِسْلَامِ.

L40000 Abū Muḥammad—may Allāh have mercy on him—said: It necessarily follows for those who assert that faith departs from the fornicator during his act of fornication, the murderer during his act of killing, the thief during his act of theft, the one who steals from war booty during his act of stealing, the drinker during his act of drinking, and the plunderer during his act of plundering: that faith is [defined as] affirmation. They must then say: The murderer, the fornicator, the thief, the one who steals from war booty, the plunderer, and the drinker—their affirmation of faith has been nullified, and whoever's affirmation of faith is nullified is an unbeliever.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَيَلْزَمُ مَنْ قَالَ: إنَّ الْإِيمَانَ الْمُزَايِلَ لِلزَّانِي فِي حِينِ زِنَاهُ، وَلِلْقَاتِلِ فِي حِينِ قَتْلِهِ، وَلِلسَّارِقِ فِي حِينِ سَرِقَتِهِ، وَلِلْغَالِّ فِي حِينِ غُلُولِهِ، وَلِلشَّارِبِ فِي حِينِ شُرْبِهِ، وَلِلْمُنْتَهِبِ فِي حَالِ نُهْبَتِهِ: أَنَّهُ التَّصْدِيقُ أَنْ يَقُولَ: الْقَاتِلُ، وَالزَّانِي، وَالْغَالُّ، وَالْمُنْتَهِبُ، وَالشَّارِبُ: قَدْ بَطَلَ تَصْدِيقُهُمْ وَمَنْ بَطَلَ تَصْدِيقُهُ فَهُوَ كَافِرٌ.

L40001 It would be incumbent that no zakāt be taken from any of these individuals, nor should they be allowed to pray in a mosque alongside Muslims, nor enter the Sacred Sanctuary, nor initiate marriage with a Muslim woman. If a relative of his dies while he is in such a state, he would not inherit him. This contradicts the consensus of the Companions and those deemed authoritative after them—and they do not hold this view—so does this mean those not among them? Abū Muḥammad—may Allah have mercy on him—said: Since the Messenger of Allah—peace and blessings be upon him—did not intend by his statement in this ḥadīth to declare the fornicator a disbeliever, nor the murderer a disbeliever, nor the plunderer a disbeliever, nor one who steals from booty a disbeliever, nor the drinker [of alcohol] a disbeliever, nor the thief a disbeliever.

فَيَلْزَمُهُ أَنْ لَا يُؤْخَذَ مِنْ أَحَدٍ مِنْ هَؤُلَاءِ زَكَاةٌ، وَلَا يُتْرَكَ يُصَلِّي فِي مَسْجِدٍ مَعَ الْمُسْلِمِينَ، وَلَا أَنْ يَدْخُلَ الْحَرَمَ، وَلَا أَنْ يَبْتَدِئَ نِكَاحَ مُسْلِمَةٍ، وَإِنْ مَاتَ لَهُ قَرِيبٌ فِي تِلْكَ الْحَالِ أَنْ لَا يَرِثَهُ - وَهَذَا خِلَافٌ لِإِجْمَاعِ الصَّحَابَةِ وَمَنْ يَعْتَدُّ بِهِ بَعْدَهُمْ، وَهُمْ لَا يَقُولُونَ هَذَا - يَعْنِي مَنْ لَمْ يَكُنْ مِنْهُمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ لَمْ يُرِدْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَوْلِهِ الْمَذْكُورِ فِي هَذَا الْحَدِيثِ أَنَّ الزَّانِيَ كَافِرٌ، وَلَا أَنَّ الْقَاتِلَ كَافِرٌ، وَلَا أَنَّ الْمُنْتَهِبَ كَافِرٌ، وَلَا أَنَّ الْغَالَّ كَافِرٌ، وَلَا أَنَّ الشَّارِبَ كَافِرٌ، وَلَا أَنَّ السَّارِقَ كَافِرٌ.

L40002–40004 And it has been established that if they were disbelievers, they would be subject to what applies to the apostate from his religion: execution and separation. Regarding the wife and the fulfillment of the financial obligation, we thus know with certainty that he (peace be upon him) did not intend that the invalidation of the aforementioned oath would entail the invalidation of its ratification.

وَصَحَّ أَنَّهُمْ لَوْ كَانُوا كُفَّارًا لَلَزِمَهُمْ مَا يَلْزَمُ الْمُرْتَدَّ عَنْ دِينِهِ مِنْ الْقَتْلِ، وَفِرَاقِ الزَّوْجَةِ، وَاسْتِيفَاءِ الْمَالِ - فَبِيَقِينٍ نَدْرِي أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَعْنِ بِذَهَابِ الْإِيمَانِ الْمَذْكُورِ ذَهَابَ تَصْدِيقِهِ.

L40005 Moreover, by the necessity of innate perception, any Muslim who commits any of the aforementioned sins knows within himself that his conviction has not ceased and remains intact. For does not every statement contradicted by self-evident truth become one whose invalidity is certain? Thus, what we have said is confirmed: the faith that departs from him while performing

وَأَيْضًا - فَبِضَرُورَةِ الْحِسِّ يَدْرِي مَنْ وَاقَعَ شَيْئًا مِنْ الذُّنُوبِ الْمَذْكُورَةِ مِنْ الْمُسْلِمِينَ مِنْ نَفْسِهِ: أَنَّ تَصْدِيقَهُ لَمْ يَزُلْ، وَأَنَّهُ كَمَا كَانَ، وَكُلُّ قَوْلٍ تُكَذِّبُهُ الضَّرُورَةُ فَهُوَ قَوْلٌ

these deeds is none other than the faith defined exclusively as obedience to Allah the Exalted.

L40006 This is a matter observed with certainty, for adultery, murder, misappropriation, robbery, and drinking alcohol—none of these are obedience to God Almighty, and thus they are not faith. Since none of these are faith, the one who commits them is not a believer (that is, he is not obedient), as he has not performed obedience. Rather, he is disobedient and a transgressor. Whoever embodies faith is a believer, but all those we have mentioned, in committing these deeds, did not perform faith; thus, they are not believers.

L40007 This ḥadīth is one of the decisive proofs that all acts of obedience are expressions of faith, and that abandoning obedience is not faith—and success comes from Allah, the Exalted.

L40008 **The issue of implementing the ḥudūd (the divinely ordained punishments) in mosques.**

L40009 Issue 2169: Are legal punishments to be carried out in mosques or not? Abū Muḥammad—may Allāh have mercy on him—said: I am Aḥmad ibn Muḥammad ibn ʿAbd Allāh al-Ṭalamankī. Ibn Mufarrij narrated to us; Muḥammad ibn Ayyūb al-Ṣamūt narrated to us; Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār narrated to us. Abū Nashīṭ Muḥammad ibn Hārūn and al-Ḥasan ibn ʿArafah narrated to us. Abū Nashīṭ said: Abū al-Mughīrah ʿAbd al-Quddūs ibn al-Ḥajjāj narrated to us; Saʿīd ibn Bashīr reported from Qatādah. Ibn ʿArafah said: Abū Ḥafṣ ʿAmr ibn ʿAbd al-Raḥmān al-Abbār narrated to us from Ismāʿīl ibn Muslim. Then the chains of Qatādah and Ismāʿīl converged: both of them reporting from ʿAmr ibn Dīnār from Ṭāwūs from Ibn ʿAbbās from the Prophet—peace and blessings be upon him—who said: "Legal punishments are not to be carried out in mosques, nor is a parent to be killed for their child."

L40010–40012 Abū Muḥammad—may Allah have mercy on him—said: Ismāʿīl ibn Muslim and Saʿīd ibn Bashīr are weak narrators. From him, it reaches al-Bazzār: Yūnus ibn Ṣāliḥ ibn Muʿādh narrated to us; Muḥammad ibn ʿUmar al-Wāqidī

مُتَيَقَّنُ السُّقُوطِ؟ فَقَدْ صَحَّ مَا قُلْنَا: إنَّ الْإِيمَانَ الْمُزَايِلَ لَهُ فِي حَالِ هَذِهِ الْأَفَاعِيلِ إنَّمَا هُوَ الْإِيمَانُ الَّذِي هُوَ الطَّاعَةُ لِلَّهِ تَعَالَى فَقَطْ.

وَهَذَا أَمْرٌ مُشَاهَدٌ بِالْيَقِينِ، لِأَنَّ الزِّنَى، وَالْقَتْلَ، وَالْغُلُولَ، وَالنُّهْبَةَ، وَشُرْبَ الْخَمْرِ، لَيْسَ شَيْءٌ مِنْهَا طَاعَةً لِلَّهِ تَعَالَى، فَلَيْسَتْ إيمَانًا، فَإِذْ لَيْسَ شَيْءٌ مِنْهَا إيمَانًا، فَفَاعِلُهَا لَيْسَ مُؤْمِنًا، بِمَعْنَى لَيْسَ مُطِيعًا، إذْ لَمْ يَفْعَلْ الطَّاعَةَ، لَكِنَّهُ عَاصٍ وَفَاسِقٌ، وَمَنْ فَعَلَ الْإِيمَانَ فَهُوَ مُؤْمِنٌ، وَكُلُّ مَنْ ذَكَرْنَا لَمْ يَفْعَلْ فِي فِعْلِهِ تِلْكَ الْأَفْعَالَ إيمَانًا، فَلَيْسَ مُؤْمِنًا.

وَهَذَا الْحَدِيثُ مِنْ الْحُجَجِ الْقَاطِعَةِ عَلَى أَنَّ الطَّاعَاتِ كُلَّهَا إيمَانٌ، وَأَنَّ تَرْكَ الطَّاعَةِ لَيْسَ إيمَانًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة إقَامَة الْحُدُود فِي الْمَسَاجِد]

٢١٦٩ - مَسْأَلَةٌ: هَلْ تُقَامُ الْحُدُودُ فِي الْمَسَاجِدِ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ نا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا أَبُو نَشِيطٍ مُحَمَّدُ بْنُ هَارُونَ، وَالْحَسَنُ بْنُ عَرَفَةَ، قَالَ أَبُو نَشِيطٍ: نا أَبُو الْمُغِيرَةِ عَبْدُ الْقُدُّوسِ بْنُ الْحَجَّاجِ نا سَعِيدُ بْنُ بَشِيرٍ عَنْ قَتَادَةَ وَقَالَ ابْنُ عَرَفَةَ: نا أَبُو حَفْصٍ عَمْرُو بْنُ عَبْدِ الرَّحْمَنِ الْأَبَّارُ عَنْ إسْمَاعِيلَ بْنِ مُسْلِمٍ - ثُمَّ اتَّفَقَ قَتَادَةُ، وَإِسْمَاعِيلُ - كِلَاهُمَا عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا تُقَامُ الْحُدُودُ فِي الْمَسَاجِدِ وَلَا يُقْتَلُ بِالْوَلَدِ الْوَالِدُ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: إسْمَاعِيلُ بْنُ مُسْلِمٍ، وَسَعِيدُ بْنُ بَشِيرٍ ضَعِيفَانِ - وَبِهِ - إلَى الْبَزَّارِ نا يُونُسُ بْنُ صَالِحِ بْنِ مُعَاذٍ نا مُحَمَّدُ بْنُ عُمَرَ الْوَاقِدِيُّ نا إسْحَاقُ بْنُ حَازِمٍ عَنْ أَبِي

narrated to us; Isḥāq ibn Ḥāzim narrated to us from Abi al-Aswad from Nāfiʿ ibn Jubayr ibn Muṭʿim from his father: "The Messenger of Allah (peace be upon him) forbade that the ḥudūd punishments be carried out in mosques."

الْأَسْوَدِ عَنْ نَافِعِ بْنِ جُبَيْرِ بْنِ مُطْعِمٍ عَنْ أَبِيهِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى أَنْ تُقَامَ الْحُدُودُ فِي الْمَسَاجِدِ» .

L40013 Muhammad ibn Umar al-Waqidi is discarded, being reported as a liar.

مُحَمَّدُ بْنُ عُمَرَ الْوَاقِدِيُّ سَاقِطٌ مَذْكُورٌ بِالْكَذِبِ.

L40014 From the transmission of Ibn Waḍḍāḥ: Mūsā ibn Muʿāwiyah narrated to us, Muḥammad ibn ʿAbd Allāh narrated to us from al-ʿAbbās ibn ʿAbd al-Raḥmān ibn Ḥakīm ibn Ḥizām, who said: The Messenger of Allah (peace be upon him) said, "Ḥudūd are not to be carried out in the mosques." Muḥammad ibn ʿAbd Allāh and al-ʿAbbās are both unknown.

وَمِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ عَنْ الْعَبَّاسِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ حَكِيمِ بْنِ حِزَامٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تُقَامُ الْحُدُودُ فِي الْمَسَاجِدِ» - مُحَمَّدُ بْنُ عَبْدِ اللَّهِ، وَالْعَبَّاسُ: مَجْهُولَانِ.

L40015 Narrated to us by Wakīʿ, from Mubārak, from Ẓabyān ibn Ṣubayḥ al-Ḍabbī, who said: ʿAbdullāh ibn Masʿūd said: "Ḥudūd should not be carried out in mosques." —Ẓabyān is unknown as a narrator.

وَعَنْ وَكِيعٍ نا مُبَارَكٌ عَنْ ظَبْيَانَ بْنِ صُبَيْحٍ الضَّبِّيِّ، قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ: لَا تُقَامُ الْحُدُودُ فِي الْمَسَاجِدِ - ظَبْيَانُ: مَجْهُولٌ.

L40016 From Waki': Sufyan al-Thawri narrated from Qays ibn Muslim from Tariq ibn Shihab, who said: A man came to 'Umar ibn al-Khattab in a ḥadd. He said: "Take him out of the mosque, then strike him."

وَعَنْ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ قَالَ: أَتَى عُمَرَ بْنَ الْخَطَّابِ رَجُلٌ فِي حَدٍّ، فَقَالَ: أَخْرِجَاهُ مِنْ الْمَسْجِدِ ثُمَّ اضْرِبَاهُ

L40017 Abu Muhammad (may Allah have mercy on him) said: This is a sound report; it is authentically established that the Messenger of Allah (peace be upon him) commanded the scenting of mosques and their purification.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا خَبَرٌ صَحِيحٌ، قَدْ صَحَّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِتَطْيِيبِ الْمَسَاجِدِ وَتَنْظِيفِهَا» .

L40018 "And He, the Exalted, said, 'In houses which Allah has permitted to be raised and where His name is mentioned' (24:36)."[1]

وَقَالَ تَعَالَى {فِي بُيُوتٍ أَذِنَ اللَّهُ أَنْ تُرْفَعَ وَيُذْكَرَ فِيهَا اسْمُهُ} [النور: ٣٦]

L40019 It is obligatory to preserve mosques, honor their status, and keep them clean. As for carrying out prescribed punishments therein—such as execution or amputation—which would defile the mosque with blood: it is unlawful to perform any such act within the mosque, as this constitutes neither purification nor cleaning. Similarly, "Allah's Messenger—may Allah bless him and grant him peace—commanded that Maʿīz be stoned in Al-Baqīʿ, outside the mosque."

فَوَجَبَ صَوْنُ الْمَسَاجِدِ، وَرَفْعُهَا، وَتَنْظِيفُهَا - فَمَا كَانَ مِنْ إقَامَةِ الْحُدُودِ فِيهِ تَقْذِيرٌ لِلْمَسْجِدِ بِالدَّمِ: كَالْقَتْلِ، وَالْقَطْعِ، فَحَرَامٌ أَنْ يُقَامَ شَيْءٌ مِنْ ذَلِكَ فِي الْمَسْجِدِ، لِأَنَّ ذَلِكَ لَيْسَ تَطْيِيبًا، وَلَا تَنْظِيفًا - وَكَذَلِكَ «أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِرَجْمِ مَاعِزٍ بِالْبَقِيعِ خَارِجَ الْمَسْجِدِ» .

[1] **Qur'an references (L40018):** Qur'an 24:36 (An-Nur).

L40020 As for ḥudūd punishments involving flogging alone, their execution is permissible both inside and outside the mosque. However, we prefer it to be carried out outside, out of concern that urine might issue from the person being flogged due to physical frailty, or other such emissions from them that cannot be guarded against.

L40021 The proof of this is the statement of Allah, the Exalted: "He has detailed for you what He has forbidden to you, except that to which you are compelled" [Al-An'am: 119]. If the implementation of the *ḥudūd* through flogging in mosques were forbidden, He would have clarified that to us in the Quran on the tongue of His Messenger—peace and blessings be upon him.[2]

L40022–40023 And among those who maintained the permissibility of executing hudud punishments through flogging in mosques are Ibn Abi Layla and others—a position we uphold—and with Allah, the Exalted, lies all success.

A Question: Do the Ḥudūd Constitute *Kafārah* for the One Upon Whom They Are Imposed, or Not?

L40025 Issue 2170: Do the ḥudūd punishments serve as an expiation for those upon whom they are carried out, or not? Abū Muḥammad—may Allah have mercy on him—said: Whoever commits a sin requiring a ḥadd punishment, and the prescribed punishment is carried out against him, what he incurred from that sin is lifted—whether he repented or not—except in the case of ḥirābah (waging war against society). For the liability of that sin remains upon him even if its punishment is carried out, and nothing lifts it from him except repentance to Allah the Exalted alone.

L40026 The proof of that is what we have narrated to us through the chain of Muslim: Yahya ibn Yahya, Abu Bakr ibn Abi Shaybah, Amr an-Naqid, Ishaq ibn Ibrahim, and Muhammad ibn Abdullah ibn Numayr—all of them from Sufyan ibn Uyaynah, from al-Zuhri, from Abu Idris al-Khawlani, from Ubada ibn al-Samit, who said: "We were with the Messenger of Allah—peace and blessings be upon him—in a gathering, and he said: 'Pledge allegiance to me that you will not associate anything with Allah, nor steal, nor commit

[2] **Qur'an references (L40021):** Qur'an 6:119 (Al-An'am).

وَأَمَّا مَا كَانَ مِنْ الْحُدُودِ جَلْدًا فَقَطْ، فَإِقَامَتُهُ فِي الْمَسْجِدِ جَائِزٌ، وَخَارِجَ الْمَسْجِدِ أَيْضًا جَائِزٌ، إلَّا أَنَّ خَارِجَ الْمَسْجِدِ أَحَبُّ إلَيْنَا، خَوْفًا أَنْ يَكُونَ مِنْ الْمَجْلُودِ بَوْلٌ لِضَعْفِ طَبِيعَتِهِ، أَوْ غَيْرِ ذَلِكَ مِمَّا لَا يُؤْمَنُ مِنْ الْمَضْرُوبِ.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] فَلَوْ كَانَ إقَامَةُ الْحُدُودِ بِالْجَلْدِ فِي الْمَسَاجِدِ حَرَامًا لَفَصَّلَ لَنَا ذَلِكَ مُبَيَّنًا فِي الْقُرْآنِ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَمِمَّنْ قَالَ بِإِقَامَةِ الْحُدُودِ بِالْجَلْدِ فِي الْمَسَاجِدِ: ابْنُ أَبِي لَيْلَى، وَغَيْرُهُ - وَبِهِ نَأْخُذُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ هَلْ الْحُدُودُ كَفَّارَةٌ لِمَنْ أُقِيمَتْ عَلَيْهِ أَمْ لَا]

٢١٧٠ - مَسْأَلَةٌ: هَلْ الْحُدُودُ كَفَّارَةٌ لِمَنْ أُقِيمَتْ عَلَيْهِ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: كُلُّ مَنْ أَصَابَ ذَنْبًا فِيهِ حَدٌّ فَأُقِيمَ عَلَيْهِ مَا يَجِبُ فِي ذَلِكَ فَقَدْ سَقَطَ عَنْهُ مَا أَصَابَ مِنْ ذَلِكَ - تَابَ أَوْ لَمْ يَتُبْ - حَاشَ الْمُحَارَبَةِ، فَإِنَّ إثْمَهَا بَاقٍ عَلَيْهِ وَإِنْ أُقِيمَ عَلَيْهِ حَدُّهَا، وَلَا يُسْقِطُهَا عَنْهُ إلَّا التَّوْبَةُ لِلَّهِ تَعَالَى فَقَطْ.

بُرْهَانُ ذَلِكَ: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا يَحْيَى بْنُ يَحْيَى، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَعَمْرٌو النَّاقِدُ، وَإِسْحَاقُ بْنُ إبْرَاهِيمَ، وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ، كُلُّهُمْ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ أَبِي إدْرِيسَ الْخَوْلَانِيِّ عَنْ «عُبَادَةَ بْنِ الصَّامِتِ قَالَ: كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي مَجْلِسٍ، فَقَالَ تُبَايِعُونِي عَلَى أَنْ لَا تُشْرِكُوا بِاَللَّهِ شَيْئًا وَلَا تَسْرِقُوا وَلَا تَزْنُوا وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إلَّا بِالْحَقِّ، فَمَنْ وَفَى مِنْكُمْ فَأَجْرُهُ

adultery, nor take a life which Allah has forbidden except by right. Whoever among you fulfills this, his reward is upon Allah. Whoever commits any of these and was punished for it, that will be his expiation. Whoever commits any of these and Allah conceals it, his matter rests with Allah: if He wills, He will forgive him, and if He wills, He will punish him.”[3]

عَلَى اللَّهِ، وَمَنْ أَصَابَ شَيْئًا مِنْ ذَلِكَ فَعُوقِبَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ، وَمَنْ أَصَابَ شَيْئًا مِنْ ذَلِكَ فَسَتَرَهُ اللَّهُ عَلَيْهِ فَأَمْرُهُ إِلَى اللَّهِ، إِنْ شَاءَ عَفَا عَنْهُ، وَإِنْ شَاءَ عَذَّبَهُ» .

L40027 And through him to Muslim: Ismāʿīl ibn Sālim → Hushaym → Khalid al-Khaddāʾ → Abū Qilābah → Abū al-Ashʿath al-Ṣanʿānī → ʿUbādah ibn al-Ṣāmit, who said: “The Messenger of Allah—peace and blessings be upon him—took a pledge from us as he took from the women: that we would not associate anything with Allah, nor steal, nor commit adultery, nor kill our children, nor engage in backbiting. Whoever among you fulfills this, his reward lies with Allah. Whoever among you commits a _ḥadd_ offense and the punishment is executed upon him, that is his punishment. And whom Allah conceals [the sin], his matter is left to Allah—if He wills, He punishes him, and if He wills, He forgives him.”

وَبِهِ - إِلَى مُسْلِمٍ حَدَّثَنِي إِسْمَاعِيلُ بْنُ سَالِمٍ أَنَا هُشَيْمٌ أَنَا خَالِدٌ - هُوَ الْحَذَّاءُ - عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْأَشْعَثِ - هُوَ الصَّنْعَانِيِّ - عَنْ «عُبَادَةَ بْنِ الصَّامِتِ قَالَ: أَخَذَ عَلَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا أَخَذَ عَلَى النِّسَاءِ: أَنْ لَا نُشْرِكَ بِاللَّهِ شَيْئًا، وَلَا نَسْرِقَ، وَلَا نَزْنِيَ، وَلَا نَقْتُلَ أَوْلَادَنَا، وَلَا يَغْتَابَ بَعْضُنَا بَعْضًا - فَمَنْ وَفَى مِنْكُمْ فَأَجْرُهُ عَلَى اللَّهِ، وَمَنْ أَتَى مِنْكُمْ حَدًّا فَأُقِيمَ عَلَيْهِ فَهُوَ عِقَابُهُ، وَمَنْ سَتَرَهُ اللَّهُ عَلَيْهِ فَأَمْرُهُ إِلَى اللَّهِ - إِنْ شَاءَ عَذَّبَهُ وَإِنْ شَاءَ غَفَرَ لَهُ» .

L40028 As for our specification of *muḥārabah* (waging war) among all the *ḥudūd* punishments, it is due to the statement of Allah the Exalted: {The recompense of those who wage war against Allah and His Messenger and spread corruption in the land} [Al-Mā’idah 5:33] up to His statement: {a great punishment} [Al-Baqarah 2:7]. Thus, Allah the Exalted has explicitly decreed in a text that permits no interpretation that, alongside the implementation of this punishment upon them—which brings them disgrace in this world—they will have along with that a great punishment in the Hereafter.[4]

وَأَمَّا تَخْصِيصُنَا الْمُحَارَبَةَ مِنْ جَمِيعِ الْحُدُودِ، فَلِقَوْلِ اللَّهِ تَعَالَى {إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا} [المائدة: ٣٣] إِلَى قَوْلِهِ تَعَالَى {عَذَابٌ عَظِيمٌ} [البقرة: ٧] فَنَصَّ اللَّهُ تَعَالَى نَصًّا لَا يَحْتَمِلُ تَأْوِيلًا، عَلَى أَنَّهُمْ مَعَ إقَامَةِ هَذَا الْحَدِّ عَلَيْهِمْ، وَأَنَّهُ لَهُمْ خِزْيٌ فِي الدُّنْيَا، وَلَهُمْ مَعَ ذَلِكَ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ.

L40029–40030 Abū Muḥammad—may Allah have mercy on him—said: It is obligatory to apply all the texts exactly as they have been revealed, and not to abandon any part of them for another part, for none of them are more deserving of obedience than others. All of them are truth from Allah the Exalted, and abrogation is not permissible in any part of them. As for the ḥadīth of ‘Ubādah, it is a merit for us that our sins are expiated through the prescribed punishment, and merits are not abrogated, as they are neither commands

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَجَبَ اسْتِعْمَالُ النُّصُوصِ كُلِّهَا كَمَا جَاءَتْ، وَأَنْ لَا يُتْرَكَ شَيْءٌ مِنْهَا لِشَيْءٍ آخَرَ وَلَيْسَ بَعْضُهَا أَوْلَى بِالطَّاعَةِ مِنْ بَعْضٍ، وَكُلُّهَا حَقٌّ مِنْ عِنْدِ اللَّهِ تَعَالَى - وَلَا يَجُوزُ النَّسْخُ فِي شَيْءٍ مِنْ ذَلِكَ: أَمَّا حَدِيثُ عُبَادَةَ - فَإِنَّهُ فَضِيلَةٌ لَنَا أَنْ تُكَفَّرَ عَنَّا الذُّنُوبُ بِالْحَدِّ، وَالْفَضَائِلُ لَا تُنْسَخُ، لِأَنَّهَا لَيْسَتْ أَوَامِرَ، وَلَا نَوَاهِيَ، وَإِنَّمَا

[3] **Qur’an references (L40026):** Qur’an 6:151 (Al-An’am); Qur’an 17:33 (Al-Isra).

[4] **Qur’an references (L40028):** Qur’an 5:33 (Al-Ma’idah); Qur’an 2:7 (Al-Baqarah).

nor prohibitions. Abrogation applies only to commands and prohibitions—whether they are conveyed through the wording of command and prohibition or through declarative statements whose meaning is that of command and prohibition.

L40031 As for the authenticated report, abrogation does not apply to it, for if it did, it would constitute falsehood—and it is impermissible to presume such a thing regarding any of the reports of Allah, the Exalted, or His Messenger (peace be upon him). As for the verse concerning waging war, the obligation of punishment in the Hereafter alongside worldly disgrace through executing the prescribed penalty upon them is a mere report from Allah, the Exalted, containing no element of command or prohibition. Thus, it remains safeguarded from the possibility of abrogation in any respect—and all praise is due to Allah, Lord of the worlds.

L40032 Abū Muḥammad—may Allāh have mercy on him—said: If someone adduces what we narrated—Aḥmad ibn ʿUmar al-ʿUdhri narrated to us, ʿAbdullāh ibn Aḥmad ibn Ḥamawayh al-Sarakhsī narrated to us, Ibrāhīm ibn Duḥaym narrated to us, ʿAbd ibn Ḥumayd al-Kāshī narrated to us, ʿAbd al-Razzāq narrated to us from Maʿmar from Ibn Abī Dhiʾb from Saʿīd al-Maqburī from Abū Hurayrah—who said: The Messenger of Allāh (peace and blessings of Allāh be upon him) said: "I do not know if Tubbaʿ was a prophet or not. I do not know if Dhū al-Qarnayn was a prophet or not. And I do not know if the prescribed punishments are expiations for those subject to them or not."

L40033–40035 Ahmad ibn Umar al-Udhri, the second narrator, narrated to us: Muhammad ibn Abi Saʿid ibn Sakhtawayh al-Isfarayini - in his house in Mecca - narrated to us: ʿAbd al-ʿAziz ibn Jaʿfar ibn Saʿd narrated to us: I, Ahmad ibn Zanjuwayh ibn Musa, narrated to us... Dawud ibn Rashid narrated to us: Sayf ibn Harun narrated from Isma'il ibn Abi Khalid from Qays ibn Abi Hazim from Jarir ibn Abdullah, who said: "We pledged allegiance to the Messenger of Allah—peace and blessings be upon him—upon the same terms as the women's pledge. Whoever among us dies without committing any of those sins, Allah guarantees him Paradise. And whoever among us commits any of them and the ḥadd punishment is carried out on him, his judgment lies with Allah, the Exalted."

النَّسْخُ فِي الْأَوَامِرِ وَالنَّوَاهِي - سَوَاءٌ وَرَدَتْ بِلَفْظَةِ الْأَمْرِ وَالنَّهْيِ - أَوْ بِلَفْظِ الْخَبَرِ، وَمَعْنَاهُ الْأَمْرُ وَالنَّهْيُ.

وَأَمَّا الْخَبَرُ الْمُحَقَّقُ فَلَا يَدْخُلُ النَّسْخُ فِيهِ، وَلَوْ دَخَلَ لَكَانَ كَذِبًا - وَهَذَا لَا يَجُوزُ أَنْ يُظَنَّ بِشَيْءٍ مِنْ أَخْبَارِ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَأَمَّا الْآيَةُ فِي الْمُحَارَبَةِ - فَإِنَّ وُجُوبَ الْعَذَابِ فِي الْآخِرَةِ مَعَ الْخِزْيِ فِي الدُّنْيَا بِإِقَامَةِ الْحَدِّ عَلَيْهِمْ: خَبَرٌ مُجَرَّدٌ مِنْ اللَّهِ تَعَالَى، لَا مَدْخَلَ فِيهِ لِلْأَمْرِ وَالنَّهْيِ فَأَمِنَ دُخُولُ النَّسْخِ فِي شَيْءٍ مِنْ ذَلِكَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ تَعَلَّقَ مُتَعَلِّقٌ بِمَا نا أَحْمَدُ بْنُ عُمَرَ الْعُذْرِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَوَيْهِ السَّرَخْسِيُّ نا إبْرَاهِيمُ بْنُ دُحَيْمٍ نا عَبْدُ بْنُ حُمَيْدٍ الْكَشِّيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَا أَدْرِي أَتُبَّعٌ كَانَ نَبِيًّا أَمْ لَا؟ وَمَا أَدْرِي ذُو الْقَرْنَيْنِ أَنَبِيًّا كَانَ أَمْ لَا؟ وَمَا أَدْرِي الْحُدُودُ كَفَّارَاتٌ لِأَهْلِهَا أَمْ لَا؟» .

وَبِمَا ثَنَاهُ أَحْمَدُ بْنُ عُمَرَ الْعُذْرِيُّ نا مُحَمَّدُ بْنُ أَبِي سَعِيدِ بْنِ سَخْتَوَيْهِ الْإِسْفَرَايِينِيّ - فِي دَارِهِ بِمَكَّةَ - ثنا عَبْدُ الْعَزِيزِ بْنُ جَعْفَرِ بْنِ سَعْدٍ أَنَا أَحْمَدُ بْنُ زَنْجُوَيْهِ بْنِ مُوسَى نا دَاوُد بْنُ رَشِيدٍ نا سَيْفُ بْنُ هَارُونَ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ قَالَ: «بَايَعْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَا بَايَعَتْ النِّسَاءُ، فَمَنْ مَاتَ مِنَّا وَلَمْ يَأْتِ بِشَيْءٍ مِنْهُنَّ: ضَمِنَ لَهُ الْجَنَّةَ، وَمَنْ مَاتَ مِنَّا وَأَتَى بِشَيْءٍ فَأُقِيمَ عَلَيْهِ الْحَدُّ: فَحِسَابُهُ عَلَى اللَّهِ تَعَالَى»

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: أَمَّا حَدِيثُ أَبِي هُرَيْرَةَ فَصَحِيحُ السَّنَدِ، وَمَا نَعْلَمُ لَهُ فِي وَقْتِنَا هَذَا عِلَّةً، إِلَّا أَنَّ الَّذِي لَا نَشُكُّ فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَخْتَلِفُ قَوْلُهُ، وَلَا يَقُولُ إِلَّا الْحَقَّ، وَقَدْ قَالَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَصَحِّ سَنَدٍ مِمَّا أَوْرَدْنَا آنِفًا مِنْ طَرِيقِ عُبَادَةَ: «أَنَّ مَنْ أَصَابَ مِنَ الزِّنَى، وَالسَّرِقَةِ، وَالْقَتْلِ، وَالْغَصْبِ: شَيْئًا، فَأُقِيمَ عَلَيْهِ الْحَدُّ، فَهُوَ كَفَّارَةٌ لَهُ» فَمِنَ الْمُحَالِ أَنْ يَشُكَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي شَيْءٍ قَدْ قَطَعَ بِهِ، وَبَشَّرَ أُمَّتَهُ بِهِ، وَهُوَ وَحْيٌ مِنَ اللَّهِ تَعَالَى أَوْحَى إِلَيْهِ بِهِ.

L40036 Abū Muḥammad—may Allah have mercy on him—said: As for the ḥadīth of Abū Hurayrah, its chain is authentic, and we know of no hidden defect in it in our time. However, what we do not doubt is that the Messenger of Allah—peace and blessings of Allah be upon him—has no contradictions in his statements, nor does he speak except the truth. He—peace and blessings of Allah be upon him—declared through the most authentic chain we have cited earlier, via the transmission of ʿUbādah: "Whoever commits fornication, theft, murder, or usurpation, and the prescribed punishment is enforced upon him, it becomes an expiation for him." It is unthinkable that the Messenger of Allah—peace and blessings of Allah be upon him—would doubt something he conclusively affirmed, proclaimed as glad tidings to his Ummah, and which is a revelation from Allah the Exalted, communicated to him.

وَالْقَوْلُ عِنْدَنَا فِيهِ: أَنَّ أَبَا هُرَيْرَةَ لَمْ يَقُلْ أَنَّهُ سَمِعَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَذَا الْكَلَامَ، وَقَدْ سَمِعَهُ أَبُو هُرَيْرَةَ مِنْ أَحَدِ الْمُهَاجِرِينَ، مِمَّنْ سَمِعَهُ ذَلِكَ الصَّاحِبُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَوَّلِ الْبَعْثِ، قَبْلَ أَنْ يَسْمَعَ عُبَادَةُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «إِنَّ الْحُدُودَ كَفَّارَةٌ» فَهَذَا صَحِيحٌ بِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يُعَلِّمُ إِلَّا مَا عَلَّمَهُ اللَّهُ تَعَالَى، ثُمَّ أَعْلَمَهُ بَعْدَ ذَلِكَ مَا لَمْ يَكُنْ يَعْلَمُهُ حِينَئِذٍ، وَأَخْبَرَ بِهِ الْأَنْصَارَ، إِذْ بَايَعُوهُ قَبْلَ الْهِجْرَةِ، وَالْحُدُودُ حِينَئِذٍ لَمْ تَكُنْ نَزَلَتْ بَعْدُ، لَا حِينَ بَيْعَةِ عُبَادَةَ وَلَا قَبْلَ ذَلِكَ، وَإِنَّمَا نَزَلَتْ بِالْمَدِينَةِ بَعْدَ الْهِجْرَةِ، لَكِنَّ اللَّهَ تَعَالَى أَعْلَمَ رَسُولَهُ - عَلَيْهِ السَّلَامُ - أَنَّهُ سَيَكُونُ لِهَذِهِ الذُّنُوبِ حُدُودٌ، وَعُقُوبَاتٌ - وَإِنْ كَانَ لَمْ يُعْلِمْهُ بِهَا - لَكِنَّهُ أَخْبَرَهُ أَنَّهَا كَفَّارَاتٌ لِأَهْلِهَا - هَذَا هُوَ الْحَقُّ الَّذِي لَا يَجُوزُ غَيْرُهُ - إِنْ صَحَّ حَدِيثُ أَبِي هُرَيْرَةَ وَلَمْ تَكُنْ فِيهِ عِلَّةٌ.

L40037 Our position regarding this is that Abū Hurayrah did not claim to have heard directly from the Messenger of Allah—peace and blessings be upon him. Rather, Abū Hurayrah heard it from one of the Emigrants—from the companion who had heard it from the Messenger of Allah—peace and blessings be upon him—during the early period of the prophetic mission, before ʿUbādah heard the Messenger of Allah—peace and blessings be upon him—say: "The hudud are an expiation." This confirms that he—peace and blessings be upon him—taught only what Allah the Exalted had taught him. Later, Allah informed him of matters he had not known at that time, which he then conveyed to the Anṣār when they pledged allegiance to him before the Hijrah. The hudud had not yet been revealed at that time—neither during ʿUbādah's pledge nor prior to it—but were revealed in Medina after the Hijrah. Nevertheless, Allah the Exalted had informed His Messenger—peace and blessings be upon him—that there would be hudud and punishments for these sins, though He had not yet informed him of their details. Rather, He told him they would serve as expiations for those liable to them. This is the truth that permits no alternative—provided Abū Hurayrah's narration is authentic and free from flaws.

وَأَمَّا حَدِيثُ جَابِرٍ - فَسَاقِطٌ لِأَنَّهُ مِنْ رِوَايَةِ دَاوُد بْنِ رَشِيدٍ - وَهُوَ ضَعِيفٌ.

L40038 As for the ḥadīth of Jābir—it is discarded (as it is transmitted through Dāwūd ibn Rashīd, a weak narrator).

L40039 Then, if it were authentic, the ruling regarding it would be like the rul-

ing concerning the hadith of Abū Hurayrah which we discussed earlier. At that time, the matter would have been clearer in the hadith of Jābir, because Jarīr's conversion to Islam occurred very late after the Conquest—he never witnessed the women's pledge that took place before the fighting, as Jarīr embraced Islam after the revelation of *al-Mā'idah*. Thus, the hadith of 'Ubādah became the decisive authority over all of that, informing from Allah the Exalted what other reports do not mention: that the prescribed punishments are an expiation for those subjected to them, except what Allah the Exalted has specifically designated.

L40040 **Question: Are the ḥudūd (fixed Islamic penalties) nullified by repentance or not?**

L40041–40042 Abu Muhammad—may Allah have mercy on him—said: Some scholars claimed that all prescribed punishments are nullified by repentance. This is a narration reported by Abu Abd al-Rahman al-Ash'ari from al-Shafi'i, who asserted this in Iraq but later retracted it in Egypt. The proponents of this view cited as evidence the narration transmitted via Abdullah ibn Rabi', via Muhammad ibn Mu'awiyah, via Ahmad ibn Shu'ayb, via Muhammad ibn Bashshar, via Abd al-Rahman ibn Mahdi, via Sufyan al-Thawri, via Zayd ibn Aslam, via Yazid ibn Nu'aym, from his father: "Ma'iz ibn Malik came to the Prophet—peace and blessings be upon him—and said: 'Apply Allah's decree upon me.' The Prophet—peace and blessings be upon him—turned away from him four times. Then Allah's Messenger—peace and blessings be upon him—ordered his stoning. When the stones struck him, he fled in haste. Abdullah ibn Anas emerged from his clan's assembly holding the donkey's jawbone, struck him, and knocked him down. He then came to the Prophet—peace and blessings be upon him—and informed him of the matter. The Prophet said: 'Why did you not leave him? Perhaps he might repent, and Allah would accept his repentance. O man, had you concealed his fault with your garment, it would have been better for you.'"

L40043 From Ḥumām, from ʿAbbās ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Malik ibn Ayman, from Muḥammad ibn Waḍḍāḥ, from Abū Bakr ibn Abī Shaybah, from ʿAmr ibn Ḥammād ibn Ṭalḥah, from Asbāṭ ibn Naṣr, from Simāk, from

ثُمَّ لَوْ صَحَّ لَكَانَ الْقَوْلُ فِيهِ كَالْقَوْلِ فِي حَدِيثِ أَبِي هُرَيْرَةَ الَّذِي تَكَلَّمْنَا فِيهِ آنِفًا، وَالْأَمْرُ كَانَ حِينَئِذٍ فِي حَدِيثِ جَابِرٍ أَبْيَنُ، لِأَنَّ إِسْلَامَ جَرِيرٍ مُتَأَخِّرٌ جِدًّا بَعْدَ الْفَتْحِ، لَمْ يُدْرِكْ قَطُّ بَيْعَةَ النِّسَاءِ الَّتِي كَانَتْ قَبْلَ الْقِتَالِ، لِأَنَّ إِسْلَامَ جَرِيرٍ كَانَ بَعْدَ نُزُولِ " الْمَائِدَةِ " فَصَارَ حَدِيثُ عُبَادَةَ قَاضِيًا عَلَى كُلِّ ذَلِكَ، وَمُخْبِرًا عَنِ اللَّهِ تَعَالَى مَا لَيْسَ فِي سَائِرِ الْأَخْبَارِ: مِنْ أَنَّ الْحُدُودَ كَفَّارَةٌ لِأَهْلِهَا، حَاشَ مَا خَصَّهُ اللَّهُ تَعَالَى مِنْهَا

[مَسْأَلَة هَلْ تَسْقُطُ الْحُدُودُ بِالتَّوْبَةِ أَمْ لَا]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ قَوْمٌ: إنَّ الْحُدُودَ كُلَّهَا تَسْقُطُ بِالتَّوْبَةِ - وَهَذِهِ رِوَايَةٌ رَوَاهَا أَبُو عَبْدِ الرَّحْمَنِ الْأَشْعَرِيُّ عَنْ الشَّافِعِيِّ، قَالَهَا بِالْعِرَاقِ وَرَجَعَ عَنْهَا بِمِصْرَ - وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ: بِمَا نَاهِ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ يَزِيدَ بْنِ نُعَيْمٍ عَنْ أَبِيهِ: «أَنَّ مَاعِزَ بْنَ مَالِكٍ أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: أَقِمْ عَلَيَّ كِتَابَ اللَّهِ؟ فَأَعْرَضَ عَنْهُ أَرْبَعَ مَرَّاتٍ، ثُمَّ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِرَجْمِهِ، فَلَمَّا مَسَّتْهُ الْحِجَارَةُ خَرَجَ يَشْتَدُّ، وَخَرَجَ عَبْدُ اللَّهِ بْنُ أُنَيْسٍ مِنْ نَادِي قَوْمِهِ بِوَظِيفِ حِمَارٍ، فَضَرَبَهُ فَصَرَعَهُ، فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَخَدَّثَهُ بِأَمْرِهِ فَقَالَ أَلَا تَرَكْتُمُوهُ لَعَلَّهُ يَتُوبُ فَيَتُوبُ اللَّهُ عَلَيْهِ؟ يَا هَذَا لَوْ سَتَرْتَهُ بِثَوْبِكَ كَانَ خَيْرًا لَكَ» .

حَدَّثَنَا حُمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَمْرُو بْنُ حَمَّادِ بْنِ طَلْحَةَ عَنْ أَسْبَاطِ بْنِ نَصْرٍ عَنْ سِمَاكٍ عَنْ

ʿAlqamah ibn Wāʾil ibn Ḥujr, from his father: A woman was approached by a man who committed zinā with her during the darkness of dawn while she was reluctantly proceeding to the mosque. She called for help from a passing man, causing her assailant to flee. Later, a large group passed by, and she sought their assistance. They apprehended the man she had initially sought help from, while the actual perpetrator had already escaped. They brought him to the Prophet (peace and blessings be upon him), where she testified that he had committed zinā with her. The group explained they had found him fleeing. The man claimed, “I only rushed to rescue her from her assailant, but these people detained me.” The woman declared, “He lies—he is the one who violated me.” The Prophet (peace and blessings be upon him) ordered, “Take him and stone him.” A man then stood and said, “Do not stone him—stone me instead, for I am the guilty one,” and confessed. Three individuals—the accused man, the rescuer, and the woman—stood before Allah’s Messenger (peace and blessings be upon him). He told the confessor, “Allah has forgiven you,” and commended the rescuer. ʿUmar asked, “Should we stone the one who confessed to zinā?” The Messenger of Allah (peace and blessings be upon him) replied, “No—he has repented to Allah the Exalted.” ʿAbdullāh ibn ʿUmar added in his narration: “Had the people of Medina repented similarly, it would have been accepted from them.”

عَلْقَمَةَ بْنِ وَائِلِ بْنِ حُجْرٍ عَنْ أَبِيهِ: «أَنَّ امْرَأَةً وَقَعَ عَلَيْهَا رَجُلٌ فِي سَوَادِ الصُّبْحِ وَهِيَ تَعْمِدُ إِلَى الْمَسْجِدِ عَنْ كُرْهٍ نَفْسِهَا، فَاسْتَغَاثَتْ بِرَجُلٍ مَرَّ عَلَيْهَا وَفَرَّ صَاحِبُهَا، ثُمَّ مَرَّ عَلَيْهَا قَوْمٌ ذَوُو عَدَدٍ، فَاسْتَغَاثَتْ بِهِمْ، فَأَدْرَكُوا الَّذِي اسْتَغَاثَتْ بِهِ، وَسَبَقَهُمُ الْآخَرُ، فَأَتَوْا بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَتْهُ: أَنَّهُ وَقَعَ عَلَيْهَا، وَأَخْبَرَهُ الْقَوْمُ: أَنَّهُمْ أَدْرَكُوهُ يَشْتَدُّ، فَقَالَ: إِنَّمَا كُنْتُ أَغَثْتُهَا عَلَى صَاحِبِهَا فَأَدْرَكَنِي هَؤُلَاءِ فَأَخَذُونِي، قَالَتْ: كَذَبَ، هُوَ الَّذِي وَقَعَ عَلَيَّ، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اذْهَبُوا بِهِ فَارْجُمُوهُ فَقَامَ رَجُلٌ مِنَ النَّاسِ فَقَالَ: لَا تَرْجُمُوهُ وَارْجُمُونِي أَنَا الَّذِي فَعَلْتُ بِهَا الْفِعْلَ، فَاعْتَرَفَ، فَاجْتَمَعَ ثَلَاثَةٌ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي وَقَعَ عَلَيْهَا، وَالَّذِي أَغَاثَهَا، وَالْمَرْأَةُ، فَقَالَ أَمَّا أَنْتَ فَقَدْ غَفَرَ اللَّهُ لَكَ، وَقَالَ لِلَّذِي أَغَاثَهَا قَوْلًا حَسَنًا فَقَالَ لَهُ عُمَرُ: أَرْجُمُ الَّذِي اعْتَرَفَ بِالزِّنَى؟ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا، إِنَّهُ قَدْ تَابَ إِلَى اللَّهِ تَعَالَى زَادَ ابْنُ عُمَرَ فِي رِوَايَتِهِ لَوْ تَابَهَا أَهْلُ مَدِينَةٍ يَثْرِبَ لَقُبِلَ مِنْهُمْ» .

L40044–40046 From Abū ʿUmar Aḥmad ibn Qāsim: from my father, Qāsim ibn Muḥammad: from my grandfather, Qāsim ibn Aṣbagh: from al-Ḥārith ibn Abī Usāmah: from Abū al-Naḍr: from Abū Muʿāwiyah: from Layth ibn Abī Sulaym: from... Abu Burdah ibn Abi Musa al-Ashʿari narrated from Abu Malih ibn Usamah al-Hudhali from Wathilah ibn al-Asqaʿ, who said: “I was present with the Messenger of Allah (peace be upon him) one day when a man came to him and said: ’O Messenger of Allah, I have committed a _hadd_ of Allah the Exalted.’ The Prophet turned away from him. The man repeated his plea a second time, and again the Prophet turned away. When he came a third time, the Prophet turned away once more. Then the _iqamah_ was called for the prayer. When he concluded the prayer, the man approached a fourth time and said: ’I have committed a _hadd_ of Allah - so carry out Allah’s _hadd_

نا أَبُو عُمَرَ أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا الْحَارِثُ بْنُ أَبِي أُسَامَةَ نا أَبُو النَّضْرِ نا أَبُو مُعَاوِيَةَ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِي مَلِيحِ بْنِ أُسَامَةَ الْهُذَلِيِّ عَنْ «وَاثِلَةَ بْنِ الْأَسْقَعِ قَالَ شَهِدْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَاتَ يَوْمٍ وَأَتَاهُ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ، إِنِّي أَصَبْتُ حَدًّا مِنْ حُدُودِ اللَّهِ تَعَالَى، فَأَعْرَضَ عَنْهُ، ثُمَّ أَتَاهُ الثَّانِيَةَ فَأَعْرَضَ عَنْهُ ثُمَّ قَالَهَا الثَّالِثَةَ فَأَعْرَضَ عَنْهُ، ثُمَّ أُقِيمَتْ الصَّلَاةُ، فَلَمَّا قَضَى الصَّلَاةَ أَتَى الرَّابِعَةَ،

on me.' The Prophet said: 'Did you not perform purification (or ablution) well, then join us in prayer moments ago? Go, for it is your expiation.'"

فَقَالَ: أَصَبْتُ حَدًّا مِنْ حُدُودِ اللَّهِ فَأَقِمْ فِي حَدَّ اللَّهِ قَالَ: أَلَمْ تُحْسِنْ الطُّهُورَ - أَوْ الْوُضُوءَ - ثُمَّ شَهِدْتَ الصَّلاَةَ مَعَنَا آنِفًا؟ اذْهَبْ فَهِيَ كَفَّارَتُكَ» .

L40047 And through the chain of Abū Bakr ibn Abī Shaybah, who narrated to us: Zayd ibn al-Ḥubāb narrated from ʿIkrimah ibn ʿAmmār; we received from Shaddād ibn ʿAbdullāh from al-Bāhilī, who said: I was with the Messenger of Allāh—peace and blessings be upon him—in the mosque when a man said to him, "I have committed an offense requiring a ḥadd punishment, so administer it to me." Then the prayer was established, and the Messenger of Allāh—peace and blessings be upon him—prayed in the mosque. Afterward, he left—with the man—and I followed him. The man said, "O Messenger of Allāh, enforce the ḥadd upon me, for I have indeed committed it." He replied, "Did you not perform ablution properly when you left your home and then attend the prayer with us?" The man said, "Yes." The Prophet said, "Then Allāh has forgiven your sin or waived your ḥadd."

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ ثنا زَيْدُ بْنُ الْحُبَابِ عَنْ عِكْرِمَةَ بْنِ عَمَّارٍ نا شَدَّادُ بْنُ عَبْدِ اللَّهِ عَنْ «الْبَاهِلِيِّ قَالَ كُنْتُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمَسْجِدِ فَقَالَ لَهُ رَجُلٌ: إنِّي أَصَبْتُ حَدًّا فَأَقِمْ عَلَيَّ وَأُقِيمَتْ الصَّلاَةُ فَصَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمَسْجِدِ ثُمَّ خَرَجَ - وَمَعَهُ الرَّجُلُ - وَتَبِعْتُهُ، فَقَالَ: يَا رَسُولَ اللَّهِ أَقِمْ عَلَيَّ حَدِّي فَإِنِّي أَصَبْتُهُ، فَقَالَ: أَلَيْسَ حِينَ خَرَجْتَ مِنْ مَنْزِلِكَ تَوَضَّأْتَ فَأَحْسَنْتَ الْوُضُوءَ وَشَهِدْتَ مَعَنَا الصَّلاَةَ؟ قَالَ: نَعَمْ، قَالَ: فَإِنَّ اللَّهَ قَدْ غَفَرَ لَكَ ذَنْبَكَ - أَوْ حَدَّكَ» .

L40048 Abu Muhammad—may Allah have mercy on him—said: We have been transmitted this report—containing "I committed adultery"—just as Al-Muhallab ibn Abi Sufrah al-Asadi al-Tamimi narrated to us, Abdullah ibn Ibrahim al-Asili informed us, Muhammad ibn Ahmad al-Sawwaf informed us, Ahmad ibn Harun ibn Rawh al-Baradhanji informed us, Muhammad ibn Abdul-Malik al-Wasiti informed us, from Amr ibn Asim, from Hammam ibn Yahya, from Ishaq ibn Abdullah ibn Abi Talhah, from Anas: "A man came to the Prophet—peace and blessings of Allah be upon him—and said: 'O Messenger of Allah, I have committed adultery—so impose the prescribed punishment upon me.' Then the prayer was established, and he prayed with the Prophet. The Prophet said to him: 'By your prayer, it has expiated for you.'"

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَدْ رُوِّينَا هَذَا الْخَبَرَ - وَفِيهِ " إنِّي زَنَيْت " كَمَا ثنا الْمُهَلَّبُ بْنُ أَبِي صُفْرَةَ الْأَسَدِيُّ التَّمِيمِيُّ ثنا عَبْدُ اللَّهِ بْنُ إبْرَاهِيمَ الْأَصِيلِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ الصَّوَّافُ نا أَحْمَدُ بْنُ هَارُونَ بْنِ رَوْحٍ الْبَرْذَنْجِيُّ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ الْوَاسِطِيُّ نا عَمْرُو بْنُ عَاصِمٍ عَنْ هَمَّامِ بْنِ يَحْيَى عَنْ إسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ عَنْ أَنَسٍ «أَنَّ رَجُلًا أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ، إنِّي زَنَيْتُ فَأَقِمْ عَلَيَّ الْحَدَّ، ثُمَّ أُقِيمَتْ الصَّلاَةُ، فَصَلَّى مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ كَفَّرَ عَنْكَ بِصَلاَتِكَ» .

L40049 Abu Muhammad—may Allah have mercy on him—said: They said, "Allah the Exalted has stated: {The recompense of those who wage war against Allah and His Messenger and strive to spread corruption in the land} [5:33]—the

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ - وَقَالُوا: قَدْ قَالَ اللَّهُ تَعَالَى {إنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الأَرْضِ فَسَادًا} [المائدة: ٣٣] الْآيَةَ إلَى قَوْلِهِ: {إلا الَّذِينَ تَابُوا مِنْ قَبْلِ أَنْ تَقْدِرُوا عَلَيْهِمْ} [المائدة: ٣٤]

verse up to His words: {except those who repent before you subdue them} [5:34]."[5]

L40050 They said: The textual evidence from the Quran is sound, and consensus confirms that the punishment for ḥirābah (waging war against society) is nullified by repentance before the authorities gain power over the offenders. It necessarily follows that all prescribed punishments—for adultery, theft, false accusation of unlawful sexual intercourse (qadhf), and drinking alcohol—are likewise [nullified], as they are all punishments for which repentance occurs before the authorities gain power over the offenders.

قَالُوا: فَصَحَّ النَّصُّ مِنْ الْقُرْآنِ وَصَحَّ الْإِجْمَاعُ بِأَنَّ حَدَّ الْمُحَارَبَةِ تُسْقِطُهُ التَّوْبَةُ قَبْلَ الْقُدْرَةِ عَلَيْهِمْ، فَوَجَبَ أَنْ تَكُونَ جَمِيعُ الْحُدُودِ مِنْ: الزِّنَى، وَالسَّرِقَةِ، وَالْقَذْفِ، وَشُرْبِ الْخَمْرِ كَذَلِكَ، لِأَنَّهَا كُلَّهَا حُدُودٌ وَقَعَتْ التَّوْبَةُ قَبْلَ الْقُدْرَةِ عَلَى أَهْلِهَا.

L40051–40052 Abū Muḥammad—may Allāh have mercy on him—said: This is all that the adherents of this opinion can invoke as proof, while others have maintained that repentance does not nullify the prescribed punishments.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: هَذَا كُلُّ مَا يُمْكِنُ أَنْ يَحْتَجَّ بِهِ أَهْلُ هَذِهِ الْمَقَالَةِ، وَذَهَبَ آخَرُونَ إلَى أَنَّ التَّوْبَةَ لَا تُسْقِطُ الْحُدُودَ.

L40053 They cited as evidence the narration transmitted by Ḥumām from ʿAbbās ibn Aṣbagh, who narrated from Muḥammad ibn ʿAbd al-Malik ibn Ayman, who narrated from Bakr—that is, Ibn Ḥammād—who narrated from Musaddad, who narrated from Yaḥyā—that is, Ibn Saʿīd al-Qaṭṭān—from Hishām al-Dastuwāʾī, who narrated from Yaḥyā ibn Abī Kathīr, from Abī Qilābah, from Abī al-Muhallab, that ʿImrān ibn al-Ḥuṣayn reported to him: "A woman from Juhaynah came to the Prophet—peace and blessings of Allah be upon him—while pregnant from fornication. She said: 'I have incurred a ḥadd punishment. Carry it out upon me.' He summoned her guardian and instructed: 'Treat her kindly. When she delivers, bring her to me.' The guardian complied. After she gave birth, he brought her to the Messenger of Allah—peace and blessings of Allah be upon him and his family. The Prophet commanded that her garments be secured around her, then ordered her execution by stoning. He later prayed over her funeral. ʿUmar exclaimed: 'You pray over her when she committed fornication?' He replied: 'She repented with such sincerity that if divided among seventy people of Medina, it would suffice them. Have you found any deed more virtuous than her surrendering her life?'"

وَاحْتَجُّوا: بِمَا ناه حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا بَكْرُ - هُوَ ابْنُ حَمَّادٍ - نا مُسَدَّدٌ نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ هِشَامٍ الدَّسْتُوَائِيِّ نا يَحْيَى بْنُ أَبِي كَثِيرٍ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ أَنَّ عِمْرَانَ بْنَ الْحُصَيْنِ حَدَّثَهُ «أَنَّ امْرَأَةً مِنْ جُهَيْنَةَ أَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُبْلَى مِنْ الزِّنَا فَقَالَتْ: إنِّي أَصَبْتُ حَدًّا فَأَقِمْهُ عَلَيَّ، فَدَعَا وَلِيَّهَا فَقَالَ أَحْسِنْ إلَيْهَا فَإِذَا وَضَعَتْ فَأْتِنِي بِهَا فَفَعَلَ فَأَمَرَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَشُكَّتْ عَلَيْهَا ثِيَابُهَا ثُمَّ أَمَرَ بِهَا فَرُجِمَتْ ثُمَّ صَلَّى عَلَيْهَا، فَقَالَ عُمَرُ: تُصَلِّي عَلَيْهَا وَقَدْ زَنَتْ؟ فَقَالَ: لَقَدْ تَابَتْ تَوْبَةً لَوْ قُسِمَتْ بَيْنَ سَبْعِينَ مِنْ أَهْلِ الْمَدِينَةِ لَوَسِعَتْهُمْ، هَلْ وَجَدْتَ شَيْئًا هُوَ أَفْضَلُ مِنْ أَنْ جَادَتْ بِنَفْسِهَا؟» .

L40054 From the chain of Muslim: Muhammad ibn al-Muthannā reported to us,

[5] **Qur'an references (L40049):** Qur'an 5:33 (Al-Ma'idah); Qur'an 5:34 (Al-Ma'idah).

saying: ʻAbd al-Aʻlā narrated to us that Dāwūd ibn Abī Naḍrah reported from Abī Saʻīd al-Khudrī: A man from Aslam named Māʻiz ibn Mālik came to the Messenger of Allah (peace and blessings of Allah be upon him) and said, “I have committed an immoral act. Carry out the punishment upon me.” The Prophet (peace and blessings of Allah be upon him) turned him away repeatedly. Then he inquired about him among his people, and they said, “We know no ill of him.” The remainder of the ḥadīth was narrated, which includes: “The Messenger of Allah (peace and blessings of Allah be upon him) commanded us to stone him.” People were divided into two groups concerning him: some said, “He is ruined—his sin has engulfed him,” while others said, “There is no repentance better than that of Māʻiz. He came to the Messenger of Allah (peace and blessings of Allah be upon him), placed his hand in the Prophet’s hand, and said, ‘Kill me with stones.’” He said, “They remained in this state for two or three days. Then the Messenger of Allah (peace and blessings of Allah be upon him) came while they were seated, greeted them, sat down, and said, ‘Seek forgiveness for Māʻiz ibn Mālik.’ They said, ‘May Allah forgive Māʻiz ibn Mālik.’ The Messenger of Allah (peace and blessings of Allah be upon him) then said, ‘He has repented a repentance that, if divided among a nation, would suffice them all.’”

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى حَدَّثَنِي عَبْدُ الْأَعْلَى نا دَاوُد بْنُ أَبِي نَضْرَةَ «عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّ رَجُلًا مِنْ أَسْلَمَ يُقَالُ لَهُ: مَاعِزُ بْنُ مَالِكٍ أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إِنِّي أَصَبْتُ فَاحِشَةً فَأَقِمْهُ عَلَيَّ فَرَدَّهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِرَارًا ثُمَّ سَأَلَ قَوْمَهُ؟ فَقَالُوا: مَا نَعْلَمُ بِهِ بَأْسًا - فَذَكَرَ بَاقِيَ الْحَدِيثِ وَفِيهِ - فَأَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَرْجُمَهُ، فَكَانَ النَّاسُ فِيهِ فِرْقَتَيْنِ: قَائِلٌ يَقُولُ: هَلَكَ، لَقَدْ أَحَاطَتْ بِهِ خَطِيئَتُهُ، وَقَائِلٌ يَقُولُ: مَا تَوْبَةٌ أَفْضَلُ مِنْ تَوْبَةِ مَاعِزٍ، إِنَّهُ جَاءَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَضَعَ يَدَهُ فِي يَدِهِ فَقَالَ: اقْتُلْنِي بِالْحِجَارَةِ، قَالَ: فَلَبِثُوا بِذَلِكَ يَوْمَيْنِ - أَوْ ثَلَاثَةً - ثُمَّ جَاءَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُمْ جُلُوسٌ فَسَلَّمَ ثُمَّ جَلَسَ فَقَالَ اسْتَغْفِرُوا لِمَاعِزِ بْنِ مَالِكٍ؟ فَقَالُوا: غَفَرَ اللَّهُ لِمَاعِزِ بْنِ مَالِكٍ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَقَدْ تَابَ تَوْبَةً لَوْ قُسِمَتْ بَيْنَ أُمَّةٍ لَوَسِعَتْهُمْ» .

L40055–40057 And from the chain of Muslim: Muḥammad ibn ʿAbdullāh ibn Numayr reported to us, from Bashīr ibn al-Muhājir, from ʿAbdullāh ibn Buraidah, from his father, that Māʻiz ibn Mālik came to the Messenger of Allāh—peace and blessings be upon him—and said: “O Messenger of Allāh, indeed I...” I have wronged myself and committed adultery, and I wish for you to purify me. He sent him back. Then he mentioned the hadith, and in it: The Ghamidiyyah woman came and said, “O Messenger of Allah, I have committed adultery; purify me.” But he turned her away. The next day, she said, “O Messenger of Allah, why do you turn me away as you turned away Maʻiz? By Allah, I am pregnant!” He said, “Then go now,” and the remainder of the account was related. When she weaned him, she brought the child to him with a piece of bread in his hand. She said, “O Prophet of Allah, I have weaned him, and he now eats food.” He handed the child to a man from the Muslims, then ordered that a pit be dug for her up to her chest and

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ نا بَشِيرُ بْنُ الْمُهَاجِرِ نا عَبْدُ اللَّهِ بْنُ بُرَيْدَةَ عَنْ أَبِيهِ «أَنَّ مَاعِزَ بْنَ مَالِكٍ أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي قَدْ ظَلَمْتُ نَفْسِي وَزَنَيْتُ وَإِنِّي أُرِيدُ أَنْ تُطَهِّرَنِي، فَرَدَّهُ - فَذَكَرَ الْحَدِيثَ وَفِيهِ - فَجَاءَتْ الْغَامِدِيَّةُ فَقَالَتْ: يَا رَسُولَ اللَّهِ، إِنِّي قَدْ زَنَيْتُ فَطَهِّرْنِي، وَأَنَّهُ رَدَّهَا، فَلَمَّا كَانَ الْغَدُ قَالَتْ: يَا رَسُولَ اللَّهِ لِمَ تَرُدُّنِي كَمَا رَدَدْتَ مَاعِزًا؟ فَوَاَللَّهِ إِنِّي لَحُبْلَى، قَالَ أَمَّا الْآنَ فَاذْهَبِي وَذَكَرَ بَاقِيَ الْخَبَرِ - فَلَمَّا فَطَمَتْهُ أَتَتْهُ بِالصَّبِيِّ - وَفِي يَدِهِ كِسْرَةُ خُبْزٍ - فَقَالَتْ: هَذَا يَا نَبِيَّ اللَّهِ قَدْ فَطَمْتُهُ، وَقَدْ أَكَلَ الطَّعَامَ، فَدَفَعَ الصَّبِيَّ إِلَى رَجُلٍ مِنْ الْمُسْلِمِينَ ثُمَّ أَمَرَ بِهَا فَحُفِرَ إِلَى صَدْرِهَا وَأَمَرَ النَّاسَ فَرَجَمُوهَا - فَأَقْبَلَ خَالِدُ بْنُ الْوَلِيدِ فَرَمَى رَأْسَهَا فَنَضَحَ

commanded the people to stone her. Khalid ibn al-Walid approached and threw at her head, causing blood to splash onto his face. He cursed her, and the Prophet of Allah—peace and blessings be upon him—heard him cursing her. He said, "Hold on, Khalid! By the One in whose hand is my soul, she has repented a repentance that, if an extortioner were to repent likewise, he would be forgiven." Then he ordered that funeral prayers be offered over her, and she was buried.[6]

الدَّمُ عَلَى وَجْهِ خَالِدٍ، فَسَبَّهَا، فَسَمِعَ نَبِيُّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَبَّهُ إِيَّاهَا، فَقَالَ: مَهْلًا يَا خَالِدُ، فَوَالَّذِي نَفْسِي بِيَدِهِ لَقَدْ تَابَتْ تَوْبَةً لَوْ تَابَهَا صَاحِبُ مَكْسٍ لَغُفِرَ لَهُ، ثُمَّ أَمَرَ بِهَا فَصَلَّى عَلَيْهَا وَدُفِنَتْ» .

L40058 They said: This Ma'iz's repentance was verified before stoning through the Messenger of Allah (peace be upon him) reporting it and affirming its acceptance. As for these two women – Al-Ghamidiyyah and Al-Juhayniyyah (may Allah be pleased with them both) – they repented in the most complete and sound manner, accepted by Allah the Exalted through the Prophet's (peace be upon him) report. Yet their repentance did not nullify the prescribed punishment for them.

قَالُوا: فَهَذَا مَاعِزٌ قَدْ صَحَّتْ تَوْبَتُهُ قَبْلَ الرَّجْمِ بِإِخْبَارِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ، وَبِأَنَّهَا مَقْبُولَةٌ - وَهَذِهِ الْغَامِدِيَّةُ، وَالْجُهَيْنِيَّةُ - رَضِيَ اللَّهُ عَنْهُمَا - قَدْ تَابَتَا أَتَمَّ تَوْبَةٍ وَأَصَحَّهَا، مَقْبُولَةً مِنْ اللَّهِ تَعَالَى بِإِخْبَارِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - وَلَمْ تُسْقِطْ هَذِهِ التَّوْبَةُ عَنْهُمْ الْحَدَّ.

L40059 They said: "Likewise, 'Did the Messenger of Allah—peace and blessings be upon him and his family—impose the hadd punishment on those who falsely accused Aisha—may Allah be pleased with her—of adultery?'" Abu Muhammad—may Allah have mercy on him—said: "When they differed regarding that—as we have mentioned—it became obligatory for us to examine that matter to discern the truth therein [and follow it] with the help of Allah the Exalted and His grace. Thus, we scrutinized the hadith cited by those who held that hudud are nullified by repentance."

قَالُوا: وَكَذَلِكَ أَيْضًا «حَدَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الَّذِينَ قَذَفُوا عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا -؟» قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا فِي ذَلِكَ - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ مِنْ ذَلِكَ [فَنَتَّبِعَهُ] بِعَوْنِ اللَّهِ تَعَالَى وَمَنِّهِ: فَنَظَرْنَا فِي الْحَدِيثِ الَّذِي احْتَجَّ بِهِ مَنْ رَأَى الْحُدُودَ سَاقِطَةً بِالتَّوْبَةِ.

L40060 So we examined that and found it to be *mursal*, thus invalidating reliance on it.

فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَاهُ مُرْسَلًا، فَسَقَطَ التَّعَلُّقُ بِهِ.

L40061 Then we examined the ḥadīth of ʿAlqamah ibn Wāʾil and found it unsound because its chain includes Simāk ibn Ḥarb, who accepts talqīn, as affirmed by Shuʿbah and others, thus it is rejected.

ثُمَّ نَظَرْنَا فِي حَدِيثِ عَلْقَمَةَ بْنِ وَائِلٍ، فَوَجَدْنَاهُ لَا يَصِحُّ، لِأَنَّهُ مِنْ طَرِيقِ سِمَاكِ بْنِ حَرْبٍ وَهُوَ يَقْبَلُ التَّلْقِينَ، شَهِدَ بِذَلِكَ شُعْبَةُ، وَغَيْرُهُ، فَسَقَطَ.

L40062 Then we examined the hadith of Wathilah ibn al-Asqaʿ and found the first chain from a chain that includes Layth ibn Abi Sulaym, who is not strong.

ثُمَّ نَظَرْنَا فِي حَدِيثِ وَاثِلَةَ بْنِ الْأَسْقَعِ، فَوَجَدْنَا الْأَوَّلَ مِنْ طَرِيقٍ فِيهَا لَيْثُ بْنُ أَبِي سُلَيْمٍ، وَلَيْسَ بِالْقَوِيِّ.

[6] **Hadith references (L40055):** Sunan Abi Dawud 4442; Sahih Muslim 1695b.

L40063 As for the ḥadīth of al-Bāhilī, we found it transmitted through the chain of ʿIkrimah ibn ʿAmmār, and he is very weak in reliability.

وَأَمَّا حَدِيثُ الْبَاهِلِيِّ، فَوَجَدْنَاهُ مِنْ طَرِيقِ عِكْرِمَةَ بْنِ عَمَّارٍ، وَهُوَ ضَعِيفٌ جِدًّا.

L40064–40065 If it is said: "But you have narrated that it includes Zaynab?" We respond: Yes, though its chain includes men who are unknown. Moreover, even if it were established without a hidden defect, it would not constitute valid evidence, for there are aspects preventing its application: The first - that this incident may have occurred before the revelation of the punishment for adultery. Then the punishment for adultery was revealed, and thus the ruling necessitated the imposition of the punishment.

فَإِنْ قِيلَ: وَقَدْ رَوَيْتُمُوهُ بِأَنَّ فِيهِ زَيْنَبَ؟ قُلْنَا: نَعَمْ، وَفِيهِ مَنْ لَا يُعْرَفُ رِجَالُهُ، ثُمَّ أَنَّهُ لَوْ ثَبَتَ دُونَ عِلَّةٍ لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّ فِيهِ وُجُوهًا تَمْنَعُ مِنْ اسْتِعْمَالِهِ: أَحَدُهَا - أَنَّ مُمْكِنًا أَنْ يَكُونَ هَذَا قَبْلَ نُزُولِ حَدِّ الزِّنَى ثُمَّ نَزَلَ حَدُّ الزِّنَى فَكَانَ الْحُكْمُ لِإِيجَابِ الْحَدِّ.

L40066 If it is said: Is it also possible that after the revelation of the punishment for adultery, the punishment for adultery was then revealed, making the ruling apply to it and thereby abrogating what is in the narration of Maʿiz, al-Ghāmidiyyah, and al-Juhayniyyah? We say: When reports conflict, the obligation is to adopt the additional ruling. The additional ruling is that which introduces a ruling not previously obligatory in the foundational principle. The established foundational principle was undoubtedly that no punishment is imposed on anyone—whether repentant or not. Then came the explicit text imposing punishments comprehensively, and these texts were additional to the foundational principle. The narration of Maʿiz, al-Ghāmidiyyah, and al-Juhayniyyah subsequently emerged. The obligation of punishment on the repentant mentioned in them would constitute an addition to the report that drops the punishment for the repentant—but this would only hold if their narration had stated that the punishment was dropped due to repentance. How can this be when no such statement exists in it? It merely mentions the dropping of the punishment based solely on his prayer—a position they themselves do not uphold [rather, they contradict this ruling]. Thus, their reliance on this narration and those reports altogether is invalidated—and with Allah, the Exalted, lies all success.

فَإِنْ قِيلَ: وَمُمْكِنٌ أَيْضًا أَنْ يَكُونَ بَعْدَ نُزُولِ حَدِّ الزِّنَى ثُمَّ نَزَلَ حَدُّ الزِّنَى فَكَانَ الْحُكْمُ لَهُ وَيَكُونُ نَاسِخًا لِمَا فِي حَدِيثِ مَاعِزٍ، وَالْغَامِدِيَّةِ وَالْجُهَيْنِيَّةِ؟ قُلْنَا: إِنَّ الْوَاجِبَ إِذَا تَعَارَضَتْ الْأَخْبَارُ أَنْ يُؤْخَذَ بِالزَّائِدِ وَالزَّائِدُ: هُوَ الَّذِي جَاءَ بِحُكْمٍ لَمْ يَكُنْ وَاجِبًا فِي مَعْهُودِ الْأَصْلِ، وَكَانَ مَعْهُودُ الْأَصْلِ بِلَا شَكٍّ: أَنْ لَا حَدَّ عَلَى أَحَدٍ - تَائِبًا كَانَ أَوْ غَيْرَ تَائِبٍ - فَجَاءَ النَّصُّ: بِإِيجَابِ الْحُدُودِ جُمْلَةً، وَكَانَتْ هَذِهِ النُّصُوصُ زَائِدَةً عَلَى مَعْهُودِ الْأَصْلِ، وَجَاءَ حَدِيثُ مَاعِزٍ، وَالْغَامِدِيَّةِ، وَالْجُهَيْنِيَّةِ، فَكَانَ مَا فِيهَا مِنْ إِيجَابِ الْحَدِّ عَلَى التَّائِبِ زَائِدًا عَلَى مَا فِي الْخَبَرِ الَّذِي فِيهِ إِسْقَاطُ الْحَدِّ عَنْ التَّائِبِ - هَذَا لَوْ كَانَ فِي حَدِيثِهِمْ أَنَّ الْحَدَّ سَقَطَ عَنْهُ بِالتَّوْبَةِ، فَكَيْفَ وَلَيْسَ هَذَا فِيهِ؟ وَإِنَّمَا فِيهِ إِسْقَاطُ الْحَدِّ بِصَلَاتِهِ فَقَطْ، وَهَذَا مَا لَا يَقُولُونَهُ [بَلْ هُمْ يُخَالِفُونَ لِهَذَا الْحُكْمِ] فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ، وَبِتِلْكَ الْأَخْبَارِ جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40067 If they say: Suppose you accept that the punishment for adultery applies, and regarding the punishment for false accusation—applying the punishment on one who has repented—then why do you not waive the punishment for theft and the punishment for consuming alcohol based on repentance, given that you have no text regarding their application upon the repentant among

فَإِنْ قَالُوا: هَبْكُمْ أَنَّ حَدَّ الزِّنَى قَدْ وَجَدْتُمْ فِيهِ، وَفِي حَدِّ الْقَذْفِ: إِقَامَةُ الْحَدِّ عَلَى مَنْ تَابَ، فَمِنْ أَيْنَ لَمْ تُسْقِطُوا حَدَّ السَّرِقَةِ، وَحَدَّ الْخَمْرِ بِالتَّوْبَةِ؟ وَلَا نَصَّ مَعَكُمْ فِي إِقَامَتِهَا عَلَى التَّائِبِ مِنْهَا؟ قُلْنَا: إِنَّ النَّصَّ قَدْ وَرَدَ جُمْلَةً بِإِقَامَةِ الْحُدُودِ فِي السَّرِقَةِ، وَالْخَمْرِ، وَالزِّنَى،

them? We reply: The text has come in general terms mandating the enforcement of the prescribed punishments for theft, alcohol consumption, adultery, and false accusation. Allah, the Exalted, did not distinguish between the repentant and the non-repentant. Moreover, no valid text whatsoever exists that addresses waiving the punishment from the repentant. Since this is the case, it is not permissible to exempt the repentant from the general command of Allah, the Exalted, to enforce the prescribed punishments based on opinion and analogy without a text or consensus. This is our primary basis for enforcing the prescribed punishments upon both the repentant and the non-repentant.

وَالْقَذْفِ، وَلَمْ يَسْتَثْنِ اللَّهُ تَعَالَى تَائِبًا مِنْ غَيْرِ تَائِبٍ، وَلَمْ يَصِحَّ نَصٌّ أَصْلًا بِإِسْقَاطِ الْحَدِّ عَنْ التَّائِبِ، فَإِذَا الْأَمْرُ كَذَلِكَ فَلَا يَحِلُّ أَنْ يُخَصَّ التَّائِبُ مِنْ عُمُومِ أَمْرِ اللَّهِ تَعَالَى بِإِقَامَةِ الْحُدُودِ بِالرَّأْيِ، وَالْقِيَاسِ دُونَ نَصٍّ وَلَا إجْمَاعٍ، فَهَذِهِ عُمْدَتُنَا فِي إقَامَةِ الْحُدُودِ عَلَى التَّائِبِ وَغَيْرِ التَّائِبِ.

L40068–40070 The accounts of Maʿiz, al-Ghāmidiyyah, and al-Juhaniyyah only corroborate our position on that matter... This follows what we require of it alongside the commands cited regarding implementing Ḥudūd (prescribed punishments), due to the Prophet's statement (peace and blessings be upon him): "Whoever changes his religion, kill him."

وَإِنَّمَا حَدِيثُ مَاعِزٍ، وَالْغَامِدِيَّةِ، وَالْجُهَنِيَّةِ: مُؤَيِّدٌ لِقَوْلِنَا فِي ذَلِكَ فَقَطْ، وَلَوْ لَمْ يَأْتِ مَا احْتَجْنَا إلَيْهَا مَعَ الْأَوَامِرِ الْوَارِدَةِ بِإِقَامَةِ الْحُدُودِ، لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ» .

L40071 And the Prophet's statement (peace be upon him): "A virgin with a virgin shall receive one hundred lashes and exile for a year; and a married person with a married person shall receive one hundred lashes and stoning."

وَقَوْلِهِ - عَلَيْهِ السَّلَامُ - «الْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ، وَالثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَالرَّجْمُ» .

L40072 And in accordance with the saying of the Most High: "The male thief and the female thief - cut off their hands" [Al-Mā'idah: 38].[7]

وَمَعَ قَوْله تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] .

L40073 And the words of the Most High: *"Then lash them eighty lashes"* [an-Nur 4].[8]

وَمَعَ قَوْله تَعَالَى {فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً} [النور: ٤] .

L40074 Along with the statement of the Messenger of Allah (peace be upon him): "If he drinks wine, then lash him"—the hadith.

وَمَعَ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا شَرِبَ الْخَمْرَ فَاجْلِدُوهُ» الْحَدِيثَ.

L40075–40076 He—peace be upon him—did not single out any particular case from the general category of what he was commanded to establish the prescribed punishment for, distinguishing between a repentant person and others. "He

فَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - شَيْئًا مِنْ شَيْءٍ مِمَّا أَمَرَ بِإِقَامَةِ الْحَدِّ عَلَيْهِ تَائِبًا مِنْ غَيْرِهِ {وَمَا يَنْطِقُ عَنِ الْهَوَى - إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٣ - ٤] {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

[7] **Qur'an references (L40072):** Qur'an 5:38 (Al-Ma'idah).
[8] **Qur'an references (L40073):** Qur'an 24:4 (An-Nur).

does not speak from [his own] inclination. It is not but a revelation revealed" [An-Najm 3-4]. "And your Lord is not forgetful" [Maryam 64].[9]

L40077 Then we also examined their argument against those mentioned individuals, asserting that they have unanimously agreed repentance waives the punishment of the Hereafter—the greater punishment. Thus, if it waives the greater punishment, it is more fitting and obligatory that it waive the lesser punishment, which is the _ḥadd_ (prescribed punishment) in this world. We found all of this necessarily applying to everyone we mentioned, for they are proponents of analogy—as they claim—and if any analogy were ever valid in all of time, these analogies would be the soundest in existence.

ثُمَّ نَظَرْنَا أَيْضًا فِي احْتِجَاجِهِمْ عَلَى هَؤُلَاءِ الْمَذْكُورِينَ بِأَنَّهُمْ قَدْ أَجْمَعُوا عَلَى أَنَّ التَّوْبَةَ تُسْقِطُ عَذَابَ الْآخِرَةِ - وَهُوَ الْعَذَابُ الْأَكْبَرُ - فَإِذَا أَسْقَطَتْ الْعَذَابَ الْأَكْبَرَ فَأَحْرَى وَأَوْجَبُ أَنْ تُسْقِطَ الْعَذَابَ الْأَقَلَّ، الَّذِي هُوَ الْحَدُّ فِي الدُّنْيَا فَوَجَدْنَا هَذَا كُلَّهُ لَازِمًا لِكُلِّ مَنْ ذَكَرْنَا، لِأَنَّهُمْ أَصْحَابُ قِيَاسٍ - بِزَعْمِهِمْ - وَلَوْ صَحَّ قِيَاسٌ يَوْمًا مَا مِنْ الدَّهْرِ لَكَانَتْ هَذِهِ الْمَقَايِيسُ أَصَحَّ قِيَاسٍ فِي الْعَالَمِ.

L40078 And how remote is this from their corrupt analogy: iron to gold in usury, the spinning of cotton to gold and silver in usury, their analogy of a wife's genitalia to the hand of a thief, and all their other irrational corrupt analogies.

وَأَيْنَ هَذَا مِنْ قِيَاسِهِمْ الْفَاسِدِ: الْحَدِيدُ عَلَى الذَّهَبِ فِي الرِّبَا، وَغَزْلُ الْقُطْنِ عَلَى الذَّهَبِ وَالْفِضَّةِ فِي الرِّبَا، وَقِيَاسِهِمْ فَرْجَ الزَّوْجَةِ عَلَى يَدِ السَّارِقِ، وَسَائِرِ قِيَاسَاتِهِمْ الْفَاسِدَةِ الَّتِي لَا تُعْقَلُ.

L40079 As for us, this does not bind us, because all analogy is invalid—it is impermissible to adopt any of it in the religion of Allah, the Exalted—and all praise is due to Allah, Lord of the worlds.

وَأَمَّا نَحْنُ فَلَا يَلْزَمُنَا هَذَا، لِأَنَّ الْقِيَاسَ كُلَّهُ بَاطِلٌ لَا يَحِلُّ الْقَوْلُ بِشَيْءٍ مِنْهُ فِي دِينِ اللَّهِ تَعَالَى - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L40080 The punishment of the Hereafter differs from worldly punishment, and it is not required that if one is invalidated the other must also be invalidated, since neither a Quranic Text, nor a Sunnah, nor a consensus has established such a ruling.

وَعَذَابُ الْآخِرَةِ غَيْرُ عَذَابِ الدُّنْيَا، وَلَيْسَ إذَا سَقَطَ أَحَدُهُمَا وَجَبَ أَنْ يَسْقُطَ الْآخَرُ، إذْ لَمْ يُوجِبْ ذَلِكَ نَصُّ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إجْمَاعٍ.

L40081 Many sins have no prescribed worldly punishment, such as usurpation, declaring someone a disbeliever, consumption of swine flesh, disobedience to parents, and similar offenses. Yet this does not necessitate the absence of punishment for them in the Hereafter - rather, they incur the most severe punishment in the Hereafter.

وَكَثِيرٌ مِنْ الْمَعَاصِي لَيْسَ فِيهَا فِي الدُّنْيَا حَدٌّ، كَالْغَصْبِ - وَمَنْ قَالَ لِآخَرَ: يَا كَافِرُ - وَكَأَكْلِ لَحْمِ الْخِنْزِيرِ، وَعُقُوقِ الْوَالِدَيْنِ، وَغَيْرِ ذَلِكَ - وَلَيْسَ ذَلِكَ بِمُوجِبٍ أَنْ يَكُونَ فِيهَا فِي الْآخِرَةِ عِقَابٌ، بَلْ فِيهَا أَعْظَمُ الْعِقَابِ فِي الْآخِرَةِ.

L40082–40083 Thus, it is established that the rulings of the worldly life are unrelated to

فَصَحَّ أَنَّ أَحْكَامَ الدُّنْيَا غَيْرُ مُتَعَلِّقَةٍ بِأَحْكَامِ الْآخِرَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[9] **Qur'an references (L40076):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 19:64 (Maryam).

those of the Hereafter—and success is from Allah, the Exalted.

L40084 They have argued using Allah's statement: "And those who accuse chaste women and then do not bring four witnesses..." [An-Nur: 4] up to His words: "Forgiving, Merciful" [Al-Baqarah: 173]. We found they have no valid argument in this verse, for Allah did not categorically abolish the prescribed punishment through repentance. Had He intended that, He would have stated "except those who repent" without adding "after that." When He said "after that" [Al-Baqarah: 52], He clarified that this repentance only occurs after receiving eighty lashes, incurring the label of transgression, and having testimony rejected—not before the lashes, as per the Quran's explicit text. Thus, repentance after the lashes waives everything except the lashes themselves, since the lashes have already been executed and cannot be waived afterward through repentance. Only the transgression and the ruling on accepting testimony are thereby waived.[10]

L40085 Moreover, after the revelation of this verse, the Messenger of Allah—may Allah bless him and his family and grant him peace—flogged Mistah ibn Uthathah, Hassan ibn Thabit, and Hamnah bint Jahsh. Thus, the argument for waiving the prescribed punishment by means of the repentance mentioned in the verse is nullified.

L40086 It has been established that only what is besides the prescribed punishment—namely sinful conduct and the disqualification of testimony alone—is nullified by it. Thus, all that these people have contentiously disputed about is invalidated. It has been confirmed that none of the prescribed punishments are waived through repentance, except the punishment for banditry, for which the textual evidence explicitly stipulates its nullification through repentance exclusively before the ability to subdue the perpetrators is established. As for repentance occurring after they are subdued or while authorities have power over them, the punishment for banditry is not waived in the slightest, because the text only nullifies this punishment through repentance prior to the establishment of power over them. All other cases remain subject to im-

وَقَدْ احْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ} [النور: ٤] إلَى قَوْله تَعَالَى: {غَفُورٌ رَحِيمٌ} [البقرة: ١٧٣] فَوَجَدْنَاهُمْ لَا حُجَّةَ لَهُمْ فِي هَذِهِ الْآيَةِ: لِأَنَّ اللَّهَ تَعَالَى لَمْ يُسْقِطْ الْحَدَّ بِالتَّوْبَةِ مُطْلَقَةً، وَلَوْ أَرَادَ ذَلِكَ لَقَالَ (إلَّا الَّذِينَ تَابُوا) وَلَمْ يَقُلْ " مِنْ بَعْدِ ذَلِكَ " فَلَمَّا قَالَ تَعَالَى {مِنْ بَعْدِ ذَلِكَ} [البقرة: ٥٢] بَيَّنَ لَنَا تَعَالَى أَنَّ هَذِهِ التَّوْبَةَ لَا تَكُونُ إلَّا مِنْ بَعْدِ الْجَلْدِ ثَمَانِينَ، وَاسْتِحْقَاقُ اسْمِ الْفُسُوقِ، وَرَدُّ الشَّهَادَةِ، لَا قَبْلَ الْجَلْدِ بِنَصِّ الْقُرْآنِ، فَإِنَّمَا سَقَطَ بِالتَّوْبَةِ بَعْدَ الْجَلْدِ مَا عَدَا الْجَلْدَ، لِأَنَّ الْجَلْدَ قَدْ نَفَذَ فَلَا يَسْقُطُ بَعْدَهُ بِالتَّوْبَةِ إلَّا الْفِسْقُ، وَحُكْمُ قَبُولِ الشَّهَادَةِ فَقَطْ.

وَأَيْضًا: فَبَعْدَ نُزُولِ هَذِهِ الْآيَةِ جَلَدَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِسْطَحَ بْنَ أُثَاثَةَ، وَحَسَّانَ بْنَ ثَابِتٍ، وَحَمْنَةَ بِنْتَ جَحْشٍ - فَبَطَلَ التَّعَلُّقُ فِي إسْقَاطِ الْحَدِّ بِالتَّوْبَةِ الْمَذْكُورَةِ فِي الْآيَةِ.

وَصَحَّ أَنَّهُ إنَّمَا سَقَطَ بِهَا مَا عَدَا الْحَدَّ - وَهُوَ الْفِسْقُ، وَرَدُّ الشَّهَادَةِ فَقَطْ - فَبَطَلَ كُلُّ مَا شَغَبَ هَؤُلَاءِ الْقَوْمُ بِهِ - وَصَحَّ أَنَّهُ لَا يَسْقُطُ بِالتَّوْبَةِ شَيْءٌ مِنْ الْحُدُودِ، حَاشَا حَدِّ الْحِرَابَةِ الَّذِي وَرَدَ النَّصُّ بِسُقُوطِهَا بِالتَّوْبَةِ قَبْلَ الْقُدْرَةِ عَلَيْهِمْ فَقَطْ - وَأَمَّا بِالتَّوْبَةِ الْكَائِنَةِ مِنْهُمْ بَعْدَ الْقُدْرَةِ عَلَيْهِمْ، أَوْ مَعَ الْقُدْرَةِ عَلَيْهِمْ، فَلَا يَسْقُطُ بِذَلِكَ عَنْهُمْ حَدُّ الْمُحَارَبَةِ أَصْلًا، لِأَنَّ النَّصَّ لَمْ يُسْقِطْ الْحَدَّ عَنْهُمْ إلَّا بِالتَّوْبَةِ قَبْلَ الْقُدْرَةِ عَلَيْهِمْ فَقَطْ، وَبَقِيَ مَا عَدَا ذَلِكَ عَلَى إنْفَاذِ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[10]**Qur'an references (L40084):** Qur'an 24:4 (An-Nur); Qur'an 2:173 (Al-Baqarah); Qur'an 2:52 (Al-Baqarah).

plementing what Allah, the Most High, has ordained concerning them. And success is from Allah, the Most High, alone.

L40087 Ali, may God have mercy on him, said: "The evidence in our view regarding this matter is that whoever confesses to a Hadd punishment without specifying its nature, nothing whatsoever becomes incumbent upon him - as the Messenger of God, peace and blessings be upon him, did. If one states: 'A Hadd punishment involving only flogging is incumbent upon me,' flogging is also not imposed, because his action in that might lead others to assume it refers to a Hadd punishment requiring flogging - though this assumption is unfounded. Since this possibility exists, it becomes impermissible for us to hastily act upon it based on his invalidly granted permission, for God the Exalted had prohibited it prior to this invalid legitimization."

قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: وَالدَّلِيلُ عِنْدَنَا فِي ذَلِكَ أَنَّ مَنْ أَقَرَّ بِحَدٍّ وَلَمْ يَقُلْ مَا هُوَ؟ فَلَا شَيْءَ عَلَيْهِ أَصْلًا كَمَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنْ قَالَ: عَلَيَّ حَدٌّ فِيهِ الْجَلْدُ فَقَطْ: لَمْ يَقُمْ أَيْضًا جَلْدٌ، لِأَنَّهُ قَدْ يُظَنُّ فِي فِعْلِهِ ذَلِكَ أَنَّهُ حَدٌّ يُوجِبُ جَلْدًا - وَلَيْسَ كَمَا يُظَنُّ - فَإِذْ هُوَ مُمْكِنٌ فَلَا يَحِلُّ لَنَا بَشَرَتُهُ بِإِحْلَالِهِ لَنَا إيَّاهَا، لِأَنَّ تَحْرِيمَ اللَّهِ تَعَالَى لَهَا قَبْلَ إحْلَالِهِ الْفَاسِدِ.

L40088 If a man were to say to another, "Strike me, for I have made my skin lawful for you," striking him would not be permissible at all. This is because one cannot declare lawful for himself what Allah the Exalted has prohibited, nor declare prohibited from himself what Allah the Exalted has made lawful.

وَلَوْ أَنَّ امْرَأً قَالَ لِآخَرَ: اضْرِبْنِي فَقَدْ أَحْلَلْت لَك بَشَرَتِي؟ لَمْ يَحِلَّ ضَرْبُهُ أَصْلًا، لِأَنَّهُ لَيْسَ لَهُ أَنْ يَحِلَّ مِنْ نَفْسِهِ مَا حَرَّمَ اللَّهُ تَعَالَى مِنْهَا، وَلَا أَنْ يُحَرِّمَ مِنْهَا مَا أَحَلَّهُ اللَّهُ تَعَالَى.

L40089–40090 If someone liable to flogging for slanderous accusation of unlawful intercourse (qadhf), unlawful sexual intercourse (zina), or consuming intoxicants (khamr) were to say, "I have prohibited my body to you," his statement would be nonsensical and legally void.

وَلَوْ قَالَ مَنْ صَحَّ عَلَيْهِ الْجَلْدُ فِي الْقَذْفِ، أَوْ الزِّنَى، أَوْ الْخَمْرِ: قَدْ حَرَّمْت عَلَيْكُمْ بَشَرَتِي، لَكَانَ كَلَامُهُ هَذْرًا وَلَغْوًا.

L40091 Similarly, if he permits another person to kill himself or to cut off his hand, or if a woman permits her private part to a non-mahram.

وَكَذَلِكَ لَوْ أَحَلَّ لِآخَرَ قَتْلَ نَفْسِهِ أَوْ قَطْعَ يَدِهِ أَوْ أَحَلَّتْ الْمَرْأَةُ فَرْجَهَا لِأَجْنَبِيٍّ.

L40092 If a man were to declare his genitalia forbidden to his wife, or if she were to declare hers forbidden to him, then all such declarations would indeed be invalid, for there is no prohibition except what Allah the Exalted or His Messenger (peace be upon him) has prohibited. Allah the Exalted said: "And do not say regarding what your tongues falsely describe—'This is lawful and this is forbidden'—to fabricate lies against Allah" (16:116).[11]

أَوْ حَرَّمَ الرَّجُلُ فَرْجَهُ عَلَى امْرَأَتِهِ، أَوْ حَرَّمَتْ هِيَ فَرْجَهَا عَلَيْهِ، لَكَانَ كُلُّ ذَلِكَ بَاطِلًا، وَلَا حَرَامَ إلَّا مَا حَرَّمَ اللَّهُ تَعَالَى أَوْ رَسُولُهُ - عَلَيْهِ السَّلَامُ -، قَالَ اللَّهُ تَعَالَى {وَلا تَقُولُوا لِمَا تَصِفُ أَلْسِنَتُكُمُ الْكَذِبَ هَذَا حَلالٌ وَهَذَا حَرَامٌ لِتَفْتَرُوا عَلَى اللَّهِ الْكَذِبَ} [النحل: ١١٦]

L40093 If he says, "Upon me is a ḥadd punishment necessitated by God the Exalted: whether adultery, slanderous accusation (qadhf), or drinking wine," then he

فَإِنْ قَالَ عَلَيَّ لِلَّهِ تَعَالَى حَدٌّ يُوجِبُ: إمَّا زِنًا، وَإِمَّا قَذْفًا، وَإِمَّا شُرْبَ خَمْرٍ، فَهَذَا لَمْ يُحَقِّقْ وَلَا أَقَرَّ إقْرَارًا صَحِيحًا - وَلَيْسَ عَلَيْهِ إلَّا حَدُّ الْخَمْرِ، لِأَنَّهُ أَقَلُّ الْحُدُودِ الْوَاجِبَةِ عَلَيْهِ بِيَقِينٍ.

[11] **Qur'an references (L40092):** Qur'an 16:116 (An-Nahl).

has neither specified [the offense] nor properly confessed, and only the ḥadd punishment for wine is imposed upon him, because it is the least severe of the punishments definitively required upon him with certainty.

L40094 It is not permissible to impose any additional punishment on him based on doubt. Therefore, it is not permissible to lash him in any way until the applicable ḥadd is clarified, and he must describe it fully.

The Issue of Imprisonment in [the Matter of] the Accusation

L40095

L40096 2172 - Issue: Imprisonment on suspicion? Abū Muḥammad—may Allāh be pleased with him—said: Some people affirmed imprisonment on suspicion. They cited as evidence the narration narrated by Aḥmad ibn Qāsim from his father Qāsim ibn Muḥammad ibn Qāsim, from his grandfather Qāsim ibn Aṣbagh, from Muḥammad ibn Abī al-ʿAwwām, from Aḥmad ibn Ḥātim al-Ṭawīl, from Ibrāhīm ibn Khuthaym ibn ʿIrāk, from his father, from his grandfather, from Abū Hurayrah: "The Prophet—peace and blessings be upon him—imprisoned someone on suspicion as a precautionary measure [or he said: 'to confirm'], detaining them for a day and a night."

L40097 And through him—up to Qāsim ibn Aṣbagh: Ibn Waddāḥ narrated to us; Muḥammad ibn Ādam reported to me: Ibn al-Mubārak informed us from Bahz ibn Ḥakīm, from his father, from his grandfather, that the Prophet—may Allah's peace and blessings be upon him—detained on suspicion, then released him.

L40098–40100 Narrated via Abd al-Razzaq, from Ma'mar, from Bahz ibn Hakim, from his father, from his grandfather Mu'awiyah ibn Haydah, who said: "Allah's Messenger (peace and blessings be upon him) detained some people from his tribe under suspicion. A man from my tribe came to the Prophet (peace and blessings be upon him) while he was delivering a sermon and said: 'O Messenger of Allah, why do you detain my neighbors?' The Prophet (peace and blessings be upon him) remained silent. The man continued: 'People say you prohibit something but do it in secret.' The Prophet (peace and blessings be upon him) responded: 'What ...'" He said: "So I began to interpose be-

وَلَا يَحِلُّ أَنْ يَزْدَادَ عَلَيْهِ شَيْءٌ بِالشَّكِّ، فَلَا يَجُوزُ أَنْ يُجْلَدَ شَيْئًا حَتَّى يَتَبَيَّنَ مَا هُوَ الْحَدُّ الَّذِي عَلَيْهِ، وَيَصِفَهُ وَصْفًا تَامًّا.

[مَسْأَلَةُ السِّجْنُ فِي التُّهْمَةِ]

٢١٧٢ - مَسْأَلَةٌ: السِّجْنُ فِي التُّهْمَةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: قَالَ قَوْمٌ: بِالسِّجْنِ فِي التُّهْمَةِ؟ وَاحْتَجُّوا: بِمَا ثنا أَحْمَدُ بْنُ قَاسِمٍ ثنا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ ثنا جَدِّي قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ أَبِي الْعَوَّامِ ثنا أَحْمَدُ بْنُ حَاتِمٍ الطَّوِيلُ ثنا إبْرَاهِيمُ بْنُ خُثَيْمِ بْنِ عِرَاكٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ أَبِي هُرَيْرَةَ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَبَسَ فِي تُهْمَةٍ احْتِيَاطًا، أَوْ قَالَ: اسْتِظْهَارًا: يَوْمًا وَلَيْلَةً» .

وَبِهِ - إلَى قَاسِمِ بْنِ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ حَدَّثَنِي مُحَمَّدُ بْنُ آدَمَ نا ابْنُ الْمُبَارَكِ عَنْ بَهْزِ بْنِ حَكِيمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ حَبَسَ فِي تُهْمَةٍ، ثُمَّ خَلَّى سَبِيلَهُ» .

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ بَهْزِ بْنِ حَكِيمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ مُعَاوِيَةَ بْنِ حَيْدَةَ قَالَ «أَخَذَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَاسًا مِنْ قَوْمِهِ فِي تُهْمَةٍ فَحَبَسَهُمْ، فَجَاءَ رَجُلٌ مِنْ قَوْمِي إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ يَخْطُبُ فَقَالَ: يَا مُحَمَّدُ، عَلَى مَا تَحْبِسُ جِيرَتِي؟ فَصَمَتَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إنَّ نَاسًا يَقُولُونَ: إنَّكَ لَتَنْهَى عَنْ الشَّيْءِ وَتَسْتَخْلِي بِهِ، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا يَقُولُ؟ فَجَعَلْتُ

tween them with speech, fearing he might hear it and invoke a supplication against my people that would leave them unsuccessful thereafter." He said: "The Prophet—peace and blessings of Allah be upon him—persisted until he comprehended it." He said: "They have indeed uttered it." One who spoke it among them said: "By Allah, had I done it, the responsibility would lie upon me rather than them. Leave his neighbors to him."

أَعْرِضُ بَيْنَهُمَا بِكَلَامٍ مَخَافَةَ أَنْ يَسْمَعَهَا فَيَدْعُوَ عَلَى قَوْمِي دَعْوَةً لَا يُفْلِحُونَ بَعْدَهُ، قَالَ: فَلَمْ يَزَلْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى فَهِمَهَا؟ قَالَ: قَدْ قَالُوهَا؟ وَقَالَ قَائِلُهَا مِنْهُمْ: وَاَللَّهِ لَوْ فَعَلْتُهَا لَكَانَ عَلَيَّ وَمَا كَانَ عَلَيْهِمْ، خَلُّوا لَهُ عَنْ جِيرَانِهِ» .

L40101 Through him to ʻAbd al-Razzāq, from Ibn Jurayj, who informed me: Yaḥyā ibn Saʻīd al-Anṣārī reported from ʻIrāk ibn Mālik, who said: "Two men from Banū Ghifār came until they alighted at a resting place in Dajinān from the waters of Medina. Some Ghatafānīs were present there with their livestock. By morning, the Ghatafānīs had lost two of their camels and accused the Ghifārīs of taking them. They came to the Messenger of Allāh (peace be upon him) and related their matter. He detained one Ghifārī and said to the other: 'Go and look for them!' Only a short time passed before he returned with them. The Prophet (peace be upon him and his family) said to one Ghifārī—I assumed he was the detained one—'Seek forgiveness for me?' The man replied: 'May Allāh forgive you, O Messenger of Allāh!' The Messenger of Allāh (peace be upon him and his family) said: 'And for you—and may you be slain in His path.' He said: 'He was killed on the day of Yamāma.'"

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ عِرَاكِ بْنِ مَالِكٍ قَالَ: «أَقْبَلَ رَجُلَانِ مِنْ بَنِي غِفَارٍ حَتَّى نَزَلَا مَنْزِلًا بِضَجْنَانَ مِنْ مِيَاهِ الْمَدِينَةِ، وَعِنْدَهَا نَاسٌ مِنْ غَطَفَانَ مَعَهُمْ ظَهْرٌ لَهُمْ، فَأَصْبَحَ الْغَطَفَانِيُّونَ قَدْ أَضَلُّوا بَعِيرَيْنِ مِنْ إبِلِهِمْ فَاتَّهَمُوا بِهِمَا الْغِفَارِيِّينَ، فَأَقْبَلُوا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَذَكَرُوا أَمْرَهُمْ، فَحَبَسَ أَحَدَ الْغِفَارِيِّينَ، وَقَالَ لِلْآخَرِ: اذْهَبْ فَالْتَمِسْ؟ فَلَمْ يَكُنْ إلَّا يَسِيرًا حَتَّى جَاءَ بِهِمَا، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَحَدِ الْغِفَارِيِّينَ - حَسِبْتُ أَنَّهُ الْمَحْبُوسُ - اسْتَغْفِرْ لِي؟ فَقَالَ: غَفَرَ اللَّهُ لَكَ يَا رَسُولَ اللَّهِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: وَلَكَ وَقَتَلَكَ فِي سَبِيلِهِ، قَالَ: فَقُتِلَ يَوْمَ الْيَمَامَةِ» .

L40102 Abu Muhammad—may Allah have mercy on him—said: A group of people adhered to this view, as we were informed through the transmission of Abd al-Razzaq from Ibn Jurayj, who said: Umar ibn Abd al-Aziz ibn Abdullah wrote a document I read: "If the possession is found with a suspect who says, 'I bought it,' then bind him tightly in prison with fetters. Do not release him by the document of anyone until Allah's command comes to him concerning the matter." Ibn Jurayj said: I mentioned this to ʿAṭāʾ, and he rejected it.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَذَهَبَ إلَى هَذَا قَوْمٌ، كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ بْنِ عَبْدِ اللَّهِ كِتَابًا قَرَأْته: إذَا وُجِدَ الْمَتَاعُ مَعَ الرَّجُلِ الْمُتَّهَمِ فَقَالَ: ابْتَعْته فَاشْدُدْهُ فِي السِّجْنِ وَثَاقًا، وَلَا تَحُلَّهُ بِكِتَابِ أَحَدٍ حَتَّى يَأْتِيَهُ فِيهِ أَمْرُ اللَّهِ تَعَالَى، قَالَ ابْنُ جُرَيْجٍ: فَذَكَرْت ذَلِكَ لِعَطَاءٍ فَأَنْكَرَهُ.

L40103 Others held the opinion prohibiting imprisonment based on mere suspicion, as narrated through Abd al-Razzaq from Ibn Jurayj, who said: I heard Abdullah ibn Abi Mulaykah state: Abdullah ibn Abi Amir informed me, saying: "I traveled with a group until we reached Dhu al-Marwah, where my travel bag was stolen. A suspected man accompanied us. My companions

وَذَهَبَ آخَرُونَ - إلَى الْمَنْعِ مِنْ الْحَبْسِ بِالتُّهَمَةِ، كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ، قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ أَبِي مُلَيْكَةَ يَقُولُ: أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ أَبِي عَامِرٍ قَالَ: انْطَلَقْت فِي رَكْبٍ حَتَّى إذَا جِئْنَا ذَا الْمَرْوَةِ سُرِقَتْ عَيْبَةٌ لِي، وَمَعَنَا رَجُلٌ مُتَّهَمٌ، فَقَالَ

said: 'O so-and-so, return his bag!' He replied: 'I did not take it.' I went to Umar ibn al-Khattab and informed him. He asked: 'Who are your companions?' I listed them. He said: 'I suspect its owner is the one I am accusing?' I responded: 'Did you intend, O Commander of the Faithful, to have him brought shackled?' Umar retorted: 'Would you shackle him without proof? I will neither issue a decree nor investigate this matter.' He grew angry, refusing to write or inquire about it. Umar - may Allah be pleased with him - rejected shackling anyone without clear evidence."

أَصْحَابِي: يَا فُلَانُ اُرْدُدْ عَلَيْهِ عَيْبَتَهُ؟ فَقَالَ: مَا أَخَذْتهَا: فَرَجَعْت إلَى عُمَرَ بْنِ الْخَطَّابِ فَأَخْبَرْته، فَقَالَ: مَنْ أَنْتُمْ؟ فَعَدَدْتهمْ، فَقَالَ: أَظُنُّهَا صَاحِبُهَا لِلَّذِي أَتَّهِمُ؟ فَقُلْت: لَقَدْ أَرَدْت يَا أَمِيرَ الْمُؤْمِنِينَ أَنْ تَأْتِيَ بِهِ مُصَفَّدًا، فَقَالَ عُمَرُ: أَتَأْتِي بِهِ مَصْفُودًا بِغَيْرِ بَيِّنَةٍ، لَا أَكْتُبُ لَك فِيهَا، وَلَا أَسْأَلُك عَنْهَا، وَغَضِبَ وَمَا كَتَبَ لِي فِيهَا، وَلَا سَأَلَ عَنْهَا، فَأَنْكَرَ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - أَنْ يُصَفَّدَ أَحَدٌ بِغَيْرِ بَيِّنَةٍ.

L40104–40106 Abū Muḥammad—may Allah have mercy on him—said: We examined this matter and found the aforementioned ḥadīths to lack valid authority. In any of them, because Ibrāhīm ibn Khuthaym is weak, Bahz ibn Ḥakīm is not strong, and the narration of ʿIrāk is mursal. Furthermore, even if it were authentic, it would contain evidence against imprisonment due to the Messenger of Allah's (peace be upon him) seeking forgiveness from that.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا الْأَحَادِيثَ الْمَذْكُورَةَ لَا حُجَّةَ فِي شَيْءٍ مِنْهَا، لِأَنَّ إبْرَاهِيمَ بْنَ خُثَيْمٍ ضَعِيفٌ، وَبَهْزُ بْنُ حَكِيمٍ لَيْسَ بِالْقَوِيِّ، وَحَدِيثَ عِرَاكٍ مُرْسَلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ فِيهِ الدَّلِيلُ عَلَى الْمَنْعِ مِنْ الْحَبْسِ لِاسْتِغْفَارِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ ذَلِكَ.

L40107 If they mention the ḥadīth of the Ghāmidiyya woman who said to the Messenger of Allah (peace and blessings be upon him), "Purify me," he replied, "Woe to you! Return, seek Allah's forgiveness, and repent to Him." She said, "Perhaps you are sending me back as you sent back Maʿiz ibn Mālik." She said, "I am pregnant from adultery." He asked, "Are you a previously married woman?" She answered, "Yes." He said, "We will certainly not stone you until you deliver what is in your womb." A man from the Anṣār undertook her care until she delivered. He then brought her to the Messenger of Allah (peace and blessings be upon him) and said, "The Ghāmidiyya woman has delivered." He responded, "Then should we not stone her and leave her child as an infant who has no one to nurse him?" A man from the Anṣār said, "I will take responsibility for nursing him." Then the Messenger of Allah (peace and blessings be upon him) commanded her stoning.

فَإِنْ ذَكَرُوا حَدِيثَ «الْمَرْأَةِ الْغَامِدِيَّةِ الَّتِي قَالَتْ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَهِّرْنِي، قَالَ: وَيْحَك، ارْجِعِي فَاسْتَغْفِرِي اللَّهَ وَتُوبِي إلَيْهِ، قَالَتْ: لَعَلَّك تَرُدُّنِي كَمَا رَدَدْتَ مَاعِزَ بْنَ مَالِكٍ، قَالَتْ: إنِّي حُبْلَى مِنْ الزِّنَى، قَالَ: أَثَيِّبٌ أَنْتِ؟ قَالَتْ: نَعَمْ، قَالَ: فَلَا نَرْجُمُنَّك حَتَّى تَضَعِي مَا فِي بَطْنِك، قَالَ: فَكَفَلَهَا رَجُلٌ مِنْ الْأَنْصَارِ حَتَّى وَضَعَتْ، فَأَتَى بِهَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: قَدْ وَضَعَتْ الْغَامِدِيَّةُ قَالَ: إذًا لَا نَرْجُمُهَا وَنَدَعُ وَلَدَهَا صَغِيرًا لَيْسَ لَهُ مَنْ يُرْضِعُهُ؟ فَقَالَ رَجُلٌ مِنْ الْأَنْصَارِ: إلَيَّ رَضَاعُهُ، فَرَجَمَهَا» .

L40108 Abu Muhammad—may Allah have mercy on him—said: This provides no valid proof for their position, for the Messenger of Allah—peace and blessings be upon him—neither imprisoned her nor ordered such. Rather, it demon-

strates that the Ansari man solely undertook responsibility for her affairs and her custodianship.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَسْجِنْهَا وَلَا أَمَرَ بِذَلِكَ، لَكِنْ فِيهِ: أَنَّ الْأَنْصَارِيَّ تَوَلَّى أَمْرَهَا وَحِيَاطَتَهَا فَقَطْ.

L40109 Abu Muhammad (may Allah have mercy on him) said: If they mention Allah's statement—the Most High—"Then confine them to their houses until death claims them or Allah prescribes for them a way" [Quran 4:15], indeed this ruling has been abrogated by the consensus of the Ummah.[12]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى {فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلا} [النساء: ١٥] فَإِنَّ هَذَا حُكْمٌ مَنْسُوخٌ بِإِجْمَاعِ الْأُمَّةِ.

L40110 Ali, may God have mercy on him, said: When no valid argument remains for those who hold the view of imprisonment, it becomes obligatory to seek decisive evidence supporting the validity of the opposing opinion. We examined this matter and found that those who argue for imprisonment must fall into one of two cases: either the accused has no previously confirmed wrongdoing, or there exists a prior confirmed act of evil. If he is accused of murder, adultery, theft, drinking alcohol, or similar offenses, it is impermissible to imprison him, for God Almighty says: "Assumption avails nothing against the truth" [Jonah: 36].[13]

قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: فَإِذْ لَمْ يَبْقَ لِمَنْ رَأَى السِّجْنَ حُجَّةٌ، فَالْوَاجِبُ طَلَبُ الْبُرْهَانِ عَلَى صِحَّةِ الْقَوْلِ الْآخَرِ، فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا مَنْ قَالَ بِسَجْنِهِ لَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ: إِمَّا أَنْ يَكُونَ مُتَّهَمًا لَمْ يَصِحَّ قَبْلَهُ شَيْءٌ، أَوْ يَكُونَ قَدْ صَحَّ قَبْلَهُ شَيْءٌ مِنْ الشَّرِّ، فَإِنْ كَانَ مُتَّهَمًا بِقَتْلٍ، أَوْ زِنًا، أَوْ سَرِقَةٍ، أَوْ شُرْبٍ، أَوْ غَيْرِ ذَلِكَ: فَلَا يَحِلُّ سَجْنُهُ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {إِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [يونس: ٣٦] .

L40111 The Messenger of Allah (peace be upon him) said, "Beware of suspicion, for suspicion is the most false of speech." Indeed, during the time of the Messenger of Allah (peace be upon him), there were those suspected of disbelief—they were the hypocrites—yet the Messenger of Allah (peace be upon him) did not detain any of them. And success comes only from Allah, the Most High.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» وَقَدْ كَانَ فِي زَمَنِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُتَّهَمُونَ بِالْكُفْرِ - وَهُمْ الْمُنَافِقُونَ - فَمَا حَبَسَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْهُمْ أَحَدًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40112–40113 An issue concerning one who has committed acts requiring prescribed punishments twice or more.

[مَسْأَلَة فِيمَنْ أَصَابَ حَدًّا مَرَّتَيْنِ فَصَاعِدًا]

L40114 Abū Muḥammad—may Allāh have mercy on him—said: People have differed regarding this matter, such as one who fornicates twice or more before the

؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي ذَلِكَ، كَمَنْ زَنَى مَرَّتَيْنِ فَأَكْثَرَ قَبْلَ أَنْ يُحَدَّ فِي ذَلِكَ، أَوْ قَذَفَ مَرَّتَيْنِ فَأَكْثَرَ قَبْلَ أَنْ يُحَدَّ فِي ذَلِكَ، أَوْ شَرِبَ الْخَمْرَ مَرَّتَيْنِ

[12] **Qur'an references (L40109):** Qur'an 4:15 (An-Nisa).
[13] **Qur'an references (L40110):** Qur'an 10:36 (Yunus).

prescribed punishment is enforced for it, or accuses of unchastity twice or more before the prescribed punishment is enforced for it, or drinks intoxicants twice or more before the prescribed punishment is enforced for it, or steals twice or more before the prescribed punishment is enforced for it, or denies a borrowed item twice or more before the prescribed punishment is enforced for it, or commits banditry twice or more before the prescribed punishment is enforced for it. One group said: In all these cases, only a single prescribed punishment is required. Another group said: A prescribed punishment is due for each offense.

L40115 Abū Muḥammad—may Allāh have mercy on him—said: "Is it not obligatory for us to examine this matter, so that we may know the truth and follow it by the help of Allāh the Exalted?" We then scrutinized the opinion of those who argue: "Does every action entail a ḥadd [prescribed punishment]?" and found them adducing as evidence the words of Allāh the Exalted: *"As for the adulteress and the adulterer, flog each of them with a hundred lashes"* [24:2].[14]

L40116 And the Most High said, "The male thief and the female thief: cut off their hands." [Al-Ma'idah: 38][15]

L40117 And He, the Exalted, said: "And those who falsely accuse chaste women and then do not produce four witnesses, flog them with eighty lashes" [An-Nur: 4].[16]

L40118–40120 We found the Messenger of Allah—peace and blessings of Allah be upon him—saying: "Abdullah ibn Rabee' reported to us: Muhammad ibn Mu'awiyah related; Ahmad ibn Shu'ayb narrated; Muhammad ibn Rafi' transmitted; 'Abd al-Razzaq conveyed; Ma'mar narrated from Sahl ibn Abi Salih from his father from Abu Hurairah that he said: 'Whoever consumes intoxicants, flog him. If he does so again, flog him again, and if he repeats it, flog him once more.'" He mentioned the remainder of the report. They said: "By the explicit text of Allah's words (Exalted is He) and the words of

فَأَكْثَرَ قَبْلَ أَنْ يُقَامَ عَلَيْهِ الْحَدُّ، أَوْ سَرَقَ مَرَّتَيْنِ فَأَكْثَرَ قَبْلَ أَنْ يُحَدَّ فِي ذَلِكَ، أَوْ جَحَدَ عَارِيَّةً مَرَّتَيْنِ فَأَكْثَرَ، قَبْلَ أَنْ يُقَامَ عَلَيْهِ الْحَدُّ فِي ذَلِكَ أَوْ حَارَبَ مَرَّتَيْنِ فَأَكْثَرَ قَبْلَ أَنْ يُقَامَ عَلَيْهِ الْحَدُّ فِي ذَلِكَ؟ فَقَالَتْ طَائِفَةٌ: لَيْسَ فِي كُلِّ ذَلِكَ إِلَّا حَدٌّ وَاحِدٌ فَقَطْ - وَقَالَتْ طَائِفَةٌ: عَلَيْهِ لِكُلِّ مَرَّةٍ حَدٌّ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ؟ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى - فَنَظَرْنَا فِي قَوْلِ مَنْ قَالَ: لِكُلِّ فِعْلَةٍ حَدٌّ؟ فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِقَوْلِ اللَّهِ تَعَالَى {الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ} [النور: ٢]

وَقَالَ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] .

وَقَالَ تَعَالَى {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً} [النور: ٤]

وَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ رَافِعٍ ثنا عَبْدُ الرَّزَّاقِ ثنا مَعْمَرٌ عَنْ سَهْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ «مَنْ شَرِبَ الْخَمْرَ فَاجْلِدُوهُ، ثُمَّ إِذَا شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِذَا شَرِبَ فَاجْلِدُوهُ» وَذَكَرَ بَاقِيَ الْخَبَرِ قَالُوا: فَوَجَبَ بِنَصِّ كَلَامِ اللَّهِ تَعَالَى، وَكَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَنْ زَنَى الْجَلْدُ الْمَأْمُورُ بِهِ، وَعَلَى مَنْ سَرَقَ قَطْعُ يَدِهِ، وَعَلَى مَنْ قَذَفَ الْجَلْدُ الْمَأْمُورُ بِهِ وَعَلَى مَنْ شَرِبَ الْخَمْرَ الْجَلْدُ الْمَأْمُورُ

[14] **Qur'an references (L40115):** Qur'an 24:2 (An-Nur).
[15] **Qur'an references (L40116):** Qur'an 5:38 (Al-Ma'idah).
[16] **Qur'an references (L40117):** Qur'an 24:4 (An-Nur).

His Messenger—peace and blessings of Allah be upon him—the prescribed flogging applies to the unmarried adulterer, the cutting of the hand applies to the thief, the prescribed flogging applies to the slanderer, and to the one who..." He drank wine; the prescribed flogging became a legally established obligation upon him. Since this is the case, we know with certainty that if he commits adultery again, a second hadd becomes obligatory upon him. If he steals again, amputation of the hand becomes obligatory upon him for the second theft. If he falsely accuses someone again, a second hadd becomes obligatory upon him. If he drinks again, a second hadd necessarily becomes obligatory upon him—and thus it applies every time.

بِهِ، فَاسْتَقَرَّ ذَلِكَ فَرْضًا عَلَيْهِ، فَإِذْ ذَلِكَ كَذَلِكَ فَبِيَقِينٍ نَدْرِي أَنَّهُ مَتَى زَنَى ثَانِيَةً وَجَبَ عَلَيْهِ حَدٌّ ثَانٍ، وَإِذَا سَرَقَ ثَانِيَةً وَجَبَ عَلَيْهِ بِالسَّرِقَةِ الثَّانِيَةِ قَطْعُ ثَانٍ، وَإِذَا قَذَفَ ثَانِيَةً وَجَبَ عَلَيْهِ حَدٌّ ثَانٍ، وَإِذَا شَرِبَ ثَانِيَةً وَجَبَ عَلَيْهِ حَدٌّ ثَانٍ وَلَا بُدَّ - وَهَكَذَا فِي كُلِّ مَرَّةٍ.

L40121 Abū Muḥammad—may Allah have mercy on him—said: As for their assertion that Allah the Exalted said, "The adulteress and the adulterer" [24:2], and His saying, the Exalted, "The male thief and the female thief" [5:38]—[17]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا قَوْلُهُمْ: إنَّ اللَّهَ تَعَالَى قَالَ {الزَّانِيَةُ وَالزَّانِي} [النور: ٢] الْآيَةَ وقَوْله تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ} [المائدة: ٣٨] الْآيَةَ.

L40122 And the statement of Allah, the Exalted: "And those who accuse chaste women..." [Al-Nur: 4] the verse.[18]

وقَوْله تَعَالَى {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ} [النور: ٤] الْآيَةَ.

L40123 The statement of the Messenger of Allah — peace and blessings be upon him — "If he drinks alcohol, flog him. Then if he drinks again, flog him again. Then if he drinks again, flog him again" — all of that is true, and whoever denies its wording or meaning becomes a disbeliever.

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا شَرِبَ فَاجْلِدُوهُ، ثُمَّ إذَا شَرِبَ فَاجْلِدُوهُ، ثُمَّ إذَا شَرِبَ فَاجْلِدُوهُ» فَكُلُّ ذَلِكَ حَقٌّ، وَيَكْفُرُ مَنْ أَنْكَرَ لَفْظَهُ وَمَعْنَاهُ.

L40124 As for their statement: "Thus, that became established as an obligation upon him" – this is a delusion of our associates, and we do not hold this view. Rather, we say: None of the aforementioned punishments – whether for illicit intercourse, false accusation, theft, or drinking intoxicants – becomes binding by the mere occurrence of the act itself. Rather, another condition must be added to it – namely, the confirmation of the act before the judge through the application of ḥudūd, either by his personal knowledge, testimony of upright witnesses, or the offender's confession. As for what is not confirmed before the judge, no punishment is imposed – neither lashing nor amputation whatsoever.

وَأَمَّا قَوْلُهُمْ: فَاسْتَقَرَّ ذَلِكَ فَرْضًا عَلَيْهِ، فَهَذَا وَهْمُ أَصْحَابِنَا، وَلَسْنَا نَقُولُ بِهَذَا، لَكِنْ نَقُولُ: إنَّهُ لَا يَجِبُ شَيْءٌ مِنْ الْحُدُودِ الْمَذْكُورَةِ بِنَفْسِ الزِّنَى، وَلَا بِنَفْسِ الْقَذْفِ، وَلَا بِنَفْسِ السَّرِقَةِ، وَلَا بِنَفْسِ الشُّرْبِ، لَكِنْ حَتَّى يَسْتَضِيفَ إلَى ذَلِكَ مَعْنًى آخَرَ - وَهُوَ ثُبُوتُ ذَلِكَ عِنْدَ الْحَاكِمِ بِإِقَامَةِ الْحُدُودِ، إمَّا بِعِلْمِهِ، وَإِمَّا بِبَيِّنَةٍ عَادِلَةٍ، وَإِمَّا بِإِقْرَارِهِ، وَأَمَّا مَا لَمْ يَثْبُتْ عِنْدَ الْحَاكِمِ فَلَا يَلْزَمُهُ حَدٌّ، لَا جَلْدٌ، وَلَا قَطْعٌ أَصْلًا.

L40125 The proof of this is that if the aforementioned Hudud punishments were

بُرْهَانُ ذَلِكَ: هُوَ أَنَّهُ لَوْ وَجَبَتْ الْحُدُودُ الْمَذْكُورَةُ بِنَفْسِ الْفِعْلِ لَكَانَ فَرْضًا عَلَى مَنْ أَصَابَ شَيْئًا مِنْ ذَلِكَ أَنْ يُقِيمَ الْحَدَّ عَلَى نَفْسِهِ لِيَخْرُجَ مِمَّا لَزِمَهُ، أَوْ أَنْ يُعَجِّلَ الْمَجِيءَ

[17] **Qur'an references (L40121):** Qur'an 24:2 (An-Nur); Qur'an 5:38 (Al-Ma'idah).

obligatory by the mere act itself, it would be incumbent upon whoever commits any such offense to either impose the punishment upon himself to absolve himself of what became binding, or to hasten to come before the ruler and inform him of his obligation so he may fulfill what is required of his legal liability—not his physical body. This is a position none in the entire community asserts without any disagreement whatsoever.

إِلَى الْحَاكِمِ فَيُخْبِرَهُ بِمَا عَلَيْهِ لِيُؤَدِّيَ مَا لَزِمَهُ فَرْضًا فِي ذِمَّتِهِ، لَا فِي بَشَرَتِهِ، وَهَذَا أَمْرٌ لَا يَقُولُهُ أَحَدٌ مِنْ الْأُمَّةِ كُلِّهَا بِلَا خِلَافٍ.

L40126 As for enforcing the hadd punishment upon oneself, this is forbidden by the consensus of the entire community. There is no disagreement that a thief may not amputate his own hand. Rather, if he were to do so, he would be considered by the entire community as disobedient to Allah the Exalted. For if the hadd punishment were an obligatory duty by virtue of the act itself, it would not be lawful for him to conceal himself, nor permissible for him to refrain from confessing for even the blink of an eye, in order to fulfill what is incumbent upon him.

أَمَّا إقَامَتُهُ الْحَدَّ عَلَى نَفْسِهِ فَحَرَامٌ عَلَيْهِ ذَلِكَ بِإِجْمَاعِ الْأُمَّةِ كُلِّهَا، وَأَنَّهُ لَا خِلَافَ فِي أَنَّهُ لَيْسَ لِسَارِقٍ أَنْ يَقْطَعَ يَدَ نَفْسِهِ، بَلْ إنْ فَعَلَ ذَلِكَ كَانَ عِنْدَ الْأُمَّةِ كُلِّهَا عَاصِيًا لِلَّهِ تَعَالَى، فَلَوْ كَانَ الْحَدُّ فَرْضًا وَاجِبًا بِنَفْسِ فِعْلِهِ لَمَا حَلَّ لَهُ السَّتْرُ عَلَى نَفْسِهِ، وَلَا جَازَ لَهُ تَرْكُ الْإِقْرَارِ طَرْفَةَ عَيْنٍ، لِيُؤَدِّيَ عَنْ نَفْسِهِ مَا لَزِمَهُ.

L40127–40129 Indeed, Allah the Exalted and His Messenger—peace be upon him—have commanded the Imams and their governors to enforce the aforementioned prescribed punishments upon whoever commits acts warranting them. Through necessary certainty we know that Allah only commands them in such matters when the offense is conclusively established before them and validated with certainty: that for every act of fornication one commits, every false accusation of adultery one utters, and every instance of drinking alcohol. If one consumes intoxicants, commits any theft, engages in *ḥirābah*, or denies an entrusted item before the Imam becomes aware of it—no penalty is incumbent upon him. However, we maintain: Indeed, God Almighty has mandated that whoever commits fornication once or a thousand times—when the Imam becomes aware of it—receives one hundred lashes. Similarly, the false accuser of unchastity, the thief, the perpetrator of *ḥirābah*, the consumer of intoxicants, and one who denies an entrusted item—whether once or a thousand times—incur a single *ḥadd* punishment, provided the judge becomes fully aware of all these acts.

وَإِنَّمَا أَمَرَ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ السَّلَامُ - الْأَئِمَّةَ وَوُلَاتَهُمْ بِإِقَامَةِ الْحُدُودِ الْمَذْكُورَةِ عَلَى مَنْ جَنَاهَا، وَبِيَقِينِ الضَّرُورَةِ نَدْرِي أَنَّ اللَّهَ تَعَالَى لَمْ يَأْمُرْهُمْ مِنْ ذَلِكَ إلَّا إذَا ثَبَتَ ذَلِكَ عِنْدَهُمْ، وَصَحَّ يَقِينًا أَنَّ لِكُلِّ زِنًا يَزْنِيهِ، وَكُلِّ قَذْفٍ يَقْذِفُهُ، وَكُلِّ شُرْبٍ يَشْرَبُهُ، وَكُلِّ سَرِقَةٍ يَسْرِقُهَا، وَكُلِّ حِرَابَةٍ يُحَارِبُ، وَكُلِّ عَارِيَةٍ يَجْحَدُهَا قَبْلَ عِلْمِ الْإِمَامِ بِذَلِكَ، فَلَمْ يَجِبْ عَلَيْهِ فِيهِ شَيْءٌ، لَكِنَّا نَقُولُ: إنَّ اللَّهَ تَعَالَى أَوْجَبَ عَلَى مَنْ زَنَى مَرَّةً، أَوْ أَلْفَ مَرَّةٍ - إذَا عَلِمَ الْإِمَامُ بِذَلِكَ - جَلْدَ مِائَةٍ، وَعَلَى الْقَاذِفِ، وَالسَّارِقِ، وَالْمُحَارِبِ، وَشَارِبِ الْخَمْرِ، وَالْجَاحِدِ مَرَّةً، وَأَلْفَ مَرَّةٍ حَدًّا وَاحِدًا، إذَا عَلِمَ الْحَاكِمُ ذَلِكَ كُلَّهُ.

L40130 Abū Muḥammad—may Allah have mercy on him—said: In the case where

[18] **Qur'an references (L40122):** Qur'an 24:4 (An-Nur).

the Imam or his deputy neglects, without necessity, to take action against one who committed any of those acts, then begins to implement the ḥadd punishment, but a necessity arises that prevents its completion, and the person then commits another act of the same category as the first—our opinion and that of our colleagues are the same: the first ḥadd punishment must be fully carried out upon him, and the Imam must necessarily initiate the second one thereafter.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا إنْ وَقَعَ عَلَى مَنْ فَعَلَ شَيْئًا مِنْ ذَلِكَ تَضْيِيعٌ مِنْ الْإِمَامِ، أَوْ أَمِيرِهِ لِغَيْرِ ضَرُورَةٍ، ثُمَّ شَرَعَ فِي إقَامَةِ الْحَدِّ فَوَقَعَتْ ضَرُورَةٌ مَنَعَتْ مِنْ إتْمَامِهِ فَوَاقَعَ فِعْلًا آخَرَ مِنْ نَوْعِ الْأَوَّلِ، فَقَوْلُنَا، وَقَوْلُ أَصْحَابِنَا سَوَاءٌ: يَسْتَتِمُّ عَلَيْهِ الْحَدَّ الْأَوَّلَ، ثُمَّ يَبْتَدِئُ فِي الثَّانِي وَلَا بُدَّ.

L40131 The proof for this is that the entire ḥadd penalty had become obligatory through the Imam's knowledge or his deputy's [knowledge] while having the capacity to enforce the full ḥadd penalty. If the offender then commits another sin, the previously mandated ḥadd penalty does not absolve him.

بُرْهَانُ ذَلِكَ: أَنَّ الْحَدَّ كُلَّهُ قَدْ وَجَبَ بِعِلْمِ الْإِمَامِ، أَوْ أَمِيرِهِ مَعَ قُدْرَتِهِ عَلَى إقَامَةِ جَمِيعِ الْحَدِّ، ثُمَّ أَحْدَثَ ذَنْبًا آخَرَ، فَلَا يَجْزِي عَنْهُ حَدٌّ قَدْ تَقَدَّمَ وُجُوبُهُ.

L40132 Abū Muḥammad—may Allāh have mercy on him—said: We ask the opponents about their opinion concerning one who fornicates repeatedly, drinks alcohol repeatedly, falsely accuses a single person of unchastity repeatedly, steals repeatedly, or commits brigandage repeatedly—while the ruler is fully aware of all this and capable of enforcing the prescribed punishments, yet refrains from punishing him until he commits these acts—why do they impose only a single punishment on him? What distinguishes this from the view of those among them who say: If one intentionally breaks the fast and then has intercourse on multiple days during Ramaḍān, he must offer an expiation for each day? Or [the case of] one who swears numerous oaths on different matters, requiring an expiation for each oath? Or the view of those among them who say: If one declares ẓihār repeatedly, each declaration necessitates an expiation? And their unanimous position is that one who—while in iḥrām—kills game must offer a compensation for each animal killed. Indeed, some of them said: If he kills a single animal while in the state of qirān, he must offer two compensations.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَنَسْأَلُ الْمُخَالِفِينَ عَنْ قَوْلِهِمْ فِيمَنْ زَنَى مَرَّاتٍ، أَوْ شَرِبَ مَرَّاتٍ، أَوْ قَذَفَ مَرَّاتٍ إنْسَانًا وَاحِدًا، أَوْ سَرَقَ مَرَّاتٍ، أَوْ حَارَبَ مَرَّاتٍ - وَعَلِمَ الْإِمَامُ كُلَّ ذَلِكَ - وَقَدَرَ عَلَى إقَامَةِ الْحُدُودِ عَلَيْهِ، ثُمَّ لَمْ يُحَدَّ حَتَّى وَاقَعَ مَا ذَكَرْنَا، فَلَمْ يُوجِبُوا عَلَيْهِ إلَّا حَدًّا وَاحِدًا، مَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ قَوْلِ مَنْ قَالَ مِنْهُمْ: إنْ أَفْطَرَ عَامِدًا فَوَطِئَ أَيَّامًا مِنْ شَهْرِ رَمَضَانَ أَنَّ عَلَيْهِ لِكُلِّ يَوْمٍ كَفَّارَةً؟ وَمَنْ حَلَفَ أَيْمَانًا كَثِيرَةً عَلَى أَشْيَاءَ مُخْتَلِفَةٍ فَعَلَيْهِ لِكُلِّ يَمِينٍ كَفَّارَةٌ؟ وَمَنْ قَالَ مِنْهُمْ: إنْ ظَاهَرَ مَرَّاتٍ كَثِيرَةً فَإِنَّ لِكُلِّ ظِهَارٍ كَفَّارَةً؟ وَقَوْلُهُمْ كُلُّهُمْ: إنَّ مَنْ أَصَابَ - وَهُوَ مُحْرِمٌ - صُيُودًا فَعَلَيْهِ لِكُلِّ صَيْدٍ جَزَاءٌ بَلْ قَالَ بَعْضُهُمْ: إنَّهُ لَوْ أَصَابَ صَيْدًا وَاحِدًا - وَهُوَ قَارِنٌ - فَعَلَيْهِ جَزَاءَانِ.

L40133–40135 If they have claimed consensus regarding the expiation for breaking the fast in Ramadan, it has revealed the ignorance or falsehood of the one making such a claim, for Zufar ibn al-Hudhayl and others among them maintains that whoever breaks their fast through intercourse or other means throughout all the days of... As for the month of Ramadan—if one has not atoned—only a single expiation is obligatory. This constitutes the obligation according to

فَإِنْ ادَّعَوْا فِي كَفَّارَةِ الْإِفْطَارِ فِي رَمَضَانَ إجْمَاعًا: ظَهَرَ جَهْلُ مَنْ ادَّعَى ذَلِكَ، أَوْ كَذِبُهُ، لِأَنَّ زُفَرَ بْنَ الْهُذَيْلِ وَغَيْرَهُ - مِنْهُمْ - يَرَى أَنَّ مَنْ أَفْطَرَ بِوَطْءٍ أَوْ غَيْرِهِ جَمِيعَ أَيَّامِ شَهْرِ رَمَضَانَ - وَلَمْ يُكَفِّرْ - فَلَيْسَ عَلَيْهِ إلَّا كَفَّارَةٌ وَاحِدَةٌ فَقَطْ - وَهَذَا هُوَ الْوَاجِبُ

the view of Sa‘id ibn al-Musayyib, for the well-authenticated reports from him establish that the entire month of Ramadan is a single obligatory fast. Whoever breaks a single day of it must necessarily make up for it by fasting an entire month, and whoever breaks all of it must likewise fast one month with no additional requirement.

L40136 **A legal question regarding one who committed a ḥadd offense and then fled to the polytheists or apostatized.**

L40137 2174 - Issue: Concerning one who incurs a prescribed punishment, then joins the polytheists or apostatizes. Abu Muhammad (may Allah have mercy on him) said: Abd Allah ibn Rabi‘ narrated to us, Muhammad ibn Mu‘awiyah narrated to us, Ahmad ibn Shu‘ayb narrated to us: Qutaybah ibn Sa‘eed narrated to us, Humaid ibn ‘Abd al-Rahman → his father → Abu Ishaq al-Sabee‘i → Jarir ibn ‘Abd Allah al-Bajali, who said: The Messenger of Allah (peace and blessings be upon him and his family) said, “If a slave flees [from servitude] to the polytheists, his blood becomes permissible.”[19]

L40138–40140 Abū Muḥammad—may Allah have mercy on him—said: This is the ruling we uphold. The term “slave” here encompasses every free person and slave, for we are all slaves of Allah the Exalted. Whoever relocates to the land of polytheism without compelling necessity is deemed a belligerent. This is the minimal status applicable to him—if he is not considered an apostate merely due to his abandonment of the Muslim community and defection to the land of polytheism. Yusuf ibn ʿAbd Allāh ibn ʿAbd al-Barr al-Namarī narrated to us via Khalf ibn al-Qāsim, Aḥmad ibn Saʿd al-Mihrānī, Aḥmad ibn ʿAbd al-Jabbār, and Abū Muʿāwiyah Muḥammad ibn Khāzim, from Ismāʿīl ibn Abī Khālid, from Qays ibn Abī Ḥāzim, from Jarīr ibn ʿAbd Allāh al-Bajalī (of the Bajīla tribe), who said: The Messenger of Allāh (peace and blessings be upon him and his family) said, “I disavow every Muslim who resides in the midst of polytheists.”[20]

L40141 Abū Muḥammad—may Allah have mercy on him—said: “We will thor-

[19] **Hadith references (L40137):** Sunan Abi Dawud 4360; Mishkat al-Masabih 3549.
[20] **Hadith references (L40138):** Mishkat al-Masabih 3547.

- عَلَى قَوْلِ سَعِيدِ بْنِ الْمُسَيِّبِ - لِأَنَّ الْمَحْفُوظَ عَنْهُ أَنَّ شَهْرَ رَمَضَانَ كُلَّهُ صَوْمٌ وَاحِدٌ، مَنْ أَفْطَرَ يَوْمًا مِنْهُ فَعَلَيْهِ قَضَاءُ جَمِيعِهِ يَقْضِي شَهْرًا، وَلَا بُدَّ، وَمَنْ أَفْطَرَهُ كُلَّهُ فَعَلَيْهِ شَهْرٌ وَاحِدٌ أَيْضًا وَلَا مَزِيدَ.

[مَسْأَلَةٌ فِيمَنْ أَصَابَ حَدًّا ثُمَّ لَحِقَ بِالْمُشْرِكِينَ أَوْ ارْتَدَّ]

٢١٧٤ - مَسْأَلَةٌ: فِيمَنْ أَصَابَ حَدًّا ثُمَّ لَحِقَ بِالْمُشْرِكِينَ أَوْ ارْتَدَّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ ثنا حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ الْبَجَلِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إذَا أَبَقَ الْعَبْدُ إلَى الشِّرْكِ فَقَدْ حَلَّ دَمُهُ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَبِهَذَا نَأْخُذُ، وَالْعَبْدُ هَاهُنَا كُلُّ حُرٍّ وَعَبْدٍ، فَكُلُّنَا عَبِيدُ اللَّهِ تَعَالَى، وَمَنْ لَحِقَ بِأَرْضِ الشِّرْكِ بِغَيْرِ ضَرُورَةٍ فَهُوَ مُحَارِبٌ، هَذَا أَقَلُّ أَحْوَالِهِ إنْ سَلِمَ مِنْ الرِّدَّةِ بِنَفْسِ فِرَاقِهِ جَمَاعَةَ الْإِسْلَامِ، وَانْحِيَازِهِ إلَى أَرْضِ الشِّرْكِ: بِمَا حَدَّثَنَا يُوسُفُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَرِّ النَّمَرِيُّ ثنا خَلَفُ بْنُ الْقَاسِمِ ثنا أَحْمَدُ بْنُ سَعْدٍ الْمِهْرَانِيُّ ثنا أَحْمَدُ بْنُ عَبْدِ الْجَبَّارِ ثنا أَبُو مُعَاوِيَةَ مُحَمَّدُ بْنُ خَازِمٍ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ الْبَجَلِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنَا بَرِيءٌ مِنْ كُلِّ مُسْلِمٍ مُقِيمٍ بَيْنَ أَظْهُرِ الْمُشْرِكِينَ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَسَنَسْتَقْصِي الْكَلَامَ - إنْ شَاءَ اللَّهُ تَعَالَى - فِي هَذَا فِي " كِتَابِ الرِّدَّةِ " مِنْ هَذَا الْكِتَابِ.

oughly examine the discussion—Allah, the Exalted, willing—on this topic in the *Book of Apostasy* of this book."

L40142 If someone says: "Since the Messenger of Allah—peace and blessings of Allah be upon him—specifically mentioned the runaway slave here, does this confirm that he intended this ruling exclusively for slaves?" We respond—by Allah's success: The term *abāq* is not restricted to slaves under our ownership alone. Rather, anyone who flees their master and owner is a runaway. Allah the Exalted is the Owner of all, and all are His slaves and owned slaves. Thus, whoever flees the community of Allah the Exalted and from the abode of Allah's religion to the abode of Allah's enemies—those who wage war against Allah the Almighty and Majestic—is a runaway.

L40143 The proof of this is Allah's statement, the Most High: *"And indeed, Jonah was among the messengers—when he absconded to the laden ship"* (Quran 37:139-140). For Allah, the Most High, designated the action of Jonah, His messenger (may Allah's prayers and peace be upon him)—who was a free man without disagreement—when he absconded in defiance of his Lord's command, as *ibāq*. Thus, it is established that *ibāq* applies juridically to every free person and slave. And with Allah, the Most High, lies all success.[21]

L40144 Abdullah ibn Rabi' narrated to us, Muhammad ibn Mu'awiyah narrated to us, Ahmad ibn Shu'ayb narrated to us from Muhammad ibn Qudamah from Jarir from al-Mughirah ibn Miqsam from al-Sha'bi, who said: Jarir ibn Abdullah used to narrate from the Prophet (peace be upon him), "If a slave flees, his prayer is not accepted, and if he dies, he dies a disbeliever." A slave belonging to Jarir fled, so he seized him and beheaded him.

L40145–40146 Abū Muḥammad—may Allah have mercy on him—said: The act of joining the polytheists does not nullify for the one who joins them any of the ḥudūd penalties he incurred before joining them, nor those he incurred after joining them. This is because Allah the Exalted ordained the ḥudūd penalties in the Quran through the revelation given to His Messenger—peace and blessings be upon him—and He did not dismiss them nor nullify them.

فَإِنْ قَالَ قَائِلٌ: إِنَّمَا ذَكَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَاهُنَا مَعَ ذِكْرِ الْعَبْدِ الْآبِقِ، فَصَحَّ أَنَّهُ إِنَّمَا عَنَى بِذَلِكَ الْمَمَالِيكَ فَقَطْ؟ قُلْنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: لَيْسَ الْإِبَاقُ لَفْظًا مَوْقُوفًا عَلَى الْمَمَالِيكِ الَّذِينَ لَنَا فَقَطْ، بَلْ كُلُّ مَنْ هَرَبَ عَنْ سَيِّدِهِ وَمَالِكِهِ فَهُوَ آبِقٌ، وَاَللَّهُ تَعَالَى مَالِكُ الْجَمِيعِ، وَالْكُلُّ عَبِيدُهُ وَمَمَالِيكُهُ، فَمَنْ هَرَبَ عَنْ جَمَاعَةِ اللَّهِ تَعَالَى، وَعَلَى دَارِ دِينِ اللَّهِ تَعَالَى إِلَى دَارِ أَعْدَاءِ اللَّهِ تَعَالَى الْمُحَارِبِينَ لِلَّهِ عَزَّ وَجَلَّ فَهُوَ آبِقٌ.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى {وَإِنَّ يُونُسَ لَمِنَ الْمُرْسَلِينَ - إِذْ أَبَقَ إِلَى الْفُلْكِ الْمَشْحُونِ} [الصافات: ١٣٩ - ١٤٠] فَقَدْ سَمَّى اللَّهُ تَعَالَى فِعْلَ يُونُسَ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ حُرٌّ بِلَا خِلَافٍ - إِذْ فَرَّ عَنْ أَمْرِ رَبِّهِ تَعَالَى إِبَاقًا - فَصَحَّ أَنَّ الْإِبَاقَ لِكُلِّ حُرٍّ وَعَبْدٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ قُدَامَةَ عَنْ جَرِيرٍ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ الشَّعْبِيِّ قَالَ: كَانَ جَرِيرُ بْنُ عَبْدِ اللَّهِ يُحَدِّثُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَبَقَ الْعَبْدُ لَمْ تُقْبَلْ لَهُ صَلَاةٌ وَإِنْ مَاتَ مَاتَ كَافِرًا؟ فَأَبَقَ غُلَامٌ لِجَرِيرٍ فَأَخَذَهُ فَضَرَبَ عُنُقَهُ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَا يُسْقِطُ عَنْ اللَّاحِقِ بِالْمُشْرِكِينَ لِحَاقُهُ بِهِمْ شَيْئًا مِنْ الْحُدُودِ الَّتِي أَصَابَهَا قَبْلَ لِحَاقِهِ، وَلَا الَّتِي أَصَابَهَا بَعْدَ لِحَاقِهِ، لِأَنَّ اللَّهَ تَعَالَى أَوْجَبَ الْحُدُودَ فِي الْقُرْآنِ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا أَرْسَلَهَا وَلَمْ يُسْقِطْهَا.

[21] **Qur'an references (L40143):** Qur'an 37:139 (As-Saffat); Qur'an 37:140 (As-Saffat).

وَكَذَلِكَ لَمْ يُسْقِطْهَا عَنِ الْمُرْتَدِّ، وَلَا عَنِ الْمُحَارِبِ، وَلَا عَنِ الْمُمْتَنِعِ، وَلَا عَنِ الْبَاغِي، إِذَا قُدِرَ عَلَى إِقَامَتِهَا عَلَيْهِمْ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L40147 Likewise, He did not exempt the apostate, the combatant, the resistant, or the rebel from it, provided it is possible to enforce it upon them. “And your Lord is never forgetful.” [Maryam: 64].[22]

وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى أَنَّ اللَّهَ عَزَّ وَجَلَّ لَوْ أَرَادَ أَنْ يَسْتَثْنِيَ أَحَدًا مِنْ هَؤُلَاءِ لَمَا سَكَتَ عَنْ ذَلِكَ إِعْنَاتًا لَنَا، وَلَا أَهْمَلَهُ، وَلَا أَغْفَلَهُ، فَإِذْ لَمْ يُعْلِمْنَا بِذَلِكَ فَنَحْنُ نُقْسِمُ بِاللَّهِ تَعَالَى أَنَّ اللَّهَ تَعَالَى مَا أَرَادَ قَطُّ إِسْقَاطَ حَدٍّ أَصَابَهُ لَاحِقٌ بِالشِّرْكِ قَبْلَ لِحَاقِهِ، أَوْ أَصَابَهُ بَعْدَ لِحَاقِهِ بِهِمْ، أَوْ أَصَابَهُ مُرْتَدٌّ قَبْلَ رِدَّتِهِ أَوْ بَعْدَهَا، وَأَنَّ مَنْ خَالَفَ هَذَا فَمُخْطِئٌ عِنْدَ اللَّهِ تَعَالَى بِيَقِينٍ لَا شَكَّ فِيهِ.

L40148 We testify by the testimony of Allah the Exalted that if Allah, Mighty and Majestic, had willed to exempt anyone from these [people], He would not have remained silent about it to burden us, nor neglected it, nor disregarded it. Since He did not inform us of such exemption, we swear by Allah the Exalted that Allah the Exalted never intended to nullify a punishment that befell one who would later join polytheism before their adherence, or that befell them after joining it, or that befell an apostate before their apostasy or after it. Whoever contradicts this is erroneous in the sight of Allah the Exalted with certainty beyond doubt.

وَقَدْ صَحَّ النَّصُّ وَالْإِجْمَاعُ بِإِسْقَاطِهِ، وَهُوَ مَا أَصَابَهُ أَهْلُ الْكُفْرِ مَا دَامُوا فِي دَارِ الْحَرْبِ قَبْلَ أَنْ يَتَذَمَّمُوا أَوْ يُسْلِمُوا فَقَطْ، فَهَذَا خَارِجٌ بِفِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي كُلِّ مَنْ أَسْلَمَ مِنْهُمْ، فَلَمْ يُؤَاخِذْهُمْ بِشَيْءٍ مِمَّا سَلَفَ لَهُمْ مِنْ قَتْلٍ، أَوْ زِنًا، أَوْ قَذْفٍ، أَوْ شُرْبِ خَمْرٍ، أَوْ سَرِقَةٍ، وَصَحَّ الْإِجْمَاعُ بِذَلِكَ.

L40149 The authentic text and consensus have authentically established the nullification of penalties for offenses committed by disbelievers as long as they remained in the abode of war before entering the covenant of dhimmah or simply submitting. This exemption is evidenced by the action of Allah’s Messenger (peace be upon him) toward every individual among them who embraced Islam, as he did not hold them accountable for past acts they had committed—whether killing, fornication, qadhf (false accusation of adultery), wine consumption, or theft—and a consensus is authentically established on this.

فَإِنْ قَالَ قَائِلٌ: فَإِنَّ اللَّهَ تَعَالَى يَقُولُ {قُلْ لِلَّذِينَ كَفَرُوا إِنْ يَنْتَهُوا يُغْفَرْ لَهُمْ مَا قَدْ سَلَفَ} [الأنفال: ٣٨] وَقَالَ تَعَالَى {وَمَنْ يَتَوَلَّهُمْ مِنْكُمْ فَإِنَّهُ مِنْهُمْ} [المائدة: ٥١] .

L40150 If someone says: “Indeed, Allah, the Exalted, says: *Say to those who disbelieve: If they cease, what they did before will be forgiven them* [Al-Anfal 8:38].” And He, the Exalted, says: *Whoever allies with them among you, then he is of them* [Al-Ma’idah 5:51].[23]

فَصَحَّ بِهَذَا أَنَّ الْمُرْتَدَّ مِنَ الْكُفَّارِ بِلَا شَكٍّ فَإِذْ هُوَ مِنْهُمْ فَحُكْمُهُ حُكْمُهُمْ.

L40151 It is thereby established that the apostate is undoubtedly among the disbelievers. Thus, if he is among them, his ruling is the same as theirs.

وَذَكَرُوا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا الضَّحَّاكُ - يَعْنِي أَبَا عَاصِمٍ النَّبِيلَ - أَنَا حَيْوَةُ بْنُ شُرَيْحٍ ثنا يَزِيدُ بْنُ أَبِي حَبِيبٍ عَنْ شُمَامَةَ الْمَهْرِيِّ ثنا مُضَرُ ثنا «عَمْرُو بْنُ الْعَاصِ فِي سِيَاقَةِ الْمَوْتِ يَبْكِي طَوِيلًا، فَذَكَرَ الْحَدِيثَ، وَفِيهِ قَالَ فَلَمَّا جَعَلَ اللَّهُ الْإِسْلَامَ فِي

L40152–40154 They mentioned through the chain of Muslim: Muḥammad ibn al-Muthannā narrated to us; al-Ḍaḥḥāk—meaning Abū ʿĀṣim al-Nabīl—narrated to us;

[22] **Qur’an references (L40147):** Qur’an 19:64 (Maryam).
[23] **Qur’an references (L40150):** Qur’an 8:38 (Al-Anfal); Qur’an 5:51 (Al-Ma’idah).

Ḥaywah ibn Shurayḥ narrated to us; Yazīd ibn Abī Ḥabīb narrated from Shumāmah al-Mahrī; Muḍar narrated to us; ʿAmr ibn al-ʿĀṣ narrated—while on the brink of death, weeping at length. The narrator mentioned the ḥadīth, which included his statement: "When Allah caused Islam to enter my heart, I came to the Messenger of Allah—peace and blessings be upon him—and said: 'Extend your right hand that I may pledge allegiance to you.' He extended his right hand, but I withdrew mine. He asked: 'What is wrong, O ʿAmr?' I replied: 'I wished to stipulate a condition.' He said: 'What do you stipulate?' I said: 'That I be forgiven.' He said: 'Do you not know that Islam erases what preceded it, that migration erases what preceded it, and that pilgrimage erases what preceded it?'" He then mentioned the remainder of the discourse. From the chain of transmission of Muslim: Muḥammad ibn Ḥātim ibn Maymūn narrated to us from Ibrāhīm ibn Dīnār—and the wording is Ibrāhīm's—he said: Ḥajjāj—i.e., Ibn Muḥammad—, narrated to us from Ibn Jurayj, who informed me from Yaʿlā ibn Muslim: that he heard Saʿīd ibn Jubayr relate from Ibn ʿAbbās: "Some people among the polytheists had committed many killings and acts of adultery. They came to the Prophet—may Allah bless him and his family and grant him peace—and said, 'What you proclaim and invite to is good, but if only you could tell us whether there is expiation for what we have done?' Then was revealed: *{And those who do not invoke with Allah another deity nor kill the soul which Allah has forbidden [to be killed], except by right}* (Quran 25:68) up to His words: *{he will meet a great punishment}* (25:68), and *{Say, "O My servants who have transgressed against themselves [by sinning], do not despair of Allah's mercy"}* (39:53)—the verse."[24]

قَلْبِي أَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْتُ: ابْسُطْ يَمِينَكَ فَلأُبَايِعْكَ، فَبَسَطَ يَمِينَهُ، فَقَبَضْتُ يَدِي فَقَالَ: مَا لَكَ يَا عَمْرُو؟ فَقُلْتُ: أَرَدْتُ أَنْ أَشْتَرِطَ، فَقَالَ: تَشْتَرِطُ مَاذَا؟ قُلْتُ: أَنْ يُغْفَرَ لِي، قَالَ: أَمَا عَلِمْتَ أَنَّ الإِسْلاَمَ يَهْدِمُ مَا قَبْلَهُ، وَأَنَّ الْهِجْرَةَ تَهْدِمُ مَا قَبْلَهَا، وَأَنَّ الْحَجَّ يَهْدِمُ مَا قَبْلَهُ» وَذَكَرَ بَاقِيَ الْكَلاَمِ وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنَا مُحَمَّدُ بْنُ حَاتِمِ بْنِ مَيْمُونٍ، لإِبْرَاهِيمَ بْنُ دِينَارٍ - وَاللَّفْظُ لإِبْرَاهِيمَ - قَالَ: ثنا حَجَّاجٌ - هُوَ ابْنُ مُحَمَّدٍ - عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي يَعْلَى بْنُ مُسْلِمٍ: أَنَّهُ سَمِعَ سَعِيدَ بْنَ جُبَيْرٍ يُحَدِّثُ عَنِ ابْنِ عَبَّاسٍ «أَنَّ نَاسًا مِنْ أَهْلِ الشِّرْكِ قَتَلُوا فَأَكْثَرُوا وَزَنَوْا فَأَكْثَرُوا فَأَتَوْا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالُوا: إِنَّ الَّذِي تَقُولُ وَتَدْعُو إِلَيْهِ لَحَسَنٌ، وَلَوْ تُخْبِرُنَا أَنَّ لِمَا عَمِلْنَا كَفَّارَةً؟ فَنَزَلَ {وَالَّذِينَ لا يَدْعُونَ مَعَ اللَّهِ إِلَهًا آخَرَ وَلا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلا بِالْحَقِّ} [الفرقان: ٦٨] إِلَى قَوْلِهِ {يَلْقَ أَثَامًا} [الفرقان: ٦٨] ، و {قُلْ يَا عِبَادِيَ الَّذِينَ أَسْرَفُوا عَلَى أَنْفُسِهِمْ لا تَقْنَطُوا مِنْ رَحْمَةِ اللَّهِ} [الزمر: ٥٣] الآيَةَ» .

L40155 Abū Muḥammad—may Allāh have mercy on him—said: "The entirety of the first verse extends up to His words *ḥasanāt* [al-Furqān: 70]."[25]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: تَمَامُ الآيَةِ الأُولَى إِلَى قَوْلِه {حَسَنَاتٍ} [الفرقان: ٧٠] .

L40156 And the other [verse]: "Indeed, Allah forgives all sins" (Quran 39:53, Surah Az-Zumar).[26]

وَالأُخْرَى {إِنَّ اللَّهَ يَغْفِرُ الذُّنُوبَ جَمِيعًا} [الزمر: ٥٣] .

L40157 All of this is true, and they have no proof against it. Rather, they are bound

وَكُلُّ هَذَا حَقٌّ وَلَا حُجَّةَ لَهُمْ فِيهِ بَلْ عَلَيْهِمْ عَلَى مَا نُبَيِّنُ - إِنْ شَاءَ اللَّهُ تَعَالَى.

[24] **Qur'an references (L40152):** Qur'an 25:68 (Al-Furqan); Qur'an 39:53 (Az-Zumar).
[25] **Qur'an references (L40155):** Qur'an 25:70 (Al-Furqan).
[26] **Qur'an references (L40156):** Qur'an 39:53 (Az-Zumar).

by what we clarify—if Allah, the Exalted, wills.

L40158 As for Allah's statement, the Exalted: {Say to those who have disbelieved, if they cease, what is past will be forgiven them} [Al-Anfāl 8:38] – yes, this is our position. We have not opposed them regarding this verse, nor is it the subject of our inquiry. Rather, our question is: should the prior Ḥudud punishments be implemented upon them or not? This verse contains no ruling whatsoever on this matter—neither through explicit Quranic text nor Sunnah. Indeed, the repentant among us is forgiven; Maʿīz is forgiven, as are the woman from Ghāmid and the woman from Juhaynah—their forgiveness is without doubt. Yet Allah's forgiveness for their sins did not nullify the worldly punishment ordained by Allah, the Exalted. Rather, Allah's forgiveness only removed from them the punishment of the Hereafter—the legal punishment itself was not waived. By the judgment of Allah's Messenger (peace and blessings be upon him), he enforced upon them the Ḥadd punishment for *zinā*, which Allah had already forgiven, despite his knowledge (peace and blessings be upon him) that they were forgiven.[27]

L40159–40161 The Messenger of Allah—peace and blessings of Allah be upon him—flogged Mistah ibn Uthathah for false accusation (qadhf), and he was a Badri who was forgiven. He flogged Al-Nu'man for drinking intoxicants (khamr), and he was a Badri who was forgiven. Umar—may Allah be pleased with him—flogged Qudamah ibn Ma'zun in the presence of the Companions—may Allah be pleased with them—for all he did related to intoxicants (khamr), and Qudamah was a Badri who was forgiven. Had the testimony against Al-Mughirah been completed, he would have been subjected to the hadd punishment—and he was a Badri who was forgiven for what he had done. Thus, it is confirmed that Allah the Exalted's forgiveness does not nullify the hudud punishments obligated in this worldly life. Whoever opposes this and claims: Repentance nullifies all Ḥudūd punishments, contradicting the ruling of the Messenger of Allah (may Allah's peace and blessings be upon him) which we mentioned. We have thoroughly examined this matter in a dedicated chapter a few chapters prior to this one.

أَمَّا قَوْلُ اللَّهِ تَعَالَى {قُلْ لِلَّذِينَ كَفَرُوا إِنْ يَنْتَهُوا يُغْفَرْ لَهُمْ مَا قَدْ سَلَفَ} [الأنفال: ٣٨] الْآيَةَ، فَنَعَمْ، هَكَذَا نَقُولُ، وَلَمْ نُخَالِفْهُمْ فِي هَذِهِ الْآيَةِ، وَلَا هِيَ مَسْأَلَتُنَا، وَإِنَّمَا مَسْأَلَتُنَا: هَلْ تُقَامُ عَلَيْهِمْ الْحُدُودُ السَّالِفَةُ أَمْ لَا؟ وَلَيْسَ فِي هَذِهِ الْآيَةِ مِنْ هَذَا حُكْمٌ أَصْلًا لَا بِنَصٍّ مِنْ الْقُرْآنِ، وَلَا مِنْ السُّنَّةِ، وَأَنَّ التَّائِبَ مِنَّا مَغْفُورٌ لَهُ، وَأَنَّ مَاعِزًا مَغْفُورٌ لَهُ وَالْغَامِدِيَّةِ، وَالْجُهَنِيَّةَ: مَغْفُورٌ لَهُمَا بِلَا شَكٍّ، وَلَمْ تُسْقِطْ عَنْهُمْ مَغْفِرَةُ اللَّهِ تَعَالَى لَهُمْ ذَنْبَهُمْ: حَدَّ اللَّهِ تَعَالَى الْوَاجِبَ فِي الدُّنْيَا، وَإِنَّمَا أَسْقَطَتْ مَغْفِرَةُ اللَّهِ تَعَالَى عَنْهُمْ عَذَابَ الْآخِرَةِ فَقَطْ، وَلَمْ يَسْقُطْ عَنْهُمْ الْحَدُّ بِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَيْهِمْ مَعَ عِلْمِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ مَغْفُورٌ لَهُمْ أَقَامَ عَلَيْهِمْ حَدَّ الزِّنَى الَّذِي قَدْ غَفَرَهُ اللَّهُ تَعَالَى لَهُمْ.

وَقَدْ جَلَدَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِسْطَحَ بْنَ أُثَاثَةَ فِي الْقَذْفِ وَهُوَ بَدْرِيٌّ مَغْفُورٌ لَهُ وَجَلَدَ النُّعْمَانَ فِي الْخَمْرِ وَهُوَ بَدْرِيٌّ مَغْفُورٌ لَهُ، وَجَلَدَ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - قُدَامَةَ بْنَ مَظْعُونٍ وَهُوَ بَدْرِيٌّ مَغْفُورٌ لَهُ، كُلُّ مَا فَعَلَ فِي الْخَمْرِ، وَلَوْ تَمَّتْ الشَّهَادَةُ عَلَى الْمُغِيرَةِ لَحَدَّهُ وَهُوَ بَدْرِيٌّ مَغْفُورٌ لَهُ مَا قَدْ فَعَلَ - فَصَحَّ أَنَّ الْمَغْفِرَةَ مِنْ اللَّهِ تَعَالَى لَا تُسْقِطُ الْحُدُودَ الْوَاجِبَةَ فِي الدُّنْيَا، وَمَنْ خَالَفَ هَذَا وَقَالَ: إنَّ التَّوْبَةَ تُسْقِطُ الْحُدُودَ كُلَّهَا خَالَفَ حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَا، وَقَدْ تَقَصَّيْنَا هَذَا فِي بَابٍ مُفْرَدٍ لِذَلِكَ قَبْلَ هَذَا بِأَبْوَابٍ يَسِيرَةٍ.

[27] **Qur'an references (L40158):** Qur'an 8:38 (Al-Anfal).

L40162 As for Allah's statement, exalted is He: {And whoever takes them as allies among you, then he is indeed one of them} [Al-Mā'idah 5:51], they have no argument in this matter at all, because it does not mention the waiver of the ḥudūd for a slave who flees to them or apostatizes. Rather, it states that the apostate is one of the disbelievers, and there is no doubt about this among Muslims.[28]

وَأَمَّا قَوْلُ اللَّهِ تَعَالَى {وَمَنْ يَتَوَلَّهُمْ مِنْكُمْ فَإِنَّهُ مِنْهُمْ} [المائدة: ٥١] فَلَا حُجَّةَ لَهُمْ فِي هَذَا أَصْلًا، لِأَنَّهُ لَيْسَ فِيهَا إسْقَاطُ الْحُدُودِ عَلَى مَنْ أَبَقَ إلَيْهِمْ، أَوْ ارْتَدَّ، وَإِنَّمَا فِيهَا: أَنَّ الْمُرْتَدَّ مِنْ الْكُفَّارِ، وَهَذَا لَا شَكَّ فِيهِ عِنْدَ مُسْلِمٍ.

L40163 If they say: Yes, but since he was among them, he was judged by their ruling? We respond: This is evident to them, and the proof is your consensus with us that an apostate is not allowed to persist in his apostasy—unlike the Scriptuary polytheist who is permitted to remain in his disbelief if he pays the jizyah in humiliation while accepting the dhimma covenant. Moreover, no jizyah is accepted from an apostate at all according to your position. An apostate woman cannot be married, unlike a female Scriptuary polytheist. The slaughter of an apostate is not permissible to eat, unlike that of a Scriptuary polytheist. Nor is an apostate enslaved if captured, whereas the polytheist is enslaved upon capture. Thus, you have admitted the invalidity of your corrupt analogy, thereby nullifying any comparison between the apostate and the disbeliever in any of these aspects. It necessarily follows that you must not analogize him to them regarding the cessation of prescribed punishments, as this safeguards your analogy. It has become clear that in this matter, they neither followed textual evidence from the Quran or Sunnah, nor applied analogy consistently, nor relied on anything at all. And with Allah, the Exalted, lies all success.

فَإِنْ قَالُوا: بَلَى، وَلَكِنْ لَمَّا كَانَ مِنْهُمْ حُكِمَ لَهُ بِحُكْمِهِمْ؟ قُلْنَا: لَهُمْ هَذَا وَاضِحٌ، وَبُرْهَانُ ذَلِكَ: إجْمَاعُكُمْ مَعَنَا عَلَى أَنَّ الْمُرْتَدَّ لَا يُقَرُّ عَلَى رِدَّتِهِ، بِخِلَافِ الْمُشْرِكِ الْكِتَابِيِّ الَّذِي يُقَرُّ عَلَى كُفْرِهِ إذَا أَدَّى الْجِزْيَةَ صَاغِرًا وَتَذَمَّمَ، وَأَنَّهُ لَا يُقْبَلُ مِنْ الْمُرْتَدِّ جِزْيَةٌ أَصْلًا عِنْدَكُمْ، وَأَنَّهُ لَا تُنْكَحُ الْمُرْتَدَّةُ بِخِلَافِ الْمُشْرِكَةِ الْكِتَابِيَّةِ، وَأَنَّهُ لَا تُؤْكَلُ ذَبِيحَةُ الْمُرْتَدِّ بِخِلَافِ الْمُشْرِكِ الْكِتَابِيِّ، وَلَا يُسْتَرَقُّ الْمُرْتَدُّ إنْ سُبِيَ كَمَا يُسْتَرَقُّ الْمُشْرِكُ إنْ سُبِيَ - فَقَدْ أَقْرَرْتُمْ بِبُطْلَانِ قِيَاسِكُمْ الْفَاسِدِ فَأَبْطَلْتُمْ أَنْ يُقَاسَ الْمُرْتَدُّ عَلَى الْكَافِرِ فِي شَيْءٍ مِنْ هَذِهِ الْوُجُوهِ، وَيَلْزَمُكُمْ أَنْ لَا تَقِيسُوهُ عَلَيْهِمْ فِي سُقُوطِ الْحُدُودِ، فَهُوَ أَحْوَطُ لِقِيَاسِكُمْ، وَلَاحَ أَنَّهُمْ فِي هَذِهِ الْمَسْأَلَةِ - لَا النَّصَّ مِنْ الْقُرْآنِ وَالسُّنَّةِ اتَّبَعُوا، وَلَا الْقِيَاسَ طَرَدُوا، وَلَا تَعَلَّقُوا بِشَيْءٍ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40164 And it has been authentically established that the statement of Allah, the Most High, {And whoever takes them as allies among you, he is indeed one of them} [Al-Mā'idah: 51] is to be interpreted according to its apparent meaning—that such a person is solely one of the disbelievers. This is a truth undisputed by Muslims, with no two differing on it.[29]

وَصَحَّ أَنَّ قَوْلَ اللَّهِ تَعَالَى {وَمَنْ يَتَوَلَّهُمْ مِنْكُمْ فَإِنَّهُ مِنْهُمْ} [المائدة: ٥١] إنَّمَا هُوَ عَلَى ظَاهِرِهِ بِأَنَّهُ كَافِرٌ مِنْ جُمْلَةِ الْكُفَّارِ فَقَطْ - وَهَذَا حَقٌّ لَا يَخْتَلِفُ فِيهِ اثْنَانِ مِنْ الْمُسْلِمِينَ.

L40165 If they claim that *jizyah* is not accepted from the apostate, his slaughtered animal is not eaten, and that enslaving him is prohibited on the basis of consensus, this indicates the ignorance or dishonesty of the one who makes

فَإِنْ ادَّعَوْا أَنَّ الْمُرْتَدَّ لَا تُقْبَلُ مِنْهُ جِزْيَةٌ، وَلَا تُؤْكَلُ ذَبِيحَتُهُ، وَلَا يُسْتَرَقُّ إجْمَاعًا: دَلَّ ذَلِكَ عَلَى جَهْلِ مَنْ ادَّعَى ذَلِكَ أَوْ كَذِبِهِ، فَقَدْ صَحَّ عَنْ بَعْضِ السَّلَفِ: أَخْذُ الْجِزْيَةِ مِنْهُمْ، وَعَنْ بَعْضِ الْفُقَهَاءِ: أَكْلُ ذَبِيحَتِهِ إنْ ارْتَدَّ إلَى دِينٍ صَابِئٍ.

[28] **Qur'an references (L40162):** Qur'an 5:51 (Al-Ma'idah).
[29] **Qur'an references (L40164):** Qur'an 5:51 (Al-Ma'idah).

such a claim. For it has been authentically reported that some of the *Salaf* took *jizyah* from apostates, and that some jurists deemed it permissible to eat his slaughtered animal if he apostatized to the Sabian faith.

وَأَبُو حَنِيفَةَ وَأَصْحَابُهُ يَقُولُونَ: إِنَّ الْمُرْتَدَّةَ إِذَا لَحِقَتْ بِأَرْضِ الْحَرْبِ سُبِيَتْ وَاسْتُرِقَّتْ وَلَمْ تُقْتَلْ، وَلَوْ أَنَّهَا هَاشِمِيَّةٌ أَوْ عَبْشَمِيَّةٌ.

L40166 Abu Hanifah and his companions assert that if a female apostate enters enemy territory, she is captured, enslaved, and not killed—even if she is a Hashimi or ʿAbd Shamsi woman.

حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ سِمَاكِ بْنِ الْفَضْلِ: أَنَّ عَامِلًا لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ كَتَبَ إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي رَجُلٍ أَسْلَمَ ثُمَّ ارْتَدَّ؟ فَكَتَبَ إِلَيْهِ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَنْ اسْأَلْهُ عَنْ شَرَائِعِ الْإِسْلَامِ، فَإِنْ كَانَ قَدْ عَرَفَهَا فَاعْرِضْ عَلَيْهِ الْإِسْلَامَ، فَإِنْ أَبَى فَاضْرِبْ عُنُقَهُ، وَإِنْ كَانَ لَمْ يَعْرِفْهَا فَغَلِّظْ عَلَيْهِ الْجِزْيَةَ وَدَعْهُ.

L40167–40169 Hammam narrated to us; Ibn Mufarrij narrated to us; Ibn al-Aʿrabī narrated to us; al-Dabarī narrated to us; ʿAbd al-Razzāq from Maʿmar from Simāk ibn al-Faḍl: A governor under ʿUmar ibn ʿAbd al-ʿAzīz wrote to him concerning a man who embraced Islam then apostatized—what should be done? ʿUmar ibn ʿAbd al-ʿAzīz wrote in response: "Question him about the ordinances of Islam." If he has known it, present Islam to him. If he refuses, execute him. If he has not known it, impose the *jizya* harshly upon him and spare him.

قَالَ مَعْمَرٌ: وَأَخْبَرَنِي قَوْمٌ مِنْ أَهْلِ الْجَزِيرَةِ: أَنَّ قَوْمًا أَسْلَمُوا ثُمَّ لَمْ يَمْكُثُوا إِلَّا قَلِيلًا حَتَّى ارْتَدُّوا؟ فَكَتَبَ فِيهِمْ مَيْمُونُ بْنُ مِهْرَانَ إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَكَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَنْ رُدَّ عَلَيْهِمُ الْجِزْيَةَ وَدَعْهُمْ.

L40170 Ma'mar said: Some inhabitants of al-Jazirah informed me that a group embraced Islam but remained in it only briefly before apostatizing. Maymun ibn Mihran wrote to Umar ibn Abd al-Aziz concerning them, and Umar ibn Abd al-Aziz responded: "Impose the *jizyah* on them and leave them."

وَقَدْ رُوِيَ نَحْوُ هَذَا عَنْ عُمَرَ بْنِ الْخَطَّابِ.

L40171 And similar to this has been reported from ʿUmar ibn al-Khaṭṭāb.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَأَمَّا حَدِيثُ عَمْرِو بْنِ الْعَاصِ فَهُوَ عَلَيْهِمْ أَعْظَمُ حُجَّةً، لِأَنَّ فِيهِ تَسْوِيَةَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ الْإِسْلَامِ وَالْهِجْرَةِ وَالْحَجِّ فِي أَنَّ كُلَّ وَاحِدٍ مِنْهَا يَهْدِمُ مَا قَبْلَهُ، وَهُمْ لَا يَخْتَلِفُونَ - وَلَا أَحَدَ نَعْلَمُهُ - فِي أَنَّ الْحَجَّ لَا يُسْقِطُ حَدًّا أَصَابَهُ الْمَرْءُ قَبْلَ حَجِّهِ وَلَمْ يَتُبْ مِنْهُ، وَلَمْ تَطُلْ مُدَّتُهُ دُونَهُ، فَمِنَ الْبَاطِلِ أَنْ يَتَحَكَّمُوا فِي حُكْمِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَيَحْمِلُوا قَوْلَهُ - عَلَيْهِ السَّلَامُ - «إِنَّ الْإِسْلَامَ يَهْدِمُ مَا قَبْلَهُ» عَلَى أَنَّ الْإِسْلَامَ يُسْقِطُ الْحُدُودَ الَّتِي وَاقَعَهَا

L40172 Abu Muhammad—may Allah have mercy on him—said: As for the ḥadīth of ʿAmr ibn al-ʿĀṣ, it constitutes a greater proof against them, for in it the Prophet (peace and blessings of Allah be upon him) equates Islam, migration, and Hajj in that each annuls what preceded it. They do not disagree—nor does anyone we know—that Hajj does not abolish prescribed penalties incurred by a person before performing Hajj if they did not repent from them and the period [for repentance] had not elapsed before performing it. It is therefore baseless for them to arbitrarily dictate Allah's ruling conveyed through His Messenger (peace and blessings of Allah be upon him) by interpreting his statement—peace be upon him—"Islam annuls what preceded it"

to mean that Islam abolishes prescribed penalties for acts committed before embracing Islam, while claiming Hajj does not abolish them. Both matters are reported from the Messenger of Allah (peace and blessings of Allah be upon him) in the same manner. This report opposes their stance, for the Messenger of Allah (peace and blessings of Allah be upon him) explicitly stated that Islam annuls what preceded it, migration annuls what preceded it, and Hajj annuls what preceded it. Yet they assert that apostasy to disbelief annuls prior prescribed penalties—by analogizing disbelief to Islam—and that migrating toward Satan by joining the abode of disbelief and people of war annuls prior prescribed penalties—by equating it with migration to Allah Almighty and the abode of Islam—while claiming Hajj does not annul what preceded it? This is sheer obstinacy, contradiction, and stubborn denial against the Messenger of Allah (peace and blessings of Allah be upon him).

الْعَبْدُ قَبْلَ إِسْلَامِهِ، وَيَجْعَلُ الْحَجَّ لَا يُسْقِطُهَا، وَكِلَا الْأَمْرَيْنِ جَاءَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَجِيئًا وَاحِدًا، وَأَنَّ هَذَا الْخَبَرَ ضِدُّ قَوْلِهِمْ فِي هَذِهِ الْمَسْأَلَةِ، وَذَلِكَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِنَّمَا أَخْبَرَ أَنَّ الْإِسْلَامَ يَهْدِمُ مَا قَبْلَهُ، وَأَنَّ الْهِجْرَةَ تَهْدِمُ مَا قَبْلَهَا، وَأَنَّ الْحَجَّ يَهْدِمُ مَا قَبْلَهُ، فَقَالُوا هُمْ: إِنَّ الرِّدَّةَ إِلَى الْكُفْرِ تَهْدِمُ مَا قَبْلَهَا مِنْ الْحُدُودِ الْوَاجِبَةِ قِيَاسًا لِلْكُفْرِ عَلَى الْإِسْلَامِ، وَأَنَّ الْهِجْرَةَ إِلَى الشَّيْطَانِ، وَاللِّحَاقَ بِدَارِ الْكُفْرِ وَأَهْلِ الْحَرْبِ، تَهْدِمُ مَا قَبْلَهَا مِنْ الْحُدُودِ، قِيَاسًا عَلَى الْهِجْرَةِ إِلَى اللَّهِ تَعَالَى وَإِلَى دَارِ الْإِسْلَامِ، وَأَنَّ الْحَجَّ لَا يَهْدِمُ مَا قَبْلَهُ؟ وَهَذَا عَيْنُ الْعِنَادِ وَالْخِلَافِ وَالْمُكَابَرَةِ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L40173 As for the narration of Umar, he did not at all address the establishment or abolition of the prescribed punishments in that report; rather, he spoke about divine forgiveness.

وَأَمَّا حَدِيثُ عُمَرَ فَإِنَّهُ لَمْ يَتَكَلَّمْ قَطُّ فِي ذَلِكَ الْخَبَرِ فِي ثَبَاتِ الْحُدُودِ أَوْ سُقُوطِهَا، وَإِنَّمَا تَكَلَّمَ فِي الْمَغْفِرَةِ.

L40174 When we say that the forgiveness of God (Exalted be He) for sins does not annul the prescribed legal punishments for those sins except where a valid textual proof and consensus have explicitly mandated their annulment only, this applies exclusively to the belligerent disbeliever who embraces Islam anew.

وَإِذَا قُلْنَا: إِنَّ مَغْفِرَةَ اللَّهِ تَعَالَى لِلذُّنُوبِ لَا تُسْقِطُ الْحُدُودَ الْوَاجِبَةَ فِي تِلْكَ الذُّنُوبِ إِلَّا حَيْثُ صَحَّ النَّصُّ، وَالْإِجْمَاعُ بِإِسْقَاطِهَا فَقَطْ، وَلَيْسَ ذَلِكَ إِلَّا فِي الْحَرْبِيِّ الْكَافِرِ يَبْتَدِئُ الْإِسْلَامَ فَقَطْ.

L40175–40177 We say: Indeed, Islam and the sincere Hijrah to Allah, the Most High, and His Messenger (peace be upon him). And that the accepted Hajj destroys the sins preceding it. Among the characteristic of all that we have mentioned—proper Islam, sincere Hijrah, and the accepted Hajj—is that the one in this state repents from every sin that came before it.

وَنَحْنُ نَقُولُ: إِنَّ الْإِسْلَامَ وَالْهِجْرَةَ الصَّادِقَةَ إِلَى اللَّهِ تَعَالَى وَرَسُولِهِ - عَلَيْهِ السَّلَامُ - وَأَنَّ الْحَجَّ الْمَبْرُورَ يَهْدِمُ مَا قَبْلَهُ مِنْ الذُّنُوبِ، وَمِنْ صِفَةِ كُلِّ مَا ذَكَرْنَا مِنْ الْإِسْلَامِ الْحَسَنِ، وَالْهِجْرَةِ الصَّادِقَةِ - وَالْحَجِّ الْمَبْرُورِ أَنْ يَتُوبَ صَاحِبُ هَذِهِ الْحَالِ عَنْ كُلِّ ذَنْبٍ سَلَفَ قَبْلَهُ.

L40178 The proof of this is what was narrated to us by ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid, from Ibrāhīm ibn Aḥmad, from al-Farbarī, from al-Bukhārī, from Khallād ibn Yaḥyā, from Sufyān ibn Manṣūr and al-Aʿmash – both transmitting from Abū Wāʾil, from ʿAbd Allāh ibn Masʿūd, who said: "A

بُرْهَانُ ذَلِكَ: مَا حَدَّثَنَا بِهِ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا خَلَّادُ بْنُ يَحْيَى نا سُفْيَانُ بْنُ مَنْصُورٍ، وَالْأَعْمَشُ، كِلَاهُمَا عَنْ

man asked the Messenger of Allāh (peace and blessings be upon him and his family): 'Will we be held accountable for what we did in the pre-Islamic era?' He replied: 'Whoever does good in Islam will not be held accountable for what he did in the pre-Islamic era, but whoever does evil in Islam will be held accountable for the first deeds and the last.'"[30]

L40179 Abu Muhammad—may Allah have mercy on him—said: The ruling of *ihsān* (spiritual excellence) in Islam is repentance from every sin one committed during his days of disbelief. As for whoever persists in his disobedience, he has not perfected his Islam; rather, he has corrupted it. Similarly, whoever does not abandon what Allah the Exalted has forbidden has not completed his *hijrah* (emigration from sin). Every Hajj whose pilgrim persists in disobedience during it and fails to fulfill its due requirement of piety is not *mabrūr* (righteous/accepted). And success is from Allah, the Exalted.

L40180 ## The issue of seeking repentance in hudud.

L40181 2175 - Issue: Demanding repentance in hudud punishments and abstaining from imprisoning him? Hammam narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrabī narrated to us: Al-Dabarī narrated to us: ʿAbd al-Razzāq narrated to us: Ibn Jurayj said: I attended ʿAbd al-ʿAzīz ibn ʿAbd Allāh lashing a man as a hadd punishment for false accusation. When he concluded, Abū Bakr ibn ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Rabīʿah said to him: "It is part of the procedure that he be asked to repent at that point." ʿAbd al-ʿAzīz then said to the lashed man: "Repent," and I assumed he said: "I repent to Allah."

L40182 Ibn Jurayj said: Some scholars from the people of Medina informed me that they unanimously agree that repentance is sought from anyone who commits the act of the people of Lot, commits fornication, falsely accuses of unchastity, drinks alcohol, steals, or commits highway robbery. Abd al-Razzaq said: Abu Bakr informed me, reporting from multiple sources, that Ibn al-Musayyab said: The established practice regarding the prescribed punishment is that the offender is called to repent after they have finished flogging him. Sa'id

[30] **Hadith references (L40178):** Sahih al-Bukhari 6921; Sahih Muslim 120b.

أَبِي وَائِلٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: «قَالَ رَجُلٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنُؤَاخَذُ بِمَا عَمِلْنَا فِي الْجَاهِلِيَّةِ؟ قَالَ: مَنْ أَحْسَنَ فِي الْإِسْلَامِ لَمْ يُؤَاخَذْ بِمَا عَمِلَ فِي الْجَاهِلِيَّةِ، وَمَنْ أَسَاءَ فِي الْإِسْلَامِ أُخِذَ بِالْأَوَّلِ وَالْآخِرِ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَحُكْمُ الْإِحْسَانِ فِي الْإِسْلَامِ هُوَ التَّوْبَةُ مِنْ كُلِّ ذَنْبٍ أَسْلَفَهُ أَيَّامَ كُفْرِهِ، وَأَمَّا مَنْ أَصَرَّ عَلَى مَعَاصِيهِ: فَمَا أَحْسَنَ فِي إسْلَامِهِ بَلْ أَسَاءَ فِيهِ، وَكَذَلِكَ مَنْ لَمْ يَهْجُرْ مَا نَهَى اللَّهُ تَعَالَى عَنْهُ، فَلَيْسَ تَامَّ الْهِجْرَةِ - وَكُلُّ حَجٍّ أَصَرَّ صَاحِبُهُ عَلَى الْمَعَاصِي فِيهِ فَلَمْ يُوفِ حَقَّهُ مِنْ الْبِرِّ، فَلَيْسَ مَبْرُورًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الِاسْتِتَابَةُ فِي الْحُدُودِ]

٢١٧٥ - مَسْأَلَةٌ: الِاسْتِتَابَةُ فِي الْحُدُودِ وَتَرْكُ سَجْنِهِ؟ حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ قَالَ: حَضَرْت عَبْدَ الْعَزِيزِ بْنَ عَبْدِ اللَّهِ جَلَدَ إنْسَانًا الْحَدَّ فِي فِرْيَةٍ، فَلَمَّا فَرَغَ مِنْ ذَلِكَ قَالَ لَهُ أَبُو بَكْرِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ رَبِيعَةَ: إنَّ مِنْ الْأَمْرِ أَنْ يُسْتَتَابَ عِنْدَ ذَلِكَ، فَقَالَ عَبْدُ الْعَزِيزِ لِلْمَجْلُودِ: تُبْ، فَحَسِبْته أَنَّهُ قَالَ: أَتُوبُ إلَى اللَّهِ.

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي بَعْضُ عُلَمَاءِ أَهْلِ الْمَدِينَةِ أَنَّهُمْ لَا يَخْتَلِفُونَ أَنَّهُ يُسْتَتَابُ كُلُّ مَنْ عَمِلَ عَمَلَ قَوْمِ لُوطٍ، أَوْ زَنَى، أَوْ افْتَرَى، أَوْ شَرِبَ، أَوْ سَرَقَ، أَوْ حَارَبَ، قَالَ عَبْدُ الرَّزَّاقِ: وَأَخْبَرَنِي أَبُو بَكْرٍ عَنْ غَيْرِ وَاحِدٍ عَنْ ابْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: سُنَّةُ الْحَدِّ أَنْ يُسْتَتَابَ صَاحِبُهُ إذَا فَرَغَ مِنْ جَلْدِهِ، قَالَ سَعِيدُ بْنُ الْمُسَيِّبِ: إنْ قَالَ: قَدْ تُبْت - وَهُوَ غَيْرُ رَضِيٍّ - لَمْ تُقْبَلْ شَهَادَتُهُ.

ibn al-Musayyab said: If he says, “I have repented,” while being insincere, his testimony is not accepted.

L40183–40185 Abu Muhammad—may Allah have mercy on him—said: And with this we say, because repentance is an obligation from Allah, the Most High, upon every [...] For a sinner, and because calling to repentance is a duty upon every Muslim. Allah the Exalted said: **“O you who have believed, repent to Allah with sincere repentance, so that your Lord may expiate your misdeeds”** [At-Tahrim: 8], the verse.[31]

L40186 Since persistence in sin is definitively forbidden by the consensus of the entire Ummah, repentance and abandoning it are obligatory through the same consensus, with no disagreement on this matter. Allah the Exalted said: “Call to the way of your Lord with wisdom and good admonition” [An-Nahl: 125].[32]

L40187 And He, the Exalted, said: {Let there be among you a community calling to good} [Āl ʿImrān 104] the verse.[33]

L40188–40190 Abu Muhammad—may Allah have mercy on him—said: Since repentance constitutes the obligatory path of Allah the Exalted to be followed and belongs to goodness and righteousness, it becomes incumbent upon every Muslim to call others to it through the texts we have mentioned. Seeking the sinner’s repentance before executing the prescribed punishment upon him is obligatory, based on Allah’s statement: *“And hasten toward forgiveness from your Lord”* (Quran 3:133). Hastening to fulfill an obligation is itself obligatory. If the Imam or those present do not seek his repentance until after the punishment is carried out, it becomes obligatory to seek his repentance afterward—as we have mentioned. If he still does not repent and the punishment is executed, he must be called to repent. If he repents, he must be released absolutely, with no grounds for detention, for the right of Allah the Exalted—which no right supersedes except His own—has been fulfilled

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَبِهَذَا نَقُولُ، لِأَنَّ التَّوْبَةَ فَرْضٌ مِنْ اللَّهِ تَعَالَى عَلَى كُلِّ مُذْنِبٍ، وَلِأَنَّ الدُّعَاءَ إلَى التَّوْبَةِ فَرْضٌ عَلَى كُلِّ مُسْلِمٍ قَالَ اللَّهُ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا تُوبُوا إِلَى اللَّهِ تَوْبَةً نَصُوحًا عَسَى رَبُّكُمْ أَنْ يُكَفِّرَ عَنْكُمْ سَيِّئَاتِكُمْ} [التحريم: ٨] الْآيَةَ.

وَإِذَا كَانَ هَذَا الْإِصْرَارُ عَلَى الذَّنْبِ حَرَامًا بِإِجْمَاعِ الْأُمَّةِ كُلِّهَا الْمُتَيَقَّنِ: فَالتَّوْبَةُ وَالْإِقْلَاعُ فَرْضٌ بِإِجْمَاعِ الْأُمَّةِ كُلِّهَا، لَا خِلَافَ فِي ذَلِكَ، قَالَ اللَّهُ تَعَالَى {ادْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحِكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ} [النحل: ١٢٥] .

وَقَالَ تَعَالَى {وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ} [آل عمران: ١٠٤] الْآيَةَ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا كَانَتْ التَّوْبَةُ مِنْ سَبِيلِ اللَّهِ تَعَالَى الْمُفْتَرَضُ سُلُوكُهَا وَكَانَتْ مِنْ الْخَيْرِ وَالْمَعْرُوفِ: كَانَ فَرْضًا عَلَى كُلِّ مُسْلِمٍ أَنْ يَدْعُوَ إلَيْهَا بِالنُّصُوصِ الَّتِي ذَكَرْنَا، وَاسْتِتَابَةُ الْمُذْنِبِ قَبْلَ إقَامَةِ الْحَدِّ عَلَيْهِ وَاجِبَةٌ، لِقَوْلِ اللَّهِ تَعَالَى {وَسَارِعُوا إِلَى مَغْفِرَةٍ مِنْ رَبِّكُمْ} [آل عمران: ١٣٣] فَالْمُسَارَعَةُ إلَى الْفَرْضِ فَرْضٌ، فَإِنْ لَمْ يَسْتَتِبْهُ الْإِمَامُ، أَوْ مَنْ حَضَرَهُ إلَّا حَتَّى أُقِيمَ عَلَيْهِ الْحَدُّ، فَوَاجِبٌ أَنْ يُسْتَتَابَ بَعْدَ الْحَدِّ - عَلَى مَا ذَكَرْنَا - فَإِنْ لَمْ يَتُبْ فَأُقِيمَ عَلَيْهِ اُسْتُتِيبَ، فَإِنْ تَابَ أُطْلِقَ، وَلَا سَبِيلَ عَلَيْهِ بِحَبْسٍ أَصْلًا، لِأَنَّهُ قَدْ أُخِذَ حَقُّ اللَّهِ تَعَالَى مِنْهُ الَّذِي لَا حَقَّ لَهُ قَبْلَهُ سِوَاهُ، فَالزِّيَادَةُ عَلَى ذَلِكَ تَعَدٍّ لِحُدُودِ اللَّهِ تَعَالَى، وَهَذَا حَرَامٌ. ٢١٧٦ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ قَالَ: لَا أَتُوبُ، فَقَدْ أَتَى مُنْكَرًا، فَوَاجِبٌ أَنْ يُعَزَّرَ عَلَى مَا نَذْكُرُهُ فِي " كِتَابِ

[31] **Qur’an references (L40183):** Qur’an 66:8 (At-Tahrim).
[32] **Qur’an references (L40186):** Qur’an 16:125 (An-Nahl).
[33] **Qur’an references (L40187):** Qur’an 3:104 (Ali ’Imran).

through the punishment. Any excess beyond this constitutes transgression against Allah's ordained limits, and this is forbidden.

Issue 2176: Abu Muhammad—may Allah have mercy on him—said: If he declares, "I will not repent," he has committed a reprehensible act. It then becomes obligatory to subject him to discretionary penalties, as we will detail in the *Book of Discretionary Penalties*—if Allah wills—based on the saying of the Messenger of Allah. The Prophet—peace and blessings of God be upon him—said: "Whoever among you sees an evil, let him change it with his hand if he is able; if not, then with his tongue; if not, then with his heart—and that is the weakest degree of faith." He must be beaten continuously until he repents—this being when he explicitly declares he will not repent. If this leads to his death, he is God's ritual sacrifice and one slain in the cause of truth. No liability falls upon the authority enforcing this, for they have acted righteously in what they did. God Almighty says: "There is no recourse against those who act righteously" (9:91). If he remains silent—neither saying "I repent" nor "I will not repent"—it becomes obligatory to imprison him and repeatedly demand repentance from him continuously until he verbally affirms repentance, whereupon he is to be released.[34]

L40191–40192 The proof of this is that the sin has been established against him, repentance has become obligatory upon him, and his repentance is not recognized except through his explicit utterance of it. Thus, as long as he has not declared it and persists in wrongdoing, it remains possible that he may repent inwardly or that he may not. Since both scenarios are possible, it is impermissible to strike him, because he has not committed a confirmed evil act, nor is it permissible to release him, as it is obligatory to summon him to repent until he does so. There is no means to detain him—and with Allah, the Exalted, lies all success, and thus forever. Whenever one repents and subsequently commits the same sin or another, two mursal narrations from the Messenger of Allah (peace be upon him) are cited concerning his summoning a thief to repent after amputating his hand. As narrated by Ḥammām: Ibn Mufarrij reported to us: Ibn al-Aʿrābī reported to us: al-Dabarī reported to us: ʿAbd al-Razzāq reported from Ibn Jurayj, Sufyān al-Thawrī, and Maʿmar. Ibn

[34]**Qur'an references (L40188):** Qur'an 3:133 (Ali 'Imran); Qur'an 9:91 (At-Tawbah).

التَّعْزِيرِ " إنْ شَاءَ اللَّهُ تَعَالَى، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِقَلْبِهِ وَذَلِكَ أَضْعَفُ الْإِيمَانِ» فَيَجِبُ أَنْ يُضْرَبَ أَبَدًا حَتَّى يَتُوبَ، هَذَا إنْ صَرَّحَ بِأَنْ لَا يَتُوبَ، فَإِذَا أَدَّى ذَلِكَ إلَى مَنِيَّتِهِ، فَذَلِكَ عَقِيرَةُ اللَّهِ، وَقَتِيلُ الْحَقِّ، لَا شَيْءَ عَلَى مُتَوَلِّي ذَلِكَ، لِأَنَّهُ أَحْسَنُ فِيمَا فَعَلَ بِهِ، وَقَدْ قَالَ اللَّهُ تَعَالَى {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] فَإِنْ سَكَتَ وَلَمْ يَقُلْ: أَتُوبُ، وَلَا: لَا أَتُوبُ، فَوَاجِبٌ حَبْسُهُ وَإِعَادَةُ الِاسْتِتَابَةِ عَلَيْهِ أَبَدًا حَتَّى يَنْطِقَ بِالتَّوْبَةِ، فَيُطْلَقَ.

بُرْهَانُ ذَلِكَ: أَنَّهُ قَدْ صَحَّ مِنْهُ الذَّنْبُ، وَوَجَبَتْ عَلَيْهِ التَّوْبَةُ، وَلَا تُعْرَفُ تَوْبَتُهُ إلَّا بِنُطْقِهِ بِهَا، فَهُوَ مَا لَمْ يَنْطِقْ بِهَا وَبِالْإِصْرَارِ: فَمُمْكِنٌ أَنْ يَتُوبَ فِي نَفْسِهِ، وَمُمْكِنٌ أَنْ لَا يَتُوبَ، فَلَمَّا كَانَ كِلَا الْأَمْرَيْنِ مُمْكِنًا لَمْ يَحِلَّ ضَرْبُهُ، لِأَنَّهُ لَمْ يَأْتِ بِمُنْكَرٍ تَيَقَّنَ أَنَّهُ أَتَى بِهِ، وَلَمْ يَجُزْ تَسْرِيحُهُ، لِأَنَّ فَرْضًا عَلَيْهِ دُعَاؤُهُ إلَى التَّوْبَةِ حَتَّى يَتُوبَ، وَلَا سَبِيلَ إلَى إمْسَاكِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ وَهَكَذَا أَبَدًا مَتَى تَابَ ثُمَّ وَاقَعَ الذَّنْبَ أَوْ غَيْرَهُ، فَقَدْ جَاءَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَبَرَانِ مُرْسَلَانِ فِي أَنَّهُ اسْتَتَابَ السَّارِقَ بَعْدَ قَطْعِ يَدِهِ: كَمَا حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ، قَالَ ابْنُ جُرَيْجٍ، وَسُفْيَانُ، كِلَاهُمَا: عَنْ أَبِي خَصْفَةَ، عَنْ مُحَمَّدِ بْنِ عُثْمَانَ بْنِ ثَوْبَانَ، وَقَالَ مَعْمَرٌ: عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، قَالَ أَيُّوبُ، وَابْنُ

Jurayj and Sufyān both transmitted from Abū Khaṣfah, from Muḥammad ibn ʿUthmān ibn Thawbān. Maʿmar reported from Ayyūb al-Sakhtiyānī. Ayyūb and Ibn Thawbān said: "A man who stole a cloak was brought to the Prophet (peace be upon him). It was said, 'O Messenger of Allah, has this man stolen?' The Prophet (peace be upon him) replied, 'I do not think so. Did you steal?' He said, 'Yes.' He said, 'Go, cut his hand and cauterize it, then bring him back to me.' They brought him back, and he said, 'I repent to Allah.' The Prophet said, 'O Allah, accept his repentance.'"

ثَوْبَانَ: «أُتِيَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِرَجُلٍ سَرَقَ شَمْلَةً فَقِيلَ يَا رَسُولَ اللَّهِ هَذَا سَرَقَ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا إخَالُهُ، أَسَرَقْتَ؟ قَالَ: نَعَمْ، قَالَ: فَاذْهَبُوا فَاقْطَعُوا يَدَهُ، ثُمَّ احْسِمُوهَا، ثُمَّ ائْتُونِي بِهِ، فَأَتَوْهُ بِهِ، فَقَالَ: إنِّي أَتُوبُ إلَى اللَّهِ، فَقَالَ: اللَّهُمَّ تُبْ عَلَيْهِ» .

L40193 And through him—to ʿAbd al-Razzāq from Maʿmar from Ibn al-Munkadir—that the Prophet, peace and blessings be upon him and his family, cut off a man's hand, then ordered the wound to be cauterized. He said to him: "Repent to Allah the Exalted!" The man replied: "I repent to Allah the Exalted." The Prophet, peace and blessings be upon him and his family, said: "When a thief's hand is cut off, it falls into the Fire. If he relapses [into theft], it follows him, but if he repents, it is withdrawn."

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ الْمُنْكَدِرِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «قَطَعَ رَجُلًا ثُمَّ أَمَرَ بِهِ فَحُسِمَ قَالَ لَهُ تُبْ إلَى اللَّهِ تَعَالَى؟ فَقَالَ: أَتُوبُ إلَى اللَّهِ تَعَالَى، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إنَّ السَّارِقَ إذَا قُطِعَتْ يَدُهُ وَقَعَتْ فِي النَّارِ، فَإِنْ عَادَ تَبِعَهَا، وَإِنْ تَابَ اسْتَشَالَهَا» .

L40194 Abd al-Razzaq said, "He stated: He withdrew her and reclaimed her."

قَالَ عَبْدُ الرَّزَّاقِ يَقُولُ اسْتَشَالَهَا اسْتَرْجَعَهَا.

L40195 Abū Muḥammad—may Allah have mercy on him—said: These two are *mursal* (narrations with incomplete chains), and there is no valid proof in a *mursal*. Valid proof is found only in the textual evidences we cited earlier. We cited these two solely to prevent any deceiver from exploiting what is in them regarding the formal seeking of repentance after amputation. And with Allah, the Exalted, is success.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَانِ مُرْسَلَانِ وَلَا حُجَّةَ فِي مُرْسَلٍ، وَإِنَّمَا الْحُجَّةُ فِيمَا أَوْرَدْنَا مِنْ النُّصُوصِ قَبْلُ، وَإِنَّمَا أَوْرَدْنَاهُمَا لِئَلَّا يُمَوِّهَ مُمَوِّهٌ بِمَا فِيهِمَا مِنْ الِاسْتِتَابَةِ بَعْدَ الْقَطْعِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الِامْتِحَانُ فِي الْحُدُودِ وَغَيْرِهَا بِالضَّرْبِ أَوْ السِّجْنِ أَوْ التَّهْدِيدِ]

A legal issue regarding coercive interrogation in the context of Ḥudūd and other [legal categories] through beating, imprisonment, or intimidation.

L40198 Ali (may Allah have mercy on him) said: It is not permissible to subject anyone to interrogation through beating, imprisonment, or threats regarding any matter, because neither the Quran, an established Sunnah, nor consensus have prescribed this. Nor is it permissible to derive any aspect of religion except from these three textual sources. Rather, Allah the Exalted has prohibited such acts through His Messenger (peace and blessings of Allah be

؟ قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: لَا يَحِلُّ الِامْتِحَانُ فِي شَيْءٍ مِنْ الْأَشْيَاءِ بِضَرْبٍ، وَلَا بِسَجْنٍ، وَلَا بِتَهْدِيدٍ، لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ ثَابِتَةٌ، وَلَا إجْمَاعٌ، وَلَا يَحِلُّ أَخْذُ شَيْءٍ مِنْ الدِّينِ، إلَّا مِنْ هَذِهِ الثَّلَاثَةِ النُّصُوصِ بَلْ قَدْ مَنَعَ اللَّهُ تَعَالَى مِنْ ذَلِكَ عَلَى لِسَانِ

upon him) in the Prophet's statement: "Your blood, your wealth, your honor, and your physical integrity are inviolable to you."

رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَوْلِهِ «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

L40199 Therefore, Allah the Exalted has forbidden harming human beings and honor. Thus, it is impermissible to strike a Muslim or insult him except for a right obligated by the Quran or the established Sunnah.

فَحَرَّمَ اللَّهُ تَعَالَى الْبَشَرَ، وَالْعِرْضَ، فَلَا يَحِلُّ ضَرْبُ مُسْلِمٍ، وَلَا سَبُّهُ إِلَّا بِحَقٍّ أَوْجَبَهُ الْقُرْآنُ، أَوْ السُّنَّةُ الثَّابِتَةُ.

L40200 And He, the Exalted, said: "So traverse its expanses and partake of His sustenance." [Al-Mulk: 15][35]

وَقَالَ تَعَالَى {فَامْشُوا فِي مَنَاكِبِهَا وَكُلُوا مِنْ رِزْقِهِ} [الملك: ١٥]

L40201 It is not permissible for anyone to prevent a Muslim from walking freely by imprisonment without a legitimate right obligated by the Quran or an established Sunnah.

فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَمْنَعَ مُسْلِمًا مِنْ الْمَشْيِ فِي الْأَرْضِ بِالسَّجْنِ بِغَيْرِ حَقٍّ أَوْجَبَهُ قُرْآنٌ أَوْ سُنَّةٌ ثَابِتَةٌ.

L40202 As for one in whose possession a valid right is confirmed but he denies and withholds it, he is an oppressor whose wrongdoing is certain. It becomes obligatory to strike him continuously until he surrenders what is due, in accordance with the statement of Allah's Messenger - peace be upon him: "Whoever among you witnesses an evil, let him correct it with his own hand if capable," and his directive - peace be upon him - to administer ten lashes or fewer for offenses below the ḥadd punishment, as we shall clarify in the "Chapter on Discretionary Punishments" if Allah wills. This ruling applies only when it is confirmed that the right is in his possession or its whereabouts are known, for the reasons we have mentioned.

وَأَمَّا مَنْ صَحَّ قِبَلَهُ حَقٌّ وَلَوَاهُ وَمَنَعَهُ، فَهُوَ ظَالِمٌ قَدْ تُيُقِّنَ ظُلْمُهُ، فَوَاجِبٌ ضَرْبُهُ أَبَدًا حَتَّى يَخْرُجَ مِمَّا عَلَيْهِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إِنْ اسْتَطَاعَ» وَلِأَمْرِهِ - عَلَيْهِ السَّلَامُ - بِجَلْدِ عَشَرَةٍ فَأَقَلَّ فِيمَا دُونَ الْحَدِّ عَلَى مَا نَذْكُرُهُ فِي " بَابِ التَّعْزِيرِ " إِنْ شَاءَ اللَّهُ تَعَالَى، وَإِنَّمَا هَذَا فِيمَا صَحَّ أَنَّهُ عِنْدَهُ أَوْ يُعْلَمُ مَكَانُهُ، لِمَا ذَكَرْنَا.

L40203 As for one who is tasked solely with obtaining a confession from another when it is known that he knows the perpetrator, it is impermissible to impose this obligation upon him because this constitutes testimony. Whoever withholds testimony is indeed a sinner, according to the words of Allah the Exalted: "Do not conceal testimony, for whoever conceals it—his heart is sinful" [Al-Baqarah 2:283].[36]

وَأَمَّا مَنْ كُلِّفَ إقْرَارًا عَلَى غَيْرِهِ فَقَطْ - وَقَدْ عُلِمَ أَنَّهُ يَعْلَمُ الْجَانِيَ - فَلَا يَجُوزُ تَكْلِيفُهُ ذَلِكَ، لِأَنَّهَا شَهَادَةٌ، وَمَنْ كَتَمَ الشَّهَادَةَ فَإِنَّهُ فَاسِقٌ، لِقَوْلِ اللَّهِ تَعَالَى {وَلا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آثِمٌ قَلْبُهُ} [البقرة: ٢٨٣] .

L40204 When he is a deviant and sinful person, his statement is of no benefit,

[35] **Qur'an references (L40200):** Qur'an 67:15 (Al-Mulk).
[36] **Qur'an references (L40203):** Qur'an 2:283 (Al-Baqarah).

and it is not permissible to accept his testimony at that point. He remains discredited by this forever unless he repents. It is not permissible for anyone to be threatened nor intimidated by being sent to an oppressor who wrongs them—and success is from Allah, the Most High.

فَإِذْ هُوَ فَاسِقٌ آثِمٌ، فَلَا يَنْتَفِعُ بِقَوْلِهِ، لَا يَحِلُّ قَبُولُ شَهَادَتِهِ حِينَئِذٍ، وَهُوَ مُجَرَّحٌ بِذَلِكَ أَبَدًا مَا لَمْ يَتُبْ، فَلَا يَحِلُّ أَنْ يُهَدَّدَ أَحَدٌ، وَلَا أَنْ يُرَوَّعَ بِأَنْ يُبْعَثَ إلَى ظَالِمٍ يَعْتَدِي عَلَيْهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40205–40207 Abū Muḥammad—may Allah have mercy on him—said: There is no disagreement that all of this is forbidden for the *dhimmi* just as it is for the Muslim. If he is beaten until he confesses, there is a narration from some of the *Salaf* concerning this—**as transmitted to us** by ʿAbdullāh ibn Rabīʿ **from** Ibn Mufarrij **from** Qāsim ibn Aṣbagh **from** Ibn Waḍḍāḥ **from** Saḥnūn. Narrated Ibn Wahb from Ibn Abi Dhi'b from Ibn Shihab: Tariq had appointed Tha'lab al-Shami over Medina as his deputy. A man accused of theft was brought before Tha'lab, who continued flogging him until he confessed. He then sent to 'Abdullah ibn 'Umar ibn al-Khattab seeking his legal opinion. Ibn 'Umar said, "Do not cut his hand until the stolen item is produced."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَا خِلَافَ فِي أَنَّ كُلَّ هَذَا حَرَامٌ فِي الذِّمِّيِّ كَمَا هُوَ فِي الْمُسْلِمِ، فَإِنْ ضُرِبَ حَتَّى أَقَرَّ، فَقَدْ جَاءَ عَنْ بَعْضِ السَّلَفِ فِي هَذَا: مَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ ابْنِ شِهَابٍ: أَنَّ طَارِقًا كَانَ جَعَلَ ثَعْلَبًا الشَّامِيَّ عَلَى الْمَدِينَةِ يَسْتَخْلِفُهُ، فَأُتِيَ بِإِنْسَانٍ اُتُّهِمَ بِسَرِقَةٍ، فَلَمْ يَزَلْ يَجْلِدُهُ حَتَّى اعْتَرَفَ بِالسَّرِقَةِ، فَأَرْسَلَ إلَى عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ فَاسْتَفْتَاهُ؟ فَقَالَ ابْنُ عُمَرَ: لَا تَقْطَعْ يَدَهُ حَتَّى يُبْرِزَهَا.

L40208 Abū Muḥammad—may Allāh have mercy on him—said: If there is nothing but his confession alone, then it holds no weight, for imposing punishment based on a confession of this nature is not established by the Qur'ān, the Sunnah, or consensus. The inviolability of his skin and blood has been confirmed with certainty, so none of that may be lawfully violated except through an explicit textual ruling or consensus. If the confession is supplemented with evidence that establishes with certainty the validity of what he confessed to—and there is no doubt that he is the perpetrator—then it becomes obligatory to execute the ḥadd punishment upon him. Nevertheless, he retains the right to demand retaliation against whoever struck him—whether the ruler or another—because the striker wrongfully struck him without it being obligatory for him to be struck, which constitutes transgression. Allāh the Exalted said: "So whoever transgresses against you, transgress against them in the same measure" [Q. 2:194]. His own wrongdoing and the ḥadd punishment he is obligated to undergo—whether ordained by Allāh or owed to others—do not nullify his rightful claim against others for their injustice toward him.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَا إنْ لَمْ يَكُنْ إلَّا إقْرَارُهُ فَقَطْ فَلَيْسَ بِشَيْءٍ، لِأَنَّ أَخْذَهُ بِإِقْرَارِ هَذِهِ صِفَتُهُ لَمْ يُوجِبْهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، وَقَدْ صَحَّ تَحْرِيمُ بَشَرَتِهِ وَدَمِهِ بِيَقِينٍ، فَلَا يَحِلُّ شَيْءٌ مِنْ ذَلِكَ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ فَإِنْ اسْتَضَافَ إلَى الْإِقْرَارِ أَمْرٌ يَتَحَقَّقُ بِهِ يَقِينًا صِحَّةُ مَا أَقَرَّ بِهِ - وَلَا يُشَكُّ فِي أَنَّهُ صَاحِبُ ذَلِكَ - فَالْوَاجِبُ إقَامَةُ الْحَدِّ عَلَيْهِ، وَلَهُ الْقَوَدُ - مَعَ ذَلِكَ - عَلَى مَنْ ضَرَبَهُ - السُّلْطَانَ كَانَ أَوْ غَيْرَهُ - لِأَنَّهُ ضَرَبَهُ ظَالِمًا لَهُ دُونَ أَنْ يَجِبَ عَلَيْهِ ضَرْبٌ - وَهُوَ عُدْوَانٌ - وَقَدْ قَالَ اللَّهُ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ} [البقرة: ١٩٤] الْآيَةَ، وَلَيْسَ ظُلْمُهُ، وَمَا وَجَبَ عَلَيْهِ مِنْ حَدِّ اللَّهِ تَعَالَى، أَوْ لِغَيْرِهِ، بِمُسْقِطِ حَقِّهِ عِنْدَ غَيْرِهِ فِي ظُلْمِهِ لَهُ، بَلْ يُؤْخَذُ مِنْهُ مَا عَلَيْهِ، وَيُعْطِي هُوَ مِنْ غَيْرِهِ.

Rather, what is due from him must be exacted, and he is to be given what is due to him from others.[37]

L40209 Similarly, Mālik and others said regarding the thief who is tested and produces the stolen item itself: Amputation is obligatory upon him if the item is of the type for which it is prescribed, unless he says: "Someone gave it to me, and I am handing it over to him; I only confessed because of the beating I suffered." In that case, he is not to be amputated.

L40210 Abū Muḥammad—may Allāh have mercy on him—said: "This is authentic, and he affirms it."

L40211 As for summoning the accused and implying suspicion without coercive threats that would compel confession, this is commendable and obligatory: "Like when God's Messenger - peace be upon him - sent for the Jewish man accused by the maidservant whose head was crushed. He was brought before him, and he - peace be upon him - persistently questioned him until he confessed, whereupon retaliation was enforced against him."

L40212 And as ʿAlī ibn Abī Ṭālib did when he separated the defendants in the murder case and privately spoke to one of them, then raised his voice by proclaiming *Allāhu Akbar* (the *takbīr*), causing the other to mistakenly believe he had confessed. He then summoned the next one, questioned him, and the latter confessed, until all of them confessed. This is acceptable, as it involved no coercion or physical coercion (ḍarb).

L40213 Mālik disliked this, but there is no justification for his dislike, as it involves no prohibited action. It is an act of a Companion with no known dissent from other Companions who reject it, and it is merely dislike.

L40214–40215 It was narrated to us by Yunus ibn Abdullah: Ahmad ibn Abdullah ibn Abd al-Rahim narrated to us, Ahmad ibn Khalid narrated to us, Muhammad ibn Abd al-Salam al-Khushani narrated to us, Muhammad ibn Bashshar narrated to us, Yahya ibn Sa'id al-Qattan narrated to us, from Abu Hayyan Yahya ibn Sa'id al-Taymi, from his father, from al-Harith ibn Suwayd, from Abdullah

[37] **Qur'an references (L40208):** Qur'an 2:194 (Al-Baqarah).

وَهَكَذَا قَالَ مَالِكٌ، وَغَيْرُهُ، فِي السَّارِقِ يُمْتَحَنُ فَيُخْرِجُ السَّرِقَةَ بِعَيْنِهَا: أَنَّ عَلَيْهِ الْقَطْعُ إِذَا كَانَتْ مِمَّا يُقْطَعُ فِيهِ، إِلَّا أَنْ يَقُولَ: دَفَعَهَا إِلَيَّ إِنْسَانٌ أَدْفَعُهَا لَهُ، وَإِنَّمَا اعْتَرَفْتُ لِمَا أَصَابَنِي مِنْ الضَّرْبِ: فَلَا يُقْطَعُ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا صَحِيحٌ، وَبِهِ يَقُولُ.

وَأَمَّا الْبَعْثَةُ فِي الْمُتَّهَمِ وَإِيهَامُهُ دُونَ تَهْدِيدٍ مَا يُوجِبُ عَلَيْهِ الْإِقْرَارَ فَحَسَنٌ وَاجِبٌ: «كَبَعْثِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - خَلْفَ الْيَهُودِيِّ - الَّذِي ادَّعَتْ الْجَارِيَةُ الَّتِي رَضَّ رَأْسَهَا - فَسِيقَ إلَيْهِ فَلَمْ يَزَلْ بِهِ - عَلَيْهِ السَّلَامُ - حَتَّى اعْتَرَفَ فَأَقَادَ مِنْهُ» .

وَكَمَا فَعَلَ عَلِيُّ بْنُ أَبِي طَالِبٍ إذْ فَرَّقَ بَيْنَ الْمُدَّعَى عَلَيْهِمْ الْقَتْلُ وَأَسَرَّ إلَى أَحَدِهِمْ، ثُمَّ رَفَعَ صَوْتَهُ بِالتَّكْبِيرِ فَوَهِمَ الْآخَرُ أَنَّهُ قَدْ أَقَرَّ، ثُمَّ دَعَا بِالْآخَرِ فَسَأَلَهُ فَأَقَرَّ، حَتَّى أَقَرُّوا كُلُّهُمْ: فَهَذَا حَسَنٌ، لِأَنَّهُ لَا إكْرَاهَ فِيهِ، وَلَا ضَرْبَ.

وَقَدْ كَرِهَ هَذَا مَالِكٌ، وَلَا وَجْهَ لِكَرَاهِيَتِهِ، لِأَنَّهُ لَيْسَ فِيهِ عَمَلٌ مَحْظُورٌ، وَهُوَ فِعْلُ صَاحِبٍ لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ يُنْكِرُ ذَلِكَ، وَإِنَّمَا الْكُرْهُ.

مَا حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا أَبُو حَيَّانَ يَحْيَى بْنُ سَعِيدٍ التَّيْمِيُّ عَنْ أَبِيهِ عَنْ الْحَارِثِ بْنِ سُوَيْدٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّهُ قَالَ: مَا مِنْ كَلَامٍ يَدْرَأُ عَنِّي سَوْطًا أَوْ سَوْطَيْنِ عِنْدَ سُلْطَانٍ إلَّا تَكَلَّمْت بِهِ.

ibn Mas'ud, who said: "There is no speech that can ward off from me a whip or two from a ruler except that which I have already spoken."

L40216 It is reported from Shurayḥ that he said: Imprisonment is discouraged, threatening is discouraged, shackling is discouraged, and beating is discouraged.

L40217 Abū Muḥammad—may Allāh have mercy on him—said: Every act that causes harm to a body or property, or by which a person is threatened concerning his son, father, family, or his Muslim brother, is considered makrūh. This is based on the statement of the Messenger of Allāh—peace and blessings be upon him: "A Muslim is the brother of another Muslim; he does not wrong him nor forsake him."

L40218 And due to what was transmitted to us via the chain in Al-Bukhārī: narrated by Musaddad, narrated by Yaḥyā—Ibn Saʿīd Al-Qaṭṭān—from Shuʿbah, from Qatādah, from Anas, from the Prophet (peace be upon him), who said: "None of you has true faith until he loves for his brother what he loves for himself."[38]

L40219 The issue of the testimony pertaining to the ḥudūd.

L40220 2178 - Issue: Testimony concerning prescribed punishments? Ali said: Muḥammad ibn Saʿīd ibn Nabāt narrated to us, ʿAbdullāh ibn Naṣr narrated to us, Qāsim ibn Aṣbagh narrated to us, Ibn Waḍḍāḥ narrated to us, Mūsā ibn Muʿāwiyah narrated to us, Wakīʿ narrated to us from Sufyān al-Thawrī from ʿAlī ibn Kulayb from his father that ʿAlī ibn Abī Ṭālib used to order the witnesses - when they testified against a thief - to amputate him themselves as those entrusted with the matter. Abū Muḥammad (may Allah have mercy on him) said: This is not obligatory, for neither the Qur'ān nor an established Sunnah from the Messenger of Allah (peace and blessings be upon him) mandates it. However, obedience to the Imam or his leader is obligatory. Thus, if the Imam or his leader orders the witnesses or others to

[38] **Hadith references (L40218):** Sahih al-Bukhari 13; Jami at-Tirmidhi 2515; Sunan an-Nasai 5017.

وَعَنْ شُرَيْحٍ أَنَّهُ قَالَ: السِّجْنُ كَرْهٌ، وَالْوَعِيدُ كَرْهٌ، وَالْقَيْدُ كَرْهٌ، وَالضَّرْبُ كَرْهٌ.

وَقَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: كُلُّ مَا كَانَ ضَرَرًا فِي جِسْمٍ، أَوْ مَالٍ، أَوْ تُوُعِّدَ بِهِ الْمَرْءُ فِي ابْنِهِ، أَوْ أَبِيهِ، أَوْ أَهْلِهِ، أَوْ أَخِيهِ الْمُسْلِمِ، فَهُوَ كَرْهٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ» .

وَلِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسَدَّدٌ نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ أَنَسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا يُؤْمِنُ أَحَدُكُمْ حَتَّى يُحِبَّ لِأَخِيهِ مَا يُحِبُّ لِنَفْسِهِ» .

[مَسْأَلَةُ الشَّهَادَةُ عَلَى الْحُدُودِ]

٢١٧٨ - مَسْأَلَةٌ: الشَّهَادَةُ عَلَى الْحُدُودِ؟ قَالَ عَلِيٌّ: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَلِيِّ بْنِ كُلَيْبٍ عَنْ أَبِيهِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يَأْمُرُ بِالشُّهُودِ إذَا شَهِدُوا عَلَى السَّارِقِ أَنْ يَقْطَعُوهُ يَلُونَ ذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَيْسَ هَذَا بِوَاجِبٍ، لِأَنَّهُ لَا يُوجِبُهُ قُرْآنٌ، وَلَا سُنَّةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَابِتَةٌ، لَكِنْ طَاعَةُ الْإِمَامِ أَوْ أَمِيرِهِ وَاجِبَةٌ، فَإِذَا أَمَرَ الْإِمَامُ أَوْ أَمِيرُهُ الشُّهُودَ، أَوْ غَيْرَهُمْ أَنْ يَقْطَعَهُ لَزِمَتْهُمْ الطَّاعَةُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

amputate him, obedience becomes obligatory upon them. And success is by Allah, the Exalted.

وَبِهِ - إلَى وَكِيعٍ نا إسْرَائِيلُ عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الشَّعْبِيِّ فِي رَجُلَيْنِ شَهِدَا عَلَى ثَلَاثَةٍ أَنَّهُمْ سَرَقُوا، قَالَ: يُقْطَعُونَ.

L40221 And through him—up to Waki‘—from Isra’il, from Jabir al-Ju‘fi, from al-Sha‘bi: Regarding two men who testified against three individuals that they had stolen, he said: They are to be cut off.

قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: وَهَكَذَا نَقُولُ - وَلَوْ شَهِدَ عَدْلَانِ عَلَى أَلْفِ رَجُلٍ، أَوْ أَكْثَرَ، بِقَتْلٍ، أَوْ بِسَرِقَةٍ، أَوْ بِحِرَابَةٍ، أَوْ بِشُرْبِ خَمْرٍ، أَوْ بِقَذْفٍ: لَوَجَبَ الْقَوَدُ، وَالْقَطْعُ، وَالْحَدُّ - فِي كُلِّ ذَلِكَ عَلَى جَمِيعِهِمْ بِشَهَادَةِ الشَّاهِدَيْنِ - وَلَا فَرْقَ بَيْنَ شَهَادَتِهِمَا عَلَيْهِمْ مُجْتَمَعِينَ، وَبَيْنَ شَهَادَتِهِمَا عَلَى كُلِّ وَاحِدٍ مِنْهُمْ عَلَى انْفِرَادِهِ.

L40222 Ali, may Allah have mercy on him, said: “This is our position: even if two just witnesses testify against a thousand men—or more—for murder, theft, highway robbery, drinking alcohol, or qadhf, then retaliation, amputation, and the prescribed ḥadd penalties would be obligatory—each according to its respective crime—upon all of them based on the testimony of the two witnesses. There is no distinction between their testimony against the group collectively and their testimony against each individual separately.”

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَوْ أَنَّ عَدْلَيْنِ شَهِدَا عَلَى عُدُولٍ بِشَيْءٍ مِمَّا ذَكَرْنَا وَقَالَ الْمَشْهُودُ عَلَيْهِمْ: نَشْهَدُ عَلَيْهِمْ بِكَذَا وَكَذَا، مِثْلَ مَا شَهِدَ بِهِ الشَّاهِدَانِ عَلَيْهِمْ أَوْ شَيْئًا آخَرَ؟ لَمْ يُلْتَفَتْ إلَى شَهَادَةِ الْمَشْهُودِ عَلَيْهِمْ أَصْلًا - وَوَجَبَ إنْفَاذُ الْحُدُودِ وَالْحُقُوقِ عَلَيْهِمْ بِشَهَادَةِ السَّابِقَيْنِ إلَى الشَّهَادَةِ.

L40223–40224 Abū Muḥammad—may Allah have mercy on him—said: If two just witnesses were to testify against other just witnesses regarding any of the matters we have mentioned, and those against whom testimony was given were to say, “We testify against them with such-and-such”—whether identical to what the two witnesses testified against them or something else—their testimony would not be considered at all. The Ḥudūd, the prescribed penalties, and rights must instead be enforced against them based on the testimony of the two who testified first.

بُرْهَانُ ذَلِكَ: أَنَّ الْمَشْهُودَ عَلَيْهِمْ بِمَا ذَكَرْنَا قَدْ بَطَلَتْ عَدَالَتُهُمْ، وَصَحَّتْ جَرْحَتُهُمْ بِشَهَادَةِ الْعَدْلَيْنِ عَلَيْهِمْ بِمَا شَهِدَا بِهِ، مِمَّا يُوجِبُ الْحَدَّ، فَإِنَّ مَنْ ثَبَتَ عَلَيْهِ مَا يُوجِبُ الْحَدَّ، أَوْ بَعْضُ الْمَعَاصِي الَّتِي لَا تُوجِبُ حَدًّا، كَالْغَصْبِ، وَغَيْرِهِ: فَهُوَ مُجَرَّحٌ فَاسِقٌ بِيَقِينٍ، وَلَا شَهَادَةَ لِمُجَرَّحٍ فَاسِقٍ أَصْلًا.

L40225 The proof of this is that those against whom testimony has been established regarding what we mentioned have had their integrity invalidated and their discrediting confirmed by the testimony of two upright witnesses against them concerning acts that warrant the prescribed punishment. For whoever is confirmed to have committed an act requiring the prescribed punishment, or some transgressions that do not necessitate it—such as usurpation of property and other [transgressions]—is definitively discredited and a transgressor, and no testimony whatsoever is accepted from a discredited transgressor under any circumstance.

L40226 If those against whom testimony is given had their repentance validated after their actions, it would necessitate the restoration of their integrity. In that

فَلَوْ أَنَّ الْمَشْهُودَ عَلَيْهِمْ صَحَّتْ تَوْبَتُهُمْ بَعْدَ مَا كَانَ مِنْهُمْ: وَجَبَ بِذَلِكَ أَنْ تَعُودَ عَدَالَتُهُمْ، فَإِذَا كَانَ ذَلِكَ كَذَلِكَ، فَإِنَّ الشَّهَادَتَيْنِ مَعًا مَقْبُولَتَانِ، وَيَنْفُذُ عَلَى كِلَا الطَّائِفَتَيْنِ شَهِدَتْ بِهِ عَلَيْهَا الْأُخْرَى، إِلَّا أَنَّ كِلْتَا الشَّهَادَتَيْنِ شَهَادَةٌ وَاجِبَةٌ قَبُولُهَا بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ، فِي أَمْرِهِ تَعَالَى بِالْحُكْمِ بِشَهَادَةِ الْعُدُولِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L40227 If both groups testify against each other simultaneously—with neither testimony preceding the other—whether before two judges or in two cases before a single judge, they are also two valid and established testimonies. For indeed, both testimonies are invalidated with certainty beyond doubt, as neither holds greater merit for acceptance than the other. Were we to accept both, we would be consistently implementing rulings based on testimony from transgressors, since each testimony necessitates the transgression and disqualification of the other, and prevents the acceptance of the opposing testimony.

فَإِنْ شَهِدَتْ كِلْتَا الطَّائِفَتَيْنِ عَلَى الْأُخْرَى مَعًا لَمْ تَسْبِقْ إِحْدَى الشَّهَادَتَيْنِ الْأُخْرَى: إِمَّا عِنْدَ حَاكِمَيْنِ، وَإِمَّا فِي عَقْدَيْنِ عِنْدَ حَاكِمٍ وَاحِدٍ، فَهُمَا أَيْضًا شَهَادَتَانِ قَائِمَتَانِ صَحِيحَتَانِ، فَإِنَّ كِلْتَا الشَّهَادَتَيْنِ تَبْطُلُ بِيَقِينٍ لَا شَكَّ فِيهِ، لِأَنَّهُ لَيْسَتْ إِحْدَاهُمَا بِأَوْلَى بِالْقَبُولِ مِنْ الْأُخْرَى، فَلَوْ قَبِلْنَاهُمَا مَعًا، لَكُنَّا قَدْ صِرْنَا مُوقِنِينَ بِأَنَّنَا نُنَفِّذُ الشَّهَادَةَ الْآنَ دَأْبًا حُكْمًا بِشَهَادَةِ فُسَّاقٍ، لِأَنَّ كُلَّ شَهَادَةٍ مِنْهُمَا تُوجِبُ الْفِسْقَ وَالْجُرْحَةَ عَلَى الْأُخْرَى، وَالْمَنْعَ مِنْ قَبُولِ الشَّهَادَةِ الْأُخْرَى.

L40228 If we were to rule by arbitrarily alternating between the two testimonies, this would constitute the very essence of injustice and tyranny, since neither a scriptural text nor consensus mandates favoring one over the other. Whoever seeks to prefer a testimony here based on it being the more just of the two evidences or the greater in number holds an erroneous opinion, for Allah the Exalted has never ordained anything of this sort, nor has His Messenger (peace be upon him), nor has there been a consensus (Ijma) of the *Ummah* on it. Ruling in such a manner is not permissible.

وَلَوْ حَكَمْنَا بِإِحْدَى الشَّهَادَتَيْنِ عَلَى الْأُخْرَى مُطَارَفَةً لَكَانَ هَذَا عَيْنُ الظُّلْمِ وَالْجَوْرِ، إِذْ لَمْ يُوجِبْ تَرْجِيحَ إِحْدَاهُمَا عَلَى الْأُخْرَى نَصٌّ وَلَا إِجْمَاعٌ، وَمَنْ أَرَادَ أَنْ يُرَجِّحَ الشَّهَادَةَ هَاهُنَا بِأَعْدَلِ الْبَيِّنَتَيْنِ، أَوْ بِأَكْثَرِهِمَا عَدَدًا: فَهُوَ خَطَأٌ مِنْ الْقَوْلِ، لِأَنَّهُ لَمْ يُوجِبْ اللَّهُ تَعَالَى قَطُّ شَيْئًا مِنْ ذَلِكَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا أَجْمَعَتْ الْأُمَّةُ عَلَيْهِ، وَالْحُكْمُ بِمِثْلِ هَذَا لَا يَجُوزُ.

The Issue of Testimony in Hadd Punishment After a Time

L40229

[مَسْأَلَةُ الشَّهَادَةِ فِي الْحَدِّ بَعْدَ حِينٍ]

L40230–40232 2179 - Issue: Regarding one who testifies in a ḥadd [punishment] after some time has passed. Abu Muhammad—may Allah have mercy on him—said: Narrated to us by Muhammad ibn Sa'id ibn Nubat, narrated to us by 'Abdullah ibn Nasr, narrated to us by... Qāsim ibn Aṣbagh reported to us from

٢١٧٩ - مَسْأَلَةٌ: مَنْ شَهِدَ فِي حَدٍّ بَعْدَ حِينٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثَنَا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ

Ibn Waḍḍāḥ, who reported to us from Mūsā ibn Muʿāwiyah, who reported to us from Wakīʿ, who reported to us from Misʿar ibn Kidām from Abū ʿAwn—he is Muḥammad ibn ʿAbdullāh al-Thaqafī—that ʿUmar ibn al-Khaṭṭāb said: "Whoever testifies against a man regarding a ḥadd punishment which he did not witness when it was committed, he testifies solely out of rancor."

ثنا وَكِيعٌ نا مِسْعَرُ بْنُ كِدَامٍ عَنْ أَبِي عَوْنٍ - هُوَ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الثَّقَفِيُّ - قَالَ عُمَرُ بْنُ الْخَطَّابِ: مَنْ شَهِدَ عَلَى رَجُلٍ بِحَدٍّ لَمْ يَشْهَدْ بِهِ حِينَ أَصَابَهُ، فَإِنَّمَا يَشْهَدُ عَلَى ضَغَنٍ.

L40233 From Ali, from Abdullah ibn Rabīʿ, from Ibn Mufarrij, from Qāsim ibn Aṣbagh, from Ibn Waḍḍāḥ, from Saḥnūn, from Ibn Wahb, who said: It reached me from Rabīʿah that he ruled concerning a man who committed fornication in his youth - a group of upright people having become aware of it without reporting his case. He lived with this [unreported guilt] for years while his condition improved, then quarreled with a man who accused him of the act, producing clear evidence for it, whereupon he confessed. He is to be stoned, for neither the length of time nor the offender's subsequent display of respectable conduct nullifies the prescribed punishment incumbent upon his family. Ibn Wahb said: By "his youth" he meant his foolishness after reaching puberty.

قَالَ عَلِيٌّ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ قَالَ: بَلَغَنِي عَنْ رَبِيعَةَ أَنَّهُ قَالَ فِي رَجُلٍ زَنَى فِي صِبَاهُ وَاطَّلَعَ عَلَى ذَلِكَ رَهْطٌ عُدُولٌ، فَلَمْ يَرْفَعُوا أَمْرَهُ، وَلَبِثَ بِذَلِكَ سِنِينَ، وَحَسُنَتْ حَالَتُهُ، ثُمَّ نَازَعَ رَجُلًا فَرَمَاهُ بِذَلِكَ، وَأَتَى عَلَى ذَلِكَ بِالْبَيِّنَةِ وَاعْتَرَفَ، فَإِنَّهُ يُرْجَمُ، لَا يَضَعُ الْحَدَّ عَنْ أَهْلِهِ طُولُ زَمَانٍ، وَلَا أَنْ يُحْدِثُ صَاحِبُ ذَلِكَ حُسْنَ هَيْئَةٍ - قَالَ ابْنُ وَهْبٍ: يُرِيدُ بِصِبَاهُ: سَفَهَهُ بَعْدَ الِاحْتِلَامِ.

L40234 Abu Muhammad—may Allah have mercy on him—said: Abu Hanifa and his companions said: If four upright, free, Muslim witnesses testify to adultery after a period of time, then no prescribed punishment is to be imposed upon him.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: إنْ شَهِدَ أَرْبَعَةٌ عُدُولٌ أَحْرَارٌ مُسْلِمُونَ بِالزِّنَى بَعْدَ مُدَّةٍ فَلَا حَدَّ عَلَيْهِ.

L40235 Abū Yūsuf said: The measure of the mentioned term is one month.

قَالَ أَبُو يُوسُفَ: مِقْدَارُ الْمُدَّةِ الْمَذْكُورَةِ شَهْرٌ وَاحِدٌ.

L40236 They said: If two upright, Muslim, and free men testify against him for theft after a period of time, there is no ḥadd punishment of amputation for him, but he must compensate for the property they testified he stole.

وَقَالُوا: إنْ شَهِدَ عَلَيْهِ عَدْلَانِ مُسْلِمَانِ حُرَّانِ بِسَرِقَةٍ بَعْدَ مُدَّةٍ فَلَا قَطْعَ عَلَيْهِ، لَكِنْ يَضْمَنُ مَا شَهِدَ عَلَيْهِ بِأَنَّهُ سَرَقَهُ.

L40237 If two witnesses testify against him for drinking wine, and the testimony occurs while the odor of wine is detectable from him or while he is intoxicated, the hadd punishment is enforced against him. However, if that testimony is given after the odor or intoxication has dissipated, no hadd punishment is imposed—unless they transported him to the Imam in another town and the odor or intoxication subsided en route, in which case the hadd punishment is implemented.

وَلَوْ شَهِدَا عَلَيْهِ بِشُرْبِ خَمْرٍ، فَإِنْ كَانَتْ الشَّهَادَةُ وَرِيحُ الْخَمْرِ تُوجَدُ مِنْهُ، أَوْ وَهُوَ سَكْرَانُ -: أُقِيمَ عَلَيْهِ الْحَدُّ - وَإِنْ كَانَتْ تِلْكَ الشَّهَادَةُ بَعْدَ ذَهَابِ الرِّيحِ أَوْ السُّكْرِ، فَلَا حَدَّ عَلَيْهِ إلَّا أَنْ يَكُونُوا حَمَلُوهُ إلَى الْإِمَامِ فِي مِصْرٍ آخَرَ، فَزَالَ الرِّيحُ أَوْ السُّكْرُ فِي الطَّرِيقِ: فَإِنَّهُ يُحَدُّ.

وَلَوْ شَهِدَ عَلَيْهِ بَعْدَ مُدَّةٍ طَوِيلَةٍ بِقَذْفٍ أَوْ جِرَاحَةٍ حُدَّ لِلْقَذْفِ، وَوَجَبَ عَلَيْهِ حُكْمُ تِلْكَ الْجِرَاحَةِ.

L40238 If, after a lengthy period, someone testified against him by accusing him of qadhf or injury, the hadd punishment for qadhf is imposed on the testifier, and the legal ruling pertaining to that injury becomes obligatory upon the testifier.

وَقَالَ الشَّافِعِيُّ، وَأَصْحَابُهُ، وَأَصْحَابُنَا: يُقَامُ عَلَيْهِ الْحَدُّ فِي كُلِّ ذَلِكَ.

L40239 Al-Shāfiʿī, his followers, and our companions held that the ḥadd is imposed in all such cases.

وَقَالَ الْأَوْزَاعِيِّ، وَاللَّيْثُ، وَالْحَسَنُ بْنُ حَيٍّ مِثْلَ ذَلِكَ.

L40240 According to Al-Awzaʿī, Al-Layth, and Al-Ḥasan ibn Ḥayyin, the same opinion was expressed.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَإِذْ قَدْ بَلَغَنَا هَاهُنَا فَلْنَتَكَلَّمْ - بِعَوْنِ اللَّهِ تَعَالَى - فِي حُكْمِ مَنْ اطَّلَعَ عَلَى حَدٍّ، أَهُوَ فِي حَرَجٍ إنْ كَتَمَ الشَّهَادَةَ أَمْ فِي سَعَةٍ مِنْ ذَلِكَ؟

L40241 Abu Muhammad—may God have mercy on him—said: Now that we have reached this point, let us discuss—with the help of God Almighty—the ruling regarding one who becomes aware of a hadd: is he under constraint if he conceals testimony, or is he in a state of leniency regarding that?

فَنَقُولُ: قَالَ اللَّهُ تَعَالَى {وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ} [الطلاق: ٢]

L40242–40243 So we say: Allah, the Most High, said: "Establish the testimony for Allah" [Surah At-Talaq (65:2)].[39]

وَقَالَ تَعَالَى {وَمَنْ أَظْلَمُ مِمَّنْ كَتَمَ شَهَادَةً عِنْدَهُ مِنَ اللَّهِ} [البقرة: ١٤٠] .

L40244 And He, the Exalted, said: *"And who is more unjust than one who conceals a testimony from Allah that is with him?"* [Al-Baqarah: 140].[40]

وَقَالَ تَعَالَى {وَلا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آثِمٌ قَلْبُهُ} [البقرة: ٢٨٣] .

L40245 And He, the Exalted, said, "Do not conceal testimony, and whoever conceals it, then indeed he is sinful in heart." [Al-Baqarah 2:283][41]

وَقَالَ تَعَالَى {وَلا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا} [البقرة: ٢٨٢] .

L40246 And He, the Exalted, said: 'Let not the witnesses refuse when they are called' [Al-Baqarah: 282].[42]

وَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا لَيْثٌ - هُوَ ابْنُ سَعْدٍ - عَنْ عُقَيْلٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ وَمَنْ كَانَ فِي حَاجَةِ أَخِيهِ كَانَ اللَّهُ فِي حَاجَتِهِ، وَمَنْ فَرَّجَ عَنْ مُسْلِمٍ كُرْبَةً فَرَّجَ اللَّهُ بِهَا عَنْهُ كُرْبَةً مِنْ كُرَبِ يَوْمِ الْقِيَامَةِ، وَمَنْ سَتَرَ مُسْلِمًا سَتَرَهُ اللَّهُ يَوْمَ الْقِيَامَةِ» .

L40247 We found what was narrated through the path of Muslim: Qutaybah ibn Saʿid narrated to us, Layth—that is, Ibn Saʿd—narrated to us from ʿUqayl from al-Zuhri from Salim ibn ʿAbdullah ibn ʿUmar from his father that the Messenger of Allah—peace be upon him and his family—said: "A Muslim is the brother of a Muslim; he does not wrong him, nor forsake him. Whoever strives to fulfill his brother's need, Allah will attend to his need. Whoever relieves a Muslim of a hardship, Allah will relieve him through it of a hardship

[39] **Qur'an references (L40243):** Qur'an 65:2 (At-Talaq).
[40] **Qur'an references (L40244):** Qur'an 2:140 (Al-Baqarah).
[41] **Qur'an references (L40245):** Qur'an 2:283 (Al-Baqarah).
[42] **Qur'an references (L40246):** Qur'an 2:282 (Al-Baqarah).

from the hardships of the Day of Resurrection. And whoever conceals the faults of a Muslim, Allah will conceal him on the Day of Resurrection."[43]

L40248 Abū Muḥammad—may Allah have mercy on him—said: It is therefore obligatory to apply all these texts. We examined the matter and found that reconciling them—a task impermissible for anyone else—cannot occur except through one of two approaches: either the general scope of the aforementioned verses is specified by the report mentioned above, or the general scope of the report is specified by the verses. No other possibility exists, and one of these two approaches is necessary. If we specify the general scope of the verses with the report, the ruling would be that fulfilling all testimonies and proclaiming them is obligatory, except what pertains to concealing a Muslim in a ḥadd punishment, in which case concealment is more virtuous. If we specify the general scope of the report with the verses, the ruling would be that concealing a Muslim is commendable, except for fulfilling testimonies, which remains obligatory.

L40249 So we considered: that is, these two actions – the one upon which proof is established as valid – is to be adopted. For it is impermissible to adopt either of them exclusively over the other, nor is it permissible to combine them altogether. Rather, the truth lies in one of them without doubt.

L40250 So we examined this matter—with the assistance of Allah the Exalted—and concluded that concealing the faults of a Muslim, as urged in the ḥadīth, must be one of two aspects with no third option: either protecting him and concealing his wrongdoing when he commits an injustice he seeks through, in which case this becomes an obligatory duty—not merely recommended—like prayer and zakah.

L40251–40252 Or it may involve a sin a Muslim commits privately against his Lord, the Exalted. None of the scholars of Islam have deemed it permissible to conceal a Muslim's wrongdoing that harms another Muslim—such as one who seizes a Muslim's property through armed robbery and someone becomes aware

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَجَبَ اسْتِعْمَالُ هَذِهِ النُّصُوصِ كُلِّهَا، فَنَظَرْنَا فِي ذَلِكَ: فَوَجَدْنَا الْعَمَلَ فِي جَمْعِهَا - الَّذِي لَا يَحِلُّ لِأَحَدٍ غَيْرِهِ - لَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ: إمَّا أَنْ يُخَصَّ عُمُومُ الْآيَاتِ الْمَذْكُورَةِ بِالْخَبَرِ الْمَذْكُورِ، وَإِمَّا أَنْ يُخَصَّ عُمُومُ الْخَبَرِ الْمَذْكُورِ بِالْآيَاتِ الْمَذْكُورَاتِ، إذْ لَا يُمْكِنُ أَلْبَتَّةَ غَيْرُ هَذَا وَلَا بُدَّ مِنْ أَحَدِ الْعَمَلَيْنِ، فَإِنْ خَصَّصْنَا عُمُومَ الْآيَاتِ بِالْخَبَرِ كَانَ الْقَوْلُ فِي ذَلِكَ أَنَّ الْقِيَامَ بِالشَّهَادَاتِ كُلِّهَا، وَالْإِعْلَانِ بِهَا فَرْضٌ، إلَّا مَا كَانَ مِنْهَا سَتْرُ الْمُسْلِمِ فِي حَدٍّ مِنْ الْحُدُودِ، فَالْأَفْضَلُ السَّتْرُ، وَإِنْ خَصَّصْنَا عُمُومَ الْخَبَرِ بِالْآيَاتِ كَانَ الْقَوْلُ فِي ذَلِكَ أَنَّ السَّتْرَ عَلَى الْمُسْلِمِ حَسَنٌ، إلَّا مَا كَانَ مِنْ أَدَاءِ الشَّهَادَاتِ فَإِنَّهُ وَاجِبٌ.

فَنَظَرْنَا: أَيْ هَذَيْنِ الْعَمَلَيْنِ هُوَ الَّذِي يَقُومُ الْبُرْهَانُ عَلَى صِحَّتِهِ فَيُؤْخَذُ بِهِ، إذْ لَا يَحِلُّ أَخْذُ أَحَدِهِمَا مُطَارَفَةً دُونَ الْآخَرِ، وَلَا يَجُوزُ أَنْ يَكُونَا جَمْعًا جَمِيعًا، بَلْ الْحَقُّ فِي أَحَدِهِمَا بِلَا شَكٍّ.

فَنَظَرْنَا فِي ذَلِكَ - بِعَوْنِ اللَّهِ تَعَالَى - فَوَجَدْنَا السَّتْرَ عَلَى الْمُسْلِمِ الَّذِي نُدِبْنَا إلَيْهِ فِي الْحَدِيثِ لَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا يَسْتُرُهُ وَيَسْتُرُ عَلَيْهِ فِي ظُلْمٍ يَطْلُبُ بِهِ الْمُسْلِمُ، فَهَذَا فَرْضٌ وَاجِبٌ، وَلَيْسَ هَذَا مَنْدُوبًا إلَيْهِ، بَلْ هُوَ كَالصَّلَاةِ وَالزَّكَاةِ.

وَإِمَّا أَنْ يَكُونَ فِي الذَّنْبِ يُصِيبُهُ الْمُسْلِمُ مَا بَيْنَهُ وَبَيْنَ رَبِّهِ تَعَالَى، وَلَمْ يَقُلْ أَحَدٌ مِنْ أَهْلِ الْإِسْلَامِ بِإِبَاحَةِ السَّتْرِ عَلَى مُسْلِمٍ فِي ظُلْمٍ ظَلَمَ بِهِ مُسْلِمًا، كَمَنْ أَخَذَ مَالَ مُسْلِمٍ بِحِرَابَةٍ وَاطَّلَعَ عَلَيْهِ إنْسَانٌ، أَوْ غَصَبَهُ امْرَأَتَهُ، أَوْ سَرَقَ حُرًّا، وَمَا أَشْبَهَهُ، فَهَذَا فَرْضٌ عَلَى كُلِّ

[43] **Hadith references (L40247):** Sahih al-Bukhari 6951.

of it, or who usurps his wife, or steals a free person, or similar acts. In such cases, it is incumbent upon every Muslim to act until injustices are returned to their rightful owners. We analyzed the mentioned hadith and determined it signifies an encouragement, not a compulsion, and a virtue, not an obligation. The apparent meaning indicates that a person may conceal a Muslim's sin involving a ḥadd offense witnessed by him, according to this textual report, provided he is not asked about that specific testimony. If he is asked, he is compelled to testify and must not conceal it. If he withholds it then, he is disobeying God, the Exalted.

L40253 This validates the agreement between the prophetic report and the verses, establishing that upholding testimony as due to Allah the Exalted, the prohibition of concealing it, and a person being a wrongdoer thereby apply only if summoned, not otherwise, as Allah the Exalted has said: "And let not the witnesses refuse when they are called" [Al-Baqarah: 282].[44]

L40254 Then we examined the aforementioned report from the Messenger of Allah—may Allah bless him and his family and grant him peace—which was narrated to us by Ḥammām, who narrated from ʿAbbās ibn Aṣbagh, who narrated from Muḥammad ibn ʿAbd al-Malik ibn Ayman, who narrated from Ibrāhīm ibn Muḥammad, who narrated from Yaḥyā ibn Yaʿmar, who narrated from Ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm, who narrated from his father, who narrated from ʿAbdullāh ibn ʿAmr ibn ʿUthmān, who narrated from Abū ʿAmrah al-Anṣārī—ʿAbd al-Raḥmān ibn Zayd ibn Khālid—that the Messenger of Allah—may Allah bless him and his family and grant him peace—said: "Shall I inform you of the best witnesses? It is one who comes forth with testimony before being asked, or who volunteers his testimony without being summoned."

L40255–40257 Abū Muḥammad—may Allāh have mercy on him—said: This constitutes a general ruling applicable to all testimonies, whether involving prescribed punishments or other matters. We found Allāh's statement: "O you who believe, be upholders of justice as witnesses for Allāh, even if against yourselves, your parents, or close relatives" (4:135). Allāh the Exalted equates the obligation for a person to give testimony against themselves, their par-

مُسْلِمٍ أَنْ يَقُومَ بِهِ حَتَّى يَرُدَّ الظُّلَامَاتِ إِلَى أَهْلِهَا؟ فَنَظَرْنَا فِي الْحَدِيثِ الْمَذْكُورِ فَوَجَدْنَاهُ نَدْبًا لَا حَتْمًا، وَفَضِيلَةً لَا فَرْضًا، فَكَانَ الظَّاهِرُ مِنْهُ أَنَّ لِلْإِنْسَانِ أَنْ يَسْتُرَ عَلَى الْمُسْلِمِ يَرَاهُ عَلَى حَدٍّ بِهَذَا الْخَبَرِ، مَا لَمْ يُسْأَلْ عَنْ تِلْكَ الشَّهَادَةِ نَفْسِهَا، فَإِنْ سُئِلَ عَنْهَا فَفَرْضٌ عَلَيْهِ إِقَامَتُهَا وَأَنْ لَا يَكْتُمَهَا، فَإِنْ كَتَمَهَا حِينَئِذٍ فَهُوَ عَاصٍ لِلَّهِ تَعَالَى.

وَصَحَّ بِهَذَا اتِّفَاقُ الْخَبَرِ مَعَ الْآيَاتِ، وَأَنَّ إِقَامَةَ الشَّهَادَةِ لِلَّهِ تَعَالَى، وَتَحْرِيمَ كِتْمَانِهَا، وَكَوْنَ الْمَرْءِ ظَالِمًا بِذَلِكَ، فَإِنَّمَا هُوَ إِذَا دُعِيَ فَقَطْ، لَا إِذَا لَمْ يُدْعَ، كَمَا قَالَ تَعَالَى {وَلا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا} [البقرة: ٢٨٢] .

ثُمَّ نَظَرْنَا فِي الْخَبَرِ الْمَذْكُورِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الَّذِي حَدَّثَنَاهُ حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ نا يَحْيَى بْنُ يَعْمُرَ نا ابْنُ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ عُثْمَانَ عَنْ أَبِي عَمْرَةَ الْأَنْصَارِيِّ - هُوَ عَبْدُ الرَّحْمَنِ بْنِ زَيْدِ بْنِ خَالِدٍ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «أَلَا أُخْبِرُكُمْ بِخَيْرِ الشُّهَدَاءِ؟ الَّذِي يَأْتِي بِالشَّهَادَةِ قَبْلَ أَنْ يُسْأَلَهَا، أَوْ يُخْبِرُ بِشَهَادَتِهِ قَبْلَ أَنْ يُسْأَلَهَا»

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَكَانَ هَذَا عُمُومًا فِي كُلِّ شَهَادَةٍ فِي حَدٍّ أَوْ غَيْرِ حَدٍّ، وَوَجَدْنَا قَوْلَ اللَّهِ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَى أَنْفُسِكُمْ أَوِ الْوَالِدَيْنِ وَالأَقْرَبِينَ} [النساء: ١٣٥] فَسَوَّى اللَّهُ تَعَالَى بَيْنَ وُجُوبِ أَدَاءِ الْمَرْءِ الشَّهَادَةَ عَلَى نَفْسِهِ، وَعَلَى وَالِدَيْهِ، وَأَقَارِبِهِ، وَالْأَبَاعِدِ، فَوَجَبَ مِنْ هَذِهِ النُّصُوصِ

[44] **Qur'an references (L40253):** Qur'an 2:282 (Al-Baqarah).

ents, relatives, and strangers. These textual proofs necessitate that no blame attaches to a person for withholding testimony when not asked—whether regarding a prescribed punishment or other matter. But when asked, testifying becomes obligatory upon them—be it for a prescribed punishment or otherwise. Moreover, if someone holds testimony for another person who is unaware of it, he must inform him, based on the Messenger of Allāh's—peace and blessings be upon him—statement: "Religion is sincere counsel." It was said: "To whom, O Messenger of Allāh?" He replied: "To Allāh, His Book, the leaders of Muslims, and their common folk." If the person for whom the testimony is given requests its performance, the witness becomes religiously obligated to comply, by virtue of Allāh's statement: "Let not the witnesses refuse when they are summoned" (2:282). And if he is not asked, he is not obligated to fulfill it—and success is from Allah, the Exalted.[45]

أَنَّ الشَّهَادَةَ لَا حَرَجَ عَلَى الْمَرْءِ فِي تَرْكِ أَدَائِهَا مَا لَمْ يُسْأَلْهَا - حَدًّا كَانَ أَوْ غَيْرَهُ - فَإِذَا سُئِلَهَا فَفَرْضٌ عَلَيْهِ أَدَاؤُهَا - حَدًّا أَوْ غَيْرَهُ وَأَنَّ مَنْ كَانَ لِإِنْسَانٍ عِنْدَهُ شَهَادَةٌ، وَالْمَشْهُودُ لَهُ لَا يَدْرِي بِهَا -: فَفَرْضٌ عَلَيْهِ إعْلَامُهُ بِهَا، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الدِّينُ النَّصِيحَةُ قِيلَ: لِمَنْ يَا رَسُولَ اللَّهِ؟ قَالَ: لِلَّهِ وَلِكِتَابِهِ، وَلِأَئِمَّةِ الْمُسْلِمِينَ، وَعَامَّتِهِمْ» فَإِنْ سَأَلَهُ الْمَشْهُودُ أَدَاءَهَا لَزِمَهُ ذَلِكَ فَرْضًا، لِمَا ذَكَرْنَا قَبْلُ مِنْ قَوْلِ اللَّهِ تَعَالَى {وَلا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا} [البقرة: ٢٨٢] وَإِنْ لَمْ يُسْأَلْ لَمْ يَلْزَمْهُ أَنْ يُؤَدِّيَهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40258 As for one who possesses testimony against a person accused of adultery, if another individual accuses that alleged adulterer—thereby rendering the accuser liable to the ḥadd punishment for false accusation—it is an absolute obligation upon the witness testifying regarding the accused adulterer to present their testimony. This obligation applies whether they are asked to testify or not, and regardless of the accuser's awareness of their testimony. Failure to testify at that time constitutes disobedience to Allah Almighty, in accordance with His statement: "Cooperate in righteousness and piety, and do not cooperate in sin and transgression" [Al-Mā'idah: 2].[46]

وَأَمَّا مَنْ كَانَتْ عِنْدَهُ شَهَادَةٌ عَلَى إنْسَانٍ بِزِنًى، فَقَذَفَ ذَلِكَ الزَّانِي إنْسَانٌ فَوَقَفَ الْقَاذِفُ عَلَى أَنْ يُحَدَّ لِلْمَقْذُوفِ، فَفَرْضٌ عَلَى الشَّاهِدِ عَلَى الْمَقْذُوفِ الزَّانِي أَنْ يُؤَدِّيَ الشَّهَادَةَ وَلَا بُدَّ، سُئِلَهَا أَوْ لَمْ يُسْأَلْهَا - عَلِمَ الْقَاذِفُ بِذَلِكَ أَوْ لَمْ يَعْلَمْ - وَهُوَ عَاصٍ لِلَّهِ تَعَالَى إنْ لَمْ يُؤَدِّهَا حِينَئِذٍ، لِقَوْلِ اللَّهِ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L40259 And due to the statement of the Messenger of Allah (peace be upon him), "A Muslim is the brother of a Muslim; he neither wrongs him nor abandons him."

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ» .

L40260 And due to his statement—peace be upon him—"Help your brother, whether he was an oppressor or oppressed."

وَلِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «انْصُرْ أَخَاكَ ظَالِمًا كَانَ أَوْ مَظْلُومًا» .

L40261 If he testifies to the validity of the qadhf (false accusation of unlawful intercourse) he made, he assists in lawfully enforcing the prescribed penalty without wrongdoing, supporting virtue and piety. But if he fails to testify,

فَهَذَا إذَا أَدَّى الشَّهَادَةَ الَّتِي عِنْدَهُ بِصِحَّةِ مَا قَذَفَ بِهِ، مُعِينٌ عَلَى إقَامَةِ حَدٍّ بِحَقٍّ غَيْرُ ظَالِمٍ بِهِ، مُعِينٌ عَلَى الْبِرِّ وَالتَّقْوَى - وَإِنْ لَمْ يُؤَدِّهَا: مُعِينٌ عَلَى الْإِثْمِ وَالْعُدْوَانِ، وَهُوَ ظَالِمٌ قَدْ أَسْلَمَهُ لِلظُّلْمِ، إذْ تَرَكَهُ يُضْرَبُ بِغَيْرِ حَقٍّ.

[45] **Qur'an references (L40255):** Qur'an 4:135 (An-Nisa); Qur'an 2:282 (Al-Baqarah).
[46] **Qur'an references (L40258):** Qur'an 5:2 (Al-Ma'idah).

he aids in sin and aggression, becoming unjust and delivering himself to injustice by abandoning him to be flogged without legal right.

فَإِنْ ذَكَرُوا: مَا ناه يُوسُفُ بْنُ عَبْدِ اللَّهِ وَغَيْرُهُ قَالُوا: حَدَّثَنَا مُحَمَّدُ بْنُ الْجَسُورِ ثنا قَاسِمُ بْنُ أَصْبَغَ نا مُطَرِّفُ بْنُ قَيْسٍ حَدَّثَنَا يَحْيَى بْنُ بُكَيْرٍ نا مَالِكُ بْنُ أَنَسٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: «إِنَّ رَجُلًا مِنْ أَسْلَمَ جَاءَ إِلَى أَبِي بَكْرٍ الصِّدِّيقِ فَقَالَ: إِنَّ الْآخَرَ زَنَى، فَقَالَ لَهُ أَبُو بَكْرٍ: هَلْ ذَكَرْتَ ذَلِكَ لِغَيْرِي؟ فَقَالَ: لَا، قَالَ أَبُو بَكْرٍ: فَتُبْ إِلَى اللَّهِ، وَاسْتَتِرْ بِسِتْرِ اللَّهِ، فَإِنَّ اللَّهَ يَقْبَلُ التَّوْبَةَ عَنْ عِبَادِهِ، فَلَمْ تَقِرَّ نَفْسُهُ حَتَّى أَتَى عُمَرَ بْنَ الْخَطَّابِ، فَقَالَ لَهُ كَمَا قَالَ لِأَبِي بَكْرٍ، فَقَالَ لَهُ عُمَرُ كَمَا قَالَ لَهُ أَبُو بَكْرٍ فَلَمْ تَقِرَّ نَفْسُهُ حَتَّى أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إِنَّ الْآخَرَ زَنَى، قَالَ سَعِيدُ بْنُ الْمُسَيِّبِ: فَأَعْرَضَ عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِرَارًا - كُلُّ ذَلِكَ يُعْرَضُ عَنْهُ - حَتَّى إِذَا أَكْثَرَ عَلَيْهِ؟ بَعَثَ إِلَى أَهْلِهِ، فَقَالَ: أَيَشْتَكِي، أَبِهِ جِنَّةٌ؟ فَقَالُوا: لَا، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَبِكْرٌ أَمْ ثَيِّبٌ؟ فَقَالُوا: بَلْ ثَيِّبٌ -: فَأَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرُجِمَ. قَالَ سَعِيدٌ: فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِرَجُلٍ مِنْ أَسْلَمَ يُقَالُ لَهُ هُزَالٌ: لَوْ سَتَرْتَهُ بِرِدَائِكَ لَكَانَ خَيْرًا لَكَ» .

L40262 When they mentioned what was narrated by Yusuf ibn Abdullah and others, they said: Muhammad ibn al-Jasur narrated to us, Qasim ibn Asbagh narrated to us, Mutarrif ibn Qays narrated to us, Yahya ibn Bukayr narrated to us, Malik ibn Anas narrated from Yahya ibn Sa'id al-Ansari from Sa'id ibn al-Musayyab, who said: A man from Aslam came to Abu Bakr al-Siddiq and said: "The other man committed adultery." Abu Bakr said to him: "Did you mention this to anyone else?" He said: "No." Abu Bakr said: "Then repent to Allah and seek cover under Allah's protection, for Allah accepts repentance from His servants." But his soul found no rest until he went to Umar ibn al-Khattab and spoke to him as he had spoken to Abu Bakr. Umar replied to him as Abu Bakr had done, yet his soul found no rest until he went to the Messenger of Allah (peace be upon him) and said: "The other man committed adultery." Sa'id ibn al-Musayyab said: The Messenger of Allah (peace be upon him) turned away from him repeatedly—each time turning away from him entirely—until the man persisted excessively. The Prophet then sent for his family and asked: "Does he complain of anything? Does he have madness?" They said: "No." The Messenger of Allah (peace be upon him) said: "Is he a virgin or non-virgin?" They said: "He is non-virgin." So the Messenger of Allah (peace be upon him) ordered that he be stoned. Sa'id said: The Messenger of Allah (peace be upon him) then said to a man from Aslam named Huzāl: "Had you covered him with your cloak, it would have been better for you."

قَالَ يَحْيَى: فَذَكَرْت هَذَا الْحَدِيثَ فِي مَجْلِسٍ فِيهِ يَزِيدُ بْنُ نُعَيْمِ بْنِ هُزَالٍ الْأَسْلَمِيُّ؟ فَقَالَ يَزِيدُ هُزَالٌ جَدِّي - وَهَذَا الْحَدِيثُ حَقٌّ قَالَ عَلِيٌّ: فَإِنَّ هَذَا الْحَدِيثَ مُرْسَلٌ لَمْ يُسْنِدْهُ سَعِيدٌ، وَلَا يَزِيدُ بْنُ نُعَيْمٍ وَلَا حُجَّةَ فِي مُرْسَلٍ، وَلَوْ انْسَنَدَ لَمَا خَرَجَ مِنْهُ إلَّا أَنَّ السَّتْرَ، وَتَرْكَ الشَّهَادَةِ أَفْضَلُ فَقَطْ - هَذَا عَلَى أُصُولِ الْقَائِلِينَ بِالْقِيَاسِ إذَا سَلِمَ لَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L40263–40265 Yahya said: I mentioned this hadith in a gathering where Yazid ibn Nu'aym ibn Huzal al-Aslami was present? Yazid said: Huzal is my grandfather—and this hadith is true. Ali said: This hadith is mursal, for neither Sa'īd nor Yazīd ibn Nu'aym transmitted it with a chain, and there is no conclusive evidence in a mursal report. Even if it were provided with a chain of transmission, it would not lead to anything except that covering oneself and abandoning testimony is only superior - this according to the principles of those who uphold analogy if their premises are conceded. And with Allah, the Exalted, lies success.

[مَسْأَلَة اخْتِلَافُ الشُّهُودِ فِي الْحُدُودِ]

٢١٨٠ - مَسْأَلَةٌ: اخْتِلَافُ الشُّهُودِ فِي الْحُدُودِ؟ قَالَ أَبُو مُحَمَّد: فَلَمَّا اخْتَلَفُوا فِي ذَلِكَ، فَنَظَرْنَا فِي ذَلِكَ، فَالَّذِي نَقُولُ بِهِ: أَنَّ كُلَّ مَا تَمَّتْ بِهِ الشَّهَادَةُ، وَوَجَبَ الْقَضَاءُ بِهَا، فَإِنَّ كُلَّ مَا زَادَهُ الشُّهُودُ عَلَى ذَلِكَ فَلَا حُكْمَ لَهُ، وَلَا يَضُرُّ الشَّهَادَةَ اخْتِلَافُهُمْ، كَمَا لَا يَضُرُّهَا سُكُوتُهُمْ عَنْهُ - وَأَنَّ كُلَّ مَا لَا تَتِمُّ الشَّهَادَةُ إلَّا بِهِ -: فَهَذَا هُوَ الَّذِي يُفْسِدُهَا اخْتِلَافُهُمْ، فَالشَّهَادَةُ إذَا تَمَّتْ مِنْ أَرْبَعَةِ عُدُولٍ بِالزِّنَى عَلَى إنْسَانٍ بِامْرَأَةٍ يَعْرِفُونَهَا أَجْنَبِيَّةٍ، لَا يَشُكُّونَ فِي ذَلِكَ، ثُمَّ اخْتَلَفُوا فِي الْمَكَانِ، أَوْ فِي الزَّمَانِ، أَوْ فِي الْمَزْنِيِّ بِهَا، فَقَالَ بَعْضُهُمْ: أَمْسِ بِامْرَأَةٍ سَوْدَاءَ، وَقَالَ بَعْضُهُمْ: بِامْرَأَةٍ بَيْضَاءَ الْيَوْمَ -: فَالشَّهَادَةُ تَامَّةٌ، وَالْحَدُّ وَاجِبٌ، لِأَنَّ الزِّنَى قَدْ تَمَّ عَلَيْهِ، وَلَا يُحْتَاجُ فِي الشَّهَادَةِ إلَى ذِكْرِ مَكَان وَلَا زَمَانٍ، وَلَا إلَى ذِكْرِ الَّتِي زَنَى بِهَا - فَالسُّكُوتُ عَنْ ذِكْرِ ذَلِكَ وَذِكْرُهُ سَوَاءٌ - وَكَذَلِكَ فِي السَّرِقَةِ، وَلَوْ قَالَ أَحَدُهُمَا: أَمْسِ، وَقَالَ الْآخَرُ: عَامَ أَوَّلٍ، أَوْ قَالَ أَحَدُهُمَا: بِمَكَّةَ، وَقَالَ الْآخَرُ: بِبَغْدَادَ، فَالسَّرِقَةُ قَدْ صَحَّتْ، وَتَمَّتْ الشَّهَادَةُ فِيهَا - وَلَا مَعْنَى لِذِكْرِ الْمَكَانِ، وَلَا الزَّمَانِ، وَلَا الشَّيْءِ الْمَسْرُوقِ مِنْهُ - سَوَاءٌ اخْتَلَفَا فِيهِ، أَوْ اتَّفَقَا فِيهِ، أَوْ سَكَتَا عَنْهُ، لِأَنَّهُ لَغْوٌ، وَحَدِيثٌ زَائِدٌ، لَيْسَ مِنْ الشَّهَادَةِ فِي شَيْءٍ.

وَكَذَلِكَ فِي شُرْبِ الْخَمْرِ، وَفِي الْقَذْفِ: فَالْحَدُّ قَدْ وَجَبَ، وَلَا مَعْنَى لِذِكْرِ الْمَكَانِ، وَالْمَقْذُوفُ فِي ذَلِكَ، وَالْمَسْكُوتُ عَنْهُ وَذِكْرُهُ، وَالِاتِّفَاقُ عَلَيْهِ وَالِاخْتِلَافُ فِيهِ سَوَاءٌ.

The Issue of Discrepancies Among the Witnesses Regarding Ḥudūd

2180 - Issue: Discrepancies among witnesses in ḥudūd cases? Abū Muḥammad said: When they differed regarding this matter, we examined it. Our ruling is: For any testimony that is complete and necessitates judicial ruling, whatever the witnesses add beyond the essentials has no legal validity. Their discrepancy does not invalidate the testimony, just as their silence about such details does not harm it. And that whatever elements are essential for the testimony's validity - discrepancy regarding these invalidates the testimony. When four upright witnesses complete their testimony about adultery committed by a person with a woman they know to be unrelated, without doubting the act, then differ regarding the location, time, or the woman with whom adultery was committed - some stating "yesterday with a black woman" while others say "today with a white woman" - the testimony remains complete and the ḥadd punishment is obligatory. This is because the act of adultery has been established against him, and testimony does not necessitate mentioning location, time, or the woman with whom adultery was committed - silence about these details holds equal weight to mentioning them. Similarly, in theft cases: if one witness states "yesterday" while another says "last year," or one says "in Makkah" while another says "in Baghdad," the theft is confirmed and the testimony remains valid. Mention of location, time, or the item stolen from its owner holds no legal significance - whether witnesses differ, agree, or remain silent about these details - as this constitutes superfluous additions and extraneous statements that form no part of the testimony in any way.

Similarly, regarding drinking wine and the accusation of fornication (qadhf): the *ḥadd* punishment is obligatory, and specifying the place holds no significance. The ruling remains the same whether the accused is identified or not, the details are mentioned or omitted, or there is agreement or disagreement concerning them.

Abū Muḥammad—may Allah have mercy on him—said: Who would claim there is disagreement regarding this? He must then account for discrepancies

in the witnesses' descriptions of the clothing of the adulterer, the thief, the one who drinks intoxicants, and the false accuser. If one of them states, "He had a cap on his head," while the other says, "A turban," or one claims, "He wore a green garment," and the other says, "No, a red one," or one asserts, "It occurred in cloudy weather," and the other says, "In clear weather"—all of this has no bearing.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَمَنْ ادَّعَى الْخِلَافَ فِي ذَلِكَ؟ فَيَلْزَمُهُ أَنْ يُرَاعِيَ اخْتِلَافَ الشُّهُودِ فِي لِبَاسِ الزَّانِي، وَالسَّارِقِ، وَالشَّارِبِ، وَالْقَاذِفِ، فَإِنْ قَالَ أَحَدُهُمَا: كَانَ فِي رَأْسِهِ قَلَنْسُوَةٌ، وَقَالَ الْآخَرُ: عِمَامَةٌ، أَوْ قَالَ أَحَدُهُمَا: كَانَ عَلَيْهِ ثَوْبٌ أَخْضَرُ، وَقَالَ الْآخَرُ: بَلْ أَحْمَرُ، وَقَالَ أَحَدُهُمَا: فِي غَيْمٍ، وَقَالَ الْآخَرُ: فِي صَحْوٍ - فَهَذَا كُلُّهُ لَا مَعْنَى لَهُ.

L40271–40273 If someone were to say: The purpose of considering discrepancies is solely that the testimony is about a single act. If they differ regarding the place, time, the one accused of *qadhf* (false accusation of adultery), the person with whom adultery was committed, the one from whom something was stolen, or the stolen item: then have they not testified to a single act? We respond: How has it occurred to you that the testimony in all such cases is about a single act? Which Qur'an, Sunnah, *ijmāʿ* (consensus), or *qiyās* (analogical reasoning) necessitates this? This is something for which there is no way to... The existence [of proof]; rather, the purpose is only to establish prohibited adultery, prohibited false accusation of adultery, prohibited theft, prohibited consumption of intoxicants, and prohibited disbelief – with nothing beyond this. The clarification is Allah's statement, the Exalted: {And those who accuse chaste women [of adultery] and then do not produce four witnesses} [an-Nur: 4].[47]

فَإِنْ قَالَ قَائِلٌ: إِنَّ الْغَرَضَ فِي مُرَاعَاةِ الِاخْتِلَافِ إِنَّمَا هُوَ أَنْ تَكُونَ الشَّهَادَةُ عَلَى عَمَلٍ وَاحِدٍ فَقَطْ، وَإِذَا اخْتَلَفُوا فِي الْمَكَانِ، أَوْ الزَّمَانِ، أَوْ الْمَقْذُوفِ، أَوْ الْمَزْنِيِّ بِهَا، أَوْ الْمَسْرُوقِ مِنْهُ، أَوْ الشَّيْءِ الْمَسْرُوقِ: فَلَمْ يَشْهَدُوا عَلَى عَمَلٍ وَاحِدٍ؟ قُلْنَا: مِنْ أَيْنَ وَقَعَ لَكُمْ أَنْ تَكُونَ الشَّهَادَةُ فِي كُلِّ ذَلِكَ عَلَى عَمَلٍ وَاحِدٍ، وَأَيُّ قُرْآنٍ، أَوْ سُنَّةٍ، أَوْ إجْمَاعٍ أَوْجَبَ ذَلِكَ؟ وَأَيُّ نَظَرٍ أَوْجَبَهُ؟ وَهَذَا مَا لَا سَبِيلَ إلَى وُجُودِهِ، بَلْ الْغَرَضُ إثْبَاتُ الزِّنَى الْمُحَرَّمِ، وَالْقَذْفِ الْمُحَرَّمِ، وَالسَّرِقَةِ الْمُحَرَّمَةِ، وَالشُّرْبِ الْمُحَرَّمِ، وَالْكُفْرِ الْمُحَرَّمِ فَقَطْ، وَلَا مَزِيدَ، وَبَيَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ} [النور: ٤] الْآيَةَ.

L40274 Thus, this verse confirms that the legally required duty is solely to establish the adultery he accused her of. There is no legal weight to his explicit accusation or failure to specify it. He is therefore not obligated to present more than four witnesses to affirm the validity of his accusation of adultery. We do not differentiate whether it involved a single act or four acts, for all such acts constitute adultery.

فَصَحَّ بِهَذِهِ الْآيَةِ: أَنَّ الْوَاجِبَ إنَّمَا هُوَ إثْبَاتُ الزِّنَى فَقَطْ، وَهُوَ الَّذِي رَمَاهَا بِهِ، وَلَا مَعْنَى لِذِكْرِهِ الَّتِي رَمَاهَا وَلَا سُكُوتِهِ عَنْهُ، فَلَيْسَ عَلَيْهِ أَنْ يَأْتِيَ بِأَكْثَرَ مِنْ أَرْبَعَةِ شُهَدَاءَ: عَلَى أَنَّ الَّذِي رَمَاهَا بِهِ مِنْ الزِّنَى حَقٌّ، وَلَا نُبَالِي عَمَلًا وَاحِدًا كَانَ أَوْ أَرْبَعَةَ أَعْمَالٍ، لِأَنَّ كُلَّ ذَلِكَ زِنًا.

L40275 Similarly, if he is testified against for accusing a chaste woman of adultery, eighty lashes are established for him through the Quran. Allah, the Exalted, has not required the testimony to mention the time or the place. Therefore,

[47] **Qur'an references (L40271):** Qur'an 24:4 (An-Nur).

adding the mention of time and place is categorically invalid, because Allah, the Exalted, has not commanded it nor required its observance.

وَكَذَلِكَ إنْ شُهِدَ عَلَيْهِ بِالْقَذْفِ لِمُحْصَنَةٍ، فَقَدْ ثَبَتَ عَلَيْهِ بِالْقُرْآنِ ثَمَانُونَ جَلْدَةً، وَلَمْ يَحُدَّ اللَّهُ تَعَالَى أَنْ يَكُونَ فِي الشَّهَادَةِ ذِكْرُ الزَّمَانِ، وَلَا ذِكْرُ الْمَكَانِ فَالزِّيَادَةُ لِهَذَا بَاطِلٌ بِيَقِينٍ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَأْمُرْ بِهِ، وَلَا بِمُرَاعَاتِهِ.

L40276 Similarly, Allah the Exalted said: "As for the thief, male or female, cut off their hands" [Al-Mā'idah 5:38]. This suffices us, and the validity of the testimony that she is a thief or he is a thief. We did not find Allah the Exalted mentioning time, place, the victim of theft, or the stolen property. Therefore, adhering to such considerations is invalid with absolute certainty beyond any doubt.[48]

وَكَذَلِكَ قَالَ اللَّهُ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] فَحَسْبُنَا، وَصِحَّةُ الشَّهَادَةِ بِأَنَّهَا سَارِقَةٌ، أَوْ أَنَّهُ سَارِقٌ، وَلَمْ نَجِدْ اللَّهَ تَعَالَى ذَكَرَ الزَّمَانَ، أَوْ الْمَكَانَ، أَوْ الْمَسْرُوقَ مِنْهُ، أَوْ الشَّيْءَ الْمَسْرُوقَ، فَمُرَاعَاةُ ذَلِكَ بَاطِلٌ بِيَقِينٍ لَا شَكَّ فِيهِ.

L40277–40279 And similarly, the Messenger of Allah (peace be upon him) said, "If he drinks khamr, then lash him," thus mandating lashing as the punishment for drinking it. Concerning wine, if testimony concerning drinking wine is validated, then the ḥadd punishment is necessitated by the explicit command of the Messenger of Allah—peace and blessings be upon him—regarding this matter. It is invalid to consider specifying a place, time, attributes of the wine, or attributes of the container, since no explicit text has been established from Allah the Exalted or His Messenger—peace and blessings be upon him—regarding such matters. Therefore, considering such factors is undoubtedly void. All praise is due to Allah, Lord of the worlds.

وَهَكَذَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا شَرِبَ الْخَمْرَ فَاجْلِدُوهُ» فَأَوْجَبَ الْجَلْدَ بِشُرْبِ الْخَمْرِ، فَإِذَا صَحَّتْ الشَّهَادَةُ بِشُرْبِ الْخَمْرِ فَقَدْ وَجَبَ الْحَدُّ، بِنَصِّ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ، وَلَا مَعْنَى لِمُرَاعَاةِ ذِكْرِ مَكَانٍ، أَوْ زَمَانٍ، أَوْ صِفَةِ الْخَمْرِ، أَوْ صِفَةِ الْإِنَاءِ - إذْ لَمْ يَأْتِ نَصٌّ بِذَلِكَ عَنْ اللَّهِ تَعَالَى وَلَا عَنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمُرَاعَاةُ ذَلِكَ بَاطِلٌ بِلَا شَكٍّ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L40280 Abu Muhammad said: Similar precedents have been transmitted from the early predecessors. As narrated to us by Abdullah ibn Rabīʿ, narrated to us by Ibn Mufarrij, narrated to us by Qāsim ibn Aṣbagh, narrated to us by Ibn Waḍḍāḥ, narrated to us by Sahnūn, narrated to us by Ibn Wahb, on the authority of Al-Sarrī ibn Yaḥyā, who said: Al-Ḥasan al-Baṣrī narrated to us, saying: Al-Jārūd testified against Qudāmah ibn Maẓʿūn that he drank wine—while ʿUmar had appointed Qudāmah as governor of Bahrain. ʿUmar asked Al-Jārūd: "Who testifies with you?" He replied: "'Alqamah the eunuch." ʿUmar summoned ʿAlqamah and asked: "What do you testify?" ʿAlqamah responded: "Is the testimony of a eunuch even valid?" ʿUmar said: "What

قَالَ أَبُو مُحَمَّد: وَقَدْ جَاءَ نَحْوُ ذَلِكَ عَنْ السَّلَفِ: كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ حَدَّثَنَا ابْنُ مُفَرِّجٍ حَدَّثَنَا قَاسِمُ بْنُ أَصْبَغَ حَدَّثَنَا ابْنُ وَضَّاحٍ حَدَّثَنَا سَحْنُونٌ حَدَّثَنَا ابْنُ وَهْبٍ أَنَا السَّرِيُّ بْنُ يَحْيَى قَالَ: حَدَّثَنَا الْحَسَنُ الْبَصْرِيُّ قَالَ: شَهِدَ الْجَارُودُ عَلَى قُدَامَةَ بْنِ مَظْعُونٍ أَنَّهُ شَرِبَ الْخَمْرَ - وَكَانَ عُمَرُ قَدْ أَمَّرَ قُدَامَةَ عَلَى الْبَحْرَيْنِ - فَقَالَ عُمَرُ لِلْجَارُودِ: مَنْ يَشْهَدُ مَعَك؟ قَالَ: عَلْقَمَةُ الْخَصِيُّ؟ فَدَعَا عَلْقَمَةَ، فَقَالَ لَهُ عُمَرُ: بِمَ تَشْهَدُ؟ فَقَالَ عَلْقَمَةُ: وَهَلْ تَجُوزُ شَهَادَةُ الْخَصِيِّ؟ قَالَ عُمَرُ: وَمَا يَمْنَعُهُ أَنْ تَجُوزَ شَهَادَتُهُ إذَا كَانَ مُسْلِمًا، قَالَ عَلْقَمَةُ:

[48] **Qur'an references (L40276):** Qur'an 5:38 (Al-Ma'idah).

prevents his testimony from being valid if he is Muslim?" ʿAlqamah said: "I saw him vomiting wine into a basin." ʿUmar declared: "No, by your Lord: he could not have vomited it unless he had drunk it!" He then ordered him to be flogged the *ḥadd* punishment. This was ʿUmar's ruling in the presence of the Companions (may Allah be pleased with them), with no recorded disagreement from them regarding enforcing the punishment based on two differing testimonies—one claiming he was seen drinking wine, the other not witnessing him drink it but seeing him vomit it. Yet we find them magnifying a Companion's dissent when it aligns with their *taqlīd*, while here they opposed ʿUmar ibn al-Khaṭṭāb, Al-Jārūd, and all present Companions. They bear no burden—and Allah suffices us, the Best Trustee.

The Issue of Confession Regarding the Ḥadd

L40281

L40282–40284 2181 - Issue: Confession to a hadd punishment after a period of time—which is superior: confession or self-concealment? Abū Muḥammad—may Allah have mercy on him—said: People have differed regarding this. When they differed, it became obligatory for us to examine their points of disagreement to discern the truth therein and follow it—with the aid of Allah, the Exalted. We thus examined the evidence presented by the group advocating concealment and found the entire Ummah unanimously agrees that concealment is permissible and confession is permissible. They differed only concerning which is superior. No one among the people of Islam has ever stated that a confessor to an act requiring a hadd punishment is disobeying Allah, the Exalted, through their confession. Nor has any among the people of Islam ever asserted that one concealing what they have committed of a hadd offense is disobeying Allah, the Exalted. We then examined the reports that have been related on this matter and found none of them to be authentic. Except for a single report at its end, there is no proof for them in it, as we will clarify - if Allah, the Exalted, wills.

L40285 As for the narration of Hizāl which we introduced via the chain of Shuʿbah from Muḥammad ibn al-Munkadir from Ibn Hizāl from his father: it is *mursal* (a ḥadīth with a missing link in its chain) and thus cannot be used as valid proof.

رَأَيْته يَقِيءُ الْخَمْرَ فِي طَسْتٍ، قَالَ عُمَرُ: فَلَا وَرَبِّك مَا قَاءَهَا حَتَّى شَرِبَهَا: فَأَمَرَ بِهِ فَجُلِدَ الْحَدَّ، فَهَذَا حُكْمُ عُمَرَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُ مِنْهُمْ مُخَالِفٌ فِي إقَامَةِ الْحَدِّ بِشَهَادَتَيْنِ مُخْتَلِفَتَيْنِ إحْدَاهُمَا: أَنَّهُ رَآهُ يَشْرَبُ الْخَمْرَ، وَالْأُخْرَى: أَنَّهُ لَمْ يَرَهُ يَشْرَبُهَا، لَكِنْ رَآهُ يَتَقَيَّؤُهَا - وَعَهِدْنَاهُمْ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ إذَا وَافَقَ تَقْلِيدَهُمْ، وَهُمْ هَاهُنَا قَدْ خَالَفُوا عُمَرَ بْنَ الْخَطَّابِ، وَالْجَارُودَ، وَجَمِيعَ مَنْ بِحَضْرَتِهِمَا مِنْ الصَّحَابَةِ، فَلَا مُؤْنَةَ عَلَيْهِمْ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

[مَسْأَلَة الأقرار بالحد]

٢١٨١ - مَسْأَلَةٌ: الْإِقْرَارُ بِالْحَدِّ بَعْدَ مُدَّةٍ، وَأَيُّهُمَا أَفْضَلُ الْإِقْرَارُ أَمْ الِاسْتِتَارُ بِهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي ذَلِكَ، فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِيمَا اخْتَلَفُوا فِيهِ لِنَعْلَمَ الْحَقَّ مِنْ ذَلِكَ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى -: فَنَظَرْنَا فِيمَا احْتَجَّتْ بِهِ الطَّائِفَةُ الْمُخْتَارَةُ لِلسَّتْرِ، وَأَنَّ جَمِيعَ الْأُمَّةِ مُتَّفِقُونَ عَلَى أَنَّ السَّتْرَ مُبَاحٌ، وَأَنَّ الِاعْتِرَافَ مُبَاحٌ، إنَّمَا اخْتَلَفُوا فِي الْأَفْضَلِ، وَلَمْ يَقُلْ أَحَدٌ مِنْ أَهْلِ الْإِسْلَامِ: إنَّ الْمُعْتَرِفَ بِمَا عَمِلَ مِمَّا يُوجِبُ الْحَدَّ: عَاصٍ لِلَّهِ تَعَالَى فِي اعْتِرَافِهِ، وَلَا قَالَ أَحَدٌ مِنْ أَهْلِ الْإِسْلَامِ قَطُّ: إنَّ السَّاتِرَ عَلَى نَفْسِهِ مَا أَصَابَ مِنْ حَدٍّ: عَاصٍ لِلَّهِ تَعَالَى: فَنَظَرْنَا فِي تِلْكَ الْأَخْبَارِ الَّتِي جَاءَتْ فِي ذَلِكَ فَوَجَدْنَاهَا كُلَّهَا لَا يَصِحُّ مِنْهَا شَيْءٌ، إلَّا خَبَرًا وَاحِدًا فِي آخِرِهَا، لَا حُجَّةَ لَهُمْ فِيهِ، عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى.

وَأَمَّا خَبَرُ هُزَالٍ الَّذِي صَدَّرْنَا بِهِ مِنْ طَرِيقِ شُعْبَةَ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ ابْنِ هِزَالٍ عَنْ أَبِيهِ: فَمُرْسَلٌ، فَلَا حُجَّةَ فِيهِ، لِأَنَّهُ مُرْسَلٌ.

وَكَذَلِكَ الَّذِي مِنْ طَرِيقِ ابْنِ الْمُبَارَكِ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ ابْنِ الْمُنْكَدِرِ - وَيَزِيدَ بْنِ النَّعِيمِ أَيْضًا مُرْسَلٌ.

L40286 Similarly, the chain through Ibn al-Mubārak from Yaḥyā ibn Saʿīd from Ibn al-Munkadir — and Yazīd ibn al-Nuʿaym's narration is also mursal.

وَكَذَلِكَ حَدِيثُ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ: مُرْسَلٌ أَيْضًا.

L40287 Similarly, the hadith of Mālik transmitted through Yaḥyā ibn Saʿīd al-Anṣārī is also *mursal*.

وَحَدِيثُ اللَّيْثِ عَنْ يَحْيَى بْنِ سَعِيدٍ مُرْسَلٌ أَيْضًا - فَبَطَلَ الِاحْتِجَاجُ بِرِوَايَةِ يَحْيَى بْنِ سَعِيدٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L40288 The narration of Al-Layth from Yaḥyā ibn Saʿīd is also *mursal* (disconnected). Therefore, citing the narration of Yaḥyā ibn Saʿīd as evidence was nullified. And success is by Allāh, the Most High.

ثُمَّ نَظَرْنَا فِي هَذَا الْخَبَرِ مِنْ طَرِيقِ عِكْرِمَةَ بْنِ عَمَّارٍ، فَوَجَدْنَاهُ لَا حُجَّةَ فِيهِ لِوَجْهَيْنِ: أَحَدُهُمَا: أَنَّهُ مُرْسَلٌ، وَالثَّانِي: أَنَّ عِكْرِمَةَ بْنَ عَمَّارٍ ضَعِيفٌ.

L40289 Then we examined this report through the transmission path of ʿIkrimah ibn ʿAmmār and found it to lack probative value due to two aspects: the first is that it is unanchored (mursal), and the second is that ʿIkrimah ibn ʿAmmār is weak (daʿīf) in narration.

ثُمَّ نَظَرْنَا فِيهِ مِنْ طَرِيقِ حِبَّانَ بْنِ هِلَالٍ عَنْ أَبَانَ بْنِ يَزِيدَ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ يَزِيدَ بْنِ نُعَيْمِ بْنِ هَزَالٍ الْأَنْصَارِيِّ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ فَوَجَدْنَاهُ أَيْضًا مُرْسَلًا.

L40290 Then we examined it through the chain of Hibbān ibn Hilāl from Abān ibn Yazīd from Yaḥyā ibn Abī Kathīr from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf from Yazīd ibn Nuʿaym ibn Huzāl al-Anṣārī from ʿAbd Allāh ibn Dīnār, and we found it also to be mursal.

ثُمَّ نَظَرْنَا فِيهِ مِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ: فَوَجَدْنَاهُ أَيْضًا مُرْسَلًا.

L40291 Then we scrutinized its transmission path via Ibn Jurayj from Yaḥyā ibn Saʿīd al-Anṣārī from ʿAbd Allāh ibn Dīnār, and determined it was mursal (a ḥadīth with a disconnected chain).

ثُمَّ نَظَرْنَا فِيهِ مِنْ رِوَايَةِ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ حُمَيْدِ بْنِ هِلَالٍ: فَوَجَدْنَاهُ أَيْضًا مُرْسَلًا.

L40292 Then we examined it through the narration of Maʿmar, on the authority of Ayyūb al-Sikhtiyānī, who narrated from Ḥumayd ibn Hilāl; we found it to be *mursal* as well.

ثُمَّ نَظَرْنَا فِيهِ مِنْ رِوَايَةِ الْحُبُلِّيِّ عَنْ أَبِي قِلَابَةَ - فَوَجَدْنَاهُ مُرْسَلًا.

L40293 Then we examined it in the narration of Al-Ḥubulī from Abu Qilabah—we found it to be *mursal*.

وَأَمَّا حَدِيثُ حَمَّادِ بْنِ سَلَمَةَ، فَفِيهِ أَبُو الْمُنْذِرِ لَا يُدْرَى مَنْ هُوَ - وَأَبُو أُمَيَّةَ الْمَخْزُومِيُّ وَلَا يُدْرَى مَنْ هُوَ؟ وَهُوَ أَيْضًا مُرْسَلٌ، وَحَتَّى لَوْ صَحَّ هَذَا الْخَبَرُ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ،

L40294–40296 As for the ḥadīth of Ḥammād ibn Salamah, it contains Abū al-Mundhir—whose identity is unknown—and Abū Umayyah al-Makhzūmī—whose identity is also unknown. Moreover, it is also a mursal narration. Even if this report were authentic, it would not constitute authoritative evidence for them, for it merely states, "I do not think you stole," and the Messenger of Allah—

peace and blessings be upon him—only speaks the truth. Thus, if it were authentically established that the Messenger of Allah—peace and blessings be upon him—said to the one brought to him accused of theft, "I do not think you stole," we would be upon... certainty that he—peace be upon him—was truthful in that, and that he actually presumes he did not steal, for this does not amount to prompting him, nor evidence that covering up is more virtuous. Thus, their reliance on this report is wholly nullified.

لأَنَّهُ لَيْسَ فِيهِ إِلَّا «مَا إِخَالُكَ سَرَقْتَ» وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَقُولُ إِلَّا الْحَقَّ - فَلَوْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِلَّذِي سِيقَ إِلَيْهِ بِالسَّرِقَةِ «مَا إِخَالُكَ سَرَقْتَ» لَكُنَّا عَلَى يَقِينٍ مِنْ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ صَدَقَ فِي ذَلِكَ، وَأَنَّهُ عَلَى الْحَقِيقَةِ يَظُنُّ أَنَّهُ لَمْ يَسْرِقْ، وَلَيْسَ فِي هَذَا تَلْقِينٌ لَهُ، وَلَا دَلِيلٌ عَلَى أَنَّ السَّتْرَ أَفْضَلُ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ جُمْلَةً.

As for the ḥadīth of Muslim regarding ijhād, it holds no legal authority for two reasons:

وَأَمَّا حَدِيثُ مُسْلِمٍ فِي الْإِجْهَادِ فَلَا حُجَّةَ فِيهِ لِوَجْهَيْنِ:

One of them is that it is from the narration of Muḥammad ibn ʿAbd Allāh, the nephew of al-Zuhrī, and he is weak.

أَحَدُهُمَا: أَنَّهُ مِنْ رِوَايَةِ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ أَخِي الزُّهْرِيِّ، وَهُوَ ضَعِيفٌ.

The second is that even if it were valid, they would have no valid argument whatsoever regarding it, because the aforementioned independent legal reasoning refers merely to something a person mentions to boast about, for this narration does not indicate that the Imam reports it while confessing so that the Book of Allah the Exalted may be applied to him. Rather, it condemns brazenly flaunting sin - and this is unquestionably forbidden.

وَالثَّانِي: أَنَّهُ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ أَصْلًا، لِأَنَّ الْإِجْهَادَ الْمَذْكُورَ إِنَّمَا هُوَ مَا ذَكَرَهُ الْمَرْءُ مُفْتَخِرًا بِهِ، لِأَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ أَنَّهُ يُخْبِرُ بِهِ الْإِمَامُ مُعْتَرِفًا لِيُقَامَ عَلَيْهِ كِتَابُ اللَّهِ تَعَالَى، وَإِنَّمَا فِيهِ ذَمُّ الْمُجَاهَرَةِ بِالْمَعْصِيَةِ - وَهَذَا لَا شَكَّ فِيهِ حَرَامٌ.

Then we examined the ḥadīth of Muslim narrated by Ibn Shihāb from Abū Salama, and by Saʿīd ibn al-Musayyib from Abū Hurayrah: "The Messenger of Allah—peace be upon him—turned away from the confessor multiple times." We found it authentic, with no flaw in it that anyone could find. However, it contains no proof for their stance, for people are divided into two opinions regarding the reason behind the Messenger of Allah's—peace be upon him—turning away from him. One group said: He turned away solely because a confession to adultery cannot be valid except... Upon the full completion of four instances, a group said: He turned away from him (peace be upon him) because he suspected he was insane or had drunk wine. None among the Ummah has stated that when a confession to a ḥadd punishment is established with the ruler, it becomes permissible for him to conceal it and refrain from implementing it. Thus, their reliance on this report is in-

ثُمَّ نَظَرْنَا فِي حَدِيثِ مُسْلِمٍ الَّذِي رَوَاهُ ابْنُ شِهَابٍ عَنْ أَبِي سَلَمَةَ، وَسَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْرَضَ عَنْ الْمُعْتَرِفِ مَرَّاتٍ» فَوَجَدْنَاهُ صَحِيحًا لَا دَاخِلَةَ فِيهِ لِأَحَدٍ، إِلَّا أَنَّهُ لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ النَّاسَ فِي سَبَبِ إعْرَاضِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهُ عَلَى قَوْلَيْنِ: فَطَائِفَةٌ قَالَتْ: إنَّمَا أَعْرَضَ عَنْهُ، لِأَنَّ الْإِقْرَارَ بِالزِّنَى لَا يَتِمُّ إلَّا بِتَمَامِ أَرْبَعِ مَرَّاتٍ، وَطَائِفَةٌ قَالَتْ: إنَّمَا أَعْرَضَ عَنْهُ - عَلَيْهِ السَّلَامُ - لِأَنَّهُ ظَنَّ أَنَّ بِهِ جُنُونًا، أَوْ شَرِبَ خَمْرًا - وَلَمْ يَقُلْ أَحَدٌ مِنْ الْأُمَّةِ: أَنَّ الْحَاكِمَ إذَا ثَبَتَ عِنْدَهُ الْإِقْرَارُ بِالْحَدِّ جَازَ لَهُ أَنْ يَسْتُرَهُ وَلَا يُقِيمَهُ - فَبَطَلَ تَعَلُّقُهُمْ

validated. We will thoroughly examine the discussion on the authentication of one of these two perspectives after this—if Allah, the Exalted, wills.

بِهَذَا الْخَبَرِ، وَسَنَسْتَقْصِي الْكَلَامَ فِي تَصْحِيحِ أَحَدِ هَذَيْنِ الْوَجْهَيْنِ بَعْدَ هَذَا - إِنْ شَاءَ اللَّهُ تَعَالَى.

L40303 Abū Muḥammad said: "Is there no report whatsoever left for this group to rely upon?" Then we examined what was narrated in that regard from the Companions (raḍiyallāhu ʿanhum) and found that none of it is authentic either. As for the narration from Abū Bakr and ʿUmar (raḍiyallāhu ʿanhumā) regarding their statement to al-Aslamī—"Seek cover through Allah's concealment"—it is not authentic, because it is transmitted via Saʿīd ibn al-Musayyab as a mursal narration.

قَالَ أَبُو مُحَمَّدٍ: فَلَمْ يبْقَ لِهَذِهِ الطَّائِفَةِ خَبَرٌ يَتَعَلَّقُونَ بِهِ أَصْلًا؟ ثُمَّ نَظَرْنَا فِيمَا رُوِيَ فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَوَجَدْنَاهُ أَيْضًا لَا يَصِحُّ مِنْهُ شَيْءٌ: أَمَّا الرِّوَايَةُ عَنْ أَبِي بَكْرٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - فِي قَوْلِهِمَا لِلْأَسْلَمِيِّ: اسْتَتِرْ بِسَتْرِ اللَّهِ، فَلَا تَصِحُّ، لِأَنَّهَا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مُرْسَلَةٌ.

L40304 Similarly, the narration of Ibrāhīm ibn Ṭahmān from Mūsā ibn ʻUqbah from ʻAbdullāh ibn Yazīd from Muḥammad ibn ʻAbd al-Raḥmān: that [the inclusion of] Abū Bakr renders the narration mursal.

وَكَذَلِكَ حَدِيثُ إبْرَاهِيمَ بْنِ طَهْمَانَ عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ: أَنَّ أَبَا بَكْرٍ فَهُوَ مُرْسَلٌ.

L40305 Abu Muhammad said: Then we examined the evidence cited by the other group, and found the narration from the Companions that a group among them said: "No repentance is greater than that of Ma'iz. He came to the Messenger of Allah (may Allah bless him and grant him peace), placed his hand in his hand, and said: 'Stone me to death.'"

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَظَرْنَا فِيمَا احْتَجَّتْ بِهِ الطَّائِفَةُ الْأُخْرَى، فَوَجَدْنَا الرِّوَايَةَ عَنْ الصَّحَابَةِ أَنَّ الطَّائِفَةَ مِنْهُمْ قَالَتْ: مَا تَوْبَةٌ أَفْضَلَ مِنْ تَوْبَةِ مَاعِزٍ: جَاءَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَضَعَ يَدَهُ فِي يَدِهِ وَقَالَ: اُقْتُلْنِي بِالْحِجَارَةِ.

L40306 This was established as correct from the statement of a great group of the Companions—may Allah be pleased with them. Rather, were we to say that none of the Companions—may Allah be pleased with them—opposed this group, we would be truthful, for the other faction did not oppose them. They only said: "Ma'iz has surely perished; his sin has overwhelmed him"—thus they rejected the matter of the sin, not the act of confession. Therefore, we found that no authentic opposition to the merit of confession has been reported from any of the Companions—may Allah be pleased with them.

فَصَحَّ هَذَا مِنْ قَوْلِ طَائِفَةٍ عَظِيمَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بَلْ لَوْ قُلْنَا: إنَّهُ لَا مُخَالِفَ لِهَذِهِ الطَّائِفَةِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَصَدَقْنَا، لِأَنَّ الطَّائِفَةَ الْأُخْرَى لَمْ تُخَالِفْهَا، وَإِنَّمَا قَالَتْ: لَقَدْ هَلَكَ مَاعِزٌ، لَقَدْ أَحَاطَتْ بِهِ خَطِيئَتُهُ - فَإِنَّمَا أَنْكَرُوا أَمْرَ الْخَطِيئَةِ لَا أَمْرَ الِاعْتِرَافِ، فَوَجَدْنَا تَفْضِيلَ الِاعْتِرَافِ لَمْ يَصِحَّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافُهُ.

L40307 Then we examined the evidences they cited from the traditions and found them to be of utmost authenticity and clarity, because the Messenger of Allah (peace be upon him) praised the repentance of Ma'iz and al-Ghamidiyyah. He (peace be upon him) mentioned that if Ma'iz's repentance were distributed

ثُمَّ نَظَرْنَا فِيمَا احْتَجُّوا بِهِ مِنْ الْآثَارِ: فَوَجَدْنَاهَا فِي غَايَةِ الصِّحَّةِ وَالْبَيَانِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَمِدَ تَوْبَةَ مَاعِزٍ، وَالْغَامِدِيَّةِ، وَذَكَرَ - عَلَيْهِ السَّلَامُ -: أَنَّ

among a nation, it would suffice them; that if an extortionist were to repent as sincerely as al-Ghamidiyyah did, he would be forgiven; and that if the repentance of al-Juhaniyyah were distributed among seventy people of Madinah, it would suffice them. Then he (peace be upon him) removed the ambiguity entirely, saying: "She found nothing better than to sacrifice herself for Allah."

L40308–40309 Therefore, it is firmly established that confessing a sin so that the ḥadd punishment may be carried out upon him is superior to concealing it, as the Prophet—may Allah bless him and grant him peace—declared that nothing surpasses the generosity of one who voluntarily confesses to Allah, the Exalted.

L40310 Abu Muhammad (may Allah have mercy on him) said: "And among the proofs of that also."

L40311 What we have narrated through the chain of Muslim: I am Yaḥyā ibn Yaḥyā, Abū Bakr ibn Abī Shaybah, ʿAmr al-Nāqid, Isḥāq ibn Ibrāhīm—he is Ibn Rāhawayh—and Muḥammad ibn ʿAbd Allāh ibn Numayr, all of whom reported from Sufyān ibn ʿUyaynah—with the wording belonging to ʿAmr—who said: Sufyān ibn ʿUyaynah said, from al-Zuhrī, from Abī Idrīs al-Khawlānī, from ʿUbādah ibn al-Ṣāmit, who said: "We were with the Messenger of Allah—peace be upon him—in a gathering when he said: 'Pledge to me that you will not associate anything with Allah, nor commit adultery, nor steal, nor kill a soul Allah has made sacred except by right. Whoever among you fulfills this pledge, his reward lies with Allah. Whoever commits any of these sins and is punished for it, that punishment will be an expiation for him. And whoever commits a sin which Allah has concealed for him, his matter rests with Allah: if He wills, He forgives him; and if He wills, He punishes him.'"[49]

L40312 Ali—may God have mercy on him—said: The difficulty is wholly resolved—praise be to God, Lord of the worlds—and validated through the explicit wording of God's Messenger's statement—peace and blessings be upon him—his notification to his community, and his sincere counsel to them through

[49] **Qur'an references (L40311):** Qur'an 6:151 (Al-An'am); Qur'an 17:33 (Al-Isra).

تَوْبَةَ مَاعِزٍ لَوْ قُسِمَتْ بَيْنَ أُمَّةٍ لَوَسِعَتْهُمْ - وَأَنَّ الْغَامِدِيَّةَ لَوْ تَابَ تَوْبَتَهَا صَاحِبُ مَكْسٍ لَغُفِرَ لَهُ - وَأَنَّ الْجُهَنِيَّةَ لَوْ قُسِمَتْ تَوْبَتُهَا بَيْنَ سَبْعِينَ مِنْ أَهْلِ الْمَدِينَةِ لَوَسِعَتْهُمْ، ثُمَّ رَفَعَ - عَلَيْهِ السَّلَامُ - الْإِشْكَالَ جُمْلَةً، فَقَالَ: إنَّهَا لَمْ تَجِدْ أَفْضَلَ مِنْ أَنْ جَادَتْ بِنَفْسِهَا لِلَّهِ.

فَصَحَّ يَقِينًا أَنَّ الِاعْتِرَافَ بِالذَّنْبِ لِيُقَامَ عَلَيْهِ الْحَدُّ أَفْضَلُ مِنْ الِاسْتِتَارِ لَهُ بِشَهَادَةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ لَا أَفْضَلَ مِنْ جُودِ الْمُعْتَرِفِ بِنَفْسِهِ لِلَّهِ تَعَالَى.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَمِنْ الْبُرْهَانِ عَلَى ذَلِكَ أَيْضًا.

مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا يَحْيَى بْنُ يَحْيَى، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَعَمْرٌو النَّاقِدُ، وَإِسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ كُلُّهُمْ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ - وَاللَّفْظُ لِعَمْرٍو، قَالَ سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ أَبِي إدْرِيسَ الْخَوْلَانِيِّ عَنْ «عُبَادَةَ بْنِ الصَّامِتِ قَالَ: كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي مَجْلِسٍ، فَقَالَ: بَايِعُونِي عَلَى أَنْ لَا تُشْرِكُوا بِاَللَّهِ شَيْئًا، وَلَا تَزْنُوا، وَلَا تَسْرِقُوا، وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إلَّا بِالْحَقِّ، فَمَنْ وَفَّى مِنْكُمْ فَأَجْرُهُ عَلَى اللَّهِ، وَمَنْ أَصَابَ شَيْئًا مِنْ ذَلِكَ فَعُوقِبَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ، وَمَنْ أَصَابَ شَيْئًا فَسَتَرَهُ اللَّهُ عَلَيْهِ، فَأَمْرُهُ إلَى اللَّهِ، إنْ شَاءَ عَفَا عَنْهُ، وَإِنْ شَاءَ عَذَّبَهُ» .

قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - وَصَحَّ بِنَصِّ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِعْلَامِهِ أُمَّتَهُ، وَنَصِيحَتِهِ إيَّاهُمْ بِأَحْسَنَ مَا عَلَّمَهُ رَبُّهُ تَعَالَى، أَنَّ مَنْ أَصَابَ حَدًّا فَسَتَرَهُ اللَّهُ عَلَيْهِ فَإِنَّ أَمْرَهُ إلَى اللَّهِ تَعَالَى - إنْ شَاءَ

the finest instruction his Lord Almighty taught him: that whoever incurs a prescribed punishment which God conceals for him, his matter rests with God Almighty—if He wills, He punishes him; if He wills, He forgives him—and that whoever has the prescribed punishment executed upon him, that sin has been expiated from him, and God Almighty has atoned for him. We necessarily know: that the certainty of forgiveness is superior to discretionary punishment in its permissibility or the torment of the Hereafter. How can all worldly punishment compare to a single dip in the Fire?—we seek refuge in God from it—let alone what exceeds that?

Abu Muhammad—may God have mercy on him—said: Thus, it is confirmed that a person's confession of his sin before the authority is superior to concealment with certainty, and that concealment is permissible by consensus—success is from God Almighty.

L40313 **The issue of mutually pardoning Hudud punishments before they reach the judge.**

L40314–40316 2182 - Issue: Should prescribed punishments be mutually pardoned before they reach the judge? Abu Muhammad (may Allah have mercy on him) said: I am Abdullah ibn Rabee', I am Umar ibn Abdul-Malik, I am Muhammad ibn Bakr, I am Abu Dawud, I am Sulayman ibn Dawud al-Mahri; Ibn Wahb informed us: I heard Ibn Jurayj narrating from Amr ibn Shu'ayb, from his father, from Abdullah ibn Amr ibn al-'Aas, that the Messenger of Allah—peace and blessings be upon him—said: "Pardon the prescribed punishments among yourselves, because whatever punishment reaches my knowledge has indeed become obligatory."[50]

L40317 From Hammam, from Abbas ibn Asbagh, from Muhammad ibn Abdul-Malik ibn Ayman, from Muhammad ibn Waddah, from Sahnun, from Ibn Wahb who said: I heard Ibn Jurayj narrating from Amr ibn Shuʿayb, from his father, from Abdullah ibn Amr ibn Al-ʿĀṣ that the Messenger of Allah - may Allah's peace and blessings be upon him - said: "Mutually pardon the

[50] **Hadith references (L40314):** Sunan Abi Dawud 4376; Sunan an-Nasai 4886; Mishkat al-Masabih 3568.

عَذَّبَهُ وَإِنْ شَاءَ غَفَرَ لَهُ - وَأَنَّ مَنْ أُقِيمَ عَلَيْهِ الْحَدُّ فَقَدْ سَقَطَ عَنْهُ ذَلِكَ الذَّنْبُ، وَكَفَّرَهُ اللَّهُ تَعَالَى عَنْهُ - وَبِالضَّرُورَةِ نَدْرِي: أَنْ يَقِينَ الْمَغْفِرَةِ أَفْضَلُ مِنْ التَّعْزِيرِ فِي إمْكَانِهَا أَوْ عَذَابِ الْآخِرَةِ، وَأَيْنَ عَذَابُ الدُّنْيَا كُلِّهَا مِنْ غَمْسَةٍ فِي النَّارِ؟ - نَعُوذُ بِاَللَّهِ مِنْهَا - فَكَيْفَ مِنْ أَكْثَرَ مِنْ ذَلِكَ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَصَحَّ أَنَّ اعْتِرَافَ الْمَرْءِ بِذَنْبِهِ عِنْدَ الْإِمَامِ أَفْضَلُ مِنْ السَّتْرِ بِيَقِينٍ، وَأَنَّ السَّتْرَ مُبَاحٌ بِالْإِجْمَاعِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَة تَعَافُوا الْحُدُودَ قَبْلَ بُلُوغِهَا إلَى الْحَاكِمِ]

٢١٨٢ - مَسْأَلَةٌ: تَعَافُوا الْحُدُودَ قَبْلَ بُلُوغِهَا إلَى الْحَاكِمِ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا عُمَرُ بْنُ عَبْدِ الْمَلِكِ أَنَا مُحَمَّدُ بْنُ بَكْرٍ أَنَا أَبُو دَاوُد أَنَا سُلَيْمَانُ بْنُ دَاوُد الْمَهْرِيُّ نا ابْنُ وَهْبٍ سَمِعْت ابْنَ جُرَيْجٍ يُحَدِّثُ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ عَمْرِو بْنِ الْعَاصِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «تَعَافُوا الْحُدُودَ فِيمَا بَيْنَكُمْ فَمَا بَلَغَنِي مِنْ حَدٍّ فَقَدْ وَجَبَ» .

نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ قَالَ: سَمِعْت ابْنَ جُرَيْجٍ يُحَدِّثُ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «تَعَافُوا الْحُدُودَ فِيمَا بَيْنَكُمْ فَمَا بَلَغَنِي مِنْ حَدٍّ فَقَدْ وَجَبَ» .

prescribed punishments among yourselves; for whatever punishment reaches me, it becomes obligatory."[51]

L40318 Abdullah ibn Rabee' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb informed me: Abdullah ibn Ahmad ibn Hanbal narrated to us: My father narrated to us: Muhammad ibn Ja'far narrated to us: Sa'eed—that is, Ibn Abi 'Arubah—narrated from Qatadah, from 'Ata' ibn Abi Rabah, from Tariq ibn Muraqqa', from Safwan ibn Umayyah: A man stole a cloak, and he brought him to the Prophet—may Allah the Exalted bless him and his family and grant him peace. He ordered him to be cut. He said, "O Messenger of Allah, I have pardoned him." He replied, "If only this had been before you brought him to me, O Abu Wahb!" Then the Messenger of Allah—may Allah bless him and grant him peace—cut him.

L40319 Abdullah ibn Rabee' narrated: Muhammad ibn Mu'awiyah narrated: Ahmad ibn Shu'ayb narrated: Hilal ibn Al-'Ala' Al-Raqqi narrated: Husayn narrated: Zuhayr narrated: 'Abdul-Malik — who is Ibn Abi Bashir — narrated: 'Ikrimah narrated from Safwan ibn Umayyah that he performed Tawaf around the House, prayed, then folded his garment into his cloak and placed it under his head to sleep. A thief came and slipped it out from beneath his head. He seized him and brought him to the Prophet (peace be upon him), saying: "Has this one stolen my garment?" The Prophet (peace be upon him) asked him: "Did you steal this one's garment?" He said: "Yes." The Prophet (peace be upon him) said: "Take him and cut off his hand." Safwan said: "I did not intend for his hand to be cut off over my garment!" He replied: "Why was this not [settled] beforehand?"

L40320–40322 Narrated by Abdullah ibn Rabi' from Muhammad ibn Mu'awiyah from Ahmad ibn Shu'ayb from Ahmad ibn Uthman ibn Hakim from Amr from Asbat from Simak from Humaid, the son of Safwan's sister, from Safwan ibn Umayyah. He said: "I was sleeping in the mosque on a striped cloak of mine worth thirty dirhams when a man came and snatched it from me. The man

[51] **Hadith references (L40317):** Sunan Abi Dawud 4376; Sunan an-Nasai 4886; Mishkat al-Masabih 3568.

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا مُحَمَّدُ بْنُ جَعْفَرٍ نا سَعِيدٌ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ طَارِقِ بْنِ مُرَقَّعٍ عَنْ صَفْوَانَ بْنِ أُمَيَّةَ «أَنَّ رَجُلًا سَرَقَ بُرْدَةً فَرَفَعَهُ إِلَى النَّبِيِّ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَمَرَ بِقَطْعِهِ، فَقَالَ: يَا رَسُولَ اللَّهِ قَدْ تَجَاوَزْتُ عَنْهُ، قَالَ فَلَوْلَا كَانَ هَذَا قَبْلَ أَنْ تَأْتِيَنِي بِهِ يَا أَبَا وَهْبٍ - فَقَطَعَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا هِلَالُ بْنُ الْعَلَاءِ الرَّقِّيُّ نا حُسَيْنٌ نا زُهَيْرٌ نا عَبْدُ الْمَلِكِ - هُوَ ابْنُ أَبِي بَشِيرٍ - أَنَا عِكْرِمَةُ عَنْ «صَفْوَانَ بْنِ أُمَيَّةَ أَنَّهُ طَافَ بِالْبَيْتِ فَصَلَّى ثُمَّ لَفَّ رِدَاءً لَهُ فِي بُرْدِهِ فَوَضَعَهُ تَحْتَ رَأْسِهِ فَنَامَ، فَأَتَاهُ لِصٌّ فَاسْتَلَّهُ مِنْ تَحْتِ رَأْسِهِ، فَأَخَذَهُ فَأَتَى بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إِنَّ هَذَا سَرَقَ رِدَائِي؟ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَسَرَقْتَ رِدَاءَ هَذَا؟ قَالَ: نَعَمْ، قَالَ: اذْهَبَا بِهِ فَاقْطَعَا يَدَهُ - قَالَ صَفْوَانُ: مَا كُنْتُ أُرِيدُ أَنْ تُقْطَعَ يَدُهُ فِي رِدَائِي؟ قَالَ: فَلَوْ مَا كَانَ هَذَا قَبْلُ» .

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا أَحْمَدُ بْنُ عُثْمَانَ بْنِ حَكِيمٍ نا عَمْرٌو عَنْ أَسْبَاطٍ عَنْ سِمَاكٍ عَنْ حُمَيْدِ بْنِ أُخْتِ صَفْوَانَ عَنْ صَفْوَانَ بْنِ أُمَيَّةَ، قَالَ: «كُنْتُ نَائِمًا فِي الْمَسْجِدِ عَلَى خَمِيصَةٍ لِي ثَمَنُ ثَلَاثِينَ دِرْهَمًا، فَجَاءَ رَجُلٌ فَاخْتَلَسَهَا مِنِّي، فَأَخَذَ الرَّجُلَ فَأَتَى بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَ بِهِ لِيُقْطَعَ، فَأَتَيْتُهُ فَقُلْتُ لَهُ:

was seized and brought to the Prophet (peace be upon him), who ordered that his hand be cut off. I went to him and said: 'Will you cut off his hand for thirty dirhams? I waive the penalty and allow him to defer payment for its value.' He replied: 'Why did you not do this before bringing him to me?'"

L40323 Abdullah ibn Rabi' narrated to us: Ibn Mufarrij narrated to us: Qasim ibn Asbagh narrated to us: Ibn Waddah narrated to us: Sahnun narrated to us: Ibn Wahb narrated to us from Amr ibn al-Harith that Amr ibn Dinar al-Makki narrated to him: "It was said to Safwan ibn Umayyah: 'One who does not emigrate has no religion.' He then went to the Messenger of Allah—peace and blessings be upon him—and entered his presence. He asked: 'What brings you?' Safwan replied: 'I was told that one who does not emigrate has no religion.' The Prophet said: 'I adjure you to return to the outskirts of Mecca.' Subsequently, a man was brought to the Messenger of Allah—peace and blessings be upon him—and the accuser said: 'This man stole my striped cloak.' The Messenger of Allah—peace and blessings be upon him—ordered: 'Cut off his hand.' Safwan interjected: 'I have forgiven him, O Messenger of Allah.' The Messenger of Allah—peace and blessings be upon him—responded: 'Why did you not do this before bringing him to me?'"

L40324 Yusuf ibn Abdullah narrated from Ahmad ibn Muhammad ibn al-Jasur, who narrated from Qasim ibn Asbagh, who narrated from Mutarrif ibn Qays, who narrated from Yahya ibn Bukayr, who narrated from Malik, who narrated from Ibn Shihab, who reported from Safwan ibn Abdullah ibn Safwan ibn Umayyah: Safwan ibn Umayyah was told, "Whoever does not emigrate will perish." He then traveled to Medina and slept in the mosque, using his cloak as a pillow. A thief stole his cloak, but Safwan apprehended him and brought him to the Messenger of Allah (peace be upon him). The Prophet ordered the thief's hand to be severed. Safwan protested, "I did not mean for this to happen! Is this not a ṣadaqah from me to him?" The Messenger of Allah (peace be upon him) responded, "Why did you not declare this before bringing him to me?"

L40325–40327 Abu Muhammad—may Allah have mercy on him—said: It is also reported therein from some of the Salaf, as we transmitted through the aforemen-

تَقْطَعُهُ مِنْ أَجْلِ ثَلَاثِينَ دِرْهَمًا، أَنَا أَضَعُهُ وَأُنْسِئُهُ ثَمَنَهَا؟ قَالَ: فَهَلَّا كَانَ هَذَا قَبْلَ أَنْ تَأْتِيَنِي بِهِ؟» .

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ أَنَّ عَمْرَو بْنَ دِينَارٍ الْمَكِّيَّ حَدَّثَهُ: «أَنَّهُ قِيلَ لِصَفْوَانَ بْنِ أُمَيَّةَ: لَا دِينَ لِمَنْ لَمْ يُهَاجِرْ؟ فَأَقْبَلَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَدَخَلَ عَلَيْهِ، فَقَالَ: مَا أَقْدَمَكَ، قَالَ: قِيلَ لِي: إِنَّهُ لَا دِينَ لِمَنْ لَمْ يُهَاجِرْ، قَالَ فَأَقْسَمْتُ عَلَيْكَ لَتَرْجِعَنَّ إِلَى أَبَاطِيحِ مَكَّةَ - ثُمَّ جِيءَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِرَجُلٍ فَقَالَ: إِنَّ هَذَا سَرَقَ خَمِيصَتِي؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اقْطَعُوا يَدَهُ - قَالَ: عَفَوْتُ عَنْهُ يَا رَسُولَ اللَّهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَلَّا قَبْلَ أَنْ تَأْتِيَنِي بِهِ؟» .

نا يُوسُفُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُطَرِّفُ بْنُ قَيْسٍ نا يَحْيَى بْنُ بُكَيْرٍ نا مَالِكٌ نا ابْنُ شِهَابٍ عَنْ صَفْوَانَ بْنِ عَبْدِ اللَّهِ بْنِ صَفْوَانَ بْنِ أُمَيَّةَ أَنَّ صَفْوَانَ بْنَ أُمَيَّةَ، قِيلَ لَهُ: «إِنَّهُ مَنْ لَمْ يُهَاجِرْ هَلَكَ، فَقَدِمَ صَفْوَانُ بْنُ أُمَيَّةَ الْمَدِينَةَ فَنَامَ فِي الْمَسْجِدِ، وَتَوَسَّدَ رِدَاءَهُ، فَجَاءَ سَارِقٌ فَأَخَذَ رِدَاءَهُ، فَأَخَذَ صَفْوَانُ السَّارِقَ، فَجَاءَ بِهِ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تُقْطَعَ يَدُهُ، فَقَالَ صَفْوَانُ: إِنِّي لَمْ أُرِدْهُ بِهَذَا، هُوَ عَلَيْهِ صَدَقَةٌ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَلَّا قَبْلَ أَنْ تَأْتِيَنِي بِهِ؟» .

tioned chain to Malik from Rabiʿah ibn Abī ʿAbd al-Raḥmān, that al-Zubayr ibn al-ʿAwwām encountered a man who had apprehended a thief. The man intended, "Should I take him to the Sultan?" Al-Zubayr interceded with him to release the thief, but the man replied: "No—not until I bring him before the Sultan." Thereupon al-Zubayr said to him: "If you bring him before the Sultan, may Allah curse the intercessor and the advocate." Abū Muḥammad—may Allāh have mercy on him—said: We examined the traditions from the Prophet—peace and blessings of Allāh be upon him—and found not a single one of them to be authentic at all. As for the first one, it is from ʿAmr ibn Shuʿayb, from his father, from ʿAmr, and it is a written document.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَجَاءَ فِيهِ أَيْضًا عَنْ بَعْضِ السَّلَفِ كَمَا رُوِّينَاهُ بِالسَّنَدِ الْمَذْكُورِ إلَى مَالِكٍ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ أَنَّ الزُّبَيْرَ بْنَ الْعَوَّامِ لَقِيَ رَجُلًا قَدْ أَخَذَ سَارِقًا وَهُوَ يُرِيدُ أَنْ يَذْهَبَ بِهِ إلَى السُّلْطَانِ؟ فَشَفَعَ لَهُ الزُّبَيْرُ لِيُرْسِلَهُ، فَقَالَ: لَا، حَتَّى أَبْلُغَ بِهِ إلَى السُّلْطَانِ، فَقَالَ لَهُ الزُّبَيْرُ: إذَا بَلَغْت بِهِ إلَى السُّلْطَانِ فَلَعَنَ اللَّهُ الشَّافِعَ وَالْمُشَفَّعَ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي الْآثَارِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَجَدْنَاهَا لَا يَصِحُّ مِنْهَا شَيْءٌ أَصْلًا: أَمَّا الْأَوَّلُ فَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ عَمْرٍو، وَهِيَ صَحِيفَةٌ.

L40328 As for the ḥadīth of Ṣafwān, nothing in it is authentic at all, for all its chains are discontinuous. This is because they are narrated through ʿAṭāʾ, ʿIkrimah, ʿAmr ibn Dīnār, and Ibn Shihāb—none of whom met Ṣafwān.

وَأَمَّا حَدِيثُ صَفْوَانَ فَلَا يَصِحُّ فِيهِ شَيْءٌ أَصْلًا، لِأَنَّهَا كُلُّهَا مُنْقَطِعَةٌ، لِأَنَّهَا عَنْ عَطَاءٍ، وَعِكْرِمَةَ، وَعَمْرِو بْنِ دِينَارٍ، وَابْنِ شِهَابٍ، وَلَيْسَ مِنْهُمْ أَحَدٌ أَدْرَكَ صَفْوَانَ.

L40329 As for the narration from 'Ata' via Tariq ibn Murtafi'—an unknown narrator—or from Asbat via Simak via Humayd, the nephew of Safwan (son of Safwan's sister): this constitutes a weak chain—a weak narrator from another weak narrator from an unknown narrator.

وَأَمَّا عَنْ عَطَاءٍ عَنْ طَارِقِ بْنِ مُرْتَفِعٍ وَهُوَ مَجْهُولٌ، أَوْ عَنْ أَسْبَاطٍ عَنْ سِمَاكٍ عَنْ حُمَيْدِ بْنِ أُخْتِ صَفْوَانَ وَهَذَا ضَعِيفٌ عَنْ ضَعِيفٍ عَنْ مَجْهُولٍ.

L40330 Ali said: Since there is no reliable tradition in this chapter to depend upon, the recourse is to seek the ruling on this issue from sources other than these specific traditions. We examined the matter and found that it has been established through the proofs we previously cited: that the prescribed punishment is not obligatory except after it reaches the Imam and its authenticity is confirmed before him.

قَالَ عَلِيٌّ: فَإِذْ لَيْسَ فِي هَذَا الْبَابِ أَثَرٌ يُعْتَمَدُ عَلَيْهِ، فَالْمَرْجُوعُ إلَيْهِ هُوَ طَلَبُ حُكْمِ هَذِهِ الْمَسْأَلَةِ مِنْ غَيْرِ هَذِهِ الْآثَارِ: فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا قَدْ صَحَّ بِالْبَرَاهِينِ الَّتِي قَدْ أَوْرَدْنَا قَبْلُ: أَنَّ الْحَدَّ لَا يَجِبُ إلَّا بَعْدَ بُلُوغِهِ إلَى الْإِمَامِ وَصِحَّتِهِ عِنْدَهُ.

L40331 Since the matter is as such, abandoning the pursuit of the person involved prior to that is permissible, because no prescribed punishment has yet been incurred for what he did. Reporting it is also permissible, as there is no textual evidence or consensus prohibiting it. Since both courses of action are permissible, the more preferable stance to us—without making it a formal legal ruling—is to pardon him if the act was a momentary lapse and kept pri-

فَإِذْ الْأَمْرُ كَذَلِكَ فَالتَّرْكُ لِطَلَبِ صَاحِبِهِ قَبْلَ ذَلِكَ مُبَاحٌ، لِأَنَّهُ لَمْ يَجِبْ عَلَيْهِ فِيمَا فَعَلَ حَدٌّ بَعْدُ - وَرَفْعُهُ أَيْضًا مُبَاحٌ، إذْ لَمْ يَمْنَعْ مِنْ ذَلِكَ نَصٌّ أَوْ إجْمَاعٌ، فَإِذْ كِلَا الْأَمْرَيْنِ مُبَاحٌ، فَالْأَحَبُّ إلَيْنَا - دُونَ أَنْ يُفْتَى بِهِ - أَنْ يُعْفَى عَنْهُ مَا كَانَ وَهْلَةً وَمَسْتُورًا، فَإِنْ أَذَى صَاحِبُهُ وَجَاهَرَ: فَرَفْعُهُ أَحَبُّ إلَيْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

vate. But if the person involved causes harm and publicizes it, then reporting it is more preferable to us—and success comes from Allah, the Exalted.

L40332 **Issue: Are ḥudūd punishments averted due to ambiguities, or not?**

L40333 2183 - Issue: Are Ḥudūd punishments warded off due to doubts or not? Abū Muḥammad (may Allāh have mercy on him) said: A group held the view that Ḥudūd punishments are warded off due to doubts. The most stringent in their adherence to this principle and its application were Abū Ḥanīfah and his followers, then the Mālikīs, and then the Shāfiʿīs.

L40334–40336 Our scholars have maintained that it is impermissible to avert the prescribed punishments due to doubt, nor to enforce them based on doubt. Rather, they are a right reserved exclusively for Allah the Exalted, and there is nothing beyond that. If the punishment is not definitively established, it is impermissible to enforce it based on doubt, due to the statement of the Messenger of Allah (peace and blessings be upon him): "Your blood, your wealth, your honor, and your bodies are inviolable." And when it is established... It is not permissible to avert the *ḥadd* through suspicion, as stated by Allah, the Exalted: "These are the limits ordained by Allah, so do not transgress them" (Q. 2:229).[52]

L40337 Abū Muḥammad—may God have mercy on him—said: When they differed as we have mentioned, it became obligatory for us to scrutinize the wording relied upon by its proponents: Is it valid or not?

L40338–40339 We examined it and found that it came through chains of transmission containing neither an explicit text nor a single word from the Prophet—peace and blessings of God be upon him and his family. Rather, it is narrated from some Companions through chains entirely devoid of merit: narrated by Hammām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Ibrāhīm al-Nakhaʿī, that ʿUmar ibn al-Khaṭṭāb said: "Avert the prescribed punishments as much as you are able."

[52]**Qur'an references (L40334):** Qur'an 2:229 (Al-Baqarah).

[مَسْأَلَة هَلْ تُدْرَأُ الْحُدُودُ بِالشُّبُهَاتِ أَمْ لَا]

٢١٨٣ - مَسْأَلَةٌ: هَلْ تُدْرَأُ الْحُدُودُ بِالشُّبُهَاتِ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ذَهَبَ قَوْمٌ إلَى أَنَّ الْحُدُودَ تُدْرَأُ بِالشُّبُهَاتِ، فَأَشَدُّهُمْ قَوْلًا بِهَا وَاسْتِعْمَالًا لَهَا أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، ثُمَّ الْمَالِكِيُّونَ، ثُمَّ الشَّافِعِيُّونَ.

وَذَهَبَ أَصْحَابُنَا إلَى أَنَّ الْحُدُودَ لَا يَحِلُّ أَنْ تُدْرَأَ بِشُبْهَةٍ، وَلَا أَنْ تُقَامَ بِشُبْهَةٍ وَإِنَّمَا هُوَ الْحَقُّ لِلَّهِ تَعَالَى وَلَا مَزِيدَ، فَإِنْ لَمْ يَثْبُتْ الْحَدُّ لَمْ يَحِلَّ أَنْ يُقَامَ بِشُبْهَةٍ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» وَإِذَا ثَبَتَ الْحَدُّ لَمْ يَحِلَّ أَنْ يُدْرَأَ بِشُبْهَةٍ لِقَوْلِ اللَّهِ تَعَالَى {تِلْكَ حُدُودُ اللَّهِ فَلا تَعْتَدُوهَا} [البقرة: ٢٢٩] .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي اللَّفْظِ الَّذِي يَتَعَلَّقُ بِهِ مَنْ تَعَلَّقَ أَيَصِحُّ أَمْ لَا؟

فَنَظَرْنَا فِيهِ فَوَجَدْنَاهُ قَدْ جَاءَ مِنْ طُرُقٍ لَيْسَ فِيهَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَصٌّ، وَلَا كَلِمَةٌ، إنَّمَا هِيَ عَنْ بَعْضِ أَصْحَابِهِ مِنْ طُرُقٍ كُلُّهَا لَا خَيْرَ فِيهَا: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: ادْرَءُوا الْحُدُودَ مَا اسْتَطَعْتُمْ

L40340 And with his narration — up to Sufyan al-Thawri, from al-Qasim ibn Abd al-Rahman, who said: Ibn Mas'ud said, "Ward off the hudud as much as you are able."

وَبِهِ - إِلَى سُفْيَانَ الثَّوْرِيِّ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ قَالَ ابْنُ مَسْعُودٍ: ادْرَءُوا الْحُدُودَ مَا اسْتَطَعْتُمْ

L40341 On the authority of Abū Hurayrah: Avert the ḥudūd as long as you find a means of averting them.

وَعَنْ أَبِي هُرَيْرَةَ ادْفَعُوا الْحُدُودَ مَا وَجَدْتُمْ مَدْفَعًا

L40342 On the authority of Ibn ʿUmar, who said: Avoid applying the prescribed punishments when there are doubts.

عَنْ ابْنِ عُمَرَ قَالَ: ادْفَعُوا الْحُدُودَ بِالشُّبُهَاتِ

L40343 Narrated by Aisha: Avert the prescribed punishments from Muslims as much as you can.

وَعَنْ عَائِشَةَ ادْرَءُوا الْحُدُودَ عَنْ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ

L40344 On the authority of ʿUmar ibn al-Khaṭṭāb and Ibn Masʿūd, who would say: Ward off the hudūd from Allah's servants in matters where uncertainty arises for you.

وَعَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ مَسْعُودٍ كَانَا يَقُولَانِ: ادْرَءُوا عَنْ عِبَادِ اللَّهِ الْحُدُودَ فِيمَا شُبِّهَ عَلَيْكُمْ

L40345 Abu Muhammad—may Allah have mercy on him—said: "All of them are invalid. As for the narration transmitted through the chain of Abd al-Razzaq, it is *mursal* (disconnected). The narration transmitted through the chain of Umar is likewise, because it is narrated by Ibrahim from Umar, and Ibrahim was not born until approximately fifteen years after Umar's death."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهِيَ كُلُّهَا لَا شَيْءَ: أَمَّا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ فَمُرْسَلٌ، وَالَّذِي مِنْ طَرِيقِ عُمَرَ كَذَلِكَ، لِأَنَّهُ عَنْ إبْرَاهِيمَ عَنْ عُمَرَ وَلَمْ يُولَدْ إبْرَاهِيمُ إلَّا بَعْدَ مَوْتِ عُمَرَ بِنَحْوِ خَمْسَةَ عَشَرَ عَامًا

L40346 The other narration from Ibn Mas'ud is mursal, as it is transmitted via the chain of al-Qāsim ibn ʿAbd al-Raḥmān ibn ʿAbdullāh ibn Mas'ūd.

وَالْآخَرُ الَّذِي عَنْ ابْنِ مَسْعُودٍ مُرْسَلٌ، لِأَنَّهُ مِنْ طَرِيقِ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ

L40347 As for the narrations of Ibn Ḥabīb, they are a disgrace; even if there were nothing else in them besides him, it would suffice, for all of them are mursal.

وَأَمَّا أَحَادِيثُ ابْنِ حَبِيبٍ فَفَضِيحَةٌ، لَوْ لَمْ يَكُنْ فِيهَا غَيْرُهُ لَكَفَى فَكُلُّهَا مُرْسَلَةٌ

L40348 Abū Muḥammad—may God have mercy on him—said: From what we have discussed, it is evident that the wording they relied upon ("Avert the ḥudūd by doubts")—we do not know it to have been reported in any form from anyone at all, neither from a Companion nor from a Follower, except the discarded narration we presented through the chain of Ibrāhīm ibn al-Faḍl from ʿAbd Allāh ibn Dīnār from Ibn ʿUmar. And Ibrāhīm is deemed unreliable.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَحَصَلَ مِمَّا ذَكَرْنَا أَنَّ اللَّفْظَ الَّذِي تَعَلَّقُوا بِهِ لَا نَعْلَمُهُ رُوِيَ عَنْ أَحَدٍ أَصْلًا، وَهُوَ " ادْرَءُوا الْحُدُودَ بِالشُّبُهَاتِ " لَا عَنْ صَاحِبٍ، وَلَا عَنْ تَابِعٍ إلَّا الرِّوَايَةُ السَّاقِطَةُ الَّتِي أَوْرَدْنَا مِنْ طَرِيقِ إبْرَاهِيمَ بْنِ الْفَضْلِ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ ابْنِ عُمَرَ، وَإِبْرَاهِيمَ سَاقِطٌ

وَإِنَّمَا جَاءَ كَمَا تَرَى عَنْ بَعْضِ الصَّحَابَةِ مِمَّا لَمْ يَصِحَّ " ادْرَءُوا الْحُدُودَ مَا اسْتَطَعْتُمْ " وَهَذَا لَفْظٌ إنْ اُسْتُعْمِلَ أَدَّى إلَى إبْطَالِ الْحُدُودِ جُمْلَةً عَلَى كُلِّ حَالٍ - وَهَذَا خِلَافُ إجْمَاعِ أَهْلِ الْإِسْلَامِ، وَخِلَافُ الدِّينِ، وَخِلَافُ الْقُرْآنِ، وَالسُّنَنِ، لِأَنَّ كُلَّ أَحَدٍ هُوَ مُسْتَطِيعٌ عَلَى أَنْ يَدْرَأَ كُلَّ حَدٍّ يَأْتِيهِ فَلَا يُقِيمُهُ

L40349–40351 It is only reported, as you see, from some Companions in unauthenticated narrations: "Avert the hudud (prescribed penalties) as much as you can." This wording, if employed, would lead to the complete and universal nullification of the hudud in all cases—and this. Opposition to the consensus of the people of Islam, opposition to the religion, and opposition to the Quran and the Sunnahs, because everyone is capable of averting every hadd punishment that comes to him, so it would never be established.

فَبَطَلَ أَنْ يُسْتَعْمَلَ هَذَا اللَّفْظُ وَسَقَطَ أَنْ تَكُونَ فِيهِ حُجَّةٌ لِمَا ذَكَرْنَا

L40352 Therefore, it is invalid for this term to be used, and any authoritative evidence within it is rendered void due to what we have elaborated.

وَأَمَّا اللَّفْظُ الْآخَرُ فِي ذِكْرِ الشُّبُهَاتِ؟ فَقَدْ قُلْنَا: " ادْرَءُوا " لَا نَعْرِفُهُ عَنْ أَحَدٍ أَصْلًا، إلَّا مَا ذَكَرْنَا مِمَّا لَا يَجِبُ أَنْ يُسْتَعْمَلَ فَقَطْ، لِأَنَّهُ بَاطِلٌ لَا أَصْلَ لَهُ، ثُمَّ لَا سَبِيلَ لِأَحَدٍ إلَى اسْتِعْمَالِهِ، لِأَنَّهُ لَيْسَ فِيهِ بَيَانُ مَا هِيَ تِلْكَ " الشُّبُهَاتِ " فَلَيْسَ لِأَحَدٍ أَنْ يَقُولَ فِي شَيْءٍ يُرِيدُ أَنْ يُسْقِطَ بِهِ حَدًّا " هَذَا شُبْهَةٌ " إلَّا كَانَ لِغَيْرِهِ أَنْ يَقُولَ: لَيْسَ بِشُبْهَةٍ، وَلَا كَانَ لِأَحَدٍ أَنْ يَقُولَ فِي شَيْءٍ لَا يُرِيدُ أَنْ يُسْقِطَ بِهِ حَدًّا: لَيْسَ هَذَا شُبْهَةً، إلَّا كَانَ لِغَيْرِهِ أَنْ يَقُولَ: بَلْ هُوَ شُبْهَةٌ، وَمِثْلُ هَذَا لَا يَحِلُّ اسْتِعْمَالُهُ فِي دِينِ اللَّهِ تَعَالَى، إنَّهُ لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَلَا مَعْقُولٌ، مَعَ الِاخْتِلَاطِ الَّذِي فِيهِ كَمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L40353 As for the other phrasing concerning the mention of doubts, we have stated: "Ward off"—we do not know of it being attributed to anyone at all, except what we mentioned, which should not be used only, for it is invalid and baseless. Furthermore, no one is permitted to employ it, as it does not clarify what those "doubts" are. Thus, no one may declare regarding something through which they seek to nullify a prescribed punishment, "This is a doubt," without another being entitled to say, "It is not a doubt." Similarly, no one may state regarding something through which they do not seek to nullify a prescribed punishment, "This is not a doubt," without another being entitled to say, "Rather, it is a doubt." It is not permissible to employ such phrasing in the religion of Allah, the Exalted. It is neither supported by the Qur'an, nor by any authentic Sunnah, nor a weak one, nor by a Companion's statement, nor by analogy, nor rational reasoning—particularly given the confusion inherent in it as we have elaborated. Success is attained solely through Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ شَغَبَ مُشْغَبٌ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْحَلَالُ بَيِّنٌ وَالْحَرَامُ بَيِّنٌ وَبَيْنَهُمَا أُمُورٌ مُشْتَبِهَةٌ فَمَنْ تَرَكَ مَا اشْتَبَهَ عَلَيْهِ مِنْ الْإِثْمِ كَانَ لِمَا اسْتَبَانَ أَتْرَكُ، وَمَنْ اجْتَرَأَ عَلَى مَا يَشُكُّ فِيهِ مِنْ الْإِثْمِ أَوْشَكَ أَنْ يُوَاقِعَ مَا اسْتَبَانَ، وَالْمَعَاصِي حِمَى اللَّهِ، مَنْ يَرْتَعْ حَوْلَ الْحِمَى يُوشِكُ أَنْ يُوَاقِعَهُ» فَإِنَّ هَذَا صَحِيحٌ، وَبِهِ نَقُولُ، وَهُوَ عَلَيْهِمْ لَا لَهُمْ، لِأَنَّهُ لَيْسَ فِيهِ إلَّا تَرْكُ

L40354 Abu Muhammad—may Allah have mercy on him—said: If a disputant raises objections using what we narrated through al-Bukhārī's chain from the Messenger of Allah—peace and blessings be upon him—"Halal is evident, Haram is evident, and between them lie ambiguous matters. Whoever avoids what is uncertain to him of sin will have been more cautious in avoiding what is evident. Whoever ventures into what he doubts as sinful is on the verge of committing what is evident. Transgressions are Allah's preserve: whoever grazes near the sanctuary is on the verge of entering it"—then this is authentic, and we adhere to it. It is against them, not for them, for it merely

concerns abandoning what one finds ambiguous when unaware of its ruling before Allah—Exalted is He—regarding that for which He has made us worship Him. This is an obligation, and none may lawfully oppose it.

الْمَرْءِ مَا اشْتَبَهَ عَلَيْهِ، فَلَمْ يَدْرِ مَا حُكْمُهُ عِنْدَ اللَّهِ تَعَالَى فِي الَّذِي لَهُ تَعَبَّدْنَا بِهِ، وَهَذَا فَرْضٌ لَا يَحِلُّ لِأَحَدٍ مُخَالَفَتُهُ

L40355–40357 And thus we say: Indeed, whoever is uncertain—"Is this thing prohibited or permissible?"—it is an act of piety for him to refrain from it. Whoever is uncertain—"Is this act obligatory or not?"—the ruling for him is not to consider it obligatory. Whoever is uncertain—"Has the *ḥadd* punishment become obligatory or not?"—his obligation is not to implement it, for honor and blood are inviolable according to the saying of the Messenger of Allah—peace and blessings be upon him—"Indeed..." Your blood, your wealth, your honor, and your bodily integrity are sacred to you. As for when the obligation of the prescribed punishment is established, it is not permissible for anyone to nullify it, for it is an obligation among the obligations prescribed by Allah, the Exalted.

وَهَكَذَا نَقُولُ: إنَّ مَنْ جَهِلَ - أَحَرَامٌ هَذَا الشَّيْءُ أَمْ حَلَالٌ؟ فَالْوَرَعُ لَهُ أَنْ يُمْسِكَ عَنْهُ، وَمَنْ جَهِلَ أَفَرْضٌ هُوَ أَمْ غَيْرُ فَرْضٍ؟ فَحُكْمُهُ أَنْ لَا يُوجِبَهُ، وَمَنْ جَهِلَ أَوَجَبَ الْحَدُّ أَمْ لَمْ يَجِبْ؟ فَفَرْضُهُ أَنْ لَا يُقِيمَهُ، لِأَنَّ الْأَعْرَاضَ وَالدِّمَاءَ حَرَامٌ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» وَأَمَّا إذَا تَبَيَّنَ وُجُوبُ الْحَدِّ فَلَا يَحِلُّ لِأَحَدٍ أَنْ يُسْقِطَهُ، لِأَنَّهُ فَرْضٌ مِنْ فَرَائِضِ اللَّهِ تَعَالَى

L40358 Abu Muhammad—may Allah have mercy on him—said: We know of no one more audacious than them in enforcing Ḥudūd punishments based on suspicions and in circumstances where their enforcement is not obligatory upon them, yet they abandon them where Allah the Exalted and His Messenger (peace be upon him) made their application obligatory. We shall mention sufficient instances of this, Allah the Exalted willing. The first of these is the soul whose sanctity Allah the Exalted has magnified and whose killing He prohibited except by due right.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا نَعْلَمُ أَحَدًا أَشَدَّ جَسْرًا عَلَى إقَامَةِ الْحَدِّ بِالشُّبُهَاتِ وَحَيْثُ لَا تَجِبُ إقَامَتُهَا مِنْهُمْ، ثُمَّ يُسْقِطُونَهَا حَيْثُ أَوْجَبَهَا اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ السَّلَامُ -، وَنَحْنُ ذَاكِرُونَ مِنْ ذَلِكَ طَرَفًا كَافِيًا إنْ شَاءَ اللَّهُ تَعَالَى، فَأَوَّلُ ذَلِكَ النَّفْسِ الَّتِي عَظَّمَ اللَّهُ تَعَالَى أَمْرَهَا وَحَرَّمَ قَتْلَهَا إلَّا بِالْحَقِّ

L40359 As for the Malikis—they permit the killing of a protected life based on the claim of one who might seek to remedy himself against his enemy, relying on the oaths of two men from his clan even if they are the most wicked of creation. Yet they would not grant him even a decayed date pit through his mere claim, even if those same two men swore a thousand oaths in support and were the most righteous of creation. This constitutes the shedding of protected blood through a false suspicion—a suspicion so baseless that none surpasses it in worthlessness.

فَأَمَّا الْمَالِكِيُّونَ - فَقَتَلُوا النَّفْسَ الْمُحَرَّمَةَ بِدَعْوَى مَنْ لَعَلَّهُ يُرِيدُ أَنْ يَشْفِيَ نَفْسَهُ مِنْ عَدُوِّهِ مَعَ أَيْمَانِ رَجُلَيْنِ مِنْ عَشِيرَتِهِ وَإِنْ كَانَا أَفْسَقَ الْبَرِيَّةِ، وَهُمْ لَا يُعْطُونَهُ بِدَعْوَاهُ نَوَاةً مَعْفُونَةً، وَلَوْ حَلَفُوا مَعَ دَعْوَاهُ أَلْفَ يَمِينٍ وَكَانُوا أَصْلَحَ الْبَرِيَّةِ، هَذَا سَفْكُ الدَّمِ الْمُحَرَّمِ بِالشُّبْهَةِ الْفَاسِدَةِ الَّتِي لَا شُبْهَةَ أَبْرَدُ مِنْهَا

L40360 They kill based on testimony arising from strong suspicion without just testimony or the qasāmah (oath of collective condemnation), and they are not

granted two fals for their testimony. They kill the one who neglects prayer if he acknowledges it as an obligation. They kill the one who detains another until the latter is killed, yet they do not apply the ḥadd punishment to the one who detains a woman unless she is actually subjected to fornication. They kill the sorcerer without demanding his repentance, for it is merely trickery and a major sin equivalent to fornication, yet they do not kill the consumer of usury despite Allah's statement concerning it being more severe than His statement regarding sorcery. They kill the one who conceals disbelief without averting punishment from him through his declaration of repentance, yet they do not kill the one who openly professes disbelief if he declares repentance, though there is no difference. They kill a Muslim for killing a disbeliever if done treacherously, refusing to accept the guardian's pardon in such cases – contradicting the Quran, the Sunnah, and the application of prescribed punishments based on baseless doubt. They lash the pardoned killer one hundred times and exile him for a year.

وَيَقْتُلُونَ بِشَهَادَةِ اللَّوْثِ غَيْرِ الْعَدْلِ وَالْقَسَامَةِ، وَلَا يُعْطَوْنَ بِشَهَادَتِهِمْ فَلْسَيْنِ، وَيَقْتُلُونَ الْآبِيَ عَنْ الصَّلَاةِ إنْ أَقَرَّ بِهَا، وَأَنَّهَا فَرْضٌ، وَيَقْتُلُونَ الْمُمْسِكَ آخَرَ حَتَّى قُتِلَ، وَلَا يَحُدُّونَ الْمُمْسِكَ امْرَأَةً حَتَّى يُزْنَى بِهَا، وَيَقْتُلُونَ السَّاحِرَ دُونَ اسْتِتَابَةٍ، وَإِنَّمَا هِيَ حِيَلٌ، وَكَبِيرَةٌ كَالزِّنَى، وَلَا يَقْتُلُونَ آكِلَ الرِّبَا، وَقَوْلُ اللَّهِ تَعَالَى فِيهِ أَشَدُّ مِنْ قَوْلِهِ فِي السَّاحِرِ، وَيَقْتُلُونَ الْمُسْتَتِرَ بِالْكُفْرِ - وَلَا يَدْرَءُونَ عَنْهُ بِإِعْلَانِهِ التَّوْبَةَ، وَلَا يَقْتُلُونَ الْمُعْلِنَ بِالْكُفْرِ إذَا أَظْهَرَ التَّوْبَةَ، وَلَا فَرْقَ، وَيَقْتُلُونَ الْمُسْلِمَ بِالْكَافِرِ إذَا قَتَلَهُ غِيلَةً، وَلَا يُجِيزُونَ فِي ذَلِكَ عَفْوَ الْوَلِيِّ - وَهَذَا خِلَافُ الْقُرْآنِ، وَالسُّنَّةِ، وَإِقَامَةِ الْحُدُودِ بِالشُّبْهَةِ الْفَاسِدَةِ، وَيَجْلِدُونَ الْقَاتِلَ الْمَعْفُوَّ عَنْهُ مِائَةَ جَلْدَةٍ، وَيَنْفُونَهُ سَنَةً

L40361 As for the Hanafis—they kill a Muslim in retaliation for a disbeliever in defiance of Allah the Exalted and His Messenger—peace be upon him—and to protect the people of disbelief. They do not kill the disbeliever who insults the Prophet—peace and blessings of Allah be upon him and his family—in the presence of Muslims within their markets and mosques. Nor do they kill those among the disbelievers who openly revile Allah the Exalted before Muslims—and these are matters from which we seek refuge in Allah. They kill the Dhimmi—whose blood is inviolable except by legitimate justification—based on the testimony of two disbelievers.

وَأَمَّا الْحَنَفِيُّونَ - فَيَقْتُلُونَ الْمُسْلِمَ بِالْكَافِرِ خِلَافًا عَلَى اللَّهِ تَعَالَى، وَعَلَى رَسُولِهِ - عَلَيْهِ السَّلَامُ -، وَمُحَافَظَةً لِأَهْلِ الْكُفْرِ، وَلَا يَقْتُلُونَ الْكَافِرَ إذَا سَبَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِحَضْرَةِ أَهْلِ الْإِسْلَامِ فِي أَسْوَاقِهِمْ وَمَسَاجِدِهِمْ، وَلَا يَقْتُلُونَ مِنْ أَهْلِ الْكُفْرِ مَنْ سَبَّ اللَّهَ تَعَالَى جِهَارًا بِحَضْرَةِ الْمُسْلِمِينَ - وَهَذِهِ أُمُورٌ نَعُوذُ بِاَللَّهِ مِنْهَا - وَيَقْتُلُونَ الذِّمِّيَّ الَّذِي قَدْ حَرُمَ دَمُهُ إلَّا بِالْحَقِّ بِشَهَادَةِ كَافِرَيْنِ

L40362–40364 As for adultery: the Malikis impose the Ḥadd punishment for adultery in cases of pregnancy—even if the pregnancy stems from coercion—and they stone [the offender]. A muḥṣan (married free man) who engages in anal intercourse with an unrelated woman, or commits sodomy—whether being muḥṣan or not—the authorities do not apply the hadd punishment to one who copulates with an animal, nor to a woman who engages in copulation with a dog. All such acts constitute wrongful sexual license. They do not apply the hadd punishment to a woman who has unlawful intercourse—while being mentally sound, adult, and acting voluntarily—with a boy who

وَأَمَّا الزِّنَى: فَإِنَّ الْمَالِكِيِّينَ - يَحُدُّونَ بِالْحَبَلِ وَلَعَلَّهُ مِنْ إكْرَاهٍ - وَيَرْجُمُونَ الْمُحْصَنَ إذَا وَطِئَ امْرَأَةً أَجْنَبِيَّةً فِي دُبُرِهَا، أَوْ فَعَلَ فِعْلَ قَوْمِ لُوطٍ - مُحْصَنًا كَانَ أَوْ غَيْرَ مُحْصَنٍ - وَلَا يَحُدُّونَ وَاطِئَ الْبَهِيمَةِ - وَلَا الْمَرْأَةَ تَحْمِلُ عَلَى نَفْسِهَا كَلْبًا - وَكُلُّ ذَلِكَ إبَاحَةُ فَرْجٍ بِالْبَاطِلِ، وَلَا يَحُدُّونَ الَّتِي تَزْنِي - وَهِيَ عَاقِلَةٌ بَالِغَةٌ مُخْتَارَةٌ - بِصَبِيٍّ لَمْ يَبْلُغْ، وَيَحُدُّونَ الرَّجُلَ إذَا زَنَى بِصَبِيَّةٍ مِنْ سِنِّ ذَلِكَ الصَّبِيِّ

has not reached puberty, but they do apply the hadd punishment to a man who commits unlawful intercourse with a girl of the same age as that non-pubescent boy.

وَأَنَّ ابْنَ الْقَاسِمِ لَا يَحُدُّ النَّصْرَانِيَّ، وَلَا الْيَهُودِيَّ، إذَا زَنَى بِمُسْلِمَةٍ، وَيُطْلِقُونَ الْحَرْبِيَّ النَّازِلَ عِنْدَنَا بِتِجَارَةٍ، وَالْمُتَذَمِّمَ يَغْرَمُ الْجِزْيَةَ عَلَى تَمَلُّكِ الْمُسْلِمَاتِ اللَّوَاتِي سَبَاهُنَّ قَبْلَ نُزُولِهِ، وَتَذَمُّمِهِ مِنْ حَرَائِرِ الْمُسْلِمَاتِ مِنْ الْقُرَشِيَّاتِ وَالْأَنْصَارِيَّاتِ، وَغَيْرِهِنَّ، وَعَلَى وَطْئِهِنَّ، وَبَيْعِهِنَّ صُرَاحًا مُبَاحًا - وَهَذِهِ قَوْلَةٌ مَا سُمِعَ بِأَفْحَشَ مِنْهَا؟ ٢١٨٤ - مَسْأَلَةٌ: وَأَمَّا السَّرِقَةُ: فَإِنَّ الْمَالِكِيِّينَ يَقْطَعُونَ فِيهَا الرِّجْلَيْنِ بِلَا نَصٍّ ثَابِتٍ وَلَا إجْمَاعٍ، وَيَقْطَعُونَ مَنْ دَخَلَ مَنْزِلَ إنْسَانٍ فَأَخْرَجَ مِنْهُ مَا يُسَاوِي ثَلَاثَةَ دَرَاهِمَ، وَقَالَ: إنَّ صَاحِبَ الدَّارِ أَرْسَلَنِي فِي هَذِهِ الْحَاجَةِ وَصَدَّقَهُ صَاحِبُ الدَّارِ، وَلَا يَلْتَفِتُونَ إلَى شَيْءٍ مِنْ هَذَا، أَوْ يَقْطَعُونَ يَدَهُ مُطَارَفَةً، وَيَقْطَعُونَ جَمَاعَةً سَرَقَتْ رُبْعَ دِينَارٍ فَقَطْ، وَرَأَوْا - فِي أَحَدِ أَقْوَالِهِمْ - أَنَّهُ إذَا غُلِطَ بِالسَّارِقِ فَقُطِعَتْ يَسَارُهُ أَنَّهُ تُقْطَعُ الْيَدُ الْأُخْرَى - فَقَطَعُوا يَدَيْهِ جَمِيعًا فِي سَرِقَةٍ وَاحِدَةٍ، وَمَا عَيَّنَ اللَّهُ تَعَالَى قَطُّ يُمْنَى مِنْ يُسْرَى، وَالْحَنَفِيُّونَ يَقْطَعُونَ فِيهَا الرِّجْلَ بَعْدَ الْيَدِ بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ

L40365 And that Ibn al-Qāsim does not apply the ḥadd punishment to a Christian or Jew who commits adultery with a Muslim woman. They release the harbī (non-Muslim from hostile territory) residing among us for trade. The one seeking dhimma status must pay jizya for owning Muslim women whom he captured before his arrival and seeking protection concerning free Muslim women among Qurayshītes, Anṣārī women, and others - including intercourse with them and openly selling them as lawful. Is there any statement more repugnant than this? [2184]

Issue: Regarding theft: The Mālikīs amputate both legs without any established textual proof or consensus. They amputate whoever enters a home and removes property worth three dirhams, even if he claims: "The owner sent me for this purpose" and the owner confirms it - while they disregard such evidence. Alternatively, they amputate his hand at the wrist. They amputate a group that stole merely a quarter dinar. In one of their opinions, if a thief's left hand is amputated by error, they amputate the other hand - thus severing both hands for one theft, though Allah the Exalted never designated right over left. The Ḥanafīs amputate the leg after the hand in theft cases without textual or consensual basis.

وَأَمَّا الْقَذْفُ: فَإِنَّ الْمَالِكِيِّينَ يَحُدُّونَ حَدَّ الْقَذْفِ، فِي التَّعْرِيضِ، وَيُسْقِطُونَ جَمِيعَ الْحُدُودِ بِالْقَتْلِ حَاشَا حَدَّ الْقَذْفِ، فَإِنْ كَانُوا يُسْقِطُونَ سَائِرَ الْحُدُودِ بِالشُّبْهَةِ، فَمَا بَالُهُمْ لَا يُسْقِطُونَ حَدَّ الْقَذْفِ أَيْضًا بِالشُّبْهَةِ؟ وَقَالُوا: إنَّمَا فَعَلْنَا ذَلِكَ خَوْفَ أَنْ يُقَالَ لِلْمَقْذُوفِ: لَوْ لَمْ يَكُنْ الَّذِي قَذَفَك صَادِقًا لَحُدَّ لَك، فَفِي أَيِّ دِينٍ وَجَدُوهَا مِنْ قُرْآنٍ أَوْ سُنَّةٍ أَوْ قِيَاسٍ؟ وَيَحُدُّونَ شَارِبَ الْخَمْرِ، وَلَوْ جَرْعَةً مِنْهُ خَوْفَ أَنْ يَقْذِفَ أَحَدًا بِالزِّنَى، وَهُوَ لَمْ

L40366 As for qadhf (false accusation of unlawful intercourse), the Mālikīs impose the hadd punishment for qadhf even in cases of insinuation. They nullify all hadd punishments due to killing except the hadd for qadhf. If they nullify other hadd punishments due to doubt, why do they not nullify the hadd for qadhf as well on grounds of doubt? They say: "We did this only out of fear that the accused might be told: 'Had your accuser not been truthful, the hadd would have been applied for you.'" In which religious sources did they find this ruling—whether in the Quran, Sunnah, or analogical reasoning? They impose the hadd punishment on a wine-drinker even for a single sip, fearing he might accuse someone of zinā (unlawful intercourse) even though

he has not yet accused anyone. What wonder is there in enforcing hadd punishments without doubt? They rely on a baseless narration transmitted from some Companions—God Almighty has already protected them from such narrations.

يَقْذِفْ أَحَدًا بَعْدُ، فَأَيُّ عَجَبٍ فِي إِقَامَةِ الْحُدُودِ بِلَا شُبْهَةٍ، وَيَتَعَلَّقُونَ بِرِوَايَةٍ سَاقِطَةٍ عَنْ بَعْضِ الصَّحَابَةِ، قَدْ أَعَاذَهُمْ اللَّهُ تَعَالَى مِنْ مِثْلِهَا

L40367 They impose the ḥadd penalty on whoever says to another: "You are not the son of so-and-so," if he denies his lineage to his father.

وَيَحُدُّونَ مَنْ قَالَ لِآخَرَ: لَسْت ابْنَ فُلَانٍ إذَا نَفَاهُ عَنْ أَبِيهِ

L40368–40370 They impose the ḥadd punishment on one who accuses his wife of adultery with a named individual, even though he has performed liʿān (a sworn oath of condemnation) against her. This directly contradicts the ruling of the Messenger of Allah (may Allah bless him and his family and grant him peace). They impose the *hadd* punishment on whoever accuses a person of *zinā* when that person contracted an invalid marriage of impermissible nature while being aware of its prohibition. Moreover, they impose the *hadd* punishment on whoever accuses a Muslim woman—whose pregnancy has become apparent—of *zinā*, while acknowledging that they neither take oaths nor conclusively establish that *zinā* occurred. Some among them hold that the *hadd* applies to one who says to another: "Your eye committed *zinā*" or "Your hand committed *zinā*." It has been authentically reported from the Prophet—peace and blessings of Allah be upon him and his family—that "the hands commit *zinā* through groping, the eyes commit *zinā* through gazing, and the private parts either confirm this or deny it."

وَيَحُدُّونَ مَنْ قَذَفَ امْرَأَتَهُ بِإِنْسَانٍ سَمَّاهُ، وَإِنْ لَاعَنَ امْرَأَتَهُ، وَهَذَا خِلَافٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مُجَرَّدٌ وَيَحُدُّونَ مَنْ قَذَفَ إنْسَانًا نَكَحَ نِكَاحًا فَاسِدًا لَا يَحِلُّ مِثْلُهُ، وَهُوَ عَالِمٌ بِالتَّحْرِيمِ - هَذَا وَهُمْ يَحُدُّونَ مَنْ قَذَفَ امْرَأَةً مُسْلِمَةً ظَهَرَ بِهَا حَمْلٌ، وَهُمْ يُقِرُّونَ أَنَّهُمْ لَا يَحْلِفُونَ، وَلَا يَقْطَعُونَ أَنَّهُ مِنْ زِنًى، وَمِنْهُمْ مَنْ يَرَى الْحَدَّ عَلَى مَنْ قَالَ لِآخَرَ: زَنَتْ عَيْنُك، أَوْ زَنَتْ يَدُك - وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنَّ الْيَدَيْنِ تَزْنِيَانِ وَزِنَاهُمَا الْبَطْشُ، وَالْعَيْنَيْنِ تَزْنِيَانِ وَزِنَاهُمَا النَّظَرُ، وَالْفَرْجُ يُصَدِّقُ ذَلِكَ أَوْ يُكَذِّبُهُ»

L40371 As for wine: the Malikis implement the hadd punishment for it based on the smell—and anyone with knowledge knows that whoever eats winter pears or some types of apples will find the smell of their mouth is the same as that of a wine drinker. Moreover, perhaps one filled his mouth with it without swallowing, leaving the smell, or perhaps he was deceived with it unknowingly. Then they administer lashes—the Malikis and Hanafis impose eighty lashes for wine, while the majority of the Companions maintained that the hadd punishment for it is forty. They did not dismiss the additional forty lashes on the basis of *shubha*, nor is this number mandated by the Quran, the Sunnah, or consensus (*ijma*).

وَأَمَّا الْخَمْرُ: فَإِنَّ الْمَالِكِيِّينَ يُقِيمُونَ الْحَدَّ فِيهِ بِالنَّكْهَةِ - وَكُلُّ مَنْ لَهُ مَعْرِفَةٌ يَدْرِي أَنَّ مَنْ أَكَلَ الْكُمَّثْرَى الشَّتْوِيَّ، وَبَعْضَ أَنْوَاعِ التُّفَّاحِ: أَنَّ نَكْهَةَ فَمِهِ، وَنَكْهَةَ شَارِبِ الْخَمْرِ: سَوَاءٌ - وَأَيْضًا فَلَعَلَّهُ مَلَأَ فَمَهُ مِنْهَا وَلَمْ يَجْرَعْهَا فَبَقِيَتْ النَّكْهَةُ، أَوْ لَعَلَّهُ دُلِّسَ عَلَيْهِ بِهَا وَهُوَ لَا يَدْرِي، ثُمَّ يَجْلِدُونَ - هُمْ وَالْحَنَفِيُّونَ فِي الْخَمْرِ: ثَمَانِينَ جَلْدَةً، وَجُمْهُورُ الصَّحَابَةِ عَلَى أَنَّ الْحَدَّ فِيهَا أَرْبَعُونَ، فَلَمْ يَدْرَءُوا الْأَرْبَعِينَ الزَّائِدَةَ بِالشُّبْهَةِ، وَلَمْ يُوجِبْهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ

L40372 They impose eighty lashes—as we stated—for a slander he has not yet fab-

ricated, then subject him to the ḥudūd punishments, even though he might never falsely accuse anyone of unlawful sexual intercourse. There is no distinction between this and applying the ḥadd penalty for unlawful sexual intercourse he did not commit or theft he did not commit.

L40373 They, along with the Shāfiʿīs, impose the ḥadd punishment on a virtuous, knowledgeable interpreter who deems intoxicating nabīdh permissible, yet they accept his testimony and take knowledge from him. They do not impose ḥadd punishment on an interpreter in cases of shighār or mutʿah—even if he is knowledgeable about the prohibition—nor on two people mixing drinks, even if the act is unlawful, like a small quantity of wine.

L40374 **The issue of a slave's confession to an act entailing the *ḥadd* punishment.**

L40375–40377 2185 - Issue: The confession of a slave to an act that necessitates a prescribed punishment (ḥadd)? Abū Muḥammad—may Allāh have mercy on him—said: Have people differed regarding this? We examined the matter and found our companions stating: Allāh the Exalted said, {No soul earns [punishment] except against itself, and no bearer of burdens will bear the burden of another} [6:164]. The slave is property belonging to his master. Therefore, his confession to an act that would nullify part of his master's property rights constitutes imposing a burden on another, which is impermissible by the explicit text of the Qurʾān. Abū Muḥammad—may Allāh have mercy on him—said: This is a valid argument unless countered by evidence. We then examined further and found Allāh the Exalted stating, {Be upholders of justice, bearing witness for Allāh, even if against yourselves, or your parents, or close relatives} [4:135]. Thus, Allāh the Exalted commanded the acceptance of a person's testimony against himself and against his parents. And his relatives—people have not disputed that a person's testimony against himself is accepted without requiring another witness or an oath—regardless of whether he is immoral or upright, a believer or a disbeliever—and that his testimony against another is not accepted unless the conditions of moral integrity are met, along with another witness or the claimant's oath,

وَيَحُدُّونَ ثَمَانِينَ - كَمَا قُلْنَا - بِفِرْيَةٍ لَمْ يَفْتَرِهَا بَعْدُ، فَيُقَدِّمُونَ لَهُ الْحُدُودَ، وَلَعَلَّهُ لَا يَقْذِفُ أَحَدًا أَبَدًا، وَلَا فَرْقَ بَيْنَ هَذَا وَبَيْنَ أَنْ يُقَدِّمُوا لَهُ حَدَّ زِنًى لَمْ يَكُنْ مِنْهُ، أَوْ حَدَّ سَرِقَةٍ لَمْ يَكُنْ مِنْهُ

وَيَحُدُّونَ - هُمْ وَالشَّافِعِيُّونَ: الْفَاضِلَ الْعَالِمَ الْمُتَأَوِّلَ إحْلَالَ النَّبِيذِ الْمُسْكِرِ، وَيَقْبَلُونَ مَعَ ذَلِكَ شَهَادَتَهُ، وَيَأْخُذُونَ الْعِلْمَ عَنْهُ - وَلَا يَحُدُّونَ الْمُتَأَوِّلَ فِي الشِّغَارِ، وَالْمُتْعَةِ - وَإِنْ كَانَ عَالِمًا بِالتَّحْرِيمِ - وَلَا فِي الْخَلِيطَيْنِ - وَإِنْ كَانَ حَرَامًا - كَالْخَمْرَةِ

[مَسْأَلَة اعْتِرَافُ الْعَبْدِ بِمَا يُوجِبُ الْحَدَّ]

٢١٨٥ - مَسْأَلَةٌ: اعْتِرَافُ الْعَبْدِ بِمَا يُوجِبُ الْحَدَّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا؟ فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا أَصْحَابَنَا يَقُولُونَ: قَالَ اللَّهُ تَعَالَى {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] وَالْعَبْدُ مَالٌ مِنْ مَالِ سَيِّدِهِ فَاعْتِرَافُهُ بِمَا يَجِبُ إبْطَالُ بَعْضِ مَالِ سَيِّدِهِ كَسْبٌ عَلَى غَيْرِهِ، فَلَا يَجُوزُ بِنَصِّ الْقُرْآنِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا احْتِجَاجٌ صَحِيحٌ إنْ لَمْ يَأْتِ مَا يَدْفَعُهُ: فَنَظَرْنَا فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَى أَنْفُسِكُمْ أَوِ الْوَالِدَيْنِ وَالأَقْرَبِينَ} [النساء: ١٣٥] فَأَمَرَ اللَّهُ تَعَالَى بِقَبُولِ شَهَادَةِ الْمَرْءِ عَلَى نَفْسِهِ وَعَلَى وَالِدَيْهِ، وَأَقْرِبَائِهِ - وَلَمْ يَخْتَلِفْ النَّاسُ فِي أَنَّ شَهَادَةَ الْمَرْءِ عَلَى نَفْسِهِ مَقْبُولَةٌ - دُونَ آخَرَ مَعَهُ دُونَ يَمِينٍ - تَلْزَمُهُ، سَوَاءٌ كَانَ فَاسِقًا، أَوْ عَدْلًا - مُؤْمِنًا كَانَ أَوْ كَافِرًا - وَأَنَّ شَهَادَتَهُ عَلَى غَيْرِهِ لَا تُقْبَلُ إلَّا بِشَرْطِ الْعَدَالَةِ، وَبِأَنْ يَكُونَ مَعَهُ غَيْرُهُ، أَوْ يَمِينُ الطَّالِبِ - عَلَى حَسَبِ اخْتِلَافِ النَّاسِ فِي ذَلِكَ - وَلَمْ يَخُصَّ اللَّهُ تَعَالَى عَبْدًا مِنْ حُرٍّ، فَلَمَّا وَرَدَ هَذَانِ

in accordance with differing scholarly opinions. Allah, the Exalted, has not distinguished between a slave and a free person. When these two divine texts were revealed, it became necessary to examine their application. We found our scholars stating: "He is a witness against himself, asserting a claim against another, so it is not accepted." Others opposed them, arguing: "Rather, he is a witness against himself, asserting a claim against himself—even if this results in a reduction of his master's property—and he did not intend his testimony to affect his master's property." We then analyzed these two interpretive approaches—since one must necessarily be adopted—and found our scholars' view that "asserting a claim against another" is valid only through an intermediary and derivative effect, not by the confession itself. Conversely, the opposing view holds validity through the incident itself, since the confession pertains solely to himself by its explicit wording—which reflects his apparent intent—while its extension to the master arises through interpretation, not the confession's literal meaning. Thus, the latter approach is the more correct and fitting of the two.[53]

L40378 If what our companions have said were valid, it would necessitate that a slave not be subjected to the prescribed punishment for adultery, theft, consuming intoxicants, false accusation of adultery, or highway robbery—even if clear evidence is established—and that he not be executed in retribution for murder, because in such cases he incurs a loss upon his master, and imposing the prescribed punishment entails deprivation of his master's property. This is a position none affirm—neither them nor anyone else.

L40379 **An issue concerning one who states, "Allah does not hold a servant accountable for the first sin."**

L40380 Issue 2186 – He who says: "Allah does not hold a servant accountable for the first sin he commits?" Abu Muhammad—may Allah have mercy on him—said: Abdullah ibn Rabīʿ narrated to us: Ibn Mufarrij narrated to us: Qāsim ibn Aṣbagh narrated to us: Ibn Waḍḍāḥ narrated to us: Saḥnūn narrated to us: Ibn Wahb narrated to us from Qurrah ibn ʿAbd al-Raḥmān al-Maʿāfirī from Ibn Shihāb, who said: A thief was brought to Abu Bakr al-Ṣiddīq. He

[53] **Qur'an references (L40375):** Qur'an 6:164 (Al-An'am); Qur'an 4:135 (An-Nisa).

النَّصَّانِ مِنْ عِنْدِ رَبِّ الْعَالَمِينَ: وَجَبَ أَنْ نَنْظُرَ فِي اسْتِعْمَالِهِمَا؟ فَوَجَدْنَا أَصْحَابَنَا يَقُولُونَ: هُوَ شَاهِدٌ عَلَى نَفْسِهِ، كَاسِبٌ عَلَى غَيْرِهِ: فَلَا يُقْبَلُ، وَوَجَدْنَا مَنْ خَالَفَهُمْ بِقَوْلٍ: بَلْ هُوَ شَاهِدٌ عَلَى نَفْسِهِ، كَاسِبٌ عَلَيْهَا، وَإِنْ أَدَّى ذَلِكَ إِلَى نَقْصٍ فِي مَالِ سَيِّدِهِ، وَلَمْ يَقْصِدْ الشَّهَادَةَ عَلَى مَالِ سَيِّدِهِ؟ فَنَظَرْنَا فِي هَذَيْنِ الِاسْتِعْمَالَيْنِ - إذْ لَا بُدَّ مِنْ اسْتِعْمَالِ أَحَدِهِمَا - فَوَجَدْنَا قَوْلَ أَصْحَابِنَا فِي أَنَّهُ كَاسِبٌ عَلَى غَيْرِهِ إنَّمَا يَصِحُّ بِوَاسِطَةٍ، وَبِإِنْتَاجٍ، لَا بِنَفْسِ الْإِقْرَارِ؟ وَوَجَدْنَا قَوْلَ مَنْ خَالَفَهُمْ يَصِحُّ بِنَفْسِ الْقِصَّةِ، لِأَنَّهُ إنَّمَا أَقَرَّ عَلَى نَفْسِهِ بِنَفْسِ لَفْظِهِ - وَهُوَ ظَاهِرُ مَقْصِدِهِ - وَإِنَّمَا يَتَعَدَّى ذَلِكَ إلَى السَّيِّدِ بِتَأْوِيلٍ لَا بِظَاهِرِ إقْرَارِهِ؟ فَكَانَ هَذَا أَصَحَّ الِاسْتِعْمَالَيْنِ، وَأَوْلَاهُمَا

وَلَوْ كَانَ مَا قَالُوهُ أَصْحَابُنَا لَوَجَبَ أَنْ لَا يُحَدَّ الْعَبْدُ فِي زِنًى، وَلَا فِي سَرِقَةٍ، وَلَا فِي خَمْرٍ، وَلَا فِي قَذْفٍ، وَلَا فِي حِرَابَةٍ - وَإِنْ قَامَتْ بِذَلِكَ بَيِّنَةٌ - وَأَنْ لَا يُقْتَلَ فِي قَوَدٍ، لِأَنَّهُ فِي ذَلِكَ كَاسِبٌ عَلَى غَيْرِهِ، وَفِي الْحَدِّ عَلَيْهِ إتْلَافٌ لِمَالِ سَيِّدِهِ؟ وَهَذَا مَا لَا يَقُولُونَهُ، لَا هُمْ وَلَا غَيْرُهُمْ

[مَسْأَلَة مَنْ قَالَ لَا يُؤَاخِذُ اللَّهُ عَبْدًا بِأَوَّلِ ذَنْبٍ]

٢١٨٦ - مَسْأَلَةٌ: مَنْ قَالَ: لَا يُؤَاخِذُ اللَّهُ عَبْدًا بِأَوَّلِ ذَنْبٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ قُرَّةَ بْنِ عَبْدِ الرَّحْمَنِ الْمَعَافِرِيِّ عَنْ ابْنِ شِهَابٍ قَالَ: أُتِيَ أَبُو بَكْرٍ الصِّدِّيقُ بِسَارِقٍ؟ فَقَالَ: اقْطَعُوا يَدَهُ فَقَالَ: أَقِلْنِيهَا يَا خَلِيفَةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَاَللَّهِ مَا

said: “Cut off his hand.” The thief pleaded: “Pardon me for this, O Caliph of the Messenger of Allah (peace and blessings of Allah be upon him). By Allah, I have never stolen before this!” Abu Bakr replied: “You lie! By the One in whose Hand is my soul, Allah does not overlook a believer’s first sin he commits.”

L40381 And through him, from Ibn Wahb, from Sufyan al-Thawri, from Humaid al-Tawil, from Anas ibn Malik, who said: A thief was brought to Umar ibn al-Khattab. He said: “By Allah, I have not stolen before this!” Umar replied: “You lie, by the Lord of Umar! Allah does not seize a servant for a first sin.”

L40382–40384 And by him—via Ibn Wahb from ʿAbdullāh ibn Samʿān in this context—and that ʿAlī ibn Abī Ṭālib said: To him: “Is Allah more forbearing than to punish His servant for the first sin, O Commander of the Faithful?” Thereupon, Umar ordered it, and it was amputated. When it was amputated, Ali ibn Abi Talib approached him and said: “I adjure you by Allah, how many times have you stolen?” He replied: “Twenty-one times”—[ghāfaṣahu: he surprised him and seized him unawares].

L40385 Abu Muhammad—may Allah have mercy on him—said: Allah does what He wills, and all His rulings are justice and righteousness. He conceals much or little for whoever He wills—whether by deferring [judgment] or as a favor—so that they may repent. He exacts recompense for a single sin or multiple sins—as a punishment or expiation on his behalf. {None can repel His judgment} [Ar-Raʿd 13:41], and {He is not questioned about what He does, but they will be questioned} [Al-Anbiya 21:23].[54]

L40386 The two chains from Abū Bakr and ʿAlī are weak: one is _mursal_ (disconnected), and the other is _mursal_ and _sāqiṭ_ (rejected). However, the chain from ʿUmar regarding that matter is sound—and to Allah belongs the command, before and after.

L40387 **The question of whether the ḥudūd punishments are to be**

[54] **Qur’an references (L40385):** Qur’an 13:41 (Ar-Ra’d); Qur’an 21:23 (Al-Anbya).

سَرَقْت قَبْلَهَا؟ فَقَالَ لَهُ أَبُو بَكْرٍ: كَذَبْت، وَالَّذِي نَفْسِي بِيَدِهِ مَا غَافَصَ اللَّهُ مُؤْمِنًا بِأَوَّلِ ذَنْبٍ يَعْمَلُهُ

وَبِهِ - إلَى ابْنِ وَهْبٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: أُتِيَ عُمَرُ بْنُ الْخَطَّابِ بِسَارِقٍ فَقَالَ: وَاَللَّهِ مَا سَرَقْت قَبْلَهَا؟ فَقَالَ لَهُ عُمَرُ: كَذَبْت وَرَبِّ عُمَرَ، مَا أَخَذَ اللَّهُ عَبْدًا عِنْدَ أَوَّلِ ذَنْبٍ

وَبِهِ - إلَى ابْنِ وَهْبٍ عَنْ عَبْدِ اللَّهِ بْنِ سَمْعَانَ بِهَذَا، وَأَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ لَهُ: اللَّهُ أَحْلَمُ مِنْ أَنْ يَأْخُذَ عَبْدَهُ فِي أَوَّلِ ذَنْبٍ يَا أَمِيرَ الْمُؤْمِنِينَ؟ فَأَمَرَ بِهِ عُمَرُ فَقُطِعَ، فَلَمَّا قُطِعَ قَامَ إلَيْهِ عَلِيُّ بْنُ أَبِي طَالِبٍ فَقَالَ لَهُ: أَنْشُدُك اللَّهَ، كَمْ سَرَقْت مِنْ مَرَّةٍ؟ قَالَ لَهُ: إحْدَى وَعِشْرِينَ مَرَّةً -[غَافَصَهُ: فَاجَأَهُ وَأَخَذَهُ عَلَى غِرَّةٍ]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: يَفْعَلُ اللَّهُ مَا يَشَاءُ، وَكُلُّ أَحْكَامِهِ عَدْلٌ وَحَقٌّ، فَقَدْ يَسْتُرُ اللَّهُ الْكَثِيرَ وَالْقَلِيلَ، عَلَى مَنْ يَشَاءُ - إمَّا إمْلَاءً وَإِمَّا تَفَضُّلًا - لِيَتُوبَ، وَيَأْخُذُ بِالذَّنْبِ الْوَاحِدِ، وَبِالذُّنُوبِ - عُقُوبَةً أَوْ كَفَّارَةً لَهُ {لا مُعَقِّبَ لِحُكْمِهِ} [الرعد: ٤١] وَ {لا يُسْأَلُ عَمَّا يَفْعَلُ وَهُمْ يُسْأَلُونَ} [الأنبياء: ٢٣]

وَالْإِسْنَادَانِ عَنْ أَبِي بَكْرٍ، وَعَلِيٍّ: ضَعِيفَانِ، أَحَدُهُمَا مُرْسَلٌ، وَالْآخَرُ مُرْسَلٌ سَاقِطٌ، وَالْإِسْنَادُ فِي ذَلِكَ عَنْ عُمَرَ صَحِيحٌ - وَلِلَّهِ الْأَمْرُ مِنْ قَبْلُ وَمِنْ بَعْدُ.

[مَسْأَلَة هَلْ تُقَامُ الْحُدُودُ عَلَى أَهْلِ الذِّمَّةِ]

imposed on dhimmis.

L40388 Issue 2187: Are the hudud punishments applied to dhimmis? Abu Muhammad—may Allah have mercy on him—said: People have differed regarding this narration. It is narrated from Ali ibn Abi Talib that there is no hadd punishment for dhimmis in cases of adultery.

٢١٨٧ - مَسْأَلَةٌ: هَلْ تُقَامُ الْحُدُودُ عَلَى أَهْلِ الذِّمَّةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا الْخَبَرِ؟ فَجَاءَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: لَا حَدَّ عَلَى أَهْلِ الذِّمَّةِ فِي الزِّنَى

L40389 It has been reported from Ibn Abbas: No ḥadd punishment applies to dhimmis for theft.

وَجَاءَ عَنْ ابْنِ عَبَّاسٍ: لَا حَدَّ عَلَى أَهْلِ الذِّمَّةِ فِي السَّرِقَةِ

L40390 Abu Hanifah said: No prescribed punishment is imposed upon protected non-Muslims for adultery or drinking wine—though they are subject to prescribed punishments for false accusation of adultery (qadhf) and theft, except for the non-Muslim under treaty obligation in theft, but he must compensate for it. His companion Muhammad ibn al-Hasan said: I do not prohibit the protected non-Muslim from adultery or drinking wine—but I prohibit him from singing.

وَقَالَ أَبُو حَنِيفَةَ: لَا حَدَّ عَلَى أَهْلِ الذِّمَّةِ فِي الزِّنَى، وَلَا فِي شُرْبِ الْخَمْرِ - وَعَلَيْهِمْ الْحَدُّ فِي الْقَذْفِ، وَفِي السَّرِقَةِ، إلَّا الْمُعَاهَدَ فِي السَّرِقَةِ، لَكِنْ يَضْمَنُهَا، وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ صَاحِبُهُ: لَا أَمْنَعُ الذِّمِّيَّ مِنْ الزِّنَى، وَشُرْبِ الْخَمْرِ - وَأَمْنَعُهُ مِنْ الْغِنَاءِ

L40391 Mālik said: There is no prescribed punishment for dhimmis in cases of fornication nor in consuming intoxicants; and they are subject to the prescribed punishment for false accusation of fornication and theft.

وَقَالَ مَالِكٌ: لَا حَدَّ عَلَى أَهْلِ الذِّمَّةِ فِي زِنًى، وَلَا فِي شُرْبِ الْخَمْرِ - وَعَلَيْهِمْ الْحَدُّ فِي الْقَذْفِ، وَالسَّرِقَةِ

L40392 Al-Shafi'i, Abu Sulayman, and their companions said that the hadd penalty applies to them in all such cases.

وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا: عَلَيْهِمْ الْحَدُّ فِي كُلِّ ذَلِكَ

L40393–40395 Hummam narrated to us from Ibn Mufarrij, who narrated from Abd al-A'la ibn Muhammad, who narrated from al-Dabari, who narrated from Abd al-Razzaq, who narrated from al-Thawri, who informed me through Simak ibn Harb, from Qabus ibn al-Mukhariq, from his father, who said: Muhammad ibn Abi Bakr wrote to Ali ibn Abi Talib asking him about two Muslims who apostatized, a Muslim who fornicated with a Christian woman, and a mukatab who died leaving an unpaid portion of his manumission contract and left free children? Ali responded in writing: "As for the two who..." If the two apostatize, then if they repent, otherwise strike their necks. As for the Muslim who commits adultery with a Christian woman, impose the prescribed punishment upon him, and refer the Christian woman to her religious community. As for the slave contracted for manumission, give his masters the remaining portion of his contract, and give his children,

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا عَبْدُ الْأَعْلَى بْنُ مُحَمَّدٍ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا الثَّوْرِيُّ أَخْبَرَنِي سِمَاكُ بْنُ حَرْبٍ قَابُوسُ بْنُ الْمُخَارِقِ عَنْ أَبِيهِ قَالَ: كَتَبَ مُحَمَّدُ بْنُ أَبِي بَكْرٍ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ يَسْأَلُهُ عَنْ مُسْلِمَيْنِ تَزَنْدَقَا، وَعَنْ مُسْلِمٍ زَنَى بِنَصْرَانِيَّةٍ، وَعَنْ مُكَاتَبٍ مَاتَ وَتَرَكَ بَقِيَّةً مِنْ كِتَابَتِهِ، وَتَرَكَ وُلْدًا أَحْرَارًا؟ فَكَتَبَ إلَيْهِ عَلِيٌّ: أَمَّا اللَّذَانِ تَزَنْدَقَا فَإِنْ تَابَا وَإِلَّا فَاضْرِبْ أَعْنَاقَهُمَا - وَأَمَّا الْمُسْلِمُ الَّذِي زَنَى بِالنَّصْرَانِيَّةِ فَأَقِمْ عَلَيْهِ الْحَدَّ، وَارْفَعْ النَّصْرَانِيَّةَ إلَى أَهْلِ دِينِهَا - وَأَمَّا الْمُكَاتَبُ فَأَعْطِ مَوَالِيهِ بَقِيَّةَ كِتَابَتِهِ، وَأَعْطِ وُلْدَهُ الْأَحْرَارَ مَا بَقِيَ مِنْ مَالِهِ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ

who are free, what remains of his wealth. Narrated by Humam from Ibn Mufarrij from Ibn al-A'rabi from al-Dabari from 'Abd al-Razzaq from Ibn Jurayj and Sufyan al-Thawri - both of whom narrated from 'Amr ibn Dinar from Mujahid: that Ibn 'Abbas did not consider the prescribed punishment applicable to slaves or dhimmis.

عَنْ ابْنِ جُرَيْجٍ، وَسُفْيَانَ الثَّوْرِيِّ، كِلَاهُمَا عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ مُجَاهِدٍ: أَنَّ ابْنَ عَبَّاسٍ كَانَ لَا يَرَى عَلَى عَبْدٍ وَلَا عَلَى أَهْلِ الذِّمَّةِ حَدًّا

L40396 And from Rabīʿah that he said regarding the Jew and the Christian: "I do not consider the prescribed punishment for adultery applicable to the two of them." He said: "Was it not from fulfilling the _dhimma_ toward them to leave them to their coreligionists and legal systems, so their sins are upon them?" Abū Muḥammad—may Allah have mercy on him—said: "When they disagreed, did it not become obligatory for us to examine this matter to discern the truth so we may follow it? We therefore considered the stance of those who assert: 'Is there no prescribed punishment for a _dhimmi_?' and found them declaring: 'Allah the Exalted said: {If they come to you, judge between them or turn away from them. If you turn away from them, they will never harm you whatsoever. But if you judge, judge between them justly}' [5:42]."[55]

وَعَنْ رَبِيعَةَ أَنَّهُ قَالَ فِي الْيَهُودِيِّ، وَالنَّصْرَانِيِّ: لَا أَرَى عَلَيْهِمَا فِي الزِّنَى حَدًّا، قَالَ: وَقَدْ كَانَ مِنَ الْوَفَاءِ لَهُمْ بِالذِّمَّةِ أَنْ يُخَلَّى بَيْنَهُمْ وَبَيْنَ أَهْلِ دِينِهِمْ وَشَرَائِعِهِمْ، تَكُونُ ذُنُوبُهُمْ عَلَيْهِمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ؟ فَنَظَرْنَا فِي قَوْلِ مَنْ قَالَ: لَا حَدَّ عَلَى ذِمِّيٍّ؟ فَوَجَدْنَاهُمْ يَقُولُونَ: قَالَ اللَّهُ تَعَالَى {فَإِنْ جَاءُوكَ فَاحْكُمْ بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ وَإِنْ تُعْرِضْ عَنْهُمْ فَلَنْ يَضُرُّوكَ شَيْئًا وَإِنْ حَكَمْتَ فَاحْكُمْ بَيْنَهُمْ بِالْقِسْطِ} [المائدة: ٤٢]

L40397 We found them asserting: "We have covenanted with them to leave them in their disbelief, and their disbelief encompasses every stipulation of their laws. Thus it becomes obligatory not to oppose them contrary to the terms of their covenant." Abū Muḥammad—may Allah have mercy on him—responded: "Do they possess any proof beyond this?" Upon examining their claim, we found it contains no valid evidence for either Ḥanafīs or Mālikīs, for the aforementioned Quranic verse is general in application, not specific. Yet they specified it by imposing prescribed punishments for theft, false accusation of unchastity against a Muslim (qadhf), and highway robbery, while abolishing punishments only for adultery and intoxicants. This constitutes arbitrary legislation not ordained by the Quran, nor by any Sunnah—whether authentic or weak—nor by consensus, nor by any Companion's ruling.

وَوَجَدْنَاهُمْ يَقُولُونَ: قَدْ عَاهَدْنَاهُمْ عَلَى التَّرْكِ لَهُمْ عَلَى كُفْرِهِمْ، وَكَانَ كُفْرُهُمْ يَدْخُلُ فِيهِ كُلُّ شَرِيطَةٍ مِنْ أَحْكَامِهِمْ، فَوَجَبَ أَنْ لَا يُعْتَرَضَ عَلَيْهِمْ بِخِلَافِ مَا عُوهِدُوا عَلَيْهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا تَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا؟ فَلَمَّا نَظَرْنَا فِي ذَلِكَ وَجَدْنَاهُ لَا حُجَّةَ فِيهِ لِلْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ أَصْلًا، لِأَنَّ الْآيَةَ الْمَذْكُورَةَ عَامَّةٌ لَا خَاصَّةٌ، وَهُمْ قَدْ خَصُّوا فَأَوْجَبُوا عَلَيْهِمُ الْحَدَّ فِي السَّرِقَةِ، وَفِي الْقَذْفِ لِمُسْلِمٍ، وَفِي الْحِرَابَةِ، وَأَسْقَطُوا الْحَدَّ فِي الزِّنَى، وَفِي الْخَمْرِ فَقَطْ، وَهَذَا تَحَكُّمٌ لَمْ يُوجِبْهُ قُرْآنٌ، وَلَا سُنَّةٌ لَا صَحِيحَةٌ وَلَا سَقِيمَةٌ وَلَا إِجْمَاعٌ، وَلَا قَوْلُ صَاحِبٍ

L40398–40400 If they said: Theft is an injustice, and they do not condone injustice against a Muslim or a dhimmi, and qadhf is a ruling between them and the Muslim—

فَإِنْ قَالُوا: السَّرِقَةُ ظُلْمٌ، وَلَا يَقِرُّونَ عَلَى ظُلْمِ مُسْلِمٍ، وَلَا عَلَى ظُلْمِ ذِمِّيٍّ، وَالْقَذْفُ حُكْمٌ بَيْنَهُمْ وَبَيْنَ الْمُسْلِمِ وَإِذَا كَانَ ذَلِكَ فَلَا خِلَافَ فِي أَنَّهُ يُحْكَمُ فِي ذَلِكَ بِحُكْمِ الْإِسْلَامِ؟

[55] **Qur'an references (L40396):** Qur'an 5:42 (Al-Ma'idah).

if that is the case, is there any dispute that judgment in that is to be rendered according to Islamic law? We replied to them: Similarly, adultery—if they commit it with the wife of a Muslim, his female slave, the wife of a dhimmi, or his female slave... For indeed, it is an injustice to the Muslim or his master, and likewise an injustice to the Dhimmi, and they must not be left to persist in injustice.

قُلْنَا لَهُمْ: وَكَذَلِكَ الزِّنَى إذَا زَنَوْا بِامْرَأَةِ مُسْلِمٍ، أَوْ بِأَمَتِهِ، أَوْ بِامْرَأَةِ ذِمِّيٍّ أَوْ أَمَتِهِ، فَإِنَّهُ ظُلْمٌ لِلْمُسْلِمِ، أَوْ سَيِّدِهَا، وَظُلْمٌ لِلذِّمِّيِّ كَذَلِكَ، وَلَا يَقَرُّونَ عَلَى ظُلْمٍ

L40401 "In any case, you have indeed specified the verse without evidence and neglected its evident meaning without authoritative proof."

وَعَلَى كُلِّ حَالٍ فَقَدْ خَصَّصْتُمْ الْآيَةَ بِلَا دَلِيلٍ وَتَرَكْتُمْ ظَاهِرَهَا بِلَا حُجَّةٍ

L40402 If they raise a dispute using the statements of Ali and Ibn Abbas—may Allah be pleased with them both—regarding this matter, we say to them: You have no valid proof in this, for the narration ascribed to Ali concerning it is not authentic. This is because it is transmitted through Simak ibn Harb—who is weak and susceptible to coaching—and then through Qabus ibn al-Mukhariq—a narrator of unknown reliability. Even if it were authentic, it would not constitute proof for them, for no valid proof exists in anyone's statement apart from that of the Messenger of Allah—peace and blessings be upon him.

فَإِنْ شَغَبُوا بِقَوْلِ عَلِيٍّ، وَابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا - فِي ذَلِكَ؟ قُلْنَا لَهُمْ: لَا حُجَّةَ لَكُمْ فِي ذَلِكَ، لِأَنَّ الرِّوَايَةَ عَنْ عَلِيٍّ فِي ذَلِكَ لَا تَصِحُّ، لِأَنَّهَا عَنْ سِمَاكِ بْنِ حَرْبٍ - وَهُوَ ضَعِيفٌ يَقْبَلُ التَّلْقِينَ - ثُمَّ عَنْ قَابُوسِ بْنِ الْمُخَارِقِ - وَهُوَ مَجْهُولٌ - ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L40403 As for the narration from Ibn Abbas, it is more far-fetched, because there is no conclusive authority in anyone apart from the Messenger of Allah—may Allah bless him and grant him peace—and because they have opposed Ibn Abbas in this matter, since in it [the narration] there is: "There is no prescribed punishment for a slave" (a view they reject) and "There is no prescribed punishment for a dhimmi [non-Muslim citizen]." But they hold that the prescribed punishment does apply to him in cases of false accusation of unchastity (qadhf) and theft.

وَأَمَّا الرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ فَأَبْعَدُ، لِأَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّهُمْ قَدْ خَالَفُوا ابْنَ عَبَّاسٍ فِي هَذِهِ الْقَضِيَّةِ، لِأَنَّ فِيهَا: لَا حَدَّ عَلَى عَبْدٍ، وَهُمْ لَا يَرَوْنَ هَذَا، وَلَا حَدَّ عَلَى ذِمِّيٍّ - وَهُمْ يَرَوْنَ الْحَدَّ عَلَيْهِ فِي الْقَذْفِ وَالسَّرِقَةِ

L40404 Abū Muḥammad—may Allāh have mercy on him—said: Since the two narrations from Mujāhid from Ibn ʿAbbās contradict each other, clinging to one over the other is invalidated, and it becomes obligatory to refer both back to the Book of Allāh the Exalted. Whichever of the two opinions is attested by the Qur'ān and the Sunnah is the truth. In any case, every opinion the Ḥanafīs and Mālikīs have disputed with is invalidated, leaving them with no proof whatsoever.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ قَدْ تَعَارَضَتْ الرِّوَايَتَانِ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ؟ فَقَدْ بَطَلَ التَّعَلُّقُ بِإِحْدَاهُمَا دُونَ الْأُخْرَى، وَوَجَبَ رَدُّهُمَا إلَى كِتَابِ اللَّهِ تَعَالَى، فَلِأَيِّ الْقَوْلَيْنِ شَهِدَ الْقُرْآنُ، وَالسُّنَّةُ فَهُوَ الْحَقُّ، وَعَلَى كُلِّ حَالٍ - فَقَدْ بَطَلَ كُلُّ قَوْلٍ شَغَبَ بِهِ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَلَمْ يَبْقَ لَهُمْ حُجَّةٌ أَصْلًا

L40405 Since the verse is abrogated, even if it were established to be unequivocal, those who use it to abolish the enforcement of Ḥudūd punishments upon them would have no valid basis for this claim. For it merely permits discretionary judgment in resolving disputes between them—not comprehensive judgment over them entirely. The enforcement of Ḥudūd constitutes judgment upon them, not arbitration between them. Thus, these punishments bear no connection whatsoever to this verse under any interpretation. Consequently, all grounds for dependency on it collapse completely.

أَمَّا الْآيَةُ فَإِنَّهَا مَنْسُوخَةٌ، وَلَوْ صَحَّ أَنَّهَا مُحْكَمَةٌ لَمَا كَانَ لِمَنْ أَسْقَطَ بِهَا إِقَامَةَ الْحُدُودِ عَلَيْهِمْ مُتَعَلَّقٌ، لِأَنَّهُ إِنَّمَا فِيهَا التَّخْيِيرَ فِي الْحُكْمِ بَيْنَهُمْ، لَا فِي الْحُكْمِ عَلَيْهِمْ جُمْلَةً، وَإِقَامَةُ الْحُدُودِ حُكْمٌ عَلَيْهِمْ لَا حُكْمٌ بَيْنَهُمْ، فَلَيْسَ لِلْحُدُودِ فِي هَذِهِ الْآيَةِ مَدْخَلٌ أَصْلًا، بِوَجْهٍ مِنْ الْوُجُوهِ - فَسَقَطَ التَّعَلُّقُ بِهَا جُمْلَةً

L40406–40408 As for the covenants of those who have made pacts with others to rule by their laws, these are not the covenants of Allah the Exalted—rather, they are the covenant of Satan, the covenant of falsehood, and the covenant of misguidance. Muslims recognize neither contracts nor covenants except what Allah the Exalted has ordained in the Qur'an and the Sunnah. These are what Allah the Exalted has commanded to fulfill, as the Messenger of Allah—peace and blessings be upon him and his family—said: "Every condition not in the Book of Allah the Exalted is void." And he (peace be upon him) said, "Whoever does a deed not in accordance with our command, it is invalid."[56]

وَأَمَّا عُهُودُ مَنْ عَاهَدَهُمْ عَلَى الْحُكْمِ بِأَحْكَامِهِمْ، فَلَيْسَ ذَلِكَ عَهْدُ اللَّهِ تَعَالَى، بَلْ هُوَ عَهْدُ إبْلِيسَ وَعَهْدُ الْبَاطِلِ، وَعَهْدُ الضَّلَالِ، وَلَا يَعْرِفُ الْمُسْلِمُونَ عُقُودًا وَلَا عُهُودًا إلَّا مَا أَمَرَ اللَّهُ تَعَالَى بِهِ فِي الْقُرْآنِ وَالسُّنَّةِ، فَهِيَ الَّتِي أَمَرَ اللَّهُ تَعَالَى بِالْوَفَاءِ بِهَا، كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ» وَقَالَ - عَلَيْهِ السَّلَامُ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ»

L40409 And if they say: Allah, the Exalted, said, *"There is no compulsion in religion"* [Al-Baqarah: 256], we say: Yes, we do not compel them to Islam, nor to prayer, nor to Zakāh, nor to fasting, nor to Ḥajj. But whenever a ruling applies to them, we judge in it according to the ruling of Islam, in accordance with the command of Allah, the Exalted: *"And judge between them by what Allah has revealed, and do not follow their desires, and beware of them lest they tempt you away from some of what Allah has revealed to you"* [Al-Mā'idah: 49].[57]

وَإِنْ قَالُوا: قَالَ اللَّهُ تَعَالَى {لا إِكْرَاهَ فِي الدِّينِ} [البقرة: ٢٥٦] قُلْنَا: نَعَمْ، مَا نُكْرِهُهُمْ عَلَى الْإِسْلَامِ، وَلَا عَلَى الصَّلَاةِ، وَلَا عَلَى الزَّكَاةِ، وَلَا عَلَى الصِّيَامِ، وَلَا الْحَجِّ، لَكِنْ مَتَى كَانَ لَهُمْ حُكْمٌ حَكَمْنَا فِيهِ بِحُكْمِ الْإِسْلَامِ، لِقَوْلِ اللَّهِ تَعَالَى {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلا تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ أَنْ يَفْتِنُوكَ عَنْ بَعْضِ مَا أَنْزَلَ اللَّهُ إِلَيْكَ} [المائدة: ٤٩]

L40410 And Allah, the Exalted, said: "Do they seek the judgment of Jahiliyyah? And who is better than Allah in judgment for a people certain in faith?" [Al-Ma'idah: 50]. Thus, Allah, the Exalted, decreed through the words of His Messenger—peace be upon him—that you must not follow their desires. For

وَقَالَ تَعَالَى {أَفَحُكْمَ الْجَاهِلِيَّةِ يَبْغُونَ وَمَنْ أَحْسَنُ مِنَ اللَّهِ حُكْمًا لِقَوْمٍ يُوقِنُونَ} [المائدة: ٥٠] ؟ فَافْتَرَضَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - أَنْ لَا نَتَّبِعَ أَهْوَاءَهُمْ، فَمَنْ تَرَكَهُمْ وَأَحْكَامَهُمْ: فَقَدْ اتَّبَعَ أَهْوَاءَهُمْ، وَخَالَفَ أَمْرَ اللَّهِ تَعَالَى فِي الْقُرْآنِ

[56] **Hadith references (L40406):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[57] **Qur'an references (L40409):** Qur'an 2:256 (Al-Baqarah); Qur'an 5:49 (Al-Ma'idah).

whoever abandons them and their rulings, by doing so, has indeed followed their desires and opposed the command of Him, the Exalted, in the Quran.[58]

The Juridical Issue Regarding the Hadd for Slaves.

[مَسْأَلَة حَدُّ الْمَمَالِيكِ]

2188 - Issue: What is the ḥadd punishment for slaves (mamālīk)? Abu Muhammad—may Allah have mercy on him—said: All ḥudūd penalties are of four categories, with no fifth: either death by crucifixion, killing by the sword, stoning with stones, and what is similar to it—or exile—or amputation—or flogging.

٢١٨٨ - مَسْأَلَةٌ: حَدُّ الْمَمَالِيكِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: الْحُدُودُ كُلُّهَا أَرْبَعَةُ أَقْسَامٍ لَا خَامِسَ لَهَا: إمَّا إمَاتَةٌ بِصَلْبٍ، أَوْ بِقَتْلٍ بِسَيْفٍ، أَوْ بِرَجْمٍ بِالْحِجَارَةِ، وَمَا جَرَى مَجْرَاهَا - وَإِمَّا نَفْيٌ - وَإِمَّا قَطْعٌ - وَإِمَّا جَلْدٌ

The textual evidence is supported by the consensus of the entire Ummah that the punishment for a female slave—in certain aspects of flogging (specifically adultery while being *muḥṣan* [married])—is half the punishment prescribed for a free man and free woman in that case.

وَجَاءَ النَّصُّ وَإِجْمَاعُ الْأُمَةِ كُلِّهَا عَلَى أَنَّ حَدَّ الْمَمْلُوكَةِ الْأُنْثَى فِي بَعْضِ وُجُوهِ الْجَلْدِ - وَهُوَ الزِّنَى مَعَ الْإِحْصَانِ خَاصَّةً -: نِصْفُ حَدِّ الْحُرِّ وَالْحُرَّةِ فِي ذَلِكَ

They all unanimously agreed in accordance with the text that the prescribed punishment for bondservants in cases of killing and crucifixion is the same as that for free persons. The text also explicitly stipulates exile, for which there is no other ruling.

وَاتَّفَقُوا كُلُّهُمْ مَعَ النَّصِّ: أَنَّ حَدَّ الْمَمَالِيكِ فِي الْقَتْلِ وَالصَّلْبِ كَحَدِّ الْأَحْرَارِ - وَجَاءَ النَّصُّ أَيْضًا فِي النَّفْيِ الَّذِي لَيْسَ لَهُ أَمْرٌ سِوَاهُ

They differed regarding what remains beyond that according to what we will mention, if God, the Exalted, wills: A group maintained that the prescribed punishment for female slaves and male slaves—in matters other than those we have specified, and we exclude nothing—is exactly identical to that for free individuals. This is the opinion of our companions.

وَاخْتَلَفُوا فِيمَا عَدَا ذَلِكَ عَلَى مَا نَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى: فَذَهَبَتْ طَائِفَةٌ إلَى أَنَّ حَدَّ الْإِمَاءِ، وَالْعَبِيدِ - فِيمَا عَدَا مَا ذَكَرْنَا، وَلَا نُحَاشَ شَيْئًا - كَحَدِّ الْأَحْرَارِ سَوَاءً سَوَاءً، وَهُوَ قَوْلُ أَصْحَابِنَا

A group maintained that the ḥadd punishment for male slaves and female slaves—in all instances of flogging—amounts to half that of free men and free women, while the ḥadd punishment for male and female slaves in cases of amputation equals that of free men and free women. The group differed. These are: a group holds the opinion regarding freemen but does not hold it regarding slaves, women, female slaves, and free women.

وَقَالَتْ طَائِفَةٌ: حَدُّ الْعَبِيدِ، وَالْإِمَاءِ - فِي الْجَلْدِ كُلِّهِ - عَلَى النِّصْفِ مِنْ حَدِّ الْأَحْرَارِ وَالْحَرَائِرِ - وَحَدُّ الْعَبِيدِ، وَالْإِمَاءِ فِي الْقَطْعِ كَحَدِّ الْأَحْرَارِ وَالْحَرَائِرِ - فَاخْتَلَفَ هَؤُلَاءِ: فَطَائِفَةٌ تَقُولُ بِهِ فِي الْأَحْرَارِ، وَلَا تَقُولُ بِهِ فِي الْعَبِيدِ، وَالنِّسَاءِ، وَالْإِمَاءِ، وَالْحَرَائِرِ

As for those who uphold temporary exile in general, they disagreed—with one group ruling that the ḥadd punishment for enslaved women and men

فَالَّذِينَ يَقُولُونَ بِالنَّفْيِ الْمُؤَقَّتِ جُمْلَةً اخْتَلَفُوا: فَطَائِفَةٌ جَعَلَتْ حَدَّ الْإِمَاءِ وَالْعَبِيدِ فِيهِ نِصْفَ حَدِّ الْحُرِّ وَالْحُرَّةِ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَصْحَابِهِ

[58] **Qur'an references (L40410):** Qur'an 5:50 (Al-Ma'idah).

in this case is half that of free individuals and free women, this being the opinion of al-Shāfiʿī and his companions.

وَطَائِفَةٌ جَعَلَتْ فِيهِ حَدَّ الْإِمَاءِ خَاصَّةً عَلَى النِّصْفِ مِنْ حَدِّ الْحَرَائِرِ، وَجَعَلَتْ فِيهِ حَدَّ الْعَبِيدِ كَحَدِّ الْأَحْرَارِ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا

L40420 A group held in it that the prescribed punishment for female slaves specifically be half that of free women, and they held that the prescribed punishment for male slaves be like that for free men - this being the opinion of Abū Sulaymān and our companions.

أَمَّا الطَّائِفَةُ الَّتِي لَا تَقُولُ بِالنَّفْيِ الْمُؤَقَّتِ، فَهُمْ: أَبُو حَنِيفَةَ، وَأَصْحَابُهُ

L40421 As for the group that does not uphold the principle of temporary negation, they are Imam Abū Ḥanīfa and his companions.

وَأَمَّا الطَّائِفَةُ الَّتِي قَالَتْ بِهِ فِي الْأَحْرَارِ خَاصَّةً، وَلَمْ يَقُولُوا بِهِ فِي الْعَبِيدِ، وَلَا فِي الْإِمَاءِ، وَلَا فِي الْحَرَائِرِ، فَهُمْ: مَالِكٌ، وَأَصْحَابُهُ

L40422 As for the group that held this opinion regarding free people specifically, and did not hold it for male slaves, female slaves, nor even free women - they are Mālik and his companions.

وَقَالَتْ طَائِفَةٌ: حَدُّ الْعَبِيدِ، وَالْإِمَاءِ فِي جَلْدِ الزِّنَى عَلَى نِصْفِ حَدِّ الْأَحْرَارِ وَالْحَرَائِرِ، وَحَدُّ الْعَبِيدِ، وَالْإِمَاءِ فِي الْقَذْفِ كَحَدِّ الْحُرِّ، وَالْحُرَّةِ - وَهُوَ قَوْلٌ رُوِيَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَغَيْرِهِ

L40423 A group of scholars holds the opinion: The ḥadd punishment for male and female slaves in cases of adultery involving flogging is half that of free men and women, and their ḥadd punishment in cases of qadhf (false accusation of adultery) is equivalent to that of a free man and woman. This is an opinion reported from ʿUmar ibn ʿAbd al-ʿAzīz and others.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالَّذِي نَقُولُ بِهِ إنَّهُ حَدُّ الْمَمَالِيكِ ذُكُورِهِمْ، وَإِنَاثِهِمْ فِي الْجَلْدِ، وَالنَّفْيِ الْمُؤَقَّتِ، وَالْقَطْعِ: عَلَى النِّصْفِ مِنْ حَدِّ الْحُرِّ وَالْحُرَّةِ - وَهُوَ كُلُّ مَا يُمْكِنُ أَنْ يَكُونَ لَهُ نِصْفٌ

L40424 Abū Muḥammad—may Allah have mercy on him—said: "The position we uphold is that the hadd punishment for male and female slaves in flogging, temporary exile, or amputation: half that of a free man or free woman. This applies to everything for which a half is possible."

وَأَمَّا مَا لَا يُمْكِنُ أَنْ يَكُونَ لَهُ نِصْفٌ مِنْ الْقَتْلِ بِالسَّيْفِ، أَوْ الصَّلْبِ، أَوْ النَّفْيِ الَّذِي لَا وَقْتَ لَهُ: فَالْمَمَالِيكُ، وَالْأَحْرَارُ فِيهِ سَوَاءٌ

L40425 As for what cannot have half—such as killing by the sword, crucifixion, or exile without a specified time—slaves and free persons are equal in this matter.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَأَمَّا أَقْوَالُ مَنْ ذَكَرْنَا فَالتَّنَاقُضُ فِيهَا ظَاهِرٌ لَا خَفَاءَ بِهِ، وَمَا نَعْلَمُ لَهُمْ شُبْهَةً أَصْلًا، وَسَنَذْكُرُ أَقْوَالَهُمْ إنْ شَاءَ اللَّهُ تَعَالَى - إلَّا أَنْ يَقُولَ قَائِلٌ: إنَّ الْقَطْعَ لَا يُمْكِنُ تَنْصِيفُهُ، فَهُوَ خَطَأٌ مِنْ قِبَلِ الْآثَارِ، وَمِنْ قِبَلِ الْحِسِّ وَالْمُشَاهَدَةِ

L40426 Abū Muḥammad—may Allāh have mercy on him—said: As for the statements of those we have mentioned, the contradiction within them is evident with no concealment. We do not recognize any valid doubt in their positions whatsoever, and we shall mention their statements—Allāh Exalted willing—except if someone were to say: "Amputation cannot be divided into halves,"

for this is erroneous in terms of transmitted traditions, sensory evidence, and observable reality.

فَأَمَّا مِنْ قِبَلِ الْحِسِّ وَالْمُشَاهَدَةِ: فَإِنَّ الْيَدَ مَعْرُوفَةُ الْمِقْدَارِ، فَقَطْعُ نِصْفِهَا مُمْكِنٌ ظَاهِرٌ بِالْعِيَانِ - وَهُوَ قَطْعُ الْأَنَامِلِ فَقَطْ وَيَبْقَى الْكَفُّ - وَقَدْ وَجَدْنَاهُمْ يُوقِعُونَ عَلَى الْأَنَامِلِ خَاصَّةً حُكْمَ الْيَدِ، فَلَا يَخْتَلِفُونَ فِيمَنْ قُطِعَتْ أَنَامِلُهُ كُلُّهَا أَنَّ لَهُ دِيَةَ يَدٍ، فَمَنْ قَطَعَ الْأَنَامِلَ خَاصَّةً فَقَدْ وَافَقَ النَّصَّ، لِأَنَّهُ قَطَعَ مَا يَقَعُ عَلَيْهِ اسْمُ يَدٍ - كَمَا أَمَرَهُ اللَّهُ تَعَالَى - وَقَطَعَ نِصْفَ مَا يُقْطَعُ مِنْ الْحُرِّ، كَمَا جَاءَ النَّصُّ أَيْضًا عَلَى مَا نَذْكُرُهُ - وَكَذَلِكَ الرِّجْلُ أَيْضًا لَهَا مِقْدَارٌ مَعْرُوفٌ، فَقَطْعُ نِصْفِهَا مُمْكِنٌ - وَهُوَ قَطْعُهَا مِنْ وَسَطِهَا مَعَ السَّاقِ فَقَطْ

L40427–40429 As for the perspective of sensory perception and observation: the hand has a known defined quantity, so cutting half of it is possible and evident through direct observation—meaning cutting only the fingers while leaving the palm (excluding the fingers) intact. We have found the jurists applying the ruling of the hand specifically to the fingers, and they do not differ concerning someone whose fingers are all cut off—agreeing that he is entitled to the *diya* of a hand. Thus, whoever cuts off specifically the fingers has adhered to the divine textual ruling, because he has cut off what is termed a hand—as Allah, the Exalted, has commanded him. Half of what is amputated from a free person is amputated, as the text explicitly stipulates what we will mention. Similarly, the leg has a defined measurement, so amputating half of it is feasible—specifically cutting it from the middle along with the shin only.

وَأَمَّا مِنْ طَرِيقِ الْآثَارِ: فَحَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يَقْطَعُ الْيَدَ مِنْ الْأَصَابِعِ وَالرِّجْلَ مِنْ نِصْفِ الْقَدَمِ

L40430 As for transmitted reports via narrational chains: Hammām narrated to us via Ibn Mufarrij, via Ibn al-Aʿrabī, via al-Dabarī, via ʿAbd al-Razzāq, from Maʿmar, from Qatādah, that ʿAlī ibn Abī Ṭālib would amputate the hand from the fingers and the foot from the midfoot.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي الْمِقْدَامِ، قَالَ: أَخْبَرَنِي مَنْ رَأَى عَلِيَّ بْنَ أَبِي طَالِبٍ يَقْطَعُ يَدَ رَجُلٍ مِنْ الْمِفْصَلِ

L40431 And with him: to Abd al-Razzaq from Sufyan al-Thawri from Abu al-Miqdam, who said: “Someone who saw Ali ibn Abi Talib informed me that he had cut off a man’s hand from the wrist joint.”

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ دِينَارٍ، قَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ يَقْطَعُ الْقَدَمَ مِنْ مِفْصَلِهَا، وَكَانَ عَلِيٌّ يَقْطَعُ الْقَدَمَ - قَالَ ابْنُ جُرَيْجٍ: أَشَارَ لِي عَمْرٌو إلَى شَطْرِهَا

L40432 And through him—to Abd al-Razzaq from Ibn Jurayj from Amr ibn Dinar, who said: Umar ibn al-Khattab would cut the foot at its ankle joint, while Ali would cut the foot. Ibn Jurayj said: Amr gestured to me toward the mid part of the foot.

L40433 Abu Muhammad—may Allah have mercy on him—said: Since there exists an explicit textual ruling from Ali—may Allah be pleased with him—regarding amputating the hand at the wrist joint and amputating it from the fingers,

it is obligatory to interpret this in opposition to an irrational contradiction. Rather, this applies to two distinct scenarios. The same opinion holds for the foot as well.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ قَدْ جَاءَ النَّصُّ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - قَطْعُ الْيَدِ مِنْ الْمَفْصَلِ، وَقَطْعُهَا مِنْ الْأَصَابِعِ: فَالْوَاجِبُ حَمْلُ ذَلِكَ عَلَى خِلَافِ التَّنَاقُضِ الَّذِي لَا وَجْهَ لَهُ، لَكِنْ عَلَى أَنَّ ذَلِكَ فِي حَالَيْنِ مُخْتَلِفَيْنِ، وَهَكَذَا الْقَوْلُ فِي الْقَدَمِ أَيْضًا

L40434 Abū Muḥammad—may Allah have mercy on him—said: These people claim adherence to analogy, yet it is firmly established through textual evidence and consensus that the legal punishment for a married enslaved woman in adultery is half that of a married free woman. Similarly, it is established through textual evidence and consensus that the punishment for an enslaved man in cases of killing by the sword, crucifixion, and indefinite exile equals that of a free man. Thus, according to their foundational principles—to which they subscribe in advocating analogy—they ought to resolve disputed cases of amputation by aligning them with the category (free or enslaved) most analogous to the case.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَقَدْ صَحَّ النَّصُّ وَالْإِجْمَاعُ عَلَى أَنَّ حَدَّ الْأَمَةِ الْمُحْصَنَةِ فِي الزِّنَى نِصْفُ حَدِّ الْحُرَّةِ الْمُحْصَنَةِ، وَصَحَّ النَّصُّ وَالْإِجْمَاعُ أَنَّ حَدَّ الْعَبْدِ فِي الْقَتْلِ بِالسَّيْفِ، وَالصَّلْبِ: كَحَدِّ الْحُرِّ - وَكَذَلِكَ فِي النَّفْيِ غَيْرِ الْمُؤَقَّتِ، فَكَانَ يَلْزَمُهُمْ عَلَى أُصُولِهِمْ الَّتِي يَنْتَمُونَ إلَيْهَا فِي الْقَوْلِ بِالْقِيَاسِ عَلَى أَنْ يَجْعَلُوا مَا اُخْتُلِفَ فِيهِ مِنْ الْقَطْعِ مَرْدُودًا إلَى أَشْبَهِ الْجِنْسَيْنِ بِهِ

L40435 This is their foundational principle upon which they have concurred regarding legal analogy. When they adhere to this, it becomes obligatory to analogize amputation to flogging—not to capital punishment nor to indefinite exile. This is because killing cannot be halved, and similarly indefinite exile admits no division.

فَهَذِهِ عُمْدَتُهُمْ الَّتِي اتَّفَقُوا عَلَيْهَا فِي الْقِيَاسِ، فَإِذَا فَعَلُوا هَذَا وَجَبَ أَنْ يَكُونَ الْقَطْعُ مَقِيسًا عَلَى الْجَلْدِ، لَا عَلَى الْقَتْلِ، وَلَا عَلَى النَّفْيِ غَيْرِ الْمُؤَقَّتِ، وَذَلِكَ أَنَّ الْقَتْلَ لَا يَتَنَصَّفُ، وَكَذَلِكَ النَّفْيُ غَيْرُ الْمُؤَقَّتِ

L40436 As for flogging, it is halved, and amputation is halved. Thus, analogizing what is halved to something else halved is more appropriate than analogizing what is halved to what is not halved. This is the most valid analogy, if analogy were ever valid.

وَأَمَّا الْجَلْدُ فَيَتَنَصَّفُ وَالْقَطْعُ يَتَنَصَّفُ فَكَانَ قِيَاسُ مَا يَتَنَصَّفُ عَلَى مَا يَتَنَصَّفُ أَوْلَى مِنْ قِيَاسِ مَا يَتَنَصَّفُ عَلَى مَا لَا يَتَنَصَّفُ - هَذَا أَصَحُّ قِيَاسٍ لَوْ صَحَّ شَيْءٌ مِنْ الْقِيَاسِ يَوْمًا مَا

L40437–40439 Abu Muhammad—may Allah have mercy on him—said: We examined that so that the truth might become evident from it, and so that we may follow it. We found them claiming: Allah the Exalted states concerning female slaves, {If they commit indecency after being chaste, then upon them is half the punishment prescribed for chaste women} [An-Nisa: 25]. This ruling from Allah the Exalted cannot be contravened. He further declares, {The adulteress and the adulterer—flog each of them with a hundred lashes} [An-

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي ذَلِكَ لِيَلُوحَ الْحَقُّ مِنْ ذَلِكَ فَنَتَّبِعَهُ فَوَجَدْنَاهُمْ يَقُولُونَ: قَالَ اللَّهُ تَعَالَى فِي الْإِمَاءِ {فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥] فَكَانَ هَذَا مِنْ اللَّهِ تَعَالَى لَا يَحِلُّ خِلَافُهُ، وَقَالَ تَعَالَى {الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ} [النور: ٢] وَلَمْ يَخُصَّ اللَّهُ

Nur: 2]. In this verse, Allah the Exalted specified only female slaves, not male slaves. {Your Lord is never forgetful} [Maryam: 64]. He retained male slaves under the general ruling without specifying them as He explicitly specified female slaves. It is absurd to claim that Allah the Exalted intended to include male slaves in such specification alongside female slaves, yet mentioned only female slaves while withholding mention of male slaves—thereby imposing on us knowledge of the unseen and knowledge of what He has not informed us of. Far removed is Allah the Exalted from such a thing.[59]

L40440 Similarly, Allah, the Mighty and Sublime, said: "And those who accuse chaste women and then do not produce four witnesses—flog them eighty lashes" [an-Nur 24:4]. He, the Exalted, did not distinguish here between a female slave and a free woman, or between a slave and a free man.[60]

L40441 Among the falsehood is to claim that God Almighty intended male and female slaves not to receive eighty lashes for false accusation of unlawful sexual intercourse (qadhf) – with their punishment being less than that – then commanded us to lash those who commit false accusation eighty lashes without clarifying this distinction to us: Does this apply to a free man but not a slave? To a free woman but not a female slave? This contradicts His statement, the Exalted: {We have neglected nothing in the Book} [6:38].[61]

L40442 And the saying of the Most High, *as an explanation of all things* [Surah An-Nahl (16:89)].[62]

L40443 And Allah, the Most High, has said: "These are the limits of Allah, so do not transgress them." [Al-Baqarah: 229][63]

L40444 The punishment for false accusation (qadhf) is among the ḥudūd (prescribed limits) decreed by Allah the Exalted, and the punishment for fornication (zinā)

تَعَالَى مِنْ ذَلِكَ إِلَّا الْإِمَاءَ فَقَطْ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَأَبْقَى الْعَبِيدَ فَلَمْ يَخُصَّ كَمَا خَصَّ الْإِمَاءَ " وَمِنْ الْبَاطِلِ أَنْ يُرِيدَ اللَّهُ تَعَالَى أَنْ يَخُصَّ الْعَبِيدَ مَعَ الْإِمَاءِ فَيَقْتَصِرَ عَلَى ذِكْرِ الْإِمَاءِ وَيُمْسِكَ عَنْ ذِكْرِ الْعَبِيدِ وَيُكَلِّفَنَا مِنْ ذَلِكَ عِلْمَ الْغَيْبِ وَمَعْرِفَةَ مَا عِنْدَهُ مِمَّا لَمْ يُعَرِّفْنَا بِهِ، حَاشَا لِلَّهِ تَعَالَى مِنْ هَذَا

وَكَذَلِكَ قَالَ اللَّهُ عَزَّ وَجَلَّ {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً} [النور: ٤] فَلَمْ يَخُصَّ تَعَالَى هَاهُنَا أَمَةً مِنْ حُرَّةٍ، وَلَا عَبْدًا مِنْ حُرٍّ

وَمِنْ الْبَاطِلِ أَنْ يُرِيدَ اللَّهُ تَعَالَى أَنْ لَا تُجْلَدَ الْعَبِيدُ وَالْإِمَاءُ فِي الْقَذْفِ ثَمَانِينَ جَلْدَةً، وَيَكُونُ أَقَلَّ مِنْ ذَلِكَ، ثُمَّ يَأْمُرُنَا بِجَلْدِ مَنْ قَذَفَ ثَمَانِينَ جَلْدَةً، وَلَا يُبَيِّنُ ذَلِكَ لَنَا، أَفِي حُرٍّ دُونَ عَبْدٍ؟ وَفِي حُرَّةٍ دُونَ أَمَةٍ؟ وَهَذَا خِلَافُ قَوْلِهِ تَعَالَى {مَا فَرَّطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ} [الأنعام: ٣٨]

وقَوْلِهِ تَعَالَى {تِبْيَانًا لِكُلِّ شَيْءٍ} [النحل: ٨٩]

وَقَدْ قَالَ اللَّهُ تَعَالَى {تِلْكَ حُدُودُ اللَّهِ فَلا تَعْتَدُوهَا} [البقرة: ٢٢٩]

فَكَانَ حَدُّ الْقَذْفِ مِنْ حُدُودِ اللَّهِ تَعَالَى، وَحَدُّ الزِّنَى مِنْ حُدُودِ اللَّهِ تَعَالَى فَلَا يَحِلُّ أَنْ يَتَعَدَّى مَا حَدَّ اللَّهُ تَعَالَى مِنْهَا؟ وَحَدَّ اللَّهُ تَعَالَى فِي الْقَذْفِ ثَمَانِينَ، وَفِي الزِّنَى مِائَةً، فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَتَعَدَّى مَا حَدَّ اللَّهُ تَعَالَى فِي أَحَدِهِمَا إلَى مَا حَدَّ اللَّهُ تَعَالَى فِي الْآخَرِ

[59] **Qur'an references (L40437):** Qur'an 4:25 (An-Nisa); Qur'an 24:2 (An-Nur); Qur'an 19:64 (Maryam).
[60] **Qur'an references (L40440):** Qur'an 24:4 (An-Nur).
[61] **Qur'an references (L40441):** Qur'an 6:38 (Al-An'am).
[62] **Qur'an references (L40442):** Qur'an 16:89 (An-Nahl).
[63] **Qur'an references (L40443):** Qur'an 2:229 (Al-Baqarah).

is likewise among His ḥudūd. Is it then permissible to transgress the limits Allah the Exalted has set among them? Allah the Exalted has decreed eighty for false accusation and one hundred for fornication. It is not permissible for anyone to extend the punishment Allah has decreed for one of these offenses to the other.

L40445 There is clear evidence beyond doubt that imposing one of the two parties upon the other—whether in the case of a male or female slave, or a free man or woman—constitutes a transgression of the boundaries of Allah and equating what Allah, the Exalted, has made distinct between them.

L40446–40448 And Allah, the Exalted, said, "The male thief and the female thief: cut off their hands" [Al-Mā'idah 5:38]. Then you said: Verily The free man, the male slave, and the female slave are equal. Where then has your qiyas vanished—the qiyas by which you contradicted the Qur'an regarding the punishment for the male slave slanderer and the female slave slanderer? From where did it become obligatory for you to deem it easy to oppose Allah's decree, "So lash them eighty lashes" [24:4], through qiyas based on His statement, "But if they are married, then if they commit an immorality, upon them is half the punishment prescribed for chaste free women" [4:25], while considering it grave to oppose His command, "Cut their hands" [5:38], through qiyas based on the aforementioned verse [4:25]? This is utterly astonishing! Our companions said: "We have found Allah the Most High declaring, 'As for the male thief and the female thief, cut their hands as a recompense for what they have earned' [5:38]. Thus, how could it be conceivable that Allah the Most High would intend for the ruling concerning male and female slaves in this matter to differ from that of free men and women—and then fail to clarify it? This is a matter we have firmly concluded that Allah the Most High neither imposes upon us nor desires from us!"[64]

L40449 They said: We established that the Messenger of Allah—peace be upon him—stated, "If he drinks intoxicants, lash him," and he implemented a fixed pun-

فَوَاضِحٌ بِلَا شَكٍّ أَنَّ حَمْلَ أَحَدِهِمَا عَلَى الْآخَرِ فِي عَبْدٍ، أَوْ أَمَةٍ، أَوْ حُرٍّ، أَوْ حُرَّةٍ: فَقَدْ تَعَدَّى حُدُودَ اللَّهِ، وَسَوَّى مَا خَالَفَ اللَّهُ تَعَالَى بَيْنَهُمَا

وَقَالَ اللَّهُ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] فَقُلْتُمْ: إِنَّ الْحُرَّ، وَالْعَبْدَ، وَالْأَمَةَ سَوَاءٌ، فَأَيْنَ زَهَقَ عَنْكُمْ قِيَاسُكُمْ الَّذِي خَالَفْتُمْ بِهِ الْقُرْآنَ فِي حَدِّ الْعَبْدِ الْقَاذِفِ، وَالْأَمَةِ الْقَاذِفَةِ؟ وَمِنْ أَيْنَ وَجَبَ أَنْ تَسْتَسْهِلُوا مُخَالَفَةَ قَوْلِ اللَّهِ تَعَالَى {فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً} [النور: ٤] قِيَاسًا عَلَى قَوْلِه تَعَالَى {فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥] وَعَظُمَ عِنْدَكُمْ أَنْ تُخَالِفُوا قَوْلَهُ {فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] قِيَاسًا عَلَى قَوْلِهِ {فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥] إِنَّ هَذَا لَعَجَبٌ جِدًّا؟ قَالَ أَصْحَابُنَا: وَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا} [المائدة: ٣٨] فَكَانَ مِنْ الْمُحَالِ أَنْ يُرِيدَ اللَّهُ تَعَالَى أَنْ يَكُونَ حُكْمُ الْعَبْدِ وَالْأَمَةِ فِي ذَلِكَ بِخِلَافِ حُكْمِ الْحُرِّ وَالْحُرَّةِ ثُمَّ لَا يُبَيِّنُهُ؟ هَذَا أَمْرٌ قَدْ تَيَقَّنَّا أَنَّ اللَّهَ تَعَالَى لَا يُكَلِّفُنَا إيَّاهُ، وَلَا يُرِيدُهُ مِنَّا؟

[64] **Qur'an references (L40446):** Qur'an 5:38 (Al-Ma'idah); Qur'an 24:4 (An-Nur); Qur'an 4:25 (An-Nisa).

ishment for consuming intoxicants through lashing, without distinguishing—peace be upon him—in that ruling between a free man and a slave, nor between a free woman and a slave woman—is this not the ruling clarified by Allah, the Exalted?

قَالُوا: وَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إذَا شَرِبَ فَاجْلِدُوهُ» وَجَلَدَ فِي الْخَمْرِ حَدًّا مُؤَقَّتًا وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - بِذَلِكَ الْحُكْمِ حُرًّا مِنْ عَبْدٍ، وَلَا حُرَّةً مِنْ أَمَةٍ - وَهُوَ الْمُبَيِّنُ عَنْ اللَّهِ تَعَالَى؟

L40450 Abū Muḥammad—may Allāh have mercy on him—said: All that our companions have mentioned is true and sound if a firmly established Sunnah does not come demonstrating the soundness of what we have held. As for when an authentic Sunnah comes that establishes what we have stated, then it is obligatory to restrict oneself to what the Sunnah of the Messenger of Allāh—peace and blessings of Allāh be upon him, who elucidates for us the intent of our Lord, the Exalted—has brought. We examined this matter and found the narration transmitted by ʿAbdullāh ibn Rabīʿ: Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us, Muḥammad ibn Ismāʿīl ibn Ibrāhīm ibn ʿUlayyah narrated to us, Yazīd ibn Hārūn narrated to us, Ḥammād ibn Salamah narrated from Ayyūb al-Sikhtiyānī, from ʿIkrimah, from Ibn ʿAbbās, from the Prophet—peace and blessings of Allāh be upon him—who said: "When a mukātab is subject to a legal punishment or inheritance, he inherits according to the proportion of his emancipation, and the legal punishment is imposed upon him according to the proportion of his emancipation."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: كُلُّ مَا ذَكَرَهُ أَصْحَابُنَا فَهُوَ حَقٌّ صَحِيحٌ - إنْ لَمْ تَأْتِ سُنَّةٌ ثَابِتَةٌ تُبَيِّنُ صِحَّةَ مَا ذَهَبْنَا إلَيْهِ - وَأَمَّا إنْ جَاءَتْ سُنَّةٌ صَحِيحَةٌ تُوجِبُ مَا قُلْنَاهُ، فَالْوَاجِبُ الْوُقُوفُ عِنْدَ مَا جَاءَتْ بِهِ السُّنَّةُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُبَيِّنِ لَنَا مُرَادَ رَبِّنَا تَعَالَى، فَنَظَرْنَا فِي ذَلِكَ: فَوَجَدْنَا مَا ثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ إسْمَاعِيلَ بْنِ إبْرَاهِيمَ بْنِ عُلَيَّةَ نا يَزِيدُ بْنُ هَارُونَ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إذَا أَصَابَ الْمُكَاتَبُ حَدًّا أَوْ مِيرَاثًا وَرِثَ بِحِسَابِ مَا عَتَقَ مِنْهُ وَأُقِيمَ عَلَيْهِ الْحَدُّ بِحِسَابِ مَا عَتَقَ مِنْهُ»

L40451–40453 Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Muʿawiyah informed us: Ahmad ibn Shuʿayb informed us: Muhammad ibn ʿĪsa ad-Dimashqi informed us: Yazīd ibn Hārūn informed us: Ḥammād ibn Salamah informed us from Qatādah and Ayyūb as-Sikhtiyānī. Qatādah said from Khilās ibn ʿAmr reported from ʿAlī ibn Abī Ṭālib, and Ayyūb reported from ʿIkrimah from Ibn ʿAbbās. Then the narrations of ʿAlī and Ibn ʿAbbās converge, both tracing back to the Prophet (peace be upon him), who said: "A mukātab (a slave under a manumission contract) is freed in proportion to the amount he has paid toward it, the prescribed punishment (ḥadd) is imposed upon him in proportion to the portion of him that has been freed, and he inherits according to the same proportion."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عِيسَى الدِّمَشْقِيُّ نا يَزِيدُ بْنُ هَارُونَ أَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ وَأَيُّوبَ السِّخْتِيَانِيِّ قَالَ قَتَادَةُ عَنْ خِلَاسِ بْنِ عَمْرٍو عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَقَالَ أَيُّوبُ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ، ثُمَّ اتَّفَقَ عَلِيٌّ، وَابْنُ عَبَّاسٍ، كِلَاهُمَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الْمُكَاتَبُ يُعْتَقُ مِنْهُ بِقَدْرِ مَا أَدَّى وَيُقَامُ عَلَيْهِ الْحَدُّ بِقَدْرِ مَا عَتَقَ مِنْهُ وَيَرِثُ بِقَدْرِ مَا عَتَقَ مِنْهُ» .

L40454 Abū Muḥammad—may Allāh have mercy on him—said: "This is a remark-

able chain of transmission, as though illuminated by the radiance of the forenoon sun. We know of no one who criticized it in any way except some who claimed that Wuhaib transmitted it as mursal." Abū Muḥammad—may Allāh have mercy on him—said: "So what if Wuhaib transmitted it as mursal? He established a connected chain for the ruling concerning the mukatab (a contracted slave) regarding what we mentioned, and [the ruling] on the mukatab's blood money. Ḥammād ibn Salamah and Ḥammād ibn Zayd narrated it from Ayyūb, while ʿAlī ibn al-Mubārak and Yaḥyā ibn Abī Kathīr established a connected chain through ʿIkrimah, from Ibn ʿAbbās, from the Prophet—may Allāh's blessings and peace be upon him and his family."

L40455 Moreover, the Ḥanafīs and Mālikīs are in agreement that the *mursal* (a ḥadīth with a disconnected chain) is equivalent to the *musnad* (a ḥadīth with a continuous chain), with no distinction. According to their view, the *mursal* narration by Wuhaib ibn Khālid only adds strength. Since it has been authenticated and established, it necessarily obligates—by the explicit ruling of the Messenger of Allah (peace be upon him)—that the prescribed punishments for slaves, as a whole and generally for their males and females, differ universally from the prescribed punishments for free individuals, generally for their males and females. Since this is so, there is no valid opinion for anyone in the Ummah to claim that the punishment for slaves is half that of free individuals. Thus, this position becomes obligatory to uphold, and this is the view we maintain—with success granted by Allah, the Exalted.

L40456 **Issue: Does a master implement the Hudud upon his bondservants, or not?**

L40457 2189 - Issue: Should a master implement the prescribed punishments upon his slaves or not? Abū Muḥammad (may Allāh have mercy on him) said: People differed regarding this. A group maintained: The master implements all the prescribed punishments - from execution including those less severe - upon his slaves.

L40458 A group held the opinion that the master imposes hadd punishments on his slaves for fornication, drinking alcohol, and false accusation, but does not

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: هَذَا إسْنَادٌ عَجِيبٌ، كَأَنَّ عَلَيْهِ مِنْ شَمْسِ الضُّحَى نُورًا، مَا نَدْرِي أَحَدًا غَمَزَهُ بِشَيْءٍ إلَّا أَنَّ بَعْضَهُمْ ادَّعَى أَنَّ وُهَيْبًا أَرْسَلَهُ. قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَكَانَ مَاذَا إذَا أَرْسَلَهُ وُهَيْبٌ؟ قَدْ أَسْنَدَ حُكْمَ الْمُكَاتَبِ فِيمَا ذَكَرْنَا، وَفِي دِيَتِهِ حَمَّادُ بْنُ سَلَمَةَ، وَحَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ، وَأَسْنَدَهُ عَلِيُّ بْنُ الْمُبَارَكِ وَيَحْيَى بْنُ أَبِي كَثِيرٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

وَأَيْضًا: فَإِنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، مُتَّفِقُونَ عَلَى أَنَّ الْمُرْسَلَ كَالْمُسْنَدِ وَلَا فَرْقَ، فَعَلَى قَوْلِهِمْ مَا زَادَهُ إرْسَالُ وُهَيْبِ بْنِ خَالِدٍ إلَّا قُوَّةً، فَإِذْ قَدْ صَحَّ، وَثَبَتَ فَقَدْ وَجَبَ ضَرُورَةً بِنَصِّ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ حُدُودَ الْمَمَالِيكِ جُمْلَةً عُمُومًا لِذُكُورِهِمْ وَإِنَاثِهِمْ: مُخَالِفَةٌ لِحُكْمِ حُدُودِ الْأَحْرَارِ عُمُومًا لِذُكُورِهِمْ وَإِنَاثِهِمْ، وَإِذْ ذَلِكَ كَذَلِكَ فَلَا قَوْلَ لِأَحَدٍ مِنْ الْأُمَّةِ إلَى أَنَّ حَدَّ الْمَمَالِيكِ عَلَى النِّصْفِ مِنْ حُدُودِ الْأَحْرَارِ، فَكَانَ هَذَا وَاجِبًا الْقَوْلَ بِهِ، وَبِهَذَا نَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَة هَلْ يُقِيمُ السَّيِّدُ الْحُدُودَ عَلَى مَمَالِيكِهِ أَمْ لَا]

٢١٨٩ - مَسْأَلَةٌ: هَلْ يُقِيمُ السَّيِّدُ الْحُدُودَ عَلَى مَمَالِيكِهِ أَمْ لَا؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: يُقِيمُ السَّيِّدُ جَمِيعَ الْحُدُودِ مِنْ الْقَتْلِ فَمَا دُونَهُ عَلَى مَمَالِيكِهِ

impose the hadd punishment of amputation. They stated: He only imposes it when witnesses testify against the slave for that offense.

وَقَالَتْ طَائِفَةٌ: يَحُدُّ السَّيِّدُ مَمَالِيكَهُ فِي الزِّنَى، وَالْخَمْرِ، وَالْقَذْفِ، وَلَا يَحُدُّهُ فِي قَطْعٍ؟ قَالُوا: وَإِنَّمَا يَحُدُّهُ إِذَا شَهِدَ عَلَيْهِ بِذَلِكَ الشُّهُودُ

L40459 A group has opined that a master does not impose hadd punishments upon his slave in any matter whatsoever, for hadd punishments belong solely to the ruling authority.

وَقَالَتْ طَائِفَةٌ: لَا يَحُدُّ السَّيِّدُ مَمْلُوكَهُ فِي شَيْءٍ مِنَ الْأَشْيَاءِ، وَإِنَّمَا الْحُدُودُ إِلَى السُّلْطَانِ فَقَطْ

L40460–40462 The first opinion is narrated from Ḥumām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabari, from ʿAbd al-Razzāq. From Maʾmar, from Ayyub al-Sikhtiyani, from Nafiʿ: Ibn Umar cut off the hand of his young male slave who stole, and he flogged another slave of his who committed fornication, without bringing their cases to the authorities.

فَالْقَوْلُ الْأَوَّلُ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ قَطَعَ يَدَ غُلَامٍ لَهُ سَرَقَ، وَجَلَدَ عَبْدًا لَهُ زَنَى مِنْ غَيْرِ أَنْ يَرْفَعَهُمَا

L40463 And via him: to Abd al-Razzaq from Ubayd Allah ibn Umar from Nafiʿ from Ibn Umar, who said: A slave girl belonging to Hafsa had cast a spell on her and confessed to it. So Hafsa informed Abd al-Rahman ibn Zayd ibn al-Khattab about her, and he killed her. But Uthman ibn Affan objected to her for this action. Ibn Umar said to him: "Why do you object against the Mother of the Believers? A woman cast a spell and confessed!" Then Uthman remained silent.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: إِنَّ جَارِيَةً لِحَفْصَةَ سَحَرَتْهَا وَاعْتَرَفَتْ بِذَلِكَ، فَأَخْبَرَتْ بِهَا عَبْدَ الرَّحْمَنِ بْنَ زَيْدِ بْنِ الْخَطَّابِ، فَقَتَلَهَا، فَأَنْكَرَ ذَلِكَ عَلَيْهَا عُثْمَانُ بْنُ عَفَّانَ؟ فَقَالَ لَهُ ابْنُ عُمَرَ: مَا تُنْكِرُ عَلَى أُمِّ الْمُؤْمِنِينَ امْرَأَةٌ سَحَرَتْ فَاعْتَرَفَتْ؟ فَسَكَتَ عُثْمَانُ

L40464 And through him—to ʿAbd al-Razzaq, from ʿUbayd Allah ibn ʿUmar ibn Hafs ibn ʿAsim, from Nafiʿ, who said: A slave belonging to Ibn ʿUmar absconded. He passed by some servants of ʿA'ishah, the Mother of the Believers, stole a sack of dates from them, and rode their donkey to flee. He was brought to Ibn ʿUmar, who sent him to Saʿid ibn al-ʿAs—then governor of Medina. Saʿid said: "Shall a runaway slave's hand be cut off?" ʿA'ishah sent him a message: "My servant is your servant. He was merely hungry, and rode the donkey to escape. Do not cut his hand off." He said: So Ibn ʿUmar cut it off.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ بْنِ حَفْصِ بْنِ عَاصِمٍ عَنْ نَافِعٍ قَالَ: أَبَقَ غُلَامٌ لِابْنِ عُمَرَ فَمَرَّ عَلَى غِلْمَةٍ لِعَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَسَرَقَ مِنْهُمْ جِرَابًا فِيهِ تَمْرٌ، وَرَكِبَ حِمَارًا لَهُمْ فَأُتِيَ بِهِ ابْنُ عُمَرَ فَبَعَثَ بِهِ إِلَى سَعِيدِ بْنِ الْعَاصِ - وَهُوَ أَمِيرٌ عَلَى الْمَدِينَةِ - فَقَالَ سَعِيدٌ: لَا يُقْطَعُ غُلَامٌ أَبَقَ؟ فَأَرْسَلَتْ إِلَيْهِ عَائِشَةُ: إِنَّمَا غِلْمَتِي غِلْمَتُكَ، وَإِنَّمَا جَاعَ، وَرَكِبَ الْحِمَارَ لِيَبْلُغَ عَلَيْهِ، فَلَا تَقْطَعْهُ؟ قَالَ: فَقَطَعَهُ ابْنُ عُمَرَ

L40465 And from Ibrāhīm al-Nakhaʿī that al-Nuʿmān ibn Muqarrin said to Ibn Masʿūd: "My slave woman committed zinā." He [Ibn Masʿūd] said: "Lash her." He [al-Nuʿmān] said: "But she is not muhsan?" He [Ibn Masʿūd] replied: "Her iḥṣān is her Islam."

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّ النُّعْمَانَ بْنَ مُقَرِّنٍ قَالَ: لِابْنِ مَسْعُودٍ أَمَتِي زَنَتْ؟ قَالَ: اجْلِدْهَا، قَالَ: إِنَّهَا لَمْ تُحْصَنْ؟ قَالَ: إِحْصَانُهَا إِسْلَامُهَا

قَالَ شُعْبَةُ: أَنَا الْأَعْمَشُ عَنْ إِبْرَاهِيمَ بِهَذَا، وَفِيهِ: جَلَدَهَا خَمْسِينَ

L40466 Shuʿbah said: I am al-Aʿmash, from Ibrāhīm regarding this matter, and in the narration: he lashed her fifty lashes.

وَعَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ وَغَيْرِهِ، قَالُوا: إِنَّ الرَّجُلَ يَجْلِدُ مَمْلُوكَتَهُ الْحُدُودَ فِي بَيْتِهِ، وَأَنَّ النُّعْمَانَ بْنَ مُقَرِّنٍ سَأَلَ عَبْدَ اللَّهِ بْنَ مَسْعُودٍ قَالَ: أَمَتِي زَنَتْ؟ قَالَ: اجْلِدْهَا خَمْسِينَ، قَالَ إِنَّهَا لَمْ تُحْصَنْ؟ قَالَ ابْنُ مَسْعُودٍ: إِحْصَانُهَا إِسْلَامُهَا

L40467 From Abdullah ibn Mas'ud and others, they said: A man may administer the hadd punishments to his female slave in his home. Al-Nu'man ibn Muqarrin asked Abdullah ibn Mas'ud, saying: "Did my female slave commit adultery?" He replied: "Flog her fifty times." He said: "Was she not muhsan?" Ibn Mas'ud said: "Her being muhsan is due to her Islam."

وَعَنْ ابْنِ وَهْبٍ نا ابْنُ جُرَيْجٍ: أَنَّ عَمْرَو بْنَ دِينَارٍ أَخْبَرَهُ: أَنَّ فَاطِمَةَ بِنْتَ رَسُولِ اللَّهِ كَانَتْ تَجْلِدُ وَلِيدَتَهَا خَمْسِينَ إِذَا زَنَتْ

L40468 And from Ibn Wahb, Ibn Jurayj narrated to us that Amr ibn Dinar informed him that Fāṭimah, the daughter of the Messenger of Allah, would lash her enslaved woman (umm walad) fifty times if she committed zinā.

وَعَنْ أَنَسِ بْنِ مَالِكٍ: أَنَّهُ كَانَ يَجْلِدُ وَلَائِدَهُ خَمْسِينَ إِذَا زَنَيْنَ

L40469 From Anas ibn Mālik: that he would flog his concubines fifty lashes if they committed zinā.

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نا عَمْرُو بْنُ دِينَارٍ أَنَّ الْحَسَنَ بْنَ مُحَمَّدِ ابْنِ الْحَنَفِيَّةِ أَخْبَرَهُ: أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَلَدَتْ أَمَةً لَهَا الْحَدَّ زَنَتْ

L40470 Hummam narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrabī narrated to us: ad-Dabarī narrated to us: ʿAbd ar-Razzāq narrated to us: Ibn Jurayj narrated to us: ʿAmr ibn Dīnār narrated that al-Ḥasan ibn Muḥammad ibn al-Ḥanafiyya informed him that Fāṭimah, the daughter of Muḥammad (may the peace and blessings of Allāh be upon him), flogged her slave girl the prescribed punishment; she had committed fornication.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ عَلْقَمَةُ، وَالْأَسْوَدُ يُقِيمَانِ الْحَدَّ عَلَى جَوَارِي قَوْمِهِمَا قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَدْ رُوِيَ عَنْ بَعْضِ مَنْ ذَكَرْنَا، وَغَيْرِهِمْ: جَوَازُ عَفْوِ السَّيِّدِ عَنْ مَمَالِيكِهِ فِي الْحُدُودِ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ رَجُلٍ عَنْ سَلَّامِ بْنِ مِسْكِينٍ أَخْبَرَنِي عَنْ حَبِيبِ بْنِ أَبِي فَضَالَةَ أَنَّ صَالِحَ بْنَ كَرِيزٍ حَدَّثَهُ أَنَّهُ جَاءَ بِجَارِيَةٍ لَهُ زَنَتْ إِلَى الْحَكَمِ بْنِ أَيُّوبَ، قَالَ: فَبَيْنَمَا أَنَا جَالِسٌ إِذْ جَاءَ أَنَسُ بْنُ مَالِكٍ فَجَلَسَ فَقَالَ: يَا صَالِحُ مَا هَذِهِ الْجَارِيَةُ مَعَكَ؟ قُلْت: جَارِيَتُنَا بَغَتْ فَأَرَدْت أَنْ أَرْفَعَهَا إِلَى الْإِمَامِ لِيُقِيمَ عَلَيْهَا الْحَدَّ؟ قَالَ: لَا تَفْعَلْ، رُدَّ جَارِيَتَك، وَاتَّقِ اللَّهَ وَاسْتُرْ

L40471–40473 It is reported from Ibrāhīm al-Nakhaʿī that he said: Alqamah and al-Aswad, used to implement the prescribed punishment upon the captive women of their kinsfolk. Abū Muḥammad—may Allāh have mercy on him—said: It has been reported from some of those we mentioned and others that it is permissible for a master to pardon his slaves regarding the prescribed punishments. As narrated to us by Ḥummām, narrated to us by Ibn Mufarrij, narrated to us by Ibn al-Aʿrabī, narrated to us by al-Dabarī, narrated to us by ʿAbd al-Razzāq, from a man, from Sallām ibn Miskīn, who informed me from Ḥabīb ibn Abī Faḍālah that Ṣāliḥ ibn Kuraiz reported to him that he brought a slave girl of his who had committed unlawful intercourse to al-Ḥakam ibn Ayyūb. He said: While I was sitting, Anas ibn Mālik came and sat down. He said: "O Ṣāliḥ, what is this slave girl with you?" I said: "Our slave girl committed unlawful intercourse, and I intended to take her to the ruler so he could carry out the prescribed punishment upon her." He said:

"Do not do that. Return your slave girl, fear Allāh, and conceal her sin." I said: "I will not do so until I take her to the ruler." Anas said to him: "Do not do it, and obey me." Ṣāliḥ said: He persisted in urging me until I said to him: "I will return her provided you guarantee accountability for any sin incurred by me." Anas said: "Yes." He said: So I returned her.

عَلَيْهَا؟ قُلْت: مَا أَنَا بِفَاعِلٍ حَتَّى أَرْفَعَهَا، قَالَ لَهُ أَنَسٌ: لَا تَفْعَلْ وَأَطِعْنِي، قَالَ صَالِحٌ: فَلَمْ يَزَلْ يُرَاجِعُنِي حَتَّى قُلْت لَهُ: أَرُدُّهَا عَلَى أَنَّ مَا كَانَ عَلَيَّ مِنْ ذَنْبٍ فَأَنْتَ لَهُ ضَامِنٌ؟ فَقَالَ أَنَسٌ: نَعَمْ، قَالَ: فَرَدَدْتهَا

L40474 From Ibrahim al-Nakha'i concerning a female slave who commits adultery: he said, "She is to be lashed fifty times. If her master forgives her punishment, that is more preferable to us." 'Abd al-Razzaq said: "We adopt this view."

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ فِي الْأَمَةِ تَزْنِي، قَالَ: تُجْلَدُ خَمْسِينَ، فَإِنْ عَفَا عَنْهَا سَيِّدُهَا فَهُوَ أَحَبُّ إلَيْنَا، قَالَ عَبْدُ الرَّزَّاقِ: وَبِهِ نَأْخُذُ

L40475 Abū Muḥammad—may Allāh have mercy on him—said: These two narrations are discarded, for they are transmitted from unnamed narrators. As for one who differentiates between a woman with a husband and one without a husband.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَانِ أَثَرَانِ سَاقِطَانِ، لِأَنَّهُمَا عَمَّنْ لَمْ يُسَمَّ وَأَمَّا مَنْ فَرَّقَ بَيْنَ ذَاتِ الزَّوْجِ وَغَيْرِ ذَاتِ الزَّوْجِ

L40476 From Ḥumām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father, who said: Regarding the female slave who is not married, if she commits an immoral act, she is flogged half the punishment prescribed for free married women - her master flogs her. If she is among those who have husbands, her case is elevated to the Imam.

فَكَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: فِي الْأَمَةِ إذَا كَانَتْ لَيْسَتْ بِذَاتِ زَوْجٍ فَظَهَرَ مِنْهَا فَاحِشَةٌ جُلِدَتْ نِصْفَ مَا عَلَى الْمُحْصَنَاتِ مِنْ الْعَذَابِ يَجْلِدُهَا سَيِّدُهَا فَإِنْ كَانَتْ مِنْ ذَوَاتِ الْأَزْوَاجِ رُفِعَ أَمْرُهَا إلَى الْإِمَامِ

L40477 From Rabi'ah that he said: The marital status of a female slave is that she has a husband. If a lewd act is alleged against her, her master's word is not accepted, while the husband defends his child, her lineage, and what is in his possession. Thus, the lewd act is not established against her except by the testimony of four witnesses, and the prescribed punishment is not carried out against her when confirmed except by the governing authority. Allah the Exalted said: {But if they [female slaves] are married and commit a lewd act, they shall receive half the punishment prescribed for chaste women} [An-Nisā' 4:25].[65]

وَعَنْ رَبِيعَةَ أَنَّهُ قَالَ: إحْصَانُ الْمَمْلُوكَةِ أَنْ تَكُونَ ذَاتَ زَوْجٍ، فَيُذْكَرَ مِنْهَا فَاحِشَةٌ فَلَا يُصَدَّقُ عَلَيْهَا سَيِّدُهَا، وَالزَّوْجُ يَذُبُّ عَنْ وَلَدِهِ، وَعَنْ رَحِمِهَا، وَعَنْ مَا بِيَدِهِ، فَلَيْسَ يُقِيمُ الْفَاحِشَةَ عَلَيْهَا إلَّا بِشَهَادَةِ أَرْبَعَةٍ، وَلَا يُقِيمُ الْحَدَّ عَلَيْهَا إذَا ثَبَتَ إلَّا السُّلْطَانُ، قَالَ اللَّهُ تَعَالَى {فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥]

L40478–40480 As for those who differentiated between the flogging prescribed for adultery, consumption of intoxicants, and false accusation of unchastity, and the

وَأَمَّا مَنْ فَرَّقَ بَيْنَ الْجَلْدِ فِي الزِّنَى، وَالْخَمْرِ، وَالْقَذْفِ، وَبَيْنَ الْقَطْعِ فِي السَّرِقَةِ، فَهُوَ قَوْلُ مَالِكٍ، وَاللَّيْثِ: وَمَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُمَا قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا نَظَرْنَا

[65] **Qur'an references (L40477):** Qur'an 4:25 (An-Nisa).

cutting off of the hand prescribed for theft—this is the opinion of Mālik and al-Layth, and we do not know of anyone who held it before them. Abū Muḥammad—may Allāh have mercy on him—said: When they differed, we examined the matter to ascertain the truth so that we might follow it—by the grace of Allāh, the Exalted. We found Abū Ḥanīfah and his companions citing as evidence the report transmitted by ʿAbdullāh ibn Rabīʿ, from ʿAbdullāh ibn ʿUthmān, from Aḥmad ibn Khālid, from ʿAlī ibn ʿAbd al-ʿAzīz, from al-Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salamah, from Yaḥyā al-Bakkāʾ, from Muslim ibn Yasār, from Abū ʿAbdillāh—a man among the Companions of the Messenger of Allāh, peace and blessings be upon him and his family—who said: "Ibn ʿUmar used to instruct us to take from that scholar. He [Ibn ʿUmar] said: 'He is a scholar, so take from him.' I heard him [the endorsed scholar] say: 'Zakat, the ḥudūd, the fayʾ, and the Friday prayer are to be referred to the ruler.'"

فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ - بِمَنِّ اللَّهِ تَعَالَى - فَوَجَدْنَا أَبَا حَنِيفَةَ، وَأَصْحَابَهُ، يَحْتَجُّونَ بِمَا: ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ يَحْيَى الْبَكَّاءِ عَنْ مُسْلِمِ بْنِ يَسَارٍ عَنْ أَبِي عَبْدِ اللَّهِ - رَجُلٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: كَانَ ابْنُ عُمَرَ يَأْمُرُنَا أَنْ نَأْخُذَ عَنْهُ، قَالَ: هُوَ عَالِمٌ فَخُذُوا عَنْهُ، فَسَمِعْته يَقُولُ: الزَّكَاةُ، وَالْحُدُودُ، وَالْفَيْءُ، وَالْجُمُعَةُ، إلَى السُّلْطَانِ

L40481 From Al-Ḥasan al-Baṣrī: He guaranteed these four: the Jumuʿah Prayer, charity, Ḥudūd, and adjudication.

وَعَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّهُ ضَمِنَ هَؤُلَاءِ أَرْبَعًا: الْجُمُعَةُ، وَالصَّدَقَةُ، وَالْحُدُودُ، وَالْحُكْمُ

L40482 Ibn Muhayriz said: The ḥudūd, fayʾ, zakāh, and Friday prayer are delegated to the ruler.

وَعَنْ ابْنِ مُحَيْرِيزٍ أَنَّهُ قَالَ: الْحُدُودُ، وَالْفَيْءُ، وَالزَّكَاةُ، وَالْجُمُعَةُ، إلَى السُّلْطَانِ

L40483 Abū Muḥammad—may Allāh have mercy on him—said: We are unaware of any specious argument they have apart from this, and none of this constitutes valid evidence for them. This is because none of what they mentioned states that masters are exempt from enforcing prescribed penalties on their slaves. Rather, the texts only mention prescribed penalties in general as being under the authority of the ruler—and this is what we assert. However, it specifies from that general ruling that the enforcement of prescribed penalties for slaves is delegated to their masters, provided there is evidence—if such evidence exists.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا نَعْلَمُ لَهُمْ شُبْهَةً غَيْرَ هَذَا، وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِمَّا ذَكَرُوا: أَنْ لَا يُقِيمَ الْحُدُودَ عَلَى الْمَمَالِيكِ سَادَاتُهُمْ، وَإِنَّمَا فِيهِ ذِكْرُ الْحُدُودِ عُمُومًا إلَى السُّلْطَانِ، وَهَكَذَا نَقُولُ، لَكِنْ يَخُصُّ مِنْ ذَلِكَ حُدُودَ الْمَمَالِيكِ إلَى سَادَاتِهِمْ بِدَلِيلٍ - إنْ وُجِدَ

L40484 Moreover, even if there had been anything in what they mentioned, it would not constitute authoritative evidence, for there is no authoritative evidence in the words of anyone apart from the Messenger of Allah—may Allah bless him and his family and grant him peace.

ثُمَّ أَيْضًا - لَوْ كَانَ فِيمَا ذَكَرُوهُ لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

L40485 Abu Muhammad—may Allah have mercy on him—said: As for the opin-

ion of Mālik and al-Layth regarding differentiating between flogging, hand amputation, and execution, we do not know of any foundational proof for them whatsoever. Nor do we recognize any precedent for this differentiation from a Companion, a successor, or any basis in the Quran, an authentic Sunnah, or even a weak one. Perhaps some of them might argue: A slave-owning master may discipline his male and female slaves through flogging as a disciplinary measure, but he may not amputate their hands as a form of punishment. Since the prescribed punishment for adultery, alcohol consumption, and false accusation of adultery (qadhf) is flogging, this authority belongs to masters because it is a prescribed punishment (ḥadd) entailing flogging.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَأَمَّا قَوْلُ مَالِك، وَاللَّيْث، فِي التَّفْرِيقِ بَيْنَ الْجَلْدِ، وَالْقَطْعِ، وَالْقَتْلِ، فَلَا نَعْلَمُ لَهُمْ أَيْضًا حُجَّةً أَصْلًا، وَلَا نَدْرِي لَهُمْ فِي هَذَا التَّفْرِيقِ سَلَفًا مِنْ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا مُتَعَلَّقًا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَعَلَّ بَعْضَهُمْ أَنْ يَقُولَ: إنَّ السَّيِّدَ لَهُ جَلْدُ عَبِيدِهِ وَإِمَائِهِ أَدَبًا، وَلَيْسَ لَهُ قَطْعُ أَيْدِيهِمْ أَدَبًا، فَلَمَّا كَانَ الْحَدُّ فِي الزِّنَى، وَالْخَمْرِ، وَالْقَذْفِ جَلْدًا كَانَ ذَلِكَ لِلسَّادَاتِ، لِأَنَّهُ حَدٌّ، وَجَلْدٌ

L40486–40488 Abū Muḥammad—may Allāh have mercy on him—said: This statement is utterly corrupt due to the statement of the Messenger of Allāh—peace be upon him—"Indeed, only..." "Actions are by intentions, and every person shall have only what they intended. Thus, disciplinary flogging (taʿzīr) is categorically not the same as ḥadd flogging – and with Allah, the Most High, is success."

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَهَذَا الْقَوْلُ فِي غَايَةِ الْفَسَادِ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» فَجَلْدُ الْأَدَبِ هُوَ غَيْرُ جَلْدِ الْحَدِّ بِلَا شَكٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L40489 Then we examined the opinion of Rabi'ah and found it to be a statement unsupported by any evidence—neither from the Qur'an nor from an authentic Sunnah. As for Rabi'ah's opinion that the husband may act on her behalf, it is a very spurious argument. Allah the Exalted has not granted the husband the act of objecting nor repelling what the Sunnah has established as incumbent upon her.

ثُمَّ نَظَرْنَا فِي قَوْلِ رَبِيعَةَ، فَوَجَدْنَاهُ قَوْلًا لَا تُؤَيِّدُهُ حُجَّةٌ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ: أَمَّا قَوْلُ رَبِيعَةَ فَإِنَّ لِلزَّوْجِ أَنْ يَنُوبَ عَنْهَا فَحُجَّةٌ زَائِفَةٌ جِدًّا، وَمَا جَعَلَ اللَّهُ تَعَالَى لِلزَّوْجِ اعْتِرَاضًا، وَلَا ذَبًّا فِيمَا جَاءَتْ السُّنَّةُ بِإِقَامَتِهِ عَلَيْهَا

L40490 As for those who hold that a master may impose all ḥadd punishments upon his slaves, we examined this matter and found: ʿAbdullāh ibn Yūsuf narrated to us, Aḥmad ibn Fatḥ narrated to us, ʿAbd al-Wahhāb ibn ʿĪsā narrated to us, Aḥmad ibn Muḥammad narrated to us, Aḥmad ibn ʿAlī narrated to us, Muslim ibn al-Ḥajjāj narrated to us, ʿĪsā ibn Ḥammād al-Miṣrī narrated to us, al-Layth ibn Saʿd from Saʿīd ibn Abī Saʿīd al-Maqburī, from Abū Hurayrah, who said: "I heard the Messenger of Allah—peace and blessings of Allah be upon him—say: 'If a slave woman belonging to any of you commits adultery and her adultery is conclusively established, let him lash her with the ḥadd punishment and not reproach her. Then if she commits adultery again, let

وَأَمَّا مَنْ رَأَى السَّيِّدَ يُقِيمُ جَمِيعَ الْحُدُودِ عَلَى مَمَالِيكِهِ، فَنَظَرْنَا فِيهِ فَوَجَدْنَا: مَا نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا عِيسَى بْنُ حَمَّادٍ الْمِصْرِيُّ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ قَالَ: «سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ إذَا

him lash her with the ḥadd punishment and not reproach her. Then if she commits adultery a third time, let him sell her even for a rope made of hair.'"

L40491 From Muslim as well: Al-Qa'nabī reported from Mālik, from Ibn Shihāb, from 'Ubayd Allāh ibn 'Utbah, from Abū Hurayrah that the Messenger of Allāh—peace and blessings be upon him—was asked about a female slave who commits adultery if she is not a muḥṣanah (a legally accountable woman). He said: "If she commits adultery, flog her. If she does so again, flog her. If she does so again, flog her. Then sell her, even if for a ḍafīr (palm-fiber rope)."

L40492 Ibn Shihāb said: And al-ḍafīr—the rope.

L40493 Ibn Shihab said: I do not know whether after the third or the fourth - and the reports concerning what we have mentioned are extremely numerous.

L40494–40496 Abū Muḥammad—may Allāh have mercy on him—said: Then we shall discuss—with the help of Allāh, the Exalted—what we mentioned in the aforementioned reports concerning the sale of the female slave who commits zinā. We say: Al-Layth narrated this ḥadīth from Sa'īd ibn Abī Sa'īd al-Maqburī, from his father, from Abū Hurayrah: "If she commits zinā the third time, he must sell her—even for a rope of animal hair." Similarly, 'Abd al-Razzāq narrated it from 'Ubayd Allāh ibn 'Umar, from Sa'īd ibn Abī Sa'īd, that he heard Abū Hurayrah. And likewise, Khalid ibn al-Harith narrated from Ibn 'Ajlan from Sa'id al-Maqburi from Abu Hurayrah. They did not mention flogging as the punishment for her third act of adultery but mentioned the sale alone.

L40497 From Abu Salih, from Abu Hurayrah: that the hadd punishment is carried out on her three times, then she is sold after the third time along with flogging - and this is how Sufyan ibn 'Uyaynah narrated it.

L40498 Ali said: Doubt must be nullified and the sale confirmed after the third time along with flogging - all transmission chains regarding this are supremely authentic. Whatever is authentically established from the Prophet (peace and blessings of Allah be upon him) originates from Allah the Exalted, for Allah

زَنَتْ أَمَةُ أَحَدِكُمْ فَتَبَيَّنَ زِنَاهَا فَلْيَجْلِدْهَا الْحَدَّ، وَلَا يُثَرِّبْ عَلَيْهَا، ثُمَّ إِنْ زَنَتْ فَلْيَجْلِدْهَا الْحَدَّ وَلَا يُثَرِّبْ عَلَيْهَا، ثُمَّ إِنْ زَنَتْ الثَّالِثَةَ فَلْيَبِعْهَا لَوْ بِحَبْلٍ مِنْ شَعْرٍ»

وَعَنْ مُسْلِمٍ أَيْضًا: أَنَا الْقَعْنَبِيُّ أَنَا مَالِكٌ عَنْ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - سُئِلَ عَنْ الْأَمَةِ إذَا زَنَتْ وَلَمْ تُحْصَنْ؟ قَالَ: إنْ زَنَتْ فَاجْلِدُوهَا، ثُمَّ إنْ زَنَتْ فَاجْلِدُوهَا، ثُمَّ إنْ زَنَتْ فَاجْلِدُوهَا، ثُمَّ بِيعُوهَا، وَلَوْ بِضَفِيرٍ»

قَالَ ابْنُ شِهَابٍ: وَالضَّفِيرُ - الْحَبْلُ

قَالَ ابْنُ شِهَابٍ: لَا أَدْرِي أَبَعْدَ الثَّالِثَةِ، أَوْ الرَّابِعَةِ - وَالْأَخْبَارُ فِيمَا ذَكَرْنَا كَثِيرَةٌ جِدًّا

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ثُمَّ نَتَكَلَّمُ - بِعَوْنِ اللَّهِ تَعَالَى - فِيمَا ذَكَرْنَا فِي الْأَخْبَارِ الْمَذْكُورَةِ مِنْ بَيْعِ الْأَمَةِ الَّتِي تَزْنِي، فَنَقُولُ: إنَّ اللَّيْثَ رَوَى هَذَا الْحَدِيثَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ: إنْ زَنَتْ الثَّالِثَةَ فَلْيَبِعْهَا - وَلَوْ بِحَبْلٍ مِنْ شَعْرٍ - وَهَكَذَا رَوَاهُ عَبْدُ الرَّزَّاقِ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ وَهَكَذَا أَيْضًا - رَوَاهُ خَالِدُ بْنُ الْحَارِثِ عَنْ ابْنِ عَجْلَانَ عَنْ سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ، فَلَمْ يَذْكُرُوا زِنَاهَا الْمَرَّةَ الثَّالِثَةَ جَلْدًا، بَلْ ذَكَرُوا الْبَيْعَ فَقَطْ

وَعَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ أَنْ يُقَامَ الْحَدُّ عَلَيْهَا ثَلَاثَ مَرَّاتٍ، ثُمَّ تُبَاعُ بَعْدَ الثَّالِثَةِ مَعَ الْجَلْدِ - وَهَكَذَا رَوَاهُ سُفْيَانُ بْنُ عُيَيْنَةَ

قَالَ عَلِيٌّ: فَوَجَبَ أَنْ يُلْغَى الشَّكُّ وَيَسْتَقِرَّ الْبَيْعُ بَعْدَ الثَّالِثَةِ مَعَ الْجَلْدِ - وَالطُّرُقُ كُلُّهَا فِي ذَلِكَ فِي غَايَةِ الصِّحَّةِ، وَكُلُّ مَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ عَنْ اللَّهِ

said: “He does not speak from inclination - it is but a revelation revealed” [An-Najm:3-4]. Since that is the case, his injunction (peace and blessings of Allah be upon him) regarding the sale in the third instance constitutes a recommended act.[66]

L40499 The proof of this is that his command to sell in the fourth time cannot possibly be except this, because if his command—peace and blessings be upon him—in the third time had been obligatory, he would not have permitted its detention until the fourth time.

تَعَالَى، قَالَ اللَّهُ تَعَالَى {وَمَا يَنْطِقُ عَنِ الْهَوَى - إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٣ - ٤] فَإِذْ ذَلِكَ كَذَلِكَ فَأَمْرُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْبَيْعِ فِي الثَّالِثَةِ نَدْبٌ

بُرْهَانُ ذَلِكَ: أَمْرُهُ بِالْبَيْعِ فِي الرَّابِعَةِ لَا يُمْكِنُ أَلْبَتَّةَ إِلَّا هَذَا، لِأَنَّهُ لَوْ كَانَ أَمْرُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الثَّالِثَةِ فَرْضًا لَمَا أَبَاحَ حَبْسَهَا إِلَى الرَّابِعَةِ

[66] **Qur’an references (L40498):** Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm).

L40500 As for the sale in the fourth scenario, it is a necessary obligation because the commands of the Prophet (may Allah bless him and grant him peace) are obligatory, based on the words of Allah the Exalted in the verse: “Let those who oppose his command beware” [An-Nur: 63].[1]

وَأَمَّا الْبَيْعُ فِي الرَّابِعَةِ فَفَرْضٌ لَا بُدَّ مِنْهُ، لِأَنَّ أَوَامِرَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْفَرْضِ لِقَوْلِ اللَّهِ تَعَالَى {فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ} [النور: ٦٣] الْآيَةَ

L40501 Abū Muḥammad—may Allāh have mercy on him—said: The ruler compels the owner to sell her, whether willing or reluctant, according to the valuation determined for her, without seeking increase or haggling—just as the Messenger of Allāh—peace and blessings be upon him and his family—commanded that she be sold even for a hair rope or a braided strand of hair if nothing beyond that is found. If she commits fornication while she is being offered for sale or before being offered, her punishment is also enforced due to the generality of his ruling—peace and blessings be upon him and his family—to lash her if she fornicates. Likewise, if the master is absent or dies, the heirs must necessarily sell her. If she belongs to minors, the guardian or custodian lashes her, based on the statement of the Messenger of Allāh—peace and blessings be upon him and his family—in Mālik’s narration from al-Zuhrī: “Lash her,” which applies generally to whoever assumes responsibility. Selling is not obligatory for a male slave if he fornicates, for the Messenger of Allāh—peace and blessings be upon him and his family—specifically ordained this for a female slave when she fornicates. “He does not speak from whim—it is but revelation inspired” (53:3-4).[2]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَيُجْبِرُهُ السُّلْطَانُ عَلَى بَيْعِهَا أَحَبَّ أَمْ كَرِهَ بِمَا يَنْتَهِي إلَيْهِ الْعَطَاءُ فِيهَا، وَلَا يَتَأَتَّى بِهَا طَلَبُ زِيَادَةٍ، وَلَا سَوْقٍ، كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تُبَاعَ - وَلَوْ بِحَبْلٍ مِنْ شَعْرٍ، أَوْ ضَفِيرٍ مِنْ شَعْرٍ - إذَا لَمْ يُوجَدْ فِيهَا إلَّا ذَلِكَ، فَإِنْ زَنَتْ فِي خِلَالِ تَعْرِيضِهَا لِلْبَيْعِ، أَوْ قَبْلَ أَنْ تُعْرَضَ حَدَّهَا أَيْضًا، لِعُمُومِ أَمْرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِجَلْدِهَا إنْ زَنَتْ - وَكَذَلِكَ إنْ غَابَ السَّيِّدُ أَوْ مَاتَ، فَلَا بُدَّ مِنْ بَيْعِهَا عَلَى الْوَرَثَةِ ضَرُورَةً - فَإِنْ كَانَتْ لِصِغَارٍ جَلَدَهَا الْوَلِيُّ أَوْ الْكَافِلُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي رِوَايَةِ مَالِكٍ عَنْ الزُّهْرِيِّ فَاجْلِدُوهَا، فَهُوَ عُمُومٌ لِكُلِّ مَنْ قَامَ بِهِ، وَلَا يَلْزَمُ الْبَيْعُ فِي الْعَبْدِ إذَا زَنَى، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إنَّمَا أَمَرَ بِذَلِكَ الْأَمَةَ إذَا زَنَتْ {وَمَا يَنْطِقُ عَنِ الْهَوَى - إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٣ - ٤]

L40502 “And whoever transgresses the limits of Allah has indeed wronged himself [Surah At-Talaq 1]. Likewise, if a female slave steals or drinks wine, she is to be given the prescribed punishment and her sale is not obligatory, for the text was revealed specifically regarding her adultery alone, and your Lord is not forgetful [Surah Maryam 64].”[3]

{وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] وَكَذَلِكَ إنْ سَرَقَتْ الْأَمَةُ أَوْ شَرِبَتْ الْخَمْرَ، فَإِنَّهَا تُحَدُّ وَلَا يَلْزَمُ بَيْعُهَا، لِأَنَّ النَّصَّ إنَّمَا جَاءَ فِي زِنَاهَا فَقَطْ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

L40503–40505 Abu Muhammad, may Allah have mercy on him, said: If the master were to emancipate her once her fornication is legally established, his emancipation would not be executed; rather, it is... It is invalid, for he is commanded to sell

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَوْ أَعْتَقَهَا السَّيِّدُ إذَا تَبَيَّنَ زِنَاهَا لَمْ يُنَفَّذْ عِتْقُهُ بَلْ هُوَ مَرْدُودٌ، لِأَنَّهُ مَأْمُورٌ بِبَيْعِهَا وَإِخْرَاجِهَا عَنْ مِلْكِهِ، فَهُوَ فِي عِتْقِهِ إيَّاهَا، أَوْ كِتَابَتِهِ لَهَا، أَوْ هِبَتِهِ إيَّاهَا، أَوْ الصَّدَقَةِ بِهَا، أَوْ إصْدَاقِهَا، أَوْ إجَارَتِهَا، أَوْ تَسْلِيمِهَا فِي شَيْءٍ بِصِفَةٍ غَيْرِ

[1] **Qur’an references (L40500):** Qur’an 24:63 (An-Nur).
[2] **Qur’an references (L40501):** Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm).
[3] **Qur’an references (L40502):** Qur’an 65:1 (At-Talaq); Qur’an 19:64 (Maryam).

her and remove her from his ownership. Thus, if he engages in manumitting her, enters into a *kitābah* contract with her, gifts her, donates her as charity, gives her as *mahr*, leases her services, or transfers her ownership in a transaction other than sale—whether paid upfront or deferred, using gold dinars or silver dirhams—he has opposed the command of God's Messenger, peace and blessings be upon him and his family. He, peace be upon him, said: "Whoever performs an act not in accordance with our command, it is invalid." Likewise, if he makes a *tadbīr* for her and dies, or bequeaths her through a *waṣiyyah*, all such acts are void. The owner must necessarily sell her.[4]

L40506 Abū Muḥammad—may Allāh have mercy on him—said: It is impermissible for a master to enforce the ḥudūd upon his slaves except through conclusive evidence, the slaves' confession, or the soundness of his knowledge and certainty, based on the explicit wording of the Prophet's statement—peace and blessings of Allāh be upon him: "Then ascertain her adultery." And the authority to enforce the ḥudūd upon slaves is restricted only to upright individuals among the Muslims.

L40507 **Question: Which limbs are struck in the hudud?**

L40508 2190 - Issue: Which limbs are struck in the prescribed punishments? Abu Muhammad (may Allah have mercy on him) said: People have differed on this. Allah the Exalted said: "If you dispute over anything, refer it to Allah and the Messenger" [an-Nisāʾ 4:59] the verse. So we did, and we found that Allah the Exalted said: "Strike the adulteress and the adulterer with one hundred lashes each" [an-Nūr 24:2].[5]

L40509 And he said (peace be upon him), "If he drinks, then flog him."

L40510 And he—peace be upon him—said: "And for your son, one hundred lashes

[4]**Hadith references (L40503):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[5]**Qur'an references (L40508):** Qur'an 4:59 (An-Nisa); Qur'an 24:2 (An-Nur).

الْبَيْعِ - مِمَّا شَاءَ نَقْدًا أَوْ إِلَى أَجَلٍ - بِدَنَانِيرَ أَوْ بِدَرَاهِمَ: مُخَالِفٌ لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَكَذَلِكَ لَوْ دَبَّرَهَا فَمَاتَ، أَوْ أَوْصَى بِهَا، فَكُلُّ ذَلِكَ بَاطِلٌ، وَلَا بُدَّ مِنْ بَيْعِهَا

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَا يَجُوزُ أَنْ يُقِيمَ الْحَدَّ السَّيِّدُ عَلَى مَمَالِيكِهِ إِلَّا بِالْبَيِّنَةِ، أَوْ بِإِقْرَارِ الْمَمَالِيكِ، أَوْ صِحَّةِ عِلْمِهِ وَيَقِينِهِ، عَلَى نَصِّ قَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فَتَبَيَّنَ زِنَاهَا» وَلَا يُطْلَقُ عَلَى إقَامَةِ الْحُدُودِ عَلَى الْمَمَالِيكِ إلَّا أَهْلُ الْعَدَالَةِ، فَقَطْ مِنْ الْمُسْلِمِينَ

[مَسْأَلَةَ أَيُّ الْأَعْضَاءِ تُضْرَبُ فِي الْحُدُودِ]

٢١٩٠ - مَسْأَلَةٌ: أَيُّ الْأَعْضَاءِ تُضْرَبُ فِي الْحُدُودِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا؟ وَقَالَ اللَّهُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ فَفَعَلْنَا: فَوَجَدْنَا اللَّهَ تَعَالَى قَالَ {الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ} [النور: ٢]

وَقَالَ - عَلَيْهِ السَّلَامُ - «إذَا شَرِبَ فَاجْلِدُوهُ»

وَقَالَ - عَلَيْهِ السَّلَامُ - «وَعَلَى ابْنِكَ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ وَالْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ» وَسَنَذْكُرُ كُلَّ ذَلِكَ - إنْ شَاءَ اللَّهُ تَعَالَى - فَلَمْ نَجِدْ عَنْ اللَّهِ تَعَالَى، وَلَا

and exile for a year. As for a virgin [who commits zinā] with another virgin—one hundred lashes and exile for a year." We will mention all of that—if Allah the Exalted wills—so we have not found from Allah the Exalted nor from His Messenger—peace and blessings be upon him—any command specifying a particular limb to be struck instead of another, except the *ḥadd* of false accusation alone. For indeed, the Messenger of Allah—peace and blessings be upon him—said regarding it: "Produce evidence; otherwise, the *ḥadd* punishment will be applied to your back."

عَنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمْرًا بِأَنْ يَخُصَّ عُضْوًا بِالضَّرْبِ دُونَ عُضْوٍ إِلَّا حَدُّ الْقَذْفِ وَحْدَهُ، فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِيهِ «الْبَيِّنَةُ وَإِلَّا حَدٌّ فِي ظَهْرِكَ»

L40511–40513 Narrated to us by ʿAbdullāh ibn Rabīʿ, from Muḥammad ibn Muʿāwiyah, from Aḥmad ibn Shuʿayb, from ʿImrān ibn Yazīd al-Dimashqī, from Makhlad ibn al-Ḥusayn al-Asadī, from Hishām ibn Ḥassān, from Muḥammad ibn Sīrīn, from Anas ibn Mālik, who said: "The first oath of condemnation (liʿān) in Islam occurred when Hilāl ibn Umayyah accused Sharīk ibn Sahmāʾ of committing adultery with his wife. He came to the Prophet—peace and blessings of Allāh be upon him—and informed him of this. The Prophet—peace and blessings of Allāh be upon him—repeatedly said to him: 'Produce evidence, or the ḥadd shall be applied to your back.' Thus, it became obligatory that the punishment for adultery not be specified [to a particular body part], and [the text breaks off here with an incomplete phrase:] 'and wine is a limb of...'" a limb, for had Allah the Exalted willed such a ruling, He would have made it clear through His Messenger (peace and blessings of Allah be upon him). However, it is obligatory and imperative to avoid the face, the male genitalia, and the vital points.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عِمْرَانُ بْنُ يَزِيدَ الدِّمَشْقِيُّ نا مَخْلَدُ بْنُ الْحُسَيْنِ الْأَسَدِيُّ نا هِشَامُ بْنُ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «إِنَّ أَوَّلَ لِعَانٍ كَانَ فِي الْإِسْلَامِ أَنَّ هِلَالَ بْنَ أُمَيَّةَ قَذَفَ شَرِيكَ ابْنَ سَحْمَاءَ بِامْرَأَتِهِ فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَهُ بِذَلِكَ، فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْبَيِّنَةُ وَإِلَّا حَدٌّ فِي ظَهْرِكَ» يُرَدِّدُ ذَلِكَ عَلَيْهِ مِرَارًا فَوَجَبَ أَنْ لَا يُخَصَّ بِضَرْبِ الزِّنَى، وَالْخَمْرِ عُضْوٌ مِنْ عُضْوٍ، إِذْ لَوْ أَرَادَ اللَّهُ تَعَالَى ذَلِكَ لَبَيَّنَهُ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا أَنَّهُ يَجِبُ اجْتِنَابُ الْوَجْهِ وَلَا بُدَّ، وَالْمَذَاكِرِ، وَالْمَقَاتِلِ

L40514 As for the face: this is due to the narration transmitted to us via the chain of transmission recorded by Imam Muslim, from ʿAmr an-Nāqid and Zuhayr ibn Harb, who both narrated from Sufyān ibn ʿUyaynah, from Abī az-Zināḍ, from al-Aʿraj, from Abī Hurayrah, who said: The Messenger of Allah, peace be upon him, said, "When any of you strikes, let him avoid the face."

أَمَّا الْوَجْهُ - فَلِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا عَمْرٌو النَّاقِدُ، وَزُهَيْرُ بْنُ حَرْبٍ قَالَا جَمِيعًا: أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا ضَرَبَ أَحَدُكُمْ فَلْيَجْتَنِبْ الْوَجْهَ»

L40515 As for the lethal points: striking them involves uncertainty [gharar], such as the heart, the testicles, and similar areas. It is impermissible to kill him nor expose him to such harm, due to the harm we fear from it. Success comes solely from Allah, the Most High.

وَأَمَّا الْمَقَاتِلُ: فَضَرْبُهَا غَرَرٌ، كَالْقَلْبِ، وَالْأُنْثَيَيْنِ، وَنَحْوِ ذَلِكَ - وَلَا يَحِلُّ قَتْلُهُ وَلَا التَّعْرِيضُ بِهِ، لِمَا نَخَافُ مِنْهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

The Question of the Method of Implementing the Ḥudūd.

[مَسْأَلَة كَيْفِيَّة ضَرْب الْحُدُود]

Issue 2191: How are the ḥudūd administered—standing or sitting? People have differed regarding this. Allah the Exalted said the verse: “But if you disagree over anything...” [An-Nisa’: 59].[6]

٢١٩١ - مَسْأَلَةٌ: كَيْف يُضْرَبُ الْحُدُودَ أَقَائِمًا أَمْ قَاعِدًا؟ اخْتَلَفَ النَّاسُ فِي ذَلِكَ وَقَالَ اللَّهُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ} [النساء: ٥٩] الْآيَةَ

As for those who maintain that Hudud punishments are to be administered to the offender while he is standing, they have mentioned regarding that matter...

أَمَّا مَنْ قَالَ بِأَنَّ الْحُدُودَ تُقَامُ عَلَى الْمَحْدُودِ وَهُوَ قَائِمٌ فَإِنَّهُمْ ذَكَرُوا فِي ذَلِكَ

Abd al-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: al-Farabari narrated to us: al-Bukhari narrated to us: Ismail ibn Abdullah narrated to us: Malik narrated from Nafi‘ from Ibn Umar, who mentioned the hadith of the two Jews whom the Messenger of Allah (ﷺ) stoned for adultery. Ibn Umar said: “I saw the man bending over the woman, shielding her from the stones.”

مَا ناه عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ أَنَا إِبْرَاهِيمُ بْنُ أَحْمَدَ أَنَا الْفَرَبْرِيُّ أَنَا الْبُخَارِيُّ أَنَا إِسْمَاعِيلُ بْنُ عَبْدِ اللَّهِ أَنَا مَالِكٌ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ، فَذَكَرَ حَدِيثَ الْيَهُودِيَّيْنِ اللَّذَيْنِ رَجَمَهُمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الزِّنَى، قَالَ ابْنُ عُمَرَ: «فَرَأَيْتُ الرَّجُلَ يَحْنِي عَلَى الْمَرْأَةِ يَقِيهَا الْحِجَارَةَ»

They mentioned the hadith of Abu Huraira concerning his being flogged with the prescribed punishment for false accusation of unchastity, in which he said: “By Allah! On the day I am struck eighty lashes while standing, I am indeed patient.”

وَذَكَرُوا حَدِيثَ أَبِي هُرَيْرَةَ فِي جَلْدِهِ حَدَّ الْقَذْفِ الَّذِي يَقُولُ فِي ذَلِكَ: لَعَمْرُك إنِّي يَوْمَ أُضْرَبُ قَائِمًا ثَمَانِينَ سَوْطًا، إنَّنِي لَصَبُورٌ

Then they presented the most extreme forms of muddled reasoning, saying: “Umar ibn al-Khattab’s instruction to the punishment administrator during the flogging—’Strike while giving each bodily member its due right’—indicates the punished person was standing.” They further argued: “The Hadith about the two Jews demonstrates the man was standing while the woman remained seated.” Abu Muhammad—may Allah have mercy on him—responded: “All of this constitutes evidence against them rather than supporting their position, as we shall clarify by Allah’s will. Regarding the Prophet’s (peace and blessings of Allah be upon him) Hadith about this matter, they were indeed the first to disobey him and oppose him, saying: ’It is not permissible to...’” The ḥadd punishment for adultery is enforced upon a Jewish man but not a Jewish woman. They interpreted the action of the Messen-

ثُمَّ أَتَوْا بِأَطْرَفَ مَا يَكُونُ مِنْ التَّخْلِيطِ؟ فَقَالُوا: إنَّ قَوْلَ عُمَرَ بْنِ الْخَطَّابِ لِلْجَلَّادِ فِي الْحَدِّ " اضْرِبْ وَأَعْطِ كُلَّ ذِي عُضْوٍ حَقَّهُ " دَلِيلٌ عَلَى أَنَّ الْمَجْلُودَ كَانَ قَائِمًا، وَقَالَ: فَدَلَّ حَدِيثُ الْيَهُودِيَّيْنِ عَلَى أَنَّ الرَّجُلَ كَانَ قَائِمًا، وَإِنَّهَا كَانَتْ قَاعِدَةً؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَكُلُّ هَذَا عَلَيْهِمْ لَا لَهُمْ عَلَى مَا نُبَيِّنُ - إنْ شَاءَ اللَّهُ تَعَالَى - أَمَّا حَدِيثُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ فَهُمْ أَوَّلُ مَنْ عَصَاهُ وَخَالَفَهُ، وَقَالُوا: لَا يَحِلُّ أَنْ يُقَامَ حَدُّ الزِّنَى عَلَى يَهُودِيٍّ وَلَا يَهُودِيَّةٍ، وَحَمَلُوا فِعْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ عَلَى مَا لَمْ يَقْدِمُوا عَلَى إطْلَاقِهِ بِأَلْسِنَتِهِمْ، إمَّا أَنَّهُ عَلَى مَعْصِيَةِ اللَّهِ تَعَالَى وَإِمَّا أَنَّهُ

[6] **Qur’an references (L40517):** Qur’an 4:59 (An-Nisa).

ger of Allah—peace and blessings of Allah be upon him—in that matter as pertaining to what they refrained from openly declaring with their tongues: either as disobedience to Allah the Exalted or as enforcing provisions from the Torah from that which they are not permitted to enact. In any case, the Messenger of Allah—peace and blessings of Allah be upon him—did not rule in that matter by the command of Allah the Exalted, nor by revelation to him, nor by an obligation requiring adherence. They have no escape from this.

عَلَى إنْفَاذِ لِمَا فِي التَّوْرَاةِ، مِمَّا لَا يَجُوزُ لَهُمْ إنْفَاذُهُ، وَأَنَّهُ عَلَى كُلِّ حَالٍ لَمْ يَحْكُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ بِأَمْرِ اللَّهِ تَعَالَى وَلَا بِوَحْيِهِ إلَيْهِ، وَلَا بِحَقٍّ يَجِبُ اتِّبَاعُهُ فِيهِ: لَا مَحِيدَ لَهُمْ مِنْ هَذَا

L40524 What they presumed about this is sheer falsehood, and there is no evidence in it that he was standing or that she was seated. Rather, he may have bent over her while in the bowing posture—which is the more apparent interpretation—or while leaning forward in a position close to sitting, and this too is very possible. As for him bending over her while standing and she is seated, this is absolutely impossible; it cannot occur at all. However, it may be possible for both to be standing, with him bending over her due to the man's greater height relative to the woman, or for both to be seated.

فَهَذَا الَّذِي ظَنُّوا مِنْ ذَلِكَ كَذِبٌ بَحْتٌ، وَمَا فِيهِ دَلِيلٌ عَلَى أَنَّهُ كَانَ قَائِمًا، وَلَا أَنَّهَا كَانَتْ قَاعِدَةً، بَلْ قَدْ يَحْنِي عَلَيْهَا وَهُوَ رَاكِعٌ - وَهُوَ الْأَظْهَرُ - أَوْ وَهُوَ مُنْكَبٌّ قَرِيبٌ مِنْ الْجُلُوسِ، وَهُوَ مُمْكِنٌ جِدًّا أَيْضًا، وَأَمَّا أَنْ يَحْنِيَ عَلَيْهَا وَهُوَ قَائِمٌ وَهِيَ قَاعِدَةٌ فَمُمْتَنِعٌ لَا يُمْكِنُ أَلْبَتَّةَ، وَلَا يَتَأَتَّى ذَلِكَ - وَقَدْ يُمْكِنُ أَنْ يَكُونَا قَائِمَيْنِ، وَيَحْنِي عَلَيْهَا بِفَضْلِ مَا لِلرَّجُلِ عَلَى الْمَرْأَةِ مِنْ الطُّولِ، وَقَدْ يُمْكِنُ أَنْ يَكُونَا قَاعِدَيْنِ

L40525 As for the ḥadīth of Abū Hurayrah, it contains no indication that he required him to stand upright when flogging was necessary, nor that the woman differs from the man.

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ فَلَيْسَ فِيهِ: أَنَّ أَبَا هُرَيْرَةَ أَوْجَبَ عَلَيْهِ أَنْ يَقُومَ قَائِمًا، إذْ جَلَدَهُ وَلَا بُدَّ، وَلَا أَنَّ الْمَرْأَةَ بِخِلَافِ الرَّجُلِ

L40526 Abū Muḥammad—may Allah have mercy on him—said: Since there is neither a textual ruling nor consensus regarding any of this, we are certain that had Allah the Exalted willed the implementation of the ḥadd punishment to be restricted to a posture that does not go beyond standing or sitting, or to differentiate between a man and a woman, He would have clarified it on the tongue of His Messenger—peace be upon him.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ لَا نَصَّ فِي شَيْءٍ مِنْ هَذَا، وَلَا إجْمَاعَ، فَقَدْ أَيْقَنَّا أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ أَنْ يَكُونَ إقَامَةُ الْحَدِّ عَلَى حَالٍ لَا يَتَعَدَّى مِنْ قِيَامٍ أَوْ قُعُودٍ، أَوْ فَرَّقَ بَيْنَ رَجُلٍ وَامْرَأَةٍ لَبَيَّنَهُ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ -

L40527 Thus, it is established that flogging for unlawful intercourse (zinā), false accusation (qadhf), alcohol consumption (khamr), and discretionary punishment (taʿzīr) is to be administered to both the woman and the man as circumstances allow, whether standing or sitting. If the individual resists, they are restrained. If they use their hands to block the blows—such as by encountering the instrument used to strike them and seizing it—their hands are restrained.

فَصَحَّ أَنَّ الْجَلْدَ فِي الزِّنَى، وَالْقَذْفِ، وَالْخَمْرِ، وَالتَّعْزِيرِ: يُقَامُ كَيْفَمَا تَيَسَّرَ عَلَى الْمَرْأَةِ وَالرَّجُلِ، قِيَامًا وَقُعُودًا، فَإِنْ امْتَنَعَ أَمْسَكَ، وَإِنْ دَفَعَ بِيَدَيْهِ الضَّرْبَ عَنْ نَفْسِهِ: مِثْلُ أَنْ يَلْقَى الشَّيْءَ الَّذِي يُضْرَبُ بِهِ فَيَمْسِكُهُ أُمْسِكَتْ يَدَاهُ

The Issue of the Manner of Striking in Ḥudūd Punishments.

[مَسْأَلَة صفة ضَرْب الْحُدُود]

L40528

2192 - Issue: The manner of striking? Abu Muhammad—may Allah have mercy on him—said: Some people permitted the drawing of blood during the whipping for prescribed punishments and discretionary punishments. However, no such practice is reported from the Companions. Rather, it is authentically established from ʻUmar—may Allah be pleased with him—as we previously mentioned: "If you do not find [evidence], then whip her," and no opposing view from the Companions—may Allah be pleased with them—is known regarding this. Our position concerning striking for adultery, false accusation, consumption of intoxicants, and discretionary punishments is that no bone should be broken, no skin torn, no blood drawn, and no flesh caused to rot. Rather, it should be a strike that is painful yet free from all such harm. Whoever transgresses by tearing the skin during such striking, drawing blood, or... If someone caused flesh to rot or broke his bone, retaliation (qisas) is incumbent upon the perpetrator, and likewise upon the one who ordered it if he commanded such an act.

L40529–40531

٢١٩٢ - مَسْأَلَةٌ: صِفَةُ الضَّرْبِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَجَازَ قَوْمٌ أَنْ يُسَالَ الدَّمُ فِي جَلْدِ الْحُدُودِ، وَالتَّعْزِيرِ - وَهُوَ لَمْ يَأْتِ بِهِ عَنْ الصَّحَابَةِ شَيْءٌ مِنْ ذَلِكَ، بَلْ قَدْ صَحَّ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - مِمَّا قَدْ ذَكَرْنَاهُ قَبْلُ لَا تَجِدُ، فَاجْلِدْهَا، وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَالَّذِي نَقُولُ بِهِ فِي الضَّرْبِ فِي الزِّنَى، وَالْقَذْفِ، وَالْخَمْرِ، وَالتَّعْزِيرِ: أَنْ لَا يُكْسَرَ لَهُ عَظْمٌ، وَلَا أَنْ يُشَقَّ لَهُ جِلْدٌ، وَلَا أَنْ يُسَالَ الدَّمُ، وَلَا أَنْ يَعْفَنَ لَهُ اللَّحْمُ، لَكِنْ بِوَجَعٍ سَالِمٍ مِنْ كُلِّ ذَلِكَ، فَمَنْ تَعَدَّى فَشَقَّ فِي ذَلِكَ الضَّرْبِ جِلْدًا، أَوْ أَسَالَ دَمًا، أَوْ عَفَّنَ لَحْمًا، أَوْ كَسَرَ لَهُ عَظْمًا، فَعَلَى مُتَوَلِّي ذَلِكَ الْقَوَدُ، وَعَلَى الْآمِرِ أَيْضًا الْقَوَدُ إنْ أَمَرَ بِذَلِكَ

The proof of that is the statement of Allah, the Exalted: "Indeed, Allah has ordained a measure for everything." [At-Talaq: 3][7]

L40532

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى {قَدْ جَعَلَ اللَّهُ لِكُلِّ شَيْءٍ قَدْرًا} [الطلاق: ٣]

We have thus ascertained with certainty that the application of the prescribed punishments has a maximum limit that cannot be exceeded and a minimum limit that cannot be reduced, as per the explicit text of the Qur'an. We sought this and found that the minimum measure is to cause pain; thus, anything falling short of causing pain is excluded from its measures (a matter uncontested by any scholar). The highest measure constitutes the utmost pain in adultery while safeguarding against all the consequences we mentioned, with the mitigation of pain being proportionate to what we have outlined.

L40533

فَعَلِمْنَا يَقِينًا أَنَّ لِضَرْبِ الْحُدُودِ قَدْرًا لَا يَتَجَاوَزُهُ وَقَدْرًا لَا يَنْحَطُّ عَنْهُ بِنَصِّ الْقُرْآنِ، فَطَلَبْنَا ذَلِكَ فَوَجَدْنَا أَدْنَى أَقْدَارِهِ أَنْ يُؤْلِمَ، فَمَا نَقَصَ عَنْ الْأَلَمِ فَلَيْسَ مِنْ أَقْدَارِهِ - وَهَذَا مَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ - وَكَانَ أَعْلَى أَقْدَارِهِ نِهَايَةُ الْأَلَمِ فِي الزِّنَى مَعَ السَّلَامَةِ مِنْ كُلِّ مَا ذَكَرْنَا، ثُمَّ الْحَطِيطَةُ مِنْ الْأَلَمِ عَلَى حَسَبِ مَا وَصَفْنَا

As for the prohibition of all that we have mentioned, it is based on the statement of the Messenger of Allah (may Allah bless him and grant him peace): "Your blood, your wealth, your honor, and your bodies are sacred to you." Thus, the shedding of blood is prohibited by explicit textual injunction,

L40534

فَأَمَّا الْمَنْعُ مِنْ كُلِّ مَا ذَكَرْنَا، فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» فَحُرِّمَتْ إسَالَةُ الدَّمِ نَصًّا إذْ هَرْقُ الدَّمِ

[7] **Qur'an references (L40532):** Qur'an 65:3 (At-Talaq).

for spilling blood is unlawful except what a text or consensus permits—and there is neither text nor consensus permitting bloodshed in any of the *hudud* punishments. Indeed, nor is this reported from any of the Tabi'een.

حَرَامٌ، إلَّا مَا أَبَاحَهُ نَصٌّ، أَوْ إجْمَاعٌ - وَلَا نَصَّ، وَلَا إجْمَاعَ عَلَى إبَاحَةِ إسَالَةِ الدَّمِ فِي شَيْءٍ مِنْ الْحُدُودِ - نَعَمْ، وَلَا عَنْ أَحَدٍ مِنْ التَّابِعِينَ

L40535 As for the decay of flesh: The Messenger of Allah—peace and blessings be upon him—explicitly decreed the prohibition of human skin; thus, none of it is lawful except what is permitted by a textual ruling or consensus. The textual ruling and consensus have only established its permissibility to alleviate pain. As for breaking bones—is there anyone in the Ummah who, without doubt, permits it in the execution of hudud punishments?

وَأَمَّا تَعَفُّنُ اللَّحْمِ: فَقَدْ نَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى تَحْرِيمِ الْبَشَرَةِ، فَلَا يَحِلُّ مِنْهَا إلَّا مَا أَحَلَّهُ نَصٌّ أَوْ إجْمَاعٌ، وَإِنَّمَا صَحَّ النَّصُّ وَالْإِجْمَاعُ عَلَى إبَاحَتِهَا لِلْأَلَمِ فَقَطْ، وَأَمَّا كَسْرُ الْعِظَامِ، فَلَا يَقُولُ بِإِبَاحَتِهِ فِي ضَرْبِ الْحُدُودِ أَحَدٌ مِنْ الْأُمَّةِ بِلَا شَكٍّ؟

L40536 Abu Muhammad—may Allah have mercy on him—said: "Whoever disagrees with us regarding these matters, we ask them: Does the severity of striking in such cases constitute a prescribed punishment or not? If they say no, they have abandoned their own assertion, opposed the consensus, and it becomes incumbent upon them to permit flogging in all such instances with a whip filled with iron or lead—the one who strikes is killed. Yet none among the Ummah says this."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَمَنْ خَالَفَنَا فِي هَذِهِ الْأَشْيَاءِ سَأَلْنَاهُ أَلشِدَّةُ الضَّرْبِ فِي ذَلِكَ حَدٌّ أَمْ لَا؟ فَإِنْ قَالُوا: لَا، تَرَكُوا قَوْلَهُمْ، وَخَالَفُوا الْإِجْمَاعَ، وَلَزِمَهُمْ أَنْ يُبِيحُوا أَنْ يُجْلَدَ فِي كُلِّ ذَلِكَ بِسَوْطٍ مَمْلُوءٍ حَدِيدًا أَوْ رَصَاصًا يُقْتَلُ مَنْ ضَرَبَهُ - وَهَذَا لَا يَقُولُهُ أَحَدٌ مِنْ الْأُمَّةِ

L40537 And if they say: "Indeed, this has a limit and a measure which they abide by, and it is not permissible to exceed it," they were asked about that. If they defined a limit therein other than what we defined, they would be imposing arbitrary rulings in matters of religion without proof.

وَإِنْ قَالُوا: إنَّ لِذَلِكَ حَدًّا وَقَدْرًا نَقِفُ عِنْدَهُ فَلَا يَحِلُّ تَجَاوُزُهُ: سُئِلُوا عَنْ ذَلِكَ، فَإِنْ حَدُّوا فِيهِ غَيْرَ مَا حَدَدْنَا كَانُوا مُتَحَكِّمِينَ فِي الدِّينِ بِلَا بُرْهَانٍ

L40538–40540 If they say, "The prescribed punishments were instituted solely as a deterrent?" We say to them: Far from it! That is not as you claim. Rather, Allah's deterrence is through His prohibitions and His warnings in... The Hereafter only. As for the prescribed punishments, Allah the Exalted has ordained them as He wills and has not informed us that they are for deterrence. Were they for deterrence as you claim, a thousand lashes would be more deterrent than a hundred, and eighty, and forty, and fifty. Cutting off both hands and both feet would be more deterrent than cutting off a single hand. Then we would say: they are an exemplary punishment, punishment, torment, retribution, and disgrace—as Allah the Exalted stated regarding those who wage

فَإِنْ قَالُوا: إنَّ الْحُدُودَ إنَّمَا جُعِلَتْ لِلرَّدْعِ؟ قُلْنَا لَهُمْ: كَلَّا، مَا ذَلِكَ كَمَا تَقُولُونَ، إنَّمَا رَدْعُ اللَّهِ تَعَالَى بِالتَّحْرِيمِ وَبِالْوَعِيدِ فِي الْآخِرَةِ فَقَطْ، وَأَمَّا بِالْحُدُودِ فَإِنَّمَا جَعَلَ اللَّهُ تَعَالَى كَمَا شَاءَ، وَلَمْ يُخْبِرْنَا اللَّهُ تَعَالَى أَنَّهَا لِلرَّدْعِ، وَلَوْ كَانَتْ لِلرَّدْعِ كَمَا تَدَّعُونَ لَكَانَ أَلْفُ سَوْطٍ أَرْدَعَ مِنْ مِائَةٍ وَمِنْ ثَمَانِينَ، وَمِنْ أَرْبَعِينَ، وَمِنْ خَمْسِينَ، وَلَكَانَ قَطْعُ الْيَدَيْنِ وَالرِّجْلَيْنِ أَرْدَعَ مِنْ قَطْعِ يَدٍ وَاحِدَةٍ، وَلَكُنَّا نَقُولُ: هِيَ نَكَالٌ وَعُقُوبَةٌ، وَعَذَابٌ، وَجَزَاءٌ، وَخِزْيٌ،

war [against Allah and His Messenger]: “The recompense of those who wage war against Allah and His Messenger and strive...” (Al-Ma’idah 5:33).[8]

كَمَا قَالَ اللَّهُ تَعَالَى فِي الْمُحَارَبَةِ {إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ} [المائدة: ٣٣] الْآيَةَ

L40541 And He, the Exalted, said: “They shall incur half the punishment prescribed for chaste women.” [An-Nisa: 25][9]

وَقَالَ تَعَالَى {فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥]

L40542 Allah, the Exalted, said concerning the slanderer of unchastity: “Indeed, those who desire that immorality should spread among those who have believed...” [An-Nur: 19] the verse.[10]

وَقَالَ تَعَالَى فِي الْقَاذِفِ {إِنَّ الَّذِينَ يُحِبُّونَ أَنْ تَشِيعَ الْفَاحِشَةُ فِي الَّذِينَ آمَنُوا} [النور: ١٩] الْآيَةَ

L40543 And the Exalted said, “The male thief and the female thief...” [Quran 5:38].[11]

وَقَالَ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ} [المائدة: ٣٨] الْآيَةَ

L40544 And He, the Exalted, said the verse {The adulteress and the adulterer} [An-Nur: 2]. Indeed, the act of naming in the religion belongs to Allah, the Exalted, not to the people.[12]

وَقَالَ تَعَالَى {الزَّانِيَةُ وَالزَّانِي} [النور: ٢] الْآيَةَ وَإِنَّمَا التَّسْمِيَةُ فِي الدِّينِ إِلَى اللَّهِ تَعَالَى، لَا إِلَى النَّاسِ

L40545 Thus, it is established that He, the Exalted, made it as He willed, where He willed, and He did not make it where He did not will.

فَصَحَّ أَنَّهُ تَعَالَى جَعَلَهَا كَمَا شَاءَ حَيْثُ شَاءَ، وَلَمْ يَجْعَلْهَا حَيْثُ لَمْ يَشَأْ

L40546 Abu Muhammad—may Allah have mercy on him—said: Since what we have mentioned has been established, and the specified measure of beating that must not be exceeded has been confirmed, it is thereby established that whoever exceeds that measure has transgressed the limits set by Allah the Exalted and is sinful in doing so. Disobedience to Allah the Exalted cannot compensate for obedience to Him. Therefore, since such a person is a transgressor, qisas (legal retaliation) becomes obligatory upon him. Allah the Exalted said: “So whoever aggressed against you, respond equivalently against him” [Al-Baqarah 2:194]. The transgressive beating undoubtedly cannot be fragmented. Since it cannot be fragmented—and it remains an act of disobedience—it is invalid for it to suffice in place of the hadd punishment, which constitutes obedience to Allah the Exalted. Thus, retaliation is imposed for

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَإِذْ قَدْ صَحَّ مَا ذَكَرْنَا، وَصَحَّ مِقْدَارُ الضَّرْبِ الَّذِي لَا يَتَجَاوَزُ، فَقَدْ صَحَّ أَنَّ مَنْ تَجَاوَزَ ذَلِكَ الْمِقْدَارَ فَإِنَّهُ مُتَعَدٍّ لِحُدُودِ اللَّهِ تَعَالَى، وَهُوَ عَاصٍ بِذَلِكَ، وَلَا تُنْوِبُ مَعْصِيَةُ اللَّهِ تَعَالَى عَنْ طَاعَتِهِ، فَإِذْ هُوَ مُتَعَدٍّ فَعَلَيْهِ الْقَوَدُ، قَالَ اللَّهُ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ} [البقرة: ١٩٤] الْآيَةَ فَضَرْبُ التَّعَدِّي لَا يَتَبَعَّضُ بِلَا شَكٍّ، فَإِذْ لَا يَتَبَعَّضُ - وَهُوَ مَعْصِيَةٌ - فَبَاطِلٌ أَنْ يُجْزِيَ عَنْ الْحَدِّ الَّذِي هُوَ طَاعَةٌ لِلَّهِ تَعَالَى فَيُقْتَصُّ لَهُ مِنْهُ، ثُمَّ يُقَامُ عَلَيْهِ الْحَدُّ وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[8] **Qur’an references (L40538):** Qur’an 5:33 (Al-Ma’idah).
[9] **Qur’an references (L40541):** Qur’an 4:25 (An-Nisa).
[10] **Qur’an references (L40542):** Qur’an 24:19 (An-Nur).
[11] **Qur’an references (L40543):** Qur’an 5:38 (Al-Ma’idah).
[12] **Qur’an references (L40544):** Qur’an 24:2 (An-Nur).

it, and the hadd punishment must still necessarily be carried out upon him. And with Allah alone is success.[13]

L40547 **Question: By what means is the striking administered in the ḥadd?**

L40548 2193 - Issue: With what is flogging carried out in the prescribed punishment? Abū Muḥammad—may God have mercy on him—said: As for the proponents of opinion and analogy, they assert that all prescribed punishments are administered with a whip. However, Al-Shāfiʿī—may God have mercy on him—said: Except for wine, for indeed flogging in its case is done with what is authentically reported from the Prophet—peace be upon him—that he flogged in such instances.

L40549–40551 Abū Muḥammad—may Allāh have mercy on him—said: Those who held that lashing with a whip is indispensable in the prescribed punishments argued by citing [the chain]: from Hummām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Maʿmar, [...] Yahya ibn Abi Kathir said: "A man came to the Messenger of Allah—peace and blessings be upon him—and said: 'O Messenger of Allah, I have committed an offense requiring a prescribed punishment; inflict it upon me.' The Prophet—peace and blessings be upon him—called for a whip. A new whip with its thongs intact was brought to him. He said: 'No, a whip inferior to this.' Then a whip with a broken handle was brought to him. He said: 'No, a whip superior to this.' Finally, a whip between the two in severity was brought to him. He ordered that the man be flogged with it." He mentioned the narration.

L40552 And from Zayd ibn Aslam: "A man confessed to committing adultery, so the Messenger of Allah—peace and blessings of Allah be upon him—called for a whip. He was brought a broken whip, and he said: 'Above this.' Then he was brought a new whip whose end had not been cut, and he said: 'Between these two.' Then he was brought a worn whip that had become supple. He commanded that he be flogged with it, and he was flogged." He mentioned the remainder of the report.

[13] **Qur'an references (L40546):** Qur'an 2:194 (Al-Baqarah).

[مَسْأَلَة بِأَيِّ شَيْءٍ يَكُونُ الضَّرْبُ فِي الْحَدِّ]

٢١٩٣ - مَسْأَلَةٌ: بِأَيِّ شَيْءٍ يَكُونُ الضَّرْبُ فِي الْحَدِّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا أَهْلُ الرَّأْيِ، وَالْقِيَاسِ، فَإِنَّهُمْ قَالُوا: الْحُدُودُ كُلُّهَا بِالسَّوْطِ، إلَّا الشَّافِعِيُّ - رَحِمَهُ اللَّهُ - قَالَ: إلَّا الْخَمْرَ، فَإِنَّهُ يُجْلَدُ فِيهَا بِمَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ جَلَدَ فِيهَا

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: احْتَجَّ مَنْ رَأَى الْجَلْدَ بِالسَّوْطِ وَلَا بُدَّ فِي الْحُدُودِ: بِمَا أَنَا حُمَامٌ أَنَا ابْنُ مُفَرِّجٍ أَنَا ابْنُ الْأَعْرَابِيِّ أَنَا الدَّبَرِيُّ أَنَا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ «جَاءَ رَجُلٌ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إنِّي أَصَبْتُ حَدًّا فَأَقِمْهُ عَلَيَّ؟ فَدَعَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِسَوْطٍ، فَأُتِيَ بِسَوْطٍ جَدِيدٍ عَلَيْهِ ثَمَرَتُهُ، قَالَ: لَا، سَوْطٌ دُونَ هَذَا؟ فَأُتِيَ بِسَوْطٍ مَكْسُورِ الْعَجُزِ، فَقَالَ: لَا، سَوْطٌ فَوْقَ هَذَا؟ فَأُتِيَ بِسَوْطٍ بَيْنَ السَّوْطَيْنِ، فَأَمَرَ بِهِ فَجُلِدَ» وَذَكَرَ الْخَبَرَ

وَعَنْ زَيْدِ بْنِ أَسْلَمَ «أَنَّ رَجُلًا اعْتَرَفَ عَلَى نَفْسِهِ بِالزِّنَى، فَدَعَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِسَوْطٍ، فَأُتِيَ بِسَوْطٍ مَكْسُورٍ، فَقَالَ: فَوْقَ هَذَا، فَأُتِيَ بِسَوْطٍ جَدِيدٍ لَمْ تُقْطَعْ ثَمَرَتُهُ، فَقَالَ: بَيْنَ هَذَيْنِ، فَأُتِيَ بِسَوْطٍ قَدْ رُكِبَ بِهِ وَلَانَ، فَأَمَرَ بِهِ فَجُلِدَ» وَذَكَرَ بَاقِيَ الْخَبَرِ

L40553 Abdullah ibn Rabīʿ narrated to us: Ibn Mufarrij narrated to us: Qāsim ibn Aṣbagh narrated to us: Ibn Waḍḍāḥ narrated to us: Sahnūn narrated to us: Ibn Wahb narrated from Makhramah ibn Bukayr from his father, who said: I heard ʿUbaydullāh ibn Miqsam say: I heard Kuraib, the freed slave of Ibn ʿAbbās, narrate, or it was narrated on his authority, saying: "A man came to the Prophet (peace and blessings of Allah be upon him) and confessed to committing adultery, and the man was not a married person. The Messenger of Allah (peace and blessings of Allah be upon him) took a whip but found its tip too stiff, so he returned it. Then he took another whip and found it supple. The Prophet ordered him to be lashed one hundred times."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا ابْنُ مُفَرِّجٍ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا ابْنُ وَضَّاحٍ أَنَا سَحْنُونٌ أَنَا ابْنُ وَهْبٍ عَنْ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ قَالَ: سَمِعْت عُبَيْدَ اللَّهِ بْنَ مِقْسَمٍ يَقُولُ: سَمِعْت كُرَيْبًا مَوْلَى ابْنِ عَبَّاسٍ يُحَدِّثُ أَوْ يُحَدَّثُ عَنْهُ قَالَ «أَتَى رَجُلٌ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاعْتَرَفَ عَلَى نَفْسِهِ بِالزِّنَى، وَلَمْ يَكُنْ الرَّجُلُ أَحْصَنَ، فَأَخَذَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَوْطًا فَوَجَدَ رَأْسَهُ شَدِيدًا فَرَدَّهُ، ثُمَّ أَخَذَ سَوْطًا آخَرَ فَوَجَدَهُ لَيِّنًا، فَأَمَرَ بِهِ فَجُلِدَ مِائَةً»

L40554 From Abu Uthman al-Nahdi, who said: Umar ibn al-Khattab was approached regarding a ḥadd punishment—I do not know which ḥadd it was—and a stiff whip was brought to him. He said: "I want something more flexible." A flexible whip was brought, and he said: "I want something firmer than this." Finally, a whip of medium severity was brought, and he said: "Strike without exposing your armpit."

وَعَنْ أَبِي عُثْمَانَ النَّهْدِيِّ قَالَ: أُتِيَ عُمَرُ بْنُ الْخَطَّابِ فِي حَدٍّ - مَا أَدْرِي مَا ذَلِكَ الْحَدُّ - فَأُتِيَ بِسَوْطٍ فِيهِ شِدَّةٌ، فَقَالَ: أُرِيدُ مَا هُوَ أَلْيَنُ فَأُتِيَ بِسَوْطٍ لَيِّنٍ، فَقَالَ: أُرِيدُ أَشَدَّ مِنْ هَذَا، فَأُتِيَ بِسَوْطٍ بَيْنَ السَّوْطَيْنِ فَقَالَ: اضْرِبْ وَلَا يُرَى إبِطُك

L40555 On the authority of Abu Uthman al-Nahdi, who said: Umar ibn al-Khattab was approached concerning a ḥadd punishment, and a whip was brought to him. He shook it and said, "Bring me a softer whip than this." Another whip was brought, and he said, "Bring me a harsher whip than this." Then a whip between the two whips was brought. He said, "Strike without exposing your armpit, and give each limb its due."

وَعَنْ أَبِي عُثْمَانَ النَّهْدِيِّ قَالَ: أُتِيَ عُمَرُ بْنُ الْخَطَّابِ فِي حَدٍّ فَأُتِيَ بِسَوْطٍ، فَهَزَّهُ فَقَالَ: ائْتُونِي بِسَوْطٍ أَلْيَنَ مِنْ هَذَا، فَأُتِيَ بِسَوْطٍ آخَرَ، فَقَالَ ائْتُونِي بِسَوْطٍ أَشَدَّ مِنْ هَذَا، فَأُتِيَ بِسَوْطٍ بَيْنَ السَّوْطَيْنِ، فَقَالَ: اضْرِبْ وَلَا يُرَى إبِطُك، وَأَعْطِ لِكُلِّ عُضْوٍ حَقَّهُ

L40556–40558 Abū Muḥammad—may Allah have mercy on him—said: "We know of no specious argument they have except what we have mentioned. As for the narrations attributed to the Messenger of Allah—peace and blessings be upon him—all of them are *mursal*, and there is no valid proof in a *mursal*. The weakest of them is the ḥadīth of Makhrama ibn Bukayr, for it is disconnected at three points in the chain, because Makhrama's hearing from [...]" The narration from his father is not valid, and Ibn Miqsam doubted whether he heard it directly from Kureib or it was conveyed to him from him. Moreover, it is a mursal narration from Kureib.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا نَعْلَمُ لَهُمْ شُبْهَةً غَيْرَ مَا ذَكَرْنَا: أَمَّا الْآثَارُ - فِي ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمُرْسَلَةٌ كُلُّهَا، وَلَا حُجَّةَ فِي مُرْسَلٍ، وَأَضْعَفُهَا حَدِيثُ مَخْرَمَةَ بْنِ بُكَيْرٍ، لِأَنَّهُ مُنْقَطِعٌ فِي ثَلَاثَةِ مَوَاضِعَ، لِأَنَّ سَمَاعَ مَخْرَمَةَ مِنْ أَبِيهِ لَا يَصِحُّ، وَشَكَّ ابْنُ مِقْسَمٍ أَسَمِعَهُ مِنْ كُرَيْبٍ أَمْ بَلَغَهُ عَنْهُ؟ ثُمَّ هُوَ عَنْ كُرَيْبٍ مُرْسَلٌ

L40559 Then, even if it were valid, they would have no argument in any of these

texts, because none of them states that prescribed punishments are not to be flogged except with a whip of this specific description. Rather, they affirm that it is permissible for prescribed punishments to be administered only with a whip of such description - a point we do not contest. Thus, their reliance on the mentioned narrated traditions is invalidated.

ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِي شَيْءٍ مِنْهَا حُجَّةٌ، لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْهَا: أَنْ لَا تُجْلَدَ الْحُدُودُ إلَّا بِسَوْطٍ هَذِهِ صِفَتُهُ، وَإِنَّمَا فِيهِ: أَنَّ الْحُدُودَ جَائِزٌ أَنْ يُضْرَبَ بِسَوْطٍ هَذِهِ صِفَتُهُ فَقَطْ، وَهَذَا أَمْرٌ لَا نَأْبَاهُ - فَسَقَطَ تَعَلُّقُهُمْ بِالْآثَارِ الْمَذْكُورَةِ

L40560 As for the narration from ʿUmar – may Allah be pleased with him – it is authentic, but there is no proof in it for them, nor is there proof in the statement of anyone besides the Messenger of Allah – peace and blessings be upon him.

وَأَمَّا الْأَثَرُ: عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فَصَحِيحٌ إلَّا أَنَّهُ لَا حُجَّةَ لَهُمْ فِيهِ، وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L40561 When all their objections were dismissed, we examined what ruling was required in that matter and found that Allah, the Exalted, says regarding the fornicator and the fornicatress: *Lash each of them with a hundred lashes, and let a group of the believers witness their punishment* [An-Nur: 2].[14]

فَلَمَّا سَقَطَ كُلُّ مَا شَغَبُوا بِهِ نَظَرْنَا فِيمَا يَجِبُ فِي ذَلِكَ فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ فِي الزَّانِي وَالزَّانِيَةِ {فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ} [النور: ٢] إلَى قَوْله تَعَالَى {وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِنَ الْمُؤْمِنِينَ} [النور: ٢]

L40562 And the Exalted said: “Upon them is half of what is prescribed for the chaste free women concerning the punishment” [al-Nisāʾ 4:25].[15]

وَقَالَ تَعَالَى {فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥]

L40563 And he—peace be upon him—said, “Upon your son are a hundred lashes and exile for a year.”

وَقَالَ - عَلَيْهِ السَّلَامُ - «عَلَى ابْنِك جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ»

L40564 And the Exalted said regarding the accuser [of unchastity]: “Flog them with eighty lashes” [an-Nur 24:4].[16]

وَقَالَ تَعَالَى فِي الْقَاذِفِ {فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً} [النور: ٤]

L40565 The Messenger of Allah—may Allah’s peace and blessings be upon him—said, “If a female slave of one of you commits unlawful sexual intercourse, then let her be lashed.”

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا زَنَتْ أَمَةُ أَحَدِكُمْ فَلْيَجْلِدْهَا»

L40566 And he said, peace be upon him, “If he drinks, then lash him.”

وَقَالَ - عَلَيْهِ السَّلَامُ - «إذَا شَرِبَ فَاجْلِدُوهُ»

L40567–40569 He - peace be upon him - prohibited lashing more than ten strokes in non-ḥadd punishments, whereby we became absolutely certain beyond doubt that had Allah the Exalted willed the use of a specific whip for lashing in any of

وَنَهَى - عَلَيْهِ السَّلَامُ - أَنْ يُجْلَدَ أَكْثَرَ مِنْ عَشْرِ جَلَدَاتٍ فِي غَيْرِ حَدٍّ، فَأَيْقَنَّا يَقِينًا لَا يَدْخُلُهُ شَكٌّ: أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ أَنْ يَكُونَ الْجَلْدُ فِي شَيْءٍ مِمَّا ذَكَرْنَا بِسَوْطٍ دُونَ سَوْطٍ لَبَيَّنَهُ لَنَا عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - فِي الْقُرْآنِ، وَفِي وَحْيٍ مَتْلُوٍ إلَيْنَا ثَابِتٍ،

[14] **Qur’an references (L40561):** Qur’an 24:2 (An-Nur).
[15] **Qur’an references (L40562):** Qur’an 4:25 (An-Nisa).
[16] **Qur’an references (L40564):** Qur’an 24:4 (An-Nur).

the aforementioned matters, He would have clarified it to us through His Messenger's tongue - peace be upon him - in the Quran or in authenticated revelation transmitted to us, just as He specified the manner of striking in zinā, and just as He specified the presence of a group of believers to witness the punishment therein. Since He the Exalted did not do so, we know with certainty that Allah the Exalted never intended striking in ḥadd punishments to be exclusively with a specific whip, to the exclusion of all other striking instruments. Therefore, given this reality, it is obligatory to strike the ḥadd punishment for zinā and qadhf with instruments that meet these specifications - whether a whip, a rope of hair, linen, hemp, wool, esparto grass, or similar materials, a leather strap, or a cane of bamboo or other wood - except for wine, in which case the lashing follows what has been transmitted from Allah's Messenger - may Allah's blessings and peace be upon him. As has been transmitted to us through the chain of Muslim: Muḥammad ibn al-Muthannā narrated from Muʿādh ibn Hishām (al-Dastuwaʾī) from Qatādah from Anas ibn Mālik that the Prophet—peace and blessings be upon him—administered the prescribed lashes for wine using palm fronds and sandals.[17]

L40570 And through the chain of Al-Bukhārī: Qutaybah ibn Saʿīd narrated from Abu Ḍamrah Anas ibn ʿIyāḍ, from Yazīd ibn al-Hādī, from Muḥammad ibn Ibrāhīm, from Abū Salamah, from Abū Hurayrah, who said: "A man who had drunk alcohol was brought to the Prophet (peace and blessings of Allah be upon him), so he said: 'Strike him!'" Abū Hurayrah said: "Among us were those striking with their hands, others with their sandals, and others with their garments." And he related the ḥadīth.

L40571 Abū Muḥammad—may Allāh have mercy on him—said: The lashing for wine specifically is to be administered with palm fronds, sandals, hands, or the edge of a garment—all such methods. This reflects the judge's opinion, and it is valid. In our view, there is no prohibition against using a whip for wine-related lashing provided it does not break [anything], cause wounds, or putrefy flesh. As we have reported via Muslim's chain: Aḥmad ibn ʿĪsā reported from Ibn Wahb, who informed me from ʿAmr ibn al-Ḥārith, from Bukayr ibn al-Ashajj, who said: While we were with Sulaymān ibn Yasār,

كَمَا بَيَّنَ صِفَةَ الضَّرْبِ فِي الزِّنَى، وَكَمَا بَيَّنَ حُضُورَ طَائِفَةٍ مِنْ الْمُؤْمِنِينَ لِلْعَذَابِ فِي ذَلِكَ، فَإِذْ لَمْ يَفْعَلْ ذَلِكَ تَعَالَى فَبِيَقِينٍ نَدْرِي أَنَّ اللَّهَ تَعَالَى لَمْ يُرِدْ قَطُّ أَنْ يَكُونَ الضَّرْبُ فِي الْحُدُودِ بِسَوْطٍ خَاصَّةً، دُونَ سَائِرِ مَا يُضْرَبُ بِهِ، فَإِذْ ذَلِكَ كَذَلِكَ فَالْوَاجِبُ أَنْ يُضْرَبَ الْحَدَّ فِي الزِّنَى وَالْقَذْفِ بِمَا يَكُونُ الضَّرْبُ بِهِ عَلَى هَذِهِ الصِّفَةِ، بِسَوْطٍ، أَوْ بِحَبْلٍ مِنْ شَعْرٍ، أَوْ مِنْ كَتَّانٍ، أَوْ مِنْ قُنَّبٍ، أَوْ صُوفٍ، أَوْ حَلْفَاءَ، وَغَيْرِ ذَلِكَ، أَوْ تَفِرٍ، أَوْ قَضِيبٍ مِنْ خَيْزُرَانَ، أَوْ غَيْرِهِ، إلَّا الْخَمْرَ، فَإِنَّ الْجَلْدَ فِيهَا عَلَى مَا جَاءَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا مُعَاذُ بْنُ هِشَامٍ - هُوَ الدَّسْتُوَائِيُّ - أَنَا قَتَادَةُ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَلَدَ فِي الْخَمْرِ بِالْجَرِيدِ، وَالنِّعَالِ»

وَمِنْ طَرِيقِ الْبُخَارِيِّ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ أَنَا أَبُو ضَمْرَةَ أَنَسُ بْنُ عِيَاضٍ عَنْ يَزِيدَ بْنِ الْهَادِي عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ: «أُتِيَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِرَجُلٍ قَدْ شَرِبَ فَقَالَ اضْرِبُوهُ قَالَ أَبُو هُرَيْرَةَ: فَمِنَّا الضَّارِبُ بِيَدِهِ، وَالضَّارِبُ بِنَعْلِهِ، وَالضَّارِبُ بِثَوْبِهِ» وَذَكَرَ الْحَدِيثَ

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَالْجَلْدُ فِي الْخَمْرِ خَاصَّةً يَكُونُ بِالْجَرِيدِ، وَالنِّعَالِ، وَالْأَيْدِي، وَبِطَرْفِ الثَّوْبِ، كُلِّ ذَلِكَ، أَيْ ذَلِكَ رَأْيُ الْحَاكِمِ فَهُوَ حَسَنٌ، وَلَا يَمْتَنِعُ عِنْدَنَا أَنْ يُجْلَدَ فِي الْخَمْرِ أَيْضًا بِسَوْطٍ لَا يَكْسِرُ، وَلَا يَجْرَحُ، وَلَا يُعَفِّنُ لَحْمًا: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا أَحْمَدُ بْنُ عِيسَى أَنَا ابْنُ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ قَالَ: بَيْنَمَا نَحْنُ عِنْدَ سُلَيْمَانَ بْنِ يَسَارٍ إذْ جَاءَ عَبْدُ الرَّحْمَنِ بْنُ جَابِرِ بْنِ عَبْدِ اللَّهِ فَحَدَّثَهُ

[17] **Hadith references (L40567):** Sunan Abi Dawud 4479.

فَأَقْبَلَ عَلَيْنَا فَقَالَ: حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ جَابِرٍ عَنْ أَبِيهِ عَنْ أَبِي بُرْدَةَ الْأَنْصَارِيِّ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «لَا يُجْلَدُ أَحَدٌ فَوْقَ عَشَرَةِ أَسْوَاطٍ إِلَّا فِي حَدٍّ مِنْ حُدُودِ اللَّهِ تَعَالَى» فَاقْتَضَى هَذَا أَنَّ الضَّرْبَ بِالسَّوْطِ جَائِزٌ فِي كُلِّ حَدٍّ، وَفِي التَّعْزِيرِ، وَضَرْبِ الْخَمْرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

'Abd al-Raḥmān ibn Jābir ibn 'Abdillāh came and narrated to him. He then turned to us and said: 'Abd al-Raḥmān ibn Jābir narrated to me from his father, from Abū Burdah al-Anṣārī, that he heard the Messenger of Allāh—peace and blessings of Allāh be upon him—say: "No one is to be lashed more than ten lashes except in a divinely prescribed punishment." This indicates that whipping is permissible in all prescribed punishments, for discretionary discipline (taʿzīr), and for wine-related offenses. Success comes solely from Allāh, the Exalted.[18]

[مَسْأَلَة جلد الْمَرِيض الْحُدُود]

L40572

The issue of applying flogging to a sick person within the framework of the prescribed punishments (ḥudūd).

٢١٩٤ - مَسْأَلَةٌ: هَلْ يُجْلَدُ الْمَرِيضُ الْحُدُودَ أَمْ لَا؟ وَإِنْ جُلِدَهَا كَيْفَ يُجْلَدُهَا؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: يُعَجَّلُ لَهُ ضَرْبُ الْحَدِّ - كَمَا أَنَّا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ أُتِيَ بِرَجُلٍ يَشْرَبُ الْخَمْرَ - وَهُوَ مَرِيضٌ - فَقَالَ: أَقِيمُوا عَلَيْهِ الْحَدَّ، فَإِنِّي أَخَافُ أَنْ يَمُوتَ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَاحْتَمَلَ هَذَا أَنْ يَكُونَ إشْفَاقُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - مِنْ أَنْ يَمُوتَ قَبْلَ أَنْ يُضْرَبَ الْحَدَّ فَيَكُونَ مُعَطِّلًا لِلْحَدِّ

L40573–40575

2194 - Issue: Should a sick person receive lashing for Ḥudūd crimes or not? And if he is to be lashed, how should it be administered? Abū Muḥammad—may God have mercy on him—said: People have differed regarding this matter. A group said: "The Ḥudūd punishment is carried out promptly for him"—as transmitted by Muḥammad ibn Saʿīd ibn Nabāt, from Aḥmad ibn ʿAbd al-Baṣīr, from Qāsim ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from ʿAbd Allāh ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm, from his father—that ʿUmar ibn al-Khaṭṭāb was presented with a man who drank wine while he was ill, whereupon he declared: "Inflict the punishment upon him, lest he die." Abu Muhammad—may God have mercy on him—said: This could imply that Umar's apprehension—may God be pleased with him—was that he might die before the punishment could be administered, thereby nullifying the prescribed penalty.

وَاحْتَمَلَ أَيْضًا: مِنْ أَنْ يَكُونَ يُصِيبُهُ مَوْتٌ مِنْهُ، فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَا مُحَمَّدَ بْنَ سَعِيدٍ أَيْضًا - قَالَ: أَنَا عَبْدُ اللَّهِ بْنُ نَصْرٍ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا ابْنُ وَضَّاحٍ أَنَا مُوسَى بْنُ مُعَاوِيَةَ أَنَا وَكِيعٌ أَنَا سُفْيَانُ فَذَكَرَ هَذَا الْخَبَرَ، وَفِيهِ: أَنَّ عُمَرَ قَالَ: اضْرِبُوهُ لَا يَمُوتُ

And it was also possible: that death might occur from it. So we investigated that matter and found Muhammad ibn Sa'id as well—he said: I am 'Abdullah ibn Nasr; I am Qasim ibn Asbagh; I am Ibn Waddah; I am Musa ibn Mu'awiyah; I am Waki'; I am Sufyan—and he mentioned this report, in which it states: that 'Umar said, "Strike him so that he does not die."

L40576

فَبَيَّنَ هَذَا أَنَّ إشْفَاقَ عُمَرَ كَانَ مِنْ كِلَا الْأَمْرَيْنِ

Thus, this clarifies that 'Umar's compassion arose from both considerations.

L40577

[18] **Hadith references (L40571):** Sahih Muslim 1708.

L40578 Abū Muḥammad—may Allāh have mercy on him—said: Given this, it has been established that he commanded him to be struck with a beating that does not kill him.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذَا كَانَ هَذَا، فَقَدْ ثَبَتَ أَنَّهُ أَمَرَ بِأَنْ يُضْرَبَ ضَرْبًا لَا يَمُوتُ مِنْهُ

L40579 And through him up to Waki‘: I, Sufyan, narrated from Ibn Jurayj from ‘Abdullāh ibn ‘Ubayd ibn ‘Umayr from his father that he would fulfill his vow with the most minimal type [of action].

وَبِهِ - إلَى وَكِيعٍ أَنَا سُفْيَانُ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ اللَّهِ بْنِ عُبَيْدِ بْنِ عُمَيْرٍ عَنْ أَبِيهِ: أَنَّهُ كَانَ يَبَرُّ نَذْرَهُ بِأَدْنَى الضَّرْبِ

L40580 And through him—Sufyan reported to Waki‘, on the authority of Ibn Jurayj, on the authority of ʿAṭāʾ: “The ruling on the bundle of stalks applies generally to all people in the statement of the Most High: ’Take in your hand a bundle of stalks and strike with it, and do not break your oath’ (Quran 38:44, Sūrat Ṣād).”[19]

وَبِهِ - إلَى وَكِيعٍ أَنَا سُفْيَانُ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: الضِّغْثُ لِلنَّاسِ عَامَّةً، فِي قَوْلِهِ تَعَالَى {وَخُذْ بِيَدِكَ ضِغْثًا فَاضْرِبْ بِهِ وَلا تَحْنَثْ} [ص: ٤٤]

L40581 From Yaḥyā ibn ʿAbd al-Raḥmān ibn Masʿūd, from Aḥmad ibn Duḥaym, from Ibrāhīm ibn Ḥammād, from Ismāʿīl ibn Isḥāq, from Ismāʿīl ibn Abī Uways, from his brother, from Sulaymān ibn Bilāl, from Hishām ibn ʿUrwah, from an attentive servant in their household. He said: The servant informed me that ʿUrwah swore to strike me such-and-such a number of blows. He then took fresh palm fronds in his hand and struck me with all of them.

أَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ أَنَا أَحْمَدُ بْنُ دُحَيْمٍ أَنَا إبْرَاهِيمُ بْنُ حَمَّادٍ أَنَا إسْمَاعِيلُ بْنُ إِسْحَاقَ أَنَا إسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ عَنْ أَخِيهِ عَنْ سُلَيْمَانَ بْنِ بِلَالٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ غُلَامٍ لَهُمْ يَفْهَمُ قَالَ: أَخْبَرَنِي ذَلِكَ الْغُلَامُ أَنَّ عُرْوَةَ حَلَفَ لَيَضْرِبُنِي كَذَا وَكَذَا ضَرْبَةً، فَأَخَذَ بِيَدِهِ شَمَارِيخَ فَضَرَبَنِي بِهَا جَمِيعًا

L40582 From Muhammad ibn ‘Ubayd, narrated to us from Isma‘il: Muhammad ibn Thawr reported from Ma‘mar from Qatadah concerning the Almighty’s statement, *“‘Take in your hand a bundle and strike with it, and do not break your oath’”* [Quran 38:44]. He said: “A twig containing ninety-nine twigs, originally totaling one hundred. He struck his wife with it, for he had sworn to strike her. Thus, the strike served as a fulfillment of his oath and a reduction of his wife’s hardship.” This is the opinion of Al-Shafi‘i.[20]

وَبِهِ - إلَى إسْمَاعِيلَ نا مُحَمَّدُ بْنُ عُبَيْدٍ أَنَا مُحَمَّدُ بْنُ ثَوْرٍ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي قَوْلِهِ تَعَالَى {وَخُذْ بِيَدِكَ ضِغْثًا فَاضْرِبْ بِهِ وَلا تَحْنَثْ} [ص: ٤٤] قَالَ: عُودًا فِيهِ تِسْعَةٌ وَتِسْعُونَ عُودًا، وَالْأَصْلُ تَمَامُ الْمِائَةِ، فَضَرَبَ بِهِ امْرَأَتَهُ، وَكَانَ حَلَفَ لِيَضْرِبَنَّهَا، فَكَانَتْ الضَّرْبَةُ تَحِلَّةً لِيَمِينِهِ، وَتَخْفِيفًا عَنْ امْرَأَتِهِ - وَهُوَ قَوْلُ الشَّافِعِيِّ

وَقَالَتْ طَائِفَةٌ: يُؤَخَّرُ جَلْدُهُ حَتَّى يَبْرَأَ - وَهُوَ قَوْلُ مَالِكٍ

L40583 A group said: His flogging is delayed until he recovers, and that is the view of Mālik.

L40584–40586 And it is reported from Mujahid regarding the aforementioned verse: What Yahya ibn Abd al-Rahman ibn Mas’ud narrated via the mentioned chain of

وَجَاءَ عَنْ مُجَاهِدٍ فِي الْآيَةِ الْمَذْكُورَةِ: مَا نَاه يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ بِالْإِسْنَادِ الْمَذْكُورِ إلَى إسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا عَلِيُّ بْنُ عَبْدِ اللَّهِ أَنَا سُفْيَانُ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ

[19] **Qur’an references (L40580):** Qur’an 38:44 (Sad).
[20] **Qur’an references (L40582):** Qur’an 38:44 (Sad).

transmission to Isma'il ibn Ishaq—I am Ali ibn Abdullah, I am Sufyan, from Ibn Abi Najih. From Mujāhid regarding the statement of the Exalted: *"Take in your hand a bunch and strike with it, and do not break your oath"* [Ṣād:44]. He said: "This is specifically for Ayyūb"; ʿAṭāʾ said: "This is universally applicable to people."[21]

مُجَاهِدٍ فِي قَوْله تَعَالَى {وَخُذْ بِيَدِكَ ضِغْثًا فَاضْرِبْ بِهِ وَلا تَحْنَثْ} [ص: ٤٤] قَالَ: هِيَ لِأَيُّوبَ خَاصَّةً - وَقَالَ عَطَاءٌ: هِيَ لِلنَّاسِ عَامَّةً

L40587 Abu Muhammad—may Allah have mercy on him—said: When they disagreed, we examined the matter to ascertain the truth so we might follow it—with the help of Allah, the Exalted. We found the faction that prevents carrying out the prescribed punishment against her until she recovers arguing with what Humaam narrated to us: I am Abbas ibn Asbagh, I am Muhammad ibn Abd al-Malik ibn Ayman, I am Abdullah ibn Ahmad ibn Hanbal, from his father, from Ghundar, from Shu'bah, who said: I heard Abd al-A'la al-Taghlibi narrate from Abu Jamilah, from Ali ibn Abi Talib: "A female slave committed adultery and became pregnant. Ali came to the Prophet—peace and blessings be upon him—and informed him. He said: 'Let her be until she gives birth'—or he said: 'until she delivers'—then flog her."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا نَظَرْنَا فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى - فَوَجَدْنَا الطَّائِفَةَ الْمَانِعَةَ مِنْ إقَامَةِ الْحَدِّ عَلَيْهِ - حَتَّى يَبْرَأَ - يَحْتَجُّونَ: بِمَا ناه حُمَامٌ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ أَنَا أَبِي أَنَا غُنْدَرٌ أَنَا شُعْبَةُ قَالَ: سَمِعْت عَبْدَ الْأَعْلَى التَّغْلِبِيَّ يُحَدِّثُ عَنْ أَبِي جَمِيلَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ «أَنَّ أَمَةً زَنَتْ فَحَمَلَتْ، فَأَتَى عَلِيٌّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَه فَقَالَ لَهُ: دَعْهَا حَتَّى تَلِدَ - أَوْ قَالَ حَتَّى تَضَعَ ثُمَّ اجْلِدْهَا»

L40588 From him to Ahmad ibn Hanbal: I am Waki', I am Sufyan, from al-A'lā at-Taghlibī, from Abū Jamīlah aṭ-Ṭahawī, from 'Alī: "A servant of the Prophet—peace and blessings of Allah be upon him—committed an offense. The Prophet—peace and blessings of Allah be upon him—commanded me to carry out the ḥadd punishment upon her. I came to her and found her bleeding had not ceased. I returned to him and informed him. He said: 'When her bleeding ceases, carry out the ḥadd punishment upon her. Carry out the ḥadd punishments upon those whom your right hands possess.'"[22]

وَبِهِ - إلَى أَحْمَدَ بْنِ حَنْبَلٍ أَنَا وَكِيعٌ أَنَا سُفْيَانُ عَنْ عَبْدِ الْأَعْلَى التَّغْلِبِيِّ عَنْ أَبِي جَمِيلَةَ الطَّهَوِيِّ عَنْ عَلِيٍّ «أَنَّ خَادِمًا لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَحْدَثَتْ فَأَمَرَنِي النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ أُقِيمَ عَلَيْهَا الْحَدَّ فَأَتَيْتُهَا فَوَجَدْتُهَا لَمْ تَجِفَّ مِنْ دَمِهَا فَأَتَيْتُهُ فَأَخْبَرْتُهُ فَقَالَ: إذَا جَفَّتْ مِنْ دَمِهَا فَأَقِمْ عَلَيْهَا الْحَدَّ أَقِيمُوا الْحُدُودَ عَلَى مَا مَلَكَتْ أَيْمَانُكُمْ»

L40589 They said: "The Messenger of Allah—peace and blessings of Allah be upon him—did not rush to flog the pregnant servant until she delivered, so that the *ḥudūd* punishment commanded by Allah the Exalted could then be administered. Similarly, the woman [awaiting purification] whose bleeding had not stopped until it ceased."

قَالُوا: فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُعَجِّلْ جَلْدَ الْخَادِمِ الْحَامِلِ حَتَّى تَضَعَ فَتَجْلِدَ الْحَدَّ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ - وَكَذَلِكَ الَّتِي لَمْ تَجِفَّ مِنْ دَمِهَا حَتَّى يَجِفَّ عَنْهَا دَمُهَا

[21] **Qur'an references (L40584):** Qur'an 38:44 (Sad).
[22] **Hadith references (L40588):** Musnad Ahmad 736.

L40590–40592 Then we examined the statement of the second group who necessitate hastening the punishment according to what prevents the risk of death. We found them citing the narration transmitted by ʻAbdullāh ibn Rabīʻ: Muḥammad ibn Muʻāwiyah reported to us, from Aḥmad ibn Shuʻayb, from Aḥmad ibn Yūsuf al-Naysābūrī and Muḥammad ibn ʻUbaydullāh ibn Yazīd ibn Ibrāhīm al-Ḥarrānī – with the wording being his. Aḥmad said: From Aḥmad ibn Sulaymān. Muḥammad ibn ʻUbaydullāh said: My father narrated to me. Then Aḥmad ibn Sulaymān and ʻUbaydullāh ibn Yazīd concurred, both stating: From ʻAbdullāh ibn ʻAmr – the one from Raqqa – from Zayd ibn Abī Unaysah, from Abū Ḥāzim, from Sahl ibn Saʻd, who said: "A man who had committed adultery was brought to the Messenger of Allah – peace and blessings be upon him. He ordered him to be stripped, revealing a crippled man with withered calves. The Messenger of Allah – peace and blessings be upon him – said: 'What would flogging leave of this man?' He then called for bundles each containing one hundred palm stalks and struck him once with them." Narrated by Humam, from Abbas ibn Asbagh, from Muhammad ibn Abd al-Malik ibn Ayman, from Yazid ibn Muhammad al-Uqayli in Mecca, from Abd al-Rahman ibn Hammad al-Thaqafi, from al-A'mash, from al-Sha'bi, from Alqamah, from Ibn Abbas, who said: "The Messenger of Allah—peace and blessings be upon him—passed by a frail woman who could not protect herself from whoever desired her. The Messenger of Allah—peace and blessings be upon him—asked: 'From whom?' She replied: 'From so-and-so,' naming a man weaker than herself. The Messenger of Allah—peace and blessings be upon him—sent for him, and he was brought forth. When questioned about the matter, he repeatedly confessed. The Messenger of Allah—peace and blessings be upon him—then ordered: 'Take one hundred bundles [of palm stalks] and strike him with them a single time.'"

L40593 Abū Muḥammad—may Allāh have mercy on him—said: The ḥadīth of Sahl ibn Saʻd is sound and constitutes valid evidence. If it is objected: "This known report contains Isrāʾīl in its chain"—as follows: I am ʿAbdullāh ibn Rabīʻ, I am Muḥammad ibn Muʻāwiyah, I am Aḥmad ibn Shuʻayb; Muḥammad ibn Wahb al-Ḥarrānī informed me; I am Muḥammad ibn Salamah; Abū ʿAbd al-Raḥīm—the maternal uncle of Muḥammad ibn Salamah—narrated to

ثُمَّ نَظَرْنَا فِي قَوْلِ الطَّائِفَةِ الثَّانِيَةِ الْمُوجِبَةِ تَعْجِيلَ الْحَدِّ عَلَى حَسَبِ مَا يُؤْمَنُ بِهِ الْمَوْتُ، فَوَجَدْنَاهُمْ يَذْكُرُونَ: مَا نَاه عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ يُوسُفَ النَّيْسَابُورِيُّ، وَمُحَمَّدُ بْنُ عُبَيْدِ اللَّهِ بْنِ يَزِيدَ بْنِ إِبْرَاهِيمَ الْحَرَّانِيُّ - وَاللَّفْظُ لَهُ - قَالَ أَحْمَدُ: أَنَا أَحْمَدُ بْنُ سُلَيْمَانَ، وَقَالَ مُحَمَّدُ بْنُ عُبَيْدِ اللَّهِ: حَدَّثَنِي أَبِي ثُمَّ اتَّفَقَ أَحْمَدُ بْنُ سُلَيْمَانَ، وَعُبَيْدُ اللَّهِ بْنُ يَزِيدَ: قَالَا: أَنَا عَبْدُ اللَّهِ بْنُ عَمْرٍو - هُوَ الرَّقِّيُّ - عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ عَنْ أَبِي حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ قَالَ: «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِرَجُلٍ قَدْ زَنَى، فَأَمَرَ بِهِ فَجُرِّدَ، فَإِذَا رَجُلٌ مُقْعَدٌ، حَمْشُ السَّاقَيْنِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا يُبْقِي الضَّرْبُ مِنْ هَذَا شَيْئًا، فَدَعَا بِأَثَاكِيلَ فِيهَا مِائَةُ شُمْرُوخٍ، فَضَرَبَهُ بِهَا ضَرْبَةً وَاحِدَةً» أَنَا حُمَامٌ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا يَزِيدُ بْنُ مُحَمَّدٍ الْعُقَيْلِيُّ بِمَكَّةَ أَنَا عَبْدُ الرَّحْمَنِ بْنُ حَمَّادٍ الثَّقَفِيُّ أَنَا الْأَعْمَشُ عَنِ الشَّعْبِيِّ عَنْ عَلْقَمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: «مَرَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِامْرَأَةٍ ضَعِيفَةٍ لَا تَقْدِرُ أَنْ تَمْتَنِعَ مِمَّنْ أَرَادَهَا فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: مِمَّنْ؟ قَالَتْ: مِنْ فُلَانٍ، فَذَكَرَتْ رَجُلًا ضَعِيفًا أَضْعَفَ مِنْهَا، فَبَعَثَ إِلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجِيءَ بِهِ فَسَأَلَهُ عَنْ ذَلِكَ؟ فَأَقَرَّ مِرَارًا، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خُذُوا أَثَاكِيلَ مِائَةً فَاضْرِبُوهُ بِهَا مَرَّةً وَاحِدَةً» .

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: حَدِيثُ سَهْلِ بْنِ سَعْدٍ صَالِحٌ تَقُومُ بِهِ الْحُجَّةُ، فَإِنْ قِيلَ: إِنَّ هَذَا الْخَبَرَ الْمَعْرُوفَ فِيهِ إِسْرَائِيلُ: كَمَا أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ وَهْبٍ الْحَرَّانِيُّ أَنَا مُحَمَّدُ بْنُ سَلَمَةَ نِي أَبُو عَبْدِ الرَّحِيمِ - هُوَ

me; Zayd—who is Ibn Abī Unaysah—narrated to me from Abū Ḥāzim, from Abū Umāmah ibn Sahl ibn Ḥunayf, who said: "A pregnant girl was brought to the Messenger of Allāh—peace and blessings of Allāh be upon him. He asked her: 'Who fathered your child?' She replied: 'So-and-so, the paralyzed man.' They brought the man—a lean-bodied blind individual—whereupon he said: 'By Allāh, beating would leave nothing of this body!' The Prophet then ordered one hundred palm stalk bundles to be gathered. He was struck with them once." These refer to the palm spathes containing fibrous stems.

L40594 In numerous narrations—too lengthy to mention here—we have omitted them for that reason. Abu Muhammad, may Allah have mercy on him, said: When the narrations came as we mentioned, it became incumbent upon us to examine the matter. We found the ḥadīth of Abu Jumaylah from ʿAlī to be authentic, yet it contains no valid proof for their position whatsoever, for it merely states that the Messenger of Allah, peace and blessings be upon him, postponed the prescribed punishment for the pregnant woman and regarding the one who had not ceased her bleeding. This has no bearing whatsoever on the matter we are discussing, for the pregnant woman is not in a state of illness; rather, the concern is for her fetus, whose destruction is impermissible. The ruling for a healthy woman is to be flogged without mercy, while the ruling for the fetus is that no means should be taken to destroy it. Thus, the flogging must be postponed for her altogether, just as stoning is also delayed for the same reason.

L40595–40597 As for the woman whose bleeding has not ceased: this is after childbirth, during the flow of blood - a preoccupying state that wholly occupies her. One such as her should not be flogged in that condition, like one overcome by vomiting, or he is... In the case of defecation or urination—with no difference [in ruling]—and the cessation of that blood being imminent, lasting merely an hour or two, the hadith does not say "when she becomes pure"; rather, he said: "when she dries up from her blood."

L40598 Thus, it is nullified for them to have any connection whatsoever in any aspect of those two hadiths.

L40599 Since it has become untenable for that group to have any basis, it is in-

خَالُ مُحَمَّدِ بْنِ سَلَمَةَ - حَدَّثَنِي زَيْدٌ - هُوَ ابْنُ أَبِي أُنَيْسَةَ - عَنْ أَبِي حَازِمٍ عَنْ أَبِي أُمَامَةَ بْنِ سَهْلِ بْنِ حُنَيْفٍ قَالَ: «جِيءَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِجَارِيَةٍ - وَهِيَ حُبْلَى - فَسَأَلَهَا مِمَّنْ حَمْلُكِ؟ فَقَالَتْ: مِنْ فُلَانٍ الْمُقْعَدِ، فَجِيءَ بِفُلَانٍ، فَإِذَا رَجُلٌ حَمْشُ الْجَسَدِ ضَرِيرٌ، فَقَالَ: وَاَللَّهِ مَا يُبْقِي الضَّرْبُ مِنْ هَذَا شَيْئًا، فَأَمَرَ بِأَثَاكِيلَ مِائَةً فَجُمِعَتْ، فَضُرِبَ بِهَا ضَرْبَةً وَاحِدَةً» وَهِيَ: شَمَارِيخُ النَّخْلِ الَّذِي يَكُونُ فِيهَا الْعُرُوقُ

وَفِي آثَارٍ كَثِيرَةٍ يَطُولُ ذِكْرُهَا جِدًّا، فَتَرَكْنَاهَا لِذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا جَاءَتْ الْآثَارُ كَمَا ذَكَرْنَا: وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ؟ فَوَجَدْنَا حَدِيثَ أَبِي جَمِيلَةَ عَنْ عَلِيٍّ صَحِيحًا إلَّا أَنَّهُ لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا، لِأَنَّهُ إنَّمَا فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخَّرَ الْحَدَّ عَنْ الْحُبْلَى، وَعَنْ الَّتِي لَمْ تَجِفَّ مِنْ دَمِهَا - وَهَذَا لَيْسَ مِمَّا نَحْنُ فِيهِ فِي شَيْءٍ، لِأَنَّ الْحَامِلَ لَيْسَتْ مَرِيضَةً، وَإِنَّمَا خِيفَ عَلَى جَنِينِهَا الَّذِي لَا يَحِلُّ هَلَاكُهُ، وَحُكْمُ الصَّحِيحِ أَنْ تُجْلَدَ بِلَا رَأْفَةٍ، وَحُكْمُ الْجَنِينِ أَنْ لَا يُتَوَصَّلَ إلَى إهْلَاكِهِ: فَوَجَبَ تَأْخِيرُ الْجَلْدِ عَنْهَا جُمْلَةً، كَمَا يُؤَخَّرُ الرَّجْمُ أَيْضًا مِنْ أَجْلِهِ

وَأَمَّا الَّتِي لَمْ تَجِفَّ مِنْ دَمِهَا: فَإِنَّ هَذَا كَانَ إثْرَ الْوِلَادَةِ، وَفِي حَالِ سَيَلَانِ الدَّمِ، وَهَذَا شُغْلٌ شَاغِلٌ لَهَا، وَمِثْلُهَا أَنْ لَا تُجْلَدَ فِي تِلْكَ الْحَالِ، كَمَنْ ذَرَعَهُ الْقَيْءُ، أَوْ هُوَ فِي حَالِ الْغَائِطِ، أَوْ الْبَوْلِ، وَلَا فَرْقَ، وَانْقِطَاعُ ذَلِكَ الدَّمِ قَرِيبٌ، إنَّمَا هِيَ سَاعَةٌ أَوْ سَاعَتَانِ - وَلَمْ يَقُلْ فِي الْحَدِيثِ إذَا طَهُرَتْ، إنَّمَا قَالَ: إذَا جَفَّتْ مِنْ دَمِهَا

فَبَطَلَ أَنْ يَكُونَ لَهُمْ فِي شَيْءٍ مِنْ ذَيْنِك الْحَدِيثَيْنِ مُتَعَلَّقٌ أَصْلًا

cumbent upon us to examine—with Allah's assistance—the position upheld by the other group. We scrutinized the ḥadīth we mentioned concerning the flogging of a chronically ill patient with green palm branches containing a hundred date clusters. We found the chain of transmission we presented, through the narration of Sahl ibn Saʿd, to be a sound chain that upholds the evidence. We discovered them invoking as evidence the command of Ayyūb—peace be upon him and his family and grant him salvation.

فَإِذْ قَدْ سَقَطَ أَنْ يَكُونَ لِتِلْكَ الطَّائِفَةِ مُتَعَلَّقٌ، فَالْوَاجِبُ أَنْ نَنْظُرَ - بِعَوْنِ اللَّهِ فِيمَا قَالَتْ بِهِ الطَّائِفَةُ الْأُخْرَى: فَنَظَرْنَا فِي الْحَدِيثِ الَّذِي أَوْرَدْنَا مِنْ جَلْدِ الْمُزْمِنِ الْمَرِيضِ بِشَمَارِيخَ فِيهَا مِائَةُ عُثْكُولٍ: فَوَجَدْنَا الطَّرِيقَ الَّذِي صَدَّرْنَا بِهِ مِنْ طَرِيقِ سَهْلِ بْنِ سَعْدٍ طَرِيقًا جَيِّدًا تَقُومُ بِهِ الْحُجَّةُ، وَوَجَدْنَاهُمْ يَحْتَجُّونَ بِأَمْرِ أَيُّوبَ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

L40600 Abū Muḥammad—may Allah have mercy on him—said: As for us, we do not cite the law of any prophet other than our Prophet (ﷺ) as evidence, for Allah the Exalted says: *{For each [community] among you We have appointed a divine law and an established way}* [Al-Mā'idah: 48].[23]

وَقَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا نَحْنُ فَلَا نَحْتَجُّ بِشَرِيعَةِ نَبِيٍّ غَيْرِ نَبِيِّنَا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِقَوْلِ اللَّهِ تَعَالَى {لِكُلٍّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا} [المائدة: ٤٨]

L40601 Now that we have firmly established in our book entitled "The Precision of the Fundamentals of Jurisprudence"

وَلَمَّا قَدْ أَحْكَمْنَا فِي كِتَابِنَا الْمَوْسُومِ بِ " الْإِحْكَامُ لِأُصُولِ الْأَحْكَامِ "

L40602 Abū Muḥammad—may Allāh have mercy on him—said: Even if no valid ḥadd punishment were established in this matter, Allāh's statement—Exalted is He—"Allāh does not burden a soul beyond its capacity" [al-Baqarah: 286] would necessitate that no one be lashed except according to their capacity for pain. This verse is a clear text on the matter, and it is fundamentally impermissible to contravene it.[24]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَحَتَّى لَوْ لَمْ يَصِحَّ فِي هَذَا حَدٌّ، لَكَانَ قَوْلُ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] مُوجِبًا أَنْ لَا يُجْلَدَ أَحَدٌ إِلَّا عَلَى حَسَبِ طَاقَتِهِ مِنْ الْأَلَمِ، وَكَانَ نَصًّا جَلِيًّا فِي ذَلِكَ لَا يَجُوزُ مُخَالَفَتُهُ أَصْلًا.

L40603 And by necessity of reason, we know that a man over thirty years of age—strong in body and resilient in disposition—can endure corporal punishment according to his strength, which an eighty-year-old man, a fifteen-year-old boy, or a fourteen-year-old (if he has reached puberty and attained the legal age) cannot endure.

وَبِضَرُورَةِ الْعَقْلِ نَدْرِي أَنَّ ابْنَ نَيِّفٍ وَثَلَاثِينَ قَوِيَّ الْجِسْمِ، مُصَبَّرَ الْخُلُقِ، يَحْمِلُ مِنْ الضَّرْبِ مِنْ قُوَّتِهِ مَا لَا يَحْمِلُهُ الشَّيْخُ ابْنُ ثَمَانِينَ، وَالْغُلَامُ ابْنُ خَمْسَةَ عَشَرَ عَامًا، - وَأَرْبَعَةَ عَشَرَ عَامًا - إذَا بَلَغَ - وَأَصَابَ حَدًّا

L40604 Similarly, an elderly man or a young boy suffers pain from a flogging that causes no pain to a strong thirty-year-old man. Indeed, the latter would scarcely feel anything but a slight sensation, whereas it inflicts severe pain upon those two. Moreover, the punishment that pains the strong young man, if applied through flogging to a decrepit old man or a frail young boy,

وَكَذَلِكَ يُؤْلِمُ الشَّيْخَ الْكَبِيرَ، وَالْغُلَامَ الصَّغِيرَ، مِنْ الْجَلْدِ مَا لَا يُؤْلِمُ ابْنَ الثَّلَاثِينَ الشَّابَّ الْقَوِيَّ، بَلْ لَا يَكَادُ يَحُسُّ إلَّا حِسًّا لَطِيفًا مَا يُؤْلِمُ ذَيْنِك الْأَلَمَ الشَّدِيدَ وَأَنَّ الَّذِي يُؤْلِمُ الشَّابَّ الْقَوِيَّ، لَوْ قُوبِلَ بِهِ الشَّيْخُ الْهَرَمُ، وَالصَّغِيرُ النَّحِيفُ، مِنْ الْجَلْدِ لَقَتَلَهُمَا، هَذَا أَمْرٌ لَا يَدْفَعُهُ إلَّا مُدَافِعٌ لِلْحِسِّ وَالْمُشَاهَدَةِ

[23] **Qur'an references (L40600):** Qur'an 5:48 (Al-Ma'idah).
[24] **Qur'an references (L40602):** Qur'an 2:286 (Al-Baqarah).

would kill them both. This is undeniable except to those who deny sensory perception and observable evidence.

L40605–40607 We have found that the sick person is pained by the slightest thing which the healthy person does not perceive at all, except as the healthy person feels his clothes - which cannot cause him pain through their sensation whatsoever. His feeling pain from speech, from injury, and from a gentle touch of the hand corresponds to the severity of the illness. This is something about which there is no doubt at all. And whoever stubbornly opposes this only resists clear evidence, direct observation, and sensory perception.

L40608 We found that when a sick person incurs a ḥadd punishment for offenses such as adultery, false accusation [of adultery], or consuming alcohol, there can only be one of two outcomes with no third alternative: either the ḥadd punishment is expedited for him, or it is postponed. If they say, "It is postponed," we ask them: "Until when?" If they reply, "Until he recovers," we respond: "This is not a fixed timeframe, for recovery may come swiftly, be delayed, or never occur. This amounts to suspending ḥadd punishments, which is wholly impermissible, as it contradicts Allah's command to uphold them. Thus, the only remaining option is to expedite the ḥadd punishment, as we ourselves have stated. This is reinforced by Allah's decree: 'And hasten toward forgiveness from your Lord' (Surah Āl ʿImrān 3:133)."[25]

L40609 It is correct that the obligation requires flogging each individual according to the capacity Allah the Exalted has enjoined him to endure. Thus, whoever is extremely weak shall be struck once with a palm branch containing one hundred date spathes in a single strike, or similarly with one containing eighty spathes. In cases of wine consumption, flogging applies even if his weakness is severe, administered with the fringe of a garment according to each person's capability with no increase. With this, we state and conclusively assert: this constitutes the certain truth before Allah the Exalted, while whatever opposes it is false before Him. Through Him alone comes success.

L40610 **Question: How many times must ḥadd punishments be-**

[25] **Qur'an references (L40608):** Qur'an 3:133 (Ali 'Imran).

وَوَجَدْنَا الْمَرِيضَ يُؤْلِمُهُ أَقَلُّ شَيْءٍ مِمَّا لَا يَحُسُّهُ الصَّحِيحُ أَصْلًا، إلَّا كَمَا يَحُسُّ بِثِيَابِهِ الَّتِي لَيْسَ لِحِسِّهِ لَهَا فِي الْأَلَمِ سَبِيلٌ أَصْلًا، وَعَلَى حَسَبِ شِدَّةِ الْمَرَضِ يَكُونُ تَأَلُّمُهُ لِلْكَلَامِ، وَلِلتَّلَفِ، وَلِلْمَسِّ الْيَدِ بِلُطْفٍ، هَذَا مَا لَا شَكَّ فِيهِ أَصْلًا وَمَنْ كَابَرَ هَذَا فَإِنَّمَا يُكَابِرُ الْعِيَانَ، وَالْمُشَاهَدَةَ، وَالْحِسَّ

فَوَجَدْنَا الْمَرِيضَ إذَا أَصَابَ حَدًّا مِنْ زِنًى، أَوْ قَذْفٍ، أَوْ خَمْرٍ، لَا بُدَّ فِيهِ مِنْ أَحَدِ أَمْرَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا أَنْ يُعَجَّلَ لَهُ الْحَدُّ، وَإِمَّا أَنْ يُؤَخَّرَ عَنْهُ؟ فَإِنْ قَالُوا: يُؤَخَّرُ؟ قُلْنَا لَهُمْ: إلَى مَتَى؟ فَإِنْ قَالُوا: إلَى أَنْ يَصِحَّ؟ قُلْنَا لَهُمْ: لَيْسَ هَذَا أَمَدٌ مَحْدُودٌ، وَقَدْ تَتَعَجَّلُ الصِّحَّةُ، وَقَدْ تُبْطِئُ عَنْهُ، وَقَدْ لَا يَبْرَأُ، فَهَذَا تَعْطِيلٌ لِلْحُدُودِ، وَهَذَا لَا يَحِلُّ أَصْلًا، لِأَنَّهُ خِلَافُ أَمْرِ اللَّهِ تَعَالَى فِي إقَامَةِ الْحُدُودِ، فَلَمْ يَبْقَ إلَّا تَعْجِيلُ الْحَدِّ كَمَا قُلْنَا نَحْنُ، وَيُؤَكِّدُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى {وَسَارِعُوا إلَى مَغْفِرَةٍ مِنْ رَبِّكُمْ} [آل عمران: ١٣٣]

فَصَحَّ أَنَّ الْوَاجِبَ أَنْ يُجْلَدَ كُلُّ وَاحِدٍ عَلَى حَسَبِ وُسْعِهِ الَّذِي كَلَّفَهُ اللَّهُ تَعَالَى أَنْ يَصْبِرَ لَهُ، فَمَنْ ضَعُفَ جِدًّا جُلِدَ بِشِمْرَاخٍ فِيهِ مِائَةُ عُثْكُولِ جَلْدَةً وَاحِدَةً، أَوْ فِيهِ ثَمَانُونَ عُثْكَالًا كَذَلِكَ - وَيُجْلَدُ فِي الْخَمْرِ وَإِنْ اشْتَدَّ ضَعْفُهُ بِطَرْفِ ثَوْبٍ: عَلَى حَسَبِ طَاقَةِ كُلِّ أَحَدٍ وَلَا مَزِيدَ - وَبِهَذَا نَقُولُ وَنَقْطَعُ: أَنَّهُ الْحَقُّ عِنْدَ اللَّهِ تَعَالَى بِيَقِينٍ، وَمَا عَدَاهُ فَبَاطِلٌ عِنْدَ اللَّهِ تَعَالَى - وَبِهِ التَّوْفِيقُ

[مَسْأَلَة كَمْ مَرَّةٍ مِنْ الْإِقْرَارِ تَجِبُ الْحُدُودُ عَلَى الْمُقِرِّ]

come obligatory upon the confessor as a result of their confession?

L40611 2195. Issue: Upon how many instances of confession does the implementation of Ḥadd punishments become obligatory for the confessor? Abū Muḥammad – may Allāh have mercy on him – said: Scholars have differed regarding this matter. One group held that the implementation of Ḥadd punishments becomes obligatory through a single confession. This is the opinion of al-Ḥasan ibn Ḥayy, Ḥammād ibn Abī Sulaymān, ʿUthmān al-Battī, Mālik, al-Shāfiʿī, Abū Thawr, Abū Sulaymān, and all their companions.

L40612 A group has stated that the prescribed punishment for adultery is not enforced against anyone based on confession until they confess four times, the punishment of amputation for theft is not enforced until two confessions are made, and the punishment for consuming intoxicants requires two confessions—while for false accusation of adultery, once suffices—and this is an opinion narrated from Abu Yusuf, the companion of Abu Hanifah.

L40613–40615 Abū Muḥammad—may Allāh have mercy on him—said: When they differed—as we have mentioned—we examined what they had cited as proof. Every group adheres to its opinion. We examined the view of those who held that the prescribed punishment for adultery is not carried out with fewer than four confessions. We found them citing the narration via Muslim's chain: from ʿAbd al-Malik ibn Shuʿayb, from al-Layth ibn Saʿd, from my father, from my grandfather, from ʿUqayl ibn Khalid, from Ibn Shihab, from Abu Salamah ibn ʿAbd al-Rahman ibn ʿAwf and Saʿid ibn al-Musayyab—both of whom narrated from Abu Hurayrah: "A man came to the Messenger of Allah—peace and blessings be upon him—while he was in the mosque. The man called out, 'O Messenger of Allah, I have committed adultery!' The Prophet turned away. He repositioned himself to face him and repeated, 'O Messenger of Allah, I have committed adultery!' The Prophet turned away until the man confessed four times. When he testified against himself four times, the Prophet called him and asked, 'Are you insane?' He replied, 'No.' The Prophet asked, 'Are you a married person?' He said, 'Yes.' The Prophet then said, 'Take him away and stone him.'"

٢١٩٥ - مَسْأَلَةٌ: بِكَمْ مِنْ مَرَّةٍ مِنْ الْإِقْرَارِ تَجِبُ الْحُدُودُ عَلَى الْمُقِرِّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَتْ طَائِفَةٌ: بِإِقْرَارِهِ مَرَّةً وَاحِدَةً تَجِبُ إقَامَةُ الْحُدُودِ - وَهُوَ قَوْلُ الْحَسَنِ بْنِ حَيٍّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَعُثْمَانَ الْبَتِّيِّ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِهِمْ

وَقَالَتْ طَائِفَةٌ: لَا يُقَامُ عَلَى أَحَدٍ حَدُّ الزِّنَى بِإِقْرَارِهِ حَتَّى يُقِرَّ عَلَى نَفْسِهِ أَرْبَعَ مَرَّاتٍ، وَلَا يُقَامُ عَلَيْهِ حَدُّ الْقَطْعِ، وَالسَّرِقَةِ حَتَّى يُقِرَّ بِهِ مَرَّتَيْنِ، وَحَدُّ الْخَمْرِ مَرَّتَيْنِ - وَأَمَّا فِي الْقَذْفِ فَمَرَّةٌ وَاحِدَةٌ - وَهُوَ قَوْلٌ رُوِيَ عَنْ أَبِي يُوسُفَ صَاحِبِ أَبِي حَنِيفَةَ

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - نَظَرْنَا فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا، فَنَظَرْنَا فِي قَوْلِ مَنْ رَأَى أَنَّ الْحَدَّ لَا يُقَامُ فِي الزِّنَا بِأَقَلَّ مِنْ أَرْبَعِ مَرَّاتٍ: فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِطَرِيقِ مُسْلِمٍ نِي عَبْدُ الْمَلِكِ بْنُ شُعَيْبٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ نِي أَبِي عَنْ جَدِّي نِي عُقَيْلُ بْنِ خَالِدٍ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَسَعِيدِ بْنِ الْمُسَيَّبِ كِلَاهُمَا عَنْ أَبِي هُرَيْرَةَ «أَنَّهُ أَتَى رَجُلٌ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ فِي الْمَسْجِدِ - فَنَادَاهُ فَقَالَ: يَا رَسُولَ اللَّهِ إنِّي قَدْ زَنَيْتُ؟ فَأَعْرَضَ عَنْهُ، فَتَنَحَّى تِلْقَاءَ وَجْهِهِ فَقَالَ: يَا رَسُولَ اللَّهِ إنِّي قَدْ زَنَيْتُ فَأَعْرَضَ عَنْهُ حَتَّى كَرَّرَ ذَلِكَ أَرْبَعَ مَرَّاتٍ، فَلَمَّا شَهِدَ عَلَى نَفْسِهِ أَرْبَعَ شَهَادَاتٍ دَعَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ أَبِكَ جُنُونٌ؟ قَالَ: لَا، قَالَ: فَهَلْ أَحْصَنْتَ قَالَ: نَعَمْ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اذْهَبُوا بِهِ فَارْجُمُوهُ»

L40616 Narrated to us Abdullah ibn Rabiʿ from Muhammad ibn Muʿawiyah from Ahmad ibn Shuʿayb from Muhammad ibn Hatim ibn Nuʿaym from Hibban (he is Ibn Musa) from Abdullah (he is Ibn al-Mubarak) from Hammad ibn Salamah from Abu al-Zubayr from Abd al-Rahman ibn Mudadd from Abu Hurairah: That Maʿiz came to a man named Huzal and said, "O Huzal, another person has committed adultery." He replied, "Go to the Messenger of Allah (peace and blessings be upon him) before a Quranic revelation is sent down concerning you." So he went to the Messenger of Allah (peace and blessings be upon him) and informed him that he himself had committed adultery. The Messenger turned away from him. He informed him again, and the Messenger turned away from him. He informed him again, and the Messenger turned away from him. This occurred four times in total. When he confessed the fourth time, the Messenger ordered him to be stoned. After he was stoned, he was taken to a tree where he was killed.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ حَاتِمِ بْنِ نُعَيْمٍ أَنَا حِبَّانُ - هُوَ ابْنُ مُوسَى - أَنَا عَبْدُ اللَّهِ - هُوَ ابْنُ الْمُبَارَكِ - عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مُضَاضٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ مَاعِزًا أَتَى رَجُلًا يُقَالُ لَهُ: هُزَالٌ، فَقَالَ: يَا هُزَالُ إِنَّ الْآخَرَ قَدْ زَنَى، قَالَ: ائْتِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَبْلَ أَنْ يَنْزِلَ فِيكَ قُرْآنٌ، فَأَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَهُ أَنَّهُ زَنَى؟ فَأَعْرَضَ عَنْهُ، ثُمَّ أَخْبَرَهُ فَأَعْرَضَ عَنْهُ، ثُمَّ أَخْبَرَهُ فَأَعْرَضَ عَنْهُ - أَرْبَعَ مَرَّاتٍ - فَلَمَّا كَانَ الرَّابِعَةُ أَمَرَ بِرَجْمِهِ، فَلَمَّا رُجِمَ أُتِيَ إِلَى شَجَرَةٍ فَقُتِلَ»

L40617–40619 Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah informed us: Aḥmad ibn Shuʿayb informed us: Muḥammad ibn Ḥātim ibn Nuʿaym informed us: Ḥibbān—who is Ibn Mūsā—informed us: ʿAbdullāh ibn al-Mubārak narrated from Zakariyyā Abū ʿImrān al-Baṣrī—he is Ibn Salīm, the companion of al-Luʾluʾī—who said: I heard a learned elder narrating to ʿAmr ibn ʿUthmān al-Qurashī, who said: I am ʿAbd al-Raḥmān ibn Abī Bakr, from his father, who said: "I witnessed the Prophet (peace and blessings of Allah be upon him) standing on his she-mule when a pregnant woman came to him and said, 'She has committed adultery—stone her?' The Prophet (peace and blessings of Allah be upon him) said to her, 'Seek Allah's protection.' She left but returned again and said, 'Stone her?' The Prophet (peace and blessings of Allah be upon him) said to her, 'Seek Allah's protection.' She left again, then came a third time—while he was still standing on his she-mule—and seized the bridle, saying, 'I adjure you by Allah to stone her!' He said, 'Go until you give birth.' She left and delivered a boy, then brought him to the Prophet (peace and blessings of Allah be upon him). The Prophet (peace and blessings of Allah be upon him) took responsibility for him, then said..." "Go and purify yourself from the blood," so she went and purified herself from the blood. Then she returned, and the Prophet—peace be upon him and

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ حَاتِمِ بْنِ نُعَيْمٍ أَنَا حِبَّانُ - وَهُوَ ابْنُ مُوسَى - أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ زَكَرِيَّا أَبِي عِمْرَانَ الْبَصْرِيِّ - هُوَ ابْنُ سَلِيمٍ - صَاحِبِ اللُّؤْلُئِيِّ قَالَ: سَمِعْتُ شَيْخًا يُحَدِّثُ عَمْرَو بْنَ عُثْمَانَ الْقُرَشِيَّ قَالَ: أَنَا عَبْدُ الرَّحْمَنِ بْنُ أَبِي بَكْرٍ عَنْ أَبِيهِ قَالَ: «شَهِدْتُ النَّبِيَّ - عَلَيْهِ السَّلَامُ - وَهُوَ وَاقِفٌ عَلَى بَغْلَتِهِ - فَجَاءَتْهُ امْرَأَةٌ حُبْلَى فَقَالَتْ: إِنَّهَا قَدْ بَغَتْ فَارْجُمْهَا؟ فَقَالَ لَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَتِرِي بِسِتْرِ اللَّهِ فَذَهَبَتْ ثُمَّ رَجَعَتْ إِلَيْهِ - وَهُوَ وَاقِفٌ عَلَى بَغْلَتِهِ - فَقَالَتْ: أَرْجُمُهَا؟ فَقَالَ لَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَتِرِي بِسِتْرِ اللَّهِ فَرَجَعَتْ ثُمَّ جَاءَتْ الثَّالِثَةَ - وَهُوَ وَاقِفٌ عَلَى بَغْلَتِهِ - فَأَخَذَتْ بِاللِّجَامِ فَقَالَتْ: أَنْشُدُكَ اللَّهَ إِلَّا رَجَمْتَهَا، فَقَالَ: انْطَلِقِي حَتَّى تَلِدِي فَانْطَلَقَتْ فَوَلَدَتْ غُلَامًا، فَجَاءَتْ بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَفَلَهُ النَّبِيُّ - عَلَيْهِ السَّلَامُ - ثُمَّ قَالَ انْطَلِقِي فَتَطَهَّرِي مِنْ الدَّمِ فَانْطَلَقَتْ فَتَطَهَّرَتْ مِنْ الدَّمِ، ثُمَّ جَاءَتْ فَبَعَثَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِلَى نِسْوَةٍ

his family—sent to some women, instructing them to verify her purification and check if she had become pure from the blood. They came and testified before the Prophet—peace be upon him and his family—to her purity. He—peace be upon him—then ordered a pit to be dug for her beside her side. He and the Muslims approached, and he gestured with his hand, picked up a pebble—resembling a chickpea—and threw it. He then said to the Muslims, “Stone her, but avoid her face.” They stoned her until she was buried under the stones. He then commanded her to be removed so that he could pray over her.

فَأَمَرَهُنَّ أَنْ يَسْتَبْرِئْنَهَا وَأَنْ يَنْظُرْنَ أَطَهُرَتْ مِنْ الدَّمِ؟ فَجِئْنَ فَشَهِدْنَ عِنْدَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِطُهْرِهَا، فَأَمَرَ لَهَا - عَلَيْهِ السَّلَامُ - بِحُفْرَةٍ إِلَى ثُنْدُوَتِهَا، ثُمَّ أَقْبَلَ هُوَ وَالْمُسْلِمُونَ فَقَالَ بِيَدِهِ: فَأَخَذَ حَصَاةً - كَأَنَّهَا حِمَّصَةٌ - فَرَمَاهَا بِهَا، ثُمَّ قَالَ لِلْمُسْلِمِينَ: ارْمُوهَا وَإِيَّاكُمْ وَوَجْهَهَا، فَرَمَوْهَا حَتَّى طُفِيَتْ، فَأَمَرَ بِإِخْرَاجِهَا حَتَّى صَلَّى عَلَيْهَا»

L40620 It has been narrated to us through the chain of Muslim, via Muhammad ibn Abdullah ibn Numayr and Abu Bakr ibn Abi Shaybah—both of whom stated that Abdullah ibn Numayr narrated to them, saying: Bishr ibn al-Muhajir narrated to me that Abdullah ibn Buraidah reported from his father: “Ma‘iz ibn Malik al-Aslami came to the Messenger of Allah (peace and blessings be upon him and his family) and said: ’O Messenger of Allah, I have wronged myself and committed adultery. I seek your purification.’ He turned him away. The next day, he returned and said: ’O Messenger of Allah, I have committed adultery.’ He turned him away a second time. The Messenger of Allah (peace and blessings be upon him and his family) then sent to his tribe and asked: ’Do you find any impairment in his intellect? Do you observe anything objectionable in him?’ They replied: ’We know him only as one of sound mind among our righteous people—in our view.’ When Ma‘iz came a third time, the Prophet again sent to inquire about him, and they informed him: ’There is no harm in him or his intellect.’ Upon his fourth arrival, a pit was dug for him, and he was ordered to be stoned.

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، كِلَاهُمَا يَقُولُ: إِنَّ عَبْدَ اللَّهِ بْنَ نُمَيْرٍ حَدَّثَهُ قَالَ: أَنَا بِشْرُ بْنُ الْمُهَاجِرِ أَنَا عَبْدُ اللَّهِ بْنُ بُرَيْدَةَ عَنْ أَبِيهِ «أَنَّ مَاعِزَ بْنَ مَالِكٍ الْأَسْلَمِيَّ أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي قَدْ ظَلَمْت نَفْسِي وَزَنَيْتُ، وَإِنِّي أُرِيدُ أَنْ تُطَهِّرَنِي، فَرَدَّهُ، فَلَمَّا كَانَ مِنْ الْغَدِ أَتَاهُ فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي قَدْ زَنَيْتُ، فَرَدَّهُ الثَّانِيَةَ فَأَرْسَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِلَى قَوْمِهِ فَقَالَ: أَتَعْلَمُونَ بِعَقْلِهِ بَأْسًا؟ أَتُنْكِرُونَ مِنْهُ شَيْئًا؟ فَقَالُوا: مَا نَعْلَمُهُ إِلَّا وَفِي الْعَقْلِ مِنْ صَالِحِينَا فِيمَا نَرَى، فَأَتَاهُ الثَّالِثَةَ، فَأَرْسَلَ إِلَيْهِمْ أَيْضًا فَسَأَلَ عَنْهُ، فَأَخْبَرُوهُ أَنَّهُ لَا بَأْسَ بِهِ، وَلَا بِعَقْلِهِ، فَلَمَّا كَانَ الرَّابِعَةَ: حَفَرَ لَهُ حُفْرَةً ثُمَّ أَمَرَ بِهِ فَرُجِمَ، فَجَاءَتْ الْغَامِدِيَّةُ فَقَالَتْ: يَا رَسُولَ اللَّهِ إِنِّي قَدْ زَنَيْتُ فَطَهِّرْنِي، وَأَنَّهُ رَدَّهَا، فَلَمَّا كَانَ الْغَدُ قَالَتْ: يَا رَسُولَ اللَّهِ أَتَرُدُّنِي، لَعَلَّكَ تُرِيدُ أَنْ تَرُدَّنِي كَمَا رَدَدْتَ مَاعِزًا، فَوَاَللَّهِ إِنِّي لَحُبْلَى، قَالَ لَهَا: لَا، أَمَّا الْآنَ فَاذْهَبِي حَتَّى تَلِدِي، فَلَمَّا وَلَدَتْ أَتَتْهُ بِالصَّبِيِّ فِي خِرْقَةٍ قَالَتْ: هَذَا قَدْ وَلَدْتُهُ قَالَ: فَاذْهَبِي فَأَرْضِعِيهِ حَتَّى تَفْطِمِيهِ، فَلَمَّا فَطَمَتْهُ أَتَتْ بِالصَّبِيِّ فِي يَدِهِ كِسْرَةُ خُبْزٍ قَالَتْ: هَذَا يَا رَسُولَ اللَّهِ قَدْ فَطَمْتُهُ، وَقَدْ أَكَلَ الطَّعَامَ، فَدَفَعَ الصَّبِيَّ إِلَى رَجُلٍ مِنْ الْمُسْلِمِينَ ثُمَّ أَمَرَ بِهَا فَحُفِرَ لَهَا إِلَى صَدْرِهَا، وَأَمَرَ النَّاسَ فَرَجَمُوهَا»

Later, a woman from Ghamid approached and said: ’O Messenger of Allah, I have committed adultery. Purify me.’ He turned her away. The following day, she said: ’O Messenger of Allah! Do you perhaps intend to turn me away as you did Ma‘iz? By Allah, I am pregnant!’ He replied: ’As for now, go until you give birth.’ After delivering, she brought the infant wrapped in a cloth and said: ’Here is the child I bore.’ He instructed: ’Go and nurse him until you wean him.’ When she weaned him, she returned with the child holding a piece of bread and said: ’O Messenger of Allah, he is weaned and

now eats food.' The Prophet entrusted the child to a Muslim man, ordered a pit dug for her up to her chest, and commanded the people to stone her."

فَهَذَا هُوَ الْبَيَانُ الْجَلِيُّ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِأَيِّ شَيْءٍ رَدَّ مَاعِزًا لِأَنَّ الْغَامِدِيَّةَ قَرَّرَتْهُ - عَلَيْهِ السَّلَامُ - عَلَى أَنَّهُ رَدَّ مَاعِزًا، وَأَنَّهُ لَا يَحْتَاجُ إلَى تَرْدِيدِهَا، لِأَنَّ الزِّنَى الَّذِي أَقَرَّتْ بِهِ صَحِيحٌ ثَابِتٌ، وَقَدْ ظَهَرَتْ عَلَامَتُهُ - وَهِيَ حَبَلُهَا - فَصَدَّقَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِذَلِكَ، وَأَمْسَكَ عَنْ تَرْدِيدِهَا - وَلَوْ كَانَ تَرْدِيدُهُ - عَلَيْهِ السَّلَامُ - مَاعِزًا مِنْ أَجْلِ أَنَّ الْإِقْرَارَ لَا يَصِحُّ بِالزِّنَى حَتَّى يَتِمَّ أَرْبَعَ مَرَّاتٍ لَأَنْكَرَ عَلَيْهَا هَذَا الْكَلَامَ، وَلَقَالَ لَهَا: لَا شَكَّ إنَّمَا أَرُدُّك كَمَا رَدَدْت مَاعِزًا لِأَنَّ الْإِقْرَارَ لَا يَتِمُّ إلَّا بِأَرْبَعِ مَرَّاتٍ - وَهُوَ - عَلَيْهِ السَّلَامُ - لَا يُقِرُّ عَلَى خَطَأٍ، وَلَا عَلَى بَاطِلٍ

L40621–40623 This is the clear explanation from the Messenger of Allah—may Allah's blessings and peace be upon him and his family—regarding why he rejected Maʿīz's confession because the Ghamīdiyyah woman affirmed it—peace be upon him—since the adultery she admitted was valid and established, and its sign—her pregnancy—had become evident. Thus, he did not require her to reiterate it and believed her. The Messenger of Allah—peace be upon him and his family—acted accordingly and refrained from repeating her confession. Had the Prophet's repetition—peace be upon him—in the case of Maʿiz been because a confession of adultery is not valid unless completed four times, he would have rejected her statement and said: "There is no doubt that I am only sending you back as I sent back Maʿiz, for the confession is not complete except after four times." He—peace be upon him—does not approve of error nor endorse falsehood.

فَصَحَّ يَقِينًا أَنَّهَا صَادِقَةٌ، فَإِنَّهَا لَا تَحْتَاجُ مِنْ التَّرْدِيدِ إلَى مَا احْتَاجَ إلَيْهِ مَاعِزٌ، وَلِذَلِكَ لَمْ يَرُدَّهَا - عَلَيْهِ السَّلَامُ - بَعْدَ هَذَا الْكَلَامِ

L40624 Thus, it became certain that she was truthful, for she did not require the repeated questioning that Maʿīz needed. For that reason, he (peace be upon him) did not dismiss her after this statement.

وَصَحَّ يَقِينًا أَنَّ تَرْدِيدَهُ - عَلَيْهِ السَّلَامُ - مَاعِزًا إنَّمَا كَانَ لِوَجْهَيْنِ: أَحَدُهُمَا - مَا نَصَّ - عَلَيْهِ السَّلَامُ - مِنْ تُهْمَتِهِ لِعَقْلِهِ فَسَأَلَ - عَلَيْهِ السَّلَامُ - قَوْمَهُ الْمَرَّةَ بَعْدَ الْمَرَّةِ هَلْ بِهِ جُنُونٌ؟ وَسُؤَالُهُ - عَلَيْهِ السَّلَامُ - هَلْ شَرِبَ خَمْرًا

L40625 It has been established with certainty that his (peace be upon him) repeated questioning of Ma'iz was for two aspects: one of them being what he (peace be upon him) explicitly stated regarding his accusation concerning his mind, so he (peace be upon him) asked his people time after time: "Is he insane?" and his (peace be upon him) asking whether he had consumed wine.

كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ الْعَلَاءِ أَنَا يَحْيَى بْنُ يَعْلَى بْنِ الْحَارِثِ الْمُحَارِبِيُّ عَنْ غَيْلَانَ بْنِ جَامِعٍ عَنْ عَلْقَمَةَ بْنِ مَرْثَدٍ عَنْ سُلَيْمَانَ بْنِ بُرَيْدَةَ عَنْ أَبِيهِ قَالَ «جَاءَ مَاعِزُ بْنُ مَالِكٍ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ لَهُ طَهِّرْنِي، قَالَ: وَيْحَكَ ارْجِعْ فَاسْتَغْفِرْ اللَّهَ وَتُبْ، قَالَ: فَرَجَعَ غَيْرَ بَعِيدٍ، ثُمَّ جَاءَ فَقَالَ: يَا رَسُولَ اللَّهِ

L40626 As we have been narrated through the chain of Muslim: from Muḥammad ibn al-ʿAlāʾ from Yaḥyā ibn Yaʿlā ibn al-Ḥārith al-Muḥāribī from Ghaylān ibn Jāmiʿ from ʿAlqamah ibn Marthad from Sulaymān ibn Yazīd from his father, who said: "Maʿiz ibn Mālik came to the Messenger of Allah—peace be upon him and his family—and said: 'Purify me.' He replied: 'Shame on you! Return, seek Allah's forgiveness, and repent.' He withdrew briefly, then returned and said: 'O Messenger of Allah, purify me?' He repeated his response. When this occurred a fourth time, the Messenger of Allah—

peace be upon him and his family—asked: 'For what should I purify you?' He answered: 'From fornication.' The Messenger of Allah—peace be upon him and his family—inquired: 'Is he mad?' It was confirmed he was not insane. He then asked: 'Has he drunk wine?' A man rose and sniffed him but found no trace of wine. The Messenger of Allah—peace be upon him and his family—asked: 'Did you commit fornication?' He said: 'Yes.' Thereupon he ordered his execution by stoning." He also mentioned the rest of the report.

طَهِّرْنِي؟ فَقَالَ لَهُ مِثْلَ ذَلِكَ، حَتَّى إِذَا كَانَتْ الرَّابِعَةُ قَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: فِيمَ أُطَهِّرُكَ؟ قَالَ: مِنْ الزِّنَى، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: أَبِهِ جِنَّةٌ؟ فَأُخْبِرَ أَنَّهُ لَيْسَ بِمَجْنُونٍ، فَقَالَ: أَشَرِبَ خَمْرًا؟ فَقَامَ رَجُلٌ فَاسْتَنْكَهَهُ فَلَمْ يَجِدْ مِنْهُ رِيحَ خَمْرٍ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: أَزَنَيْتَ؟ قَالَ: نَعَمْ، فَأَمَرَ بِهِ فَرُجِمَ» وَذَكَرَ بَاقِيَ الْخَبَرِ

L40627 The other perspective is that the Messenger of Allah—may Allah bless him and his family and grant him peace—suspected he did not know what adultery entailed, so he sent him back for this reason and made him reaffirm. As I am Abdullah ibn Rabeeʿ, I am Muhammad ibn Muʿawiyah, I am Ahmad ibn Shuʿayb; Suwayd ibn Nasr reported to us, Abdullah ibn al-Mubarak reported to us from Maʿmar from Yahya ibn Abi Kathir from Ikrimah from Ibn Abbas: "A man from the Aslam tribe came to the Messenger of Allah—may Allah bless him and his family and grant him peace—and confessed to adultery. He said: 'Perhaps you kissed, winked, or gazed?'"

وَالْوَجْهُ الْآخَرُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - اتَّهَمَهُ أَنَّهُ لَا يَدْرِي مَا الزِّنَى؟ فَرَدَّدَهُ لِذَلِكَ وَقَرَّرَهُ» : كَمَا أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أرنا سُوَيْدُ بْنُ نَصْرٍ أرنا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ الْأَسْلَمِيَّ أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَاعْتَرَفَ بِالزِّنَى، فَقَالَ: لَعَلَّك قَبَّلْت أَوْ غَمَزْت أَوْ نَظَرْت»

L40628–40630 And through him — to Aḥmad ibn Shuʿayb — ʿAbdullāh ibn al-Haytham informed me from ʿUthmān al-Baṣrī; he narrated to us. Wahb ibn Jarir ibn Hazim said: My father narrated to me, saying: I heard Ya'la ibn Hakim narrating on the authority of Ikrimah, from Ibn Abbas, that the Prophet (peace be upon him and his family) said to Ma'iz ibn Malik: "Alas for you! Did you perhaps kiss, fondle, or gaze?" He said: "No." He said: "Did you have intercourse with her?" He said: "Yes," whereupon he ordered his stoning.

وَبِهِ - إلَى أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ الْهَيْثَمِ عَنْ عُثْمَانَ الْبَصْرِيِّ أرنا وَهْبُ بْنُ جَرِيرِ بْنِ حَازِمٍ قَالَ: حَدَّثَنِي أَبِي قَالَ سَمِعْتُ يَعْلَى بْنَ حَكِيمٍ يُحَدِّثُ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لِمَاعِزِ بْنِ مَالِكٍ: وَيْحَكَ لَعَلَّكَ قَبَّلْتَ، أَوْ غَمَزْتَ، أَوْ نَظَرْتَ؟ قَالَ: لَا، قَالَ: فَنِكْتَهَا؟ قَالَ: نَعَمْ، فَعِنْدَ ذَلِكَ أَمَرَ بِرَجْمِهِ»

L40631 It has been established with certainty that the Prophet's (peace be upon him) repeated questioning of Māʿiz was not at all a consideration of completing the confession four times, but rather due to his suspicion regarding Māʿiz's mental state and his ignorance of what constitutes fornication. Thus, their reliance on the ḥadīth of Ibn Buraydah is invalidated. All praise is due to Allah, Lord of the worlds.

فَقَدْ صَحَّ يَقِينًا أَنَّ تَرْدِيدَ النَّبِيِّ - عَلَيْهِ السَّلَامُ - لِمَاعِزٍ لَمْ يَكُنْ مُرَاعَاةً لِتَمَامِ الْإِقْرَارِ أَرْبَعَ مَرَّاتٍ أَصْلًا، وَإِنَّمَا كَانَ لِتُهْمَتِهِ إيَّاهُ فِي عَقْلِهِ، وَفِي جَهْلِهِ مَا هُوَ الزِّنَى - فَبَطَلَ تَعَلُّقُهُمْ بِحَدِيثِ ابْنِ بُرَيْدَةَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ

L40632–40634 As for the hadith of Abu Hurairah through the chain of Ibn Muḍāḍ, Ibn Muḍāḍ is unknown—his identity is undetermined. A sound narration from

Abu Hurairah exists that clarifies the falsity of their presumption, which we shall mention after completing our discourse on these reports (if Allah, the Exalted, wills), and it is as follows: I am Abdullah ibn Rabi', I am Muhammad ibn Muawiyah, I am Ahmad ibn Shu'ayb, I am Ishaq ibn Ibrahim—that is Ibn Rāhawayh—I am Abd al-Razzāq, I am Ibn Jurayj, who informed us that Abu al-Zubayr said: Abd al-Rahman ibn al-Sāmit, the cousin of Abu Hurairah, informed him that he heard Abu Hurairah say: "An Aslami man (a man from the tribe of Aslam) came to the Messenger of Allah—peace and blessings be upon him and his family—and confessed to adultery four times, declaring: 'I had unlawful sexual intercourse with a woman.' Each time, the Messenger of Allah—peace and blessings be upon him and his family—averted his gaze. On the fifth instance, the Prophet turned to him and asked: 'Did you marry her?' He replied: 'Yes.' The Prophet asked: 'Do you understand what adultery entails?' He answered: 'Yes. I engaged with her unlawfully as a man does with his wife lawfully.' The Prophet inquired: 'What do you seek by this confession?' He said: 'I desire purification.' Thereupon, the Messenger of Allah—peace and blessings be upon him and his family—ordered his stoning, and he was stoned. Later, the Prophet heard two companions remarking—one saying to the other: 'Observe this man whom Allah had veiled [his sin], yet his soul persisted until he was stoned like a dog.' The Messenger of Allah—peace and blessings be upon him and his family—remained silent toward them for a while. Then, passing a donkey carcass with raised legs, he called: 'Where are so-and-so and so-and-so?' They responded: 'We are here, O Messenger of Allah.' He commanded: 'Eat from this carcass.' They exclaimed: 'O Messenger of Allah, may Allah forgive you! Who would consume this?' The Prophet—peace and blessings be upon him and his family—said: 'The harm you inflicted upon this man's honor moments ago is graver than [eating] this carcass. By Him in whose hand my soul rests, he now resides in the rivers of Paradise.'" Abu Muhammad—may Allah have mercy on him—said: This is an authentic report. It demonstrates that the Messenger of Allah—may Allah bless him and his family and grant him peace—was not satisfied with affirming [the matter] four times, nor with his confession four times, until he confessed in the fifth instance. Then he was not satisfied with that until he asked him a sixth time: "Do you know what illicit sexual intercourse (zinā)

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ مِنْ طَرِيقِ ابْنِ مُضَاضٍ، فَإِنَّ ابْنَ مُضَاضٍ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ؟ وَقَدْ جَاءَ عَنْ أَبِي هُرَيْرَةَ خَبَرٌ صَحِيحٌ بِبَيَانِ بُطْلَانِ ظَنِّهِمْ نَذْكُرُهُ بَعْدَ تَمَامِ كَلَامِنَا فِي هَذِهِ الْأَخْبَارِ - إِنْ شَاءَ اللَّهُ تَعَالَى، وَهُوَ -: مَا أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - أَنَا عَبْدُ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ قَالَ: إِنَّ عَبْدَ الرَّحْمَنِ بْنَ الصَّامِتِ ابْنَ عَمِّ أَبِي هُرَيْرَةَ أَخْبَرَهُ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: «جَاءَ الْأَسْلَمِيُّ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَشَهِدَ عَلَى نَفْسِهِ أَرْبَعَ مَرَّاتٍ بِالزِّنَى يَقُولُ: أَتَيْتُ امْرَأَةً حَرَامًا، وَكُلُّ ذَلِكَ يُعْرِضُ عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَقْبَلَ فِي الْخَامِسَةِ فَقَالَ لَهُ: أَنَكْتَحْتَهَا؟ قَالَ: نَعَمْ، قَالَ: فَهَلْ تَدْرِي مَا الزِّنَى؟ قَالَ: نَعَمْ، أَتَيْتُ مِنْهَا حَرَامًا مِثْلَ مَا يَأْتِي الرَّجُلُ مِنْ أَهْلِهِ حَلَالًا، قَالَ: فَمَا تُرِيدُ بِهَذَا الْقَوْلِ؟ قَالَ: أُرِيدُ أَنْ تُطَهِّرَنِي؟ فَأَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُرْجَمَ فَرُجِمَ، فَسَمِعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَجُلَيْنِ مِنْ أَصْحَابِهِ يَقُولُ أَحَدُهُمَا لِصَاحِبِهِ: انْظُرُوا إِلَى هَذَا الَّذِي سَتَرَ اللَّهُ عَلَيْهِ فَلَمْ تَدَعْهُ نَفْسُهُ حَتَّى رُجِمَ رَجْمَ الْكَلْبِ، فَسَكَتَ عَنْهُمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - سَاعَةً فَمَرَّ بِجِيفَةِ حِمَارٍ شَائِلٍ بِرِجْلَيْهِ، فَقَالَ: أَيْنَ فُلَانٌ وَفُلَانٌ؟ فَقَالَا: نَحْنُ يَا رَسُولَ اللَّهِ، فَقَالَ لَهُمَا: كُلَا مِنْ جِيفَةِ هَذَا الْحِمَارِ، فَقَالَا: يَا رَسُولَ اللَّهِ غَفَرَ اللَّهُ لَكَ مَنْ يَأْكُلُ هَذَا؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: مَا نِلْتُمَا مِنْ عِرْضِ هَذَا آنِفًا أَشَدُّ مِنْ هَذِهِ الْجِيفَةِ، فَوَالَّذِي نَفْسِي بِيَدِهِ إِنَّهُ الْآنَ فِي أَنْهَارِ الْجَنَّةِ» قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَهَذَا خَبَرٌ صَحِيحٌ، وَفِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَمْ يَكْتَفِ بِتَقْرِيرِهِ أَرْبَعَ مَرَّاتٍ، وَلَا بِإِقْرَارِهِ أَرْبَعَ مَرَّاتٍ، حَتَّى أَقَرَّ فِي الْخَامِسَةِ، ثُمَّ لَمْ

يَكْتَفِ بِذَلِكَ حَتَّى سَأَلَهُ السَّادِسَةَ: هَلْ تَعْرِفُ مَا الزِّنَى؟ فَلَمَّا عَرَفَ - عَلَيْهِ السَّلَامُ - أَنَّهُ يَعْرِفُ الزِّنَى لَمْ يَكْتَفِ بِذَلِكَ حَتَّى سَأَلَهُ السَّابِعَةَ، مَا يُرِيدُ بِهَذَا إِلَّا لِيَخْتَبِرَ عَقْلَهُ، فَلَمَّا عَرَفَ أَنَّهُ عَاقِلٌ صَحِيحُ الْعَرْضِ أَقَامَ عَلَيْهِ الْحَدَّ - وَفِي هَذَا الْخَبَرِ بَيَانُ بُطْلَانِ الرَّأْيِ مِنْ الصَّاحِبِ وَغَيْرِهِ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - أَنْكَرَ عَلَيْهِمَا مَا قَالَاهُ بِرَأْيِهِمَا مُجْتَهِدِينَ قَاصِدِينَ إِلَى الْحَقِّ - فَهَذَا يُبْطِلُ احْتِجَاجَ مَنْ احْتَجَّ بِمَا رُوِيَ عَنْ بُرَيْدَةَ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

entails?" When he—peace be upon him—confirmed that the man understood zinā, he still did not consider it sufficient until he questioned him a seventh time. He intended this solely to test his mental competence. Once he verified that the man was rational and of sound reputation, he carried out the ḥadd punishment upon him. This report clarifies the invalidity of juristic opinion advanced by the Companion and others, for the Prophet—peace be upon him—reproached them for what they asserted through their independent legal reasoning (ijtihad), even though they were practicing ijtihad and sincerely seeking the truth. This refutes the argument of those who cite the narration from Buraidah as evidence. And success comes only from Allah, the Exalted.

L40635

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو غَسَّانَ الْمِسْمَعِيُّ أَنَا مُعَاذٌ - يَعْنِي ابْنَ هِشَامٍ الدَّسْتُوَائِيَّ - نِي أَبِي عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ نِي أَبُو قِلَابَةَ أَنَّ أَبَا الْمُهَلَّبِ حَدَّثَهُ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ «أَنَّ امْرَأَةً مِنْ جُهَيْنَةَ أَتَتْ نَبِيَّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهِيَ حُبْلَى مِنْ الزِّنَى - فَقَالَتْ: يَا نَبِيَّ اللَّهِ أَصَبْتُ حَدًّا فَأَقِمْهُ عَلَيَّ؟ فَدَعَا نَبِيُّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلِيَّهَا فَقَالَ: أَحْسِنْ إِلَيْهَا، فَإِذَا وَضَعَتْ فَأْتِنِي بِهَا، فَأَمَرَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَشُكَّتْ عَلَيْهَا ثِيَابُهَا، وَأَمَرَ بِهَا فَرُجِمَتْ، ثُمَّ صَلَّى عَلَيْهَا، فَقَالَ لَهُ عُمَرُ: أَتُصَلِّي عَلَيْهَا يَا نَبِيَّ اللَّهِ وَقَدْ زَنَتْ؟ قَالَ: لَقَدْ تَابَتْ تَوْبَةً لَوْ قُسِمَتْ بَيْنَ أَهْلِ الْمَدِينَةِ لَوَسِعَتْهُمْ، وَهَلْ وَجَدَتْ أَفْضَلَ مِنْ أَنْ جَادَتْ بِنَفْسِهَا لِلَّهِ تَعَالَى؟» "

And through the chain of Muslim: I [am] Abu Ghassan al-Misma'i - I [received it from] Mu'adh - meaning ibn Hisham al-Dastuwa'iyy - from his father, from Yahya ibn Abi Kathir, from Abu Qilabah, that Abu al-Muhallab narrated to him from Imran ibn al-Husayn: "A woman from Juhaynah came to the Prophet of Allah (peace and blessings be upon him and his family) while pregnant from adultery. She said: 'O Prophet of Allah, I have incurred a prescribed punishment - execute it upon me.' The Prophet of Allah (peace and blessings be upon him and his family) summoned her guardian and said: 'Treat her well. When she delivers, bring her to me.' When she gave birth, the Messenger of Allah (peace and blessings be upon him and his family) commanded that her garments be tightly fastened around her, then ordered that she be stoned. He thereafter prayed the funeral prayer over her. Umar said: 'Do you pray over her, O Prophet of Allah, when she committed adultery?' He replied: 'She repented with such sincerity that were it distributed among the people of Medina, it would suffice them all. Has she attained anything greater than sacrificing her very self for Allah the Exalted?'"

L40636–40638

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا قُتَيْبَةُ أَنَا اللَّيْثُ عَنْ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ أَبِي هُرَيْرَةَ، وَزَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ أَنَّهُمَا قَالَا «إِنَّ رَجُلَيْنِ مِنْ الْأَعْرَابِ أَتَيَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ أَحَدُهُمَا: يَا رَسُولَ اللَّهِ أَنْشُدُكَ اللَّهَ إِلَّا

From the narration chain of Muslim: I, Qutaybah, narrate from Al-Layth, from Ibn Shihab, from Ubayd Allah ibn Abd Allah ibn Utbah, from Abu Hurairah and Zayd ibn Khalid al-Juhani, that they both said: "Two Bedouin men came to the Messenger of Allah, peace and blessings of Allah be upon him and his family. One of them said: 'O Messenger of Allah, I adjure you by Allah to judge between us by the Book of Allah!' The other—who was

more knowledgeable—said: 'Yes, judge between us by the Book of Allah, and permit me?' The Messenger of Allah, peace and blessings of Allah be upon him and his family, said: 'Speak.' He said: 'My son was a hired worker for this man, yet he committed adultery with his wife.'" He mentioned the hadith, in which the Messenger of Allah, peace and blessings of Allah be upon him and his family, declared: "By the One in Whose Hand is my soul, I shall judge between you by the Book of Allah: As for the slave girl and the sheep, they shall be returned to you, while your son shall receive one hundred lashes and be exiled for a year." Go early, O Unays, to the wife of this man. If she confesses, then stone her? So he went to her in the morning, and she confessed. Then the Messenger of Allah (Allah's peace and blessings be upon him and his family) commanded concerning her, and she was stoned.

L40639 We found Buraidah, Imran ibn al-Husayn, Abu Hurairah, and Zayd ibn Khalid—all of whom transmitted from the Messenger of Allah (peace be upon him) the enforcement of the ḥadd punishment for zinā upon Al-Ghamidiyyah and Al-Juhayniyyah without hesitation, and upon the wife of the aforementioned man based on unconditional confession. This requires—necessarily—her stoning by what is termed a confession, which occurs once only.

L40640 It has been established that the Book of Allah mandates what His Messenger—peace and blessings be upon him—decreed regarding enforcing the prescribed punishment for adultery through an unequivocal confession without stipulating a specific number of confessions, based on the statement of Allah's Messenger—peace and blessings be upon him and his family—"I shall certainly judge between you both by the Book of Allah, the Most High," and he swore an oath to that effect. He then decreed stoning for the confession without stipulating a number.

L40641 Thus, it is established that if a valid confession is made once or a thousand times, it is entirely the same, and that enforcing the prescribed punishment is obligatory and necessary—and success is from Allah, the Exalted.

L40642 **Issue: Is exile included among the ḥudūd or not?**

قَضَيْتَ لِي بِكِتَابِ اللَّهِ؟ فَقَالَ لَهُ الْآخَرُ - وَهُوَ أَفْقَهُ مِنْهُ -: نَعَمْ، فَاقْضِ بَيْنَنَا بِكِتَابِ اللَّهِ، وَإِيذَنْ لِي؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: قُلْ، فَقَالَ: إِنَّ ابْنِي كَانَ عَسِيفًا عَلَى هَذَا فَزَنَى بِامْرَأَتِهِ وَذَكَرَ الْحَدِيثَ وَفِيهِ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لَهُ وَالَّذِي نَفْسِي بِيَدِهِ لَأَقْضِيَنَّ بَيْنَكُمَا بِكِتَابِ اللَّهِ: أَمَّا الْوَلِيدَةُ وَالْغَنَمُ رَدٌّ عَلَيْكَ، وَعَلَى ابْنِكَ جَلْدُ مِائَةٍ، وَتَغْرِيبُ عَامٍ، وَاغْدُ يَا أُنَيْسُ عَلَى امْرَأَةِ هَذَا، فَإِنْ اعْتَرَفَتْ فَارْجُمْهَا؟ فَغَدَا عَلَيْهَا فَاعْتَرَفَتْ، فَأَمَرَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَرُجِمَتْ»

فَوَجَدْنَا بُرَيْدَةَ، وَعِمْرَانَ بْنَ الْحُصَيْنِ، وَأَبَا هُرَيْرَةَ، وَزَيْدَ بْنَ خَالِدٍ، كُلَّهُمْ قَدْ رَوَى عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إقَامَةَ الْحَدِّ فِي الزِّنَى عَلَى: الْغَامِدِيَّةِ، وَالْجُهَنِيَّةِ، بِغَيْرِ تَرْدِيدٍ، وَعَلَى امْرَأَةِ هَذَا الْمَذْكُورِ بِالِاعْتِرَافِ الْمُطْلَقِ، وَهُوَ يَقْتَضِي - وَلَا بُدَّ - رَجْمَهَا بِمَا يَقَعُ عَلَيْهِ اسْمُ اعْتِرَافٍ، وَهُوَ مَرَّةٌ وَاحِدَةٌ فَقَطْ

وَصَحَّ أَنَّ كِتَابَ اللَّهِ يُوجِبُ مَا قَضَى بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ إقَامَةِ الْحَدِّ فِي الزِّنَى بِالِاعْتِرَافِ الْمُطْلَقِ دُونَ تَحْدِيدِ عَدَدٍ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَأَقْضِيَنَّ بَيْنَكُمَا بِكِتَابِ اللَّهِ تَعَالَى» وَأَقْسَمَ عَلَى ذَلِكَ، ثُمَّ قَضَى بِالرَّجْمِ فِي الِاعْتِرَافِ دُونَ عَدَدٍ

فَصَحَّ أَنَّهُ إذَا صَحَّ الِاعْتِرَافُ مَرَّةً أَوْ أَلْفَ مَرَّةٍ فَهُوَ كُلُّهُ سَوَاءٌ، وَأَنَّ إقَامَةَ الْحَدِّ وَاجِبٌ وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ هَلْ فِي الْحُدُودِ نَفْيٌ أَمْ لَا]

L40643 2196 – Issue: Is exile among the prescribed punishments (ḥudūd) or not? Abū Muḥammad—may Allah have mercy on him—said: Exile is prescribed in ḥirābah by the Quran, in zinā by the Sunnah, and some scholars have prescribed it for apostasy, alcohol consumption, and theft.

٢١٩٦ - مَسْأَلَةٌ: هَلْ فِي الْحُدُودِ نَفْيٌ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: النَّفْيُ يَقَعُ مِنْ الْحُدُودِ فِي الْمُحَارَبَةِ بِالْقُرْآنِ، وَفِي الزِّنَى بِالسُّنَّةِ، وَحَكَمَ بِهِ قَوْمٌ فِي الرِّدَّةِ، وَفِي الْخَمْرِ، وَالسَّرِقَةِ "

L40644 Abū Muḥammad—may God have mercy on him—said: We shall discuss each of these matters—if God Almighty wills—section by section. We say—and success is from God Almighty—: A school held that his exile constitutes his imprisonment. Another school held that he is to be exiled perpetually from one land to another.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَتَكَلَّمُ - إنْ شَاءَ اللَّهُ تَعَالَى - فِي كُلِّ ذَلِكَ فَصْلًا فَصْلًا، فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: وَقَالَتْ طَائِفَةٌ: نَفْيُهُ سَجْنُهُ - وَقَالَتْ طَائِفَةٌ: يُنْفَى أَبَدًا مِنْ بَلَدٍ إلَى بَلَدٍ

L40645 A group said: His banishment entails that he be pursued until he incapacitates them, so they cannot subdue him.

قَالَتْ طَائِفَةٌ: نَفْيُهُ هُوَ أَنْ يُطْلَبَ حَتَّى يُعْجِزَهُمْ فَلَا يَقْدِرُوا عَلَيْهِ

L40646–40648 I am Hammam, I am Ibn Mufarrij, I am Ibn al-A'rabi, I am al-Dabbari, I am Abd al-Razzaq, I am Ibrahim ibn Abi Yahya, from Dawud ibn al-Husayn, from Ikrimah, from Ibn Abbas, who said: "Concerning the combatant against society, if he flees and renders them incapable [of apprehending him], that constitutes his banishment." And with it—from ʻAbd al-Razzāq, from Ibn Jurayj, from ʻAbd al-Karīm or another—he said: "I heard Saʻīd ibn Jubayr and Abū al-Shaʻthā' Jābir ibn Zayd saying: Exile is imposed when they evade capture. If they are apprehended, then the judgment of God, the Exalted, applies to them; otherwise, they are exiled until they return to their land."

كَمَا أَنَا حُمَامٌ أَنَا ابْنُ مُفَرِّجٍ أَنَا ابْنُ الْأَعْرَابِيِّ أَنَا الدَّبَرِيُّ أَنَا عَبْدُ الرَّزَّاقِ أَنَا إبْرَاهِيمُ بْنُ أَبِي يَحْيَى عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: فِي الْمُحَارِبِ إنْ هَرَبَ وَأَعْجَزَهُمْ فَذَلِكَ نَفْيُهُ وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْكَرِيمِ أَوْ غَيْرِهِ، قَالَ: سَمِعْت سَعِيدَ بْنَ جُبَيْرٍ، وَأَبَا الشَّعْثَاءِ جَابِرَ بْنَ زَيْدٍ يَقُولَانِ: إنَّمَا النَّفْيُ أَنْ لَا يُدْرَكُوا، فَإِذَا أُدْرِكُوا، فَفِيهِمْ حُكْمُ اللَّهِ تَعَالَى، وَإِلَّا نُفُوا حَتَّى يَلْحَقُوا بِبَلَدِهِمْ

L40649 From al-Zuhri regarding those who wage war (ḥirābah): they must be executed, crucified, have their limbs cut off, or exiled - with exile applying if they cannot be captured. From al-Dahhak concerning the Most High's statement "or be banished from the land" [5:33], he said: It means they are to be pursued until they are subdued.[26]

وَعَنْ الزُّهْرِيِّ أَنَّهُ قَالَ فِيمَنْ حَارَبَ: أَنَّ عَلَيْهِ أَنْ يُقْتَلَ، أَوْ يُصْلَبَ، أَوْ يُقْطَعَ، أَوْ يُنْفَى، فَلَا يُقْدَرُ عَلَيْهِ - وَعَنْ الضَّحَّاكِ فِي قَوْله تَعَالَى {أَوْ يُنْفَوْا مِنَ الأَرْضِ} [المائدة: ٣٣] قَالَ: هُوَ أَنْ يُطْلَبُوا حَتَّى يُعْجِزُوا

L40650 Abu Muhammad—may Allah have mercy on him—said: Al-Shāfiʻī holds this opinion. Others said: Exile is a ḥadd among the punishments for the muḥārib (brigand), as Al-Marjīyy ibn Zarwān wrote to me, stating: From Abū al-Ḥasan al-Raḥabī, from Abū Muslim al-Kātib, from ʻAbdullāh ibn Aḥmad

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَبِهَذَا يَقُولُ الشَّافِعِيُّ - وَقَالَ آخَرُونَ: النَّفْيُ حَدٌّ مِنْ حُدُودِ الْمُحَارِبِ، كَمَا كَتَبَ إلَيَّ الْمَرْجِيُّ بْنُ زَرْوَانَ قَالَ: أَنَا أَبُو الْحَسَنِ الرَّحَبِيُّ أَنَا أَبُو مُسْلِمٍ الْكَاتِبُ أَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ الْمُغَلِّسِ أَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ عَنْ أَبِيهِ أَنَا

[26] **Qur'an references (L40649):** Qur'an 5:33 (Al-Ma'idah).

ibn al-Mughallis, from ʿAbdullāh ibn Aḥmad ibn Ḥanbal, from his father, from Abū Muʿāwiyah, from Ḥajjāj, from ʿAṭiyyah al-ʿAwfī, from Ibn ʿAbbās, who said: When a man emerges as a brigand, spreads fear on the road, and seizes property: his hand and foot are to be cut off on opposite sides. If he seizes property and kills: his hand and foot are to be cut off on opposite sides, then he is executed and displayed. If he kills without seizing property: he is to be executed. If he spreads fear on the road without seizing property or killing: he is to be exiled.

أَبُو مُعَاوِيَةَ أَنَا حَجَّاجٌ عَنْ عَطِيَّةَ الْعَوْفِيِّ عَنْ ابْنِ عَبَّاسٍ قَالَ: إِذَا خَرَجَ الرَّجُلُ مُحَارِبًا فَأَخَافَ الطَّرِيقَ، وَأَخَذَ الْمَالَ: قُطِعَتْ يَدُهُ وَرِجْلُهُ مِنْ خِلَافٍ - وَإِذَا أَخَذَ الْمَالَ وَقَتَلَ: قُطِعَتْ يَدُهُ وَرِجْلُهُ مِنْ خِلَافٍ ثُمَّ صُلِبَ - وَإِذَا قَتَلَ وَلَمْ يَأْخُذْ الْمَالَ: قُتِلَ - وَإِذَا أَخَافَ الطَّرِيقَ وَلَمْ يَأْخُذْ مَالًا وَلَمْ يَقْتُلْ: نُفِيَ

L40651 Abū Muḥammad—may Allah have mercy on him—said: We examined the evidence cited by those who argue that banishment constitutes imprisonment. We found them asserting that Allah the Exalted stated: "or they be banished from the land" [Al-Mā'idah: 33].[27]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِيمَا يَحْتَجُّ بِهِ مَنْ قَالَ: إنَّ النَّفْيَ هُوَ السَّجْنُ؟ فَوَجَدْنَاهُمْ يَقُولُونَ: إنَّ اللَّهَ تَعَالَى قَالَ {أَوْ يُنْفَوْا مِنَ الأَرْضِ} [المائدة: ٣٣]

L40652 They said: Exile (al-nafy) in the language of the Arabs—the language in which the Quran was revealed—is defined as banishment (al-ibʿād).

قَالُوا: وَالنَّفْيُ فِي لُغَةِ الْعَرَبِ الَّتِي نَزَلَ بِهَا الْقُرْآنُ: هُوَ الْإِبْعَادُ

L40653 It is established that the obligation is to remove it from the land. They said: "It is not possible to remove it from the land entirely." Therefore, it becomes obligatory for us to do the utmost we can in that regard, based on the statement of the Messenger of Allah—peace be upon him and his family—"When I command you with a matter, do as much as you can."

فَصَحَّ أَنَّ الْوَاجِبَ إبْعَادُهُ مِنْ الْأَرْضِ، قَالُوا: وَلَا يُقْدَرُ عَلَى إخْرَاجِهِ مِنْ الْأَرْضِ جُمْلَةً، فَوَجَبَ أَنْ نَفْعَلَ مِنْ ذَلِكَ أَقْصَى مَا نَقْدِرُ عَلَيْهِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ»

L40654 And due to the statement of Allah the Exalted: {So fear Allah as much as you are able} [At-Taghabun: 16], the utmost limit of what we can achieve in this regard is to remove him from every part of the earth we are capable of removing him from. The ultimate form of this restriction is imprisonment, for he is prohibited from all parts of the earth except his prison, which we cannot prevent him from occupying at all. Thus, we are obligated to fulfill what we can accomplish in this matter, and what we are unable to do of it is absolved from us.[28]

وَلِقَوْلِ اللَّهِ تَعَالَى {فَاتَّقُوا اللَّهَ مَا اسْتَطَعْتُمْ} [التغابن: ١٦] فَكَانَ أَقْصَى مَا نَسْتَطِيعُ مِنْ ذَلِكَ إبْعَادَهُ عَنْ كُلِّ مَا قَدَرْنَا عَلَى إبْعَادِهِ مِنْهُ مِنْ الْأَرْضِ، وَغَايَةُ ذَلِكَ السَّجْنُ، لِأَنَّهُ مَمْنُوعٌ مِنْ جَمِيعِ الْأَرْضِ حَاشَا مَا كَانَ سِجْنُهُ الَّذِي لَمْ نَقْدِرْ عَلَى مَنْعِهِ مِنْهُ أَصْلًا، فَلَزِمَنَا مَا اسْتَطَعْنَا مِنْ ذَلِكَ، وَسَقَطَ عَنَّا مَا لَمْ نَسْتَطِعْ مِنْهُ

L40655–40657 And we only said: until he initiates repentance, because as long as he persists in waging war, he remains a combatant [muḥārib]. If he is a highway robber, the prescribed punishment for waging war (hirabah) must be applied to him.

وَإِنَّمَا قُلْنَا: حَتَّى يُحْدِثَ تَوْبَةً، لِأَنَّهُ مَا دَامَ مُصِرًّا عَلَى الْمُحَارَبَةِ فَهُوَ مُحَارِبٌ، فَإِذْ هُوَ مُحَارِبٌ فَوَاجِبٌ أَنْ يُجْزَى جَزَاءَ الْمُحَارِبِ، فَالنَّفْيُ عَلَيْهِ بَاقٍ مَا لَمْ يَتْرُكْ الْمُحَارَبَةَ بِالتَّوْبَةِ، فَإِذَا تَرَكَهَا سَقَطَ عَنْهُ جَزَاؤُهَا أَنْ يَتَمَادَى فِيهِ، إذْ قَدْ جُوزِيَ عَلَى مُحَارَبَتِهِ

[27] **Qur'an references (L40651):** Qur'an 5:33 (Al-Ma'idah).
[28] **Qur'an references (L40654):** Qur'an 64:16 (At-Taghabun).

Banishment remains incumbent upon him as long as he does not abandon warfare through repentance. If he desists from it, the punishment for it ceases to apply to him upon cessation, since he has already faced legal consequences for his act of waging war.

L40658 Abū Muḥammad—may Allāh have mercy on him—said: Then we examined the argument of those who assert that he must be perpetually exiled from one land to another. They argued: If we imprison him in a land or allow him to remain there without imprisonment, we have not expelled him from the earth as Allāh the Exalted commanded. Rather, we have acted in opposition to expulsion and banishment by settling him and confirming his presence in a single place on earth—and this contradicts the Qur'ān. Thus, by the explicit injunction of the Qur'ān, we are obligated to enforce his banishment and expulsion from the entire earth forever, to the extent of our ability. The ultimate aim is to prevent him from residing in any part of it as long as we can expel him from that location—then thus forever. If we could prevent him from settling for even an hour in any part of the earth, we would do so, and it would remain obligatory upon us to act thus for as long as he persists in waging war.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ثُمَّ نَظَرْنَا فِي حُجَّةِ مَنْ قَالَ: يُنْفَى أَبَدًا مِنْ بَلَدٍ إلَى بَلَدٍ أَنْ قَالَ: إنَّا إذَا سَجَنَّاهُ فِي بَلَدٍ، أَوْ أَقْرَرْنَاهُ فِيهِ - غَيْرَ مَسْجُونٍ - فَلَمْ نَنْفِهِ مِنْ الْأَرْضِ كَمَا أَمَرَ اللَّهُ تَعَالَى، بَلْ عَمِلْنَا بِهِ ضِدَّ النَّفْيِ، وَالْإِبْعَادِ، وَهُوَ الْإِقْرَارُ وَالْإِثْبَاتُ فِي الْأَرْضِ فِي مَكَانٍ وَاحِدٍ مِنْهَا - وَهَذَا خِلَافُ الْقُرْآنِ، فَوَجَبَ عَلَيْنَا بِنَصِّ الْقُرْآنِ أَنْ نَسْتَعْمِلَ إبْعَادَهُ وَنَفْيَهُ عَنْ جَمِيعِ الْأَرْضِ أَبَدًا، حَسَبَ طَاقَتِنَا، أَوْ غَايَةُ ذَلِكَ أَلَّا نُقِرَّهُ فِي شَيْءٍ مِنْهَا مَا دُمْنَا قَادِرِينَ عَلَى نَفْيِهِ مِنْ ذَلِكَ الْمَوْضِعِ - ثُمَّ هَكَذَا أَبَدًا، وَلَوْ قَدَرْنَا عَلَى أَنْ لَا نَدَعَهُ يَقَرُّ سَاعَةً فِي شَيْءٍ مِنْ الْأَرْضِ لَفَعَلْنَا ذَلِكَ، وَلَكَانَ وَاجِبًا عَلَيْنَا فِعْلُهُ مَا دَامَ مُصِرًّا عَلَى الْمُحَارَبَةِ

L40659 Abū Muḥammad (may Allah have mercy on him) said: This view is the soundest and most aligned with the Qur'an's apparent meaning, based on the proponent's argument that imprisonment constitutes an affirmation and legal acknowledgment, not a negation.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَكَانَ هَذَا الْقَوْلُ أَصَحَّ وَأَوْلَى بِظَاهِرِ الْقُرْآنِ لِمَا ذَكَرَ الْمُحْتَجُّ لَهُ مِنْ أَنَّ السَّجْنَ إثْبَاتٌ، وَإِقْرَارٌ لَا نَفْيٌ

L40660 The people of the language through which the Quran was revealed and by which Allah the Exalted addressed us have never recognized imprisonment being termed exile, nor exile being termed imprisonment. Rather, they are two distinct and divergent names. Allah the Exalted said: {So confine them in houses until death takes them or Allah appoints for them a way} [An-Nisa: 15].[29]

وَمَا عَرَفَ قَطُّ أَهْلُ اللُّغَةِ الَّتِي نَزَلَ بِهَا الْقُرْآنُ وَخَاطَبَنَا بِهَا اللَّهُ تَعَالَى: أَنَّ السَّجْنَ يُسَمَّى: نَفْيًا، وَلَا أَنَّ النَّفْيَ يُسَمَّى: سَجْنًا، بَلْ هُمَا اسْمَانِ مُخْتَلِفَانِ، مُتَغَايِرَانِ قَالَ اللَّهُ تَعَالَى {فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلا} [النساء: ١٥] الْآيَةَ

L40661 And He, the Most High, said: {Then it occurred to them after they saw the signs that they must surely imprison him for a time. And there entered the prison with him two youths} [Yusuf: 35-36]. No one—neither ancient nor

وَقَالَ تَعَالَى {ثُمَّ بَدَا لَهُمْ مِنْ بَعْدِ مَا رَأَوُا الآيَاتِ لَيَسْجُنُنَّهُ حَتَّى حِينٍ - وَدَخَلَ مَعَهُ السِّجْنَ فَتَيَانِ} [يوسف: ٣٥ - ٣٦] فَمَا قَالَ أَحَدٌ - لَا قَدِيمٌ وَلَا حَدِيثٌ - أَنَّ حُكْمَ

[29] **Qur'an references (L40660):** Qur'an 4:15 (An-Nisa).

الزَّوَانِي كَانَ النَّفْيَ، إِذْ أَمَرَ اللَّهُ تَعَالَى بِحَبْسِهِنَّ فِي الْبُيُوتِ، وَلَا قَالَ قَطُّ أَحَدٌ: إِنَّ يُوسُفَ - عَلَيْهِ السَّلَامُ - نُفِيَ إِذْ حُبِسَ فِي السِّجْنِ - فَقَدْ بَطَلَ قَوْلُ مَنْ قَالَ، بِالسَّجْنِ جُمْلَةً

modern scholars—has ever claimed that the punishment for female adulterers was exile, since Allah, the Most High, commanded their confinement in homes. Nor has anyone asserted that Yusuf—peace be upon him—was exiled when he was imprisoned. Thus, the claim that imprisonment constitutes exile altogether is invalidated.[30]

وَعَلَى كُلِّ حَالٍ فَالْوَاجِبُ أَنْ نَنْظُرَ فِي الْقَوْلَيْنِ اللَّذَيْنِ هُمَا إِمَّا نَفْيُهُ إِلَى مَكَان غَيْرِ مَكَانِهِ وَإِقْرَارُهُ هُنَالِكَ أَوْ نَفْيُهُ أَبَدًا، فَوَجَدْنَا مِنْ حُجَّةِ مَنْ قَالَ: يُنْفَى مِنْ بَلَدٍ إِلَى بَلَدٍ وَيُقَرُّ هُنَالِكَ [أَنْ قَالُوا: أَنْتُمْ تَقُولُونَ بِتَكْرَارِ فِعْلِ الْأَمْرِ بَلْ يُجْزِي عِنْدَكُمْ إِيقَاعُهُ مَرَّةً وَاحِدَةً، وَإِذَا كَرَّرْتُمْ النَّفْيَ أَبَدًا فَقَدْ نَقَضْتُمْ أَصْلَكُمْ قَالَ عَلِيٌّ: وَهَذَا الَّذِي أَنْكَرُوهُ دَاخِلٌ عَلَيْهِمْ بِمَنْعِهِمْ الْمَنْفِيَّ مِنْ الرُّجُوعِ إِلَى مَنْزِلِهِ، فَهُمْ يُقِرُّونَ عَلَيْهِ اسْتِدَامَةَ تِلْكَ الْعُقُوبَةِ، فَقَدْ وَقَعُوا فِيمَا أَنْكَرُوا بِعَيْنِهِ

In any case, it is obligatory to examine the two positions: either banishing him to a location other than his place and keeping him there, or perpetual banishment. We found from the argument of those who said "He should be exiled from one territory to another and confirmed there" that they asserted: "You claim the necessity of repeating the command's enactment, yet you consider its execution once sufficient. If you impose perpetual banishment, you have contradicted your foundational principle." Ali said: "This which they denied now applies to them through their prevention of the exiled person from returning to his home, for they thereby uphold the continuation of that punishment. Thus, they have fallen into the very act they condemned."

نَعَمْ، وَالتَّكْرَارُ أَيْضًا لَازِمٌ لِمَنْ قَالَ بِنَفْيِهِ أَوْ سَجْنِهِ سَوَاءً سَوَاءً]

Yes, and repetition is also required for whoever asserts its denial or imprisonment, equally, equally.]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَنَقُولُ: إِنَّ الْمُحَارِبَ الَّذِي افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا نَفْيَهُ حَرْبًا عَلَى مُحَارَبَتِهِ فَإِنَّهُ مَا دَامَ مُصِرًّا فَهُوَ مُحَارِبٌ وَمَا دَامَ مُحَارِبًا فَالنَّفْيُ حَدٌّ مِنْ حُدُودِهِ قَالَ اللَّهُ تَعَالَى {وَلَمْ يُصِرُّوا عَلَى مَا فَعَلُوا} [آل عمران: ١٣٥] فَمَنْ فَعَلَ الْمُحَارَبَةَ فَبِلَا شَكٍّ نَدْرِي أَنَّهُ فِي حَالِ نَوْمِهِ، وَأَكْلِهِ، وَاسْتِرَاحَتِهِ، وَمَرَضِهِ: أَنَّهُ مُحَارِبٌ، كَمَا كَانَ لَمْ يَسْقُطْ عَنْهُ الِاسْمُ الَّذِي وَسَمَهُ اللَّهُ تَعَالَى بِهِ، وَحُقَّ عَلَيْهِ الْحَدُّ بِهِ

Abū Muḥammad—may Allah have mercy on him—said: We affirm: The brigand (muharib) against whom Allah the Exalted has mandated exile as a penalty for his warfare—so long as he persists, he remains a brigand. As long as he is a brigand, exile is a prescribed punishment for him. Allah the Exalted stated: *"and they did not persist in what they had done"* [Āl ʿImrān 3:135]. Thus, whoever commits brigandage—we know without doubt that during his sleep, eating, rest, or illness, he remains a brigand as he was. The designation Allah the Exalted has imposed upon him does not cease, and the punishment for it is rightfully incurred due to his acts.[31]

هَذَا مَا لَا خِلَافَ فِيهِ، فَهُوَ بَعْدَ الْقُدْرَةِ عَلَيْهِ فِي حَالِ إِصْرَارِهِ عَلَى الْمُحَارَبَةِ بِلَا شَكٍّ، لَا يَسْقُطُ عَنْهُ الْإِثْمُ إِلَّا بِتَوْبَةٍ أَوْ نَصٍّ أَوْ إِجْمَاعٍ

This is undisputed: after having the capability to desist, yet persisting in warfare without doubt, the sin is not lifted from him except through repentance, textual evidence, or consensus.

[30] **Qur'an references (L40661):** Qur'an 12:35 (Yusuf); Qur'an 12:36 (Yusuf).

[31] **Qur'an references (L40666):** Qur'an 3:135 (Ali 'Imran).

L40668 The prescribed punishment remains upon him until it is waived through repentance or the ruling is nullified by scriptural text or consensus. This punishment is only carried out by cutting off his hand and foot from opposite sides, with unanimous agreement that no additional amputation may be reimposed upon him. The scriptural text prohibits prescribing another punishment for his prior offense.

فَالْحَدُّ بَاقٍ عَلَيْهِ حَتَّى يَسْقُطَ بِالتَّوْبَةِ أَوْ يَسْقُطَ عَنْهُ الْحُكْمُ بِالنَّصِّ أَوْ الْإِجْمَاعِ فَلَيْسَ ذَلِكَ إلَّا بِقَطْعِ يَدِهِ وَرِجْلِهِ مِنْ خِلَافٍ، بِلَا خِلَافٍ مِنْ أَحَدٍ فِي أَنَّهُ لَا يُجَدَّدُ عَلَيْهِ قَطْعٌ آخَرُ، وَيَمْنَعُ النَّصُّ مِنْ أَنْ يُحْدِثَ لَهُ حَدًّا آخَرَ عَلَى مَا سَلَفَ مِنْهُ

L40669 Abū Muḥammad—may Allāh have mercy on him—said: Then we found that those who advocated its expulsion and abandonment to the place they expelled it had contradicted the Qurʾān, for He affirmed it in that place, and affirmation is contrary to expulsion. Thus, they affirmed it on earth, leaving no valid opinion except the one we have verified—which is the opinion of al-Ḥasan al-Baṣrī, and this is the position we uphold.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ثُمَّ وَجَدْنَا مَنْ قَالَ: بِنَفْيِهِ وَتَرْكِهِ فِي الْمَكَانِ الَّذِي يَنْفِيهِ إلَيْهِ - قَدْ خَالَفَ الْقُرْآنَ فِي أَنَّهُ أَقَرَّهُ فِي ذَلِكَ الْمَكَانِ، وَالْإِقْرَارُ خِلَافُ النَّفْيِ، فَقَدْ أَقَرُّوهُ فِي الْأَرْضِ فَلَمْ يَبْقَ إلَّا الْقَوْلُ الَّذِي صَحَّحْنَاهُ - وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَبِهِ نَقُولُ

L40670 Therefore, it is obligatory that he be permanently expelled from every place on earth and not be left to settle except during the time of his eating, sleeping, and what is indispensable for him - including rest without which he would die - and the period of his illness, in accordance with the words of Allah the Exalted: "And cooperate in righteousness and piety" [Al-Mā'idah: 2].[32]

فَالْوَاجِبُ أَنْ يُنْفَى أَبَدًا مِنْ كُلِّ مَكَانٍ مِنْ الْأَرْضِ، وَأَنْ لَا يُتْرَكَ يَقَرُّ إلَّا مُدَّةَ أَكْلِهِ، وَنَوْمِهِ، وَمَا لَا بُدَّ لَهُ مِنْهُ مِنْ الرَّاحَةِ الَّتِي إنْ لَمْ يَنَلْهَا مَاتَ، وَمُدَّةَ مَرَضِهِ، لِقَوْلِ اللَّهِ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢]

L40671 It is obligatory that he not be killed nor neglected, but he must be perpetually exiled until he demonstrates repentance. If he does so, the exile is lifted from him, and he is permitted to return to his place. This is the ruling of the Quran. Whenever he demonstrates repentance, whether sooner or later, the exile is lifted from him. And success comes from Allah, the Most High.

فَوَاجِبٌ أَنْ لَا يُقْتَلَ، وَأَنْ لَا يُضَيَّعَ، لَكِنْ يُنْفَى أَبَدًا حَتَّى يُحْدِثَ تَوْبَةً، فَإِذَا أَحْدَثَهَا سَقَطَ عَنْهُ النَّفْيُ، وَتُرِكَ يَرْجِعُ إلَى مَكَانِهِ - فَهَذَا حُكْمُ الْقُرْآنِ، وَمَتَى أَحْدَثَ التَّوْبَةَ مِنْ قُرْبٍ أَوْ بُعْدٍ سَقَطَ عَنْهُ النَّفْيُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40672 ٢١٩٧ - Issue:

٢١٩٧ - مَسْأَلَةٌ:

L40673–40675 As for the exile of the adulterer? People have differed concerning it. A group said: The non-muḥṣan adulterer—the free man and the free woman—is to be flogged one hundred lashes and exiled for a year. A married woman and a woman not married are equal in that. As for the male slave, he is like the free man. As for the female slave, she is to be lashed fifty times and exiled for six months. This is the opinion of al-Shāfiʿī, his companions, Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, and Ibn Abī Laylā.

وَأَمَّا نَفْيُ الزَّانِي؟ فَإِنَّ النَّاسَ اخْتَلَفُوا فِيهِ: فَقَالَتْ طَائِفَةٌ: الزَّانِي غَيْرُ الْمُحْصَنِ، يُجْلَدُ مِائَةً، وَيُنْفَى سَنَةً - الْحُرُّ، وَالْحُرَّةُ ذَاتُ الزَّوْجِ، وَغَيْرُ ذَاتِ الزَّوْجِ، فِي ذَلِكَ سَوَاءٌ - وَأَمَّا الْعَبْدُ الذَّكَرُ فَكَالْحُرِّ، وَأَمَّا الْأَمَةُ فَتُجْلَدُ خَمْسِينَ وَنَفْيُ سِتَّةِ أَشْهُرٍ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَصْحَابِهِ، وَسُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَابْنِ أَبِي لَيْلَى.

[32] **Qur'an references (L40670):** Qur'an 5:2 (Al-Ma'idah).

وَقَالَتْ طَائِفَةٌ: يُنْفَى الرَّجُلُ الزَّانِي جُمْلَةً، وَلَا تُنْفَى النِّسَاءُ.

L40676 A group held that the male fornicator is to be exiled categorically, whereas women are not subject to exile.

وَهُوَ قَوْلُ الْأَوْزَاعِيِّ.

L40677 And this is the opinion of Al-Awzaʿī.

وَقَالَتْ طَائِفَةٌ: يُنْفَى الْحُرُّ الذَّكَرُ، وَلَا تُنْفَى الْمَرْأَةُ الْحُرَّةُ - ذَاتَ زَوْجٍ كَانَتْ أَوْ غَيْرَ ذَاتِ زَوْجٍ - وَلَا الْأَمَةُ، وَلَا الْعَبْدُ - وَهُوَ قَوْلُ مَالِكٍ، وَأَصْحَابِهِ.

L40678 A group held that the free man is to be exiled, while the free woman—whether married or unmarried—is not exiled, nor the female slave, nor the male slave. This is the opinion of Mālik and his followers.

وَقَالَتْ طَائِفَةٌ: لَا نَفْيَ عَلَى زَانٍ أَصْلًا - لَا عَلَى ذَكَرٍ، وَلَا عَلَى أُنْثَى، وَلَا حُرٍّ، وَلَا عَبْدٍ، وَلَا أَمَةٍ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ.

L40679 A group stated that there is no exile at all for any fornicator—neither for a male nor a female, nor for a free person (whether male or female), nor for an enslaved man or woman. This is the opinion of Abū Ḥanīfah and his followers.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَنَحْنُ ذَاكِرُونَ - إنْ شَاءَ اللَّهُ تَعَالَى - مَا جَاءَ فِي ذَلِكَ عَنْ الْمُتَقَدِّمِينَ فَمِنْ ذَلِكَ: مَا ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ الْعَلَاءِ أَبُو كُرَيْبٍ نا عَبْدُ اللَّهِ بْنُ إدْرِيسَ الْأَوْدِيُّ سَمِعْت عُبَيْدَ اللَّهِ بْنَ عُمَرَ بْنِ حَفْصِ بْنِ عَاصِمٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - ضَرَبَ وَغَرَّبَ، وَإِنَّ أَبَا بَكْرٍ ضَرَبَ وَغَرَّبَ، وَإِنَّ عُمَرَ ضَرَبَ وَغَرَّبَ» .

L40680 Abū Muḥammad—may Allah have mercy on him—said: We shall mention—by Allah the Exalted's will—what has been transmitted regarding this matter from the predecessors. Among these is what ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: Muḥammad ibn al-ʿAlāʾ Abū Kuraib narrated to us: ʿAbdullāh ibn Idrīs al-Awdī said: I heard ʿUbaydullāh ibn ʿUmar ibn Ḥafṣ ibn ʿĀṣim narrate from Nāfiʿ, from Ibn ʿUmar, who said: "Indeed, the Messenger of Allah—peace and blessings be upon him and his family—imposed flogging and exile. And indeed Abū Bakr imposed flogging and exile. And indeed ʿUmar imposed flogging and exile."

أَنَا حُمَامٌ أَنَا ابْنُ مُفَرِّجٍ أَنَا ابْنُ الْأَعْرَابِيِّ أَنَا الدَّبَرِيُّ أَنَا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ نَافِعٍ عَنْ صَفِيَّةَ بِنْتِ أَبِي عُبَيْدٍ أَنَّ رَجُلًا وَقَعَ عَلَى جَارِيَةٍ بِكْرٍ فَأَحْبَلَهَا فَاعْتَرَفَ وَلَمْ يَكُنْ أَحْصَنَ فَأَمَرَ بِهِ أَبُو بَكْرٍ فَجَلَدَهُ مِائَةً ثُمَّ نُفِيَ.

L40681 I am Humaam, I am Ibn Mufarrij, I am Ibn al-A'rabi, I am al-Dabari, I am 'Abd al-Razzaq, from Ibn Jurayj, from Musa ibn 'Uqbah, from Nafi', from Safiyyah bint Abi 'Ubayd: A man committed zinā with a virgin slave girl and she became pregnant. He confessed, and he was not a married man. Abu Bakr ordered him to be lashed one hundred times and then exiled.

وَعَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا قَالَتْ: أَتَى رَجُلٌ إلَى عُمَرَ بْنِ الْخَطَّابِ فَأَخْبَرَهُ أَنَّ أُخْتَهُ أَحْدَثَتْ - وَهِيَ فِي سِتْرِهَا وَأَنَّهَا حَامِلٌ - فَقَالَ عُمَرُ: أَمْهِلْهَا حَتَّى إذَا وَضَعَتْ وَاسْتَقَلَّتْ فَآذِنِّي بِهَا، فَلَمَّا وَضَعَتْ جَلَدَهَا مِائَةً وَغَرَّبَهَا إلَى الْبَصْرَةِ عَامًا.

L40682 From Urwah ibn al-Zubayr, on the authority of Aisha, the Mother of the Believers, that she said: A man came to Umar ibn al-Khattab and informed him that his sister had committed adultery while in seclusion and that she was pregnant. Umar said: "Delay until she delivers and has recovered, then inform me." When she delivered, he lashed her one hundred times and exiled her to Basra for a year.

L40683 From the narration of Malik, from Ibn Shihab: that Umar ibn al-Khattab imposed exile for one year in cases of fornication. Ibn Wahb reported that Ibn Shihab said: “This ruling remained enacted by the Sunnah until Marwan exiled during his governorship of Medina. Afterward, the people abandoned it.”

وَمِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ غَرَّبَ فِي الزِّنَى سَنَةً. قَالَ ابْنُ وَهْبٍ، قَالَ ابْنُ شِهَابٍ: ثُمَّ لَمْ يَزَلْ ذَلِكَ الْأَمْرُ تَمْضِي بِهِ السُّنَّةُ حَتَّى غَرَّبَ مَرْوَانُ فِي إِمْرَتِهِ بِالْمَدِينَةِ - ثُمَّ تَرَكَ ذَلِكَ النَّاسُ.

L40684–40685 From Ibn Wahb: Jarir ibn Hazim informed me, from Al-Hasan ibn Umara, from Al-Ala ibn Badr, from Kulthum ibn Jubayr, who said: A man among us married a woman, and she committed adultery before he consummated the marriage. Ali ibn Abi Talib flogged her one hundred lashes and banished her for a year to the river of Karbala. When she returned, he handed her over to her husband and said: “She is your wife. Divorce her if you wish, or keep her if you prefer.”

وَعَنْ ابْنِ وَهْبٍ أَخْبَرَنِي جَرِيرُ بْنُ حَازِمٍ عَنْ الْحَسَنِ بْنِ عُمَارَةَ عَنْ الْعَلَاءِ بْنِ بَدْرٍ عَنْ كُلْثُومِ بْنِ جُبَيْرٍ قَالَ، تَزَوَّجَ رَجُلٌ مِنَّا امْرَأَةً فَزَنَتْ قَبْلَ أَنْ يَدْخُلَ بِهَا، فَجَلَدَهَا عَلِيُّ بْنُ أَبِي طَالِبٍ مِائَةَ سَوْطٍ وَنَفَاهَا سَنَةً إِلَى نَهْرِ كَرْبَلَاءَ فَلَمَّا رَجَعَتْ دَفَعَهَا إِلَى زَوْجِهَا، وَقَالَ: امْرَأَتُك فَإِنْ شِئْت فَطَلِّقْ، وَإِنْ شِئْت فَأَمْسِكْ.

L40686 From Ibn Shihab, from Yahya ibn Abd al-Rahman ibn Hatib, from his father: When Hatib died, he emancipated those among his slaves who prayed and fasted. He had a Nubian slave woman who had prayed and fasted—though she was a non-Arab who did not understand the religion—when suddenly her pregnancy became apparent, startling her master. He went to Umar in distress. Umar said to him, “You are the man who brings no good!” Umar then sent for her and asked, “Are you pregnant?” She replied, “Yes, by Mar‘ush for two dirhams,” confessing to it. Ali ibn Abi Talib, Uthman ibn Affan, and Abd al-Rahman ibn Awf were present with Umar when she was brought in. Umar said, “Advise me.” Uthman, who was seated, reclined as if to distance himself. Ali and Abd al-Rahman said, “The ḥadd punishment applies to her.” Umar asked, “Advise me, Uthman!” He replied, “Your two brothers have already advised you.” Umar insisted, “Advise me yourself!” Uthman said, “She confessed as one unaware of the implications, and the ḥadd punishment only applies to those who act knowingly.” Umar then ordered her to be flogged one hundred lashes and exiled.

وَعَنْ ابْنِ شِهَابٍ عَنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ بْنِ حَاطِبٍ عَنْ أَبِيهِ أَنَّ حَاطِبًا تُوُفِّيَ وَأَعْتَقَ مَنْ صَلَّى مِنْ رَقِيقِهِ وَصَامَ، وَكَانَتْ لَهُ وَلِيدَةٌ نُوبِيَّةٌ قَدْ صَلَّتْ وَصَامَتْ - وَهِيَ أَعْجَمِيَّةٌ لَمْ تَفْقَهْ - فَلَمْ يَرُعْهُ إِلَّا حَمْلُهَا، فَذَهَبَ إِلَى عُمَرَ فَزِعًا، فَقَالَ لَهُ عُمَرُ: أَنْتَ الرَّجُلُ الَّذِي لَا تَأْتِي بِخَيْرٍ، فَأَرْسَلَ إِلَيْهَا عُمَرُ: أَحَبِلْتِ؟ فَقَالَتْ: نَعَمْ، مِنْ مَرْعُوشٍ بِدِرْهَمَيْنِ، فَإِذَا هِيَ تَسْتَهِلُّ بِهِ، وَصَادَفَتْ عِنْدَهُ عَلِيَّ بْنَ أَبِي طَالِبٍ، وَعُثْمَانَ بْنَ عَفَّانَ، وَعَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ، فَقَالَ: أَشِيرُوا عَلَيَّ، وَعُثْمَانُ جَالِسٌ فَاضْطَجَعَ، فَقَالَ عَلِيٌّ، وَعَبْدُ الرَّحْمَنِ: قَدْ وَقَعَ عَلَيْهَا الْحَدُّ، قَالَ: أَشِرْ عَلَيَّ يَا عُثْمَانُ؟ قَالَ: قَدْ أَشَارَ عَلَيْك أَخَوَاك، قَالَ: أَشِرْ عَلَيَّ أَنْتَ؟ قَالَ: أَرَاهَا تَسْتَهِلُّ بِهِ كَأَنَّهَا لَا تَعْلَمُهُ، وَلَيْسَ الْحَدُّ إِلَّا عَلَى مَنْ عَلِمَهُ، فَأَمَرَ بِهَا فَجُلِدَتْ مِائَةً وَغَرَّبَهَا.

L40687 It is narrated from ʿAṭāʾ that he said: An unmarried person is to be lashed one hundred times and exiled for a year.

وَعَنْ عَطَاءٍ قَالَ: الْبِكْرُ تُجْلَدُ مِائَةً وَتُنْفَى سَنَةً.

L40688 From Abdullah ibn Mas’ud regarding a virgin male who commits fornication

وَعَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ فِي الْبِكْرِ يَزْنِي بِالْبِكْرِ يُجْلَدَانِ مِائَةً وَيُنْفَيَانِ سَنَةً.

with a virgin female: they are to be flogged one hundred times and banished for a year.

L40689 It is reported from Ibn ʿUmar that he enforced the ḥadd punishment upon his female slave for zinā and exiled her to Fadak.

L40690–40692 Abu Muhammad—may God have mercy on him—said: As for those who did not hold that view—regarding the chain: from Hammām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Abū Ḥanīfah, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī—who reported: ʿAlī ibn Abī Ṭālib ruled concerning a virgin male who fornicates with a virgin female that if they are detained among the youths, they shall be exiled. From Ibrāhīm al-Nakhaʿī: ʿAlī ibn Abī Ṭālib said regarding the umm al-walad—when her master emancipates her or dies, then she commits fornication—that she is to be lashed but not exiled? Abu Muhammad—may God have mercy on him—said: When they disagreed, we examined this matter to discern the truth and follow it—with God Almighty's assistance. We considered the opinion of those who prescribe exile within the ḥadd punishment for fornication, citing what we narrated through Muslim's chain: from Qutaybah, from Layth, from Ibn Shihāb, from ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah ibn Masʿūd. From Abu Huraira and Zayd ibn Khalid that they said: "A Bedouin man came to the Messenger of Allah—peace and blessings of Allah be upon him—and said: 'O Messenger of Allah, I adjure you by Allah **to** judge between us by the Book of Allah!' The other disputant, who was more knowledgeable than him, said: 'Yes, judge between us by the Book of Allah **and** permit me to speak.' The Messenger of Allah—peace and blessings of Allah be upon him—said to him: 'Speak.' He said: 'My son was a hired worker for this man and committed adultery with his wife. I was informed that my son deserved stoning, so I ransomed him with a hundred sheep and a slave girl. Then I asked knowledgeable people, and they informed me that my son should receive a hundred lashes and exile for a year, and that this man's wife deserved stoning.' The Messenger of Allah—peace and blessings of Allah be upon him **and his family**—said: 'By the One in whose Hand is my soul, I will indeed judge between you by the Book of Allah! The slave girl and the sheep are to be returned to you. Your son

وَعَنْ ابْنِ عُمَرَ أَنَّهُ حَدَّ مَمْلُوكَةً لَهُ فِي الزِّنَى وَنَفَاهَا إِلَى فَدَكَ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا مَنْ لَمْ يَرَ ذَلِكَ: فَكَمَا أَنَا حُمَامٌ أَنَا ابْنُ مُفَرِّجٍ أَنَا ابْنُ الْأَعْرَابِيِّ أَنَا الدَّبَرِيُّ أَنَا عَبْدُ الرَّزَّاقِ عَنْ أَبِي حَنِيفَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ فِي الْبِكْرِ يَزْنِي بِالْبِكْرِ، فَإِنْ حَبَسَهُمَا مِنْ الْفِتْيَانِ يُنْفَيَانِ - وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي أُمِّ الْوَلَدِ إذَا أَعْتَقَهَا سَيِّدُهَا، أَوْ مَاتَ فَزَنَتْ: أَنَّهَا تُجْلَدُ وَلَا تُنْفَى؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا نَظَرْنَا فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى - فَنَظَرْنَا فِي قَوْلِ مَنْ قَالَ بِالتَّغْرِيبِ مِنْ حَدِّ الزِّنَى يَذْكُرُونَ: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا قُتَيْبَةُ أَنَا لَيْثٌ عَنْ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ أَبِي هُرَيْرَةَ، وَزَيْدِ بْنِ خَالِدٍ أَنَّهُمَا قَالَا «إنَّ رَجُلًا مِنْ الْأَعْرَابِ أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ أَنْشُدُكَ اللَّهَ إلَّا قَضَيْتَ لِي بِكِتَابِ اللَّهِ؟ فَقَالَ: الْخَصْمُ الْآخَرُ وَهُوَ أَفْقَهُ مِنْهُ: نَعَمْ فَاقْضِ بَيْنَنَا بِكِتَابِ اللَّهِ وَائْذَنْ لِي فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قُلْ: قَالَ: إنَّ ابْنِي كَانَ عَسِيفًا عَلَى هَذَا فَزَنَى بِامْرَأَتِهِ وَإِنِّي أُخْبِرْتُ أَنَّ عَلَى ابْنِي الرَّجْمَ فَافْتَدَيْتُ مِنْهُ بِمِائَةِ شَاةٍ وَوَلِيدَةٍ، فَسَأَلْتُ أَهْلَ الْعِلْمِ فَأَخْبَرُونِي أَنَّمَا عَلَى ابْنِي جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ وَأَنَّ عَلَى امْرَأَةِ هَذَا الرَّجْمَ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَالَّذِي نَفْسِي بِيَدِهِ لَأَقْضِيَنَّ بَيْنَكُمَا بِكِتَابِ اللَّهِ: الْوَلِيدَةُ وَالْغَنَمُ رَدٌّ عَلَيْكَ، وَعَلَى ابْنِكَ جَلْدُ مِائَةٍ

shall receive a hundred lashes and exile for a year. **Go in the morning**, O Unays, to this man's wife. If she confesses, stone her.' He said: 'Unays went to her in the morning, and she confessed. He then ordered her to be stoned, and she was stoned.'"

L40693 Abu Muhammad—may Allah have mercy on him—said: And thus it has been narrated to us through the chains of Maʿmar, Ṣāliḥ ibn Kaysān, Yūnus ibn Yazīd, Sufyān ibn ʿUyaynah, and Mālik ibn Anas—all of them from al-Zuhrī through this chain of transmission.

L40694 Through the chain of Muslim: Yaḥyā ibn Yaḥyā al-Tamīmī reported from Hushaym, from Manṣūr, from al-Ḥasan, from Ḥiṭṭān ibn ʿAbd Allāh al-Raqāshī, from ʿUbādah ibn al-Ṣāmit, who said: "The Messenger of Allah (peace be upon him) declared: 'Learn from me, learn from me: Allah has ordained a punishment for them. The virgin with the virgin shall receive one hundred lashes and exile for a year. The non-virgin with the non-virgin shall receive one hundred lashes and stoning.'"

L40695 And from the chain of Muslim: I am ʿAmr al-Nāqid; I am Hushaym via this same chain (isnād).

L40696 From the chain of Imam Muslim: Muhammad ibn al-Muthanna and Muhammad ibn Bashar—both transmitting from Abd al-A'la—Sa'id ibn Abi Arubah reported to us from Qatadah, from al-Hasan, from Hittan ibn Abdullah, from Ubada ibn al-Samit, who said: "When revelation descended upon the Prophet of Allah (peace be upon him), he would become troubled, and his face would darken. He said: One day, revelation came to him, and he remained in that state. When it subsided, he said: 'Take this from me. Allah has established a way for them [women]: the married person with the married person, and the virgin with the virgin. The married person is to be flogged a hundred lashes then stoned; the virgin is to be flogged a hundred lashes then banished for a year.'"

L40697–40699 I am Abdullah ibn Rabee', I am Muhammad ibn Mu'awiyah, I am Ahmad ibn Shu'ayb, I am Muhammad ibn Abd al-A'la. Yazid ibn Zura'—he is Ibn Zuraiq—narrated from Sa'id ibn Abi 'Arubah from Qatadah from al-Hasan from Hittan ibn 'Abdullah al-Raqashi from 'Ubadah ibn al-Samit, who said: "When

وَتَغْرِيبُ عَامٍ، وَاغْدُ يَا أُنَيْسُ عَلَى امْرَأَةِ هَذَا، فَإِنْ اعْتَرَفَتْ فَارْجُمْهَا؟ قَالَ: فَغَدَا عَلَيْهَا فَاعْتَرَفَتْ، فَأَمَرَ بِهَا فَرُجِمَتْ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ مَعْمَرٍ، وَصَالِحِ بْنِ كَيْسَانَ، وَيُونُسَ بْنِ يَزِيدَ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، وَمَالِكِ بْنِ أَنَسٍ، كُلِّهِمْ عَنِ الزُّهْرِيِّ بِهَذَا الْإِسْنَادِ.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا يَحْيَى بْنُ يَحْيَى التَّمِيمِيُّ أَنَا هُشَيْمٌ عَنْ مَنْصُورٍ عَنِ الْحَسَنِ عَنْ حِطَّانَ بْنِ عَبْدِ اللَّهِ الرَّقَاشِيِّ عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خُذُوا عَنِّي، خُذُوا عَنِّي: قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا الْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ، وَالثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَالرَّجْمُ» .

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عَمْرٌو النَّاقِدُ أَنَا هُشَيْمٌ بِهَذَا الْإِسْنَادِ مِثْلَهُ.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، وَمُحَمَّدُ بْنُ بَشَّارٍ جَمِيعًا عَنْ عَبْدِ الْأَعْلَى نا سَعِيدٌ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنِ الْحَسَنِ عَنْ حِطَّانَ بْنِ عَبْدِ اللَّهِ عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ «كَانَ نَبِيُّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا أُنْزِلَ عَلَيْهِ كُرِبَ لِذَلِكَ، وَتَرَبَّدَ لَهُ وَجْهُهُ، قَالَ: فَأُنْزِلَ عَلَيْهِ ذَاتَ يَوْمٍ، فَبَقِيَ كَذَلِكَ، فَلَمَّا سُرِّيَ عَنْهُ قَالَ: خُذُوا عَنِّي: قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا: الثَّيِّبُ بِالثَّيِّبِ، وَالْبِكْرُ بِالْبِكْرِ، الثَّيِّبُ جَلْدُ مِائَةٍ ثُمَّ رَجْمٌ بِالْحِجَارَةِ، الْبِكْرُ جَلْدُ مِائَةٍ ثُمَّ نَفْيُ سَنَةٍ» .

أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى أَنَا يَزِيدَ - هُوَ ابْنُ زُرَيْعٍ - أَنَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنِ الْحَسَنِ عَنْ حِطَّانَ

revelation descended upon the Messenger of Allah—peace and blessings of Allah be upon him—he would become distressed, and his face would darken. One day, revelation descended upon him. When it was lifted from him, he said: 'Learn from me: Allah has prescribed a ruling for them. The virgin with the virgin: one hundred lashes and exile for a year. The previously married with the previously married: one hundred lashes and stoning.'"

بْنِ عَبْدِ اللَّهِ الرَّقَاشِيِّ عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا أُنْزِلَ عَلَيْهِ كُرِبَ لِذَلِكَ وَتَرَبَّدَ لَهُ وَجْهُهُ، فَنَزَلَ عَلَيْهِ ذَاتَ يَوْمٍ فَلَقِيَ ذَلِكَ فَلَمَّا سُرِّيَ عَنْهُ قَالَ: خُذُوا عَنِّي: قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا الْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَنَفْيُ سَنَةٍ، وَالثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَالرَّجْمُ» .

L40700 Abu Muhammad—may Allah have mercy on him—said: It was also narrated by Shu'bah and Hishām al-Dastawā'ī, both of them from Qatādah through his chain: I am 'Abdullāh ibn Rabī', I am Muḥammad ibn Mu'āwiyah, I am Aḥmad ibn Shu'ayb, I am Muḥammad ibn Ismā'īl ibn Ibrāhīm ibn 'Ulayyah and Muḥammad ibn Yaḥyā ibn 'Abdillāh. Ibn 'Ulayyah said: I am 'Abd al-Raḥmān ibn Mahdī, from 'Abd al-'Azīz ibn 'Abdillāh ibn Abī Salamah. Muḥammad ibn Yaḥyā said: I am Ya'qūb ibn Ibrāhīm ibn Sa'd ibn Ibrāhīm ibn 'Abd al-Raḥmān ibn 'Awf, from his father, from Ṣāliḥ ibn Kayṣān. Then the chains of Ṣāliḥ and Ibn Abī Salamah converge, both of them from al-Zuhrī, from 'Ubaydillāh ibn 'Abdillāh ibn 'Utbah ibn Mas'ūd, from Zayd ibn Khālid al-Juhanī, who said: "I heard the Messenger of Allah—peace and blessings be upon him—command regarding an unmarried person who commits fornication: one hundred lashes and banishment for a year."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَرَوَاهُ أَيْضًا شُعْبَةُ، وَهِشَامٌ الدَّسْتُوَائِيُّ، كِلَاهُمَا عَنْ قَتَادَةَ بِإِسْنَادِهِ أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ إِبْرَاهِيمَ بْنِ عُلَيَّةَ، وَمُحَمَّدُ بْنُ يَحْيَى بْنِ عَبْدِ اللَّهِ، قَالَ ابْنُ عُلَيَّةَ: أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ أَنَا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي سَلَمَةَ، وَقَالَ مُحَمَّدُ بْنُ يَحْيَى: أَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَا أَبِي عَنْ صَالِحِ بْنِ كَيْسَانَ، ثُمَّ اتَّفَقَ صَالِحٌ، وَابْنُ أَبِي سَلَمَةَ، كِلَاهُمَا عَنِ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ قَالَ: «سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُ فِيمَنْ لَمْ يُحْصِنْ إِذَا زَنَى بِجَلْدِ مِائَةٍ وَتَغْرِيبِ عَامٍ» .

L40701 And through his chain—to Ahmad ibn Shu'ayb: I am Muhammad ibn Rafi', I am Hujayr, I am al-Layth from 'Uqayl ibn Khalid from Ibn Shihab from Sa'id ibn al-Musayyib from Abu Hurayrah from the Messenger of Allah—peace and blessings of Allah be upon him—"that he ruled regarding one who committed fornication while not being muhsan (a chaste/married person) to be exiled for one year combined with the enforcement of the hadd punishment upon him." Abu Muhammad—may Allah have mercy on him—said: These were manifestly corroborated reports transmitted by three Companions—may Allah be pleased with them: 'Ubadah ibn al-Samit, Abu Hurayrah, and Zayd ibn Khalid al-Juhani—affirming the obligation of one year's exile alongside one hundred lashes for the unmarried fornicator. This ruling was accompanied by the Prophet's—peace and blessings of Allah be upon him—

وَبِهِ - إِلَى أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ رَافِعٍ أَنَا حُجَيْرٌ أَنَا اللَّيْثُ عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنِ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ أَبِي هُرَيْرَةَ عَنْ «رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَضَى فِيمَنْ زَنَى وَلَمْ يُحْصِنْ أَنْ يُنْفَى عَامًا مَعَ إِقَامَةِ الْحَدِّ عَلَيْهِ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَكَانَتْ هَذِهِ آثَارٌ مُتَظَاهِرَةٌ رَوَاهَا ثَلَاثَةٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - عُبَادَةُ بْنُ الصَّامِتِ، وَأَبُو هُرَيْرَةَ، وَزَيْدُ بْنُ خَالِدٍ الْجُهَنِيُّ بِإِيجَابِ تَغْرِيبِ عَامٍ مَعَ جَلْدِ مِائَةٍ عَلَى الزَّانِي الَّذِي لَمْ يُحْصِنْ، مَعَ إِقْسَامِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - بِاللَّهِ تَعَالَى

solemn oath by Allah the Exalted in his judgment, declaring it to be "the Book of Allah the Exalted," while the Book of Allah is both His revelation and His legal decree. Moreover, Allah the Exalted states in the Quran: *He does not speak from desire—it is nothing but revelation inspired* (al-Najm 53:3-4). Thus, this constitutes the explicit text of the Quran, for every utterance of the Messenger of Allah—peace and blessings of Allah be upon him—originates from divine revelation conveyed by Allah the Exalted.[33]

L40702–40703 And He, the Exalted, said, "Slave women shall incur half the prescribed penalty applicable to chaste free women." [An-Nisa: 25][34]

L40704 He (peace be upon him) distinguished between the Ḥadd of a slave and the Ḥadd of a free person in the Hadith of Ibn Abbas. As per what we presented earlier in the chapter on the Ḥadd of slaves, the text establishes that their male and female slaves are subject to half the Ḥadd of a free man and a free woman—which is fifty lashes and six months of exile.

L40705 Abu Muhammad (may Allah have mercy on him) said: We then examined the position of those who do not uphold exile for women and slaves. We found them citing the previously mentioned hadith with its chain—making its repetition unnecessary—which states (peace be upon him): "If a slave woman of yours commits fornication, let him lash her and not reproach her." This provides them no valid argument, because it is a general hadith that others have explicitly interpreted. For it only states "let him lash her" without specifying the number of lashes. Thus it is established that the Prophet (peace be upon him) referred the explanation of this commanded lashing to the Quran and to the hadith detailing rulings concerning slaves within prescribed punishments (ḥudūd). Therefore, the Prophet's silence (peace be upon him) regarding exile in this particular narration cannot invalidate the exile he (peace be upon him) definitively ordained for those who commit fornication while not in a state of marital protection (muḥṣan).

L40706 Similarly, his silence (may Allah's peace and blessings be upon him) regarding specifying the exact number of lashes she should receive does not constitute

فِي قَضَائِهِ بِهِ أَنَّهُ كِتَابُ اللَّهِ تَعَالَى وَكِتَابُ اللَّهِ تَعَالَى هُوَ وَحْيُهُ وَحُكْمُهُ مَعَ أَنَّ اللَّهَ تَعَالَى يَقُولُ فِي الْقُرْآنِ {وَمَا يَنْطِقُ عَنِ الْهَوَى - إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٣ - ٤] فَهَذَا نَصُّ الْقُرْآنِ، فَإِنَّ كُلَّ مَا قَالَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَعَنْ وَحْيٍ مِنَ اللَّهِ تَعَالَى يَقُولُهُ.

وَقَالَ تَعَالَى {فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥] .

وَفَرَّقَ - عَلَيْهِ السَّلَامُ - بَيْنَ حَدِّ الْمَمْلُوكِ، وَحَدِّ الْحُرِّ فِي حَدِيثِ ابْنِ عَبَّاسٍ، وَعَلَى الَّذِي أَوْرَدْنَا قَبْلُ فِي بَابِ حَدِّ الْمَمَالِيكِ فَصَحَّ النَّصُّ أَنَّ عَلَى الْمَمَالِيكِ ذُكُورِهِمْ وَإِنَاثِهِمْ - نِصْفَ حَدِّ الْحُرِّ وَالْحُرَّةِ، وَذَلِكَ جَلْدُ خَمْسِينَ وَنَفْيُ سِتَّةِ أَشْهُرٍ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ لَمْ يَرَ التَّغْرِيبَ عَلَى النِّسَاءِ وَالْمَمَالِيكِ، فَوَجَدْنَاهُمْ يَذْكُرُونَ الْخَبَرَ الَّذِي قَدْ أَوْرَدْنَاهُ قَبْلُ بِإِسْنَادِهِ، فَأَغْنَى عَنْ تَرْدَادِهِ، وَهُوَ قَوْلُهُ - عَلَيْهِ السَّلَامُ - «إذَا زَنَتْ أَمَةُ أَحَدِكُمْ فَلْيَجْلِدْهَا وَلَا يُثَرِّبْ» فَلَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّهُ خَبَرٌ مُجْمَلٌ فَسَّرَهُ غَيْرُهُ، لِأَنَّهُ إنَّمَا فِيهِ " فَلْيَجْلِدْهَا " وَلَمْ يَذْكُرْ فِيهِ عَدَدَ الْجَلْدِ كَمْ هُوَ؟ فَصَحَّ أَنَّهُ إنَّمَا أَحَالَ - عَلَيْهِ السَّلَامُ - بَيَانَ الْجَلْدِ الْمَأْمُورِ بِهِ فِيهِ عَلَى الْقُرْآنِ، وَعَلَى الْخَبَرِ الَّذِي فِيهِ بَيَانُ حُكْمِ الْمَمْلُوكِ فِي الْحُدُودِ، فَإِذْ هُوَ كَذَلِكَ، فَلَيْسَ سُكُوتُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذِكْرِ التَّغْرِيبِ فِي ذَلِكَ الْخَبَرِ: حُجَّةً فِي إبْطَالِ التَّغْرِيبِ الَّذِي قَدْ صَحَّ أَمْرُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهِ فِيمَنْ زَنَى وَلَمْ يُحْصَنْ.

كَذَلِكَ لَيْسَ فِي سُكُوتِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذِكْرِ عَدَدِ جَلْدِهَا كَمْ هُوَ: حُجَّةٌ فِي إسْقَاطِ مَا قَدْ صَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - مِنْ أَنَّ حَدَّهَا نِصْفُ حَدِّ الْحُرَّةِ.

[33]**Qur'an references (L40701):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).
[34]**Qur'an references (L40703):** Qur'an 4:25 (An-Nisa).

evidence for abrogating what has been authentically established from him (peace be upon him) - that her ḥadd is half that of a free woman.

وَأَيْضًا - فَإِنَّ هَذَا الْخَبَرَ، لَيْسَ فِيهِ: أَنْ لَا تَغْرِيبَ، وَلَا أَنَّ التَّغْرِيبَ سَاقِطٌ عَنْهَا، لَكِنَّهُ مَسْكُوتٌ عَنْهُ فَقَطْ، وَإِذَا لَمْ يَكُنْ فِيهِ نَهْيٌ عَنْ تَغْرِيبِهَا، فَلَا يَجُوزُ أَنْ يَكُونَ هَذَا الْخَبَرُ مُعَارِضًا لِلْأَخْبَارِ الَّتِي فِيهَا النَّفْيُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L40707 Moreover, this report does not state that there is no exile, nor that exile is waived for her; rather, it is simply silent on the matter. Since there is no prohibition against exiling her in it, this report cannot conflict with those reports in which there is negation of exile. And success is from Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَالَ بَعْضُهُمْ: إنَّ حَقَّ السَّيِّدِ فِي خِدْمَةِ عَبْدِهِ وَأَمَتِهِ، وَحَقَّ أَهْلِ الْمَرْأَةِ فِيهَا، فَلَا يَجُوزُ قَطْعُ حُقُوقِهِمْ بِنَفْيِ الْعَبْدِ، وَالْأَمَةِ، وَالْمَرْأَةِ؟ فَيُقَالُ لَهُمْ: لَيْسَ بِشَيْءٍ، لِأَنَّ حَقَّ الزَّوْجَةِ وَالْوَلَدِ أَيْضًا فِي زَوْجِهَا وَابْنِهِمْ، فَلَا يَجُوزُ قَطْعُهُ بِنَفْيِهِمْ.

L40708 Abū Muḥammad—may Allāh have mercy on him—said: Some of them argued: "Does the master's right to the service of his male and female slaves, and the right of a woman's family over her, not make it impermissible to terminate their rights by exiling the male slave, female slave, or woman?" They are told: This is baseless, for the right of the wife and child is also inherent in her husband and their son, and it cannot be severed by exiling them.

فَإِنْ ادَّعَوْا أَنَّ حَدِيثَ عُبَادَةَ مَنْسُوخٌ بِقَوْلِ اللَّهِ تَعَالَى {الزَّانِيَةُ وَالزَّانِي} [النور: ٢] الْآيَةَ؟ وَقَالُوا: لِأَنَّ حَدِيثَ عُبَادَةَ «خُذُوا عَنِّي قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا» ؟ قَالُوا: صَحَّ أَنَّ هَذَا الْخَبَرَ كَانَ بَعْدَ قَوْلِ اللَّهِ تَعَالَى {وَاللاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ} [النساء: ١٥] الْآيَةَ.

L40709–40710 If they claimed that the ḥadīth of ʿUbādah is abrogated by Allah's statement {The adulteress and the adulterer...} [An-Nūr 24:2], and argued: "Because the ḥadīth of ʿUbādah states: 'Take from me, for Allah has prescribed a punishment for them'"—they replied: "It is authenticated that this report originated after Allah's statement {As for those women among you who commit adultery...} [An-Nisā' 4:15]."[35]

قَالَ: فَكَانَ السَّبِيلُ مَا ذُكِرَ فِي حَدِيثِ عُبَادَةَ مِنْ الْجَلْدِ وَالرَّجْمِ وَالتَّغْرِيبِ.

L40711 He said: Thus, the ruling was as stated in the Hadith of ʿUbādah concerning flogging, stoning, and exile.

ثُمَّ جَاءَ قَوْلُ اللَّهِ تَعَالَى {الزَّانِيَةُ وَالزَّانِي} [النور: ٢] الْآيَةَ، فَكَانَ نَاسِخًا لِخَبَرِ عُبَادَةَ.

L40712 Then came the verse of Allah, the Exalted: {The adulteress and the adulterer...} [An-Nur: 2] [...], thereby abrogating the hadith reported by Ubada.[36]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا كَلَامٌ جَمَعَ التَّخْلِيطَ وَالْكَذِبَ، أَمَّا التَّخْلِيطُ: فَدَعْوَاهُمْ النَّسْخَ، وَأَمَّا الْكَذِبُ: فَهُوَ التَّحَكُّمُ مِنْهُمْ فِي أَوْقَاتِ نُزُولِ الْآيَةِ، وَمَا فِي خَبَرِ عُبَادَةَ بِلَا بُرْهَانٍ.

L40713 Abū Muḥammad—may God have mercy on him—said: This statement combines muddled reasoning and falsehood. As for the muddled reasoning, it is their claim of abrogation. As for the falsehood, it is their arbitrary assertions about the timing of the verse's revelation and what is in the narration of Ubāda without proof.

[35] **Qur'an references (L40710):** Qur'an 4:15 (An-Nisa); Qur'an 24:2 (An-Nur).
[36] **Qur'an references (L40712):** Qur'an 24:2 (An-Nur).

L40714 We clarify that—by the power of Allah Almighty and His might—and say: Their claim that the report of ʿUbāda occurred before the revelation of the verse due to what it contains—"Take from me, for Allah has appointed a way for them [women]"—is conjecture on their part. Allah Almighty has forbidden to assert based on conjecture, as He says: {They follow not except conjecture and what [their] souls desire} [An-Najm: 23].[37]

وَنَحْنُ نُبَيِّنُ ذَلِكَ - بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ - فَنَقُولُ: إِنَّ دَعْوَاهُمْ أَنَّ خَبَرَ عُبَادَةَ كَانَ قَبْلَ نُزُولِ الْآيَةِ مِنْ أَجْلِ مَا فِيهِ «خُذُوا عَنِّي قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا» فَظَنٌّ مِنْهُمْ، وَقَدْ حَرَّمَ اللَّهُ تَعَالَى الْقَطْعَ بِالظَّنِّ بِقَوْلِهِ تَعَالَى {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَمَا تَهْوَى الأَنْفُسُ} [النجم: ٢٣] .

L40715 And He, the Exalted, said: "And indeed, assumption does not avail against the truth at all." [An-Najm: 28][38]

وَقَالَ تَعَالَى {وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨] .

L40716 And by his saying—may Allah bless him and grant him peace—"Beware of suspicion, for indeed suspicion is the worst of false tales."

وَبِقَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» .

L40717 However, the correct opinion in this matter is that definitively asserting whether the ḥadīth of ʿUbāda ibn al-Ṣāmit preceded the revelation of the verse *"As for the adulteress and the adulterer"* [al-Nūr: 2], or whether the revelation of this verse preceded the ḥadīth of ʿUbāda—it remains possible that ʿUbāda's ḥadīth predated the revelation of the aforementioned verse.[39]

لَكِنَّ الْقَوْلَ الصَّحِيحَ فِي هَذَا الْمَكَانِ، هُوَ أَنَّ الْقَطْعَ بِأَنَّ حَدِيثَ عُبَادَةَ كَانَ قَبْلَ نُزُولِ {الزَّانِيَةُ وَالزَّانِي} [النور: ٢] الْآيَةَ، أَوْ بِأَنَّ نُزُولَ هَذِهِ الْآيَةِ كَانَ قَبْلَ حَدِيثِ عُبَادَةَ، فَمِنْ الْمُمْكِنِ أَنْ يَكُونَ حَدِيثُ عُبَادَةَ قَبْلَ نُزُولِ الْآيَةِ الْمَذْكُورَةِ.

L40718–40719 It is permissible that the revelation of the verse preceded the ḥadīth of ʿUbādah, and all of that is equal—whichever occurred, none of it opposes another, nor does any part conflict with another. There is no contradiction between the verse and the ḥadīth—as we shall clarify, Allah, Exalted, willing. Thus we say: If the ḥadīth of ʿUbādah preceded the revelation of the verse, then the ruling in the ḥadīth of ʿUbādah regarding flogging, exile, and stoning is confirmed. The verse mentioned part of what is in the ḥadīth of ʿUbādah, and Allah, Exalted, has directed us to the remainder of the ḥadd punishment as established in the ḥadīth of ʿUbādah.

وَجَائِزٌ أَنْ يَكُونَ نُزُولُ الْآيَةِ قَبْلَ حَدِيثِ عُبَادَةَ، وَكُلُّ ذَلِكَ سَوَاءٌ، أَيَّ ذَلِكَ كَانَ لَا يَعْتَرِضُ بَعْضُهُ عَلَى بَعْضٍ، وَلَا يُعَارِضُ شَيْءٌ مِنْهُ شَيْئًا، وَلَا خِلَافَ بَيْنَ الْآيَةِ وَالْحَدِيثِ - عَلَى مَا نُبَيِّنُ إِنْ شَاءَ اللَّهُ تَعَالَى - فَنَقُولُ: إِنَّهُ إِنْ كَانَ حَدِيثُ عُبَادَةَ قَبْلَ نُزُولِ الْآيَةِ، فَقَدْ صَحَّ مَا فِي حُكْمِ حَدِيثِ عُبَادَةَ مِنْ الْجَلْدِ، وَالتَّغْرِيبِ، وَالرَّجْمِ، وَكَانَتْ الْآيَةُ وَرَدَتْ بِبَعْضِ مَا فِي حَدِيثِ عُبَادَةَ، وَأَحَالَنَا اللَّهُ تَعَالَى فِي بَاقِي الْحَدِّ عَلَى مَا سَلَفَ فِي حَدِيثِ عُبَادَةَ.

L40720 Just as the verse was not considered by them to prevent stoning—which is mentioned in the ḥadīth of ʿUbāda before the revelation of the verse (according to their claim) even though it is not mentioned in it—similarly, it does not prevent exile, which is mentioned in the ḥadīth of ʿUbāda before

وَكَمَا لَمْ تَكُنْ الْآيَةُ مَانِعَةً عِنْدَهُمْ مِنْ الرَّجْمِ الَّذِي ذُكِرَ فِي حَدِيثِ عُبَادَةَ قَبْلَ نُزُولِهَا - بِزَعْمِهِمْ - وَلَمْ يُذْكَرْ فِيهَا، فَكَذَلِكَ لَيْسَتْ مَانِعَةً مِنْ التَّغْرِيبِ الَّذِي ذُكِرَ فِي حَدِيثِ عُبَادَةَ قَبْلَ نُزُولِهَا - بِزَعْمِهِمْ - وَلَمْ يُذْكَرْ فِيهَا، وَلَا فَرْقَ.

[37] **Qur'an references (L40714):** Qur'an 53:23 (An-Najm).
[38] **Qur'an references (L40715):** Qur'an 53:28 (An-Najm).
[39] **Qur'an references (L40717):** Qur'an 24:2 (An-Nur).

the revelation of the verse (according to their claim) even though it is not mentioned in it. There is no distinction.

L40721 This is the ruling that may not be transgressed if the hadith of ʾUbāda preceded the revelation of the verse, as they claimed. But if the hadith of ʾUbāda occurred after the revelation of the verse, then it indeed brought forth what is in the verse regarding flogging, along with the addition of stoning and exile - all of which are legally established. The statement of Allah's Messenger (peace and blessings be upon him) in ʾUbāda's hadith, "Allah has ordained a way for them," does not necessitate that the hadith must have occurred before the verse's revelation. Rather, the verse may have been revealed with part of what Allah the Exalted ordained for them, after which Allah's Messenger (peace and blessings be upon him) clarified the complete way in ʾUbāda's hadith - namely the stoning and exile which are added to the flogging mentioned in the verse. And with Allah the Exalted lies all success.

L40722 The issue of one who incurred a Ḥadd without knowing of its prohibition.

L40723–40725 2198 - Issue: Who commits an act requiring a prescribed punishment without knowing its prohibition? Abu Muhammad—may Allah have mercy on him—said: Whoever commits a prohibited act—whether it entails a prescribed punishment or not—while ignorant of Allah's prohibition of it is not held accountable—no sin, prescribed punishment, or blame—for it. However, they must be instructed. If they repeat the act, Allah's prescribed punishment is applied. If they claim ignorance, their case is examined. If that is possible, no prescribed punishment is imposed at all—though some have advocated his swearing an oath, but we hold that neither prescribed punishment nor oath is required. If it is certain they are lying, is their claim disregarded? Abu Muhammad said: The evidence for this is Allah's statement: *"That I may warn you thereby and whoever it reaches"* (6:19). Thus, the obligation is incumbent upon those who have received the warning, not those it does not reach. Allah also said: *"Allah does not burden a soul beyond its capacity"* (2:286). It is beyond anyone's capacity to know what has not reached them, for such knowledge is [...] Regarding the unseen, if that is not within one's

هَذَا هُوَ الْحُكْمُ الَّذِي لَا يَجُوزُ تَعَدِّيهِ إنْ كَانَ حَدِيثُ عُبَادَةَ قَبْلَ نُزُولِ الْآيَةِ، كَمَا ادَّعَوْا - وَإِنْ كَانَ حَدِيثُ عُبَادَةَ بَعْدَ نُزُولِ الْآيَةِ، فَقَدْ جَاءَ بِمَا فِي الْآيَةِ مِنْ الْجَلْدِ، وَزِيَادَةِ الرَّجْمِ، وَالتَّغْرِيبِ، وَكُلُّ ذَلِكَ حَقٌّ، وَلَمْ يَكُنْ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثِ عُبَادَةَ «قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا» بِمُوجِبٍ أَنْ يَكُونَ قَبْلَ نُزُولِ الْآيَةِ وَلَا بُدَّ، بَلْ قَدْ تَنْزِلُ الْآيَةُ بِبَعْضِ الَّذِي جَعَلَهُ اللَّهُ تَعَالَى لَهُنَّ، ثُمَّ بَيَّنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثِ عُبَادَةَ تَمَامَ السَّبِيلِ، وَهُوَ الرَّجْمُ، وَالتَّغْرِيبُ الْمُضَافَانِ إلَى مَا فِي الْآيَةِ مِنْ الْجَلْدِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ مَنْ أَصَابَ حَدًّا وَلَمْ يَدْرِ بِتَحْرِيمِهِ]

٢١٩٨ - مَسْأَلَةٌ: مَنْ أَصَابَ حَدًّا وَلَمْ يَدْرِ بِتَحْرِيمِهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَنْ أَصَابَ شَيْئًا مُحَرَّمًا - فِيهِ حَدٌّ أَوْ لَا حَدَّ فِيهِ - وَهُوَ جَاهِلٌ بِتَحْرِيمِ اللَّهِ تَعَالَى لَهُ فَلَا شَيْءَ عَلَيْهِ فِيهِ - لَا إثْمَ وَلَا حَدَّ وَلَا مَلَامَةَ - لَكِنْ يُعَلَّمُ، فَإِنْ عَادَ أُقِيمَ عَلَيْهِ حَدُّ اللَّهِ تَعَالَى، فَإِنْ ادَّعَى جَهَالَةً نُظِرَ، فَإِنْ كَانَ ذَلِكَ مُمْكِنًا فَلَا حَدَّ عَلَيْهِ أَصْلًا - وَقَدْ قَالَ قَوْمٌ بِتَحْلِيفِهِ، وَلَا نَرَى عَلَيْهِ حَدًّا، وَلَا تَحْلِيفًا - وَإِنْ كَانَ مُتَيَقَّنًا أَنَّهُ كَاذِبٌ لَمْ يُلْتَفَتْ إلَى دَعْوَاهُ؟ قَالَ أَبُو مُحَمَّدٍ: بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى {لِأُنْذِرَكُمْ بِهِ وَمَنْ بَلَغَ} [الأنعام: ١٩] فَإِنَّ الْحُجَّةَ عَلَى مَنْ بَلَغَتْهُ النِّذَارَةُ لَا مَنْ لَمْ تَبْلُغْهُ، وَقَدْ قَالَ اللَّهُ تَعَالَى {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَلَيْسَ فِي وُسْعِ أَحَدٍ أَنْ يَعْلَمَ مَا لَمْ يَبْلُغْهُ، لِأَنَّهُ عِلْمُ غَيْبٍ،

capacity, then Allah does not burden anyone beyond their capacity. Thus, they are not obligated in that matter, so there is no sin upon them for what they have not been tasked with, nor any ḥadd punishment, nor any blame.[40]

L40726 This obligation is lifted only from those capable of knowing and capable of ignorance, based on the words of the Messenger of Allah—may Allah bless him and grant him peace—: "Verily, your blood, your wealth, your honor, and your physical integrity are inviolable for you."

L40727 Numerous reports from the early generations exist regarding this matter. As narrated from Sa'īd ibn al-Musayyib: A governor appointed by 'Umar ibn al-Khaṭṭāb wrote to him informing that a man had confessed to adultery before him. 'Umar responded: "Ask him whether he knew it was prohibited. If he affirms this, implement the ḥadd punishment upon him. If he denies it, inform him that it is prohibited. If he subsequently repeats it, then implement the ḥadd punishment upon him."

L40728 From Al-Haytham ibn Badr, from Harqus, who said: A woman came to Ali ibn Abi Talib and said, "My husband has committed adultery with my slave girl." The husband, who was present, responded: "She has spoken the truth. The slave girl and her wealth are now lawful for him." Ali then said to him: "Go and do not repeat it," as if he had waived the prescribed punishment from him due to ignorance.

The Issue of the Apostate: Its Definition and Ruling

L40729

L40730 2199 - Issue: Apostates. Abu Muhammad—may Allah have mercy on him—said: Concerning every individual authentically established to have been a Muslim—renouncing all religions except the religion of Islam—and subsequently confirmed to have apostatized from Islam by adopting a scriptural religion, a non-scriptural religion, or abandoning religion altogether: people have differed regarding his ruling. Some scholars said: He is not to be offered repentance. Others said: He is to be offered repentance. Another group differentiated between one who concealed his apostasy and one who proclaimed it publicly. Yet another group distinguished between one born

[40]**Qur'an references (L40723):** Qur'an 6:19 (Al-An'am); Qur'an 2:286 (Al-Baqarah).

وَإِذَا لَمْ يَكُنْ ذَلِكَ فِي وُسْعِهِ فَلَا يُكَلِّفُ اللَّهُ أَحَدًا إِلَّا مَا فِي وُسْعِهِ، فَهُوَ غَيْرُ مُكَلَّفٍ تِلْكَ الْقِصَّةَ، فَلَا إِثْمَ عَلَيْهِ فِيمَا لَمْ يُكَلَّفْهُ، وَلَا حَدَّ وَلَا مَلَامَةَ.

وَإِنَّمَا سَقَطَ هَذَا عَمَّنْ يُمْكِنُ أَنْ يَعْلَمَ، وَيُمْكِنُ أَنْ يَجْهَلَ، فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

وَقَدْ جَاءَتْ فِي هَذَا عَنْ السَّلَفِ آثَارٌ كَثِيرَةٌ: كَمَا رُوِّينَا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عَامِلًا لِعُمَرَ بْنِ الْخَطَّابِ كَتَبَ إلَى عُمَرَ يُخْبِرُهُ: أَنَّ رَجُلًا اعْتَرَفَ عِنْدَهُ بِالزِّنَى؟ فَكَتَبَ إلَيْهِ عُمَرُ، أَنْ سَلْهُ: هَلْ كَانَ يَعْلَمُ أَنَّهُ حَرَامٌ، فَإِنْ قَالَ: نَعَمْ، فَأَقِمْ عَلَيْهِ الْحَدَّ، وَإِنْ قَالَ: لَا، فَأَعْلِمْهُ أَنَّهُ حَرَامٌ، فَإِنْ عَادَ فَاحْدُدْهُ.

وَعَنْ الْهَيْثَمِ بْنِ بَدْرٍ عَنْ حَرْقُوصٍ قَالَ: أَتَتْ امْرَأَةٌ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَقَالَتْ: إنَّ زَوْجِي زَنَى بِجَارِيَتِي، فَقَالَ: صَدَقَتْ، هِيَ وَمَالُهَا لِي حِلٌّ، فَقَالَ لَهُ عَلِيٌّ: اذْهَبْ وَلَا تَعُدْ، كَأَنَّهُ دَرَأَ عَنْهُ الْحَدَّ بِالْجَهَالَةِ؟

[مَسْأَلَة الْمُرْتَدّ تَعْرِيفه وَحُكْمه]

٢١٩٩ - مَسْأَلَةٌ: الْمُرْتَدِّينَ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: كُلُّ مَنْ صَحَّ عَنْهُ أَنَّهُ كَانَ مُسْلِمًا مُتَبَرِّئًا مِنْ كُلِّ دِينٍ - حَاشَ دِينِ الْإِسْلَامِ ثُمَّ ثَبَتَ عَنْهُ أَنَّهُ ارْتَدَّ عَنْ الْإِسْلَامِ، وَخَرَجَ إلَى دِينٍ كِتَابِيٍّ، أَوْ غَيْرِ كِتَابِيٍّ، أَوْ إلَى غَيْرِ دِينٍ، فَإِنَّ النَّاسَ اخْتَلَفُوا فِي حُكْمِهِ؟ فَقَالَتْ طَائِفَةٌ: لَا يُسْتَتَابُ - وَقَالَتْ طَائِفَةٌ: يُسْتَتَابُ، وَفَرَّقَتْ طَائِفَةٌ بَيْنَ مَنْ أَسَرَّ رِدَّتَهُ وَبَيْنَ مَنْ أَعْلَنَهَا - وَفَرَّقَتْ طَائِفَةٌ بَيْنَ مَنْ وُلِدَ فِي الْإِسْلَامِ ثُمَّ ارْتَدَّ، وَبَيْنَ مَنْ أَسْلَمَ بَعْدَ كُفْرِهِ ثُمَّ ارْتَدَّ.

into Islam who later apostatized and one who embraced Islam after prior disbelief and subsequently apostatized.

وَنَحْنُ ذَاكِرُونَ - إِنْ شَاءَ اللَّهُ تَعَالَى - مَا يَسَّرَ اللَّهُ تَعَالَى لِذِكْرِهِ: فَأَمَّا مَنْ قَالَ: لَا يُسْتَتَابُونَ، فَانْقَسَمُوا قِسْمَيْنِ: فَقَالَتْ طَائِفَةٌ: يُقْتَلُ الْمُرْتَدُّ، تَابَ أَوْ لَمْ يَتُبْ، رَاجَعَ الْإِسْلَامَ أَوْ لَمْ يُرَاجِعْ.

L40731–40733 We shall mention—if Allah the Exalted wills—what He, the Exalted, has facilitated for His remembrance. As for those who said, "They are not to be called to repent," they were divided into two groups. A group held the opinion: The apostate must be executed, whether he repented or not, or retracted his apostasy or not.

وَقَالَتْ طَائِفَةٌ: إِنْ بَادَرَ فَتَابَ قُبِلَتْ مِنْهُ تَوْبَتُهُ، وَسَقَطَ عَنْهُ الْقَتْلُ، وَإِنْ لَمْ تَظْهَرْ تَوْبَتُهُ أُنْفِذَ عَلَيْهِ الْقَتْلُ.

L40734 A group said: If he hastens to repent, his repentance is accepted and the death penalty is waived. If his repentance does not manifest, the death penalty is implemented against him.

وَأَمَّا مَنْ قَالَ: يُسْتَتَابُ، فَإِنَّهُمْ انْقَسَمُوا أَقْسَامًا: فَطَائِفَةٌ قَالَتْ: نَسْتَتِيبُهُ مَرَّةً فَإِنْ تَابَ وَإِلَّا قَتَلْنَاهُ.

L40735 As for those who maintained that he should be summoned to repent, they split into groups: one group said, "We summon him to repent once; if he repents, [it is accepted]; otherwise, we kill him."

وَطَائِفَةٌ قَالَتْ: نَسْتَتِيبُهُ ثَلَاثَ مَرَّاتٍ، فَإِنْ تَابَ، وَإِلَّا قَتَلْنَاهُ.

L40736 A group said: We formally demand his repentance three times. If he repents; otherwise, we will execute him.

وَطَائِفَةٌ قَالَتْ: نَسْتَتِيبُهُ شَهْرًا، فَإِنْ تَابَ وَإِلَّا قَتَلْنَاهُ.

L40737 And a group said: We grant him a month to repent. If he repents, well and good; otherwise, we will kill him.

وَطَائِفَةٌ قَالَتْ: نَسْتَتِيبُهُ ثَلَاثَةَ أَيَّامٍ فَإِنْ تَابَ وَإِلَّا قَتَلْنَاهُ.

L40738 And a group said: We grant him three days to repent. If he repents, [well and good]; otherwise, we kill him.

وَطَائِفَةٌ قَالَتْ: نَسْتَتِيبُهُ مِائَةَ مَرَّةٍ، فَإِنْ تَابَ وَإِلَّا قَتَلْنَاهُ.

L40739 And a faction said: "We demand that he repent a hundred times. If he repents, then; otherwise, we will kill him."

وَطَائِفَةٌ قَالَتْ: يُسْتَتَابُ أَبَدًا، وَلَا يُقْتَلُ.

L40740 A group maintained that he must perpetually be called to repent and not be executed.

فَأَمَّا مَنْ فَرَّقَ بَيْنَ الْمُسِرِّ وَالْمُعْلِنِ: فَإِنَّ طَائِفَةً قَالَتْ: مَنْ أَسَرَّ رِدَّتَهُ قَتَلْنَاهُ دُونَ اسْتِتَابَةٍ، وَلَمْ نَقْبَلْ تَوْبَتَهُ، وَمَنْ أَعْلَنَهَا قَبِلْنَا تَوْبَتَهُ.

L40741 As for those who differentiate between the concealed apostate and the open one: a group has stated, "Whoever conceals his apostasy, we execute him without inviting repentance and do not accept his repentance, while whoever openly declares it, we accept his repentance."

L40742 A faction said: If the secretive sinner admits and is sincere in his intention, we accept his repentance. But if he neither admits nor is sincere in his

intention, we kill him and do not accept his repentance. They said: As for the public sinner, his repentance is accepted.

وَطَائِفَةٌ قَالَتْ: إِنْ أَقَرَّ الْمُسِرُّ وَصَدَقَ النِّيَّةَ قَبِلْنَا تَوْبَتَهُ، وَإِنْ لَمْ يُقِرَّ وَلَا صَدَقَ النِّيَّةَ قَتَلْنَاهُ وَلَمْ نَقْبَلْ تَوْبَتَهُ - قَالَ هَؤُلَاءِ: وَأَمَّا الْمُعْلِنُ فَتُقْبَلُ تَوْبَتُهُ.

L40743 And a group said: There is no distinction between those who conceal [sins] and those who commit them openly in any aspect of this matter: another group accepted the repentance of both together—whether the concealer acknowledged or did not acknowledge.

وَطَائِفَةٌ قَالَتْ: لَا فَرْقَ بَيْنَ الْمُسِرِّ وَالْمُعْلِنِ فِي شَيْءٍ مِنْ ذَلِكَ: فَطَائِفَةٌ قَبِلَتْ تَوْبَتَهُمَا مَعًا - أَقَرَّ الْمُسِرُّ أَوْ لَمْ يُقِرَّ.

L40744 And a group did not accept the repentance of one [acting] secretly or openly. Abu Muhammad—may Allah have mercy on him—said: They also differed concerning the disbelieving *dhimmi* or the *harbi* when both of them abandon one disbelief for another. A group said: They are left in that state and neither is prevented from it.

وَطَائِفَةٌ: لَمْ تَقْبَلْ تَوْبَةَ مُسِرٍّ وَلَا مُعْلِنٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَاخْتَلَفُوا أَيْضًا فِي الْكَافِرِ الذِّمِّيِّ، أَوِ الْحَرْبِيِّ يَخْرُجَانِ مِنْ كُفْرٍ إِلَى كُفْرٍ: فَقَالَتْ طَائِفَةٌ: يُتْرَكَانِ عَلَى ذَلِكَ، وَلَا يُمْنَعَانِ مِنْهُ.

L40745 And a group said: The two are not to be left in that state at all.

وَقَالَتْ طَائِفَةٌ: لَا يُتْرَكَانِ عَلَى ذَلِكَ أَصْلًا.

L40746–40748 Then these people divided into two groups: A group said: If the *dhimmi* returns to the religion he had abandoned, he is spared; otherwise, he is killed.

ثُمَّ افْتَرَقَ هَؤُلَاءِ فِرْقَتَيْنِ: فَقَالَتْ طَائِفَةٌ: إِنْ رَجَعَ الذِّمِّيُّ إِلَى دِينِهِ الَّذِي خَرَجَ عَنْهُ تُرِكَ، وَإِلَّا قُتِلَ.

L40749 A group has said: Nothing is accepted from him except Islam alone—otherwise he must be killed. He is not left in the religion he turned to, nor permitted to return to the religion he abandoned. If he embraces Islam, he is spared; if he refuses, he must inevitably be killed.

وَقَالَتْ طَائِفَةٌ: لَا يُقْبَلُ مِنْهُ شَيْءٌ غَيْرُ الْإِسْلَامِ وَحْدَهُ، وَإِلَّا قُتِلَ، وَلَا يُتْرَكُ عَلَى الدِّينِ الَّذِي خَرَجَ إِلَيْهِ، وَلَا يُتْرَكُ أَيْضًا أَنْ يَرْجِعَ إِلَى الَّذِي خَرَجَ عَنْهُ، لَكِنْ إِنْ أَسْلَمَ تُرِكَ، وَإِنْ أَبَى قُتِلَ وَلَا بُدَّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ نِي حَمَّادُ بْنُ مَسْعَدَةَ نا قُرَّةُ - هُوَ ابْنُ خَالِدٍ - عَنْ حُمَيْدِ بْنِ هِلَالٍ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَهُ إِلَى الْيَمَنِ ثُمَّ أَرْسَلَ مُعَاذَ بْنَ جَبَلٍ بَعْدَ ذَلِكَ فَلَمَّا قَدِمَ قَالَ: يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَيْكُمْ، فَأَلْقَى لَهُ أَبُو مُوسَى

Abū Muḥammad—may Allāh have mercy on him—said: From ʿAbdullāh ibn Rabīʿ, from Muḥammad ibn Muʿāwiyah, from Aḥmad ibn Shuʿayb, from Muḥammad ibn Bashshār, from Ḥammād ibn Masʿadah, from Qurrah—that is, Ibn Khālid—from Ḥumayd ibn Hilāl, from Abū Burdah ibn Abī Mūsā al-Ashʿarī, from his father:

"The Prophet—peace and blessings of Allāh be upon him—sent him to Yemen, then later dispatched Muʿādh ibn Jabal. When Muʿādh arrived, he proclaimed: 'O people, I am the messenger of the Messenger of Allāh—peace and blessings of Allāh be upon him—to you!' Abū Mūsā placed a cushion for him to sit upon. A man who had been a Jew, then embraced Islam, then

apostatized was brought forth. Muʿādh declared: ’I will not sit until he is slain—the decree of Allāh and His Messenger!’—repeating this three times. When the man was killed, Muʿādh sat down.”[41]

L40750 From the chain of Al-Bukhari: He reported to us from Yahya ibn Sa‘id Al-Qattan, from Qurrah ibn Khalid, who said: Humaid ibn Hilal narrated to me, informing me that Abu Burdah ibn Abi Musa Al-Ash‘ari reported from Abu Musa Al-Ash‘ari that the Messenger of Allah—peace and blessings be upon him—said to him: “Go yourself, O Abu Musa—or O ‘Abdullah ibn Qays—to Yemen.” Then he sent Mu‘adh ibn Jabal after him. When Mu‘adh arrived to him, he placed a cushion for him. He said: There was a man bound. He asked: “What is this?” He replied: “He was a Jew who embraced Islam then reverted to Judaism.” Mu‘adh said: “I will not sit until he is killed—this is the judgment of Allah and His Messenger!” repeating this three times. He then commanded that he be killed, in a hadith.

L40751 From Ayyub al-Sikhtiyānī, from ʿIkrimah, who said: ʿAlī ibn Abī Ṭālib was brought some heretics, and he burned them. When this reached Ibn ʿAbbās, he said: “Had I been in his position, I would not have burned them, due to the prohibition of the Messenger of Allah (peace be upon him): ’Do not punish with Allah’s punishment.’ And I would have killed them.” He then related the remainder of the ḥadīth.

L40752–40754 And from Abu ‘Amr al-Shaybani: A man from Banu ‘Ijl embraced Christianity, so ‘Uyaynah ibn Furqad al-Sulami wrote to ‘Ali ibn Abi Talib regarding this matter. ‘Ali instructed that the man be brought to him. He was brought and laid before him—a man wearing coarse woolen garments, shackled in iron chains. ‘Ali engaged him in prolonged discourse. And he was silent—so he said, “I do not know what you are saying, except that I know Jesus is the Son of God.” When he said this, Ali rose to him and subdued him. When the people saw this: that Ali had subdued him, they stood and joined in subduing him. Ali said, “Seize him!” So they seized him until they killed him. Then Ali ordered that he be burned with fire.

وِسَادَةً لِيَجْلِسَ عَلَيْهَا، فَأُتِيَ بِرَجُلٍ كَانَ يَهُودِيًّا فَأَسْلَمَ ثُمَّ كَفَرَ، فَقَالَ مُعَاذٌ: لَا أَجْلِسُ حَتَّى يُقْتَلَ: قَضَاءُ اللَّهِ وَرَسُولِهِ - ثَلَاثَ مَرَّاتٍ - فَلَمَّا قُتِلَ قَعَدَ» .

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ قُرَّةَ بْنِ خَالِدٍ، قَالَ: حَدَّثَنِي حُمَيْدُ بْنُ هِلَالٍ أَخْبَرَنِي أَبُو بُرْدَةَ بْنُ أَبِي مُوسَى الْأَشْعَرِيُّ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ «اذْهَبْ أَنْتَ يَا أَبَا مُوسَى، أَوْ يَا عَبْدَ اللَّهِ بْنَ قَيْسٍ إِلَى الْيَمَنِ ثُمَّ أَتْبَعَهُ مُعَاذَ بْنَ جَبَلٍ، فَلَمَّا قَدِمَ عَلَيْهِ أَلْقَى لَهُ وِسَادَةً، قَالَ: وَإِذَا رَجُلٌ مُوثَقٌ، فَقَالَ: مَا هَذَا؟ قَالَ: كَانَ يَهُودِيًّا فَأَسْلَمَ ثُمَّ تَهَوَّدَ، قَالَ: لَا أَجْلِسُ حَتَّى يُقْتَلَ: قَضَاءُ اللَّهِ وَرَسُولِهِ - ثَلَاثَ مَرَّاتٍ - فَأَمَرَ بِهِ فَقُتِلَ» فِي حَدِيثٍ.

وَعَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ قَالَ: أُتِيَ عَلِيُّ بْنُ أَبِي طَالِبٍ بِزَنَادِقَةٍ فَأَحْرَقَهُمْ، فَبَلَغَ ذَلِكَ ابْنَ عَبَّاسٍ فَقَالَ: لَوْ كُنْت أَنَا لَمْ أُحْرِقْهُمْ، لِنَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تُعَذِّبُوا بِعَذَابِ اللَّهِ» وَلَقَتَلْتهمْ، وَذَكَرَ بَاقِيَ الْحَدِيثِ.

وَعَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ أَنَّ رَجُلًا مِنْ بَنِي عِجْلٍ تَنَصَّرَ، فَكَتَبَ بِذَلِكَ عُيَيْنَةَ بْنُ فَرْقَدٍ السُّلَمِيُّ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ، فَكَتَبَ عَلِيٌّ: أَنْ يُؤْتَى بِهِ، فَجِيءَ بِهِ حَتَّى طُرِحَ بَيْنَ يَدَيْهِ رَجُلٌ - أَشْعَرُ عَلَيْهِ ثِيَابُ صُوفٍ - مَوْثُوقٌ فِي الْحَدِيدِ، فَكَلَّمَهُ عَلِيٌّ فَأَطَالَ كَلَامَهُ وَهُوَ سَاكِتٌ - فَقَالَ: لَا أَدْرِي مَا تَقُولُ؟ غَيْرَ أَنِّي أَعْلَمُ أَنَّ عِيسَى ابْنُ اللَّهِ، فَلَمَّا قَالَهَا قَامَ إِلَيْهِ عَلِيٌّ فَوَطِئَهُ، فَلَمَّا رَأَى النَّاسُ: أَنَّ عَلِيًّا قَدْ وَطِئَهُ قَامُوا فَوَطِئُوهُ، فَقَالَ عَلِيٌّ: أَمْسِكُوا، فَأَمْسَكُوا حَتَّى قَتَلُوهُ، ثُمَّ أَمَرَ بِهِ عَلِيٌّ فَأُحْرِقَ بِالنَّارِ.

[41] **Qur’an references (L40749):** Qur’an 7:158 (Al-A’raf).

L40755 Anas ibn Malik reported: Abu Musa al-Ash'ari sent me to Umar ibn al-Khattab during the conquest of Tustar. Umar questioned me - six individuals from the tribe of Bakr ibn Wa'il had apostatized from Islam and joined the polytheists - asking, "What became of the group from Bakr?" I began discussing another matter to divert his attention from them. He repeated, "What became of the group from Bakr ibn Wa'il?" I replied, "O Commander of the Faithful, they are people who apostatized from Islam and joined the polytheists. Their fate is none but execution." Umar said, "Had I captured them peacefully, it would have been dearer to me than all the gold or silver the sun has ever risen upon" - and he mentioned the remainder of the report.

وَعَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: بَعَثَنِي أَبُو مُوسَى الْأَشْعَرِيُّ بِفَتْحِ تُسْتَرَ إِلَى عُمَرَ بْنِ الْخَطَّابِ، فَسَأَلَنِي عُمَرُ - وَكَانَ نَفَرٌ سِتَّةٌ مِنْ بَكْرِ بْنِ وَائِلٍ قَدْ ارْتَدُّوا عَنِ الْإِسْلَامِ وَلَحِقُوا بِالْمُشْرِكِينَ - فَقَالَ: مَا فَعَلَ النَّفَرُ مِنْ بَكْرٍ؟ قَالَ: فَأَخَذْت فِي حَدِيثٍ آخَرَ لِأَشْغَلَهُ عَنْهُمْ، فَقَالَ: مَا فَعَلَ النَّفَرُ مِنْ بَكْرِ بْنِ وَائِلٍ؟ قُلْت: يَا أَمِيرَ الْمُؤْمِنِينَ قَوْمٌ ارْتَدُّوا عَنِ الْإِسْلَامِ، وَلَحِقُوا بِالْمُشْرِكِينَ، مَا سَبِيلُهُمْ إلَّا الْقَتْلُ؟ فَقَالَ عُمَرُ: لَأَنْ أَكُونَ أَخَذْتهمْ سِلْمًا أَحَبُّ إلَيَّ مِمَّا طَلَعَتْ عَلَيْهِ الشَّمْسُ مِنْ صَفْرَاءَ أَوْ بَيْضَاءَ - وَذَكَرَ بَاقِيَ الْخَبَرِ.

L40756 As for those who said: He should be given one opportunity to repent; if he repents, he is spared—otherwise he is to be executed—this ruling derives from the narration we transmitted via Abd al-Razzaq's chain: from Ma'mar, from al-Zuhri, from Ubayd Allah ibn Abd Allah ibn Utba ibn Mas'ud, from his father, who stated: Ibn Mas'ud arrested a group of Iraqi apostates. He consulted Uthman regarding them, and Uthman responded: "Present them with the true religion and the testimony that there is no deity but Allah. If they accept it, release them; if they reject it, execute them." Some accepted and were spared, while others rejected and were executed.

وَأَمَّا مَنْ قَالَ: يُسْتَتَابُ مَرَّةً، فَإِنْ تَابَ وَإِلَّا قُتِلَ: لِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ أَبِيهِ قَالَ: أَخَذَ ابْنُ مَسْعُودٍ قَوْمًا ارْتَدُّوا عَنِ الْإِسْلَامِ مِنْ أَهْلِ الْعِرَاقِ، فَكَتَبَ فِيهِمْ إلَى عُثْمَانَ، فَرَدَّ إلَيْهِ عُثْمَانُ: أَنْ اعْرِضْ عَلَيْهِمْ دِينَ الْحَقِّ، وَشَهَادَةَ أَنْ لَا إلَهَ إلَّا اللَّهُ، فَإِنْ قَبِلُوهَا، فَخَلِّ عَنْهُمْ وَإِنْ لَمْ يَقْبَلُوهَا، فَاقْتُلْهُمْ - فَقَبِلَهَا بَعْضُهُمْ فَتَرَكَهُ، وَلَمْ يَقْبَلْهَا بَعْضُهُمْ فَقَتَلَهُ.

L40757 From Abu Amr al-Shaybani, who said: An elderly man who had been Christian, embraced Islam, then apostatized from Islam was brought before Ali ibn Abi Talib. Ali said to him: "Perhaps you apostatized merely to seize inheritance and then return to Islam?" The man said: "No." Ali said: "Or perhaps you proposed to a woman, so they refused to marry her to you, and you wished to marry her and then return to Islam?" The man said: "No." Ali said: "Then return to Islam?" The man said: "No, not until I meet the Messiah." Ali then ordered him to be beheaded and handed over his inheritance to his Muslim children.

وَعَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ قَالَ: أُتِيَ عَلِيُّ بْنُ أَبِي طَالِبٍ بِشَيْخٍ كَانَ نَصْرَانِيًّا فَأَسْلَمَ، ثُمَّ ارْتَدَّ عَنِ الْإِسْلَامِ؟ فَقَالَ لَهُ عَلِيٌّ: لَعَلَّك إنَّمَا ارْتَدَدْت لِأَنْ تُصِيبَ مِيرَاثًا ثُمَّ تَرْجِعَ إلَى الْإِسْلَامِ؟ قَالَ: لَا، قَالَ: فَلَعَلَّك خَطَبْت امْرَأَةً فَأَبَوْا أَنْ يُزَوِّجُوكَهَا فَأَرَدْت أَنْ تَزَوَّجَهَا ثُمَّ تَعُودَ إلَى الْإِسْلَامِ؟ قَالَ: لَا، قَالَ: فَارْجِعْ إلَى الْإِسْلَامِ؟ قَالَ: لَا، حَتَّى أَلْقَى الْمَسِيحَ، قَالَ: فَأَمَرَ بِهِ عَلِيٌّ فَضُرِبَتْ عُنُقُهُ، وَدَفَعَ مِيرَاثَهُ إلَى وُلْدِهِ الْمُسْلِمِينَ.

L40758 From Abu Amr al-Shaybani: Al-Miswar al-Ijli apostatized to Christianity after becoming Muslim, so Utbah ibn Abi Waqqas sent him to Ali. Ali demanded his repentance, but he did not repent, so Ali killed him. The Chris-

tians requested his corpse for thirty thousand, but Ali refused and burned him.

وَعَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ: أَنَّ الْمِسْوَرَ الْعِجْلِيَّ تَنَصَّرَ بَعْدَ إِسْلَامِهِ فَبَعَثَ بِهِ عُتْبَةُ بْنُ أَبِي وَقَّاصٍ إِلَى عَلِيٍّ فَاسْتَتَابَهُ فَلَمْ يَتُبْ، فَقَتَلَهُ، فَسَأَلَهُ النَّصَارَى جِيفَتَهُ بِثَلَاثِينَ أَلْفًا، فَأَبَى عَلِيٌّ وَأَحْرَقَهُ.

L40759–40761 As for the one who said, "He is to be called to repent three times," this ruling derives from what was narrated to us through ʿAbd al-Razzāq's transmission from Ibn Jurayj, who reported from Sulaymān ibn Mūsā that he informed him... It was conveyed to the narrator from Uthman ibn Affan that a man disbelieved after having believed. Uthman summoned him to Islam three times, but he refused, so Uthman killed him.

وَأَمَّا مَنْ قَالَ: يُسْتَتَابُ ثَلَاثَ مَرَّاتٍ: فَلِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي سُلَيْمَانُ بْنُ مُوسَى أَنَّهُ بَلَغَهُ عَنْ عُثْمَانَ بْنِ عَفَّانَ: أَنَّهُ كَفَرَ إِنْسَانٌ بَعْدَ إِيمَانِهِ، فَدَعَاهُ إِلَى الْإِسْلَامِ - ثَلَاثًا - فَأَبَى، فَقَتَلَهُ.

L40762 And through him—up to Abd al-Razzaq via Ibn Jurayj—Hayyan narrated to me from Ibn Shihab: that he said: If a Muslim commits shirk, he is called to Islam three times; if he refuses, his neck is to be struck.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي حَيَّانُ عَنِ ابْنِ شِهَابٍ: أَنَّهُ قَالَ: إِذَا أَشْرَكَ الْمُسْلِمُ دُعِيَ إِلَى الْإِسْلَامِ - ثَلَاثَ مَرَّاتٍ - فَإِنْ أَبَى ضُرِبَتْ عُنُقُهُ.

L40763 As for those who hold the opinion that he should be given three days to repent—if he repents, he is spared; otherwise, he is to be executed—this is the opinion of Mālik, his followers, and one of the two opinions of al-Shāfiʿī.

وَأَمَّا مَنْ قَالَ: يُسْتَتَابُ ثَلَاثَةَ أَيَّامٍ، فَإِنْ تَابَ وَإِلَّا قُتِلَ، فَهُوَ قَوْلُ مَالِكٍ، وَأَصْحَابِهِ، وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ.

L40764 As for the one who said: he must be summoned to repent once. If he repents, [well and good]; otherwise, he is to be killed—this is the opinion of al-Ḥasan ibn Ḥayyin.

وَأَمَّا مَنْ قَالَ: يُسْتَتَابُ مَرَّةً فَإِنْ تَابَ وَإِلَّا قُتِلَ: فَهُوَ قَوْلُ الْحَسَنِ بْنِ حَيٍّ.

L40765 As for the one who said "He should be given a month to repent" - it has been narrated to us through the chain of ʿAbd al-Razzāq: I am ʿUthmān, from Saʿīd ibn Abī ʿArūbah, from Abū al-ʿAlā', from Abū ʿUthmān al-Nahdī that ʿAlī gave a man who apostatized after embracing Islam a month to repent. When he refused, ʿAlī executed him.

وَأَمَّا مَنْ قَالَ: يُسْتَتَابُ شَهْرًا فَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا عُثْمَانُ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ أَبِي الْعَلَاءِ عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ: أَنَّ عَلِيًّا اسْتَتَابَ رَجُلًا كَفَرَ بَعْدَ إِسْلَامِهِ شَهْرًا؟ فَأَبَى، فَقَتَلَهُ.

L40766 This has been reported from Mālik and some of the adherents of his school of thought.

وَقَدْ رُوِيَ هَذَا عَنْ مَالِكٍ، وَعَنْ بَعْضِ أَهْلِ مَذْهَبِهِ.

L40767 As for those who said, "He is to be given two months to repent," this is as narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from Ayyūb from Ḥumayd ibn Hilāl from Abū Burdah, who said: "Muʿādh ibn Jabal came to Abū Mūsā al-Ashʿarī from Yemen, and there was a man with

وَأَمَّا مَنْ قَالَ: يُسْتَتَابُ شَهْرَيْنِ: فَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ حُمَيْدِ بْنِ هِلَالٍ عَنْ أَبِي بُرْدَةَ قَالَ: «قَدِمَ عَلَى أَبِي مُوسَى الْأَشْعَرِيِّ مُعَاذُ بْنُ جَبَلٍ

him. He asked, 'Who is this?' They replied, 'A man who was a Jew, then embraced Islam, then reverted to Judaism. We have been urging him back to Islam for two months—I think he said—.' Muʿādh said, 'By Allah, I will not sit until you behead him!' So he was beheaded. Then Muʿādh said, 'This is the decree of Allah and His Messenger.'"

مِنْ الْيَمَنِ وَإِذَا بِرَجُلٍ عِنْدَهُ، فَقَالَ: مَا هَذَا؟ فَقَالَ رَجُلٌ كَانَ يَهُودِيًّا فَأَسْلَمَ، ثُمَّ تَهَوَّدَ وَنَحْنُ نُرِيدُهُ عَلَى الْإِسْلَامِ، مُنْذُ - أَحْسِبُهُ قَالَ - شَهْرَيْنِ، قَالَ مُعَاذٌ: وَاللَّهِ لَا أَقْعُدُ حَتَّى تَضْرِبُوا عُنُقَهُ، فَضُرِبَتْ عُنُقُهُ، ثُمَّ قَالَ مُعَاذٌ: قَضَاءُ اللَّهِ وَرَسُولِهِ.»

L40768 Abdul-Wahhāb—he is the son of ʿAṭāʾ al-Khaffāf—narrated to us: Saʿīd narrated from Ayyūb from Ḥumayd ibn Hilāl that Muʿādh ibn Jabal came to Abū Mūsā in Yemen and found with him a man who had apostatized to Judaism. Abū Mūsā had been inviting him to Islam for two months. Muʿādh said, "By Allah, I will not rest until I kill him—the judgment of Allah and His Messenger."

حَدَّثَنَا عَبْدُ الْوَهَّابِ - هُوَ ابْنُ عَطَاءٍ الْخَفَّافُ - أَنَا سَعِيدٌ عَنْ أَيُّوبَ عَنْ حُمَيْدِ بْنِ هِلَالٍ «أَنَّ مُعَاذَ بْنَ جَبَلٍ قَدِمَ عَلَى أَبِي مُوسَى الْيَمَنَ فَوَجَدَ عِنْدَهُ رَجُلًا قَدْ تَهَوَّدَ وَعَرَضَ عَلَيْهِ أَبُو مُوسَى الْإِسْلَامَ شَهْرَيْنِ، فَقَالَ مُعَاذٌ: وَاللَّهِ لَا أَجْلِسُ حَتَّى أَقْتُلَهُ، قَضَاءَ اللَّهِ وَرَسُولِهِ.»

L40769–40771 As for the one who said, "He is to be perpetually called to repentance without being killed" — then because ʿAbdullāh ibn Rabīʿ narrated from ʿAbdullāh ibn Muḥammad ibn ʿUthmān, from ʿAlī ibn ʿAbd al-ʿAzīz, from al-Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salamah, from Dāwūd — that is, Ibn Abī Hind — from al-Shaʿbī, from... Anas ibn Malik reported that Abu Musa al-Ash'ari killed Juhaynah the Liar and his companions. Anas said: "I came to Umar ibn al-Khattab, and he asked: 'What became of Juhaynah and his companions?'" Anas said: "I pretended not to hear him three times, then I said: 'O Commander of the Faithful, was there no alternative but to kill them?' Umar replied: 'Had you brought them to me, I would have offered them Islam. If they had repented, [it would suffice]; otherwise, I would have imprisoned them.'"

وَأَمَّا مَنْ قَالَ: يُسْتَتَابُ أَبَدًا دُونَ قَتْلٍ: فَلِمَا أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ أَنَا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ أَنَا الْحَجَّاجُ بْنُ الْمِنْهَالِ أَنَا حَمَّادُ بْنُ سَلَمَةَ أَنَا دَاوُد - هُوَ ابْنُ أَبِي هِنْدٍ - عَنْ الشَّعْبِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ: أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ قَتَلَ جُحَيْنَةَ الْكَذَّابَ، وَأَصْحَابَهُ، قَالَ أَنَسٌ: فَقَدِمْتُ عَلَى عُمَرَ بْنِ الْخَطَّابِ فَقَالَ: مَا فَعَلَ جُحَيْنَةُ، وَأَصْحَابُهُ؟ قَالَ: فَتَغَافَلْت عَنْهُ - ثَلَاثَ مَرَّاتٍ، فَقُلْت: يَا أَمِيرَ الْمُؤْمِنِينَ، وَهَلْ كَانَ سَبِيلٌ إلَّا الْقَتْلُ؟ فَقَالَ عُمَرُ: لَوْ أَتَيْت بِهِمْ لَعَرَضْت عَلَيْهِمْ الْإِسْلَامَ، فَإِنْ تَابُوا وَإِلَّا اسْتَوْدَعْتهمْ السِّجْنَ.

L40772 It was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar, who said: Muḥammad ibn ʿAbd al-Raḥmān ibn ʿAbd al-Qārī informed me from his father, who said: Majzaʾah ibn Thawr—or Shaqīq ibn Thawr—came to ʿUmar to announce the conquest of Tustar. ʿUmar said to him: "Was there any significant event to report?" He replied: "None, save that an Arab man apostatized, so we struck his neck." ʿUmar said: "Woe to you! Why did you not confine him behind a clay wall, make an aperture in it, feed him a loaf of bread daily through it, and give him a jug of water for three days? Then

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: أَخْبَرَنِي مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ الْقَارِيِّ عَنْ أَبِيهِ، قَالَ: قَدِمَ مَجْزَأَةُ بْنُ ثَوْرٍ، أَوْ شَقِيقُ بْنُ ثَوْرٍ عَلَى عُمَرَ يُبَشِّرُهُ بِفَتْحِ تُسْتَرَ فَقَالَ لَهُ عُمَرُ: هَلْ كَانَتْ مُغْرِبَةٌ يُخْبِرُنَا بِهَا؟ قَالَ: لَا إلَّا أَنَّ رَجُلًا مِنْ الْعَرَبِ ارْتَدَّ فَضَرَبْنَا عُنُقَهُ، قَالَ عُمَرُ: وَيْحَكُمْ، فَهَلَّا طَيَّنْتُمْ عَلَيْهِ بَابًا، وَفَتَحْتُمْ لَهُ كُوَّةً فَأَطْعَمْتُمُوهُ

on the third day, you could have offered him Islam anew, so that he might perhaps return. O Allah, I was not present, did not command, and had no knowledge."

كُلَّ يَوْمٍ مِنْهَا رَغِيفًا، وَسَقَيْتُمُوهُ كُوزًا مِنْ مَاءٍ ثَلَاثَةَ أَيَّامٍ، ثُمَّ عَرَضْتُمْ عَلَيْهِ الْإِسْلَامَ فِي الثَّالِثَةِ، فَلَعَلَّهُ أَنْ يَرْجِعَ، اللَّهُمَّ لَمْ أَحْضُرْ، وَلَمْ آمُرْ، وَلَمْ أَعْلَمْ.

L40773 As for he who said forty days: this is based on what was narrated to us through Ibn Waḍḍāḥ's chain: I, Sahnoon ibn Wahb, from Maslamah ibn ʿAlī from a man from Qatādah that a Jewish man embraced Islam then apostatized. Abū Mūsā al-Ashʿarī imprisoned him for forty days while urging him to Islam. When Muʿādh ibn Jabal came and saw him with Abū Mūsā, he said: "I will not dismount until you strike his neck!" He did not dismount until the man's neck was struck.

وَأَمَّا مَنْ قَالَ: أَرْبَعِينَ يَوْمًا: فَلِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ أَنَا سَحْنُونٌ أَنَا ابْنُ وَهْبٍ عَنْ مَسْلَمَةَ بْنِ عَلِيٍّ عَنْ رَجُلٍ عَنْ قَتَادَةَ أَنَّ رَجُلًا يَهُودِيًّا أَسْلَمَ ثُمَّ ارْتَدَّ عَنِ الْإِسْلَامِ، فَحَبَسَهُ أَبُو مُوسَى الْأَشْعَرِيُّ أَرْبَعِينَ يَوْمًا يَدْعُوهُ إِلَى الْإِسْلَامِ، فَأَتَاهُ مُعَاذُ بْنُ جَبَلٍ فَرَآهُ عِنْدَهُ فَقَالَ: لَا أَنْزِلُ حَتَّى تَضْرِبَ عُنُقَهُ؟ فَلَمْ يَنْزِلْ حَتَّى ضُرِبَتْ عُنُقُهُ.

L40774 As for one who shifts from one disbelief to another, Abu Hanifah and Malik both held that his status is affirmed, and he is not challenged.

وَأَمَّا مَنِ ارْتَدَّ مِنْ كُفْرٍ إِلَى كُفْرٍ، فَإِنَّ أَبَا حَنِيفَةَ، وَمَالِكًا قَالَا جَمِيعًا: يُقَرُّ عَلَى ذَلِكَ وَلَا يُعْتَرَضُ عَلَيْهِ.

L40775 And Al-Shafi'i, Abu Sulayman, and their followers said: They are not to be confirmed in that.

وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا: لَا يُقَرُّ عَلَى ذَلِكَ.

L40776 Then the statements of Al-Shāfiʿī differed: At one point he said, "If he returns to the apostasy for which he was condemned, otherwise he is killed, unless he embraces Islam." At another point he stated, "His reversion to the religion he abandoned is not accepted; he must choose either Islam or the sword." Is this the position held by our companions? Abū Muḥammad—may Allah have mercy on him—said: We examined the opinion of those who maintain he is called to repent once—if he repents, otherwise he is killed. We found them quoting Allah's words: "Invite to the way of your Lord with wisdom and good exhortation, and dispute with them in the most courteous manner" [16:125].[42]

ثُمَّ اخْتَلَفَ قَوْلُ الشَّافِعِيِّ: فَمَرَّةً قَالَ: إِنْ رَجَعَ إِلَى الْكُفْرِ الَّذِي تَذَمَّمَ عَلَيْهِ، وَإِلَّا قُتِلَ، وَإِلَّا أَنْ يُسْلِمَ - وَمَرَّةً قَالَ: لَا يُقْبَلُ مِنْهُ الرُّجُوعُ إِلَى الدِّينِ الَّذِي خَرَجَ عَنْهُ، لَا بُدَّ لَهُ مِنَ الْإِسْلَامِ أَوِ السَّيْفِ - وَبِهَذَا يَقُولُ أَصْحَابُنَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي قَوْلِ مَنْ قَالَ: إِنَّهُ يُسْتَتَابُ مَرَّةً، فَإِنْ تَابَ وَإِلَّا قُتِلَ؟ فَوَجَدْنَاهُمْ يَقُولُونَ: قَالَ اللَّهُ تَعَالَى {ادْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحِكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَادِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ} [النحل: ١٢٥].

L40777 And He, the Exalted, said, "And do good" (22:77).[43]

وَقَالَ تَعَالَى {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧].

L40778–40779 And He, the Exalted, said: {Let there be among you a community who call

وَقَالَ تَعَالَى: {وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ} [آل عمران: ١٠٤] الْآيَةَ.

[42] **Qur'an references (L40776):** Qur'an 16:125 (An-Nahl).
[43] **Qur'an references (L40777):** Qur'an 22:77 (Al-Hajj).

to good} [Āl ʿImrān 3:104] the verse.[44]

فَكَانَتْ الِاسْتِتَابَةُ فِعْلَ خَيْرٍ وَدُعَاءً إلَى سَبِيلِ رَبِّنَا بِالْحِكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ، وَدُعَاءً إلَى الْخَيْرِ، وَأَمْرًا بِالْمَعْرُوفِ وَنَهْيًا عَنْ الْمُنْكَرِ، فَكَانَ ذَلِكَ وَاجِبًا، وَكَانَ فَاعِلُهُ مُصْلِحًا.

L40780 Thus, calling to repentance was an act of goodness—a summons to our Lord's path through wisdom and kind exhortation, a summons to virtue, enjoining what is right and forbidding what is wrong. Therefore, this became obligatory, and whoever fulfills it is a rectifier.

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ لِعَلِيٍّ «لَأَنْ يَهْدِيَ اللَّهُ بِهُدَاكَ رَجُلًا وَاحِدًا خَيْرٌ لَكَ مِنْ حُمْرِ النَّعَمِ» .

L40781 It has been authentically reported from the Messenger of Allah—peace and blessings be upon him—that he said to Ali: "For Allah to guide a single person through your guidance is better for you than red camels."

قَالُوا: فَهَذَا لَا يَنْبَغِي أَنْ يُزْهَدَ فِيهِ.

L40782 They said: Therefore, it is not fitting to renounce [asceticism] in this.

قَالُوا: وَقَدْ فَعَلَهُ عَلِيٌّ، وَعُثْمَانُ، وَابْنُ مَسْعُودٍ - وَرُوِيَ عَنْ أَبِي بَكْرٍ، وَعُمَرَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا أَصْلًا، فَعَارَضَهُمْ مَنْ قَالَ: لَا أَسْتَتِيبُهُ بِأَنْ قَالُوا: بِأَنَّ الدُّعَاءَ إلَى سَبِيلِ اللَّهِ تَعَالَى لَا يَخْلُو مِنْ أَنْ يَجِبَ مَرَّةً، أَوْ عَدَدًا مَحْدُودًا، أَوْ أَكْثَرَ مِنْ مَرَّةٍ، أَوْ أَبَدًا مَا امْتَدَّ الْعُمْرُ بِلَا نِهَايَةٍ، وَلَا سَبِيلَ إلَى قِسْمٍ رَابِعٍ.

L40783 They said, "Did ʿAli, ʿUthmān, and Ibn Masʿūd do so—and was it reported from Abū Bakr and ʿUmar [to have been practiced] in the presence of the other Companions—may Allah be pleased with them?" Abū Muḥammad—may Allah have mercy on him—said: "We know of no argument for them other than this whatsoever. Those who said, 'I do not demand his repentance [as a precondition],' countered them by arguing: Inviting to the way of Allah the Exalted cannot escape being obligatory either once, a limited number of times, more than once, or perpetually for as long as life persists indefinitely. There is no valid basis for a fourth category."

قَالَ: فَإِنْ قُلْتُمْ: إنَّهُ يَجِبُ أَبَدًا مَا امْتَدَّ بِهِ الْعُمْرُ بِلَا نِهَايَةٍ: تَرَكْتُمْ قَوْلَكُمْ وَصِرْتُمْ إلَى قَوْلِ مَنْ رَأَى أَنْ يُسْتَتَابَ الْمُرْتَدُّ أَبَدًا، وَلَا يُقْتَلَ - وَهَذَا لَيْسَ هُوَ قَوْلَكُمْ، وَلَوْ كَانَ لَكُنَّا قَدْ أَبْطَلْنَاهُ آنِفًا، وَلَوْ كَانَ هَذَا أَيْضًا لَبَطَلَ الْجِهَادُ جُمْلَةً، لِأَنَّ الدُّعَاءَ كَانَ يَلْزَمُ أَبَدًا مُكَرَّرًا بِلَا نِهَايَةٍ، وَهَذَا قَوْلٌ لَا يَقُولُهُ مُسْلِمٌ أَصْلًا، وَلَيْسَ دُعَاءُ الْمُرْتَدِّ - وَهُوَ أَحَدُ الْكُفَّارِ - بِأَوْجَبَ مِنْ دُعَاءِ غَيْرِهِ مِنْ أَهْلِ الْكُفْرِ الْحَرْبِيِّينَ - فَسَقَطَ هَذَا الْقَوْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40784 He said: If you claim that it is perpetually obligatory as long as life continues without end, you have abandoned your own doctrine and adopted the view of those who hold that the apostate must be summoned to repent indefinitely and not killed—yet this is not your position at all. Had it been your view, we would have refuted it earlier. And if this too were the case, jihad as a whole would be invalidated, because the summons to Islam would then need to be perpetually and endlessly repeated—a position no Muslim would ever assert. Summoning the apostate—who is among the disbelievers—to Islam is no more obligatory than summoning other warring disbelievers. Thus, this argument is invalidated—and success is through Allah alone, the Exalted.

L40785 And if you say, "It is obligatory to perform it a defined number of times

[44] **Qur'an references (L40779):** Qur'an 3:104 (Ali 'Imran).

more than once," you would be claiming without proof, and this is false, due to the statement of Allah, the Exalted: "Say, 'Produce your proof if you are truthful'" [Surah Al-Baqarah 2:111].[45]

L40786 The opinion of those who said he should be summoned to repent twice is no more valid than the view of those who said three times, nor than those who said four times, five times, or more than that.

L40787–40788 All these statements are without proof; thus, this particular claim was dismissed without doubt.

L40789 There remains only the opinion of those who say: "Is he to be invited once?" It is then said to him: "Indeed, whoever embraced Islam then apostatized - the call to Islam had already been extended to him when he first embraced it, without doubt, whether he was a newcomer to Islam or when he reached maturity and learned the precepts of the religion. This is without doubt."

L40790 We have stated that repetition is not obligatory; therefore, the prescribed punishment must be enforced upon him, since we—both us and you—have agreed on the obligation to execute him if he does not return to Islam. Thus, diverting from this duty and delaying it by offering him a chance to repent and supplicating for him does not justify abandoning the enforcement of the punishment—is this not impermissible? They responded: We have not prohibited supplicating for him to embrace Islam during this process, provided it does not delay enforcing the rightful punishment upon him or neglect it. Our discussion is: Is supplicating for him and offering him a chance to repent an obligatory duty or not? Herein lies our disagreement: You have deemed it obligatory without proof, whereas we have neither deemed it obligatory nor have we prohibited it. If you argue: "We supplicate for him once after the initial supplication," you would have no stronger claim than one who argues: "Rather, supplicate for him a second time after this instance," or than one who argues: "Rather, a third time after the second."

L40791 Or of those who said: Rather, the fourth after the third—and so forth perpetually.

وَإِنْ قُلْتُمْ: إِنَّهُ يَجِبُ عَدَدًا مُحَدَّدًا أَكْثَرَ مِنْ مَرَّةٍ: كُنْتُمْ قَائِلِينَ بِلَا دَلِيلٍ، وَهَذَا بَاطِلٌ، لِقَوْلِ اللَّهِ تَعَالَى {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] .

وَلَيْسَ قَوْلُ مَنْ قَالَ: يُسْتَتَابُ مَرَّتَيْنِ بِأَوْلَى مِمَّنْ قَالَ: ثَلَاثَةً، وَلَا مِمَّنْ قَالَ: أَرْبَعًا، أَوْ خَمْسًا، أَوْ أَكْثَرَ مِنْ ذَلِكَ.

وَكُلُّ هَذِهِ الْأَقْوَالِ بِلَا بُرْهَانٍ، فَسَقَطَ هَذَا الْقَوْلُ بِلَا شَكٍّ.

فَلَمْ يَبْقَ إِلَّا قَوْلُ مَنْ قَالَ: يُدْعَى مَرَّةً؟ فَيُقَالُ لَهُ: إِنَّ مَنْ أَسْلَمَ ثُمَّ ارْتَدَّ: قَدْ تَقَدَّمَ دُعَاؤُهُ إِلَى الْإِسْلَامِ حِينَ أَسْلَمَ بِلَا شَكٍّ، إِنْ كَانَ دَخِيلًا فِي الْإِسْلَامِ، أَوْ حِينَ بَلَغَ، وَعَلِمَ شَرَائِعَ الدِّينِ، هَذَا مَا لَا شَكَّ فِيهِ.

وَقَدْ قُلْنَا: إِنَّ التَّكْرَارَ لَا يَلْزَمُ، فَالْوَاجِبُ إِقَامَةُ الْحَدِّ عَلَيْهِ، إِذْ قَدْ اتَّفَقْنَا - نَحْنُ وَأَنْتُمْ - عَلَى وُجُوبِ قَتْلِهِ إِنْ لَمْ يُرَاجِعْ الْإِسْلَامَ، فَالِاشْتِغَالُ عَنْ ذَلِكَ وَتَأْخِيرُهُ بِاسْتِتَابَةٍ، وَدُعَاءٍ: لَا يُلْزِمَانِ تَرْكَ الْإِقَامَةِ عَلَيْهِ - وَهَذَا لَا يَجُوزُ؟ قَالُوا: وَنَحْنُ لَمْ نَمْنَعْ مِنْ دُعَائِهِ إِلَى الْإِسْلَامِ فِي خِلَالِ ذَلِكَ دُونَ تَأْخِيرٍ لِإِقَامَةِ الْحَقِّ عَلَيْهِ، وَلَا تَضْيِيعٍ لَهُ، وَإِنَّمَا كَلَامُنَا: هَلْ يَجِبُ دُعَاؤُهُ وَاسْتِتَابَتُهُ فَرْضًا أَمْ لَا؟ فَهَاهُنَا اخْتَلَفْنَا، فَأَوْجَبْتُمُوهُ بِلَا بُرْهَانٍ، وَلَمْ نُوجِبْ نَحْنُ وَلَا مَنَعْنَا؟ فَإِنْ قُلْتُمْ: نَدْعُوهُ مَرَّةً بَعْدَ الدُّعَاءِ الْأَوَّلِ السَّالِفِ: لَمْ تَكُونُوا بِأَوْلَى مِمَّنْ قَالَ: بَلْ أَدْعُوهُ مَرَّةً ثَانِيَةً أَيْضًا بَعْدَ هَذِهِ الْمَرَّةِ؟ أَوْ مِمَّنْ قَالَ: بَلْ الثَّالِثَةُ بَعْدَ الثَّانِيَةِ.

أَوْ مِمَّنْ قَالَ: بَلْ الرَّابِعَةُ بَعْدَ الثَّالِثَةِ - وَهَكَذَا أَبَدًا.

[45] **Qur'an references (L40785):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

فَبَطَلَ بِلَا شَكٍّ مَا أَوْجَبْتُمْ فَرْضًا مِنْ اسْتِتَابَتِهِ مَرَّةً وَاحِدَةً فَأَكْثَرَ.

L40792 Therefore, without doubt, the obligation you imposed to demand his repentance once or more has been rendered void.

قَالَ: وَأَمَّا قَوْلُكُمْ: فَإِنَّهُ قَدْ رُوِيَ عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَصَحَّ عَنْ عُثْمَانَ، وَعَلِيٍّ، وَابْنِ مَسْعُودٍ، بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَا حُجَّةَ لَكُمْ فِي هَذَا: أَمَّا الرِّوَايَةُ عَنْ أَبِي بَكْرٍ - فَلَا تَصِحُّ، لِأَنَّ الطَّرِيقَ فِي كِلْتَيْ الرِّوَايَتَيْنِ عَنْ ابْنِ لَهِيعَةَ وَهُوَ سَاقِطٌ.

L40793 He said: As for your assertion that it has been narrated from Abū Bakr and ʿUmar and established from ʿUthmān, ʿAlī, and Ibn Masʿūd in the presence of the Companions—may Allah be pleased with them—there is no valid proof for you in this. As for the narration from Abū Bakr, it is not valid because the chain in both narrations traces back to Ibn Lahīʿah, and he is rejected.

وَأَمَّا الْحُكْمُ فِي أَهْلِ الرِّدَّةِ: فَهُوَ أَمْرٌ مَشْهُورٌ، نَقْلُ الْكَوَافِّ لَا يَقْدِرُ أَحَدٌ عَلَى إنْكَارِهِ، إلَّا أَنَّهُ لَا حُجَّةَ لَكُمْ فِيهِ، لِأَنَّ أَهْلَ الرِّدَّةِ كَانُوا قِسْمَيْنِ: قِسْمًا لَمْ يُؤْمِنْ قَطُّ كَأَصْحَابِ مُسَيْلِمَةَ، وَسَجَاحَ، فَهَؤُلَاءِ حَرْبِيُّونَ لَمْ يُسْلِمُوا قَطُّ، لَا يَخْتَلِفُ أَحَدٌ فِي أَنَّهُمْ تُقْبَلُ تَوْبَتُهُمْ وَإِسْلَامُهُمْ.

L40794 As for the ruling concerning apostates: it is a widely recognized matter, transmitted by scholarly consensus which none can deny. However, this contains no proof for you, for apostates were of two categories: those who never believed at all, such as the followers of Musaylimah and Sajāḥ. These are belligerents who never embraced Islam at all. None disputes that their repentance and embracing Islam are accepted.

وَالْقِسْمُ الثَّانِي: قَوْمٌ أَسْلَمُوا وَلَمْ يَكْفُرُوا بَعْدَ إسْلَامِهِمْ، لَكِنْ مَنَعُوا الزَّكَاةَ مِنْ أَنْ يَدْفَعُوهَا إلَى أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - فَعَلَى هَذَا قُوتِلُوا.

L40795–40796 The second category: people who embraced Islam and did not apostatize after their conversion, but withheld the Zakat from being paid to Abu Bakr (may Allah be pleased with him) as the rightful authority. For this reason, they were combated.

وَلَا يَخْتَلِفُ الْحَنَفِيُّونَ، وَلَا الشَّافِعِيُّونَ: فِي أَنَّ هَؤُلَاءِ لَيْسَ لَهُمْ حُكْمُ الْمُرْتَدِّ أَصْلًا، وَهُمْ قَدْ خَالَفُوا فِعْلَ أَبِي بَكْرٍ فِيهِمْ، وَلَا يُسَمِّيهِمْ أَهْلَ رِدَّةٍ.

L40797 Neither the Hanafis nor the Shafi'is differ regarding the ruling that these individuals are not subject to apostasy rulings at all. They have opposed Abu Bakr's action regarding them, nor do they designate them as people of apostasy.

وَدَلِيلُ مَا قُلْنَا: شِعْرُ الْحُطَيْئَةِ الْمَشْهُورُ الَّذِي يَقُولُ فِيهِ:

L40798 And the evidence for what we have stated is the famous poem of Al-Ḥuṭayʾah in which he says:

أَطَعْنَا رَسُولَ اللَّهِ مَا كَانَ بَيْنَنَا ... فَيَا لَهْفَنَا مَا بَالُ دِينِ أَبِي بَكْرِ

L40799 We obeyed the Messenger of Allah as long as he was among us... Alas, our anguish! What has become of the faith of Abu Bakr?

أَيُورِثُهَا بَكْرًا إذْ مَاتَ بَعْدَهُ ... فَتِلْكَ لَعَمْرُ اللَّهِ قَاصِمَةُ الظَّهْرِ

L40800 Does he inherit her while she is a virgin if he dies after him? By Allah's life, that is a backbreaker!

وَإِنَّ الَّتِي طَالَبْتُمْ فَمُنِعْتُمْ ... لَكَالتَّمْرِ أَوْ أَحْلَى لَدَيَّ مِنْ التَّمْرِ

L40801 What you demanded but were denied... Is like the dates—or sweeter to me than dates!

L40802 My saddle and I are a ransom for Banī Bakr ibn Dhawdān... At dusk, I am

slain, Abu Bakr drives forth with spears.

فِدًا لِبَنِي بَكْرِ بْنِ ذُودَانَ رَحْلِي وَنَا ... قَتِي عَشِيَّةَ يَحْدِي بِالرِّمَاحِ أَبُو بَكْرِ

L40803 He acknowledges the Messenger of Allah—may Allah bless him and grant him peace—as you see. It is indeed plausible that Al-Ashʿath is among these individuals and others, and it is not far-fetched that among them were entire peoples who apostatized collectively, such as those who believed in Tulayhah and similar factions. However, this is unsupported. Even if it were deemed sound, it would not constitute a valid argument, for disagreement on this matter exists among the Companions—may Allah be pleased with them.

فَهُوَ مُقِرٌّ بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا تَرَى، فَقَدْ يُمْكِنُ أَنْ يَكُونَ الْأَشْعَثُ مِنْ هَؤُلَاءِ وَغَيْرُهُ وَمَا يَبْعُدُ أَنْ يَكُونَ فِيهِمْ قَوْمٌ ارْتَدُّوا جُمْلَةً، كَمَنْ آمَنَ بِطُلَيْحَةَ، وَنَحْوِ هَؤُلَاءِ، إلَّا أَنَّ هَذَا لَا يَنْسَنِدُ؟ فَلَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّ الْخِلَافَ فِي ذَلِكَ مَوْجُودٌ بَيْنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L40804 And whoever said that the killing of the apostate is obligatory, without mentioning the invitation to repent or its acceptance, as we have cited from Muʿādh, Abū Mūsā, Anas, Ibn ʿAbbās, and Maʿqil ibn Muqrin.

وَمَنْ قَالَ: بِقَتْلِ الْمُرْتَدِّ وَلَا بُدَّ، دُونَ ذِكْرِ اسْتِتَابَةٍ أَوْ قَبُولِهَا: كَمَا أَوْرَدْنَا عَنْ مُعَاذٍ، وَأَبِي مُوسَى، وَأَنَسٍ، وَابْنِ عَبَّاسٍ، وَمَعْقِلِ بْنِ مُقَرِّنٍ.

L40805 Among them are those who held the position of perpetual demand for repentance and imposing imprisonment alone—as authentically established from ʿUmar through what we previously cited. The obligation to fight constitutes a separate ruling distinct from the obligation to kill after possessing the capability. For combating those who rebel against Muslims, withhold a right from him, or wage war to defend it is an obligatory duty without disagreement. There is no valid argument against Abū Bakr (may Allah be pleased with him) fighting the apostates, as this is undoubtedly a right. We do not oppose you in this matter. Fundamentally, no authentic report exists from Abū Bakr stating he captured an apostate from Islam who did not resist the call to repentance—then if he repented, he would spare him; otherwise, he would kill him. This is something they cannot find.

وَمِنْهُمْ مَنْ قَالَ: بِالِاسْتِتَابَةِ أَبَدًا وَإِيدَاعِ السِّجْنِ فَقَطْ: كَمَا قَدْ صَحَّ عَنْ عُمَرَ مِمَّا قَدْ أَوْرَدْنَا قَبْلُ، وَوُجُوبُ الْقِتَالِ: هُوَ حُكْمٌ آخَرُ غَيْرُ وُجُوبِ الْقَتْلِ بَعْدَ الْقُدْرَةِ، فَإِنَّ قِتَالَ مَنْ بَغَى عَلَى الْمُسْلِمِ، أَوْ مَنَعَ حَقًّا قِبَلَهُ، وَحَارَبَ دُونَهُ: فَرْضٌ وَاجِبٌ بِلَا خِلَافٍ - وَلَا حُجَّةَ فِي قِتَالِ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - أَهْلَ الرِّدَّةِ، لِأَنَّهُ حَقٌّ بِلَا شَكٍّ، وَلَمْ نُخَالِفْكُمْ فِي هَذَا، وَلَا يَصِحُّ - أَصْلًا - عَنْ أَبِي بَكْرٍ أَنَّهُ ظَفِرَ بِمُرْتَدٍّ عَنْ الْإِسْلَامِ غَيْرِ مُمْتَنِعٍ بِاسْتِتَابَةٍ، فَتَابَ، فَتَرَكَهُ، أَوْ لَمْ يَتُبْ فَقَتَلَهُ - هَذَا مَا لَا يَجِدُونَهُ.

L40806–40808 As for one who exchanges one disbelief for another? Abu Muhammad—may Allah have mercy on him—said: "People have differed regarding those who left one disbelief for another." Then Abu Hanifah and Malik said... And Abu Thawr held the view that they are left upon that, and no objection is made against them.

وَأَمَّا مَنْ بَدَّلَ كُفْرًا بِكُفْرٍ آخَرَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِيمَنْ خَرَجَ مِنْ كُفْرٍ إلَى كُفْرٍ؟ فَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ وَأَبُو ثَوْرٍ: أَنَّهُمْ يُقَرُّونَ عَلَى ذَلِكَ وَلَا يُعْتَرَضُ عَلَيْهِمْ.

L40809 Al-Shāfiʿī, Abū Sulaymān, and their adherents ruled: They do not permit them to do so at all.

قَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا: لَا يُقَرُّونَ عَلَى ذَلِكَ أَصْلًا.

L40810 Then they differed—a group of Al-Shāfiʿī's companions said: His covenant is annulled, and he is expelled to the abode of war. If he is captured thereafter? On one occasion he stated: If he returns to his scriptural religion from which he had apostatized, his freedom shall be confirmed and he shall be left unmolested.

ثُمَّ اخْتَلَفُوا - فَقَالَتْ طَائِفَةٌ مِنْ أَصْحَابِ الشَّافِعِيِّ: يُنْبَذُ إِلَيْهِ عَهْدُهُ، وَيُخْرَجُ إِلَى دَارِ الْحَرْبِ، فَإِنْ ظُفِرَ بِهِ بَعْدَ ذَلِكَ؟ فَمَرَّةً قَالَ: إِنْ رَجَعَ إِلَى دِينِهِ الْكِتَابِيِّ الَّذِي خَرَجَ مِنْهُ أُقِرَّ عَلَى حُرِّيَّتِهِ وَتُرِكَ.

L40811 He is not spared; rather, nothing is accepted from him except Islam or the sword.

وَمَرَّةً قَالَ: لَا يُتْرَكُ بَلْ لَا يُقْبَلُ مِنْهُ إِلَّا الْإِسْلَامُ أَوْ السَّيْفُ.

L40812 Our scholars say this—except that they do not deem it permissible to affiliate him with the abode of war, but rather he is compelled to profess Islam; otherwise, he is to be killed. Abū Muḥammad (may Allāh have mercy on him) said: When they differed, we examined the matter and found those who stated: "They are to be left in that state," citing as evidence the verse: *"And those who disbelieve are allies of one another"* [Al-Anfāl: 73], and His command—the Exalted—to proclaim while addressing all disbelievers: *"Say: 'O disbelievers! I do not worship what you worship, nor are you worshippers of what I worship'"* [Al-Kāfirūn: 1-3], to the end of the surah.[46]

وَبِهَذَا يَقُولُ أَصْحَابُنَا - إِلَّا أَنَّهُمْ لَا يَرَوْنَ إلْحَاقَهُ بِدَارِ الْحَرْبِ، بَلْ يُجْبَرُ عَلَى الْإِسْلَامِ وَإِلَّا قُتِلَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا نَظَرْنَا فِي ذَلِكَ: فَوَجَدْنَا مَنْ قَالَ: إنَّهُمْ يُقَرُّونَ عَلَى ذَلِكَ، يَحْتَجُّونَ بِقَوْلِ اللَّهِ تَعَالَى {وَالَّذِينَ كَفَرُوا بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [الأنفال: ٧٣] وَأَمْرِهِ تَعَالَى أَنْ يَقُولَ مُخَاطِبًا لِجَمِيعِ الْكُفَّارِ {قُلْ يَا أَيُّهَا الْكَافِرُونَ - لا أَعْبُدُ مَا تَعْبُدُونَ - وَلا أَنْتُمْ عَابِدُونَ مَا أَعْبُدُ} [الكافرون: ١ - ٣] ، إلَى آخِرِ السُّورَةِ.

L40813 They said: Thus, Allah the Exalted decreed all disbelief to be a single creed.

قَالُوا: فَجَعَلَ اللَّهُ تَعَالَى الْكُفْرَ كُلَّهُ دِينًا وَاحِدًا.

L40814 They said: And Allah, the Exalted, has said, "There is no compulsion in religion" [Al-Baqarah: 256]. Thus, this was clear in prohibiting forcing him to abandon his disbelief.[47]

قَالُوا: وَقَدْ قَالَ اللَّهُ تَعَالَى {لا إِكْرَاهَ فِي الدِّينِ} [البقرة: ٢٥٦] فَكَانَ هَذَا ظَاهِرًا يَمْنَعُ مِنْ إكْرَاهِهِ عَلَى تَرْكِ كُفْرِهِ.

L40815 They said: When one is compelled to abandon the disbelief he had adopted, this situation necessarily entails one of two scenarios—and there is no third possibility for them. Either he is compelled to return to the religion he originally abandoned—as Al-Shāfiʿī held in one of his two opinions—or he is compelled to return to Islam, as Al-Shāfiʿī stated in his second opinion and as maintained by your jurist school. If he is compelled to return to his original religion, he is thereby compelled to affirm belief in disbelief and to revert to the state of disbelief.

قَالُوا: وَلَا يَخْلُو إذَا أُجْبِرَ عَلَى تَرْكِ الْكُفْرِ الَّذِي خَرَجَ إلَيْهِ مِنْ أَحَدِ وَجْهَيْنِ، وَلَا ثَالِثَ لَهُمَا: إمَّا أَنْ يُجْبَرَ عَلَى الرُّجُوعِ إلَى دِينِهِ الَّذِي خَرَجَ عَنْهُ - كَمَا قَالَ الشَّافِعِيُّ فِي أَحَدِ قَوْلَيْهِ - أَوْ يُجْبَرَ عَلَى الرُّجُوعِ إلَى الْإِسْلَامِ، كَمَا قَالَ هُوَ فِي قَوْلِهِ الثَّانِي، وَأَصْحَابُكُمْ، فَإِنْ أُجْبِرَ عَلَى الرُّجُوعِ إلَى دِينِهِ فَقَدْ أُجْبِرَ عَلَى اعْتِقَادِ الْكُفْرِ، وَعَلَى الرُّجُوعِ إلَى الْكُفْرِ.

[46] **Qur'an references (L40812):** Qur'an 8:73 (Al-Anfal); Qur'an 109:1 (Al-Kafirun); Qur'an 109:2 (Al-Kafirun); Qur'an 109:3 (Al-Kafirun); Qur'an 109:5 (Al-Kafirun).

[47] **Qur'an references (L40814):** Qur'an 2:256 (Al-Baqarah).

قَالُوا: وَاعْتِقَادُ جَوَازِ هَذَا كُفْرٌ؟ قَالُوا: إنْ أُكْرِهَ عَلَى الرُّجُوعِ إلَى الْإِسْلَامِ فَكَيْفَ يَجُوزُ أَنْ يُجْبَرَ عَلَى ذَلِكَ دُونَ سَائِرِ أَهْلِ الْكُفْرِ مِنْ أَهْلِ الذِّمَّةِ، وَلَا فَرْقَ بَيْنَهُ وَبَيْنَهُمْ، فَهُوَ كَافِرٌ، وَهُمْ كُفَّارٌ، وَلَا فَرْقَ؟

L40816 They said: "Is believing in the permissibility of this considered apostasy?" They responded: "If he is coerced into reverting to Islam, how is it permissible to compel him alone without compelling the rest of the disbelievers among the dhimmah? For there is no distinction between him and them—he is a disbeliever, and they are disbelievers—with no distinction?"

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا كُلُّ مَا شَغَبُوا بِهِ مِنْ النُّصُوصِ، إلَّا أَنَّ بَعْضَهُمْ قَالَ: أَرَأَيْت مَنْ أَحْدَثَ فِي نَصْرَانِيَّةٍ، أَوْ يَهُودِيَّةٍ، أَوْ مَجُوسِيَّةٍ: رَأْيًا لَمْ يَخْرُجْ بِهِ عَنْ جُمْلَتِهِمْ أَتُجْبِرُونَهُ عَلَى تَرْكِ ذَلِكَ الرَّأْيِ وَالرُّجُوعِ إلَى جُمْلَتِهِمْ، أَوْ إلَى الْإِسْلَامِ؟ وَأَرَأَيْتُمْ مَنْ خَرَجَ مِنْ مَلْكَانِيَّةٍ إلَى نُسْطُورِيَّةٍ، أَوْ يَعْقُوبِيَّةٍ، أَوْ قَادُونِيَّةٍ، أَوْ مَعْدُونِيَّةٍ، فَدَانَ بِعُبُودِيَّةِ الْمَسِيحِ، وَأَنَّهُ نَبِيُّ اللَّهِ، وَأَنَّ اللَّهَ تَعَالَى وَحْدَهُ لَا شَرِيكَ لَهُ؟ أَتُجْبِرُونَهُ عَلَى الرُّجُوعِ إلَى التَّثْلِيثِ، أَوْ إلَى الرُّجُوعِ إلَى الْقَوْلِ بِأَنَّ اللَّهَ هُوَ الْمَسِيحُ ابْنُ مَرْيَمَ؟ وَكَذَلِكَ مَنْ خَرَجَ مِنْ رَبَّانِيَّةٍ إلَى عَامَانِيَّةٍ، أَوْ إلَى عِيسَوِيَّةٍ، أَتُجْبِرُونَهُ عَلَى الرُّجُوعِ عَنْ الْإِيمَانِ بِمُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى الْكُفْرِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا كُلُّ مَا مَوَّهُوا بِهِ مِنْ التَّشْنِيعِ وَكُلُّ هَذَا عَائِدٌ عَلَيْهِمْ عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى.

L40817–40818 Abū Muḥammad—may Allāh have mercy on him—said: This encompasses all the textual proofs they have objected with. However, some of them said: What is your view regarding one who introduces an opinion within Christianity, Judaism, or Zoroastrianism without departing from their collective doctrine? Would you compel him to abandon that opinion and return to their collective doctrine or to Islam? And what is your view regarding one who transitions from Melkite Christianity to Nestorianism, Jacobitism, Qadūniyya, or Maʿdūniyya, professing the servanthood of Christ; that he is the Prophet of Allāh; and that Allāh the Exalted alone has no partner? Would you compel him to return to Trinitarianism or to return to the belief that Allāh is Christ, the son of Mary? Similarly, what of one who leaves Rabbanite Judaism for Amanism or Isawism—would you compel him to abandon belief in Muḥammad—peace and blessings of Allāh be upon him—and return to disbelief? Abū Muḥammad—may Allāh have mercy on him—said: This is all they have disguised as vilification, and all of this will rebound upon them, as we will clarify, if Allāh the Exalted wills.

أَمَّا قَوْلُ اللَّهِ تَعَالَى {وَالَّذِينَ كَفَرُوا بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [الأنفال: ٧٣] فَحَقٌّ، وَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَيْسَ فِيهِ إلَّا أَنَّهُمْ كُلُّهُمْ أَوْلِيَاءُ بَعْضِهِمْ لِبَعْضٍ فَقَطْ، وَلَيْسَ فِي هَذِهِ الْآيَةِ حُكْمُ إقْرَارِهِمْ، وَلَا حُكْمُ قَتْلِهِمْ، وَلَا حُكْمُ مَا يُفْعَلُ بِهِمْ فِي شَيْءٍ مِنْ أُمُورِهِمْ أَصْلًا.

L40819 As for the statement of Allah, the Exalted, {And those who disbelieve are allies of one another} [Al-Anfāl: 73], it is true, and there is no argument for them in it, for it contains nothing except that they are all merely allies of one another. This verse does not contain any ruling concerning their acknowledgment, nor a ruling concerning their killing, nor any ruling at all regarding what is done to them in any of their affairs.[48]

وَكَذَلِكَ قَوْلُهُ تَعَالَى: قُلْ يَا أَيُّهَا الْكَافِرُونَ [الكافرون: ١] إلَى آخِرِهَا لَيْسَ فِيهَا إلَّا أَنَّا بُرَآءُ مِنْ كُلِّ مَا يَعْبُدُونَ، وَلَيْسَ فِيهَا أَنَّهُمْ عَلَى حَقٍّ، وَلَا أَنَّهُمْ عَلَى بَاطِلٍ، وَلَا أَنَّهُمْ مُخَلَّدُونَ فِي النَّارِ، وَلَا أَنَّهُمْ لَا يُخَلَّدُونَ فِيهَا، وَلَا أَنَّهُمْ مُؤْمِنُونَ، وَلَا أَنَّهُمْ كُفَّارٌ، وَلَا أَنَّهُمْ مُشْرِكُونَ، وَلَا أَنَّهُمْ لَيْسُوا مُشْرِكِينَ، وَلَا أَنَّهُمْ مُوَحِّدُونَ، وَلَا أَنَّهُمْ لَيْسُوا مُوَحِّدِينَ، وَلَا أَنَّهُمْ مُسْلِمُونَ، وَلَا أَنَّهُمْ لَيْسُوا مُسْلِمِينَ، وَلَا أَنَّهُمْ عَلَى هُدًى، وَلَا أَنَّهُمْ لَيْسُوا عَلَى هُدًى، وَلَا أَنَّهُمْ عَلَى ضَلَالٍ، وَلَا أَنَّهُمْ لَيْسُوا عَلَى ضَلَالٍ، وَلَا أَنَّهُمْ عَلَى شَيْءٍ، وَلَا أَنَّهُمْ لَيْسُوا عَلَى شَيْءٍ، وَلَا أَنَّهُمْ عَلَى دِينٍ، وَلَا أَنَّهُمْ لَيْسُوا عَلَى دِينٍ، وَلَا أَنَّهُمْ عَلَى دِينِ اللَّهِ تَعَالَى، وَلَا أَنَّهُمْ لَيْسُوا عَلَى دِينِ اللَّهِ تَعَالَى، وَلَا أَنَّهُمْ عَلَى الْإِسْلَامِ، وَلَا أَنَّهُمْ لَيْسُوا عَلَى الْإِسْلَامِ، وَلَا أَنَّهُمْ عَلَى الْحَقِّ، وَلَا أَنَّهُمْ لَيْسُوا عَلَى الْحَقِّ، وَلَا أَنَّهُمْ عَلَى الْبَاطِلِ، وَلَا أَنَّهُمْ لَيْسُوا عَلَى الْبَاطِلِ، وَلَا أَنَّهُمْ عَلَى الْهُدَى، وَلَا أَنَّهُمْ لَيْسُوا عَلَى الْهُدَى، وَلَا أَنَّهُمْ عَلَى الضَّلَالِ، وَلَا أَنَّهُمْ لَيْسُوا عَلَى الضَّلَالِ

from all disbelievers in worship and religion. This surah includes none of the rulings pertaining to them—neither rulings that acknowledge them nor rulings that abandon their acknowledgment.[49]

وَكَذَلِكَ قَوْله تَعَالَى {قُلْ يَا أَيُّهَا الْكَافِرُونَ} [الكافرون: ١] إلَى آخِرِهَا لَيْسَ فِيهَا أَيْضًا إلَّا أَنَّنَا مُبَايِنُونَ لِجَمِيعِ الْكُفَّارِ فِي الْعِبَادَةِ، وَالدِّينِ، وَلَيْسَ فِي هَذِهِ السُّورَةِ شَيْءٌ مِنْ أَحْكَامِهِمْ، لَا مِنْ إقْرَارِهِمْ وَلَا مِنْ تَرْكِ إقْرَارِهِمْ.

L40821 Allah the Exalted has said, addressing us: "Whoever among you takes them as allies is indeed one of them" [Al-Mā'idah: 51]. Thus, whoever among us takes them as allies is of them, as He, the Exalted, has stated: "They are allies of one another" [Al-Mā'idah: 51].[50]

وَقَدْ قَالَ اللَّهُ تَعَالَى مُخَاطِبًا لَنَا {وَمَنْ يَتَوَلَّهُمْ مِنْكُمْ فَإِنَّهُ مِنْهُمْ} [المائدة: ٥١] فَمَنْ تَوَلَّاهُمْ مِنَّا فَهُوَ مِنْهُمْ، كَمَا قَالَ تَعَالَى إنَّ {بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [المائدة: ٥١] .

L40822 Why did they not leave the apostate among us who reverted to them in his apostasy, given Allah the Exalted's informing that he is of them? If this verse is not a proof for affirming the apostate among us who reverted to them in that state, then those two texts are no proof for the confusion they sought to create by citing them - that one who exits from one disbelief to another among them is to be confirmed in it. And with Allah, the Exalted, is success.

فَهَلَّا تَرَكُوا الْمُرْتَدَّ إلَيْهِمْ مِنَّا عَلَى رِدَّتِهِ؟ بِإِخْبَارِ اللَّهِ تَعَالَى أَنَّهُ مِنْهُمْ، فَإِنْ لَمْ تَكُنْ هَذِهِ الْآيَةُ حُجَّةً فِي إقْرَارِ الْمُرْتَدِّ مِنَّا إلَيْهِمْ عَلَى ذَلِكَ، ذَانِكَ النَّصَّانِ لَيْسَا بِحُجَّةٍ فِيمَا أَرَادُوا التَّمْوِيهَ بِإِيرَادِهِمَا مِنْ أَنَّ الْخَارِجَ مِنْهُمْ مِنْ كُفْرٍ إلَى كُفْرٍ يُقَرُّ عَلَى ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40823–40825 Abu Muhammad—may Allah have mercy on him—said: As for the words of Allah, the Exalted, "There is no compulsion in religion" [Al-Baqarah: 256], they have no valid proof in this matter, for there is unanimous agreement in the entire Ummah that this verse does not apply... Its apparent meaning; because the community unanimously agrees on compelling the apostate to abandon his religion. Some scholars argue he should be coerced but not executed, while others maintain he should be coerced and executed.[51]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا قَوْلُ اللَّهِ تَعَالَى {لا إِكْرَاهَ فِي الدِّينِ} [البقرة: ٢٥٦] فَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَمْ يَخْتَلِفْ أَحَدٌ مِنْ الْأُمَّةِ كُلِّهَا فِي أَنَّ هَذِهِ الْآيَةَ لَيْسَتْ عَلَى ظَاهِرِهَا، لِأَنَّ الْأُمَّةَ مُجْمِعَةٌ عَلَى إكْرَاهِ الْمُرْتَدِّ عَنْ دِينِهِ، فَمِنْ قَائِلٍ: يُكْرَهُ وَلَا يُقْتَلُ، وَمِنْ قَائِلٍ، يُكْرَهُ وَيُقْتَلُ.

L40826 If they say: "The apostate among us has departed based on another argument contrary to the ruling of this verse?" We respond: "Similarly, if an apostate among them departs from one disbelief to another disbelief based on another argument contrary to the ruling of this verse, then it is as you say. Otherwise, it is as you have stated." Those who cite Allah's words, "And those who disbelieve are allies of one another" [Al-Anfal: 73], and His words, "For

فَإِنْ قَالُوا: خَرَجَ الْمُرْتَدُّ مِنَّا بِدَلِيلٍ آخَرَ عَنْ حُكْمِ هَذِهِ الْآيَةِ؟ قُلْنَا لَهُمْ: وَكَذَلِكَ إنْ خَرَجَ الْمُرْتَدُّ مِنْهُمْ مِنْ كُفْرٍ إلَى كُفْرٍ بِدَلِيلٍ آخَرَ عَنْ حُكْمِ هَذِهِ الْآيَةِ، وَإِلَّا فَهُوَ كَمَا قُلْتُمْ، وَإِنَّ الْمُحْتَجِّينَ بِقَوْلِ اللَّهِ تَعَالَى {وَالَّذِينَ كَفَرُوا بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [الأنفال: ٧٣] وَبِقَوْلِ اللَّهِ تَعَالَى {لَكُمْ دِينُكُمْ وَلِيَ دِينِ} [الكافرون: ٦] فِي أَنَّ الْكُفْرَ كُلَّهُ مِلَّةٌ وَاحِدَةٌ وَشَيْءٌ وَاحِدٌ: هُمْ أَوَّلُ مَنْ نَقَضَ الِاحْتِجَاجَ وَخَالَفَهُ، وَفَرَّقُوا بَيْنَ أَحْكَامِ أَهْلِ الْكُفْرِ، فَكُلُّهُمْ

[49] **Qur'an references (L40820):** Qur'an 109:1 (Al-Kafirun).
[50] **Qur'an references (L40821):** Qur'an 5:51 (Al-Ma'idah).
[51] **Qur'an references (L40823):** Qur'an 2:256 (Al-Baqarah).

you is your religion, and for me is my religion" [Al-Kafirun: 6], claiming all disbelief constitutes a single creed and one entity, are the first to invalidate their own argument and contradict it. They drew distinctions between the rulings for disbelievers, yet all agree with us in consensus that among them are those whose women may be married and whose slaughtered animals may be eaten, and others whose women may not be married nor their slaughtered animals eaten.

Abu Muhammad (may Allah have mercy on him) said: "As for their claim that one compelled to abandon the disbelief they apostatized toward must face one of two outcomes—either being compelled to revert to the original disbelief they left or to embrace Islam—we affirm this. Our position is that they must inevitably and without exception be compelled to return to Islam and are not permitted to revert to the disbelief they originally departed from."[52]

L40827 As for their statement: "How can it be permissible for one to be compelled to embrace Islam given what we have mentioned?" Our response—and success comes only from Allah, the Exalted—is: If no proof from the Qur'an and Sunnah is established regarding the obligation to compel him, otherwise, it is your assertion.

L40828 Abu Muhammad—may Allah have mercy on him—said: Similarly, their assertion that if someone leaves a sect of the Christians to join another denomination, we do not oppose this regarding what we will clarify later—God willing (Exalted is He).

L40829 Now, what remains is the discussion concerning their argument based on Allah's statement, the Most High: "There is no compulsion in religion" [Al-Baqarah: 256]. We found people adhering to two positions.[53]

L40830 One of the two is that it is abrogated, and the second is that it is specified.

L40831–40833 As for those who claim it is abrogated—he argues that the Messenger of Allah (peace be upon him) did not accept from the polytheists—it is said to them,

مُجْمِعٌ مَعَنَا عَلَى: أَنَّ مِنْ أَهْلِ الْكُفْرِ مَنْ تُنْكَحُ نِسَاؤُهُمْ، وَتُؤْكَلُ ذَبَائِحُهُمْ، وَأَنَّ مِنْهُمْ مَنْ لَا تُنْكَحُ نِسَاؤُهُمْ، وَلَا تُؤْكَلُ ذَبَائِحُهُمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا قَوْلُهُمْ: لَا يَخْلُو مَنْ أُجْبِرَ عَلَى تَرْكِ الْكُفْرِ الَّذِي خَرَجَ إلَيْهِ مِنْ أَحَدِ وَجْهَيْنِ: إمَّا أَنْ يُجْبَرَ عَلَى الرُّجُوعِ إلَى الْكُفْرِ الَّذِي خَرَجَ مِنْهُ، وَإِمَّا أَنْ يُجْبَرَ عَلَى الْإِسْلَامِ؟ فَنَعَمْ: أَنَّهُ لَا يَخْلُو مِنْ أَحَدِهِمَا - وَالَّذِي نَقُولُ بِهِ: فَإِنَّهُ يُجْبَرُ عَلَى الرُّجُوعِ إلَى الْإِسْلَامِ وَلَا بُدَّ، وَلَا يُتْرَكُ يَرْجِعُ إلَى الدِّينِ الَّذِي خَرَجَ مِنْهُ.

وَأَمَّا قَوْلُهُمْ: كَيْفَ يَجُوزُ أَنْ يُجْبَرَ عَلَى الْإِسْلَامِ مَعَ مَا ذَكَرْنَا؟ فَجَوَابُنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: أَنَّهُ إنْ لَمْ يَقُمْ بُرْهَانٌ مِنْ الْقُرْآنِ وَالسُّنَّةِ عَلَى وُجُوبِ إجْبَارِهِ، وَإِلَّا فَهُوَ قَوْلُكُمْ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَكَذَلِكَ قَوْلُهُمْ: إنْ خَرَجَ مِنْ فِرْقَةٍ مِنْ النَّصَارَى إلَى فِرْقَةٍ أُخْرَى فَإِنَّنَا لَا نَعْتَرِضُ عَلَيْهِمْ عَلَى مَا نُبَيِّنُهُ بَعْدُ - إنْ شَاءَ اللَّهُ تَعَالَى.

فَبَقِيَ الْآنَ الْكَلَامُ فِي احْتِجَاجِهِمْ بِقَوْلِ اللَّهِ تَعَالَى {لا إِكْرَاهَ فِي الدِّينِ} [البقرة: ٢٥٦] فَوَجَدْنَا النَّاسَ عَلَى قَوْلَيْنِ:

أَحَدُهُمَا: أَنَّهَا مَنْسُوخَةٌ، وَالثَّانِي: أَنَّهَا مَخْصُوصَةٌ.

فَأَمَّا مَنْ قَالَ: إنَّهَا مَنْسُوخَةٌ، فَيَحْتَجُّ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقْبَلْ مِنْ الْوَثَنِيِّينَ؟ فَيُقَالُ لَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - لَمْ يَخْتَلِفْ مُسْلِمَانِ فِي أَنَّ رَسُولَ اللَّهِ

[52] **Qur'an references (L40826):** Qur'an 8:73 (Al-Anfal); Qur'an 109:6 (Al-Kafirun).
[53] **Qur'an references (L40829):** Qur'an 2:256 (Al-Baqarah).

and with Allah alone is all success: no two Muslims have differed that the Messenger of Allah (peace be upon him) did not... The Prophet would accept nothing from the Arab idolaters except Islam or the sword until he (peace be upon him) died, thus demonstrating coercion in religion. Therefore, this verse is abrogated.

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقْبَلْ مِنْ الْوَثَنِيِّينَ مِنْ الْعَرَبِ إلَّا الْإِسْلَامَ أَوْ السَّيْفَ - إلَى أَنْ مَاتَ - عَلَيْهِ السَّلَامُ - فَهُوَ إكْرَاهٌ فِي الدِّينِ، فَهَذِهِ الْآيَةُ مَنْسُوخَةٌ.

L40834 As for those who said it is specific, they stated that it was revealed particularly concerning the Jews and Christians, as narrated from Umar ibn al-Khattab that he said to an elderly Christian woman: "O respected elderly woman, embrace Islam and attain salvation, for Allah the Exalted has sent Muhammad (peace and blessings be upon him) to us with the truth." The old woman replied: "And I am an elderly woman nearing death?" Umar said: "O Allah, bear witness. There is no compulsion in [accepting] the religion."

وَأَمَّا مَنْ قَالَ: إنَّهَا مَخْصُوصَةٌ، فَإِنَّهُمْ قَالُوا: إنَّمَا نَزَلَتْ فِي الْيَهُودِ وَالنَّصَارَى خَاصَّةً، كَمَا رُوِيَ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ لِعَجُوزٍ نَصْرَانِيَّةٍ: أَيَّتُهَا الْعَجُوزُ أَسْلِمِي تَسْلَمِي، إنَّ اللَّهَ تَعَالَى بَعَثَ إلَيْنَا مُحَمَّدًا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْحَقِّ؟ فَقَالَتْ الْعَجُوزُ: وَأَنَا عَجُوزٌ كَبِيرَةٌ وَأَمُوتُ إلَى قَرِيبٍ؟ قَالَ عُمَرُ: اللَّهُمَّ اشْهَدْ، لَا إكْرَاهَ فِي الدِّينِ.

L40835 And it is narrated to us from Ibn Abbas that he said: A woman vowed that if her child survived, she would Judaize him. When Banu al-Nadir were expelled, among them were some of the children of the Ansar. The Ansar said: "We will not leave our children [with them]," whereupon Allah the Exalted revealed: "There is no compulsion in religion" [Al-Baqarah: 256].[54]

وَبِمَا رُوِّينَا عَنْ ابْنِ عَبَّاسٍ قَالَ: كَانَتْ امْرَأَةٌ تَجْعَلُ عَلَى نَفْسِهَا إنْ عَاشَ وَلَدُهَا تُهَوِّدُهُ، فَلَمَّا أُجْلِيَتْ بَنُو النَّضِيرِ كَانَ فِيهِمْ مِنْ أَبْنَاءِ الْأَنْصَارِ، فَقَالَتْ الْأَنْصَارُ: لَا نَدَعُ أَبْنَاءَنَا، فَأَنْزَلَ اللَّهُ تَعَالَى {لا إِكْرَاهَ فِي الدِّينِ} [البقرة: ٢٥٦] .

L40836 It has been authentically established that the Messenger of Allah, peace and blessings be upon him, fought the disbelievers until his death, until those among them who were to accept Islam had done so.

فَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَاتَلَ الْكُفَّارَ إلَى أَنْ مَاتَ - عَلَيْهِ السَّلَامُ - حَتَّى أَسْلَمَ مَنْ أَسْلَمَ مِنْهُمْ.

L40837 It was authentically established from him (the Prophet) that there was a report about coercion in religion. Then after that, the verse was revealed: {When the sacred months have passed, then kill those who associate partners with Allah wherever you find them} up to His saying, the Most High: {then let them go their way} [9:5].[55]

وَصَحَّ عَنْهُ الْإِكْرَاهُ فِي الدِّينِ، ثُمَّ نَزَلَ بَعْدَ ذَلِكَ {فَإِذَا انْسَلَخَ الأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ} [التوبة: ٥] الْآيَةَ إلَى قَوْله تَعَالَى {فَخَلُّوا سَبِيلَهُمْ} [التوبة: ٥] .

L40838 And the words of the Most High were revealed: "Fight those who do not believe in Allah nor in the Last Day" up to His words: "until they give the jizyah with their own hands while they are humiliated" (Quran 9:29).[56]

وَنَزَلَ قَوْله تَعَالَى {قَاتِلُوا الَّذِينَ لا يُؤْمِنُونَ بِاللَّهِ وَلا بِالْيَوْمِ الآخِرِ} [التوبة: ٢٩] إلَى قَوْله تَعَالَى {حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩]

[54] **Qur'an references (L40835):** Qur'an 2:256 (Al-Baqarah).
[55] **Qur'an references (L40837):** Qur'an 9:5 (At-Tawbah).
[56] **Qur'an references (L40838):** Qur'an 9:29 (At-Tawbah).

فَإِنْ قَالَ قَائِلٌ: فَأَيْنَ أَنْتُمْ مِنْ قَوْلِه تَعَالَى {فَانْبِذْ إِلَيْهِمْ عَلَى سَوَاءٍ} [الأنفال: ٥٨] .

L40839 If someone says: "Where do you stand regarding the saying of the Exalted: {Cast back to them on equal terms} [Al-Anfal: 58]?"[57]

فَيُقَالُ لَهُمْ: لَا يَخْتَلِفُ اثْنَانِ فِي أَنَّ هَذِهِ الْآيَةَ نَزَلَتْ قَبْلَ نُزُولِ " بَرَاءَةٌ " فَإِذْ ذَلِكَ كَذَلِكَ فَإِنَّ " بَرَاءَةٌ " نَسَخَتْ كُلَّ حُكْمٍ تَقَدَّمَ، وَأَبْطَلَتْ كُلَّ عَهْدٍ سَلَفَ بِقَوْلِ تَعَالَى {كَيْفَ يَكُونُ لِلْمُشْرِكِينَ عَهْدٌ عِنْدَ اللَّهِ وَعِنْدَ رَسُولِهِ إِلا الَّذِينَ عَاهَدْتُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ} [التوبة: ٧] وَإِنَّمَا كَانَتْ آيَةُ النَّبْذِ عَلَى سَوَاءٍ أَيَّامَ كَانَتْ الْمُهَادَنَاتُ جَائِزَةً، وَأَمَّا بَعْدَ نُزُولِ {فَإِذَا انْسَلَخَ الأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ} [التوبة: ٥] فَلَا يَحِلُّ تَرْكُ مُشْرِكٍ أَصْلًا، إِلَّا بِأَنْ يُقْتَلَ، أَوْ يُسْلِمَ، أَوْ يُنْبَذَ إِلَيْهِ عَهْدُهُ بَعْدَ التَّمَكُّنِ مِنْ قَتْلِهِ حَيْثُ وُجِدَ، إِلَّا أَنْ يَكُونَ مِنْ أَبْنَاءِ الَّذِينَ أُوتُوا الْكِتَابَ فَيُقَرَّ عَلَى الْجِزْيَةِ وَالصَّغَارِ، كَمَا أَمَرَ اللَّهُ تَعَالَى، أَوْ يَكُونَ مُسْتَجِيرًا فَيُجَارَ حَتَّى يُقْرَأَ عَلَيْهِ الْقُرْآنُ، ثُمَّ يُرَدَّ إِلَى مَأْمَنِهِ وَلَا بُدَّ، إِلَى أَنْ يُسْلِمَ، وَلَا يُتْرَكَ أَكْثَرَ مِنْ ذَلِكَ، أَوْ رَسُولًا فَيُتْرَكَ مُدَّةَ أَدَاءِ رِسَالَتِهِ، وَأَخْذِ جَوَابِهِ، ثُمَّ يُرَدَّ إِلَى بَلَدِهِ، وَمَا عَدَا هَؤُلَاءِ فَالْقَتْلُ وَلَا بُدَّ، أَوْ الْإِسْلَامُ، كَمَا أَمَرَ اللَّهُ تَعَالَى فِي نَصِّ الْقُرْآنِ، وَمَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L40840–40842 They will be told: No two people dispute that this verse was revealed before the revelation of "Barā'ah." Given this undeniable fact, "Barā'ah" has abrogated every prior ruling and annulled every previous covenant by Allah's statement: {How can there be a covenant for the polytheists with Allah and His Messenger, except for those with whom you made a covenant at the Sacred Mosque?} [9:7]. The verse of treaty termination applied uniformly during the period when temporary peace treaties were permissible. However, after the revelation of {When the sacred months have passed, kill the polytheists wherever you find them} [9:5], it is impermissible to leave any polytheist under any circumstance unless he is killed, embraces Islam, or his covenant is repudiated by Muslims after they are capable of killing him wherever he is found—except if he is among the descendants of those given the Scripture, in which case he is permitted to remain [in Islamic lands] provided he pays the jizyah (poll tax) and accepts humiliation, as Allah the Most High has commanded; or if he seeks protection, in which case he is granted protection until the Quran is recited to him, after which he must be returned to his place of safety without fail until he embraces Islam, and he may not be allowed to stay beyond the period required [to convey the Quran]; or if he is an envoy, in which case he is left for the duration of delivering his message and receiving its reply. Then he is to be returned to his country. As for those other than these, they must either accept Islam or be executed, in accordance with what Allah, the Exalted, has commanded in the text of the Quran and what has been authentically established from the Messenger of Allah (peace be upon him).[58]

فَإِنْ ذَكَرُوا: مَا أَنَا حُمَامٌ أَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ أَنَا أَحْمَدُ بْنُ خَالِدٍ أَنَا عُبَيْدُ اللَّهِ بْنُ مُحَمَّدٍ الْكَشْوَرِيُّ أَنَا مُحَمَّدُ بْنُ يُوسُفَ الْحُذَافِيُّ أَنَا عَبْدُ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ قَالَ: حَيْثُ رُفِعَ إِلَى عَلِيٍّ فِي يَهُودِيٍّ تَزَنْدَقَ وَنَصْرَانِيٍّ تَزَنْدَقَ؟ قَالَ: دَعُوهُ يَحُوَّلُ مِنْ دِينٍ إِلَى دِينٍ.

L40843 If the chain is traced back: From Ḥumām, from ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bājī, from Aḥmad ibn Khālid, from ʿUbaydullāh ibn Muḥammad al-Kashwārī, from Muḥammad ibn Yūsuf al-Ḥudhāfī, from ʿAbd al-Razzāq, from Ibn Jurayj, who said: "In cases referred to ʿAlī concerning a Jew who

[57] **Qur'an references (L40839):** Qur'an 8:58 (Al-Anfal).
[58] **Qur'an references (L40840):** Qur'an 9:7 (At-Tawbah); Qur'an 9:5 (At-Tawbah).

adopted heresy or a Christian who adopted heresy, he ruled: 'Let him convert from one religion to another.'"

L40844 Abū Muḥammad—may Allah have mercy on him—said: This is not authentically established from ʿAlī, for the chain of transmission is broken. Ibn Jurayj was not born until over thirty years after the death of ʿAlī ibn Abī Ṭālib—may Allah be pleased with him. No one after the Messenger of Allah—peace be upon him—holds infallible authority. How many sound statements of ʿAlī have they opposed! And true guidance comes only from Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا لَمْ يَصِحَّ عَنْ عَلِيٍّ، لِأَنَّهُ مُنْقَطِعٌ وَلَمْ يُولَدْ ابْنُ جُرَيْجٍ إِلَّا بَعْدَ نَحْوِ نَيِّفٍ وَثَلَاثِينَ عَامًا مِنْ مَوْتِ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - وَلَا حُجَّةَ فِي أَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَمْ مِنْ قَوْلَةٍ لِعَلِيٍّ صَحِيحَةٍ قَدْ خَالَفُوهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: The Inheritance of the Apostate

[مَسْأَلَة مِيرَاثُ الْمُرْتَدِّ]

L40845

L40846 **Issue 2200**: The inheritance of the apostate? Abū Muḥammad—may God have mercy on him—said: "People differed regarding his inheritance. A group held that it belongs to his heirs from among the Muslims." _Narrated by Muḥammad ibn Saʿīd ibn Nabāt, from Aḥmad ibn ʿAbd al-Baṣīr, from Qāsim ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from Mūsā ibn Masʿūd Abū Ḥudhayfah, from Sufyān, from Simāk ibn Ḥarb, from Dithār ibn Yazīd ibn ʿUbayd ibn al-Abraṣ al-Asadī_, ʿAlī ibn Abī Ṭālib said: "The inheritance of the apostate belongs to his children."

٢٢٠٠ - مَسْأَلَةٌ: مِيرَاثُ الْمُرْتَدِّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي مِيرَاثِهِ: فَقَالَتْ طَائِفَةٌ: هُوَ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ: كَمَا أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا مُوسَى بْنُ مَسْعُودٍ أَبُو حُذَيْفَةَ أَنَا سُفْيَانُ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ دِثَارِ بْنِ يَزِيدَ بْنِ عُبَيْدِ بْنِ الْأَبْرَصِ الْأَسَدِيِّ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: مِيرَاثُ الْمُرْتَدِّ لِوَلَدِهِ.

L40847 And from Al-A'mash from Al-Shaybani, who said: An elderly man who had been a Christian, embraced Islam, and later renounced Islam was brought to Ali ibn Abi Talib. Ali said to him: "Perhaps you renounced Islam only to obtain an inheritance and then return to it." He replied: "No." Ali said: "Or perhaps you proposed to a woman, and they refused to let you marry her, so you intended to marry her and then return to Islam." He said: "No." Ali said: "Return to Islam!" He said: "No, until I meet the Messiah?" So Ali ordered that he be executed, and he was beheaded. He then handed over his inheritance to his children among the Muslims. A similar account is reported from Ibn Masʿud.

وَعَنْ الْأَعْمَشِ عَنْ الشَّيْبَانِيِّ قَالَ: أُتِيَ عَلِيُّ بْنُ أَبِي طَالِبٍ بِشَيْخٍ كَانَ نَصْرَانِيًّا فَأَسْلَمَ، ثُمَّ ارْتَدَّ عَنْ الْإِسْلَامِ، فَقَالَ لَهُ عَلِيٌّ: لَعَلَّك إنَّمَا ارْتَدَدْت، لِأَنْ تُصِيبَ مِيرَاثًا ثُمَّ تَرْجِعَ إلَى الْإِسْلَامِ، قَالَ: لَا، قَالَ: فَلَعَلَّك خَطَبْت امْرَأَةً فَأَبَوْا أَنْ يُزَوِّجُوكَهَا فَأَرَدْت أَنْ تَزَوَّجَهَا ثُمَّ تَعُودَ إلَى الْإِسْلَامِ، قَالَ: لَا، قَالَ: فَارْجِعْ إلَى الْإِسْلَامِ؟ قَالَ: لَا، حَتَّى أَلْقَى الْمَسِيحُ؟ فَأَمَرَ بِهِ فَضُرِبَتْ عُنُقُهُ، فَدَفَعَ مِيرَاثَهُ إلَى وَلَدِهِ مِنْ الْمُسْلِمِينَ - وَعَنْ ابْنِ مَسْعُودٍ بِمِثْلِهِ.

L40848 A group held this opinion, among them: Al-Layth ibn Saʿd and Isḥāq ibn

وَقَالَتْ طَائِفَةٌ بِهَذَا، مِنْهُمْ: اللَّيْثُ بْنُ سَعْدٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ.

Rahawayh.

L40849 Al-Awzaʿī said: If he is killed in the land of Islam, his wealth belongs to his Muslim heirs.

L40850–40851 A group has stated: If he has an heir sharing his religion, that heir is most entitled to his estate. Otherwise, his wealth belongs to his Muslim heirs. As we have reported through the chain of ʻAbd al-Razzāq from Isḥāq ibn Rāshid: ʻUmar ibn ʻAbd al-ʻAzīz issued a ruling concerning a Muslim man who was captured and converted to Christianity. If this is confirmed, his wife inherits from him and observes a waiting period of three menstrual cycles. His wealth is to be handed over to his Muslim heirs. I do not know of it. He said: Unless he has an heir sharing his religion in a territory, in which case that heir is most entitled to it.

L40852 A group held that his inheritance belongs solely to the people of his religion. As narrated to us through Abd al-Razzaq's transmission chain: Maʻmar reported from Qatādah, who said: "The apostate's inheritance belongs to the people of his religion."

L40853 Abd al-Razzaq said: Ibn Jurayj informed us, saying: People are divided into two groups. Among them are those who say: The inheritance of the apostate belongs to the Muslims, for when he apostatizes, his assets are suspended, and nothing can be obtained from him until it is determined whether he will embrace Islam or persist in disbelief. Among them are al-Nakhaʿī, al-Shaʿbī, and al-Ḥakam ibn ʿUtayba. Another group says it goes to the people of his religion. A group said: If he returns to Islam, his wealth remains his; but if he is killed, his wealth goes to the Muslim public treasury (bayt al-māl), not to his disbelieving heirs. This opinion was held by Rabīʿa, Mālik, Ibn Abī Laylā, and al-Shāfiʿī.

L40854 A group said: If he returns to Islam, his wealth remains his; if killed, it passes to his heirs among the disbelievers. Abu Sulayman and our associates said this.

L40855 Abu Hanifa and his companions said: If the apostate is killed, his wealth belongs to his Muslim heirs, and his wife inherits from him like all his other heirs. If he flees and joins the land of war, leaving his wealth with us, the

وَقَالَ الْأَوْزَاعِيِّ: إِنْ قُتِلَ فِي أَرْضِ الْإِسْلَامِ فَمَالُهُ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ.

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَ لَهُ وَارِثٌ عَلَى دِينِهِ فَهُوَ أَحَقُّ بِهِ، وَإِلَّا فَمَالُهُ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إِسْحَاقَ بْنِ رَاشِدٍ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ كَتَبَ فِي رَجُلٍ مِنْ الْمُسْلِمِينَ أُسِرَ فَتَنَصَّرَ إِذَا عَلِمَ ذَلِكَ تَرِثُ مِنْهُ امْرَأَتُهُ، وَتَعْتَدُّ ثَلَاثَةَ قُرُوءٍ، وَدَفْعُ مَالِهِ إِلَى وَرَثَتِهِ مِنْ الْمُسْلِمِينَ لَا أَعْلَمُهُ، قَالَ: إِلَّا أَنْ يَكُونَ لَهُ وَارِثٌ عَلَى دِينِهِ فِي أَرْضٍ فَهُوَ أَحَقُّ بِهِ.

وَقَالَتْ طَائِفَةٌ: مِيرَاثُهُ لِأَهْلِ دِينِهِ فَقَطْ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ قَتَادَةَ قَالَ: مِيرَاثُ الْمُرْتَدِّ لِأَهْلِ دِينِهِ.

قَالَ عَبْدُ الرَّزَّاقِ: أَنْبَأَنَا ابْنُ جُرَيْجٍ قَالَ: النَّاسُ فَرِيقَانِ، مِنْهُمْ مَنْ يَقُولُ: مِيرَاثُ الْمُرْتَدِّ لِلْمُسْلِمِينَ، لِأَنَّهُ سَاعَةَ يَكْفُرُ يُوقَفُ، فَلَا يُقْدَرُ مِنْهُ عَلَى شَيْءٍ حَتَّى يُنْظَرَ أَيُسْلِمُ أَمْ يَكْفُرُ؟ مِنْهُمْ النَّخَعِيُّ: وَالشَّعْبِيُّ، وَالْحَكَمُ بْنُ عُتَيْبَةَ - وَفَرِيقٌ يَقُولُ: لِأَهْلِ دِينِهِ. وَقَالَتْ طَائِفَةٌ: إِنْ رَاجَعَ الْإِسْلَامَ فَمَالُهُ لَهُ، وَإِنْ قُتِلَ فَمَالُهُ لِبَيْتِ مَالِ الْمُسْلِمِينَ لَا لِوَرَثَتِهِ مِنْ الْكُفَّارِ - قَالَ بِهَذَا رَبِيعَةُ، وَمَالِكٌ، وَابْنُ أَبِي لَيْلَى، وَالشَّافِعِيُّ.

وَقَالَتْ طَائِفَةٌ: إِنْ رَاجَعَ الْإِسْلَامَ فَمَالُهُ لَهُ، وَإِنْ قُتِلَ فَمَالُهُ لِوَرَثَتِهِ مِنْ الْكُفَّارِ - قَالَ بِهَذَا أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا.

judge shall rule accordingly, emancipate the mothers of his children and his mudabbar slaves, and distribute his wealth among his Muslim heirs in accordance with the Book of Allah, the Exalted. If he returns as a Muslim, he takes from his wealth whatever he finds in the possession of his heirs, with no liability upon them for what they consumed. This applies to what was in his possession before apostasy. As for what he acquired during his apostasy and was then killed or died, it becomes fay for the Muslims.

وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: إِنْ قُتِلَ الْمُرْتَدُّ فَمَالُهُ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ، وَتَرِثُهُ زَوْجَتُهُ كَسَائِرِ وَرَثَتِهِ، وَإِنْ فَرَّ وَلَحِقَ بِأَرْضِ الْحَرْبِ وَتَرَكَ مَالَهُ عِنْدَنَا فَإِنَّ الْقَاضِيَ يَقْضِي بِذَلِكَ، وَيُعْتِقُ أُمَّهَاتِ أَوْلَادِهِ وَمُدَبَّرِهِ وَيَقْسِمُ مَالَهُ بَيْنَ وَرَثَتِهِ مِنْ الْمُسْلِمِينَ عَلَى كِتَابِ اللَّهِ تَعَالَى، فَإِنْ جَاءَ مُسْلِمًا أَخَذَ مِنْ مَالِهِ مَا وَجَدَ فِي أَيْدِي وَرَثَتِهِ، وَلَا ضَمَانَ عَلَيْهِمْ فِيمَا اسْتَهْلَكُوهُ، هَذَا فِيمَا كَانَ بِيَدِهِ قَبْلَ الرِّدَّةِ - وَأَمَّا مَا اكْتَسَبَهُ فِي حَالِ رِدَّتِهِ ثُمَّ قُتِلَ أَوْ مَاتَ فَهُوَ فَيْءٌ لِلْمُسْلِمِينَ.

L40856 A group of scholars maintained that the property of an apostate at the moment of apostasy belongs to all Muslims—whether he is killed, dies, flees to the land of war, returns to Islam, or [any other outcome]. In all these circumstances, the ruling applies equally.

وَقَالَتْ طَائِفَةٌ: مَالُ الْمُرْتَدِّ سَاعَةَ يَرْتَدُّ لِجَمِيعِ الْمُسْلِمِينَ - قُتِلَ، أَوْ مَاتَ، أَوْ لَحِقَ بِأَرْضِ الْحَرْبِ، أَوْ رَاجَعَ الْإِسْلَامَ - كُلُّ ذَلِكَ سَوَاءٌ.

L40857 This is the opinion of some of Mālik's companions. Ibn Shaʿbān mentioned this from him [Mālik], and Ashhab also held this view.

وَهُوَ قَوْلُ بَعْضِ أَصْحَابِ مَالِكٍ، ذَكَرَ ذَلِكَ ابْنُ شَعْبَانَ عَنْهُ، وَأَشْهَبُ.

L40858–40860 Abu Muhammad (may Allah have mercy on him) said: When they differed, we considered the matter, and what was established from the Messenger of Allah... The Prophet Muhammad - peace and blessings be upon him - [stated] as a barrier preventing the Muslim children of an apostate - they being Muslims - from inheriting their apostate father's wealth, since he is a disbeliever whereas they remain Muslims. A group of narrators related this ḥadīth to me, including: Abdullah ibn Rabiʿ reported to me, Muhammad ibn Isḥāq ibn al-Sulaym reported to me, Ibn al-Aʿrābī reported to me, Abū Dāwūd reported to me, Musaddad reported to me, Sufyān reported to me from al-Zuhrī from Ali ibn al-Ḥusayn from Amr ibn Uthmān ibn Affān from Usāmah ibn Zayd from the Prophet - peace and blessings be upon him - who said: "A Muslim does not inherit a disbeliever, nor does a disbeliever inherit a Muslim."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا نَظَرْنَا فِي ذَلِكَ، فَكَانَ الثَّابِتُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَنَّهُ لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ: مَانِعًا مِنْ تَوْرِيثِ وَلَدِ الْمُرْتَدِّ - وَهُمْ مُسْلِمُونَ - مَالَ أَبِيهِمْ الْمُرْتَدِّ، لِأَنَّهُ كَافِرٌ وَهُمْ مُسْلِمُونَ - أَنَا بِهَذَا الْحَدِيثِ جَمَاعَةٌ، وَمِنْ جُمْلَتِهِمْ: مَا أَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السَّلِيمِ أَنَا ابْنُ الْأَعْرَابِيِّ أَنَا أَبُو دَاوُد أَنَا مُسَدَّدٌ أَنَا سُفْيَانُ عَنْ الزُّهْرِيِّ عَنْ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ عَمْرِو بْنِ عُثْمَانَ بْنِ عَفَّانَ عَنْ أُسَامَةَ بْنِ زَيْدٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ وَلَا الْكَافِرُ الْمُسْلِمَ» .

L40861 This is a general statement from him (peace be upon him), from which no apostate has been excluded. *"And your Lord is not forgetful"* [19:64]. Had Allah willed to exclude apostates from this ruling, He would not have

هَذَا عُمُومٌ مِنْهُ - عَلَيْهِ السَّلَامُ - لَمْ يُخَصَّ مِنْهُ مُرْتَدٌّ مِنْ غَيْرِهِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَلَوْ أَرَادَ اللَّهُ أَنْ يَخُصَّ الْمُرْتَدَّ مِنْ ذَلِكَ لَمَا أَغْفَلَهُ، وَلَا أَهْمَلَهُ، بَلْ قَدْ

neglected it. Rather, Allah the Exalted has urged that the apostate is among the disbelievers through His saying: *"Whoever among you allies with them is indeed one of them"* [5:51].[59]

L40862 Thus, this statement is invalidated entirely, and success is from Allah, the Most High.

L40863 **The Ruling on the Apostate's Will and the Administration of His Affairs.**

L40864 Issue 2201: The will of an apostate and his disposition of property? Abu Muhammad said: Any will made by him before or during his apostasy, conforming to piety and Islamic law - all such wills are effective regarding his property that was not seized until his execution, for it remains his property and the legal status of his dispositions is valid. If he is executed or dies, his will becomes binding through his death before that property is seized.

L40865 As for when we seize it before his death—whether it is a slave, a dhimmi, or property—all of it belongs to the Muslim community. No testament can be executed regarding it, because once the testament becomes binding upon his death, that property is no longer his afterwards, and no one's testament can be executed pertaining to what he does not own.

L40866 **Issue: Is one who has voluntarily gone to the land of war to cause hardship to the Muslims deemed an apostate?**

L40867–40869 2202 – Issue: If someone voluntarily goes to the territory of war (dār al-ḥarb), causing discord against the Muslims, is he an apostate because of that or not? And if someone seeks reinforcement from the people of war against the people of Islam – even without leaving the abode of Islam (dār al-Islām) – is he an apostate because of that or not? Abū Muḥammad said: I am ʿAbdullāh ibn Rabīʿ, I am Muḥammad ibn Muʿāwiyah, I am Aḥmad ibn Shuʿayb, I am Muḥammad ibn Qudāmah from Jarīr from Mughīrah from al-Shaʿbī, who said: Jarīr used to narrate from the Prophet – may Allah's peace

[59] **Qur'an references (L40861):** Qur'an 19:64 (Maryam); Qur'an 5:51 (Al-Ma'idah).

حَضَّ اللَّهُ تَعَالَى عَلَى أَنَّ الْمُرْتَدَّ مِنْ جُمْلَةِ الْكُفَّارِ بِقَوْلِهِ تَعَالَى {وَمَنْ يَتَوَلَّهُمْ مِنْكُمْ فَإِنَّهُ مِنْهُمْ} [المائدة: ٥١] .

فَسَقَطَ هَذَا الْقَوْلُ جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة وَصِيَّةُ الْمُرْتَدِّ وَتَدْبِيرِهِ]

٢٢٠١ - مَسْأَلَةٌ: وَصِيَّةُ الْمُرْتَدِّ وَتَدْبِيرِهِ؟ قَالَ أَبُو مُحَمَّد: كُلُّ وَصِيَّةٍ أَوْصَى بِهَا قَبْلَ رِدَّتِهِ، أَوْ فِي حِينِ رِدَّتِهِ، بِمَا يُوَافِقُ الْبِرَّ وَدِينَ الْإِسْلَامِ، فَكُلُّ ذَلِكَ نَافِذٌ فِي مَالِهِ الَّذِي لَمْ يُقْدَرْ عَلَيْهِ حَتَّى قُتِلَ، لِأَنَّهُ مَالُهُ وَحُكْمُهُ نَافِذٌ - فَإِذَا قُتِلَ أَوْ مَاتَ، فَقَدْ وَجَبَتْ فِيهِ وَصَايَاهُ بِمَوْتِهِ قَبْلَ أَنْ يُقْدَرَ عَلَى ذَلِكَ الْمَالِ.

وَأَمَّا إذَا قَدَرْنَا عَلَيْهِ قَبْلَ مَوْتِهِ مِنْ عَبْدٍ، وَذِمِّيٍّ، أَوْ مَالٍ، فَهُوَ لِلْمُسْلِمِينَ كُلُّهُ، لَا تَنْفُذُ فِيهِ وَصِيَّةٌ، لِأَنَّهُ إذَا وَجَبَتْ الْوَصِيَّةُ بِمَوْتِهِ لَمْ يَكُنْ ذَلِكَ الْمَالُ لَهُ بَعْدُ، وَلَا تَنْفُذُ وَصِيَّةُ أَحَدٍ فِيمَا لَا يَمْلِكُهُ.

[مَسْأَلَة مَنْ صَارَ مُخْتَارًا إلَى أَرْضِ الْحَرْبِ مُشَاقًّا لِلْمُسْلِمِينَ أَمُرْتَدٌّ هُوَ]

٢٢٠٢ - مَسْأَلَةٌ: مَنْ صَارَ مُخْتَارًا إلَى أَرْضِ الْحَرْبِ، مُشَاقًّا لِلْمُسْلِمِينَ أَمُرْتَدٌّ هُوَ بِذَلِكَ أَمْ لَا؟ وَمَنْ اعْتَضَدَ بِأَهْلِ الْحَرْبِ عَلَى أَهْلِ الْإِسْلَامِ - وَإِنْ لَمْ يُفَارِقْ دَارَ الْإِسْلَامِ - أَمُرْتَدٌّ هُوَ بِذَلِكَ أَمْ لَا؟ قَالَ أَبُو مُحَمَّد: أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ قُدَامَةَ عَنْ جَرِيرٍ عَنْ مُغِيرَةَ عَنْ الشَّعْبِيِّ قَالَ: كَانَ جَرِيرٌ يُحَدِّثُ

and blessings be upon him – If a slave flees, his prayer is not accepted, and if he dies, he dies in a state of disbelief. A servant of Jarīr fled, so Jarīr seized him and beheaded him.

عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا أَبَقَ الْعَبْدُ لَمْ تُقْبَلْ لَهُ صَلَاةٌ، وَإِنْ مَاتَ مَاتَ كَافِرًا، فَأَبَقَ غُلَامٌ لِجَرِيرٍ، فَأَخَذَهُ فَضَرَبَ عُنُقَهُ» .

L40870 And through him to Ahmad ibn Shu'ayb: Qutaybah reported from Humaid ibn 'Abd al-Rahman from his father from Abu Ishaq from al-Sha'bi from Jarir ibn 'Abd Allah al-Bajali, who said: The Messenger of Allah (peace be upon him) said, "If a slave absconds to polytheism, it becomes permissible to shed his blood."[60]

وَبِهِ - إِلَى أَحْمَدَ بْنِ شُعَيْبٍ أَنَا قُتَيْبَةُ أَنَا حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي إِسْحَاقَ عَنْ الشَّعْبِيِّ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ الْبَجَلِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا أَبَقَ الْعَبْدُ إِلَى الشِّرْكِ فَقَدْ حَلَّ دَمُهُ» .

L40871 From the transmission of Muslim: I, Ali ibn Hujr al-Sa'di, narrate from Ismail—meaning ibn Ulayyah—from Mansur ibn Abd al-Rahman, from al-Sha'bi, from Jarir that he heard him say: Any slave who flees from his masters has committed disbelief until he returns to them. Mansur said: By Allah, this has indeed been narrated from the Prophet—peace and blessings of Allah be upon him—but I dislike having this narration attributed to me here in Basra.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عَلِيُّ بْنُ حُجْرٍ السَّعْدِيُّ أَنَا إِسْمَاعِيلُ - يَعْنِي ابْنَ عُلَيَّةَ - عَنْ مَنْصُورِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الشَّعْبِيِّ عَنْ جَرِيرٍ أَنَّهُ سَمِعَهُ يَقُولُ: أَيُّمَا عَبْدٍ أَبَقَ مِنْ مَوَالِيهِ فَقَدْ كَفَرَ حَتَّى يَرْجِعَ إِلَيْهِمْ - قَالَ مَنْصُورٌ: قَدْ وَاَللَّهِ رُوِيَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَكِنْ أَكْرَهُ أَنْ يُرْوَى عَنِّي هَاهُنَا بِالْبَصْرَةِ.

L40872 Abdullah ibn Rabi' narrated to us: Muhammad ibn Ishaq narrated to us: Ibn al-A'rabi narrated to us: Abu Dawud narrated to us: Hannad ibn al-Sari narrated to us: Abu Mu'awiyah—he is Ibn Abi Khazim al-Darir—narrated from Isma'il ibn Abi Khalid from Qays ibn Abi Hazim from Jarir ibn Abdullah al-Bajali, who said: "The Messenger of Allah—peace and blessings be upon him—sent a military detachment to Khatham. Some of them sought refuge by prostrating, but they were swiftly killed. When this reached the Prophet—peace and blessings be upon him—he ordered half the blood money for them and said: 'I disavow any Muslim who settles amidst polytheists.' They said: 'O Messenger of Allah, their two fires are not visible to each other.'"

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ إِسْحَاقَ أَنَا ابْنُ الْأَعْرَابِيِّ أَنَا أَبُو دَاوُد أَنَا هَنَّادُ بْنُ السَّرِيِّ أَنَا أَبُو مُعَاوِيَةَ - هُوَ ابْنُ أَبِي خَازِمٍ الضَّرِيرُ - عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ الْبَجَلِيِّ قَالَ «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَرِيَّةً إِلَى خَثْعَمَ فَاعْتَصَمَ نَاسٌ مِنْهُمْ بِالسُّجُودِ فَأَسْرَعَ فِيهِمْ الْقَتْلَ، فَبَلَغَ ذَلِكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَ لَهُمْ بِنِصْفِ الْعَقْلِ، وَقَالَ: أَنَا بَرِيءٌ مِنْ كُلِّ مُسْلِمٍ يُقِيمُ بَيْنَ أَظْهُرِ الْمُشْرِكِينَ، قَالُوا: يَا رَسُولَ اللَّهِ لَا تَتَرَاءَى نَارُهُمَا» .

L40873 Abu Muhammad—may Allah have mercy on him—said: The hadith of al-Sha'bi from Jarir, which we previously mentioned, is transmitted through the chain of Mansur ibn 'Abd al-Rahman from al-Sha'bi and is mawqoof—

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: حَدِيثُ الشَّعْبِيِّ عَنْ جَرِيرٍ الَّذِي قَدَّمْنَا هُوَ مِنْ طَرِيقِ مَنْصُورِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الشَّعْبِيِّ مَوْقُوفٌ عَلَى جَرِيرٍ، فَلَا وَجْهَ لِلِاشْتِغَالِ بِهِ.

[60] **Hadith references (L40870):** Sunan Abi Dawud 4360; Mishkat al-Masabih 3549.

a narration attributed to a Companion, not the Prophet. Thus, there is no basis for preoccupation with it.

L40874–40876 This is transmitted through the chain of Mughīrah from al-Shaʿbī as an authenticated report, except it contains the statement: "Indeed the servant becomes a disbeliever by his remaining," which outwardly refers to the owned servant, since in conventional terms a free person is not described as an absconder. However, Abū Isḥāq's narration from al-Shaʿbī in this report clarifies that it applies to both the free person and the servant, explaining the specific absconding that causes disbelief - namely, absconding to the land of polytheism. The act of distancing applies to everyone, for all are servants of Allah Almighty, as we have transmitted through the chain of Muslim: I am Isḥāq ibn Ibrāhīm al-Ḥanẓalī, from Sufyān ibn ʿUyaynah. From al-ʿAlāʾ ibn ʿAbd al-Raḥmān, from his father, from Abū Hurayrah: I heard the Prophet - peace and blessings of Allah be upon him - say: "Allah the Exalted said: 'I have divided the Ṣalāh between Myself and My servant into two halves, and My servant shall have what he asked. So when the servant says: "All praise is due to Allah, Lord of the worlds," Allah says: "My servant has praised Me."'"[61]

L40877 The statement of the Exalted, "When the slave says" - He intended by this both the free person and the enslaved, without doubt.

L40878 The term "absconding" is also applied to a free person. Allah the Exalted said: {When he absconded to the laden ship} [As-Saffat: 140]. Thus, the Exalted informed about His free messenger Yunus ibn Matta—may Allah's peace and blessings be upon him—that he absconded when he left in anger about his Lord the Exalted's command.[62]

L40879 We have known that whoever departs from the abode of Islam to the abode of war has indeed fled from Allah the Exalted, from the Imam of the Muslims, and their community. His Hadith (peace and blessings be upon him) clarifies this: "He is free from responsibility toward any Muslim who settles among polytheists," and he (peace be upon him) only disavows a disbeliever. Allah

[61] **Qur'an references (L40874):** Qur'an 1:2 (Al-Fatihah).
[62] **Qur'an references (L40878):** Qur'an 37:140 (As-Saffat).

وَهُوَ مِنْ طَرِيقِ مُغِيرَةَ عَنْ الشَّعْبِيِّ مُسْنَدٌ، إلَّا أَنَّ فِيهِ: إنَّ الْعَبْدَ بِإِقَامَتِهِ يَكُونُ كَافِرًا، فَظَاهِرُهُ فِي الْمَمْلُوكِ، لِأَنَّ الْحُرَّ لَا يُوصَفُ بِإِبَاقٍ - فِي الْمَعْهُودِ - لَكِنَّ رِوَايَةَ أَبِي إِسْحَاقَ عَنْ الشَّعْبِيِّ فِي هَذَا الْخَبَرِ بَيَانُ أَنَّهُ فِي الْحُرِّ وَالْمَمْلُوكِ، وَبَيَانُ الْإِبَاقِ الَّذِي يَكْفُرُ بِهِ، وَهُوَ إبَاقُهُ إلَى أَرْضِ الشِّرْكِ، وَالْبُعْدُ وَاقِعٌ عَلَى كُلِّ أَحَدٍ، لِأَنَّ كُلَّ أَحَدٍ عَبْدُ اللَّهِ تَعَالَى: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا إِسْحَاقُ بْنُ إبْرَاهِيمَ الْحَنْظَلِيُّ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ " سَمِعْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «قَالَ اللَّهُ تَعَالَى: قَسَمْتُ الصَّلَاةَ بَيْنِي وَبَيْنَ عَبْدِي نِصْفَيْنِ، وَلِعَبْدِي مَا سَأَلَ، فَإِذَا قَالَ الْعَبْدُ: الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، قَالَ اللَّهُ: حَمِدَنِي عَبْدِي» .

فَقَوْلُهُ تَعَالَى (إذَا قَالَ الْعَبْدُ) عَنِيَ بِهِ الْحُرَّ وَالْمَمْلُوكَ - بِلَا شَكٍّ -.

وَالْإِبَاقُ مُطْلَقٌ عَلَى الْحُرِّ أَيْضًا قَالَ اللَّهُ تَعَالَى {إِذْ أَبَقَ إِلَى الْفُلْكِ الْمَشْحُونِ} [الصافات: ١٤٠] فَأَخْبَرَ تَعَالَى عَنْ رَسُولِهِ الْحُرِّ يُونُسَ بْنِ مَتَّى - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَبَقَ إذْ خَرَجَ مُغَاضِبًا لِأَمْرِ رَبِّهِ تَعَالَى.

وَقَدْ عَلِمْنَا أَنَّ مَنْ خَرَجَ عَنْ دَارِ الْإِسْلَامِ إلَى دَارِ الْحَرْبِ فَقَدْ أَبَقَ عَنْ اللَّهِ تَعَالَى، وَعَنْ إمَامِ الْمُسْلِمِينَ وَجَمَاعَتِهِمْ، وَيُبَيِّنُ هَذَا حَدِيثُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّهُ بَرِيءٌ مِنْ كُلِّ مُسْلِمٍ يُقِيمُ بَيْنَ أَظْهُرِ الْمُشْرِكِينَ» وَهُوَ - عَلَيْهِ السَّلَامُ - لَا يَبْرَأُ إلَّا مِنْ كَافِرٍ، قَالَ اللَّهُ تَعَالَى {وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [التوبة: ٧١] .

the Exalted said: {The believing men and believing women are allies of one another} [At-Tawbah: 71].[63]

L40880 Abu Muhammad—may God have mercy on him—said: Thus, it is established that whoever willingly enters the abode of disbelief and war while waging hostilities against adjacent Muslims, becomes an apostate through this act, subject to all apostasy rulings: the obligation to execute him when captured, the permissibility of confiscating his wealth, the dissolution of his marriage, and other such rulings. For the Messenger of God—peace and blessings be upon him—did not disavow any Muslim.

L40881 As for one who fled to the land of war due to injustice he feared, did not fight the Muslims, nor aided them against them, and found no one among the Muslims who would grant him protection, there is no blame upon him, for he is compelled by necessity and forced.

L40882 We have mentioned that Muhammad ibn Muslim ibn Shihab al-Zuhri was resolved that if Hisham ibn Abd al-Malik died, he would flee to Byzantine territory, because al-Walid ibn Yazid—who succeeded Hisham as ruler—had vowed to kill him if he could get hold of him. Whoever is in such a circumstance is excused.

L40883 Similarly, whoever among the Muslims resides in the lands of India, Sindh, China, the Turks, the lands of the Sudan, and the Byzantines, and is unable to depart from there due to a heavy burden, lack of wealth, physical weakness, or an impassable path, he is excused.

L40884–40885 If there is someone there who wages war against the Muslims and aids the disbelievers through service or writing, he is a disbeliever—even if he resides there solely to seek worldly benefits, being like a dhimmi to them, despite being capable of joining the Muslim community and their land. He is not far from disbelief, and we see no excuse for him—we ask Allah for well-being.

L40886 The same does not apply to those residing under the rule of extremist

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَصَحَّ بِهَذَا أَنَّ مَنْ لَحِقَ بِدَارِ الْكُفْرِ وَالْحَرْبِ مُخْتَارًا مُحَارِبًا لِمَنْ يَلِيهِ مِنْ الْمُسْلِمِينَ، فَهُوَ بِهَذَا الْفِعْلِ مُرْتَدٌّ لَهُ أَحْكَامُ الْمُرْتَدِّ كُلُّهَا: مِنْ وُجُوبِ الْقَتْلِ عَلَيْهِ، مَتَى قُدِرَ عَلَيْهِ، وَمِنْ إبَاحَةِ مَالِهِ، وَانْفِسَاخِ نِكَاحِهِ، وَغَيْرِ ذَلِكَ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَبْرَأْ مِنْ مُسْلِمٍ.

وَأَمَّا مَنْ فَرَّ إلَى أَرْضِ الْحَرْبِ لِظُلْمٍ خَافَهُ، وَلَمْ يُحَارِبْ الْمُسْلِمِينَ، وَلَا أَعَانَهُمْ عَلَيْهِمْ، وَلَمْ يَجِدْ فِي الْمُسْلِمِينَ مَنْ يُجِيرُهُ، فَهَذَا لَا شَيْءَ عَلَيْهِ، لِأَنَّهُ مُضْطَرٌّ مُكْرَهٌ.

وَقَدْ ذَكَرْنَا أَنَّ الزُّهْرِيَّ مُحَمَّدَ بْنَ مُسْلِمِ بْنِ شَهَابٍ: كَانَ عَازِمًا عَلَى أَنَّهُ إنْ مَاتَ هِشَامُ بْنُ عَبْدِ الْمَلِكِ لَحِقَ بِأَرْضِ الرُّومِ، لِأَنَّ الْوَلِيدَ بْنَ يَزِيدَ كَانَ نَذَرَ دَمَهُ إنْ قَدَرَ عَلَيْهِ، وَهُوَ كَانَ الْوَالِي بَعْدَ هِشَامٍ فَمَنْ كَانَ هَكَذَا فَهُوَ مَعْذُورٌ.

وَكَذَلِكَ: مَنْ سَكَنَ بِأَرْضِ الْهِنْدِ، وَالسِّنْدِ، وَالصِّينِ، وَالتُّرْكِ، وَالسُّودَانِ وَالرُّومِ، مِنْ الْمُسْلِمِينَ، فَإِنْ كَانَ لَا يَقْدِرُ عَلَى الْخُرُوجِ مِنْ هُنَالِكَ لِثِقَلِ ظَهْرٍ، أَوْ لِقِلَّةِ مَالٍ، أَوْ لِضَعْفِ جِسْمٍ، أَوْ لِامْتِنَاعِ طَرِيقٍ، فَهُوَ مَعْذُورٌ.

فَإِنْ كَانَ هُنَاكَ مُحَارِبًا لِلْمُسْلِمِينَ مُعِينًا لِلْكُفَّارِ بِخِدْمَةٍ، أَوْ كِتَابَةٍ: فَهُوَ كَافِرٌ - وَإِنْ كَانَ إنَّمَا يُقِيمُ هُنَالِكَ لِدُنْيَا يُصِيبُهَا، وَهُوَ كَالذِّمِّيِّ لَهُمْ، وَهُوَ قَادِرٌ عَلَى اللِّحَاقِ بِجَمْهَرَةِ الْمُسْلِمِينَ وَأَرْضِهِمْ، فَمَا يَبْعُدُ عَنْ الْكُفْرِ، وَمَا نَرَى لَهُ عُذْرًا - وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

[63] **Qur'an references (L40879):** Qur'an 9:71 (At-Tawbah).

disbelievers or those who emulate them, for in the land of Egypt, Qayrawan, and others, Islam remains outwardly manifest. Their rulers do not openly renounce Islam but rather claim affiliation to it, though in reality they are disbelievers.

وَلَيْسَ كَذَلِكَ: مَنْ سَكَنَ فِي طَاعَةِ أَهْلِ الْكُفْرِ مِنْ الْغَالِيَةِ، وَمَنْ جَرَى مَجْرَاهُمْ، لِأَنَّ أَرْضَ مِصْرَ وَالْقَيْرَوَانِ، وَغَيْرَهُمَا، فَالْإِسْلَامُ هُوَ الظَّاهِرُ، وَوُلَاتُهُمْ عَلَى كُلِّ ذَلِكَ لَا يُجَاهِرُونَ بِالْبَرَاءَةِ مِنْ الْإِسْلَامِ، بَلْ إلَى الْإِسْلَامِ يَنْتَمُونَ، وَإِنْ كَانُوا فِي حَقِيقَةِ أَمْرِهِمْ كُفَّارًا.

L40887 As for one who willingly resides in the land of the Qarmatians, he is unquestionably a disbeliever, for they openly profess disbelief and renounce Islam, and we seek refuge in Allah from that.

وَأَمَّا مَنْ سَكَنَ فِي أَرْضِ الْقَرَامِطَةِ مُخْتَارًا فَكَافِرٌ بِلَا شَكٍّ، لِأَنَّهُمْ مُعْلِنُونَ بِالْكُفْرِ وَتَرْكِ الْإِسْلَامِ - وَنَعُوذُ بِاَللَّهِ مِنْ ذَلِكَ.

L40888 As for one who resides in a land where certain heretical desires leading to disbelief become manifest, he is not a disbeliever, for the name of Islam is manifest there under all circumstances—such as monotheism, affirmation of the message of Muḥammad (peace and blessings of Allah be upon him), renunciation of every religion other than Islam, establishment of prayer, fasting in Ramaḍān, and all other divine laws that constitute Islam and faith—and all praise belongs to Allah, Lord of the worlds.

وَأَمَّا مَنْ سَكَنَ فِي بَلَدٍ تَظْهَرُ فِيهِ بَعْضُ الْأَهْوَاءِ الْمُخْرِجَةِ إلَى الْكُفْرِ، فَهُوَ لَيْسَ بِكَافِرٍ، لِأَنَّ اسْمَ الْإِسْلَامِ هُوَ الظَّاهِرُ هُنَالِكَ عَلَى كُلِّ حَالٍ، مِنْ التَّوْحِيدِ، وَالْإِقْرَارِ بِرِسَالَةِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْبَرَاءَةِ مِنْ كُلِّ دِينٍ غَيْرِ الْإِسْلَامِ وَإِقَامَةِ الصَّلَاةِ، وَصِيَامِ رَمَضَانَ، وَسَائِرِ الشَّرَائِعِ الَّتِي هِيَ الْإِسْلَامُ وَالْإِيمَانُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L40889 The statement of the Messenger of Allah—peace be upon him—"I disavow every Muslim who resides among the polytheists," clarifies what we have mentioned, and that he—peace be upon him—intended none but the abode of war by this. Otherwise, why would he—peace be upon him—appoint his agents over Khaibar when they were all Jews?

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَا بَرِيءٌ مِنْ كُلِّ مُسْلِمٍ أَقَامَ بَيْنَ أَظْهُرِ الْمُشْرِكِينَ» يُبَيِّنُ مَا قُلْنَاهُ، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - إنَّمَا عَنَى بِذَلِكَ دَارَ الْحَرْبِ، وَإِلَّا فَقَدْ اسْتَعْمَلَ - عَلَيْهِ السَّلَامُ - عُمَّالَهُ عَلَى خَيْبَرَ، وَهُمْ كُلُّهُمْ يَهُودُ.

L40890 When the People of the Dhimma are in their cities where others do not mix with them, the one residing among them—whether to exercise authority over them or for trade—is not called a disbeliever or a wrongdoer. Rather, he is a virtuous Muslim, and their land is a domain of Islam, not a domain of polytheism. This is because the domain is ascribed to the dominant authority over it, the ruler within it, and its owner.

وَإِذَا كَانَ أَهْلُ الذِّمَّةِ فِي مَدَائِنِهِمْ لَا يُمَازِجُهُمْ غَيْرُهُمْ فَلَا يُسَمَّى السَّاكِنُ فِيهِمْ - لِإِمَارَةٍ عَلَيْهِمْ، أَوْ لِتِجَارَةٍ - بَيْنَهُمْ: كَافِرًا، وَلَا مُسِيئًا، بَلْ هُوَ مُسْلِمٌ حَسَنٌ، وَدَارُهُمْ دَارُ إسْلَامٍ، لَا دَارُ شِرْكٍ، لِأَنَّ الدَّارَ إنَّمَا تُنْسَبُ لِلْغَالِبِ عَلَيْهَا، وَالْحَاكِمُ فِيهَا، وَالْمَالِكُ لَهَا.

L40891 If a militant disbeliever were to dominate a territory among the domains of Islam, allowing the Muslims within it to retain their status under his rule—while he is the ruler over it, exercising sole and unrestricted control over its governance, and openly professing a religion other than Islam—then all

who aid him and remain with him would apostatize by doing so, even if he professes to be Muslim, due to the rationale we have elaborated.

L40892–40894 As for the one from among the Muslims who are of the frontier people whose protective zeal drove him to seek assistance from the polytheists... Regarding the Ḥarbīs, he permitted them to kill any Muslim who opposed him, seize their wealth, or take them captive. If his faction prevails and the disbelievers act as his followers, he is doomed to perish in extreme corruption yet does not thereby become a disbeliever, for he has not committed any act necessitating disbelief per the Quran or consensus. But if the disbelievers' rule governs him, he becomes a disbeliever thereby, as previously established. If both sides are equally matched with neither ruling over the other, we do not deem him a disbeliever in this case—and Allah knows best. The true disbeliever from whom the Messenger of Allah—peace and blessings be upon him and his household—dissociated himself is one who resides among the polytheists. And success is from Allah, the Exalted.

L40895 **The Juristic Issue of Defining the Dissemblers (Munāfiqūn) and Apostates (Murtaddūn).**

L40896 2203 – Issue: Who are the hypocrites and apostates? Some said: The Messenger of God—peace and blessings be upon him—knew the hypocrites and recognized them as apostates who disbelieved after professing Islam. A man confronted him under the custom of tajwīr (protection), and he allocated shares not for God's sake—a valid apostasy—yet the Prophet did not kill him.

L40897 They said: Thus, it is established that there is no prescribed killing for an apostate. For if killing were obligatory, the Messenger of Allah - peace and blessings of Allah be upon him - would have carried it out upon the hypocrites who were apostates, concerning whom Allah the Exalted said:

وَلَوْ أَنَّ كَافِرًا مُجَاهِدًا غَلَبَ عَلَى دَارٍ مِنْ دُورِ الْإِسْلَامِ، وَأَقَرَّ الْمُسْلِمِينَ بِهَا عَلَى حَالِهِمْ، إلَّا أَنَّهُ هُوَ الْمَالِكُ لَهَا، الْمُنْفَرِدُ بِنَفْسِهِ فِي ضَبْطِهَا، وَهُوَ مُعْلِنٌ بِدِينٍ غَيْرِ الْإِسْلَامِ لَكَفَرَ بِالْبَقَاءِ مَعَهُ كُلُّ مَنْ عَاوَنَهُ، وَأَقَامَ مَعَهُ - وَإِنْ ادَّعَى أَنَّهُ مُسْلِمٌ - لِمَا ذَكَرْنَا.

وَأَمَّا مَنْ حَمَلَتْهُ الْحَمِيَّةُ مِنْ أَهْلِ الثَّغْرِ مِنْ الْمُسْلِمِينَ فَاسْتَعَانَ بِالْمُشْرِكِينَ الْحَرْبِيِّينَ، وَأَطْلَقَ أَيْدِيَهُمْ عَلَى قَتْلِ مَنْ خَالَفَهُ مِنْ الْمُسْلِمِينَ، أَوْ عَلَى أَخْذِ أَمْوَالِهِمْ، أَوْ سَبْيِهِمْ، فَإِنْ كَانَتْ يَدُهُ هِيَ الْغَالِبَةُ وَكَانَ الْكُفَّارُ لَهُ كَأَتْبَاعٍ، فَهُوَ هَالِكٌ فِي غَايَةِ الْفُسُوقِ، وَلَا يَكُونُ بِذَلِكَ كَافِرًا، لِأَنَّهُ لَمْ يَأْتِ شَيْئًا أَوْجَبَ بِهِ عَلَيْهِ كُفْرًا: قُرْآنٌ أَوْ إجْمَاعٌ، وَإِنْ كَانَ حُكْمُ الْكُفَّارِ جَارِيًا عَلَيْهِ فَهُوَ بِذَلِكَ كَافِرٌ عَلَى مَا ذَكَرْنَا، فَإِنْ كَانَا مُتَسَاوِيَيْنِ لَا يَجْرِي حُكْمُ أَحَدِهِمَا عَلَى الْآخَرِ فَمَا نَرَاهُ بِذَلِكَ كَافِرًا - وَاَللَّهُ أَعْلَمُ - وَإِنَّمَا الْكَافِرُ الَّذِي بَرِئَ مِنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - هُوَ الْمُقِيمُ بَيْنَ أَظْهُرِ الْمُشْرِكِينَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة التَّعْرِيف بالمنافقين والمرتدين]

٢٢٠٣ - مَسْأَلَةٌ: مَنْ الْمُنَافِقِينَ، وَالْمُرْتَدِّينَ؟ قَالَ قَوْمٌ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ عَرَفَ الْمُنَافِقِينَ، وَعَرَفَ أَنَّهُمْ مُرْتَدُّونَ كَفَرُوا بَعْدَ إسْلَامِهِمْ - وَوَاجَهَهُ رَجُلٌ بِالتَّجْوِيرِ، وَأَنَّهُ يُقَسِّمُ قِسْمَةً لَا يُرَادُ بِهَا وَجْهُ اللَّهِ - وَهَذِهِ رِدَّةٌ صَحِيحَةٌ فَلَمْ يَقْتُلْهُ.

قَالُوا: فَصَحَّ أَنْ لَا قَتْلَ عَلَى مُرْتَدٍّ، وَلَوْ كَانَ عَلَيْهِ قَتْلٌ لَأَنْفَذَ ذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمُنَافِقِينَ الْمُرْتَدِّينَ الَّذِينَ قَالَ اللَّهُ تَعَالَى فِيهِمْ {إذَا جَاءَكَ الْمُنَافِقُونَ} [المنافقون: ١] إلَى قَوْله تَعَالَى {فَهُمْ لا يَفْقَهُونَ} [التوبة: ٨٧] .

{When the hypocrites come to you} [Al-Munāfiqūn: 1] to His words: {so they do not comprehend} [At-Tawbah: 87].[64]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: هَذَا كُلُّ مَا احْتَجُّوا بِهِ، وَنَحْنُ - إنْ شَاءَ اللَّهُ تَعَالَى - ذَاكِرُونَ كُلَّ آيَةٍ تَعَلَّقَ بِهَا مُتَعَلِّقٌ فِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَرَّفَ الْمُنَافِقِينَ بِأَعْيَانِهِمْ، وَمُبِينُونَ - بِعَوْنِ اللَّهِ تَعَالَى وَتَأْيِيدِهِ - أَنَّهُمْ قِسْمَانِ: قِسْمٌ - لَمْ يُعَرِّفْهُمْ قَطُّ - عَلَيْهِ السَّلَامُ -.

L40898 Abū Muḥammad—may Allāh have mercy on him—said: This is all the evidence they have cited. We—by the will of Allāh the Exalted—will enumerate every verse cited by those who argue that the Messenger of Allāh—peace and blessings be upon him—identified hypocrites by their persons. With Allāh's aid and support, we clarify that they comprise two categories: a category whom he—peace and blessings be upon him—never identified at all.

وَقِسْمٌ آخَرُ - افْتَضَحُوا، فَعَرَّفَهُمْ فَلَاذُوا بِالتَّوْبَةِ، وَلَمْ يُعَرِّفْهُمْ - عَلَيْهِ السَّلَامُ - أَنَّهُمْ كَاذِبُونَ أَوْ صَادِقُونَ فِي تَوْبَتِهِمْ فَقَطْ.

L40899 And another group—they were disgraced, so he made them aware, and they resorted to repentance. Yet he (peace be upon him) did not inform them that they were lying or truthful in their repentance only.

فَإِذَا بَيَّنَّا هَذَا - بِعَوْنِ اللَّهِ تَعَالَى - بَطَلَ قَوْلُ مَنْ احْتَجَّ بِأَمْرِ الْمُنَافِقِينَ فِي أَنَّهُ لَا قَتْلَ عَلَى مُرْتَدٍّ، وَبَقِيَ قَوْلُ: مَنْ رَأَى الْقَتْلَ بِالتَّوْبَةِ.

L40900 When we have clarified this—with the help of God, the Exalted—the argument of those who cite the matter of the hypocrites to claim that there is no execution for apostates is invalidated, and remains the view of those who hold that killing is warranted despite repentance.

وَأَمَّا إنَّهُ لَا يَسْقُطُ بِالتَّوْبَةِ، وَالْبُرْهَانُ عَلَى الصَّحِيحِ مِنْ ذَلِكَ، فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40901 As for it not being nullified by repentance, and the evidence supporting the correct opinion regarding that, we say. And with Allah, the Exalted, is success.

قَالَ اللَّهُ تَعَالَى: {وَمِنَ النَّاسِ مَنْ يَقُولُ آمَنَّا بِاللَّهِ وَبِالْيَوْمِ الآخِرِ} [البقرة: ٨] إلَى قَوْله تَعَالَى {فَمَا رَبِحَتْ تِجَارَتُهُمْ وَمَا كَانُوا مُهْتَدِينَ} [البقرة: ١٦] .

L40902–40903 Allah, the Exalted, said: "And among the people are those who say, 'We believe in Allah and the Last Day'" [Al-Baqarah: 8] up to His saying, the Exalted: "So their trade has brought no profit, nor have they been guided" [Al-Baqarah: 16].[65]

فَهَذِهِ أَوَّلُ آيَةٍ فِي الْقُرْآنِ فِيهَا ذِكْرُ الْمُنَافِقِينَ، وَلَيْسَ فِي شَيْءٍ مِنْهَا دَلِيلٌ عَلَى أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَرَفَهُمْ، وَلَا عَلَى أَنَّهُ لَمْ يَعْرِفْهُمْ، فَلَا مُتَعَلَّقَ فِيهَا لِأَحَدٍ مِنْ أَهْلِ الْقَوْلَيْنِ الْمَذْكُورَيْنِ.

L40904 This is the first verse in the Qur'an that mentions the hypocrites. There is no indication in any part of it that the Messenger of Allah (PBUH) recognized them, nor that he failed to recognize them. Therefore, this verse provides no grounds for either of the two aforementioned positions.

[64] **Qur'an references (L40897):** Qur'an 63:1 (Al-Munafiqun); Qur'an 9:87 (At-Tawbah); Qur'an 63:3 (Al-Munafiqun).

[65] **Qur'an references (L40903):** Qur'an 2:8 (Al-Baqarah); Qur'an 2:16 (Al-Baqarah).

L40905 Allah the Exalted said: {O you who believe, do not take close allies from outside your faith} [Āl ʿImrān: 118] until His saying: {Indeed, Allah fully comprehends all they do} [Āl ʿImrān: 120]. This verse provides proof that these people can be known, for Allah the Exalted informed us they are outsiders through His words {from outside your faith} [Āl ʿImrān: 118]. Since they are outsiders, they could be Jews who are exposed.[66]

قَالَ اللَّهُ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تَتَّخِذُوا بِطَانَةً مِنْ دُونِكُمْ} [آل عمران: ١١٨] إِلَى قَوْله تَعَالَى: {إِنَّ اللَّهَ بِمَا يَعْمَلُونَ مُحِيطٌ} [آل عمران: ١٢٠] فَفِي هَذِهِ الْآيَةِ دَلِيلٌ عَلَى أَنَّ هَؤُلَاءِ الْقَوْمَ مُمْكِنٌ أَنْ يَكُونُوا مَعْرُوفِينَ، لِأَنَّ اللَّهَ تَعَالَى أَخْبَرَنَا أَنَّهُمْ مِنْ غَيْرِنَا بِقَوْلِهِ تَعَالَى {مِنْ دُونِكُمْ} [آل عمران: ١١٨] فَإِذْ هُمْ مِنْ غَيْرِنَا فَمُمْكِنٌ أَنْ يَكُونُوا مِنْ الْيَهُودِ مَكْشُوفِينَ.

L40906 It is possible that His saying, Exalted is He, about them—that they said, *"We have believed"* [Quran 2:14]—refers to what they had.[67]

وَمُمْكِنٌ أَنْ يَكُونَ قَوْله تَعَالَى عَنْهُمْ أَنَّهُمْ {قَالُوا آمَنَّا} [البقرة: ١٤] أَيْ بِمَا عِنْدَهُمْ.

L40907 It may indeed also be possible that they are among the hypocrites who outwardly show adherence to Islam.

وَقَدْ يُمْكِنُ أَيْضًا: أَنْ يَكُونُوا مِنْ الْمُنَافِقِينَ الْمُظْهِرِينَ لِلْإِسْلَامِ.

L40908 It is possible that Allah the Exalted commanded us not to take them as confidants if He made us aware of this from them, and the first opinion is clearer and stronger in accordance with the apparent meaning of the verse.

وَمُمْكِنُ أَنَّ اللَّهَ تَعَالَى أَمَرَنَا أَنْ لَا نَتَّخِذَهُمْ بِطَانَةً إذَا أَطْلَعَنَا مِنْهُمْ عَلَى هَذَا، وَالْوَجْهُ الْأَوَّلُ أَظْهَرُ وَأَقْوَى لِظَاهِرِ الْآيَةِ.

L40909 And since both are possible, there is no basis in this verse for those who claim that the Messenger of Allah—may Allah bless him and grant him peace—knew the hypocrites by their identities and knew that their inner selves were hypocrisy.

وَإِذْ كِلْتَاهُمَا مُمْكِنٌ فَلَا مُتَعَلَّقَ فِي هَذِهِ الْآيَةِ لِمَنْ ذَهَبَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَعْرِفُ الْمُنَافِقِينَ بِأَعْيَانِهِمْ، وَيَدْرِي أَنَّ بَاطِنَهُمْ النِّفَاقُ.

L40910 And the Exalted said: "Have you not seen those who claim that they..." [Quran 4:60] until His statement: "...until they seek your judgment in what they dispute..." [Quran 4:65].[68]

وَقَالَ تَعَالَى {أَلَمْ تَرَ إِلَى الَّذِينَ يَزْعُمُونَ أَنَّهُمْ} [النساء: ٦٠] إلَى قَوْله تَعَالَى: {حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ} [النساء: ٦٥] .

L40911 It has been authentically reported from the Messenger of Allah—peace and blessings of Allah be upon him—: "Three traits: whoever possesses them is a pure hypocrite"—as recorded in *Sahih Muslim* and others—"When he speaks, he lies; when he promises, he breaks it; and when entrusted, he betrays—even if he fasts, prays, and falsely claims to be a Muslim."

وَصَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «ثَلَاثٌ مَنْ كُنَّ فِيهِ كَانَ مُنَافِقًا خَالِصًا» فِي كِتَابِ مُسْلِمٍ وَغَيْرِهِ «إذَا حَدَّثَ كَذَبَ وَإِذَا وَعَدَ أَخْلَفَ وَإِذَا اُؤْتُمِنَ خَانَ وَإِنْ صَامَ وَصَلَّى وَزَعَمَ أَنَّهُ مُسْلِمٌ» .

[66] **Qur'an references (L40905):** Qur'an 3:118 (Ali 'Imran); Qur'an 3:120 (Ali 'Imran).
[67] **Qur'an references (L40906):** Qur'an 2:14 (Al-Baqarah).
[68] **Qur'an references (L40910):** Qur'an 4:60 (An-Nisa); Qur'an 4:65 (An-Nisa).

وَمِنْ طَرِيقِ مُسْلِمٍ أَيْضًا - نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ قَالَا جَمِيعًا: نا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ نا الْأَعْمَشُ عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةَ عَنْ مَسْرُوقٍ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَرْبَعٌ مَنْ كُنَّ فِيهِ كَانَ مُنَافِقًا خَالِصًا وَمَنْ كَانَتْ فِيهِ خَلَّةٌ مِنْهُنَّ كَانَتْ فِيهِ خَلَّةٌ مِنْ نِفَاقٍ حَتَّى يَدَعَهَا: إِذَا حَدَّثَ كَذَبَ، إِذَا وَعَدَ أَخْلَفَ، إِذَا عَاهَدَ غَدَرَ، وَإِذَا خَاصَمَ فَجَرَ» .

L40912–40914 And from the chain of Muslim as well: Abu Bakr ibn Abi Shaybah and Muhammad ibn Abdullah ibn Numayr both narrated to us, saying altogether: Abdullah ibn Numayr narrated to us, Al-Aʿmash narrated to us, from Abdullah ibn Murrah, from Masruq, from Abdullah ibn Amr ibn Al-ʿAs, who said: The Messenger of Allah (peace and blessings be upon him) said, “Four: whoever possesses them is a hypocrite.” “Purely, whoever has within him a trait from these carries a trait of hypocrisy until he renounces it: when he narrates, he lies; when he promises, he breaks it; when he covenants, he betrays; and when he disputes, he acts immorally.”

فَقَدْ صَحَّ أَنَّ هَاهُنَا نِفَاقًا لَا يَكُونُ صَاحِبُهُ كَافِرًا، وَنِفَاقًا يَكُونُ صَاحِبُهُ كَافِرًا، فَيُمْكِنُ أَنْ يَكُونَ هَؤُلَاءِ الَّذِينَ أَرَادُوا التَّحَاكُمَ إِلَى الطَّاغُوتِ لَا إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُظْهِرِينَ لِطَاعَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عُصَاةً بِطَلَبِ الرُّجُوعِ فِي الْحُكْمِ إِلَى غَيْرِهِ مُعْتَقِدِينَ لِصِحَّةِ ذَلِكَ، لَكِنْ رَغْبَةً فِي اتِّبَاعِ الْهَوَى، فَلَمْ يَكُونُوا بِذَلِكَ كُفَّارًا بَلْ عُصَاةً، فَنَحْنُ نَجِدُ هَذَا عِيَانًا عِنْدَنَا، فَقَدْ نَدْعُو نَحْنُ عِنْدَ الْحَاكِمِ إِلَى الْقُرْآنِ وَإِلَى سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الثَّابِتِ عَنْهُمْ بِإِقْرَارِهِمْ فَيَأْبَوْنَ ذَلِكَ وَيَرْضَوْنَ بِرَأْيِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، هَذَا أَمْرٌ لَا يُنْكِرُهُ أَحَدٌ، فَلَا يَكُونُونَ بِذَلِكَ كُفَّارًا، فَقَدْ يَكُونُ أُولَئِكَ هَكَذَا حَتَّى إِذَا بَيَّنَ اللَّهُ تَعَالَى أَنَّهُمْ لَا يُؤْمِنُونَ حَتَّى يُحَكِّمُوا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَا شَجَرَ بَيْنَهُمْ، وَجَبَ أَنَّ مَنْ وَقَفَ عَلَى هَذَا قَدِيمًا وَحَدِيثًا، وَإِلَى يَوْمِ الْقِيَامَةِ فَأَبَى وَعَنَدَ فَهُوَ كَافِرٌ؟ وَلَيْسَ فِي الْآيَةِ: أَنَّ أُولَئِكَ عَنَدُوا بَعْدَ نُزُولِ هَذِهِ الْآيَةِ، فَإِذْ لَا بَيَانَ فِيهَا فَلَا حُجَّةَ فِيهَا لِمَنْ يَقُولُ: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَرَفَهُمْ أَنَّهُمْ مُنَافِقُونَ وَأَقَرَّهُمْ.

L40915 It has been established that there exist here two types of hypocrisy: one whose perpetrator is not a disbeliever, and another whose perpetrator is a disbeliever. Thus, it is plausible that those who sought judgment from Taghut instead of the Prophet—peace be upon him—while outwardly displaying obedience to the Messenger of Allah—peace be upon him—were merely disobedient by seeking recourse in judgment to others, believing in its validity yet driven by desire to follow their whims. They did not thereby become disbelievers but remained disobedient. We witness this reality manifestly among us: when we stand before a judge, calling him to the Quran and the Sunnah of Allah’s Messenger—peace be upon him—as established through their own acknowledgment, they reject this and instead prefer the opinions of Abū Ḥanīfah, Mālik, and al-Shāfiʿī. This is an undeniable fact, yet they do not thereby become disbelievers. Thus, those [mentioned in the verse] might have been like this until Allah the Exalted clarified that they do not truly believe unless they refer their disputes to the Messenger of Allah—peace be upon him. It then becomes obligatory that whoever confronts this truth—whether in earlier times, recent times, or until the Day of Resurrection—yet refuses and persists in obstinacy is a disbeliever. The verse does not specify that those [hypocrites] persisted in obstinacy after its revelation. Since there is no explicit clarification within it, the verse cannot serve as proof for those who claim that the Messenger of Allah—peace be upon him—recognized them as hypocrites and confirmed them.

L40916 And He, the Exalted, said: {And they say, “Obedience,” but when they depart from you, a group of them secretly plotted by night} [An-Nisa: 81] up to

His saying, the Exalted: {and sufficient is Allah as a Sufficient Trustee} [An-Nisa: 81]. This contains no explicit text indicating that they were outwardly professing faith; rather, they may have been openly disbelieving, feigning obedience to maintain peace. Since there is no explicit text here, it provides no proof for those who claim that he (peace be upon him) knew them and was aware that their covenant was rooted in hypocrisy.[69]

L40917 And the Almighty said: {Why are you divided into two factions concerning the hypocrites?} [An-Nisa: 88] to His words: {As for those, We have granted you a manifest authority over them.} [An-Nisa: 91].[70]

L40918 It has been narrated to us through the chain of al-Bukhari: Abu al-Walid—al-Tayalisi—reported to us; Shu'bah reported to us from 'Adi ibn Thabit, who said: I heard 'Abdullah ibn Yazid narrating from Zayd ibn Thabit, who said: "When the Messenger of Allah (peace and blessings be upon him) set out for Uhud, some people who had accompanied him turned back. The companions of the Messenger of Allah (peace and blessings be upon him) split into two groups: one group saying, 'We fight them,' and the other group saying, 'We do not fight them.' Thereupon the verse was revealed: *What is the matter with you that you are divided into two groups concerning the hypocrites?* [Quran 4:88]." This is an authentic isnad, and Allah the Exalted called those people hypocrites.[71]

L40919–40921 As for the statement of the Most High in this verse, connected to that context: "They wish that you would disbelieve as they have disbelieved, so that you may become equal" (4:89). To His statement, the Exalted: "So Allah has not made for you any cause against them" [An-Nisa: 90], it could have been assumed that He meant those hypocrites by this, and this would have been the most apparent interpretation were it not for His words, the Exalted: "So do not take from among them allies until they emigrate in the cause of Allah" [An-Nisa: 89]. This utterly clarifies that it introduces

وَقَالَ تَعَالَى {وَيَقُولُونَ طَاعَةٌ فَإِذَا بَرَزُوا مِنْ عِنْدِكَ بَيَّتَ طَائِفَةٌ} [النساء: ٨١] إِلَى قَوْله تَعَالَى: {وَكِيلا} [النساء: ٨١] فَهَذَا لَيْسَ فِيهِ نَصٌّ عَلَى أَنَّهُمْ كَانُوا يُظْهِرُونَ الْإِيمَانَ، بَلْ لَعَلَّهُمْ كَانُوا كُفَّارًا مُعْلِنِينَ، وَكَانُوا يَلْتَزِمُونَ الطَّاعَةَ بِالْمُسَالَمَةِ، فَإِذْ لَا نَصَّ فِيهَا فَلَا حُجَّةَ فِيهَا لِمَنْ ادَّعَى أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يَعْرِفُهُمْ وَيَدْرِي أَنَّ عَقْدَهُمْ النِّفَاقَ.

وَقَالَ تَعَالَى {فَمَا لَكُمْ فِي الْمُنَافِقِينَ فِئَتَيْنِ} [النساء: ٨٨] إِلَى قَوْلِهِ: {وَأُولَئِكُمْ جَعَلْنَا لَكُمْ عَلَيْهِمْ سُلْطَانًا مُبِينًا} [النساء: ٩١] .

وَقَدْ رُوِّينَا عَنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو الْوَلِيدِ - هُوَ الطَّيَالِسِيُّ - نا شُعْبَةُ عَنْ عَدِيِّ بْنِ ثَابِتٍ قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ يَزِيدَ يُحَدِّثُ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: «لَمَّا خَرَجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى أُحُدٍ رَجَعَ نَاسٌ مِمَّنْ خَرَجَ مَعَهُ، وَكَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِرْقَتَيْنِ: فِرْقَةٌ تَقُولُ: نُقَاتِلُهُمْ، وَفِرْقَةٌ تَقُولُ: لَا نُقَاتِلُهُمْ، فَنَزَلَتْ {فَمَا لَكُمْ فِي الْمُنَافِقِينَ فِئَتَيْنِ} [النساء: ٨٨] » فَهَذَا إسْنَادٌ صَحِيحٌ، وَقَدْ سَمَّى اللَّهُ تَعَالَى أُولَئِكَ: مُنَافِقِينَ.

وَأَمَّا قَوْله تَعَالَى فِي هَذِهِ الْآيَةِ مُتَّصِلًا بِذَلِكَ {وَدُّوا لَوْ تَكْفُرُونَ كَمَا كَفَرُوا فَتَكُونُونَ سَوَاءً} [النساء: ٨٩] إلَى قَوْله تَعَالَى: {فَمَا جَعَلَ اللَّهُ لَكُمْ عَلَيْهِمْ سَبِيلا} [النساء: ٩٠] فَقَدْ كَانَ يُمْكِنُ أَنْ يُظَنَّ أَنَّهُ تَعَالَى عَنَى بِذَلِكَ أُولَئِكَ الْمُنَافِقِينَ، وَهُوَ كَانَ الْأَظْهَرَ لَوْلَا قَوْله تَعَالَى {فَلا تَتَّخِذُوا مِنْهُمْ أَوْلِيَاءَ حَتَّى يُهَاجِرُوا فِي سَبِيلِ اللَّهِ} [النساء: ٨٩] فَهَذَا يُوَضِّحُ غَايَةَ الْإِيضَاحِ أَنَّهُ ابْتِدَاءُ حُكْمٍ فِي قَوْمٍ آخَرِينَ غَيْرِ أُولَئِكَ الْمُنَافِقِينَ، لِأَنَّ أُولَئِكَ

[69] **Qur'an references (L40916):** Qur'an 4:81 (An-Nisa).
[70] **Qur'an references (L40917):** Qur'an 4:88 (An-Nisa); Qur'an 4:91 (An-Nisa).
[71] **Qur'an references (L40918):** Qur'an 4:88 (An-Nisa).

كَانُوا مِنْ سُكَّانِ الْمَدِينَةِ بِلَا شَكٍّ، وَلَيْسَ عَلَى سُكَّانِ الْمَدِينَةِ هِجْرَةٌ، بَلْ الْهِجْرَةُ كَانَتْ إلَى دَارِهِمْ.

فَإِذَا كَانَ ذَلِكَ كَذَلِكَ فَحُكْمُ الْآيَةِ كُلِّهَا أَنَّهَا فِي قَوْمٍ كُفَّارٍ لَمْ يُؤْمِنُوا بَعْدُ، وَادَّعُوا أَنَّهُمْ آمَنُوا وَلَمْ يُهَاجِرُوا، وَكَانَ الْحُكْمُ حِينَئِذٍ: أَنَّ مَنْ آمَنَ وَلَمْ يُهَاجِرْ لَمْ يَنْتَفِعْ بِإِيمَانِهِ، وَكَانَ كَافِرًا كَسَائِرِ الْكُفَّارِ وَلَا فَرْقَ، حَتَّى يُهَاجِرَ، إلَّا مَنْ أُبِيحَ لَهُ سُكْنَى بَلَدِهِ، كَمَنْ بِأَرْضِ الْحَبَشَةِ، وَالْبَحْرَيْنِ، وَسَائِرِ مَنْ أُبِيحَ لَهُ سُكْنَى أَرْضِهِ، إلَّا الْمُسْتَضْعَفِينَ، قَالَ اللَّهُ تَعَالَى {وَالَّذِينَ آمَنُوا وَلَمْ يُهَاجِرُوا مَا لَكُمْ مِنْ وَلَايَتِهِمْ مِنْ شَيْءٍ حَتَّى يُهَاجِرُوا} [الأنفال: ٧٢] .

وَقَدْ قَالَ تَعَالَى {وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [التوبة: ٧١] فَقَدْ قَطَعَ اللَّهُ تَعَالَى الْوِلَايَةَ بَيْنَنَا وَبَيْنَهُمْ، فَلَيْسُوا مُؤْمِنِينَ.

وَقَالَ تَعَالَى {إنَّ الَّذِينَ تَوَفَّاهُمُ الْمَلَائِكَةُ ظَالِمِي أَنْفُسِهِمْ قَالُوا فِيمَ كُنْتُمْ} [النساء: ٩٧] إلَى قَوْلِهِ {إلا الْمُسْتَضْعَفِينَ} [النساء: ٩٨] الْآيَةَ.

فَإِنْ قَالَ قَائِلٌ: مَعْنَى {حَتَّى يُهَاجِرُوا فِي سَبِيلِ اللَّهِ} [النساء: ٨٩] أَيْ حَتَّى يُجَاهِدُوا مَعَكُمْ، بِخِلَافِ فِعْلِهِمْ حِينَ انْصَرَفُوا عَنْ أُحُدٍ وَأَرَادُوا أَنْ يَجْعَلُوا الْآيَةَ كُلَّهَا فِي الْمُنَافِقِينَ الْمُنْصَرِفِينَ عَنْ أُحُدٍ؟ قِيلَ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: هَذَا مُمْكِنٌ، وَلَكِنْ قَدْ قَالَ تَعَالَى {فَخُذُوهُمْ وَاقْتُلُوهُمْ حَيْثُ وَجَدْتُمُوهُمْ} [النساء: ٨٩] فَأَخْبِرُونَا هَلْ فَعَلَ ذَلِكَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - فَقَتَلَ الرَّاجِعِينَ عَنْ أُحُدٍ حَيْثُ وَجَدَهُمْ؟ وَهَلْ أَخَذَهُمْ أَمْ لَا؟ فَإِنْ

a ruling concerning another group distinct from those hypocrites, for those hypocrites were unquestionably residents of Madinah, and no emigration is required of Madinah's inhabitants - rather, emigration was directed toward their own abode [Madinah].[72]

L40922 If that is the case, the ruling of the entire verse indicates it concerns people who were disbelievers, had not yet believed, claimed they believed, and did not emigrate. The ruling at that time was: whoever believed but did not emigrate would derive no benefit from his faith and would be considered a disbeliever like all other disbelievers - no different from them - until he emigrated, except those permitted to remain in their land such as those in the land of Abyssinia, Bahrain, and all others granted this permission, except the oppressed. Allah the Exalted said: "As for those who believed but did not emigrate, you owe them no guardianship until they emigrate" [Al-Anfāl: 72].[73]

L40923 Allah the Exalted has said, *"The believing men and believing women are allies of one another"* [At-Tawbah: 71]. Thereby, Allah the Exalted has severed the bond of allegiance between us and them, for they are not believers.[74]

L40924 And He, the Exalted, said: "As for those whose souls the angels seize while they are wronging themselves—[the angels] will ask, 'What was your circumstance?'" [An-Nisa 4:97] up to His words: "except the vulnerable" [An-Nisa 4:98], thus completing the verse.[75]

L40925 If someone says: The meaning of {until they emigrate in the cause of Allah} [4:89] is that they should strive alongside you, contrary to their action when they turned back from Uhud, intending to attribute the entire verse exclusively to the hypocrites who deserted during Uhud? It is said to him—and by Allah, the Exalted, success is His alone—: This is conceivable, but Allah the Exalted has stated {capture them and kill them wherever you find them} [4:89]. Then inform us: Did the Prophet—peace be upon him—kill

[72] **Qur'an references (L40919):** Qur'an 4:89 (An-Nisa); Qur'an 4:90 (An-Nisa).
[73] **Qur'an references (L40922):** Qur'an 8:72 (Al-Anfal).
[74] **Qur'an references (L40923):** Qur'an 9:71 (At-Tawbah).
[75] **Qur'an references (L40924):** Qur'an 4:97 (An-Nisa); Qur'an 4:98 (An-Nisa).

those who turned back from Uhud wherever he encountered them? Did he capture them or not? If they claim he did so, they utter a falsehood unmistakable to all. No Muslim doubts that he—peace be upon him—killed none of them nor renounced their pledge toward any of them.[76]

L40926 And if they say: He—peace be upon him—did not do that, nor did the believers do so?

L40927–40928 They were told: "You have spoken the truth, and it is not permissible for any Muslim to believe that the Prophet—peace be upon him—disobeyed the command of his Lord. The Almighty commanded him that if they turned away, he should kill them wherever he found them, yet he did not do so. This constitutes apostasy on the part of anyone who believes it without doubt."

L40929 If they say: "They did not turn away but rather repented, returned, and fought?" It is said to them: "The ruling of hypocrisy has undoubtedly been lifted from them, and they have undoubtedly attained the judgment of openly professing [faith] per the verse's outward meaning. Thus, their reliance on this verse is entirely invalidated regarding the claim that he—peace be upon him—knew the hypocrites. However, in God's words: {Except those who join a people with whom you have a treaty, or those who come to you with their hearts constrained} [An-Nisa: 90] to His words: {Then Allah has not given you a way against them} [An-Nisa: 90], there is a clear explanation that these people were never from the Aws or the Khazraj, for they had no community hostile to the Prophet—peace be upon him—nor were they ever linked to a people bound by a covenant with the Prophet—peace be upon him—through an established treaty. This is in addition to God's statement: {But if they withdraw from you and do not fight you} [An-Nisa: 90] to His words: {a way} [Al Imran: 97]. Indeed, this clearly demonstrates that they were neither from the Ansar nor the hypocrites, but rather disbelievers who openly professed their disbelief."[77]

L40930 Unless someone argues: Indeed, the statement of the Almighty, *"Except

قَالُوا: قَدْ فَعَلَ ذَلِكَ، كَذَبُوا كَذِبًا لَا يَخْفَى عَلَى أَحَدٍ، وَمَا عِنْدَ مُسْلِمٍ شَكٌّ فِي أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَقْتُلْ مِنْهُمْ أَحَدًا وَلَا نَبَذَ الْعَهْدَ إِلَى أَحَدٍ مِنْهُمْ.

وَإِنْ قَالُوا: لَمْ يَفْعَلْ ذَلِكَ - عَلَيْهِ السَّلَامُ - وَلَا الْمُؤْمِنُونَ؟

قِيلَ لَهُمْ: صَدَقْتُمْ، وَلَا يَحِلُّ لِمُسْلِمٍ أَنْ يَظُنَّ أَنَّ النَّبِيَّ - عَلَيْهِ السَّلَامُ - خَالَفَ أَمْرَ رَبِّهِ، فَأَمَرَهُ تَعَالَى إِنْ تَوَلَّوْا بِقَتْلِهِمْ، حَيْثُ وَجَدَهُمْ، فَلَمْ يَفْعَلْ، وَهَذَا كُفْرٌ مِمَّنْ ظَنَّهُ بِلَا شَكٍّ.

فَإِنْ قَالُوا: لَمْ يَتَوَلَّوْا بَلْ تَابُوا وَرَجَعُوا وَجَاهَدُوا؟ قِيلَ لَهُمْ: فَقَدْ سَقَطَ حُكْمُ النِّفَاقِ عَنْهُمْ - بِلَا شَكٍّ - وَحَصَلَ لَهُمْ حُكْمُ الْإِعْلَامِ بِظَاهِرِ الْآيَةِ - بِلَا شَكٍّ - فَقَدْ بَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْآيَةِ جُمْلَةً فِي أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يَعْرِفُ الْمُنَافِقِينَ. وَلَكِنْ فِي قَوْلِهِ تَعَالَى {إِلا الَّذِينَ يَصِلُونَ إِلَى قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ أَوْ جَاءُوكُمْ حَصِرَتْ صُدُورُهُمْ} [النساء: ٩٠] إِلَى قَوْلِهِ تَعَالَى: {فَمَا جَعَلَ اللَّهُ لَكُمْ عَلَيْهِمْ سَبِيلا} [النساء: ٩٠] بَيَانٌ جَلِيٌّ بِأَنَّ هَؤُلَاءِ لَمْ يَكُونُوا قَطُّ مِنَ الْأَوْسِ وَلَا مِنَ الْخَزْرَجِ، لِأَنَّهُمْ لَمْ يَكُنْ لَهُمْ قَوْمٌ مُحَارِبُونَ لِلنَّبِيِّ - عَلَيْهِ السَّلَامُ - وَلَا نُسِبُوا قَطُّ إِلَى قَوْمٍ مُعَاهِدِينَ النَّبِيَّ - عَلَيْهِ السَّلَامُ - بِمِيثَاقٍ مَعْقُودٍ، هَذَا مَعَ قَوْلِهِ تَعَالَى {فَإِنِ اعْتَزَلُوكُمْ فَلَمْ يُقَاتِلُوكُمْ} [النساء: ٩٠] إِلَى قَوْلِهِ تَعَالَى {سَبِيلا} [آل عمران: ٩٧] فَإِنَّ هَذَا بَيَانٌ جَلِيٌّ عَلَى أَنَّهُمْ مِنْ غَيْرِ الْأَنْصَارِ، وَمِنْ غَيْرِ الْمُنَافِقِينَ، لَكِنْ مِنَ الْكُفَّارِ الْمُجَاهِرِينَ بِالْكُفْرِ.

[76] **Qur'an references (L40925):** Qur'an 4:89 (An-Nisa).
[77] **Qur'an references (L40929):** Qur'an 4:90 (An-Nisa); Qur'an 3:97 (Ali 'Imran).

those who join a people with whom you have a covenant”* [4:90], constitutes a disconnected exception from the preceding mention of *“others”* [4:91]. In any case, the legal ruling of hypocrisy has ceased to apply to those individuals if that is the case.[78]

L40931 If it is said: If the matter is as you claim—that in Allah’s words {They wish you would disbelieve as they disbelieved, so you may become equal} [An-Nisā’:89] refers to a group of disbelievers other than those—does it suffice us that the Exalted has labeled those who revert [to disbelief] as “hypocrites,” thus making them known as such? It was said to him—and with Allah, the Exalted, lies all success: We have indeed stated that hypocrisy is of two distinct types: one applies to those who outwardly manifest disbelief while inwardly concealing faith, and another to those who display outwardly what contradicts their inward state in matters unrelated to religion, without thereby becoming disbelievers. It was once said to Ibn ‘Umar: “When we enter the presence of the ruler and he issues a judgment we deem unjust, should we remain silent?” He replied: “We, the companions of Allah’s Messenger—peace and blessings be upon him—count this as hypocrisy. We do not know what you count it as.” We previously mentioned the saying of Allah’s Messenger: “Three traits—whoever possesses them is a pure hypocrite, even if he prays, fasts, and claims ’I am Muslim.’”[79]

L40932–40933 Since the matter is as such, it is not permissible for us to conclusively judge them with disbelief—which is the antithesis of Islam—except by explicit textual evidence. However, we do declare conclusively regarding them what Allah the Most High has decreed: the designation of hypocrisy, deviation, reversion to misguidance, and opposition to divine guidance. We neither add nor transgress beyond what Allah the Most High has textually established through our own opinions. Success is attained through Allah the Most High.

L40934 And Allah, the Most High, said: “Announce to the hypocrites that they will

إِلَّا أَنْ يَقُولَ قَائِلٌ: إِنَّ قَوْله تَعَالَى {إِلا الَّذِينَ يَصِلُونَ إِلَى قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ} [النساء: ٩٠] اسْتِثْنَاءٌ مُنْقَطِعٌ مِمَّا قَبْلَهُ فِي قَوْلِ {آخَرِينَ} [النساء: ٩١] وَعَلَى كُلِّ حَالٍ فَقَدْ سَقَطَ حُكْمُ النِّفَاقِ عَلَى أُولَئِكَ إنْ كَانَ هَكَذَا.

فَإِنْ قِيلَ: فَإِنْ كَانَ الْأَمْرُ كَمَا قُلْتُمْ أَنَّ فِي قَوْله تَعَالَى {وَدُّوا لَوْ تَكْفُرُونَ كَمَا كَفَرُوا فَتَكُونُونَ سَوَاءً} [النساء: ٨٩] أَنَّهُ فِي قَوْمٍ مِنْ الْكُفَّارِ غَيْرِ أُولَئِكَ، فَحَسْبُنَا أَنَّهُ تَعَالَى قَدْ سَمَّى أُولَئِكَ الرَّاجِعِينَ " مُنَافِقِينَ " فَصَارُوا مَعْرُوفِينَ؟ قِيلَ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: وَقَدْ قُلْنَا إنَّ النِّفَاقَ قِسْمَانِ: قِسْمٌ لِمَنْ يُظْهِرُ الْكُفْرَ وَيُبْطِنُ الْإِيمَانَ، وَقِسْمٌ لِمَنْ يُظْهِرُ غَيْرَ مَا يُضْمِرُ فِيمَا سِوَى الدِّينِ وَلَا يَكُونُ بِذَلِكَ كَافِرًا، وَقَدْ قِيلَ لِابْنِ عُمَرَ: إنَّا نَدْخُلُ عَلَى الْإِمَامِ فَيَقْضِي بِالْقَضَاءِ فَنَرَاهُ جَوْرًا فَنَمْسِكُ؟ فَقَالَ: إنَّا مَعْشَرَ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَعُدُّ هَذَا نِفَاقًا، فَلَا نَدْرِي مَا تَعُدُّونَهُ أَنْتُمْ؟ وَقَدْ ذَكَرْنَا قَبْلُ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «ثَلَاثٌ مَنْ كُنَّ فِيهِ كَانَ مُنَافِقًا خَالِصًا وَإِنْ صَلَّى وَإِنْ صَامَ وَقَالَ إنِّي مُسْلِمٌ» .

فَإِذَا كَانَ الْأَمْرُ كَذَلِكَ، فَلَا يَجُوزُ أَنْ نَقْطَعَ عَلَيْهِمْ بِالْكُفْرِ الَّذِي هُوَ ضِدُّ الْإِسْلَامِ إلَّا بِنَصٍّ، وَلَكِنَّا نَقْطَعُ عَلَيْهِمْ بِمَا قَطَعَ اللَّهُ تَعَالَى بِهِ مِنْ اسْمِ النِّفَاقِ، وَالضَّلَالَةِ، وَالْإِرْكَاسِ، وَخِلَافِ الْهُدَى - وَلَا نَزِيدُ وَلَا نَتَعَدَّى مَا نَصَّ اللَّهُ تَعَالَى عَلَيْهِ بِآرَائِنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَالَ اللَّهُ تَعَالَى {بَشِّرِ الْمُنَافِقِينَ بِأَنَّ لَهُمْ عَذَابًا أَلِيمًا} [النساء: ١٣٨] إلَى قَوْلِهِ: {أَجْرًا عَظِيمًا} [النساء: ٤٠] .

[78] **Qur’an references (L40930):** Qur’an 4:90 (An-Nisa); Qur’an 4:91 (An-Nisa).
[79] **Qur’an references (L40931):** Qur’an 4:89 (An-Nisa).

have a painful punishment" [An-Nisa:138] up to the verse where He says: "a great reward" [An-Nisa:40].[80]

قَالَ أَبُو مُحَمَّد: أَمَّا هَؤُلَاءِ فَمُنَافِقُونَ النِّفَاقَ الَّذِي هُوَ الْكُفْرُ، فَلَا شَكَّ لِنَصِّهِ تَعَالَى عَلَى أَنَّهُمْ مُذَبْذَبُونَ، لَا إِلَى الْمُؤْمِنِينَ، وَلَا إِلَى الْمُجَاهِرِينَ بِالْكُفْرِ فِي نَارِ جَهَنَّمَ، وَأَنَّهُمْ أَشَدُّ عَذَابًا مِنْ الْكُفَّارِ، بِكَوْنِهِمْ فِي الدَّرْكِ الْأَسْفَلِ مِنْ النَّارِ.

L40935 Abu Muhammad said: As for these, they are hypocrites with the hypocrisy that constitutes disbelief. There is no doubt—by the decree of the Exalted—that they are wavering in the Fire of Hell, belonging neither to the believers nor to those who openly profess disbelief, and that their punishment is more severe than that of the disbelievers, due to their being in the lowest level of the Fire.

وَلَكِنْ لَيْسَ فِي شَيْءٍ مِنْ هَذِهِ الْآيَاتِ كُلِّهَا أَنَّهُ - عَلَيْهِ السَّلَامُ - عَرَفَهُمْ، بِأَعْيَانِهِمْ، وَعَرَفَ نِفَاقَهُمْ، إذْ لَا دَلِيلَ عَلَى ذَلِكَ، فَلَا حُجَّةَ فِيهَا لِمَنْ ادَّعَى أَنَّهُ - عَلَيْهِ السَّلَامُ - عَرَفَهُمْ، وَعَرَفَ نِفَاقَهُمْ.

L40936 However, none of all these verses indicate that he—peace be upon him—knew them individually or knew their hypocrisy, as there is no evidence for that. Therefore, there is no proof in them for anyone who claims he—peace be upon him—knew them and knew their hypocrisy.

ثُمَّ لَوْ كَانَ ذَلِكَ لَكَانَ قَوْله تَعَالَى {إنَّ الْمُنَافِقِينَ فِي الدَّرْكِ الْأَسْفَلِ مِنَ النَّارِ} [النساء: ١٤٥] إلَى قَوْله تَعَالَى {أَجْرًا عَظِيمًا} [النساء: ٤٠] مُوجِبًا لِقَبُولِ تَوْبَتِهِمْ إذَا تَابُوا - وَهُمْ قَدْ أَظْهَرُوا التَّوْبَةَ، وَالنَّدَمَ، وَالْإِقْرَارَ بِالْإِيمَانِ بِلَا شَكٍّ، فَبَطَلَ عَنْهُمْ بِهَذَا حُكْمُ النِّفَاقِ جُمْلَةً فِي الدُّنْيَا، وَبَقِيَ بَاطِنُ أَمْرِهِمْ إلَى اللَّهِ تَعَالَى.

L40937 Then, if that were the case, the statement of the Exalted, *"Indeed, the hypocrites will be in the lowest depth of the Fire"* [4:145] up to His saying, *"a great reward"* [4:40], would necessitate the acceptance of their repentance if they repent - and they have outwardly displayed repentance, remorse, and affirmation of faith without doubt. Thus, the ruling of hypocrisy would have been entirely invalidated for them in this world, and the inner reality of their condition would remain with Allah, the Exalted.[81]

وَهَذِهِ الْآيَةُ تَقْضِي عَلَى كُلِّ آيَةٍ فِيهَا نَصٌّ بِأَنَّهُ - عَلَيْهِ السَّلَامُ - عَرَفَ مُنَافِقًا بِعَيْنِهِ، وَعَرَفَ نِفَاقَهُ، قَالَ اللَّهُ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تَتَّخِذُوا الْيَهُودَ وَالنَّصَارَى أَوْلِيَاءَ بَعْضُهُمْ} [المائدة: ٥١] إلَى قَوْله تَعَالَى {فَأَصْبَحُوا خَاسِرِينَ} [المائدة: ٥٣] .

L40938 This verse overrules every verse containing an explicit text indicating that he—peace be upon him—recognized a specific hypocrite by sight and acknowledged his hypocrisy. Allah the Exalted said: "O you who believe, do not take the Jews and Christians as allies. Some of them..." [Al-Ma'idah 5:51] up to His statement: "So they became losers" [Al-Ma'idah 5:53].[82]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَأَخْبَرَ اللَّهُ تَعَالَى عَنْ قَوْمٍ يُسَارِعُونَ فِي الَّذِينَ كَفَرُوا حَذَرًا أَنْ تُصِيبَهُمْ دَائِرَةٌ، وَأَخْبَرَ تَعَالَى عَنْ الَّذِينَ آمَنُوا أَنَّهُمْ يَقُولُونَ لِلْكَافِرِينَ {أَهَؤُلَاءِ الَّذِينَ أَقْسَمُوا بِاللَّهِ جَهْدَ أَيْمَانِهِمْ إنَّهُمْ لَمَعَكُمْ} [المائدة: ٥٣] يَعْنُونَ الَّذِينَ يُسَارِعُونَ فِيهِمْ، قَالَ اللَّهُ تَعَالَى {حَبِطَتْ أَعْمَالُهُمْ فَأَصْبَحُوا خَاسِرِينَ} [المائدة: ٥٣] فَهَذَا لَا يَكُونُ إلَّا خَبَرًا

L40939–40941 Abū Muḥammad—may Allāh have mercy on him—said: Allāh the Exalted informed about a people who hasten toward the disbelievers out of fear that a calamity might befall them. He the Exalted informed about the believers that they say to the disbelievers, "Are these the ones who swore by Allāh with their

[80] **Qur'an references (L40934):** Qur'an 4:138 (An-Nisa); Qur'an 4:40 (An-Nisa).
[81] **Qur'an references (L40937):** Qur'an 4:145 (An-Nisa); Qur'an 4:40 (An-Nisa).
[82] **Qur'an references (L40938):** Qur'an 5:51 (Al-Ma'idah); Qur'an 5:53 (Al-Ma'idah).

most solemn oaths that they are truly with you?" [Al-Mā'idah: 53] - referring to those who hasten toward them. Allāh the Exalted declared: "Their deeds have been nullified, and they have become losers" [Al-Mā'idah: 53]. This can only be a report concerning people who displayed inclination toward the disbelievers, thereby becoming disbelievers themselves—those whose deeds have failed—and they are in most cases recognized as such. However, the statement of Him, the Exalted: "Then they will become remorseful for what they concealed within themselves" [Al-Mā'idah: 52]... An evidence of their remorse for what had passed from them, and that repentance is presented to them as in the verse we mentioned before this—and success is by Allah, the Exalted.[83]

عَنْ قَوْمٍ أَظْهَرُوا الْمَيْلَ إِلَى الْكُفَّارِ فَكَانُوا مِنْهُمْ كُفَّارًا خَائِبِي الْأَعْمَالِ وَلَا يَكُونُونَ فِي الْأَغْلَبِ إِلَّا مَعْرُوفِينَ، لَكِنَّ قَوْله تَعَالَى {فَيُصْبِحُوا عَلَى مَا أَسَرُّوا فِي أَنْفُسِهِمْ نَادِمِينَ} [المائدة: ٥٢] دَلِيلٌ عَلَى نَدَامَتِهِمْ عَلَى مَا سَلَفَ مِنْهُمْ، وَأَنَّ التَّوْبَةَ لَهُمْ مَعْرُوضَةٌ عَلَى مَا فِي الْآيَةِ الَّتِي ذَكَرْنَا قَبْلَ هَذِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40942 And He, the Most High, said: *{Prepare against them whatever of capability you can gather}* [8:60] to His words: *{You do not know them; We know them}* [9:101].[84]

وَقَالَ تَعَالَى {وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ} [الأنفال: ٦٠] إلَى قَوْله تَعَالَى {لا تَعْلَمُهُمْ نَحْنُ نَعْلَمُهُمْ} [التوبة: ١٠١]

L40943 Abū Muḥammad said: These verses undoubtedly concern the hypocrites. Allāh the Exalted has explicitly affirmed that Muslims do not recognize them—while the Messenger of Allāh (peace be upon him) is addressed by this discourse alongside the Muslims without doubt—thus he does not know them, though Allāh the Exalted knows them. He the Exalted said: "If it had been an immediate worldly gain or an attainable journey, they would have followed you" [9:42] until His statement: "reluctant" [9:48]. Abū Muḥammad—may Allāh have mercy on him—said: The beginning of the verse only indicates that they swear false oaths while knowingly aware of their falsehood in that, and that they thereby destroy themselves. This is the trait of every sinner in their sin.[85]

قَالَ أَبُو مُحَمَّد: فَهَذِهِ فِي الْمُنَافِقِينَ بِلَا شَكٍّ، وَقَدْ نَصَّ اللَّهُ تَعَالَى عَلَى أَنَّ الْمُسْلِمِينَ لَا يَعْلَمُونَهُمْ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُخَاطَبٌ بِهَذَا الْخِطَابِ مَعَ الْمُسْلِمِينَ بِلَا شَكٍّ فَهُوَ لَا يَعْلَمُهُمْ، وَاَللَّهُ تَعَالَى يَعْلَمُهُمْ، وَقَالَ تَعَالَى {لَوْ كَانَ عَرَضًا قَرِيبًا وَسَفَرًا قَاصِدًا لَاتَّبَعُوكَ} [التوبة: ٤٢] إلَى قَوْله تَعَالَى {كَارِهُونَ} [التوبة: ٤٨] ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَيْسَ فِي أَوَّلِ الْآيَةِ إلَّا أَنَّهُمْ يَحْلِفُونَ كَاذِبِينَ وَهُمْ يَعْلَمُونَ كَذِبَهُمْ فِي ذَلِكَ، وَأَنَّهُمْ يُهْلِكُونَ أَنْفُسَهُمْ بِذَلِكَ، وَهَذِهِ صِفَةُ كُلِّ عَاصٍ فِي مَعْصِيَتِهِ.

L40944 In the verse is also Allah the Exalted's reproaching of His Prophet (peace be upon him) for his permission to them.

وَفِي الْآيَةِ أَيْضًا: مُعَاتَبَةُ اللَّهِ تَعَالَى نَبِيَّهُ - عَلَيْهِ السَّلَامُ - عَلَى إذْنِهِ لَهُمْ.

L40945 As for the words of the Most High, "Those who believe in Allah and the Last Day do not ask your permission" [At-Tawbah: 44] up to His statement, "they

وَأَمَّا قَوْله تَعَالَى {لا يَسْتَأْذِنُكَ الَّذِينَ يُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [التوبة: ٤٤] إلَى قَوْله تَعَالَى {يَتَرَدَّدُونَ} [التوبة: ٤٥] فَإِنَّ وَجْهَ هَذِهِ الْآيَةِ الَّتِي يَجِبُ أَنْ لَا تُصْرَفَ عَنْهُ إلَى غَيْرِهِ بِغَيْرِ نَصٍّ، وَلَا إجْمَاعٍ: أَنَّهُ فِي الْمُسْتَأْنَفِ، لِأَنَّ لَفْظَهَا لَفْظُ الِاسْتِقْبَالِ.

[83] **Qur'an references (L40939):** Qur'an 5:53 (Al-Ma'idah); Qur'an 5:52 (Al-Ma'idah).
[84] **Qur'an references (L40942):** Qur'an 8:60 (Al-Anfal); Qur'an 9:101 (At-Tawbah).
[85] **Qur'an references (L40943):** Qur'an 9:42 (At-Tawbah); Qur'an 9:48 (At-Tawbah).

hesitate" [At-Tawbah: 45], the intended meaning of this verse—which must not be interpreted contrary to its apparent meaning without explicit textual evidence or consensus—is that it pertains to the newly initiated action, for its wording is in the future form.[86]

وَلَا خِلَافَ فِي هَذِهِ الْآيَةِ أَنَّهَا نَزَلَتْ بَعْدَ تَبُوكَ، وَلَمْ يَكُنْ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْدَ تَبُوكَ غَزْوَةٌ أَصْلًا، وَلَكِنَّا نَقْطَعُ عَلَى أَنَّهَا لَوْ كَانَتْ هُنَاكَ غَزْوَةٌ بَعْدَ تَبُوكَ وَبَعْدَ نُزُولِ الْآيَةِ فَاسْتَأْذَنَ قَوْمٌ مِنْهُمْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي الْقُعُودِ دُونَ عُذْرٍ لَهُمْ فِي ذَلِكَ لَكَانُوا بِلَا شَكٍّ مُرْتَابَةً قُلُوبُهُمْ كُفَّارًا بِاَللَّهِ تَعَالَى وَبِالْيَوْمِ الْآخِرِ مُتَرَدِّدِينَ فِي الرَّيْبِ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْآيَةِ.

L40946 There is no disagreement that this verse was revealed after Tabuk, and the Messenger of Allah—peace be upon him—undertook no military expedition whatsoever after Tabuk. However, we conclusively assert that if there had been an expedition after Tabuk and after the revelation of this verse, and a group among them sought the Prophet's—peace be upon him and his family—permission to remain behind without any excuse, they would without doubt have been those whose hearts were filled with doubt, disbelieving in Allah the Exalted and the Last Day, wavering in uncertainty—thereby nullifying their claim to this verse's applicability.

ثُمَّ قَوْله تَعَالَى {وَلَوْ أَرَادُوا الْخُرُوجَ لَأَعَدُّوا لَهُ عُدَّةً} [التوبة: ٤٦] إلَى قَوْله تَعَالَى {كَارِهُونَ} [التوبة: ٤٨] فَهَذِهِ أَخْبَارٌ عَمَّا خَلَا لَهُمْ وَعَنْ سَيِّئَاتٍ اقْتَرَفُوهَا، وَلَيْسَ فِيهَا شَيْءٌ يُوجِبُ لَهُمْ الْكُفْرَ، حَتَّى لَوْ كَانُوا مَعْرُوفِينَ بِأَعْيَانِهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40947 Then His Exalted saying: {If they had intended to go forth, they would have made preparations for it} [At-Tawbah: 46] up to His Exalted saying: {unwillingly} [At-Tawbah: 48]. These are divine accounts of what they left behind and the sins they committed. There is nothing in them that necessitates their disbelief, even if they were known individually—and success is from Allah, the Exalted.[87]

وَقَوْله تَعَالَى {وَمِنْهُمْ مَنْ يَقُولُ ائْذَنْ لِي} [التوبة: ٤٩] إلَى قَوْله تَعَالَى {وَهُمْ فَرِحُونَ} [التوبة: ٥٠].

L40948 And His saying, the Most High: "Grant me permission" to "while they are rejoicing" [at-Tawbah: 49–50].[88]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَدْ قِيلَ: إنَّ هَذِهِ الْآيَةَ نَزَلَتْ فِي الْحُرِّ بْنِ قَيْسٍ - وَهَذَا لَا يَنْسَنِدُ أَلْبَتَّةَ، وَإِنَّمَا هُوَ مُنْقَطِعٌ مِنْ أَخْبَارِ الْمَغَازِي، وَلَكِنْ عَلَى كُلِّ حَالٍ يُقَالُ: هَذَا كَانَ مَعْرُوفًا بِلَا شَكٍّ.

L40949–40950 Abu Muhammad—may Allah have mercy on him—said: It has been said that this verse was revealed concerning al-Ḥurr ibn Qays. This [report] has no chain of transmission whatsoever; it is merely a disconnected chain from the reports of the military expeditions. In any case, it is said that this was undoubtedly well-known.

وَلَيْسَ فِي الْآيَةِ أَنَّهُ كَفَرَ بِذَلِكَ، وَلَكِنَّهُ عَصَى و (٠٠٠) وَأَذْنَبَ، وَبَلَى {وَإِنَّ جَهَنَّمَ لَمُحِيطَةٌ بِالْكَافِرِينَ} [التوبة: ٤٩]

L40951 The verse does not state that he disbelieved thereby, but he disobeyed [...]

[86] **Qur'an references (L40945):** Qur'an 9:44 (At-Tawbah); Qur'an 9:45 (At-Tawbah).
[87] **Qur'an references (L40947):** Qur'an 9:46 (At-Tawbah); Qur'an 9:48 (At-Tawbah).
[88] **Qur'an references (L40948):** Qur'an 9:49 (At-Tawbah); Qur'an 9:50 (At-Tawbah).

and sinned. *"And indeed, Jahannam encompasses the disbelievers"* (Quran 9:49).[89]

وَلَا يَجُوزُ أَنْ يُقْطَعَ بِهَذَا النَّصِّ عَلَى أَنَّ ذَلِكَ الْقَائِلَ كَانَ مِنْ الْكَافِرِينَ.

L40952 It is not permissible to decisively conclude based on this text that the one who uttered that statement was among the disbelievers.

وَأَمَّا الَّذِي أَخْبَرَ اللَّهُ تَعَالَى بِأَنَّهُ إنْ أَصَابَتْ رَسُولَهُ - عَلَيْهِ السَّلَامُ - سَيِّئَةٌ وَمُصِيبَةٌ تَوَلَّوْا وَهُمْ فَرِحُونَ، أَوْ أَنَّهُ إنْ أَصَابَتْهُ حَسَنَةٌ سَاءَتْهُمْ، فَهَؤُلَاءِ كُفَّارٌ بِلَا شَكٍّ، وَلَيْسَ فِي الْآيَةِ نَصٌّ عَلَى أَنَّ الْقَائِلَ: ائْذَنْ لِي وَلَا تَفْتِنِّي، كَانَ مِنْهُمْ، وَلَا فِيهَا نَصٌّ عَلَى أَنَّهُ - عَلَيْهِ السَّلَامُ - عَرَفَهُمْ وَعَرَفَ نِفَاقَهُمْ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْآيَةِ.

L40953 As for the one whom Allah, the Exalted, has informed that if evil or calamity befalls His Messenger (peace be upon him), he turns away rejoicing, or that if a blessing befalls him, it grieves him - these are undoubtedly disbelievers. There is no explicit text in the verse stating that the one who said, "Grant me permission and do not put me to trial," was among them, nor does it state that he (peace be upon him) knew them and recognized their hypocrisy. Thus, their reliance on this verse is invalidated.

وَقَالَ تَعَالَى {قُلْ أَنْفِقُوا طَوْعًا أَوْ كَرْهًا لَنْ يُتَقَبَّلَ مِنْكُمْ} [التوبة: ٥٣] إلَى قَوْلِهِ {يُفْرَقُونَ} [البقرة: ١٠٢] ؟ قَالَ أَبُو مُحَمَّد: أَمَّا هَؤُلَاءِ فَكُفَّارٌ بِلَا شَكٍّ، مُظْهِرُونَ لِلْإِسْلَامِ، وَلَكِنْ لَيْسَ فِي الْآيَةِ أَنَّهُ - عَلَيْهِ السَّلَامُ - عَرَفَهُمْ بِأَعْيَانِهِمْ، وَلَا دَلِيلَ فِيهَا عَلَى ذَلِكَ أَصْلًا، وَإِنَّمَا هِيَ صِفَةٌ وَصَفَهَا اللَّهُ تَعَالَى فِيهِمْ لِيُمَيِّزُوهَا مِنْ أَنْفُسِهِمْ.

L40954 And He, the Exalted, said: {Say, "Spend willingly or unwillingly; it will never be accepted from you"} [9:53] up to His statement {they sow discord} [2:102]. Abu Muhammad said: As for these individuals, they are undoubtedly disbelievers, outwardly professing Islam. However, the verse does not indicate that the Prophet (peace be upon him) knew them individually, nor does it provide any proof for that at all. Rather, it is a description that God, the Exalted, ascribed to them so that they might recognize these traits within themselves.[90]

وَلَيْسَ فِي قَوْله تَعَالَى {فَلا تُعْجِبْكَ أَمْوَالُهُمْ وَلا أَوْلادُهُمْ} [التوبة: ٥٥] دَلِيلٌ عَلَى أَنَّهُ كَانَ يَعْرِفُهُمْ بِأَعْيَانِهِمْ، وَأَنَّهُ كَانَ يَعْرِفُ نِفَاقَهُمْ، بَلْ قَدْ كَانَ لِلْفُضَلَاءِ مِنْ الْأَنْصَارِ - رَضِيَ اللَّهُ عَنْهُمْ - الْأَمْوَالُ الْوَاسِعَةُ، وَالْأَوْلَادُ النُّجَبَاءُ الْكَثِيرُ: كَسَعْدِ بْنِ عُبَادَةَ، وَأَبِي طَلْحَةَ، وَغَيْرِهِمَا - فَهَذِهِ صِفَةٌ عَامَّةٌ يَدْخُلُ فِيهَا الْفَاضِلُ الصَّادِقُ، وَالْمُنَافِقُ، فَأَمَرَ تَعَالَى فِي الْآيَةِ أَنْ لَا تُعْجِبَهُ أَمْوَالُهُمْ، وَلَا أَوْلَادُهُمْ، عُمُومًا، لِأَنَّ اللَّهَ تَعَالَى يُرِيدُ أَنْ يُعَذِّبَ الْمُنَافِقِينَ مِنْهُمْ بِتِلْكَ الْأَمْوَالِ وَيَمُوتُوا كُفَّارًا وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40955 There is no evidence in the statement of Allah the Most High, "So let not their wealth or their children impress you" [At-Tawbah 9:55], indicating that the Prophet knew them personally or that he was aware of their hypocrisy. Rather, even the virtuous among the Anṣār—may Allah be pleased with them—such as Saʿd ibn ʿUbādah, Abū Ṭalḥah, and others, possessed vast wealth and noble and numerous children. Thus, this is a general description encompassing both the virtuous, truthful one and the hypocrite. In this verse, Allah the Most High commanded the Prophet not to be impressed by their wealth or children in a general sense, for Allah intends to punish

[89] **Qur'an references (L40951):** Qur'an 9:49 (At-Tawbah); Qur'an 29:54 (Al-'Ankabut).
[90] **Qur'an references (L40954):** Qur'an 9:53 (At-Tawbah); Qur'an 2:102 (Al-Baqarah).

the hypocrites among them with that wealth, and they will inevitably die as disbelievers. And success is from Allah, the Most High.[91]

L40956 And He, the Exalted, said: {And among them are those who criticize you concerning the charities} [At-Tawbah: 58] up to His statement: {desirous} [At-Tawbah: 59]?[92]

L40957–40958 Abū Muḥammad—may Allāh have mercy on him—said: And this does not indicate in the least—neither by scriptural text nor evidence—that whoever does this is guilty of disbelief. However, it is undoubtedly a sin.

L40959 And He, the Exalted, said, "And among them are those who harm the Prophet" [At-Tawbah: 61] up to His words, the Exalted: "That is the great humiliation" [At-Tawbah: 61–63].[93]

L40960 He said: This verse does not contain evidence for the disbelief of one who said at that time, "Indeed the Messenger of Allah—peace and blessings be upon him—is receptive." Rather, the disbeliever is only one who says that and harms the Messenger of Allah—peace and blessings be upon him—after the revelation of the prohibition against that and the Quran's revelation stating that whoever does that is a disbeliever, and that whoever opposes Allah the Exalted and His Messenger—peace and blessings be upon him—will have Hellfire as his eternal abode.

L40961 It has been narrated that 'Umar said to the Messenger of Allah (peace be upon him), "By Allah, O Messenger of Allah, you are indeed more beloved to me than anyone else except myself." Thereupon, the Messenger of Allah (peace be upon him) spoke words whose meaning was that a person does not truly believe until the Prophet is more beloved to him than his own self. 'Umar then said, "As for now, you are indeed more beloved to me than my own self."

L40962 Abu Muhammad said: It is not valid to assert that anyone who returns to harming the Messenger of Allah (may Allah bless him and grant him peace)

وَقَالَ تَعَالَى {وَمِنْهُم مَنْ يَلْمِزُكَ فِي الصَّدَقَاتِ} [التوبة: ٥٨] إلَى قَوْله تَعَالَى {رَاغِبُونَ} [التوبة: ٥٩] ؟

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا لَا يَدُلُّ أَلْبَتَّةَ لَا بِنَصٍّ، وَلَا بِدَلِيلٍ عَلَى كُفْرِ مَنْ فَعَلَ هَذَا، وَلَكِنَّهَا مَعْصِيَةٌ بِلَا شَكٍّ.

وَقَالَ تَعَالَى {وَمِنْهُمُ الَّذِينَ يُؤْذُونَ النَّبِيَّ} [التوبة: ٦١] إلَى قَوْله تَعَالَى {ذَلِكَ الْخِزْيُ الْعَظِيمُ} [التوبة: ٦٣] .

قَالَ: وَهَذِهِ الْآيَةُ لَيْسَ فِيهَا دَلِيلٌ عَلَى كُفْرِ مَنْ قَالَ حِينَئِذٍ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُذُنٌ، وَإِنَّمَا يَكُونُ كَافِرًا مَنْ قَالَ ذَلِكَ، وَآذَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْدَ نُزُولِ النَّهْيِ عَنْ ذَلِكَ، وَنُزُولِ الْقُرْآنِ بِأَنَّ مَنْ فَعَلَ ذَلِكَ فَهُوَ كَافِرٌ، وَأَنَّ مَنْ حَادَّ اللَّهَ تَعَالَى وَرَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَهُ جَهَنَّمُ خَالِدًا فِيهَا.

فَقَدْ جَاءَ أَنَّ عُمَرَ قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاَللَّهِ يَا رَسُولَ اللَّهِ إنَّك لَأَحَبُّ إلَيَّ مِنْ كُلِّ أَحَدٍ إلَّا نَفْسِي، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَلَامًا مَعْنَاهُ أَنَّهُ لَا يُؤْمِنُ حَتَّى يَكُونَ أَحَبَّ إلَيْهِ مِنْ نَفْسِهِ، فَقَالَ لَهُ عُمَرُ: أَمَّا الْآنَ فَأَنْتَ أَحَبُّ إلَيَّ مِنْ نَفْسِي.

قَالَ أَبُو مُحَمَّد: لَا يَصِحُّ أَنَّ أَحَدًا عَادَ إلَى أَذَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمُحَادَّتِهِ بَعْدَ مَعْرِفَتِهِ بِالنَّازِلِ فِي ذَلِكَ مِنْ عِنْدِ اللَّهِ تَعَالَى إلَّا كَانَ كَافِرًا.

[91] **Qur'an references (L40955):** Qur'an 9:55 (At-Tawbah).
[92] **Qur'an references (L40956):** Qur'an 9:58 (At-Tawbah); Qur'an 9:59 (At-Tawbah).
[93] **Qur'an references (L40959):** Qur'an 9:61 (At-Tawbah); Qur'an 9:63 (At-Tawbah).

or openly opposing him—after knowing what Allah the Exalted has revealed regarding this matter—could do so unless he is a disbeliever.

وَلَا خِلَافَ فِي أَنَّ امْرَأً لَوْ أَسْلَمَ وَلَمْ يَعْلَمْ شَرَائِعَ الْإِسْلَامِ فَاعْتَقَدَ أَنَّ الْخَمْرَ - حَلَالٌ، وَأَنْ لَيْسَ عَلَى الْإِنْسَانِ صَلَاةٌ، وَهُوَ لَمْ يَبْلُغْهُ حُكْمُ اللَّهِ تَعَالَى لَمْ يَكُنْ كَافِرًا بِلَا خِلَافٍ يُعْتَدُّ بِهِ، حَتَّى إذَا قَامَتْ عَلَيْهِ الْحُجَّةُ فَتَمَادَى حِينَئِذٍ بِإِجْمَاعِ الْأُمَّةِ فَهُوَ كَافِرٌ.

L40963 There is no disagreement that if a man accepts Islam while unaware of the divine laws of Islam—believing wine to be permissible or that prayer is not obligatory—as long as Allah the Exalted's ruling has not been conveyed to him, he is not deemed a disbeliever (there being no valid disagreement on this matter). But when the proof is established against him and he persists obstinately, then by the consensus of the Ummah, he becomes a disbeliever.

وَيُبَيِّنُ هَذَا قَوْله تَعَالَى فِي الْآيَةِ الْمَذْكُورَةِ {يَحْلِفُونَ بِاللَّهِ لَكُمْ لِيُرْضُوكُمْ وَاللَّهُ وَرَسُولُهُ أَحَقُّ أَنْ يُرْضُوهُ إنْ كَانُوا مُؤْمِنِينَ} [التوبة: ٦٢] فَقَدْ أَخْبَرَهُمْ تَعَالَى أَنَّهُمْ إنْ كَانُوا مُؤْمِنِينَ فَإِرْضَاءُ اللَّهِ وَرَسُولِهِ أَحَقُّ عَلَيْهِمْ مِنْ إرْضَاءِ الْمُسْلِمِينَ فَصَحَّ هَذَا بِيَقِينٍ - وَبِاَللَّهِ تَعَالَى نَسْتَعِينُ.

L40964 This is clarified by the statement of Allah, the Exalted, in the mentioned verse: "They swear by Allah to you to please you, but it is more deserving for them to please Allah and His Messenger if they are believers" [At-Tawbah: 62]. Allah, the Exalted, has informed them that if they are believers, then pleasing Allah and His Messenger is more incumbent upon them than pleasing the Muslims. Thus, this is conclusively affirmed. And in Allah, the Exalted, we seek help.[94]

وَقَالَ تَعَالَى {يَحْذَرُ الْمُنَافِقُونَ أَنْ تُنَزَّلَ عَلَيْهِمْ سُورَةٌ تُنَبِّئُهُمْ بِمَا فِي قُلُوبِهِمْ قُلِ اسْتَهْزِئُوا إِنَّ اللَّهَ مُخْرِجٌ مَا تَحْذَرُونَ} [التوبة: ٦٤] قَالَ: وَهَذِهِ الْآيَةُ أَيْضًا لَا نَصَّ فِيهَا عَلَى قَوْمٍ بِأَعْيَانِهِمْ فَلَا مُتَعَلَّقَ فِيهَا لِأَحَدٍ فِي هَذَا الْمَعْنَى.

L40965 And He, the Exalted, said: {The hypocrites fear that a surah will be revealed concerning them, informing them of what is in their hearts. Say, "Continue mocking! Indeed, Allah will bring forth what you fear"} [At-Tawbah 9:64]. He said: This verse, too, does not explicitly specify any particular individuals; thus, there is no basis for anyone to use it as evidence in this regard.[95]

وَقَالَ تَعَالَى {وَلَئِنْ سَأَلْتَهُمْ لَيَقُولُنَّ إِنَّمَا كُنَّا نَخُوضُ وَنَلْعَبُ} [التوبة: ٦٥] إلَى قَوْله تَعَالَى {كَانُوا مُجْرِمِينَ} [التوبة: ٦٦] .

L40966 And He, the Exalted, said: "And if you ask them, they will surely say, 'We were only jesting and playing'" [At-Tawbah:65] up to His Exalted words: "they were evildoers" [At-Tawbah:66].[96]

قَالَ أَبُو مُحَمَّد: هَذِهِ بِلَا شَكٍّ فِي قَوْمٍ مَعْرُوفِينَ كَفَرُوا بَعْدَ إيمَانِهِمْ وَلَكِنَّ التَّوْبَةَ مَبْسُوطَةٌ لَهُمْ بِقَوْلِهِ تَعَالَى {إِنْ نَعْفُ عَنْ طَائِفَةٍ مِنْكُمْ نُعَذِّبْ طَائِفَةً بِأَنَّهُمْ كَانُوا مُجْرِمِينَ} [التوبة: ٦٦] فَصَحَّ أَنَّهُمْ أَظْهَرُوا التَّوْبَةَ وَالنَّدَامَةَ وَاعْتَرَفُوا بِذَنْبِهِمْ، فَمِنْهُمْ مَنْ قَبِلَ اللَّهُ تَعَالَى تَوْبَتَهُ فِي الْبَاطِنِ عِنْدَهُ لِعِلْمِهِ تَعَالَى بِصِحَّتِهَا، وَمِنْهُمْ مَنْ لَمْ تَصِحَّ تَوْبَتُهُ فِي الْبَاطِنِ فَهُمْ

L40967–40968 Abu Muhammad said: This [matter] is undoubtedly regarding a known group who disbelieved after having believed. However, repentance remains accessible to them by the words of the Exalted: *"If We spare a group among you, We will punish another group because they were wrongdoers"* [Qur'an 9:66]. Thus, it is established that they outwardly demonstrated repentance,

[94] **Qur'an references (L40964):** Qur'an 9:62 (At-Tawbah).
[95] **Qur'an references (L40965):** Qur'an 9:64 (At-Tawbah).
[96] **Qur'an references (L40966):** Qur'an 9:65 (At-Tawbah); Qur'an 9:66 (At-Tawbah).

remorse, and confession of their sin. Among them are those whose repentance Allah the Exalted accepted inwardly by Him, through His knowledge of its validity. Others had invalid repentance inwardly; these are the ones punished in the Hereafter. As for outwardly, they all repented according to the explicit text of the verse—and success is from Allah, the Exalted.[97]

الْمُعَذَّبُونَ فِي الْآخِرَةِ، وَأَمَّا فِي الظَّاهِرِ فَقَدْ تَابَ جَمِيعُهُمْ بِنَصِّ الْآيَةِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L40969 And He, the Exalted, said: "The hypocrite men and hypocrite women" [at-Tawbah: 67] until His statement, the Exalted: "an enduring punishment" [al-Mā'idah: 37].[98]

وَقَالَ تَعَالَى {الْمُنَافِقُونَ وَالْمُنَافِقَاتُ} [التوبة: ٦٧] إلَى قَوْله تَعَالَى {عَذَابٌ مُقِيمٌ} [المائدة: ٣٧] .

L40970 He said: This is a general description that did not aim to identify specific individuals, and this is an obligatory right upon every male hypocrite and female hypocrite - and success comes only from Allah, the Exalted.

قَالَ: فَهَذِهِ صِفَةٌ عَامَّةٌ لَمْ يَقْصِدْ بِهَا إلَى التَّعْرِيفِ لِقَوْمٍ بِأَعْيَانِهِمْ، وَهَذِهِ حَقٌّ وَاجِبٌ عَلَى كُلِّ مُنَافِقٍ وَمُنَافِقَةٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L40971 And the Exalted said, "O Prophet, strive against the disbelievers and the hypocrites and be harsh upon them" [At-Tawbah 9:73] until the words of the Exalted: "and no supporter" [Al-Baqarah 2:107].[99]

وَقَالَ تَعَالَى {يَا أَيُّهَا النَّبِيُّ جَاهِدِ الْكُفَّارَ وَالْمُنَافِقِينَ وَاغْلُظْ عَلَيْهِمْ} [التوبة: ٧٣] إلَى قَوْله تَعَالَى {وَلا نَصِيرٍ} [البقرة: ١٠٧] .

L40972 He said: This is a verse—Allah the Exalted commanded His Messenger (peace and blessings be upon him) to strive against the disbelievers and hypocrites. Striving may be through speech, admonition, and decisive argument, as narrated by Abdullah ibn Rabīʿ, from Muḥammad ibn Isḥāq, from Ibn al-Aʿrābī, from Abū Dāwūd, from Mūsā ibn Ismāʿīl, from Ḥammād (Ibn Salamah), from Ḥumayd, from Anas, that the Messenger of Allah (peace and blessings be upon him) said: "Strive against the polytheists with your wealth, your lives, and your tongues."

قَالَ: فَهَذِهِ آيَةٌ أَمَرَ اللَّهُ تَعَالَى رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمُجَاهَدَةِ الْكُفَّارِ وَالْمُنَافِقِينَ، وَالْجِهَادُ قَدْ يَكُونُ بِاللِّسَانِ، وَالْمَوْعِظَةِ، وَالْحُجَّةِ: كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا مُوسَى بْنُ إِسْمَاعِيلَ نا حَمَّادٌ - هُوَ ابْنُ سَلَمَةَ - عَنْ حُمَيْدٍ عَنْ أَنَسٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «جَاهِدُوا الْمُشْرِكِينَ بِأَمْوَالِكُمْ وَأَنْفُسِكُمْ وَأَلْسِنَتِكُمْ» .

L40973 Abu Muhammad said: This verse indicates that these individuals were known individually and that they uttered the word of disbelief and apostatized after embracing Islam. However, when Allah the Exalted stated, *"If they repent, it is better for them, and if they turn away, Allah will punish

قَالَ أَبُو مُحَمَّد: وَهَذِهِ الْآيَةُ تَدُلُّ عَلَى أَنَّ هَؤُلَاءِ كَانُوا مَعْرُوفِينَ بِأَعْيَانِهِمْ وَأَنَّهُمْ قَالُوا كَلِمَةَ الْكُفْرِ وَكَفَرُوا بَعْدَ إسْلَامِهِمْ، وَلَكِنْ لَمَّا قَالَ اللَّهُ تَعَالَى {فَإِنْ يَتُوبُوا يَكُ خَيْرًا لَهُمْ وَإِنْ يَتَوَلَّوْا يُعَذِّبْهُمُ اللَّهُ عَذَابًا أَلِيمًا} [التوبة: ٧٤] صَحَّ أَنَّ اللَّهَ تَعَالَى بَذَلَ لَهُمْ التَّوْبَةَ وَقَبِلَهَا مِمَّنْ أَحَاطَهَا مِنْهُمْ وَكُلُّهُمْ بِلَا شَكٍّ أَظْهَرَ التَّوْبَةَ.

[97] **Qur'an references (L40968):** Qur'an 9:66 (At-Tawbah).
[98] **Qur'an references (L40969):** Qur'an 9:67 (At-Tawbah); Qur'an 5:37 (Al-Ma'idah).
[99] **Qur'an references (L40971):** Qur'an 9:73 (At-Tawbah); Qur'an 66:9 (At-Tahrim); Qur'an 2:107 (Al-Baqarah).

them with a painful punishment”* [9:74], it is established that Allah the Exalted granted them repentance and accepted it from those among them who fulfilled its conditions. All of them, without doubt, openly repented.[100]

L40974 And the proof of that: their oath and their denial, so they have no valid claim in this verse—and success is from Allah, the Exalted.

L40975–40976 And He, the Exalted, said, **“And among them are those who made a covenant with Allah: ‘If He should give us from His bounty...’”** [at-Tawbah 9:75] until His Exalted statement: **“...they lie.”** [al-Baqarah 2:10].[101]

L40977–40979 He said: This is also a trait mentioned by Allah the Exalted, recognized by anyone who embodies it personally, containing neither explicit textual evidence nor indication that its subject is specifically identified. Though we have been transmitted an unreliable report claiming it was revealed concerning Thaʿlabah ibn Ḥāṭib – this is invalid, for Thaʿlabah is a known Badr veteran. The narration states: Ḥammām narrated to us from Yaḥyā ibn Mālik ibn ʿĀ’idh, from al-Ḥasan ibn Abī Ghassān, from Zakariyyā ibn Yaḥyā al-Bājī, from Sahl al-Sukkari, from Aḥmad ibn al-Ḥasan al-Kharrāz, from Miskīn ibn Bukayr, from Maʿān ibn Rifāʿah al-Salāmī, from ʿAlī ibn Yazīd, from al-Qāsim ibn ʿAbd al-Raḥmān, from Abī Umāmah, who said: “Thaʿlabah ibn Ḥāṭib brought his Zakāt to ʿUmar, who refused it, stating: ‘The Prophet – peace and blessings of Allah be upon him – did not accept it, nor did Abū Bakr, so how could I?’” Abū Muḥammad said: This is undoubtedly false, for Allah the Exalted commanded the collection of Zakāt payments from Muslims’ wealth, and the Prophet – peace upon him – ordained at his death that no two religions remain in the Arabian Peninsula. Thus, Thaʿlabah must either be a Muslim – obligating Abū Bakr and ʿUmar to collect his Zakāt without exception – or a disbeliever, necessitating his expulsion from the Peninsula. Therefore, this narration is unquestionably invalid. Among its transmitters are Maʿān ibn Rifāʿah, al-Qāsim ibn ʿAbd al-Raḥmān, and ʿAlī ibn Yazīd (known as Abū ʿAbd al-Malik al-Alhānī) – all deemed weak. Miskīn ibn Bukayr is not strong. Allah the Exalted said: “Those who ridicule the

وَبُرْهَانُ ذَلِكَ: حَلِفُهُمْ وَإِنْكَارُهُمْ فَلَا مُتَعَلَّقَ لَهُمْ فِي هَذِهِ الْآيَةِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَالَ تَعَالَى {وَمِنْهُمْ مَنْ عَاهَدَ اللَّهَ لَئِنْ آتَانَا مِنْ فَضْلِهِ} [التوبة: ٧٥] إلَى قَوْله تَعَالَى {يَكْذِبُونَ} [البقرة: ١٠] .

قَالَ: وَهَذِهِ أَيْضًا صِفَةٌ أَوْرَدَهَا اللَّهُ تَعَالَى يَعْرِفُهَا كُلُّ مَنْ فَعَلَ ذَلِكَ مِنْ نَفْسِهِ، وَلَيْسَ فِيهَا نَصٌّ وَلَا دَلِيلٌ، عَلَى أَنَّ صَاحِبَهَا مَعْرُوفٌ بِعَيْنِهِ، عَلَى أَنَّهُ قَدْ رُوِّينَا أَثَرًا لَا يَصِحُّ، وَفِيهِ أَنَّهَا نَزَلَتْ فِي ثَعْلَبَةَ بْنِ حَاطِبٍ - وَهَذَا بَاطِلٌ، لِأَنَّ ثَعْلَبَةَ بَدْرِيٌّ مَعْرُوفٌ، وَهَذَا أَثَرٌ: نا حُمَامٌ نا يَحْيَى بْنُ مَالِكِ بْنِ عَائِذٍ نا الْحَسَنُ بْنُ أَبِي غَسَّانَ نا زَكَرِيَّا بْنُ يَحْيَى الْبَاجِيُّ نِي سَهْلٌ السُّكَّرِيُّ نا أَحْمَدُ بْنُ الْحَسَنِ الْخَرَّازُ نا مِسْكِينُ بْنُ بُكَيْرٍ نا مَعَانُ بْنُ رِفَاعَةَ السَّلَامِيُّ عَنْ عَلِيِّ بْنِ يَزِيدَ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي أُمَامَةَ قَالَ: «جَاءَ ثَعْلَبَةُ بْنُ حَاطِبٍ بِصَدَقَتِهِ إلَى عُمَرَ فَلَمْ يَقْبَلْهَا وَقَالَ: لَمْ يَقْبَلْهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا أَبُو بَكْرٍ، وَلَا أَقْبَلُهَا؟» قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ بِلَا شَكٍّ، لِأَنَّ اللَّهَ تَعَالَى أَمَرَ بِقَبْضِ زَكَوَاتِ أَمْوَالِ الْمُسْلِمِينَ، وَأَمَرَ - عَلَيْهِ السَّلَامُ - عِنْدَ مَوْتِهِ أَنْ لَا يَبْقَى فِي جَزِيرَةِ الْعَرَبِ دِينَانِ، فَلَا يَخْلُو ثَعْلَبَةُ مِنْ أَنْ يَكُونَ مُسْلِمًا فَفَرَضَ عَلَى أَبِي بَكْرٍ، وَعُمَرَ قَبْضَ زَكَاتِهِ وَلَا بُدَّ، وَلَا فُسْحَةَ فِي ذَلِكَ - وَإِنْ كَانَ كَافِرًا فَفَرَضَ أَنْ لَا يُقِرَّ فِي جَزِيرَةِ الْعَرَبِ - فَسَقَطَ هَذَا الْأَثَرُ بِلَا شَكٍّ، وَفِي رُوَاتِهِ: مَعَانُ بْنُ رِفَاعَةَ وَالْقَاسِمُ بْنُ عَبْدِ الرَّحْمَنِ، وَعَلِيُّ بْنُ يَزِيدَ - وَهُوَ أَبُو عَبْدِ الْمَلِكِ الْأَلْهَانِيُّ - وَكُلُّهُمْ ضُعَفَاءُ، وَمِسْكِينُ بْنُ بُكَيْرٍ لَيْسَ بِالْقَوِيِّ. وَقَالَ

[100] **Qur’an references (L40973):** Qur’an 9:74 (At-Tawbah).
[101] **Qur’an references (L40976):** Qur’an 9:75 (At-Tawbah); Qur’an 2:10 (Al-Baqarah).

willing contributors among the believers regarding charities..." [9:79] up to His words: "...transgressors" [5:59]. He also said: "And never pray over any of them who dies..." [9:84] until His statement: "...and they died while persisting in transgression" [9:84]. Abū Muḥammad said: We have cited this verse here – though it appears later in the Quran – due to its thematic connection with the preceding context, as both pertain to ʻAbdullāh ibn Ubayy. We shall address both collectively, Allah willing. Abū Muḥammad said: These verses indicate that they mocked the voluntary contributors among the believers... They mock them—and this is not disbelief, with no disagreement from anyone among the people of the Sunnah. As for Allah's statement, {Ask forgiveness for them or do not ask forgiveness for them} [Quran 9:80] up to His words {the transgressors} [Quran 2:26], and His statement {And never pray over any of them who dies, ever} [Quran 9:84] up to His words {transgressors} [Quran 5:59], this does not indicate that they persisted in disbelief until their death. Rather, it decisively demonstrates that their act of mocking those who believed is unforgivable because they had disbelieved previously. Thus, their past disbelief necessitated that their disparagement of the eager volunteers among the believers and their mockery of those who could only muster their utmost effort—even if they repented from their disbelief—would not be forgiven, and that they died in transgression, not disbelief. This is undoubtedly the meaning of the verse. The proof for this is the narration transmitted by Muslim: Abu Bakr ibn Abi Shaybah narrated to us, Abu Usamah narrated to us, Ubaydullah—that is, Ibn Umar—narrated to us from Nafi' from Ibn Umar, who said: "When Abdullah ibn Ubayy ibn Salul died, his son Abdullah came to the Messenger of Allah (peace be upon him) and asked him to give him a shirt to shroud his father. He gave it to him. Then he requested him to pray over him? The Messenger of Allah (peace be upon him) rose to pray over him, but Umar stood, seized the garment of the Messenger of Allah (peace be upon him), and said: 'O Messenger of Allah, will you pray over him when Allah has forbidden you to do so?' The Messenger of Allah (peace be upon him) replied: 'Allah the Exalted granted me a choice, saying: {Ask forgiveness for them or do not ask forgiveness for them} [Quran 9:80] up to His words {seventy times} [Quran 9:80], and I will exceed seventy.' Umar said: 'Is he not a hypocrite?' The Messenger of Allah (peace be

تَعَالَى {الَّذِينَ يَلْمِزُونَ الْمُطَّوِّعِينَ مِنَ الْمُؤْمِنِينَ فِي الصَّدَقَاتِ} [التوبة: ٧٩] إِلَى قَوْله تَعَالَى {فَاسِقُونَ} [المائدة: ٥٩] . وَقَالَ تَعَالَى {وَلا تُصَلِّ عَلَى أَحَدٍ مِنْهُمْ مَاتَ أَبَدًا} [التوبة: ٨٤] إِلَى قَوْله تَعَالَى {وَمَاتُوا وَهُمْ فَاسِقُونَ} [التوبة: ٨٤] . قَالَ أَبُو مُحَمَّد: قَدَّمْنَا هَذِهِ الْآيَةَ وَهِيَ مُؤَخَّرَةٌ عَنْ هَذَا الْمَكَانِ، لِأَنَّهَا مُتَّصِلَةُ الْمَعَانِي بِالَّتِي ذَكَرْنَا قَبْلَهَا، لِأَنَّهُمَا جَمِيعًا فِي أَمْرِ عَبْدِ اللَّهِ بْنِ أُبَيٍّ - ثُمَّ نَذْكُرُ الْقَوْلَ فِيهِمَا جَمِيعًا - إِنْ شَاءَ اللَّهُ تَعَالَى. قَالَ أَبُو مُحَمَّد: هَذِهِ الْآيَاتُ فِيهَا: أَنَّهُمْ يَلْمِزُونَ الْمُطَّوِّعِينَ مِنَ الْمُؤْمِنِينَ، وَيَسْخَرُونَ مِنْهُمْ - وَهَذَا لَيْسَ كُفْرًا بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ أَهْلِ السُّنَّةِ. وَأَمَّا قَوْله تَعَالَى {اسْتَغْفِرْ لَهُمْ أَوْ لا تَسْتَغْفِرْ لَهُمْ} [التوبة: ٨٠] إِلَى قَوْله تَعَالَى {الْفَاسِقِينَ} [البقرة: ٢٦] . وَقَوْله تَعَالَى {وَلا تُصَلِّ عَلَى أَحَدٍ مِنْهُمْ مَاتَ أَبَدًا} [التوبة: ٨٤] إِلَى قَوْله تَعَالَى {فَاسِقُونَ} [المائدة: ٥٩] . فَإِنَّ هَذَا لَا يَدُلُّ عَلَى تَمَادِيهِمْ عَلَى الْكُفْرِ إِلَى أَنْ مَاتُوا، وَلَكِنْ يَدُلُّ يَقِينًا عَلَى أَنَّ فِعْلَهُمْ ذَلِكَ مِنْ سُخْرِيَّتِهِمْ بِالَّذِينَ آمَنُوا غَيْرُ مَغْفُورٍ لَهُمْ، لِأَنَّهُمْ كَفَرُوا فِيمَا خَلَا، فَكَانَ مَا سَلَفَ مِنْ كُفْرِهِمْ مُوجِبًا أَنْ يُغْفَرَ لَهُمْ لَمْزُهُمُ الْمُطَّوِّعِينَ مِنَ الْمُؤْمِنِينَ، وَسُخْرِيَّتُهُمْ بِالَّذِينَ لَا يَجِدُونَ إِلَّا جَهْدَهُمْ - وَإِنْ تَابُوا مِنْ كُفْرِهِمْ - وَأَنَّهُمْ مَاتُوا عَلَى الْفِسْقِ لَا عَلَى الْكُفْرِ، بَلْ هَذَا مَعْنَى الْآيَةِ بِلَا شَكٍّ. بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا أَبُو أُسَامَةَ نا عُبَيْدُ اللَّهِ - هُوَ ابْنُ عُمَرَ - عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: «لَمَّا تُوُفِّيَ عَبْدُ اللَّهِ بْنُ أُبَيٍّ ابْنُ سَلُولَ جَاءَ ابْنُهُ عَبْدُ اللَّهِ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَأَلَهُ أَنْ يُعْطِيَهُ قَمِيصًا يُكَفِّنُ فِيهِ أَبَاهُ فَأَعْطَاهُ ثُمَّ سَأَلَهُ أَنْ يُصَلِّيَ عَلَيْهِ؟ فَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُصَلِّيَ عَلَيْهِ، فَقَامَ عُمَرُ وَأَخَذَ بِثَوْبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ أَتُصَلِّي عَلَيْهِ وَقَدْ نَهَاكَ اللَّهُ أَنْ تُصَلِّيَ عَلَيْهِ؟ فَقَالَ رَسُولُ

upon him) prayed over him, after which Allah revealed: {And never pray over any of them who dies, ever, nor stand at his grave} [Quran 9:84]." Muslim said: Muhammad ibn al-Muthanna narrated to us, Yahya—that is, Ibn Sa'id al-Qattan—narrated to us from Ubaydullah ibn Umar with the same chain and meaning, adding: "Thus, he abandoned praying over them."[102]

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا خَيَّرَنِي اللَّهُ تَعَالَى فَقَالَ {اسْتَغْفِرْ لَهُمْ أَوْ لا تَسْتَغْفِرْ لَهُمْ} [التوبة: ٨٠] إِلَى قَوْله تَعَالَى {سَبْعِينَ مَرَّةً} [التوبة: ٨٠] وَسَأَزِيدُ عَلَى السَّبْعِينَ قَالَ: إِنَّهُ مُنَافِقٌ؟ فَصَلَّى عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَنْزَلَ اللَّهُ تَعَالَى {وَلا تُصَلِّ عَلَى أَحَدٍ مِنْهُمْ مَاتَ أَبَدًا وَلا تَقُمْ عَلَى قَبْرِهِ} [التوبة: ٨٤] » قَالَ مُسْلِمٌ: نا مُحَمَّدُ بْنُ الْمُثَنَّى نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ بِإِسْنَادِهِ وَمَعْنَاهُ، وَزَادَ «فَتَرَكَ الصَّلَاةَ عَلَيْهِمْ»

L40980–40986 Abū Muḥammad said: Yūsuf ibn ʿAbd Allāh ibn ʿAbd al-Barr narrated to us, saying: Khālaf ibn al-Qāsim narrated to us: Ibn al-Ward narrated to us: Ibn ʿAbd al-Raḥīm al-Raqqī narrated to us: From ʿAbd al-Malik ibn Hishām, from Ziyād ibn ʿAbd Allāh al-Bakkaʾī, from Muḥammad ibn Isḥāq al-Zuhrī, from ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah, from Ibn ʿAbbās, who said: "I heard ʿUmar ibn al-Khaṭṭāb say: When ʿAbd Allāh ibn Ubayy died, the Messenger of Allāh—peace and blessings be upon him—was asked to attend his funeral." When he was called to pray over him, the Messenger of Allah—peace and blessings be upon him—stood up. When he positioned himself to pray, I shifted until I stood directly facing him and said, "O Messenger of Allah, will you pray over Allah's enemy, Abdullah ibn Ubayy, the one who said such-and-such on such-and-such day, and the one who said such-and-such on such-and-such day?" I listed his misdeeds day by day until I had enumerated many. He said, "O Umar, step back from me. I was given a choice and I chose. It was said to me: *'Ask forgiveness for them or do not ask forgiveness for them'* [Quran 9:80]. If I knew that exceeding seventy would secure his forgiveness, I would exceed it." Then the Messenger of Allah—peace and blessings be upon him—prayed over him and walked with the bier until he stood at his grave until the burial was completed. He said, "I marveled at myself and my boldness toward the Messenger of Allah—peace and blessings be upon him—and Allah and His Messenger know best. By

قَالَ أَبُو مُحَمَّد: ونا يُوسُفُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَرِّ قَالَ: نا خَلَفُ بْنُ الْقَاسِمِ نا ابْنُ الْوَرْدِ نا ابْنُ عَبْدِ الرَّحِيمِ الرَّقِّيِّ عَنْ عَبْدِ الْمَلِكِ بْنِ هِشَامٍ عَنْ زِيَادِ بْنِ عَبْدِ اللَّهِ الْبَكَّائِيِّ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: «سَمِعْتُ عُمَرَ بْنَ الْخَطَّابِ يَقُولُ: لَمَّا تُوُفِّيَ عَبْدُ اللَّهِ بْنُ أُبَيٍّ دُعِيَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلصَّلَاةِ عَلَيْهِ فَقَامَ إِلَيْهِ فَلَمَّا وَقَفَ إِلَيْهِ يُرِيدُ الصَّلَاةَ تَحَوَّلْتُ حَتَّى قُمْتُ فِي صَدْرِهِ فَقُلْتُ: يَا رَسُولَ اللَّهِ أَتُصَلِّي عَلَى عَدُوِّ اللَّهِ عَبْدِ اللَّهِ بْنِ أُبَيٍّ؟ الْقَائِلِ كَذَا يَوْمَ كَذَا، وَالْقَائِلِ كَذَا فِي يَوْمِ كَذَا، أُعَدِّدُ أَيَّامَهُ حَتَّى إِذَا أَكْثَرْتُ عَلَيْهِ قَالَ يَا عُمَرُ أَخِّرْ عَنِّي إِنِّي قَدْ خُيِّرْتُ فَاخْتَرْتُ قَدْ قِيلَ لِي {اسْتَغْفِرْ لَهُمْ أَوْ لا تَسْتَغْفِرْ لَهُمْ} [التوبة: ٨٠] فَلَوْ أَعْلَمُ أَنِّي إِنْ زِدْت عَلَى السَّبْعِينَ غُفِرَ لَهُ لَزِدْتُ قَالَ: ثُمَّ صَلَّى عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَشَى مَعَهُ حَتَّى قَامَ عَلَى قَبْرِهِ حَتَّى فَرَغَ مِنْهُ، قَالَ: فَعَجِبْتُ لِي وَلِجُرْأَتِي عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاَللَّهُ وَرَسُولُهُ أَعْلَمُ، فَوَاَللَّهِ مَا كَانَ إِلَّا يَسِيرًا حَتَّى نَزَلَتْ هَاتَانِ الْآيَتَانِ {وَلا تُصَلِّ عَلَى أَحَدٍ مِنْهُمْ مَاتَ أَبَدًا وَلا تَقُمْ عَلَى قَبْرِهِ} [التوبة: ٨٤] إِلَى قَوْله تَعَالَى {وَهُمْ فَاسِقُونَ} [التوبة: ٨٤] فَمَا صَلَّى رَسُولُ اللَّهِ

[102] **Qur'an references (L40977):** Qur'an 9:79 (At-Tawbah); Qur'an 9:84 (At-Tawbah); Qur'an 9:80 (At-Tawbah); Qur'an 5:59 (Al-Ma'idah); Qur'an 2:26 (Al-Baqarah).

Allah, it was not long before these two verses were revealed: *‘Never pray over any of them who dies, nor stand at their grave’* [Quran 9:84] up to His saying: *‘And they are defiantly disobedient’* [Quran 9:84]. Thereafter, the Messenger of Allah—peace and blessings be upon him—never prayed over a hypocrite until Allah took his soul.”

Abdullah ibn Rabi‘ narrated to us: Muhammad ibn Mu‘awiyah narrated to us: Ahmad ibn Shu‘ayb narrated to us: Muhammad ibn Abdullah ibn al-Mubarak narrated to us: Hujayr ibn al-Muthanna narrated to us: al-Layth ibn Sa‘d narrated to us from ‘Uqayl ibn Khalid from Ibn Shihab from ‘Ubaydullah ibn Abdullah ibn ‘Utbah ibn Mas‘ud from Ibn ‘Abbas from ‘Umar ibn al-Khattab, who said: “When Abdullah ibn Ubayy ibn Salul died, the Messenger of Allah—peace and blessings be upon him—was summoned to pray over him. When he stood, I rose and said, ‘O Messenger of Allah, will you pray over Ibn Ubayy?’ I mentioned his words on such-and-such day, enumerating his offenses. The Messenger of Allah—peace and blessings be upon him—smiled and said, ‘Step back, O Umar.’ When I pressed him further, he said, ‘I was given a choice and I chose. If I knew that exceeding seventy would secure his forgiveness, I would exceed it.’ The Messenger of Allah—peace and blessings be upon him—then prayed over him and departed. It was not long before the two verses from Surah At-Tawbah were revealed. ‘Umar said, ‘I marveled at my boldness toward the Messenger of Allah—peace and blessings be upon him—’ and Allah and His Messenger know best.”

Ahmad ibn ‘Umar ibn Anas al-‘Udhri narrated to us: Abu Dhar al-Harawi narrated to us: Abdullah ibn Ahmad ibn Hamawayh al-Sarakhsi narrated to us: Ibrahim ibn Khuraym narrated to us: ‘Abd ibn Humayd narrated to us: Ibrahim ibn al-Hakam narrated to us from his father from ‘Ikrimah, who said: “When Abdullah ibn Ubayy neared death, Ibn ‘Abbas said: The Messenger of Allah—peace and blessings be upon him and his family—entered upon him, and they conversed. Abdullah ibn Ubayy said, ‘I comprehend your words, but grant me this favor today: shroud me in this shirt of yours and pray over me.’ Ibn ‘Abbas said: He shrouded him...” The Messenger of Allah—peace and blessings be upon him—clothed him in his shirt and prayed over him“—And Allah knows best—”whatever prayer that was. The Messenger

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مُنَافِقٍ حَتَّى قَبَضَهُ اللَّهُ تَعَالَى» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ نا حُجَيْرُ بْنُ الْمُثَنَّى نا اللَّيْثُ بْنُ سَعْدٍ عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنِ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنِ ابْنِ عَبَّاسٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ «لَمَّا تُوُفِّيَ عَبْدُ اللَّهِ بْنُ أُبَيِّ ابْنُ سَلُولَ دُعِيَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُصَلِّيَ عَلَيْهِ فَلَمَّا قَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَثَبْتُ، ثُمَّ قُلْتُ: يَا رَسُولَ اللَّهِ أَتُصَلِّي عَلَى ابْنِ أُبَيٍّ؟ وَقَالَ يَوْمَ كَذَا: كَذَا وَكَذَا، أُعَدِّدُ عَلَيْهِ، فَتَبَسَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ: أَخِّرْ عَنِّي يَا عُمَرُ، فَلَمَّا أَكْثَرْتُ عَلَيْهِ قَالَ: إِنِّي خُيِّرْتُ فَاخْتَرْتُ فَلَوْ عَلِمْتُ أَنِّي إِنْ زِدْتُ عَلَى السَّبْعِينَ غُفِرَ لَهُ لَزِدْتُ عَلَيْهَا، فَصَلَّى عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ انْصَرَفَ، فَمَا مَكَثَ إِلَّا يَسِيرًا حَتَّى نَزَلَتْ الْآيَتَانِ مِنْ بَرَاءَةٍ الْمَذْكُورَتَانِ، قَالَ عُمَرُ: فَعَجِبْتُ مِنْ جُرْأَتِي عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» وَاَللَّهُ أَعْلَمُ. حَدَّثَنَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَوَيْهِ السَّرَخْسِيُّ نا إِبْرَاهِيمُ بْنُ خُرَيْمٍ نا عَبْدُ بْنُ حُمَيْدٍ نا إِبْرَاهِيمُ بْنُ الْحَكَمِ عَنْ أَبِيهِ عَنْ عِكْرِمَةَ قَالَ «لَمَّا حَضَرَ عَبْدَ اللَّهِ بْنَ أُبَيٍّ الْمَوْتُ، قَالَ ابْنُ عَبَّاسٍ: فَدَخَلَ عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَجَرَى بَيْنَهُمَا كَلَامٌ فَقَالَ لَهُ عَبْدُ اللَّهِ بْنُ أُبَيٍّ: قَدْ أَفْقَهُ مَا تَقُولُ وَلَكِنْ مُنَّ عَلَيَّ الْيَوْمَ وَكَفِّنِّي بِقَمِيصِكَ هَذَا، وَصَلِّ عَلَيَّ؟ قَالَ ابْنُ عَبَّاسٍ: فَكَفَّنَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَمِيصِهِ وَصَلَّى عَلَيْهِ» - وَاَللَّهُ أَعْلَمُ - أَيَّ صَلَاةٍ كَانَتْ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَخْدَعْ إِنْسَانًا قَطُّ غَيْرَ أَنَّهُ قَالَ يَوْمَ الْحُدَيْبِيَةِ: كَلِمَةً حَسَنَةً، قَالَ الْحَكَمُ: فَسَأَلْت عِكْرِمَةَ مَا هَذِهِ الْكَلِمَةُ؟ قَالَ: قَالَتْ قُرَيْشٌ: يَا أَبَا حَبَّابٍ

of Allah—peace and blessings be upon him—never deceived anyone except when he spoke a kind word during the day of Al-Hudaybiyah." Al-Hakam said: "I asked Ikrimah, 'What was this word?' He replied: 'The Quraysh said: "O Abu Habbab, we have prevented Muhammad from circumambulating this House, but we grant you permission." He responded: "No, I follow the exemplary model of the Messenger of Allah—peace and blessings be upon him and his family."'"

Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: 'Abdul-Jabbar ibn Al-'Ala' ibn 'Abdul-Jabbar narrated from Sufyan ibn 'Uyaynah from 'Amr ibn Dinar, who heard Jabir say: "The Prophet—peace and blessings be upon him and his family—came to the grave of 'Abdullah ibn Ubayy after he had been placed in his grave pit. He stood there, ordered him removed from it, placed him on his knees, clothed him in his own shirt, and blew gently upon him with his saliva"—And Allah knows best?

Abu Muhammad—may Allah have mercy on him—said: "All this confirms the validity of our position for several reasons: First—the apparent meaning of the verse, as we stated, indicates they had disbelieved earlier and died in depravity. Second—Allah the Exalted categorically forbade the Prophet—peace and blessings be upon him and his family—and the believers from seeking forgiveness for polytheists, as He said: {It is not for the Prophet and those who believe to seek forgiveness for the polytheists} [9:113] until His words: {companions of the Blaze} [2:119]. Had Ibn Ubayy and the others mentioned been among those whom the Prophet—peace and blessings be upon him—knew with certainty to be disbelievers, he would neither have sought forgiveness for them nor prayed over them. No Muslim may presume that the Prophet—peace and blessings be upon him—disobeyed his Lord in this matter. Thus, it is certain he—peace be upon him—never knew that 'Abdullah ibn Ubayy and the others mentioned were inwardly disbelievers."

We received through Muslim: Harmalah ibn Yahya At-Tujibi narrated to us: 'Abdullah ibn Wahb narrated to us: Yunus narrated from Ibn Shihab, who informed me that Sa'id ibn Al-Musayyib ibn Hawr narrated from his father, who said: "When Abu Talib's death approached, the Messenger of

إِنَّا قَدْ مَنَعْنَا مُحَمَّدًا طَوَافَ هَذَا الْبَيْتِ، وَلَكِنَّا نَأْذَنُ لَكَ؟ فَقَالَ: لَا، لِي فِي رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أُسْوَةٌ حَسَنَةٌ". حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَبْدُ الْجَبَّارِ بْنُ الْعَلَاءِ بْنِ عَبْدِ الْجَبَّارِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ وَسَمِعَ جَابِرًا يَقُولُ: «أَتَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَبْرَ عَبْدِ اللَّهِ بْنِ أُبَيٍّ - وَقَدْ وُضِعَ فِي حُفْرَتِهِ - فَوَقَفَ فَأَمَرَ بِهِ فَأُخْرِجَ مِنْ حُفْرَتِهِ، فَوَضَعَهُ عَلَى رُكْبَتَيْهِ، وَأَلْبَسَهُ قَمِيصَهُ، وَنَفَثَ عَلَيْهِ مِنْ رِيقِهِ» ، وَاللَّهُ أَعْلَمُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا كُلُّهُ يُوجِبُ صِحَّةَ مَا قُلْنَاهُ لِوُجُوهٍ: أَحَدُهَا - ظَاهِرُ الْآيَةِ كَمَا قُلْنَا مِنْ أَنَّهُمْ كَفَرُوا قَبْلُ، وَمَاتُوا عَلَى الْفِسْقِ. وَالثَّانِي - أَنَّ اللَّهَ تَعَالَى قَدْ نَهَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَالْمُؤْمِنِينَ عَنْ الِاسْتِغْفَارِ جُمْلَةً لِلْمُشْرِكِينَ بِقَوْلِهِ تَعَالَى {مَا كَانَ لِلنَّبِيِّ وَالَّذِينَ آمَنُوا أَنْ يَسْتَغْفِرُوا لِلْمُشْرِكِينَ} [التوبة: ١١٣] إلَى قَوْله تَعَالَى {أَصْحَابِ الْجَحِيمِ} [البقرة: ١١٩] فَلَوْ كَانَ ابْنُ أُبَيٍّ وَغَيْرُهُ مِنْ الْمَذْكُورِينَ مِمَّنْ تَبَيَّنَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُمْ كُفَّارٌ - بِلَا شَكٍّ - لَمَا اسْتَغْفَرَ لَهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَا صَلَّى عَلَيْهِ. وَلَا يَحِلُّ لِمُسْلِمٍ أَنْ يَظُنَّ بِالنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ خَالَفَ رَبَّهُ فِي ذَلِكَ، فَصَحَّ يَقِينًا أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَعْلَمْ قَطُّ أَنَّ عَبْدَ اللَّهِ بْنَ أُبَيٍّ وَالْمَذْكُورِينَ كُفَّارٌ فِي الْبَاطِنِ؟ رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا حَرْمَلَةُ بْنُ يَحْيَى التُّجِيبِيُّ نا عَبْدُ اللَّهِ بْنُ وَهْبٍ نا يُونُسُ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيِّبِ بْنِ حَوْرٍ عَنْ أَبِيهِ قَالَ: «لَمَّا حَضَرَتْ أَبَا طَالِبٍ الْوَفَاةُ جَاءَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَجَدَ عِنْدَهُ أَبَا جَهْلٍ، وَعَبْدَ اللَّهِ بْنَ أَبِي أُمَيَّةَ بْنِ الْمُغِيرَةِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَا

Allah—peace and blessings be upon him—came to him and found Abu Jahl and ʻAbdullah ibn Abi Umayyah ibn Al-Mughirah present. The Messenger of Allah—peace and blessings be upon him—said: ʼO uncle, declare: There is no god but Allah—a phrase by which I may testify for you before Allah.ʼ Abu Jahl and ʻAbdullah ibn Abi Umayyah interjected: ʼDo you abandon the faith of ʻAbdul-Muttalib?ʼ The Messenger of Allah—peace and blessings be upon him—continued to insist...“ They presented it to him and repeated that statement to him until Abū Ṭālib—in his final words to them—said: ”Upon the religion of ʿAbd al-Muṭṭalib.“ Thereupon the Messenger of Allāh—peace and blessings of Allāh be upon him—declared: ”By Allāh, I will surely seek forgiveness for you as long as I am not prohibited from doing so.“ Then Allāh the Exalted revealed: {It is not for the Prophet and those who have believed...} [9:113] to affirm this prohibition. Abū Muḥammad said: This confirms beyond doubt that the prohibition against seeking forgiveness for polytheists was revealed in Makkah. Thus, it is established with certainty that he—peace and blessings of Allāh be upon him—did not hold conviction that ʿAbdullāh ibn Ubayy was a polytheist. Had he been certain he was a polytheist, he would not have prayed over him at all nor sought forgiveness for him. Likewise, ʿUmar ibn al-Khaṭṭāb's enumeration of ʿAbdullāh ibn Ubayy ibn Salūl's statements—No, had he considered him a disbeliever, he would have explicitly declared so, confronted him directly, and would not have engaged others at length. Third: Ibn ʿAbbās doubted, and Jābir [shared this], while ʿUmar marveled at the opposition to the Prophet—peace and blessings of Allāh be upon him and his family—regarding his praying over ʿAbdullāh ibn Ubayy, while acknowledging that the Messenger of Allāh—peace and blessings of Allāh be upon him and his family—possessed greater knowledge. Fourth: Allāh the Exalted prohibited only His Prophet—peace and blessings of Allāh be upon him and his family—from praying over them and seeking forgiveness for them, without prohibiting other Muslims. We do not deny this, for the Messenger of Allāh—peace and blessings of Allāh be upon him and his family—would not pray over one indebted without means for repayment yet commanded Muslims to pray over them. This establishes with certainty that the verses' meaning is their disbelief due to their statements—a fact known to the Prophet—peace and blessings of Allāh

عَمِّ قُلْ: لَا إِلَهَ إِلَّا اللَّهُ كَلِمَةً أَشْهَدُ لَكَ بِهَا عِنْدَ اللَّهِ؟ فَقَالَ أَبُو جَهْلٍ، وَعَبْدُ اللَّهِ بْنُ أَبِي أُمَيَّةَ: أَتَرْغَبُ عَنْ مِلَّةِ عَبْدِ الْمُطَّلِبِ، فَلَمْ يَزَلْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَعْرِضُهَا عَلَيْهِ وَيُعِيدَانِ عَلَيْهِ تِلْكَ الْمَقَالَةَ، حَتَّى قَالَ أَبُو طَالِبٍ، آخِرُ مَا كَلَّمَهُمْ بِهِ: عَلَى مِلَّةِ عَبْدِ الْمُطَّلِبِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَا وَاللَّهِ لَأَسْتَغْفِرَنَّ لَكَ مَا لَمْ أُنْهَ عَنْكَ فَأَنْزَلَ اللَّهُ تَعَالَى {مَا كَانَ لِلنَّبِيِّ وَالَّذِينَ آمَنُوا} [التوبة: ١١٣] الْآيَةَ؟»

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ أَنَّ النَّهْيَ عَنْ الِاسْتِغْفَارِ لِلْمُشْرِكِينَ نَزَلَ بِمَكَّةَ - بِلَا شَكٍّ - فَصَحَّ يَقِينًا أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُوقِنْ أَنَّ عَبْدَ اللَّهِ بْنَ أُبَيٍّ مُشْرِكٌ وَلَوْ أَيْقَنَ أَنَّهُ مُشْرِكٌ لَمَا صَلَّى عَلَيْهِ أَصْلًا، وَلَا اسْتَغْفَرَ لَهُ، وَكَذَلِكَ تَعْدِيدُ عُمَرَ بْنِ الْخَطَّابِ مَقَالَاتِ عَبْدِ اللَّهِ بْنِ أُبَيٍّ ابْنِ سَلُولَ: لَا، وَلَوْ كَانَ عِنْدَهُ كَافِرًا لَصَرَّحَ بِذَلِكَ، وَقَصَدَ إلَيْهِ، وَلَمْ يُطَوِّلْ بِغَيْرِهِ. وَالثَّالِثُ - شَكَّ ابْنُ عَبَّاسٍ، وَجَابِرٌ، وَتَعَجَّبَ عُمَرُ مِنْ مُعَارَضَةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي صَلَاتِهِ عَلَى عَبْدِ اللَّهِ بْنِ أُبَيٍّ، وَإِقْرَارِهِ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْرَفُ مِنْهُ. وَالرَّابِعُ - أَنَّ اللَّهَ تَعَالَى إنَّمَا نَهَى نَبِيَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الصَّلَاةِ عَلَيْهِمْ وَالِاسْتِغْفَارِ لَهُمْ فَقَطْ، وَلَمْ يَنْهَ سَائِرَ الْمُسْلِمِينَ عَنْ ذَلِكَ، وَهَذَا لَا نُنْكِرُهُ، فَقَدْ كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُصَلِّي عَلَى مَنْ عَلَيْهِ دَيْنٌ لَا يُتْرَكُ لَهُ وَفَاءٌ وَيَأْمُرُ الْمُسْلِمِينَ بِالصَّلَاةِ عَلَيْهِمْ. فَصَحَّ يَقِينًا بِهَذَا أَنَّ مَعْنَى الْآيَاتِ إنَّمَا هُوَ أَنَّهُمْ كَفَرُوا بِذَلِكَ مِنْ قَوْلِهِمْ، وَعَلِمَ بِذَلِكَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - وَالْمُسْلِمُونَ. ثُمَّ تَابُوا فِي ظَاهِرِ الْأَمْرِ، فَمِنْهُمْ مِنْ عَلِمَ اللَّهُ تَعَالَى أَنَّ بَاطِنَهُ كَظَاهِرِهِ فِي التَّوْبَةِ، وَمِنْهُمْ مَنْ عَلِمَ اللَّهُ تَعَالَى أَنَّ بَاطِنَهُ خِلَافُ ظَاهِرِهِ، وَلَمْ يَعْلَمْ ذَلِكَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - وَلَا أَحَدٌ مِنْ الْمُسْلِمِينَ، وَهَذَا فِي غَايَةِ الْبَيَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

be upon him—and the Muslims. They then ostensibly repented. Among them were those whose inward state Allāh knew matched their outward repentance, and others whose inward state Allāh knew contradicted their appearance—though neither the Prophet—peace and blessings of Allāh be upon him—nor any Muslim knew this. This is manifestly clear—and success comes solely from Allāh the Exalted.[103][104]

L40987 And He, the Exalted, said, "Those who remained behind rejoiced at their sitting in opposition to the Messenger of Allah" [At-Tawbah: 81], and the statement of the Exalted, "while they were disbelievers" [At-Tawbah: 55].[105]

L40988 He said: The statement of Allah, the Exalted, {Those who stayed behind rejoiced} [At-Tawbah: 81] contains no explicit text indicating they disbelieved through that act. Rather, they committed a major sin from the gravest sins, and they were thereby disobedient and transgressors.[106]

L40989 And indeed, Allah, the Exalted, has mentioned these [people] by name in Sūrat al-Fatḥ.

L40990–40992 And the Most High clarified this which We have said there, with an elaboration beyond what He had reminded them of here, as He, the Exalted, said: "Those who stayed behind among the Bedouins will say to you" [Al-Fath 48:11]. To the statement of Allah, the Exalted, {a painful punishment} [An-Nisa: 18], Allah decreed that those who stayed behind—whom He commanded His Prophet (peace be upon him) never to pray over any of them who died at all—disbelieved in Allah and His Messenger. These are those whom Allah commanded His Prophet (peace be upon him) not to be pleased by their wealth or children, and whose souls He intended to take while they were disbelievers: that their repentance is accepted if they repent outwardly in their apparent affairs, and in the ruling regarding their inner state—that whoever among them had sincere repentance and obeyed when summoned

وَقَالَ تَعَالَى {فَرِحَ الْمُخَلَّفُونَ بِمَقْعَدِهِمْ خِلافَ رَسُولِ اللَّهِ} [التوبة: ٨١] إِلَى قَوْله تَعَالَى {وَهُمْ كَافِرُونَ} [التوبة: ٥٥] .

قَالَ فَقَوْلُهُ تَعَالَى {فَرِحَ الْمُخَلَّفُونَ} [التوبة: ٨١] الْآيَةَ لَيْسَ فِيهَا نَصٌّ عَلَى أَنَّهُمْ كَفَرُوا بِذَلِكَ، وَلَكِنَّهُمْ أَتَوْا كَبِيرَةً مِنْ الْكَبَائِرِ كَانُوا بِهَا عُصَاةً فَاسِقِينَ.

وَقَدْ ذَكَرَ اللَّهُ تَعَالَى هَؤُلَاءِ بِأَعْيَانِهِمْ فِي سُورَةِ الْفَتْحِ.

وَبَيَّنَ تَعَالَى هَذَا الَّذِي قُلْنَاهُ هُنَالِكَ بِزِيَادَةٍ عَلَى مَا ذَكَرَهُمْ بِهِ هَاهُنَا، فَقَالَ تَعَالَى {سَيَقُولُ لَكَ الْمُخَلَّفُونَ مِنَ الأَعْرَابِ} [الفتح: ١١] إلَى قَوْله تَعَالَى {عَذَابًا أَلِيمًا} [النساء: ١٨] فَنَصَّ اللَّهُ تَعَالَى عَلَى أَنَّ أُولَئِكَ الْمُخَلَّفِينَ الَّذِينَ أَمَرَ اللَّهُ تَعَالَى نَبِيَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ لَا يُصَلِّيَ عَلَى أَحَدٍ مِنْهُمْ مَاتَ أَبَدًا، وَأَنَّهُمْ كَفَرُوا بِاَللَّهِ وَبِرَسُولِهِ، وَالَّذِينَ أَمَرَ اللَّهُ تَعَالَى نَبِيَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ لَا تُعْجِبَهُ أَمْوَالُهُمْ وَلَا أَوْلَادُهُمْ، وَأَنَّهُ تَعَالَى أَرَادَ أَنْ تَزْهَقَ أَنْفُسُهُمْ وَهُمْ كَافِرُونَ: أَنَّهُمْ مَقْبُولَةٌ تَوْبَتُهُمْ إنْ تَابُوا فِي ظَاهِرِ أَمْرِهِمْ، وَفِي الْحُكْمِ بِأَنَّ بَاطِنَهُمْ: أَنَّ مَنْ كَانَ مِنْهُمْ صَحِيحَ التَّوْبَةِ مُطِيعًا إذَا دُعِيَ بَعْدَ مَوْتِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى الْجِهَادِ فَسَيُؤْتِيهِ أَجْرًا عَظِيمًا، وَأَنَّ مَنْ تَوَلَّى عَذَّبَهُ اللَّهُ تَعَالَى عَذَابًا أَلِيمًا.

[103] **Hadith references (L40980):** Sahih Muslim 24a.

[104] **Qur'an references (L40980):** Qur'an 9:80 (At-Tawbah); Qur'an 9:84 (At-Tawbah); Qur'an 9:113 (At-Tawbah); Qur'an 2:119 (Al-Baqarah).

[105] **Qur'an references (L40987):** Qur'an 9:81 (At-Tawbah); Qur'an 9:55 (At-Tawbah).

[106] **Qur'an references (L40988):** Qur'an 9:81 (At-Tawbah).

to jihad after the death of the Messenger of Allah (peace be upon him) will be granted a great reward, and that whoever turns away, Allah will inflict on him a painful punishment.[107]

L40993 Thus, what we have stated is correct—that they disbelieved, and the Messenger of Allah (peace be upon him) knew they had disbelieved, then they repented, and he accepted their repentance. Yet, after their repentance, he (peace be upon him) could not discern who among them was truthful in the secret of their affair or in whom disbelief resided in the inner aspect of their belief. This is the truth, which none may deviate from, as evidenced by the texts we previously cited—and success is by Allah, the Exalted.

L40994 And He, the Exalted, said: {When a sūrah is revealed [saying], "Believe in Allah"} [At-Tawbah: 86] up to His saying, the Exalted: {so they do not comprehend} [At-Tawbah: 87]. Abū Muḥammad (may Allah have mercy on him) said: These are the exact texts of the verses we mentioned, and we have already spoken about them. And He, the Exalted, said: {The excuse-makers among the Bedouins came} [At-Tawbah: 90] up to His saying: {a painful punishment} [Al-Baqarah: 10].[108]

L40995 He said: This verse clarifies what we have stated in explicit terms, because He, the Exalted, has informed that some of them are disbelievers, though all of them are sinners. As for those among them who harbored disbelief inwardly, neither the Prophet—peace be upon him—knew about them, nor did anyone among them know about them except Allah the Exalted alone.

L40996 And the Most High said, "Indeed, the blame rests only upon those who seek permission from you" [At-Tawbah: 93] up to His saying "from the transgressing people" [At-Tawbah: 96]. Abu Muhammad—may Allah have mercy on him—said: This [verse] is similar to the preceding one, and we have already stated: Among them were those who disbelieved, so those are the ones upon whose hearts Allah has sealed. However, Allah, the Most High, postponed

فَصَحَّ مَا قُلْنَاهُ مِنْ أَنَّهُمْ كَفَرُوا فَعَرَفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُمْ كَفَرُوا ثُمَّ تَابُوا فَقَبِلَ تَوْبَتَهُمْ، وَلَمْ يَعْرِفْ - عَلَيْهِ السَّلَامُ - بَعْدَ التَّوْبَةِ مَنْ مِنْهُمْ الصَّادِقُ فِي سِرِّ أَمْرِهِ، وَلَا مَنْ مِنْهُمْ الْكُفْرُ فِي بَاطِنِ مُعْتَقَدِهِ، وَهَذَا هُوَ الْحَقُّ الَّذِي لَا يَجُوزُ غَيْرُهُ بِشَهَادَةِ النُّصُوصِ، كَمَا أَوْرَدْنَا آنِفًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَالَ تَعَالَى {وَإِذَا أُنْزِلَتْ سُورَةٌ أَنْ آمِنُوا بِاللَّهِ} [التوبة: ٨٦] إلَى قَوْله تَعَالَى {فَهُمْ لا يَفْقَهُونَ} [التوبة: ٨٧] ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذِهِ نَصُّ الْآيَاتِ الَّتِي ذَكَرْنَا أَيْضًا وَقَدْ تَكَلَّمْنَا فِيهَا، وَقَالَ تَعَالَى {وَجَاءَ الْمُعَذِّرُونَ مِنَ الأَعْرَابِ} [التوبة: ٩٠] إلَى قَوْله تَعَالَى {عَذَابٌ أَلِيمٌ} [البقرة: ١٠] .

قَالَ: وَهَذِهِ الْآيَةُ تُبَيِّنُ مَا قُلْنَاهُ نَصًّا، لِأَنَّهُ تَعَالَى أَخْبَرَ أَنَّ بَعْضَهُمْ كُفَّارٌ، إلَّا أَنَّ كُلَّهُمْ عُصَاةٌ، فَأَمَّا الْمُبْطِنُونَ لِلْكُفْرِ مِنْهُمْ فَلَمْ يَعْلَمْهُمْ النَّبِيُّ - عَلَيْهِ السَّلَامُ - وَلَا عَلِمَهُمْ أَحَدٌ مِنْهُمْ إلَّا اللَّهُ تَعَالَى فَقَطْ.

وَقَالَ تَعَالَى {إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَسْتَأْذِنُونَكَ} [التوبة: ٩٣] إلَى قَوْلِهِ {عَنِ الْقَوْمِ الْفَاسِقِينَ} [التوبة: ٩٦] ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذِهِ كَالَّتِي قَبْلَهَا، وَقَدْ قُلْنَا: إنَّ فِيهِمْ مَنْ كَفَرَ، فَأُولَئِكَ الَّذِينَ طَبَعَ اللَّهُ عَلَى قُلُوبِهِمْ، وَلَكِنَّ اللَّهَ تَعَالَى أَرْجَأَ أَمْرَهُمْ بِقَوْلِهِ تَعَالَى {وَسَيَرَى اللَّهُ عَمَلَكُمْ وَرَسُولُهُ} [التوبة: ٩٤] .

[107] **Qur'an references (L40990):** Qur'an 48:11 (Al-Fath); Qur'an 9:84 (At-Tawbah); Qur'an 4:18 (An-Nisa).

[108] **Qur'an references (L40994):** Qur'an 9:86 (At-Tawbah); Qur'an 9:87 (At-Tawbah); Qur'an 63:3 (Al-Munafiqun); Qur'an 9:90 (At-Tawbah); Qur'an 2:10 (Al-Baqarah).

His judgment on them by His saying: “Allah and His Messenger will see your deeds” [At-Tawbah: 94].[109]

L40997 Thus, what we have said is correct, and all the verses are in harmony. All praise is due to Allah, Lord of the worlds.

L40998–40999 Similarly, the Exalted has informed that {Their refuge is Hellfire as a recompense for what they used to acquire} [At-Tawbah 9:95]. Hellfire serves as a recompense both for disbelief and for disobedience. Similarly, the Exalted is not pleased with the evildoers, even if they are not disbelievers.[110]

فَصَحَّ مَا قُلْنَاهُ وَاتَّفَقَتْ الْآيَاتُ كُلُّهَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَكَذَلِكَ أَخْبَرَ تَعَالَى أَنَّ {وَمَأْوَاهُمْ جَهَنَّمُ جَزَاءً بِمَا كَانُوا يَكْسِبُونَ} [التوبة: ٩٥] وَجَهَنَّمُ تَكُونُ جَزَاءً عَلَى الْكُفْرِ وَتَكُونُ جَزَاءً عَلَى الْمَعْصِيَةِ، وَكَذَلِكَ لَا يَرْضَى تَعَالَى عَنْ الْقَوْمِ الْفَاسِقِينَ، وَإِنْ لَمْ يَكُونُوا كَافِرِينَ.

[109] **Qur’an references (L40996):** Qur’an 9:93 (At-Tawbah); Qur’an 9:96 (At-Tawbah); Qur’an 16:108 (An-Nahl); Qur’an 47:16 (Muhammad); Qur’an 9:94 (At-Tawbah).

[110] **Qur’an references (L40999):** Qur’an 9:95 (At-Tawbah).

L41000 He, the Exalted, said: “The desert Arabs are the most severe in disbelief and hypocrisy” [Surah At-Tawbah 9:97] up to His words: “Indeed, Allah is Forgiving, Merciful” [Surah At-Tawbah 9:99]. Abu Muhammad said: “Do these verses not explicitly confirm what we have asserted—that there are hidden disbelievers among them inwardly?” Abu Muhammad—may Allah have mercy on him—said: “None knows their secret except Allah Himself, but His Messenger—peace be upon him—does not.”[1]

وَقَالَ تَعَالَى {الأَعْرَابُ أَشَدُّ كُفْرًا وَنِفَاقًا} [التوبة: ٩٧] إِلَى قَوْله تَعَالَى {إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ} [البقرة: ١٧٣] ؟ قَالَ أَبُو مُحَمَّد: وَهَذِهِ الْآيَاتُ كُلُّهَا تُبَيِّنُ نَصَّ مَا قُلْنَاهُ مِنْ أَنَّ فِيهِمْ كُفَّارًا فِي الْبَاطِنِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَا يَعْلَمُ سِرَّهُمْ إِلَّا اللَّهُ تَعَالَى، وَأَمَّا رَسُولُهُ - عَلَيْهِ السَّلَامُ - فَلَا.

L41001 And He, the Exalted, said, {And among those around you from the Bedouins are hypocrites} [At-Tawbah: 101] until His statement, the Exalted, {All-Hearing, All-Knowing} [Al-Baqarah: 127]. Abu Muḥammad said: This verse explicitly clarifies the text of what we said with a clarity that none may lawfully oppose. It establishes that the Prophet—peace be upon him—did not know the hypocrites, neither from the Bedouins nor from the people of Medina. Rather, Allah, the Exalted, knows them, and among them are those who repent, so Allah, the Exalted, forgives them. The Prophet—may Allah’s blessings and peace be upon him and his family—was commanded to collect zakāt from all of them based on the outward manifestation of Islam.[2]

وَقَالَ تَعَالَى {وَمِمَّنْ حَوْلَكُمْ مِنَ الأَعْرَابِ مُنَافِقُونَ} [التوبة: ١٠١] إِلَى قَوْله تَعَالَى {سَمِيعٌ عَلِيمٌ} [البقرة: ١٨١] ؟ قَالَ أَبُو مُحَمَّد: هَذِهِ الْآيَةُ مُبَيِّنَةٌ نَصَّ مَا قُلْنَاهُ بَيَانًا لَا يَحِلُّ لِأَحَدٍ أَنْ يُخَالِفَهُ مِنْ أَنَّ النَّبِيَّ - عَلَيْهِ السَّلَامُ - لَا يَعْلَمُ الْمُنَافِقِينَ - لَا مِنْ الْأَعْرَابِ، وَلَا مِنْ أَهْلِ الْمَدِينَةِ - وَلَكِنَّ اللَّهَ تَعَالَى يَعْلَمُهُمْ، وَأَنَّ مِنْهُمْ مَنْ يَتُوبُ فَيَعْفُو اللَّهُ تَعَالَى عَنْهُ، وَأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَأْمُورٌ بِأَخْذِ زَكَوَاتِ جَمِيعِهِمْ عَلَى ظَاهِرِ الْإِسْلَامِ.

L41002 And He, the Exalted, said: {As for those who took a mosque [for] harm and disbelief} [9:107] up to His statement: {until their hearts are cut asunder, and Allah is All-Knowing, All-Wise} [9:110]. Abu Muhammad—may Allah have mercy on him—said: This passage is like the one before it. It indicates that their construction of the mosque was intended for disbelief. Then they professed repentance, so Allah the Exalted knew the truthfulness of those who were truthful in this matter and the deceit of those who lied in it.[3]

وَقَالَ تَعَالَى {وَالَّذِينَ اتَّخَذُوا مَسْجِدًا ضِرَارًا وَكُفْرًا} [التوبة: ١٠٧] إِلَى قَوْله تَعَالَى {إِلا أَنْ تَقَطَّعَ قُلُوبُهُمْ وَاللَّهُ عَلِيمٌ حَكِيمٌ} [التوبة: ١١٠] ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذِهِ كَالَّتِي قَبْلَهَا، وَفِيهَا، أَنَّ بُنْيَانَهُمْ لِلْمَسْجِدِ قَصَدُوا بِهِ الْكُفْرَ، ثُمَّ أَظْهَرُوا التَّوْبَةَ، فَعَلِمَ اللَّهُ تَعَالَى صِدْقَ مَنْ صَدَقَ فِيهَا، وَكَذِبَ مَنْ كَذَبَ فِيهَا.

L41003 Indeed, {Their structure which they built will not cease to be a cause of doubt in their hearts unless their hearts are cut asunder} [At-Tawbah: 110]. Allah the Exalted has already decreed that whoever commits a sin, it is possible He will not forgive him ever until He punishes him for it, and this is the requirement of this verse.[4]

وَنَعَمْ {لا يَزَالُ بُنْيَانُهُمُ الَّذِي بَنَوْا رِيبَةً فِي قُلُوبِهِمْ إِلا أَنْ تَقَطَّعَ قُلُوبُهُمْ} [التوبة: ١١٠] وَقَدْ قَدَّمَ اللَّهُ تَعَالَى أَنَّ مَنْ أَذْنَبَ ذَنْبًا فَمُمْكِنٌ أَنْ لَا يَغْفِرَهُ لَهُ أَبَدًا حَتَّى يُعَاقِبَهُ عَلَيْهِ، وَهَذَا مُقْتَضَى هَذِهِ الْآيَةِ.

[1] **Qur’an references (L41000):** Qur’an 9:97 (At-Tawbah); Qur’an 2:173 (Al-Baqarah).
[2] **Qur’an references (L41001):** Qur’an 9:101 (At-Tawbah); Qur’an 2:181 (Al-Baqarah).
[3] **Qur’an references (L41002):** Qur’an 9:107 (At-Tawbah); Qur’an 9:110 (At-Tawbah).
[4] **Qur’an references (L41003):** Qur’an 9:110 (At-Tawbah).

L41004 And the Most High said, “When a chapter [sūrah] is revealed, some of them say...” [at-Tawbah 9:124] up to His words, “they do not understand” [al-A‘raf 7:179]—how is this reconciled?[5]

L41005–41006 Abu Muhammad—may Allah have mercy on him—said: “These [texts] provide no evidence whatsoever that those who affirm this are known as specific individuals. Rather, it is an attribute Allah the Exalted has ascribed to them, which they recognize intrinsically, solely upon hearing it.”

L41007 And He, the Exalted, said: {And they say, “We believe in Allah and the Messenger”} [An-Nur: 47] up to His statement, the Exalted: {they are the triumphant} [At-Tawbah: 20]. Abu Muhammad said: There is no clarification in this verse that they are known by their individual identities; rather, it is a description such that whoever hears it recognizes it from himself. And it is expressed in two aspects.[6]

L41008 One of them is that the one who does so is a disbeliever—when he shuns the ruling of the Messenger of Allah (may Allah’s blessings and peace be upon him and his family) and adopts a creed of not accepting it. This is pure disbelief.

L41009 The second view—divided into two divisions:

L41010 One of the two [scenarios] is when the perpetrator acts on his desires in oppression and self-favoritism, fully aware of the moral repugnance of his actions in that regard while believing the truth contradicts his deeds—such a person is a transgressor, not a disbeliever.

L41011 The second - is that one does so by emulating a person while being deeply infatuated with glorifying and loving them, deluding oneself that they are upon the truth. All these aspects exist among people. The people of these latter two categories are erring transgressors but not disbelievers. The meaning of Allah’s statement, {And those are not the believers} [Al-Mā’idah 5:43], is that they are not those who are obedient, for all obedience to Allah is faith, and all faith is obedience to Allah. Thus, whoever is not obedient to Allah

وَقَالَ تَعَالَى {وَإِذَا مَا أُنْزِلَتْ سُورَةٌ فَمِنْهُمْ مَنْ يَقُولُ} [التوبة: ١٢٤] إلَى قَوْله تَعَالَى {لا يَفْقَهُونَ} [الأعراف: ١٧٩] ؟

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَهَذِهِ لَا دَلِيلَ فِيهَا أَصْلًا عَلَى أَنَّ الْقَائِلِينَ بِذَلِكَ مَعْرُوفُونَ بِأَعْيَانِهِمْ لَكِنَّهَا صِفَةٌ وَصَفَهَا اللَّهُ تَعَالَى يَعْرِفُونَهَا مِنْ أَنْفُسِهِمْ إذَا سَمِعُوهَا فَقَطْ.

وَقَالَ تَعَالَى {وَيَقُولُونَ آمَنَّا بِاللَّهِ وَبِالرَّسُولِ} [النور: ٤٧] إلَى قَوْله تَعَالَى {هُمُ الْفَائِزُونَ} [التوبة: ٢٠] ؟ قَالَ أَبُو مُحَمَّد: لَيْسَ فِي هَذِهِ الْآيَةِ بَيَانٌ أَنَّهُمْ مَعْرُوفُونَ بِأَعْيَانِهِمْ وَإِنَّمَا هِيَ صِفَةٌ مَنْ سَمِعَهَا عَرَفَهَا مِنْ نَفْسِهِ، وَهِيَ تَخْرُجُ عَلَى وَجْهَيْنِ:

أَحَدُهُمَا - أَنْ يَكُونَ مَنْ فَعَلَ ذَلِكَ كَافِرًا وَهُوَ أَنْ يَعْتَقِدَ النِّفَارَ عَنْ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَيَدِينُ بِأَنْ لَا يَرْضَى بِهِ فَهَذَا كُفْرٌ مُجَرَّدٌ.

وَالْوَجْهُ الثَّانِي - يَنْقَسِمُ قِسْمَيْنِ:

أَحَدُهُمَا - أَنْ يَكُونَ فَاعِلُ ذَلِكَ مُتَّبِعًا لِهَوَاهُ فِي الظُّلْمِ وَمُحَابَاةِ نَفْسِهِ عَارِفًا بِقُبْحِ فِعْلِهِ فِي ذَلِكَ وَمُعْتَقِدًا أَنَّ الْحَقَّ فِي خِلَافِ فِعْلِهِ - فَهَذَا فَاسِقٌ، وَلَيْسَ كَافِرًا.

وَالثَّانِي - أَنْ يَفْعَلَ ذَلِكَ مُقَلِّدًا لِإِنْسَانٍ فِي أَنَّهُ قَدْ شَغَفَهُ تَعْظِيمُهُ إيَّاهُ وَحُبُّهُ مُوهِمًا نَفْسَهُ أَنَّهُ عَلَى حَقٍّ، وَهَذِهِ الْوُجُوهُ كُلُّهَا مَوْجُودَةٌ فِي النَّاسِ فَأَهْلُ هَذَيْنِ الْقِسْمَيْنِ الْآخَرَيْنِ مُخْطِئُونَ عُصَاةٌ وَلَيْسُوا كُفَّارًا وَيَكُونُ مَعْنَى قَوْله تَعَالَى {وَمَا أُولَئِكَ بِالْمُؤْمِنِينَ} [المائدة: ٤٣] أَيْ وَمَا أُولَئِكَ بِالْمُطِيعِينَ، لِأَنَّ كُلَّ طَاعَةٍ لِلَّهِ تَعَالَى فَهُوَ إيمَانٌ، وَكُلُّ إيمَانٍ طَاعَةٌ

[5] **Qur’an references (L41004):** Qur’an 9:124 (At-Tawbah); Qur’an 7:179 (Al-A’raf).
[6] **Qur’an references (L41007):** Qur’an 24:47 (An-Nur); Qur’an 9:20 (At-Tawbah).

in a specific matter is not a believer in that precise matter, even if they are believers in other matters wherein they obey Allah.[7]

L41012 And He, the Exalted, said, {O Prophet, fear Allah} [Al-Ahzab: 1] to His saying, the Exalted, {All-Knowing, All-Wise} [An-Nisa: 11]? Abu Muhammad—may Allah have mercy on him—said: The apparent meaning of this verse entails that the desires of the disbelievers and hypocrites are known, and it is that all believers would disbelieve.[8]

L41013 Allah the Exalted said: "They wish you would disbelieve as they disbelieved, so you would all be alike." [An-Nisā': 89] Since their desires are evident, He ordained upon the Prophet—peace and blessings of Allah be upon him—and every Muslim not to obey them in matters recognized to stem from their intent, even if they do not explicitly advise him regarding it.[9]

L41014–41016 It is not permissible for anyone to think that the disbelievers and hypocrites came to the Messenger of Allah (peace and blessings of Allah be upon him and his family). They advised him with an opinion, hoping that he would follow them in it. Since the matter stands thus, the verse does not indicate that the hypocrites were known by their specific identities to the Messenger of Allah (peace and blessings be upon him) in such a way that he knew them to be hypocrites. But rather, their characteristics were known collectively, and among their attributes without doubt was their desire that all people would be unbelievers.

L41017 And He, the Exalted, said: {When the hypocrites and those in whose hearts is disease said} [Al-Anfal: 49] the verse. Abu Muhammad (may Allah have mercy on him) said: This also does not clarify that they are people identifiable by their specific identities; rather, it is a narrative about those who said that.[10]

لِلَّهِ تَعَالَى، فَمَنْ لَمْ يَكُنْ مُطِيعًا لِلَّهِ تَعَالَى فِي شَيْءٍ مَا فَهُوَ غَيْرُ مُؤْمِنٍ فِي ذَلِكَ الشَّيْءِ بِعَيْنِهِ - وَإِنْ كَانَ مُؤْمِنًا فِي غَيْرِ ذَلِكَ مِمَّا هُوَ فِيهِ مُطِيعٌ لِلَّهِ تَعَالَى.

وَقَالَ تَعَالَى {يَا أَيُّهَا النَّبِيُّ اتَّقِ اللَّهَ} [الأحزاب: ١] إلَى قَوْله تَعَالَى {عَلِيمًا حَكِيمًا} [النساء: ١١] ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذِهِ الْآيَةُ يَقْتَضِي ظَاهِرُهَا أَنَّ أَهْوَاءَ الْكَافِرِينَ وَالْمُنَافِقِينَ مَعْرُوفَةٌ، وَهُوَ أَنْ يَكْفُرَ جَمِيعُ الْمُؤْمِنِينَ.

قَالَ تَعَالَى {وَدُّوا لَوْ تَكْفُرُونَ كَمَا كَفَرُوا فَتَكُونُونَ سَوَاءً} [النساء: ٨٩] فَإِذْ أَهْوَاؤُهُمْ مَعْرُوفَةٌ فَفَرَضَ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَى كُلِّ مُسْلِمٍ أَنْ لَا يُطِيعَهُمْ فِي ذَلِكَ مِمَّا قَدْ عَرَفَ أَنَّهُ مُرَادُهُمْ، وَإِنْ لَمْ يُشِيرُوا عَلَيْهِ فِي ذَلِكَ بِرَأْيٍ.

وَلَا يَجُوزُ أَنْ يَظُنَّ ظَانٌّ أَنَّ الْكُفَّارَ وَالْمُنَافِقِينَ أَتَوْا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مُشِيرِينَ عَلَيْهِ بِرَأْيٍ رَاجِينَ أَنْ يَتْبَعَهُمْ فِيهِ، فَإِذْ الْأَمْرُ كَذَلِكَ فَلَيْسَ فِي الْآيَةِ بَيَانٌ أَنَّ الْمُنَافِقِينَ كَانُوا مَعْرُوفِينَ بِأَعْيَانِهِمْ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَدْرِي أَنَّهُمْ مُنَافِقُونَ، وَلَكِنَّهُمْ مَعْرُوفَةٌ صِفَاتُهُمْ جُمْلَةً، وَمِنْ صِفَاتِهِمْ بِلَا شَكٍّ إرَادَتُهُمْ أَنْ يَكُونَ كُلُّ النَّاسِ كُفَّارًا.

وَقَالَ تَعَالَى {إِذْ يَقُولُ الْمُنَافِقُونَ وَالَّذِينَ فِي قُلُوبِهِمْ مَرَضٌ} [الأنفال: ٤٩] الْآيَةَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا أَيْضًا لَيْسَ فِيهِ بَيَانٌ بِأَنَّهُمْ قَوْمٌ مَعْرُوفُونَ بِأَعْيَانِهِمْ وَإِنَّمَا هُوَ خَبَرٌ عَنْ قَائِلِينَ قَالُوا ذَلِكَ.

[7] **Qur'an references (L41011):** Qur'an 5:43 (Al-Ma'idah); Qur'an 24:47 (An-Nur).
[8] **Qur'an references (L41012):** Qur'an 33:1 (Al-Ahzab); Qur'an 4:11 (An-Nisa).
[9] **Qur'an references (L41013):** Qur'an 4:89 (An-Nisa).
[10] **Qur'an references (L41017):** Qur'an 8:49 (Al-Anfal).

وَقَالَ تَعَالَى {وَإِذْ قَالَتْ طَائِفَةٌ مِنْهُمْ يَا أَهْلَ يَثْرِبَ لا مُقَامَ لَكُمْ فَارْجِعُوا} [الأحزاب: ١٣] ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا أَيْضًا مُمْكِنٌ أَنْ يَقُولَهُ يَهُودُ، وَمُمْكِنٌ أَنْ يَقُولَهُ أَيْضًا قَوْمٌ مُسْلِمُونَ خَوَرًا وَجُبْنًا، وَإِذْ كُلُّ ذَلِكَ مُمْكِنٌ فَلا يَجُوزُ الْقَطْعُ مِنْ أَجْلِ هَذِهِ الْآيَةِ عَلَى أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَعْرِفُ أَنَّهُمْ مُنَافِقُونَ.

L41018 And He, the Exalted, said: {And when a faction among them said, "O people of Yathrib, there is no abode for you, so turn back"} [Al-Ahzab: 13]. Abu Muhammad said: This could also have been said by Jews, or by some Muslims out of weakness and cowardice. Since all these possibilities exist, it is impermissible to assert definitively based on this verse that the Messenger of Allah (may Allah bless him and grant him peace) knew they were hypocrites.[11]

وَأَمَّا قَوْلُ اللَّهِ تَعَالَى {وَيَسْتَأْذِنُ فَرِيقٌ مِنْهُمُ النَّبِيَّ} [الأحزاب: ١٣] إلَى قَوْله تَعَالَى {وَكَانَ عَهْدُ اللَّهِ مَسْئُولا} [الأحزاب: ١٥] فَإِنَّ هَذَا قَدْ رُوِيَ أَنَّهُ كَانَ نَزَلَ فِي بَنِي حَارِثَةَ، وَبَنِي سَلَمَةَ - وَهُمْ الْأَفَاضِلُ الْبَدْرِيُّونَ الْأُحُدِيُّونَ - وَلَكِنَّهَا كَانَتْ وَهْلَةً فِي اسْتِئْذَانِهِمْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ الْخَنْدَقِ، وَقَوْلُهُمْ {إِنَّ بُيُوتَنَا عَوْرَةٌ} [الأحزاب: ١٣] وَفِيهِمَا نَزَلَتْ {إِذْ هَمَّتْ طَائِفَتَانِ مِنْكُمْ أَنْ تَفْشَلا وَاللَّهُ وَلِيُّهُمَا} [آل عمران: ١٢٢] .

L41019 As for the verse of Allah, the Exalted: {And a group of them seek permission from the Prophet} [Al-Ahzab: 13] up to His saying: {And the covenant of Allah is to be questioned} [Al-Ahzab: 15], it has been narrated that this was revealed concerning Banū Ḥārithah and Banū Salamah—they being the virtuous participants of Badr and Uḥud—but there was a moment of fear in their seeking permission from the Prophet (peace and blessings of Allah be upon him) during the Battle of the Trench, and their statement: {Indeed, our homes are unprotected} [Al-Ahzab: 13]. Concerning them both was revealed: {When two factions among you were on the verge of losing heart, though Allah was their Guardian} [Āl ʿImrān: 122]. As narrated by ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid from Ibrāhīm ibn Aḥmad from al-Farabrī from al-Bukhārī from ʿAlī ibn ʿAbd Allāh from Sufyān ibn ʿUyaynah.[12]

كَمَا نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا سُفْيَانُ بْنُ عُيَيْنَةَ

قَالَ عَمْرُو بْنُ دِينَارٍ: سَمِعْت جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: فِينَا نَزَلَتْ {إِذْ هَمَّتْ طَائِفَتَانِ مِنْكُمْ أَنْ تَفْشَلا وَاللَّهُ وَلِيُّهُمَا} [آل عمران: ١٢٢] قَالَ جَابِرٌ: نَحْنُ الطَّائِفَتَانِ بَنُو حَارِثَةَ وَبَنُو سَلَمَةَ.

L41020 Amr ibn Dinar said: I heard Jabir ibn Abdullah saying: "Concerning us was revealed *'When two parties among you were about to lose courage, and Allah was their Protector'* [Quran 3:122]." Jabir said: "We are the two parties—Banu Harithah and Banu Salamah."[13]

قَالَ جَابِرٌ: وَمَا نُحِبُّ أَنَّهَا لَمْ تَنْزِلْ لِقَوْلِهِ تَعَالَى {وَاللَّهُ وَلِيُّهُمَا} [آل عمران: ١٢٢] ؟ قَالَ أَبُو مُحَمَّدٍ: مَعَ أَنَّهُ لَيْسَ فِي الْآيَةِ أَنَّ هَذَا كُفْرٌ أَصْلًا، فَبَطَلَ التَّعَلُّقُ بِهَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41021 Jābir said: "Do we not dislike that it had not been revealed, due to His statement—the Exalted—'And Allah is the Protector of both of them' [Āl ʿImrān: 122]?" Abū Muḥammad said: "Even though the verse does not indicate that

[11] **Qur'an references (L41018):** Qur'an 33:13 (Al-Ahzab).

[12] **Qur'an references (L41019):** Qur'an 33:13 (Al-Ahzab); Qur'an 33:15 (Al-Ahzab); Qur'an 3:122 (Ali 'Imran).

[13] **Qur'an references (L41020):** Qur'an 3:122 (Ali 'Imran).

this constitutes disbelief at all, invoking it as evidence is invalidated, and divine success is with Allah, the Exalted."[14]

L41022 And He, the Exalted, said, {Allah certainly knows those among you who hinder} [Al-Ahzab: 18] to His saying, the Exalted, {and that is easy for Allah} [An-Nisa: 30].[15]

L41023–41024 Abu Muhammad said: This contains no evidence that it pertains to people known by their specific identities; rather, it describes a trait recognized within themselves by those among them who hear this verse. However, Allah's statement shortly thereafter: {So that Allah may reward the truthful for their truthfulness and punish the hypocrites if He wills or accept their repentance} [Al-Ahzab: 24] is a clear exposition of the availability of repentance for them. All these individuals, without any disagreement from anyone in the Ummah, are confessors of Islam who take refuge in repentance regarding what has been established against them – from statements constituting disbelief or disobedience.[16]

L41025 Thus, the reliance on this verse is invalidated for whoever alleges that the Messenger of Allah (may Allah bless him and grant him peace) knew them by their specific identities and knew that they held disbelief inwardly in their hearts.

L41026 Allah the Exalted said: {And do not obey the disbelievers and the hypocrites} [Al-Ahzab: 1] until His statement, the Exalted: {And sufficient is Allah as a Trustee} [An-Nisa: 81]? Abu Muhammad said: We have previously addressed our statement regarding the statement of Allah the Exalted: {And do not obey the disbelievers and the hypocrites} [Al-Ahzab: 1].[17]

L41027 And He, the Exalted, said: {Cease harming them and rely upon Allah, for Allah suffices as a Trustee.} [Al-Ahzab: 48] No two Muslims disagree that there is no obligation to refrain from fighting disbelievers, humbling them,

وَقَالَ تَعَالَى {قَدْ يَعْلَمُ اللَّهُ الْمُعَوِّقِينَ مِنْكُمْ} [الأحزاب: ١٨] إلَى قَوْله تَعَالَى {وَكَانَ ذَلِكَ عَلَى اللَّهِ يَسِيرًا} [النساء: ٣٠] .

قَالَ أَبُو مُحَمَّد: فَهَذِهِ لَيْسَ فِيهَا دَلِيلٌ عَلَى أَنَّهَا فِي قَوْمٍ مَعْرُوفِينَ بِأَعْيَانِهِمْ وَلَكِنَّهَا صِفَةٌ يَعْرِفُهَا مِنْ نَفْسِهِ مَنْ سَمِعَ مِنْهُمْ هَذِهِ الْآيَةَ، إلَّا أَنَّ قَوْلَ اللَّهِ تَعَالَى بَعْدَهَا بِيَسِيرٍ {لِيَجْزِيَ اللَّهُ الصَّادِقِينَ بِصِدْقِهِمْ وَيُعَذِّبَ الْمُنَافِقِينَ إنْ شَاءَ أَوْ يَتُوبَ عَلَيْهِمْ} [الأحزاب: ٢٤] بَيَانٌ جَلِيٌّ عَلَى بَسْطِ التَّوْبَةِ لَهُمْ، وَكُلُّ هَؤُلَاءِ بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ الْأُمَّةِ مُعْتَرِفٌ بِالْإِسْلَامِ، لَائِذٌ بِالتَّوْبَةِ فِيمَا صَحَّ عَلَيْهِمْ، مِنْ قَوْلٍ يَكُونُ كُفْرًا وَمَعْصِيَةً.

فَبَطَلَ التَّعَلُّقُ بِهَذِهِ الْآيَةِ لِمَنْ ادَّعَى أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَعْرِفُهُمْ بِأَعْيَانِهِمْ، وَيَعْرِفُ أَنَّهُمْ يَعْتَقِدُونَ الْكُفْرَ فِي بَاطِنِهِمْ.

قَالَ اللَّهُ تَعَالَى {وَلا تُطِعِ الْكَافِرِينَ وَالْمُنَافِقِينَ} [الأحزاب: ١] إلَى قَوْله تَعَالَى {وَكَفَى بِاللَّهِ وَكِيلا} [النساء: ٨١] ؟ قَالَ أَبُو مُحَمَّدٍ: قَدْ مَضَى قَوْلُنَا فِي قَوْله تَعَالَى {وَلا تُطِعِ الْكَافِرِينَ وَالْمُنَافِقِينَ} [الأحزاب: ١] .

وَقَالَ تَعَالَى {وَدَعْ أَذَاهُمْ وَتَوَكَّلْ عَلَى اللَّهِ وَكَفَى بِاللَّهِ وَكِيلا} [الأحزاب: ٤٨] لَا يَخْتَلِفُ مُسْلِمَانِ فِي أَنَّهُ لَيْسَ عَلَى تَرْكِ قِتَالِ الْكَافِرِينَ وَإِصْغَارِهِمْ وَدُعَائِهِمْ إلَى الْإِسْلَامِ وَلَكِنْ فِيمَا عَدَا ذَلِكَ، وَقَالَ تَعَالَى {لَئِنْ لَمْ يَنْتَهِ الْمُنَافِقُونَ وَالَّذِينَ فِي قُلُوبِهِمْ مَرَضٌ} [الأحزاب: ٦٠] إلَى قَوْله تَعَالَى {وَلَنْ تَجِدَ لِسُنَّةِ اللَّهِ تَبْدِيلا} [الأحزاب: ٦٢] ؟ قَالَ أَبُو مُحَمَّدٍ: هَذِهِ الْآيَةُ فِيهَا كِفَايَةٌ لِمَنْ عَقَلَ وَنَصَحَ نَفْسَهُ، لِأَنَّ اللَّهَ تَعَالَى قَطَعَ بِأَنَّهُ إنْ لَمْ

[14] **Qur'an references (L41021):** Qur'an 3:122 (Ali 'Imran).
[15] **Qur'an references (L41022):** Qur'an 33:18 (Al-Ahzab); Qur'an 4:30 (An-Nisa); Qur'an 4:169 (An-Nisa); Qur'an 33:19 (Al-Ahzab); Qur'an 33:30 (Al-Ahzab).
[16] **Qur'an references (L41024):** Qur'an 33:24 (Al-Ahzab).
[17] **Qur'an references (L41026):** Qur'an 33:1 (Al-Ahzab); Qur'an 33:48 (Al-Ahzab); Qur'an 4:81 (An-Nisa).

and calling them to Islam, but they differ regarding matters beyond this. He, the Exalted, said: {If the hypocrites and those in whose hearts is sickness do not desist...} [Al-Ahzab: 60] up to His words: {And you will never find any change in Allah's way.} [Al-Ahzab: 62]? Abu Muhammad said: This verse suffices for whoever reasons rightly and seeks to better himself, for Allah decreed that if the hypocrites, those with diseased hearts, and the rumor-mongers in Medina do not desist, He will surely urge His Messenger - peace be upon him - against them. They will not dwell near him in the city except briefly. He, the Exalted, informed that if they persist, they will be accursed wherever found—seized and slain mercilessly. The grammatical case of "accursed" is a circumstantial accusative describing their state while dwelling near him—meaning they will not remain in his vicinity except briefly, being accursed.[18]

يَنْتَهِ الْمُنَافِقُونَ، وَالَّذِينَ فِي قُلُوبِهِمْ مَرَضٌ، وَالْمُرْجِفُونَ فِي الْمَدِينَةِ: لَيُغْرِيَنَّ بِهِمْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ لَا يُجَاوِرُونَهُ فِيهَا إِلَّا قَلِيلًا، فَأَخْبَرَ تَعَالَى أَنَّهُمْ يَكُونُونَ إِنْ لَمْ يَنْتَهُوا مَلْعُونِينَ أَيْنَمَا ثُقِفُوا أُخِذُوا وَقُتِّلُوا تَقْتِيلًا - وَإِعْرَابُ - مَلْعُونِينَ - أَنَّهُ حَالٌ لِمُجَاوَرَتِهِمْ - مَعْنَاهُ لَا يُجَاوِرُونَهُ إِلَّا قَلِيلًا مَلْعُونِينَ.

L41028 If Allah the Exalted had willed other than this, He would have said: "Cursed ones" as the predicate of an elided subject. Then He, the Exalted, affirmed that this is His Sunnah which does not change.

وَلَوْ أَرَادَ اللَّهُ تَعَالَى غَيْرَ هَذَا لَقَالَ: مَلْعُونُونَ عَلَى خَبَرِ ابْتِدَاءٍ مُضْمَرٍ ثُمَّ أَكَّدَ تَعَالَى بِأَنَّ هَذَا هُوَ سُنَّتُهُ تَعَالَى الَّتِي لَا تَتَبَدَّلُ.

L41029–41031 Then we ask those who claim that the Messenger of Allah—peace be upon him and his family—knew them individually and knew their hypocrisy: Did they cease or not? If he says they ceased, he reverts to the truth, and it is confirmed that they repented while he did not know their inner reality... None knows the validity of repentance or its falsehood except Allah the Exalted alone—He has no partner—and the Messenger of Allah (may Allah bless him and his family and grant him peace) never knew at all except the apparent reality which is Islam, or [except] disbelief they renounced—then openly professed repentance from it.

فَنَسْأَلُ مَنْ قَالَ: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَلِمَهُمْ بِأَعْيَانِهِمْ وَعَلِمَ نِفَاقَهُمْ، هَلْ انْتَهَوْا أَوْ لَمْ يَنْتَهُوا؟ فَإِنْ قَالَ: انْتَهَوْا، رَجَعَ إِلَى الْحَقِّ، وَصَحَّ أَنَّهُمْ تَابُوا وَلَمْ يَعْلَمْ بَاطِنَهُمْ - فِي صِحَّةِ التَّوْبَةِ أَوْ كَذِبِهَا - إِلَّا اللَّهُ تَعَالَى وَحْدَهُ لَا شَرِيكَ لَهُ، وَلَمْ يَعْلَمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَطُّ إِلَّا الظَّاهِرَ الَّذِي هُوَ الْإِسْلَامُ، أَوْ كُفْرًا رَجَعُوا عَنْهُ فَأَظْهَرُوا التَّوْبَةَ مِنْهُ.

L41032 And if he said, "They did not desist," he would not be far from disbelief, for he lies about Allah the Exalted and states that He—Exalted is He—has altered His Sunnah which He has declared He does not alter, or that His Messenger—peace be upon him—has altered it.

وَإِنْ قَالَ: لَمْ يَنْتَهُوا، لَمْ يَبْعُدْ عَنْ الْكُفْرِ، لِأَنَّهُ يَكْذِبُ اللَّهَ تَعَالَى، وَيُخْبِرُ أَنَّهُ تَعَالَى بَدَّلَ سُنَّتَهُ الَّتِي قَدْ أَخْبَرَ أَنَّهُ لَا يُبَدِّلُهَا أَوْ بَدَّلَهَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -.

L41033 Abu Muhammad said: Everyone who acknowledges this truth, upon whom

قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ مَنْ وَقَفَ عَلَى هَذَا وَقَامَتْ عَلَيْهِ الْحُجَّةُ ثُمَّ تَمَادَى فَهُوَ كَافِرٌ، لِأَنَّهُ مُكَذِّبٌ لِلَّهِ تَعَالَى، أَوْ مُجَوِّرٌ لِرَسُولِهِ - عَلَيْهِ السَّلَامُ - وَكِلَا الْأَمْرَيْنِ كُفْرٌ.

[18] **Qur'an references (L41027):** Qur'an 33:48 (Al-Ahzab); Qur'an 33:60 (Al-Ahzab); Qur'an 33:62 (Al-Ahzab); Qur'an 48:23 (Al-Fath).

the definitive proof has been established, yet persists is a disbeliever, for he either denies Allah the Exalted or slanders His Messenger (peace be upon him) - and both are disbelief.

قَالَ أَبُو مُحَمَّدٍ: وَلَقَدْ بَلَغَنِي عَنْ بَعْضِ مَنْ خَذَلَهُ اللَّهُ تَعَالَى أَنَّهُ تَلَا هَذِهِ الْآيَةَ ثُمَّ قَالَ: مَا انْتَهَوْا وَلَا أَغْرَاهُ بِهِمْ؟ قَالَ أَبُو مُحَمَّدٍ: نَحْنُ نَبْرَأُ إلَى اللَّهِ تَعَالَى مِنْ هَذَا، فَإِنَّ قَائِلَهُ آفِكٌ كَاذِبٌ، عَاصٍ لِلَّهِ تَعَالَى لَا يَحِلُّ لَهُ الْكَلَامُ فِي الدِّينِ - وَنَسْأَلُ اللَّهَ تَعَالَى الْعَافِيَةَ.

L41034 Abu Muhammad said: It has reached me that some of those whom Allah the Exalted has abandoned recited this verse and then said: "Have they not ceased, and did He not deter them?" Abu Muhammad said: We absolve ourselves before Allah the Exalted from this, for its speaker is a deviant fabricator, a liar, disobedient to Allah the Exalted. It is not permissible for him to speak about religion—and we ask Allah the Exalted for well-being.

وَقَالَ تَعَالَى {وَمِنْهُمْ مَنْ يَسْتَمِعُ إِلَيْكَ} [الأنعام: ٢٥] إلَى قَوْله تَعَالَى {وَاتَّبَعُوا أَهْوَاءَهُمْ} [محمد: ١٤] ؟ قَالَ أَبُو مُحَمَّدٍ: مَنْ عَصَى اللَّهَ تَعَالَى فَقَدْ طَبَعَ عَلَى قَلْبِهِ فِي الْوَجْهِ الَّذِي عَصَى فِيهِ، وَلَوْ لَمْ يَطْبَعْ عَلَى قَلْبِهِ فِيهِ لَمَا عَصَى؟ فَقَدْ يُمْكِنُ أَنْ يَكُونَ هَؤُلَاءِ مُنَافِقِينَ فَإِعْلَانُهُمْ بِالتَّوْبَةِ مَاحٍ لِمَا تَقَدَّمَ فِي الظَّاهِرِ، وَاَللَّهُ أَعْلَمُ بِالْبَاطِنِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41035 And He, the Exalted, said: {And among them are those who listen to you} [Al-Anʿām 6:25] up to His statement, the Exalted: {and followed their desires} [Al-Qaṣaṣ 28:50]. Abu Muhammad said: Whoever disobeys Allah, the Exalted, has sealed his heart in the aspect in which he disobeyed, for if Allah had not sealed his heart in that aspect, he would not have disobeyed. It is possible that these individuals are hypocrites. Their public declaration of repentance erases what preceded outwardly, but Allah knows best what is hidden. And by Allah, the Exalted, is divine enablement.[19]

وَقَالَ تَعَالَى {فَإِذَا أُنْزِلَتْ سُورَةٌ مُحْكَمَةٌ} [محمد: ٢٠] إلَى قَوْلِهِ {فَلَوْ صَدَقُوا اللَّهَ لَكَانَ خَيْرًا لَهُمْ} [محمد: ٢١] ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كَالَّذِي قَبْلَهُ إمَّا أَنْ يَكُونَ هَذَا النَّظَرُ يُبَيِّنُ مُعْتَقَدَهُمْ وَإِظْهَارَهُمْ الْإِسْلَامَ تَوْبَةً تَصِحُّ بِهِ قَبُولُهُمْ عَلَى ظَاهِرِهِمْ وَإِنْ لَمْ يَكُنْ ذَلِكَ النَّظَرُ دَلِيلًا يَتَمَيَّزُونَ بِهِ فَهُمْ كَغَيْرِهِمْ وَلَا فَرْقَ.

L41036 And He, the Exalted, said: {When a decisive surah is revealed} [Surah Muhammad (47):20] until His statement: {Had they been truthful to Allah, it would have been better for them} [Surah Muhammad (47):21]. Abu Muhammad said: This is analogous to the prior case. Either this consideration clarifies their creed and their outward manifestation of Islam as a valid repentance through which their acceptance [by the community] is sound based on their outward compliance—or if this consideration does not serve as definitive proof to distinguish them, then they are like others, with no distinction.[20]

وَقَالَ تَعَالَى {إِنَّ الَّذِينَ ارْتَدُّوا عَلَى أَدْبَارِهِمْ} [محمد: ٢٥] إلَى قَوْله تَعَالَى {وَاَللَّهُ يَعْلَمُ إِسْرَارَهُمْ} [محمد: ٢٦] ؟ قَالَ أَبُو مُحَمَّدٍ: هَذِهِ صِفَةٌ مُجْمَلَةٌ لِمَنْ ارْتَدَّ مُعْلِنًا أَوْ مُسِرًّا، وَلَا دَلِيلَ فِيهَا عَلَى أَنَّهُ - عَلَيْهِ السَّلَامُ - عَرَفَ أَنَّهُمْ مُنَافِقُونَ مُسِرُّونَ لِلْكُفْرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41037–41039 And He, exalted is He, said: {Indeed, those who turned back on their backs} [Muhammad: 25] until His verse: {And Allah knows their secrets} [Muhammad: 26]? Abu Muhammad said: This is a concise description of whoever

[19] **Qur'an references (L41035):** Qur'an 6:25 (Al-An'am); Qur'an 47:16 (Muhammad); Qur'an 47:14 (Muhammad).

[20] **Qur'an references (L41036):** Qur'an 47:20 (Muhammad); Qur'an 47:21 (Muhammad).

apostatizes openly or secretly, and there is no evidence in it that he. (Peace be upon him), he knew they were hypocrites secretly concealing disbelief. And with Allah the Exalted is all success.[21]

قَالَ تَعَالَى {أَمْ حَسِبَ الَّذِينَ فِي قُلُوبِهِمْ مَرَضٌ} [محمد: ٢٩] إلَى قَوْله تَعَالَى {وَاللَّهُ يَعْلَمُ أَعْمَالَكُمْ} [محمد: ٣٠] ؟ قَالَ أَبُو مُحَمَّد: قَدْ بَيَّنَ اللَّهُ تَعَالَى: أَنَّهُ لَوْ شَاءَ أَرَاهُمْ نَبِيَّهُ - عَلَيْهِ السَّلَامُ - وَهَذَا لَا شَكَّ فِيهِ ثُمَّ قَالَ تَعَالَى {وَلَتَعْرِفَنَّهُمْ فِي لَحْنِ الْقَوْلِ} [محمد: ٣٠] فَهَذَا كَالنَّظَرِ الْمُتَقَدِّمِ إنْ كَانَ لَحْنُ الْقَوْلِ بُرْهَانًا يَقْطَعُ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَلَى أَنَّهُمْ مُنَافِقُونَ، فَإِظْهَارُهُمْ خِلَافُ ذَلِكَ الْقَوْلِ وَإِعْلَانُهُمْ الْإِسْلَامَ تَوْبَةٌ فِي الظَّاهِرِ - كَمَا قَدَّمْنَا - وَإِنْ كَانَ - عَلَيْهِ السَّلَامُ - لَا يَقْطَعُ بِلَحْنِ قَوْلِهِمْ عَلَى ضَمِيرِهِمْ، فَإِنَّمَا هُوَ ظَنٌّ يَعْرِفُهُ فِي الْأَغْلَبِ لَا يَقْطَعُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

L41040 He, the Exalted, said: _“Or do those in whose hearts is a disease think...”_ [47:29] up to His statement: _“And Allah indeed knows your deeds”_ [47:30]. Abu Muhammad said: Allah, the Exalted, has clarified that had He willed, He would have shown them His Prophet—peace and blessings be upon him—and this is beyond doubt. Then He, the Exalted, said: _“And you will assuredly recognize them by the tone of speech”_ [47:30]. This resembles the earlier consideration: if the tone of speech constitutes definitive proof by which the Messenger of Allah—may Allah’s blessings and peace be upon him and his family—judges conclusively that they are hypocrites, then their outward display contradicting that speech and their public profession of Islam constitutes apparent repentance—as we previously established. But if he—peace and blessings be upon him—does not conclusively discern their concealed intentions through the tone of their speech, then this is a presumption he recognizes in most cases without absolute certainty—and with Allah, the Exalted, lies all success.[22]

قَالَ أَبُو مُحَمَّد: قَدْ ذَكَرْنَا فِي " بَرَاءَة، وَالْفَتْحِ قَوْلَ اللَّهِ تَعَالَى {سَيَقُولُ لَكَ الْمُخَلَّفُونَ} [الفتح: ١١] الْآيَاتِ كُلَّهَا، وَبَيَّنَّا أَنَّ اللَّهَ تَعَالَى وَعَدَهُمْ بِقَبُولِ التَّوْبَةِ وَالْأَجْرِ الْعَظِيمِ إنْ تَابُوا وَأَطَاعُوا لِمَنْ دَعَاهُمْ بَعْدَ النَّبِيِّ - عَلَيْهِ السَّلَامُ - إلَى الْجِهَادِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41041 Abu Muhammad said: We have mentioned in Surah Barā’ah (At-Tawbah) and Surah Al-Fath the words of Allah the Most High, {Those who remained behind will say to you...} [Al-Fath: 11] and all the verses, and we clarified that Allah the Most High promised them acceptance of repentance and immense reward if they repent and obey those who, after the Prophet (peace be upon him), called them to jihad. And success is from Allah, the Most High.[23]

وَقَالَ تَعَالَى {قَالَتِ الْأَعْرَابُ آمَنَّا} [الحجرات: ١٤] إلَى قَوْله تَعَالَى {غَفُورٌ رَحِيمٌ} [البقرة: ١٧٣] ؟

L41042 And the Most High said, “The Bedouins said, ‘We have believed’” (49:14) up to His statement, the Most High, “He is Forgiving and Merciful” (2:173)?[24]

[21] **Qur’an references (L41037):** Qur’an 47:25 (Muhammad); Qur’an 47:26 (Muhammad).

[22] **Qur’an references (L41040):** Qur’an 47:29 (Muhammad); Qur’an 47:30 (Muhammad).

[23] **Qur’an references (L41041):** Qur’an 48:11 (Al-Fath).

[24] **Qur’an references (L41042):** Qur’an 49:14 (Al-Hujurat); Qur’an 2:173 (Al-Baqarah).

L41043 Abu Muhammad said: This is evidence that they surrendered to Allah, the Exalted, out of compulsion, and faith had not entered their hearts. Yet Allah, the Exalted, has extended repentance to them within the very verse through His statement: *"If you obey Allah and His Messenger, He will not diminish anything from your deeds"* [Al-Hujurat: 14]. Thus, their outward display of obedience to Allah, the Exalted, and His Messenger—peace be upon him—brings them into the rulings of Islam and nullifies that the Messenger—peace be upon him—could have known their inner thoughts.[25]

قَالَ أَبُو مُحَمَّد: هَذَا دَلِيلٌ عَلَى أَنَّهُمْ اسْتَسْلَمُوا لِلَّهِ تَعَالَى غَلَبَةً وَلَمْ يَدْخُلْ الْإِيمَانُ فِي قُلُوبِهِمْ، وَلَكِنَّ اللَّهَ تَعَالَى قَدْ بَسَطَ لَهُمْ التَّوْبَةَ فِي الْآيَةِ نَفْسِهَا بِقَوْلِهِ تَعَالَى {وَإِنْ تُطِيعُوا اللَّهَ وَرَسُولَهُ لا يَلِتْكُمْ مِنْ أَعْمَالِكُمْ شَيْئًا} [الحجرات: ١٤] فَإِظْهَارُهُمْ الطَّاعَةَ لِلَّهِ تَعَالَى وَلِرَسُولِهِ - عَلَيْهِ السَّلَامُ - مُدْخِلٌ لَهُمْ فِي حُكْمِ الْإِسْلَامِ وَمُبْطَلٌ لَأَنْ يَكُونَ - عَلَيْهِ السَّلَامُ - عَرَفَ بَاطِنَهُمْ.

L41044 And He, the Exalted, said: {On the Day when the hypocrite men and the hypocrite women will say} [Al-Hadid: 13] up to the words of Him, the Exalted: {and vain desires deluded you} [Al-Hadid: 14].[26]

وَقَالَ تَعَالَى {يَوْمَ يَقُولُ الْمُنَافِقُونَ وَالْمُنَافِقَاتُ} [الحديد: ١٣] إلَى قَوْله تَعَالَى {وَغَرَّتْكُمُ الأَمَانِيُّ} [الحديد: ١٤] .

L41045–41047 Abu Muhammad said: This is a narration concerning the Day of Resurrection and an account that they were with the Muslims in worldly life. This clarifies that they were not known to the Prophet (peace and blessings be upon him and his family) nor to the Muslims. This verse corresponds to what has been narrated to us through the chain of Muslim ibn al-Hajjaj: Zuhayr ibn Harb reported to us, [who reported] from Ya'qub ibn Ibrahim ibn Sa'd. My father narrated to us from Ibn Shihāb, from 'Aṭā' ibn Yazīd al-Laythī, that Abū Hurayrah informed him: The Messenger of Allah—may Allah's peace and blessings be upon him and his family—said in a ḥadīth: "Allah will gather people on the Day of Resurrection and declare: 'Whoever worshipped anything, let them follow it?' Then those who worshipped the sun will follow the sun, those who worshipped the moon will follow the moon, those who worshipped the false deities will follow the false deities. This nation will remain, with its hypocrites among them." He mentioned the ḥadīth.

قَالَ أَبُو مُحَمَّد: فَهَذِهِ حِكَايَةٌ عَنْ يَوْمِ الْقِيَامَةِ، وَإِخْبَارٌ بِأَنَّهُمْ كَانُوا فِي الدُّنْيَا مَعَ الْمُسْلِمِينَ، وَهَذَا يُبَيِّنُ أَنَّهُمْ لَمْ يَكُونُوا مَعْرُوفِينَ عِنْدَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَا عِنْدَ الْمُسْلِمِينَ، وَهَذِهِ الْآيَةُ يُوَافِقُهَا: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا زُهَيْرُ بْنُ حَرْبٍ نا يَعْقُوبُ بْنُ إبْرَاهِيمَ بْنِ سَعْدٍ نا أَبِي عَنْ ابْنِ شِهَابٍ عَنْ عَطَاءِ بْنِ يَزِيدَ اللَّيْثِيِّ أَنَّ أَبَا هُرَيْرَةَ أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ فِي حَدِيثٍ «فَيَجْمَعُ اللَّهُ النَّاسَ يَوْمَ الْقِيَامَةِ فَيَقُولُ: مَنْ كَانَ يَعْبُدُ شَيْئًا فَلْيَتْبَعْهُ؟ فَيَتْبَعُ مَنْ يَعْبُدُ الشَّمْسَ الشَّمْسَ، وَيَتْبَعُ مَنْ يَعْبُدُ الْقَمَرَ الْقَمَرَ، وَيَتْبَعُ مَنْ يَعْبُدُ الطَّوَاغِيتَ الطَّوَاغِيتَ، وَتَبْقَى هَذِهِ الْأُمَّةُ فِيهَا مُنَافِقُوهَا» وَذَكَرَ الْحَدِيثَ.

L41048 And He, the Exalted, said: {Have you not seen those who were forbidden from private conversation, then they return to what they were forbidden and conspire in sin, aggression, and disobedience to the Messenger? When they come to you, they greet you with a greeting not ordained by God, while they

وَقَالَ تَعَالَى {أَلَمْ تَرَ إِلَى الَّذِينَ نُهُوا عَنِ النَّجْوَى} [المجادلة: ٨] إلَى قَوْله تَعَالَى {فَبِئْسَ الْمَصِيرُ} [المجادلة: ٨] ؟ قَالَ أَبُو مُحَمَّد: هَؤُلَاءِ مَعْرُوفُونَ بِلَا شَكٍّ، وَلَكِنَّ التَّوْبَةَ لَهُمْ مَبْسُوطَةٌ كَمَا ذَكَرْنَا فِي سَائِرِ الْآيَاتِ.

[25] **Qur'an references (L41043):** Qur'an 49:14 (Al-Hujurat).
[26] **Qur'an references (L41044):** Qur'an 57:13 (Al-Hadid); Qur'an 57:14 (Al-Hadid).

say to themselves, “Why does God not punish us for what we say?” Hell will suffice them—they will burn in it—so wretched is the destination} [Al-Mujadilah: 8]? Abu Muhammad said: These are well-known without doubt, but repentance is open to them, as we have mentioned in the rest of the verses.[27]

L41049 And He, the Exalted, said: “Have you not seen those who ally themselves with a people with whom Allah is angry?” [Al-Mujadilah: 14] up to His statement in [Al-Baqarah: 27]: “They are the losers.” Abu Muhammad said: This describes a people who have not embraced Islam but renounce allegiance to the disbelievers. If they are known for disbelief, repentance is extended to them, as the Exalted mentioned in the rest of the verses we have recited before—and success is from Allah, the Exalted.[28]

L41050–41052 And He, the Exalted, said: {Have you not considered those who act hypocritically} [Al-Hashr: 11] until His statement, the Exalted: {their strife among themselves is intense} [Al-Hashr: 14]? Abu Muhammad said: This could be a secret Allah informed him (the Prophet) of and exposed the hypocrite, without naming its speaker, and it is possible that he (the hypocrite) realized, so repentance remains open to them as we mentioned in the other verses. And He, the Exalted, said: {When the hypocrites come to you} [Al-Munafiqoon: 1] until His statement, the Exalted: {but the hypocrites do not know} [Al-Munafiqoon: 8]? Abu Muhammad said: This was revealed concerning Abdullah ibn Ubayy, as we were narrated through Al-Bukhari’s chain: from Amr ibn Khalid, from Zuhayr ibn Muawiyah, from Abu Ishaq—Al-Sabi’i—who said: I heard Zayd ibn Arqam say: “We journeyed with the Messenger of Allah—peace and blessings be upon him and his family—on an expedition where the people were afflicted with hardship. Abdullah ibn Ubayy said: ’Do not spend on those around the Messenger of Allah until they scatter from him,’ and he said: ’If we return to Medina, the mightier will surely expel the weaker from it.’ I went to the Prophet—peace and blessings be upon him and his family—and informed him. He sent for Abdullah ibn Ubayy, who strenuously swore he had not done it. They said: ’He lied.’” Zayd said, “O

[27] **Qur’an references (L41048):** Qur’an 58:8 (Al-Mujadila).

[28] **Qur’an references (L41049):** Qur’an 58:14 (Al-Mujadila); Qur’an 2:27 (Al-Baqarah).

وَقَالَ تَعَالَى {أَلَمْ تَرَ إِلَى الَّذِينَ تَوَلَّوْا قَوْمًا غَضِبَ اللَّهُ عَلَيْهِمْ} [المجادلة: ١٤] إِلَى قَوْله تَعَالَى {هُمُ الْخَاسِرُونَ} [البقرة: ٢٧] ؟ قَالَ أَبُو مُحَمَّد: وَهَذِهِ صِفَةُ قَوْمٍ لَمْ يُسْلِمُوا إِلَّا أَنَّهُمْ يَتَبَرَّءُونَ مِنْ مُوَالَاةِ الْكُفَّارِ، فَإِنْ كَانُوا مَعْرُوفِينَ بِالْكُفْرِ فَالتَّوْبَةُ لَهُمْ مَبْسُوطَةٌ، كَمَا ذَكَرَ تَعَالَى فِي سَائِرِ الْآيَاتِ الَّتِي تَلَوْنَا قَبْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَالَ تَعَالَى {أَلَمْ تَرَ إِلَى الَّذِينَ نَافَقُوا} [الحشر: ١١] إِلَى قَوْله تَعَالَى {بَأْسُهُمْ بَيْنَهُمْ شَدِيدٌ} [الحشر: ١٤] ؟ قَالَ أَبُو مُحَمَّد: هَذَا قَدْ يَكُونُ سِرًّا عَلَّمَهُ اللَّهُ مِنْهُ وَفَضَحَهُ وَلَمْ يُسَمِّ قَائِلَهُ وَيُمْكِنُ أَنْ يَكُونَ قَدْ عَرَفَ فَالتَّوْبَةُ لَهُمْ مَبْسُوطَةٌ كَمَا ذَكَرْنَا فِي سَائِرِ الْآيَاتِ، وَقَالَ تَعَالَى {إِذَا جَاءَكَ الْمُنَافِقُونَ} [المنافقون: ١] إِلَى قَوْله تَعَالَى {وَلَكِنَّ الْمُنَافِقِينَ لا يَعْلَمُونَ} [المنافقون: ٨] ؟ قَالَ أَبُو مُحَمَّد: هَذَا نَزَلَ فِي عَبْدِ اللَّهِ بْنِ أُبَيٍّ، كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَمْرُو بْنُ خَالِدٍ نا زُهَيْرُ بْنُ مُعَاوِيَةَ نا أَبُو إِسْحَاقَ هُوَ السَّبِيعِيُّ قَالَ: سَمِعْتُ زَيْدَ بْنَ أَرْقَمَ قَالَ: «خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي سَفَرٍ أَصَابَ النَّاسَ فِيهِ شِدَّةٌ فَقَالَ عَبْدُ اللَّهِ بْنُ أُبَيٍّ: لَا تُنْفِقُوا عَلَى مَنْ عِنْدَ رَسُولِ اللَّهِ حَتَّى يَنْفَضُّوا مِنْ حَوْلِهِ، وَقَالَ: لَئِنْ رَجَعْنَا إِلَى الْمَدِينَةِ لَيُخْرِجَنَّ الْأَعَزُّ مِنْهَا الْأَذَلَّ؟ فَأَتَيْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَخْبَرْتُهُ، فَأَرْسَلَ إِلَى عَبْدِ اللَّهِ بْنِ أُبَيٍّ، فَاجْتَهَدَ يَمِينَهُ مَا فَعَلَ، فَقَالُوا: كَذَبَ زَيْدٌ يَا رَسُولَ اللَّهِ، فَوَقَعَ فِي نَفْسِي مِمَّا قَالَ شِدَّةٌ،

Messenger of Allah," and what he said caused deep distress within me, until Allah the Exalted revealed my confirmation regarding [the verse] "When the hypocrites come to you [63:1]." Then the Prophet—may Allah bless him and his family and grant him peace—called them so he could seek forgiveness for them. But they averted their heads.[29]

L41053 He said: The statement of Allah, {like propped-up planks} [Al-Munafiqun: 4], refers to men who were the most comely in appearance. As narrated to us through Al-Bukhari's chain of transmission: from Ali ibn Abdullah, from Sufyan, who reported that Amr ibn Dinar said: I heard Jabir ibn Abdullah say: "We were on an expedition when a man from the Muhajireen struck a man from the Ansar in a demeaning manner. The man said: 'Leave it, for it is foul.' Abdullah ibn Ubayy heard this and exclaimed: 'They've done it now! By Allah, if we return to Medina, the mightier will surely expel the weaker from it!' This reached the Prophet (peace and blessings of Allah be upon him and his family), so Umar stood and said: 'O Messenger of Allah, let me strike the neck of this hypocrite!' The Prophet (peace and blessings of Allah be upon him and his family) replied: 'Leave him, lest people say that Muhammad kills his companions.'" Sufyan said: I memorized this from Umar, who said: I heard Jabir state: "We were with the Prophet (peace and blessings of Allah be upon him and his family)." Abu Muhammad said: As for Allah's statement, {When the hypocrites come to you} [Al-Munafiqun: 1] up to His saying, {so they do not understand} [Surah At-Tawbah, 9:87], these are people who apostatized without doubt after their belief, as Allah Almighty explicitly testifies to their apostasy. However, repentance for them is mentioned with certainty in the verse, and in the authentic hadith narrated by Zayd ibn Arqam.[30]

L41054 As for the textual evidence, it is His statement - the Exalted: "Were the

حَتَّى أَنْزَلَ اللَّهُ تَعَالَى تَصْدِيقِي فِي إِذَا جَاءَكَ الْمُنَافِقُونَ فَدَعَاهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِيَسْتَغْفِرَ لَهُمْ؟ فَلَوَّوْا رُءُوسَهُمْ» .

قَالَ: وَقَوْلُهُ {خُشُبٌ مُسَنَّدَةٌ} [المنافقون: ٤] كَانُوا رِجَالًا أَجْمَلَ شَيْءٍ: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا سُفْيَانُ قَالَ عَمْرُو بْنُ دِينَارٍ: سَمِعْتُ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «كُنَّا فِي غَزَاةٍ فَكَسَعَ رَجُلٌ مِنْ الْمُهَاجِرِينَ رَجُلًا مِنْ الْأَنْصَارِ: فَقَالَ: دَعُوهَا فَإِنَّهَا مُنْتِنَةٌ، فَسَمِعَ ذَلِكَ عَبْدُ اللَّهِ بْنُ أُبَيٍّ فَقَالَ: فَعَلُوهَا، أَمَا وَاَللَّهِ لَئِنْ رَجَعْنَا إلَى الْمَدِينَةِ لَيُخْرِجَنَّ الْأَعَزُّ مِنْهَا الْأَذَلَّ، فَبَلَغَ ذَلِكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَامَ عُمَرُ فَقَالَ: يَا رَسُولَ اللَّهِ دَعْنِي أَضْرِبُ عُنُقَ هَذَا الْمُنَافِقِ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: دَعْهُ لَا يَتَحَدَّثُ النَّاسُ أَنَّ مُحَمَّدًا يَقْتُلُ أَصْحَابَهُ» ، فَقَالَ سُفْيَانُ: فَحَفِظْتُهُ مِنْ عُمَرَ، وَقَالَ: سَمِعْتُ جَابِرًا قَالَ: كُنَّا مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ اللَّهِ تَعَالَى {إِذَا جَاءَكَ الْمُنَافِقُونَ} [المنافقون: ١] إلَى قَوْله تَعَالَى {فَهُمْ لا يَفْقَهُونَ} [التوبة: ٨٧] فَهُمْ قَوْمٌ كَفَرُوا بِلَا شَكٍّ بَعْدَ إيمَانِهِمْ ارْتَدُّوا بِشَهَادَةِ اللَّهِ تَعَالَى عَلَيْهِمْ بِذَلِكَ، إلَّا أَنَّ التَّوْبَةَ لَهُمْ بِيَقِينٍ مَذْكُورَةٌ فِي الْآيَةِ، وَفِيمَا رَوَاهُ زَيْدُ بْنُ أَرْقَمَ مِنْ الْحَدِيثِ الثَّابِتِ.

أَمَّا النَّصُّ فَقَوْلُهُ تَعَالَى {يَسْتَغْفِرْ لَكُمْ رَسُولُ اللَّهِ لَوَّوْا رُءُوسَهُمْ} [المنافقون: ٥] .

[29] **Qur'an references (L41050):** Qur'an 59:11 (Al-Hashr); Qur'an 59:14 (Al-Hashr); Qur'an 63:1 (Al-Munafiqun); Qur'an 63:8 (Al-Munafiqun); Qur'an 63:7 (Al-Munafiqun).

[30] **Qur'an references (L41053):** Qur'an 63:8 (Al-Munafiqun); Qur'an 63:1 (Al-Munafiqun); Qur'an 9:87 (At-Tawbah); Qur'an 63:3 (Al-Munafiqun); Qur'an 63:4 (Al-Munafiqun).

Messenger of Allah to seek forgiveness for you, they would still turn their heads away" [Al-Munāfiqūn 5].[31]

وَأَمَّا مَنْعُ اللَّهِ تَعَالَى مِنْ الْمَغْفِرَةِ لَهُمْ، فَإِنَّمَا هُوَ بِلَا شَكٍّ فِيمَا قَالُوهُ مِنْ ذَلِكَ الْقَوْلِ، لَا فِي مُرَاجَعَةِ الْإِيمَانِ بَعْدَ الْكُفْرِ، فَإِنَّ هَذَا مَقْبُولٌ مِنْهُمْ بِلَا شَكٍّ.

L41055 As for Allah's denial of forgiveness to them, it is undoubtedly due to the statement they uttered, not because of returning to faith after disbelief, for this [act of returning] is undoubtedly accepted from them.

بُرْهَانُ ذَلِكَ: مَا سَلَفَ فِي الْآيَاتِ الَّتِي قَدَّمْنَا قَبْلُ، وَأَيْضًا إطْلَاقُهُمْ فِيهِ نَبِيَّهُ - صَلَّى اللَّهُ عَلَيْهِ وآلِهِ وَسَلَّمَ - عَلَى الِاسْتِغْفَارِ لَهُمْ بِقَوْلِهِ {سَوَاءٌ عَلَيْهِمْ أَسْتَغْفَرْتَ لَهُمْ أَمْ لَمْ تَسْتَغْفِرْ لَهُمْ لَنْ يَغْفِرَ اللَّهُ لَهُمْ} [المنافقون: ٦] وَهُمْ قَدْ أَظْهَرُوا الْإِيمَانَ بِلَا شَكٍّ، وَاَللَّهُ أَعْلَمُ بِنِيَّاتِهِمْ.

L41056 The proof of that is what preceded in the verses we cited earlier, as well as the hypocrites' assertion regarding His Prophet, may Allah bless him and his family and grant him peace, that seeking forgiveness for them would benefit them, as in His saying: *"It is the same for them whether you seek forgiveness for them or do not seek forgiveness for them; Allah will never forgive them"* [Al-Munāfiqūn: 6], though the hypocrites had undoubtedly professed faith outwardly. And Allah knows best their intentions.[32]

بُرْهَانُ ذَلِكَ: مَا قَدْ ذَكَرْنَاهُ قَبْلُ مِنْ شَكِّ جَابِرٍ، وَابْنِ عَبَّاسٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ابْنِ أُبَيٍّ بِعَيْنِهِ صَاحِبِ هَذِهِ الْقِصَّةِ.

L41057–41058 The proof of this is what we previously mentioned concerning the doubt of Jabir, Ibn Abbas, and Umar—may Allah be pleased with them—about Ibn Ubayy himself, the one involved in this incident.

وَكَذَلِكَ الْخَبَرُ عَنْ جَابِرٍ إذْ «قَالَ عُمَرُ لِلنَّبِيِّ - عَلَيْهِ السَّلَامُ - دَعْنِي أَضْرِبُ عُنُقَ هَذَا الْمُنَافِقِ - يَعْنِي عَبْدَ اللَّهِ بْنَ أُبَيٍّ» فَلَيْسَ فِي هَذَا دَلِيلٌ أَنَّهُ حِينَئِذٍ مُنَافِقٌ، لَكِنَّهُ قَدْ كَانَ نَافَقَ بِلَا شَكٍّ وَقَدْ قَالَ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - مِثْلَ هَذَا فِي مُؤْمِنٍ بَرِئَ مِنْ النِّفَاقِ جُمْلَةً - وَهُوَ حَاطِبُ بْنُ بَلْتَعَةَ - وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وآلِهِ وَسَلَّمَ - «دَعْهُ لَا يَتَحَدَّثُ النَّاسُ أَنَّ مُحَمَّدًا يَقْتُلُ أَصْحَابَهُ» دَلِيلٌ بَيِّنٌ عَلَى تَحْرِيمِ دَمِ عَبْدِ اللَّهِ بْنِ أُبَيٍّ ابْنِ سَلُولَ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ - " دَعْهُ " وَهُوَ - عَلَيْهِ السَّلَامُ - لَا يَجُوزُ أَنْ يَأْمُرَ بِأَنْ يَدَعَ النَّاسُ فَرْضًا وَاجِبًا.

L41059 Similarly, the report from Jabir that "Umar said to the Prophet (peace be upon him), 'Let me strike the neck of this hypocrite'—referring to Abdullah ibn Ubayy"—does not indicate he was a hypocrite at that time, though he had undoubtedly practiced hypocrisy. Umar (may Allah be pleased with him) had similarly spoken about a believer entirely free from hypocrisy—namely Hatib ibn Balta'ah. The statement of the Messenger of Allah (peace and blessings be upon him and his family), "Leave him, lest people say that Muhammad kills his companions," constitutes clear evidence for the prohibition of shedding Abdullah ibn Ubayy ibn Salul's blood through his saying (peace be upon him), "Leave him." It is impermissible for him (peace be upon him) to command people to abandon a binding obligation.[33]

[31] **Qur'an references (L41054):** Qur'an 63:5 (Al-Munafiqun).

[32] **Qur'an references (L41056):** Qur'an 63:6 (Al-Munafiqun).

[33] **Hadith references (L41059):** Sahih al-Bukhari 4907; Sahih al-Bukhari 4905; Sahih Muslim 2584b.

L41060 Similarly, his statement—peace be upon him—"Let not people say that Muhammad kills his companions" constitutes a clear explanation through its apparent wording, decisively affirming the soundness of their inner faith concerning the unseen—that 'Abdullāh ibn Ubayy was among the companions of Allah's Messenger—blessings and peace be upon him and his family—by virtue of his outward Islam, being counted among the Muslim companions subject to Islam's rulings, those whose blood Allah the Exalted has forbidden except by its rightful due. With certainty we know that had ibn Ubayy's blood been permissible, Allah's Messenger—blessings and peace be upon him and his family—would not have shown him favor, and had his execution been obligatory, he—peace be upon him—would not have neglected it. Whoever imagines that Allah's Messenger—blessings and peace be upon him and his family—refrains from killing those among his companions deserving execution has committed disbelief, rendering his blood permissible to shed and his wealth forfeit, due to his false attribution to Allah's Messenger—blessings and peace be upon him and his family—and opposition to Allah the Exalted. By Allah, Allah's Messenger—blessings and peace be upon him and his family—did execute his noble companions—those decisively granted faith and destined for Paradise—when execution became legally mandated for them, such as Mā'iz, the Ghamidiyyah woman, and the Juhayniyyah woman—Allah was pleased with them. Thus, it constitutes certain falsehood, pure misguidance, and sheer transgression—but rather explicit disbelief—for any Muslim to believe or suppose that Allah's Messenger—blessings and peace be upon him and his family—would kill virtuous Muslims among his companions, assured inhabitants of Paradise, through the vilest method of stoning; or execute al-Ḥārith ibn Suwayd al-Anṣārī in retribution for al-Mujaddar ibn Khiyār al-Balawī based on his—peace be upon him—knowledge without others being aware; or command Unays to stone the woman if she confessed.

وَكَذَلِكَ قَوْلُهُ - عَلَيْهِ السَّلَامُ - «لَا يَتَحَدَّثُ النَّاسُ أَنَّ مُحَمَّدًا يَقْتُلُ أَصْحَابَهُ» بَيَانٌ جَلِيٌّ بِظَاهِرِ لَفْظِهِ، مَقْطُوعٌ عَلَى غَيْبَةٍ بِصِحَّةِ بَاطِنٍ أَنَّ عَبْدَ اللَّهِ بْنَ أُبَيٍّ مِنْ جُمْلَةِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِظَاهِرِ إِسْلَامِهِ، وَأَنَّهُ مِنْ جُمْلَةِ الصَّحَابَةِ الْمُسْلِمِينَ الَّذِينَ لَهُمْ حُكْمُ الْإِسْلَامِ، وَالَّذِينَ حَرَّمَ اللَّهُ تَعَالَى دِمَاءَهُمْ إِلَّا بِحَقِّهَا؟ وَبِيَقِينٍ نَدْرِي أَنَّهُ لَوْ حَلَّ دَمُ ابْنِ أُبَيٍّ لَمَا حَابَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَوْ وَجَبَ عَلَيْهِ لَمَا ضَيَّعَهُ - عَلَيْهِ السَّلَامُ -؟ وَمَنْ ظَنَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَقْتُلُ مَنْ وَجَبَ عَلَيْهِ الْقَتْلُ مِنْ أَصْحَابِهِ فَقَدْ كَفَرَ، وَحَلَّ دَمُهُ وَمَالُهُ، لِنِسْبَتِهِ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْبَاطِلَ، وَمُخَالَفَةِ اللَّهِ تَعَالَى، وَاَللَّهِ: لَقَدْ قَتَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَصْحَابَهُ الْفُضَلَاءَ الْمَقْطُوعَ لَهُمْ بِالْإِيمَانِ وَالْجَنَّةِ، إِذْ وَجَبَ عَلَيْهِمْ الْقَتْلُ، كَمَاعِزٍ، وَالْغَامِدِيَّةِ، وَالْجُهَيْنِيَّةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ، وَالضَّلَالِ الْبَحْتِ، وَالْفُسُوقِ الْمُجَرَّدِ: بَلْ مِنْ الْكُفْرِ الصَّرِيحِ: أَنْ يَعْتَقِدَ، أَوْ يَظُنَّ - مَنْ هُوَ مُسْلِمٌ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقْتُلُ مُسْلِمِينَ فَاضِلِينَ مِنْ أَهْلِ الْجَنَّةِ مِنْ أَصْحَابِهِ أَشْنَعَ قِتْلَةٍ بِالْحِجَارَةِ، وَيَقْتُلُ الْحَارِثَ بْنَ سُوَيْدٍ الْأَنْصَارِيَّ قِصَاصًا بِالْمُجَدَّرِ بْنِ خِيَارٍ الْبَلَوِيِّ بِعِلْمِهِ - عَلَيْهِ السَّلَامُ - دُونَ أَنْ يَعْلَمَ ذَلِكَ أَحَدٌ، وَالْمَرْأَةَ الَّتِي أَمَرَ أُنَيْسًا بِرَجْمِهَا، إِنْ اعْتَرَفَتْ.

L41061 And by cutting off the hand of the Makhzumi Woman—he declared: "If it were Fatimah, I would have cut off her hand."

وَبِقَطْعِ يَدِ الْمَخْزُومِيَّةِ - وَيَقُولُ «لَوْ كَانَتْ فَاطِمَةُ لَقَطَعْتُ يَدَهَا» .

L41062–41063 And by his saying—peace be upon him—"The Children of Israel were destroyed only because when a weak person among them committed an offense

وَبِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «إِنَّمَا هَلَكَتْ بَنُو إِسْرَائِيلَ بِأَنَّهُمْ كَانُوا إِذَا أَصَابَ الضَّعِيفُ مِنْهُمْ الْحَدَّ أَقَامُوهُ عَلَيْهِ، وَإِذَا أَصَابَهُ الشَّرِيفُ تَرَكُوهُ» .

requiring the ḥadd punishment, they would carry it out on him, but when a noble person committed it, they would abandon it."

L41064 Then he—peace be upon him—does this, neglecting to establish the obligatory right of executing the apostate against a disbeliever whom he knows has now apostatized. He is not content with this until he prays over him and seeks forgiveness for him—while knowing he is a disbeliever.

ثُمَّ يَفْعَلُ هُوَ - عَلَيْهِ السَّلَامُ - ذَلِكَ، وَيُعَطِّلُ إقَامَةَ الْحَقِّ الْوَاجِبِ فِي قَتْلِ الْمُرْتَدِّ عَلَى كَافِرٍ يَدْرِي أَنَّهُ ارْتَدَّ الْآنَ، ثُمَّ لَا يَقْنَعُ بِهَذَا حَتَّى يُصَلِّيَ عَلَيْهِ، وَيَسْتَغْفِرَ لَهُ - وَهُوَ يَدْرِي أَنَّهُ كَافِرٌ.

L41065 Allah the Exalted had previously forbidden him from seeking forgiveness for the disbelievers.

وَقَدْ تَقَدَّمَ نَهْيُ اللَّهِ تَعَالَى لَهُ عَنْ الِاسْتِغْفَارِ لِلْكُفَّارِ.

L41066 We testify by the testimony of Allah the Exalted that whoever adheres to this [belief] and professes it is a disbeliever, polytheist, apostate - whose blood and wealth are lawful [to be taken]. We disavow to Allah the Exalted from him and his allegiance. Whoever ascribes hypocrisy to him without disagreement, then the ruling for those below his rank is undoubtedly more obscure. Thus, the ambiguity in these Verses is lifted - and all praise is due to Allah.

وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى بِأَنَّ مَنْ دَانَ بِهَذَا وَاعْتَقَدَهُ فَإِنَّهُ كَافِرٌ، مُشْرِكٌ، مُرْتَدٌّ، حَلَالُ الدَّمِ وَالْمَالِ - نَبْرَأُ إلَى اللَّهِ تَعَالَى مِنْهُ وَمِنْ وِلَايَتِهِ - مَنْ يَظُنُّ بِهِ النِّفَاقَ بِلَا خِلَافٍ، فَالْأَمْرُ فِيمَنْ دُونَهُ بِلَا شَكٍّ أَخْفَى - فَارْتَفَعَ الْإِشْكَالُ فِي هَذِهِ الْآيَاتِ - وَلِلَّهِ الْحَمْدُ.

L41067 It has been authentically established that after ʻAbdullah ibn Ubayy and those who assisted him in that disbelieved, they displayed repentance and professed Islam. The Messenger of Allah—may Allah bless him and grant him peace—accepted that from them, not knowing their inner state: Did they remain upon the disbelief they were on, or the repentance they displayed? But Allah the Exalted is All-Knowing of that, and He, without doubt, is the One Who will recompense them for it on the Day of Resurrection.

وَصَحَّ أَنَّ عَبْدَ اللَّهِ بْنَ أُبَيٍّ بَعْدَ أَنْ كَفَرَ هُوَ وَمَنْ سَاعَدَهُ عَلَى ذَلِكَ أَظْهَرُوا التَّوْبَةَ وَالْإِسْلَامَ، فَقَبِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ مِنْهُمْ، وَلَمْ يَعْلَمْ بَاطِنَهُمْ عَلَى مَا كَانُوا عَلَيْهِ مِنْ الْكُفْرِ؟ أَمْ عَلَى مَا أَظْهَرُوا مِنْ التَّوْبَةِ؟ وَلَكِنَّ اللَّهَ تَعَالَى عَلِيمٌ بِذَلِكَ، وَهُوَ بِلَا شَكٍّ الْمُجَازِي عَلَيْهِ يَوْمَ الْقِيَامَةِ.

L41068 And the Exalted said: "O Prophet, strive against the disbelievers and the hypocrites and be harsh upon them" [At-Tawbah: 73]. Abu Muhammad said: This resolves into two categories with no third: As for one whom he [the Prophet] knows individually to be a hypocrite and has disbelieved, he (peace be upon him) strives against him personally with his tongue, being harsh upon him until he repents. As for one not known specifically to be a hypocrite, he strives against them collectively by describing their traits, condemning hypocrisy, and calling to repentance.[34]

وَقَالَ تَعَالَى {يَا أَيُّهَا النَّبِيُّ جَاهِدِ الْكُفَّارَ وَالْمُنَافِقِينَ وَاغْلُظْ عَلَيْهِمْ} [التوبة: ٧٣] ؟ قَالَ أَبُو مُحَمَّد: هَذَا يَخْرُجُ عَلَى وَجْهَيْنِ لَا ثَالِثَ لَهُمَا -: أَمَّا مَنْ يَعْلَمُ أَنَّهُ مُنَافِقٌ وَكَفَرَ فَإِنَّهُ - عَلَيْهِ السَّلَامُ - يُجَاهِدُهُ بِعَيْنِهِ بِلِسَانِهِ، وَالْإِغْلَاظُ عَلَيْهِ حَتَّى يَتُوبَ - وَمَنْ لَمْ يَعْلَمْهُ بِعَيْنِهِ جَاهَدَهُ جُمْلَةً بِالصِّفَةِ، وَذَمِّ النِّفَاقِ، وَالدُّعَاءِ إلَى التَّوْبَةِ.

[34] **Qur'an references (L41068):** Qur'an 9:73 (At-Tawbah); Qur'an 66:9 (At-Tahrim).

L41069–41071

It is sheer falsehood to claim that the Messenger of Allah—peace and blessings of Allah be upon him—knew that a specific individual was a hypocrite persistently engaged in hypocrisy yet failed to combat him, thereby disobeying his Lord Most High and opposing His command. Whoever holds this belief is a disbeliever, for he attributes contempt toward Allah's command to His Messenger—peace and blessings of Allah be upon him. Abu Muhammad said: "This encompasses everything the Quran states regarding the hypocrites, which we have exhaustively investigated—all praise is due to Allah, Lord of the worlds. There remain narrations that we shall now mention, Allah the Most High willing." We have been narrated through the chain of Al-Bukhari: Sa'id ibn 'Ufayr narrated to us, from Al-Layth ibn Sa'd, from 'Uqayl, from Ibn Shihab, who informed me that Mahmud ibn Rabi' Al-Ansari reported that 'Itban ibn Malik—one of those who witnessed Badr—said in a hadith: "The Messenger of Allah—may the peace and blessings of Allah be upon him—and Abu Bakr came to me when the sun was high. He added: 'We kept him for a porridge we had prepared.' He continued: 'A considerable number of men gathered in the house. Someone among them asked: "Where is Malik ibn Ad-Dikhshan—or ibn Dikhshan¿' Some of them said: "That is a hypocrite who does not love Allah and His Messenger." The Messenger of Allah—may the peace and blessings of Allah be upon him—said: "Do not say that. Do you not see that he has declared: 'There is no god but Allah,' seeking thereby the Face of Allah¿' He replied: "Allah and His Messenger know best. We only observe his outward demeanor and his counsel directed toward the hypocrites." The Messenger of Allah—may the peace and blessings of Allah be upon him and his family—said: "Indeed, Allah has forbidden the Fire from consuming anyone who declares: 'There is no god but Allah,' seeking thereby the Face of Allah the Exalted.""

Abdullah ibn Rabi' narrated to us: Ibn Ishaq ibn As-Sulaym narrated to us: Ibn Al-A'rabi narrated to us: Abu Dawud narrated to us: Abdullah ibn Masrrah narrated to us: Mu'adh ibn Hisham Ad-Dastawā'ī narrated to us: My father narrated from Qatadah, from 'Ubaydullah ibn Buraidah, from his father, who said: The Messenger of Allah—may the peace and blessings of

وَمِنْ الْبَاطِلِ الْبَحْتِ أَنْ يَكُونَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَعْلَمُ أَنَّ فُلَانًا بِعَيْنِهِ مُنَافِقٌ مُتَّصِلُ النِّفَاقِ ثُمَّ لَا يُجَاهِدُهُ، فَيَعْصِي رَبَّهُ تَعَالَى، وَيُخَالِفُ أَمْرَهُ - وَمَنْ اعْتَقَدَ هَذَا فَهُوَ كَافِرٌ، لِأَنَّهُ نَسَبَ الِاسْتِهَانَةَ بِأَمْرِ اللَّهِ تَعَالَى إلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا فِي الْقُرْآنِ مِنْ ذِكْرِ الْمُنَافِقِينَ قَدْ تَقَصَّيْنَاهُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، وَبَقِيَتْ آثَارٌ نَذْكُرُهَا الْآنَ إنْ شَاءَ اللَّهُ تَعَالَى: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا سَعِيدُ بْنُ عُفَيْرٍ نِي اللَّيْثُ هُوَ ابْنُ سَعْدٍ - نا عُقَيْلٌ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي مَحْمُودُ بْنُ رَبِيعٍ الْأَنْصَارِيُّ أَنَّ «عِتْبَانَ بْنَ مَالِكٍ - مِمَّنْ شَهِدَ بَدْرًا - قَالَ فِي حَدِيثٍ فَغَدَا عَلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبُو بَكْرٍ حِينَ ارْتَفَعَ النَّهَارُ، قَالَ: وَحَبَسْنَاهُ عَلَى خَزِيرَةٍ صَنَعْنَاهَا لَهُ، قَالَ: فَثَابَ فِي الْبَيْتِ رِجَالٌ ذَوُو عَدَدٍ، فَاجْتَمَعُوا، فَقَالَ قَائِلٌ مِنْهُمْ: أَيْنَ مَالِكُ بْنُ الدُّخْشُنِ - أَوْ ابْنُ دَخْشُنٍ - فَقَالَ بَعْضُهُمْ: ذَلِكَ مُنَافِقٌ لَا يُحِبُّ اللَّهَ وَرَسُولَهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا تَقُلْ ذَلِكَ، أَلَا تَرَاهُ قَدْ قَالَ: لَا إلَهَ إلَّا اللَّهُ يُرِيدُ بِذَلِكَ وَجْهَ اللَّهِ قَالَ: اللَّهُ وَرَسُولُهُ أَعْلَمُ، فَإِنَّا نَرَى وَجْهَهُ وَنَصِيحَتَهُ إلَى الْمُنَافِقِينَ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَإِنَّ اللَّهَ قَدْ حَرَّمَ عَلَى النَّارِ مَنْ قَالَ: لَا إلَهَ إلَّا اللَّهُ يَبْتَغِي بِهَا وَجْهَ اللَّهِ تَعَالَى» حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا بْنُ إِسْحَاقَ بْنِ السُّلَيْمِ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا عَبْدُ اللَّهِ بْنُ مَسَرَّةَ نا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ نا أَبِي عَنْ قَتَادَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ بُرَيْدَةَ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَا تَقُولُوا لِلْمُنَافِقِ: سَيِّدًا، فَإِنَّهُ إنْ يَكُ سَيِّدًا فَقَدْ أَسْخَطْتُمْ رَبَّكُمْ» .

Allah be upon him and his family—said: “Do not call the hypocrite ’master,’ for if he were truly a master, you would have angered your Lord.”

L41072 From the narration of Muslim: Zuhayr ibn Harb narrated to us, Jarir—who is Ibn Abd al-Hamid—narrated to us from Mansur ibn al-Mu’tamir from Abu Wa’il from Ibn Mas’ud, who said: “On the day of Hunayn, the Messenger of Allah—peace and blessings of Allah be upon him—favored certain people in the distribution. He gave Al-Aqra’ ibn Habis one hundred camels and gave Uyaynah ibn Hisn the same. He gave to some nobles of the Arabs and favored them in the distribution that day. A man said: ’By Allah, this is a division where justice was not upheld, nor was the Face of Allah sought in it.’ I said: ’By Allah, I will certainly inform the Messenger of Allah—peace and blessings of Allah be upon him and his family—of this.’ So I came to him and relayed what the man had said. The face of the Messenger of Allah—peace and blessings of Allah be upon him and his family—changed until it became like saffron. Then he said: ’Who will uphold justice if Allah and His Messenger do not? May Allah have mercy on Moses. He was wronged far more than this, yet he remained patient.’”

L41073 Ibn Masʿūd said: I said, “No doubt, I will not transmit to him a ḥadīth after that.”

L41074–41076 From the chain of Muslim, it was narrated to us by Muḥammad ibn al-Muthannā and Muḥammad ibn Rumḥ. Muḥammad ibn Rumḥ ibn al-Muhājir said. Al-Layth ibn Saʿd narrated from Yaḥyā ibn Saʿīd al-Anṣārī from Abū al-Zubayr from Jābir. Ibn al-Muthannā said: ʿAbd al-Wahhāb narrated to us from ʿAbd al-Ḥamīd al-Thaqafī, who said: I heard Yaḥyā ibn Saʿīd al-Anṣārī say: From me, Abū al-Zubayr, that he heard Jābir ibn ʿAbd Allāh say: “A man came to al-Jiʿrānah after returning from Ḥunayn while Bilāl’s garment contained silver—and the Messenger of Allah, peace and blessings be upon him, was taking from it to give to the people. The man said: ‘O Muḥammad, be just!’ He replied: ‘Woe to you! Who would be just if I were not just?’ ‘Umar ibn al-Khaṭṭāb said: ‘Let me, O Messenger of Allah, kill this dissenter!’ He said: ‘Allah forbid that people should say I kill my companions. Indeed, this man and his companions recite the Quran—their recitation does not

وَمِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ نا جَرِيرٌ - هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ أَبِي وَائِلٍ عَنِ ابْنِ مَسْعُودٍ قَالَ: «لَمَّا كَانَ يَوْمُ حُنَيْنٍ آثَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَاسًا فِي الْقِسْمَةِ، فَأَعْطَى الْأَقْرَعَ بْنَ حَابِسٍ مِائَةً مِنَ الْإِبِلِ، وَأَعْطَى عُيَيْنَةَ بْنَ حِصْنٍ مِثْلَ ذَلِكَ، وَأَعْطَى نَاسًا مِنْ أَشْرَافِ الْعَرَبِ وَآثَرَهُمْ يَوْمَئِذٍ فِي الْقِسْمَةِ، فَقَالَ رَجُلٌ: وَاللَّهِ إِنَّ هَذِهِ لَقِسْمَةٌ مَا يُعْدَلُ فِيهَا، مَا أُرِيدُ بِهَا وَجْهَ اللَّهِ، قَالَ فَقُلْتُ: وَاللَّهِ لَأُخْبِرَنَّ بِهِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: فَأَتَيْتُهُ فَأَخْبَرْتُهُ بِمَا قَالَ، فَتَغَيَّرَ وَجْهُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَتَّى كَانَ كَالصِّرْفِ ثُمَّ قَالَ مَنْ يَعْدِلُ إِذَا لَمْ يَعْدِلِ اللَّهُ وَرَسُولُهُ، يَرْحَمُ اللَّهُ مُوسَى لَقَدْ أُوذِيَ بِأَكْثَرَ مِنْ هَذَا فَصَبَرَ» .

قَالَ ابْنُ مَسْعُودٍ: قُلْتُ: لَا جَرَمَ، لَا أَرْفَعُ إِلَيْهِ بَعْدَهَا حَدِيثًا.

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى، وَمُحَمَّدُ بْنُ رُمْحٍ قَالَ مُحَمَّدُ بْنُ رُمْحِ بْنِ الْمُهَاجِرِ أَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ، وَقَالَ ابْنُ الْمُثَنَّى: نا عَبْدُ الْوَهَّابِ عَنْ عَبْدِ الْحَمِيدِ الثَّقَفِيِّ قَالَ: سَمِعْتُ يَحْيَى بْنَ سَعِيدٍ الْأَنْصَارِيَّ يَقُولُ: أَنَا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ قَالَ: «أَتَى رَجُلٌ بِالْجِعْرَانَةِ مُنْصَرَفَهُ مِنْ حُنَيْنٍ وَفِي ثَوْبِ بِلَالٍ فِضَّةٌ - وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقْبِضُ مِنْهَا يُعْطِي النَّاسَ فَقَالَ: يَا مُحَمَّدُ اعْدِلْ؟ قَالَ وَيْلَكَ وَمَنْ يَعْدِلُ إِذَا لَمْ أَكُنْ أَعْدِلُ؟ فَقَالَ عُمَرُ بْنُ الْخَطَّابِ: دَعْنِي يَا رَسُولَ اللَّهِ فَأَقْتُلَ هَذَا الْمُنَافِقَ؟ فَقَالَ: مَعَاذَ اللَّهِ أَنْ يَتَحَدَّثَ النَّاسُ

pass beyond their throats. They slip away from it as an arrow slips through prey.’”[35]

أَنِّي أَقْتُلُ أَصْحَابِي، إِنَّ هَذَا وَأَصْحَابَهُ يَقْرَءُونَ الْقُرْآنَ لَا يُجَاوِزُ حَنَاجِرَهُمْ يَمْرُقُونَ مِنْهُ كَمَا يَمْرُقُ السَّهْمُ مِنَ الرَّمِيَّةِ» .

L41077 Through the chain of Al-Bukhari: Muhammad narrated to us: I am Makhlad ibn Yazid. Ibn Jurayj informed us; Amr ibn Dinar informed me that he heard Jabir ibn Abdullah saying: “We campaigned with the Messenger of Allah—peace and blessings of Allah be upon him and his family—while many Muhajireen had joined him until their numbers grew. Among the Muhajireen was a mocker who struck an Ansari man. The Ansar became enraged with intense anger until they rallied together. The Ansari shouted: ’O Ansar!’ and the Muhajiri shouted: ’O Muhajireen!’ The Prophet—peace and blessings of Allah be upon him and his family—came out and said: ’What is this call of the Age of Ignorance? What troubles them?’ He was informed about the Muhajiri striking the Ansari. The Prophet—peace and blessings of Allah be upon him and his family—said: ’Leave this matter, for it is evil.’ Abdullah ibn Ubayy ibn Salul then declared: ’They have rallied against us! If we return to Medina, the mightier among them will surely expel the lowlier.’ Umar ibn Al-Khattab said: ’O Prophet of Allah, should we not kill this wicked one?’—referring to Abdullah ibn Ubayy. The Prophet—peace and blessings of Allah be upon him and his family—responded: ’No, otherwise people will say: ”Muhammad kills his companions.“”[36]

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدٌ أَنَا مَخْلَدُ بْنُ يَزِيدَ أَخْبَرَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «غَزَوْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَدْ ثَابَ مَعَهُ نَاسٌ مِنَ الْمُهَاجِرِينَ حَتَّى كَثُرُوا، وَكَانَ مِنَ الْمُهَاجِرِينَ رَجُلٌ لَعَّابٌ فَكَسَعَ أَنْصَارِيًّا فَغَضِبَتِ الْأَنْصَارُ غَضَبًا شَدِيدًا حَتَّى تَدَاعَوْا، فَقَالَ الْأَنْصَارِيُّ: يَا لَلْأَنْصَارِ؟ وَقَالَ الْمُهَاجِرِيُّ: يَا لَلْمُهَاجِرِينَ؟ فَخَرَجَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: مَا بَالُ دَعْوَى الْجَاهِلِيَّةِ مَا شَأْنُهُمْ؟ فَأُخْبِرَ بِكَسْعَةِ الْمُهَاجِرِيِّ الْأَنْصَارِيَّ، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - دَعُوهَا فَإِنَّهَا خَبِيثَةٌ؟ فَقَالَ عَبْدُ اللَّهِ بْنُ أُبَيٍّ ابْنُ سَلُولَ: قَدْ تَدَاعَوْا عَلَيْنَا لَئِنْ رَجَعْنَا إِلَى الْمَدِينَةِ لَيُخْرِجَنَّ الْأَعَزُّ مِنْهَا الْأَذَلَّ، فَقَالَ عُمَرُ بْنُ الْخَطَّابِ: أَلَا تَقْتُلُ يَا نَبِيَّ اللَّهِ هَذَا الْخَبِيثَ؟ - لِعَبْدِ اللَّهِ بْنِ أُبَيٍّ - فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: لَا يَتَحَدَّثُ النَّاسُ: أَنَّ مُحَمَّدًا يَقْتُلُ أَصْحَابَهُ» .

L41078–41080 From the transmission of Muslim: Qutaybah ibn Saʿīd narrated to us: ʿAbd al-Wāḥid – that is Ibn Ziyād – narrated to us from ʿUmārah ibn al-Qaʿqāʿ from ʿAbd al-Raḥmān ibn Abī Nuʿm, who said: I heard Abū Saʿīd al-Khudrī say: “‘Alī ibn Abī Ṭālib sent to the Messenger of God – may God’s blessings and peace be upon him and his family – a gold piece wrapped in a coarse tanned hide that had not been purified of its dust. He divided it among four men: ʿUyaynah ibn Badr, al-Aqraʿ ibn Ḥābis, Zayd al-Khayl – but he was uncertain about the fourth – when a man among his companions said: ’We were more entitled to this than these.’ When this reached the Prophet – may God’s blessings and peace be upon him and his family – he said:

وَمِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا عَبْدُ الْوَاحِدِ - هُوَ ابْنُ زِيَادٍ - عَنْ عُمَارَةَ بْنِ الْقَعْقَاعِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي نُعْمٍ قَالَ: سَمِعْتُ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ «بَعَثَ عَلِيُّ بْنُ أَبِي طَالِبٍ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنَ الْيَمَنِ بِذُهَيْبَةٍ فِي أَدِيمٍ مَقْرُوظٍ لَمْ تُحَلَّصْ مِنْ تُرَابِهَا، فَقَسَمَهَا بَيْنَ أَرْبَعَةِ نَفَرٍ: عُيَيْنَةَ بْنِ بَدْرٍ، وَالْأَقْرَعِ بْنِ حَابِسٍ، وَزَيْدِ الْخَيْلِ - وَشَكَّ فِي الرَّابِعِ - فَقَالَ رَجُلٌ مِنْ أَصْحَابِهِ: كُنَّا نَحْنُ أَحَقَّ بِهَا مِنْ هَؤُلَاءِ، فَبَلَغَ ذَلِكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: أَلَا تَأْمَنُونِي وَأَنَا

[35] **Hadith references (L41074):** Sahih Muslim 1063a.

[36] **Qur’an references (L41077):** Qur’an 63:8 (Al-Munafiqun).

'Will you not trust me, when I am trustworthy in... [text ends here at 'in...']'" From the heavens, news comes to me morning and evening. A man then stood up—sunken-eyed, with protruding cheekbones, a prominent forehead, thick-bearded, shaven-headed, and with his lower garment rolled up—and said: "O Messenger of Allah, fear Allah!" He replied: "Woe to you! Am I not the most deserving of the people of the earth to fear Allah?" The man then turned away. Khalid ibn al-Walid said: "O Messenger of Allah, shall I strike his neck?" He responded: "Perhaps he is one who prays." Khalid said: "How many are those who pray but say with their tongues what is not in their hearts?" The Messenger of Allah—peace and blessings be upon him and his family—said: "I have not been commanded to probe into the hearts of people, nor to split open their bellies. From the descendants of this man will emerge a people who recite the Book of Allah fluently—it does not go beyond their throats. They will abandon the religion as an arrow passes through the game."

أَمِينٌ فِي السَّمَاءِ، يَأْتِينِي خَبَرُ السَّمَاءِ صَبَاحًا وَمَسَاءً، فَقَامَ رَجُلٌ غَائِرُ الْعَيْنَيْنِ، مُشْرِفُ الْوَجْنَتَيْنِ، نَاشِزُ الْجَبْهَةِ، كَثُّ اللِّحْيَةِ، مَحْلُوقُ الرَّأْسِ، مُشَمِّرُ الْإِزَارِ، فَقَالَ: يَا رَسُولَ اللَّهِ اتَّقِ اللَّهَ. فَقَالَ: وَيْلَكَ، أَوَلَسْتُ أَحَقَّ أَهْلِ الْأَرْضِ أَنْ يَتَّقِيَ اللَّهَ؟ ثُمَّ وَلَّى الرَّجُلُ، فَقَالَ خَالِدُ بْنُ الْوَلِيدِ: يَا رَسُولَ اللَّهِ أَلَا أَضْرِبُ عُنُقَهُ؟ فَقَالَ: لَعَلَّهُ أَنْ يَكُونَ يُصَلِّي. قَالَ خَالِدٌ: وَكَمْ مِنْ مُصَلٍّ يَقُولُ بِلِسَانِهِ مَا لَيْسَ فِي قَلْبِهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: إِنِّي لَمْ أُؤْمَرْ أَنْ أَنْقُبَ عَنْ قُلُوبِ النَّاسِ، وَلَا أَشُقَّ بُطُونَهُمْ، إِنَّهُ يَخْرُجُ مِنْ ضِئْضِئِ هَذَا قَوْمٌ يَتْلُونَ كِتَابَ اللَّهِ رَطْبًا، لَا يُجَاوِزُ حَنَاجِرَهُمْ، يَمْرُقُونَ مِنْ الدِّينِ كَمَا يَمْرُقُ السَّهْمُ مِنْ الرَّمِيَّةِ» .

L41081 Muhammad ibn Sa'id ibn Nabat narrated to us, Ahmad ibn Awn Allah narrated to us, Qasim ibn Asbagh narrated to us, Muhammad ibn Abd al-Salam al-Khushani narrated to us, Muhammad ibn Bashshar narrated to us, Muhammad ibn Ja'far narrated to us, Shu'bah said: I heard Qatadah narrating from Abu Nadrah from Qays ibn Abbad: I said to Ammar: What is your view concerning this fighting of yours? Is it an opinion you devised, for opinions may err or be correct? Or did the Messenger of Allah—peace and blessings of Allah be upon him and his family—entrust you with a specific injunction? He replied: The Messenger of Allah—peace and blessings of Allah be upon him and his family—did not entrust us with anything he did not entrust to all people universally. The Messenger of Allah—peace and blessings of Allah be upon him and his family—said (I believe he said): Hudhayfah narrated to me—that there are twelve hypocrites in my Ummah who will not enter Paradise nor sense its fragrance until a camel passes through the eye of a needle. Eight of them will be sufficiently marked by a fiery mark—a lamp from the Fire that appears between their shoulder blades and protrudes from their backs.

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ: قَالَ: سَمِعْت قَتَادَةَ يُحَدِّثُ عَنْ أَبِي نَضْرَةَ «عَنْ قَيْسِ بْنِ عَبَّادٍ قُلْتُ لِعَمَّارٍ: أَرَأَيْتَ قِتَالَكُمْ هَذَا؟ أَرَأْيٌ رَأَيْتُمُوهُ، فَإِنَّ الرَّأْيَ يُخْطِئُ وَيُصِيبُ؟ أَوَعَهِدَ إِلَيْكُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ فَقَالَ: مَا عَهِدَ إِلَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - شَيْئًا لَمْ يَعْهَدْهُ إِلَى النَّاسِ كَافَّةً، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، أَحْسَبُهُ قَالَ: حَدَّثَنِي حُذَيْفَةُ: أَنَّهُ قَالَ: فِي أُمَّتِي اثْنَا عَشَرَ مُنَافِقًا لَا يَدْخُلُونَ الْجَنَّةَ وَلَا يَجِدُونَ رِيحَهَا حَتَّى يَلِجَ الْجَمَلُ فِي سَمِّ الْخِيَاطِ، ثَمَانِيَةٌ مِنْهُمْ يَكْفِيهِمْ الرَّسْلَةُ، سِرَاجٌ مِنْ النَّارِ يَظْهَرُ بَيْنَ أَكْتَافِهِمْ حَتَّى يَنْجُمَ مِنْ ظُهُورِهِمْ» .

L41082 Muhammad ibn Sa'id ibn Nabaat narrated to us: Ahmad ibn Abd al-Basir

narrated to us, Qasim ibn Asbagh narrated to us, Muhammad ibn Abd al-Salam al-Khushani narrated to us, Muhammad ibn al-Muthanna narrated to us, Abu Ahmad—who is al-Zubayri—narrated to us, from Sufyan al-Thawri, from Salamah ibn Kuhayl, from Iyad ibn Iyad, from his father, from Ibn Mas'ud, who said: "The Messenger of Allah—peace and blessings be upon him and his family—addressed us in a sermon and spoke therein as Allah the Exalted willed. Then he said: 'There are hypocrites among you. Let whoever I name stand up.' He then called out: 'Rise, O so-and-so! Rise, O so-and-so! Rise, O so-and-so!'—until he had named thirty-six men. Then he declared: 'There are indeed among you and within you [hypocrites], so seek Allah's protection!' Later, Umar encountered a veiled man with whom he was acquainted. He asked: 'What troubles you?' The man recounted the Prophet's words—peace and blessings be upon him and his family. Umar responded: 'Perish you for this entire day!'"

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا أَبُو أَحْمَدَ - هُوَ الزُّبَيْرِيُّ - نا سُفْيَانُ الثَّوْرِيُّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ عِيَاضِ بْنِ عِيَاضٍ أَبِيهِ عَنِ ابْنِ مَسْعُودٍ قَالَ «خَطَبَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَذَكَرَ فِي خُطْبَتِهِ مَا شَاءَ اللَّهُ تَعَالَى، ثُمَّ قَالَ: إِنَّ مِنْكُمْ مُنَافِقِينَ فَمَنْ سَمَّيْتُ فَلْيَقُمْ؟ ثُمَّ قَالَ: قُمْ يَا فُلَانُ، قُمْ يَا فُلَانُ، قُمْ يَا فُلَانُ - حَتَّى عَدَّ سِتَّةً وَثَلَاثِينَ - ثُمَّ قَالَ: إِنَّ مِنْكُمْ وَإِنَّ فِيكُمْ، فَسَلُوا اللَّهَ الْعَافِيَةَ؟ فَمَرَّ عُمَرُ بِرَجُلٍ مُقَنَّعٍ قَدْ كَانَ بَيْنَهُ وَبَيْنَهُ مَعْرِفَةٌ، قَالَ: مَا شَأْنُكَ؟ فَأَخْبَرَهُ بِمَا قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ لَهُ عُمَرُ: تَبًّا لَكَ سَائِرَ الْيَوْمِ» .

L41083–41084 And through the chain of Muslim: Al-Hasan ibn Ali Al-Hulwani narrated to us, Ibn Abi Maryam narrated to us: I, Muhammad ibn Ja'far, was informed by Zayd ibn Aslam from Ata ibn Yasar from Abu Sa'id Al-Khudri: "There was a man among the hypocrites during the time of the Messenger of Allah—peace and blessings be upon him and his household—who, whenever the Messenger of Allah—peace and blessings be upon him and his household—went forth, they would stay behind, taking delight in their refusal contrary to the Messenger of Allah—peace and blessings be upon him and his household. When the Prophet—peace and blessings be upon him and his household—returned, they would make excuses to him, swear oaths, and seek praise for deeds they never performed. Therefore, do not think them safe from the punishment."[37]

وَمِنْ طَرِيقِ مُسْلِمٍ نا الْحَسَنُ بْنُ عَلِيٍّ الْحُلْوَانِيُّ نا ابْنُ أَبِي مَرْيَمَ أَنَا مُحَمَّدُ بْنُ جَعْفَرٍ أَخْبَرَنِي زَيْدُ بْنُ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ: «أَنَّ رَجُلًا مِنَ الْمُنَافِقِينَ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ إِذَا خَرَجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - تَخَلَّفُوا عَنْهُ وَفَرِحُوا بِمَقْعَدِهِمْ خِلَافَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَإِذَا قَدِمَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - اعْتَذَرُوا إِلَيْهِ وَحَلَفُوا وَأَحَبُّوا أَنْ يُحْمَدُوا بِمَا لَمْ يَفْعَلُوا، فَلَا تَحْسَبَنَّهُمْ بِمَفَازَةٍ مِنَ الْعَذَابِ» .

L41085 And via the chain of Muslim: From Zuhayr ibn Harb, from Ahmad al-Kufi, from al-Walid ibn Jumay', from Abu al-Tufayl who said: "There arose a dispute between a man from the people of al-Aqabah and Hudhayfah, such as commonly occurs among people. The man said: 'I adjure you by Allah - how many were the companions of al-Aqabah?' The people urged him: 'Answer him since he has asked you.' Hudhayfah responded: 'We were informed they

وَمِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ أَنَا أَحْمَدُ الْكُوفِيُّ نا الْوَلِيدُ بْنُ جُمَيْعٍ نا أَبُو الطُّفَيْلِ قَالَ: «كَانَ بَيْنَ رَجُلٍ مِنْ أَهْلِ الْعَقَبَةِ وَبَيْنَ حُذَيْفَةَ مَا يَكُونُ بَيْنَ النَّاسِ فَقَالَ: أَنْشُدُكَ اللَّهَ، كَمْ كَانَ أَصْحَابُ الْعَقَبَةِ؟ فَقَالَ لَهُ الْقَوْمُ: أَخْبِرْهُ إِذْ سَأَلَكَ؟ قَالَ - يَعْنِي حُذَيْفَةَ -: كُنَّا نُخْبَرُ أَنَّهُمْ أَرْبَعَةَ عَشَرَ، فَإِنْ كُنْتَ فِيهِمْ فَقَدْ كَانَ الْقَوْمُ خَمْسَةَ عَشَرَ، وَأَشْهَدُ

[37] **Qur'an references (L41084):** Qur'an 3:188 (Ali 'Imran).

numbered fourteen. If you were among them, the group would have been fifteen. I testify by Allah that twelve of them constituted a party for Allah and His Messenger. On the Day when witnesses rise, were three excused and three excused?' They replied: 'We neither heard the caller of the Messenger of Allah - may Allah bless him and his family and grant peace - nor knew the people's intent.'"

بِاللَّهِ أَنَّ اثْنَيْ عَشَرَ مِنْهُمْ حِزْبٌ لِلَّهِ وَلِرَسُولِهِ، وَيَوْمَ يَقُومُ الْأَشْهَادُ، وَعَذَرَ ثَلَاثَةً، وَعَذَرَ ثَلَاثَةً؟ قَالُوا: مَا سَمِعْنَا مُنَادِيَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَا عَلِمْنَا بِمَا أَرَادَ الْقَوْمُ؟» قَالَ أَبُو مُحَمَّد: لَيْسَتْ هَذِهِ الْعَقَبَةُ الْفَاضِلَةُ الْمَحْمُودَةُ قَبْلَ الْهِجْرَةِ، تِلْكَ كَانَتْ لِلْأَنْصَارِ خَالِصَةً شَهِدَهَا مِنْهُمْ - رَضِيَ اللَّهُ عَنْهُمْ - سَبْعُونَ رَجُلًا وَثَلَاثُ نِسْوَةٍ، وَلَمْ يَشْهَدْهَا أَحَدٌ مِنْ غَيْرِهِمْ إِلَّا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَحْدَهُ، وَالْعَبَّاسُ عَمُّهُ، وَهُوَ غَيْرُ مُسْلِمٍ يَوْمَئِذٍ، لَكِنَّهُ شَفَقَةً عَلَى ابْنِ أَخِيهِ.

Abu Muhammad remarked: This is not the eminent and commendable al-Aqabah preceding the Hijrah. That event was exclusively for the Ansar, witnessed by seventy men and three women from them (may Allah be pleased with them). No one else attended except the Messenger of Allah - may Allah bless him and his family and grant peace - alone, and his uncle al-Abbas, who remained non-Muslim at the time yet attended out of compassion for his nephew.

L41086 From the chain of Muslim: Abu Kurayb—Ja'far ibn Ghiyath—narrated to us from al-A'mash from Abu Sufyan from Jabir: "The Messenger of Allah—peace and blessings be upon him and his family—returned from a journey. When he neared Medina, a violent wind arose that nearly buried the rider. He reported that the Messenger of Allah—peace and blessings be upon him and his family—said: 'This wind was sent upon the death of a hypocrite.' Upon entering Medina, lo, a prominent hypocrite had indeed died!"

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو كُرَيْبٍ جَعْفَرُ بْنُ غِيَاثٍ عَنْ الْأَعْمَشِ عَنْ أَبِي سُفْيَانَ عَنْ جَابِرٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدِمَ مِنْ سَفَرٍ، فَلَمَّا كَانَ قُرْبَ الْمَدِينَةِ هَاجَتْ رِيحٌ تَكَادُ أَنْ تَدْفِنَ الرَّاكِبَ، فَزَعَمَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: بُعِثَتْ هَذِهِ الرِّيحُ لِمَوْتِ مُنَافِقٍ، وَقَدِمَ الْمَدِينَةَ، فَإِذَا عَظِيمٌ مِنْ الْمُنَافِقِينَ قَدْ مَاتَ؟» قَالَ أَبُو مُحَمَّد: وَأَحَادِيثُ مَوْقُوفَةٌ عَلَى حُذَيْفَةَ فِيهَا: أَنَّهُ كَانَ يَدْرِي الْمُنَافِقِينَ، وَأَنَّ عُمَرَ سَأَلَهُ: أَهُوَ مِنْهُمْ؟ قَالَ: لَا، وَلَا أُخْبِرُ أَحَدًا بَعْدَك بِمِثْلِ هَذَا، وَأَنَّ عُمَرَ كَانَ يَنْظُرُ إلَيْهِ فَإِذَا حَضَرَ حُذَيْفَةُ جِنَازَةً حَضَرَهَا عُمَرُ، وَإِنْ لَمْ يَحْضُرْهَا حُذَيْفَةُ لَمْ يَحْضُرْهَا عُمَرُ، وَفِي بَعْضِهَا مِنْهُمْ: شَيْخٌ لَوْ ذَاقَ الْمَاءَ مَا وَجَدَ لَهُ طَعْمًا: كُلُّهَا غَيْرُ مُسْنَدَةٍ.

Abu Muhammad said: There are narrations attributed to Hudhayfah stating he knew the hypocrites. Umar asked him: "Am I among them?" He replied: "No, nor have I informed anyone after you of such a matter." It is also mentioned that Umar would follow his example—if Hudhayfah attended a funeral, Umar attended it, and if Hudhayfah abstained, Umar abstained. Some narrations describe an elder among them who, were he to taste water, would not perceive its flavor—all these lack complete chains of transmission (non-musnad).

L41087–41088 On the authority of Hudhayfah, who said: A man from the hypocrites died, and I did not attend his funeral. Someone said, "He is one of them." Umar then asked me, "Am I one of them?" I replied, "No."

وَعَنْ حُذَيْفَةَ قَالَ: مَاتَ رَجُلٌ مِنْ الْمُنَافِقِينَ فَلَمْ أَذْهَبْ إلَى الْجِنَازَةِ فَقَالَ: هُوَ مِنْهُمْ، فَقَالَ لَهُ عُمَرُ: أَنَا مِنْهُمْ؟ قَالَ: لَا.

L41089–41091 From Muhammad ibn Ishaq, from Asim ibn Umar ibn Qatadah ibn An-

Nu'man al-Ẓafarī, who said: I said to Mahmud ibn Labid: "Did people recognize hypocrisy among themselves?" He replied: "Yes, by Allah! A man would recognize it in his brother, his father, his paternal cousin, and his clansmen, yet they would cover for one another concerning it." Mahmud said: "A man from my tribe informed me about a man from the hypocrites whose hypocrisy was well-known. He would travel with the Messenger of Allah (peace be upon him and his family) wherever he went. When the incident of the stone occurred and the Messenger of Allah (peace be upon him and his family) supplicated as he supplicated, Allah sent a cloud that rained until the people were satiated. We turned to him and said: 'Woe to you! Can anything remain after this?' He replied: 'It was merely a passing cloud.' Then the Messenger of Allah (peace be upon him and his family) traveled until partway along the path, his she-camel went astray. The companions of the Messenger of Allah (peace be upon him and his family) went out to search for it, while with the Messenger of Allah (peace be upon him and his family) was a man from his companions named 'Umārah ibn Hazm—a participant of Aqabah, a Badri veteran from Banu 'Amr ibn Makhzum—who was in the company of Yazid ibn Nasib al-Qaynuqā'ī, a known hypocrite. While in 'Umārah's group, Yazid said: 'Does Muhammad claim to be a prophet, informing you of news from the heavens, yet not know where his she-camel is?' The Messenger of Allah (peace be upon him and his family) said to 'Umārah, who was beside him: 'A man has said: "This Muhammad claims to be a prophet who informs you of heavenly matters, yet he does not know where his she-camel is." By Allah, I know only what Allah teaches me. He has guided me to it—it is in this valley, in such-and-such ravine, held back by a tree gripping its reins. Go forth until you bring it to me.' They went and brought it. 'Umārah ibn Hazm returned to his group and said: 'By Allah! The most astonishing thing is what the Messenger of Allah (peace be upon him and his family) just told us regarding the statement of a speaker—Allah informed him of exactly what Yazid ibn Nasib said.' A man from 'Umārah's group who had not been present with the Messenger of Allah (peace be upon him and his family) said: 'Yazid, by Allah, uttered these words before you returned!' 'Umārah seized Yazid by the neck, shouting: 'O servants of Allah!

وَعَنْ مُحَمَّدِ بْنِ إِسْحَاقَ ثَنِي «عَاصِمُ بْنُ عُمَرَ بْنِ قَتَادَةَ بْنِ النُّعْمَانِ الظَّفَرِيُّ، قَالَ: قُلْت لِمَحْمُودِ بْنِ لَبِيدٍ: هَلْ كَانَ النَّاسُ يَعْرِفُونَ النِّفَاقَ فِيهِمْ؟ قَالَ: نَعَمْ، وَاَللَّهِ إنْ كَانَ الرَّجُلُ لَيَعْرِفُهُ مِنْ أَخِيهِ، وَمِنْ أَبِيهِ، وَمِنْ بَنِي عَمِّهِ، وَمِنْ عَشِيرَتِهِ، ثُمَّ يُلْبِسُ بَعْضُهُمْ بَعْضًا عَلَى ذَلِكَ - قَالَ مَحْمُودٌ: لَقَدْ أَخْبَرَنِي رَجُلٌ مِنْ قَوْمِي عَنْ رَجُلٍ مِنْ الْمُنَافِقِينَ مَعْرُوفٍ نِفَاقُهُ كَانَ يَسِيرُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَيْثُ سَارَ، فَلَمَّا كَانَ مِنْ أَمْرِ الْحَجَرِ مَا كَانَ، وَدَعَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حِينَ دَعَا فَأَرْسَلَ اللَّهُ السَّحَابَةَ فَأَمْطَرَتْ حَتَّى ارْتَوَى النَّاسُ، أَقْبَلْنَا عَلَيْهِ نَقُولُ: وَيْحَك أَبَعْدَ هَذَا شَيْءٌ؟ قَالَ: سَحَابَةٌ مَارَّةٌ، ثُمَّ إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - سَارَ حَتَّى كَانَ بِبَعْضِ الطَّرِيقِ ضَلَّتْ نَاقَتُهُ، فَخَرَجَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي طَلَبِهَا، وَعِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَجُلٌ مِنْ أَصْحَابِهِ يُقَالُ لَهُ: عُمَارَةُ بْنُ حَزْمٍ، وَكَانَ عَقَبِيًّا بَدْرِيًّا - وَهُوَ مِنْ بَنِي عَمْرِو بْنِ مَخْزُومٍ - وَكَانَ فِي رَحْلِ يَزِيدَ بْنِ نَصِيبٍ الْقَيْنُقَاعِيِّ وَكَانَ مُنَافِقًا، فَقَالَ يَزِيدُ - وَهُوَ فِي رَحْلِ عُمَارَةَ - وَعُمَارَةُ عِنْدَ النَّبِيِّ - عَلَيْهِ السَّلَامُ -: أَلَيْسَ مُحَمَّدٌ يَزْعُمُ أَنَّهُ نَبِيٌّ وَيُخْبِرُكُمْ عَنْ خَبَرِ السَّمَاءِ، وَلَا يَدْرِي أَيْنَ نَاقَتُهُ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَعُمَارَةُ عِنْدَهُ: إنَّ رَجُلًا قَالَ: هَذَا مُحَمَّدٌ يُخْبِرُكُمْ أَنَّهُ نَبِيٌّ وَيَزْعُمُ أَنَّهُ يُخْبِرُكُمْ بِخَبَرِ السَّمَاءِ - هُوَ لَا يَدْرِي أَيْنَ نَاقَتُهُ - وَإِنِّي وَاَللَّهِ مَا أَعْلَمُ إلَّا مَا عَلَّمَنِي اللَّهُ، وَقَدْ دَلَّنِي عَلَيْهَا - وَهِيَ فِي هَذَا الْوَادِي مِنْ شِعْبِ كَذَا وَكَذَا - وَقَدْ حَبَسَتْهَا شَجَرَةٌ بِزِمَامِهَا، فَانْطَلِقُوا حَتَّى تَأْتُونِي بِهَا؟ فَذَهَبُوا فَجَاءُوا بِهَا، فَرَجَعَ عُمَارَةُ بْنُ حَزْمٍ إلَى رَحْلِهِ، فَقَالَ: وَاَللَّهِ لَأَعْجَبُ شَيْءٍ حَدَّثَنَاهُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - آنِفًا عَنْ مَقَالَةِ قَائِلٍ أَخْبَرَهُ اللَّهُ عَنْهُ كَذَا وَكَذَا - لِلَّذِي قَالَ يَزِيدُ

There is a hidden hypocrite in my company, and I was unaware! Leave, O enemy of Allah! Do not accompany me!'"

From Zayd ibn Wahb (via al-Bukhārī's chain), who said: We were with Hudhayfa when he said: "None remain of the companions addressed by this verse—{So fight the leaders of disbelief} [9:12] until {they desist} [9:12]—except three." Hudhayfa added: "And none remain of the hypocrites except four." He said... A Bedouin said to him: "You companions of Muhammad inform us of things we do not know. So who are these people breaking into our homes and stealing our fodder?" He replied: "Those are the transgressors. Yes, none remain of them except four: an old man who, if he drank water, would find it cold?" Abu Muhammad said: "This is all that has been related to us of the accounts, and there is no proof whatsoever in any of them."[38]

L41092 As for the ḥadīth of Mālik ibn al-Dikhshan, it is authentic and constitutes the greatest evidence against them, because the Messenger of Allah—peace and blessings be upon him and his family—stated that the testimony of divine oneness protects its possessor. Thus, the Messenger of Allah—peace be upon him—said: "We have been forbidden from fighting those who pray."

L41093 As for the ḥadīth of Buraydah al-Aslamī, "Do not call the hypocrite 'master,'" this constitutes a general ruling applicable to the entire community, and none can remain unaware of this. Since this is the case, when we recognize a hypocrite and are prohibited from calling him "master," he is not a hypocrite but rather one who openly flaunts disbelief. However, if we claim to know who the hypocrite is—while we neither possess knowledge of the unseen nor comprehend what lies in his innermost thoughts—then he would be openly declared as such, not merely concealing it.

بْنُ نَصِيبٍ فَقَالَ رَجُلٌ مِمَّنْ كَانَ فِي رَحْلِ عُمَارَةَ وَلَمْ يَحْضُرْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: يَزِيدُ، وَاللَّهِ قَالَ هَذِهِ الْمَقَالَةَ قَبْلَ أَنْ تَأْتِيَ؟ فَأَقْبَلَ عُمَارَةُ عَلَى يَزِيدَ يَجَأُ فِي عُنُقِهِ وَيَقُولُ: يَا آلَ عِبَادِ اللَّهِ، إِنَّ فِي رَحْلِي الرَّاهِبَةَ، وَمَا أَشْعُرُ، اُخْرُجْ، أَيْ عَدُوَّ اللَّهِ مِنْ رَحْلِي فَلَا تَصْحَبْنِي» ؟ وَعَنْ زَيْدِ بْنِ وَهْبٍ قَالَ: كُنَّا عِنْدَ حُذَيْفَةَ - وَهُوَ مِنْ طَرِيقِ الْبُخَارِيِّ - فَقَالَ حُذَيْفَةُ: مَا بَقِيَ مِنْ أَصْحَابِ هَذِهِ الْآيَةِ إِلَّا ثَلَاثَةٌ، يَعْنِي قَوْلَه تَعَالَى {فَقَاتِلُوا أَئِمَّةَ الْكُفْرِ} [التوبة: ١٢] إِلَى قَوْلِهِ {يَنْتَهُونَ} [التوبة: ١٢] قَالَ حُذَيْفَةُ: وَلَا بَقِيَ مِنْ الْمُنَافِقِينَ إِلَّا أَرْبَعَةٌ، فَقَالَ لَهُ أَعْرَابِيٌّ: إِنَّكُمْ أَصْحَابُ مُحَمَّدٍ تُخْبِرُونَنَا بِمَا لَا نَدْرِي، فَمَا هَؤُلَاءِ الَّذِينَ يَنْقُرُونَ بُيُوتَنَا، وَيَسْرِقُونَ أَعْلَافَنَا؟ قَالَ: أُولَئِكَ الْفُسَّاقُ، أَجَلْ، لَمْ يَبْقَ مِنْهُمْ إِلَّا أَرْبَعَةٌ: شَيْخٌ كَبِيرٌ لَوْ شَرِبَ الْمَاءَ وَجَدَ لَهُ بَرْدًا؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا حَضَرَنَا ذِكْرُهُ مِنْ الْأَخْبَارِ، وَلَيْسَ فِي شَيْءٍ مِنْهَا حُجَّةٌ أَصْلًا.

أَمَّا حَدِيثُ مَالِكِ بْنِ الدِّخْشَنِ فَصَحِيحٌ وَهُوَ أَعْظَمُ حُجَّةٍ عَلَيْهِمْ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَخْبَرَ بِأَنَّ شَهَادَةَ التَّوْحِيدِ تَمْنَعُ صَاحِبَهَا وَهَكَذَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «نُهِينَا عَنْ قِتَالِ الْمُصَلِّينَ» .

وَأَمَّا حَدِيثُ بُرَيْدَةَ الْأَسْلَمِيِّ «لَا تَقُولُوا لِلْمُنَافِقِ سَيِّدًا» فَإِنَّ هَذَا عُمُومًا لِجَمِيعِ الْأُمَّةِ، وَلَا يَخْفَى هَذَا عَلَى أَحَدٍ - وَإِذْ الْأَمْرُ كَذَلِكَ فَإِذَا عَرَفْنَا الْمُنَافِقَ وَنُهِينَا أَنْ نُسَمِّيَهُ " سَيِّدًا " فَلَيْسَ مُنَافِقًا بَلْ مُجَاهِرًا، وَإِذَا عَرَفْنَا مَنْ الْمُنَافِقُ؟ وَنَحْنُ لَا نَعْلَمُ الْغَيْبَ؟ وَلَا مَا فِي ضَمِيرِهِ فَهُوَ مُعْلِنٌ لَا مُسِرٌّ.

[38] **Qur'an references (L41089):** Qur'an 9:12 (At-Tawbah).

وَقَدْ يَكُونُ هَذَا الْحَدِيثُ أَيْضًا عَلَى وَجْهٍ آخَرَ - وَهُوَ أَنَّ النَّبِيَّ - عَلَيْهِ السَّلَامُ - قَدْ صَحَّ عَنْهُ أَنَّ خِصَالًا مَنْ كُنَّ فِيهِ كَانَ مُنَافِقًا خَالِصًا وَقَدْ ذَكَرْنَاهَا قَبْلُ.

L41094 This ḥadīth may also be interpreted another way: that it is authentically established from the Prophet (peace be upon him) that whoever possesses these traits becomes a pure hypocrite, as we have mentioned before.

وَلَيْسَ هَذَا نِفَاقُ الْكُفْرِ، لَكِنَّهُ مُنَافِقٌ لِإِظْهَارِهِ خِلَافَ مَا يُضْمِرُهُ فِي هَذِهِ الْخِلَالِ الْمَذْكُورَةِ فِي كَذِبِهِ، وَغَدْرِهِ، وَفُجُورِهِ، وَإِخْلَافِهِ، وَخِيَانَتِهِ - وَمَنْ هَذِهِ صِفَاتُهُ فَلَا يَجُوزُ أَنْ يُسَمَّى سَيِّدًا، وَمَنْ سَمَّاهُ سَيِّدًا فَقَدْ أَسْخَطَ اللَّهَ تَعَالَى بِإِخْبَارِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِذَلِكَ.

L41095 This is not the hypocrisy of disbelief, but he is a hypocrite for outwardly displaying the opposite of what he conceals in these mentioned traits: his lying, betrayal, immorality, breaking promises, and treachery. Whoever possesses these attributes must not be called a master, and whoever calls him a master has angered God Almighty by the report of the Messenger of God (may God bless him and his family and grant him peace) concerning that.

وَأَمَّا حَدِيثُ ابْنِ مَسْعُودٍ - فَإِنَّ الْقَائِلَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَمْ يَعْدِلْ، وَلَا أَرَادَ وَجْهَ اللَّهِ تَعَالَى فِيمَا عَمِلَ فَهُوَ كَافِرٌ مُعْلِنٌ بِلَا شَكٍّ.

L41096 As for the ḥadīth of Ibn Masʿūd: indeed, whoever claims that the Messenger of Allah (may Allah bless him and his family and grant him peace) neither acted justly nor sought the Face of Allah the Exalted in his actions is, without doubt, an avowed disbeliever.

وَكَذَلِكَ الْقَائِلُ فِي حَدِيثِ جَابِرٍ إِذْ اسْتَأْذَنَ عُمَرُ فِي قَتْلِهِ إِذْ قَالَ: اعْدِلْ يَا رَسُولَ اللَّهِ؟ فَنَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عُمَرَ عَنْ ذَلِكَ، وَأَخْبَرَ بِأَنَّهُ لَا يَقْتُلُ أَصْحَابَهُ.

L41097 Similarly, the one who spoke in Jabir's narration when ʿUmar sought permission to kill him when he said, "Be just, O Messenger of Allah?" Thereupon, the Messenger of Allah—peace and blessings be upon him and his family—forbade ʿUmar from that and informed him that he does not kill his companions.

وَكَذَلِكَ أَيْضًا اسْتِئْذَانُ عُمَرَ فِي قَتْلِ عَبْدِ اللَّهِ بْنِ أُبَيٍّ أَنَّ هَؤُلَاءِ صَارُوا بِإِظْهَارِهِمْ الْإِسْلَامَ بَعْدَ أَنْ قَالُوا مَا قَالُوا: حُرِّمَتْ دِمَاؤُهُمْ وَصَارُوا بِذَلِكَ جُمْلَةَ أَصْحَابِهِ - عَلَيْهِ السَّلَامُ -.

L41098–41099 Similarly, Umar's request for permission to kill ʿAbdullāh ibn Ubayy demonstrates that these individuals – after uttering their statements – had their blood rendered inviolable through their outward profession of Islam, thereby joining the collective body of the Prophet's Companions (peace be upon him).

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا مَا احْتَجَّ بِهِ مَنْ رَأَى أَنَّ الْمُرْتَدَّ لَا يُقْتَلُ أَصْلًا، لِأَنَّ هَؤُلَاءِ مُرْتَدُّونَ بِلَا شَكٍّ، وَلَمْ يَقْتُلْهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَقَدْ قَتَلَ أَصْحَابُهُ الْفُضَلَاءَ، كَمَاعِزٍ، وَالْغَامِدِيَّةِ، وَالْجُهَنِيَّةِ، إذْ وَجَبَ الْقَتْلُ عَلَيْهِمْ، وَلَوْ كَانَ الْقَتْلُ عَلَى هَؤُلَاءِ الْمُرْتَدِّينَ لَمَا ضَيَّعَ ذَلِكَ أَصْلًا؟ قَالَ أَبُو مُحَمَّدٍ: فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - إنَّهُ

L41100 Abu Muhammad said: This is the argument of those who hold that the apostate should not be killed at all, for these individuals were undoubtedly apostates, yet the Messenger of Allah—peace and blessings of Allah be upon him and his family—did not kill them, though his noble companions executed individuals such as Ma'iz, Al-Ghamidiyyah, and Al-Juhayniyyah when the death penalty was mandated for them. If killing were obligatory for these apostates, how could he have overlooked that at all? Abu Muhammad said: We respond—and success lies with Allah, the Exalted—that there is no

disagreement among the Ummah that it is impermissible for a Muslim to label a disbeliever who openly claims to be a companion of the Messenger of Allah—peace and blessings of Allah be upon him and his family—nor to affirm that he is one of the Prophet's companions—peace be upon him. For the Prophet—peace be upon him—praised his companions.

لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّهُ لَا يَحِلُّ لِمُسْلِمٍ أَنْ يُسَمِّيَ كَافِرًا مُعْلِنًا بِأَنَّهُ صَاحِبُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَلَا أَنَّهُ مِنْ أَصْحَابِ النَّبِيِّ - عَلَيْهِ السَّلَامُ -، وَهُوَ - عَلَيْهِ السَّلَامُ - قَدْ أَثْنَى عَلَى أَصْحَابِهِ.

L41101 It has been confirmed that they outwardly professed Islam, thereby rendering their blood inviolable according to the apparent ruling, while their inner state—whether truthful or deceitful—is known only to God Almighty. If they were truthful in their repentance, they are truly his companions in the eyes of people based on their outward [profession], and in the sight of God Almighty—both inwardly and outwardly. These are the ones about whom the Messenger of God—peace and blessings be upon him and his family—said: "If any of us were to spend gold equal to Mount Uḥud, it would not equal half a mudd of one of theirs." But if they were lying, they are outwardly Muslims, while in the sight of God Almighty, they are disbelievers.

فَصَحَّ أَنَّهُمْ أَظْهَرُوا الْإِسْلَامَ، فَحُرِّمَتْ بِذَلِكَ دِمَاؤُهُمْ فِي ظَاهِرِ الْأَمْرِ، وَبَاطِنُهُمْ إلَى اللَّهِ تَعَالَى فِي صِدْقٍ أَوْ كَذِبٍ، فَإِنْ كَانُوا صَادِقِينَ فِي تَوْبَتِهِمْ فَهُمْ أَصْحَابُهُ حَقًّا عِنْدَ النَّاسِ ظَاهِرُهُمْ، وَعِنْدَ اللَّهِ تَعَالَى بَاطِنُهُمْ وَظَاهِرُهُمْ، فَهُمْ الَّذِينَ أَخْبَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُمْ لَوْ أَنْفَقَ أَحَدُنَا مِثْلَ أُحُدٍ ذَهَبًا مَا بَلَغَ نَصِيفَ مُدِّ أَحَدِهِمْ، وَإِنْ كَانُوا كَاذِبِينَ، فَهُمْ فِي الظَّاهِرِ مُسْلِمُونَ، وَعِنْدَ اللَّهِ تَعَالَى كُفَّارٌ.

L41102 The same applies to the statement regarding the narration of Abu Sa'id which we have mentioned, when Khalid sought his permission to kill a man, and the Prophet (peace be upon him) said: "No, perhaps he is praying." The Prophet's prohibition to Khalid against killing him has been authentically established. If killing him had been permissible, the Messenger of Allah (peace and blessings be upon him and his family) would not have prohibited him from that. The Messenger of Allah (peace and blessings be upon him and his family) informed him of the reason preventing his killing - which is that he might be praying. Khalid said to him: "Many a worshipper utters with his tongue what is not in his heart." He (peace be upon him) informed him: "I was not sent to pry into people's hearts; I judge by what is apparent." He (peace be upon him) informed us that he does not know what lies in their hearts, and that their outward conduct fundamentally prevents their being killed.

وَهَكَذَا الْقَوْلُ فِي حَدِيثِ أَبِي سَعِيدٍ الَّذِي قَدْ ذَكَرْنَاهُ إذْ اسْتَأْذَنَهُ خَالِدٌ فِي قَتْلِ الرَّجُلِ فَقَالَ: لَا، لَعَلَّهُ أَنْ يَكُونَ يُصَلِّي، فَقَدْ صَحَّ نَهْيُ النَّبِيِّ - عَلَيْهِ السَّلَامُ - لِخَالِدٍ عَنْ قَتْلِهِ، وَلَوْ حَلَّ قَتْلُهُ لَمَا نَهَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ ذَلِكَ، وَأَخْبَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِالسَّبَبِ الْمَانِعِ مِنْ قَتْلِهِ - وَهُوَ أَنَّهُ لَعَلَّهُ يُصَلِّي - فَقَالَ لَهُ خَالِدٌ: رُبَّ مُصَلٍّ يَقُولُ بِلِسَانِهِ مَا لَيْسَ فِي قَلْبِهِ، فَأَخْبَرَهُ: أَنَّهُ لَمْ يُبْعَثْ لِيَشُقَّ عَنْ قُلُوبِ النَّاسِ فَإِنَّمَا عَلَيْهِ الظَّاهِرُ - وَأَخْبَرَنَا - عَلَيْهِ السَّلَامُ - أَنَّهُ لَا يَدْرِي مَا فِي قُلُوبِهِمْ، وَأَنَّ ظَاهِرَهُمْ مَانِعٌ مِنْ قَتْلِهِمْ أَصْلًا.

L41103–41105 This report has come through an unsound chain, and in it, it is mentioned that he—peace and blessings be upon him—commanded Abū Bakr and 'Umar to kill him. One found him bowing, and the other found him prostrating, so the two left the man. Then he commanded 'Alī to kill him, so he went

وَقَدْ جَاءَ هَذَا الْخَبَرُ مِنْ طَرِيقٍ لَا تَصِحُّ، وَفِيهِ: «أَنَّهُ - عَلَيْهِ السَّلَامُ - أَمَرَ أَبَا بَكْرٍ، وَعُمَرَ، بِقَتْلِهِ، فَوَجَدَهُ يَرْكَعُ، وَوَجَدَهُ الْآخَرُ يَسْجُدُ فَتَرَكَاهُ، وَأَمَرَ عَلِيًّا بِقَتْلِهِ فَمَضَى فَلَمْ

but did not... He would find him, and that he—peace be upon him—said: "If he were killed, not even two of my community would disagree." This is baseless, and there is no justification for concerning oneself with it.

L41106 As for the narration of ʻAmmār, "There are twelve hypocrites in my nation," it does not state that the Messenger of Allah—peace and blessings be upon him and his family—knew them by their persons. Rather, it is a report describing their number alone, with no clarification in it that they were identified by their names. Therefore, reliance upon this narration is invalid—and success is from Allah, the Exalted.

L41107 As for the ḥadīth of Ibn Masʿūd, it is not authentic, for we have narrated it via the chain of Qāsim ibn Aṣbagh: Aḥmad ibn Zuhayr ibn Ḥarb narrated to us, Abū Nuʿaym narrated to us, from Sufyān al-Thawrī, from Salamah ibn Kuhayl, from a man, from his father, from Ibn Masʿūd, and he mentioned this ḥadīth.

L41108 Sufyan said concerning this man whose father's name was not mentioned: I think he is Iyad ibn Iyad, for Abu Nuʻaym reported from Sufyan that the man is considered of uncertain reliability.

L41109 Then, even if their claim were valid, they would have no argument in it, for they have been exposed and their affair has become public. Thus, they are not hypocrites but rather openly professing. Therefore, there must inevitably be one of two options - with no third option for them: either they have repented, thereby sparing their blood through that repentance, or they have not repented, which pertains to the view of those who do not advocate for the killing of apostates in accordance with what we previously explained.

L41110 As for the ḥadīth of Abū Saʿīd, it merely indicates that they are not safe from the punishment, and this is beyond doubt. It does not contain any indication that the Messenger of Allāh—may Allāh bless him and his family and grant him peace—knew their disbelief.

L41111 As for the narration of Hudhayfah, it is invalid because it is transmitted through al-Walid ibn Jumayʿ—who is an abandoned narrator—and we do not consider him to have knowledge of who fabricated the hadith. He narrated

يَجِدْهُ، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: لَوْ قُتِلَ لَمْ يَخْتَلِفْ مِنْ أُمَّتِي اثْنَانِ» وَهَذَا لَا يَصِحُّ أَصْلًا، وَلَا وَجْهَ لِلِاشْتِغَالِ بِهِ.

وَأَمَّا حَدِيثُ عَمَّارٍ «فِي أُمَّتِي اثْنَا عَشَرَ مُنَافِقًا» فَلَيْسَ فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَرَفَهُمْ بِأَعْيَانِهِمْ وَهُوَ إِخْبَارٌ بِصِفَةٍ عَنْ عَدَدٍ فَقَطْ لَيْسَ فِيهِمْ بَيَانُ أَنَّهُمْ عُرِفُوا بِأَسْمَائِهِمْ فَسَقَطَ التَّعَلُّقُ بِهَذَا الْخَبَرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا حَدِيثُ ابْنِ مَسْعُودٍ فَإِنَّهُ لَا يَصِحُّ فَإِنَّنَا قَدْ رُوِّينَاهُ مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ نا أَبُو نُعَيْمٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ رَجُلٍ عَنْ أَبِيهِ عَنْ ابْنِ مَسْعُودٍ، فَذَكَرَ هَذَا الْحَدِيثَ.

وَقَالَ سُفْيَانُ عَنْ هَذَا الرَّجُلِ الَّذِي لَمْ يُسَمِّ عَنْ أَبِيهِ: أَرَاهُ عِيَاضُ بْنُ عِيَاضٍ، فَقَدْ أَخْبَرَ أَبُو نُعَيْمٍ عَنْ سُفْيَانَ: أَنَّهُ مَشْكُوكٌ فِيهِ.

ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُمْ قَدْ انْكَشَفُوا وَاشْتَهَرَ أَمْرُهُمْ، فَلَيْسُوا مُنَافِقِينَ، بَلْ هُمْ مُجَاهِرُونَ فَلَا بُدَّ مِنْ أَحَدِ أَمْرَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا أَنْ يَكُونُوا تَابُوا فَحُقِنَتْ دِمَاؤُهُمْ بِذَلِكَ، وَإِمَّا أَنَّهُمْ لَمْ يَتُوبُوا فَهُوَ مِمَّا تَعَلَّقَ بِهِ مَنْ لَا يَرَى قَتْلَ الْمُرْتَدِّ عَلَى مَا ذَكَرْنَا.

وَأَمَّا حَدِيثُ أَبِي سَعِيدٍ فَإِنَّمَا فِيهِ أَنَّهُمْ لَيْسُوا مَأْمُونِينَ مِنْ الْعَذَابِ وَهَذَا مَا لَا شَكَّ فِيهِ لَيْسَ فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَرَفَ كُفْرَهُمْ.

reports alleging that Abu Bakr, ʿUmar, ʿUthman, Talḥah, and Saʿd ibn Abi Waqqas—may Allah be pleased with them—intended to kill the Prophet—peace and blessings of Allah be upon him and his family—and throw him from the cliff in Tabuk. This is the fabricated falsehood whose inventor Allah the Exalted condemns. Thus, reliance on it is invalidated, and all praise is due to Allah, Lord of the worlds.

وَأَمَّا حَدِيثُ حُذَيْفَةَ فَسَاقِطٌ، لِأَنَّهُ مِنْ طَرِيقِ الْوَلِيدِ بْنِ جُمَيْعٍ - وَهُوَ هَالِكٌ - وَلَا نَرَاهُ يَعْلَمُ مَنْ وَضَعَ الْحَدِيثَ فَإِنَّهُ قَدْ رَوَى أَخْبَارًا فِيهَا أَنَّ أَبَا بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَطَلْحَةَ، وَسَعْدَ بْنَ أَبِي وَقَّاصٍ - رَضِيَ اللَّهُ عَنْهُمْ - أَرَادُوا قَتْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَإِلْقَاءَهُ مِنْ الْعَقَبَةِ فِي تَبُوكَ - وَهَذَا هُوَ الْكَذِبُ الْمَوْضُوعُ الَّذِي يَطْعَنُ اللَّهُ تَعَالَى وَاضِعَهُ - فَسَقَطَ التَّعَلُّقُ بِهِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L41112–41114 As for the ḥadīth of Jābir, its narrator is Abū Sufyān Ṭalḥah ibn Nāfiʿ—who is weak. Moreover, even if it were authentic, it would not constitute proof, for there is nothing in it except the gusting of the wind upon the death of a great one among the prominent hypocrites. This merely indicates the exposure of his affair after his death, so it did not at all establish certainty that the Messenger of Allah—peace and blessings of Allah be upon him—knew of his hypocrisy during his lifetime. Therefore, it is impermissible to assert definitive judgments based on conjecture regarding the Messenger of Allah—peace and blessings of Allah be upon him and his family. As for The mawqūf narration attributed to Ḥudhayfah is not authentic. Even if it were authentic, it would undoubtedly align with what we have clarified - that their hypocrisy was established and they sought refuge in repentance. Neither Ḥudhayfah nor anyone else asserted certainty about their inward state, so he refrained from praying over them out of pious restraint.

وَأَمَّا حَدِيثُ جَابِرٍ فَرَاوِيه أَبُو سُفْيَانَ طَلْحَةُ بْنُ نَافِعٍ وَهُوَ ضَعِيفٌ، ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ إلَّا هُبُوبُ الرِّيحِ لِمَوْتِ عَظِيمٍ مِنْ عُظَمَاءِ الْمُنَافِقِينَ، فَإِنَّمَا فِي هَذَا انْكِشَافُ أَمْرِهِ بَعْدَ مَوْتِهِ فَلَمْ يُوقِنْ قَطُّ، بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلِمَ نِفَاقَهُ فِي حَيَاتِهِ، فَلَا يَجُوزُ أَنْ يَقْطَعَ بِالظَّنِّ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَأَمَّا الْمَوْقُوفَةُ عَلَى حُذَيْفَةَ - فَلَا تَصِحُّ وَلَوْ صَحَّتْ لَكَانَتْ بِلَا شَكٍّ عَلَى مَا بَيَّنَّا مِنْ أَنَّهُمْ صَحَّ نِفَاقُهُمْ وَعَاذُوا بِالتَّوْبَةِ، وَلَمْ يَقْطَعْ حُذَيْفَةُ وَلَا غَيْرُهُ عَلَى بَاطِنِ أَمْرِهِمْ، فَتَوَرَّعَ عَنْ الصَّلَاةِ عَلَيْهِمْ.

L41115 In some narrations, it is mentioned that ʿUmar asked him: “Am I among them?” He replied: “No, and I will not inform anyone else after your time.” This is false, as you see, because it constitutes pure falsehood to claim that ʿUmar doubted his own convictions to the extent of not knowing whether he was a hypocrite or not. Likewise, no two Muslims have ever disagreed that there were no hypocrites among the Emigrants before the conquest of Mecca, for hypocrisy existed solely among people of the Aws and Khazraj tribes. Thus, the falsehood of this report became evident.

وَفِي بَعْضِهَا أَنَّ عُمَرَ سَأَلَهُ: أَنَا مِنْهُمْ؟ فَقَالَ لَهُ: لَا، وَلَا أُخْبِرُ أَحَدًا غَيْرَك بَعْدَك - وَهَذَا بَاطِلٌ كَمَا تَرَى، لِأَنَّ مِنْ الْكَذِبِ الْمَحْضِ أَنْ يَكُونَ عُمَرُ يَشُكُّ فِي مُعْتَقَدِ نَفْسِهِ حَتَّى لَا يَدْرِي أَمُنَافِقٌ هُوَ أَمْ لَا؟ وَكَذَلِكَ أَيْضًا لَمْ يَخْتَلِفْ اثْنَانِ مِنْ أَهْلِ الْإِسْلَامِ فِي أَنَّ جَمِيعَ الْمُهَاجِرِينَ قَبْلَ فَتْحِ مَكَّةَ لَمْ يَكُنْ فِيهِمْ مُنَافِقٌ، إنَّمَا كَانَ النِّفَاقُ فِي قَوْمٍ مِنْ الْأَوْسِ وَالْخَزْرَجِ فَقَطْ - فَظَهَرَ بُطْلَانُ هَذَا الْخَبَرِ.

L41116 As for the ḥadīth of Maḥmūd ibn Labīd, it is disconnected. Nevertheless, it only states that they used to recognize the hypocrites among them. Given this

context, this is not hypocrisy but rather well-known disbelief and manifest apostasy—this constitutes proof for those who maintain that an apostate should not be killed.

وَأَمَّا حَدِيثُ مَحْمُودِ بْنِ لَبِيدٍ فَمُنْقَطِعٌ، وَمَعَ هَذَا فَإِنَّمَا فِيهِ: أَنَّهُمْ كَانُوا يَعْرِفُونَ الْمُنَافِقِينَ مِنْهُمْ، وَإِذْ الْأَمْرُ كَذَلِكَ فَلَيْسَ هَذَا نِفَاقًا بَلْ هُوَ كُفْرٌ مَشْهُورٌ، وَرِدَّةٌ ظَاهِرَةٌ - هَذَا حُجَّةٌ لِمَنْ رَأَى أَنَّهُ لَا يُقْتَلُ الْمُرْتَدُّ.

L41117 As for the narration of Hudhayfah, "None remained of the companions of this verse except three," it is authentic, but there is no proof in it for them, because the explicit text of the verse commands that they be fought until they desist. Thus, we know with certainty that if they had not desisted, the fighting against them would not have been abandoned, as Allah, the Exalted, commanded.

وَأَمَّا حَدِيثُ حُذَيْفَةَ " لَمْ يَبْقَ مِنْ أَصْحَابِ هَذِهِ الْآيَةِ إلَّا ثَلَاثَةٌ " فَصَحِيحٌ لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ فِي نَصِّ الْآيَةِ أَنْ يُقَاتِلُوا حَتَّى يَنْتَهُوا، فَبِيَقِينٍ نَدْرِي أَنَّهُمْ لَوْ لَمْ يَنْتَهُوا لَمَا تُرِكَ قِتَالُهُمْ كَمَا أَمَرَ اللَّهُ تَعَالَى.

L41118 Similarly, his statement "that none of the hypocrites remained except four" - there is no doubt among any of the people that those four were outwardly professing Islam, and that none knows the unseen of hearts except Allah Almighty. Thus, they were among those who displayed repentance with certain conviction, then Allah Almighty knows best what was in their souls. Abu Muhammad said: This clarifies what we have narrated through Al-Bukhari's chain: 'Umar ibn Hafs ibn Ghiyath narrated to us from his father from Al-A'mash from Ibrāhīm An-Nakha'ī from Al-Aswad, who said: We were in the gathering of 'Abdullāh ibn Mas'ūd when Ḥudhayfah came and stood before us, greeted us, then said: "Hypocrisy was indeed revealed upon people better than you." Al-Aswad said: "Glory be to Allah! Allah Almighty says: {Indeed, the hypocrites will be in the lowest depth of the Fire} [4:145]." 'Abdullāh ibn Mas'ūd smiled, and Ḥudhayfah sat in a corner of the mosque. Then 'Abdullāh stood, causing the companions to disperse. Ḥudhayfah threw pebbles at me, so I approached him. He said: "I marveled at his laughter when he knew what I meant: 'Allah revealed hypocrisy upon people who were better than you, then they repented, and Allah accepted their repentance.'"[39]

وَكَذَلِكَ أَيْضًا قَوْلُهُ " أَنَّهُ لَمْ يَبْقَ مِنْ الْمُنَافِقِينَ إلَّا أَرْبَعَةٌ " فَلَا شَكَّ عِنْدَ أَحَدٍ مِنْ النَّاسِ أَنَّ أُولَئِكَ الْأَرْبَعَةَ كَانُوا يُظْهِرُونَ الْإِسْلَامَ، وَأَنَّهُ لَا يَعْلَمُ غَيْبَ الْقُلُوبِ إلَّا اللَّهُ تَعَالَى، فَهُمْ مِمَّنْ أَظْهَرَ التَّوْبَةَ بِيَقِينٍ لَا شَكَّ فِيهِ، ثُمَّ اللَّهُ تَعَالَى أَعْلَمُ بِمَا فِي نُفُوسِهِمْ؟ قَالَ أَبُو مُحَمَّدٍ: وَيُبَيِّنُ هَذَا مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ نا أَبِي نا الْأَعْمَشُ نِي إبْرَاهِيمُ النَّخَعِيُّ عَنْ الْأَسْوَدِ قَالَ: كُنَّا فِي حَلْقَةِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ فَجَاءَ حُذَيْفَةُ حَتَّى قَامَ عَلَيْنَا فَسَلَّمَ، ثُمَّ قَالَ: لَقَدْ أُنْزِلَ النِّفَاقُ عَلَى قَوْمٍ خَيْرٍ مِنْكُمْ، قَالَ الْأَسْوَدُ: سُبْحَانَ اللَّهِ، إنَّ اللَّهَ تَعَالَى يَقُولُ {إِنَّ الْمُنَافِقِينَ فِي الدَّرْكِ الأَسْفَلِ مِنَ النَّارِ} [النساء: ١٤٥] فَتَبَسَّمَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ، وَجَلَسَ حُذَيْفَةُ فِي نَاحِيَةِ الْمَسْجِدِ، فَقَامَ عَبْدُ اللَّهِ فَتَفَرَّقَ الصَّحَابَةُ، فَرَمَانِي حُذَيْفَةُ بِالْحَصَى فَأَتَيْته، فَقَالَ حُذَيْفَةُ: عَجِبْت مِنْ ضَحِكِهِ وَقَدْ عَلِمَ مَا قُلْت " لَقَدْ أَنْزَلَ اللَّهُ النِّفَاقَ عَلَى قَوْمٍ كَانُوا خَيْرًا مِنْكُمْ ثُمَّ تَابُوا فَتَابَ اللَّهُ عَلَيْهِمْ.

L41119–41120 We have been narrated through the chain of Al-Bukhārī: Ādam ibn Abī

[39] **Qur'an references (L41118):** Qur'an 4:145 (An-Nisa).

Iyās narrated to us, from Shu'bah, from Wāṣil al-Aḥdab, from Abū Wā'il Shaqīq ibn Salamah, from Ḥudhayfah ibn al-Yamān, who said: "Indeed the hypocrites today are worse than those during the era of Allah's Messenger (peace and blessings be upon him). They used to conceal [it] then, but today they openly proclaim it."

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا آدَم بْنُ أَبِي إيَاسٍ نا شُعْبَةُ عَنْ وَاصِلٍ الْأَحْدَبِ عَنْ أَبِي وَائِلٍ شَقِيقِ بْنِ سَلَمَةَ عَنْ حُذَيْفَةَ بْنِ الْيَمَانِ قَالَ: إنَّ الْمُنَافِقِينَ الْيَوْمَ شَرٌّ مِنْهُمْ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانُوا حِينَئِذٍ يُسِرُّونَ وَالْيَوْمَ يَجْهَرُونَ؟ قَالَ أَبُو مُحَمَّدٍ: فَهَذَانِ أَثَرَانِ فِي غَايَةِ الصِّحَّةِ، فِي أَحَدِهِمَا بَيَانٌ أَنَّ الْمُنَافِقِينَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانُوا يُسِرُّونَ، وَفِي الثَّانِي أَنَّهُمْ تَابُوا - فَبَطَلَ تَعَلُّقُ مَنْ تَعَلَّقَ بِكُلِّ آيَةٍ وَكُلِّ خَبَرٍ وَرَدَ فِي الْمُنَافِقِينَ.

Abū Muḥammad said: These are two reports of utmost authenticity. The first clarifies that the hypocrites during the era of Allah's Messenger (peace and blessings be upon him) used to conceal, while the second indicates that they repented. Thus, the argument of those who clung to every verse and every report concerning hypocrites becomes invalid.

L41121 It has been established that they are two divisions: either a division whose inner reality is not known—in which case no ruling is made upon such a person in the Hereafter—or a division whose inner reality is known and exposed, so he sought refuge in repentance.

وَصَحَّ أَنَّهُمْ قِسْمَانِ: إمَّا قِسْمٌ لَمْ يُعْلَمْ بَاطِنُ أَمْرِهِ، فَهَذَا لَا حُكْمَ لَهُ فِي الْآخِرَةِ، وَقِسْمٌ عُلِمَ بَاطِنُ أَمْرِهِ وَانْكَشَفَ فَعَاذَ بِالتَّوْبَةِ.

L41122 They said: "Indeed, the one who accused the Messenger of Allah—peace be upon him—of injustice by claiming he did not act equitably and did not intend his distribution for Allah's sake is an apostate beyond doubt—a manifest case. None of the reports mention his repentance from this or his execution; rather, they mention the prohibition against killing him." We replied: "This is true, as you state. However, the response lies in the fact that Allah—Exalted be He—had not yet commanded the killing of apostates at that time. For this reason, the Messenger of Allah—peace be upon him—did not kill him and prohibited his execution. Later, Allah commanded him to kill whoever apostatized from his religion, and thus the prohibition on killing them was abrogated."

قَالُوا: إنَّ الَّذِي جَوَّرَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ: إنَّهُ لَمْ يَعْدِلْ، وَلَا أَرَادَ بِقِسْمَتِهِ وَجْهَ اللَّهِ مُرْتَدٌّ لَا شَكَّ فِيهِ، مُنْكَشِفُ الْأَمْرِ، وَلَيْسَ فِي شَيْءٍ مِنْ الْأَخْبَارِ أَنَّهُ تَابَ مِنْ ذَلِكَ، وَلَا أَنَّهُ قُتِلَ، بَلْ فِيهَا النَّهْيُ عَنْ قَتْلِهِ؟ قُلْنَا: أَمَّا هَذَا فَحَقٌّ، كَمَا قُلْتُمْ، لَكِنَّ الْجَوَابَ فِي هَذَا أَنَّ اللَّهَ - تَعَالَى - لَمْ يَكُنْ أَمَرَ بَعْدُ بِقَتْلِ مَنْ ارْتَدَّ، فَلِذَلِكَ لَمْ يَقْتُلْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلِذَلِكَ نَهَى عَنْ قَتْلِهِ، ثُمَّ أَمَرَهُ اللَّهُ تَعَالَى بَعْدَ ذَلِكَ بِقَتْلِ مَنْ ارْتَدَّ عَنْ دِينِهِ فَنُسِخَ تَحْرِيمُ قَتْلِهِمْ.

L41123 The evidence for that is what we have narrated through the chain in Sahih Muslim: Hannad ibn al-Sari reported to us, Abu al-Ahwas reported to us from Sa'id ibn Masruq from 'Abd al-Rahman ibn Abi Nu'aym from Abu Sa'id al-Khudri, who said: "Ali—while he was in Yemen—sent a piece of gold in its raw form to the Messenger of Allah (peace be upon him). The Messenger of Allah (peace be upon him) divided it among four men: al-Aqra' ibn Habis al-Hanzali, 'Uyaynah ibn Badr al-Fazari, 'Alqamah ibn 'Ulathah al-'Amiri, and

بُرْهَانُ ذَلِكَ - مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا هَنَّادُ بْنُ السَّرِيِّ نا أَبُو الْأَحْوَصِ عَنْ سَعِيدِ بْنِ مَسْرُوقٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي نُعَيْمٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «بَعَثَ عَلِيٌّ - وَهُوَ بِالْيَمَنِ - بِذُهَيْبَةٍ فِي تُرْبَتِهَا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَسَمَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ أَرْبَعَةِ نَفَرٍ: الْأَقْرَعِ بْنِ حَابِسٍ الْحَنْظَلِيِّ، وَعُيَيْنَةَ

Zayd al-Khayr al-Ta'i, one of the Banu Nabhan." He mentioned the hadith, and in it: "Then a man with a thick beard, high cheekbones, sunken eyes, a protruding forehead, and a shaved head came and said: 'Fear Allah, O Muhammad!' The Messenger of Allah (peace be upon him) replied: 'Who would obey Allah if I disobeyed Him? Do you trust me with the people of the earth but not yourselves?' A man sought permission to kill him—they thought it was Khalid ibn al-Walid—but the Messenger of Allah (peace be upon him) said: 'From the progeny of this man will emerge a people who recite the Quran, yet it will not pass beyond their throats. They will kill the people of Islam and call to the worship of idols. They will exit Islam as swiftly as an arrow pierces its target. If I live to confront them, I will surely annihilate them as thoroughly as the annihilation of 'Ad.'"[40]

بْنِ بَدْرٍ الْفَزَارِيِّ، وَعَلْقَمَةَ بْنِ عُلاَثَةَ الْعَامِرِيِّ، وَزَيْدِ الْخَيْرِ الطَّائِيِّ أَحَدِ بَنِي نَبْهَانَ - فَذَكَرَ الْحَدِيثَ، وَفِيهِ: فَجَاءَ رَجُلٌ كَثُّ اللِّحْيَةِ مُشْرِفُ الْوَجْنَتَيْنِ غَائِرُ الْعَيْنَيْنِ نَاتِئُ الْجَبِينِ مَحْلُوقُ الرَّأْسِ فَقَالَ: اتَّقِ اللَّهَ يَا مُحَمَّدُ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَنْ يُطِعِ اللَّهَ إِنْ عَصَيْتُهُ؟ أَيَأْمَنُنِي عَلَى أَهْلِ الْأَرْضِ، وَلَا تَأْمَنُونِي، فَاسْتَأْذَنَ رَجُلٌ فِي قَتْلِهِ - يَرَوْنَ أَنَّهُ خَالِدُ بْنُ الْوَلِيدِ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّ مِنْ ضِئْضِئِ هَذَا قَوْمًا يَقْرَءُونَ الْقُرْآنَ لَا يُجَاوِزُ حَنَاجِرَهُمْ يَقْتُلُونَ أَهْلَ الْإِسْلَامِ وَيَدَعُونَ أَهْلَ الْأَوْثَانِ يَمْرُقُونَ مِنَ الْإِسْلَامِ كَمَا يَمْرُقُ السَّهْمُ مِنَ الرَّمِيَّةِ لَئِنْ أَدْرَكْتُهُمْ لَأَقْتُلَنَّهُمْ قَتْلَ عَادٍ» .

L41124–41125 Hisham ibn Sa'id narrated to us: from Abd al-Jabbar ibn Ahmad: al-Hasan ibn al-Husayn al-Bujayrami narrated to us: Ja'far ibn Muhammad narrated to us: Yunus ibn Habib narrated to us: Abu Dawud al-Tayalisi narrated to us: Sallam ibn Sulayman—he is Abu al-Ahwas—from Sa'id ibn Masruq, from Abd al-Rahman ibn Abi Nu'aym, from Abu Sa'id al-Khudri: "Ali sent a piece of gold in its soil to the Prophet—peace be upon him. The Prophet—peace be upon him and his family—divided it among four men: Uyaynah ibn Hisn ibn Badr al-Fazari, Alqamah ibn Ulathah al-Kilabi, al-Aqra ibn Habis al-Tamimi, and Zayd al-Khayr al-Ta'i. The Quraysh and the Ansar grew angry, saying, 'He gives to the chieftains of Najd and disregards us?' The Messenger of Allah—peace be upon him and his family—responded, 'I gave to them only to reconcile their hearts.' A man with deep-set eyes, shaven head, raised cheekbones, and a projecting forehead stood up and said, 'Fear Allah, O Muhammad!' The Messenger of Allah—peace be upon him and his family—retorted, 'Who would obey Allah if I disobeyed Him? Does He entrust me with the people of the earth while you distrust me?' Umar sought permission to kill him, but the Prophet forbade it. Then the Messenger of Allah—peace be upon him and his family—declared, 'From the loins of this

حَدَّثَنَا هِشَامُ بْنُ سَعِيدٍ أَنَا عَبْدُ الْجَبَّارِ بْنُ أَحْمَدَ نا الْحَسَنُ بْنُ الْحُسَيْنِ الْبُجَيْرَمِيُّ نا جَعْفَرُ بْنُ مُحَمَّدٍ نا يُونُسُ بْنُ حَبِيبٍ نا أَبُو دَاوُد الطَّيَالِسِيُّ نا سَلَّامُ بْنُ سُلَيْمَانَ - هُوَ أَبُو الْأَحْوَصِ - عَنْ سَعِيدِ بْنِ مَسْرُوقٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي نُعَيْمٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ عَلِيًّا بَعَثَ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذُهَيْبَةٍ فِي تُرْبَتِهَا فَقَسَمَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بَيْنَ أَرْبَعَةِ نَفَرٍ، بَيْنَ: عُيَيْنَةَ بْنِ حِصْنِ بْنِ بَدْرٍ الْفَزَارِيِّ، وَعَلْقَمَةَ بْنِ عُلاَثَةَ الْكِلاَبِيِّ وَالْأَقْرَعِ بْنِ حَابِسٍ التَّمِيمِيِّ، وَزَيْدِ الْخَيْرِ الطَّائِيِّ، فَغَضِبَتْ قُرَيْشٌ وَالْأَنْصَارُ، وَقَالُوا: يُعْطِي صَنَادِيدَ أَهْلِ نَجْدٍ وَيَدَعُنَا؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: إِنَّمَا أَعْطَيْتُهُمْ أَتَأَلَّفُهُمْ، فَقَامَ رَجُلٌ غَائِرُ الْعَيْنَيْنِ، مَحْلُوقُ الرَّأْسِ مُشْرِفُ الْوَجْنَتَيْنِ، نَاتِئُ الْجَبِينِ، فَقَالَ: اتَّقِ اللَّهَ يَا مُحَمَّدُ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَمَنْ يُطِيعُ اللَّهَ إِنْ عَصَيْتُهُ أَنَا؟ أَيَأْمَنُنِي عَلَى أَهْلِ الْأَرْضِ وَلَا تَأْمَنُونِي؟ فَاسْتَأْذَنَ عُمَرُ فِي قَتْلِهِ، فَأَبَى، ثُمَّ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَخْرُجُ مِنْ ضِئْضِئِ

[40] **Hadith references (L41123):** Sahih Muslim 1064a; Sunan an-Nasai 2578.

man will emerge a people who recite the Quran without it passing beyond their throats. They will abandon Islam as an arrow pierces through its target, killing the Muslims and summoning the idol-worshippers. By Allah, if I live to meet them, I will annihilate them as the tribe of ‘Ad was annihilated.”’

هَذَا قَوْمٌ يَقْرَءُونَ الْقُرْآنَ لَا يُجَاوِزُ حَنَاجِرَهُمْ، يَمْرُقُونَ مِنْ الْإِسْلَامِ كَمَا يَمْرُقُ السَّهْمُ مِنْ الرَّمِيَّةِ، يَقْتُلُونَ أَهْلَ الْإِسْلَامِ، وَيَدْعُونَ أَهْلَ الْأَوْثَانِ، وَاَللَّهِ لَئِنْ أَدْرَكْتُهُمْ لَأَقْتُلَنَّهُمْ قَتْلَ عَادٍ» .

L41126 Abu Muhammad said: Thus, it has been confirmed, as you see, through the established chain of narration: Umar ibn al-Khattab and Khalid ibn al-Walid sought permission from the Messenger of Allah—peace be upon him—to kill this apostate, but he did not grant them permission. He—peace be upon him—immediately declared that a group would emerge from his progeny whom, if the Prophet encountered them, he would kill, for they would slip out of Islam as an arrow pierces through its target. Thus he had apostatized, and whoever apostatizes after having embraced Islam, their re-entry into it becomes as impossible as an arrow re-entering the target after passing through it—thereby he has apostatized.

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ كَمَا تَرَى الْإِسْنَادُ الثَّابِتُ: أَنَّ هَذَا الْمُرْتَدَّ اسْتَأْذَنَ عُمَرُ بْنُ الْخَطَّابِ، وَخَالِدُ بْنُ الْوَلِيدِ فِي قَتْلِهِ فَلَمْ يَأْذَنْ لَهُمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي ذَلِكَ، وَأَخْبَرَ - عَلَيْهِ السَّلَامُ - فِي فَوْرِهِ ذَلِكَ: أَنَّهُ سَيَأْتِي مِنْ ضِئْضِئِهِ عِصَابَةٌ إنْ أَدْرَكَهُمْ قَتَلَهُمْ، وَأَنَّهُمْ يَمْرُقُونَ مِنْ الْإِسْلَامِ كَمَا يَمْرُقُ السَّهْمُ مِنْ الرَّمِيَّةِ، فَقَدْ خَرَجَ عَنْهُ، وَمَنْ خَرَجَ عَنْهُ بَعْدَ كَوْنِهِ فَدُخُولُهُ كَدُخُولِ السَّهْمِ فِي الرَّمِيَّةِ، فَقَدْ ارْتَدَّ عَنْهُ.

L41127 The Prophet’s warning—peace be upon him—concerning the obligation to kill the apostate was validated, as he had learned from Allah the Exalted that He would command this at that time. Thus what we have said was established: that killing one who apostatized was forbidden. For this reason, he—peace be upon him—prohibited it and did not permit it, neither to ‘Umar nor to Khalid.

فَصَحَّ إنْذَارُ النَّبِيِّ - عَلَيْهِ السَّلَامُ - بِوُجُوبِ قَتْلِ الْمُرْتَدِّ، وَأَنَّهُ قَدْ عَلِمَ عَنْ اللَّهِ تَعَالَى أَنَّهُ سَيَأْمُرُ بِذَلِكَ الْوَقْتِ - فَثَبَتَ مَا قُلْنَاهُ مِنْ أَنَّ قَتْلَ مَنْ ارْتَدَّ كَانَ حَرَامًا - وَلِذَلِكَ نَهَى عَنْهُ - عَلَيْهِ السَّلَامُ - وَلَمْ يَأْذَنْ بِهِ لَا لِعُمَرَ، وَلَا لِخَالِدٍ.

L41128–41130 Then he - peace be upon him - vowed that his killing would become permissible and that slaying whoever apostatizes would become obligatory. Thus, the abrogation of that state was conclusively validated, and it was indeed abrogated through what we have narrated from Ibn Abbas, Ibn Mas’ud, Uthman, and Mu’adh from the Messenger of Allah - peace and blessings be upon him and his family. Abu Muhammad - may Allah have mercy on him - said: Therefore, since this claim that the apostate should not be killed has been invalidated, And it has been established that whoever says, “He has adhered to an abrogated text,” only the opinion of those who say he must be asked to repent remains, and we have mentioned it.

ثُمَّ إنَّهُ - عَلَيْهِ السَّلَامُ - نَذَرَ بِأَنَّهُ سَيُبَاحُ قَتْلُهُ، وَأَنَّهُ سَيَجِبُ قَتْلُ مَنْ يَرْتَدُّ فَصَحَّ يَقِينًا نَسْخُ ذَلِكَ الْحَالِ، وَقَدْ نُسِخَ ذَلِكَ بِمَا رُوِّينَاهُ عَنْ ابْنِ عَبَّاسٍ، وَابْنِ مَسْعُودٍ، وَعُثْمَانَ، وَمُعَاذٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ قَدْ بَطَلَتْ هَذِهِ الْمَقَالَةُ مِنْ أَنْ لَا يُقْتَلَ الْمُرْتَدُّ، وَصَحَّ أَنَّهُ مَنْ قَالَ: إنَّهُ تَعَلَّقَ بِمَنْسُوخٍ، فَلَمْ يَبْقَ إلَّا قَوْلُ مَنْ قَالَ: يُسْتَتَابُ، وَقَدْ ذَكَرْنَاهُ.

L41131 The Legal Ruling on the Ḥadd for Zinā

[مَسْأَلَة حَدُّ الزِّنَى]

L41132 Abu Muhammad—may Allah have mercy on him—said: Allah the Exalted said, “And do not approach unlawful sexual intercourse. Indeed, it is a grave immorality” [Al-Isra 17:32]. And He the Exalted said, “And those who do not commit unlawful sexual intercourse” [Al-Furqan 25:68] the verse.[41]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ اللَّهُ تَعَالَى {وَلا تَقْرَبُوا الزِّنَا إِنَّهُ كَانَ فَاحِشَةً} [الإسراء: ٣٢] وَقَالَ تَعَالَى {وَلا يَزْنُونَ} [الفرقان: ٦٨] الْآيَةَ.

L41133 The Exalted has forbidden adultery, deemed it one of the gravest sins, and threatened with the Fire for it.

حَرَّمَ تَعَالَى الزِّنَى وَجَعَلَهُ مِنْ الْكَبَائِرِ، تَوَعَّدَ فِيهِ بِالنَّارِ.

L41134 Abd al-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: al-Farbarī narrated to us: al-Bukhari narrated to us: Muhammad ibn al-Muthanna narrated to us: Ishaq ibn Yusuf narrated to us: al-Fadl ibn Ghazwan narrated from Ikrimah, from Ibn Abbas, who said: The Messenger of Allah—peace be upon him and his family—said: “A servant [of Allah] is not a faithful believer while committing adultery, nor while stealing, nor while drinking, nor while killing.”

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا إِسْحَاقُ بْنُ يُوسُفَ نا الْفَضْلُ بْنُ غَزْوَانَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَا يَزْنِي الْعَبْدُ حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ حِينَ يَشْرَبُ وَهُوَ مُؤْمِنٌ، وَلَا يَقْتُلُ حِينَ يَقْتُلُ وَهُوَ مُؤْمِنٌ» .

L41135 Ikrimah said: I asked Ibn Abbas, “How is faith withdrawn from him?” He replied, “Like this”—interlacing his fingers and then pulling them apart—“but if he repents, it returns to him like this”—and he interlaced his fingers again.

قَالَ عِكْرِمَةُ قُلْت لِابْنِ عَبَّاسٍ كَيْفَ يُنْتَزَعُ الْإِيمَانُ مِنْهُ قَالَ هَكَذَا - وَشَبَّكَ بَيْنَ أَصَابِعِهِ ثُمَّ أَخْرَجَهَا - فَإِنْ تَابَ عَادَ إلَيْهِ هَكَذَا، وَشَبَّكَ بَيْنَ أَصَابِعِهِ.

L41136 And through the chain of Al-Bukhārī: Ādam narrated to us, Shu‘bah narrated to us from Al-A‘mash from Dhakwān—he is Abū Ṣāliḥ—from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him and his family—said: “No adulterer commits adultery at the moment of sinning while he is a believer, no thief steals at the moment of theft while he is a believer, and no one drinks alcohol at the moment of drinking while he is a believer—yet repentance remains accessible.”[42]

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا آدَم نا شُعْبَةُ عَنْ الْأَعْمَشِ عَنْ ذَكْوَانَ - هُوَ أَبُو صَالِحٍ - عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَا يَزْنِي الزَّانِي حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ حِينَ يَشْرَبُ وَهُوَ مُؤْمِنٌ - وَالتَّوْبَةُ مَعْرُوضَةٌ» .

L41137 I am ʿAbdullāh ibn Rabīʿ al-Tamīmī. Muḥammad ibn Muʿāwiyah al-Marwānī narrated to us. I am Aḥmad ibn Shuʿayb. I am Isḥāq ibn Rāhawayh. Al-Walīd ibn Muslim narrated to us from al-Awzāʿī, who said: Saʿīd ibn al-Musayyab, Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, and Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām all narrated to me from Abū Hurayrah,

أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ التَّمِيمِيُّ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ الْمَرْوَانِيُّ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ رَاهْوَيْهِ أَنَا الْوَلِيدُ بْنُ مُسْلِمٍ عَنْ الْأَوْزَاعِيِّ قَالَ: ثني سَعِيدُ بْنُ الْمُسَيِّبِ وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَأَبُو بَكْرِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ، كُلُّهُمْ حَدَّثُونِي عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «لَا يَزْنِي الزَّانِي حِينَ يَزْنِي

[41] **Qur’an references (L41132):** Qur’an 17:32 (Al-Isra); Qur’an 25:68 (Al-Furqan).
[42] **Hadith references (L41136):** Sahih al-Bukhari 6782.

from the Prophet—peace and blessings of Allāh be upon him and his family—who said: "A fornicator does not fornicate while he is a believer at the moment he fornicates. A thief does not steal while he is a believer at the moment he steals. A drinker does not drink wine while he is a believer at the moment he drinks it. Nor does one seize a prized plunder—while the Muslims turn their eyes toward it—while he is a believer at the moment he seizes it."[43]

وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ الْخَمْرَ حِينَ يَشْرَبُهَا وَهُوَ مُؤْمِنٌ، وَلَا يَنْتَهِبُ نُهْبَةً ذَاتَ شَرَفٍ فَيَرْفَعُ الْمُسْلِمُونَ إِلَيْهَا أَبْصَارَهُمْ حِينَ يَنْتَهِبُهَا وَهُوَ مُؤْمِنٌ» .

L41138–41139 Abu Muhammad—may Allah have mercy on him—said: Faith is all obedience. Any obedience through which a servant obeys his Lord constitutes faith, and by performing it, he is a believer. Any disobedience through which a servant disobeys his Lord does not constitute faith, and by committing it, he is not a believer. Faith and obedience are one. Thus, "he is not a believer" means "he is not obedient to Allah the Exalted." If negating faith here entailed affirming disbelief, it would necessitate executing the thief and those mentioned with him on charges of apostasy—but no one says this, nor did the Messenger of Allah—peace and blessings be upon him and his family—ever act accordingly.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: الْإِيمَانُ هُوَ جَمِيعُ الطَّاعَةِ، فَأَيُّ طَاعَةٍ أَطَاعَ الْعَبْدُ بِهَا رَبَّهُ فَهِيَ إِيمَانٌ وَهُوَ بِفِعْلِهِ إِيَّاهَا مُؤْمِنٌ، وَأَيُّ مَعْصِيَةٍ عَصَى بِهَا الْعَبْدُ رَبَّهُ فَلَيْسَتْ إِيمَانًا، فَهُوَ بِفِعْلِهِ إِيَّاهَا غَيْرُ مُؤْمِنٍ، وَالْإِيمَانُ وَالطَّاعَةُ شَيْءٌ وَاحِدٌ، فَمَعْنَى لَيْسَ مُؤْمِنًا: لَيْسَ مُطِيعًا لِلَّهِ تَعَالَى، وَلَوْ كَانَ نَفْيُ الْإِيمَانِ هَاهُنَا إِيجَابًا لِلْكُفْرِ لَوَجَبَ قَتْلُ السَّارِقِ وَمَنْ ذُكِرَ مَعَهُ عَلَى الرِّدَّةِ - هَذَا لَا يَقُولُهُ أَحَدٌ، وَلَا فَعَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L41140 Hammam narrated to us from Abbas ibn Asbagh, who narrated from Muhammad ibn Abd al-Malik ibn Ayman, who narrated from Muhammad ibn Isma'il al-Tirmidhi, who narrated from al-Humaydi, who narrated from Sufyan ibn Uyaynah, from al-A'mash, from Abdullah ibn Murrah, from Masruq, from Abdullah ibn Mas'ud, that the Messenger of Allah - peace and blessings be upon him and his family - said: "It is impermissible to kill a Muslim who testifies that there is no god but Allah and that Muhammad is the Messenger of Allah, except in three cases: a man who apostatizes after embracing faith, commits adultery after marriage, or [as] retribution for murder."

حَدَّثَنَا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ نا الْحُمَيْدِيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الْأَعْمَشِ عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةَ عَنْ مَسْرُوقٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ يَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنِّي رَسُولُ اللَّهِ إِلَّا فِي إِحْدَى ثَلَاثٍ: رَجُلٌ كَفَرَ بَعْدَ إِيمَانِهِ، أَوْ زَنَى بَعْدَ إِحْصَانِهِ، أَوْ نَفْسٌ بِنَفْسٍ» .

L41141 It has been narrated that 'Uthmān—may Allah be pleased with him—said while besieged in his house: "Why are you killing me? I heard the Messenger of Allah—peace and blessings be upon him and his family—say: 'It is unlawful to shed the blood of a Muslim person except for one of three reasons: a

وَقَدْ رُوِيَ «عَنْ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ قَالَ وَهُوَ مَحْصُورٌ فِي الدَّارِ: بِمَ تَقْتُلُونِي؟ وَقَدْ سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ

[43] **Hadith references (L41137):** Sahih al-Bukhari 6782.

person who disbelieves after faith, commits adultery after marriage, or kills a soul so he is killed for it.'"

إِلَّا بِإِحْدَى ثَلَاثٍ: رَجُلٌ كَفَرَ بَعْدَ إِيمَانٍ، أَوْ زَنَى بَعْدَ إِحْصَانٍ، أَوْ قَتَلَ نَفْسًا فَقُتِلَ بِهَا» .

L41142 Abu Muhammad (may Allah have mercy on him) said: Allah the Exalted has magnified some types of adultery over others, though all of it is grave, but sins vary in magnitude. Thus Allah emphasized the severity of adultery with a neighbor's lawful wife, adultery with a mujahid's wife, and adultery with an old man's wife.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَعَظَّمَ اللَّهُ تَعَالَى بَعْضَ الزِّنَى عَلَى بَعْضٍ، وَكُلُّهُ عَظِيمٌ، وَلَكِنَّ الْمَعَاصِيَ بَعْضَهَا أَكْبَرُ مِنْ بَعْضٍ، فَعَظَّمَ اللَّهُ الزِّنَى بِحَلِيلَةِ الْجَارِ، وَبِامْرَأَةِ الْمُجَاهِدِ، وَزِنَى الشَّيْخِ.

L41143 It was narrated to us through the chain of Muslim ibn Ibrāhīm: Isḥāq ibn Ibrāhīm reported from Jarīr, from Manṣūr, from Abī Wā'il, from ʿAmr ibn Shuraḥbīl, from ʿAbdullāh ibn Masʿūd, who said: "I asked the Messenger of Allah—may Allah bless him and his family and grant him peace—'Which sin is gravest before Allah, the Exalted?' He replied: 'To set up a rival to Allah when He created you.' I asked: 'Then which?' He said: 'To kill your child for fear they would share your sustenance.' I asked: 'Then which?' He answered: 'To commit adultery with your neighbor's spouse.'"

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ أَنَا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ أَبِي وَائِلٍ عَنْ عَمْرِو بْنِ شُرَحْبِيلَ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ «سَأَلْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَيُّ الذَّنْبِ أَعْظَمُ عِنْدَ اللَّهِ تَعَالَى؟ قَالَ: أَنْ تَدْعُوَ لِلَّهِ نِدًّا وَهُوَ خَلَقَكَ، قُلْتُ: ثُمَّ أَيٌّ؟ قَالَ: أَنْ تَقْتُلَ وَلَدَكَ مَخَافَةَ أَنْ يُطْعَمَ مَعَكَ، قُلْتُ: ثُمَّ أَيٌّ؟ قَالَ: أَنْ تُزَانِيَ بِحَلِيلَةِ جَارِكَ» .

L41144–41146 And with him (to Muslim): Abu Bakr ibn Abi Shaybah reported to us from Waki' from Sufyan from 'Alqamah ibn Marthad from Sulayman ibn Buraydah from his father, who reported that the Messenger of Allah (peace be upon him and his family) said, "The sanctity of..." The wives of the mujahideen hold the same inviolability as the sanctity of their mothers for those who stay behind. There is no man among those who stay behind who assumes responsibility for a mujahid's family and then betrays him concerning them, except that he will stand before him on the Day of Resurrection, and the mujahid will take from his deeds whatever he wills. What then do you think?[44]

وَبِهِ - إلَى مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ سُفْيَانَ عَنْ عَلْقَمَةَ بْنِ مَرْثَدٍ عَنْ سُلَيْمَانَ بْنِ بُرَيْدَةَ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «حُرْمَةُ نِسَاءِ الْمُجَاهِدِينَ عَلَى الْقَاعِدِينَ كَحُرْمَةِ أُمَّهَاتِهِمْ، وَمَا مِنْ رَجُلٍ مِنْ الْقَاعِدِينَ يَخْلُفُ رَجُلًا مِنْ الْمُجَاهِدِينَ فِي أَهْلِهِ فَيَخُونُهُ فِيهِمْ إلَّا وَقَفَ لَهُ يَوْمَ الْقِيَامَةِ فَيَأْخُذُ مِنْ عَمَلِهِ مَا شَاءَ، فَمَا ظَنُّكُمْ؟» .

L41147 Abdullah ibn Rabee' narrated to us from Muhammad ibn Mu'awiyah from Ahmad ibn Shu'ayb from Muhammad ibn al-Muthanna from Muhammad ibn Ja'far from Shu'bah from Mansur, who said: I heard Rib'i ibn Hirash narrating from Zayd ibn Ẓabyān, who attributed it to Zirr from the Prophet (peace and blessings be upon him and his family), who said: "Three whom

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ عَنْ مَنْصُورٍ قَالَ سَمِعْت رِبْعِيَّ بْنَ حِرَاشٍ يُحَدِّثُ عَنْ زَيْدِ بْنِ ظَبْيَانَ

[44] **Hadith references (L41144):** Sahih Muslim 1897a; Mishkat al-Masabih 3798.

Allah loves, and three whom He hates. As for the three whom Allah hates: the elderly adulterer, the arrogant poor man, and the oppressive wealthy man."

L41148 Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: Muḥammad ibn al-ʿAlā narrated to us: Abū Muʿāwiyah narrated from al-Aʿmash from Abū Ḥāzim from Abū Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him and his family) said: "Three whom Allah will neither look upon nor purify, and theirs will be a painful punishment: an adulterous old man, a lying king, and an arrogant ruler."[45]

L41149 Aḥmad ibn Shuʿayb said — and I am ʿAbd al-Raḥmān ibn Muḥammad ibn Salām — Muḥammad ibn Rabīʿah narrated to us from al-Aʿmash, from Abū Ḥāzim, from Abū Hurayrah, from the Prophet (ṣallā Allāhu ʿalayhi wa-sallam). He cited it, stating therein: "The elderly fornicator, the lying leader, and the arrogant tax-collecting agent."

L41150 Abdullah ibn Rabee' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Abu Dawud Al-Hizami narrated to us: Arim—who is Muhammad ibn Al-Fadl—narrated to us: Hammad ibn Zayd narrated to us: Ubaydullah ibn Umar narrated from Sa'eed ibn Abi Sa'eed Al-Maqburi from Abu Hurairah that the Messenger of Allah—peace and blessings be upon him—said: "Four are detested by Allah: the merchant who habitually swears false oaths, the poor yet haughty, the old man who commits adultery, and the oppressive leader."

L41151 2205 - Issue: What is unlawful sexual intercourse? Ali said: Allah the Exalted said, "And those who guard their private parts, except from their spouses" [Al-Mu'minun: 5-6] until His statement, "Then those are the transgressors" [Al-Mu'minun: 7]. It is authentically reported that the Messenger of Allah (peace and blessings be upon him) said, "The child belongs to the

[45]**Qur'an references (L41148):** Qur'an 2:174 (Al-Baqarah); Qur'an 3:77 (Ali 'Imran).

رَفَعَهُ إِلَى زِرٍّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «ثَلَاثَةٌ يُحِبُّهُمْ اللَّهُ، وَثَلَاثَةٌ يُبْغِضُهُمْ: الثَّلَاثَةُ الَّذِينَ يُبْغِضُهُمْ اللَّهُ: الشَّيْخُ الزَّانِي، وَالْفَقِيرُ الْمُخْتَالُ، وَالْغَنِيُّ الظَّلُومُ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ الْعَلَاءِ نا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «ثَلَاثَةٌ لَا يَنْظُرُ اللَّهُ إلَيْهِمْ وَلَا يُزَكِّيهِمْ وَلَهُمْ عَذَابٌ أَلِيمٌ: شَيْخٌ زَانٍ، وَمَلِكٌ كَذَّابٌ، وَعَائِلٌ مُسْتَكْبِرٌ» .

قَالَ أَحْمَدُ بْنُ شُعَيْبٍ وَأَنَا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ سَلَامٍ نا مُحَمَّدُ بْنُ رَبِيعَةَ نا الْأَعْمَشُ عَنْ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَهُ، وَقَالَ فِيهِ: «الشَّيْخُ الزَّانِي، وَالْإِمَامُ الْكَذَّابُ، وَالْعَائِلُ الْمُخْتَالُ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا أَبُو دَاوُد الْحِزَامِيُّ نا عَارِمٌ - هُوَ مُحَمَّدُ بْنُ الْفَضْلِ - نا حَمَّادُ بْنُ زَيْدٍ نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَرْبَعَةٌ يُبْغِضُهُمْ اللَّهُ: الْبَيَّاعُ الْحَلَّافُ، وَالْفَقِيرُ الْمُخْتَالُ، وَالشَّيْخُ الزَّانِي، وَالْإِمَامُ الْجَائِرُ» .

٢٢٠٥ - مَسْأَلَةٌ: مَا الزِّنَى؟ قَالَ عَلِيٌّ: قَالَ اللَّهُ تَعَالَى {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ - إلا عَلَى أَزْوَاجِهِمْ} [المؤمنون: ٥ - ٦] إلَى قَوْلِهِ {فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧] وَصَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الْوَلَدُ لِلْفِرَاشِ، وَلِلْعَاهِرِ الْحَجَرُ» وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِيمَا تَقَدَّمَ.

marriage bed, and the stone is for the adulterer." We have previously mentioned this with its chain of transmission in earlier sections.[46]

فَصَحَّ أَنَّهُ لَيْسَ الْوَطْءُ إلَّا مُبَاحًا لَا يُلَامُ فَاعِلُهُ، أَوْ عَهرًا فِي غَيْرِ الْفِرَاشِ وَهَاهُنَا وَطْآنِ آخَرَانِ: أَحَدُهُمَا - مَنْ وَطِئَ فِرَاشًا مُبَاحًا فِي حَالٍ مُحَرَّمَةٍ، كَوَاطِئِ الْحَائِضِ، وَالْمُحْرِمَةِ، وَالْمُحْرِمِ، وَالصَّائِمِ فَرْضًا، وَالصَّائِمَةِ كَذَلِكَ، وَالْمُعْتَكِفِ، وَالْمُعْتَكِفَةِ، وَالْمُشْرِكَةِ - فَهَذَا عَاصٍ وَلَيْسَ زَانِيًا بِإِجْمَاعِ الْأُمَّةِ كُلِّهَا، إلَّا أَنَّهُ وَطِئَ فِرَاشًا حُرِّمَ بِوَجْهٍ مَا، فَإِذَا ارْتَفَعَ ذَلِكَ الْوَجْهُ حَلَّ لَهُ وَطْؤُهَا. وَالثَّانِي - مَنْ جَهِلَ، فَلَا ذَنْبَ لَهُ، وَلَيْسَ زَانِيًا - فَبَعْدَ هَذَيْنِ الْوَطْأَيْنِ فَلَيْسَ إلَّا مَنْ وَطِئَ امْرَأَتَهُ الْمُبَاحَةَ بِعَقْدِ نِكَاحٍ صَحِيحٍ، أَوْ بِمِلْكِ يَمِينٍ صَحِيحٍ يَحِلُّ فِيهِ الْوَطْءُ، أَوْ عَاهِرٌ - وَهُوَ مَنْ وَطِئَ مَنْ لَا يَحِلُّ النَّظَرُ إلَى مُجَرَّدِهَا، وَهُوَ عَالِمٌ بِالتَّحْرِيمِ: فَهَذَا هُوَ الْعَاهِرُ الزَّانِي - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41152–41153 It has been established that sexual intercourse is either permissible—where the doer incurs no blame—or fornication outside the marital bed. Here, two other categories exist: The first is intercourse in a lawful marital bed during a prohibited state, such as with a menstruating woman, a woman in iḥrām, a man in iḥrām, one observing obligatory fasting, a woman similarly observing obligatory fasting, a man in iʿtikāf, a woman in iʿtikāf, or a polytheist woman. In such cases, the person is sinful but not an adulterer by the unanimous consensus of the entire Ummah, except that he engaged in intercourse in a marital bed prohibited under a specific consideration. When that consideration ceases, intercourse with her becomes permissible. The second category involves one who acts out of ignorance, incurring no sin and not being deemed an adulterer. Beyond these two, there remains only lawful intercourse with a wife through a valid marriage contract, with a slave woman lawfully possessed under valid ownership permitting intercourse, or the fornicator—who is one that engages in intercourse with a woman whose mere body it is impermissible to gaze upon while being aware of the prohibition: this is the fornicator-adulterer. And success comes only from Allah, the Exalted.

٢٢٠٦ - مَسْأَلَةٌ: حَدُّ الزِّنَى: قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: قَالَ اللَّهُ تَعَالَى {وَاللاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ} [النساء: ١٥] الْآيَةَ إلَى قَوْله تَعَالَى: {فَأَعْرِضُوا عَنْهُمَا} [النساء: ١٦] ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَصَحَّ النَّصُّ وَالْإِجْمَاعُ عَلَى أَنَّ هَذَيْنِ الْحُكْمَيْنِ مَنْسُوخَانِ بِلَا شَكٍّ، ثُمَّ اخْتَلَفَ النَّاسُ: فَقَالَتْ طَائِفَةٌ: إنَّ قَوْله تَعَالَى {وَاللَّذَانِ يَأْتِيَانِهَا مِنْكُمْ فَآذُوهُمَا} [النساء: ١٦] نَاسِخٌ لِقَوْلِهِ {وَاللاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ} [النساء: ١٥] إلَى قَوْله تَعَالَى {أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلا} [النساء: ١٥] وَحَمَلَ مَنْ قَالَ هَذَا قَوْلَهُ عَزَّ وَجَلَّ {وَاللَّذَانِ يَأْتِيَانِهَا مِنْكُمْ} [النساء: ١٦] عَلَى أَنَّ الْمُرَادَ بِهِ الزَّانِي وَالزَّانِيَةُ.

L41154 2206 - Issue: The Hadd Punishment for Zina: Ali, may Allah have mercy on him, said: Allah the Exalted stated, {As for those of your women who commit immoral acts...} [An-Nisa 4:15] up to His saying, {then turn away from the two of them} [An-Nisa 4:16]. Abu Muhammad, may Allah have mercy on him, said: The textual evidence and consensus conclusively establish that these two rulings are abrogated without doubt. Then people differed; a group said that the verse {And the two who commit this immorality among you, punish them both} [An-Nisa 4:16] abrogates the previous verse {As for those of your women who commit immoral acts...} [An-Nisa 4:15] up to His saying, {or Allah will create for them [women] a way} [An-Nisa 4:15]. Those who held this view interpreted His saying, {And the two who commit this immorality

[46] **Qur'an references (L41151):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun); Qur'an 70:31 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun).

among you} [An-Nisa 4:16] as referring to the male and female offenders of zina.[47]

L41155–41157 Others said: Neither of the two rulings abrogates the other. However, Allah the Exalted's statement *"Then confine them to their houses"* [Quran 4:15] applies to female fornicators—non-virgin women and virgins. As for His statement *"As for the two who commit it among you, discipline them both"* [Quran 4:16]—does this constitute the ruling for male fornicators specifically, whether non-virgin men or virgins? Abu Muhammad—may Allah have mercy on him—said: This is the opinion of Ibn Abbas and others: As narrated to us by Abu Sa'id al-Ja'fari, narrated to us by Muhammad ibn Ali al-Idfawi al-Muqri, narrated to us by Abu Ja'far Ahmad ibn Muhammad ibn Isma'il al-Nahwi, narrated to us by Bakr ibn Sahl, narrated to us by Abdullah ibn Salih, narrated to us by Mu'awiyah ibn Salih, from Ali ibn Abi Talhah, from Ibn Abbas, who said regarding Allah's statement: "And those women among you who commit immoral acts, call four male witnesses from among you against them. If they testify, then confine them in houses" [Quran 4:15]. For when a woman committed adultery, she would be confined in the house until death. Then Allah later revealed: "The adulteress and the adulterer—flog each of them with a hundred lashes" [Quran 24:2]. If they are married, they are to be stoned. This is the way Allah has prescribed for them.[48]

L41158 Ibn Abbas said: Regarding the words of the Exalted, "As for the two among you who commit it, punish them both" [An-Nisa: 16], when the man committed adultery, he would be punished through public humiliation and beating with sandals. Then Allah the Exalted revealed afterward, "The adulteress and the adulterer—flog each of them with a hundred lashes" [An-Nur: 2]. If they were muḥṣan (chaste and married), they were to be stoned according to the established Sunnah of Allah's Messenger—peace be upon him. Narrated by Abu Sa'id al-Ja'fari from Muhammad ibn 'Ali al-Udfuwi from Abu Ja'far Ahmad ibn Muhammad ibn Isma'il from Ahmad ibn Muhammad from

[47] **Qur'an references (L41154):** Qur'an 4:15 (An-Nisa); Qur'an 4:16 (An-Nisa).

[48] **Qur'an references (L41155):** Qur'an 4:15 (An-Nisa); Qur'an 4:16 (An-Nisa); Qur'an 24:2 (An-Nur).

وَقَالَ آخَرُونَ: لَيْسَ أَحَدُ الْحُكْمَيْنِ نَاسِخًا لِلْآخَرِ، لَكِنَّ قَوْله تَعَالَى {فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ} [النساء: ١٥] هَذَا كَانَ حُكْمَ الزَّوَانِي مِنْ النِّسَاءِ - ثَيِّبَاتُهُنَّ وَأَبْكَارُهُنَّ - وَقَوْله تَعَالَى {وَاللَّذَانِ يَأْتِيَانِهَا مِنْكُمْ فَآذُوهُمَا} [النساء: ١٦] هَذَا حُكْمُ الزَّانِينَ مِنْ الرِّجَالِ خَاصَّةً الثَّيِّبَ مِنْهُمْ وَالْبِكْرَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا قَوْلُ ابْنِ عَبَّاسٍ وَغَيْرِهِ: كَمَا نا أَبُو سَعِيدٍ الْجَعْفَرِيُّ نا مُحَمَّدُ بْنُ عَلِيٍّ الإدفوي الْمُقْرِي نا أَبُو جَعْفَرٍ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ إِسْمَاعِيلَ النَّحْوِيُّ نا بَكْرُ بْنُ سَهْلٍ نا عَبْدُ اللَّهِ بْنُ صَالِحٍ نا مُعَاوِيَةُ بْنُ صَالِحٍ عَنْ عَلِيِّ بْنِ أَبِي طَلْحَةَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ فِي قَوْلِ اللَّهِ تَعَالَى {وَاللاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ فَاسْتَشْهِدُوا عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ} [النساء: ١٥] . فَكَانَتْ الْمَرْأَةُ إذَا زَنَتْ تُحْبَسُ فِي الْبَيْتِ حَتَّى تَمُوتَ. ثُمَّ أَنْزَلَ اللَّهُ تَعَالَى بَعْدَ ذَلِكَ {الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ} [النور: ٢] وَإِنْ كَانَا مُحْصَنَيْنِ رُجِمَا، فَهَذَا السَّبِيلُ الَّذِي جَعَلَ اللَّهُ لَهُمَا.

قَالَ ابْنُ عَبَّاسٍ: وقَوْله تَعَالَى {وَاللَّذَانِ يَأْتِيَانِهَا مِنْكُمْ فَآذُوهُمَا} [النساء: ١٦] فَكَانَ الرَّجُلُ إذَا زَنَى أُوذِيَ بِالتَّعْيِيرِ وَضَرْبِ النِّعَالِ، فَأَنْزَلَ اللَّهُ تَعَالَى بَعْدَ هَذَا {الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ} [النور: ٢] فَإِنْ كَانَا مُحْصَنَيْنِ رُجِمَا فِي سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: نا أَبُو سَعِيدٍ الْجَعْفَرِيُّ نا مُحَمَّدُ بْنُ عَلِيٍّ الْأُدْفُوِيُّ نا أَبُو جَعْفَرٍ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ إِسْمَاعِيلَ ثنا أَحْمَدُ بْنُ مُحَمَّدٍ أَنَا سَلَمَةُ - هُوَ ابْنُ شَبِيبٍ - نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ قَتَادَةَ فِي قَوْلِ اللَّهِ تَعَالَى {فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلا} [النساء: ١٥] قَالَ: نَسَخَتْهَا الْحُدُودُ - وَقَالَ قَتَادَةُ

Salama—that is, Ibn Shayb—from ʻAbd al-Razzaq from Maʻmar from Qatada concerning Allah's words, "Confine them to their homes until death claims them or Allah appoints a way for them" [An-Nisa: 15]. He said: This ruling was abrogated by the ḥudūd. Qatada also said regarding the Exalted's words, "As for the two among you who commit it, punish them both" [An-Nisa: 16]: Was this abrogated by the ḥudūd? Abu Muhammad—may Allah have mercy on him—said: This is the correct position, for Allah's words, "As for those among your women who commit adultery" [An-Nisa: 15] up to His words, "Confine them to their homes until death claims them or Allah appoints a way for them" [An-Nisa: 15] pertain exclusively to rulings concerning women and contain no legal provisions regarding men whatsoever.[49]

أَيْضًا: فِي قَوْله تَعَالَى {وَاللَّذَانِ يَأْتِيَانِهَا مِنْكُمْ فَآذُوهُمَا} [النساء: ١٦] نَسَخَتْهَا الْحُدُودُ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا هُوَ الْقَوْلُ الصَّحِيحُ، لِأَنَّ قَوْله تَعَالَى {وَاللاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ} [النساء: ١٥] إلَى قَوْلِهِ {فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلا} [النساء: ١٥] إنَّمَا فِيهِ حُكْمُ النِّسَاءِ فَقَطْ، وَلَيْسَ فِيهَا حُكْمُ الرِّجَالِ أَصْلًا.

L41159–41161 Then Allah, Exalted be He, appended to it His statement: {And as for the two who commit it among you, punish them both} [Quran 4:16]. Thus, this constituted an additional ruling specific to men, supplementing the preceding rulings regarding women. It is absolutely impermissible to assert regarding anything in the Quran that it is abrogated by such-and-such, or that it abrogates such-and-such, except with certainty, for this constitutes an assertion about the intent of Allah, Exalted be He. It is impossible to discern the intent of Allah, Exalted be He, from us, except through a Quranic text or an established Sunnah from the Messenger of Allah—peace and blessings be upon him and his family—for the Sunnah is through revelation from Allah, Exalted be He. Or by a certain consensus of all the Companions — may Allah the Exalted be pleased with them — who stated it based on definitive instruction from the Messenger of Allah — may Allah send blessings upon him and his family and grant him peace — which was established for them in that matter, or by necessity, which occurs when one becomes certain that one of the two texts was revealed after the other, rendering their simultaneous application impossible. Thus we know with certainty that Allah the Exalted has abrogated the ruling of the first through the latter text. Similarly, what came from the Messenger of Allah — may Allah the Exalted send blessings

ثُمَّ عَطَفَ اللَّهُ تَعَالَى عَلَيْهَا مُتَّصِلًا بِهَا قَوْله تَعَالَى {وَاللَّذَانِ يَأْتِيَانِهَا مِنْكُمْ فَآذُوهُمَا} [النساء: ١٦] فَكَانَ هَذَا حُكْمًا زَائِدًا لِلرِّجَالِ مُضَافًا إلَى مَا قَبْلَهُ مِنْ حُكْمِ النِّسَاءِ، وَلَا يَجُوزُ أَلْبَتَّةَ أَنْ يُقَالَ فِي شَيْءٍ مِنْ الْقُرْآنِ: إنَّهُ مَنْسُوخٌ بِكَذَا، وَلَا أَنَّهُ نَاسِخٌ لِكَذَا إلَّا بِيَقِينٍ، لِأَنَّهُ إخْبَارٌ عَنْ مُرَادِ اللَّهِ تَعَالَى، وَلَا يُمْكِنُ أَنْ يُعْلَمَ مُرَادُ اللَّهِ تَعَالَى مِنَّا، إلَّا بِنَصِّ قُرْآنٍ أَوْ سُنَّةٍ ثَابِتَةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، فَإِنَّهَا بِوَحْيٍ مِنْ اللَّهِ تَعَالَى، أَوْ بِإِجْمَاعٍ مُتَيَقَّنٍ مِنْ جَمِيعِ الصُّحْبَةِ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمْ - قَالُوهُ عَنْ تَوْقِيفٍ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَهُمْ ذَلِكَ، أَوْ بِضَرُورَةٍ، وَهُوَ أَنْ يَتَيَقَّنَ تَأْخِيرَ أَحَدِ النَّصَّيْنِ بَعْدَ الْآخَرِ، وَلَا يُمْكِنُ اسْتِعْمَالُهُمَا جَمِيعًا: فَنَدْرِي حِينَئِذٍ بِيَقِينٍ أَنَّ اللَّهَ تَعَالَى أَبْطَلَ حُكْمَ الْأَوَّلِ بِالنَّصِّ الْآخَرِ - وَكَذَلِكَ مَا جَاءَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَا فَرْقَ.

[49] **Qur'an references (L41158):** Qur'an 4:16 (An-Nisa); Qur'an 24:2 (An-Nur); Qur'an 4:15 (An-Nisa).

upon him and his family and grant him peace — follows the same principle, and there is no distinction.[50]

فَمَنْ أَخْبَرَ عَنْ مُرَادِ اللَّهِ تَعَالَى مِنَّا بِشَيْءٍ مِنْ دِينِ اللَّهِ تَعَالَى بِغَيْرِ أَحَدِ هَذِهِ الْوُجُوهِ فَقَدْ أَخْبَرَ عَنِ اللَّهِ تَعَالَى بِمَا لَا عِلْمَ لَهُ، وَهَذَا هُوَ الْكَذِبُ عَلَى اللَّهِ تَعَالَى بِلَا شَكٍّ: أَخْبَرَ عَنْهُ بِمَا لَمْ يُخْبِرْ بِهِ تَعَالَى عَنْ نَفْسِهِ.

L41162 Whoever reports about Allah the Exalted's intent concerning us regarding any matter of His religion without relying on one of these aspects has indeed reported about Allah the Exalted what he has no knowledge of. This is lying upon Allah the Exalted without doubt—he has stated about Him what He has not stated about Himself.

فَصَحَّ يَقِينًا: أَنَّ حُكْمَ النِّسَاءِ الزَّوَانِي كَانَ الْحَبْسَ فِي الْبُيُوتِ حَتَّى يَمُتْنَ، أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا بِحُكْمٍ آخَرَ وَأَنَّ حُكْمَ الرِّجَالِ الزُّنَاةِ كَانَ الْأَذَى، هَذَا مَا لَا شَكَّ فِيهِ عِنْدَ أَحَدٍ مِنَ الْأُمَّةِ، ثُمَّ نُسِخَ هَذَا كُلُّهُ بِالْحُدُودِ بِلَا خِلَافٍ مِنْ أَحَدٍ مِنَ الْأُمَّةِ، وَلَيْسَ مَعَنَا يَقِينٌ بِأَنَّ حَبْسَ الزَّوَانِي مِنَ النِّسَاءِ نُسِخَ بِالْأَذَى، ثُمَّ نُسِخَ عَنْهُنَّ الْأَذَى بِالْحَدِّ، هَذَا مَا لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ وَلَا إِجْمَاعٌ، وَلَا أَوْجَبَتْهُ ضَرُورَةٌ فَلَمْ يَجُزِ الْقَوْلُ بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L41163 It is established with certainty that the ruling for adulterous women was confinement in their homes until death or until Allah ordained another ruling for them, and that the ruling for adulterous men was disciplinary punishment. This is beyond doubt among the Ummah. Subsequently, all these rulings were abrogated by the prescribed legal punishments without any disagreement within the Ummah. There is no certainty that the confinement of adulterous women was abrogated by disciplinary punishment, which was later replaced for them by the hadd punishment. This position lacks support in the Quran, Sunnah, consensus, nor is it compelled by any necessity. Therefore, asserting it is impermissible. Success comes solely from Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا صَحَّ بِالنَّصِّ وَالْإِجْمَاعِ أَنَّ الْحَبْسَ وَالْأَذَى مَنْسُوخَانِ عَنِ الزَّوَانِي وَالزُّنَاةِ بِالْيَقِينِ الَّذِي لَا شَكَّ فِيهِ بِالْحُدُودِ وَجَبَ أَنْ نَنْظُرَ فِي النَّاسِخِ مَا هُوَ؟ فَوَجَدْنَا النَّاسَ قَدْ أَجْمَعُوا عَلَى أَنَّ الْحُرَّ الزَّانِيَ، وَالْحُرَّةَ الزَّانِيَةَ - إِذَا كَانَا غَيْرَ مُحْصَنَيْنِ - فَإِنَّ حَدَّهُمَا مِائَةُ جَلْدَةٍ - ثُمَّ اخْتَلَفُوا: فَقَالَتْ طَائِفَةٌ: وَمَعَ الْمِائَةِ جَلْدَةٍ نَفْيُ سَنَةٍ.

L41164 Abū Muḥammad said: Since it has been firmly established through textual evidence and consensus that imprisonment and corporal punishment are abrogated for female fornicators and male fornicators with a certainty beyond doubt through the ḥudūd punishments, it became necessary to examine the abrogating ruling. We found that people unanimously agree that a free male fornicator and a free female fornicator—if they are not muḥṣan—are to receive a ḥudūd punishment of one hundred lashes. Then they disagreed: a group said, "Along with the hundred lashes, there is exile for one year."

وَقَالَتْ طَائِفَةٌ: هَذَا عَلَى الرَّجُلِ، وَأَمَّا الْمَرْأَةُ فَلَا نَفْيَ عَلَيْهَا.

L41165 A group said: This applies to the man. As for the woman, no banishment is imposed on her.

وَقَالَتْ طَائِفَةٌ: لَا نَفْيَ فِي ذَلِكَ، لَا عَلَى رَجُلٍ وَلَا امْرَأَةٍ، ثُمَّ اتَّفَقُوا كُلُّهُمْ، حَاشَ مَنْ لَا يُعْتَدُّ بِهِ بِلَا خِلَافٍ، وَلَيْسَ هُمْ عِنْدَنَا مِنَ الْمُسْلِمِينَ، فَقَالُوا: إِنَّ عَلَى الْحُرِّ وَالْحُرَّةِ

L41166 A group said: There is no exile in that, neither for a man nor a woman. Then all of them agreed—excluding those whose opinions are disregarded without any disagreement, for they are not considered Muslims in our view—and

[50] **Qur'an references (L41159):** Qur'an 4:16 (An-Nisa).

- إِذَا زَنَيَا وَهُمَا مُحْصَنَانِ - الرَّجْمَ حَتَّى يَمُوتَا - ثُمَّ اخْتَلَفُوا: فَقَالَتْ طَائِفَةٌ: عَلَيْهِمَا مَعَ الرَّجْمِ الْمَذْكُورِ جَلْدُ مِائَةٍ لِكُلِّ وَاحِدٍ مِنْهُمَا.

they said: Upon the free man and free woman who commit adultery while being chaste (muḥṣan), the punishment is stoning until they die. Then they differed: A group said: They must each receive one hundred floggings along with the aforementioned stoning.

وَقَالَتْ طَائِفَةٌ: لَيْسَ عَلَيْهِمَا إِلَّا الرَّجْمُ، وَلَا جَلْدَ عَلَيْهِمَا.

L41167 And a group said: There is nothing imposed upon them except stoning, and no flogging.

وَقَالَتْ الْأَزَارِقَةُ مِنْ الْخَوَارِجِ: لَيْسَ عَلَيْهِمَا إِلَّا الْجَلْدُ فَقَطْ، وَلَا رَجْمَ عَلَى زَانٍ أَصْلًا.

L41168–41169 The Azariqa, a sect of the Khawarij, asserted: The two [adulterers] are only subject to flogging, and there is no stoning at all for one who commits *zina*.

ثُمَّ وَجَدْنَا الْأُمَّةَ قَدْ اتَّفَقَتْ - بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْهُمْ -: عَلَى أَنَّ الْأَمَةَ إذَا أُحْصِنَتْ فَعَلَيْهَا خَمْسُونَ جَلْدَةً؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَا نَدْرِي أَحَدًا أَوْجَبَ عَلَيْهَا مَعَ ذَلِكَ الرَّجْمَ، وَلَا يُقْطَعُ عَلَى أَنَّ الْمَنْعَ مِنْ رَجْمِهَا إجْمَاعٌ - وَاَللَّهُ أَعْلَمُ.

L41170 Then we found the scholarly community had unanimously agreed—without dissent from any of them—that if a female slave is a muḥṣanah, she is to receive fifty lashes. Abū Muḥammad—may Allah have mercy on him—said: We do not know of anyone who imposed stoning upon her alongside that, nor can it be decisively established that precluding her stoning constitutes a consensus—and Allah knows best.

ثُمَّ اخْتَلَفُوا: فَقَالَتْ طَائِفَةٌ: عَلَيْهَا نَفْيُ سِتَّةِ أَشْهُرٍ مَعَ الْجَلْدِ.

L41171 Then they disagreed: a group maintained that she must be banished for six months alongside flogging.

وَقَالَتْ طَائِفَةٌ: لَا نَفْيَ عَلَيْهَا مَعَ ذَلِكَ أَصْلًا.

L41172 And a group said: There is no exile upon her in such a case at all.

ثُمَّ اخْتَلَفُوا فِي الْأَمَةِ إذَا لَمْ تُحْصَنْ وَزَنَتْ: فَقَالَتْ طَائِفَةٌ: عَلَيْهَا خَمْسُونَ جَلْدَةً وَنَفْيُ سِتَّةِ أَشْهُرٍ.

L41173 Then they differed concerning the female slave who is not in a state of legal chastity and commits adultery: A group held that she must receive fifty lashes and six months of temporary banishment.

وَقَالَتْ طَائِفَةٌ: لَيْسَ عَلَيْهَا إِلَّا خَمْسُونَ جَلْدَةً فَقَطْ وَلَا نَفْيَ عَلَيْهَا.

L41174 A school of thought maintains: she is liable for fifty lashes with no banishment required of her.

وَقَالَتْ طَائِفَةٌ: لَا شَيْءَ عَلَيْهَا، لَا جَلْدَ وَلَا نَفْيَ أَصْلًا.

L41175 A faction of scholars maintained: There is no punishment upon her—neither flogging nor exile whatsoever.

ثُمَّ اخْتَلَفُوا فِي حَدِّ الْعَبْدِ إذَا زَنَى - وَهُوَ مُحْصَنٌ أَوْ غَيْرُ مُحْصَنٍ: فَقَالَتْ طَائِفَةٌ: حَدُّهُ كَحَدِّ الْأَمَةِ عَلَى حَسَبِ اخْتِلَافِهِمْ فِي النَّفْيِ مَعَ الْجَلْدِ، أَوْ إسْقَاطِ النَّفْيِ.

L41176 Then they differed concerning the punishment for a male slave who commits fornication—whether he is muḥṣan (having legal protection) or not. A group of scholars maintained: His punishment corresponds to that of a female slave in the same way, based on their disagreement over whether banishment (nafy) should accompany flogging or be omitted.

L41177 A school of thought said: The slave's ḥadd punishment is like that of a free man, namely stoning or exile.

وَقَالَتْ طَائِفَةٌ: حَدُّهُ كَحَدِّ الْحُرِّ الرَّجْمُ أَوْ النَّفْيُ.

L41178 They differed regarding the punishment for one who is partially free and partially enslaved if they commit adultery among male and female slaves. A group said: His punishment matches that of a fully enslaved male slave—either flogging or stoning and exile—while a fully enslaved female slave's punishment is flogging.

وَاخْتَلَفُوا فِي حَدِّ مَنْ بَعْضُهُ حُرٌّ وَبَعْضُهُ عَبْدٌ إذَا زَنَى مِنْ الْعَبِيدِ وَالْإِمَاءِ: فَقَالَتْ طَائِفَةٌ: حَدُّهُ حَدُّ الْعَبْدِ التَّامِّ الرِّقِّ، أَوْ الرَّجْمُ وَالنَّفْيُ، وَالْأَمَةِ التَّامَّةِ الرِّقِّ.

L41179–41181 A group of scholars said: Should he be subjected to flogging and exile according to the proportion of his free status and enslaved status? Abu Muhammad—may Allah have mercy on him—said: We—if Allah the Exalted wills—will mention all these matters individually, thoroughly examine the evidence every group has presented to support its position, and clarify—with Allah's assistance— Exalted is He—the correctness of the position concerning that [is established] through proofs from the Qur'an and the Sunnah, as we have done in the rest of this book of ours—and all praise be to Allah, Lord of the worlds. In Him, the Most High, we seek help and take refuge.[51]

وَقَالَتْ طَائِفَةٌ: عَلَيْهِ مِنْ الْجَلْدِ وَالنَّفْيِ بِحِسَابِ مَا فِيهِ مِنْ الْحُرِّيَّةِ وَبِحِسَابِ مَا فِيهِ مِنْ الرِّقِّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَنَحْنُ - إنْ شَاءَ اللَّهُ تَعَالَى - ذَاكِرُونَ جَمِيعَ هَذِهِ الْمَسَائِلِ مَسْأَلَةً مَسْأَلَةً وَمُتَقَصُّونَ مَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا، وَمُبَيِّنُونَ - بِعَوْنِ اللَّهِ تَعَالَى - صَوَابَ الْقَوْلِ فِي ذَلِكَ بِالْبَرَاهِينِ مِنْ الْقُرْآنِ، وَالسُّنَّةِ، كَمَا فَعَلْنَا فِي سَائِرِ كِتَابِنَا هَذَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - وَبِهِ تَعَالَى نَسْتَعِينُ، وَنَعْتَصِمُ.

L41182

A legal issue: the prescribed punishment for a free man and a free woman who are not muḥṣanayn (i.e., neither married nor in a state of lawful sexual relations).

[مَسْأَلَةُ حَدُّ الْحُرِّ وَالْحُرَّةِ غَيْرِ الْمُحْصَنَيْنِ]

L41183 2207 - Issue: What is the punishment for a free *non-muḥṣan* man and a free *non-muḥṣana* woman? Abū Muḥammad—may Allah have mercy on him—said: Allah the Exalted states: *"The fornicatress and the fornicator—lash each of them with a hundred lashes, and do not let pity for them sway you in the religion of Allah, if you believe in Allah and the Last Day. Let a group of the believers witness their punishment"* (24:2). Abū Muḥammad—may Allah have mercy on him—said: The text is as you see [in the verse], and none among the Muslims (people of the Qiblah) disagree that lashing is the ruling for the fornicator who is a free *non-muḥṣan* and the fornicatress who is a free *non-muḥṣana*. The disagreement among scholars concerns only whether exile is imposed on them, as we mentioned, or not. We have thoroughly examined this topic in compiled chapters presented prior to our

٢٢٠٧ - مَسْأَلَةٌ: حَدُّ الْحُرِّ وَالْحُرَّةِ غَيْرِ الْمُحْصَنَيْنِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ اللَّهُ تَعَالَى {الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ وَلا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِنَ الْمُؤْمِنِينَ} [النور: ٢] ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَجَاءَ النَّصُّ كَمَا تَرَى، وَلَمْ يَخْتَلِفْ أَحَدٌ مِنْ أَهْلِ الْقِبْلَةِ فِي أَنَّ الْجَلْدَ حُكْمُ الزَّانِي الْحُرِّ غَيْرِ الْمُحْصَنِ، وَالزَّانِيَةِ الْحُرَّةِ غَيْرِ الْمُحْصَنَةِ، وَإِنَّمَا اخْتَلَفَ النَّاسُ فِي هَلْ عَلَيْهِمَا نَفْيٌ كَمَا ذَكَرْنَا أَمْ لَا؟ وَهَذَا بَابٌ قَدْ تَقَصَّيْنَاهُ فِي أَبْوَابٍ مَجْمُوعَةٍ صَدَّرْنَا بِهَا قَبْلُ كَلَامَنَا فِي الْمُرْتَدِّينَ ذَكَرْنَا فِيهَا كُلَّ حُكْمٍ يَخْتَصُّ بِهِ حَدَّانِ

[51] **Qur'an references (L41179):** Qur'an 37:182 (As-Saffat).

discussion on apostates, where we detailed every ruling specific to two or more punishments and traced narrations there with their chains of transmission. Here, Allah willing, we will mention a concise summary of that.[52]

مِنْ الْحُدُودِ فَصَاعِدًا وَتَقَصَّيْنَا هُنَالِكَ الْآثَارَ بِأَسَانِيدِهَا، وَنَذْكُرُ هَاهُنَا إنْ شَاءَ اللَّهُ تَعَالَى جُمْلَةً مُخْتَصَرَةً مِنْ ذَلِكَ.

L41184 Divine enablement is by Allah, the Exalted.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41185 We say: It has been authenticated that the Messenger of Allah—peace be upon him—said, "If a virgin commits adultery with a virgin: one hundred lashes and exile for a year; and if a married person commits adultery with a married person: one hundred lashes and stoning."

فَنَقُولُ: إنَّهُ قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ وَالثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَالرَّجْمُ» .

L41186 It has been authentically reported from him—peace be upon him—through the chain of Az-Zuhri, from Ubayd Allah ibn Abd Allah ibn Utbah ibn Mas'ud, from Zayd ibn Khalid: that he heard the Messenger of Allah—peace and blessings be upon him—commanding regarding one who commits fornication and is not a muḥṣan: "He is to be flogged one hundred lashes and exiled for a year."

وَصَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - مِنْ طَرِيقِ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ «عَنْ زَيْدِ بْنِ خَالِدٍ: أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُ فِيمَنْ زَنَى وَلَمْ يُحْصَنْ بِجَلْدِ مِائَةٍ وَتَغْرِيبِ عَامٍ» .

L41187 From al-Zuhri, from Sa'id ibn al-Musayyab, from Abu Hurairah: "The Messenger of Allah—peace and blessings of Allah be upon him—ruled that one who committed fornication and was not a muhsan should be exiled for a year, along with the imposition of the ḥadd punishment upon him."

وَعَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ، «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِيمَنْ زَنَى وَلَمْ يُحْصَنْ بِأَنْ يُنْفَى عَامًا مَعَ إقَامَةِ الْحَدِّ عَلَيْهِ» .

L41188 It has been authentically reported that he (peace be upon him) said to the man whose son committed adultery with a hired woman: "Your son is to receive one hundred lashes and be exiled for a year, and the woman [involved] is to be stoned."

وَصَحَّ «أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ لِلَّذِي زَنَى ابْنُهُ بِامْرَأَةِ مُسْتَأْجَرَةٍ: عَلَى ابْنِك جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ، وَعَلَى امْرَأَةِ هَذَا الرَّجْمُ» .

L41189 It is authentically established that ʿUmar ibn al-Khaṭṭāb lashed a woman with one hundred lashes for committing fornication and exiled her for a year.

وَصَحَّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَلَدَ امْرَأَةً زَنَتْ مِائَةَ جَلْدَةٍ وَغَرَّبَهَا عَامًا ".

L41190–41191 It has also been similarly narrated from Ali ibn Abi Talib and other Companions—may Allah be pleased with them—and no contrary report has been transmitted from any of the Companions—may Allah be pleased with them—except a narration from Ali: "There is no exile for the umm al-walad (enslaved mother of her master's child)." He only stated concerning two un-

وَرُوِيَ أَيْضًا مِثْلُ ذَلِكَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ وَغَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَمْ يُرْوَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافُ ذَلِكَ إلَّا رِوَايَةً عَنْ عَلِيٍّ: لَيْسَ عَلَى أُمِّ الْوَلَدِ نَفْيٌ - وَإِنَّمَا قَالَ فِي الْبِكْرَيْنِ يَزْنِيَانِ: حَسْبُهُمَا مِنْ الْفِتْنَةِ أَنْ يُنْفَيَا.

[52] **Qur'an references (L41183):** Qur'an 24:2 (An-Nur).

married individuals who fornicate: “Sufficient for them as a deterrent from fitnah (temptation) is exile.”

L41192 From Ibn Abbas: “Whoever commits fornication is flogged and sent away.” Abu Muhammad—may God have mercy on him—said: Ibn Abbas’s statement “Whoever commits fornication is flogged and sent away” does not serve as evidence that he does not require exile in his view. Rather, his statement “and sent away” may intend that he is sent to another land.

وَعَنْ ابْنِ عَبَّاسٍ: مَنْ زَنَى جُلِدَ وَأُرْسِلَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَيْسَ قَوْلُ ابْنِ عَبَّاسٍ “ مَنْ زَنَى جُلِدَ وَأُرْسِلَ ” دَلِيلًا عَلَى أَنَّهُ لَا يُوجِبُ النَّفْيَ عِنْدَهُ، بَلْ قَدْ يَكُونُ قَوْلُهُ “ وَأُرْسِلَ ” يُرِيدُ بِهِ أَنْ يُرْسَلَ إلَى بَلَدٍ آخَرَ.

L41193 Similarly, ʿAlī’s statement, “Exiling them both suffices for them from the discord,” is based on the obligation of exile, and that suffices for them both from the trial.

وَكَذَلِكَ قَوْلُ عَلِيٍّ “ حَسْبُهُمَا مِنْ الْفِتْنَةِ أَنْ يُنْفَيَا ” يَخْرُجُ عَلَى إيجَابِ النَّفْيِ، وَأَنَّ ذَلِكَ حَسْبُهُمَا مِنْ الْبَلَاءِ.

L41194 Allah the Exalted said: {Alif-Lam-Meem. Do the people think they will be left to say, “We believe,” without being tested?} [Al-Ankabut: 1-2] up to His statement: {And He will surely expose the liars.} [Al-Ankabut: 3]. The narration from him regarding the *umm al-walad* (a slave woman who bore her master’s child) not being expelled if she commits adultery is invalid, as we discussed earlier. Abu Muhammad—may Allah have mercy on him—said: “Both opinions are unsubstantiated assertions.”[53]

قَالَ اللَّهُ تَعَالَى {الم - أَحَسِبَ النَّاسُ أَنْ يُتْرَكُوا أَنْ يَقُولُوا آمَنَّا وَهُمْ لا يُفْتَنُونَ} [العنكبوت: ١ - ٢] إلَى قَوْله تَعَالَى {وَلَيَعْلَمَنَّ الْكَاذِبِينَ} [العنكبوت: ٣] وَالرِّوَايَةُ عَنْهُ فِي أَنَّ أُمَّ الْوَلَدِ لَا تُنْفَى إذَا زَنَتْ لَا تَصِحُّ عَلَى مَا ذَكَرْنَا قَبْلُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَكِلَا الْقَوْلَيْنِ دَعْوَى بِلَا بُرْهَانٍ.

L41195 Among the astonishing things of this world is that people have taken the forty lashes—which ʿUmar ibn al-Khaṭṭāb (may Allah be pleased with him) introduced **within** the ḥadd punishment for khamr (alcoholic intoxicants) **as a form of taʿzīr** (discretionary punishment)—and transformed it into an obligatory ḥadd, despite the fact that he himself (may Allah be pleased with him) would lash forty times on one occasion, sixty on another, and eighty on another.

وَمِنْ عَجَائِبِ الدُّنْيَا أَنْ يَجْعَلُوا الْأَرْبَعِينَ الَّتِي زَادَهَا عُمَرُ بْنُ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - فِي حَدِّ الْخَمْرِ عَلَى سَبِيلِ التَّعْزِيرِ حَدًّا وَاجِبًا مُفْتَرَضًا، وَهُوَ - رَضِيَ اللَّهُ عَنْهُ - يَجْلِدُ مَرَّةً أَرْبَعِينَ، وَمَرَّةً سِتِّينَ، وَمَرَّةً ثَمَانِينَ.

L41196–41198 Likewise, ʻUthmān after him, ʻAlī, and others among the Companions—may Allah be pleased with them—then apply a limit obligated by Allah, the Exalted, through His Messenger—peace and blessings of Allah be upon him and his family—and make it a discretionary punishment. All of this is audacity in advancing claims without proof. They allege that the Messenger of Allah—

وَكَذَلِكَ عُثْمَانُ بَعْدَهُ، وَعَلِيٌّ، وَغَيْرُهُمَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - ثُمَّ يَأْتُونَ إلَى حَدٍّ افْتَرَضَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَيَجْعَلُونَهُ تَعْزِيرًا، كُلُّ ذَلِكَ جُرْأَةٌ عَلَى الدَّعْوَى بِلَا بُرْهَانٍ، وَادَّعُوا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «إذَا زَنَتْ أَمَةُ أَحَدِكُمْ فَلْيَجْلِدْهَا» وَلَمْ يَقُلْ “ فَلْيَنْفِهَا ” دَلِيلًا عَلَى نَسْخِ

[53] **Qur’an references (L41194):** Qur’an 29:2 (Al-’Ankabut); Qur’an 29:1 (Al-’Ankabut); Qur’an 29:3 (Al-’Ankabut).

peace and blessings of Allah be upon him and his family—said, "If a slave woman of any of you commits adultery, let him lash her," without saying "let him exile her," as evidence for the abrogation of exile. Abū Muḥammad—may Allah have mercy on him—said: This is sheer falsehood, because this is a concise report that deferred... In it, the Messenger of Allah—may Allah bless him and grant him peace—applied [the ruling] against others, yet he did not mention exile nor the number of lashes. If this constitutes evidence for abolishing exile, it equally constitutes evidence for abolishing the number of lashes. If it does not serve as evidence for abolishing the number of lashes—since it remains unmentioned—then it likewise cannot be evidence for abrogating exile merely due to its omission. The reports supplement one another, and the rulings of Allah the Exalted and His Messenger—peace be upon him—are all valid. It is impermissible to discard some rulings for others; rather, it is obligatory to integrate them and implement all collectively. Abu Muhammad—may Allah have mercy on him—said: As for Mālik's abolition of exile for slaves, female slaves, and women while restricting it to free men, this constitutes an unfounded distinction lacking valid evidence. For the judgment and command of the Messenger of Allah—may Allah bless him and grant him peace—universally prescribed exile for every fornicator not in a chaste state (muḥṣan). Neither Allah the Exalted nor His Messenger—may Allah bless him and grant him peace—distinguished between women and men, nor between slaves and free individuals. {And your Lord is never forgetful} [19:64].[54]

التَّغْرِيبِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا مِنْ الْبَاطِلِ الْمَحْضِ، لِأَنَّ هَذَا خَبَرٌ مُجْمَلٌ أَحَالَ فِيهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَلَى غَيْرِهِ، فَلَمْ يَذْكُرْ نَفْيًا، وَلَا عَدَدَ الْجَلْدِ، فَإِنْ كَانَ دَلِيلًا عَلَى إسْقَاطِ التَّغْرِيبِ فَهُوَ أَيْضًا دَلِيلٌ عَلَى إسْقَاطِ عَدَدِ مَا يُجْلَدُ، وَإِنْ لَمْ يَكُنْ دَلِيلًا عَلَى إسْقَاطِ عَدَدِ مَا يُجْلَدُ، لِأَنَّهُ لَمْ يُذْكَرْ فِيهِ، فَلَيْسَ أَيْضًا دَلِيلًا عَلَى نَسْخِ النَّفْيِ وَإِنْ لَمْ يُذْكَرْ فِيهِ، وَالْأَخْبَارُ يُضَمُّ بَعْضُهَا إلَى بَعْضٍ، وَأَحْكَامُ اللَّهِ تَعَالَى وَأَحْكَامُ رَسُولِهِ - عَلَيْهِ السَّلَامُ - كُلُّهَا حَقٌّ وَلَا يَحِلُّ تَرْكُ بَعْضِهَا لِبَعْضٍ، بَلْ الْوَاجِبُ ضَمُّ بَعْضِهَا إلَى بَعْضٍ وَاسْتِعْمَالُ جَمِيعِهَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا إسْقَاطُ مَالِكٍ النَّفْيَ عَنْ الْعَبِيدِ، وَالْإِمَاءِ، وَالنِّسَاءِ، وَإِثْبَاتُهُ إيَّاهُ عَلَى الْحُرِّ، فَتَفْرِيقٌ لَا دَلِيلَ عَلَى صِحَّتِهِ، لِأَنَّ قَضَاءَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَأَمْرَهُ قَدْ وَرَدَ عُمُومًا بِالنَّفْيِ عَلَى كُلِّ مَنْ زَنَى وَلَمْ يُحْصَنْ، وَلَمْ يَخُصَّ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - امْرَأَةً مِنْ رَجُلٍ، وَلَا عَبْدًا مِنْ حُرٍّ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L41199 Allah the Exalted has said concerning female slaves: "They shall receive half the punishment prescribed for free, chaste married women" [An-Nisa 4:25].[55]

وَقَدْ قَالَ اللَّهُ تَعَالَى فِي الْإِمَاءِ {فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥] .

L41200 Thus, it is established that upon them [the women] falls half the banishment imposed on a muhsan [chaste free person]. Likewise, the command of Allah's Messenger (may Allah's blessings and peace be upon him and his family) to impose the punishment on a mukatab [contractually bound slave] proportionally based on the portion he has paid toward the free person's punishment

فَصَحَّ أَنَّ عَلَيْهِنَّ مِنْ النَّفْيِ نِصْفُ مَا يَنْفِي الْمُحْصَنَ، وَكَذَلِكَ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِأَنْ يُقَامَ الْحَدُّ عَلَى الْمُكَاتَبِ بِنِسْبَةِ مَا أَدَّى مِنْ حَدِّ الْحُرِّ، وَبِنِسْبَةِ مَا لَمْ يُؤَدِّ مِنْ حَدِّ الْعَبْدِ. فَبَطَلَ كُلُّ مَا خَالَفَ حُكْمَ اللَّهِ تَعَالَى وَحُكْمَ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[54] **Qur'an references (L41196):** Qur'an 19:64 (Maryam).
[55] **Qur'an references (L41199):** Qur'an 4:25 (An-Nisa).

and the unpaid portion of the slave's punishment. Therefore, every ruling contradicting the judgment of Allah the Most High and the judgment of His Messenger (may Allah's blessings and peace be upon him and his family) is void. And true success is only granted by Allah the Most High.

L41201 **The legal issue concerning a free man and a free woman who commit adultery while being married.**

L41202 The Prescribed Penalty for the Free Man and Free Woman Who Are Muḥṣan (2208) – Issue: Abu Muhammad—may Allah have mercy on him—said: A group said: If a free man and a free woman commit adultery while they are muḥṣan [i.e., married and free], they shall be stoned until they die.

L41203 A group of scholars opined: The two are to be lashed, then stoned to death.

L41204 As for the Azāriqa, they are not among the sects of Islam, for they are those about whom the Messenger of Allah—peace and blessings be upon him—foretold, stating they would exit the religion as an arrow passes through its target. They asserted: There is no stoning whatsoever; it is only flogging.

L41205–41206 As for the one from whom only stoning is reported without flogging: Muhammad ibn Saʿīd ibn Nabāt narrated to us, ʿAbdullāh ibn Naṣr narrated to us, Qāsim ibn Aṣbaġ narrated to us, Ibn Waḍḍāḥ narrated to us, Mūsā ibn Muʿāwiyah narrated to us, Wakīʿ narrated to us from Yaḥyā ibn Abī Kathīr al-Saqqā from al-Zuhrī that Abū Bakr (may Allah be pleased with him) and ʿUmar stoned [the offenders] and did not administer flogging.

L41207 And through him to Waki', Al-'Umari—who is 'Abdullāh ibn 'Umar—narrated to us from Nāfi', from Ibn 'Umar, who said: "Verily, 'Umar stoned [someone] and did not flog [them]."

L41208 And through his chain up to Waki', al-Thawrī narrated to us from Mughīrah from Ibrāhīm al-Nakha'ī, who said: "He is to be stoned and not lashed."

L41209 From Abd al-Razzaq, from Ma'mar, from al-Zuhri, that he rejected lashing combined with stoning - and holding this opinion are al-Awza'i, Sufyan al-

[مَسْأَلَة الْحُرُّ وَالْحُرَّةُ إِذَا زَنَيَا وَهُمَا مُحْصَنَانِ]

حَدُّ الْحُرِّ وَالْحُرَّةِ الْمُحْصَنَيْنِ ٢٢٠٨ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَتْ طَائِفَةٌ: الْحُرُّ وَالْحُرَّةُ إِذَا زَنَيَا - وَهُمَا مُحْصَنَانِ - فَإِنَّهُمَا يُرْجَمَانِ حَتَّى يَمُوتَا.

وَقَالَتْ طَائِفَةٌ: يُجْلَدَانِ ثُمَّ يُرْجَمَانِ حَتَّى يَمُوتَا.

فَأَمَّا الْأَزَارِقَةُ - فَلَيْسَ مِنْ فِرَقِ الْإِسْلَامِ، لِأَنَّهُمْ الَّذِينَ أَخْبَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهُمْ بِأَنَّهُمْ يَمْرُقُونَ مِنْ الدِّينِ كَمَا يَمْرُقُ السَّهْمُ مِنْ الرَّمِيَّةِ فَإِنَّهُمْ قَالُوا: لَا رَجْمَ أَصْلًا وَإِنَّمَا هُوَ الْجَلْدُ فَقَطْ.

فَأَمَّا مَنْ رُوِيَ عَنْهُ الرَّجْمُ فَقَطْ دُونَ جَلْدٍ: فَكَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نِي يَحْيَى بْنُ أَبِي كَثِيرٍ السَّقَّا عَنْ الزُّهْرِيِّ أَنَّ أَبَا بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - وَعُمَرَ: رَجَمَا وَلَمْ يَجْلِدَا.

وَبِهِ - إلَى وَكِيعٍ نا الْعُمَرِيُّ - هُوَ عَبْدُ اللَّهِ بْنُ عُمَرَ - عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: إنَّ عُمَرَ رَجَمَ وَلَمْ يَجْلِدْ.

وَبِهِ - إلَى وَكِيعٍ نا الثَّوْرِيُّ عَنْ مُغِيرَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: يَرْجُمُ وَلَا يَجْلِدُ.

Thawri, Abu Hanifa, Malik, al-Shafi'i, Abu Thawr, Ahmad ibn Hanbal, and their followers.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ أَنَّهُ كَانَ يُنْكِرُ الْجَلْدَ مَعَ الرَّجْمِ وَبِهِ - يَقُولُ الْأَوْزَاعِيِّ، وَسُفْيَانُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَصْحَابُهُمْ.

L41210 As for the one for whom both stoning and flogging were jointly narrated: As narrated to us by Abū ʻUmar Aḥmad ibn Qāsim, from his father Qāsim ibn Muḥammad ibn Qāsim, from my grandfather Qāsim ibn Aṣbagh, from Muḥammad ibn ʻAbd al-Salām al-Khushanī, from Muḥammad ibn Bashshār, from Muḥammad ibn Jaʻfar Ghundar, from Shuʻbah through Salamah ibn Kuhayl from al-Shaʻbī: ʻAlī ibn Abī Ṭālib flogged Shuraḥah on Thursday and stoned her on Friday, declaring, "I flog her by Allah's Book, and I stone her by the saying of Allah's Messenger—peace and blessings be upon him."

وَأَمَّا مَنْ رُوِيَ عَنْهُ الرَّجْمُ وَالْجَلْدُ مَعًا: فَكَمَا نا أَبُو عُمَرَ أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ الشَّعْبِيِّ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ جَلَدَ شُرَاحَةَ يَوْمَ الْخَمِيسِ وَرَجَمَهَا يَوْمَ الْجُمُعَةِ، فَقَالَ: أَجْلِدُهَا بِكِتَابِ اللَّهِ، وَأَرْجُمُهَا بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L41211 Hammam narrated to us from Abbas ibn Asbagh from Muhammad ibn Abd al-Malik ibn Ayman from Ismail ibn Ishaq al-Qadi from Abd al-Wahid ibn Ziyad from Hafs ibn Ghiyath from al-A'mash from al-Qasim ibn Abd al-Rahman ibn Abd Allah ibn Mas'ud from his father, who said: I saw Ali ibn Abi Talib call for Shurahah. He flogged her on Thursday and stoned her on Friday, saying: "I flogged her in accordance with the Book of Allah and stoned her in accordance with the Sunnah of the Messenger of Allah - peace and blessings be upon him."

حَدَّثَنَا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ الْقَاضِي أَنَا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ أَنَا حَفْصُ بْنُ غِيَاثٍ عَنْ الْأَعْمَشِ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ أَبِيهِ قَالَ: رَأَيْت عَلِيَّ بْنَ أَبِي طَالِبٍ دَعَا بِشُرَاحَةَ فَجَلَدَهَا يَوْمَ الْخَمِيسِ وَرَجَمَهَا يَوْمَ الْجُمُعَةِ، فَقَالَ: جَلَدْتهَا بِكِتَابِ اللَّهِ وَرَجَمْتهَا بِسُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L41212 Muhammad ibn Saʿīd ibn Nabāt narrated to us: ʿAbdullāh ibn Naṣr narrated to us: Qāsim ibn Aṣbagh narrated to us: Ibn Waḍḍāḥ narrated to us: Mūsā ibn Muʿāwiyah narrated to us: Wakīʿ narrated to us: Ismāʿīl ibn Abī Khālid reported from ʿAmr ibn Murrah from ʿAlī ibn Abī Ṭālib that he said: "I flog her according to the Book, and I stone her according to the Sunnah."

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ: أَجْلِدُهَا بِالْكِتَابِ، وَأَرْجُمُهَا بِالسُّنَّةِ.

L41213 From Al-Sha'bi, from Ubayy ibn Ka'b that he said: "If a previously married woman commits adultery, I lash her and then stone her."

وَعَنْ الشَّعْبِيِّ عَنْ أُبَيِّ بْنِ كَعْبٍ أَنَّهُ قَالَ: فِي الثَّيِّبِ تَزْنِي أَجْلِدُهَا ثُمَّ أَرْجُمُهَا.

L41214–41215 And through him—Al-Ḥasan Al-Baṣrī says: Ḥumām informed us, Ibn Mufarrij informed us, Ibn Al-Aʿrābī informed us: Al-Dabarī informed us, from

وَبِهِ - يَقُولُ الْحَسَنُ الْبَصْرِيُّ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ أَنَا الدَّبَرِيُّ أَنَا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ الْحَسَنِ قَالَ: «أُوحِيَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خُذُوا عَنِّي خُذُوا عَنِّي قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا، الثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَالرَّجْمُ، وَالْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَنَفْيُ سَنَةٍ» ، وَكَانَ الْحَسَنُ يُفْتِي بِهِ.

This is the view of Al-Ḥasan ibn Ḥayyin, Ibn Rāhawayh, Abū Sulaymān, and all our companions.

وَبِهِ يَقُولُ الْحَسَنُ بْنُ حَيٍّ، وَابْنُ رَاهْوَيْهِ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا.

Here is a third opinion: If a married person is elderly, he is flogged and stoned. If he is young, he is stoned but not flogged - as narrated from Abū Dharr, who said: "The two elderly married ones are flogged and stoned, the two married ones are stoned, and the two unmarried fornicators are flogged and banished."

هَاهُنَا قَوْلٌ ثَالِثٌ: أَنَّ الثَّيِّبَ إنْ كَانَ شَيْخًا جُلِدَ وَرُجِمَ، فَإِنْ كَانَ شَابًّا رُجِمَ وَلَمْ يُجْلَدْ - كَمَا رُوِيَ عَنْ أَبِي ذَرٍّ قَالَ: الشَّيْخَانِ يُجْلَدَانِ وَيُرْجَمَانِ، وَالثَّيِّبَانِ يُرْجَمَانِ، وَالْبِكْرَانِ يُجْلَدَانِ وَيُنْفَيَانِ.

From Ubayy ibn Kaʿb, who said: "Some are flogged and stoned; some are stoned without flogging; and some are flogged without stoning." Qatadah explained it, stating: "The older married person is flogged and stoned if he commits illicit intercourse; the young married person is stoned if he commits illicit intercourse; and the young person who is not married is flogged if he commits illicit intercourse."

وَعَنْ أُبَيِّ بْنِ كَعْبٍ قَالَ: يُجْلَدُونَ، وَيُرْجَمُونَ وَلَا يُجْلَدُونَ، وَيُجْلَدُونَ وَلَا يُرْجَمُونَ - وَفَسَّرَهُ قَتَادَةُ، قَالَ: الشَّيْخُ الْمُحْصَنُ يُجْلَدُ وَيُرْجَمُ إذَا زَنَى، وَالشَّابُّ الْمُحْصَنُ يُرْجَمُ إذَا زَنَى، وَالشَّابُّ إذَا لَمْ يُحْصَنْ جُلِدَ.

From Masruq, he said: "The two virgins are to be flogged and exiled, the two previously married individuals are to be stoned and not flogged, and the two elderly individuals are to be flogged and stoned?" Abu Muhammad—may Allah have mercy on him—said: "These are opinions as you can observe. As for the opinion of those who do not consider stoning valid at all, it is a rejected view because it contradicts what is established from the Messenger of Allah—peace and blessings be upon him and his family. A Quranic verse had been revealed concerning it, but its wording was textually abrogated while its ruling remained. Hammam narrated to us: Ibn Mufarrij narrated to us: Ibn al-A'rabi narrated to us: al-Dabari narrated to us: 'Abd al-Razzaq narrated from Sufyan al-Thawri from 'Asim ibn Abi al-Najud from Zirr ibn Hubaysh, who said: Ubayy ibn Ka'b said to me, 'How many verses do you

وَعَنْ مَسْرُوقٍ قَالَ: الْبِكْرَانِ يُجْلَدَانِ وَيُنْفَيَانِ، وَالثَّيِّبَانِ يُرْجَمَانِ وَلَا يُجْلَدَانِ، وَالشَّيْخَانِ يُجْلَدَانِ وَيُرْجَمَانِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذِهِ أَقْوَالٌ كَمَا تَرَى: فَأَمَّا قَوْلُ مَنْ لَمْ يَرَ الرَّجْمَ أَصْلًا فَقَوْلٌ مَرْغُوبٌ عَنْهُ، لِأَنَّهُ خِلَافُ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَدْ كَانَ نَزَلَ بِهِ قُرْآنٌ وَلَكِنَّهُ نُسِخَ لَفْظُهُ وَبَقِيَ حُكْمُهُ: حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَاصِمِ بْنِ أَبِي النَّجُودِ عَنْ زِرِّ بْنِ حُبَيْشٍ قَالَ: قَالَ لِي أُبَيُّ بْنُ كَعْبٍ: كَمْ تَعُدُّونَ سُورَةَ الْأَحْزَابِ؟ قُلْت: إمَّا ثَلَاثًا وَسَبْعِينَ آيَةً، أَوْ أَرْبَعًا وَسَبْعِينَ آيَةً، قَالَ: إنْ كَانَتْ لَتُقَارِنُ

count in Surah al-Ahzab?' I said, 'Either seventy-three or seventy-four verses.' He said, 'Yet it once rivaled Surah al-Baqarah in length or was even longer, and it contained the verse of stoning.' I said, 'O Abu al-Mundhir, what is the verse of stoning?' He said, 'If an elderly man and an elderly woman commit adultery, stone them both decisively as a deterrent from Allah, and Allah is Almighty and Wise.'" 'Ali said: "This chain of narration is as luminous as the sun, with no flaw in it."

سُورَةَ الْبَقَرَةِ، أَوْ هِيَ أَطْوَلُ مِنْهَا، وَإِنْ كَانَ فِيهَا لَآيَةُ الرَّجْمِ؟ قُلْت: أَبَا الْمُنْذِرِ وَمَا آيَةُ الرَّجْمِ؟ قَالَ: إِذَا زَنَى الشَّيْخُ وَالشَّيْخَةُ فَارْجُمُوهُمَا أَلْبَتَّةَ نَكَالًا مِنْ اللَّهِ وَاَللَّهُ عَزِيزٌ حَكِيمٌ؟ " قَالَ عَلِيٌّ: هَذَا إسْنَادٌ صَحِيحٌ كَالشَّمْسِ لَا مَغْمَزَ فِيهِ.

L41220–41222 And also narrated to us... Abdullah ibn Rabīʿ narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: from Mu'awiyah ibn Salih al-Ash'ari: Mansur—that is, Ibn Abi Muzahim—narrated to us: Abu Hafs—that is, Umar ibn Abd al-Rahman—narrated to us from Mansur—that is, Ibn al-Mu'tamir—from Asim ibn Abi al-Najud from Zirr ibn Hubaysh, who said: Ubayy ibn Ka'b said to me: "How many do you count in Surah al-Ahzab?" I said: "Seventy-three." Ubayy said: "It certainly equaled Surah al-Baqarah in length or longer, and in it was the verse of stoning: 'The elderly man and the elderly woman, if they commit adultery, stone them both certainly as an exemplary punishment from Allah, and Allah is Mighty and Wise?'"

وَحَدَّثَنَا أَيْضًا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُعَاوِيَةُ بْنُ صَالِحٍ الْأَشْعَرِيُّ نا مَنْصُورٌ - هُوَ ابْنُ أَبِي مُزَاحِمٍ - نا أَبُو حَفْصٍ - هُوَ عُمَرُ بْنُ عَبْدِ الرَّحْمَنِ - عَنْ مَنْصُورٍ - هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ عَاصِمِ بْنِ أَبِي النَّجُودِ عَنْ زِرِّ بْنِ حُبَيْشٍ قَالَ: قَالَ لِي أُبَيُّ بْنُ كَعْبٍ: كَمْ تَعُدُّونَ سُورَةَ الْأَحْزَابِ؟ قُلْت: ثَلَاثًا وَسَبْعِينَ، فَقَالَ أُبَيٌّ: إنْ كَانَتْ لَتَعْدِلُ سُورَةَ الْبَقَرَةِ أَوْ أَطْوَلَ، وَفِيهَا آيَةُ الرَّجْمِ " الشَّيْخُ وَالشَّيْخَةُ إذَا زَنَيَا فَارْجُمُوهُمَا أَلْبَتَّةَ نَكَالًا مِنْ اللَّهِ وَاَللَّهُ عَزِيزٌ حَكِيمٌ "؟

L41223 This is Sufyan al-Thawri and Mansur: they testified regarding Asim without falsehood, thus being the two trustworthy imams, the two eminent Badrites. Asim did not bear false witness against Zirr, nor did Zirr bear false witness against Ubayy. Abu Muhammad (may God have mercy on him) said: Rather, its wording was abrogated while its ruling remained. Had its wording not been abrogated, Ubayy ibn Ka'b would certainly have taught it to Zirr without doubt. Yet he informed him only that it once held equivalence to Surah al-Baqarah, without stating its present equivalence—thereby confirming the abrogation of its wording.

فَهَذَا سُفْيَانُ الثَّوْرِيُّ، وَمَنْصُورٌ: شَهِدَا عَلَى عَاصِمٍ وَمَا كَذَبَا، فَهُمَا الثِّقَتَانِ، الْإِمَامَانِ، الْبَدْرَانِ - وَمَا كَذَبَ عَاصِمٌ عَلَى زِرٍّ، وَلَا كَذَبَ زِرٌّ عَلَى أُبَيٍّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَكِنَّهَا نُسِخَ لَفْظُهَا وَبَقِيَ حُكْمُهَا، وَلَوْ لَمْ يُنْسَخْ لَفْظُهَا لَأَقْرَأَهَا أُبَيُّ بْنُ كَعْبٍ زِرًّا بِلَا شَكٍّ، وَلَكِنَّهُ أَخْبَرَهُ بِأَنَّهَا كَانَتْ تَعْدِلُ سُورَةَ الْبَقَرَةِ، وَلَمْ يَقُلْ لَهُ: إنَّهَا تَعْدِلُ الْآنَ - فَصَحَّ نَسْخُ لَفْظِهَا.

L41224 Ali said: This has been narrated through various chains, including: Abdullah ibn Rabee' narrated to us, Muhammad ibn Mu'awiyah narrated to us, Ahmad ibn Shu'ayb narrated to us, Muhammad ibn al-Muthanna narrated to us, Muhammad ibn Ja'far, known as Ghundar, narrated to us, Shu'bah narrated from Qatadah from Yunus ibn Jubayr from Kathir ibn al-Salt, who said: Zayd ibn Thabit said to me: I heard the Messenger of Allah—peace and blessings

قَالَ عَلِيٌّ: وَقَدْ رُوِيَ هَذَا مِنْ طُرُقٍ، مِنْهَا: مَا ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ عَنْ قَتَادَةَ عَنْ يُونُسَ بْنِ جُبَيْرٍ عَنْ كَثِيرِ بْنِ الصَّلْتِ، قَالَ: قَالَ لِي زَيْدُ بْنُ ثَابِتٍ: سَمِعْت رَسُولَ اللَّهِ

be upon him—say: “If an elderly married man and an elderly married woman commit adultery, stone them both without exception.” Umar said: When this was revealed, I went to the Messenger of Allah—peace and blessings be upon him—and said: “Will you write it down for me?” Shu’bah said: It was as if he disliked that. Umar then said: Do you not see that if an elderly man has not attained [the status of] muḥṣan, he is flogged, and if a young man commits adultery after attaining [the status of] muḥṣan, he is stoned?

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «إِذَا زَنَى الشَّيْخُ وَالشَّيْخَةُ فَارْجُمُوهُمَا أَلْبَتَّةَ قَالَ عُمَرُ: لَمَّا نَزَلَتْ أَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْتُ: أَكْتِبْنِيهَا؟» قَالَ شُعْبَةُ: كَأَنَّهُ كَرِهَ ذَلِكَ؟ فَقَالَ عُمَرُ: أَلَا تَرَى أَنَّ الشَّيْخَ إِذَا لَمْ يُحْصَنْ جُلِدَ، وَأَنَّ الشَّابَّ إِذَا زَنَى وَقَدْ أَحْصَنَ رُجِمَ؟ .

L41225 Ali – may Allah have mercy on him – said: “This is a good chain of narration.”

قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: وَهَذَا إِسْنَادٌ جَيِّدٌ.

L41226–41228 Ali said: Some people presumed that the omission of the stoning verse occurred for a reason other than this—they believed it was lost without abrogation—and they argued by citing the following chain: Aḥmad ibn Muḥammad ibn ʿAbd Allāh al-Ṭalamankī reported to us, from Ibn Mufarrij, from Muḥammad ibn Ayyūb al-Ṣamūt. Ahmad ibn Umar ibn Abd al-Khaliq al-Bazzar narrated to us: Yahya ibn Khalaf narrated to us: Abd al-A’la ibn Abd al-A’la narrated to us from Muhammad ibn Ishaq from Abdullah ibn Abi Bakr ibn Muhammad ibn Amr ibn Hazm and Abd al-Rahman ibn al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq. Abdullah narrated from Amrah bint Abd al-Rahman, and Abd al-Rahman narrated from his father. Then the chains of al-Qasim ibn Muhammad and Amrah converged, both narrating from Aisha, the Mother of the Believers, who said: “The verse of stoning and breastfeeding was indeed revealed, and they were written on a sheet beneath my bed. When the Messenger of Allah (peace and blessings be upon him) died, we became preoccupied with his death, whereupon a domestic animal entered and consumed it?” Abu Muhammad said: “This is an authentic Hadith, though not as they presumed. For when the stoning verse was revealed, it was preserved, recognized, and implemented by the Messenger of Allah (peace and blessings be upon him), except that the Quranic scribes did not transcribe it in the Mushaf, nor did they incorporate its wording into the Quran. Umar ibn al-Khattab had inquired about this matter—as we mentioned—but the Messenger of Allah (peace and blessings be upon him) did not respond to him regarding it.”

قَالَ عَلِيٌّ: وَقَدْ تَوَهَّمَ قَوْمٌ أَنَّ سُقُوطَ آيَةِ الرَّجْمِ إِنَّمَا كَانَ لِغَيْرِ هَذَا، ظَنُّوا أَنَّهَا تَلِفَتْ بِغَيْرِ نَسْخٍ - وَاحْتَجُّوا بِمَا -: ناه أَحْمَدُ بْنُ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ نا أَحْمَدُ بْنُ عُمَرَ بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا يَحْيَى بْنُ خَلَفٍ نا عَبْدُ الْأَعْلَى بْنُ عَبْدِ الْأَعْلَى عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ، وَعَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ، قَالَ عَبْدُ اللَّهِ عَنْ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ، وَقَالَ عَبْدُ الرَّحْمَنِ عَنْ أَبِيهِ، ثُمَّ اتَّفَقَ الْقَاسِمُ بْنُ مُحَمَّدٍ، وَعَمْرَةُ، كِلَاهُمَا عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: لَقَدْ نَزَلَتْ آيَةُ الرَّجْمِ وَالرَّضَاعَةِ، فَكَانَتَا فِي صَحِيفَةٍ تَحْتَ سَرِيرِي، فَلَمَّا مَاتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَشَاغَلْنَا بِمَوْتِهِ فَدَخَلَ دَاجِنٌ فَأَكَلَهَا؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا حَدِيثٌ صَحِيحٌ وَلَيْسَ هُوَ عَلَى مَا ظَنُّوا، لِأَنَّ آيَةَ الرَّجْمِ إِذْ نَزَلَتْ حُفِظَتْ، وَعُرِفَتْ، وَعَمِلَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا أَنَّهُ لَمْ يَكْتُبْهَا نُسَّاخُ الْقُرْآنِ فِي الْمُصْحَفِ، وَلَا أَثْبَتُوا لَفْظَهَا فِي الْقُرْآنِ، وَقَدْ سَأَلَ عُمَرُ بْنُ الْخَطَّابِ ذَلِكَ - كَمَا أَوْرَدْنَا - فَلَمْ يُجِبْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى ذَلِكَ.

L41229 The copy of its wording was validated, and the sheet on which it was written

remained—as ʿĀ’ishah, may Allah be pleased with her, said—until a domestic fowl ate it, for no one had any need of it.

فَصَحَّ نَسْخُ لَفْظِهَا وَبَقِيَتْ الصَّحِيفَةُ الَّتِي كُتِبَتْ فِيهَا - كَمَا قَالَتْ عَائِشَةُ - رَضِيَ اللَّهُ عَنْهَا - فَأَكَلَهَا الدَّاجِنُ، وَلَا حَاجَةَ بِأَحَدٍ إلَيْهَا.

L41230 This is likewise the ruling concerning the verse pertaining to breastfeeding, and there is no distinction.

وَهَكَذَا الْقَوْلُ فِي آيَةِ الرَّضَاعَةِ وَلَا فَرْقَ.

L41231 The proof of this is that they preserved it as we have mentioned. If it had been recorded in the Quran, a domestic fowl's consumption of the page would not have prevented - from their preservation - its inclusion in the Quran. And success is from Allah, the Exalted.

وَبُرْهَانُ هَذَا: أَنَّهُمْ قَدْ حَفِظُوهَا كَمَا أَوْرَدْنَا، فَلَوْ كَانَتْ مُثْبَتَةً فِي الْقُرْآنِ لَمَا مَنَعَ أَكْلُ الدَّاجِنِ لِلصَّحِيفَةِ مِنْ إثْبَاتِهَا فِي الْقُرْآنِ مِنْ حِفْظِهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41232 With certainty, we know that no two Muslims differ in affirming that Allah the Exalted obligated the conveyance of revelation upon His Messenger (peace be upon him) and that he (peace and blessings be upon him) indeed conveyed it as commanded. Allah the Exalted said: {O Messenger, proclaim what has been revealed to you from your Lord. If you do not, you will have failed to deliver His message} [Al-Ma'idah 5:67].[56]

فَبِيَقِينٍ نَدْرِي أَنَّهُ لَا يَخْتَلِفُ مُسْلِمَانِ فِي أَنَّ اللَّهَ تَعَالَى افْتَرَضَ التَّبْلِيغَ عَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَدْ بَلَّغَ كَمَا أُمِرَ، قَالَ اللَّهُ تَعَالَى {يَا أَيُّهَا الرَّسُولُ بَلِّغْ مَا أُنْزِلَ إِلَيْكَ مِنْ رَبِّكَ وَإِنْ لَمْ تَفْعَلْ فَمَا بَلَّغْتَ رِسَالَتَهُ} [المائدة: ٦٧] .

L41233 And He, the Exalted, said, {Indeed, We have sent down the Reminder, and indeed, We are its guardians} [Al-Hijr: 9].[57]

وَقَالَ تَعَالَى {إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ} [الحجر: ٩] .

L41234–41236 And He, the Exalted, said: {We will cause you to recite, so you will not forget, except what Allah wills} [Al-A'la: 6–7]. And He, the Exalted, said: {Whatever verse We abrogate or cause to be forgotten, We bring better than it or similar to it} [Al-Baqarah: 106]. Thus, it is established that the verses that were abrogated—had the Messenger of Allah, peace and blessings of Allah be upon him, been commanded to convey them, he would have conveyed them. Had he conveyed them, they would have been preserved. Had they been preserved, his death would not have harmed them, just as his death, peace and blessings of Allah be upon him, did not harm all that he conveyed exclusively of the Quran. Even if he, peace and blessings of Allah be upon him, did not convey them, or conveyed them only for them to be forgotten by him and the people, or did not... They forgot it, but the Prophet—peace be upon him—did not command that it be written in the Quran; thus, it is

وَقَالَ تَعَالَى {سَنُقْرِئُكَ فَلا تَنْسَى - إِلا مَا شَاءَ اللَّهُ} [الأعلى: ٦ - ٧] وَقَالَ تَعَالَى {مَا نَنْسَخْ مِنْ آيَةٍ أَوْ نُنْسِهَا نَأْتِ بِخَيْرٍ مِنْهَا أَوْ مِثْلِهَا} [البقرة: ١٠٦] فَصَحَّ أَنَّ الْآيَاتِ الَّتِي ذَهَبَتْ لَوْ أُمِرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِتَبْلِيغِهَا لَبَلَّغَهَا، وَلَوْ بَلَّغَهَا لَحُفِظَتْ، وَلَوْ حُفِظَتْ مَا ضَرَّهَا مَوْتُهُ، كَمَا لَمْ يَضُرَّ مَوْتُهُ - عَلَيْهِ السَّلَامُ - كُلَّ مَا بَلَّغَ فَقَطْ مِنْ الْقُرْآنِ، وَإِنْ كَانَ - عَلَيْهِ السَّلَامُ - لَمْ يُبَلِّغْ، أَوْ بَلَّغَهُ فَأُنْسِيه هُوَ وَالنَّاسُ، أَوْ لَمْ يَنْسَوْهُ، لَكِنْ لَمْ يَأْمُرْ - عَلَيْهِ السَّلَامُ - أَنْ يُكْتَبَ فِي الْقُرْآنِ فَهُوَ مَنْسُوخٌ بِيَقِينٍ مِنْ عِنْدِ اللَّهِ تَعَالَى، لَا يَحِلُّ أَنْ يُضَافَ إلَى الْقُرْآنِ.

[56] **Qur'an references (L41232):** Qur'an 5:67 (Al-Ma'idah).
[57] **Qur'an references (L41233):** Qur'an 15:9 (Al-Hijr).

abrogated with certainty from Allah the Exalted. It is not permissible to add it to the Quran.[58]

L41237 Abū Muḥammad—may Allah have mercy on him—said: A group transmitted the ruling of stoning from the Prophet—peace and blessings of Allah be upon him. As narrated to us by ʿAbdullāh ibn Rabīʿah: Muḥammad ibn Muʿāwiyah narrated to us; Aḥmad ibn Shuʿayb narrated to us; Muḥammad ibn Yaḥyā ibn ʿAbdillāh al-Naysābūrī narrated to us; Bishr ibn ʿUmar al-Zahrānī narrated to us from Mālik, from al-Zuhrī, from ʿUbaydillāh ibn ʿAbdillāh ibn ʿUtbah, from Ibn ʿAbbās: "'Umar ibn al-Khaṭṭāb said: 'Allah sent Muḥammad—peace and blessings of Allah be upon him—and revealed the Book to him. Among what was revealed was the verse of stoning. We recited it, preserved it in memory, and the Messenger of Allah—peace and blessings of Allah be upon him—carried out stoning, and we did so after him. I fear that if time prolongs for people, someone will say: "We do not find the verse of stoning in the Book of Allah," thereby abandoning an obligation Allah revealed. Verily, stoning in the Book of Allah is a rightful punishment for whoever commits adultery if they are muḥṣan (chaste and lawfully married), whether male or female, when conclusive evidence is established, or there is pregnancy, or confession.'"

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَدْ رَوَى الرَّجْمَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَمَاعَةٌ: كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ يَحْيَى بْنُ عَبْدِ اللَّهِ النَّيْسَابُورِيُّ نا بِشْرُ بْنُ عُمَرَ الزَّهْرَانِيُّ نا مَالِكٌ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إنَّ اللَّهَ بَعَثَ مُحَمَّدًا وَأَنْزَلَ عَلَيْهِ الْكِتَابَ فَكَانَ فِيمَا أَنْزَلَ آيَةُ الرَّجْمِ، فَقَرَأْنَاهَا وَوَعَيْنَاهَا، وَرَجَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرَجَمْنَا بَعْدَهُ، وَأَخْشَى إنْ طَالَ بِالنَّاسِ زَمَانٌ أَنْ يَقُولَ قَائِلٌ: مَا نَجِدُ آيَةَ الرَّجْمِ فِي كِتَابِ اللَّهِ تَعَالَى فَيَتْرُكُ فَرِيضَةً أَنْزَلَهَا اللَّهُ، وَأَنَّ الرَّجْمَ فِي كِتَابِ اللَّهِ حَقٌّ عَلَى مَنْ زَنَى إذَا أَحْصَنَ مِنْ الرِّجَالِ وَالنِّسَاءِ، إذَا قَامَتْ الْبَيِّنَةُ، أَوْ كَانَ الْحَبَلُ، أَوْ الِاعْتِرَافُ» .

L41238 Through him to Ahmad ibn Shuʿayb: I am Muhammad ibn Mansur al-Makki, narrated to us by Sufyan ibn ʿUyaynah, from al-Zuhri, from ʿUbayd Allah ibn ʿAbd Allah ibn ʿUtbah, from Ibn ʿAbbas, who said: "I heard ʿUmar say: 'I feared that time might prolong for people until someone says: "We do not find stoning in Allah's Book," thereby causing them to stray by abandoning an obligation Allah revealed. Indeed, stoning is a prescribed punishment for whoever commits adultery if they are muhsan, when there is evidence, pregnancy, or confession. We have recited it: "The elderly man and elderly woman: stone them both certainly." The Messenger of Allah (peace be upon him) enacted stoning, and we continued it after him.'"

وَبِهِ - إلَى أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَنْصُورٍ الْمَكِّيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: «سَمِعْتُ عُمَرَ يَقُولُ: قَدْ خَشِيتُ أَنْ يَطُولَ بِالنَّاسِ زَمَانٌ حَتَّى يَقُولَ قَائِلٌ: مَا نَجِدُ الرَّجْمَ فِي كِتَابِ اللَّهِ؟ فَيَضِلُّ بِتَرْكِ فَرِيضَةٍ أَنْزَلَهَا اللَّهُ، أَلَا وَإِنَّ الرَّجْمَ حَقٌّ عَلَى مَنْ زَنَى إذَا أَحْصَنَ، وَكَانَتْ الْبَيِّنَةُ، أَوْ كَانَ الْحَبَلُ، أَوْ الِاعْتِرَافُ، وَقَدْ قَرَأْنَاهَا الشَّيْخُ وَالشَّيْخَةُ فَارْجُمُوهُمَا أَلْبَتَّةَ وَقَدْ رَجَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرَجَمْنَا بَعْدَهُ» .

L41239 Abdullah ibn Rabi' informed us: Umar ibn Abd al-Malik informed us:

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ نا سُلَيْمَانُ بْنُ الْأَشْعَثِ نا مُسَدَّدٌ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ

[58] **Qur'an references (L41234):** Qur'an 87:6 (Al-A'la); Qur'an 2:106 (Al-Baqarah); Qur'an 87:7 (Al-A'la).

Muhammad ibn Bakr informed us: Sulayman ibn al-Ash'ath informed us: Musaddad informed us: Yahya ibn Sa'id al-Qattan reported from Sa'id ibn Abi 'Arubah from Qatadah from al-Hasan from Hittan ibn Abdullah al-Raqashi from 'Ubadah ibn al-Samit, who said: The Messenger of Allah (peace and blessings be upon him) said: "Learn from me, learn from me. Allah has indeed ordained a prescribed punishment for them: if a married person commits adultery with another married person, they shall be flogged one hundred times and stoned to death; if a virgin commits adultery with another virgin, they shall be flogged one hundred times and banished for one year."

حطَّانَ بْنِ عَبْدِ اللَّهِ الرَّقَاشِيِّ عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «خُذُوا عَنِّي خُذُوا عَنِّي قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا، الثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَرَجْمٌ بِالْحِجَارَةِ، وَالْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَنَفْيُ سَنَةٍ» .

L41240–41242 It was narrated to us via the chain of Muslim: from 'Abd al-Malik ibn Shu'ayb ibn al-Layth ibn Sa'd, from his father, from his grandfather, from 'Uqayl, from Ibn Shihāb, from Abū Salama ibn 'Abd al-Raḥmān ibn 'Awf and Sa'īd ibn al-Musayyib, from Abū Hurayra—that a man from the Muslims came to the Messenger of Allah (peace be upon him) while he was in the mosque and called out: "O Messenger of Allah, I have committed adultery." He then mentioned the hadith, which includes that the Messenger of Allah (peace be upon him) said to him... "Have you been married?" He replied, "Yes." Then the Messenger of Allah (peace be upon him) said, "Take him away and then stone him."

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا عَبْدُ الْمَلِكِ بْنُ شُعَيْبِ بْنِ اللَّيْثِ بْنِ سَعْدٍ نا أَبِي عَنْ جَدِّي نا عُقَيْلٌ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ «أَتَى رَجُلٌ مِنْ الْمُسْلِمِينَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ بِالْمَسْجِدِ فَنَادَاهُ: يَا رَسُولَ اللَّهِ، إنِّي زَنَيْتُ - فَذَكَرَ الْحَدِيثَ، وَفِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ فَهَلْ أَحْصَنْتَ؟ قَالَ: نَعَمْ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اذْهَبُوا بِهِ فَارْجُمُوهُ» .

[مَسْأَلَة حَدُّ الْأَمَةِ الْمُحْصَنَةِ]

The Issue of the Ḥadd (Prescribed Punishment) of the Chaste Enslaved Woman.

L41243

L41244 2209 – Issue: What is the prescribed punishment for the chaste female slave? Abū Muḥammad said: Allāh the Exalted states: *"But if they attain chastity, then if they commit an indecency, upon them is half the punishment prescribed for chaste free women"* [al-Nisā' 4:25]. With certainty, we understand that Allāh intended: If they enter lawful marriage and have intercourse, then upon them is half the punishment of chaste free women. The chaste free woman is liable to one hundred lashes and stoning. By necessity, we recognize that stoning cannot be divided, leaving half of the hundred lashes upon them. Thus, the chaste female slave is obligated to receive fifty lashes exclusively.[59]

٢٢٠٩ - مَسْأَلَةٌ: حَدُّ الْأَمَةِ الْمُحْصَنَةِ؟ قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ تَعَالَى {فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥] فَبِيَقِينٍ نَدْرِي أَنَّ اللَّهَ تَعَالَى أَرَادَ فَإِذَا تَزَوَّجْنَ وَوُطِئْنَ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْحَرَائِرِ الْمُحْصَنَاتِ مِنْ الْعَذَابِ، وَالْحُرَّةُ الْمُحْصَنَةُ فَإِنَّ عَلَيْهَا جَلْدَ مِائَةٍ وَالرَّجْمَ، وَبِالضَّرُورَةِ نَدْرِي أَنَّ الرَّجْمَ لَا نِصْفَ لَهُ، فَبَقِيَ عَلَيْهِنَّ نِصْفُ الْمِائَةِ، فَوَجَبَ عَلَى الْأَمَةِ الْمُحْصَنَةِ جَلْدُ خَمْسِينَ فَقَطْ.

[59] **Qur'an references (L41244):** Qur'an 4:25 (An-Nisa).

فَإِنْ قِيلَ: فَمِنْ أَيْنَ أَوْجَبْتُمْ عَلَيْهَا نَفْيَ سِتَّةِ أَشْهُرٍ، أَمِنْ هَذِهِ الْآيَةِ أَمْ مِنْ غَيْرِهِ؟ فَجَوَابُنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ -: أَنَّ الْقَائِلِينَ إنَّ عَلَى الْأَمَةِ نَفْيَ سِتَّةِ أَشْهُرٍ قَالُوا: إنَّ ذَلِكَ وَاجِبٌ عَلَيْهِنَّ مِنْ هَذِهِ الْآيَةِ.

L41245 If it is asked: On what basis have you obligated her to a six-month waiting period—is it from this verse or another source? Our answer—and with Allah's success—is that those who hold the obligation of a six-month waiting period upon the enslaved woman have said: This is indeed incumbent upon them by virtue of this verse.

وَقَالُوا: إنَّ " الْإِحْصَانَ " اسْمٌ يَقَعُ عَلَى الْحُرَّةِ الْمُطَلَّقَةِ فَقَطْ، فَإِنْ كَانَ هَذَا كَمَا قَالُوا فَالنَّفْيُ وَاجِبٌ عَلَى الْإِمَاءِ الْمُحْصَنَاتِ مِنْ هَذِهِ الْآيَةِ، لِأَنَّ مَعْنَى الْآيَةِ: فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْحَرَائِرِ مِنْ الْعَذَابِ، وَعَلَى الْحَرَائِرِ هُنَا مِنْ الْعَذَابِ جَلْدُ مِائَةٍ، وَمَعَهُ نَفْيُ سَنَةٍ، أَوْ رَجْمٌ، وَالرَّجْمُ يَنْتَصِفُ أَصْلًا، لِأَنَّهُ مَوْتٌ، وَالْمَوْتُ لَا نِصْفَ لَهُ أَصْلًا وَكَذَلِكَ الرَّجْمُ، لِأَنَّهُ قَدْ يَمُوتُ الْمَرْجُومُ مِنْ رَمْيَةٍ وَاحِدَةٍ، وَقَدْ لَا يَمُوتُ مِنْ أَلْفِ رَمْيَةٍ، وَمَا كَانَ هَكَذَا فَلَا يُمْكِنُ ضَبْطُ نِصْفِهِ أَبَدًا، وَإِذْ لَا يُمْكِنُ هَذَا فَقَدْ أَمِنَّا أَنْ يُكَلِّفَنَا اللَّهُ تَعَالَى مَا لَا نُطِيقُ لِقَوْلِهِ تَعَالَى {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

L41246 They said: "Indeed, 'al-iḥṣān' is a term that applies exclusively to free divorced women. If this is as they claim, then exile is obligatory for enslaved married women based on this verse, for the verse's meaning is: 'Upon them is half the punishment prescribed for free women.' For free women here, the punishment is one hundred lashes combined with exile for a year, or stoning. Stoning inherently cannot be divided, as it is death, and death inherently has no half. Similarly, stoning cannot be precisely measured, for the stoned person may die from a single strike or survive a thousand strikes. Since such a punishment cannot be precisely determined, it is inherently impossible to fix half of it. Given this impossibility, we are assured that God Almighty does not burden us with what we cannot bear, in accordance with His statement: *'Allah does not burden a soul beyond its capacity'* [Al-Baqarah 2:286]."[60]

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَمَرْتُكُمْ بِشَيْءٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» أَوْ كَمَا قَالَ - عَلَيْهِ السَّلَامُ -، فَسَقَطَ الرَّجْمُ وَبَقِيَ الْجَلْدُ وَالنَّفْيُ سَنَةٍ - وَكِلَاهُمَا لَهُ نِصْفٌ، فَعَلَى الْأَمَةِ نِصْفُ مَا عَلَى الْحُرَّةِ مِنْهَا؟

L41247 And due to the statement of Allah's Messenger, peace be upon him, "When I command you with something, fulfill it to the best of your ability," or as he said, peace be upon him, stoning is no longer applicable while flogging and exile for one year remains. Each of these punishments is halved, so does the female slave receive half the penalty prescribed for the free woman in these cases?

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَإِنْ كَانَ " الْإِحْصَانُ " لَا يَقَعُ فِي اللُّغَةِ إلَّا عَلَى الْحُرَّةِ فَقَطْ، فَالنَّفْيُ لَا يَجِبُ عَلَى الْإِمَاءِ مِنْ هَذِهِ الْآيَةِ؟ وَمَا نَعْلَمُ " الْإِحْصَانَ " فِي اللُّغَةِ الْعَرَبِيَّةِ وَالشَّرِيعَةِ يَقَعُ إلَّا عَلَى مَعْنَيَيْنِ: عَلَى الزَّوَاجِ الَّذِي يَكُونُ فِيهِ الْوَطْءُ - فَهَذَا إجْمَاعٌ لَا خِلَافَ فِيهِ - وَعَلَى الْعَقْدِ فَقَطْ، وَلَا نَعْلَمُهُ يَقَعُ عَلَى الْحُرَّةِ الْمُطَلَّقَةِ فَقَطْ، فَلَا يَجُوزُ أَنْ يَقْطَعَ فِي الدِّينِ إلَّا بِيَقِينٍ؛ لِأَنَّهُ إخْبَارٌ عَنْ اللَّهِ تَعَالَى، وَلَا يَحِلُّ لِمَنْ لَهُ تَقْوَى أَوْ

L41248–41250 Abu Muhammad—may God have mercy on him—said: If "iḥṣān" in the Arabic language applies exclusively to free women, would female slaves then be exempt from punishment under this verse? We affirm that "iḥṣān" in Arabic and the Sharīʿa applies only to two meanings: first... The marriage in which intercourse occurs—and this is a matter of consensus without disagreement—applies solely to the contractual aspect. We do not know of this ruling being applied exclusively to a divorced woman. Thus, it is impermissible to judge definitively in religious matters except with certainty, for

[60] **Qur'an references (L41246):** Qur'an 2:286 (Al-Baqarah).

it constitutes attributing a statement to Allah, the Exalted. It is not lawful for anyone possessing piety or intellect to attribute anything to Allah, the Exalted, except with certainty. By Allah, we ourselves are nothing like those who claim that religious rulings are derived merely from conjectures. However, a prescribed punishment is obligatory for female slaves if they commit adultery with someone other than their master, as per the narration reported by ʻAbdullāh ibn Rabīʻ, narrated by Muḥammad ibn Muʻāwiyah, narrated by Aḥmad ibn Shuʻayb, who was informed by Muḥammad ibn Ismāʻīl ibn Ibrāhīm ibn ʻUlayyah, narrated by Yazīd ibn Hārūn, narrated by Ḥammād ibn Salamah, from Ayyūb al-Sikhtiyānī, from ʻIkrimah, from Ibn ʻAbbās, from the Prophet—peace and blessings be upon him—who said: "If a slave under a manumission contract (mukātab) becomes subject to a legal punishment or entitlement to inheritance, he inherits proportionally to the degree of his freedom, and the legal punishment is applied to him proportionally to the degree of his freedom."

عَقْلٌ: أَنْ يُخْبِرَ عَنْ اللهِ تَعَالَى إِلَّا بِيَقِينٍ، وَلَسْنَا وَاَللَّهِ نَحْنُ كَمَنْ يَقُولُ: إنَّ الدِّينَ مَأْخُوذٌ بِالظُّنُونِ فَقَطْ، وَلَكِنَّ " النَّفْيَ " وَاجِبٌ عَلَى الْإِمَاءِ إذَا زَنَيْنَ مِنْ مَوْضِعٍ آخَرَ، وَهُوَ الْخَبَرُ الَّذِي: ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ إسْمَاعِيلَ بْنِ إبْرَاهِيمَ بْنِ عُلَيَّةَ نا يَزِيدُ بْنُ هَارُونَ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا أَصَابَ الْمُكَاتَبُ حَدًّا أَوْ مِيرَاثًا وَرِثَ بِحِسَابِ مَا عَتَقَ مِنْهُ وَأُقِيمَ عَلَيْهِ الْحَدُّ بِحِسَابِ مَا عَتَقَ مِنْهُ» .

L41251 And through him - to Ahmad ibn Shu'ayb: I am Muhammad ibn Isa al-Dimashqi. Yazid ibn Harun narrated to us: Hammad ibn Salamah narrated to us from Ayyub al-Sikhtiyani and Qatadah. Qatadah said: From Khilas ibn Amr, from Ali ibn Abi Talib. Ayyub said: From Ikrimah, from Ibn Abbas. Then they both concurred: Ali and Ibn Abbas - both from the Prophet (peace and blessings be upon him) - who said: "The mukatab (a slave contracted for freedom) is emancipated proportionally to what he has paid, the prescribed punishment is imposed upon him proportionally to his degree of emancipation, and he inherits proportionally to his degree of emancipation." This is a chain of transmission of utmost authenticity. Therefore, it necessarily follows that the female slave's punishment proportionally corresponds to that of the free woman generally in all that entails half the punishment of the free woman. Thus, it necessarily follows that the punishment for a married female slave is half that of a free woman - regarding exile and flogging - with no exclusion whatsoever, because the Messenger of Allah (peace and blessings be upon him) specified no exclusion, nor did any individual from the ummah reach consensus to specify it, nor does the Quran specify any ex-

وَبِهِ - إلَى أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عِيسَى الدِّمَشْقِيُّ نا يَزِيدُ بْنُ هَارُونَ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، وَقَتَادَةَ، قَالَ قَتَادَةُ: عَنْ خِلَاسِ بْنِ عَمْرٍو عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَقَالَ أَيُّوبُ: عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ، ثُمَّ اتَّفَقَا: عَلِيٌّ، وَابْنُ عَبَّاسٍ، كِلَاهُمَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الْمُكَاتَبُ يُعْتَقُ مِنْهُ بِقَدْرِ مَا أَدَّى، وَيُقَامُ عَلَيْهِ الْحَدُّ بِقَدْرِ مَا عَتَقَ مِنْهُ، وَيَرِثُ بِقَدْرِ مَا عَتَقَ مِنْهُ» وَهَذَا إسْنَادٌ فِي غَايَةِ الصِّحَّةِ، فَوَجَبَ ضَرُورَةً أَنْ يَكُونَ حَدُّ الْأَمَةِ بِنِسْبَتِهِ مِنْ حَدِّ الْحُرَّةِ عُمُومًا فِي جَمِيعِ مَا لَهُ نِصْفٌ مِنْ حَدِّ الْحُرَّةِ، فَوَجَبَ ضَرُورَةً أَنَّ حَدَّ الْأَمَةِ الْمُتَزَوِّجَةِ نِصْفُ حَدِّ الْحُرَّةِ، مِنْ - النَّفْيِ وَالْجَلْدِ - وَأَنْ لَا يُخَصَّ مِنْ ذَلِكَ شَيْءٌ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَخُصَّ مِنْ ذَلِكَ، وَلَا أَحَدٌ مِنْ الْأُمَّةِ أَجْمَعَ عَلَى تَخْصِيصِهِ، وَلَا جَاءَ الْقُرْآنُ بِتَخْصِيصِهِ، فَوَجَبَ نَفْيُهَا سِتَّةَ أَشْهُرٍ، وَجَلْدُهَا خَمْسُونَ جَلْدَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

clusion. Therefore, her exile lasts six months, and her flogging is fifty lashes. And by Allah, the Most High, is success.

L41252–41254 ٢٢١٠ - مَسْأَلَةٌ: حَدُّ الْمَمْلُوكِ إذَا زَنَى، وَهَلْ عَلَيْهِ وَعَلَى الْأَمَةِ الْمُحْصَنَةِ رَجْمٌ أَمْ لَا؟
قَالَ أَبُو مُحَمَّد: اخْتَلَفَ النَّاسُ فِي الْمَمْلُوكِ الذَّكَرِ إذَا زَنَى: فَقَالَتْ طَائِفَةٌ: إنَّ حَدَّهُ حَدُّ الْحُرِّ مِنْ الْجَلْدِ وَالنَّفْيِ وَالرَّجْمِ: كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ اللَّهِ بْنُ إدْرِيسَ الْأَوْدِيُّ نا لَيْثُ بْنُ أَبِي سُلَيْمٍ عَنْ مُجَاهِدٍ قَالَ: قَدِمْت الْمَدِينَةَ وَقَدْ أَجْمَعُوا عَلَى عَبْدٍ زَنَى - وَقَدْ أُحْصِنَ بِحُرَّةٍ - أَنَّهُ يُرْجَمُ، إلَّا عِكْرِمَةُ فَإِنَّهُ قَالَ: عَلَيْهِ نِصْفُ الْحَدِّ.

L41255 Mujāhid said: A male slave's chastity is affirmed when he marries a free woman, and a female slave's chastity is affirmed when a free man marries her. This is the position upheld by all scholars of our school.

قَالَ مُجَاهِدٌ: وَإِحْصَانُ الْعَبْدِ أَنْ يَتَزَوَّجَ الْحُرَّةَ، وَإِحْصَانُ الْأَمَةِ أَنْ يَتَزَوَّجَهَا الْحُرُّ - وَبِهَذَا يَأْخُذُ أَصْحَابُنَا كُلُّهُمْ.

L41256 Abu Thawr said: The chaste female slave and the chaste male slave are to be stoned, unless a scholarly consensus prevents it.

وَقَالَ أَبُو ثَوْرٍ: الْأَمَةُ الْمُحْصَنَةُ وَالْعَبْدُ الْمُحْصَنُ عَلَيْهِمَا الرَّجْمُ، إلَّا أَنْ يَمْنَعَ مِنْ ذَلِكَ إجْمَاعٌ.

L41257 Al-Awzaʿī said: If a male slave achieves marital protection (iḥṣān) through marriage to a free woman, he is subject to stoning even if not emancipated. But if he is married to a female slave, he is not subject to stoning if he commits adultery, even if he is later freed. Similarly, he also stated: If a female slave achieves marital protection (iḥṣān) through marriage to a free man, she is subject to stoning even if not emancipated. She cannot achieve marital protection (iḥṣān) through marriage to a male slave.

وَقَالَ الْأَوْزَاعِيِّ: إذَا أُحْصِنَ الْعَبْدُ بِزَوْجَةٍ حُرَّةٍ فَعَلَيْهِ الرَّجْمُ، وَإِنْ لَمْ يُعْتَقْ، فَإِنْ كَانَ تَحْتَهُ أَمَةٌ لَمْ يَجِبْ عَلَيْهِ الرَّجْمُ إنْ زَنَى وَإِنْ عَتَقَ - وَكَذَلِكَ قَالَ أَيْضًا: إذَا أُحْصِنَتْ الْأَمَةُ بِزَوْجٍ حُرٍّ فَعَلَيْهَا الرَّجْمُ، وَإِنْ لَمْ تُعْتَقْ، وَلَا تَكُونُ مُحْصَنَةً بِزَوْجِ عَبْدٍ.

L41258 Abu Hanifa, Malik, al-Shafi'i, and Ahmad said: The ḥadd punishment for a muḥṣan [married] slave, a non-muḥṣan slave, or a female slave—stoning is not prescribed in any of these cases.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ: حَدُّ الْعَبْدِ الْمُحْصَنِ، وَغَيْرِ الْمُحْصَنِ، وَالْأَمَةِ: لَا رَجْمَ فِي شَيْءٍ مِنْ ذَلِكَ؟

L41259 Abū Muḥammad said: When they differed as we mentioned, it became necessary for us to examine what our companions cited as evidence for their opinion. We found them saying: "{The adulteress and the adulterer...} [Quran 24:2, An-Nur]" - the verse.[61]

L41260 The Messenger of Allah—peace and blessings of Allah be upon him—said, "A virgin shall receive one hundred lashes and exile for a year, and a married person shall receive one hundred lashes and stoning."

L41261 They said: The Quran and the Sunnah came with general rulings that may not be particularized except by what Allah the Exalted and His Messenger—peace be upon him—have specified. We found the explicit text of the Quran and the Sunnah confirmed in particularizing female slaves within the scope of this ruling, stipulating that chaste female slaves incur half the liability incumbent upon chaste free women. Similarly, the explicit text concerning the female slave who has not been chaste exists. Thus, we particularized the ruling regarding female slaves based on the Quran and the Sunnah, while the male slave remains [under the general ruling], as "your Lord is not forgetful" [19:64].[62]

L41262 We know with certainty that if Allah, the Exalted, had intended to specify male slaves, He would have mentioned them as He mentioned female slaves, and He would not have neglected that nor disregarded it—and all analogy is entirely invalid, and it is a claim without proof.

L41263–41264 And every argument they raise contentiously concerning proving the Quran—even if it were valid for them, though none of it from them is valid for them at all—would not necessitate specifying the Quran by means of any of it, nor permit reporting about the intent of Allah the Exalted, since it is not permissible to know the unseen aspects of anyone through *qiyas*.

L41265 They said: It is therefore obligatory that the ruling for the slave is the same as that of the free person in the *ḥadd* for *zinā* (illicit sexual intercourse, extramarital).

قَالَ أَبُو مُحَمَّد: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ فِيمَا احْتَجَّ بِهِ أَصْحَابُنَا لِقَوْلِهِمْ، فَوَجَدْنَاهُمْ يَقُولُونَ {الزَّانِيَةُ وَالزَّانِي} [النور: ٢] الْآيَةَ.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ، وَالثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَالرَّجْمُ» .

قَالُوا: فَجَاءَ الْقُرْآنُ وَالسُّنَّةُ بِعُمُومٍ لَا يَحِلُّ أَنْ يُخَصَّ مِنْهُ إِلَّا مَا خَصَّهُ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ السَّلَامُ -، فَوَجَدْنَا النَّصَّ مِنْ الْقُرْآنِ وَالسُّنَّةِ قَدْ صَحَّ بِتَخْصِيصِ الْإِمَاءِ مِنْ جُمْلَةِ هَذَا الْحُكْمِ بِأَنَّ عَلَى الْمُحْصَنَاتِ مِنْهُنَّ نِصْفَ مَا عَلَى الْمُحْصَنَاتِ الْحَرَائِرِ، وَكَذَلِكَ النَّصُّ الْوَارِدُ فِي الْأَمَةِ الَّتِي لَمْ تُحْصَنْ، فَخَصَّصْنَا الْإِمَاءَ بِالْقُرْآنِ وَالسُّنَّةِ، وَبَقِيَ الْعَبْدُ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَبِيَقِينٍ نَدْرِي أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ أَنْ يَخُصَّ الْعَبِيدَ لَذَكَرَهُمْ كَمَا ذَكَرَ الْإِمَاءَ، وَلَمَا أَغْفَلَ ذَلِكَ، وَلَا أَهْمَلَهُ - وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، وَدَعْوَى بِلَا بُرْهَانٍ.

وَكُلُّ مَا يَشْغَبُونَ بِهِ فِي إثْبَاتِ الْقُرْآنِ فَحَتَّى لَوْ صَحَّ لَهُمْ - وَهُوَ لَا يَصِحُّ لَهُمْ مِنْهُ شَيْءٌ أَصْلًا - لَمَا كَانَ فِي شَيْءٍ مِنْهُ إيجَابُ تَخْصِيصِ الْقُرْآنِ بِهِ، وَلَا إبَاحَةُ الْإِخْبَارِ عَنْ مُرَادِ اللَّهِ تَعَالَى، إذْ لَا يَجُوزُ أَنْ يُعْرَفَ مَغِيبُ أَحَدٍ بِقِيَاسٍ.

قَالُوا: فَوَجَبَ أَنْ يَكُونَ حُكْمُ الْعَبْدِ كَحُكْمِ الْحُرِّ فِي حَدِّ الزِّنَى.

[61] **Qur'an references (L41259):** Qur'an 24:2 (An-Nur).
[62] **Qur'an references (L41261):** Qur'an 19:64 (Maryam).

ثُمَّ نَقُولُ لِأَصْحَابِ الْقِيَاسِ: قَدْ أَجْمَعْتُمْ عَلَى أَنَّ حَدَّ الْعَبْدِ كَحَدِّ الْحُرِّ فِي الرِّدَّةِ، وَفِي الْمُحَارَبَةِ، وَفِي قَطْعِ السَّرِقَةِ، فَيَلْزَمُكُمْ - عَلَى أُصُولِكُمْ فِي الْقِيَاسِ - أَنْ تَرُدُّوا مَا اُخْتُلِفَ فِيهِ مِنْ حُكْمِهِ فِي الزِّنَى إِلَى مَا اتَّفَقْتُمْ فِيهِ مِنْ حُكْمِهِ فِي الرِّدَّةِ، وَالْمُحَارَبَةِ، وَالسَّرِقَةِ: بِالْقَتْلِ رَجْمًا، وَالْقَتْلِ صَلْبًا أَوْ بِالسَّيْفِ: أَشْبَهَ بِالْقَتْلِ رَجْمًا بِالْجَلْدِ، قَالُوا: لَا، وَلَا سِيَّمَا الْمَالِكِيُّونَ الْمُشْغِبُونَ بِإِجْمَاعِ أَهْلِ الْمَدِينَةِ، وَهَذَا إِجْمَاعٌ - إِلَّا عِكْرِمَةُ - قَدْ خَالَفُوهُ.

L41266 Then we say to the proponents of analogical reasoning: You have unanimously agreed that the prescribed punishment for a slave equals that of a free person in cases of apostasy, banditry, and theft (where amputation applies). By your principles of analogy, you must consequently extend the disputed rulings regarding his punishment for adultery to the agreed rulings in apostasy, banditry, and theft—applying execution methods (stoning, crucifixion, or the sword for apostasy and banditry) rather than flogging. They replied: No—particularly the contentious Malikis, who invoke the consensus of Medina's scholars. This is a consensus—except for Ikrimah, whom the Malikis opposed.

فَإِنْ قَالُوا: إِنَّ رَاوِيَ هَذَا الْخَبَرِ لَيْثُ بْنُ أَبِي سُلَيْمٍ وَلَيْسَ بِالْقَوِيِّ؟ قُلْنَا لَهُمْ: رُبَّ خَبَرٍ احْتَجَجْتُمْ فِيهِ لِأَنْفُسِكُمْ بِلَيْثٍ وَمَنْ هُوَ دُونَ لَيْثٍ، كَجَابِرٍ الْجُعْفِيِّ عَنِ الشَّعْبِيِّ «لَا يَؤُمَّنَّ أَحَدٌ بَعْدِي جَالِسًا» وَلَيْثٌ أَقْوَى مِنْ جَابِرٍ بِلَا شَكٍّ.

L41267 If they say: "The narrator of this report is Layth ibn Abi Sulaym, and he is not strong?" We say to them: Perhaps a report you have cited as evidence for yourselves relies on Layth or those below him in reliability, such as what is narrated by Jabir al-Ju'fi from al-Sha'bi: "No one should lead the prayer while sitting after me." Yet Layth is undoubtedly stronger than Jabir.

ثُمَّ نَظَرْنَا فِيمَا احْتَجَّ بِهِ أَبُو ثَوْرٍ فَوَجَدْنَا مِنْ حُجَّتِهِ أَنْ قَالَ: قَالَ اللَّهُ تَعَالَى {فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥] ؟ قُلْنَا: أَمَرَ اللَّهُ تَعَالَى بِالْمُخَالَفَةِ بَيْنَ حَدِّ الْأَمَةِ وَحَدِّ الْحُرَّةِ فِيمَا لَهُ نِصْفٌ، وَلَيْسَ ذَلِكَ إِلَّا الْجَلْدُ وَالتَّغْرِيبُ فَقَطْ، وَأَمَّا الرَّجْمُ فَلَا نِصْفَ لَهُ أَصْلًا، فَلَمْ يَكُنْ لِلرَّجْمِ فِي هَذِهِ الْآيَةِ دُخُولٌ أَصْلًا وَلَا ذِكْرٌ.

L41268 Then we examined the evidence presented by Abū Thawr and found among his arguments his statement: Allāh the Exalted said, *"But if they commit unlawful sexual intercourse after being married, then upon them is half the punishment prescribed for chaste free women"* [al-Nisāʾ 4:25]. We responded: Allāh the Exalted commanded differentiation between the punishment of the enslaved woman and the free woman in matters where half the punishment applies, and this pertains only to flogging and banishment. As for stoning, it has no half whatsoever. Thus stoning has no connection to this verse at all, nor is it mentioned therein.[63]

وَكَذَلِكَ لَمْ يَكُنْ لَهُ ذِكْرٌ فِي قَوْلِهِ تَعَالَى {الزَّانِيَةُ وَالزَّانِي} [النور: ٢] الْآيَةَ.

L41269 Similarly, there was no mention regarding him in the verse of the Most High: "The fornicatress and the fornicator" [24:2].[64]

وَوَجَدْنَا الرَّجْمَ قَدْ جَاءَتْ بِهِ سُنَّةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَنْ أُحْصِنَ.

L41270 And we found that stoning was established in the Sunnah of the Messenger of Allah (peace be upon him) for one who is married (muḥṣan).

وَكَذَلِكَ جَاءَ - عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَغَيْرِهِ، مِنَ الصَّحَابَةِ: الرَّجْمُ عَلَى مَنْ أُحْصِنَ جُمْلَةً، وَلَمْ يَخُصَّ حُرًّا مِنْ عَبْدٍ، وَلَا حُرَّةً مِنْ أَمَةٍ.

L41271 Similarly, it has been reported from 'Umar—may Allah be pleased with him—and other Companions that stoning is prescribed generally for a married

[63] **Qur'an references (L41268):** Qur'an 4:25 (An-Nisa).
[64] **Qur'an references (L41269):** Qur'an 24:2 (An-Nur).

person (muḥṣan), and they made no exception for a free man over a male slave, nor a free woman over a female slave.

L41272 Therefore, stoning is obligatory for every free, legally competent married person—whether a free man, a male slave, a free woman, or a female slave—by the universal ruling established in this matter, except that the flogging of the female slave is half that of the free woman, and her exile is half the duration of the free woman's.

فَوَجَبَ أَنْ يَكُونَ الرَّجْمُ وَاجِبًا عَلَى كُلِّ مَنْ أُحْصِنَ مِنْ حُرٍّ أَوْ عَبْدٍ، أَوْ حُرَّةٍ أَوْ أَمَةٍ، بِالْعُمُومِ الْوَارِدِ فِي ذَلِكَ، إِلَّا أَنَّ جَلْدَ الْأَمَةِ نِصْفُ جَلْدِ الْحُرَّةِ، وَنَفْيُهَا نِصْفُ أَمَدِ الْحُرَّةِ.

L41273–41274 Abū Muḥammad—may Allāh have mercy on him—said: We examined these two evidences and found them valid, since no authentic textual proof contradicts them. We then investigated this matter and found that the Messenger of Allāh—peace and blessings of Allāh be upon him—stated: "When a mukātab commits a ḥadd offense or becomes entitled to inheritance, he inherits according to the portion of his emancipation, and the ḥadd punishment is enforced upon him according to the portion of his emancipation." We have already mentioned this with its chain of transmission connected to it in the preceding adjacent chapter, making its repetition unnecessary.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي هَذَيْنِ الِاحْتِجَاجَيْنِ فَوَجَدْنَاهُمَا صَحِيحَيْنِ، إِذْ لَمْ يَرِدْ نَصٌّ صَحِيحٌ يُعَارِضُهُمَا - فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ «إِذَا أَصَابَ الْمُكَاتَبُ حَدًّا أَوْ مِيرَاثًا وَرِثَ بِحِسَابِ مَا عَتَقَ مِنْهُ، وَأُقِيمَ عَلَيْهِ الْحَدُّ بِحِسَابِ مَا عَتَقَ مِنْهُ» وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِي الْبَابِ الَّذِي قَبْلَ هَذَا مُتَّصِلًا بِهِ فَأَغْنَى عَنْ إِعَادَتِهِ.

L41275 The wording of the Messenger of Allah—peace and blessings be upon him—and his ruling in this report establish that the legal status of slaves regarding ḥadd punishments differs from that of free individuals as a whole. For if the rulings were the same, there would have been no meaning whatsoever to the Messenger of Allah's statement—peace and blessings be upon him—that "the ḥadd punishment is imposed upon him in accordance with the portion of him that has been freed," nor would the mukātab (a slave contracted for freedom) who has partially been freed be treated as if he were entirely free. This contradicts the ruling of the Messenger of Allah—peace and blessings be upon him.

فَاقْتَضَى لَفْظُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحُكْمُهُ فِي هَذَا الْخَبَرِ حُكْمَ الْمَمَالِيكِ فِي الْحَدِّ بِخِلَافِ حُكْمِ الْأَحْرَارِ جُمْلَةً إِذْ لَوْ كَانَ ذَلِكَ سَوَاءً لَمَا كَانَ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ «يُقَامَ عَلَيْهِ الْحَدُّ بِحِسَابِ مَا عَتَقَ مِنْهُ» مَعْنًى أَصْلًا، وَلَكَانَ الْمُكَاتَبُ الَّذِي عَتَقَ بَعْضُهُ كَأَنَّهُ حُرٌّ كُلُّهُ، هَذَا خِلَافُ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L41276 Abū Muḥammad—may Allāh have mercy on him—said: Since it is confirmed that the legal ruling concerning apostates in prescribed punishments differs from that governing free persons, there remain only two scenarios—no third exists—and one of them must apply. Either no prescribed punishment whatsoever applies to slaves, and this is invalid due to the evidence we also cited with its chain of transmission in the adjoining chapter. Its chain is: ʿAb-

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ قَدْ صَحَّ أَنَّ حُكْمَ أَهْلِ الرِّدَّةِ فِي الْحُدُودِ خِلَافُ حُكْمِ الْحُرِّ، فَلَيْسَ إِلَّا أَحَدُ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا، وَلَا بُدَّ مِنْ أَحَدِهِمَا: إِمَّا أَنْ لَا يَكُونَ عَلَى الْمَمَالِيكِ حَدٌّ أَصْلًا، وَهَذَا بَاطِلٌ بِمَا أَوْرَدْنَاهُ أَيْضًا بِإِسْنَادِهِ فِي الْبَابِ الْمُتَّصِلِ بِهَذَا

dullāh ibn Rabīʿ from Muḥammad ibn Muʿāwiyah from Aḥmad ibn Shuʿayb from ʿAbd al-Raḥmān ibn Muḥammad ibn Salām from Isḥāq ibn Yūsuf al-Azraq from Sufyān al-Thawrī from al-Aʿlā—Ibn ʿAbd al-Aʿlā al-Taghlibī—from Maysarah—Ibn Jamīlah—from ʿAlī ibn Abī Ṭālib, who reported that the Messenger of Allāh—peace and blessings be upon him—said: "Apply the prescribed punishments to those whom your right hands possess." This was a general principle requiring the implementation of prescribed punishments upon male and female slaves.

L41277–41279 Alternatively, that slaves have a prescribed punishment differing from the rulings applicable to free persons—and this is the correct position, since the other argument has been invalidated, leaving only this. The truth necessarily lies in one of the two positions—given the existence of the two textual proofs we mentioned—which obligate enforcing the prescribed punishments upon those whom our right hands possess, and that their punishments differ from those of free persons. Since this is undeniably obligatory, it becomes necessary to specify the punishment for slaves contrary to the rulings for free persons in matters of prescribed punishments. Thus, the consensus of those who uphold this position—the people of truth—is validated: that the punishment for slaves is half that of a free person. This constitutes sound evidence, alongside the definitive consensus encompassing all Muslims: that the punishment for male and female slaves is neither less nor more than half the punishment of a free person. No textual proof has ever stipulated this—thereby forming a validated, definitive consensus invalidating the opinion that the punishment for a slave... Whether the punishment for a male or female slave is less than half that of a free person or more than half that of a free person—is this nullified by the aforementioned texts? Abu Muhammad—may Allah have mercy on him—said: Were it not for the textual evidence from the Messenger of Allah—peace be upon him—establishing the enforcement of prescribed punishments upon those whom our right hands possess, these punishments would have been wholly waived for them. Since the prescribed punishments have been confirmed as applicable to them, it is impermissible to enforce upon them anything not mandated by a textual evidence or consensus. There exists neither textual evidence nor consensus

الْبَابِ وَإِسْنَادُهُ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ سَلَامٍ نا إِسْحَاقُ بْنُ يُوسُفَ الْأَزْرَقُ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الْأَعْلَى - هُوَ ابْنُ عَبْدِ الْأَعْلَى التَّغْلِبِيَّ - عَنْ مَيْسَرَةَ - هُوَ ابْنُ جَمِيلَةَ - عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَقِيمُوا الْحُدُودَ عَلَى مَا مَلَكَتْ أَيْمَانُكُمْ» فَكَانَ هَذَا عُمُومًا مُوجِبًا لِوُقُوعِ الْحُدُودِ عَلَى الْعَبِيدِ وَالْإِمَاءِ.

وَإِمَّا أَنْ يَكُونَ لِلْمَمَالِيكِ حَدٌّ مُخَالِفٌ لِحُكْمِ حُدُودِ الْأَحْرَارِ، وَهَذَا هُوَ الْحَقُّ، إذْ قَدْ بَطَلَ الْوَجْهُ الْآخَرُ وَلَمْ يَبْقَ إلَّا هَذَا، وَالْحَقُّ فِي أَحَدِهِمَا وَلَا بُدَّ - مَعَ وُرُودِ هَذَيْنِ النَّصَّيْنِ اللَّذَيْنِ ذَكَرْنَا - مِنْ وُجُوبِ إقَامَةِ الْحُدُودِ عَلَى مَا مَلَكَتْ أَيْمَانُنَا، وَأَنَّهُمْ فِي ذَلِكَ بِخِلَافِ حُدُودِ الْأَحْرَارِ، فَإِذْ قَدْ وَجَبَ هَذَا - بِلَا شَكٍّ - فَلَمْ يَكُنْ بُدٌّ مِنْ تَحْدِيدِ حَدِّ الْمَمَالِيكِ بِخِلَافِ حُكْمِ الْأَحْرَارِ فِي الْحُدُودِ، فَقَدْ صَحَّ إجْمَاعُ الْقَائِلِينَ بِهَذَا الْقَوْلِ - وَهُمْ أَهْلُ الْحَقِّ -: عَلَى أَنَّ الْمَمَالِيكَ فِي الْحَدِّ نِصْفُ حَدِّ الْحُرِّ، فَكَانَ هَذَا حُجَّةً صَحِيحَةً مَعَ صِحَّةِ الْإِجْمَاعِ الْمُتَيَقَّنِ عَلَى إطْبَاقِ جَمِيعِ أَهْلِ الْإِسْلَامِ: عَلَى أَنَّ حَدَّ الْعَبْدِ وَالْأَمَةِ لَيْسَ يَكُونُ أَقَلَّ مِنْ نِصْفِ حَدِّ الْحُرِّ، وَلَا أَكْثَرَ مِنْ نِصْفِ حَدِّ الْحُرِّ، وَلَمْ يَأْتِ بِهَذَا نَصٌّ قَطُّ - فَهَذَا إجْمَاعٌ صَحِيحٌ مُتَيَقَّنٌ عَلَى إبْطَالِ الْقَوْلِ بِأَنْ يَكُونَ حَدُّ الْمَمْلُوكِ أَوْ الْمَمْلُوكَةِ أَقَلَّ مِنْ نِصْفِ حَدِّ الْحُرِّ، أَوْ أَكْثَرَ مِنْ نِصْفِ حَدِّ الْحُرِّ - فَبَطَلَ بِالنُّصُوصِ الْمَذْكُورَةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَوْلَا نَصُّ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى إقَامَةِ الْحُدُودِ عَلَى مَا مَلَكَتْ أَيْمَانُنَا لَكَانَتْ الْحُدُودُ عَنْهُمْ سَاقِطَةً جُمْلَةً، فَإِذْ قَدْ صَحَّتْ الْحُدُودُ عَلَيْهِمْ فَلَا يَجُوزُ أَنْ يُقَامَ عَلَيْهِمْ مِنْهَا إلَّا مَا أَوْجَبَهُ عَلَيْهِمْ نَصٌّ أَوْ إجْمَاعٌ، وَلَا نَصَّ وَلَا إجْمَاعَ بِوُجُوبِ الرَّجْمِ عَلَيْهِمْ، وَلَا بِإِيجَابِ أَزْيَدَ مِنْ خَمْسِينَ جَلْدَةً وَنَفْيِ نِصْفِ سَنَةٍ، فَوَجَبَ

requiring stoning for them, nor imposing more than fifty lashes and exile for half a year. Therefore, it is obligatory to adhere to what the textual evidence and consensus have mandated and to waive what lacks textual evidence or consensus—and success is from Allah, the Exalted.

L41280 Abu Muhammad—may Allah have mercy on him—said: It is established by what we have mentioned that Allah's statement—the Exalted—{As for the fornicatress and the fornicator, strike each of them with a hundred lashes} [24:2], refers exclusively to free men and free women. Similarly, the statement of the Messenger of Allah—peace be upon him—"A virgin with a virgin is a hundred lashes and exile for a year, and a previously married person with a previously married person is a hundred lashes and stoning," was intended by him—peace be upon him—exclusively for free men and free women, neither male slaves nor female slaves.[65][66]

L41281 As for he who does not authenticate the ḥadīth we cited from the Messenger of Allah—peace and blessings be upon him—regarding "the ḥadd punishment being imposed on a mukātab slave in proportion to the degree of his emancipation," and who does not authenticate the ruling based on the statement of the Messenger of Allah—peace and blessings be upon him—"the virgin with a virgin: one hundred lashes and exile for a year, and the previously married with the previously married: one hundred lashes and stoning," and who relies solely on the ḥadīths concerning the stoning of Māʿiz, Al-Ghāmidiyyah, and Al-Juhaniyyah—may Allah be pleased with them—then he has no escape from the evidence presented by Abū Thawr and our companions. Moreover, we find absolutely no evidence for abolishing stoning in the case of a muḥṣan female slave or a muḥṣan male slave. If he resorts to analogy and says, "I analogize the male slave to the female slave," it is said to him: All analogy is entirely invalid. Even if analogy were valid, you would have no valid analogy to rely on for abolishing stoning at all, for the statement of Allah the Exalted, *"But if they commit adultery after attaining chastity, they shall suffer half the punishment prescribed for chaste free women"* (4:25), contains no explicit text or indication supporting the abolition of stoning

الْأَخْذُ بِمَا أَوْجَبَهُ النَّصُّ وَالْإِجْمَاعُ وَإِسْقَاطُ مَا لَا نَصَّ فِيهِ وَلَا إجْمَاعَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَصَحَّ بِمَا ذَكَرْنَا أَنَّ قَوْلَ اللَّهِ تَعَالَى {الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا} [النور: ٢] الْآيَةَ إنَّمَا عَنَى بِلَا شَكٍّ الْأَحْرَارَ وَالْحَرَائِرَ، وَكَذَلِكَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَنَفْيُ سَنَةٍ وَالثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَالرَّجْمُ» إنَّمَا عَنَى بِهِ - عَلَيْهِ السَّلَامُ - الْأَحْرَارَ وَالْحَرَائِرَ لَا الْعَبِيدَ وَلَا الْإِمَاءَ.

وَأَمَّا مَنْ لَمْ يُصَحِّحْ الْحَدِيثَ الَّذِي أَوْرَدْنَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَنْ «يُقَامُ الْحَدُّ عَلَى الْمُكَاتَبِ بِقَدْرِ مَا عَتَقَ» وَلَمْ يُصَحِّحْ الْحُكْمَ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ وَالثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَالرَّجْمُ» وَلَمْ يَعْتَمِدْ فِي الرَّجْمِ إلَّا عَلَى الْأَحَادِيثِ الْوَارِدَةِ فِي رَجْمِ مَاعِزٍ، وَالْغَامِدِيَّةِ، وَالْجُهَنِيَّةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَإِنَّهُ لَا مُخَلِّصَ لَهُمْ مِنْ دَلِيلِ أَبِي ثَوْرٍ وَأَصْحَابِنَا، وَلَا نَجِدُ أَلْبَتَّةَ دَلِيلًا عَلَى إسْقَاطِ الرَّجْمِ عَنْ الْأَمَةِ الْمُحْصَنَةِ وَالْعَبْدِ الْمُحْصَنِ؟ فَإِنْ رَجَعَ إلَى الْقِيَاسِ فَقَالَ: أَقِيسُ الْعَبْدَ عَلَى الْأَمَةِ؟ قِيلَ لَهُ: الْقِيَاسُ كُلُّهُ بَاطِلٌ، وَلَوْ كَانَ حَقًّا لَمَا كَانَ لَكُمْ هَاهُنَا وَجْهٌ مِنْ الْقِيَاسِ تَتَعَلَّقُونَ بِهِ فِي إسْقَاطِ الرَّجْمِ أَصْلًا، لِأَنَّ قَوْلَ اللَّهِ تَعَالَى {فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥] لَيْسَ فِيهِ نَصٌّ وَلَا دَلِيلٌ عَلَى إسْقَاطِ الرَّجْمِ عَنْهَا، وَلَا نَجِدُ دَلِيلًا عَلَى

[65] **Hadith references (L41280):** Sahih Muslim 1690a.
[66] **Qur'an references (L41280):** Qur'an 24:2 (An-Nur).

for them. We find no evidence whatsoever for abolishing it, especially those who claim that "her being muḥṣanah is defined by her being Muslim," which would also necessitate that every free Muslim woman must necessarily be considered muḥṣanah, even if she has never been married, since her iḥṣān is likewise equated with her Islam.[67]

L41282–41283 Among the absurd and untenable falsehoods is that a slave woman's Islam would constitute chastity for her, while a free woman's Islam would not constitute chastity. Since this conclusion is necessarily established, the aforementioned verse - Allah's statement *"If they attain chastity, then upon them, if they commit indecency, is half the punishment of the chaste women"* [4:25] - must refer to unmarried slave women and free women. This is because proponents of this doctrine restrict the term "chaste women" here solely to free women who have not married, maintaining that only such women have half the punishment relative to chaste women.[68]

L41284 As for stoning—which in their view is the punishment exclusively for married women, while other punishments exist for them according to their perspective—there is no mitigation for it. If this becomes binding upon them by the requirement of their doctrine, then it remains obligatory for the enslaved woman made chaste through marriage and the free woman made chaste through marriage to be subject to stoning. This obligation exists solely because the Prophet—peace and blessings of God be upon him and his family—stoned those who were muhsan (chaste and married). Success comes solely from God, the Most High.

L41285 A juristic case: A man and woman were discovered engaging in intercourse. They claimed marital status, but this is not legally recognized.

L41286 2211 - Issue: A woman and a man were found, with the man having intercourse with her. She said, "He is my husband," and he said, "She is my wife"—though this was not known. Abū Muḥammad—may Allāh have mercy

[67] **Qur'an references (L41281):** Qur'an 4:25 (An-Nisa).
[68] **Qur'an references (L41283):** Qur'an 4:25 (An-Nisa).

إِسْقَاطِه أَصْلًا، وَلَا سِيَّمَا مَنْ قَالَ: إِحْصَانُهَا هُوَ إِسْلَامُهَا، وَأَنَّهُ أَيْضًا يَلْزَمُهُ أَنْ تَكُونَ كُلُّ حُرَّةٍ مُسْلِمَةٍ مُحْصَنَةً وَلَا بُدَّ، وَإِنْ لَمْ تَتَزَوَّجْ قَطُّ، لِأَنَّ إِحْصَانَهَا أَيْضًا إِسْلَامُهَا.

وَمِنْ الْبَاطِلِ الْمُحَالِ أَنْ يَكُونَ إِسْلَامُ الْأَمَةِ إِحْصَانًا لَهَا، وَلَا يَكُونُ إِسْلَامُ الْحُرَّةِ إِحْصَانًا لَهَا، فَإِذَا وَجَبَ هَذَا وَلَا بُدَّ، فَوَاجِبٌ أَنْ تَكُونَ الْآيَةُ الْمَذْكُورَةُ، يَعْنِي قَوْله تَعَالَى {فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥] اللَّوَاتِي لَمْ يَتَزَوَّجْنَ مِنْ الْإِمَاءِ وَالْحَرَائِرِ، لِأَنَّ أَهْلَ هَذِهِ الْمَقَالَةِ لَا يَرَوْنَ الْمُحْصَنَاتِ هَاهُنَا إلَّا الْحَرَائِرَ اللَّوَاتِي لَمْ يَتَزَوَّجْنَ فَهُنَّ عِنْدَهُمْ اللَّوَاتِي لِعَذَابِهِنَّ نِصْفٌ.

وَأَمَّا الرَّجْمُ الَّذِي هُوَ عِنْدَهُمْ عَذَابُ الْمُتَزَوِّجَاتِ فَقَطْ عَذَابٌ عَلَيْهِنَّ عِنْدَهُمْ غَيْرُهُ، فَلَا نِصْفَ لَهُ، فَإِذَا لَزِمَهُمْ هَذَا وَاقْتَضَاهُ قَوْلُهُمْ، فَوَاجِبٌ أَنْ تَبْقَى الْأَمَةُ الْمُحْصَنَةُ بِالزَّوَاجِ وَالْحُرَّةُ الْمُحْصَنَةُ بِالزَّوَاجِ: عَلَى وُجُوبِ الرَّجْمِ الَّذِي إنَّمَا وَجَبَ عِنْدَهُمْ بِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَجَمَ مَنْ أُحْصِنَ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة وُجِدَتْ امْرَأَةٌ وَرَجُلٌ يَطَؤُهَا فادعيا الزَّوْجِيَّة وَذَلِكَ لَا يَعْرِف]

٢٢١١ - مَسْأَلَةٌ: وُجِدَتْ امْرَأَةٌ وَرَجُلٌ يَطَؤُهَا؟ فَقَالَتْ: هُوَ زَوْجِي وَقَالَ هُوَ: هِيَ زَوْجَتِي - وَذَلِكَ لَا يُعْرَفُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: لَا حَدَّ عَلَيْهِمَا كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ

أَصْبَغَ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا دَاوُد بْنُ يَزِيدَ الزَّعَاوِيُّ عَنْ أَبِيهِ أَنَّ رَجُلًا وَامْرَأَةً وُجِدَا فِي " حَرْبِ مِرْدَاسٍ " فَرُفِعَا إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَقَالَ: ابْنَةُ عَمِّي تَزَوَّجْتَهَا، فَقَالَ لَهَا عَلِيٌّ: مَا تَقُولِينَ؟ فَقَالَ لَهَا النَّاسُ: قُولِي نَعَمْ، فَقَالَتْ: نَعَمْ، فَدَرَأَ عَنْهُمَا.

on him—said: "People differed regarding this. A group said: 'No ḥadd punishment is imposed on them.'" Just as narrated by Muḥammad ibn Saʿīd ibn Nabāt, narrated by ʿAbdullāh ibn Naṣr, narrated by Qāsim ibn Aṣbagh, narrated by Mūsā ibn Muʿāwiyah, narrated by Wakīʿ, narrated by Dāwūd ibn Yazīd al-Zaʿāwī, from his father: A man and a woman were found during the battle of Mirdās and were brought to ʿAlī ibn Abī Ṭālib. The man said, "She is the daughter of my paternal uncle; I married her." ʿAlī asked her, "What do you say?" People urged her, "Say yes." She said, "Yes," so he averted the ḥadd punishment from them.

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ بُنْدَارٌ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ سُلَيْمَانَ أَنَّهُمَا قَالَا فِي الرَّجُلِ يُوجَدُ مَعَ الْمَرْأَةِ فَيَقُولُ: هِيَ امْرَأَتِي: أَنَّهُ لَا حَدَّ عَلَيْهِ - قَالَ شُعْبَةُ: فَذَكَرْتُ ذَلِكَ لِأَيُّوبَ السِّخْتِيَانِيِّ، فَقَالَ: ادْرَءُوا الْحُدُودَ مَا اسْتَطَعْتُمْ؟ .

L41287 Muhammad ibn Saʿid ibn Nabat narrated to us → Ahmad ibn ʿAwn Allah → Qasim ibn Asbagh → Muhammad ibn ʿAbd al-Salam al-Khushani → Muhammad ibn Bashshar Bundār → Muhammad ibn Jaʿfar Ghundar → Shuʿbah, from al-Hakam ibn ʿUtaybah and Hammad ibn Sulayman, that they both said regarding a man discovered (in seclusion) with a woman who claims, "She is my wife": There is no prescribed punishment upon him. Shuʿbah said: I mentioned that to Ayyub al-Sakhtiyānī, and he said: Avert the prescribed punishments as much as you are able.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ.

L41288 Abu Muhammad—may Allah have mercy on him—said: And by this position speak Abu Hanifah and al-Shafi'i.

وَقَالَتْ طَائِفَةٌ: عَلَيْهِمَا الْحَدُّ: كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنِ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي الرَّجُلِ يُوجَدُ مَعَ الْمَرْأَةِ فَيَقُولُ: هِيَ امْرَأَتِي، فَقَالَ إِبْرَاهِيمُ: إِنْ كَانَ كَمَا يَقُولُ لَمْ يُقَمْ عَلَى فَاجِرٍ حَدٌّ.

L41289–41291 A group said: The ḥadd punishment is upon both of them: As narrated to us by Muḥammad ibn Saʿīd ibn Nabāt, narrated to us by ʿAbdullāh ibn Naṣr, narrated to us by Qāsim ibn Aṣbagh, narrated to us by Ibn Waḍḍāḥ, narrated to us by Mūsā ibn Muʿāwiyah, narrated to us by Wakīʿ, from Sufyān al-Thawrī, from... Al-Mughīrah from Ibrāhīm al-Nakhaʿī regarding a man found with a woman, then he says: "She is my wife." Ibrāhīm said: "If it is as he claims, no ḥadd punishment is enforced upon the fornicator."

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ عَنِ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي الرَّجُلِ يُوجَدُ مَعَ الْمَرْأَةِ فَيَقُولُ: هِيَ امْرَأَتِي قَالَ: عَلَيْهِ الْحَدُّ.

L41292 Muhammad ibn Saʿīd ibn Nabāt narrated to us: Aḥmad ibn ʿAwn Allāh narrated to us: Qāsim ibn Aṣbagh narrated to us: Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us: Muḥammad ibn Bashshār narrated to us: Muḥammad ibn Jaʿfar narrated to us: Shuʿbah narrated from al-Mughīrah from Ibrāhīm al-Nakhaʿī concerning a man discovered with a woman who

claims, “She is my wife.” He stated: “The ḥadd punishment is obligatory upon him.”

L41293 Abdullah ibn Rabīʿ narrated to us: Ibn Mufarrij narrated to us, Qāsim ibn Aṣbagh narrated to us, Ibn Waḍḍāḥ narrated to us, Saḥnūn narrated to us, Ibn Wahb narrated from several authorities from Al-Awzāʿī, who said: I asked Ibn Shihāb about a man found with a woman, and he says: “I have married her.” He replied: “He is asked to provide evidence. If he brings his evidence, otherwise the prescribed punishment is applied to him.” This is the position upheld by Mālik and his companions.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ غَيْرِ وَاحِدٍ عَنْ الْأَوْزَاعِيِّ قَالَ: سَأَلْت ابْنَ شِهَابٍ عَنْ الرَّجُلِ يُوجَدُ مَعَ الْمَرْأَةِ؟ فَيَقُولُ: تَزَوَّجْتهَا فَقَالَ: يَسْأَلُ الْبَيِّنَةَ، فَإِنْ جَاءَ بِبَيِّنَتِهِ وَإِلَّا وَقَعَ عَلَيْهِ الْحَدُّ - وَبِهِ يَقُولُ، مَالِكٌ، وَأَصْحَابُهُ.

L41294 Uthman al-Batti said: If the two are unknown, no ḥadd is imposed upon them. If they are known, then if it was previously observed that he entered her and that was mentioned, no ḥadd is imposed upon him. But if none of that existed, then the ḥadd is imposed upon both of them.

وَقَالَ عُثْمَانُ الْبَتِّيُّ: إنْ كَانَا لَا يُعْرَفَانِ فَلَا حَدَّ عَلَيْهِمَا، فَإِنْ كَانَا مَعْرُوفَيْنِ فَإِنْ كَانَ يُرَى قَبْلَ ذَلِكَ يُدْخَلُ إلَيْهَا وَيُذْكَرُ ذَلِكَ، فَلَا حَدَّ عَلَيْهِ، وَإِنْ لَمْ يَكُنْ شَيْءٌ مِنْ ذَلِكَ فَعَلَيْهِمَا الْحَدُّ.

L41295 Abū Muḥammad—may Allāh have mercy on him—said: When they differed as we mentioned, it became obligatory to examine this matter. We found those who asserted that no ḥadd punishment applies to the two of them, arguing that it is an opinion transmitted from ʿAlī ibn Abī Ṭālib in the presence of the Companions, with none among them opposing him. Therefore, it is impermissible to contravene this ruling.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ: فَوَجَدْنَا مَنْ قَالَ: لَا حَدَّ عَلَيْهِمَا يَحْتَجُّ بِأَنْ قَالَ: هُوَ قَوْلٌ رُوِيَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ بِحَضْرَةِ الصَّحَابَةِ وَلَا مُخَالِفَ لَهُ مِنْهُمْ، فَلَا يَجُوزُ تَعَدِّيه.

L41296 They said: Ward off the hudud (prescribed punishments) by means of doubts, for this [dismissal] is necessitated by a strong doubt.

وَقَالُوا: ادْرَءُوا الْحُدُودَ بِالشُّبُهَاتِ وَأَوْجَبَ هَذِهِ شُبْهَةً قَوِيَّةً.

L41297 They said: There is no disagreement among any members of the Ummah that if a man were found having intercourse with a female slave known to belong to someone else, and the one whose ownership of her is recognized said to him: “He had indeed purchased her from me,” while the man likewise asserted this, and she herself confirmed it—there would be no ḥadd punishment upon either of them. Is this case analogous to that? Abū Muḥammad—may Allah have mercy on him—said: We know of no proof for their position except what we have mentioned. None of this constitutes proof for them. As for their claim that this is a statement narrated from ʿAlī, this provides

وَقَالُوا: لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ رَجُلًا لَوْ وُجِدَ يَطَأُ أَمَةً مَعْرُوفَةً لِغَيْرِهِ فَقَالَ الَّذِي عُرِفَ مِلْكُهَا لَهُ: قَدْ كَانَ اشْتَرَاهَا مِنِّي، وَقَالَ هُوَ كَذَلِكَ، وَأَقَرَّتْ هِيَ بِذَلِكَ: أَنَّهُ لَا حَدَّ عَلَيْهِمَا - فَهَذَا مِثْلُهُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ مَا ذَكَرْنَا، وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ: أَمَّا قَوْلُهُمْ: إنَّهُ قَوْلٌ رُوِيَ عَنْ عَلِيٍّ، فَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَذَا لَا يَلْزَمُنَا.

no proof for them, for no proof lies in anyone apart from the Messenger of Allah—peace and blessings be upon him. Thus, this does not obligate us.

L41298–41300 As for their statement, "Ward off the hudud as much as possible," the invalidity of this assertion has been firmly established, and that it has no... It is permissible to avert a prescribed punishment due to legal doubt, but not to implement it based on doubt in the divine law of Allah the Exalted. Verily, it is solely the truth and absolute certainty. The mere fact that this statement is not found in the Quran or Sunnah suffices to invalidate the claim of those who say "Avert the prescribed punishments due to doubts." The Quran and Sunnah instead prohibit [the spilling of] a Muslim's blood and violation of his bodily integrity until a prescribed punishment from Allah the Exalted is proven against him. Once proven, it becomes entirely impermissible to avert it, and thus [one] is disobedient to Allah the Exalted.

L41301 As for their analogy comparing this to a known female slave belonging to a man—where another man is found with her claiming, "She has come under my ownership," while her master asserts the same claim—and their appeal to juristic consensus in this matter: this constitutes a claim based on conjecture and is invalid. We have not found Malik's well-known ruling regarding someone against whom evidence is established for taking property stealthily from its secured place, who then alleges that the owner authorized this or gifted it, even if the owner acknowledges the claim—that such a plea is disregarded, and his hand must inevitably be amputated. Abu Muhammad (may Allah have mercy on him) said: Our position is that if a man is found with a woman he has had intercourse with, and evidence establishes the act, and he claims she is his wife or female slave—which she corroborates—then if they are strangers or known individuals, no penalty applies to them. They are neither questioned nor investigated, nor are they scrutinized about anything. This is because the consensus—reliably transmitted by trustworthy narrators—confirms that people migrated to Allah's Messenger (peace and blessings be upon him) individually and in groups from Yemen's farthest regions and all Arab lands, bringing their families, wives, female slaves, and male slaves. None were barred from claiming a woman as his wife or slave, nor was anyone compelled to produce evidence for such a claim.

وَأَمَّا قَوْلُهُمْ: " ادْرَءُوا الْحُدُودَ مَا أَمْكَنَكُمْ " فَقَدْ ثَبَتَ بُطْلَانُ هَذَا الْقَوْلِ، وَأَنَّهُ لَا يَحِلُّ دَرْءُ حَدٍّ بِشُبْهَةٍ وَلَا إقَامَتُهُ بِشُبْهَةٍ فِي دِينِ اللَّهِ تَعَالَى، وَإِنَّمَا هُوَ الْحَقُّ وَالْيَقِينُ فَقَطْ، وَيَكْفِي مِنْ بُطْلَانِ قَوْلِ مَنْ قَالَ " ادْرَءُوا الْحُدُودَ بِالشُّبُهَاتِ " أَنَّهُ قَوْلٌ لَمْ يَأْتِ بِهِ قُرْآنٌ وَلَا سُنَّةٌ - وَإِنَّمَا جَاءَ الْقُرْآنُ وَالسُّنَّةُ بِتَحْرِيمِ دَمِ الْمُسْلِمِ وَبَشَرَتِهِ حَتَّى يَثْبُتَ عَلَيْهِ حَدٌّ مِنْ حُدُودِ اللَّهِ تَعَالَى، فَإِذَا ثَبَتَ لَمْ يَحِلَّ دَرْؤُهُ أَصْلًا، فَيَكُونُ عَاصِيًا لِلَّهِ تَعَالَى.

وَأَمَّا قَوْلُهُ فِي تَنْظِيرِهِمْ ذَلِكَ بِالْأَمَةِ الْمَعْرُوفَةِ لِإِنْسَانٍ فَيُوجَدُ مَعَهَا رَجُلٌ فَيَقُولُ: قَدْ صَارَتْ إلَيَّ وَمَلَكْتُهَا، وَيَقُولُ سَيِّدُهَا بِذَلِكَ، وَدَعْوَاهُمْ الْإِجْمَاعَ فِي ذَلِكَ: قَوْلٌ بِالظَّنِّ لَا يَصِحُّ، وَمَا عَهِدْنَا قَوْلَ مَالِكٍ الْمَشْهُورِ فِيمَنْ قَامَتْ عَلَيْهِ بَيِّنَةٌ بِأَنَّهُ أَخْرَجَ مِنْ حِرْزِهِ مَالًا مُسْتَتِرًا بِذَلِكَ، فَادَّعَى أَنَّ صَاحِبَ ذَلِكَ الشَّيْءِ أَمَرَهُ بِذَلِكَ، أَوْ أَنَّهُ وَهَبَهُ، وَأَقَرَّ صَاحِبُ الْمَالِ بِذَلِكَ: بِأَنَّهُ لَا يَلْتَفِتُ إلَى ذَلِكَ: بَلْ تُقْطَعُ يَدُهُ وَلَا بُدَّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالَّذِي نَقُولُ بِهِ: أَنَّ مَنْ وُجِدَ مَعَ امْرَأَةٍ يَطَؤُهَا وَقَامَتْ الْبَيِّنَةُ بِالْوَطْءِ، فَقَالَ هُوَ: إنَّهَا امْرَأَتِي، أَوْ قَالَ: أَمَتِي، فَصَدَّقَتْهُ فِي ذَلِكَ، فَإِنْ كَانَا غَرِيبَيْنِ، أَوْ يُعْرَفَانِ، فَلَا شَيْءَ عَلَيْهِمَا، وَلَا يُعْرَضُ لَهُمَا وَلَا يُكْشَفَانِ عَنْ شَيْءٍ، لِأَنَّ الْإِجْمَاعَ قَدْ صَحَّ بِنَقْلِ الْكَوَافِّ: أَنَّ النَّاسَ كَانُوا يُهَاجِرُونَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَفْذَاذًا وَمُجْتَمِعِينَ، مِنْ أَقَاصِي الْيَمَنِ، وَمِنْ جَمِيعِ بِلَادِ الْعَرَبِ - بِأَهْلِيهِمْ وَنِسَائِهِمْ وَإِمَائِهِمْ

وَعَبِيدِهِمْ - فَمَا حِيلَ بَيْنَ أَحَدٍ وَبَيْنَ مَنْ زَعَمَ أَنَّهَا امْرَأَتُهُ أَوْ أَمَتُهُ، وَلَا كُلِّفَ أَحَدٌ عَلَى ذَلِكَ بَيِّنَةً.

L41302–41304 ثُمَّ عَلَى هَذَا إجْمَاعُ جَمِيعِ أَهْلِ الْإِسْلَامِ، وَجَمِيعِ أَهْلِ الْأَرْضِ مِنْ عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِلَى يَوْمِنَا هَذَا لَا يَزَالُ النَّاسُ يَرْحَلُونَ بِأَهْلِيهِمْ وَإِمَائِهِمْ وَرَقِيقِهِمْ، وَلَا يُكَلَّفُ أَحَدٌ مِنْهُمْ بَيِّنَةً عَلَى ذَلِكَ، بَلْ تُصَدَّقُ أَقْوَالُهُمْ فِي ذَلِكَ - مُسْلِمِينَ كَانُوا أَوْ كُفَّارًا - فَإِذْ قَدْ صَحَّ النَّصُّ بِهَذَا وَالْإِجْمَاعُ فَلَا يَجُوزُ مُخَالَفَةُ ذَلِكَ، فَإِنْ كَانَتْ مَعْرُوفَةً فِي الْبَلَدِ، وَمَعْرُوفٌ أَنَّهُ لَا زَوْجَ لَهَا، فَإِنْ أَمْكَنَ مَا يَقُولُ، فَلَا شَيْءَ عَلَيْهِمَا، لِأَنَّ أَصْلَ دِمَائِهِمَا وَأَبْشَارِهِمَا عَلَى التَّحْرِيمِ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَجُوزُ إبَاحَةُ مَا حَرَّمَ اللَّهُ تَعَالَى إلَّا بِيَقِينٍ لَا شَكَّ فِيهِ - وَإِنْ كَانَ كَذِبُهُمَا فِي ذَلِكَ مُتَيَقَّنًا فَالْحَدُّ وَاجِبٌ عَلَيْهِمَا - وَإِنْ قَالَ: هِيَ أَمَتِي، وَصَدَّقَهُ صَاحِبُهَا الَّذِي عُرِفَ مِلْكُهَا لَهُ، وَأَقَرَّ أَنَّهُ قَدْ كَانَ وَهَبَهَا لَهُ، أَوْ كَانَ بَاعَهَا مِنْهُ: صُدِّقَ وَلَا شَيْءَ عَلَيْهِمَا فِي ذَلِكَ، فَإِنْ كَذَّبَهُ حُدَّ، إلَّا أَنْ يَأْتِيَ بِبَيِّنَةٍ عَلَى صِحَّةِ دَعْوَاهُ، فَلَوْ قَالَ: هِيَ أَمَتِي، وَقَالَتْ هِيَ: بَلْ أَنَا زَوْجَتُهُ، أَوْ قَالَ: هِيَ زَوْجَتِي، وَقَالَتْ هِيَ: بَلْ أَنَا أَمَتُهُ، أَوْ قَالَتْ: بَلْ أُمُّ وَلَدِهِ - فَقَدْ اتَّفَقَا عَلَى صِحَّةِ الْفِرَاشِ فَلَا حَدَّ فِي ذَلِكَ، وَهِيَ عَلَى الْحُرِّيَّةِ حَتَّى يُقِيمَ هُوَ بَيِّنَةً بِمِلْكِهِ لَهَا، فَإِنْ لَمْ يَفْعَلْ حَلَفَ لَهَا فِيمَا يَدَّعِيهِ مِنْ الزَّوْجِيَّةِ، وَفُرِّقَ بَيْنَهُمَا، لِأَنَّ الْمِلْكَ قَدْ بَطَلَ إذَا لَمْ تَقُمْ بَيِّنَةٌ، وَالنَّاسُ عَلَى الْحُرِّيَّةِ حَتَّى يَصِحَّ الرِّقُّ، وَالزَّوْجِيَّةُ لَمْ تَثْبُتْ - لَا بِإِقْرَارِهِمَا وَلَا بِبَيِّنَةٍ - وَإِنَّمَا يُحْكَمُ عَلَيْهِمَا مِنْ الْآنَ، وَأَمَّا إذَا كَانَتْ أَمَةً مَعْرُوفَةً لِإِنْسَانٍ، فَأَنْكَرَ سَيِّدُهَا خُرُوجَهَا عَنْ مِلْكِهِ

Then, upon this is the consensus of all people of Islam and all inhabitants of the earth from the era of Allah's Messenger—peace and blessings be upon him—until our present day. People continually journey with their families, female slaves, and slaves, none being obligated to produce evidence for this. Rather, their statements are accepted in this matter—whether they are Muslims or unbelievers. Since the textual proof and consensus have been firmly established, opposing this is impermissible. If she is known in the locality, and it is established that she has no husband—if his claim is feasible—no penalty falls upon them. This is because the foundational principle governing their blood and bodies is inviolability, per the statement of Allah's Messenger—peace and blessings be upon him: "Your blood, your wealth, your honor, and your bodies are inviolable to you." Thus, it is impermissible to legitimize what Allah the Exalted has forbidden except through indubitable certainty. If their falsehood in this matter is conclusively proven, the ḥadd punishment becomes obligatory upon them. If he states, "She is my female slave," and her owner confirms it by acknowledging having gifted her to him or sold her to him, his testimony is accepted with no penalty upon them. Should the owner refute his assertion, the ḥadd is imposed unless he produces evidence substantiating his claim. Were he to say... She is my slave-girl, while she says: "Rather, I am his wife," or he says: "She is my wife," while she says: "Rather, I am his slave-girl," or she says: "Rather, I am his umm walad" - they agree upon the lawfulness of cohabitation, so no hadd penalty applies. She remains presumed free until he presents evidence of his ownership over her. If he fails to do so, he must swear an oath regarding his claim of marriage, and they are separated. Ownership becomes invalid without evidence, and people are presumed free until valid enslavement is established. Marriage remains unproven - neither by their mutual admission nor by evidence - with judgment applied from now. If she is a known slave belonging to someone else, and her master denies her transfer from his ownership to the man found with her, the hadd penalty applies to her and the man unless he

presents evidence. The man may compel her master to swear an oath, and this is obligatory.

إِلَى الَّذِي وُجِدَ مَعَهَا، فَالْحَدُّ عَلَيْهَا وَعَلَى الَّذِي وُجِدَ مَعَهَا، إِلَّا أَنْ يَأْتِيَ بِبَيِّنَةٍ عَلَى ذَلِكَ، وَلَهُ عَلَى سَيِّدِهَا الْيَمِينُ وَلَا بُدَّ.

A legal question concerning a man found in seclusion with a woman when her father or brother affirmed the validity of marriage on his behalf.

[مَسْأَلَةٌ فِيمَنْ وُجِدَ مَعَ امْرَأَةٍ فَشَهِدَ لَهُ أَبُوهَا أَوْ أَخُوهَا بِالزَّوْجِيَّةِ]

Abū Muḥammad—may God have mercy on him—said: If a man—whether known or unknown—is found having intercourse with a known woman, and both he and she claim marriage, and her father or brother testifies to this on their behalf, then Mālik said: The ḥadd punishment applies to them. Our companions said: If the two who testified for them are upright, the marriage contract is valid, and the ḥadd punishment is nullified—and this is the position we adopt. If they are not upright, the ḥadd punishment applies to them unless there is clear evidence or public acknowledgment of the marriage's validity. For certainty has been established that they are not spouses and that she is forbidden to him. Thus, the prohibition cannot transition to permissibility, nor can their spousal status be recognized except through certainty derived from clear evidence or public acknowledgment.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَوْ وُجِدَ يَطَأُ امْرَأَةً مَعْرُوفَةً - وَهُوَ مَجْهُولٌ أَوْ مَعْرُوفٌ - فَادَّعَى هُوَ وَهِيَ الزَّوْجِيَّةَ، وَشَهِدَ لَهُمَا بِذَلِكَ أَبُوهَا أَوْ أَخُوهَا فَإِنَّ مَالِكًا قَالَ: عَلَيْهِمَا الْحَدُّ، وَقَالَ أَصْحَابُنَا: إنْ كَانَ اللَّذَانِ شَهِدَا لَهُمَا عَدْلَيْنِ صَحَّ الْعَقْدُ، وَبَطَلَ الْحَدُّ - وَبِهَذَا نَأْخُذُ، فَإِنْ لَمْ يَكُونَا عَدْلَيْنِ، فَالْحَدُّ عَلَيْهِمَا مَا لَمْ يَكُنْ عَلَى صِحَّةِ النِّكَاحِ بَيِّنَةٌ، أَوْ اسْتِفَاضَةٌ، لِأَنَّ الْيَقِينَ صَحَّ أَنَّهُمَا غَيْرُ زَوْجَيْنِ، وَأَنَّهَا حَرَامٌ عَلَيْهِ، فَلَا يَنْتَقِلُ التَّحْرِيمُ إلَى التَّحْلِيلِ، وَلَا يَنْتَقِلَانِ إلَى حُكْمِ الزَّوْجِيَّةِ إلَّا بِيَقِينٍ مِنْ بَيِّنَةٍ أَوْ اسْتِفَاضَةٍ.

[Issue: Should the Imam and others pray the funeral prayer over the stoned individual or not?]

[مَسْأَلَةٌ هَلْ يُصَلِّي الْإِمَامُ وَغَيْرُهُ عَلَى الْمَرْجُومِ أَمْ لَا]

Issue 2213: Should the Imam and others pray over one who has been stoned or not? Abu Muhammad—may Allah have mercy on him—said: From Abdullah ibn Yusuf, from Ahmad ibn Fath, from Abdul Wahhab ibn Isa, from Ahmad ibn Muhammad, from Ahmad ibn Ali, from Muslim ibn Al-Hajjaj, from Muhammad ibn Al-Muthanna, from Abdul A'la, from Dawud, from Abu Nadrah, from Abu Sa'id Al-Khudri: A man from Aslam named Ma'iz ibn Malik—whom the Messenger of Allah (peace be upon him) stoned—then Abu Sa'id mentioned the full account of the hadith. The Messenger of Allah (peace be upon him) stood to deliver an evening sermon and said: "Whenever we embark on expeditions in Allah's cause, does a man shirk [his duty] and stay behind among our families with a bleating like the bleating of a he-goat?

٢٢١٣ - مَسْأَلَةٌ: هَلْ يُصَلِّي الْإِمَامُ وَغَيْرُهُ عَلَى الْمَرْجُومِ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الْأَعْلَى نا دَاوُد عَنْ أَبِي نَضْرَةَ «عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّ رَجُلًا مِنْ أَسْلَمَ يُقَالُ لَهُ مَاعِزُ بْنُ مَالِكٍ رَجَمَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ الْحَدِيثَ - ثُمَّ قَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَطِيبًا مِنْ الْعَشِيِّ فَقَالَ: أَوَكُلَّمَا انْطَلَقْنَا غُزَاةً فِي سَبِيلِ اللَّهِ تَخَلَّفَ رَجُلٌ فِي عِيَالِنَا لَهُ

I swear, if I am brought any man who does this, I will punish him severely." He neither sought forgiveness for him nor cursed him.[69]

L41309–41311 Narrated to us Hammam from Ibn Mufarrij from Ibn Al-Aʿrabī from Al-Dabarī from ʿAbd Al-Razzāq from Ibn Jurayj. Abdullah ibn Abi Bakr informed me; he was informed by Ayyub from Abu Umamah ibn Sahl ibn Hunayf al-Ansari that the Messenger of Allah—peace and blessings be upon him—prayed the Dhuhr prayer on the day he ordered Maʿiz to be stoned. He prolonged the first two rak'ahs of Dhuhr until the people were nearly unable to endure due to the prolonged standing. When he concluded, he ordered Maʿiz to be stoned. He was not killed until Umar ibn al-Khattab struck him with a camel's jawbone, hitting his head and killing him. As his soul departed, a man asked, "Will you pray over him, O Messenger of Allah?" He replied, "No." The next day, he prayed Dhuhr and prolonged the first two rak'ahs as he had done the day before—or he delayed due to matters. When he concluded, he said, "Pray over your companion." So the Prophet—peace be upon him—and the people prayed over him.

L41312 Hammam narrated to us, Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabari narrated to us, 'Abd al-Razzaq narrated from Ma'mar from al-Zuhri from Abu Salama from Jabir ibn 'Abd Allah: "A man from Aslam came to the Prophet — peace and blessings be upon him — and confessed to adultery. The Prophet turned away — and he related the hadith, which included — The Prophet — peace and blessings be upon him — ordered him to be stoned at the Musalla. When the stones made him stumble, he fled but was overtaken and stoned until he died. The Prophet — peace and blessings be upon him — spoke favorably of him but did not perform the funeral prayer over him."

L41313 Abu Muhammad—may Allah have mercy on him—said: A group of people adopted this view and stated: "The Imam does not pray over them, but others besides the Imam do." Others held the opinion that the Imam prays over the

نَبِيبٌ كَنَبِيبِ التَّيْسِ، عَلَى أَنْ لَا أُوتَى بِرَجُلٍ فَعَلَ ذَلِكَ إِلَّا نَكَّلْتُ بِهِ قَالَ: فَمَا اسْتَغْفَرَ لَهُ وَلَا سَبَّهُ» .

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ أَبِي بَكْرٍ أَخْبَرَنِي أَيُّوبُ عَنْ أَبِي أُمَامَةَ بْنِ سَهْلِ بْنِ حُنَيْفٍ الْأَنْصَارِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى الظُّهْرَ يَوْمَ أَمَرَ بِمَاعِزٍ يُرْجَمُ فَطَوَّلَ الْأُولَيَيْنِ مِنْ الظُّهْرِ حَتَّى كَادَ النَّاسُ يَعْجِزُونَ عَنْهَا مِنْ طُولِ الْقِيَامِ، فَلَمَّا انْصَرَفَ أَمَرَ بِهِ فَرُجِمَ، فَلَمْ يُقْتَلْ حَتَّى رَمَاهُ عُمَرُ بْنُ الْخَطَّابِ بِلَحْيِ بَعِيرٍ فَأَصَابَ رَأْسَهُ فَقَتَلَهُ، فَقَالَ رَجُلٌ لِمَاعِزٍ حِينَ فَاضَتْ نَفْسُهُ: أَتُصَلِّي عَلَيْهِ يَا رَسُولَ اللَّهِ؟ قَالَ: لَا، فَلَمَّا كَانَ الْغَدُ صَلَّى الظُّهْرَ فَطَوَّلَ الرَّكْعَتَيْنِ الْأُولَتَيْنِ كَمَا طَوَّلَهُمَا بِالْأَمْسِ، أَوْ أَخَّرَ بِأَشْيَاءَ، فَلَمَّا انْصَرَفَ قَالَ: صَلُّوا عَلَى صَاحِبِكُمْ فَصَلَّى عَلَيْهِ النَّبِيُّ - عَلَيْهِ السَّلَامُ - وَالنَّاسُ» .

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ عَنْ جَابِرِ بْنَ عَبْدِ اللَّهِ «أَنَّ رَجُلًا مِنْ أَسْلَمَ جَاءَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاعْتَرَفَ بِالزِّنَى فَأَعْرَضَ - فَذَكَرَ الْحَدِيثَ، وَفِيهِ - فَأَمَرَ بِهِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرُجِمَ بِالْمُصَلَّى، فَلَمَّا أَذْلَقَتْهُ الْحِجَارَةُ فَرَّ فَأُدْرِكَ فَرُجِمَ حَتَّى مَاتَ، فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْرًا وَلَمْ يُصَلِّ عَلَيْهِ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَذَهَبَ إلَى هَذَا قَوْمٌ فَقَالُوا: لَا يُصَلِّي عَلَيْهِ الْإِمَامُ وَيُصَلِّي عَلَيْهِ غَيْرُهُ - وَذَهَبَ آخَرُونَ إلَى أَنَّ الْإِمَامَ يُصَلِّي عَلَى الْمَرْجُومِ وَالْمَرْجُومَةِ كَسَائِرِ الْمَوْتَى وَلَا فَرْقَ.

[69] **Hadith references (L41308):** Sahih Muslim 1694a.

stoned man and stoned woman just as he prays over all other deceased, without any distinction.

L41314 We have been narrated through the chain of al-Bukhārī: Mahmūd narrated to us, ʿAbd al-Razzāq narrated to us, Maʿmar narrated to us from al-Zuhrī from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf from Jābir, who said: "A man from the tribe of Aslam came to the Prophet—peace and blessings of Allāh be upon him—and confessed to committing adultery. The Prophet turned away from him until he testified against himself four times." He mentioned the ḥadīth, and in it: "The Prophet ordered him to be stoned at the muṣallā. When the stones made him slip, he fled but was caught and stoned until he died. The Prophet—peace and blessings of Allāh be upon him—spoke well of him and prayed over him."

L41315 Abū Muḥammad—may Allāh have mercy on him—said: This is among the matters in which Maḥmūd ibn Ghaylān and Isḥāq ibn Ibrāhīm al-Dabariyy differed from ʿAbd al-Razzāq. Al-Dabariyy's report from him states, "He did not pray over him," while Maḥmūd's report states, "He prayed over him." Allāh knows best which of the two erred.

L41316–41318 Through Muslim's transmission: Muḥammad ibn ʿAbd Allāh ibn Numayr reported to us, my father reported to us, ʿAbd Allāh ibn Buraidah reported to us from his father. He mentioned the hadith of Al-Ghamidiyya: the Messenger of Allah (peace be upon him) commanded the people to stone her. Then he commanded concerning her, prayed over her, and she was buried.

L41319 From the narration of Muslim: Abu Ghassān al-Mismaʿī narrated to us from Muʿādh—meaning Ibn Hāshim al-Dastuwāʾī—from his father, from Yaḥyā ibn Abī Kathīr, from Abū Qilābah, that Abū al-Muhallab narrated to him from ʿImrān ibn al-Ḥuṣayn, "A woman from Juhaynah came to the Prophet of Allah—peace be upon him—while she was pregnant from fornication," and he mentioned the ḥadīth—in which it states: "The Messenger of Allah—peace be upon him—ordered her to be stoned, so she was stoned. Then he performed the funeral prayer over her. ʿUmar ibn al-Khaṭṭāb said to him: 'Do you pray over her, O Prophet of Allah, when she committed unlawful intercourse?' He replied: 'She repented so sincerely that if her repentance were distributed

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مَحْمُودٌ نا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ جَابِرٍ قَالَ «إِنَّ رَجُلًا مِنْ أَسْلَمَ جَاءَ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاعْتَرَفَ بِالزِّنَى فَأَعْرَضَ عَنْهُ حَتَّى شَهِدَ عَلَى نَفْسِهِ أَرْبَعَ مَرَّاتٍ - فَذَكَرَ الْحَدِيثَ وَفِيهِ - فَأَمَرَ بِهِ فَرُجِمَ بِالْمُصَلَّى فَلَمَّا أَذْلَقَتْهُ الْحِجَارَةُ فَرَّ فَأُدْرِكَ فَرُجِمَ حَتَّى مَاتَ، فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْرًا وَصَلَّى عَلَيْهِ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا مِمَّا اخْتَلَفَ فِيهِ مَحْمُودُ بْنُ غَيْلَانَ، وَإِسْحَاقُ بْنُ إبْرَاهِيمَ الدَّبَرِيُّ عَلَى عَبْدِ الرَّزَّاقِ، فَرِوَايَةُ الدَّبَرِيِّ عَنْهُ فِي هَذَا الْخَبَرِ " وَلَمْ يُصَلِّ عَلَيْهِ " وَرِوَايَةُ مَحْمُودٍ عَنْهُ فِي هَذَا الْخَبَرِ " وَصَلَّى عَلَيْهِ " فَاَللَّهُ أَعْلَمُ أَيُّهُمَا وَهِمَ؟

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ نا أَبِي نا عَبْدُ اللَّهِ بْنُ بُرَيْدَةَ عَنْ أَبِيهِ فَذَكَرَ حَدِيثَ «الْغَامِدِيَّةِ وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ النَّاسَ فَرَجَمُوهَا، ثُمَّ أَمَرَ بِهَا فَصَلَّى عَلَيْهَا وَدُفِنَتْ» .

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو غَسَّانَ الْمِسْمَعِيُّ نا مُعَاذٌ - يَعْنِي ابْنَ هَاشِمٍ الدَّسْتُوَائِيَّ - نِي أَبِي عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ نِي أَبُو قِلَابَةَ أَنَّ أَبَا الْمُهَلَّبِ حَدَّثَهُ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ «أَنَّ امْرَأَةً مِنْ جُهَيْنَةَ أَتَتْ نَبِيَّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهِيَ حُبْلَى مِنْ الزِّنَى وَذَكَرَ الْحَدِيثَ - وَفِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِهَا فَرُجِمَتْ ثُمَّ صَلَّى عَلَيْهَا، فَقَالَ لَهُ عُمَرُ بْنُ الْخَطَّابِ: أَتُصَلِّي عَلَيْهَا يَا نَبِيَّ اللَّهِ وَقَدْ زَنَتْ؟ قَالَ: لَقَدْ تَابَتْ تَوْبَةً لَوْ

among seventy of the people of Medina, it would suffice them. Can you find anything better than her having sacrificed her life generously for Allah?'"

قُسِمَتْ بَيْنَ سَبْعِينَ مِنْ أَهْلِ الْمَدِينَةِ لَوَسِعَتْهُمْ، وَهَلْ وَجَدْتَ بِأَفْضَلَ مِنْ أَنْ جَادَتْ بِنَفْسِهَا لِلَّهِ؟» .

L41320 In these narrations, there is the funeral prayer of the Messenger of Allah over the Juhayniyyah woman by himself without any disagreement, his command to perform the funeral prayer over the Ghamidiyyah woman without any disagreement, and his funeral prayer over Ma'iz—may Allah be pleased with him—with disagreement. These narrations are of the highest authenticity—and this is the view of Ali ibn Abi Talib—may Allah be pleased with him—when Shurahah was stoned, they said: "What should we do with her?" He replied: "Treat her as you would treat your women who die in your homes." Abu Muhammad—may Allah have mercy on him—said: "What we do with our women when they die in our homes is to wash them, shroud them, and have the Imam and others perform the funeral prayer over them—a matter on which there is no disagreement from anyone of the Ummah—and success is from Allah, the Most High."

فَفِي هَذِهِ الْآثَارِ صَلَاةُ رَسُولِ اللَّهِ عَلَى الْجُهَيْنِيَّةِ بِنَفْسِهِ بِلَا خِلَافٍ، وَأَمْرُهُ بِالصَّلَاةِ عَلَى الْغَامِدِيَّةِ بِلَا خِلَافٍ، وَصَلَاتُهُ عَلَى مَاعِزٍ - رَضِيَ اللَّهُ عَنْهُ - بِاخْتِلَافٍ، وَهَذِهِ الْآثَارُ فِي غَايَةِ الصِّحَّةِ - وَبِهَذَا يَقُولُ عَلِيُّ بْنُ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - رُجِمَ شُرَاحَةُ فَقَالُوا: كَيْفَ نَصْنَعُ بِهَا؟ قَالَ: اصْنَعُوا بِهَا كَمَا تَصْنَعُونَ بِنِسَائِكُمْ إذَا مُتْنَ فِي بُيُوتِكُمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالَّذِي نَصْنَعُ بِنِسَائِنَا إذَا مُتْنَ فِي بُيُوتِنَا هُوَ أَنْ يُغَسَّلْنَ وَيُكَفَّنَ وَيُصَلِّيَ عَلَيْهِنَّ الْإِمَامُ وَغَيْرُهُ - هَذَا مَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ مِنْ الْأُمَّةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فِي امْرَأَةٍ أحلت نَفْسَهَا أَوْ دلست بنفسها لأجنبي أَوْ تَزَوَّجَ رَجُل بخامسة]

A legal issue concerning a woman who contracted herself, or a woman who deceived a non-mahram by herself, or a man who married a fifth wife.

L41322–41324 2214 - Issue: Concerning a woman who permits herself unlawfully, a man who marries a fifth wife, a woman who conceals her defects, or one who deceitfully offers herself to a stranger. Abu Muhammad—may Allah have mercy on him—said: Abdullah ibn Rabi' narrated to us: Ibn Mufarrij narrated to us; Qasim ibn Asbagh narrated to us; Ibn Waddah narrated to us; Sahnun narrated to us; Ibn Wahb narrated from Yunus ibn Yazid from Ibn Shihab, who said regarding a woman who tells a man, "I am lawful for you," and he then touches her based on that, resulting in a child: the man is to be stoned, and the child does not inherit from him. Abu Muhammad said: No one may permit what Allah the Exalted has forbidden. Her self-permission is void—this is sheer adultery. They incur both stoning and flogging if they are legally protected (muḥṣan), and no child is ever legally affiliated in such a case if—No marriage contract existed. If both parties were unaware [of the ruling],

٢٢١٤ - مَسْأَلَةٌ: فِي امْرَأَةٍ أَحَلَّتْ نَفْسَهَا، أَوْ تَزَوَّجَ رَجُلٌ خَامِسَةً، أَوْ دَلَّسَتْ، أَوْ دَلَّسَتْ بِنَفْسِهَا لِأَجْنَبِيٍّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ أَنَّهُ قَالَ فِي الْمَرْأَةِ تَقُولُ لِلرَّجُلِ: إنِّي حِلٌّ لَك، فَيَمَسُّهَا عَلَى ذَلِكَ فَتَلِدُ مِنْهُ: أَنَّهُ يُرْجَمُ وَلَا يَرِثُهُ ذَلِكَ الْوَلَدُ؟ قَالَ أَبُو مُحَمَّدٍ: لَيْسَ لِأَحَدٍ أَنْ يُحِلَّ مَا حَرَّمَ اللَّهُ تَعَالَى، فَإِحْلَالُهَا نَفْسَهَا بَاطِلٌ وَهُوَ زِنًى مَحْضٌ وَعَلَيْهِ الرَّجْمُ وَالْجَلْدُ إنْ كَانَا مُحْصَنَيْنِ وَلَا يُلْحَقُ

no penalty is incurred by them. If one was unaware and the other knew [the ruling], the ḥadd punishment applies solely to the aware party, excluding the unaware one.

L41325 It is narrated from Bukayr ibn al-Ashajj that he said regarding a woman who went to her female slave, prepared her in her own appearance, placed her in her bridal chamber, and then her husband came and had intercourse with her: The woman is to be publicly disciplined, there is no flogging for the man, and the female slave incurs the *ḥadd* punishment for *zinā* if she was aware that this act was unlawful.

L41326 If a woman were to disguise herself to a stranger who then has intercourse with her believing her to be his wife, she is an adulteress. She is to be stoned and flogged if she is a married woman, or flogged and banished if unmarried. The child is not attributed [to the man] in that case. Abu Muhammad said concerning a woman found with a man while having a husband, who claimed "He married me": Hammam narrated from Ibn Mufarrij, from Ibn al-A'rabi, from al-Dabari, from 'Abd al-Razzaq, from Ibn Jurayj, who said: Some of the people of Kufa informed me that 'Ali ibn Abi Talib stoned a woman who had a husband. She had gone to another land and married [someone], believing without doubt that she had received news of her husband's death or divorce.

L41327 Ibn Shihāb reported that he said: Regarding a free woman who was married to a slave, then moved to another land and married a man — we deem the ḥadd applicable to her. We do not deem anything incumbent upon the man who married her, nor upon the one who married her off, if he did not know that she had a husband.

L41328 Abu Muhammad—may Allah have mercy on him—said: As for one who marries a fifth wife, Humaam reported to us: Ibn Mufarrij reported to us, Ibn al-A'rabī reported to us, al-Dabariyy reported to us, 'Abd al-Razzāq reported from Ma'mar from al-Zuhrī regarding a man who marries a fifth wife. He said: He must be flogged. If he divorces his fourth wife with one or two divorces and then marries a fifth wife before the waiting period of the divorced woman has concluded, he must be flogged one hundred lashes.

فِي هَذَا وَلَدٌ أَصْلًا إذَا لَمْ يَكُنْ عَقْدٌ، فَإِنْ كَانَا جَاهِلَيْنِ فَلَا شَيْءَ عَلَيْهِمَا، وَإِنْ كَانَ أَحَدُهُمَا جَاهِلًا وَالْآخَرُ عَالِمًا، فَالْحَدُّ عَلَى الْعَالِمِ دُونَ الْجَاهِلِ.

وَعَنْ بُكَيْرِ بْنِ الْأَشَجِّ أَنَّهُ قَالَ فِي امْرَأَةٍ انْطَلَقَتْ إلَى جَارِيَتِهَا فَهَيَّأَتْهَا بِهَيْئَتِهَا وَجَعَلَتْهَا فِي حَجْلَتِهَا وَجَاءَ زَوْجُهَا فَوَطِئَهَا، قَالَ: تُنْكَلُ الْمَرْأَةُ وَلَا جَلْدَ عَلَى الرَّجُلِ وَعَلَى الْجَارِيَةِ حَدُّ الزِّنَى إنْ كَانَتْ تَدْرِي أَنَّ ذَلِكَ لَا يَحِلُّ.

وَلَوْ أَنَّ امْرَأَةً دَلَّسَتْ نَفْسَهَا لِأَجْنَبِيٍّ فَوَطِئَهَا يَظُنُّ أَنَّهَا امْرَأَتُهُ: فَهِيَ زَانِيَةٌ تُرْجَمُ وَتُجْلَدُ إنْ كَانَتْ مُحْصَنَةً أَوْ تُجْلَدُ وَتُنْفَى، إنْ كَانَتْ غَيْرَ مُحْصَنَةٍ وَلَا يَلْحَقُ الْوَلَدُ فِي ذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ: فِي امْرَأَةٍ وُجِدَتْ مَعَ رَجُلٍ وَلَهَا زَوْجٌ فَقَالَتْ: تَزَوَّجَنِي: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي بَعْضُ أَهْلِ الْكُوفَةِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ رَجَمَ امْرَأَةً كَانَتْ ذَاتَ زَوْجٍ فَجَاءَتْ أَرْضًا فَتَزَوَّجَتْ وَلَمْ تَشُكَّ أَنَّ مَا جَاءَهَا مَوْتُ زَوْجِهَا وَلَا طَلَاقُهُ.

وَعَنْ ابْنِ شِهَابٍ أَنَّهُ قَالَ: نَرَى فِي امْرَأَةٍ حُرَّةٍ كَانَتْ تَحْتَ عَبْدٍ فَتَحَوَّلَتْ أَرْضًا أُخْرَى فَتَزَوَّجَتْ رَجُلًا، قَالَ: نَرَى عَلَيْهَا الْحَدَّ وَلَا نَرَى عَلَى الَّذِي تَزَوَّجَهَا شَيْئًا، وَلَا عَلَى الَّذِي أَنْكَحَهَا إنْ كَانَ لَا يَعْلَمُ أَنَّهَا كَانَ لَهَا زَوْجٌ؟ .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا مَنْ تَزَوَّجَ خَامِسَةً، فَإِنَّ حُمَامًا قَالَ: حَدَّثَنَا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي الرَّجُلِ يَتَزَوَّجُ الْخَامِسَةَ؟ قَالَ: يُجْلَدُ، فَإِنْ طَلَّقَ رَابِعَةً مِنْ نِسَائِهِ طَلْقَةً أَوْ طَلْقَتَيْنِ ثُمَّ تَزَوَّجَ الْخَامِسَةَ قَبْلَ انْقِضَاءِ عِدَّةِ الَّتِي طَلَّقَ: جُلِدَ مِائَةً

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ ابْنُ شِهَابٍ: فِي رَجُلٍ نَكَحَ الْخَامِسَةَ فَدَخَلَ بِهَا، قَالَ: إِنْ كَانَ قَدْ عَلِمَ ذَلِكَ أَنَّ الْخَامِسَةَ لَا تَحِلُّ: رُجِمَ، وَإِنْ كَانَ جَاهِلًا جُلِدَ أَدْنَى الْحَدَّيْنِ، وَلَهَا مَهْرُهَا بِمَا اسْتَحَلَّ مِنْهَا، ثُمَّ يُفَرَّقُ بَيْنَهُمَا وَلَا يَجْتَمِعَانِ أَبَدًا، فَإِنْ وَلَدَتْ لَمْ يَرِثْهُ وَلَدُهَا.

L41329 And through him—to Abd al-Razzaq from Ibn Jurayj, who said: Ibn Shihab said regarding a man who married a fifth wife and consummated the marriage: If he knew that the fifth wife is unlawful, he is to be stoned. If he was ignorant, he is to be flogged as the lesser of the two punishments, and she is entitled to her dowry for the intimacy he unlawfully took from her. They are to be permanently separated and forbidden from reuniting. If she bears a child, her child does not inherit from him.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي الَّذِي يَنْكِحُ الْخَامِسَةَ مُتَعَمِّدًا قَبْلَ أَنْ تَنْقَضِيَ عِدَّةُ الرَّابِعَةِ مِنْ نِسَائِهِ: أَنَّهُ يُجْلَدُ مِائَةً وَلَا يُنْفَى.

L41330 From Ibrāhīm al-Nakhaʿī regarding one who intentionally marries a fifth wife before the waiting period of his fourth wife has concluded: he is to be flogged one hundred lashes and not exiled.

وَقَالَ آخَرُونَ غَيْرَ هَذَا: كَمَا رُوِيَ عَنِ الْأَوْزَاعِيِّ قَالَ: سَأَلْت ابْنَ شِهَابٍ عَنِ الرَّجُلِ يَتَزَوَّجُ الْأُخْتَ عَلَى الْأُخْتِ، وَالْخَامِسَةَ - وَهُوَ يَعْلَمُ أَنَّهُ حَرَامٌ - قَالَ: يُرْجَمُ إِنْ كَانَ مُحْصَنًا.

L41331–41332 Others have stated a different opinion, as narrated by Al-Awzāʿī, who said: "I asked Ibn Shihāb about a man who marries one sister while still married to another, and the fifth wife—while knowing it is forbidden." He replied: "He is to be stoned to death if he is married [a muḥṣan]."

قَالَ ابْنُ وَهْبٍ: وَسَمِعْت اللَّيْثَ يَقُولُ ذَلِكَ.

L41333 Ibn Wahb said: And I heard al-Layth say that.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ وَأَصْحَابُنَا: يُرْجَمُ إِلَّا أَنْ يُعْذَرَ بِجَهْلٍ؟

L41334 Malik, al-Shāfiʿī, and our school's scholars said: He is to be stoned unless excused due to ignorance?

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ، فَوَجَدْنَا مَنْ قَالَ: لَا حَدَّ عَلَى مَنْ تَزَوَّجَ خَامِسَةً يَحْتَجُّ بِمَا ذَكَرْنَا فِي أَوَّلِ الْبَابِ الَّذِي قَبْلَ هَذَا مُتَّصِلًا بِهِ فِي الْكَلَامِ فِي الْمَرْأَةِ تَتَزَوَّجُ وَلَهَا زَوْجٌ وَالرَّدُّ عَلَيْهِ قَدْ ذَكَرْنَاهُ هُنَالِكَ أَيْضًا بِمَا جُمْلَتُهُ أَنَّهُ لَيْسَ زَوَاجًا، لِأَنَّ اللَّهَ تَعَالَى حَرَّمَهُ، وَإِذْ لَيْسَ زَوَاجًا فَهُوَ عَهْرٌ، فَإِذَا هُوَ عَهْرٌ فَعَلَيْهِ حَدُّ الزِّنَى وَعَلَيْهَا كَذَلِكَ إِنْ كَانَا عَالِمَيْنِ بِأَنَّ ذَلِكَ لَا يَحِلُّ وَلَا يَلْحَقُ فِيهِ الْوَلَدُ أَصْلًا، فَإِنْ كَانَا جَاهِلَيْنِ فَلَا حَدَّ فِي ذَلِكَ لِمَا ذَكَرْنَا وَيَلْحَقُ الْوَلَدُ، وَإِنْ كَانَ أَحَدُهُمَا جَاهِلًا وَالْآخَرُ عَالِمًا فَالْحَدُّ عَلَى الْعَالِمِ وَلَا شَيْءَ عَلَى الْجَاهِلِ، وَأَمَّا مَنْ قَالَ: إِنَّهُ يُجْلَدُ

L41335 Abū Muḥammad—may Allāh have mercy on him—said: When they differed—as we mentioned—it became obligatory to examine this matter. We found those who argue that no punishment is prescribed for one who marries a fifth wife. They cite as evidence what we mentioned at the beginning of the preceding chapter connected to this discussion regarding a woman who marries while already having a husband. We have already refuted this position there, the essence being that such a union is not a valid marriage, for Allāh the Exalted has prohibited it. Since it is not a valid marriage, it constitutes illicit intercourse (zina). Therefore, if it is zina, the prescribed punishment for zina applies to him and to her as well—provided they both knowingly acknowledged its impermissibility—and the child is not legally attributed to the father in such a case at all. If they were ignorant [of the prohibition], no punishment applies for the reasons we stated, and the child is attributed

[to the father]. If one was ignorant and the other aware, the punishment applies to the aware party alone, with no penalty for the ignorant one. As for those who claim he is to receive the lesser of the two punishments, this is baseless due to our earlier clarification: he is either guilty of zina or not. If guilty, the full punishment for zina applies. If not, no penalty is incurred, for sexual intimacy is unlawful except through what is sanctioned by the Qur'ān or Sunnah. And success is only through Allāh, the Exalted.

أَدْنَى الْحَدَّيْنِ فَلَيْسَ بِشَيْءٍ لِمَا ذَكَرْنَا هُنَالِكَ مِنْ أَنَّهُ زَانٍ أَوْ غَيْرُ زَانٍ، فَإِنْ كَانَ زَانِيًا فَعَلَيْهِ حَدُّ الزِّنَى كَامِلًا، وَإِنْ كَانَ غَيْرَ زَانٍ فَلَا شَيْءَ عَلَيْهِ، لِأَنَّ بَشَرَتَهُ حَرَامٌ إِلَّا بِقُرْآنٍ أَوْ بِسُنَّةٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The issue of a woman who married during her ʿiddah.

L41336

[مَسْأَلَة امْرَأَةٌ تَزَوَّجَتْ فِي عِدَّتِهَا]

L41337 Issue 2215: A woman who married during her waiting period? And a man who pronounced three divorces—before or after consummation—and then had intercourse? Abu Muhammad—may God have mercy on him—said: It is reported from Sa'id ibn al-Musayyab that a woman married during her waiting period, and the matter was brought to Umar ibn al-Khattab. He struck her without imposing the *hadd* punishment and separated them.

٢٢١٥ - مَسْأَلَةٌ: امْرَأَةٌ تَزَوَّجَتْ فِي عِدَّتِهَا؟ وَمَنْ طَلَّقَ ثَلَاثًا قَبْلَ الدُّخُولِ أَوْ بَعْدَهُ ثُمَّ وَطِئَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: رُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ امْرَأَةً تَزَوَّجَتْ فِي عِدَّتِهَا فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ الْخَطَّابِ فَضَرَبَهَا دُونَ الْحَدِّ، وَفَرَّقَ بَيْنَهُمَا.

L41338 From al-Sha'bi that he said regarding a woman who was intentionally married [by others] during her waiting period: "There is no ḥadd punishment upon her." And from Ibrahim al-Nakha'i a similar statement? Abu Muhammad—may God have mercy on him—said: "The chain of transmission (isnād) to Umar is disconnected, for Sa'id did not hear directly from Umar—may God be pleased with him—except [for] hearing his announcement of Nu'man ibn Muqarrin's death from the pulpit."

وَعَنْ الشَّعْبِيِّ أَنَّهُ قَالَ: فِي امْرَأَةٍ نُكِحَتْ فِي عِدَّتِهَا عَمْدًا، قَالَ: لَيْسَ عَلَيْهَا حَدٌّ - وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ بِمِثْلِهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالْإِسْنَادُ إلَى عُمَرَ مُنْقَطِعٌ، لِأَنَّ سَعِيدًا لَمْ يَلْحَقْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - سَمَاعًا إلَّا نَعْيَهُ النُّعْمَانَ بْنَ مُقَرِّنٍ عَلَى الْمِنْبَرِ.

L41339–41341 A woman in her waiting period (ʿiddah) must be in one of three situations: either she is aware that [marital relations] are impermissible, she is ignorant of the prohibition [during the waiting period], or she has erred regarding the waiting period's duration. If she was ignorant [of the prohibition] or mistaken about the waiting period, then no... [text cut off]. There is nothing upon her because she did not intentionally commit the forbidden act, and her testimony prevails in cases of inadvertent error under all circumstances. If she knew that this was impermissible and did not err regarding the waiting period, then she is an adulteress subject to stoning. It is possible that ʿUmar—may Allah be pleased with him—could strike her as a discretionary

وَلَا تَخْلُو النَّاكِحَةُ فِي عِدَّتِهَا بِأَنْ تَكُونَ عَالِمَةً بِأَنَّ ذَلِكَ لَا يَحِلُّ، أَوْ تَكُونَ جَاهِلَةً بِأَنَّ ذَلِكَ مُحَرَّمٌ، أَوْ غَلِطَتْ فِي الْعِدَّةِ: فَإِنْ كَانَتْ جَاهِلَةً، أَوْ غَلِطَتْ فِي الْعِدَّةِ: فَلَا شَيْءَ عَلَيْهَا، لِأَنَّهَا لَمْ تَعْمَدْ الْحَرَامَ، وَالْقَوْلُ قَوْلُهَا فِي الْغَلَطِ عَلَى كُلِّ حَالٍ - فَإِنْ كَانَتْ عَالِمَةً بِأَنَّ ذَلِكَ لَمْ يَحِلَّ، وَلَمْ تَغْلَطْ فِي الْعِدَّةِ: فَهِيَ زَانِيَةٌ وَعَلَيْهَا الرَّجْمُ - وَقَدْ يُمْكِنُ أَنْ يَضْرِبَهَا عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - تَعْزِيرًا لِتَرْكِهَا التَّعَلُّمَ مِنْ دِينِهَا مَا يَلْزَمُهَا؛ فَهُوَ مَكَانُ التَّعْزِيرِ.

punishment for neglecting to learn what is obligatory upon her from her religion, for this is a situation for discretionary punishment.

L41342 As for those who abolish the hadd penalty for intentional acts in such matters, if they adhere consistently to their position, they would logically be required to adopt Abū Ḥanīfa's ruling regarding the annulment of the hadd penalty for one who marries his mother—knowing she is his mother and that she is forbidden—and similarly for one who marries his daughter, his sister, or women already married to others, intentionally doing so without securing divorce or annulment of their existing marriages. This constitutes unrestricted permission for zinā—indeed, it is a belittlement of the Book of Allah Almighty. As for those who abolish the hadd penalty in some of these cases while enforcing it in others, this is contradiction.

L41343 If they cite ʿUmar's position, we have already stated: There is no report from ʿUmar confirming her knowledge of the waiting period's completion or the prohibition—thus they have no basis for this claim. Abū Muḥammad—may Allah have mercy on him—said: The ruling concerning all this is unified: every invalid contract is impermissible. Consequently, sexual intercourse therein is unlawful, and no valid marriage is established by it. They remain strangers as they were originally. Intercourse within such a contract by one knowingly transgressing the prohibition is sheer and absolute fornication, entailing the full punishment consisting of stoning, flogging, or discretionary correction. No child is affiliated thereby under any circumstance, nor is there any dowry or application of marital rulings. If the individual was ignorant, no prescribed punishment applies, and none of the marital rulings take effect except the child's affiliation alone—by consensus. Success is attained solely through Allah, the Exalted.

L41344 As for one who pronounces three divorces and then engages in intercourse: if he was aware this is impermissible, the full hadd punishment for fornication is incumbent upon him and likewise upon her, for she is now a stranger. If he was ignorant, there is no liability upon him, and the child is not legally ascribed to him here, because he engaged in intercourse in the absence of any marital contract with her—neither a valid nor an invalid one. And with Allah, the Exalted, is success.

وَأَمَّا مَنْ أَسْقَطَ الْحَدَّ فِي الْعَمْدِ فِي ذَلِكَ، فَإِنَّهُ إنْ طَرَدَ قَوْلَهُ لَزِمَهُ الْمَصِيرُ إلَى قَوْلِ أَبِي حَنِيفَةَ فِي سُقُوطِ الْحَدِّ عَمَّنْ تَزَوَّجَ أُمَّهُ - وَهُوَ يَدْرِي أَنَّهَا أُمُّهُ وَأَنَّهَا حَرَامٌ - وَعَمَّنْ تَزَوَّجَ ابْنَتَهُ كَذَلِكَ، أَوْ أُخْتَهُ كَذَلِكَ، وَتَزَوَّجَ نِسَاءَ النَّاسِ - وَهُنَّ تَحْتَ أَزْوَاجِهِنَّ عَمْدًا دُونَ طَلَاقٍ، وَلَا فَسْخٍ - وَهَذَا هُوَ الْإِطْلَاقُ عَلَى الزِّنَى، بَلْ هُوَ الِاسْتِخْفَافُ بِكِتَابِ اللَّهِ تَعَالَى، وَأَمَّا مَنْ أَسْقَطَ الْحَدَّ فِي بَعْضِ ذَلِكَ وَأَوْجَبَهُ فِي بَعْضٍ، فَتَنَاقُضٌ.

فَإِنْ تَعَلَّقُوا بِعُمَرَ فَقَدْ قُلْنَا: إنَّهُ لَيْسَ فِي الْأَثَرِ عَنْ عُمَرَ أَنَّهَا كَانَتْ عَالِمَةً بِانْقِضَاءِ الْعِدَّةِ وَلَا بِالتَّحْرِيمِ - فَلَا مُتَعَلَّقَ لَهُمْ بِذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالْقَوْلُ فِي ذَلِكَ كُلِّهِ وَاحِدٌ، وَهُوَ أَنَّ كُلَّ عَقْدٍ فَاسِدٍ لَا يَحِلُّ، فَالْفَرْجُ بِهِ لَا يَحِلُّ، وَلَا يَصِحُّ بِهِ زَوَاجٌ، فَهُمَا أَجْنَبِيَّانِ كَمَا كَانَا، وَالْوَطْءُ فِيهِ مِنْ الْعَالِمِ بِالتَّحْرِيمِ زِنًى مُجَرَّدٌ مَحْضٌ، وَفِيهِ الْحَدُّ كَامِلًا مِنْ: الرَّجْمِ أَوْ الْجَلْدِ، أَوْ التَّعْزِيرِ - وَلَا يَلْحَقُ فِيهِ وَلَدٌ أَصْلًا وَلَا مَهْرَ فِيهِ، وَلَا شَيْءَ مِنْ أَحْكَامِ الزَّوْجِيَّةِ - وَإِنْ كَانَ جَاهِلًا فَلَا حَدَّ، وَلَا يَقَعُ فِي ذَلِكَ شَيْءٌ مِنْ أَحْكَامِ الزَّوْجِيَّةِ إلَّا لِحَاقَ الْوَلَدِ فَقَطْ، لِلْإِجْمَاعِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا مَنْ طَلَّقَ ثَلَاثًا ثُمَّ وَطِئَ فَإِنْ كَانَ عَالِمًا أَنَّ ذَلِكَ لَا يَحِلُّ، فَعَلَيْهِ حَدُّ الزِّنَى كَامِلًا وَعَلَيْهَا كَذَلِكَ، لِأَنَّهَا أَجْنَبِيَّةٌ، فَإِنْ كَانَ جَاهِلًا، فَلَا شَيْءَ عَلَيْهِ، وَلَا يَلْحَقُ الْوَلَدُ هَاهُنَا، لِأَنَّهُ وَطِئَ فِيمَا لَا عَقْدَ لَهُ مَعَهَا - لَا صَحِيحًا وَلَا فَاسِدًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

The Jurisprudential Issue of a Woman Marrying Her Slave

[مَسْأَلَة مَنْ تَزَوَّجَتْ عَبْدَهَا]

L41345

L41346–41348 Issue 2216: A woman who marries her slave. Abu Muhammad—may God have mercy on him—said: Muhammad ibn Sa'id ibn Nabāt narrated to us from 'Abdullāh ibn Naṣr, from Qāsim ibn Aṣbagh, from Ibn Waḍḍāḥ, from Mūsā ibn Mu'āwiyah, from Wakī', from Sufyān al-Thawrī, from Jābir al-Ju'fī, from al-Ḥakam ibn 'Utaybah, that 'Umar ibn al-Khaṭṭāb ruled concerning a woman who married her slave. He administered disciplinary punishment (ta'zīr) to her and forbade men from marrying her. Via his chain to Wakī': Al-Aswad ibn Shaybān narrated to us from Abū Nawfal from Abū 'Aqrab, who said: A woman came to 'Umar ibn al-Khaṭṭāb and said, "O Commander of the Faithful, I am a woman as you see—other women are more beautiful than I am. I have a slave whose integrity I trust, so I wished to marry him." 'Umar sent for the slave, gave him a severe beating, and ordered him sold in a foreign land.

٢٢١٦ - مَسْأَلَةٌ: مَنْ تَزَوَّجَتْ عَبْدَهَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَتَبَ فِي امْرَأَةٍ تَزَوَّجَتْ عَبْدَهَا فَعَزَّرَهَا وَحَرَّمَهَا عَلَى الرِّجَالِ - وَبِهِ إلَى وَكِيعٍ نا الْأَسْوَدُ بْنُ شَيْبَانَ عَنْ أَبِي نَوْفَلٍ عَنْ أَبِي عَقْرَبٍ قَالَ: جَاءَتْ امْرَأَةٌ إلَى عُمَرَ بْنِ الْخَطَّابِ فَقَالَتْ: يَا أَمِيرَ الْمُؤْمِنِينَ إنِّي امْرَأَةٌ كَمَا تَرَى، غَيْرِي مِنْ النِّسَاءِ أَجْمَلُ مِنِّي، وَلِي عَبْدٌ قَدْ رَضِيت أَمَانَتَهُ، فَأَرَدْت أَنْ أَتَزَوَّجَهُ؟ فَبَعَثَ عُمَرُ إلَى الْعَبْدِ فَضَرَبَهُ ضَرْبًا، وَأَمَرَ بِالْعَبْدِ فَبِيعَ فِي أَرْضِ غُرْبَةٍ.

L41349 And from Ibn Shihab from Ibn Sam'an, he said: Abu al-Zubayr narrated from Jabir ibn Abdullah al-Ansari that a woman came to Umar ibn al-Khattab—while we were at al-Jabiyah—who had married her slave. He was deeply disturbed by her action and intended to stone her, then he forcibly separated them and said to the woman: "Is it not unlawful for you [to have] those whom your right hand possesses?" Abu Muhammad—may Allah have mercy on him—said: The ruling regarding all such cases is uniform: any marriage not sanctioned by Allah the Exalted is impermissible to contract. If it occurs, it is invalidated perpetually, for it is neither a valid nor lawful marriage. If intercourse occurs within such a marriage, the one knowingly transgressing its prohibition is an adulterer—whether he, she, or both—and is liable to the full ḥadd punishment for adultery. As for the ignorant party, no penalty falls upon them, and the child is legally affiliated by consensus. Whoever accuses the ignorant party of adultery is himself subjected to the ḥadd punishment, for they are not adulterers—had they been adulterers, they would have incurred the adultery penalty. It is unlawful for a woman to marry her slave. If he has intercourse with her, then as we stated: If she was aware

وَعَنْ ابْنِ شِهَابٍ عَنْ ابْنِ سَمْعَانَ قَالَ: كَانَ أَبُو الزُّبَيْرِ يُحَدِّثُ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ الْأَنْصَارِيِّ أَنَّهُ قَالَ: جَاءَتْ امْرَأَةٌ إلَى عُمَرَ بْنِ الْخَطَّابِ - وَنَحْنُ بِالْجَابِيَةِ نَكَحَتْ عَبْدَهَا، فَتَلَهَّفَ عَلَيْهَا وَهَمَّ بِرَجْمِهَا، ثُمَّ فَرَّقَ بَيْنَهُمَا، وَقَالَ لِلْمَرْأَةِ: لَا يَحِلُّ لَك مِلْكُ يَمِينِك؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: الْقَوْلُ فِي هَذَا كُلِّهِ وَاحِدٌ، كُلُّ نِكَاحٍ لَمْ يُبِحْهُ اللَّهُ تَعَالَى فَلَا يَجُوزُ عَقْدُهُ، فَإِنْ وَقَعَ، فُسِخَ أَبَدًا، لِأَنَّهُ لَيْسَ نِكَاحًا صَحِيحًا جَائِزًا، فَإِنْ وَقَعَ فِيهِ الْوَطْءُ، فَالْعَالِمُ بِتَحْرِيمِهِ زَانٍ عَلَيْهِ الْحَدُّ حَدُّ الزِّنَى كَامِلًا - فَهُوَ أَوْ هِيَ أَوْ كِلَاهُمَا - وَمَنْ كَانَ جَاهِلًا، فَلَا شَيْءَ عَلَيْهِ، وَالْوَلَدُ فِيهِ لَاحِقٌ لِلْإِجْمَاعِ وَمَنْ قَذَفَ الْجَاهِلَ حُدَّ لِأَنَّهُ لَيْسَ زَانِيًا، وَلَوْ كَانَ زَانِيًا لَحُدَّ حَدَّ الزِّنَى وَلَا يَحِلُّ لِلْمَرْأَةِ عَبْدُهَا، فَإِنْ وَطِئَهَا فَكَمَا قُلْنَا: إنْ كَانَتْ عَالِمَةً أَنَّ هَذَا لَا يَحِلُّ فَهِيَ زَانِيَةٌ وَتُرْجَمُ، وَيَجْلِدُهَا - إنْ كَانَتْ مُحْصَنَةً - أَوْ تُجْلَدُ

of this prohibition, she is an adulteress and is stoned. He flogs her if she is a muhsanah (a free, married woman), or she is flogged and exiled if she is non-muhsanah. The slave is likewise treated accordingly, and the child is not legally affiliated. If she was ignorant, no penalty applies to her, and the child is affiliated with her. As for separation, it is absolutely obligatory. As for imposing a prohibition upon men, this does not become binding thereby, for Allah the Exalted has not ordained it, nor has His Messenger—peace and blessings be upon him.

وَتُنْفَى - إنْ كَانَتْ غَيْرَ مُحْصَنَةٍ - وَالْعَبْدُ كَذَلِكَ، وَلَا يَلْحَقُ الْوَلَدُ، فَإِنْ كَانَتْ جَاهِلَةً فَلَا شَيْءَ عَلَيْهَا، وَيَلْحَقُ الْوَلَدُ بِهَا - أَمَّا التَّفْرِيقُ فَلَا بُدَّ مِنْهُ، وَأَمَّا التَّحْرِيمُ عَلَى الرِّجَالِ فَلَا يَحْرُمُ بِذَلِكَ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ ذَلِكَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L41350 If she emancipates him on the condition that he marries her, the manumission is invalid and rejected, as it is contingent upon a condition not found in the Book of Allah the Exalted. When the condition becomes void, every contract that was not contracted except with that condition becomes void, and the contract cannot be upheld. This is because the contracting party never bound themselves to it independently of the condition. Therefore, it is impermissible to enforce upon them a contract they never formally obligated themselves to, as neither the Quran, nor an authentic Sunnah, nor consensus obligates this.

فَإِنْ أَعْتَقَتْهُ بِشَرْطِ أَنْ يَتَزَوَّجَهَا فَالْعِتْقُ بَاطِلٌ مَرْدُودٌ، لِأَنَّهُ عُلِّقَ بِشَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، وَإِذَا بَطَلَ الشَّرْطُ بَطَلَ كُلُّ عَقْدٍ لَمْ يُعْقَدْ إلَّا بِذَلِكَ الشَّرْطِ، وَلَا يَجُوزُ إنْفَاذُ الْعَقْدِ، لِأَنَّ الْعَاقِدَ لَهُ لَمْ يَعْقِدْهُ قَطُّ مُنْفَرِدًا مِنْ الشَّرْطِ، فَلَا يَحِلُّ أَنْ يُمْضِيَ عَلَيْهِ عَقْدٌ لَمْ يَعْقِدْهُ عَلَى نَفْسِهِ قَطُّ، لِأَنَّهُ لَمْ يُوجِبْ عَلَيْهِ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا إجْمَاعٌ.

L41351 If she emancipates him without stipulation and then he marries her in a valid marriage, is that permissible? Abū Muḥammad—may Allah have mercy on him—said: If they ask, "From what basis did you mandate the ḥadd punishment - when ʿUmar ibn al-Khaṭṭāb did not apply it in that matter - and no dissenter from the Companions—may Allah be pleased with them—is known regarding him?"

فَإِنْ أَعْتَقَتْهُ بِغَيْرِ شَرْطٍ ثُمَّ تَزَوَّجَهَا زَوَاجًا صَحِيحًا فَهُوَ جَائِزٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ قَالُوا: مِنْ أَيْنَ أَوْجَبْتُمْ الْحَدَّ - وَعُمَرُ بْنُ الْخَطَّابِ لَمْ يَحُدَّ فِي ذَلِكَ - وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ؟

L41352–41353 We said: Indeed, ʿUmar—may Allah be pleased with him—had resolved to stone her, and if stoning her had not been obligatory, he would not have resolved to do so. He only refrained from stoning her because he recognized her ignorance without any doubt.

قُلْنَا: إنَّ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - قَدْ هَمَّ بِرَجْمِهَا فَلَوْلَا أَنَّ الرَّجْمَ عَلَيْهَا كَانَ وَاجِبًا مَا هَمَّ، وَإِنَّمَا تَرَكَ رَجْمَهَا إذْ عَرَفَ جَهْلَهَا بِلَا شَكٍّ.

L41354 We also do not consider anyone's statement as valid proof besides the Messenger of Allah—peace be upon him. However, since you cite as proof the statement of ʿUmar—may Allah be pleased with him—it becomes incumbent upon you to prohibit it for men permanently, as reported from ʿUmar. And success comes only from Allah, the Exalted.

وَنَحْنُ أَيْضًا لَا نَرَى حُجَّةً فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَكِنْ إذْ تَحْتَجُّونَ بِقَوْلِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فَيَلْزَمُكُمْ أَنْ تُحَرِّمُوهَا عَلَى الرِّجَالِ فِي الْأَبَدِ، كَمَا جَاءَ عَنْ عُمَرَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الْمُحَلِّلِ وَالْمُحَلَّلُ لَهُ]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا شُعْبَةُ عَنْ الْأَعْمَشِ عَنْ الْمُسَيَّبِ بْنِ رَافِعٍ عَنْ قَبِيصَةَ بْنِ جَابِرٍ الْأَسَدِيِّ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَا أُوتَى بِمُحَلِّلٍ أَوْ مُحَلَّلٍ لَهُ إلَّا رَجَمْته؟

قَالَ أَبُو مُحَمَّدٍ: عَهِدْنَا بِالْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، يُعَظِّمُونَ خِلَافَ الصَّاحِبِ إذَا وَافَقَ تَقْلِيدَهُمْ، وَكُلُّهُمْ قَدْ خَالَفُوا عُمَرَ بْنَ الْخَطَّابِ وَهُمْ يُقَلِّدُونَهُ فِيمَا هُوَ عَنْهُ مِنْ طَرِيقٍ لَا تَصِحُّ؟ وَالَّذِي نَقُولُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: أَنَّ كُلَّ نِكَاحٍ انْعَقَدَ سَالِمًا مِمَّا يُفْسِدُهُ، وَلَمْ يُشْتَرَطْ فِيهِ التَّحْلِيلُ وَالطَّلَاقُ فَهُوَ نِكَاحٌ صَحِيحٌ تَامٌّ لَا يُفْسَخُ - وَسَوَاءٌ اشْتَرَطَ ذَلِكَ عَلَيْهِ قَبْلَ الْعَقْدِ أَوْ لَمْ يَشْتَرِطْ - لِأَنَّ كُلَّ نَاكِحٍ لِمُطَلَّقَةٍ ثَلَاثًا فَهُوَ مُحَلِّلٌ وَلَا بُدَّ، فَالتَّحْلِيلُ الْمُحَرَّمُ هُنَا: هُوَ مَا انْعَقَدَ عَقْدًا غَيْرَ صَحِيحٍ.

وَأَمَّا إذَا عُقِدَ النِّكَاحُ عَلَى شَرْطِ التَّحْلِيلِ ثُمَّ الطَّلَاقِ فَهُوَ عَقْدٌ فَاسِدٌ، وَنِكَاحٌ فَاسِدٌ، فَإِنْ وَطِئَ فِيهِ، فَإِنْ كَانَ عَالِمًا أَنَّ ذَلِكَ لَا يَحِلُّ فَعَلَيْهِ الرَّجْمُ وَالْحَدُّ، لِأَنَّهُ زِنًا، وَعَلَيْهَا إنْ كَانَتْ عَالِمَةً مِثْلُ ذَلِكَ، وَلَا يَلْحَقُ الْوَلَدُ - فَإِنْ كَانَ جَاهِلًا فَلَا حَدَّ عَلَيْهِ، وَلَا صَدَاقَ، وَالْوَلَدُ لَاحِقٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The issue of the muḥallil (interim spouse facilitating remarriage) and the muḥallal lahu (the original husband seeking to remarry his divorced wife).

Abu Muhammad—may Allah have mercy on him—said: Muhammad ibn Sa'id ibn Nabat narrated to us: Ahmad ibn 'Awn Allah narrated to us: Qasim ibn Asbagh narrated to us: Muhammad ibn 'Abd al-Salam al-Khushani narrated to us: Muhammad ibn Bishar narrated to us: Yahya ibn Sa'id al-Qattan narrated to us: Shu'bah narrated to us from al-A'mash, from al-Musayyib ibn Rafi', from Qabisah ibn Jabir al-Asadi, who said: 'Umar ibn al-Khattab said: "If a man hired to perform tahlil or the one who commissioned him is brought before me, I will sentence them to stoning."

Abū Muḥammad said: We have observed the Ḥanafīs, Mālikīs, and Shāfi'īs magnify the Companion's dissent when it aligns with their adherence, yet all of them have opposed 'Umar ibn al-Khaṭṭāb while adhering to him in matters transmitted through unauthenticated chains? What we affirm—and with Allah, the Exalted, is success—is that every marriage contract established soundly, free from invalidating elements, without stipulating the tahleel or divorce within it, is a valid and complete marriage that cannot be annulled—whether such a condition was stipulated before the contract or not—for every man who marries a thrice-divorced woman is inevitably a muhallil. The prohibited tahleel here is that which is contracted as an invalid contract.

As for when a marriage is contracted on the condition of [tahleel] (a temporary marriage to permit remarriage to a former spouse) followed by divorce, it constitutes an invalid contract and an invalid marriage. If intercourse takes place within such a marriage, then if the husband was aware of its impermissibility, he is subject to stoning (rajm) and the prescribed punishment (hadd) for adultery (zinā). The same applies to the wife if she was aware. The child is not attributed to him. If the husband was ignorant, no prescribed punishment (hadd) is imposed, nor is any bridal gift (mahr) due, and the child is legally recognized. And with Allah, the Exalted, lies success.

The same ruling applies to every invalid contract due to shighar, mut'ah,

and contracts stipulating conditions not established in the Book of Allah, the Exalted—whatever such conditions may be. And by Allah, the Exalted, is success attained. 2218

وَهَكَذَا الْقَوْلُ فِي كُلِّ عَقْدٍ فَاسِدٍ بِالشِّغَارِ، وَالْمُتْعَةِ وَالْعَقْدِ بِشَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، أَيُّ شَرْطٍ كَانَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. ٢٢١٨ -

L41360 **The issue of a woman hired for fornication, or for service and a female servant.**

[مَسْأَلَةُ الْمُسْتَأْجَرَةُ لِلزِّنَى أَوْ لِلْخِدْمَةِ وَالْمُخْدِمَةِ]

L41361–41362 Abu Muhammad said: Hammam narrated to us, Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabari narrated to us, Abd al-Razzaq narrated to us, Ibn Jurayj narrated to us, Muhammad ibn al-Harith ibn Sufyan from Abu Salama ibn Sufyan: A woman came to Umar ibn al-Khattab and said, "O Commander of the Faithful, I went out herding my sheep when a man met me. He scooped for me a handful of dates, then scooped another handful, then scooped another handful, then he had intercourse with me?" Umar said, "What did you say?" She repeated it. Umar ibn al-Khattab, gesturing with his hand, said, "A dowry! A dowry! A dowry!"—then he dismissed her case.

قَالَ أَبُو مُحَمَّد: حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نِي مُحَمَّدُ بْنُ الْحَارِثِ بْنِ سُفْيَانَ عَنْ أَبِي سَلَمَةَ بْنِ سُفْيَانَ: أَنَّ امْرَأَةً جَاءَتْ إِلَى عُمَرَ بْنِ الْخَطَّابِ فَقَالَتْ: يَا أَمِيرَ الْمُؤْمِنِينَ أَقْبَلْت أَسُوقُ غَنَمًا لِي فَلَقِيَنِي رَجُلٌ فَحَفَنَ لِي حَفْنَةً مِنْ تَمْرٍ، ثُمَّ حَفَنَ لِي حَفْنَةً مِنْ تَمْرٍ ثُمَّ حَفَنَ لِي حَفْنَةً مِنْ تَمْرٍ، ثُمَّ أَصَابَنِي؟ فَقَالَ عُمَرُ: مَا قُلْت؟ فَأَعَادَتْ، فَقَالَ عُمَرُ بْنُ الْخَطَّابِ وَيُشِيرُ بِيَدِهِ: مَهْرٌ مَهْرٌ مَهْرٌ - ثُمَّ تَرَكَهَا.

L41363 And through him—to 'Abd al-Razzāq from Sufyān ibn 'Uyaynah from al-Walīd ibn 'Abd Allāh—who is Ibn Jumayy—from Abū al-Ṭufayl: that a woman was struck by hunger, so she came to a shepherd and asked him for food. He refused her unless she gave herself to him. She said: "So he scooped three scoops of dates for me," and she mentioned that she had suffered severe hardship from hunger. She informed 'Umar, so he proclaimed "Allāhu Akbar" and said: "Dowry, dowry, dowry!" and he averted the prescribed punishment from her.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الْوَلِيدِ بْنِ عَبْدِ اللَّهِ - وَهُوَ ابْنُ جُمَيْعٍ - عَنْ أَبِي الطُّفَيْلِ أَنَّ امْرَأَةً أَصَابَهَا الْجُوعُ فَأَتَتْ رَاعِيًا فَسَأَلَتْهُ الطَّعَامَ؟ فَأَبَى عَلَيْهَا حَتَّى تُعْطِيَهُ نَفْسَهَا، قَالَتْ: فَخَثَى لِي ثَلَاثَ حَثَيَاتٍ مِنْ تَمْرٍ وَذَكَرَتْ أَنَّهَا كَانَتْ جَهِدَتْ مِنْ الْجُوعِ، فَأَخْبَرَتْ عُمَرَ، فَكَبَّرَ وَقَالَ: مَهْرٌ مَهْرٌ مَهْرٌ - وَدَرَأَ عَنْهَا الْحَدَّ؟

L41364 Abū Muḥammad—may God have mercy on him—said: Abū Ḥanīfah held this view, maintaining that unlawful sexual relations (zinā) apply only to casual encounters. As for acts involving a gift or hire, he considered them neither zinā nor subject to ḥadd punishment.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: قَدْ ذَهَبَ إلَى هَذَا أَبُو حَنِيفَةَ وَلَمْ يَرَ الزِّنَى، إلَّا مَا كَانَ مُطَارَفَةً، وَأَمَّا مَا كَانَ فِيهِ عَطَاءٌ أَوْ اسْتِئْجَارٌ فَلَيْسَ زِنًى وَلَا حَدَّ فِيهِ.

L41365 Abū Yūsuf, Muḥammad, Abū Thawr, our fellow scholars, and the rest of the jurists have said: All of it constitutes illicit sexual intercourse, and the ḥadd punishment applies to it.

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدٌ، وَأَبُو ثَوْرٍ، وَأَصْحَابُنَا، وَسَائِرُ النَّاسِ، هُوَ زِنًى كُلُّهُ وَفِيهِ الْحَدُّ.

L41366 As for the Malikis and Shafi'is, we have observed them condemning disagreement with a Companion for whom no dissenter is known—when it

aligns with their taqlid (adherence to a school)—and they themselves opposed 'Umar, may Allah be pleased with him, though no dissenter among the Companions, may Allah be pleased with them, is known regarding him. Rather, they consider such a case as consensus, citing as evidence the silence of the present Companions in the absence of objection to it.

وَأَمَّا الْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، فَعَهِدْنَا بِهِمْ يُشَنِّعُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ - إِذَا وَافَقَ تَقْلِيدَهُمْ - وَهُمْ قَدْ خَالَفُوا عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، بَلْ هُمْ يَعُدُّونَ مِثْلَ هَذَا إجْمَاعًا، وَيَسْتَدِلُّونَ عَلَى ذَلِكَ بِسُكُوتِ مَنْ بِالْحَضْرَةِ مِنْ الصَّحَابَةِ عَنْ النَّكِيرِ لِذَلِكَ.

L41367 If they say: "Abū al-Ṭufayl mentioned in his report that hunger had exhausted her," we respond: "This too is a position you yourselves reject, nor do you consider it an excusing circumstance that nullifies the prescribed punishment. Thus, you gain no concession through Abū al-Ṭufayl's narration - particularly since his report does not state that ʿUmar pardoned her due to necessity, but rather that he waived the punishment because of the dates he gave her, with ʿUmar designating those dates as her dowry."

فَإِنْ قَالُوا: إنَّ أَبَا الطُّفَيْلِ ذَكَرَ فِي خَبَرِهِ أَنَّهَا قَدْ كَانَ جَهَدَهَا الْجُوعُ؟ قُلْنَا لَهُمْ: وَهَذَا أَيْضًا أَنْتُمْ لَا تَقُولُونَ بِهِ، وَلَا تَرَوْنَهُ عُذْرًا مُسْقِطًا لِلْحَدِّ، فَلَا رَاحَةَ لَكُمْ فِي رِوَايَةِ أَبِي الطُّفَيْلِ مَعَ أَنَّ خَبَرَ أَبِي الطُّفَيْلِ لَيْسَ فِيهِ أَنَّ عُمَرَ عَذَرَهَا بِالضَّرُورَةِ، بَلْ فِيهِ: أَنَّهُ دَرَأَ الْحَدَّ مِنْ أَجْلِ التَّمْرِ الَّذِي أَعْطَاهَا وَجَعَلَهُ عُمَرُ مَهْرًا.

L41368–41370 As for the Ḥanafī followers practicing *taqlīd* of Abū Ḥanīfa in this matter, they represent one of the world's strangest phenomena with scarcely any parallel: they follow ʿUmar's juristic precedent in waiving the *ḥadd* punishment here by deeming three small handfuls of dates a valid *mahr*, yet they opposed this very ruling by invalidating such an amount—or even larger multiples of it—in a valid marriage. Rather, they prohibited anything less than ten dirhams as dower in such cases – this constitutes true belittlement, selectively adopting the Companion's rulings when it suits them and abandoning them when it does not. What religion is this? Shame on such practice! For they assert that the dower in lawful marriage must be no less than ten dirhams, yet accept a dirham or less as dower in illicit relations. This is nothing but paving the way for adultery, permitting forbidden intercourse, aiding Satan in facilitating major sins. By this logic, whenever an adulterer or adulteress wishes to commit adultery openly, they may do so with impunity by giving her a dirham as hire for adultery.

وَأَمَّا الْحَنَفِيُّونَ الْمُقَلِّدُونَ لِأَبِي حَنِيفَةَ فِي هَذَا فَمِنْ عَجَائِبِ الدُّنْيَا الَّتِي لَا يَكَادُ يُوجَدُ لَهَا نَظِيرٌ: أَنْ يُقَلِّدُوا عُمَرَ فِي إسْقَاطِ الْحَدِّ هَاهُنَا بِأَنَّ ثَلَاثَ حَثَيَاتٍ مِنْ تَمْرٍ مَهْرٌ، وَقَدْ خَالَفُوا هَذِهِ الْقَضِيَّةَ بِعَيْنِهَا فَلَمْ يُجِيزُوا فِي النِّكَاحِ الصَّحِيحِ مِثْلَ هَذَا وَأَضْعَافَهُ مَهْرًا، بَلْ مَنَعُوا مِنْ أَقَلَّ مِنْ عَشَرَةِ دَرَاهِمَ فِي ذَلِكَ - فَهَذَا هُوَ الِاسْتِخْفَافُ حَقًّا، وَالْأَخْذُ بِمَا اشْتَهَوْا مِنْ قَوْلِ الصَّاحِبِ حَيْثُ اشْتَهَوْا، وَتَرْكُ مَا اشْتَهَوْا تَرْكُهُ مِنْ قَوْلِ الصَّاحِبِ إذَا اشْتَهَوْا، فَمَا هَذَا دِينًا؟ وَأُفٍّ لِهَذَا عَمَلًا، إذْ يَرَوْنَ الْمَهْرَ فِي الْحَلَالِ لَا يَكُونُ إلَّا عَشَرَةَ دَرَاهِمَ لَا أَقَلَّ، وَيَرَوْنَ الدِّرْهَمَ فَأَقَلَّ مَهْرًا فِي الْحَرَامِ، إلَّا أَنَّ هَذَا هُوَ التَّطْرِيقُ إلَى الزِّنَى، وَإِبَاحَةُ الْفُرُوجِ الْمُحَرَّمَةِ، وَعَوْنٌ لِإِبْلِيسَ عَلَى تَسْهِيلِ الْكَبَائِرِ، وَعَلَى هَذَا لَا يَشَاءُ زَانٍ وَلَا زَانِيَةٌ أَنْ يَزْنِيَا عَلَانِيَةً إلَّا فَعَلَا وَهُمَا فِي أَمْنٍ مِنْ الْحَدِّ، بِأَنْ يُعْطِيَهَا دِرْهَمًا يَسْتَأْجِرُهَا بِهِ لِلزِّنَى.

L41371 The flagrant evildoers have devised a ploy of highway robbery (ḥirābah) by keeping with them a wicked adulteress and a boy given to prostitution, then

فَقَدْ عَلِمُوا الْفُسَّاقُ حِيلَةً فِي قَطْعِ الطَّرِيقِ، بِأَنْ يُحْضِرُوا مَعَ أَنْفُسِهِمْ امْرَأَةَ سَوْءٍ زَانِيَةً وَصَبِيًّا بِغَاءً، ثُمَّ يَقْتُلُوا الْمُسْلِمِينَ كَيْفَ شَاءُوا، وَلَا قَتْلَ عَلَيْهِمْ مِنْ أَجْلِ الْمَرْأَةِ الزَّانِيَةِ وَالصَّبِيِّ الْبِغَاءِ، فَكُلَّمَا اسْتَوْقَرُوا مِنَ الْفِسْقِ خَفَّتْ أَوْزَارُهُمْ وَسَقَطَ الْخِزْيُ وَالْعَذَابُ عَنْهُمْ.

slaying the Muslims as they will—with no execution mandated against them on account of the adulterous woman and the prostituting boy. Thus, the more entrenched they become in depravity, the lighter their burdens of sin grow, and disgrace and punishment are abolished from them.

L41372 ثُمَّ عَلَّمُوهُمْ وَجْهَ الْحِيلَةِ فِي الزِّنَى، وَذَلِكَ أَنْ يَسْتَأْجِرَهَا بِتَمْرَتَيْنِ وَكِسْرَةِ خُبْزٍ لِيَزْنِيَ بِهَا ثُمَّ يَزْنِيَانِ فِي أَمْنٍ وَذِمَامٍ مِنَ الْعَذَابِ بِالْحَدِّ الَّذِي افْتَرَضَهُ اللَّهُ تَعَالَى.

"Then they taught them the method of legal subterfuge for adultery: to hire her for [the price of] two dates and a piece of bread, thereby enabling the two to commit adultery under [the illusion of] security and a guarantee of immunity from the ḥadd punishment prescribed by Allah, the Exalted."

L41373 ثُمَّ عَلَّمُوهُمُ الْحِيلَةَ فِي وَطْءِ الْأُمَّهَاتِ وَالْبَنَاتِ، بِأَنْ يَعْقِدُوا مَعَهُنَّ نِكَاحًا ثُمَّ يَطَئُونَهُنَّ عَلَانِيَةً آمِنِينَ مِنَ الْحُدُودِ.

Then they taught them the stratagem for engaging in intercourse with mothers and daughters by contracting a marriage with them, then having intercourse with them openly, secure from the prescribed punishments.

L41374 ثُمَّ عَلَّمُوهُمُ الْحِيلَةَ فِي السَّرِقَةِ أَنْ يَنْقُبَ أَحَدُهُمْ نَقْبًا فِي الْحَائِطِ وَيَقِفَ الْوَاحِدُ دَاخِلَ الدَّارِ وَالْآخَرُ خَارِجَ الدَّارِ، ثُمَّ يَأْخُذَ كُلَّ مَا فِي الدَّارِ فَيَضَعَهُ فِي النَّقْبِ، ثُمَّ يَأْخُذُهُ الْآخَرُ مِنَ النَّقْبِ، وَيَخْرُجَا آمِنِينَ مِنَ الْقَطْعِ.

Then they taught them the trick employed in theft: one of them would dig a hole in the wall, one would stand inside the house and the other outside. The one inside would take everything in the house and place it into the hole, then the other would take it from the hole. Thus they would both remain secure from the punishment of hand amputation.

L41375 ثُمَّ عَلَّمُوهُمُ الْحِيلَةَ فِي قَتْلِ النَّفْسِ الْمُحَرَّمَةِ بِأَنْ يَأْخُذَ عُودًا صَحِيحًا فَيَكْسِرَ بِهِ رَأْسَ مَنْ أَحَبَّ حَتَّى يَسِيلَ دِمَاغُهُ وَيَمُوتَ وَيَمْضِيَ آمِنًا مِنَ الْقَوَدِ وَمِنْ غُرْمِ الدِّيَةِ مِنْ مَالِهِ.

Then they taught them the method of unlawfully killing a soul by taking a solid stick and smashing with it the head of whomever they choose until his brain spills out and he dies, thereby escaping retaliation and the liability of blood money from his own wealth.

L41376 وَنَحْنُ نَبْرَأُ إِلَى اللَّهِ تَعَالَى هَذِهِ الْأَقْوَالَ الْمَلْعُونَةَ، وَمَا قَالَ أَئِمَّةُ الْمُحَدِّثِينَ مَا قَالُوا بَاطِلًا - وَنَسْأَلُ اللَّهَ السَّلَامَةَ.

We declare our innocence to Allah the Exalted from these accursed statements, for the imams of the Muhaddithīn did not speak falsely—and we ask Allah for safety.

L41377 وَلَوْ أَنَّهُمْ تَعَلَّقُوا فِي كُلِّ مَا ذَكَرْنَا بِقُرْآنٍ أَوْ سُنَّةٍ لَأَصَابُوا، بَلْ خَالَفُوا الْقُرْآنَ وَالسُّنَّةَ، وَمَا تَعَلَّقُوا بِشَيْءٍ إِلَّا بِتَقْلِيدٍ مُهْلِكٍ، وَرَأْيٍ فَاسِدٍ، وَاتِّبَاعِ الْهَوَى الْمُضِلِّ؟

If only they had clung to the Quran or Sunnah in all that we have mentioned—they would have succeeded! Yet they opposed the Quran and Sunnah, clinging only to ruinous imitation, corrupt judgment, and the following of misguiding desires?

L41378–41379 قَالَ أَبُو مُحَمَّدٍ—رَحِمَهُ اللَّهُ—: الْحُدُودُ

Abū Muḥammad—may Allāh have mercy on him—said: The prescribed pun-

ishment for adultery is obligatory upon both the hirer and the hired [prostitute]. Indeed, their sin is greater than that of the adulterer and adulteress who engage in it without hiring, for the hirer and hired commit adultery just as others do, with no distinction. Moreover, they compound their sin by adding another forbidden act—unlawful acquisition of wealth—to the act of adultery itself.

L41380 As for the female servant [kept] for many years, it has been narrated from Ibn al-Mājishūn—a disciple of Mālik—that no ḥadd punishment is imposed on the master if he fornicates with her. This is a corrupt opinion, and in addition to its corruption, it is baseless. As for its corruption: it abolishes the ḥadd punishment that Allah the Exalted has mandated for adultery.

L41381 As for the nullification of the punishment—it is distinguishing between a female servant serving for an extended duration and one serving briefly, wherein one is required to specify that time span which nullifies the prescribed penalty—the period during which the punishment is annulled. If a duration is set, this constitutes overstepping by asserting falsehood without evidence; whereas leaving it undefined becomes prohibited, as it ascribes to the Lawgiver rulings He has not decreed in matters He has not addressed—and these are confusions from which we seek refuge with Allah.

L41382 The full ḥadd punishment is obligatory upon the master and the female servant, even if he employed her as a servant for as long as Noah lived among his people—because he committed unlawful sexual intercourse with one who is not his lawful spouse—and success is from Allah, the Most High.

L41383 **The issue of one who commits adultery with a woman and then marries her.**

L41384 2219 - Issues: such as the following:

L41385 Ali said: Whoever commits fornication with a woman and then marries her, the hadd is not waived for him because of that, for Allah the Exalted has prescribed it as an obligation upon him, nor does marrying her preclude it.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَحَدُّ الزِّنَى وَاجِبٌ عَلَى الْمُسْتَأْجِرِ وَالْمُسْتَأْجَرَةِ، بَلْ جُرْمُهُمَا أَعْظَمُ مِنْ جُرْمِ الزَّانِي وَالزَّانِيَةِ بِغَيْرِ اسْتِئْجَارٍ، لِأَنَّ الْمُسْتَأْجِرَ وَالْمُسْتَأْجَرَةَ زَنَيَا كَمَا زَنَى غَيْرُ الْمُسْتَأْجِرِ وَلَا فَرْقَ، وَزَادَ الْمُسْتَأْجِرُ وَالْمُسْتَأْجَرَةُ عَلَى سَائِرِ الزِّنَى حَرَامًا آخَرَ - وَهُوَ أَكْلُ الْمَالِ بِالْبَاطِلِ.

وَأَمَّا الْمُخْدِمَةُ - فَرُوِيَ عَنْ ابْنِ الْمَاجِشُونِ صَاحِبِ مَالِكٍ: أَنَّ الْمُخْدِمَةَ سِنِينَ كَثِيرَةً لَا حَدَّ عَلَى الْمُخْدِمِ إذَا وَطِئَهَا - وَهَذَا قَوْلٌ فَاسِدٌ وَمَعَ فَسَادِهِ سَاقِطٌ: أَمَّا فَسَادُهُ - فَإِسْقَاطُهُ الْحَدَّ الَّذِي أَوْجَبَهُ اللَّهُ تَعَالَى فِي الزِّنَى.

وَأَمَّا سُقُوطُهُ - فَتَفْرِيقُهُ بَيْنَ الْمُخْدِمَةِ مُدَّةً طَوِيلَةً، وَالْمُخْدِمَةِ مُدَّةً قَصِيرَةً، وَيُكَلَّفُ تَحْدِيدَ تِلْكَ الْمُدَّةِ الْمُسْقِطَةِ لِلْحَدِّ الَّتِي يَسْقُطُ فِيهَا الْحَدُّ، فَإِنْ حَدَّ مُدَّةً كَانَ مُتَزَيِّدًا مِنْ الْقَوْلِ بِالْبَاطِلِ بِلَا بُرْهَانٍ، وَإِنْ لَمْ يَحُدَّ شَيْئًا كَانَ مُحَرِّمًا مُوجِبًا شَارِعًا مَا لَا يَدْرِي فِيمَا لَا يَدْرِي - وَهَذِهِ تَخَالِيطُ نَعُوذُ بِاَللَّهِ مِنْهَا.

وَالْحَدُّ كَامِلٌ وَاجِبٌ عَلَى الْمُخْدِمِ وَالْمُخْدِمَةِ، وَلَوْ أَخْدَمَهَا عُمْرَ نُوحٍ فِي قَوْمِهِ - لِأَنَّهُ زَنَى وَعَهَرَ مَنْ لَيْسَتْ لَهُ فِرَاشًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مَنْ زَنَى بِامْرَأَةٍ ثُمَّ تَزَوَّجَهَا]

٢٢١٩ - مَسَائِلُ: مِنْ نَحْوِ هَذَا:

قَالَ عَلِيٌّ: مَنْ زَنَى بِامْرَأَةٍ ثُمَّ تَزَوَّجَهَا لَمْ يَسْقُطْ الْحَدُّ بِذَلِكَ عَنْهُ، لِأَنَّ اللَّهَ تَعَالَى قَدْ أَوْجَبَهُ عَلَيْهِ فَلَا يُسْقِطُهُ زَوَاجُهُ إيَّاهَا.

L41386 Likewise, if he commits zinā with a slave woman and then purchases her—this is the opinion of the majority of scholars.

وَكَذَلِكَ إِذَا زَنَى بِأَمَةٍ ثُمَّ اشْتَرَاهَا - وَهُوَ قَوْلُ جُمْهُورِ الْعُلَمَاءِ.

L41387 Abu Hanifah said: "Is there no legal penalty for him in both issues?"

وَقَالَ أَبُو حَنِيفَةَ: لَا حَدَّ عَلَيْهِ فِي كِلْتَا الْمَسْأَلَتَيْنِ؟

L41388–41390 Abū Muḥammad—may Allāh have mercy on him—said: "Is this among those great calamities?" If they say: "How do we apply the *ḥadd* punishment in the case of intercourse with his wife and slave woman?" We respond: "We do not apply the *ḥadd* punishment for his intercourse with them (two)—since they are his wife and slave woman—but rather we apply it in the case of intercourse he engages in with them (two) who are neither his wife nor slave woman." Then, by this corrupt reasoning, it would necessarily follow that whoever falsely accuses a woman of adultery and then marries her must be subjected to *liʿān*. No ḥadd punishment is imposed on him, and if he engages in illicit intercourse with her and she conceives, then marries her or purchases her (as a slave), the child is legally affiliated with him. Otherwise, how could he deny parentage of a child borne by his wife from him or a child borne by his female slave from him? If they say: "He is not a child of the bed?" we respond: "You are correct," and for this reason, we impose the ḥadd punishment on him for the prior unlawful intercourse, since it was not intercourse of the bed?

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذِهِ مِنْ تِلْكَ الطَّوَامِّ؟ فَإِنْ قَالُوا: كَيْفَ نَحُدُّهُ فِي وَطْءِ امْرَأَتِهِ وَأَمَتِهِ؟ قُلْنَا لَهُمْ: لَمْ نَحُدَّهُ فِي وَطْئِهِ لَهُمَا - وَهُمَا امْرَأَتُهُ وَأَمَتُهُ - وَإِنَّمَا نَحُدُّهُ فِي الْوَطْءِ الَّذِي كَانَ مِنْهُ لَهُمَا - وَهُمَا لَيْسَتَا امْرَأَتَهُ وَلَا أَمَتَهُ ثُمَّ يَلْزَمُهُمْ عَلَى هَذَا الِاعْتِلَالِ الْفَاسِدِ: أَنَّ مَنْ قَذَفَ امْرَأَةً ثُمَّ تَزَوَّجَهَا أَنْ يُلَاعَنَ وَلَا حَدَّ عَلَيْهِ، وَأَنَّهُ إِنْ زَنَى بِهَا فَحَمَلَتْ ثُمَّ تَزَوَّجَهَا أَوْ اشْتَرَاهَا أَنْ يُلْحَقَ بِهِ الْوَلَدُ، وَإِلَّا فَكَيْفَ يَنْفِي عَنْهُ وَلَدَ امْرَأَتِهِ مِنْهُ أَوْ وَلَدَ أَمَتِهِ مِنْهُ؟ فَإِنْ قَالُوا: لَيْسَ ابْنَ فِرَاشٍ؟ قُلْنَا: صَدَقْتُمْ، وَلِذَلِكَ نَحُدُّهُ عَلَى الْوَطْءِ السَّالِفِ، لِأَنَّهُ لَمْ يَكُنْ وَطْءَ فِرَاشٍ؟

L41391 Abu Muhammad—may Allah have mercy on him—said: If a man commits adultery with a free woman or a slave woman and then kills her, he is subject to the full punishment for adultery, as well as retaliation, blood money, or market value. For all of these are rights Allah, the Exalted, has obligated; they are not nullified by corrupt opinions.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَوْ زَنَى بِامْرَأَةِ حُرَّةٍ أَوْ أَمَةٍ ثُمَّ قَتَلَهَا فَعَلَيْهِ حَدُّ الزِّنَى كَامِلًا - وَالْقَوَدُ أَوْ الدِّيَةُ وَالْقِيمَةُ، لِأَنَّهَا كُلَّهَا حُقُوقٌ أَوْجَبَهَا اللَّهُ تَعَالَى، فَلَا تُسْقِطُهَا الْآرَاءُ الْفَاسِدَةُ.

L41392 It has been reported from Abu Hanifah that the punishment for adultery is remitted if he kills her. Nothing more astonishing than this calamity has been heard: that one commits adultery and becomes liable to the punishment, yet when he adds the major sin of killing a person - which Allah the Exalted has forbidden - to the major sin of adultery, the punishment for adultery is waived from him. We declare our innocence before Allah the Exalted from such a notion, and we praise Him abundantly for preservation from it, and in Him we seek help.

وَرُوِيَ عَنْ أَبِي حَنِيفَةَ أَنَّ حَدَّ الزِّنَى يَسْقُطُ إِذَا قَتَلَهَا - فَمَا سُمِعَ بِأَعْجَبَ مِنْ هَذِهِ الْبَلِيَّةِ: أَنْ يَكُونَ يَزْنِي فَيَلْزَمُ الْحَدَّ، فَإِذَا أَضَافَ إِلَى كَبِيرَةِ الزِّنَى كَبِيرَةَ الْقَتْلِ لِلنَّفْسِ الَّتِي حَرَّمَ اللَّهُ تَعَالَى: سَقَطَ عَنْهُ حَدُّ الزِّنَى - نَبْرَأُ إِلَى اللَّهِ تَعَالَى مِنْ ذَلِكَ، وَنَحْمَدُهُ عَلَى السَّلَامَةِ مِنْهَا كَثِيرًا، وَبِهِ نَسْتَعِينُ.

[مَسْأَلَة مَنْ وَطِئَ امْرَأَةَ أَبِيهِ أَوْ حَرِيمَتَهُ بِعَقْدِ زَوَاجٍ أَوْ بِغَيْرِ عَقْدٍ]

A legal issue regarding one who has sexual intercourse with his father's wife or his female mahram, whether by a marriage contract or without a contract.

٢٢٢٠ - مَسْأَلَةٌ: وَمَنْ وَطِئَ امْرَأَةَ أَبِيهِ أَوْ حَرِيمَتَهُ، بِعَقْدِ زَوَاجٍ أَوْ بِغَيْرِ عَقْدٍ؟

2220. Issue: What is the ruling for one who has intercourse with his father's wife or a female forbidden to him (ḥarīmah), whether through a marriage contract or without one?

قَالَ أَبُو مُحَمَّد: نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَحْمَدُ بْنُ زُهَيْرٍ نا عَبْدُ اللَّهِ بْنُ جَعْفَرٍ الرَّقِّيّ، وَإِبْرَاهِيمُ بْنُ عَبْدِ اللَّهِ، قَالَ الرَّقِّيّ: نا عُتْبَةُ بْنُ عَمْرٍو الرَّقِّيّ عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ عَنْ عَدِيّ بْنِ ثَابِتٍ عَنْ يَزِيدَ بْنِ الْبَرَاءِ بْنِ عَازِبٍ عَنْ أَبِيهِ، وَقَالَ إِبْرَاهِيمُ: نا هُشَيْمٌ عَنْ أَشْعَثَ بْنِ سَوَّارٍ عَنْ الْبَرَاءِ بْنِ عَازِبٍ، ثُمَّ اتَّفَقَا - وَاللَّفْظُ لِهُشَيْمٍ - قَالَ: مَرَّ بِي عَمِّي الْحَارِثُ بْنُ عَمْرٍو وَقَدْ عَقَدَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْتُ لَهُ: أَيْ عَمِّ أَيْنَ بَعَثَكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: بَعَثَنِي إلَى رَجُلٍ تَزَوَّجَ امْرَأَةَ أَبِيهِ، فَأَمَرَنِي أَنْ أَضْرِبَ عُنُقَهُ؟»

Abu Muhammad said: Hammam narrated to us, Abbas ibn Asbagh narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, Ahmad ibn Zuhayr narrated to us, Abdullah ibn Ja'far al-Raqqi and Ibrahim ibn Abdullah narrated to us. Abdullah ibn Ja'far al-Raqqi said: Utbah ibn Amr al-Raqqi narrated to us from Zayd ibn Abi Unaysah from Adi ibn Thabit from Yazid ibn al-Bara' ibn Azib from his father. Ibrahim ibn Abdullah said: Hushaym narrated to us from Ash'ath ibn Sawwar from al-Bara' ibn Azib. Then their narrations converged—and the wording is Hushaym's—who said: My uncle al-Harith ibn Amr passed by me after the Messenger of Allah—peace and blessings be upon him—had appointed him. I said to him: "O uncle, where has the Messenger of Allah—peace and blessings be upon him—sent you?" He replied: "He sent me to a man who married his father's wife and commanded me to behead him."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا الْخَبَرُ مِنْ طَرِيقِ الرِّقِّيْنِ صَحِيحٌ نَقِيُّ الْإِسْنَادِ.

Abū Muḥammad—may Allāh have mercy on him—said, "This report, transmitted via the path of al-Riqayn, is authentic with a pure chain of transmission."

وَأَمَّا مِنْ طُرُقِ هُشَيْمٍ فَلَيْسَتْ بِشَيْءٍ، لِأَنَّ أَشْعَثَ بْنَ سَوَّارٍ ضَعِيفٌ.

As for Hushaym's chains of transmission, they are unreliable, for Ash'ath ibn Sawwār is weak.

وَبِهِ - إلَى أَحْمَدَ بْنِ زُهَيْرٍ نا يُوسُفُ بْنُ مَنَازِلَ نا عَبْدُ اللَّهِ بْنُ إدْرِيسَ نا خَالِدُ بْنُ أَبِي كَرِيمَةَ «عَنْ مُعَاوِيَةَ بْنِ قُرَّةَ عَنْ أَبِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بَعَثَ أَبَاهُ - هُوَ جَدُّ مُعَاوِيَةَ - إلَى رَجُلٍ أَعْرَسَ بِامْرَأَةِ أَبِيهِ فَضَرَبَ عُنُقَهُ وَخَمَّسَ مَالَهُ» .

And through him—to Ahmad ibn Zuhayr—Yusuf ibn Manazil narrated to us, Abdullah ibn Idris narrated to us, Khalid ibn Abi Karimah narrated to us, from Muawiyah ibn Qurrah, from his father, that the Messenger of Allah—peace and blessings be upon him and his family—sent his father—he being Muawiyah's grandfather—to a man who had married his father's wife, and he struck his neck and took one-fifth of his wealth.

Ahmad ibn Ibrahim said: Yahya ibn Ma'in said: This hadith is ṣaḥīḥ, and

those who narrated it. He brought him before Muawiyah, and it is invalid. Ibn Idris had sent him to a group and attributed it to others.

قَالَ أَحْمَدُ بْنُ إِبْرَاهِيمَ: قَالَ يَحْيَى بْنُ مَعِينٍ: هَذَا الْحَدِيثُ صَحِيحٌ، وَمَنْ رَوَاهُ فَأَوْقَفَهُ عَلَى مُعَاوِيَةَ فَلَيْسَ بِشَيْءٍ، قَدْ كَانَ ابْنُ إِدْرِيسَ أَرْسَلَهُ لِقَوْمٍ وَأَسْنَدَهُ لِآخَرِينَ.

L41402 Ibn Maʿīn said: Yūsuf ibn Manāzil is trustworthy. Ḥumām narrated to us; ʿAbbās ibn Aṣbagh narrated to us; Muḥammad ibn ʿAbd al-Malik ibn Ayman narrated to us; ʿAbd Allāh ibn Aḥmad ibn Ḥanbal and Abū Qilābah narrated to us. Abū Qilābah said: al-Mughīrah ibn Bakkār narrated to us; Shuʿbah narrated to us: I heard al-Rabīʿ ibn al-Rukayn say: I heard ʿAdī ibn Thābit narrate from al-Barāʾ, who said: "Some people passed by us. We asked: 'Where are you headed?' They replied: 'The Messenger of Allah (may Allah bless him and his family and grant him peace) sent us to a man who approached his father's wife, to strike his neck.'"

قَالَ ابْنُ مَعِينٍ: وَيُوسُفُ بْنُ مَنَازِلَ ثِقَةٌ نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ، وَأَبُو قِلَابَةَ، قَالَ أَبُو قِلَابَةَ: حَدَّثَنَا الْمُغِيرَةُ بْنُ بَكَّارٍ نا شُعْبَةُ سَمِعْتُ الرَّبِيعَ بْنَ الرُّكَيْنِ يَقُولُ: سَمِعْتُ عَدِيَّ بْنَ ثَابِتٍ يُحَدِّثُ عَنِ «الْبَرَاءِ، قَالَ: مَرَّ بِنَا نَاسٌ يَنْطَلِقُونَ قُلْنَا: أَيْنَ تُرِيدُونَ؟ قَالُوا: بَعَثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِلَى رَجُلٍ أَتَى امْرَأَةَ أَبِيهِ أَنْ نَضْرِبَ عُنُقَهُ؟»

L41403 Abū Muḥammad—may Allāh have mercy on him—said: These are authentic narrations that establish binding proof. It does not detract from their validity that ʿAdī ibn Thābit narrated them once from Al-Barāʾ and another time from Yazīd ibn Al-Barāʾ from his father, for he heard it from Al-Barāʾ and heard it from Yazīd ibn Al-Barāʾ, thus narrating it once from the former and once from the latter. Sufyān ibn ʿUyaynah similarly did this, relating a ḥadīth once from Al-Zuhrī and another time from Maʿmar from Al-Zuhrī. He said: People have differed regarding this matter. A group said: Whoever marries his mother, daughter, a woman forbidden to him by close kinship, or commits fornication with any of them—all these acts are equivalent. All constitute fornication, and the marriage is entirely a marriage contract if he was aware of the prohibition. The full punishment for fornication applies to him, and the child is not legally attributed to the marriage.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: هَذِهِ آثَارٌ صِحَاحٌ تَجِبُ بِهَا الْحُجَّةُ وَلَا يَضُرُّهَا أَنْ يَكُونَ عَدِيُّ بْنُ ثَابِتٍ حَدَّثَ بِهِ مَرَّةً عَنِ الْبَرَاءِ، وَمَرَّةً عَنْ يَزِيدَ بْنِ الْبَرَاءِ عَنْ أَبِيهِ فَقَدْ يَسْمَعُهُ مِنْ الْبَرَاءِ وَيَسْمَعُهُ مِنْ يَزِيدَ بْنِ الْبَرَاءِ فَيُحَدِّثُ بِهِ مَرَّةً عَنْ هَذَا وَمَرَّةً عَنْ هَذَا، فَهَذَا سُفْيَانُ بْنُ عُيَيْنَةَ يَفْعَلُ ذَلِكَ، يَرْوِي الْحَدِيثَ عَنِ الزُّهْرِيِّ مَرَّةً، وَعَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ مَرَّةً، قَالَ: وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: مَنْ تَزَوَّجَ أُمَّهُ أَوْ ابْنَتَهُ أَوْ حَرِيمَتَهُ أَوْ زَنَى بِوَاحِدَةٍ مِنْهُنَّ، فَكُلُّ ذَلِكَ سَوَاءٌ، وَهُوَ كُلُّهُ زِنًى، وَالزَّوَاجُ كُلُّهُ زَوَاجٌ إِذَا كَانَ عَالِمًا بِالتَّحْرِيمِ، وَعَلَيْهِ حَدُّ الزِّنَى كَامِلًا، وَلَا يَلْحَقُ الْوَلَدُ فِي الْعَقْدِ.

L41404 This is the opinion of Al-Hasan, Malik, Al-Shafi'i, Abu Thawr, Abu Yusuf, and Muhammad ibn Al-Hasan (the two companions of Abu Hanifah), except that Malik differentiated between intercourse in such cases through a marriage contract and intercourse in some of these cases through ownership by the right hand. He said: If a man owns his niece (daughter of his brother or sister), his paternal aunt, maternal aunt, his father's wife, the wife of his biological son, his own foster mother through breastfeeding, his foster daughter

وَهُوَ قَوْلُ الْحَسَنِ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ - صَاحِبِي أَبِي حَنِيفَةَ - إِلَّا أَنَّ مَالِكًا فَرَّقَ بَيْنَ الْوَطْءِ فِي ذَلِكَ بِعَقْدِ النِّكَاحِ، وَبَيْنَ الْوَطْءِ فِي بَعْضِ ذَلِكَ بِمِلْكِ الْيَمِينِ، فَقَالَ: فِيمَنْ مَلَكَ بِنْتَ أَخِيهِ، أَوْ بِنْتَ أُخْتِهِ، وَعَمَّتِهِ، وَخَالَتِهِ، وَامْرَأَةَ أَبِيهِ، وَامْرَأَةَ ابْنِهِ بِالْوِلَادَةِ، وَأُمَّهُ نَفْسِهِ مِنَ الرَّضَاعَةِ، وَابْنَتَهُ

مِنْ الرَّضَاعَةِ، وَأُخْتَهُ مِنْ الرَّضَاعَةِ وَهُوَ عَارِفٌ بِتَحْرِيمِهِنَّ، وَعَارِفٌ بِقَرَابَتِهِنَّ مِنْهُ ثُمَّ وَطِئَهُنَّ كُلَّهُنَّ عَالِمًا بِمَا عَلَيْهِ فِي ذَلِكَ، فَإِنَّ الْوَلَدَ لَاحِقٌ بِهِ، وَلَا حَدَّ عَلَيْهِ، لَكِنْ يُعَاقَبُ.

through breastfeeding, or his foster sister through breastfeeding, while being fully aware of their prohibition and their familial relation to him, and then engages in intercourse with all of them knowing the legal rulings incumbent upon him in that matter, then the child is legally attributed to him, no hadd punishment is applied, but he receives discretionary punishment.

وَرَأَى: أَنْ مِلْكَ أُمِّهِ الَّتِي وَلَدَتْهُ، وَابْنَتِهِ، وَأُخْتِهِ، بِأَنَّهُنَّ حَرَائِرُ سَاعَةَ يَمْلِكُهُنَّ، فَإِنْ وَطِئَهُنَّ حُدَّ حَدَّ الزِّنَى.

L41405 He maintained the view that the ownership of his mother who bore him, his daughter, and his sister—given they are free women at the time he owns them—entails that if he engages in sexual intercourse with them, he must receive the ḥadd punishment prescribed for zinā.

وَقَالَ أَبُو حَنِيفَةَ: لَا حَدَّ عَلَيْهِ فِي ذَلِكَ كُلِّهِ، وَلَا حَدَّ عَلَى مَنْ تَزَوَّجَ أُمَّهُ الَّتِي وَلَدَتْهُ، وَابْنَتَهُ، وَأُخْتَهُ، وَجَدَّتَهُ، وَعَمَّتَهُ، وَخَالَتَهُ، وَبِنْتَ أَخِيهِ، وَبِنْتَ أُخْتِهِ - عَالِمًا بِقَرَابَتِهِنَّ مِنْهُ، عَالِمًا بِتَحْرِيمِهِنَّ عَلَيْهِ، وَوَطِئَهُنَّ كُلَّهُنَّ: فَالْوَلَدُ لَاحِقٌ بِهِ، وَالْمَهْرُ وَاجِبٌ لَهُنَّ عَلَيْهِ، وَلَيْسَ عَلَيْهِ إِلَّا التَّعْزِيرُ دُونَ الْأَرْبَعِينَ فَقَطْ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، قَالَا: فَإِنْ وَطِئَهُنَّ بِغَيْرِ عَقْدِ نِكَاحٍ فَهُوَ زِنًى، عَلَيْهِ مَا عَلَى الزَّانِي مِنْ الْحَدِّ.

L41406–41408 Abū Ḥanīfa said: There is no ḥadd punishment upon him for any of that, nor is there a ḥadd punishment upon one who marries his mother who bore him, his daughter, his sister, his grandmother, his paternal aunt, his maternal aunt, his brother's daughter, or his sister's daughter—knowing their relation to him and their prohibition for him—and then has intercourse with all of them. The child is legally attributed to him, and the dowry... He is legally responsible toward them and is only liable for a taʿzīr punishment of less than forty lashes—this being the opinion of Sufyan al-Thawri. The two scholars said: If he has intercourse with them without a valid marriage contract, it constitutes fornication, and he incurs the ḥadd punishment prescribed for a fornicator.

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ فِي مَنْ زَنَى بِذَاتِ مَحْرَمٍ: يُرْجَمُ عَلَى كُلِّ حَالٍ. وَقَالَ إِبْرَاهِيمُ النَّخَعِيُّ، وَالْحَسَنُ: حَدُّهُ حَدُّ الزِّنَى.

L41409 Narrated to us Ḥammām; informed us Ibn Mufarrij; informed us Ibn al-Aʿrabī; informed us al-Dabarī; from ʿAbd al-Razzāq, from Maʿmar, from Qatādah, from Saʿīd ibn al-Musayyab that he said regarding one who commits *zinā* with a woman within the prohibited degree of marriage (*dhāt maḥram*): "They are to be stoned regardless of marital status." Ibrāhīm al-Nakhaʿī and al-Ḥasan said: "His *ḥadd* is the *ḥadd* prescribed for *zinā*."

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَوْفٍ - هُوَ ابْنُ أَبِي جَمِيلَةَ - نِي عَمْرُو بْنُ أَبِي هِنْدٍ، قَالَ: إنَّ رَجُلًا أَسْلَمَ وَتَحْتَهُ أُخْتَانِ، فَقَالَ لَهُ عَلِيُّ بْنُ أَبِي طَالِبٍ: لَتُفَارِقَنَّ إحْدَاهُمَا، أَوْ لَأَضْرِبَنَّ عُنُقَك.

L41410 And with it—from Abd al-Razzaq from Ma'mar from Awf—he is Ibn Abi Jamilah—[Nafi'] from Amr ibn Abi Hind, who said: A man embraced Islam while married to two sisters, so Ali ibn Abi Talib said to him: "You must divorce one of them, or I will behead you."

L41411 Jābir ibn Zayd Abū al-Sha'thā', Aḥmad ibn Ḥanbal, and Isḥāq ibn Rāhawayh

said: Anyone who knowingly engages in intercourse with his forbidden female relative, fully aware of the prohibition and her kinship to him—whether he does so under the name of marriage, by right-hand possession, or under any other pretext—must inevitably be killed, whether he is muḥṣan (married) or not. Abū Muḥammad—may Allāh have mercy on him—said: Since they differed as we mentioned, it became necessary to examine the matter so the truth may emerge, and we may follow it—Allāh willing. We began with the evidence presented by Abū Ḥanīfah and those who adopted his view regarding his opinion. We found them asserting: "The term 'zinā' differs from the term 'nikāḥ,' so it is obligatory for zinā to have a ruling distinct from nikāḥ."

وَقَالَ جَابِرُ بْنُ زَيْدٍ أَبُو الشَّعْثَاءِ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ، كُلُّ مَنْ وَطِئَ حَرِيمَتَهُ عَالِمًا بِالتَّحَرُّمِ عَالِمًا بِقَرَابَتِهَا مِنْهُ، فَسَوَاءٌ وَطِئَهَا بِاسْمِ نِكَاحٍ، أَوْ بِمِلْكِ يَمِينٍ، أَوْ بِغَيْرِ ذَلِكَ، فَإِنَّهُ يُقْتَلُ وَلَا بُدَّ - مُحْصَنًا كَانَ أَوْ غَيْرَ مُحْصَنٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِيَلُوحَ الْحَقُّ فَنَتَّبِعَهُ - إِنْ شَاءَ اللَّهُ تَعَالَى - فَبَدَأْنَا بِمَا احْتَجَّ بِهِ أَبُو حَنِيفَةَ وَمَنْ قَلَّدَهُ لِقَوْلِهِ، فَوَجَدْنَاهُمْ يَقُولُونَ: إِنَّ اسْمَ " الزِّنَى " غَيْرُ اسْمِ " النِّكَاحِ " فَوَاجِبٌ أَنْ يَكُونَ لَهُ غَيْرُ حُكْمِهِ.

L41412 If you say: He committed adultery with his mother—then the punishment for adultery applies to him. If you say: He married his mother, marriage being distinct from adultery, no prescribed punishment applies. Rather, it is a void marriage subject to the rulings of invalid marriage: annulment of the punishment, establishment of filiation, and obligation of the dowry. We know of no other obfuscation in their argument besides this—it is corrupt speech, baseless argumentation, and reprehensible conduct. As for the statement "The term 'adultery' differs from 'marriage,'" this is undeniably true. However, marriage remains what Allah the Exalted has commanded and permitted—the pure lawful act and blessed practice.

فَإِذَا قُلْتُمْ: زَنَى بِأُمِّهِ - فَعَلَيْهِ مَا عَلَى الزَّانِي؟ وَإِذَا قُلْتُمْ: تَزَوَّجَ أُمَّهُ، فَالزَّوَاجُ غَيْرُ الزِّنَى فَلَا حَدَّ فِي ذَلِكَ، وَإِنَّمَا هُوَ نِكَاحٌ فَاسِدٌ، فَحُكْمُهُ حُكْمُ النِّكَاحِ الْفَاسِدِ، مِنْ سُقُوطِ الْحَدِّ، وَلِحَاقِ الْوَلَدِ، وَوُجُوبِ الْمَهْرِ - وَمَا نَعْلَمُ لَهُمْ تَمْوِيهًا غَيْرَ هَذَا، وَهُوَ كَلَامٌ فَاسِدٌ، وَاحْتِجَاجٌ فَاسِدٌ، وَعَمَلٌ غَيْرُ صَالِحٍ: وَأَمَّا قَوْلُهُ " إِنَّ اسْمَ الزِّنَى غَيْرُ اسْمِ الزَّوَاجِ " فَحَقٌّ لَا شَكَّ فِيهِ، إِلَّا أَنَّ الزَّوَاجَ هُوَ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ وَأَبَاحَهُ - وَهُوَ الْحَلَالُ الطَّيِّبُ وَالْعَمَلُ الْمُبَارَكُ.

L41413–41415 As for every contract or intercourse that Allah the Exalted has neither commanded nor permitted—rather, He has forbidden it—it is invalid, forbidden, sinful, and misguided. Whoever calls that "marriage" is a lying, slanderous transgressor, and it is not... The act of naming in the Sharīʿah does not belong to us—nor is there any honor—for it belongs solely to Allah the Exalted. Allah the Almighty said: "They are but names you have named—you and your fathers—for which Allah has sent down no proof." [An-Najm:23] Abū Muḥammad—may Allah have mercy on him—said: As for one who labels every invalid contract and invalid intercourse—being sheer zinā (illicit intercourse)—as marriage, to seek a means through this name to permit what Allah the Exalted has prohibited or to abolish Allah's ordained punishments, he is like one who calls a pig a ram to deem it lawful through this label, or

وَأَمَّا كُلُّ عَقْدٍ أَوْ وَطْءٍ لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِهِ، وَلَا أَبَاحَهُ بَلْ نَهَى عَنْهُ، فَهُوَ الْبَاطِلُ وَالْحَرَامُ وَالْمَعْصِيَةُ وَالضَّلَالُ - وَمَنْ سَمَّى ذَلِكَ زَوَاجًا فَهُوَ كَاذِبٌ آفِكٌ مُتَعَدٍّ، وَلَيْسَتْ التَّسْمِيَةُ فِي الشَّرِيعَةِ إلَيْنَا - وَلَا كَرَامَةَ - إنَّمَا هِيَ إلَى اللَّهِ تَعَالَى قَالَ اللَّهُ عَزَّ وَجَلَّ {إِنْ هِيَ إِلا أَسْمَاءٌ سَمَّيْتُمُوهَا أَنْتُمْ وَآبَاؤُكُمْ مَا أَنْزَلَ اللَّهُ بِهَا مِنْ سُلْطَانٍ} [النجم: ٢٣] قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا مَنْ سَمَّى كُلَّ عَقْدٍ فَاسِدٍ وَوَطْءٍ فَاسِدٍ - وَهُوَ الزِّنَى الْمَحْضُ - زَوَاجًا، لِيَتَوَصَّلَ بِهِ إلَى إبَاحَةِ مَا حَرَّمَ اللَّهُ تَعَالَى، أَوْ إلَى إسْقَاطِ حُدُودِ

like one who calls wine “nabīdh” or “ṭilāʾ (a type of alcoholic drink)” to permit it by this name, or like one who calls a synagogue or church a mosque, or like one who labels Judaism as Islam—and this constitutes renouncing Islam entirely and invalidating the contract of the Sharīʿah. No falsehood is greater than the claim: “This is an invalid marriage” or “This is invalid ownership,” for this is speech that contradicts itself. If it were indeed a marriage or ownership, then it is indeed valid and lawful, since Allah the Exalted has permitted marriage and ownership.[70]

اللَّهِ تَعَالَى، إِلَّا كَمَنْ سَمَّى الْخِنْزِيرَ: كَبْشًا، لِيَسْتَحِلَّهُ بِذَلِكَ الِاسْمِ، وَكَمَنْ سَمَّى الْخَمْرَ: نَبِيذًا، أَوْ طِلَاءً، لِيَسْتَحِلَّهَا بِذَلِكَ الِاسْمِ، وَكَمَنْ سَمَّى الْبَيْعَةَ وَالْكَنِيسَةَ: مَسْجِدًا، وَكَمَنْ سَمَّى الْيَهُودِيَّةَ: إِسْلَامًا - وَهَذَا هُوَ الِانْسِلَاخُ مِنَ الْإِسْلَامِ وَنَقْضُ عَقْدِ الشَّرِيعَةِ، وَلَيْسَ فِي الْمُحَالِ أَكْثَرُ مِنْ قَوْلِ الْقَائِلِ: هَذَا نِكَاحٌ فَاسِدٌ، وَهَذَا مِلْكٌ فَاسِدٌ، لِأَنَّ هَذَا كَلَامٌ يَنْقُضُ بَعْضُهُ بَعْضًا، وَلَئِنْ كَانَ نِكَاحًا أَوْ مِلْكًا فَإِنَّهُ لَصَحِيحٌ حَلَالٌ، لِأَنَّ اللَّهَ تَعَالَى أَحَلَّ الزَّوَاجَ، وَالْمِلْكَ.

L41416 And He, the Exalted, said: {Except with their spouses or those whom their right hands possess} [Al-Mu’minun: 6]. Thus, whatever constitutes marriage or lawful possession is lawful, permissible, permitted, and pure, with neither blame nor sin in it. But whatever entails blame and sin is neither marriage nor permissible possession permitting intercourse—nor is there any dignity—rather, it is sheer transgression and sheer adultery, nothing but a bed or forbidden fornication. Should a day ever arise where we speak of a “void marriage” or “void possession,” this would merely be recounting their own assertions and discussing their interpretations.[71]

وَقَالَ تَعَالَى: {إِلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ} [المؤمنون: ٦] فَمَا كَانَ زَوَاجًا وَمِلْكَ يَمِينٍ فَهُوَ حَلَالٌ، طَلْقٌ، وَمُبَاحٌ، طَيِّبٌ، وَلَا مَلَامَةَ فِيهِ، وَلَا مَأْثَمَ، وَكُلُّ مَا كَانَ فِيهِ اللَّوْمُ وَالْإِثْمُ فَلَيْسَ زَوَاجًا، وَلَا مِلْكًا مُبَاحًا لِلْوَطْءِ - وَلَا كَرَامَةَ - بَلْ هُوَ الْعُدْوَانُ وَالزِّنَى الْمُجَرَّدُ، لَا شَيْءَ إِلَّا فِرَاشٌ، أَوْ عَهْرٌ حَرَامٌ، فَإِنْ وَجَدَ لَنَا يَوْمًا مَا أَنْ نَقُولَ: نِكَاحٌ فَاسِدٌ، أَوْ زَوَاجٌ فَاسِدٌ، أَوْ مِلْكٌ فَاسِدٌ، فَإِنَّمَا هُوَ حِكَايَةُ أَقْوَالٍ لَهُمْ، وَكَلَامٌ عَلَى مَعَانِيهِمْ.

L41417 As the Almighty has said: *The recompense for an evil deed is an evil of equal measure* (42:40).[72]

كَمَا قَالَ تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠]

L41418 And as He, the Exalted, said: {So whoever attacks you, then attack him in the same manner as he has attacked you} [Al-Baqarah: 194] and {Allah mocks them} [Al-Baqarah: 15]. The Muslims know that recompense is not evil, that retaliation (qisas) is not aggression, and that countering Allah the Exalted in the face of mockery is not blameworthy. Rather, it is a right.[73]

وَكَمَا قَالَ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] وَ {اللَّهُ يَسْتَهْزِئُ بِهِمْ} [البقرة: ١٥] وَقَدْ عَلِمَ الْمُسْلِمُونَ أَنَّ الْجَزَاءَ لَيْسَ بِسَيِّئَةٍ، وَأَنَّ الْقِصَاصَ لَيْسَ عُدْوَانًا، وَأَنَّ مُعَارَضَةَ اللَّهِ تَعَالَى عَلَى الِاسْتِهْزَاءِ لَيْسَ مَذْمُومًا، بَلْ هُوَ حَقٌّ.

[70] **Qur’an references (L41413):** Qur’an 53:23 (An-Najm).
[71] **Qur’an references (L41416):** Qur’an 23:6 (Al-Mu’minun); Qur’an 70:30 (Al-Ma’arij).
[72] **Qur’an references (L41417):** Qur’an 42:40 (Ash-Shuraa).
[73] **Qur’an references (L41418):** Qur’an 2:194 (Al-Baqarah); Qur’an 2:15 (Al-Baqarah).

فَصَحَّ مِنْ هَذَا أَنَّ كُلَّ عَقْدٍ لَمْ يَأْمُرْ بِهِ اللَّهُ تَعَالَى فَمَنْ عَقَدَهُ فَهُوَ بَاطِلٌ - وَإِنْ وَطِئَ فِيهِ، فَإِنْ كَانَ عَالِمًا بِالتَّحْرِيمِ، عَالِمًا بِالسَّبَبِ الْمُحَرِّمِ: فَهُوَ زَانٍ مُطْلَقٌ.

L41419 Thus, it is evident from this that any contract not ordained by Allah the Exalted is void if someone enters into it. Even if intercourse occurs within it, if the individual is aware of the prohibition and the reason for its prohibition, then he is an absolute fornicator.

وَهَكَذَا الْقَوْلُ فِيمَنْ نَكَحَ نِكَاحَ مُتْعَةٍ: أَوْ شِغَارٍ، أَوْ مَوْهُوبَةٍ، أَوْ عَلَى شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، أَوْ بِصَدَاقٍ: لَا يَحِلُّ، مَنْ جَهِلَ التَّحْرِيمَ فِي شَيْءٍ مِنْ ذَلِكَ، بِأَنْ لَمْ تَبْلُغْهُ، أَوْ بِتَأْوِيلٍ لَمْ تَقُمْ عَلَيْهِ الْحُجَّةُ، فِي فَسَادِهِ، فَهُوَ مَعْذُورٌ، لَا حَدَّ عَلَيْهِ، وَمَنْ قَذَفَهُ فَعَلَيْهِ الْحَدُّ.

L41420 The same ruling applies to one who contracts a marriage of mut'ah, shighar, mawhubah, a marriage stipulating a condition not found in the Book of Allah the Exalted, or with an invalid dowry: such marriages are void. Whoever is ignorant of the prohibition in any of these matters—whether due to the ruling not reaching him or through an interpretation unsupported by evidence regarding its invalidity—is excused, and no ḥadd punishment is imposed upon him. But whoever accuses him of fornication, the ḥadd punishment falls upon the accuser.

كَمَنْ دَخَلَ بَلَدًا فَتَزَوَّجَ امْرَأَةً لَا يَعْرِفُهَا، فَوَجَدَهَا أُمَّهُ أَوْ ابْنَتَهُ: فَهَذَا يَلْحَقُ فِيهِ الْوَلَدُ، وَلَا يُحَدُّ فِيهِ حَدٌّ بِالْإِجْمَاعِ - وَبِهَذَا بَطَلَ قَوْلُ أَبِي حَنِيفَةَ الْمَذْكُورُ، وَقَوْلُ مَالِكٍ الَّذِي وَصَفْنَا فِي وَطْءِ الْحَرِيمَةِ بِمِلْكِ الْيَمِينِ.

L41421–41422 Like one who enters a city and marries a woman he does not know, then discovers her to be his mother or daughter: in this case, the child is legally recognized as his offspring, and no _ḥadd_ punishment is applied by consensus. This invalidates Abū Ḥanīfah's aforementioned opinion and Mālik's position which we described regarding intercourse with a woman forbidden due to kinship through right-hand possession.

وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ احْتِجَاجِ بَعْضِ مَنْ لَقِينَاهُ مِنْ الْمَالِكِيِّينَ بِقَوْلِهِ تَعَالَى: {إِلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ} [المؤمنون: ٦] ؟ قِيلَ لَهُمْ: إنْ كُنْتُمْ تَعَلَّقْتُمْ بِهَذِهِ الْآيَةِ فِي إلْحَاقِ الْوَلَدِ بِمَنْ وَطِئَ عَمَّتَهُ، وَخَالَتَهُ، وَذَوَاتَ مَحَارِمِهِ، فَإِنَّهَا مِنْ مِلْكِ الْيَمِينِ: فَأَبِيحُوا الْوَطْءَ الْمَذْكُورَ، وَأَسْقِطُوا عَنْهُ الْمَلَامَةَ جُمْلَةً - فَهَذَا هُوَ نَصُّ الْآيَةِ، فَلَوْ فَعَلُوا ذَلِكَ لَكَفَرُوا بِلَا خِلَافٍ مِنْ أَحَدٍ - وَإِذْ لَمْ يَفْعَلُوا ذَلِكَ، وَلَا أَسْقَطُوا الْمَلَامَةَ، وَلَا أَبَاحُوا لَهُ ذَلِكَ قَدْ ظَهَرَ تَمْوِيهُهُمْ فِي إيرَادِ هَذِهِ الْآيَةِ فِي غَيْرِ مَوْضِعِهَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ قَالَ قَائِلٌ: فَأَنْتُمْ تَقُولُونَ " إنَّ الْمَمْلُوكَةَ الْكِتَابِيَّةَ لَا يَحِلُّ وَطْؤُهَا وَإِنْ

L41423 The utmost wonder lies in the argumentation of some Malikis we encountered who cite Allah's words: {Except with their spouses or those their right hands possess} [Al-Mu'minun:6]. They were confronted: "If you cling to this verse to establish paternity for one who fornicates with his paternal aunt, maternal aunt, or female mahrams - claiming these fall under 'those their right hands possess' - thereby permitting such intercourse and wholly absolving him of blame, then this constitutes the explicit text of the verse. Were they to do this, they would undoubtedly commit disbelief without disagreement from anyone. Since they neither do this, nor absolve blame, nor permit such acts, does not their deception in citing this verse out of context become evident?"

Abu Muhammad (may Allah have mercy on him) responded: "Should an objector say: 'You yourselves claim that intercourse with an enslaved Jewish or Christian woman is unlawful, yet if one does so, no ḥadd punishment

applies and the child is attributed to him. What differentiates this from one who fornicates with the female relatives we mentioned, where you impose the ḥadd penalty for zinā and deny paternity?'"[74]

وَطِئَهَا فَلَا حَدَّ عَلَيْهِ وَالْوَلَدُ لَاحِقٌ " فَمَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ مَنْ وَطِئَ أَحَدًا مِنْ ذَوَاتِ مَحَارِمِهِ الَّتِي ذَكَرْنَا فَأَوْجَبْتُمْ فِي كُلِّ هَذَا حَدَّ الزِّنَى، وَلَمْ تُلْحِقُوا الْوَلَدَ؟

L41424 We said: The distinction herein is that Allah, the Exalted, permitted the ownership of enslaved individuals in general, while prohibiting close kin by blood, breastfeeding, and marriage ties, and married women—all under a single, consistent prohibition. Thus, their very persons are entirely forbidden under one prohibition: neither touching them, nor gazing upon nakedness, nor any form of enjoyment whatsoever is permitted, for they are prohibited in their very persons.

قُلْنَا: إنَّ الْفَرْقَ فِي ذَلِكَ: هُوَ أَنَّ اللَّهَ تَعَالَى أَبَاحَ مِلْكَ الْيَمِينِ جُمْلَةً، وَحَرَّمَ ذَوَاتَ الْمَحَارِمِ بِالنَّسَبِ، وَالرَّضَاعِ، وَالصِّهْرِ، وَالْمُحْصَنَاتِ مِنْ النِّسَاءِ، تَحْرِيمًا وَاحِدًا مُسْتَوِيًا: فَحُرِّمَتْ أَعْيَانُهُنَّ كُلِّهِنَّ تَحْرِيمًا وَاحِدًا، وَلَمْ يَحِلَّ مِنْهُنَّ لَمْسٌ، وَلَا رُؤْيَةُ عُرْيَةٍ، وَلَا تَلَذُّذٌ أَصْلًا، لِأَنَّهُنَّ مُحَرَّمَاتُ الْأَعْيَانِ.

L41425 And He, the Exalted, said: {And do not marry polytheistic women until they believe} [Al-Baqarah: 221]. Thus, He prohibited only marriage to them, for marriage is nothing but the contract of wedlock. As for intercourse itself, if we own them, their persons are not prohibited to us, as there is no explicit text nor consensus on that. Only intercourse with them is prohibited, while the rest remains permissible through ownership by the right hand: such as a female slave, a menstruating woman, a woman in a state of ritual consecration, a woman observing an obligatory fast, a woman in obligatory iʿtikāf, and a woman pregnant by someone other than her master—with no distinction.[75]

وَقَالَ تَعَالَى: {وَلا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَّ} [البقرة: ٢٢١] فَإِنَّمَا حَرَّمَ فِيهِنَّ النِّكَاحَ فَقَطْ، وَالنِّكَاحُ لَيْسَ إلَّا عَقْدَ الزَّوَاجِ، أَمَّا الْوَطْءُ فَقَطْ، فَإِذَا مَلَكْنَاهُنَّ فَلَمْ تُحَرَّمْ عَلَيْنَا أَعْيَانُهُنَّ، إذْ لَا نَصَّ فِي ذَلِكَ، وَلَا إجْمَاعَ، وَإِنَّمَا حُرِّمَ وَطْؤُهُنَّ فَقَطْ، وَبَقِيَ سَائِرُ ذَلِكَ عَلَى التَّحْلِيلِ بِمِلْكِ الْيَمِينِ: كَالْمَمْلُوكَةِ، وَالْحَائِضِ، وَالْمُحْرِمَةِ، وَالصَّائِمَةِ فَرْضًا، وَالْمُعْتَكِفَةِ فَرْضًا، وَالْحَامِلِ مِنْ غَيْرِ السَّيِّدِ، وَلَا فَرْقَ.

L41426–41428 Since none of these women were prohibited due to kinship, they remained a marital bed in matters other than intercourse. Thus, intercourse—even if forbidden—occurs within a marital bed where only intercourse itself is prohibited, and every act of intercourse outside of… Inherently prohibited intercourse is not considered ʿihr nor zinā. Rather, ʿihr refers exclusively to that which falls under the category of inherently prohibited intercourse. And success comes from Allah, the Exalted.

فَلَمَّا لَمْ يَكُنْ فِي وَاحِدَةٍ مِنْ هَؤُلَاءِ مُحَرَّمَةُ الْعَيْنِ كُنَّ فِرَاشًا فِي غَيْرِ الْوَطْءِ، فَكَانَ الْوَطْءُ - وَإِنْ كَانَ حَرَامًا - فَهُوَ فِي فِرَاشٍ لَمْ يُحَرَّمْ فِيهِ إلَّا الْوَطْءُ فَقَطْ وَكُلُّ وَطْءٍ فِي غَيْرِ مُحَرَّمِ الْعَيْنِ فَلَيْسَ عِهْرًا، وَلَا زِنًى، وَإِنَّمَا الْعِهْرُ: مَا كَانَ فِي مُحَرَّمَةِ الْعَيْنِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41429 He said: Then we examined the position of those who mandated the ḥadd punishment for intercourse with one's mother through a marriage contract, equivalent to the punishment for adultery with women unrelated to her, and

قَالَ: ثُمَّ نَظَرْنَا فِيمَنْ أَوْجَبَ الْحَدَّ فِي وَطْءِ الْأُمِّ بِعَقْدِ النِّكَاحِ كَحَدِّ الزِّنَى بِغَيْرِهَا مِنْ الْأَجْنَبِيَّاتِ، وَقَوْلِ مَنْ أَوْجَبَ فِي ذَلِكَ الْقَتْلَ - أَحْصَنَ أَوْ لَمْ يُحْصِنْ - فَوَجَدْنَا الْخَبَرَ

[74] **Qur'an references (L41423):** Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij).
[75] **Qur'an references (L41425):** Qur'an 2:221 (Al-Baqarah).

the view of those who mandated execution for such an act—whether the perpetrator was a married person (muḥṣan) or not. We found the narration regarding the execution of one who marries his father's wife to be established, and the legal argument based on it is sound. Thus, ruling by it became obligatory, and no one has the leeway to deviate from it.

فِي قَتْلِ مَنْ أَعْرَسَ بِامْرَأَةِ أَبِيهِ ثَابِتًا وَالْحُجَّةُ بِهِ قَائِمَةٌ، فَوَجَبَ الْحُكْمُ بِهِ، وَلَمْ يَسَعْ أَحَدًا الْخُرُوجُ عَنْهُ.

L41430 Among the statements of the opponents regarding that matter was their saying: "It is possible that the one who married his father's wife did so while considering it lawful. If this is the case, then do we not oppose you in that?"

فَكَانَ مِنْ قَوْلِ الْمُخَالِفِ فِي ذَلِكَ أَنْ قَالُوا: قَدْ يُمْكِنُ أَنْ يَكُونَ ذَلِكَ الَّذِي أَعْرَسَ بِامْرَأَةِ أَبِيهِ قَدْ فَعَلَ ذَلِكَ مُسْتَحِلًّا لَهُ، فَإِنْ كَانَ هَذَا فَنَحْنُ لَا نُخَالِفُكُمْ فِي ذَلِكَ؟

L41431 We said to them: This addition by whoever fabricated it is a sheer lie against the Messenger of Allah—peace and blessings be upon him—and against the Companions who narrated it—may Allah be pleased with them. Had this been the case, the narrator would have stated: "The Messenger of Allah—peace and blessings be upon him and his family—sent us to a man who apostatized and took his father's wife as lawful, so we executed him for apostasy." Since the narrator did not mention this, the addition is plainly false. Thus, this addition constitutes an unfounded assumption absent from the original narration.

فَقُلْنَا لَهُمْ: إِنَّ هَذِهِ الزِّيَادَةَ مِمَّنْ زَادَهَا كَذِبٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُجَرَّدٌ، وَعَلَى مَنْ رَوَى ذَلِكَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَوْ كَانَ ذَلِكَ لَقَالَ الرَّاوِي: بَعَثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إلَى رَجُلٍ ارْتَدَّ فَاسْتَحَلَّ امْرَأَةَ أَبِيهِ، فَقَتَلْنَاهُ عَلَى الرِّدَّةِ، فَإِذَا لَمْ يَقُلْ ذَلِكَ الرَّاوِي، فَهُوَ كَذِبٌ مُجَرَّدٌ، فَهَذِهِ الزِّيَادَةُ ظَنُّ مَا لَيْسَ فِيهِ.

L41432 It is established that whoever has intercourse with his father's wife—whether through a contract termed marriage or without any contract, as stated in the wording of the aforementioned hadith—must be executed, and this is obligatory and necessary. The confiscation of one-fifth of his wealth is obligatory, and the remainder goes to his heirs—if he had not apostatized—or to the Muslims—if he had apostatized.

فَصَحَّ مَنْ وَطِئَ امْرَأَةَ أَبِيهِ بِعَقْدٍ سِمَاهُ نِكَاحًا - أَوْ بِغَيْرِ عَقْدٍ كَمَا جَاءَتْ أَلْفَاظُ الْحَدِيثِ الْمَذْكُورِ - فَقَتْلُهُ وَاجِبٌ وَلَا بُدَّ، وَتَخْمِيسُ مَالِهِ فَرْضٌ، وَيَكُونُ الْبَاقِي لِوَرَثَتِهِ - إنْ كَانَ لَمْ يَرْتَدَّ - أَوْ لِلْمُسْلِمِينَ، إنْ كَانَ ارْتَدَّ.

L41433 If they say: "We have not found anything like this in the sources?" We respond: "We recognize no sources except the Quran, the Sunnah, and consensus. This report is a source in itself. But inform us: in which sources have you found that one who knowingly marries his mother—while knowing she is his mother—or his daughter while knowing she is his daughter, or his sister, or any of his mahram relatives—knowing the prohibition in all such cases—then consummates these marriages incurs no legal punishment, yet the dowry is obligatory for them against him, and the child is legally ascribed to him? We know this only outside Islam." Abu Muhammad—may

فَإِنْ قَالُوا: لَمْ نَجِدْ مِثْلَ هَذَا فِي الْأُصُولِ؟ قُلْنَا لَهُمْ: لَا أَصْلَ عِنْدَنَا إلَّا الْقُرْآنُ، وَالسُّنَّةُ، وَالْإِجْمَاعُ، فَهَذَا الْخَبَرُ أَصْلٌ فِي نَفْسِهِ - وَلَكِنْ أَخْبِرُونَا: فِي أَيِّ الْأُصُولِ وَجَدْتُمْ أَنَّ مَنْ تَزَوَّجَ أُمَّهُ - وَهُوَ يَدْرِي أَنَّهَا أُمُّهُ - أَوْ ابْنَتَهُ - وَهُوَ يَدْرِي أَنَّهَا ابْنَتُهُ أَوْ أُخْتَهُ - أَوْ إحْدَى ذَوَاتِ مَحَارِمِهِ - وَهُوَ يَدْرِي عَالِمٌ بِالتَّحْرِيمِ فِي كُلِّ ذَلِكَ: فَوَطِئَهُنَّ فَلَا حَدَّ عَلَيْهِ، وَالْمَهْرُ وَاجِبٌ لَهُنَّ عَلَيْهِ، وَالْوَلَدُ لَاحِقٌ بِهِ، فَمَا نَدْرِي هَذَا إلَّا فِي غَيْرِ الْإِسْلَامِ.

Allah have mercy on him—said: "As for us, it is impermissible to transgress Allah's ordained limits. We therefore rule: whoever has intercourse with his father's wife—whether by contract or without contract, or contracted her under the name of nikāh even without consummation—must inevitably be executed regardless of being a muḥṣan or not. A fifth of his property is taken. This ruling applies equally whether she was his mother or not, and irrespective of whether his father had consummated marriage with her."

L41434–41435 As for one who has intercourse with someone other than his father's wife from among the rest of his female *mahrams*—such as his mother who gave birth to him through adultery or through a contract in the name of an invalid marriage with his father (she is his mother, not his father's wife), or his sister, daughter, paternal aunt, maternal aunt, or any one of his *mahrams* through affinity or foster kinship—whether through a marriage contract or without a contract: he is an adulterer, and only the *ḥadd* punishment applies to him. If he is a *muhsan*, he is to be flogged and stoned, just as with unrelated women, because he committed adultery. As for one who is unaware regarding all such matters, there is no punishment upon him.

L41436 A legal issue concerning one who makes lawful for another sexual access to the private part of his female slave.

L41437 Abū Muḥammad—may God have mercy on him—said: Whether a woman permits her female slave to her husband, a mahram permits his female slave to his mahram, or a stranger does so—we have already mentioned Sufyān's opinion on this matter, which is extremely evidently erroneous. This is because he deemed the child to be owned by the owner of his mother, and he was correct in this. However, he then affiliated the child's lineage to the one who had intercourse with his mother—and this is an egregious error—because the Messenger of God—peace and blessings be upon him—said, "The child belongs to the marital bed, and stoning is for the adulterer."

L41438 And He, the Almighty and Majestic, has clarified: What constitutes lawful marital relations and what constitutes illicit relations? He, the Exalted,

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَأَمَّا نَحْنُ فَلَا يَجُوزُ أَنْ نَتَعَدَّى حُدُودَ اللَّهِ فِيمَا وَرَدَتْ بِهِ، فَنَقُولُ: إنَّ مَنْ وَقَعَ عَلَى امْرَأَةِ أَبِيهِ - بِعَقْدٍ أَوْ بِغَيْرِ عَقْدٍ أَوْ عَقَدَ عَلَيْهَا بِاسْمِ نِكَاحٍ وَإِنْ لَمْ يَدْخُلْ بِهَا - فَإِنَّهُ يُقْتَلُ وَلَا بُدَّ - مُحْصَنًا كَانَ أَوْ غَيْرَ مُحْصَنٍ - وَيُخَمَّسُ مَالُهُ، وَسَوَاءٌ أُمُّهُ كَانَتْ أَوْ غَيْرَ أُمِّهِ، دَخَلَ بِهَا أَبُوهُ أَوْ لَمْ يَدْخُلْ بِهَا.

وَأَمَّا مَنْ وَقَعَ عَلَى غَيْرِ امْرَأَةِ أَبِيهِ مِنْ سَائِرِ ذَوَاتِ مَحَارِمِهِ - كَأُمِّهِ الَّتِي وَلَدَتْهُ مِنْ زِنًى أَوْ بِعَقْدٍ بِاسْمِ نِكَاحٍ فَاسِدٍ مَعَ أَبِيهِ - فَهِيَ أُمُّهُ وَلَيْسَتْ امْرَأَةَ أَبِيهِ، أَوْ أُخْتَهُ، أَوْ ابْنَتَهُ، أَوْ عَمَّتَهُ، أَوْ خَالَتَهُ أَوْ وَاحِدَةً مِنْ ذَوَاتِ مَحَارِمِهِ بِصِهْرٍ، أَوْ رَضَاعٍ - فَسَوَاءٌ كَانَ ذَلِكَ بِعَقْدٍ أَوْ بِغَيْرِ عَقْدٍ: هُوَ زَانٍ، وَعَلَيْهِ الْحَدُّ فَقَطْ، وَإِنْ أُحْصِنَ عَلَيْهِ الْجَلْدُ وَالرَّجْمُ كَسَائِرِ الْأَجْنَبِيَّاتِ لِأَنَّهُ زَنَى، وَأَمَّا الْجَاهِلُ فِي كُلِّ ذَلِكَ فَلَا شَيْءَ عَلَيْهِ.

[مَسْأَلَة مِنْ أَحَلَّ لِآخَرَ فَرْجَ أَمَتِهِ]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: سَوَاءٌ كَانَتْ امْرَأَةً أَحَلَّتْ أَمَتَهَا لِزَوْجِهَا، أَوْ ذِي رَحِمٍ مَحْرَمٍ أَحَلَّ أَمَتَهُ لِذِي رَحِمِهِ، أَوْ أَجْنَبِيٍّ فَعَلَ ذَلِكَ: فَقَدْ ذَكَرْنَا قَوْلَ سُفْيَانَ فِي ذَلِكَ وَهُوَ ظَاهِرُ الْخَطَأِ جِدًّا، لِأَنَّهُ جَعَلَ الْوَلَدَ مَمْلُوكًا لِمَالِكِ أُمِّهِ، وَأَصَابَ فِي هَذَا، ثُمَّ جَعَلَهُ لَاحِقَ النَّسَبِ بِوَاطِئِ أُمِّهِ - وَهَذَا خَطَأٌ فَاحِشٌ - لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ» .

وَبَيَّنَ عَزَّ وَجَلَّ مَا هُوَ الْفِرَاشُ وَمَا هُوَ الْعِهْرُ؟ فَقَالَ تَعَالَى: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] إلَى قَوْله تَعَالَى: {هُمُ الْعَادُونَ} [المؤمنون: ٧] .

said: “And those who guard their private parts” [Al-Mu’minun: 5] up to His statement: “those who transgress” [Al-Mu’minun: 7].[76]

L41439 Therefore, this woman whose guardian has permitted another man lawful sexual access to her is neither a wife to him nor among those whom the latter’s right hand possesses—and this is invalid, for Allah the Exalted says: “And do not consume your wealth among yourselves wrongfully” [Al-Baqarah: 188].[77]

L41440 The Messenger of Allah—peace and blessings of Allah be upon him—said: “Indeed, your lives and wealth are sacred and forbidden to violate.”

L41441 We know that the one who permitted sexual relations did not free the slave, nor did he willingly surrender ownership of them, nor did he ever approve of that. Is it lawful, then, that he was content with permitting sexual relations alone?

L41442–41443 He is not obligated to anyone else, nor is anything binding on him except what he has explicitly consented to. Even if what his soul was content with in permitting sexual relations is unlawful, he is not bound by it, for what is unlawful is invalid, according to the statement of Allah’s Messenger—peace and blessings be upon him: “Whoever introduces into this matter of ours what is not part of it, it is rejected.” Therefore, the gift of sexual access is not enforceable upon him.[78]

L41444 As for the slave, he has never agreed to relinquish ownership of her; thus, it is impermissible to take her from him without his free consent, except by a scriptural text that mandates this or consensus?

L41445 Abū Muḥammad—may Allāh have mercy on him—said: If the matter is as we have described, then the child is not attributed [to the father], and the prescribed punishment is obligatory—unless he is unaware of the prohibition of what he did. And with Allāh, the Most High, is success.

فَهَذِهِ الَّتِي أَحَلَّ مَالِكُهَا فَرْجَهَا لِغَيْرِهِ لَيْسَتْ زَوْجَةً لَهُ، وَلَا مِلْكَ يَمِينٍ لِلَّذِي أَحَلَّتْ لَهُ - وَهَذَا خَطَأٌ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

وَقَدْ عَلِمْنَا أَنَّ الَّذِي أَحَلَّ الْفَرْجَ لَمْ يَهَبْ الرَّقَبَةَ وَلَا طَابَتْ نَفْسُهُ بِإِخْرَاجِهَا عَنْ مِلْكِهِ، وَلَا رَضِيَ بِذَلِكَ قَطُّ، فَإِنْ كَانَ مَا طَابَتْ بِهِ نَفْسُهُ مِنْ إبَاحَةِ الْفَرْجِ وَحْدَهُ حَلَالًا؟

فَلَا يَلْزَمُهُ سِوَاهُ، وَلَا يَنْفُذُ عَلَيْهِ غَيْرُ مَا رَضِيَ بِهِ فَقَطْ، وَإِنْ كَانَ مَا طَابَتْ بِهِ نَفْسُهُ مِنْ إبَاحَةِ الْفَرْجِ حَرَامًا، فَإِنَّهُ لَا يَلْزَمُهُ، وَالْحَرَامُ مَرْدُودٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» فَلَا يَنْفُذُ عَلَيْهِ هِبَةُ الْفَرْجِ.

وَأَمَّا الرَّقَبَةُ فَلَمْ يَرْضَ قَطُّ بِإِخْرَاجِهَا عَنْ مِلْكِهِ، فَلَا يَحِلُّ أَخْذُهَا لَهُ بِغَيْرِ طِيبِ نَفْسِهِ، إلَّا بِنَصٍّ يُوجِبُ ذَلِكَ أَوْ إجْمَاعٍ؟

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَإِذَا الْأَمْرُ كَمَا ذَكَرْنَا فَالْوَلَدُ غَيْرُ لَاحِقٍ، وَالْحَدُّ وَاجِبٌ، إلَّا أَنْ يَكُونَ جَاهِلًا بِتَحْرِيمِ مَا فَعَلَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[76] **Qur’an references (L41438):** Qur’an 23:5 (Al-Mu’minun); Qur’an 70:29 (Al-Ma’arij); Qur’an 23:7 (Al-Mu’minun).

[77] **Qur’an references (L41439):** Qur’an 2:188 (Al-Baqarah).

[78] **Hadith references (L41443):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

L41446 2222 – Question: Who permitted another person to have lawful access to the private part of his female slave?

٢٢٢٢ - مَسْأَلَةٌ: مَنْ أَحَلَّ فَرْجَ أَمَتِهِ لِغَيْرِهِ؟

L41447 From Ḥumām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Ibn Jurayj, who said: ʿAmr ibn Dīnār informed me that he heard Ṭāwūs say: Ibn ʿAbbās said, "If a man's wife, daughter, or sister makes lawful for him her female slave, he must have intercourse with her while she is hers, and he must place it between her thighs?"

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ أَنَّهُ سَمِعَ طَاوُسًا يَقُولُ: قَالَ ابْنُ عَبَّاسٍ: إِذَا أَحَلَّتْ امْرَأَةُ الرَّجُلِ، أَوْ ابْنَتُهُ، أَوْ أُخْتُهُ لَهُ جَارِيَتَهَا فَلْيُصِبْهَا وَهِيَ لَهَا، فَلْيَجْعَلْ بِهِ بَيْنَ وِرْكَيْهَا؟ .

L41448 Ibn Jurayj said: Ibn Tāwūs informed me from his father that he saw no harm in it, stating: "It is lawful. If she gives birth, her child is free; the enslaved woman belongs to his wife, and the husband owes nothing."

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي ابْنُ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ كَانَ لَا يَرَى بِهِ بَأْسًا، وَقَالَ: هُوَ حَلَالٌ فَإِنْ وَلَدَتْ فَوَلَدُهَا حُرٌّ، وَالْأَمَةُ لِامْرَأَتِهِ، وَلَا يَغْرَمُ الزَّوْجُ شَيْئًا.

L41449 Ibn Jurayj said: Ibrahim ibn Abi Bakr informed me via Abd al-Rahman ibn Zādawayh from Tawus that he said: The child is more permissible than food. If she gives birth, her child—whom she has made lawful for him—belongs to him, while she remains under her original master.

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي إِبْرَاهِيمُ بْنُ أَبِي بَكْرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ زَادَوَيْهِ عَنْ طَاوُسٍ أَنَّهُ قَالَ: هُوَ أَحَلَّ مِنَ الطَّعَامِ، فَإِنْ وَلَدَتْ فَوَلَدُهَا الَّذِي أَحَلَّتْ لَهُ، وَهِيَ لِسَيِّدِهَا الْأَوَّلِ.

L41450 Ibn Jurayj said: 'Aṭā' ibn Abī Rabāḥ reported to me that it was the practice that a man would permit his slave girl to his young male servant, his son, and his brother—and a woman would permit hers to her husband.

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عَطَاءُ بْنُ أَبِي رَبَاحٍ قَالَ: كَانَ يُفْعَلُ، يُحِلُّ الرَّجُلُ وَلِيدَتَهُ لِغُلَامِهِ، وَابْنِهِ، وَأَخِيهِ - وَتُحِلُّهَا الْمَرْأَةُ لِزَوْجِهَا.

L41451 Ata said: "I do not like that it be done, nor has it reached me from a reliable narrator." He said: "But has it reached me that a man would send his slave woman with his guest?"

قَالَ عَطَاءٌ: وَمَا أُحِبُّ أَنْ يُفْعَلَ، وَمَا بَلَغَنِي عَنْ ثِبَتٍ، قَالَ: وَقَدْ بَلَغَنِي أَنَّ الرَّجُلَ كَانَ يُرْسِلُ بِوَلِيدَتِهِ إِلَى ضَيْفِهِ؟

L41452–41454 Abu Muhammad—may Allah have mercy on him—said: "This is the opinion—and Sufyan al-Thawri likewise held it." Malik and his companions said: There is no prescribed punishment for that matter at all.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا قَوْلٌ - وَبِهِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَقَالَ مَالِكٌ، وَأَصْحَابُهُ: لَا حَدَّ فِي ذَلِكَ أَصْلًا.

L41455 Then his statement differed regarding the legal ruling on this matter: at one instance he said, "It belongs to its owner - the one who permitted it - as long as it has not conceived. But if it conceives, its value is assessed against the one to whom it was permitted."

ثُمَّ اخْتَلَفَ قَوْلُهُ فِي الْحُكْمِ فِي ذَلِكَ: فَمَرَّةً قَالَ: هِيَ لِمَالِكِهَا الْمُبِيحِ مَا لَمْ تَحْمِلْ، فَإِنْ حَمَلَتْ قُوِّمَتْ عَلَى الَّذِي أُبِيحَتْ لَهُ.

L41456 And once he said: The ruling is established based on his first intercourse

وَمَرَّةً قَالَ: تُقَامُ بِأَوَّلِ وَطْئِهِ عَلَى الَّذِي أُبِيحَتْ لَهُ حَمَلَتْ أَوْ لَمْ تَحْمِلْ.

with the one lawfully permitted to him, whether the wife conceives or not.

وَقَالَتْ طَائِفَةٌ: إِذَا أَحَلَّتْ فَقَدْ صَارَ مِلْكُهَا لِلَّذِي أُحِلَّتْ لَهُ بِكُلِّيَّتِهَا: كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ ابْنِ مُجَاهِدٍ، وَعَمْرِو بْنِ عُبَيْدٍ، قَالَ ابْنُ مُجَاهِدٍ عَنْ أَبِيهِ: وَقَالَ عَمْرٌو عَنِ الْحَسَنِ، ثُمَّ اتَّفَقَا: إِذَا أُحِلَّتِ الْأَمَةُ لِإِنْسَانٍ فَعِتْقُهَا لَهُ، وَيَلْحَقُ بِهِ الْوَلَدُ.

L41457 A group said: If she makes herself lawful, her ownership becomes entirely that of the one to whom she was made lawful, as has been narrated to us through the aforementioned chain from ʿAbd al-Razzāq from Maʿmar from Ibn Mujāhid and ʿAmr ibn ʿUbayd. Ibn Mujāhid reported from his father, and ʿAmr reported from al-Ḥasan; then they both agreed: If a female slave is made lawful to a man, her emancipation becomes his exclusive right, and the child is legally affiliated with him.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ قَيْسٍ: أَنَّ الْوَلِيدَ بْنَ هِشَامٍ أَخْبَرَهُ أَنَّهُ سَأَلَ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ؟ فَقَالَ: امْرَأَتِي أَحَلَّتْ جَارِيَتَهَا لِأَبِيهَا، قَالَ: فَهِيَ لَهُ - فَهَذَا قَوْلٌ ثَانٍ.

L41458 And through him [the preceding narrator], the chain extends to Abd al-Razzaq from Ibn Jurayj, who said: Abdullah ibn Qays informed me that al-Walīd ibn Hishām informed him that he asked Umar ibn Abd al-Azīz, who replied: “My wife has transferred her slave girl to her father.” He said: “She now belongs to him.” This is a second view.

وَذَهَبَ آخَرُونَ إِلَى غَيْرِ هَذَا: كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ فِي الرَّجُلِ يُحِلُّ الْجَارِيَةَ لِلرَّجُلِ؟ فَقَالَ: إِنْ وَطِئَهَا جُلِدَ مِائَةً - أَحْصَنَ أَوْ لَمْ يُحْصِنْ وَلَا يَلْحَقُ بِهِ الْوَلَدُ، وَلَا يَرِثُهُ، وَلَهُ أَنْ يَفْتَدِيَهُ - لَيْسَ لَهُمْ أَنْ يَمْنَعُوهُ.

L41459 Others held a differing opinion, as we have narrated through the aforementioned chain from ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, regarding a man who makes a female slave lawful for another man. He said: If he has intercourse with her, he is to be flogged one hundred lashes—whether he is a muḥṣan (a legally protected person, typically married) or not. The child is not attributed to him, nor does the child inherit from him. He has the right to redeem the child by purchasing his freedom, and the owners are not permitted to prevent him from doing so.

وَقَالَ آخَرُونَ: بِتَحْرِيمِ ذَلِكَ جُمْلَةً: كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: جَاءَ رَجُلٌ إِلَى ابْنِ عُمَرَ فَقَالَ: إِنَّ أُمِّي كَانَتْ لَهَا جَارِيَةٌ، وَإِنَّهَا أَحَلَّتْهَا لِي أَنْ أَطَأَهَا عَلَيْهَا؟ قَالَ: لَا تَحِلُّ لَك إِلَّا مِنْ إِحْدَى ثَلَاثٍ: إِمَّا أَنْ تَتَزَوَّجَهَا وَإِمَّا أَنْ تَشْتَرِيَهَا، وَإِمَّا أَنْ تَهَبَهَا لَك “.

L41460 Others said: That is entirely prohibited, as narrated through the aforementioned chain from Abd al-Razzaq from Sufyan al-Thawri from Abu Ishaq al-Sabi’i from Sa’id ibn al-Musayyab, who said: A man came to Ibn Umar and asked: “My mother had a slave girl whom she permitted me to cohabit with for her sake?” He replied: “She is not lawful for you except by one of three means: either marry her, purchase her, or have her gifted to you by your mother.”

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ أَنَّ ابْنَ عُمَرَ قَالَ: لَا يَحِلُّ لَك أَنْ تَطَأَ إِلَّا فَرْجًا لَك إِنْ شِئْت بِعْتَ، وَإِنْ شِئْت وَهَبْتَ، وَإِنْ شِئْت أَعْتَقْتَ.

L41461–41462 And by him—from Abd al-Razzaq, from Ma’mar, from Qatadah—that Ibn Umar said: It is unlawful for you to have intercourse except with a female slave you own. If you wished, you could sell her; if you wished, gift her; or if you wished, free her.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: لَا تُعَارُ الْفُرُوجُ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: أَمَّا قَوْلُ ابْنِ عَبَّاسٍ فَهُوَ عَنْهُ وَعَنْ طَاوُسٍ فِي غَايَةِ الصِّحَّةِ، وَلَكِنَّا لَا نَقُولُ بِهِ، إذْ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ قَالَ تَعَالَى {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ - إلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ} [المؤمنون: ٥ - ٦] الْآيَةَ إلَى قَوْلِهِ {هُمُ الْعَادُونَ} [المؤمنون: ٧] فَقَوْلُ اللَّهِ أَحَقُّ أَنْ يُتَّبَعَ.

L41463 And through him—to Abd al-Razzaq from Ibn Jurayj from Amr ibn Dinar, who said: "Should private parts be exposed?" Abu Muhammad—may Allah have mercy on him—said: As for the statement of Ibn Abbas, it is narrated from him and from Tawus with the highest authenticity, but we do not adhere to this view, since there is no authoritative evidence in the opinion of anyone apart from the Messenger of Allah—peace and blessings be upon him. Allah the Exalted has said: *And those who guard their private parts—except from their spouses or those their right hands possess* [23:5-6]—until His words: *they are the transgressors* [23:7]. Thus, Allah's word is most deserving of adherence.[79]

وَأَمَّا قَوْلُ مَالِك فَظَاهِرُ الْخَطَأِ، وَمَا نَعْلَمُ أَحَدًا قَالَ بِهِ قَبْلَهُ - وَيَبْطُلُ قَوْلُهُ فِي التَّقْوِيمِ بِمَا يَبْطُلُ بِهِ قَوْلُ مَنْ رَأَى أَنَّ الْمِلْكَ يَنْتَقِلُ بِالْإِبَاحَةِ، إلَّا أَنَّ قَوْلَ مَالِكٍ: زَادَ إيجَابَ الْقِيمَةِ فِي ذَلِكَ.

L41464 As for Mālik's opinion, it is clearly incorrect, and we know of no one who held it before him. His stance on valuation is nullified by the same grounds that nullify the view of those who assert that ownership is transferred through mere permissibility, except that Mālik's statement goes further by imposing the value in that matter.

وَأَمَّا قَوْلُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَالْحَسَنِ، وَمُجَاهِدٍ قَدْ تَقَدَّمَ إبْطَالُنَا إيَّاهُ بِأَنَّهُ لَا يَحِلُّ أَنْ يَلْزَمَ الْمَرْءُ فِي مَالِهِ مَا لَمْ يَلْتَزِمْهُ، إلَّا أَنْ يُلْزِمَهُ ذَلِكَ نَصٌّ أَوْ إجْمَاعٌ، فَمَنْ أَبَاحَ الْفَرْجَ وَحْدَهُ فَلَمْ يُبِحْ الرَّقَبَةَ، فَلَا يَحِلُّ إخْرَاجُ مِلْكِ الرَّقَبَةِ عَنْ يَدِهِ بِالْبَاطِلِ - وَلَيْسَ إلَّا أَحَدُ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا جَوَازُ هِبَتِهِ فَهُوَ قَوْلُ ابْنِ عَبَّاسٍ، وَإِمَّا إبْطَالُهُ فَهُوَ قَوْلُ ابْنِ عُمَرَ فَالرَّقَبَةُ فِي كِلَا الْوَجْهَيْنِ بَاقِيَةٌ عَلَى مِلْكِ مَالِكِهَا، لَا يَحِلُّ سِوَى ذَلِكَ أَصْلًا.

L41465 As for the statements of Umar ibn Abd al-Aziz, al-Hasan, and Mujahid, we have previously invalidated their position because it is impermissible to impose obligations upon a person regarding their property that they have not voluntarily undertaken, unless such an obligation is established by a textual injunction or consensus. Therefore, whoever permits sexual access alone without permitting ownership of the enslaved person, it is unlawful to unjustly deprive them of ownership of the enslaved person. There are only two possibilities with no third alternative: either the permissibility of gifting the enslaved person, which is the opinion of Ibn Abbas, or the invalidation of such a gift, which is the opinion of Ibn Umar. In both scenarios, the enslaved person remains under the ownership of their owner, and no other course of action is permissible at all.

وَأَمَّا قَوْلُ الزُّهْرِيِّ خَطَأٌ أَيْضًا لَا يَخْلُو وَطْءُ الْفَرْجِ الَّذِي أُحِلَّ لَهُ مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا أَنْ يَكُونَ زَانِيًا فَعَلَيْهِ حَدُّ الزِّنَى مِنْ الرَّجْمِ وَالْجَلْدِ أَوْ الْجَلْدِ وَالتَّغْرِيبِ - أَوْ يَكُونَ غَيْرَ زَانٍ فَلَا شَيْءَ عَلَيْهِ.

L41466 As for Az-Zuhri's statement, it is also incorrect. Lawful sexual intercourse permitted to him must fall into one of two scenarios with no third possibility: either he is a fornicator, in which case he is subject to the punishment for

[79] **Qur'an references (L41463):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun).

unlawful intercourse consisting of either stoning and flogging or flogging and exile, or he is not a fornicator, in which case no punishment applies to him.

L41467–41469 As for limiting to one hundred lashes, there is no basis for it. The child is not legally affiliated to him in this case at all—whether the child was ignorant or knowledgeable—because this relationship does not constitute a lawful matrimonial bond, nor does he possess a valid marriage contract. He is also not liable for a bridal gift, because his wealth is illicit except by explicit textual evidence or consensus, and neither textual evidence nor consensus imposes a bridal gift obligation upon him in this situation— The muḥallil (facilitator of lawful remarriage) incurs taʿzīr (discretionary punishment) if he is knowledgeable. But if they are ignorant, or if one of them is ignorant, then there is no penalty whatsoever upon the ignorant one.

وَأَمَّا الِاقْتِصَارُ عَلَى مِائَةِ جَلْدَةٍ فَلَا وَجْهَ لَهُ، وَلَا يَلْحَقُ الْوَلَدُ هَاهُنَا أَصْلًا - جَاهِلًا كَانَ أَوْ عَالِمًا - لِأَنَّهَا لَيْسَتْ فِرَاشًا أَصْلًا، وَلَا لَهُ فِيهَا عَقْدٌ، وَلَا مَهْرَ عَلَيْهِ أَيْضًا، لِأَنَّ مَالَهُ حَرَامٌ، إلَّا بِنَصٍّ أَوْ إجْمَاعٍ، وَلَمْ يُوجِبْ عَلَيْهِ الْمَهْرَ هَاهُنَا نَصٌّ وَلَا إجْمَاعٌ - وَعَلَى الْمُحَلِّلِ التَّعْزِيرُ إنْ كَانَ عَالِمًا فَإِنْ كَانُوا جُهَّالًا، أَوْ أَحَدُهُمْ فَلَا شَيْءَ عَلَى الْجَاهِلِ أَصْلًا.

A legal issue concerning situations where the witnesses to adultery do not complete four in number.

L41470

[مَسْأَلَةٌ إذَا كَانَ الشُّهُودُ فِي الزِّنَى لَا يُتِمُّونَ أَرْبَعَةً]

L41471 Issue 2223: Are the witnesses in adultery not four in number?

٢٢٢٣ - مَسْأَلَةٌ: الشُّهُودُ فِي الزِّنَى لَا يُتِمُّونَ أَرْبَعَةً؟

L41472 Abū Muḥammad—may Allāh have mercy on him—said: A group said, "If the witnesses do not complete four, they shall be subjected to the *qadhf* penalty." As narrated by ʿAbdullāh ibn Rabīʿ from ʿAbdullāh ibn Muḥammad ibn ʿUthmān, from Aḥmad ibn Khālid, from ʿAlī ibn ʿAbd al-ʿAzīz, from al-Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salamah, from ʿAlī ibn Zayd ibn Judʿān, from ʿAbd al-Raḥmān ibn Abī Bakrah:

Abū Bakrah, Ziyād, Nāfiʿ, and Shibl ibn Maʿbad were in an upper room of Abū ʿAbdullāh's house while a man was below. A gust of wind blew open the door, causing the curtain to fall—and there was a man between her thighs? Some said, "The two have been afflicted with what you see," so they pledged to uphold their testimony. When the ʿAṣr prayer time arrived, the man sought to lead the prayer, but Abū Bakrah prevented him, declaring, "By Allāh, you shall not lead us in prayer after what we witnessed!" The people urged, "Let him lead, for he is the commander. Write to ʿUmar about this." They wrote to ʿUmar, who commanded, "Come before me."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ قَوْمٌ: إذَا لَمْ يُتِمَّ الشُّهُودُ أَرْبَعَةً حُدُّوا حَدَّ الْقَذْفِ: كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ أَنَا عَلِيُّ بْنُ زَيْدِ بْنِ جُدْعَانَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرَةَ: أَنَّ أَبَا بَكْرَةَ وَزِيَادًا، وَنَافِعًا، وَشِبْلَ بْنَ مَعْبَدٍ، كَانُوا فِي دَارِ أَبِي عَبْدِ اللَّهِ فِي غُرْفَةٍ وَرَجُلٌ فِي أَسْفَلِ ذَاكَ، إذْ هَبَّتْ رِيحٌ فَتَحَتْ الْبَابَ وَوَقَعَتْ الشَّقَّةُ، فَإِذَا رَجُلٌ بَيْنَ فَخْذَيْهَا؟ فَقَالَ بَعْضُهُمْ: قَدْ ابْتُلِيَا بِمَا تَرَوْنَ، فَتَعَاهَدُوا وَتَعَاقَدُوا عَلَى أَنْ يَقُومُوا بِشَهَادَتِهِمْ، فَلَمَّا حَضَرَتْ صَلَاةُ الْعَصْرِ أَرَادَ الرَّجُلُ أَنْ يَتَقَدَّمَ فَيُصَلِّيَ بِالنَّاسِ فَمَنَعَهُ أَبُو بَكْرَةَ، وَقَالَ: لَا وَاَللَّهِ لَا تُصَلِّي بِنَا، وَقَدْ رَأَيْنَا مَا رَأَيْنَا؟ فَقَالَ النَّاسُ: دَعُوهُ فَلْيُصَلِّ فَإِنَّهُ

الْأَمِيرُ، وَاكْتُبُوا بِذَلِكَ إِلَى عُمَرَ؟ فَكَتَبُوا إِلَى عُمَرَ؟ فَكَتَبَ عُمَرُ بْنُ الْخَطَّابِ: أَنْ اُقْدُمُوا عَلَيَّ؟ فَلَمَّا قَدِمُوا شَهِدَ عَلَيْهِ أَبُو بَكْرَةَ، وَنَافِعٌ، وَشِبْلٌ، وَقَالَ زِيَادٌ: قَدْ أُرِيت رِعَةَ سِيِّهِ، وَرَأَيْت وَرَأَيْت، وَلَكِنْ لَا أَدْرِي أَنَكَحَهَا أَمْ لَا؟ فَجَلَدَهُمْ عُمَرُ، إلَّا زِيَادًا فَقَالَ أَبُو بَكْرَةَ: أَلَسْتُمْ قَدْ جَلَدْتُمُونِي؟ قَالُوا: بَلَى، قَالَ: فَأَشْهَدُ بِاَللَّهِ أَلْفَ مَرَّةٍ لَقَدْ فَعَلَ؟ فَأَرَادَ عُمَرُ بْنُ الْخَطَّابِ أَنْ يَجْلِدَهُ الثَّانِيَةَ، فَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: إنْ كَانَتْ شَهَادَةُ أَبِي بَكْرَةَ شَهَادَةَ: رَجُلَيْنِ فَارْجُمْ صَاحِبَك وَإِلَّا فَقَدْ جَلَدْتُمُوهُ.

Upon their arrival, Abū Bakrah, Nāfiʿ, and Shibl testified against him. Ziyād said, “I saw the movement of his garment—I saw and I saw—but I do not know whether he had intercourse with her or not.” ʿUmar ordered them flogged except Ziyād. Abū Bakrah protested, “Did you not flog me?” They affirmed, and he swore, “By Allāh a thousand times—he did it!” When ʿUmar moved to flog him again, ʿAlī ibn Abī Ṭālib interjected, “If Abū Bakrah’s testimony holds the weight of two men’s, stone your companion. If not, you have already flogged him.”

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ ابْنِ الْمُسَيِّبِ قَالَ: شَهِدَ عَلَى الْمُغِيرَةِ بْنِ شُعْبَةَ ثَلَاثَةٌ بِالزِّنَى وَنَكَلَ زِيَادٌ، فَجَلَدَ عُمَرُ الثَّلَاثَةَ، وَقَالَ لَهُمْ: تُوبُوا تُقْبَلْ شَهَادَتُكُمْ؟ فَتَابَ اثْنَانِ وَلَمْ يَتُبْ أَبُو بَكْرَةَ - فَكَانَتْ لَا تُقْبَلُ شَهَادَتُهُ - وَأَبُو بَكْرَةَ أَخُو زِيَادٍ لِأُمِّهِ - فَحَلَفَ أَبُو بَكْرَةَ أَنْ لَا يُكَلِّمَ زِيَادًا أَبَدًا، فَلَمْ يُكَلِّمْهُ حَتَّى مَاتَ.

L41473–41474 Humam narrated to us, Ibn Mufarrij narrated to us, Ibn al-A’rabi narrated to us, al-Dabari narrated to us: ʿAbd al-Razzaq narrated to us from Ma’mar from al-Zuhri from Ibn al-Musayyib, who said: Three individuals testified against al-Mughirah ibn Shu’bah for adultery, and Ziyad withdrew his testimony. ʿUmar flogged the three and said to them: “Repent, and your testimony will be accepted.” Two repented, but Abu Bakrah did not repent, so his testimony remained invalid. Abu Bakrah was Ziyad’s maternal brother. He swore never to speak to Ziyad again and maintained this oath until Abu Bakrah died.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ بُدَيْلٍ الْعُقَيْلِيِّ عَنْ أَبِي الْوَضَّاحِ قَالَ: شَهِدَ ثَلَاثَةُ نَفَرٍ عَلَى رَجُلٍ وَامْرَأَةٍ بِالزِّنَى، وَقَالَ الرَّابِعُ: رَأَيْتهمَا فِي ثَوْبٍ وَاحِدٍ، فَإِنْ كَانَ هَذَا زِنًى فَهُوَ ذَاكَ، فَجَلَدَ عَلِيٌّ الثَّلَاثَةَ وَعَزَّرَ الرَّجُلَ وَالْمَرْأَةَ؟

L41475 And through the chain of ʿAbd al-Razzāq from Maʿmar from Budayl al-ʿUqaylī from Abū al-Waḍḍāḥ, who said: Three men testified against a man and woman regarding adultery, while the fourth said: “I saw them both in a single garment. If this constitutes adultery, then it is indeed that.” So ʿAlī flogged the three and imposed taʿzīr (discretionary punishment) upon the man and woman?

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ - رَحِمَهُ اللَّهُ: وَبِهَذَا يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمَا.

L41476 Abu Muhammad—may Allah have mercy on him, may Allah have mercy on him—said: “And this is the opinion of Abu Hanifah, Al-Shafi’i, and their companions.”

وَقَالَ أَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا: لَا يُحَدُّ الشَّاهِدُ بِالزِّنَى أَصْلًا - كَانَ مَعَهُ غَيْرُهُ أَوْ لَمْ يَكُنْ؟

L41477 Abu Thawr, Abu Sulayman, and all our companions said: The witness is not to be subjected to the hadd punishment for adultery at all—whether there are others with him or not.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا لِيَلُوحَ الْحَقُّ مِنْ ذَلِكَ فَنَتَّبِعُهُ بِعَوْنِ اللَّهِ تَعَالَى، فَوَجَدْنَا مَنْ قَالَ: يُحَدُّ الشُّهُودُ إذَا لَمْ يُتِمُّوا أَرْبَعَةً، بِأَنْ ذَكَرُوا: مَا ناه حُمَامٌ نا ابْنُ الْمُفَرِّجِ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «قَضَاءُ اللَّهِ وَرَسُولِهِ أَنْ لَا تُقْبَلَ شَهَادَةُ ثَلَاثَةٍ، وَلَا اثْنَيْنِ، وَلَا وَاحِدٍ، عَلَى الزِّنَى وَيُجْلَدُونَ ثَمَانِينَ جَلْدَةً، وَلَا تُقْبَلُ لَهُمْ شَهَادَةٌ أَبَدًا حَتَّى يَتَبَيَّنَ لِلْمُسْلِمِينَ مِنْهُمْ تَوْبَةٌ نَصُوحٌ وَإِصْلَاحٌ» .

L41478 Abū Muḥammad—may Allāh have mercy on him—said: When they disagreed, it became necessary for us to examine the evidence each faction cited for their position so the truth might manifest itself, enabling us to follow it with the help of Allāh, the Exalted. We found those who argued: "The witnesses are to be subjected to the hadd punishment if they fail to complete four," citing the narration transmitted by Ḥummām, on the authority of Ibn al-Mufarrij, on the authority of Ibn al-Aʿrabī, on the authority of al-Dabarī, on the authority of ʿAbd al-Razzāq, on the authority of Ibn Jurayj from ʿAmr ibn Shuʿayb, who said: The Messenger of Allāh—peace and blessings be upon him—declared: "The ruling of Allāh and His Messenger is that the testimony of three, two, or one is not accepted regarding zinā. They are to be lashed eighty lashes, and no testimony is ever accepted from them until sincere repentance and reform on their part becomes evident to the Muslims."

وَقَالُوا: حُكْمُ عُمَرَ بْنِ الْخَطَّابِ بِحَضْرَةِ عَلِيٍّ وَعِدَّةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُنْكِرُ ذَلِكَ عَلَيْهِ مِنْهُمْ أَحَدٌ، فَكَانَ هَذَا إجْمَاعًا، وَهَذَا كُلُّ مَا مَوَّهُوا بِهِ، مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا، إلَّا أَنَّ بَعْضَهُمْ ذَكَرَ «قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلَّذِي رَمَى امْرَأَتَهُ الْبَيِّنَةُ وَإِلَّا حَدٌّ فِي ظَهْرِكَ» .

L41479 They said: The ruling of Umar ibn al-Khattab in the presence of Ali and several Companions—may Allah be pleased with them—was not denied by any of them, thus constituting a consensus. This is all they tried to pass off as evidence, for we know they have no argument beyond this. However, some of them mentioned "the statement of Allah's Messenger—peace and blessings be upon him—to the man who accused his wife: 'Produce the proof, otherwise you will bear the _hadd_ punishment.'"

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ: أَمَّا خَبَرُ عَمْرِو بْنِ شُعَيْبٍ فَمُنْقَطِعٌ أَقْبَحُ انْقِطَاعٍ لِأَنَّهُ لَمْ يَذْكُرْ مَنْ بَيْنَهُ وَبَيْنَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا حُجَّةَ عِنْدَنَا فِي مُرْسَلٍ، وَلَا عِنْدَ الشَّافِعِيِّ، فَلَا يَجُوزُ لَهُمْ أَنْ يَحْتَجُّوا عَلَيْنَا بِهِ، لِأَنَّنَا لَا نَقُولُ بِهِ أَصْلًا، فَيُلْزِمُونَا إيَّاهُ عَلَى أَصْلِنَا، وَهُمْ لَا يَقُولُونَ بِهِ فَيَحْتَجُّوا بِهِ عَلَى أُصُولِهِمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ " إنَّهُ لَا حَدَّ عَلَى الشَّاهِدِ سَوَاءٌ كَانَ وَحْدَهُ - لَا أَحَدَ مَعَهُ - أَوْ اثْنَيْنِ كَذَلِكَ، أَوْ ثَلَاثَةً كَذَلِكَ " فَوَجَدْنَاهُمْ يَقُولُونَ: قَالَ اللَّهُ

L41480–41482 Abū Muḥammad—may Allāh have mercy on him—said: All of this contains no valid proof for them. As for the report... The narration from ʿAmr ibn Shuʿayb is severed by the worst form of discontinuity, for he did not mention those between him and the Messenger of Allah—peace and blessings of Allah be upon him. There is no evidence in our view, nor in Al-Shāfiʿī's view, regarding a mursal narration. Thus, it is impermissible for them to cite it as evidence against us, since we do not accept it at all. How then can they impose it upon us according to our principles while they themselves do not uphold it, yet cite it as evidence based on their own principles?

Abū Muḥammad—may Allah have mercy on him—said: We then examined the statement of those who claim, "There is no ḥadd punishment upon the witness, whether he is alone (with no one else), two in the same manner, or three in the same manner." We found them asserting: Allah the Exalted

said, {As for those who accuse chaste women and then do not produce four witnesses, lash them with eighty lashes} [24:4].[80]

تَعَالَى {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً} [النور: ٤]

L41483 The Messenger of Allah, peace be upon him, said, "The burden of evidence lies on the accuser of adultery; otherwise, the ḥadd shall be inflicted on your back."

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لِلْقَاذِفِ الْبَيِّنَةُ وَإِلَّا حَدٌّ فِي ظَهْرِكَ» .

L41484 It has been established with certainty, without any doubt, by the explicit texts of Allah the Exalted and His Messenger—may Allah bless him and grant him peace—that the ḥadd punishment applies solely to the accuser who makes the accusation, and not to the witnesses or the evidence.

فَصَحَّ يَقِينًا لَا مِرْيَةَ فِيهِ بِنَصِّ كَلَامِ اللَّهِ تَعَالَى وَكَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ الْحَدَّ إنَّمَا هُوَ عَلَى الْقَاذِفِ الرَّامِي، لَا عَلَى الشُّهَدَاءِ، وَلَا عَلَى الْبَيِّنَةِ.

L41485 It has been authentically established that the Messenger of Allah—peace and blessings be upon him—said: "Your blood, your wealth, your honor, and your bodies are inviolable to you, as inviolable as this day of yours in this month of yours." Thus, the bodily sanctity of a witness is inviolable beyond any doubt. Neither a Quranic text nor an authentic Sunnah states that a witness in a case of adultery is to be flogged if there is no corroborating evidence alongside him. The Quran and Sunnah have distinguished between a witness who provides clear evidence and a false accuser of adultery. It is therefore absolutely impermissible for the ruling applicable to one to apply to the other. This is the definitive ruling of the Quran and the established Sunnah.

وَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ كَحُرْمَةِ يَوْمِكُمْ هَذَا مِنْ شَهْرِكُمْ هَذَا» فَبَشَرَةُ الشَّاهِدِ حَرَامٌ بِيَقِينٍ لَا مِرْيَةَ فِيهِ، وَلَمْ يَأْتِ نَصُّ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ، يُجْلَدُ الشَّاهِدُ فِي الزِّنَى إذَا لَمْ يَكُنْ مَعَهُ غَيْرُهُ - وَقَدْ فَرَّقَ الْقُرْآنُ، وَالسُّنَّةُ، بَيْنَ الشَّاهِدِ مِنْ الْبَيِّنَةِ وَبَيْنَ الْقَاذِفِ الرَّامِي، فَلَا يَحِلُّ أَلْبَتَّةَ أَنْ يَكُونَ لِأَحَدِهِمَا حُكْمُ الْآخَرِ - فَهَذَا حُكْمُ الْقُرْآنِ وَالسُّنَّةِ الثَّابِتَةِ.

L41486 As for consensus (ijmāʿ)—the entire Ummah agrees without dissent—that when witnesses testify one after another and amount to four just individuals, no ḥadd punishment is imposed upon him.

وَأَمَّا الْإِجْمَاعُ - فَإِنَّ الْأُمَّةَ كُلَّهَا مُجْمِعَةٌ - بِلَا خِلَافٍ مِنْ أَحَدٍ - عَلَى أَنَّ الشُّهُودَ إذَا شَهِدُوا وَاحِدًا بَعْدَ وَاحِدٍ، فَتَمُّوا عُدُولًا أَرْبَعَةً، فَإِنَّهُ لَا حَدَّ عَلَيْهِ.

L41487–41488 Similarly, they unanimously agreed—with no dissent whatsoever—that if a thousand just witnesses were to accuse a woman or a man of adultery, whether together or separately, the ḥadd punishment for false accusation would be imposed upon all of them if they did not produce four witnesses. If they produced four witnesses, the ḥadd punishment would be waived for the accusers. Thus, indeed, the certain consensus, about which there is no doubt, has been firmly established.

وَكَذَلِكَ أَجْمَعُوا - بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْهُمْ - لَوْ أَنَّ أَلْفَ عَدْلٍ قَذَفُوا امْرَأَةً أَوْ رَجُلًا كَذَلِكَ بِالزِّنَى مُجْتَمِعِينَ، أَوْ مُفْتَرِقِينَ: أَنَّ الْحَدَّ عَلَيْهِمْ كُلِّهِمْ حَدُّ الْقَذْفِ إنْ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ، فَإِنْ جَاءُوا بِأَرْبَعَةِ شُهَدَاءَ: سَقَطَ الْحَدُّ عَنْ الْقَذْفَةِ - فَقَدْ صَحَّ الْإِجْمَاعُ الْمُتَيَقَّنُ الَّذِي لَا شَكَّ فِيهِ.

[80] **Qur'an references (L41480):** Qur'an 24:4 (An-Nur).

وَأَمَّا الْمُخَالِفُونَ لَنَا فِي الْجُمْلَةِ عَلَى الْفَرْقِ بَيْنَ حُكْمِ الْقَاذِفِ وَبَيْنَ حُكْمِ الشَّاهِدِ وَأَنَّ الْقَاذِفَ لَيْسَ شَاهِدًا، وَأَنَّ الشَّاهِدَ لَيْسَ قَاذِفًا، فَقَدْ صَحَّ الْإِجْمَاعُ عَلَى هَذَا بِلَا شَكٍّ، وَصَحَّ الْيَقِينُ بِبُطْلَانِ قَوْلِ مَنْ قَالَ: بِأَنْ يُحَدَّ الشَّاهِدُ وَالشَّاهِدَانِ وَالثَّلَاثَةُ، إذَا لَمْ يُتِمُّوا أَرْبَعَةً، لِأَنَّهُمْ لَيْسُوا قَذَفَةً، وَلَا لَهُمْ حُكْمُ الْقَاذِفِ - وَهَذَا هُوَ الْإِجْمَاعُ حَقًّا، الَّذِي لَا يَجُوزُ خِلَافُهُ.

L41489 As for those who oppose us in general regarding the distinction between the ruling concerning one who commits qadhf (false accusation of unlawful intercourse) and the ruling concerning a witness—that the one who commits qadhf is not a witness and the witness is not one who commits qadhf—consensus (ijmāʿ) has been definitively established on this without doubt. It has been irrevocably confirmed that the claim of those who assert a single witness, two witnesses, or three witnesses should be subjected to the ḥadd punishment if they fail to reach four witnesses is false, because they are neither guilty of qadhf nor subject to the ruling applicable to one who commits qadhf. This constitutes the true and rightful consensus, which cannot be contravened.

وَأَمَّا طَرِيقُ النَّظَرِ - فَنَقُولُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: إنَّهُ لَوْ كَانَ مَا قَالُوا لَمَا صَحَّتْ فِي الزِّنَا شَهَادَةٌ أَبَدًا، لِأَنَّهُ كَانَ الشَّاهِدُ الْوَاحِدُ إذَا شَهِدَ بِالزِّنَى صَارَ قَاذِفًا عَلَيْهِ الْحَدُّ - عَلَى أَصْلِهِمْ - فَإِذْ قَدْ صَارَ قَاذِفًا فَلَيْسَ شَاهِدًا، فَإِذَا شَهِدَ الثَّانِي - فَكَذَلِكَ أَيْضًا - يَصِيرُ قَاذِفًا - وَهَذَا فَاسِدٌ كَمَا تَرَى، وَخِلَافٌ لِلْقُرْآنِ فِي إيجَابِ الْحُكْمِ بِالشَّهَادَةِ بِالزِّنَى، وَخِلَافُ السُّنَّةِ الثَّابِتَةِ بِوُجُوبِ قَبُولِ الْبَيِّنَةِ فِي الزِّنَى، وَخِلَافُ الْإِجْمَاعِ الْمُتَيَقَّنِ بِقَبُولِ الشَّهَادَةِ فِي الزِّنَى، وَخِلَافُ الْحِسِّ وَالْمُشَاهَدَةِ فِي أَنَّ الشَّاهِدَ لَيْسَ قَاذِفًا، وَالْقَاذِفَ لَيْسَ شَاهِدًا.

L41490–41492 As for the method of juristic consideration—we declare, and success comes only from Allah the Exalted—were their claim valid, testimony in adultery cases could never be valid. For according to their juristic basis, a single witness testifying to adultery would become an accuser subject to the ḥadd punishment. Once deemed an accuser, he cannot be considered a witness. If a second witness testifies, he too becomes an accuser—a conclusion that is invalid as you can see. This contradicts the Quran's obligation to establish judgment through testimony in adultery cases, opposes the established Sunnah requiring acceptance of clear evidence in adultery, and conflicts with the certain consensus regarding acceptance of... Testimony in cases of zinā; the distinction between sensory perception and direct witnessing lies in the fact that the witness is not an accuser of zinā, and the accuser of zinā is not a witness.

وَأَيْضًا فَنَقُولُ لَهُمْ: أَخْبِرُونَا عَنْ الشَّاهِدِ إذَا شَهِدَ عَلَى آخَرَ بِالزِّنَى - وَهُوَ عَدْلٌ: مَاذَا هُوَ الْآنَ عِنْدَكُمْ: أَشَاهِدٌ أَمْ قَاذِفٌ؟ أَمْ لَا شَاهِدَ وَلَا قَاذِفَ؟ وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ؟ فَإِنْ قَالُوا: وَهُوَ شَاهِدٌ؟ قُلْنَا: صَدَقْتُمْ، وَهَذَا هُوَ الْحَقُّ، وَإِذْ هُوَ شَاهِدٌ فَلَيْسَ قَاذِفًا حِينَ نَطَقَ بِالشَّهَادَةِ، فَمِنْ الْمُحَالِ الْمُمْتَنِعِ أَنْ يَصِيرَ قَاذِفًا إذَا سَكَتَ وَلَمْ يَأْتِ بِثَلَاثَةِ عُدُولٍ إلَيْهِ، وَلَيْسَ فِي الْمُحَالِ أَكْثَرُ مِنْ أَنْ يَكُونَ شَاهِدًا لَا قَاذِفًا، فَإِنْ تَكَلَّمَ بِإِطْلَاقِ الزِّنَى

L41493 Moreover, we say to them: Inform us about a witness who testifies against another for adultery—while being upright himself—what is his status in your view now: Is he a witness or a slanderer? Or neither a witness nor a slanderer? There is no possibility for a third category. If they say, "He is a witness," we reply: You are correct, and this is the true ruling. Since he is a witness, he is not a slanderer at the moment of giving testimony. It is utterly impossible for him to become a slanderer if he remains silent and fails to produce three upright witnesses. There is no greater impossibility than him being a witness—not a slanderer—when he accuses the defendant

of adultery, then becomes a slanderer—not a witness—if he refrains from speech and does not utter a single letter? This is an absolute impossibility, beyond any ambiguity. If they say, "He is a slanderer," they have undeniably affirmed the obligation of imposing the ḥadd upon the slanderer, and thus the punishment becomes irrevocably binding upon him.

L41494 **Issue: Four witnesses testified to adultery against a woman, one of whom was her husband.**

L41495 Issue 2224: Four witnesses testified against a woman for adultery, one being her husband. Abu Muhammad—may Allah have mercy on him—said: People differed concerning this. A group held: "This does not constitute valid testimony. The husband must undergo liʿān (mutual cursing)," as transmitted from Ibn Abbas when asked about four witnesses testifying to a woman's adultery with her husband among them. He replied: "The husband undergoes liʿān while the others receive the ḥadd punishment." A similar ruling is narrated from Ibrāhīm al-Nakhaʿī. This is the view of Mālik, al-Shāfiʿī, and al-Awzāʿī in one of his two opinions.

L41496 Other scholars said: If they are credible witnesses, then the testimony is valid and the woman is to be subjected to the ḥadd punishment. As narrated to us from al-Ḥasan al-Baṣrī regarding four men who testified against a woman for adultery—one of them being her husband—he said: If they come forward together, the husband's testimony is the most valid among them.

L41497–41498 It is narrated from Al-Shaʿbī that he ruled regarding four individuals who testified against a woman for adultery (one of whom was her husband) that their testimony was deemed valid, and they safeguarded themselves against retaliation.

L41499 Al-Hakam ibn Utaybah stated regarding four individuals who testify against a woman for adultery—one of whom is her husband—that there must be someone with them to bring her. This is the position adopted by Abu Hanifah and Al-Awza'i (in one of his two opinions?). Abu Muhammad—may Allah have mercy on him—said: Since they disagreed as we mentioned, it became necessary to examine the evidence each group cited for their opinion. We

عَلَى الْمَشْهُودِ عَلَيْهِ، ثُمَّ يَصِيرُ قَاذِفًا لَا شَاهِدًا إِذَا لَمْ يَتَكَلَّمْ وَلَا نَطَقَ بِحَرْفٍ؟ ؟ فَهَذَا مُحَالٌ لَا إِشْكَالَ فِيهِ، وَإِنْ قَالُوا هُوَ قَاذِفٌ؟ فَقَدْ ذَكَرُوا وُجُوبَ الْحَدِّ عَلَى الْقَاذِفِ بِلَا شَكٍّ، فَقَدْ وَجَبَ الْحَدُّ عَلَيْهِ.

[مَسْأَلَة شَهِدَ أَرْبَعَةٌ بِالزِّنَى عَلَى امْرَأَةٍ أَحَدُهُمْ زَوْجُهَا]

٢٢٢٤ - مَسْأَلَةٌ: شَهِدَ أَرْبَعَةٌ بِالزِّنَى عَلَى امْرَأَةٍ، أَحَدُهُمْ: زَوْجُهَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: لَيْسَتْ شَهَادَةً وَيُلَاعَنُ الزَّوْجُ: كَمَا رُوِّينَا عَنْ ابْنِ عَبَّاسٍ فِي أَرْبَعَةِ شُهَدَاءَ شَهِدُوا بِالزِّنَى عَلَى امْرَأَةٍ، وَأَحَدُهُمْ زَوْجُهَا؟ قَالَ: يُلَاعَنُ الزَّوْجُ، وَيُحَدُّ الْآخَرُونَ - وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ بِمِثْلِهِ - وَبِهِ يَقُولُ مَالِكٌ، وَالشَّافِعِيُّ، وَالْأَوْزَاعِيُّ - فِي أَحَدِ قَوْلَيْهِ.

وَقَالَ آخَرُونَ: إنْ كَانُوا عُدُولًا فَالشَّهَادَةُ تَامَّةٌ، وَتُحَدُّ الْمَرْأَةُ: كَمَا رُوِّينَا عَنْ الْحَسَنِ الْبَصْرِيِّ فِي أَرْبَعَةٍ شَهِدُوا عَلَى امْرَأَةٍ بِالزِّنَى أَحَدُهُمْ زَوْجُهَا؟ قَالَ: إذَا جَاءُوا مُجْتَمِعِينَ، الزَّوْجُ أَجْوَزُهُمْ شَهَادَةً.

وَعَنْ الشَّعْبِيِّ أَنَّهُ قَالَ فِي أَرْبَعَةٍ شَهِدُوا عَلَى امْرَأَةٍ بِالزِّنَى - أَحَدُهُمْ زَوْجُهَا - أَنَّهُ قَدْ جَازَتْ شَهَادَتُهُمْ، وَأَحْرَزُوا ظُهُورَهُمْ.

وَقَالَ الْحَكَمُ بْنُ عُتَيْبَةَ - فِي أَرْبَعَةٍ شَهِدُوا عَلَى امْرَأَةٍ بِالزِّنَى أَحَدُهُمْ زَوْجُهَا حَتَّى يَكُونَ مَعَهُمْ مَنْ يَجِيءُ بِهَا - وَبِهَذَا يَأْخُذُ أَبُو حَنِيفَةَ، وَالْأَوْزَاعِيُّ، فِي أَحَدِ قَوْلَيْهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّ بِهِ كُلُّ قَائِلٍ

مِنْهُمْ لِقَوْلٍ، فَوَجَدْنَا كِلْتَا الطَّائِفَتَيْنِ تَتَعَلَّقُ بِقَوْلِ اللَّهِ تَعَالَى {وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلا أَنْفُسُهُمْ} [النور: ٦] وَبِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لِهِلَالِ بْنِ أُمَيَّةَ الْبَيِّنَةُ وَإِلَّا حَدٌّ فِي ظَهْرِكَ»

found that both groups rely on the words of Allah the Exalted: {As for those who accuse their wives but have no witnesses except themselves...} [24:6] and on the statement of the Messenger of Allah—peace and blessings be upon him and his family—to Hilal ibn Umayyah: "Produce conclusive evidence, or else the punishment will be on your back."[81]

[81] **Qur'an references (L41499):** Qur'an 24:6 (An-Nur).

فَنَظَرْنَا فِي هَذَيْنِ النَّصَّيْنِ فَوَجَدْنَاهُمَا: إِنَّمَا نَزَلَا فِي الزَّوْجِ إِذَا كَانَ رَامِيًا قَاذِفًا، إِلَّا إِذَا كَانَ شَاهِدًا، هَذَا نَصُّ الْآيَةِ، وَنَصُّ الْخَبَرِ، فَلَيْسَ حُكْمُ الزَّوْجِ إِذَا كَانَ شَاهِدًا لَا قَاذِفًا رَامِيًا، فَوَجَبَ أَنْ نَطْلُبَ حُكْمَ شَهَادَةِ الزَّوْجِ فِي غَيْرِهِمَا.

L41500 We examined these two texts and found that they pertain to the husband when he is one who falsely accuses of adultery (qadhf), unless he is a witness. This is the explicit wording of the Quranic verse and the Prophetic report. Therefore, the ruling for the husband when he is a witness differs from when he is engaged in false accusation. Thus, it becomes obligatory for us to seek the legal ruling regarding the husband's testimony in scenarios outside these two contexts.

فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ} [النور: ٤] فَشَرَطَ اللَّهُ تَعَالَى عَلَى الْقَاذِفِ إِنْ لَمْ يَأْتِ بِأَرْبَعَةِ شُهَدَاءَ أَنْ يُجْلَدَ، وَلَمْ يَخُصَّ تَعَالَى أُولَئِكَ الْأَرْبَعَةَ الشُّهَدَاءَ أَنْ لَا يَكُونَ مِنْهُمْ زَوْجُهَا {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L41501 We found Allah, the Exalted, saying: {And those who accuse chaste women and then do not bring four witnesses—lash them} [24:4]. Thus, Allah, the Exalted, stipulated upon the false accuser that if they do not bring four witnesses, they must be lashed. He did not specify that her husband must be excluded from those four witnesses, {and your Lord is not forgetful} [19:64].[1]

وَلَوْ أَرَادَ اللَّهُ تَعَالَى أَنْ لَا يَكُونَ الزَّوْجُ أَحَدَ أُولَئِكَ الشُّهَدَاءِ لَبَيَّنَ ذَلِكَ وَلَمَا كَتَمَهُ، وَلَا أَهْمَلَهُ، فَإِذْ عَمَّ اللَّهُ تَعَالَى وَلَمْ يَخُصَّ فَالزَّوْجُ وَغَيْرُ الزَّوْجِ فِي ذَلِكَ سَوَاءٌ بِيَقِينٍ لَا شَكَّ فِيهِ.

L41502 If Allah, the Exalted, had willed that the husband not be one of those witnesses, He would have made it clear and not concealed it, nor left it unaddressed. Since Allah, the Exalted, generalized and did not specify, the husband and non-husband are equal in that with unequivocal certainty.

فَصَحَّ مِنْ هَذَا أَنَّ الزَّوْجَ إِنْ قَذَفَ امْرَأَتَهُ فَعَلَيْهِ حَدُّ الْقَذْفِ إِلَّا أَنْ يُلَاعِنَ، أَوْ يَأْتِيَ بِأَرْبَعَةِ شُهَدَاءَ سَوَاءٌ، لِأَنَّهُ قَاذِفٌ، وَرَامٍ - وَالْقَاذِفُ وَالرَّامِي: مُكَلَّفٌ أَنْ يُخَلِّصَ نَفْسَهُ بِأَرْبَعَةِ شُهَدَاءَ وَلَا بُدَّ - وَهَكَذَا الْأَجْنَبِيُّ وَلَا فَرْقَ، إِذَا قَذَفَ، فَلَا بُدَّ مِنْ أَرْبَعَةِ غَيْرِهِ، فَإِنْ جَاءَ الزَّوْجُ شَاهِدًا لَا قَاذِفًا، فَهُوَ كَالْأَجْنَبِيِّ الشَّاهِدِ وَلَا فَرْقَ، لَا حَدَّ عَلَيْهِ وَلَا لِعَانَ أَصْلًا، لِأَنَّهُ لَمْ يَرْمِهَا، وَلَا قَذَفَهَا، فَإِنْ كَانَ عَدْلًا وَجَاءَ مَعَهُ بِثَلَاثَةِ شُهُودٍ، فَقَدْ تَمَّتْ الشَّهَادَةُ، وَوَجَبَ الرَّجْمُ عَلَيْهَا، لِأَنَّهُمْ أَرْبَعَةُ شُهُودٍ - كَمَا أَمَرَ اللَّهُ تَعَالَى - وَبِهِ نَأْخُذُ.

L41503–41505 From this, it is established that if a husband accuses his wife [of adultery], he incurs the legal punishment for false accusation unless he performs liʿān or equally produces four witnesses. This is because he is both an accuser and a slanderer—and such a person, being legally responsible, must absolve himself by producing four witnesses without exception. The same applies to a third party without distinction. If he makes an accusation, he must provide four witnesses other than himself. If the husband presents himself as a witness rather than an accuser, he is treated like a third-party witness without distinction: no punishment is imposed upon him, nor is liʿān required. In principle, because he neither accused her nor charged her with adultery. If he is a just person and brings three witnesses with him, the testimony is complete, and stoning becomes obligatory upon her, because he and the

[1] **Qur'an references (L41501):** Qur'an 24:4 (An-Nur); Qur'an 19:64 (Maryam).

three witnesses together constitute four witnesses—as Allah the Exalted has commanded—and this is the position we adopt.

L41506 As for the stipulation of al-Ḥakam ibn ʻUṭaybah that there must be someone with them to produce them, this has no basis, since neither Allah the Exalted nor His Messenger (peace be upon him) ordained it. That fifth person cannot exist outside one of three cases with no fourth possibility: either being a false accuser [of adultery], a witness, or a volunteer who is neither a false accuser nor a witness.

وَأَمَّا اشْتِرَاطُ الْحَكَمِ بْنِ عُتَيْبَةَ - مِنْ أَنْ يَكُونَ مَعَهُمْ مَنْ يَأْتِي بِهِمْ، فَلَا مَعْنَى لَهُ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ ذَلِكَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: وَلَا يَخْلُو ذَلِكَ الْخَامِسُ مِنْ أَحَدِ ثَلَاثَةِ أَوْجُهٍ لَا رَابِعَ لَهَا: إمَّا أَنْ يَكُونَ قَاذِفًا - وَإِمَّا أَنْ يَكُونَ شَاهِدًا - وَإِمَّا أَنْ يَكُونَ مُتَطَوِّعًا لَا قَاذِفًا وَلَا شَاهِدًا.

L41507 If he is a slanderer [qadhif], it is forbidden and void to obligate witnesses to follow a slanderer who precedes them or to order that a chaste woman or man be slandered, in order to thereby establish the testimony.

فَإِنْ كَانَ قَاذِفًا - فَمِنْ الْحَرَامِ وَالْبَاطِلِ أَنْ يَلْزَمَ الشُّهُودُ أَنْ يَأْتِيَ قَاذِفًا يَتَقَدَّمُهُمْ، أَوْ يَأْمُرَ بِقَذْفِ الْمُحْصَنَةِ وَالْمُحْصَنِ، لِيَتَوَصَّلَ بِذَلِكَ إلَى إقَامَةِ الشَّهَادَةِ.

L41508 If that fifth is a witness, this constitutes a requirement for five witnesses—and this is contrary to the Quran, the Sunnah, and the consensus.

وَإِنْ كَانَ ذَلِكَ الْخَامِسُ شَاهِدًا - فَهَذَا إيجَابُ خَمْسَةِ شُهُودٍ - وَهَذَا خِلَافُ الْقُرْآنِ، وَالسُّنَّةِ، وَالْإِجْمَاعِ.

L41509 If he was acting voluntarily—neither as a false accuser [of unchastity] nor as a testifier—then this is invalid, because Allah the Exalted has not obligated it, nor has His Messenger (peace and blessings be upon him). Does the arbitrator's ruling on this matter thereby lapse?

وَإِنْ كَانَ مُتَطَوِّعًا لَا قَاذِفًا وَلَا شَاهِدًا - فَهَذَا بَاطِلٌ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْهُ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَقَطَ قَوْلُ الْحَكَمِ فِي ذَلِكَ؟

L41510 Abū Muḥammad—may Allāh have mercy on him—said: The ruling in this matter follows three scenarios: If the husband is a qādhif (false accuser of adultery), he must produce four witnesses in any case; otherwise, he faces the ḥadd punishment or undergoes the liʿān process. If he is not a qādhif but presents one witness, then if this witness is upright and accompanied by three other upright individuals, it constitutes a complete testimony, requiring the full ḥadd punishment for adultery upon the accused.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَالْحُكْمُ فِي هَذَا عَلَى ثَلَاثَةِ أَوْجُهٍ: إذَا كَانَ الزَّوْجُ قَاذِفًا فَلَا بُدَّ مِنْ أَرْبَعَةِ شُهُودٍ سَوَاءٍ وَإِلَّا حُدَّ أَوْ يُلَاعِنُ فَإِنْ لَمْ يَكُنْ قَاذِفًا لَكِنْ جَاءَ شَاهِدًا فَإِنْ كَانَ عَدْلًا وَمَعَهُ ثَلَاثَةُ عُدُولٍ فَهِيَ شَهَادَةٌ تَامَّةٌ وَعَلَى الْمَشْهُودِ عَلَيْهَا حَدُّ الزِّنَى كَامِلًا.

L41511 If the husband is not just, or if he is just but among those with him there is someone unjust, or if he does not provide three witnesses besides himself, and the testimony remains incomplete, then no liability is upon the accused. The witnesses are not accusers of adultery (qadhf), thus no ḥadd applies to

وَإِنْ كَانَ الزَّوْجُ غَيْرَ عَدْلٍ، أَوْ كَانَ عَدْلًا وَكَانَ فِي الَّذِينَ مَعَهُ غَيْرُ عَدْلٍ أَوْ لَمْ يُتِمَّ ثَلَاثَةً سِوَاهُ وَالشَّهَادَةُ لَمْ تَتِمَّ فَلَا عَلَى الْمَشْهُودِ، وَلَيْسَ الشُّهُودُ قَذْفَةً، فَلَا حَدَّ عَلَيْهِمْ، وَلَا حَدَّ عَلَى الزَّوْجِ، وَلَا لِعَانَ، لِأَنَّهُ لَيْسَ قَاذِفًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ:

them, nor to the husband, nor is there any liʿān, for he is not a false accuser of adultery (qādhif)—and with Allah, the Exalted, is success:

[مَسْأَلَة شَهِدَ أَرْبَعَةٌ بِالزِّنَى عَلَى امْرَأَةٍ وَشَهِدَ أَرْبَعَةُ نِسْوَةٍ أَنَّهَا عَذْرَاءُ]

L41512 **Case: Four men testified that a woman committed adultery, and four women testified that she is a virgin.**

٢٢٢٥ - مَسْأَلَةٌ: شَهِدَ أَرْبَعَةٌ بِالزِّنَى عَلَى امْرَأَةٍ، وَشَهِدَ أَرْبَعَةُ نِسْوَةٍ أَنَّهَا عَذْرَاءُ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: لَا حَدَّ عَلَيْهَا، كَمَا رُوِّينَا عَنْ الشَّعْبِيِّ أَنَّهُ قَالَ فِي أَرْبَعَةِ رِجَالٍ عُدُولٍ شَهِدُوا عَلَى امْرَأَةٍ بِالزِّنَى وَشَهِدَ أَرْبَعُ نِسْوَةٍ بِأَنَّهَا بِكْرٌ، فَقَالَ: أُقِيمُ عَلَيْهَا الْحَدَّ، وَعَلَيْهَا خَاتَمٌ مِنْ رَبِّهَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا عَلَى الْإِنْكَارِ مِنْهُ لِإِقَامَةِ الْحَدِّ عَلَيْهَا.

L41513–41515 2225 - Issue: Four men testified that a woman had committed adultery, while four women testified that she was a virgin. Abū Muḥammad—may Allah have mercy on him—said: "People differed regarding this. A juristic group held: 'There is no ḥadd upon her,' as we have been narrated from al-Shaʿbī that he said concerning four men..." Upright witnesses testified that a woman committed adultery, while four women testified she was a virgin. He said: "Should I impose the prescribed punishment on her when she bears a seal from her Lord?" Abū Muḥammad—may Allah have mercy on him—said: "This reflects his denial of imposing the punishment on her."

وَقَالَتْ طَائِفَةٌ: تُحَدُّ - كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ حَدَّثَنَا ابْنُ وَضَّاحٍ نا سَحْنُونٌ حَدَّثَنَا ابْنُ وَهْبٍ عَنْ الْحَارِثِ بْنِ نَبْهَانَ فِي أَرْبَعَةٍ شَهِدُوا بِالزِّنَى عَلَى امْرَأَةٍ، وَنَظَرَ النِّسَاءُ إلَيْهَا فَقُلْنَ: إنَّهَا عَذْرَاءُ، قَالَ: آخُذُ بِشَهَادَةِ الرِّجَالِ، وَأَتْرُكُ شَهَادَةَ النِّسَاءِ، وَأُقِيمُ عَلَيْهِمَا الْحَدَّ.

L41516 A group said: The ḥadd is to be applied—as ʿAbd Allāh ibn Rabīʿ informed us; Ibn Mufarrij informed us; Qāsim ibn Aṣbagh narrated to us; Ibn Waḍḍāḥ narrated to us; Saḥnūn narrated to us; Ibn Wahb narrated to us from al-Ḥārith ibn Nabhān—regarding four men who testified to adultery against a woman. The women inspected her and said she was a virgin. He said: I accept the testimony of the men and disregard the testimony of the women, and I enforce the ḥadd upon the woman and the accused man.

وَبِإِسْقَاطِ الْحَدِّ عَنْهَا يَقُولُ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، إلَّا زُفَرُ، وَبِهِ - يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَالشَّافِعِيُّ.

L41517 Regarding the waiver of the ḥadd punishment from her, Abū Ḥanīfah and his companions hold this opinion except Zufar—and with this opinion also say Sufyān al-Thawrī and al-Shāfiʿī.

وَقَالَ مَالِكٌ: وَزُفَرُ بْنُ الْهُذَيْلِ، وَأَصْحَابُنَا: تُحَدُّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا، وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ، فَوَجَدْنَا مَنْ رَأَى إيجَابَ الْحَدِّ عَلَيْهَا يَقُولُ: قَدْ صَحَّتْ الْبَيِّنَةُ عَلَيْهَا بِمَا يُوجِبُ الْحَدَّ بِنَصِّ الْقُرْآنِ، فَلَا يَجُوزُ أَنْ يُعَارِضَ أَمْرَ رَبِّهِ تَعَالَى بِشَيْءٍ - وَمَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا؟

L41518 Malik said: "Zufar ibn al-Hudhayl and our fellow jurists said: 'Should she be subjected to the hadd punishment?'" Abu Muhammad—may Allah have mercy on him—said: "Since they differed as we mentioned, it became obligatory for us to examine this matter. We found that those who advocated imposing the hadd upon her argued: 'Valid evidence based on the Quran's text has been established against her, mandating the hadd. Thus, it is impermissible to oppose the command of his Lord, the Exalted, with anything—and what other argument do they even have?'"

L41519 The others opposed them by stating: There is no difference of opinion that if it is established that the witnesses are liars or mistaken, then the testimony is not valid—rather, it is null and void—and it is unlawful to rule by falsehood. But rather, Allah the Exalted has commanded the implementation of testimony only when it is valid in its outward form to us, not when its nullity is established to us. Since its nullity has been established to us in this case, it is impermissible to judge by it?

فَعَارَضَهُمْ الْآخَرُونَ - بِأَنْ قَالُوا: بِأَنْ لَا خِلَافَ أَنَّهُ إذَا صَحَّ أَنَّ الشُّهُودَ - كَاذِبُونَ أَوْ وَاهِمُونَ - فَإِنَّ الشَّهَادَةَ لَيْسَتْ حَقًّا: بَلْ هِيَ بَاطِلٌ، وَلَا يَحِلُّ الْحُكْمُ بِالْبَاطِلِ، وَإِنَّمَا أَمَرَ اللَّهُ تَعَالَى بِإِنْفَاذِ الشَّهَادَةِ إذَا كَانَتْ حَقًّا عِنْدَنَا فِي ظَاهِرِهَا، لَا إذَا صَحَّ عِنْدَنَا بُطْلَانُهَا، وَهَذِهِ قَدْ صَحَّ عِنْدَنَا بُطْلَانُهَا فَلَا يَجُوزُ الْحُكْمُ بِهَا؟

L41520 Abū Muḥammad—may God have mercy on him—said: God the Exalted declared, *"Be upholders of justice, witnesses for God"* [4:135]. It is therefore obligatory that if testimony appears to us—in its outward aspect—to be truthful, and nothing arises to invalidate it, we must judge by it. If it is established to us that it is not truthful, it is an obligation upon us not to judge by it, for ruling by falsehood is impermissible. This is the truth beyond doubt.[2]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ اللَّهُ تَعَالَى {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥] فَوَاجِبٌ إذَا كَانَتْ الشَّهَادَةُ عِنْدَنَا - فِي ظَاهِرِهَا - حَقًّا، وَلَمْ يَأْتِ شَيْءٌ يُبْطِلُهَا أَنْ يُحْكَمَ بِهَا، وَإِذَا صَحَّ عِنْدَنَا أَنَّهَا لَيْسَتْ حَقًّا فَفَرْضٌ عَلَيْنَا أَنْ لَا نَحْكُمَ بِهَا، إذْ لَا يَحِلُّ الْحُكْمُ بِالْبَاطِلِ، هَذَا هُوَ الْحَقُّ الَّذِي لَا شَكَّ فِيهِ.

L41521–41523 Then we examined the witnesses testifying that she is a virgin, so it became incumbent upon the women to establish the attribute of her virginity. If the women say, "It is a hymen, necessarily ruptured by the insertion of the glans, and that it is a membrane at the entrance of the vagina," we are certain of the witnesses' falsehood and their error; thus, it is unlawful to uphold the ruling based on their testimony.

ثُمَّ نَظَرْنَا فِي الشُّهُودِ لَهَا أَنَّهَا عَذْرَاءُ فَوَجَبَ أَنْ يُقَرِّرَ النِّسَاءُ عَلَى صِفَةِ عُذْرَتِهَا، فَإِنْ قُلْنَ: إنَّهَا عُذْرَةٌ، يُبْطِلُهَا إيلَاجُ الْحَشَفَةِ وَلَا بُدَّ، وَأَنَّهُ صِفَاقٌ عِنْدَ بَابِ الْفَرْجِ، فَقَدْ أَيْقَنَّا بِكَذِبِ الشُّهُودِ، وَأَنَّهُمْ وَهِمُوا فَلَا يَحِلُّ إنْفَاذُ الْحُكْمِ بِشَهَادَتِهِمْ.

L41524 And if they say: Indeed, it is a deep-seated hymen within the vagina, not invalidated by the insertion of the glans, then the possibility of the witnesses' truthfulness is affirmed, for the ḥadd punishment becomes obligatory upon the insertion of the glans. Thus, the ḥadd punishment is carried out against her at that point, because we have not ascertained the witnesses' lying or their error - and success is from Allah, the Most High.

وَإِنْ قُلْنَ: إنَّهَا عُذْرَةٌ وَاغِلَةٌ فِي دَاخِلِ الْفَرْجِ، لَا يُبْطِلُهَا إيلَاجُ الْحَشَفَةِ، فَقَدْ أَمْكَنَ صِدْقُ الشُّهُودِ، إذْ بِإِيلَاجِ الْحَشَفَةِ يَجِبُ الْحَدُّ، فَيُقَامُ الْحَدُّ عَلَيْهَا حِينَئِذٍ، لِأَنَّهُ لَمْ نَتَيَقَّنْ كَذِبَ الشُّهُودِ وَلَا وَهْمَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41525 The Issue of Enforcing the Ḥadd and His Stoning for the Fornicator.

[مَسْأَلَة حُضُور حَدّ الزاني ورجمة]

L41526 Issue 2226: What is the number of people required to witness the hadd punishment for adultery or its execution by stoning?

٢٢٢٦ - مَسْأَلَةٌ: كَمْ الطَّائِفَةُ الَّتِي تَحْضُرُ حَدَّ الزَّانِي أَوْ رَجْمَهُ؟

[2] **Qur'an references (L41520):** Qur'an 4:135 (An-Nisa).

L41527 Abu Muhammad—may Allah have mercy on him—said: Allah the Exalted said: {And let a group of the believers witness their punishment} [An-Nur 24:2]; he said: {And the punishment shall be averted from her by her bearing four testimonies by Allah that he is indeed among the liars} [An-Nur 24:8].[3]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ اللَّهُ تَعَالَى {وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِنَ الْمُؤْمِنِينَ} [النور: ٢] قَالَ {وَيَدْرَأُ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ} [النور: ٨].

L41528 Thus, it has been established that the punishment for illicit sexual acts is flogging, and alongside it stoning and exile may apply.

فَصَحَّ أَنَّ عَذَابَ الزُّنَاةِ الْجَلْدُ، وَمَعَ الْجَلْدِ الرَّجْمُ وَالنَّفْيُ.

L41529 Then the scholars differed concerning the size of the group that Allah the Exalted ordained to witness the mentioned punishment. A group held that it is one from among the people - if it increases, then it is permissible; this is the opinion of Ibn Abbas.

ثُمَّ اخْتَلَفَ الْعُلَمَاءُ فِي مِقْدَارِ الطَّائِفَةِ الَّتِي افْتَرَضَ اللَّهُ تَعَالَى أَنْ تَشْهَدَ الْعَذَابَ الْمَذْكُورَ - فَقَالَتْ طَائِفَةٌ: هِيَ وَاحِدٌ مِنْ النَّاسِ، فَإِنْ زَادَ فَجَائِزٌ - وَهُوَ قَوْلُ ابْنِ عَبَّاسٍ.

L41530 As reported by al-Thawrī from Ibn Abī Najīḥ from Mujāhid, who said: “A single man constitutes a group,” and this is the opinion stated by our companions.

كَمَا رَوَى الثَّوْرِيُّ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: الطَّائِفَةُ رَجُلٌ، وَبِهَذَا يَقُولُ أَصْحَابُنَا.

L41531 A group said: The group is two and upwards. As we have been narrated from ʿAṭāʾ, who said: “Two and upwards”—and this is the view held by Isḥāq ibn Rāhawayh.

وَقَالَتْ طَائِفَةٌ: الطَّائِفَةُ اثْنَانِ فَصَاعِدًا. كَمَا رُوِّينَا عَنْ عَطَاءٍ قَالَ: اثْنَانِ فَصَاعِدًا - وَبِهِ يَقُولُ إِسْحَاقُ بْنُ رَاهَوَيْهِ.

L41532–41533 A group said: three and above, as we have narrated from Ibn Shihāb. Ibn Wahb said: I heard Shimr ibn Numayr narrating from al-Ḥusayn ibn ʿUbayd Allāh ibn Ḍamīrah, from his father, from his grandfather, from ʿAlī ibn Abī Ṭālib the same ruling—exactly the same—that the group is three and above. Al-Shāfiʿī upholds this view in one of his two opinions.

وَقَالَتْ طَائِفَةٌ: ثَلَاثَةٌ فَصَاعِدًا، كَمَا رُوِّينَا عَنْ ابْنِ شِهَابٍ. وَقَالَ ابْنُ وَهْبٍ: سَمِعْت شِمْرَ بْنَ نُمَيْرٍ يُحَدِّثُ عَنْ الْحُسَيْنِ بْنِ عُبَيْدِ اللَّهِ بْنِ ضَمِيرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ مِثْلَهُ - سَوَاءً سَوَاءً - أَنَّ الطَّائِفَةَ ثَلَاثَةٌ فَصَاعِدًا - وَبِهِ يَقُولُ الشَّافِعِيُّ فِي أَحَدِ قَوْلَيْهِ.

L41534 A group said: “A ṭāʾifah is a group without specifying a number, as we were narrated from Maʿmar via Qatādah, who heard the verse {And let a group of the believers witness their punishment} [an-Nur 24:2] and explained: ’A group of the Muslims.’”[4]

وَقَالَتْ طَائِفَةٌ: الطَّائِفَةُ - نَفَرٌ دُونَ أَنْ يَحُدُّوا عَدَدًا، كَمَا رُوِّينَا عَنْ مَعْمَرٍ عَنْ قَتَادَةَ أَنَّهُ سَمِعَ {وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِنَ الْمُؤْمِنِينَ} [النور: ٢] قَالَ: نَفَرٌ مِنْ الْمُسْلِمِينَ.

L41535 A group held that a *ṭāʾifah* is four and upwards, as reported from al-Layth

وَقَالَتْ طَائِفَةٌ: الطَّائِفَةُ - أَرْبَعَةٌ فَصَاعِدًا، كَمَا رُوِّينَا عَنْ اللَّيْثِ بْنِ سَعْدٍ. وَقَالَتْ طَائِفَةٌ: الطَّائِفَةُ - خَمْسَةٌ فَصَاعِدًا، كَمَا رُوِّينَا عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ.

[3] **Qur’an references (L41527):** Qur’an 24:2 (An-Nur); Qur’an 24:8 (An-Nur).
[4] **Qur’an references (L41534):** Qur’an 24:2 (An-Nur).

ibn Saʿd. Another group held that a *ṭāʾifah* is five and upwards, as reported from Rabīʿah ibn Abī ʿAbd al-Raḥmān.

L41536 A group said: The group is ten individuals, as narrated from Al-Hasan Al-Basri that he said: Does "group" mean ten? Abu Muhammad—may Allah have mercy on him—said: When they differed as we mentioned, it was incumbent to investigate this. We found all opinions cannot be used as proof except the view of Mujahid and Ibn Abbas—that the group refers to one or more. We found this view to be necessitated by conclusive evidence from the Quran, consensus, and linguistic principles.

L41537 As for the Quran, Allah the Exalted says: "And if two factions among the believers fight, then make settlement between them. But if one of them transgresses against the other..." [Al-Ḥujurāt 49:9]. Here the Exalted has clearly clarified through an explicit text that He intended by "the two factions" here two or more, as evidenced by His statement at the verse's beginning "they fought," His saying "if one of them transgresses against the other" [Al-Ḥujurāt 49:9], and His saying at the verse's end "make peace between your two brothers" [Al-Ḥujurāt 49:10]. Another proof is His statement: "And let a group of the believers witness their punishment" [An-Nūr 24:2]. With certainty we know that had Allah the Exalted intended by that a prescribed number, He would have clarified it, made it known to us, and not left us groping blindly until we conjecture false assumptions—far is Allah the Exalted from such. And success is from Allah, the Exalted.[5]

Issue: The Ḥadd for Qadhf

L41538–41539

L41540 Issue: The prescribed punishment for false accusation of zinā (fornication) – which is qadhf (defamation of chastity) –. Allah, the Most High, says: "And those who accuse chaste women and then do not bring four witnesses, flog

[5] **Qur'an references (L41537):** Qur'an 49:9 (Al-Hujurat); Qur'an 49:10 (Al-Hujurat); Qur'an 24:2 (An-Nur).

وَقَالَتْ طَائِفَةٌ: الطَّائِفَةُ - عَشْرَةٌ، كَمَا رُوِيَ عَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ قَالَ: الطَّائِفَةُ عَشْرَةٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ فَوَجَدْنَا جَمِيعَ الْأَقْوَالِ لَا يُحْتَجُّ بِهَا إلَّا قَوْلُ مُجَاهِدٍ، وَابْنِ عَبَّاسٍ، وَهُوَ أَنَّ الطَّائِفَةَ: وَاحِدٌ فَصَاعِدًا - فَوَجَدْنَاهُ قَوْلًا يُوجِبُهُ الْبُرْهَانُ مِنْ الْقُرْآنِ، وَالْإِجْمَاعِ، وَاللُّغَةِ.

فَأَمَّا الْقُرْآنُ - فَإِنَّ اللَّهَ تَعَالَى يَقُولُ {وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الأُخْرَى} [الحجرات: ٩] الْآيَةَ، فَبَيَّنَ تَعَالَى نَصًّا جَلِيًّا أَنَّهُ أَرَادَ بِالطَّائِفَتَيْنِ هُنَا الِاثْنَيْنِ فَصَاعِدًا: بِقَوْلِهِ فِي أَوَّلِ الْآيَةِ (اقْتَتَلُوا) وَبِقَوْلِهِ تَعَالَى {فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الأُخْرَى} [الحجرات: ٩] وَبِقَوْلِهِ تَعَالَى فِي آخِرِ الْآيَةِ {فَأَصْلِحُوا بَيْنَ أَخَوَيْكُمْ} [الحجرات: ١٠] وَبُرْهَانٌ آخَرُ - وَهُوَ أَنَّ اللَّهَ تَعَالَى قَالَ {وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِنَ الْمُؤْمِنِينَ} [النور: ٢] وَبِيَقِينٍ نَدْرِي أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ بِذَلِكَ عَدَدًا مِنْ عَدَدٍ لَبَيَّنَهُ، وَلَأَوْقَفَنَا عَلَيْهِ، وَلَمْ يَدَعْنَا نَخْبِطُ فِيهِ خَبْطَ عَشْوَاءَ، حَتَّى تَتَكَهَّنَ فِيهِ الظُّنُونُ الْكَاذِبَةُ، حَاشَ لِلَّهِ تَعَالَى مِنْ هَذَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حَدُّ الْقَذْفُ]

مَسْأَلَةٌ: حَدُّ الرَّمْيِ بِالزِّنَى - وَهُوَ الْقَذْفُ - قَالَ اللَّهُ تَعَالَى {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً} [النور: ٤] إلَى قَوْله تَعَالَى {غَفُورٌ رَحِيمٌ} [البقرة: ١٧٣] .

them with eighty lashes" [An-Nur: 4] up to His statement, the Most High: "the Forgiving, the Merciful" [Al-Baqarah: 173].[6]

L41541 Abū Muḥammad—may Allah have mercy on him—said: "In this verse are many rulings that must be comprehended by seeking knowledge of them, believing in them, and acting upon them with the aid of Allah the Exalted. Among them are: to know what constitutes the false accusation of adultery that necessitates the rulings mentioned in the verse—flogging, invalidation of testimony, and being declared a transgressor—and that such accusation is among the major sins; to identify the chaste women for whom this ruling of flogging, invalidation of testimony, and being deemed transgressors is necessitated when they are accused; to determine the number of lashes prescribed, their manner of administration, and who is obligated to carry out the flogging; to ascertain when it becomes impermissible to accept their testimony, in what matters their testimony is rejected, and the implications of their moral transgression; to recognize which of these rulings are nullified by repentance; and to understand the manner of repentance required from this sin."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَفِي هَذِهِ الْآيَةِ أَحْكَامٌ كَثِيرَةٌ يَجِبُ الْوُقُوفُ عَلَيْهَا بِأَنْ تَطْلُبَ عِلْمَهَا، وَأَنْ تَعْتَقِدَ، وَأَنْ يُعْمَلَ بِهَا بِعَوْنِ اللَّهِ تَعَالَى عَلَى ذَلِكَ: فَمِنْهَا - مَعْرِفَةُ مَا هُوَ الرَّمْيُ الَّذِي يُوجِبُ الْحُكْمَ الْمَذْكُورَ فِي الْآيَةِ، مِنْ الْجَلْدِ، وَإِسْقَاطِ الشَّهَادَةِ، وَالْفِسْقِ، وَأَنَّ الْقَذْفَ مِنْ الْكَبَائِرِ، وَمِنْ الْمُحْصَنَاتِ اللَّوَاتِي يَجِبُ لِرَمْيِهِنَّ الْحُكْمُ الْمَذْكُورُ فِي الْآيَةِ مِنْ الْجَلْدِ، وَإِسْقَاطِ الشَّهَادَةِ، وَالْفِسْقِ، وَعَدَدِ الْجَلْدِ، وَصِفَتِهِ؟ وَمَنْ الْمَأْمُورُ بِالْجَلْدِ؟ وَمَتَى يَمْتَنِعُ مِنْ قَبُولِ شَهَادَتِهِمْ، وَفِي مَاذَا يَمْتَنِعُ مِنْ قَبُولِهَا، وَفِسْقِهِمْ، وَمَا يَسْقُطُ بِالتَّوْبَةِ مِنْ الْأَحْكَامِ الْمَذْكُورَةِ وَمَا صِفَةُ التَّوْبَةِ مِنْ ذَلِكَ؟

L41542 And we, if Allah the Exalted wills, will mention all of that—with the help of Allah the Exalted—through clear proofs from the Quran and the established Sunnahs pertaining to that. There is no power nor strength except with Allah.

وَنَحْنُ إنْ شَاءَ اللَّهُ تَعَالَى نَذْكُرُ كُلَّ ذَلِكَ - بِعَوْنِ اللَّهِ تَعَالَى - بِالْبَرَاهِينِ الْوَاضِحَةِ مِنْ الْقُرْآنِ، وَالسُّنَنِ الثَّابِتَةِ فِي ذَلِكَ - وَلَا حَوْلَ وَلَا قُوَّةَ إلَّا بِاَللَّهِ.

L41543 2228 - Issue: What are ar-ramy and al-qadhf?

٢٢٢٨ - مَسْأَلَةٌ: مَا الرَّمْيُ، وَالْقَذْفُ؟

L41544 Abu Muhammad—may Allah have mercy on him—said: Allah the Exalted mentioned this ruling by the name of "accusation of adultery" in the aforementioned verse, and it is established that "slander" and "accusation of adultery" are two names for a single meaning. This was transmitted from Abdullah ibn Rabee' from Muhammad ibn Mu'awiyah from Ahmad ibn Shu'ayb from Ishaq ibn Ibrahim—that is, Ibn Rahawayh—from Abd al-A'la—that is, Ibn Abd al-A'la al-Sulami—who said: Hisham—that is, Ibn Hassan—was asked about a man who accuses his wife of adultery. Hisham narrated to us from Muhammad—meaning Ibn Sirin—who said: I asked Anas ibn Malik

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ذَكَرَ اللَّهُ تَعَالَى هَذَا الْحُكْمَ بِاسْمِ " الرَّمْيِ " فِي الْآيَةِ الْمَذْكُورَةِ، وَصَحَّ أَنَّ " الْقَذْفَ، وَالرَّمْيَ " اسْمَانِ لِمَعْنًى وَاحِدٍ: لِمَا ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا إِسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - أَنَا عَبْدُ الْأَعْلَى - هُوَ ابْنُ عَبْدِ الْأَعْلَى السُّلَمِيُّ - قَالَ: «سُئِلَ هِشَامٌ - هُوَ ابْنُ حَسَّانَ - عَنْ الرَّجُلِ يَقْذِفُ امْرَأَتَهُ؟ فَحَدَّثَنَا هِشَامٌ عَنْ مُحَمَّدٍ - يَعْنِي ابْنَ سِيرِينَ - قَالَ: سَأَلْتُ أَنَسَ بْنَ مَالِكٍ عَنْ

[6] **Qur'an references (L41540):** Qur'an 24:4 (An-Nur); Qur'an 2:173 (Al-Baqarah).

about that—and I believed he had knowledge of it—so he said: Hilal ibn Umayyah accused his wife of adultery with Sharik ibn Sahma', who was the brother of al-Bara' ibn Malik. He was the first to engage in mutual cursing, so the Messenger of Allah—peace and blessings be upon him and his family—conducted the mutual cursing between them. Then he said: "Observe the child. If she gives birth to a fair-skinned child with bright eyes, he belongs to Hilal ibn Umayyah. But if she gives birth to a dark-skinned child with curly hair and thin calves, he belongs to Sharik ibn Sahma'." Anas said: "I was informed that she gave birth to a dark-skinned child with curly hair and thin calves."

ذَلِكَ - وَأَنَا أَرَى أَنَّ عِنْدَهُ مِنْ ذَلِكَ عِلْمًا - فَقَالَ: إِنَّ هِلَالَ بْنَ أُمَيَّةَ قَذَفَ امْرَأَتَهُ بِشَرِيكِ ابْنِ سَحْمَاءَ، وَكَانَ أَخَا الْبَرَاءِ بْنِ مَالِكٍ، وَكَانَ أَوَّلَ مَنْ لَاعَنَ، فَلَاعَنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بَيْنَهُمَا، ثُمَّ قَالَ أَبْصِرُوهُ، فَإِنْ جَاءَتْ بِهِ أَبْيَضَ، نَضَّ الْعَيْنَيْنِ، فَهُوَ لِهِلَالِ بْنِ أُمَيَّةَ، وَإِنْ جَاءَتْ بِهِ أَكْحَلَ جَعْدًا حَمْشَ السَّاقَيْنِ فَهُوَ لِشَرِيكِ ابْنِ سَحْمَاءَ. قَالَ أَنَسٌ: فَأُنْبِئْتُ أَنَّهَا جَاءَتْ بِهِ أَكْحَلَ جَعْدًا حَمْشَ السَّاقَيْنِ» .

L41545–41546 Abdullah ibn Rabīʿ narrated to us from Muḥammad ibn Muʿāwiyah from Muḥammad ibn Sīrīn from Anas ibn Mālik, who said: The first instance of mutual cursing (liʿān) in Islam occurred when Hilāl ibn Umayyah accused Sharīk ibn Saḥmāʾa of adultery with his (Hilāl's) wife. He came to the Prophet—peace be upon him—and informed him of this. The Prophet—peace be upon him—said to him: "Bring four witnesses, or else the ḥadd punishment shall be inflicted upon your back." And Anas related the narration of the mutual cursing.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ «أَنَسِ بْنِ مَالِكٍ، قَالَ: أَوَّلُ لِعَانٍ كَانَ فِي الْإِسْلَامِ أَنَّ هِلَالَ بْنَ أُمَيَّةَ قَذَفَ شَرِيكَ ابْنَ سَحْمَاءَ بِامْرَأَتِهِ فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَ بِذَلِكَ، فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرْبَعَةُ شُهَدَاءَ وَإِلَّا حَدٌّ فِي ظَهْرِكَ» وَذَكَرَ حَدِيثَ اللِّعَانِ.

L41547 Abu Muhammad—may Allah have mercy on him—said: Now this Anas ibn Malik is an authority in language and in transmitting religious teachings. He referred to the stoning (ramy) as qadhf (casting), though there is no disagreement about this from any linguist nor among any of the people of the religious community.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا أَنَسُ بْنُ مَالِكٍ حُجَّةٌ فِي اللُّغَةِ وَفِي النَّقْلِ فِي الدِّيَانَةِ قَدْ سَمَّى الرَّمْيَ: قَذْفًا، مَعَ أَنَّهُ لَا خِلَافَ فِي ذَلِكَ مِنْ أَحَدٍ مِنْ أَهْلِ اللُّغَةِ، وَلَا بَيْنَ أَحَدٍ مِنْ أَهْلِ الْمِلَّةِ.

L41548 Similarly, there is no disagreement among any of the people of Islam that the "accusation (qadhf)" mentioned in the aforementioned verse - which necessitates flogging, sinfulness, and invalidation of testimony - refers specifically to the false allegation of illicit sexual relations between a man and a woman.

وَكَذَلِكَ لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ فِي أَنَّ " الرَّمْيَ " الْمَذْكُورَ فِي الْآيَةِ الْمَذْكُورَةِ الْمُوجِبَ لِلْجَلْدِ وَالْفِسْقِ، وَسُقُوطِ الشَّهَادَةِ هُوَ الرَّمْيُ بِالزِّنَى بَيْنَ الرِّجَالِ وَالنِّسَاءِ.

L41549 Then the scholars differed regarding whether false accusations unrelated to adultery necessitate a hadd punishment or not.

ثُمَّ اخْتَلَفَ الْعُلَمَاءُ فِي الرَّمْيِ بِغَيْرِ الزِّنَى أَيُوجِبُ حَدًّا أَمْ لَا؟

L41550 A group said: There is no *ḥadd* except in falsely accusing someone of adultery alone, and there is no *ḥadd* in other matters—not in denying the lineage of a father or grandfather, nor in falsely accusing someone of sodomy,

فَقَالَتْ طَائِفَةٌ: لَا حَدَّ إِلَّا فِي الرَّمْيِ بِالزِّنَى فَقَطْ، وَلَا حَدَّ فِي غَيْرِ ذَلِكَ، لَا فِي نَفْيِ عَنْ نَسَبِ أَبٍ أَوْ جَدٍّ، وَلَا فِي رَمْيٍ بِلُوطِيَّةٍ، وَلَا فِي رَمْيٍ بِبِغَاءٍ، وَلَا فِي رَمْيِ رَجُلٍ بِوَطْءٍ فِي دُبُرِ امْرَأَةٍ، وَلَا فِي إِتْيَانِ بَهِيمَةٍ، وَلَا فِي رَمْيِ امْرَأَةٍ أَنَّهَا أُتِيَتْ فِي دُبُرِهَا، وَلَا فِي رَمْيِهَا بِبَهِيمَةٍ، وَلَا فِي رَمْيٍ بِكُفْرٍ، وَلَا بِشُرْبِ خَمْرٍ، وَلَا فِي شَيْءٍ أَصْلًا - وَهُوَ قَوْلُ أَصْحَابِنَا.

nor in falsely accusing someone of prostitution, nor in falsely accusing a man of anal intercourse with a woman, nor in bestiality, nor in falsely accusing a woman of anal penetration, nor in falsely accusing her of bestiality, nor in falsely accusing someone of apostasy, nor for drinking wine, nor in anything at all—and this is the opinion of our companions.

وَقَالَ قَائِلُونَ فِي بَعْضِ مَا ذَكَرْنَا: إِيجَابُ الْجَلْدِ، وَنَحْنُ نَذْكُرُ إِنْ شَاءَ اللَّهُ تَعَالَى مَا يَسَّرَ اللَّهُ تَعَالَى لِذِكْرِهِ مِنْ ذَلِكَ، وَبَيَانِ الْحَقِّ إِنْ شَاءَ اللَّهُ تَعَالَى - وَبِهِ نَسْتَعِينُ.

L41551 And some have said regarding some of what we have mentioned: "The obligation of flogging," and we shall mention—if Allah the Exalted wills—what Allah the Exalted has facilitated for mention concerning this matter, and expound the truth—if Allah the Exalted wills—and in Him we seek help.

[مَسْأَلَةُ النَّفْيُ عَنْ النَّسَبِ]

The Issue of Disavowal Concerning Lineage

L41552

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِيمَنْ نَفَى آخَرَ عَنْ نَسَبِهِ: فَقَالَتْ طَائِفَةٌ: فِيهِ الْحَدُّ - وَقَالَتْ طَائِفَةٌ: لَا حَدَّ فِيهِ، فَأَمَّا مَنْ أَوْجَبَ فِيهِ الْحَدَّ - فَهُوَ كَمَا قَالَ ابْنُ مَسْعُودٍ: لَا حَدَّ إِلَّا فِي اثْنَيْنِ: أَنْ يَقْذِفَ مُحْصَنَةً، أَوْ يَنْفِيَ رَجُلًا عَنْ أَبِيهِ، وَإِنْ كَانَتْ أُمُّهُ أَمَةً.

L41553 Abū Muḥammad—may Allāh have mercy on him—said: People differed regarding one who denies another's paternity. A group held that the ḥadd applies in this case, while another group maintained there is no ḥadd. Those who ruled that the ḥadd is obligatory cite Ibn Masʿūd's declaration: "There is no ḥadd except in two matters: falsely accusing a chaste woman of adultery, or denying a person's relation to their father—even if their mother was an enslaved woman."

وَعَنْ الشَّعْبِيِّ فِي الرَّجُلِ يَنْفِي الرَّجُلَ مِنْ نَخْذِهِ، قَالَ: لَيْسَ عَلَيْهِ حَدٌّ إِلَّا أَنْ يَنْفِيَهُ مِنْ أَبِيهِ - وَعَنْ الشَّعْبِيِّ، وَالْحَسَنِ قَالَا جَمِيعًا: يُضْرَبُ الْحَدَّ.

L41554–41556 From Ash-Shaʿbi regarding a man who denies another man [as being] from his lineage: No ḥadd punishment is incurred upon him except for denying him. From his father, and from al-Shaʿbī and al-Ḥasan, who both said: The ḥadd is to be imposed.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: مَنْ نَفَى رَجُلًا عَنْ أَبِيهِ - كَانَ أَبُوهُ مَا كَانَ - فَعَلَيْهِ الْحَدُّ - وَمَنْ قَالَ لِرَجُلٍ مِنْ بَنِي تَمِيمٍ لَسْتَ مِنْهُمْ - وَهُوَ مِنْهُمْ - أَوْ لِرَجُلٍ مِنْ بَنِي بَكْرٍ لَسْتَ مِنْهُمْ - وَهُوَ مِنْهُمْ - فَعَلَيْهِ الْحَدُّ.

L41557 From Ibrahim al-Nakhāʿī, who said: Whoever denies a man's lineage to his father—regardless of who his father was—the *ḥadd* punishment applies to him. And whoever says to a man from Banū Tamīm or Banū Bakr, "You are not from them," when he is indeed one of them—the *ḥadd* punishment applies to him.

L41558 From Ibrahim al-Nakhaʿī regarding a man who denied another man's pa-

ternity: He said to him, “You are not to your father,” and his mother was Christian or a slave woman - he ruled: The man is not to be flogged.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي رَجُلٍ نَفَى رَجُلًا عَنْ أَبِيهِ، قَالَ لَهُ: لَسْتَ لِأَبِيك وَأُمُّهُ نَصْرَانِيَّةٌ أَوْ مَمْلُوكَةٌ - قَالَ: لَا يُجْلَدُ.

L41559 From the narration of Abd al-Razzaq: Ibn Jurayj said: I heard Hafs ibn Umar ibn Rabiʿ say: A legal dispute arose between my father and a Jew regarding a pre-emption right. My father said to the Jew, “A Jew, son of a Jew!” The Jew replied, “Yes, by Allah! I am a Jew, son of a Jew—since many men do not even know their fathers?” The local governor wrote to Umar ibn Abd al-Aziz—who was the governor of Medina—about this matter. He responded: “If the one who said this to him has a known father, then apply the hadd punishment to the Jew.” They struck him eighty lashes.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ قَالَ: سَمِعْتُ حَفْصَ بْنَ عُمَرَ بْنِ رَبِيعٍ يَقُولُ: كَانَ بَيْنَ أَبِي وَبَيْنَ يَهُودِيٍّ مُرَافَعَةٌ فِي الْقَوْلِ فِي شُفْعَةٍ، فَقَالَ أَبِي لِلْيَهُودِيِّ: يَهُودِيٌّ ابْنُ يَهُودِيٍّ، فَقَالَ: أَجَلْ، وَاَللَّهِ إنِّي الْيَهُودِيُّ ابْنُ الْيَهُودِيِّ، إذْ لَا يَعْرِفُ رِجَالٌ كَثِيرٌ آبَاءَهُمْ؟ فَكَتَبَ عَامِلُ الْأَرْضِ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ - وَهُوَ عَامِلُ الْمَدِينَةِ - بِذَلِكَ، فَكَتَبَ، فَقَالَ: إنْ كَانَ الَّذِي قَالَ لَهُ ذَلِكَ يُعْرَفُ أَبُوهُ، فَحُدَّ الْيَهُودِيَّ، فَضَرَبَهُ ثَمَانِينَ سَوْطًا.

L41560 And from Ibn Jurayj that he said: Ibn Shihab was asked about a man addressed as “O son of a metalworker”—though his father was not a metalworker. He said: We hold that he should be lashed the hadd.

وَعَنْ ابْنِ جُرَيْجٍ أَنَّهُ قَالَ: سُئِلَ ابْنُ شِهَابٍ عَنْ رَجُلٍ قِيلَ لَهُ: يَا ابْنَ الْقَيْنِ - وَلَمْ يَكُنْ أَبُوهُ قَيْنًا - قَالَ: نَرَى أَنْ يُجْلَدَ الْحَدَّ.

L41561 As for those from whom it has been narrated that no prescribed punishment applies in such cases: as narrated to us via Abd al-Razzaq’s chain from Ibrahim ibn Muhammad, from Ishaq ibn Abdullah, from Makhul—Muadh ibn Jabal and Abdullah ibn Amr ibn al-As (may Allah be pleased with them both) jointly stated: “The prescribed punishment applies solely to the word that has no alternative interpretation and has only one meaning.” From Ali ibn Abi Talib (may Allah be pleased with him) it is related: “If the punishment reaches ’perhaps’ or ’maybe,’ then the punishment is suspended.”

وَأَمَّا مَنْ رُوِيَ عَنْهُ: أَنَّهُ لَا حَدَّ فِي ذَلِكَ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إبْرَاهِيمَ بْنِ مُحَمَّدٍ عَنْ إسْحَاقَ بْنِ عَبْدِ اللَّهِ عَنْ مَكْحُولٍ أَنَّ مُعَاذَ بْنَ جَبَلٍ، وَعَبْدَ اللَّهِ بْنَ عَمْرِو بْنِ الْعَاصِ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَا جَمِيعًا: لَيْسَ الْحَدُّ إلَّا فِي الْكَلِمَةِ لَيْسَ لَهَا مُصَرَّفٌ، وَلَيْسَ لَهَا إلَّا وَجْهٌ وَاحِدٌ: وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: إذَا بَلَغَ الْحَدُّ - لَعَلَّ وَعَسَى - فَالْحَدُّ مُعَطَّلٌ.

L41562 It has been narrated from Ibn Abbas—may Allah be pleased with him—regarding someone who called a man “O Nabataean” that no *hadd* punishment applies to him.

وَقَدْ رُوِيَ عَنْ ابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُ - فِيمَنْ قَالَ لِرَجُلٍ: يَا نَبَطِيُّ أَنَّهُ لَا حَدَّ عَلَيْهِ.

L41563 And from ʻAṭāʼ ibn Abī Rabāḥ that he was asked about a man who said to another man, “O Nabatean, and O slave of the sons of so-and-so,” and ʻAṭāʼ did not see anything in it.

وَعَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ أَنَّهُ سُئِلَ عَنْ رَجُلٍ قَالَ لِرَجُلٍ: يَا نَبَطِيُّ، وَيَا عَبْدَ بَنِي فُلَانٍ، فَلَمْ يَرَ عَطَاءٌ فِيهِ شَيْئًا.

L41564 It is reported from Ash-Sha'bi that he was asked about a man who said, "By my life, O Nabatean." Ash-Sha'bi did not see any issue in that and said, "We are all Nabateans"—and this is the view held by our scholars.

وَعَنْ الشَّعْبِيِّ أَنَّهُ سُئِلَ عَنْ الرَّجُلِ قَالَ لَعَمْرِي: يَا نَبَطِيُّ، فَلَمْ يَرَ الشَّعْبِيُّ فِي ذَلِكَ شَيْئًا، وَقَالَ: كُلُّنَا نَبَطٌ - وَبِهِ يَقُولُ أَصْحَابُنَا؟

L41565–41566 Abū Muḥammad—may Allāh have mercy on him—said: When they differed as we mentioned, it became obligatory for us to examine this matter so that we might know the truth and thereby follow it. We found al-Zuhrī stating regarding a man's denial of his father or his lineage—as we previously cited from him—that the Sunnah upon the denier, according to the Book of Allāh the Exalted and the Sunnah of His Prophet—peace be upon him—is to produce four witnesses. We then examined: Do we find support for what al-Zuhrī mentioned in the Book of Allāh the Exalted?

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ، فَوَجَدْنَا الزُّهْرِيَّ يَقُولُ فِي نَفْيِ الْمَرْءِ عَنْ أَبِيهِ، أَوْ عَنْ نَسَبِهِ - كَمَا أَوْرَدْنَا عَنْهُ قَبْلَ ذَلِكَ أَنَّ السُّنَّةَ عَلَى النَّافِي فِي كِتَابِ اللَّهِ تَعَالَى، وَسُنَّةِ نَبِيِّهِ - عَلَيْهِ السَّلَامُ -: أَنْ يَأْتِيَ بِأَرْبَعَةِ شُهَدَاءَ: فَنَظَرْنَا هَلْ نَجِدُ هَذَا الَّذِي ذَكَرَ الزُّهْرِيُّ فِي كِتَابِ اللَّهِ تَعَالَى؟

L41567 We did not find it at all; rather, we found in it the prescribed punishment and the obligation of four witnesses for accusing chaste women. Thus, we found the lineage denier—a person denying his lineage—did not accuse a chaste woman at all. As for Al-Zuhri—even though he is, in our view, one of the virtuous Imams—he is a human who errs as others err, makes mistakes, and is sometimes correct. On the contrary, we found the explicit text of the Quran contradicting Al-Zuhri's opinion, because it waives the punishment from one who accuses chaste women if he says to the son of a slave woman or the son of a disbeliever, "O son of an adulteress," yet imposed it in a situation where the Quran does not mandate it—if he says to him, "You are not your father's son"—thus rendering their entire argument invalid. If they say, "Is the lineage denier necessarily an accuser of adultery?"

فَلَمْ نَجِدْهُ أَصْلًا، وَإِنَّمَا وَجَدْنَا فِيهِ الْحَدَّ، وَوُجُوبَ أَرْبَعَةِ شُهَدَاءَ عَلَى رَمْيِ الْمُحْصَنَاتِ فَوَجَدْنَا النَّافِيَ إنْسَانًا عَنْ نَسَبِهِ، فَلَمْ يَرْمِ مُحْصَنَةً أَصْلًا، وَالزُّهْرِيُّ - وَإِنْ كَانَ عِنْدَنَا أَحَدُ الْأَئِمَّةِ الْفُضَلَاءِ - فَهُوَ بَشَرٌ يَهِمُ كَمَا يَهِمُ غَيْرُهُ، وَيُخْطِئُ وَيُصِيبُ، بَلْ وَجَدْنَا نَصَّ الْقُرْآنِ مُخَالِفًا لِقَوْلِ الزُّهْرِيِّ، لِأَنَّهُ يُسْقِطُ الْحَدَّ عَمَّنْ رَمَى الْمُحْصَنَاتِ إذَا قَالَ لِابْنِ أَمَةٍ، أَوْ ابْنِ كَافِرَةٍ: يَا ابْنَ الزَّانِيَةِ، وَأَوْجَبَهُ حَيْثُ لَيْسَ فِي الْقُرْآنِ إيجَابُهُ إذَا قَالَ لَهُ: لَسْتَ لِأَبِيكَ - فَسَقَطَ تَعَلُّقُهُمْ بِذَلِكَ جُمْلَةً. فَإِنْ قَالُوا: النَّافِي قَاذِفٌ وَلَا بُدَّ؟

L41568 We said: No, he is not a false accuser of zinā, nor has he accused anyone thereof. He may deny lineage by legally claiming paternity, asserting the child belongs to others through valid marriage. Pre-Islamic Arabs practiced this, so no accusation of zinā exists here whatsoever. His denial could mean the mother was coerced - that she conceived where zinā cannot apply, like

قُلْنَا: لَا، مَا هُوَ قَاذِفٌ، وَلَا قَذَفَ أَحَدًا، وَقَدْ يَنْفِيهِ عَنْ نَسَبِهِ بِأَنَّهُ اسْتَلْحَقَ، وَأَنَّهُ مِنْ غَيْرِهِمْ ابْنُ نِكَاحٍ صَحِيحٍ، فَقَدْ كَانَتْ الْعَرَبُ تَفْعَلُ هَذَا، فَلَا قَذَفَ هَاهُنَا أَصْلًا، وَقَدْ يَكُونُ نَفْيُهِ لَهُ بِأَنْ أَرَادَ الِاسْتِكْرَاهَ لِأُمِّهِ، وَأَنَّهَا حَمَلَتْ بِهِ فِي حَالَةٍ لَا يَكُونُ لِلزِّنَى فِيهِ

intercourse with a sleeping woman, intoxicated woman, unconscious woman, or unaware woman. Thus, the denier is wholly exempt from being deemed a false accuser of zinā.

L41569 Then we examined—is there in the Sunnah any basis for them? We found what was narrated by Ahmad ibn Qasim, who narrated from his father Qasim ibn Muhammad ibn Qasim, who narrated from my grandfather Qasim ibn Asbagh, who narrated from Ibn Waddah, who narrated from Sahnun, who narrated from Ibn Wahb, who informed me through Haywah ibn Shurayh, from Salim ibn Ghaylan, from Yahya ibn Sa'id al-Ansari, from Sulayman ibn Yasar, from one of the Companions of the Prophet—peace and blessings be upon him—that "the Messenger of Allah—peace and blessings be upon him—flogged a man for calling another: 'O son of the madwoman!'" Abu Muhammad said: We scrutinized this report and found they have no connection to it whatsoever on several grounds. The first is that it is *mursal* [a hadith with an incomplete chain], and no proof can be established through a *mursal* report.

L41570 The second: through the chain of Sālim ibn Ghaylān al-Tujībī—he is unknown [as a reliable narrator] and was not declared trustworthy.

L41571–41572 The third is that even if it were valid, it would not constitute proof, because it does not state that he—peace be upon him—imposed the ḥadd punishment on him. It merely states that he flogged him. Thus, it is invalid to interpret this as meaning he imposed the ḥadd punishment. We do not object, in that regard, to punishing anyone who insults a Muslim, for it is an evil to be eradicated by physical intervention. Consequently, their claim to have any proof in it is invalidated—rather, it invalidates their position.

L41573 And indeed, Yunus ibn Abd al-A'la—who had a more precise memory than Sahnun and was more knowledgeable in Hadith than him—narrated this report, yet he did not transmit it to the Messenger of Allah—peace and blessings be upon him.

L41574 As narrated by ʿAbdullāh ibn Rabīʿ, from Muḥammad ibn Muʿāwiyah, from Aḥmad ibn Shuʿayb: I, Yūnus ibn ʿAbd al-Aʿlā, narrated that Ibn Wahb informed us, from Ibn Ḥaywah ibn Shurayḥ, from Sālim ibn Ghaylān at-Tujībī,

دُخُولٌ، كَالنَّائِمَةِ تُوطَأُ، أَوْ السَّكْرَى، أَوْ الْمُغْمَى عَلَيْهَا، أَوْ الْجَاهِلَةِ، فَقَدْ بَطَلَ أَنْ يَكُونَ النَّافِي قَاذِفًا جُمْلَةً وَاحِدَةً.

ثُمَّ نَظَرْنَا - هَلْ فِي السُّنَّةِ لَهُمْ مُتَعَلَّقٌ؟ فَوَجَدْنَا: مَا ناه أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي حَيْوَةُ بْنُ شُرَيْحٍ عَنْ سَالِمِ بْنِ غَيْلَانَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ بَعْضِ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَلَدَ رَجُلًا أَنْ دَعَا آخَرَ: يَا ابْنَ الْمَجْنُونِ» ؟ قَالَ أَبُو مُحَمَّدٍ: فَنَظَرْنَا فِي هَذَا الْخَبَرِ فَوَجَدْنَاهُ لَا مُتَعَلَّقَ لَهُمْ بِهِ أَصْلًا مِنْ وُجُوهٍ: أَوَّلُهَا: إنَّهُ مُرْسَلٌ وَلَا تَقُومُ بِمُرْسَلٍ حُجَّةٌ.

وَالثَّانِي: مِنْ طَرِيقِ سَالِمِ بْنِ غَيْلَانَ التُّجِيبِيِّ وَهُوَ مَجْهُولٌ لَمْ يُعَدَّلْ.

وَثَالِثُهَا: أَنَّهُ لَوْ صَحَّ لَمْ يَكُنْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - جَلَدَهُ الْحَدَّ، إنَّمَا فِيهِ: أَنَّهُ جَلَدَهُ، فَلَا يَحِلُّ أَنْ يُرَادَ فِيهِ: أَنَّهُ جَلَدَهُ الْحَدَّ، وَنَحْنُ لَا نَأْبَى مِنْ ذَلِكَ مَنْ سَبَّ مُسْلِمًا، لِأَنَّهُ مُنْكَرٌ يُغَيَّرُ بِالْيَدِ، فَبَطَلَ أَنْ تَكُونَ لَهُمْ فِيهِ حُجَّةٌ، بَلْ هُوَ عَلَيْهِمْ.

وَقَدْ رَوَى هَذَا الْخَبَرَ يُونُسُ بْنُ عَبْدِ الْأَعْلَى - وَهُوَ أَحْفَظُ مِنْ سَحْنُونَ، وَأَعْرَفُ بِالْحَدِيثِ مِنْهُ، فَلَمْ يُبَلِّغْهُ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

from Yaḥyā ibn Saʿīd, from Sulaymān ibn Yasār, who said: "One of the Companions of the Messenger of Allah—may Allah bless him and his family and grant him peace—flogged a man because he called another: 'O son of the madman!'" Abū Muḥammad—may Allah have mercy on him—said: "This resembles what we mentioned earlier, for it does not specify that he imposed the prescribed punishment. Prescribed punishments are not enforced based on false presumptions. Additions to the ḥadīth are falsehood, and the claim that the mentioned punishment amounted to eighty lashes is undeniably a lie from whoever asserted it."

كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا يُونُسُ بْنُ عَبْدِ الْأَعْلَى أَخْبَرَنَا ابْنُ وَهْبٍ أَخْبَرَنِي ابْنُ حَيْوَةُ بْنُ شُرَيْحٍ عَنْ سَالِمِ بْنِ غَيْلَانَ التُّجِيبِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: إنَّ بَعْضَ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - جَلَدَ رَجُلًا أَنْ دَعَا آخَرَ: يَا ابْنَ الْمَجْنُونِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا أَيْضًا كَالَّذِي ذَكَرْنَا قَبْلُ، لِأَنَّهُ لَيْسَ فِيهِ أَنَّهُ جَلَدَهُ الْحَدَّ، وَالْحُدُودُ لَا تُقَامُ بِالظُّنُونِ الْكَاذِبَةِ، وَالزِّيَادَةُ فِي الْحَدِيثِ كَذِبٌ، وَتَبْلِيغُ الْحَدِّ الْمَذْكُورِ إلَى ثَمَانِينَ كَذِبٌ بِلَا شَكٍّ مِمَّنْ قَطَعَ بِذَلِكَ.

L41575 Thus, their reliance on this report is entirely invalidated. Then, upon examining this, we found that Allah, the Exalted, has ordained the ḥadd for accusing of adultery, which the sound Sunnah has brought, and it has been confirmed by definitive consensus. Thus, this became the truth in which there is no doubt.

فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ جُمْلَةً. ثُمَّ نَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا اللَّهَ تَعَالَى قَدْ أَوْجَبَ فِي الْقَذْفِ بِالزِّنَى الْحَدَّ، وَجَاءَتْ بِهِ السُّنَّةُ الصَّحِيحَةُ، وَصَحَّ بِهِ الْإِجْمَاعُ الْمُتَيَقَّنُ، فَكَانَ هَذَا هُوَ الْحَقَّ الَّذِي لَا شَكَّ فِيهِ.

L41576 We found the Messenger of Allah—peace and blessings be upon him—to have declared, "Indeed, your blood, your wealth, your honor, and your bodies are sacred and inviolable to you." The Exalted has said, *"These are the limits set by Allah, so do not transgress them"* [Al-Baqarah 2:229], and He has said, *"And do not transgress. Indeed, Allah does not love the transgressors"* [Al-Baqarah 2:190]. Thus, Allah the Exalted has prohibited transgression, and striking the bodies without evidence is a form of transgression. He the Exalted has also forbidden the transgression of His limits, and enacting a *ḥadd* punishment without evidence is a transgression of the limits set by Allah the Exalted. And success comes only from Allah, the Exalted.[7]

وَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» وَقَدْ قَالَ تَعَالَى {تِلْكَ حُدُودُ اللَّهِ فَلا تَعْتَدُوهَا} [البقرة: ٢٢٩] وَقَالَ تَعَالَى {وَلا تَعْتَدُوا إِنَّ اللَّهَ لا يُحِبُّ الْمُعْتَدِينَ} [البقرة: ١٩٠] فَحَرَّمَ اللَّهُ تَعَالَى الْعُدْوَانَ، وَضَرْبَ الْأَبْشَارِ بِغَيْرِ بُرْهَانٍ مِنْ الْعُدْوَانِ، وَحَرَّمَ تَعَالَى أَنْ تُتَعَدَّى حُدُودُهُ، وَإِثْبَاتُ حَدٍّ بِغَيْرِ بُرْهَانٍ تَعَدٍّ لِحُدُودِ اللَّهِ تَعَالَى. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة حُكْم القذف]

The Ruling on *Qadhf*

L41577–41578

L41579 Issue: Is accusing believing women among the major sins, and is a person's

[7] **Qur'an references (L41576):** Qur'an 2:229 (Al-Baqarah); Qur'an 2:190 (Al-Baqarah); Qur'an 5:87 (Al-Ma'idah).

engagement in insulting his parents among the major sins? Abu Muhammad—may Allah have mercy on him—said: Allah the Exalted stated in the verse: "If you avoid the major sins you are forbidden, We shall expiate your minor sins" [al-Nisā' 4:31].[8]

مَسْأَلَةٌ: قَذْفُ الْمُؤْمِنَاتِ مِنْ الْكَبَائِرِ، وَتَعَرُّضُ الْمَرْءِ لِسَبِّ أَبَوَيْهِ مِنْ الْكَبَائِرِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ اللَّهُ تَعَالَى {إِنْ تَجْتَنِبُوا كَبَائِرَ مَا تُنْهَوْنَ عَنْهُ نُكَفِّرْ عَنْكُمْ سَيِّئَاتِكُمْ} [النساء: ٣١] الْآيَةَ.

L41580 And He, the Exalted, said: "And those who avoid the major sins and shameful deeds" [Ash-Shūrā: 37] the verse.[9]

وَقَالَ تَعَالَى {وَالَّذِينَ يَجْتَنِبُونَ كَبَائِرَ الإِثْمِ وَالْفَوَاحِشَ} [الشورى: ٣٧] الْآيَةَ.

L41581 As it was narrated to us through the chain of Muslim: Hārūn ibn Saʿīd al-Aylī narrated to us, Ibn Wahb narrated to us, Sulaymān ibn Bilāl informed me from Thawr ibn Yazīd from Abū al-Ghayth from Abū Hurayrah from the Messenger of Allah—peace and blessings of Allah be upon him—who said: "Avoid the seven deadly sins." Someone asked: "O Messenger of Allah, what are they?" He replied: "Associating partners with Allah, practicing sorcery, unjustly killing a soul sanctified by Allah, devouring the wealth of orphans, consuming usury, fleeing from the battlefield, and falsely accusing chaste, innocent believing women of adultery."[10][11]

وَكَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نِي هَارُونُ بْنُ سَعِيدٍ الْأَيْلِيُّ نا ابْنُ وَهْبٍ أَخْبَرَنِي سُلَيْمَانُ بْنُ بِلَالٍ عَنْ ثَوْرِ بْنِ يَزِيدَ عَنْ أَبِي الْغَيْثِ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «اجْتَنِبُوا السَّبْعَ الْمُوبِقَاتِ قِيلَ: يَا رَسُولَ اللَّهِ وَمَا هُنَّ؟ قَالَ: الشِّرْكُ بِاللَّهِ، وَالسِّحْرُ، وَقَتْلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ، وَأَكْلُ مَالِ الْيَتِيمِ، وَأَكْلُ الرِّبَا، وَالتَّوَلِّي يَوْمَ الزَّحْفِ، وَقَذْفُ الْمُحْصَنَاتِ الْغَافِلَاتِ الْمُؤْمِنَاتِ» .

L41582 And Allah, the Exalted, said: "Indeed, those who accuse chaste, unaware, believing women are cursed in this world and the Hereafter." [An-Nur: 23][12]

وَقَالَ اللَّهُ تَعَالَى: {إِنَّ الَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ الْغَافِلَاتِ الْمُؤْمِنَاتِ لُعِنُوا فِي الدُّنْيَا وَالآخِرَةِ} [النور: ٢٣] الْآيَةَ.

L41583 Abū Muḥammad—may Allāh have mercy on him—said: It is confirmed that falsely accusing chaste, innocent believing women of unchastity is among the grave sins necessitating divine curse in this world and the Hereafter, and the grievous punishment in the Hereafter. This ruling applies equally to falsely accusing enslaved women and free women, for Allāh the Exalted did not exclude any believing woman over another.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَصَحَّ أَنَّ قَذْفَ الْمُؤْمِنَاتِ الْمُحْصَنَاتِ الْبَرِيئَاتِ مِنْ الْكَبَائِرِ الْمُوجِبَةِ لِلَّعْنَةِ فِي الدُّنْيَا وَالْآخِرَةِ، وَالْعَذَابِ الْعَظِيمِ فِي الْآخِرَةِ، وَدَخَلَ فِيهَا قَذْفُ الْأَمَةِ وَالْحُرَّةِ دُخُولًا مُسْتَوِيًا، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَخُصَّ مُؤْمِنَةً مِنْ مُؤْمِنَةٍ.

L41584 There remains the ruling regarding false accusation of unchastity against disbelieving women. We hold that Allah the Exalted stated: _"And those who

وَبَقِيَ قَذْفُ الْكَافِرَةِ فَوَجَدْنَا اللَّهَ تَعَالَى قَالَ {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً} [النور: ٤] الْآيَةَ - فَهَذَا عُمُومٌ تَدْخُلُ فِيهِ الْكَافِرَةُ وَالْمُؤْمِنَةُ، فَوَجَبَ أَنَّ قَاذِفَهَا فَاسِقٌ إلَّا أَنْ يَتُوبَ.

[8] **Qur'an references (L41579):** Qur'an 4:31 (An-Nisa).
[9] **Qur'an references (L41580):** Qur'an 42:37 (Ash-Shuraa).
[10] **Hadith references (L41581):** Sahih Muslim 89.
[11] **Qur'an references (L41581):** Qur'an 6:151 (Al-An'am); Qur'an 17:33 (Al-Isra); Qur'an 25:68 (Al-Furqan).
[12] **Qur'an references (L41582):** Qur'an 24:23 (An-Nur).

accuse chaste women [of misconduct] and then do not produce four witnesses - lash them with eighty lashes"_ [An-Nur: 4]. This verse establishes a general ruling that includes both disbelieving and believing women. Therefore, it is obligatory that the one who commits _qadhf_ against such women be deemed a transgressor unless he repents.[13]

L41585 It was narrated to us through the chain of Muslim: Muḥammad ibn al-Walīd ibn ʿAbd al-Ḥamīd narrated to us, Muḥammad ibn Jaʿfar narrated to us, Shuʿbah narrated to us, ʿUbayd Allāh ibn Abī Bakr said: I heard Anas ibn Mālik say, "Allah's Messenger—peace and blessings be upon him—mentioned the major sins and was asked about them? He said: 'Associating partners with Allah, murder, and undutifulness to parents.' He said: 'Shall I inform you of the greatest of the major sins? It is false testimony'—or he said: 'bearing false witness.'" Shuʿbah said: "My strongest assumption is that he said 'bearing false witness.'"

L41586–41587 From the narration of Muslim: I am Umar ibn Muhammad ibn Bukayr al-Naqid, he informed us Isma'il ibn Ulayya, he informed us Sa'id al-Jurayri, he informed us Abd al-Rahman ibn Abi Bakrah, from his father, who said: "We were in the presence of the Messenger of Allah—peace be upon him—when he said: 'Shall I inform you of the gravest of major sins?'—three times—'Associating partners with Allah, disobedience to parents, and false testimony or false speech.' The Messenger of Allah—peace be upon him—was reclining, then he sat upright and persisted in repeating it until we said: 'Would that he ceased.'" Abu Muhammad—may Allah have mercy on him—said: "The narrator's uncertainty between the Prophet's—peace be upon him—mention of 'false testimony' or 'false speech' does not nullify anything in the rulings derived from these two narrations. Whichever it was, the meaning is one and consistent, for every statement a person makes without narrating [something heard] constitutes a testimony, and every testimony a person gives is inherently a statement. Thus, speech is testimony, and testimony is speech. This [mentioned] testimony refers to the articulated utterance, not the testimony adjudicated in court. Allah the Exalted says: 'Their testimony will be recorded, and they will be questioned' (Az-Zukhruf 43:19), and He says:

[13] **Qur'an references (L41584):** Qur'an 24:4 (An-Nur).

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْوَلِيدِ بْنِ عَبْدِ الْحَمِيدِ أَنَا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ نا عُبَيْدُ اللَّهِ بْنُ أَبِي بَكْرٍ قَالَ: سَمِعْت أَنَسَ بْنَ مَالِكٍ قَالَ «ذَكَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْكَبَائِرَ، وَسُئِلَ عَنْ الْكَبَائِرِ؟ فَقَالَ: الشِّرْكُ بِاَللَّهِ، وَقَتْلُ النَّفْسِ، وَعُقُوقُ الْوَالِدَيْنِ - قَالَ: أَلَا أُنَبِّئُكُمْ بِأَكْبَرِ الْكَبَائِرِ، قَوْلُ الزُّورِ - أَوْ قَالَ: شَهَادَةُ الزُّورِ» قَالَ شُعْبَةُ: وَأَكْبَرُ ظَنِّي أَنَّهُ قَالَ - شَهَادَةُ الزُّورِ ".

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عُمَرُ بْنُ مُحَمَّدِ بْنِ بُكَيْرٍ النَّاقِدُ نا إسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ سَعِيدٍ الْجُرَيْرِيِّ نا عَبْدُ الرَّحْمَنِ بْنُ أَبِي بَكْرَةَ عَنْ أَبِيهِ أَنَّهُ قَالَ «كُنَّا عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: أَلَا أُنَبِّئُكُمْ بِأَكْبَرِ الْكَبَائِرِ - ثَلَاثًا - الْإِشْرَاكُ بِاَللَّهِ وَعُقُوقُ الْوَالِدَيْنِ - وَشَهَادَةُ الزُّورِ أَوْ قَوْلُ الزُّورِ - وَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُتَّكِئًا فَجَلَسَ، فَمَا زَالَ يُكَرِّرُهَا حَتَّى قُلْنَا: لَيْتَهُ سَكَتَ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَيْسَ شَكُّ الرَّاوِي بَيْنَ قَوْلِهِ - عَلَيْهِ السَّلَامُ - شَهَادَةَ الزُّورِ أَوْ قَوْلَ الزُّورِ بِمُحِيلٍ شَيْئًا مِنْ حُكْمِ هَذَيْنِ الْخَبَرَيْنِ فَأَيُّ ذَلِكَ كَانَ فَالْمَعْنَى فِيهِ وَاحِدٌ لَا يَخْتَلِفُ، لِأَنَّ كُلَّ قَوْلٍ قَالَهُ الْمَرْءُ غَيْرَ حَاكٍ فَقَدْ شَهِدَ بِهِ، وَكُلُّ شَهَادَةٍ يَشْهَدُ بِهَا الْمَرْءُ فَقَدْ قَالَهَا فَالْقَوْلُ شَهَادَةٌ، وَالشَّهَادَةُ قَوْلٌ، وَهَذِهِ الشَّهَادَةُ هِيَ غَيْرُ الشَّهَادَةِ الْمَحْكُومِ بِهَا، قَالَ اللَّهُ تَعَالَى {سَتُكْتَبُ شَهَادَتُهُمْ وَيُسْأَلُونَ} [الزخرف: ١٩] وَقَالَ تَعَالَى {فَإِنْ شَهِدُوا فَلا تَشْهَدْ مَعَهُمْ} [الأنعام: ١٥٠] فَهَذِهِ الشَّهَادَةُ هِيَ الْقَوْلُ الْمَقُولُ، لَا الْمُؤَدَّاةُ عِنْدَ الْحَاكِمِ بِصِفَةٍ مَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

'If they testify, do not testify with them' (Al-An'am 6:150). This testimony denotes the spoken assertion, not the formal legal testimony. And with Allah alone is success."[14][15]

L41588 It has been established that accusing an innocent disbelieving woman is unequivocally a false statement without any disagreement from anyone, and false speech is among the major sins, as clarified by the Messenger of Allah (peace be upon him).

L41589 It has been narrated to us through the chain transmitted by Muslim: Qutaybah ibn Sa'id narrated to us from Laith ibn Sa'd from Ibn al-Hādī from Sa'd ibn Ibrāhīm ibn 'Abd al-Rahmān ibn 'Awf from Humayd ibn 'Abd al-Rahmān from 'Abdullāh ibn 'Amr ibn al-'Ās that the Messenger of Allah—peace and blessings be upon him—said: "Is reviling one's parents among the gravest major sins?" They asked: "O Messenger of Allah, how could a man revile his parents?" He responded: "Yes. If he curses another man's father, the latter will curse the instigator's father. If he curses another's mother, the latter will curse the instigator's mother."

L41590 Thus, it is established that the aforementioned insult constitutes one of the major sins, even if it does not amount to *qadhf* (false accusation of adultery).

L41591 Abū Muḥammad—may Allāh have mercy on him—said: As for one who accuses a person of what he has done, it is not qadhf (false accusation of fornication). However, it constitutes backbiting if the person is absent, and harm if he is present. This is a matter upon which there is no disagreement—and success is granted by Allāh, the Exalted.

L41592 The Obligatory Ruling for Falsely Accusing Chaste Women of Adultery.

L41593 2231 - Question: Who are the chaste women for whom accusing them of adultery incurs the punishment prescribed by Allah, the Exalted, in the Quran?

فَصَحَّ أَنَّ قَذْفَ الْكَافِرَةِ الْبَرِيئَةِ قَوْلُ زُورٍ بِلَا خِلَافٍ مِنْ أَحَدٍ، وَقَوْلُ الزُّورِ مِنْ الْكَبَائِرِ، كَمَا بَيَّنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا لَيْثُ بْنُ سَعْدٍ عَنْ ابْنِ الْهَادِي عَنْ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّ مِنْ أَكْبَرِ الْكَبَائِرِ شَتْمُ الرَّجُلِ وَالِدَيْهِ؟ قَالُوا: يَا رَسُولَ اللَّهِ، وَكَيْفَ يَشْتُمُ الرَّجُلُ وَالِدَيْهِ؟ قَالَ: نَعَمْ، يَسُبُّ أَبَا الرَّجُلِ فَيَسُبُّ أَبَاهُ، وَيَسُبُّ أُمَّهُ فَيَسُبُّ أُمَّهُ» .

فَصَحَّ أَنَّ السَّبَّ الْمَذْكُورَ مِنْ الْكَبَائِرِ، وَإِنْ لَمْ يَكُنْ قَذْفًا؟

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَأَمَّا مَنْ رَمَى الْمَرْءَ بِمَا فَعَلَ فَلَيْسَ قَذْفًا، لَكِنَّهُ غَيْبَةٌ إنْ كَانَ غَائِبًا، وَأَذًى إنْ كَانَ حَاضِرًا، هَذَا مَا لَا خِلَافَ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الواجب بقذف المحصنات]

٢٢٣١ - مَسْأَلَةٌ: مَنْ الْمُحْصَنَاتُ الْوَاجِبُ بِقَذْفِهِنَّ مَا أَوْجَبَهُ اللَّهُ تَعَالَى فِي الْقُرْآنِ؟

[14] **Hadith references (L41587):** Sahih Muslim 87.
[15] **Qur'an references (L41587):** Qur'an 43:19 (Az-Zukhruf); Qur'an 6:150 (Al-An'am).

L41594–41595 Abu Muhammad said: Allah the Exalted stated, {And those who accuse chaste women and then do not produce four witnesses—flog them} [An-Nur:4]. The apparent meaning indicates that "the chaste women" mentioned here: they are women, as this expression employs the feminine plural form. At this point, the advocates of qiyas raised an objection against us, saying: "The text only specifies the hadd punishment of flogging for slandering a woman. What basis do you have for flogging one who accuses a man of unlawful sexual intercourse (zinā)? This constitutes qiyas on your part, yet you reject qiyas?" Abu Muhammad—may Allah have mercy on him—replied: Our scholars responded to them with answers here, each of which is convincing and sufficient, thereby invalidating their specious objection—all praise belongs to Allah, Lord of the worlds.[16]

L41596 One of those answers is that our early scholars stated: The textual evidence prescribes the hadd punishment for falsely accusing women of unchastity, and consensus has validated the hadd punishment for one who falsely accuses a man of unchastity. Consensus is valid and a foundational principle among the principles we rely upon, for Allah the Exalted has obligated us to follow consensus. Consensus derives solely from definitive instruction by the Messenger of Allah—peace and blessings be upon him.

L41597 Some of our companions said: Rather, the explicit wording of the verse is general, encompassing both men and women, and Allah the Exalted intended "the chaste female souls (al-muḥṣanāt)." They said: The proof of this position and the evidence for its validity is Allah's statement elsewhere: {And chaste women (al-muḥṣanāt) from among the women} [4:24]. They argued: Had the term "al-muḥṣanāt" (feminine plural) applied exclusively to women, the phrase "from among the women" in Allah's statement would be superfluous - Far is Allah from that! Thus, it is confirmed that "al-muḥṣanāt" applies to both women and men. Therefore, Allah the Exalted clarified His intent there by specifying "from among the women," while leaving the matter in the verse of qadhf (false accusation) stated concisely.[17]

قَالَ أَبُو مُحَمَّد: قَالَ اللَّهُ تَعَالَى {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ} [النور: ٤] الْآيَةَ، فَكَانَ ظَاهِرُ هَذَا أَنَّ " الْمُحْصَنَاتِ الْمَذْكُورَاتِ: هُنَّ النِّسَاءُ " لِأَنَّ هَذَا اللَّفْظَ جَاءَ بِجَمْعِ الْمُؤَنَّثِ فَاعْتَرَضَ عَلَيْنَا أَصْحَابُ الْقِيَاسِ هَاهُنَا وَقَالُوا لَنَا: إنَّ النَّصَّ إنَّمَا وَرَدَ بِجَلْدِ الْحَدِّ مِنْ قَذْفِ امْرَأَةٍ، فَمِنْ أَيْنَ لَكُمْ أَنْ تَجْلِدُوا مَنْ قَذَفَ رَجُلًا بِالزِّنَى؟ وَمَا هَذَا إلَّا قِيَاسٌ مِنْكُمْ، وَأَنْتُمْ تُنْكِرُونَ الْقِيَاسَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَأَجَابَهُمْ أَصْحَابُنَا هَاهُنَا بِأَجْوِبَةٍ كُلُّ وَاحِدٍ مِنْهَا مُقْنِعٌ كَافٍ، مُبْطِلٌ لِاعْتِرَاضِهِمْ هَذَا الْفَاسِدِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

فَأَحَدُ تِلْكَ الْأَجْوِبَةِ: أَنَّ مَنْ تَقَدَّمَ مِنْ أَصْحَابِنَا، قَالَ: جَاءَ النَّصُّ بِالْحَدِّ عَلَى قَذْفِ النِّسَاءِ وَصَحَّ الْإِجْمَاعُ بِحَدِّ مَنْ قَذَفَ رَجُلًا وَالْإِجْمَاعُ حَقٌّ وَأَصْلٌ مِنْ أُصُولِنَا الَّتِي نَعْتَمِدُ عَلَيْهَا وَقَدْ افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا اتِّبَاعَ الْإِجْمَاعِ، وَالْإِجْمَاعُ لَيْسَ إلَّا عَنْ تَوْقِيفٍ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَقَالَ بَعْضُ أَصْحَابِنَا: بَلْ نَصُّ الْآيَةِ عَامٌّ لِلرِّجَالِ وَالنِّسَاءِ وَإِنَّمَا أَرَادَ اللَّهُ تَعَالَى النُّفُوسَ الْمُحْصَنَاتِ قَالُوا: وَبُرْهَانُ هَذَا الْقَوْلِ وَدَلِيلُ صِحَّتِهِ قَوْلُ اللَّهِ تَعَالَى فِي مَكَانٍ آخَرَ {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ} [النساء: ٢٤] قَالُوا: فَلَوْ كَانَتْ لَفْظَةُ " الْمُحْصَنَاتُ " لَا تَقَعُ إلَّا عَلَى النِّسَاءِ لَمَا كَانَ لِقَوْلِ اللَّهِ تَعَالَى " مِنْ النِّسَاءِ " مَعْنًى وَحَاشَ لِلَّهِ مِنْ هَذَا فَصَحَّ أَنَّ الْمُحْصَنَاتِ يَقَعُ عَلَى النِّسَاءِ وَالرِّجَالِ فَبَيَّنَ اللَّهُ تَعَالَى مُرَادَهُ هُنَالِكَ بِأَنْ قَالَ " مِنْ النِّسَاءِ " وَأَجْمَلَ الْأَمْرَ فِي آيَةِ الْقَذْفِ إجْمَالًا.

[16] **Qur'an references (L41595):** Qur'an 24:4 (An-Nur).
[17] **Qur'an references (L41597):** Qur'an 4:24 (An-Nisa).

قَالُوا: فَإِنْ قَالَ قَائِلٌ: وَإِنَّ قَوْله تَعَالَى {مِنَ النِّسَاءِ} [آل عمران: ١٤] كَقَوْلِهِ تَعَالَى {وَغَرَابِيبُ سُودٌ} [فاطر: ٢٧] وَ {عَشَرَةٌ كَامِلَةٌ} [البقرة: ١٩٦] ؟ قُلْنَا: لَا يَجُوزُ أَنْ يُحْمَلَ كَلَامُ اللَّهِ تَعَالَى عَلَى تَكْرَارٍ لَا فَائِدَةَ أُخْرَى فِيهِ إلَّا بِنَصِّ قُرْآنٍ، أَوْ سُنَّةٍ، أَوْ إجْمَاعٍ، وَلَيْسَ مَعَكُمْ شَيْءٌ مِنْ هَذَا فِي دَعْوَاكُمْ أَنَّ قَوْله تَعَالَى {مِنَ النِّسَاءِ} [آل عمران: ١٤] تَكْرَارٌ لَا فَائِدَةَ فِيهِ؟

L41598–41599 They said: If someone were to say, “Indeed, the word of Allah the Exalted {from the women} [Āl ʿImrān: 14] is like His word {and intensely black} [Fāṭir: 27] and {ten complete days} [al-Baqarah: 196]?” We replied: It is impermissible to construe the speech of Allah the Exalted as repetition containing no other benefit in it except through a Quranic text, Sunnah, or consensus. Yet you possess none of these to substantiate your assertion that His word {from the women} [Āl ʿImrān: 14] constitutes purposeless repetition.[18]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا جَوَابٌ حَسَنٌ، وَأَمَّا الْأَوَّلُ فَلَا نَقُولُ بِهِ، لِأَنَّهُ حَتَّى لَوْ صَحَّ الْإِجْمَاعُ عَلَى وُجُوبِ الْحَدِّ عَلَى قَاذِفِ الرَّجُلِ لَمَا كَانَ فِي الْآيَةِ احْتِجَاجٌ وَإِيجَابًا الْحَدَّ عَلَى قَاذِفِ الْعَبْدِ وَقَاذِفِ الْكَافِرَةِ، لِأَنَّهُ لَا إجْمَاعَ عَلَى ذَلِكَ؟

L41600 Abu Muhammad—may God have mercy on him—said: “This is a good answer. As for the first, we do not adopt it, because even if consensus were established on the obligation of the prescribed penalty for slandering a free man, there would be no proof in the verse. However, we impose the penalty on one who slanders a slave and a non-Muslim woman, since there is no consensus on that to preclude it.”

وَأَمَّا جَوَابُنَا الَّذِي نَعْتَمِدُ عَلَيْهِ وَنَقْطَعُ عَلَى صِحَّتِهِ، وَأَنَّهُ مُرَادُ اللَّهِ تَعَالَى بِالْبُرْهَانِ الْوَاضِحِ فَهُوَ أَنَّ اللَّهَ تَعَالَى إنَّمَا أَرَادَ بِقَوْلِهِ {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ} [النور: ٤] الْفُرُوجَ الْمُحْصَنَاتِ. بُرْهَانُ ذَلِكَ: أَنَّ الْأَرْبَعَةَ الشُّهُودِ الْمَذْكُورِينَ لَا يَخْتَلِفُ اثْنَانِ مِنْ الْأُمَّةِ فِي أَنَّ شَهَادَتَهُمْ الَّتِي يُكَلَّفُونَهَا هِيَ أَنْ يَشْهَدُوا بِأَنَّهُمْ رَأَوْا فَرْجَهُ فِي فَرْجِهَا وَالِجًا خَارِجًا - وَالْإِجْمَاعُ قَدْ صَحَّ بِأَنَّ مَا عَدَا هَذِهِ الشَّهَادَةَ لَيْسَتْ شَهَادَةً بِزِنًى وَلَا يَبْرَأُ بِهَا الْقَاذِفُ مِنْ الْحَدِّ.

L41601 As for our definitive response—which we rely upon and affirm decisively its correctness, being the intended meaning of God Almighty through clear proof—it is that God Almighty in His statement {And those who accuse chaste women and then do not produce four witnesses} [24:4] specifically refers to accusations against the chastity of women. The proof of this is that the Ummah unanimously agrees that the four witnesses mentioned must testify that they saw the male genitalia penetrating and exiting the female genitalia. Consensus has been soundly established that any testimony other than this does not constitute testimony of adultery, nor does it absolve the slanderer from the prescribed penalty.[19]

فَصَحَّ أَنَّ الرَّمْيَ الْمَذْكُورَ إنَّمَا هُوَ الْفُرُوجُ فَقَطْ.

L41602 Thus, it became clear that the aforementioned stoning pertains solely to illicit sexual relations.

وَأَيْضًا، بُرْهَانٌ آخَرُ - كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - أَنَا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ قَالَ: مَا رَأَيْت أَشْبَهَ بِاللَّمَمِ مِمَّا قَالَ أَبُو هُرَيْرَةَ فَإِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إنَّ اللَّهَ كَتَبَ عَلَى

L41603–41605 And also, another proof—as was narrated to us in Ṣaḥīḥ Muslim via the chain: Isḥāq ibn Ibrāhīm (Ibn Rāhawayh) reported to us: ʿAbd al-Razzāq reported to us from Maʿmar, from Ibn Ṭāwūs, from his father, from Ibn

[18] **Qur’an references (L41599):** Qur’an 3:14 (Ali ’Imran); Qur’an 35:27 (Fatir); Qur’an 2:196 (Al-Baqarah).

[19] **Qur’an references (L41601):** Qur’an 24:4 (An-Nur).

ابْنِ آدَمَ حَظَّهُ مِنْ الزِّنَى أَدْرَكَ ذَلِكَ لَا مَحَالَةَ فَزِنَى الْعَيْنَيْنِ النَّظَرُ، وَزِنَى اللِّسَانِ النُّطْقُ، وَالنَّفْسُ تَمَنَّى وَتَشْتَهِي، وَالْفَرْجُ يُصَدِّقُ ذَلِكَ أَوْ يُكَذِّبُهُ» ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَلَمْ يَجْعَلْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الزِّنَى إلَّا لِلْفَرْجِ فَقَطْ وَأَبْطَلَهُ عَنْ جَمِيعِ أَعْضَاءِ الْجِسْمِ - أَوَّلِهَا عَنْ آخِرِهَا - إلَّا أَنْ يُصَدِّقَهُ فِيهَا الْفَرْجُ.

‘Abbās, who said: “I have not seen...” The closest to minor sins is what Abū Hurayrah reported, for the Prophet—peace and blessings of Allah be upon him—said: “Allah has decreed for the son of Adam his share of zina [i.e., illicit sexual transgression], which he will inevitably encounter. The zina of the eyes is looking [with desire], the zina of the tongue is speaking [sinful words], the soul covets and craves, and the genitals either confirm this [by acting] or deny it.” Abū Muḥammad—may Allah have mercy on him—said: The Messenger of Allah—peace and blessings of Allah be upon him—did not assign zina except to the genitals alone, negating its attribution to all other body parts—from the first to the last—unless the genitals confirm it [by acting] through those parts.[20]

فَصَحَّ يَقِينًا أَنَّ النَّفْسَ وَالْقَلْبَ وَجَمِيعَ أَعْضَاءِ الْجَسَدِ، حَاشَ الْفَرْجَ لَا رَمْيَ فِيهَا، وَلَا قَذْفَ أَصْلًا، وَأَنَّهُ لَا رَمْيَ إلَّا لِلْفُرُوجِ فَقَطْ، فَإِذْ لَا شَكَّ فِي هَذَا وَلَا مِرْيَةَ، فَالْمُرَادُ مِنْ قَوْلِ اللَّهِ تَعَالَى {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ} [النور: ٤] هِيَ بِلَا شَكٍّ " الْفُرُوجُ " الَّتِي لَا يَقَعُ " الرَّمْيُ " إلَّا عَلَيْهَا، لَا يَكُونُ الزِّنَى الْمَرْمِيُّ بِهِ إلَّا مِنْهَا؟

L41606 It was conclusively established that the soul, heart, and all bodily limbs—excluding the private parts—are not subject to accusations of fornication, nor any false accusation of _zinā_ whatsoever, and that there is no accusation of fornication except for the private parts alone. Since there is no doubt or uncertainty in this, the intended meaning of Allah’s words {And those who accuse chaste women} [An-Nūr: 4] refers unequivocally to the “private parts,” for accusations of fornication pertain exclusively to them—can the alleged fornication originate except from them?[21]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَإِنْ قَالَ قَائِلٌ: إنَّ " الْمُحْصَنَاتِ " نَعْتٌ وَلَا يُفْرَدُ النَّعْتُ عَنْ ذِكْرِ الْمَنْعُوتِ؟

L41607 Abū Muḥammad—may Allāh have mercy on him—said: If someone were to say: “‘Married women’ is an adjective—and an adjective cannot be isolated from the noun it describes?”

قُلْنَا: هَذَا خَطَأٌ، لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ، لِأَنَّ الْقُرْآنَ وَأَشْعَارَ الْعَرَبِ مَمْلُوءٌ مِمَّا جَاءَ فِي ذَلِكَ، بِخِلَافِ هَذَا.

L41608 We said: This is an error, for it is an unsubstantiated claim, since the Quran and the poetry of the Arabs are replete with what appears in that regard, unlike this claim.

قَالَ اللَّهُ تَعَالَى {وَالصَّائِمِينَ وَالصَّائِمَاتِ} [الأحزاب: ٣٥] .

L41609 Allah, the Exalted, said, “And the fasting men and the fasting women” [Al-Ahzab: 35].[22]

وَقَالَ اللَّهُ تَعَالَى {إِنَّ الْمُصَّدِّقِينَ وَالْمُصَّدِّقَاتِ} [الحديد: ١٨] . وَمِثْلُ هَذَا كَثِيرٌ مِمَّا ذَكَرَ اللَّهُ تَعَالَى النَّعْتَ دُونَ ذِكْرِ الْمَنْعُوتِ.

L41610 And Allah, the Exalted, said: *“Indeed, the charitable men and women”*

[20] **Hadith references (L41603):** Sahih Muslim 2657b.
[21] **Qur’an references (L41606):** Qur’an 24:4 (An-Nur).
[22] **Qur’an references (L41609):** Qur’an 33:35 (Al-Ahzab).

[Al-Hadid 18]. Much among what Allah, the Exalted, has mentioned follows this pattern—He states the descriptive term but omits the noun it describes.[23]

L41611 The poet said:

وَقَالَ الشَّاعِرُ:

L41612 Nor women who place ivory above their wrists.

وَلَا جَاعِلَاتِ الْعَاجِ فَوْقَ الْمَعَاصِمِ

L41613 He mentioned the attribute but omitted the qualified noun, and we know of no grammarian who has ever prohibited this at all. We mentioned this solely to preclude any obfuscator from obfuscating.

فَذَكَرَ النَّعْتَ وَلَمْ يَذْكُرْ الْمَنْعُوتَ وَمَا نَعْلَمُ نَحْوِيًّا مَنَعَ مِنْ هَذَا أَصْلًا، وَإِنَّمَا ذَكَرْنَا هَذَا لِئَلَّا يُمَوِّهَ مُمَوِّهٌ.

L41614–41617 Moreover, this objection rebounds on them, because from their statements: "He intended the chaste women." In any case, He has omitted the described noun and confined Himself to the descriptive term, with no difference between His limiting, Exalted be He, to mentioning "chaste women" and omitting "private parts" according to our position, or His omitting "women" according to their claim. Thus their objection collapses entirely, and our position—which we applied to the aforementioned first verse regarding their assertion—is supported by the explicit text and the established consensus as we have explained.

ثُمَّ إِنَّ هَذَا الِاعْتِرَاضَ رَاجِعٌ عَلَيْهِمْ، لِأَنَّ مِنْ قَوْلِهِمْ: إِنَّهُ أَرَادَ " النِّسَاءَ الْمُحْصَنَاتِ " فَعَلَى كُلِّ حَالٍ قَدْ حَذَفَ الْمَنْعُوتَ وَاقْتَصَرَ عَلَى النَّعْتِ وَلَا فَرْقَ بَيْنَ اقْتِصَارِهِ تَعَالَى عَلَى ذِكْرِ " الْمُحْصَنَاتِ " وَحَذْفِ الْفُرُوجِ عَلَى قَوْلِنَا، أَوْ حَذْفِ " النِّسَاءِ " عَلَى قَوْلِهِمْ - فَسَقَطَ اعْتِرَاضُهُمْ جُمْلَةً، وَقَوْلُنَا نَحْنُ الَّذِي حَمَلْنَا عَلَيْهِ الْآيَةَ الْأُولَى مِنْ دَعْوَاهُمْ، لِأَنَّ قَوْلَنَا يَشْهَدُ لَهُ النَّصُّ وَالْإِجْمَاعُ عَلَى مَا ذَكَرْنَا.

L41618 As for their claim that Allah the Exalted intended "women" by that—it is a baseless claim devoid of proof, neither from textual sources nor scholarly consensus. For they restrict their interpretation and nullify the hadd punishment for slanderers of various categories of women—such as female slaves, disbelievers, minors, and the insane—thereby directly invalidating their claim despite its complete absence of evidence. And success comes only from Allah the Exalted.

وَأَمَّا دَعْوَاهُمْ أَنَّ اللَّهَ تَعَالَى أَرَادَ بِذَلِكَ " النِّسَاءَ " فَدَعْوَى عَارِيَةٌ لَا بُرْهَانَ عَلَيْهَا، لَا مِنْ نَصٍّ وَلَا إِجْمَاعٍ، لِأَنَّهُمْ يَخُصُّونَ تَأْوِيلَهُمْ هَذَا، وَيُسْقِطُونَ الْحَدَّ عَنْ قَاذِفِ نِسَاءٍ كَثِيرَةٍ: كَالْإِمَاءِ، وَالْكَوَافِرِ، وَالصِّغَارِ، وَالْمَجَانِينِ، فَقَدْ أَفْسَدُوا دَعْوَاهُمْ مِنْ قُرْبٍ مَعَ تَعَرِّيهَا مِنْ الْبُرْهَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41619 [Issue of Qadhf (False Accusation of Unlawful Sexual Intercourse) Pertaining to Male and Female Slaves]

[مَسْأَلَةَ قَذْفُ الْعَبِيدِ وَالْإِمَاءِ]

L41620–41622 Issue 2232: The false accusation of adultery against male and female slaves. Abu Muhammad said: Scholars have differed concerning one who falsely accuses a male or female slave of adultery. A group stated: There is no ḥadd

[23] **Qur'an references (L41610):** Qur'an 57:18 (Al-Hadid).

upon him, as narrated from al-Nakhaʿī and al-Shaʿbī that they both jointly said: One who falsely accuses a slave woman who has borne her master a child of unlawful sexual intercourse shall not be flogged.

٢٢٣٢ - مَسْأَلَةٌ: قَذْفُ الْعَبِيدِ وَالْإِمَاءِ قَالَ أَبُو مُحَمَّدٍ: اخْتَلَفَ النَّاسُ فِيمَنْ قَذَفَ عَبْدًا أَوْ أَمَةً بِالزِّنَا: فَقَالَتْ طَائِفَةٌ: لَا حَدَّ عَلَيْهِ كَمَا رُوِيَ عَنْ النَّخَعِيِّ، وَالشَّعْبِيِّ أَنَّهُمَا قَالَا جَمِيعًا: لَا يُضْرَبُ قَاذِفُ أُمِّ وَلَدٍ.

L41623 From Hammad ibn Abi Sulayman, who said: If a man says to another man whose mother is an umm walad or a Christian, “You are not your father’s son,” he is not to be flogged, because the denial pertains to the mother.

وَعَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ قَالَ: إذَا قَالَ رَجُلٌ لِرَجُلٍ أُمُّهُ أُمُّ وَلَدٍ أَوْ نَصْرَانِيَّةٌ: لَسْت لِأَبِيك؟ لَمْ يُضْرَبْ، لِأَنَّ النَّفْيَ وَقَعَ عَلَى الْأُمِّ.

L41624 And from Ibn Sirin, he said: Ubaydullah ibn Ziyad sought to lash the false accuser of an *umm walad*—an enslaved woman who bore her master a child—for *zinā*, but none supported him in that.

وَعَنْ ابْنِ سِيرِينَ قَالَ: أَرَادَ عُبَيْدُ اللَّهِ بْنُ زِيَادٍ أَنْ يُضْرَبَ قَاذِفُ أُمِّ وَلَدٍ، فَلَمْ يُتَابِعْهُ عَلَى ذَلِكَ أَحَدٌ.

L41625 It has been reported from ʻAṭāʼ, al-Ḥasan, and al-Zuhrī that there is no prescribed punishment for one who falsely accuses an *umm walad*?

وَقَدْ رُوِيَ عَنْ عَطَاءٍ، وَالْحَسَنِ، وَالزُّهْرِيِّ: لَا حَدَّ عَلَى قَاذِفِ أُمِّ وَلَدٍ؟

L41626 Ali said: Among those who held that the *ḥadd* punishment does not apply to one who slanders a male slave or a female slave are Abū Ḥanīfah, Mālik, al-Awzāʿī, Sufyān al-Thawrī, ʿUthmān al-Battī, al-Ḥasan ibn Ḥayy, al-Shāfiʿī, and their followers.

قَالَ عَلِيٌّ: وَمِمَّنْ لَمْ يَرَ الْحَدَّ عَلَى قَاذِفِ الْعَبْدِ وَالْأَمَةِ: أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالْأَوْزَاعِيُّ، وَسُفْيَانُ الثَّوْرِيُّ، وَعُثْمَانُ الْبَتِّيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمْ.

L41627 A group held the opinion that the prescribed punishment is obligatory in this matter. Hammam narrated: Ibn Mufarrij narrated: Ibn al-A’rabi narrated: al-Dabari narrated: ’Abd al-Razzaq narrated from Ma’mar from Ayyub al-Sikhtiyani from Nafi’, the freed slave of Ibn ’Umar, who said: A commander asked Ibn ’Umar, “What about a man who slandered a man’s *umm walad*?” Ibn ’Umar replied: “He is to be subjected to the prescribed punishment by flogging, humiliated.”

وَقَالَتْ طَائِفَةٌ بِإِيجَابِ الْحَدِّ فِي ذَلِكَ - نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ قَالَ: إنَّ أَمِيرًا مِنْ الْأُمَرَاءِ سَأَلَ ابْنَ عُمَرَ عَنْ رَجُلٍ قَذَفَ أُمَّ وَلَدٍ لِرَجُلٍ؟ فَقَالَ ابْنُ عُمَرَ: يُضْرَبُ الْحَدَّ صَاغِرًا.

L41628 Al-Hasan al-Basri said: A husband may invoke mutual cursing (liʿān) against a female slave, and if he accuses her of unchastity while she remains a slave, he is to be flogged, because she is his wife. Abu Muhammad said: This is the view held by our companions, and this chain of narration from Ibn Umar is among the most authentic chains found in ḥadīth. When they differed as we have mentioned, it became obligatory to examine the evidence each group

وَعَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: الزَّوْجُ يُلَاعِنُ الْأَمَةَ، وَإِنْ قَذَفَهَا - وَهِيَ أَمَةٌ - جُلِدَ، لِأَنَّهَا امْرَأَتُهُ؟ قَالَ أَبُو مُحَمَّدٍ: وَبِهَذَا يَقُولُ أَصْحَابُنَا، وَهَذَا الْإِسْنَادُ عَنْ ابْنِ عُمَرَ مِنْ أَصَحِّ إسْنَادٍ يُوجَدُ فِي الْحَدِيثِ فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ

cited to discern the truth in the matter and follow it—by the assistance and subtle kindness of God Almighty. We then examined the position of those who did not deem the ḥadd punishment applicable to one who accuses a female slave or a male slave of unchastity, but we found nothing they could rely upon except what was reported to us through Bukhārī's chain: Musaddad narrated to us, Yahya ibn Saʿīd al-Qaṭṭān narrated to us from al-Fuḍayl ibn Ghazwān from Ibn Abi Nuʿm from Abu Hurayrah, who said: "I heard Abu al-Qasim—peace and blessings be upon him—say: 'Whoever accuses his slave of what he is innocent of will be flogged on the Day of Resurrection unless it is as he says.'"[24]

لِنَعْلَمَ الْحَقَّ مِنْ ذَلِكَ فَنَتَّبِعُهُ - بِعَوْنِ اللَّهِ تَعَالَى وَلُطْفِهِ: فَنَظَرْنَا فِي قَوْلِ مَنْ لَمْ يَرَ الْحَدَّ عَلَى قَاذِفِ الْأَمَةِ وَالْعَبْدِ، فَلَمْ نَجِدْ لَهُمْ شَيْئًا يُمْكِنُ أَنْ يَتَعَلَّقُوا بِهِ، إِلَّا مَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسَدَّدٌ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنِ الْفُضَيْلِ بْنِ غَزْوَانَ عَنِ ابْنِ أَبِي نُعْمٍ عَنْ أَبِي هُرَيْرَةَ قَالَ " سَمِعْتُ أَبَا الْقَاسِمِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ قَذَفَ مَمْلُوكَهُ وَهُوَ بَرِيءٌ مِمَّا قَالَ، جُلِدَ يَوْمَ الْقِيَامَةِ إِلَّا أَنْ يَكُونَ كَمَا قَالَ» .

L41629–41631 Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Muʿawiyah narrated to us: Ahmad ibn Shuʿayb narrated to us: I am Suwayd ibn Nasr. I am ʿAbdullāh ibn al-Mubārak, from al-Fuḍayl ibn Ghazwān, from Abī Nuʿm, who narrated that he said: Abū al-Qāsim—peace be upon him—said, "Whoever falsely accuses his slave of fornication while innocent of the allegation, divine punishment will be imposed upon him on the Day of Judgment, unless the slave is actually guilty of what the accuser claimed."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا سُوَيْدُ بْنُ نَصْرٍ أَنَا عَبْدُ اللَّهِ - هُوَ ابْنُ الْمُبَارَكِ - عَنِ الْفُضَيْلِ بْنِ غَزْوَانَ عَنْ أَبِي نُعْمٍ: أَنَّهُ حَدَّثَهُ أَنَّهُ قَالَ: قَالَ أَبُو الْقَاسِمِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قَذَفَ مَمْلُوكَهُ بَرِيئًا مِمَّا قَالَ أُقِيمَ عَلَيْهِ الْحَدُّ يَوْمَ الْقِيَامَةِ، إِلَّا أَنْ يَكُونَ كَمَا قَالَ» .

L41632 From Al-Ḥasan, from Ibn ʿUmar, who said: "Whoever accuses his slave, there is a ḥadd punishment on his back from Allah the Exalted on the Day of Resurrection - if He wills, He will enforce it, and if He wills, He will forgive him?"

وَعَنِ الْحَسَنِ عَنِ ابْنِ عُمَرَ قَالَ: مَنْ قَذَفَ مَمْلُوكَهُ كَانَ لِلَّهِ تَعَالَى فِي ظَهْرِهِ حَدٌّ يَوْمَ الْقِيَامَةِ، إِنْ شَاءَ آخَذَهُ، وَإِنْ شَاءَ عَفَا عَنْهُ؟

L41633 Abu Muhammad said: Perhaps they claim scholarly consensus, or they say: "There is no inviolability for a male slave or a female slave," and they frequently bring forth such things.

قَالَ أَبُو مُحَمَّدٍ: وَلَعَلَّهُمْ يَدَّعُونَ الْإِجْمَاعَ، أَوْ يَقُولُونَ: لَا حُرْمَةَ لِلْعَبْدِ وَلَا لِلْأَمَةِ، فَكَثِيرًا مَا يَأْتُونَ بِمِثْلِ هَذَا.

L41634 If they claim consensus, they are contradicted by what has been narrated to us from Ibn Umar through the most authentic chain of transmission. We do not know of any statement of theirs attributed to a single Companion whatsoever, except for a narration whose place in our primary sources we are currently unable to determine.

فَإِنِ ادَّعَوُا الْإِجْمَاعَ أَكْذَبَهُمْ مَا رُوِّينَا عَنِ ابْنِ عُمَرَ بِأَصَحِّ طَرِيقٍ، وَمَا نَعْلَمُ قَوْلَهُمْ عَنْ أَحَدٍ مِنَ الصَّحَابَةِ أَصْلًا، إِلَّا رِوَايَةً لَا نَقِفُ الْآنَ عَلَى مَوْضِعِهَا مِنْ أُصُولِنَا.

L41635 It is narrated from Abu Burda that he had a daughter by a free woman and a daughter by an umm walad. The daughter of the free woman would accuse

[24] **Hadith references (L41628):** Sahih al-Bukhari 6858; Mishkat al-Masabih 3351.

the daughter of the umm walad of fornication, so he freed her mother and said to the daughter of the free woman: “Accuse her now if you can?” As for the group of Followers we previously mentioned, they opposed them [the earlier scholars] in most of their opinions. Regarding the narration from Abu Burda—there is no basis for their argument in it, for it does not state that there is no prescribed punishment for her accuser. Perhaps the judge of his time did not enforce the prescribed punishment for accusing an umm walad—thus their reliance on this is invalid.

عَنْ أَبِي بُرْدَةَ - أَنَّهُ كَانَتْ لَهُ ابْنَةٌ مِنْ حُرَّةٍ، وَابْنَةٌ مِنْ أُمِّ وَلَدٍ، فَكَانَتْ ابْنَةُ الْحُرَّةِ تَقْذِفُ ابْنَةَ أُمِّ الْوَلَدِ، فَأَعْتَقَ أُمَّهَا، وَقَالَ لِابْنَةِ الْحُرَّةِ: اقْذِفِيهَا الْآنَ إِنْ قَدِرْتِ؟ وَعَنْ نَفَرٍ مِنْ التَّابِعِينَ قَدْ ذَكَرْنَاهُمْ خَالَفُوهُمْ فِي أَكْثَرِ أَقْوَالِهِمْ: فَأَمَّا الرِّوَايَةُ عَنْ أَبِي بُرْدَةَ - فَلَا مُتَعَلَّقَ لَهُمْ بِهَا، لِأَنَّهُ لَيْسَ فِيهَا أَنَّهُ لَا حَدَّ فِيهَا عَلَى قَاذِفِهَا، وَلَعَلَّ حَاكِمَ وَقْتِهِ كَانَ لَا يَرَى الْحَدَّ عَلَى قَاذِفِ أُمِّ الْوَلَدِ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا.

L41636 As for their statement, “There is no inviolability for a male slave or a female slave,” this is foolish speech, for a believer possesses immense sanctity. Many an uncouth slave may be better than a Qurayshi leader in the sight of Allah, the Exalted. Allah said: “O mankind, We have created you from a male and a female” [Al-Hujurat: 13] - continuing to His words - “Indeed, the most noble of you in the sight of Allah is the most righteous among you” [Al-Hujurat: 13].[25]

وَأَمَّا قَوْلُهُمْ " لَا حُرْمَةَ لِلْعَبْدِ وَلَا لِلْأَمَةِ " فَكَلَامٌ سَخِيفٌ، وَالْمُؤْمِنُ لَهُ حُرْمَةٌ عَظِيمَةٌ، وَرُبَّ عَبْدٍ جِلْفٍ خَيْرٌ مِنْ خَلِيفَةٍ قُرَشِيٍّ عِنْدَ اللَّهِ تَعَالَى، قَالَ اللَّهُ تَعَالَى {يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَى} [الحجرات: ١٣] الْآيَةَ إلَى قَوْلِهِ {إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ} [الحجرات: ١٣] .

L41637 All people, at birth, are children of Adam and his spouse. Then people become distinguished through their moral character and faiths - not by their lineages, not by their physical attributes.

وَالنَّاسُ كُلُّهُمْ فِي الْوِلَادَةِ أَوْلَادُ آدَمَ وَامْرَأَتِهِ، ثُمَّ تَفَاضَلَ النَّاسُ بِأَخْلَاقِهِمْ وَأَدْيَانِهِمْ، لَا بِأَعْرَاقِهِمْ، وَلَا بِأَبْدَانِهِمْ.

L41638–41640 The Messenger of Allah (peace be upon him) said: “Indeed, your blood, your wealth, your honor, and your flesh are sacred to you.” He (peace be upon him) equated the sanctity of honor for the free person and the slave in explicit textual terms, particularly in this matter. Do the Hanafis—who mandate qisas against a free person for [harming] a slave and against a free woman for [harming] a female slave—thereby affirm the equal inviolability of both?

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» فَسَوَّى - عَلَيْهِ السَّلَامُ - بَيْنَ حُرْمَةِ الْعِرْضِ مِنْ الْحُرِّ وَالْعَبْدِ نَصًّا، وَلَا سِيَّمَا الْحَنَفِيُّونَ الْمُوجِبُونَ الْقَوَدَ عَلَى الْحُرِّ لِلْعَبْدِ، وَعَلَى الْحُرَّةِ لِلْأَمَةِ، فَقَدْ أَثْبَتُوا حُرْمَتَهُمَا سَوَاءً؟

L41641 Ali said: “There are differing opinions among them regarding these issues. If a man says to his wife: ’You committed adultery during your disbelief,’ or says: ’You committed adultery while you were a slave’...”

قَالَ عَلِيٌّ: أَقْوَالٌ لَهُمْ فِي هَذِهِ الْمَسَائِلِ، قَدْ اُخْتُلِفَ فِيهَا، فَمَنْ قَالَ لِامْرَأَتِهِ: زَنَيْت فِي كُفْرِك أَوْ قَالَ: زَنَيْت وَأَنْتِ أَمَةٌ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ أَنَّهُ سَأَلَ ابْنَ شِهَابٍ عَنْ رَجُلٍ

[25] **Qur’an references (L41636):** Qur’an 49:13 (Al-Hujurat).

Abdullah ibn Rabiʿ narrated to us, from Ibn Mufarrij, from Qāsim ibn Aṣbagh, from Ibn Waḍḍāḥ, from Saḥnūn, from Ibn Wahb: Yūnus informed me that he asked Ibn Shihāb about a man who accused his wife of adultery, saying to her: "You committed adultery while you were a slave or a Christian woman?" Ibn Shihāb replied: "If he does not produce clear evidence for this, he is subjected to the hadd punishment of eighty lashes."

قَذَفَ امْرَأَتَهُ فَقَالَ لَهَا: زَنَيْت وَأَنْتِ أَمَةٌ أَوْ نَصْرَانِيَّةٌ؟ فَقَالَ ابْنُ شِهَابٍ: إنْ لَمْ يَأْتِ عَلَى ذَلِكَ بِالْبَيِّنَةِ جُلِدَ الْحَدَّ ثَمَانِينَ.

L41642 And according to this—Abu Hanifah, Sufyan, Malik, al-Awza'i, and their companions state.

وَبِهِ - يَقُولُ أَبُو حَنِيفَةَ، وَسُفْيَانُ، وَمَالِكٌ، وَالْأَوْزَاعِيُّ، وَأَصْحَابُهُمْ.

L41643 Al-Shāfiʿī and his followers said: There is no ḥadd upon him.

وَقَالَ الشَّافِعِيُّ، وَأَصْحَابُهُ: لَا حَدَّ عَلَيْهِ.

L41644 Abu Hanifah, his disciples, Sufyan, al-Shafi'i, and his disciples ruled regarding one who says, "You [masculine verb] committed adultery when you [feminine] were a minor," or says, "You [masculine verb] committed adultery when you [feminine] were compelled under duress," that no ḥadd punishment applies.

قَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، وَسُفْيَانُ، وَالشَّافِعِيُّ، وَأَصْحَابُهُ: فِيمَنْ قَالَ: زَنَيْت وَأَنْتِ صَغِيرَةٌ، أَوْ قَالَ: زَنَيْت وَأَنْتِ مُكْرَهَةٌ أَنْ لَا حَدَّ.

L41645 Malik said: "The prescribed punishment is also incumbent upon him for his statement: 'You committed adultery while you were coerced.'" Abu Muhammad said: As for the position of Abu Hanifah and his companions, it is evidently contradictory, because they assert there is no prescribed punishment for one who accuses an enslaved woman, a non-Muslim woman, or a female minor of adultery. Yet they made a distinction here by imposing the punishment on one who says: "You committed adultery when you were an enslaved woman," while refraining from imposing it on one who says: "You committed adultery when you were a female minor."

وَقَالَ مَالِكٌ: عَلَيْهِ الْحَدُّ أَيْضًا فِي قَوْلِهِ: زَنَيْت وَأَنْتِ مُكْرَهَةٌ؟ قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ فَظَاهِرُ التَّنَاقُضِ، لِأَنَّهُمْ يَقُولُونَ: لَا حَدَّ عَلَى قَاذِفِ الْأَمَةِ، وَالْكَافِرَةِ، وَالصَّغِيرَةِ - ثُمَّ فَرَّقُوا هَاهُنَا فَحَدُّوا مَنْ قَالَ: زَنَيْت وَأَنْتِ أَمَةٌ، وَلَمْ يَحُدُّوا مَنْ قَالَ: زَنَيْت وَأَنْتِ صَغِيرَةٌ.

L41646 "If they say, 'He accused her of adultery only when she was a free Muslim woman?'"

فَإِنْ قَالُوا: إنَّمَا قَذَفَهَا وَهِيَ حُرَّةٌ مُسْلِمَةٌ؟

L41647 It was said: And likewise, he accused her of adultery only while she was an adult.

قِيلَ: وَكَذَلِكَ إنَّمَا قَذَفَهَا وَهِيَ بَالِغٌ.

L41648 If they say: "Indeed, the coerced woman is not an adulteress, and similarly the minor female [is not]?" They are told: "Then now, the ḥadd punishment becomes obligatory upon him when his lie is confirmed with certainty."

فَإِنْ قَالُوا: إنَّ الْمُكْرَهَةَ لَيْسَتْ زَانِيَةً، وَكَذَلِكَ الصَّغِيرَةُ؟ قِيلَ لَهُمْ: فَالْآنَ يُوجَبُ عَلَيْهِ الْحَدُّ إذَا صَحَّ كَذِبُهُ بِيَقِينٍ.

L41649 **On the issue of falsely accusing a minor, an insane person,**

[مَسْأَلَة قَذف الصَّغِير أَوْ الْمَجْنُون أَوْ الْمَجْبُوب وَغَيْرهمْ]

٢٢٣٣ - مَسْأَلَةٌ: فِيمَنْ قَذَفَ صَغِيرًا أَوْ مَجْنُونًا، أَوْ مُكْرَهًا، أَوْ مَجْبُوبًا، أَوْ رَتْقَاءَ، أَوْ قَرْنَاءَ، أَوْ بِكْرًا، أَوْ عِنِّينًا؟ قَالَ أَبُو مُحَمَّد: أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا ابْنُ مُفَرِّجٍ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا ابْنُ وَضَّاحٍ أَنَا سَحْنُونٌ أَنَا ابْنُ وَهْبٍ أَخْبَرَنِي يَزِيدُ بْنُ عِيَاضٍ اللَّيْثِيُّ عَنْ ابْنِ هِشَامٍ أَنَّهُ قَالَ فِي صَبِيَّةٍ افْتُرِيَ عَلَيْهَا أَوْ افْتَرَتْ؟ قَالَ: إذَا قَارَبَتْ الْحَيْضَ أَوْ مَسَّهَا الرَّجُلُ جُلِدَ قَاذِفُهَا الْحَدَّ.

وَقَالَ مَالِكٌ: إذَا بَلَغَ مِثْلُهَا أَنْ يُوطَأَ: جُلِدَ قَاذِفُهَا الْحَدَّ، وَكَذَلِكَ يُجْلَدُ قَاذِفُ الْمَجْنُونِ - وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمَا، وَالْحَسَنُ بْنُ حَيٍّ: لَا حَدَّ عَلَى قَاذِفِ صَغِيرٍ، وَلَا مَجْنُونٍ؟

قَالَ عَلِيٌّ: قَالَ اللَّهُ تَعَالَى {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ} [النور: ٤] الْآيَةَ. وَقَدْ قُلْنَا: إنَّ " الْإِحْصَانَ " فِي لُغَةِ الْعَرَبِ: هُوَ الْمَنْعُ، وَبِهِ سُمِّيَ الْحِصْنُ حِصْنًا، يُقَالُ: دِرْعٌ حَصِينَةٌ - وَقَدْ أَحْصَنَ فُلَانٌ مَالَهُ: إذَا أَحْرَزَهُ وَمَنَعَ مِنْهُ. قَالَ تَعَالَى {لا يُقَاتِلُونَكُمْ جَمِيعًا إلا فِي قُرًى مُحَصَّنَةٍ} [الحشر: ١٤] . وَالصِّغَارُ: مُحَصَّنُونَ بِمَنْعِ اللَّهِ تَعَالَى لَهُمْ مِنْ الزِّنَى، وَبِمَنْعِ أَهْلِيهِمْ، وَكَذَلِكَ الْمَجَانِينُ - وَكَذَلِكَ الْمَجْبُوبُ، وَالرَّتْقَاءُ، وَالْقَرْنَاءُ، وَالْعِنِّينُ - وَقَدْ يَكُونُ كُلُّ هَؤُلَاءِ مُحَصَّنِينَ بِالْعِفَّةِ. وَأَمَّا الْبِكْرُ وَالْمُكْرَهُ فَمُحَصَّنَانِ بِالْعِفَّةِ، فَإِذَا كُلُّ هَؤُلَاءِ يَدْخُلُونَ فِي جُمْلَةِ " الْمُحْصَنَاتِ " بِمَنْعِ الْفُرُوجِ مِنْ الزِّنَى، فَعَلَى قَاذِفِهِمْ الْحَدُّ، وَلَا سِيَّمَا الْقَائِلُونَ: إنَّ الْحُرِّيَّةَ إحْصَانٌ، وَكُلَّ حُرَّةٍ مُحْصَنَةٌ، فَإِنَّ الصَّغِيرَةَ الْحُرَّةَ، وَالْمَجْنُونَةَ،

a castrated individual, or others besides them of unlawful sexual intercourse (zina).

L41650–41652 2233 - Issue: Regarding one who falsely accuses of unchastity a minor, an insane person, a coerced person, a castrated person, a woman with a congenitally closed vagina, a woman with an intact hymen, a virgin, or an impotent man? Abu Muhammad said: I am ʿAbdullāh ibn Rabīʿ, I am Ibn Mufarrij, I am Qāsim ibn Aṣbagh, I am Ibn Waddāḥ, I am... Sahnun said: I am Ibn Wahb. Yazid ibn Iyad al-Laythi informed me on the authority of Ibn Hisham, who was asked concerning a young girl: "Was she falsely accused, or did she falsely accuse?" He replied: "If she approaches menstruation or a man touched her, the accuser is to be flogged with the ḥadd."

L41653 Malik said: When a girl reaches the age of lawful intercourse, the one who falsely accuses her of zinā is subjected to the ḥadd of flogging. Likewise, the one who falsely accuses an insane person of zinā is flogged. However, Abū Ḥanīfah, al-Shāfiʿī, their followers, and al-Ḥasan ibn Ḥayy said: There is no ḥadd upon one who falsely accuses a minor or an insane person of zinā.

L41654 Ali said: Allah the Exalted stated, {And those who accuse protected women} [An-Nur: 4], the verse. We have stated: "Al-Iḥṣān" in the Arabic language denotes protection, and the fortress is termed ḥiṣn for this reason. It is said: "A fortified shield"—and when someone safeguards their wealth, it is said: "He has fortified his wealth," meaning he secured it. Allah the Exalted said: {They will not fight you collectively except within fortified towns} [Al-Hashr: 14]. Minors are protected as Allah prevents fornication concerning them and through their guardians' restraint. Similarly, the insane, the eunuch, the woman with an imperforate hymen, the woman with a vaginal septum, and the sexually incapacitated man—all these may be protected by their chastity. As for the virgin and the coerced, they are protected through such chastity. Thus, all these individuals fall under the category of "protected women" due to the safeguarding of their private parts from illicit intercourse. Therefore, the prescribed punishment applies to their slanderers, particularly according to those who assert: "Free status constitutes protection," and every free woman is protected. Indeed, the minor free girl, the insane woman, the

وَالرَّتْقَاءَ، وَسَائِرَ مَنْ ذَكَرْنَاهُمْ مُحَصَّنُونَ، وَإِسْقَاطُ الْحَدِّ عَنْ قَاذِفِهِمْ خَطَأٌ مَحْضٌ لَا إِشْكَالَ فِيهِ.

فَمَا عَلِمْنَا لَهُمْ حُجَّةً أَكْثَرَ مِنْ أَنْ قَالُوا: إنَّ مَنْ قَذَفَ مَنْ ذَكَرْنَا فَقَدْ تَيَقَّنَّا كَذِبَهُ؟ فَقُلْنَا لَهُمْ: صَدَقْتُمْ، وَالْآنَ حَقًّا وَجَبَ الْحَدُّ عَلَى الْقَاذِفِ، إذْ قَدْ صَحَّ كَذِبُهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

قَالَ أَبُو مُحَمَّد: وَهَذَا مَكَانٌ عَظُمَتْ فِيهِ غَفْلَةُ مَنْ أَغْفَلَهُ، لِأَنَّ الْقَذْفَ لَا يَخْلُو مِنْ أَحَدِ أَوْجُهٍ ثَلَاثَةٍ لَا رَابِعَ لَهَا، إمَّا أَنْ يَكُونَ صَادِقًا، وَقَدْ صَحَّ صِدْقُهُ فَلَا خِلَافَ فِي أَنَّهُ لَا حَدَّ عَلَيْهِ - أَوْ يَكُونَ مُمْكِنًا صِدْقُهُ، وَمُمْكِنًا كَذِبُهُ فَهَذَا عَلَيْهِ الْحَدُّ بِلَا خِلَافٍ لِإِمْكَانِ كَذِبِهِ فَقَطْ وَلَوْ صَحَّ صِدْقُهُ لَمَا حُدَّ - أَوْ يَكُونُ كَاذِبًا قَدْ صَحَّ كَذِبُهُ، فَالْآنَ حَقًّا طَابَتْ النَّفْسُ عَلَى وُجُوبِ الْحَدِّ عَلَيْهِ بِيَقِينٍ، إذْ الْمَشْكُوكُ فِي صِدْقِهِ أَوْ كَذِبِهِ لَا بُدَّ لَهُ مِنْ أَحَدِهِمَا ضَرُورَةً، فَلَوْ كَانَ صَادِقًا لَمَا صَحَّ عَلَيْهِ حَدٌّ أَصْلًا - فَصَحَّ يَقِينًا، إذْ قَدْ سَقَطَ الْحَدُّ عَنْ الصَّادِقِ أَنَّهُ بَاقٍ عَلَى الْكَذِبِ، إذْ لَيْسَ إلَّا صَادِقًا أَوْ كَاذِبًا، وَهَذَا فِي غَايَةِ الْبَيَانِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[مَسْأَلَة كَافِرٌ قَذَفَ مُسْلِمًا أَوْ كَافِرًا]

٢٢٣٤ - مَسْأَلَةٌ: كَافِرٌ قَذَفَ مُسْلِمًا أَوْ كَافِرًا؟ قَالَ أَبُو مُحَمَّد: قَدْ ذَكَرْنَا وُجُوبَ الْحَدِّ عَلَى مَنْ قَذَفَ كَافِرًا فَإِذَا قَذَفَ الْكَافِرُ مُسْلِمًا، قَدْ ذَكَرْنَا فِيمَا سَلَفَ مِنْ كِتَابِنَا هَذَا

L41654 woman with an imperforate hymen, and all others we have mentioned are protected. Exempting their slanderers from the prescribed punishment constitutes a sheer error without any ambiguity.[26]

L41655 So we know no argument for them beyond [the fact] that they said: "Whoever slanders those we have mentioned, we have ascertained with certainty his falsehood?" We responded to them: "You have spoken truthfully—and now, in truth, the hadd punishment becomes obligatory upon the slanderer, since his falsehood has been verified—and with Allah, the Exalted, lies all attainment of correctness?"

L41656–41658 And this is a matter wherein the negligence of those who overlooked it is grave, for false accusation (qadhf) cannot exist except within one of three categories with no fourth: Either the accuser is truthful with confirmed veracity - here there is no disagreement that no ḥadd applies to him; or his claim could potentially be true or false - here the ḥadd is unanimously applied solely due to the mere possibility of his falsehood (for were his truthfulness confirmed, he would not be punished); or he is a confirmed liar - here the mind is now indeed at ease regarding the certain obligation of ḥadd upon him. As for one whose truthfulness or falsehood remains doubtful, he must inevitably... [text incomplete] One of the two is necessarily the case. If he were truthful, no ḥadd punishment would apply to him whatsoever—thus it is confirmed with certainty, since the punishment is lifted from the truthful one while acknowledging his persistence in lying, given there exists only truthfulness or falsehood. This represents the utmost clarity, and all praise belongs to Allah, Lord of the worlds.

L41659 **Issue regarding a disbeliever who falsely accuses a Muslim or a disbeliever of unchastity.**

L41660 2234 - Issue: What is the ruling if a non-Muslim falsely accuses a Muslim or another non-Muslim of unchastity? Abu Muhammad said: We have previously mentioned the obligation of imposing the prescribed punishment on one who falsely accuses a non-Muslim of unchastity. If a non-Muslim

[26] **Qur'an references (L41654):** Qur'an 24:4 (An-Nur); Qur'an 59:14 (Al-Hashr).

falsely accuses a Muslim of unchastity, we have stated earlier in this book the obligation to judge non-Muslims by the laws of Islam, based on Allah's saying: "And judge between them by what Allah has revealed" [Al-Mā'idah 5:49].[27]

وُجُوبَ الْحُكْمِ عَلَى الْكُفَّارِ بِحُكْمِ الْإِسْلَامِ، لِقَوْلِ اللَّهِ تَعَالَى {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] .

L41661 And by the words of Allah, the Exalted: "Fight them until there is no persecution and the religion is entirely devoted to Allah" [Al-Anfal 8:39].[28]

وَبِقَوْلِهِ تَعَالَى {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] .

L41662 We have mentioned the obligation to kill any disbeliever who insults a Muslim due to their violation of the covenant and annulment of the dhimma, based on Allah's statement: "until they pay the jizyah with willing submission while they are humbled" [Quran 9:29]. Thus, Allah has mandated their humiliation. If they depart from this state of humiliation, there is no dhimma for them. When there is no dhimma, it is lawful to kill them, enslave them, and their wealth: it becomes lawful. If they insult a Muslim, they have departed from humiliation and have humiliated the Muslim. The dhimma is thereby nullified for whoever among them commits this act, and there is no dhimma for him.

وَقَدْ ذَكَرْنَا وُجُوبَ قَتْلِ مَنْ سَبَّ مُسْلِمًا مِنْ الْكُفَّارِ لِنَقْضِهِمْ الْعَهْدَ وَفَسْخِهِمْ الذِّمَّةَ، لِقَوْلِ اللَّهِ تَعَالَى {حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] . فَافْتَرَضَ اللَّهُ تَعَالَى إصْغَارَهُمْ، فَإِذَا خَرَجُوا عَنْ الصَّغَارِ فَلَا ذِمَّةَ لَهُمْ، وَإِذَا لَمْ تَكُنْ لَهُمْ ذِمَّةٌ فَقَتْلُهُمْ وَسَبْيُهُمْ، وَأَمْوَالُهُمْ: حَلَالٌ، وَإِذَا سَبُّوا مُسْلِمًا فَقَدْ خَرَجُوا عَنْ الصَّغَارِ، وَأَصْغَرُوا الْمُسْلِمَ، فَقَدْ بَرِئَتْ الذِّمَّةُ مِمَّنْ فَعَلَ ذَلِكَ مِنْهُمْ، وَلَا ذِمَّةَ لَهُ: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا إِسْحَاقُ بْنُ خَالِدٍ، قَالَ: سَأَلْت الشَّعْبِيَّ عَنْ يَهُودِيَّةٍ افْتَرَتْ عَلَى مُسْلِمٍ؟ قَالَ: تُضْرَبُ الْحَدَّ.

Muhammad ibn Saʿīd ibn Nabāt narrated to us; ʿAbdullāh ibn Naṣr narrated to us; Qāsim ibn Aṣbagh narrated to us; Ibn Waḍḍāḥ narrated to us; Mūsā ibn Muʿāwiyah narrated to us; Wakīʿ narrated to us; Isḥāq ibn Khālid said: I asked al-Shaʿbī about a Jewish woman who slandered a Muslim. He replied: She is to be subjected to the ḥadd punishment.[29]

L41663 And through him—to Waki'—Sufyan al-Thawri narrated to us from Tariq ibn 'Abd al-Rahman, who said: "I witnessed al-Sha'bi striking a Christian who falsely accused a Muslim of unchastity: he flogged him eighty—why?" Abu Muhammad said: "As for the ḥadd—it is obligatory without doubt, for it is Allah's decree against every accuser of unchastity. The execution is also obligatory, as we mentioned, due to the breach of the dhimma covenant, whether the offender is a man or a woman—they must both be executed,

وَبِهِ - إلَى وَكِيعٍ حَدَّثَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ طَارِقِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: شَهِدْت الشَّعْبِيَّ ضَرَبَ نَصْرَانِيًّا قَذَفَ مُسْلِمًا، فَجَلَدَهُ ثَمَانِينَ؟ قَالَ أَبُو مُحَمَّد: أَمَّا الْحَدُّ - فَوَاجِبٌ بِلَا شَكٍّ، لِأَنَّهُ حُكْمُ اللَّهِ تَعَالَى عَلَى كُلِّ قَاذِفٍ، وَالْقَتْلُ وَاجِبٌ كَمَا ذَكَرْنَا لِنَقْضِ الذِّمَّةِ سَوَاءٌ كَانَ رَجُلًا أَوْ امْرَأَةً لَا بُدَّ مِنْ قَتْلِهِمَا، إلَّا أَنْ يُسْلِمَا فَيُتْرَكَا عَنْ الْقَتْلِ لَا عَنْ الْحَدِّ.

[27] **Qur'an references (L41660):** Qur'an 5:49 (Al-Ma'idah).
[28] **Qur'an references (L41661):** Qur'an 8:39 (Al-Anfal).
[29] **Qur'an references (L41662):** Qur'an 9:29 (At-Tawbah).

unless they embrace Islam, in which case they are exempted from execution but not from the ḥadd."

L41664 If someone were to say: Why did you not detain the woman and refrain from killing her, given the Messenger of Allah's prohibition (peace be upon him) against killing women? Since she violated her covenant by insulting Muslims, she has reverted to enemy status. If she reverts to this status, no covenant applies to her, and the sole recourse is enslavement?

فَإِنْ قَالَ قَائِلٌ: هَلَّا أَوْقَفْتُمْ الْمَرْأَةَ وَلَمْ تَقْتُلُوهَا، لِنَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ قَتْلِ النِّسَاءِ؟ وَلِأَنَّهَا إذَا نَقَضَتْ ذِمَّتَهَا بِسَبِّ الْمُسْلِمِ فَقَدْ عَادَتْ حَرْبِيَّةً، وَإِذَا عَادَتْ حَرْبِيَّةً فَلَا ذِمَّةَ لَهَا فَلَيْسَ عَلَيْهَا إلَّا الِاسْتِرْقَاقُ؟

L41665–41666 We said—and with Allah, the Exalted, lies all success—: The ruling concerning belligerents prior to entering a covenant differs from their ruling after violating their covenant. For their ruling before covenanting is combat. When we overpower them, the options are to release without ransom, accept ransom, kill, or maintain their protected status under the covenant—this applies to men. Similarly, it applies to women except killing. As for after violating the covenant, there remains only killing or embracing Islam exclusively, based on Allah's statement: {If they break their oaths after their covenant and defame your religion, then fight the leaders of disbelief until they desist} [9:12]. Thus Allah, the Exalted, obligated fighting them after their oath-breaking until they completely abandon their disbelief. It is impermissible here to limit their cessation to partial renunciation of their disbelief instead of total abandonment, as no evidence necessitates this. We are certain that if they desist from disbelief, their bloodshed becomes forbidden. Neither textual proof nor consensus exists indicating that partial cessation from some aspects of their disbelief while persisting in others would restore their right to preservation.[30]

قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّ حُكْمَ الْحَرْبِيِّ قَبْلَ التَّذَمُّمِ غَيْرُ حُكْمِهِ بَعْدَ نَقْضِهِمْ الذِّمَّةَ، لِأَنَّ حُكْمَهُمْ قَبْلَ التَّذَمُّمِ الْمُقَاتَلَةُ، فَإِذَا قَدَرْنَا عَلَيْهِمْ، فَإِمَّا الْمَنُّ وَإِمَّا الْفِدَاءُ، وَإِمَّا الْقَتْلُ، وَإِمَّا الْإِبْقَاءُ عَلَى الذِّمَّةِ - هَذَا فِي الرِّجَالِ، وَكَذَلِكَ فِي النِّسَاءِ حَاشَ الْقَتْلَ، وَأَمَّا بَعْدَ نَقْضِ الذِّمَّةِ فَلَيْسَ إلَّا الْقَتْلُ، أَوْ الْإِسْلَامُ فَقَطْ، لِقَوْلِ اللَّهِ تَعَالَى {وَإِنْ نَكَثُوا أَيْمَانَهُمْ مِنْ بَعْدِ عَهْدِهِمْ وَطَعَنُوا فِي دِينِكُمْ فَقَاتِلُوا أَئِمَّةَ الْكُفْرِ} [التوبة: ١٢] فَافْتَرَضَ اللَّهُ تَعَالَى قِتَالَهُمْ بَعْدَ نَكْثِ أَيْمَانِهِمْ مِنْ بَعْدِ عَهْدِهِمْ حَتَّى يَنْتَهُوا - وَلَا يَجُوزُ أَنْ يُخَصَّ الِانْتِهَاءُ هَاهُنَا عَنْ بَعْضِ مَا هُمْ عَلَيْهِ دُونَ جَمِيعِ مَا هُمْ عَلَيْهِ، إذْ لَا دَلِيلَ يُوجِبُ ذَلِكَ، وَنَحْنُ عَلَى يَقِينٍ أَنَّنَا إذَا انْتَهَوْا عَنْ الْكُفْرِ فَقَدْ حُرِّمَتْ دِمَاؤُهُمْ، وَلَا نَصَّ مَعَنَا وَلَا إجْمَاعَ عَلَى أَنَّهُمْ إنْ انْتَهَوْا عَنْ بَعْضِ مَا هُمْ عَلَيْهِ دُونَ بَعْضٍ عَادُوا إلَى حُكْمِ الِاسْتِبْقَاءِ.

L41667 We have thoroughly examined this in the "Book of Jihad" within multiple sections of our legal code (*dīwān*). The ruling for the woman in this case is equivalent to her ruling if she commits an act warranting capital punishment after the covenant of protection—such as adultery after attaining marital protection (*iḥṣān*), murder, or other similar offenses.

وَقَدْ تَقَصَّيْنَا هَذَا فِي " كِتَابِ الْجِهَادِ " فِي مَوَاضِعَ مِنْ دِيوَانِنَا وَحُكْمُ الْمَرْأَةِ فِي ذَلِكَ حُكْمُهَا إذَا أَتَتْ بَعْدَ الذِّمَّةِ بِشَيْءٍ يُبِيحُ الدَّمَ مِنْ زِنًى بَعْدَ إحْصَانٍ، وَقَتْلِ نَفْسٍ، أَوْ غَيْرِ ذَلِكَ.

L41668 As for when a disbeliever slanders another disbeliever, is only the hadd punishment applicable, based on the general ruling of Allah's command re-

وَأَمَّا إذَا قَذَفَ الْكَافِرُ كَافِرًا فَلَيْسَ إلَّا الْحَدُّ فَقَطْ، عَلَى عُمُومِ أَمْرِ اللَّهِ تَعَالَى فِيمَنْ قَذَفَ مُحْصَنَةً بِنَصِّ الْقُرْآنِ؟

[30] **Qur'an references (L41666):** Qur'an 9:12 (At-Tawbah).

garding one who slanders a chaste woman, as established by the explicit text of the Qur'an?

L41669 Abū Muḥammad—may Allah have mercy on him—said: It is astonishing that someone would hold that there is no ḥadd punishment for a disbeliever who fornicates with a Muslim woman, nor for a disbelieving woman when a Muslim fornicates with her, and would not apply the ḥadd punishment to a disbeliever for drinking wine—yet would apply the ḥadd punishment to a disbeliever who falsely accuses a Muslim man or woman of fornication (qadhf). I wonder what it is that distinguishes between the rulings of these ḥadd punishments according to them?

L41670 If they say, "Is the prescribed punishment for *qadhf* (false accusation of unchastity) a right belonging to the Muslim?"

L41671 We said to them: Also state that the *ḥadd* punishment for a disbeliever who fornicates with a Muslim woman is a right owed to that Muslim woman's father, her husband, and her mother—with no distinction. How astonishing it is that those who would cut off a disbeliever's hand for stealing from another disbeliever do not impose the *ḥadd* punishment on him for falsely accusing a Muslim of fornication! These are absurdities without parallel. They have contradicted the Quran's explicit texts, abandoned the *qiyās* they profess to uphold and argue by, arbitrarily differentiating between these rulings without analogizing some to others—all without evidence. Success comes only from Allah, the Exalted.

L41672 **A legal case concerning one who says to a woman, "Your husband did not find you to be a virgin [at the time of marriage]."**

L41673–41675 2235 - Issue: Concerning one who says to a woman, "Did your husband not find you a virgin?" Abu Muhammad—may Allah have mercy on him—said: The people have disagreed regarding this. A group said: There is no legal punishment (ḥadd) for that, nor is it considered qadhf (false accusation of adultery). Similarly, if a man makes such a statement to a woman he married, liʿān is not imposed on him because of this.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالْعَجَبُ مِمَّنْ يَرَى أَنَّهُ لَا حَدَّ عَلَى كَافِرٍ إذَا زَنَى بِمُسْلِمَةٍ، وَلَا عَلَى كَافِرَةٍ إذَا زَنَى بِهَا مُسْلِمٌ، وَلَا يَرَى الْحَدَّ عَلَى كَافِرٍ فِي شُرْبِ الْخَمْرِ - ثُمَّ يَرَى الْحَدَّ عَلَى الْكَافِرِ إذَا قَذَفَ مُسْلِمًا أَوْ مُسْلِمَةً، فَلَيْتَ شِعْرِي مَا الَّذِي فَرَّقَ بَيْنَ أَحْكَامِ هَذِهِ الْحُدُودِ عِنْدَهُمْ؟

فَإِنْ قَالُوا: إنَّ الْحَدَّ فِي الْقَذْفِ حَقٌّ لِلْمُسْلِمِ؟

قُلْنَا لَهُمْ: وَقُولُوا أَيْضًا: إنَّ حَدَّ الْكَافِرِ إذَا زَنَى بِمُسْلِمَةٍ حَقٌّ لِأَبِي تِلْكَ الْمُسْلِمَةِ، وَلِزَوْجِهَا، وَأُمِّهَا وَلَا فَرْقَ - وَالْعَجَبُ أَيْضًا مِمَّنْ قَطَعَ يَدَ الْكَافِرِ إذَا سَرَقَ مِنْ كَافِرٍ، ثُمَّ لَا يَحُدُّهُ لَهُ إذَا قَذَفَهُ، وَهَذِهِ عَجَائِبُ لَا نَظِيرَ لَهَا؟ خَالَفُوا فِيهَا نُصُوصَ الْقُرْآنِ، وَتَرَكُوا الْقِيَاسَ الَّذِي إلَيْهِ يَدْعُونَ، وَبِهِ يَحْتَجُّونَ، إذْ فَرَّقُوا بَيْنَ هَذِهِ الْأَحْكَامِ، وَلَمْ يَقِيسُوا بَعْضَهَا عَلَى بَعْضٍ بِغَيْرِ دَلِيلٍ فِي كُلِّ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة فِيمَنْ قَالَ لِامْرَأَةٍ لَمْ يَجِدْك زَوْجُك عَذْرَاءَ]

٢٢٣٥ - مَسْأَلَةٌ: فِيمَنْ قَالَ لِامْرَأَةٍ: لَمْ يَجِدْك زَوْجُك عَذْرَاءَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: لَا حَدَّ فِي ذَلِكَ وَلَيْسَ قَذْفًا. وَكَذَلِكَ لَوْ قَالَ رَجُلٌ لِامْرَأَةٍ تَزَوَّجَهَا، فَلَا يُلَاعِنُ بِهَذَا.

وَقَالَتْ طَائِفَةٌ: هُوَ قَذْفٌ، وَيُحَدُّ، وَيُلَاعِنُ الزَّوْجَ؟

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: احْتَجَّ مَنْ رَآهُ قَذْفًا بِمَا نا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ قَالَ: نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ نا أَحْمَدُ بْنُ عُمَرَ بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا مُحَمَّدُ بْنُ مَنْصُورٍ الطُّوسِيُّ نا يَعْقُوبُ بْنُ إبْرَاهِيمَ بْنِ سَعْدٍ نا أَبِي عَنْ ابْنِ إِسْحَاقَ قَالَ: وَذَكَرَ طَلْحَةَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: «تَزَوَّجَ رَجُلٌ مِنْ الْأَنْصَارِ امْرَأَةً مِنْ بَنِي الْعَجْلَانِ فَبَاتَ عِنْدَهَا لَيْلَةً فَلَمَّا أَصْبَحَ لَمْ يَجِدْهَا عَذْرَاءَ فَرَفَعَ شَأْنَهَا إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَدَعَا الْجَارِيَةَ، فَقَالَتْ: بَلْ كُنْت عَذْرَاءَ، فَأَمَرَ بِهِمَا فَتَلَاعَنَا، وَأَعْطَاهَا الْمَهْرَ» قَالَ الْبَزَّارُ: لَا نَعْلَمُهُ رُوِيَ إلَّا مِنْ هَذَا الطَّرِيقِ؟

A group maintained: "It constitutes an accusation of unchastity (qadhf) incurring the prescribed penalty (ḥadd). Does the husband then undertake the oath of imprecation (liʿān)?"

Abū Muḥammad—may Allāh have mercy on him—said: Those who regarded it as an accusation of adultery (qadhf) cited the report transmitted by Aḥmad ibn Muḥammad al-Ṭalamankī, who stated: Via Ibn Mufarrij, from Muḥammad ibn Ayyūb, from Aḥmad ibn ʿUmar ibn ʿAbd al-Khāliq al-Bazzār, from Muḥammad ibn Manṣūr al-Ṭūsī, from Yaʿqūb ibn Ibrāhīm ibn Saʿd, from Ubay, via Ibn Isḥāq, who said: He mentioned Ṭalḥa, from Saʿīd ibn Jubayr, from Ibn ʿAbbās, who said: "A man from the Anṣār married a woman from Banū al-ʿAjlān. He spent the night with her, and at dawn, he discovered she was not a virgin. He brought her case to the Prophet—peace and blessings of Allāh be upon him. The Prophet summoned the woman, and she declared: 'No, I was a virgin!' He then ordered them to perform liʿān, and granted her the dowry." Al-Bazzār remarked: "Is it not known to be narrated except through this chain?"

قَالَ عَلِيٌّ: وَهَذَا لَيْسَ بِشَيْءٍ لِوَجْهَيْنِ:

أَحَدُهُمَا - أَنَّ ابْنَ إِسْحَاقَ لَمْ يَصِحَّ سَمَاعُهُ لِذَلِكَ مِنْ طَلْحَةَ، فَهُوَ مُنْقَطِعٌ.

Ali said: "This is invalid for two aspects:"

One of them is that Ibn Isḥāq's hearing from Ṭalḥah is not established, thus it is discontinuous.

وَالثَّانِي - أَنَّ طَلْحَةَ هَذَا لَمْ يَنْسُبْهُ وَهُوَ - وَاَللَّهُ أَعْلَمُ - طَلْحَةُ بْنُ عَمْرٍو الْمَكِّيُّ، فَهُوَ الَّذِي يَرْوِي عَنْ أَصْحَابِ ابْنِ عَبَّاسٍ، وَهُوَ مَشْهُورٌ بِالْكَذِبِ، وَإِلَّا فَهُوَ عَلَى كُلِّ حَالٍ مَجْهُولٌ - فَسَقَطَ التَّعَلُّقُ بِهَذَا الْخَبَرِ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَذَهَابُ الْعُذْرَةِ يَكُونُ بِغَيْرِ الزِّنَى، أَوْ بِغَيْرِ وَطْءٍ كَوَقْعَةٍ، أَوْ غَيْرِ ذَلِكَ، فَلَمَّا لَمْ يَكُنْ ذَهَابُ الْعُذْرَةِ زِنًى لَمْ يَكُنْ الرَّمْيُ بِهِ رَمْيًا، وَلَا قَذْفًا، فَإِذْ لَيْسَ رَمْيًا وَلَا قَذْفًا فَلَا حَدَّ فِيهِ، وَلَا لِعَانَ، لِأَنَّ اللَّهَ تَعَالَى إنَّمَا جَعَلَ الْحَدَّ وَاللِّعَانَ بِالزِّنَى، لَا بِمَا سِوَاهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - هُوَ قَوْلُ أَصْحَابِنَا وَغَيْرِهِمْ - وَبِهَذَا نَقُولُ.

The second point is that this Talḥah's lineage was omitted—and he is, Allah knows best, Talḥah ibn ʿAmr al-Makkī. He is the one who narrates from the companions of Ibn ʿAbbās and is notorious for lying; otherwise, in any case, he is unknown—thus reliance on this report is invalidated. Abū Muḥammad (may Allah have mercy on him) said: The breaking of the hymen may occur without fornication or without intercourse, such as through a fall or other cause. Since the breaking of the hymen is not fornication, accusing someone of this does not constitute a valid accusation of zinā nor a false accusation of fornication. Therefore, as it is neither a valid accusation nor a false accusation, there is no prescribed punishment nor liʿān for it, because Allah the Exalted has ordained the prescribed punishment and liʿān solely for fornication, not for anything else—and success comes only from Allah. This is the opinion of our companions and other scholars, and this is what we uphold.

[مَسْأَلَة التَّعْرِيض هَلْ فِيهِ حَدّ أَوْ تَحْلِيف]

، أَمْ لَا حَدَّ فِيهِ وَلَا تَحْلِيف؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي التَّعْرِيضِ أَفِيه حَدٌّ أَمْ لَا؟ فَقَالَتْ طَائِفَةٌ: فِيهِ حَدُّ الْقَذْفِ كَامِلًا كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: إنَّ عُمَرَ كَانَ يَجْلِدُ فِي التَّعْرِيضِ بِالْفَاحِشَةِ. وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي ابْنُ أَبِي مُلَيْكَةَ عَنْ صَفْوَانَ، وَأَيُّوبَ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ حَدَّ فِي التَّعْرِيضِ، قَالَ ابْنُ أَبِي مُلَيْكَةَ: وَالَّذِي حَدَّهُ عُمَرُ فِي التَّعْرِيضِ - هُوَ عِكْرِمَةُ بْنُ عَامِرِ بْنِ هِشَامِ بْنِ عَبْدِ مَنَافِ بْنِ عَبْدِ الدَّارِ - هَجَا وَهْبَ بْنَ زَمْعَةَ بْنِ الْأَسْوَدِ بْنِ الْمُطَّلِبِ بْنِ أَسَدِ بْنِ عَبْدِ الْعُزَّى فَعَرَّضَ بِهِ فِي هِجَائِهِ.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ سَمِعْت مُعَاوِيَةَ بْنَ صَالِحٍ يُحَدِّثُ عَنْ كَثِيرِ بْنِ الْحَارِثِ عَنْ الْقَاسِمِ مَوْلَى عَبْدِ الرَّحْمَنِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَلَدَ فِي التَّعْرِيضِ وَقَالَ: إنَّ حِمَى اللَّهِ لَا تُرْعَى حَوَاشِيهُ. وَبِهِ - إلَى ابْنِ وَهْبٍ أَخْبَرَنِي مَالِكٌ، وَعَمْرُو بْنُ الْحَارِثِ، قَالَ مَالِكٌ: عَنْ أَبِي الرِّجَالِ عَنْ أُمِّهِ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ، وَقَالَ عَمْرٌو: عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ قَالَتْ عَمْرَةُ، وَيَحْيَى: إنَّ رَجُلَيْنِ اسْتَبَّا فِي زَمَانِ عُمَرَ بْنِ الْخَطَّابِ فَقَالَ أَحَدُهُمَا: مَا أَبِي بِزَانٍ، وَلَا أُمِّي بِزَانِيَةٍ، فَاسْتُفْتِيَ فِي ذَلِكَ عُمَرُ بْنُ الْخَطَّابِ؟ فَقَالَ قَائِلٌ: مَدَحَ أَبَاهُ وَأُمَّهُ، وَقَالَ آخَرُونَ: قَدْ كَانَ لِأَبِيهِ وَأُمِّهِ مَدْحٌ سِوَى هَذَا، نَرَى أَنْ يُجْلَدَ الْحَدَّ، فَجَلَدَهُ عُمَرُ ثَمَانِينَ.

L41681–41682 **The issue of equivocal speech: does it entail a prescribed punishment or requiring an oath?**

L41683 Or is there no prescribed punishment nor oath required in it? Abu Muhammad—may Allah have mercy on him—said: People have disagreed regarding insinuation—does it entail a ḥadd punishment or not? A group said: It entails the full ḥadd punishment for false accusation of unchastity (qadhf). As per the narration from Hammam via Ibn Mufarrij, via Ibn al-Aʿrabī, via al-Dabarī, via ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father ʿAbd Allāh ibn ʿUmar, who said: "'Umar used to administer lashes for insinuation involving sexual immorality." Via the same chain extending back to ʿAbd al-Razzāq: Ibn Jurayj narrated, reporting that Ibn Abī Mulaykah informed him from Ṣafwān and Ayyūb, from ʿUmar ibn al-Khaṭṭāb, that he imposed the ḥadd punishment for insinuation. Ibn Abī Mulaykah said: "'Umar imposed the ḥadd punishment on ʿIkrimah ibn ʿĀmir ibn Hishām ibn ʿAbd Manāf ibn ʿAbd al-Dār for insinuation—he composed satirical verses against Wahb ibn Zamʿah ibn al-Aswad ibn al-Muṭṭalib ibn Asad ibn ʿAbd al-ʿUzzā and alluded to impropriety in his poetry."

L41684 Abdullah ibn Rabee' narrated to us: Ibn Mufarrij narrated to us: Qasim ibn Asbagh narrated to us: Ibn Waddah narrated to us: Sahnoon narrated to us: Ibn Wahb narrated: I heard Muawiyah ibn Muṣāliḥ narrating from Kathir ibn al-Harith from al-Qasim, the freed slave of Abd al-Rahman: that Umar ibn al-Khattab administered lashes for indirect defamation and said, "Indeed, the sanctity of Allah is not safeguarded by merely guarding its peripheries." Through the same chain up to Ibn Wahb: Malik and Amr ibn al-Harith informed me. Malik said: from Abu al-Rijal from his mother Amrah bint Abd al-Rahman. Amr said: from Yahya ibn Sa'eed al-Ansari. Amrah said, and Yahya said: Two men exchanged insults during the time of Umar ibn al-Khattab. One of them said, "My father is not a fornicator, nor is my mother a fornicator." Umar ibn al-Khattab was asked for a legal ruling on this. One person said, "He defended his father and mother." Others said, "His father and mother could have been praised in ways other than this. We believe he should receive the ḥadd punishment of lashes." Umar lashed him eighty times.

وَبِهِ - إِلَى ابْنِ وَهْبٍ أَخْبَرَنِي رَجُلٌ - مِنْ أَهْلِ الْعِلْمِ - أَنَّ مَسْلَمَةَ بْنَ مَخْلَدٍ جَلَدَ الْحَدَّ فِي التَّعْرِيضِ. وَبِهِ - إِلَى ابْنِ وَهْبٍ أَخْبَرَنِي سَعِيدُ بْنُ أَيُّوبَ عَنْ عَطَاءٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي صَالِحٍ الْغِفَارِيِّ أَنَّ عَمْرَو بْنَ الْعَاصِ جَلَدَ رَجُلًا الْحَدَّ كَامِلًا فِي أَنْ قَالَ لِآخَرَ: يَا ابْنَ ذَاتِ الدَّايَةِ. حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا غَيْرُ وَاحِدٍ عَنْ جَابِرٍ عَنْ طَرِيفٍ الْعُكْلِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: مَنْ عَرَّضَ عَرَّضْنَا لَهُ بِالسَّوْطِ.

To Ibn Wahb—a man from the people of knowledge informed me that Maslamah ibn Makhlad administered the hadd punishment by flogging for indirect accusation. To Ibn Wahb—Saʿīd ibn Ayyūb narrated to me, from ʿAṭāʾ, from ʿAmr ibn Dīnār, from Abū Ṣāliḥ al-Ghifārī, that ʿAmr ibn al-ʿĀṣ administered the full hadd punishment upon a man for saying to another: "O son of the midwife!" Muḥammad ibn Saʿīd ibn Nabāt narrated to us, ʿAbdullāh ibn Naṣr narrated to us, Qāsim ibn Aṣbagh narrated to us, Ibn Waḍḍāḥ narrated to us, Mūsā ibn Muʿāwiyah narrated to us, Wakīʿ narrated to us, from multiple narrators, from Jābir, from Ṭarīf al-ʿUklī, from ʿAlī ibn Abī Ṭālib, who said: "Whoever makes an indirect accusation, we will confront him with the whip."

L41685–41686

وَبِهِ - إِلَى وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَاصِمٍ عَنِ ابْنِ سِيرِينَ عَنْ سَمُرَةَ قَالَ: مَنْ عَرَّضَ عَرَّضْنَا لَهُ.

And through him as far as Wakīʿ: Sufyān al-Thawrī reported from ʿĀṣim, from Ibn Sīrīn, from Samurah, who said: "Whoever hints, We will hint toward him."

L41687

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ قَالَ: سَمِعْتُ مُحَمَّدَ بْنَ هِشَامٍ يَقُولُ: قَالَ رَجُلٌ فِي إِمَارَةِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ لِرَجُلٍ: إِنَّكَ تُسَرِّي عَلَى جَارَاتِكَ؟ قَالَ: وَاللَّهِ مَا أَرَدْتُ إِلَّا نَخَلَاتٍ كَانَ يَسْرِقُهُنَّ، فَجَلَدَهُ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ قَالَ أَبُو مُحَمَّدٍ: وَبِإِيجَابِ الْحَدِّ فِي التَّعَرُّضِ يَقُولُ مَالِكٌ - وَهُوَ قَوْلُ رَبِيعَةَ أَيْضًا - وَقَالَ آخَرُونَ لَا حَدَّ فِي التَّعْرِيضِ: كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرِ بْنِ قَاسِمِ بْنِ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي الرِّجَالِ عَنْ أُمِّهِ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ قَالَ: نَازَعَ رَجُلٌ رَجُلًا؟ فَقَالَ: أَمَّا أَبِي فَلَيْسَ بِزَانٍ، وَلَا أُمِّي بِزَانِيَةٍ، فَرُفِعَ إِلَى عُمَرَ، فَشَاوَرَ أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: مَا نَرَى عَلَيْهِ حَدًّا، مَدَحَ أَبَاهُ وَأُمَّهُ؟ فَضَرَبَهُ عُمَرُ. وَبِهِ - إِلَى وَكِيعٍ نا الْمَسْعُودِيُّ عَنِ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ: لَا حَدَّ إِلَّا فِي اثْنَيْنِ: أَنْ

Hummam narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrabī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq narrated to us: Ibn Jurayj said: I heard Muḥammad ibn Hishām say: A man said to another during the caliphate of ʿUmar ibn ʿAbd al-ʿAzīz: "Do you secretly consort with your female neighbors?" The man replied: "By Allah, I intended nothing but some palm trees he was stealing." So ʿUmar ibn ʿAbd al-ʿAzīz imposed the prescribed punishment on him. Abū Muḥammad said: Mālik holds the view that the prescribed punishment is obligatory for indirect insinuation — which is also the opinion of Rabīʿah — while others say there is no prescribed punishment for indirect allusion. As narrated by Muḥammad ibn Saʿīd ibn Nabāt: ʿAbdullāh ibn Naṣr ibn Qāsim ibn Aṣbagh narrated to us: Ibn Waḍḍāḥ narrated to us: Mūsā ibn Muʿāwiyah narrated to us: Wakīʿ narrated to us: Sufyān al-Thawrī narrated from Abū al-Rijāl from his mother ʿAmrah bint ʿAbd al-Raḥmān, who said: A man disputed with another and said: "As for my father, he is not an adulterer, nor is my mother an adulteress." The matter was brought to ʿUmar, who consulted the companions of the Messenger of Allah — peace and blessings be upon him. They said: "We see no prescribed punishment for him—he praised his father and mother!" Yet ʿUmar struck him. And through the same chain up to Wakīʿ: al-Masʿūdī nar-

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rated from al-Qāsim ibn ʿAbd al-Raḥmān, who said: ʿAbdullāh ibn Masʿūd stated: "There is no prescribed punishment except in two cases: when a man accuses a chaste married woman (of adultery) or denies a man's lineage from his father." Hummam narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrabī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq narrated from Ibrāhīm ibn Muḥammad from Isḥāq ibn ʿAbdullāh from Makhūl: that Muʿādh ibn Jabal... Abdullah ibn Amr ibn al-As said: The hadd penalty applies only to unambiguous speech permitting no interpretative flexibility. Through the chain reaching Ibrahim ibn Muhammad from his companion from al-Dahhak ibn Muzahim, Ali ibn Abi Talib said: When the hadd penalty depends on expressions like "la'alla" (perhaps) and "'asa" (maybe), it becomes void. Abdullah ibn Rabi' narrated to us: Abdullah ibn Muhammad ibn Uthman narrated to us, Ahmad ibn Khalid narrated to us, Ali ibn Abd al-Aziz narrated to us, al-Hajjaj ibn al-Minhal narrated to us, Hammad ibn Salama narrated to us from Yunus ibn Ubayd from Humayd ibn Hilal: A man insulted another, saying, "O son of a spotted ewe" - meaning male genitalia. Uthman demanded, "Produce witnesses against him!" The case was escalated to Umar. The man persisted in reviling Uthman, prompting Umar to strike him with a whip while commanding, "Cease mentioning Umar!" Upon learning the man's mother had multiple marriages, Umar averted the hadd penalty from him. Muhammad ibn Sa'id ibn Nabat narrated to us: Ahmad ibn Awn Allah narrated to us, Qasim ibn Asbagh narrated to us, Muhammad ibn Abd al-Salam al-Khushani narrated to us, Muhammad ibn Bashshar (Bindar) narrated to us, Muhammad ibn Ja'far (Ghundar) narrated to us, Shu'ba narrated to us from Abu Maymunah Salamah ibn al-Muhabbaq from Ibn Abi Maymunah from Salamah ibn al-Muhabbaq, who said: "In Medina, I tied my camel. A man untied it, so I struck his chest and said, 'O you who fornicate with your mother!' He took me to Abu Hurayrah, whose wife remarked, 'Had you insinuated indirectly! But you were explicit.' Abu Hurayrah then administered the hadd penalty of eighty lashes. I declared, 'By your life, if I endure eighty lashes while standing, I am indeed patient!'" Muhammad ibn Sa'id ibn Nabat narrated to us: Abdullah ibn Ahmad narrated to us, Qasim ibn Asbagh narrated to us, Ibn Waddah narrated to us, Musa ibn Mu'awiyah narrated to us, Waki' narrated to us, Isra'il narrated to us from Jabir from Amir al-Sha'bi

يَقْذِفَ مُحْصَنَةً، أَوْ يَنْفِي رَجُلًا مِنْ أَبِيهِ. حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ إِبْرَاهِيمَ بْنِ مُحَمَّدٍ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ عَنْ مَكْحُولٍ: أَنَّ مُعَاذَ بْنَ جَبَلٍ، وَعَبْدَ اللَّهِ بْنَ عَمْرِو بْنِ الْعَاصِ قَالَا جَمِيعًا: لَيْسَ يُحَدُّ إِلَّا فِي الْكَلِمَةِ الَّتِي لَهَا مُصَرَّفٌ، وَلَيْسَ لَهَا إِلَّا وَجْهٌ وَاحِدٌ. وَبِهِ - إِلَى إِبْرَاهِيمَ بْنِ مُحَمَّدٍ عَنْ صَاحِبٍ لَهُ عَنِ الضَّحَّاكِ بْنِ مُزَاحِمٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إِذَا بَلَغَ الْحَدُّ لَعَلَّ وَعَسَى، فَالْحَدُّ مُعَطَّلٌ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ حُمَيْدِ بْنِ هِلَالٍ أَنَّ رَجُلًا شَاتَمَ رَجُلًا، فَقَالَ: يَا بْنَ شَامَّةَ الْوَذْرِ - يَعْنِي ذُكُورَ الرِّجَالِ - فَقَالَ لَهُ عُثْمَانُ: أَشْهِدْ عَلَيْهِ، أَشْهِدْ عَلَيْهِ؟ فَرَفَعَهُ إِلَى عُمَرَ، فَجَعَلَ الرَّجُلُ يَقَعُ فِي عُثْمَانَ فَيَنَالُ مِنْهُ، فَقَالَ عُمَرُ: أَعْرِضْ عَنْ ذِكْرِ عُثْمَانَ، فَجَعَلَ لَا يَنْزِعُ، فَعَلَاهُ عُمَرُ بِالدِّرَّةِ وَقَالَ: أَعْرِضْ عَنْ ذِكْرِ عُثْمَانَ، وَسَأَلَ عَنْ أُمِّ الرَّجُلِ؟ فَإِذَا هِيَ قَدْ تَزَوَّجَتْ أَزْوَاجًا فَدَرَأَ عَنْهُ الْحَدَّ. حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ - بِنْدَارٌ - نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ - نا شُعْبَةُ عَنْ أَبِي مَيْمُونَةَ سَلَمَةَ بْنِ الْمُحَبَّقِ نا ابْنُ أَبِي مَيْمُونَةَ نا سَلَمَةُ بْنُ الْمُحَبَّقِ قَالَ: قَدِمْت الْمَدِينَةَ فَعَقَلْت رَاحِلَتِي، فَجَاءَ إِنْسَانٌ فَأَطْلَقَهَا فَجِئْت فَلَهَزْت فِي صَدْرِهِ وَقُلْت: يَا نَائِكَ أُمِّهِ، فَذَهَبَ بِي إِلَى أَبِي هُرَيْرَةَ وَامْرَأَتُهُ قَاعِدَةٌ فَقَالَتْ لِي امْرَأَتُهُ: لَوْ كُنْت عَرَّضْت، وَلَكِنَّك أَحْقَمْت، قَالَ: فَجَلَدَنِي أَبُو هُرَيْرَةَ الْحَدَّ ثَمَانِينَ، فَقُلْت: لَعَمْرُك، إِنِّي يَوْمَ أُجْلَدُ قَائِمًا ثَمَانِينَ سَوْطًا إِنِّي لَصَبُورٌ. حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا إِسْرَائِيلُ عَنْ جَابِرٍ عَنْ

regarding a man who said to another, “You lead men to your wife” - ruling this as ta‘zir (discretionary punishment), not a hadd. Through Waki‘: Sufyan reported from al-Mughirah from Ibrahim al-Nakha‘i, who said: “Indirect allusions warrant punishment.” Through Waki‘: Sufyan al-Thawri reported from Isma‘il ibn Abi Khalid from Amir al-Sha‘bi: “If told, ’Ten have claimed you,’ no flogging applies.” Hammam narrated to us: Ibn Mufarrij narrated to us, Ibn al-A‘rabi narrated to us, al-Dabari narrated to us, Abd al-Razzaq narrated to us, Ibn Jurayj narrated to us. He said: I said to ʿAṭāʾ, “What about indirect allusion?” He replied, “There is no prescribed punishment for it.” ʿAṭāʾ and ʿAmr ibn Dīnār said, “It entails deterrent punishment.” Ibn Jurayj said: I asked him, “Should he be made to swear that he intended such and such?” He answered, “No.” Ibn Jurayj said: I asked ʿAṭāʾ, “A man said to his paternal brother, ’You are not my brother.’” He replied, “He is not subjected to the prescribed punishment.” Through the same chain to ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī regarding a man who told another, “O son of a slave” or “O slave,” then claimed, “I meant ’Abdullāh by it”—al-Zuhrī said: “He is made to swear by Allah that he intended nothing else. No prescribed punishment applies, but if he refuses to swear, he is flogged.” Al-Zuhrī added: “If one says to another, ’O son of the weaver,’ ’O son of the tailor,’ ’O son of the cobbler,’ insulting him through a profession, he must swear by Allah that he did not intend to deny lineage but only referenced his father’s work. If he swears, he is released. If he refuses, the prescribed punishment is applied.” Through the same chain to ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Ismāʿīl ibn Abī Khālid, who was asked about a man who said to another, “You are an adopted child.” He ruled: “No prescribed punishment applies. Even if he said, ’Six men claim you,’ no punishment would follow.” Qatādah said: “If a man tells another, ’I perceive you as an adulterer,’ he receives discretionary punishment, not the prescribed penalty. All indirect allusions incur discretionary punishment per Qatādah’s view.” Saʿīd ibn al-Musayyib said: “The prescribed punishment applies only to one who explicitly establishes its grounds.” Abū Muḥammad—may Allah have mercy on him—stated: “There is no prescribed punishment for indirect allusion. This is the position of Sufyān al-Thawrī, Ibn Shubrumah, al-Ḥasan ibn Ḥayy, Abū Ḥanīfah, al-Shāfiʿī, Abū Sulaymān, and their followers.” When differences arose as mentioned,

عَامِرٍ الشَّعْبِيِّ فِي رَجُلٍ قَالَ لِرَجُلٍ: إنَّك تَقُودُ الرِّجَالَ إلَى امْرَأَتِك، قَالَ: التَّعْزِيرُ، وَلَيْسَ يُحَدُّ. وَبِهِ - إلَى وَكِيعٍ نا سُفْيَانُ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: فِي التَّعْرِيضِ عُقُوبَةٌ - وَبِهِ إلَى وَكِيعٍ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ عَامِرٍ الشَّعْبِيِّ قَالَ: لَوْ قَالَ لَهُ: ادَّعَاك عَشَرَةٌ، لَمْ يُضْرَبْ. حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: التَّعْرِيضُ، قَالَ: لَيْسَ فِيهِ حَدٌّ، قَالَ عَطَاءٌ، وَعَمْرُو بْنُ دِينَارٍ: فِيهِ نَكَالٌ، قَالَ ابْنُ جُرَيْجٍ: قُلْت لَهُ: يُسْتَحْلَفُ مَا أَرَادَ كَذَا وَكَذَا؟ قَالَ: لَا، قَالَ ابْنُ جُرَيْجٍ: وَقُلْت لِعَطَاءٍ: رَجُلٌ قَالَ لِأَخِيهِ ابْنِ أَبِيهِ: لَسْت بِأَخِي، قَالَ: لَا يُحَدُّ. وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي رَجُلٍ قَالَ لِآخَرَ: يَا ابْنَ الْعَبْدِ، أَوْ أَيُّهَا الْعَبْدُ، قَالَ: إنَّمَا عَنَيْتُ بِهِ عَبْدَ اللَّهِ، قَالَ: يُسْتَحْلَفُ بِاَللَّهِ مَا أَرَادَ إلَّا ذَلِكَ، وَلَا حَدَّ عَلَيْهِ، فَإِنْ نَكَلَ جُلِدَ. وَقَالَ الزُّهْرِيُّ: فَلَوْ قَالَ لِآخَرَ: يَا ابْنَ الْحَائِكِ، يَا ابْنَ الْخَيَّاطِ، يَا ابْنَ الْإِسْكَافِ يُعَيِّرُهُ بِبَعْضِ الْأَعْمَالِ، قَالَ: يُسْتَحْلَفُ بِاَللَّهِ مَا أَرَادَ نَفْيَهُ، وَمَا أَرَادَ إلَّا عَمَلَ أَبِيهِ، فَإِنْ حَلَفَ تُرِكَ، وَإِنْ نَكَلَ حُدَّ. وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ: أَنَّهُ سُئِلَ عَنْ رَجُلٍ قَالَ لِآخَرَ: إنَّك لَدَعِيٌّ قَالَ: لَيْسَ عَلَيْهِ حَدٌّ - وَلَوْ قَالَ لَهُ: ادَّعَاك سِتَّةٌ، لَمْ يَكُنْ عَلَيْهِ حَدٌّ. قَالَ قَتَادَةُ: لَوْ قَالَ رَجُلٌ لِرَجُلٍ: إنِّي أَرَاك زَانِيًا، عُزِّرَ، وَلَمْ يُحَدَّ - وَالتَّعْرِيضُ كُلُّهُ يُعَزَّرُ فِيهِ فِي قَوْلِ قَتَادَةَ. وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: إنَّمَا جُعِلَ الْحَدُّ عَلَى مَنْ نَصَبَ الْحَدَّ نَصْبًا قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: بِأَنْ لَا حَدَّ فِي التَّعْرِيضِ، يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَابْنُ شُبْرُمَةَ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ - فَلَمَّا اخْتَلَفُوا كَمَا

we examined the matter and found proponents of the prescribed punishment citing ʿUmar's action before the Companions—may Allah be pleased with them. ʿAlī countered: "This provides no grounds for them, for explicit disagreement among the Companions—may Allah be pleased with them—is established, as we conveyed through Wakīʿ's chain. Indeed, ʿUmar—may Allah be pleased with him—said, 'Avert the prescribed punishment from one who says, "O son of the woman with deformed ears."' As for ʿAlī ibn Abī Ṭālib and Samurah, reports state: "Whoever alludes, we allude to him." This does not prove they meant the prescribed punishment. Thus, reliance on the actions of ʿUmar, ʿAlī, and Samurah—may Allah be pleased with them—is wholly invalid.

L41693–41698 We examined whether they had any argument besides this and discovered them mentioning Allah's statement: {O you who believe, do not say "rāʿinā"} [Al-Baqarah: 104]. They argued that the disbelievers would say "rāʿinā" to the Messenger of Allah—peace and blessings of Allah be upon him—intending "foolishness," thereby making an implicit allusion. Thus, they claimed Allah prohibited implicit allusion. Abu Muhammad responded: This verse constitutes a proof against them, not for them, for several reasons. First: We do not dispute their claim that implicit allusion is impermissible, which would warrant their citation of this verse. Our disagreement lies solely in whether it entails a legal punishment. Even if their deduction from this verse were valid, it contains only a prohibition against implicit allusion without any mention of imposing a punishment whatsoever. Thus, their distortion through this verse becomes evident. Second: Allah the Exalted did not prescribe a punishment for those who made this implicit allusion. How then can they cite it as evidence for mandating a punishment? Third: Allah the Exalted prohibited the utterance of "rāʿinā" to those entirely unsuspected of implicit allusion—namely the Companions, may Allah be pleased with them. This conclusively demonstrates that He did not forbid the term "rāʿinā" due to implicit allusion, but solely by His will without any underlying cause. Consequently, the legal punishment for this is entirely baseless. Their reliance on the verse is wholly invalidated, and it stands as a proof against them—is not success from Allah, the Exalted? Abu Muhammad said: When the position of those advo-

ذَكَرْنَا، نَظَرْنَا فَوَجَدْنَا مَنْ رَأَى الْحَدَّ فِيهِ يَقُولُ: هَذَا فِعْلُ عُمَرَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؟ قَالَ عَلِيٌّ: وَهَذَا لَا مُتَعَلَّقَ لَهُمْ بِهِ، لِأَنَّهُ قَدْ صَحَّ الْخِلَافُ فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - نَصًّا، كَمَا ذَكَرْنَا أَيْضًا مِنْ طَرِيقِ وَكِيعٍ، نَعَمْ، وَعَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - ادْرَءُوا الْحَدَّ عَمَّنْ قَالَ لِآخَرَ: يَا ابْنَ شَامَّةِ الْوَذْرِ. وَأَمَّا عَلِيُّ بْنُ أَبِي طَالِبٍ، وَسَمُرَةُ، فَإِنَّهُ جَاءَ عَنْهُمَا: مَنْ عَرَّضَ عَرَّضْنَا لَهُ وَلَيْسَ فِي هَذَا بَيَانُ أَنَّهُمَا أَرَادَا الْحَدَّ. فَبَطَلَ تَعَلُّقُهُمْ بِفِعْلِ عُمَرَ، وَعَلِيٍّ، وَسَمُرَةَ - رَضِيَ اللَّهُ عَنْهُمْ - جُمْلَةً.

فَنَظَرْنَا هَلْ لَهُمْ حُجَّةٌ غَيْرُ هَذَا؟ فَوَجَدْنَاهُمْ يَذْكُرُونَ قَوْلَ اللَّهِ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تَقُولُوا رَاعِنَا} [البقرة: ١٠٤] الْآيَةَ. قَالُوا: وَكَانَ الْكُفَّارُ يَقُولُونَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَاعِنَا، يُرِيدُونَ مِنْ " الرُّعُونَةِ " وَهَذَا تَعْرِيضٌ، فَنَهَى عَنْ التَّعْرِيضِ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا حُجَّةٌ عَلَيْهِمْ لَا لَهُمْ لِوُجُوهٍ: أَوَّلُهَا: أَنَّا لَمْ نُخَالِفْهُمْ فِي أَنَّ " التَّعْرِيضَ " لَا يَجُوزُ، فَيَحْتَجُّوا بِهَذَا، وَإِنَّمَا خَالَفْنَاهُمْ فِي هَلْ فِيهِ حَدٌّ أَمْ لَا؟ وَلَيْسَ فِي هَذِهِ الْآيَةِ لَوْ صَحَّ اسْتِدْلَالُهُمْ بِهَا إلَّا النَّهْيُ عَنْ التَّعْرِيضِ فَقَطْ وَلَيْسَ فِيهَا إيجَابُ حَدٍّ فِيهِ أَصْلًا، فَظَهَرَ تَمْوِيهُهُمْ بِالْآيَةِ. وَالثَّانِي: أَنَّ اللَّهَ تَعَالَى لَمْ يَحُدَّ الَّذِينَ عَرَّضُوا بِهَذَا التَّعْرِيضِ فَكَيْفَ يَحْتَجُّونَ بِهَا فِي إيجَابِ الْحَدِّ. وَالثَّالِثُ: أَنَّ اللَّهَ تَعَالَى إنَّمَا نَهَى عَنْ قَوْلِ " رَاعِنَا " مَنْ لَا يُظَنُّ بِهِ تَعْرِيضٌ أَصْلًا، فَهُمْ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ -. فَصَحَّ يَقِينًا أَنَّهُ لَمْ يَنْهَ عَزَّ وَجَلَّ عَنْ لَفْظَةِ " رَاعِنَا " مِنْ أَجْلِ التَّعْرِيضِ، بَلْ كَمَا شَاءَ تَعَالَى، لَا لِعِلَّةٍ أَصْلًا، وَالْحَدُّ فِي ذَلِكَ سَاقِطٌ لَا يَنْسَنِدُ أَصْلًا. فَبَطَلَ تَعَلُّقُهُمْ بِالْآيَةِ جُمْلَةً، وَصَحَّ أَنَّهَا حُجَّةٌ عَلَيْهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟ قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا بَطَلَ قَوْلُ مَنْ رَأَى الْحَدَّ فِي التَّعْرِيضِ:

cating punishment for implicit allusion was refuted, we examined the view of the opposing group. We found them citing Allah's statement: {There is no blame on you for what you implicitly propose regarding marriage to women or conceal within yourselves} [Al-Baqarah: 235] up to His words: {until the prescribed term reaches its end} [Al-Baqarah: 235]. Here, Allah the Exalted distinguishes between the rulings for explicit speech and implicit speech—a distinction unmistakable to any sound intellect. Since these are two distinct matters, neither sharing the ruling of the other, it is entirely impermissible to impose upon one what applies to the other absent a textual proof or consensus. They also cited the narration transmitted to us via Muslim—from Abu al-Ṭāhir and Ḥarmalah (the wording being Ḥarmalah's)—who said... All of them: Ibn Wahb narrated to us, Yunus informed me from Ibn Shihab from Abu Salamah ibn Abd al-Rahman from Abu Hurayrah: "A Bedouin came to the Messenger of Allah (peace be upon him) and said, 'O Messenger of Allah, my wife has given birth to a black child, and I reject him.' The Prophet (peace be upon him) asked him, 'Do you have camels?' He replied, 'Yes.' He asked, 'What are their colors?' He said, 'Red.' He asked, 'Is there any dappled gray among them?' He answered, 'Yes.' The Messenger of Allah (peace be upon him) said, 'How did that occur?' He responded, 'Perhaps, O Messenger of Allah, a hereditary trait caused it.' The Prophet (peace be upon him) said, 'And this child—perhaps a hereditary trait caused him.'"

Hammam narrated to us, Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabari narrated to us, Abd al-Razzaq narrated from Ma'mar from al-Zuhri, who said: Sa'id ibn al-Musayyab narrated from Abu Hurayrah: "A man came to the Prophet (peace be upon him) and said, 'My wife has given birth to a black child'—he was hinting at disavowing him. The Prophet (peace be upon him) asked, 'Do you have camels?' He said, 'Yes.' He asked, 'What are their colors?' He replied, 'Red.' He asked, 'Is there any dappled gray among them?' He said, 'Yes, there are some gray ones.' He asked, 'How do you explain that?' He answered, 'I do not know—perhaps a hereditary trait caused it.' The Messenger of Allah (peace be upon him) said, 'And this child—perhaps a hereditary trait caused him.'" He did not permit him to disown the child.

وَجَبَ أَنْ نَنْظُرَ فِي قَوْلِ الطَّائِفَةِ الْأُخْرَى، فَوَجَدْنَاهُمْ يَذْكُرُونَ قَوْلَ اللَّهِ تَعَالَى {وَلا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خِطْبَةِ النِّسَاءِ أَوْ أَكْنَنْتُمْ فِي أَنْفُسِكُمْ} [البقرة: ٢٣٥] إلَى قَوْله تَعَالَى {حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ} [البقرة: ٢٣٥] فَفَرَّقَ عَزَّ وَجَلَّ بَيْنَ حُكْمِ التَّصْرِيحِ وَبَيْنَ حُكْمِ التَّعْرِيضِ تَفْرِيقًا لَا يَخْتَلُّ عَلَى ذِي حِسٍّ سَلِيمٍ، وَإِذَا كَانَا شَيْئَيْنِ مُخْتَلِفَيْنِ لَيْسَ لِأَحَدِهِمَا حُكْمُ الْآخَرِ فَلَا يَجُوزُ أَلْبَتَّةَ أَنْ يُجْعَلَ فِي أَحَدِهِمَا مَا جُعِلَ فِي الْآخَرِ بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ. وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نِي أَبُو الطَّاهِرِ، وَحَرْمَلَةُ - وَاللَّفْظُ لِحَرْمَلَةَ - قَالَا جَمِيعًا: نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ «أَنَّ أَعْرَابِيًّا أَتَى إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ يَا رَسُولَ اللَّهِ إنَّ امْرَأَتِي وَلَدَتْ غُلَامًا أَسْوَدَ وَأَنَا أُنْكِرُهُ؟ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَلْ لَك مِنْ إبِلٍ؟ قَالَ: نَعَمْ، قَالَ: مَا أَلْوَانُهَا؟ قَالَ: حُمْرٌ، قَالَ: فَهَلْ فِيهَا مِنْ أَوْرَقَ؟ قَالَ: نَعَمْ، قَالَ رَسُولُ اللَّهِ فَأَنَّى هُوَ؟ فَقَالَ لَعَلَّهُ يَا رَسُولَ اللَّهِ نَزَعَهُ عِرْقٌ لَهُ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا لَعَلَّهُ نَزَعَهُ عِرْقٌ لَهُ» حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ نِي سَعِيدُ بْنُ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ «جَاءَ رَجُلٌ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: وَلَدَتْ امْرَأَتِي غُلَامًا أَسْوَدَ - وَهُوَ حِينَئِذٍ يُعَرِّضُ بِأَنْ يَنْفِيَهُ - فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَلَك إبِلٌ؟ قَالَ: نَعَمْ، قَالَ: مَا أَلْوَانُهَا؟ قَالَ: حُمْرٌ، قَالَ: أَفِيهَا أَوْرَقُ؟ قَالَ: نَعَمْ، فِيهَا ذَوْدٌ وُرْقٌ قَالَ: مِمَّ ذَاكَ تَرَى؟ قَالَ: لَا أَدْرِي لَعَلَّهُ أَنْ يَكُونَ نَزَعَهُ عِرْقٌ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا لَعَلَّهُ أَنْ يَكُونَ نَزَعَهُ عِرْقٌ» وَلَمْ يُرَخِّصْ لَهُ فِي الِانْتِفَاءِ مِنْهُ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا

أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - أَخْبَرَنِي النَّضْرُ بْنُ شُمَيْلٍ نا حَمَّادُ بْنُ سَلَمَةَ أَنَا هَارُونُ بْنُ زِيَادٍ عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَيْرٍ عَنِ ابْنِ عَبَّاسٍ «أَنَّ رَجُلًا قَالَ: يَا رَسُولَ اللَّهِ إِنَّ تَحْتِي امْرَأَةً جَمِيلَةً لَا تَرُدُّ يَدَ لَامِسٍ؟ قَالَ: طَلِّقْهَا، قَالَ: إِنِّي لَا أَصْبِرُ عَنْهَا، قَالَ: فَأَمْسِكْهَا» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذِهِ الْأَحَادِيثُ كُلُّهَا فِي غَايَةِ الصِّحَّةِ مُوجِبَةٌ أَنَّهُ لَا شَيْءَ فِي التَّعْرِيضِ أَصْلًا، لِأَنَّ الْأَعْرَابِيَّ الَّذِي ذَكَرَ أَنَّ امْرَأَتَهُ وَلَدَتْ وَلَدًا أَسْوَدَ وَعَرَّضَ بِنَفْيِهِ وَكَانَ مِنْ بَنِي فَزَارَةَ - ذَكَرَ ذَلِكَ الزُّهْرِيُّ - فَلَمْ يَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ حَدًّا وَلَا لِعَانًا - وَكَذَلِكَ الَّذِي قَالَ: " إِنَّ امْرَأَتِي لَا تَرُدُّ يَدَ لَامِسٍ " فَلَمْ يَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ حَدًّا وَلَا لِعَانًا - وَقَدْ أَوْجَبَ - عَلَيْهِ السَّلَامُ - الْحَدَّ وَاللِّعَانَ عَلَى مَنْ صَرَّحَ - وَكَذَلِكَ قَوْلُهُ - عَلَيْهِ السَّلَامُ - «لَوْلَا مَا سَبَقَ مِنْ كِتَابِ اللَّهِ لَكَانَ لِي وَلَهَا شَأْنٌ» . وَقَالَ - عَلَيْهِ السَّلَامُ - «لَوْ كُنْتُ رَاجِمًا أَحَدًا بِغَيْرِ بَيِّنَةٍ لَرَجَمْتُ هَذِهِ» تَعْرِيضٌ صَحِيحٌ، وَأَنْكَرُ لِلْمُنْكَرِ دُونَ تَصْرِيحٍ، لَكِنْ بِظَنٍّ لَا يُحْكَمُ بِهِ وَلَا يُقْطَعُ بِهِ - وَكَذَلِكَ قَوْلُ ابْنِ عَبَّاسٍ: تِلْكَ امْرَأَةٌ كَانَتْ تُظْهِرُ السُّوءَ فِي الْإِسْلَامِ، تَعْرِيضٌ صَحِيحٌ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا إِسْحَاقُ بْنُ إِبْرَاهِيمَ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ عَنْ عَائِشَةَ قَالَتْ «اخْتَصَمَ سَعْدُ بْنُ أَبِي وَقَّاصٍ، وَعَبْدُ بْنُ زَمْعَةَ فِي ابْنِ أَمَةِ زَمْعَةَ فَقَالَ سَعْدٌ: أَوْصَانِي أَخِي عُتْبَةُ إِذَا قَدِمْتُ مَكَّةَ فَأَنْظُرُ ابْنَ أَمَةِ زَمْعَةَ فَهُوَ ابْنِي، وَقَالَ عَبْدٌ: هُوَ ابْنُ أَمَةِ أَبِي وُلِدَ عَلَى فِرَاشِ أَبِي؟ فَرَأَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَبَهًا بَيِّنًا بِعُتْبَةَ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْوَلَدُ لِلْفِرَاشِ وَاحْتَجِبِي مِنْهُ يَا سَوْدَةُ» فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ أَشَارَ إِشَارَةً لَمْ

Abdullah ibn Rabi' narrated to us, Muhammad ibn Mu'awiyah narrated to us, Ahmad ibn Shu'ayb informed me, Ishaq ibn Ibrahim (Ibn Rahawayh) informed me, al-Nadr ibn Shumayl narrated to us, Hammad ibn Salamah narrated to us, Harun ibn Ziyad narrated from Abdullah ibn Abdullah ibn Umayr from Ibn Abbas: "A man said, 'O Messenger of Allah, my wife is beautiful but does not repel the touch of admirers.' He said, 'Divorce her.' The man replied, 'I cannot endure separation from her.' He said, 'Then keep her.'"

Abu Muhammad (may Allah have mercy on him) said: All these rigorously authenticated narrations establish that mere implication holds no legal consequence. The Bedouin—from the Fazarah tribe, as al-Zuhri noted—who claimed his wife bore a black child and hinted at disavowing him was not prescribed any punishment or *li'ān* (mutual cursing) by the Messenger of Allah (peace be upon him). Similarly, the man who stated, "My wife does not repel the touch of admirers" received no prescribed punishment or *li'ān*. Yet the Prophet (peace be upon him) mandated punishment and *li'ān* for explicit accusations, as he (peace be upon him) said: "Were it not for what Allah decreed in His Book, there would be a matter between her and me." He (peace be upon him) also said: "If I were to stone anyone without evidence, I would stone this woman"—both being instances of implication. Authentic, and denouncing evil without explicit mention, but based on uncertainty that is neither judicially enforceable nor definitive. Similarly, Ibn Abbas's statement – "That was a woman who used to manifest immorality in Islam" – constitutes a valid implication. Abdullah ibn Rabee' narrated to us: Muhammad ibn Mu'awiyah narrated from Ahmad ibn Shu'ayb, from Ishaq ibn Ibrahim, from Sufyan ibn 'Uyaynah, from Al-Zuhri, from 'Aishah, who said: "Sa'd ibn Abi Waqqas and 'Abd ibn Zam'ah disputed over the son of Zam'ah's slave woman. Sa'd said: 'My brother 'Utbah instructed me upon arriving in Makkah to care for the son of Zam'ah's slave woman, for he is my son.' 'Abd said: 'He is the son of my father's slave woman, born on his bed.' The Messenger of Allah—peace and blessings be upon him—observed a clear resemblance to 'Utbah and declared: 'The child belongs to the bed. Seclude yourself from him, O Sawdah.'" Here, the Messenger of Allah—peace and blessings be upon him—implied an indication without decisive ruling,

opposing it by presuming the child originated from ‘Utbah’s semen, yet he did not deem a hadd punishment applicable against Sa‘d ibn Abi Waqqas for attributing Zam‘ah’s child to his brother. These narrations, transmitted by a group of Companions—may Allah be pleased with them—including ‘Aishah, Abu Hurayrah, Anas, and Ibn Abbas, attain the level of recurrent transmission, establishing certainty and invalidating the view that implications incur hadd penalties. They confirm that one who implies without cause—whether voicing grievance (as in the Bedouin’s case), exercising scrupulousness (as regarding Zam‘ah’s slave woman’s son), or denouncing evil (per Ibn Abbas’s and Anas’s narrations)—bears no sin, disapproval, or prohibition, for the Messenger of Allah—peace and blessings be upon him—stated this, and it was uttered in his presence without objection. As for scholarly consensus: the entire Ummah agrees unanimously. Malikis collectively affirm that when a man or woman manifests immorality—such as unrelated individuals secluding together or a man covertly entering a woman’s home—Muslims must denounce this and report it to the authority. This is undeniably implication; otherwise, what precisely do they condemn? It is utterly astonishing that they apply hadd penalties for implications while imposing no consequences for explicit false accusations of unchastity—such as enforcing the hadd for adultery upon a pregnant woman without established proof of fornication. They claim to suspend hadd punishments due to doubts, yet contradict this in two instances: enforcing the hadd for false accusation upon those implying without explicitness, and the hadd for adultery upon a pregnant woman lacking a husband or master. And is all success not with Allah the Exalted?[31]

يَقْطَعْ بِهَا، بَلْ خَالَفَ وَظَنَّ أَنَّهُ مِنْ مَاءِ عُتْبَةَ، وَلَمْ يَرَ حَدًّا عَلَى سَعْدِ بْنِ أَبِي وَقَّاصٍ، إِذْ نَسَبَ وَلَدَ زَمْعَةَ إِلَى أَخِيهِ. فَهَذِهِ آثَارٌ رَوَاهَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - جَمَاعَةٌ عَائِشَةُ، وَأَبُو هُرَيْرَةَ، وَأَنَسٌ، وَابْنُ عَبَّاسٍ، فَصَارَتْ فِي حَدِّ التَّوَاتُرِ مُوجِبَةً لِلْعِلْمِ، مُبْطِلَةً قَوْلَ مَنْ رَأَى: أَنَّ فِي التَّعْرِيضِ حَدًّا، بَلْ صَحَّ بِهَا: أَنَّ مَنْ عَرَّضَ لِغَيْرِ سَبَبٍ لَكِنْ لِشَكْوَى عَلَى حَدِيثِ الْأَعْرَابِيِّ، أَوْ تَوَرُّعًا عَلَى حَدِيثِ ابْنِ وَلِيدَةِ - زَمْعَةَ - أَوْ إِنْكَارًا لِلْمُنْكَرِ عَلَى حَدِيثِ ابْنِ عَبَّاسٍ، وَعَلَى حَدِيثِ أَنَسٍ، فَلَا شَيْءَ فِي ذَلِكَ أَصْلًا، لَا إِثْمَ وَلَا كَرَاهِيَةَ وَلَا إِنْكَارَ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ ذَلِكَ، وَقِيلَ بِحَضْرَتِهِ فَلَمْ يُنْكِرْهُ. وَأَمَّا طَرِيقُ الْإِجْمَاعِ - فَإِنَّ الْأُمَّةَ كُلَّهَا لَا تَخْتَلِفُ، وَالْمَالِكِيُّونَ فِي جُمْلَتِهِمْ عَلَى أَنَّ مَنْ أَظْهَرَ السُّوءَ مِنْ رَجُلٍ، أَوْ امْرَأَةٍ، كَانْفِرَادِ الْأَجْنَبِيَّيْنِ، وَدُخُولِ الرَّجُلِ مَنْزِلَ الْمَرْأَةِ تَسَتُّرًا، فَوَاجِبٌ عَلَى الْمُسْلِمِينَ إنْكَارُ ذَلِكَ، وَرَفْعُهُ إلَى الْإِمَامِ، وَهَذَا بِيَقِينٍ تَعْرِيضٌ، وَإِلَّا فَأَيُّ شَيْءٍ يُنْكِرُونَ مِنْ ذَلِكَ. وَالْعَجَبُ كُلُّ الْعَجَبِ أَنَّهُمْ يَرَوْنَ الْحَدَّ فِي التَّعْرِيضِ وَهُمْ يُصَرِّحُونَ بِالْقَذْفِ وَلَا يَرَوْنَ فِي ذَلِكَ شَيْئًا، وَذَلِكَ إقَامَتُهُمْ حَدَّ الزِّنَى عَلَى الْحُبْلَى وَمَا ثَبَتَ قَطُّ عَلَيْهَا زِنًا، فَهُمْ يَدَّعُونَ أَنَّهُمْ يُسْقِطُونَ الْحُدُودَ بِالشُّبُهَاتِ وَهَذَانِ مَكَانَانِ أَقَامُوا الْحَدَّ بِالشُّبُهَاتِ فِيهِمَا، وَهُمَا: حَدُّ الْقَذْفِ عَلَى مَنْ عَرَّضَ وَلَمْ يُصَرِّحْ - وَحَدُّ الزِّنَا عَلَى مَنْ حَمَلَتْ وَلَا زَوْجَ لَهَا وَلَا سَيِّدَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

L41699–41700 Abu Muhammad said: It has been established that there is absolutely no ḥadd whatsoever for indirect implication. If the person alluded to states, “I will make him swear he intended to accuse me of unchastity,” he has no right to do so, and no oath is required here at all. This is because he did not actually accuse him of unchastity but merely filed a claim alleging he intended to

قَالَ أَبُو مُحَمَّد: وَصَحَّ أَنْ لَا حَدَّ فِي التَّعْرِيضِ أَصْلًا؟ فَإِنْ قَالَ الْمُعَرَّضُ بِهِ: أُحَلِّفُهُ مَا أَرَادَ قَذْفِي، لَمْ يَكُنْ لَهُ ذَلِكَ، وَلَا يَحْلِفُ هَاهُنَا أَصْلًا، لِأَنَّهُ لَمْ يَقْذِفْهُ، وَإِنَّمَا ادَّعَى عَلَيْهِ أَنَّهُ أَرَادَ قَذْفَهُ فَقَطْ، وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ كُلِّهَا فِي أَنَّ مَنْ ادَّعَى عَلَى

[31] **Qur’an references (L41694):** Qur’an 2:104 (Al-Baqarah); Qur’an 2:235 (Al-Baqarah).

do so. There is no disagreement among the entire Ummah that if someone claims another harbored the intention to accuse of unchastity without acting on it, no oath is required in that case. This rests on the valid consensus that whoever harbors such an intention without uttering it incurs no ḥadd whatsoever—even if a person admits to such an intention upon himself. The one making the implication neither uttered the accusation of unchastity nor is there any basis for ḥadd in this matter. As for one who claims another explicitly accused him of unchastity while the accused denies it, no oath is required here either, because this ruling falls under the divinely ordained ḥudūd and rights of Allah—not the rights of individuals. The accused may instead swear by Allah that he neither harmed nor insulted you, thereby being acquitted. Success comes only from Allah, the Most High.

آخَرَ أَنَّهُ أَضْمَرَ قَذْفَهُ وَلَمْ يَقْذِفْهُ، فَإِنَّهُ لَا تَحْلِيفَ فِي ذَلِكَ، لِصِحَّةِ الْإِجْمَاعِ عَلَى أَنَّ مَنْ أَضْمَرَ قَذْفًا وَلَمْ يَنْطِقْ بِهِ، فَإِنَّهُ لَا حَدَّ فِي ذَلِكَ أَصْلًا، حَتَّى أَقَرَّ بِذَلِكَ امْرُؤٌ عَلَى نَفْسِهِ - وَهَذَا الْمُعَرِّضُ فَلَمْ يَنْطِقْ بِالْقَذْفِ وَلَا شَيْءَ فِي ذَلِكَ أَصْلًا. وَأَمَّا مَنْ ادَّعَى عَلَيْهِ أَنَّهُ صَرَّحَ بِالْقَذْفِ وَهُوَ مُنْكِرٌ فَلَا تَحْلِيفَ فِي ذَلِكَ أَيْضًا؛ لِأَنَّ الْحَدَّ فِي ذَلِكَ مِنْ حُدُودِ اللَّهِ تَعَالَى وَحُقُوقِهِ لَا مِنْ حُقُوقِ الْآدَمِيِّينَ، فَإِنَّمَا يَحْلِفُ بِاللَّهِ مَا آذَيْتُك، وَلَا شَتَمْتُك وَيَبْرَأُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: Falsely accusing of adultery a person against whom adultery has been proven, whether the hadd was imposed upon him or not.

[مَسْأَلَةٌ قَذَفَ إنْسَانًا قَدْ ثَبَتَ عَلَيْهِ الزِّنَا وَحُدَّ فِيهِ أَوْ لَمْ يُحَدَّ]

2237 - Issue: Concerning one who accuses of adultery a person upon whom adultery has been established, whether subjected to the hadd punishment or not. Abū Muḥammad said: Narrations exist regarding this matter, such as: Ḥammām reported to us; Ibn Mufarrij reported to us; Ibn al-Aʿrābī reported to us; al-Dabarī reported to us; ʿAbd al-Razzāq reported from Maʿmar from al-Zuhrī from Ibn al-Musayyab, who said: If a man is flogged for a hadd punishment, then someone reviles him for it after it is observed that he has abandoned the offense, the reviler is subjected to disciplinary punishment. Through the same chain to ʿAbd al-Razzāq: Ibn Jurayj reported from ʿAṭāʾ, who said: Whoever publicizes an act of adultery incurs disciplinary punishment, even if truthful. From al-Zuhrī: He said: If a man incurred a hadd punishment for an offense during polytheism, then embraced Islam, and someone reviles him for it in Islam, he is subjected to disciplinary punishment. From Yaḥyā ibn Saʿīd al-Anṣārī: Two men came before ʿUmar ibn ʿAbd al-ʿAzīz. One said: "He is an illegitimate child (born of adultery)." The other lowered his head. ʿUmar asked: "What is this man saying?" He remained silent and confessed. ʿUmar ordered the speaker to be struck on the

٢٢٣٧ - مَسْأَلَةٌ: مَنْ قَذَفَ إنْسَانًا قَدْ ثَبَتَ عَلَيْهِ الزِّنَا وَحُدَّ فِيهِ أَوْ لَمْ يُحَدَّ قَالَ أَبُو مُحَمَّدٍ: قَدْ جَاءَتْ فِي هَذَا آثَارٌ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ ابْنِ الْمُسَيِّبِ قَالَ: إذَا جُلِدَ الرَّجُلُ فِي حَدٍّ ثُمَّ أُونِسَ مِنْهُ تَرْكُهُ فَعَيَّرَهُ بِهِ إنْسَانٌ نُكِّلَ بِهِ. وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: عَلَى مَنْ أَشَاعَ الْفَاحِشَةَ نَكْلٌ، وَإِنْ صَدَقَ. وَعَنْ الزُّهْرِيِّ: قَالَ: لَوْ أَنَّ رَجُلًا أَصَابَ حَدًّا فِي الشِّرْكِ ثُمَّ أَسْلَمَ فَعَيَّرَهُ بِهِ رَجُلٌ فِي الْإِسْلَامِ نَكَلَ. وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّهُ قَالَ: دَخَلَ رَجُلَانِ عَلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَقَالَ أَحَدُهُمَا: إنَّهُ وَلَدُ زِنًا؟ فَطَأْطَأَ الْآخَرُ رَأْسَهُ، فَقَالَ عُمَرُ: مَا يَقُولُ هَذَا؟ فَسَكَتَ، وَاعْتَرَفَ، فَأَمَرَ عُمَرُ بِالْقَائِلِ ذَلِكَ لَهُ فَلَمْ يَزَلْ يُجَأُ قَفَاهُ حَتَّى خَرَجَ مِنْ الدَّارِ. وَعَنْ ابْنِ شِهَابٍ أَنَّهُ قَالَ: لَا نَرَى عَلَى

back of his neck until he was driven out of the residence. From Ibn Shihāb: He said: We hold that the hadd punishment of flogging does not apply to one who accuses a man [of adultery] after the accuser swears by Allāh: "I intended by my statement nothing other than the offense for which he was subjected to the hadd punishment."

مَنْ قَذَفَ رَجُلًا جُلِدَ الْحَدَّ بَعْدَ أَنْ يَحْلِفَ الْقَاذِفُ بِاللَّهِ مَا أَرَدْت حِينَ قُلْت لَهُ مَا قُلْت إلَّا الْأَمْرَ الَّذِي جُلِدَ فِيهِ الْحَدَّ.

L41703–41706 Ibn Shihab said regarding a man who called another "O son of the fornicator" — when the latter's grandmother had committed fornication — that he must swear by Allah, besides whom there is no god but He, that he intended none but his grandmother who had perpetrated it, and then there would be no liability upon him. From Sufyan al-Thawri that he said regarding a man who was flogged with the prescribed punishment (ḥadd) and then someone said to him, "O fornicator," that he should be subjected to the durrah and disciplined. Among our scholars, some say: When the prescribed punishment is executed, the slanderer is flogged. Is Ibn Abī Laylā among those who advocated flogging him? Abū Muḥammad said: Our position — and with Allah, the Exalted, lies success — is that Allah, the Exalted, said, "Indeed, those who desire that immorality should spread among the believers will have a painful punishment" [24:19]. We previously mentioned in our book the statement of Allah's Messenger — peace and blessings be upon him — regarding a man whose female slave committed fornication: "Let him flog her but not reproach her persistently." This confirms that persistent reproach against a fornicator is forbidden, that spreading immorality is forbidden, and that harming a Muslim is impermissible — without disagreement — except in ways Allah, the Exalted, has sanctioned. Thus, it is established that whoever insults a Muslim by referencing fornication, theft, or disobedience they committed — intending harm rather than admonishing them through gracious admonition privately — must be disciplined, for this is an evil act. Allah's Messenger — peace and blessings be upon him — said, "Whoever among you sees evil, let him change it with his hand if he is able; if not, then with his tongue." This ḥadīth elucidates our earlier text, as it permits changing evils by hand or tongue. Whoever rebukes another for their actions in the course of enjoining good and forbidding evil is acting rightly, but whoever admonishes contrary to this approach has committed an evil act —

وَقَالَ ابْنُ شِهَابٍ فِي رَجُلٍ قَالَ لِآخَرَ: يَا ابْنَ الزَّانِيَةِ - وَكَانَتْ جَدَّتُهُ قَدْ زَنَتْ - أَنَّهُ يَحْلِفُ بِاَللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ أَنَّهُ لَمْ يُرِدْ إلَّا جَدَّتَهُ الَّتِي أَحْدَثَتْ ثُمَّ لَا يَكُونُ عَلَيْهِ شَيْءٌ. وَعَنْ سُفْيَانَ الثَّوْرِيِّ أَنَّهُ قَالَ فِي الرَّجُلِ يُجْلَدُ الْحَدَّ فَيَقُولُ لَهُ رَجُلٌ: يَا زَانِي، قَالَ: يُسْتَجَبْ بِالدُّرَّةِ وَيُعَزَّرُ - وَمِنَّا مَنْ يَقُولُ: إذَا أُقِيمَ الْحَدُّ جُلِدَ مَنْ قَذَفَ - وَمِمَّنْ قَالَ بِجَلْدِهِ: ابْنُ أَبِي لَيْلَى؟ قَالَ أَبُو مُحَمَّدٍ: وَالَّذِي نَقُولُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - إنَّ اللَّهَ تَعَالَى قَالَ {إنَّ الَّذِينَ يُحِبُّونَ أَنْ تَشِيعَ الْفَاحِشَةُ فِي الَّذِينَ آمَنُوا لَهُمْ عَذَابٌ أَلِيمٌ} [النور: ١٩] وَقَدْ ذَكَرْنَا فِيمَا سَلَفَ مِنْ كِتَابِنَا قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الَّذِي تَزْنِي أَمَتُهُ «فَلْيَجْلِدْهَا وَلَا يُثَرِّبْ» فَصَحَّ أَنَّ التَّثْرِيبَ عَلَى الزَّانِي حَرَامٌ، وَأَنَّ إشَاعَةَ الْفَاحِشَةِ حَرَامٌ، وَلَا يَحِلُّ - بِلَا خِلَافٍ - أَذَى الْمُسْلِمِ بِغَيْرِ مَا أَمَرَ اللَّهُ تَعَالَى أَنْ يُؤْذَى بِهِ. فَصَحَّ مِنْ هَذَا أَنَّ مَنْ سَبَّ مُسْلِمًا بِزِنًا كَانَ مِنْهُ، أَوْ بِسَرِقَةٍ كَانَتْ مِنْهُ، أَوْ مَعْصِيَةٍ كَانَتْ مِنْهُ، وَكَانَ ذَلِكَ عَلَى سَبِيلِ الْأَذَى - لَا عَلَى سَبِيلِ الْوَعْظِ وَالتَّذْكِيرِ الْجَمِيلِ سِرًّا: لَزِمَهُ الْأَدَبُ؛ لِأَنَّهُ مُنْكَرٌ. وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ» فَهَذَا الْحَدِيثُ بَيَانُ مَا قَدَّمْنَا نَصًّا؛ لِأَنَّ فِيهِ أَبَاحَ تَغْيِيرَ الْمُنْكَرَاتِ بِالْيَدِ وَاللِّسَانِ، فَمَنْ بَكَّتَ آخَرَ بِمَا فَعَلَ عَلَى سَبِيلِ الْأَمْرِ بِالْمَعْرُوفِ وَالنَّهْيِ عَنْ الْمُنْكَرِ فَهُوَ مُحْسِنٌ، وَمَنْ ذَكَّرَهُ عَلَى غَيْرِ هَذَا الْوَجْهِ فَقَدْ أَتَى مُنْكَرًا - فَفَرْضٌ عَلَى النَّاسِ تَغْيِيرُهُ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إنَّ

obligating people to rectify it, for Allah's Messenger — peace and blessings be upon him — said, "Your blood, wealth, honor, and bodies are inviolable." Thus, every person's honor is inviolable except where a textual proof or consensus permits. The honor of the disobedient and others is equal — and with Allah, the Exalted, lies success. Abū Muḥammad said: If someone accuses another of a type of fornication differing from what was proven against them and clarifies... That being established, the *ḥadd* punishment is incumbent upon the slanderer—whether the accused of *zinā* was subjected to the *ḥadd* for the act proven against him or not—because he is *muḥṣan* (legally protected) from every *zinā* not proven against him. We have stated that "*iḥṣān*" denotes prevention; thus, whoever is prevented by something or refrains from it is *muḥṣan* from it. Since he is *muḥṣan*, the *ḥadd* punishment is obligatory upon him by the explicit decree of the Quran.[32]

L41707 **A legal issue concerning someone who repudiates paternity.**

L41708 2238 - Issue: Concerning one who denies paternity. Ali said: From Muhammad ibn Sa'id ibn Nabat, from Abdullah ibn Nasr, from Qasim ibn Asbagh, from Ibn Waddah, from Musa ibn Mu'awiyah, from Waki', from Al-Mas'udi, from Al-Qasim ibn Abd al-Rahman: That Abu Bakr al-Siddiq — may Allah be pleased with him — was brought a man who disowned his father. Abu Bakr said: "Strike the head, for Satan is in the head." Abu Muhammad said: Those who assert the obligation of imposing the *hadd* punishment for denying lineage or paternity must apply the full punishment for *qadhf* upon whoever denies his father or disavows his child. Otherwise, they contradict themselves. As for us, we have previously clarified that in such cases only *ta'zir* applies, with no *hadd* in this matter — and by Allah, the Exalted, is success.

L41709 **A legal case concerning one who says to another, "You are the son of so-and-so," ascribing his lineage to his uncle or another person.**

دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» . فَصَحَّ أَنَّ عِرْضَ كُلِّ أَحَدٍ حَرَامٌ إِلَّا حَيْثُ أَبَاحَهُ النَّصُّ أَوْ الْإِجْمَاعُ، وَسَوَاءٌ عِرْضُ الْعَاصِي وَغَيْرِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ قَالَ أَبُو مُحَمَّدٍ: فَإِنْ قَذَفَ إنْسَانٌ إنْسَانًا قَدْ زَنَى بِزِنًا غَيْرِ الَّذِي ثَبَتَ عَلَيْهِ، وَبَيَّنَ ذَلِكَ، وَصَرَّحَ، فَعَلَى الْقَاذِفِ الْحَدُّ - سَوَاءٌ حُدَّ الْمَقْذُوفُ فِي الزِّنَى الَّذِي صَحَّ عَلَيْهِ أَوْ لَمْ يُحَدَّ -؛ لِأَنَّهُ مُحْصَنٌ عَنْ كُلِّ زِنًا لَمْ يَثْبُتْ عَلَيْهِ، وَقَدْ قُلْنَا إنَّ " الْإِحْصَانَ " هُوَ الْمَنْعُ فَمَنْ مَنَعَ بِشَيْءٍ أَوْ امْتَنَعَ مِنْهُ فَهُوَ مُحْصَنٌ عَنْهُ، فَإِذْ هُوَ مُحْصَنٌ فَعَلَيْهِ الْحَدُّ بِنَصِّ الْقُرْآنِ.

[مَسْأَلَة فِيمَنْ انْتَفَى مِنْ أَبِيهِ]

٢٢٣٨ - مَسْأَلَةٌ: فِيمَنْ انْتَفَى مِنْ أَبِيهِ؟ قَالَ عَلِيٌّ: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا الْمَسْعُودِيُّ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ: أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ - رَضِيَ اللَّهُ عَنْهُ - أُتِيَ بِرَجُلٍ انْتَفَى عَنْ أَبِيهِ فَقَالَ أَبُو بَكْرٍ: اضْرِبْ الرَّأْسَ، فَإِنَّ الشَّيْطَانَ فِي الرَّأْسِ قَالَ أَبُو مُحَمَّدٍ: يَلْزَمُ الْقَائِلِينَ بِإِيجَابِ الْحَدِّ فِي النَّفْيِ عَنْ الْأَبِ، أَوْ عَنْ النَّسَبِ: أَنْ يُقِيمَ حَدَّ الْقَذْفِ كَامِلًا عَلَى مَنْ انْتَفَى مِنْ أَبِيهِ، أَوْ عَلَى مَنْ نَفَى وَلَدَهُ مِنْ نَفْسِهِ، وَإِلَّا فَقَدْ تَنَاقَضُوا - وَأَمَّا نَحْنُ، فَقَدْ بَيَّنَّا قَبْلُ أَنَّ هَاهُنَا التَّعْزِيرُ فَقَطْ، وَلَا حَدَّ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة فِيمَنْ قَالَ لِآخَرَ أَنْتَ ابْنُ فُلَانٍ وَنَسَبَهُ إلَى عَمِّهِ أَوْ غَيْرِهِ]

[32] **Qur'an references (L41704):** Qur'an 24:19 (An-Nur).

L41710–41712

2239 - Issue: If someone says to another, “You are the son of so-and-so” - attributing him to his paternal uncle, maternal uncle, his mother’s husband, or a stranger - Abu Muhammad said: Some people stated that the ḥadd punishment applies in all these cases. This is erroneous. The ruling here is that when such attribution follows the path of truth and goodness, it constitutes a virtuous deed and commendable speech. However, if intended as insult, harm, or insinuation, only discretionary punishment applies, with no ḥadd penalty. The proof for this is Allah’s words recounting Jacob’s sons (peace be upon him) when they said: *“We worship your God and the God of your fathers Abraham, Ishmael, and Isaac”* [Al-Baqarah: 133]. Here they designated his uncle Ishmael (peace be upon him) as his father, yet neither Allah Almighty nor Jacob (peace be upon him), a prophet of Allah, objected to this. Allah also says: *“The faith of your father Abraham”* [Al-Hajj: 78], though we know with certainty that there are people among the Muslims who have no genealogical tie to Abraham (peace be upon him). Regarding attribution to a mother’s husband, Ahmad ibn Muhammad ibn Abd Allah al-Ṭalamankī said: Narrated from Ibn Mufarrij, who narrated from... Muhammad ibn Ayyūb al-Ṣamūt narrated to us: Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār narrated to us: Ibrāhīm ibn Saʿīd al-Jawharī narrated to us: Abū Usāmah narrated to us: Muḥammad ibn ʿAmr narrated from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf: “Abū Ṭalḥah prepared a meal for the Prophet—peace and blessings of Allah be upon him—and sent Anas ibn Mālik. He came until he entered the mosque where the Messenger of Allah—peace and blessings of Allah be upon him—was among his companions, and said: ’Has your father invited us?’ He replied: ’Yes.’ The Prophet said: ’Rise.’” Anas said: “I came to Abū Ṭalḥah,” and he narrated the ḥadīth. Ḥumām narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrābī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq narrated from Ibn Jurayj from Hishām ibn ʿUrwah ibn al-Zubayr from his father, who said: “Umm ʿUmayr bint Saʿd was married to al-Julās ibn Suwayd. During the expedition of Tabūk, al-Julās ibn Suwayd said: ’If what Muḥammad says is true, then we are worse than donkeys.’ ʿUmayr heard this and said: ’By Allah, I fear that if I do not report this to the Prophet—peace and blessings of Allah be upon him—revelation will descend concerning him, and I will be implicated in his sin. What an excellent father he is to

٢٢٣٩ - مَسْأَلَةٌ: مَنْ قَالَ لِآخَرَ: أَنْتَ ابْنُ فُلَانٍ - وَنَسَبَهُ إلَى عَمِّهِ، أَوْ خَالِهِ، أَوْ زَوْجِ أُمِّهِ، أَوْ أَجْنَبِيٍّ قَالَ أَبُو مُحَمَّدٍ: قَالَ قَوْمٌ: فِي كُلِّ هَذَا الْحَدُّ - وَهُوَ خَطَأٌ، وَلَكِنَّ الْحُكْمَ فِي هَذَا: أَنَّ مَا كَانَ مِنْ ذَلِكَ عَلَى سَبِيلِ الْحَقِّ وَالْخَيْرِ، فَهُوَ فِعْلٌ حَسَنٌ وَقَوْلٌ حَسَنٌ، وَأَمَّا مَا كَانَ مِنْ ذَلِكَ مُشَاتَمَةً، أَوْ أَذًى، أَوْ تَعْرِيضًا، فَفِيهِ التَّعْزِيرُ فَقَطْ، وَلَا حَدَّ فِي ذَلِكَ، بُرْهَانُ مَا ذَكَرْنَا: قَوْلُ اللَّهِ تَعَالَى حَاكِيًا عَنْ وَلَدِ يَعْقُوبَ - عَلَيْهِ السَّلَامُ - إذْ قَالُوا {نَعْبُدُ إِلَهَكَ وَإِلَهَ آبَائِكَ إِبْرَاهِيمَ وَإِسْمَاعِيلَ وَإِسْحَاقَ} [البقرة: ١٣٣] فَجَعَلُوا عَمَّهُ إسْمَاعِيلَ - عَلَيْهِ السَّلَامُ - أَبًا لَهُ، وَلَمْ يُنْكِرْ اللَّهُ تَعَالَى ذَلِكَ، وَلَا يَعْقُوبُ - عَلَيْهِ السَّلَامُ - وَهُوَ نَبِيُّ اللَّهِ تَعَالَى. وَقَالَ تَعَالَى {مِلَّةَ أَبِيكُمْ إِبْرَاهِيمَ} [الحج: ٧٨] وَقَدْ عَلِمْنَا يَقِينًا أَنَّ فِي الْمُسْلِمِينَ خَلَائِقَ لَيْسَ لِإِبْرَاهِيمَ - عَلَيْهِ السَّلَامُ - فِي وِلَادَتِهِمْ نَسَبٌ. وَأَمَّا زَوْجُ الْأُمِّ - فَإِنَّ أَحْمَدَ بْنَ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الطَّلَمَنْكِيَّ قَالَ: نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ نا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا إبْرَاهِيمُ بْنُ سَعِيدٍ الْجَوْهَرِيُّ نا أَبُو أُسَامَةَ نا مُحَمَّدُ بْنُ عَمْرٍو عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ «أَنَّ أَبَا طَلْحَةَ صَنَعَ طَعَامًا لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَرْسَلَ أَنَسَ بْنَ مَالِكٍ فَجَاءَ حَتَّى دَخَلَ الْمَسْجِدَ - وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَصْحَابِهِ - فَقَالَ دَعَانَا أَبُوكَ؟ فَقَالَ: نَعَمْ، قَالَ: قُومُوا» قَالَ أَنَسٌ: فَأَتَيْت أَبَا طَلْحَةَ، فَذَكَرَ الْحَدِيثَ. حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ هِشَامِ بْنِ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ قَالَ «كَانَتْ أُمُّ عُمَيْرِ بِنْتُ سَعْدٍ عِنْدَ الْجُلَاسِ بْنِ سُوَيْدٍ فَقَالَ الْجُلَاسُ بْنُ سُوَيْدٍ فِي غَزْوَةِ تَبُوكَ: إنْ كَانَ مَا يَقُولُ مُحَمَّدٌ حَقًّا لَنَحْنُ أَشَرُّ مِنْ الْحَمِيرِ، فَسَمِعَهَا عُمَيْرٌ فَقَالَ: وَاَللَّهِ إنِّي لَأَخْشَى إنْ لَمْ أَرْفَعْهَا إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَنْزِلَ الْقُرْآنُ فِيهِ، وَأَنْ

me!' He informed the Prophet—peace and blessings of Allah be upon him—who summoned al-Julās and confronted him. They exchanged oaths, and revelation descended upon the Prophet—peace be upon him—and everyone fell silent, motionless (as was their practice during revelation) until it ceased. The Prophet—peace and blessings of Allah be upon him—then recited: {They swear by Allah that they did not speak, yet they certainly uttered words of disbelief} [9:74] up to His saying: {But if they repent, it will be better for them} [9:74]. Al-Julās said: 'Seek acceptance of my repentance, O Messenger of Allah! I repent to Allah and testify to His truth.'" 'Urwah said: "'Umayr remained esteemed thereafter until he died." Abū Muḥammad said: "Here, the Messenger of Allah—peace and blessings of Allah be upon him—refers to a stepfather as a father and attributes the child of one's wife to him, calling him 'your father.' This is Anas and 'Umayr ibn Sa'd—people of linguistic precision and piety—affirming this. Abū Muḥammad said: 'This is the opinion of Abū Ḥanīfah, Abū Sulaymān, our companions, and the position we adopt.'"[33]

L41713 **A legal issue concerning one who says to another: O sodomite or O effeminate one.**

L41714 2240. Issue: Regarding one who says to another: "O sodomite?" or "O effeminate man (mukhannath)." Ali said: Muhammad ibn Sa'id ibn Nabat reported to us from 'Abdullah ibn Nasr reported to us from Qasim ibn Asbagh reported to us from Ibn Waddah reported to us from Musa ibn Mu'awiyah reported to us from Waki' reported to us from Abu Hilal from Qatadah that a man said to Abu al-Aswad al-Du'ali: "O sodomite?" He replied: "May Allah have mercy on Lot." Through the same chain up to Abu Hilal, then from 'Ikrimah regarding a man who said to another: "O sodomite?" 'Ikrimah said: "He is not subject to a hadd punishment."

L41715–41718 From Al-Zuhri and Qatadah, both of whom said regarding a man who ad-

[33] **Qur'an references (L41710):** Qur'an 2:133 (Al-Baqarah); Qur'an 22:78 (Al-Hajj); Qur'an 9:74 (At-Tawbah).

أَخْلَطَ بِخِطْبَتِهِ، وَلَنِعْمَ الْأَبُ هُوَ لِي، فَأَخْبَرَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَدَعَا النَّبِيُّ - عَلَيْهِ السَّلَامُ - الْجُلَاسَ فَعَرَّفَهُ فَتَحَالَفَا فَجَاءَ الْوَحْيُ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَكَتُوا فَلَمْ يَتَحَرَّكْ أَحَدٌ - كَذَلِكَ كَانُوا يَفْعَلُونَ لَا يَتَحَرَّكُونَ إِذَا نَزَلَ الْوَحْيُ - فَرُفِعَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ {يَحْلِفُونَ بِاللَّهِ مَا قَالُوا وَلَقَدْ قَالُوا كَلِمَةَ الْكُفْرِ} [التوبة: ٧٤] إِلَى قَوْلِهِ {فَإِنْ يَتُوبُوا يَكُ خَيْرًا لَهُمْ} [التوبة: ٧٤] فَقَالَ الْجُلَاسُ: اسْتَتِبْ لِي رَبِّي يَا رَسُولَ اللَّهِ، فَإِنِّي أَتُوبُ إِلَى اللَّهِ، وَأَشْهَدُ لَهُ بِصِدْقٍ، قَالَ عُرْوَةُ: فَمَا زَالَ عُمَيْرٌ مِنْهَا بِعَلْيَاءَ حَتَّى مَاتَ» قَالَ أَبُو مُحَمَّدٍ: فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: " عَنْ الرَّبِيبِ أَبٌ، وَيَنْسُبُ إِلَى الرَّجُلِ ابْنَ امْرَأَتِهِ " فَيَقُولُ لَهُ: أَبُوك - وَهَذَا أَنَسٌ، وَعُمَيْرُ بْنُ سَعْدٍ مِنْ أَهْلِ اللُّغَةِ وَالدِّيَانَةِ يَقُولَانِ بِذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ - وَأَصْحَابِنَا - وَبِهِ نَأْخُذُ.

[مَسْأَلَةٌ فِيمَنْ قَالَ لِآخَرَ يَا لُوطِيُّ أَوْ يَا مُخَنَّثُ]

٢٢٤٠ - مَسْأَلَةٌ: فِيمَنْ قَالَ لِآخَرَ: يَا لُوطِيُّ، أَوْ يَا مُخَنَّثُ قَالَ عَلِيٌّ: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا أَبُو هِلَالٍ عَنْ قَتَادَةَ أَنَّ رَجُلًا قَالَ لِأَبِي الْأَسْوَدِ الدُّؤَلِيِّ: يَا لُوطِيُّ؟ قَالَ يَرْحَمُ اللَّهُ لُوطًا. وَبِهِ - إِلَى أَبِي هِلَالٍ عَنْ عِكْرِمَةَ فِي رَجُلٍ قَالَ لِآخَرَ: يَا لُوطِيُّ؟ قَالَ عِكْرِمَةُ: لَيْسَ عَلَيْهِ حَدٌّ.

وَعَنْ الزُّهْرِيِّ، وَقَتَادَةَ أَنَّهُمَا قَالَا جَمِيعًا فِي رَجُلٍ قَالَ لِرَجُلٍ: يَا لُوطِيُّ؟ أَنَّهُ لَا يُحَدُّ - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُنَا. وَقَالَ آخَرُونَ: لَا حَدَّ فِي ذَلِكَ إِلَّا أَنْ

يُبَيِّنَ: كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إلَى عَبْدِ الرَّزَّاقِ: أَخْبَرَنِي ابْنُ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ فِي رَجُلٍ قَالَ لِآخَرَ: يَا لُوطِيُّ؟ قَالَ: لَا حَدَّ عَلَيْهِ حَتَّى يَقُولَ: إنَّك لَتَصْنَعُ بِفُلَانٍ، وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ فِي رَجُلٍ قَالَ لِآخَرَ: يَا لُوطِيُّ؟ قَالَ: نِيَّتُهُ يُسْأَلُ عَمَّا أَرَادَ بِذَلِكَ. وَقَالَتْ طَائِفَةٌ: عَلَيْهِ الْحَدُّ - كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سَعِيدُ بْنُ حَسَّانَ عَنْ عَبْدِ الْحَمِيدِ بْنِ جُبَيْرِ بْنِ شَيْبَةَ أَنَّ رَجُلًا قَالَ لِرَجُلٍ: يَا لُوطِيُّ؟ فَرُفِعَ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، فَجَعَلَ عُمَرُ يَقُولُ: يَا لُوطِيُّ، يَا مُحَمَّدِيُّ - فَكَأَنَّهُ لَمْ يَرَ عَلَيْهِ الْحَدَّ، وَضَرَبَهُ بِضْعَةَ عَشَرَ سَوْطًا، ثُمَّ أَرْسَلَ إلَيْهِ مِنْ الْغَدِ فَأَكْمَلَ لَهُ الْحَدَّ. وَبِهِ - إلَى وَكِيعٍ نا أَبُو هِلَالٍ عَنْ الْحَسَنِ الْبَصْرِيِّ فِي الرَّجُلِ يَقُولُ لِلرَّجُلِ: يَا لُوطِيُّ؟ قَالَ: عَلَيْهِ الْحَدُّ. وَبِهِ - إلَى وَكِيعٍ عَنْ الْحَسَنِ بْنِ صَالِحِ بْنِ حَيٍّ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ فِي فِعْلِ قَوْمِ لُوطٍ؟ قَالَ: يُجْلَدُ مَنْ فَعَلَهُ وَمَنْ رَمَى بِهِ وَبِهِ - إلَى وَكِيعٍ عَنْ إسْرَائِيلَ عَنْ جَابِرٍ عَنْ عَامِرٍ الشَّعْبِيِّ فِي الرَّجُلِ يَقُولُ لِلرَّجُلِ: يَا لُوطِيُّ؟ قَالَ: يُجْلَدُ؟ قَالَ أَبُو مُحَمَّدٍ: قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ: يُجْلَدُ، لَيْسَ فِيهِ بَيَانُ أَنَّهُمَا أَرَادَا الْحَدَّ، وَقَدْ يُمْكِنُ أَنْ يُرِيدَا جَلْدَ تَعْزِيرٍ. وَبِإِيجَابِ الْحَدِّ عَلَى مَنْ رَمَى بِهِ يَقُولُ مَالِكٌ، وَالشَّافِعِيُّ. وَهُوَ الْخَارِجُ عَلَى قَوْلِ أَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ؟ قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ فَوَجَدْنَا هَذِهِ الْمَسْأَلَةَ - يَعْنِي مَنْ رَمَى آخَرَ: بِأَنَّهُ يَنْكِحُ الرِّجَالَ، أَوْ بِأَنَّهُ يَنْكِحُهُ الرِّجَالُ - إنَّمَا هِيَ مُعَلَّقَةٌ بِالْوَاجِبِ فِي قَوْمِ لُوطٍ، فَإِنْ كَانَ زَنَى فَالْوَاجِبُ فِي الرَّمْيِ بِهِ حَدُّ الْقَذْفِ بِالزِّنَى، وَإِنْ كَانَ لَيْسَ

dresses another as “O sodomite (Lūṭī)!” that he is not liable to the *ḥadd* punishment—this being the view of Abū Ḥanīfah, Abū Sulaymān, and our companions. Others held that no *ḥadd* applies unless the accuser specifies the act, as transmitted through the cited chain to ʿAbd al-Razzāq: Ibn Jurayj reported to me, stating, “I asked ʿAṭāʾ about a man who said to another, ’O sodomite (Lūṭī)!’ He replied, ’No *ḥadd* penalty is incurred unless he explicitly states, ”You commit sodomy with so-and-so.“” Through the same chain to ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī: concerning a man who said to another, “O sodomite (Lūṭī)!” he ruled, “His intention must be scrutinized regarding the meaning of his words.” Another group affirmed the applicability of the *ḥadd*—as narrated by Muḥammad ibn Saʿīd ibn Nabāt, from ʿAbdullāh ibn Naṣr, from Qāsim ibn Aṣbagh, from Ibn Waḍḍāḥ, from Mūsā ibn Muʿāwiyah, from Wakīʿ, from Saʿīd ibn Ḥassān, from ʿAbd al-Ḥamīd ibn Jubayr ibn Shaybah: A man said to another, “O sodomite (Lūṭī)!” The case was brought before ʿUmar ibn ʿAbd al-ʿAzīz, who remarked, “O sodomite (Lūṭī)! O ‘Muḥammadan’!”—as if he did not consider the *ḥadd* applicable; yet he ordered the man to receive a dozen or so lashes. The following day, he summoned him and imposed the full *ḥadd* punishment. Through this chain to Wakīʿ, from Abū Hilāl, from al-Ḥasan al-Baṣrī: regarding a man who says to another, “O sodomite (Lūṭī)!” he ruled, “The *ḥadd* penalty applies.” Through this chain to Wakīʿ, from al-Ḥasan ibn Ṣāliḥ ibn Ḥayy, from Manṣūr, from Ibrāhīm al-Nakhaʿī: concerning the act of Lot’s people, he stated, “The one who commits it and the one who accuses another of it are to be flogged.” Through this chain to Wakīʿ, from Isrāʾīl, from Jābir, from ʿĀmir al-Shaʿbī: regarding a man who says to another, “O sodomite (Lūṭī)!” he ruled, “He is to be flogged.” Abū Muḥammad said: The rulings of Ibrāhīm al-Nakhaʿī and al-Shaʿbī—“He is to be flogged”—do not specify whether they intended the *ḥadd* penalty, as it is plausible they referred to disciplinary flogging (*taʿzīr*). Mālik and al-Shāfiʿī maintain that the *ḥadd* is obligatory for one who levels such an accusation, diverging from the position of Abū Yūsuf and Muḥammad ibn al-Ḥasan. Abū Muḥammad said: Given their disagreement, it became necessary to examine the issue. We determined that this matter—accusing someone of engaging in or being subjected to sodomy—hinges on

زَنَى فَلَا يَجِبُ فِي الرَّمْيِ بِهِ حَدُّ الْقَذْفِ بِالزِّنَا - وَسَنَسْتَقْصِي الْكَلَامَ فِي هَذِهِ الْمَسْأَلَةِ - إنْ شَاءَ اللَّهُ تَعَالَى - فِي بَابٍ مُفْرَدٍ لَهُ إثْرَ كَلَامِنَا فِي حَدِّ السَّرِقَةِ، وَحَدِّ الْخَمْرِ - وَلَا حَوْلَ وَلَا قُوَّةَ إلَّا بِاَللَّهِ - وَهُوَ لَيْسَ عِنْدَنَا زِنًا فَلَا حَدَّ فِي الرَّمْيِ بِهِ. وَأَمَّا أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ فَهُوَ عِنْدَهُمَا زِنًا أَوْ مَقِيسٌ عَلَى الزِّنَا فَالْحَدُّ عِنْدَهُمَا فِي الْقَذْفِ بِهِ. وَأَمَّا مَالِكٌ، وَالْأَشْهَرُ مِنْ أَقْوَالِ الشَّافِعِيِّ فَهُوَ عِنْدَهُمْ خَارِجٌ مِنْ حُكْمِ الزِّنَا، لِأَنَّهُمَا يَرَيَانِ فِيهِ الرَّجْمَ - أَحْصَنَ أَوْ لَمْ يُحْصَنْ - فَإِذْ هُوَ عِنْدَهُمْ لَيْسَ زِنًا، وَإِنَّمَا حُكْمُهُ الْمُحَارَبَةُ أَوْ الرِّدَّةُ، لِأَنَّهُ لَا يُرَاعَى فِيهِ إحْصَانٌ مِنْ غَيْرِهِ، فَكَانَ الْوَاجِبُ - عَلَى قَوْلِهِمَا - أَنْ لَا يَكُونَ فِيهِ حَدُّ الزِّنَا - وَهُوَ مِمَّا تَنَاقَضُوا فِيهِ أَفْحَشَ تَنَاقُضٍ، فَلَمْ يَتَّبِعُوا فِيهِ نَصًّا وَلَا قِيَاسًا. فَإِنْ قَالُوا: إنَّ الرَّمْيَ بِذَلِكَ حُرِّمَ؟ قُلْنَا: نَعَمْ، وَإِثْمٌ، وَلَكِنْ لَيْسَ كُلُّ حَرَامٍ، وَإِثْمٍ: تَجِبُ فِيهِ الْحُدُودُ، فَالْغَصْبُ حَرَامٌ وَلَا حَدَّ فِيهِ، وَأَكْلُ الْخِنْزِيرِ حَرَامٌ وَلَا حَدَّ فِيهِ، وَالرَّمْيُ بِالْكُفْرِ حَرَامٌ وَلَا حَدَّ فِيهِ. وَأَمَّا مَنْ قَالَ لِآخَرَ: يَا مُخَنَّثُ فَإِنَّ الْقَاضِي حُمَامَ بْنَ أَحْمَدَ قَالَ: نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ إبْرَاهِيمَ بْنِ مُحَمَّدِ بْنِ أَبِي يَحْيَى عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ أَبِي سُفْيَانَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قَالَ لِرَجُلٍ مِنْ الْأَنْصَارِ: يَا يَهُودِيُّ، فَاضْرِبُوهُ عِشْرِينَ، وَمَنْ قَالَ لِرَجُلٍ: يَا مُخَنَّثُ فَاضْرِبُوهُ عِشْرِينَ» قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا لَيْسَ بِشَيْءٍ، وَذَلِكَ، لِأَنَّهُ مُرْسَلٌ، وَالْمُرْسَلُ لَا تَقُومُ بِهِ حُجَّةٌ. ثُمَّ هُوَ أَيْضًا مِنْ رِوَايَةِ إبْرَاهِيمَ بْنِ أَبِي يَحْيَى - وَهُوَ فِي غَايَةِ السُّقُوطِ. وَلَوْ كَانَ هَذَا صَحِيحًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَأَوْجَبْنَاهُ حَدًّا، وَلَكِنَّهُ لَا يَصِحُّ، فَلَا يَجِبُ الْقَوْلُ بِهِ، وَلَا حَدَّ فِي شَيْءٍ مِمَّا

the legal ruling governing such acts... The people of Lut: if he committed fornication, then the prescribed punishment for slander through accusation of fornication becomes obligatory. If he did not commit fornication, no prescribed punishment for slander applies—and we shall elaborate exhaustively on this matter, God willing, in a dedicated chapter following our discussion on the punishment for theft and the punishment for wine (there is no power nor might except with Allah). Since in our view this act is not classified as fornication, no prescribed punishment applies to accusations thereof. As for Abu Yusuf and Muhammad ibn al-Hasan, they consider it either fornication or analogous to fornication, thus mandating the prescribed punishment for slander in their school. Malik and the predominant opinion in al-Shafi'i's positions regard it as outside the ruling of fornication, since they both impose stoning for it—regardless of the perpetrator's chaste status—thus deeming it not fornication but rather subject to the ruling of banditry or apostasy, as chaste status is not considered in this context. Consequently, according to their view, the prescribed punishment for fornication does not apply—a position marked by severe contradiction, adhering neither to textual evidence nor legal analogy. Should they argue that such accusation is prohibited, we respond: True, it is sinful, but not every prohibited or sinful act incurs prescribed punishments. Usurpation is prohibited yet has no prescribed punishment; eating pork is prohibited yet has no prescribed punishment; accusing someone of disbelief is prohibited yet has no prescribed punishment. Regarding one who says to another, "O effeminate man!"—Judge Humam ibn Ahmad reported: Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabari narrated to us, 'Abd al-Razzaq narrated from Ibrahim ibn Muhammad ibn Abi Yahya from Dawud ibn al-Husayn from Abu Sufyan, who said: The Messenger of Allah (peace be upon him) stated, "Whoever says to a man of the Ansar, 'O Jew!' strike him twenty lashes, and whoever says to a man, 'O effeminate one!' strike him twenty lashes." Abu Muhammad (may Allah have mercy on him) remarked: This narration is invalid, being a disconnected chain (mursal), which cannot serve as legal proof. Moreover, it is transmitted through Ibrahim ibn Abi Yahya—a narrator of severely weak status. Had this been authentically established from the Messenger of Allah (peace be upon him), we would have upheld it as a prescribed punishment. However, since

it lacks authenticity, it is not binding, and no prescribed punishment applies to any of these cases—only discretionary discipline for the harm caused, as it constitutes reprehensible conduct, and rectifying evil is obligatory by the decree of the Messenger of Allah (peace be upon him). Success is attained solely through Allah, the Exalted.

L41719 **A jurisprudential case regarding one who threw an animal at a person.**

L41720 2241. Issue: What is the ruling regarding someone who causes an animal to injure a person?

L41721–41722 Abū Muḥammad—may Allāh have mercy on him—said: ʿAbd Allāh ibn Rabīʿ narrated to us via Ibn Mufarrij via Qāsim ibn Aṣbagh via Ibn Waḍḍāḥ via Sahnūn via Ibn Wahb via Ibn Abī Dhi'b from al-Zuhrī that he said: "Whoever accuses a person of bestiality incurs the ḥadd punishment." Up to Ibn Wahb via Ibn Samʿān from al-Zuhrī, who said: "One accused of that—meaning bestiality—receives eighty lashes." Ḥammām narrated to us via Ibn Mufarrij via Ibn al-Aʿrābī via al-Dabarī via ʿAbd al-Razzāq from Maʿmar from al-Zuhrī, who said: "Whoever slanders a man with bestiality is lashed with the ḥadd punishment for slanderous fabrication." A group held that no ḥadd applies to this—as we reported through ʿAbd al-Razzāq from Sufyān al-Thawrī from Jābir al-Juʿfī, who said: "I asked al-Shaʿbī about a man accused of bestiality or found upon an animal. He replied: 'No ḥadd applies to him.'" ʿAbd Allāh ibn Rabīʿ narrated to us via Ibn Mufarrij via Qāsim ibn Aṣbagh via Ibn Waḍḍāḥ via Sahnūn via Ibn Wahb, who informed me via Yūnus ibn Yazīd from Rabīʿah, who said regarding one accused of bestiality: "He has been slandered with a grave allegation. The accuser merits severe exemplary punishment, contingent on the ruler's judgment in the matter." As for the Ḥanafīs, Mālikīs, Shāfiʿīs, and our Ẓāhirī adherents, they maintain no ḥadd applies to this whatsoever—a contradiction from the Ḥanafīs, Mālikīs, and Shāfiʿīs, as they impose ḥadd for accusations of the act of Lot's people yet reject it for bestiality. All of this is disputed, as we have documented. No textual proof exists mandating ḥadd for such accusations—success is by Allāh the Exalted alone. Abū Muḥammad—may Allāh have mercy on him—

ذَكَرُوا - وَإِنَّمَا هُوَ التَّعْزِيرُ فَقَطْ لِلْأَذَى، لِأَنَّهُ مُنْكَرٌ، وَتَغْيِيرُ الْمُنْكَرِ وَاجِبٌ، لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَة فِيمَنْ رَمَى إنْسَانًا بِبَهِيمَةٍ]

٢٢٤١ - مَسْأَلَةٌ: مَنْ رَمَى إنْسَانًا بِبَهِيمَةٍ؟

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ نا ابْنُ أَبِي ذِئْبٍ عَنْ الزُّهْرِيِّ أَنَّهُ قَالَ: مَنْ رَمَى إنْسَانًا بِبَهِيمَةٍ، فَعَلَيْهِ الْحَدُّ. وَبِهِ - إلَى ابْنِ وَهْبٍ نا ابْنُ سَمْعَانَ عَنْ الزُّهْرِيِّ قَالَ: مَنْ رُمِيَ بِذَلِكَ - يَعْنِي بِبَهِيمَةٍ - جُلِدَ ثَمَانِينَ. حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: مَنْ قَذَفَ رَجُلًا بِبَهِيمَةٍ جُلِدَ حَدَّ الْفِرْيَةِ. وَقَالَتْ طَائِفَةٌ: لَا حَدَّ فِي ذَلِكَ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ الْجُعْفِيِّ قَالَ: سَأَلْت الشَّعْبِيَّ عَنْ رَجُلٍ قُذِفَ بِبَهِيمَةٍ أَوْ وُجِدَ عَلَيْهَا؟ قَالَ: لَيْسَ عَلَيْهِ حَدٌّ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ رَبِيعَةَ أَنَّهُ قَالَ فِيمَنْ يُقْذَفُ بِبَهِيمَةٍ؟ قَالَ: قَدْ قُذِفَ بِقَوْلٍ كَبِيرٍ، وَالْقَائِلُ أَهْلٌ لِلنَّكَالِ الشَّدِيدِ، وَرَأْيِ السُّلْطَانِ فِيهِ. وَأَمَّا الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، وَأَصْحَابُنَا الظَّاهِرِيُّونَ، فَلَا يَرَوْنَ فِي ذَلِكَ حَدًّا أَصْلًا - وَهَذَا تَنَاقُضٌ مِنْ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ فِي ذَلِكَ، إذْ يَرَوْنَ الْحَدَّ عَلَى مَنْ قُذِفَ بِفِعْلِ قَوْمِ لُوطٍ، وَلَا يَرَوْنَ الْحَدَّ عَلَى مَنْ قُذِفَ بِبَهِيمَةٍ - وَكُلُّ ذَلِكَ

said: “They find no ruling from the Companions—may Allāh be pleased with them—obligating ḥadd for accusing one of the act of Lot’s people, while we demonstrate from the Companions’ positions the obligation of ḥadd where they deny it, as we shall detail—Allāh the Exalted willing.”

مُخْتَلَفٌ فِيهِ كَمَا أَوْرَدْنَا. وَكُلُّ ذَلِكَ لَا نَصَّ فِي إِيجَابِ الْحَدِّ فِي الرَّمْيِ بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهُمْ لَا يَجِدُونَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ إِيجَابَ حَدٍّ عَلَى مَنْ رَمَى إنْسَانًا بِفِعْلِ قَوْمِ لُوطٍ، وَنَحْنُ نُوجِدُهُمْ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إيجَابَ حَدٍّ حَيْثُ لَا يُوجِبُونَهُ، كَمَا نَذْكُرُ إنْ شَاءَ اللَّهُ تَعَالَى؛

[مَسْأَلَة فِيمَنْ فَضَّلَ عَلَى أَبِي بَكْرٍ الصِّدِّيقِ أَوْ افْتَرَى عَلَى الْقُرْآنِ]

L41723 **A legal issue concerning one who prefers another over Abu Bakr the Truthful or ascribes falsehood to the Quran.**

L41724–41728 2242 – An issue concerning one who prefers [someone] over Abu Bakr al-Siddiq or fabricates lies against the Quran? As narrated to us by Ahmad ibn ʿUmar ibn Anas al-ʿUdhri, via ʿAbd Allah ibn al-Husayn ibn ʿIqal, via Ibrahim ibn Muhammad al-Dinawari, via Muhammad ibn Ahmad ibn al-Jahm, via Abu Qilabah, via Muhammad ibn Bishar (Bindar), via Muhammad ibn Jaʿfar (Ghundar), via Shuʿbah from Husayn ibn ʿAbd al-Rahman from Ibn Abi Layla. That al-Jarūd ibn al-‘Alā’ al-‘Abdī said: “Is Abū Bakr better than ‘Umar?” A man from the descendants of Ḥājib ibn ‘Uṭārid said: “‘Umar is better than Abū Bakr.” When this reached ‘Umar, he struck the Ḥājibī with a whip until his leg was split open and said: “You said: ‘Umar is better than Abū Bakr.’ Verily, Abū Bakr was the companion of Allah’s Messenger—peace and blessings of Allah be upon him—and was the most virtuous of people in such-and-such matters. Whoever says otherwise is liable to the ḥadd punishment for slanderers.” Abū Muḥammad—may Allah have mercy on him—said: “This is as found in al-‘Udhri’s book: ‘from the descendants of Ḥājib ibn ‘Uṭārid’—which is erroneous. The correct version is: from the descendants of ‘Uṭārid ibn Ḥājib ibn Zurārah.” ‘Alī said: “In this report, ‘Umar only stated that Abū Bakr was the most virtuous of people in such-and-such matters—things he mentioned—not in absolute terms. A person may be superior in one matter while another surpasses him in others. For example, Bilāl was tortured for Allah’s sake in ways Abū Bakr was not, and he fought strenuously in ways Abū Bakr did not, yet Abū Bakr is generally better than him—alongside many other matters.”

٢٢٤٢ - مَسْأَلَةٌ: فِيمَنْ فَضَّلَ عَلَى أَبِي بَكْرٍ الصِّدِّيقِ، أَوْ افْتَرَى عَلَى الْقُرْآنِ؟ كَمَا نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ نا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ نا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ نا أَبُو قِلَابَةَ نا مُحَمَّدُ بْنُ بَشَّارٍ - بُنْدَارٌ - نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ - نا شُعْبَةُ عَنْ حُصَيْنِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ ابْنِ أَبِي لَيْلَى: أَنَّ الْجَارُودَ بْنَ الْعَلَاءِ الْعَبْدِيَّ قَالَ: أَبُو بَكْرٍ خَيْرٌ مِنْ عُمَرَ؟ فَقَالَ رَجُلٌ مِنْ وَلَدِ حَاجِبِ بْنِ عُطَارِدَ: عُمَرُ خَيْرٌ مِنْ أَبِي بَكْرٍ: فَبَلَغَ عُمَرَ، فَضَرَبَ بِالدِّرَّةِ الْحَاجِبِيَّ حَتَّى شَغَرَ بِرِجْلِهِ؟ وَقَالَ: قُلْتَ: عُمَرُ خَيْرٌ مِنْ أَبِي بَكْرٍ، إنَّ أَبَا بَكْرٍ صَاحِبُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَانَ أَخْيَرَ النَّاسِ فِي كَذَا وَكَذَا - مَنْ قَالَ غَيْرَ ذَلِكَ وَجَبَ عَلَيْهِ حَدُّ الْمُفْتَرِي قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَكَذَا فِي كِتَابِ الْعُذْرِيِّ: مِنْ وَلَدِ حَاجِبِ بْنِ عُطَارِدَ - وَهُوَ خَطَأٌ - وَالصَّوَابُ: مِنْ وَلَدِ عُطَارِدَ بْنِ حَاجِبِ بْنِ زُرَارَةَ قَالَ عَلِيٌّ: إنَّمَا أَخْبَرَ عُمَرُ فِي هَذَا الْخَبَرِ: أَنَّ أَبَا بَكْرٍ أَخْيَرُ النَّاسِ فِي كَذَا وَكَذَا - أَشْيَاءُ ذَكَرَهَا - لَا عَلَى الْعُمُومِ، وَقَدْ يَكُونُ الْمَرْءُ خَيْرًا فِي شَيْءٍ مَا مِنْ آخَرَ خَيْرٌ مِنْهُ فِي أَشْيَاءَ، فَقَدْ عُذِّبَ بِلَالٌ فِي اللَّهِ تَعَالَى بِمَا لَمْ يُعَذَّبْ أَبُو بَكْرٍ، وَجَالَدَ عَلَى مَا لَمْ يُجَالِدْ أَبُو بَكْرٍ، وَأَبُو بَكْرٍ خَيْرٌ مِنْهُ عَلَى الْعُمُومِ - وَفِي أَشْيَاءَ غَيْرِ

Through the aforementioned chain—from Ibn al-Jahm: Muḥammad ibn Bishr narrated to us; al-Haytham and al-Ḥakam both narrated to us, jointly stating: Shihāb ibn Khirāsh narrated to us from al-Ḥajjāj ibn Dīnār from Abū Maʿshar from Ibrāhīm, who said: "I heard ʿAlqamah strike his hand upon Kufa's pulpit and say: 'I heard ʿAlī—peace be upon him—declare: "It has reached me that some people prefer me over Abū Bakr and ʿUmar. Whoever utters such a thing is a slanderer, liable to the ḥadd punishment for slanderers."'"

Through the same chain—from Ibn al-Jahm: Abū Qilābah narrated to us; al-Ḥajjāj ibn al-Minhāl narrated to us; Muḥammad ibn Ṭalḥah narrated to us from Abū ʿUbaydah ibn Ḥajal that ʿAlī ibn Abī Ṭālib said: "If I am presented with any man who prefers me over Abū Bakr and ʿUmar, I will lash him with the ḥadd punishment for slanderers."

Muḥammad ibn Saʿīd ibn Nabāt narrated to us; ʿAbdullāh ibn Naṣr narrated to us; Qāsim ibn Aṣbagh narrated to us; Ibn Waḍḍāḥ narrated to us; Mūsā ibn Muʿāwiyah narrated to us; Wakīʿ narrated to us; Ismāʿīl ibn Abī Khālid narrated from ʿĀmir al-Shaʿbī, who said: "'Umar sought their counsel regarding wine. ʿAbd al-Raḥmān ibn ʿAwf said: 'For one who fabricates against the Qur'ān, I opine he should be lashed eighty times.'"

ʿAbdullāh ibn Rabīʿ narrated to us; ʿAbdullāh ibn Muḥammad ibn ʿUthmān narrated to us; Aḥmad ibn Khālid narrated to us; ʿAlī ibn ʿAbd al-ʿAzīz narrated to us; al-Ḥajjāj ibn al-Minhāl narrated to us; Ḥammād ibn Salamah narrated from ʿAṭāʾ ibn al-Sāʾib from Juḥādah ibn Dithār that some companions of Allah's Messenger—peace and blessings of Allah be upon him—drank wine in Syria, and Yazīd ibn Abī Sufyān [...] He wrote to ʿUmar concerning them and mentioned the ḥadīth—which included that they cited as evidence against ʿUmar the words of Allah the Exalted: *"There is no blame upon those who believe and do righteous deeds for what they consumed when they feared Allah and believed and did righteous deeds, then feared Allah and believed"* (5:93). ʿUmar consulted the people about them. He asked ʿAlī, "What is your opinion?" ʿAlī replied, "I hold that they have legislated in Allah's religion what He did not authorize. If they assert its permissibility, execute them, for they have permitted what Allah the Exalted has forbid-

هَذَا كَثِيرَةٌ. وَبِالسَّنَدِ الْمَذْكُورِ - إِلَى ابْنِ الْجَهْمِ نا مُحَمَّدُ بْنُ بِشْرٍ نا الْهَيْثَمُ، وَالْحَكَمِ، قَالَا جَمِيعًا: نا شِهَابُ بْنُ خِرَاشٍ عَنْ الْحَجَّاجِ بْنِ دِينَارٍ عَنْ أَبِي مَعْشَرٍ عَنْ إِبْرَاهِيمَ قَالَ: سَمِعْت عَلْقَمَةَ ضَرَبَ بِيَدِهِ عَلَى مِنْبَرِ الْكُوفَةِ، قَالَ: سَمِعْت عَلِيًّا - عَلَيْهِ السَّلَامُ - يَقُولُ: بَلَغَنِي أَنَّ قَوْمًا يُفَضِّلُونَنِي عَلَى أَبِي بَكْرٍ، وَعُمَرَ؟ مَنْ قَالَ شَيْئًا مِنْ هَذَا فَهُوَ مُفْتَرٍ، عَلَيْهِ مَا عَلَى الْمُفْتَرِي. وَبِهِ - إِلَى ابْنِ الْجَهْمِ نا أَبُو قِلَابَةَ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا مُحَمَّدُ بْنُ طَلْحَةَ عَنْ أَبِي عُبَيْدَةَ بْنِ حَجَلٍ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لَا أُوتَى بِرَجُلٍ فَضَّلَنِي عَلَى أَبِي بَكْرٍ، وَعُمَرَ، إِلَّا جَلَدْتُهُ حَدَّ الْمُفْتَرِي. حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ عَامِرٍ الشَّعْبِيِّ، قَالَ: اسْتَشَارَهُمْ عُمَرُ فِي الْخَمْرِ؟ فَقَالَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ: مَنْ افْتَرَى عَلَى الْقُرْآنِ أَرَى أَنْ يُجْلَدَ ثَمَانِينَ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ جُحَادَةَ بْنِ دِثَارٍ أَنَّ نَاسًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَرِبُوا الْخَمْرَ بِالشَّامِ وَأَنَّ يَزِيدَ بْنَ أَبِي سُفْيَانَ كَتَبَ فِيهِمْ إِلَى عُمَرَ فَذَكَرَ الْحَدِيثَ - وَفِيهِ: أَنَّهُمْ احْتَجُّوا عَلَى عُمَرَ بِقَوْلِ اللَّهِ تَعَالَى {لَيْسَ عَلَى الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ جُنَاحٌ فِيمَا طَعِمُوا إِذَا مَا اتَّقَوْا وَآمَنُوا وَعَمِلُوا الصَّالِحَاتِ ثُمَّ اتَّقَوْا وَآمَنُوا} [المائدة: ٩٣] فَشَاوَرَ فِيهِمْ النَّاسَ، فَقَالَ لِعَلِيٍّ: مَاذَا تَرَى؟ فَقَالَ: أَرَى أَنَّهُمْ قَدْ شَرَعُوا فِي دِينِ اللَّهِ مَا لَمْ يَأْذَنْ بِهِ، فَإِنْ زَعَمُوا أَنَّهَا حَلَالٌ فَاقْتُلْهُمْ، فَإِنَّهُمْ قَدْ أَحَلُّوا مَا حَرَّمَ اللَّهُ تَعَالَى، وَإِنْ زَعَمُوا أَنَّهَا حَرَامٌ فَاجْلِدْهُمْ ثَمَانِينَ ثَمَانِينَ، فَقَدْ افْتَرَوْا عَلَى اللَّهِ الْكَذِبَ، وَقَدْ أَخْبَرَ اللَّهُ تَعَالَى بِحَدِّ مَا يُفْتَرَى بِهِ بَعْضُنَا عَلَى بَعْضٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -:

den. If they assert its prohibition, lash them eighty lashes each, for they have fabricated lies against Allah. Has Allah the Exalted not informed us of the ḥadd punishment for what one falsely attributes to another?" Abū Muḥammad—may Allah have mercy on him—said: They (meaning the Ḥanafīs and Mālikīs) greatly revere the opinion and ruling of a Companion if it conforms to their blind adherence and capricious whims. Yet here they have opposed the Companions—may Allah be pleased with them—for they do not consider the ḥadd punishment for slander applicable to those who prefer ʿUmar over Abū Bakr, nor to those who prefer ʿAlī over both, nor to those who fabricate lies against Allah the Exalted and against the Quran. Rather, they deem execution only for one who alters the religion, or nothing at all if the person engages in interpretation. Moreover, they cite the statements of ʿAlī and ʿAbd al-Raḥmān in these two reports to affirm eighty lashes as the ḥadd punishment for wine—and indeed to affirm analogical reasoning—while contradicting them in imposing the ḥadd punishment for slander upon those who fabricate lies against Allah. If the statements of ʿAlī and ʿAbd al-Raḥmān constitute proof for establishing the ḥadd punishment for wine and for analogical reasoning, then they equally constitute proof for imposing the ḥadd punishment for slander upon those who fabricate lies against Allah the Exalted and against the Quran.[34]

هُمْ يُعَظِّمُونَ - يَعْنِي الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ - قَوْلَ الصَّاحِبِ وَحُكْمَه إذَا وَافَقَ تَقْلِيدَهُمْ وَأَهْوَاءَهُمْ، وَهُمْ هَاهُنَا قَدْ خَالَفُوا الصَّحَابَةَ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَا يَرَوْنَ عَلَى مَنْ فَضَّلَ عُمَرَ عَلَى أَبِي بَكْرٍ حَدَّ الْفِرْيَةِ، وَلَا عَلَى مَنْ فَضَّلَ عَلِيًّا عَلَيْهِمَا حَدَّ الْفِرْيَةِ، وَلَا يَرَوْنَ عَلَى مَنْ افْتَرَى عَلَى اللَّهِ تَعَالَى وَعَلَى الْقُرْآنِ، حَدَّ الْفِرْيَةِ، لَكِنْ يَرَوْنَ الْقَتْلَ إنْ بَدَّلَ الدِّينَ، أَوْ لَا شَيْءَ إنْ كَانَ مُتَأَوِّلًا. هَذَا، وَهُمْ يَحْتَجُّونَ بِقَوْلِ عَلِيٍّ، وَعَبْدِ الرَّحْمَنِ، فِي هَذَيْنِ الْخَبَرَيْنِ فِي إثْبَاتِ ثَمَانِينَ فِي حَدِّ الْخَمْرِ، نَعَمْ، وَفِي إثْبَاتِ الْقِيَاسِ؟ وَقَدْ خَالَفُوهُمَا فِي إيجَابِ حَدِّ الْفِرْيَةِ عَلَى مَنْ افْتَرَى عَلَى اللَّهِ كَذِبًا. فَلَئِنْ كَانَ قَوْلُ عَلِيٍّ، وَعَبْدِ الرَّحْمَنِ، حُجَّةً فِي إيجَابِ حَدِّ الْخَمْرِ، وَفِي الْقِيَاسِ، فَإِنَّهُ حُجَّةٌ فِي إيجَابِ حَدِّ الْفِرْيَةِ عَلَى مَنْ افْتَرَى عَلَى اللَّهِ تَعَالَى كَذِبًا وَعَلَى الْقُرْآنِ.

L41729 And if the statement of the two is not a proof for imposing the ḥadd for fabrication against one who fabricates against Allah the Exalted and the Quran, then their statement is not a proof for imposing analogy, nor for imposing eighty [lashes] for intoxicants—with no distinction. Success comes from Allah the Exalted. This indicates to whoever is fair to himself that not every fabrication warrants the ḥadd. Since this is so, there is no ḥadd except for fabrication involving adultery, due to the soundness of the textual evidence and the consensus thereon. Success comes from Allah the Exalted.

وَلَئِنْ كَانَ قَوْلُهُمَا لَيْسَ بِحُجَّةٍ فِي إيجَابِ حَدِّ الْفِرْيَةِ عَلَى مَنْ افْتَرَى عَلَى اللَّهِ تَعَالَى، وَعَلَى الْقُرْآنِ، فَمَا قَوْلُهُمَا حُجَّةً فِي إيجَابِ الْقِيَاسِ، وَلَا فِي إيجَابِ ثَمَانِينَ فِي الْخَمْرِ وَلَا فَرْقَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَهَذَا يُلِيحُ لِمَنْ أَنْصَفَ نَفْسَهُ أَنَّهُ لَيْسَ كُلُّ فِرْيَةٍ يَجِبُ فِيهَا الْحَدُّ، فَإِذْ ذَلِكَ كَذَلِكَ فَلَا حَدَّ إلَّا فِي الْفِرْيَةِ بِالزِّنَا، لِصِحَّةِ النَّصِّ، وَالْإِجْمَاعِ عَلَى ذَلِكَ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة عَفْوُ الْمَقْذُوفِ عَنْ الْقَاذِفِ]

The Jurisprudential Issue of the Falsely Accused Person's Forgiveness of the Slanderer.

L41730

L41731–41732 Abū Muḥammad—may Allāh have mercy on him—said: ʿAbd Allāh ibn Rabīʿ

[34] **Qur'an references (L41724):** Qur'an 5:93 (Al-Ma'idah).

informed us, Ibn Mufarrij informed us, Qāsim ibn Aṣbagh informed us, Ibn Waḍḍāḥ informed us, Saḥnūn informed us, Ibn Wahb reported to me from Yūnus ibn Yazīd, from Rabīʿah, who said regarding a man who tells the Imam: "So-and-so has slandered me" or "has accused my mother of adultery," and the Imam asks: "Did you do it?" The man replies: "Yes, I did." The other party then says: "I have pardoned him." It is incumbent upon the Imam to say to the one slandered against: "You know best"—without probing into it, lest he expose a private matter whose exposure is impermissible. If the accuser returns seeking that ḥadd punishment, it becomes his right.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ رَبِيعَةَ أَنَّهُ قَالَ فِي رَجُلٍ قَالَ لِلْإِمَامِ: افْتَرَى عَلَيَّ فُلَانٌ، أَوْ رَمَى أُمِّي؟ فَيَقُولُ الْإِمَامُ: أَفَعَلْتَ؟ فَيَقُولُ: نَعَمْ، قَدْ فَعَلْتُ، فَيَقُولُ الْآخَرُ: قَدْ أَعْفَيْتُهُ؟ فَيَنْبَغِي لِلْإِمَامِ أَنْ يَقُولَ لِلْمُفْتَرَى عَلَيْهِ: أَنْتَ أَبْصَرُ - وَلَا يَكْشِفُهُ لَعَلَّهُ يَكْشِفُ غِطَاءً لَا يَحِلُّ كَشْفُهُ، فَإِنْ عَادَ يَلْتَمِسُ ذَلِكَ الْحَدَّ كَانَ ذَلِكَ لَهُ.

L41733 And through him—to Ibn Wahb from Malik ibn Anas—that Zuraiq ibn al-Hakam narrated to him. He said: A man named Misbah falsely accused his son, saying to him: "O fornicator!" The son brought this matter to me, so I ordered that the father be flogged. The father then said: "By Allah, if I am flogged, I will confess to fornication myself!" When he said this to me—it perplexed me—I wrote to Umar ibn Abd al-Aziz, informing him of the situation. Umar wrote back to me: "Permit the son to pardon his father." Zuraiq said: I then wrote to Umar ibn Abd al-Aziz concerning parents who falsely accuse their son—is his pardon of them permissible? Umar wrote back to me: "Enforce for him the ruling of Allah Almighty, unless he wishes to conceal it out of mercy."

وَبِهِ - إِلَى ابْنِ وَهْبٍ نِي مَالِكُ بْنُ أَنَسٍ أَنَّ زُرَيْقَ بْنَ الْحَكَمِ حَدَّثَهُ. قَالَ: افْتَرَى رَجُلٌ - يُقَالُ لَهُ مِصْبَاحٌ - عَلَى ابْنِهِ، فَقَالَ لَهُ: يَا زَانِي، فَرَفَعَ ذَلِكَ إِلَيَّ فَأَمَرْت بِجَلْدِهِ، فَقَالَ: وَاَللَّهِ لَئِنْ جَلَدْتُهُ لَأُقِرَّنَّ عَلَى نَفْسِي بِالزِّنَا؟ فَلَمَّا قَالَ ذَلِكَ لِي أَشْكَلَ عَلَيَّ؟ فَكَتَبْت إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَذْكُرُ ذَلِكَ لَهُ، فَكَتَبَ عُمَرُ إِلَيَّ: أَنْ أَجِزْ عَفْوَهُ فِي نَفْسِهِ؟ قَالَ زُرَيْقٌ: فَكَتَبْت إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي الرَّجُلِ يَفْتَرِي عَلَيْهِ أَبَوَاهُ، أَيَجُوزُ عَفْوُهُ عَنْهُمَا؟ فَكَتَبَ عُمَرُ إِلَيَّ: خُذْ لَهُ بِكِتَابِ اللَّهِ تَعَالَى، إِلَّا أَنْ يُرِيدَ سَتْرًا

L41734 Ḥummām narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrabī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq reported from Maʿmar, from Ismāʿīl ibn Umayyah, who informed me: Zuraiq ibn Ḥakīm informed me that ʿUmar ibn ʿAbd al-ʿAzīz wrote to him concerning a man who slandered his son: "Lash him unless his son pardons him." Ibn Zuraiq said: "I assumed this applied specifically to the father. Thus, I wrote to ʿUmar seeking clarification: ʿIs this for all people generally or specifically for the father?'" He wrote back to me: "Rather, it is a general ruling for all people."

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ أَخْبَرَنِي زُرَيْقُ بْنُ حَكِيمٍ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ كَتَبَ إِلَيْهِ فِي رَجُلٍ قَذَفَ ابْنَهُ: أَنْ اجْلِدْهُ، إِلَّا أَنْ يَعْفُوَ ابْنُهُ عَنْهُ. قَالَ ابْنُ زُرَيْقٍ: فَظَنَنْت أَنَّهَا لِلْأَبِ خَاصَّةً، فَكَتَبْت إِلَى عُمَرَ أُرَاجِعُهُ: لِلنَّاسِ عَامَّةً أَمْ لِلْأَبِ خَاصَّةً؟ فَكَتَبَ إِلَيَّ: بَلْ لِلنَّاسِ عَامَّةً.

L41735 Others said: There is no pardon for anyone in that, as we have transmitted through the cited chain from ʿAbd al-Razzāq, from ʿUmar ibn ʿAbd al-ʿAzīz, from ʿUmar ibn al-Khaṭṭāb, who said: "There is no pardon regarding any

part of the *ḥudūd* after they reach the Imam, for their implementation is from the *Sunnah*."

وَقَالَ آخَرُونَ: لَا عَفْوَ فِي ذَلِكَ لِأَحَدٍ، كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: لَا عَفْوَ فِي الْحُدُودِ عَنْ شَيْءٍ مِنْهَا بَعْدَ أَنْ تَبْلُغَ الْإِمَامَ، فَإِنَّ إِقَامَتَهَا مِنَ السُّنَّةِ.

L41736 And according to him—to ʿAbd al-Razzāq [who narrates] from Maʿmar and Ibn Jurayj, both of whom [narrate] from al-Zuhrī—who said: When prescribed punishments reach the Sultan's authority, it is impermissible for anyone to pardon them. Ibn Jurayj and Maʿmar stated this—meaning the false accusation of unchastity (qadhf)—and this opinion has been transmitted from al-Ḥasan al-Baṣrī. Abū Sulaymān and our companions hold this view, as do al-Awzāʿī and al-Ḥasan ibn Ḥayy.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَابْنِ جُرَيْجٍ كِلَاهُمَا عَنِ الزُّهْرِيِّ، قَالَ: إِذَا بَلَغَتْ الْحُدُودُ السُّلْطَانَ فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَعْفُوَ عَنْهَا قَالَ ابْنُ جُرَيْجٍ، وَمَعْمَرٌ - يَعْنِي الْفِرْيَةَ - وَقَدْ رُوِيَ هَذَا الْقَوْلُ عَنِ الْحَسَنِ الْبَصْرِيِّ - وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا. وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ.

L41737 Abu Hanifa and his disciples said: It is impermissible to pardon the hadd punishment for qadhf (false accusation of unchastity).

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا يَجُوزُ الْعَفْوُ عَنِ الْحَدِّ فِي الْقَذْفِ.

L41738–41739 It is narrated from Abū Yūsuf—in one of his two opinions—and from al-Shāfiʿī and his companions, Aḥmad ibn Ḥanbal and his companions, that pardon in this matter is permissible both before the matter reaches the Imam and after it has reached him. Mālik said regarding one who slanders another and the accusation is established before the Imam, and the slandered person wishes to pardon the slanderer: "He is not permitted to pardon unless he intends to conceal something about himself, fearing that what he was accused of might be proven against him. In that case, his pardon is permissible." Mālik said: "If the slandered person wishes to delay the implementation of the punishment against the slanderer for his own sake or for his parents' sake, he may do so and may enforce it whenever he desires." He added: "If he pardons him and later wishes to enforce it, he is no longer entitled to do so." Abū Muḥammad—may Allah have mercy on him—said: "Since they differed as we have mentioned, it became incumbent upon us to examine this matter. We found that this disagreement revolves around one of two perspectives, with no third option: either the punishment for slander is among the rights of Allah the Exalted, like the punishment for adultery, intoxicants, theft, and

وَرُوِيَ عَنْ أَبِي يُوسُفَ - فِي أَحَدِ قَوْلَيْهِ - وَعَنِ الشَّافِعِيِّ، وَأَصْحَابِهِ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَصْحَابِهِ: أَنَّ الْعَفْوَ فِي ذَلِكَ جَائِزٌ قَبْلَ بُلُوغِ الْأَمْرِ إِلَى الْإِمَامِ، وَبَعْدَ بُلُوغِهِ إِلَيْهِ. وَقَالَ مَالِكٌ فِيمَنْ قَذَفَ آخَرَ فَثَبَتَ ذَلِكَ عِنْدَ الْإِمَامِ فَأَرَادَ الْمَقْذُوفُ أَنْ يَعْفُوَ عَنِ الْقَاذِفِ؟ قَالَ: لَا يَجُوزُ لَهُ الْعَفْوُ، إِلَّا أَنْ يُرِيدَ سَتْرًا عَلَى نَفْسِهِ خَوْفَ أَنْ يَثْبُتَ عَلَيْهِ مَا رُمِيَ بِهِ، فَيَجُوزُ عَفْوُهُ حِينَئِذٍ. قَالَ مَالِكٌ: فَإِنْ أَرَادَ الْمَقْذُوفُ أَنْ يُؤَخِّرَ إِقَامَةَ الْحَدِّ عَلَى الْقَاذِفِ لَهُ أَوْ لِأَبَوَيْهِ كَانَ ذَلِكَ لَهُ، وَيَأْخُذُهُ بِهِ مَتَى أَحَبَّ، قَالَ: فَإِنْ عَفَا عَنْهُ ثُمَّ أَرَادَ أَخْذَهُ لَمْ يَكُنْ لَهُ أَخْذُهُ بِهِ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ: فَوَجَدْنَا هَذَا الِاخْتِلَافَ مَرْجِعَهُ إِلَى أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا: إِمَّا أَنْ يَكُونَ الْحَدُّ فِي الْقَذْفِ مِنْ حُقُوقِ اللَّهِ تَعَالَى، كَالْحَدِّ فِي الزِّنَا، وَالْحَدِّ فِي الْخَمْرِ، وَالْحَدِّ فِي السَّرِقَةِ، وَالْحَدِّ فِي الْمُحَارَبَةِ - وَإِمَّا أَنْ يَكُونَ مِنْ حُقُوقِ النَّاسِ، كَالْقِصَاصِ فِي الْأَعْضَاءِ، وَالْجِنَايَاتِ عَلَى الْأَمْوَالِ.

highway robbery; or it is among the rights of people, like retaliation for injuries to body parts and monetary crimes."

L41740 If the prescribed punishment for false accusation (qadhf) is among the rights of God Almighty—like all other ḥudūd—then no one may pardon it, for no personal right exists in such matters. There is no distinction between one who steals another's property; one who commits adultery with his female servant and falsely accuses him; or one who coerces a woman, steals property from her wealth, and falsely accuses her. There was no disagreement that a man cannot pardon adultery committed with his female servant, thereby waiving the prescribed punishment for adultery. Likewise, neither party may pardon one who steals their property or engages in highway robbery (muḥārabah) against them, thereby waiving the prescribed punishments for theft or banditry (muḥārabah).

فَإِنْ كَانَ الْحَدُّ فِي الْقَذْفِ مِنْ حُقُوقِ اللَّهِ تَعَالَى كَسَائِرِ الْحُدُودِ، فَلَا يَجُوزُ لِأَحَدٍ عَفْوٌ فِيهِ؛ لِأَنَّهُ لَا حَقَّ لَهُ فِيهِ، وَلَا فَرْقَ بَيْنَ مَنْ سَرَقَ مَالَ إنْسَانٍ، أَوْ زَنَى بِأَمَتِهِ وَافْتَرَى عَلَيْهِ، أَوْ بِامْرَأَةٍ أَكْرَهَهَا، وَسَرَقَ مَالًا مِنْ مَالِهَا، وَافْتَرَى عَلَيْهَا، فَلَمْ يَخْتَلِفُوا فِي أَنَّهُ لَيْسَ لِلرَّجُلِ أَنْ يَعْفُوَ عَنْ الزِّنَا بِأَمَتِهِ فَيَسْقُطُ عَنْهُ حَدُّ الزِّنَا بِذَلِكَ، وَلَا لَهُمَا أَنْ يَعْفُوَا عَمَّنْ سَرَقَ مَالَهُمَا، أَوْ قَطَعَ عَلَيْهِمَا الطَّرِيقَ، فَيَسْقُطُ عَنْهُ حَدُّ السَّرِقَةِ بِذَلِكَ، وَحَدُّ الْمُحَارَبَةِ.

L41741 The one who arbitrarily distinguishes between *qadhf* (false accusation of unchastity) and what we have mentioned is imposing rulings in religion without proof. If the *ḥadd* punishment for *qadhf* is considered among people's rights, then their pardon regarding their rights is permissible. We examined Mālik's statement and found it apparently contradictory. For if - according to him - the *ḥadd* punishment for *qadhf* is among the rights of God Almighty, then the pardon of the one falsely accused becomes impermissible - whether they intend to conceal [the accusation] or not - because God Almighty has not granted the victim authority to nullify any of the *ḥadd* punishments ordained by Him.

وَالْمُفَرِّقُ بَيْنَ الْقَذْفِ وَبَيْنَ مَا ذَكَرْنَا: مُتَحَكِّمٌ فِي الدِّينِ بِلَا دَلِيلٍ. وَإِنْ كَانَ الْحَدُّ فِي الْقَذْفِ مِنْ حُقُوقِ النَّاسِ: فَعَفْوُ النَّاسِ عَنْ حُقُوقِهِمْ جَائِزٌ: فَنَظَرْنَا فِي قَوْلِ مَالِكٍ، فَوَجَدْنَاهُ ظَاهِرَ التَّنَاقُضِ؛ لِأَنَّهُ إنْ كَانَ حَدُّ الْقَذْفِ عِنْدَهُ مِنْ حُقُوقِ اللَّهِ تَعَالَى - فَلَا يَجُوزُ عَفْوُ الْمَقْذُوفِ - أَرَادَ سَتْرًا أَوْ لَمْ يُرِدْ: لِأَنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ لَهُ إسْقَاطَ حَدٍّ مِنْ حُدُودِ اللَّهِ تَعَالَى.

L41742–41743 If the matter pertains to human rights, forgiveness is permissible for every person regarding their own right—whether they intended concealment or not. To those who support this manifestly erroneous opinion, we say: What difference exists between this and one who forgives the man who had intercourse with his female slave—while intending to conceal himself, fearing the involved party might produce evidence that she was taken by force from him and is now in his possession? Or between this and one who forgives the thief of his property—intending to conceal himself, fearing the thief might present evidence of justice proving the property in his possession was stolen from him, and that it originally belonged to the one from whom another stole it?

وَإِنْ كَانَ مِنْ حُقُوقِ النَّاسِ فَالْعَفْوُ جَائِزٌ لِكُلِّ أَحَدٍ فِي حَقِّهِ - أَرَادَ سَتْرًا أَوْ لَمْ يُرِدْ - وَيُقَالُ لِمَنْ نَصَرَ هَذَا الْقَوْلَ الظَّاهِرَ الْخَطَأِ: مَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ مَنْ عَفَا عَنْ الزَّانِي بِأَمَتِهِ - وَهُوَ يُرِيدُ تَسَتُّرًا عَلَى نَفْسِهِ خَوْفَ أَنْ يُقِيمَ الْوَاطِئُ لَهَا بَيِّنَةً بِأَنَّهَا لَهُ غَصَبَهَا مِنْهُ الَّذِي هِيَ بِيَدِهِ الْآنَ؟ وَبَيْنَ مَنْ عَفَا عَنْ سَارِقِ مَتَاعِهِ وَهُوَ يُرِيدُ سَتْرًا عَلَى نَفْسِهِ خَوْفَ أَنْ يُقِيمَ الَّذِي سَرَقَهُ مِنْهُ بَيِّنَةَ عَدْلٍ أَنَّ الَّذِي كَانَ بِيَدِهِ سَرَقَهُ مِنْهُ، وَأَنَّهُ مَالٌ مِنْ مَالِ

هَذَا الَّذِي سَرَقَهُ آخَرُ، فَهَلْ بَيْنَ شَيْءٍ مِنْ هَذَا كُلِّهِ فَرْقٌ هَذَا مَا لَا يُعْرَفُ أَصْلًا، فَسَقَطَ هَذَا الْقَوْلُ جُمْلَةً، لِتَنَاقُضِهِ، وَلِتَعَرِّيهِ مِنْ الْأَدِلَّةِ، وَلِأَنَّهُ قَوْلٌ لَا يُعْرَفُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا عَنْ أَحَدٍ مِنْ التَّابِعِينَ. ثُمَّ نَظَرْنَا فِي قَوْلِ أَبِي حَنِيفَةَ: فَوَجَدْنَاهُ قَدْ تَنَاقَضَ، لِأَنَّهُ جَعَلَهُ مِنْ حُقُوقِ اللَّهِ تَعَالَى، وَلَمْ يُجِزْ الْعَفْوَ عَنْهُ أَصْلًا، فَأَصَابَ فِي ذَلِكَ - ثُمَّ تَنَاقَضَ مُنَاقَضَةً ظَاهِرَةً فَقَالَ: لَا حَدَّ عَلَى الْقَاذِفِ إلَّا أَنْ يُطَالِبَهُ الْمَقْذُوفُ، فَجَعَلَهُ بِهَذَا الْقَوْلِ مِنْ حُقُوقِ الْمَقْذُوفِ، وَأَسْقَطَهُ بِأَنْ لَمْ يَطْلُبْهُ - وَهَذَا تَخْلِيطٌ ظَاهِرٌ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ - وَقَدْ نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ نا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ عَنْ «عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: لَمَّا نَزَلَ عُذْرِي قَامَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمِنْبَرِ فَأَمَرَ بِالْمَرْأَةِ وَالرَّجُلَيْنِ فَضُرِبُوا حَدَّهُمْ» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَقَامَ حَدَّ الْقَذْفِ وَلَمْ يُشَاوِرْ عَائِشَةَ أُمَّنَا - رَضِيَ اللَّهُ عَنْهَا - أَنْ تَعْفُوَ أَمْ لَا؟ فَلَوْ كَانَ لَهَا فِي ذَلِكَ حَقٌّ لَمَا عَطَّلَهُ - عَلَيْهِ السَّلَامُ - وَهُوَ أَرْحَمُ النَّاسِ، وَأَكْثَرُهُمْ حَضًّا عَلَى الْعَفْوِ فِيمَا يَجُوزُ فِيهِ الْعَفْوُ - فَصَحَّ أَنَّ الْحَدَّ مِنْ حُقُوقِ اللَّهِ تَعَالَى، لَا مَدْخَلَ لِلْمَقْذُوفِ فِيهِ أَصْلًا وَلَا عَفْوَ لَهُ عَنْهُ.

Is there any distinction among all these cases? This has no basis in principle, thus invalidating this opinion entirely due to its contradictions, absence of evidence, and lack of any known foundation among the Companions—may Allah be pleased with them—or the Successors.

Upon examining Abū Ḥanīfah's view, we found it contradictory. He classified it as a right of Allah the Exalted, prohibiting forgiveness entirely—a position in which he was correct. Yet he contradicted himself blatantly by stating: "No ḥadd punishment is imposed on a slanderer unless the slandered party demands it," thereby treating it as a right of the slandered individual and annulling it if not pursued. This constitutes evident confusion.

Abū Muḥammad—may Allah have mercy on him—said: They possess no valid argument here. ʿAbdullāh ibn Rabīʿ narrated to us, Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us, Qutaybah ibn Saʿīd narrated to us, Muḥammad ibn Abī ʿAdiyy narrated to us, from Muḥammad ibn Isḥāq, from ʿAbdullāh ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm, from ʿAmrah bint ʿAbd al-Raḥmān, from ʿĀ'ishah, the Mother of the Believers, who said: "When my exoneration was revealed, the Prophet—peace and blessings of Allah be upon him—ascended the pulpit, ordered the woman and the two men to be brought forth, and they were subjected to the prescribed punishment."

Abū Muḥammad—may Allah have mercy on him—commented: Here, Allah's Messenger—peace and blessings of Allah be upon him—enforced the punishment for slander without consulting ʿĀ'ishah, our Mother—may Allah be pleased with her—about whether to forgive or not. Had she held any right in this matter, he—peace be upon him—would not have neglected it, for he was the most merciful of people and the most ardent in urging forgiveness where permissible. This confirms that the ḥadd punishment is solely a right of Allah the Exalted, with no entitlement whatsoever for the slandered party to influence it or grant pardon.

وَأَمَّا مِنْ طَرِيقِ الْإِجْمَاعِ، فَإِنَّ الْأُمَّةَ مُجْمِعَةٌ عَلَى تَسْمِيَةِ الْجَلْدِ الْمَأْمُورِ بِهِ فِي الْقَذْفِ حَدًّا، وَلَمْ يَأْتِ نَصٌّ، وَلَا إجْمَاعٌ بِأَنَّ لِإِنْسَانٍ حُكْمًا فِي إسْقَاطِ حَدٍّ مِنْ حُدُودِ اللَّهِ تَعَالَى

L41744–41746 As for the path of consensus, the Ummah is unanimously agreed upon designating the prescribed flogging in cases of false accusation of unlawful intercourse as a hadd punishment. No textual evidence has been established,

nor any consensus, indicating that any human possesses authority to annul any of the divinely ordained punishments of Allah the Exalted. Therefore, it is established that there is no room for pardon in such cases. As for the path of rational analysis: were it among the rights of humans, the aforementioned pardon in this matter would not... It is absolutely impermissible except for the slandered person regarding the specific slander directed at them, not regarding slander directed at others such as their deceased father or mother. This is because there is no dispute that one cannot waive a right belonging to another—yet they permit a person to pardon someone who slandered their deceased father or mother. This is invalid and a contradiction in their reasoning, given that these scholars are proponents of analogical reasoning (qiyas). They unanimously agree that the theft victim cannot pardon the thief from amputation of their hand, nor can the victim of highway robbery pardon the highway robber, nor can the husband pardon the adulterer who committed adultery with his wife or his female slave. What distinction, then, exists between slander and the punishment for theft? Similarly, the victim of highway robbery cannot pardon the highway robber.

- فَصَحَّ أَنَّهُ لَا مَدْخَلَ لِلْعَفْوِ فِيهِ. وَأَمَّا مِنْ طَرِيقِ النَّظَرِ، فَلَوْ كَانَ مِنْ حُقُوقِ النَّاسِ لَكَانَ الْعَفْوُ الْمَذْكُورُ فِي ذَلِكَ لَا يَجُوزُ أَلْبَتَّةَ إلَّا مِنْ الْمَقْذُوفِ فِيمَا قُذِفَ بِهِ، لَا فِيمَا قُذِفَ بِهِ غَيْرُهُ مِنْ أَبِيهِ، وَأُمِّهِ؛ لِأَنَّهُ لَا خِلَافَ فِي أَنَّهُ لَا يَجُوزُ عَفْوُ أَحَدٍ عَنْ حَقِّ غَيْرِهِ - وَهُمْ يُجِيزُونَ عَفْوَ الْمَرْءِ عَنْ قَاذِفِ أَبِيهِ الْمَيِّتِ، وَأُمِّهِ الْمَيِّتَةِ - وَهَذَا فَاسِدٌ، وَتَنَاقُضٌ مِنْ الْقَوْلِ، وَالْقَوْمُ أَهْلُ قِيَاسٍ. قَدْ اتَّفَقُوا عَلَى أَنَّهُ لَا عَفْوَ لِلْمَسْرُوقِ مِنْهُ مِنْ قَطْعِ يَدِ سَارِقِهِ، وَلَا لِلْمَقْطُوعِ عَلَيْهِ فِي الطَّرِيقِ فِي الْعَفْوِ عَنْ الْقَاطِعِ عَلَيْهِ لِلْمُحَارِبِ لَهُ، وَلَا لِلْمَزْنِيِّ بِامْرَأَتِهِ، وَأَمَتِهِ، عَنْ الزَّانِي بِهِمَا فَأَيُّ فَرْقٍ بَيْنَ الْقَذْفِ وَحَدِّ السَّرِقَةِ، وَلَا لِلْمَقْطُوعِ عَلَيْهِ الطَّرِيقُ فِي الْعَفْوِ عَنْ الْقَاطِعِ.

L41747 As for what is reported from the Companions—may Allah be pleased with them—ʻUmar flogged Abū Bakrah, Nāfiʻ, and Shibl ibn Maʻbad when he saw them as perpetrators of false accusation, without consulting al-Mughīrah in this matter, nor did he recognize any right for al-Mughīrah to pardon or other. Thus, the opinion of those who deemed pardon universally applicable in such cases is invalidated—and success is from Allah, the Exalted.

وَأَمَّا مَا جَاءَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَإِنَّ عُمَرَ جَلَدَ أَبَا بَكْرَةَ، وَنَافِعًا، وَشِبْلَ بْنَ مَعْبَدٍ، إذْ رَآهُمْ قَذَفَةً - وَلَمْ يُشَاوِرْ فِي ذَلِكَ الْمُغِيرَةَ - وَلَا رَأَى لَهُ حَقًّا فِي عَفْوٍ أَوْ غَيْرِهِ. فَبَطَلَ قَوْلُ مَنْ رَأَى الْعَفْوَ فِي ذَلِكَ جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة فِيمَنْ قَالَ لِامْرَأَتِهِ يَا زَانِيَةُ فَقَالَتْ زَنَيْتُ مَعَك]

A legal issue concerning one who says to his wife, "O adulteress!" and she responds, "I committed adultery with you."

L41749 2244. Issue: Concerning one who says to his wife, "O adulteress!" and she responds, "I committed adultery with you," or if he says to a man, "O adulterer!" and the latter retorts, "You are more adulterous than I am." Abū Muḥammad—may Allāh have mercy on him—said: From ʿAbdullāh ibn Rabīʿ, from ʿAbdullāh ibn Muḥammad ibn ʿUthmān, from Aḥmad ibn Khālid, from ʿAlī ibn ʿAbd al-ʿAzīz, from al-Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salamah, from Qatādah, who said regarding a man who told his female slave,

٢٢٤٤ - مَسْأَلَةٌ: فِيمَنْ قَالَ لِامْرَأَتِهِ: يَا زَانِيَةُ؟ فَقَالَتْ: زَنَيْتُ مَعَك، أَوْ قَالَ ذَلِكَ لِرَجُلٍ، فَقَالَ: أَنْتَ أَزْنَى مِنِّي قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ قَالَ فِيمَنْ قَالَ لِأَمَتِهِ: يَا زَانِيَةُ، فَقَالَتْ: زَنَيْتُ بِك، قَالَ:

"O adulteress!" and she replied, "I committed adultery with you": She is to be flogged ninety lashes. Through the same chain to Ḥammād ibn Salamah, from Abū Ḥurrah, from al-Ḥasan, concerning a free woman who told another, "I committed adultery with you": She is to be flogged two hadd punishments. Abū Muḥammad said: If a man says to a woman, or a woman says to a man, "I committed adultery with you," this constitutes a plain confession of zinā (adultery) rather than qadhf (false accusation), for the speaker merely discloses their own sin without attributing adultery to the addressed party. A man may commit adultery with a woman while she is intoxicated, insane, coerced, or ignorant—while he is aware—and likewise a woman may commit adultery with a man under such circumstances. This resembles a man who buys a female slave and has intercourse with her, only to discover she is free: she is deemed an adulteress, but he is not deemed an adulterer. Therefore, the speaker of this phrase—if uttered as a confession—incurs only the hadd punishment for zinā, nothing more. If said insultingly, the speaker is neither a slanderer nor a confessor; thus no hadd applies—neither for adultery nor false accusation—but they incur discretionary punishment (taʿzīr) solely for causing harm.

تُجْلَدُ تِسْعِينَ. وَبِهِ - إلَى حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي حُرَّةَ عَنْ الْحَسَنِ فِي امْرَأَةٍ حُرَّةٍ قَالَتْ لِآخَرَ: زَنَيْت بِك، قَالَ: تُجْلَدُ حَدَّيْنِ قَالَ أَبُو مُحَمَّد: إذَا قَالَ الرَّجُلُ لِلْمَرْأَةِ، أَوْ قَالَتْ الْمَرْأَةُ لِلرَّجُلِ: زَنَيْت بِك، فَهَذَا اعْتِرَافٌ مُجَرَّدٌ بِالزِّنَا وَلَيْسَ قَذْفًا؛ لِأَنَّهُ مَنْ قَالَ هَذَا اللَّفْظَ فَإِنَّمَا أَخْبَرَ عَنْ نَفْسِهِ، أَنَّهُ زَنَى وَلَمْ يُخْبِرْ عَنْ الْمَقُولِ لَهُ بِزِنًا أَصْلًا، وَقَدْ يَزْنِي الرَّجُلُ بِالْمَرْأَةِ وَهِيَ سَكْرَى، أَوْ مَجْنُونَةٌ، أَوْ مَغْلُوبَةٌ، أَوْ وَهِيَ جَاهِلَةٌ وَهُوَ عَالِمٌ، وَتَزْنِي الْمَرْأَةُ بِالرَّجُلِ كَذَلِكَ. وَكَمَنْ ابْتَاعَ أَمَةً فَإِذَا بِهَا حُرَّةٌ، فَهِيَ زَانِيَةٌ، وَلَيْسَ هُوَ زَانِيًا - فَقَائِلُ هَذَا الْقَوْلِ إنْ قَالَهُ مُعْتَرِفًا فَعَلَيْهِ حَدُّ الزِّنَا فَقَطْ، وَلَا شَيْءَ عَلَيْهِ غَيْرُ ذَلِكَ، وَإِنْ قَالَهُ لَهَا شَاتِمًا فَلَيْسَ قَاذِفًا وَلَا مُعْتَرِفًا، فَلَا حَدَّ عَلَيْهِ - لَا لِلزِّنَى وَلَا لِلْقَذْفِ - وَلَكِنْ يُعَزَّرُ لِلْأَذَى فَقَطْ.

If he said to her, "We committed adultery together," or if she said that to him, then if he said it insultingly, this constitutes a valid instance of qadhf (false accusation of adultery), and only the hadd punishment for qadhf applies to him. But if he said it as a confession, only the hadd punishment for adultery applies to him.

L41750–41751

فَلَوْ قَالَ لَهَا: زَنَيْنَا مَعًا، أَوْ قَالَتْ لَهُ ذَلِكَ، فَهَذَا إنْ كَانَ قَالَهُ شَاتِمًا فَهُوَ قَذْفٌ صَحِيحٌ عَلَيْهِ حَدُّ الْقَذْفِ فَقَطْ، وَإِنْ قَالَهُ مُعْتَرِفًا فَعَلَيْهِ حَدُّ الزِّنَا فَقَطْ.

Similarly, it is incumbent upon the woman if she makes such a statement, with no distinction. ʿAbdullāh ibn Rabīʿ narrated to us: Ibn Mufarrij narrated to us: Qāsim ibn Aṣbagh narrated to us: Ibn Waḍḍāḥ narrated to us: Sahnūn narrated to us: Ibn Wahb informed me: Yūnus ibn Yazīd reported from al-Zuhrī and Rabīʿah, who both said regarding one who says to another, "I deem you an adulterer," and the other responds, "You are more adulterous than me"—they being chaste—both must be flogged with the hadd penalty together. Rabīʿah added: "No man can be more adulterous than another until he becomes an adulterer." Mālik said: "They are both to be flogged with the hadd penalty together." Abū Muḥammad—may Allāh have mercy on

L41752

وَكَذَلِكَ عَلَى الْمَرْأَةِ إنْ قَالَتْ ذَلِكَ وَلَا فَرْقَ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ الزُّهْرِيِّ، وَرَبِيعَةَ، قَالَا جَمِيعًا فِيمَنْ قَالَ لِآخَرَ: إنِّي أَرَاك زَانِيًا، فَقَالَ لَهُ الْآخَرُ: أَنْتَ أَزْنَى مِنِّي - وَهُمَا عَفِيفَانِ - فَإِنَّهُمَا يُجْلَدَانِ الْحَدَّ مَعًا - زَادَ رَبِيعَةُ: لَا يَكُونُ رَجُلٌ أَزْنَى مِنْ رَجُلٍ حَتَّى يَكُونَ زَانِيًا - وَقَالَ مَالِكٌ: يُضْرَبَانِ الْحَدَّ جَمِيعًا. قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا

him—said: As for Rabīʿah's statement "No man can be more adulterous than another until he becomes an adulterer," this is erroneous. Common linguistic usage contradicts this. Allāh the Exalted said: "Is Allāh better, or what they associate [with Him]?" [27:59], though there is no good whatsoever in what they associate. He also said: "The companions of Paradise on that Day are better in abode and fairer in resting place" [25:24], though there is no good at all in dwelling in the Fire, nor any measure of fair resting therein—we seek refuge with Allāh from it. The Messenger of Allāh—peace and blessings of Allāh be upon him—said: "Allāh's Book holds greater truth, and Allāh's covenant is more binding," though no reliability exists in covenants made for other than Allāh, nor does any truth in religion lie outside the Book of Allāh the Exalted. As for the Sunnah and consensus, they are encompassed within Allāh's Book, for all of this constitutes Allāh's justice. Examining this matter, we find that when one says to another, "You are more adulterous than me," this contains no self-admission of adultery. Rather, it constitutes valid slander. Thus, flogging him with the hadd penalty for slander is obligatory—success comes solely from Allāh the Exalted.[35]

L41753 **A legal issue concerning a woman who claims that a named individual compelled her to commit fornication with him.**

L41754–41762 2245 - Issue: Regarding one who claimed that so-and-so coerced her, ʿAlī said: Narrated by Ḥummām; narrated by Ibn Mufarrij; narrated by Ibn al-Aʿrābī; narrated by al-Dabarī; narrated by ʿAbd al-Razzāq; narrated by Maʿmar. From Al-Zuhri and Qatadah, both said collectively: Regarding a woman who slanders a man by claiming he overpowered her, while the man denies it and she has no evidence, she is to be flogged with the ḥadd punishment for slander (qadhf). Abdullah ibn Rabiʿ narrated to us: Abdullah ibn Muhammad ibn Uthman narrated to us: Ahmad ibn Khalid narrated to us: Ali ibn Abdul-Aziz narrated to us: Al-Hajjaj ibn Al-Minhal narrated to us: Hammad ibn Salamah narrated to us from Qatadah that a man forced himself upon a woman, and she screamed. A mu'adhdhin came and testified on her behalf before Umar ibn Abdul-Aziz that he heard her scream, so he did not flog

[35]**Qur'an references (L41752):** Qur'an 27:59 (An-Naml); Qur'an 25:24 (Al-Furqan).

قَوْلُ رَبِيعَةَ " لَا يَكُونُ رَجُلٌ أَزْنَى مِنْ رَجُلٍ حَتَّى يَكُونَ زَانِيًا " خَطَأٌ، وَالْمُسْتَعْمَلُ فِي اللُّغَةِ غَيْرُ هَذَا: قَالَ اللَّهُ تَعَالَى {آللَّهُ خَيْرٌ أَمَّا يُشْرِكُونَ} [النمل: ٥٩] وَلَا خَيْرَ أَصْلًا فِيمَا يُشْرِكُونَ. وَقَالَ تَعَالَى {أَصْحَابُ الْجَنَّةِ يَوْمَئِذٍ خَيْرٌ مُسْتَقَرًّا وَأَحْسَنُ مَقِيلا} [الفرقان: ٢٤] وَلَيْسَ فِي الْقَرَارِ فِي النَّارِ خَيْرٌ أَصْلًا، وَلَا فِيهَا مِنْ حُسْنِ الْمَقِيلِ لَا كَثِيرٌ وَلَا قَلِيلٌ - نَعُوذُ بِاَللَّهِ مِنْهَا. وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ» وَلَيْسَ فِي شَرْطٍ لِغَيْرِ اللَّهِ شَيْءٌ مِنْ الثِّقَةِ، وَلَا فِي غَيْرِ كِتَابِ اللَّهِ تَعَالَى فِي الدِّينِ شَيْءٌ مِنْ الْحَقِّ. وَأَمَّا السُّنَّةُ وَالْإِجْمَاعُ - فَهُمَا دَاخِلَانِ فِي كِتَابِ اللَّهِ تَعَالَى، لِأَنَّ كُلَّ ذَلِكَ عَدْلُ اللَّهِ تَعَالَى، فَنَظَرْنَا فِي هَذَا: فَوَجَدْنَا مَنْ قَالَ لِآخَرَ: أَنْتَ أَزْنَى مِنِّي، لَيْسَ فِيهِ اعْتِرَافٌ عَلَى نَفْسِهِ بِالزِّنَا، وَإِنَّمَا هُوَ قَذْفٌ صَحِيحٌ، فَوَاجِبٌ جَلْدُهُ حَدَّ الْقَذْفِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فِيمَنْ ادَّعَتْ أَنَّ فُلَانًا اسْتَكْرَهَهَا عَلَى الزِّنَا بِهَا]

٢٢٤٥ - مَسْأَلَةٌ: فِيمَنْ ادَّعَتْ أَنَّ فُلَانًا اسْتَكْرَهَهَا قَالَ عَلِيٌّ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ، وَقَتَادَةَ قَالَا جَمِيعًا: فِي امْرَأَةٍ قَذَفَتْ رَجُلًا بِنَفْسِهَا أَنَّهُ غَلَبَهَا عَلَى نَفْسِهَا، وَالرَّجُلُ يُنْكِرُ ذَلِكَ، وَلَيْسَ لَهَا بَيِّنَةٌ: فَإِنَّهَا تُضْرَبُ حَدَّ الْفِرْيَةِ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ أَنَا قَتَادَةُ أَنَّ رَجُلًا اسْتَكْرَهَ امْرَأَةً فَصَاحَتْ؟ فَجَاءَ مُؤَذِّنٌ فَشَهِدَ لَهَا عِنْدَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ سَمِعَ صِيَاحَهَا، فَلَمْ يَجْلِدْهَا. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا

her. Abdullah ibn Rabiʿ narrated to us: Ibn Mufarrij narrated to us: Qasim ibn Asbagh narrated to us: Ibn Waddah narrated to us: Sahnūn narrated to us: Ibn Wahb informed me from Umayrah ibn Abi Najiyah from Yazid ibn Abi Habibah from Umar ibn Abdul-Aziz: A woman came to him and said, "So-and-so forced himself upon me." He said, "Did anyone hear you or see you?" She said, "No." So he flogged her [in response to] the man's denial—the man being Amr ibn Muslim or Ishaq ibn Muslim, the freed slave of Amr ibn Uthman. Ibn Wahb said: I asked Malik about a woman who says, "So-and-so forced himself upon me." He said, "If the accused is not someone publicly associated with such behavior, she is flogged the ḥadd punishment. If he is publicly known for immorality, the matter is investigated." Abu Muhammad—may Allah have mercy on him—said: Here, they hold that the accused should face prolonged imprisonment, discretionary punishment (taʿzīr), and payment of a dowry equivalent to her peer. These opinions differ: (1) She is flogged the ḥadd punishment for slander if she lacks evidence—this is the view of Al-Zuhri and Qatadah; (2) The punishment is waived for her based on a single witness hearing her scream—this is reported from Umar ibn Abdul-Aziz—otherwise, she is flogged; (3) The punishment is averted by evidence of him being found alone with her, physical marks on her, or hearing her screams—this is the view of Rabiʿah and Yahya ibn Saʿid Al-Ansari, who added that the accused man should be severely punished if any such evidence emerges; otherwise, the woman is flogged for slander; (4) If the accused is of upright character, she is flogged. If he is publicly known for immorality, she is exempt, he is imprisoned indefinitely, and he must pay a dowry equivalent to her peer—this is the view of Malik. Abū Muḥammad—may Allah have mercy on him—said: As for Mālik's opinion, its erroneous nature is evident. This is because he differentiated in legal claims between one referred to as virtuous and one accused of immorality, even though neither the Quran, the Sunnah, consensus, analogy, nor the opinion of any Companion necessitates such a distinction. The entire Ummah has unanimously agreed that if a man claims a debt against another, and the defendant denies it, the defendant must take an oath—even if he were one of the Companions, may Allah be pleased with them. Indeed, ʿAlī, ʿUmar, ʿUthmān, Ibn ʿUmar, and others—may Allah be pleased with them—ruled that the oath is binding. There is no one more

ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي عُمَيْرَةُ بْنُ أَبِي نَاجِيَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبَةَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ أَتَتْهُ امْرَأَةٌ فَقَالَتْ: إنَّ فُلَانًا اسْتَكْرَهَنِي عَلَى نَفْسِي؟ فَقَالَ: هَلْ سَمِعَكِ أَحَدٌ أَوْ رَآكِ؟ قَالَتْ: لَا، فَجَلَدَهَا بِالرَّجُلِ - وَهُوَ عَمْرُو بْنُ مُسْلِمٍ، أَوْ إِسْحَاقُ بْنُ مُسْلِمٍ مَوْلَى عَمْرِو بْنِ عُثْمَانَ - قَالَ ابْنُ وَهْبٍ: سَأَلْت مَالِكًا عَنْ الْمَرْأَةِ تَقُولُ: إنَّ فُلَانًا أَكْرَهَنِي عَلَى نَفْسِي؟ قَالَ: إنْ كَانَ لَيْسَ مِمَّا يُشَارُ إلَيْهِ بِذَلِكَ، جُلِدَتْ الْحَدَّ، وَإِنْ كَانَ مِمَّا يُشَارُ إلَيْهِ بِالْفِسْقِ نُظِرَ فِي ذَلِكَ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَاهُنَا يَرَوْنَ عَلَيْهِ السِّجْنَ الطَّوِيلَ، وَالْأَدَبَ، وَغُرْمَ مَهْرِ مِثْلِهَا - وَهَذِهِ أَقْوَالٌ تَدُورُ عَلَى وُجُوهٍ: إمَّا جَلْدُهَا حَدَّ الْقَذْفِ إنْ لَمْ يَكُنْ لَهَا بَيِّنَةٌ - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَقَتَادَةَ. وَإِمَّا إسْقَاطُ الْحَدِّ عَنْهَا بِشَهَادَةِ وَاحِدٍ: أَنَّهُ سَمِعَ صِيَاحَهَا فَقَطْ - وَهُوَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ - وَإِلَّا فَتُجْلَدُ. وَإِمَّا أَنْ يَدْرَأَ عَنْهَا الْحَدَّ بِأَنْ يُرَى مَعَهَا خَالِيًا، وَيُؤَثِّرَ فِيهِ أَثَرًا، أَوْ يَسْمَعَ صِيَاحَهَا - وَهُوَ قَوْلُ رَبِيعَةَ - وَهُوَ أَيْضًا قَوْلُ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَزَادَ: أَنْ يُعَاقَبَ الرَّجُلُ الْمُدَّعَى عَلَيْهِ - إنْ كَانَ ذَلِكَ - أَشَدَّ الْعُقُوبَةِ إنْ ظَهَرَ بِشَيْءٍ مِمَّا ذَكَرْنَا، وَإِلَّا فَالْحَدُّ عَلَى الْمَرْأَةِ حَدُّ الْقَذْفِ. وَإِمَّا أَنْ يَنْظُرَ، فَإِنْ كَانَ الْمُدَّعَى عَلَيْهِ مِنْ أَهْلِ الْعَافِيَةِ جُلِدَ حَدَّ الْقَذْفِ - وَإِنْ كَانَ مِمَّنْ يُشَارُ إلَيْهِ بِالْفِسْقِ فَلَا شَيْءَ عَلَيْهَا، وَيُسْجَنُ هُوَ وَيُطَالُ سِجْنُهُ، وَيَغْرَمُ مَهْرَ مِثْلِهَا - وَهُوَ قَوْلُ مَالِكٍ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا قَوْلُ مَالِكٍ - فَظَاهِرُ الْخَطَأِ، لِأَنَّهُ فَرَّقَ فِي الِادِّعَاءِ بَيْنَ الْمُشَارِ إلَيْهِ بِالْخَيْرِ، وَالْمُشَارِ إلَيْهِ بِالْفِسْقِ، وَلَمْ يُوجِبْ الْفَرْقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، وَلَا قِيَاسٌ، وَلَا قَوْلُ صَاحِبٍ وَقَدْ أَجْمَعَتْ الْأُمَّةُ كُلُّهَا عَلَى أَنَّ رَجُلًا يَدَّعِي دَيْنًا عَلَى آخَرَ، وَالْمُدَّعَى عَلَيْهِ مُنْكِرٌ: فَإِنَّهُ يَحْلِفُ - وَلَوْ أَنَّهُ أَحَدُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَقَدْ قَضَى بِالْيَمِينِ

virtuous than them, nor anyone further removed from suspicion. A claim of denying property, oppression, or usurpation is like a claim of coercion in adultery; there is no difference, for all these are forbidden and sinful. The Messenger of Allah—peace and blessings be upon him—said: "If people were granted their claims merely by asserting them, others would claim the blood and wealth of people. But the oath is upon the one against whom the claim is made." He also said to two disputing Companions: "Either you present evidence, or he must take an oath." The entire Ummah, including Mālik, agrees that if a righteous, virtuous, and just Muslim—even if he were one of the Companions, may Allah be pleased with them—claims property against a Jew or Christian without evidence, the Jew or Christian is absolved by their oath. Conversely, if a disbeliever makes such a claim against a Muslim, the Muslim would be required to take an oath. How, then, can the judge rule in her favor based solely on her claim, obligating him to pay her dower merely because he is a transgressor? Yet no one is more transgressing than a disbeliever, for Allah says: "The disbelievers are the transgressors." These are two aspects of the error.

A third error is ruling to imprison and punish him without evidence—a clear and undeniable injustice. A fourth is that the judge either believes her or disbelieves her, with no third option. If he believes her, he must enforce the ḥadd punishment for adultery upon her; otherwise, he contradicts himself and neglects a divine penalty. If he disbelieves her, on what grounds does he imprison him, obligate him to pay her dower, cause her to wrongfully consume wealth, and seize his property without right?

A fifth error is that if she speaks and the accused is known for uprightness, he flogs her for false accusation of adultery. If time passes and pregnancy becomes apparent, he stones her if she is married. This is an injustice unheard of. By a ruling more heinous than the one discussed, and a constriction in religion that Allah the Exalted has never ordained therein. None is recorded to have made this distinction before Mālik—and with Allah alone is success. Abū Muḥammad—may Allah have mercy on him—said: We examined this matter and found Allah the Exalted stating: {If you dispute over anything, refer it to Allah and the Messenger} [4:59]. We did so and found Allah the

عَلِيٌّ وَعُمَرُ، وَعُثْمَانُ وَابْنُ عُمَرَ، وَغَيْرُهُمْ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا أَحَدَ أَفْضَلُ مِنْهُمْ، وَلَا أَبْعَدَ مِنْ التُّهْمَةِ، وَالدَّعْوَى بِجَحْدِ الْمَالِ، وَالظُّلْمِ، وَالْغَصْبِ كَالدَّعْوَى بِالْغَلَبَةِ فِي الزِّنَا، وَلَا فَرْقَ، لِأَنَّ كُلَّ ذَلِكَ حَرَامٌ، وَمَعْصِيَةٌ. وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَوْ أُعْطِيَ قَوْمٌ بِدَعْوَاهُمْ لَادَّعَى قَوْمٌ دِمَاءَ قَوْمٍ وَأَمْوَالَهُمْ وَلَكِنَّ الْيَمِينَ عَلَى مَنْ أُدُّعِيَ عَلَيْهِ» وَقَالَ - عَلَيْهِ السَّلَامُ - لِصَاحِبِ مِنْ أَصْحَابِهِ اخْتَصَمَا «بَيِّنَتُك أَوْ يَمِينُهُ» وَقَدْ أَجْمَعَتْ الْأُمَّةُ، وَمَالِكٌ مَعَهُمْ عَلَى أَنَّ مُسْلِمًا بَرًّا فَاضِلًا عَدْلًا - وَلَوْ أَنَّهُ أَحَدُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: ادَّعَى مَالًا عَلَى يَهُودِيٍّ، أَوْ نَصْرَانِيٍّ، وَلَا بَيِّنَةَ لَهُ أَنَّ الْيَهُودِيَّ، أَوْ النَّصْرَانِيَّ: يَبْرَأُ مِنْ ذَلِكَ بِيَمِينِهِ، وَأَنَّ الْكَافِرَ لَوْ ادَّعَى ذَلِكَ عَلَى الْمُسْلِمِ لَأُحْلِفَ لَهُ، فَكَيْفَ يَقْضِي لَهَا بِدَعْوَاهَا، فَيُغَرِّمُهُ مَهْرَهَا مِنْ أَجْلِ أَنَّهُ فَاسِقٌ، وَلَا فَاسِقَ أَفْسَقُ مِنْ كَافِرٍ، قَالَ اللَّهُ تَعَالَى الْكَافِرُونَ هُمْ الْفَاسِقُونَ فَهَذَانِ وَجْهَانِ مِنْ الْخَطَأِ؟ وَثَالِثٌ - وَهُوَ الْقَضَاءُ عَلَيْهِ بِالسِّجْنِ وَالْعُقُوبَةِ دُونَ بَيِّنَةٍ - وَهَذَا ظُلْمٌ ظَاهِرٌ لَا خَفَاءَ بِهِ. وَرَابِعٌ - هُوَ أَنَّهُ لَا يَخْلُو مِنْ أَنْ يَكُونَ يُصَدِّقُهَا أَوْ يُكَذِّبُهَا، وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ - فَإِنْ كَانَ يُصَدِّقُهَا فَيَنْبَغِي لَهُ أَنْ يُقِيمَ عَلَيْهَا حَدَّ الزِّنَا وَإِلَّا فَقَدْ تَنَاقَضَ وَضَيَّعَ حَدًّا لِلَّهِ تَعَالَى، وَإِنْ كَانَ يُكَذِّبُهَا فَبِأَيِّ مَعْنًى يَسْجُنُهُ وَيُغَرِّمُهُ مَهْرَ مِثْلِهَا، فَيُؤَكِّلُهَا الْمَالَ بِالْبَاطِلِ، وَيَأْخُذُ مَالَهُ بِغَيْرِ حَقٍّ. وَخَامِسٌ - وَهُوَ أَنَّهُ إنْ تَكَلَّمَتْ - وَكَانَ الْمُدَّعَى عَلَيْهِ مَعْرُوفًا بِالْعَافِيَةِ: جَلَدَهَا حَدَّ الْقَذْفِ، وَإِنْ مَكَثَتْ، فَظَهَرَ بِهَا حَمْلٌ: رَجَمَهَا إنْ كَانَتْ مُحْصَنَةً - وَهَذَا ظُلْمٌ مَا سُمِعَ بِأَشْنَعَ مِنْهُ، وَحَرَجٌ فِي الدِّينِ لَمْ يَجْعَلْهُ اللَّهُ تَعَالَى قَطُّ فِيهِ، وَلَا يُحْفَظُ عَنْ أَحَدٍ فَرَّقَ هَذَا التَّفْرِيقَ قَبْلَ مَالِكٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. قَالَ أَبُو مُحَمَّدٍ -

Exalted has ordained the ḥadd punishment for anyone who accuses another of fornication unless they produce evidence. We then considered the case of a woman who complains that someone overpowered her sexually. She must either be making an accusation of unchastity (qadhf) or not. If she is making such an accusation, the ḥadd punishment is undoubtedly obligatory upon her, as there is consensus that one who accuses even a morally corrupt person of unchastity incurs the ḥadd punishment, just as with accusing a virtuous person—no distinction exists. Qadhf entails intentional defamation and censure. However, this woman is not making an accusation of unchastity but rather lodging a legal claim. Since she is not engaging in qadhf, no ḥadd punishment applies to her. She must nevertheless provide evidence. If she produces it, the ḥadd punishment for fornication is executed upon the accused. If she fails, no penalty whatsoever falls upon him—no imprisonment, disciplinary punishment, or financial liability—for his wealth is inviolable, his person protected, and his freedom to move about the earth lawful, as Allah the Exalted says: {Walk through its spacious expanses} [67:15]. Should someone argue: "If no evidence exists, judge against him by oath based on this textual report," we respond: With Allah's guidance—her claim combines her personal right and Allah's right, wherein she holds no authority to alter terms. Her right pertains to the transgression against her, while Allah's right pertains to the act of fornication. Thus, the accused must swear regarding her right, declaring: "By Allah, I did not transgress against you nor wrong you"—thereby absolving himself. He may not swear regarding fornication itself, as all agree no one may swear concerning a right they have no stake in. There is no disagreement that if one says: "You seized a dinar from me and Zayd," the oath pertains solely to the claimant's share, not Zayd's—and likewise in all matters. As for distinguishing between defamation and complaint: all agree that if one addresses another—whether initially or during[...] A conversation between them—"O oppressor, O usurper! [You claim] he is a wrongdoer"—so some say: disciplinary correction is incumbent upon him, while others say: another may respond to him with the same [words]. They do not differ regarding one who complains about another, stating: "He wronged me and seized my property unjustly," that no penalty applies to him and he is not deemed a wrongdoer in doing so. Thus, the validity of

رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي ذَلِكَ - فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ؟ فَفَعَلْنَا - فَوَجَدْنَا اللَّهَ تَعَالَى قَدْ أَوْجَبَ الْحَدَّ عَلَى مَنْ رَمَى أَحَدًا بِالزِّنَا، إلَّا أَنْ يَأْتِيَ بِبَيِّنَةٍ. ثُمَّ نَظَرْنَا فِي الَّتِي تَشْتَكِي بِإِنْسَانٍ: أَنَّهُ غَلَبَهَا عَلَى نَفْسِهَا؟ فَوَجَدْنَاهَا لَا تَخْلُو مِنْ أَنْ تَكُونَ قَاذِفَةً، أَوْ تَكُونَ غَيْرَ قَاذِفَةٍ، فَإِنْ كَانَتْ قَاذِفَةً فَالْحَدُّ وَاجِبٌ عَلَيْهَا بِلَا شَكٍّ، إذْ لَا خِلَافَ فِي أَنَّ قَاذِفَ الْفَاسِقِ يَلْزَمُهُ الْحَدُّ، كَقَاذِفِ الْفَاضِلِ، وَلَا فَرْقَ. وَالْقَذْفُ هُوَ مَا قُصِدَ بِهِ الْعَيْبُ وَالذَّمُّ وَهَذِهِ لَيْسَتْ قَاذِفَةً إنَّمَا هِيَ مُشْتَكِيَةٌ مُدَّعِيَةٌ، وَإِذْ لَيْسَتْ قَاذِفَةً فَلَا حَدَّ لِلْقَذْفِ عَلَيْهَا، وَلَكِنْ تُكَلَّفُ الْبَيِّنَةَ، فَإِنْ جَاءَتْ بِهَا أُقِيمَ عَلَيْهِ حَدُّ الزِّنَا، وَإِنْ لَمْ تَأْتِ بِهَا فَلَا شَيْءَ عَلَيْهِ أَصْلًا، لَا سِجْنَ، وَلَا أَدَبَ، وَلَا غَرَامَةَ؛ لِأَنَّ مَالَهُ مُحَرَّمٌ، وَبَشَرَتُهُ مُحَرَّمَةٌ، وَمُبَاحٌ لَهُ الْمَشْيُ فِي الْأَرْضِ، قَالَ اللَّهُ تَعَالَى {فَامْشُوا فِي مَنَاكِبِهَا} [الملك: ١٥] . فَإِنْ قَالَ قَائِلٌ: فَإِنْ لَمْ تَكُنْ بَيِّنَةٌ فَاقْضُوا عَلَيْهِ بِالْيَمِينِ بِهَذَا الْخَبَرِ؟ قُلْنَا: وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - إنَّ دَعْوَاهَا انْتَظَمَ حَقًّا لَهَا وَحَقًّا لِلَّهِ تَعَالَى، لَيْسَ لَهَا فِيهِ دُخُولٌ وَلَا خُرُوجٌ؟ فَحَقُّهَا: التَّعَدِّي عَلَيْهَا وَظُلْمُهَا، وَحَقُّ اللَّهِ تَعَالَى: هُوَ الزِّنَا، فَوَاجِبٌ أَنْ يَحْلِفَ لَهَا فِي حَقِّهَا، فَيَحْلِفُ بِاَللَّهِ مَا تَعَدَّيْت عَلَيْك فِي شَيْءٍ، وَلَا ظَلَمْتُك وَتَبْرَأُ ذِمَّتُهُ. وَلَا يَجُوزُ أَنْ يَحْلِفَ بِاَللَّهِ مَا زَنَى؛ لِأَنَّهُ لَا خِلَافَ فِي أَنَّ أَحَدًا لَا يَحْلِفُ فِي حَقٍّ لَيْسَ لَهُ فِيهِ مَدْخَلٌ. وَلَا يَخْتَلِفُ اثْنَانِ فِي أَنَّ مَنْ قَالَ: إنَّك غَصَبْتَنِي وَزَيْدًا دِينَارًا، فَإِنَّهُ إنَّمَا يَحْلِفُ لَهُ فِي حَقِّهِ مِنْ الدِّينَارِ لَا فِي حَقِّ زَيْدٍ، وَهَكَذَا فِي كُلِّ شَيْءٍ. وَأَمَّا الْفَرْقُ بَيْنَ الذَّمِّ وَالشَّكْوَى، فَإِنَّهُمْ لَا يَخْتَلِفُونَ فِيمَنْ قَالَ لِآخَرَ - ابْتِدَاءً أَوْ فِي كَلَامٍ بَيْنَهُمَا - يَا ظَالِمُ، يَا غَاصِبُ، أَنَّهُ مُسِيءٌ - فَمِنْ قَائِلٍ: عَلَيْهِ الْأَدَبُ، وَمِنْ قَائِلٍ: لِآخَرَ أَنْ يَقُولَ لَهُ مِثْلَ ذَلِكَ. وَلَا يَخْتَلِفُونَ فِيمَنْ شَكَا بِآخَرَ فَقَالَ:

distinguishing between lodging a legitimate complaint and the transgression involving verbal abuse and false accusation of unchastity is established—and success comes only from Allah, the Exalted.[36]

L41763 **A legal issue concerning one who falsely accuses of unlawful sexual intercourse while intoxicated.**

L41764–41766 2246 - Issue: Regarding one who falsely accuses [someone] while intoxicated. Abu Muhammad—may Allah have mercy on him—said: We have mentioned in many places the ruling concerning the intoxicated person—that he is not held accountable for anything whatsoever except the prescribed ḥadd punishment for wine alone. However, we shall briefly present the essence of our evidence for this—Allah willing. He said: Allah the Exalted declares: {O you who believe, do not approach prayer while you are intoxicated until you know what you are saying} [4:43]. Thus Allah—the Most Truthful Witness—testifies that the intoxicated person does not comprehend what he utters. Since he lacks awareness of his speech, nothing is incumbent upon him. No one in the Ummah disputes that if a person utters a phrase whose meaning he does not grasp—even if its implication is disbelief, false accusation, or divorce—he is not held accountable for any of that. Therefore, as the intoxicated person is unaware of his speech, it is impermissible to hold him liable for anything he says, whether a false accusation or otherwise. Should they object: "This was before the prohibition of intoxicants?" We reply: Yes—what then? The entire Ummah unanimously agrees without dissent that the ruling of this verse remains in force, un-abrogated, and that it is unlawful for an intoxicated person to approach prayer until he comprehends his speech. Likewise, no two of the children of Adam dispute that the intoxicated person's state of being unaware of his speech persists as it was, for Allah the Exalted has not altered his inherent condition. If they argue: "He brought this upon himself?" We respond: Yes, but this objection holds no merit for several reasons. First: This is an argument that does not establish a legal ruling, as neither Quranic text, Sunnah, nor consensus supports this reasoning. Second: We ask you about one who was coerced into drinking wine, his

[36]**Qur'an references (L41754):** Qur'an 4:59 (An-Nisa); Qur'an 67:15 (Al-Mulk).

ظَلَمَنِي وَأَخَذَ مَالِي بِغَيْرِ حَقٍّ، أَنَّهُ لَا شَيْءَ عَلَيْهِ وَأَنَّهُ لَيْسَ مُسِيئًا بِذَلِكَ فَصَحَّ الْفَرْقُ بَيْنَ الشَّكْوَى وَبَيْنَ الِاعْتِدَاءِ بِالسَّبِّ وَالْقَذْفِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فِيمَنْ قَذَفَ وَهُوَ سَكْرَانُ]

٢٢٤٦ - مَسْأَلَةٌ: فِيمَنْ قَذَفَ وَهُوَ سَكْرَانُ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَدْ ذَكَرْنَا فِي مَوَاضِعَ كَثِيرَةٍ حُكْمَ السَّكْرَانِ وَأَنَّهُ غَيْرُ مُؤَاخَذٍ بِشَيْءٍ أَصْلًا إلَّا حَدَّ الْخَمْرِ فَقَطْ، إلَّا أَنَّنَا نَذْكُرُ عُمْدَةَ حُجَّتِنَا فِي ذَلِكَ بِاخْتِصَارٍ - إنْ شَاءَ اللَّهُ تَعَالَى قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ اللَّهُ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تَقْرَبُوا الصَّلاةَ وَأَنْتُمْ سُكَارَى حَتَّى تَعْلَمُوا مَا تَقُولُونَ} [النساء: ٤٣] فَشَهِدَ اللَّهُ تَعَالَى وَهُوَ أَصْدَقُ شَاهِدٍ: أَنَّ السَّكْرَانَ لَا يَدْرِي مَا يَقُولُ، وَإِذْ لَمْ يَدْرِ مَا يَقُولُ فَلَا شَيْءَ عَلَيْهِ، وَلَمْ يَخْتَلِفْ أَحَدٌ مِنْ الْأُمَّةِ فِي أَنَّ امْرَأً لَوْ نَطَقَ بِلَفْظٍ لَا يَدْرِي مَعْنَاهُ - وَكَانَ مَعْنَاهُ كُفْرًا، أَوْ قَذْفًا، أَوْ طَلَاقًا - فَإِنَّهُ لَا يُؤَاخَذُ بِشَيْءٍ مِنْ ذَلِكَ، فَإِذَا كَانَ السَّكْرَانُ لَا يَدْرِي مَا يَقُولُ، فَلَا يَجُوزُ أَنْ يُؤَاخَذَ بِشَيْءٍ مِمَّا يَقُولُ، قَذْفًا كَانَ أَوْ غَيْرَ قَذْفٍ. فَإِنْ قَالُوا: كَانَ هَذَا قَبْلَ تَحْرِيمِ الْخَمْرِ؟ قُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ وَالْأُمَّةُ كُلُّهَا مُجْمِعَةٌ بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْهَا عَلَى أَنَّ حُكْمَ هَذِهِ الْآيَةِ بَاقٍ لَمْ يُنْسَخْ، وَأَنَّهُ لَا يَحِلُّ لِسَكْرَانَ أَنْ يَقْرَبَ الصَّلَاةَ حَتَّى يَدْرِيَ مَا يَقُولُ. وَكَذَلِكَ لَا يَخْتَلِفُ اثْنَانِ مِنْ وَلَدِ آدَمَ فِي أَنَّ حَالَ السَّكْرَانِ فِي أَنَّهُ لَا يَدْرِي مَا يَقُولُ بَاقٍ كَمَا كَانَ لَمْ يُحِلَّهُ اللَّهُ تَعَالَى عَنْ صِفَتِهِ. فَإِنْ قَالُوا: هُوَ أَدْخَلَ ذَلِكَ عَلَى نَفْسِهِ؟ قُلْنَا: نَعَمْ، وَهَذَا لَا فَائِدَةَ لَكُمْ فِيهِ لِوُجُوهٍ: أَوَّلُهَا - أَنَّ هَذَا تَعَلُّلٌ لَا يُوجِبُ حُكْمًا، لِأَنَّهُ لَمْ يَأْتِ بِهَذَا التَّعْلِيلِ قُرْآنٌ، وَلَا سُنَّةٌ وَلَا إجْمَاعٌ الثَّانِي - إنَّا نَسْأَلُكُمْ عَمَّنْ أُكْرِهَ عَلَى شُرْبِ الْخَمْرِ، فَفُتِحَ فَمُهُ كَرْهًا

mouth forced open with hooks and wine poured into him until he became intoxicated. There is no dispute that such a person is not sinful, nor that he did not voluntarily ingest it. Thus, his ruling should—by your principles—differ from that of one who drank willingly. You must therefore absolve this coerced individual of liability for anything he uttered in that state of intoxication; otherwise, you would contradict yourselves.

Third: We ask you about one who consumed balādhur (marking nut) and went mad, or overdosed until the sinews of his legs were severed and he became unable to walk. Should such an insane person be accorded the rulings applicable to the insane—nullifying all legal obligations—or do the obligations remain binding because he brought this upon himself? Similarly, does one who intentionally or sinfully disabled his legs in disobedience to Allah Almighty receive the rulings of those unable to walk—such as sitting for prayer, exemption from Hajj, and other matters—or does none of this exemption apply to him because he caused his own condition? Their position—without dispute—holds that both are treated like all other insane persons and those unable to walk. Thus, their argument that the intoxicated individual "brought it upon himself" collapses.

It is authentically established that Ḥamzah (may Allah be pleased with him) said to the Messenger of Allah (peace be upon him), ʿAlī ibn Abī Ṭālib, and Zayd ibn Khālid while intoxicated: "Are you not but slaves of my fathers?" Yet he was not censured for this. Had he uttered this while sane, it would have been disbelief—far removed is he from such! This confirms that an intoxicated person who loses discernment bears no liability—neither for slander nor anything else—for he is like one insane, devoid of reason.

If they contend: "Some Companions (may Allah be pleased with them) reportedly said, 'When he drinks, he becomes intoxicated; when intoxicated, he raves; when he raves, he slanders; and when he slanders, he is flogged eighty lashes,'" we reply: Far be it from Allah that any Companion would utter such falsehood! By Allah, they are far nobler, wiser, and more knowledgeable than to espouse such baseless absurdity. Their own consensus suffices—that one who raves bears no punishment, even if he blasphemes or slanders. Yet they

بِأَكَالِيبَ وَصُبَّ فِيهِ الْخَمْرُ حَتَّى سَكِرَ، فَإِنَّ هَذَا لَا خِلَافَ فِي أَنَّهُ غَيْرُ آثِمٍ، وَلَا فِي أَنَّهُ لَمْ يُدْخِلْهُ عَلَى نَفْسِهِ، فَيَنْبَغِي أَنْ يَكُونَ حُكْمُهُ عِنْدَكُمْ بِخِلَافِ حُكْمِ مَنْ أَدْخَلَهُ عَلَى نَفْسِهِ، فَلَا تُلْزِمُوا هَذَا الْمُكْرَهَ شَيْئًا مِمَّا قَالَ فِي ذَلِكَ السُّكْرِ، وَإِلَّا فَقَدْ تَنَاقَضْتُمْ. وَالثَّالِثُ - إِنَّا نَسْأَلُكُمْ عَمَّنْ شَرِبَ الْبَلَاذِرَ فَجُنَّ، أَوْ تَزَيَّدَ فَقُطِعَ عَصَبُ سَاقَيْهِ فَأُقْعِدَ، أَيَكُونُ لِذَلِكَ الْمَجْنُونِ حُكْمُ الْمَجَانِينِ فِي سُقُوطِ جَمِيعِ الْأَحْكَامِ عَنْهُ، أَوْ تَكُونُ الْأَحْكَامُ لَازِمَةً لَهُ مِنْ أَجْلِ أَنَّهُ أَدْخَلَ ذَلِكَ عَلَى نَفْسِهِ؟ وَهَلْ يَكُونُ لِلَّذِي أَبْطَلَ سَاقَيْهِ عَمْدًا أَوْ أَشَرًا وَمَعْصِيَةً لِلَّهِ تَعَالَى حُكْمُ الْمُقْعَدِ فِي الصَّلَاةِ وَسُقُوطِ الْحَجِّ وَغَيْرِ ذَلِكَ؟ أَمْ لَا يَسْقُطُ عَنْهُ شَيْءٌ مِنْ ذَلِكَ مِنْ أَجْلِ إِدْخَالِهِ ذَلِكَ عَلَى نَفْسِهِ؟ فَمِنْ قَوْلِهِمْ - بِلَا خِلَافٍ - إِنَّ لَهُمَا حُكْمَ سَائِرِ الْمَجَانِينِ، وَسَائِرِ الْقَاعِدِينَ. فَبَطَلَ تَعَلُّقُهُمْ بِأَنَّ السَّكْرَانَ أَدْخَلَ ذَلِكَ عَلَى نَفْسِهِ. وَقَدْ صَحَّ «أَنَّ حَمْزَةَ - رَضِيَ اللَّهُ عَنْهُ - قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلِعَلِيِّ بْنِ أَبِي طَالِبٍ، وَزَيْدِ بْنِ خَالِدٍ: هَلْ أَنْتُمْ إِلَّا عَبِيدٌ لِآبَائِي - وَهُوَ سَكْرَانُ - فَلَمْ يُعَنِّفْهُ عَلَى ذَلِكَ» وَلَوْ قَالَهَا صَحِيحًا لَكَفَرَ بِذَلِكَ، وَحَاشَ لَهُ مِنْ ذَلِكَ. فَصَحَّ أَنَّ السَّكْرَانَ إِذَا ذَهَبَ تَمْيِيزُهُ فَلَا شَيْءَ عَلَيْهِ - لَا فِي الْقَذْفِ وَلَا فِي غَيْرِهِ -؛ لِأَنَّهُ مَجْنُونٌ لَا عَقْلَ لَهُ. فَإِنْ قَالُوا: قَدْ جَاءَ عَنْ بَعْضِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إِذَا شَرِبَ سَكِرَ، وَإِذَا سَكِرَ هَذَى، وَإِذَا هَذَى افْتَرَى، وَإِذَا افْتَرَى جُلِدَ ثَمَانِينَ؟ قُلْنَا: حَاشَى لِلَّهِ أَنْ يَقُولَ صَاحِبٌ هَذَا الْكَلَامَ الْفَاسِدَ؟ هُمْ وَاَللَّهِ، أَجَلُّ، وَأَعْقَلُ، وَأَعْلَمُ، مِنْ أَنْ يَقُولُوا هَذَا السُّخْفَ الْبَاطِلَ، وَيَكْفِي مِنْهُ إِجْمَاعُهُمْ عَلَى أَنَّ مَنْ هَذَى فَلَا حَدَّ عَلَيْهِ، وَلَوْ كَفَرَ، أَوْ قَذَفَ، فَهُمْ يَحْتَجُّونَ بِمَا هُمْ أَوَّلُ مُخَالِفٍ لَهُ، وَأَحْضَرُ مُبْطِلٍ لِحُكْمِهِ - وَنَعُوذُ بِاَللَّهِ مِنْ مِثْلِ هَذَا. وَسَنَتَكَلَّمُ - إِنْ شَاءَ اللَّهُ تَعَالَى - فِي إِبْطَالِ هَذَا الْخَبَرِ مِنْ طَرِيقِ إِسْنَادِهِ،

cite what they themselves first contradicted and invalidated—we seek refuge in Allah from such [a contradiction].

We shall discuss—Allah willing—the invalidation of this report in our treatment of the hadd punishment for wine in this work, examining its weak chain of transmission, its inconsistency, and its intrinsic corruption. If they ask: "Who can verify he was truly intoxicated? Perhaps he feigned drunkenness?"...[37]

L41767–41768 They were told: "State this exact thing regarding the insane person - for who knows he is insane? Perhaps he is feigning foolishness. Yet you do not say this; rather, you absolve him of legal obligations and *ḥudūd*. The condition through which insanity is ascertained in the madman is precisely the same through which intoxication is recognized in the drunkard, with no distinction - namely, when one reaches such confusion in speech and actions that it becomes certain he cannot regain a sober, rational state due to such a condition. Such a person is undoubtedly a mentally incompetent person and an intoxicated one, as Allah the Exalted said: 'Until you know what you are saying' [4:43]. Whoever babbles incoherently does not know what he says. Success comes from Allah, the Exalted."[38]

L41769 An issue concerning a father who falsely accuses his son, the mother of his slave children (umm walad), or the mother of his son of unlawful sexual intercourse (qadhf).

L41770 Issue 2247: A father accusing his son, the mother of his slaves, or the mother of his son. Abu Muhammad - may Allah have mercy on him - said: We have mentioned the ruling of Umar ibn Abd al-Aziz: "The one who accuses his son incurs hadd punishment." Those who mandated this hadd include Malik, al-Awzaʿi, Abu Sulayman, and our companions. Another group said: "No hadd punishment applies to the father in such cases." As narrated by Hammam via Ibn Mufarrij via Ibn al-Aʿrabi via Abu Yaʿqub al-Dabari via Abd al-Razzaq

[37] **Qur'an references (L41764):** Qur'an 4:43 (An-Nisa).
[38] **Qur'an references (L41768):** Qur'an 4:43 (An-Nisa).

وَمِنْ تَخَاذُلِهِ وَفَسَادِهِ فِي كَلَامِنَا فِي " حَدّ الْخَمْرِ " مِنْ دِيوَانِنَا هَذَا إنْ شَاءَ اللَّهُ تَعَالَى فَإِنْ قَالُوا: وَمَنْ يَدْرِي أَنَّهُ سَكْرَانُ، وَلَعَلَّهُ تَسَاكَرَ؟

قِيلَ لَهُمْ: قُولُوا هَذَا بِعَيْنِهِ فِي الْمَجْنُونِ: وَمَنْ يَدْرِي أَنَّهُ مَجْنُونٌ، وَلَعَلَّهُ مُتَحَامِقٌ، وَأَنْتُمْ لَا تَقُولُونَ هَذَا، بَلْ تُسْقِطُونَ عَنْهُ الْأَحْكَامَ وَالْحُدُودَ، فَالْحَالُ الَّتِي تُدْرَى فِي الْمَجْنُونِ أَنَّهُ مَجْنُونٌ، بِمِثْلِهَا يُدْرَى فِي السَّكْرَانِ أَنَّهُ سَكْرَانُ وَلَا فَرْقَ - وَهِيَ: إنَّهُ إذَا بَلَغَ مِنْ نَفْسِهِ مِنْ التَّخْلِيطِ فِي كَلَامِهِ وَأَفْعَالِهِ حَيْثُ يُوقَنُ أَنَّهُ لَا يَبْلُغُهُ مِنْ نَفْسِهِ الْمُمَيِّزَ الصَّاحِي حَيَاءً مِنْ مِثْلِ تِلْكَ الْحَالِ - فَهَذَا بِلَا شَكّ أَحْمَقُ، وَسَكْرَانُ، كَمَا قَالَ اللَّهُ تَعَالَى {حَتَّى تَعْلَمُوا مَا تَقُولُونَ} [النساء: ٤٣] فَمَنْ خَلَطَ فِي كَلَامِهِ فَلَيْسَ يَعْلَمُ مَا يَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فِي الْأَبِ يَقْذِفُ ابْنَهُ أَوْ أُمَّ عَبِيدِهِ أَوْ أُمَّ ابْنِهِ]

٢٢٤٧ - مَسْأَلَةٌ: الْأَبُ يَقْذِفُ ابْنَهُ، أَوْ أُمَّ عَبِيدِهِ، أَوْ أُمَّ ابْنِهِ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَدْ ذَكَرْنَا حُكْمَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: يُحَدُّ مَنْ قَذَفَ ابْنَهُ - وَأَوْجَبَ الْحَدَّ فِي ذَلِكَ: مَالِكٌ، وَالْأَوْزَاعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُنَا. وَقَالَتْ طَائِفَةٌ: لَا حَدَّ عَلَى الْأَبِ فِي ذَلِكَ: كَمَا نَا حُمَامٌ نَا ابْنُ مُفَرِّجٍ نَا ابْنُ الْأَعْرَابِيِّ نَا أَبُو يَعْقُوبَ الدَّبَرِيُّ نَا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: إذَا افْتَرَى الْأَبُ عَلَى الِابْنِ فَلَا يُحَدُّ.

via Ibn Jurayj via Ata', who stated: "When a father accuses his son, he is not subjected to hadd punishment."

L41771 And through him—to Abd al-Razzaq from Sufyan al-Thawri, from one who heard al-Hasan say: "No hadd punishment applies to a father for his son." Through him—Abu Hanifa, al-Shafi'i, Ahmad ibn Hanbal, their companions, al-Hasan ibn Hayy, and Ishaq ibn Rāhawayh hold this opinion. Sufyan al-Thawri said regarding a father who accuses his son of adultery: "They deem it preferable to avert the punishment from him." Concerning a woman who commits adultery (as a married woman) and kills her child, he said: "The hadd punishment is averted from her." Abu Muhammad—may Allah have mercy on him—said: "Since they differed as we mentioned, it became obligatory to examine this matter. We examined the view of those who held that a father is not subjected to hadd punishment for his son: We found them citing Allah's words: *'And treat parents with kindness. Do not say to them "uff" nor scold them, but speak to them gracious words. Lower to them the wing of humility out of mercy*' (Quran 17:23–24). They argued: 'Striking a parent with whips constitutes neither kindness nor righteousness, nor does this align with lowering the wing of mercy to them.'"[39]

L41772–41773 They also analogized the waiving of the ḥadd penalty for slander by a parent against his child to their waiving of retaliation from him if he kills his child, and their waiving of retaliation from him for bodily harm against his child to their waiving of the ḥadd penalty from him for stealing from his own property.

L41774 Regarding their waiving of the ḥadd punishment for his adultery with his *umm walad* (enslaved mother of his child), Abū Muḥammad—may Allah have mercy on him—said: "We know of no foundational basis for their position whatsoever—and all of this contains no evidence for them—as we shall clarify, Allah willing. As for Allah's Exalted injunction to show kindness to parents by not uttering 'Uff' to them, not rebuking them, and lowering the wing of humility out of mercy for them: this is an indisputable truth no Muslim may deviate from. Yet none of this necessitates waiving the ḥadd

[39] **Qur'an references (L41771):** Qur'an 17:23 (Al-Isra); Qur'an 17:24 (Al-Isra).

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَمَّنْ سَمِعَ الْحَسَنَ يَقُولُ: لَيْسَ عَلَى الْأَبِ لِابْنِهِ حَدٌّ. وَبِهِ - يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَصْحَابُهُمْ، وَالْحَسَنُ بْنُ حَيٍّ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ. وَقَالَ سُفْيَانُ الثَّوْرِيُّ فِي الْأَبِ يَقْذِفُ ابْنَهُ: إنَّهُمْ يَسْتَحِبُّونَ الدَّرْءَ عَنْهُ - وَقَالَ فِي الْمَرْأَةِ تَزْنِي - وَهِيَ مُحْصَنَةٌ - وَتَقْتُلُ وَلَدَهَا: إنَّهُ يُدْرَأُ عَنْهَا الْحَدُّ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ - فَنَظَرْنَا فِي قَوْلِ مَنْ رَأَى أَنَّهُ لَا يُحَدُّ الْأَبُ لِابْنِهِ: فَوَجَدْنَاهُمْ يَقُولُونَ قَالَ اللَّهُ تَعَالَى {وَبِالْوَالِدَيْنِ إحْسَانًا - فَلا تَقُلْ لَهُمَا أُفٍّ وَلا تَنْهَرْهُمَا وَقُلْ لَهُمَا قَوْلا كَرِيمًا - وَاخْفِضْ لَهُمَا جَنَاحَ الذُّلِّ مِنَ الرَّحْمَةِ} [الإسراء: ٨٣ - ٢٤] قَالُوا: وَلَيْسَ مِنْ الْإِحْسَانِ، وَلَا مِنْ الْبِرِّ: ضَرْبُهُمَا بِالسِّيَاطِ، وَلَا هَذَا مِنْ خَفْضِ الْجَنَاحِ لَهُمَا مِنْ الرَّحْمَةِ.

وَقَاسُوا أَيْضًا إسْقَاطَ الْحُدُودِ فِي الْقَذْفِ عَنْ الْوَالِدِ فِي قَذْفِهِ لِوَلَدِهِ عَلَى إسْقَاطِهِمْ الْقَوَدَ عَنْهُ إنْ قَتَلَهُ - وَإِسْقَاطِهِمْ الْقِصَاصَ عَنْهُ لِوَلَدِهِ فِيمَا دُونَ النَّفْسِ عَلَى إسْقَاطِهِمْ الْحَدَّ عَنْهُ فِي سَرِقَتِهِ مِنْ مَالِهِ.

وَعَلَى إسْقَاطِهِمْ الْحَدَّ فِي زِنَاهُ بِأُمِّ وَلَدِهِ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا نَعْلَمُ لَهُمْ غَيْرَ هَذَا أَصْلًا - وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ - عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى. أَمَّا وَصِيَّةُ اللَّهِ تَعَالَى بِالْإِحْسَانِ إلَى الْأَبَوَيْنِ بِأَنْ لَا يُقَالَ لَهُمَا: أُفٍّ، وَلَا يُنْهَرَا، وَيُخْفَضَ لَهُمَا جَنَاحُ الذُّلِّ مِنْ الرَّحْمَةِ: فَحَقٌّ لَا يَحِيدُ عَنْهُ مُسْلِمٌ، وَلَيْسَ يَقْتَضِي شَيْءٌ مِنْ ذَلِكَ إسْقَاطَ الْحَدِّ عَنْهُ فِي الْقَذْفِ لِوَلَدِهِ؛ لِأَنَّهُ لَا يَخْتَلِفُ النَّاسُ فِي أَنَّ إمَامًا لَهُ وَالِدٌ قَدِمَ إلَيْهِ فِي قَذْفٍ،

أَوْ فِي سَرِقَةٍ أَوْ فِي زِنًا، أَوْ فِي قَوَدٍ، فَإِنْ فَرَضَا عَلَى الْوَلَدِ إقَامَةَ الْحَدِّ عَلَى وَالِدِهِ فِي كُلِّ ذَلِكَ وَأَنَّ ذَلِكَ لَا يُسْقِطُ عَنْهُ مَا افْتَرَضَ اللَّهُ تَعَالَى لَهُ عَلَيْهِ مِنْ الْإِحْسَانِ، وَالْبِرِّ، وَأَنْ لَا يَنْهَرَهُ، وَلَا يَقُلْ لَهُ: أُفٍّ، وَأَنْ يَخْفِضَ لَهُ جَنَاحَ الذُّلِّ مِنْ الرَّحْمَةِ، وَأَنْ يَشْكُرَ لَهُ وَلِلَّهِ عَزَّ وَجَلَّ - وَقَدْ قَالَ اللَّهُ عَزَّ وَجَلَّ {أَشِدَّاءُ عَلَى الْكُفَّارِ رُحَمَاءُ بَيْنَهُمْ} [الفتح: ٢٩] وَقَدْ أَمَرَ مَعَ ذَلِكَ بِإِقَامَةِ الْحَدِّ عَلَى مَنْ أَمَرَنَا بِرَحْمَتِهِ. وَقَالَ تَعَالَى {وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ} [النساء: ٣٦] الْآيَةَ. وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ ذَا الْقُرْبَى يُحَدُّ فِي قَذْفِ ذِي الْقُرْبَى وَأَنَّ ذَلِكَ لَا يُضَادُّ الْإِحْسَانَ الْمَأْمُورَ بِهِ، بَلْ إقَامَةُ الْحَدِّ عَلَى الْوَالِدَيْنِ فَمِنْ دُونِهِمَا إحْسَانٌ إلَيْهِمَا وَبِرٌّ بِهِمَا؛ لِأَنَّهُ حُكْمُ اللَّهِ تَعَالَى الَّذِي لَوْلَاهُ لَمْ يَجِبْ بِرُّهُمَا. فَسَقَطَ تَعَلُّقُهُمْ بِالْآيَاتِ الْمَذْكُورَاتِ.

وَأَمَّا قِيَاسُهُمْ إسْقَاطَ حَدِّ الْقَذْفِ عَلَى إسْقَاطِهِمْ عَنْ الْوَالِدِ حَدَّ الزِّنَا فِي زِنَاهُ بِأَمَةِ وَلَدِهِ، وَعَلَى إسْقَاطِهِمْ عَنْهُ حَدَّ السَّرِقَةِ فِي سَرِقَةِ مَالِ وَلَدِهِ، وَعَلَى إسْقَاطِهِمْ الْقَوَدَ عَنْهُ فِي قَتْلِهِ إيَّاهُ، وَجَرْحِهِ إيَّاهُ فِي أَعْضَائِهِ - فَهَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ؛ لِأَنَّهُ قِيَاسٌ لِلْخَطَأِ عَلَى الْخَطَأِ، وَنَصْرٌ لِلْبَاطِلِ بِالْبَاطِلِ، وَاحْتِجَاجٌ مِنْهُ لِقَوْلٍ لَهُمْ فَاسِدٍ، بِقَوْلٍ لَهُمْ آخَرَ فَاسِدٍ، لَا يُتَابِعُونَ عَلَيْهِ، وَلَا أَوْجَبَهُ نَصٌّ، وَلَا إجْمَاعٌ، بَلْ الْحُدُودُ وَالْقَوَدُ وَاجِبَانِ عَلَى الْأَبِ لِلْوَلَدِ فِي كُلِّ مَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَلَمَّا سَقَطَ قَوْلُهُمْ لِتَعَرِّيهِ عَنْ الْبُرْهَانِ رَجَعْنَا إلَى الْقَوْلِ الثَّانِي، فَوَجَدْنَاهُ صَحِيحًا؛ لِأَنَّ اللَّهَ تَعَالَى قَالَ {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ} [النور: ٤] الْآيَةَ، فَلَمْ يَقُلْ تَعَالَى: إلَّا الْوَالِدَ

punishment for falsely accusing one's child of zinā. For there is no disagreement that if a parent is brought before a judge for false accusation, theft, adultery, or retribution (qisas)—and if the two [authorities] obligate the child to enforce the ḥadd punishment upon the parent in all such cases—this does not negate the child's duty to show kindness, dutiful care, avoidance of rebuke or saying 'Uff,' lowering the wing of humility out of mercy, and gratitude owed to the parent—and to Allah Almighty. Allah states: 'Severe against the disbelievers, compassionate among themselves' (48:29), while simultaneously commanding the enforcement of ḥadd punishments upon those He ordered us to show mercy to. He also says: 'Show kindness to parents, relatives, orphans, and the needy' (4:36). No one in the Ummah disputes that a relative may receive the ḥadd punishment for falsely accusing another relative of zinā, and that this does not conflict with the commanded kindness. Rather, enforcing the ḥadd punishment upon parents or those below them constitutes kindness and dutifulness toward them, for it is Allah's ruling—without which their dutifulness would not even exist as an obligation. Thus their reliance on the aforementioned verses is invalidated."[40]

L41775 As for their analogy of dropping the punishment for false accusation (qadhf) based on their dropping the punishment for unlawful intercourse (zina) from the father when he commits it with his child's female slave, their dropping the punishment for theft from him when he steals his child's property, and their dropping retaliation (qawd) from him when he kills his child or injures him in his bodily limbs—this is an analogy, and all analogy is invalid. For it is an analogy of error to error, upholding falsehood through falsehood, and an argument from him for a corrupt opinion using another corrupt opinion, which they are not to be followed in, nor is it mandated by any textual evidence or consensus. Rather, the prescribed punishments and retaliation are obligatory upon the father for the child in all that we have mentioned—and success is from Allah, the Exalted.

L41776–41777 When their argument was invalidated for lacking proof, we reverted to the second opinion and found it sound. For Allah the Exalted stated: *"And those who accuse chaste women..."* **[this verse]** [24:4], yet He did not say

[40] **Qur'an references (L41774):** Qur'an 48:29 (Al-Fath); Qur'an 4:36 (An-Nisa).

“except a father regarding his child,” while *“your Lord is never forgetful”* [19:64]. Had Allah the Exalted intended to exempt the father from the ḥadd penalty for accusing his child, He would have clarified this and not omitted it, until it is discerned by one whose argument lacks proof. Thus, it is certain that since Allah the Exalted spoke generally without specification, He undoubtedly intended that **the parent** be subjected to the ḥadd penalty for **the child** and **the child** for **the parent** without doubt. We also find Him the Exalted stating: *“O you who believe, be steadfast upholders of justice, witnesses for Allah even if against yourselves or both parents and relatives...”* [4:135]. Here Allah the Exalted obligated upholding justice toward parents and relatives as with strangers, encompassing ḥadd penalties and other rulings—and with Allah, the Exalted, lies all success.[41]

L41778 Ḥammām narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrābī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq, from Ibn Jurayj, who said: ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz informed me, from his father, ʿUmar ibn ʿAbd al-ʿAzīz, from ʿUmar ibn al-Khaṭṭāb, who said: “There is no pardon permissible for the prescribed punishments (ḥudūd), nor for any part of them after they are reported to the Imam, for their implementation is part of the Sunnah.” This is the statement of a Companion, and no opposing view is known from them. And they revered such an opinion when it contradicted their own school of thought—though here they opposed it, because ʿUmar ibn al-Khaṭṭāb applied the ḥudūd universally and did not specify exceptions. Abū Muḥammad—may Allah have mercy on him—said: Similarly, they differed regarding one who falsely accuses the mother of his son of fornication. Abū Ḥanīfah, his companions, al-Shāfiʿī, and his companions said: “The child does not have the right to subject his father to the legal punishment for that.”

L41779–41781 Malik said: He may enforce the ḥadd punishment for that. Abū Ḥanīfa, al-Shāfiʿī, and their followers said regarding one who slanders the mother of a slave of his: He has no right to impose the ḥadd punishment upon his slave for that. Abū Thawr, Abū Sulaymān, and our companions said: He may enforce the ḥadd punishment for that. The discourse concerning these two

[41] **Qur’an references (L41777):** Qur’an 24:4 (An-Nur); Qur’an 19:64 (Maryam); Qur’an 4:135 (An-Nisa).

لِوَلَدِهِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] . فَلَوْ أَنَّ اللَّهَ تَعَالَى أَرَادَ تَخْصِيصَ الْأَبِ بِإِسْقَاطِ الْحَدِّ عَنْهُ لِوَلَدِهِ لَبَيَّنَ ذَلِكَ، وَلَمَا أَهْمَلَهُ، حَتَّى يَتَفَطَّنَ لَهُ مَنْ لَا حُجَّةَ فِي قَوْلِهِ. فَصَحَّ يَقِينًا أَنَّ اللَّهَ تَعَالَى إذْ عَمَّ وَلَمْ يَخُصَّ، فَإِنَّهُ أَرَادَ أَنْ يُحَدَّ الْوَالِدُ لِوَلَدِهِ وَالْوَلَدُ لِوَالِدِهِ بِلَا شَكٍّ، وَوَجَدْنَاهُ تَعَالَى يَقُولُ {يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَى أَنْفُسِكُمْ أَوِ الْوَالِدَيْنِ وَالْأَقْرَبِينَ} [النساء: ١٣٥] فَأَوْجَبَ اللَّهُ تَعَالَى الْقِيَامَ بِالْقِسْطِ عَلَى الْوَالِدَيْنِ، وَالْأَقْرَبِينَ كَالْأَجْنَبِيِّينَ، فَدَخَلَ فِي ذَلِكَ الْحُدُودُ وَغَيْرُهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِيهِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: لَا عَفْوَ عَنِ الْحُدُودِ، وَلَا عَنْ شَيْءٍ مِنْهَا بَعْدَ أَنْ تَبْلُغَ الْإِمَامَ فَإِنَّ إقَامَتَهَا مِنَ السُّنَّةِ. فَهَذَا قَوْلُ صَاحِبٍ لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْهُمْ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا خَالَفَ تَقْلِيدَهُمْ - وَقَدْ خَالَفُوهُ هَاهُنَا، لِأَنَّ عُمَرَ بْنَ الْخَطَّابِ عَمَّ جَمِيعَ الْحُدُودِ، وَلَمْ يَخُصَّ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَكَذَلِكَ اخْتَلَفُوا: فِيمَنْ قَذَفَ أُمَّ ابْنِهِ؟ فَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، وَالشَّافِعِيُّ، وَأَصْحَابُهُ: لَيْسَ لِلْوَلَدِ أَنْ يَأْخُذَ أَبَاهُ بِذَلِكَ.

وَقَالَ مَالِكٌ: لَهُ أَنْ يَأْخُذَهُ بِذَلِكَ وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمَا: فِيمَنْ قَذَفَ أُمَّ عَبْدٍ لَهُ لَيْسَ لَهُ أَنْ يَأْخُذَ عَبْدُهُ الْحَدَّ فِي ذَلِكَ. وَقَالَ أَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُنَا: لَهُ أَنْ يَأْخُذَهُ بِذَلِكَ. وَالْكَلَامُ فِي هَاتَيْنِ الْمَسْأَلَتَيْنِ كَالْكَلَامِ فِي الَّتِي قَبْلَهُمَا وَقَدْ بَيَّنَّا أَنَّ حَدَّ الْقَذْفِ: حَدٌّ لِلَّهِ تَعَالَى، لَا لِلْمَقْذُوفِ، فَإِذْ هُوَ كَذَلِكَ فَأَخْذُهُ وَاجِبٌ عَلَى كُلِّ

issues is like the discourse concerning the two that preceded them. We have clarified that the prescribed punishment for false accusation of unchastity is a right due to Allah the Exalted, not to the accused person. Since this is the case, applying the punishment remains obligatory under all circumstances—whoever among the Muslims carries it out—because Allah the Exalted commanded flogging the false accuser eighty lashes without stipulating that it must be executed by a specific individual among the people to the exclusion of others. Therefore, specifying some of those who carry it out while excluding others constitutes an opinion of the utmost corruption. It is a position invented for them, for we know none among the Companions—may Allah be pleased with them—who upheld it, nor does it possess any foundational proof whatsoever—neither from the Qur'an nor the Sunnah.

حَالٍ - قَامَ بِهِ مَنْ قَامَ بِهِ مِنْ الْمُسْلِمِينَ -؛ لِأَنَّ اللَّهَ تَعَالَى أَمَرَ بِجَلْدِ الْقَاذِفِ ثَمَانِينَ، لَمْ يَشْتَرِطْ بِهِ قَائِمًا مِنْ النَّاسِ دُونَ غَيْرِهِ، فَكَانَ تَخْصِيصُ مَنْ خَصَّ بَعْضَ الْقَائِمِينَ بِهِ دُونَ بَعْضٍ قَوْلًا فِي غَايَةِ الْفَسَادِ، وَهُوَ قَوْلٌ مُخْتَرَعٌ لَهُمْ، مَا نَعْلَمُ أَحَدًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - قَالَ بِهِ، وَلَا لَهُ حُجَّةٌ أَصْلًا - لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ.

L41782 There is no consensus, analogy, or underlying rationale—and whatever resembles this is invalid—and success comes only from God Almighty. Abū Muḥammad—may God have mercy on him—said: The ruling among Ḥanafī jurists regarding the removal of the prescribed punishment from a grandfather who slanders his grandchild mirrors their ruling concerning one who slanders the direct parents. Remarkably, the Ḥanafīs have differentiated between the legal status of children versus grandchildren in apostasy cases—ruling that an apostate's children must be compelled to embrace Islam yet not executed, while grandchildren are neither compelled nor executed. Abū Yūsuf, Muḥammad ibn al-Ḥasan, and al-Shāfiʿī distinguished between a father and grandfather in inheritance matters. How then did they end up with this contradiction here, treating fathers and grandfathers as equivalent, and sons and grandsons alike? These scholars claim adherence to analogical reasoning—yet this constitutes an unparalleled contradiction—and success comes only from God Almighty.

وَلَا إجْمَاعٍ، وَلَا قِيَاسٍ، وَلَا مَعْنًى - وَمَا كَانَ هَكَذَا فَهُوَ سَاقِطٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَالْحُكْمُ عِنْدَ الْحَنَفِيِّينَ فِي إسْقَاطِ الْحَدِّ عَنْ الْجَدِّ إذَا قَذَفَ وَلَدَ الْوَلَدِ، كَالْحُكْمِ فِي قَاذِفِ الْأَبَوَيْنِ الْأَدْنَيْنِ. وَالْعَجَبُ بِأَنَّ الْحَنَفِيِّينَ قَدْ فَرَّقُوا بَيْنَ حُكْمِ الْوَلَدِ وَبَيْنَ حُكْمِ وَلَدِ الْوَلَدِ فِي الْمُرْتَدِّ، فَجَعَلُوا وَلَدَ الْمُرْتَدِّ يُجْبَرُ عَلَى الْإِسْلَامِ وَلَا يُقْتَلُ، وَجَعَلُوا وَلَدَ وَلَدِهِ لَا يُجْبَرُ وَلَا يُقْتَلُ. وَفَرَّقَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَالشَّافِعِيُّ، بَيْنَ الْأَبِ فِي الْمِيرَاثِ - وَبَيْنَ الْجَدِّ - فَمِنْ أَيْنَ وَقَعَ لَهُمْ التَّنَاقُضُ هَاهُنَا؟ فَسَوَّوْا بَيْنَ الْأَبِ وَالْجَدِّ، وَبَيْنَ الِابْنِ وَابْنِ الِابْنِ؟ وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ - وَهَذَا تَنَاقُضٌ لَا نَظِيرَ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة نَازَعَ آخَرَ فَقَالَ لَهُ الْكَاذِبُ بَيْنِي وَبَيْنَك ابْنُ زَانِيَةٍ]

An issue arose where one disputed with another, and the liar said to him, "Between me and you is the son of an adulteress!"

L41784 2248 - Issue: If someone disputes with another and says to them, "The liar between me and you is the son of a fornicatress," or says, "a child of fornica-

tion," or "a bastard," or "a fornicator"—some scholars have held that no hadd punishment applies. Abu Muḥammad said: If he initiated this statement before the other party disputed with him, no hadd punishment falls upon the speaker, as he has not yet falsely accused anyone. But if he said this after the dispute, he is unquestionably a false accuser of unchastity, incurring the hadd punishment, because—in his view—the disputant is undeniably a liar. Similarly, if he declared, "Whoever was present today on this path is the son of a fornicatress," and someone had indeed been present from there, he is indisputably a false accuser of that person, thus incurring the hadd punishment. If he made such a statement in a subsequent case, no hadd punishment applies, for when he uttered it, he was not a false accuser. It is impossible for him to retroactively become a false accuser through silence after not being one when he spoke. This reasoning is patently invalid. Success comes only from God, the Exalted.

٢٢٤٨ - مَسْأَلَةٌ: مَنْ نَازَعَ آخَرَ، فَقَالَ لَهُ: الْكَاذِبُ بَيْنِي وَبَيْنَك ابْنُ زَانِيَةٍ أَوْ قَالَ: وَلَدُ زِنًا، أَوْ زَنِيمٌ، أَوْ زَانٍ - فَقَدْ قَالَ قَائِلُونَ: لَا حَدَّ عَلَيْهِ قَالَ أَبُو مُحَمَّد: إنْ كَانَ قَالَ ذَلِكَ مُبْتَدِئًا قَبْلَ أَنْ يُنَازِعَهُ الْآخَرُ فَلَا حَدَّ عَلَى الْقَائِلِ؛ لِأَنَّهُ لَمْ يَقْذِفْ بَعْدُ أَحَدًا، وَإِنْ قَالَ ذَلِكَ بَعْدَ الْمُنَازَعَةِ فَهُوَ قَاذِفٌ لَهُ بِلَا شَكٍّ، فَعَلَيْهِ الْحَدُّ؛ لِأَنَّ الْمُنَازِعَ لَهُ كَاذِبٌ عِنْدَهُ بِلَا شَكٍّ. وَهَكَذَا لَوْ قَالَ: مَنْ حَضَرَ الْيَوْمَ عَلَى هَذَا الطَّرِيقِ فَهُوَ ابْنُ زَانِيَةٍ وَقَدْ كَانَ حَضَرَ مِنْ هُنَالِكَ أَحَدٌ: فَهُوَ قَاذِفٌ لَهُ بِلَا شَكٍّ، فَعَلَيْهِ الْحَدُّ - فَلَوْ قَالَ ذَلِكَ فِي الْمُسْتَأْنَفِ فَلَا حَدَّ عَلَيْهِ؛ لِأَنَّهُ إذَا لَفَظَ بِذَلِكَ لَمْ يَكُنْ قَاذِفًا، أَوْ مِنْ الْمُحَالِ أَنْ يَصِيرَ قَاذِفًا - وَهُوَ سَاكِتٌ - بَعْدَ أَنْ لَمْ يَكُنْ قَاذِفًا إذَا نَطَقَ - وَهَذَا بَاطِلٌ، لَا خَفَاءَ بِهِ - بِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41785–41786

Issue: A man committed qadhf (false accusation of adultery) against an unrelated woman (non-maḥram) and his wife, then after the accusation, both the unrelated woman and his wife committed adultery.

[مَسْأَلَة قَذَفَ أَجْنَبِيَّةً وَامْرَأَتَهُ ثُمَّ زَنَتْ الْأَجْنَبِيَّةُ وَامْرَأَتُهُ بَعْدَ الْقَذْفِ]

L41787

Issue: If a man slanders an unrelated woman and his own wife, and both women subsequently commit adultery after the slander, he must necessarily receive the full hadd punishment for slandering the unrelated woman. He must also necessarily perform the oath of condemnation (liʿān) if he wishes to deny paternity of his wife's child or if the hadd punishment for adultery is confirmed against her. If he refuses (after being lashed for slandering the unrelated woman), the child is legally ascribed to him, and his wife incurs no consequences—neither oath of condemnation, hadd punishment, nor imprisonment—nor does he face further punishment, having already received the hadd. If he has not yet been lashed, he must perform the oath of condemnation to deny paternity. If he refuses, he is lashed for the slander. If they perform the oath of condemnation together, the hadd punishment for

مَسْأَلَةٌ: مَنْ قَذَفَ أَجْنَبِيَّةً وَامْرَأَتَهُ، ثُمَّ زَنَتْ الْأَجْنَبِيَّةُ وَامْرَأَتُهُ بَعْدَ الْقَذْفِ، فَعَلَيْهِ حَدُّ الْقَذْفِ كَامِلًا لِلْأَجْنَبِيَّةِ وَلَا بُدَّ - وَيُلَاعِنُ وَلَا بُدَّ - إنْ أَرَادَ أَنْ يَنْفِيَ حَمْلَ زَوْجَتِهِ، أَوْ إنْ ثَبَتَ عَلَيْهَا الْحَدُّ، فَإِنْ أَبَى - وَقَدْ جُلِدَ لِلْأَجْنَبِيَّةِ - فَالْحَمْلُ لَاحِقٌ بِهِ، وَلَا شَيْءَ عَلَى زَوْجَتِهِ - لَا لِعَانَ، وَلَا حَدَّ، وَلَا حَبْسَ - وَلَا عَلَيْهِ بَعْدُ؛ لِأَنَّهُ قَدْ حُدَّ. وَإِنْ كَانَ لَمْ يُجْلَدْ، لَاعَنَ إنْ أَرَادَ أَنْ يَنْفِيَ الْحَمْلَ عَنْهُ، فَإِنْ أَبَى جُلِدَ الْحَدَّ فَإِنْ الْتَعَنَ وَالْتَعَنَتْ الْمَرْأَةُ: جُلِدَ حَدَّ الزِّنَا. وَجُمْلَةُ هَذَا - أَنَّ مَنْ قَذَفَهُ قَاذِفٌ ثُمَّ زَنَى الْمَقْذُوفُ: لَمْ يَسْقُطْ ذَلِكَ الزِّنَا مَا قَدْ وَجَبَ مِنْ الْحَدِّ عَلَى قَاذِفِهِ؛ لِأَنَّهُ زِنًا غَيْرُ الَّذِي رَمَاهُ بِهِ، فَهُوَ إذَا رَمَى

adultery is averted. The essence is: If a slanderer slanders someone, and the slandered person later commits adultery, this subsequent adultery does not nullify the hadd punishment already incumbent on the slanderer, because the adultery occurred after the act he accused them of. Thus, if one slanders a chaste man or woman, the hadd punishment for slander is necessarily obligatory—and no established hadd punishment is nullified except by explicit textual evidence (naṣṣ) or consensus (ijmāʿ). Here, there exists neither textual evidence nor consensus to nullify it after its obligation is established by text. The same ruling applies to the wife without distinction: he is lashed for slandering her—even if she commits adultery—unless he performs the oath of condemnation, and she necessarily receives the hadd punishment for adultery. Success comes only from Allah, the Most High.

L41788 **An issue: He said to another, "O adulterer!" Then a person said to him, "You have spoken the truth" or "Yes."**

L41789 2250. Issue: If someone says to another, "O fornicator!" and a person responds, "You have spoken the truth," or says, "Yes," then according to Abū Ḥanīfah and all his companions except Zufar ibn al-Hudhayl, no ḥadd punishment applies to the one who said, "You have spoken the truth." They stated: If he said, "You have spoken the truth—he is as you claimed," both are to be subjected to ḥadd punishment. Zufar said regarding both scenarios: "Both are to be subjected to ḥadd punishment." Abū Muḥammad—may Allah have mercy on him—said: There is no distinction between the two scenarios. If someone argues that the statement "You have spoken the truth" could affirm something other than the accusation of fornication (qadhf), it is said to him: Similarly, the statement "You have spoken the truth—he is as you claimed" could refer to another claim made by this accuser unrelated to the accusation. There is no difference. Abū Muḥammad—may Allah have mercy on him—said: Our position—and success is from Allah, the Exalted—is that if it is conclusively established that the one who said "You have spoken the truth," "Yes," "He is as you claimed," or "Yes, by Allah" heard the accusation and understood it, he has undeniably admitted to it, and the ḥadd punishment becomes obligatory upon him. Similarly, if someone is asked, "Did you sell your house to Zayd for a hundred dinars?" and he responds, "Yes," "You

رَامٍ مُحْصَنًا أَوْ مُحْصَنَةً: فَعَلَيْهِ الْحَدُّ وَلَا بُدَّ - وَلَا يَسْقُطُ حَدٌّ قَدْ وَجَبَ إِلَّا بِنَصٍّ، أَوْ إِجْمَاعٍ، وَلَا نَصَّ، وَلَا إِجْمَاعَ هَاهُنَا أَصْلًا عَلَى سُقُوطِهِ، بَعْدَ وُجُوبِهِ بِنَصٍّ. وَكَذَلِكَ الْقَوْلُ فِي الزَّوْجَةِ وَلَا فَرْقَ: أَنَّهُ يُجْلَدُ لَهَا لِلْقَذْفِ - وَإِنْ زَنَتْ - إِلَّا أَنْ يُلَاعِنَ، وَتُحَدُّ هِيَ لِلزِّنَى وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة قَالَ لِآخَرَ يَا زَانٍ فَقَالَ لَهُ إِنْسَانٌ صَدَقْت أَوْ نَعَمْ]

٢٢٥٠ - مَسْأَلَةٌ: مَنْ قَالَ لِآخَرَ: يَا زَانٍ؟ فَقَالَ لَهُ إِنْسَانٌ: صَدَقْت، أَوْ قَالَ: نَعَمْ فَإِنَّ أَبَا حَنِيفَةَ وَجَمِيعَ أَصْحَابِهِ - إِلَّا زُفَرَ بْنَ الْهُذَيْلِ - قَالُوا: لَا حَدَّ عَلَى الْقَائِلِ: صَدَقْت - قَالُوا: فَلَوْ قَالَ لَهُ: صَدَقْت، هُوَ كَمَا قُلْت؟ حُدَّا جَمِيعًا - قَالَ زُفَرُ فِي كِلْتَا الْمَسْأَلَتَيْنِ: يُحَدَّانِ جَمِيعًا قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَا فَرْقَ بَيْنَ الْمَسْأَلَتَيْنِ وَمَنْ قَالَ: إنَّهُ فِي قَوْلِهِ لَهُ: صَدَقْت، يُمْكِنُ أَنْ يُصَدِّقَهُ فِي غَيْرِ رَمْيِهِ بِالزِّنَا؟ قِيلَ لَهُ: وَكَذَلِكَ قَوْلُهُ: صَدَقْت، هُوَ كَمَا قُلْت؟ مُمْكِنٌ أَنْ يَعْنِيَ بِذَلِكَ قَوْلًا آخَرَ قَالَهُ هَذَا الْقَاذِفُ مِنْ غَيْرِ الْقَذْفِ، وَلَا فَرْقَ. قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالَّذِي نَقُولُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - إنَّهُ إنْ تَيَقَّنَ أَنَّ الْقَائِلَ: صَدَقْت، أَوْ نَعَمْ، أَوْ هُوَ كَمَا قُلْت، أَوْ إي وَاَللَّهِ: أَنَّهُ سَمِعَ الْقَذْفَ وَفَهِمَهُ، فَهُوَ مُقِرٌّ بِلَا شَكٍّ، وَعَلَيْهِ الْحَدُّ. وَكَذَلِكَ مَنْ قِيلَ لَهُ: أَبِعْت دَارَك مِنْ زَيْدٍ بِمِائَةِ دِينَارٍ؟ فَقَالَ: نَعَمْ، أَوْ قَالَ: صَدَقْت، أَوْ قَالَ: إي وَاَللَّهِ، أَوْ مَا أَشْبَهَ هَذَا: فَإِنَّهُ إقْرَارٌ صَحِيحٌ بِلَا

have spoken the truth," "Yes, by Allah," or similar phrases, this constitutes a valid admission without doubt. The same applies if he utters this in response to one who said to him, "You divorced your wife," "You married off so-and-so," or "You gifted a man such-and-such."

L41790–41791 Thus, in every matter—if doubt arises, whether one heard the accusation of adultery or not, or understood it or not—no legal punishment is incurred in such a case, because he has mumbled and assumes he uttered different words. Likewise, in all that we have mentioned beyond this, there is no distinction. The Prophet—peace and blessings of Allah be upon him and his family—said, "Your blood, your wealth, your honor, and your physical integrity are inviolable to you." Thus, it is established that it is not permissible for anything we have mentioned to be made lawful except with certainty free from doubt. And success is from Allah, the Exalted.

L41792 **Case: He said to another, "You committed sexual immorality with so-and-so (a woman)"; or he said, "You defied moral bounds with her."**

L41793 2251. Issue: If someone says to another, "You fornicated with so-and-so," or says, "You engaged in sodomy with her," then Abū Ḥanīfah, al-Shāfiʿī, and their followers ruled there is no ḥadd for this. Abū Muḥammad—may Allah have mercy on him—said: If these two phrases can have a meaning other than zinā, their view is correct. But if they cannot be understood except as zinā, then is the ḥadd applicable? When we examined them, we found they can refer to having anal intercourse with her—thus the ḥadd is waived. Similarly, if he said, "I had intercourse with her in a forbidden manner," there is no distinction [in the ruling]. ʿAlī said: If one were to state this about himself, he would not be confessing to zinā, as we clarified. And success is from Allah, the Exalted.

L41794 **[Issue: If someone says to another (a man), "You have committed adultery" (zanayti) with a kasrah on the tā', or says to a woman, "You have committed adultery" (zanayta) with a fatḥah on the tā'.]**

شَكٍّ - أَوْ قَالَ ذَلِكَ مُجَاوِبًا لِمَنْ قَالَ لَهُ: طَلَّقْت امْرَأَتَك، أَوْ أَنْكَحْت فُلَانَةَ، أَوْ وَهَبْت امْرَأً كَذَا وَكَذَا.

فَهَكَذَا فِي كُلِّ شَيْءٍ - وَإِنْ وَقَعَ شَكٌّ - أَسَمِعَ الْقَذْفَ، أَوْ لَمْ يَسْمَعْهُ - وَفَهِمَهُ، أَوْ لَمْ يَفْهَمْهُ: فَلَا حَدَّ فِي ذَلِكَ، لِأَنَّهُ قَدْ بَهُمَ وَيَظُنُّ أَنَّهُ قَالَ كَلَامًا آخَرَ. وَهَكَذَا فِي جَمِيعِ مَا ذَكَرْنَا مِنْ غَيْرِ ذَلِكَ وَلَا فَرْقَ. وَقَدْ قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» فَصَحَّ أَنَّهُ لَا يَحِلُّ أَنْ يُسْتَبَاحَ شَيْءٌ مِمَّا ذَكَرْنَا إلَّا بِيَقِينٍ لَا إشْكَالَ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة قَالَ لِآخَرَ فَجَرْتَ بِفُلَانَةَ أَوْ قَالَ فَسَقْت بِهَا]

٢٢٥١ - مَسْأَلَةٌ: مَنْ قَالَ لِآخَرَ: فَجَرْتَ بِفُلَانَةَ، أَوْ قَالَ: فَسَقْت بِهَا فَإِنَّ أَبَا حَنِيفَةَ، وَالشَّافِعِيَّ، وَأَصْحَابَهُمَا قَالُوا: لَا حَدَّ فِي ذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: إنْ كَانَ لِهَذَيْنِ اللَّفْظَيْنِ وَجْهٌ غَيْرُ الزِّنَا فَكَمَا قَالُوا، وَإِنْ كَانَ لَا يُفْهَمُ مِنْهُمَا غَيْرُ الزِّنَا فَالْحَدُّ فِي ذَلِكَ؟ فَلَمَّا نَظَرْنَا فِيهِمَا وَجَدْنَاهُمَا يَقَعَانِ عَلَى إتْيَانِهَا فِي الدُّبُرِ - فَسَقَطَ الْحَدُّ فِي ذَلِكَ. وَكَذَلِكَ لَوْ قَالَ: جَامَعْتهَا حَرَامًا، وَلَا فَرْقَ قَالَ عَلِيٌّ: فَلَوْ أَخْبَرَ بِهَذَا عَنْ نَفْسِهِ لَمْ يَكُنْ مُعْتَرِفًا بِالزِّنَا كَمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة قَالَ لِآخَرَ زَنَيْتِ بِكَسْرِ التَّاءِ أَوْ قَالَ لِامْرَأَةٍ زَنَيْتَ بِفَتْحِ التَّاءِ]

L41795 2252 - Issue: If a man says to another, “You have committed adultery (zanayti)”—with a kasrah on the tāʾ—or says to a woman, “You have committed adultery (zanayta)”—with a fatḥah on the tāʾ—then if he is not eloquent in Arabic, he must be subjected to the ḥadd punishment without exception. If he is eloquent and proficient in this degree of Arabic, he is asked: “Whom did you address?” If he responds, “I addressed someone other than her,” or “I addressed someone other than him,” no penalty is incurred, because this aligns with the apparent meaning of his statement. This is because addressing a female requires the verb to end with a kasrah on the tāʾ (zanayti), while addressing a male requires a fatḥah (zanayta). Thus, if he addresses her with a fatḥah, he did not address her, and if he addresses him with a kasrah, he did not address him. However, if he admits that he addressed her with that statement, he is punished with the ḥadd penalty, as this constitutes an accusation of adultery against her. Success is from Allah, the Exalted.

٢٢٥٢ - مَسْأَلَةٌ: وَمَنْ قَالَ لِآخَرَ: زَنَيْتِ - بِكَسْرِ التَّاءِ - أَوْ قَالَ لِامْرَأَةٍ: زَنَيْتَ - بِفَتْحِ التَّاءِ - فَإِنْ كَانَ غَيْرَ فَصِيحٍ: حُدَّ وَلَا بُدَّ. وَإِنْ كَانَ فَصِيحًا يُحْسِنُ هَذَا الْمِقْدَارَ مِنْ الْعَرَبِيَّةِ سُئِلَ: مَنْ خَاطَبْتَ؟ فَإِنْ قَالَ: خَاطَبْتُ غَيْرَهَا، أَوْ قَالَ: خَاطَبْتُ غَيْرَهُ، فَلَا شَيْءَ عَلَيْهِ؛ لِأَنَّ هَذَا هُوَ ظَاهِرُ كَلَامِهِ؛ لِأَنَّ خِطَابَ الْمُؤَنَّثِ لَا يَكُونُ إلَّا بِكَسْرِ التَّاءِ، فَإِذَا خَاطَبَهَا بِفَتْحِ التَّاءِ فَلَمْ يُخَاطِبْهَا، وَخِطَابُ الرَّجُلِ بِفَتْحِ التَّاءِ، فَإِذَا خَاطَبَهُ بِكَسْرِهَا فَلَمْ يُخَاطِبْهُ - وَإِنْ أَقَرَّ: أَنَّهُ خَاطَبَهَا بِذَلِكَ، حُدَّ؛ لِأَنَّهُ حِينَئِذٍ قَاذِفٌ لَهَا - بِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة قَذَفَ إنْسَانًا قَدْ زَنَى الْمَقْذُوفُ وَعُرِفَ أَنَّهُ صَادِقٌ فِي ذَلِكَ]

L41796 **A legal case where a person accuses another of unlawful sexual intercourse (zina), the accused had indeed committed it, and it is established that the accuser is truthful in that.**

L41797–41801 2253 – Issue: If someone accuses a person [of zinā], and the accused has indeed committed zinā, and it is established that the accuser is truthful in this—then all scholars agree that it is impermissible to seek the hadd punishment against the accuser—except Mālik, who held that the hadd punishment may still be sought against him. Abū Muḥammad—may Allāh have mercy on him—said: This is a statement manifestly corrupt and evidently flawed, leaving no room for obscurity. There is no disagreement that one established as truthful in making an accusation of adultery incurs no ḥadd punishment. Thus, if the accused knows his accuser is truthful, he recognizes no punishment is due. Therefore, demanding punishment from such an accuser constitutes certain injustice, and permitting this demand amounts to permitting confirmed wrongdoing. There is no distinction between this case and witnesses who hear the accuser while knowing his truthfulness—there being no disagreement that it is unlawful for them to testify to the accusation,

٢٢٥٣ - مَسْأَلَةٌ: مَنْ قَذَفَ إنْسَانًا قَدْ زَنَى الْمَقْذُوفُ وَعُرِفَ أَنَّهُ صَادِقٌ فِي ذَلِكَ - فَجَمِيعُ الْعُلَمَاءِ عَلَى أَنَّهُ لَا يَحِلُّ طَلَبُهُ بِذَلِكَ الْحَدِّ - إلَّا مَالِكًا فَإِنَّهُ قَالَ: لَهُ طَلَبُهُ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا قَوْلٌ ظَاهِرُ الْفَسَادِ بَيِّنُ الْحَوَالَةِ لَا خَفَاءَ بِهِ؛ لِأَنَّهُ لَا خِلَافَ فِي أَنَّ مَنْ عُرِفَ صِدْقُهُ فِي الْقَذْفِ فَلَا حَدَّ عَلَيْهِ، فَإِذَا عَرَفَ الْمَقْذُوفُ أَنَّ قَاذِفَهُ صَادِقٌ فَقَدْ عَرَفَ أَنَّهُ لَا حَدَّ عَلَيْهِ، فَمُطَالَبَتُهُ إيَّاهُ ظُلْمٌ بِيَقِينٍ، وَإِبَاحَةُ طَلَبِهِ لَهُ إبَاحَةٌ لِلظُّلْمِ الْمُتَيَقَّنِ، وَلَا فَرْقَ بَيْنَ هَذَا وَبَيْنَ شُهُودٍ سَمِعُوا الْقَاذِفَ وَهُمْ يَعْلَمُونَ صِدْقَهُ بِلَا خِلَافٍ فِي أَنَّهُمْ لَا يَحِلُّ لَهُمْ أَنْ يَشْهَدُوا بِالْقَذْفِ؛ لِأَنَّ شَهَادَتَهُمْ تُؤَدِّي إلَى الظُّلْمِ. وَكَذَلِكَ مَنْ كَانَ لَهُ أَبٌ فَقَتَلَ أَبُوهُ إنْسَانًا ظُلْمًا، وَأَخَذَ مَالَهُ ظُلْمًا، فَأَتَى وَلَدُ الْمَقْتُولِ الْمَأْخُوذِ مَالُهُ

as their testimony leads to injustice. Similarly, if a man's father wrongfully kills someone and seizes their property, and the heir of the slain man whose property was taken kills the murderer and reclaims the property he had wrongfully taken from him, it remains unlawful for the heir of the retaliated party to seek retribution—neither for bloodshed nor for the reclaimed property that had been unlawfully seized. Whoever differentiates between any aspect of these rulings errs. Allāh the Exalted said: "Be upholders of justice" [4:135], thus forbidding unjust conduct. He also said: "Cooperate in righteousness and piety, and do not cooperate in sin and transgression" [5:2]. No sin or transgression is greater than knowingly persisting when one is aware that his accuser of unchastity did not lie, then demanding of him what is demanded of those given to lying. And success is by Allah, the Most High. If they say, "He has indeed wronged him," we respond: "True, but no fixed punishment applies to such wronging; it entails only discretionary punishment."[42]

فَقَتَلَ قَاتِلَ أَبِيهِ، وَأَخَذَ مَالَهُ الَّذِي كَانَ لِأَبِيهِ، فَإِنَّهُ لَا يَحِلُّ لِوَلَدِ هَذَا الْمُسْتَقَادِ مِنْهُ: بِأَنْ يَطْلُبَ الْمُسْتَقِيدَ - لَا بِدَمٍ، وَلَا بِمَا أَخَذَ مِنْ مَالِهِ الَّذِي أَخَذَ مِنْهُ بِبَاطِلٍ، وَاسْتَرْجَعَهُ مِنْهُ بِحَقٍّ. وَمَنْ فَرَّقَ بَيْنَ شَيْءٍ مِنْ هَذِهِ الْوُجُوهِ فَهُوَ مُخْطِئٌ - وَقَدْ قَالَ تَعَالَى {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] الْآيَةَ فَحَرَّمَ اللَّهُ تَعَالَى الْقِيَامَ بِغَيْرِ الْقِسْطِ. وَكَذَلِكَ قَالَ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَلَيْسَ فِي الْإِثْمِ وَالْعُدْوَانِ أَكْثَرُ مِنْ أَنْ يَدْرِيَ أَنَّ قَاذِفَهُ لَمْ يَكْذِبْ ثُمَّ يُطَالِبُهُ بِمَا يُطَالِبُ بِهِ أَهْلَ الْكَذِبِ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. فَإِنْ قَالُوا: إنَّهُ قَدْ آذَاهُ قُلْنَا: نَعَمْ، وَلَيْسَ فِي الْأَذَى حَدٌّ، وَإِنَّمَا فِيهِ التَّعْزِيرُ فَقَطْ.

"An issue where a man accused his wife of adultery and initiated the liʿān oath procedure, then repeated the accusation before the liʿān process was completed."

[مَسْأَلَة قَذَفَ زَوْجَتَهُ فَأَخَذَ فِي اللِّعَانِ ثُمَّ أَعَادَ قذفها قَبْل أَنْ تتم التعانها]

2254. Issue: Abu Muhammad—may Allah have mercy on him—said: If a man accuses his wife and initiates the mutual imprecation (liʿān), then after commencing it and completing part of it—whether a small portion, most of it, or the majority—he repeats his accusation against her before she completes her liʿān, he must restart the liʿān from the beginning. This is because Allah the Exalted states: "As for those who accuse their wives but have no witnesses except themselves…" (24:6). Allah has ordained liʿān only after the husband's accusation. Therefore, after accusing his wife, he must fulfill the procedure as commanded by Allah. Since she has not completed her liʿān after his liʿān was completed, she remains his wife as she was provided the liʿān is not finalized. His renewed accusation constitutes a fresh charge against her. Consequently, he must present four sworn testimonies and the fifth invoking Allah's curse upon himself if lying. If he refuses and retracts, the accuser (husband) must

٢٢٥٤ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَنْ قَذَفَ زَوْجَتَهُ فَأَخَذَ فِي اللِّعَانِ، فَلَمَّا شَرَعَ فِيهِ وَمَضَى بَعْضُهُ - أَقَلُّهُ، أَوْ أَكْثَرُهُ، أَوْ جُلُّهُ - أَعَادَ قَذْفَهَا قَبْلَ أَنْ تُتِمَّ هِيَ الْتِعَانَهَا، فَلَا بُدَّ لَهُ مِنْ ابْتِدَاءِ اللِّعَانِ؛ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلا أَنْفُسُهُمْ} [النور: ٦] الْآيَةَ. فَلَمْ يَجْعَلْ اللَّهُ تَعَالَى الِالْتِعَانَ إلَّا بَعْدَ رَمْيِ الزَّوْجَةِ، فَلَا بُدَّ بَعْدَ رَمْيِ الزَّوْجَةِ بِأَنْ يَأْتِيَ بِمَا أَمَرَ اللَّهُ تَعَالَى بِهِ، كَمَا أَمَرَ بِهِ، وَهِيَ مَا لَمْ تُتِمَّ الْتِعَانَهَا بَعْدَ تَمَامِ الْتِعَانِهِ زَوْجَتَهُ كَمَا كَانَتْ، فَهُوَ فِي تَجْدِيدِ قَذْفِهَا رَامٍ زَوْجَتَهُ، فَلَا بُدَّ لَهُ مِنْ شَهَادَةِ أَرْبَعِ شَهَادَاتٍ وَالْخَامِسَةِ، فَإِنْ أَبَى وَنَكَلَ: حُدَّ الْمَقْذُوفُ

[42] **Qur'an references (L41797):** Qur'an 4:135 (An-Nisa); Qur'an 5:2 (Al-Ma'idah).

inevitably be subjected to the ḥadd punishment. However, if he accuses her of adultery while being certain of his own falsehood, he is to be punished with the ḥadd, and no liʿān is permitted whatsoever. For Allah says: “Cooperate in righteousness and piety, and do not cooperate in sin and aggression…” (5:2).[43]

وَلَا بُدَّ - فَإِنْ رَمَاهَا بِزِنًا يُتَيَقَّنُ أَنَّهُ كَاذِبٌ فِيهِ حُدَّ وَلَا لِعَانَ أَصْلًا، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢]

L41804 There is no sin and transgression greater than compelling someone to swear false oaths when the one present or the judge is certain that in doing so he is a false accuser of adultery. This is aiding in sin and transgression. Allah the Exalted said: “When you judge between people, judge with justice” [An-Nisa: 58]. Meanwhile, she remains his wife as she was, and no separation occurs except after they complete the mutual imprecation we mentioned. If he accuses her and the judge is certain he is truthful, nor is it permissible for him to rule by mutual imprecation. Rather, the prescribed punishment is carried out upon her while she remains his wife—as she was; he inherits from her and she inherits from him, due to our earlier explanation that no separation occurs except after their mutual imprecation. Thus, it is established that mutual imprecation does not apply to one who accuses his wife of adultery where the accusation could possibly be truthful or false. However, if his falsehood is conclusively known, it is impermissible to neglect enforcing Allah’s obligatory punishment upon him, impermissible to assist him in sinful false oaths, and impermissible to command him to do so. And success is by Allah, the Exalted.[44]

وَلَيْسَ مِنْ الْإِثْمِ وَالْعُدْوَانِ أَكْثَرُ مِنْ أَنْ يُكَلَّفَ أَنْ يَأْتِيَ بِأَيْمَانٍ كَاذِبَةٍ، يُوقِنُ مَنْ حَضَرَ أَوْ الْحَاكِمُ: أَنَّهُ فِيهَا قَاذِفٌ، فَهَذَا عَوْنٌ عَلَى الْإِثْمِ وَالْعُدْوَانِ. وَقَالَ تَعَالَى {وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ} [النساء: ٥٨] وَهِيَ مَعَ ذَلِكَ امْرَأَتُهُ كَمَا كَانَتْ وَلَا فُرْقَةَ إلَّا بَعْدَ أَنْ يَتِمَّ الْتِعَانُهُمَا عَلَى مَا ذَكَرْنَا. فَلَوْ رَمَاهَا وَأَيْقَنَ الْحَاكِمُ أَنَّهُ صَادِقٌ فَلَا يَحِلُّ لَهُ الْحُكْمُ بِاللِّعَانِ أَيْضًا، لَكِنْ يُقَامُ الْحَدُّ عَلَيْهَا وَهِيَ امْرَأَتُهُ - كَمَا كَانَتْ - يَرِثُهَا وَتَرِثُهُ لِمَا ذَكَرْنَا مِنْ أَنَّهُ لَا فُرْقَةَ إلَّا بَعْدَ الْتِعَانِهِمَا. فَصَحَّ بِهَذَا أَنَّهُ لَا لِعَانَ فِيمَنْ رَمَى امْرَأَتَهُ بِزِنًا مُمْكِنٍ أَنْ يَكُونَ فِيهِ صَادِقًا، وَيُمْكِنُ أَنْ يَكُونَ فِيهِ كَاذِبًا - فَأَمَّا إذَا تُيُقِّنَ كَذِبُهُ فَلَا يَحِلُّ تَعْطِيلُ وَاجِبِ حَدِّ اللَّهِ عَنْهُ، وَلَا يَحِلُّ عَوْنُهُ عَلَى الْأَيْمَانِ الْكَاذِبَةِ الْآثِمَةِ، وَلَا يَحِلُّ أَمْرُهُ بِهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: Falsely accusing a group of fornication (zina) or if a person is found repeatedly engaging in sexual intercourse with non-māḥram women.

[مَسْأَلَة قَذَفَ جَمَاعَةً أَوْ وُجِدَ يَطَأُ النِّسَاءَ الْأَجْنَبِيَّاتِ مَرَّةً بَعْدَ مَرَّةٍ]

L41806 2255 - Issue: If someone falsely accuses a group of unchastity, was found repeatedly having sexual intercourse with non-maḥram women, was found to have stolen multiple times, or was seen drinking wine repeatedly—and he testified to all these acts—but provides proof confirming the truthfulness of his accusation against all except one individual, or all except one [of the

٢٢٥٥ - مَسْأَلَةٌ: مَنْ قَذَفَ جَمَاعَةً، أَوْ وُجِدَ يَطَأُ النِّسَاءَ الْأَجْنَبِيَّاتِ مَرَّةً بَعْدَ مَرَّةٍ، أَوْ وُجِدَ يَسْرِقُ مَرَّاتٍ، أَوْ رُئِيَ يَشْرَبُ الْخَمْرَ مَرَّاتٍ، فَشَهِدَ بِكُلِّ ذَلِكَ، فَأَقَامَ بَيِّنَةً عَلَى صِدْقِهِ فِي قَذْفِهِ مَنْ قَذَفَ إلَّا وَاحِدًا، أَوْ صَدَّقَهُ جَمِيعُهُمْ، إلَّا وَاحِدًا، فَعَلَيْهِ الْحَدُّ فِي الْقَذْفِ وَلَا بُدَّ، لِأَنَّ الْحَدَّ فِي قَذْفِ أَلْفٍ أَوْ فِي قَذْفِ وَاحِدٍ: حَدٌّ وَاحِدٌ، وَلَا مَزِيدَ

[43] **Qur’an references (L41803):** Qur’an 24:6 (An-Nur); Qur’an 5:2 (Al-Ma’idah).
[44] **Qur’an references (L41804):** Qur’an 4:58 (An-Nisa).

accused] corroborate his accusation, the ḥadd punishment for false accusation is necessarily due. For the ḥadd punishment for falsely accusing a thousand individuals or one individual is a single penalty, with no increase beyond our prior ruling. Similarly, if he provides evidence that all women he was found to have lain with were his female slaves except one, the ḥadd punishment for adultery is necessarily due. For the ḥadd punishment for adultery with a thousand women or one woman is a single penalty, with no increase, as previously established. Likewise, if he proves that all he stole was his property except for some of it, his hand must necessarily be amputated. For the ḥadd punishment for a thousand thefts or a single theft meeting the legal criteria is one penalty, as established. Similarly, if he proves that every instance of his drinking occurred while mentally incapacitated or under medical necessity except one instance, he must necessarily receive forty lashes. For the ḥadd punishment for drinking a thousand times or a single sip is one penalty, as outlined. Success comes solely from Allah, the Exalted.

عَلَى مَا قَدَّمْنَا. وَكَذَلِكَ لَوْ أَقَامَ بَيِّنَةً عَلَى أَنَّ جَمِيعَ أُولَئِكَ اللَّوَاتِي وُجِدَ يَطَأُهُنَّ إِمَاؤُهُ إِلَّا وَاحِدَةً، فَعَلَيْهِ حَدُّ الزِّنَا وَلَا بُدَّ؛ لِأَنَّ الْحَدَّ فِي الزِّنَا بِأَلْفٍ، أَوْ فِي الزِّنَا بِوَاحِدَةٍ: حَدٌّ وَاحِدٌ، وَلَا مَزِيدَ، عَلَى مَا قَدَّمْنَا. وَكَذَلِكَ لَوْ أَقَامَ بَيِّنَةً عَلَى كُلِّ مَا سَرَقَ: أَنَّهُ مَالُهُ أَخَذَهُ حَاشَ بَعْضَ ذَلِكَ، فَإِنَّهُ يُقْطَعُ بِهِ وَلَا بُدَّ؛ لِأَنَّ الْحَدَّ فِي أَلْفِ سَرِقَةٍ، وَفِي سَرِقَةٍ وَاحِدَةٍ: حَدٌّ وَاحِدٌ عَلَى مَا قَدَّمْنَا، وَكَذَلِكَ لَوْ أَقَامَ الْبَيِّنَةَ عَلَى أَنَّ كُلَّ مَا شَرِبَ مِنْ ذَلِكَ كَانَ فِي غَيْرِ عَقْلِهِ، أَوْ كَانَ فِي ضَرُورَةٍ لِعِلَاجٍ أَوْ غَيْرِهِ، إِلَّا مَرَّةً وَاحِدَةً: فَعَلَيْهِ جَلْدُ الْأَرْبَعِينَ وَلَا بُدَّ؛ لِأَنَّ الْحَدَّ فِي شُرْبِ أَلْفِ مَرَّةٍ، وَفِي جَرْعَةٍ: حَدٌّ وَاحِدٌ، كَمَا قَدَّمْنَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.



AL-MUHALLA

كِتَابُ الْمُحَارِبِينَ

The Book of Those Who Wage War

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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The Book of Those Who Wage War

L41807–41808

[كِتَابُ الْمُحَارِبِينَ]

L41809

2256. Issue: Allah the Exalted said: {The recompense of those who wage war against Allah and His Messenger} [Al-Ma'idah: 33], the verse. Abu Muhammad said: People have differed regarding who the "muharib" (one who wages war) is, upon whom this ruling is obligatory. A group said: The "muharib" mentioned in this verse refers to the polytheists. It was narrated from Ibn Abbas and others – as narrated by Yahya ibn Abd al-Rahman ibn Mas'ud, from Ahmad ibn Duhaym, from Ibrahim ibn Hammad, from Isma'il ibn Ishaq, from Muhammad ibn Abi Bakr (he is Al-Muqaddami), from Yahya and Khalid—both Al-Qattan—and Abu Al-Harith, each of them from Ash'ath, from Al-Hasan Al-Basri regarding Allah's statement {The recompense of those who wage war against Allah and His Messenger} [Al-Ma'idah: 33], the verse. He said: It was revealed concerning the polytheists. Through the chain extending to Isma'il via Yahya ibn Abd al-Hamid Al-Himmani, from Hushaym, from Juwaybir, from Al-Dahhak, who said: There were people who had a covenant with the Prophet (peace be upon him), but they violated the covenant, waylaid travelers, and spread corruption in the land. Thus, Allah the Exalted gave His Prophet (peace be upon him) the choice regarding them: if he wished, he could kill them, crucify them, or cut off their hands and feet from opposite sides.[1]

٢٢٥٦ - مَسْأَلَةٌ: قَالَ اللَّهُ تَعَالَى: {إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ} [المائدة: ٣٣] الْآيَةَ قَالَ أَبُو مُحَمَّد: فَاخْتَلَفَ النَّاسُ، مَنْ هُوَ الْمُحَارِبُ الَّذِي يَلْزَمُهُ هَذَا الْحُكْمُ؟ فَقَالَتْ طَائِفَةٌ: الْمُحَارِبُ الْمَذْكُورُ فِي هَذِهِ الْآيَةِ: هُمْ الْمُشْرِكُونَ. رُوِيَ عَنْ ابْنِ عَبَّاسٍ وَغَيْرِهِ - كَمَا نا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ نا أَحْمَدُ بْنُ دُحَيْمٍ نا إبْرَاهِيمُ بْنُ حَمَّادٍ نا إسْمَاعِيلُ بْنُ إسْحَاقَ نا مُحَمَّدُ بْنُ أَبِي بَكْرٍ - هُوَ الْمُقَدَّمِيُّ - نا يَحْيَى، وَخَالِدٌ - هُمَا الْقَطَّانُ - وَأَبُو الْحَارِثِ، كِلَاهُمَا عَنْ أَشْعَثَ عَنْ الْحَسَنِ الْبَصْرِيِّ فِي قَوْلِ اللَّهِ تَعَالَى {إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ} [المائدة: ٣٣] الْآيَةَ، قَالَ: نَزَلَتْ فِي أَهْلِ الشِّرْكِ. وَبِهِ - إلَى إسْمَاعِيلَ نا يَحْيَى بْنُ عَبْدِ الْحَمِيدِ الْحِمَّانِيُّ نا هُشَيْمٌ عَنْ جُوَيْبِرٍ عَنْ الضَّحَّاكِ قَالَ: كَانَ قَوْمٌ بَيْنَهُمْ وَبَيْنَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِيثَاقٌ فَنَقَضُوا الْعَهْدَ، وَقَطَعُوا السَّبِيلَ، وَأَفْسَدُوا فِي الْأَرْضِ، فَخَيَّرَ اللَّهُ تَعَالَى نَبِيَّهُ - عَلَيْهِ السَّلَامُ - فِيهِمْ إنْ شَاءَ أَنْ يَقْتُلَ، وَإِنْ شَاءَ أَنْ يَصْلُبَ، وَإِنْ شَاءَ قَطَعَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ مِنْ خِلَافٍ.

L41810–41814

And through him via Ismāʿīl: Muḥammad ibn Abī Bakr narrated to us, Ashʿath narrated to us, Sufyān narrated to us that he received a report from al-Ḍaḥḥāk ibn Muzāḥim concerning this verse. He said: "It was revealed regarding the People of the Book."

وَبِهِ - إلَى إسْمَاعِيلَ نا مُحَمَّدُ بْنُ أَبِي بَكْرٍ نا أَشْعَثُ نا سُفْيَانُ أَنَّهُ بَلَغَهُ عَنْ الضَّحَّاكِ بْنِ مُزَاحِمٍ فِي هَذِهِ الْآيَةِ قَالَ: نَزَلَتْ فِي أَهْلِ الْكِتَابِ. وَبِهِ - إلَى إسْمَاعِيلَ نا مُحَمَّدُ بْنُ عُبَيْدٍ وَإِبْرَاهِيمُ الْهَرَوِيُّ، قَالَ مُحَمَّدٌ: نا مُحَمَّدُ بْنُ ثَوْرٍ، وَقَالَ إبْرَاهِيمُ: نا سُفْيَانُ، ثُمَّ اتَّفَقَ مُحَمَّدُ بْنُ ثَوْرٍ، وَسُفْيَانُ، كِلَاهُمَا عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، وَعَطَاءٍ الْخُرَاسَانِيِّ، قَالَا جَمِيعًا فِي قَوْلِ اللَّهِ تَعَالَى {إلا الَّذِينَ تَابُوا مِنْ قَبْلِ أَنْ تَقْدِرُوا عَلَيْهِمْ} [المائدة: ٣٤] هَذِهِ الْآيَةَ لِأَهْلِ الشِّرْكِ، فَمَنْ أَصَابَ مِنْ الْمُشْرِكِينَ شَيْئًا مِنْ الْمُسْلِمِينَ - وَهُوَ لَهُمْ حَرْبٌ - فَأَخَذَ مَالًا،

And through him via Ismāʿīl: Muḥammad ibn ʿUbayd and Ibrāhīm al-Harawī narrated to us. Muḥammad said: Muḥammad ibn Thawr narrated to us. Ibrāhīm said: Sufyān narrated to us. Then their chains meet: both Muḥammad ibn Thawr and Sufyān narrate from Maʿmar, from Qatādah and ʿAṭāʾ al-Khurāsānī. They both said regarding Allah's statement (Exalted is He): {Except those who repent before you gain power over them} [5:34]: "This

[1] **Qur'an references (L41809):** Qur'an 5:33 (Al-Ma'idah).

verse pertains to the polytheists. As for whoever among..." The polytheists have nothing of [what belongs to] the Muslims—and such a person is at war with them—so if someone seizes property or sheds blood, then repents before being apprehended, his past offenses are waived. Hammam al-Qadi reported to us, Ibn Mufarrij reported to us, Abu Ali al-Hasan ibn Sa'd reported to us, Abu Ya'qub al-Dabari reported to us, Abd al-Razzaq reported to us from Ibn Jurayj, who said: Ata ibn Abi Rabah and Abd al-Karim said to me: Banditry constitutes polytheism. Ibn Jurayj said: I maintain that I know no one who wages war against the Prophet—peace and blessings of Allah be upon him—except that he has committed polytheism. A group held: He is the apostate, as reported to us by Abu Sa'id al-Ja'fari; Muhammad ibn Ali al-Idfawi reported to us; Abu Ja'far Ahmad ibn Muhammad ibn Isma'il al-Nahwi reported to us from Abdullah ibn Ahmad ibn Abd al-Salam; Abu al-Azhar reported to us; Rawh ibn Ubada reported to us from Ibn Jurayj; Hisham ibn Urwah reported to us from his father, who said: If a Muslim goes out and brandishes his weapon, then steals, then comes repentant, the legal punishment is imposed upon him—for if it were waived, penalties would become void—unless he joins the lands of polytheism and returns repentant, his repentance is accepted. A group held: The thief is not a Muslim, as reported to us by Abdullah ibn Rabi'; Ibn Mufarrij reported to us; Qasim ibn Asbagh reported to us; Ibn Waddah reported to us; Sahnoon reported to us; Ibn Wahb reported to us from Ibn Lahi'ah; Abdullah ibn Abi Ja'far said: I asked Nafi', freedman of Ibn Umar, about a Muslim thief or disbeliever who approaches a Muslim intending to seize his property and spill his blood. He replied: Were it me, I would resist—this one who attempts to subdue me to spill my blood and seize my property is no Muslim. A group held: Every thief is a muḥārib, as reported to us by Hammam; Ibn Mufarrij reported to us; al-Hasan ibn Sa'd reported to us; al-Dabari reported to us; Abd al-Razzaq reported to us from Ibn Jurayj via Abd al-Karim—or another—from al-Hasan al-Basri and Sa'id ibn Jubayr, both stating: Whoever destroys property is a muḥārib. Abu Muhammad said: The muḥārib is the thief. Hammam reported to us; Ibn Mufarrij reported to us; Ibn al-A'rabi reported to us; al-Dabari reported to us; Abd al-Razzaq reported to us from Sufyan al-Thawri via Jabir from al-Sha'bi, who said: The thief wages war against Allah and His Messenger—

وَأَصَابَ دَمًا، ثُمَّ تَابَ مِنْ قَبْلِ أَنْ يُقْدَرَ عَلَيْهِ أُهْدِرَ عَنْهُ مَا مَضَى نا حُمَامٌ الْقَاضِي نا ابْنُ مُفَرِّجٍ نا أَبُو عَلِيٍّ الْحَسَنُ بْنُ سَعْدٍ نا أَبُو يَعْقُوبَ الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: قَالَ لِي عَطَاءُ بْنُ أَبِي رَبَاحٍ، وَعَبْدُ الْكَرِيمِ: الْمُحَارَبَةُ شِرْكٌ - قَالَ ابْنُ جُرَيْجٍ: وَأَقُولُ أَنَا: لَا أَعْلَمُ أَحَدًا يُحَارِبُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا أَشْرَكَ. وَقَالَتْ طَائِفَةٌ: هُوَ الْمُرْتَدُّ كَمَا نا أَبُو سَعِيدٍ الْجَعْفَرِيُّ نا مُحَمَّدُ بْنُ عَلِيٍّ الإدفوي نا أَبُو جَعْفَرٍ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ إِسْمَاعِيلَ النَّحْوِيُّ عَنْ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ عَبْدِ السَّلَامِ عَنْ أَبِي الْأَزْهَرِ نا رَوْحُ بْنُ عُبَادَةَ عَنِ ابْنِ جُرَيْجٍ نا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ قَالَ: إِذَا خَرَجَ الْمُسْلِمُ فَشَهَرَ سِلَاحَهُ، ثُمَّ تَلَصَّصَ، ثُمَّ جَاءَ تَائِبًا أُقِيمَ عَلَيْهِ الْحَدُّ - وَلَوْ تُرِكَ لَبَطَلَتِ الْعُقُوبَاتُ، إِلَّا أَنْ يَلْحَقَ بِبِلَادِ الشِّرْكِ ثُمَّ يَأْتِيَ تَائِبًا: فَتُقْبَلُ مِنْهُ. وَقَالَتْ طَائِفَةٌ: اللِّصُّ لَيْسَ مُسْلِمًا - كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنِ ابْنِ لَهِيعَةَ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ قَالَ: سَأَلْتُ نَافِعًا مَوْلَى ابْنِ عُمَرَ - عَنْ لِصٍّ مُسْلِمٍ، أَوْ كَافِرٍ أَتَى مُسْلِمًا وَأَرَادَ أَنْ يَأْخُذَ مَالَهُ، وَيُهْرِيقَ دَمَهُ؟ قَالَ: لَوْ كُنْتُ أَنَا امْتَنَعْتُ - هَذَا الَّذِي يَسْتَغِيلُنِي لِيُهْرِيقَ دَمِي، وَيَأْخُذَ مَالِي، لَيْسَ بِمُسْلِمٍ. وَقَالَتْ طَائِفَةٌ: كُلُّ لِصٍّ فَهُوَ مُحَارِبٌ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا الْحَسَنُ بْنُ سَعْدٍ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْكَرِيمِ - أَوْ غَيْرِهِ - عَنِ الْحَسَنِ الْبَصْرِيِّ، وَسَعِيدِ بْنِ جُبَيْرٍ، قَالَا جَمِيعًا: مَنْ خَرَّبَ فَهُوَ مُحَارِبٌ قَالَ أَبُو مُحَمَّدٍ: الْمُحَارِبُ اللِّصُّ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ عَنِ الشَّعْبِيِّ قَالَ: اللِّصُّ مُحَارِبٌ لِلَّهِ وَلِرَسُولِهِ فَاقْتُلْهُ، فَمَا أَصَابَكَ فِيهِ مِنْ شَيْءٍ مِنْ دَمِهِ فَعَلَيَّ.

so kill him. Whatever consequences you face for shedding his blood, I am responsible. A group held: None is a muḥārib except one who terrorizes the highways, as reported to us by Yahya ibn Abd al-Rahman ibn Masʿud; Ahmad ibn Duhaym reported to us; Ibrahim ibn Hammad reported to us; Ismaʿil ibn Ishaq reported to us; Yahya ibn Abd al-Hamid al-Himmani reported to us; Sufyan ibn Uyaynah reported to us from Ammar al-Duhni, who said: A man came... Mis'ar ibn Fadkiyy—while disguised—entered the presence of Ali ibn Abi Talib. He inquired about every verse in Allah's Book containing strictness without exception, and Ali would respond, "He has repentance." Ali said, "Even if he were Mis'ar ibn Fadkiyy?" then repeated, "Even if he were Mis'ar ibn Fadkiyy." I said to him, "Then I am Mis'ar ibn Fadkiyy; grant me security?" He replied, "You are secure." He had been a highway robber who deemed it lawful to violate women's chastity.[2]

وَقَالَتْ طَائِفَةٌ: لَا يَكُونُ الْمُحَارِبُ إِلَّا مَنْ أَخَافَ السَّبِيلَ: كَمَا نا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ نا أَحْمَدُ بْنُ دُحَيْمٍ نا إِبْرَاهِيمُ بْنُ حَمَّادٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ نا يَحْيَى بْنُ عَبْدِ الْحَمِيدِ الْحِمَّانِيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمَّارٍ الدُّهْنِيِّ قَالَ: جَاءَ مِسْعَرُ بْنُ فَدْكِيٍّ - وَهُوَ مُتَنَكِّرٌ - حَتَّى دَخَلَ عَلَى عَلِيِّ بْنِ أَبِي طَالِبٍ، فَمَا تَرَكَ آيَةً مِنْ كِتَابِ اللَّهِ فِيهَا تَشْدِيدٌ إِلَّا سَأَلَهُ عَنْهَا، وَهُوَ يَقُولُ، لَهُ تَوْبَةٌ، قَالَ: وَإِنْ كَانَ مِسْعَرَ بْنَ فَدْكِيٍّ قَالَ: وَإِنْ كَانَ مِسْعَرَ بْنَ فَدْكِيٍّ، قَالَ: فَقُلْتُ لَهُ: فَأَنَا مِسْعَرُ بْنُ فَدْكِيٍّ فَأَمِّنِّي؟ قَالَ: أَنْتَ آمِنٌ، قَالَ: وَكَانَ يَقْطَعُ الطَّرِيقَ، وَيَسْتَحِلُّ الْفُرُوجَ.

From him to Ismāʿīl ibn Isḥāq: Muḥammad ibn Abī Bakr narrated to us; ʿUmar ibn ʿAlī narrated to us from Mujāhid from al-Shaʿbī from Saʿīd ibn Qays al-Hamdānī: Ḥārithah ibn Badr al-Tamīmī—who was an enemy of ʿAlī and reviled him—came to al-Ḥasan, al-Ḥusayn, and ʿAbdullāh ibn Jaʿfar (may Allah be pleased with them) to seek protection. But ʿAlī refused to grant him safety. Saʿīd said: "I went to ʿAlī and asked, 'What is **the recompense of those who wage war against Allah and His Messenger and strive to spread corruption in the land** [Al-Māʾidah 5:33]?' He replied, '**That they be killed or crucified, or that their hands and feet be cut off from opposite sides** [Al-Māʾidah 5:33].' I asked, 'What is the exception?' He said, '**Except those who repent before you apprehend them** [Al-Māʾidah 5:34].' I said, 'Ḥārithah ibn Badr has repented before we apprehended him.' ʿAlī said, 'He is granted protection.'" Saʿīd said: "I then took Ḥārithah to ʿAlī, and he granted him safety."[3]

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وَبِهِ - إِلَى إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا مُحَمَّدُ بْنُ أَبِي بَكْرٍ نا عُمَرُ بْنُ عَلِيٍّ عَنْ مُجَاهِدٍ عَنِ الشَّعْبِيِّ عَنْ سَعِيدِ بْنِ قَيْسٍ الْهَمْدَانِيِّ أَنَّ حَارِثَةَ بْنَ بَدْرٍ التَّمِيمِيَّ - كَانَ عَدُوًّا لِعَلِيٍّ وَكَانَ يَهْجُوهُ - فَأَتَى الْحَسَنَ، وَالْحُسَيْنَ، وَعَبْدَ اللَّهِ بْنَ جَعْفَرٍ - رَضِيَ اللَّهُ عَنْهُمْ - لِيَأْخُذُوا لَهُ أَمَانًا، فَأَبَى عَلِيٌّ أَنْ يُؤَمِّنَهُ، قَالَ سَعِيدٌ: فَانْطَلَقْتُ إِلَى عَلِيٍّ فَقُلْتُ: مَا {جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الأَرْضِ فَسَادًا} [المائدة: ٣٣] قَالَ {أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلافٍ} [المائدة: ٣٣] الْآيَةَ قُلْتُ: إِلَّا مَاذَا؟ قَالَ {إِلا الَّذِينَ تَابُوا مِنْ قَبْلِ أَنْ تَقْدِرُوا عَلَيْهِمْ} [المائدة: ٣٤] قُلْتُ: فَإِنَّ حَارِثَةَ بْنَ بَدْرٍ قَدْ تَابَ مِنْ قَبْلِ أَنْ نَقْدِرَ عَلَيْهِ، قَالَ: هُوَ آمِنٌ، قَالَ: فَانْطَلَقْتُ بِحَارِثَةَ إِلَى عَلِيٍّ فَآمَنَهُ.

Hammam narrated to us: From Ibn Mufarrij, from al-Hasan ibn Sa'd, from Abu Ya'qub al-Dabari, from 'Abd al-Razzaq, from Ma'mar, from Qatadah and 'Ata' al-Khurasani—both said unanimously regarding this verse: *"The

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حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا الْحَسَنُ بْنُ سَعْدٍ نا أَبُو يَعْقُوبَ الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، وَعَطَاءٍ الْخُرَاسَانِيِّ، قَالَا جَمِيعًا فِي هَذِهِ الْآيَةِ {إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ} [المائدة: ٣٣] قَالَ: هَذِهِ الْآيَةُ فِي اللِّصِّ الَّذِي يَقْطَعُ الطَّرِيقَ فَهُوَ مُحَارِبٌ

[2] **Qur'an references (L41810):** Qur'an 5:34 (Al-Ma'idah).

[3] **Qur'an references (L41815):** Qur'an 5:33 (Al-Ma'idah); Qur'an 5:34 (Al-Ma'idah).

recompense of those who wage war against Allah and His Messenger…”* (5:33): This verse concerns the highway robber who cuts off the road, thus becoming a muḥārib. Abu Muhammad said: Then these scholars differed. A group held that wherever one cuts off the road—whether in a city or elsewhere—he is a muḥārib. As Abu al-Murajja ibn Dhurwan al-Misri wrote to me: From Abu al-Hasan al-Rahabi, from Muslim the scribe, from ʻAbdullah ibn Ahmad ibn al-Mughallis, who said: Waki‘ reported from al-Hakam ibn ʻAtiyyah, who said: I asked al-Hasan about a man who struck another with a sword in Basra. Al-Hasan said: They would state, “Whoever brandishes a weapon is a muḥārib.” Hammam narrated to us: From Ibn Mufarrij, from Ibn al-A‘rabi, from al-Dabari, from ʻAbd al-Razzaq, from Ma‘mar, from Ibn Tawus, from his father, from al-Zubayr. Tawus said: I heard him declare, “Whoever raises a weapon then lowers it is a muḥārib: his blood may be shed without penalty.” He added: Tawus also upheld this view. ʻAbd al-Rahman ibn Salamah al-Kinani narrated to us: From Ahmad ibn Khalil, from Khalid ibn Sa‘d, from [...] Aḥmad ibn Khālid narrated to us: Yaḥyā ibn Ayyūb ibn Bādī al-ʿAllāf—the jurist of the people of Egypt—narrated to us: Saʿīd ibn Abī Maryam narrated to us: Sulaymān ibn Bilāl narrated to me from ʿAlqamah ibn Abī ʿAlqamah from his mother: “A slave boy belonged to Bāni, who would punish him by beating him for certain offenses. The slave boy harbored hostility toward his master, so Bāni sold him. One day, the slave boy encountered Bāni while carrying a sword—this occurred during the governorship of Saʿīd ibn al-ʿĀṣ. The slave boy brandished the sword at Bāni and lunged toward him, but people restrained him. Bāni then went to ʿĀ’ishah and informed her of what the slave had done to him. ʿĀ’ishah said: ’I heard the Messenger of Allah—peace and blessings be upon him—say: ”Whoever points an iron weapon at a Muslim intending to kill him, his blood is forfeit.“’ He mentioned the hadith, and in it is that the slave boy was killed.”[4]

L41819 Yahya ibn Abd al-Rahman ibn Mas‘ud narrated to us: Ahmad ibn Duhaym narrated to us: Hammad ibn Ibrahim narrated to us: Isma‘il ibn Ishaq narrated to us: Ali ibn Abd al-Aziz al-Madini narrated to us: Muhammad ibn

[4]**Qur’an references (L41816):** Qur’an 5:33 (Al-Ma’idah).

قَالَ أَبُو مُحَمَّد: ثُمَّ اخْتَلَفَ هَؤُلَاءِ: فَقَالَتْ طَائِفَةٌ: حَيْثُمَا قَطَعَ الطَّرِيقَ فِي مِصْرٍ أَوْ غَيْرِهِ فَهُوَ مُحَارِبٌ: كَمَا كَتَبَ إِلَيَّ أَبُو الْمُرَجَّى بْنُ ذَرْوَانَ الْمِصْرِيُّ نا أَبُو الْحَسَنِ الرَّحَبِيُّ نا مُسْلِمٌ الْكَاتِبُ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ الْمُغَلِّسِ قَالَ: ذَكَرَ وَكِيعٌ عَنِ الْحَكَمِ بْنِ عَطِيَّةَ قَالَ: سَأَلْت الْحَسَنَ عَنْ رَجُلٍ ضَرَبَ رَجُلًا بِالسَّيْفِ بِالْبَصْرَةِ؟ قَالَ: كَانُوا يَقُولُونَ: مَنْ شَهَرَ السِّلَاحَ فَهُوَ مُحَارِبٌ. حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنِ الزُّبَيْرِ قَالَ طَاوُسٌ: سَمِعْته يَقُولُ: مَنْ رَفَعَ السِّلَاحَ ثُمَّ وَضَعَهُ: مُحَارِبٌ، فَدَمُهُ هَدَرٌ - قَالَ: وَكَانَ طَاوُسٌ يَرَى هَذَا أَيْضًا. حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ سَلَمَةَ الْكِنَانِيُّ نا أَحْمَدُ بْنُ خَلِيلٍ نا خَالِدُ بْنُ سَعْدٍ نا أَحْمَدُ بْنُ خَالِدٍ نا يَحْيَى بْنُ أَيُّوبَ بْنِ بَادِي الْعَلَّافُ - فَقِيهُ أَهْلِ مِصْرَ - نا سَعِيدُ بْنُ أَبِي مَرْيَمَ نا سُلَيْمَانُ بْنُ بِلَالٍ نِي عَلْقَمَةُ بْنُ أَبِي عَلْقَمَةَ عَنْ أُمِّهِ: «أَنَّ غُلَامًا كَانَ لِبَانِي، فَكَانَ بَانِي يَضْرِبُهُ فِي أَشْيَاءَ يُعَاقِبُهُ فِيهَا، فَكَانَ الْغُلَامُ يُعَادِي سَيِّدَهُ، فَبَاعَهُ بَانِي، فَلَقِيَهُ الْغُلَامُ يَوْمًا وَمَعَ الْغُلَامِ سَيْفٌ يَحْمِلُهُ وَذَلِكَ فِي إِمْرَةِ سَعِيدِ بْنِ الْعَاصِ - فَشَهَرَ الْغُلَامُ السَّيْفَ عَلَى بَانِي وَتَفَلَّتَ بِهِ عَلَيْهِ، فَأَمْسَكَهُ عَنْهُ النَّاسُ، فَدَخَلَ بَانِي عَلَى عَائِشَةَ فَأَخْبَرَهَا بِمَا فَعَلَ بِهِ الْعَبْدُ، فَقَالَتْ عَائِشَةُ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ مَنْ أَشَارَ بِحَدِيدَةٍ إِلَى أَحَدٍ مِنَ الْمُسْلِمِينَ يُرِيدُ قَتْلَهُ فَقَدْ وَجَبَ دَمُهُ» فَذَكَرَ الْحَدِيثَ، وَفِيهِ: أَنَّ الْغُلَامَ قُتِلَ.

حَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ نا أَحْمَدُ بْنُ دُحَيْمٍ نا حَمَّادُ بْنُ إِبْرَاهِيمَ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ الْمَدِينِيُّ نا مُحَمَّدُ بْنُ عَلِيِّ بْنِ مُقَدَّمٍ عَنْ سُفْيَانَ بْنِ حُسَيْنٍ

Ali ibn Muqaddam narrated to us from Sufyan ibn Husayn from Ya'la ibn Muslim from Abu al-Sha'tha' (Jabir ibn Zayd) from Ibn Abbas, who said: "If someone climbs over into their houses armed, his hand and leg must be cut off."

عَنْ يَعْلَى بْنِ مُسْلِمٍ عَنْ أَبِي الشَّعْثَاءِ - جَابِرِ بْنِ زَيْدٍ - عَنْ ابْنِ عَبَّاسٍ قَالَ إِذَا تَسَوَّرَ عَلَيْهِمْ فِي بُيُوتِهِمْ بِالسِّلَاحِ قُطِعَتْ يَدُهُ وَرِجْلُهُ.

L41820 From Ismāʿīl: Naṣr ibn ʿAlī al-Jahḍamī reported to us from Khālid ibn al-Ḥārith from Ashʿath from al-Ḥasan, who said: "If a robber assails you at night, he is a combatant (muḥārib)."

From the same chain: Ismāʿīl reported to us: Muḥammad ibn Abī Bakr al-Muqaddamī reported to us from Muḥammad ibn Sawwār from Saʿīd ibn Abī ʿArūbah from Qatādah, who said: "If one enters upon you while carrying an iron weapon, he is a combatant (muḥārib)."

Ismāʿīl said: Naṣr ibn ʿAlī reported to us from Ḥarb ibn Maymūn from Saʿīd ibn Abī ʿArūbah from Qatādah, who said: "If a robber assails you at night, he is a combatant (muḥārib)."

وَبِهِ - إِلَى إِسْمَاعِيلَ نا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ نا خَالِدُ بْنُ الْحَارِثِ عَنْ أَشْعَثَ عَنْ الْحَسَنِ قَالَ: إِذَا طَرَقَك اللِّصُّ بِاللَّيْلِ فَهُوَ مُحَارِبٌ. وَبِهِ إِسْمَاعِيلُ نا مُحَمَّدُ بْنُ أَبِي بَكْرٍ الْمُقَدَّمِيُّ نا مُحَمَّدُ بْنُ سَوَّارٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ قَالَ: إِذَا دَخَلَ عَلَيْك وَمَعَهُ حَدِيدَةٌ فَهُوَ مُحَارِبٌ. قَالَ إِسْمَاعِيلُ: ونا نَصْرُ بْنُ عَلِيٍّ نا حَرْبُ بْنُ مَيْمُونٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ قَالَ: إِذَا طَرَقَك اللِّصُّ بِاللَّيْلِ فَهُوَ مُحَارِبٌ.

L41821–41827 Ash-Shāfiʿī, Abū Sulaymān, and their adherents hold this opinion regarding muḥārabah. Mālik's position is reported with differing narrations: in one narration, he stated, "Muḥārabah occurs only in the desert," and in another narration, he said, "Muḥārabah occurs in the desert and in urban centers (amsar)." Sufyān said, "Muḥārabah occurs only in the desert." Abū Ḥanīfah and his followers said, "Muḥārabah does not occur in a city (miṣr), nor in an urban center (amṣār), nor..." Near a town, nor near a city, nor between two cities, nor between Kufa and Hirah. Then it was narrated from Abū Yūsuf that he said: If they confronted the people of a city defiantly at night, they would fall under the ruling of brigandage (muḥārabah). Abū Ḥanīfah said: If someone brandishes a weapon against another—whether night or day—and the one threatened intentionally kills him, there is no penalty. If he brandishes a club against him during the day in a town and the threatened one intentionally kills him, the killer is subject to retaliation. If this occurs at night in a town, a city, or on a road outside a city, there is no penalty for the killer. Abū Muḥammad—may Allah have mercy on him—said: Since they differed as we mentioned, it became obligatory for us to seek the truth from their statements to discern the correct view and follow

وَبِهَذَا يَأْخُذُ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا. وَاخْتَلَفَ فِيهِ قَوْلُ مَالِك، فَمَرَّةً قَالَ: لَا تَكُونُ الْمُحَارَبَةُ إلَّا فِي الصَّحْرَاءِ وَمَرَّةً قَالَ: تَكُونُ الْمُحَارَبَةُ فِي الصَّحْرَاءِ، وَفِي الْأَمْصَارِ. وَقَالَ سُفْيَانُ: لَا تَكُونُ الْمُحَارَبَةُ إلَّا فِي الصَّحْرَاءِ. قَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا تَكُونُ الْمُحَارَبَةُ فِي مَدِينَةٍ، وَلَا فِي مِصْرٍ، وَلَا بِقُرْبِ مَدِينَةٍ، وَلَا بِقُرْبِ مِصْرٍ وَلَا بَيْنَ مَدِينَتَيْنِ، وَلَا بَيْنَ الْكُوفَةِ وَالْحِيرَةِ - ثُمَّ رُوِيَ عَنْ أَبِي يُوسُفَ أَنَّهُ قَالَ: إذْ كَابَرُوا أَهْلَ مَدِينَةٍ لَيْلًا، كَانُوا فِي حُكْمِ الْمُحَارَبَةِ. وَقَالَ أَبُو حَنِيفَةَ: مَنْ شَهَرَ عَلَى آخَرَ سِلَاحًا - لَيْلًا أَوْ نَهَارًا - فَقَتَلَهُ الْمَشْهُورُ عَلَيْهِ عَمْدًا فَلَا شَيْءَ عَلَيْهِ، فَإِنْ شَهَرَ عَلَيْهِ عَصًا نَهَارًا فِي مِصْرٍ فَقَتَلَهُ عَمْدًا قُتِلَ بِهِ - وَإِنْ كَانَ فِي اللَّيْلِ فِي مِصْرٍ، أَوْ فِي مَدِينَةٍ، أَوْ فِي طَرِيقٍ فِي غَيْرِ مَدِينَةٍ، فَلَا شَيْءَ عَلَى الْقَاتِلِ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَطْلُبَ الْحَقَّ مِنْ أَقْوَالِهِمْ، لِنَعْلَمَ الصَّوَابَ فَنَتَّبِعُهُ - بِمَنِّ اللَّهِ تَعَالَى - فَنَظَرْنَا

it—by the grace of Allah Almighty. We examined the evidence each group cited for their opinion. We considered those who argued that a brigand (muḥārib) must be a polytheist or apostate, and found them citing: What ʻAbdullāh ibn Rabīʻ narrated, from Muḥammad ibn Muʻāwiyah, from Aḥmad ibn Shuʻayb al-Nasāʾī, who reported from al-ʻAbbās ibn Muḥammad, from Abū ʻĀmir al-ʻAqadī, from Ibrāhīm ibn Ṭahmān, from ʻAbd al-ʻAzīz ibn Rufayʻ, from ʻUbayd ibn ʻUmayr, from ʻĀʾishah, the Mother of the Believers, that the Messenger of Allah—peace and blessings be upon him—said: "The blood of a Muslim is not lawful except for one of three reasons: a married person (muḥṣan) who commits adultery and is stoned, a person who intentionally kills another and is thus executed, or one who abandons Islam and wages war against Allah and His Messenger, thereby being killed, crucified, or exiled from the land." They also cited Ibn Jurayj's earlier statement: "We do not know of anyone who waged war against the Messenger of Allah—peace and blessings be upon him—except a polytheist." Abū Muḥammad—may Allah have mercy on him—said: We examined their evidence and found the cited narration unreliable, as it was solely transmitted by Ibrāhīm ibn Ṭahmān, who is not a strong authority. As for Ibn Jurayj's statement, "We do not know of anyone who waged war against the Messenger of Allah except a polytheist," waging war against Allah Almighty and His Messenger—peace upon him—occurs in two forms: one by a person who deems it permissible, thus becoming a disbeliever by the consensus of all Muslims, with no dissent except from those unworthy of consideration in Islam; the other by a sinful transgressor who admits his crime, yet does not deem it lawful—such a person remains a Muslim, though a sinner. By that, a disbeliever—but like all other sins such as fornication, murder, forcible seizure, drinking wine, eating pork, carrion, blood, abandoning prayer, abandoning zakāh, abandoning the fast of Ramadan, and abandoning Hajj: this does not make one a disbeliever, as we have thoroughly investigated in *The Book of Distinction* and other works. The comprehensive proof for this is: If committing any of these grave sins rendered one a disbeliever through that act, he would undoubtedly be an apostate. If he were thereby an apostate, his execution would be obligatory under the command of Allah's Messenger—peace and blessings be

فِيمَا تَحْتَجُّ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا: فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ قَالَ: إنَّ الْمُحَارِبَ لَا يَكُونُ إلَّا مُشْرِكًا أَوْ مُرْتَدًّا، فَوَجَدْنَاهُمْ يَذْكُرُونَ: مَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ النَّسَائِيّ، أَخْبَرَنَا الْعَبَّاسُ بْنُ مُحَمَّدٍ أَنَا أَبُو عَامِرٍ الْعَقَدِيُّ عَنْ إبْرَاهِيمَ بْنِ طَهْمَانَ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إلَّا بِإِحْدَى ثَلَاثِ خِصَالٍ: زَانٍ مُحْصَنٌ، يُرْجَمُ، أَوْ رَجُلٌ قَتَلَ مُتَعَمِّدًا، فَيُقْتَلُ - أَوْ رَجُلٌ يَخْرُجُ مِنْ الْإِسْلَامِ فَيُحَارِبُ اللَّهَ وَرَسُولَهُ، فَيُقْتَلُ أَوْ يُصَلَّبُ أَوْ يُنْفَى مِنْ الْأَرْضِ» . وَبِمَا ذَكَرَهُ ابْنُ جُرَيْجٍ آنِفًا مِنْ قَوْلِهِ: مَا نَعْلَمُ أَحَدًا حَارَبَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا أَشْرَكَ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِيمَا احْتَجُّوا بِهِ مِنْ ذَلِكَ فَوَجَدْنَا الْخَبَرَ الْمَذْكُورَ لَا يَصِحُّ، لِأَنَّهُ انْفَرَدَ بِهِ إبْرَاهِيمُ بْنُ طَهْمَانَ - وَلَيْسَ بِالْقَوِيِّ. وَأَمَّا قَوْلُ ابْنِ جُرَيْجٍ " مَا نَعْلَمُ أَحَدًا حَارَبَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا أَشْرَكَ " فَإِنَّ مُحَارَبَةَ اللَّهِ تَعَالَى، وَمُحَارَبَةَ رَسُولِهِ - عَلَيْهِ السَّلَامُ - تَكُونُ عَلَى وَجْهَيْنِ: أَحَدُهُمَا - مِنْ مُسْتَحِلٍّ لِذَلِكَ، فَهُوَ كَافِرٌ بِإِجْمَاعِ الْأُمَّةِ كُلِّهَا، لَا خِلَافَ فِي ذَلِكَ إلَّا مِمَّنْ لَا يُعْتَدُّ بِهِ فِي الْإِسْلَامِ - وَتَكُونُ مِنْ فَاسِقٍ عَاصٍ مُعْتَرِفٍ بِجُرْمِهِ، فَلَا يَكُونُ بِذَلِكَ كَافِرًا، لَكِنْ كَسَائِرِ الذُّنُوبِ، مِنْ الزِّنَا، وَالْقَتْلِ، وَالْغَصْبِ، وَشُرْبِ الْخَمْرِ، وَأَكْلِ الْخِنْزِيرِ، وَالْمَيْتَةِ، وَالدَّمِ، وَتَرْكِ الصَّلَاةِ، وَتَرْكِ الزَّكَاةِ، وَتَرْكِ صَوْمِ شَهْرِ رَمَضَانَ، وَتَرْكِ الْحَجِّ: فَهَذَا لَا يَكُونُ كَافِرًا، لِمَا قَدْ تَقَصَّيْنَاهُ فِي " كِتَابِ الْفَصْلِ " وَغَيْرِهِ. وَيَجْمَعُ الْحُجَّةَ فِي ذَلِكَ: أَنَّهُ لَوْ كَانَ فَاعِلُ شَيْءٍ مِنْ هَذِهِ الْعَظَائِمِ كَافِرًا بِفِعْلِهِ ذَلِكَ، لَكَانَ مُرْتَدًّا بِلَا شَكٍّ، وَلَوْ كَانَ بِذَلِكَ مُرْتَدًّا لَوَجَبَ قَتْلُهُ، لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَتْلِ مَنْ ارْتَدَّ،

upon him—to kill whoever apostatizes and changes his religion. No Muslim holds this position.

Abū Muḥammad said: If a speaker says, "We do not concede that one who disobeys without disbelief is not waging war against Allah the Exalted and His Messenger—peace be upon him," we reply—and by Allah's enablement we proceed—: Allah the Exalted states, *"O you who believe, fear Allah and relinquish what remains of usury, if you are truly believers. If you do not, then prepare for war from Allah and His Messenger"* [Al-Baqarah 2:278–279].

Abū al-Murajjā ibn Dharwān wrote to me, stating: Abū al-Ḥasan al-Raḥabī narrated to us: Abū Muslim al-Kātib narrated to us: ʿAbdullāh ibn Aḥmad ibn al-Mughallis narrated to us: ʿAbdullāh ibn Aḥmad ibn Ḥanbal narrated to us: My father narrated to us: Ḥammād ibn Khālid al-Khayyāṭ narrated to us: ʿAbd al-Wāḥid—client of ʿUrwah—narrated from ʿUrwah, from ʿĀ'ishah, who said: Allah's Messenger—peace and blessings be upon him—stated, *"Allah the Exalted declared: 'Whoever harms My ally has thereby incurred My lawful warfare against him.'"*

Allah the Exalted says, *"If two factions of believers fight one another, reconcile between them..."* [Al-Ḥujurāt 49:9] up to His words, *"...reconcile between your two brothers"* [Al-Ḥujurāt 49:10]. The Messenger of Allah—peace and blessings be upon him—said, *"The rebellious faction will kill ʿAmmār."* Thus, it is confirmed that not every sinner is one who wages war [against Allah], nor is every such person a disbeliever.

We further examined this matter and found that Allah the Exalted has ordained for those who wage war the penalties we mentioned: execution, crucifixion, amputation of hands and feet from opposite sides, or exile from the land— The remission of all that from him through repentance before gaining the capacity to act. If the belligerent subject to these rulings were a disbeliever, it would inevitably fall into one of three categories with absolutely no fourth possibility: either he was an enemy combatant from the beginning; or he was a *dhimmi* who breached the covenant of protection and waged war, thereby becoming an enemy combatant; or he was a Muslim who apo-

وَبَدَّلَ دِينَهُ - وَهَذَا لَا يَقُولُهُ مُسْلِمٌ قَالَ أَبُو مُحَمَّد: فَإِنْ قَالَ قَائِلٌ: إنَّنَا لَا نُسَلِّمُ أَنَّ مَنْ عَصَى بِغَيْرِ الْكُفْرِ لَا يَكُونُ مُحَارِبًا لِلَّهِ تَعَالَى وَلِرَسُولِهِ - عَلَيْهِ السَّلَامُ - قُلْنَا لَهُ: وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: قَالَ اللَّهُ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِنْ كُنْتُمْ مُؤْمِنِينَ - فَإِنْ لَمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِنَ اللَّهِ وَرَسُولِهِ} [البقرة: ٢٧٨ - ٢٧٩] الْآيَةَ. كَتَبَ إلَيَّ أَبُو الْمُرَجَّى بْنُ ذَرْوَانَ قَالَ: نا أَبُو الْحَسَنِ الرَّحَبِيُّ نا أَبُو مُسْلِمٍ الْكَاتِبُ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ الْمُغَلِّسِ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا حَمَّادُ بْنُ خَالِدٍ الْخَيَّاطُ نا عَبْدُ الْوَاحِدِ - مَوْلَى عُرْوَةَ - عَنْ عُرْوَةَ عَنْ عَائِشَةَ، قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «قَالَ اللَّهُ تَعَالَى مَنْ آذَى لِي وَلِيًّا فَقَدْ اسْتَحَلَّ مُحَارَبَتِي» . وَقَالَ اللَّهُ تَعَالَى {وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا} [الحجرات: ٩] إلَى قَوْلِهِ {فَأَصْلِحُوا بَيْنَ أَخَوَيْكُمْ} [الحجرات: ١٠] . وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «تَقْتُلُ عَمَّارًا الْفِئَةُ الْبَاغِيَةُ» فَصَحَّ أَنَّهُ لَيْسَ كُلُّ عَاصٍ مُحَارِبًا، وَلَا كُلُّ مُحَارِبٍ كَافِرًا، ثُمَّ نَظَرْنَا فِي ذَلِكَ أَيْضًا، فَوَجَدْنَا اللَّهَ تَعَالَى قَدْ حَكَمَ فِي الْمُحَارِبِ مَا ذَكَرْنَا مِنْ الْقَتْلِ، أَوْ الصَّلْبِ، أَوْ قَطْعِ الْأَيْدِي وَالْأَرْجُلِ مِنْ خِلَافٍ، أَوْ النَّفْيِ مِنْ الْأَرْضِ - وَإِسْقَاطُ ذَلِكَ كُلِّهِ عَنْهُ بِالتَّوْبَةِ قَبْلَ الْقُدْرَةِ عَلَيْهِ، فَلَوْ كَانَ الْمُحَارِبُ الْمَأْمُورُ فِيهِ بِهَذِهِ الْأَوَامِرِ كَافِرًا: لَمْ يَخْلُ مِنْ ثَلَاثَةِ أَوْجُهٍ، لَا رَابِعَ لَهَا: إمَّا أَنْ يَكُونَ حَرْبِيًّا مُذْ كَانَ. وَإِمَّا أَنْ يَكُونَ ذِمِّيًّا فَنَقَضَ الذِّمَّةَ وَحَارَبَ فَصَارَ حَرْبِيًّا. وَإِمَّا أَنْ يَكُونَ مُسْلِمًا فَارْتَدَّ إلَى الْكُفْرِ. لَا بُدَّ مِنْ أَحَدِ هَذِهِ الْوُجُوهِ ضَرُورَةً، وَلَا يُمْكِنُ - وَلَا يُوجَدُ غَيْرُهَا، فَلَوْ كَانَ حَرْبِيًّا مُذْ كَانَ، فَلَا يَخْتَلِفُ مِنْ الْأُمَّةِ اثْنَانِ فِي أَنَّهُ لَيْسَ هَذَا حُكْمُ الْحَرْبِيِّينَ - وَإِنَّمَا حُكْمُ الْحَرْبِيِّينَ الْقَتْلُ فِي اللِّقَاءِ كَيْفَ أَمْكَنَ حَتَّى يُسْلِمُوا، أَوْ يُعْطُوا الْجِزْيَةَ عَنْ

statized to disbelief. This must necessarily be one of these categories, as no other exists. If he was an enemy combatant from the outset, no two scholars in the Ummah disagree that this is not the ruling applicable to enemy combatants. The established ruling for enemy combatants is to kill them in battle whenever possible until they embrace Islam or pay the *jizyah* directly and submissively while in a state of humiliation—applying to those among them who are People of the Book according to our position and that of certain groups, or to non-Arabs of any religion according to other opinions. Alternatively, they may be captured, in which case their ruling is unequivocally execution by beheading without disagreement, as the Messenger of Allah (peace be upon him) killed ʻUqbah ibn Abī Muʻayṭ, al-Naḍr ibn al-Ḥārith, the Banū Qurayẓah, and others. They may also be enslaved, released to their homeland—as the Messenger of Allah (peace be upon him) released Thumāmah ibn Athāl al-Ḥanafī, Abū al-ʿĀṣ ibn al-Rabīʿ, and others—or ransomed, as Allah the Exalted stated: "When you confront the disbelievers in battle, strike their necks until you have thoroughly subdued them, then bind them securely. Thereafter, either grant them grace or ransom them until the war lays down its burdens" (Surah Muhammad 47:4). Or they may be freed as protected non-Muslims under covenant, as the Messenger of Allah (peace be upon him) did with the people of Khaybar. These are the rulings for enemy combatants established by the explicit Qur'an, authenticated Sunnah, and definitive consensus. There is no disagreement that crucifixion, amputation of hands and feet, or banishment are not among their rulings. Thus, it is invalid to regard the belligerent mentioned in the verse as a disbelieving enemy combatant. If he was a *dhimmi* who violated the covenant, there are three opinions among scholars with no fourth: The first is that he transitions to the rulings applicable to enemy combatants in all that we have mentioned.[5]

يَدٍ وَهُمْ صَاغِرُونَ، وَمَنْ كَانَ مِنْهُمْ كِتَابِيًّا - فِي قَوْلِنَا وَقَوْلِ طَوَائِفَ مِنْ النَّاسِ. أَوْ مَنْ كَانَ مِنْهُمْ مِنْ أَيِّ دِينٍ كَانَ مَا لَمْ يَكُنْ عَرَبِيًّا فِي قَوْلِ غَيْرِنَا. أَوْ يُؤْسَرَ فَيَكُونُ حُكْمُهُ ضَرْبَ الْعُنُقِ فَقَطْ بِلَا خِلَافٍ، كَمَا قَتَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عُقْبَةَ بْنَ أَبِي مُعَيْطٍ، وَالنَّضْرَ بْنَ الْحَارِثِ، وَبَنِي قُرَيْظَةَ، وَغَيْرَهُمْ، أَوْ يُسْتَرَقَّ، أَوْ يُطْلَقَ إلَى أَرْضِهِ، كَمَا أَطْلَقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَامَةَ بْنَ أَثَالٍ الْحَنَفِيَّ، وَأَبَا الْعَاصِ بْنَ الرَّبِيعِ وَغَيْرَهُمَا. أَوْ يُفَادَى بِهِ - كَمَا قَالَ اللَّهُ تَعَالَى {فَإِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا فَضَرْبَ الرِّقَابِ حَتَّى إِذَا أَثْخَنْتُمُوهُمْ فَشُدُّوا الْوَثَاقَ فَإِمَّا مَنًّا بَعْدُ وَإِمَّا فِدَاءً حَتَّى تَضَعَ الْحَرْبُ أَوْزَارَهَا} [محمد: ٤] . أَوْ نُطْلِقَهُمْ أَحْرَارًا ذِمَّةً، كَمَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَهْلِ خَيْبَرَ. فَهَذِهِ أَحْكَامُ الْحَرْبِيِّينَ بِنَصِّ الْقُرْآنِ، وَالسُّنَنِ الثَّابِتَةِ، وَالْإِجْمَاعِ الْمُتَيَقَّنِ، وَلَا خِلَافَ فِي أَنَّهُ لَيْسَ الصَّلْبُ، وَلَا قَطْعُ الْأَيْدِي وَالْأَرْجُلِ، وَلَا النَّفْيُ، مِنْ أَحْكَامِهِمْ. فَبَطَلَ أَنْ يَكُونَ الْمُحَارِبُ الْمَذْكُورُ فِي الْآيَةِ حَرْبِيًّا كَافِرًا وَإِنْ كَانَ ذِمِّيًّا فَنَقَضَ الْعَهْدَ فَلِلنَّاسِ فِيهِ أَقْوَالٌ ثَلَاثَةٌ لَا رَابِعَ لَهَا: أَحَدُهَا - أَنَّهُ يَنْتَقِلُ إلَى حُكْمِ الْحَرْبِيِّينَ فِي كُلِّ مَا ذَكَرْنَا.

L41828–41829 The second is that he is a belligerent until subdued, whereupon he must inevitably be restored to his dhimma as it was. The third is that nothing is accepted from him except Islam or the sword. Some have differentiated

وَالثَّانِي - أَنَّهُ مُحَارِبٌ حَتَّى يُقْدَرَ عَلَيْهِ فَيُرَدَّ إلَى ذِمَّتِهِ كَمَا كَانَ وَلَا بُدَّ. وَالثَّالِثُ - أَنَّهُ لَا يُقْبَلُ مِنْهُ إلَّا الْإِسْلَامُ أَوْ السَّيْفُ. وَقَدْ فَرَّقَ بَعْضُ النَّاسِ بَيْنَ الذِّمِّيِّ يَنْقُضُ الْعَهْدَ فَيَصِيرُ حَرْبِيًّا وَبَيْنَ الذِّمِّيِّ يُحَارِبُ فَيَكُونُ لَهُ عِنْدَهُمْ حُكْمُ الْمُحَارِبِ الْمَذْكُورِ فِي

[5] **Qur'an references (L41821):** Qur'an 2:278 (Al-Baqarah); Qur'an 2:279 (Al-Baqarah); Qur'an 49:9 (Al-Hujurat); Qur'an 49:10 (Al-Hujurat); Qur'an 47:4 (Muhammad).

between a dhimmī who violates the covenant, thereby becoming hostile, and a dhimmī who wages war, who would—according to them—be subject to the ruling of the belligerent mentioned in the verse, not the ruling of the hostile combatant. Thus, it is decisively and undisputedly established that the dhimmī who breaches his dhimma and transitions to the ruling of hostile combatants does not fall under the ruling of the belligerent mentioned in the verse. This is clarified by Allah's statement: {If they break their oaths after their covenant and vilify your religion, then fight the leaders of disbelief} [9:12] until His words: {so that they may desist} [9:12]. Here, Allah commands fighting them if they violate their covenant until they desist—a universal command necessitating their abandonment of all deviation. This inherently requires that nothing be accepted from them except Islam alone. It is impermissible to restrict His words {so that they may desist} [9:12] to partial desistance instead of complete desistance, for doing so would entail falsely attributing to Allah what one has no knowledge of—an act He forbids, as stated: {And do not say about Allah what you do not know} [2:169]. If the belligerent mentioned in the verse were an apostate from Islam, the Messenger of Allah—peace and blessings be upon him—would have clarified the ruling for apostates with his statement: "Whoever changes his religion, kill him." Allah further elucidates this in His words: {Indeed, those who disbelieve after their faith, then increase in disbelief—their repentance will never be accepted} [3:90]. Thus, it is conclusively established that the ruling for apostates—decreed by Allah in the Quran and through His Messenger, peace be upon him—differs from His ruling for the belligerent. Hence, it is decisively certain that the belligerent is not an apostate.[6]

L41830–41831 Moreover, there is no disagreement among anyone in the Ummah that the ruling for an apostate under control is not crucifixion, amputation of the hand and foot, or exile from the land? Thus, it is firmly established by all we have mentioned that the muḥārib is not a disbeliever at all, since he shares none of the rulings of disbelief, nor does any disbeliever have the ruling of the muḥārib. The narration from Ibn Abbas here involves Al-Ḥasan ibn Wāqid—

[6]**Qur'an references (L41829):** Qur'an 9:12 (At-Tawbah); Qur'an 2:169 (Al-Baqarah); Qur'an 7:33 (Al-A'raf); Qur'an 3:90 (Ali 'Imran).

الْآيَةِ، لَا حُكْمُ الْحَرْبِيِّ فَصَحَّ بِلَا خِلَافٍ أَنَّ الذِّمِّيَّ النَّاقِضَ لِذِمَّتِهِ الْمُنْتَقِلَ إلَى حُكْمِ أَهْلِ الْحَرْبِ لَيْسَ لَهُ حُكْمُ الْمُحَارِبِ الْمَذْكُورِ فِي الْآيَةِ بِلَا خِلَافٍ. وَبَيَّنَ هَذَا قَوْلُ اللَّهِ تَعَالَى {وَإِنْ نَكَثُوا أَيْمَانَهُمْ مِنْ بَعْدِ عَهْدِهِمْ وَطَعَنُوا فِي دِينِكُمْ فَقَاتِلُوا أَئِمَّةَ الْكُفْرِ} [التوبة: ١٢] إلَى قَوْلِهِ: {لَعَلَّهُمْ يَنْتَهُونَ} [التوبة: ١٢] فَأَمَرَ اللَّهُ تَعَالَى بِقِتَالِهِمْ إذَا نَكَثُوا عَهْدَهُمْ حَتَّى يَنْتَهُوا - وَهَذَا عُمُومٌ يُوجِبُ الِانْتِهَاءَ عَنْ كُلِّ مَا هُمْ عَلَيْهِ مِنْ الضَّلَالِ، وَهَذَا يَقْتَضِي - وَلَا بُدَّ - أَنْ لَا يُقْبَلَ مِنْهُمْ إلَّا الْإِسْلَامُ وَحْدَهُ، وَلَا يَجُوزُ أَنْ يُخَصَّ بِقَوْلِهِ تَعَالَى {لَعَلَّهُمْ يَنْتَهُونَ} [التوبة: ١٢] انْتِهَاءٌ دُونَ انْتِهَاءٍ، فَيَكُونُ فَاعِلُ ذَلِكَ قَائِلًا عَلَى اللَّهِ تَعَالَى مَا لَا عِلْمَ لَهُ بِهِ، وَهَذَا حَرَامٌ، قَالَ اللَّهُ تَعَالَى {وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لا تَعْلَمُونَ} [البقرة: ١٦٩] . وَإِنْ كَانَ الْمُحَارِبُ الْمَذْكُورُ فِي الْآيَةِ مُرْتَدًّا عَنْ إسْلَامِهِ، فَقَدْ بَيَّنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُكْمَ الْمُرْتَدِّ بِقَوْلِهِ «مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ» . وَبَيَّنَهُ اللَّهُ تَعَالَى بِقَوْلِهِ {إِنَّ الَّذِينَ كَفَرُوا بَعْدَ إِيمَانِهِمْ ثُمَّ ازْدَادُوا كُفْرًا لَنْ تُقْبَلَ تَوْبَتُهُمْ} [آل عمران: ٩٠] . فَصَحَّ يَقِينًا أَنَّ حُكْمَ الْمُرْتَدِّ الَّذِي أَوْجَبَ اللَّهُ تَعَالَى فِي الْقُرْآنِ، وَعَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - هُوَ غَيْرُ حُكْمِهِ تَعَالَى فِي الْمُحَارِبِ؟ فَصَحَّ يَقِينًا أَنَّ الْمُحَارِبَ لَيْسَ مُرْتَدًّا.

وَأَيْضًا - فَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ حُكْمَ الْمُرْتَدِّ الْمَقْدُورِ عَلَيْهِ لَيْسَ هُوَ الصَّلْبُ، وَلَا قَطْعُ الْيَدِ وَالرِّجْلِ، وَلَا النَّفْيُ مِنْ الْأَرْضِ؟ فَصَحَّ بِكُلِّ مَا ذَكَرْنَا أَنَّ الْمُحَارِبَ لَيْسَ كَافِرًا أَصْلًا، إذْ لَيْسَ لَهُ شَيْءٌ مِنْ أَحْكَامِ الْكُفْرِ، وَلَا لِأَحَدٍ مِنْ الْكُفَّارِ: حُكْمُ الْمُحَارِبِ. وَالرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ فِيهَا الْحَسَنُ بْنُ وَاقِدٍ - وَلَيْسَ بِالْقَوِيِّ - وَهُوَ أَيْضًا مِنْ قَوْلِ ابْنِ عَبَّاسٍ لَا مُسْنَدًا، فَإِذْ قَدْ صَحَّ مَا ذَكَرْنَا يَقِينًا فَقَدْ

who is not strong in reliability—and it is attributed to Ibn Abbas as his opinion, not as a formally transmitted report. Therefore, since what we have mentioned is confirmed with certainty, it is established without doubt that the muḥārib is a disobedient Muslim. Given this, we must examine: What is the sin that necessitates labeling someone as a muḥārib and subjecting them to the rulings for muḥāribīn? We examined all sins—fornication, false accusation, theft, usurpation, sorcery, oppression, drinking alcohol, consuming prohibited things, fleeing from battle, fornication, and other such sins—and found none of these has a textual proof or consensus designating their perpetrator as a muḥārib. Thus, it is invalid to consider the perpetrator of any of these sins a muḥārib. Furthermore, all sins—whether mentioned or not—must be one of two possibilities with no third alternative: either they have a text specifying a fixed punishment or they do not. Those with a fixed punishment include apostasy, fornication, false accusation, drinking alcohol, theft, and denial of a loaned item. None of these carry the rulings mentioned in the Quranic verse regarding the muḥārib, invalidating the notion that any of these sins constitute muḥārabah. This is also a matter of certain consensus. As for sins without a divinely prescribed fixed punishment—neither in the Quran nor the Sunnah of the Messenger of Allah (peace be upon him)—it is impermissible to equate them with the punishment for muḥārabah, thereby legislating what Allah has not authorized. This is unlawful. The Messenger of Allah (peace be upon him) said: "Your blood, wealth, honor, and bodily integrity are inviolable." Thus, it is certain that no one's blood, body, wealth, or honor may be violated except by explicit textual proof from the Quran, the Sunnah, or a certain consensus of the Companions (may Allah be pleased with them) tracing back to the instruction of the Messenger of Allah (peace be upon him).

ثَبَتَ بِلَا شَكٍّ أَنَّ الْمُحَارِبَ إنَّمَا هُوَ مُسْلِمٌ عَاصٍ، فَإِذْ هُوَ كَذَلِكَ فَالْوَاجِبُ: أَنْ نَنْظُرَ مَا الْمَعْصِيَةُ الَّتِي بِهَا وَجَبَ أَنْ يَكُونَ مُحَارِبًا؟ وَأَنْ يَكُونَ لَهُ حُكْمُ الْمُحَارِبِ فَنَظَرْنَا فِي جَمِيعِ الْمَعَاصِي مِنْ الزِّنَا، وَالْقَذْفِ، وَالسَّرِقَةِ، وَالْغَصْبِ، وَالسِّحْرِ، وَالظُّلْمِ، وَشُرْبِ الْخَمْرِ، وَالْمُحَرَّمَاتِ، أَوْ أَكْلِهَا، وَالْفِرَارِ مِنْ الزَّحْفِ، وَالزِّنَا، وَغَيْرِ ذَلِكَ - فَوَجَدْنَا جَمِيعَ هَذِهِ الْمَعَاصِي لَيْسَ مِنْهَا شَيْءٌ جَاءَ نَصٌّ أَوْ إجْمَاعٌ فِي أَنَّهُ مُحَارِبٌ، فَبَطَلَ أَنْ يَكُونَ فَاعِلُ شَيْءٍ مِنْهَا مُحَارِبًا. وَأَيْضًا فَإِنَّ جَمِيعَ الْمَعَاصِي - الَّتِي ذَكَرْنَا وَالَّتِي لَمْ نَذْكُرْ - لَا تَخْلُو مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا أَنْ يَكُونَ فِيهَا نَصٌّ بِحَدٍّ مَحْدُودٍ أَوْ لَا يَكُونَ فِيهَا نَصٌّ بِحَدٍّ مَحْدُودٍ، فَالَّتِي فِيهَا النَّصُّ بِحَدٍّ مَحْدُودٍ فَهِيَ الرِّدَّةُ، وَالزِّنَا، وَالْقَذْفُ، وَالْخَمْرُ، وَالسَّرِقَةُ، وَجَحْدُ الْعَارِيَّةِ - وَلَيْسَ لِشَيْءٍ مِنْهَا الْحُكْمُ الْمَذْكُورُ فِي الْآيَةِ فِي الْمُحَارِبِ - فَبَطَلَ أَنْ يَكُونَ شَيْءٌ مِنْ هَذِهِ الْمَعَاصِي مُحَارَبَةً وَهَذَا أَيْضًا إجْمَاعٌ مُتَيَقَّنٌ وَأَمَّا مَا لَيْسَ فِيهِ مِنْ اللَّهِ تَعَالَى حَدٌّ مَحْدُودٌ - لَا فِي الْقُرْآنِ وَلَا عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا يَحِلُّ لِأَحَدٍ أَنْ يُلْحِقَهَا بِحَدِّ الْمُحَارَبَةِ، فَيَكُونُ شَارِعًا فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى، وَهَذَا لَا يَحِلُّ، بَلْ قَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» . فَوَجَبَ يَقِينًا أَنْ لَا يُسْتَبَاحَ دَمُ أَحَدٍ، وَلَا بَشَرَتُهُ، وَلَا مَالُهُ، وَلَا عِرْضُهُ إلَّا بِنَصٍّ وَارِدٍ فِيهِ بِعَيْنِهِ، مِنْ قُرْآنٍ، أَوْ سُنَّةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ إجْمَاعٍ مُتَيَقَّنٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - رَاجِعٍ إلَى تَوْقِيفِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L41832–41833 Thus, it is invalidated for any of the aforementioned sins to constitute "waging war." Since this is beyond doubt, only the highway robber and those who revolt remain. Both are combatants, and "combat" linguistically cor-

responds to “waging war.” Upon examining this, we found that those who revolt are explicitly addressed in the textual ruling: they are to be fought until they cease their rebellion, after which reconciliation between them and those they rebelled against is sought. Thus, those who revolt fall outside the ruling applicable to those who wage war. This leaves only the “highway robber” and “the one who terrorizes the highway”—the latter being a confirmed corrupter on earth. The majority of scholars assert that he is precisely the “one who wages war” mentioned in the verse, with no other possibility remaining. As established earlier, it is invalidated for the one who wages war to be a disbeliever, and no Muslim scholar has ever classified any sinner as the “one who wages war” mentioned in the verse except the highway robber who spreads fear on the path or the thief. Therefore, it is conclusively established that the one who terrorizes the highway and spreads corruption is unquestionably the “one who wages war” mentioned in the verse. As for the thief, we examined his case—with Allah’s help, the Exalted—and found that if he enters stealthily to steal, commit fornication, or kill, and commits any such act covertly, he is merely a thief, subject to the thief’s punishment, not that of the one who wages war, without any disagreement.

فَبَطَلَ أَنْ يَكُونَ شَيْءٌ مِنْ الْمَعَاصِي الْمَذْكُورَةِ هِيَ الْمُحَارَبَةُ، فَإِذْ لَا شَكَّ فِي هَذَا فَلَمْ يَبْقَ إلَّا قَاطِعُ الطَّرِيقِ، وَالْبَاغِي، فَهُمَا جَمِيعًا مُقَاتِلَانِ، الْمُقَاتَلَةُ هِيَ الْمُحَارَبَةُ فِي اللُّغَةِ: فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَا " الْبَاغِي " قَدْ وَرَدَ فِيهِ النَّصُّ، بِأَنْ يُقَاتَلَ حَتَّى يَفِيءَ فَقَطْ، فَيُصْلَحُ بَيْنَهُ وَبَيْنَ الْمَبْغِيِّ عَلَيْهِ، فَخَرَجَ الْبَاغِي عَنْ أَنْ يَكُونَ لَهُ حُكْمُ الْمُحَارِبِينَ، فَلَمْ يَبْقَ إلَّا " قَاطِعُ الطَّرِيقِ، وَمُخِيفُ السَّبِيلِ " هَذَا مُفْسِدٌ فِي الْأَرْضِ بِيَقِينٍ، وَقَدْ قَالَ جُمْهُورُ النَّاسِ: إنَّهُ هُوَ الْمُحَارِبُ الْمَذْكُورُ فِي الْآيَةِ، وَلَمْ يَبْقَ غَيْرُهُ، وَقَدْ بَطَلَ - كَمَا قَدَّمْنَا - أَنْ يَكُونَ كَافِرًا، وَلَمْ يَقُلْ أَحَدٌ مِنْ أَهْلِ الْإِسْلَامِ فِي أَحَدٍ مِنْ أَهْلِ الْمَعَاصِي: إنَّهُ الْمُحَارِبُ الْمَذْكُورُ فِي الْآيَةِ، إلَّا قَاطِعُ الطَّرِيقِ الْمُخِيفِ فِيهَا، أَوْ فِي اللِّصِّ - فَصَحَّ أَنَّ مُخِيفَ السَّبِيلِ الْمُفْسِدَ فِيهَا: هُوَ الْمُحَارِبُ الْمَذْكُورُ فِي الْآيَةِ بِلَا شَكٍّ. وَبَقِيَ أَمْرُ اللِّصِّ فَنَظَرْنَا فِيهِ - بِعَوْنِ اللَّهِ تَعَالَى - فَوَجَدْنَاهُ إنْ دَخَلَ مُسْتَخْفِيًا لِيَسْرِقَ، أَوْ لِيَزْنِيَ، أَوْ لِيَقْتُلَ فَفَعَلَ شَيْئًا مِنْ ذَلِكَ مُخْتَفِيًا فَإِنَّمَا هُوَ سَارِقٌ، عَلَيْهِ مَا عَلَى السَّارِقِ، لَا مَا عَلَى الْمُحَارِبِ بِلَا خِلَافٍ.

L41834–41838 Or if he is merely an adulterer, he incurs the punishment prescribed for adultery, not that for *ḥirābah*, without disagreement. Or if he is a murderer, he incurs the punishment prescribed for intentional murder according to the explicit texts of the Quran and Sunnah—though some have disputed this with an untenable objection lacking evidence. If his crime becomes widely known, and he flees and is apprehended, he is not deemed a brigand (*muharib*), for he did not wage war against anyone; he is merely a transgressor. The legal ruling for *ḥirābah* does not apply to him, but only that for committing a reprehensible act, leaving him subject to nothing beyond discretionary punishment. However, if he resists with force and obstinately defies, he is unquestionably a brigand (*muharib*), having waged war, spread terror on the path, and caused corruption in the land. Thus, the ruling for brigands applies to him, as affirmed by Al-Sha‘bi and others. Abu

أَوْ إنَّمَا هُوَ زَانٍ، فَعَلَيْهِ مَا عَلَى الزَّانِي، لَا مَا عَلَى الْمُحَارِبِ بِلَا خِلَافٍ. أَوْ إنَّمَا هُوَ قَاتِلٌ، فَعَلَيْهِ مَا عَلَى الْقَاتِلِ بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ، فِيمَنْ قَتَلَ عَمْدًا - وَإِنْ كَانَ قَدْ خَالَفَ فِي هَذَا قَوْمٌ خِلَافًا لَا تَقُومُ بِهِ حُجَّةٌ، فَإِنْ اُشْتُهِرَ أَمْرُهُ فَفَرَّ وَأَخَذَ، فَلَيْسَ مُحَارِبًا، لِأَنَّهُ لَمْ يُحَارِبْ أَحَدًا، وَإِنَّمَا هُوَ عَاصٍ فَقَطْ، وَلَا يَكُونُ عَلَيْهِ لَهُ حُكْمُ الْمُحَارَبَةِ، لَكِنْ حُكْمُ مَنْ فَعَلَ مُنْكَرًا، فَلَيْسَ عَلَيْهِ إلَّا التَّعْزِيرُ - وَإِنْ دَافَعَ وَكَابَرَ: فَهُوَ مُحَارِبٌ بِلَا شَكٍّ، لِأَنَّهُ قَدْ حَارَبَ وَأَخَافَ السَّبِيلَ، وَأَفْسَدَ فِي الْأَرْضِ، فَلَهُ حُكْمُ الْمُحَارِبِ كَمَا قَالَ الشَّعْبِيُّ، وَغَيْرُهُ. قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا قَوْلُ مَنْ قَالَ: لَا تَكُونُ الْمُحَارَبَةُ إلَّا فِي الصَّحْرَاءِ، أَوْ

مَنْ قَالَ: لَا تَكُونُ الْمُحَارَبَةُ فِي الْمُدُنِ إِلَّا لَيْلًا: فَقَوْلَانِ فَاسِدَانِ، وَدَعْوَتَانِ سَاقِطَتَانِ، بِلَا بُرْهَانٍ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا مِنْ إِجْمَاعٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ سَدِيدٍ، وَمَا يَبْعُدُ أَنْ يَكُونَ فِيهِمْ مَنْ هَانَ عِنْدَهُ الْكَذِبُ عَلَى الْأُمَّةِ كُلِّهَا، فَيَقُولُ: مَنْ حَارَبَ فِي الصَّحْرَاءِ فَقَدْ صَحَّ عَلَيْهِ اسْمُ مُحَارِبٍ وَمِنْ كِتَابِ الْمُحَارِبِينَ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ اعْتَرَضَ مُعْتَرِضٌ فِي أَنَّ الْمُحَارِبَ لَا يَكُونُ إِلَّا مَنْ شَهَرَ السِّلَاحَ: بِمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ رَاهْوَيْهِ أرنا الْفَضْلُ بْنُ مُوسَى نا مَعْمَرٌ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنِ ابْنِ الزُّبَيْرِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ شَهَرَ سَيْفَهُ ثُمَّ وَضَعَهُ فَدَمُهُ هَدَرٌ» قَالَ إِسْحَاقُ: أرناه عَبْدُ الرَّزَّاقِ بِهَذَا الْإِسْنَادِ مِثْلَهُ، وَلَمْ يَرْفَعْهُ، يُرِيدُ، أَنَّهُ جَعَلَهُ مِنْ كَلَامِ ابْنِ الزُّبَيْرِ - قَالَ ابْنُ شُعَيْبٍ: وَأَنَا أَبُو دَاوُد نا أَبُو عَاصِمٍ عَنِ ابْنِ جُرَيْجٍ عَنِ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنِ ابْنِ الزُّبَيْرِ قَالَ: مَنْ رَفَعَ السِّلَاحَ ثُمَّ وَضَعَهُ فَدَمُهُ هَدَرٌ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَخْبَرَنِي أَحْمَدُ بْنُ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ أَخْبَرَنِي ابْنُ وَهْبٍ أَنَا مَالِكٌ، وَأُسَامَةُ بْنُ زَيْدٍ، وَيُونُسُ بْنُ يَزِيدَ: أَنَّ نَافِعًا أَخْبَرَهُمْ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ حَمَلَ عَلَيْنَا السِّلَاحَ فَلَيْسَ مِنَّا» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا كُلُّهُ حَقٌّ، وَآثَارٌ صِحَاحٌ لَا يَضُرُّهَا إِيقَافُ مَنْ أَوْقَفَهَا، إِلَّا أَنَّهُ لَا حُجَّةَ فِيهَا لِمَنْ لَمْ يَرَ الْمُحَارِبَ إِلَّا مَنْ حَارَبَ بِسِلَاحٍ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا ذَكَرَ فِي هَذَيْنِ الْأَثَرَيْنِ: مَنْ وَضَعَ سَيْفَهُ وَشَهَرَ سِلَاحَهُ فَقَطْ، وَسَكَتَ عَمَّا عَدَا ذَلِكَ فِيهَا، وَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ - أَنْ لَا مُحَارِبَ إِلَّا مَنْ هَذِهِ صِفَتُهُ، فَوَجَبَ مِنْ هَذَيْنِ الْأَثَرَيْنِ حُكْمُ مَنْ حَمَلَ السِّلَاحَ

Muhammad—may Allah have mercy on him—said: As for those who assert, "*Ḥirābah* is confined to deserts," or claim, "*Ḥirābah* in cities occurs only at night"—these are two invalid opinions and baseless assertions devoid of proof: neither from the Quran, nor a sound or weak Sunnah, nor consensus, nor a Companion's statement, nor analogy, nor valid juristic opinion. It is plausible that among them are those who trivialize fabricating lies against the entire Ummah, declaring, "Whoever wages war in a desert is rightfully labeled a brigand (*muharib*)." From the Book of Those Who Wage War, Abu Muhammad—may Allah have mercy on him—said: Should an objector argue that one who wages war is only he who brandishes weapons, we respond with what ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb informed us, Isḥāq ibn Rāhwayh informed us, al-Faḍl ibn Mūsā narrated to us, Maʿmar narrated from ʿAbdullāh ibn Ṭāwūs from Ibn al-Zubayr from the Messenger of Allah—peace and blessings be upon him—who said: "Whoever unsheathes his sword then sheathes it, his blood is forfeited." Isḥāq stated: ʿAbd al-Razzāq reported this to us via the same chain but did not attribute it to the Prophet, instead ascribing it to Ibn al-Zubayr's statement. Ibn Shuʿayb said: And I, Abū Dāwūd, narrated from Abū ʿĀṣim, from Ibn Jurayj, from Ibn Ṭāwūs, from his father, from Ibn al-Zubayr, who said: "Whoever raises a weapon then lowers it, his blood is forfeited." ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah informed me, Aḥmad ibn Shuʿayb informed me, Aḥmad ibn ʿAmr ibn al-Sarḥ informed me, Ibn Wahb informed me—Mālik, Usāmah ibn Zayd, and Yūnus ibn Yazīd reported that Nāfiʿ informed them from ʿAbdullāh ibn ʿUmar that the Messenger of Allah—peace and blessings be upon him—said: "Whoever bears arms against us is not of us."

Abu Muhammad—may Allah have mercy on him—said: All this constitutes valid, authentic reports whose reliability remains intact despite those who deemed them stopped. However, they offer no proof for restricting "one who wages war" solely to those who fight with weapons, for the Messenger of Allah—peace and blessings be upon him—specified in these two reports only those who sheathed swords or brandished weapons, remaining silent on others. He—peace be upon him—did not exclude those who wage war

beyond this description. Thus, these reports establish rulings for weapon-bearers, requiring that rulings for those not bearing weapons be sought from other sources. Upon doing so, we found:

What ʿAbdullāh ibn Yūsuf narrated to us: Aḥmad ibn Fatḥ narrated to us, ʿAbd al-Wahhāb ibn ʿĪsā narrated to us, Aḥmad ibn Muḥammad narrated to us, Aḥmad ibn ʿAlī narrated to us, Muslim ibn al-Ḥajjāj narrated to us: Zuhayr ibn Ḥarb narrated to us, ʿAbd al-Raḥmān ibn Mahdī narrated to us, Mahdī narrated to us, Ibn Maymūn narrated from Ghaylān ibn Jarīr from Ziyād ibn Rabāḥ from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—stated in his ḥadīth: "Whoever from my Ummah rises against my Ummah, striking their righteous..." The one who is wicked among them and does not refrain from harming a believer among them, nor fulfills the covenant with those under it, is not of me.

L41839 The Messenger of Allah—peace and blessings be upon him—generalized, as you have heard, "acts of brigandage" without specifying the use of a weapon or anything else. Thus, it is established that every act of brigandage—whether with a weapon or without any weapon at all—is equivalent. The author said: Therefore, it is established by what we have mentioned that the brigand is the arrogantly defiant one who terrifies travelers on the path, spreading corruption on earth—whether with a weapon or without any weapon at all, whether by night or day, in a city or wilderness, in the caliph's palace or a mosque, whether they appoint a leader for themselves or do not appoint anyone other than the caliph himself, whether he does this with his army or others, isolated in the desert, villagers in their homes, inhabitants of a fortress, residents of a large city or a small one, whether one individual or more. Anyone who wages war against passersby, instilling fear on the path through killing, seizing property, wounding, or violation of chastity: such a person is a brigand. The ruling of brigands specified in the verse applies to him and to them, whether they are many or few, for Allah the Exalted did not specify any of these aspects when He entrusted us with the ruling concerning brigands: {And your Lord is never forgetful} [19:64]. We solemnly testify by Allah's authority that if He—glory to Him—had intended to specify any of these aspects, He would not have neglected any of it, nor

وَبَقِيَ حُكْمُ مَنْ لَمْ يَحْمِلْ السِّلَاحَ أَنْ يُطْلَبَ فِي غَيْرِهِمَا؟ فَفَعَلْنَا، فَوَجَدْنَا: مَا نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا زُهَيْرُ بْنُ حَرْبٍ ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا مَهْدِيٌّ ثنا ابْنُ مَيْمُونٍ عَنْ غَيْلَانِ بْنِ جَرِيرٍ عَنْ زِيَادِ بْنِ رَبَاحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثِهِ «وَمَنْ خَرَجَ مِنْ أُمَّتِي عَلَى أُمَّتِي يَضْرِبُ بَرَّهَا وَفَاجِرَهَا لَا يَتَحَاشَى مِنْ مُؤْمِنِهَا وَلَا يَفِي بِذِي عَهْدِهَا فَلَيْسَ مِنِّي.

» فَقَدْ عَمَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا تَسْمَعُ " الضَّرْبَ " وَلَمْ يَقُلْ بِسِلَاحٍ، وَلَا غَيْرِهِ. فَصَحَّ أَنَّ كُلَّ حِرَابَةٍ بِسِلَاحٍ، أَوْ بِلَا سِلَاحٍ فَسَوَاءٌ؟ قَالَ: فَوَجَبَ بِمَا ذَكَرْنَا أَنَّ الْمُحَارِبَ: هُوَ الْمُكَابِرُ الْمُخِيفُ لِأَهْلِ الطَّرِيقِ، الْمُفْسِدُ فِي سَبِيلِ الْأَرْضِ - سَوَاءً بِسِلَاحٍ، أَوْ بِلَا سِلَاحٍ أَصْلًا - سَوَاءً لَيْلًا، أَوْ نَهَارًا - فِي مِصْرٍ، أَوْ فِي فَلَاةٍ - أَوْ فِي قَصْرِ الْخَلِيفَةِ، أَوْ الْجَامِعِ - سَوَاءً قَدَّمُوا عَلَى أَنْفُسِهِمْ إمَامًا، أَوْ لَمْ يُقَدِّمُوا سِوَى الْخَلِيفَةِ نَفْسِهِ - فَعَلَ ذَلِكَ بِجُنْدِهِ أَوْ غَيْرِهِ - مُنْقَطِعِينَ فِي الصَّحْرَاءِ، أَوْ أَهْلِ قَرْيَةٍ سُكَّانًا فِي دُورِهِمْ، أَوْ أَهْلِ حِصْنٍ كَذَلِكَ، أَوْ أَهْلِ مَدِينَةٍ عَظِيمَةٍ، أَوْ غَيْرِ عَظِيمَةٍ كَذَلِكَ - وَاحِدًا كَانَ أَوْ أَكْثَرَ - كُلُّ مَنْ حَارَبَ الْمَارَّ، وَأَخَافَ السَّبِيلَ بِقَتْلِ نَفْسٍ، أَوْ أَخْذِ مَالٍ، أَوْ لِجِرَاحَةٍ، أَوْ لِانْتِهَاكِ فَرْجٍ: فَهُوَ مُحَارِبٌ، عَلَيْهِ وَعَلَيْهِمْ - كَثُرُوا أَوْ قَلُّوا - حُكْمُ الْمُحَارِبِينَ الْمَنْصُوصُ فِي الْآيَةِ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَخُصَّ شَيْئًا مِنْ هَذِهِ الْوُجُوهِ، إذْ عَهِدَ إلَيْنَا بِحُكْمِ الْمُحَارِبِينَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] . وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ

forgotten it, nor burdened us with deliberately omitting its mention until someone else explains it to us through conjecture and false assumption.[7]

L41840 **The issue of granting belligerents that which does not unjustly harm those subject to a judicial ruling.**

L41841 2257. Issue: Abū Muḥammad—may Allāh have mercy on him—said: Some scholars held that combatants must be given an amount which does not unjustly burden those obligated to provide it, and they deemed this applicable to all wealth concerning non-combatants. Abū Muḥammad—may Allāh have mercy on him—said: As for our position—and with Allāh the Exalted we seek strength—it is impermissible to give those individuals anything on this basis, whether little or much, for it is the same whether they are combatants or devils. This is based on Allāh's words: "Cooperate in righteousness and piety, and do not cooperate in sin and aggression" (5:2), and His words: "Be upholders of justice, witnesses for Allāh, even if against yourselves" (4:135).[8]

L41842 **A legal question concerning one whose property was unjustly claimed.**

L41843–41847 2258. Issue: Abū Muḥammad—may Allah have mercy on him—said: The taking of property in the aforementioned manner cannot be free from being one of two possibilities: either injustice or wrongful seizure by force without right. There is no third possibility. Either it is righteousness and piety, or it is sin and transgression. There is no disagreement among anyone in the Ummah that it is neither righteousness nor piety, but rather it is sin and transgression without any disagreement. Cooperation in sin and transgression is forbidden and unlawful.

Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath narrated to us: Abdul Wahhab ibn Isa narrated to us: Ahmad ibn Muhammad narrated to us: Ahmad ibn Ali narrated to us: Muslim ibn al-Hajjaj narrated to us: Abu Kuraib Muhammad ibn al-Ala narrated to us: Khalid—meaning ibn

[7] **Qur'an references (L41839):** Qur'an 19:64 (Maryam).

[8] **Qur'an references (L41841):** Qur'an 5:2 (Al-Ma'idah); Qur'an 4:135 (An-Nisa).

تَعَالَى أَنَّ اللَّهَ سُبْحَانَهُ لَوْ أَرَادَ أَنْ يَخُصَّ بَعْضَ هَذِهِ الْوُجُوهِ لَمَا أَغْفَلَ شَيْئًا مِنْ ذَلِكَ، وَلَا نَسِيَهُ وَلَا أَعْنَتَنَا بِتَعَمُّدِ تَرْكِ ذِكْرِهِ حَتَّى يُبَيِّنَهُ لَنَا غَيْرُهُ بِالتَّكَهُّنِ وَالظَّنِّ الْكَاذِبِ.

[مَسْأَلَةٌ إِعْطَاء المحاربين الشَّيْءَ الَّذِي لَا يُجْحِفُ بِالْمَقْطُوعِ عَلَيْهِمْ]

٢٢٥٧ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: قَالَ قَوْمٌ: يَجِبُ أَنْ يُعْطَى الْمُحَارِبُونَ الشَّيْءَ الَّذِي لَا يُجْحِفُ بِالْمَقْطُوعِ عَلَيْهِمْ، وَرَأَوْا ذَلِكَ فِي جَمِيعِ الْأَمْوَالِ لِغَيْرِ الْمُحَارِبِينَ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَالَّذِي نَقُولُ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ: إنَّهُ لَا يَجُوزُ أَنْ يُعْطَوْا عَلَى هَذَا الْوَجْهِ شَيْئًا - قَلَّ أَمْ كَثُرَ - سَوَاءٌ مُحَارِبًا كَانَ أَوْ شَيْطَانًا. لِقَوْلِ اللَّهِ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَقَوْله تَعَالَى {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَى أَنْفُسِكُمْ} [النساء: ١٣٥] .

[مَسْأَلَةٌ فِيمَنْ سُئِلَ مَاله بِغَيْرِ حَقّ]

٢٢٥٨ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَلَا يَخْلُو أَخْذُ الْمَالِ بِالْوَجْهِ الْمَذْكُورِ مِنْ الظُّلْمِ، وَالْغَلَبَةِ بِغَيْرِ حَقٍّ مِنْ أَحَدِ وَجْهَيْنِ، لَا ثَالِثَ لَهُمَا: إمَّا أَنْ يَكُونَ بِرًّا وَتَقْوَى - أَوْ يَكُونَ إثْمًا وَعُدْوَانًا. وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّهُ لَيْسَ بِرًّا وَلَا تَقْوَى، وَلَكِنَّهُ إثْمٌ وَعُدْوَانٌ بِلَا خِلَافٍ، وَالتَّعَاوُنُ عَلَى الْإِثْمِ وَالْعُدْوَانِ: حَرَامٌ لَا يَحِلُّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ نا خَالِدٌ - يَعْنِي ابْنَ مَخْلَدٍ - نا مُحَمَّدُ بْنُ جَعْفَرٍ عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ «جَاءَ رَجُلٌ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ أَرَأَيْتَ إنْ جَاءَ رَجُلٌ يُرِيدُ أَخْذَ مَالِي؟

قَالَ: فَلَا تُعْطِه مَالَكَ قَالَ: أَرَأَيْتَ إِنْ قَاتَلَنِي؟ قَالَ: قَاتِلْهُ قَالَ: أَرَأَيْتَ إِنْ قَتَلَنِي؟ قَالَ: فَأَنْتَ شَهِيدٌ، قَالَ: أَرَأَيْتَ إِنْ قَتَلْتُهُ؟ قَالَ: هُوَ فِي النَّارِ» . وَبِهِ - إِلَى مُسْلِمٍ نا الْحَسَنُ بْنُ عَلِيٍّ الْحُلْوَانِيُّ، وَمُحَمَّدُ بْنُ نَافِعٍ، قَالَا جَمِيعًا: نا عَبْدُ الرَّزَّاقِ أرنا ابْنُ جُرَيْجٍ أَنَا سُلَيْمَانُ الْأَحْوَلُ أَنَّ ثَابِتًا - مَوْلَى عُمَرَ بْنِ عَبْدِ الرَّحْمَنِ - أَخْبَرَهُ أَنَّهُ «لَمَّا كَانَ بَيْنَ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ وَبَيْنَ عَنْبَسَةَ بْنِ أَبِي سُفْيَانَ مَا كَانَ تَيَسَّرُوا لِلْقِتَالِ، رَكِبَ خَالِدُ بْنُ الْعَاصِ إِلَى عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ، فَوَعَظَهُ خَالِدٌ، فَقَالَ عَبْدُ اللَّهِ بْنُ عَمْرٍو: أَمَا عَلِمْتَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا إِبْرَاهِيمُ بْنُ سَعْدٍ عَنْ أَبِيهِ - هُوَ سَعْدُ بْنُ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - عَنْ أَبِي عُبَيْدَةَ بْنِ مُحَمَّدِ بْنِ عَمَّارِ بْنِ يَاسِرٍ عَنْ طَلْحَةَ بْنِ عَبْدِ اللَّهِ بْنِ عَوْفٍ عَنْ سَعِيدِ بْنِ زَيْدٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ قَاتَلَ دُونَ مَالِهِ فَقُتِلَ فَهُوَ شَهِيدٌ، وَمَنْ قَاتَلَ دُونَ دَمِهِ فَهُوَ شَهِيدٌ، وَمَنْ قَاتَلَ دُونَ أَهْلِهِ فَهُوَ شَهِيدٌ» . وَبِهِ - إِلَى أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ رَافِعٍ، وَمُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ إِبْرَاهِيمَ قَالَ: نا سَلْمَانُ - هُوَ ابْنُ دَاوُد الْهَاشِمِيُّ - نا إِبْرَاهِيمُ - هُوَ ابْنُ سَعْدِ بْنِ إِبْرَاهِيمَ - عَنْ أَبِيهِ عَنْ أَبِي عُبَيْدَةَ بْنِ مُحَمَّدِ بْنِ عَمَّارِ بْنِ يَاسِرٍ عَنْ طَلْحَةَ بْنِ عَبْدِ اللَّهِ بْنِ عَوْفٍ عَنْ سَعِيدِ بْنِ زَيْدٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ أَهْلِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ دِينِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ دَمِهِ فَهُوَ شَهِيدٌ» . وَبِهِ - إِلَى أَحْمَدَ بْنِ شُعَيْبٍ أَنَا الْقَاسِمُ بْنُ زَكَرِيَّا بْنِ دِينَارٍ نا سَعِيدُ بْنُ عَمْرٍو الْأَشْعَثِيُّ نا عَمْرٌو - هُوَ ابْنُ الْقَاسِمِ - عَنْ مُطَرِّفٍ - هُوَ ابْنُ أَبِي طَرِيفٍ - عَنْ سَوَادَةَ - هُوَ ابْنُ أَبِي

Makhlad—narrated to us: Muhammad ibn Ja'far narrated from al-Ala ibn Abd al-Rahman from his father from Abu Hurairah, who said: "A man came to the Messenger of Allah (PBUH) and said, 'O Messenger of Allah, what do you think if a man comes wanting to take my wealth?' He said, 'Do not give him your wealth.' The man asked, 'What do you think if he fights me?' He replied, 'Fight him.' The man asked, 'What do you think if he kills me?' He said, 'Then you are a martyr.' The man asked, 'What do you think if I kill him?' He replied, 'He is in the Fire.'"

Through the same chain via Muslim: al-Hasan ibn Ali al-Hulwani and Muhammad ibn Nafi' both narrated to us—they said: Abd al-Razzaq reported to us: Ibn Jurayj narrated: Sulayman al-Ahwal reported that Thabit—the freed slave of Umar ibn Abd al-Rahman—informed him that "when conflict arose between Abdullah ibn Amr ibn al-As and Anbasa ibn Abi Sufyan, they prepared for fighting. Khalid ibn al-As rode to Abdullah ibn Amr ibn al-As and admonished him. Abdullah ibn Amr said, 'Do you not know that the Messenger of Allah (PBUH) said, "Whoever is killed defending his wealth is a martyr"?'"

Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb reported to us: Amr ibn Ali narrated to us: Abd al-Rahman ibn Mahdi narrated to us: Ibrahim ibn Sa'd narrated from his father—Sa'd ibn Ibrahim ibn Abd al-Rahman ibn Awf—from Abu Ubaydah ibn Muhammad ibn Ammar ibn Yasir from Talhah ibn Abdullah ibn Awf from Sa'id ibn Zayd from the Prophet (PBUH), who said: "Whoever fights to defend his wealth and is killed is a martyr; whoever fights to defend his life and is killed is a martyr; and whoever fights to defend his family and is killed is a martyr."

Through the same chain via Ahmad ibn Shu'ayb: Muhammad ibn Rafi' and Muhammad ibn Isma'il ibn Ibrahim narrated: Salman—ibn Dawud al-Hashimi—narrated to us: Ibrahim—ibn Sa'd ibn Ibrahim—narrated from his father. On the authority of Abu Ubaydah ibn Muhammad ibn Ammar ibn Yasir, from Talhah ibn Abdullah ibn Awf, from Sa'id ibn Zayd, who said: The Messenger of Allah - peace and blessings be upon him - said: "Whoever is killed defending his wealth is a martyr; whoever is killed defending

his family is a martyr; whoever is killed defending his religion is a martyr; and whoever is killed defending his life is a martyr." And through him [the preceding narrator] to Ahmad ibn Shu'ayb: It is narrated by Al-Qasim ibn Zakariya ibn Dinar from Sa'id ibn Amr Al-Ash'athi, from Amr - that is, Ibn Al-Qasim - from Mutarrif - that is, Ibn Abi Tarif - from Sawadah - that is, Ibn Abi Al-Ja'd - from Abu Ja'far, who said: I was sitting with Suwayd ibn Muqrin when he said: The Messenger of Allah - peace and blessings be upon him - said: "Whoever is killed defending his right against wrongful oppression is a martyr." It is narrated from Abdurrahman ibn Abdullah ibn Khalid, from Ibrahim ibn Ahmad Al-Balkhi, from Al-Farabri, from Al-Bukhari, from Muhammad ibn Abdullah ibn Al-Muthanna Al-Ansari, from my father, from Thumamah ibn Abdullah ibn Anas, that Anas narrated to him: "Abu Bakr wrote this document for him when he dispatched him to Bahrain: 'In the name of Allah, the Most Gracious, the Most Merciful. This is the obligation of zakat prescribed by the Messenger of Allah - peace and blessings be upon him - upon the Muslims, which Allah Almighty enjoined upon His Messenger - peace and blessings be upon him - to establish. Whoever is asked for it by Muslims in its rightful manner must give it, but whoever is asked for more than that must not give it.'" He mentioned the rest of the hadith. Abu Muhammad - may Allah have mercy on him - said: Thus, the Messenger of Allah - peace and blessings be upon him - commands that whoever is wrongfully demanded for his wealth must not give it, and orders him to fight in its defense, either striking rightfully or being killed as an innocent martyr. He did not specify any particular type of wealth over another. Likewise, Abu Bakr As-Siddiq and Abdullah ibn Amr - may Allah be pleased with them - held that the ruling applies equally to authorities and others in this matter. Success is by Allah, the Exalted.[9][10]

الْجَعْدِ - عَنْ أَبِي جَعْفَرٍ قَالَ: كُنْت جَالِسًا عِنْدَ سُوَيْدِ بْنِ مُقْرِنٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ دُونَ مَظْلِمَتِهِ فَهُوَ شَهِيدٌ» . نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيّ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُثَنَّى الْأَنْصَارِيُّ نا أَبِي نا ثُمَامَةُ بْنُ عَبْدِ اللَّهِ بْنِ أَنَسٍ أَنَّ «أَنَسًا حَدَّثَهُ أَنَّ أَبَا بَكْرٍ كَتَبَ لَهُ هَذَا الْكِتَابَ لَمَّا وَجَّهَهُ إلَى الْبَحْرَيْنِ: بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ - هَذِهِ فَرِيضَةُ الصَّدَقَةِ الَّتِي فَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمُسْلِمِينَ، وَالَّتِي أَمَرَ اللَّهُ عَزَّ وَجَلَّ بِهَا رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَنْ سُئِلَهَا مِنْ الْمُسْلِمِينَ عَلَى وَجْهِهَا فَلْيُعْطِهَا، وَمَنْ سُئِلَ فَوْقَهَا فَلَا يُعْطِ» وَذَكَرَ الْحَدِيثَ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُ مَنْ سُئِلَ مَالَهُ بِغَيْرِ حَقٍّ أَنْ لَا يُعْطِيَهُ، وَأَمَرَ أَنْ يُقَاتِلَ دُونَهُ فَيُقْتَلُ مُصِيبًا سَدِيدًا، أَوْ يُقْتَلُ بَرِيئًا شَهِيدًا، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - مَالًا مِنْ مَالٍ. وَهَذَا أَبُو بَكْرٍ الصِّدِّيقُ، وَعَبْدُ اللَّهِ بْنُ عَمْرٍو - رَضِيَ اللَّهُ عَنْهُمَا - يَرَيَانِ السُّلْطَانَ فِي ذَلِكَ وَغَيْرَ السُّلْطَانِ سَوَاءً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: Discussion of What Has Been Said Regarding the Verse on Banditry

L41848

[مَسْأَلَة ذِكْرُ مَا قِيلَ فِي آيَةِ الْمُحَارَبَةِ]

L41849–41851

Mention of what was said concerning the verse of ḥirābah (2259) – An

ذِكْرُ مَا قِيلَ فِي آيَةِ الْمُحَارَبَةِ ٢٢٥٩ - مَسْأَلَةٌ: قَالَ عَلِيٌّ: قَالَ قَوْمٌ: آيَةُ الْمُحَارَبَةِ نَاسِخَةٌ لِفِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْعُرَنِيِّينَ، وَنَهْيٍ لَهُ عَنْ فِعْلِهِ بِهِمْ - وَاحْتَجُّوا

[9] **Hadith references (L41843):** Sahih Muslim 140; Riyad as-Salihin 1357; Sunan an-Nasai 4094; Sunan an-Nasai 4095.

issue: ʿAlī said: A group held that the verse of ḥirābah abrogates the action of the Messenger of Allah (peace and blessings be upon him) regarding the ʿUraniyyīn and prohibits him from his action toward them. They cited as evidence the narration of ʿAbdullāh ibn Rabīʿ: Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us, who reported to me from ʿAmr ibn ʿUthmān ibn Saʿīd ibn Kathīr ibn Dīnār, from al-Walīd, from al-Awzāʿī, from Yaḥyā ibn Abī Kathīr, from Abī Qilābah, from Anas ibn Mālik. That a group from the tribe of ʻUkl came to the Messenger of Allah—peace and blessings be upon him—and embraced Islam. They then fell ill in Medina, so the Prophet—peace and blessings be upon him—commanded them to go to the zakat camels and drink from their urine and milk. They did so, then killed their shepherd and drove away the camels. The Prophet—peace and blessings be upon him—sent trackers in pursuit of them, and they were captured. He cut off their hands and feet, seared their eyes, and did not cauterize their wounds. He abandoned them until they died. Thereupon, Allah the Exalted revealed: {The recompense of those who wage war against Allah and His Messenger...} [Al-Mā'idah 5:33].[11]

L41852–41854 The verse. Abdullah ibn Rabee' reported to us: Muhammad ibn Mu'awiyah reported to us: Ahmad ibn Shu'ayb reported to us: I am Ahmad ibn 'Amr ibn Al-Sarh: I am Ibn Wahb; Al-Layth ibn Sa'd informed me from Ibn 'Ajlan from Abu Al-Zinad, who said: "When the Messenger of Allah—peace and blessings of Allah be upon him—cut off the hands of those who stole his camels and gouged out their eyes with fire, Allah the Exalted reproached him for that. Thereupon Allah revealed: {The recompense of those who wage war against Allah and His Messenger is execution, crucifixion, the amputation of hands and feet, or exile} [Al-Ma'idah 5:33]." Abdullah ibn Rabee' reported to us: Muhammad ibn Mu'awiyah reported to us: Ahmad ibn Shu'ayb reported to us: Muhammad ibn Al-Muthanna reported to us: 'Abd Al-Samad—who is Ibn 'Abd Al-Warith ibn Sa'id Al-Tannuri—reported to us: Hisham—who is Al-Dastawa'i—reported from Qatadah from Anas, who said: "The Messenger of Allah—peace and blessings of Allah be upon

[10]**Qur'an references (L41843):** Qur'an 1:1 (Al-Fatihah).

[11]**Qur'an references (L41849):** Qur'an 5:33 (Al-Ma'idah).

فِي ذَلِكَ بِمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي عَمْرُو بْنُ عُثْمَانَ بْنِ سَعِيدِ بْنِ كَثِيرِ بْنِ دِينَارٍ عَنْ الْوَلِيدِ عَنْ الْأَوْزَاعِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ نَفَرًا مِنْ عُكْلٍ قَدِمُوا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَسْلَمُوا فَاجْتَوَوْا الْمَدِينَةَ فَأَمَرَهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَأْتُوا إبِلَ الصَّدَقَةِ فَيَشْرَبُوا مِنْ أَبْوَالِهَا وَأَلْبَانِهَا، فَفَعَلُوا، فَقَتَلُوا رَاعِيَهَا وَاسْتَاقُوهَا، فَبَعَثَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي طَلَبِهِمْ قَافَةً، فَأُتِيَ بِهِمْ، فَقَطَعَ أَيْدِيَهُمْ، وَأَرْجُلَهُمْ، وَسَمَلَ أَعْيُنَهُمْ، وَلَمْ يَحْسِمْهُمْ، وَتَرَكَهُمْ حَتَّى مَاتُوا فَأَنْزَلَ اللَّهُ تَعَالَى {إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ} [المائدة: ٣٣] »

الْآيَةَ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ أَنَا ابْنُ وَهْبٍ أَخْبَرَنِي اللَّيْثُ بْنُ سَعْدٍ عَنْ ابْنِ عَجْلَانَ عَنْ أَبِي الزِّنَادِ قَالَ: «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا قَطَعَ الَّذِينَ سَرَقُوا لِقَاحَهُ، وَسَمَلَ أَعْيُنَهُمْ بِالنَّارِ، عَاتَبَهُ اللَّهُ تَعَالَى فِي ذَلِكَ فَأَنْزَلَ اللَّهُ تَعَالَى {إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ} [المائدة: ٣٣] الْآيَةَ» حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الصَّمَدِ - هُوَ ابْنُ عَبْدِ الْوَارِثِ بْنِ سَعِيدٍ التَّنُّورِيُّ - نا هِشَامٌ - هُوَ الدَّسْتُوَائِيُّ - عَنْ قَتَادَةَ عَنْ أَنَسٍ قَالَ: كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَحُثُّ فِي خُطْبَتِهِ عَلَى الصَّدَقَةِ، وَيَنْهَى عَنْ الْمُثْلَةِ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: كُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ، وَلَا يَجُوزُ أَنْ يُقَالَ فِي شَيْءٍ مِنْ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ

him—would urge charity in his sermons and prohibit disfigurement (as retaliation)." Abu Muhammad—may Allah have mercy on him—said: "None of this constitutes proof for their claim. It is impermissible to assert that any action or saying of the Messenger of Allah—peace and blessings of Allah be upon him—is abrogated except through irrefutable certainty of its validity. Conjecture, being the most deceitful speech, holds no weight. We assert—and with Allah alone is success: As for the hadith we prefaced via Abu Qilabah from Anas, it contains no indication of abrogation whatsoever—neither explicitly nor implicitly. It merely states that the Messenger of Allah—peace and blessings of Allah be upon him—amputated the hands and feet of the ʻUrayniyyīn without cauterization, gouged out their eyes, and left them until they perished. Subsequently, Allah revealed the verse on ḥudūd (prescribed punishments). This clearly demonstrates that the revelation of the warfare verse marked either the inception of a ruling—as with the Quran's gradual revelation—or a divine confirmation of his action—peace be upon him—toward them, since the verse concurs with his amputation of their hands and feet while introducing the options of execution, crucifixion, or exile. As for the additional measures taken by the Messenger of Allah—peace and blessings of Allah be upon him—beyond amputation, such as gouging their eyes and leaving them uncauterized until death, this constituted retaliation (qisas) for their crimes against the shepherds." Abdullah ibn Rabīʻ narrated to us, Muḥammad ibn Muʻāwiyah narrated to us, Aḥmad ibn Shuʻayb narrated to us: I am Al-Faḍl ibn Sahl al-Aʻraj al-Marzuqī—a reliable narrator—Yaḥyā ibn Ghaylān—a trustworthy authority—narrated to us, Yazīd ibn Zuraiʻ narrated from Sulaymān at-Taymī from Anas ibn Mālik, who said: "The Messenger of Allah—peace and blessings of Allah be upon him—blinded the eyes of those al-ʻUraniyyīn solely because they had blinded the eyes of the shepherds. The previously cited ḥadīth mentions that they killed the shepherds, thereby confirming our assertion that those al-ʻUraniyyīn incurred multiple penalties [against them]: among these were waging war, blinding the shepherds, killing them, and apostasy. Thus, it became obligatory to enforce all these penalties upon them, as none of these punishments was more obligatory to implement than the others. Whoever waives some penalties in exchange for others has erred, judged falsely, spoken without evidence, opposed the action

وَسَلَّمَ - وَقَوْلِهِ إنَّهُ مَنْسُوخٌ إلَّا بِيَقِينٍ مَقْطُوعٍ عَلَى صِحَّتِهِ، وَأَمَّا بِالظَّنِّ، الَّذِي هُوَ أَكْذَبُ الْحَدِيثِ فَلَا. فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: أَمَّا الْحَدِيثُ الَّذِي صَدَّرْنَا بِهِ مِنْ طَرِيقِ أَبِي قِلَابَةَ عَنْ أَنَسٍ، فَلَيْسَ فِيهِ دَلِيلٌ عَلَى نَسْخٍ أَصْلًا - لَا بِنَصٍّ وَلَا بِمَعْنًى - وَإِنَّمَا فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطَعَ أَيْدِي الْعُرَنِيِّينَ وَأَرْجُلَهُمْ، وَلَمْ يَحْسِمْهُمْ، وَسَمَلَ أَعْيُنَهُمْ، وَتَرَكَهُمْ حَتَّى مَاتُوا، فَأَنْزَلَ اللَّهُ تَعَالَى آيَةَ الْمُحَارَبَةِ - وَهَذَا ظَاهِرٌ: أَنَّ نُزُولَ آيَةِ الْمُحَارَبَةِ ابْتِدَاءُ حُكْمٍ، كَسَائِرِ الْقُرْآنِ فِي نُزُولِهِ شَيْئًا بَعْدَ شَيْءٍ، أَوْ تَصْوِيبًا لِفِعْلِهِ - عَلَيْهِ السَّلَامُ - بِهِمْ؛ لِأَنَّ الْآيَةَ مُوَافِقَةٌ لِفِعْلِهِ - عَلَيْهِ السَّلَامُ - فِي قَطْعِ أَيْدِيهِمْ وَأَرْجُلِهِمْ، وَزَائِدَةٌ عَلَى ذَلِكَ تَخْيِيرًا فِي الْقَتْلِ، أَوْ الصَّلْبِ، أَوْ النَّفْيِ - وَكَانَ مَا زَادَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْقَطْعِ مِنْ السَّمْلِ، وَتَرْكِهِمْ لَمْ يَحْسِمْهُمْ حَتَّى مَاتُوا قِصَاصًا بِمَا فَعَلُوا بِالرِّعَاءِ: كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا الْفَضْلُ بْنُ سَهْلٍ الْأَعْرَجِ - مَرْزُوقِيٌّ ثِقَةٌ - نا يَحْيَى بْنُ غَيْلَانَ - ثِقَةٌ مَأْمُونٌ - نا يَزِيدُ بْنُ زُرَيْعٍ عَنْ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ، قَالَ: إنَّمَا سَمَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْيُنَ أُولَئِكَ الْعُرَنِيِّينَ؛ لِأَنَّهُمْ سَمَلُوا أَعْيُنَ الرِّعَاءِ. وَقَدْ ذَكَرَ فِي الْحَدِيثِ الَّذِي أَوْرَدْنَا أَنَّهُمْ قَتَلُوا الرِّعَاءَ، فَصَحَّ مَا قُلْنَاهُ مِنْ أَنَّ أُولَئِكَ الْعُرَنِيِّينَ اجْتَمَعَتْ عَلَيْهِمْ حُقُوقٌ: مِنْهَا الْمُحَارَبَةُ، وَمِنْهَا سَمْلُهُمْ أَعْيُنَ الرِّعَاءِ، وَقَتْلُهُمْ إيَّاهُمْ، وَمِنْهَا الرِّدَّةُ - فَوَجَبَ عَلَيْهِمْ إقَامَةُ كُلِّ ذَلِكَ، إذْ لَيْسَ شَيْءٌ مِنْ هَذِهِ الْحُدُودِ أَوْجَبَ بِالْإِقَامَةِ عَلَيْهِمْ مِنْ سَائِرِهَا، وَمَنْ أَسْقَطَ بَعْضَهَا لِبَعْضٍ فَقَدْ أَخْطَأَ، وَحَكَمَ بِالْبَاطِلِ، وَقَالَ بِلَا بُرْهَانٍ، وَخَالَفَ فِعْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَرَكَ أَمْرَ اللَّهِ تَعَالَى بِالْقِصَاصِ فِي الْعُدْوَانِ بِمَا أَمَرَهُ بِهِ فِي الْمُحَارَبَةِ، فَقَطَعَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

of the Messenger of Allah—peace and blessings of Allah be upon him—and abandoned Allah's command to execute retaliation for transgression as He ordained concerning warfare. The Messenger of Allah—peace and blessings of Allah be upon him—amputated them for waging war, blinded them in retaliation, and left them in that state until they died—they sought water but were not given it until they perished—just as they themselves had killed the shepherds. Thus, the objection is lifted, and abundant praise belongs to Allah. As for the ḥadīth of Abū az-Zinād, it is a disconnected narration, and no valid proof lies in disconnected reports. Its wording is highly rejected, for it alleges that Allah reproached His Messenger in the verse concerning warfare, whereas no reproach whatsoever is discernible therein. The term 'reproach' applies only to instances such as Allah's saying: 'Allah has pardoned you. Why did you grant them permission?' [9:43], His saying: 'He frowned and turned away when the blind man came to him' [80:1-2], and His saying: 'Had it not been for a prior decree from Allah, a tremendous punishment would have afflicted you for what you seized' [8:68]. The narration on warfare contains no indication of reproach. As for the ḥadīth of Qatādah from Anas regarding the exhortation to charity and prohibition of disfigurement, it is authentic but unrelated to our subject—neither in substance nor form. Only those who trivialize falsehood against the Messenger of Allah—peace and blessings of Allah be upon him—would cite such a report to claim he mutilated the al-ʿUraniyyīn. Glory be to Allah! Rather, this supports their erroneous doctrine that if one is killed by a specific method, it is impermissible to execute him likewise, deeming it disfigurement. They assert that if someone amputates a man's nose, gouges another's eyes, severs a third's lips, extracts a fourth's molars, or cuts off a fifth's ears, all these must be inflicted upon him while leaving him alive. Could any disfigurement surpass this, if they had understood from their corrupt principles?"[12]

L41855–41856 Far be it from Allah that anything He, the Exalted, has commanded, or that His Messenger—may Allah's peace and blessings be upon him—has done, could be considered mutilation. Mutilation is only that which is initiated

[12]**Qur'an references (L41852):** Qur'an 5:33 (Al-Ma'idah); Qur'an 9:43 (At-Tawbah); Qur'an 80:1 ('Abasa); Qur'an 80:2 ('Abasa); Qur'an 8:68 (Al-Anfal).

لِلْمُحَارَبَةِ، وَسَمَلَهُمْ لِلْقِصَاصِ، وَتَرَكَهُمْ كَذَلِكَ حَتَّى مَاتُوا، يَسْتَسْقُونَ فَلَا يُسْقَوْنَ حَتَّى مَاتُوا؛ لِأَنَّهُمْ كَذَلِكَ قَتَلُوا هُمْ - الرِّعَاءَ - فَارْتَفَعَ الْإِشْكَالُ - وَالْحَمْدُ لِلَّهِ كَثِيرًا. وَأَمَّا حَدِيثُ أَبِي الزِّنَادِ فَمُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ، وَلَفْظُهُ مُنْكَرٌ جِدًّا؛ لِأَنَّ فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَاتَبَهُ رَبُّهُ فِي آيَةِ الْمُحَارَبَةِ، وَمَا يُسْمَعُ فِيهَا عِتَابٌ أَصْلًا؛ لِأَنَّ لَفْظَ " الْعِتَابِ " إِنَّمَا هُوَ مِثْلُ قَوْلِهِ تَعَالَى {عَفَا اللَّهُ عَنْكَ لِمَ أَذِنْتَ لَهُمْ} [التوبة: ٤٣] . وَمِثْلُ قَوْلِهِ تَعَالَى {عَبَسَ وَتَوَلَّى - أَنْ جَاءَهُ الْأَعْمَى} [عبس: ١ - ٢] الْآيَاتِ. وَمِثْلُ قَوْلِهِ تَعَالَى {لَوْلَا كِتَابٌ مِنَ اللَّهِ سَبَقَ لَمَسَّكُمْ فِيمَا أَخَذْتُمْ عَذَابٌ عَظِيمٌ} [الأنفال: ٦٨] وَأَمَّا حَدِيثُ الْمُحَارَبَةِ، فَلَيْسَ فِيهَا أَثَرٌ لِلْمُعَاتَبَةِ. وَأَمَّا حَدِيثُ قَتَادَةَ عَنْ أَنَسٍ فِي الْحَثِّ عَلَى الصَّدَقَةِ وَالنَّهْيِ عَنِ الْمُثْلَةِ فَحَقٌّ، وَلَيْسَ هَذَا مِمَّا نَحْنُ فِيهِ - فِي وِرْدٍ وَلَا صَدْرٍ - وَإِنَّمَا يَحْتَجُّ بِمِثْلِ هَذَا مَنْ يَسْتَسْهِلُ الْكَذِبَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ مَثَّلَ بِالْعُرَنِيِّينَ، وَحَاشَ لِلَّهِ مِنْ هَذَا، بَلْ هَذَا نَصٌّ لِمَذْهَبِهِمْ فِي أَنَّ مَنْ قُتِلَ بِشَيْءٍ مَا لَمْ يَجُزْ أَنْ يُقْتَلَ بِمِثْلِهِ؛ لِأَنَّهُ مُثْلَةٌ وَهُمْ يَرَوْنَ عَلَى مَنْ جَدَعَ أَنْفَ إِنْسَانٍ وَفَقَأَ عَيْنَيْ آخَرَ، وَقَطَعَ شَفَتَيْ ثَالِثٍ، وَقَلَعَ أَضْرَاسَ رَابِعٍ، وَقَطَعَ أُذُنَيْ خَامِسٍ: أَنْ يُفْعَلَ ذَلِكَ بِهِ كُلُّهُ، وَيُتْرَكَ، فَهَلْ فِي الْمُثْلَةِ أَعْظَمُ مِنْ هَذَا لَوْ عَقَلُوا عَنْ أُصُولِهِمُ الْفَاسِدَةِ؟

وَحَاشَ لِلَّهِ أَنْ يَكُونَ شَيْءٌ أَمَرَ اللَّهُ تَعَالَى بِهِ، أَوْ فَعَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُثْلَةً، إِنَّمَا الْمُثْلَةُ مَا كَانَ ابْتِدَاءً فِيمَا لَا نَصَّ فِيهِ، وَأَمَّا مَا كَانَ قِصَاصًا أَوْ حَدًّا كَالرَّجْمِ لِلْمُحْصَنِ، وَكَالْقَطْعِ أَوِ الصَّلْبِ لِلْمُحَارِبِ، فَلَيْسَ مُثْلَةً - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

in matters where there is no textual ruling. As for what is carried out as retribution or a ḥadd punishment—such as stoning for the married person [who commits adultery], and amputation or crucifixion for the combatant—it is not mutilation. And with Allah, the Exalted, is success.

L41857 We have been narrated through the chain of Muslim: Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Yahya ibn Yahya al-Tamimi informed us from Hushaym from Abdul-Aziz ibn Suhayb and Humayd, both from Anas ibn Malik: "Some people from Uraynah came to the Messenger of Allah - peace and blessings of Allah be upon him - in Medina but found it disagreeable. The Messenger of Allah - peace and blessings of Allah be upon him - said to them: 'If you wish, you may go to the alms camels and drink from their milk and urine.' They did so and recovered. Then they attacked the shepherds, killed them, apostatized from Islam, and drove away the Messenger of Allah's camels. When the Prophet - peace and blessings of Allah be upon him - learned of this, he sent men in pursuit. They were captured, and he had their hands and feet cut off, their eyes seared with hot irons, and left them in the volcanic region of al-Ḥarrah until they died."

Abdullah ibn Rabi' narrated to us, Muhammad ibn Mu'awiyah narrated to us, Ahmad ibn Shu'ayb narrated to us, Ali ibn Hujr narrated to us, Isma'il ibn 'Ulayyah narrated to us, Humayd narrated from Anas, who said: "Some people from Uraynah came to the Prophet - peace and blessings of Allah be upon him. The Messenger of Allah - peace and blessings of Allah be upon him - said to them: 'If you would go to our camels and stay with them, drinking from their milk and urine?' They did so. When they recovered, they attacked the Messenger of Allah's shepherd, killed him, apostatized, and drove away his camels. He sent men to pursue them, and they were brought back. He had their hands and feet cut off and their eyes seared with hot irons."

Abu Muhammad - may Allah have mercy on him - said: "All these are narrations of utmost authenticity. Success is from Allah, the Exalted. The brigand is to be killed."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ مَا ناه عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا يَحْيَى بْنُ يَحْيَى التَّمِيمِيُّ أرنا هُشَيْمٌ عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ، وَحُمَيْدٍ، كِلَاهُمَا عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ نَاسًا مِنْ عُرَيْنَةَ قَدِمُوا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَدِينَةَ فَاجْتَوَوْهَا فَقَالَ لَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنْ شِئْتُمْ أَنْ تَخْرُجُوا إِلَى إِبِلِ الصَّدَقَةِ فَتَشْرَبُوا مِنْ أَلْبَانِهَا وَأَبْوَالِهَا؟ فَفَعَلُوا، فَصَحُّوا، ثُمَّ مَالُوا عَلَى الرِّعَاءِ فَقَتَلُوهُمْ وَارْتَدُّوا عَنْ الْإِسْلَامِ، وَسَاقُوا ذَوْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَلَغَ ذَلِكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَعَثَ فِي آثَارِهِمْ فَأُتِيَ بِهِمْ، فَقَطَعَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ، وَسَمَلَ أَعْيُنَهُمْ، وَتَرَكَهُمْ فِي الْحَرَّةِ حَتَّى مَاتُوا» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَلِيُّ بْنُ حُجْرٍ نا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ نا حُمَيْدٌ عَنْ أَنَسٍ قَالَ «قَدِمَ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَاسٌ مِنْ عُرَيْنَةَ فَقَالَ لَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَوْ خَرَجْتُمْ إِلَى ذَوْدِنَا فَكُنْتُمْ فِيهَا، فَشَرِبْتُمْ مِنْ أَلْبَانِهَا، وَأَبْوَالِهَا؟ فَفَعَلُوا، فَلَمَّا صَحُّوا قَامُوا إِلَى رَاعِي رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَتَلُوهُ وَرَجَعُوا كُفَّارًا، وَاسْتَاقُوا ذَوْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَرْسَلَ فِي طَلَبِهِمْ، فَأُتِيَ بِهِمْ فَقَطَعَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ، وَسَمَلَ أَعْيُنَهُمْ» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذِهِ كُلُّهَا آثَارٌ فِي غَايَةِ الصِّحَّةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. الْمُحَارِبُ يُقْتَلُ

[مَسْأَلَة هَلْ لولي الْمُحَارَب المقتول مِنْ حَقّ عِنْد الْإِمَام]

Issue: Does the guardian of the executed *muḥārib* have any right recognized by the Imam?

٢٢٦٠ - مَسْأَلَةٌ: هَلْ لِوَلِيِّ الْمَقْتُولِ فِي ذَلِكَ حُكْمٌ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا الْحَسَنُ بْنُ سَعْدٍ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: إنَّ فِي كِتَابٍ لِعُمَرَ بْنِ الْخَطَّابِ " وَالسُّلْطَانُ وَلِيُّ مَنْ حَارَبَ الدِّينَ، وَإِنْ قَتَلَ أَبَاهُ، أَوْ أَخَاهُ، فَلَيْسَ إلَى طَالِبِ الدَّمِ مِنْ أَمْرِ مَنْ حَارَبَ الدِّينَ وَسَعَى فِي الْأَرْضِ فَسَادًا شَيْءٌ "

2260. Issue: Does the guardian of the slain person have a ruling in this matter or not? Abū Muḥammad—may Allāh have mercy on him—said: Narrated to us by Ḥumām, narrated to us by Ibn Mufarrij, narrated to us by Al-Ḥasan ibn Saʿd, narrated to us by Al-Dabarī, narrated to us by ʿAbd al-Razzāq, from Ibn Jurayj, who informed me that ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz said: Verily, in a legal decree by ʿUmar ibn al-Khaṭṭāb: "The sovereign ruler is the guardian of whoever wages war against the religion, even if [the rebel] killed his own father or brother. Then there is no... [text cut off in the manuscript]." To the legal guardian entitled to demand retribution for bloodshed, regarding the ruling of one who wages war against the religion and spreads corruption in the land, there is a ruling [to be applied].

وَقَالَ ابْنُ جُرَيْجٍ: وَقَالَ لِي سُلَيْمَانُ بْنُ مُوسَى مِثْلَ هَذَا سَوَاءً سَوَاءً حَرْفًا حَرْفًا. وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: عُقُوبَةُ الْمُحَارِبِ إلَى السُّلْطَانِ، لَا تَجُوزُ عُقُوبَةُ وَلِيِّ الدَّمِ ذَلِكَ إلَى الْإِمَامِ، قَالَ: وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَمَالِك، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَبِهَذَا نَقُولُ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي الْخَبَرَيْنِ اللَّذَيْنِ رُوِّينَاهُمَا مِنْ طَرِيقِ ابْنِ عَبَّاسٍ ذَكَرْنَاهُمَا فِي " كِتَابِ الْحَجِّ " " وَكِتَابِ الصِّيَامِ " " وَبَابِ وُجُوبِ قَضَاءِ الْحَجِّ الْوَاجِبِ ". " وَقَضَاءِ الصِّيَامِ الْوَاجِبِ عَنْ الْمَيِّتِ ".

Ibn Jurayj said: Sulayman ibn Musa told me the same thing, exactly the same, exactly the same, word for word. Through him to Abd al-Razzaq, from Maʿmar, from al-Zuhri—he said: The punishment of the brigand rests with the Sultan; the punishment of the blood avenger is not permissible—this authority belongs to the Imam. He said: This is the opinion of Abu Hanifah, Malik, al-Shafiʿi, Ahmad, Abu Sulayman, and their companions. Abu Muhammad (may Allah have mercy on him) said: We hold this view because the Messenger of Allah (peace and blessings be upon him) said in the two narrations transmitted by us through Ibn Abbas, which we mentioned in the "Book of Hajj," the "Book of Fasting," the chapter on the obligation of fulfilling the obligatory Hajj, and fulfilling obligatory fasting on behalf of the deceased.

«اقْضُوا اللَّهَ فَهُوَ أَحَقُّ بِالْوَفَاءِ، دَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى» . وَبِقَوْلِهِ - عَلَيْهِ السَّلَامُ - فِي حَدِيثِ بُرَيْدَةَ «كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اجْتَمَعَ حَقَّانِ: أَحَدُهُمَا لِلَّهِ، وَالثَّانِي لِوَلِيِّ الْمَقْتُولِ - كَانَ حَقُّ اللَّهِ تَعَالَى أَحَقَّ بِالْقَضَاءِ وَدَيْنُهُ أَوْلَى بِالْأَدَاءِ، وَشَرْطُهُ الْمُقَدَّمُ فِي الْوَفَاءِ عَلَى حُقُوقِ النَّاسِ، فَإِنْ قَتَلَهُ الْإِمَامُ، أَوْ

Fulfill the right of Allah, for He is most deserving of fulfillment. The debt owed to Allah is most deserving of being settled. By the Prophet's statement—peace be upon him—in the ḥadīth of Buraydah: "The Book of Allah has the greatest right, and Allah's covenant is firmer." Abu Muḥammad—may Allah have mercy on him—said: When two rights converge—one belonging to Allah and the other to the heir of the slain—the right of Allah, the Exalted, is most deserving of fulfillment, His debt is foremost in repayment, and His

stipulation takes precedence over the rights of people. If the Imam executes or crucifies him for brigandage, the heir may take the blood money from the slain's estate, because his right to retaliation has been nullified, leaving his right to blood money or forgiveness—as we clarified in *The Book of Retaliation*. And to Allah belongs all praise. If the Imam chooses to amputate the combatant's hand and foot or banish him, he may enforce that. At that point, the heir has the choice to kill him, demand blood money, compensation through negotiation, or forgive—for the Imam has fulfilled the authority Allah granted him to exercise. Here, nothing nullifies the heir's right, as it remains possible for him to exact his right after the fulfillment of Allah's right, the Exalted.

L41864–41866 Indeed, the Hanafis and Malikis have contradicted themselves here in the basest contradiction, for they do not differ regarding Hajj, fasting, Zakah, expiations, or vows—maintaining that the rights of people take precedence over the rights of Allah the Exalted, that creditors' debts are more obligatory to settle than the debts owed to Allah the Exalted, and that... The conditions of people are prioritized in fulfillment over the conditions of Allah, the Exalted. Yet they have abandoned these invalid statements here, prioritizing the rights of Allah, the Exalted, above the rights of people—and all success lies with Allah, the Exalted.

L41867 ## A Juristic Issue Regarding the Refusal to Pay Zakāt

L41868 Issue 2261: The One Who Withholds Zakāt Abū Muḥammad—may Allāh have mercy on him—said: Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Aḥmad ibn al-Faḍl al-Dīnawarī narrated to us: Abū Jaʿfar Muḥammad ibn Jarīr al-Ṭabarī narrated to us: Al-Ḥārith narrated to us: Muḥammad ibn Saʿd narrated to us: Muḥammad ibn ʿUmar al-Wāqidī narrated from ʿAbd al-Raḥmān ibn ʿAbd al-ʿAzīz from Ḥakīm ibn Ḥakīm ibn ʿAbbād ibn Ḥunayf from Fāṭimah bint Khushāf al-Sulamīyyah from ʿAbd al-Raḥmān ibn al-Rabīʿ al-Ṭafarī—who had companionship—who said: "The Messenger of Allāh—peace and blessings be upon him—sent a messenger to a man from Ashjaʿ to collect his zakāt. The messenger came to him, but the man turned him away. The messenger returned to the Prophet—peace and blessings be upon him—

صَلْبَهُ لِلْمُحَارَبَةِ، كَانَ لِلْوَلِيِّ أَخْذُ الدِّيَةِ فِي مَالِ الْمَقْتُولِ؛ لِأَنَّ حَقَّهُ فِي الْقَوَدِ قَدْ سَقَطَ، فَبَقِيَ حَقُّهُ فِي الدِّيَةِ، أَوْ الْعَفْوِ عَنْهَا، عَلَى مَا بَيَّنَّا فِي " كِتَابِ الْقِصَاصِ " وَلِلَّهِ الْحَمْدُ. فَإِنْ اخْتَارَ الْإِمَامُ قَطْعَ يَدِ الْمُحَارِبِ، وَرِجْلِهِ، أَوْ نَفْيِهِ: أَنْفَذَ ذَلِكَ، وَكَانَ حِينَئِذٍ لِلْوَلِيِّ الْخِيَارُ فِي قَتْلِهِ، أَوْ الدِّيَةِ، أَوْ الْمُفَادَاةِ، أَوْ الْعَفْوِ؛ لِأَنَّ الْإِمَامَ قَدْ اسْتَوْفَى مَا جَعَلَ اللَّهُ تَعَالَى لَهُ الْخِيَارَ فِيهِ - وَلَيْسَ هَاهُنَا شَيْءٌ يُسْقِطُ حَقَّ الْوَلِيِّ، إذْ مُمْكِنٌ لَهُ أَنْ يَسْتَوْفِيَ حَقَّهُ بَعْدَ اسْتِيفَاءِ حَقِّ اللَّهِ تَعَالَى.

وَلَقَدْ تَنَاقَضَ هَاهُنَا الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، أَسْمَجَ تَنَاقُضٍ؛ لِأَنَّهُمْ لَا يَخْتَلِفُونَ فِي الْحَجِّ، وَالصِّيَامِ، وَالزَّكَاةِ، وَالْكَفَّارَاتِ، وَالنُّذُورِ، بِأَنَّ حُقُوقَ النَّاسِ أَوْلَى مِنْ حُقُوقِ اللَّهِ تَعَالَى - وَأَنَّ دُيُونَ الْغُرَمَاءِ أَوْجَبُ فِي الْقَضَاءِ مِنْ دُيُونِ اللَّهِ تَعَالَى، وَأَنَّ شُرُوطَ النَّاسِ مُقَدَّمَةٌ فِي الْوَفَاءِ عَلَى شُرُوطِ اللَّهِ تَعَالَى - وَقَدْ تَرَكُوا هَاهُنَا هَذِهِ الْأَقْوَالَ الْفَاسِدَةَ، وَقَدَّمُوا حُقُوقَ اللَّهِ تَعَالَى عَلَى حُقُوقِ النَّاسِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة فِي مَانِعِ الزَّكَاة]

٢٢٦١ - مَسْأَلَةٌ: مَانِعُ الزَّكَاةِ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا أَحْمَدُ بْنُ الْفَضْلِ الدِّينَوَرِيُّ نا أَبُو جَعْفَرٍ - مُحَمَّدُ بْنُ جَرِيرٍ الطَّبَرِيُّ - نا الْحَارِثُ أَنَا مُحَمَّدُ بْنُ سَعْدٍ نا مُحَمَّدُ بْنُ عُمَرَ الْوَاقِدِيُّ نِي عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ الْعَزِيزِ عَنْ حَكِيمِ بْنِ حَكِيمِ بْنِ عَبَّادِ بْنِ حُنَيْفٍ عَنْ فَاطِمَةَ بِنْتِ خُشَافٍ السُّلَمِيَّةِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الرَّبِيعِ الطَّفَرِيِّ وَكَانَتْ لَهُ صُحْبَةٌ قَالَ «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى رَجُلٍ مِنْ أَشْجَعَ تُؤْخَذُ صَدَقَتُهُ فَجَاءَهُ الرَّسُولُ فَرَدَّهُ، فَرَجَعَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَهُ،

and informed him. The Messenger of Allāh—peace and blessings be upon him—said: 'Go back to him. If he does not give his zakāt, behead him.'"

ʿAbd al-Raḥmān said: I asked Ḥakīm, "I do not think Abū Bakr fought the apostates except based on this ḥadīth." He replied, "Yes."

Abū Muḥammad—may Allāh have mercy on him—said: This is a fabricated ḥadīth filled with defects, including unknown and accused narrators. The ruling regarding one who withholds zakāt is that it must be taken from him willingly or unwillingly. If he resists its collection, he is a combatant. If he denies its obligation, he is an apostate. If he conceals it without resistance, he is performing an evil act, and it is obligatory to discipline or strike him until he produces it or dies as one killed by Allāh the Exalted, leading to the curse of Allāh—as the Messenger of Allāh—peace and blessings be upon him—said: "Whoever among you sees an evil act, let him rectify it with his own hand if he is able." This is an evil act, so it is obligatory upon whoever is able to rectify it as we have mentioned. And success is by Allāh the Exalted.

L41869 **Issue: Whether one should act immediately toward the thief or implore him.**

L41870 2262 - Issue: Should one confront the thief immediately or appeal to him? Abu Muhammad—may God have mercy on him—said: Ahmad ibn Muhammad ibn al-Jasur narrated to us: Ahmad ibn al-Fadl al-Dinawari narrated to us: Muhammad ibn Jarir al-Tabari narrated to us from Muhammad ibn Bashar and Muhammad ibn al-Muthanna, who both said together: Abu Amir al-Aqadi narrated to us: Abdul Aziz ibn al-Muṭṭalib narrated from his brother al-Hakam ibn al-Muṭṭalib, from his father—who is al-Muṭṭalib ibn Hantab ibn Fuhaydh ibn Muṭarrif al-Ghifari—that "a man asked the Prophet—peace and blessings be upon him—'What if an aggressor attacks me?' The Prophet commanded him to warn him three times. The man said: 'If he refuses?' The Prophet then commanded him to fight him."

L41871–41872 He (peace be upon him) said: "If he kills you, you are in Paradise, and if you kill him, he is in the Fire."

L41873 Yusuf ibn Abd al-Barr al-Namari narrated to us: Abdullah ibn Muhammad

فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: اذْهَبْ إِلَيْهِ، فَإِنْ لَمْ يُعْطِ صَدَقَتَهُ فَاضْرِبْ عُنُقَهُ» قَالَ عَبْدُ الرَّحْمَنِ: فَقُلْت لِحَكِيمٍ: مَا أَرَى أَبَا بَكْرٍ قَاتَلَ أَهْلَ الرِّدَّةِ إِلَّا عَلَى هَذَا الْحَدِيثِ؟ فَقَالَ: أَجَلْ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا حَدِيثٌ مَوْضُوعٌ مَمْلُوءٌ آفَاتٍ مِنْ مَجْهُولِينَ، وَمُتَّهَمِينَ، وَحُكْمُ مَانِعِ الزَّكَاةِ إِنَّمَا هُوَ أَنْ تُؤْخَذَ مِنْهُ أَحَبَّ أَمْ كَرِهَ، فَإِنْ مَانَعَ دُونَهَا فَهُوَ مُحَارِبٌ، فَإِنْ كَذَّبَ بِهَا فَهُوَ مُرْتَدٌّ، فَإِنْ غَيَّبَهَا وَلَمْ يُمَانِعْ دُونَهَا فَهُوَ آتٍ مُنْكَرًا، فَوَاجِبٌ تَأْدِيبُهُ أَوْ ضَرْبُهُ حَتَّى يُحْضِرَهَا أَوْ يَمُوتَ قَتِيلَ اللَّهِ تَعَالَى، إلَى لَعْنَةِ اللَّهِ. كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ» وَهَذَا مُنْكَرٌ، فَفَرْضٌ عَلَى مَنْ اسْتَطَاعَ أَنْ يُغَيِّرَهُ كَمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة هَلْ يُبَادِر اللِّصَّ أَمْ يُنَاشِدُ]

٢٢٦٢ - مَسْأَلَةٌ: هَلْ يُبَادِر اللِّصَّ أَمْ يُنَاشِدُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا أَحْمَدُ بْنُ الْفَضْلِ الدِّينَوَرِيُّ نا مُحَمَّدُ بْنُ جَرِيرٍ الطَّبَرِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ، وَمُحَمَّدُ بْنُ الْمُثَنَّى، قَالَا جَمِيعًا: نا أَبُو عَامِرٍ الْعَقَدِيُّ نا عَبْدُ الْعَزِيزِ بْنُ الْمُطَّلِبِ عَنْ أَخِيهِ الْحَكَمِ بْنِ الْمُطَّلِبِ عَنْ أَبِيهِ - هُوَ الْمُطَّلِبُ بْنُ حَنْطَبِ - بْنِ فهيد بْنِ مُطَرِّفٍ الْغِفَارِيُّ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَأَلَهُ سَائِلٌ إنْ عَدَا عَلَيَّ عَادٍ؟ فَأَمَرَهُ أَنْ يَنْهَاهُ ثَلَاثَ مَرَّاتٍ، قَالَ: فَإِنْ أَبَى عَلَيَّ؟ فَأَمَرَهُ بِقِتَالِهِ» .

وَقَالَ - عَلَيْهِ السَّلَامُ -: «إنْ قَتَلَكَ فَأَنْتَ فِي الْجَنَّةِ، وَإِنْ قَتَلْتَهُ فَهُوَ فِي النَّارِ» .

ibn Yusuf ibn Ahmad al-Dabbi narrated to us: Al-Uqayli narrated to us: My grandfather narrated to us: Ya'la ibn Asad al-Ammi narrated to us: Muhammad ibn Kathir al-Sulami—known as Al-Qassab—narrated to us from Yunus ibn Ubayd from Muhammad ibn Sirin from Ubadah ibn al-Samit, who said: The Messenger of Allah—peace and blessings be upon him—said: "The home is inviolable; whoever enters your home, kill him." Abu Muhammad—may Allah have mercy on him—said: The first hadith is not strong, as it includes Al-Hakam ibn al-Muttalib, whose reliability is unknown. The second report includes Muhammad ibn Kathir al-Qassab, who is discredited in hadith transmission and not considered credible. Abu Muhammad—may Allah have mercy on him—said: The reliable basis for the reports we cited in *Our Book on the Muharibun* regarding the permissibility of killing without seizing property or committing other transgressions applies only if the individuals are those conclusively judged as such, a single convicted person, or one whose dwelling is entered within the city—day or night—to seize property, seek fornication: or other such crimes, provided there is opportunity for intervention. Exhortation is a virtuous act, as Allah says: *Invite to the way of your Lord with wisdom and good instruction, and argue with them in the best manner* (16:125). If there is no opportunity for intervention, it is obligatory upon the oppressed to immediately employ every means of self-defense available—even if this necessitates killing the thief or brigand from the outset. However, if one is certain that striking without killing would deter him, it is forbidden to kill him.[13]

حَدَّثَنَا يُوسُفُ بْنُ عَبْدِ الْبَرِّ النَّمَرِيُّ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ يُوسُفَ بْنِ أَحْمَدَ الضَّبِّيُّ نا الْعُقَيْلِيُّ نا جَدِّي نا يَعْلَى بْنُ أَسَدٍ الْعَمِّيُّ نا مُحَمَّدُ بْنُ كَثِيرٍ السُّلَمِيُّ - هُوَ الْقَصَّابُ - عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الدَّارُ حَرَمٌ فَمَنْ دَخَلَ عَلَيْكَ حَرَمَكَ فَاقْتُلْهُ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: الْحَدِيثُ الْأَوَّلُ لَيْسَ بِالْقَوِيِّ، فَفِيهِ: الْحَكَمُ بْنُ الْمُطَّلِبِ، وَلَا يُعْرَفُ حَالُهُ - وَالْخَبَرُ الثَّانِي فِيهِ: مُحَمَّدُ بْنُ كَثِيرٍ الْقَصَّابُ - وَهُوَ ذَاهِبُ الْحَدِيثِ، وَلَيْسَ بِشَيْءٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالْمُعْتَمَدُ عَلَيْهِ فِي الْأَخْبَارِ الَّتِي صَدَّرْنَا بِهَا فِي " كِتَابِنَا فِي الْمُحَارِبِينَ " مِنْ إبَاحَةِ الْقَتْلِ دُونَ الْمَالِ وَسَائِرِ الْمَظَالِمِ، لَكِنْ إنْ كَانَ عَلَى الْقَوْمِ الْمَقْطُوعِ عَلَيْهِمْ، أَوْ الْوَاحِدِ الْمَقْطُوعِ عَلَيْهِ، أَوْ الْمَدْخُولِ عَلَيْهِ مَنْزِلُهُ فِي الْمِصْرِ - لَيْلًا أَوْ نَهَارًا - فِي أَخْذِ مَالِهِ، أَوْ فِي طَلَبِ زِنًا: أَوْ غَيْرِ ذَلِكَ، مُهْلَةً، فَالْمُنَاشَدَةُ فِعْلٌ حَسَنٌ، لِقَوْلِ اللَّهِ تَعَالَى {ادْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحِكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَادِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ} [النحل: ١٢٥] فَإِنْ لَمْ يَكُنْ فِي الْأَمْرِ مُهْلَةٌ، فَفَرْضٌ عَلَى الْمَظْلُومِ أَنْ يُبَادِرَ إلَى كُلِّ مَا يُمْكِنُهُ بِهِ الدِّفَاعُ عَنْ نَفْسِهِ - وَإِنْ كَانَ فِي ذَلِكَ إتْلَافُ نَفْسِ اللِّصِّ وَالْقَاطِعِ مِنْ أَوَّلِ وَهْلَةٍ - فَإِنْ كَانَ عَلَى يَقِينٍ مِنْ أَنَّهُ إنْ ضَرَبَهُ وَلَمْ يَقْتُلْهُ ارْتَدَعَ، فَحَرَامٌ عَلَيْهِ قَتْلُهُ.

L41874 If he is not certain of this, is it not certain that repelling and fighting are permissible for him? There is no sin upon him if he kills him from the first strike or after it—whether intending to kill him or intending other than his killing—for Allah, the Exalted, has permitted him to fight and defend himself, whether killing or being killed. And with Allah, the Exalted, is success.

فَإِنْ لَمْ يَكُنْ عَلَى يَقِينٍ مِنْ هَذَا، فَقَدْ صَحَّ الْيَقِينُ بِأَنَّ مُبَاحًا لَهُ الدَّفْعُ وَالْمُقَاتَلَةُ؟ فَلَا شَيْءَ عَلَيْهِ إنْ قَتَلَهُ مِنْ أَوَّلِ ضَرْبَةٍ أَوْ بَعْدَهَا قَصْدًا إلَى مَقْتَلِهِ أَوْ إلَى غَيْرِ مَقْتَلِهِ، لِأَنَّ اللَّهَ تَعَالَى قَدْ أَبَاحَ لَهُ الْمُقَاتَلَةَ وَالْمُدَافَعَةَ قَاتِلًا وَمَقْتُولًا. - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41875 As for if the thief is so weak that he cannot resist at all, or resists in a manner where the homeowner is certain the thief cannot kill him, and the

[13] **Qur'an references (L41873):** Qur'an 16:125 (An-Nahl).

homeowner kills him, qisas (retribution) is incumbent upon the homeowner; because he could have prevented him without killing, thus making him a transgressor.

فَأَمَّا لَوْ كَانَ اللِّصُّ مِنْ الضَّعْفِ بِحَيْثُ لَا يُدَافِعُ أَصْلًا، أَوْ يُدَافِعُ دِفَاعًا يُوقِنُ مَعَهُ أَنَّهُ لَا يَقْدِرُ عَلَى قَتْلِ صَاحِبِ الدَّارِ فَقَتَلَهُ صَاحِبُ الْمَنْزِلِ فَعَلَيْهِ الْقَوَدُ، لِأَنَّهُ قَادِرٌ عَلَى مَنْعِهِ بِغَيْرِ الْقَتْلِ، فَهُوَ مُتَعَدٍّ.

L41876–41878 Narrated to us Muhammad ibn Sa'id ibn Nabat; he narrated to us Ahmad ibn 'Abd al-Basir; he narrated to us Qasim ibn Asbagh; he narrated to us... Muhammad ibn Abd al-Salam al-Khushani narrated to us: Muhammad ibn al-Muthanna narrated to us: Musa ibn Isma'il narrated to us: Sufyan al-Thawri narrated to us from Muslim al-Dabbi, who said: Ibrahim al-Nakha'i stated: "If you fear a thief might preempt you, then preempt him first?" Abu Muhammad—may Allah have mercy on him—remarked: "And this parallels our view—and all praise belongs to Allah, Lord of the worlds?"

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُوسَى بْنُ إِسْمَاعِيلَ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مُسْلِمٍ الضَّبِّيِّ قَالَ: قَالَ إِبْرَاهِيمُ النَّخَعِيُّ: إِنْ خَشِيتَ أَنْ يَبْتَدِرَكَ اللِّصُّ فَابْدُرْهُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا نَظِيرُ قَوْلِنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: قُلْت لِلزُّهْرِيِّ: إنَّ هِشَامَ بْنَ عُرْوَةَ أَخْبَرَنِي أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ - إذْ هُوَ عَامِلٌ عَلَى الْمَدِينَةِ فِي زَمَانِ الْوَلِيدِ بْنِ عَبْدِ الْمَلِكِ - قَطَعَ يَدَ رَجُلٍ ضَرَبَ آخَرَ بِالسَّيْفِ؟ فَضَحِكَ الزُّهْرِيُّ وَقَالَ لِي: أَوَ هَذَا مِمَّا يُؤْخَذُ بِهِ؟ إنَّمَا كَتَبَ الْوَلِيدُ بْنُ عَبْدِ الْمَلِكِ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنْ يَقْطَعَ يَدَ رَجُلٍ ضَرَبَ آخَرَ بِالسَّيْفِ؟ قَالَ الزُّهْرِيُّ: فَدَعَانِي عُمَرُ بْنُ عَبْدِ الْعَزِيزِ وَاسْتَفْتَانِي فِي قَطْعِهِ؟ فَقُلْت لَهُ: أَرَى أَنْ يَصْدُقَهُ الْحَدِيثَ، وَيُكْتَبَ إلَيْهِ: «أَنَّ صَفْوَانَ بْنَ الْمُعَطَّلِ ضَرَبَ حَسَّانَ بْنَ ثَابِتٍ بِالسَّيْفِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمْ يَقْطَعْ النَّبِيُّ - عَلَيْهِ السَّلَامُ - يَدَهُ» وَضَرَبَ فُلَانٌ فُلَانًا بِالسَّيْفِ زَمَنَ مَرْوَانَ فَلَمْ يَقْطَعْ مَرْوَانُ يَدَهُ، وَكَتَبَ إلَيْهِ عُمَرُ بِذَلِكَ، فَمَكَثَ حِينًا لَا يَأْتِيهِ رَجَعَ كِتَابُهُ - ثُمَّ كَتَبَ إلَيْهِ الْوَلِيدُ: أَنَّ حَسَّانًا كَانَ يَهْجُو صَفْوَانَ وَيَذْكُرُ أُمَّهُ وَنِسَاءَ أُخَرَ، قَدْ قَالَهُ الزُّهْرِيُّ. وَذَكَرْت: أَنَّ مَرْوَانَ لَمْ يَقْطَعْ يَدَهُ، وَلَكِنَّ عَبْدَ الْمَلِكِ قَطَعَ يَدَهُ، فَاقْطَعْ يَدَهُ؟

Abu Muhammad—may Allah have mercy on him—narrated to us: Humam narrated to us: Ibn Mufarrij narrated to us: Ibn al-A'rabi narrated to us: al-Dabari narrated to us: from Abd al-Razzaq, from Ma'mar, who said: I asked al-Zuhri: "Hisham ibn Urwah informed me that Umar ibn Abd al-Aziz—when he was governor of Medina during al-Walid ibn Abd al-Malik's reign—cut off the hand of a man who struck another with a sword?" Al-Zuhri laughed and said: "Is this even something to be acted upon? Al-Walid ibn Abd al-Malik merely wrote to Umar ibn Abd al-Aziz ordering him to amputate the hand of a man who struck another with a sword." Al-Zuhri continued: "Umar summoned me for a legal opinion regarding the amputation. I told him: 'I advise him to authenticate the report and write back: "Safwan ibn al-Mu'attal struck Hassan ibn Thabit with a sword during the Messenger of Allah's era—peace and blessings be upon him—yet the Prophet—peace be upon him—did not amputate his hand. Likewise, so-and-so struck another with a sword during Marwan's reign, and Marwan did not amputate his hand."' Umar wrote this to him. After some time passed without his letter being answered, al-Walid wrote again: 'Hassan had been satirizing Safwan, insulting his mother and other women'—as al-Zuhri stated. I added: 'Marwan did not amputate the hand, but Abd al-Malik did. Therefore, amputate

his hand.'" Al-Zuhri concluded: "Thus Umar amputated the hand—was this among the sins for which he later sought Allah's forgiveness?"

Abu Muhammad—may Allah have mercy on him—ruled: "If one brandishes a sword to intimidate travelers, he is a highway robber subject to the penalty for brigandage. If the assault constitutes mere aggression without highway robbery, only retaliation applies for the injured party. If no injury occurred, only discretionary punishment is warranted. Success comes solely from Allah, the Exalted."

L41879 **The jurisprudential issue of ḥirābah (highway robbery) committed by a Muslim against a Muslim or a *dhimmi*.**

L41880 Issue 2263: Is the prescribed punishment for Ḥirābah (highway robbery) committed by a Muslim against a Muslim and against a Dhimmi equivalent? This is because Allah the Exalted specifically ordained the ruling for those who commit Ḥirābah by waging war against Him and His Messenger (peace be upon him) or spread corruption in the land, without distinguishing between Muslim and Dhimmi in this matter. "And your Lord is never forgetful" (Quran 19:64).[14]

L41881 This is not killing a Muslim on account of a *dhimmi*—God forbid that!—but rather killing him for *ḥirābah* (banditry), and the blood of the *dhimmi* is forfeited with no penalty.

L41882–41883 Similarly, the punishment of cutting [for ḥirābah] applies to a woman, child, or insane person. All such acts constitute valid ḥirābah, thereby deserving the punishments we have mentioned for ḥirābah.

L41884 As for the dhimmi—if he wages war, he is not a combatant (muḥārib), but a violator of the covenant, for he has abandoned the state of submission (ṣaghār). Thus, it is impermissible except to kill him without exception, unless he embraces Islam. In that case, he bears no liability whatsoever for any bloodshed, sexual transgression, or property damage he caused, except

[14] **Qur'an references (L41880):** Qur'an 19:64 (Maryam).

قَالَ الزُّهْرِيُّ: فَقَطَعَ عُمَرُ يَدَهُ - وَكَانَ مِنْ ذُنُوبِهِ الَّتِي كَانَ يَسْتَغْفِرُ اللَّهَ تَعَالَى مِنْهَا؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: إنْ كَانَ رَفَعَ السَّيْفَ عَلَى سَبِيلِ إخَافَةِ الطَّرِيقِ فَهُوَ مُحَارِبٌ، عَلَيْهِ حُكْمُ الْمُحَارِبِ، وَإِنْ كَانَ لِعُدْوَانٍ فَقَطْ، لَا قَطْعِ طَرِيقٍ - فَعَلَيْهِ الْقِصَاصُ فَقَطْ، إلَى الْمَجْرُوحِ، فَإِنْ لَمْ يَكُنْ هُنَالِكَ جُرْحٌ فَلَا شَيْءَ إلَّا التَّعْزِيرَ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةُ قَطْعُ الطَّرِيقِ مِنْ الْمُسْلِمِ عَلَى الْمُسْلِمِ وَعَلَى الذِّمِّيِّ]

٢٢٦٣ - مَسْأَلَةٌ: قَطْعُ الطَّرِيقِ مِنْ الْمُسْلِمِ عَلَى الْمُسْلِمِ وَعَلَى الذِّمِّيِّ سَوَاءٌ؟ وَذَلِكَ؛ لِأَنَّ اللَّهَ تَعَالَى إنَّمَا نَصَّ عَلَى حُكْمِ مَنْ حَارَبَهُ وَحَارَبَ رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ سَعَى فِي الْأَرْضِ فَسَادًا وَلَمْ يَخُصَّ بِذَلِكَ مُسْلِمًا مِنْ ذِمِّيٍّ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

وَلَيْسَ هَذَا قَتْلًا لِلْمُسْلِمِ بِالذِّمِّيِّ، وَمَعَاذَ اللَّهِ مِنْ هَذَا، لَكِنَّهُ قَتْلٌ لَهُ بِالْحِرَابَةِ، وَيَمْضِي دَمُ الذِّمِّيِّ هَدَرًا.

وَكَذَلِكَ الْقَطْعُ عَلَى امْرَأَةٍ، أَوْ صَبِيٍّ، أَوْ مَجْنُونٍ، كُلُّ ذَلِكَ - مُحَارَبَةٌ صَحِيحَةٌ - يَسْتَحِقُّ بِهَا مَا ذَكَرْنَا مِنْ حُكْمِ الْمُحَارَبَةِ

وَأَمَّا الذِّمِّيُّ - إنْ حَارَبَ فَلَيْسَ مُحَارِبًا، لَكِنَّهُ نَاقِضٌ لِلذِّمَّةِ؛ لِأَنَّهُ قَدْ فَارَقَ الصَّغَارَ، فَلَا يَجُوزُ إلَّا قَتْلُهُ وَلَا بُدَّ، أَوْ يُسْلِمَ، فَلَا يَجِبُ عَلَيْهِ شَيْءٌ أَصْلًا فِي كُلِّ مَا أَصَابَ مِنْ دَمٍ، أَوْ فَرْجٍ، أَوْ مَالٍ، إلَّا مَا وُجِدَ فِي يَدِهِ فَقَطْ؛ لِأَنَّهُ حَرْبِيٌّ لَا مُحَارِبٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

for what is found in his possession alone, as he is an enemy combatant (ḥarbī), not a combatant (muḥārib). And success is by Allah, the Most High.

L41885 As for the Muslim who apostatizes and wages war, all rulings pertaining to one who wages ḥirābah apply to him in full, as per the precedent we cited from the Messenger of Allah (peace be upon him) regarding the Urayniyīn—from whom he exacted retribution (qiwad) and implemented the ruling of ḥirābah, as they were apostates waging war and transgressing. And success comes from Allah, the Most High.

L41886 **A jurisprudential issue regarding the prescribed manner of crucifixion for the *muhārib*.**

L41887 Issue 2264: The method of displaying [the body] after execution for those guilty of waging war [against society]? Abu Muhammad—may Allah have mercy on him—said: People have differed over the manner of post-execution display that Allah the Exalted has commanded regarding those guilty of waging war. Abu Hanifa and Al-Shafi'i said: His neck is struck with the sword, then he is displayed on a stake after being slain. Al-Shafi'i added: He is left for three days, then taken down and buried.

L41888 And Al-Layth ibn Sa'd, Al-Awza'i, and Abu Yusuf said: He is crucified alive, then stabbed with the spear until he dies.

L41889 Some of our Zahirite companions said: He is crucified alive and left until he dies, his entire body drying out and desiccating. When he has dried and desiccated, he is taken down, washed, shrouded, prayed over, and buried. Abu Muhammad—may Allah have mercy on him—said: When they differed, it became incumbent upon us to examine the evidence each group presented for their position to discern the truth therein and follow it—with the assistance of Allah, Exalted is He, and His favor. We examined this matter and found those who say "He is killed then crucified while dead" arguing through what we previously mentioned in "The Book of Blood" from our code regarding how retaliation is to be enacted, based on the Messenger of Allah's—peace and blessings be upon him—statement: "Allah has ordained excellence in all

وَأَمَّا الْمُسْلِمُ يَرْتَدُّ، فَيُحَارِبُ - فَعَلَيْهِ أَحْكَامُ الْمُحَارِبِ كُلِّهَا عَلَى مَا ذَكَرْنَا مِنْ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْعُرَنِيِّينَ الَّذِينَ اقْتَصَّ مِنْهُمْ قَوَدًا، وَأَقَامَ عَلَيْهِمْ حُكْمَ الْمُحَارَبَةِ وَكَانُوا مُرْتَدِّينَ مُحَارِبِينَ مُتَعَدِّينَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَة صِفَةُ الصَّلْبِ لِلْمُحَارِبِ]

٢٢٦٤ - مَسْأَلَةٌ: صِفَةُ الصَّلْبِ لِلْمُحَارِبِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي صِفَةِ الصَّلْبِ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ فِي الْمُحَارِبُ؟ فَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: يُضْرَبُ عُنُقُهُ بِالسَّيْفِ ثُمَّ يُصْلَبُ مَقْتُولًا - زَادَ الشَّافِعِيُّ -: وَيُتْرَكُ ثَلَاثَةَ أَيَّامٍ ثُمَّ يُنْزَلُ فَيُدْفَنُ.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ، وَالْأَوْزَاعِيُّ، وَأَبُو يُوسُفَ: يُصْلَبُ حَيًّا ثُمَّ يُطْعَنُ بِالْحَرْبَةِ حَتَّى يَمُوتَ.

وَقَالَ بَعْضُ أَصْحَابِنَا الظَّاهِرِينَ: يُصْلَبُ حَيًّا وَيُتْرَكُ حَتَّى يَمُوتَ، وَيَيْبَسَ كُلُّهُ وَيَجِفَّ، فَإِذَا يَبِسَ وَجَفَّ أُنْزِلَ، فَغُسِّلَ، وَكُفِّنَ، وَصُلِّيَ عَلَيْهِ، وَدُفِنَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا لِنَعْلَمَ الْحَقَّ مِنْ ذَلِكَ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى وَمَنِّهِ - فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَا مَنْ قَالَ: يُقْتَلُ ثُمَّ يُصْلَبُ مَقْتُولًا، يَحْتَجُّونَ بِمَا ذَكَرْنَاهُ قَبْلُ فِي " كِتَابِ الدِّمَاءِ " مِنْ دِيوَانِنَا كَيْفَ يَكُونُ الْقَوَدُ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ اللَّهَ كَتَبَ الْإِحْسَانَ عَلَى كُلِّ

matters. When you kill, perform the killing in the best manner." And his saying—peace be upon him—: "The most merciful people in killing are the people of faith."[15]

L41890–41891 And among his prohibitions—peace be upon him—is using a living being as a target, and his curse—peace be upon him—on whoever does so.

L41892 We have already mentioned these hadiths there with their chains of narration, making it unnecessary to repeat them.

L41893 They said: "Fixing him to the wooden stake is neither a virtuous nor honorable execution, for it involves treating the soul as a target—thus this is impermissible." We examined the evidence cited by those who advocated crucifying him after killing him, and found them arguing: "Allah the Exalted commanded killing as a punitive measure to disgrace the rebel in this worldly life. Since that is the case, punishment and disgrace cannot be inflicted upon a corpse, for the humiliation of the dead pertains to the Afterlife, not this world. Therefore, given this reasoning, crucifying him after killing him as a deterrent to others becomes invalid." The first group countered them by stating: "He is to be crucified after being killed as a deterrent to others."

L41894 These opponents countered them by saying: It is not a deterrent, but rather a punishment for the perpetrator and humiliation according to the explicit text of the Quran—and does his crucifixion followed by killing not also constitute the greatest deterrent? Abu Muhammad—may Allah have mercy on him—said: This encompasses all the evidence presented by both factions together. The evidence cited by both groups is true, except that they drew conclusions unsupported by the sound premises they cited, thus deviating from the paths of truth into the misguidances of confusion and error. Abu Muhammad—may Allah have mercy on him—said: This is as we shall clarify, Allah willing: We say that the statement of the Messenger of Allah—peace and blessings be upon him—"The most restrained people in killing are the people of faith,"

[15]**Hadith references (L41889):** Sunan an-Nasai 4405; Sunan an-Nasai 4412; Sahih Muslim 1955a.

شَيْءٍ فَإِذَا قَتَلْتُمْ فَأَحْسِنُوا الْقِتْلَةَ» . وَمِنْ قَوْلِهِ - عَلَيْهِ السَّلَامُ - «أَعَفُّ النَّاسِ قِتْلَةً أَهْلُ الْإِيمَانِ» .

وَمِنْ نَهْيِهِ - عَلَيْهِ السَّلَامُ - أَنْ يُتَّخَذَ شَيْئًا فِيهِ الرُّوحُ غَرَضًا وَلَعْنِهِ - عَلَيْهِ السَّلَامُ - مَنْ فَعَلَ ذَلِكَ.

وَقَدْ ذَكَرْنَا هَذِهِ الْأَحَادِيثَ هُنَالِكَ بِأَسَانِيدِهَا فَأَغْنَى عَنْ إعَادَتِهَا.

وَقَالُوا: طَعْنُهُ عَلَى الْخَشَبَةِ لَيْسَ قِتْلَةً حَسَنَةً، وَلَا عَفِيفَةً، وَهُوَ اتِّخَاذُ الرُّوحِ غَرَضًا، فَهَذَا لَا يَحِلُّ؟ وَنَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ رَأَى قَتْلَهُ مَصْلُوبًا فَوَجَدْنَاهُمْ يَقُولُونَ: إنَّ اللَّهَ تَعَالَى إنَّمَا أَمَرَنَا بِالْقَتْلِ عُقُوبَةً، وَخِزْيًا لِلْمُحَارِبِ فِي الدُّنْيَا، فَإِذْ ذَلِكَ كَذَلِكَ، فَالْعُقُوبَةُ وَالْخِزْيُ لَا يَقَعَانِ عَلَى مَيِّتٍ، وَإِنَّمَا خِزْيُ الْمَيِّتِ فِي الْآخِرَةِ لَا فِي الدُّنْيَا، فَلَمَّا كَانَ ذَلِكَ كَذَلِكَ بَطَلَ أَنْ يُصْلَبَ بَعْدَ قَتْلِهِ رَدْعًا لِغَيْرِهِ؟ فَعَارَضَهُمْ الْأَوَّلُونَ - بِأَنْ قَالُوا: يُصْلَبُ بَعْدَ قَتْلِهِ رَدْعًا لِغَيْرِهِ.

فَعَارَضَهُمْ هَؤُلَاءِ بِأَنْ قَالُوا: لَيْسَ رَدْعًا، وَإِنَّمَا هُوَ عُقُوبَةٌ لِلْفَاعِلِ، وَخِزْيٌ بِنَصِّ الْقُرْآنِ - وَفِي صَلْبِهِ، ثُمَّ قَتْلِهِ، أَعْظَمُ الرَّدْعِ أَيْضًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا كُلُّ مَا احْتَجَّتْ بِهِ الطَّائِفَتَانِ مَعًا، وَالَّتِي احْتَجَّتْ بِهِ كِلْتَا الطَّائِفَتَيْنِ حَقٌّ، إلَّا أَنَّهُ انْتَجَوْا مِنْهُ مَا لَا تُوجِبُهُ الْقَضَايَا الصِّحَاحُ الَّتِي ذَكَرُوا، فَمَالُوا عَنْ شَوَارِعِ الْحَقِّ إلَى زَوَائِغِ التَّلْبِيسِ وَالْخَطَأِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَذَلِكَ عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى: فَنَقُولُ: إنَّ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ أَعَفَّ النَّاسِ قِتْلَةً أَهْلُ الْإِيمَانِ» وَ «إذَا قَتَلْتُمْ فَأَحْسِنُوا الْقِتْلَةَ» وَ «لَعَنَ اللَّهُ مَنْ اتَّخَذَ شَيْئًا فِيهِ الرُّوحُ غَرَضًا» . وَالنَّهْيُ عَنْ

ذَلِكَ، فَهُوَ كُلُّهُ حَقٌّ، كَمَا قَالَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ كُلُّهُ مَانِعٌ مِنْ أَنْ يُقْتَلَ بَعْدَ الصَّلْبِ بِرُمْحٍ أَوْ بِرَمْيِ سِهَامٍ، أَوْ بِغَيْرِ ذَلِكَ كَمَا ذَكَرْنَا.

When you kill, do so in the best manner," and "Allah curses whoever takes a living being as a target," along with the prohibition against such acts—all of this is true, as stated by the Messenger of Allah—peace and blessings be upon him. All of this prohibits that one be killed after crucifixion with a spear, by shooting arrows, or any other method we have mentioned.

وَإِنَّمَا فِي هَذِهِ الْأَحَادِيثِ وُجُوبُ الْفَرْضِ فِي إحْسَانِ قَتْلِهِ إنْ اخْتَارَ الْإِمَامُ قَتْلَهُ فَقَطْ، وَلَيْسَ فِي شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ وُجُوبُ صَلْبِهِ بَعْدَ الْقَتْلِ، وَلَا إبَاحَةُ صَلْبِهِ بَعْدَ الْقَتْلِ أَلْبَتَّةَ، لَا بِنَصٍّ، وَلَا بِإِشَارَةٍ.

L41895 In these narrations, there is only the obligation to properly execute him if the Imam chooses only to kill him. None of these reports mentions an obligation to crucify him after his death, nor any permission to crucify him post-mortem whatsoever - neither by explicit text nor by textual allusion.

فَأَمَّا إحْسَانُ الْقَتْلِ فَحَقٌّ، وَأَمَّا صَلْبُهُ بَعْدَ الْقَتْلِ، فَدَعْوَى فَاسِدَةٌ، لَيْسَتْ فِي شَيْءٍ مِنْ الْآثَارِ الَّتِي ذَكَرُوا، وَلَا غَيْرِهَا - فَبَطَلَ بِيَقِينٍ - لَا شَكَّ فِيهِ - احْتِجَاجُهُمْ بِهَذِهِ الْأَخْبَارِ فِي النُّكْتَةِ الَّتِي عَلَيْهَا تَكَلَّمُوا - وَهِيَ الصَّلْبُ بَعْدَ الْقَتْلِ أَوْ قَبْلَهُ - وَسَقَطَ قَوْلُهُمْ، إذْ تَعَرَّى مِنْ الْبُرْهَانِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ثُمَّ نَظَرْنَا فِيمَا احْتَجَّتْ بِهِ الطَّائِفَةُ الثَّانِيَةُ الْمُوجِبَةُ قَتْلَهُ بَعْدَ الصَّلْبِ، فَوَجَدْنَاهُمْ يَقُولُونَ: إنَّ الصَّلْبَ عُقُوبَةٌ وَخِزْيٌ فِي الدُّنْيَا، كَمَا قَالَ اللَّهُ تَعَالَى، وَإِنَّ الْمَيِّتَ لَا يُخْزَى فِي الدُّنْيَا بَعْدَ مَوْتِهِ، وَلَا يُعَاقَبُ بَعْدَ مَوْتِهِ: قَوْلًا صَحِيحًا لَا شَكَّ فِيهِ - وَوَجَدْنَاهُمْ يَقُولُونَ: إنَّ الرَّدْعَ يَكُونُ بِصَلْبِهِ حَيًّا قَوْلًا أَيْضًا خَارِجًا عَنْ أُصُولِهِمْ، إلَّا أَنَّهُ لَيْسَ فِي شَيْءٍ مِنْ ذَلِكَ كُلِّهِ إيجَابُ قَتْلِهِ بَعْدَ الصَّلْبِ، كَمَا قَالُوا، وَلَا إبَاحَةُ ذَلِكَ أَيْضًا - وَإِنَّمَا فِي كُلِّ مَا قَالُوهُ: إيجَابُ الصَّلْبِ فَقَطْ، فَأَقْحَمُوا فِيهِ الْقَتْلَ بَعْدَ الصَّلْبِ جَرْيًا عَلَى عَادَتِهِمْ، فِي التَّلْبِيسِ وَالزِّيَادَةِ بِالدَّعَاوَى الْكَاذِبَةِ، عَلَى النُّصُوصِ مَا لَيْسَ فِيهَا - فَبَطَلَ قَوْلُهُمْ أَيْضًا لِمَا ذَكَرْنَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا بَطَلَ الْقَوْلَانِ مَعًا وَجَبَ الرَّدُّ إلَى الْقُرْآنِ، وَالسُّنَّةِ، كَمَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا بِقَوْلِهِ عَزَّ

L41896–41898 As for the humane manner of killing, it is a right. As for crucifixion after killing, then it is an invalid claim—not found in any of the traditions they cited, nor in other reports. Thus, their argument relying on these reports is undeniably invalidated with certainty—leaving no doubt. Regarding the point they debated—whether crucifixion occurs after killing or before it—their argument collapsed, for was it not stripped of any evidentiary basis? Abu Muhammad—may Allah have mercy on him—said: Then we examined the evidence presented by the second group, who mandate his killing after crucifixion. We found them claiming: "Crucifixion is a worldly punishment and humiliation, as Allah the Exalted stated, and the deceased is neither humiliated in this world after death nor punished posthumously"—a sound statement beyond doubt. We also found them asserting: "Deterrence as a public measure is achieved by crucifying him alive"—a claim that further deviates from their own foundational principles. Yet none of this entails mandating his killing after crucifixion, as they alleged, nor does it permit such an act. All their arguments solely mandate crucifixion itself. Nevertheless, they forcibly inserted killing after crucifixion, following their habitual practice of obfuscation and adding false claims to texts that contain no such rulings. Does this not invalidate their argument for the reasons we have outlined? Abu Muhammad—may Allah have mercy on him—said: When both views were thus invalidated, it became obligatory to revert to the Quran and the Sunnah, as Allah the Exalted obligated us by His words: "If you disagree over something, refer it to Allah and the Messenger" (4:59). We did so and

found Allah the Exalted stating: “The recompense of those who wage war against Allah and His Messenger...” (5:33), citing the entire verse.[16]

وَجَلَّ {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] فَفَعَلْنَا فَوَجَدْنَا اللَّهَ تَعَالَى قَدْ قَالَ {إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ} [المائدة: ٣٣] الْآيَةَ كُلَّهَا.

L41899 It is conclusively established that Allah the Exalted never imposed upon them two of these rulings, nor permitted combining two such disgraces upon them in this world. Rather, He obligated upon the combatant one of them - not all of them, nor two, nor three.

فَصَحَّ يَقِينًا أَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ قَطُّ عَلَيْهِمْ حُكْمَيْنِ مِنْ هَذِهِ الْأَحْكَامِ، وَلَا أَبَاحَ أَنْ يُجْمَعَ عَلَيْهِمْ خِزْيَانِ مِنْ هَذِهِ الْأَخْزَاءِ فِي الدُّنْيَا، وَإِنَّمَا أَوْجَبَ عَلَى الْمُحَارِبِ أَحَدَهَا لَا كُلَّهَا، وَلَا اثْنَيْنِ مِنْهَا، وَلَا ثَلَاثَةً

L41900 Thus, it is established with certainty beyond doubt that if he is killed, his crucifixion, amputation, and exile are prohibited.

فَصَحَّ بِهَذَا يَقِينًا لَا شَكَّ فِيهِ: أَنَّهُ إِنْ قُتِلَ فَقَدْ حَرُمَ صَلْبُهُ، وَقَطْعُهُ، وَنَفْيُهُ.

L41901 And that if the punishment [of amputation] is carried out, it is forbidden to kill him, crucify him, or exile him.

وَأَنَّهُ إِنْ قُطِعَ، فَقَدْ حَرُمَ قَتْلُهُ، وَصَلْبُهُ، وَنَفْيُهُ.

L41902 And that if he is exiled, then killing him, crucifying him, and amputating him are prohibited; and that if he is crucified, then killing him, amputating him, and his exile are prohibited—apart from this, nothing is permissible whatsoever. Thus, if he is killed, crucifying him is prohibited by the text of the Quran.

وَأَنَّهُ إِنْ نُفِيَ، فَقَدْ حَرُمَ قَتْلُهُ، وَصَلْبُهُ وَقَطْعُهُ وَأَنَّهُ إِنْ صُلِبَ، فَقَدْ حَرُمَ قَتْلُهُ، وَقَطْعُهُ، وَنَفْيُهُ - لَا يَجُوزُ أَلْبَتَّةَ غَيْرُ هَذَا، فَحَرُمَ بِنَصِّ الْقُرْآنِ صَلْبُهُ إِنْ قُتِلَ.

L41903–41905 It is also prohibited by the explicit text of the Quran to kill him even if he is crucified, and this aspect is likewise prohibited by the Sunnah of the Messenger of Allah—peace and blessings be upon him—which we cited, such as: “The most compassionate in carrying out executions are those who show restraint.” The people of faith,“ and ”When you kill, perfect the killing,“ and ”May Allah curse whoever takes a living being as a target,“ along with the prohibition thereof. Since killing through crucifixion is definitively prohibited—due to our earlier mention of the obligatory curse upon whoever takes a living being as a target—and since crucifying after killing is prohibited (as we established that combining both acts is impermissible), does it not necessarily follow that the crucifixion Allah the Exalted commanded for the combatant must be crucifixion without accompanying killing? If it were otherwise, what Allah ordained would be void, His speech would become entirely devoid of

وَحَرُمَ أَيْضًا بِنَصِّ الْقُرْآنِ قَتْلُهُ إِنْ صُلِبَ وَحَرُمَ هَذَا الْوَجْهُ أَيْضًا بِسُنَنِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّتِي ذَكَرْنَا مِنْ «إِنَّ أَعَفَّ النَّاسِ قِتْلَةً أَهْلُ الْإِيمَانِ» وَ «إِذَا قَتَلْتُمْ فَأَحْسِنُوا الْقِتْلَةَ» وَ «لَعَنَ اللَّهُ مَنْ اتَّخَذَ شَيْئًا فِيهِ الرُّوحُ غَرَضًا» وَالنَّهْيِ عَنْ ذَلِكَ. فَلَمَّا حَرُمَ قَتْلُهُ مَصْلُوبًا بِيَقِينٍ، لِمَا ذَكَرْنَا مِنْ وُجُوبِ اللَّعْنَةِ عَلَى مَنْ اتَّخَذَ شَيْئًا فِيهِ الرُّوحُ غَرَضًا - وَحَرُمَ صَلْبُهُ بَعْدَ الْقَتْلِ لِمَا ذَكَرْنَا أَنَّهُ لَا يَجُوزُ عَلَيْهِ جَمْعُ الْأَمْرَيْنِ مَعًا وَجَبَ ضَرُورَةً أَنَّ الصَّلْبَ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ فِي الْمُحَارِبِ إِنَّمَا هُوَ صَلْبٌ لَا قَتْلَ مَعَهُ؟ وَلَوْ لَمْ يَكُنْ هَكَذَا لَبَطَلَ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ، وَلَكَانَ كَلَامًا عَارِيًّا مِنْ الْفَائِدَةِ أَصْلًا، وَحَاشَ لِلَّهِ تَعَالَى مِنْ أَنْ يَكُونَ كَلَامُهُ تَعَالَى هَكَذَا؟ وَلَكَانَ أَيْضًا تَكْلِيفًا لِمَا لَا يُطَاقُ

[16] **Qur’an references (L41896):** Qur’an 4:59 (An-Nisa); Qur’an 5:33 (Al-Ma’idah).

benefit—far is Allah the Exalted from His speech being thus!—and it would constitute imposing an unbearable obligation, which is invalid. Thus, it is decisively established that the obligation requires the Imam must be given the choice to crucify him alive and leave him until his entire body dries out and withers entirely. For "crucifixion" in Arabic usage carries two meanings: one refers to binding the hands to the wooden structure, as Allah the Exalted states, quoting Pharaoh: "I will surely crucify you on the trunks of palm trees" [20:71].[17]

L41906 The other position is drying. The poet said—describing a trackless, misleading desert—

L41907 Within lie the carcasses of the grief-stricken - as for their bones, they are white; and as for their skin, it is rigid.

L41908 He wants her skin to be dry. And the other said:

L41909 Jadhimah al-Nahid atop a soaring peak... Behold the bones heaped into a cross, stark and bleak.

L41910 Is he referring to rendered fat? Abu Muhammad—may Allah have mercy on him—said: It becomes obligatory to combine both matters together, so that when we fulfill Allah the Exalted's command regarding it, this thereby obligates what Allah the Exalted has prescribed upon a Muslim for another Muslim: the washing, the shrouding, the prayer, and the burial, according to what we have mentioned before this.

L41911 If someone were to say: Is stoning (rajm) not taking a living being as a target? And likewise your statement regarding retribution (qisas) with the same means by which the victim was killed?

L41912–41913 Our response—and success is from Allah the Exalted—is: Yes, both are commanded acts. He—peace be upon him—ruled on both, necessitating their exemption from the prohibition against targeting the soul. As for stoning, it is established by textual evidence and consensus. As for retributive punishment for homicide, it is affirmed by the explicit text regarding compensation for

[17] **Qur'an references (L41903):** Qur'an 20:71 (Taha).

- وَهَذَا بَاطِلٌ. فَصَحَّ يَقِينًا أَنَّ الْوَاجِبَ أَنْ يُخَيَّرَ الْإِمَامُ صَلْبُهُ إِنْ صَلَبَهُ حَيًّا، ثُمَّ يَدَعُهُ حَتَّى يَيْبَسَ وَيَجِفَّ كُلُّهُ؛ لِأَنَّ الصَّلْبَ فِي كَلَامِ الْعَرَبِ يَقَعُ عَلَى مَعْنَيَيْنِ: أَحَدُهُمَا: مِنْ الْأَيْدِي، وَالرَّبْطِ عَلَى الْخَشَبَةِ، قَالَ اللَّهُ تَعَالَى حَاكِيًا عَنْ فِرْعَوْنَ {وَلَأُصَلِّبَنَّكُمْ فِي جُذُوعِ النَّخْلِ} [طه: ٧١]

وَالْوَجْهُ الْآخَرُ: التَّيْبِيسُ، قَالَ الشَّاعِرُ، يَصِفُ فَلَاةً مُضِلَّةً:

بِهَا جِيَفُ الْحَسْرَى فَأَمَّا عِظَامُهَا ... فَبِيضٌ وَأَمَّا جِلْدُهَا فَصَلِيبُ

يُرِيدُ أَنَّ جِلْدَهَا يَابِسٌ. وَقَالَ الْآخَرُ:

جَذِيمَةُ نَاهِضٍ فِي رَأْسِ نِيقٍ ... تَرَى لِعِظَامِ مَا جَمَعَتْ صَلِيبًا

يُرِيدُ: وَدَكًا سَائِلًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَجَبَ جَمْعُ الْأَمْرَيْنِ مَعًا، حَتَّى إذَا أَنْفَذْنَا أَمْرَ اللَّهِ تَعَالَى فِيهِ وَجَبَ بِهِ مَا افْتَرَضَهُ اللَّهُ تَعَالَى لِلْمُسْلِمِ عَلَى الْمُسْلِمِ: مِنْ الْغُسْلِ، وَالتَّكْفِينِ، وَالصَّلَاةِ، وَالدَّفْنِ، عَلَى مَا قَدْ ذَكَرْنَا قَبْلَ هَذَا.

فَإِنْ قَالَ قَائِلٌ: أَلَيْسَ الرَّجْمُ اتِّخَاذُ مَا فِيهِ الرُّوحُ غَرَضًا؟ وَكَذَلِكَ قَوْلُكُمْ فِي الْقَوَدِ بِمِثْلِ مَا قُتِلَ؟

فَجَوَابُنَا، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: نَعَمْ، وَهُمَا مَأْمُورٌ بِهِمَا، قَدْ حَكَمَ - عَلَيْهِ السَّلَامُ - بِكِلَيْهِمَا فَوَجَبَ أَنْ يَكُونَا مُسْتَثْنَيَيْنِ مِمَّا نَهَى عَنْهُ مِنْ اتِّخَاذِ الرُّوحِ غَرَضًا، فَأَمَّا الرَّجْمُ فَبِالنَّصِّ وَالْإِجْمَاعِ، وَأَمَّا الْقَوَدُ فَبِالنَّصِّ الْجَلِيِّ فِي رَضْخِ رَأْسِ الْيَهُودِيِّ وَفِي الْعُرَنِيِّينَ كَمَا قُلْتُمْ أَنْتُمْ وَنَحْنُ فِي أَنَّ الْقِصَاصَ مِنْ قَطْعِ الْأَيْدِي، وَالْأَرْجُلِ، وَسَمْلِ الْأَعْيُنِ، وَجَدْعِ الْأَنْفِ،

the Jew's head injury and the case of the 'Uraynah people as you yourselves mentioned. We are of the view that retribution for severing hands and feet, gouging eyes, amputating noses and ears, splitting lips and tongues, and uprooting molars constitutes an obligatory right requiring implementation. These acts are exempted from the ruling on unlawful disfigurement, with no distinction between these cases.

وَالْآذَانِ، وَقَطْعِ الشِّفَاهِ، وَالْأَلْسِنَةِ، وَقَلْعِ الْأَضْرَاسِ، حَقٌّ وَاجِبٌ إِنْفَاذُهُ، مُسْتَثْنَيَيْنِ مِنْ الْمُثْلَةِ الْمُحَرَّمَةِ، وَلَا فَرْقَ

L41914 If someone were to say: "You have heard the words of the Messenger of Allah—peace and blessings be upon him—'The most restrained in killing are the people of faith' and 'When you kill, do so in the best manner,' yet you kill him in the most savage and repugnant manner: through hunger, thirst, heat, and cold?" We would reply: "We did not kill him at all; rather, we crucified him as Allah the Exalted commanded. He died only of his natural end, and this is not termed 'killed' in the language."

فَإِنْ قَالَ قَائِلٌ: فَإِنَّكُمْ قَدْ سَمِعْتُمْ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَعَفُّ النَّاسِ قِتْلَةً أَهْلُ الْإِيمَانِ» وَ «إِذَا قَتَلْتُمْ فَأَحْسِنُوا الْقِتْلَةَ» وَأَنْتُمْ تَقْتُلُونَهُ أَوْحَشَ قِتْلَةٍ وَأَقْبَحَهَا: جُوعًا، وَعَطَشًا، وَحَرًّا، وَبَرْدًا؟ فَنَقُولُ: وَمَا قَتَلْنَاهُ أَصْلًا، بَلْ صَلَبْنَاهُ كَمَا أَمَرَ اللَّهُ تَعَالَى: وَمَا مَاتَ إِلَّا حَتْفَ أَنْفِهِ، وَمَا يُسَمَّى هَذَا فِي اللُّغَةِ مَقْتُولًا

L41915 If they say: "You maintain that concerning one who imprisons a person and denies him food and drink until he dies, he must be imprisoned and denied food and drink until he dies. Is this retaliatory killing (*qisas*) for killing?" We respond: "This is neither killing nor retaliation for killing, but rather oppression and legal retaliation solely for the act of oppression itself."

فَإِنْ قَالُوا: فَإِنَّكُمْ تَقُولُونَ فِيمَنْ سَجَنَ إِنْسَانًا وَمَنَعَهُ الْأَكْلَ وَالشُّرْبَ حَتَّى مَاتَ إِنَّهُ يُسْجَنُ وَيُمْنَعُ الْأَكْلَ وَالشُّرْبَ حَتَّى يَمُوتَ، فَهَذَا قَتْلٌ بِقَتْلٍ؟ فَنَقُول: إِنَّ هَذَا لَيْسَ قَتْلًا، وَلَا قَوَدًا بِقَتْلٍ، بَلْ هُوَ ظُلْمٌ وَقَوَدٌ مِنْ الظُّلْمِ فَقَطْ.

L41916 The proof of this is: If a man were to close a door without transgression, while unaware of a person inside the dwelling who subsequently died there of hunger and thirst, no expiation whatsoever would be required from the door-closer, nor would blood money be incumbent upon his kinsmen – because he is not a killer. If it is objected: "Do you prevent him from prayer and purification?" We reply: "Yes, for when Allah the Exalted commanded his crucifixion, He knew prayer times would pass during it. Yet He did not command us to remove the crucifixion for that reason – {and your Lord is never forgetful} [19:64]. Thus, it is neither permissible for a Muslim nor lawful for him to oppose Allah the Exalted's command – {none can revise His judgment} [13:41], and {He will not be questioned about what He does, but they will be questioned} [21:23]."[18]

وَبُرْهَانُ ذَلِكَ: أَنَّ رَجُلًا لَوْ اتَّفَقَ لَهُ أَنْ يُقْفِلَ بَابًا بِغَيْرِ عُدْوَانٍ، فَإِذَا فِي دَاخِلِ الدَّارِ إِنْسَانٌ لَمْ يَشْعُرْ بِهِ، فَمَاتَ هُنَالِكَ جُوعًا وَعَطَشًا: أَنَّهُ لَا كَفَّارَةَ عَلَى قَافِلِ الْبَابِ أَصْلًا، وَلَا دِيَةَ عَلَى عَاقِلَتِهِ، لِأَنَّهُ لَيْسَ قَاتِلًا؟ فَإِنْ قِيلَ: إِنَّكُمْ تَمْنَعُونَهُ الصَّلَاةَ وَالطَّهَارَةَ؟ قُلْنَا: نَعَمْ، لِأَنَّ اللَّهَ تَعَالَى إِذْ أَمَرَ بِصَلْبِهِ قَدْ عَلِمَ أَنَّهُ سَتَمُرُّ عَلَيْهِ أَوْقَاتُ الصَّلَوَاتِ، فَلَمْ يَأْمُرْنَا بِإِزَالَةِ التَّصْلِيبِ عَنْهُ مِنْ أَجْلِ ذَلِكَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] فَلَا يَسَعُ مُسْلِمًا، وَلَا يَحِلُّ لَهُ أَنْ يَعْتَرِضَ عَلَى أَمْرِ اللَّهِ تَعَالَى {لا مُعَقِّبَ لِحُكْمِهِ} [الرعد: ٤١] و {لا يُسْأَلُ عَمَّا يَفْعَلُ وَهُمْ يُسْأَلُونَ} [الأنبياء: ٢٣] .

[18] **Qur'an references (L41916):** Qur'an 13:41 (Ar-Ra'd); Qur'an 21:23 (Al-Anbya); Qur'an 19:64 (Maryam).

The Manner of Killing the Muḥārib (One Who Wages Ḥirābah)

Issue 2265: Abu Muhammad—may Allah have mercy on him—said: There is no disagreement that the obligatory killing for the brigand is solely striking the neck with the sword. As for cutting off limbs, Allah the Exalted said: "Or that their hands and feet be cut off from opposite sides" (5:33). This confirms that it is not permissible to cut off his hands and his foot together, for if that were done, it would not be cutting from opposite sides. This is also a matter of consensus without doubt. Some have said: His right hand and left foot are cut off, then the wounds must be cauterized with fire. Abu Muhammad said: As for cauterization, it is obligatory, for if it is not cauterized, he will die—and this is a form of killing that Allah the Exalted did not command. We have stated that it is not permissible to combine both actions together, for Allah the Exalted commanded this with the term "or," which necessitates choice without exception.[19]

If Allah, the Exalted, had willed to combine those punishments, He would have said: "They are to be killed, crucified, and their hands and feet are to be cut off from opposite sides."

And similarly, His statement, the Exalted: "The expiation is feeding ten needy persons from the average of what you feed your families, or providing clothing for them, or freeing a slave" (Al-Ma'idah 5:89).[20]

And His Exalted statement: "Then an expiation of fasting, charity, or sacrifice" [Quran 2:196].[21]

If someone were to argue: "The Arabs have said, 'Sit with al-Ḥasan or Ibn Sīrīn,'" and "'Eat bread or dates,'" and Allah the Exalted said, _"And do not obey among them any sinful ingrate"_ [al-Insān 24], we respond: As for Allah's statement _"And do not obey among them any sinful ingrate"_ [al-

[19] **Qur'an references (L41919):** Qur'an 5:33 (Al-Ma'idah).
[20] **Qur'an references (L41921):** Qur'an 5:89 (Al-Ma'idah).
[21] **Qur'an references (L41922):** Qur'an 2:196 (Al-Baqarah).

[صِفَةُ الْقَتْلِ فِي الْمُحَارِبِ]

٢٢٦٥ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: لَا خِلَافَ عَلَى أَنَّ الْقَتْلَ الْوَاجِبَ فِي الْمُحَارِبِ إنَّمَا هُوَ ضَرْبُ الْعُنُقِ بِالسَّيْفِ فَقَطْ، وَأَمَّا قَطْعُهُ فَإِنَّ اللَّهَ تَعَالَى قَالَ {أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلافٍ} [المائدة: ٣٣] . فَصَحَّ بِهَذَا أَنَّهُ لَا يَجُوزُ قَطْعُ يَدَيْهِ وَرِجْلِهِ مَعًا، لِأَنَّهُ لَوْ كَانَ ذَلِكَ لَمْ يَكُنْ الْقَطْعُ مِنْ خِلَافٍ، وَهَذَا أَيْضًا إجْمَاعٌ لَا شَكَّ فِيهِ، فَقَالَ قَوْمٌ: يُقْطَعُ يَمِينُ يَدَيْهِ وَيُسْرَى رِجْلَيْهِ ثُمَّ يُحْسَمُ بِالنَّارِ وَلَا بُدَّ؟ قَالَ أَبُو مُحَمَّد: أَمَّا الْحَسْمُ فَوَاجِبٌ، لِأَنَّهُ إنْ لَمْ يُحْسَمْ مَاتَ، وَهَذَا قَتْلٌ لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِهِ، وَقَدْ قُلْنَا: إنَّهُ لَا يَحِلُّ أَنْ يُجْمَعَ عَلَيْهِ الْأَمْرَانِ مَعًا، لِأَنَّ اللَّهَ تَعَالَى إنَّمَا أَمَرَ بِذَلِكَ بِلَفْظِ " أَوْ " وَهُوَ يَقْتَضِي التَّخْيِيرُ وَلَا بُدَّ.

وَلَوْ أَرَادَ اللَّهُ تَعَالَى جَمْعَ ذَلِكَ لَقَالَ: أَنْ يُقَتَّلُوا وَيُصَلَّبُوا وَتُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ.

وَهَكَذَا قَوْله تَعَالَى {فَكَفَّارَتُهُ إطْعَامُ عَشَرَةِ مَسَاكِينَ مِنْ أَوْسَطِ مَا تُطْعِمُونَ أَهْلِيكُمْ أَوْ كِسْوَتُهُمْ أَوْ تَحْرِيرُ رَقَبَةٍ} [المائدة: ٨٩] .

وقَوْله تَعَالَى {فَفِدْيَةٌ مِنْ صِيَامٍ أَوْ صَدَقَةٍ أَوْ نُسُكٍ} [البقرة: ١٩٦] .

فَإِنْ قَالَ قَائِلٌ: فَإِنَّ الْعَرَبَ قَدْ قَالَتْ: جَالِسْ الْحَسَنَ، أَوْ ابْنَ سِيرِينَ - وَكُلْ خُبْزًا، أَوْ تَمْرًا - وَقَالَ تَعَالَى {وَلا تُطِعْ مِنْهُمْ آثِمًا أَوْ كَفُورًا} [الإنسان: ٢٤] . قُلْنَا: أَمَّا قَوْلُ اللَّهِ تَعَالَى {وَلا تُطِعْ مِنْهُمْ آثِمًا أَوْ كَفُورًا} [الإنسان: ٢٤] فَهُوَ عَلَى ظَاهِرِهِ، وَهُوَ - عَلَيْهِ

Insān 24], it is understood according to its apparent meaning. The Prophet (peace be upon him) is prohibited from obeying a sinner—even if that sinner is not an ingrate—for every ingrate is a sinner, but not every sinner is an ingrate. Thus, the Exalted's mention of the ingrate serves as a perpetual emphasis, otherwise the ingrate would already be encompassed within the category of the sinner.[22]

السَّلَامُ - مَنْهِيٌّ أَنْ يُطِيعَ الْآثِمَ - وَإِنْ لَمْ يَكُنْ كَفُورًا - وَكُلُّ كَفُورٍ آثِمٌ، وَلَيْسَ كُلُّ آثِمٍ كَفُورًا - فَصَحَّ أَنَّ ذِكْرَهُ تَعَالَى لِلْكَفُورِ تَأْكِيدٌ أَبَدًا، وَإِلَّا فَالْكَفُورُ دَاخِلٌ فِي الْآثِمِ.

L41924 As for the Arabs' saying: "Sit with Al-Hasan or Ibn Sīrīn," and "Eat bread or dates"—we do not prevent an expression from deviating from its literal meaning in the language when there is evidence, but we do prevent causing its deviation through baseless conjectures and false claims.

وَأَمَّا قَوْلُ الْعَرَبِ: جَالِسْ الْحَسَنَ، أَوْ ابْنَ سِيرِينَ - وَكُلْ خُبْزًا، أَوْ تَمْرًا، فَنَحْنُ لَا نَمْنَعُ خُرُوجَ اللَّفْظِ عَنْ مَوْضُوعِهِ فِي اللُّغَةِ بِدَلِيلٍ، وَإِنَّمَا نَمْنَعُ مِنْ إخْرَاجِهِ بِالظُّنُونِ وَالدَّعْوَى الْكَاذِبَةِ.

L41925–41926 We have concluded that the statement "Sit with al-Ḥasan or Ibn Sīrīn" indicates the permissibility of sitting with both of them together and the permissibility of sitting with each of them separately.

وَإِنَّمَا صِرْنَا إلَى أَنَّ قَوْلَ الْقَائِلِ: جَالِسْ الْحَسَنَ، أَوْ ابْنَ سِيرِينَ: إبَاحَةٌ لِمُجَالَسَتِهِمَا مَعًا، وَلِكُلِّ وَاحِدٍ مِنْهُمَا بِانْفِرَادِهِ.

L41927 Similarly, their statement: "Eat bread or dates as well," with no distinction—based on evidence that obligated this from the situation of the addressed party. Were it not for that evidence, it would not be permissible to depart from "or" in origin and its established meaning in the language—its established meaning being either choice or doubt. But God Almighty does not doubt, so nothing remains except choice alone? Abū Muḥammad said: If the judge were to amputate his left hands and right feet, this would not be prohibited, whether done intentionally or unintentionally, because God Almighty did not specify cutting off the right of his hands rather than the left. He only mentioned hands and feet: *"And your Lord is not forgetful" [Maryam: 64]*. Whoever claims consensus here has lied against the entire community, and he cannot find any basis for this from any of the Companions at all, nor do we know it from any of the Followers—and with God Almighty is success.[23]

وَكَذَلِكَ قَوْلُهُمْ: كُلْ خُبْزًا، أَوْ تَمْرًا أَيْضًا، وَلَا فَرْقَ - بِدَلِيلٍ أَوْجَبَ ذَلِكَ مِنْ حَالِ الْمُخَاطَبِ، وَلَوْلَا ذَلِكَ الدَّلِيلُ لَمَا جَازَ إخْرَاجُ " أَوْ " عَنْ مَوْضُوعِهَا فِي اللُّغَةِ - أَصْلًا وَمَوْضُوعُهَا، إنَّمَا هُوَ التَّخْيِيرُ أَوْ الشَّكُّ - وَاَللَّهُ تَعَالَى لَا يَشُكُّ، فَلَمْ يَبْقَ إلَّا التَّخْيِيرُ فَقَطْ؟ قَالَ أَبُو مُحَمَّدٍ: وَلَوْ قَطَعَ الْقَاطِعُ يُسْرَى يَدَيْهِ، وَيُمْنَى رِجْلَيْهِ، لَمْ يُمْنَعْ مِنْ ذَلِكَ، عَمْدًا فَعَلَهُ أَوْ غَيْرَ عَامِدٍ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَنُصَّ عَلَى قَطْعِ يُمْنَى يَدَيْهِ دُونَ يُسْرَى، وَإِنَّمَا ذَكَرَ تَعَالَى الْأَيْدِي وَالْأَرْجُلَ فَقَطْ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] . وَمَنْ ادَّعَى هَاهُنَا إجْمَاعًا فَقَدْ كَذَبَ عَلَى جَمِيعِ الْأُمَّةِ، وَلَا يَقْدِرُ عَلَى أَنْ يُوجِدَ ذَلِكَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ أَصْلًا، وَمَا نَعْلَمُهُ عَنْ أَحَدٍ مِنْ التَّابِعِينَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[22] **Qur'an references (L41923):** Qur'an 76:24 (Al-Insan).
[23] **Qur'an references (L41927):** Qur'an 19:64 (Maryam).



AL-MUHALLA

كِتَابُ السَّرِقَةِ

The Book of Theft

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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Book on Theft

L41928–41929

L41930 Issue 2266: Abū Muḥammad—may Allah have mercy on him—said: Allah the Exalted stated, “As for the thief, male or female, cut off their hands as a recompense for what they committed—an exemplary punishment from Allah” (Quran 5:38). Thus, amputation is obligatory in cases of theft by the explicit text of the Quran, the explicit text of the Sunnah, and the consensus of the Ummah. Then people have differed regarding certain points in the rulings on theft, which we will mention—if Allah wills. There is no power nor strength except with Allah.[1]

L41931 Issue: Defining theft and the ruling regarding protected property (ḥirz)—is it a requirement or not?

L41932 2267 - Issue: Explaining what constitutes theft and the ruling regarding *hirz*—whether it is taken into account (as a condition) or not. Abū Muḥammad—may Allāh have mercy on him—said: A group held: “Amputation is only prescribed for what is removed from its *hirz* (secure storage). If someone takes it from outside its *hirz* and carries it away, the amputation penalty does not apply to him.”

L41933 Similarly, if someone takes an item—and he has indeed taken it—from a secure place but is apprehended before removing it from the secure place and departs with it, then amputation is not imposed on him. As narrated by Muḥammad ibn Saʿīd ibn Nabāt from ʿAbdullāh ibn Naṣr, from Qāsim ibn Aṣbagh, from Ibn Waḍḍāḥ, from Mūsā ibn Muʿāwiyah, from Wakīʿ, from Ibn Jurayj, from Sulaymān ibn Mūsā and ʿAmr ibn Shuʿayb. Sulaymān said, “‘Uthmān stated,” and ʿAmr ibn Shuʿayb said, “Ibn ʿUmar stated.” Then the two concurred: “Amputation is not imposed on a thief until he removes the property.”

L41934 Narrated to us Humam: From Ibn Mufarrij, from Ibn al-A’rabi, from al-Dabari, from ’Abd al-Razzaq, from Ibn Jurayj, from Sulayman ibn Musa: That ’Uthman ruled there is no hand amputation for a thief—even if he gathered

[1] **Qur’an references (L41930):** Qur’an 5:38 (Al-Ma’idah).

[كِتَابُ السَّرِقَةِ]

٢٢٦٦ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ اللَّهُ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالا مِنَ اللَّهِ} [المائدة: ٣٨] فَوَجَبَ الْقَطْعُ فِي السَّرِقَةِ بِنَصِّ الْقُرْآنِ، وَنَصِّ السُّنَّةِ، وَإِجْمَاعِ الْأُمَّةِ، ثُمَّ اخْتَلَفَ النَّاسُ فِي مَوَاضِعَ مِنْ حُكْمِ السَّرِقَةِ نَذْكُرُهَا - إِنْ شَاءَ اللَّهُ تَعَالَى - وَلَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ.

[مَسْأَلَةٌ ذِكْرُ مَا السَّرِقَةُ وَحُكْمُ الْحِرْزِ أَيُرَاعَى أَمْ لَا]

٢٢٦٧ - مَسْأَلَةٌ: ذِكْرُ مَا السَّرِقَةُ وَحُكْمُ الْحِرْزِ أَيُرَاعَى أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَتْ طَائِفَةٌ: لَا قَطْعَ إِلَّا فِيمَا أُخْرِجَ مِنْ حِرْزِهِ، وَأَمَّا إِنْ أَخَذَهُ مِنْ غَيْرِ حِرْزِهِ وَمَضَى بِهِ، فَلَا قَطْعَ عَلَيْهِ.

وَكَذَلِكَ لَوْ أَخَذَ - وَقَدْ أَخَذَهُ - مِنْ حِرْزٍ فَأُدْرِكَ قَبْلَ أَنْ يُخْرِجَهُ مِنَ الْحِرْزِ وَيَمْضِيَ بِهِ، فَلَا قَطْعَ عَلَيْهِ. كَمَا نَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نَا عَبْدُ اللَّهِ بْنُ نَصْرٍ نَا قَاسِمُ بْنُ أَصْبَغَ نَا ابْنُ وَضَّاحٍ نَا مُوسَى بْنُ مُعَاوِيَةَ نَا وَكِيعٌ نَا ابْنُ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى، وَعَمْرِو بْنِ شُعَيْبٍ، قَالَ سُلَيْمَانُ: إِنَّ عُثْمَانَ، وَقَالَ عَمْرُو بْنُ شُعَيْبٍ: إِنَّ ابْنَ عُمَرَ، ثُمَّ اتَّفَقَا: لَا قَطْعَ عَلَى سَارِقٍ حَتَّى يُخْرِجَ الْمَتَاعَ.

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى أَنَّ عُثْمَانَ قَضَى أَنَّهُ لَا قَطْعَ عَلَى سَارِقٍ - وَإِنْ كَانَ قَدْ جَمَعَ الْمَتَاعَ فَأَرَادَ أَنْ يَسْرِقَ - حَتَّى يَحْمِلَهُ وَيَخْرُجَ بِهِ. وَبِهِ - إِلَى ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ أَنَّ

the belongings and intended to steal—until he removes them and departs with them. Through the same chain, continuing to Ibn Jurayj, from ’Amr ibn Shu’ayb: That a thief breached the treasury of al-Muttalib ibn Wada’ah and penetrated it. He had gathered the belongings but did not depart with them. He was brought to Ibn al-Zubayr, who flogged him and ordered that his hand be amputated. The thief was taken past Ibn ’Umar, who inquired and was informed. Ibn ’Umar then went to Ibn al-Zubayr and said: “Did you order that his hand be amputated?”

سَارِقًا نَقَبَ خِزَانَةَ الْمُطَّلِبِ بْنِ وَدَاعَةَ وَالْطَعَنّ فِيهَا قَدْ جَمَعَ الْمَتَاعَ وَلَمْ يَخْرُجْ بِهِ، فَأُتِيَ بِهِ إِلَى ابْنِ الزُّبَيْرِ فَجَلَدَهُ وَأَمَرَ بِهِ أَنْ يُقْطَعَ، فَمَرَّ بِابْنِ عُمَرَ فَسَأَلَ فَأُخْبِرَ فَأَتَى ابْنَ الزُّبَيْرِ فَقَالَ: أَمَرْت بِهِ أَنْ يُقْطَعَ؟

He said: “Yes.” He asked: “What is the reason for the flogging?” He replied: “I became angry.” Ibn Umar said: “The hand is not to be cut until he takes it out of the house. Suppose you saw a man in a compromising position with a woman without intercourse—would you enforce the ḥadd on him?” He said: “No.” He said: “Perhaps he was relinquishing, repentant, and abandoning the property.” Abdullah ibn Rabi‘ narrated to us - Muhammad ibn Ahmad ibn Mufarrij narrated to us - Qasim ibn Asbagh narrated to us - Ibn Waddah narrated to us - Sahnun narrated to us - Ibn Wahb narrated from Ibn Lahi‘ah from Yazid ibn Abi Habib from Ali ibn Sulayman from Makhūl from Uthman ibn Affan, who said: “The thief’s hand is not cut—even if the property is found with him—unless he takes it out of the house.”

L41935–41936

فَقَالَ: نَعَمْ، قَالَ: فَمَا شَأْنُ الْجَلْدِ؟ قَالَ: غَضِبْت، فَقَالَ ابْنُ عُمَرَ: لَيْسَ عَلَيْهِ قَطْعٌ حَتَّى يَخْرُجَ بِهِ مِنْ الْبَيْتِ، أَرَأَيْت لَوْ رَأَيْت رَجُلًا بَيْنَ رِجْلَيْ امْرَأَةٍ لَمْ يُصِبْهَا أَكُنْت حَادَّهُ؟ قَالَ: لَا، قَالَ: لَعَلَّهُ قَدْ كَانَ نَازِعًا تَائِبًا وَتَارِكًا لِلْمَتَاعِ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عَلِيِّ بْنِ سُلَيْمَانَ عَنْ مَكْحُولٍ عَنْ عُثْمَانَ بْنِ عَفَّانَ قَالَ: لَا تُقْطَعُ يَدُ السَّارِقِ - وَإِنْ وُجِدَ مَعَهُ الْمَتَاعُ - مَا لَمْ يَخْرُجْ بِهِ عَنْ الدَّارِ.

And from him—to Ibn Wahb: I heard Al-Shimr ibn Numayr narrate from Al-Husayn ibn Abdullah ibn Al-Ḍumayrah, from his father, from his grandfather, from Ali ibn Abi Talib, who said regarding a man found in a house he had breached, possessing the belongings: He is not to have his hand amputated until he carries the belongings and exits with them from the house.

L41937

وَبِهِ - إلَى ابْنِ وَهْبٍ سَمِعْتُ الشِّمْرَ بْنَ نُمَيْرٍ يُحَدِّثُ عَنْ الْحُسَيْنِ بْنِ عَبْدِ اللَّهِ بْنِ ضُمَيْرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ فِي الرَّجُلِ يُوجَدُ فِي الْبَيْتِ - وَقَدْ نَقَبَهُ - مَعَهُ الْمَتَاعُ: أَنَّهُ لَا يُقْطَعُ حَتَّى يَحْمِلَ الْمَتَاعَ فَيَخْرُجَ بِهِ عَنْ الدَّارِ.

Muhammad ibn Sa’id ibn Nabat narrated to us: Abdullah ibn Nasr narrated to us: Qasim ibn Asbagh narrated to us: Ibn Waddah narrated to us: Musa ibn Mu’awiyah narrated to us: Waki’ narrated to us: Zakariyya narrated from al-Sha’bi, who said: The thief’s hand shall not be cut off until he removes the goods.

L41938

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا زَكَرِيَّا عَنْ الشَّعْبِيِّ قَالَ: لَيْسَ عَلَى السَّارِقِ قَطْعٌ حَتَّى يُخْرِجَ الْمَتَاعَ.

It is narrated from ‘Aṭā’ that Ibn Jurayj asked him, “If a thief is found in a house after gathering belongings but before leaving with them?” He replied, “No hand amputation is imposed on him until he exits with them.”

L41939

وَعَنْ عَطَاءٍ - سَأَلَهُ ابْنُ جُرَيْجٍ السَّارِقُ يُوجَدُ فِي الْبَيْتِ قَدْ جَمَعَ الْمَتَاعَ وَلَمْ يَخْرُجْ بِهِ؟ قَالَ: لَا قَطْعَ عَلَيْهِ حَتَّى يَخْرُجَ بِهِ.

L41940 It is narrated from Rabi'ah that he said: If someone is apprehended in a community's residence with stolen property after having exited beyond the area secured by the keys of the house from which he took it, amputation is mandated. Whoever is not found possessing anything incurs no amputation, even if he intended theft.

وَعَنْ رَبِيعَةَ - أَنَّهُ قَالَ: مَنْ أُخِذَ فِي دَارِ قَوْمٍ مَعَهُ سَرِقَةٌ قَدْ خَرَجَ عَنْ مَفَاتِيحِ الْبَيْتِ الَّذِي أَخَذَ السَّرِقَةَ مِنْهُ فَعَلَيْهِ الْقَطْعُ، وَمَنْ لَمْ يُوجَدْ مَعَهُ شَيْءٌ فَلَا قَطْعَ عَلَيْهِ وَإِنْ كَانَ يُرِيدُ السَّرِقَةَ.

L41941 From Adī ibn Arṭā'ah: He wrote to ʿUmar ibn ʿAbd al-ʿAzīz regarding a man who tunneled into a people's house until he entered it and gathered their possessions. They seized him inside the house after he had collected the belongings. ʿUmar ibn ʿAbd al-ʿAzīz wrote back: "He did not tunnel into the house and gather the possessions for any good purpose. Therefore, punish him severely, then imprison him, and do not neglect to keep me reminded of his case." From Ibn Shihāb—he said: "Theft applies only to what is safeguarded. If something is safeguarded in a house, a protected storage, a wall, or tethered, and one undid its fastening and took it away, this constitutes the theft for which hand amputation is mandated." He said: "If someone steals a bird from a suspended safeguarded enclosure belonging to its owner, does the same punishment apply to him as to the thief?"

وَعَنْ عَدِيِّ بْنِ أَرْطَاةَ أَنَّهُ كَتَبَ إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي رَجُلٍ نَقَبَ بَيْتَ قَوْمٍ حَتَّى دَخَلَ الْبَيْتَ فَجَمَعَ مَتَاعَهُمْ فَأَخَذُوهُ فِي الْبَيْتِ قَدْ جَمَعَ الْمَتَاعَ، فَكَتَبَ إِلَيْهِ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: إِنَّهُ لَمْ يَنْقُبِ الْبَيْتَ وَيَجْمَعِ الْمَتَاعَ لِخَيْرٍ، فَعَاقِبْهُ عُقُوبَةً شَدِيدَةً ثُمَّ احْبِسْهُ وَلَا تَدَعْ أَنْ تُذَكِّرَنِيهِ. وَعَنِ ابْنِ شِهَابٍ - أَنَّهُ قَالَ: إِنَّمَا السَّرِقَةُ فِيمَا أُحْصِنَ، فَمَا كَانَ مُحْصَنًا فِي دَارٍ، أَوْ حِرْزٍ، أَوْ حَائِطٍ، أَوْ مَرْبُوطٍ، فَاحْتَلَّ رِبَاطَهُ فَذَهَبَ بِهِ، فَتِلْكَ مِنَ السَّرِقَةِ الَّتِي يُقْطَعُ فِيهَا، قَالَ: فَمَنْ سَرَقَ طَيْرًا مِنْ حِرْزٍ لَهُ مُعَلَّقٍ، فَعَلَيْهِ مَا عَلَى السَّارِقِ؟

L41942–41943 Abu Muhammad—may Allah have mercy on him—said: In this matter hold Sufyan al-Thawrī, Abu Hanifah, Malik, al-Shafiʿi, Ahmad ibn Hanbal, their companions, and Isḥāq ibn Rāhawayh.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَبِهَذَا يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَصْحَابُهُمْ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ.

L41944 A juristic school held that the prescribed amputation is obligatory, whether the theft was from a secure place or a non-secure one.

وَقَالَتْ طَائِفَةٌ: عَلَيْهِ الْقَطْعُ سَوَاءٌ مِنْ حِرْزٍ سَرَقَ أَوْ مِنْ غَيْرِ حِرْزٍ.

L41945 As reported by Aḥmad ibn Anas al-ʿUdhri, who reported from ʿAbdullāh ibn al-Ḥusayn ibn ʿIqāl—the Zubayrī—who reported from Ibrāhīm ibn Muḥammad al-Dīnawarī, who reported from Muḥammad ibn Aḥmad ibn al-Jahm, who reported from Mūsā ibn Isḥāq, who reported from Abū Bakr ibn Abī Shaybah, who reported from Abū Khālid, from Yaḥyā ibn Saʿīd al-Anṣārī, from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq, who said: News reached ʿĀ'ishah, the Mother of the Believers, that people were saying, "If the thief does not produce the stolen item, his hand is not amputated." ʿĀ'ishah responded, "If I found nothing but a knife, I would amputate it—theft by stealth, and with that..."

كَمَا نا أَحْمَدُ بْنُ أَنَسٍ الْعُذْرِيُّ نا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ - هُوَ الزُّبَيْرِيُّ - نا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ نا مُوسَى بْنُ إِسْحَاقَ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا أَبُو خَالِدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ قَالَ: بَلَغَ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَنَّهُمْ يَقُولُونَ: إِذَا لَمْ يُخْرِجِ السَّارِقُ الْمَتَاعَ لَمْ يُقْطَعْ؟ فَقَالَتْ عَائِشَةُ: لَوْ لَمْ أَجِدْ إِلَّا سِكِّينًا لَقَطَعْتُهُ. اخْتِلَاسٌ وَبِهِ - إِلَى ابْنِ الْجَهْمِ نا

Up to Ibn al-Jahm: Muḥammad ibn Rumḥ reported from Yazīd ibn Hārūn, who reported from Sulaym ibn Ḥayyān, who reported from Saʿīd ibn Muslim, who said: ʿAbdullāh ibn al-Zubayr was responsible for al-Zubayr's charity funds, which were kept in a house entered by none except him and his servant girl. When some money went missing, he asked the girl, "No one entered this place except me and you. Who took this money?" The girl confessed. He then said to me, "O Saʿīd, take her away and amputate her hand, for if the money had not been her responsibility, amputation would still be mandated."

مُحَمَّدُ بْنُ رُمْحٍ نا يَزِيدُ بْنُ هَارُونَ نا سُلَيْمُ بْنُ حَيَّانَ نا سَعِيدُ بْنُ مُسْلِمٍ قَالَ: كَانَ عَبْدُ اللَّهِ بْنُ الزُّبَيْرِ يَلِي صَدَقَةَ الزُّبَيْرِ، فَكَانَتْ فِي بَيْتٍ لَا يَدْخُلُهُ أَحَدٌ غَيْرُهُ وَغَيْرُ جَارِيَةٍ لَهُ، فَفَقَدَ شَيْئًا مِنْ الْمَالِ؟ فَقَالَ لِلْجَارِيَةِ: مَا كَانَ يَدْخُلُ هَذَا الْمَكَانَ غَيْرِي وَغَيْرُكِ فَمَنْ أَخَذَ هَذَا الْمَالَ؟ فَأَقَرَّتْ الْجَارِيَةُ، فَقَالَ لِي: يَا سَعِيدُ انْطَلَقَ بِهَا فَاقْطَعْ يَدَهَا، فَإِنَّ الْمَالَ لَوْ كَانَ لَمْ يَكُنْ عَلَيْهَا، قَطْعٌ.

L41946 Muḥammad ibn Saʿīd ibn Nabāt reported to us; Aḥmad ibn ʿAbd al-Baṣīr reported to us; Qāsim reported to us; Aṣbagh reported to us; Muḥammad ibn ʿAbd al-Salām al-Khushanī reported to us; Muḥammad ibn al-Muthannā reported to us; ʿAbd al-Raḥmān ibn Mahdī reported to us; Sufyān al-Thawrī reported to us from al-Mughīra ibn Miqsam, who said: "When al-Shaʿbī's opinion regarding the thief - that his hand should not be severed until he exits with the stolen property - was mentioned in Ibrāhīm al-Nakhaʿī's presence, Ibrāhīm repudiated it."

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمٌ نا أَصْبَغُ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ، قَالَ: ذُكِرَ عِنْدَ إبْرَاهِيمَ النَّخَعِيِّ قَوْلُ الشَّعْبِيِّ فِي السَّارِقِ لَا يُقْطَعُ حَتَّى يَخْرُجَ بِالْمَتَاعِ، فَأَنْكَرَهُ إبْرَاهِيمُ.

L41947 Hummam ibn Mufarrij narrated to us, Ibn al-Aʿrabī narrated to us, al-Dabarī narrated to us, ʿAbd al-Razzāq narrated to us, Ibn Jurayj informed me: Abū Bakr said, "Khalid ibn Saʿīd ibn al-Musayyab and Ubayd Allāh ibn ʿAbd Allāh ibn ʿUtbah were asked about a thief who steals, discards the stolen item, and is found in the house from which he stole, without having left." They both agreed: "Amputation is obligatory [for him]."

حَدَّثَنَا حُمَامُ بْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو بَكْرٍ قَالَ: نا خَالِدُ بْنُ سَعِيدِ بْنِ الْمُسَيَّبِ، وَعُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ أَنَّهُمَا سُئِلَا عَنْ السَّارِقِ يَسْرِقُ فَيَطْرَحُ السَّرِقَةَ، وَيُوجَدُ فِي الْبَيْتِ الَّذِي سَرَقَ مِنْهُ، لَمْ يَخْرُجْ؟ فَقَالَا جَمِيعًا: عَلَيْهِ الْقَطْعُ.

L41948–41950 This has also been narrated from al-Ḥasan al-Baṣrī. Rawḥ ibn ʿUbādah narrated it from Ashʿath ibn ʿAbd al-Malik al-Ḥumrānī, from al-Ḥasan, who said: "If a thief gathers the goods but does not depart with them, his hand shall be amputated." ʿAbdullāh ibn Rabīʿ narrated to us: ʿAbdullāh ibn Muḥammad ibn ʿUthmān narrated to us: Aḥmad ibn Khālid narrated to us: ʿAlī ibn ʿAbd al-ʿAzīz narrated to us: al-Ḥajjāj ibn al-Minhāl narrated to us: Ḥammād ibn Salamah narrated to us, who said: "I, ʿAbd al-ʿAzīz ibn Abī Saʿīd al-Muzannī..." That ʿAmr ibn Abī Sayyārah al-Muzanī was standing praying at night when he heard a rustling in the house. He thought it was the sheep,

وَقَدْ رُوِيَ هَذَا أَيْضًا عَنْ الْحَسَنِ الْبَصْرِيِّ رَوَاهُ رَوْحُ بْنُ عُبَادَةَ عَنْ أَشْعَثَ بْنِ عَبْدِ الْمَلِكِ الْحُمْرَانِيِّ عَنْ الْحَسَنِ قَالَ: إذَا جَمَعَ السَّارِقُ الْمَتَاعَ وَلَمْ يَخْرُجْ بِهِ، قُطِعَ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ أَنَا عَبْدُ الْعَزِيزِ بْنُ أَبِي سَعِيدٍ الْمُزَنِيُّ أَنَّ عَمْرَو بْنَ أَبِي سَيَّارَةَ الْمُزَنِيَّ كَانَ قَائِمًا يُصَلِّي مِنْ اللَّيْلِ فَسَمِعَ خَشَفَةً فِي الْبَيْتِ، فَظَنَّ أَنَّهَا الشَّاةُ

then became certain there were thieves in the house. He took the sword and stood at the house door, and there was a bundle in the middle of the house. A figure resembling a camel with bound legs lunged at him. The thief struck his [‘Amr’s] face with the clothes, and ‘Amr slashed him with the sword once. He called his clients and slaves concerning the man, saying, “I’ve inflicted a grave wound on him.” He stayed in his place, thinking there were others in the house. They caught up with him under a covered passage belonging to Banū Layth as he fled. They captured him and brought him to ‘Ubayd Allāh ibn Abī Bakrah. The man said, “I am a butcher. I departed from my family at night heading to the bridge to cross with my sheep. ‘Amr struck me with the sword.” ‘Ubayd Allāh sent for ‘Amr and questioned him. He replied, “Rather, he entered my house and gathered the belongings.” When witnesses testified against him, ‘Ubayd Allāh ibn Abī Bakrah cut off his hand. Abū Muḥammad—may Allāh have mercy on him—said: This is the opinion of Abū Sulaymān and all our companions. From this category also is the stealth-thief—regarding whom people have differed. A group said: There is no cutting [of the hand] for him—as narrated to us by Muḥammad ibn Sa‘īd ibn Nabāt, from Aḥmad ibn ‘Abd al-Baṣīr, from Qāsim ibn Aṣbagh, from Muḥammad ibn ‘Abd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from ‘Abd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Simāk ibn Ḥarb, from Dithār ibn Yazīd, from ‘Ubayd ibn al-Ab’raṣ: ‘Alī ibn Abī Ṭālib was brought a man who had snatched a garment from someone. The man said, “I was only playing with him.” ‘Alī asked, “Do you know him?” He said, “Yes.” So ‘Alī did not amputate his hand.

ثُمَّ اسْتَيْقَنَ أَنَّ فِي الْبَيْتِ لُصُوصًا، فَأَخَذَ السَّيْفَ فَقَامَ عَلَى بَابِ الْبَيْتِ، فَإِذَا كَارَّةٌ وَسَطَ الْبَيْتِ، فَخَرَجَ عَلَيْهِ مِثْلُ الْجَمَلِ الْمُحَجْرِمِ، فَضَرَبَ بِالثِّيَابِ وَجْهَهُ، وَحَذَفَهُ عَمْرٌو بِالسَّيْفِ حَذْفَةً، وَنَادَى مَوَالِيَهُ وَعَبِيدَهُ عَلَى الرَّجُلِ فَقَدْ أَثْقَلْتُهُ، وَأَقَامَ بِمَكَانِهِ يَرَى أَنَّ فِي الْبَيْتِ آخَرِينَ فَأَدْرَكُوهُ، وَهُوَ تَحْتَ سَابَاطٍ لِبَنِي لَيْثٍ يَشْتَدُّ، فَأَخَذُوهُ فَجَاءُوا بِهِ إِلَى عُبَيْدِ اللَّهِ بْنِ أَبِي بَكْرَةَ، فَقَالَ: إِنِّي رَجُلٌ قَصَّابٌ، وَإِنِّي أَدْلَجْت مِنْ أَهْلِي أُرِيدُ الْجِسْرَ لِأُجِيزَ غَنَمًا لِي، وَإِنَّ عَمْرًا ضَرَبَنِي بِالسَّيْفِ، فَبَعَثَ عُبَيْدُ اللَّهِ إلَى عَمْرٍو فَسَأَلَهُ؟ فَقَالَ: بَلْ دَخَلَ عَلَيَّ بَيْتِي، وَجَمَعَ الْمَتَاعَ، فَشُهِدَ عَلَيْهِ فَقَطَعَ عُبَيْدُ اللَّهِ بْنُ أَبِي بَكْرَةَ يَدَهُ. قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا؟ وَمِنْ هَذَا أَيْضًا الْمُخْتَلِسُ - فَإِنَّ النَّاسَ اخْتَلَفُوا فِيهِ؟ فَقَالَتْ طَائِفَةٌ: لَا قَطْعَ عَلَيْهِ: كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ دِثَارِ بْنِ يَزِيدَ عَنْ عُبَيْدِ بْنِ الْأَبْرَصِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أُتِيَ بِرَجُلٍ اخْتَلَسَ مِنْ رَجُلٍ ثَوْبًا؟ فَقَالَ: إِنَّمَا كُنْت أَلْعَبُ مَعَهُ، قَالَ: تَعْرِفُهُ؟ قَالَ: نَعَمْ، فَلَمْ يَقْطَعْهُ.

L41951 Muhammad ibn Sa’id ibn Nabat narrated to us: Abdullah ibn Nasr narrated to us: Qasim ibn Asbagh narrated to us: Ibn Waddah narrated to us: Musa ibn Mu’awiyah narrated to us: Waki’ narrated to us: Malik ibn Anas narrated from al-Zuhri that a man stole a necklace through snatching. Marwan asked Zayd ibn Thabit about it, and Zayd said: “There is no amputation for this.” From Ma’mar, from al-Zuhri, who said: “A man snatched goods, and Marwan intended to amputate his hand. Zayd ibn Thabit said to him: ’That is overt snatching; there is no amputation for it, but rather deterrent punishment.’” From the path of Abd al-Razzaq, from Sufyan al-Thawri, from Isma’il ibn

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا مَالِكُ بْنُ أَنَسٍ عَنْ الزُّهْرِيِّ أَنَّ رَجُلًا اخْتَلَسَ طَوْقًا، فَسَأَلَ عَنْهَا مَرْوَانُ زَيْدَ بْنَ ثَابِتٍ؟ فَقَالَ: لَيْسَ عَلَيْهِ قَطْعٌ. وَعَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: اخْتَلَسَ رَجُلٌ مَتَاعًا فَأَرَادَ مَرْوَانُ أَنْ يَقْطَعَ - يَدَهُ، فَقَالَ لَهُ زَيْدُ بْنُ ثَابِتٍ: تِلْكَ الْخِلْسَةُ الظَّاهِرَةُ، لَا قَطْعَ فِيهَا، لَكِنْ نَكَالٌ وَعُقُوبَةٌ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ

Muslim, from al-Hasan, from Ali ibn Abi Talib (may Allah be pleased with him), when asked about theft by snatching, he replied: “That is a minor act; there is no amputation for it.”

سُفْيَانَ الثَّوْرِيِّ عَنْ إِسْمَاعِيلَ بْنِ مُسْلِمٍ عَنْ الْحَسَنِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ سُئِلَ عَنْ الْخِلْسَةِ، فَقَالَ: تِلْكَ الدَّعْوَةُ الْمُقِلَّةُ، لَا قَطْعَ فِيهَا.

L41952–41954 It is reported from Al-Shaʿbi that a man pilfered a necklace. They seized him while he was in his private quarters, and he was brought before ʿAmmār ibn Yāsir. He was in Kufa - so he wrote to Umar ibn al-Khattab. Then Umar wrote to him: “He returned at midday, and no penalty was imposed upon him.”

وَعَنْ الشَّعْبِيِّ أَنَّ رَجُلًا اخْتَلَسَ طَوْقًا فَأَخَذُوهُ - وَهُوَ فِي حُجْرَتِهِ فَرُفِعَ إلَى عَمَّارِ بْنِ يَاسِرٍ وَهُوَ عَلَى الْكُوفَةِ - فَكَتَبَ إلَى عُمَرَ بْنِ الْخَطَّابِ؟ فَكَتَبَ إلَيْهِ: أَنَّهُ عَادِي الظَّهِيرَةِ، وَلَا قَطَعَ عَلَيْهِ.

L41955 From ʻAdī ibn Arṭāʼa that he wrote to ʻUmar ibn Abd al-Aziz regarding a man who stole a gold necklace from the neck of a slave girl during the day. ʻUmar ibn Abd al-Aziz wrote back: “This is a transgressor whose act has become evident, but amputation is not mandated. Therefore, discipline him with discretionary punishment.”

وَعَنْ عَدِيِّ بْنِ أَرْطَاةَ أَنَّهُ كَتَبَ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي رَجُلٍ اخْتَلَسَ طَوْقًا مِنْ ذَهَبٍ كَانَ فِي عُنُقِ جَارِيَةٍ نَهَارًا، فَكَتَبَ إلَيْهِ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: إنَّ ذَلِكَ عَادٍ ظَهَرَ لَيْسَ عَلَيْهِ قَطْعٌ، فَعَاقِبْهُ.

L41956 And from Al-Hasan al-Basri concerning **the** stealthy theft: **No amputation is prescribed for it.**

وَعَنْ الْحَسَنِ الْبَصْرِيِّ فِي الْخِلْسَةِ: لَا قَطْعَ فِيهَا

L41957 From Qatādah: There is no cutting [of the hand] for the snatcher, but he is imprisoned and punished—this is the view of al-Nakhaʿī, Abū Ḥanīfah, Mālik, al-Shāfiʿī, Aḥmad ibn Ḥanbal, and their companions—and this is the position upheld by Isḥāq ibn Rāhawayh.

وَعَنْ قَتَادَةَ: لَا قَطْعَ عَلَى الْمُخْتَلِسِ، وَلَكِنْ يُسْجَنُ وَيُعَاقَبُ - وَهُوَ قَوْلُ النَّخَعِيِّ، وَأَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَصْحَابِهِمْ - وَبِهِ يَقُولُ إِسْحَاقُ بْنُ رَاهْوَيْهِ.

L41958 A group said: Upon him is amputation - as narrated by ʿAbdullāh ibn Rabīʿ from Ibn Mufarrij from Qāsim ibn Aṣbagh from Ibn Waḍḍāḥ from Sahnūn from Ibn Wahb from Qabbāth ibn Razīn, who heard ʿAlī ibn Rabāḥ al-Lakhmī say: The Sunnah dictates that the hand which steals covertly be amputated, while the hand that steals overtly is not amputated.

وَقَالَتْ طَائِفَةٌ: عَلَيْهِ الْقَطْعُ - كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ قَبَّاثِ بْنِ رَزِينٍ أَنَّهُ سَمِعَ عَلِيَّ بْنَ رَبَاحٍ اللَّخْمِيَّ يَقُولُ: السُّنَّةُ أَنْ تُقْطَعَ الْيَدُ الْمُسْتَخْفِيَةُ، وَلَا تُقْطَعُ الْيَدُ الْمُعْلِنَةُ.

L41959–41961 From Aṭā ibn Abī Rabāḥ, he said: The hand of the covert, settled thief is amputated, but the hand of the overt snatcher is not amputated. Through the chain of Abū Bakr ibn Abī Shaybah: ʿAbd al-Aʿlā narrated to us from Hishām that ʿAdī ibn Arṭāh was presented with a man who had snatched something in theft. Iyās ibn Muʿāwiyah said: “Is amputation required for him?” Abū Muḥammad—may Allah have mercy on him—said: When they differed as we mentioned, it became necessary to examine this matter. We

وَعَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ أَنَّهُ قَالَ: تُقْطَعُ يَدُ السَّارِقِ الْمُسْتَخْفِي الْمُسْتَقِرِّ - وَلَا تُقْطَعُ يَدُ الْمُخْتَلِسِ الْمُعْلِنِ. وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ ثنا عَبْدُ الْأَعْلَى عَنْ هِشَامٍ: أَنَّ عَدِيَّ بْنَ أَرْطَاةَ رُفِعَ إلَيْهِ رَجُلٌ اخْتَلَسَ خِلْسَةً، فَقَالَ إيَاسُ بْنُ مُعَاوِيَةَ: عَلَيْهِ الْقَطْعُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ، فَنَظَرْنَا

reviewed the opinion of those who only mandated amputation for theft from a secured place. We found them mentioning: ʿAbdullāh ibn Rabīʿ narrated to us, Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us, Quṭaybah ibn Saʿīd narrated to us, al-Layth ibn Saʿd narrated to us from Muḥammad ibn ʿAjlān from ʿAmr ibn Shuʿayb from his father from his grandfather from ʿAbdullāh ibn ʿAmr: "The Messenger of Allah—peace and blessings be upon him—was asked about hanging dates. He said: 'Whoever takes from them out of need without dishonest intent incurs no liability. But whoever carries away anything must pay a penalty of double its value.'" As for the punishment: Whoever steals something from the threshing floor after it has been stored there, and the stolen item reaches the value of a shield, amputation is mandated. For theft below that threshold, the offender must pay a fine equivalent to the stolen item's value and face punishment.[2]

فِي قَوْلِ مَنْ لَمْ يَرَ الْقَطْعَ إِلَّا فِي أَخْذٍ مِنْ حِرْزٍ، فَوَجَدْنَاهُمْ يَذْكُرُونَ: مَا ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ مُحَمَّدِ بْنِ عَجْلَانَ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ عَنِ التَّمْرِ الْمُعَلَّقِ؟ فَقَالَ: مَنْ أَصَابَ مِنْهُ مِنْ ذِي حَاجَةٍ غَيْرَ مُتَّخِذٍ خُبْنَةً فَلَا شَيْءَ عَلَيْهِ، وَمَنْ خَرَجَ بِشَيْءٍ مِنْهُ فَعَلَيْهِ غَرَامَةُ مِثْلَيْهِ وَالْعُقُوبَةُ - وَمَنْ سَرَقَ شَيْئًا مِنْهُ بَعْدَ أَنْ يُؤْوِيَهُ الْجَرِينُ فَبَلَغَ ثَمَنَ الْمِجَنِّ فَعَلَيْهِ الْقَطْعُ - وَمَنْ سَرَقَ دُونَ ذَلِكَ فَعَلَيْهِ غَرَامَةُ مِثْلِهِ وَالْعُقُوبَةُ» .

L41962 Abdullah ibn Rabee' narrated from Muhammad ibn Mu'awiyah from Ahmad ibn Shu'ayb from Qutaybah ibn Sa'eed from Abu 'Awanah from 'Ubaydullah ibn al-Akhras from 'Amr ibn Shu'ayb from his father from his grandfather, who said: "The Messenger of Allah (peace be upon him) was asked: 'For what amount is the hand to be cut?' He replied: 'The hand is not cut for hanging dates. However, when they are gathered in the drying area, the hand is cut if their value reaches that of a shield. The hand is not cut for livestock guarded in mountain pastures. However, when they are sheltered in the enclosure, the hand is cut if their value reaches that of a shield.'"

Abdullah ibn Rabee' narrated from Muhammad ibn Mu'awiyah from Ahmad ibn Shu'ayb from al-Harith ibn Miskin – recited to him while Ahmad listened – from Ibn Wahb from 'Amr ibn al-Harith from 'Amr ibn Shu'ayb from his father from 'Abdullah ibn 'Amr, who said: "A man from Muzaynah came to the Messenger of Allah (peace be upon him) and asked: 'O Messenger of Allah, what is your ruling concerning livestock guarded in mountain pastures?' He said: 'The thief must surrender the stolen animal and its equivalent, along with deterrent punishment. The hand is not cut for any livestock unless taken from the enclosure. If the stolen property reaches the value of

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ نا أَبُو عَوَانَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ الْأَخْنَسِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي كَمْ تُقْطَعُ الْيَدُ؟ فَقَالَ: لَا تُقْطَعُ الْيَدُ فِي تَمْرٍ مُعَلَّقٍ، فَإِذَا ضَمَّهُ الْجَرِينُ قُطِعَتْ فِي ثَمَنِ الْمِجَنِّ، وَلَا تُقْطَعُ فِي حَرِيسَةِ الْجَبَلِ، فَإِذَا آوَاهُ الْمُرَاحُ قُطِعَتْ فِي ثَمَنِ الْمِجَنِّ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ عَنِ الْحَارِثِ بْنِ مِسْكِينٍ قِرَاءَةً عَلَيْهِ وَأَحْمَدُ يَسْمَعُ عَنِ ابْنِ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ «إِنَّ رَجُلًا مِنْ مُزَيْنَةَ أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ كَيْفَ تَرَى فِي حَرِيسَةِ الْجَبَلِ؟ قَالَ: هِيَ وَمِثْلُهَا، وَالنَّكَالُ، وَلَيْسَ فِي شَيْءٍ مِنَ الْمَاشِيَةِ قَطْعٌ إِلَّا فِيمَا آوَاهُ الْمُرَاحُ، فَبَلَغَ ثَمَنَ الْمِجَنِّ فَفِيهِ قَطْعُ الْيَدِ، وَمَا لَمْ يَبْلُغْ ثَمَنَ الْمِجَنِّ فَفِيهِ غَرَامَةُ مِثْلَيْهِ، وَجَلَدَاتُ نَكَالٍ، قَالَ: يَا رَسُولَ اللَّهِ كَيْفَ تَرَى فِي التَّمْرِ الْمُعَلَّقِ؟ قَالَ: هُوَ وَمِثْلُهُ مَعَهُ،

[2] **Hadith references (L41959):** Jami at-Tirmidhi 1289.

a shield, the hand is cut. If it does not reach this value, a double fine is imposed along with deterrent lashes.'

The man asked: 'O Messenger of Allah, what is your ruling concerning hanging dates?' He replied: 'The thief must surrender the stolen dates and their equivalent, along with deterrent punishment. The hand is not cut for any hanging dates unless taken from the drying area. If what is stolen from the drying area reaches the value of a shield, the hand is cut. If it does not reach this value, a double fine is imposed along with deterrent lashes.'"[3]

وَالنَّكَالُ، وَلَيْسَ فِي شَيْءٍ مِنْ التَّمْرِ الْمُعَلَّقِ قَطْعٌ إِلَّا فِيمَا آوَاهُ الْجَرِينُ، فَمَا أُخِذَ مِنْ الْجَرِينِ فَبَلَغَ ثَمَنَ الْمِجَنِّ فَفِيهِ الْقَطْعُ، وَمَا لَمْ يَبْلُغْ ثَمَنَ الْمِجَنِّ فَفِيهِ غَرَامَةُ مِثْلَيْهِ، وَجَلَدَاتُ نَكَالٍ» .

L41963 Abdullah ibn Rabi' informed us: Muhammad ibn Mu'awiyah informed us: Ahmad ibn Shu'ayb informed us: Abdullah ibn Abd al-Samad ibn Ali informed us from Makhlad, from Sufyan, from Abu al-Zubayr, from Jabir, from the Messenger of Allah, peace and blessings of Allah be upon him, who said: "There is no amputation for a traitor or a snatcher."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَبْدُ اللَّهِ بْنُ عَبْدِ الصَّمَدِ بْنِ عَلِيٍّ عَنْ مَخْلَدٍ عَنْ سُفْيَانَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَيْسَ عَلَى خَائِنٍ وَلَا مُخْتَلِسٍ قَطْعٌ» .

L41964–41966 Abdullah ibn Rabee' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Muhammad ibn Hatim narrated to us: Suwayd ibn Nasr narrated to us: Abdullah ibn al-Mubarak narrated from Ibn Jurayj, who informed me: Abu al-Zubayr narrated from Jabir that "the Messenger of Allah (peace and blessings be upon him) exempted the plunderer, the snatcher, and the embezzler from amputation." Abu Muhammad (may Allah have mercy on him) said: They said, "The Prophet (peace and blessings be upon him) did not impose amputation on a snatcher nor..." As for a betrayer of trust, amputation is thereby waived for all those entrusted [with property]. Amputation does not apply to unattended livestock in mountain pastures, nor to dates left hanging until they and the livestock are gathered into the threshing floor, nor to the grazing area, which serves as their secure enclosure.

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ حَاتِمٍ نا سُوَيْدُ بْنُ نَصْرٍ أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ عَنْ جَابِرٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَرَأَ عَنْ الْمُنْتَهِبِ، وَالْمُخْتَلِسِ، وَالْخَائِنِ، الْقَطْعَ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَقَالُوا: لَمْ يَجْعَلْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْقَطْعَ عَلَى مُخْتَلِسٍ، وَلَا عَلَى خَائِنٍ - فَسَقَطَ بِذَلِكَ الْقَطْعُ عَنْ كُلِّ مَنْ اُؤْتُمِنَ، وَسَقَطَ الْقَطْعُ عَنْ حَرِيسَةِ الْجَبَلِ، وَالتَّمْرِ الْمُعَلَّقِ، حَتَّى يُؤْوِيَهُمَا الْجَرِينُ، وَالْمِرَاحُ، وَهُوَ حِرْزُهُمَا.

L41967 They said: Whatever is found outside a secure enclosure is merely a lost item whose taking and safeguarding has been permitted. They also said: It has been reported from Umar ibn al-Khattab, Ali ibn Abi Talib, and Zayd ibn Thabit that there is no amputation penalty for an open thief, and no dissenting opinion among the Companions is known regarding their view.

وَقَالُوا: مَا وُجِدَ فِي غَيْرِ حِرْزٍ فَإِنَّمَا هُوَ لُقَطَةٌ قَدْ أُبِيحَ أَخْذُهَا وَتَحْصِينُهَا، وَقَالُوا: قَدْ جَاءَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَزَيْدِ بْنِ ثَابِتٍ: أَنَّهُ لَا قَطْعَ عَلَى مُخْتَلِسٍ

[3] **Hadith references (L41962):** Sunan an-Nasai 4959.

- وَلَا يُعْرَفُ لَهُمْ مِنْ الصَّحَابَةِ مُخَالِفٌ، فَدَلَّ ذَلِكَ عَلَى اعْتِبَارِ الْحِرْزِ: فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَاهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ: أَمَّا الْخَبَرَانِ اللَّذَانِ ذَكَرْنَا فَلَا يَصِحُّ مِنْهُمَا وَلَا وَاحِدٌ.

This indicates the legal requirement of secure storage. We examined this matter and found they have no valid evidence for any part of it. As for the two reports we mentioned, neither of them is authentic—not even one.

L41968 أَمَّا حَدِيثُ حَرِيسَةِ الْجَبَلِ، وَالتَّمْرِ الْمُعَلَّقِ، فَإِنَّهُ لَا يَصِحُّ، لِأَنَّ أَحَدَ طَرِيقَيْهِ مِنْ سَعِيدِ بْنِ الْمُسَيِّبِ مُرْسَلٌ، وَالْأُخْرَى: هِيَ أَيْضًا أَسْقَطُ، مُرْسَلَةً - مِنْ طَرِيقِ ابْنِ أَبِي حُسَيْنٍ - وَلَا حُجَّةَ فِي مُرْسَلٍ - وَالْأُخْرَى: مِمَّا انْفَرَدَ بِهِ عَمْرُو بْنُ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ - وَهِيَ صَحِيفَةٌ لَا يُحْتَجُّ بِهَا - فَهَذَا وَجْهٌ يَسْقُطُ بِهِ. وَدَلِيلٌ آخَرُ - أَنَّهُ لَوْ صَحَّ لَكَانَ عَلَيْهِمْ لَا لَهُمْ؛ لِأَنَّهُمْ كُلَّهُمْ - يَعْنِي الْحَاضِرِينَ مِنْ الْمُخَالِفِينَ - مُخَالِفُونَ، لِمَا فِيهِ مِنْ ذَلِكَ أَنَّ فِيهِ: أَنَّ مَنْ خَرَجَ بِشَيْءٍ مِنْ التَّمْرِ الْمُعَلَّقِ فَفِيهِ غَرَامَةُ مِثْلَيْهِ - وَهُمْ لَا يَقُولُونَ بِهَذَا.

As for the ḥadīth concerning the guarding of the mountain and the suspended dates, it is not authentic because one of its two chains from Saʿīd ibn al-Musayyib is *mursal* (disconnected), and the other is also dropped, being *mursal* through the chain of Ibn Abī Ḥusayn. There is no valid proof in a *mursal* report. The other chain is that which ʿAmr ibn Shuʿayb uniquely narrated from his father, from his grandfather — and it is a document (*ṣaḥīfah*) not accepted as authoritative. Thus, this is a reason that invalidates it. Another proof is that even if it were authentic, it would count against them rather than support them, for all of them — meaning the opposing contemporaries — contradict its content, because it contains the stipulation that "whoever takes something from the suspended dates incurs a penalty of double its value" — a ruling they themselves do not uphold.

L41969 وَكَذَلِكَ إذَا آوَاهُ الْجَرِينُ فَلَمْ يَبْلُغْ ثَمَنَ الْمِجَنِّ فَفِيهِ أَيْضًا غَرَامَةُ مِثْلَيْهِ، وَهُمْ لَا يَقُولُونَ بِهَذَا أَيْضًا.

Similarly, if the grain is stored in the threshing floor and does not reach the value of a shield, a penalty of twice its value is incurred. Yet the scholars do not uphold this ruling either.

L41970–41972 وَفِيهِ أَيْضًا: أَنَّ فِي حَرِيسَةِ الْجَبَلِ غَرَامَةُ مِثْلِهَا، وَأَنَّ فِيهَا غَرَامَةُ مِثْلَيْهَا، وَأَنَّ فِيهَا - إنْ آوَاهُ الْمِرَاحُ فَلَمْ يَبْلُغْ ثَمَنَ الْمِجَنِّ - غَرَامَةُ مِثْلَيْهَا، فَهُمْ قَدْ خَالَفُوا هَذَا الْخَبَرَ الَّذِي احْتَجُّوا بِهِ فِي أَرْبَعَةِ مَوَاضِعَ مِنْ أَحْكَامِهِ، فَكَيْفَ يَسْتَجِيزُ ذُو وَرَعٍ يَدْرِي أَنَّ كَلَامَهُ مَحْسُوبٌ عَلَيْهِ، وَأَنَّهُ مُحَاسَبٌ بِهِ يَخَافُ لِقَاءَ اللَّهِ تَعَالَى، وَيَهَابُ عِقَابَهُ، أَنْ يَحْتَجَّ بِخَبَرٍ هُوَ يُصَحِّحُهُ، وَيُخَالِفُهُ فِي أَرْبَعَةِ أَحْكَامٍ مِنْ أَحْكَامِهِ، عَلَى مَنْ لَا يُصَحِّحُهُ أَصْلًا، فَلَا يَرَاهُ حُجَّةً، وَهَلْ فِي التَّعْجِيلِ بِالْإِثْمِ، وَالْفَضِيحَةِ الْعَاجِلَةِ أَكْثَرُ مِنْ هَذَا؟ فَإِنْ ادَّعَوْا فِي تَرْكِ هَذِهِ الْأَحْكَامِ الْأَرْبَعَةِ إجْمَاعًا؟ كَذَبُوا؛ لِأَنَّ عُمَرَ بْنَ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - قَدْ حَكَمَ بِهَا بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ مِنْهُمْ لَهُ مُخَالِفٌ وَلَا يُدْرَى

In it also: that in the guarded mountain pasture there is a fine equivalent to the animal's value, that in it there is a fine of twice its value, and that in it – if the pastures shelter it without reaching the price of a shield – there is a fine amounting to twice its value. Thus they have contradicted this report which they cited as evidence in four aspects of its rulings. How can a scrupulous person who knows his speech is recorded against him, who will be held accountable for it, who fears meeting Allah the Exalted and dreads His punishment, deem it permissible to cite a report he authenticates while contradicting it in four of its rulings against someone who does not authenticate it at all and thus rejects it as evidence? Is there any greater instance of precipitating sin and immediate disgrace than this? If they claim consensus in abandoning these four rulings, they lie – for Umar ibn al-Khattab (may Allah be pleased with him) had ruled by them in the presence of the Companions (may Allah be pleased with them), with none of them

known to have opposed him. The violator [remains unchallenged] with no one known to contest him, so the lowest assessed value of the unlawfully slaughtered she-camel—stolen and unlawfully slaughtered by Hatib's slaves—is owed to the adulterer by Hatib's slaves.

مِنْهُمْ عَلَيْهِ مُنْكِرٌ، فَأَضْعَفُ قِيمَةِ النَّاقَةِ الْمُنْتَحَرَةِ لِلْمُزَنِيِّ عَلَى رَقِيقِ حَاطِبٍ الَّتِي سَرَقُوهَا وَانْتَحَرُوهَا.

L41973 We have been narrated through various chains, one of which is transmitted to us by Aḥmad ibn Muḥammad ibn al-Jasūr, from Qāsim ibn Aṣbagh, from Muṭarrif ibn Qays, from Yaḥyā ibn Bukayr, from Mālik ibn Anas, from Hishām ibn ʿUrwah ibn al-Zubayr, from his father, from Yaḥyā ibn ʿAbd al-Raḥmān ibn Ḥāṭib, that slaves belonging to Ḥāṭib stole a she-camel owned by al-Muzanī—a man from Muzaynah—and slaughtered it. The matter was raised to ʿUmar ibn al-Khaṭṭāb, who instructed Kathīr ibn al-Ṣalt to amputate their hands. ʿUmar said: "I observe you are depriving them of sustenance. By Allah, I will impose upon you a fine so severe it will strain you!" He then asked al-Muzanī: "What was your she-camel's value?" The man replied: "Four hundred dirhams." ʿUmar decreed: "Then give him eight hundred dirhams." Abū Muḥammad—may Allah have mercy on him—remarked: "Is this not a precedent from ʿUmar as luminous as the sun? As for the ḥadīth of Saʿīd ibn al-Musayyab—though they deem such matters consensus (ijmāʿ) when it aligns with their desires—it has been related from ʿUthmān ibn ʿAffān—may Allah be pleased with him—and others similarly regarding property destruction. Just as we have been narrated via ʿAbd al-Razzāq's chain, from Maʿmar, from al-Zuhrī, from Abān ibn ʿUthmān, that his father ʿUthmān levied a fine for a she-camel belonging to a person in the state of iḥrām that a man had destroyed, requiring him to pay a third over its value. Al-Zuhrī stated: 'Whatever is taken from people's wealth or livestock during the sacred months, an additional third is imposed for intentional harm.' This is a report of the highest authenticity from ʿUthmān—may Allah be pleased with him—and no opposition to him from the Companions—may Allah be pleased with them—is known concerning it."

وَقَدْ رُوِّينَا مِنْ طُرُقٍ مِنْهَا مَا ناه أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُطَرِّفُ بْنُ قَيْسٍ نا يَحْيَى بْنُ بُكَيْرٍ نا مَالِكُ بْنُ أَنَسٍ عَنْ هِشَامِ بْنِ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ عَنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ بْنِ حَاطِبٍ أَنَّ رَقِيقًا لِحَاطِبٍ سَرَقُوا نَاقَةً لِلْمُزَنِيِّ - رَجُلٍ مِنْ مُزَيْنَةَ - فَانْتَحَرُوهَا، فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ الْخَطَّابِ فَأَمَرَ عُمَرُ لِكَثِيرِ بْنِ الصَّلْتِ أَنْ يَقْطَعَ أَيْدِيَهُمْ، قَالَ عُمَرُ: إنِّي أَرَاك تُجِيعُهُمْ، وَاَللَّهِ لَأُغَرِّمَنَّكَ غُرْمًا يَشُقُّ عَلَيْك - ثُمَّ قَالَ لِلْمُزَنِيِّ: كَمْ ثَمَنُ نَاقَتِكَ؟ قَالَ: أَرْبَعمِائَةِ دِرْهَمٍ، قَالَ عُمَرُ: فَأَعْطِهِ ثَمَانمِائَةِ دِرْهَمٍ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَهَذَا أَثَرٌ عَنْ عُمَرَ كَالشَّمْسِ؟ وَأَمَّا حَدِيثُ سَعِيدِ بْنِ الْمُسَيِّبِ - وَهُمْ يَعُدُّونَ مِثْلَ هَذَا إجْمَاعًا - إذَا وَافَقَ أَهْوَاءَهُمْ - وَقَدْ رُوِيَ عَنْ عُثْمَانَ بْنِ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُ - وَغَيْرِهِ نَحْوُ هَذَا فِي إتْلَافِ الْأَمْوَالِ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ أَبَانَ بْنِ عُثْمَانَ أَنَّ أَبَاهُ عُثْمَانَ أَغْرَمَ فِي نَاقَةِ مُحْرِمٍ أَهْلَكَهَا رَجُلٌ، فَأَغْرَمَهُ الثُّلُثَ زِيَادَةً عَلَى ثَمَنِهَا - قَالَ الزُّهْرِيُّ: مَا أُصِيبَ مِنْ أَمْوَالِ النَّاسِ وَمَوَاشِيهِمْ فِي الشَّهْرِ الْحَرَامِ، فَإِنَّهُ يُزَادُ الثُّلُثُ لِهَذَا فِي الْعَمْدِ - فَهَذَا أَثَرٌ فِي غَايَةِ الصِّحَّةِ عَنْ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L41974–41976 Al-Zuhri later held this opinion as well, yet they show no concern for claims of consensus in matters even lesser than this—audacity in lying. Then do they not care about opposing what they themselves acknowledge as consensus? Abu Muhammad—may Allah have mercy on him—said: We state—with Al-

وَقَالَ بِهِ الزُّهْرِيُّ بَعْدَ ذَلِكَ، وَهُمْ لَا يُبَالُونَ بِدَعْوَى الْإِجْمَاعِ فِي أَقَلَّ مِنْ هَذَا جُرْأَةً عَلَى الْكَذِبِ، ثُمَّ لَا يُبَالُونَ بِمُخَالَفَةِ مَا يُقِرُّونَ بِأَنَّهُ إجْمَاعٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نَقُولُ -

lah's guidance, the Exalted—that the report transmitted by Abu al-Zubayr from Jabir was narrated by none other than Abu al-Zubayr alone. Abu al-Zubayr was a *mudallis* (practitioner of *tadlis*) unless he explicitly stated "narrated to us" or "I heard," especially given his narrations from Jabir, for he himself admitted to *tadlis* in this context. As Yusuf ibn ʻAbdullah ibn ʻAbd al-Barr al-Namari narrated: ʻAbdullah ibn Muhammad ibn Yusuf al-Azdi narrated to us, Ishaq ibn Ahmad al-Saydalani narrated to us, Abu Jaʻfar al-ʻUqayli narrated to us, Zakariyya ibn Yahya al-Hulwani narrated to us. Narrated by Aḥmad ibn Saʿīd ibn Abī Maryam from his uncle, and Muḥammad ibn Ismāʿīl from al-Ḥasan ibn ʿAlī, and Saʿīd ibn Abī Maryam from al-Layth ibn Saʿd, who said: I came to Mecca and went to Abū al-Zubayr, who handed me two books. I left with them, then thought to myself: What if I return and ask him, "Did you hear all of this from Jābir?" So I went back to him and said, "Did you hear all of this from Jābir?" He replied, "Some of it I heard from him, and some was related to me." I said, "Indicate to me what you heard directly from him," so he identified it in the copy I had. ʿAlī ibn al-Madīnī said: Whatever al-Layth did not narrate from Abū al-Zubayr, or did not explicitly state "he narrated to us" or "I" in it, has an interrupted chain—for it is confirmed that Abū al-Zubayr did not hear this ḥadīth from Jābir. As for their argument citing what is transmitted from the Companions—may Allah be pleased with them—regarding the snatcher (mukhtalis), the narration from Zayd ibn Thābit is unsound, as it is interrupted through al-Zuhrī from him, for al-Zuhrī did not hear a single word from Zayd. As for the narrations from ʿUmar and ʿAmmār ibn Yāsir on this matter, they are interrupted, for they are transmitted through al-Shaʿbī from both—and al-Shaʿbī was not born until after the killing of ʿUmar ibn al-Khaṭṭāb—may Allah be pleased with him—and he had not reached the age of awareness when ʿAmmār ibn Yāsir died.

L41977 As for the narration from ʿAlī regarding this matter, it is transmitted through two chains of narrators: one of them from Simāk ibn Ḥarb—who accepts prompting.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ - إِنَّ الْخَبَرَ الَّذِي رَوَاهُ أَبُو الزُّبَيْرِ عَنْ جَابِرٍ لَمْ يَرْوِهِ أَحَدٌ مِنْ النَّاسِ عَنْ جَابِرٍ إِلَّا أَبُو الزُّبَيْرِ فَقَطْ، وَأَبُو الزُّبَيْرِ مُدَلِّسٌ مَا لَمْ يُقِلْ فِيهِ: نا، أَوْ أَنَا، لَا سِيَّمَا فِي جَابِرٍ، فَقَدْ أَقَرَّ عَلَى نَفْسِهِ بِالتَّدْلِيسِ فِيهِ: كَمَا نا يُوسُفُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَرِّ النَّمَرِيُّ قَالَ: نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ يُوسُفَ الْأَزْدِيُّ نا إِسْحَاقُ بْنُ أَحْمَدَ الصَّيْدَلَانِيُّ نا أَبُو جَعْفَرٍ الْعُقَيْلِيُّ نا زَكَرِيَّا بْنُ يَحْيَى الْحُلْوَانِيُّ نا أَحْمَدُ بْنُ سَعِيدِ بْنِ أَبِي مَرْيَمَ نا عَمِّي ونا مُحَمَّدُ بْنُ إِسْمَاعِيلَ نا الْحَسَنُ بْنُ عَلِيٍّ نا سَعِيدُ بْنُ أَبِي مَرْيَمَ نا اللَّيْثُ بْنُ سَعْدٍ قَالَ: قَدِمْتُ مَكَّةَ، فَجِئْتُ أَبَا الزُّبَيْرِ فَدَفَعَ إِلَيَّ كِتَابَيْنِ، فَانْقَلَبْتُ بِهِمَا، فَقُلْت فِي نَفْسِي: لَوْ عَاوَدْته فَسَأَلْته: أَسَمِعَ هَذَا كُلَّهُ مِنْ جَابِرٍ؟ فَرَجَعْت إِلَيْهِ، فَقُلْت لَهُ: هَذَا كُلُّهُ سَمِعْتَهُ مِنْ جَابِرٍ؟ فَقَالَ: مِنْهُ مَا سَمِعْته، وَمِنْهُ مَا حُدِّثْتُ عَنْهُ، فَقُلْت لَهُ: أَعْلِمْ لِي مَا سَمِعْتَ مِنْهُ؟ فَأَعْلَمَ لِي عَلَى هَذَا الَّذِي عِنْدِي؟ قَالَ عَلِيٌّ: فَمَا لَمْ يَرْوِهِ اللَّيْثُ عَنْ أَبِي الزُّبَيْرِ، أَوْ لَمْ يَقُلْ فِيهِ: نا، أَوْ أَنَا، فَهُوَ مُنْقَطِعٌ - فَقَدْ صَحَّ أَنَّ هَذَا الْحَدِيثَ لَمْ يَسْمَعْهُ أَبُو الزُّبَيْرِ مِنْ جَابِرٍ. وَأَمَّا احْتِجَاجُهُمْ بِمَا جَاءَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي الْمُخْتَلِسِ - فَإِنَّ الرِّوَايَةَ فِي ذَلِكَ عَنْ زَيْدِ بْنِ ثَابِتٍ لَا تَصِحُّ؛ لِأَنَّهَا عَنْ الزُّهْرِيِّ عَنْهُ مُنْقَطِعَةٌ، وَلَمْ يَسْمَعْ الزُّهْرِيُّ مِنْ زَيْدٍ كَلِمَةً: وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ، وَعَمَّارِ بْنِ يَاسِرٍ فِي ذَلِكَ، فَإِنَّهَا مُنْقَطِعَةٌ؛ لِأَنَّهَا عَنْ الشَّعْبِيِّ عَنْهُمَا - وَلَمْ يُولَدْ الشَّعْبِيُّ إِلَّا بَعْدَ قَتْلِ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - وَلَمْ يَكُنْ يَعْقِلْ إِذْ مَاتَ عَمَّارُ بْنُ يَاسِرٍ.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ فِي ذَلِكَ - فَهِيَ مِنْ طَرِيقَيْنِ -: إحْدَاهُمَا - عَنْ سِمَاكِ بْنِ حَرْبٍ وَهُوَ يَقْبَلُ التَّلْقِينَ

L41978 The other [narration] is transmitted via Bukayr ibn Abi al-Sumayṭ the blind. A similar report is narrated from Qatādah and ʻAffān, though his reliability remains unspecified. The ruling concerning the snatcher must fall into one of two scenarios: either he snatched openly without concealing himself from people - in which case there is no disagreement that he is not deemed a thief, and no cutting is applied to him.

وَالْأُخْرَى - مِنْ طَرِيقِ بُكَيْرِ بْنِ أَبِي السُّمَيْطِ الْمَكْفُوفِ - وَقَدْ رُوِيَ نَحْوُهُ عَنْ قَتَادَةَ، وَعَفَّانَ، وَلَا يُعْرَفُ حَالُهُ، إلَّا أَنَّ الْقَوْلَ فِي الْمُخْتَلِسِ لَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ: إمَّا أَنْ يَكُونَ اخْتَلَسَ جِهَارًا غَيْرَ مُسْتَخْفٍ مِنْ النَّاسِ - فَهَذَا لَا خِلَافَ فِيهِ أَنَّهُ لَيْسَ سَارِقًا، وَلَا قَطْعَ عَلَيْهِ.

L41979–41980 Or he may have done that while concealing himself from everyone present - there is no disagreement between us and our opponents present that he is a thief and that amputation [of the hand] is mandated for him.

أَوْ يَكُونُ فَعَلَ ذَلِكَ مُسْتَخْفِيًا عَنْ كُلِّ مَنْ حَضَرَ - فَهَذَا لَا خِلَافَ بَيْنَنَا وَبَيْنَ الْحَاضِرِينَ مِنْ خُصُومِنَا فِي أَنَّهُ سَارِقٌ، وَأَنَّ عَلَيْهِ الْقَطْعَ.

L41981 Therefore, everything they relied upon was invalidated, and their assertion concerning the maintenance of secure custody was stripped of any proof.

فَبَطَلَ كُلُّ مَا تَعَلَّقُوا بِهِ، وَعَرِيَ قَوْلُهُمْ فِي مُرَاعَاةِ الْحِرْزِ عَنْ أَنْ يَكُونَ لَهُ حُجَّةٌ أَصْلًا.

L41982 As for their statement that an item not secured is considered lost property, this is erroneous. For lost property specifically refers to what has fallen from its owner and becomes liable to loss or neglect—and similarly, stray animals. However, anything neither legally abandoned nor fallen cannot be classified as lost property or stray animals. There exist explicit texts regarding lost property and strays that prohibit transgression, leaving no grounds for theft in such cases. We are only addressing a thief who takes from secured property, not one who collects lost items or takes strays—for the collector of lost property is an embezzler. Thus, this invalid objection collapses.

وَأَمَّا قَوْلُهُمْ: إنَّ الشَّيْءَ إذَا لَمْ يَكُنْ مُحْرَزًا فَهُوَ لُقَطَةٌ فَخَطَأٌ؛ لِأَنَّ اللُّقَطَةَ إنَّمَا هِيَ مَا سَقَطَ عَنْ صَاحِبِهِ وَصَارَ بِدَارِ مَضْيَعَةٍ - وَكَذَلِكَ الضَّالَّةُ - وَأَمَّا مَا كَانَ غَيْرَ مُهْمَلٍ وَلَا سَاقِطٍ، فَقَدْ بَطَلَ عَنْ أَنْ يَكُونَ لُقَطَةً، أَوْ ضَالَّةً، وَقَدْ جَاءَ فِي اللُّقَطَةِ وَالضَّالَّةِ نُصُوصٌ لَا يَحِلُّ تَعَدِّيهَا، فَلَا مَدْخَلَ لِلسَّارِقِ فِيهَا، فَنَحْنُ إنَّمَا نُكَلِّمُهُمْ فِي سَارِقٍ مِنْ حِرْزٍ، لَا فِي مُلْتَقِطٍ، وَلَا فِي آخِذِ ضَالَّةٍ - فَإِنَّ الْمُلْتَقِطَ مُخْتَلِسٌ فَسَقَطَ هَذَا الِاعْتِرَاضُ الْفَاسِدُ. قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَجَبَ أَنْ نَنْظُرَ فِي الْقَوْلِ الثَّانِي فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالا مِنَ اللَّهِ} [المائدة: ٣٨] فَوَجَبَ بِنَصِّ الْقُرْآنِ أَنَّ كُلَّ مَنْ سَرَقَ فَالْقَطْعُ عَلَيْهِ، وَأَنَّ مَنْ اكْتَسَبَ سَرِقَةً فَقَدْ اسْتَحَقَّ بِنَصِّ كَلَامِ اللَّهِ تَعَالَى جَزَاءً لِكَسْبِهِ ذَلِكَ قَطْعَ يَدِهِ نَكَالًا.

L41983 By empirical necessity and linguistic understanding, anyone who knows the language *knows* that whoever steals—whether from a protected storage or

وَبِالضَّرُورَةِ الْحِسِّيَّةِ، وَبِاللُّغَةِ يَدْرِي كُلُّ أَحَدٍ يَدْرِي اللُّغَةَ أَنَّ مَنْ سَرَقَ - مِنْ حِرْزٍ أَوْ مِنْ غَيْرِ حِرْزٍ - فَإِنَّهُ " سَارِقٌ " وَأَنَّهُ قَدْ اكْتَسَبَ سَرِقَةً، لَا خِلَافَ فِي ذَلِكَ، فَإِذْ هُوَ

[4] **Qur'an references (L41982):** Qur'an 5:38 (Al-Ma'idah).

otherwise—is indeed a "thief" and has committed theft, with no disagreement on this. Since he is a thief who has committed theft, cutting off his hand is obligatory by the explicit text of the Quran. It is not permissible to restrict the Quran based on a false presumption or a baseless claim.

سَارِقٌ مُكْتَسِبٌ سَرِقَةً، فَقَطْعُ يَدِهِ وَاجِبٌ، بِنَصِّ الْقُرْآنِ، وَلَا يَحِلُّ أَنْ يُخَصَّ الْقُرْآنُ بِالظَّنِّ الْكَاذِبِ، وَلَا بِالدَّعْوَى الْعَارِيَةِ مِنْ الْبُرْهَانِ.

L41984 Indeed, whoever claims that Allah the Exalted only intended in this verse one who stole from a safeguarded place is thereby falsely ascribing assertions to Allah. For whoever informs about Allah what He has not revealed about Himself, nor has His Prophet (may Allah bless him and grant him peace) conveyed, has certainly lied against Allah, and uttered what he does not know, and asserted claims without knowledge—and this is an extremely grave offense.

فَإِنَّ مَنْ قَالَ: إنَّ اللَّهَ تَعَالَى إنَّمَا أَرَادَ فِي هَذِهِ الْآيَةِ مَنْ سَرَقَ مِنْ حِرْزٍ، فَإِنَّهُ مُخْبِرٌ عَنْ اللَّهِ تَعَالَى، وَالْمُخْبِرُ عَنْ اللَّهِ تَعَالَى بِمَا لَمْ يُخْبِرْ بِهِ عَنْ نَفْسِهِ، وَلَا أَخْبَرَ بِهِ عَنْهُ نَبِيُّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ قَالَ عَلَى اللَّهِ تَعَالَى الْكَذِبَ، وَقَالَ مَا لَا يَعْلَمُ، وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ - وَهَذَا عَظِيمٌ جِدًّا.

L41985–41987 We have cited from ʻĀ'ishah, Ibn al-Zubayr, Saʻīd ibn al-Musayyib, ʻAbd Allāh ibn ʻUbayd Allāh, al-Ḥasan, Ibrāhīm al-Nakhaʻī, and ʻUbayd Allāh ibn Abī Bakrah: Is amputation prescribed for someone who steals, even if he did not take it out from the secure place? Abū Muḥammad—may Allāh have mercy on him—said: "This is the text of the Qur'ān. As for the traditions..." It has been narrated to us through the chain of al-Bukhārī: Abū al-Walīd, al-Ṭayālisī, and al-Layth—he is Ibn Saʿd—narrated from Ibn Shihāb from ʿUrwah from ʿĀ'ishah that the Quraysh were troubled by the Makhzūmī woman who stole. He mentioned the ḥadīth, which states: The Messenger of Allah (peace and blessings of Allah be upon him) stood to deliver a sermon and said, "O people, those before you were led astray only because when a nobleman among them stole, they would spare him, but when a weak person stole, they would enforce the ḥadd upon him. By Allah, if Fāṭimah bint Muḥammad were to steal, Muḥammad would cut off her hand!"

وَقَدْ أَوْرَدْنَا عَنْ عَائِشَةَ، وَابْنِ الزُّبَيْرِ، وَسَعِيدِ بْنِ الْمُسَيَّبِ، وَعَبْدِ اللَّهِ بْنِ عُبَيْدِ اللَّهِ، وَالْحَسَنِ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَعُبَيْدِ اللَّهِ بْنِ أَبِي بَكْرَةَ الْقَطْعُ عَلَى مَنْ سَرَقَ، وَإِنْ لَمْ يَخْرُجْ بِهِ مِنْ الْحِرْزِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا نَصُّ الْقُرْآنِ، وَأَمَّا مِنْ السُّنَنِ فَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو الْوَلِيدِ - هُوَ الطَّيَالِسِيُّ - وَاللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ «أَنَّ قُرَيْشًا أَهَمَّتْهُمْ الْمَرْأَةُ الْمَخْزُومِيَّةُ الَّتِي سَرَقَتْ - فَذَكَرَ الْحَدِيثَ - وَفِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَامَ فَخَطَبَ فَقَالَ: يَا أَيُّهَا النَّاسُ إنَّمَا ضَلَّ مَنْ كَانَ قَبْلَكُمْ أَنَّهُمْ كَانُوا إذَا سَرَقَ الشَّرِيفُ تَرَكُوهُ وَإِذَا سَرَقَ الضَّعِيفُ فِيهِمْ أَقَامُوا عَلَيْهِ الْحَدَّ، وَايْمُ اللَّهِ لَوْ أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ لَقَطَعَ مُحَمَّدٌ يَدَهَا»

L41988 Through Al-Bukhari's chain: Musa ibn Isma'il narrated to us: Abd al-Wahid al-A'mash narrated to us, saying: I heard Abu Salih say: I heard Abu Hurayrah say: The Messenger of Allah (peace and blessings be upon him) said, "Allah curses the thief who steals an egg, so his hand must be cut off, and steals a rope, so his hand must be cut off." Abu Muhammad (may Allah have mercy on him) said: The Messenger of Allah (peace and blessings be upon him)

مِنْ طَرِيقِ الْبُخَارِيِّ نا مُوسَى بْنُ إسْمَاعِيلَ نا عَبْدُ الْوَاحِدِ الْأَعْمَشُ قَالَ: سَمِعْت أَبَا صَالِحٍ سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَعَنَ اللَّهُ السَّارِقَ يَسْرِقُ الْبَيْضَةَ فَتُقْطَعُ يَدُهُ، وَيَسْرِقُ الْحَبْلَ فَتُقْطَعُ يَدُهُ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -:

فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَطْعِ السَّارِقِ جُمْلَةً وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - حِرْزًا مِنْ غَيْرِ حِرْزٍ {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] ، {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

وَقَالَ تَعَالَى {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] .

وَقَالَ تَعَالَى {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] .

وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى أَنَّ اللَّهَ عَزَّ وَجَلَّ لَوْ أَرَادَ أَنْ لَا يَقْطَعَ السَّارِقَ حَتَّى يَسْرِقَ مِنْ حِرْزٍ وَيُخْرِجَهُ مِنْ الدَّارِ لَمَا أَغْفَلَ ذَلِكَ، وَلَا أَهْمَلَهُ، وَلَا أَعْنَتَنَا بِأَنْ يُكَلِّفَنَا عِلْمَ شَرِيعَةٍ لَمْ يُطْلِعْنَا عَلَيْهِ، وَلَبَيَّنَهُ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إمَّا فِي الْوَحْيِ، وَإِمَّا فِي النَّقْلِ الْمَنْقُولِ.

فَإِذْ لَمْ يَفْعَلْ اللَّهُ تَعَالَى ذَلِكَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَنَحْنُ نَشْهَدُ، وَنَبُتُّ، وَنَقْطَعُ - بِيَقِينٍ لَا يُمَازِجُهُ شَكٌّ - أَنَّ اللَّهَ تَعَالَى لَمْ يُرِدْ قَطُّ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اشْتِرَاطَ الْحِرْزِ فِي السَّرِقَةِ.

إذْ لَا شَكَّ فِي ذَلِكَ فَاشْتِرَاطُ الْحِرْزِ فِيهَا بَاطِلٌ بِيَقِينٍ لَا شَكَّ فِيهِ، وَشَرْعٌ لِمَا لَمْ يَأْذَنْ اللَّهُ تَعَالَى بِهِ، وَكُلُّ مَا ذَكَرْنَا فَإِنَّمَا يَلْزَمُ مَنْ قَامَتْ عَلَيْهِ الْحُجَّةُ وَوَقَفَ عَلَى مَا ذَكَرْنَا، لِأَنَّ مَنْ سَلَفَ مِمَّنْ اجْتَهَدَ فَأَخْطَأَ مَأْجُورٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

ruled categorically to cut off the thief's hand and did not specify—peace be upon him—a distinction between secured property and unsecured property. "Nor does he speak from [his own] inclination. It is not but a revelation revealed" (53:3-4). "And your Lord is not forgetful" (19:64).[5][6]

L41989 And He, the Exalted, said {Today I have perfected for you your religion} [The Table Spread: 3].[7]

L41990 And He, the Most High, said: "So that you may make clear to mankind what has been revealed to them" [An-Nahl: 44].[8]

L41991 We bear witness by the testimony of Allah—Exalted and Majestic—that if Allah had willed not to amputate the thief's hand until he steals from a secured premises and removes it from the property, He would not have neglected this, nor disregarded it, nor burdened us with knowing a Sharia ruling He did not disclose to us. Rather, He would have clarified it through the tongue of His Messenger—may Allah's blessings and peace be upon him—whether in revelation or in transmitted reports.

L41992 Since neither Allah, the Exalted, nor His Messenger—peace and blessings be upon him—did so, we bear witness, resolve definitively, and assert with certainty unmixed by doubt that Allah, the Exalted, never intended—nor did His Messenger, peace and blessings be upon him, intend—the stipulation of secure custody as a condition in theft.

L41993–41995 Since there is no doubt in that, stipulating custody in it is undeniably invalid with undoubted certainty, and constitutes legislating for that which Allah the Exalted has not permitted. All that we have mentioned only binds those upon whom the proof has been established and who have ascertained what... We

[5] **Hadith references (L41988):** Sahih al-Bukhari 6783; Sahih al-Bukhari 6799; Sunan Ibn Majah 2583.

[6] **Qur'an references (L41988):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 19:64 (Maryam).

[7] **Qur'an references (L41989):** Qur'an 5:3 (Al-Ma'idah).

[8] **Qur'an references (L41990):** Qur'an 16:44 (An-Nahl).

have mentioned because those predecessors who engaged in *ijtihad* and erred are rewarded—and success is from Allah, the Exalted.

L41996 As for consensus, there is no disagreement among anyone in the entire Ummah that theft is the act of taking something one has no right to through concealment, that the thief is the one who takes what is not his in a concealed manner, and that safekeeping is irrelevant to the definition necessitated by the term 'theft.' Whoever imposes the requirement of safekeeping in this matter has opposed the consensus regarding the linguistic meaning of this term and has asserted in Islamic law a claim with no basis for its existence and no evidence of its validity.

L41997 As for the statements of the Companions: We have clarified that none of them ever stipulated custody as a principle. Rather, some of them mentioned "until he exits the residence," and some said "from the house." This does not constitute evidence for what they claimed regarding custody—despite the difference of opinion reported from ʿĀʾishah and Ibn al-Zubayr on that matter. Thus, it becomes evident that our opinion is one brought forth by the Qurʾān and the established Sunnahs of the Messenger of Allah—peace and blessings be upon him—and success is from Allah, the Most High.

L41998 ## Issues from the Chapter on Theft

L41999 Issue 2268: Concerning one who steals from the public treasury or from war spoils. Abū Muḥammad—may Allāh have mercy on him—said: Muḥammad ibn Saʿīd ibn Nabāt narrated to us; ʿAbdullāh ibn Naṣr narrated to us; Qāsim ibn Aṣbagh narrated to us; Ibn Waḍḍāḥ narrated to us; Mūsā ibn Muʿāwiyah narrated to us; Wakīʿ narrated to us; al-Masʿūdī narrated from al-Qāsim ibn ʿAbd al-Raḥmān, who said: A man stole from the public treasury, so Saʿd ibn Abī Waqqāṣ wrote to ʿUmar ibn al-Khaṭṭāb? ʿUmar wrote back to him: There is no amputation for him, because he has a share in it.

وَأَمَّا الْإِجْمَاعُ فَإِنَّهُ لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ كُلِّهَا فِي أَنَّ السَّرِقَةَ هِيَ الِاخْتِفَاءُ بِأَخْذِ الشَّيْءِ لَيْسَ لَهُ، وَأَنَّ السَّارِقَ هُوَ الْمُخْتَفِي بِأَخْذِ مَا لَيْسَ لَهُ، وَأَنَّهُ لَا مَدْخَلَ لِلْحِرْزِ فِيمَا اقْتَضَاهُ الِاسْمُ، فَمَنْ أَقْحَمَ فِي ذَلِكَ اشْتِرَاطَ الْحِرْزِ فَقَدْ خَالَفَ الْإِجْمَاعَ عَلَى مَعْنَى هَذِهِ اللَّفْظَةِ فِي اللُّغَةِ، وَادَّعَى فِي الشَّرْعِ مَا لَا سَبِيلَ لَهُ إلَى وُجُودِهِ، وَلَا دَلِيلَ عَلَى صِحَّتِهِ.

وَأَمَّا قَوْلُ الصَّحَابَةِ: فَقَدْ أَوْضَحْنَا أَنَّهُ لَمْ يَأْتِ قَطُّ عَنْ أَحَدٍ مِنْهُمْ اشْتِرَاطُ الْحِرْزِ أَصْلًا وَإِنَّمَا جَاءَ عَنْ بَعْضِهِمْ " حَتَّى يَخْرُجَ مِنْ الدَّارِ " وَقَالَ بَعْضُهُمْ " مِنْ الْبَيْتِ " وَلَيْسَ هَذَا دَلِيلًا عَلَى مَا ادَّعَوْهُ مِنْ الْحِرْزِ - مَعَ الْخِلَافِ الَّذِي ذَكَرْنَا عَنْ عَائِشَةَ، وَابْنِ الزُّبَيْرِ فِي ذَلِكَ - فَلَاحَ أَنَّ قَوْلَنَا قَوْلٌ قَدْ جَاءَ بِهِ الْقُرْآنُ، وَالسُّنَنُ الثَّابِتَةُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسَائِلُ مِنْ بَابِ السَّرِقَةِ]

٢٢٦٨ - مَسْأَلَةٌ: فِيمَنْ سَرَقَ مِنْ بَيْتِ الْمَالِ، أَوْ مِنْ الْغَنِيمَةِ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا الْمَسْعُودِيُّ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: إنَّ رَجُلًا سَرَقَ مِنْ بَيْتِ الْمَالِ، فَكَتَبَ فِيهِ سَعْدُ بْنُ أَبِي وَقَّاصٍ إلَى عُمَرَ بْنِ الْخَطَّابِ؟ فَكَتَبَ عُمَرُ إلَيْهِ: أَنْ لَا قَطْعَ عَلَيْهِ؛ لِأَنَّ لَهُ فِيهِ نَصِيبًا.

وَبِهِ - إِلَى وَكِيعٍ نا سُفْيَانُ - هُوَ الثَّوْرِيُّ - عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ عُبَيْدِ بْنِ الْأَبْرَصِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أُتِيَ بِرَجُلٍ قَدْ سَرَقَ مِنْ الْخُمْسِ مِغْفَرًا فَلَمْ يَقْطَعْهُ عَلِيٌّ، وَقَالَ: إنْ لَهُ فِيهِ نَصِيبًا.

L42000 Through him [the preceding narrator], the chain ascends to Wakiʿ: Sufyān—that is, al-Thawrī—narrated to us from Simāk ibn Ḥarb, from Ubayd ibn al-Abraṣ, that Ali ibn Abi Talib was brought a man who had stolen a helmet from the *khums*. Ali did not amputate his hand, saying, “Indeed, he has a share in it.”

وَبِهِ - يَقُولُ إبْرَاهِيمُ النَّخَعِيُّ، وَالْحَكَمُ بْنُ عُتَيْبَةَ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمَا - وَقَالَ مَالِكٌ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ: عَلَيْهِ الْقَطْعُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: إنَّمَا احْتَجَّ مَنْ لَمْ يَرَ الْقَطْعَ فِي ذَلِكَ بِحُجَّتَيْنِ:

L42001 According to this view - which is held by Ibrāhīm al-Nakhaʿī, al-Ḥakam ibn ʿUtaybah, Abū Ḥanīfah, al-Shāfiʿī, and their followers - while Mālik, Abū Thawr, Abū Sulaymān, and their adherents said: “Is amputation obligatory upon him?” Abū Muḥammad - may Allah have mercy on him - said: Those who did not hold the view of amputation in this matter relied on two arguments.

إحْدَاهُمَا: أَنَّ لَهُ فِيهِ نَصِيبًا مُشَاعًا.

L42002 One of them is that he holds a common undivided share in it.

وَالثَّانِيَةُ: أَنَّهُ قَوْلُ صَاحِبَيْنِ لَا يُعْرَفُ لَهُمَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L42003–42004 The second is that it is the opinion of two Companions, with no dissenter known against their view among the Companions—may Allah be pleased with them.

أَمَّا الِاحْتِجَاجُ بِأَنَّهُ قَوْلُ طَائِفَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، فَإِنَّ هَذَا يَلْزَمُ الْمَالِكِيِّينَ الْمُحْتَجِّينَ بِمِثْلِ هَذَا إذَا وَافَقَ أَهْوَاءَهُمْ التَّارِكِينَ لَهُ إذَا اشْتَهَوْا؟ وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L42005 As for the argument that this is the position of a group of the Companions (may Allah be pleased with them) with no known dissenter among them—this would obligate the Malikis who cite such evidence when it aligns with their desires, while those who abandon it do so when they desire. As for us, there is no valid proof for us in the opinion of anyone besides the Messenger of Allah (peace be upon him).

وَأَمَّا احْتِجَاجُهُمْ بِأَنَّ لَهُ فِي ذَلِكَ نَصِيبًا - فَهَذَا لَيْسَ حُجَّةً فِي إسْقَاطِ حَدِّ اللَّهِ تَعَالَى، إذْ لَيْسَتْ هَذِهِ الْقَضِيَّةُ مِمَّا جَاءَ بِهِ الْقُرْآنُ، وَلَا مِمَّا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا مِمَّا أَجْمَعَتْ عَلَيْهِ الْأُمَّةُ: فَلَا حُجَّةَ لَهُمْ فِي غَيْرِ هَذِهِ الْعُمَدِ الثَّلَاثِ.

L42006 As for their argument that he has a share in this matter—this constitutes no valid proof to nullify the Ḥadd punishment ordained by Allah Almighty, for this case forms no part of what the Qur’an has revealed, nor what has been authentically transmitted from the Messenger of Allah (peace be upon him), nor what the Ummah has unanimously agreed upon. Thus, they hold no valid evidence outside these three foundational sources.

وَكَوْنُهُ لَهُ فِي بَيْتِ الْمَالِ وَفِي الْمَغْنَمِ نَصِيبٌ لَا يُبِيحُ لَهُ أَخْذَ نَصِيبِ غَيْرِهِ، لِأَنَّهُ حَرَامٌ عَلَيْهِ بِإِجْمَاعٍ لَا خِلَافَ فِيهِ.

L42007 His having a share in the public treasury and in the spoils of war does not permit him to take another’s share, for this is forbidden by consensus with no disagreement about it.

L42008 And Allah, the Most High, says: “And do not devour one another’s wealth wrongfully” [Al-Baqarah: 188].[1]

وَبِقَوْلِ اللَّهِ تَعَالَى {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

L42009 Since the share of his partner is forbidden to him, there is no difference between stealing from him and stealing from a stranger with whom he shares no portion—while they claim *qiyas*. They say: “When the forbidden has been mixed with the permissible, all of it becomes forbidden—like wine mixed with water, pork ground with mutton, and many similar cases.” They also uphold the *hadd* punishment for one who drinks wine blended with lawful water. What distinguishes this from someone who steals something partly permissible for him and partly forbidden for others? Abū Muḥammad—may Allah have mercy on him—said: Since we found no fundamental evidence—whether from the Quran, the Sunnah, or consensus—to prohibit amputating the hand of one who steals from war spoils, the fifth share, or the public treasury, we had to consider the opposing view. We found Allah the Exalted stating: “As for the male thief and the female thief, cut off their hands as a recompense for what they earned—a deterrent punishment from Allah” (5:38).[2]

فَإِذْ نَصِيبُ شَرِيكِهِ عَلَيْهِ حَرَامٌ فَلَا فَرْقَ بَيْنَ سِرْقَتِهِ إيَّاهُ وَبَيْنَ سَرِقَتِهِ مِنْ أَجْنَبِيٍّ لَا نَصِيبَ لَهُ مَعَهُ، وَهُمْ يَدَّعُونَ الْقِيَاسَ. وَهُمْ يَقُولُونَ: إنَّ الْحَرَامَ إذَا امْتَزَجَ مَعَ الْحَلَالِ فَإِنَّهُ كُلُّهُ حَرَامٌ، كَالْخَمْرِ مَعَ الْمَاءِ، وَلَحْمِ الْخِنْزِيرِ يُدَقُّ مَعَ لَحْمِ الْكَبْشِ، وَغَيْرِ هَذَا كَثِيرٌ؟ وَيَرَوْنَ الْحَدَّ عَلَى مَنْ شَرِبَ خَمْرًا مَمْزُوجَةً بِمَاءٍ حَلَالٍ، فَمَا الْفَرْقُ بَيْنَهُ وَبَيْنَ مَنْ سَرَقَ شَيْئًا بَعْضُهُ لَهُ حَلَالٌ وَبَعْضُهُ حَرَامٌ لِغَيْرِهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا لَمْ نَجِدْ فِي الْمَنْعِ مِنْ قَطْعِ مَنْ سَرَقَ مِنْ الْمَغْنَمِ، أَوْ مِنْ الْخُمُسِ، أَوْ مِنْ بَيْتِ الْمَالِ، حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إجْمَاعٍ، وَجَبَ أَنْ نَنْظُرَ فِي الْقَوْلِ الْآخَرِ: فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالا مِنَ اللَّهِ} [المائدة: ٣٨] .

L42010–42012 We found that the Messenger of Allah (peace be upon him) established amputation as an obligatory punishment for theft in general terms. Neither Allah the Exalted nor His Messenger (peace be upon him) made any exception for a thief stealing from the public treasury or other sources, nor for a thief stealing from war spoils. nor a thief who takes from wealth of others in which he has a share—“And your Lord is not forgetful” (Quran 19:64)—and if Allah the Exalted had intended that, He would not have overlooked it nor neglected it.[3]

وَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ أَوْجَبَ الْقَطْعَ عَلَى السَّارِقِ جُمْلَةً، وَلَمْ يَخُصَّ اللَّهُ تَعَالَى، وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - سَارِقًا مِنْ بَيْتِ الْمَالِ مِنْ غَيْرِهِ، وَلَا سَارِقًا مِنْ الْمَغْنَمِ، وَلَا سَارِقًا مِنْ مَالٍ لَهُ فِيهِ نَصِيبٌ مِنْ غَيْرِهِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَلَوْ أَنَّ اللَّهَ تَعَالَى أَرَادَ ذَلِكَ لَمَا أَغْفَلَهُ وَلَا أَهْمَلَهُ

L42013 The procedure in this matter is to consider one who steals from something in which he has a share from the public treasury, the fifth (khums), spoils of war, or other sources. If his share is a defined, known quantity—such as spoils of war, communal property acquired through sale or inheritance, or similar means, or if he belongs to those entitled to the fifth—then the

وَالْعَمَلُ فِي ذَلِكَ أَنْ نَنْظُرَ فِيمَنْ سَرَقَ مِنْ شَيْءٍ لَهُ فِيهِ نَصِيبٌ مِنْ بَيْتِ الْمَالِ أَوْ الْخُمُسِ، أَوْ الْمَغْنَمِ، أَوْ غَيْرِ ذَلِكَ، فَإِنْ كَانَ نَصِيبُهُ مَحْدُودًا مَعْرُوفَ الْمِقْدَارِ كَالْغَنِيمَةِ، أَوْ مَا اشْتَرَكَ فِيهِ بِبَيْعٍ، أَوْ مِيرَاثٍ، أَوْ غَيْرِ ذَلِكَ، أَوْ كَانَ مِنْ أَهْلِ الْخُمُسِ، نُظِرَ: فَإِنْ أَخَذَ زَائِدًا عَلَى نَصِيبِهِ مِمَّا يَجِبُ فِي مِثْلِهِ الْقَطْعُ قُطِعَ، وَلَا بُدَّ، فَإِنْ سَرَقَ أَقَلَّ فَلَا قَطْعَ عَلَيْهِ،

[1] **Qur’an references (L42008):** Qur’an 2:188 (Al-Baqarah).
[2] **Qur’an references (L42009):** Qur’an 5:38 (Al-Ma’idah).
[3] **Qur’an references (L42010):** Qur’an 19:64 (Maryam).

following applies: If he took an excess beyond his rightful share from that which, in similar cases, necessitates amputation, amputation must be carried out without fail. If he stole less than his share, no amputation is imposed on him unless his right to that share was withheld, or he needed it and could not obtain his right except through his means, and he could not obtain his rightful portion separately. In such a case, amputation is not carried out if this is verified, and he is only required to return the excess beyond his right. This is because he was compelled to take it if he could not obtain the exact measure of his right. Allah, the Most High, says: "He has already detailed to you what He has forbidden you, except when you are compelled to necessity" (6:119). Success is from Allah, the Most High.[4]

إِلَّا أَنْ يَكُونَ مُنعَ حَقُّهُ فِي ذَلِكَ أَوْ احْتَاجَ إِلَيْهِ فَلَمْ يَصِلْ إِلَى أَخْذِ حَقِّهِ إِلَّا بِمَا فَعَلَ وَلَا قَدَرَ عَلَى أَخْذِ حَقِّهِ خَالِصًا فَلَا يُقْطَعُ إِذَا عُرِفَ ذَلِكَ، وَإِنَّمَا عَلَيْهِ أَنْ يَرُدَّ الزَّائِدَ عَلَى حَقِّهِ فَقَطْ؛ لِأَنَّهُ مُضْطَرٌّ إِلَى أَخْذِ مَا أُخِذَ إِذَا لَمْ يَقْدِرْ عَلَى تَخْلِيصِ مِقْدَارِ حَقِّهِ، وَاَللَّهُ تَعَالَى يَقُولُ {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

An issue concerning one who stole from the bathhouse.

[مَسْأَلَة فِيمَنْ سَرَقَ مِنْ الْحَمَّامِ]

Issue 2269: Concerning one who stole from the bathhouse. Narrated by Muḥammad ibn Saʿīd ibn Nabāt from ʿAbd Allāh ibn Naṣr from Qāsim ibn Aṣbagh from Ibn Waḍḍāḥ from Mūsā ibn Muʿāwiyah from Wakīʿ from Saʿīd ibn ʿAbd al-ʿAzīz al-Tanūkhī from Bilāl ibn Saʿd: A man stole a burnus from the bathhouse, and the matter was referred to Abū al-Dardāʾ. He did not deem amputation applicable to him.

٢٢٦٩ - مَسْأَلَةٌ: فِيمَنْ سَرَقَ مِنْ الْحَمَّامِ؟ نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سَعِيدُ بْنُ عَبْدِ الْعَزِيزِ التَّنُوخِيُّ عَنْ بِلَالِ بْنِ سَعْدٍ أَنَّ رَجُلًا سَرَقَ بُرْنُسًا مِنْ الْحَمَّامِ فَرُفِعَ إلَى أَبِي الدَّرْدَاءِ؟ فَلَمْ يَرَ عَلَيْهِ قَطْعًا.

And by him – says Abu Hanifah and his companions.

وَبِهِ - يَقُولُ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ

Malik, Ahmad, Ishaq, Abu Thawr, Abu Sulayman, and their companions said: "Is amputation obligatory if a guardian was present there?" Abu Muhammad—may Allah have mercy on him—said: "This is among the matters where the Hanafis and Malikis contradicted themselves, for they magnify the disagreement of a Companion—when no opposing view from other Companions is known—if it aligns with their opinions. Yet here they oppose the statement of Abu al-Darda', though no opposition to him from the Companions is known?" Abu Muhammad—may Allah have mercy on him—said: "As for us, we do not consider any statement as authoritative except that of

وَقَالَ مَالِكٌ، وَأَحْمَدُ، وَإِسْحَاقُ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ: عَلَيْهِ الْقَطْعُ إذَا كَانَ هُنَالِكَ حَافِظٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا مِمَّا تَنَاقَضَ فِيهِ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ؛ لِأَنَّهُمْ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ إذَا وَافَقَ آرَاءَهُمْ، وَقَدْ خَالَفُوا هَاهُنَا قَوْلَ أَبِي الدَّرْدَاءِ، وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ قَالَ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا

[4] **Qur'an references (L42013):** Qur'an 6:119 (Al-An'am).

the Messenger of Allah—peace and blessings of Allah be upon him—for the Exalted has said: *‘As for the thief, male or female, cut off their hands as a recompense for what they earned, an exemplary punishment from Allah’* [5:38]. This is a thief, so amputation is obligatory by the Quran’s explicit text. Had Allah the Exalted intended to specify that, He would not have neglected it.”[5]

A jurisprudential question concerning one who stole from a mosque.

A group said: There is no cutting off the hand for one who steals from a mosque.

A group said: If there was a custodian present for that item, or if the doors were locked, amputation is carried out; otherwise, it is not. Similarly, if one uproots the door of the mosque, then if it was locked and fastened, amputation is carried out; otherwise, it is not. This same ruling applies to the door of a house. This is Mālik’s opinion.

Our companions said: Amputation is obligatory in all such cases. The basis for this ruling is the consideration of safekeeping, as we have mentioned, thereby invalidating the opinion of those who upheld the consideration of safekeeping. It is obligatory to amputate one who steals a door from a mosque—whether locked or unlocked—or a mat, a lamp, or something its owner placed there and forgot—whether the owner was present or not—if he took it covertly with intent to appropriate it for himself, not to safeguard it for its owner. This ruling is due to what we have explained, and success is by Allah, the Exalted.

Is amputation applicable to the grave exhumer?

2271 - Issue: Is amputation the prescribed punishment for the grave-exhumer or not? Abū Muḥammad—may Allah have mercy on him—said: People have differed regarding the grave-exhumer. One group said: He

[5] **Qur’an references (L42017):** Qur’an 5:38 (Al-Ma’idah).

نَكَالا مِنَ اللَّهِ} [المائدة: ٣٨] وَهَذَا سَارِقٌ فَالْقَطْعُ عَلَيْهِ بِنَصِّ الْقُرْآنِ، وَلَوْ أَرَادَ اللَّهُ تَعَالَى تَخْصِيصَ ذَلِكَ لَمَا أَغْفَلَهُ.

[مَسْأَلَةٌ فِيمَنْ سَرَقَ مِنْ مَسْجِدٍ]

؟ قَالَ قَوْمٌ: لَا قَطْعَ عَلَى مَنْ سَرَقَ مِنْ مَسْجِدٍ.

وَقَالَتْ طَائِفَةٌ: إذَا كَانَ هُنَالِكَ حَافِظٌ لِذَلِكَ الشَّيْءِ، أَوْ كَانَتْ الْأَبْوَابُ مُغْلَقَةً قُطِعَ، وَإِلَّا فَلَا - وَكَذَلِكَ لَوْ قَلَعَ بَابَ الْمَسْجِدِ فَإِنْ كَانَ مُغْلَقًا مَضْبُوطًا قُطِعَ، وَإِلَّا فَلَا - وَهَكَذَا الْقَوْلُ فِي بَابِ الدَّارِ - وَهُوَ قَوْلُ مَالِكٍ.

وَقَالَ أَصْحَابُنَا: الْقَطْعُ فِي كُلِّ ذَلِكَ وَاجِبٌ، وَالْأَصْلُ فِي ذَلِكَ أَمْرُ الْحِرْزِ كَمَا ذَكَرْنَا - وَقَدْ بَطَلَ قَوْلُ مَنْ قَالَ بِمُرَاعَاةِ الْحِرْزِ فَالْوَاجِبُ قَطْعُ مَنْ سَرَقَ مِنْ مَسْجِدٍ بَابًا - كَانَ مُغْلَقًا أَوْ غَيْرَ مُغْلَقٍ - أَوْ حَصِيرًا، أَوْ قِنْدِيلًا، أَوْ شَيْئًا وَضَعَهُ صَاحِبُهُ هُنَالِكَ وَنَسِيَهُ - كَانَ صَاحِبُهُ مَعَهُ أَوْ لَمْ يَكُنْ - إذَا أَخَذَهُ مُسْتَتِرًا بِأَخْذِهِ لِنَفْسِهِ، لَا لِيَحْفَظَهُ عَلَى صَاحِبِهِ، وَذَلِكَ لِمَا ذَكَرْنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ هَلْ عَلَى النَّبَّاشِ قَطْعٌ أَمْ لَا]

٢٢٧١ - مَسْأَلَةٌ: هَلْ عَلَى النَّبَّاشِ قَطْعٌ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي النَّبَّاشِ؟ فَقَالَتْ طَائِفَةٌ: عَلَيْهِ الْقَتْلُ. وَقَالَتْ طَائِفَةٌ: تُقْطَعُ يَدُهُ وَرِجْلُهُ.

should be put to death. Another group said: His hand and foot are to be cut off.

وَقَالَتْ طَائِفَةٌ: تُقْطَعُ يَدُهُ فَقَطْ.

L42025 A group stated: Only his hand is to be severed.

وَقَالَتْ طَائِفَةٌ: يُعَزَّرُ أَدَبًا - وَلَا شَيْءَ عَلَيْهِ غَيْرُ ذَلِكَ.

L42026 A group has stated: He should be disciplined as a corrective measure, with no further penalty imposed.

وَأَمَّا مَنْ رَأَى عَلَيْهِ الْقَتْلَ - فَكَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ صَفْوَانَ بْنِ سُلَيْمٍ: أَنَّ رَجُلًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَجَدَ رَجُلًا يَخْتَفِي فِي الْقُبُورِ فَقَتَلَهُ، فَأَهْدَرَ عُمَرُ بْنُ الْخَطَّابِ دَمَهُ.

L42027 Regarding one deemed liable for execution: From Ḥumām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Ibn Jurayj, from Ṣafwān ibn Sulaym: A man from the Companions of the Messenger of Allah (peace be upon him) encountered a man lurking among graves and killed him, whereupon ʿUmar ibn al-Khaṭṭāb held his blood to be without sanction.

وَأَمَّا مَنْ رَأَى قَطْعَ يَدِهِ وَرِجْلِهِ: فَكَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى ابْنِ جُرَيْجٍ قَالَ: قَالَ لِي عَمْرُو بْنُ دِينَارٍ: قَطَعَ عَبَّادُ بْنُ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ يَدَ غُلَامٍ وَرِجْلَهُ، اخْتَفَى؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: " عَبَّادٌ " هَذَا مِنَ التَّابِعِينَ أَدْرَكَ عَائِشَةَ، نَعَمْ، وَجَدُّهُ الزُّبَيْرُ، وَجُمْهُورُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L42028 As for the one who ruled on cutting off his hand and leg: as narrated through the aforementioned chain of transmission to Ibn Jurayj, he said: ʿAmr ibn Dīnār told me: "Did ʿAbbād ibn ʿAbd Allāh ibn al-Zubayr cut off the hand and leg of a young servant who went into hiding?" Abū Muḥammad – may Allah have mercy on him – said: "This ʿAbbād was among the Tabi'un; he met ʿĀ'ishah. Indeed, his grandfather was al-Zubayr, and the majority of the Companions – may Allah be pleased with them –."

وَأَمَّا مَنْ رَأَى قَطْعَ يَدِهِ فَقَطْ: فَكَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ إِبْرَاهِيمَ بْنِ مُحَمَّدِ بْنِ أَبِي يَحْيَى أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ أَبِي بَكْرٍ عَنْ عَبْدِ اللَّهِ بْنِ عَامِرِ بْنِ رَبِيعَةَ أَنَّهُ وَجَدَ قَوْمًا يَخْتَفُونَ الْقُبُورَ بِالْيَمَنِ، فَكَتَبَ إِلَى عُمَرَ بْنِ الْخَطَّابِ فَكَتَبَ إِلَيْهِ عُمَرُ: أَنْ يُقْطَعَ أَيْدِيَهُمْ.

L42029–42030 As for the one who held the opinion of cutting off the hand alone: As was narrated to us through the aforementioned chain to Abd al-Razzaq, from Ibrahim ibn Muhammad ibn Abi Yahya: Abdullah ibn Abi Bakr informed me from Abdullah ibn Amir ibn Rabiʿah that he encountered people concealing the graves in Yemen. He wrote to Umar ibn al-Khattab, and Umar wrote to him that he should cut off their hands.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا حَجَّاجُ بْنُ الْمِنْهَالِ نا هُشَيْمٌ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ قَالَ: شَهِدْتُ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ قَطَعَ يَدَ النَّبَّاشِ.

L42031 Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Uthman from Ahmad ibn Khalid from Ali ibn Abd al-Aziz from Hajjaj ibn al-Minhal from Hushaym from Suhayl ibn Abi Salih, who said, "I witnessed Abdullah ibn al-Zubayr cutting off the hand of the grave robber."

L42032 Through him to Al-Hajjaj ibn Al-Minhal: Hammad ibn Salamah narrated to

us from Al-Hajjaj ibn Arta'a that Al-Sha'bi, Al-Nakha'i, Masruq ibn Al-Ajda', Zadhan, Abu Dhur'ah ibn Amr, and Amr ibn Hazm said regarding the grave robber when he takes the property: he is to be amputated.

وَبِهِ - إلَى الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ: أَنَّ الشَّعْبِيَّ، وَالنَّخَعِيَّ، وَمَسْرُوقَ بْنَ الْأَجْدَعِ، وَزَاذَانَ، وَأَبَا ذُرْعَةَ بْنَ عَمْرٍو وَعَمْرَو بْنَ حَزْمٍ، قَالُوا فِي النَّبَّاشِ إذَا أَخَذَ الْمَتَاعَ: قُطِعَ.

L42033 Ibrahim an-Nakhai said: If a grave exhumer steals property equivalent to the amount that necessitates amputation, then amputation is incumbent upon him.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إذَا سَرَقَ النَّبَّاشُ قَدْرَ مَا يُقْطَعُ فِيهِ، فَعَلَيْهِ الْقَطْعُ.

L42034 And from Al-Sha'bi that he was asked about the grave robber, and he said: "Do we cut off the hands of our dead as we cut off those of our living?" Abu Muhammad—may Allah have mercy on him—said: "As for our position—and success comes only from Allah, the Exalted—all of this has no basis. Rather, the obligation lies in what Allah, the Exalted, and His Messenger—peace be upon him—have ordained as mandatory, to which recourse must be made in disputes. For He, the Exalted, says: {If you differ over anything, refer it to Allah and the Messenger} [4:59]. We acted accordingly: we observed that Allah, the Exalted, states: {As for the male thief and the female thief, cut off their hands} [5:38], and we observed that the Messenger of Allah—peace be upon him—imposed amputation upon whoever steals, as he—peace be upon him—declared: 'If Fāṭimah, the daughter of Muhammad, were to steal, Muhammad would cut off her right hand.'"[6]

وَعَنْ الشَّعْبِيِّ أَنَّهُ سُئِلَ عَنْ النَّبَّاشِ فَقَالَ: نَقْطَعُ فِي أَمْوَاتِنَا، كَمَا نَقْطَعُ فِي أَحْيَائِنَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالَّذِي نَقُولُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: أَنَّ كُلَّ هَذَا لَا مَعْنَى لَهُ، لَكِنَّ الْفَرْضَ هُوَ مَا افْتَرَضَ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ السَّلَامُ - الرُّجُوعَ إلَيْهِ عِنْد التَّنَازُعِ، إذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ فَفَعَلْنَا: فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] وَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ أَوْجَبَ الْقَطْعَ عَلَى مَنْ سَرَقَ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «لَوْ سَرَقَتْ فَاطِمَةُ بِنْتُ مُحَمَّدٍ لَقَطَعَ مُحَمَّدٌ يَدَهَا» .

L42035 We found the meaning of "thief" in the language in which the Quran was revealed and through which Allah the Exalted addresses us: it is one who takes what Allah the Exalted has not permitted him to take, claiming ownership of it while concealing the act. We found the grave robber to have these attributes.

وَوَجَدْنَا " " السَّارِقَ " فِي اللُّغَةِ الَّتِي نَزَلَ بِهَا الْقُرْآنُ وَبِهَا خَاطَبَنَا اللَّهُ تَعَالَى: هُوَ الْآخِذُ شَيْئًا لَمْ يُبِحْ اللَّهُ تَعَالَى لَهُ أَخْذَهُ، فَيَأْخُذُهُ مُتَمَلِّكًا لَهُ، مُسْتَخْفِيًا بِهِ - فَوَجَدْنَا النَّبَّاشَ هَذِهِ صِفَتُهُ.

L42036 Thus, it is established that he is a thief. Since he is a thief, amputation of the hand is prescribed [for such a crime]. Therefore, it is obligatory to amputate his hand—and this is the position we uphold.

فَصَحَّ أَنَّهُ سَارِقٌ، وَإِذْ هُوَ سَارِقٌ، فَقَطْعُ الْيَدِ عَلَى السَّارِقِ، فَقَطْعُ يَدِهِ وَاجِبٌ - وَبِهِ نَقُولُ.

L42037–42038 As for those who opine his killing or the amputation of his hand and foot, we

[6] **Qur'an references (L42034):** Qur'an 4:59 (An-Nisa); Qur'an 5:38 (Al-Ma'idah).

know of no valid proof for them unless they deem him a highway robber—and there is no proof here that he is a highway robber at all, for he did not spread fear on public roads. Thus, the ruling of a highway robber does not apply to him. Our blood is inviable; therefore, the grave robber's blood is equally inviolable. Success is from Allah, the Most High.

L42039 **The issue of what necessitates hand amputation for the taker in such a case.**

L42040 2272 - Issue: For what taking is amputation obligatory? Abu Muhammad—may Allah have mercy on him—said: People have disputed regarding certain things. Some said: There is no amputation in their theft.

L42041 A group said: Does cutting apply to these—dates, palm hearts, trees, and crops? Abū Muḥammad—may Allāh have mercy on him—said: ʿAbd Allāh ibn Rabīʿ narrated to us, Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us, Muḥammad ibn Khālid informed me, my father informed me, Salamah ibn ʿAbd al-Malik al-Ghawṣī narrated from al-Ḥasan—the son of Ṣāliḥ ibn Ḥayy—from Yaḥyā ibn Saʿīd al-Anṣārī from al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq from Rāfiʿ ibn Khadīj, who said: I heard the Messenger of Allāh—peace and blessings be upon him—say: "There is no cutting for fruit or *kathar*"—and *al-kathar* means palm hearts. Many narrations exist on this matter which we have not cited to avoid prolonging by mentioning them. Had they been authentic, it would have been obligatory to act upon them, requiring that cutting not apply to any fruit or grains—whether harvested or unharvested, threshed or unthreshed, stored or unstored—due to the generality of this wording.

L42042 And because Allah, the Exalted, named the dried [produce] as fruit, He said, {And from the fruits of palm trees and grapevines} [Al-Naḥl: 67]. Thus, Allah named what the tree, the palm tree, and the cultivated plants bear as fruit by His statement: {He is the One Who created gardens, trellised and untrellised, and palm trees, the cultivated plants diverse in their fruits, and olives, and

وَأَمَّا مَنْ رَأَى قَتْلَهُ، أَوْ قَطْعَ يَدِهِ وَرِجْلِهِ، فَمَا نَعْلَمُ لَهُ حُجَّةً، إلَّا أَنْ يَكُونُوا رَأَوْهُ مُحَارِبًا - وَلَيْسَ هَاهُنَا دَلِيلٌ عَلَى أَنَّهُ مُحَارِبٌ أَصْلًا، لِأَنَّهُ لَمْ يُخِفْ طَرِيقًا، فَلَيْسَ لَهُ حُكْمُ الْمُحَارِبِ، وَدِمَاؤُنَا حَرَامٌ، فَدَمُ النَّبَّاشِ حَرَامٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مَا يَجِبُ فِيهِ عَلَى آخِذِهِ الْقَطْعُ]

٢٢٧٢ - مَسْأَلَةٌ: مَا يَجِبُ فِيهِ عَلَى آخِذِهِ الْقَطْعُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: تَنَازَعَ النَّاسُ فِي أَشْيَاءَ، فَقَالَ قَوْمٌ: لَا قَطْعَ فِي سَرِقَتِهَا.

وَقَالَ قَوْمٌ: فِيهَا الْقَطْعُ، مِنْ ذَلِكَ: التَّمْرُ، وَالْجُمَّارُ، وَالشَّجَرُ، وَالزَّرْعُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ خَالِدٍ أَخْبَرَنِي أَبِي نا سَلَمَةُ بْنُ عَبْدِ الْمَلِكِ الْغَوْصِيُّ عَنْ الْحَسَنِ - هُوَ ابْنُ صَالِحِ بْنِ حَيٍّ - عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ رَافِعِ بْنِ خَدِيجٍ قَالَ: " سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا قَطْعَ فِي ثَمَرٍ، وَلَا كَثَرٍ» وَالْكَثَرُ الْجُمَّارُ - وَفِي هَذَا آثَارٌ كَثِيرَةٌ لَمْ نَذْكُرْهَا، لِئَلَّا نُطَوِّلَ بِذِكْرِهَا، وَلَوْ صَحَّتْ لَوَجَبَ الْأَخْذُ بِهَا بِذَلِكَ، وَلَلَزِمَ حِينَئِذٍ أَنْ لَا يُقْطَعَ فِي شَيْءٍ مِنْ الثَّمَرِ، وَالْحُبُوبِ - سَوَاءٌ حُصِدَ أَوْ لَمْ يُحْصَدْ، جُدَّ أَوْ لَمْ يُجَدَّ - كَانَ فِي الْمَخَازِنِ أَوْ لَمْ يَكُنْ - لِعُمُومِ هَذَا اللَّفْظِ.

وَلِأَنَّ اللَّهَ تَعَالَى سَمَّى الْيَابِسَ ثَمَرًا، فَقَالَ {وَمِنْ ثَمَرَاتِ النَّخِيلِ وَالْأَعْنَابِ} [النحل: ٦٧] فَسَمَّى اللَّهُ تَعَالَى مَا تُثْمِرُهُ الشَّجَرَةُ، وَالنَّخْلَةُ، وَالزَّرْعُ، ثَمَرًا بِقَوْلِهِ تَعَالَى {وَهُوَ الَّذِي أَنْشَأَ جَنَّاتٍ مَعْرُوشَاتٍ وَغَيْرَ مَعْرُوشَاتٍ وَالنَّخْلَ وَالزَّرْعَ مُخْتَلِفًا أُكُلُهُ وَالزَّيْتُونَ وَالرُّمَّانَ} [الأنعام: ١٤١] الْآيَةَ إلَى قَوْلِهِ تَعَالَى: {وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ} [الأنعام: ١٤١] .

pomegranates} [Al-An'ām: 141]—the verse up to His words: {And give its due right on the day of its harvest} [Al-An'ām: 141].[7]

فَوَجَبَ الْحَقُّ فِيهِ يَوْمَ حَصَادِهِ - وَالْحَصَادُ لَا يَكُونُ إِلَّا فِي الْيَابِسِ - وَأَمَّا سَاقُ الشَّجَرِ، وَالنَّخْلِ، وَأَغْصَانُهُ، فَلَا يَقَعُ عَلَيْهِ اسْمُ ثَمَرٍ أَصْلًا، لَا فِي لُغَةٍ، وَلَا فِي شَرِيعَةٍ.

L42043 The obligation for it becomes due on the day of its harvest—and harvest applies only to dry crops. As for the trunks of trees, including palm trees, and their branches, the term "produce" does not apply to them whatsoever, neither in linguistic usage nor in divine legislation.

وَاخْتَلَفَ الْمُتَأَخِّرُونَ فِي هَذَا، فَقَالَ سُفْيَانُ الثَّوْرِيُّ: لَا قَطْعَ فِيمَا يَفْسُدُ مِنْ يَوْمِهِ مِنَ الطَّعَامِ، مِثْلَ: الثَّرِيدِ، وَاللَّحْمِ، وَمَا أَشْبَهَهُ، لَكِنْ يُعَزَّرُ. وَإِذَا كَانَتِ الثَّمَرَةُ فِي شَجَرَتِهَا لَمْ تُقْطَعِ الْيَدُ فِي سَرِقَتِهَا، لَكِنْ يُعَزَّرُ.

L42044 The later scholars differed regarding this. Sufyan al-Thawri said: There is no amputation for food that spoils within a day, such as tharid, meat, and similar items, but the offender is subjected to *taʿzīr*. If the fruit is on its tree, the hand is not amputated for stealing it, but the offender is subjected to *taʿzīr*.

قَالَ أَبُو حَنِيفَةَ: لَا يُقْطَعُ فِي شَيْءٍ مِنْ: الْإِبِلِ، وَلَا الْبَقَرِ، وَلَا الْغَنَمِ، وَلَا الْخَيْلِ، وَلَا الْبِغَالِ، وَلَا الْحَمِيرِ - إِذَا سُرِقَ كُلُّ ذَلِكَ مِنَ الْمَرْعَى، فَإِذَا كَانَتْ فِي الْمِرَاحِ، أَوْ فِي الدُّورِ فَفِيهَا الْقَطْعُ.

L42045–42046 Abu Hanifa said: There is no hand amputation for the theft of any of the following: camels, cattle, sheep, horses, mules, or donkeys—if all such animals are stolen from the pasture. But if they are taken from the animal fold or from enclosed dwellings, then hand amputation applies.

وَلَا يُقْطَعُ فِي شَيْءٍ مِنَ: الْفَوَاكِهِ الرَّطْبَةِ كَانَتْ فِي الدُّورِ أَوْ فِي الشَّجَرِ - فِي حِرْزٍ كَانَتْ أَوْ غَيْرِ حِرْزٍ - وَكَذَلِكَ الْبُقُولُ كُلُّهَا.

L42047 And cutting [of the hand] is not prescribed for any fresh fruits - whether in dwellings or on trees, in a secure place or not - and likewise for all vegetables.

وَكَذَلِكَ مَا يُسْرِعُ إِلَيْهِ الْفَسَادُ مِنَ اللَّحْمِ، وَالطَّعَامِ كُلِّهِ - كَانَ فِي حِرْزٍ أَوْ فِي غَيْرِ حِرْزٍ.

L42048 Similarly, what is prone to rapid spoilage—such as meat and all food—whether in a protected place or not.

وَلَا قَطْعَ فِي الْمِلْحِ، وَلَا فِي التَّوَابِلِ، وَلَا فِي الزُّرُوعِ كُلِّهَا، فَإِذَا يَبِسَ الزَّرْعُ وَحُمِلَ إِلَى الْأَنْدَرِ، أَوْ إِلَى الْبُيُوتِ وَجَبَ الْقَطْعُ فِي سَرِقَةِ شَيْءٍ مِنْهُ، إِذَا بَلَغَ مَا يَجِبُ فِيهِ الْقَطْعُ.

L42049 There is no amputation for salt, nor for spices, nor for any crops whatsoever. When the crop dries and is transported to the granaries or to the houses, amputation becomes obligatory for stealing any of it, if the stolen amount reaches the prescribed threshold requiring amputation.

وَقَالَ مَالِكٌ: كُلُّ مَا كَانَ مِنَ الْفَوَاكِهِ فِي أَشْجَارِهِ، وَالزَّرْعِ فِي مَزْرَعَتِهِ، فَلَا قَطْعَ فِي شَيْءٍ مِنْهُ - وَكَذَلِكَ الْأَنْعَامُ فِي مَسَارِحِهَا، فَإِذَا أُحْرِزَتِ الْأَنْعَامُ فِي مِرَاحٍ، أَوْ دَارٍ، فَفِيهَا الْقَطْعُ، فَإِذَا جُمِعَ الزَّرْعُ فِي أَنْدَرِهِ أَوْ فِي الدُّورِ فَفِيهِ الْقَطْعُ، وَإِذَا جُنِيَتِ الْفَوَاكِهُ،

L42050 Malik said: All fruits on their trees, crops in their fields—there is no hand amputation for stealing any of these. Likewise, livestock in their grazing areas are exempt. However, if livestock are secured in pens or enclosures, amputation is mandated for their theft. If crops are gathered in granaries

[7] **Qur'an references (L42042):** Qur'an 16:67 (An-Nahl); Qur'an 6:141 (Al-An'am).

or houses, amputation applies. If fruits are harvested and placed in secure storage, amputation is required. Similarly, amputation is mandated for theft of vegetables, all fruits, meat, and anything kept under protection—this being the view of al-Shāfiʿī as well. Abū Thawr said: Amputation applies to fruits on trees—whether fresh or dried—and saplings in walled gardens, provided they are protected and secured. In other cases, he concurred with Mālik and al-Shāfiʿī. Mālik, al-Shāfiʿī, and Abū Thawr ruled that stealing a camel or beast of burden from farmland warrants amputation. Our companions held regarding all aforementioned cases: Amputation applies—whether the property was protected or not—if the thief takes it secretly rather than openly? Abū Muḥammad—may Allāh have mercy on him—said: Given their disagreement as outlined, we examined this matter. Reviewing Abū Thawr's opinion, we found it valid except for his requirement of protection alone, for such protection holds no significance as we previously clarified.

وَأُدْخِلَتْ فِي الْحِرْزِ فَفِيهَا الْقَطْعُ، وَكَذَلِكَ تُقْطَعُ فِي الْبُقُولِ، وَالْفَوَاكِهِ كُلِّهَا، وَفِي اللَّحْمِ وَفِي كُلِّ شَيْءٍ إذَا كَانَ فِي حِرْزٍ - وَهَذَا قَوْلُ الشَّافِعِيِّ أَيْضًا. وَقَالَ أَبُو ثَوْرٍ: إذَا كَانَتْ الْفَوَاكِهُ فِي أَشْجَارِهَا - رَطْبَةً أَوْ غَيْرَ رَطْبَةٍ - وَكَانَ الْفَسِيلُ فِي حَائِطِهِ، وَكَانَ كُلُّ ذَلِكَ مُحْرَزًا مَمْنُوعًا، فَفِيهِ الْقَطْعُ - وَقَالَ - فِيمَا عَدَا ذَلِكَ - بِقَوْلِ مَالِكٍ، وَالشَّافِعِيِّ، وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ وَأَبُو ثَوْرٍ فِي الْبَعِيرِ، أَوْ الدَّابَّةِ تُسْرَقُ مِنْ الْفَدَّانِ، فَفِيهِ الْقَطْعُ. وَقَالَ أَصْحَابُنَا فِي كُلِّ مَا ذَكَرْنَا: الْقَطْعُ - مُحْرَزًا كَانَ أَوْ غَيْرَ مُحْرَزٍ - إذَا سَرَقَهُ السَّارِقُ وَلَمْ يَأْخُذْهُ مُعْلِنًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا نَظَرْنَا فِي ذَلِكَ، وَنَظَرْنَا فِي قَوْلِ أَبِي ثَوْرٍ فَوَجَدْنَاهُ صَحِيحًا، إلَّا اشْتِرَاطَهُ الْحِرْزَ فَقَطْ، فَإِنَّ الْحِرْزَ لَا مَعْنَى لَهُ عَلَى مَا بَيَّنَّا قَبْلُ.

L42051–42052 The statement of Abu Thawr is only valid because it conforms to the general scope of Allah's words, the Exalted: {As for the male thief and the female thief, cut off their hands} [Al-Ma'idah: 38], and to the ruling of the Messenger of Allah (peace and blessings be upon him) mandating the amputation of the thief's hand as a general rule without requiring secure custody. Yet Abu Thawr's opinion contradicts the previously mentioned hadiths because they are weak in authenticity, and no valid proof exists except in authentic hadiths.[8]

وَقَوْلُ أَبِي ثَوْرٍ هَذَا إنَّمَا صَحَّ لِمُوَافَقَتِهِ عُمُومَ قَوْلِ اللَّهِ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] . وَبِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَطْعِ السَّارِقِ عُمُومًا دُونَ اشْتِرَاطِ حِرْزٍ. وَقَوْلُ أَبِي ثَوْرٍ، مُخَالِفٌ لِلْأَحَادِيثِ الْمَذْكُورَةِ قَبْلَ هَذَا، لِأَنَّهَا وَاهِيَةٌ، وَلَا حُجَّةَ إلَّا فِي صَحِيحٍ.

L42053 Then we examined the statements of Mālik and al-Shāfiʿī, and found their evidence to be solely the narration of ʿAmr ibn Shuʿayb and Ibn al-Musayyib, and the narration of Ḥumayd ibn Qays and ʿAbd al-Raḥmān ibn ʿAbdullāh—they had no other proof. We have already demonstrated that these reports are of the utmost weakness, and that reliance on the weak [narration] is invalid. We have stated: These reports are not sound, and even if they were sound, none of them would contain evidence for what its proponents claimed regarding custody. Rather, the obligation in that case would be to

ثُمَّ نَظَرْنَا فِي قَوْلِ مَالِكٍ، وَالشَّافِعِيِّ، فَوَجَدْنَا حُجَّتَهُمَا إنَّمَا هِيَ خَبَرُ عَمْرِو بْنِ شُعَيْبٍ، وَابْنِ الْمُسَيَّبِ، وَخَبَرُ حُمَيْدِ بْنِ قَيْسٍ، وَعَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ، لَا حُجَّةَ لَهُمَا غَيْرُهَا، وَقَدْ بَيَّنَّا أَنَّ هَذِهِ الْأَخْبَارَ فِي غَايَةِ الْوَهْيِ، وَأَنَّ الِاحْتِجَاجَ بِالْوَاهِي بَاطِلٌ؛ وَقَدْ قُلْنَا: إنَّ هَذِهِ الْأَخْبَارِ لَا تَصِحُّ وَلَوْ صَحَّتْ لَمَا كَانَ فِي شَيْءٍ مِنْهَا دَلِيلٌ عَلَى مَا ادَّعَاهُ مَنْ ادَّعَاهُ مِنْ الْحِرْزِ، بَلْ كَانَ الْوَاجِبُ حِينَئِذٍ أَنْ لَا يُقْطَعَ فِي شَيْءٍ مِمَّا يَقَعُ عَلَيْهِ اسْمُ ثَمَرٍ، وَلَا

[8] **Qur'an references (L42052):** Qur'an 5:38 (Al-Ma'idah).

abstain from definitive rulings regarding anything designated as “fruit” or “abundance,” and to rule definitively only if stored in the granary—whether fresh or not. This would have been the ruling if the report were authentic. Anything beyond this is invalid, based on false conjecture.

اسْمُ كَثَرٍ، وَأَنْ يُقْطَعَ فِي ذَلِكَ إِنْ آوَاهُ الْجَرِينُ - رَطْبًا كَانَ أَوْ غَيْرَ رَطْبٍ - فَهَذَا كَانَ يَكُونُ الْحُكْمُ - لَوْ صَحَّ الْخَبَرُ - وَمَا عَدَا هَذَا فَبَاطِلٌ، بِظَنٍّ كَاذِبٍ

L42054 If the narrations are fundamentally unauthentic, then the obligatory position is what our companions have stated: that amputation is obligatory for every fruit and every grain—whether hanging on its tree, cut down, in a granary, or not in a granary—if taken by a thief who conceals his taking, acts without compulsion, and has no legitimate right to it. Amputation is indeed required for every food item, whether perishable or not, if taken surreptitiously in the manner of theft, neither out of necessity nor due to a right that necessitates his taking it. Amputation is also obligatory for crops if taken from his cultivated field (faddan) or its midst, through theft involving concealment or hiding his act, without necessity and without any legitimate claim to it.

فَإِذَا لَمْ تَصِحَّ الْآثَارُ أَصْلًا فَالْوَاجِبُ مَا قَالَهُ أَصْحَابُنَا مِنْ أَنَّ الْقَطْعَ وَاجِبٌ فِي كُلِّ ثَمَرٍ، وَفِي كُلِّ كَثَرٍ - مُعَلَّقًا كَانَ فِي شَجَرِهِ أَوْ مَجْذُوذًا، أَوْ فِي جَرِينٍ كَانَ أَوْ غَيْرِ جَرِينٍ - إِذَا أَخَذَهُ سَارِقًا لَهُ، مُسْتَخْفِيًا بِأَخْذِهِ، غَيْرَ مُضْطَرٍّ إِلَيْهِ، وَبِغَيْرِ حَقٍّ لَهُ، فَإِنَّ الْقَطْعَ فِي كُلِّ طَعَامٍ كَانَ مِمَّا يَفْسُدُ أَوْ لَا يَفْسُدُ - إِذَا أَخَذَهُ عَلَى وَجْهِ السَّرِقَةِ غَيْرَ مَشْهُورٍ بِأَخْذِهِ، لَا حَاجَةَ إِلَيْهِ، وَلَا عَنْ حَقٍّ أَوْجَبَ لَهُ أَخْذُهُ، فَإِنَّ الْقَطْعَ وَاجِبٌ فِي الزَّرْعِ، إِذَا أُخِذَ مِنْ فَدَّانِهِ، أَوْ هُوَ بِأَنْدَرِهِ، عَلَى وَجْهِ السَّرِقَةِ مُسْتَتِرًا، أَوْ مُخْتَفِيًا بِأَخْذِهِ، لَا عَنْ حَاجَةٍ إِلَيْهِ، وَلَا عَنْ حَقٍّ لَهُ.

L42055 As for livestock, amputation applies similarly, unless it is a stray animal taken openly. In that case, the taker is considered to be acting rightly when permitted to take it, but disobedient—not a thief—when not permitted. Thus, no amputation applies here, as he is not a thief, for amputation is mandated only for the thief. Our basis in this is the words of Allah, the Exalted: “As for the thief, male or female, cut off their hands” (Quran 5:38), and the universal ruling of the Messenger of Allah—peace and blessings of Allah be upon him—to amputate the thief. Success comes solely from Allah, the Exalted.[9]

وَأَمَّا الْمَاشِيَةُ - فَالْقَطْعُ فِيهَا أَيْضًا كَذَلِكَ، إِلَّا أَنْ تَكُونَ ضَالَّةً يَأْخُذُهَا مُعْلِنًا فَيَكُونُ مُحْسِنًا، حَيْثُ أُبِيحَ لَهُ أَخْذُهَا، وَعَاصِيًا لَا سَارِقًا، حَيْثُ لَمْ يُبَحْ لَهُ أَخْذُهَا، فَلَا قَطْعَ هَاهُنَا، لِأَنَّهُ لَيْسَ سَارِقًا، وَإِنَّمَا الْقَطْعُ عَلَى السَّارِقِ - وَعُمْدَتُنَا فِي ذَلِكَ قَوْلُ اللَّهِ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] وَحُكْمُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَطْعِ السَّارِقِ عُمُومًا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The issue of differing opinions concerning amputation for stealing a bird.

[مَسْأَلَةُ الِاخْتِلَافِ فِي الْقَطْعِ فِي الطَّيْرِ إِذَا سُرِقَ]

L42056

L42057 Case 2273: What is the legal ruling for one who steals a bird?

٢٢٧٣ - مَسْأَلَةٌ: الطَّيْرُ فِيمَنْ سَرَقَهَا؟

L42058–42059 Abu Muhammad—may Allah have mercy on him—said: People have differed regarding amputating the hand for stealing birds such as chickens, geese, and

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي الْقَطْعِ فِي الطَّيْرِ إِذَا سُرِقَ، كَالدَّجَاجِ، وَالْإِوَزِّ، وَغَيْرِهَا. فَقَالَتْ طَائِفَةٌ: لَا قَطْعَ فِي شَيْءٍ مِنْ ذَلِكَ: كَمَا نَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ

[9] **Qur’an references (L42055):** Qur’an 5:38 (Al-Ma’idah).

others. A group held that there is no amputation for any of that, as narrated by Muhammad ibn Sa'id ibn Nabat from 'Abdullah ibn Nasr from Qasim ibn Asbagh from Ibn Waddah from Musa ibn Mu'awiyah from Waki' from Sufyan al-Thawri from Jabir ibn Yazid al-Ju'fi from 'Abdullah ibn Yasar, who said: A man who stole chickens was brought to 'Umar ibn 'Abd al-'Aziz, and he intended to amputate his hand. Abu Salamah ibn 'Abd al-Rahman ibn 'Awf said: "'Uthman used to say: There is no amputation for birds." So 'Umar released him. Narrated by Hummam from Ibn Mufarrij from Ibn al-A'rabi from al-Dabari from 'Abd al-Razzaq from 'Abdullah ibn al-Mubarak from Sufyan al-Thawri from Jabir al-Ja'fari from 'Abdullah ibn Yasar, who said: 'Umar ibn 'Abd al-'Aziz intended to amputate the hand of a thief who stole a chicken. Abu Salamah ibn 'Abd al-Rahman ibn 'Awf said to him: "Verily, 'Uthman ibn 'Affan said: There is no amputation for birds."

نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ جَابِرِ بْنِ يَزِيدَ الْجُعْفِيِّ عَنْ عَبْدِ اللَّهِ بْنِ يَسَارٍ قَالَ: أُتِيَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ بِرَجُلٍ قَدْ سَرَقَ دَجَاجًا، فَأَرَادَ أَنْ يَقْطَعَهُ، فَقَالَ أَبُو سَلَمَةَ بْنُ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ كَانَ عُثْمَانُ يَقُولُ: لَا قَطْعَ فِي طَيْرٍ؟ فَخَلَّى عُمَرُ سَبِيلَهُ. حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ الْجَعْفَرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ يَسَارٍ، قَالَ: أَرَادَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ أَنْ يَقْطَعَ سَارِقًا سَرَقَ دَجَاجَةً، فَقَالَ لَهُ أَبُو سَلَمَةَ بْنُ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ: إِنَّ عُثْمَانَ بْنَ عَفَّانَ قَالَ: لَا قَطْعَ فِي طَيْرٍ.

L42060 And with this, Abu Hanifah, Ahmad ibn Hanbal, their companions, and Ishaq ibn Rahwayh hold the opinion. A group said: Amputation applies in this case if he steals from a safeguarded place—and this is the view of Malik, Al-Shafi'i, and their companions. Another group said: Amputation applies in the act under all circumstances if it is stolen. Abu Muhammad—may Allah have mercy on him—said: We examined their disagreements regarding that matter, and found that those who argued against amputation in this case cited the opinion of Uthman ibn Affan concerning the abolition of amputation for it—with no known dissenting opinion among the Companions regarding that.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَصْحَابُهُمَا، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ. وَقَالَتْ طَائِفَةٌ: الْقَطْعُ فِيهِ - إذَا سَرَقَ مِنْ حِرْزٍ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَصْحَابُهُمَا. وَقَالَتْ طَائِفَةٌ: الْقَطْعُ فِيهَا عَلَى كُلِّ حَالٍ، إذَا سُرِقَتْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِيمَا اخْتَلَفُوا مِنْ ذَلِكَ، فَوَجَدْنَا مَنْ احْتَجَّ بِقَوْلِ مَنْ لَمْ يَرَ الْقَطْعَ فِيهِ، فَوَجَدْنَاهُمْ يَقُولُونَ: إنَّ إبْطَالَ الْقَطْعِ فِيهِ قَدْ رُوِيَ عَنْ عُثْمَانَ بْنِ عَفَّانَ - وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ.

L42061 And some of them claimed that he narrated something similar from ʿAlī. This is unattested.

وَادَّعَى بَعْضُهُمْ أَنَّهُ رَوَى نَحْوَ ذَلِكَ عَنْ عَلِيٍّ، هَذَا لَا يُعْرَفُ.

L42062–42064 They said: The foundational principle is that it is inherently insignificant and permissible. If owned, the thief of such property is not subjected to amputation. When an item bears these attributes, the thief is not subjected to amputation. As for a bird, if it is unowned and a fledgling, it has no value. It only gains value after becoming owned through training. This constitutes all they have used to obfuscate the issue. Do they possess any specious argu-

وَقَالُوا: إنَّ الْأَصْلَ فِيهِ أَنَّهُ تَافِهٌ فِي الْأَصْلِ مُبَاحٌ، فَإِذَا كَانَ مَمْلُوكًا لَمْ يُقْطَعْ سَارِقُهُ، إذَا كَانَ مَا هَذَا وَصْفُهُ لَمْ يُقْطَعْ سَارِقُهُ، وَالطَّيْرُ إذَا كَانَ مُبَاحًا، وَكَانَ فَرْخًا فَلَا قِيمَةَ لَهُ، وَإِنَّمَا تَصِيرُ لَهُ الْقِيمَةُ بَعْدَمَا يَصِيرُ مَمْلُوكًا بِالتَّعْلِيمِ. فَهَذَا كُلُّ مَا مَوَّهُوا بِهِ، مَا لَهُمْ

ment beyond this? Do they have any valid proof in this matter whatsoever? Abū Muḥammad—may Allah have mercy on him—said: Thus, their assertion stands devoid of proof, and the bird constitutes property from... As for properties that have been established as the rightful possession of their owner—such as chickens, pigeons, and the like—the amputation of the hand is prescribed, in accordance with the command of Allah, the Exalted: *"As for the male thief and the female thief, cut off each of their hands"* [al-Mā'idah 5:38].[10]

L42065 The Messenger of Allah (peace be upon him) prescribed the amputation of the hand for the one who steals.

L42066 Neither Allah the Exalted nor His Messenger—peace be upon him—specified any exception from that (ruling) for a bird or anything else. By Allah! Allah the Exalted—who knows the hidden reality of every created being, all that exists, all that occurs, of any movement, breath, or word, throughout the eternity of eternities, and all that would never exist—even if it were to exist in any conceivable way—if He had intended to specify an exception from amputation for one who steals a bird, He would not have neglected it, nor overlooked it.

L42067 We testify by the testimony of Allah, the Most High, that Allah, the Most High, never intended to abolish amputation for one who steals birds; rather, Allah, the Most High, has explicitly commanded it - and all praise is due to Allah, Lord of the worlds.

L42068 ## The Issue of Proper Slaughter During Hunting When Taking Possession

L42069 2274. Issue: On Hunting? Abu Muhammad (may Allah have mercy on him) said: Pertaining to this chapter is the matter of hunting. Abu Hanifa does not deem amputation applicable in cases of hunting if one has original ownership. He also does not deem amputation applicable to someone who steals camels that are owned from their enclosure, nor to one who steals a

[10]**Qur'an references (L42062):** Qur'an 5:38 (Al-Ma'idah).

شُبْهَةٌ غَيْرُ ذَلِكَ لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَإِذَا قَدْ عَرَى قَوْلُهُمْ مِنْ حُجَّةٍ، وَكَانَ الطَّيْرُ مَالًا مِنْ الْأَمْوَالِ، فَقَدْ تَعَيَّنَ ذَلِكَ مِلْكًا لِصَاحِبِهِ، كَالدَّجَاجِ، وَالْحَمَامِ، وَشِبْهِهَا وَجَبَ فِيهِ الْقَطْعُ بِقَوْلِ اللَّهِ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] .

وَبِإِيجَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْقَطْعَ عَلَى مَنْ سَرَقَ.

وَلَمْ يَخُصَّ اللَّهُ تَعَالَى، وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - مِنْ ذَلِكَ - طَيْرًا وَلَا غَيْرَهُ - وَتَاللَّهِ، أَرَادَ اللَّهُ تَعَالَى الَّذِي يَعْلَمُ سِرَّ كُلِّ مَنْ خَلَقَ، وَكُلَّ مَا هُوَ كَائِنٌ، وَحَادِثٌ، مِنْ حَرَكَةٍ أَوْ نَفَسٍ، وَكَلِمَةٍ، أَبَدَ الْأَبَدِ، وَكُلَّ مَا لَا يَكُونُ لَوْ كَانَ كَيْفَ كَانَ يَكُونُ، أَنْ يَخُصَّ مِنْ الْقَطْعِ مَنْ سَرَقَ الطَّيْرَ، لَمَا أَغْفَلَ ذَلِكَ، وَلَا أَهْمَلَهُ.

فَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى أَنَّ اللَّهَ تَعَالَى لَمْ يُرِدْ قَطُّ إسْقَاطَ الْقَطْعِ عَنْ سَارِقِ الطَّيْرِ، بَلْ قَدْ أَمَرَ اللَّهُ تَعَالَى بِقَطْعِهِ نَصًّا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[مَسْأَلَةُ الْقَطْعِ فِي الصَّيْدِ إذَا تَمَلَّكَ]

٢٢٧٤ - مَسْأَلَةٌ: الصَّيْدُ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: يَتَعَلَّقُ بِهَذَا الْبَابِ أَمْرُ الصَّيْدِ، فَإِنَّ أَبَا حَنِيفَةَ لَا يَرَى الْقَطْعَ فِي الصَّيْدِ إذَا تَمَلَّكَ أَصْلًا، وَلَا يَرَى الْقَطْعَ فِيمَنْ سَرَقَ إبِلًا مُتَمَلَّكًا مِنْ حِرْزِهِ، وَلَا عَلَى مَنْ سَرَقَ كَذَلِكَ غَزَالًا، أَوْ خَشْفًا، أَوْ ظَبْيًا، أَوْ حِمَارًا وَحْشِيًّا، أَوْ أَرْنَبًا، أَوْ غَيْرَ ذَلِكَ مِنْ الصَّيْدِ.

gazelle, a fawn, a gazelle, a wild donkey, a rabbit, or any other type of game animal.

L42070 Mālik, al-Shāfiʿī, and their followers held that amputation applies in all such cases according to the differing opinions we previously mentioned from them regarding the consideration of safeguarded property. Abū Muḥammad (may God have mercy on him) said: "This is a matter wherein we find no valid argument for the Ḥanafīs whatsoever, nor that anyone before their leading scholar ever upheld this position. Rather, it constitutes a rupture of consensus and a plain contradiction of the Quran. They claimed they analogized it to birds. If they argue that game resembles birds as wild animals inherently permissible [to take], they should be told: 'Then by this analogy, you must waive amputation for one who steals ruby, gold, silver, copper, iron, lead, tin, mercury, or sea wool (coral), for all these are inherently permissible substances unowned like game—with no distinction.' This comparison is broader than yours, and its effective cause more comprehensive than your rationale."

L42071–42072 Moreover, they have nullified this analogy, for they did not analogize the killer of domesticated chickens to prohibited hunting during the state of consecration (iḥrām), nor did they analogize livestock and horses—according to those who permit them—to four-legged game animals. All of this was established through textual evidence or definitive consensus. Thus, it is established that amputation is obligatory for one who steals owned hunted game, just as it is obligatory for other forms of property. And success comes only from Allah, the Exalted.

وَرَأَى مَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمَا، الْقَطْعَ فِي كُلِّ ذَلِكَ عَلَى حَسَبِ الِاخْتِلَافِ الَّذِي أَوْرَدْنَاهُ عَنْهُمْ فِي مُرَاعَاةِ الْحِرْزِ. قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا مَكَانٌ مَا نَعْلَمُ لِلْحَنَفِيِّينَ فِيهِ حُجَّةً أَصْلًا، وَلَا أَنَّهُ قَالَ بِهِ أَحَدٌ قَبْلَ شَيْخِهِمْ، بَلْ هُوَ خَرْقٌ لِلْإِجْمَاعِ، وَخِلَافٌ لِلْقُرْآنِ مُجَرَّدٌ، إلَّا أَنَّهُمْ ادَّعُوا أَنَّهُمْ قَاسُوهُ عَلَى الطَّيْرِ؟ فَإِنْ قَالُوا: إنَّ الصَّيْدَ يُشْبِهُ الطَّيْرَ فِي أَنَّهُمَا حَيَوَانٌ وَحْشِيٌّ مُبَاحٌ فِي أَصْلِهِ؟ قِيلَ لَهُمْ: فَأَسْقِطُوا عَلَى هَذَا الْقِيَاسِ الْقَطْعَ عَمَّنْ سَرَقَ يَاقُوتًا، أَوْ ذَهَبًا، أَوْ فِضَّةً، أَوْ نُحَاسًا، أَوْ حَدِيدًا، أَوْ رَصَاصًا، أَوْ قَزْدِيرًا، أَوْ زِئْبَقًا، أَوْ صُوفَ الْبَحْرِ، لِأَنَّ هَذَا كُلَّهُ أَجْسَامٌ مُبَاحَةٌ فِي الْأَصْلِ، غَيْرُ مُتَمَلَّكَةٍ كَالصَّيْدِ، وَلَا فَرْقَ - فَهَذَا تَشْبِيهٌ أَعَمُّ مِنْ تَشْبِيهِكُمْ، وَعِلَّةٌ أَعَمُّ مِنْ عِلَّتِكُمْ.

وَأَيْضًا - فَإِنَّهُمْ قَدْ نَقَضُوا هَذَا الْقِيَاسَ، فَلَمْ يَقِيسُوا قَاتِلَ الدَّجَاجِ الْإِنْسِيِّ عَلَى الصَّيْدِ الْمُحَرَّمِ فِي الْإِحْرَامِ، وَلَا قَاسُوا الْأَنْعَامَ، وَالْخَيْلَ - عِنْدَ مَنْ يُبِيحُهَا - عَلَى ذَوَاتِ الْأَرْبَعِ مِنْ الصَّيْدِ، وَكَانَ هَذَا كُلُّهُ نَصًّا أَوْ إجْمَاعًا مُتَيَقَّنًا فَصَحَّ أَنَّ الْقَطْعَ وَاجِبٌ عَلَى مَنْ سَرَقَ صَيْدًا مُتَمَلَّكًا، كَمَا هُوَ وَاجِبٌ فِي سَائِرِ الْأَمْوَالِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة فِيمَنْ سَرَقَ خَمْرًا لِذِمِّيٍّ أَوْ لِمُسْلِمٍ أَوْ سَرَقَ خِنْزِيرًا أَوْ مَيْتَةً]

A jurisprudential issue concerning one who steals wine belonging to a *dhimmi* or a Muslim, or steals a pig or carrion.

L42073

L42074 2275 – Issue: Concerning one who steals wine belonging to a dhimmi or a Muslim, or steals a pig under the same circumstances, or carrion similarly? Abū Muḥammad—may Allāh have mercy on him—said: Ḥammām narrated to us, Ibn Mufarrij narrated to us, Ibn al-Aʿrabī narrated to us, al-Dabarī narrated to us, ʿAbd al-Razzāq narrated from Ibn Jurayj from ʿAṭāʾ, who

٢٢٧٥ - مَسْأَلَةٌ: فِيمَنْ سَرَقَ خَمْرًا لِذِمِّيٍّ، أَوْ لِمُسْلِمٍ، أَوْ سَرَقَ خِنْزِيرًا كَذَلِكَ، أَوْ مَيْتَةً كَذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: مَنْ سَرَقَ خَمْرًا مِنْ أَهْلِ الْكِتَابِ، قَالَ

said: “Whoever steals wine from the People of the Book”—ʿAṭāʾ said: “It was asserted regarding wine and pigs: if a Muslim steals them from the People of the Book, his hand is to be cut off, because these are permissible for them in their religion. But if he steals such items from a Muslim, there is no cutting of the hand for him.”

عَطَاءٌ: زَعَمُوا فِي الْخَمْرِ، وَالْخِنْزِيرِ، يَسْرِقُهُ الْمُسْلِمُ مِنْ أَهْلِ الْكِتَابِ يُقْطَعُ، مِنْ أَجْلِ أَنَّهُ حَلَّ لَهُمْ فِي دِينِهِمْ، وَإِنْ سَرَقَ ذَلِكَ مِنْ مُسْلِمٍ فَلَا قَطْعَ عَلَيْهِ.

L42075 And via him, to Abd al-Razzaq, from Ma’mar, from Ibn Abi Najih, from Ata, who said: Whoever steals wine from the People of the Book is amputated.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ عَطَاءٍ قَالَ: مَنْ سَرَقَ خَمْرًا مِنْ أَهْلِ الْكِتَابِ قُطِعَ.

L42076 A group said: There is no amputation upon him for that, but he must pay a fine equivalent to it—this being the view of Shurayḥ, Sufyān al-Thawrī, Mālik, Abū Ḥanīfa, and their followers. Another group said: There is no amputation upon him for that, nor any financial liability—this being the view of al-Shāfiʿī, Aḥmad, and their followers. Is this not the view of our companions? Abū Muḥammad—may Allah have mercy on him—said: We examined this matter and found the opinion of those who imposed financial liability while negating amputation to be utterly invalid. For wine and pork must either be considered property belonging to the dhimmī—they having monetary value—or not considered his property at all, with no third category existing. If wine and pork are deemed property of the dhimmī—they having monetary value—then amputation becomes obligatory regarding them according to their principles, when each reaches the threshold requiring amputation.

وَقَالَتْ طَائِفَةٌ: لَا قَطْعَ عَلَيْهِ فِي ذَلِكَ، وَلَكِنْ يَغْرَمُ لَهَا مِثْلَهَا - وَهَذَا قَوْلُ شُرَيْحٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَمَالِكٍ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِمْ. وَقَالَتْ طَائِفَةٌ: لَا قَطْعَ عَلَيْهِ ذَلِكَ، وَلَا ضَمَانَ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ، وَأَصْحَابِهِمَا - وَبِهِ يَقُولُ أَصْحَابُنَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي ذَلِكَ، فَرَأَيْنَا قَوْلَ مَنْ أَوْجَبَ الضَّمَانَ وَأَسْقَطَ الْقَطْعَ، فِي غَايَةِ الْفَسَادِ؛ لِأَنَّهُ لَا يَخْلُو الْخَمْرُ، وَالْخِنْزِيرُ، مِنْ أَنْ يَكُونَا مَالًا لِلذِّمِّيِّ لَهُ قِيمَةٌ، أَوْ لَا يَكُونَا مَالًا لَهُ، وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ أَصْلًا، فَإِنْ كَانَتْ الْخَمْرُ، وَالْخِنْزِيرُ، مَالًا لِلذِّمِّيِّ، لَهُمَا قِيمَةٌ، فَالْقَطْعُ فِيهِمَا وَاجِبٌ - عَلَى أُصُولِهِمْ - إذَا بَلَغَ كُلُّ وَاحِدٍ مِنْهُمَا مَا فِيهِ الْقَطْعُ.

L42077–42079 If wine and pigs have no value and are not property of the dhimmi, then on what basis did they rule for liability over what has no value and is not property? Is this anything but an invalid judgment from them, and the transfer of property without [just cause?]... It is a right, especially since they state: If a Muslim steals wine belonging to a Muslim or a pig belonging to a Muslim, there is neither amputation nor liability, because they are not property for him, nor do they hold value. The utmost astonishment lies in how they impose liability upon him for these—even though he has no means to fulfill them—since in their view, such items fall under what is measured by volume or weight, and thus like-for-like compensation applies.

وَإِنْ كَانَ الْخَمْرُ، وَالْخِنْزِيرُ، لَا قِيمَةَ لَهُمَا، وَلَيْسَا مَالًا لِلذِّمِّيِّ، فَبِأَيِّ وَجْهٍ قَضَوْا بِضَمَانِ مَا لَا قِيمَةَ لَهُ، وَلَا هُوَ مَالٌ، وَهَلْ هَذَا مِنْهُمْ إلَّا قَضَاءٌ بِالْبَاطِلِ؟ وَإِيكَالُ مَالِ بِغَيْرِ حَقٍّ، لَا سِيَّمَا وَهُمْ يَقُولُونَ: إنَّ الْمُسْلِمَ إنْ سَرَقَ خَمْرًا لِمُسْلِمٍ، أَوْ خِنْزِيرًا لِمُسْلِمٍ، فَلَا قَطْعَ، وَلَا ضَمَانَ، لِأَنَّهُمَا لَيْسَا مَالًا لَهُ، وَلَا لَهُمَا قِيمَةٌ. وَالْعَجَبُ كُلُّهُ، كَيْفَ يَقْضُونَ بِضَمَانِهِمَا عَلَيْهِ - وَهُوَ لَا سَبِيلَ لَهُ إلَى قَضَائِهِمَا -؛ لِأَنَّهُ عِنْدَهُمْ مِمَّا يُكَالُ أَوْ يُوزَنُ - فَفِيهِمَا الْمِثْلُ عِنْدَهُمْ.

L42080 Then we examined the opinion of those who held that amputation and

financial liability apply in that matter, and the opinion of those who did not hold this view: there is neither amputation nor financial liability.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ رَأَى الْقَطْعَ فِي ذَلِكَ وَالضَّمَانَ، وَقَوْلَ مَنْ لَا يَرَى فِي ذَلِكَ - لَا قَطْعًا وَلَا ضَمَانًا.

L42081 We examined the position of those who held the opinion of amputation and compensation, yet found no foundational evidence for their stance whatsoever—unless they say: "It is their property and holds value in their view?" We responded: "Inform us—did they acquire ownership of it by a rightful claim from God, entitling them to its possession and consumption, or by falsehood?" There is no third alternative. If they say it is by a rightful claim and command from God Almighty, they disbelieve by consensus (though they do not make this claim), and they would be compelled to affirm that the religions of the Jews and Christians are true—a statement no Muslim would ever make.

فَنَظَرْنَا فِيمَنْ رَأَى الْقَطْعَ وَالضَّمَانَ، فَلَمْ نَجِدْ لَهُمْ حُجَّةً أَصْلًا. إِلَّا إِنْ قَالُوا: إِنَّهَا مَالٌ لَهُمْ، وَلَهَا قِيمَةٌ عِنْدَهُمْ؟ فَقُلْنَا لَهُمْ: أَخْبِرُونَا، أَبِحَقٍّ مِنَ اللَّهِ تَمَلَّكُوهَا، وَاسْتَحَقُّوا مِلْكَهَا وَشُرْبَهَا، أَوْ بِبَاطِلٍ؟ وَلَا سَبِيلَ إِلَى قِسْمٍ ثَالِثٍ؟ فَإِنْ قَالُوا: بِحَقٍّ، وَأَمْرٍ مِنَ اللَّهِ تَعَالَى، كَفَرُوا بِلَا خِلَافٍ - وَهُمْ لَا يَقُولُونَ هَذَا - وَيَلْزَمُهُمْ أَنْ يَقُولُوا: إِنَّ دِينَ الْيَهُودِ وَالنَّصَارَى حَقٌّ، وَهَذَا لَا يَقُولُهُ مُسْلِمٌ أَصْلًا.

L42082 Allah, the Exalted, said: "Indeed, the religion with Allah is Islam" [*Surah Āl ʿImrān 3:19*].[11]

قَالَ اللَّهُ تَعَالَى {إِنَّ الدِّينَ عِنْدَ اللَّهِ الإِسْلامُ} [آل عمران: ١٩] .

L42083 And He, the Exalted, said: "Whoever seeks a religion other than Islam, it will never be accepted from him" [Al-Imran 3:85].[12]

وَقَالَ تَعَالَى {وَمَنْ يَبْتَغِ غَيْرَ الإِسْلامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ} [آل عمران: ٨٥] .

L42084 Since what we have stated is confirmed, and it is confirmed that Allah the Exalted has prohibited the consumption of intoxicants, their sale, and their ownership for every Muslim and disbeliever alike, through His exalted statement commanding the Messenger (peace be upon him) to proclaim: "O mankind, I am the Messenger of Allah to you all" [Al-A'rāf 7:158].[13]

فَإِذْ قَدْ صَحَّ مَا قُلْنَا، وَصَحَّ أَنَّ اللَّهَ تَعَالَى حَرَّمَ شُرْبَ الْخَمْرِ، عَلَى كُلِّ مُسْلِمٍ وَكَافِرٍ، وَحَرَّمَ بَيْعَهَا عَلَى كُلِّ مُسْلِمٍ وَكَافِرٍ، وَحَرَّمَ مِلْكَهَا عَلَى كُلِّ مُسْلِمٍ وَكَافِرٍ بِقَوْلِهِ تَعَالَى آمِرًا لِلرَّسُولِ - عَلَيْهِ السَّلَامُ - أَنْ يَقُولَ {يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا} [الأعراف: ١٥٨] .

L42085 And by his statement—peace be upon him—"Every intoxicant is forbidden," and that He who prohibited its consumption also prohibited its sale, it is established that it is not legitimate property for anyone and that it has no value whatsoever. Likewise, the pig—due to the comprehensive prohibition that applies to it.

وَبِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «كُلُّ مُسْكِرٍ حَرَامٌ» وَأَنَّ الَّذِي حَرَّمَ شُرْبَهَا حَرَّمَ بَيْعَهَا، ثَبَتَ أَنَّهَا لَيْسَتْ مَالًا لِأَحَدٍ، وَأَنَّهُ لَا قِيمَةَ لَهَا أَصْلًا، وَكَذَلِكَ الْخِنْزِيرُ - لِلتَّحْرِيمِ الْوَارِدِ فِيهِ جُمْلَةً.

[11] **Qur'an references (L42082):** Qur'an 3:19 (Ali 'Imran).
[12] **Qur'an references (L42083):** Qur'an 3:85 (Ali 'Imran).
[13] **Qur'an references (L42084):** Qur'an 7:158 (Al-A'raf).

L42086–42088 Since He has entirely prohibited ownership of it, whoever stole it did not steal anyone's property. It has no value. Fundamentally, if he did not steal something permissible to retain in its entirety, then nothing is incumbent upon him - though the obligation to spill their blood (the swine's blood) applies universally, regardless of whether the individual is Muslim or non-Muslim, as does the killing of swine. Success comes solely from Allah the Exalted.

Abū Muḥammad - may Allah have mercy on him - stated: Regarding one who steals carrion, amputation is mandated for the thief because its hide remains the owner's property after tanning, enabling its use and sale. If it is objected: "What distinguishes swine from carrion? You mandate amputation for carrion due to its hide, yet not for swine. Why not mandate it for the swine's hide, when its hide - like all carrion hides - becomes permissible for use and sale after tanning?"

Our response - praise be to Allah - is that the distinction is abundantly clear: The animal that becomes carrion, during its lifetime, was wholly owned by its owner. Upon its death, ownership ceases over its flesh, fat, blood, entrails, dung, brain, and cartilage - all absolutely prohibited - but persists over what Allah permits for benefit: the hide, hair, wool, undercoat, and bones. These remain owned unless the owner explicitly permits another to take them or discards them entirely and renounces ownership of them. Thus, if stolen while undiscarded, the thief has taken legitimately owned property - property belonging to a Muslim or *dhimmi* - making hand amputation obligatory for that theft.

L42089 As for the pig, no one can own it during its lifetime, for it is entirely impure and forbidden. Whoever steals it alive or dead has merely taken ownerless property. As for what is impermissible to own, its hide belongs to whoever hastens to it, takes it, and tans it. Once tanned, it then becomes a type of ownable property. Whoever steals it becomes liable to hand amputation. The amputation penalty is obligatory for stealing elephant bones, and all carcasses are treated similarly, because the Messenger of Allah—peace be upon him—said, "Only their consumption is forbidden"—excluding the bones of the pig. Its hair and every part of it remain entirely forbidden; no one may lawfully

فَإِذْ قَدْ حَرَّمَ مِلْكَهَا جُمْلَةً، كَانَ مَنْ سَرَقَهَا لَمْ يَسْرِقْ مَالًا لِأَحَدٍ، لَا قِيمَةَ لَهَا أَصْلًا، وَلَا سَرَقَ شَيْئًا يَحِلُّ إبْقَاؤُهُ جُمْلَةً، فَلَا شَيْءَ عَلَيْهِ - وَالْوَاجِبُ هَرْقُهَا عَلَى كُلِّ حَالٍ لِمُسْلِمٍ وَكَافِرٍ، وَكَذَلِكَ قَتْلُ الْخَنَازِيرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا مَنْ سَرَقَ مَيْتَةً، فَإِنَّ فِيهَا الْقَطْعَ؛ لِأَنَّ جِلْدَهَا بَاقٍ عَلَى مِلْكِ صَاحِبِهَا، بِدَبْغِهِ فَيَنْتَفِعُ بِهِ وَيَبِيعُهُ. فَإِنْ قِيلَ: مَا الْفَرْقُ بَيْنَ الْخِنْزِيرِ وَالْمَيْتَةِ؟ أَوْجَبْتُمْ الْقَطْعَ فِي الْمَيْتَةِ مِنْ أَجْلِ جِلْدِهَا، وَلَمْ تُوجِبُوا الْقَطْعَ فِي الْخِنْزِيرِ؟ فَهَلَّا أَوْجَبْتُمُوهُ مِنْ أَجْلِ جِلْدِهِ، وَجِلْدُهُ وَجِلْدُ سَائِرِ الْمَيْتَاتِ سَوَاءٌ - فِي جَوَازِ الِانْتِفَاعِ بِهِ وَبَيْعِهِ - إذَا دُبِغَ؟ فَجَوَابُنَا: أَنَّ الْفَرْقَ بَيْنَهُمَا فِي غَايَةِ الْوُضُوحِ - وَلِلَّهِ الْحَمْدُ - وَهُوَ أَنَّ الْمَيْتَةَ كَانَتْ فِي حَيَاتِهَا مُتَمَلَّكَةً لِصَاحِبِهَا بِأَسْرِهَا، فَلَمَّا مَاتَتْ سَقَطَ مِلْكُهُ عَنْ لَحْمِهَا، وَشَحْمِهَا، وَدَمِهَا، وَمِعَاهَا، وَفَرْثِهَا، وَدِمَاغِهَا، وَغَضَارِيفِهَا؛ لِأَنَّ كُلَّ هَذَا حَرَامٌ مُطْلَقُ التَّحْرِيمِ، وَبَقِيَ مِلْكُهُ كَمَا كَانَ، عَلَى مَا أَبَاحَ اللَّهُ تَعَالَى لَهُ الِانْتِفَاعَ بِهِ مِنْهَا، وَهُوَ الْجِلْدُ، وَالشَّعْرُ، وَالصُّوفُ، وَالْوَبَرُ، وَالْعَظْمُ، فَلَا يَخْرُجُ عَنْ مِلْكِهِ، إلَّا بِإِبَاحَتِهِ إيَّاهُ لِإِنْسَانٍ بِعَيْنِهِ، أَوْ لِمَنْ أَخَذَهُ وَيَعْلَمُ ذَلِكَ بِطَرْحِهِ الْجَمِيعَ، وَتَبَرِّيهِ مِنْهُ، فَهُوَ مَا لَمْ يَطْرَحْهُ مَالِكٌ لِذَلِكَ، فَإِنْ سَرَقَ فَإِنَّمَا سَرَقَ شَيْئًا مُتَمَلَّكًا، مِلْكًا صَحِيحًا، وَمَالٌ مِنْ مَالِ مُسْلِمٍ، أَوْ ذِمِّيٍّ، فَالْقَطْعُ فِيهِ.

وَأَمَّا الْخِنْزِيرُ فَلَا يَقَعُ عَلَيْهِ فِي حَيَاتِهِ مِلْكٌ لِأَحَدٍ؛ لِأَنَّهُ رِجْسٌ مُحَرَّمٌ جُمْلَةً فَمَنْ سَرَقَهُ حَيًّا، أَوْ مَيِّتًا، فَإِنَّمَا أَخَذَ مَالًا لَا مَالِكَ لَهُ، وَمَا لَا يَحِلُّ لِأَحَدٍ تَمَلُّكُهُ فَجِلْدُهُ لِمَنْ بَادَرَ إلَيْهِ، وَأَخَذَهُ، وَدَبَغَهُ، فَإِذَا دُبِغَ صَارَ حِينَئِذٍ مِلْكًا مِنْ مَالٍ مُتَمَلَّكٍ، مَنْ سَرَقَهُ فَعَلَيْهِ فِيهِ الْقَطْعُ، وَالْقَطْعُ وَاجِبٌ فِي عِظَامِ الْفِيلِ كَمَا ذَكَرْنَا وَالْمَيْتَاتُ كُلُّهَا كَذَلِكَ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إنَّمَا حَرُمَ أَكْلُهَا» حَاشَ عَظْمِ الْخِنْزِيرِ، وَشَعْرِهِ، وَكُلِّ

own anything from it except the hide alone after tanning, in accordance with the Messenger of Allah's statement—peace be upon him—"Any hide that is tanned becomes pure." And success is from Allah, the Exalted.

L42090 **A legal issue concerning one who kidnaps a free person, whether a minor or an adult.**

L42091–42093 2276 - Issue: Regarding one who steals a free person, whether young or old? Abu Muhammad (may Allah have mercy on him) said: We know of no disagreement that whoever steals a young slave who does not comprehend that the thief incurs amputation for stealing him. Scholars have differed regarding one who steals an adult slave who can speak, and regarding one who steals a free person—whether young or adult. As for the young slave who lacks understanding of this liability, the thief is deemed to have stolen property, incurring amputation. As for one who steals a comprehending slave, those who exempt the thief from amputation argue: "Were it not for the slave's compliance, how could the theft have been possible?" Abu Muhammad—may God have mercy on him—said: This should not be stated categorically, for the thief might steal the slave while he is asleep, intoxicated, unconscious, or by overpowering him and threatening with death, leaving him unable to resist or call for help. In such cases, the theft constitutes a legally valid act fully executed by the thief. Since it is valid, amputation is incumbent upon him by the Quran's text.

L42094 Hammam narrated to us: Ibn Mufarrij narrated to us: Ibn al-A'rabi narrated to us: al-Dabari narrated to us: Abd al-Razzaq narrated from Ibn Jurayj, who said: I was informed that Umar ibn al-Khattab cut off the hand of a man for stealing a slave boy.

L42095 And through him—to Abd al-Razzaq, from Sufyan al-Thawri, from Isma'il, from al-Hasan al-Basri, who said: Whoever steals a free minor or a slave has his hand amputated.

L42096 Ibrahim al-Nakhaʿī said: The Hudud penalty is enforced against the adult but not at all against the minor, meaning the adult's hand is cut off in the case of the minor's theft.

شَيْءٍ مِنْهُ حَرَامٌ جُمْلَةً، لَا يَحِلُّ لِأَحَدٍ تَمَلُّكُ شَيْءٍ مِنْهُ، إلَّا الْجِلْدَ فَقَطْ بِالدِّبَاغِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَيُّمَا إهَابٍ دُبِغَ فَقَدْ طَهُرَ» وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؛

[مَسْأَلَةٌ فِيمَنْ سَرَقَ حُرًّا صَغِيرًا أَوْ كَبِيرًا]

٢٢٧٦ - مَسْأَلَةٌ: فِيمَنْ سَرَقَ حُرًّا صَغِيرًا، أَوْ كَبِيرًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَا نَعْلَمُ خِلَافًا فِي أَنَّ مَنْ سَرَقَ عَبْدًا صَغِيرًا لَا يَفْهَمُ أَنَّ عَلَيْهِ الْقَطْعَ، وَاخْتَلَفَ النَّاسُ فِيمَنْ سَرَقَ عَبْدًا كَبِيرًا يَتَكَلَّمُ، وَفِيمَنْ سَرَقَ حُرًّا صَغِيرًا أَوْ كَبِيرًا - فَأَمَّا الْعَبْدُ الصَّغِيرُ الَّذِي لَا يَفْهَمُ، فَإِنَّ الَّذِي سَرَقَهُ سَارِقُ مَالٍ، فَعَلَيْهِ الْقَطْعُ - وَأَمَّا مَنْ سَرَقَ الْعَبْدَ الَّذِي يَفْهَمُ، فَإِنَّمَا أَسْقَطَ عَنْهُ الْقَطْعَ مَنْ أَسْقَطَهُ، لِأَنَّهُ لَوْلَا أَنَّهُ أَطَاعَهُ مَا أَمْكَنَهُ سَرِقَتُهُ إيَّاهُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا لَا يَنْبَغِي أَنْ يُطْلَقَ إطْلَاقًا، لِأَنَّ فِي الْمُمْكِنِ أَنْ يَسْرِقَهُ وَهُوَ نَائِمٌ، أَوْ سَكْرَانُ، أَوْ مُغْمًى عَلَيْهِ، أَوْ مُتَغَلِّبًا عَلَيْهِ مُتَهَدِّدًا بِالْقَتْلِ، فَلَا يَقْدِرُ عَلَى الِامْتِنَاعِ، وَلَا عَلَى الِاسْتِغَاثَةِ، فَإِذَا كَانَ هَكَذَا، فَهِيَ سَرِقَةٌ صَحِيحَةٌ قَدْ تَمَّتْ مِنْهُ، وَإِذْ هِيَ صَحِيحَةٌ فَالْقَطْعُ عَلَيْهِ بِنَصِّ الْقُرْآنِ.

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ، قَالَ: أُخْبِرْت أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَطَعَ رَجُلًا فِي غُلَامٍ سَرَقَهُ.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إسْمَاعِيلَ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: مَنْ سَرَقَ صَغِيرًا حُرًّا، أَوْ عَبْدًا، قُطِعَ.

قَالَ إبْرَاهِيمُ النَّخَعِيُّ: يُقَامُ الْحَدُّ عَلَى الْكَبِيرِ وَلَيْسَ عَلَى الصَّغِيرِ مِنْ شَيْءٍ - يَعْنِي أَنَّهُ يُقْطَعُ الْكَبِيرُ فِي سَرِقَةِ الصَّغِيرِ.

L42097 And through him—to ʻAbd al-Razzāq from Maʻmar, who said: I asked al-Zuhrī about someone who stole a non-Arab slave who does not comprehend [Arabic]. He said: His hand is to be amputated.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: سَأَلْت الزُّهْرِيَّ عَمَّنْ سَرَقَ عَبْدًا أَعْجَمِيًّا لَا يَفْقَهُ؟ قَالَ: يُقْطَعُ.

L42098 Concerning amputation for stealing a small slave, the opinion is held by Abū Ḥanīfah, Muḥammad ibn al-Ḥasan, Mālik, al-Shāfiʻī, Aḥmad, their companions, Isḥāq, our school's scholars, and Sufyān al-Thawrī.

وَبِالْقَطْعِ فِي سَرِقَةِ الْعَبْدِ الصَّغِيرِ يَقُولُ أَبُو حَنِيفَةَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَصْحَابُهُمْ، وَإِسْحَاقُ، وَأَصْحَابُنَا، وَسُفْيَانُ الثَّوْرِيُّ.

L42099 It was related from Abu Yusuf that he deemed amputation preferable.

وَذُكِرَ عَنْ أَبِي يُوسُفَ أَنَّهُ اسْتَحْسَنَ أَنْ يُقْطَعَ.

L42100 As for one who steals a free person, Ḥammām ibn Aḥmad narrated to us → Ibn Mufarrij → Ibn al-Aʻrabī → al-Dabarī → ʻAbd al-Razzāq → Ibn Jurayj, who said: I was informed that ʻAlī amputated the seller—a seller of free persons—and proclaimed: "A free person cannot be made a slave." Ibn ʻAbbās said: "Amputation is not required for him, but he is subject to imprisonment—a penalty analogous to amputation."

وَأَمَّا مَنْ سَرَقَ حُرًّا - فَإِنَّ حُمَامَ بْنَ أَحْمَدَ نا قَالَ: نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أُخْبِرْت أَنَّ عَلِيًّا قَطَعَ الْبَائِعَ - بَائِعَ الْحُرِّ - وَقَالَ: لَا يَكُونُ الْحُرُّ عَبْدًا. وَقَالَ ابْنُ عَبَّاسٍ: لَيْسَ عَلَيْهِ قَطْعٌ، وَعَلَيْهِ شَبِيهٌ بِالْقَطْعِ الْحَبْسُ.

L42101–42102 Abu Hanifah, Sufyan, Ahmad, and Abu Thawr said: Amputation [for theft] is not imposed upon one who kidnaps a free person, whether the kidnapped person is a minor or an adult.

وَقَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ، وَأَحْمَدُ، وَأَبُو ثَوْرٍ: لَا قَطْعَ عَلَى مَنْ سَرَقَ حُرًّا صَغِيرًا كَانَ أَوْ كَبِيرًا.

L42103 Malik and Isḥāq ibn Rāhawayh said: Amputation is obligatory for one who steals from a free minor. This was also attributed to al-Ḥasan al-Baṣrī and al-Shaʻbī. Abū Muḥammad—may Allāh have mercy on him—said: A narration has been transmitted regarding this matter. We are not obligated to mention it, for the Ḥanafīs rely on less stringent evidence when it conforms to their views. The chain is as follows: From al-Qāḍī ʻAbdullāh ibn ʻAbd al-Raḥmān ibn Jaḥḥāf al-Maʻāfirī in Valencia, from Muḥammad, from Ibrāhīm in Toledo, from Bakr ibn al-ʻAlāʾ al-Qushayrī in Egypt, from Zakariyyā ibn Yaḥyā al-Sājī al-Baṣrī, from al-Qāsim ibn Isḥāq al-Anṣārī, from my father, from ʻAbdullāh ibn Muḥammad ibn Yaḥyā ibn ʻUrwah ibn al-Zubayr, from Hishām ibn ʻUrwah, from his father, from ʻĀʾishah: "A man who stole from children was brought to the Messenger of Allāh—peace and blessings be upon him—and he ordered that his hand be amputated." Abū Muḥammad—may Allāh have

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: سَأَلْت الزُّهْرِيَّ عَمَّنْ سَرَقَ عَبْدًا أَعْجَمِيًّا لَا يَفْقَهُ؟ قَالَ: يُقْطَعُ.

وَبِالْقَطْعِ فِي سَرِقَةِ الْعَبْدِ الصَّغِيرِ يَقُولُ أَبُو حَنِيفَةَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَصْحَابُهُمْ، وَإِسْحَاقُ، وَأَصْحَابُنَا، وَسُفْيَانُ الثَّوْرِيُّ.

وَذُكِرَ عَنْ أَبِي يُوسُفَ أَنَّهُ اسْتَحْسَنَ أَنْ يُقْطَعَ.

وَأَمَّا مَنْ سَرَقَ حُرًّا - فَإِنَّ حُمَامَ بْنَ أَحْمَدَ نا قَالَ: نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أُخْبِرْت أَنَّ عَلِيًّا قَطَعَ الْبَائِعَ - بَائِعَ الْحُرِّ - وَقَالَ: لَا يَكُونُ الْحُرُّ عَبْدًا. وَقَالَ ابْنُ عَبَّاسٍ: لَيْسَ عَلَيْهِ قَطْعٌ، وَعَلَيْهِ شَبِيهٌ بِالْقَطْعِ الْحَبْسُ.

وَقَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ، وَأَحْمَدُ، وَأَبُو ثَوْرٍ: لَا قَطْعَ عَلَى مَنْ سَرَقَ حُرًّا صَغِيرًا كَانَ أَوْ كَبِيرًا.

وَقَالَ مَالِكٌ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ: عَلَى مَنْ سَرَقَ حُرًّا صَغِيرًا، الْقَطْعُ - وَذُكِرَ هَذَا عَنْ الْحَسَنِ الْبَصْرِيِّ، وَالشَّعْبِيِّ. قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَدْ جَاءَ فِي هَذَا أَثَرٌ، لَا عَلَيْنَا أَنْ نَذْكُرَهُ، لِأَنَّ الْحَنَفِيِّينَ يَأْخُذُونَ بِأَقَلَّ مِنْهُ، إذَا وَافَقَهُمْ، وَهُوَ: كَمَا نا الْقَاضِي عَبْدُ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ جَحَّافٍ الْمَعَافِرِيُّ بِبُلَنْسِيَةَ نا مُحَمَّدٌ نا إبْرَاهِيمُ بِطُلَيْطُلَةَ نا بَكْرُ بْنُ الْعَلَاءِ الْقُشَيْرِيُّ بِمِصْرَ نا زَكَرِيَّا بْنُ يَحْيَى السَّاجِيُّ الْبَصْرِيُّ نا الْقَاسِمُ بْنُ إسْحَاقَ الْأَنْصَارِيُّ نا أَبِي نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ يَحْيَى بْنِ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِرَجُلٍ كَانَ يَسْرِقُ الصِّبْيَانَ، فَأَمَرَ

mercy on him—said: This does not differentiate between a free person and a slave. Success comes only from Allāh, the Exalted.

A legal issue regarding someone who stole the Mushaf.

Issue 2277: Regarding one who steals a Mus'haf. Abu Muhammad—may Allah have mercy on him—said: Abu Hanifah and his companions stated: There is no amputation for one who steals a Mus'haf, whether it has silver ornamentation weighing two hundred dirhams, more than that, less than that, or none at all.

Malik, Al-Shafi'i, and our companions said: "Is amputation obligatory upon him?" Abu Muhammad—may Allah have mercy on him—said: Those who rejected amputation argued by stating: "He has a right to instruction regarding it, as he may not withhold it from those in need." He said: "Since he holds a right in it, this is akin to someone who steals from the public treasury." He said: "Silver is secondary, as silver is included in the sale, just as the leather and two covers are included in its sale." This argument is utterly corrupt and invalid. First among its flaws is their claim: "Because he has a right to instruction in it"—he has lied. The learner's right pertains solely to instruction, not to the people's Qur'anic copy whatsoever, as this obligation is established neither by the Qur'an, nor the Sunnah, nor scholarly consensus.

Indeed, Allah obligated the people to teach one another the Quran—through instruction and memorization—and such was the practice of all the Companions - may Allah be pleased with them - during the era of the Messenger of Allah - peace be upon him - without any disagreement. There was no Mushaf at that time; rather, they would teach one another through repetition and have each other recite it. Whoever among them needed to preserve what they memorized would write it on leather, palm stalks, wooden tablets, or shoulder bones only. Thus, the claim that "the thief has a right to the Mushaf" is invalidated, and it is confirmed that the owner of the Mushaf may prevent anyone from taking it, as no one has a necessity to possess it?

بِهِ فَقُطِعَ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَيْسَ فِيهِ تَخْصِيصُ حُرٍّ مِنْ عَبْدٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة فِيمَنْ سَرَقَ الْمُصْحَف]

٢٢٧٧ - مَسْأَلَةٌ: مَنْ سَرَقَ الْمُصْحَفَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، لَا قَطْعَ عَلَى مَنْ سَرَقَ مُصْحَفًا - سَوَاءٌ كَانَتْ عَلَيْهِ حِلْيَةُ فِضَّةٍ تَزِنُ مِائَتَيْ دِرْهَمٍ، أَوْ أَكْثَرَ، أَوْ أَقَلَّ أَوْ لَمْ تَكُنْ.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُنَا: عَلَيْهِ الْقَطْعُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَاحْتَجَّ مَنْ لَمْ يَرَ الْقَطْعَ بِأَنْ قَالَ: إنَّ لَهُ فِيهِ حَقَّ التَّعْلِيمِ، لِأَنَّهُ لَيْسَ لَهُ مَنْعُهُ عَمَّنْ احْتَاجَ إلَيْهِ. قَالَ: فَلَمَّا كَانَ لَهُ فِيهِ حَقٌّ كَانَ كَمَنْ سَرَقَ مِنْ بَيْتِ الْمَالِ. قَالَ: وَالْفِضَّةُ تَبَعٌ، لِأَنَّهَا تَدْخُلُ فِي بَيْعِهِ، كَمَا يَدْخُلُ فِي بَيْعِهِ الْجِلْدُ، وَالدَّفَّتَانِ - وَهَذَا كَلَامٌ فِي غَايَةِ الْفَسَادِ وَالْبَاطِلِ: أَوَّلُ ذَلِكَ - قَوْلُهُمْ: لِأَنَّ لَهُ فِيهِ حَقَّ التَّعْلِيمِ - وَقَدْ كَذَبَ، إنَّمَا حَقُّ الْمُتَعَلِّمِ فِي التَّلْقِينِ فَقَطْ، لَا فِي مُصْحَفِ النَّاسِ أَصْلًا، إذْ لَمْ يُوجِبْهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ.

وَإِنَّمَا فَرَضَ عَلَى النَّاسِ تَعْلِيمَ بَعْضِهِمْ بَعْضًا الْقُرْآنَ - تَدْرِيسًا وَتَحْفِيظًا - وَهَكَذَا كَانَ جَمِيعُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِلَا خِلَافٍ مِنْ أَحَدٍ، أَنَّهُ لَمْ يَكُنْ هُنَالِكَ مُصْحَفٌ، وَإِنَّمَا كَانُوا يُلَقِّنُهُ بَعْضُهُمْ بَعْضًا، وَيُقْرِئُهُ بَعْضُهُمْ بَعْضًا، فَمَنْ احْتَاجَ مِنْهُمْ أَنْ يُقَيِّدَ مَا حَفِظَ كَتَبَهُ فِي الْأَدِيمِ، وَفِي اللِّخَافِ، وَالْأَلْوَاحِ، وَالْأَكْتَافِ فَقَطْ. فَبَطَلَ قَوْلُهُ " إنَّ لِلسَّارِقِ حَقًّا فِي الْمُصْحَفِ " وَصَحَّ أَنَّ لِصَاحِبِ الْمُصْحَفِ مَنْعَهُ مِنْ كُلِّ أَحَدٍ، إذْ لَا ضَرُورَةَ بِأَحَدٍ إلَيْهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -:

Abu Muhammad - may Allah have mercy on him - said: It is therefore confirmed that amputation is obligatory for stealing the Mushaf—whether adorned or not—based on Allah's statement: *"As for the male thief and the female thief, cut off their hands"* (5:38).

Abu Muhammad - may Allah have mercy on him - added: They are compelled to reject enforcing amputation for one who steals books of knowledge—but this is erroneous. Rather, amputation is obligatory in all such cases. Success comes solely through Allah.[14]

L42109 **Issue: As for thieves, people have differed regarding the obligation to amputate them.**

L42110 Issue 2278: Concerning thieves about whom people differ regarding the obligation of amputation - Abu Muhammad (may Allah have mercy on him) said: Abu Hanifa and his companions stated: "One who steals a cross or an idol - even if made of silver or gold - is not to be subjected to amputation. But if he steals dirhams containing images of idols or images of crosses, amputation becomes obligatory because those [objects] are worshipped, whereas these [dirhams] are not worshipped?" Abu Muhammad (may Allah have mercy on him) said: "This is erroneous, self-contradictory, and based on flawed reasoning."

L42111 As for error, it is the omission of the ḥadd punishment that Allah, the Exalted, has prescribed - which is amputation upon the thief.

L42112 Amputation is obligatory for the thief who steals a cross because he stole a material he is not permitted to take. What is obligatory regarding it is solely breaking it, while ownership of its substance remains valid. There is no distinction between him and one who steals a gold vessel or a silver vessel. The prohibition has been authentically established against possessing gold and silver vessels, just as it has been established against possessing crosses and idols, with no distinction. Amputation is obligatory in all such cases because he did not steal the image nor the form of the vessel. Rather, he stole

[14] **Qur'an references (L42108):** Qur'an 5:38 (Al-Ma'idah).

فَصَحَّ أَنَّ الْقَطْعَ وَاجِبٌ فِي سَرِقَةِ الْمُصْحَفِ - كَانَتْ عَلَيْهِ حِلْيَةٌ أَوْ لَمْ تَكُنْ - لِقَوْلِ اللَّهِ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَيَلْزَمُهُمْ أَنْ لَا يُوجِبُوا الْقَطْعَ عَلَى مَنْ سَرَقَ كُتُبَ الْعِلْمِ - وَهَذَا خَطَأٌ، بَلْ الْقَطْعُ فِي كُلِّ ذَلِكَ وَاجِبٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ سُرَّاقٌ اخْتَلَفَ النَّاسُ فِي وُجُوبِ الْقَطْعِ عَلَيْهِمْ]

٢٢٧٨ - مَسْأَلَةٌ: سُرَّاقٌ اخْتَلَفَ النَّاسُ فِي وُجُوبِ الْقَطْعِ عَلَيْهِمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا يُقْطَعُ مَنْ سَرَقَ صَلِيبًا، أَوْ وَثَنًا - وَلَوْ كَانَ مِنْ فِضَّةٍ، أَوْ ذَهَبٍ - قَالَ: فَإِنْ سَرَقَ دَرَاهِمَ فِيهَا صُوَرُ أَصْنَامٍ، أَوْ صُوَرُ صُلْبَانٍ، فَعَلَيْهِ الْقَطْعُ؛ لِأَنَّ ذَلِكَ يُعْبَدُ وَهَذَا لَا يُعْبَدُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا خَطَأٌ، وَتَنَاقُضٌ، وَاحْتِجَاجٌ فَاسِدٌ.

أَمَّا الْخَطَأُ، فَإِسْقَاطُ الْحَدِّ الَّذِي افْتَرَضَ اللَّهُ تَعَالَى مِنْ الْقَطْعِ عَلَى السَّارِقِ.

وَإِنَّمَا وَجَبَ الْقَطْعُ عَلَى سَارِقِ الصَّلِيبِ؛ لِأَنَّهُ سَرَقَ جَوْهَرًا لَا يَحِلُّ لَهُ أَخْذُهُ. وَإِنَّمَا الْوَاجِبُ فِيهِ كَسْرُهُ فَقَطْ، وَأَمَّا مِلْكُ جَوْهَرِهِ فَصَحِيحٌ - وَلَا فَرْقَ بَيْنَهُ وَبَيْنَ مَنْ سَرَقَ إنَاءَ ذَهَبٍ وَإِنَاءَ فِضَّةٍ، وَالنَّهْيُ قَدْ صَحَّ عَنْ اتِّخَاذِ آنِيَةِ الْفِضَّةِ وَالذَّهَبِ، كَمَا صَحَّ عَنْ اتِّخَاذِ الصَّلِيبِ وَالْوَثَنِ وَلَا فَرْقَ - وَالْقَطْعُ وَاجِبٌ فِي كُلِّ ذَلِكَ؛ لِأَنَّهُ لَمْ يَسْرِقْ الصُّورَةَ، وَلَا شَكْلَ الْإِنَاءِ، وَإِنَّمَا سَرَقَ الْجِسْمَ الْحَلَالَ تَمَلُّكُهُ، وَإِنَّمَا الْوَاجِبُ فِي الْآنِيَةِ الْمَذْكُورَةِ، وَالصُّلْبَانِ، وَالْأَوْثَانِ، الْكَسْرُ فَقَطْ.

the physical object that is permissible to own. What is obligatory regarding the mentioned vessels, crosses, and idols is solely breaking them.

فَإِنْ كَانَ الصَّلِيبُ، أَوْ الْوَثَنُ، مِنْ حَجَرٍ لَا قِيمَةَ لَهُ أَصْلًا بَعْدَ الْكَسْرِ، فَلَا قَطْعَ فِيهِ أَصْلًا، لِمَا ذَكَرْنَا قَبْلُ مِنْ قَوْلِ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - «إنَّ يَدَ السَّارِقِ لَمْ تَكُنْ تُقْطَعُ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الشَّيْءِ التَّافِهِ» وَسَنَسْتَقْصِي الْكَلَامَ فِي ذَلِكَ - إنْ شَاءَ اللَّهُ تَعَالَى - فِي كَلَامِنَا " فِي مِقْدَارِ مَا يُقْطَعُ فِيهِ السَّارِقُ ".

L42113–42114 If the cross or idol is made of stone and holds no value whatsoever after being broken, then there is no amputation at all in this case, due to what we previously cited from the statement of ʿĀ'ishah (raḍiya Allāhu ʿanhā): "The thief's hand was not amputated during the era of the Messenger of Allah (ṣallā Allāhu ʿalayhi wa-sallam) for a trivial item." We will elaborate in detail on this—Allah willing—in our discussion on "the threshold value warranting the amputation of a thief's hand."

وَأَمَّا التَّنَاقُضُ، فَظَاهِرٌ أَيْضًا؛ لِأَنَّهُ لَا فَرْقَ بَيْنَ صُورَةٍ وَصُورَةٍ بِلَا بُرْهَانٍ وَكِلَاهُمَا مُحَرَّمٌ تَصْوِيرُهُ، وَمُتَوَعَّدٌ عَلَيْهِ بِالْعَذَابِ الشَّدِيدِ يَوْمَ الْقِيَامَةِ. وَأَمَّا فَسَادُ احْتِجَاجِهِ، بِأَنَّ الصَّلِيبَ يُعْبَدُ، وَالصُّورَةُ الَّتِي فِي الدَّرَاهِمِ لَا تُعْبَدُ، فَإِنَّ الْهِنْدَ يَعْبُدُونَ الْبَقَرَ كَمَا يَعْبُدُ النَّصَارَى الصَّلِيبَ، وَيُعَظِّمُونَهَا كَمَا يُعَظِّمُ الصَّلِيبُ، وَلَا فَرْقَ - فَيَلْزَمُهُ أَيْضًا، أَنْ لَا يَقْطَعَ فِي سَرِقَةِ الْبَقَرِ.

L42115 As for the contradiction, it is also evident because there is no distinction between one image and another without evidence. Depicting both is prohibited, and it is threatened with severe punishment on the Day of Resurrection. Regarding the invalidity of his argument that the cross is worshipped while the image on dirhams is not worshipped—indeed, Hindus worship cows just as Christians worship the cross, and they venerate them as the cross is venerated, with no distinction. It necessarily follows that he must also not enforce amputation for the theft of cows.

فَإِنْ قَالُوا: إنَّا نَحْنُ لَا نَعْبُدُهَا؟ قُلْنَا لَهُمْ: وَإِنَّا نَحْنُ أَيْضًا لَا نَعْبُدُ الصَّلِيبَ، وَلَا نُعَظِّمُهُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ إسْقَاطِ أَبِي حَنِيفَةَ الْقَطْعَ عَنْ سَارِقِ الصَّلِيبِ، وَهُوَ يَقْتُلُ الْمُسْلِمَ إذَا قَتَلَ عَابِدَ الصَّلِيبِ؟ فَلَئِنْ كَانَ لِعَابِدِ الصَّلِيبِ مِنْ الْحُرْمَةِ عِنْدَهُمْ مَا يُسْتَبَاحُ بِهِ دَمُ الْمُسْلِمِ، فَإِنَّ لِمَالِ عَابِدِ الصَّلِيبِ مِنْ الْحُرْمَةِ مَا تُسْتَبَاحُ بِهِ يَدُ سَارِقِهِ، وَالصَّلِيبُ مَالٌ مِنْ مَالِهِ، هَذَا عَلَى أَنَّ النَّهْيَ قَدْ صَحَّ «أَنْ لَا يُقْتَلَ مُؤْمِنٌ بِكَافِرٍ» عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ".

L42116 If they say, "Indeed, we do not worship it?" We reply to them: "Indeed, we too do not worship the cross nor venerate it—praise be to Allah, Lord of the worlds. The greatest of all astonishments is Abu Hanifah's omission of amputating the hand of the cross thief, while he rules to kill the Muslim if he kills a cross-worshipper! For if the cross-worshipper holds such sanctity in their view that a Muslim's blood becomes permissible to shed for it, then the property of the cross-worshipper must hold such sanctity that the hand of its thief becomes permissible to sever—the cross being part of his possessions. This is despite the authentic prohibition from the Messenger of Allah—peace and blessings be upon him—'that a believer is not to be killed for a disbeliever.'"

نَعَمْ، وَعَنْ اللَّهِ تَعَالَى فِي الْقُرْآنِ، إذْ يَقُولُ {وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلا} [النساء: ١٤١] .

L42117 Indeed, as stated by Allah the Exalted in the Quran when He says, "And never will Allah grant the disbelievers a way over the believers" [al-Nisā' 4:141].[15]

[15] **Qur'an references (L42117):** Qur'an 4:141 (An-Nisa).

L42118 And when He, the Exalted, says: “Shall We treat the righteous like the wicked? What is the matter with you? How do you make such judgments?” [Al-Qalam: 35, 36].[16]

L42119 No prohibition has ever been issued against amputating the hand of one who steals the property of a Dhimmi; rather, Allah, the Exalted, commanded the amputation of their hands based on the generality of His verse: {As for the male thief and the female thief, cut off their hands} [Al-Mā’idah: 38].[17]

L42120–42122 Allah, the Exalted, knows that a thief steals from a Muslim and a Dhimmi. Therefore, we swear by Allah, the Exalted, that had He intended to make an exception for the thief who steals a Dhimmi’s property, He would not have remained silent about it, nor forgotten it, and He would have clarified it, just as... He has made clear to us that a believer is not to be executed in retaliation for killing a non-Muslim, and success comes from Allah, the Exalted.

The Legal Ruling on Presenting the Stolen Item

L42123

L42124–42126 2279 - Issue: Producing the Stolen Property. Abu Muhammad—may Allah have mercy on him—said: The Malikis said: If someone confesses to stealing dirhams—whether a large or small amount—or anything else, the punishment of cutting off the hand is not obligatory unless the stolen item they confessed to stealing is produced. Abu Muhammad—may Allah have mercy on him—said: This is also erroneous, for it rejects what Allah Almighty commanded regarding cutting off the thief’s hand. He did not stipulate producing the stolen property: {And your Lord is never forgetful} [Maryam: 64]. Rather, cutting it off is obligatory without exception. The thief must then produce what he stole to return it to its owner—if known—or for the general welfare of the Muslims—if the owner is unknown. If the stolen item is lost, he must compensate for it, as we will mention later, Allah Almighty willing. Abu Muhammad—may Allah have mercy on him—said: We do not know of any valid argument for those who oppose this. If they rely on the narration reported by Abdullah ibn Rabīʿ—from Ibn Mufarrij—from Qāsim ibn

[16] **Qur’an references (L42118):** Qur’an 68:35 (Al-Qalam); Qur’an 37:154 (As-Saffat); Qur’an 68:36 (Al-Qalam).

[17] **Qur’an references (L42119):** Qur’an 5:38 (Al-Ma’idah).

وَإِذْ يَقُولُ تَعَالَى {أَفَنَجْعَلُ الْمُسْلِمِينَ كَالْمُجْرِمِينَ} [القلم: ٣٥] {مَا لَكُمْ كَيْفَ تَحْكُمُونَ} [القلم: ٣٦] .

وَلَمْ يَأْتِ نَهْيٌ قَطُّ عَنْ قَطْعِ يَدِ مَنْ سَرَقَ مَالَ كَافِرٍ ذِمِّيٍّ بَلْ أَمَرَ اللَّهُ تَعَالَى بِقَطْعِهِ فِي عُمُومِ قَوْلِهِ {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] .

وَقَدْ عَلِمَ اللَّهُ تَعَالَى أَنَّ السَّارِقَ يَسْرِقُ مِنْ مُسْلِمٍ وَمِنْ ذِمِّيٍّ، فَنَحْنُ نُقْسِمُ بِاَللَّهِ تَعَالَى أَنَّهُ لَوْ أَرَادَ اسْتِثْنَاءَ سَارِقِ مَالِ الذِّمِّيِّ لَمَا سَكَتَ عَنْ ذَلِكَ، وَلَا نَسِيَهُ، وَلَبَيَّنَهُ، كَمَا بَيَّنَ لَنَا «أَنْ لَا يُقْتَلَ مُؤْمِنٌ بِكَافِرٍ» وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة إحْضَارُ السَّرِقَةِ]

٢٢٧٩ - مَسْأَلَةٌ: إحْضَارُ السَّرِقَةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ الْمَالِكِيُّونَ: مَنْ أَقَرَّ بِسَرِقَةِ دَرَاهِمَ - كَثِيرَةٍ أَوْ قَلِيلَةٍ - أَوْ غَيْرِ ذَلِكَ، فَإِنَّ الْقَطْعَ لَا يَجِبُ بِذَلِكَ إلَّا حَتَّى يُحْضِرَ ذَلِكَ الشَّيْءَ الَّذِي أَقَرَّ بِسَرِقَتِهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا أَيْضًا خَطَأٌ، لِأَنَّهُ رَدَّ لِمَا أَمَرَ اللَّهُ تَعَالَى بِهِ مِنْ قَطْعِ السَّارِقِ، وَلَمْ يَشْتَرِطْ إحْضَارَ السَّرِقَةِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] لَكِنَّ الْوَاجِبَ قَطْعُهُ وَلَا بُدَّ، ثُمَّ يَلْزَمُهُ إحْضَارُ مَا سَرَقَ لِيُرَدَّ إلَى صَاحِبِهِ - إنْ عُرِفَ - أَوْ لِيَكُونَ فِي جَمِيعِ مَصَالِحِ الْمُسْلِمِينَ - إنْ لَمْ يُعْرَفْ صَاحِبُهُ - فَإِنْ عَدِمَ الشَّيْءَ الْمَسْرُوقَ ضَمِنَهُ، عَلَى مَا نَذْكُرُ بَعْدَ هَذَا، إنْ شَاءَ اللَّهُ تَعَالَى؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَا نَعْلَمُ لِمَنْ خَالَفَ هَذَا حُجَّةً أَصْلًا؟ فَإِنْ تَعَلَّقُوا: بِمَا ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ ابْنِ أَبِي

Aṣbagh—from Ibn Waḍḍāḥ—from Sahnūn—from Ibn Wahb—from Ibn Abī Dhib—from Ibn Shihāb: Tāriq, whom Thaʿlabah al-Shāmī appointed as his deputy over Medina, was brought a man suspected of theft. He flogged him until he confessed. He then sought Ibn ʿUmar's verdict, who said: "Do not cut off his hand until he produces it." This holds no proof for them, for a confession extracted under torture or threat does not warrant cutting off the hand—whether the stolen item is produced or not. The item might have been deposited with him, and he may or may not have known it was stolen. In such a case, the custodian is not subject to cutting off the hand at all. Ibn ʿUmar's statement—"until he produces it"—could also be a mere assertion stripped of any confession under flogging. Moreover, no one's opinion constitutes proof against the Messenger of Allah—peace and blessings be upon him. How many of Ibn ʿUmar's positions have they opposed without evidence? If they cite what was narrated to us—via the aforementioned chain—to Ibn Wahb, he said: Yaḥyā ibn Ayyūb informed me: Yaḥyā ibn Saʿīd wrote to me: "If someone confesses to theft and corroborates it with evidence, their hand is to be cut off. But if someone confesses under threat or fear and does not produce..." based on what corroborates his confession, for there are people who assert that they should be amputated in such a case.[18]

ذِئْبٍ عَنْ ابْنِ شِهَابٍ: أَنَّ طَارِقًا كَانَ جَعَلَهُ ثَعْلَبَةُ الشَّامِيُّ عَلَى الْمَدِينَةِ يَسْتَخْلِفُهُ، فَأُتِيَ بِإِنْسَانٍ مُتَّهَمٍ بِسَرِقَةٍ، فَجَلَدَهُ، فَلَمْ يَزَلْ يَجْلِدُهُ حَتَّى اعْتَرَفَ بِالسَّرِقَةِ، فَأَرْسَلَ إِلَى ابْنِ عُمَرَ فَاسْتَفْتَاهُ؟ فَقَالَ ابْنُ عُمَرَ لَا تُقْطَعْ - يَدُهُ حَتَّى يُبْرِزَهَا؟ فَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ مَنْ أَقَرَّ تَحْتَ الْعَذَابِ وَبِالتَّهْدِيدِ فَلَا قَطْعَ عَلَيْهِ، وَسَوَاءٌ أَبْرَزَ السَّرِقَةَ أَوْ لَمْ يُبْرِزْهَا، لِأَنَّهُ قَدْ يَكُونُ أُودِعَتْ عِنْدَهُ، وَهُوَ يَدْرِي أَنَّهَا سَرِقَةٌ أَوْ لَا يَدْرِي، فَلَا يَكُونُ عَلَى الْمُودَعِ فِي ذَلِكَ قَطْعٌ أَصْلًا. وَيَحْتَمِلُ قَوْلُ ابْنِ عُمَرَ هَذَا - أَيْ حَتَّى يُبْرِزَ - قَوْلَتَهُ مُجَرَّدَةً مِنَ الْإِقْرَارِ بِالضَّرْبِ، مَعَ أَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَمْ قَوْلَةٌ لِابْنِ عُمَرَ قَدْ خَالَفُوهَا بِلَا بُرْهَانٍ فَإِنْ ذَكَرُوا مَا رُوِّينَا - بِالسَّنَدِ الْمَذْكُورِ - إِلَى ابْنِ وَهْبٍ قَالَ: أَخْبَرَنِي يَحْيَى بْنُ أَيُّوبَ، قَالَ: كَتَبَ إِلَيَّ يَحْيَى بْنِ سَعِيدٍ يَقُولُ: مَنْ اعْتَرَفَ بِسَرِقَةٍ، ثُمَّ أَتَى - مَعَ ذَلِكَ - بِمَا يُصَدِّقُ اعْتِرَافَهُ فَذَلِكَ الَّذِي تُقْطَعُ يَدُهُ، وَمَنْ اعْتَرَفَ عَلَى تَهَدُّدٍ وَتَخَوُّفٍ، ثُمَّ لَمْ يَأْتِ بِمَا يُصَدِّقُ اعْتِرَافَهُ، فَإِنَّ نَاسًا يَزْعُمُونَ أَنْ يُقْطَعُوا فِي مِثْلِ هَذَا.

L42127 And through him—to Ibn Wahb from Yunus ibn Yazid from Rabi'ah, who said: Whoever confesses after investigation, yet the matter is not found with him, nor is there any corroborating evidence from his actions, then his confession is not considered continuous, nor his persistence in confessing out of fear that the affliction he averted through his confession might still be imposed upon him. Thus, we hold that his confession should not be accepted unless there comes forth an aspect of clear evidence and certainty that he is the perpetrator of that theft. This provides no valid argument for them, for one who confesses to theft either does so without threat or torment, or confesses under threat and torment. If he confesses under threat and torment, there is no amputation of the hand for him at all—whether he produces the stolen item or not—since he may know its location or it was placed with him.

وَبِهِ - إِلَى ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ رَبِيعَةَ، قَالَ: مَنْ اعْتَرَفَ بَعْدَ امْتِحَانٍ فَلَمْ يُوجَدْ ذَلِكَ عِنْدَهُ، وَلَمْ يُوجَدْ مَا يُصَدِّقُهُ مِنْ عَمَلِهِ، فَإِنَّ اعْتِرَافَهُ لَمْ يَكُنْ مُتَّصِلًا، وَلَا إِقَامَتُهُ عَلَى الِاعْتِرَافِ خَشْيَةَ أَنْ يَكُونَ عَلَيْهِ مِنَ الْبَلَاءِ مَا قَدْ دَفَعَ عَنْهُ مِنَ الْبَلَاءِ بِاعْتِرَافِهِ، فَنَرَى أَنْ لَا يُؤْخَذَ بِاعْتِرَافِهِ، إِلَّا أَنْ يَأْتِيَ وَجْهُ الْبَيِّنَةِ وَالْمَعْرِفَةِ أَنَّهُ صَاحِبُ تِلْكَ السَّرِقَةِ؟ وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ مَنْ أَقَرَّ بِسَرِقَةٍ، فَلَا يَخْلُو مِنْ أَنْ يَكُونَ أَقَرَّ بِلَا تَهْدِيدٍ وَلَا عَذَابٍ، أَوْ أَقَرَّ بِتَهْدِيدٍ وَعَذَابٍ؟ فَإِنْ أَقَرَّ بِتَهْدِيدٍ وَعَذَابٍ، فَلَا قَطْعَ عَلَيْهِ أَصْلًا - أَحْضَرَ السَّرِقَةَ، أَوْ لَمْ يُحْضِرْهَا - إِذْ قَدْ يَدْرِي مَوْضِعَهَا، أَوْ جُعِلَتْ عِنْدَهُ، فَلَا

[18] **Qur'an references (L42124):** Qur'an 19:64 (Maryam).

Hence, no amputation applies to him. But if he confesses without threat or torment, then amputation of the hand is obligatory—whether he produces the stolen item or not—due to what we previously explained.

L42128 As for Rabiʿah's statement, "A compelled person under duress is not to be held accountable by confession unless there emerges the aspect of clear evidence and definitive knowledge that he is the perpetrator of that theft," this is an unquestionably sound position. If one brings forth evidence that establishes with certainty—free from doubt—that he stole it, then amputation becomes obligatory, regardless of whether he confessed under torture or without torture at that point. Similarly, if he was tortured or confessed, and conclusive evidence emerged testifying that they witnessed him stealing, amputating his hand for the theft would be obligatory—based on the evidence, not his confession. We have stated: Producing the stolen item does not constitute proof that he stole it; rather, it is mere conjecture, and it is impermissible to amputate a Muslim's hand based on conjecture. Allah the Exalted said: *"They follow nothing but conjecture, and indeed conjecture avails nothing against the truth"* (53:28).[19]

L42129–42131 The Messenger of Allah (peace and blessings of Allah be upon him) said: "Beware of suspicion, for suspicion is the most false of speech." Abu Muhammad (may Allah have mercy on him) said: It has been transmitted to us from Abu Bakr al-Siddiq in the presence of Umar ibn al-Khattab and all the Companions (may Allah be pleased with them) that cutting (the hand) is only enforced through a mere confession without requiring the stolen item to be presented as evidence, and that the stolen item was found either with the jeweler or with the accused, while it is possible that it was placed in his saddlebag without his knowledge: Hammad narrated to us; Ibn Mufarrij narrated to us; Ibn al-A'rabi narrated to us; al-Dabari narrated to us; Abd al-Razzaq narrated from Ma'mar and Sufyan al-Thawri - both of them transmitting from al-A'mash, from al-Qasim ibn Abd al-Rahman ibn Abd Allah ibn Mas'ud. On the authority of his father, who said: A man came to Ali ibn Abi Talib and said, "I have stolen." Ali dismissed him, but the man said again, "I have

[19] **Qur'an references (L42128):** Qur'an 53:28 (An-Najm).

قَطْعَ عَلَيْهِ؟ وَإِنْ كَانَ أَقَرَّ بِلَا تَهْدِيدٍ وَلَا عَذَابٍ، فَالْقَطْعُ عَلَيْهِ - أَخْرَجَ السَّرِقَةَ، أَوْ لَمْ يُخْرِجْهَا - لِمَا ذَكَرْنَا قَبْلُ.

وَأَمَّا قَوْلُ رَبِيعَةَ " أَنْ لَا يُؤْخَذَ الْمُكْرَهُ بِاعْتِرَافٍ إِلَّا أَنْ يَأْتِيَ وَجْهُ الْبَيِّنَةِ وَالْمَعْرِفَةِ أَنَّهُ صَاحِبُ تِلْكَ السَّرِقَةِ " فَقَوْلٌ صَحِيحٌ لَا شَكَّ فِيهِ، أَنَّهُ إِذَا جَاءَ بِبَيَانٍ يَتَيَقَّنُ بِهِ - دُونَ شَكٍّ - أَنَّهُ سَرَقَهَا، فَالْقَطْعُ وَاجِبٌ - وَسَوَاءٌ حِينَئِذٍ أَقَرَّ تَحْتَ الْعَذَابِ أَوْ دُونَ عَذَابٍ - وَكَذَلِكَ لَوْ عُذِّبَ أَوْ أَقَرَّ، وَجَاءَتْ بَيِّنَةٌ تَشْهَدُ بِأَنَّهُمْ رَأَوْهُ يَسْرِقُ لَوَجَبَ قَطْعُ يَدِهِ بِالسَّرِقَةِ، لَا بِإِقْرَارِهِ، وَقَدْ قُلْنَا: إِنَّ إِحْضَارَ الشَّيْءِ الْمَسْرُوقِ لَيْسَ بَيَانًا فِي أَنَّهُ هُوَ سَرَقَهُ، وَإِنَّمَا هُوَ ظَنٌّ، وَلَا يَحِلُّ قَطْعُ يَدِ مُسْلِمٍ بِالظَّنِّ، قَالَ اللَّهُ تَعَالَى {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَدْ رُوِّينَا عَنْ أَبِي بَكْرٍ الصِّدِّيقِ بِحَضْرَةِ عُمَرَ بْنِ الْخَطَّابِ وَسَائِرِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّهُ قَطْعٌ إِلَّا قَطْعٌ بِإِقْرَارٍ مُجَرَّدٍ دُونَ إِحْضَارِ السَّرِقَةِ، وَأَنَّ السَّرِقَةَ إِنَّمَا وُجِدَتْ عِنْدَ الصَّائِغِ، أَوْ عِنْدَهُ، وَقَدْ يُمْكِنُ أَنْ تُوضَعَ فِي رَحْلِهِ بِغَيْرِ عِلْمِهِ: حَدَّثَنَا حَمَّادٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَسُفْيَانَ الثَّوْرِيِّ، كِلَاهُمَا عَنِ الْأَعْمَشِ عَنِ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ أَبِيهِ قَالَ: جَاءَ رَجُلٌ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَقَالَ: إِنِّي سَرَقْتُ، فَرُدَّهُ، فَقَالَ: إِنِّي سَرَقْتُ، فَقَالَ: شَهِدْتَ عَلَى نَفْسِكَ مَرَّتَيْنِ، فَقَطَعَهُ - قَالَ عَبْدُ الرَّحْمَنِ: فَرَأَيْتُ يَدَهُ فِي عُنُقِهِ مُعَلَّقَةً.

stolen." Ali said, "You have testified against yourself twice," and he cut off his hand. Abdul Rahman said: I saw his hand hanging from his neck.

L42132 And through him—to ʿAbd al-Razzāq from Ibn Jurayj, who said: I asked ʿAṭāʾ, "What if a man confesses against himself once?" He replied, "It is sufficient for him." Abū Muḥammad (may Allah have mercy on him) said: We cited this solely to prevent their specious objections regarding their claim about producing the stolen goods, based on what we mentioned from Ibn ʿUmar. We demonstrated conclusively that their reports from ʿAlī are decisively more sound than what they cited for Ibn ʿUmar in requiring amputation without producing the stolen goods. Similarly, from ʿAṭāʾ—otherwise, is there any valid proof in anyone apart from the Messenger of Allah (peace and blessings be upon him)? Abū Muḥammad (may Allah have mercy on him) said: Some who deny averting the punishment from the thief upon his retraction argued: "If he confesses then retracts, no amputation is imposed, but he must pay restitution for the stolen property he confessed to taking." This is contradictory and erroneous, for he did not confess to anything except in the context of theft? We responded: His confession inevitably entails one of two scenarios—no third exists. Either he is truthful in having stolen what he mentioned, or he is lying. If truthful, they invalidated the obligation by failing to enforce what Allah commanded—amputating the thief's hand. If lying, they wronged him by compelling him to pay for what he never owed, nor did his confession validate it. Thus, they are either invalidating an obligation or committing injustice by permitting forbidden wealth—both are impermissible. And success comes from Allah, the Exalted.

The Issue of Discrepancy in Testimony Regarding Theft

L42133

L42134 2280 - Issue: Discrepancy in testimony regarding this matter? Abū Muḥammad—may Allah have mercy on him—said: Al-Shāfiʿī, Abū Yūsuf, Muḥammad ibn al-Ḥasan, and Abū Thawr stated: If the two witnesses disagree—such that one says, "He stole a cow," while the other says, "No, a bull," or one says, "He stole a red cow," while the other says, "No, a black cow," or one says, "He stole on Thursday," while the other says, "No, on Friday"—

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: رَجُلٌ شَهِدَ عَلَى نَفْسِهِ مَرَّةً وَاحِدَةً؟ قَالَ: حَسْبُهُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: إنَّمَا أَوْرَدْنَا هَذَا لِئَلَّا يَشْغَبُوا فِيمَا يَذْكُرُونَهُ مِنْ إحْضَارِ السَّرِقَةِ بِمَا ذَكَرْنَا عَنْ ابْنِ عُمَرَ، فَأَوْجَدْنَاهُمْ عَنْ عَلِيٍّ أَصَحَّ مِمَّا وَجَدُوا لِابْنِ عُمَرَ قَطْعًا، بِغَيْرِ إحْضَارِ السَّرِقَةِ، وَكَذَلِكَ عَنْ عَطَاءٍ - وَإِلَّا فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَالَ بَعْضُ مَنْ لَا يَرَى دَرْءَ الْحَدِّ عَنْ السَّارِقِ بِرُجُوعِهِ: أَنَّهُ إنْ أَقَرَّ ثُمَّ رَجَعَ فَلَا قَطْعَ عَلَيْهِ، لَكِنْ يَغْرَمُ السَّرِقَةَ الَّذِي أَقَرَّ أَنَّهُ سَرَقَهَا مِنْهُ - وَهَذَا تَنَاقُضٌ وَخَطَأٌ، لِأَنَّهُ لَمْ يُقِرَّ لَهُ بِشَيْءٍ إلَّا عَلَى وَجْهِ السَّرِقَةِ؟ قُلْنَا: فَلَا يَخْلُو إقْرَارُهُ ذَلِكَ ضَرُورَةً مِنْ أَحَدِ وَجْهَيْنِ، لَا ثَالِثَ لَهُمَا: إمَّا أَنْ يَكُونَ صَادِقًا فِي أَنَّهُ سَرَقَ مِنْهُ مَا ذَكَرَ - أَوْ يَكُونَ كَاذِبًا فِي ذَلِكَ، فَإِنْ كَانَ صَادِقًا فَقَدْ عَطَّلُوا الْفَرْضَ، إذْ لَمْ يُنَفِّذُوا عَلَيْهِ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ مِنْ قَطْعِ - يَدِ السَّارِقِ - وَإِنْ كَانَ كَاذِبًا فَقَدْ ظَلَمُوهُ، إذْ غَرَّمُوهُ مَا لَمْ يَجِبْ لَهُ عِنْدَهُ قَطُّ، وَلَا صَحَّ إقْرَارُهُ بِهِ، فَهُمْ بَيْنَ تَعْطِيلِ الْفَرْضِ، أَوْ ظُلْمٍ فِي إبَاحَةِ مَالٍ مُحَرَّمٍ - وَكِلَاهُمَا لَا يَحِلُّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة أختلاف الشَّهَادَة فِي السَّرِقَة]

٢٢٨٠ - مَسْأَلَةٌ: اخْتِلَافُ الشَّهَادَةِ فِي ذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ الشَّافِعِيُّ، وَأَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَأَبُو ثَوْرٍ: إنْ اخْتَلَفَ الشَّاهِدَانِ، فَقَالَ أَحَدُهُمَا: سَرَقَ بَقَرَةً، وَقَالَ الْآخَرُ: بَلْ ثَوْرًا - أَوْ قَالَ أَحَدُهُمَا: سَرَقَ بَقَرَةً حَمْرَاءَ، وَقَالَ الْآخَرُ: بَلْ

then amputation is not carried out against him; but if one says, “He stole a red cow,” and the other says, “No, a black cow,” then amputation is required against him.

L42135–42137 Mālik said: If one of the witnesses said, “He stole on Thursday,” and the other said, “Rather, on the day of...” On Friday, two said: “He committed adultery on Thursday,” and two said: “Rather, on Friday,” so the punishment for theft and the punishment for adultery were nullified against him.

L42138–42140 He said: If one of them states, “He slandered Zayd on Friday,” and the other says, “He slandered him on Thursday”—or if one says, “He drank wine on Thursday,” and the other says, “Rather, on Friday”—then the prescribed punishment (ḥadd) for slander and the prescribed punishment for drinking wine apply. All these are muddled assertions. We have only cited this to demonstrate—with Allah the Exalted’s help—to those who seek self-improvement and whom Allah wills to guide, the invalidity of their claims regarding analogical reasoning, which they consider the foundation of their false analogy. Would not one who discerns this readily counter their legal arguments with equivalent or stronger ones? Thus we ask them all: Inform us about a case where two witnesses testified against someone for stealing a red cow while another testified he stole a white cow. Or where two witnesses testified he slandered Zayd—one stating “yesterday” and the other “today”—or one said, “He drank wine yesterday,” and the other, “Rather, today.” Is this testimony concerning a single theft or two distinct thefts? A single slander or two differing slanders? A single drinking act or two separate acts? If they reply, “It is a single theft, a single drinking act, and a single slander,” they defiantly contradict manifest reality. No person of sound intellect doubts that Thursday’s drinking differs from Friday’s—being a separate act—or that stealing a yellow cow differs from stealing a black cow—constituting another theft. If they say, “These are two distinct thefts, two distinct drinking acts, and two distinct slanders,” we ask: What distinguishes this from testimonies differing in instances of adultery, stealing an ox versus a cow, or discrepancies in location? Here they have no escape whatsoever—no Quranic text, sound Sunnah, consensus, Companion’s opinion, valid analogy, or sound reasoning.

سَوْدَاءَ - أَوْ قَالَ أَحَدُهُمَا: سَرَقَ يَوْمَ الْخَمِيسِ، وَقَالَ الْآخَرُ: بَلْ يَوْمَ الْجُمُعَةِ، فَلَا قَطْعَ عَلَيْهِ - فَإِنْ قَالَ أَحَدُهُمَا: سَرَقَ بَقَرَةً حَمْرَاءَ، وَقَالَ الْآخَرُ: بَلْ سَوْدَاءَ فَعَلَيْهِ الْقَطْعُ.

وَقَالَ مَالِكٌ: إِنْ قَالَ: أَحَدُ الشَّاهِدَيْنِ: سَرَقَ يَوْمَ الْخَمِيسِ، وَقَالَ الْآخَرُ: بَلْ يَوْمَ الْجُمُعَةِ، وَقَالَ اثْنَانِ: زَنَى يَوْمَ الْخَمِيسِ، وَقَالَ اثْنَانِ: بَلْ يَوْمَ الْجُمُعَةِ، فَقَدْ بَطَلَ عَنْهُ حَدُّ السَّرِقَةِ، وَحَدُّ الزِّنَى.

قَالَ: فَلَوْ قَالَ أَحَدُهُمَا: قَذَفَ زَيْدًا يَوْمَ الْجُمُعَةِ، وَقَالَ الْآخَرُ: قَذَفَهُ يَوْمَ الْخَمِيسِ - أَوْ قَالَ أَحَدُهُمَا: شَرِبَ الْخَمْرَ يَوْمَ الْخَمِيسِ، وَقَالَ الْآخَرُ: بَلْ يَوْمَ الْجُمُعَةِ، فَعَلَيْهِ حَدُّ الْقَذْفِ، وَحَدُّ الْخَمْرِ. وَهَذَا كُلُّهُ تَخْلِيطٌ، وَإِنَّمَا أَوْرَدْنَاهُ لِنُرِيَ - بِعَوْنِ اللَّهِ تَعَالَى - مَنْ نَصَحَ نَفْسَهُ، وَأَرَادَ اللَّهُ تَعَالَى بِهِ خَيْرًا، بُطْلَانَ أَقْوَالِهِمْ فِي التَّشْبِيهِ، الَّذِي هُوَ عِنْدَهُمْ أَصْلٌ لِقِيَاسِهِمْ الْبَاطِلِ، وَأَنَّهُ مَنْ مَيَّزَهُ لَمْ يَعْجِزْ أَنْ يُعَارِضَ عِلَلَهُمْ بِمِثْلِهَا، أَوْ بِأَقْوَى مِنْهَا؟ فَنَقُولُ لِجَمِيعِهِمْ: أَخْبِرُونَا عَمَّنْ شَهِدَ عَلَيْهِ شَاهِدَانِ بِأَنَّهُ سَرَقَ بَقَرَةً حَمْرَاءَ، وَقَالَ الْآخَرُ: بَيْضَاءَ - وَعَمَّنْ شَهِدَ عَلَيْهِ شَاهِدَانِ بِأَنَّهُ قَذَفَ زَيْدًا، وَقَالَ أَحَدُهُمَا: أَمْسِ، وَقَالَ الْآخَرُ: بَلْ الْيَوْمَ - أَوْ قَالَ أَحَدُهُمَا: شَرِبَ خَمْرًا أَمْسِ، وَقَالَ الْآخَرُ: بَلْ الْيَوْمَ - أَهَذِهِ الشَّهَادَةُ عَلَى سَرِقَةٍ وَاحِدَةٍ؟ أَوْ عَلَى سَرِقَتَيْنِ مُخْتَلِفَتَيْنِ؟ وَعَلَى قَذْفٍ وَاحِدٍ، أَمْ عَلَى قَذْفَيْنِ مُتَغَايِرَيْنِ؟ وَعَلَى شُرْبٍ وَاحِدٍ، أَمْ عَلَى شُرْبَيْنِ مُفْتَرِقَيْنِ؟ فَإِنْ قَالُوا: بَلْ عَلَى سَرِقَةٍ وَاحِدَةٍ، وَشُرْبٍ وَاحِدٍ، وَقَذْفٍ وَاحِدٍ، كَابَرُوا الْعِيَانَ، لِأَنَّهُ لَا يَشُكُّ ذُو حِسٍّ سَلِيمٍ فِي أَنَّ شُرْبَ يَوْمِ الْخَمِيسِ لَيْسَ هُوَ شُرْبَ يَوْمِ الْجُمُعَةِ، وَإِنَّمَا هُوَ شُرْبٌ آخَرُ - وَأَنَّ سَرِقَةَ بَقَرَةٍ صَفْرَاءَ لَيْسَتْ هِيَ سَرِقَةَ بَقَرَةٍ سَوْدَاءَ، وَإِنَّمَا هِيَ سَرِقَةٌ أُخْرَى؟ وَإِنْ قَالُوا: بَلْ هِيَ سَرِقَتَانِ مُخْتَلِفَتَانِ، وَشُرْبَانِ مُخْتَلِفَانِ، وَقَذْفَانِ مُخْتَلِفَانِ مُتَغَايِرَانِ؟ قِيلَ لَهُمْ: فَأَيُّ فَرْقٍ بَيْنَ هَذَا

Thus, the view differentiating between these rulings collapses with certainty, leaving only the stance equating them—whether by observing distinctions in all cases or disregarding them entirely. Abū Muḥammad—may Allah have mercy on him—said: We find that those who consider distinctions in all such matters state: If... If the two witnesses differ in describing the stolen item, the time of theft, or its location, their testimonies constitute two conflicting accounts. Since that is the case, the outcome is reduced to the testimony of a single witness, and it is impermissible to establish a definitive judgment with a single witness. Similarly, it is impermissible to enforce the hadd punishment for slander nor the hadd punishment for wine consumption through a single witness. This is their sole argument; they have no other proof.

وَبَيْنَ الشَّهَادَاتِ بِزِنًا مُخْتَلِفٍ، أَوْ بِسَرِقَةِ ثَوْرٍ، أَوْ بَقَرَةٍ، أَوْ بِاخْتِلَافِ الشَّهَادَةِ فِي الْمَكَانِ - وَهَذَا مَا لَا سَبِيلَ لَهُمْ مِنْهُ إلَى التَّخَلُّصِ أَصْلًا، لَا بِنَصِّ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ وَلَا إجْمَاعٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ - فَسَقَطَ بِيَقِينٍ قَوْلُ مَنْ فَرَّقَ بَيْنَ الْأَحْكَامِ الَّتِي ذَكَرْنَا، وَلَمْ يَبْقَ إلَّا قَوْلُ مَنْ سَاوَى بَيْنَهُمَا، فَرَاعَى الِاخْتِلَافَ فِي كُلِّ ذَلِكَ، أَوْ لَمْ يُرَاعِ الِاخْتِلَافَ فِي شَيْءٍ مِنْ ذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَجَدْنَا مَنْ رَاعَى الِاخْتِلَافَ فِي كُلِّ ذَلِكَ يَقُولُ: إذَا اخْتَلَفَ الشَّاهِدَانِ فِي صِفَةِ الْمَسْرُوقِ، أَوْ فِي زَمَانِهِ، أَوْ فِي مَكَانِهِ فَإِنَّمَا حَصَلَ مِنْ قَوْلِهِمْ فِعْلَانِ مُتَغَايِرَانِ، فَإِذْ ذَلِكَ كَذَلِكَ، فَإِنَّمَا حَصَلَ عَلَى فِعْلِ شَاهِدٍ وَاحِدٍ، وَلَا يَجُوزُ الْقَطْعُ بِشَاهِدٍ وَاحِدٍ - وَكَذَلِكَ الْقَذْفُ، فَلَا يَجُوزُ إقَامَةُ حَدِّ قَذْفٍ، وَلَا حَدِّ خَمْرٍ، بِشَاهِدٍ وَاحِدٍ - فَهَذِهِ حُجَّتُهُمْ، مَا لَهُمْ حُجَّةٌ غَيْرُهَا.

L42141 We examined it and found it invalid, because what must be strictly defined in testimony and required of the witness is precisely that without which the testimony cannot be completed—that which, if deficient, renders the testimony nonexistent. Therefore, if the witness contradicts himself regarding this, the testimony is voided, as it was not completed.

فَنَظَرْنَا فِيهَا فَوَجَدْنَاهَا لَا تَصِحُّ؛ لِأَنَّ الَّذِي يَنْبَغِي أَنْ يُضْبَطَ فِي الشَّهَادَةِ، وَيُطْلَبَ بِهِ الشَّاهِدُ، إنَّمَا هُوَ مَا لَا تَتِمُّ الشَّهَادَةُ إلَّا بِهِ، وَالَّذِي إنْ نَقَصَ لَمْ تَكُنْ شَهَادَةٌ، فَهَذَا هُوَ الَّذِي إنْ اخْتَلَفَ الشَّاهِدُ فِيهِ بَطَلَتْ الشَّهَادَةُ؛ لِأَنَّهَا لَمْ تَتِمَّ.

L42142 As for matters that serve no purpose in testimony, are unnecessary for it, and where testimony remains complete without their mention—whether witnesses differ regarding them or not, mention them or remain silent—they should not be considered. Their disagreement in such matters equates to disagreement in an unrelated case, with no distinction. Since this principle applies, mentioning color in testimony has no significance. Similarly, specifying time in testimony regarding adultery, theft, slander, or alcohol consumption holds no relevance. Mentioning location in all such cases is equally meaningless. Therefore, their disagreement on these points carries the same weight as their agreement or silence, for testimony in these matters

وَأَمَّا مَا لَا مَعْنَى لِذِكْرِهِ فِي الشَّهَادَةِ، وَلَا يُحْتَاجُ إلَيْهِ فِيهَا، وَتَتِمُّ الشَّهَادَةُ مَعَ السُّكُوتِ عَنْهُ، فَلَا يَنْبَغِي أَنْ يُلْتَفَتَ إلَيْهِ - وَسَوَاءٌ اخْتَلَفَ الشُّهُودُ فِيهِ، أَوْ لَمْ يَخْتَلِفُوا، وَسَوَاءٌ ذَكَرُوهُ، أَوْ لَمْ يَذْكُرُوهُ - وَاخْتِلَافُهُمْ فِيهِ كَاخْتِلَافِهِمْ فِي قِصَّةٍ أُخْرَى لَيْسَتْ مِنْ الشَّهَادَةِ فِي شَيْءٍ، وَلَا فَرْقَ، فَلَمَّا وَجَبَ هَذَا كَانَ ذِكْرُ اللَّوْنِ فِي الشَّهَادَةِ لَا مَعْنَى لَهُ، وَكَانَ أَيْضًا ذِكْرُ الْوَقْتِ فِي الشَّهَادَةِ فِي الزِّنَا وَفِي السَّرِقَةِ، وَفِي الْقَذْفِ، وَفِي الْخَمْرِ لَا مَعْنَى لَهُ

requires none of these details. What then defines the ruling of testimony? It suffices for witnesses to declare: “He committed adultery with a foreign woman we recognize—we saw him insert his genitalia into hers. Nothing more.” It is irrelevant whether they describe her as dark-skinned, fair, blue-eyed, or kohl-eyed; whether she was coerced or willing; whether the act occurred yesterday, today, a year ago, in Egypt, or in Baghdad.

- وَكَانَ أَيْضًا ذِكْرُ الْمَكَانِ فِي كُلِّ ذَلِكَ لَا مَعْنَى لَهُ، فَكَانَ اخْتِلَافُهُمْ فِي كُلِّ ذَلِكَ كَاتِّفَاقِهِمْ، كَسُكُوتِهِمْ، وَلَا فَرْقَ؛ لِأَنَّ الشَّهَادَةَ فِي كُلِّ ذَلِكَ تَامَّةٌ دُونَ ذِكْرِ شَيْءٍ مِنْ ذَلِكَ، وَإِنَّمَا حُكْمُ الشَّهَادَةِ؟ وَحَسْبُ الشُّهُودِ أَنْ يَقُولُوا: إِنَّهُ زَنَى بِامْرَأَةٍ أَجْنَبِيَّةٍ نَعْرِفُهَا، أَوْلَجَ ذَكَرَهُ فِي قُبُلِهَا، رَأَيْنَا ذَلِكَ فَقَطْ، وَمَا نُبَالِي قَالُوا: إِنَّهَا سَوْدَاءُ، أَوْ بَيْضَاءُ، أَوْ زَرْقَاءُ أَوْ كَحْلَاءُ مُكْرَهَةٌ، أَوْ طَائِعَةٌ، أَمْسِ، أَوْ الْيَوْمِ، أَوْ مُنْذُ سَنَةٍ بِمِصْرَ، أَوْ بِبَغْدَادَ.

L42143 And likewise: if they differed regarding the color of his garment at that time, or the color of his turban.

وَكَذَلِكَ - لَوْ اخْتَلَفُوا فِي لَوْنِ ثَوْبِهِ حِينَئِذٍ، أَوْ لَوْنِ عِمَامَتِهِ.

L42144 Similarly, it suffices for them to state: “He stole a head of cattle by secretly taking it,” and it is not required for the two witnesses to specify: “horned,” “docked-tailed,” “tailless,” “full-tailed and white or full-tailed and black”—and so too in cases of slander and drinking wine; there is no distinction.

وَكَذَلِكَ - حَسْبُهُمْ أَنْ يَقُولُوا: سَرَقَ رَأْسًا مِنْ الْبَقَرِ مُخْتَفِيًا بِأَخْذِهِ، وَلَا عَلَيْهِمَا أَنْ يَقُولَا: أَقْرَنُ، أَوْ أَعْضَبُ، أَوْ أَبْتَرُ، أَوْ وَافِي الذَّنَبِ أَبْيَضَ أَوْ أَسْوَدَ - وَهَكَذَا فِي الْقَذْفِ، وَشُرْبِ الْخَمْرِ، وَلَا فَرْقَ.

L42145 It is established that testimony in all such matters remains valid despite differences among the witnesses, and what need not be explicitly mentioned in the testimony, if their testimony entails only the existence of adultery by him, theft, false accusation of unchastity (qadhf) by him, or his drinking of alcohol, because the witnesses have agreed on that.

فَصَحَّ أَنَّ الشَّهَادَةَ فِي كُلِّ ذَلِكَ تَامَّةٌ مَعَ اخْتِلَافِ الشُّهُودِ، وَمَا لَا يَحْتَاجُ إلَى ذِكْرِهِ فِي الشَّهَادَةِ، إذَا اقْتَضَتْ شَهَادَتُهُمْ وُجُودَ الزِّنَا مِنْهُ، أَوْ وُجُودَ السَّرِقَةِ، أَوْ وُجُودَ الْقَذْفِ مِنْهُ، أَوْ وُجُودَ شُرْبِ الْخَمْرِ مِنْهُ فَقَطْ؛ لِأَنَّهُمْ قَدْ اتَّفَقُوا فِي ذَلِكَ.

L42146–42147 This is what necessitates the prescribed punishment, for Allah the Exalted has obligated the punishment solely due to the occurrence of adultery, the established penalty for theft, or false accusation of adultery. If four witnesses establish adultery, the prescribed punishment becomes obligatory by the explicit text of the Quran and the Sunnah. Neither Allah the Exalted nor His Messenger—peace and blessings be upon him—ever stated: “Do not accept testimony unless they testify to a single act of adultery at one time and in one place, or to a single theft of one item at one time and in one place.” “And your Lord is not forgetful” (Quran 19:64).[20]

وَهَذَا هُوَ الْمُوجِبُ لِلْحَدِّ، فَإِنَّمَا أَوْجَبَ اللَّهُ تَعَالَى الْحَدَّ فِي كُلِّ ذَلِكَ بِوُقُوعِ الزِّنَا، وَوُجُوبِ السَّرِقَةِ، أَوْ الْقَذْفِ، وَأَثْبَتَ الْأَرْبَعَةُ الزِّنَا فَقَدْ وَجَبَ الْحَدُّ فِي ذَلِكَ بِنَصِّ الْقُرْآنِ، وَالسُّنَّةِ وَلَمْ يَقُلْ اللَّهُ تَعَالَى قَطُّ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا تَقْبَلُوا الشَّهَادَةَ حَتَّى يَشْهَدُوا عَلَى زِنًا وَاحِدٍ، فِي وَقْتٍ وَاحِدٍ، فِي مَكَانٍ وَاحِدٍ، وَعَلَى سَرِقَةٍ وَاحِدَةٍ لِشَيْءٍ وَاحِدٍ فِي وَقْتٍ وَاحِدٍ، فِي مَكَانٍ وَاحِدٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L42148 And by Allah, if Allah the Exalted had willed that matter, He would not

[20] **Qur’an references (L42147):** Qur’an 19:64 (Maryam).

have neglected it nor overlooked it until it were expounded by so-and-so and so-and-so - Allah is utterly beyond such imperfection! Thus it stands confirmed that their stipulated condition in this regard is baseless and devoid of meaning - with Allah alone lies all success. Let them realize that their claim "We do not know this position to be reported from any Companion - may Allah be pleased with them - nor do we attribute it to any follower except for what is transmitted from Qatadah": Hammam narrated to us, Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabari narrated to us, Abd al-Razzaq narrated from Ma'mar from Qatadah concerning a man against whom one witness testified he stole in one region, and another testified he stole in a different region. He ruled: "No amputation is to be imposed upon him."

L42149 It has been authentically reported from some of the Followers—those we recognize as being of higher standing than Qatādah—that they held a differing opinion: ʿAbdullāh ibn Rabīʿ reported from ʿAbdullāh ibn Muḥammad ibn ʿUthmān, who reported from Aḥmad ibn Khālid, who reported from ʿAlī ibn ʿAbd al-ʿAzīz, who reported from al-Ḥajjāj ibn al-Minhāl, who reported from Ḥammād ibn Salamah, who reported from Hishām ibn ʿUrwah ibn al-Zubayr, from his father, who said: "A man's solitary testimony is permissible in theft"—we have previously mentioned a similar report from ʿUbaydullāh ibn Abī Bakrah—"even though we do not hold this opinion. We [present this] to show them that their obfuscation—by claiming it constitutes a single testimony regarding a single act—is invalid reasoning. Success is from Allah, the Exalted."

L42150 **The issue of theft in a state of necessity.**

L42151–42153 2281 - Issue: Is amputation applicable in cases of necessity? Abū Muḥammad—may Allāh have mercy on him—said: Ḥumām narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrabī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq narrated to us from Maʿmar from Yaḥyā ibn Abī Kathīr, who said: ʿUmar ibn al-Khaṭṭāb ruled: "Amputation is not to be imposed for a palm branch, nor during a year of famine." And via this chain to Maʿmar from Abān: A man came to ʿUmar ibn al-Khaṭṭāb regarding a she-camel that

وَتَاللَّهِ، لَوْ أَرَادَ اللَّهُ تَعَالَى ذَلِكَ لَمَا أَهْمَلَهُ، وَلَا أَغْفَلَهُ حَتَّى يُبَيِّنَهُ فُلَانٌ وَفُلَانٌ، وَحَاشَ لِلَّهِ مِنْ هَذَا. فَصَحَّ أَنَّ مَا اشْتَرَطُوهُ مِنْ ذَلِكَ خَطَأٌ لَا مَعْنَى لَهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: فَلْيَعْلَمُوا أَنَّ قَوْلَهُمْ: لَا نَعْلَمُهُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا نَذْكُرُهُ عَنْ تَابِعٍ، إلَّا شَيْئًا وَرَدَ عَنْ قَتَادَةَ: وَحَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، فِي رَجُلٍ شَهِدَ عَلَيْهِ رَجُلٌ أَنَّهُ سَرَقَ بِأَرْضٍ، وَشَهِدَ عَلَيْهِ آخَرُ بِأَنَّهُ سَرَقَ بِأَرْضٍ أُخْرَى؟ قَالَ: لَا قَطْعَ عَلَيْهِ.

وَقَدْ صَحَّ عَنْ بَعْضِ التَّابِعِينَ مِمَّنْ نَعْلَمُهُ أَعْلَى مِنْ قَتَادَةَ خِلَافُ هَذَا: كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ أَنَا هِشَامُ بْنُ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ، قَالَ: تَجُوزُ شَهَادَةُ الرَّجُلِ وَحْدَهُ فِي السَّرِقَةِ - وَقَدْ ذَكَرْنَا مِثْلَ هَذَا عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي بَكْرَةَ - وَإِنْ كُنَّا لَا نَقُولُ بِهِ - وَلَكِنْ لِنُرِيَهُمْ أَنَّ تَمْوِيهَهُمْ بِأَنَّهَا شَهَادَةٌ وَاحِدَةٌ عَلَى فِعْلٍ وَاحِدٍ: كَلَامٌ فَاسِدٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة السَّرِقَة عِنْد الضرورة]

٢٢٨١ - مَسْأَلَةٌ: الْقَطْعُ فِي الضَّرُورَةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ حَدَّثَنَا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَا تُقْطَعُ فِي عِذْقٍ، وَلَا فِي عَامِ السَّنَةِ. وَبِهِ - إلَى مَعْمَرٍ عَنْ أَبَانَ: أَنَّ رَجُلًا جَاءَ إلَى عُمَرَ بْنِ الْخَطَّابِ فِي نَاقَةٍ نُحِرَتْ، فَقَالَ لَهُ عُمَرُ: هَلْ لَكَ فِي

had been slaughtered. Umar said to him: “What do you think of two ten-year-old she-camels, pastured and fattened, in exchange for your camel? For we do not amputate hands during a drought year”—and “pastured” refers to those made to rest? Abu Muhammad said: “Whoever steals due to dire need, if he takes an amount sufficient to relieve himself, nothing is imposed upon him, for he has taken his rightful due. If he finds only a single item in which there is abundant surplus—such as one garment, a pearl, a camel, or the like—and takes it, nothing is imposed upon him either, for he must return the surplus to whom it rightfully belongs, since he could not take beyond the surplus required for his sustenance. But if he could obtain precisely what sustains him until reaching a place where provision is attainable, yet takes more while having the means to refrain, hand amputation is required, for he stole without necessity. If a person is compelled to take what is indispensable for his livelihood yet fails to do so, he is causing his own destruction and disobeying Allah. Allah Almighty says: *Do not destroy yourselves* [4:29]—a universal ruling encompassing all that its wording entails.” And with Allah, the Most High, lies all success.[21]

The Issue of the Prohibition of Stealing from Relatives

Issue 2282: The case of one who steals from a mahram relative. Abu Muhammad—may Allah have mercy on him—said: Scholars have differed regarding one who steals from the property of any mahram relative. Malik, Abu Hanifah, al-Shafi’i, Ahmad ibn Hanbal, their followers, Sufyan al-Thawri, and Ishaq said: If parents steal from the property of their son or daughter, their hands are not to be amputated.

Al-Shafi’i said: Similarly, grandfathers and grandmothers—however they may be—are not subject to amputation for what they steal from the property of those born after them in their lineage.

All these jurists—except Mālik and Abū Thawr—stated that no amputa-

[21] **Qur’an references (L42151):** Qur’an 4:29 (An-Nisa).

نَاقَتَيْنِ عِشْرَاوَيْنِ، مُرْتَعَتَيْنِ، سَمِينَتَيْنِ، بِنَاقَتِكَ؟ فَإِنَّا لَا نَقْطَعُ فِي عَامِ السَّنَةِ - وَالْمُرْتَعَتَانِ: الْمُوَطَّأَتَانِ؟ قَالَ أَبُو مُحَمَّدٍ: مَنْ سَرَقَ مِنْ جَهْدٍ أَصَابَهُ، فَإِنْ أَخَذَ مِقْدَارَ مَا يَغِيثُ بِهِ نَفْسَهُ فَلَا شَيْءَ عَلَيْهِ، وَإِنَّمَا أَخَذَ حَقَّهُ، فَإِنْ لَمْ يَجِدْ إِلَّا شَيْئًا وَاحِدًا فَفِيهِ فَضْلٌ كَثِيرٌ، كَثَوْبٍ وَاحِدٍ أَوْ لُؤْلُؤَةٍ، أَوْ بَعِيرٍ، أَوْ نَحْوِ ذَلِكَ، فَأَخَذَهُ كَذَلِكَ فَلَا شَيْءَ عَلَيْهِ أَيْضًا؛ لِأَنَّهُ يَرُدُّ فَضْلَهُ لِمَنْ فَضَلَ عَنْهُ؛ لِأَنَّهُ لَمْ يَقْدِرْ عَلَى فَضْلِ قُوتِهِ مِنْهُ، فَلَوْ قَدَرَ عَلَى مِقْدَارِ قُوتِهِ يُبَلِّغُهُ إِلَى مَكَانِ الْمَعَاشِ فَأَخَذَ أَكْثَرَ مِنْ ذَلِكَ وَهُوَ مُمَكَّنٌ لَا يَأْخُذُهُ، فَعَلَيْهِ الْقَطْعُ؛ لِأَنَّهُ سَرَقَ ذَلِكَ عَنْ غَيْرِ ضَرُورَةٍ، وَإِنْ فُرِضَ عَلَى الْإِنْسَانِ أَخْذُ مَا اُضْطُرَّ إِلَيْهِ فِي مَعَاشِهِ، فَإِنْ لَمْ يَفْعَلْ فَهُوَ قَاتِلٌ نَفْسَهُ، وَهُوَ عَاصٍ لِلَّهِ قَالَ اللَّهُ تَعَالَى {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] وَهُوَ عُمُومٌ لِكُلِّ مَا اقْتَضَاهُ لَفْظُهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة السَّرِقَة مِنْ ذِي رَحِم محرم]

٢٢٨٢ - مَسْأَلَةٌ: مَنْ سَرَقَ مِنْ ذِي رَحِمٍ مَحْرَمَةٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِيمَنْ سَرَقَ مِنْ مَالِ كُلِّ ذِي رَحِمٍ مَحْرَمَةٍ؟ فَقَالَ مَالِكٌ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَصْحَابُهُمْ، وَسُفْيَانُ الثَّوْرِيُّ، وَإِسْحَاقُ: إِنْ سَرَقَ الْأَبَوَانِ مِنْ مَالِ ابْنِهِمَا، أَوْ بِنْتِهِمَا فَلَا قَطْعَ عَلَيْهِمَا.

قَالَ الشَّافِعِيُّ: وَكَذَلِكَ الْأَجْدَادُ وَالْجَدَّاتُ - كَيْفَ كَانُوا - لَا قَطْعَ عَلَيْهِمْ فِيمَا سَرَقُوهُ مِنْ مَالِ مَنْ تَلِيهِ وِلَادَتُهُمْ.

tion applies to a son or daughter for stealing from the property of parents, grandfathers, or grandmothers. Mālik and Abū Thawr said: Amputation is required for them in that case.

وَقَالَ هَؤُلَاءِ كُلُّهُمْ - حَاشَا مَالِكًا، وَأَبَا ثَوْرٍ: لَا قَطْعَ عَلَى الْوَلَدِ، وَلَا عَلَى الْبِنْتِ فِيمَا سَرَقَاهُ مِنْ مَالِ الْوَالِدَيْنِ، أَوْ الْأَجْدَادِ، أَوْ الْجَدَّاتِ، قَالَ مَالِكٌ، وَأَبُو ثَوْرٍ: عَلَيْهِمَا الْقَطْعُ فِي ذَلِكَ.

L42158 Al-Thawri, Abu Hanifah, and his companions said: The ḥadd punishment of amputation is not imposed on anyone who steals property belonging to one of his mahram relatives.

وَقَالَ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا قَطْعَ عَلَى كُلِّ مَنْ سَرَقَ مَالًا لِأَحَدٍ مِنْ رَحِمِهِ الْمَحْرَمَةِ.

L42159 Our companions said: Amputation is obligatory upon one who steals from his child, his parents, his grandmother, his grandfather, or a relative—whether *mahram* or non-*mahram*.

وَقَالَ أَصْحَابُنَا: الْقَطْعُ وَاجِبٌ عَلَى مَنْ سَرَقَ مِنْ وَلَدِهِ، أَوْ مِنْ وَالِدَيْهِ، أَوْ مِنْ جَدَّتِهِ، أَوْ مِنْ جَدِّهِ، أَوْ مِنْ ذِي رَحِمٍ مَحْرَمَةٍ، أَوْ غَيْرِ مَحْرَمَةٍ.

L42160 Have they all agreed that the hand is to be cut off for stealing from a blood relative not within the prohibited degrees of marriage, for stealing from one's milk mother, for stealing from one's milk daughter, milk son, or milk brothers?

وَاتَّفَقُوا كُلُّهُمْ أَنَّهُ يُقْطَعُ فِيمَا سَرَقَ مِنْ ذِي رَحِمِهِ غَيْرِ الْمَحْرَمَةِ، وَفِيمَا سَرَقَ مِنْ أُمِّهِ مِنْ الرَّضَاعَةِ، وَابْنَتِهِ وَابْنِهِ مِنْ الرَّضَاعَةِ، وَإِخْوَتِهِ مِنْ الرَّضَاعَةِ؟

L42161–42162 Abū Muḥammad said: When they differed as we mentioned, it became obligatory for us to examine this matter to know the truth and follow it—with the help of Allah, the Exalted—so we examined the opinion of those who waived amputation from the parents regarding the child's property if he stole it. We found them citing what is established from the Messenger of Allah—peace and blessings be upon him—in his saying, "You and your property belong to your father." They said: "He only took his own property."

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا، وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى - فَنَظَرْنَا فِي قَوْلِ مَنْ أَسْقَطَ الْقَطْعَ عَنْ الْأَبَوَيْنِ فِي مَالِ الْوَلَدِ إذَا سَرَقَهُ؟ فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِالثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ «أَنْتَ وَمَالُكَ لِأَبِيكَ» قَالُوا: فَإِنَّمَا أَخَذَ مَالَهُ.

L42163 They said: If he killed his son, he would not be executed for it, and if he committed adultery with his son's female slave, he would not receive the *hadd* punishment for that. Similarly, if he stole from his son's wealth—He further stated: It is incumbent upon him to make his father self-sufficient if he becomes needy and dependent on others, for the father thereby has a rightful claim to his son's wealth.

وَقَالُوا: لَوْ قَتَلَ ابْنُهُ لَمْ يُقْتَلْ بِهِ، وَلَوْ زَنَى بِأَمَةِ ابْنِهِ لَمْ يُحَدَّ لِذَلِكَ، فَكَذَلِكَ إذَا سَرَقَ مِنْ مَالِهِ - قَالَ: وَفَرْضٌ عَلَيْهِ أَنْ يُعَفِّفَ أَبَاهُ إذَا احْتَاجَ إلَى النَّاسِ فَلَهُ فِي مَالِهِ حَقٌّ بِذَلِكَ.

L42164 And they said: For the needy, there is a right in the owner's wealth; when he needs it, the owner is obligated to spend on him.

وَقَالُوا: لَهُ فِي مَالِهِ حَقٌّ إذَا احْتَاجَ إلَيْهِ كُلِّفَ الْإِنْفَاقَ عَلَيْهِ.

L42165 And they said, “Allah, the Most High, said: ’And show good treatment to your parents’ [Al-Isra: 23].”[22]

وَقَالُوا: قَالَ اللَّهُ تَعَالَى {وَبِالْوَالِدَيْنِ إِحْسَانًا} [الإسراء: ٢٣] .

L42166 And He, the Exalted, said: {Give thanks to Me and to your parents} [Luqman: 14]. And He, the Exalted, said: {Do not say to them “Uff,” nor repel them} [Al-Isra: 23] up to His saying: {as they nurtured me in my childhood} [Al-Isra: 24]. Is cutting off their hands for what was taken from his wealth an act of mercy? This encompasses every baseless argument they raised in all these matters—and in all of that, there is no proof for them in any part of it; rather, it is against them, as I will clarify—Allah, the Exalted, willing.[23]

وَقَالَ تَعَالَى {أَنِ اشْكُرْ لِي وَلِوَالِدَيْكَ} [لقمان: ١٤] . وَقَالَ تَعَالَى {فَلا تَقُلْ لَهُمَا أُفٍّ وَلا تَنْهَرْهُمَا} [الإسراء: ٢٣] إلَى قَوْلِهِ: {كَمَا رَبَّيَانِي صَغِيرًا} [الإسراء: ٢٤] فَلَيْسَ قَطْعُ أَيْدِيهِمَا فِيمَا أُخِذَ مِنْ مَالِهِ رَحْمَةٌ؟ فَهَذَا كُلُّ مَا شَغَبُوا بِهِ فِي كُلِّ ذَلِكَ - وَكُلُّ ذَلِكَ لَا حُجَّةَ لَهُمْ فِي كُلِّ شَيْءٍ مِنْهُ، بَلْ هُوَ عَلَيْهِمْ، كَمَا نُبَيِّنُ - إنْ شَاءَ اللَّهُ تَعَالَى.

L42167 As for what they cited from the Quran, it is correct. However, it does not indicate their claim regarding the abolition of amputation for stealing from the child’s property, nor the abolition of flogging, stoning, or banishment—if one fornicates with the child’s slave girl—nor the abolition of the ḥadd punishment—if one falsely accuses the child of unchastity—nor the abolition of the penalty for ḥirābah (banditry)—if one commits highway robbery against the child. As for the statement of Allah, the Exalted: _And show kindness to parents_ [Al-Isra: 23], Allah the Exalted has indeed mandated kindness toward them, just as He has obligated us to show kindness to others as well.[24]

أَمَّا مَا ذَكَرُوا مِنْ الْقُرْآنِ فَحَقٌّ، إلَّا أَنَّهُ لَا يَدُلُّ عَلَى مَا ادَّعَوْا مِنْ إسْقَاطِ الْقَطْعِ فِيمَا سَرَقُوا مِنْ مَالِ الْوَلَدِ، وَلَا عَلَى إسْقَاطِ الْجَلْدِ، وَالرَّجْمِ، أَوْ التَّغْرِيبِ - إذَا زَنَى بِجَارِيَةِ الْوَلَدِ - وَلَا عَلَى إسْقَاطِ الْحَدِّ - إذَا قَذَفَ الْوَلَدَ - وَلَا عَلَى إسْقَاطِ الْمُحَارَبَةِ - إذَا قَطَعَ الطَّرِيقَ عَلَى الْوَلَدِ. أَمَّا قَوْله تَعَالَى {وَبِالْوَالِدَيْنِ إحْسَانًا} [الإسراء: ٢٣] فَإِنَّ اللَّهَ تَعَالَى أَوْجَبَ الْإِحْسَانَ إلَيْهِمَا، كَمَا أَوْجَبَهُ عَلَيْنَا أَيْضًا لِغَيْرِنَا.

L42168 Allah, the Exalted, said, “And to parents, kindness, and to near relatives of kinship, orphans, the needy, and the neighbor of kinship” [An-Nisa: 36].[25]

قَالَ اللَّهُ تَعَالَى {وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَالْجَارِ ذِي الْقُرْبَى} [النساء: ٣٦] .

L42169–42170 If the preceding part of the verse constitutes evidence for the obligation to show kindness to parents by exempting them from amputation when they steal from their child’s property, then it must also, inevitably, serve as evidence for exempting every relative, the wayfarer, the distant neighbor, and the companion at your side from amputation when they steal from our property. Yet this is a position they do not uphold? Thus their contradiction becomes evident, and their argument based on the verse is invalidated.

فَإِنْ كَانَتْ مُقَدِّمَةُ الْآيَةِ حُجَّةً بِوُجُوبِ الْإِحْسَانِ إلَى الْأَبَوَيْنِ فِي إسْقَاطِ الْقَطْعِ عَنْهُمَا - إذَا سَرَقَا مِنْ مَالِ الْوَلَدِ - فَهِيَ حُجَّةٌ أَيْضًا - وَلَا بُدَّ - فِي إسْقَاطِ الْقَطْعِ عَنْ كُلِّ ذِي قُرْبَى، وَعَنْ ابْنِ السَّبِيلِ، وَعَنْ الْجَارِ الْجُنُبِ، وَالصَّاحِبِ بِالْجَنْبِ - إذَا سَرَقُوا مِنْ أَمْوَالِنَا - وَهَذَا مَا لَا يَقُولُونَهُ؟ فَظَهَرَ تَنَاقُضُهُمْ، وَبَطَلَ احْتِجَاجُهُمْ بِالْآيَةِ.

[22] **Qur’an references (L42165):** Qur’an 17:23 (Al-Isra).

[23] **Qur’an references (L42166):** Qur’an 31:14 (Luqman); Qur’an 17:23 (Al-Isra); Qur’an 17:24 (Al-Isra).

[24] **Qur’an references (L42167):** Qur’an 17:23 (Al-Isra).

[25] **Qur’an references (L42168):** Qur’an 4:36 (An-Nisa).

L42171 Moreover, the command to do good does not entail prohibiting the enforcement of prescribed penalties. Rather, enforcing them upon those subject to them constitutes beneficence toward them, as per the explicit injunction of the Quran. For Allah the Exalted states: "Indeed, Allah commands justice and beneficence" [16:90]. He has commanded us to implement these penalties; thus, enforcing them upon offenders is an act of beneficence toward them. Verily, they serve as atonement and purification for those subjected to them.[26]

وَأَيْضًا - فَالْأَمْرُ بِالْإِحْسَانِ لَيْسَ فِيهِ مَنْعٌ مِنْ إقَامَةِ الْحُدُودِ، بَلْ إقَامَتُهَا عَلَيْهِمْ مِنْ الْإِحْسَانِ إلَيْهِمْ، بِنَصِّ الْقُرْآنِ، لِقَوْلِ اللَّهِ تَعَالَى: {إنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ} [النحل: ٩٠] وَقَدْ أَمَرَنَا بِإِقَامَةِ الْحُدُودِ، فَإِقَامَتُهَا عَلَى مَنْ أُقِيمَتْ عَلَيْهِ إحْسَانٌ إلَيْهِ، وَإِنَّهَا تَكْفِيرٌ وَتَطْهِيرٌ لِمَنْ أُقِيمَتْ عَلَيْهِ.

L42172 They do not differ in holding that if an imam's father or mother were to steal, it would be obligatory upon him to enforce the punitive amputation upon them. Thus their obfuscation with the verse is entirely invalidated, and it stands confirmed that it constitutes definitive proof against them. As for the statement of the Exalted, "Be grateful to Me and to your parents" [Luqman 31:14], it is an obligation—and part of gratitude is establishing Allah's command upon them. Gratitude toward them does not entail neglecting what Allah the Exalted has commanded concerning them. The One who enjoined gratitude to them—Blessed is His Name—is He who declares: "Be maintainers of justice, witnesses for Allah even against yourselves or your parents and kinsmen" [An-Nisa' 4:135].[27]

وَهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ إمَامًا لَوْ كَانَ لَهُ أَبٌ أَوْ أُمٌّ فَسَرَقَا، فَإِنَّ فَرْضًا عَلَيْهِ إقَامَةُ الْقَطْعِ عَلَيْهِمَا. فَبَطَلَ تَمْوِيهُهُمْ بِالْآيَةِ جُمْلَةً وَصَحَّ أَنَّهَا حُجَّةٌ عَلَيْهِمْ. وَأَمَّا قَوْله تَعَالَى {أَنِ اشْكُرْ لِي وَلِوَالِدَيْكَ} [لقمان: ١٤] فَحَقٌّ - وَمِنْ الشُّكْرِ إقَامَةُ أَمْرِ اللَّهِ تَعَالَى عَلَيْهِمَا، وَلَيْسَ يَقْتَضِي شُكْرُهُمَا إسْقَاطُ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ فِيهِمَا وَالَّذِي أَمَرَ بِشُكْرِهِمَا - تَبَارَكَ اسْمُهُ - هُوَ الَّذِي يَقُولُ {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَى أَنْفُسِكُمْ أَوِ الْوَالِدَيْنِ وَالأَقْرَبِينَ} [النساء: ١٣٥] .

L42173 Thus, the command of Allah, the Exalted, was confirmed to uphold justice toward them and to give truthful testimony concerning them.

فَصَحَّ أَمْرُ اللَّهِ تَعَالَى بِالْقِيَامِ عَلَيْهِمْ بِالْقِسْطِ، وَبِأَدَاءِ الشَّهَادَةِ عَلَيْهِمْ.

L42174 And part of upholding justice is the establishment of hudud (divinely ordained penalties) against them—and with Allah, the Exalted, is success.

وَمِنْ الْقِيَامِ بِالْقِسْطِ إقَامَةُ الْحُدُودِ عَلَيْهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L42175 Similarly, the ruling applies to the statement of Allah, the Exalted: "Do not say to them 'uff' and do not repel them" [Al-Isra: 23], the verse. None of this entails nullifying the prescribed punishment from them for theft from the child's property or other than that. And Allah, the Exalted, says: "Severe against the disbelievers, merciful between them" [Al-Fath: 29]. The obliga-

وَهَكَذَا الْقَوْلُ فِي قَوْله تَعَالَى {فَلا تَقُلْ لَهُمَا أُفٍّ وَلا تَنْهَرْهُمَا} [الإسراء: ٢٣] الْآيَةَ فَلَيْسَ فِي شَيْءٍ مِنْ هَذَا إسْقَاطُ الْحَدِّ عَنْهُمْ فِي سَرِقَةٍ مِنْ مَالِ الْوَلَدِ، وَلَا فِي غَيْرِ ذَلِكَ وَاَللَّهُ تَعَالَى يَقُولُ {أَشِدَّاءُ عَلَى الْكُفَّارِ رُحَمَاءُ بَيْنَهُمْ} [الفتح: ٢٩] وَلَمْ يَكُنْ وُجُوبُ الرَّحْمَةِ لِبَعْضِنَا مُسْقِطًا لِإِقَامَةِ الْحُدُودِ بَعْضُنَا عَلَى بَعْضٍ.

[26] **Qur'an references (L42171):** Qur'an 16:90 (An-Nahl).
[27] **Qur'an references (L42172):** Qur'an 31:14 (Luqman); Qur'an 4:135 (An-Nisa).

tion of mercy among some of us does not nullify the enforcement of the prescribed punishments by some of us against others.[28]

فَبَطَلَ تَعَلُّقُهُمْ بِالْآيَاتِ الْمَذْكُورَاتِ جُمْلَةً. وَأَمَّا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنْتَ وَمَالُكَ لِأَبِيكَ» فَقَدْ أَوْضَحْنَا ذَلِكَ: أَنَّ ذَلِكَ خَبَرٌ مَنْسُوخٌ، قَدْ صَحَّ نَسْخُهُ بِآيَاتِ الْمَوَارِيثِ وَغَيْرِهَا.

L42176 Their attachment to the aforementioned verses is entirely nullified. As for the statement of the Messenger of Allah—peace and blessings be upon him—"You and your wealth are for your father," we have clarified that this is an abrogated report, as its abrogation is confirmed by the verses of inheritance and other verses.

وَأَوَّلُ مَنْ يَحْتَجُّ بِهَذَا الْخَبَرِ: فَالْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ؛ لِأَنَّهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ الْأَبَ إِذَا أَخَذَ مِنْ مَالِ ابْنِهِ دِرْهَمًا - وَهُوَ غَيْرُ مُحْتَاجٍ إِلَيْهِ - فَإِنَّهُ يُقْضَى عَلَيْهِ بِرَدِّهِ، أَحَبَّ أَمْ كَرِهَ - كَمَا يُقْضَى بِذَلِكَ عَلَى الْأَجْنَبِيِّ وَلَا فَرْقَ، وَلَوْ كَانَ مَالُ الْوَلَدِ لِلْوَالِدِ لَمَا قُضِيَ عَلَيْهِ بِرَدِّ مَا أُخِذَ مِنْهُ.

L42177–42178 The first to cite this report as evidence are the Hanafis, Malikis, and Shafi'is, as they unanimously hold that if a father takes a dirham from his son's wealth without needing it, he is legally obligated to return it, whether willingly or unwillingly—just as a third party would be obligated to return it, with no distinction. If the child's wealth belonged to the parent, he would not be ordered to return what he took from it.

فَإِذْ قَدْ صَحَّ أَنَّ هَذَا الْخَبَرَ مَنْسُوخٌ، وَصَحَّ أَنَّ مَالَ الْوَلَدِ لِلْوَلَدِ لَا لِلْوَالِدِ، فَقَدْ صَحَّ أَنَّهُ كَمَالِ الْأَجْنَبِيِّ وَلَا فَرْقَ؟ فَإِنْ قَالُوا: إِنَّ لِلْوَالِدَيْنِ حَقًّا فِي مَالِ الْوَلَدِ؛ لِأَنَّهُمَا إِذَا احْتَاجَا أُجْبِرَ عَلَى أَنْ يُنْفِقَ عَلَيْهِمَا، وَعَلَى أَنْ يَعِفَّ أَبَاهُ، فَإِذْ لَهُ فِي مَالِهِ حَقٌّ، فَلَا يُقْطَعُ فِيمَا سَرَقَ مِنْهُ: فَهَذَا تَمْوِيهٌ ظَاهِرٌ وَلَمْ يُخَالِفْهُمْ أَحَدٌ فِي أَنَّ الْوَالِدَيْنِ إِذَا احْتَاجَا فَأَخَذَا مِنْ مَالِ وَلَدِهِمَا حَاجَتَهُمَا بِاخْتِفَاءٍ أَوْ بِقَهْرٍ أَوْ كَيْفَ أَخَذَاهُ - فَلَا شَيْءَ عَلَيْهِمَا، فَإِنَّمَا أَخَذَا حَقَّهُمَا - وَإِنَّمَا الْكَلَامُ فِيهِمَا إِذَا أَخَذَا مَا لَا حَاجَةَ بِهِمَا إِلَيْهِ - إِمَّا سِرًّا وَإِمَّا جَهْرًا - فَاحْتِجَاجُهُمَا بِمَا لَيْسَ مِنْ مَسْأَلَتِهِمَا تَمْوِيهٌ.

L42179 Since it has been confirmed that this report is abrogated, and established that the child's wealth belongs to the child rather than the parent, then isn't it confirmed that this wealth is equivalent to that of a stranger with no distinction? If they argue, "Parents hold a right to their child's wealth because when in need, the child is compelled to provide for them and support his father sufficiently. Since he has a right to this wealth, his hand is not to be amputated for stealing from it"—this constitutes blatant deception. No one disputes that if parents in need take from their child's wealth what meets their necessity—whether secretly, by force, or however they take it—they incur no penalty, for they merely take their rightful due. The debate concerns them taking what they do not need, whether secretly or openly. Their use of arguments irrelevant to their situation is pure deception.

وَهُمْ لَا يَخْتَلِفُونَ فِيمَنْ كَانَ لَهُ حَقٌّ عِنْدَ أَحَدٍ، فَأَخَذَ مِنْ مَالِهِ مِقْدَارَ حَقِّهِ، فَإِنَّهُ لَا يُقْطَعُ، وَلَا يُقْضَى عَلَيْهِ بِرَدِّهِ - فَلَوْ كَانَ وُجُوبُ الْحَقِّ لِلْأَبَوَيْنِ فِي مَالِ الْوَلَدِ إِذَا احْتَاجَا إِلَيْهِ مُسْقِطًا لِلْقَطْعِ عَنْهُمَا إِذَا سَرَقَا مِنْ مَالِهِ مَا لَا يَحْتَاجَانِ إِلَيْهِ وَلَا حَقَّ لَهُمَا فِيهِ،

L42180 They do not differ regarding one who has a right against another person and takes from his property the equivalent of his rightful claim - for he is neither subject to hand-cutting nor legally required to return it. If the parents' entitlement to their child's property when they need it were to nullify the

[28] **Qur'an references (L42175):** Qur'an 17:23 (Al-Isra); Qur'an 48:29 (Al-Fath).

hand-cutting penalty when they steal from his property what they neither need nor have any right to, it would necessarily follow that the penalty must be waived for a creditor with a valid claim to his debtor's property if he steals from him what he has no right to take. This they do not affirm.

L42181 Thus, their embellishment of that is invalid—and all praise is to Allah, Lord of the Worlds. As for their claim: "If he killed his son, he would not be killed for it; if he severed or fractured his limb, retaliation would not be enacted against him; if he accused him of adultery (qadhf), the hadd punishment would not be imposed on him; and if he committed adultery with his female slave, the hadd punishment would not be imposed on him"—then similarly, if he stole from his wealth, would the hadd punishment not be imposed on him? This is baseless argumentation and a defense of error by citing error.

L42182–42184 Rather, if he were to kill his son, he would be executed in retaliation. If he were to sever or fracture his limb, Qisas (retaliation) would be exacted from him. If he were to falsely accuse him, the hadd punishment would be imposed upon him. If he were to commit unlawful sexual intercourse with his female slave, the hadd punishment would be imposed on him just as it is imposed on the fornicator—and we have clarified all of this in its respective chapters in *The Book of Blood Money, Qisas (Retaliation), the Hadd Punishment for Unlawful Sexual Intercourse, and the Hadd Punishment for False Accusation*. Abu Muhammad—may Allah have mercy on him—said: Since no argument whatsoever remains for them, it is obligatory that we retract at... The dispute is to be referred to that which Allah the Exalted has obligated Muslims to return to, as He says: *"If you disagree over something, refer it to Allah and the Messenger"* [an-Nisa: 59], the verse. So we acted accordingly: We found Allah the Exalted saying: *"As for the male thief and the female thief, cut off their hands"* [al-Ma'idah: 38]. And we found the Messenger of Allah (peace and blessings be upon him) having obligated amputation for those who steal, and he said: *"Indeed, your blood and your wealth are inviolable to you."*[29]

L42185 Neither Allah the Exalted nor His Messenger—may Allah's peace and bless-

لَوَجَبَ ضَرُورَةً أَنْ يَسْقُطَ الْقَطْعُ عَنْ الْغَرِيمِ الَّذِي لَهُ الْحَقُّ فِي مَالِ غَرِيمِهِ إذَا سَرَقَ مِنْهُ مَا لَا حَقَّ لَهُ فِيهِ - وَهَذَا لَا يَقُولُونَهُ.

فَبَطَلَ مَا مَوَّهُوا بِهِ مِنْ ذَلِكَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ. وَأَمَّا قَوْلُهُمْ: لَوْ قَتَلَ ابْنَهُ لَمْ يُقْتَلْ بِهِ، وَلَوْ قَطَعَ لَهُ عُضْوًا أَوْ كَسَرَهُ لَمْ يُقْتَصَّ مِنْهُ، وَلَوْ قَذَفَ لَمْ يُحَدَّ لَهُ، وَلَوْ زَنَى بِأَمَتِهِ لَمْ يُحَدَّ، فَكَذَلِكَ إذَا سَرَقَ مِنْ مَالِهِ لَمْ يُحَدَّ؟ فَكَلَامٌ بَاطِلٌ، وَاحْتِجَاجٌ لِلْخَطَأِ بِالْخَطَأِ.

بَلْ لَوْ قَتَلَ ابْنَهُ لَقُتِلَ بِهِ، وَلَوْ قَطَعَ لَهُ عُضْوًا أَوْ كَسَرَهُ لَاقْتُصَّ مِنْهُ، وَلَوْ قَذَفَهُ لَحُدَّ لَهُ، وَلَوْ زَنَى بِأَمَتِهِ لَحُدَّ كَمَا يُحَدُّ الزَّانِي - وَقَدْ بَيَّنَّا كُلَّ هَذَا فِي أَبْوَابِهِ فِي " كِتَابِ الدِّمَاءِ، وَالْقِصَاصِ وَحَدِّ الزِّنَا وَحَدِّ الْقَذْفِ ". قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ لَمْ يَبْقَ لَهُمْ حُجَّةٌ أَصْلًا، فَالْوَاجِبُ أَنْ نَرْجِعَ عِنْدَ التَّنَازُعِ إلَى مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَى الْمُسْلِمِينَ الرُّجُوعَ إلَيْهِ، إذْ يَقُولُ {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ فَفَعَلْنَا: فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] . وَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ أَوْجَبَ الْقَطْعَ عَلَى مَنْ سَرَقَ، وَقَالَ «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» ؟ .

[29] **Qur'an references (L42182):** Qur'an 4:59 (An-Nisa); Qur'an 5:38 (Al-Ma'idah).

ings be upon him—singled out a son over a non-relative in that matter, nor did He single out a non-relative's wealth over a son's wealth in matters of wealth. *"And your Lord is never forgetful"* [19:64].[30]

L42186 With certainty we know that had Allah the Exalted intended to exempt the father from amputation, He would not have overlooked or neglected it. The Exalted says: "an explanation of all things" [16:89].[31]

L42187 Thus, it is established that the hadd punishment of hand amputation is obligatory for the father and mother if they steal from their child's property items they have no legitimate need for.

L42188 Then we examined the argument of those who argue for exempting a son from amputation if he steals from his parents' property and from any mahram relative. We found them invoking as evidence Allah's verse: {There is no blame upon you for eating in your own houses, the houses of your fathers, the houses of your mothers...} [24:61] up to {or the houses of your friends} [24:61]. They contended that Allah's permission to eat from the houses of these individuals logically entails permitting entry into their dwellings without their consent. If entering their homes without permission is lawful, their property is not considered secured from them, and amputation is not mandated for theft from a place not under secure custody.[32]

L42189 They also said: Permitting misappropriation from their wealth precludes the obligation of hand amputation because of the right they hold in it, as in the case of a co-owner.

L42190 They said: Furthermore, it is obligatory for a mahram relative to provide for his kin in times of need, thereby granting the kin a rightful claim to the relative's wealth without compensation—akin to a thief taking from the public treasury.

فَلَمْ يَخُصَّ اللَّهُ تَعَالَى فِي ذَلِكَ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ابْنًا مِنْ أَجْنَبِيٍّ، وَلَا خَصَّ فِي الْأَمْوَالِ مَالَ أَجْنَبِيٍّ مِنْ مَالِ ابْنٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

وَبِيَقِينٍ نَدْرِي أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ تَخْصِيصَ الْأَبِ مِنْ الْقَطْعِ لَمَا أَغْفَلَهُ وَلَا أَهْمَلَهُ، قَالَ تَعَالَى {تِبْيَانًا لِكُلِّ شَيْءٍ} [النحل: ٨٩]

فَصَحَّ أَنَّ الْقَطْعَ وَاجِبٌ عَلَى الْأَبِ، وَالْأُمِّ، إذَا سَرَقَا مِنْ مَالِ ابْنِهِمَا مَا لَا حَاجَةَ بِهِمَا إلَيْهِ.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ احْتَجَّ بِهِ مَنْ رَأَى إسْقَاطَ الْقَطْعِ عَنْ الِابْنِ إذَا سَرَقَ مِنْ مَالِ أَبَوَيْهِ، وَعَنْ كُلِّ ذِي رَحِمٍ مَحْرَمَةٍ؟ فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِقَوْلِ اللَّهِ تَعَالَى {وَلا عَلَى أَنْفُسِكُمْ أَنْ تَأْكُلُوا مِنْ بُيُوتِكُمْ أَوْ بُيُوتِ آبَائِكُمْ أَوْ بُيُوتِ أُمَّهَاتِكُمْ} [النور: ٦١] الْآيَةَ إلَى قَوْله تَعَالَى: {أَوْ صَدِيقِكُمْ} [النور: ٦١] . قَالَ: فَإِبَاحَةُ اللَّهِ تَعَالَى الْأَكْل مِنْ بُيُوتِ هَؤُلَاءِ يَقْتَضِي إبَاحَةَ دُخُولِ مَنَازِلِهِمْ بِغَيْرِ إذْنِهِمْ، فَإِذَا جَازَ لَهُمْ دُخُولُ مَنَازِلِهِمْ بِغَيْرِ إذْنِهِمْ لَمْ يَكُنْ مَالُهُمْ مُحْرَزًا عَنْهُمْ، وَلَا يَجِبُ الْقَطْعُ فِي السَّرِقَةِ مِنْ غَيْرِ حِرْزٍ.

وَقَالُوا أَيْضًا: فَإِنَّ إبَاحَةَ الْأَكْلِ مِنْ أَمْوَالِهِمْ تَمْنَعُهُمْ وُجُوبَ الْقَطْعِ لِمَا لَهُمْ فِيهِ مِنْ الْحَقِّ، كَالشَّرِيكِ.

قَالُوا: وَأَيْضًا فَإِنَّ عَلَى ذِي الرَّحِمِ الْمَحْرَمَةَ أَنْ يُنْفِقَ عَلَى ذِي رَحِمِهِ عِنْدَ الْحَاجَةِ، فَصَارَ لَهُ بِذَلِكَ حَقٌّ فِي مَالِهِ بِغَيْرِ بَدَلٍ، فَأَشْبَهَ السَّارِقَ مِنْ بَيْتِ الْمَالِ.

قَالُوا: وَلَمَّا كَانَ مُحْتَاجًا إلَى مَا يُنْفِقُهُ عَلَيْهِ لِإِحْيَاءِ نَفْسِهِ كَانَ ذَلِكَ لَازِمًا فِي جَمِيعِ أَعْضَائِهِ، فَلِذَلِكَ يَسْقُطُ الْقَطْعُ عَنْ الْيَدِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا كُلُّ مَا

[30] **Qur'an references (L42185):** Qur'an 19:64 (Maryam).
[31] **Qur'an references (L42186):** Qur'an 16:89 (An-Nahl).
[32] **Qur'an references (L42188):** Qur'an 24:61 (An-Nur).

مَوَّهُوا بِهِ، وَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ أَصْلًا، عَلَى مَا نُبَيِّنُ إِنْ شَاءَ اللَّهُ تَعَالَى، فَأَمَّا الْآيَةُ فَحَقٌّ، وَلَا دَلِيلَ فِيهَا عَلَى مَا ذَكَرُوا، بَلْ هِيَ حُجَّةٌ عَلَيْهِمْ، وَقَدْ كَذَبُوا فِيهَا أَيْضًا: أَمَّا كَوْنُهَا لَا دَلِيلَ فِيهَا عَلَى مَا ادَّعُوهُ، فَإِنَّهُ لَيْسَ فِيهَا إِسْقَاطُ الْقَطْعِ عَلَى مَنْ سَرَقَ مِنْ هَؤُلَاءِ - لَا بِنَصٍّ وَلَا بِدَلِيلٍ - وَإِنَّمَا فِيهَا إِبَاحَةُ الْأَكْلِ لَا إِبَاحَةُ الْأَخْذِ بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ الْأُمَّةِ؟ فَإِذَا قَالُوا: قِسْنَا الْأَخْذَ عَلَى الْأَكْلِ؟ قُلْنَا لَهُمْ: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنُ الْبَاطِلِ، لِأَنَّ الْقِيَاسَ عِنْدَ الْقَائِلِينَ بِهِ قِيَاسُ الشَّيْءِ عَلَى نَظِيرِهِ فِي الْعِلَّةِ أَوْ فِي شَبَهٍ بِوَجْهٍ مَا، وَلَا يَجُوزُ عِنْدَ أَحَدٍ مِنْ الْأُمَّةِ - لَا مُجِيزِ قِيَاسٍ وَلَا مَانِعٍ - قِيَاسُ الضِّدِّ عَلَى ضِدِّهِ، وَلَا مُضَادَّةَ أَكْثَرَ وَمِنْ التَّحْرِيمِ وَالتَّحْلِيلِ، وَأَنْتُمْ مُجْمِعُونَ - مَعَنَا وَمَعَ النَّاسِ - عَلَى أَنَّ الْأَخْذَ لِعُرُوضِ الْأَخِ، وَالْأُخْتِ، وَالْعَمِّ، وَالْعَمَّةِ، وَالْخَالِ، وَالْخَالَةِ، وَالْأَبِ، وَالْأُمِّ، وَالصَّدِيقِ، مِنْ بُيُوتِهِمْ، وَنَقْلُ مَا فِيهَا حَرَامٌ، وَأَنَّ الْأَكْلَ حَلَالٌ، فَكَيْفَ اسْتَحْلَلْتُمْ قِيَاسَ حُكْمِ الْحَرَامِ الْمَمْنُوعِ عَلَى حُكْمِ الْحَلَالِ الْمُبَاحِ؟ وَأَمَّا قَوْلُهُمْ فِي الْآيَةِ، وَكَذِبُهُمْ فِيهَا، قَوْلُ هَذَا الْجَاهِلِ الْمُقَدَّمِ " إنَّ إبَاحَةَ اللَّهِ تَعَالَى الْأَكْلَ مِنْ بُيُوتِ هَؤُلَاءِ يَقْتَضِي إبَاحَةَ دُخُولِ مَنَازِلِهِمْ بِغَيْرِ إذْنِهِمْ ". فَلَيْتَ شِعْرِي أَيْنَ وَجَدُوا هَذَا فِي هَذِهِ الْآيَةِ أَوْ فِي غَيْرِهَا؟ فَيَدْخُلُ الصَّدِيقُ مَنْزِلَ صَدِيقِهِ بِغَيْرِ إذْنِهِ؟ هَذَا عَجَبٌ مِنْ الْعَجَبِ، أَمَا سَمِعُوا قَوْلَ اللَّهِ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا لِيَسْتَأْذِنْكُمُ الَّذِينَ مَلَكَتْ أَيْمَانُكُمْ وَالَّذِينَ لَمْ يَبْلُغُوا الْحُلُمَ} [النور: ٥٨] إلَى قَوْلِهِ تَعَالَى {فَلْيَسْتَأْذِنُوا كَمَا اسْتَأْذَنَ الَّذِينَ مِنْ قَبْلِهِمْ} [النور: ٥٩] .

L42191–42192 They said: Since he is in need of what he spends to sustain himself, this necessity applies to all his limbs; therefore, hand amputation is waived. Abu Muhammad—may Allah have mercy on him—responded: All these are their deceptive arguments, containing no valid proof whatsoever, as we shall clarify by Allah's Exalted will. As for the verse, it is true but offers no evidence for their claim—rather, it refutes them. They have also lied about it.

The verse's lack of support for their claim lies in its failure to mention amputation waiver for thieves among these people—neither explicitly nor implicitly. It merely permits eating, not taking, without any disagreement from the Ummah. Should they argue, "We analogize taking to eating," we counter: All analogy is invalid. Even if valid, this would remain utterly false, for analogy—according to its proponents—compares equivalents in causation or resemblance. No member of the Ummah permits analogizing opposites, nor greater opposition than that between prohibition and permissibility. You universally agree—with us and others—that taking from one's brother, sister, uncle, aunt, parent, or friend's possessions is forbidden, while eating is permitted. How then do you deem it permissible to analogize forbidden acts to permissible ones?

As for their false claim about the verse—this so-called prominent ignoramus's assertion that "Allah's permission to eat from their houses implies entering homes without consent"—where did they find this in the verse or elsewhere? Does a friend enter another's house uninvited? This is astounding! Have they not heard Allah's decree: *"O believers! Let those your right hands possess and children under puberty seek permission..."* [24:58] to *"...let them seek permission as their predecessors did"* [24:59]?[33]

L42193 Allah, the Exalted, has decreed that no adult may enter upon anyone without permission—and this ruling explicitly includes the father, the son, and others

[33] **Qur'an references (L42192):** Qur'an 24:58 (An-Nur); Qur'an 24:59 (An-Nur).

besides them. Excepted from this are enslaved persons and minors, for they are not required to seek permission except during these three specific times alone. And success comes only from Allah, the Exalted.

فَنَصَّ اللَّهُ تَعَالَى عَلَى أَنَّهُ لَا يَدْخُلُ بَالِـغٌ أَصْلًا عَلَى أَحَدٍ إلَّا بِإِذْنٍ - وَدَخَلَ فِي ذَلِكَ: الْأَبُ، وَالِابْنُ، وَغَيْرُهُمَا، حَاشَ مَا مَلَكَتْ أَيْمَانُنَا، وَالْأَطْفَالَ، فَإِنَّهُمْ لَا يَسْتَأْذِنُونَ إلَّا فِي هَذِهِ الْأَوْقَاتِ الثَّلَاثِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The issue of theft by one spouse from the other.

[مَسْأَلَةُ سَرِقَةُ أَحَدِ الزَّوْجَيْنِ مِنْ الْآخَرِ]

L42195–42196 Abū Muḥammad—may Allāh have mercy on him—said: People have differed regarding this. A group said: There is no hand amputation in this matter—as narrated by Ḥumām, narrated by Ibn Mufarrij, narrated by Ibn al-Aʿrābī, narrated by al-Dabarī, narrated by ʿAbd al-Razzāq, from Ibn Jurayj, who said: It has been reported to me from al-Shaʿbī that he said: A woman's husband is not subject to hand amputation for stealing her belongings.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: لَا قَطْعَ فِي ذَلِكَ - كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: بَلَغَنِي عَنْ الشَّعْبِيِّ قَالَ: لَيْسَ عَلَى زَوْجِ الْمَرْأَةِ فِي سَرِقَةِ مَتَاعِهَا قَطْعٌ.

L42197 Abu Hanifah and his companions stated that there is no amputation for a man who steals from his wife's possessions, nor for a woman who steals from her husband's possessions.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا قَطْعَ عَلَى الرَّجُلِ فِيمَا سَرَقَ مِنْ مَالِ امْرَأَتِهِ وَلَا عَلَى الْمَرْأَةِ فِيمَا سَرَقَتْ مِنْ مَالِ زَوْجِهَا.

L42198 Malik, Ahmad ibn Hanbal, Ishaq, and Abu Thawr ruled that amputation is prescribed for each individual who steals from the other's property if the theft occurs from a secure place.

وَقَالَ مَالِكٌ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ، وَأَبُو ثَوْرٍ: عَلَى كُلِّ وَاحِدٍ مِنْهُمَا الْقَطْعُ فِيمَا سَرَقَ مِنْ مَالِ الْآخَرِ مِنْ حِرْزٍ.

L42199 Al-Shafi'i held three opinions: one of them—like the opinion of Abū Ḥanīfah.

وَقَالَ الشَّافِعِيُّ ثَلَاثَةَ أَقْوَالٍ: أَحَدُهَا - كَقَوْلِ أَبِي حَنِيفَةَ.

L42200 The second opinion—such as that of Mālik—is that if the husband steals from her wealth, his hand is severed. The third opinion holds that if she steals from his wealth, no amputation is imposed upon her. Abū Muḥammad said: When they differed as we have mentioned, we scrutinized the matter and found those who reject amputation citing as evidence the report we transmitted through Muslim's chain: Muḥammad ibn Rumḥ narrated to us from al-Layth ibn Saʿd, from Nāfiʿ, from Ibn ʿUmar, from the Prophet—peace be upon him—who said: "Every one of you is a guardian and accountable for those under his care. The ruler governing the people is a guardian and answerable for his subjects. The man is a guardian over his household and

وَالْآخَرُ - كَقَوْلِ مَالِكٍ، وَالثَّالِثُ - أَنَّ الزَّوْجَ إذَا سَرَقَ مِنْ مَالِهَا قُطِعَتْ يَدُهُ، وَإِنْ سَرَقَتْ هِيَ مِنْ مَالِهِ فَلَا قَطْعَ عَلَيْهَا؟ قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا نَظَرْنَا فِي ذَلِكَ: فَوَجَدْنَا مَنْ لَا يَرَى الْقَطْعَ يَحْتَجُّ: بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رُمْحٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «كُلُّكُمْ رَاعٍ وَكُلُّكُمْ مَسْئُولٌ عَنْ رَعِيَّتِهِ فَالْأَمِيرُ الَّذِي عَلَى النَّاسِ رَاعٍ وَهُوَ مَسْئُولٌ عَنْ رَعِيَّتِهِ

answerable for them. The woman is a guardian over her husband's home and children, and she is answerable for them. The slave is a guardian over his master's wealth and answerable for it. Behold, every one of you is a guardian, and every one of you is answerable for those entrusted to him."

وَالرَّجُلُ رَاعٍ عَلَى أَهْلِ بَيْتِهِ وَهُوَ مَسْئُولٌ عَنْهُمْ وَالْمَرْأَةُ رَاعِيَةٌ عَلَى بَيْتِ بَعْلِهَا وَوَلَدِهَا وَهِيَ مَسْئُولَةٌ عَنْهُمْ وَالْعَبْدُ رَاعٍ عَلَى مَالِ سَيِّدِهِ وَهُوَ مَسْئُولٌ عَنْهُ أَلَا كُلُّكُمْ رَاعٍ وَكُلُّكُمْ مَسْئُولٌ عَنْ رَعِيَّتِهِ» .

L42201 And likewise, it was narrated by ʿAbdullāh ibn ʿUmar ibn Ḥafṣ, Ḥammād ibn Zayd, Ayyūb al-Sikhtiyānī, al-Ḍaḥḥāk ibn ʿUthmān, and Usāmah ibn Zayd: all of them from Nāfiʿ from Ibn ʿUmar from the Prophet, may God bless him and grant him peace.

وَهَكَذَا رَوَاهُ عَبْدُ اللَّهِ بْنُ عُمَرَ بْنِ حَفْصٍ وَحَمَّادُ بْنُ زَيْدٍ، وَأَيُّوبُ السِّخْتِيَانِيُّ، وَالضَّحَّاكُ بْنُ عُثْمَانَ، وَأُسَامَةُ بْنُ زَيْدٍ، كُلُّهُمْ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L42202 Salim narrated it from his father from the Prophet (peace and blessings of Allah be upon him) and added: As it was narrated to us through the aforementioned chain to Muslim: Harmala narrated to me, Ibn Wahb narrated to me; Yunus ibn Yazid informed me from al-Zuhri, from Salim ibn Abdillah ibn Umar, from his father that he heard the Messenger of Allah - and he mentioned this hadith.

وَرَوَاهُ سَالِمٌ عَنْ أَبِيهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَزَادَ فِيهِ: كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى مُسْلِمٍ ثني حَرْمَلَةُ ثني ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ هَذَا الْحَدِيثَ.

L42203 And he added in it, "A man is a guardian of his father's wealth and accountable for his dependents."

وَزَادَ فِيهِ «وَالرَّجُلُ رَاعٍ فِي مَالِ أَبِيهِ وَمَسْئُولٌ عَنْ رَعِيَّتِهِ» .

L42204–42205 They said: Each spouse is a trustee over the other's property; thus, the punishment of amputation does not apply to them, as in the case of a bailee.

قَالُوا: فَكُلُّ وَاحِدٍ مِنَ الزَّوْجَيْنِ أَمِينٌ فِي مَالِ الْآخَرِ، فَلَا قَطْعَ عَلَيْهِ كَالْمُودَعِ.

L42206 Some of those deemed unreliable have added to this ḥadīth an unrecognized insertion and altered wording: "The woman is a custodian over her husband's wealth, and the man is a custodian over his wife's wealth." Abū Muḥammad—may Allah have mercy on him—stated: None of this constitutes valid evidence for them in the slightest.

وَزَادَ بَعْضُ مَنْ لَا يُعْبَأُ بِهِ فِي هَذَا الْحَدِيثِ زِيَادَةً لَا نَعْرِفُهَا، وَلَفْظًا مَبْدُولًا، وَهُوَ «الْمَرْأَةُ رَاعِيَةٌ فِي مَالِ زَوْجِهَا وَالرَّجُلُ رَاعٍ فِي مَالِ امْرَأَتِهِ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا.

L42207 As for the mentioned report, it is an established and binding truth that may not be transgressed, serving as the greatest proof against them. For the Prophet—peace be upon him—declared that all those we have mentioned are custodians in what we have described, and that they will be questioned regarding the responsibilities entrusted to them. Since they are accountable

أَمَّا الْخَبَرُ الْمَذْكُورُ فَحَقٌّ وَاجِبٌ لَا يَحِلُّ تَعَدِّيهِ، وَهُوَ أَعْظَمُ حُجَّةٍ عَلَيْهِمْ؛ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - أَخْبَرَ: أَنْ كُلَّ مَنْ ذَكَرْنَا رَاعٍ فِيمَا ذَكَرَ، وَأَنَّهُمْ مَسْئُولُونَ عَمَّا اسْتُرْعُوا مِنْ ذَلِكَ - فَإِذْ هُمْ مَسْئُولُونَ عَنْ ذَلِكَ فَبِيَقِينٍ يَدْرِي كُلُّ مُسْلِمٍ أَنَّهُ لَمْ تُبَحْ لَهُمُ السَّرِقَةُ،

for this, every Muslim knows with certainty that theft and betrayal are not permitted to them concerning what was entrusted to them and handed over to their care. If they are not like strangers, distant parties, or those not entrusted with stewardship in this matter, they are undoubtedly more sinful, greater in offense, and worse in condition than strangers. Given this reality, is the least of their obligations not that they bear what strangers bear without exception? This constitutes the true ruling of this report in its definitive sense.

وَالْخِيَانَةُ، فِيمَا اُسْتُودِعُوهُ وَأُسْلِمَ إِلَيْهِمْ، وَأَنَّهُمْ فِي ذَلِكَ - إِنْ لَمْ يَكُونُوا كَالْأَجْنَبِيَّيْنِ وَالْأَبَاعِدِ وَمَنْ لَمْ يُسْتَرْعَ - فَهُمْ بِلَا شَكٍّ أَشَدُّ إِثْمًا، وَأَعْظَمُ جُرْمًا، وَأَسْوَأُ حَالَةً مِنَ الْأَجْنَبِيِّينَ، وَأَنَّ ذَلِكَ كَذَلِكَ، فَأَقَلُّ أُمُورِهِمْ أَنْ يَكُونَ عَلَيْهِمْ مَا عَلَى الْأَجْنَبِيِّينَ وَلَا بُدَّ؟ فَهَذَا حُكْمُ هَذَا الْخَبَرِ عَلَى الْحَقِيقَةِ.

L42208 Moreover, they do not differ in holding that those we mentioned concerning betrayal are subject to the same obligations as third parties—requiring the restitution of what they betrayed and liability for it, despite their claim to be adherents of analogy. Why then do they not analogize the disputed rulings on theft and amputation as a prescribed punishment to the agreed rulings on betrayal? But we have already stated that they neither followed the textual sources nor did they excel in analogy. Furthermore, this report contains no evidence whatsoever for abandoning amputation in theft. The ruling on their additional interpretations is the same—as we mentioned—whether valid or not, as there is no distinction.

وَأَيْضًا - فَإِنَّهُمْ لَا يَخْتَلِفُونَ أَنَّ عَلَى مَنْ ذَكَرْنَا فِي الْخِيَانَةِ مَا عَلَى الْأَجْنَبِيِّينَ مِنْ إِلْزَامِ رَدِّ مَا خَانُوا وَضَمَانِهِ، وَهُمْ أَهْلُ قِيَاسٍ بِزَعْمِهِمْ، فَهَلَّا قَاسُوا مَا اُخْتُلِفَ فِيهِ مِنَ السَّرِقَةِ وَالْقَطْعِ فِيهَا عَلَى مَا اتُّفِقَ عَلَيْهِ مِنْ حُكْمِ الْخِيَانَةِ، وَلَكِنَّهُمْ قَدْ قُلْنَا إِنَّهُمْ لَا النُّصُوصَ اتَّبَعُوا وَلَا الْقِيَاسَ أَحْسَنُوا؟ وَأَيْضًا - فَلَيْسَ فِي هَذَا الْخَبَرِ دَلِيلٌ أَصْلًا عَلَى تَرْكِ الْقَطْعِ فِي السَّرِقَةِ، وَالْقَوْلُ فِي الزِّيَادَةِ الَّتِي زَادُوهَا سَوَاءٌ - كَمَا ذَكَرْنَا - لَوْ صَحَّتْ وَلَا فَرْقَ.

L42209 As for their statement, “Both are like the depositary and like the one authorized to enter,” this constitutes the strongest argument against them. For they unanimously agree that if the depositary were to steal not from property entrusted to him but from property belonging to another depositary kept in the latter’s custody, or if the authorized entrant were to steal from safeguarded property belonging to the one whose premises he was permitted to enter, then hand amputation would be obligatory for both according to them without any disagreement.

وَأَمَّا قَوْلُهُمْ " إِنَّ كِلَيْهِمَا كَالْمُودَعِ، وَكَالْمَأْذُونِ لَهُ فِي الدُّخُولِ " فَأَعْظَمُ حُجَّةً عَلَيْهِمْ؛ لِأَنَّهُمْ لَا يَخْتَلِفُونَ أَنَّ الْمُودَعَ إِذَا سَرَقَ مِمَّا لَمْ يُودَعْ عِنْدَهُ لَكِنْ مِنْ مَالٍ لِمُودَعٍ آخَرَ فِي حِرْزِهِ، وَأَنَّ الْمَأْذُونَ لَهُ فِي الدُّخُولِ لَوْ سَرَقَ مِنْ مَالٍ مُحْرَزٍ عَنْهُ لِلْمَدْخُولِ عَلَيْهِ الْإِذْنُ لَهُ فِي الدُّخُولِ لَوَجَبَ الْقَطْعُ عَلَيْهِمَا عِنْدَهُمْ بِلَا خِلَافٍ.

L42210 By this ingenious analogy by contrast, it necessarily follows that they cannot exempt the spouses from amputation for theft committed by one against the other, except where the item was entrusted to him and not safeguarded from him. Amputation is not required for either spouse regarding items the owner did not entrust to them but safeguarded against them, such as the depositary or someone granted access—with no distinction—and this is an analogy, if valid: a fleeting analogy?

فَيَلْزَمُهُمْ بِهَذَا التَّشْبِيهِ الْبَدِيعِ بِالضِّدِّ أَنْ لَا يُسْقِطُوا الْقَطْعَ عَنِ الزَّوْجَيْنِ فِيمَا سَرَقَ أَحَدُهُمَا مِنَ الْآخَرِ إِلَّا فِيمَا أُؤْتُمِنَ عَلَيْهِ، وَلَمْ يُحْرَزْ مِنْهُ، وَإِنْ لَمْ يَجِبِ الْقَطْعُ عَلَى كُلِّ وَاحِدٍ مِنْهُمَا فِيمَا لَمْ يَأْمَنْهُ صَاحِبُهُ عَلَيْهِ، وَأُحْرِزَ عَنْهُ، كَالْمُودَعِ وَالْمَأْذُونِ لَهُ فِي الدُّخُولِ وَلَا فَرْقَ - وَهَذَا قِيَاسٌ لَوْ صَحَّ: قِيَاسُ سَاعَةٍ مِنَ الدَّهْرِ؟

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ مِنْ ذَلِكَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - ثُمَّ نَظَرْنَا فِي ذَلِكَ فِي قَوْلِ مَنْ فَرَّقَ بَيْنَ الزَّوْجِ وَالزَّوْجَةِ، فَرَأَى عَلَيْهِ الْقَطْعَ إذَا سَرَقَ مِنْ مَالِهَا، وَلَمْ يَرَ عَلَيْهَا الْقَطْعُ إذَا سَرَقَتْ مِنْ مَالِهِ.

L42211–42212 Abū Muḥammad—may Allāh have mercy on him—said: Thus, all that they have glossed over in this regard is invalidated—and praise be to Allāh, Lord of the worlds. Then we examined that in the opinion of those who distinguish between husband and wife, who held that the husband is subject to amputation if he steals from her property, but did not hold that the wife is subject to amputation if she steals from his property.

فَوَجَدْنَاهُمْ يَقُولُونَ " إنْ الرَّجُلَ لَا حَقَّ لَهُ فِي مَالِ الْمَرْأَةِ أَصْلًا، فَوَجَبَ الْقَطْعُ عَلَيْهِ إذَا سَرَقَ مِنْهُ شَيْئًا، لِأَنَّهُ فِي ذَلِكَ كَالْأَجْنَبِيِّ ".

L42213 We found them stating, "Indeed, a man has no right whatsoever in a woman's property. Thus, amputation is obligatory for him if he steals anything from it; for in this regard, he is like a stranger."

فَوَجَدْنَا الْمَرْأَةَ لَهَا فِي مَالِهِ حُقُوقًا مِنْ: صَدَاقٍ، وَنَفَقَةٍ، وَكِسْوَةٍ، وَإِسْكَانٍ، وَخِدْمَةٍ، فَكَانَتْ بِذَلِكَ كَالشَّرِيكِ - وَوَجَدْنَا «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ لِهِنْدَ بِنْتِ عُتْبَةَ إذْ أَخْبَرَتْهُ أَنَّ أَبَا سُفْيَانَ لَا يُعْطِيهَا مَا يَكْفِيهَا وَوَلَدَهَا، فَقَالَ لَهَا - عَلَيْهِ السَّلَامُ - خُذِي مَا يَكْفِيكِ وَوَلَدَكِ بِالْمَعْرُوفِ» .

L42214 We found that the woman has rights in his property consisting of: dowry, maintenance, clothing, housing, and household service - thus becoming through this like a partner. We also found that the Messenger of Allah - peace and blessings be upon him - said to Hind bint Utbah when she informed him that Abu Sufyan did not give her what sufficed her and her child - peace be upon him - "Take what suffices you and your child according to customary provision."

قَالُوا: فَقَدْ أَطْلَقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَدَهَا عَلَى مَالِ زَوْجِهَا تَأْخُذُ مِنْهُ مَا يَكْفِيهَا وَوَلَدَهَا، فَهِيَ مُؤْتَمَنَةٌ عَلَيْهِ كَالْمُسْتَوْدَعِ، وَلَا فَرْقَ.

L42215 They said: The Messenger of Allah—peace and blessings be upon him—authorized her to take from her husband's property what suffices her and her child. Thus, she is entrusted with it like a custodian, and there is no distinction.

قَالُوا: وَالزَّوْجُ بِخِلَافِ ذَلِكَ، لِأَنَّ اللَّهَ تَعَالَى قَالَ {وَآتَيْتُمْ إِحْدَاهُنَّ قِنْطَارًا فَلا تَأْخُذُوا مِنْهُ شَيْئًا} [النساء: ٢٠] الْآيَةَ.

L42216 They said: The husband's case is different, for Allah, the Exalted, said in the verse, "And you have given one of them a qintār, then do not take anything from it" [An-Nisa: 20].[34]

وَقَالَ تَعَالَى {فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا} [النساء: ٤] فَبَيَّنَ اللَّهُ تَعَالَى تَحْرِيمَ الْقَلِيلِ مِنْ مَالِهَا وَالْكَثِيرِ عَلَيْهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا قَوْلُهُمْ - إنَّ لَهَا فِي مَالِهِ حُقُوقًا مِنْ صَدَاقٍ وَنَفَقَةٍ، وَكِسْوَةٍ، وَإِسْكَانٍ، وَخِدْمَةٍ.

L42217 And He, the Exalted, said: {But if they willingly relinquish to you anything of it, then consume it enjoyably and harmlessly.} [An-Nisa: 4]. Allah, the Exalted, clarified the prohibition of taking even a small amount from her wealth and the extensive obligations incumbent upon him. Abu Muhammad—may Allah have mercy on him—said: As for their assertion that she holds rights in his wealth—such as dowry, maintenance, clothing, housing, and service.[35]

[34] **Qur'an references (L42216):** Qur'an 4:20 (An-Nisa).
[35] **Qur'an references (L42217):** Qur'an 4:4 (An-Nisa).

L42218 And that the Messenger of God—peace and blessings be upon him—granted her unrestricted access to his property, whether in a safeguarded place or otherwise, to take from it what suffices her and her child according to customary norms—if he does not fulfill her rights and theirs—the children's—then yes, all of this is a binding right, and thus we state.

وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَطْلَقَ يَدَهَا عَلَى مَالِهِ حَيْثُ كَانَ مِنْ حِرْزٍ أَوْ غَيْرِ حِرْزٍ، لِتَأْخُذَ مِنْهُ مَا يَكْفِيهَا وَوَلَدَهَا بِالْمَعْرُوفِ - إذَا لَمْ يُوَفِّهَا وَإِيَّاهُمْ حُقُوقَهُمْ - فَنَعَمْ، كُلُّ هَذَا حَقٌّ وَاجِبٌ، وَهَكَذَا نَقُولُ.

L42219–42221 But no person endowed with sound judgment would doubt that the Messenger of Allah—may Allah bless him and grant him peace—did not permit her to freely dispose of her husband's wealth in matters where she has no rightful claim, nor beyond her lawful entitlement. Since this is beyond doubt, the permissibility... In the rulings pertaining to the taking of rights and what is permissible, there is no evidence whatsoever to justify dropping Allah's prescribed ḥudūd punishments against those who take what is forbidden and not permissible.

وَلَكِنْ لَا يَشُكُّ ذُو مُسْكَةٍ مِنْ حِسٍّ سَلِيمٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُطْلِقْ يَدَهَا عَلَى مَا لَا حَقَّ لَهَا فِيهِ مِنْ مَالِ زَوْجِهَا، وَلَا عَلَى أَكْثَرَ مِنْ حَقِّهَا، فَإِذْ لَا شَكَّ فِي ذَلِكَ، فَإِبَاحَةُ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَخْذِ الْحَقِّ وَالْمُبَاحِ لَيْسَ فِيهِ دَلِيلٌ أَصْلًا عَلَى إسْقَاطِ حُدُودِ اللَّهِ تَعَالَى عَلَى مَنْ أَخَذَ الْحَرَامَ غَيْرَ الْمُبَاحِ.

L42222 If that were the case, then drinking permissible juice would nullify the prescribed punishment when one transgresses from its lawful portion into the forbidden intoxicant, with no distinction between these two cases. Since this is so, she retains what she rightfully took. However, she bears the obligation of cutting decreed by God Almighty for what she unlawfully seized under the pretext of theft - applying the due ruling to the obligatory right, the appropriate ruling to the permissible, and the prohibited ruling to the false and forbidden: *"Whoever transgresses God's limits has wronged themselves"* [Quran 65:1].[36]

وَلَوْ كَانَ ذَلِكَ، لَكَانَ شُرْبُ الْعَصِيرِ الْحَلَالِ مُسْقِطًا لِلْحَدِّ عَنْهُ، إذَا تَعَدَّى الْحَلَالَ مِنْهُ إلَى الْمُسْكِرِ الْحَرَامِ، وَلَا فَرْقَ بَيْنَ الْأَمْرَيْنِ، فَإِذْ ذَلِكَ كَذَلِكَ فَلَهَا مَا أَخَذَتْ بِالْحَقِّ، وَعَلَيْهَا مَا افْتَرَضَ اللَّهُ تَعَالَى مِنْ الْقَطْعِ فِيمَا أَخَذَتْ بِوَجْهِ السَّرِقَةِ لِلْحَقِّ الْوَاجِبِ حُكْمُهُ، وَلِلْمُبَاحِ حُكْمُهُ، وَلِلْبَاطِلِ الْمُحَرَّمِ حُكْمُهُ {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١].

L42223 In this regard, he is like a stranger—exactly equivalent—having entitlements against the thief. It is permissible for him to reclaim his due and the precise amount owed from the property of the indebted party, whether taken from a secured or unsecured location. He may combat the thief if obstructed, with the thief's bloodshed becoming lawful in this process, and he is divinely rewarded for all these actions. If he deliberately seizes what he has no right to—specifically, if he takes it through spreading corruption on earth—he becomes a combatant against societal order, subject to the ruling for such offenders. If he seizes it openly without spreading corruption, he falls under

وَهِيَ فِي ذَلِكَ كَالْأَجْنَبِيِّ - سَوَاءٌ سَوَاءٌ - يَكُونُ لَهُ حُقُوقٌ عِنْدَ السَّارِقِ، فَمُبَاحٌ لَهُ أَنْ يَأْخُذَ حَقَّهُ وَمِقْدَارَ حَقِّهِ مِنْ مَالِ الَّذِي لَهُ عِنْدَهُ الْحَقُّ مِنْ حِرْزٍ، أَوْ مِنْ غَيْرِ حِرْزٍ - نَعَمْ، وَيُقَاتِلُهُ عَلَيْهِ إنْ مَنَعَهُ، وَيَحِلُّ لَهُ بِذَلِكَ دَمُهُ، وَهُوَ مَأْجُورٌ فِي كُلِّ ذَلِكَ، فَإِنْ تَعَمَّدَ أَخْذَ مَا لَيْسَ لَهُ بِحَقٍّ، فَإِنْ تَعَمَّدَ أَخْذَهُ بِإِفْسَادِ طَرِيقٍ فَهُوَ مُحَارِبٌ، لَهُ حُكْمُ الْمُحَارِبِ، وَإِنْ أَخَذَهُ مُجَاهِرًا غَيْرَ مُفْسِدٍ فِي الْأَرْضِ فَلَهُ حُكْمُ الْغَاصِبِ، وَإِنْ أَخَذَهُ مُخْتَفِيًا فَلَهُ حُكْمُ السَّارِقِ، وَالْمُحَارِبِ.

[36] **Qur'an references (L42222):** Qur'an 65:1 (At-Talaq).

the ruling of a usurper. If he takes it covertly, he is subject to the rulings applicable to thieves and those waging war against society.

L42224 This also applies to the wife regarding her husband's property, because Allah the Exalted did not specify when He commanded the amputation of the male thief and female thief—except if it is a wife from the property of her husband, and a husband is not [exempt] from the property of his wife, "and your Lord is not forgetful" [Maryam 19:64].[37]

L42225 Thus, it is conclusively established that hand amputation is a divinely obligated duty incumbent upon the father and mother if they steal from their son's property, and upon the son and daughter if they steal from the property of their father or mother, provided they were not lawfully permitted to take it.

L42226 And likewise, every relative—whether a mahram or non-mahram—if he steals from the property of his relative or a non-relative, provided it is something he is not permitted to take, then the ruling applies.

L42227 The ruling of amputation applies to each of the spouses if they steal from the other's property what is not legally permissible for them to take, just as it applies to a stranger, with no distinction—when they steal what is prohibited. They are blameless if they take what is permissible (ḥalāl) for them to take, whether from a ḥirz (secured place) or elsewhere. And success comes from Allah, the Most High.

L42228 **Question: Is the thief liable to hand amputation on the first offense?**

L42229–42231 2284 - Issue: Is a thief's hand to be amputated upon the first offense or not? Abu Muhammad—may Allah have mercy on him—said: Narrated by Humām from Ibn Mufarrij from Ibn al-Aʿrabī from al-Dabarī from ʿAbd al-Razzāq. From Ibn Jurayj, it was reported to me by ʿAbd Rabbihi ibn Abī Umayyah that al-Ḥārith ibn ʿAbd Allāh ibn Abī Rabīʿah and Ibn Sābiṭ al-Aḥwal narrated: "The Prophet (peace be upon him) was brought a slave who had stolen. It was said: 'O Messenger of Allah, this slave stole - the stolen item was found with

[37] **Qur'an references (L42224):** Qur'an 19:64 (Maryam).

هَذَا وَالزَّوْجَةُ فِي مَالِ زَوْجِهَا كَذَلِكَ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَخُصَّ إذْ أَمَرَ بِقَطْعِ السَّارِقِ وَالسَّارِقَةِ، إلَّا أَنْ تَكُونَ زَوْجَةٌ مِنْ مَالِ زَوْجِهَا، وَلَا يَكُونَ زَوْجٌ مِنْ مَالِ زَوْجَتِهِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

فَصَحَّ يَقِينًا - أَنَّ الْقَطْعَ فَرْضٌ وَاجِبٌ عَلَى الْأَبِ وَالْأُمِّ إذَا سَرَقَا مِنْ مَالِ ابْنِهِمَا، وَعَلَى الِابْنِ وَالْبِنْتِ إذَا سَرَقَا مِنْ مَالِ أَبِيهِمَا، وَأُمِّهِمَا، مَا لَمْ يُبَحْ لَهُمَا أَخْذُهُ.

وَهَكَذَا كُلُّ ذِي رَحِمٍ مَحْرَمَةٍ، أَوْ غَيْرِ مَحْرَمَةٍ، إذَا سَرَقَ مِنْ مَالِ ذِي رَحِمِهِ، أَوْ مِنْ غَيْرِ ذِي رَحِمِهِ، مَا لَمْ يُبَحْ لَهُ أَخْذُهُ.

فَالْقَطْعُ عَلَى كُلِّ وَاحِدٍ مِنْ الزَّوْجَيْنِ إذَا سَرَقَا مِنْ مَالِ صَاحِبِهِ مَا لَمْ يُبَحْ لَهُ أَخْذُهُ كَالْأَجْنَبِيِّ وَلَا فَرْقَ - إذَا سَرَقَ مَا لَمْ يُبَحْ - وَهُوَ مُحْسِنٌ إنْ أَخَذَ مَا أُبِيحَ لَهُ أَخْذُهُ مِنْ حِرْزٍ، أَوْ مِنْ غَيْرِ حِرْزٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة هَلْ يُقْطَعُ السَّارِقُ فِي أَوَّلِ مَرَّةٍ]

٢٢٨٤ - مَسْأَلَةٌ: هَلْ يُقْطَعُ السَّارِقُ فِي أَوَّلِ مَرَّةٍ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ رَبِّهِ بْنُ أَبِي أُمَيَّةَ: أَنَّ الْحَارِثَ بْنَ عَبْدِ اللَّهِ بْنِ أَبِي رَبِيعَةَ حَدَّثَهُ، وَابْنَ سَابِطٍ الْأَحْوَلَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِعَبْدٍ قَدْ سَرَقَ فَقِيلَ يَا رَسُولَ اللَّهِ هَذَا عَبْدٌ

him, and evidence was established against him.' A man said: 'O Messenger of Allah, this slave belongs to orphans of Banu Fulān who own nothing but him.' So he released him. He said: 'Then he was brought a second time as a thief, then a third, then a fourth. Each time, he [the Prophet] responded as he had the first time.' He said: 'When he was brought the fifth time, the Prophet cut off his hand. The sixth time, he cut off his leg. The seventh time, he cut off his hand. The eighth time, he cut off his leg.'"

L42232 Al-Harith said: "Four for four—did God pardon him four and punish him four?" Abu Muhammad—may God have mercy on him—said: "This is mursal, and there is no proof in a mursal."

L42233 The Hanafis and Malikis, who assert that a mursal report holds the status of a musnad one, are indeed obligated to uphold this position—particularly since they mandate warding off prescribed punishments through ambiguities. Is there any ambiguity stronger than a transmitted report they act upon when they desire? By Allah, this report—despite its weakness—is either superior to or equivalent to the report of Ibn al-Habashi, for which they contravened the apparent meaning of the Quran, and more secure than the report of al-Miswar, through which they waived liability for property wrongfully destroyed from the theft victim. They thereby opposed the Quran regarding His Exalted injunction to retaliate against the aggressor commensurate with his transgression, and permitted wrongful acquisition of property—and success is by Allah, the Exalted. Abu Muhammad—may Allah have mercy on him—said: Amputating the thief's hand is obligatory from the first offense under the Quran's general ruling, as we have stated. Sufficient for us is Allah, and He is the best Disposer of affairs.

L42234 **Issue regarding the threshold amount necessitating the amputation of a thief's hand.**

L42235 2285 - Question: The amount at which the amputation of the thief's hand becomes obligatory. Abū Muḥammad (may Allāh have mercy on him) said: People have differed over the amount that mandates the amputation of the

سَرَقَ وَأُخِذَتْ مَعَهُ سَرِقَتُهُ، وَقَامَتْ الْبَيِّنَةُ عَلَيْهِ فَقَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ هَذَا عَبْدُ بَنِي فُلَانٍ، أَيْتَامٌ، لَيْسَ لَهُمْ مَالٌ غَيْرَهُ، فَتَرَكَهُ، قَالَ: ثُمَّ أُتِيَ بِهِ الثَّانِيَةَ سَارِقًا، ثُمَّ الثَّالِثَةَ، ثُمَّ الرَّابِعَةَ، كُلُّ ذَلِكَ يَقُولُ فِيهِ كَمَا قِيلَ لَهُ فِي الْأَوَّلِ، قَالَ: ثُمَّ أُتِيَ بِهِ الْخَامِسَةَ، فَقَطَعَ يَدَهُ، ثُمَّ أُتِيَ بِهِ السَّادِسَةَ، فَقَطَعَ رِجْلَهُ، ثُمَّ السَّابِعَةَ، فَقَطَعَ يَدَهُ، ثُمَّ الثَّامِنَةَ، فَقَطَعَ رِجْلَهُ» .

قَالَ الْحَارِثُ: أَرْبَعٌ بِأَرْبَعٍ، فَأَعْفَاهُ اللَّهُ أَرْبَعًا وَعَاقَبَهُ أَرْبَعًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ.

وَلَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، الْقَائِلِينَ بِأَنَّ الْمُرْسَلَ كَالْمُسْنَدِ، أَنْ يَقُولُوا بِهِ، لَا سِيَّمَا وَهُمْ يَقُولُونَ بِوُجُوبِ دَرْءِ الْحُدُودِ بِالشُّبُهَاتِ، وَلَا شُبْهَةَ أَقْوَى مِنْ خَبَرٍ وَارِدٍ يَعْمَلُونَ بِمِثْلِهِ، إذَا اشْتَهَوْا؟ وَتَاللَّهِ، إنَّ هَذَا الْخَبَرَ - عَلَى وَهْيِهِ - لَأَرْفَعُ أَوْ مِثْلُ خَبَرِ ابْنِ الْحَبَشِيِّ الَّذِي خَالَفُوا لَهُ ظَاهِرَ الْقُرْآنِ، وَأَيْمَنُ مِنْ خَبَرِ الْمِسْوَرِ الَّذِي أَسْقَطُوا بِهِ ضَمَانَ مَا أُتْلِفَ بِالْبَاطِلِ مِنْ مَالِ الْمَسْرُوقِ مِنْهُ، وَخَالَفُوا بِهِ الْقُرْآنَ فِي إيجَابِهِ تَعَالَى الِاعْتِدَاءَ عَلَى الْمُعْتَدِي بِمِثْلِ مَا اعْتَدَى بِهِ، وَأَبَاحُوا بِهِ الْمَالَ بِالْبَاطِلِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَقَطْعُ السَّارِقِ وَاجِبٌ فِي أَوَّلِ مَرَّةٍ بِعُمُومِ الْقُرْآنِ كَمَا ذَكَرْنَا - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

[مَسْأَلَةٌ مِقْدَارُ مَا يَجِبُ فِيهِ قَطْعُ السَّارِقِ]

thief's hand. One group held: Amputation is mandated for anything possessing value, whether little or much.

٢٢٨٥ - مَسْأَلَةٌ: مِقْدَارُ مَا يَجِبُ فِيهِ قَطْعُ السَّارِقِ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي مِقْدَارِ مَا يَجِبُ فِيهِ قَطْعُ يَدِ السَّارِقِ فَقَالَتْ طَائِفَةٌ: يُقْطَعُ فِي كُلِّ مَا لَهُ قِيمَةٌ، قَلَّ أَوْ كَثُرَ.

L42236 A school of thought held: As for gold, the hand is not amputated unless the stolen amount is a quarter dinar or more. As for other than gold, the hand is amputated for any item of value, whether small or large.

وَقَالَتْ طَائِفَةٌ: أَمَّا مِنْ الذَّهَبِ فَلَا تُقْطَعُ الْيَدُ فِيهِ إلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا، وَأَمَّا مِنْ غَيْرِ الذَّهَبِ فَفِي كُلِّ مَا لَهُ قِيمَةٌ، قَلَّتْ أَوْ كَثُرَتْ.

L42237 A group held that the hand must not be amputated except for a dirham or its equivalent or more.

وَقَالَتْ طَائِفَةٌ: لَا تُقْطَعُ الْيَدُ إلَّا فِي دِرْهَمٍ أَوْ مَا يُسَاوِي دِرْهَمًا فَصَاعِدًا.

L42238–42239 A group maintained that the hand is severed only for two dirhams—or their equivalent—or more.

وَقَالَتْ طَائِفَةٌ: لَا تُقْطَعُ الْيَدُ إلَّا فِي دِرْهَمَيْنِ - أَوْ مَا يُسَاوِي دِرْهَمَيْنِ - فَصَاعِدًا.

L42240 A group held the opinion that regarding gold, the hand is not amputated unless the stolen amount reaches a quarter dinar or more. As for items other than gold, the hand is not amputated unless their value equals three dirhams. If the gold amounts to a quarter dinar, half a dinar, or more but - due to gold's low value - does not equate to three dirhams, the hand is not amputated. Similarly, if a non-gold item equals three dirhams but - due to gold's high value - does not reach a tenth of a dinar, the hand is not amputated.

وَقَالَتْ طَائِفَةٌ: أَمَّا مِنْ الذَّهَبِ فَلَا تُقْطَعُ الْيَدُ إلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا، وَأَمَّا مِنْ غَيْرِ الذَّهَبِ فَلَا تُقْطَعُ الْيَدُ إلَّا فِيمَا قِيمَتُهُ ثَلَاثَةُ دَرَاهِمَ، فَإِنْ سَاوَى رُبْعَ دِينَارٍ أَوْ نِصْفَ دِينَارٍ فَأَكْثَرَ، وَلَمْ يُسَاوِ - لِرُخْصِ الذَّهَبِ - ثَلَاثَةَ دَرَاهِمَ، فَلَا تُقْطَعُ الْيَدُ فِيهِ وَإِنْ سَاوَى ثَلَاثَةَ دَرَاهِمَ، وَلَمْ يُسَاوِ عُشْرَ دِينَارٍ لِغَلَاءِ الذَّهَبِ فَلَا قَطْعَ فِيهِ.

L42241 A group held: In the case of gold items, the hand is not amputated for less than a quarter dinar. As for non-gold items, anything equivalent to a quarter dinar or more in value necessitates amputation. If the value [of the stolen item] equals ten dirhams—or more or less—but does not reach a quarter dinar due to gold's high valuation, or if it equals a quarter dinar but does not amount to half a dirham—due to the cheapness of gold—hand amputation is prescribed in all such cases.

وَقَالَتْ طَائِفَةٌ: أَمَّا مِنْ الذَّهَبِ فَلَا تُقْطَعُ الْيَدُ فِي أَقَلَّ مِنْ رُبْعِ دِينَارٍ، وَأَمَّا مِنْ غَيْرِ الذَّهَبِ، فَكُلُّ مَا يُسَاوِي رُبْعَ دِينَارٍ فَصَاعِدًا، فَفِيهِ الْقَطْعُ، فَإِنْ سَاوَى عَشَرَةَ دَرَاهِمَ - أَوْ أَكْثَرَ أَوْ أَقَلَّ - وَلَا يُسَاوِي رُبْعَ دِينَارٍ لِغَلَاءِ الذَّهَبِ، أَوْ سَاوَى رُبْعَ دِينَارٍ وَلَمْ يُسَاوِ نِصْفَ دِرْهَمٍ - لِرُخْصِ الذَّهَبِ - فَالْقَطْعُ فِي كُلِّ ذَلِكَ.

L42242 A group held the opinion: Regarding gold, amputation is not prescribed for less than a quarter dinar, but is mandated for a quarter dinar or more. As for non-gold items, if the value equals a quarter dinar but does not equal three dirhams, or equals three dirhams but does not equal a quarter dinar,

وَقَالَتْ طَائِفَةٌ: أَمَّا مِنْ الذَّهَبِ فَلَا قَطْعَ فِي أَقَلَّ مِنْ رُبْعِ دِينَارٍ، وَتُقْطَعُ فِي رُبْعِ دِينَارٍ فَأَكْثَرَ، وَأَمَّا مِنْ غَيْرِ الذَّهَبِ، فَإِنْ سَاوَى رُبْعَ دِينَارٍ وَلَمْ يُسَاوِ ثَلَاثَةَ دَرَاهِمَ، أَوْ سَاوَى

amputation is mandated in all such cases. If the value neither equals a quarter dinar nor three dirhams, no amputation applies.

ثَلَاثَةَ دَرَاهِمَ وَلَمْ يُسَاوِ رُبْعَ دِينَارٍ، قُطِعَ فِي كُلِّ ذَلِكَ، وَإِنْ لَمْ يُسَاوِ رُبْعَ دِينَارٍ وَلَا ثَلَاثَةَ دَرَاهِمَ، فَلَا قَطْعَ فِيهِ.

L42243 A group held that the hand is not severed except for [the theft of] four dirhams or their equivalent in value or more.

وَقَالَتْ طَائِفَةٌ: لَا تُقْطَعُ الْيَدُ إِلَّا فِي أَرْبَعَةِ دَرَاهِمَ أَوْ مَا يُسَاوِيهَا فَصَاعِدًا.

L42244 A school of thought held: The hand is not amputated except for theft amounting to a quarter of a dinar or its equivalent value or more.

وَقَالَتْ طَائِفَةٌ: لَا تُقْطَعُ الْيَدُ إِلَّا فِي ثُلُثِ دِينَارٍ أَوْ مَا يُسَاوِيه فَصَاعِدًا.

L42245 A group maintained that the hand is only amputated for [the value of] five dirhams or their equivalent or upwards.

وَقَالَتْ طَائِفَةٌ: لَا تُقْطَعُ الْيَدُ إِلَّا فِي خَمْسَةِ دَرَاهِمَ أَوْ يُسَاوِيهَا فَصَاعِدًا.

L42246 A group maintained that amputation of the hand is only mandated for theft of a gold dinar or its equivalent value or more.

وَقَالَتْ طَائِفَةٌ: لَا تُقْطَعُ الْيَدُ إِلَّا فِي دِينَارِ ذَهَبٍ أَوْ مَا يُسَاوِيه فَصَاعِدًا.

L42247 A group of scholars maintains that the hand is only amputated for [the theft of] a gold dinar, ten dirhams, or what equals or exceeds either of these two values. If the stolen property does not equal a gold dinar or ten dirhams, no amputation is mandated.

وَقَالَتْ طَائِفَةٌ: لَا تُقْطَعُ الْيَدُ إِلَّا فِي دِينَارِ ذَهَبٍ، أَوْ عَشَرَةِ دَرَاهِمَ، أَوْ مَا يُسَاوِي أَحَدَ الْعَدَدَيْنِ فَصَاعِدًا، فَإِنْ لَمْ يُسَاوِ لَا دِينَارًا وَلَا عَشَرَةَ دَرَاهِمَ، لَمْ تُقْطَعْ.

L42248–42250 A group has said: "The hand is not to be cut except for ten minted dirhams or their equivalent or more, and is it not to be cut for less than that?" Abū Muḥammad—may Allah have mercy on him—said: "We examined this matter and found the narration we transmitted via al-Bukhārī's chain: 'Umar ibn Ḥafṣ ibn Ghiyāth reported to us, [who reported] from his father, [who reported] from al-A'mash, who said: I heard Abū Ṣāliḥ as-Sammān the fat seller narrate from Abū Hurayrah, from the Prophet—peace and blessings of Allah be upon him—who said: 'Allah curses the thief who steals an egg, so his hand is cut off, and steals... [the text ends here]'" [If someone steals] the rope, his hand is to be severed. This likewise constituted an explicitly clear text establishing that there is no prescribed *ḥadd* penalty for acts requiring amputation in theft unless another clarifying text emerges. We found the following: From 'Abdullāh ibn Rabī'ah, from Muḥammad ibn Mu'āwiyah, from Aḥmad ibn Shu'ayb, from Ar-Rabī' ibn Sulaymān, from Ash'ath, from Al-Layth ibn Sa'd, from Muḥammad ibn 'Ajlān, from Al-Qa'qā' ibn Ḥakīm, from Abū Ṣāliḥ As-Sammān, from Abū Hurayrah, that the Prophet—peace be upon him—said: "A believer does not commit adultery at the moment of

وَقَالَتْ طَائِفَةٌ: لَا تُقْطَعُ الْيَدُ إِلَّا فِي عَشَرَةِ دَرَاهِمَ مَضْرُوبَةٍ، أَوْ مَا يُسَاوِيهَا فَصَاعِدًا، وَلَا تُقْطَعُ فِي أَقَلَّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَا - مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ نا أَبِي نا الْأَعْمَشُ قَالَ: سَمِعْت أَبَا صَالِحٍ السَّمَّانَ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَعَنَ اللَّهُ السَّارِقَ يَسْرِقُ الْبَيْضَةَ فَتُقْطَعُ يَدُهُ وَيَسْرِقُ الْحَبْلَ فَتُقْطَعُ يَدُهُ» فَكَانَ هَذَا أَيْضًا نَصًّا بَيِّنًا جَلِيًّا عَلَى أَنَّهُ لَا حَدَّ فِيمَا يَجِبُ الْقَطْعُ فِيهِ فِي السَّرِقَةِ، إلَّا أَنْ يَأْتِيَ نَصٌّ آخَرُ مُبَيِّنٌ لِذَلِكَ: فَوَجَدْنَا - مَا، ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا الرَّبِيعُ بْنُ سُلَيْمَانَ نا أَشْعَثُ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ مُحَمَّدِ بْنِ عَجْلَانَ عَنْ الْقَعْقَاعِ بْنِ حَكِيمٍ عَنْ أَبِي صَالِحٍ السَّمَّانِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «لَا يَزْنِي الزَّانِي

committing it, nor steal at the moment of stealing, nor drink *khamr* at the moment of drinking it, nor seize a plunder of significant value—that people admire him for—at the moment of seizing it while he remains a believer."[38]

حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ السَّارِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ وَلَا يَشْرَبُ الْخَمْرَ حِينَ يَشْرَبُهَا وَهُوَ مُؤْمِنٌ وَلَا يَنْتَهِبُ نُهْبَةً ذَاتَ شَرَفٍ يَرْفَعُ النَّاسُ إِلَيْهِ فِيهَا أَبْصَارَهُمْ وَهُوَ مُؤْمِنٌ» .

L42251 The Messenger of Allah—peace be upon him—applied [the ruling] to every theft comprehensively, without specifying a number from a number. Had he—peace be upon him—intended a specific measure, he would have clarified it, just as he clarified in the aforementioned ḥadīth regarding plundering—specifying the honorable item that people raise their eyes toward. Yet he did not specify in adultery, in theft, or in wine.

فَعَمَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلَّ سَرِقَةٍ، وَلَمْ يَخُصَّ عَدَدًا مِنْ عَدَدٍ، وَلَوْ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَرَادَ مِقْدَارًا مِنْ مِقْدَارٍ لَبَيَّنَهُ، كَمَا بَيَّنَ ذَلِكَ فِي النُّهْبَةِ فِي الْحَدِيثِ الْمَذْكُورِ، فَخَصَّ ذَاتَ الشَّرَفِ الَّتِي يَرْفَعُ النَّاسُ إِلَيْهِ فِيهَا أَبْصَارَهُمْ، وَلَمْ يَخُصَّ فِي الزِّنَى، وَلَا فِي السَّرِقَةِ، وَلَا فِي الْخَمْرِ.

L42252 Thus, these mass-transmitted, manifest, mutually reinforcing texts are in agreement with the Quranic text through which Allah the Exalted has clarified His intent for us.

فَكَانَتْ هَذِهِ النُّصُوصُ الْمُتَوَاتِرَةُ، الْمُتَظَاهِرَةُ، الْمُتَرَادِفَةُ، مُوَافِقَةً لِنَصِّ الْقُرْآنِ الَّذِي بِهِ عَرَّفَنَا اللَّهُ تَعَالَى مُرَادَهُ مِنَّا.

L42253 We then examined whether there exists in the Sunnah a specification for any of these general texts. We found the report we mentioned through the chain of ʿUrwah, ʿAmrah, al-Zuhrī, and Abū Bakr ibn Ḥazm—as transmitted by ʿAbdullāh ibn Yūsuf who narrated from Aḥmad ibn Fatḥ who narrated from ʿAbd al-Wahhāb ibn ʿĪsā who narrated from Aḥmad ibn Muḥammad who narrated from Aḥmad ibn ʿAlī who narrated from Muslim ibn al-Ḥajjāj who narrated from al-Walīd ibn Shujāʿ who presented to me [the narration] from Ibn Wahb who informed me from Yūnus from Ibn Shihāb from ʿUrwah and ʿAmrah from ʿĀ'ishah from the Messenger of Allah—peace and blessings be upon him—who said: "The hand of the thief is not cut off except for [the theft of] a quarter of a dinar and above."[39]

فَنَظَرْنَا، هَلْ نَجِدُ فِي السُّنَّةِ تَخْصِيصًا لِشَيْءٍ مِنْ هَذِهِ النُّصُوصِ؟ فَوَجَدْنَا الْخَبَرَ الَّذِي ذَكَرْنَاهُ مِنْ طَرِيقِ عُرْوَةَ، وَعَمْرَةَ، وَالزُّهْرِيِّ، وَأَبِي بَكْرِ بْنِ حَزْمٍ - كَمَا نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا الْوَلِيدُ بْنُ شُجَاعٍ أَرِنِي ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنِ ابْنِ شِهَابٍ عَنْ عُرْوَةَ، وَعَمْرَةَ عَنْ عَائِشَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا تُقْطَعُ يَدُ السَّارِقِ إِلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا» .

L42254–42256 And through him, up to Muslim: Bishr ibn al-Ḥakam al-ʿAbdī reported to us; ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī reported to us; from Yazīd

وَبِهِ - إِلَى مُسْلِمٍ نا بِشْرُ بْنُ الْحَكَمِ الْعَبْدِيُّ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ الْهَادِي عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَمْرَةَ عَنْ عَائِشَةَ أَنَّهَا

[38] **Hadith references (L42248):** Sahih al-Bukhari 6783; Sahih al-Bukhari 6799; Sunan Ibn Majah 2583; Sahih Muslim 57a.

[39] **Hadith references (L42253):** Sunan an-Nasai 4936; Sahih Muslim 1684e; Sahih Muslim 1684c.

ibn ʻAbd Allāh ibn al-Hādī; from Abū Bakr ibn Muḥammad ibn ʻAmr ibn Ḥazm; from ʻAmrah. Aisha reported that she heard the Prophet—peace be upon him—say: "A thief's hand is not to be cut off except in a quarter of a dinar or more."[40]

L42257 Abū Muḥammad—may Allāh have mercy on him—said: Gold is excluded by this report from the general scope of the Quranic verse and from the broad application of the texts we previously mentioned. It is obligatory to act upon all of that and to make an exception for gold among all other items. Thus, the hand is not amputated except for a quarter of a dinar by Meccan weight or more, and no amputation applies specifically to gold for less than that amount.

L42258 Then we examined—do we find another text regarding anything besides gold? For this narration contains no mention of value or price whatsoever, nor evidence for that, nor does it refer to the ruling concerning anything other than gold itself. Yunus ibn Abdullah narrated to us, saying: Isa ibn Abi Isa—who is Yahya ibn Abdullah ibn Yahya—narrated to us: Ahmad ibn Khalid narrated to us, Muhammad ibn Waddah narrated to us, Abu Bakr ibn Abi Shaybah narrated to us, Abdur-Rahim ibn Sulayman narrated to us from Hisham ibn Urwah from his father from Aisha that "the hand of the thief was not cut during the time of Allah's Messenger—peace and blessings be upon him—for anything less than the price of a shield or protective gear, each of which had a price at that time. Indeed, the hand of the thief was not cut during the time of Allah's Messenger—peace and blessings be upon him—for a trifling item." This was an authentic ḥadīth that constitutes proof, being well-attested. For it clarifies that Allah's Messenger—peace and blessings be upon him—only cut the thief's hand for such [a value]. Furthermore, no one—neither believer nor disbeliever—could doubt that in Medina, where Aisha resided and witnessed these matters, no one would amputate hands for theft. No one's actions in Islam are taken as evidence except those of Allah's Messenger—peace and blessings be upon him—alone. Thus, this narration establishes three legal rulings:

سَمِعَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «لَا تُقْطَعُ يَدُ السَّارِقِ إلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا» ؟ .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَخَرَجَ الذَّهَبُ بِهَذَا الْخَبَرِ عَنْ جُمْلَةِ الْآيَةِ، وَعَنْ عُمُومِ النُّصُوصِ الَّتِي ذَكَرْنَا قَبْلُ، وَوَجَبَ الْأَخْذُ بِكُلِّ ذَلِكَ، وَأَنْ يُسْتَثْنَى الذَّهَبُ عَنْ سَائِرِ الْأَشْيَاءِ، فَلَا تُقْطَعُ الْيَدُ إلَّا فِي رُبْعِ دِينَارٍ بِوَزْنِ مَكَّةَ فَصَاعِدًا، وَلَا تُقْطَعُ فِي أَقَلَّ مِنْ ذَلِكَ مِنْ الذَّهَبِ خَاصَّةً.

ثُمَّ نَظَرْنَا - هَلْ نَجِدُ نَصًّا آخَرَ فِيمَا عَدَا الذَّهَبِ؟ إذْ لَيْسَ فِي هَذَا الْخَبَرِ ذِكْرُ قِيمَةٍ وَلَا ثَمَنٍ أَصْلًا، وَلَا دَلِيلَ عَلَى ذَلِكَ، وَلَا فِيهِ ذِكْرُ حُكْمِ شَيْءٍ غَيْرِ عَيْنِ الذَّهَبِ، فَإِذَا يُونُسُ بْنُ عَبْدِ اللَّهِ قَدْ حَدَّثَنَا: قَالَ: نا عِيسَى بْنُ أَبِي عِيسَى - هُوَ يَحْيَى بْنُ عَبْدِ اللَّهِ بْنِ يَحْيَى - قَالَ: نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَبْدُ الرَّحِيمِ بْنُ سُلَيْمَانَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أَنَّ «يَدَ السَّارِقِ لَمْ تَكُنْ تُقْطَعُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَدْنَى مِنْ ثَمَنِ حَجَفَةٍ أَوْ تُرْسٍ، كُلُّ وَاحِدٍ مِنْهُمَا يَوْمَئِذٍ ذُو ثَمَنٍ، وَأَنَّ يَدَ السَّارِقِ لَمْ تَكُنْ تُقْطَعُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الشَّيْءِ التَّافِهِ» فَكَانَ هَذَا حَدِيثًا صَحِيحًا تَقُومُ بِهِ الْحُجَّةُ، وَهُوَ مُسْنَدٌ؛ لِأَنَّهَا ذُكِرَتْ عَمَّا كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَقْطَعُ يَدَ السَّارِقِ إلَّا فِيهِ، وَلِأَنَّهُ لَا يَشُكُّ أَحَدٌ - لَا مُؤْمِنٌ وَلَا كَافِرٌ - فِي أَنَّهُ لَمْ يَكُنْ فِي الْمَدِينَةِ - حَيْثُ كَانَتْ عَائِشَةُ، وَحَيْثُ شَهِدَتْ الْأَمْرَ - أَحَدٌ يَقْطَعُ الْأَيْدِي فِي السَّرِقَاتِ، وَلَا يُحْتَجُّ

[40] **Hadith references (L42254):** Sunan an-Nasai 4936; Sahih Muslim 1684e; Sahih Muslim 1684c.

بِفِعْلِ أَحَدٍ فِي الْإِسْلَامِ إِلَّا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحْدَهُ. فَصَحَّ بِهَذَا الْخَبَرِ أَحْكَامٌ ثَلَاثَةٌ:

L42259 One of these rulings is that amputation is only obligatory for the theft of non-gold items whose value is equivalent to that of a shield or buckler—regardless of whether the amount is small or large, without a specified limit.

أَحَدُهَا - أَنَّ الْقَطْعَ إِنَّمَا يَجِبُ فِي سَرِقَةِ مَا سِوَى الذَّهَبِ - فِيمَا يُسَاوِي ثَمَنَ جَحْفَةٍ أَوْ تُرْسٍ - قَلَّ ذَلِكَ أَوْ كَثُرَ دُونَ تَحْدِيدٍ.

L42260 The second is that anything less than that—which has no intrinsic value (being trifling)—amputation is not carried out for it at all.

وَالثَّانِي - أَنَّ مَا دُونَ ذَلِكَ مِمَّا لَا قِيمَةَ لَهُ أَصْلًا - وَهُوَ التَّافِهُ - لَا يُقْطَعُ فِيهِ أَصْلًا.

L42261–42263 The third [point] is clarifying the falsehood of those who claimed that the value of the shield requiring amputation refers exclusively to one specific, identifiable shield—the very one that was stolen, for which the Prophet—may God the Exalted bless him and his family and grant him peace—ordered the amputation. This is because ʿĀʾisha reported that the criterion in this matter is the value of a ḥajafa or a turs, both of which are [text cut off]. A price [is involved], so neither the small shield (al-turs) was singled out over the large shield (al-hajafa), nor vice versa. It was clarified that both have a value, though the price was not specified.

وَالثَّالِثُ - بَيَانُ كَذِبِ مَنْ ادَّعَى أَنَّ ثَمَنَ الْمِجَنِّ الَّذِي فِيهِ الْقَطْعُ، إِنَّمَا هُوَ مِجَنٌّ وَاحِدٌ بِعَيْنِهِ مَعْرُوفٌ، وَهُوَ الَّذِي سُرِقَ، فَقَطَعَ فِيهِ النَّبِيُّ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ -؛ لِأَنَّ عَائِشَةَ أَخْبَرَتْ بِأَنَّ الْمُرَاعَى فِي ذَلِكَ ثَمَنُ جَحْفَةٍ أَوْ تُرْسٍ، وَكِلَاهُمَا ذُو ثَمَنٍ، فَلَمْ يَخُصَّ التُّرْسَ دُونَ الْجَحْفَةِ، وَلَا الْجَحْفَةَ دُونَ التُّرْسِ، وَأَخْبَرَتْ أَنْ كِلَيْهِمَا ذُو ثَمَنٍ دُونَ تَحْدِيدِ الثَّمَنِ.

L42264 Thus, what we have said is certainly valid.

فَصَحَّ مَا قُلْنَاهُ يَقِينًا.

L42265 As for our statement that the dinar is according to Mecca's weight, this is based on the authentic report from the Prophet - may God bless him and his family and grant him peace - through the chain of ʿAbdullāh ibn Rabīʿ → Muḥammad ibn Muʿāwiyah → Aḥmad ibn Shuʿayb → Aḥmad ibn Sulaymān al-Zahrānī → Abū Nuʿaym (al-Faḍl ibn Dukayn) → Sufyān al-Thawrī → Ḥanẓalah ibn Abī Sufyān al-Jumaḥī → Ṭāwūs → Ibn ʿUmar → the Prophet - may God bless him and his family and grant him peace - who said: "The dry measure is the measure of Medina's people, and the weight is the weight of Mecca's people." Thus, the Meccan mithqāl equals eighty-two grains of unsorted barley: neither selecting large grains nor deliberately seeking out small ones. A quarter dinar weighs twenty and a half grains. No division is permitted in anything less than that of pure refined gold, free from any

وَأَمَّا قَوْلُنَا فِي الدِّينَارُ إِنَّهُ بِوَزْنِ مَكَّةَ، فَلِمَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِمَّا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ سُلَيْمَانَ الزَّهْرَانِيُّ نا أَبُو نُعَيْمٍ - هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - نا سُفْيَانُ - هُوَ الثَّوْرِيُّ - عَنْ حَنْظَلَةَ بْنِ أَبِي سُفْيَانَ الْجُمَحِيِّ عَنْ طَاوُسٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الْمِكْيَالُ مِكْيَالُ أَهْلِ الْمَدِينَةِ، وَالْوَزْنُ وَزْنُ أَهْلِ مَكَّةَ» . فَالْمِثْقَالُ الْمَكِّيُّ: اثْنَانِ وَثَمَانُونَ حَبَّةً مِنْ حُبِّ الشَّعِيرِ الْمُجْمَلِ - لَا تُنْتَخَبُ كَبِيرَةٌ وَلَا تُتَحَرَّ صَغِيرَةٌ - فَرُبْعُ دِينَارٍ: وَزْنُهُ عِشْرُونَ حَبَّةً وَنِصْفُ حَبَّةٍ - لَا قَطْعَ فِي أَقَلَّ مِنْ ذَلِكَ مِنْ الذَّهَبِ الْمَحْضِ الصِّرْفِ،

detectable alloy - whether minimal or substantial - of silver, copper, or other substances. And success comes only from God, the Most High.[41]

الَّذِي لَا يَنْضَافُ إِلَيْهِ خَلْطٌ يَظْهَرُ لَهُ فِيهِ أَثَرٌ - قَلَّ أَوْ كَثُرَ - مِنْ وَرِقٍ، أَوْ نُحَاسٍ، أَوْ غَيْرِ ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: Mentioning the Specific Hadiths Pertaining to Amputation

L42266

[مَسْأَلَة ذِكْرُ أَعْيَانِ الْأَحَادِيثِ الْوَارِدَةِ فِي الْقَطْعِ]

L42267 2286 - Issue: Mentioning the specific hadiths concerning amputation in brief? Abu Muhammad—may Allah have mercy on him—said: As for the hadith of Ibn Umar, "The Messenger of Allah—peace and blessings be upon him—ordered amputation regarding a shield whose value was three dirhams," none narrated it except Nāfiʿ, from Ibn ʿUmar, from the Prophet—peace and blessings be upon him. The trustworthy authorities narrated it from him thus: Ayyub al-Sakhtiyānī, Mūsā ibn ʿUqbah, Ayyub ibn Mūsā, Ḥanẓalah ibn Abī Sufyān al-Jumaḥī, ʿUbaydullāh ibn ʿUmar ibn Ḥafṣ, Ismāʿīl ibn Umayyah, Ismāʿīl ibn ʿUlayyah, Ḥammād ibn Zayd, Mālik ibn Anas, al-Layth ibn Saʿd, Muḥammad ibn Isḥāq, Juwayriyah ibn Asmāʾ, and others besides them who do not attain the rank of these. The wording does not differ except that some said "its value" and some said "its price."[42]

٢٢٨٦ - مَسْأَلَةٌ: ذِكْرُ أَعْيَانِ الْأَحَادِيثِ الْوَارِدَةِ فِي الْقَطْعِ بِاخْتِصَارٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا حَدِيثُ ابْنِ عُمَرَ «قَطَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي مِجَنٍّ ثَمَنُهُ ثَلَاثَةُ دَرَاهِمَ» ؟ فَلَمْ يَرْوِهِ أَحَدٌ إلَّا نَافِعٌ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَكَذَا رَوَاهُ عَنْهُ الثِّقَاتُ الْأَئِمَّةُ: أَيُّوبُ السِّخْتِيَانِيُّ، وَمُوسَى بْنُ عُقْبَةَ، وَأَيُّوبُ بْنُ مُوسَى، وَحَنْظَلَةُ بْنُ أَبِي سُفْيَانَ الْجُمَحِيُّ، وَعُبَيْدُ اللَّهِ بْنُ عُمَرَ بْنِ حَفْصٍ، وَإِسْمَاعِيلُ بْنُ أُمَيَّةَ، وَإِسْمَاعِيلُ بْنُ عُلَيَّةَ، وَحَمَّادُ بْنُ زَيْدٍ، وَمَالِكُ بْنُ أَنَسٍ، وَاللَّيْثُ بْنُ سَعْدٍ، وَمُحَمَّدُ بْنُ إِسْحَاقَ، وَجُوَيْرِيَةُ بْنُ أَسْمَاءَ، وَغَيْرُ هَؤُلَاءِ مِمَّنْ لَا يَلْحَقُ بِهَؤُلَاءِ، وَلَا يَخْتَلِفُ فِي اللَّفْظِ، إلَّا أَنَّ بَعْضَهُمْ قَالَ: قِيمَتُهُ - وَبَعْضُهُمْ قَالَ: ثَمَنُهُ.

L42268 And some trustworthy narrators reported it from Ḥanẓalah ibn Abī Sufyān from Nāfiʿ from Ibn ʿUmar from the Messenger of Allah (peace and blessings of Allah be upon him and his family), who said: "Its value is five dirham."

وَرَوَاهُ بَعْضُ الثِّقَاتِ أَيْضًا عَنْ حَنْظَلَةَ بْنِ أَبِي سُفْيَانَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: قِيمَتُهُ خَمْسَةُ دَرَاهِمَ.

L42269 A ḥadīth was reported (which is not authentic because its narrator is Abū Ḥarmal—and it is not known who he is) that "a female servant stole a waterskin of wine whose value did not reach three dirhams, so the Messenger of Allāh—may Allāh bless him and grant him peace—did not amputate her hand."

وَجَاءَ حَدِيثٌ لَمْ يَصِحَّ؛ لِأَنَّ رَاوِيهِ أَبُو حَرْمَلٍ - وَلَا يُدْرَى مَنْ هُوَ - أَنَّ «جَارِيَةً سَرَقَتْ رِكْوَةَ خَمْرٍ لَمْ تَبْلُغْ ثَلَاثَةَ دَرَاهِمَ، فَلَمْ يَقْطَعْهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -».

L42270–42271 As for the ruling on amputation as a legal punishment for theft amounting

وَأَمَّا الْقَطْعُ فِي رُبْعِ دِينَارٍ، فَلَمْ يُرْوَ إلَّا عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - وَرُوِيَ عَنْهَا عَلَى ثَلَاثَةِ أَضْرُبٍ:

[41] **Hadith references (L42265):** Sunan an-Nasai 2520.
[42] **Hadith references (L42267):** Sunan an-Nasai 4907.

to a quarter of a dinar, it has exclusively been narrated from Aisha—may Allah be pleased with her—and was reported from her in three aspects.

L42272 One of them is that the Messenger of Allah (peace be upon him) said: "There is no cutting except for a quarter of a dinar."

أَحَدُهَا - أَنَّ رَسُولَ اللَّهِ قَالَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا قَطْعَ إِلَّا فِي رُبْعِ دِينَارٍ» .

L42273 The second is that the Messenger of Allah (peace be upon him and his family) prescribed the punishment of cutting off the hand for stealing a quarter of a dinar, or he said: "The cutting of the hand is mandated for stealing a quarter of a dinar."

" وَالثَّانِي - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «قَطَعَ فِي رُبْعِ دِينَارٍ، أَوْ قَالَ: الْقَطْعُ فِي رُبْعِ دِينَارٍ» .

L42274 The third [ruling] is that "he—peace be upon him—mandates hand-cutting for [theft] worth less than the value of a shield—a ḥajafah or a turs [types of shields]—not for a trivial thing," or that the Prophet—peace be upon him—cut [the hand] for [theft of] a shield. None narrated these variant wordings from her—may Allah be pleased with her—except al-Qāsim ibn Muḥammad, ʿUrwah ibn al-Zubayr, ʿAmrah bint ʿAbd al-Raḥmān, and the wife of ʿIkrimah—her name was not named to us.

وَالثَّالِثُ - «أَنَّهُ - عَلَيْهِ السَّلَامُ - يُقْطَعُ فِي أَقَلَّ مِنْ ثَمَنِ الْمِجَنِّ - جَحَفَةٍ أَوْ تُرْسٍ» لَا فِي الشَّيْءِ التَّافِهِ، أَوْ قَطَعَ فِي مِجَنٍّ - وَلَمْ يَرْوِ هَذِهِ الْأَلْفَاظَ بِاخْتِلَافِهَا عَنْهَا - رَضِيَ اللَّهُ عَنْهَا - إِلَّا الْقَاسِمُ بْنُ مُحَمَّدٍ، وَعُرْوَةُ بْنُ الزُّبَيْرِ، وَعَمْرَةُ بِنْتُ عَبْدِ الرَّحْمَنِ، وَامْرَأَةُ عِكْرِمَةَ - لَمْ تُسَمَّ لَنَا -.

L42275 As for Al-Qāsim, he attributed it directly to ʿĀ'isha in her own words without providing an isnad; however, she stated: "The thief's hand is to be cut off for a quarter of a dinar."

فَأَمَّا الْقَاسِمُ، فَأَوْقَفَهُ عَلَى عَائِشَةَ مِنْ لَفْظِهَا، وَلَمْ يُسْنِدْهُ، لَكِنْ أَنَّهَا قَالَتْ: السَّارِقُ تُقْطَعُ يَدُهُ فِي رُبْعِ دِينَارٍ.

L42276 Abd al-Rahman's son objected to the one who had ascribed [the claim] to him and declared that person mistaken.

وَأَنْكَرَ عَبْدُ الرَّحْمَنِ ابْنُهُ عَلَى مَنْ رَفَعَهُ وَخَطَّأَهُ.

L42277 As for those who said, "There is no amputation except for a quarter of a dinar," no one we know of has reported this except Yunus from al-Zuhrī from ʿUrwah with a connected *isnād*, and ʿAmrah from ʿĀ'ishah with a connected *isnād*, and Abū Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm from ʿAmrah from ʿĀ'ishah with a connected *isnād*, and Muḥammad ibn ʿAbd al-Raḥmān from ʿAmrah from ʿĀ'ishah with a connected *isnād*.

وَأَمَّا مَنْ قَالَ: لَا قَطْعَ إِلَّا فِي رُبْعِ دِينَارٍ، فَلَمْ يَرْوِهِ أَحَدٌ نَعْلَمُهُ إِلَّا يُونُسُ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ، وَعَمْرَةَ عَنْ عَائِشَةَ مُسْنَدًا، وَأَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَمْرَةَ عَنْ عَائِشَةَ مُسْنَدًا، وَمُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ عَمْرَةَ عَنْ عَائِشَةَ مُسْنَدًا.

L42278 As for those who transmitted the amputation punishment in the value of a shield—not for items of lesser value below the shield's threshold—and the specification by Hisham ibn Urwah from his father from Aisha, and Umm Ikrimah from Aisha as musnad. As for the hadith concerning ten dirhams or the dinar, there is absolutely no basis for it from the Messenger of Allah—

وَأَمَّا الَّذِينَ رَوَوْا الْقَطْعَ فِي ثَمَنِ الْمِجَنِّ لَا فِي التَّافِهِ الَّذِي هُوَ أَقَلُّ مِنْ ثَمَنِ الْمِجَنِّ، وَتَحْدِيدُ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ، وَامْرَأَةِ عِكْرِمَةَ عَنْ عَائِشَةَ مُسْنَدًا. وَأَمَّا حَدِيثُ الْعَشَرَةِ دَرَاهِمَ أَوْ الدِّينَارِ، فَلَيْسَ فِيهِ شَيْءٌ أَصْلًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

peace and blessings of Allah be upon him. Therefore, it is impermissible to allow any deception regarding it. It only cites ten dirhams connected to it from the statement of ʿAbd Allāh ibn ʿAmr ibn al-ʿĀṣ—and even this is not authentically established from him.

L42279 And from the statement of Abdullah ibn Abbas ibn Abdullah—which is also the view of Sa‘id ibn al-Musayyib and Ayman likewise—and it is soundly transmitted from them, except for a fabricated, false hadith—whose narrator is unknown—transmitted via Ibn Mas‘ud’s chain (musnad): “There is no amputation except for a quarter of a dinar or ten dirhams,” which contains no mention of value whatsoever, despite its defect.

Issue: Mentioning What Is Cut from the Thief

L42280–42281

L42282 Abu Muhammad—may Allah have mercy on him—said: People have differed regarding what is amputated from the thief. A group maintained: Only one hand is to be amputated, and nothing else is to be amputated from him thereafter.

L42283 A group held that only the hand and foot on opposite sides are to be amputated, then nothing else is amputated from him.

L42284 And a group said: The hand is cut off, then the left leg.

L42285 A group held that his hand is to be severed, then his opposite foot, then his second foot.

L42286 They also differed regarding how the hand is amputated, how the leg is amputated, what is done if he has nothing left to be amputated, and which of the two hands is amputated. We shall mention - if Allah, the Exalted, wills - each of these chapters, those who held such positions, and the evidence of each group, so the truth may become evident - and there is no might nor power except with Allah, the Most High, the Supreme. As for those who said: “Only his hand is amputated” - it is as narrated by Hammam, who narrated from Ibn Mufarrij, who narrated from Ibn al-A’rabi, who narrated from al-Dabari, who narrated from Abd al-Razzaq, from Ibn Jurayj, who said:

- فَلَا يَنْبَغِي أَنْ يَجُوزَ التَّمْوِيهُ فِيهِ عَلَى أَحَدٍ، إنَّمَا فِيهِ مَوْصُولًا بِهِ ذِكْرُ الْعَشَرَةِ دَرَاهِمَ مِنْ قَوْلِ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ - وَلَا يَصِحُّ عَنْهُ أَيْضًا.

وَمِنْ قَوْلِ عَبْدِ اللَّهِ بْنِ عَبَّاسِ بْنِ عَبْدِ اللَّهِ - وَهُوَ قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ، وَأَيْمَنُ كَذَلِكَ - وَهُوَ عَنْهُمْ صَحِيحٌ، إلَّا حَدِيثًا مَوْضُوعًا مَكْذُوبًا - لَا يُدْرَى مَنْ رَوَاهُ - مِنْ طَرِيقِ ابْنِ مَسْعُودٍ مُسْنَدًا: لَا قَطْعَ إلَّا فِي رُبْعِ دِينَارٍ، أَوْ عَشَرَةِ دَرَاهِمَ، وَلَيْسَ فِيهِ - مَعَ عِلَّتِهِ - ذِكْرُ الْقِيمَةِ أَصْلًا.

[مَسْأَلَة ذِكْرُ مَا يُقْطَعُ مِنْ السَّارِقِ]

؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِيمَا يُقْطَعُ مِنْ السَّارِقِ: فَقَالَتْ طَائِفَةٌ: لَا تُقْطَعُ إلَّا الْيَدُ الْوَاحِدَةُ فَقَطْ، ثُمَّ لَا يُقْطَعُ مِنْهُ شَيْءٌ.

وَقَالَتْ طَائِفَةٌ: لَا يُقْطَعُ مِنْهُ إلَّا الْيَدُ وَالرِّجْلُ مِنْ خِلَافٍ، ثُمَّ لَا يُقْطَعُ مِنْهُ شَيْءٌ.

وَقَالَتْ طَائِفَةٌ: تُقْطَعُ الْيَدُ، ثُمَّ الرِّجْلُ الْأُخْرَى.

وَقَالَتْ طَائِفَةٌ: تُقْطَعُ يَدُهُ، ثُمَّ رِجْلُهُ مِنْ خِلَافٍ، ثُمَّ رِجْلُهُ الثَّانِيَةُ.

وَاخْتَلَفُوا أَيْضًا: كَيْفَ تُقْطَعُ الْيَدُ، وَكَيْفَ تُقْطَعُ الرِّجْلُ، وَمَاذَا يُفْعَلُ إذَا لَمْ يَبْقَ لَهُ مَا يُقْطَعُ، وَأَيُّ الْيَدَيْنِ تُقْطَعُ؟ وَسَنَذْكُرُ - إنْ شَاءَ اللَّهُ تَعَالَى - كُلَّ بَابٍ مِنْ هَذِهِ الْأَبْوَابِ، وَالْقَائِلِينَ بِذَلِكَ، وَحُجَّةَ كُلِّ طَائِفَةٍ، لِيَلُوحَ الْحَقُّ - وَلَا حَوْلَ وَلَا قُوَّةَ إلَّا بِاَللَّهِ الْعَلِيِّ الْعَظِيمِ: فَأَمَّا مَنْ قَالَ: لَا تُقْطَعُ إلَّا يَدُهُ فَقَطْ - فَكَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: سَرَقَ الْأُولَى، قَالَ:

"I asked Ata: 'If he steals the first time?' He replied: 'His hand is amputated.' I asked: 'What about their statement concerning the fingers?' He said: 'I have only encountered the amputation of the entire hand.' I asked Ata: 'If he steals a second time?' He replied: 'I maintain that only the hand should be amputated for the first theft. Allah, the Exalted, says: {Cut off their hands} [5:38]. Had He willed, He would have commanded the leg, and Allah, the Exalted, is not forgetful.'" This is the explicit statement of Ata.[43]

L42287 As for those who say: the hand is to be cut off, then the other hand, while the foot is not to be cut off—this has been reported from Rabīʿah and others—and some of our companions said this.

L42288–42290 As for those who assert that his hand is amputated, then his opposite leg from the other limb, and then nothing further is to be severed: Muḥammad ibn Saʿīd ibn Nubāt narrated to us via ʿAbdullāh ibn Naṣr via Qāsim ibn Aṣbagh via Ibn Waḍḍāḥ via Mūsā ibn Muʿāwiyah via Wakīʿ via Sufyān al-Thawrī via Manṣūr ibn al-Muʿtamir via Abū al-Ḍuḥā, who said, "'Alī ibn Abī Ṭālib never imposed penalties for theft beyond amputating the hand and leg." Wakīʿ added: We also narrate via Shuʿbah via ʿAmr ibn Murrah via ʿAbdullāh ibn Salamah that a thief was brought to ʿAlī ibn Abī Ṭālib, who amputated his hand. When the thief was brought again, ʿAlī amputated his opposite leg. Upon being brought a third time, ʿAlī said, "I am restrained by honor from..." He cut off his hand—so with what will he eat? Or he cut off his leg—so upon what will he rely? Then he struck him and imprisoned him.

L42291 Through him (up to Waki') - Isra'il narrated to us via Simak ibn Harb from 'Abd al-Rahman ibn 'Abid al-Azdi, who said: A man called Sadum, who had amputated a hand and leg [of another], was brought to Umar ibn al-Khattab. Umar intended to amputate him, but Ali ibn Abi Talib said, "Only the amputation of his hand and leg is required." Thereupon, Umar detained him.

L42292 Hammam narrated to us: Ibn Mufarrij related to us: Ibn al-A'rabi reported to us: ad-Dabari conveyed to us: 'Abd al-Razzaq narrated from Ibn Jurayj,

[43] **Qur'an references (L42286):** Qur'an 5:38 (Al-Ma'idah).

تُقْطَعُ كَفُّهُ، قُلْت: فَمَا قَوْلُهُمْ: أَصَابِعُهُ، قَالَ: لَمْ أَدْرِكْ إلَّا قَطْعَ الْكَفِّ كُلِّهَا، قُلْت لِعَطَاءٍ: سَرَقَ الثَّانِيَةَ، قَالَ: مَا أَرَى أَنْ تُقْطَعَ إلَّا فِي السَّرِقَةِ الْأُولَى الْيَدَ فَقَطْ، قَالَ اللَّهُ تَعَالَى {فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] وَلَوْ شَاءَ أَمَرَ بِالرِّجْلِ، وَلَمْ يَكُنْ اللَّهُ تَعَالَى نَسِيًّا - هَذَا نَصُّ قَوْلِ عَطَاءٍ.

وَأَمَّا مَنْ قَالَ: تُقْطَعُ الْيَدُ، ثُمَّ الْيَدُ، وَلَا تُقْطَعُ الرِّجْلُ - فَرُوِيَ عَنْ رَبِيعَةَ وَغَيْرِهِ - وَبِهِ قَالَ بَعْضُ أَصْحَابِنَا.

وَأَمَّا مَنْ قَالَ: تُقْطَعُ يَدُهُ، ثُمَّ رِجْلُهُ مِنْ خِلَافٍ فَقَطْ، ثُمَّ لَا يُقْطَعُ مِنْهُ شَيْءٌ: فَكَمَا، نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ أَبِي الضُّحَى، قَالَ: كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ لَا يَزِيدُ فِي السَّرِقَةِ عَلَى قَطْعِ الْيَدِ وَالرِّجْلِ - قَالَ وَكِيعٌ: ونا شُعْبَةُ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ عَبْدِ اللَّهِ بْنِ سَلَمَةَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أُتِيَ بِسَارِقٍ فَقَطَعَ يَدَهُ، ثُمَّ أُتِيَ بِهِ فَقَطَعَ رِجْلَهُ، ثُمَّ أُتِيَ بِهِ الثَّالِثَةَ، فَقَالَ: إنِّي أَسْتَحْيِي أَنْ أَقْطَعَ يَدَهُ، فَبِأَيِّ شَيْءٍ يَأْكُلُ، أَوْ أَقْطَعَ رِجْلَهُ فَعَلَى أَيِّ شَيْءٍ يَعْتَمِدُ؟ فَضَرَبَهُ وَحَبَسَهُ.

وَبِهِ - إلَى وَكِيعٍ نا إسْرَائِيلُ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَابِدٍ الْأَزْدِيِّ قَالَ: أُتِيَ عُمَرُ بْنُ الْخَطَّابِ بِرَجُلٍ أَقْطَعِ الْيَدِ وَالرِّجْلِ - يُقَالُ لَهُ: سَدُومٌ - فَأَرَادَ أَنْ يَقْطَعَهُ، فَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: إنَّمَا عَلَيْهِ قَطْعُ يَدِهِ وَرِجْلِهِ، فَحَبَسَهُ عُمَرُ.

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ قَالَ: كَتَبَ نَجْدَةُ بْنُ عَامِرٍ إلَى ابْنِ عَبَّاسٍ: السَّارِقُ يَسْرِقُ فَتُقْطَعُ يَدُهُ،

who informed me that ‘Amr ibn Dinar said: Najda ibn ‘Amir wrote to Ibn ‘Abbas: “The thief steals and his hand is cut off. Then he steals again and his other hand is cut off, for Allah the Exalted said: {Cut off the hands of both of them} [5:38].” Ibn ‘Abbas responded: “Yes, but his hand and foot from opposite sides.” ‘Amr ibn Dinar remarked: “Did I hear this from ‘Ata’ forty years ago?” Abu Muhammad—may Allah have mercy on him—commented: “This chain is supremely authentic, and Ibn ‘Abbas’s statement here bears two interpretations.”[44]

L42293 One said: “Indeed, Allah the Exalted has declared this, but the obligation is to amputate his hand and foot.” The other responded: “It may also be understood—indeed, Allah the Exalted has decreed this—and this is the truth—that the governing authority amputates the hand and foot. This is the second viewpoint—the only impermissible interpretation is to carry Ibn Abbas’ statement to anything other than this absolutely, for it is impermissible that Ibn Abbas could affirm this as Allah the Exalted’s decree yet oppose and contradict it.”

L42294 For it is not permissible to abandon the command of Allah the Exalted except for a Sunnah of the Messenger of Allah—peace and blessings be upon him and his family—that abrogates what is in the Quran, coming from Allah the Exalted through revelation to His Prophet—upon him be peace.

L42295 It is an inconceivable falsehood that Ibn Abbas’s statement would contradict the words of Allah the Exalted based on his own opinion or by adhering to the view of anyone other than the Messenger of Allah—peace and blessings be upon him and his family. He was the farthest of people from such behavior, and he summoned them to the *mubāhala* (ritual invocation of divine curse) regarding *ʿawl* (over-provision in inheritance) and other matters.

L42296 He spoke regarding the matter of Hajj tamattu’ and its conversion to ‘Umrah: “I can only envision that Allah will cause the earth to swallow you! Do I say to you: ‘The Messenger of Allah (peace and blessings be upon him) said,’ while you retort: ‘Abu Bakr and Umar said?’” It is implausible that he would possess knowledge of a Sunnah from the Messenger of Allah (peace and

[44]**Qur’an references (L42292):** Qur’an 5:38 (Al-Ma’idah).

ثُمَّ يَعُودُ فَتُقْطَعُ يَدُهُ الْأُخْرَى، قَالَ اللَّهُ تَعَالَى {فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] قَالَ ابْنُ عَبَّاسٍ: بَلَى، وَلَكِنَّ يَدَهُ وَرِجْلَهُ مِنْ خِلَافٍ، قَالَ عَمْرُو بْنُ دِينَارٍ: سَمِعْته مِنْ عَطَاءٍ مُنْذُ أَرْبَعِينَ سَنَةً؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا إسْنَادٌ فِي غَايَةِ الصِّحَّةِ، وَيَحْتَمِلُ قَوْلُ ابْنِ عَبَّاسٍ هَذَا وَجْهَيْنِ:

أَحَدُهُمَا - بَلَى، إنَّ اللَّهَ تَعَالَى قَالَ هَذَا، وَلَكِنَّ الْوَاجِبَ قَطْعُ يَدِهِ وَرِجْلِهِ - وَيَحْتَمِلُ أَيْضًا - بَلَى، إنَّ اللَّهَ تَعَالَى قَالَ هَذَا - وَهُوَ الْحَقُّ - وَلَكِنَّ السُّلْطَانَ يَقْطَعُ الْيَدَ وَالرِّجْلَ، وَهَذَا الْوَجْهُ الثَّانِي - هُوَ الَّذِي لَا يَجُوزُ أَنْ يُحْمَلَ قَوْلُ ابْنِ عَبَّاسٍ عَلَى غَيْرِهِ أَلْبَتَّةَ؛ لِأَنَّهُ لَا يَجُوزُ أَنْ يَكُونَ ابْنُ عَبَّاسٍ يُحَقِّقُ أَنَّ هَذَا قَوْلُ اللَّهِ تَعَالَى ثُمَّ يُخَالِفُهُ وَيُعَارِضُهُ.

إذْ لَا يَحِلُّ تَرْكُ أَمْرِ اللَّهِ تَعَالَى إلَّا لِسُنَّةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَاسِخَةٍ لِمَا فِي الْقُرْآنِ، وَارِدَةٍ مِنْ عِنْدِ اللَّهِ تَعَالَى بِالْوَحْيِ، إلَى نَبِيِّهِ - عَلَيْهِ السَّلَامُ -.

فَمِنْ الْبَاطِلِ الْمُمْتَنِعِ أَنْ يُخَالِفَ قَوْلُ ابْنِ عَبَّاسٍ قَوْلَ اللَّهِ تَعَالَى بِرَأْيِهِ، أَوْ بِتَقْلِيدِهِ لِرَأْيِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؛ وَهُوَ أَبْعَدُ النَّاسِ مِنْ ذَلِكَ، وَقَدْ دَعَاهُمْ إلَى الْمُبَاهَلَةِ فِي " الْعَوْلِ " وَغَيْرِهِ.

وَقَالَ فِي أَمْرِ مُتْعَةِ الْحَجِّ وَفَسْخِهِ بِعُمْرَةٍ: مَا أَرَاكُمْ إلَّا سَيَخْسِفُ اللَّهُ بِكُمْ الْأَرْضَ أَقُولُ لَكُمْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَقُولُونَ: قَالَ أَبُو بَكْرٍ، وَعُمَرُ؟ وَمِنْ الْمُحَالِ أَنْ يَكُونَ عِنْدَهُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُنَّةٌ فِي ذَلِكَ وَلَا يَذْكُرُهَا، وَقَدْ أَعَاذَهُ اللَّهُ تَعَالَى مِنْ ذَلِكَ.

blessings be upon him) concerning this matter and fail to mention it, for Allah the Exalted has protected him from that.

L42297–42298 It is inconceivable that ‘Aṭā’ would hear this ruling and comprehend from him the existence of a Sunnah concerning leg amputation that requires leaving the Qur’an, yet then refuse—as we have cited from him—to amputate the leg for theft while clinging to the Qur’an in this matter, declaring: “Your Lord is never heedless” [19:64]. Had Allah the Exalted willed, He would have commanded leg amputation.[45]

L42299 It was thus confirmed with certainty that Ibn Abbas, in his statement “Yes, but the hands and the feet,” only intended to validate the cutting of both hands only, in accordance with the Divine ruling in the Quran, and that his statement “but the hands and the feet” merely reported the practice of the people of his time.

L42300 From Al-Zuhri, Salim, and others: Abu Bakr al-Siddiq only amputated his foot, as his hand had already been amputated. Al-Zuhri said: “No precedent has been reported to us in the Sunnah except the amputation of the hand and foot. No additional amputation is mandated beyond this.”

L42301 And from Ibrāhīm an-Nakhaʿī, he said: They used to say: The son of Adam should not be left like a beast, having no hand to eat with or relieve himself. This is the opinion of Ḥammād ibn Abī Sulaymān, Sufyān al-Thawrī, Aḥmad ibn Ḥanbal, and their companions? Abū Muḥammad (may Allah have mercy on him) said: We examined the opinion of those who held that only the thief’s single hand should be amputated with no further amputation thereafter, and the opinion of those who held that amputating the hand after the hand alone, while not considering foot amputation in this matter at all. We found them saying: Allah the Exalted said, “As for the thief, male or female, cut off their hands” [5:38].[46]

L42302 The Messenger of Allah (peace be upon him) said, “If Fāṭimah, the daughter of Muhammad, were to steal, the Prophet Muhammad would cut off her

[45] **Qur’an references (L42298):** Qur’an 19:64 (Maryam).

[46] **Qur’an references (L42301):** Qur’an 5:38 (Al-Ma’idah).

وَمِنْ الْمُحَالِ أَنْ يَسْمَعَهُ عَطَاءٌ وَيَفْهَمَ عَنْهُ أَنَّ عِنْدَهُ فِي قَطْعِ الرِّجْلِ سُنَّةً يَنْبَغِي لَهَا تَرْكُ الْقُرْآنِ، ثُمَّ يَأْبَى عَطَاءٌ مِنْ قَطْعِ الرِّجْلِ فِي السَّرِقَةِ - كَمَا ذَكَرْنَا عَنْهُ - وَيَتَمَسَّكُ بِالْقُرْآنِ فِي ذَلِكَ، وَيَقُولُ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] لَوْ شَاءَ اللَّهُ تَعَالَى أَمَرَ بِالرِّجْلِ.

فَصَحَّ يَقِينًا أَنَّ ابْنَ عَبَّاسٍ لَمْ يَرِدْ بِقَوْلِهِ " بَلَى، وَلَكِنَّ الْيَدَ وَالرِّجْلَ " إلَّا لِتَصْحِيحِ: قَطْعِ الْيَدَيْنِ فَقَطْ، عَلَى حُكْمِ اللَّهِ تَعَالَى فِي الْقُرْآنِ، وَأَنَّ قَوْلَهُ " وَلَكِنَّ الْيَدَ وَالرِّجْلَ " إنَّمَا أَخْبَرَ عَنْ فِعْلِ أَهْلِ زَمَانِهِ فَقَطْ.

وَعَنْ الزُّهْرِيِّ، وَسَالِمٍ، وَغَيْرِهِ: إنَّمَا قَطَعَ أَبُو بَكْرٍ الصِّدِّيقُ رِجْلَهُ، وَكَانَ مَقْطُوعَ الْيَدِ - قَالَ الزُّهْرِيُّ: فَلَمْ يَبْلُغْنَا فِي السُّنَّةِ إلَّا قَطْعُ الْيَدِ وَالرِّجْلِ، لَا يُزَادُ عَلَى ذَلِكَ.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ كَانُوا يَقُولُونَ: لَا يُتْرَكُ ابْنُ آدَمَ مِثْلَ الْبَهِيمَةِ، لَيْسَ لَهُ يَدٌ يَأْكُلُ بِهَا، وَيَسْتَنْجِي بِهَا - وَهُوَ قَوْلُ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَصْحَابِهِمْ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي قَوْلِ مَنْ رَأَى قَطْعَ يَدِ السَّارِقِ الْوَاحِدَةِ فَقَطْ ثُمَّ لَا يُقْطَعُ مِنْهُ شَيْءٌ - وَقَوْلِ مَنْ رَأَى قَطْعَ الْيَدِ بَعْدَ الْيَدِ فَقَطْ، وَلَمْ يَرَ قَطْعَ الرِّجْلِ فِي ذَلِكَ أَصْلًا: فَوَجَدْنَاهُمْ يَقُولُونَ: قَالَ اللَّهُ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَوْ سَرَقَتْ فَاطِمَةُ بِنْتُ مُحَمَّدٍ لَقَطَعَ مُحَمَّدٌ يَدَهَا» . وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تُقْطَعُ الْيَدُ إلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا» . وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَعَنَ اللَّهُ السَّارِقَ يَسْرِقُ

hand." The Messenger of Allah (peace be upon him) said, "The hand is not cut except for a quarter of a dinar or above." The Messenger of Allah (peace be upon him and his family) said, "Allah has cursed the thief who steals an egg and has his hand cut off, and steals a rope and has his hand cut off." ʿĀ'ishah (may Allah be pleased with her) said, "Hands were not cut off during the time of the Messenger of Allah (peace be upon him) for something trivial."[47]

L42303–42304 So this Quran and the authentic established narrations from the Messenger of Allah—may Allah send blessings upon him and his family and grant him peace—have come with the cutting of hands, and in them there is no mention of the foot.

L42305 And He, the Exalted, said: "Follow what has been revealed to you from your Lord" [Al-Aʿrāf: 3]. We have clarified that no authentic report has been transmitted from the Messenger of Allah—may Allah bless him and his family and grant him peace—concerning amputating the thief's foot whatsoever. Had it been authentic, we would have ruled by it, and we do not overstep the bounds.[48]

L42306 Nothing has been reported regarding the amputation of the foot except from Abu Bakr, Umar, Uthman, Ali, and Ya'la ibn Munyah.

L42307 As for the narration from ʿUthmān—it is not authentic.

L42308 As for the narration from Abū Bakr, it is reported that he intended to amputate the second leg in the case of a third theft, but they do not uphold this ruling.

L42309 It has been authentically reported from ʿAlī that he did not permit amputating the second foot or the second hand.

L42310 Thus, the disagreement among them concerning that matter was affirmed valid – may Allah be pleased with them.

L42311 Muhammad ibn Sa'id ibn Nubat narrated from Abdullah ibn Nasr, who

الْبَيْضَةَ فَتُقْطَعُ يَدُهُ وَيَسْرِقُ الْحَبْلَ فَتُقْطَعُ يَدُهُ» وَقَالَتْ عَائِشَةُ - رَضِيَ اللَّهُ عَنْهَا -: «لَمْ تَكُنْ الْأَيْدِي تُقْطَعُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الشَّيْءِ التَّافِهِ» .

فَهَذَا الْقُرْآنُ، وَالْآثَارُ الصِّحَاحُ الثَّابِتَةُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - جَاءَتْ بِقَطْعِ الْأَيْدِي، لَمْ يَأْتِ فِيهَا لِلرِّجْلِ ذِكْرٌ.

وَقَالَ تَعَالَى {اتَّبِعُوا مَا أُنْزِلَ إِلَيْكُمْ مِنْ رَبِّكُمْ} [الأعراف: ٣] . وَقَدْ بَيَّنَّا أَنَّهُ لَمْ يَصِحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي قَطْعِ رَجُلِ السَّارِقِ شَيْءٌ أَصْلًا وَلَوْ صَحَّ لَقُلْنَا بِهِ، وَمَا تَعَدَّيْنَا.

وَلَمْ يُرْوَ فِي قَطْعِ الرِّجْلِ شَيْءٌ إلَّا عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ، وَيَعْلَى بْنِ مُنْيَةَ.

فَأَمَّا الرِّوَايَةُ عَنْ عُثْمَانَ - فَلَا تَصِحُّ.

وَأَمَّا الرِّوَايَةُ عَنْ أَبِي بَكْرٍ - فَقَدْ جَاءَ عَنْهُ أَنَّهُ أَرَادَ قَطْعَ الرِّجْلِ الثَّانِيَةِ فِي السَّرِقَةِ الثَّالِثَةِ - وَهُمْ لَا يَقُولُونَ بِهَذَا.

وَصَحَّ عَنْ عَلِيٍّ - أَنَّهُ لَمْ يَرَ قَطْعَ الرِّجْلِ الثَّانِيَةِ، وَلَا الْيَدِ الثَّانِيَةِ.

فَصَحَّ الِاخْتِلَافُ عَنْهُمْ فِي ذَلِكَ - رَضِيَ اللَّهُ عَنْهُمْ -.

وَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ، وَمُحَمَّدِ بْنِ أَبِي

[47] **Hadith references (L42302):** Sunan Ibn Majah 2585; Sahih al-Bukhari 6783; Sahih al-Bukhari 6799; Sunan Ibn Majah 2583.

[48] **Qur'an references (L42305):** Qur'an 7:3 (Al-A'raf).

narrated from Qasim ibn Asbagh, who narrated from Ibn Waddah, who narrated from Musa ibn Mu'awiyah, who narrated from Waki', who narrated from Sufyan al-Thawri, from Abd al-Rahman ibn al-Qasim and Muhammad ibn Abi Bakr, from his father, who said: Abu Bakr intended to cut the foot after the hand. Umar then said, "The Sunnah specifies the hand." Thus, Umar, may Allah be pleased with him, did not recognize the Sunnah except for the hand. Abu Muhammad, may Allah have mercy on him, said: Thus, the matter became clear, and all praise is due to Allah.

بَكْرٍ عَنْ أَبِيهِ، قَالَ: أَرَادَ أَبُو بَكْرٍ قَطْعَ الرِّجْلِ بَعْدَ الْيَدِ وَالرِّجْلِ، فَقَالَ عُمَرُ: السُّنَّةُ فِي الْيَدِ - فَهَذَا عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - لَمْ يَرَ السُّنَّةَ إلَّا فِي الْيَدِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَانْبَلَجَ الْأَمْرُ وَلِلَّهِ الْحَمْدُ.

L42312 We have been narrated through the chain of al-Bukhārī: Yaḥyā ibn Bukayr narrated to us; al-Layth narrated to us, from Yūnus, from Ibn Shihāb, from ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah, that Ibn ʿAbbās used to relate: "A man came to the Messenger of Allah (peace be upon him and his family) and said, 'I saw last night...'—and he mentioned the Hadith—and that Abū Bakr (may Allah be pleased with him) interpreted the meaning of that dream. The Messenger of Allah (peace be upon him and his family) said to Abū Bakr (may Allah be pleased with him): 'You were correct in part and mistaken in part.' Thus, everyone besides the Messenger of Allah (peace be upon him and his family) may err and may be correct."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا يَحْيَى بْنُ بُكَيْرٍ نا اللَّيْثُ عَنْ يُونُسَ عَنْ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ أَنَّ ابْنَ عَبَّاسٍ كَانَ يُحَدِّثُ: «أَنَّ رَجُلًا أَتَى إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: إنِّي رَأَيْتُ اللَّيْلَةَ - وَذَكَرَ الْحَدِيثَ - وَأَنَّ أَبَا بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - عَبَّرَ تِلْكَ الرُّؤْيَا، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لِأَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - أَصَبْتَ بَعْضًا وَأَخْطَأْتَ بَعْضًا» فَكُلُّ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يُخْطِئُ وَيُصِيبُ.

L42313–42314 If someone were to say: The Messenger of Allah—blessings and peace be upon him and his family—said, "You must adhere to my Sunnah and the Sunnah of the Rightly Guided Caliphs after me," we would respond: The Sunnah of the Caliphs—may Allah be pleased with them—is the following of his Sunnah—peace be upon him. As for what they established through independent reasoning, it is not obligatory to follow their rulings in that regard.

فَإِنْ قَالَ قَائِلٌ: قَدْ جَاءَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «عَلَيْكُمْ بِسُنَّتِي وَسُنَّةِ الْخُلَفَاءِ الرَّاشِدِينَ مِنْ بَعْدِي؟» قُلْنَا: سُنَّةُ الْخُلَفَاءِ - رَضِيَ اللَّهُ عَنْهُمْ - هِيَ اتِّبَاعُ سُنَّتِهِ - عَلَيْهِ السَّلَامُ -، وَأَمَّا مَا عَمِلُوهُ - بِاجْتِهَادٍ فَلَا يَجِبُ اتِّبَاعُ اجْتِهَادِهِمْ فِي ذَلِكَ.

L42315 It has been authentically reported from Abu Bakr, ʿUmar, ʿUthman, ʿAli, Ibn al-Zubayr, Khalid Ibn al-Walid, and others that retaliation applies even for a slap. However, the Ḥanafīs, the Mālikīs, and the Shāfiʿīs do not uphold this ruling.

وَقَدْ صَحَّ عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ، وَابْنِ الزُّبَيْرِ، وَخَالِدِ بْنِ الْوَلِيدِ، وَغَيْرِهِمْ: الْقَوَدُ مِنْ اللَّطْمَةِ - وَالْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، لَا يَقُولُونَ بِذَلِكَ.

L42316 As for us, consensus in our view is only that which is confirmed—wherefrom the first to the last, they have declared it, acted upon it, and approved it,

without any silence from any of them or dissent from any of them. This, in truth, is the consensus—and success comes from Allah, the Most High.

وَأَمَّا نَحْنُ فَلَيْسَ الْإِجْمَاعُ عِنْدَنَا إلَّا الَّذِي تَيَقَّنَ أَنَّهُمْ أَوَّلُهُمْ عَنْ آخِرِهِمْ قَالُوا بِهِ، وَعَمِلُوهُ، وَصَوَّبُوهُ، دُونَ سُكُوتٍ مِنْ أَحَدٍ مِنْهُمْ، وَلَا خِلَافٍ مِنْ أَحَدٍ مِنْهُمْ، فَهَذَا حَقًّا هُوَ الْإِجْمَاعُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L42317 Since the Qur'an and the Sunnah have only stipulated cutting off the hand of the thief, not his foot, it is fundamentally impermissible to cut off his foot at all, and this is beyond dispute—and praise be to Allah.

فَإِذْ إنَّمَا جَاءَ الْقُرْآنُ، وَالسُّنَّةُ، بِقَطْعِ يَدِ السَّارِقِ لَا بِقَطْعِ رِجْلِهِ، فَلَا يَجُوزُ قَطْعُ رِجْلِهِ أَصْلًا، وَهَذَا مَا لَا إشْكَالَ فِيهِ - وَالْحَمْدُ لِلَّهِ.

L42318 It is therefore obligatory, based on this, that if a man or woman steals, one hand must be severed from each of them. If either steals a second time, their other hand must be severed according to the explicit text of the Quran and the Sunnah. Should they steal a third time, they are disciplined, reformed, and people are shielded from their harm until their conduct becomes upright - with success granted solely by Allah, the Exalted.

فَوَجَبَ مِنْ هَذَا إذَا سَرَقَ الرَّجُلُ، أَوْ الْمَرْأَةُ، أَنْ يُقْطَعَ مِنْ كُلِّ وَاحِدٍ مِنْهُمَا يَدًا وَاحِدَةً، فَإِنْ سَرَقَ أَحَدُهُمَا ثَانِيَةً قُطِعَتْ يَدُهُ الثَّانِيَةُ، بِالنَّصِّ مِنْ الْقُرْآنِ، وَالسُّنَّةِ، فَإِنْ سَرَقَ فِي الثَّالِثَةِ عُذِّرَ، وَثُقِّفَ، وَمُنِعَ النَّاسُ ضُرَّهُ، حَتَّى يَصْلُحَ حَالُهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L42319 Issue: The Method of Hand Amputation

[مَسْأَلَة صِفَةُ قَطْعِ الْيَدِ]

L42320 2288 - Issue: What is the method for cutting the hand? We have previously cited ʿAlī—may Allah be pleased with him—regarding cutting the fingers from the hand and cutting half of the foot from the leg.

٢٢٨٨ - مَسْأَلَةٌ: صِفَةُ قَطْعِ الْيَدِ؟ قَدْ ذَكَرْنَا عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - فِي قَطْعِ الْأَصَابِعِ مِنْ الْيَدِ، وَقَطْعِ نِصْفِ الْقَدَمِ مِنْ الرِّجْلِ.

L42321 We have mentioned the statement of Umar—may Allah be pleased with him—and others regarding the cutting of all such [matters] from the joint.

وَذَكَرْنَا قَوْلَ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَغَيْرِهِ فِي قَطْعِ كُلِّ ذَلِكَ مِنْ الْمَفْصَلِ.

L42322 As for the Kharijites—they advocated amputating the hand at the elbow or shoulder. Abū Muḥammad—may Allah have mercy on him—said: They cited as evidence for this the words of Allah, the Most High: *"So cut off their two hands"* [al-Mā'idah: 38].[49]

وَأَمَّا الْخَوَارِجُ - فَرَأَوْا فِي ذَلِكَ قَطْعَ الْيَدِ مِنْ الْمِرْفَقِ، أَوْ الْمَنْكِبِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَاحْتَجُّوا فِي ذَلِكَ بِقَوْلِ اللَّهِ تَعَالَى {فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] .

L42323–42324 They said: The term "hand" in the Arabic language denotes what extends from the shoulder to the fingertips. While this accords with what we have previously cited from them, the term "hand" also applies to the palm and to

قَالُوا: وَالْيَدُ فِي لُغَةِ الْعَرَبِ اسْمٌ يَقَعُ عَلَى مَا بَيْنَ الْمَنْكِبِ إلَى طَرَفِ الْأَصَابِعِ، وَهَذَا - وَإِنْ كَانَ أَيْضًا كَمَا ذَكَرْنَا عَنْهُمْ - فَإِنَّ الْيَدَ أَيْضًا تَقَعُ عَلَى الْكَفِّ، وَتَقَعُ عَلَى مَا بَيْنَ

[49] **Qur'an references (L42322):** Qur'an 5:38 (Al-Ma'idah).

what extends from the fingertips to the elbow. Given this, we are obligated to adopt the minimal part to which the term "hand" applies, because amputating the hand is prohibited except in the case of theft - as the textual ruling explicitly prescribes hand-amputation. Thus, it is obligatory to exclude nothing from the established prohibition unless its exclusion is certain. There is no certainty except regarding the palm. Consequently, it is not permissible to amputate more than the palm.

الْأَصَابِعِ إِلَى الْمِرْفَقِ، فَإِذْ ذَلِكَ كَذَلِكَ فَإِنَّمَا يَلْزَمُنَا أَقَلُّ مَا يَقَعُ عَلَيْهِ اسْمُ يَدٍ، لِأَنَّ الْيَدَ مُحَرَّمَةٌ قَطْعُهَا قَبْلَ السَّرِقَةِ، كَمَا جَاءَ النَّصُّ بِقَطْعِ الْيَدِ، فَوَاجِبٌ أَنْ لَا يَخْرُجَ مِنْ التَّحْرِيمِ الْمُتَيَقَّنِ الْمُتَقَدِّمِ شَيْءٌ، إِلَّا مَا تُيُقِّنَ خُرُوجُهُ، وَلَا يَقِينَ إِلَّا فِي الْكَفِّ، فَلَا يَجُوزُ قَطْعُ أَكْثَرَ مِنْهَا.

L42325 And thus we have recognized Allah, the Exalted, when He commanded us concerning tayammum as He says: "If you find no water, then perform tayammum with clean earth and wipe your faces and hands with it" [Surah Al-Ma'idah 5:6].[50]

وَهَكَذَا وَجَدْنَا اللَّهَ تَعَالَى إذْ أَمَرَنَا فِي التَّيَمُّمِ بِمَا أَمَرَ، إذْ يَقُولُ تَعَالَى {فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا فَامْسَحُوا بِوُجُوهِكُمْ وَأَيْدِيكُمْ مِنْهُ} [المائدة: ٦]

L42326 The Messenger of Allah (peace be upon him and his family) explained the intended meaning of Allah, the Exalted, in mentioning "hands" here—that it refers specifically to the two palms exclusively, in accordance with what we have previously mentioned.

فَفَسَّرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مُرَادَ اللَّهِ تَعَالَى بِذِكْرِ الْأَيْدِي هَاهُنَا، وَأَنَّهُ الْكَفَّانِ فَقَطْ، عَلَى مَا قَدْ أَوْرَدْنَاهُ.

L42327 It has been authentically established from the Prophet—peace be upon him—that there is a distinction between the hadd punishment for a free person and the hadd punishment for a slave, as we have previously mentioned. Since the Prophet (peace be upon him) explicitly stated that the hadd punishment for a slave differs from that of a free person, this constitutes a general ruling that should not be particularized in any aspect without textual evidence or consensus.

وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الْفَرْقُ بَيْنَ حَدِّ الْحُرِّ، وَبَيْنَ حَدِّ الْعَبْدِ عَلَى مَا قَدْ ذَكَرْنَاهُ فَإِذْ قَدْ نَصَّ - عَلَيْهِ السَّلَامُ - عَلَى أَنَّ حَدَّ الْعَبْدِ بِخِلَافِ حَدِّ الْحُرِّ، فَهَذَا عُمُومٌ لَا يَنْبَغِي أَنْ يُخَصَّ مِنْهُ شَيْءٌ بِغَيْرِ نَصٍّ، وَلَا إجْمَاعٍ.

L42328 The prescribed punishment—if a slave steals—is that only his fingers (half the hand) be cut off. If a free person steals, his hand is cut off at the wrist joint. As for highway robbery, the free person's hand is cut off at the joint and his leg at the joint, while the slave's fingers are cut off from the hand and half his leg from the shin—as narrated from Ali ibn Abi Talib, may Allah be pleased with him. We accept from the opinions of every scholar what aligns with the scriptural text and discard what contradicts it. Success comes solely through Allah, the Exalted.

فَالْوَاجِبُ - إنْ سَرَقَ الْعَبْدُ - أَنْ تُقْطَعَ أَنَامِلُهُ فَقَطْ، وَهُوَ نِصْفُ الْيَدِ فَقَطْ، وَإِنْ سَرَقَ الْحُرُّ قُطِعَتْ يَدُهُ مِنْ الْكُوعِ هُوَ الْمَفْصَلُ - وَأَمَّا فِي الْمُحَارَبَةِ فَتُقْطَعُ يَدُ الْحُرِّ مِنْ الْمَفْصَلِ، وَرِجْلُهُ مِنْ الْمَفْصَلِ، وَتُقْطَعُ مِنْ الْعَبْدِ أَنَامِلُهُ مِنْ الْيَدِ، وَنِصْفُ قَدَمِهِ مِنْ السَّاقِ - كَمَا رُوِيَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - نَأْخُذُ مِنْ قَوْلِ كُلِّ قَائِلٍ مَا وَافَقَ النَّصَّ، وَنَتْرُكُ مَا لَمْ يُوَافِقْهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[50] **Qur'an references (L42325):** Qur'an 5:6 (Al-Ma'idah).

L42329 As for which of the two hands is to be amputated: Abdullah ibn Rabi‘ reported to us, saying: Ibn Mufarrij reported to us, Qasim ibn Asbagh reported to us, Ibn Waddah reported to us, Sahnun reported to us, Ibn Wahb reported from Makhramah ibn Bukayr ibn al-Ashajj from his father from Nafi‘, the freed slave of Ibn Umar, who said: A thief stole in Iraq during Ali ibn Abi Talib’s time. He was brought forward to have his hand amputated. The thief presented his left hand - while they were unaware - so it was amputated. When Ali ibn Abi Talib was informed of his situation, he left him and did not amputate his other hand. This is the position of Malik and Abu Hanifah. Some of our companions said: The person responsible for the amputation owes the blood money for the hand. Some scholars held: The right hand should be amputated.

وَأَمَّا أَيُّ الْيَدَيْنِ تُقْطَعُ؟ فَإِنَّ عَبْدَ اللَّهِ بْنَ رَبِيعٍ ثنا، قَالَ: ثنا ابْنُ مُفَرِّجٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ ثنا سَحْنُونٌ ثنا ابْنُ وَهْبٍ عَنْ مَخْرَمَةَ بْنِ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ أَبِيهِ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ، قَالَ: سَرَقَ سَارِقٌ بِالْعِرَاقِ فِي زَمَانِ عَلِيِّ بْنِ أَبِي طَالِبٍ، فَقُدِّمَ لِيُقْطَعَ يَدُهُ، فَقَدَّمَ السَّارِقُ يَدَهُ الْيُسْرَى - وَلَمْ يَشْعُرُوا - فَقُطِعَتْ، فَأُخْبِرَ عَلِيُّ بْنُ أَبِي طَالِبٍ خَبَرَهُ فَتَرَكَهُ وَلَمْ يَقْطَعْ يَدَهُ الْأُخْرَى - وَبِهَذَا يَقُولُ مَالِكٌ، وَأَبُو حَنِيفَةَ - وَقَالَ بَعْضُ أَصْحَابِنَا: عَلَى مُتَوَلِّي الْقَطْعِ دِيَةُ الْيَدِ - وَقَالَ قَائِلُونَ: تُقْطَعُ الْيُمْنَى.

L42330 They argued that the obligation is to cut off the right hand, basing this on Ibn Mas‘ūd’s recitation: “As for the male thief and the female thief, cut off their right hands.”

وَاحْتَجُّوا أَنَّ الْوَاجِبَ قَطْعُ الْيُمْنَى - وَاحْتَجُّوا فِي ذَلِكَ بِقِرَاءَةِ ابْنِ مَسْعُودٍ " وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْمَانَهُمَا ".

L42331–42332 The recitation is invalid, and they claimed a consensus—which is false, refuted by Ali’s amputation of the left instead of the right and his sufficiency with that. Had amputating the right been obligatory, amputating the left would not have sufficed—just as cleansing with the right does not suffice, nor is eating with the left permitted. No text exists specifying obligation except for amputating the hand or hands in the Book and the Sunnah. However, we recommend amputating the right hand due to the narration from him (peace be upon him) that “it was obligatory to give preference to the right in all his affairs.”

وَالْقِرَاءَةُ غَيْرُ صَحِيحَةٍ، وَادَّعَوْا إجْمَاعًا - وَهُوَ بَاطِلٌ يَرُدُّهُ قَطْعُ عَلِيٍّ الشِّمَالَ عَنْ الْيَمِينِ وَاكْتِفَاؤُهُ بِذَلِكَ، فَلَوْ وَجَبَ قَطْعُ الْيَمِينِ لَمَا أَجْزَأَ عَنْ ذَلِكَ قَطْعُ الشِّمَالِ، كَمَا لَا يُجْزِئُ الِاسْتِنْجَاءُ بِالْيَمِينِ، وَلَا الْأَكْلُ بِالشِّمَالِ، وَلَا نَصَّ إلَّا وُجُوبُ قَطْعِ الْيَدِ، أَوْ الْأَيْدِي، فِي الْكِتَابِ وَالسُّنَّةِ، إلَّا أَنَّنَا نَسْتَحِبُّ قَطْعَ الْيَمِينِ، لِلْأَثَرِ عَنْهُ - عَلَيْهِ السَّلَامُ - أَنَّهُ «كَانَ يَجِبُ التَّيَمُّنُ فِي شَأْنِهِ كُلِّهِ» .

[مَسْأَلَة مِنْ جَحَدَ الْعَارِيَّةَ هَلْ تقطع يَده]

L42333 **A juridical question: Regarding one who denies a gratuitous loan—should his hand be amputated?**

L42334 2289 - Question: Cutting off the hand of one who denies an entrusted item? Abu Muhammad—may Allah have mercy on him—said: It was narrated to us through Muslim’s chain: ‘Abd ibn Humayd narrated to us, ‘Abd al-Razzaq narrated to us, saying: I heard from Ma‘mar, from al-Zuhri, from ‘Urwah, from ‘A’ishah, who said: “There was a woman from Makhzum who would borrow items and then deny them, so the Messenger of Allah—may Allah’s

٢٢٨٩ - مَسْأَلَةٌ: قَطْعُ الْيَدِ فِيمَنْ جَحَدَ الْعَارِيَّةَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا عَبْدُ بْنُ حُمَيْدٍ نا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ، قَالَتْ: «كَانَتْ امْرَأَةٌ مَخْزُومِيَّةٌ تَسْتَعِيرُ الْمَتَاعَ وَتَجْحَدُهُ، فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى

blessings and peace be upon him and his family—ordered her hand to be cut off. Her family approached Usamah ibn Zayd and spoke to him, so he spoke to the Messenger of Allah—may Allah's blessings and peace be upon him and his family—regarding her," and Abu Muhammad mentioned the hadith.

اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِقَطْعِ يَدِهَا فَأَتَى أَهْلُهَا أُسَامَةَ بْنَ زَيْدٍ فَكَلَّمُوهُ، فَكَلَّمَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِيهَا» وَذَكَرَ الْحَدِيثَ.

L42335 Narrated to us by Humam, narrated to us by Ibn Mufarrij, on the authority of Ibn al-A'rabi, narrated to us by al-Dabari, narrated to us by Abd al-Razzaq, who said: Ma'mar reported from al-Zuhri from Urwah from Aishah, the Mother of the Believers, who said: "There was a woman from the Makhzum tribe who would borrow possessions and then deny them. The Prophet—peace and blessings of Allah be upon him and his family—commanded that her hand be severed. Her family approached Usamah ibn Zayd and spoke to him, so Usamah spoke to the Prophet—peace and blessings of Allah be upon him and his family—about her. The Prophet—peace and blessings of Allah be upon him and his family—said to him: 'O Usamah! Do I see you mediating in a matter pertaining to Allah's ordained punishment?' Then he—peace and blessings of Allah be upon him and his family—rose to deliver a sermon and said: 'Those before you were destroyed because when a noble person among them stole, they spared him, but when a weak person stole, they enforced the penalty upon him. By Him in Whose Hand lies my soul, if Fatimah bint Muhammad were to steal, I would cut her hand.' Thus, they severed the hand of the Makhzumi woman." And from Nafi', on the authority of Ibn Umar, who said: "There was a woman from the Makhzum tribe who would borrow possessions and deny them. The Prophet—peace and blessings of Allah be upon him and his family—commanded that her hand be severed."

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، قَالَتْ «كَانَتْ امْرَأَةٌ مَخْزُومِيَّةٌ تَسْتَعِيرُ الْمَتَاعَ فَتَجْحَدُهُ، فَأَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِقَطْعِ يَدِهَا فَأَتَى أَهْلُهَا أُسَامَةَ بْنَ زَيْدٍ فَكَلَّمُوهُ فَكَلَّمَ أُسَامَةُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِيهَا؟ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: يَا أُسَامَةُ، أَلَا أَرَاكَ تُكَلِّمُ فِي حَدٍّ مِنْ حُدُودِ اللَّهِ، ثُمَّ قَامَ - عَلَيْهِ السَّلَامُ - خَطِيبًا فَقَالَ: إِنَّمَا هَلَكَ مَنْ كَانَ قَبْلَكُمْ بِأَنَّهُ إِذَا سَرَقَ فِيهِمُ الشَّرِيفُ تَرَكُوهُ، وَإِذَا سَرَقَ فِيهِمُ الضَّعِيفُ قَطَعُوهُ، وَالَّذِي نَفْسِي بِيَدِهِ لَوْ كَانَتْ فَاطِمَةَ بِنْتَ مُحَمَّدٍ لَقَطَعْتُ يَدَهَا فَقَطَعَ يَدَ الْمَخْزُومِيَّةِ» وَعَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ «كَانَتْ امْرَأَةٌ مَخْزُومِيَّةٌ تَسْتَعِيرُ الْمَتَاعَ وَتَجْحَدُهُ، فَأَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِقَطْعِ يَدِهَا» .

L42336–42338 Abdullah ibn Ahmad ibn Hanbal said: I asked my father and said to him: Do you adhere to this *hadith*? He replied: I do not know of anything that refutes it, and said: The borrower's hand must be cut off if he denies [the debt] and later confesses. Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Muʿāwiyah narrated to us: Ahmad ibn Shuʿayb narrated to us: Uthman ibn Abdullah ibn al-Hasan ibn Hammad narrated to us: ʿAmr ibn Hashim, Abu Malik, narrated to us from Ubaydullah ibn ʿUmar ibn Hafs ibn ʿAsim. From Nāfiʿ, from Ibn 'Umar, who said: "A woman used to borrow jewelry from people and then withhold it. The Messenger of Allah (peace be upon him

قَالَ عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ: سَأَلْتُ أَبِي، فَقُلْتُ لَهُ: تَذْهَبُ إِلَى هَذَا الْحَدِيثِ؟ فَقَالَ: لَا أَعْلَمُ شَيْئًا يَدْفَعُهُ، وَقَالَ: تُقْطَعُ يَدُ الْمُسْتَعِيرِ إِذَا جَحَدَ ثُمَّ أَقَرَّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عُثْمَانُ بْنُ عَبْدِ اللَّهِ بْنِ الْحَسَنِ بْنِ حَمَّادٍ نا عَمْرُو بْنُ هَاشِمٍ أَبُو مَالِكٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ بْنِ حَفْصِ بْنِ عَاصِمٍ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ «إِنَّ امْرَأَةً كَانَتْ تَسْتَعِيرُ الْحُلِيَّ لِلنَّاسِ ثُمَّ تُمْسِكُهُ، قَالَ رَسُولُ اللَّهِ - صَلَّى

and his family) said: ‘Let her repent to Allah and His Messenger and return what she takes from the people.’ Then the Messenger of Allah (peace be upon him and his family) said: ‘Arise, O Bilāl! Take her hand and cut it off’?”

Abū Muḥammad (may Allah have mercy on him) said: Among the objections of those who upheld this opinion was their statement regarding the ḥadīth you narrated—that it is disputed. Some narrators reported that the woman from the Makhzūm tribe had stolen, as transmitted to us through Muslim’s chain: Muḥammad ibn Rumḥ narrated to us from al-Layth—that is, Ibn Sa‘d—from Ibn Shihāb from ‘Urwah from ‘Ā’ishah:

“The Quraysh were gravely concerned about the affair of the woman from the Makhzūm tribe who stole. They said: ‘Who will speak to the Messenger of Allah (peace be upon him and his family) concerning her?’ They replied: ‘Who would dare approach him except Usāmah, the dear companion of the Messenger of Allah (peace be upon him and his family)?’ Usāmah interceded with him, and the Messenger of Allah (peace be upon him and his family) said: ‘Do you intercede regarding a ḥadd punishment among Allah’s ordained punishments?’ Then he stood and delivered a sermon, saying: ‘O people! Those before you were destroyed because when a noble among them stole, they spared him, but when a weak person stole, they enforced the ḥadd upon him. By Allah! If Fāṭimah bint Muḥammad were to steal, I would cut off her hand.’”[51]

L42339–42341 From the chain of Muslim, Harmala reported to us: Ibn Wahb informed me, Yunus ibn Yazid informed me from Ibn Shihab, who informed me from Urwah ibn al-Zubayr from Aisha, the wife of the Prophet—may Allah bless him and his family and grant him peace—that Quraysh were gravely concerned about the case of the Makhzumi woman who stole during the era of the Messenger of Allah—may Allah bless him and his family and grant him peace—in the campaign of the Conquest. They said: “Who will speak to the Messenger of Allah—may Allah bless him and his family and grant him peace—concerning her?” They replied: “Who would dare approach him except Usama ibn Zayd, the one beloved to the Messenger of Allah—may

[51] **Hadith references (L42336):** Sunan Ibn Majah 2547; Sunan Abi Dawud 4373.

اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: لِتَتُبْ إِلَى اللَّهِ وَرَسُولِهِ، وَتَرُدَّ مَا تَأْخُذُ عَلَى الْقَوْمِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: قُمْ يَا بِلَالُ فَخُذْ بِيَدِهَا فَاقْطَعْهَا» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَكَانَ مِنْ اعْتِرَاضِ مَنْ انْتَصَرَ لِهَذَا الْقَوْلِ أَنْ قَالَ فِي الْحَدِيثِ الَّذِي رَوَيْتُمْ: مُخْتَلَفٌ فِيهِ، فَرَوَى بَعْضُهُمْ: أَنَّ تِلْكَ الْمَخْزُومِيَّةَ سَرَقَتْ: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رُمْحٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ «أَنَّ قُرَيْشًا أَهَمَّهُمْ شَأْنُ الْمَخْزُومِيَّةِ الَّتِي سَرَقَتْ، فَقَالُوا: مَنْ يُكَلِّمُ فِيهَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ فَقَالُوا: وَمَنْ يَجْتَرِئُ عَلَيْهِ إِلَّا أُسَامَةُ حِبُّ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ فَكَلَّمَهُ أُسَامَةُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَتَشْفَعُ فِي حَدٍّ مِنْ حُدُودِ اللَّهِ؟ ثُمَّ قَامَ فَاخْتَطَبَ، فَقَالَ: يَا أَيُّهَا النَّاسُ إِنَّمَا هَلَكَ الَّذِينَ مِنْ قَبْلِكُمْ أَنَّهُمْ كَانُوا إِذَا سَرَقَ فِيهِمْ الشَّرِيفُ تَرَكُوهُ، وَإِذَا سَرَقَ فِيهِمْ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ، وَايْمُ اللَّهِ، لَوْ أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ لَقَطَعْتُ يَدَهَا» .

وَمِنْ طَرِيقِ مُسْلِمٍ نا حَرْمَلَةُ أَخْبَرَنِي ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ عَنْ عَائِشَةَ زَوْجِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنَّ قُرَيْشًا أَهَمَّهُمْ شَأْنُ الْمَخْزُومِيَّةِ الَّتِي سَرَقَتْ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي غَزْوَةِ الْفَتْحِ، فَقَالُوا: مَنْ يُكَلِّمُ فِيهَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ فَقَالُوا: مَنْ يَجْتَرِئُ عَلَيْهِ إِلَّا أُسَامَةُ بْنُ زَيْدٍ حِبُّ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَتَى بِهَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَكَلَّمَهُ فِيهَا أُسَامَةُ بْنُ زَيْدٍ - فَتَلَوَّنَ وَجْهُ

Allah bless him and his family and grant him peace?" So Usama came to the Messenger of Allah—may Allah bless him and his family and grant him peace—and interceded for her. The face of the Messenger of Allah—may Allah bless him and his family and grant him peace—changed color, and he said: "Do you intercede concerning a ḥadd among the ḥudud of Allah?" Usama said: "Seek forgiveness for me, O Messenger of Allah!" When evening arrived, the Messenger of Allah—may Allah bless him and his family and grant him peace—stood to deliver a sermon. He praised Allah the Exalted as He deserves, then said: "To proceed—those before you were destroyed because when a noble person among them stole, they would pardon him, but if a weak person among them stole, they would enforce it upon him." "The ḥadd punishment—by the One in whose hand is my soul—is such that if Fāṭimah, the daughter of Muḥammad, were to steal, I would cut off her hand. Thereupon, he ordered the woman who had stolen, and her hand was cut off."

رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَالَ: أَتَشْفَعُ فِي حَدٍّ مِنْ حُدُودِ اللَّهِ؟ فَقَالَ أُسَامَةُ: اسْتَغْفِرْ لِي يَا رَسُولَ اللَّهِ - فَلَمَّا كَانَ الْعَشِيُّ قَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَاخْتَطَبَ، فَأَثْنَى عَلَى اللَّهِ تَعَالَى بِمَا هُوَ أَهْلُهُ، ثُمَّ قَالَ: أَمَّا بَعْدُ، فَإِنَّمَا هَلَكَ الَّذِينَ مِنْ قَبْلِكُمْ أَنَّهُمْ كَانُوا إِذَا سَرَقَ فِيهِمْ الشَّرِيفُ تَرَكُوهُ، وَإِنْ سَرَقَ فِيهِمْ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ، وَالَّذِي نَفْسِي بِيَدِهِ لَوْ أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ لَقَطَعْتُ يَدَهَا، ثُمَّ أَمَرَ بِتِلْكَ الْمَرْأَةِ الَّتِي سَرَقَتْ فَقَطَعَ يَدَهَا» .

L42342 Thus, these jurists hold the view that she stole.

فَهَؤُلَاءِ يَرَوْنَ أَنَّهَا سَرَقَتْ.

L42343 They said: Among the evidences indicating it was a single woman and a single case, and that she stole - while whoever narrated "she borrowed" erred - is that the majority of these narrations state they sought intercession for her through Usama ibn Zayd, and that the Messenger of Allah (may Allah bless him and his family and grant him peace) condemned this action, forbidding him from intervening through intercession regarding any prescribed punishment among the Hudūd ordained by Allah the Exalted.

قَالُوا: وَمِنْ الدَّلِيلِ عَلَى أَنَّهَا امْرَأَةٌ وَاحِدَةٌ، وَقِصَّةٌ وَاحِدَةٌ، وَأَنَّهَا سَرَقَتْ وَأَنَّ مَنْ رَوَى " اسْتَعَارَتْ " قَدْ وَهِمَ: أَنَّ فِي جُمْهُورِ هَذِهِ الْآثَارِ أَنَّهُمْ اسْتَشْفَعُوا لَهَا بِأُسَامَةَ بْنِ زَيْدٍ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنْكَرَ ذَلِكَ عَلَيْهِ، وَنَهَاهُ أَنْ يَشْفَعَ فِي حَدٍّ مِنْ حُدُودِ اللَّهِ تَعَالَى.

L42344 It is inconceivable that Usāmah ibn Zayd—may Allāh be pleased with him—would have been prohibited by the Messenger of Allāh—peace and blessings be upon him and his family—from interceding in a Ḥudūd punishment ordained by Allāh the Exalted, then return to intercede in another punishment again. They said: "The borrower is a trust-breaker, and there is no amputation for a trust-breaker," especially as narrated through the chain: 'Abdullāh ibn Rabī' narrated to us Ibn Mufarrij narrated to us Qāsim ibn Aṣbagh narrated to us Ibn Waḍḍāḥ narrated to us Saḥnūn narrated to us Ibn Wahb, who said: "I heard Ibn Jurayj narrating from Abū al-Zubayr al-Makkī from Jābir ibn 'Abdillāh that the Messenger of Allāh—peace and blessings be upon

وَمِنْ الْمُحَالِ أَنْ يَكُونَ أُسَامَةُ بْنُ زَيْدٍ - رَضِيَ اللَّهُ عَنْهُ - قَدْ نَهَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنْ يَشْفَعَ فِي حَدٍّ مِنْ حُدُودِ اللَّهِ تَعَالَى ثُمَّ يَعُودُ فَيَشْفَعُ فِي حَدٍّ آخَرَ مَرَّةً أُخْرَى؟ وَقَالُوا: إنَّ الْمُسْتَعِيرَ خَائِنٌ، وَلَا قَطْعَ عَلَى خَائِنٍ، لَا سِيَّمَا وَقَدْ نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ قَالَ: سَمِعْت ابْنَ جُرَيْجٍ يُحَدِّثُ عَنْ أَبِي الزُّبَيْرِ الْمَكِّيِّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ -

him and his family—said: "There is no amputation for the trust-breaker, the stealthy thief, or the plunderer."'

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَيْسَ عَلَى الْخَائِنِ، وَلَا عَلَى الْمُخْتَلِسِ، وَلَا عَلَى الْمُنْتَهِبِ: قَطْعٌ» .

L42345 He said: The narration of those who reported that she had borrowed the jewelry and that the Messenger of Allah—peace and blessings be upon him—ordered her hand to be amputated can be interpreted to mean that they sought to establish her identity as the one who had borrowed the jewelry and then stole it. Thus, her hand was amputated for the theft, not for the borrowed item.

قَالَ: وَتَحْتَمِلُ رِوَايَةُ مَنْ رَوَى أَنَّهَا اسْتَعَارَتْ فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَطْعِهَا: أَنَّهُمْ أَرَادُوا التَّعْرِيفَ بِأَنَّهَا هِيَ الَّتِي كَانَتْ اسْتَعَارَتْ الْحُلِيَّ وَسَرَقَتْ، فَقُطِعَتْ لِلسَّرِقَةِ لَا لِلْعَارِيَّةِ.

L42346 They said: This is as narrated, "The cupper and the cupped have broken the fast."

قَالُوا: وَهَذَا كَمَا رُوِيَ «أَفْطَرَ الْحَاجِمُ وَالْمَحْجُومُ» .

L42347 The Messenger of Allah - peace and blessings be upon him - saw a man praying behind the row and commanded him to reperform the prayer. They said: "Was it not for a reason other than cupping that he declared their fast invalid? And was it not for a reason other than praying behind the row that he commanded him to reperform the prayer?"

«وَرَأَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَجُلًا يُصَلِّي خَلْفَ الصَّفِّ فَأَمَرَهُ بِإِعَادَةِ الصَّلَاةِ» ، قَالُوا: وَلَيْسَ مِنْ أَجَلِ الْحِجَامَةِ أَخْبَرَ بِأَنَّهُمَا أَفْطَرَا، لَكِنْ بِغَيْرِ ذَلِكَ، وَلَيْسَ مِنْ أَجْلِ الصَّلَاةِ خَلْفَ الصَّفِّ أَمَرَهُ بِالْإِعَادَةِ، لَكِنْ بِغَيْرِ ذَلِكَ؟

L42348–42349 Abū Muḥammad—may Allah have mercy on him—said: This is all they have disputed; we have thoroughly examined it. All of that contains no valid argument for them in any part of it, contrary to what we clarify, if Allah the Exalted wills.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: هَذَا كُلُّ مَا شَغَبُوا بِهِ قَدْ تَقَصَّيْنَاهُ، وَكُلُّ ذَلِكَ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ عَلَى مَا نُبَيِّنُ - إنْ شَاءَ اللَّهُ تَعَالَى.

L42350 We say—and with Allah alone is success—: As for their discourse regarding discrepancies in the transmission from al-Zuhrī, they have no basis for this. For Maʿmar and Shuʿayb ibn Abī Ḥamzah—both of the highest reliability and eminence—narrated it from al-Zuhrī, as did Ayyūb ibn Mūsā. All of them state that she would borrow household items and then deny doing so. When this was mentioned to the Prophet—peace and blessings of Allah be upon him—he ordered her hand to be severed and informed that it was a ḥadd [punishment] among the boundaries set by Allah, the Exalted. No inconsistency occurred in Maʿmar's transmission regarding this matter, nor in that of Shuʿayb ibn Abī Ḥamzah—even though al-Layth, Yūnus ibn Abī Yazīd, Ismāʿīl ibn Umayyah, and Isḥāq ibn Rāshid contradicted Maʿmar and Shuʿayb.

فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: أَمَّا كَلَامُهُمْ فِي اخْتِلَافِ الرِّوَايَةِ عَنْ الزُّهْرِيِّ فَلَا مُتَعَلَّقَ لَهُمْ بِهِ؛ لِأَنَّ مَعْمَرًا، وَشُعَيْبَ بْنَ أَبِي حَمْزَةَ، رَوَيَاهُ عَنْ الزُّهْرِيِّ - وَهُمَا فِي غَايَةِ الثِّقَةِ وَالْجَلَالَةِ - وَكَذَلِكَ أَيُّوبُ بْنُ مُوسَى، كُلُّهُمْ يَقُولُونَ: إنَّهَا كَانَتْ تَسْتَعِيرُ الْمَتَاعَ فَتَجْحَدُهُ، فَذُكِرَ ذَلِكَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَ بِقَطْعِ يَدِهَا، وَأَخْبَرَ أَنَّهُ حَدٌّ مِنْ حُدُودِ اللَّهِ تَعَالَى - وَلَمْ يَضْطَرِبْ عَلَى مَعْمَرٍ فِي ذَلِكَ، وَلَا عَلَى شُعَيْبِ بْنِ أَبِي حَمْزَةَ - وَإِنْ كَانَا خَالَفَهُمَا: اللَّيْثُ، وَيُونُسُ بْنُ أَبِي يَزِيدَ، وَإِسْمَاعِيلُ بْنُ أُمَيَّةَ، وَإِسْحَاقُ بْنُ رَاشِدٍ.

فَإِنَّ اللَّيْثَ قَدْ اضْطَرَبَ عَلَيْهِ أَيْضًا، وَكَذَلِكَ عَلَى يُونُسَ بْنِ يَزِيدَ، فَإِنْ اللَّيْثَ، وَيُونُسَ، وَإِسْمَاعِيلَ، وَإِسْحَاقَ لَيْسُوا فَوْقَ مَعْمَرٍ، وَشُعَيْبٍ، فِي الْحِفْظِ، وَقَدْ وَافَقَهُمَا ابْنُ أَخِي الزُّهْرِيِّ عَنْ عَمِّهِ.

L42351 Al-Layth's narrations about him are inconsistent, as are those of Yunus ibn Yazid. For indeed, al-Layth, Yunus, Isma'il, and Ishaq do not surpass Ma'mar and Shu'ayb in reliability of preservation. Al-Zuhri's nephew, transmitting from his uncle, has corroborated both of them.

وَأَمَّا تَنْظِيرُهُمْ فِي ذَلِكَ بِالثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ قَوْلِهِمْ «أَفْطَرَ الْحَاجِمُ وَالْمَحْجُومُ» .

L42352 As for their analogy in this matter to what is established from the Messenger of Allah (peace and blessings be upon him and his family) in his statement: "The cupper and the cupped person break the fast."

وَبِأَمْرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي صَلَّى خَلْفَ الصَّفِّ بِإِعَادَةِ الصَّلَاةِ.

L42353 And by his command (peace and blessings be upon him), the one who prayed behind the row was required to repeat the prayer.

فَمَا زَادُوا عَلَى أَنْ فَضَحُوا أَنْفُسَهُمْ، وَاسْتَحَلُّوا فِي الْكَذِبِ الَّذِي لَا يَسْتَسْهِلُهُ مُسْلِمٌ؛ لِأَنَّهُمْ يَقُولُونَ: إنَّهُمَا أَفْطَرَا، لِأَنَّهُمَا كَانَا يَغْتَابَانِ النَّاسَ؟ فَقِيلَ لَهُمْ: فَمَنْ اغْتَابَ النَّاسَ - وَهُوَ صَائِمٌ - أَفْطَرَ عِنْدَكُمْ؟ قَالُوا: لَا.

L42354 They did nothing more than disgrace themselves and deem permissible the lying that no Muslim would trivialize—for they claimed the two had invalidated their fast because they were backbiting people. They were asked: "Does, in your view, one who backbites people while fasting invalidate their fast?" They replied: "No."

وَهَذِهِ مَضَاحِكُ وَشَمَاتَةُ الْأَعْدَاءِ وَاسْتِخْفَافٌ بِأَوَامِرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَعَ الْكَذِبِ عَلَيْهِ، أَنْ يَقُولَ - عَلَيْهِ السَّلَامُ - «أَفْطَرَ الْحَاجِمُ وَالْمَحْجُومُ» فَيَقُولُونَ هُمْ: لَمْ يُفْطِرْ وَاحِدٌ مِنْهُمَا.

L42355 These are objects of ridicule, the enemies' malicious joy, and contemptuous disregard for the commands of the Prophet—may Allah bless him and his family and grant him peace—combined with falsehood attributed to him, when he—peace be upon him—stated "The cupper and the cupped person have invalidated their fast," yet they themselves say: "Neither of them has invalidated their fasts."

فَإِنْ قِيلَ لَهُمْ: أَتُكَذِّبُونَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي قَوْلِهِ أَفْطَرَا؟ قَالُوا أَفْطَرَا بِغَيْرِ ذَلِكَ، وَهُوَ الْغِيبَةُ.

L42356 If it is said to them, "Do you deny the Prophet—peace and blessings be upon him and his family—in his statement 'they [two] broke their fast'?" they reply, "They broke their fast by something other than that—namely, backbiting."

فَإِنْ قِيلَ لَهُمْ: أَتُفَطِّرُ الْغِيبَةُ؟ قَالُوا: لَا.

L42357 If they are asked, "Does backbiting invalidate the fast?" they respond, "No."

فَرَجَعُوا إلَى مَا فَرُّوا عَنْهُ كَيْدًا لِأَهْلِ الْإِسْلَامِ، وَلِمَنْ اغْتَرَّ بِهِمْ مِنْ الضُّعَفَاءِ الْمَخَاذِيلِ.

L42358–42359 They returned to that from which they had fled, to plot against the people of Islam and against those among the weak and forsaken who had been deluded by them.

L42360 As for the ḥadīth concerning the Prophet's command—peace and blessings be upon him and his family—that whoever prays alone behind the row must

repeat the prayer: had eleven Companions not transmitted through verified chains his directive—peace and blessings be upon him and his family—to properly form the rows, align closely within them, and the warning against neglecting this, it might have been excusable to attribute their error to ignorance. But how could there be no excuse for them? For it is impermissible for a Muslim to presume that the Prophet—peace and blessings be upon him and his family—would say to his Ummah, "The cupper and the one cupped break their fast."

وَأَمَّا حَدِيثُ: أَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي الْمُصَلِّي خَلْفَ الصَّفِّ وَحْدَهُ بِإِعَادَةِ الصَّلَاةِ، فَلَوْ لَمْ يَرْوِ أَحَدَ عَشَرَ مِنْ الصَّحَابَةِ بِالْأَسَانِيدِ الثَّابِتَةِ أَمْرَهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِإِقَامَةِ الصُّفُوفِ، وَالتَّرَاصِّ فِيهَا، وَالْوَعِيدِ عَلَى خِلَافِ ذَلِكَ: لَأَمْكَنَ أَنْ يُعْذَرُوا بِالْجَهْلِ، فَكَيْفَ وَلَا عُذْرَ لَهُمْ؟ ؛ لِأَنَّهُ لَا يَجُوزُ لِمُسْلِمٍ أَنْ يُظَنَّ بِالنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ لِأُمَّتِهِ «أَفْطَرَ الْحَاجِمُ وَالْمَحْجُومُ» .

L42361 And he instructed the worshiper who prays alone behind the row to repeat the prayer.

وَأَمَرَ الْمُصَلِّي خَلْفَ الصَّفِّ وَحْدَهُ، بِإِعَادَةِ الصَّلَاةِ.

L42362 Then he does not clarify to them the basis for which the two of them broke their fast, nor the basis, because of it, for which he commanded the one praying behind the row to repeat the prayer.

ثُمَّ لَا يُبَيِّنُ لَهُمْ الْوَجْهَ الَّذِي أَفْطَرَا، بِهِ، وَلَا الْوَجْهَ الَّذِي أَمَرَ مِنْ أَجْلِهِ الْمُصَلِّيَ خَلْفَ الصَّفِّ، بِإِعَادَةِ الصَّلَاةِ.

L42363 This is defamation against the Prophet (peace and blessings of Allah be upon him and his family), so it is not permissible for a Muslim to assume that he (peace and blessings of Allah be upon him and his family) commanded him to repeat something regarding a matter he did not clarify to us.

فَهَذَا طَعْنٌ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَلَا يَحِلُّ لِمُسْلِمٍ أَنْ يَظُنَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَمَرَهُ بِالْإِعَادَةِ لِأَمْرٍ لَمْ يُبَيِّنْهُ عَلَيْنَا.

L42364 As for their statement that the denying borrower is a betrayer and that amputation punishment does not apply to a betrayer, along with the ḥadīth transmitted from Jābir regarding this matter—we previously addressed the weakness of this report at the beginning of our discourse on the amputation punishment for theft, clarifying that Ibn Jurayj did not hear it from Abū al-Zubayr, and that Abū al-Zubayr did not hear it from Jābir, since he explicitly acknowledged engaging in *tadlīs* (concealment of flaws in the chain of narration).

وَأَمَّا قَوْلُهُمْ: إنَّ الْمُسْتَعِيرَ الْجَاحِدَ: خَائِنٌ، وَلَا قَطْعَ عَلَى خَائِنٍ، وَالْحَدِيثُ بِذَلِكَ عَنْ جَابِرٍ - وَقَدْ ذَكَرْنَا قَبْلُ فَسَادَ هَذَا الْخَبَرِ فِي صَدْرِ كَلَامِنَا فِي قَطْعِ السَّارِقِ، وَأَنَّ ابْنَ جُرَيْجٍ لَمْ يَسْمَعْهُ مِنْ أَبِي الزُّبَيْرِ، وَأَنَّ أَبَا الزُّبَيْرِ لَمْ يَسْمَعْهُ مِنْ جَابِرٍ؛ لِأَنَّهُ قَدْ أَقَرَّ عَلَى نَفْسِهِ بِالتَّدْلِيسِ.

L42365 Thus, the connection to this report is invalidated—and all praise is due to Allah, Lord of the worlds. Abū Muḥammad—may Allah have mercy on him—said: We therefore say—and by Allah, the Exalted, we seek help—the narration of those who reported that she borrowed, and the Messenger of Allah—peace and blessings of Allah be upon him and his family—subsequently ordered her hand to be cut off, and the narration of those who reported that

فَسَقَطَ التَّعَلُّقُ بِهَذَا الْخَبَرِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَقُولُ - وَبِاَللَّهِ تَعَالَى نَسْتَعِينُ: إنَّ رِوَايَةَ مَنْ رَوَى أَنَّهَا اسْتَعَارَتْ فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِقَطْعِ يَدِهَا، وَرِوَايَةَ مَنْ رَوَى أَنَّهَا سَرَقَتْ فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى

she stole, and the Messenger of Allah—peace and blessings of Allah be upon him and his family—subsequently ordered her hand to be cut off: both are sound, with no criticism in them, for both derive from the narrations of reliable narrators through which religious proof is established in accordance with what we have presented.

اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِقَطْعِ يَدِهَا: صَحِيحَانِ، لَا مَغْمَزَ فِيهِمَا، لِأَنَّ كِلَيْهِمَا مِنْ رِوَايَةِ الثِّقَاتِ الَّتِي تَقُومُ بِهَا الْحُجَّةُ فِي الدِّينِ عَلَى مَا أَوْرَدْنَا.

L42366–42367 The height of astonishment lies in those who make excuses to reject this Sunnah through this contradiction, while they themselves adhere to the hadith: "There is no amputation except for [the theft of] a quarter of a dinar."

وَالْعَجَبُ كُلُّهُ فِيمَنْ يَتَعَلَّلُ فِي رَدِّ هَذِهِ السُّنَّةِ بِهَذَا الِاضْطِرَابِ، وَهُمْ يَأْخُذُونَ بِحَدِيثِ «لَا قَطْعَ إِلَّا فِي رُبْعِ دِينَارٍ» .

L42368 And with the ḥadīth, "Amputation for a shield valued at ten dirhams"—both narrations being part of the inconsistency we previously mentioned, an inconsistency far graver than that in this report. Alternatively, one might take the report of Ibn ʿUmar: "The Messenger of Allāh (ﷺ) amputated for a shield priced at three dirhams"—though it does not clarify that this constitutes the legal punishment of amputation. But does it not conflict with a report of equal authenticity concerning amputation for a quarter of a dinar? Abū Muḥammad—may Allāh have mercy on him—said: "The inconsistency in this aspect does not invalidate any of the reports. Let us therefore state, with the aid of Allāh the Exalted: These two narrations—one stating she borrowed goods and denied [the borrowing], prompting the Messenger of Allāh (ﷺ) to order her amputation; the other stating she stole, leading him to order the amputation of her hand—must necessarily pertain to either two separate incidents involving two different women or a single incident involving one woman. If they are two incidents involving two women, then idle talk ceases entirely, and the commotion is wholly invalidated. The discussion of Usāma's intercession in both cases—as we clarified earlier—is that he interceded regarding theft and was prohibited, then interceded for the borrower while unaware that its punishment was also amputation."

وَبِحَدِيثِ «الْقَطْعِ فِي مِجَنٍّ ثَمَنُهُ عَشَرَةُ دَرَاهِمَ» وَهُمَا مِنْ الِاضْطِرَابِ بِحَيْثُ قَدْ ذَكَرْنَاهُ، وَذَلِكَ الِاضْطِرَابُ أَشَدُّ مِنْ الِاضْطِرَابِ فِي هَذَا الْخَبَرِ بِكَثِيرٍ، أَوْ يَأْخُذُ بِخَبَرِ ابْنِ عُمَرَ: «قَطَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي مِجَنٍّ ثَمَنُهُ ثَلَاثَةُ دَرَاهِمَ» وَلَيْسَ فِيهِ بَيَانٌ أَنَّ ذَلِكَ حَدُّ الْقَطْعِ، وَقَدْ عَارَضَهُ مِثْلُهُ فِي الصِّحَّةِ مِنْ الْقَطْعِ فِي رُبْعِ دِينَارٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنَّ فِي هَذَا الْوَجْهِ مِنْ الِاضْطِرَابِ لَيْسَ عِلَّةً فِي شَيْءٍ مِنْ الْأَخْبَارِ، فَلْنَقُلْ بِعَوْنِ اللَّهِ تَعَالَى: إنَّ فِي هَاتَيْنِ الرِّوَايَتَيْنِ اللَّتَيْنِ إحْدَاهُمَا: اسْتَعَارَتْ الْمَتَاعَ فَجَحَدَتْ فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِقَطْعِهَا - وَفِي الْأُخْرَى: أَنَّهَا سَرَقَتْ فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِقَطْعِ يَدِهَا: لَا يَخْلُو مِنْ أَنْ يَكُونَا فِي قِصَّتَيْنِ اثْنَتَيْنِ، فِي امْرَأَتَيْنِ مُتَغَايِرَتَيْنِ، أَوْ يَكُونَا فِي قِصَّةٍ وَاحِدَةٍ، فِي امْرَأَةٍ وَاحِدَةٍ؟ فَإِنْ كَانَتْ فِي قِصَّتَيْنِ، وَفِي امْرَأَتَيْنِ، فَقَدْ انْقَطَعَ الْهَذْرُ، وَبَطَلَ الشَّغَبُ جُمْلَةً، وَيَكُونُ الْكَلَامُ فِي شَفَاعَةِ أُسَامَةَ فِيهِمَا جَمِيعًا، عَلَى مَا قَدْ ذَكَرْنَا - مِنْ الْبَيَانِ - مِنْ أَنَّهُ شَفَعَ فِي السَّرِقَةِ فَنُهِيَ، ثُمَّ شَفَعَ فِي الْمُسْتَعِيرَةِ وَهُوَ لَا يَعْلَمُ أَنَّ حَدَّ ذَلِكَ أَيْضًا الْقَطْعُ.

L42369–42371 Moreover, if we were to assert decisively that they are two dissimilar women and two separate cases, we would have a basis—unlike their mere claims devoid of any link except brazen falsehood and audacity in lying. From

Humaam, from Ibn Mufarrij, from Ibn al-A'raabi, from al-Dabari, from 'Abd al-Razzaaq, from Ibn Jurayj, who said: 'Ikrimah ibn Khalid al-Makhzumi informed me that Abu Bakr ibn 'Abd al-Rahman ibn al-Harith ibn Hisham al-Makhzumi informed him: A woman came to another woman and said, "So-and-so wishes to borrow jewelry from you"—while lying—so she lent it to her. She waited but did not see her jewelry again. She then approached the one who had lied against her in it and demanded her jewelry. The woman replied, "I never borrowed anything from you." She went to the other woman and demanded her jewelry, but she denied having borrowed anything from her. Finally, she went to the Prophet—peace be upon him and his family. So he summoned her, and she said, "By the One who sent you with the truth, I did not borrow anything from her." He said, "Go and take it from beneath her bed." So it was taken. Then he ordered regarding her, and she was cut off.

عَلَى أَنَّا لَوْ شِئْنَا الْقَطْعَ، فَإِنَّهُمَا امْرَأَتَانِ مُتَغَايِرَتَانِ، وَقَضِيَّتَانِ اثْنَتَانِ، لَكَانَ لَنَا مُتَعَلَّقٌ، بِخِلَافِ دَعَاوِيهِمْ الْمُجَرَّدَةِ مِنْ كُلِّ عَلْقَةٍ، إِلَّا مِنْ الْمُجَاهَرَةِ بِالْبَاطِلِ، وَالْجَسْرِ عَلَى الْكَذِبِ، لَكَانَ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ، قَالَ: أَخْبَرَنِي عِكْرِمَةُ بْنُ خَالِدٍ الْمَخْزُومِيُّ أَنَّ أَبَا بَكْرِ بْنَ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ الْمَخْزُومِيَّ أَخْبَرَهُ «أَنَّ امْرَأَةً جَاءَتْ إِلَى امْرَأَةٍ فَقَالَتْ: إِنَّ فُلَانَةَ تَسْتَعِيرُكِ حُلِيًّا - وَهِيَ كَاذِبَةٌ - فَأَعَارَتْهَا إِيَّاهُ، فَمَكَثَتْ لَا تَرَى حُلِيَّهَا، فَجَاءَتْ الَّتِي كَذَبَتْ عَلَيَّ فِيهَا فَسَأَلَتْهَا حُلِيَّهَا، فَقَالَتْ: مَا اسْتَعَرْتُ مِنْكِ شَيْئًا، فَرَجَعَتْ إِلَى الْأُخْرَى فَسَأَلَتْهَا حُلِيَّهَا، فَأَنْكَرَتْ أَنْ تَكُونَ اسْتَعَارَتْ مِنْهَا شَيْئًا، فَجَاءَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَدَعَاهَا، فَقَالَتْ: وَالَّذِي بَعَثَكَ بِالْحَقِّ مَا اسْتَعَرْتُ مِنْهَا شَيْئًا، فَقَالَ: اذْهَبُوا فَخُذُوهُ مِنْ تَحْتِ فِرَاشِهَا، فَأُخِذَ، وَأَمَرَ بِهَا فَقُطِعَتْ» .

L42372 Ibn Jurayj said: Bishr ibn Tamim informed me that she was Umm ʿAmr, the daughter of Sufyān ibn ʿAbd al-Asad.

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي بِشْرُ بْنُ تَمِيمٍ أَنَّهَا أُمُّ عَمْرِو بِنْتِ سُفْيَانَ بْنِ عَبْدِ الْأَسَدِ.

L42373 Ibn Jurayj said: "I will not take any other than her, I will not take any other than her." Ibn Jurayj said: Amr ibn Dīnār reported to me that Al-Ḥasan ibn Muḥammad ibn ʿAlī ibn Abī Ṭālib narrated: "A woman was accused of theft and was brought to the Prophet—peace be upon him and his family—whereupon ʿAmr ibn Abī Salamah came and said to the Prophet—peace be upon him and his family—: 'But she is my aunt!' The Prophet—peace be upon him and his family—said: 'If she were Fāṭimah, the daughter of Muḥammad, I would have cut off her hand.'"

قَالَ ابْنُ جُرَيْجٍ: لَا آخُذُ غَيْرَهَا، لَا آخُذُ غَيْرَهَا، قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ قَالَ: أَخْبَرَنِي الْحَسَنُ بْنُ مُحَمَّدِ بْنِ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ «سَرَقَتْ امْرَأَةٌ، فَأُتِيَ بِهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَجَاءَهُ عَمْرُو بْنُ أَبِي سَلَمَةَ، فَقَالَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: أَيْ إِنَّهَا عَمَّتِي؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَوْ كَانَتْ فَاطِمَةُ بِنْتُ مُحَمَّدٍ لَقَطَعْتُ يَدَهَا» .

L42374 So I did not doubt when Hasan said: 'Umar said to the Prophet - peace be upon him and his family - "Is she my paternal aunt? Is she the daughter of al-Aswad ibn Abd al-Asad?" Abu Muhammad - may Allah have mercy on him - said: This is Ibn Jurayj narrating from Amr ibn Dinar that he did not

قَالَ عَمْرُو بْنُ دِينَارٍ: فَلَمْ أَشُكَّ حِينَ قَالَ حَسَنٌ: قَالَ عُمَرُ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِنَّهَا عَمَّتِي، إِنَّهَا بِنْتُ الْأَسْوَدِ بْنِ عَبْدِ الْأَسَدِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا

doubt the woman who stole was the daughter of al-Aswad ibn Abd al-Asad, and he reports from Bishr at-Taymi that the woman who borrowed was the daughter of Sufyan ibn Abd al-Asad. They were two paternal cousins from the Makhzum tribe, their uncle being Abu Salama ibn Abd al-Asad - may Allah be pleased with him - the husband of Umm Salama - may Allah be pleased with her - before the Messenger of Allah - peace be upon him and his family.

L42375 However, we say—and success is from Allah, the Exalted—suppose she were a lone woman and this were a single incident; there is no proof in it, because the mention of theft is merely from the wording of some narrators, not from the wording of the Prophet—peace be upon him and his family—just as the mention of borrowing is. The actual wording of the Prophet—peace be upon him and his family—is: "If Fāṭimah bint Muḥammad had stolen, I would have cut her hand off."

L42376 Therefore, this is extrapolated according to two aspects, namely the mention of theft.

L42377 One of the two is that the narrator considers borrowing to be theft and thus reports about it using the term for theft.

L42378–42380 The other perspective is that borrowing followed by subsequent denial constitutes actual theft, not metaphorical; this is because the borrower, when he uses another's words, trivializes taking what he has borrowed from another's property and covers it up. By borrowing for himself or others, then claiming ownership of it while concealed and hidden—this unambiguously constitutes theft itself. Thus, this wording is entirely distinct from what we have discussed in the clearest manner, and the phrasing of those who transmitted "the ʿāriyyah" does not permit any alternative interpretation whatsoever. Abū Muḥammad (may Allah have mercy on him) said: The hand of the borrower who denies [the loan] shall be amputated, just as the thief's hand is amputated—absolutely without distinction—for [theft] from gold amounting to a quarter dinar or more, not for less than that, in accordance with the statement of Allah's Messenger (peace be upon him): "No amputation occurs except for a quarter dinar or greater."

ابْنُ جُرَيْجٍ يَحْكِي عَنْ عَمْرِو بْنِ دِينَارٍ: أَنَّهُ لَا يَشُكُّ أَنَّ الَّتِي سَرَقَتْ بِنْتَ الْأَسْوَدِ بْنِ عَبْدِ الْأَسَدِ، وَيُخْبِرُ عَنْ بِشْرٍ التَّيْمِيِّ أَنَّ الَّتِي اسْتَعَارَتْ هِيَ بِنْتُ سُفْيَانَ بْنِ عَبْدِ الْأَسَدِ، وَهُمَا ابْنَتَا عَمٍّ مَخْزُومِيَّتَانِ، عَمُّهُمَا أَبُو سَلَمَةَ بْنُ عَبْدِ الْأَسَدِ - رَضِيَ اللَّهُ عَنْهُ - زَوْجُ أُمِّ سَلَمَةَ - رَضِيَ اللَّهُ عَنْهَا - قَبْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

وَلَكِنَّا نَقُولُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ -: هَبْكَ أَنَّهَا امْرَأَةٌ وَاحِدَةٌ، وَقِصَّةٌ وَاحِدَةٌ، فَلَا حُجَّةَ فِيهَا؛ لِأَنَّ ذِكْرَ السَّرِقَةِ إنَّمَا هُوَ مِنْ لَفْظِ بَعْضِ الرُّوَاةِ، لَا مِنْ لَفْظِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَكَذَلِكَ ذِكْرُ الِاسْتِعَارَةِ، وَإِنَّمَا لَفْظُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَوْ كَانَتْ فَاطِمَةُ بِنْتُ مُحَمَّدٍ سَرَقَتْ لَقَطَعْتُهَا» .

فَهَذَا يُخَرَّجُ عَلَى وَجْهَيْنِ، يَعْنِي ذِكْرَ السَّرِقَةِ:

أَحَدُهُمَا - أَنْ يَكُونَ الرَّاوِي يَرَى أَنَّ الِاسْتِعَارَةَ سَرِقَةٌ، فَيُخْبِرُ عَنْهَا بِلَفْظِ السَّرِقَةِ.

وَالْوَجْهُ الْآخَرُ - هُوَ أَنَّ الِاسْتِعَارَةَ، ثُمَّ الْجَحْدَ سَرِقَةٌ صَحِيحَةٌ لَا مَجَازًا؛ لِأَنَّ الْمُسْتَعِيرَ إذَا أَتَى عَلَى لِسَانِ غَيْرِهِ، فَإِنَّهُ مُسْتَخِفٌّ بِأَخْذِ مَا أَخَذَ مِنْ مَالِ غَيْرِهِ، يُوَرِّي بِالِاسْتِعَارَةِ لِنَفْسِهِ أَوْ لِغَيْرِهِ، ثُمَّ يَمْلِكُهُ مُسْتَتِرًا مُخْتَفِيًا - فَهَذِهِ هِيَ السَّرِقَةُ نَفْسُهَا دُونَ تَكَلُّفٍ، فَكَانَ هَذَا اللَّفْظُ خَارِجًا عَمَّا ذَكَرْنَا أَحْسَنَ خُرُوجٍ، وَكَانَ لَفْظُ مَنْ رَوَى " الْعَارِيَّةَ " لَا يَحْتَمِلُ وَجْهًا آخَرَ أَصْلًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَتُقْطَعُ يَدُ الْمُسْتَعِيرِ الْجَاحِدِ كَمَا تُقْطَعُ مِنْ السَّارِقِ - سَوَاءٌ سَوَاءٌ - مِنْ الذَّهَبِ فِي رُبْعِ دِينَارٍ لَا فِي أَقَلَّ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا قَطْعَ إلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا» .

L42381 In cases other than gold—it applies to anything of value, whether small or large—because it entails cutting [of the hand] for property taken covertly, not overtly.

وَفِي غَيْرِ الذَّهَبِ فِي كُلِّ مَا لَهُ قِيمَةٌ - قَلَّتْ أَوْ كَثُرَت -؛ لِأَنَّه قَطْعٌ فِي مَالٍ أُخِذَ اخْتِفَاءً لَا مُجَاهِرَةً.

L42382 The woman is subject to amputation, like the man, due to the consensus of the entire Ummah that the ruling for the man in this matter applies equally to the woman. Some exempt her from amputation, while others obligate it upon her. Amputation is only imposed when there is clear evidence establishing the taking and transfer of ownership, coupled with denial or confession. If the offense recurs, the other hand is amputated, for the Messenger of Allah—peace and blessings be upon him—commanded the amputation of her hand. This constitutes a universal ruling, as one who seeks a loaned item while concealing his method in taking it is deemed a thief, thus making amputation obligatory upon him. Sufficient for us is Allah, and He is the Best Trustee.

وَتُقْطَعُ الْمَرْأَةُ كَالرَّجُلِ، لِإِجْمَاعِ الْأُمَةِ كُلِّهَا عَلَى أَنَّ حُكْمَ الرَّجُلِ فِي ذَلِكَ كَحُكْمِ الْمَرْأَةِ، وَمِنْ مُسْقِطِ الْقَطْعَ عَنْهَا، وَمِنْ مُوجِبٍ الْقَطْعَ عَلَيْهَا، وَلَا قَطْعَ فِي ذَلِكَ إِلَّا بِبَيِّنَةٍ تَقُومُ بِالْأَخْذِ، وَالتَّمْلِيكِ، مَعَ الْجَحْدِ، أَوْ الْإِقْرَارِ بِذَلِكَ، فَإِنْ عَادَ مَرَّةً أُخْرَى قُطِعَتْ الْيَدُ الْأُخْرَى، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِقَطْعِ يَدِهَا - وَهَذَا عُمُومٌ، لِأَنَّ الْمُسْتَعِيرَ طَلَبَهُ الْعَارِيَّةَ مُسْتَخْفِيًا بِمَذْهَبِهِ فِي أَخْذِهِ، فَكَانَ سَارِقًا، فَوَجَبَ عَلَيْهِ الْقَطْعُ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

[مَسْأَلَة مِنْ يُقْرِض فِي الدَّرَاهِم وَالدَّنَانِير هَلْ تقطع يَده]

The legal question regarding someone who lends dirhams and dinars: should his hand be cut off?

L42384 2290 - Issue: Cutting [mutilating] dirhams? Narrated by ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bājī from Aḥmad ibn Khālid from Abū ʿUbayd ibn Muḥammad al-Kashwārī from Muḥammad ibn Yūsuf al-Ḥudhāfī from ʿAbd al-Razzāq from Dāwūd ibn Qays, who informed me through Khālid ibn Abī Rabīʿah: When Ibn al-Zubayr arrived in Mecca, he found a man cutting dirhams, so he cut off his hand.

٢٢٩٠ - مَسْأَلَةٌ: قَطْعُ الدَّرَاهِمِ؟ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا أَحْمَدُ بْنُ خَالِدٍ نا أَبُو عُبَيْدِ بْنِ مُحَمَّدٍ الْكَشْوَرِيُّ نا مُحَمَّدُ بْنُ يُوسُفَ الْحُذَافِيُّ نا عَبْدُ الرَّزَّاقِ نا دَاوُد بْنُ قَيْسٍ أَخْبَرَنِي خَالِدُ بْنُ أَبِي رَبِيعَةَ أَنَّ ابْنَ الزُّبَيْرِ حِينَ قَدِمَ مَكَّةَ وَجَدَ رَجُلًا يَقْرِضُ الدَّرَاهِمَ فَقَطَعَ يَدَهُ.

L42385 Abdullah ibn Rabee’ narrated to us: Ibn Mufarrij narrated to us: Qasim ibn Asbagh narrated to us: Ibn Waddah narrated to us: Sahnoon narrated to us: Ibn Wahb narrated to us: Abdul-Jabbar ibn Umar narrated from Abu Abdur-Rahman at-Taymi, who said: I was with Umar ibn Abdul-Azeez when he was the governor of Medina. A man who was cutting dirhams (and witnesses had testified against him) was brought before him. He had him beaten, shaved his head, ordered him to be paraded around, and commanded him to proclaim: “This is the recompense of one who cuts dirhams.” Then he ordered him to be returned. He said: “The only reason I spared your hand is that I

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ نا عَبْدُ الْجَبَّارِ بْنُ عُمَرَ عَنْ أَبِي عَبْدِ الرَّحْمَنِ التَّيْمِيِّ، قَالَ: كُنْتُ عِنْدَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَهُوَ إِذْ ذَاكَ أَمِيرٌ عَلَى الْمَدِينَةِ - فَأُتِيَ بِرَجُلٍ يَقْطَعُ الدَّرَاهِمَ - وَقَدْ شُهِدَ عَلَيْهِ - فَضَرَبَهُ، وَحَلَقَهُ، وَأَمَرَ بِهِ فَطِيفَ بِهِ وَأَمَرَهُ أَنْ يَقُولَ: هَذَا جَزَاءُ مَنْ يَقْطَعُ الدَّرَاهِمَ،

had not established this precedent before today. Now I have established the precedent. So let whoever wishes [to cut] cut off [the hand]."

ثُمَّ أَمَرَ بِهِ أَنْ يُرَدَّ إِلَيْهِ، فَقَالَ: أَمَا إِنِّي لَمْ يَمْنَعْنِي مِنْ أَنْ أَقْطَعَ يَدَكَ إِلَّا أَنِّي لَمْ أَكُنْ تَقَدَّمْتُ فِي ذَلِكَ قَبْلَ الْيَوْمِ، وَقَدْ تَقَدَّمْتُ فِي ذَلِكَ، فَمَنْ شَاءَ فَلْيَقْطَعْ؟

L42386–42387 Abū Muḥammad—may Allāh have mercy on him—said: We have been narrated through the chain of Saʿīd ibn al-Musayyab that he said: "Would that I witnessed hands being amputated for shaving dinārs and dirhams!" Abū Muḥammad—may Allāh have mercy on him—said: The meaning of this is that dirhams were being transacted by count without weight. Thus, one owing dirhams or dinārs would shave them through their circulation, then give them by count while retaining the surplus from this shaving. Abū Muḥammad—may Allāh have mercy on him—said: This was the practice of Ibn al-Zubayr—and he was a Companion—with no dissent known from the Companions—may Allāh be pleased with them. Yet the Ḥanafīs, in their defense of their false claim that water becomes impure by anything falling into it—even without altering it—present the drawing of Zamzam by a Zinjī as proof and consensus that is impermissible to oppose. However, their narration does not state Zamzam remained unaltered. Perhaps it had changed, or perhaps the water therein measured less than two qullahs—as al-Shāfiʿī states.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: وَدِدْتُ أَنِّي رَأَيْت الْأَيْدِي تُقْطَعُ فِي قَرْضِ الدَّنَانِيرِ وَالدَّرَاهِمِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَعْنَى هَذَا: أَنَّهُ كَانَتْ الدَّرَاهِمُ يُتَعَامَلُ بِهَا عَدَدًا دُونَ وَزْنٍ، فَكَانَ مَنْ عَلَيْهِ دَرَاهِمُ أَوْ دَنَانِيرُ يَقْرِضُ بِالْجَلَمِ مِنْ تَدْوِيرِهَا، ثُمَّ يُعْطِيهَا عَدَدًا، وَيَسْتَفْضِلُ الَّذِي قَطَعَ مِنْ ذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا عَمَلُ ابْنِ الزُّبَيْرِ - وَهُوَ صَاحِبٌ - لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَالْحَنَفِيُّونَ يَجْعَلُونَ نَزْحَهُ زَمْزَمَ مِنْ زِنْجِيٍّ وَقَعَ فِيهَا حُجَّةً وَإِجْمَاعًا لَا يَجُوزُ خِلَافُهُ فِي نَصْرِ بَاطِلِهِمْ، فِي أَنَّ الْمَاءَ يُنَجِّسُهُ مَا وَقَعَ فِيهِ - وَإِنْ لَمْ يُغَيِّرْهُ - وَلَيْسَ فِي خَبَرِهِمْ: أَنَّ زَمْزَمَ لَمْ تَكُنْ تَغَيَّرَتْ، وَلَعَلَّهَا قَدْ كَانَتْ تَغَيَّرَتْ، وَلَعَلَّ الْمَاءَ كَانَ فِيهَا قَدْرَ أَقَلَّ مِنْ قُلَّتَيْنِ كَمَا يَقُولُ الشَّافِعِيُّ.

L42388 And how can this be, when it has been authentically established that the believer does not become impure, while they cite this as proof? Yet they disregard the established Sunnah concerning the command of Allah's Messenger—peace and blessings be upon him—"Whoever washes a deceased person must perform ghusl." They argue that the believer does not become impure where there is no basis for impurity, and the ghusl performed after washing the deceased is neither a declaration of impurity from the deceased nor an act of veneration. Rather, he is pure (if he is a believer), but this is a prescribed law, like the ghusl after penetration (even though both private parts are pure) and like the ghusl following a nocturnal emission.

وَكَيْفَ، وَقَدْ صَحَّ أَنَّ الْمُؤْمِنَ لَا يَنْجُسُ، وَهُمْ يَحْتَجُّونَ بِهَذَا، وَإِسْقَاطُهُمْ السُّنَّةَ الثَّابِتَةَ فِي أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ غَسَّلَ مَيِّتًا فَلْيَغْتَسِلْ» فَهُمْ يَحْتَجُّونَ بِأَنَّ الْمُؤْمِنَ لَا يَنْجُسُ حَيْثُ لَا مَدْخَلَ لَهُ فِيهِ، وَلَيْسَ الْغُسْلُ مِنْ غُسْلِ الْمَيِّتِ تَنْجِيسًا مِنْ الْمَيِّتِ، وَلَا كَرَامَةً، بَلْ هُوَ طَاهِرٌ - إنْ كَانَ مُؤْمِنًا - لَكِنَّهَا شَرِيعَةٌ، كَالْغُسْلِ مِنْ الْإِيلَاجِ - وَإِنْ كَانَ كِلَا الْفَرْجَيْنِ طَاهِرًا - وَكَالْغُسْلِ مِنْ الِاحْتِلَامِ.

L42389 If they mention—as narrated by ʿAbdullāh ibn Rabīʿ from Ibn Mufarrij from Qāsim ibn Aṣbagh from Ibn Waḍḍāḥ from Sahnūn from Ibn Wahb from Ibn Lahīʿah from ʿAbd al-Malik ibn ʿAbd al-ʿAzīz—that ʿAbdullāh ibn al-Zubayr

فَإِنْ ذَكَرُوا - مَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ عَبْدِ الْمَلِكِ بْنِ عَبْدِ الْعَزِيزِ أَنْ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ

imposed amputation on a man for [stealing] *dinārs* and *dirhams*? We respond—and success is from Allāh, the Exalted—this does not conflict with what we previously stated, for this narration does not specify that it involved a stolen amount equivalent to the threshold that necessitates amputation. Thus, amputation is not obligatory for him.

L42390 As for us, we accept no argument based on anyone's statement apart from the Messenger of Allah—may Allah bless him and his family and grant him peace. No ruling prescribing the punishment of amputation has been reported from him (peace be upon him) regarding loans of dinars and dirhams, nor is the borrower in such cases termed a thief or a borrower. Success is with Allah, the Most High.

L42391 ## A Jurisprudential Issue on the Prohibition of Intoxicants (Khamr) and the Disagreement Among People Concerning the Ḥadd for Consuming It

L42392–42393 A group holds the view that the Messenger of Allah (peace be upon him and his family) did not mandate a hadd punishment for this offense; rather, it was mandated by the one who came after him.

L42394 A group said: There is no ḥadd punishment for it at all because the Messenger of Allah—may Allah bless him and his family and grant him peace—did not prescribe a ḥadd punishment for it.

L42395 A group said: Rather, the Messenger of Allah—peace and blessings of Allah be upon him and his family—prescribed a punishment for it, then they disagreed. One group said eighty, and another said forty. As for those who said the Messenger of Allah—peace and blessings of Allah be upon him and his family—did not fix a punishment for it, they cited the following: Abd al-Raḥmān ibn Abd Allāh ibn Khālid narrated to us, Ibrāhīm ibn Aḥmad narrated to us, al-Farabrī narrated to us, al-Bukhārī narrated to us, Abd Allāh ibn Abd al-Wahhāb al-Ḥajabī narrated to us, Khālid ibn al-Ḥārith narrated to us, Sufyān al-Thawrī narrated to us, Abū Ḥuṣayn said: I heard Umayr ibn Saʿd al-Nakhaʿī say: I heard Alī ibn Abī Ṭālib say: "I would not carry out a prescribed punishment on anyone causing his death and feel remorse

ضَرَبَ رَجُلًا فِي قَطْعِ الدَّنَانِيرِ وَالدَّرَاهِمِ؟ قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: هَذَا لَا يُخَالِفُهُ مَا ذَكَرْنَا عَنْهُ قَبْلُ، لِأَنَّ هَذَا لَيْسَ فِيهِ: أَنَّهُ قَرْضُ مِقْدَارِ مَا يَجِبُ فِيهِ الْقَطْعُ، فَلَا يَلْزَمُهُ قَطْعٌ.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَمْ يَأْتِ عَنْهُ - عَلَيْهِ السَّلَامُ - إيجَابُ الْقَطْعِ فِي قَرْضِ الدَّنَانِيرِ، وَالدَّرَاهِمِ، وَلَا يَقَعُ عَلَيْهِ اسْمُ سَارِقٍ وَلَا مُسْتَعِيرٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فِي تَحْرِيمِ الْخَمْرِ وَاخْتِلَافِ النَّاسِ فِي حَدِّ شَارِبِهَا]

قَالَتْ طَائِفَةٌ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَمْ يَفْرِضْ فِيهَا حَدًّا وَإِنَّمَا فَرَضَهُ مَنْ بَعْدَهُ.

وَقَالَتْ طَائِفَةٌ: لَا حَدَّ فِيهَا أَصْلًا، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَمْ يَفْرِضْ فِيهَا حَدًّا.

وَقَالَتْ طَائِفَةٌ: بَلْ فَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِيهَا حَدًّا، ثُمَّ اخْتَلَفُوا - فَقَالَتْ طَائِفَةٌ: ثَمَانِينَ، وَقَالَتْ طَائِفَةٌ: أَرْبَعِينَ؟ فَأَمَّا مَنْ قَالَ: لَمْ يُوَقِّتْ فِيهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَدًّا، فَإِنَّهُمْ ذَكَرُوا فِي ذَلِكَ: مَا نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا عَبْدُ اللَّهِ بْنُ عَبْدِ الْوَهَّابِ الْحَجَبِيُّ نا خَالِدُ بْنُ الْحَارِثِ نا سُفْيَانُ الثَّوْرِيُّ نا أَبُو حُصَيْنٍ قَالَ: سَمِعْتُ عُمَيْرَ بْنَ سَعْدٍ النَّخَعِيَّ يَقُولُ: «سَمِعْتُ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: مَا كُنْتُ لِأُقِيمَ حَدًّا عَلَى أَحَدٍ فَيَمُوتَ

except in the case of the wine-drinker, for if he died, I would pay blood money for him, because the Messenger of Allah—peace and blessings of Allah be upon him and his family—did not prescribe it as a Sunnah precedent." Abū Muḥammad—may Allah have mercy on him—said: This is how Abd al-Raḥmān ibn Abd Allāh narrated to us. Through him, up to al-Bukhārī, Qutaybah ibn Saʿīd narrated to us, Abd al-Wahhāb ibn Abd al-Majīd narrated to us, from Ayyūb al-Sikhtiyānī, from Abd Allāh ibn Abī Mulaykah, from Uqbah ibn al-Ḥārith, who said: An-Nuʿaymān—or Ibn an-Nuʿaymān—was brought in, and he ordered those present in the house to strike him. I was among those who struck him with sandals.

فَأَجِدُ فِي نَفْسِي إِلَّا صَاحِبَ الْخَمْرِ، فَإِنَّهُ لَوْ مَاتَ وَدَيْتُهُ، وَذَلِكَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَمْ يَسُنَّهُ» ؟ . قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: هَكَذَا ناه عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ؟ وَبِهِ - إِلَى الْبُخَارِيِّ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي مُلَيْكَةَ عَنْ عُقْبَةَ بْنِ الْحَارِثِ أَنَّهُ قَالَ: جِيءَ بِالنُّعَيْمَانَ - أَوْ ابْنِ النُّعَيْمَانِ - فَأَمَرَ مَنْ كَانَ فِي الْبَيْتِ أَنْ يَضْرِبُوهُ، فَكُنْتُ أَنَا فِيمَنْ ضَرَبُوهُ بِالنِّعَالِ.

L42396 And through him—to al-Bukhārī: Qutaybah narrated to us: Abū Ḍamrah narrated to us: Anas ibn ʿIyāḍ from Yazīd ibn al-Hādī from Muḥammad ibn Ibrāhīm al-Taymī from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf from Abū Hurayrah, who said: "A man who had drunk was brought to the Prophet (peace and blessings of Allah be upon him and his family), so he said: 'Strike him.' Abū Hurayrah said: 'Some of us struck him with our hands, some with our sandals, and some with our garments.' When he withdrew, some people said: 'May Allah humiliate you!' He said: 'Do not say this. Do not assist Satan against him.'"

وَبِهِ - إِلَى الْبُخَارِيِّ نا قُتَيْبَةُ نا أَبُو ضَمْرَةَ نا أَنَسُ بْنُ عِيَاضٍ عَنْ يَزِيدَ بْنِ الْهَادِي عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ التَّيْمِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ قَالَ «أُتِيَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِرَجُلٍ شَرِبَ، فَقَالَ: اضْرِبُوهُ، قَالَ أَبُو هُرَيْرَةَ: فَمِنَّا الضَّارِبُ بِيَدِهِ، وَمِنَّا الضَّارِبُ بِنَعْلِهِ، وَالضَّارِبُ بِثَوْبِهِ، فَلَمَّا انْصَرَفَ قَالَ بَعْضُ الْقَوْمِ: أَخْزَاكَ اللَّهُ، قَالَ: لَا تَقُولُوا هَذَا، لَا تُعِينُوا عَلَيْهِ الشَّيْطَانَ» .

L42397–42399 And with him—to al-Bukhārī—narrated to us Makkī ibn Ibrāhīm from Abī al-Jaʿd from Yazīd ibn Khuṣayfah from... Al-Sa'ib ibn Yazid said, "During the time of the Messenger of Allah (peace and blessings of Allah be upon him and his family), the leadership of Abu Bakr, and the early period of Umar's caliphate, the drinker would be brought to us. We would deal with them using our hands, sandals, and garments, until the latter part of Umar's caliphate, during which he administered forty lashes. Then, when they became insolent and defiant, he administered eighty lashes."

وَبِهِ - إِلَى الْبُخَارِيِّ نا مَكِّيُّ بْنُ إِبْرَاهِيمَ عَنْ أَبِي الْجَعْدِ عَنْ يَزِيدَ بْنِ خُصَيْفَةَ عَنِ السَّائِبِ بْنِ يَزِيدَ قَالَ «كُنَّا نُؤْتَى بِالشَّارِبِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَإِمْرَةِ أَبِي بَكْرٍ، وَصَدْرًا مِنْ خِلَافَةِ عُمَرَ، فَنَقُومُ إِلَيْهِ بِأَيْدِينَا، وَنِعَالِنَا، وَأَرْدِيَتِنَا، حَتَّى كَانَ آخِرَ إِمْرَةِ عُمَرَ، فَجَلَدَ أَرْبَعِينَ، حَتَّى إِذَا عَتَوْا وَفَسَقُوا جَلَدَ ثَمَانِينَ» .

L42400 And through him—to al-Bukhārī: From Yaḥyā ibn Bukayr, al-Layth ibn Saʿd narrated to me: From Khālid ibn Yazīd, from Saʿīd ibn Hilāl, from Zayd ibn Aslam, from his father, from ʿUmar ibn al-Khaṭṭāb: "There was a man during the lifetime of the Messenger of Allah—peace and blessings be upon him and his family—named ʿAbdullāh, who was nicknamed 'Donkey.' He used to make the Messenger of Allah—peace be upon him—laugh. The Messenger

وَبِهِ - إِلَى الْبُخَارِيِّ نا يَحْيَى بْنُ بُكَيْرٍ ثني اللَّيْثُ بْنُ سَعْدٍ نا خَالِدُ بْنُ يَزِيدَ عَنْ سَعِيدِ بْنِ هِلَالٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ «أَنَّ رَجُلًا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ اسْمُهُ عَبْدَ اللَّهِ وَكَانَ يُلَقَّبُ حِمَارًا، وَكَانَ يُضْحِكُ

of Allah—peace be upon him—had previously flogged him for drinking. One day, he was brought again, and the Messenger of Allah—peace be upon him—ordered him to be flogged. A man among the people said: ‘O Allah, curse him! How frequently he is brought forth!’ The Messenger of Allah—peace be upon him—said: ‘Do not curse him. By Allah, I know nothing of him except that he loves Allah and His Messenger.’ When the Messenger of Allah—peace be upon him—passed away, this remained his established Sunnah.”

رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ جَلَدَهُ فِي الشُّرْبِ، فَأُتِيَ بِهِ يَوْمًا، فَأَمَرَ بِهِ فَجُلِدَ، فَقَالَ رَجُلٌ مِنْ الْقَوْمِ: اللَّهُمَّ الْعَنْهُ، مَا أَكْثَرَ مَا يُؤْتَى بِهِ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: لَا تَلْعَنُوهُ، فَوَاَللَّهِ مَا عَلِمْتُهُ إلَّا يُحِبُّ اللَّهَ وَرَسُولَهُ - فَتُوُفِّيَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتِلْكَ سُنَّتُهُ» .

L42401 Then Abu Bakr administered forty lashes for drinking wine. Then Umar administered forty lashes at the beginning of his caliphate. Then Uthman administered both penalties: eighty and forty lashes. Then Mu‘awiyah formalized the penalty as eighty lashes. Abu Muhammad—may Allah have mercy on him—said: “Whoever adheres to the increase instituted by Umar—may Allah be pleased with him—and those who later increased it after him as a form of discretionary punishment ta‘zīr, thereby making it an obligatory and prescribed ḥadd punishment.”

ثُمَّ جَلَدَ أَبُو بَكْرٍ فِي الْخَمْرِ أَرْبَعِينَ، ثُمَّ جَلَدَ عُمَرُ أَرْبَعِينَ صَدْرًا مِنْ إمَارَتِهِ، ثُمَّ جَلَدَ عُثْمَانُ الْحَدَّيْنِ كِلَيْهِمَا ثَمَانِينَ وَأَرْبَعِينَ، ثُمَّ أَثْبَتَ مُعَاوِيَةُ الْحَدَّ ثَمَانِينَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَمَنْ تَعَلَّقَ بِزِيَادَةِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَمَنْ زَادَهَا مَعَهُ عَلَى وَجْهِ التَّعْزِيرِ، وَجَعَلَ ذَلِكَ حَدًّا وَاجِبًا مُفْتَرَضًا.

L42402 He is thus obligated to burn the house of the wine seller and establish that as a presumed punishment, because ‘Umar did so—and to also exile the wine drinker and make it an obligatory punishment, because ‘Umar did so? If it is said: “But ‘Umar stated, ‘I will not exile anyone after that,’” it is replied: “He flogged ‘Umar forty or sixty lashes for wine after the eighty lashes, through the most authentic chain of transmission possible.”

فَيَلْزَمُهُ: أَنْ يُحَرِّقَ بَيْتَ بَائِعِ الْخَمْرِ، وَيَجْعَلَ ذَلِكَ حَدًّا مُفْتَرَضًا، لِأَنَّ عُمَرَ فَعَلَهُ - وَأَنْ يَنْفِيَ شَارِبَ الْخَمْرِ أَيْضًا وَيَجْعَلَهُ حَدًّا وَاجِبًا، لِأَنَّ عُمَرَ فَعَلَهُ؟ فَإِنْ قَالَ: قَدْ قَالَ عُمَرُ: لَا أُغَرِّبُ بَعْدَهُ أَحَدًا؟ قِيلَ: وَقَدْ جَلَدَ عُمَرُ أَرْبَعِينَ، وَسِتِّينَ، فِي الْخَمْرِ، بَعْدَ أَنْ جَلَدَ الثَّمَانِينَ، بِأَصَحِّ إسْنَادٍ يُمْكِنُ وُجُودُهُ.

L42403 They are obligated to shave the mustache of anyone who drinks intoxicants after the fourth offense, as Umar did, so they do not impose the hadd punishment at all. They must also necessarily impose eighty lashes, without exception, upon whoever considers Ali superior to Abu Bakr or to Umar, and upon whoever considers Umar superior to Abu Bakr, for Umar and Ali declared this in the presence of the Companions.

وَيَلْزَمُهُمْ أَنْ يَحْلِقُوا شَارِبَ الْخَمْرِ بَعْدَ الرَّابِعَةِ، كَمَا فَعَلَ عُمَرُ، فَلَا يَحُدُّونَهُ أَصْلًا، وَيَلْزَمُهُمْ أَنْ يُوجِبُوا جَلْدَ ثَمَانِينَ أَيْضًا - وَلَا بُدَّ - عَلَى مَنْ فَضَّلَ عَلِيًّا عَلَى أَبِي بَكْرٍ، أَوْ عَلَى عُمَرَ، وَعَلَى مَنْ فَضَّلَ عُمَرَ عَلَى أَبِي بَكْرٍ، لِأَنَّ عُمَرَ وَعَلِيًّا، قَالَا ذَلِكَ، بِحَضْرَةِ الصَّحَابَةِ.

L42404–42405 It is incumbent upon them to administer a hadd of flogging—a binding punishment—to everyone who lies against Allah the Exalted and against the Quran. Otherwise, would they not be contradicting themselves falsely—thereby exposing the corruption of their claim? Abu Muhammad—may Allah have mercy on him—said: What we have mentioned confirms that the

وَيَلْزَمُهُمْ أَنْ يُجْلَدَ حَدًّا وَاجِبًا كُلُّ مَنْ كَذَبَ عَلَى اللَّهِ تَعَالَى، وَعَلَى الْقُرْآنِ، وَإِلَّا فَقَدْ تَنَاقَضُوا بِالْبَاطِلِ - فَظَهَرَ فَسَادُ قَوْلِهِمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَصَحَّ بِمَا ذَكَرْنَا: أَنَّ

ruling of forty lashes regarding khamr is the position of Abu Bakr, Umar, Uthman, Ali, al-Hasan ibn Ali, and Abdullah ibn Ja'far—as witnessed by all the Companions, may Allah be pleased with them.

L42406 And by it—so say Al-Shafi'i, Abu Sulayman, and their adherents—we adopt. And with Allah, the Exalted, is success.

L42407 **Should a wine-drinker be put to death after being subjected to the *hadd* punishment three times?**

L42408 Issue 2292: Is a wine drinker to be executed after being punished three times for it or not? [Abu Muhammad—may Allah have mercy on him—said: Wine is forbidden by the explicit text of the Quran, the Sunnah of Allah's Messenger (peace and blessings of Allah be upon him and his family), and the Consensus (Ijmaʿ) of the Ummah. Whoever among those who heard the textual evidence regarding this matter declares it lawful while knowing the Consensus is an unbelieving apostate, whose blood and wealth are rendered lawful. As for the Quranic evidence, it is Allah's statement: {Indeed, wine, gambling, stone altars, and divining arrows are filth} [5:90] up to His saying: {so avoid them} [5:90]. Thus, He commanded the complete avoidance of all abomination and declared wine to be part of that abomination. He ordained its avoidance as obligatory, for Allah's commands are inherently obligatory unless abrogated by another text clarifying it is not obligatory.[52]

L42409 And He, the Most High, said: {Indeed, my Lord has forbidden shameful deeds—what is apparent of them and what is concealed—and sin and unjust transgression} [Al-Aʿrāf 7:33]. Thus, the Most High has explicitly stated the prohibition of sin.[53]

L42410 And He, the Exalted, said, "They ask you about intoxicants and gambling. Say, 'In them is great sin'" [Al-Baqarah: 219]. Thus, it is established that sin is forbidden, that there is sin in intoxicants, and that engaging in them is engaging in sin. Therefore, it explicitly involves what the Prohibitor has

الْقَوْلَ بِجَلْدِ أَرْبَعِينَ فِي الْخَمْرِ هُوَ قَوْلُ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ، وَالْحَسَنِ بْنِ عَلِيٍّ، وَعَبْدِ اللَّهِ بْنِ جَعْفَرٍ، بِحَضْرَةِ جَمِيعِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

وَبِهِ - يَقُولُ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا - وَبِهِ نَأْخُذُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ هَلْ يُقْتَلُ شَارِبُ الْخَمْرِ بَعْدَ أَنْ يُحَدَّ فِيهَا ثَلَاثَ مَرَّاتٍ]

٢٢٩٢ - مَسْأَلَةٌ: هَلْ يُقْتَلُ شَارِبُ الْخَمْرِ بَعْدَ أَنْ يُحَدَّ فِيهَا ثَلَاثَ مَرَّاتٍ أَمْ لَا؟ [قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: الْخَمْرُ حَرَامٌ بِنَصِّ الْقُرْآنِ، وَسُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَإِجْمَاعِ الْأُمَّةِ، فَمَنْ اسْتَحَلَّهَا مِمَّنْ سَمِعَ النَّصَّ فِي ذَلِكَ، وَعَلِمَ بِالْإِجْمَاعِ فَهُوَ كَافِرٌ، مُرْتَدٌّ، حَلَالُ الدَّمِ، وَالْمَالِ - فَأَمَّا الْقُرْآنُ فَقَوْلُهُ تَعَالَى {إِنَّمَا الْخَمْرُ} [المائدة: ٩٠] إلَى قَوْله تَعَالَى {فَاجْتَنِبُوهُ} [المائدة: ٩٠] فَأَمَرَ تَعَالَى بِاجْتِنَابِ الرِّجْسِ جُمْلَةً وَأَخْبَرَ تَعَالَى أَنَّ الْخَمْرَ مِنْ الرِّجْسِ، فَفَرَضَ اجْتِنَابَهَا، لِأَنَّ أَوَامِرَ اللَّهِ تَعَالَى عَلَى الْفَرْضِ حَتَّى يَأْتِيَ نَصٌّ آخَرُ يُبَيِّنُ أَنَّهُ لَيْسَ فَرْضًا.

وَقَالَ تَعَالَى {إِنَّمَا حَرَّمَ رَبِّيَ الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَنَ وَالإِثْمَ وَالْبَغْيَ بِغَيْرِ الْحَقِّ} [الأعراف: ٣٣] فَنَصَّ تَعَالَى عَلَى تَحْرِيمِ الْإِثْمِ.

وَقَالَ تَعَالَى {يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ} [البقرة: ٢١٩] . فَصَحَّ أَنَّ الْإِثْمَ حَرَامٌ وَأَنَّ فِي الْخَمْرِ إثْمًا وَأَنَّ مُوَاقِعَهَا مُوَاقِعُ إثْمٍ، فَهُوَ مُوَاقِعُ الْمُحْرِمِ نَصًّا - وَأَمَّا مِنْ السُّنَّةِ فَمَعْلُومٌ مَشْهُورٌ] .

[52] **Qur'an references (L42408):** Qur'an 5:90 (Al-Ma'idah).
[53] **Qur'an references (L42409):** Qur'an 7:33 (Al-A'raf).

forbidden. As for evidence from the Sunnah, it is well-known and widely established.[54]

L42411–42413 Abū Muḥammad—may Allāh have mercy on him—said: People have differed regarding a wine drinker who is subjected to the ḥadd punishment for it, then drinks it again and is subjected to the ḥadd punishment a second time, then drinks it and is subjected to the ḥadd punishment a third time, then drinks it a fourth time—what is the ruling? One group said: "He should be killed," while another group said: "He should not be killed." As for those who said he should be killed, it is as narrated by Aḥmad ibn Qāsim, who reported to us from my father, Qāsim ibn Muḥammad ibn Qāsim, who reported from [...] My grandfather Qāsim ibn Aṣbagh narrated to us through al-Ḥārith—he being Ibn Abī Usāmah—who narrated through ʿAbd al-Wahhāb ibn ʿAṭāʾ from Qurrah ibn Khālid, from al-Ḥasan ibn ʿAbd Allāh ibn al-Naṣrī, from ʿAbd Allāh ibn ʿAmr ibn al-ʿĀṣ, who said: "Bring me a man subjected to the prescribed punishment for wine-drinking. If I do not kill him, then I am a liar." Mālik, al-Shāfiʿī, Abū Ḥanīfah, and others held that no killing is imposed upon him—citing this position from ʿUmar ibn al-Khaṭṭāb and Saʿd ibn Abī Waqqāṣ. Abū Muḥammad—may Allāh have mercy on him—said: "When they differed as mentioned, it became necessary to examine this matter. We found those who advocated killing him supported by the following narrations: ʿAbd Allāh ibn Rabīʿ narrated to us through Muḥammad ibn Isḥāq via Ibn al-Aʿrābī from Abū Dāwūd through Mūsā ibn Ismāʿīl from Abū Salamah through Abān—he being Ibn Yazīd al-ʿAṭṭār—from ʿĀṣim—he being Ibn Abī al-Najūd—from Abū Ṣāliḥ al-Sammān, from Muʿāwiyah ibn Abī Sufyān, who said: The Messenger of Allāh—peace and blessings be upon him—declared: 'When they drink wine, lash them. If they drink again, lash them. If they drink again, kill them.'" Ḥammām narrated to us through Ibn Mufarrij via Ibn al-Aʿrābī from al-Dabarī through ʿAbd al-Razzāq from Sufyān al-Thawrī through ʿĀṣim ibn Abī al-Najūd from Dhakwān—he being Abū Ṣāliḥ al-Sammān—from Muʿāwiyah, that the Prophet—peace and blessings be upon him—said regarding the wine-drinker: "If he drinks, lash him. If he drinks again, lash him. If he drinks a fourth time, strike his neck."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي شَارِبِ الْخَمْرِ يُحَدُّ فِيهَا، ثُمَّ يَشْرَبُهَا، فَيُحَدُّ فِيهَا ثَانِيَةً، ثُمَّ يَشْرَبُهَا فَيُحَدُّ فِيهَا ثَالِثَةً، ثُمَّ يَشْرَبُهَا الرَّابِعَةَ؟ فَقَالَتْ طَائِفَةٌ: يُقْتَلُ - وَقَالَتْ طَائِفَةٌ: لَا يُقْتَلُ. فَأَمَّا مَنْ قَالَ يُقْتَلُ: فَكَمَا نا أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا الْحَارِثُ - هُوَ ابْنُ أَبِي أُسَامَةَ - نا عَبْدُ الْوَهَّابِ بْنُ عَطَاءٍ أَنَا قُرَّةُ بْنُ خَالِدٍ عَنْ الْحَسَنِ بْنِ عَبْدِ اللَّهِ بْنِ النَّصْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّهُ قَالَ: ائْتُونِي بِرَجُلٍ أُقِيمَ عَلَيْهِ حَدٌّ فِي الْخَمْرِ، فَإِنْ لَمْ أَقْتُلْهُ فَأَنَا كَاذِبٌ؟ وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو حَنِيفَةَ، وَغَيْرُهُمْ: أَنْ لَا قَتْلَ عَلَيْهِ - وَذَكَرُوا ذَلِكَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَسَعْدِ بْنِ أَبِي وَقَّاصٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ: فَوَجَدْنَا مَنْ رَأَى قَتْلَهُ: كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا مُوسَى بْنُ إِسْمَاعِيلَ ثنا أَبُو سَلَمَةَ نا أَبَانُ - هُوَ ابْنُ يَزِيدَ الْعَطَّارُ - عَنْ عَاصِمٍ - هُوَ ابْنُ أَبِي النَّجُودِ - عَنْ أَبِي صَالِحٍ السَّمَّانِ عَنْ مُعَاوِيَةَ بْنِ أَبِي سُفْيَانَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا شَرِبُوا الْخَمْرَ فَاجْلِدُوهُمْ، ثُمَّ إنْ شَرِبُوا فَاجْلِدُوهُمْ، ثُمَّ إنْ شَرِبُوا فَاقْتُلُوهُمْ» حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَاصِمِ بْنِ أَبِي النَّجُودِ عَنْ ذَكْوَانَ - هُوَ أَبُو صَالِحٍ السَّمَّانُ - عَنْ مُعَاوِيَةَ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي شَارِبِ الْخَمْرِ «إنْ شَرِبَ فَاجْلِدُوهُ ثُمَّ إنْ شَرِبَ فَاجْلِدُوهُ، ثُمَّ إنْ شَرِبَ الرَّابِعَةَ فَاضْرِبُوا عُنُقَهُ» .

[54] **Qur'an references (L42410):** Qur'an 2:219 (Al-Baqarah).

L42414 Abdullah ibn Rabee' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Muhammad ibn Rafi' narrated to us: Abd al-Razzaq narrated to us: Ma'mar narrated from Suhayl ibn Abi Salih from his father from Abu Hurairah that the Prophet (peace be upon him and his family) said: "Whoever drinks wine, flog him. Then if he drinks again, flog him. Then if he drinks again, flog him. Then if he drinks on the fourth occasion—the narrator used a word meaning execution—then kill him."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ رَافِعٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «مَنْ شَرِبَ الْخَمْرَ فَاجْلِدُوهُ، ثُمَّ إِذَا شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِذَا شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِذَا شَرِبَ فِي الرَّابِعَةِ - ذَكَرَ كَلِمَةً مَعْنَاهَا - فَاقْتُلُوهُ» .

L42415 Hammam narrated to us: Ibn Mufarrij narrated to us: Ibn al-A'rabi narrated to us: al-Dabari narrated to us: Abd al-Razzaq narrated from Suhayl Ibn Abi Salih from his father from Abu Hurayrah that the Messenger of Allah—peace be upon him and his family—said: "Whoever drinks wine, lash him. Then, if he drinks again, lash him. Then, if he drinks again, lash him. Then, if he drinks again, kill him."

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «مَنْ شَرِبَ الْخَمْرَ فَاجْلِدُوهُ، ثُمَّ إِذَا شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِذَا شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِذَا شَرِبَ فَاقْتُلُوهُ» .

L42416–42418 Abū Muḥammad—may Allah have mercy on him—said: "These are two methods of the highest validity—and it has been narrated through the chain of transmission of" Another narration is not relied upon, and if opponents among the attendees were to seize any part of it, they would spread it far and wide. Among these is what Ahmad ibn Muḥammad ibn ʿAbd Allāh al-Ṭalamankī reported from Ibn Mufarrij, who reported from Ibn al-Aʿrābī, who reported from al-Dabarī, who reported from Muḥammad ibn Ayyūb al-Ṣamūt, who reported from Aḥmad ibn ʿUmar ibn ʿAbd al-Khāliq al-Bazzār, who reported from Muḥammad ibn Yaḥyā al-Qaṭīʿī, who reported from al-Ḥajjāj ibn al-Minhāl, who reported from Ḥammād ibn Salamah, from Jamīl ibn Ziyād, from Nāfiʿ, from Ibn ʿUmar, who said: The Messenger of Allāh (peace and blessings be upon him and his family) said, "Whoever drinks intoxicants, flog him three times. If he does it again a fourth time, execute him."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَانِ طَرِيقَانِ فِي نِهَايَةِ الصِّحَّةِ - وَقَدْ رُوِيَ مِنْ طَرِيقٍ آخَرَ لَا يُعْتَمَدُ عَلَيْهَا، وَلَوْ ظَفِرَ بِبَعْضِهَا الْمُخَالِفُونَ مِنْ الْحَاضِرِينَ لَطَارُوا بِهِ كُلَّ مَطِيرٍ: مِنْ ذَلِكَ مَا ناه أَحْمَدُ بْنُ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ نا أَحْمَدُ بْنُ عُمَرَ بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا مُحَمَّدُ بْنُ يَحْيَى الْقَطِيعِيُّ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ جَمِيلِ بْنِ زِيَادٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ، قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ شَرِبَ الْخَمْرَ فَاجْلِدُوهُ ثَلَاثًا، فَإِنْ عَادَ فِي الرَّابِعَةِ فَاقْتُلُوهُ» .

L42419 Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: From Ishaq ibn Ibrahim — that is, Ibn Rahawayh — from Jarir — that is, Ibn Abd al-Hamid — from al-Mughirah ibn Miqsam, from Abd al-Rahim ibn Ibrahim, from Abdullah ibn Umar ibn al-Khattab and a group of the Companions of the Messenger of Allah —

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - أَنَا جَرِيرٌ - هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ عَبْدِ الرَّحِيمِ بْنِ إِبْرَاهِيمَ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ وَنَفَرٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ

peace and blessings be upon him — who said: The Messenger of Allah — peace and blessings be upon him and his family — said, “Whoever drinks intoxicants, flog him. Then if he drinks, flog him. Then if he drinks, flog him. Then if he drinks, kill him.”

Abdullah ibn Rabi’ narrated to us: Muhammad ibn Mu’awiyah narrated to us: Ahmad ibn Shu’ayb narrated to us: Muhammad ibn Yahya ibn Abdullah narrated to us: Muhammad ibn Abdullah al-Raqashi narrated to us: Yazid ibn Zurayʿ narrated from Muhammad ibn Ishaq, from Abdullah ibn Utbah, from Urwah ibn Mas’ud, from Amr ibn al-Sharid, from his father, who said: The Messenger of Allah — peace and blessings be upon him — said, “If he drinks intoxicants, flog him. Then if he drinks, flog him. Then if he drinks, flog him. Then if he drinks, kill him.”[55]

وَسَلَّمَ - قَالُوا: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ شَرِبَ الْخَمْرَ فَاجْلِدُوهُ، ثُمَّ إِنْ شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِنْ شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِنْ شَرِبَ فَاقْتُلُوهُ» حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ يَحْيَى بْنِ عَبْدِ اللَّهِ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الرَّقَاشِيُّ نا يَزِيدُ بْنُ زُرَيْعٍ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ عُرْوَةَ بْنِ مَسْعُودٍ عَنْ عَمْرِو بْنِ الشَّرِيدِ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا شَرِبَ الْخَمْرَ فَاجْلِدُوهُ، ثُمَّ إِنْ شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِنْ شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِنْ شَرِبَ فَاقْتُلُوهُ» .

L42420 Yunus ibn Abd Allah ibn Mughith narrated to us: Abu Bakr ibn Ahmad ibn Khalid narrated to us: My father narrated to us: Ibn Waddāḥ narrated to us: Abu Bakr ibn Abi Shaybah narrated from Shababah ibn Sawwar from Ibn Abi Dhi’b from al-Harith ibn Abd al-Rahman from Abu Salamah ibn Abd al-Rahman ibn Awf from Abu Hurayrah from the Prophet (peace and blessings be upon him and his family) who said: “If he becomes intoxicated, lash him. Then if he becomes intoxicated, lash him. If he becomes intoxicated, lash him. Then if he becomes intoxicated, strike his neck.”

حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ بْنِ مُغِيثٍ أَنَا أَبُو بَكْرِ بْنُ أَحْمَدَ بْنِ خَالِدٍ نا أَبِي نا ابْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ شَبَابَةَ بْنِ سَوَّارٍ عَنِ ابْنِ أَبِي ذِئْبٍ عَنِ الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «إِذَا سَكِرَ فَاجْلِدُوهُ، ثُمَّ إِذَا سَكِرَ فَاجْلِدُوهُ، إِذَا سَكِرَ فَاجْلِدُوهُ، ثُمَّ إِنْ سَكِرَ فَاضْرِبُوا عُنُقَهُ» .

L42421 Aḥmad ibn Qāsim narrated to us: From my father, Qāsim ibn Muḥammad ibn Qāsim; from my grandfather, Qāsim ibn Aṣbagh; from Aḥmad ibn Zuhayr; from Ibrāhīm ibn ʿAbdullāh; from Hishām; from Mughīrah ibn Maʿbad ibn Khālid; from ʿAbd ibn ʿAbd; from Muʿāwiyah, who attributed the ḥadīth to the Prophet, who said: “Whoever drinks wine, flog him; if he repeats, flog him again; if he repeats again, kill him.”

حَدَّثَنَا أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا أَحْمَدُ بْنُ زُهَيْرٍ نا إِبْرَاهِيمُ بْنُ عَبْدِ اللَّهِ أَنَا هِشَامٌ أَنَا مُغِيرَةُ بْنُ مَعْبَدِ بْنِ خَالِدٍ عَنْ عَبْدِ بْنِ عَبْدٍ عَنْ مُعَاوِيَةَ رَفَعَ الْحَدِيثَ قَالَ «مَنْ شَرِبَ الْخَمْرَ فَاضْرِبُوهُ، فَإِنْ عَادَ فَاضْرِبُوهُ، فَإِنْ عَادَ فَاقْتُلُوهُ» .

L42422–42423 Aḥmad ibn Zuhayr said: Thus said ʻAbdullāh ibn ʻAbdullāh—and ʻAbdullāh ibn ʻAbdullāh or Abū ʻAbd Allāh al-Jadalī—Aḥmad ibn Zuhayr said: I asked Yaḥyā ibn Maʻīn about Abū ʻAbd Allāh al-Jadalī. He said: He is so-and-so son of ʻAbd, a Kūfan, reliable, from Qays. Yaḥyā was uncertain of his name. Abū

قَالَ أَحْمَدُ بْنُ زُهَيْرٍ: هَكَذَا قَالَ عَبْدُ بْنُ عَبْدٍ - وَعَبْدُ بْنُ عَبْدٍ أَوْ أَبُو عَبْدِ اللَّهِ الْجَدَلِيُّ - قَالَ أَحْمَدُ بْنُ زُهَيْرٍ: سَأَلْتُ يَحْيَى بْنَ مَعِينٍ عَنْ أَبِي عَبْدِ اللَّهِ الْجَدَلِيِّ؟ قَالَ: هُوَ فُلَانُ ابْنُ عَبْدٍ، كُوفِيٌّ، ثِقَةٌ، مِنْ قَيْسٍ، لَمْ يَحْفَظْ يَحْيَى اسْمَهُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -:

[55] **Hadith references (L42419):** Sunan an-Nasai 5661.

وَقَدْ رَوَى هَذَا الْحَدِيثَ أَيْضًا شُرَحْبِيلُ بْنُ أَوْسٍ، وَعَبْدُ اللَّهِ بْنُ عَمْرِو بْنِ الْعَاصِ، وَأَبُو غُطَيْفٍ الْكِنْدِيُّ - كُلُّهُمْ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَقَلُّ مِنْ هَذَا يَجْعَلُونَ فِيمَا وَافَقَهُمْ نَقْلَ تَوَاتُرٍ، كَقَوْلِ الْحَنَفِيِّينَ فِي شُرْبِ النَّبِيذِ الْمُسْكِرِ، وَكَاعْتِمَادِ الْمَالِكِيِّينَ فِي إبْطَالِ السُّنَنِ الثَّابِتَةِ فِي التَّوْقِيتِ فِي الْمَسْحِ عَلَى رِوَايَةِ أَبِي عَبْدِ اللَّهِ الْجَدَلِيِّ، وَغَيْرِ ذَلِكَ لَهُمْ كَثِيرٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَكَانَتْ الرِّوَايَةُ فِي ذَلِكَ عَنْ مُعَاوِيَةَ، وَأَبِي هُرَيْرَةَ، ثَابِتَةً، تَقُومُ بِهَا الْحُجَّةُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Muḥammad, may Allāh have mercy on him, said: This ḥadīth was also narrated by Shuraḥbīl ibn Aws, ʻAbd Allāh ibn ʻAmr ibn al-ʻĀṣ, and Abū Ghuṭayf al-Kindī—all of them from the Prophet, peace and blessings of Allāh be upon him and his family. Abū Muḥammad, may Allāh have mercy on him, said: They treat even lesser evidence as constituting *tawātur* transmission in matters aligning with their views, such as the Ḥanafīs' stance on consuming intoxicating *nabīdh*, and the Mālikīs' reliance on nullifying established sunnahs regarding the time limit for wiping over footwear based on the narration of Abū ʻAbd Allāh al-Jadalī, among many other similar instances. Abū Muḥammad, may Allāh have mercy on him, said: The narrations concerning this from Muʻāwiyah and Abū Hurayrah are firmly established, serving as conclusive proof—and Allāh alone grants success.

فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ الْمُخَالِفُونَ، فَوَجَدْنَاهُمْ يَقُولُونَ: إنَّ هَذَا الْخَبَرَ مَنْسُوخٌ - وَذَكَرُوا فِي ذَلِكَ: مَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عُبَيْدُ اللَّهِ بْنُ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ سَعْدٍ نا عَمِّي - هُوَ يَعْقُوبُ بْنُ سَعْدٍ - نا شَرِيكٌ عَنْ مُحَمَّدِ بْنِ إسْحَاقَ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «إذَا شَرِبَ الرَّجُلُ فَاجْلِدُوهُ، فَإِنْ عَادَ فَاجْلِدُوهُ، فَإِنْ عَادَ فَاجْلِدُوهُ، فَإِنْ عَادَ الرَّابِعَةَ فَاقْتُلُوهُ، فَأُتِيَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِرَجُلٍ مِنَّا فَلَمْ يَقْتُلْهُ» .

L42424 We examined the arguments of the opposing party and found them asserting that this narration is abrogated. They cited the following: ʻAbdullāh ibn Rabīʿ narrated to us, Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us: I, ʿUbaydullāh ibn Saʿd ibn Ibrāhīm ibn Saʿd narrated to us—from my uncle, he is Yaʿqūb ibn Saʿd—from Shurayk, from Muḥammad ibn Isḥāq, from Muḥammad ibn al-Munkadir, from Jābir ibn ʿAbdullāh, from the Prophet—peace and blessings be upon him and his family—who said: "When a man drinks intoxicants, flog him. If he repeats it, flog him again. If he repeats it, flog him again. If he repeats it a fourth time, kill him." Then a man from among us was brought to the Messenger of Allah—peace and blessings be upon him and his family—but he did not kill him.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مُوسَى نا زِيَادُ بْنُ عَبْدِ اللَّهِ الْبَكَّائِيُّ ثني مُحَمَّدُ بْنُ إسْحَاقَ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ شَرِبَ الْخَمْرَ فَاضْرِبُوهُ، فَإِنْ عَادَ فَاضْرِبُوهُ، فَإِنْ عَادَ فَاضْرِبُوهُ، فَإِنْ عَادَ فِي الرَّابِعَةِ فَاضْرِبُوا عُنُقَهُ - فَضَرَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نُعَيْمَانَ أَرْبَعَ مَرَّاتٍ» .

L42425 Abdullah ibn Rabee' narrated to us: Muhammad ibn Mu'awiyah narrated to us; Ahmad ibn Shu'ayb narrated to us from Muhammad ibn Musa, who narrated from Ziyad ibn Abdullah al-Bakkā'ī, who narrated from Muhammad ibn Ishaq, from Muhammad ibn al-Munkadir, from Jabir ibn Abdullah, who said: The Messenger of Allah—peace and blessings be upon him—said, "Whoever drinks wine, strike him. If he repeats it, strike him. If he repeats it again, strike him. If he repeats it a fourth time, strike his neck." The Messenger of Allah—peace and blessings be upon him—struck Nu'ayman four times.

L42426–42428 The Muslims held the view that the ḥadd punishment had been lifted and

the death penalty revoked. Hammam narrated to us, from Abbas ibn Asbagh, from Muhammad ibn Abd al-Malik ibn Ayman, from Isma'il ibn Ishaq. Abu Thabit narrated to us: Ibn Wahb informed us, Yunus ibn Yazid informed us, Ibn Shihab informed us that Qabisah ibn Dhu'ayb reported that it reached him from the Messenger of Allah—peace and blessings be upon him—that he said regarding the drinker of intoxicants: "If he drinks, then lash him. Then if he drinks again, lash him. Then if he drinks again, lash him. Then if he drinks again, kill him." A man who had drunk three times was brought to the Prophet, so the Prophet lashed him. Then he was brought a fourth time, and the Prophet lashed him—and abolished the killing from the people.

L42429 Muhammad ibn Abd al-Malik said: Abu Isma'il Muhammad ibn Isma'il al-Tirmidhi narrated to us: Sa'id ibn Abi Maryam narrated to us: Sufyan ibn Uyaynah said: I heard Ibn Shihab saying to Mansur ibn al-Mu'tamir (from the delegate of the people of Iraq) with this narration, meaning this hadith of Qabisa ibn Dhu'ayb.

L42430 Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us: Ibrahim ibn Ahmad al-Farabi narrated to us: al-Bukhari narrated to us: Yahya ibn Bukayr narrated to us: al-Layth narrated to us: Khalid ibn Yazid ibn Abi Hilal narrated to us: from Zayd ibn Aslam: from his father: from Umar ibn al-Khattab: "During the time of the Messenger of Allah—peace and blessings be upon him and his family—there was a man named Abdullah, nicknamed 'the Donkey,' who used to make the Messenger of Allah—peace and blessings be upon him and his family—laugh. The Messenger of Allah—peace and blessings be upon him and his family—had previously flogged him for drinking. One day, he was brought before him, and he ordered him to be flogged. A man among the people said: 'O Allah, curse him! How frequently he is brought!' The Messenger of Allah—peace and blessings be upon him and his family—responded: 'Do not curse him, for by Allah, I know nothing of him except that he loves Allah and His Messenger.'" They also mentioned the established report from the Messenger of Allah—peace and blessings be upon him and his family: "The blood of a Muslim is not lawful except for one of three reasons: apostasy after belief, adultery after marriage, or a life for a

فَرَأَى الْمُسْلِمُونَ أَنَّ الْحَدَّ قَدْ رُفِعَ، وَأَنَّ الْقَتْلَ قَدْ رُفِعَ: حَدَّثَنَا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ نا أَبُو ثَابِتٍ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ أَخْبَرَنِي ابْنُ شِهَابٍ أَنَّ قَبِيصَةَ بْنَ ذُؤَيْبٍ حَدَّثَهُ أَنَّهُ بَلَغَهُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ لِشَارِبِ الْخَمْرِ «إِنْ شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِنْ شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِنْ شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِنْ شَرِبَ فَاقْتُلُوهُ - فَأُتِيَ بِرَجُلٍ قَدْ شَرِبَ ثَلَاثَ مَرَّاتٍ، فَجَلَدَهُ، ثُمَّ أُتِيَ بِهِ فِي الرَّابِعَةِ فَجَلَدَهُ - وَوَضَعَ الْقَتْلَ عَنْ النَّاسِ» .

قَالَ مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ: قَدْ نا أَبُو إِسْمَاعِيلَ مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ نا سَعِيدُ بْنُ أَبِي مَرْيَمَ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ قَالَ: سَمِعْتُ ابْنَ شِهَابٍ يَقُولُ لِمَنْصُورِ بْنِ الْمُعْتَمِرِ مِنْ وَافِدِ أَهْلِ الْعِرَاقِ بِهَذَا الْخَبَرِ - يَعْنِي حَدِيثَ قَبِيصَةَ بْنِ ذُؤَيْبٍ هَذَا.

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا يَحْيَى بْنُ بُكَيْرٍ ثني اللَّيْثُ ثني خَالِدُ بْنُ يَزِيدَ بْنِ أَبِي هِلَالٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ «أَنَّ رَجُلًا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ اسْمُهُ عَبْدَ اللَّهِ، وَكَانَ يُلَقَّبُ حِمَارًا، وَكَانَ يُضْحِكُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدْ جَلَدَهُ فِي الشُّرْبِ، فَأُتِيَ بِهِ يَوْمًا فَأَمَرَ بِهِ فَجُلِدَ، فَقَالَ رَجُلٌ مِنْ الْقَوْمِ: اللَّهُمَّ الْعَنْهُ، مَا أَكْثَرَ مَا يُؤْتَى بِهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: لَا تَلْعَنُوهُ، فَوَاَللَّهِ مَا عَلِمْتُهُ إِلَّا يُحِبُّ اللَّهَ وَيُحِبُّ رَسُولَهُ» . وَذَكَرُوا الْخَبَرَ الثَّابِتَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إِلَّا بِإِحْدَى ثَلَاثٍ: كُفْرٌ بَعْدَ إِيمَانٍ، أَوْ زِنًى بَعْدَ إِحْصَانٍ، أَوْ نَفْسٌ

life." Thus, is it impermissible to kill anyone not mentioned in this report? Abu Muhammad—may Allah have mercy on him—said: "If only the Malikis, Hanafis, and Shafi'is were to cite this report as evidence against themselves regarding their killing of those whom Allah the Exalted—nor His Messenger, peace be upon him—ever permitted to be killed: such as the Malikis killing based on a sick person's deathbed claim or the oath of two witnesses in such cases; the Shafi'is killing those who commit the act of the people of Lut or those who acknowledge the obligation of prayer yet say 'I will not pray'; and the Hanafis and Malikis killing the sorcerer."

L42431–42432 And all of these people did not apostatize, nor commit adultery as a muḥṣan (a free, lawfully married person who has had lawful intercourse), nor commit murder.

L42433 All of this refutes their argument regarding the killing of the one who drinks wine on the fourth instance, based on the statement of the Prophet—peace and blessings of Allah be upon him and his family? Abu Muhammad—may Allah have mercy on him—said: This is all the evidence they have cited.

L42434 They mentioned from the Companions: It is not [via] Ḥammām, from Ibn Mufarrij, from Ibn al-Aʿrabī, from al-Dabarī, from ʿAbd al-Razzāq, from Muḥammad ibn Rāshid, from ʿAbd al-Karīm ibn Abī Umayya ibn Abī al-Mukhāriq, from Qabīṣa ibn Dhuʾayb that ʿUmar ibn al-Khaṭṭāb flogged Abū Miḥjan eight times for wine - and a similar narration was reported from Saʿīd as well - yet none of this constitutes valid evidence for them, as we shall clarify if God, the Exalted, wills.

L42435 As for the ḥadīth of Jābir ibn ʿAbd Allāh regarding the abrogation of the established ruling to kill the wine drinker on the fourth [occasion], it is not valid because no one narrated it with a connected chain from Ibn al-Munkadir except Sharīk the Judge and Ziyād ibn ʿAbd Allāh al-Bakkāʾī—who reported it from Muḥammad ibn Isḥāq from Ibn al-Munkadir—and both of them are weak narrators.

L42436 As for the narration of Qabīṣa ibn Dhu'ayb, it is broken, and no authoritative evidence can be established in a broken [chain].

بِنَفْسٍ» فَلَا يَجُوزُ أَنْ يُقْتَلَ أَحَدٌ لَمْ يُذْكَرْ فِي هَذَا الْخَبَرِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَوْ أَنَّ الْمَالِكِيِّينَ، وَالْحَنَفِيِّينَ، وَالشَّافِعِيِّينَ، احْتَجُّوا عَلَى أَنْفُسِهِمْ بِهَذَا الْخَبَرِ فِي قَتْلِهِمْ مَنْ لَمْ يُبِحْ اللَّهُ تَعَالَى قَتْلَهُ قَطُّ، وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -: كَقَتْلِ الْمَالِكِيِّينَ بِدَعْوَى الْمَرِيضِ، وَقَسَامَةِ اثْنَيْنِ فِي ذَلِكَ وَقَتْلِهِمْ - وَالشَّافِعِيِّينَ مَنْ فَعَلَ فِعْلَ قَوْمِ لُوطٍ، وَمَنْ أَقَرَّ بِفَرْضِ صَلَاةٍ وَقَالَ: لَا أُصَلِّي. وَكَقَتْلِ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، السَّاحِرَ.

وَكُلُّ هَؤُلَاءِ لَمْ يَكْفُرْ، وَلَا زَنَى وَهُوَ مُحْصَنٌ، وَلَا قَتَلَ نَفْسًا.

فَهَذَا كُلُّهُ نَقَضَ احْتِجَاجَهُمْ فِي قَتْلِ شَارِبِ الْخَمْرِ فِي الرَّابِعَةِ، بِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا كُلُّ مَا احْتَجُّوا بِهِ.

وَذَكَرُوا عَنْ الصَّحَابَةِ: مَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ رَاشِدٍ عَنْ عَبْدِ الْكَرِيمِ بْنِ أَبِي أُمَيَّةَ بْنِ أَبِي الْمُخَارِقِ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَلَدَ أَبَا مِحْجَنٍ فِي الْخَمْرِ ثَمَانِي مَرَّاتٍ - وَرُوِيَ نَحْوُ ذَلِكَ عَنْ سَعِيدٍ أَيْضًا - وَكُلُّ ذَلِكَ لَا حُجَّةَ لَهُمْ فِيهِ، عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى.

أَمَّا حَدِيثُ جَابِرِ بْنَ عَبْدِ اللَّهِ فِي نَسْخِ الثَّابِتِ مِنْ الْأَمْرِ بِقَتْلِ شَارِبِ الْخَمْرِ فِي الرَّابِعَةِ فَإِنَّهُ لَا يَصِحُّ؛ لِأَنَّهُ لَمْ يَرْوِهِ عَنْ ابْنِ الْمُنْكَدِرِ أَحَدٌ مُتَّصِلًا، إلَّا شَرِيكٌ الْقَاضِي، وَزِيَادُ بْنُ عَبْدِ اللَّهِ الْبَكَّائِيُّ عَنْ مُحَمَّدِ بْنِ إسْحَاقَ عَنْ ابْنِ الْمُنْكَدِرِ - وَهُمَا ضَعِيفَانِ.

وَأَمَّا حَدِيثُ قَبِيصَةَ بْنِ ذُؤَيْبٍ فَمُنْقَطِعٌ، وَلَا حُجَّةَ فِي مُنْقَطِعٍ.

وَأَمَّا حَدِيثُ زَيْدِ بْنِ أَسْلَمَ الَّذِي مِنْ طَرِيقِ مَعْمَرٍ عَنْهُ فَمُنْقَطِعٌ - ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ، أَنَّ ذَلِكَ كَانَ بَعْدَ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقَتْلِ، فَإِذْ لَيْسَ ذَلِكَ فِيهِ فَالْيَقِينُ الثَّابِتُ لَا يَحِلُّ تَرْكُهُ لِلضَّعِيفِ الَّذِي لَا يَصِحُّ، وَلَوْ صَحَّ لَكَانَ ظَنًّا - فَسَقَطَ التَّعَلُّقُ بِهِ جُمْلَةً.

L42437 As for the ḥadīth of Zayd ibn Aslam transmitted through Maʿmar from him, it is interrupted. Moreover, even if it were authentic, it would not constitute valid proof, for it does not mention that this occurred after the Messenger of Allah—peace and blessings be upon him—commanded execution. Since this is absent, the established certainty cannot permissibly be abandoned due to a weak report—and even if it were authentic, it would remain conjectural. Thus, all reliance on it is entirely dismissed.

وَلَوْ أَنَّ إنْسَانًا يَجْلِدُهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْخَمْرِ ثَلَاثَ مَرَّاتٍ قَبْلَ أَنْ يَأْمُرَ بِقَتْلِهِ فِي الرَّابِعَةِ، لَكَانَ مُقْتَضَى أَمْرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتِئْنَافُ جِلْدِهِ بَعْدَ ذَلِكَ ثَلَاثَ مَرَّاتٍ وَلَا بُدَّ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - حِينَ لَفَظَ بِالْحَدِيثِ الْمَذْكُورِ أَمَرَ فِي الْمُسْتَأْنَفِ بِضَرْبِهِ إنْ شَرِبَ، ثُمَّ بِضَرْبِهِ إنْ شَرِبَ ثَانِيَةً، ثُمَّ بِضَرْبِهِ ثَالِثَةً، ثُمَّ بِقَتْلِهِ رَابِعَةً - هَذَا نَصُّ حَدِيثِهِ وَكَلَامِهِ - عَلَيْهِ السَّلَامُ -.

L42438 If a man were to be flogged by the Prophet—peace be upon him—three times for drinking wine before he [the Prophet] ordered his execution on the fourth offense, the necessary implication of his command—peace be upon him—would require resuming his flogging three times again afterward. This is because when he—peace be upon him—uttered the mentioned hadith, he ordered flogging if he drinks again, then flogging if he drinks a second time again, then flogging a third time again, then execution on the fourth offense—this is the explicit text of his hadith and his words, peace be upon him.

فَإِنَّمَا كَانَ يَكُونُ حُجَّةً لَوْ بَيَّنَ فِيهِ أَنَّهُ أُتِيَ بِهِ أَرْبَعَ مَرَّاتٍ بَعْدَ أَمْرِهِ - عَلَيْهِ السَّلَامُ - بِقَتْلِهِ فِي الرَّابِعَةِ، وَهَكَذَا الْقَوْلُ - سَوَاءٌ سَوَاءٌ - فِي حَدِيثِ عُمَرَ الَّذِي مِنْ طَرِيقِ سَعِيدِ بْنِ أَبِي هِلَالٍ عَنْ زَيْدِ بْنِ أَسْلَمَ؟

L42439 For it to serve as a valid proof, it would only be so if it clarified that he was brought four times after his command - peace be upon him - to kill him in the fourth instance. And does exactly the same apply to the ḥadīth of ʿUmar transmitted via Saʿīd ibn Abī Hilāl from Zayd ibn Aslam?

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَأَمَّا نَحْنُ فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: إنَّ الْوَاجِبَ ضَمُّ أَوَامِرِ اللَّهِ تَعَالَى، وَأَوَامِرِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلِّهَا بَعْضُهَا إلَى بَعْضٍ، وَالِانْقِيَادُ إلَى جَمِيعِهَا، وَالْأَخْذُ بِهَا، وَأَنْ لَا يُقَالَ فِي شَيْءٍ مِنْهَا: هَذَا مَنْسُوخٌ إلَّا بِيَقِينٍ.

L42440–42441 Abu Muhammad—may Allah have mercy on him—said: As for us, we say—and with Allah alone is success—the obligation is to unite all the commands of Allah the Exalted and the commands of His Messenger—peace be upon him—all of them, each part interconnected with the others, to submit to all of them, act upon them, and that it should not be said regarding anything among them: "This is abrogated" except with certainty.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى {أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ} [النساء: ٥٩] .

L42442 The proof of that is the saying of Allah, Exalted is He: "Obey Allah and obey the Messenger" [An-Nisa: 59].[56]

فَصَحَّ أَنَّ كُلَّ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ، أَوْ رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَفَرْضٌ عَلَيْنَا الْأَخْذُ بِهِ، وَالطَّاعَةُ لَهُ، وَمَنْ ادَّعَى فِي شَيْءٍ مِنْ ذَلِكَ نَسْخًا، فَقَوْلُهُ مُطَّرَحٌ؛ لِأَنَّهُ

L42443 Thus, it has been established that every command ordained by Allah, the

[56] **Qur'an references (L42442):** Qur'an 4:59 (An-Nisa); Qur'an 24:54 (An-Nur); Qur'an 47:33 (Muhammad).

Exalted, or His Messenger—peace and blessings be upon him and his family—is an obligation upon us to act upon and obey. Whoever claims abrogation in any matter thereof, his assertion is rejected, for he is saying to us: "Do not obey this command from Allah, the Exalted, or His Messenger—peace and blessings be upon him and his family." Therefore, it is incumbent upon us to disobey anyone who commands such, unless there is a clear and explicit text attesting that this command is abrogated, a consensus affirming this, or established chronological evidence clarifying that one of the two abrogates the other.

يَقُولُ لَنَا: لَا تُطِيعُوا هَذَا الْأَمْرَ مِنْ اللَّهِ تَعَالَى، وَلَا مِنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَاجِبٌ عَلَيْنَا عِصْيَانُ مَنْ أَمَرَ بِذَلِكَ، إلَّا أَنْ يَأْتِيَ نَصٌّ جَلِيٌّ بَيِّنٌ يَشْهَدُ بِأَنَّ هَذَا الْأَمْرَ مَنْسُوخٌ، أَوْ إجْمَاعٌ عَلَى ذَلِكَ، أَوْ بِتَارِيخٍ ثَابِتٍ مُبَيِّنٍ أَنَّ أَحَدَهُمَا نَاسِخٌ لِلْآخَرِ.

L42444 As for us, our position is that Allah the Exalted has undertaken to preserve His religion and perfect it, and He has forbidden us from following conjecture. Thus, it is entirely impermissible to set aside two texts where one can be specified by the other and harmonized with it, except when it is certain that this is Allah's intended meaning from both, and that there is absolutely no abrogation in this, without any doubt. For if abrogation existed here, Allah the Exalted would have elucidated it with absolute clarity and would not have left it ambiguous or problematic—far be it from Allah—how could that be? Abu Muhammad—may Allah have mercy on him—said: Consequently, the only remaining scenario is to set aside two texts where one could be specified by the other, as it is less comprehensive in scope. It may also be possible that the specific text is abrogated by the general one, and it has been clarified that the specific text undoubtedly precedes the general one. If such a case is found, the ruling necessarily requires abrogation without exception, until another text arrives or a definitive consensus is established confirming that the specific text is indeed specified by the general text that came afterward.

وَأَمَّا نَحْنُ - فَإِنَّ قَوْلَنَا: هُوَ أَنَّ اللَّهَ تَعَالَى قَدْ تَكَفَّلَ بِحِفْظِ دِينِهِ وَأَكْمَلَهُ، وَنَهَانَا عَنْ اتِّبَاعِ الظَّنِّ، فَلَا يَجُوزُ أَلْبَتَّةَ أَنْ يُرَدَّ نَصَّانِ يُمْكِنُ تَخْصِيصُ أَحَدِهِمَا مِنْ الْآخَرِ، وَضَمِّهِ إلَيْهِ، إلَّا وَهُوَ مُرَادُ اللَّهِ تَعَالَى مِنْهُمَا بِيَقِينٍ، وَأَنَّهُ لَا نَسْخَ فِي ذَلِكَ بِلَا شَكٍّ أَصْلًا - وَلَوْ كَانَ فِي ذَلِكَ نَسْخٌ لَبَيَّنَهُ اللَّهُ تَعَالَى بَيَانًا جَلِيًّا، وَلَمَا تَرَكَهُ مُلْتَبِسًا مُشْكِلًا، حَاشَ لِلَّهِ مِنْ هَذَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمْ يَبْقَ إلَّا أَنْ يُرَدَّ نَصَّانِ مُمْكِنٌ أَنْ يَكُونَ أَحَدُهُمَا مَخْصُوصًا مِنْ الْآخَرِ، لِأَنَّهُ أَقَلُّ مَعَانٍ مِنْهُ، وَقَدْ يُمْكِنُ أَنْ يَكُونَ مَنْسُوخًا بِالْأَعَمِّ، وَيَكُونُ الْبَيَانُ قَدْ جَاءَ بِأَنَّ الْأَخَصَّ قَبْلَ الْأَعَمِّ بِلَا شَكٍّ - فَهَذَا إنْ وُجِدَ فَالْحُكْمُ فِيهِ النَّسْخُ وَلَا بُدَّ، حَتَّى يَجِيءَ نَصٌّ آخَرُ أَوْ إجْمَاعٌ مُتَيَقَّنٌ عَلَى أَنَّهُ مَخْصُوصٌ مِنْ الْعَامِّ الَّذِي جَاءَ بَعْدَهُ.

L42445 The proof of that is that Allah, the Exalted, said in His Book: "as an explanation for all things" [An-Nahl: 89].[57]

بُرْهَانُ ذَلِكَ: أَنَّ اللَّهَ تَعَالَى قَالَ فِي كِتَابِهِ {تِبْيَانًا لِكُلِّ شَيْءٍ} [النحل: ٨٩] .

L42446 And He said to the Messenger of Allah—peace and blessings be upon him and his family—{to make clear to people what has been sent down to them} [16:44]. The explanation—without doubt—is what the apparent meaning

وَقَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إلَيْهِمْ} [النحل: ٤٤] وَالْبَيَانُ - بِلَا شَكٍّ - هُوَ مَا اقْتَضَاهُ ظَاهِرُ اللَّفْظِ الْوَارِدِ، مَا لَمْ يَأْتِ نَصٌّ آخَرُ، أَوْ إجْمَاعٌ مُتَيَقَّنٌ عَلَى نَقْلِهِ عَنْ ظَاهِرِهِ، فَإِذَا اخْتَلَفَ الصَّحَابَةُ فَالْوَاجِبُ الرَّدُّ إلَى مَا

[57] **Qur'an references (L42445):** Qur'an 16:89 (An-Nahl).

of the conveyed wording necessitates, provided no other text arises or a definitive consensus establishes a departure from its apparent meaning. If the Companions disagreed, it becomes obligatory to revert to what Allah the Exalted has obligated to refer back to, as He says: {If you dispute over something, refer it to Allah and the Messenger} [4:59] the verse.[58]

L42447–42448 And the command of the Prophet—peace be upon him—to kill him on the fourth instance has been authenticated, and its abrogation has not been authenticated. Had it been authenticated, we would have upheld it—and there is no valid proof in the statement of anyone apart from the Messenger of Allah—peace be upon him and his family.

L42449 **Issue: Is the hadd punishment imposed on someone who drinks two blended substances?**

L42450 Issue 2293: Regarding mixing two substances. We have previously mentioned in the section on "Permissible and Prohibited Beverages" that dates, fresh dates, semi-dried dates, unripe dates, and raisins - these five exclusively, excluding all other things - may lawfully be prepared as nabidh individually. It is unlawful for any of them to be prepared as nabidh when mixed with another thing - whether from these five or any other thing whatsoever.

L42451 And that it is impermissible to mix the nabīdh of anything—after it has become wholesome or before it becomes wholesome—with another item or with the nabīdh of another item—whether from them or from others—fundamentally. As for what lies beyond these five, it is permissible to make nabīdh from two or more of them together, and to mix the nabīdh of two or more of them or the juice of two or more of them. We have clarified the reported Sunnahs pertaining to this matter. Whoever drinks from the two prohibited blends we mentioned—even if it does not intoxicate—has consumed something unlawful like blood or urine. No prescribed punishment applies in this case, for he did not drink wine, and the prescribed punishment applies exclusively to wine.

[58] **Qur'an references (L42446):** Qur'an 16:44 (An-Nahl); Qur'an 4:59 (An-Nisa).

افْتَرَضَ اللَّهُ تَعَالَى الرَّدَّ إِلَيْهِ، إِذْ يَقُولُ {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ.

وَقَدْ صَحَّ أَمْرُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَتْلِهِ فِي الرَّابِعَةِ، وَلَمْ يَصِحَّ نَسْخُهُ، وَلَوْ صَحَّ لَقُلْنَا بِهِ - وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

[مَسْأَلَة هَلْ يحد شَارِب الخلطين]

٢٢٩٣ - مَسْأَلَةٌ: الْخَلِيطَيْنِ؟ قَدْ ذَكَرْنَا " فِيمَا يَحِلُّ وَيَحْرُمُ مِنْ الْأَشْرِبَةِ " أَنَّ التَّمْرَ وَالرُّطَبَ، وَالزَّهْوَ وَالْبُسْرَ، وَالزَّبِيبَ، هَذِهِ الْخَمْسَةُ - خَاصَّةً دُونَ سَائِرِ الْأَشْيَاءِ - يَحِلُّ أَنْ يُنْبَذَ كُلُّ وَاحِدٍ مِنْهَا عَلَى انْفِرَادِهِ، وَلَا يَحِلُّ أَنْ يُنْبَذَ شَيْءٌ مِنْهَا مَعَ شَيْءٍ آخَرَ - لَا مِنْهَا وَلَا مِنْ سَائِرِهَا - فِي الْعَالَمِ.

وَأَنَّهُ لَا يَحِلُّ أَنْ يُخْلَطَ نَبِيذُ شَيْءٍ - بَعْدَ طِيبِهِ أَوْ قَبْلَ طِيبِهِ - لَا بِشَيْءٍ آخَرَ وَلَا بِنَبِيذِ شَيْءٍ آخَرَ - لَا مِنْهَا وَلَا مِنْ غَيْرِهَا - أَصْلًا، وَأَمَّا مَا عَدَا هَذِهِ الْخَمْسَةَ فَجَائِزٌ أَنْ يُنْبَذَ مِنْهَا الشَّيْئَانِ وَالْأَكْثَرُ مَعًا، وَأَنْ يُخْلَطَ نَبِيذُ اثْنَيْنِ مِنْهَا فَصَاعِدًا أَوْ عَصِيرُ اثْنَيْنِ فَصَاعِدًا، وَبَيَّنَّا السُّنَنَ الْوَارِدَةَ فِي ذَلِكَ، فَمَنْ شَرِبَ مِنْ الْخَلِيطَيْنِ الْمُحَرَّمَيْنِ مِمَّا ذَكَرْنَا شَيْئًا لَا يُسْكِرُ فَقَدْ شَرِبَ حَرَامًا كَالدَّمِ، وَالْبَوْلِ، وَلَا حَدَّ فِي ذَلِكَ؛ لِأَنَّهُ لَمْ يَشْرَبْ خَمْرًا، وَلَا حَدَّ إلَّا فِي الْخَمْرِ.

L42452 Based on the statement of the Messenger of Allah—may Allah bless him and his family and grant him peace—"Whoever drinks khamr [intoxicant], lash him," and the authentic narrations confirming that the Messenger of Allah—may Allah bless him and his family and grant him peace—administered lashing for khamr, and his declaration—peace be upon him—"Every intoxicant is khamr": If the substance is not khamr, no prescribed punishment applies; it entails only discretionary punishment, for one has committed a reprehensible act.

لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «وَمَنْ شَرِبَ الْخَمْرَ فَاجْلِدُوهُ» وَلِلْآثَارِ الثَّابِتَةِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - جَلَدَ فِي الْخَمْرِ، وَلِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «كُلُّ مُسْكِرٍ خَمْرٌ» فَإِنْ لَمْ يَكُنْ خَمْرًا فَلَا حَدَّ فِيهِ، وَإِنَّمَا فِيهِ التَّعْزِيرُ فَقَطْ؛ لِأَنَّهُ أَتَى مُنْكَرًا.

L42453 As for every two mixtures from what we have mentioned other than those specified, if they cause intoxication, they are classified as khamr. The drinker thereof is subject to the hadd punishment prescribed for khamr, as per our earlier explanation—and with Allah, the Exalted, is success.

وَأَمَّا كُلُّ خَلِيطَيْنِ مِمَّا ذَكَرْنَا مِنْ غَيْرِ ذَلِكَ إذَا أَسْكَرَ فَهُوَ خَمْرٌ، وَعَلَى شَارِبِهِ حَدُّ الْخَمْرِ، لِمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مَتَى يحد السَّكْرَان]

The issue of when the *hadd* applies to the intoxicated person.

L42454

L42455 2294 - Issue: When should the intoxicated person be subjected to the *hadd* punishment - after becoming sober or while in a state of intoxication? Abu Muhammad (may Allah have mercy on him) said, "People have differed regarding this. It was narrated from Umar ibn Abd al-Aziz and al-Sha'bi that both of them said, 'He is not subjected to the *hadd* punishment until he becomes sober.' This was also stated by Sufyan al-Thawri and Abu Hanifah."

٢٢٩٤ - مَسْأَلَةٌ: مَتَى يُحَدُّ السَّكْرَانُ؟ أَبَعْدَ صَحْوِهِ أَمْ فِي حَالِ سُكْرِهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَرُوِيَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَالشَّعْبِيِّ، أَنَّهُمَا قَالَا: لَا يُحَدُّ حَتَّى يَصْحُوَ، وَبِهِ - قَالَ سُفْيَانُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ.

L42456–42457 A school of thought said: He is to be flogged when taken into custody.

وَقَالَتْ طَائِفَةٌ: يُجْلَدُ حِينَ يُؤْخَذُ.

L42458 We know of no basis for those who say the punishment should be delayed until sobriety, except their claim that flogging constitutes an exemplary deterrent and infliction of pain—does the intoxicated person not comprehend this? Abū Muḥammad—may Allah have mercy on him—said: Those who hold that the ḥadd must be carried out immediately upon its legal confirmation cite as evidence the established report from Allah's Messenger—peace and blessings be upon him—through ʿUtbah ibn al-Ḥārith, Anas ibn Mālik, and others: "A drinker was brought to Allah's Messenger—peace and blessings be upon him—and he confessed, whereupon he administered the flogging without awaiting his sobriety."

وَمَا نَعْلَمُ لِمَنْ قَالَ: يُؤَخَّرُ حَتَّى يَصْحُوَ إلَّا أَنْ قَالُوا: إنَّ الْجَلْدَ تَنْكِيلٌ وَإِيلَامٌ، وَالسَّكْرَانُ لَا يَعْقِلُ ذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَاحْتَجَّ مَنْ رَأَى أَنَّ الْحَدَّ حِينَ يُؤْخَذُ بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ عُتْبَةَ بْنِ الْحَارِثِ، وَأَنَسِ بْنِ مَالِكٍ، وَغَيْرِهِمْ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِالشَّارِبِ فَأَقَرَّ، فَضَرَبَهُ وَلَمْ يَنْتَظِرْ أَنْ يَصْحُوَ» .

L42459 Speculative reasoning does not override authentically transmitted textual evidence; therefore, the hadd punishment must be administered when the individual is brought forward, unless they lack consciousness whatsoever and possess no understanding, in which case it is postponed until they attain consciousness—and success is granted by Allah, the Most High.

وَالنَّظَرُ لَا يَدْخُلُ عَلَى الْخَبَرِ الثَّابِتِ، فَالْوَاجِبُ أَنْ يُحَدَّ حِينَ يُؤْتَى بِهِ، إِلَّا أَنْ يَكُونَ لَا يُحِسُّ أَصْلًا، وَلَا يَفْهَمَ شَيْئًا، فَيُؤَخَّرُ حَتَّى يُحِسَّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L42460 A legal question concerning one who sits with wine-drinkers or entrusts his son to a disbeliever, and the disbeliever subsequently gives the son wine to drink.

[مَسْأَلَة فِيمَنْ جَالَسَ شُرَّابَ الْخَمْرِ أَوْ دَفَعَ ابْنَهُ إلَى كَافِرٍ فَسَقَاهُ خَمْرًا]

L42461 2295 - Issue: Concerning one who sits with drinkers of wine or hands his son over to a disbeliever, and the disbeliever gives him wine to drink. Abu Muhammad (may Allah have mercy on him) said: Abdullah ibn Rabi' narrated to us: Abdullah ibn Muhammad ibn Uthman narrated to us: Ahmad ibn Khalid narrated to us: Ali ibn Abdulaziz narrated to us: Al-Hajjaj ibn Al-Minhal narrated to us: Hammad ibn Salamah narrated from Ali ibn Zayd ibn Jud'an from Al-Hasan Al-Basri that Ibn Amir said: "Whenever a man who handed his son over to a Jew or a Christian, and the disbeliever gave him wine to drink, is brought before me, I will impose the ḥadd on his father by flogging."

٢٢٩٥ - مَسْأَلَةٌ: فِيمَنْ جَالَسَ شُرَّابَ الْخَمْرِ، أَوْ دَفَعَ ابْنَهُ إلَى كَافِرٍ فَسَقَاهُ خَمْرًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَلِيِّ بْنِ زَيْدِ بْنِ جُدْعَانَ عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّ ابْنَ عَامِرٍ قَالَ: لَا أُوتَى بِرَجُلٍ دَفَعَ ابْنَهُ إلَى يَهُودِيٍّ، أَوْ نَصْرَانِيٍّ، فَسَقَاهُ خَمْرًا إلَّا جَلَدْتُ أَبَاهُ الْحَدَّ.

L42462 And through him—to Hammad ibn Salamah: I am Hisham ibn Urwah from his father, that a fasting man who had invited a group and served them wine—though he did not drink with them—was brought to Marwan ibn al-Hakam. They were flogged the ḥadd punishment, and Marwan flogged him alongside them. Abu Muhammad—may Allah have mercy on him—said: This is not something to be heeded, for the Messenger of Allah—peace and blessings be upon him and his family—said: "Your blood, your wealth, your honor, and your bodily integrity are inviolable upon you."

وَبِهِ - إلَى حَمَّادِ بْنِ سَلَمَةَ أَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ أَنَّ مَرْوَانَ بْنَ الْحَكَمِ أُتِيَ بِرَجُلٍ صَائِمٍ دَعَا قَوْمًا فَسَقَاهُمْ الْخَمْرَ - وَلَمْ يَشْرَبْ مَعَهُمْ - فَجُلِدُوا الْحَدَّ، وَجَلَدَهُ مَعَهُمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَيْسَ هَذَا مِمَّا يُعْبَأُ بِهِ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

L42463 We have clarified that there is no hadd punishment except upon a fornicator, apostate, highway robber, one who falsely accuses of unlawful sexual intercourse, thief, one who borrows an item and denies receiving it, or drinker of an intoxicant.

وَقَدْ بَيَّنَّا - أَنْ لَا حَدَّ إلَّا عَلَى زَانٍ، أَوْ مُرْتَدٍّ، أَوْ مُحَارِبٍ، وَقَاذِفٍ، أَوْ سَارِقٍ، أَوْ مُسْتَعِيرٍ جَاحِدٍ، أَوْ شَارِبِ خَمْرٍ.

L42464 As for the one who serves another wine, there is no prescribed punishment

upon him because the act itself is inherently unlawful. No evidence—neither from the Qur'an, nor an authentic Sunnah, nor a weak Sunnah, nor consensus, nor the statement of a Companion—has been established to justify permitting it through the imposition of the prescribed punishment.

L42465–42466 Abu Muhammad—may Allah have mercy on him—said: It is indeed incumbent that those who assert retributive killing for one who detains a person until the detainee is unjustly slain, those who impose the ḥadd for indirect defamation by analogy to explicit defamation, and those who impose the ḥadd for committing the act of the people of Lut, i.e., sodomy, by analogy to fornication must likewise impose the ḥadd on the one who serves wine to others by analogy to the drinker of it—otherwise, their stance contradicts their analogical framework—and success is from Allah, the Exalted.

L42467 **The issue of one who is coerced to drink wine or compelled by necessity to drink it.**

L42468 Question 2296: What is the ruling for one who was compelled to drink intoxicants?

L42469 Abū Muḥammad—may Allah have mercy on him—said: Whoever is coerced into drinking an intoxicant, or forced by dire necessity due to thirst, treatment, or to avert choking, and drinks it, or is ignorant of its nature and does not realize that it is an intoxicant—none of these individuals incurs the prescribed punishment.

L42470 As for the coerced person, he is in a state of dire necessity, for the Most High has said, "He has made clear to you what He has forbidden to you, except that which you are compelled to [consume]" [al-Anʿām 6:119].[59]

L42471 And the Most High has said, "So whoever is compelled, neither intending [to transgress] nor transgressing [limits], there is no sin upon him" [Quran 2:173].[60]

L42472 Therefore, it has been established that the one compelled by necessity is not

[59] **Qur'an references (L42470):** Qur'an 6:119 (Al-An'am).
[60] **Qur'an references (L42471):** Qur'an 2:173 (Al-Baqarah).

وَأَمَّا مَنْ سَقَى غَيْرَهُ الْخَمْرَ فَلَا حَدَّ عَلَيْهِ؛ لِأَنَّ بَشَرَتَهُ حَرَامٌ، وَلَمْ يَأْتِ بِإِبَاحَتِهَا بِإِيجَابِ الْحَدِّ عَلَيْهِ، لَا قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا سَقِيمَةٌ، وَلَا إجْمَاعٌ، وَلَا قَوْلُ صَاحِبٍ؟

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: لَقَدْ يَلْزَمُ مَنْ رَأَى الْقَوَدَ بِالْقَتْلِ عَلَى الْمُمْسِكِ إنْسَانًا حَتَّى قُتِلَ ظُلْمًا، وَمَنْ رَأَى الْحَدَّ فِي التَّعْرِيضِ قِيَاسًا عَلَى الْقَذْفِ، وَمَنْ رَأَى الْحَدَّ عَلَى فَاعِلِ فِعْلِ قَوْمِ لُوطٍ قِيَاسًا عَلَى الزِّنَى: أَنْ يَرَى الْحَدَّ عَلَى سَاقِي الْقَوْمِ الْخَمْرَ قِيَاسًا عَلَى شَارِبِهَا - وَإِلَّا فَقَدْ تَنَاقَضُوا فِي قِيَاسِهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مَنْ أُكْرِهَ عَلَى شُرْبِ الْخَمْرِ أَوْ اُضْطُرَّ إلَيْهَا]

٢٢٩٦ - مَسْأَلَةٌ: مَنْ اُضْطُرَّ إلَى شُرْبِ الْخَمْرِ؟

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: مَنْ أُكْرِهَ عَلَى شُرْبِ الْخَمْرِ، أَوْ اُضْطُرَّ إلَيْهَا لِعَطَشٍ، أَوْ عِلَاجٍ، أَوْ لِدَفْعِ خَنْقٍ، فَشَرِبَهَا، أَوْ جَهِلَهَا فَلَمْ يَدْرِ أَنَّهَا خَمْرٌ، فَلَا حَدَّ عَلَى أَحَدٍ مِنْ هَؤُلَاءِ.

أَمَّا الْمُكْرَهُ - فَإِنَّهُ مُضْطَرٌّ، وَقَدْ قَالَ تَعَالَى {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] .

وَقَدْ قَالَ تَعَالَى {فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَلا عَادٍ فَلا إِثْمَ عَلَيْهِ} [البقرة: ١٧٣] .

فَصَحَّ أَنَّ الْمُضْطَرَّ لَا يَحْرُمُ عَلَيْهِ شَيْءٌ مِمَّا اُضْطُرَّ إلَيْهِ مِنْ طَعَامٍ، أَوْ شَرَابٍ.

prohibited from anything he was compelled to [consume], whether food or drink.

L42473 As for the ignorant person, he has not transgressed what Allah the Exalted has prohibited upon him. No hadd punishment applies except to one who knows the prohibition. No two people of the Ummah disagree that if a woman other than his wife is secretly brought to a man, and he has intercourse with her while unaware of her identity—thinking she is his wife—no hadd punishment is incurred upon him.

L42474 As for the one who recites the Quran and alters it out of ignorance, is he not liable? He, the Exalted, said, "That I may warn you thereby and whoever the warning reaches" [Surah al-An'am 6:19]. Thus, it is established that there is no ḥadd punishment except upon the one to whom the prohibition has been conveyed, and upon the one who knows that illicit sexual intercourse is forbidden yet intentionally commits it deliberately—and success comes only from Allah, the Exalted.[61]

L42475 ## The Issue of the Ḥadd of the Dhimmi Concerning Wine

L42476 Abu Muhammad (may God have mercy on him) said: We have elucidated in numerous contexts that the scope of the rulings applied to the People of the Covenant is the same as those applied to the People of Islam.

L42477 Allah, the Exalted, says: "And fight them until there is no persecution and religion is wholly for Allah" (Al-Anfal 8:39).[62]

L42478 And because of His words, the Exalted: *"Judge between them by what Allah has revealed"* (al-Mā'idah 5:49).[63]

L42479–42480 Al-Hasan ibn Ziyād said: "There is no Ḥadd punishment for a Dhimmi unless he becomes intoxicated; if he becomes intoxicated, should the Ḥadd punishment then be applied to him?" Abū Muḥammad—may Allah have

[61] **Qur'an references (L42474):** Qur'an 6:19 (Al-An'am).
[62] **Qur'an references (L42477):** Qur'an 8:39 (Al-Anfal).
[63] **Qur'an references (L42478):** Qur'an 5:49 (Al-Ma'idah).

وَأَمَّا الْجَاهِلُ - فَإِنَّهُ لَمْ يَتَعَدَّ مَا حَرَّمَ اللَّهُ تَعَالَى عَلَيْهِ، وَلَا حَدَّ إلَّا عَلَى مَنْ عَلِمَ التَّحْرِيمَ - وَلَا يَخْتَلِفُ اثْنَانِ مِنْ الْأُمَّةِ فِي أَنَّهُ مَنْ دُسَّتْ إلَيْهِ غَيْرُ امْرَأَتِهِ فَوَطِئَهَا وَهُوَ لَا يَدْرِي مَنْ هِيَ يَظُنُّ أَنَّهَا زَوْجَتُهُ، فَلَا حَدَّ عَلَيْهِ.

وَأَمَّا مَنْ قَرَأَ الْقُرْآنَ فَبَدَّلَهُ جَاهِلًا، فَلَا شَيْءَ عَلَيْهِ؟ قَالَ تَعَالَى {لِأُنْذِرَكُمْ بِهِ وَمَنْ بَلَغَ} [الأنعام: ١٩] فَصَحَّ أَنَّهُ لَا حَدَّ إلَّا عَلَى مَنْ بَلَغَهُ التَّحْرِيمُ، وَعَلَى مَنْ عَرَفَ أَنَّ الزِّنَى حَرَامٌ فَقَصَدَهُ عَمْدًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة حَدُّ الذِّمِّيِّ فِي الْخَمْرِ]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: قَدْ بَيَّنَّا فِي مَوَاضِعَ جَمَّةٍ مِقْدَارَ الْحُكْمِ عَلَى أَهْلِ الذِّمَّةِ كَالْحُكْمِ عَلَى أَهْلِ الْإِسْلَامِ.

لِقَوْلِ اللَّهِ تَعَالَى {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] .

وَلِقَوْلِهِ تَعَالَى {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] .

قَالَ الْحَسَنُ بْنُ زِيَادٍ: لَا حَدَّ عَلَى الذِّمِّيِّ إلَّا أَنْ يَسْكَرَ، فَإِنْ سَكِرَ فَعَلَيْهِ الْحَدُّ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا تَقْسِيمٌ لَا وَجْهَ لَهُ، لِأَنَّهُ لَمْ يُوجِبْهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

mercy on him—said: “This distinction has no valid basis, for it is not made obligatory by the Quran, nor the Sunnah, nor scholarly consensus. And success is from Allah, the Most High.”

[مَسْأَلَة بَيْعُ الْعَصِيرِ مِمَّنْ لَا يُوقِنُ أَنَّهُ يُبْقِيه حَتَّى يَصِيرَ خَمْرًا]

The legal question regarding the sale of juice by someone who is uncertain they will retain it until it becomes wine.

٢٢٩٨ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: جَائِزٌ بَيْعُ الْعَصِيرِ مِمَّنْ لَا يُوقِنُ أَنَّهُ يُبْقِيه حَتَّى يَصِيرَ خَمْرًا، فَإِنْ تَيَقَّنَ أَنَّهُ يَجْعَلُهُ خَمْرًا لَمْ يَحِلَّ بَيْعُهُ مِنْهُ أَصْلًا وَفُسِخَ الْبَيْعُ.

Issue 2298: Abu Muhammad—may Allah have mercy on him—said: It is permissible to sell grape juice from one who does not believe they will keep it until it becomes wine. If the seller becomes certain he will turn it into wine, the sale is entirely impermissible, and the transaction is annulled.

لِقَوْلِ اللَّهِ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَبِيَقِينٍ نَدْرِي أَنَّهُ مَنْ بَاعَ الْعِنَبَ، أَوْ التِّينَ، أَوْ الْخَمْرَ مِمَّنْ يَتَّخِذُهُ خَمْرًا، فَقَدْ أَعَانَهُ عَلَى الْإِثْمِ وَالْعُدْوَانِ - وَهَذَا مُحَرَّمٌ بِنَصِّ الْقُرْآنِ، وَإِذْ هُوَ مُحَرَّمٌ فَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» ؟ .

Due to the statement of Allah the Exalted: {And cooperate in righteousness and piety, and do not cooperate in sin and aggression} [Al-Mā’idah: 2], and with certainty we know that whoever sells grapes, figs, or wine to one who intends to make it into wine has indeed aided them in sin and aggression—and this is prohibited by the explicit text of the Quran. Since it is prohibited, has the Messenger of Allah—peace and blessings be upon him and his family—not said, “Whoever performs a deed not in accordance with our way, it is rejected?”[6465]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَمَنْ كَسَرَ إنَاءَ خَمْرٍ، أَوْ شَقَّ زِقَّ خَمْرٍ، ضَمِنَهُ؛ لِأَنَّهُ لَمْ يَصِحَّ فِي ذَلِكَ أَثَرٌ، وَأَمْوَالُ النَّاسِ مُحَرَّمَةٌ، وَقَدْ يُغْسَلُ الْإِنَاءُ وَيُسْتَعْمَلُ فِيمَا يَحِلُّ، فَإِفْسَادُهُ إفْسَادٌ لِلْمَالِ. فَإِنْ قِيلَ: إنَّ أَبَا طَلْحَةَ: وَجَمَاعَةً مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - كَسَرُوا خَوَابِيَ الْخَمْرِ؟ قُلْنَا: لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَيْسَ فِي ذَلِكَ الْخَبَرِ أَنَّهُ - عَلَيْهِ السَّلَامُ - عَرَفَ ذَلِكَ فَأَقَرَّهُ - وَالْحَدِيثُ الَّذِي فِيهِ شَقُّ الزِّقَاقِ لَا يَصِحُّ؛ لِأَنَّهُ مِنْ رِوَايَةِ طَلْقٍ، وَلَا يُدْرَى مَنْ هُوَ، عَنْ شَرَاحِيلَ بْنِ نُكَيْلٍ - هُوَ مَجْهُولٌ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَمَنْ طَرَحَ فِي الْخَمْرِ سَمَكًا وَمِلْحًا فَجَعَلَهَا مَرِيًّا؟ فَقَدْ عَصَى اللَّهَ تَعَالَى، وَعَلَيْهِ التَّعْزِيرُ، لِاسْتِعْمَالِهِ الْخَمْرَ الَّذِي لَا يَجُوزُ اسْتِعْمَالُهَا،

Abū Muḥammad—may Allāh have mercy on him—said: Whoever breaks a vessel of wine or slashes a wine-skin is liable for it, as no valid narration exists regarding this matter, for people’s wealth is sacred and protected. The vessel could be washed and used for lawful purposes, so destroying it constitutes destruction of property. If it is objected: Did not Abū Ṭalḥah and a group of Companions—may Allāh be pleased with them—break wine jars? We reply: There is no authoritative evidence in the statement of anyone other than the Messenger of Allāh—peace and blessings be upon him and his family. That report does not mention that he—peace be upon him—was aware of it and approved it. The ḥadīth mentioning the slashing of wine-skins is inauthentic, as it is narrated by Ṭalq—whose identity is unknown—from Sharāḥīl ibn Nukayl, who is an unknown narrator. Abū Muḥammad—may

[6464] **Hadith references (L42483):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[6465] **Qur’an references (L42483):** Qur’an 5:2 (Al-Ma’idah).

Allāh have mercy on him—said: If someone throws fish and salt into wine, transforming it into sauce, he has disobeyed Allāh the Exalted and is subject to discretionary punishment for utilizing wine in an impermissible manner. Wine is inherently unlawful in all circumstances, nor is anything permissible to do with it except pouring it out. If he ascertains that the mixture still has the smell, taste, or color of wine, he must pour out all of it.

وَلَا تَحِلُّ فِي شَيْءٍ أَصْلًا، وَلَا يَحِلُّ فِيهَا شَيْءٌ إلَّا الْهَرْقُ، فَإِنْ أَدْرَكَ ذَلِكَ - وَلِلْخَمْرِ رِيحٌ، أَوْ طَعْمٌ، أَوْ لَوْنٌ: هَرَقَ الْجَمِيعَ.

L42485 And likewise, every liquid mixed with wine — even if one does not realize it until after it has fully transformed, leaving no trace — none of it is spoiled, and its consumption and sale are permissible.

وَهَكَذَا كُلُّ مَائِعٍ خُلِطَ فِيهِ خَمْرٌ - وَإِنْ لَمْ يُدْرِكْ ذَلِكَ إلَّا وَقَدْ اسْتَحَالَتْ وَلَمْ يَبْقَ لَهَا أَثَرٌ - فَلَا يَفْسُدُ شَيْءٌ مِنْ ذَلِكَ، وَهُوَ حَلَالٌ أَكْلُهُ، وَبَيْعُهُ.

L42486–42487 It belongs to whoever first appropriates it among people, not to one who discards the wine. When the owner's ownership of it ceases, and when his ownership is terminated, it does not revert to him except by nass (divine text) or ijmāʿ (consensus). And with Allah alone is success, the Most High.

وَهُوَ لِمَنْ سَبَقَ إلَيْهِ مِنْ النَّاسِ، لَا لِمَنْ يَطْرَحُ الْخَمْرَ - فَمَتَى سَقَطَ مِلْكُ صَاحِبِهِ عَنْهُ، وَإِذَا سَقَطَ عَنْهُ مِلْكُهُ: لَمْ يَرْجِعْ إلَيْهِ إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L42488 **Matters of Discretionary Punishment (taʿzīr) and Those Without Fixed Penalties (ḥadd).**

[مَسَائِلُ التَّعْزِيرِ وَمَا لَا حَدَّ فِيهِ]

L42489 **Legal Principle: Allah the Exalted has no limited boundary, nor does His Messenger, except in seven matters.**

[مَسْأَلَةٌ لَا حَدَّ لِلَّهِ تَعَالَى مَحْدُودٌ وَلَا لِرَسُولِهِ إلَّا فِي سَبْعَةِ أَشْيَاءَ]

L42490 Issues of Discretionary Punishments and Matters Without Prescribed Penalties 2299 - Issue: Abu Muhammad—may Allah have mercy on him—said: We have stated that there is no divinely fixed punishment (hadd) ordained by Allah the Exalted or His Messenger—peace and blessings be upon him and his family—except in seven matters: apostasy, highway robbery before the perpetrator is apprehended, unlawful sexual intercourse, false accusation of unlawful sexual intercourse, consuming intoxicants—whether intoxication occurs or not—theft, and denial of a loaned item.

مَسَائِلُ التَّعْزِيرِ وَمَا لَا حَدَّ فِيهِ ٢٢٩٩ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَقَدْ قُلْنَا: إنَّهُ لَا حَدَّ لِلَّهِ تَعَالَى مَحْدُودٌ وَلَا لِرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إلَّا فِي سَبْعَةِ أَشْيَاءَ، وَهِيَ: الرِّدَّةُ، وَالْحِرَابَةُ قَبْلَ أَنْ يُقْدَرَ عَلَيْهِ، وَالزِّنَى، وَالْقَذْفِ بِالزِّنَى، وَشُرْبُ الْمُسْكِرِ - سَكِرَ أَوْ لَمْ يَسْكَرْ - وَالسَّرِقَةُ، وَجَحْدُ الْعَارِيَّةِ.

L42491 As for other sins, only discretionary punishment applies—which is disciplinary measures. Among these are certain matters wherein some early scholars deemed an obligatory prescribed punishment. We shall mention these—if Allah the Exalted wills—and present the arguments of those who considered them subject to prescribed punishment and those who did not,

وَأَمَّا سَائِرُ الْمَعَاصِي - فَإِنَّ فِيهَا التَّعْزِيرُ فَقَطْ - وَهُوَ الْأَدَبُ - وَمِنْ جُمْلَةِ ذَلِكَ أَشْيَاءُ، رَأَى فِيهَا قَوْمٌ مِنْ الْمُتَقَدِّمِينَ حَدًّا وَاجِبًا نَذْكُرُهَا - إنْ شَاءَ اللَّهُ تَعَالَى - وَنَذْكُرُ حُجَّةَ مَنْ رَأَى فِيهَا الْحَدَّ وَحُجَّةَ مَنْ لَمْ يَرَهُ لِيَلُوحَ الْحَقُّ فِي ذَلِكَ - بِعَوْنِ اللَّهِ تَعَالَى - كَمَا فَعَلْنَا فِي

so that the truth may become evident in this regard—with the help of Allah the Exalted—as we have done throughout our book. These matters are: intoxication, accusing someone of drinking wine, ambiguous accusations, drinking blood, eating pork and carrion, committing the act of the people of Lot, engaging in bestiality, a woman entering into a marital act with an animal, accusing someone of bestiality, lesbianism, abandoning prayer without denying its obligation, breaking the fast in Ramadan similarly without denying its obligation, and sorcery.

L42492 And we, if Allah, the Exalted, wills, will mention all of that chapter by chapter.

L42493 **An issue concerning what warrants enforcement of the ḥadd punishment upon the intoxicated person.**

L42494 Issue 2300: Question: Intoxication? Abu Muhammad said: Abu Hanifah permitted drinking fermented raisin infusion when cooked, fermented date infusion when cooked, and grape juice when cooked until two-thirds of it is reduced - even if all these cause intoxication - for they remain lawful according to him. There is no hadd for this unless one drinks the intoxicating quantity. If intoxication results from any of these, the hadd applies.

L42495 If one drinks intoxicating fig nabidh, intoxicating honey infusion, intoxicating apple juice, wheat drink, barley drink, or intoxicating corn drink—whether he became intoxicated from all of that or not—there is no prescribed punishment whatsoever. Abu Muhammad—may God have mercy on him—said: "And they say: 'Prescribed punishments are not derived by analogy at all?'"

L42496–42497 We say to them: Where did you find this division? Is it in the Quran, or in a sound, sick, or fabricated Sunnah? Or in consensus, or evidence of consensus? Or in the statement of a Companion, or in the view of someone before you, or in analogy, or in a sound opinion? Do they have no way of finding this in any of the mentioned sources? For if they say: "Allah the Exalted prohibited wine in the Quran," we reply: Yes. Then from where did you derive the prescribed punishment for intoxication from what you

سَائِرِ كَتَابِنَا: وَتِلْكَ الْأَشْيَاءُ: السُّكْرُ، وَالْقَذْفُ بِالْخَمْرِ، وَالتَّعْرِيضُ، وَشُرْبُ الدَّمِ، وَأَكْلُ الْخِنْزِيرِ، وَالْمَيْتَةِ، وَفِعْلُ قَوْمِ لُوطٍ، وَإِتْيَانُ الْبَهِيمَةِ، وَالْمَرْأَةُ تَسْتَنْكِحُ الْبَهِيمَةَ، وَالْقَذْفُ بِالْبَهِيمَةِ، وَسَحْقُ النِّسَاءِ، وَتَرْكُ الصَّلَاةِ غَيْرَ جَاحِدٍ لَهَا، وَالْفِطْرُ فِي رَمَضَانَ كَذَلِكَ، وَالسِّحْرُ.

وَنَحْنُ إِنْ شَاءَ اللَّهُ تَعَالَى ذَاكِرُونَ كُلَّ ذَلِكَ بَابًا بَابًا.

[مَسْأَلَة مِمَّا يحد السَّكْرَان]

٢٣٠٠ - مَسْأَلَةٌ: السُّكْرُ؟ قَالَ أَبُو مُحَمَّدٍ: أَبَاحَ أَبُو حَنِيفَةَ شُرْبَ نَقِيعِ الزَّبِيبِ إِذَا طُبِخَ، وَشُرْبَ نَقِيعِ التَّمْرِ إِذَا طُبِخَ، وَشُرْبَ عَصِيرِ الْعِنَبِ إِذَا طُبِخَ حَتَّى يَذْهَبَ ثُلُثَاهُ - وَإِنْ أَسْكَرَ كُلُّ ذَلِكَ - فَهُوَ عِنْدَهُ حَلَالٌ، وَلَا حَدَّ فِيهِ مَا لَمْ يَشْرَبْ مِنْهُ الْقَدْرَ الَّذِي يُسْكِرُ - وَإِنْ سَكِرَ مِنْ شَيْءٍ مِنْ ذَلِكَ فَعَلَيْهِ الْحَدُّ.

وَإِنْ شَرِبَ نَبِيذَ تِينٍ مُسْكِرٍ، أَوْ نَقِيعَ عَسَلٍ مُسْكِرٍ، أَوْ عَصِيرَ تُفَّاحٍ مُسْكِرٍ، أَوْ شَرَابَ قَمْحٍ، أَوْ شَعِيرٍ، أَوْ ذُرَةٍ مُسْكِرٍ: فَسَكِرَ مِنْ كُلِّ ذَلِكَ، أَوْ لَمْ يَسْكَرْ، فَلَا حَدَّ فِي ذَلِكَ أَصْلًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهُمْ يَقُولُونَ: إِنَّ الْحُدُودَ لَا تُؤْخَذُ قِيَاسًا أَصْلًا؟

فَنَقُولُ لَهُمْ: أَيْنَ وَجَدْتُمْ هَذَا التَّقْسِيمَ؟ أَفِي قُرْآنٍ، أَمْ فِي سُنَّةٍ صَحِيحَةٍ، أَوْ سَقِيمَةٍ، أَوْ مَوْضُوعَةٍ؟ أَوْ فِي إِجْمَاعٍ، أَوْ دَلِيلِ إِجْمَاعٍ؟ أَمْ فِي قَوْلِ صَاحِبٍ، أَمْ فِي قَوْلِ أَحَدٍ قَبْلَكُمْ، أَمْ فِي قِيَاسٍ، أَمْ فِي رَأْيٍ يَصِحُّ؟ فَلَا سَبِيلَ لَهُمْ إِلَى وُجُودِ ذَلِكَ فِي شَيْءٍ مِمَّا ذُكِرَ؟ ؛ لِأَنَّهُمْ، إِنْ قَالُوا: حَرَّمَ اللَّهُ تَعَالَى الْخَمْرَ فِي الْقُرْآنِ؟ قُلْنَا: نَعَمْ، فَمِنْ أَيْنَ وَجَدْتُمْ أَنْتُمُ الْحَدَّ فِي

السُّكْرِ مِمَّا لَيْسَ خَمْرًا عِنْدَكُمْ، بَلْ هُوَ حَلَالٌ عِنْدَكُمْ طَيِّبٌ، وَهُوَ مَطْبُوخُ عَصِيرِ الْعِنَبِ إِذَا ذَهَبَ ثُلُثَاهُ، وَنَقِيعُ الزَّبِيبِ، وَنَقِيعُ التَّمْرِ إِذَا طُبِخَا، وَلَا خَمْرَ هَاهُنَا أَصْلًا؟ فَإِنْ قَالُوا: «جَلَدَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - السَّكْرَانَ إِذْ أُتِيَ بِهِ» .

وَرَوَوْا حَدِيثَ الْخَمْرِ بِعَيْنِهَا، وَالسُّكْرُ مِنْ غَيْرِهَا، أَوْ مِنْ كُلِّ شَرَابٍ، و «اشْرَبُوا فِي الظُّرُوفِ وَلَا تَسْكَرُوا» وَمَا كَانَ فِي مَعْنَى هَذِهِ الْأَخْبَارِ؟ قُلْنَا لَهُمْ: وَبِاللَّهِ تَعَالَى التَّوْفِيقُ - فَأَنْتُمْ أَوَّلُ مَنْ خَالَفَ ذَلِكَ، فَإِنَّكُمْ لَا تَرَوْنَ الْحَدَّ عَلَى مَنْ وُجِدَ سَكْرَانَ.

وَأَيْضًا: فَهَلْ وَجَدْتُمْ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَأَلَهُ مِمَّاذَا سَكِرَ؟ فَإِنْ قَالَ لَهُ: مِنْ نَبِيذِ عَسَلٍ، أَوْ شَرَابِ شَعِيرٍ، أَوْ شَرَابِ ذُرَةٍ، أَطْلَقَهُ، وَقَدْ كَانَ كُلُّ ذَلِكَ مَوْجُودًا كَثِيرًا عَلَى عَهْدِهِ - عَلَيْهِ السَّلَامُ -.

yourselves do not consider wine—but it is lawful and wholesome according to you, such as boiled grape juice when two-thirds of it has evaporated, raisin infusion, and date infusion when cooked, when there is no wine here at all? If they say: "The Messenger of Allah (peace and blessings be upon him) flogged the intoxicated person when he was brought to him,"

L42498 They narrated the hadith specifically about wine itself, and intoxication from other than it or from any drink, and the hadith, "Drink from the vessels but do not become intoxicated," along with what falls within the meaning of these reports. We said to them—And with Allah alone is success—"You are foremost in contradicting this, for you do not uphold the ḥadd punishment against one found in a state of intoxication."

L42499 Moreover, have you ever found that the Prophet—peace and blessings of Allah be upon him—asked someone about the source of their intoxication? If the person answered: "From honey nabīdh, a barley drink, or a corn drink," he allowed it, though all such beverages were abundantly available during his time—peace be upon him.

وَإِنْ قَالَ لَهُ: مِنْ نَبِيذِ تَمْرٍ، أَوْ نَقِيعِ زَبِيبٍ، أَوْ عَصِيرِ عِنَبٍ: حَدَّهُ.

L42500 If he informs him that it is made from date wine, raisin soak, or grape juice, the ḥadd punishment is incurred.

هَلْ جَاءَ هَذَا قَطُّ فِي نَقْلٍ صَادِقٍ أَوْ كَاذِبٍ؟ فَأَنَّى لَكُمْ هَذَا التَّقْسِيمُ السَّخِيفُ؟ فَعَنْهُ سَأَلْنَاكُمْ، وَعَنْ تَحْرِيمِكُمْ بِهِ، وَتَحْلِيلِكُمْ، وَعَنْ إِبَاحَتِكُمْ بِهِ الْأَشْيَاءَ الْمُحَرَّمَةَ، أَوْ إِسْقَاطِكُمْ حُدُودَ اللَّهِ تَعَالَى الْوَاجِبَةَ؟ فَإِنْ قَالُوا: قَدْ صَحَّ الْإِجْمَاعُ عَلَى حَدِّ الشَّارِبِ بِعَصِيرِ الْعِنَبِ الَّذِي لَمْ يُطْبَخْ إِذَا سَكِرَ، وَاخْتُلِفَ فِيمَا عَدَاهُ؟ قُلْنَا لَهُمْ: فَمِنْ أَيْنَ أَوْجَبْتُمُ الْحَدَّ عَلَى مَنْ سَكِرَ مِنْ نَبِيذِ التَّمْرِ - مَطْبُوخًا كَانَ أَوْ غَيْرَ مَطْبُوخٍ - وَمِنْ نَبِيذِ الرُّطَبِ كَذَلِكَ، وَمِنْ نَبِيذِ الزَّهْوِ، وَمِنْ نَبِيذِ الْبُسْرِ، وَمِنْ نَبِيذِ الزَّبِيبِ كَذَلِكَ، وَلَا إِجْمَاعَ فِي وُجُوبِ الْحَدِّ عَلَيْهِ؟ وَقَدْ رُوِّينَا عَنِ الْحَسَنِ وَغَيْرِهِ: أَنَّهُ لَا حَدَّ عَلَى السَّكْرَانِ مِنَ النَّبِيذِ - وَكَذَلِكَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى - وَلَا يَجِدُونَ أَبَدًا قَوْلَ صَاحِبٍ، وَلَا قَوْلَ تَابِعٍ بِمِثْلِ هَذَا التَّقْسِيمِ.

L42501–42503 Has this ever been conveyed through any truthful or false report? Whence have you come by this preposterous division? We question you concerning it—your prohibitions based on it, your permissions, your permitting of forbidden matters through it, or your annulment of Allah the Exalted's obligatory ḥadd punishments? If they respond: "Consensus has been established regarding the ḥadd punishment for one who drinks uncooked grape juice when intoxicated, while disagreement exists concerning other cases," we reply: From what evidence do you mandate ḥadd punishment for one intoxicated by date wine—whether cooked or otherwise... Uncooked—and likewise nabidh of fresh dates, nabidh of zahw, nabidh of unripe dates, and nabidh of raisins likewise. Is there no consensus regarding the obligation of imposing the *hadd* punishment for it? It has been narrated to us from al-Ḥasan and others that there is no *hadd* punishment for one intoxicated by *nabidh*—similarly from Ibrāhīm al-Nakhaʿī—and this is the opinion of Ibn Abī Laylā. They have never found any opinion of a Companion or a Follower resembling this categorization ever.

وَكَذَلِكَ مَنْ اُضْطُرَّ إِلَى الْخَمْرِ لِعَطَشٍ، أَوْ لِاخْتِنَاقٍ، فَشَرِبَ مِنْهَا مِقْدَارَ مَا يُزِيلُ عَطَشَهُ، أَوْ اخْتِنَاقَهُ، وَذَلِكَ حَلَالٌ لَهُ - عِنْدَنَا وَعِنْدَهُمْ - فَسَكِرَ مِنْ ذَلِكَ؟ وَهَذَا لَا يَقُولُونَهُ.

L42504 If someone is forced by necessity to drink wine due to thirst or suffocation and drinks the amount that alleviates his thirst or suffocation—this is permissible for him according to our school and theirs—but then becomes intoxicated by it? This is not a position they uphold.

فَصَحَّ يَقِينًا أَنَّ السُّكْرَ لَا حَدَّ فِيهِ أَصْلًا، وَإِنَّمَا الْحَدُّ، وَالتَّحْرِيمُ، فِي الْمُسْكِرِ - سَكِرَ مِنْهُ أَوْ لَمْ يَسْكَرْ - وَقَدْ نَجِدُ مَنْ يَسْكَرُ مِنْ ثَلَاثَةِ أَرْطَالٍ - أَوْ أَرْبَعَةٍ سُكْرًا شَدِيدًا - وَنَجِدُ مَنْ لَا يَسْكَرُ مِنْ أَزِيدَ مِنْ عِشْرِينَ رِطْلًا مِنْ خَمْرٍ، وَلَا تَتَغَيَّرُ لَهُ حَالَةٌ أَصْلًا.

L42505 It is thus established with certainty that there is absolutely no prescribed punishment for intoxication itself. Rather, the prescribed punishment and prohibition pertain solely to the intoxicant—whether one becomes intoxicated from it or not. For indeed, we find those who become severely intoxicated from three arṭāl—or four—resulting in severe intoxication, while we find others who do not become intoxicated from more than twenty riṭl of wine, and their condition shows no alteration whatsoever.

L42506 As for accusing someone of drinking wine—we have previously discussed this in earlier chapters. The position of Rajaʿ ibn Ḥaywah and others asserts the obligation of the *ḥadd* punishment in this matter, but we have clarified

that the *ḥadd* is not obligatory here, as it is not substantiated by a Quranic verse, Sunnah, or consensus. Success comes from Allah, the Exalted.

وَأَمَّا الْقَذْفُ بِشُرْبِ الْخَمْرِ - فَقَدْ ذَكَرْنَاهُ قَبْلَ هَذَا بِأَبْوَابٍ وَقَوْلُ رَجَاءِ بْنِ حَيْوَةُ وَغَيْرِهِ إيجَابُ الْحَدِّ فِيهِ، وَبَيَّنَّا أَنَّ الْحَدَّ لَا يَجِبُ فِي ذَلِكَ، إذْ لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L42507 As for indirect insinuation in accusations of unlawful intercourse (qadhf) - we have previously mentioned in our discussion on the prescribed punishment for qadhf and thoroughly examined there that no punishment applies to indirect insinuation. This is because neither the Quran, nor any Sunnah - whether sound or weak - from the Messenger of Allah (peace be upon him), nor consensus obligates the punishment for it. This is because the Companions (may Allah be pleased with them) disagreed on this matter, and the view of some is no more valid than that of others. We also confirmed the authenticity of the narration from the Messenger of Allah (peace be upon him) regarding "the man who informed him that his wife had borne a black child - while he was insinuating denial of parentage."

وَأَمَّا التَّعْرِيضُ فِي الْقَذْفِ - فَقَدْ ذَكَرْنَاهُ فِي كَلَامِنَا فِي حَدِّ الْقَذْفِ وَتَقَصَّيْنَاهُ هُنَالِكَ أَنَّهُ لَا حَدَّ فِي التَّعْرِيضِ؛ لِأَنَّهُ لَمْ يُوجِبْ الْحَدَّ فِيهِ قُرْآنٌ، وَلَا سُنَّةٌ، عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا صَحِيحَةٌ، وَلَا سَقِيمَةٌ، وَلَا إجْمَاعٌ؛ لِأَنَّ الصَّحَابَةَ - رَضِيَ اللَّهُ عَنْهُمْ - اخْتَلَفُوا فِي ذَلِكَ، وَلَيْسَ قَوْلُ بَعْضِهِمْ أَوْلَى مِنْ قَوْلِ بَعْضٍ - وَذَكَرْنَا صِحَّةَ الْخَبَرِ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الَّذِي أَخْبَرَهُ: أَنَّ امْرَأَتَهُ وَلَدَتْ وَلَدًا أَسْوَدَ - وَهُوَ يُعَرِّضُ بِنَفْيِهِ» .

L42508 And regarding the one who informed him (peace be upon him) that his wife did not repel the hand of a toucher, the Messenger of Allah (peace and blessings be upon him) did not impose upon him the ḥadd punishment for false accusation of adultery. And success is from Allah, the Most High. 2301.

وَفِي «الَّذِي أَخْبَرَهُ - عَلَيْهِ السَّلَامُ -: أَنَّ امْرَأَتَهُ لَا تَرُدُّ يَدَ لَامِسٍ فَلَمْ يُوجِبْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَيْهِ حَدَّ الْقَذْفِ» - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. ٢٣٠١ -

The issue of drinking blood, and eating pork and carrion.

[مَسْأَلَة شُرْبُ الدَّمِ وَأَكْلُ الْخِنْزِيرِ وَالْمَيْتَةِ]

L42509

L42510–42512 [?] Abu Muhammad (may Allah have mercy on him) said: "I am Hammām." Ibn Mufarrij narrated to us: Ibn al-A'rabī narrated to us: al-Dabarī narrated to us [...] Abd al-Razzaq reported from Ibn Jurayj, who said: I asked Ata, "What about a man found eating pork who said, 'I craved it'? Or one who encountered a sacrificial camel and slaughtered it, knowing it was a sacrificial camel? Or a woman who broke her fast during Ramadan? Or a man who had intercourse with his menstruating wife? Or one who intentionally killed game within the sacred precinct? Or someone who drank wine and neglected some prayers?" He mentioned several scenarios. Ata replied, "God is not forgetful. Had He willed, He would have specified that as a named ruling. I have not heard anything about these matters." Then he reconsidered and

؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ، قُلْت لِعَطَاءٍ: رَجُلٌ وُجِدَ يَأْكُلُ لَحْمَ الْخِنْزِيرِ، وَقَالَ: اشْتَهَيْتُهُ - أَوْ مَرَّتْ بِهِ بَدَنَةٌ فَنَحَرَهَا، وَقَدْ عَلِمَ أَنَّهَا بَدَنَةٌ - أَوْ امْرَأَةٌ أَفْطَرَتْ فِي رَمَضَانَ - أَوْ أَصَابَ امْرَأَتَهُ حَائِضًا - أَوْ قَتَلَ صَيْدًا فِي الْحَرَمِ مُتَعَمِّدًا - أَوْ شَرِبَ خَمْرًا فَتَرَكَ بَعْضَ الصَّلَاةِ فَذَكَرَ جُمْلَةً؟ فَقَالَ عَطَاءٌ: مَا كَانَ اللَّهُ نَسِيًّا، لَوْ شَاءَ لَجَعَلَ ذَلِكَ شَيْئًا يُسَمِّيهِ، مَا سَمِعْتُ

said, “If someone does this once, nothing is required of him. But if he repeats it, let him be punished as a deterrent.” He also mentioned the one who kissed his wife and the one who had relations with his spouse during Ramadan.

فِي ذَلِكَ بِشَيْءٍ - ثُمَّ رَجَعَ إلَى أَنْ قَالَ: إذَا فَعَلَ ذَلِكَ مَرَّةً لَيْسَ عَلَيْهِ شَيْءٌ، وَإِذَا عَاوَدَ ذَلِكَ: فَلْيُنَكَّلْ - وَذَكَرَ الَّذِي قَبَّلَ امْرَأَتَهُ، وَالَّذِي أَصَابَ أَهْلَهُ فِي رَمَضَانَ.

L42513 And through him, up to Abd al-Razzaq from Ma’mar from Qatadah, who said: If someone eats the flesh of a pig and then the opportunity for repentance arises for him, if he repents, it is accepted; otherwise, he must be executed.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، قَالَ: إذَا أَكَلَ لَحْمَ الْخِنْزِيرِ، ثُمَّ عَرَضَتْ لَهُ التَّوْبَةُ، فَإِنْ تَابَ وَإِلَّا قُتِلَ.

L42514 From Ma’mar, from al-Zuhri regarding a man who broke his fast during Ramadan: If he was a transgressor among the transgressors, he is to be punished with a severe punishment and must also perform expiation. If he did that by adopting a religion other than Islam, repentance is presented to him.

بِهِ - إلَى مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي رَجُلٍ أَفْطَرَ فِي رَمَضَانَ، فَقَالَ: إذَا كَانَ فَاسِقًا مِنْ الْفُسَّاقِ: نُكِّلَ نَكَالًا مُوجِعًا، وَيُكَفِّرُ أَيْضًا - وَإِنْ كَانَ فَعَلَ ذَلِكَ انْتِحَالًا لِدِينٍ غَيْرِ الْإِسْلَامِ، عُرِضَتْ عَلَيْهِ التَّوْبَةُ.

L42515 And by him—to Abd al-Razzaq from Sufyan al-Thawri—regarding eating pig meat in all such cases: a punishment equivalent to the punishment for intoxicants.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ فِي أَكْلِ لَحْمِ الْخِنْزِيرِ فِي كُلِّ ذَلِكَ: حَدُّ حَدِّ الْخَمْرِ.

L42516 What we know from the statements of Abū Ḥanīfa, Mālik, al-Shāfiʿī, their followers, and our school’s scholars is that he is subject to *taʿzīr* (discretionary punishment) only.

وَالَّذِي نَعْرِفُهُ مِنْ قَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمْ، وَأَصْحَابِنَا: أَنَّهُ يُعَزَّرُ فَقَطْ.

L42517 Regarding the pig, there are five opinions: an opinion stating that the prescribed punishment (ḥadd) equals that for wine; an opinion asserting there is no punishment whatsoever for it—this being the view of Sufyān al-Thawrī; and the first of ʿAṭā”s two opinions.

فَهَذِهِ فِي الْخِنْزِيرِ خَمْسَةُ أَقْوَالٍ: قَوْلٌ فِيهِ: الْحَدُّ كَحَدِّ الْخَمْرِ - وَقَوْلٌ فِيهِ: أَنَّهُ لَا شَيْءَ فِيهِ أَصْلًا - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ - وَأَوَّلُ قَوْلَيْ عَطَاءٍ -

L42518 The third ruling: he must be given the opportunity to repent. If he repents, he is spared; otherwise, he is to be executed. This is the opinion of Qatādah.

وَالثَّالِثُ: أَنَّهُ يُسْتَتَابُ، فَإِنْ تَابَ وَإِلَّا قُتِلَ - وَهُوَ قَوْلُ قَتَادَةَ

L42519 The fourth is that no penalty is imposed on him for the first instance. If he repeats it, he is subject to discretionary punishment.

وَالرَّابِعُ: أَنَّهُ لَا شَيْءَ عَلَيْهِ فِي أَوَّلِ مَرَّةٍ، فَإِنْ عَادَ عُزِّرَ.

L42520 The fifth opinion is that he should be subject to *taʿzīr* (discretionary punishment). Abū Muḥammad—may Allah have mercy on him—said: “We examined the evidence cited by those who hold that a fixed *ḥadd* punishment applies to that, but found nothing supporting their view except *qiyās* (legal

وَقَوْلَةٌ خَامِسَةٌ: أَنَّهُ يُعَزَّرُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِيمَا يَحْتَجُّ بِهِ مَنْ رَأَى أَنَّ فِي ذَلِكَ حَدًّا؟ فَلَمْ نَجِدْ لَهُمْ شَيْئًا إلَّا الْقِيَاسَ، فَلَمَّا كَانَتْ الْخَمْرُ مَطْعُومَةً مُحَرَّمَةً، فِيهَا

analogy). Since wine is a prohibited consumable entailing a fixed *ḥadd* punishment, they argue by analogy to it that every prohibited consumable must likewise entail a fixed *ḥadd* punishment, as with wine—and this is the most valid *qiyās*."

L42521 In the world, if a qiyās is ever valid…

L42522 A group said: The Messenger of Allah (peace and blessings be upon him) did not prescribe it as obligatory, but the Companions unanimously agreed upon its obligation, thus it became binding through consensus.

L42523–42524 And a group maintained that it was legislated by analogy to the ḥadd punishment for qadhf [false accusation of unchastity], because it leads to intoxication, thereby constituting qadhf.

L42525 As for the group that asserted the Messenger of Allah—peace and blessings be upon him—established the legal punishment for intoxicants, their foundational principle is to analogize unmentioned matters to those explicitly stipulated. These individuals analogize sexual contact with the anus to sexual contact with the penis, since both are considered genitalia according to them. Would any person of sound judgment doubt that if analogical reasoning were correct, analogizing drinking blood, consuming pork, and eating carrion to drinking intoxicants would be more correct than analogizing the anus to the penis? Furthermore, they all analogize the ruling of rosewater and honey—in which a mouse or bird dies without altering its color, taste, or smell—to clarified butter in which a mouse dies. Yet analogizing pork, blood, and carrion to intoxicants remains more correct than any of their analogies, even if it were valid for a day.

L42526 As for the sandgrouse, it is not like the rat, for the sandgrouse is consumed while the rat is not consumed. The sandgrouse is valid in both the state of ordinary compliance and ritual consecration, yet it is impermissible to kill it there [in sacred precincts]. The rat is not valid, and it is permissible to kill it there.

L42527 Similarly, rose water and honey are not like ghee, because according to some scholars, honey is subject to zakāt, whereas ghee is not subject to

حَدٌّ مَحْدُودٌ: وَجَبَ أَنْ يَكُونَ كُلُّ مَطْعُومٍ مُحَرَّمٍ، فِيهِ حَدٌّ مَحْدُودٌ كَالْخَمْرِ، قِيَاسًا عَلَيْهَا - وَهَذَا أَصَحُّ قِيَاسٍ.

فِي الْعَالَمِ إِنْ صَحَّ قِيَاسٌ يَوْمًا مَا.

وَطَائِفَةٌ قَالَتْ: لَمْ يَفْرِضْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَكِنَّ الصَّحَابَةَ أَجْمَعَتْ عَلَى فَرْضِهِ فَصَارَ وَاجِبًا بِالْإِجْمَاعِ.

وَطَائِفَةٌ قَالَتْ: إِنَّمَا فُرِضَتْ قِيَاسًا عَلَى حَدِّ الْقَذْفِ، لِأَنَّهَا تُؤَدِّي إِلَى السُّكْرِ، فَيَكُونُ فِيهِ الْقَذْفُ.

فَأَمَّا الْفِرْقَةُ الَّتِي قَالَتْ: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَضَ حَدَّ الْخَمْرِ، فَمِنْ أَصْلِهِمْ أَنْ يُقَاسَ الْمَسْكُوتُ عَنْهُ عَلَى الْمَنْصُوصِ عَلَيْهِ، وَهَؤُلَاءِ يَقِيسُونَ مَسَّ الدُّبُرِ عَلَى مَسِّ الذَّكَرِ، لِأَنَّ كِلَيْهِمَا عِنْدَهُمْ فَرْجٌ؟ وَلَا يَشُكُّ ذُو حِسٍّ سَلِيمٍ أَنَّهُ لَوْ صَحَّ الْقِيَاسُ، فَإِنَّ قِيَاسَ شُرْبِ الدَّمِ، وَأَكْلِ الْخِنْزِيرِ، وَالْمَيْتَةِ، عَلَى شُرْبِ الْخَمْرِ أَصَحُّ مِنْ قِيَاسِ الدُّبُرِ عَلَى الذَّكَرِ؟ وَكُلُّهُمْ يَقِيسُونَ حُكْمَ مَاءِ الْوَرْدِ، وَالْعَسَلِ، تَمُوتُ فِيهِ الْفَأْرَةُ، أَوْ الْقَطَاةُ، فَلَا تُغَيِّرُ مِنْهُ لَوْنًا وَلَا طَعْمًا وَلَا رِيحًا، عَلَى السَّمْنِ تَمُوتُ فِيهِ الْفَأْرَةُ - وَقِيَاسُ الْخِنْزِيرِ، وَالدَّمِ، وَالْمَيْتَةِ، عَلَى الْخَمْرِ أَصَحُّ مِنْ كُلِّ قِيَاسٍ لَهُمْ، وَلَوْ صَحَّ يَوْمًا مَا.

وَأَمَّا الْقَطَاةُ فَلَيْسَتْ كَالْفَأْرَةِ، لِأَنَّ الْقَطَاةَ تُؤْكَلُ، وَالْفَأْرَةُ لَا تُؤْكَلُ، وَالْقَطَاةُ تُجْزِي فِي الْحِلِّ وَالْإِحْرَامِ، وَلَا يَحِلُّ قَتْلُهَا هُنَالِكَ - وَالْفَأْرَةُ لَا تُجْزِي، وَيَحِلُّ قَتْلُهَا هُنَالِكَ.

zakāt. According to some, rose water is not subject to ribā, while all scholars agree that ghee is subject to ribā. This demonstrates that they abandoned the qiyās they invoke for argumentation, and that they neither perform it well nor apply it consistently.

وَكَذَلِكَ مَاءُ الْوَرْدِ وَالْعَسَلِ، لَيْسَ كَالسَّمْنِ؛ لِأَنَّ الْعَسَلَ عِنْدَ بَعْضِهِمْ فِيهِ الزَّكَاةُ، وَالسَّمْنُ لَا زَكَاةَ فِيهِ، وَمَاءُ الْوَرْدِ لَا رِبَا فِيهِ عِنْدَ بَعْضِهِمْ، وَالسَّمْنُ فِيهِ الرِّبَا عِنْدَ جَمِيعِهِمْ - فَظَهَرَ تَرْكُهُمْ الْقِيَاسَ الَّذِي بِهِ يَحْتَجُّونَ، وَأَنَّهُمْ لَا يُحْسِنُونَهُ، وَلَا يَطْرُدُونَهُ.

L42528 As for the group that asserts: "Indeed, the Companions—may Allah be pleased with them—affirmed the ḥadd penalty for khamr (fermented intoxicants), and qiyās is also binding upon them, just as it was binding upon the aforementioned group."

وَأَمَّا الطَّائِفَةُ الَّتِي تَقُولُ: إنَّ الصَّحَابَةَ - رَضِيَ اللَّهُ عَنْهُمْ - فَرَضُوا حَدَّ الْخَمْرِ، وَالْقِيَاسُ أَيْضًا لَازِمٌ لَهُمْ، كَمَا لَزِمَ الطَّائِفَةَ الْمَذْكُورَةَ.

L42529 As for the group that stated that the punishment for khamr was prescribed by analogy to the punishment for false accusation of unchastity (qadhf), analogy is more binding for them. For just as the punishment for khamr was prescribed by analogy to qadhf, so too should the punishment for eating pork, carrion, and drinking blood be prescribed by analogy to the punishment for khamr—with the majority of them permitting analogy based on the analogized case.

وَأَمَّا الطَّائِفَةُ الَّتِي قَالَتْ: إنَّ حَدَّ الْخَمْرِ إنَّمَا فُرِضَ قِيَاسًا عَلَى حَدِّ الْقَذْفِ، وَالْقِيَاسُ لِهَؤُلَاءِ أَلْزَمُ؛ لِأَنَّهُ كَمَا جَازَ أَنْ يُفْرَضَ حَدُّ الْخَمْرِ قِيَاسًا عَلَى حَدِّ الْقَذْفِ، فَكَذَلِكَ يُفْرَضُ حَدُّ أَكْلِ الْخِنْزِيرِ، وَالْمَيْتَةِ، وَشُرْبِ الدَّمِ، قِيَاسًا عَلَى حَدِّ الْخَمْرِ - وَجُمْهُورُهُمْ يُجِيزُونَ الْقِيَاسَ عَلَى الْمَقِيسِ.

L42530 Thus, it became clear what we stated regarding the invalidity of their statements.

فَوَضَحَ مَا قُلْنَاهُ مِنْ فَسَادِ أَقْوَالِهِمْ.

L42531–42533 Then we examined the statement of those who said: "He should be called upon to repent; if he repents, otherwise he is killed." We found that he had applied the ruling of apostasy in his case based on his own opinion—and this is erroneous, for it constitutes an unsubstantiated claim. It is impermissible to judge a Muslim as an unbeliever on account of a sin he committed unless there exists sound textual evidence or an indisputable consensus establishing that... He thereby becomes a disbeliever, and that act is disbelief. We have neither an explicit text nor a consensus stating that one who eats pork, carrion, or blood without deeming it lawful is a disbeliever. Rather, he is a disobedient, sinful transgressor—unless he commits this act while deeming it lawful, in which case he becomes a disbeliever at that moment. This is because the defiant rejection of what has been established by consensus from the texts of the Quran and the Sunnah of the Messenger of Allah—peace and blessings be upon him—is disbelief about which there is no disagreement.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: يُسْتَتَابُ، فَإِنْ تَابَ وَإِلَّا قُتِلَ، فَوَجَدْنَاهُ قَدْ حَكَمَ لَهُ بِحُكْمِ الرِّدَّةِ عِنْدَهُ - وَهَذَا خَطَأٌ؛ لِأَنَّهُ قَوْلٌ بِلَا بُرْهَانٍ، وَلَا يَجُوزُ أَنْ يُحْكَمَ عَلَى مُسْلِمٍ بِالْكُفْرِ مِنْ أَجْلِ مَعْصِيَةٍ أَتَى بِهَا إلَّا أَنْ يَأْتِيَ نَصٌّ صَحِيحٌ، أَوْ إجْمَاعٌ مُتَيَقَّنٌ، عَلَى أَنَّهُ يَكُونُ بِذَلِكَ كَافِرًا، وَأَنَّ ذَلِكَ الْفِعْلَ كُفْرٌ، وَلَيْسَ مَعَنَا نَصٌّ، وَلَا إجْمَاعٌ، عَلَى أَنَّ آكِلَ الْخِنْزِيرِ، وَالْمَيْتَةِ، وَالدَّمِ غَيْرَ مُسْتَحِلٍّ لِذَلِكَ: كَافِرٌ، وَلَكِنَّهُ عَاصٍ، مُذْنِبٌ، فَاسِقٌ، إلَّا أَنْ يَفْعَلَ ذَلِكَ مُسْتَحِلًّا لَهُ، فَيَكُونُ كَافِرًا حِينَئِذٍ؛ لِأَنَّ مُعَانَدَةَ مَا صَحَّ الْإِجْمَاعُ عَلَيْهِ مِنْ نُصُوصِ الْقُرْآنِ، وَسُنَنِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُفْرٌ لَا خِلَافَ فِيهِ - فَسَقَطَ هَذَا الْقَوْلُ لِمَا ذَكَرْنَا، وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أُمِرْتُ أَنْ

Thus, this claim is dismissed due to what we have mentioned and the statement of the Messenger of Allah—peace and blessings be upon him—: "I have been commanded to fight people until they testify that there is no deity but Allah and that I am Muhammad, the Messenger of Allah, establish salah, and give zakah. When they do so, their lives and wealth are safeguarded from me except by the due of Islam, and their reckoning rests with Allah."

The issue of one who intentionally neglects the prayer until its time elapses.

L42534

L42535 Issue 2302: Regarding one who deliberately abandons prayer until its time expires. Abu Muhammad—may Allah have mercy on him—said: Malik and Al-Shafi'i maintained that whoever states, "Prayer is an obligatory duty but I do not intend to pray," should be given respite until the prayer time elapses, then executed. Abu Hanifa, Abu Sulayman, and their followers said: He is not to be killed but disciplined until he prays. Abu Muhammad—may Allah have mercy on him—commented: As for Malik and Al-Shafi'i, they regard the one who abandons prayer as we described to remain a Muslim, for they permit his children to inherit his wealth, pray over him themselves, bury him among Muslims, maintain his marriage bond, execute his will, and allow him to inherit from deceased Muslim heirs who preceded him. Since this is their position, their ruling to kill him becomes invalid, for a Muslim's blood is inviolable except in three cases: apostasy after faith, adultery after being muhsan, or murder. The deliberate abandoner of prayer—as described—is necessarily either a disbeliever or not. If he were a disbeliever, they [Malik and Al-Shafi'i] would not hold this view, for this would require imposing upon him the rulings applicable to apostates—dissolving his marriage and other legal consequences. Since he is neither a disbeliever, nor a murderer, nor an adulterer, nor a combatant, nor one who has received the hadd punishment for drinking alcohol three times, his blood remains inviolable by explicit text. Thus their opinion is conclusively invalidated without ambiguity—all praise is due to Allah, Lord of the Worlds.[1]

[1] **Qur'an references (L42535):** Qur'an 37:182 (As-Saffat).

أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنِّي مُحَمَّدٌ رَسُولُ اللَّهِ وَيُقِيمُوا الصَّلَاةَ وَيُؤْتُوا الزَّكَاةَ، فَإِذَا فَعَلُوا ذَلِكَ عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ إِلَّا بِحَقِّ الْإِسْلَامِ، وَحِسَابُهُمْ عَلَى اللَّهِ» .

[مَسْأَلَة تَارِكُ الصَّلَاةِ عَمْدًا حَتَّى يَخْرُجَ وَقْتُهَا]

٢٣٠٢ - مَسْأَلَةٌ: تَارِكُ الصَّلَاةِ عَمْدًا حَتَّى يَخْرُجَ وَقْتُهَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ذَهَبَ مَالِكٌ، وَالشَّافِعِيُّ إلَى أَنَّ مَنْ قَالَ: الصَّلَاةُ حَقٌّ فَرْضٌ إلَّا أَنِّي لَا أُرِيدُ أَنْ أُصَلِّيَ - فَإِنَّهُ يُتَأَنَّى بِهِ حَتَّى يَخْرُجَ وَقْتُ الصَّلَاةِ، ثُمَّ يُقْتَلُ - وَقَالَ أَبُو حَنِيفَةَ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا: لَا قَتْلَ عَلَيْهِ، لَكِنْ يُعَزَّرُ حَتَّى يُصَلِّيَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا مَالِكٌ، وَالشَّافِعِيُّ، فَإِنَّهُمَا يَرَيَانِ تَارِكَ الصَّلَاةِ الَّذِي ذَكَرْنَا مُسْلِمًا؛ لِأَنَّهُمَا يُوَرِّثَانِ مَالَهُ وَلَدَهُ، وَيُصَلِّيَانِ عَلَيْهِ، وَيَدْفِنَانِهِ مَعَ الْمُسْلِمِينَ، وَلَا يُفَرِّقَانِ بَيْنَهُ وَبَيْنَ امْرَأَتِهِ، وَيُنْفِذَانِ وَصِيَّتَهُ، وَيُوَرِّثَانِهِ مَنْ مَاتَ قَبْلَهُ مِنْ وَرَثَتِهِ مِنْ الْمُسْلِمِينَ، فَإِذْ ذَلِكَ كَذَلِكَ فَقَدْ سَقَطَ قَوْلُهُمَا فِي قَتْلِهِ؛ لِأَنَّهُ لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إلَّا بِإِحْدَى ثَلَاثٍ: كُفْرٌ بَعْدَ إيمَانٍ، أَوْ زَنَى بَعْدَ إحْصَانٍ، أَوْ نَفْسٌ بِنَفْسٍ وَتَارِكُ الصَّلَاةِ مُتَعَمِّدًا - كَمَا ذَكَرْنَا - لَا يَخْلُو مِنْ أَنْ يَكُونَ بِذَلِكَ كَافِرًا، أَوْ يَكُونَ غَيْرَ كَافِرٍ - فَإِنْ كَانَ كَافِرًا، فَهُمْ لَا يَقُولُونَ بِذَلِكَ؛ لِأَنَّهُمْ لَوْ قَالُوهُ لَلَزِمَهُمْ أَنْ يُلْزِمُوهُ حُكْمَ الْمُرْتَدِّ فِي التَّفْرِيقِ بَيْنَهُ وَبَيْنَ امْرَأَتِهِ، وَفِي سَائِرِ أَحْكَامِهِ - فَإِذْ لَيْسَ كَافِرًا، وَلَا قَاتِلًا، وَلَا زَانِيًا مُحْصَنًا، وَلَا مُحَارِبًا، وَلَا مَحْدُودًا فِي الْخَمْرِ ثَلَاثَ مَرَّاتٍ، فَدَمُهُ حَرَامٌ بِالنَّصِّ، فَسَقَطَ قَوْلُهُمْ بِيَقِينٍ لَا إشْكَالَ فِيهِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L42536–42538 If they argue using the established report we previously mentioned from the statement of the Messenger of Allah—may Allah bless him and grant him peace—"I have been commanded to fight the people until they testify that there is no deity except Allah, that I am Muhammad the Messenger of Allah, and establish prayer." "And give Zakat. If they do so, they will be guaranteed protection from me for their lives and wealth, except by the right of Islam, and their account is with Allah."

فَإِنْ احْتَجُّوا بِالْخَبَرِ الثَّابِتِ الَّذِي ذَكَرْنَاهُ آنِفًا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أُمِرْت أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إلَهَ إلَّا اللَّهُ وَأَنِّي مُحَمَّدٌ رَسُولُ اللَّهِ وَيُقِيمُوا الصَّلَاةَ وَيُؤْتُوا الزَّكَاةَ فَإِذَا فَعَلُوا ذَلِكَ عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ إلَّا بِحَقِّ الْإِسْلَامِ وَحِسَابُهُمْ عَلَى اللَّهِ» .

L42539 "And by the statement of Allah, the Exalted: 'So kill the polytheists wherever you find them, capture them, besiege them, and lie in wait for them at every ambush point. Then if they repent, establish prayer, and give zakāh, release them' [At-Tawbah 9:5]."[2]

وَبِقَوْلِ اللَّهِ تَعَالَى {فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصَدٍ فَإِنْ تَابُوا وَأَقَامُوا الصَّلاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ} [التوبة: ٥] .

L42540 They said: It is impermissible to abandon someone who neither prays nor gives Zakat.

قَالُوا: وَلَا يَجُوزُ تَخْلِيَةُ مَنْ لَمْ يُصَلِّ، وَلَمْ يُزَكِّ.

L42541 They mentioned what was narrated to us via the chain of Imam Muslim: from Haddab ibn Khalid, from Hammam ibn Yahya, from Qatadah, from al-Hasan, from Dabba ibn Muhsin, from Umm Salamah, the Mother of the Believers, that the Messenger of Allah (peace and blessings of Allah be upon him) said: "There will emerge rulers whom you will recognize [their evil] and disapprove. Whoever recognizes [their evil] is free from blame, and whoever disapproves is secure. But as for one who is pleased [with them] and follows them..." They said: "Should we not fight them?" He replied: "No, so long as they pray."

وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا هَدَّابُ بْنُ خَالِدٍ نا هَمَّامُ بْنُ يَحْيَى نا قَتَادَةُ عَنْ الْحَسَنِ عَنْ ضَبَّةَ بْنِ مُحْصَنٍ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «سَتَكُونُ أُمَرَاءُ فَتَعْرِفُونَ وَتُنْكِرُونَ، فَمَنْ عَرَفَ بَرِئَ وَمَنْ أَنْكَرَ سَلِمَ، قَالَ: فَمَنْ رَضِيَ وَتَابِعَ، قَالُوا: أَفَلَا نُقَاتِلُهُمْ؟ قَالَ: لَا، مَا صَلُّوا» .

L42542 Through the chain of Muslim: Dawud ibn Rashid narrated to us, Al-Walid ibn Muslim narrated to us, Abd al-Rahman ibn Yazid ibn Jabir informed me from the freed slave of Banu Fazarah, Zuraiq ibn Hayyan, that he heard Sulaym ibn Qarẓah, the paternal cousin of Awf ibn Malik al-Ashja'i, say: I heard Awf ibn Malik say: I heard the Messenger of Allah—peace and blessings of Allah be upon him—say: "The best of your leaders are those whom you love and they love you, you send blessings upon them and they send blessings upon you. The worst of your leaders are those whom you hate and they hate you, you curse them and they curse you." We said: O Messenger of Allah,

وَمِنْ طَرِيقِ مُسْلِمٍ نا دَاوُد بْنُ رَشِيدٍ نا الْوَلِيدُ بْنُ مُسْلِمٍ نا عَبْدُ الرَّحْمَنِ بْنُ يَزِيدَ بْنِ جَابِرٍ أَخْبَرَنِي مَوْلَى بَنِي فَزَارَةَ زُرَيْقُ بْنُ حَيَّانَ أَنَّهُ سَمِعَ سُلَيْمَ بْنَ قَرَظَةَ ابْنَ عَمِّ عَوْفِ بْنِ مَالِكٍ الْأَشْجَعِيَّ يَقُولُ سَمِعْت عَوْفَ بْنَ مَالِكٍ يَقُولُ سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «خِيَارُ أَئِمَّتِكُمْ الَّذِينَ تُحِبُّونَهُمْ وَيُحِبُّونَكُمْ وَتُصَلُّونَ عَلَيْهِمْ وَيُصَلُّونَ عَلَيْكُمْ، وَشِرَارُ أَئِمَّتِكُمْ الَّذِينَ تُبْغِضُونَهُمْ وَيُبْغِضُونَكُمْ وَتَلْعَنُونَهُمْ وَيَلْعَنُونَكُمْ، قُلْنَا: يَا رَسُولَ اللَّهِ

[2] **Qur'an references (L42539):** Qur'an 9:5 (At-Tawbah).

should we not renounce allegiance to them in that case? He said: "No, as long as they establish prayer among you. No, as long as they establish prayer among you." And he mentioned the remainder of the narration.[3]

L42543 The two hadiths which state: "I forbade the killing of those who pray, thus those are the ones whom Allah has forbidden me to kill," and "No, perhaps he is praying."

L42544–42546 And through the chain of Muslim: Qutaybah narrated to us, Abdul Wahid ibn Ziyad narrated to us from Umarah ibn al-Qa'qa', on the authority of Abd al-Rahman ibn Abi al-Nu'm, who said: I heard Abu Sa'id al-Khudri say, "Ali ibn Abi Talib sent to the Messenger of Allah—may Allah bless him and grant him peace—a small gold nugget in a hide tanned with qaraz that had not been purified of its earthy impurities," and he mentioned the hadith. In it, a man with sunken eyes, prominent cheekbones, a protruding forehead, a thick beard, a shaved head, and tucked-up garments stood and said, "O Messenger of Allah, fear Allah!" The Prophet replied, "Woe to you! Am I not the most deserving of the people of the earth to fear Allah?" The man then turned away. Khalid ibn al-Walid said, "O Messenger of Allah, shall I strike his neck?" The Prophet responded, "Perhaps he prays?"

Abu Muhammad (may Allah have mercy on him) said: Through Muslim's chain: Hannad ibn al-Sariyy narrated to us, Abu al-Ahwas narrated to us from Sa'id ibn Masruq from 'Abd al-Rahman ibn Abi Nu'm from Abu Sa'id al-Khudri, who said: "Ali ibn Abi Talib sent a piece of unrefined gold to the Prophet (peace be upon him)," and he mentioned the incident. In it, a man with a thick beard, prominent cheekbones, sunken eyes, a protruding forehead, and a shaved head came and said, "Fear Allah, O Muhammad!" The Messenger of Allah (peace be upon him) replied, "Who will obey Allah if I do not obey Him? Would Allah entrust me with the people of the earth, and you would not entrust me?" The man then turned away. A man from the group sought permission to kill him—they believed it was Khalid ibn al-Walid—but the Messenger of Allah (peace be upon him) said, "From the descendants of this man will emerge a people who recite the Quran, but it

[3] **Hadith references (L42542):** Sahih Muslim 1855b.

أَفَلَا نُنَابِذُهُمْ عِنْدَ ذَلِكَ؟ قَالَ: لَا، مَا أَقَامُوا فِيكُمُ الصَّلَاةَ، لَا، مَا أَقَامُوا فِيكُمُ الصَّلَاةَ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

وَالْحَدِيثَيْنِ اللَّذَيْنِ فِيهِمَا «نَهَيْتُ عَنْ قَتْلِ الْمُصَلِّينَ فَأُولَئِكَ الَّذِينَ نَهَانِي اللَّهُ عَنْ قَتْلِهِمْ» و " لَا لَعَلَّهُ يَكُونُ يُصَلِّي ".

وَمِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ نا عَبْدُ الْوَاحِدِ - هُوَ ابْنُ زِيَادٍ - عَنْ عُمَارَةَ بْنِ الْقَعْقَاعِ نا عَبْدُ الرَّحْمَنِ بْنُ أَبِي النُّعْمِ قَالَ: سَمِعْتُ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ «بَعَثَ عَلِيُّ بْنُ أَبِي طَالِبٍ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذُهَيْبَةٍ فِي أَدِيمٍ مَقْرُوظٍ لَمْ تُحَصَّلْ مِنْ تُرَابِهَا وَذَكَرَ الْحَدِيثَ - وَفِيهِ فَقَامَ رَجُلٌ غَائِرُ الْعَيْنَيْنِ مُشْرِفُ الْوَجْنَتَيْنِ، نَاشِزُ الْجَبْهَةِ، كَثُّ اللِّحْيَةِ، مَحْلُوقُ الرَّأْسِ مُشَمِّرُ الْإِزَارِ فَقَالَ: يَا رَسُولَ اللَّهِ اتَّقِ اللَّهَ، فَقَالَ: وَيْلَكَ، أَلَسْتُ أَحَقَّ أَهْلِ الْأَرْضِ أَنْ يَتَّقِيَ اللَّهَ؟ قَالَ: ثُمَّ وَلَّى الرَّجُلُ، فَقَالَ خَالِدُ بْنُ الْوَلِيدِ: يَا رَسُولَ اللَّهِ أَلَا أَضْرِبُ عُنُقَهُ؟ قَالَ: لَعَلَّهُ يَكُونُ يُصَلِّي؟» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَمِنْ طَرِيقِ مُسْلِمٍ نا هَنَّادُ بْنُ السَّرِيِّ نا أَبُو الْأَحْوَصِ عَنْ سَعِيدِ بْنِ مَسْرُوقٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي نُعْمٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «بَعَثَ عَلِيُّ بْنُ أَبِي طَالِبٍ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَهَبِيَّةٍ فِي تُرْبَتِهَا فَذَكَرَ الْخَبَرَ. وَفِيهِ فَجَاءَ رَجُلٌ كَثُّ اللِّحْيَةِ مُشْرِفُ الْوَجْنَتَيْنِ غَائِرُ الْعَيْنَيْنِ نَاتِئُ الْجَبِينِ مَحْلُوقُ الرَّأْسِ، فَقَالَ: اتَّقِ اللَّهَ يَا مُحَمَّدُ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَنْ يُطِعْ اللَّهَ إِنْ لَمْ أُطِعْهُ؟ أَيَأْمَنُنِي عَلَى أَهْلِ الْأَرْضِ، وَلَا تَأْمَنُنِي - ثُمَّ أَدْبَرَ الرَّجُلُ، فَاسْتَأْذَنَ رَجُلٌ مِنْ الْقَوْمِ فِي قَتْلِهِ - يَرَوْنَ أَنَّهُ خَالِدُ بْنُ الْوَلِيدِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَخْرُجُ مِنْ ضِئْضِئِ هَذَا قَوْمٌ يَقْرَءُونَ الْقُرْآنَ لَا يُجَاوِزُ حَنَاجِرَهُمْ، يَقْتُلُونَ أَهْلَ الْإِسْلَامِ وَيَدَعُونَ أَهْلَ الْأَوْثَانِ، يَمْرُقُونَ مِنْ

will not pass beyond their throats. They will kill the adherents of Islam and spare the idolaters. They will bolt from Islam as an arrow passes through game. If I live to confront them, I will surely annihilate them as ʻAd was annihilated."

Abu Muhammad (may Allah have mercy on him) said: The Prophet (peace be upon him) declared that he would fight people until they professed, "There is no god but Allah," established prayer, and gave zakat. Once they did so, their blood became inviolable. Thus, it is confirmed that if they fail to do so, their blood is permissible. He also forbade killing leaders as long as they pray.

L42547 Thus, it is established that if they do not pray, they are to be fought.

L42548 And it has been established that killing during prayer is forbidden; it necessarily follows that killing outside of prayer is permissible.

L42549 It has been established as authentic that he prohibited killing those performing the ritual prayer.

L42550 It has thus been established that he did not prohibit killing those who do not pray—we do not know of any argument they have for permitting the killing of those who do not pray besides this—and all of it provides no argument for them, in accordance with what we shall clarify, God, the Exalted, willing. As for the verse—its text concerns fighting the polytheists until they establish prayer and give zakāt.

L42551–42553 No two individuals in the Ummah disagree that the Messenger of Allah—peace and blessings be upon him—never ceased calling the polytheists to faith (to attain Allah the Exalted's pleasure and noble reward) until his death, and that throughout all this, he did not compel anyone who... He accepted his call to Islam, remaining until the time of prayer came so he prayed, then until a full year had elapsed so he gave zakah, then he released him—this is a duty none may oppose.

L42554 As for the narrations on this matter: Regarding the ḥadīth of Umm Salamah and ʿAwf ibn Mālik—may Allah be pleased with them—there is no proof for their position in this, for it only prohibits killing rulers as long as they pray.

الْإِسْلَامِ كَمَا يَمْرُقُ السَّهْمُ مِنْ الرَّمِيَّةِ، لَئِنْ أَدْرَكْتُهُمْ لَأَقْتُلَنَّهُمْ قَتْلَ عَادٍ» ؟ . قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَأَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّهُ يُقَاتِلُ النَّاسَ حَتَّى يَقُولُوا: لَا إلَهَ إلَّا اللَّهُ، وَيُقِيمُوا الصَّلَاةَ، وَيُؤْتُوا الزَّكَاةَ، فَإِذَا فَعَلُوا ذَلِكَ حَرُمَتْ دِمَاؤُهُمْ. فَصَحَّ أَنَّهُمْ إنْ لَمْ يَفْعَلُوا ذَلِكَ حَلَّتْ دِمَاؤُهُمْ، وَنَهَى عَنْ قَتْلِ الْأَئِمَّةِ مَا صَلَّوْا.

فَصَحَّ أَنَّهُمْ إنْ لَمْ يُصَلُّوا قُوتِلُوا.

وَصَحَّ أَنَّ الْقَتْلَ بِالصَّلَاةِ حَرَامٌ، فَوَجَبَ أَنَّهُ بِغَيْرِ الصَّلَاةِ حَلَالٌ.

وَصَحَّ أَنَّهُ نَهَى عَنْ قَتْلِ الْمُصَلِّينَ.

فَصَحَّ أَنَّهُ لَمْ يَنْهَ عَنْ قَتْلِ غَيْرِ الْمُصَلِّينَ - مَا نَعْلَمُ لَهُمْ حُجَّةً فِي إبَاحَةِ قَتْلِ مَنْ لَا يُصَلِّي غَيْرَ هَذَا - وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ، عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى: أَمَّا الْآيَةَ - فَإِنَّ نَصَّهَا قِتَالُ الْمُشْرِكِينَ حَتَّى يُقِيمُوا الصَّلَاةَ، وَيُؤْتُوا الزَّكَاةَ.

وَلَا يَخْتَلِفُ اثْنَانِ مِنْ الْأُمَّةِ فِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَزَلْ يَدْعُو الْمُشْرِكِينَ إلَى الْإِيمَانِ حَتَّى مَاتَ - إلَى رِضْوَانِ اللَّهِ تَعَالَى وَكَرَامَتِهِ - وَأَنَّهُ فِي كُلِّ ذَلِكَ لَمْ يَقِفْ مَنْ أَجَابَهُ إلَى الْإِسْلَامِ حَتَّى يَأْتِيَ وَقْتُ صَلَاةٍ فَيُصَلِّيَ، ثُمَّ حَتَّى يَحُولَ الْحَوْلُ فَيُزَكِّيَ، ثُمَّ يُطْلِقُهُ - هَذَا مَا لَا يَقْدِرُ أَحَدٌ عَلَى دَفْعِهِ.

وَأَمَّا الْأَحَادِيثُ فِي ذَلِكَ: فَأَمَّا حَدِيثُ أُمِّ سَلَمَةَ، وَعَوْفِ بْنِ مَالِكٍ - رَضِيَ اللَّهُ عَنْهُمَا - فَلَا حُجَّةَ لَهُمْ فِي ذَلِكَ، فَإِنَّهُ لَيْسَ فِيهِ إِلَّا الْمَنْعُ مِنْ قَتْلِ الْوُلَاةِ مَا صَلُّوا وَلَسْنَا مَعَهُمْ فِي مَسْأَلَةِ الْقِتَالِ، وَإِنَّمَا نَحْنُ مَعَهُمْ فِي مَسْأَلَةِ الْقَتْلِ صَبْرًا وَلَيْسَ كُلُّ مَنْ جَازَ قَتْلُهُ إِذَا قُدِرَ عَلَيْهِ قُتِلَ - قَالَ اللَّهُ تَعَالَى {وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا} [الحجرات: ٩] إِلَى قَوْلِه تَعَالَى: {الْمُقْسِطِينَ} [الحجرات: ٩] فَأَمَرَ اللَّهُ تَعَالَى بِقِتَالِ الْبُغَاةِ مِنْ الْمُؤْمِنِينَ إِلَى أَنْ يَفِيئُوا، ثُمَّ حَرَّمَ قَتْلَهُمْ إِذَا فَاءُوا.

We do not share their view regarding the issue of combat; we only align with them concerning the matter of execution in captivity. Not everyone who may lawfully be killed when captured must necessarily be executed. Allah the Exalted said: “If two groups of believers fight each other, reconcile between them...” (al-Ḥujurāt 49:9) up to His words: “those who act justly.” Thus, Allah commanded fighting the rebels among the believers until they desist, then forbade killing them once they cease.[4]

وَهَكَذَا كُلُّ مَنْ مَنَعَ حَقًّا مِنْ أَيِّ حَقٍّ كَانَ - وَلَوْ أَنَّهُ فِلْسٌ - وَجَبَ عَلَيْهِ لِلَّهِ تَعَالَى، أَوْ لِآدَمِيٍّ، وَامْتَنَعَ دُونَ أَدَائِهِ فَإِنَّهُ قَدْ حَلَّ قِتَالُهُ؛ لِأَنَّهُ بَاغٍ عَلَى أَخِيهِ، وَبَاغٍ فِي الدِّينِ.

L42555 And in this manner, whoever withholds any right—be it even a single coin—that is incumbent upon him toward Allah, the Exalted, or toward another person, and refuses to fulfill it, then indeed it is permissible to fight him, for he is a transgressor against his brother and a transgressor in religion.

وَكَذَلِكَ كُلُّ مَنْ امْتَنَعَ مِنْ عَمَلٍ لِلَّهِ تَعَالَى لَزِمَهُ وَامْتَنَعَ دُونَهُ، وَلَا فَرْقَ، فَإِذَا قُدِرَ عَلَيْهِمْ أُجْبِرُوا عَلَى أَدَاءِ مَا عَلَيْهِمْ بِالتَّعْزِيرِ وَالسَّجْنِ.

L42556 Similarly, anyone who refuses to perform an act ordained by Allah the Exalted that is incumbent upon them and persists in refusing it—there is no difference. If they are subdued, they are to be compelled by means of discretionary punishment and imprisonment to fulfill their obligation.

كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَنْ أَتَى مُنْكَرًا فَلَا يُزَالُ يُؤَدَّبُ حَتَّى يُؤَدِّيَ مَا عَلَيْهِ أَوْ يَمُوتَ - غَيْرَ مَقْصُودٍ إِلَى قَتْلِهِ - وَحُرِمَتْ دِمَاؤُهُمْ بِالنَّصِّ وَالْإِجْمَاعِ، وَتَارِكُ الصَّلَاةِ الْمُمْتَنِعِ مِنْهَا وَاحِدٌ مِنْ هَؤُلَاءِ، إِنْ امْتَنَعَ قُوتِلَ، وَإِنْ لَمْ يَمْتَنِعْ لَمْ يَحِلَّ قَتْلُهُ؛ لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ نَصٌّ وَلَا إِجْمَاعٌ، بَلْ يُؤَدَّبُ حَتَّى يُؤَدِّيَهَا أَوْ يَمُوتَ كَمَا قُلْنَا - غَيْرَ مَقْصُودٍ إِلَى قَتْلِهِ - وَلَا فَرْقَ.

L42557 As the Messenger of Allah—may Allah’s peace and blessings be upon him—commanded regarding those who commit evil: they are to be disciplined continually until they fulfill their obligation or die—without intending to kill them. Shedding their blood is prohibited by textual evidence and consensus. The prayer-neglecter who refuses to perform it is among these; if he refuses, he is compelled by force, and if he does not refuse, it is unlawful to kill him, for neither textual evidence nor consensus mandates this. Rather, he is disciplined until he performs it or dies, as we stated—without intending to kill him—and no distinction is made.

فَصَحَّ أَنَّ هَذَيْنِ الْحَدِيثَيْنِ - حَدِيثُ أُمِّ سَلَمَةَ، وَحَدِيثُ عَوْفٍ - إِنَّمَا هُوَ فِي بَابِ الْقِتَالِ لِلْأَئِمَّةِ، لَا فِي بَابِ الْقَتْلِ الْمَقْدُورِ عَلَيْهِ لَا يُصَلِّي.

L42558 Thus, it is established that these two hadiths—the hadith of Umm Salamah and the hadith of ‘Awf—pertain solely to the chapter of fighting for the rulers, not to the chapter of the decreed killing of one who does not pray.

[4] **Qur’an references (L42554):** Qur’an 49:9 (Al-Hujurat).

L42559–42561 As for the narration of Abu Sa'id al-Khudri, "Perhaps he is praying," it only prohibits the killing of one who is praying, and it does not mention killing one who does not pray at all. Rather, the matter remains unaddressed. When the Messenger of Allah—peace and blessings be upon him—remains silent about a ruling, it is not permissible for anyone to attribute to him—peace be upon him—what he did not say, thereby lying against him and asserting what he intended without knowledge, thus taking his seat in the Fire. Abu Muhammad—may Allah have mercy on him—said: As for "I prohibited the killing of those who pray" and "Those are the ones I was prohibited from." Allah is free from them. Truly, it is impermissible to kill one who prays except by an explicit text regarding his execution. There is no mention whatsoever in it of killing someone who does not pray if he professes prayer openly—no basis for it.

وَأَمَّا حَدِيثُ أَبِي سَعِيدٍ الْخُدْرِيِّ " لَعَلَّهُ يُصَلِّي " فَإِنَّمَا فِيهِ الْمَنْعُ مِنْ قَتْلِ مَنْ يُصَلِّي، وَلَيْسَ فِيهِ قَتْلُ مَنْ لَا يُصَلِّي أَصْلًا، بَلْ هُوَ مَسْكُوتٌ عَنْهُ، وَإِذَا سَكَتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ حُكْمٍ فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَقُولَهُ - عَلَيْهِ السَّلَامُ - مَا لَمْ يَقُلْ، فَيَكْذِبُ عَلَيْهِ، وَيُخْبِرُ عَنْ مُرَادِهِ بِمَا لَا عِلْمَ لَهُ بِهِ فَيَتَبَوَّأُ مَقْعَدَهُ مِنْ النَّارِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا «نَهَيْتُ عَنْ قَتْلِ الْمُصَلِّينَ» و " أُولَئِكَ الَّذِينَ نَهَانِي اللَّهُ عَنْهُمْ " فَنَعَمْ، لَا يَحِلُّ قَتْلُ مُصَلٍّ إلَّا بِنَصٍّ وَارِدٍ فِي قَتْلِهِ، وَلَيْسَ فِيهِ ذِكْرٌ لِقَتْلِ مَنْ لَيْسَ مُصَلِّيًا إذَا أَقَرَّ بِالصَّلَاةِ، أَصْلًا.

L42562 We have said: It is not permissible for anyone to attribute to the Messenger of Allah—peace and blessings of Allah be upon him—what he did not say. To one who dares to do this, it is said: Did the Messenger of Allah—peace and blessings of Allah be upon him—utter what you claim? If he answers yes, he is openly declared a liar. If he replies no, but asserts it is implied by his teachings, he is challenged: Where is your evidence for this? He possesses no evidence whatsoever except his false conjecture. Thus, they are left with no valid proof at all—neither from the Quran, the Sunnah, consensus, a companion's opinion, analogy, nor sound reasoning. Any assertion of this kind is undoubtedly erroneous.

وَقَدْ قُلْنَا: إنَّهُ لَا يَحِلُّ لِأَحَدٍ أَنْ يُنْسَبَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْ. وَيُقَالُ لِمَنْ جَسَرَ عَلَى هَذَا: أَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَذَا الَّذِي تَقُولُ؟ فَإِنْ قَالَ: نَعَمْ، كُذِّبَ جِهَارًا، وَإِنْ قَالَ: لَمْ يَقُلْ، لَكِنَّهُ دَلَّ عَلَيْهِ؟ قِيلَ لَهُ: أَيْنَ دَلِيلُك عَلَى ذَلِكَ؟ فَلَا سَبِيلَ لَهُ إلَى دَلِيلٍ أَصْلًا، إلَّا ظَنَّهُ الْكَاذِبَ - فَلَمْ يَبْقَ لَهُمْ دَلِيلٌ أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ وَلَا مِنْ إجْمَاعٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ صَحِيحٍ - وَمَا كَانَ هَكَذَا مِنْ الْأَقْوَالِ فَهُوَ خَطَأٌ بِلَا شَكٍّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا الْكَلَامُ كُلُّهُ إنَّمَا هُوَ مَعَ مَنْ قَالَ بِقَتْلِهِ، وَهُوَ عِنْدَهُ غَيْرُ كَافِرٍ - وَأَمَّا مَنْ قَالَ بِتَكْفِيرِهِ بِتَرْكِ صَلَاةٍ وَاحِدَةٍ حَتَّى يَخْرُجَ وَقْتُهَا، فَلَيْسَ هَذَا مَكَانُ الْكَلَامِ فِيهِ مَعَهُمْ، فَسَيَقَعُ الْكَلَامُ فِي ذَلِكَ مُتَقَصًّى فِي " كِتَابِ الْإِيمَانِ " مِنْ الْجَامِعِ إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ قَدْ بَطَلَ هَذَا الْقَوْلُ فَإِنَّا نَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّهُ قَدْ صَحَّ - عَلَى مَا ذَكَرْنَا - فِي قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

Abū Muḥammad—may Allah have mercy on him—said: All this discourse applies to those who advocate executing him while not deeming him a disbeliever. As for those who declare him a disbeliever for neglecting a single prayer until its time expires, this is not the place to engage their argument. The exhaustive treatment of this matter will occur in the "Book of Faith" within *al-Jāmiʿ*, Allah Almighty willing.

He further said: Since this opinion is invalidated, we affirm—by the guidance of Allah, the Exalted—that the authentic statement of the Messenger of Allah—peace and blessings of Allah be upon him—has been established, as we cited: "Whoever among you witnesses a reprehensible act, let him change

it with his hand if he is able." This is a command to correct those who commit a reprehensible act. Refusing to pray, neglecting purification from major impurity, abandoning Ramadan fasting, withholding zakāh, avoiding Ḥajj, failing to fulfill all obligatory acts, and disregarding any human right—in whatever manner—are all unquestionably reprehensible acts, without doubt or disagreement from any member of the Ummah. For all these are forbidden, and the forbidden is inherently reprehensible by definitive certainty.

«مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إِنْ اسْتَطَاعَ» فَكَانَ هَذَا أَمْرًا بِالْأَدَبِ عَلَى مَنْ أَتَى مُنْكَرًا - وَالِامْتِنَاعُ مِنْ الصَّلَاةِ، وَمِنْ الطَّهَارَةِ مِنْ غُسْلِ الْجَنَابَةِ، وَمِنْ صِيَامِ رَمَضَانَ، وَمِنْ الزَّكَاةِ، وَمِنْ الْحَجِّ، وَمِنْ أَدَاءِ جَمِيعِ الْفَرَائِضِ كُلِّهَا وَمِنْ كُلِّ حَقٍّ لِآدَمِيٍّ - بِأَيِّ وَجْهٍ كَانَ - كُلُّ ذَلِكَ مُنْكَرٌ، بِلَا شَكٍّ وَبِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ الْأُمَّةِ؛ لِأَنَّ كُلَّ ذَلِكَ حَرَامٌ، وَالْحَرَامُ مُنْكَرٌ بِيَقِينٍ.

L42563 Therefore, by the command of the Messenger of Allah—may Allah's peace and blessings be upon him—the permissibility of striking with the hand all those we have mentioned was validated.

فَصَحَّ بِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إبَاحَةُ ضَرْبِ كُلِّ مَنْ ذَكَرْنَا بِالْيَدِ.

L42564 It has been authentically reported from the Messenger of Allah—peace and blessings be upon him—that one should not strike more than ten times when administering discretionary punishment, according to what we will detail in the chapter titled "The Extent of Discretionary Punishment," Allah the Exalted willing.

وَصَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ لَا يَضْرِبَ فِي التَّعْزِيرِ أَكْثَرُ مِنْ عَشَرَةٍ عَلَى مَا نُورِدُ فِي " بَابِ كَمْ يَكُونُ التَّعْزِيرُ " إنْ شَاءَ اللَّهُ تَعَالَى.

L42565–42566 Therefore, in such a case, it is obligatory to flog everyone we have mentioned ten times. If he fulfills the obligations incumbent upon him—whether prayer or others—he is absolved and owes nothing. If he persists in refusal, he commits another offense through his continued refusal, so he is flogged ten times again—and this continues perpetually—until he fulfills the right owed to God Almighty or dies, without any intention to kill him. The flogging is not suspended at all until the time of the prayer expires and another prayer's time begins; he is then flogged so that he performs the prayer whose time has commenced. This continues perpetually until the midpoint of the night. When the time of Isha expires, he is left, for he cannot pray a prayer whose time has passed. The flogging is then renewed against him when the time of Fajr prayer begins and continues until its time expires. He is subsequently left until the start of Dhuhr. The person who has already prayed should administer the flogging. When another person prays, the first leaves to pray, and the other takes over the flogging—and with God Almighty is success—until he abandons the offense he persists in or dies. The rightful judgment is

فَإِذْ ذَلِكَ كَذَلِكَ فَوَاجِبٌ أَنْ يُضْرَبَ كُلُّ مَنْ ذَكَرْنَا عَشْرَ جَلَدَاتٍ فَإِنْ أَدَّى مَا عَلَيْهِ مِنْ صَلَاةٍ أَوْ غَيْرِهَا، فَقَدْ بَرِئَ وَلَا شَيْءَ عَلَيْهِ، وَإِنْ تَمَادَى عَلَى الِامْتِنَاعِ فَقَدْ أَحْدَثَ مُنْكَرًا آخَرَ بِالِامْتِنَاعِ الْآخَرِ، فَيُجْلَدُ أَيْضًا عَشْرًا - وَهَكَذَا أَبَدًا، حَتَّى يُؤَدِّيَ الْحَقَّ الَّذِي عَلَيْهِ لِلَّهِ تَعَالَى أَوْ يَمُوتَ - غَيْرَ مَقْصُودٍ إلَى قَتْلِهِ - وَلَا يُرْفَعُ عَنْهُ الضَّرْبُ أَصْلًا حَتَّى يَخْرُجَ وَقْتُ الصَّلَاةِ وَتَدْخُلَ أُخْرَى فَيُضْرَبُ لِيُصَلِّيَ الَّتِي دَخَلَ وَقْتُهَا، وَهَكَذَا أَبَدًا إلَى نِصْفِ اللَّيْلِ، فَإِذَا خَرَجَ وَقْتُ الْعَتَمَةِ تُرِكَ؛ لِأَنَّهُ لَا يَقْدِرُ عَلَى صَلَاةٍ مَا خَرَجَ وَقْتُهَا - ثُمَّ يُجَدَّدُ عَلَيْهِ الضَّرْبُ إذَا دَخَلَ وَقْتُ صَلَاةِ الْفَجْرِ حَتَّى يَخْرُجَ وَقْتُهَا - ثُمَّ يُتْرَكُ إلَى أَوَّلِ الظُّهْرِ، وَيَتَوَلَّى ضَرْبَهُ مَنْ قَدْ صَلَّى، فَإِذَا صَلَّى غَيْرُهُ خَرَجَ هَذَا إلَى الصَّلَاةِ وَيَتَوَلَّى

to kill him, yet he remains a Muslim despite that—and with God Almighty is success.

الْآخَرُ ضَرْبَهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ - حَتَّى يَتْرُكَ الْمُنْكَرَ الَّذِي يُحْدِثُ أَوْ يَمُوتُ، فَالْحَقُّ قَتْلُهُ، وَهُوَ مُسْلِمٌ مَعَ ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of Sodomy (the Act of the People of Lot).

[مَسْأَلَةُ فِعْلُ قَوْمِ لُوطٍ]

L42568 Issue 2303: The act of Lot's people? Abu Muhammad - may Allah have mercy on him - said: The act of Lot's people is among the major abominable forbidden sins - like pork, carrion, blood, wine, fornication, and all other transgressions. Whoever permits it or permits any of what we have mentioned is a disbeliever, a polytheist; his blood and wealth become permissible.

٢٣٠٣ - مَسْأَلَةٌ: فِعْلُ قَوْمِ لُوطٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فِعْلُ قَوْمِ لُوطٍ مِنْ الْكَبَائِرِ الْفَوَاحِشِ الْمُحَرَّمَةِ: كَلَحْمِ الْخِنْزِيرِ، وَالْمَيْتَةِ، وَالدَّمِ، وَالْخَمْرِ، وَالزِّنَى، وَسَائِرِ الْمَعَاصِي، مَنْ أَحَلَّهُ أَوْ أَحَلَّ شَيْئًا مِمَّا ذَكَرْنَا فَهُوَ كَافِرٌ، مُشْرِكٌ حَلَالُ الدَّمِ وَالْمَالِ.

L42569 People have differed regarding what is obligatory for him: one group said the upper and lower parts should be burned, while another group said the upper and lower parts are to be carried to the summit of a mountain in a village—then cast down from it, and stoned.

وَإِنَّمَا اخْتَلَفَ النَّاسُ فِي الْوَاجِبِ عَلَيْهِ: فَقَالَتْ طَائِفَةٌ: يُحْرَقُ بِالنَّارِ الْأَعْلَى وَالْأَسْفَلُ وَقَالَتْ طَائِفَةٌ: يُحْمَلُ الْأَعْلَى وَالْأَسْفَلَ إلَى أَعْلَى جَبَلٍ بِقَرْيَةٍ - فَيُصَبُّ مِنْهُ، وَيُتْبَعُ بِالْحِجَارَةِ.

L42570 A group of scholars held: The free and the slave are to be stoned—whether they are married or unmarried.

وَقَالَتْ طَائِفَةٌ: يُرْجَمُ الْأَعْلَى وَالْأَسْفَلُ - سَوَاءٌ أَحْصَنَا أَوْ لَمْ يُحْصِنَا.

L42571 A group said: Both are to be killed.

وَقَالَتْ طَائِفَةٌ: يُقْتَلَانِ جَمِيعًا.

L42572 A group has said: As for the lower status, he is stoned—whether he is a *muḥṣan* or not. As for the upper status: if he is a *muḥṣan*, he is stoned; and if he is not a *muḥṣan*, he is flogged with the punishment prescribed for *zinā*.

وَقَالَتْ طَائِفَةٌ: أَمَّا الْأَسْفَلُ فَيُرْجَمُ - أَحْصَنَ أَمْ لَمْ يُحْصِنْ - وَأَمَّا الْأَعْلَى فَإِنْ أَحْصَنَ رُجِمَ، وَإِنْ لَمْ يُحْصِنْ جُلِدَ جَلْدَ الزِّنَى.

L42573 A group said: The upper and the lower, both are equivalent – whichever of them is chaste is stoned, and whichever is not chaste is flogged one hundred lashes, as in the case of zinā.

وَقَالَتْ طَائِفَةٌ: الْأَعْلَى وَالْأَسْفَلُ كِلَاهُمَا سَوَاءٌ - أَيُّهُمَا أَحْصَنَ رُجِمَ، وَأَيُّهُمَا لَمْ يُحْصِنْ جُلِدَ مِائَةً، كَالزِّنَى.

L42574 A group held: No ḥadd (prescribed punishment) or killing applies to them; rather, they are disciplined via taʿzīr (discretionary punishment).

وَقَالَتْ طَائِفَةٌ: لَا حَدَّ عَلَيْهِمَا وَلَا قَتْلَ، لَكِنْ يُعَزَّرَانِ.

L42575–42577 As for the first opinion, as narrated by ʿAbdullāh ibn Rabīʿ: he narrated from Ibn Mufarrij, who narrated from Qāsim ibn Aṣbagh, who narrated

from Ibn Waḍḍāḥ. Sahnun narrated to us: Ibn Wahb narrated to us: Ibn Sam'an informed me through a man who reported to him, saying: Some people came to Khalid ibn al-Walid and informed him about a man among them who was being penetrated in marriage as a woman is penetrated, and he was married? Abu Bakr said: "He must be stoned"—and the Companions of the Messenger of Allah (peace and blessings be upon him) concurred with his statement. Then Ali said: "O Commander of the Faithful, the Arabs recoil from the disgrace of such an act and its notoriety—a revulsion they do not harbor toward the prescribed penalties enforced in legal judgments. Therefore, I propose you burn him." Abu Bakr said: "Abu al-Hasan has spoken truthfully," and he wrote to Khalid ibn al-Walid: "Burn him." So he did.

L42578 Ibn Wahb said: It is not my view that Khalid burned him with fire unless he had already killed him, for none may inflict punishment through fire except Allah, the Most High.

L42579 Ibn Habib said: Whoever burns with fire a person who commits the act of the people of Lut has not sinned.

L42580 From Ibn Ḥabīb via Muṭarrif ibn ʿAbdillāh ibn ʿAbd al-ʿAzīz ibn Abī Ḥāzim, who reported from Muḥammad ibn al-Munkadir, Mūsā ibn ʿUqbah, and Ṣafwān ibn Sulaym: Khālid ibn al-Walīd wrote to Abū Bakr al-Ṣiddīq that he had encountered a man on one of the coastal regions who was subjected to sodomy as a woman is, and conclusive evidence had been established against him. Abū Bakr sought counsel from the Companions of the Messenger of Allah—peace and blessings be upon him—regarding this matter. The most severe among them in his opinion that day was ʿAlī ibn Abī Ṭālib, who said: "This is a sin committed by no nation except one, and Allah inflicted upon them what you know. I recommend burning them both with fire." The consensus of the Companions of the Messenger of Allah—peace and blessings be upon him—was to burn him with fire. Abū Bakr thus wrote to Khālid ibn al-Walīd to burn him with fire. Later, Ibn al-Zubayr burned them during his rule, followed by Hishām ibn ʿAbd al-Malik, and then al-Qasrī burned them in Iraq.

فَالْقَوْلُ الْأَوَّلُ - كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي ابْنُ سَمْعَانَ عَنْ رَجُلٍ أَخْبَرَهُ قَالَ: جَاءَ نَاسٌ إِلَى خَالِدِ بْنِ الْوَلِيدِ فَأَخْبَرُوهُ عَنْ رَجُلٍ مِنْهُمْ أَنَّهُ يُنْكَحُ كَمَا تُوطَأُ الْمَرْأَةُ، وَقَدْ أَحْصَنَ؟ فَقَالَ أَبُو بَكْرٍ: عَلَيْهِ الرَّجْمُ - وَتَابَعَهُ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى ذَلِكَ مِنْ قَوْلِهِ: فَقَالَ عَلِيٌّ: يَا أَمِيرَ الْمُؤْمِنِينَ إِنَّ الْعَرَبَ تَأْنَفُ مِنْ عَارِ الْمِثْلِ وَشُهْرَتِهِ، أَنَفًا لَا تَأْنَفُهُ مِنْ الْحُدُودِ الَّتِي تَمْضِي فِي الْأَحْكَامِ فَأَرَى أَنْ تُحْرِقَهُ بِالنَّارِ؟ فَقَالَ أَبُو بَكْرٍ: صَدَقَ أَبُو الْحَسَنِ وَكَتَبَ إِلَى خَالِدِ بْنِ الْوَلِيدِ: أَنْ أَحْرِقَهُ بِالنَّارِ؟ فَفَعَلَ.

قَالَ ابْنُ وَهْبٍ: لَا أَرَى خَالِدًا أَحْرَقَهُ بِالنَّارِ إِلَّا بَعْدَ أَنْ قَتَلَهُ، لِأَنَّ النَّارَ لَا يُعَذِّبُ بِهَا إِلَّا اللَّهُ تَعَالَى.

قَالَ ابْنُ حَبِيبٍ: مَنْ أَحْرَقَ بِالنَّارِ فَاعِلَ فِعْلَ قَوْمِ لُوطٍ لَمْ يُخْطِئْ.

وَعَنْ ابْنِ حَبِيبٍ: نا مُطَرِّفُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْعَزِيزِ بْنِ أَبِي حَازِمٍ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ، وَمُوسَى بْنِ عُقْبَةَ وَصَفْوَانُ بْنُ سُلَيْمٍ: أَنَّ خَالِدَ بْنَ الْوَلِيدِ كَتَبَ إِلَى أَبِي بَكْرٍ الصِّدِّيقِ: أَنَّهُ وَجَدَ فِي بَعْضِ سَوَاحِلِ الْبَحْرِ رَجُلًا يُنْكَحُ كَمَا تُنْكَحُ الْمَرْأَةُ، وَقَامَتْ عَلَيْهِ بِذَلِكَ الْبَيِّنَةُ، فَاسْتَشَارَ أَبُو بَكْرٍ فِي ذَلِكَ أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَانَ أَشَدُّهُمْ فِيهِ يَوْمَئِذٍ قَوْلًا عَلِيُّ بْنُ أَبِي طَالِبٍ قَالَ: إِنَّ هَذَا ذَنْبٌ لَمْ يَعْصِ بِهِ مِنْ الْأُمَمِ إِلَّا أُمَّةً وَاحِدَةً صَنَعَ اللَّهُ بِهَا مَا قَدْ عَلِمْتُمْ، أَرَى أَنْ تُحْرِقَهُمَا بِالنَّارِ، فَاجْتَمَعَ رَأْيُ صَحَابَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَنْ يُحْرِقَهُ بِالنَّارِ؟ فَكَتَبَ أَبُو بَكْرٍ إِلَى

خَالِدِ بْنِ الْوَلِيدِ أَنْ أَحْرِقَهُ بِالنَّارِ - ثُمَّ حَرَقَهُمَا ابْنُ الزُّبَيْرِ فِي زَمَانِهِ - ثُمَّ حَرَقَهُمَا هِشَامُ بْنُ عَبْدِ الْمَلِكِ - ثُمَّ حَرَقَهُمَا الْقَسْرِيُّ بِالْعِرَاقِ.

L42581 Ismāʿīl ibn Dulaym al-Ḥaḍramī, the judge of Majorca, narrated to us, saying: Muḥammad ibn Aḥmad ibn al-Khallāṣ narrated to us; Muḥammad ibn al-Qāsim ibn Shaʿbān narrated to us; Muḥammad ibn Ismāʿīl ibn Aslam narrated to us; Muḥammad ibn Dāwūd ibn Abī Nājiyah narrated to us; Yaḥyā ibn Bukayr narrated from ʿAbd al-ʿAzīz ibn Abī Ḥāzim, from Dāwūd ibn Abī Bakr, Muḥammad ibn al-Munkadir, Mūsā ibn ʿUqbah, and Ṣafwān ibn Sulaym: that Ṣafwān found in some coastal regions near the sea a man who was being used for intercourse as a woman is. (Abū Isḥāq said: The man's name was al-Fujā'ah.) Abū Bakr then consulted the Companions of the Messenger of Allah—peace and blessings be upon him—and subsequently recounted the same narration of ʿAbd al-Malik that we had previously mentioned, verbatim, in the exact same wording.

حَدَّثَنَا إِسْمَاعِيلُ بْنُ دُلَيْمٍ الْحَضْرَمِيُّ قَاضِي مَيُورْقَةَ قَالَ: نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْخَلَّاصِ نا مُحَمَّدُ بْنُ الْقَاسِمِ بْنِ شَعْبَانَ نِي مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ أَسْلَمَ نا مُحَمَّدُ بْنُ دَاوُد بْنِ أَبِي نَاجِيَةَ نا يَحْيَى بْنُ بُكَيْرٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ أَبِي حَازِمٍ عَنْ دَاوُد بْنِ أَبِي بَكْرٍ، وَمُحَمَّدِ بْنِ الْمُنْكَدِرِ، وَمُوسَى بْنُ عُقْبَةَ، وَصَفْوَانُ بْنُ سُلَيْمٍ: أَنَّهُ وَجَدَ فِي بَعْضِ ضَوَاحِي الْبَحْرِ رَجُلًا يُنْكَحُ كَمَا تُنْكَحُ الْمَرْأَةُ - قَالَ أَبُو إِسْحَاقَ: كَانَ اسْمُهُ الْفُجَاءَةَ - فَاسْتَشَارَ أَبُو بَكْرٍ أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ ذَكَرَ مِثْلَ حَدِيثِ عَبْدِ الْمَلِكِ الَّذِي ذَكَرْنَا حَرْفًا حَرْفًا نَصًّا سَوَاءً.

L42582–42584 As for the one who said he is taken up to the highest mountain in the village... Aḥmad ibn Ismāʿīl ibn Dulaym narrated to us: Muḥammad ibn Aḥmad ibn al-Khullaṣ narrated to us: Muḥammad ibn al-Qāsim ibn Shaʿbān narrated to us: Aḥmad ibn Salamah ibn al-Ḍaḥḥāk reported on the authority of Ismāʿīl ibn Maḥmūd ibn Nuʿaym: Muʿādh narrated to us: ʿAbd al-Raḥmān narrated to us: Ḥassān ibn Maṭar narrated to us: Yazīd ibn Maslamah reported from Abū Naḍrah from Ibn ʿAbbās, who was asked about the legal punishment for homosexual intercourse between men. He said: "He is taken to the highest elevation in the village, then thrown down upside down, then followed by stones."

وَأَمَّا مَنْ قَالَ يُصْعَدُ بِهِ إِلَى أَعْلَى جَبَلٍ فِي الْقَرْيَةِ: فَكَمَا نا أَحْمَدُ بْنُ إِسْمَاعِيلَ بْنِ دُلَيْمٍ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْخَلَّاصِ نا مُحَمَّدُ بْنُ الْقَاسِمِ بْنِ شَعْبَانَ نا أَحْمَدُ بْنُ سَلَمَةَ بْنِ الضَّحَّاكِ عَنْ إِسْمَاعِيلَ بْنِ مَحْمُودِ بْنِ نُعَيْمٍ نا مُعَاذٌ نا عَبْدُ الرَّحْمَنِ نا حَسَّانُ بْنُ مَطَرٍ نا يَزِيدُ بْنُ مَسْلَمَةَ عَنْ أَبِي نَضْرَةَ عَنِ ابْنِ عَبَّاسٍ سُئِلَ عَنْ حَدِّ اللُّوطِيِّ فَقَالَ: يُصْعَدُ بِهِ إِلَى أَعْلَى جَبَلٍ فِي الْقَرْيَةِ ثُمَّ يُلْقَى مُنَكَّسًا ثُمَّ يُتْبَعُ بِالْحِجَارَةِ.

L42585 As for those who said, "The one who penetrates and the one penetrated are to be stoned whether they were of chaste status or not" - this ruling is transmitted through Muḥammad ibn Saʿīd ibn Nubāt, through ʿAbdullāh ibn Naṣr, through Qāsim ibn Aṣbaġ, through Ibn Waḍḍāḥ, through Mūsā ibn Muʿāwiyah, through Wakīʿ, through Ibn Abī Laylā, from al-Qāsim ibn al-Walīd al-Mihrānī, from Yazīd ibn Qays, that ʿAlī stoned a practitioner of sodomy.

وَأَمَّا مَنْ قَالَ: يُرْجَمُ الْأَعْلَى وَالْأَسْفَلُ أَحْصَنَا أَوْ لَمْ يُحْصِنَا: فَكَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا ابْنُ أَبِي لَيْلَى عَنِ الْقَاسِمِ بْنِ الْوَلِيدِ الْمِهْرَانِيِّ عَنْ يَزِيدَ بْنِ قَيْسٍ أَنَّ عَلِيًّا رَجَمَ لُوطِيًّا.

L42586 Hummam narrated to us from Ibn Mufarrij, who narrated from Ibn al-A'rabī, who narrated from al-Dabarī, who narrated from 'Abd al-Razzāq, who narrated from Ibn Jurayj, who informed me: 'Abdullāh ibn 'Uthmān ibn Khuthaym reported that he heard Mujāhid and Sa'īd ibn Jubayr narrating from Ibn 'Abbās, who said regarding a virgin found engaging in sodomy: "He is to be stoned."

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ عُثْمَانَ بْنِ خُثَيْمٍ أَنَّهُ سَمِعَ مُجَاهِدًا، وَسَعِيدَ بْنَ جُبَيْرٍ يُحَدِّثَانِ عَنِ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ فِي الْبِكْرِ يُوجَدُ عَلَى اللُّوطِيَّةِ: أَنَّهُ يُرْجَمُ.

L42587 Ibrahim al-Nakha'i said: If there were anyone deserving to be stoned twice, it would indeed be the sodomite who deserves to be stoned twice.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ: لَوْ كَانَ أَحَدٌ يَنْبَغِي لَهُ أَنْ يُرْجَمَ مَرَّتَيْنِ لَكَانَ يَنْبَغِي لِلُوطِيِّ أَنْ يُرْجَمَ مَرَّتَيْنِ.

L42588 From Rabī'ah that he said: If a man commits sodomy, he is to be stoned, without consideration of being muḥṣan or any other condition.

وَعَنْ رَبِيعَةَ أَنَّهُ قَالَ: إِذَا أَخَذَ الرَّجُلُ لُوطِيًّا رُجِمَ، لَا يُلْتَمَسُ بِهِ إِحْصَانٌ، وَلَا غَيْرُهُ.

L42589 Al-Zuhri said: The sodomizer is to be stoned, whether chaste (muḥṣan) or unchaste.

وَعَنِ الزُّهْرِيِّ أَنَّهُ قَالَ: عَلَى اللُّوطِيِّ الرَّجْمُ أَحْصَنَ أَوْ لَمْ يُحْصِنْ.

L42590 And Abdullah ibn Rabī' narrated to us: Ibn Mufarrij narrated to us, Qāsim ibn Aṣbagh narrated to us, Ibn Waḍḍāḥ narrated to us, Sahnūn narrated to us, Ibn Wahb narrated to us: Al-Shimr ibn Numayr and Yazīd ibn 'Iyāḍ ibn Ju'dabah narrated to me, along with a trustworthy source, and it was written to Ibn Abī Sabrah. Al-Shimr reported: From Ḥusayn ibn 'Abdillāh ibn Ḍumayrah, from Ḥusayn's father, from his grandfather, from 'Alī ibn Abī Ṭālib. Yazīd ibn 'Iyāḍ ibn Ju'dabah reported: From 'Abd al-Malik ibn 'Ubayd, from Sa'īd ibn al-Musayyab. Ibn Abī Sabrah said: I heard Abū al-Zinād. The one Ibn Abī Sabrah trusted reported: From al-Ḥasan. Then 'Alī, Sa'īd ibn al-Musayyab, Abū al-Zinād, and al-Ḥasan all concurred with the aforementioned statement of al-Zuhrī.

وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي الشِّمْرُ بْنُ نُمَيْرٍ، وَيَزِيدُ بْنُ عِيَاضِ بْنِ جعدبة، وَمِنْ أَثِقُ بِهِ، وَكَتَبَ إِلَى ابْنِ أَبِي سَبْرَةَ، قَالَ الشِّمْرُ: عَنْ حُسَيْنِ بْنِ عَبْدِ اللَّهِ بْنِ ضُمَيْرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَقَالَ يَزِيدُ بْنُ عِيَاضِ بْنِ جعدبة: عَنْ عَبْدِ الْمَلِكِ بْنِ عُبَيْدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَقَالَ ابْنُ أَبِي سَبْرَةَ: سَمِعْتُ أَبَا الزِّنَادِ، وَقَالَ الَّذِي يَثِقُ بِهِ: عَنِ الْحَسَنِ، ثُمَّ اتَّفَقَ عَلِيٌّ، وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَأَبُو الزِّنَادِ، وَالْحَسَنُ، كُلُّهُمْ مِثْلَ قَوْلِ الزُّهْرِيِّ الْمَذْكُورِ.

L42591 And by it says Al-Shāfi'ī—and it is the opinion of Mālik, al-Layth, and Isḥāq ibn Rāhawayhi.

وَبِهِ يَقُولُ الشَّافِعِيُّ - وَهُوَ قَوْلُ مَالِكٍ، وَاللَّيْثِ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ.

L42592–42593 As for those who said both are to be executed, this aligns with what was reported from Ibn Abbas who stated: "Kill the active partner and the passive partner." As for those who ruled it analogous to adultery - where the muḥṣan (a legally protected person, i.e., married and free) among them is stoned and the non-muḥṣan receives one hundred lashes - this follows the narration

وَأَمَّا مَنْ قَالَ: يُقْتَلَانِ: فَكَمَا رُوِّينَا عَنِ ابْنِ عَبَّاسٍ، قَالَ: اقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ. وَأَمَّا مَنْ قَالَ: هُوَ كَالزِّنَى يُرْجَمُ الْمُحْصَنُ مِنْهُمَا وَيُجْلَدُ غَيْرُ الْمُحْصَنِ مِائَةَ جَلْدَةٍ: فَكَمَا نا أَحْمَدُ

transmitted by Ahmad ibn Ismāʿīl ibn Dulaym from Muhammad ibn Ahmad ibn al-Khallas, from Muhammad ibn al-Qāsim ibn Shaʿbān, from Ahmad ibn Salamah and al-Ḍaḥḥāk, from Ismāʿīl ibn Muhammad ibn Nuʿaym, from Muʿādh ibn al-Ḥārith, from ʿAbd al-Raḥmān ibn Qays al-Ḍabbī, from al-Yamānī ibn al-Mughīrah, from ʿAṭāʾ ibn Abī Rabāḥ, who said: I witnessed ʿAbd Allāh ibn al-Zubayr when seven men caught in male homosexual acts were brought before him. He questioned them and found four to be muḥṣan. He ordered them removed from al-Ḥaram, then they were stoned with stones until they died. He flogged the remaining three with the ḥadd of one hundred lashes. Ibn Abbas and Ibn ʿUmar were present during this judgment, and neither objected to his ruling.

بْنُ إِسْمَاعِيلَ بْنِ دُلَيْمٍ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْخَلَّاصِ نا مُحَمَّدُ بْنُ الْقَاسِمِ بْنِ شَعْبَانَ نا أَحْمَدُ بْنُ سَلَمَةَ، وَالضَّحَّاكُ عَنْ إِسْمَاعِيلَ بْنِ مُحَمَّدِ بْنِ نُعَيْمٍ نا مُعَاذُ بْنُ الْحَارِثِ نا عَبْدُ الرَّحْمَنِ بْنُ قَيْسٍ الضَّبِّيُّ عَنْ الْيَمَانِي بْنِ الْمُغِيرَةِ نا عَطَاءُ بْنُ أَبِي رَبَاحٍ، قَالَ: شَهِدْت عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ وَأُتِيَ بِسَبْعَةٍ أَخَذُوا فِي اللِّوَاطِ فَسَأَلَ عَنْهُمْ؟ فَوَجَدَ أَرْبَعَةً قَدْ أَحْصَنُوا، فَأَمَرَ بِهِمْ فَأُخْرِجُوا مِنْ الْحَرَمِ - ثُمَّ رُجِمُوا بِالْحِجَارَةِ حَتَّى مَاتُوا، وَجَلَدَ ثَلَاثَةً الْحَدَّ - وَعِنْدَهُ ابْنُ عَبَّاسٍ، وَابْنُ عُمَرَ، فَلَمْ يُنْكِرَا ذَلِكَ عَلَيْهِ.

L42594 It is narrated from Al-Ḥasan al-Baṣrī that he said regarding a man who performs the act of the people of Lūṭ: If he is previously married, he is to be stoned; if he is unmarried, he is to be flogged.

وَعَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ قَالَ فِي الرَّجُلِ يَعْمَلُ عَمَلَ قَوْمِ لُوطٍ: إنْ كَانَ ثَيِّبًا رُجِمَ، وَإِنْ كَانَ بِكْرًا جُلِدَ.

L42595 As for those who say: If the fornicator is a muḥṣan, he is to be stoned; if he is not a muḥṣan, he is to be lashed one hundred times and exiled for a year. As for the married individual (mankūḥ), he is to be stoned whether he qualifies as a muḥṣan or not—this is a position upheld by Abū Jaʿfar Muḥammad ibn ʿAlī ibn Yūsuf, one of the Shāfiʿī jurists.

وَأَمَّا مَنْ قَالَ: إنَّ الْفَاعِلَ إنْ كَانَ مُحْصَنًا فَإِنَّهُ يُرْجَمُ وَإِنْ كَانَ غَيْرَ مُحْصَنٍ فَإِنَّهُ يُجْلَدُ مِائَةً وَيُنْفَى سَنَةً، وَأَمَّا الْمَنْكُوحُ فَيُرْجَمُ أَحْصَنَ أَوْ لَمْ يُحْصِنْ: فَقَوْلٌ ذَهَبَ إلَيْهِ أَبُو جَعْفَرٍ مُحَمَّدُ بْنُ عَلِيِّ بْنِ يُوسُفَ - أَحَدُ فُقَهَاءِ الشَّافِعِيِّينَ.

L42596 As for the one who said there is no prescribed punishment for that: Muhammad ibn Saʿid ibn Nubat reported from ʿAbdullah ibn Nasr; from Qasim ibn Asbagh; from Ibn Waddah; from Musa ibn Muʿawiyah; from Waki‘; from Sufyan al-Thawri—citing both Mansur ibn al-Muʿtamir and Abu Ishaq al-Shaybani, each transmitting from al-Hakam ibn ʿUtaybah—that he ruled regarding one who commits the act of the people of Lot: He is to be flogged without imposing the prescribed punishment.

وَأَمَّا مَنْ قَالَ: لَا حَدَّ فِي ذَلِكَ: فَكَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ، وَأَبِي إِسْحَاقَ الشَّيْبَانِيِّ، كِلَاهُمَا عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّهُ قَالَ فِيمَنْ عَمِلَ عَمَلَ قَوْمِ لُوطٍ: يُجْلَدُ دُونَ الْحَدِّ.

L42597 Abu Hanifah, those who follow him, Abu Sulaymān, and all our companions hold this opinion. Abu Muhammad (may Allah have mercy on him) said: When they differed - as we mentioned - it became necessary for us to examine the evidence presented by those who advocated burning it with fire. We found them asserting: “This constitutes the consensus of the Companions, and it is impermissible to oppose their consensus.”

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَنْ اتَّبَعَهُ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّ بِهِ مَنْ رَأَى حَرْقَهُ بِالنَّارِ، فَوَجَدْنَاهُمْ يَقُولُونَ: إنَّهُ إجْمَاعُ الصَّحَابَةِ، وَلَا يَجُوزُ خِلَافُ إجْمَاعِهِمْ.

فَإِنْ قِيلَ: فَقَدْ رُوِيَ عَنْ عَلِيٍّ، وَابْنِ عَبَّاسٍ، وَابْنِ الزُّبَيْرِ، وَابْنِ عُمَرَ، بَعْدَ ذَلِكَ الرَّجْمُ، وَحَدُّ الزِّنَى، وَغَيْرُ ذَلِكَ؟

L42598 If it is asked: “Was it not reported from Ali, Ibn Abbas, Ibn al-Zubayr, and Ibn Umar after that—regarding stoning, the hadd for fornication, and other such matters?”

قِيلَ: هَذَا لَا يَجُوزُ، لِأَنَّهُ خِلَافٌ لِمَا أَجْمَعُوا.

L42599–42600 It is said: This is not permissible because it contradicts the consensus.

فَهَذَا كُلُّ مَا ذَكَرُوا فِي ذَلِكَ، لَا حُجَّةَ لَهُمْ غَيْرَ هَذَا.

L42601 Thus, this is all that they have mentioned regarding that; they have no argument other than this.

وَوَجَدْنَاهُ لَا تَقُومُ بِهِ حُجَّةٌ، لِأَنَّهُ لَمْ يَرْوِهِ إِلَّا ابْنُ سَمْعَانَ عَنْ رَجُلٍ أَخْبَرَهُ - لَمْ يَسْمَعْهُ - أَنَّ أَبَا بَكْرٍ - وَعَبْدَ الْمَلِكِ بْنَ حَبِيبٍ عَنْ مُطَرِّفٍ عَنْ أَبِي حَازِمٍ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ، وَمُوسَى بْنِ عُقْبَةَ، وَصَفْوَانِ بْنِ سُلَيْمٍ، وَدَاوُد بْنِ بَكْرٍ: أَنَّ أَبَا بَكْرٍ - وَابْنَ شَعْبَانَ عَنْ مُحَمَّدِ بْنِ الْعَبَّاسِ بْنِ أَسْلَمَ عَنْ مُحَمَّدِ بْنِ دَاوُد بْنِ أَبِي نَاجِيَةَ عَنْ يَحْيَى بْنِ بُكَيْرٍ عَنْ ابْنِ أَبِي حَازِمٍ عَنْ ابْنِ الْمُنْكَدِرِ، وَمُوسَى بْنِ عُقْبَةَ، وَصَفْوَانَ بْنِ سُلَيْمٍ، وَدَاوُد بْنِ بَكْرٍ: أَنَّ أَبَا بَكْرٍ. فَهَذِهِ كُلُّهَا مُنْقَطِعَةٌ لَيْسَ مِنْهُمْ أَحَدٌ أَدْرَكَ أَبَا بَكْرٍ.

L42602 We found that it does not constitute a valid proof, as it was only narrated by Ibn Samʿān from a man who informed him – without having heard it – that Abū Bakr; and through ʿAbd al-Malik ibn Ḥabīb from Muṭarrif from Abū Ḥāzim from Muḥammad ibn al-Munkadir, Mūsā ibn ʿUqba, Ṣafwān ibn Sulaym, and Dāwūd ibn Bakr: that Abū Bakr; and through Ibn Shaʿbān from Muḥammad ibn al-ʿAbbās ibn Aslam from Muḥammad ibn Dāwūd ibn Abī Nājiya from Yaḥyā ibn Bukayr from Ibn Abī Ḥāzim from Ibn al-Munkadir, Mūsā ibn ʿUqba, Ṣafwān ibn Sulaym, and Dāwūd ibn Bakr: that Abū Bakr. All these chains are interrupted, as none of them met Abū Bakr.

وَأَيْضًا - فَإِنَّ ابْنَ سَمْعَانَ مَذْكُورٌ بِالْكَذِبِ وَصَفَهُ بِذَلِكَ مَالِكُ بْنُ أَنَسٍ.

L42603 Furthermore, Ibn Sam’ān is mentioned for falsehood, and Mālik ibn Anas described him as such.

وَوَجْهٌ آخَرَ - وَهُوَ أَنَّ الْإِحْرَاقَ بِالنَّارِ قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ نَهَى عَنْ ذَلِكَ: كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ الْخَوْلَانِيِّ نا مُحَمَّدُ بْنُ بَكْرٍ نا أَبُو دَاوُد نا سَعِيدُ بْنُ مَنْصُورٍ نا الْمُغِيرَةُ بْنُ عَبْدِ الرَّحْمَنِ الْحِزَامِيُّ عَنْ أَبِي الزِّنَادِ عَنْ مُحَمَّدِ بْنِ حَمْزَةَ بْنِ عَمْرٍو الْأَسْلَمِيِّ عَنْ أَبِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَّرَهُ عَلَى سَرِيَّةٍ وَقَالَ: إنْ وَجَدْتُمْ فُلَانًا فَأَحْرِقُوهُ بِالنَّارِ، فَوَلَّيْت فَنَادَانِي فَرَجَعْتُ، فَقَالَ: إنْ وَجَدْتُمْ فُلَانًا فَاقْتُلُوهُ وَلَا تُحْرِقُوهُ، فَإِنَّهُ لَا يُعَذِّبُ بِالنَّارِ إلَّا رَبُّ النَّارِ» .

L42604 Another legal opinion is that burning with fire has been authentically established from the Messenger of Allah (peace and blessings be upon him), in that he prohibited it: As narrated by Abdullah ibn Rabee’, who narrated to us from Umar ibn Abd al-Malik al-Khawlani, who narrated to us from Muhammad ibn Bakr, who narrated to us from Abu Dawud, who narrated to us from Sa’eed ibn Mansoor, who narrated to us from al-Mughirah ibn Abd al-Rahman al-Hizami, from Abu al-Zinad, from Muhammad ibn Hamzah ibn Amr al-Aslami, from his father: The Messenger of Allah (peace and blessings be upon him) appointed him to lead an expedition and said, “If you find so-and-so, burn him with fire.” I began to depart, but he called me back. When

I returned, he said, “If you find so-and-so, kill him and do not burn him, for none punishes with fire except the Lord of the Fire.”[5]

L42605 Then we examined the opinion of those who advocated killing them and found them citing as evidence the following narration: Abdullah ibn Rabi’ narrated to us, from Muhammad ibn Ishaq, from Ibn al-A’rabi, from al-Dabari, from Abu Dawud, from Abdullah ibn Muhammad al-Nufayli, from Abd al-Aziz ibn Muhammad—who is Muhammad al-Darawardi’s son—from Amr ibn Abi Amr, from Ikrimah, from Ibn Abbas, who said: The Messenger of Allah—peace and blessings be upon him—declared, “Whoever you find committing the act of the people of Lot, kill the active participant and the passive recipient.”[6]

L42606–42607 Abdullah ibn Rabīʿ narrated to us: Ibn Mufarrij narrated to us: Qāsim ibn Aṣbagh narrated to us: Ibn Waḍḍāḥ narrated to us: Saḥnūn narrated to us: Ibn Wahb narrated to us: Al-Qāsim ibn ʿAbdillāh ibn ʿUmar ibn Ḥafṣ informed me: Suhayl ibn Abī Ṣāliḥ reported from his father, from Abū Hurayrah, from the Messenger of Allah (peace and blessings be upon him) who said: “Kill the one who does it and the one to whom it is done.”

L42608 And through him—to Ibn Wahb from Yaḥyā ibn Ayyūb from Ibn Jurayj from Ibn ʿAbbās from the Prophet—may the peace and blessings of Allah be upon him—with a similar wording.

L42609 And through him—up to Yahya ibn Ayyub—from a man who narrated to him from Abdullah ibn Muhammad ibn Aqil ibn Abi Talib from Jabir ibn Abdullah that the Messenger of Allah, peace and blessings be upon him, said: “Whoever commits the act of the people of Lot, then kill him.” This man—Abbad ibn Kathir—...

L42610 Abu Muhammad—may Allah have mercy on him—said: “This is all they have embellished, and none of it has any sound basis from them. As for the

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ رَأَى قَتْلَهُمْ: فَوَجَدْنَاهُمْ يَحْتَجُّونَ: بِمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا أَبُو دَاوُد نا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ النُّفَيْلِيُّ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ - هُوَ ابْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ - عَنْ عَمْرِو بْنِ أَبِي عَمْرٍو عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ وَجَدْتُمُوهُ يَعْمَلُ عَمَلَ قَوْمِ لُوطٍ فَاقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي الْقَاسِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ حَفْصٍ ثني سُهَيْلُ بْنُ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «اُقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ» .

وَبِهِ - إلَى ابْنِ وَهْبٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِ ذَلِكَ.

وَبِهِ - إلَى يَحْيَى بْنِ أَيُّوبَ عَنْ رَجُلٍ حَدَّثَهُ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلِ بْنِ أَبِي طَالِبٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ عَمِلَ عَمَلَ قَوْمِ لُوطٍ فَاقْتُلُوهُ» وَهَذَا الرَّجُلُ - هُوَ عَبَّادُ بْنُ كَثِيرٍ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا كُلُّ مَا مَوَّهُوا بِهِ، وَكُلُّهُ لَيْسَ لَهُمْ مِنْهُ شَيْءٌ يَصِحُّ: أَمَّا حَدِيثُ ابْنِ عَبَّاسٍ - فَانْفَرَدَ بِهِ عَمْرُو بْنُ أَبِي عَمْرٍو - هُوَ ضَعِيفٌ، وَإِبْرَاهِيمُ بْنُ إِسْمَاعِيلَ ضَعِيفٌ.

[5] **Hadith references (L42604):** Sunan Abi Dawud 2673.

[6] **Hadith references (L42605):** Sunan Ibn Majah 2561; Sunan Abi Dawud 4462; Jami at-Tirmidhi 1456.

hadith of Ibn Abbas, it was solely narrated by ʿAmr ibn Abī ʿAmr—who is weak—and Ibrāhīm ibn Ismāʿīl is also weak."

L42611 As for the ḥadīth of Abū Hurayrah, it was solely transmitted by al-Qāsim ibn ʿAbd Allāh ibn ʿUmar ibn Ḥafṣ—who is discarded as being of the utmost weakness.

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ - فَانْفَرَدَ بِهِ الْقَاسِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ حَفْصٍ - وَهُوَ مُطْرَحٌ فِي غَايَةِ السُّقُوطِ.

L42612 As for the ḥadīth of Jābir—it is reported via Yaḥyā ibn Ayyūb—who is weak—then via ʿAbbād ibn Kathīr—who is weaker than him.

وَأَمَّا حَدِيثُ جَابِرٍ - فَعَنْ يَحْيَى بْنِ أَيُّوبَ - وَهُوَ ضَعِيفٌ - عَنْ عَبَّادِ بْنِ كَثِيرٍ - وَهُوَ شَرٌّ مِنْهُ.

L42613 As for the ḥadīth of Ibn Abī al-Ziyād—Ibn Abī al-Zināد is weak, and Muḥammad ibn ʿAbd Allāh is unknown—and the ḥadīth itself is also mursal.

وَأَمَّا حَدِيثُ ابْنِ أَبِي الزِّيَادِ - فَابْنُ أَبِي الزِّنَادِ ضَعِيفٌ، وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ مَجْهُولٌ - وَهُوَ أَيْضًا مُرْسَلٌ.

L42614 Thus, everything in this chapter is abrogated.

فَسَقَطَ كُلُّ مَا فِي هَذَا الْبَابِ.

L42615–42617 It is not permissible to shed the blood of a Jew or Christian from the People of the Dhimma. Indeed, nor is the blood of a combatant permissible based on such narrations—how then could the blood of an evildoer or a repentant person be permissible? Even if any of the things we have mentioned about them were valid. Indeed, we would have said it, and we never considered contradicting it permissible in the least—and success is from Allah, the Exalted.

وَلَا يَحِلُّ سَفْكُ دَمِ يَهُودِيٍّ - أَوْ نَصْرَانِيٍّ مِنْ أَهْلِ الذِّمَّةِ، نَعَمْ، وَلَا دَمُ حَرْبِيٍّ بِمِثْلِ هَذِهِ الرِّوَايَاتِ، فَكَيْفَ دَمُ فَاسِقٍ أَوْ تَائِبٍ؟ وَلَوْ صَحَّ شَيْءٌ مِمَّا قُلْنَا مِنْهَا لَقُلْنَا بِهِ، وَلَمَا اسْتَجَزْنَا خِلَافَهُ أَصْلًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L42618 Then we considered the statement of those who said: "They are both to be stoned together, whether they were married and chaste or not"—and we found them arguing that God, Exalted is He, acted similarly toward the people of Lūṭ. God, Exalted is He, said: *"And We rained upon them stones of layered clay, piled up, ordained by your Lord."* [Hūd 11:82-83].[7]

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: يُرْجَمَانِ مَعًا - أَحْصَنَا أَوْ لَمْ يُحْصِنَا - فَوَجَدْنَاهُمْ يَحْتَجُّونَ: بِأَنَّهُ هَكَذَا فَعَلَ اللَّهُ بِقَوْمِ لُوطٍ، قَالَ اللَّهُ تَعَالَى {وَأَمْطَرْنَا عَلَيْهَا حِجَارَةً مِنْ سِجِّيلٍ مَنْضُودٍ - مُسَوَّمَةً عِنْدَ رَبِّكَ} [هود: ٨٢ - ٨٣] .

L42619 They cited as evidence from the narrations we previously mentioned: What Ahmad ibn Isma'il ibn Dulaym narrated to us, Muhammad ibn Ahmad ibn al-Khallas narrated to us, Muhammad ibn al-Qasim ibn Sha'ban narrated to us, Muhammad ibn Ahmad narrated to us from Yunus ibn Abd al-A'la and

وَاحْتَجُّوا مِنَ الْآثَارِ الَّتِي ذَكَرْنَا آنِفًا: بِمَا نا أَحْمَدُ بْنُ إِسْمَاعِيلَ بْنِ دُلَيْمٍ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْخَلَّاصِ نا مُحَمَّدُ بْنُ الْقَاسِمِ بْنِ شَعْبَانَ ثَنِي مُحَمَّدُ بْنُ أَحْمَدَ عَنْ يُونُسَ بْنِ عَبْدِ الْأَعْلَى، وَأَبِي الرَّبِيعِ بْنِ أَبِي رِشْدِينَ نا عُبَيْدُ اللَّهِ بْنُ رَافِعٍ عَنْ عَاصِمِ بْنِ عُبَيْدِ اللَّهِ عَنْ سُهَيْلِ بْنِ

[7] **Qur'an references (L42618):** Qur'an 11:82 (Hud); Qur'an 11:83 (Hud).

أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الَّذِي يَعْمَلُ عَمَلَ قَوْمِ لُوطٍ فَارْجُمُوا الْأَعْلَى وَالْأَسْفَلَ» وَقَالَ فِيهِ: وَقَالَ «أَحْصَنَا أَوْ لَمْ يُحْصِنَا» .

Abi al-Rabi' ibn Abi Rashidīn narrated to us, Ubaidullah ibn Rafi' narrated to us from Asim ibn Ubaidullah from Suhail ibn Abi Salih from his father from Abu Hurairah from the Prophet—peace and blessings be upon him—who said: "The one who commits the act of the people of Lut, stone the upper and the lower." He also said in it: "Whether he is married or unmarried."

فَهَذَا كُلُّ مَا شَغَبُوا بِهِ قَدْ تَقَصَّيْنَاهُ - وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ عَلَى مَا نُبَيِّنُ - إنْ شَاءَ اللَّهُ تَعَالَى.

L42620 So this is all they have raised objections about—we have thoroughly examined it, and none of their claims hold any argument against what we will clarify, if Allah, the Exalted, wills.

أَمَّا فِعْلُ اللَّهِ تَعَالَى فِي قَوْمِ لُوطٍ - فَإِنَّهُ لَيْسَ كَمَا ظَنُّوا، لِأَنَّ اللَّهَ تَعَالَى قَالَ {كَذَّبَتْ قَوْمُ لُوطٍ بِالنُّذُرِ} [القمر: ٣٣] {إِنَّا أَرْسَلْنَا عَلَيْهِمْ حَاصِبًا} [القمر: ٣٤] إلَى قَوْله تَعَالَى {فَذُوقُوا عَذَابِي وَنُذُرِ} [القمر: ٣٧] .

L42621 As for the act of Allah the Exalted toward the people of Lot—it was not as they presumed, for Allah the Exalted said: "The people of Lot rejected the warnings" [Quran 54:33], "We sent upon them a pelting storm" [54:34] up to His words: "So taste My punishment and My warnings" [54:37].[8]

وَقَالَ تَعَالَى {إِنَّا مُنَجُّوكَ وَأَهْلَكَ إِلا امْرَأَتَكَ كَانَتْ مِنَ الْغَابِرِينَ} [العنكبوت: ٣٣] .

L42622 And He, the Exalted, said, "Indeed, We will save you and your family, except your wife; she will be among those who remain behind." [Al-Ankabut: 33][9]

قَالَ تَعَالَى {إِنَّهُ مُصِيبُهَا مَا أَصَابَهُمْ} [هود: ٨١] الْآيَةُ، فَنَصَّ تَعَالَى نَصًّا جَلِيًّا عَلَى أَنَّ قَوْمَ لُوطٍ كَفَرُوا، فَأَرْسَلَ عَلَيْهِمْ الْحَاصِبَ.

L42623 He—Exalted is He—said: {Indeed, she will be struck by what strikes them} [Hud: 81], the verse. Thus, Allah—Exalted is He—explicitly states that the people of Lot disbelieved, so He sent upon them a rain of stones.[10]

فَصَحَّ: أَنَّ الرَّجْمَ الَّذِي أَصَابَهُمْ لَمْ يَكُنْ لِلْفَاحِشَةِ وَحْدَهَا، لَكِنْ لِلْكُفْرِ وَلَهَا: فَلَزِمَهُمْ أَنْ لَا يَرْجُمُوا مَنْ فَعَلَ فِعْلَ قَوْمِ لُوطٍ، إلَّا أَنْ يَكُونَ كَافِرًا، وَإِلَّا فَقَدْ خَالَفُوا حُكْمَ اللَّهِ تَعَالَى فَأَبْطَلُوا احْتِجَاجَهُمْ بِالْآيَةِ، إذْ خَالَفُوا حُكْمَهَا.

L42624 It is established that the stoning which befell them was not for the immoral act alone, but for disbelief combined with the act itself. Thus, it became incumbent upon them not to stone anyone who committed the deed of the people of Lut unless he is a disbeliever. Otherwise, they would have opposed the decree of Allah Almighty, thus invalidating their argument based on the verse because they contravened its ruling.

وَأَيْضًا - فَإِنَّ اللَّهَ تَعَالَى أَخْبَرَ: أَنَّ امْرَأَةَ لُوطٍ أَصَابَهَا مَا أَصَابَهُمْ، وَقَدْ عَلِمَ كُلُّ ذِي مَسْكَةِ عَقْلٍ أَنَّهَا لَمْ تَعْمَلْ عَمَلَ قَوْمِ لُوطٍ.

L42625 Moreover, Allah, the Exalted, declared that the wife of Lot was afflicted with what afflicted them, and every person endowed with a share of intellect knows she did not commit the act of Lot's people.

[8] **Qur'an references (L42621):** Qur'an 54:33 (Al-Qamar); Qur'an 54:34 (Al-Qamar); Qur'an 54:37 (Al-Qamar); Qur'an 54:39 (Al-Qamar).

[9] **Qur'an references (L42622):** Qur'an 29:33 (Al-'Ankabut).

[10] **Qur'an references (L42623):** Qur'an 11:81 (Hud).

L42626 Thus, it is valid without doubt that that is a ruling not solely for that action.

فَصَحَّ: أَنَّ ذَلِكَ حُكْمٌ لَمْ يَكُنْ لِذَلِكَ الْعَمَلِ وَحْدَهُ، بِلَا مِرْيَةٍ.

L42627–42628 If they say, “She was aiding them in that deed?” We reply: Then stone everyone who assisted in that deed through guidance or leadership. Otherwise, you have contradicted yourselves, invalidated your Quranic proof, and opposed it.

فَإِنْ قَالُوا: إِنَّهَا كَانَتْ تُعِينُهُمْ عَلَى ذَلِكَ الْعَمَلِ؟ قُلْنَا: فَارْجُمُوا كُلَّ مَنْ أَعَانَ عَلَى ذَلِكَ الْعَمَلِ بِدَلَالَةٍ أَوْ قِيَادَةٍ وَإِلَّا فَقَدْ تَنَاقَضْتُمْ وَأَبْطَلْتُمْ احْتِجَاجَكُمْ بِالْقُرْآنِ، وَخَالَفْتُمُوهُ.

L42629 Moreover, Allah the Exalted revealed that they sought to sexually violate his guests, so He blinded them. Thus, they are necessarily obligated to gouge out the eyes of those who commit the act of Lot’s people [i.e., sodomy], for Allah the Exalted did not merely stone them—rather, He blinded them and then stoned them. Since they have not done this, they have opposed Allah’s ruling in their case and invalidated their argument.

وَأَيْضًا - فَإِنَّ اللَّهَ تَعَالَى أَخْبَرَ أَنَّهُمْ رَاوَدُوهُ عَنْ ضَيْفِهِ، فَطَمَسَ أَعْيُنَهُمْ، فَيَلْزَمُهُمْ وَلَا بُدَّ أَنْ يُسْمِلُوا عُيُونَ فَاعِلِي فِعْلَ قَوْمِ لُوطٍ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَرْجُمْهُمْ فَقَطْ، لَكِنْ طَمَسَ أَعْيُنَهُمْ، ثُمَّ رَجَمَهُمْ، فَإِذْ لَمْ يَفْعَلُوا هَذَا، فَقَدْ خَالَفُوا حُكْمَ اللَّهِ تَعَالَى فِيهِمْ، وَأَبْطَلُوا حُجَّتَهُمْ.

L42630 And it is also obligatory upon them to gouge out both eyes of anyone who makes sexual advances toward another.

وَيَلْزَمُهُمْ أَيْضًا - أَنْ يَطْمِسُوا عَيْنَيْ كُلِّ مَنْ رَاوَدَ آخَرَ.

L42631 It is also obligatory to burn with fire those who shortchange in weights and measures, because Allah the Exalted destroyed with fire the people of Shu‘ayb for that.

وَيَلْزَمُ أَيْضًا - أَنْ يُحْرِقُوا بِالنَّارِ مَنْ أَنْقَصَ الْمِكْيَالَ وَالْمِيزَانَ، لِأَنَّ اللَّهَ تَعَالَى أَحْرَقَ بِالنَّارِ قَوْمَ شُعَيْبٍ فِي ذَلِكَ.

L42632 They are obligated to kill the one who hamstrung another’s she-camel, for Allah the Exalted destroyed the people of Ṣāliḥ when they hamstrung her. There is no distinction between Allah’s punishment of Lot’s people through blinding their eyes and stoning them to death for committing that abomination; the burning of Shu‘ayb’s people for defrauding in measure and weight; and His destruction of Ṣāliḥ’s people for hamstringing the she-camel. Allah the Exalted said: {Allah’s she-camel and her right to water} [Surah al-Shams 91:13] {But they rejected him and hamstrung her} [Surah al-Shams 91:14] to the end of the chapter.[11]

وَيَلْزَمُهُمْ - أَنْ يَقْتُلُوا مِنْ عُقْرِ نَاقَةِ آخَرَ، لِأَنَّ اللَّهَ تَعَالَى أَهْلَكَ قَوْمَ صَالِحٍ إِذْ عَقَرُوا النَّاقَةَ، إِذْ لَا فَرْقَ بَيْنَ عَذَابِ اللَّهِ تَعَالَى قَوْمَ لُوطٍ بِطَمْسِ الْعُيُونِ، وَالرَّجْمِ - إِذْ أَتَوْا تِلْكَ الْفَاحِشَةَ - وَبَيْنَ إِحْرَاقِ قَوْمِ شُعَيْبٍ إِذْ بَخَسُوا الْمِكْيَالَ وَالْمِيزَانَ - وَبَيْنَ إِهْلَاكِهِ قَوْمَ صَالِحٍ إِذْ عَقَرُوا النَّاقَةَ، قَالَ اللَّهُ تَعَالَى {نَاقَةَ اللَّهِ وَسُقْيَاهَا} [الشمس: ١٣] {فَكَذَّبُوهُ فَعَقَرُوهَا} [الشمس: ١٤] إِلَى آخِرِ السُّورَةِ.

L42633 Then we examined the opinion of those who did not recognize a prescribed punishment (hadd) for that matter. We found them citing as evidence the words of Allah, the Exalted: *“And they do not kill the soul which Allah has

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ لَمْ يَرَ فِي ذَلِكَ حَدًّا: فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِقَوْلِ اللَّهِ تَعَالَى {وَلا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلا بِالْحَقِّ وَلا يَزْنُونَ} [الفرقان: ٦٨] إِلَى قَوْلِهِ {إِلا مَنْ تَابَ} [الفرقان: ٧٠] .

[11] **Qur’an references (L42632):** Qur’an 91:13 (Ash-Shams); Qur’an 91:14 (Ash-Shams).

forbidden except by right, nor do they commit adultery”* [Al-Furqān 25:68] up to His words: *“except those who repent”* [Al-Furqān 25:70].[12]

L42634 The Messenger of Allah, peace and blessings be upon him, said, “It is not lawful to take the life of a Muslim except for one of three reasons: apostasy after belief, adultery after marital chastity, or killing a soul in retribution.”

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إِلَّا بِإِحْدَى ثَلَاثٍ: كُفْرٌ بَعْدَ إِيمَانٍ وَزِنًى بَعْدَ إِحْصَانٍ أَوْ نَفْسًا بِنَفْسٍ» .

L42635–42637 He (peace be upon him) said, “Indeed, your blood, your wealth, your honor, and your physical integrity are inviolable upon you.” Allah the Exalted has forbidden the blood of every person—Muslim or Dhimmi—except by right, and there is no right except in textual evidence or scholarly consensus.

وَقَالَ - عَلَيْهِ السَّلَامُ - «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» فَحَرَّمَ اللَّهُ تَعَالَى دَمَ كُلِّ امْرِئٍ - مُسْلِمٍ وَذِمِّيٍّ - إلَّا بِالْحَقِّ، وَلَا حَقَّ إلَّا فِي نَصٍّ أَوْ إجْمَاعٍ.

L42638 The Prophet—peace and blessings of Allah be upon him—prohibited bloodshed except for what he permitted: adultery after being chaste (i.e., by a married person), disbelief after faith, legal retaliation, the prescribed punishment for wine consumption [committed] three times, and the combatant (muharib) before repentance. The perpetrator of the act of the people of Lot (sodomy) is not among these categories—thus his blood is forbidden unless by explicit text or consensus. Have we not stated: “Is there no valid precedent for killing him?” Yes, and there is also no valid report from any Companion—may Allah be pleased with them—regarding this matter. For the narrations about it from Abu Bakr, Ali, and the Companions are all disconnected. One of them is reported by Ibn Samʿān from an unknown narrator.

وَحَرَّمَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الدَّمَ إلَّا بِمَا أَبَاحَهُ بِهِ مِنْ الزِّنَى بَعْدَ الْحِصَانِ، وَالْكُفْرِ بَعْدَ الْإِيمَانِ وَالْقَوَدِ وَالْمَحْدُودِ فِي الْخَمْرِ ثَلَاثًا، وَالْمُحَارِبُ قَبْلَ أَنْ يَتُوبَ - وَلَيْسَ فَاعِلُ فِعْلِ قَوْمِ لُوطٍ وَاحِدًا مِنْ هَؤُلَاءِ، فَدَمُهُ حَرَامٌ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ، وَقَدْ قُلْنَا: إنَّهُ لَا يَصِحُّ أَثَرٌ فِي قَتْلِهِ؟ نَعَمْ، وَلَا يَصِحُّ أَيْضًا - فِي ذَلِكَ شَيْءٌ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لِأَنَّ الرِّوَايَةَ فِي ذَلِكَ عَنْ أَبِي بَكْرٍ، وَعَلِيٍّ، وَالصَّحَابَةِ إنَّمَا هِيَ مُنْقَطِعَةٌ: وَإِحْدَاهَا - عَنْ ابْنِ سَمْعَانَ عَنْ مَجْهُولٍ.

L42639 And the other pertains to someone whose narration is not relied upon.

وَالْأُخْرَى عَمَّنْ لَا يَعْتَمِدُ عَلَى رِوَايَتِهِ.

L42640 As for the narrations from Ibn Abbas, one of the two narrations is reported through Muʿadh ibn al-Harith from ʿAbd al-Rahman ibn Qays al-Dabbi from Hassan ibn Matar—all of whom are unknown narrators. Likewise, the narration from Ibn al-Zubayr and Ibn ʿUmar is similarly transmitted from unknown narrators.

وَأَمَّا الرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ، فَإِحْدَاهُمَا - عَنْ مُعَاذِ بْنِ الْحَارِثِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ قَيْسٍ الضَّبِّيِّ عَنْ حَسَّانَ بْنِ مَطَرٍ - وَكُلُّهُمْ مَجْهُولُونَ - وَالرِّوَايَةُ عَنْ ابْنِ الزُّبَيْرِ، وَابْنِ عُمَرَ مِثْلُ ذَلِكَ عَنْ مَجْهُولِينَ.

L42641 It becomes invalid for anyone to rely on any of the Companions—may Allah

[12] **Qur’an references (L42633):** Qur’an 25:68 (Al-Furqan); Qur’an 19:60 (Maryam); Qur’an 25:70 (Al-Furqan).

be pleased with them—regarding this matter through any valid attribution. As for the one who holds a view less than the prescribed punishment—it is Al-Hakam ibn ʻUtaybah. Abu Muhammad—may Allah have mercy on him—said: Since it has been authentically established that there is neither execution nor fixed punishment upon the offender, because Allah the Exalted has not ordained this nor His Messenger—peace be upon him—the ruling is that he has committed a reprehensible act. Therefore, it is obligatory by the command of Allah's Messenger—peace be upon him—to change the evil by force. Thus, it is obligatory to administer the discretionary punishment that Allah's Messenger defined for this matter—nothing beyond that—and to only ward off his harm from the people.

فَبَطَلَ أَنْ يَتَعَلَّقَ أَحَدٌ فِي هَذِهِ الْمَسْأَلَةِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بِشَيْءٍ يَصِحُّ - وَأَمَّا مَنْ رَأَى دُونَ الْحَدِّ، فَالْحَكَمُ بْنُ عُتَيْبَةَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ قَدْ صَحَّ ذَلِكَ أَنَّهُ لَا قَتْلَ عَلَيْهِ وَلَا حَدَّ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ ذَلِكَ وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - فَحُكْمُهُ أَنَّهُ أَتَى مُنْكَرًا - فَالْوَاجِبُ بِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَغْيِيرُ الْمُنْكَرِ بِالْيَدِ، فَوَاجِبٌ أَنْ يَضْرِبَ التَّعْزِيرَ الَّذِي حَدَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ لَا أَكْثَرَ، وَيَكُفُّ ضَرَرَهُ عَنْ النَّاسِ فَقَطْ.

L42642 As we have been narrated through the chain of al-Bukharī: Narrated to us by Muslim ibn Ibrāhīm, narrated to us by Hishām—al-Dastuwā'ī—, narrated to us by Yaḥyā—ibn Abī Kathīr—, from ʻIkrimah, from Ibn ʻAbbās, who said: "The Messenger of Allāh—may Allāh bless him and grant him peace—cursed the effeminate men among males and the masculine-acting women among females. He said: 'Expel them from your houses.' He expelled so-and-so and so-and-so."

كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسْلِمُ بْنُ إبْرَاهِيمَ نا هِشَامٌ - هُوَ الدَّسْتُوَائِيُّ - نا يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: قَالَ «لَعَنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُخَنَّثِينَ مِنْ الرِّجَالِ وَالْمُتَرَجِّلَاتِ مِنْ النِّسَاءِ، وَقَالَ: أَخْرِجُوهُمْ مِنْ بُيُوتِكُمْ، وَأَخْرَجَ فُلَانًا، وَأَخْرَجَ فُلَانًا» .

L42643 As for imprisonment—it is grounded in the words of Allah, the Exalted: "Cooperate in righteousness and piety, and do not cooperate in sin and transgression" [Al-Mā'idah 2].[13]

وَأَمَّا السِّجْنُ - فَلِقَوْلِ اللَّهِ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L42644–42646 And with certainty, every possessor of sound perception knows that warding off the harm of the act of the people of Lot - those who commit intercourse - And those who are married—they are a support for people in righteousness and piety, while neglecting them aids sin and transgression. Thus, it becomes obligatory to restrain them by means that do not justify spilling their blood, harming their bodily integrity, or seizing their wealth. Abu Muhammad—may Allah have mercy on him—said: If some shameless and foolish people were to protest, "Does abstaining from killing them provide a pretext for such misconduct?" Respond to them: Does your refraining from killing every fornicator provide a pretext to legalize fornication among you? Does

وَبِيَقِينٍ يَدْرِي كُلُّ ذِي حِسٍّ سَلِيمٍ أَنَّ كَفَّ ضَرَرِ فِعْلَةِ قَوْمِ لُوطٍ - النَّاكِحِينَ وَالْمَنْكُوحِينَ - عَنْ النَّاسِ عَوْنٌ عَلَى الْبِرِّ وَالتَّقْوَى، وَإِنَّ إهْمَالَهُمْ عَوْنٌ عَلَى الْإِثْمِ وَالْعُدْوَانِ، فَوَجَبَ كَفُّهُمْ بِمَا لَا يُسْتَبَاحُ بِهِ لَهُمْ دَمٌ، وَلَا بَشَرَةٌ، وَلَا مَالٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ شَنَّعَ بَعْضُ أَهْلِ الْقِحَةِ وَالْحَمَاقَةِ أَنْ يَقُولَ: إنْ تَرَكَ قَتْلَهُمْ ذَرِيعَةً إلَى هَذَا الْفِعْلِ؟ قِيلَ لَهُمْ: وَتَرَكَكُمْ أَنْ تَقْتُلُوا كُلَّ زَانٍ ذَرِيعَةً إلَى إبَاحَةِ الزِّنَى مِنْكُمْ، وَتَرَكَكُمْ أَنْ تَقْتُلُوا الْمُرْتَدَّ - وَإِنْ تَابَ - تَطْرِيقٌ مِنْكُمْ وَذَرِيعَةٌ إلَى إبَاحَتِكُمْ الْكُفْرَ،

[13] **Qur'an references (L42643):** Qur'an 5:2 (Al-Ma'idah).

your refraining from killing the apostate—even if he repents—constitute a pretext on your part to legitimize disbelief, cross-worship, and denial of the Quran and the Prophet—peace be upon him? Does your refraining from killing those who consume pork, carrion, blood, or drink wine serve as a pretext to legalize these acts? This is merely their retaliation with the same absurdities they spout. *"As for those who retaliate after being wronged, there is no blame on them"* [42:41]. *"Blame lies only against those who wrong people and unjustly spread corruption on earth—these will suffer a painful punishment"* [42:42].[14]

وَعِبَادَةُ الصَّلِيبِ، وَتَكْذِيبُ الْقُرْآنِ وَالنَّبِيِّ - عَلَيْهِ السَّلَامُ - وَتَرْكُكُمْ قَتْلَ آكِلِ الْخِنْزِيرِ وَالْمَيْتَةِ وَالدَّمِ وَشَارِبِ الْخَمْرِ تَطْرِيقٌ مِنْكُمْ وَذَرِيعَةٌ إلَى إبَاحَتِكُمْ أَكْلَ الْخِنْزِيرِ وَالْمَيْتَةِ وَالدَّمِ وَشُرْبِ الْخَمْرِ - وَإِنَّمَا هَذَا انْتِصَارٌ مِنْهُمْ بِمِثْلِ مَا يَهْذِرُونَ بِهِ {وَلَمَنِ انْتَصَرَ بَعْدَ ظُلْمِهِ فَأُولَئِكَ مَا عَلَيْهِمْ مِنْ سَبِيلٍ} [الشورى: ٤١] {إِنَّمَا السَّبِيلُ} [الشورى: ٤٢] الْآيَةُ.

L42647 We seek refuge in Allah from becoming angry for His sake either more than the Exalted is angered for His religion or less than that, or from enacting—with our own opinions—corrupt laws—and we praise Allah the Exalted abundantly for what He has bestowed upon us of adherence to the Quran and the Sunnah—and with Allah, the Exalted, lies all success.

وَنَعُوذُ بِاَللَّهِ مِنْ أَنْ نَغْضَبَ لَهُ بِأَكْثَرَ مِمَّا غَضِبَ تَعَالَى لِدِينِهِ أَوْ أَقَلَّ مِنْ ذَلِكَ، أَوْ أَنْ نُشَرِّعَ - بِآرَائِنَا - الشَّرَائِعَ الْفَاسِدَةَ - وَنَحْمَدُ اللَّهَ تَعَالَى كَثِيرًا عَلَى مَا مَنَّ بِهِ عَلَيْنَا مِنْ التَّمَسُّكِ بِالْقُرْآنِ وَالسُّنَّةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L42648 The legal ruling regarding someone who commits sexual intercourse with a beast.

[مَسْأَلَة فِيمَنْ أَتَى بَهِيمَةً]

L42649 2304 - Issue: Concerning one who commits bestiality. Abū Muḥammad—may God have mercy on him—said: People have differed regarding one who commits bestiality. A group stated: His punishment is the punishment of one who commits zinā—he is stoned if married (muḥṣan), and flogged if unmarried.

٢٣٠٤ - مَسْأَلَةٌ: فِيمَنْ أَتَى بَهِيمَةً؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِيمَنْ أَتَى بَهِيمَةً: فَقَالَتْ طَائِفَةٌ: حَدُّهُ حَدُّ الزَّانِي يُرْجَمُ إنْ أَحْصَنَ، وَيُجْلَدُ إنْ لَمْ يُحْصِنْ.

L42650 A group held that he must be killed without exception.

وَقَالَتْ طَائِفَةٌ: يُقْتَلُ وَلَا بُدَّ.

L42651 A group said: The lesser of the two punishments applies to him, whether he was a muḥṣan (one meeting the conditions of lawful sexual relations) or not.

وَقَالَتْ طَائِفَةٌ: عَلَيْهِ أَدْنَى الْحَدَّيْنِ أَحْصَنَ أَوْ لَمْ يُحْصِنْ.

L42652 A group maintained that the ḥadd punishment applies to him unless the beast belongs to him.

وَقَالَتْ طَائِفَةٌ: عَلَيْهِ الْحَدُّ إلَّا أَنْ تَكُونَ الْبَهِيمَةُ لَهُ.

L42653 A group maintained that discretionary punishment (taʿzīr) applies if the animal was his own, slaughtered and not eaten; and if it belonged to someone else, it was not slaughtered.

وَقَالَتْ طَائِفَةٌ: يُعَزَّرُ إنْ كَانَتْ الْبَهِيمَةُ لَهُ، وَذُبِحَتْ وَلَمْ تُؤْكَلْ، وَإِنْ كَانَتْ لِغَيْرِهِ لَمْ تُذْبَحْ.

[14] **Qur'an references (L42644):** Qur'an 42:41 (Ash-Shuraa); Qur'an 42:42 (Ash-Shuraa).

وَقَالَتْ طَائِفَةٌ: فِيهَا اجْتِهَادُ الْإِمَامِ فِي الْعُقُوبَةِ بَالِغَةً مَا بَلَغَتْ.

L42654 A group held that in this matter, the imam's ijtihād (independent juristic reasoning) determines the punishment, extending to its full extent.

وَقَالَتْ طَائِفَةٌ: لَيْسَ فِيهِ إِلَّا التَّعْزِيرُ دُونَ الْحَدِّ.

L42655 And a group said: There is therein only discretionary punishment, excluding the prescribed punishment.

فَالْقَوْلُ الْأَوَّلُ - كَمَا نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نا أَبُو ذَرٍّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَوَيْهِ السَّرَخْسِيُّ نا إِبْرَاهِيمُ بْنُ خُرَيْمِ بْنِ فِهْرٍ الشَّاشِيُّ ثني عَبْدُ بْنُ حُمَيْدٍ نا يَزِيدُ بْنُ هَارُونَ أَنَا سُفْيَانُ بْنُ حُسَيْنٍ عَنْ أَبِي عَلِيٍّ الرَّحَبِيِّ عَنْ عِكْرِمَةَ قَالَ: سُئِلَ الْحَسَنُ بْنُ عَلِيٍّ - مَقْدَمَهُ مِنْ الشَّامِ - عَنْ رَجُلٍ أَتَى بَهِيمَةً، فَقَالَ: إِنْ كَانَ مُحْصَنًا رُجِمَ.

L42656–42658 The first statement: as narrated to us by Aḥmad ibn ʿUmar ibn Anas from Abū Dharr, from ʿAbdullāh ibn Aḥmad ibn Ḥamawayh al-Sarakhsī, from Ibrāhīm ibn Khuraym ibn Fihr al-Shāshī, narrated to me by ʿAbd ibn Ḥumayd, narrated to us by Yazīd ibn Hārūn. On the authority of Sufyān ibn Ḥusayn, from Abū ʿAlī al-Raḥabī, from ʿIkrimah, who said: Al-Ḥasan ibn ʿAlī—after his return from Syria—was asked about a man who had intercourse with an animal. He said: "If he is a *muḥṣan*, he is to be stoned."

وَعَنْ عَامِرٍ الشَّعْبِيِّ أَنَّهُ قَالَ فِي الَّذِي يَأْتِي الْبَهِيمَةَ، أَوْ يَعْمَلُ عَمَلَ قَوْمِ لُوطٍ، قَالَ: عَلَيْهِ الْحَدُّ.

L42659 On the authority of ʿĀmir al-Shaʿbī, who said regarding one who commits bestiality or performs the act of the people of Lūṭ: "The ḥadd punishment applies to him."

وَعَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ قَالَ فِي الَّذِي يَأْتِي الْبَهِيمَةَ: إِنْ كَانَ ثَيِّبًا رُجِمَ، وَإِنْ كَانَ بِكْرًا جُلِدَ - وَهُوَ قَوْلُ قَتَادَةَ، وَالْأَوْزَاعِيُّ، وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ.

L42660 And from Al-Ḥasan al-Baṣrī that he said concerning one who has sexual intercourse with an animal: If the perpetrator is a thayyib (previously married), they are stoned; if a bikr (unmarried), they are flogged. This is the position of Qatādah, Al-Awzāʿī, and one of the two opinions of Al-Shāfiʿī.

وَالْقَوْلُ الثَّانِي - عَنْ ابْنِ الْهَادِي، قَالَ: قَالَ ابْنُ عُمَرَ فِي الَّذِي يَأْتِي الْبَهِيمَةَ: لَوْ وَجَدْتُهُ لَقَتَلْتُهُ - وَهُوَ قَوْلُ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ قَالَ: تُقْتَلُ الْبَهِيمَةُ أَيْضًا.

L42661 The second opinion is from Ibn al-Hādī, who reported that Ibn ʿUmar said regarding one who commits bestiality: "Were I to find him, I would kill him." This is also the opinion of Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, who said: "The animal is likewise to be killed."

وَالْقَوْلُ الثَّالِثُ - عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي الَّذِي يَأْتِي الْبَهِيمَةَ، قَالَ: عَلَيْهِ أَدْنَى الْحَدَّيْنِ - أَحْصَنَ أَوْ لَمْ يُحْصِنْ.

L42662 The third opinion – from Ma'mar, from al-Zuhrī regarding one who engages in intercourse with an animal – he said: The lesser of the two ḥadd punishments applies to him, whether he is a muḥṣan or not.

وَالْقَوْلُ الرَّابِعُ - عَنْ رَبِيعَةَ أَنَّهُ قَالَ فِي الَّذِي يَأْتِي الْبَهِيمَةَ: هُوَ الْمُبْتَغِي مَا لَمْ يُحَلِّلْ اللَّهُ لَهُ، فَرَأَى الْإِمَامُ فِيهِ الْعُقُوبَةَ بَالِغَةً مَا بَلَغَتْ، فَإِنَّهُ قَدْ أَحْدَثَ فِي الْإِسْلَامِ أَمْرًا عَظِيمًا - وَهُوَ قَوْلُ مَالِكٍ.

L42663 The fourth opinion – from Rabiʿah – is that he said regarding one who commits bestiality: "He seeks what Allah has not permitted him." Thus, the Imam deemed the punishment for it to reach the utmost severity, for he has indeed introduced a grave matter into Islam – and this is the opinion of Malik.

L42664 The fifth opinion (from Ibn Abbas regarding one who has intercourse with an animal: there is no ḥadd upon him) is also attributed to Al-Sha'bi.

وَالْقَوْلُ الْخَامِسُ - عَنْ ابْنِ عَبَّاسٍ فِي الَّذِي يَأْتِي الْبَهِيمَةَ: لَا حَدَّ عَلَيْهِ - وَعَنْ الشَّعْبِيِّ مِثْلُهُ.

L42665 From ʻAṭāʾ concerning one who commits bestiality, he said: "Allah was not forgetful in not revealing a ruling about it, but it is vile—so they declared vile what Allah had declared vile"—and this is the view of our companions. "And is this one of the two opinions of Al-Shāfiʿī?" Abū Muḥammad said: "When they differed as we mentioned, it became obligatory to examine. We examined the position held by the proponents of the first view and found nothing for them except that they analogized it to fornication, saying: 'It is unlawful intercourse.' All analogy is invalid, except that it obligates the one who inserts into an animal's vulva to perform the ritual bath even without ejaculation, treating it like vaginal intercourse, with no distinction."

وَعَنْ عَطَاءٍ فِي الَّذِي يَأْتِي الْبَهِيمَةَ، فَقَالَ: مَا كَانَ اللَّهُ نَسِيًا: أَنْ يَنْزِلَ فِيهِ، وَلَكِنَّهُ قَبِيحٌ، فَقَبَحُوا مَا قَبَّحَ اللَّهُ - وَهُوَ قَوْلُ أَصْحَابِنَا - وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ؟ قَالَ أَبُو مُحَمَّد: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ: فَنَظَرْنَا فِيمَا قَالَ بِهِ أَهْلُ الْقَوْلِ الْأَوَّلِ - فَلَمْ نَجِدْ لَهُمْ إلَّا أَنَّهُمْ قَاسُوهُ عَلَى الزِّنَى، فَقَالُوا: هُوَ وَطْءٌ مُحَرَّمٌ - وَالْقِيَاسُ كُلُّهُ بَاطِلٌ إلَّا أَنَّهُ يَلْزَمُ عَلَى مَنْ أَوْلَجَ فِي حَيَاءِ بَهِيمَةٍ الْغُسْلُ وَإِنْ لَمْ يُنْزِلْ، وَيَجْعَلُهُ كَالْوَطْءِ فِي الْفَرْجِ، وَلَا فَرْقَ.

L42666–42668 In the second opinion, we found them using as proof what we ourselves have transmitted—as narrated to us by Hammām, from ʿAbbās ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Malik ibn Ayman, from al-Ḥārith ibn Abī Usāmah, from ʿAbd al-Wahhāb (he is Ibn ʿAṭāʾ al-Khaffāf), from ʿAbbād (he is Ibn Manṣūr), from ʿIkrimah, from Ibn ʿAbbās, from the Prophet—peace and blessings be upon him. that he said concerning the one who engages in intercourse with an animal: «Kill the perpetrator and the one acted upon».

وَفِي الْقَوْلِ الثَّانِي - فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِمَا رُوِّينَاهُ - كَمَا نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا الْحَارِثُ بْنُ أَبِي أُسَامَةَ نا عَبْدُ الْوَهَّابِ - هُوَ ابْنُ عَطَاءٍ الْخَفَّافُ - نا عَبَّادٌ - هُوَ ابْنُ مَنْصُورٍ - عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ فِي الَّذِي يَأْتِي الْبَهِيمَةَ «اُقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ» .

L42669 Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Ishaq narrated to us: Ibn al-Aʿrabi narrated to us: Abu Dawud narrated to us: An-Nufayli — who is Abdullah ibn Muhammad — narrated to us: ʿAbdul-ʿAziz — who is Ibn Muhammad ad-Darawardi — narrated from ʿAmr ibn Abi ʿAmr ibn ʿIkrimah from Ibn ʿAbbas, who said: The Messenger of Allah — peace and blessings of Allah be upon him — said: "Whoever you find committing the deed of the people of Lut, kill both the doer and the one acted upon. Whoever has sexual intercourse with an animal, kill both him and the animal alongside him." I said: "What about the animal?" He replied: "I believe he only said this because he disapproved of consuming its meat since that act had been committed with it."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا النُّفَيْلِيُّ - هُوَ عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ - نا عَبْدُ الْعَزِيزِ - هُوَ ابْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ - عَنْ عَمْرِو بْنِ أَبِي عَمْرِو بْنِ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ وَجَدْتُمُوهُ يَعْمَلُ عَمَلَ قَوْمِ لُوطٍ فَاقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ، مَنْ أَتَى بَهِيمَةً فَاقْتُلُوهُ وَاقْتُلُوهَا مَعَهُ» قُلْت: مَا شَأْنُ الْبَهِيمَةِ؟ قَالَ: مَا أَرَاهُ قَالَ ذَلِكَ، إلَّا أَنَّهُ كَرِهَ أَكْلَ لَحْمِهَا وَقَدْ عَمِلَ بِهَا ذَلِكَ الْعَمَلَ.

L42670 Aḥmad ibn Muḥammad al-Ṭalamankī narrated to us from Ibn Mufarrij from

Muḥammad ibn Ayyūb al-Ṣamūṭ al-Raqqī from Aḥmad ibn ʿUmar ibn ʿAbd al-Khāliq al-Bazzār from Ismāʿīl ibn Masʿūd al-Jaḥdarī from Muḥammad ibn Ismāʿīl ibn Abī Fudayk from Ibrāhīm ibn Ismāʿīl—who is Ibn Abī Ḥabībah—from Dāwūd ibn al-Ḥuṣayn from ʿIkrimah from Ibn ʿAbbās from the Prophet (peace be upon him) who said: "Kill those who engage in bestiality—both the active participant and the passive one. Whoever commits the act of the people of Lot, kill the active partner and the passive partner."

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلْمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ الرَّقِّيُّ نا أَحْمَدُ بْنُ عُمَرَ بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا إِسْمَاعِيلُ بْنُ مَسْعُودٍ الْجَحْدَرِيُّ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ أَبِي فُدَيْكٍ نا إِبْرَاهِيمُ بْنُ إِسْمَاعِيلَ - هُوَ ابْنُ أَبِي حَبِيبَةَ - عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «اُقْتُلُوا مُوَاقِعَ الْبَهِيمَةِ، اُقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ، وَمَنْ عَمِلَ عَمَلَ قَوْمِ لُوطٍ فَاقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ» .

L42671–42673 Abdullah ibn Rabee' narrated to us, Muhammad ibn Mu'awiyah narrated to us, Ahmad ibn Shu'ayb narrated to us, Qutaybah ibn Sa'eed narrated to us, Abdul-Azeez ibn Muhammad Ad-Darāwardī narrated to us, Amr ibn Abi Amr narrated from Ikrimah from Ibn Abbas that the Messenger of Allah — peace and blessings be upon him — said: "May Allah curse whoever does the deed of the people of Lut (three times). May Allah curse whoever has intercourse with a beast. If you find anyone who has mounted a beast, kill him and kill the beast." It was said to Ibn Abbas: "What is the ruling concerning the beast?" He said: "I did not hear anything from the Messenger of Allah — peace and blessings be upon him — regarding that, but I think the Messenger of Allah — peace and blessings be upon him — disliked that its meat be consumed or that any benefit be derived from it after such an act was committed with it." Abu Muhammad said: "They have no proof other than what we mentioned. We have already mentioned in the preceding chapter the weakness of these narrations, because Abbad ibn Mansoor, Amr ibn Abi Amr, and Isma'eel ibn Ibrahim are all weak narrators. Had they been authentic, we would have acted upon them, adhered to them, and it would not have been permissible to oppose them. Since they are not authentic, then no... [text ends here]." It is permissible to adopt this opinion, though it was incumbent upon the Hanafis and Malikis to adopt it according to their principles, for they invoked evidence weaker than this to impose the hadd punishment of eighty [lashes] for wine in numerous cases.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ نا عَمْرُو بْنُ أَبِي عَمْرٍو عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَعَنَ اللَّهُ مَنْ عَمِلَ عَمَلَ قَوْمِ لُوطٍ - ثَلَاثَ مَرَّاتٍ - لَعَنَ اللَّهُ مَنْ وَاقَعَ بَهِيمَةً، مَنْ وَجَدْتُمُوهُ وَقَعَ عَلَى بَهِيمَةٍ فَاقْتُلُوهُ وَاقْتُلُوا الْبَهِيمَةَ» فَقِيلَ لِابْنِ عَبَّاسٍ: مَا شَأْنُ الْبَهِيمَةِ؟ قَالَ: مَا سَمِعْتُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ شَيْئًا، وَلَكِنْ أَرَى أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَرِهَ أَنْ يُؤْكَلَ مِنْ لَحْمِهَا، أَوْ يُنْتَفَعَ بِهَا وَقَدْ عُمِلَ بِهَا ذَلِكَ الْعَمَلُ؟ قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ لَهُمْ غَيْرُ مَا ذَكَرْنَا، وَقَدْ ذَكَرْنَا فِي الْبَابِ الَّذِي قَبْلَ هَذَا ضَعْفَ هَذَا الْآثَارِ لِأَنَّ عَبَّادَ بْنَ مَنْصُورٍ، وَعَمْرَو بْنَ أَبِي عَمْرٍو، وَإِسْمَاعِيلَ بْنَ إِبْرَاهِيمَ ضُعَفَاءُ كُلُّهُمْ وَلَوْ صَحَّتْ لَقُلْنَا بِهَا وَلَجَارَيْنَا عَلَيْهَا وَلَمَا حَلَّ خِلَافُهَا - فَإِذْ لَا تَصِحُّ فَلَا يَجُوزُ الْقَوْلُ بِهَا إِلَّا أَنَّهُ قَدْ كَانَ لَازِمًا لِلْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ الْقَوْلَ بِهَا عَلَى أُصُولِهِمْ، فَإِنَّهُمْ احْتَجُّوا بِأَسْقَطَ مِنْهَا فِي إِيجَابِ حَدِّ الْخَمْرِ ثَمَانِينَ فِي مَوَاضِعَ جَمَّةٍ.

L42674 Then we examined the statement of those who asserted, "The minimum of the two punishments is incumbent upon him"—but we found it devoid of

any foundational proof at all, nor do we recognize any valid justification for it—thus, it is invalidated.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: عَلَيْهِ أَدْنَى الْحَدَّيْنِ - فَوَجَدْنَاهُ لَا حُجَّةَ لَهُ أَصْلًا، وَلَا نَعْرِفُ لَهُ وَجْهًا - فَسَقَطَ.

L42675 Then we examined the statement of those who said: "A *hadd* punishment is to be imposed and the animal is to be killed," and we found it to be the height of corruption.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: " يُحَدُّ وَتُقْتَلُ الْبَهِيمَةُ " فَوَجَدْنَاهُ فِي غَايَةِ الْفَسَادِ.

L42676 Then we examined the statement of those who claimed: "The punishment is his liability according to the Imam's discretion, however severe it may be," and we found it erroneous. For Allah the Exalted has regulated all matters and did not neglect them, nor did the Imams have unrestricted authority over people's blood, their honor, their physical integrity, or their wealth. Rather, He had previously addressed them through His Messenger - peace be upon him - when He said: "Indeed, your blood, your wealth, and your physical integrity are sacredly inviolable to you."

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: " عَلَيْهِ الْعُقُوبَةُ بِرَأْيِ الْإِمَامِ بَالِغَةً مَا بَلَغَتْ " فَوَجَدْنَاهُ خَطَأً، لِأَنَّ اللَّهَ تَعَالَى قَدْ زَمَّ الْأُمُورَ وَلَمْ يُهْمِلْهَا، وَلَمْ يُطْلِقْ الْأَئِمَّةُ عَلَى دِمَاءِ النَّاسِ، وَلَا أَعْرَاضِهِمْ، وَلَا أَبْشَارِهِمْ، وَلَا أَمْوَالِهِمْ، بَلْ قَدْ تَقَدَّمَ إلَيْهِمْ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - فَقَالَ: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

L42677 It may be that the Imam's judgment applies to specific matters concerning an individual - such as confiscating his wealth, executing him, or selling him [into slavery]. If those [who oppose this ruling] are barred from such actions, how can they justify prohibiting this while permitting other [similar] acts? They possess no valid means to distinguish between these cases, rendering their claim baseless and devoid of evidence for its proponent.

وَلَعَلَّ رَأْيَ الْإِمَامِ يَبْلُغُ إلَى خِصَائِهِ، أَوْ إلَى أَخْذِ مَالِهِ، أَوْ إلَى قَتْلِهِ، أَوْ إلَى بَيْعِهِ، فَإِنْ مُنِعُوا مِنْ هَذَا، سُئِلُوا الْفَرْقَ بَيْنَ مَا مُنِعُوا مِنْ هَذَا وَبَيْنَ مَا أَبَاحُوا مِنْ غَيْرِ ذَلِكَ؟ وَلَا سَبِيلَ لَهُمْ إلَيْهِ، فَخَصَلَ هَذَا الْقَوْلُ لَا حُجَّةَ لِقَائِلِهِ.

L42678 Then we examined the sole remaining opinion—that only discretionary punishment is due—and found it sound, because he committed a reprehensible act. Allah the Exalted says: "And those who guard their private parts, except from their spouses or those their right hands possess..." [23:5-6] until His statement: "...the transgressors" [23:7]. There is no disagreement among any in the Ummah that it is categorically impermissible to have sexual intercourse with an animal. Thus, the perpetrator of such an act has committed a reprehensible act. The Messenger of Allah—peace and blessings be upon him—commanded changing the reprehensible act through physical intervention.

ثُمَّ نَظَرْنَا فِي الْقَوْلِ الَّذِي لَمْ يَبْقَ غَيْرُهُ - وَهُوَ أَنَّ عَلَيْهِ التَّعْزِيرَ فَقَطْ - فَوَجَدْنَاهُ صَحِيحًا، لِأَنَّهُ قَدْ أَتَى مُنْكَرًا، فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إِلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ} [المؤمنون: ٦] إلَى قَوْله تَعَالَى {الْعَادُونَ} [المؤمنون: ٧] وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ أَنَّهُ لَا يَحِلُّ أَنْ تُؤْتَى الْبَهِيمَةُ أَصْلًا، فَفَاعِلُ ذَلِكَ فَاعِلُ مُنْكَرٍ، وَقَدْ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِتَغْيِيرِ الْمُنْكَرِ بِالْيَدِ، فَعَلَيْهِ مِنْ التَّعْزِيرِ مَا نَذْكُرُهُ - إنْ شَاءَ اللَّهُ تَعَالَى.

Therefore, he is subject to a discretionary punishment, as we will elaborate (if Allah the Exalted wills).[15]

[مَسْأَلَة فِيمَنْ قَذَفَ آخَرَ بِبَهِيمَةٍ أَوْ بِفِعْلِ قَوْمِ لُوطٍ]

A jurisprudential issue concerning one who accuses another of bestiality or sodomy.

٢٣٠٥ - مَسْأَلَةٌ: مَنْ قَذَفَ آخَرَ بِبَهِيمَةٍ، أَوْ بِفِعْلِ قَوْمِ لُوطٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: عَلَيْهِ حَدُّ الْقَذْفِ.

Issue 2305: Concerning one who accuses another of bestiality or the act of the people of Lot. Abu Muhammad—may Allah have mercy on him—said: "Scholars have differed regarding this matter. A group maintains that the hadd of qadhf applies to him."

كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: مَنْ قَذَفَ آخَرَ بِبَهِيمَةٍ جُلِدَ حَدَّ الْفِرْيَةِ.

From Ḥammām, from Ibn Mufarrij, from Ibn al-Aʿrabī, from al-Dabarī, from ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: "Whoever accuses another of bestiality is to be flogged with the *ḥadd* for false accusation."

قَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: لَيْسَ عَلَيْهِ حَدُّ الْفِرْيَةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَنْ جَعَلَ إتْيَانَ الْبَهِيمَةِ زِنًى فَقَدْ طَرَدَ أَصْلَهُ، وَكَذَلِكَ مَنْ جَعَلَ فِعْلَ قَوْمِ لُوطٍ زِنًى فَقَدْ طَرَدَ أَصْلَهُ، إذْ جَعَلَ فِي الْقَذْفِ بِهِمَا حَدَّ الزِّنَى، وَقَدْ بَيَّنَّا أَنَّهُمَا لَيْسَا زِنًى فَالْقَذْفُ بِهِمَا لَيْسَ هُوَ الْقَذْفُ الْمُوجِبُ لِلْحَدِّ، وَإِنَّمَا هُوَ أَذًى فَقَطْ فَفِيهِ التَّعْزِيرُ.

Abu Hanifah, Malik, and al-Shafiʿi said: Is the ḥadd punishment for false accusation not applicable to him? Abu Muhammad—may Allah have mercy on him—said: Whoever equates intercourse with an animal to adultery has invalidated its foundation, and likewise whoever equates the act of the people of Lot to adultery has invalidated its foundation, since it applies the ḥadd punishment for adultery to accusations involving them. We have clarified that these two acts are not adultery; thus, accusing someone of them does not constitute the type of false accusation that necessitates the ḥadd punishment. It is merely harm, warranting discretionary punishment (taʿzīr).

وَأَمَّا الْمَالِكِيُّونَ - فَإِنَّهُمْ وَافَقُونَا عَلَى أَنَّ فِعْلَ قَوْمِ لُوطٍ لَيْسَ زِنًى، وَأَنَّ إتْيَانَ الْبَهِيمَةِ لَيْسَ زِنًى، فَسَاوَوْا بَيْنَهُمَا فِي هَذَا الْبَابِ، ثُمَّ إنَّهُمْ جَعَلُوا فِي الْقَذْفِ بِفِعْلِ قَوْمِ لُوطٍ حَدَّ الْقَذْفِ بِالزِّنَى، وَلَمْ يَجْعَلُوا فِي الْقَذْفِ بِإِتْيَانِ الْبَهِيمَةِ حَدَّ الْقَذْفِ بِالزِّنَى، وَهَذَا تَنَاقُضٌ.

As for the Mālikīs, they agreed with us that the act of Lot's people is not adultery and that bestiality is not adultery, thus they equated the two in this regard. Then they applied the ḥadd punishment for false accusation related to adultery to accusations of engaging in the act of Lot's people, yet did not apply the ḥadd punishment for false accusation related to adultery to accusations of bestiality. This is a contradiction.

فَإِنْ قَالُوا: إنَّ فِعْلَ قَوْمِ لُوطٍ أَعْظَمُ مِنْ الزِّنَى؟ قِيلَ لَهُمْ: هَبْكُمْ أَنَّهُ كَالْكُفْرِ، فَهَلَّا جَعَلْتُمْ فِي الْقَذْفِ بِالْكُفْرِ حَدَّ الزِّنَى عَلَى هَذَا الْأَصْلِ الْفَاسِدِ؟ وَهَذَا لَا مَخْلَصَ مِنْهُ؟

If they say: "Indeed, the act of the people of Lot is graver than adultery?" It is said to them: "Suppose it is like disbelief—why then did you not prescribe

[15] **Qur'an references (L42678):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun).

adultery's punishment for accusations of disbelief according to this corrupt principle? There is no escape from it." If they say: "It is adultery, but the gravest form of adultery, so the severest punishment for adultery was prescribed for it—because the person with whom adultery was committed might become lawful at some point in time, whereas the one subjected to the act of Lot's people can never become permissible for the doer, thus it is undoubtedly graver"—it is said to them: "This is invalidated through multiple aspects:"

فَإِنْ قَالُوا: هُوَ زِنًى، وَلَكِنَّهُ أَعْظَمُ الزِّنَى، فَجُعِلَ فِيهِ أَعْظَمُ حُدُودِ الزِّنَى، لِأَنَّ الْمَزْنِيَّ بِهَا قَدْ تَحِلُّ يَوْمًا مِنْ الدَّهْرِ، وَفِعْلَ قَوْمِ لُوطٍ لَا يَحِلُّ الْمَفْعُولُ بِهِ ذَلِكَ لِلْفَاعِلِ أَبَدًا، فَهُوَ أَعْظَمُ بِلَا شَكٍّ؟ قِيلَ لَهُمْ: هَذَا يَبْطُلُ مِنْ وُجُوهٍ:

L42686 One of them is that if someone commits adultery with a female relative unlawful to him—whether by lineage or milk kinship (*radāʿa*)—it is never permissible for him. Therefore, you must impose the severest *ḥudūd* for *zinā* in accordance with this legal principle.

أَحَدُهَا - أَنَّ الزَّانِيَ بِحَرِيمَتِهِ مِنْ نَسَبٍ أَوْ رَضَاعٍ لَا يَحِلُّ لَهُ أَبَدًا، فَاجْعَلُوا فِيهِ أَغْلَظَ حُدُودَ الزِّنَى عَلَى هَذَا الْأَصْلِ.

L42687 The second is that it should be stated to them: A man who penetrates an unrelated woman in her anus has perpetrated an act perpetually impermissible for him. If he marries her, then impose upon him, according to this foundational principle, the most severe hudud punishment for zina.

وَالثَّانِي - أَنْ يُقَالَ لَهُمْ: وَاطِئُ أَجْنَبِيَّةٍ فِي دُبُرِهَا أَتَى مَا لَا يَحِلُّ لَهُ أَبَدًا، فَإِنْ تَزَوَّجَهَا فَاجْعَلُوا فِيهِ عَلَى هَذَا الْأَصْلِ أَغْلَظَ حُدُودَ الزِّنَى.

L42688 The third point is that it may also be said to them: "You commit an act with an animal—you commit what is perpetually impermissible for you." By this very rationale you cited to justify your claim, the act of Lot's people has been equated [to bestiality]. Why then did you not also impose the harshest ḥadd punishment for illicit sexual relations upon it? There is no distinction. Then we return to their assertion: "Indeed, the act of Lot's people is the gravest form of illicit sexual relations"?

وَالثَّالِثُ - أَنْ يُقَالَ لَهُمْ أَيْضًا: آتِي الْبَهِيمَةَ آتِي مَا لَا يَحِلُّ لَهُ أَبَدًا، فَقَدْ سَاوَى فِعْلَ قَوْمِ لُوطٍ فِي هَذِهِ الْعِلَّةِ الَّتِي عَلَّلْتُمْ بِهَا قَوْلَكُمْ، فَهَلَّا جَعَلْتُمْ فِيهِ أَغْلَظَ الْحُدُودِ فِي الزِّنَى أَيْضًا؟ وَلَا فَرْقَ، ثُمَّ رَجَعْنَا إلَى قَوْلِهِمْ " إنَّ فِعْلَ قَوْمِ لُوطٍ أَعْظَمُ الزِّنَى "؟

L42689–42690 We say to them: We have clarified that illicit sexual intercourse (zinā)—linguistically and according to the Sunnah of Allah's Messenger (peace be upon him)—does not apply to the act of the people of Lūṭ. We have explained that it is neither zinā nor greater than zinā, for when Allah's Messenger (peace be upon him) was asked, "Which sin is the gravest?" he said words—their meaning being: associating partners with Allah, then a man killing his child out of fear that he would have to feed the child alongside himself, then committing zinā with the wife of one's neighbor.

فَنَقُولُ لَهُمْ: إنَّا قَدْ أَوْضَحْنَا أَنَّ الزِّنَى بِاللُّغَةِ، وَبِسُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَقَعُ عَلَى فِعْلِ قَوْمِ لُوطٍ - وَقَدْ بَيَّنَّا أَنَّهُ لَيْسَ زِنًى وَلَا أَعْظَمَ مِنْ الزِّنَى، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ أَيُّ الذَّنْبِ أَعْظَمُ؟ فَقَالَ كَلَامًا - مَعْنَاهُ: الشِّرْكُ، ثُمَّ قَتْلُ الْمَرْءِ وَلَدَهُ مَخَافَةَ أَنْ يُطْعَمَ مَعَهُ، ثُمَّ الزِّنَى بِحَلِيلَةِ الْجَارِ.

L42691 Thus, it is established that adultery with a neighbor's wife is more severe

than the act of the people of Lot, by the report of the Messenger of Allah (peace and blessings be upon him) which no one is permitted to reject. And with Allah, the Exalted, is success.

فَصَحَّ أَنَّ الزِّنَى بِحَلِيلَةِ الْجَارِ أَعْظَمُ مِنْ فِعْلِ قَوْمِ لُوطٍ بِخَبَرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي لَا يَحِلُّ لِأَحَدٍ رَدُّهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of What is Admissible from Witnesses Regarding the Acts of the People of Lot and Bestiality.

[مَسْأَلَة مَا يقْبَل فِي فعل قَوْم لوط وأتيان الْبَهَائِم مِنْ الشُّهُود]

2306. Issue: Testimony regarding what we have mentioned? Abu Muhammad (may Allah have mercy on him) said: There was a difference of opinion among the people: A group among them, including Al-Shāfiʿī, and a group from our companions said: Testimony concerning the act of the people of Lot and bestiality is not accepted with fewer than four witnesses.

٢٣٠٦ - مَسْأَلَةٌ: الشَّهَادَةُ فِيمَا ذَكَرْنَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ: قَالَ قَوْم مِنْهُمْ الشَّافِعِيُّ، وَقَوْمٌ مِنْ أَصْحَابِنَا: إنَّهُ لَا يُقْبَلُ فِي فِعْلِ قَوْمِ لُوطٍ، وَإِتْيَانِ الْبَهِيمَةِ أَقَلُّ مِنْ أَرْبَعَةِ شُهُودٍ.

Abu Hanifa and his companions said: "Are two witnesses accepted in this case?" Abu Muhammad said: "As for those who consider these two sins to be fornication, they have contradicted its foundational principle. We have clarified with clear proofs that they are fundamentally not acts of fornication, and therefore they are not subject to any of the rulings specifically designated for fornication."

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: يُقْبَلُ فِي ذَلِكَ اثْنَانِ؟ قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ جَعَلَ هَذَيْنِ الذَّنْبَيْنِ زِنًى فَقَدْ طَرَدَ أَصْلَهُ، وَقَدْ أَوْضَحْنَا بِالْبَرَاهِينِ الْوَاضِحَةِ أَنَّهُمَا لَيْسَا مِنْ الزِّنَى أَصْلًا فَلَيْسَ لَهُمَا شَيْءٌ مِمَّا خَصَّ بِهِ حُكْمَ الزِّنَى.

Some of our companions argued in this matter by saying: These specific acts of physical contact are prohibited except by textual evidence or consensus. No consensus exists to permit the physical contact of one who commits the act of the people of Lot, nor the physical contact of one who engages with an animal—whether by discretionary punishment or otherwise—except through four witnesses. Thus, it is impermissible to deem these acts lawful with fewer than that.

وَاحْتَجَّ بَعْضُ أَصْحَابِنَا فِي ذَلِكَ بِأَنْ قَالُوا: إنَّ الْأَبْشَارَ مُحَرَّمَةٌ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ، وَلَمْ يُجْمِعُوا عَلَى إبَاحَةِ بَشَرَةِ فَاعِلِ فِعْلِ قَوْمِ لُوطٍ، وَبَشَرَةِ آتِي الْبَهِيمَةِ بِتَعْزِيرٍ، وَلَا بِغَيْرِهِ، إلَّا بِأَرْبَعَةِ شُهُودٍ، فَلَا يَجُوزُ اسْتِبَاحَتُهُمَا بِأَقَلَّ.

Abū Muḥammad—may Allāh have mercy on him—said: It would necessarily follow for whoever upholds this view that they may not decree retaliation under any circumstance except with four witnesses, because there has been no consensus permitting the shedding of the blood of one accused of murder with fewer than four upright witnesses. If someone were to assert all of this, the discourse with them would take a different course—namely, by stating: There stands established a truthful, definitive, and certain consensus that the Messenger of Allāh—peace be upon him—commanded the acceptance of

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَيَلْزَمُ مَنْ رَاعَى هَذَا أَنْ لَا يَحْكُمَ بِقَوَدٍ أَصْلًا إلَّا بِأَرْبَعَةِ شُهُودٍ، لِأَنَّهُ لَمْ يُجْمِعْ عَلَى إبَاحَةِ دَمِ الْمَشْهُودِ عَلَيْهِ بِالْقَتْلِ بِأَقَلَّ مِنْ أَرْبَعَةِ شُهُودٍ عُدُولٍ؟ فَإِنْ قَالَ بِذَلِكَ كُلِّهِ قَائِلٌ كَانَ الْكَلَامُ مَعَهُ مِنْ غَيْرِ هَذَا، وَهُوَ أَنْ يُقَالَ لَهُ: قَدْ صَحَّ الْإِجْمَاعُ الصَّادِقُ الْقَاطِعُ الْمُتَيَقَّنُ عَلَى أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

evidence in all legal rulings, from first to last. He specified a number for some rulings and remained silent regarding others. Since this is beyond doubt, we are certain that these two rulings—and others—fall under Allāh the Exalted's command to enforce obligations through the testimony of proof.

أَمَرَ بِقَبُولِ الْبَيِّنَةِ فِي جَمِيعِ الْأَحْكَامِ - أَوَّلُهَا عَنْ آخِرِهَا - وَحَدَّ فِي بَعْضِ الْأَحْكَامِ عَدَدًا وَسَكَتَ عَنْ بَعْضِهَا، فَإِذْ لَا شَكَّ فِي ذَلِكَ، فَهَذَانِ الْحُكْمَانِ، وَغَيْرُهُمَا، قَدْ أَيْقَنَّا أَنَّ اللَّهَ تَعَالَى أَمَرَنَا بِإِنْفَاذِ الْوَاجِبِ فِي ذَلِكَ بِشَهَادَةِ الْبَيِّنَةِ.

L42697–42699 Therefore, the obligation in that regard is to accept whatever falls under the designation of clear evidence, unless a text prohibits something thereof. One must adhere to this, for the text prohibits accepting the testimony of the disbeliever and the morally corrupt. The text states that a woman's testimony is half that of a man, and that minors are not subject to any of the rulings. Thus, these individuals are excluded from the ruling of testimony solely as the text has excluded them.

فَالْوَاجِبُ فِي ذَلِكَ قَبُولُ مَا وَقَعَ عَلَيْهِ اسْمُ بَيِّنَةٍ، إِلَّا أَنْ يَمْنَعَ نَصٌّ مِنْ شَيْءٍ مِنْ ذَلِكَ فَيُوقَفُ عِنْدَهُ، وَقَدْ مَنَعَ النَّصُّ مِنْ قَبُولِ الْكَافِرِ وَالْفَاسِقِ، وَأَخْبَرَ النَّصُّ: أَنَّ شَهَادَةَ الْمَرْأَةِ نِصْفُ شَهَادَةِ الرَّجُلِ، وَأَنَّ الصِّبْيَانَ غَيْرُ مُخَاطَبِينَ بِشَيْءٍ مِنَ الْأَحْكَامِ، فَخَرَجَ هَؤُلَاءِ مِنْ حُكْمِ الشَّهَادَةِ حَسْبَمَا أَخْرَجَهُمْ النَّصُّ فَقَطْ.

L42700 For indeed, Allah, the Exalted, says: {O you who believe, if a transgressor comes to you with news, verify it} [Al-Ḥujurāt: 6]. Thus, it is valid that this is a ruling from Allah, the Exalted, applicable to all judgments He decrees concerning one's blood, wealth, or honor, and to every judgment.[16]

وَأَيْضًا - فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَإٍ فَتَبَيَّنُوا} [الحجرات: ٦] الْآيَةُ فَصَحَّ أَنَّ هَذَا حُكْمٌ مِنْ اللَّهِ تَعَالَى وَارِدٌ فِي كُلِّ مَا يَحْكُمُ بِهِ عَلَى أَحَدٍ فِي دَمِهِ وَمَالِهِ، وَبَشَرَتِهِ، وَفِي كُلِّ حُكْمٍ.

L42701 Had it not been for the established text stating that "the Messenger of Allah (peace be upon him) ruled by the oath of the plaintiff along with a single witness" and the verified report that "he (peace be upon him) did not accept the testimony of a single witness unless accompanied by an oath," it would have been obligatory to accept a single witness based on the mentioned verse, except where the text specifies two witnesses or four witnesses.

فَلَوْلَا النَّصُّ الثَّابِتُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ بِيَمِينِ الطَّالِبِ مَعَ الشَّاهِدِ الْوَاحِدِ» وَصَحَّ «أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَحْكُمْ بِشَهَادَةِ الشَّاهِدِ الْوَاحِدِ دُونَ يَمِينٍ مَعَهَا» لَوَجَبَ قَبُولُ شَاهِدٍ وَاحِدٍ بِالْآيَةِ الْمَذْكُورَةِ، إِلَّا حَيْثُ جَاءَ النَّصُّ بِاثْنَيْنِ أَوْ أَرْبَعَةٍ.

L42702 Since the plaintiff's oath is impermissible in these two rulings—as they are not a single right but belong to Allah, the Exalted—it is obligatory that only what is affirmed by those who permit it is valid. This includes the testimony of two [male witnesses], four women, or one man and two women, consistent with other legal rulings.

فَلَمَّا كَانَ هَذَانِ الْحُكْمَانِ لَا يَجُوزُ فِيهِمَا تَحْلِيفُ الطَّالِبِ، لِأَنَّهَا لَيْسَا حَقًّا وَاحِدًا، وَإِنَّمَا هُمَا لِلَّهِ تَعَالَى وَجَبَ أَنْ لَا يَجُوزَ فِيهِمَا إِلَّا مَا قَالَ قَائِلُونَ بِإِجَازَتِهِ - وَهُوَ شَهَادَةُ اثْنَيْنِ، أَوْ أَرْبَعِ نِسْوَةٍ، أَوْ رَجُلٍ وَامْرَأَتَيْنِ كَسَائِرِ الْأَحْكَامِ.

L42703 As for adultery specifically, it cannot be proven with fewer than four [wit-

[16] **Qur'an references (L42700):** Qur'an 49:6 (Al-Hujurat).

nesses], in accordance with the transmitted scriptural text on the matter—and with Allah, the Exalted, lies all success.

A legal question concerning a woman having sexual relations with another woman.

2307: Issue of Rubbing (al-Sahq) Abū Muḥammad—may Allāh have mercy on him—said: People have differed regarding tribadism (sahq). A group held that each of the two women is to be lashed one hundred times, as narrated from Ḥammām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarrī, from ʿAbd al-Razzāq, from Ibn Jurayj, from Ibn Shihāb, who said: I encountered our scholars stating that if a woman engages with another woman by means of "rubbing" (al-riʿfah) or similar methods—they are both lashed one hundred times—the active party and the passive party.

And by him - to ʿAbd al-Razzāq, from Maʿmar, from Ibn Shihāb, with the like of that.

A group of scholars permitted this matter—as reported from Ḥammām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, who said: Ibn Jurayj informed me through someone I trust, transmitting from al-Ḥasan al-Baṣrī, that he saw no issue with a woman inserting an object to achieve concealment, thereby enabling her to avoid adultery.

Others said—it is forbidden, and there is no prescribed punishment for it, but does discretionary punishment apply? Abu Muhammad (may Allah have mercy on him) said: Since they differed—as we mentioned—it became necessary for us to examine this matter. We examined al-Zuhri's opinion and found no foundational evidence for it whatsoever, unless a speaker were to propose: "Just as the act of the People of Lot was deemed the most severe form of fornication, leading them to establish the harshest prescribed punishment for it, then by analogy—if this act is the least severe form of fornication—should one prescribe the mildest prescribed punishment for it?"

Abu Muhammad—may Allah have mercy on him—said: This is an inescapable and obligatory analogy for those who prescribe stoning for the act

وَأَمَّا الزِّنَى وَحْدَهُ فَلَا يُقْبَلُ فِيهِ أَقَلُّ مِنْ أَرْبَعَةٍ بِالنَّصِّ الْوَارِدِ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة فِي الْمَرْأَة تَأْتِي الْمَرْأَة]

٢٣٠٧ - مَسْأَلَةٌ: السَّحْقِ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي السَّحْقِ: فَقَالَتْ طَائِفَةٌ: تُجْلَدُ كُلُّ وَاحِدَةٍ مِنْهُمَا مِائَةً - كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ ثني ابْنُ جُرَيْجٍ أَخْبَرَنِي ابْنُ شِهَابٍ قَالَ: أَدْرَكْتُ عُلَمَاءَنَا يَقُولُونَ فِي الْمَرْأَةِ تَأْتِي الْمَرْأَةَ بِ " الرِّفْعَةِ " وَأَشْبَاهِهَا يُجْلَدَانِ مِائَةً - الْفَاعِلَةُ وَالْمَفْعُولُ بِهَا.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ شِهَابٍ بِمِثْلِ ذَلِكَ.

وَرَخَّصَتْ فِيهِ طَائِفَةٌ - كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي مَنْ أَصْدُقُ عَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِالْمَرْأَةِ تُدْخِلُ شَيْئًا، تُرِيدُ السِّتْرَ تَسْتَغْنِي بِهِ عَنْ الزِّنَى.

وَقَالَ آخَرُونَ - هُوَ حَرَامٌ وَلَا حَدَّ فِيهِ، وَفِيهِ التَّعْزِيرُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ: فَنَظَرْنَا فِي قَوْلِ الزُّهْرِيِّ فَلَمْ نَجِدْ لَهُ حُجَّةً أَصْلًا، إلَّا أَنْ يَقُولَ قَائِلٌ: كَمَا جَعَلَ فِعْلَ قَوْمِ لُوطٍ أَشَدُّ الزِّنَى، فَجَعَلُوا فِيهِ أَعْظَمَ حَدٍّ فِي الزِّنَى، فَكَذَلِكَ هَذَا أَقَلُّ الزِّنَى، فَجَعَلَ فِيهِ أَخَفَّ حَدِّ الزِّنَى؟ .

of the people of Lut, as it is graver than unlawful sexual intercourse. There is absolutely no escape for them from this at all. They must also consider the lesbian sexual act to be more severe than unlawful sexual intercourse, like the act of the people of Lut. Thus, it necessarily becomes binding upon them to prescribe stoning for it, just as they inevitably prescribed it for the act of the people of Lut, for both acts involve diverting the private part to what is perpetually unlawful.

L42712–42714 However, the people do not properly apply analogical reasoning, nor do they comprehend inferential reasoning, nor do they apply their rulings consistently, nor adhere to their own justifications, nor ground themselves in textual sources. Why do they not argue here: "Al-Zuhri met the Companions and senior Successors," thus he would only state this based on their teachings? We know of no disagreement among those who prohibit this act, so why do they adopt his opinion as they would have done if it conformed to their taqlīd (legal adherence)? Abū Muḥammad—may Allah have mercy on him—said: "As for us, analogical reasoning is invalid in our view, and it is not binding to follow anyone's opinion apart from the Messenger of Allah—peace and blessings be upon him. Tribadism (al-saḥq) and non-penetrative intercourse (ar-rifʿah) do not constitute zinā (adultery). Since they are not zinā, the ḥadd punishment for zinā does not apply to them. Nor does anyone have the right to arbitrarily categorize acts—as more severe or lenient—and assign legal punishments accordingly based on personal opinion, just as..." He desires—rather, it is a transgression of the boundaries of Allah, the Exalted, and he has legislated in the religion what Allah, the Exalted, has not permitted—He, the Exalted, says: {And whoever transgresses the boundaries of Allah has indeed wronged himself} [At-Talaq: 1].[17]

L42715 Does this obligation apply only to one against whom the decisive proof has been established, yet persists in error while advocating blind imitation? Abū Muḥammad—may Allāh have mercy on him—said: Since neither the Qur'ān nor an authentic Sunnah corroborates al-Zuhrī's statement, therefore declarations are forbidden and the hudud—there is absolutely no prescribed punishment in this matter whatsoever, and with Allāh, the Exalted, is success.

[17] **Qur'an references (L42712):** Qur'an 65:1 (At-Talaq).

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا قِيَاسٌ لَازِمٌ وَاجِبٌ عَلَى مَنْ جَعَلَ الرَّجْمَ فِي فِعْلِ قَوْمِ لُوطٍ، لِأَنَّهُ أَعْظَمُ مِنْ الزِّنَى، وَلَا مُخَلِّصَ لَهُمْ مِنْ هَذَا أَصْلًا، وَأَنْ يَجْعَلُوا " السَّحْقَ " أَيْضًا أَشَدَّ الزِّنَى، كَفِعْلِ قَوْمِ لُوطٍ، فَيَلْزَمُهُمْ أَنْ يَجْعَلُوا فِيهِ الرَّجْمَ، كَمَا جَعَلُوا فِي فِعْلِ قَوْمِ لُوطٍ وَلَا بُدَّ، لِأَنَّ كِلَا الْأَمْرَيْنِ عُدُولٌ بِالْفَرْجِ إلَى مَا لَا يَحِلُّ أَبَدًا.

وَلَكِنَّ الْقَوْمَ لَا يُحْسِنُونَ الْقِيَاسَ، وَلَا يَعْرِفُونَ الِاسْتِدْلَالَ، وَلَا يَطْرُدُونَ أَقْوَالَهُمْ، وَلَا يَلْزَمُونَ تَعْلِيلَهُمْ، وَلَا يَتَعَلَّقُونَ بِالنُّصُوصِ، وَهَلَّا قَالُوا هَاهُنَا: إنَّ الزُّهْرِيَّ أَدْرَكَ الصَّحَابَةَ وَكِبَارَ التَّابِعِينَ؟ فَلَا يَقُولُ هَذَا إلَّا عَنْهُمْ، وَلَا نَعْرِفُ خِلَافًا فِي ذَلِكَ مِمَّنْ يَرَى تَحْرِيمَ هَذَا الْعَمَلِ، فَيَأْخُذُونَ بِقَوْلِهِ، كَمَا كَانُوا يَفْعَلُونَ لَوْ وَافَقَ تَقْلِيدَهُمْ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَأَمَّا نَحْنُ فَإِنَّ الْقِيَاسَ بَاطِلٌ عِنْدَنَا، وَلَا يَلْزَمُ اتِّبَاعُ قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " وَالسَّحْقُ " " وَالرِّفْعَةُ " لَيْسَا زِنًى، فَإِذْ لَيْسَا زِنًى فَلَيْسَ فِيهِمَا حَدُّ الزِّنَى، وَلَا لِأَحَدٍ أَنْ يُقَسِّمَ بِرَأْيِهِ - أَعْلَى وَأَخَفَّ - فَيُقْسِمَ الْحُدُودَ فِي ذَلِكَ كَمَا يَشْتَهِي بَلْ هُوَ تَعَدٍّ لِحُدُودِ اللَّهِ تَعَالَى، وَشَرَعَ فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى - وَهُوَ يَقُولُ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

وَإِنَّمَا يَلْزَمُ هَذَا مَنْ قَامَتْ عَلَيْهِ الْحُجَّةُ فَتَمَادَى عَلَى الْخَطَأِ نَاصِرًا لِلتَّقْلِيدِ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَإِذْ لَمْ يَأْتِ بِمِثْلِ قَوْلِ الزُّهْرِيِّ قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، فَالْأَبْشَارُ مُحَرَّمَةٌ وَالْحُدُودُ، فَلَا حَدَّ فِي هَذَا أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَإِنْ ذَكَرُوا: مَا نَاهِ أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا هِشَامُ بْنُ خَالِدٍ نا بَقِيَّةُ بْنُ الْوَلِيدِ ثَنِي عُثْمَانُ بْنُ عَبْدِ الرَّحْمَنِ نِي عَنْبَسَةُ بْنُ سَعِيدٍ نا مَكْحُولٌ عَنْ وَاثِلَةَ بْنِ الْأَسْقَعِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «السِّحَاقُ زِنًى بِالنِّسَاءِ بَيْنَهُنَّ» فَإِنَّ هَذَا لَا يَصِحُّ، لِأَنَّهُ عَنْ بَقِيَّةٍ - وَهُوَ ضَعِيفٌ - وَلَمْ يُدْرِكْ مَكْحُولًا، وَوَاثِلَةَ، فَهُوَ مُنْقَطِعٌ.

L42716 If they cite the report: From Aḥmad ibn Qāsim—from his father Qāsim ibn Muḥammad ibn Qāsim—from his grandfather Qāsim ibn Aṣbagh—from Muḥammad ibn Waḍḍāḥ—from Hishām ibn Khālid—from Baqiyyah ibn al-Walīd (from ʿUthmān ibn ʿAbd al-Raḥmān)—from ʿAnbasah ibn Saʿīd—from Makhūl—from Wāthilah ibn al-Asqaʿ that the Prophet—peace be upon him and his family—said: "Sexual relations between women constitute adultery among them," then this is invalid. For its transmission relies on Baqiyyah (a weak narrator) who did not contemporaneously meet Makhūl or Wāthilah, resulting in a disconnected chain.

ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ مَا يُوجِبُ الْحُكْمَ بِالْحَدِّ فِي ذَلِكَ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ بَيَّنَ فِي حَدِيثِ الْأَسْلَمِيِّ مَا هُوَ الزِّنَى الْمُوجِبُ لِلْحَدِّ، وَإِنَّمَا هُوَ إِتْيَانُ الرَّجُلِ مِنْ الْمَرْأَةِ حَرَامًا مَا يَأْتِي مِنْ أَهْلِهِ حَلَالًا.

L42717 Then, even if [the narration] were authentic, it would not necessitate applying the ḥadd in this matter, because the Prophet (peace be upon him) clarified in the *ḥadīth* of the Aslamī what constitutes zinā that necessitates the ḥadd: it is specifically a man's unlawful intercourse with a woman in the same manner he lawfully engages with his spouse.

وَأَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّ الْأَعْضَاء تَزْنِي، وَأَنَّ الْفَرْجَ يُكَذِّبُ ذَلِكَ أَوْ يُصَدِّقُهُ فَصَحَّ أَنْ لَا زِنَى بَيْنَ رَجُلٍ وَامْرَأَةٍ إلَّا بِالْفَرْجِ الَّذِي هُوَ الذَّكَرُ فِي الْفَرْجِ الَّذِي هُوَ مَخْرَجُ الْوَلَدِ فَقَطْ.

L42718 He (peace be upon him) conveyed that limbs may commit zinā, while the genitalia either deny or confirm this. Thus, zinā between a man and woman is only established through the penetration of the penis into the vagina—the latter being exclusively the childbirth passage.

وَلَقَدْ كَانَ يَلْزَمُ هَذَا الْخَبَرَ مَنْ رَأَى بِرَأْيِهِ أَنَّ فِعْلَ قَوْمِ لُوطٍ أَعْظَمُ الزِّنَى، فَإِنَّهُ لَيْسَ مَعَهُمْ فِيهِ نَصٌّ أَصْلًا، وَلَوْ وَجَدُوا مِثْلَ هَذَا لَطَغَوْا وَبَغَوْا.

L42719 Indeed, this report binds those who assert—based on personal opinion—that the act of Lot's people constitutes the gravest fornication, for they possess no textual evidence whatsoever regarding it. Had they found anything resembling this, they would have transgressed and acted unjustly.

فَسَقَطَ هَذَا جُمْلَةً وَاحِدَةً.

L42720 Therefore, this was invalidated as a single whole.

ثُمَّ نَظَرْنَا فِي قَوْلِ الْحَسَنِ فِي إبَاحَةِ ذَلِكَ - فَوَجَدْنَاهُ خَطَأً، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ} [المؤمنون: ٦] إلَى قَوْلِهِ {الْعَادُونَ} [المؤمنون: ٧] .

L42721 Then we examined Al-Ḥasan's statement permitting that, and found it erroneous, for Allah, the Exalted, says: *"And those who guard their private parts - except with their spouses or those whom their right hands possess"* (23:5-7) up to His words *"the transgressors."*[18]

[18] **Qur'an references (L42721):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun).

L42722 It has been established by evidence from the Quran and by consensus that a woman is not lawful for her male slaves, and that he is her mahram, because Allah the Exalted exempted the Mothers of the Believers from observing hijab in front of their male slaves and their mahrams from among the women.

وَصَحَّ بِالدَّلِيلِ مِنْ الْقُرْآنِ، وَبِالْإِجْمَاعِ: أَنَّ الْمَرْأَةَ لَا تَحِلُّ لِمِلْكِ يَمِينِهَا وَأَنَّهُ مِنْهَا ذُو مَحْرَمٍ، لِأَنَّ اللَّهَ تَعَالَى أَسْقَطَ الْحِجَابَ عَنْ أُمَّهَاتِ الْمُؤْمِنِينَ عَنْ عَبِيدِهِنَّ مَعَ ذِي مَحَارِمِهِنَّ مِنْ النِّسَاءِ.

L42723–42724 It is established that a slave has a mahram relationship with his master. Thus, if a woman allows someone other than her husband access to her private parts and fails to safeguard it, she has indeed disobeyed Allah the Exalted by doing so. It is also established that her body is forbidden to anyone other than her husband, to whom it has been explicitly permitted by scriptural text. Therefore, if she permits her body to a woman or a man other than her husband, she has permitted what is forbidden.

فَصَحَّ أَنَّ الْعَبْدَ مِنْ سَيِّدِهِ ذُو مَحْرَمٍ فَالْمَرْأَةُ إذَا أَبَاحَتْ فَرْجَهَا لِغَيْرِ زَوْجِهَا فَلَمْ تَحْفَظْهُ، فَقَدْ عَصَتْ اللَّهَ تَعَالَى بِذَلِكَ - وَصَحَّ أَنَّ بَشَرَتَهَا مُحَرَّمَةٌ عَلَى غَيْرِ زَوْجِهَا الَّذِي أُبِيحَتْ لَهُ بِالنَّصِّ، فَإِذَا أَبَاحَتْ بَشَرَتَهَا لِامْرَأَةٍ أَوْ رَجُلٍ غَيْرِ زَوْجِهَا فَقَدْ أَبَاحَتْ الْحَرَامَ.

L42725 It has been narrated to us through the chain of Muslim: Abu Bakr ibn Abi Shaybah narrated to us from Zayd ibn al-Hubab (he is al-Ukli) from al-Dahhak ibn Uthman (he is al-Hizami), who informed me: Zayd ibn Aslam reported from Abd al-Rahman ibn Abi Said al-Khudri from his father, that the Messenger of Allah (peace be upon him) said: "A man must not look at the private parts of another man, nor must a woman look at the private parts of another woman. A man must not be in close contact with another man in a single garment, nor must a woman be in close contact with another woman in the same garment."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا زَيْدُ بْنُ الْحُبَابِ - هُوَ الْعُكْلِيُّ - نا الضَّحَّاكُ بْنُ عُثْمَانَ - هُوَ الْحِزَامِيُّ - أَخْبَرَنِي زَيْدُ بْنُ أَسْلَمَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنْ أَبِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَنْظُرُ الرَّجُلُ إلَى عَوْرَةِ الرَّجُلِ، وَلَا الْمَرْأَةُ إلَى عَوْرَةِ الْمَرْأَةِ، وَلَا يُفْضِ الرَّجُلُ إلَى الرَّجُلِ فِي ثَوْبٍ وَاحِدٍ، وَلَا تُفْضِ الْمَرْأَةُ إلَى الْمَرْأَةِ فِي الثَّوْبِ الْوَاحِدِ» .

L42726 Aḥmad ibn Qāsim narrated to us: His father Qāsim ibn Muḥammad ibn Qāsim narrated to us: His grandfather Qāsim ibn Aṣbagh narrated to us: Muḥammad ibn Waḍḍāḥ narrated to us: Abū Bakr ibn Abī Shaybah narrated to us: Abū al-Aḥwaṣ (who is Salām ibn Sulaym) narrated to us from Manṣūr ibn al-Muʿtamir, from Abū Wā'il (who is Shaqīq ibn Salamah), from ʿAbdullāh ibn Masʿūd, who said: "The Messenger of Allāh—peace and blessings of Allāh be upon him—forbade a woman from having direct contact with another woman in a single garment, lest she describe her to her husband as though he were looking at her."

حَدَّثَنَا أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا أَبُو الْأَحْوَصِ - هُوَ سَلَّامُ بْنُ سُلَيْمٍ - عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ أَبِي وَائِلٍ - هُوَ شَقِيقُ بْنُ سَلَمَةَ - عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تُبَاشِرَ الْمَرْأَةُ الْمَرْأَةَ فِي ثَوْبٍ وَاحِدٍ - لَعَلَّ أَنْ تَصِفَهَا إلَى زَوْجِهَا كَأَنْ يَنْظُرَ إلَيْهَا» .

L42727 And through him to Qāsim ibn Aṣbagh; narrated to us Muḥammad ibn ʿAbd al-Salām al-Khushanī; narrated to us Muḥammad ibn Bishār (Bundār); I am Muḥammad ibn Jaʿfar (Ghundar); narrated to us Shuʿbah from Qatādah from

ʿIkrimah from Ibn ʿAbbās, who said: “The Messenger of Allah—peace and blessings be upon him—cursed men who imitate women and women who imitate men.”[19]

وَبِهِ - إِلَى قَاسِمِ بْنِ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ - بُنْدَارُ - أَنَا مُحَمَّدُ بْنُ جَعْفَرٍ - غُنْدَرٌ - نا شُعْبَةُ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: «لَعَنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُتَشَبِّهِينَ مِنَ الرِّجَالِ بِالنِّسَاءِ، وَالْمُتَشَبِّهَاتِ مِنَ النِّسَاءِ بِالرِّجَالِ» .

L42728–42730 Abu Muhammad—may Allah have mercy on him—said: These are explicit texts prohibiting a man’s direct contact with another man, and a woman’s direct contact with another woman, alike. Therefore, engaging in such direct contact with someone whom it is forbidden to touch constitutes disobedience to Allah the Exalted and commits something forbidden alike. If such contact involves the genitals, it becomes an intensified prohibition and a multiplied sin. When a woman inserts anything into her genitals other than what is permitted for her—her husband’s genitals or what is used to suppress menstruation—and she fails to safeguard it, then by failing to safeguard it, she has increased in sin. Thus, al-Hasan’s statement on this matter is invalidated. And success is from Allah the Exalted. Abū Muḥammad—may Allāh have mercy on him—said: Since it is established that a woman who engages in lesbian acts with another woman is disobedient, having committed an evil deed, it becomes obligatory to physically intervene to change this, as the Messenger of Allāh—peace and blessings be upon him and his family—commanded: “Whoever witnesses an evil deed must change it with his hand.” Thus, she is liable to discretionary punishment. Abū Muḥammad—may Allāh have mercy on him—said: If she partially exposes her genitalia without insertion leading to ejaculation, this is reprehensible but not sinful. Similarly, male masturbation is entirely equivalent, for a man touching his penis with his left hand is permissible, and a woman touching her genitalia is likewise permissible by the consensus of the entire community. Since this is permissible, there is no transgression beyond the permissible except the deliberate pursuit of ejaculation. This is not fundamentally forbidden, in accordance with Allāh’s statement: *He has already detailed for you what He

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَهَذِهِ نُصُوصٌ جَلِيَّةٌ عَلَى تَحْرِيمِ مُبَاشَرَةِ الرَّجُلِ الرَّجُلَ، وَالْمَرْأَةِ الْمَرْأَةَ، عَلَى السَّوَاءِ، فَالْمُبَاشَرَةُ مِنْهَا لِمَنْ نَهَى عَنْ مُبَاشَرَتِهِ عَاصٍ لِلَّهِ تَعَالَى، مُرْتَكِبٌ حَرَامًا عَلَى السَّوَاءِ، فَإِذَا اُسْتُعْمِلَتْ بِالْفُرُوجِ كَانَتْ حَرَامًا زَائِدًا، وَمَعْصِيَةً مُضَاعَفَةً، وَالْمَرْأَةُ إِذَا أَدْخَلَتْ فَرْجَهَا شَيْئًا غَيْرَ مَا أُبِيحَ لَهَا مِنْ فَرْجِ زَوْجِهَا، أَوْ مَا تَرُدُّ بِهِ الْحَيْضَ، فَلَمْ تَحْفَظْ فَرْجَهَا، وَإِذْ لَمْ تَحْفَظْهُ فَقَدْ زَادَتْ مَعْصِيَةً - فَبَطَلَ قَوْلُ الْحَسَنِ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ قَدْ صَحَّ - أَنَّ " الْمَرْأَةَ الْمُسَاحَقَةَ " لِلْمَرْأَةِ عَاصِيَةٌ، فَقَدْ أَتَتْ مُنْكَرًا، فَوَجَبَ تَغْيِيرُ ذَلِكَ بِالْيَدِ، كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - " مَنْ رَأَى مُنْكَرًا أَنْ يُغَيِّرَهُ بِيَدِهِ " فَعَلَيْهَا التَّعْزِيرُ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَلَوْ عَرَضَتْ فَرْجَهَا شَيْئًا دُونَ أَنْ تُدْخِلَهُ حَتَّى يَنْزِلَ فَيُكْرَهُ هَذَا، وَلَا إِثْمَ فِيهِ - وَكَذَلِكَ " الِاسْتِمْنَاءُ " لِلرِّجَالِ سَوَاءٌ سَوَاءٌ، لِأَنَّ مَسَّ الرَّجُلِ ذَكَرَهُ بِشِمَالِهِ مُبَاحٌ، وَمَسَّ الْمَرْأَةِ فَرْجَهَا كَذَلِكَ مُبَاحٌ، بِإِجْمَاعِ الْأُمَّةِ كُلِّهَا، فَإِذْ هُوَ مُبَاحٌ فَلَيْسَ هُنَالِكَ زِيَادَةٌ عَلَى الْمُبَاحِ، إِلَّا التَّعَمُّدُ لِنُزُولِ الْمَنِيِّ، فَلَيْسَ ذَلِكَ حَرَامًا أَصْلًا، لِقَوْلِ اللَّهِ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] وَلَيْسَ هَذَا مِمَّا فَصَّلَ لَنَا تَحْرِيمَهُ فَهُوَ حَلَالٌ، لِقَوْلِهِ تَعَالَى: {خَلَقَ لَكُمْ مَا فِي الْأَرْضِ جَمِيعًا} [البقرة: ٢٩] إِلَّا أَنَّنَا نَكْرَهُهُ، لِأَنَّهُ لَيْسَ مِنْ مَكَارِمِ الْأَخْلَاقِ، وَلَا مِنَ الْفَضَائِلِ.

[19] **Hadith references (L42727):** Sahih al-Bukhari 5885; Riyad as-Salihin 1631.

has forbidden upon you* (6:119). As this is not among what He specified as forbidden, it is lawful, per His words: *He created for you all that is on the earth* (2:29). Nevertheless, we disapprove of it, for it is neither among noble moral traits nor virtues.[20]

L42731 People have spoken about this matter, with one group deeming it reprehensible and another permitting it. From Humaam, from Ibn Mufarrij, from Ibn al-Aʿrabi, from al-Dabari, from ʿAbd al-Razzaq, from Sufyan al-Thawri, from ʿAbdullah ibn ʿUthman, from Mujahid, who said: Ibn ʿUmar was asked about masturbation: he replied, "That is self-fornication."

وَقَدْ تَكَلَّمَ النَّاسُ فِي هَذَا فَكَرِهَتْهُ طَائِفَةٌ وَأَبَاحَتْهُ أُخْرَى: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عُثْمَانَ عَنْ مُجَاهِدٍ قَالَ: سُئِلَ ابْنُ عُمَرَ عَنْ الِاسْتِمْنَاءِ؟ فَقَالَ: ذَلِكَ نَائِكُ نَفْسِهِ.

L42732 And through him—to Sufyan al-Thawri from al-A'mash from Abu Razin from Abu Yahya from Ibn Abbas—that a man said to him, "I masturbate until I ejaculate?" He replied, "Ugh! Lawful intercourse with a female slave is better than that, and [masturbation] is better than fornication."

وَبِهِ - إلَى سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ أَبِي رَزِينٍ عَنْ أَبِي يَحْيَى عَنْ ابْنِ عَبَّاسٍ أَنَّ رَجُلًا قَالَ لَهُ: إنِّي أَعْبَثُ بِذَكَرِي حَتَّى أُنْزِلَ؟ قَالَ: أُفٍّ، نِكَاحُ الْأَمَةِ خَيْرٌ مِنْهُ، وَهُوَ خَيْرٌ مِنْ الزِّنَى.

L42733 And the permissibility of a group—as has been transmitted to us through the mentioned chain to ʿAbd al-Razzāq: Ibn Jurayj reported to us; Ibrāhīm ibn Abī Bakr informed me from a man from Ibn ʿAbbās—that he said: "It is nothing but one of you rubbing his penis until he releases semen."

وَإِبَاحَةُ قَوْمٌ - كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إلَى عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي إبْرَاهِيمُ بْنُ أَبِي بَكْرٍ عَنْ رَجُلٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: وَمَا هُوَ إلَّا أَنْ يُعْرِكَ أَحَدُكُمْ زُبَّهُ حَتَّى يُنْزِلَ الْمَاءَ.

L42734 Muhammad ibn Saʿīd ibn Nabāt narrated to us: Aḥmad ibn ʿAwn Allāh narrated to us: Qāsim ibn Aṣbagh narrated to us: Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us: Muḥammad ibn Bashshār, called Bundar, narrated to us: Muḥammad ibn Jaʿfar, called Ghundar, narrated to us from Shuʿbah, from Qatādah, from a man, from Ibn ʿUmar, who said: "It is merely a nerve that you massage."

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ - بُنْدَارٌ - أَنَا مُحَمَّدُ بْنُ جَعْفَرٍ - غُنْدَرٌ - نا شُعْبَةُ عَنْ قَتَادَةَ عَنْ رَجُلٍ عَنْ ابْنِ عُمَرَ أَنَّهُ قَالَ: إنَّمَا هُوَ عَصَبٌ تُدَلِّكُهُ.

L42735–42736 On his authority—to Qatādah from al-'Alā' ibn Ziyād from his father—that they would practice it during military expeditions (meaning masturbation): a man would fiddle with his penis, rubbing it until ejaculation. Qatādah said, "Al-Ḥasan said concerning a man who masturbates by fiddling with his

وَبِهِ - إلَى قَتَادَةَ عَنْ الْعَلَاءِ بْنِ زِيَادٍ عَنْ أَبِيهِ أَنَّهُمْ كَانُوا يَفْعَلُونَهُ فِي الْمَغَازِي " يَعْنِي الِاسْتِمْنَاءَ " يَعْبَثُ الرَّجُلُ بِذَكَرِهِ يُدَلِّكُهُ حَتَّى يُنْزِلَ - قَالَ قَتَادَةُ: وَقَالَ الْحَسَنُ فِي الرَّجُلِ يَسْتَمْنِي يَعْبَثُ بِذَكَرِهِ حَتَّى يُنْزِلَ، قَالَ: كَانُوا يَفْعَلُونَ فِي الْمَغَازِي.

[20] **Qur'an references (L42728):** Qur'an 6:119 (Al-An'am); Qur'an 2:29 (Al-Baqarah).

penis and rubbing it until ejaculation: ’They used to do so during military expeditions.”’

L42737 On the authority of Jabir ibn Zayd Abi al-Shaʿtha, who said: “It is your water; therefore, pour it out”—meaning masturbation.

وَعَنْ جَابِرِ بْنِ زَيْدٍ أَبِي الشَّعْثَاءِ قَالَ: هُوَ مَاؤُك فَأَهْرِقْهُ " يَعْنِي الِاسْتِمْنَاءَ ".

L42738 And on the authority of Mujāhid, he said: Those who came before would instruct their youth to practice istimnā’ to preserve their chastity through it. ʿAbd al-Razzāq said: Maʿmar mentioned it from Ayyūb al-Sikhtiyānī, or someone else, from Mujāhid from al-Ḥasan: that al-Ḥasan saw no issue with istimnā’.

وَعَنْ مُجَاهِدٍ قَالَ: كَانَ مَنْ مَضَى يَأْمُرُونَ شَبَابَهُمْ بِالِاسْتِمْنَاءِ يَسْتَعْفُونَ بِذَلِكَ - قَالَ عَبْدُ الرَّزَّاقِ: وَذَكَرَهُ مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، أَوْ غَيْرِهِ عَنْ مُجَاهِدٍ عَنْ الْحَسَنِ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِالِاسْتِمْنَاءِ.

L42739 From Amr ibn Dinar: “I do not see any harm in masturbation.” Abu Muhammad (may Allah have mercy on him) said: The chains of transmission from Ibn Abbas and Ibn Umar regarding both opinions are weak.

وَعَنْ عَمْرِو بْنِ دِينَارٍ: مَا أَرَى بِالِاسْتِمْنَاءِ بَأْسًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: الْأَسَانِيدُ عَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ فِي كِلَا الْقَوْلَيْنِ - مَغْمُوزَةٌ.

L42740 However, dislike is authentically transmitted from ʿAṭāʾ.

لَكِنَّ الْكَرَاهَةَ صَحِيحَةٌ عَنْ عَطَاءٍ.

L42741 The absolute permissibility is sound (ṣaḥīḥ) as narrated from al-Ḥasan.

وَالْإِبَاحَةُ الْمُطْلَقَةُ صَحِيحَةٌ عَنْ الْحَسَنِ.

L42742 From ʿAmr ibn Dīnār, from Ziyād Abū al-ʿAlā, and from Mujāhid.

وَعَنْ عَمْرِو بْنِ دِينَارٍ، وَعَنْ زِيَادٍ أَبِي الْعَلَاءِ، وَعَنْ مُجَاهِدٍ.

L42743 It was narrated by those who transmitted it among these individuals—from those they encountered—and these are the senior Followers who scarcely narrated except from the Companions, may Allah be pleased with them—? Abu Muhammad—may Allah have mercy on him—said: There are transmitted reports regarding a woman deflowering another woman with her finger: As narrated to us by Hammam, narrated to us by Ibn Mufarrij, narrated to us by Ibn al-Aʿrabī, narrated to us by al-Dabarī, narrated to us by ʿAbd al-Razzāq, narrated to us by Ibn Jurayj from ʿAṭāʾ from ʿAlī ibn Abī Ṭālib and al-Ḥasan ibn ʿAlī: That al-Ḥasan issued a legal opinion concerning a woman who deflowered another with her finger, while some women restrained her for that act. He ruled that the blood money is to be apportioned among them, and ʿAlī judged accordingly.

وَرَوَاهُ مَنْ رَوَاهُ مِنْ هَؤُلَاءِ عَمَّنْ أَدْرَكُوا - وَهَؤُلَاءِ - كِبَارُ التَّابِعِينَ الَّذِينَ لَا يَكَادُونَ يَرْوُونَ إلَّا عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَدْ جَاءَ فِي الْمَرْأَةِ تَفْتَضُّ الْمَرْأَةَ بِأُصْبُعِهَا آثَارٌ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَالْحَسَنِ بْنِ عَلِيٍّ: أَنَّ الْحَسَنَ أَفْتَى فِي الْمَرْأَةِ افْتَضَّتْ أُخْرَى بِأُصْبُعِهَا وَأَمْسَكَهَا نِسْوَةٌ لِذَلِكَ: أَنَّ الْعَقْلَ بَيْنَهُنَّ - وَقَضَى عَلِيٌّ بِذَلِكَ.

L42744–42746 And through him — to Abd al-Razzaq from Sufyan al-Thawri, from Mansur,

and Mughirah. Mansur said, from... Al-Hakam ibn ʻUtaybah narrated, and Mughirah reported from Ibrahim. Then Al-Hakam and Ibrahim concurred, both narrating from ʻAli and al-Hasan: that al-Hasan issued a legal opinion regarding a woman who deflowered another woman with her finger, ruling that the dowry is incumbent upon her and the withholders, to be divided among them—thus said Mughirah.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ، وَمُغِيرَةَ، قَالَ مَنْصُورٌ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَقَالَ مُغِيرَةُ عَنْ إبْرَاهِيمَ، ثُمَّ اتَّفَقَ الْحَكَمُ، وَإِبْرَاهِيمُ عَنْ عَلِيٍّ، وَالْحَسَنِ: أَنَّ الْحَسَنَ أَفْتَى فِي امْرَأَةٍ افْتَضَّتْ امْرَأَةً بِأُصْبُعِهَا أَنَّ عَلَيْهَا وَالْمُمْسِكَاتُ الصَّدَاقُ بَيْنَهُنَّ - هَكَذَا قَالَ الْمُغِيرَةُ.

L42747 And Al-Hakam stated in his narration: "The obligation rests solely on the woman for whom the dower is specified"—and they both concurred that ʿAlī issued this ruling.

وَقَالَ الْحَكَمُ فِي رِوَايَتِهِ: عَلَى الْمُفْتَضَّةِ وَحْدَهَا - وَاتَّفَقَا أَنَّ عَلِيًّا قَضَى بِذَلِكَ.

L42748 From al-Zuhrī: If a woman were to rupture her hymen with her finger, she would lose her dower, equivalent to the dower of a woman among her peers.

وَعَنْ الزُّهْرِيِّ - لَوْ افْتَضَّتْ امْرَأَةٌ بِأُصْبُعِهَا غَرِمَتْ صَدَاقَهَا، كَصَدَاقِ امْرَأَةٍ مِنْ نِسَائِهَا.

L42749 From Iyad ibn Ubayd Allah, the judge of the people of Egypt: He wrote to Umar ibn Abd al-Aziz regarding a young boy who digitally penetrated a girl with his finger. Umar wrote back to him: "Nothing has reached me concerning this matter, and I have considered it. Judge it according to your opinion." He ruled that the boy must pay fifty dinars to her. Abu Muhammad—may Allah have mercy on him—said: "This is a narration with an interrupted chain from Ali."

وَعَنْ عِيَاضِ بْنِ عُبَيْدِ اللَّهِ قَاضِي أَهْلِ مِصْرَ: كَتَبَ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي صَبِيٍّ افْتَرَعَ صَبِيَّةً بِأُصْبُعِهِ؟ فَكَتَبَ إلَيْهِ عُمَرُ: لَمْ يَبْلُغْنِي فِي هَذَا شَيْءٌ، وَقَدْ جَمَعْت لِذَلِكَ، فَاقْضِ فِيهِ بِرَأْيِك، فَقَضَى لَهَا عَلَى الْغُلَامِ بِخَمْسِينَ دِينَارًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا عَنْ عَلِيٍّ مُرْسَلٌ.

L42750 The Messenger of Allah - may Allah grant him peace and blessings - said: "Your blood and your wealth are forbidden upon you."

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L42751 Therefore, it is not permissible to rule for a dower in this case, because it is not a marriage, and no dower exists except within a valid marriage, since neither a textual source nor scholarly consensus has mandated it outside that context. Thus, whether the one who caused the rupture with their finger is male or female, there is absolutely no compensation for this, because Allah, the Exalted, has not imposed any compensation for it, nor has His Messenger—peace and blessings be upon him—imposed it.

فَلَا يَجُوزُ أَنْ يُقْضَى هَاهُنَا بِصَدَاقٍ، لِأَنَّهُ لَيْسَ زَوَاجًا، وَلَا صَدَاقَ إلَّا فِي نِكَاحِ زَوَاجٍ - إذْ لَمْ يُوجِبْهُ فِي غَيْرِ ذَلِكَ نَصٌّ، وَلَا إجْمَاعٌ، فَسَوَاءٌ كَانَ الْمُفْتَضُّ بِأُصْبُعِهِ رَجُلًا أَوْ امْرَأَةً: لَا غَرَامَةَ فِي ذَلِكَ أَصْلًا، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ فِي ذَلِكَ غَرَامَةً، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L42752 If they denounce—is this not the position of ʿAlī and al-Ḥasan ibn ʿAlī? We said to them: These two reports contain no obligation whatsoever to inflict exemplary punishment on the man who deflowers a virgin and the deflowered woman. Yet you impose discretionary punishment in this matter.

فَإِنْ شَنَّعُوا - فَإِنَّ هَذَا قَوْلُ عَلِيٍّ، وَالْحَسَنِ بْنِ عَلِيٍّ؟ قُلْنَا لَهُمْ: فَإِنَّ هَذَيْنِ الْخَبَرَيْنِ لَيْسَ فِيهِمَا إيجَابُ نَكَالٍ عَلَى الْمُفْتَضِّ وَالْمُفْتَضَّةِ أَصْلًا، وَأَنْتُمْ تُوجِبُونَ فِي ذَلِكَ الْأَدَبَ،

This contradicts the rulings of ʿAlī and al-Ḥasan—may Allah be pleased with them—which you yourselves denounce. The disgrace and sin of this fall only on those who mandate adherence to narrations from the Companion as an obligatory duty, while being the first to oppose him.

وَهَذَا خِلَافٌ مِنْكُمْ لِمَا تُشَنِّعُونَ بِهِ مِنْ حُكْمِ عَلِيٍّ، وَالْحَسَنِ - رَضِيَ اللَّهُ عَنْهُمَا - وَعَارُ هَذَا وَإِثْمُهُ إنَّمَا يَلْزَمُ مَنْ أَوْجَبَ فَرْضًا اتِّبَاعَ مَا رُوِيَ عَنْ الصَّاحِبِ، ثُمَّ هُوَ مَعَ ذَلِكَ أَوَّلُ مُخَالِفٍ لَهُ.

L42753–42755 As for us, we are not bound to follow anyone except the Messenger of Allah—may Allah bless him and grant him peace—alone. Thus, there is no blame upon us for opposing what we do not deem obligatory. However, taʿzīr (discretionary punishment) applies to: the man who penetrates a woman with his finger, the woman who penetrates another woman with her finger, and one who inserts anything into the anus of another person—for all we have mentioned constitutes sin and a recognized evil, in accordance with the statement of the Messenger of Allah. The Prophet Muhammad, peace and blessings of Allah be upon him, said: "Indeed, your blood, wealth, honor, and bodies are sacred and inviolable to you."

وَأَمَّا نَحْنُ فَلَا يَلْزَمُ عِنْدَنَا اتِّبَاعُ أَحَدٍ غَيْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، فَلَا حَرَجَ عَلَيْنَا فِي مُخَالَفَةِ مَا لَا نَرَاهُ وَاجِبًا، وَلَكِنْ عَلَى الْمُفْتَضِّ بِأُصْبُعِهِ امْرَأَةً، وَالْمُفْتَضَّةِ بِأُصْبُعِهَا امْرَأَةً، وَمُدْخِلُ شَيْءٍ فِي دُبُرِ آخَرَ: التَّعْزِيرُ، لِأَنَّ كُلَّ مَا ذَكَرْنَا مَعْصِيَةٌ وَمُنْكَرٌ، لِقَوْلِ رَسُولِ اللَّهِ: - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

L42756 These individuals have violated a sacred bodily boundary, committing a reprehensible act. Whoever commits such an act, Allah has obligated him to rectify it through physical action, as commanded by the Messenger of Allah (may Allah bless him and grant him peace). It is therefore obligatory upon whoever commits this act or any other reprehensible acts to be subject to discretionary legal punishment according to what we will mention—if Allah, the Most High, wills—after this passage.

وَهَؤُلَاءِ قَدْ انْتَهَكُوا بَشَرَةً مُحَرَّمَةً، فَأَتَوْا مُنْكَرًا، وَمَنْ أَتَى مُنْكَرًا فَفَرَضَ عَلَيْهِ تَغْيِيرَهُ بِالْيَدِ، كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَاجِبٌ عَلَى مَنْ فَعَلَ ذَلِكَ، أَوْ غَيْرِهِ مِنْ الْمُنْكَرَاتِ: التَّعْزِيرُ عَلَى مَا نَذْكُرُهُ - إنْ شَاءَ اللَّهُ تَعَالَى - بَعْدَ هَذَا.

L42757 Abū Muḥammad—may Allāh have mercy on him—said: No one we know of has stated that any of these matters entails the prescribed punishment for adultery or any specified punishment. There is no distinction between this and other matters for which they have mandated legal punishments among matters where there is no valid textual proof—and success is through Allāh, the Exalted.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَمْ يَقُلْ أَحَدٌ نَعْلَمُهُ: إنَّ فِي شَيْءٍ مِنْ هَذَا حَدَّ زِنًى، وَلَا حَدًّا مَحْدُودًا، وَلَا فَرْقَ بَيْنَهُ وَبَيْنَ سَائِرِ مَا أَوْجَبُوا فِيهِ الْحُدُودَ مِمَّا لَا نَصَّ فِيهِ يَصِحُّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

[مَسْأَلَة فِي السِّحْر]

L42758 ## A Question on Sorcery

L42759 2308 - Issue: Sorcery? Abu Muhammad—may Allah have mercy on him—said: People have differed concerning sorcery. A group stated: The sorcerer

is to be killed without being called to repent—for sorcery is disbelief—this being the opinion of Mālik. Abū Ḥanīfah said: The sorcerer is to be killed.

٢٣٠٨٠ - مَسْأَلَةٌ: السِّحْرُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي السِّحْرِ: فَقَالَتْ طَائِفَةٌ: يُقْتَلُ السَّاحِرُ وَلَا يُسْتَتَابُ - وَالسِّحْرُ كُفْرٌ - وَهُوَ قَوْلُ مَالِكٍ - وَقَالَ أَبُو حَنِيفَةَ: يُقْتَلُ السَّاحِرُ.

L42760 Al-Shafi'i and our companions said: If the words used for sorcery constitute disbelief, the sorcerer is an apostate; and if they do not constitute disbelief, he is not killed, for he is not a disbeliever.

وَقَالَ الشَّافِعِيُّ وَأَصْحَابُنَا: إنْ كَانَ الْكَلَامُ الَّذِي يُسْحَرُ بِهِ كُفْرًا فَالسَّاحِرُ مُرْتَدٌّ، وَإِنْ كَانَ لَيْسَ كُفْرًا فَلَا يُقْتَلُ، لِأَنَّهُ لَيْسَ كَافِرًا.

L42761 He mentioned from the predecessors regarding that matter several things: As narrated by Humaam from Ibn Mufarrij from Ibn al-A'raabi from al-Dabari from 'Abd al-Razzaq from Ibn Jurayj, who informed me that 'Amr ibn Dinar said: Verily, 'Umar ibn al-Khattab wrote to Juzayy ibn Mu'awiyah (the uncle of al-Ahnaf ibn Qays), who was a governor under 'Umar ibn al-Khattab, commanding him to kill every sorcerer. Al-Bajalah was Juzayy's scribe. Al-Bajalah said: "We sent out and found three sorceresses, so we beheaded them."

وَذَكَرَ عَنْ الْمُتَقَدِّمِينَ فِي ذَلِكَ أَشْيَاءَ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ، قَالَ: إنَّ عُمَرَ بْنَ الْخَطَّابِ كَتَبَ إلَى جُزَيِّ بْنِ مُعَاوِيَةَ عَمِّ الْأَحْنَفِ بْنِ قَيْسٍ - وَكَانَ عَامِلًا لِعُمَرَ بْنِ الْخَطَّابِ - أَنْ اُقْتُلْ كُلَّ سَاحِرٍ، وَكَانَ بَجَالَةُ كَاتِبَ جُزَيٍّ، قَالَ بَجَالَةُ: فَأَرْسَلْنَا فَوَجَدْنَا ثَلَاثَ سَوَاحِرَ، فَضَرَبْنَا أَعْنَاقَهُنَّ.

L42762 And by him—to 'Abd al-Razzāq, from Ibn 'Uyaynah, from 'Amr ibn Dīnār, from Sālim ibn Abī al-Ja'd—who said, "Qays ibn Sa'd killed a sorcerer."

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ قَالَ: إنَّ قَيْسَ بْنَ سَعْدٍ قَتَلَ سَاحِرًا

L42763 From Nafi' on the authority of Ibn 'Umar: A female slave of Hafsa bewitched her and confessed to it. Hafsa commanded that she be dealt with, so 'Abd al-Rahman ibn Zayd killed her. 'Uthman disapproved of Hafsa's action. Ibn 'Umar said to him: "Why do you disapprove of the Mother of the Believers' action concerning a woman who practiced witchcraft and confessed?" 'Uthman fell silent.

وَعَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّ جَارِيَةً لِحَفْصَةَ سَحَرَتْهَا فَاعْتَرَفَتْ بِذَلِكَ فَأَمَرَتْ بِهَا عَبْدَ الرَّحْمَنِ بْنَ زَيْدٍ فَقَتَلَهَا، فَأَنْكَرَ ذَلِكَ عَلَيْهَا عُثْمَانُ، فَقَالَ لَهُ ابْنُ عُمَرَ: مَا تُنْكِرُ عَلَى أُمِّ الْمُؤْمِنِينَ امْرَأَةٌ سَحَرَتْ وَاعْتَرَفَتْ؟ فَسَكَتَ عُثْمَانُ.

L42764–42765 And from Ayyub al-Sikhtiyani, from Nafi': that Hafsah was bewitched, so she ordered her brother 'Ubayd Allah, and he killed two sorceresses. And from al-'Attaf ibn Khalid al-Makhzumi, Abu Safwan, who said: I saw Salim ibn 'Abdullah standing by the wall of a house belonging to orphaned nephews of his. Four boys came to him, accompanied by another, weaker boy. They

وَعَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ: أَنَّ حَفْصَةَ سُحِرَتْ فَأَمَرَتْ عُبَيْدَ اللَّهِ أَخَاهَا فَقَتَلَ سَاحِرَتَيْنِ، وَعَنْ الْعَطَّافِ بْنِ خَالِدٍ الْمَخْزُومِيِّ أَبُو صَفْوَانَ قَالَ: رَأَيْت سَالِمَ بْنَ عَبْدِ اللَّهِ وَهُوَ وَاقِفٌ عَلَى جِدَارِ بَيْتٍ لِبَنِي أَخٍ لَهُ يَتَامَى، أَتَاهُ غِلْمَةٌ أَرْبَعَةٌ، وَمَعَهُمْ غُلَامٌ هُوَ أَشَفُّ

said, “O Abu ʻUmar, look at what this one is doing!” He asked, “What is he doing?” They replied, “He pulled out a thread from his garment”—while Salim watched—“then gathered it between two of his fingers, spat on it two or three times, stretched it, and behold, it was intact, with no damage.” I heard Salim say, “If I had any authority in the matter, I would crucify him.”

مِنْهُمْ، فَقَالَ: يَا أَبَا عُمَرَ انْظُرْ مَا يَصْنَعُ هَذَا؟ قَالَ: وَمَاذَا يَصْنَعُ؟ قَالَ: فَسَلْ خَيْطًا مِنْ ثَوْبِهِ فَقَطَعَهُ - وَسَالِمٌ يَنْظُرُ إِلَيْهِ - فَجَمَعَهُ بَيْنَ أُصْبُعَيْنِ مِنْ أَصَابِعِهِ ثُمَّ تَفَلَ عَلَيْهِ مَرَّتَيْنِ أَوْ ثَلَاثًا، ثُمَّ مَدَّهُ، فَإِذَا هُوَ صَحِيحٌ لَيْسَ بِهِ بَأْسٌ، فَسَمِعْت سَالِمًا يَقُولُ: لَوْ كَانَ لِي مِنْ الْأَمْرِ شَيْءٌ لَصَلَبْتُهُ.

L42766 And from Yahya ibn Sa‘id al-Ansari: that Khalid ibn al-Muhajir ibn Khalid killed a Nabataean (dhimmi) who had practiced sorcery.

وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ: أَنَّ خَالِدَ بْنَ الْمُهَاجِرِ بْنِ خَالِدٍ قَتَلَ نَبَطِيًّا سَحَرَ - يَعْنِي ذِمِّيًّا.

L42767 And from Yahya ibn Abi Kathir, he said: A youth in the service of Umar ibn Abd al-Aziz seized a sorceress and cast her into the water, where she floated—thus indicating guilt. Umar ibn Abd al-Aziz wrote to him: Allah did not command you to cast her into the water; if she confesses, then execute her.

وَعَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، قَالَ: إنَّ غُلَامًا لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَخَذَ سَاحِرَةً فَأَلْقَاهَا فِي الْمَاءِ فَطَفَتْ، فَكَتَبَ إلَيْهِ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: إنَّ اللَّهَ لَمْ يَأْمُرْك أَنْ تُلْقِيَهَا فِي الْمَاءِ، فَإِنْ اعْتَرَفَتْ فَاقْتُلْهَا.

L42768 On the authority of Ibn Shihāb, he said: “A Muslim sorcerer is to be executed, but a sorcerer from the People of the Book is not to be executed, because the Prophet—peace be upon him and his family—was bewitched by a Jewish man named Ibn Aʿṣam and a woman from Khaybar named Zaynab, so why did he not kill them?”

وَعَنْ ابْنِ شِهَابٍ قَالَ: يُقْتَلُ سَاحِرُ الْمُسْلِمِينَ، وَلَا يُقْتَلُ سَاحِرُ أَهْلِ الْكِتَابِ، لِأَنَّ «النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - سَحَرَهُ رَجُلٌ مِنْ الْيَهُودِ يُقَالُ لَهُ: ابْنُ أَعْصَمَ، وَامْرَأَةٌ مِنْ خَيْبَرَ يُقَالُ لَهَا: زَيْنَبُ، فَلَمْ يَقْتُلْهُمَا؟»

L42769 Abu Muhammad—may Allah have mercy on him—said: These are Umar ibn al-Khattab, Hafsah, his two sons Abdullah, his son Ubaydullah, Uthman, and Qays ibn Rabi’ah.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَهَؤُلَاءِ - عُمَرُ بْنُ الْخَطَّابِ، وَحَفْصَةُ، وَعَبْدُ اللَّهِ ابْنَاهُ، وَعُبَيْدُ اللَّهِ ابْنُهُ، وَعُثْمَانُ، وَقَيْسُ بْنُ رَبِيعَةَ.

L42770 The Successors include Salim ibn Abdullah, Khalid ibn al-Muhājir, ʿUmar ibn ʿAbd al-ʿAzīz, and ʿAbd al-Raḥmān ibn Zayd ibn al-Khaṭṭāb.

وَمِنْ التَّابِعِينَ سَالِمُ بْنُ عَبْدِ اللَّهِ، وَخَالِدُ بْنُ الْمُهَاجِرِ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ، وَعَبْدُ الرَّحْمَنِ بْنُ زَيْدِ بْنِ الْخَطَّابِ.

L42771 As for those who differ [with this]: As narrated from Hummām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Mālik ibn Anas, from Muḥammad ibn ʿAbd al-Raḥmān—he being Abū al-Rijāl—from ʿAmrah bint ʿAbd al-Raḥmān: ʿĀ’ishah, the Mother of the Believers, manumitted a slave girl of hers posthumously. The slave girl had bewitched

وَأَمَّا مَنْ خَالَفَ هَذَا: فَكَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَالِكِ بْنِ أَنَسٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ - هُوَ أَبُو الرِّجَالِ - عَنْ عَمْرَةَ بِنْتِ

ʿĀʾishah and confessed to this, stating, “I desired emancipation.” ʿĀʾishah then ordered her nephew to sell the girl to Bedouins who would mistreat her in her ownership, instructing: “Use the proceeds from her sale to buy another slave and emancipate them.”

عَبْدِ الرَّحْمَنِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَعْتَقَتْ جَارِيَةً لَهَا عَنْ دُبُرٍ، وَأَنَّهَا سَحَرَتْهَا وَاعْتَرَفَتْ بِذَلِكَ، وَقَالَتْ: أَحْبَبْتُ الْعِتْقَ، فَأَمَرَتْ بِهَا عَائِشَةُ ابْنَ أَخِيهَا أَنْ يَبِيعَهَا مِنَ الْأَعْرَابِ مِمَّنْ يُسِيءُ مَلْكَتَهَا، وَقَالَتْ: ابْتَعْ بِثَمَنِهَا رَقَبَةً فَأَعْتِقْهَا.

L42772–42774 And with him—up to ʿAbd al-Razzāq from Sufyān ibn ʿUyaynah from Yaḥyā ibn Saʿīd al-Anṣārī from Abi al-Rijal narrated from Amrah, who said: Aisha fell ill and her sickness lingered. Her nephews went to a man and described her condition to him. He responded, “Are you informing me about a bewitched woman?” They went to investigate, and found her servant girl had indeed enchanted her, for she had conspired against her. Aisha demanded, “What did you intend against me?” The girl replied, “I wanted you to die so I might gain freedom.” Aisha declared, “I swear by Allah, I must sell you to the strictest Arab queen.” She then sold her and commanded that the payment be used to acquire a replacement of similar status.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ أَبِي الرِّجَالِ عَنْ عَمْرَةَ، قَالَتْ: مَرِضَتْ عَائِشَةُ فَطَالَ مَرَضُهَا، فَذَهَبَ بَنُو أَخِيهَا إِلَى رَجُلٍ، فَذَكَرُوا لَهُ مَرَضَهَا؟ فَقَالَ: إِنَّكُمْ لَتُخْبِرُونِي خَبَرَ امْرَأَةٍ مَطْبُوبَةٍ، فَذَهَبُوا يَنْظُرُونَ، فَإِذَا جَارِيَةٌ لَهَا قَدْ سَحَرَتْهَا وَكَانَتْ قَدْ دَبَّرَتْهَا، فَقَالَتْ لَهَا: مَا أَرَدْتِ مِنِّي؟ قَالَتْ: أَرَدْتُ أَنْ تَمُوتِي حَتَّى أَعْتِقَ، قَالَتْ: فَإِنَّ لِلَّهِ عَلَيَّ أَنْ تُبَاعَ مِنْ أَشَدِّ الْعَرَبِ مَلِكَةً، فَبَاعَتْهَا، وَأَمَرَتْ بِثَمَنِهَا أَنْ يُجْعَلَ فِي مِثْلِهَا.

L42775 From Rabīʿah ibn ʿAṭāʾ: A male slave used sorcery on an Arab female slave, causing her to become submissive to him under his spell. The matter was brought before ʿUrwah ibn Muḥammad—who served as governor appointed by ʿUmar ibn ʿAbd al-ʿAzīz. ʿUmar ibn ʿAbd al-ʿAzīz wrote to him: “Sell him outside her land and his land, then give her the proceeds from his sale.” Have we not previously mentioned that ʿUthmān—may Allah be pleased with him—rejected the killing of sorcerers? Abū Muḥammad said: When they disagreed as we described, it became necessary to investigate. We examined the view of those who supported executing the sorcerer and found them arguing: Allah the Exalted said: “They followed what the devils recited during Solomon’s reign. Solomon did not disbelieve, but the devils disbelieved by teaching people sorcery” [Al-Baqarah: 102]—the verse. They asserted: Allah the Exalted labeled sorcery as disbelief in His statement: “But the devils disbelieved by teaching people sorcery” [Al-Baqarah: 102].[21]

وَعَنْ رَبِيعَةَ بْنِ عَطَاءٍ أَنَّ رَجُلًا عَبْدًا سَحَرَ جَارِيَةً عَرَبِيَّةً، وَكَانَتْ تَتْبَعُهُ، فَرُفِعَ إِلَى عُرْوَةَ بْنِ مُحَمَّدٍ - وَكَانَ عَامِلَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ - فَكَتَبَ إِلَيْهِ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَنْ يَبِيعَهُ بِغَيْرِ أَرْضِهَا وَأَرْضِهِ، ثُمَّ ادْفَعْ ثَمَنَهُ إِلَيْهَا - وَقَدْ ذَكَرْنَا عَنْ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - إِنْكَارَ قَتْلِ السَّاحِرِ؟ قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ، فَنَظَرْنَا فِي قَوْلِ مَنْ رَأَى قَتْلَ السَّاحِرِ، فَوَجَدْنَاهُمْ يَقُولُونَ: قَالَ اللَّهُ تَعَالَى: {وَاتَّبَعُوا مَا تَتْلُو الشَّيَاطِينُ عَلَى مُلْكِ سُلَيْمَانَ وَمَا كَفَرَ سُلَيْمَانُ وَلَكِنَّ الشَّيَاطِينَ كَفَرُوا يُعَلِّمُونَ النَّاسَ السِّحْرَ} [البقرة: ١٠٢] الْآيَةُ قَالُوا: فَسَمَّى اللَّهُ تَعَالَى السِّحْرَ كُفْرًا بِقَوْلِهِ: {وَلَكِنَّ الشَّيَاطِينَ كَفَرُوا يُعَلِّمُونَ النَّاسَ السِّحْرَ} [البقرة: ١٠٢] .

L42776 He said: “So they teach” is an appositional substitute for “they disbelieved,” thus teaching magic is disbelief.

قَالَ: " فَيُعَلِّمُونَ " بَدَلٌ مِنْ " كَفَرُوا " فَتَعْلِيمُ السِّحْرِ كُفْرٌ.

[21] **Qur’an references (L42775):** Qur’an 2:102 (Al-Baqarah).

L42777 And also by His statement (Exalted is He): “We are only a trial, so do not become disbelievers” [Al-Baqarah 2:102].[22]

وَأَيْضًا بِقَوْلِهِ تَعَالَى: {إِنَّمَا نَحْنُ فِتْنَةٌ فَلا تَكْفُرْ} [البقرة: ١٠٢] .

L42778 And also by His saying, the Exalted: “And they certainly knew that whoever purchased [magic] would have no share in the Hereafter.” [Al-Baqarah: 102][23]

وَأَيْضًا بِقَوْلِهِ تَعَالَى: {وَلَقَدْ عَلِمُوا لَمَنِ اشْتَرَاهُ مَا لَهُ فِي الآخِرَةِ مِنْ خَلاقٍ} [البقرة: ١٠٢] .

L42779 And by His saying, “Evil is that for which they traded their souls, if only they had known” [al-Baqarah 2:102].[24]

وَبِقَوْلِهِ {وَلَبِئْسَ مَا شَرَوْا بِهِ أَنْفُسَهُمْ لَوْ كَانُوا يَعْلَمُونَ} [البقرة: ١٠٢] .

L42780 They mentioned that Ḥammām narrated to us, Ibn Mufarrij narrated to us, Ibn al-Aʿrābī narrated to us, al-Dabarī narrated to us, ʿAbd al-Razzāq narrated to us, from Sufyān ibn ʿUyaynah, from Ismāʿīl ibn Muslim, from al-Ḥasan, who said: The Prophet—peace be upon him—said, “The ḥadd punishment for a sorcerer is execution by the sword.”

وَذَكَرُوا - مَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ إِسْمَاعِيلَ بْنِ مُسْلِمٍ عَنْ الْحَسَنِ قَالَ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «حَدُّ السَّاحِرِ ضَرْبُهُ بِالسَّيْفِ» .

L42781–42782 And through him—via ʿAbd al-Razzāq from Ibrāhīm ibn Abī Yaḥyā from Ṣafwān ibn Sulaym—who said: The Messenger of Allah (peace and blessings be upon him) said, “Whoever learns magic, whether a little or a great amount, will have severed his final covenant with Allah.”

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ إبْرَاهِيمَ بْنِ أَبِي يَحْيَى عَنْ صَفْوَانَ بْنِ سُلَيْمٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ تَعَلَّمَ السِّحْرَ قَلِيلًا أَوْ كَثِيرًا كَانَ آخِرَ عَهْدِهِ مِنْ اللَّهِ» .

L42783 We were narrated by Yahya ibn Abd al-Rahman ibn Masud, from Ahmad ibn Juhaym, from Ibrahim ibn Hammad, from Isma’il ibn Ishaq, from al-Hajjaj ibn al-Minhal, from Hammad ibn Salamah, from Sa’id al-Jurayri, from Abu al-’Ala: “The Messenger of Allah (peace and blessings be upon him) passed by ’Uqbah one night and alighted. He began reciting rajaz poetry, saying: ’Jundub—and what is Jundub? The amputee! The news! The news!’ When morning came, his companions said: ’O Messenger of Allah, we have never heard better rajaz poetry than yours tonight. What are Jundub and the amputee?’ He said: ’As for Jundub, he is a man from my community who will strike a blow for which he will be resurrected as a community unto himself on the Day of Judgment. As for the amputee, he is a man whose hand will be severed, and it will enter Paradise ahead of his body for a span of time.’”

حَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ نا أَحْمَدُ بْنُ جُهَيْمٍ نا إبْرَاهِيمُ بْنُ حَمَّادٍ نا إسْمَاعِيلُ بْنُ إِسْحَاقَ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ سَعِيدٍ الْجُرَيْرِيِّ عَنْ أَبِي الْعَلَاءِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَانَبَ عُقْبَةَ ذَاتَ لَيْلَةٍ فَنَزَلَ، فَجَعَلَ يَرْتَجِزُ وَيَقُولُ: جُنْدُبٌ وَمَا جُنْدُبٌ وَالْأَقْطَعُ الْخَبَرُ الْخَبَرُ فَلَمَّا أَصْبَحَ قَالَ أَصْحَابُهُ: يَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا رَأَيْنَا رَاجِزًا أَحْسَنَ رَجَزًا مِنْكَ اللَّيْلَةَ، فَمَا جُنْدُبٌ، وَالْأَقْطَعُ؟ قَالَ: أَمَّا جُنْدُبٌ فَرَجُلٌ مِنْ أُمَّتِي يَضْرِبُ ضَرْبَةً يُبْعَثُ بِهَا أُمَّةً وَحْدَهُ يَوْمَ الْقِيَامَةِ وَأَمَّا الْأَقْطَعُ فَرَجُلٌ تُقْطَعُ يَدُهُ فَتَدْخُلُ الْجَنَّةَ قَبْلَ جَسَدِهِ بِبُرْهَةٍ مِنْ الدَّهْرِ» .

[22] **Qur’an references (L42777):** Qur’an 2:102 (Al-Baqarah).
[23] **Qur’an references (L42778):** Qur’an 2:102 (Al-Baqarah).
[24] **Qur’an references (L42779):** Qur’an 2:102 (Al-Baqarah).

فَكَانُوا يَرَوْنَ أَنَّ الْأَقْطَعَ، زَيْدَ بْنَ صُوحَانَ، قُطِعَتْ يَدُهُ يَوْمَ الْيَرْمُوكِ قَبْلَ يَوْمِ الْجَمَلِ مَعَ عَلِيٍّ - وَأَمَّا جُنْدُبٌ، فَهُوَ الَّذِي قَتَلَ السَّاحِرَ.

L42784 They maintained the view that al-Aqṭaʿ, Zayd ibn Ṣūḥān, had his hand severed during the Day of Yarmouk before the Day of the Camel - which occurred with ʿAlī. As for Jundub, he was the one who killed the sorcerer.

وَقَالَ: نا حَمَّادُ بْنُ سَلَمَةَ نا أَبُو عِمْرَانَ - هُوَ الْجَوْنِيُّ - أَنَّ سَاحِرًا كَانَ عِنْدَ الْوَلِيدِ بْنِ عُقْبَةَ فَجَعَلَ يَدْخُلُ فِي بَقَرَةٍ ثُمَّ يَخْرُجُ مِنْهَا، فَرَآهُ جُنْدُبٌ، فَذَهَبَ إِلَى بَيْتِهِ فَالْتَفَعَ عَلَى سَيْفِهِ، فَلَمَّا دَخَلَ السَّاحِرُ جَوْفَ الْبَقَرَةِ ضَرَبَهُمَا، قَالَ {أَفَتَأْتُونَ السِّحْرَ وَأَنْتُمْ تُبْصِرُونَ} [الأنبياء: ٣] فَانْدَفَعَ النَّاسُ وَتَفَرَّقُوا وَقَالُوا: حَرُورِي، فَسَجَنَهُ الْوَلِيدُ، وَكَتَبَ بِهِ إِلَى عُثْمَانَ بْنِ عَفَّانَ فَكَانَ يُفْتَحُ لَهُ بِاللَّيْلِ فَيَذْهَبُ إِلَى أَهْلِهِ، فَإِذَا أَصْبَحَ رَجَعَ إِلَى السِّجْنِ - قَالَ: فَيَرَوْنَ أَنَّ جُنْدُبًا صَاحِبَ الضَّرْبَةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ مَا ذَكَرْنَا، قَدْ تَقَصَّيْنَاهُ لَهُمْ غَايَةَ التَّقَصِّي، وَأَتَيْنَا بِمَا لَمْ نَذْكُرْهُ أَيْضًا، وَكُلُّ ذَلِكَ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ عَلَى مَا نُبَيِّنُ، إِنْ شَاءَ اللَّهُ تَعَالَى فَنَقُولُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: أَمَّا مَا ذَكَرُوهُ مِنْ أَقْوَالِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ: أَمَّا قَوْلُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فَإِنَّهُ خَبَرٌ صَحِيحٌ عَنْهُ أَخَذُوا مَا اشْتَهَوْا مِنْهُ، وَتَرَكُوا سَائِرَهُ، وَهُوَ خَبَرٌ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، كِلَاهُمَا عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: سَمِعْتُ بَجَالَةَ كَاتِبَ جُزَيٍّ يُحَدِّثُ أَبَا الشَّعْثَاءِ، وَعَمْرَو بْنَ أَوْسٍ عَنْ صِفَةِ زَمْزَمَ فِي إِمَارَةِ الْمُصْعَبِ بْنِ الزُّبَيْرِ قَالَ: كُنْتُ كَاتِبًا لِجَزِيٍّ - عَمِّ الْأَحْنَفِ بْنِ قَيْسٍ - فَأَتَى كِتَابُ عُمَرَ قَبْلَ مَوْتِهِ، بِسَنَةٍ: اقْتُلُوا كُلَّ سَاحِرٍ وَفَرِّقُوا بَيْنَ كُلِّ ذِي رَحِمٍ مَحْرَمٍ مِنَ الْمَجُوسِ، وَانْهَهُمْ عَنِ الزَّمْزَمَةِ، قَالَ: فَقَتَلْنَا ثَلَاثَ سَوَاحِرَ، قَالَ: وَصَنَعَ طَعَامًا كَثِيرًا وَعَرَضَ السَّيْفَ، ثُمَّ دَعَا الْمَجُوسَ فَأَلْقَوْا وِقْرَ بَغْلٍ، أَوْ بَغْلَيْنِ مِنْ وَرِقٍ أَخِلَّةً، كَانُوا يَأْكُلُونَ بِهَا، وَأَكَلُوا بِغَيْرِ زَمْزَمَةٍ، قَالَ: «وَلَمْ

L42785–42787 He said: Hammad ibn Salama narrated to us, Abu Imran—he is al-Jawni—narrated to us that a sorcerer was with al-Walid ibn Uqba, and he would enter a cow and then emerge from it. Jundub saw him, went to his house, then strapped on his sword. When the sorcerer entered the cow's belly, he struck both of them. He recited: "Do you practice sorcery while you see [its falsehood]?" [Al-Anbiya 21:3]. The people surged and scattered, exclaiming: "A Haruri!" Al-Walid imprisoned the sorcerer and wrote to Uthman ibn Affan regarding him. The sorcerer's cell would be opened at night, allowing him to visit his family, and he would return to prison at dawn. He said: Do they suppose Jundub to be the one who struck the blow? Abu Muhammad—may Allah have mercy on him—said: We know nothing supporting their view beyond what we have mentioned. We have exhaustively scrutinized their claims and presented even what we omitted earlier. None of this constitutes valid evidence for them regarding what we shall clarify, if Allah the Exalted wills. Then we say—and success comes only from Allah, the Exalted: As for their citations from the statements of the Companions—may Allah be pleased with them—there is no proof for them in any of it. As for the statement of ʿUmar—may Allah be pleased with him—it is an authentic report from him wherein they took what they desired from it and left the remainder. The narration is as follows: Ḥummām narrated to us, Ibn Mufarrij narrated to us, Ibn al-Aʿrābī narrated to us, al-Dabarī narrated to us, ʿAbd al-Razzāq narrated to us from Maʿmar and Sufyān ibn ʿUyaynah—both of them from ʿAmr ibn Dīnār—who said: I heard Bajāla, the scribe of Juzayy, relating to Abū al-Shaʿthāʾ and ʿAmr ibn Awṣ regarding the condition of Zamzam during the governorship of al-Muṣʿab ibn al-Zubayr. He said: I was the scribe of Juzayy, the uncle of al-Aḥnaf ibn Qays, when ʿUmar's letter arrived a year before his death, stating: "Kill every sorcerer, separate between every Magian with prohibited kinship ties, and forbid them from Zamzama." He said: We killed three sorceresses. He said: Juzayy prepared abundant food, displayed the sword, then summoned the Magians. They brought a mule-load or two of

silver utensils they used for eating, and they ate without Zamzama. He said: "'Umar did not collect the jizya from the Magians until ʿAbd al-Raḥmān ibn ʿAwf testified that the Prophet—peace and blessings of Allah be upon him—had taken it from the Magians of Hajar." Thus is the hadith.[25]

L42788 The Malikis and the Hanafis oppose Umar in this narration regarding his command—in which disagreement is impermissible—specifically, his order to separate every Magian from their mahram relatives, for this is the injunction of Allah Almighty, as He says: "And judge between them by what Allah has revealed" [Al-Mā'idah 5:49].[26]

L42789 Allah, the Exalted, says: "Fight them until there is no persecution and the religion is wholly for Allah" (Quran 8:39).[27]

L42790 The Hanafis and Malikis said: No distinction is to be made between a Magian and his female kin, and the jizya is taken from every non-scriptuary among the non-Arabs—thereby contradicting the Quran and ʿUmar ibn al-Khaṭṭāb in matters where opposing him is impermissible, while they emulated him—by their claim—in cases where he ruled according to the conclusions of his ijtihad regarding issues not addressed by Quranic text nor supported by an authentic Sunnah. This is contrary to the facts.

L42791 Al-Zamzama refers to speech uttered by the Zoroastrians during their meals, which they cannot do without, and no meal is permissible in their religion without it. It consists of words glorifying Allah the Exalted, which they recite within their mouths innately while keeping their lips firmly closed - they deem any deviation from this impermissible. They use small wooden sticks during this practice and toothpicks for eating. This constitutes foolishness and contrivance on their part.

L42792 Via the aforementioned chain from ʿAbd al-Razzāq via ʿAbd al-Raḥmān via al-Muthannā ibn al-Ṣabbāḥ via ʿAmr ibn Shuʿayb via Saʿīd ibn al-Musayyab:

يَكُنْ عُمَرُ أَخَذَ مِنْ الْمَجُوسِ الْجِزْيَةَ حَتَّى شَهِدَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخَذَهَا مِنْ مَجُوسِ أَهْلِ هَجَرَ» فَهَكَذَا الْحَدِيثُ.

وَالْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ يُخَالِفُونَ عُمَرَ فِي هَذَا الْخَبَرِ فِيمَا لَا يَحِلُّ خِلَافُهُ فِيهِ مِنْ أَمْرِهِ: بِأَنْ يُفَرِّقَ بَيْنَ كُلِّ ذِي رَحِمٍ مَحْرَمٍ مِنْ الْمَجُوسِ، لِأَنَّ هَذَا هُوَ أَمْرُ اللَّهِ تَعَالَى إذْ يَقُولُ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] .

فَهُوَ إذْ يَقُولُ تَعَالَى: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] .

فَقَالَ الْحَنَفِيُّونَ وَالْمَالِكِيُّونَ: لَا يُفَرَّقُ بَيْنَ مَجُوسِيٍّ وَبَيْنَ حَرِيمَتِهِ، وَتُؤْخَذُ الْجِزْيَةُ مِنْ كُلِّ مَنْ لَيْسَ كِتَابِيًّا مِنْ الْعَجَمِ - فَخَالَفُوا الْقُرْآنَ، وَعُمَرَ بْنَ الْخَطَّابِ، حَيْثُ لَا يَحِلُّ خِلَافُهُ وَقَلَّدُوهُ - بِزَعْمِهِمْ - حَيْثُ حَكَمَ فِيهِ بِمَا أَدَّاهُ إلَيْهِ اجْتِهَادُهُ، مِمَّا لَمْ يَرِدْ فِيهِ قُرْآنٌ، وَلَا صَحَّتْ بِهِ سُنَّةٌ - فَهَذَا عَكْسُ الْحَقَائِقِ.

وَالزَّمْزَمَةُ - كَلَامٌ تَتَكَلَّمُ بِهِ الْمَجُوسُ عِنْدَ أَكْلِهِمْ، لَا بُدَّ لَهُمْ مِنْهُ، وَلَا يَحِلُّ فِي دِينِهِمْ أَكْلٌ دُونَهُ - وَهُوَ كَلَامُ تَعْظِيمٍ لِلَّهِ تَعَالَى يَتَكَلَّمُونَ بِهِ فِي أَفْوَاهِهِمْ خِلْقَةً وَشِفَاهُهُمْ مُطْبَقَةٌ، لَا يَجُوزُ عِنْدَهُمْ خِلَافُ ذَلِكَ - وَلَهُمْ خَشَبَاتٌ صِغَارٌ يَسْتَعْمِلُونَهَا عِنْدَ ذَلِكَ - وَأَخِلَّةٌ يَأْكُلُونَ بِهَا - وَهَذَا حُمْقٌ مِنْهُمْ وَتَكَلُّفٌ.

وَبِالسَّنَدِ الْمَذْكُورِ إلَى عَبْدِ الرَّزَّاقِ عَنْ عَبْدِ الرَّحْمَنِ عَنْ الْمُثَنَّى بْنِ الصَّبَّاحِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ أَخَذَ سَاحِرًا فَدَفَنَهُ إلَى صَدْرِهِ ثُمَّ تَرَكَهُ حَتَّى مَاتَ.

[25] **Qur'an references (L42785):** Qur'an 21:3 (Al-Anbya).
[26] **Qur'an references (L42788):** Qur'an 5:49 (Al-Ma'idah).
[27] **Qur'an references (L42789):** Qur'an 8:39 (Al-Anfal).

that ʿUmar ibn al-Khaṭṭāb seized a sorcerer, buried him up to the sorcerer's chest, then abandoned him until he died.

وَهُمْ لَا يَأْخُذُونَ بِهَذَا نَفْسَهُ مِنْ حُكْمِ عُمَرَ فِي السَّاحِرِ - وَحَتَّى لَوْ الْتَزَمُوا قَوْلَ عُمَرَ كُلَّهُ لَكَانَ إذْ صَحَّ خِلَافُ عَائِشَةَ لَهُ فِي ذَلِكَ، وَلَمَّا كَانَ قَوْلُهُ أَوْلَى مِنْ قَوْلِهَا، وَلَا قَوْلُهَا أَوْلَى مِنْ قَوْلِهِ.

L42793–42794 They do not adopt this very ruling itself from Umar concerning the sorcerer - and even if they were to fully adhere to all of Umar's opinion, since Aisha's disagreement with him on that matter is valid, his opinion remains more deserving of precedence than hers, and hers is not more deserving of precedence than his.

فَالْوَاجِبُ عِنْدَ التَّنَازُعِ الرُّجُوعُ إلَى مَا افْتَرَضَ اللَّهُ تَعَالَى الرُّجُوعَ إلَيْهِ: مِنْ الْقُرْآنِ، وَالسُّنَّةِ - فَسَقَطَ تَعَلُّقُهُمْ بِعُمَرَ فِي ذَلِكَ.

L42795 In cases of dispute, it is necessary to refer back to what Allah the Exalted has obligated [people] to turn to - such as the Quran and Sunnah. Thus their reliance on 'Umar's position in that matter becomes invalid.

وَأَمَّا حَدِيثُ قَيْسِ بْنِ سَعِيدٍ أَنَّهُ قَتَلَ سَاحِرًا؟ فَقَدْ يُمْكِنُ أَنْ يَكُونَ ذَلِكَ السَّاحِرُ كَافِرًا أَضَرَّ بِمُسْلِمٍ فَقَتَلَهُ - وَهَكَذَا نَقُولُ.

L42796 As for the ḥadīth of Qays ibn Saʿīd—that he killed a sorcerer—is it possible this sorcerer was a disbeliever who had harmed a Muslim, so he killed him? Thus we say.

وَأَيْضًا - فَقَدْ صَحَّ خِلَافُ ذَلِكَ عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا -.

L42797 Moreover, indeed, a differing opinion on that matter has been authentically established from ʿĀ'ishah (may Allah be pleased with her).

فَسَقَطَ تَعَلُّقُهُمْ بِحَدِيثِ قَيْسٍ.

L42798 Thus, their reliance on the Hadith of Qays was invalidated.

وَأَمَّا حَدِيثُ حَفْصَةَ، وَابْنِ عُمَرَ؟ فَقَدْ قُلْنَا: إنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L42799 As for the ḥadīth of Ḥafṣah and Ibn ʿUmar—we have already stated: There is no proof in the statement of anyone other than the Messenger of Allāh, peace and blessings be upon him.

ثُمَّ نَظَرْنَا فِي الْآثَارِ الَّتِي ذَكَرُوا فِي ذَلِكَ: فَوَجَدْنَا خَبَرَ الْحَسَنِ مُرْسَلًا، وَلَا حُجَّةَ فِي مُرْسَلٍ - وَلَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ مُتَعَلَّقٌ أَصْلًا، لِأَنَّهُ إنَّمَا فِيهِ حَدُّ السَّاحِرِ: ضَرْبُهُ بِالسَّيْفِ، وَلَيْسَ فِيهِ قَتْلُهُ، وَالضَّرْبَةُ قَدْ تُخْطِئُ فَتَجْرَحُ فَقَطْ، وَقَدْ تَقْتُلُ - فَهُمْ قَدْ خَالَفُوا هَذَا الْخَبَرَ وَأَوْجَبُوا قَتْلَهُ وَلَا بُدَّ.

L42800 Then we examined the traditions they cited regarding that matter and found the report of Al-Hasan to be disconnected in its chain of transmission, for there is no proof in a disconnected report - even if it were authentic, they would have no basis to rely upon it whatsoever, as it merely mentions the prescribed punishment for the sorcerer as striking him with a sword, not killing him. A strike might miss its lethal intent, merely wounding, or it may kill. Yet they have contradicted this report and made killing him obligatory without exception.

L42801 As for the narration of Jundub, it is extremely weak: the first point is that it

is mursal (disconnected), and it is not known from whom Abū al-ʿAlāʾ heard it.

وَأَمَّا خَبَرُ جُنْدُبَ فَفِي غَايَةِ السُّقُوطِ: أَوَّلُ ذَلِكَ - أَنَّهُ مُرْسَلٌ لَا يُدْرَى مِمَّنْ سَمِعَهُ أَبُو الْعَلَاءِ.

L42802 Then nothing remained except the verse—necessitating its examination, which we undertook by the help of Allah the Most High—beginning with its start from the words of the Most High: {But indeed the devils disbelieved, teaching people magic} [Al-Baqarah: 102].[28]

فَلَمْ يَبْقَ إِلَّا الْآيَةُ - فَوَجَبَ النَّظَرُ فِيهَا، فَفَعَلْنَا - بِعَوْنِ اللَّهِ تَعَالَى - وَابْتَدَأْنَا بِأَوَّلِهَا مِنْ قَوْلِه تَعَالَى: {وَلَكِنَّ الشَّيَاطِينَ كَفَرُوا يُعَلِّمُونَ النَّاسَ السِّحْرَ} [البقرة: ١٠٢] .

L42803 Their statement, “they teach,” is a substitute for “they disbelieved.”

وَقَوْلُهُمْ “ يُعَلِّمُونَ ” بَدَلٌ مِنْ “ كَفَرُوا ”.

L42804 So we examined that—and found it not as they presumed, and that their statement is a claim without proof. Rather, the manifest view is that the discourse concluded at the statement of the Exalted: *They disbelieved* [Al-Baqarah: 102]; the narrative was completed, and it stood independently, sound and complete: *But the devils disbelieved* [Al-Baqarah: 102].[29]

فَنَظَرْنَا فِي ذَلِكَ - فَوَجَدْنَاهُ لَيْسَ كَمَا ظَنُّوا، وَأَنَّ قَوْلَهُمْ هَذَا دَعْوَى بِلَا بُرْهَانٍ، بَلْ الْقَوْلُ الظَّاهِرُ هُوَ أَنَّ الْكَلَامَ تَمَّ عِنْدَ قَوْلِه تَعَالَى: {كَفَرُوا} [البقرة: ١٠٢] وَكَمُلَتْ الْقِصَّةُ، وَقَامَتْ بِنَفْسِهَا صَحِيحَةً تَامَّةً {وَلَكِنَّ الشَّيَاطِينَ كَفَرُوا} [البقرة: ١٠٢] .

L42805 Then, the Exalted initiated another commenced narrative, as stated in His verse: {They teach people magic} [Al-Baqarah: 102]. Thus, they teach it - an initial grammatical structure that begins a sentence and does not allow substitution.[30]

ثُمَّ ابْتَدَأَ تَعَالَى قِصَّةً أُخْرَى مُبْتَدَأَةً، وَهُوَ: {يُعَلِّمُونَ النَّاسَ السِّحْرَ} [البقرة: ١٠٢] فَيُعَلِّمُونَ ابْتِدَاءُ كَلَامٍ لَا بَدَلَ.

L42806–42807 Then, even if it were valid that “they teach” stands in substitution for “they disbelieved” and could not bear any other interpretation whatsoever, they would have no argument whatsoever in this matter. For that is a statement from Allah, the Exalted, regarding what constituted the ruling concerning the devils after the time of Solomon—peace be upon him—and that is a divine law which does not bind us. The ruling of Allah, the Exalted, regarding the devils is a ruling external to our own rulings, and every ruling not established within our divine law does not obligate us.

ثُمَّ لَوْ صَحَّ: أَنَّ “ يُعَلِّمُونَ ” بَدَلٌ مِنْ “ كَفَرُوا ” وَلَمْ يَحْتَمِلْ غَيْرَ ذَلِكَ أَصْلًا، لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ أَلْبَتَّةَ، لِأَنَّ ذَلِكَ خَبَرٌ مِنْ اللَّهِ تَعَالَى عَنْ أَنَّ ذَلِكَ كَانَ حُكْمَ الشَّيَاطِينِ بَعْدَ أَيَّامِ سُلَيْمَانَ - عَلَيْهِ السَّلَامُ - وَذَلِكَ شَرِيعَةٌ لَا تَلْزَمُنَا، وَحُكْمُ اللَّهِ تَعَالَى فِي الشَّيَاطِينِ حُكْمٌ خَارِجٌ مِنْ حُكْمِنَا، وَكُلُّ حُكْمٍ لَمْ يَكُنْ فِي شَرِيعَتِنَا فَلَا يَلْزَمُنَا.

L42808 Rather, it has been authentically established that the ruling concerning “the jinn” today in our law differs from our rulings, just as it has been authentically reported from the Prophet—peace and blessings be upon him—that he

بَلْ قَدْ صَحَّ: أَنَّ حُكْمَ “ الْجِنِّ ” الْيَوْمَ فِي شَرِيعَتِنَا غَيْرُ حُكْمِنَا، كَمَا قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَبَاحَ لَهُمْ الرَّوْثَ وَالْعِظَامَ طَعَامًا وَالرَّوْثُ حَرَامٌ عِنْدَنَا

[28] **Qur’an references (L42802):** Qur’an 2:102 (Al-Baqarah).
[29] **Qur’an references (L42804):** Qur’an 2:102 (Al-Baqarah).
[30] **Qur’an references (L42805):** Qur’an 2:102 (Al-Baqarah).

permitted them to consume dung and bones as food, while dung is prohibited for us but permissible for them. So how, when the apparent meaning of the verse admits two interpretations, is it permissible to restrict it to one without definitive proof? We have already clarified that they have no proof for either of them whatsoever.

وَحَلَالٌ لَهُمْ، فَكَيْفَ وَإِذَا احْتَمَلَ ظَاهِرُ الْآيَةِ مَعْنَيَيْنِ، فَلَا يَجُوزُ حَمْلُهَا عَلَى أَحَدِهِمَا دُونَ الْآخَرِ، إِلَّا بِبُرْهَانٍ، وَقَدْ بَيَّنَّا أَنَّ كِلَا الْوَجْهَيْنِ لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا.

L42809 Moreover, the textual statement of their position is that the devils disbelieved **by** teaching people magic—while they assert that the two angels teach people magic, yet **in their view**, the two angels do not disbelieve **thereby**. Thus, they have acknowledged that the ruling on teaching magic varies—that it may constitute disbelief or **not** constitute disbelief **thereby**. Since they have stated this, **on what basis** do they derive that the ruling on a human sorcerer is disbelief by analogy to the devils, **without negating disbelief** by analogy to the two angels? How can this stand, when the entire analogy is baseless? Thus, it is confirmed that they have no valid proof for declaring a human sorcerer a disbeliever on the grounds that the devils disbelieve **by** teaching it—this would only hold if it were valid for them that the disbelief of the devils occurred **solely** due to their teaching people magic—and this can never be valid for them.

وَأَيْضًا - فَإِنَّ نَصَّ قَوْلِهِمْ: إنَّ الشَّيَاطِينَ كَفَرُوا بِتَعْلِيمِ النَّاسِ السِّحْرَ - وَهُمْ يَزْعُمُونَ: أَنَّ الْمَلَكَيْنِ يُعَلِّمَانِ النَّاسَ السِّحْرَ، وَلَا يَكْفُرُ الْمَلَكَانِ عِنْدَهُمْ بِذَلِكَ، فَقَدْ أَقَرُّوا بِاخْتِلَافِ حُكْمِ تَعْلِيمِ السِّحْرِ، وَأَنَّهُ يَكُونُ كُفْرًا، وَلَا يَكُونُ كُفْرًا بِذَلِكَ، فَإِذْ قَدْ قَالُوا ذَلِكَ، فَمِنْ أَيْنَ لَهُمْ: أَنَّ حُكْمَ السَّاحِرِ مِنْ النَّاسِ الْكُفْرُ قِيَاسًا عَلَى الشَّيَاطِينِ، دُونَ أَنْ لَا يَكُونَ كُفْرًا قِيَاسًا عَلَى الْمَلَكَيْنِ؟ فَكَيْفَ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.؟ فَصَحَّ - أَنَّهُ لَا حُجَّةَ لَهُمْ فِي تَكْفِيرِ السَّاحِرِ مِنْ النَّاسِ: بِأَنَّ الشَّيَاطِينَ يَكْفُرُونَ بِتَعْلِيمِهِ - هَذَا لَوْ صَحَّ لَهُمْ أَنَّ كُفْرَ الشَّيَاطِينِ لَمْ يَكُنْ إلَّا بِتَعْلِيمِهِمْ النَّاسَ السِّحْرَ خَاصَّةً - وَهَذَا لَا يَصِحُّ لَهُمْ أَبَدًا.

L42810 Rather, they had already disbelieved before that. Thus, their teaching people magic was an added misguidance and another newly introduced sin. This is the dictate of the verse's apparent meaning, from which it is impermissible to deviate in any way, except by a claim stripped of all proof—and success is by Allah, the Exalted.

بَلْ قَدْ كَفَرُوا قَبْلَ ذَلِكَ، فَكَانَ تَعْلِيمُهُمْ النَّاسَ السِّحْرَ ضَلَالًا زَائِدًا، وَمَعْصِيَةً حَادِثَةً أُخْرَى، وَهَذَا هُوَ مُقْتَضَى ظَاهِرِ الْآيَةِ الَّذِي لَا يَجُوزُ أَنْ يُحَالَ عَنْهُ أَلْبَتَّةَ، إلَّا بِالدَّعْوَى الْعَارِيَّةِ مِنْ الْبُرْهَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L42811 Then we proceeded to the statement of Allah the Exalted: {The two do not teach anyone until they say, "We are but a trial, so do not disbelieve"} [Al-Baqarah: 102]. We found they have no argument in it at all by any means, because this statement only contains a general prohibition of disbelief in totality, and the two did not say: "So do not disbelieve by learning magic" or "by knowing magic." This is what is not understood from the verse at all.[31]

ثُمَّ صِرْنَا إلَى قَوْلِ اللَّهِ تَعَالَى: {وَمَا يُعَلِّمَانِ مِنْ أَحَدٍ حَتَّى يَقُولا إِنَّمَا نَحْنُ فِتْنَةٌ فَلا تَكْفُرْ} [البقرة: ١٠٢] فَوَجَدْنَاهُمْ لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا بِوَجْهٍ مِنْ الْوُجُوهِ لِأَنَّهُ إنَّمَا فِي هَذَا الْكَلَامِ النَّهْيُ عَنْ الْكُفْرِ جُمْلَةً، وَلَمْ يَقُولَا: فَلَا تَكْفُرْ بِتَعَلُّمِك السِّحْرِ، وَلَا بِعِلْمِك السِّحْرَ، هَذَا مَا لَا يُفْهَمُ مِنْ الْآيَةِ أَصْلًا.

L42812–42814 Such is the statement of the Messenger of Allah (may Allah bless him and

[31] **Qur'an references (L42811):** Qur'an 2:102 (Al-Baqarah).

grant him peace): “Do not revert to disbelief after my death, cutting one another’s throats.” The ruling regarding “some” is solely a prohibition against initial disbelief and only against apostasy—not that they become disbelievers by killing one another. This is evident and unambiguous—and success comes from Allah, the Exalted. Anyone who was compelled into attributing to this verse that Allah’s words—narrating about those who said, “We are but a trial, so do not disbelieve” [Al-Baqarah 2:102]—mean “do not disbelieve by your learning of what we teach you” has lied. He has appended to the Quran what is not in it and what has no basis in evidence whatsoever.[3233]

وَهَكَذَا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَرْجِعُوا بَعْدِي كُفَّارًا يَضْرِبُ بَعْضُكُمْ رِقَابَ بَعْضٍ» إنَّمَا هُوَ نَهْيٌ أَنْ يَكْفُرُوا ابْتِدَاءً، وَعَنْ أَنْ يَرْتَدُّوا فَقَطْ، لَا أَنَّهُمْ بِقَتْلِ بَعْضِهِمْ بَعْضًا يَكُونُونَ كُفَّارًا، وَهَذَا بَيِّنٌ لَا خَفَاءَ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَكُلُّ مَنْ أُلْقِمَ فِي هَذِهِ الْآيَةِ: أَنَّ قَوْله تَعَالَى حَاكِيًا عَنْ الْقَائِلِينَ: {إنَّمَا نَحْنُ فِتْنَةٌ فَلَا تَكْفُرْ} [البقرة: ١٠٢] أَنَّ مُرَادَهُمَا لَا تَكْفُرْ بِتَعَلُّمِك مَا نُعَلِّمُك فَقَدْ كَذَبَ، وَزَادَ فِي الْقُرْآنِ مَا لَيْسَ فِيهِ وَمَا لَا دَلِيلَ عَلَيْهِ أَصْلًا.

L42815 Then we proceeded to the Exalted’s words: {So they learn from the two of them that by which they cause separation between a man and his wife} [Al-Baqarah: 102], and we found this even further removed from constituting a plausible pretext for them than all preceding matters. For has any of the people of the Sunnah ever disputed that one who separates a woman from her husband does not thereby become a disbeliever? Rather, we have observed that Malikis and Hanafis separate a man and his wife through means never sanctioned by Allah the Exalted or His Messenger—peace and blessings be upon him—such as invalid stipulations, the option [of divorce], granting divorce authority, impotence, and withholding financial support.[34]

ثُمَّ صِرْنَا إلَى قَوْله تَعَالَى: {فَيَتَعَلَّمُونَ مِنْهُمَا مَا يُفَرِّقُونَ بِهِ بَيْنَ الْمَرْءِ وَزَوْجِهِ} [البقرة: ١٠٢] فَوَجَدْنَا هَذَا أَبْعَدَ مِنْ أَنْ يَكُونَ لَهُمْ فِيهِ شُبْهَةٌ يُمَوِّهُونَ بِهَا مِنْ كُلِّ مَا سَلَفَ، لِأَنَّهُ لَمْ يَخْتَلِفْ أَحَدٌ مِنْ أَهْلِ السُّنَّةِ فِي أَنَّ مَنْ فَرَّقَ بَيْنَ امْرَأَةٍ وَزَوْجِهَا لَا يَكُونُ كَافِرًا بِذَلِكَ؟ بَلْ قَدْ وَجَدْنَا الْمَالِكِيِّينَ، وَالْحَنَفِيِّينَ يُفَرِّقُونَ بَيْنَ الْمَرْءِ وَزَوْجِهِ بِمَا لَمْ يَأْذَنْ اللَّهُ تَعَالَى بِهِ قَطُّ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَالشُّرُوطِ الْفَاسِدَةِ، وَالتَّخْيِيرِ، وَالتَّمْلِيكِ وَالْعِنَانَةِ، وَعَدَمِ النَّفَقَةِ.

L42816–42818 More astonishing than all of this is the Hanafis’ permission for transgressors with extended influence and those among them of limited means to approach one infatuated with the wife of a Muslim man - that they carry whips on their backs to coerce him into pronouncing her divorce under duress. When she completes her waiting period, the immoral transgressor coerces her through whips to marry him, until she utters consent under compulsion. Yet they consider this a wholesome marriage, a blessed union, and lawful intercourse by which one seeks proximity to Allah the Exalted. By Allah! In the divine

وَأَعْجَبُ مِنْ ذَلِكَ كُلِّهِ إبَاحَةُ الْحَنَفِيِّينَ لِمَنْ طَالَتْ يَدُهُ مِنْ الْفُسَّاقِ، وَلِمَنْ قَصُرَتْ يَدُهُ مِنْهُمْ أَنْ يَأْتِيَ إلَى مَنْ عَشِقَ امْرَأَةَ رَجُلٍ مِنْ الْمُسْلِمِينَ أَنْ يَحْمِلَ السَّوْطَ عَلَى ظَهْرِهِ حَتَّى يَنْطِقَ بِطَلَاقِهَا مُكْرَهٌ، فَإِذَا اعْتَدَّتْ أَكْرَهَهَا الْفَاسِقُ عَلَى أَنْ تَتَزَوَّجَهُ بِالسِّيَاطِ أَيْضًا، حَتَّى تَنْطِقَ بِالرِّضَا مُكْرَهَةً، فَكَانَ ذَلِكَ عِنْدَهُمْ نِكَاحًا طَيِّبًا، وَزَوَاجًا مُبَارَكًا، وَوَطْئًا حَلَالًا يُتَقَرَّبُ بِهِ إلَى اللَّهِ تَعَالَى. وَتَاَللَّهِ، مَا فِي شَرِيعَةِ اللَّهِ تَعَالَى مِنْ التَّفْرِيقِ بَيْنَ الْمَرْءِ وَزَوْجِهِ أَعْظَمُ إثْمًا، وَلَا أَشْنَعُ حَرَامًا وَأَبْعَدُ مِنْ رِضَاءِ اللَّهِ تَعَالَى، وَلَا أَدْنَى، مِنْ رَأْيِ إبْلِيسَ،

[32] **Hadith references (L42812):** Sahih al-Bukhari 121; Sahih al-Bukhari 6868; Sahih al-Bukhari 7077.

[33] **Qur’an references (L42812):** Qur’an 2:102 (Al-Baqarah).

[34] **Qur’an references (L42815):** Qur’an 2:102 (Al-Baqarah).

law of Allah the Exalted, no act holds greater sin than separating a man from his wife, nothing more abominably forbidden, nothing farther from Allah's pleasure, nothing closer to Iblis's design, nor... We ask Allah, the Exalted, for protection from this division which the devils have implemented and permitted, and from the like of this and similar matters.

وَمِنْ الشَّيَاطِينِ، مِنْ هَذَا التَّفْرِيقِ الَّذِي أَمْضَوْهُ، وَأَجَازُوهُ، وَنَسْأَلُ اللَّهَ تَعَالَى الْعَافِيَةَ مِن مِثْلِ هَذَا وشِبْهِهِ.

L42819 And we may find the talebearer causing separation between a person and their spouse, yet he does not thereby become a disbeliever. So how could they possibly declare the sorcerer (sīḥr) a disbeliever for that reason? Thus, their reliance on this text is rendered completely invalid.

وَقَدْ نَجِدُ النَّمَّامَ يُفَرِّقُ بَيْنَ الْمَرْءِ وَزَوْجِهِ فَلَا يَكُونُ بِذَلِكَ كَافِرًا، فَمِنْ أَيْنَ وَقَعَ لَهُمْ أَنْ يُكَفِّرُوا السَّاحِرَ بِذَلِكَ؟ فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا النَّصِّ جُمْلَةً.

L42820 The same applies to the statement of Allah the Exalted: {They could not harm anyone with it except by Allah's permission, and they learn what harms them and does not benefit them} [Al-Baqarah: 102], for not every harm that a person causes renders the one who causes harm a disbeliever; rather, he is a sinner against Allah the Exalted, not a disbeliever, nor is it lawful to shed his blood.[35]

وَهَكَذَا الْقَوْلُ فِي قَوْله تَعَالَى {وَمَا هُمْ بِضَارِّينَ بِهِ مِنْ أَحَدٍ إلا بِإِذْنِ اللَّهِ وَيَتَعَلَّمُونَ مَا يَضُرُّهُمْ وَلا يَنْفَعُهُمْ} [البقرة: ١٠٢] إذْ لَيْسَ كُلُّ مَا ضَرَّ الْمَرْءُ يَكُونُ بِهِ كَافِرًا، بَلْ يَكُونُ عَاصِيًا لِلَّهِ تَعَالَى، لَا كَافِرًا وَلَا حَلَالَ الدَّمِ.

L42821 Then we proceeded to His statement, the Exalted: {And they certainly knew that whoever traded it away} [Al-Baqarah: 102] up to His statement, the Exalted: {If they only knew} [Al-Baqarah: 102]. We found they had no valid argument for declaring the sorcerer a disbeliever or permitting his killing whatsoever, for this attribute could exist in a Muslim by their consensus in agreement with us. As narrated via the chain of Muslim: Shaybān ibn Farrūkh narrated to us, Jarīr ibn Ḥāzim narrated to us, Nāfi' narrated from Ibn 'Umar, who said: The Messenger of Allah—peace and blessings be upon him—said: "Verily, only he who has no share in the Hereafter wears silk in this world."[36]

ثُمَّ صِرْنَا إلَى قَوْله تَعَالَى {وَلَقَدْ عَلِمُوا لَمَنِ اشْتَرَاهُ} [البقرة: ١٠٢] إلَى قَوْله تَعَالَى: {لَوْ كَانُوا يَعْلَمُونَ} [البقرة: ١٠٢] فَوَجَدْنَاهُمْ لَا حُجَّةَ لَهُمْ فِي تَكْفِيرِ السَّاحِرِ، وَلَا فِي إبَاحَةِ دَمِهِ أَصْلًا، لِأَنَّ هَذِهِ الصِّفَةَ قَدْ تَكُونُ فِي مُسْلِمٍ بِإِجْمَاعِهِمْ مَعَنَا: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا شَيْبَانُ بْنُ فَرُّوخَ نا جَرِيرُ بْنُ حَازِمٍ نا نَافِعٌ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّمَا يَلْبَسُ الْحَرِيرَ فِي الدُّنْيَا مَنْ لَا خَلَاقَ لَهُ فِي الْآخِرَةِ؟» .

L42822 Abū Muḥammad—may Allāh have mercy on him—stated: They unanimously agree that wearing silk does not constitute disbelief, nor is it permissible to kill its wearer. Thus, their reliance upon this verse is rendered invalid, and all praise belongs to Allāh.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ لِبَاسَ الْحَرِيرِ لَيْسَ كُفْرًا، وَلَا يَحِلُّ قَتْلُ لَابِسِهِ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْآيَةِ، وَلِلَّهِ الْحَمْدُ.

L42823 So we scrutinized whether there existed for them any foundational basis to

[35] **Qur'an references (L42820):** Qur'an 2:102 (Al-Baqarah).
[36] **Qur'an references (L42821):** Qur'an 2:102 (Al-Baqarah).

rely on in the verse, or in any part of the Quran, or in the Authentic Sunnahs, or in the Weak Sunnahs, or in consensus, or in a Companion's opinion, or in analogy, or in speculative reasoning, or in any valid sound opinion. Rather, all these aspects invalidate their claim.

L42824 When the opinion of those who held that the sorcerer should be killed categorically and the opinion of those who claimed that magic constitutes disbelief wholly were proven invalid, it became obligatory to examine the third opinion. We found that Allah, the Exalted, says: "And do not kill yourselves" [Sūrat al-Nisāʾ 4:29].[37]

L42825–42827 And He, the Exalted, said: "So kill the polytheists wherever you find them" [al-Tawbah 9:5], up to His words: "then let them go their way" [al-Tawbah 9:5]. And He, the Exalted, said: "Do not kill the soul which Allah has forbidden, except by right" [Al-An'am 6:151].[38]

L42828 Allah, the Exalted, said: "And whoever kills a believer intentionally" [Surah An-Nisā 4:93].[39]

L42829 The Messenger of Allah—peace be upon him—said: "Your blood and wealth are sacredly forbidden from violation."

L42830 It has been established by the Qur'an and the Sunnah that the blood of every Muslim is inviolable except by an explicit scriptural ruling or definitive consensus. We then considered whether there exists an established text clarifying the definition of magic. We found—as reported in Ṣaḥīḥ Muslim through the chain: Hārūn ibn Saʿīd al-Aylī narrated to us, Ibn Wahb narrated to us, Sulaymān ibn Bilāl informed me from Thawr ibn Yazīd from Abū al-Ghayth from Abū Hurayrah—that the Messenger of Allah, peace and blessings be upon him, said: "Avoid the seven destructive sins." They asked: "O Messenger of Allah, what are they?" He replied: "Associating partners with Allah, practicing magic, unlawfully killing a soul sanctified by Allah,

فَنَظَرْنَا أَنْ يَكُونَ لَهُمْ فِي الْآيَةِ مُتَعَلَّقٌ أَصْلًا، وَلَا فِي شَيْءٍ مِنْ الْقُرْآنِ، وَلَا مِنْ السُّنَنِ الصِّحَاحِ، وَلَا فِي السُّنَنِ الْوَاهِيَةِ، وَلَا فِي إجْمَاعٍ، وَلَا فِي قَوْلِ صَاحِبٍ، وَلَا فِي قِيَاسٍ، وَلَا نَظَرٍ، وَلَا رَأْيٍ سَدِيدٍ يَصِحُّ، بَلْ كُلُّ هَذِهِ الْوُجُوهِ مُبْطِلَةٌ لِقَوْلِهِمْ.

فَلَمَّا بَطَلَ قَوْلُ مَنْ رَأَى أَنْ يَقْتُلَ السَّاحِرَ جُمْلَةً، وَقَوْلُ مَنْ ادَّعَى أَنَّ السِّحْرَ كُفْرٌ بِالْجُمْلَةِ: وَجَبَ أَنْ نَنْظُرَ فِي الْقَوْلِ الثَّالِثِ: فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] .

وَقَالَ تَعَالَى {فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ} [التوبة: ٥] إلَى قَوْلِهِ: {فَخَلُّوا سَبِيلَهُمْ} [التوبة: ٥] وَقَالَ تَعَالَى {وَلا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إلا بِالْحَقِّ} [الأنعام: ١٥١] .

قَالَ تَعَالَى {وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا} [النساء: ٩٣] الْآيَةُ.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَصَحَّ بِالْقُرْآنِ وَالسُّنَّةِ: أَنَّ كُلَّ مُسْلِمٍ فَدَمُهُ حَرَامٌ إلَّا بِنَصٍّ ثَابِتٍ أَوْ إجْمَاعٍ مُتَيَقَّنٍ - فَنَظَرْنَا هَلْ نَجِدُ فِي السِّحْرِ نَصًّا ثَابِتًا بِتِبْيَانِ مَا هُوَ؟ فَوَجَدْنَا - مِنْ طَرِيقِ مُسْلِمٍ نا هَارُونُ بْنُ سَعِيدٍ الْأَيْلِيُّ نا ابْنُ وَهْبٍ أَخْبَرَنِي سُلَيْمَانُ بْنُ بِلَالٍ عَنْ ثَوْرِ بْنِ يَزِيدَ عَنْ أَبِي الْغَيْثِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «اجْتَنِبُوا السَّبْعَ الْمُوبِقَاتِ، قِيلَ: يَا رَسُولَ اللَّهِ وَمَا هُنَّ؟ قَالَ: الشِّرْكُ بِاَللَّهِ، وَالسِّحْرُ، وَقَتْلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ إلَّا بِالْحَقِّ، وَأَكْلُ مَالِ الْيَتِيمِ، وَأَكْلُ الرِّبَا، وَالتَّوَلِّي يَوْمَ الزَّحْفِ، وَقَذْفُ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ» .

[37] **Qur'an references (L42824):** Qur'an 4:29 (An-Nisa).

[38] **Qur'an references (L42825):** Qur'an 9:5 (At-Tawbah); Qur'an 6:151 (Al-An'am); Qur'an 17:33 (Al-Isra).

[39] **Qur'an references (L42828):** Qur'an 4:93 (An-Nisa).

devouring the wealth of orphans, engaging in usury, fleeing from battle, and falsely accusing chaste believing women of adultery."[40]

L42831 This was a clear clarification that magic is not a form of polytheism, but rather a ruinous sin like killing a soul and the like thereof—thus the ambiguity is removed, and all praise belongs to Allah.

L42832 It has been established that magic is not disbelief, and since it is not disbelief, it is not permissible to kill its practitioner, because the Messenger of Allah—may Allah's blessings and peace be upon him and his family—said, "The blood of a Muslim individual is not lawful except for one of three: disbelief after belief, adultery after marriage, and a life for a life."

L42833 The sorcerer is not a disbeliever as we have clarified, nor a murderer, nor a married adulterer. No authentic text exists regarding his execution to justify adding him to these three, as is the case with the highway robber and the one punished with ḥadd three times for wine.

L42834 Thus, the prohibition of his blood was confirmed with certainty, without any ambiguity.

L42835–42837 We also found—via al-Bukhārī's transmission—that ʿAbdullāh ibn Muḥammad informed us, "I heard Sufyān ibn ʿUyaynah." He says: Hisham ibn Urwah narrated to them from his father from Aishah, the Mother of the Believers, who said: "The Messenger of Allah—peace and blessings of Allah be upon him—was bewitched such that he thought he was approaching women but had not done so." Ibn Uyaynah said: This is the most severe form of magic. He said, "O Aishah, do you know that Allah has answered me with a verdict regarding what I sought His guidance about? Two men came to me; one sat at my head and the other at my feet. The one at my head said to the other: What ails this man? He replied: He is bewitched. He asked: Who bewitched him? He answered: Labid ibn Aʿṣam, a man from Banu Zuraiq, an ally of the Jews, who was a hypocrite. He asked: With what? He replied: With a comb and the hair gathered from it. He asked: Where is it? He replied: In the

فَكَانَ هَذَا بَيَانًا جَلِيًّا بِأَنَّ السِّحْرَ لَيْسَ مِنْ الشِّرْكِ، وَلَكِنَّهُ مَعْصِيَةٌ مُوبِقَةٌ كَقَتْلِ النَّفْسِ وَشَبَهِهَا، فَارْتَفَعَ الْإِشْكَالُ - وَلِلَّهِ الْحَمْدُ.

وَصَحَّ أَنَّ السِّحْرَ لَيْسَ كُفْرًا، وَإِذَا لَمْ يَكُنْ كُفْرًا فَلَا يَحِلُّ قَتْلُ فَاعِلِهِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إلَّا بِإِحْدَى ثَلَاثٍ: كُفْرٌ بَعْدَ إيمَانٍ، وَزِنًى بَعْدَ إحْصَانٍ، وَنَفْسٌ بِنَفْسٍ» .

فَالسَّاحِرُ لَيْسَ كَافِرًا كَمَا بَيَّنَّا، وَلَا قَاتِلًا، وَلَا زَانِيًا مُحْصَنًا، وَلَا جَاءَ فِي قَتْلِهِ نَصٌّ صَحِيحٌ فَيُضَافُ إلَى هَذِهِ الثَّلَاثِ، كَمَا جَاءَ فِي الْمُحَارِبِ، وَالْمَحْدُودِ فِي الْخَمْرِ ثَلَاثَ مَرَّاتٍ.

فَصَحَّ تَحْرِيمُ دَمِهِ بِيَقِينٍ لَا إشْكَالَ فِيهِ.

وَوَجَدْنَا أَيْضًا - مِنْ طَرِيقِ الْبُخَارِيِّ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ سَمِعْتُ سُفْيَانَ بْنَ عُيَيْنَةَ يَقُولُ: إنَّ هِشَامَ بْنَ عُرْوَةَ حَدَّثَهُمْ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُحِرَ حَتَّى يَرَى أَنَّهُ يَأْتِي النِّسَاءَ وَلَا يَأْتِيهِنَّ» قَالَ ابْنُ عُيَيْنَةَ: وَهَذَا أَشَدُّ مَا يَكُونُ مِنْ السِّحْرِ «فَقَالَ: يَا عَائِشَةُ - أَعَلِمْتِ أَنَّ اللَّهَ أَفْتَانِي فِيمَا اسْتَفْتَيْتُهُ فِيهِ؟ أَتَانِي رَجُلَانِ، فَقَعَدَ أَحَدُهُمَا عِنْدَ رَأْسِي، وَالْآخَرُ عِنْدَ رِجْلِي، فَقَالَ الَّذِي عِنْدَ رَأْسِي لِلْآخَرِ: مَا بَالُ الرَّجُلِ؟ فَقَالَ: مَطْبُوبٌ، قَالَ: وَمَنْ طَبَّهُ؟ قَالَ: لَبِيدُ بْنُ أَعْصَمَ - رَجُلٌ مِنْ بَنِي زُرَيْقٍ حَلِيفُ الْيَهُودِ، وَكَانَ مُنَافِقًا - قَالَ: وَفِيمَ؟ قَالَ: فِي مُشْطٍ وَمُشَاطَةٍ، قَالَ: وَأَيْنَ؟ قَالَ: فِي جُفِّ طَلْعَةِ ذَكَرٍ، تَحْتَ رَاعُوفَةٍ فِي بِئْرِ ذَرْوَانَ، قَالَ: فَأَتَى الْبِئْرَ حَتَّى

[40] **Qur'an references (L42830):** Qur'an 6:151 (Al-An'am); Qur'an 17:33 (Al-Isra); Qur'an 25:68 (Al-Furqan).

sheath of a male palm spathe, beneath a grindstone in the well of Dharwan." He went to the well and retrieved it, saying, "This is the well I saw—its water appeared like henna infusion, and its palm trees seemed as the heads of devils." It was retrieved, and I said, "Why did you not publicize it?" He replied, "Allah has cured me, and I dislike inciting mischief among the people." Abu Muhammad said: This is an authentic report. Allah the Exalted informed His Messenger—peace and blessings of Allah be upon him—of who bewitched him, yet he did not kill him.

اسْتَخْرَجَهُ، قَالَ: فَهَذِهِ الْبِئْرُ الَّتِي رَأَيْتُهَا، كَأَنَّ مَاءَهَا نُقَاعَةُ الْحِنَّاءِ، وَكَأَنَّ نَخْلَهَا رُءُوسُ الشَّيَاطِينِ، قَالَ: فَاسْتُخْرِجَ، فَقُلْتُ: أَفَلَا تَنَشَّرْتَ؟ قَالَ: أَمَّا اللَّهُ فَقَدْ شَفَانِي، وَأَكْرَهُ أَنْ أُثِيرَ عَلَى النَّاسِ شَرًّا؟» قَالَ أَبُو مُحَمَّد: فَهَذَا خَبَرٌ صَحِيحٌ، وَقَدْ عَرَّفَ اللَّهُ تَعَالَى رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ سَحَرَهُ، فَلَمْ يَقْتُلْهُ.

L42838 If it is objected: "This ḥadīth states that he was a hypocrite, and in some of its narrations, that he was a Jew—while you assert that if a disbeliever harms a Muslim, he must be killed, the covenant of protection no longer applies to him, and that if a hypocrite is identified, he must be killed?" We reply: "We indeed say this, for conclusive evidence has been established for it."

فَإِنْ قِيلَ: فَإِنَّ فِي هَذَا الْحَدِيثِ: أَنَّهُ كَانَ مُنَافِقًا، وَفِي بَعْضِ رِوَايَاتِهِ: أَنَّهُ كَانَ يَهُودِيًّا - وَأَنْتُمْ تَقُولُونَ: إِنَّ الْكَافِرَ إِذَا أَضَرَّ بِمُسْلِمٍ وَجَبَ قَتْلُهُ، وَبَرِئَتْ مِنْهُ الذِّمَّةُ، وَأَنَّ الْمُنَافِقَ إِذَا عُرِفَ وَجَبَ قَتْلُهُ؟ قُلْنَا: إِنَّنَا كَذَلِكَ نَقُولُ، لِأَنَّ الْبُرْهَانَ قَامَ بِذَلِكَ.

L42839 As for the dhimmi, if he harms a Muslim, [this ruling applies] due to Allah's statement, {until they pay the jizyah directly from their hand while they are subdued} [9:29]. The prohibition against shedding the blood of the People of the Book is contingent upon their adherence to a subdued status. If they abandon this subjugation, their covenant is absolved, the prohibition against their blood is lifted, and it reverts to its original permissibility. For Allah the Exalted has permitted their blood perpetually except when in a state of subjugation. When subjugation ceases, their blood is no longer prohibited. If they harm a Muslim while not in a state of subjugation, even though they have humiliated him, their blood becomes permissible.[41]

وَأَمَّا الذِّمِّيُّ - إِذَا أَضَرَّ بِمُسْلِمٍ، فَلِقَوْلِ اللَّهِ تَعَالَى {حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] فَإِنَّمَا حُرِّمَتْ دِمَاءُ أَهْلِ الْكِتَابِ بِالْتِزَامِ الصَّغَارِ، فَإِذَا فَارَقُوا الصَّغَارَ فَقَدْ بَرِئَتْ ذِمَّتُهُمْ، وَسَقَطَ تَحْرِيمُ دِمَائِهِمْ، وَعَادَتْ حَلَالًا كَمَا كَانَتْ، لِأَنَّ اللَّهَ تَعَالَى أَبَاحَ دِمَاءَهُمْ أَبَدًا إِلَّا بِالصَّغَارِ، فَإِذَا لَمْ يَكُنْ الصِّغَارُ فَدِمَاؤُهُمْ لَمْ تَحْرُمْ، وَهُمْ إِذَا أَضَرُّوا بِمُسْلِمٍ فَلَمْ يَصْغُرْ وَهُمْ وَقَدْ أَصْغَرُوهُ، فَدِمَاؤُهُمْ حَلَالٌ.

L42840 As for the hypocrite - when it is confirmed that he is a disbeliever, the Messenger of Allah (peace and blessings be upon him) said: "Whoever alters his religion, execute him." This hypocrite or Jew - we are certain beyond any doubt that Allah the Exalted had not yet commanded His Messenger (peace and blessings be upon him) to kill those who changed their religion, nor to kill those among the protected non-Muslims who failed to adhere to the humiliating terms.

وَأَمَّا الْمُنَافِقُ - فَإِذَا عُرِفَ أَنَّهُ كَافِرٌ فَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ» فَهَذَا الْمُنَافِقُ أَوْ الْيَهُودِيُّ، نَحْنُ عَلَى يَقِينٍ لَا مِرْيَةَ فِيهِ: أَنَّهُ لَمْ يَكُنْ اللَّهُ تَعَالَى أَمَرَ رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْدُ بِقَتْلِ مَنْ بَدَّلَ دِينَهُ، وَلَا بِقَتْلِ مَنْ لَمْ يَلْتَزِمْ الصَّغَارَ مِنْ أَهْلِ الذِّمَّةِ.

L42841–42842 The proof of this—no one in whose heart is an atom's weight of faith would

[41] **Qur'an references (L42839):** Qur'an 9:29 (At-Tawbah).

doubt that the Messenger of Allah, peace and blessings be upon him, does not ever intentionally disobey his Lord. If his Lord, the Exalted, had commanded him to kill him, he would have executed it. Since he, peace be upon him, did not kill him, we assert with certainty and conclusively resolve that this occurred before the revelation of the verse commanding the killing of the People of the Book if they did not pay the jizyah in humiliation, and before the command was revealed to him to kill those who apostatized from their religion.

L42843 If they say: "Say the same regarding the sorcerer?" We respond: "Yes, this is what we say," meaning the sorcerer's blood is inviolable according to this narration. Similarly, the Jew who harms a Muslim - how then for the leader of the people of Islam (may Allah bless him and grant him peace)? Likewise, one who openly declares Islam while hiding disbelief.

L42844 Then the command of Allah, the Exalted, prohibiting the shedding of blood of the People of the Book in exchange for the jizyah coupled with humiliation, and permitting their bloodshed in the absence thereof, was firmly established—and the command of the Messenger of Allah—peace and blessings of Allah be upon him—to kill whoever apostatizes from their religion was firmly established. Thus, we affirm that, and no sound command has come regarding killing the sorcerer. Therefore, the prohibition against shedding blood remains—so the ambiguity is wholly resolved. And success comes only from Allah, the Exalted.

L42845 ## On the Extent of Taʿzīr (Discretionary Punishment)

L42846 Issue 3209: Discretionary Punishment. Abu Muhammad—may Allah have mercy on him—said: People have differed regarding the measure of discretionary punishment. One group held that it has no defined limit, and that it is permissible for the ruler to extend it as he deems appropriate—even for it to exceed the prescribed punishments in severity, however extensive it may be. This is the opinion of Malik, one of the views of Abu Yusuf, as well as the opinion of Abu Thawr and al-Tahawi from the followers of Abu Hanifa.

بُرْهَانُ ذَلِكَ - لَا يَشُكُّ أَنَّهُ مَنْ فِي قَلْبِهِ مِقْدَارُ ذَرَّةٍ مِنْ إيمَانٍ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَتَعَمَّدُ عِصْيَانَ رَبِّهِ، فَلَوْ أَمَرَهُ رَبُّهُ تَعَالَى بِقَتْلِهِمْ لَأَنْفَذَ ذَلِكَ، فَإِذْ لَمْ يَقْتُلْهُ - عَلَيْهِ السَّلَامُ -، فَبِيَقِينٍ نَقْطَعُ وَنَبُتُّ أَنَّ ذَلِكَ كَانَ قَبْلَ نُزُولِ الْآيَةِ بِقَتْلِ أَهْلِ الْكِتَابِ مَا لَمْ يُؤَدُّوا الْجِزْيَةَ مَعَ الصَّغَارِ، وَقَبْلَ أَنْ يَنْزِلَ عَلَيْهِ الْأَمْرُ بِقَتْلِ مَنْ بَدَّلَ دِينَهُ.

فَإِنْ قَالُوا: قُولُوا كَذَلِكَ فِي السَّاحِرِ؟ قُلْنَا: نَعَمْ، هَكَذَا نَقُولُ، وَهُوَ أَنَّ السَّاحِرَ بِهَذَا الْخَبَرِ حَرَامُ الدَّمِ، وَكَذَلِكَ الْيَهُودِيُّ يَضُرُّ بِالْمُسْلِمِ، فَكَيْفَ بِسَيِّدِ أَهْلِ الْإِسْلَامِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَذَلِكَ مَنْ أَعْلَنَ الْإِسْلَامَ وَأَسَرَّ الْكُفْرَ.

ثُمَّ صَحَّ أَمْرُ اللَّهِ تَعَالَى بِتَحْرِيمِ دِمَاءِ أَهْلِ الْكِتَابِ بِالْجِزْيَةِ مَعَ الصَّغَارِ، وَإِبَاحَتِهَا بِعَدَمِ ذَلِكَ - وَصَحَّ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَتْلِ مَنْ بَدَّلَ دِينَهُ، فَصِرْنَا إلَى ذَلِكَ، وَلَمْ يَأْتِ أَمْرٌ صَحِيحٌ بِقَتْلِ السَّاحِرِ، فَبَقِيَ عَلَى تَحْرِيمِ الدَّمِ - فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مِقْدَار التَّعْزِير]

٣٢٠٩ - مَسْأَلَةٌ: التَّعْزِيرُ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي مِقْدَارِ التَّعْزِيرِ: فَقَالَتْ طَائِفَةٌ: لَيْسَ لَهُ مِقْدَارٌ مَحْدُودٌ، وَجَائِزٌ أَنْ يَبْلُغَ بِهِ الْإِمَامُ مَا رَآهُ، وَأَنْ يُجَاوِزَ بِهِ الْحُدُودَ - بَالِغًا مَا بَلَغَ - وَهُوَ قَوْلُ مَالِكٍ - وَأَحَدُ أَقْوَالِ أَبِي يُوسُفَ وَهُوَ قَوْلُ أَبِي ثَوْرٍ، وَالطَّحَاوِيِّ مِنْ أَصْحَابِ أَبِي حَنِيفَةَ.

L42847 A group stated: The discretionary punishment (taʿzīr) is up to one hundred lashes.

وَقَالَتْ طَائِفَةٌ: التَّعْزِيرُ مِائَةُ جَلْدَةٍ فَأَقَلَّ.

L42848 A group states that the maximum discretionary corporal punishment is one hundred lashes except one.

وَقَالَتْ طَائِفَةٌ: أَكْثَرُ التَّعْزِيرِ مِائَةُ جَلْدَةٍ إِلَّا جَلْدَةً.

L42849 A faction held that the maximum punishment for *taʿzīr* is seventy-nine lashes, and the minimum—this being one of the opinions of Abū Yūsuf.

وَقَالَتْ طَائِفَةٌ: أَكْثَرُ التَّعْزِيرِ تِسْعَةٌ وَسَبْعُونَ سَوْطًا فَأَقَلَّ - هُوَ أَحَدُ أَقْوَالِ أَبِي يُوسُفَ.

L42850 A juristic faction held that the maximum *taʿzīr* is seventy-five lashes—with fewer permitted—this being the position of Ibn Abī Laylā and one of the positions upheld by Abū Yūsuf.

وَقَالَتْ طَائِفَةٌ: أَكْثَرُ التَّعْزِيرِ خَمْسَةٌ وَسَبْعُونَ سَوْطًا فَأَقَلَّ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَأَحَدُ أَقْوَالِ أَبِي يُوسُفَ.

L42851 A group holds that the maximum discretionary punishment is thirty lashes.

وَقَالَتْ طَائِفَةٌ: أَكْثَرُ التَّعْزِيرِ ثَلَاثُونَ سَوْطًا.

L42852–42853 A group said: The maximum discretionary punishment is twenty lashes.

وَقَالَتْ طَائِفَةٌ: أَكْثَرُ التَّعْزِيرِ عِشْرُونَ سَوْطًا.

L42854 A group held that discretionary punishment (ta'zir) should not exceed nine lashes; this is the view of some adherents of Al-Shafi'i's school.

وَقَالَتْ طَائِفَةٌ: لَا يَتَجَاوَزُ بِالتَّعْزِيرِ تِسْعَةً - وَهُوَ قَوْلُ بَعْضِ أَصْحَابِ الشَّافِعِيِّ.

L42855 A group held that the maximum discretionary punishment is ten lashes or less, and it is impermissible to exceed that—this being the opinion of al-Layth ibn Sa'd and our companions. Abu Muhammad—may God have mercy on him—said: Among what was narrated supporting the first opinion is what Ahmad ibn 'Umar ibn Anas reported to us: al-Hasan ibn Ya'qub reported to us: Sa'd ibn Falḥūn reported to us: Yusuf ibn Yahya reported to us: 'Abd al-Malik ibn Habib said: Mutarrif ibn 'Abdullah, a reliable narrator, told me: Hisham ibn 'Abdullah al-Makhzumi—the judge of Medina and one of its virtuous judges—was brought a depraved man notorious for pursuing young boys, who had pressed against a youth in a crowd until he violated him. Hisham referred the case to Malik for consultation and asked, "Do you think I should execute him?"—Hisham was severe in enforcing prescribed punishments. Malik replied, "As for execution, no. But I think you should punish him with a painful chastisement." Hisham asked, "How much?" Malik said, "That is up to you." Hisham ordered him to be flogged four hundred lashes and imprisoned him. He died shortly afterward. When this was mentioned to Malik, he did not disapprove nor consider it an error.

وَقَالَتْ طَائِفَةٌ: أَكْثَرُ التَّعْزِيرِ عَشْرَةُ أَسْوَاطٍ فَأَقَلَّ، لَا يَجُوزُ أَنْ يَتَجَاوَزَ بِهِ أَكْثَرَ مِنْ ذَلِكَ - وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ، وَقَوْلُ أَصْحَابِنَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَمِمَّا رُوِيَ فِي الْقَوْلِ الْأَوَّلِ: مَا ناه أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نا الْحَسَنُ بْنُ يَعْقُوبَ نا سَعْدُ بْنُ فَلْحُونٍ نا يُوسُفُ بْنُ يَحْيَى نا عَبْدُ الْمَلِكِ بْنُ حَبِيبٍ قَالَ: قَالَ لِي مُطَرِّفُ بْنُ عَبْدِ اللَّهِ ثِقَةٌ: أُتِيَ هِشَامُ بْنُ عَبْدِ اللَّهِ الْمَخْزُومِيُّ - وَهُوَ قَاضِي الْمَدِينَةِ وَمِنْ صَالِحِ قُضَاتِهَا - بِرَجُلٍ خَبِيثٍ مَعْرُوفٍ بِاتِّبَاعِ الصِّبْيَانِ قَدْ لَصِقَ بِغُلَامٍ فِي ازْدِحَامِ النَّاسِ حَتَّى أَفْضَى، فَبَعَثَ بِهِ هِشَامٌ إِلَى مَالِكٍ، وَقَالَ: أَتَرَى أَنْ أَقْتُلَهُ؟ قَالَ: وَكَانَ هِشَامٌ شَدِيدًا فِي الْحُدُودِ، فَقَالَ مَالِكٌ: أَمَّا الْقَتْلُ فَلَا، وَلَكِنْ أُرِي أَنْ تُعَاقِبَهُ عُقُوبَةً مُوجِعَةً، فَقَالَ: كَمْ؟ قَالَ: ذَلِكَ إِلَيْكَ، فَأَمَرَ بِهِ هِشَامٌ فَجُلِدَ أَرْبَعَ مِائَةِ سَوْطٍ، وَأَبْقَاهُ فِي السِّجْنِ، فَمَا لَبِثَ أَنْ مَاتَ، فَذَكَرُوا

ذَلِكَ لِمَالِكٍ، فَمَا اسْتَنْكَرَ، وَلَا رَأَى أَنَّهُ أَخْطَأَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَذَكَرَ مُحَمَّدُ بْنُ سَحْنُونَ بْنِ سَعِيدٍ فِي كِتَابِهِ الَّذِي جَمَعَ فِيهِ أَحْكَامَ أَبِيهِ أَيَّامَ وِلَايَتِهِ قَضَاءَ مَدِينَةِ الْقَيْرَوَانِ لِابْنِ الْأَغْلَبِ، قَالَ: شَكَا إِلَى أَبِي رَجُلٌ يَأْتِي زَوْجَتَهُ أَنَّهُ غَيَّبَ عَنْهُ ابْنَتَهُ، وَحَالَ بَيْنَهُ وَبَيْنَهَا؟ فَبَعَثَ فِي أَبِي الْجَارِيَةِ، قَالَ: أَيْنَ ابْنَتُكَ امْرَأَةُ هَذَا؟ فَقَالَ: وَاَللَّهِ مَا أَتَتْنِي وَلَا أَدْرِي أَيْنَ هِيَ؟ وَلَا لَهَا عِنْدِي عِلْمٌ، قَالَ: فَأَمَرَ بِهِ فَحُمِلَ إِلَى وَسَطِ السُّوقِ، وَضُرِبَ مِائَةَ سَوْطٍ، ثُمَّ سَجَنَهُ، ثُمَّ أَخْرَجَهُ مَرَّةً ثَانِيَةً وَجَلَدَهُ فِي وَسَطِ السُّوقِ مِائَةَ سَوْطٍ - ثُمَّ أَنَا أَشُكُّ أَذَكَرَ الثَّالِثَةَ أَوْ الرَّابِعَةَ أَمْ لَا؟ قَالَ: فَمَاتَ الرَّجُلُ مِنْ الضَّرْبِ فِي السِّجْنِ، ثُمَّ وَجَدَ ابْنَتَهُ فِي بَعْضِ الشِّعَابِ عِنْدَ قَوْمٍ مِنْ أَهْلِ الْفَسَادِ.

Abu Muhammad—may God have mercy on him—said: Muhammad ibn Sahnun ibn Sa'id mentioned in his book compiling the judicial rulings of his father during his tenure as judge of Qayrawan for Ibn al-Aghlab: A man complained to my father that a man who was committing adultery with the complainant's wife had unlawfully taken custody of his daughter and prevented him from seeing her. My father summoned Abu al-Jariyah and asked, "Where is your daughter, the wife of this man [the complainant]?" He swore, "By God, she has not come to me, and I do not know where she is. I have no information about her." My father ordered him to be taken to the middle of the market, flogged one hundred lashes, and imprisoned. He was later brought out a second time and flogged one hundred lashes in the market (I am uncertain whether a third or fourth instance was mentioned). The man died in prison from the flogging. Later, his daughter was found in some ravines among a group of corrupt people.

وَأَمَّا الْقَوْلُ الثَّانِي - فَكَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ أَنَّ يَحْيَى بْنَ عَبْدِ الرَّحْمَنِ بْنِ حَاطِبٍ حَدَّثَهُ، قَالَ: تُوُفِّيَ عَبْدُ الرَّحْمَنِ بْنُ حَاطِبٍ وَأَعْتَقَ مَنْ صَلَّى مِنْ رَقِيقِهِ وَصَامَ، وَكَانَتْ لَهُ نُوبِيَّةٌ قَدْ صَلَّتْ وَصَامَتْ وَهِيَ أَعْجَمِيَّةٌ لَمْ تَفْقَهْ، فَلَمْ يَرُعْهُ إِلَّا حَمْلُهَا وَكَانَتْ ثَيِّبًا، فَذَهَبَ إِلَى عُمَرَ فَزِعًا فَحَدَّثَهُ؟ فَقَالَ: أَنْتَ الرَّجُلُ لَا تَأْتِي بِخَيْرٍ، فَأَرْسَلَ إِلَيْهَا عُمَرُ فَسَأَلَهَا، فَقَالَ: أَحَبِلْتِ؟ قَالَتْ: نَعَمْ، مِنْ مَرْعُوشٍ بِدِرْهَمَيْنِ، فَصَادَفَ ذَلِكَ عِنْدَهُ: عُثْمَانُ، وَعَلِيًّا، وَعَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ، فَقَالَ: أَشِيرُوا عَلَيَّ وَكَانَ عُثْمَانُ جَالِسًا فَاضْطَجَعَ، فَقَالَ عَلِيٌّ، وَعَبْدُ الرَّحْمَنِ: قَدْ وَقَعَ عَلَيْهَا الْحَدُّ، فَقَالَ: أَشِرْ عَلَيَّ يَا عُثْمَانُ؟ قَالَ: قَدْ أَشَارَ عَلَيْكَ أَخَوَاكَ، قَالَ: أَشِرْ عَلَيَّ أَنْتَ، قَالَ عُثْمَانُ: أَرَاهَا تَسْتَهِلُّ بِهِ كَأَنَّهَا لَا تَعْرِفُهُ، فَلَيْسَ الْحَدُّ

As for the second opinion: Hammam narrated to us, Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabari narrated to us, Abd al-Razzaq narrated from Ibn Jurayj, who said: Hisham ibn Urwah informed me from his father that Yahya ibn Abd al-Rahman ibn Hatib narrated to him, saying: Abd al-Rahman ibn Hatib died, and he freed those of his slaves who prayed and fasted. He had a Nubian slave woman who had prayed and fasted - she was a non-Arab who did not understand. He was taken aback only by her pregnancy, and she was a woman who was no longer a virgin. He went to Umar in alarm and related the matter to him. Umar said, "You are a man who brings no good," then he sent for her. He asked her, saying: "Have you become pregnant?" She replied: "Yes, through Mar'ūsh for two dirhams." He found this matter with him where 'Uthmān, 'Alī, and 'Abd al-Raḥmān ibn 'Awf were present. He said: "Advise me." 'Uthmān had been sitting but then reclined. 'Alī and 'Abd al-Raḥmān said: "The hadd punishment has fallen upon her." He said: "Advise me, O 'Uthmān!" 'Uthmān responded: "Your two brothers have already advised you." He said: "Advise me yourself." 'Uthmān said: "I see her crying out because of it as if she does not acknowledge it. The punishment applies only to one who consciously acknowledges it." 'Umar then ordered her to be flogged one hundred lashes and exiled. He

L42856–42858

concluded: “She told the truth. By Him in whose hand my soul rests, the hadd punishment applies solely to one who acknowledges it.”

إِلَّا عَلَى مَنْ عَلِمَهُ، فَأَمَرَ بِهَا عُمَرُ فَجُلِدَتْ مِائَةً ثُمَّ غَرَّبَهَا، ثُمَّ قَالَ: صَدَقَتْ، وَالَّذِي نَفْسِي بِيَدِهِ مَا الْحَدُّ إِلَّا عَلَى مَنْ عَلِمَهُ.

L42859 And with his chain—to Abd al-Razzaq from Muhammad ibn Rashid, who said: I heard Makhūl narrate that a man found another man in a house after the Isha prayer, wrapped in a mat. Umar struck him a hundred.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ رَاشِدٍ قَالَ: سَمِعْت مَكْحُولًا يُحَدِّثُ أَنَّ رَجُلًا وَجَدَ فِي بَيْتِ رَجُلٍ بَعْدَ الْعَتَمَةِ مُلَفِّفًا فِي حَصِيرٍ، فَضَرَبَهُ عُمَرُ مِائَةً.

L42860 And through him to Abd al-Razzaq: Ibn Jurayj narrated to us; Ja’far ibn Muhammad narrated to us from his father from Ali, that whenever he found a man with a woman under a single blanket, he would flog both of them one hundred lashes each.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نا جَعْفَرُ بْنُ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَلِيٍّ أَنَّهُ كَانَ إِذَا وَجَدَ الرَّجُلَ مَعَ الْمَرْأَةِ فِي لِحَافٍ وَاحِدٍ، جَلَدَهُمَا مِائَةً كُلُّ إِنْسَانٍ مِنْهُمَا.

L42861 And through him—to Abd al-Razzaq, from Sufyan ibn Uyaynah, from al-A’mash, from al-Qasim ibn Abd al-Rahman ibn Abd Allah ibn Mas’ud, from his father, who said: A man who was found with a woman in a blanket was brought to Ibn Mas’ud. He flogged them both, forty lashes each. The woman’s family and the man’s family went and complained about that to Umar ibn al-Khattab? Umar said to Ibn Mas’ud, “What are these people saying?” He replied, “I did indeed do that.”

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الْأَعْمَشِ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ أَبِيهِ قَالَ: أُتِيَ ابْنُ مَسْعُودٍ بِرَجُلٍ وُجِدَ مَعَ امْرَأَةٍ فِي لِحَافٍ، فَضَرَبَهُمَا لِكُلِّ وَاحِدٍ مِنْهُمَا أَرْبَعِينَ سَوْطًا، فَذَهَبَ أَهْلُ الْمَرْأَةِ وَأَهْلُ الرَّجُلِ فَشَكَوْا ذَلِكَ إِلَى عُمَرَ بْنِ الْخَطَّابِ؟ فَقَالَ عُمَرُ لِابْنِ مَسْعُودٍ مَا يَقُولُ هَؤُلَاءِ؟ قَالَ: قَدْ فَعَلْت ذَلِكَ.

L42862 As for the third opinion - it has been reported to us from Sa’id ibn al-Musayyib, and it has also been reported to us from Ibn Shihab, who said: ’Umar ibn al-Khattab imposed fewer than one hundred lashes upon a man who was found alone with a woman at night.’

وَأَمَّا الْقَوْلُ الثَّالِثُ - فَرُوِّينَا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَرُوِّينَاهُ أَيْضًا عَنْ ابْنِ شِهَابٍ قَالَ: إنَّ عُمَرَ بْنَ الْخَطَّابِ ضَرَبَ رَجُلًا دُونَ الْمِائَةِ وُجِدَ مَعَ امْرَأَةٍ فِي الْعَتَمَةِ.

L42863 As for those who said thirty lashes, it is based on the narration we transmitted from Sufyān ibn ʿUyaynah, from Jāmiʿ, from Shaqīq, who said: A man had a claim against Umm Salamah, the Mother of the Believers. He wrote to her and then came to her, whereupon ʿUmar ordered that he be lashed thirty times.

وَأَمَّا مَنْ قَالَ ثَلَاثُونَ سَوْطًا فَلِمَا رُوِّينَاهُ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ جَامِعٍ عَنْ شَقِيقٍ قَالَ: كَانَ لِرَجُلٍ عَلَى أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ حَقٌّ فَكَتَبَ إلَيْهَا يَخْرُجُ عَلَيْهَا فَأَمَرَ عُمَرُ بِأَنْ يُجْلَدَ ثَلَاثِينَ جَلْدَةً.

L42864–42866 As for those who said twenty lashes—as transmitted to us from Waki‘ and ‘Abd al-Rahman, both of whom concurred, narrating from Sufyan al-Thawri, who reported from Humayd al-A‘raj, who reported from Yahya ibn ‘Abd

وَأَمَّا مَنْ قَالَ عِشْرُونَ سَوْطًا - فَكَمَا رُوِّينَا عَنْ وَكِيعٍ، وَعَبْدِ الرَّحْمَنِ، ثُمَّ اتَّفَقَا كِلَاهُمَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حُمَيْدٍ الْأَعْرَجِ عَنْ يَحْيَى بْنِ عَبْدِ اللَّهِ بْنِ صَيْفِيٍّ أَنَّ عُمَرَ بْنَ

Allah ibn Sayfi that ‘Umar ibn al-Khattab wrote to Abu Musa: “No one shall be lashed in a discretionary punishment exceeding twenty lashes?” Abu Muhammad—may Allah have mercy on him—said: When they differed as mentioned, it became necessary to investigate the matter. We therefore examined the view of those who abolished discretionary punishment entirely and those who held that ten lashes should be added to it, since— Only these two opinions remain, as all other opinions have been dismissed as a whole.

الْخَطَّابِ كَتَبَ إلَى أَبِي مُوسَى لَا يُجْلَدْ فِي تَعْزِيرٍ أَكْثَرُ مِنْ عِشْرِينَ سَوْطًا؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ: - فَنَظَرْنَا فِي قَوْلِ مَنْ أَسْقَطَ التَّعْزِيرَ جُمْلَةً، وَمَنْ رَأَى أَنَّهُ يُزَادُ فِيهِ عَشْرُ جَلَدَاتٍ، إذْ لَمْ يَبْقَ غَيْرُ هَذَيْنِ الْقَوْلَيْنِ، إذْ سَائِرُ الْأَقْوَالِ قَدْ سَقَطَ التَّعَلُّقُ بِهَا جُمْلَةً وَاحِدَةً.

L42867 We found its prohibition to be comprehensive, as reported from ʿUmar ibn al-Khaṭṭāb and from ʿAṭāʾ—he was the basis for the statement of the Messenger of Allah (peace and blessings be upon him): “Indeed, your blood, your wealth, your honor, and your skins are inviolable for you.”

فَوَجَدْنَا الْمَنْعَ مِنْهُ جُمْلَةً، كَمَا جَاءَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَنْ عَطَاءٍ هُوَ كَانَ الْأَصْلَ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

L42868 However, when the Messenger of Allah (peace be upon him) said, “Whoever among you witnesses a reprehensible act, let him change it with his hand if he is able; if he cannot, then with his tongue,” this established an absolute ruling for altering evil by hand. Yet this remained an ambiguous directive—we do not understand the manner of changing it by hand: how is it to be done? For changing evil by hand might involve the sword, a stone, a spear, or striking. Such measures must not be undertaken except through explicit clarification from Allah, the Exalted, conveyed by the words of His Messenger (peace be upon him).

لَكِنْ لَمَّا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ» كَانَ ذَلِكَ مُطْلَقًا لِتَغْيِيرِ الْمُنْكَرِ بِالْيَدِ، فَكَانَ هَذَا أَمْرًا مُجْمَلًا، لَا نَدْرِي كَيْفِيَّةَ ذَلِكَ التَّغْيِيرِ بِالْيَدِ كَيْفَ هُوَ؟ لِأَنَّ التَّغْيِيرَ بِالْيَدِ يَكُونُ بِالسَّيْفِ، وَبِالْحَجَرِ، وَيَكُونُ بِالرُّمْحِ، وَيَكُونُ بِالضَّرْبِ - وَهَذَا لَا يُقْدَمُ عَلَيْهِ إلَّا بِبَيَانٍ مِنْ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ -.

L42869 Then we examined Mālik’s statement and found it the furthest of the opinions from being correct, as it is not grounded in the Qur’ān, nor the Sunnah, nor evidence of consensus, nor the saying of any Companion—may Allah be pleased with them—nor a sound opinion. We reflected on this and found the following narration: ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid narrated to us from Ibrāhīm ibn Aḥmad from al-Farabrī from al-Bukhārī from ʿAbd Allāh ibn Yūsuf from al-Layth ibn Saʿd from Yazīd ibn Abī Ḥabīb from Bukayr ibn ʿAbd Allāh from Sulaymān ibn Yasār from ʿAbd al-Raḥmān ibn Jābir ibn ʿAbd Allāh ibn Abī Burdah, who said: The Messenger of Allah—peace and blessings be upon him—used to say, “None shall be flogged beyond ten lashes except in a prescribed punishment from the hudūd of Allah the Exalted.” This constitutes an explicit clarification that none may rightfully transgress it.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَالِكٍ: فَوَجَدْنَاهُ أَبْعَدَ الْأَقْوَالِ مِنْ الصَّوَابِ، لِأَنَّهُ لَمْ يَتَعَلَّقْ بِقُرْآنٍ، وَلَا بِسُنَّةٍ، وَلَا بِدَلِيلِ إجْمَاعٍ، وَلَا بِقَوْلِ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا بِرَأْيٍ سَدِيدٍ: فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَا: مَا نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - نِي يَزِيدُ بْنُ أَبِي حَبِيبٍ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ جَابِرِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي بُرْدَةَ قَالَ: كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «لَا يُجْلَدُ

فَوْقَ عَشْرِ جَلَدَاتٍ إِلَّا فِي حَدٍّ مِنْ حُدُودِ اللَّهِ تَعَالَى» فَكَانَ هَذَا بَيَانًا جَلِيًّا لَا يَحِلُّ لِأَحَدٍ أَنْ يَتَعَدَّاهُ.

L42870 It has been narrated to us—from Sufyan al-Thawri, from Abu Husayn, from Abu Amir, who said: Ali ibn Abi Talib was brought a man found beneath a woman's bedding. He said, "Take him and turn him back to belly in a putrid place, for the place he was in is worse than that."

وَقَدْ رُوِّينَا - عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي حُصَيْنٍ عَنْ أَبِي عَامِرٍ قَالَ: أُتِيَ عَلِيُّ بْنُ أَبِي طَالِبٍ بِرَجُلٍ وُجِدَ تَحْتَ فِرَاشِ امْرَأَةٍ، فَقَالَ: اذْهَبُوا بِهِ فَقَلِّبُوهُ ظَهْرًا لِبَطْنٍ فِي مَكَانٍ مُنْتِنٍ، فَإِنَّهُ كَانَ فِي مَكَانٍ شَرٍّ مِنْهُ.

L42871 From the chain of Muhammad ibn al-Muthanna, narrated by al-Dhahhak ibn Makhlad, from Sufyan al-Thawri, from Abu Ishaq al-Shaybani, from a man: A man came to Ali ibn Abi Talib with an accuser, saying, "This one had a nocturnal emission involving my mother last night." Ali said to him, "Take him into the sunlight and strike his shadow."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا الضَّحَّاكُ بْنُ مَخْلَدٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ رَجُلٍ: أَنَّ رَجُلًا جَاءَ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ بِمُسْتَعِدٍّ عَلَيْهِ، فَقَالَ: هَذَا احْتَلَمَ عَلَى أُمِّي الْبَارِحَةَ؟ فَقَالَ لَهُ عَلِيٌّ: اذْهَبْ فَأَقِمْهُ فِي الشَّمْسِ وَاضْرِبْ ظِلَّهُ؟

L42872–42873 Abū Muḥammad—may God have mercy on him—said: Whoever commits multiple forbidden acts, the ruler may flog him with ten lashes or fewer for each forbidden act—even if the total exceeds typical limits—because the ruling on taʿzīr (discretionary punishment) is stated generally regarding one who commits a forbidden act requiring physical discipline. This differs from the case of the fornicator, for which there is established consensus and textual evidence that a single penetration and repeated acts are treated equally; nor is it like drinking, for which there is established consensus and textual evidence that a single sip and intoxication are treated equally; nor like theft, for which there is established consensus that stealing a quarter of a dinar and stealing more are treated equally; nor like false accusation of unchastity (qadhf), for which there is established textual evidence that falsely accusing one person or multiple persons is treated equally. And success is from God, the Exalted.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَمَنْ أَتَى مُنْكَرَاتٍ جَمَّةً، فَلِلْحَاكِمِ أَنْ يَضْرِبَهُ لِكُلِّ مُنْكَرٍ مِنْهَا عَشْرَ جَلَدَاتٍ فَأَقَلَّ - بَالِغًا ذَلِكَ مَا بَلَغَ - لِأَنَّ الْأَمْرَ فِي التَّعْزِيرِ جَاءَ مُجْمَلًا فِيمَنْ أَتَى مُنْكَرًا أَنْ يُغَيَّرَ بِالْيَدِ، وَلَيْسَ هَذَا بِمَنْزِلَةِ الزَّانِي الَّذِي قَدْ صَحَّ الْإِجْمَاعُ وَالنَّصُّ أَنَّ الْإِيلَاجَ وَالتَّكْرَارَ سَوَاءٌ - وَلَا كَالشُّرْبِ الَّذِي قَدْ صَحَّ الْإِجْمَاعُ وَالنَّصُّ عَلَى أَنَّ الْجَرْعَةَ وَالسُّكْرَ سَوَاءٌ - وَلَا كَالسَّرِقَةِ الَّتِي قَدْ صَحَّ الْإِجْمَاعُ بِأَنَّ سَارِقَ رُبْعِ دِينَارٍ وَسَارِقَ أَكْثَرَ مِنْ ذَلِكَ سَوَاءٌ - وَلَا كَالْقَذْفِ الَّذِي قَدْ صَحَّ النَّصُّ بِأَنَّ قَاذِفَ وَاحِدٍ أَوْ أَكْثَرَ مِنْ وَاحِدٍ سَوَاءٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة هَلْ يُقَالُ ذَوُو الْهَيْئَاتِ عَثَرَاتُهُمْ وَكَيْفَ يَتَجَاوَزُ عَنْ مُسِيءٍ الْأَنْصَارِ]

L42874 Question: Is it stated that the faults of those adhering to proper formalities are pardoned, and how should wrongdoing by a member of the Ansar be forgiven?

L42875 3210 – Issue: Should it be said, "Overlook the missteps of people of stand-

ing”? And how should one overlook the wrongdoer among the Ansar—may Allah be pleased with them? Abu Muhammad (may Allah have mercy on him) said: From Abdullah ibn Rabi’, from Umar ibn Abd al-Malik al-Khawlani, from Muhammad ibn Bukayr al-Basri, from Abu Dawud al-Sijistani and Ja’far ibn Musafir al-Tinnisi, from Ibn Abi Fudayk, from Abd al-Malik ibn Zayd—a descendant of Sa’id ibn Zayd ibn Amr ibn Nufayl—from Muhammad ibn Abi Bakr ibn Amr ibn Hazm, from Amrah, from A’ishah, who said: The Messenger of Allah (peace and blessings of Allah be upon him) said, “Overlook the missteps of people of standing, except in cases of ḥudūd.”

٣٢١٠ - مَسْأَلَةٌ: هَلْ يُقَالُ ذَوُو الْهَيْئَاتِ عَثَرَاتُهُمْ؟ وَكَيْفَ يَتَجَاوَزُ عَنْ مُسِيءِ الْأَنْصَارِ - رَضِيَ اللَّهُ عَنْهُمْ -؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ الْخَوْلَانِيّ نا مُحَمَّدُ بْنُ بُكَيْرٍ الْبَصْرِيُّ نا أَبُو دَاوُد السِّجِسْتَانِيُّ، وَجَعْفَرُ بْنُ مُسَافِرٍ التِّنِّيسِيُّ نا ابْنُ أَبِي فُدَيْكٍ عَنْ عَبْدِ الْمَلِكِ بْنِ زَيْدٍ - مِنْ وَلَدِ سَعِيدِ بْنِ زَيْدِ بْنِ عَمْرِو بْنِ نُفَيْلٍ - عَنْ مُحَمَّدِ بْنِ أَبِي بَكْرِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَمْرَةَ عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَقِيلُوا ذَوِي الْهَيْئَاتِ عَثَرَاتِهِمْ إِلَّا الْحُدُودَ» .

L42876 Hammam narrated to us: Abbas ibn Asbagh, Muhammad ibn Abd al-Malik ibn Ayman, Abu Abdullah, Sa’id ibn Mansur, Abu Bakr ibn Nafi’, the client of the Umari clan, who said: I heard Abu Bakr ibn Muhammad ibn Amr ibn Hazm say: Amrah said: Aisha said: The Messenger of Allah (peace and blessings of Allah be upon him) said: “Excuse the people of dignity their stumbles.”

حَدَّثَنَا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَبُو عَبْدِ اللَّهِ نا سَعِيدُ بْنُ مَنْصُورٍ نا أَبُو بَكْرِ بْنُ نَافِعٍ مَوْلَى الْعُمَرِيِّينَ قَالَ: سَمِعْت أَبَا بَكْرِ بْنَ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ، قَالَتْ عَمْرَةُ: قَالَتْ عَائِشَةُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَقِيلُوا ذَوِي الْهَيْئَاتِ عَثَرَاتِهِمْ» .

L42877 Ahmad ibn Qasim narrated to us: Muhammad ibn Qasim ibn Asbagh narrated to us: My father narrated to us: My grandfather narrated to us: Mudar ibn Muhammad narrated to us: Makhlad ibn Malik narrated to us: Abd al-Rahman ibn Muhammad ibn Abi al-Rijal narrated from Ibn Abi Dhi’b, who informed me: Abd al-Aziz ibn Abdullah ibn Abdullah ibn Umar ibn al-Khattab reported that he injured a slave of his, and the slave sought legal redress against him before Ibn Hazm—the governor of Medina. Ibn Hazm said: I heard my grandmother Amrah narrate from Aisha that the Prophet—peace and blessings of Allah be upon him—said: Excuse people of honorable stature their stumbles or slips. Then he added: You are a man of honorable stature, and I have excused you.

حَدَّثَنَا أَحْمَدُ بْنُ قَاسِمٍ نا مُحَمَّدُ بْنُ قَاسِمِ بْنِ أَصْبَغَ نا أَبِي نا جَدِّي نا مُضَرُ بْنُ مُحَمَّدٍ نا مَخْلَدُ بْنُ مَالِكٍ نا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ أَبِي الرِّجَالِ عَنْ ابْنِ أَبِي ذِئْبٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ جَرَحَ مَوْلًى لَهُ فَاسْتَعْدَى عَلَيْهِ ابْنُ حَزْمٍ - وَهُوَ وَالِي الْمَدِينَةِ - فَقَالَ ابْنُ حَزْمٍ: سَمِعْت جَدَّتِي عَمْرَةَ عَنْ عَائِشَةَ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَقِيلُوا ذَوِي الْهَيْئَاتِ عَثَرَاتِهِمْ - أَوْ زَلَّاتِهِمْ» وَأَنْتَ ذُو هَيْئَةٍ، وَقَدْ أَقَلْتُك.

L42878–42879 Abdullah ibn Rabee’ narrated to us, from Muhammad ibn Mu’awiyah, from Ahmad ibn Shu’ayb, from Amr ibn Ali, from Abdur-Rahman ibn Mahdi, from Abdul-Malik ibn Zayd al-Madini, from Abu Bakr ibn Muhammad ibn Amr

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا عَبْدُ الْمَلِكِ بْنُ زَيْدٍ الْمَدِينِيُّ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ

ibn Hazm, from his father, from Amrah, from Aishah, that the Prophet (peace be upon him) said: “Excuse the slips of those with dignified standing.”

عَنْ أَبِيهِ عَنْ عَمْرَةَ عَنْ عَائِشَةَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «أَقِيلُوا ذَوِي الْهَيْئَاتِ عَثَرَاتِهِمْ» .

L42880 Narrated by Abdullah ibn Rabee’, narrated by Muhammad ibn Mu’awiyah, narrated by Ahmad ibn Shu’ayb, narrated by Muhammad ibn Hatim, narrated by Suwayd—he is Ibn Nasr—narrated by Abdullah—he is Ibn al-Mubarak—from Abdul-Aziz ibn Abdullah ibn Abdullah ibn Umar, from Muhammad ibn Abi Bakr ibn Muhammad ibn Amr ibn Hazm, from his father, from Amrah, that the Messenger of Allah (peace and blessings be upon him and his family) said: “Overlook the misstep of the person of stature.” Abu Muhammad (may Allah have mercy on him) said: The hadith of Abdul-Malik would have been acceptable were it not presumed that Muhammad ibn Abi Bakr did not hear it from Amrah, for this hadith is only transmitted from his father Abu Bakr, from Amrah. As for Abu Bakr ibn Nafi’, he is weak and utterly unreliable—he is not Abu Bakr ibn Nafi’, the freed slave of Ibn Umar; the former has an elevated chain and is trustworthy, whereas the latter is from a later generation. The best of them all is the hadith of Abdur-Rahman ibn Mahdi, for it is sound, and the authoritative proof by it is established.

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ حَاتِمٍ نا سُوَيْدٌ - هُوَ ابْنُ نَصْرٍ نا عَبْدُ اللَّهِ - هُوَ ابْنُ الْمُبَارَكِ - عَنْ عَبْدِ الْعَزِيزِ بْنِ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ مُحَمَّدِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ عَمْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «تَجَاوَزُوا عَنْ زَلَّةِ ذِي الْهَيْئَةِ؟» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: حَدِيثُ عَبْدِ الْمَلِكِ كَانَ يَكُونُ جَيِّدًا لَوْلَا أَنَّ مُحَمَّدَ بْنَ أَبِي بَكْرٍ مُقَدَّرٌ أَنَّهُ لَمْ يَسْمَعْهُ مِنْ عَمْرَةَ، لِأَنَّ هَذَا الْحَدِيثَ إِنَّمَا هُوَ عَنْ أَبِيهِ أَبِي بَكْرٍ عَنْ عَمْرَةَ - وَأَمَّا أَبُو بَكْرِ بْنُ نَافِعٍ - فَهُوَ ضَعِيفٌ لَيْسَ هُوَ بِشَيْءٍ - وَلَيْسَ هُوَ أَبَا بَكْرِ بْنَ نَافِعٍ مَوْلَى ابْنِ عُمَرَ، ذَلِكَ عَالٍ ثِقَةٌ، وَهَذَا مُتَأَخِّرٌ - وَأَحْسَنُهَا كُلُّهَا حَدِيثُ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ فَهُوَ جَيِّدٌ وَالْحُجَّةُ بِهِ قَائِمَةٌ.

L42881 And via the chain of Muslim: Muhammad ibn al-Muthanna narrated to us, Muhammad ibn Ja‘far narrated to us, Shu‘bah narrated to us, stating: I heard Qatadah narrating from Anas ibn Malik that the Messenger of Allah—peace be upon him and his family—said: “The Ansar are my inner circle and my trusted community. People will multiply in number while the Ansar will diminish. Therefore, accept the good from them and overlook the faults of their wrongdoers.”[42]

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ سَمِعْت قَتَادَةَ يُحَدِّثُ عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «الْأَنْصَارُ كَرِشِي وَعَيْبَتِي، وَالنَّاسُ سَيَكْثُرُونَ وَيَقِلُّونَ، فَاقْبَلُوا مِنْ مُحْسِنِهِمْ وَتَجَاوَزُوا عَنْ مُسِيئِهِمْ» .

L42882–42884 Abd al-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: al-Farbari narrated to us: al-Bukhari narrated to us: Muhammad ibn Yahya Abu Ali al-Sa’igh narrated to us: Shadhan—brother of ʿAbdān—narrated to us: my father narrated to us: Shuʿbah ibn al-Ḥajjaj narrated from Hisham ibn Zayd, who said: I heard Anas ibn Malik say: “Abu

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا مُحَمَّدُ بْنُ يَحْيَى أَبُو عَلِيٍّ الصَّائِغُ نا شَاذَانُ - أَخُو عَبْدَانَ - نا أَبِي نا شُعْبَةُ بْنُ الْحَجَّاجِ عَنْ هِشَامِ بْنِ زَيْدٍ قَالَ: سَمِعْت أَنَسَ بْنَ مَالِكٍ يَقُولُ «مَرَّ أَبُو بَكْرٍ، وَالْعَبَّاسُ، بِمَجْلِسٍ مِنْ

[42] **Hadith references (L42881):** Sahih al-Bukhari 3801.

Bakr and al-ʿAbbās passed by a gathering of the Ansar who were weeping. He asked: 'What makes you weep?' They replied: 'We recalled the Prophet's gathering—peace and blessings be upon him and his family.' He went to the Prophet—peace and blessings be upon him and his family—and informed him of this. The Prophet—peace and blessings be upon him and his family—emerged with his head bound by the edge of a cloak, ascended the pulpit—which he did not ascend after that day—praised Allah and extolled Him, then said:" I commend to you the *Anṣār*, for they are my close kin and my clan. They have fulfilled what was incumbent upon them, and what remains is what is due to them. So accept those who do good among them, and overlook their wrongdoers.[43]

مَجَالِسِ الْأَنْصَارِ وَهُمْ يَبْكُونَ، فَقَالَ: مَا يُبْكِيكُمْ؟ فَقَالُوا: ذَكَرْنَا مَجْلِسَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنَّا، فَدَخَلَ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَخْبَرَهُ بِذَلِكَ، قَالَ: فَخَرَجَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَدْ عَصَبَ رَأْسَهُ بِحَاشِيَةِ بُرْدٍ، فَصَعِدَ الْمِنْبَرَ - وَلَمْ يَصْعَدْهُ بَعْدَ ذَلِكَ الْيَوْمِ - فَحَمِدَ اللَّهَ وَأَثْنَى عَلَيْهِ، ثُمَّ قَالَ: أُوصِيكُمْ بِالْأَنْصَارِ فَإِنَّهُمْ كَرِشِي وَعَيْبَتِي، وَقَدْ قَضَوْا الَّذِي عَلَيْهِمْ، وَبَقِيَ الَّذِي لَهُمْ، فَاقْبَلُوا مِنْ مُحْسِنِهِمْ وَتَجَاوَزُوا عَنْ مُسِيئِهِمْ» .

L42885 And via him to al-Bukhārī—Aḥmad ibn Yaʿqūb narrated to us: Ibn al-Mughallis narrated to us, saying: I heard ʿIkrimah say: I heard Ibn ʿAbbās say: "Allah's Messenger—peace and blessings be upon him—came out wearing a mantle wrapped over his shoulders, with a greased headband upon him, until he sat on the pulpit. He praised Allah and extolled Him, then said: 'Now then: O people, people will multiply while the Anṣār will diminish until they become like salt in food.'"

وَبِهِ - إِلَى الْبُخَارِيِّ نا أَحْمَدُ بْنُ يَعْقُوبَ نا ابْنُ الْمُغَلِّسِ قَالَ: سَمِعْت عِكْرِمَةَ يَقُولُ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ «خَرَجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَيْهِ مِلْحَفَةٌ مُتَعَصِّبًا بِهَا عَلَى مَنْكِبَيْهِ وَعَلَيْهِ عِصَابَةٌ دَسْمَاءُ، حَتَّى جَلَسَ عَلَى الْمِنْبَرِ، فَحَمِدَ اللَّهَ وَأَثْنَى عَلَيْهِ، ثُمَّ قَالَ: أَمَّا بَعْدُ: أَيُّهَا النَّاسُ، فَإِنَّ النَّاسَ يَكْثُرُونَ وَتَقِلُّ الْأَنْصَارُ، حَتَّى يَكُونُوا كَالْمِلْحِ فِي الطَّعَامِ» .

L42886 If someone asks: How are these narrations reconciled with the Prophet's statement—peace be upon him and his family—"Whoever among you sees a reprehensible act, let him change it with his hand if he is able," and with what ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid narrated to you: Ibrāhīm ibn Aḥmad narrated to us, al-Farabarī narrated to us, al-Bukhārī narrated to us, ʿAbdān—who is Ibn ʿUthmān—narrated to us, ʿAbd Allāh ibn al-Mubārak narrated to us, Yūnus—who is Ibn Yazīd—narrated to us from al-Zuhrī, who informed me from ʿUrwah, from ʿĀ'ishah, who said: "The Messenger of Allah—peace be upon him and his family—never avenged himself for any harm inflicted upon him personally unless Allah's sanctities were violated, at which point he would retaliate for the sake of Allah, the Almighty and Majestic."

فَإِنْ قَالَ قَائِلٌ: فَكَيْفَ تُجْمَعُ هَذِهِ الْآثَارُ مَعَ قَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إِنْ اسْتَطَاعَ» وَمَعَ مَا حَدَّثَكُمُوهُ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا عَبْدَانُ - هُوَ ابْنُ عُثْمَانَ - نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ نا يُونُسُ - هُوَ ابْنُ يَزِيدَ - عَنْ الزُّهْرِيِّ أَخْبَرَنِي عُرْوَةُ عَنْ عَائِشَةَ، قَالَتْ: «مَا انْتَقَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِنَفْسِهِ فِي شَيْءٍ يُؤْتَى إِلَيْهِ، حَتَّى يُنْتَهَكَ مِنْ حُرُمَاتِ اللَّهِ، فَيَنْتَقِمُ لِلَّهِ عَزَّ وَجَلَّ؟» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إِنَّ جَمِيعَهَا كُلَّهَا حَقٌّ مُمْكِنٌ ظَاهِرٌ، وَذَلِكَ مَا كَانَ مِنْ إِسَاءَةٍ لَا

[43] **Hadith references (L42882):** Sahih al-Bukhari 3799.

Abū Muḥammad—may Allah have mercy on him—said: We respond—and success is from Allah, the Exalted—that all these narrations are entirely true, applicable, and evident. This refers to offenses that do not rise to the level of a reprehensible act, wherein it is obligatory to pardon the Anṣārī in discretionary punishment without extending such leniency to others. Similarly, regarding minor prescribed penalties, the Anṣār receive lighter treatment—such as an Anṣārī being flogged for drinking alcohol with the edge of a garment [to lessen severity], while others are flogged with the hand, palm stalks, or sandals. It is also stated that a person of dignified bearing—one possessing a bearing of knowledge and honor—may be excused for a lapse in harsh conduct or similar matters, provided it does not involve a prescribed penalty or a reprehensible act. Nevertheless, it remains obligatory to enforce prescribed penalties and discretionary punishment—and success is from Allah, the Exalted.

L42887 **The legal question concerning a Qurayshi: If he is punished three times with the ḥadd punishment for adultery or other ḥudūd crimes, should he be executed?**

L42888 Issue: Is a Qurayshi to be executed for offenses requiring the death penalty—such as stoning the *muḥṣan* (a legally accountable married person) if he commits adultery, retribution for murder (*qiṣāṣ*), banditry (*ḥirābah*), apostasy, or drinking wine after being subjected to the *ḥadd* punishment three times—or not?

L42889–42890 Abū Muḥammad—may Allāh have mercy on him—said: Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us; Abū Bakr Aḥmad ibn al-Faḍl al-Dīnawarī narrated to us; Muḥammad ibn Jarīr al-Ṭabarī narrated to us; ʿAbd Allāh ibn Saʿd ibn Ibrāhīm ibn ʿAbd al-Raḥmān ibn ʿAwf al-Zuhrī informed us from his uncle Yaʿqūb ibn Ibrāhīm; Shuʿbah ibn al-Ḥajjāj informed us; ʿAbd Allāh ibn Abī al-Safar informed us; ʿĀmir al-Shaʿbī informed us; ʿAbd Allāh ibn Muṭīʿ ibn al-Aswad informed us; from his father Muṭīʿ—brother of the Banū ʿAdī ibn Kaʿb, whose name was originally al-ʿĀṣ, but the Messenger of Allāh (peace and blessings be upon him and his family) renamed him Muṭīʿ—who said: I heard the Messenger of Allāh (peace and blessings be upon him and

تَبْلُغُ مُنْكَرًا وَجَبَ أَنْ يَتَجَاوَزَ فِيهَا عَنْ الْأَنْصَارِيِّ فِي التَّعْزِيرِ، وَلَمْ يُخَفِّفْ عَنْ غَيْرِهِمْ، وَمَا كَانَ مِنْ حَدٍّ خَفِيفٍ أَيْضًا مِنْ الْأَنْصَارِ مَا لَا يُخَفَّفُ عَنْ غَيْرِهِمْ، مِثْلُ أَنْ يُجْلَدَ الْأَنْصَارِيُّ فِي الْخَمْرِ بِطَرَفِ الثَّوْبِ، وَغَيْرِهِ بِالْيَدِ، أَوْ بِالْجَرِيدِ، وَالنِّعَالِ، وَيُقَالُ ذُو الْهَيْئَةِ - وَهُوَ الَّذِي لَهُ هَيْئَةُ عِلْمٍ وَشَرَفٍ - عَثْرَةٌ فِي جَفَا، وَنَحْوِ ذَلِكَ مَا لَمْ يَكُنْ حَدًّا أَوْ مُنْكَرًا، فَلَا بُدَّ مِنْ إقَامَةِ الْحُدُودِ، وَالتَّعْزِيرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الْقُرَشِيّ إذَا حَدّ فِي زَنَى أَوْ غيرة مِنْ الْحُدُود ثَلَاثًا هَلْ يقتل]

٢٣١١ - مَسْأَلَةٌ: هَلْ يُقْتَلُ الْقُرَشِيُّ فِيمَا يُوجِبُ الْقَتْلَ مِنْ رَجْمِ الْمُحْصَنِ إذَا زَنَى، وَالْقَوَدِ، وَالْحِرَابَةِ، وَالرِّدَّةِ، وَإِذَا شَرِبَ الْخَمْرَ، بَعْدَ أَنْ حُدَّ فِيهَا ثَلَاثَ مَرَّاتٍ أَمْ لَا؟

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا أَبُو بَكْرٍ أَحْمَدُ بْنُ الْفَضْلِ الدِّينَوَرِيُّ نا مُحَمَّدُ بْنُ جَرِيرٍ الطَّبَرِيُّ نا عَبْدُ اللَّهِ بْنُ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ الزُّهْرِيُّ نِي عَمِّي يَعْقُوبُ بْنُ إبْرَاهِيمَ نِي شُعْبَةُ بْنُ الْحَجَّاجِ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ عَنْ عَامِرٍ الشَّعْبِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مُطِيعِ بْنِ الْأَسْوَدِ عَنْ أَبِيهِ مُطِيعٍ - أَخِي بَنِي عَدِيِّ بْنِ كَعْبٍ وَكَانَ اسْمُهُ الْعَاصِ، فَسَمَّاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -:

his family) say in Mecca, “Mecca shall never be invaded after this year, nor shall any man from Quraysh be killed after capture following this year.”

مُطِيعًا - قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِمَكَّةَ يَقُولُ «لَا تُغْزَى مَكَّةُ بَعْدَ هَذَا الْعَامِ أَبَدًا وَلَا يُقْتَلُ رَجُلٌ مِنْ قُرَيْشٍ بَعْدَ هَذَا الْعَامِ صَبْرًا» .

L42891 Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Aḥmad ibn al-Faḍl ibn Bahrām narrated to us: Muḥammad ibn Jarīr narrated to us: from ʿAbdullāh ibn Muḥammad al-Zuhrī: Sufyān—he is Ibn ʿUyaynah—narrated to us from Zakariyyā—he is Ibn Abī Zāʾidah—from al-Shaʿbī, who said: Al-Ḥārith ibn Mālik ibn al-Barṣāʾi said: The Messenger of Allāh—peace and blessings be upon him—said: “Never shall Mecca be invaded after this day.”

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا أَحْمَدُ بْنُ الْفَضْلِ بْنِ بَهْرَامَ نا مُحَمَّدُ بْنُ جَرِيرٍ ثَنِي عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الزُّهْرِيُّ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ الشَّعْبِيِّ قَالَ: قَالَ الْحَارِثُ بْنُ مَالِكِ بْنِ الْبَرْصَاءِ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تُغْزَى مَكَّةُ بَعْدَ الْيَوْمِ أَبَدًا» .

L42892 Ahmad ibn Muhammad ibn al-Jasur narrated to us: Ahmad ibn al-Fadl narrated to us: Muhammad ibn Jarir narrated to us: Nasr ibn Abd al-Rahman al-Azdi narrated to us through two intermediaries: Muhammad ibn Ubayd narrated from Zakariyya – who is the son of Abi Za’idah – from Amir al-Sha‘bi, from al-Harith ibn Malik ibn Barṣā’, who said: “I heard the Messenger of Allah – peace and blessings be upon him – say on the day of the conquest of Mecca: ‘No military expedition shall be launched against it after this day until the Day of Resurrection.’” Abu Muhammad – may Allah have mercy on him – said: This al-Harith is al-Harith ibn Malik ibn Qays ibn Awf ibn Jabir ibn Abd Manaf ibn Kinanah ibn Sa‘j ibn Amir ibn Layth ibn Bakr ibn Abd Manaf ibn Kinanah. It is not established that al-Sha‘bi heard from Abdullah ibn Muti‘ – and this Abdullah ibn Muti‘ was killed alongside Abdullah ibn al-Zubayr during the first siege. Nor is it established that Abdullah ibn Muti‘ heard from al-Harith ibn Malik ibn al-Barṣā’. Thus, both reports have interrupted chains, and no valid evidence can be established through an interrupted chain.

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا أَحْمَدُ بْنُ الْفَضْلِ نا مُحَمَّدُ بْنُ جَرِيرٍ ثَنِيّ نَصْرُ بْنُ عَبْدِ الرَّحْمَنِ الْأَزْدِيُّ نا مُحَمَّدُ بْنُ عُبَيْدٍ عَنْ زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ عَامِرٍ الشَّعْبِيِّ عَنْ الْحَارِثِ بْنِ مَالِكِ بْنِ بَرْصَاءَ قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ فَتْحِ مَكَّةَ وَهُوَ يَقُولُ «لَا تُغْزَى بَعْدَهَا إلَى يَوْمِ الْقِيَامَةِ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: الْحَارِثُ هَذَا - هُوَ الْحَارِثُ بْنُ مَالِكِ بْنِ قَيْسِ بْنِ عَوْدِ بْنِ جَابِرِ بْنِ عَبْدِ مَنَافِ بْنِ كِنَانَةَ بْنِ سَجْعِ بْنِ عَامِرِ بْنِ لَيْثِ بْنِ بَكْرِ بْنِ عَبْدِ مَنَافِ بْنِ كِنَانَةَ - لَا يُعْرَفُ لِلشَّعْبِيِّ سَمَاعٌ مِنْ عَبْدِ اللَّهِ بْنِ مُطِيعٍ - وَعَبْدُ اللَّهِ بْنُ مُطِيعٍ هَذَا قُتِلَ مَعَ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ فِي الْحِصَارِ الْأَوَّلِ، وَلَا يُعْرَفُ لَهُ أَيْضًا سَمَاعٌ مِنْ الْحَارِثِ بْنِ مَالِكِ بْنِ الْبَرْصَاءِ - فَخَصَلَ الْخَبَرَانِ مُنْقَطِعَيْنِ، وَلَا حُجَّةَ فِي مُنْقَطِعٍ.

L42893 Moreover, if it were valid, the intended meaning would be that he (peace be upon him) would never launch a military expedition against it, nor would he himself execute a captive Qurayshi after that day. This is among the signs of his prophethood (may Allah bless him and his family and grant him peace).

ثُمَّ لَوْ صَحَّ لَكَانَ الْمُرَادُ بِذَلِكَ أَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يَغْزُوهَا أَبَدًا، وَلَا يَقْتُلُ هُوَ قُرَشِيًّا بَعْدَ ذَلِكَ الْيَوْمِ صَبْرًا، فَهَذَا مِنْ أَعْلَامِ نُبُوَّتِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L42894–42896 The proof for the validity of this interpretation is Allah the Exalted’s statement: {Do not fight them at all at the Sacred Mosque unless they fight you in

it. But if they fight you in it, then kill them} [Al-Baqarah 191]. The Exalted has informed us that we will fight therein, kill, and be killed. We received the narration via the chain in Muslim's collection: Qutaybah ibn Sa'īd, Abū Bakr ibn Abī Shaybah, and Isḥāq—that is, Ibn Ibrāhīm—with the wording from Qutaybah. Isḥāq said: "He informed us," while the other two said: "Jarīr narrated to us from 'Abd al-'Azīz ibn Rufay' from 'Ubayd Allāh ibn al-Qibṭiyyah, who said: Al-Ḥārith ibn Abī Rabī'ah, 'Abd Allāh ibn Ṣafwān, and I entered upon Umm Salamah, the Mother of the Believers. She said: The Messenger of Allāh—peace be upon him and his family—said, 'A seeker of refuge will take refuge in the Sacred House, then a battalion will be dispatched against him. When they reach al-Baydā' in the land, they will be engulfed by the earth.' I said: O Messenger of Allāh, what about one who is unwilling? He said: 'He will be engulfed with them, but he will be raised on the Day of Resurrection according to his intention.'" Abū Muḥammad—may Allāh have mercy on him—said: We omitted from this report extraneous words by one of its narrators, as they are not part of the ḥadīth whatsoever and are erroneous. He claimed this occurred during Ibn al-Zubayr's era, which is incorrect, for Umm Salamah, the Mother of the Believers—may Allāh be pleased with her—died during the days of Mu'āwiyah. The purpose of the ḥadīth is the statement of the Messenger of Allāh—peace be upon him and his family—not the words of others; thus, it holds no legal proof.[44]

وَبُرْهَانُ صِحَّةِ هَذَا التَّأْوِيلِ: هُوَ قَوْلُ اللَّهِ تَعَالَى {وَلا تُقَاتِلُوهُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ حَتَّى يُقَاتِلُوكُمْ فِيهِ فَإِنْ قَاتَلُوكُمْ فَاقْتُلُوهُمْ} [البقرة: ١٩١] فَأَخْبَرَ تَعَالَى أَنَّنَا سَنُقَاتِلُ فِيهِ وَنَقْتُلُ وَنُقْتَلُ. رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَإِسْحَاقُ - هُوَ ابْنُ إِبْرَاهِيمَ - وَاللَّفْظُ لِقُتَيْبَةَ، قَالَ إِسْحَاقُ: أَخْبَرَنَا، وَقَالَ الْآخَرَانِ: نا جَرِيرٌ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنْ عُبَيْدِ اللَّهِ ابْنِ الْقِبْطِيَّةِ، قَالَ: دَخَلَ الْحَارِثُ بْنُ أَبِي رَبِيعَةَ، وَعَبْدُ اللَّهِ بْنُ صَفْوَانَ، وَأَنَا مَعَهُمَا عَلَى أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ فَقَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «يَعُوذُ عَائِذٌ بِالْبَيْتِ فَيُبْعَثُ إِلَيْهِ بَعْثٌ فَإِذَا كَانَ بِبَيْدَاءَ مِنَ الْأَرْضِ خُسِفَ بِهِمْ، فَقُلْتُ: يَا رَسُولَ اللَّهِ فَكَيْفَ بِمَنْ كَانَ كَارِهًا؟ قَالَ: يُخْسَفُ بِهِ مَعَهُمْ، وَلَكِنَّهُ يُبْعَثُ يَوْمَ الْقِيَامَةِ عَلَى نِيَّتِهِ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَسْقَطْنَا مِنْ هَذَا الْخَبَرِ كَلَامًا لِبَعْضِ رُوَاتِهِ لَيْسَ مِنَ الْحَدِيثِ فِي شَيْءٍ، وَهُوَ غَلَطٌ، وَهُوَ أَنَّهُ ذَكَرَ أَنَّ ذَلِكَ كَانَ أَيَّامَ ابْنِ الزُّبَيْرِ - وَهُوَ خَطَأٌ، لِأَنَّ أُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - مَاتَتْ أَيَّامَ مُعَاوِيَةَ، فَإِنَّمَا الْغَرَضُ مِنَ الْحَدِيثِ كَلَامُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَا كَلَامَ مَنْ دُونَهُ فَلَا حُجَّةَ فِيهِ.

L42897 And through the chain of Muslim: 'Amr ibn Muhammad al-Naqid narrated to us, Sufyan ibn 'Uyaynah narrated to us from Umayyah ibn Safwan, who heard his grandfather 'Abdullah ibn Safwan say: Hafsah informed me that she heard the Prophet—may Allah's blessings and peace be upon him and his family—say: "Most certainly will an army come to attack this House. When they reach the desert of Bayda', they shall be swallowed by the earth from their midst. The first will call out to the last, then all will be swallowed, leaving none except a fugitive to report their fate."

وَمِنْ طَرِيقِ مُسْلِمٍ نا عَمْرُو بْنُ مُحَمَّدٍ النَّاقِدُ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أُمَيَّةَ بْنِ صَفْوَانَ سَمِعَ جَدَّهُ عَبْدَ اللَّهِ بْنَ صَفْوَانَ يَقُولُ: أَخْبَرَتْنِي حَفْصَةُ أَنَّهَا سَمِعَتِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ «لَيُؤَمَّنَّ هَذَا الْبَيْتَ جَيْشٌ يَغْزُونَهُ حَتَّى إِذَا كَانُوا بِبَيْدَاءَ مِنَ الْأَرْضِ يُخْسَفُ بِهِمْ بِأَوْسَطِهِمْ، وَيُنَادِي أَوَّلُهُمْ آخِرَهُمْ، ثُمَّ يُخْسَفُ بِهِمْ فَلَا يَبْقَى إِلَّا الشَّرِيدُ الَّذِي يُخْبِرُ عَنْهُمْ» .

[44] **Qur'an references (L42894):** Qur'an 2:191 (Al-Baqarah).

L42898 From the chain of Muslim: Muḥammad ibn Ḥātim ibn Maymūn reported to me, al-Walīd ibn Ṣāliḥ reported to us, ʿUbaydullāh ibn ʿAmr reported to us, Yazīd ibn Abī Unaysah reported from ʿAbd al-Malik al-ʿĀmirī from Yūsuf ibn Māhak: ʿAbdullāh ibn Ṣafwān informed me from the Mother of the Believers that the Messenger of Allah (peace and blessings of Allah be upon him) said: "A people without protection, numbers, or preparation will return to this House. An army will be sent forth against them until, when they reach Baydāʾ in the land, they will be swallowed up."

وَمِنْ طَرِيقِ مُسْلِمٍ نِي مُحَمَّدُ بْنُ حَاتِمِ بْنِ مَيْمُونٍ نا الْوَلِيدُ بْنُ صَالِحٍ نا عُبَيْدُ اللَّهِ بْنُ عَمْرٍو نا يَزِيدُ بْنُ أَبِي أُنَيْسَةَ عَنْ عَبْدِ الْمَلِكِ الْعَامِرِيِّ عَنْ يُوسُفَ بْنِ مَاهَكَ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ صَفْوَانَ عَنْ أُمِّ الْمُؤْمِنِينَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «سَيَعُودُ بِهَذَا الْبَيْتِ قَوْمٌ لَيْسَ لَهُمْ مَنَعَةٌ وَلَا عَدَدٌ وَلَا عُدَّةٌ يُبْعَثُ إِلَيْهِمْ جَيْشٌ حَتَّى إِذَا كَانُوا بِبَيْدَاءَ مِنْ الْأَرْضِ خُسِفَ بِهِمْ» .

L42899–42900 Yusuf said, "The people of al-Sham at that time are traveling to Makkah."

قَالَ يُوسُفُ: وَأَهْلُ الشَّامِ يَوْمَئِذٍ يَسِيرُونَ إِلَى مَكَّةَ.

L42901 Abdullah ibn Safwan declared: "By Allah, he is not with this army!" Via the chain of Imam Muslim: Abu Bakr ibn Abi Shaybah narrated to us, Yunus ibn Muhammad narrated to us, Al-Qasim ibn Al-Fadl Al-Huddani narrated to us from Muhammad ibn Ziyad from Abdullah ibn Al-Zubayr, who said: "Aisha reported: 'The Messenger of Allah—peace and blessings be upon him and his family—fidgeted in his sleep. We asked: "O Messenger of Allah, you did something in your sleep unlike your usual manner." He said: "How remarkable! Certain people from my community will march toward this House (Kaaba) pursuing a Qurayshite who has taken refuge there. When they reach the desert of Al-Bayda, the earth will swallow them." We said: "O Messenger of Allah, the road often gathers diverse travelers." He replied: "Yes – including the perceptive, the coerced, and the wayfarer. They will perish collectively and emerge from disparate origins. Allah will resurrect them according to their intentions.""'

Abu Muhammad—may Allah have mercy on him—stated: "This is a rigorously authentic report transmitted from three Mothers of the Believers—may Allah be pleased with them—and from Ibn Al-Zubayr, the Prophet's close companion. The Prophet—peace and blessings be upon him and his family—had indeed forewarned that Mecca would be attacked after his death."

قَالَ عَبْدُ اللَّهِ بْنُ صَفْوَانَ: أَمَا وَاَللَّهِ مَا هُوَ بِهَذَا الْجَيْشِ؟ وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا يُونُسُ بْنُ مُحَمَّدٍ نا الْقَاسِمُ بْنُ الْفَضْلِ الْحُدَّانِيُّ عَنْ مُحَمَّدِ بْنِ زِيَادٍ عَنْ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ قَالَ: إِنَّ عَائِشَةَ قَالَتْ «عَبَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي مَنَامِهِ، فَقُلْنَا: يَا رَسُولَ اللَّهِ صَنَعْتُ شَيْئًا فِي مَنَامِكَ لَمْ تَكُنْ تَفْعَلُهُ، قَالَ: الْعَجَبُ، إِنَّ نَاسًا مِنْ أُمَّتِي يَؤُمُّونَ هَذَا الْبَيْتَ لِرَجُلٍ مِنْ قُرَيْشٍ قَدْ لَجَأَ بِالْبَيْتِ، حَتَّى إِذَا كَانُوا بِالْبَيْدَاءِ خُسِفَ بِهِمْ؟ فَقُلْنَا: يَا رَسُولَ اللَّهِ، فَإِنَّ الطَّرِيقَ قَدْ تَجْمَعُ النَّاسَ، قَالَ: نَعَمْ، فِيهِ الْمُسْتَبْصِرُ، وَالْمُجْبَرُ، وَابْنُ السَّبِيلِ، يَهْلِكُونَ مَهْلَكًا وَاحِدًا، وَيَصْدُرُونَ مَصَادِرَ شَتَّى حَتَّى يَبْعَثَهُمْ اللَّهُ عَلَى نِيَّاتِهِمْ» .؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا خَبَرٌ صَحِيحٌ فِي غَايَةِ الصِّحَّةِ عَنْ ثَلَاثَةٍ مِنْ أُمَّهَاتِ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهُنَّ - وَعَنْ ابْنِ الزُّبَيْرِ - وَهُوَ صَاحِبُ - قَدْ «أَنْذَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِأَنَّ مَكَّةَ تُغْزَى بَعْدَهُ» .

L42902 As for the execution of a Qurayshī through torture: it is due to what was transmitted to us through the chain of Muslim—Muhammad ibn al-Muthannā reported to us from Ibn Abī ʿAdiyy from ʿUthmān ibn Ghiyāth

وَأَمَّا قَتْلُ الْقُرَشِيِّ صَبْرًا: فَلِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا ابْنُ أَبِي عَدِيٍّ عَنْ عُثْمَانَ بْنِ غِيَاثٍ عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ قَالَ «بَيْنَمَا

from Abī ʻUthmān al-Nahdī from Abī Mūsā al-Ashʻarī, who said: "While the Messenger of Allah—may the blessings and peace of Allah be upon him and his family—was in a walled garden of Medina, a man sought permission to enter." He then mentioned the hadith.

L42903 In it [the narration]: "Then another man requested opening, so he said: 'Open,' and gave him glad tidings of Paradise upon a trial that will occur. He said: 'I went, and there was Uthman ibn Affan. I opened for him and gave him glad tidings of Paradise. I conveyed to him what he [the Prophet] had said, so he responded: "O Allah, grant patience – and Allah is the One to be sought for help¡'"

L42904–42906 Abdullah ibn Rabee' narrated to us from Umar ibn Abd al-Malik al-Khawlani, from Muhammad ibn Bakr, from Abu Dawud al-Sijistani, from Musaddad, from Yazid ibn Zurai' and Yahya ibn Sa'id al-Qattan—the latter's wording—both narrated collectively: from Sa'id ibn Abi Arubah, from Qatadah, from Anas ibn Malik, who narrated to them that the Prophet—peace and blessings be upon him and his family— He ascended Mount Uhud, followed by Abu Bakr, Umar, and Uthman. The mountain trembled beneath them, so the Prophet of Allah—peace and blessings of Allah be upon him and his family—struck it with his foot, saying: "Be still, Uhud! For upon you are a Prophet, the Truthful One, and two martyrs." Abu Muhammad—may Allah have mercy on him—said: "The Messenger of Allah—peace and blessings of Allah be upon him and his family—warned that the Kaaba will be destroyed by the one with two spindly legs from Ethiopia—without doubt—and this will occur only after its invasion. He explicitly stated that it would be invaded after him and declared that Uthman would suffer a tribulation as is evident—this foretold his impending martyrdom, and he was a Qurayshi."

L42907 And it is established with certainty: that the narration of Al-Sha'bi from Ibn Mutiʻ and from Al-Harith ibn Barṣāʾ—even if it were authentic, which it is not—would mean that he (peace be upon him) would never raid that place after that day of his until the Day of Resurrection, and that he (peace be upon him) would not execute a Qurayshi in captivity after that day until the Day of Resurrection. And so it was. Therefore, since this is the meaning

رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي حَائِطٍ مِنْ حَوَائِطِ الْمَدِينَةِ اسْتَفْتَحَ رَجُلٌ» فَذَكَرَ الْحَدِيثَ.

وَفِيهِ «ثُمَّ اسْتَفْتَحَ رَجُلٌ آخَرُ فَقَالَ: افْتَحْ وَبَشِّرْهُ بِالْجَنَّةِ عَلَى بَلْوَى تَكُونُ، قَالَ: فَذَهَبْت فَإِذَا عُثْمَانُ بْنُ عَفَّانَ قَالَ: فَفَتَحْتُ لَهُ وَبَشَّرْتُهُ بِالْجَنَّةِ، فَقُلْتُ الَّذِي قَالَ، فَقَالَ: اللَّهُمَّ صَبْرًا وَاَللَّهُ الْمُسْتَعَانُ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ الْخَوْلَانِيّ نا مُحَمَّدُ بْنُ بَكْرٍ نا أَبُو دَاوُد السِّجِسْتَانِيُّ نا مُسَدَّدٌ نا يَزِيدُ بْنُ زُرَيْعٍ، وَيَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ - وَاللَّفْظُ لَهُ - قَالَا جَمِيعًا: نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ أَنَسِ بْنِ مَالِكٍ حَدَّثَهُمْ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - صَعِدَ أُحُدًا فَتَبِعَهُ أَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ، فَرَجَفَ بِهِمْ، فَضَرَبَهُ نَبِيُّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِرِجْلِهِ: اُثْبُتْ أُحُدُ، فَإِنَّمَا عَلَيْكَ نَبِيٌّ، وَصِدِّيقٌ، وَشَهِيدَانِ؟» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَنْذَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِأَنَّ الْكَعْبَةَ يَهْدِمُهَا ذُو السُّوَيْقَتَيْنِ مِنْ الْحَبَشَةِ وَهَذَا لَا يَكُونُ إلَّا بَعْدَ غَزْوِهَا - بِلَا شَكٍّ - وَقَدْ صَرَّحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِأَنَّهَا تُغْزَى بَعْدَهُ، وَصَرَّحَ بِأَنَّ عُثْمَانَ تُصِيبُهُ بَلْوَى كَمَا تَرَى - فَهَذَا أَنْذَرَ بِأَنَّهُ سَيُقْتَلُ، وَهُوَ قُرَشِيٌّ.

وَصَحَّ يَقِينًا: أَنَّ حَدِيثَ الشَّعْبِيِّ عَنْ ابْنِ مُطِيعٍ، وَعَنْ الْحَارِثِ بْنِ بَرْصَاءَ، لَوْ صَحَّ - وَهُوَ لَا يَصِحُّ - لَكَانَ مَعْنَاهُ: أَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يَغْزُوهَا بَعْدَ يَوْمِهِ ذَلِكَ أَبَدًا إلَى يَوْمِ الْقِيَامَةِ، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يُقْتَلُ قُرَشِيًّا صَبْرًا بَعْدَ ذَلِكَ الْيَوْمِ إلَى يَوْمِ الْقِيَامَةِ،

of that narration if it were authentic—without doubt—it is confirmed that a Qurayshi, like a non-Qurashi, is to be executed if the death penalty is warranted for him, just as others are executed, and that the Hudud are enforced upon him, just as they are enforced upon a non-Qurashi, with no distinction—even though this is a matter of certain consensus, beyond doubt. And success is from Allah, the Most High.

Ruling on reviling a prophet, a messenger, Allah, the Most High, or an angel.

2312 - Issue: Whoever insults the Messenger of Allah—peace and blessings of Allah be upon him and his family—or Allah the Exalted, or a prophet from among the prophets, or an angel from among the angels, or a human from among the righteous: does he thereby become an apostate—if he is a Muslim—or not? And does this act nullify the covenant—if he is a dhimmi—or not? Abu Muhammad said: People have differed regarding one who insults the Prophet—peace and blessings of Allah be upon him and his family—or a prophet from among the prophets, among those who claim to be Muslim. A group said: This is not disbelief.

A group said: This is disbelief, while others abstained from taking a position on the matter. As for abstention, it is the opinion of our school's scholars.

As for the one who said, "It is not disbelief" - we have indeed received reports through a chain whose place is absent from our narration, except... If any man is brought to me who accuses David—peace be upon him—of adultery, I will flog him two ḥadd punishments [contrary to the standard ruling].

As for those who declared it disbelief and thereby permitted his execution—Abdullah ibn Rabi' reported: Muhammad ibn Mu'awiyah narrated to us; Ahmad ibn Shu'ayb narrated to us; Muhammad ibn al-'Ala' narrated to us; Abu Bakr narrated to us; Abu Mu'awiyah narrated to us from al-A'mash, from 'Amr ibn Murrah, from Salim ibn Abi al-Ja'd, from Abu Barzah, who said: Abu Bakr became furious with a man. I asked, "Who is he, O Caliph of the Messenger of Allah?" He replied, "Why do you ask?" I said, "So I might

وَهَكَذَا كَانَ، فَإِذْ هَذَا مَعْنَى ذَلِكَ الْحَدِيثِ لَوْ صَحَّ - بِلَا شَكٍّ - فَقَدْ ثَبَتَ أَنَّ الْقُرَشِيَّ كَغَيْرِ الْقُرَشِيِّ فِي أَنْ يُقْتَلَ إذَا وَجَبَ عَلَيْهِ الْقَتْلُ صَبْرًا، كَمَا يُقْتَلُ غَيْرُهُ، وَأَنَّ الْحُدُودَ تُقَامُ عَلَيْهِ، كَمَا تُقَامُ عَلَى غَيْرِ قُرَشِيٍّ، وَلَا فَرْقَ، مَعَ أَنَّ هَذَا أَمْرٌ مُجْمَعٌ عَلَيْهِ بِيَقِينٍ لَا شَكَّ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة سَبَّ نبيا أَوْ رسولا أَوْ اللَّهَ تَعَالَى أَوْ مَلَكًا]

٢٣١٢ - مَسْأَلَةٌ: مَنْ سَبَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَوْ اللَّهَ تَعَالَى، أَوْ نَبِيًّا مِنْ الْأَنْبِيَاءِ، أَوْ مَلَكًا مِنْ الْمَلَائِكَةِ، أَوْ إنْسَانًا مِنْ الصَّالِحِينَ، هَلْ يَكُونُ بِذَلِكَ مُرْتَدًّا - إنْ كَانَ مُسْلِمًا - أَمْ لَا؟ وَهَلْ يَكُونُ بِذَلِكَ نَاقِضًا لِلْعَهْدِ - إنْ كَانَ ذِمِّيًّا - أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ: اخْتَلَفَ النَّاسُ فِيمَنْ سَبَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَوْ نَبِيًّا مِنْ الْأَنْبِيَاءِ، مِمَّنْ يَقُولُ: إنَّهُ مُسْلِمٌ: فَقَالَتْ طَائِفَةٌ: لَيْسَ ذَلِكَ كُفْرًا.

وَقَالَتْ طَائِفَةٌ: هُوَ كُفْرٌ، وَتَوَقَّفَ آخَرُونَ فِي ذَلِكَ: فَأَمَّا التَّوَقُّفُ فَهُوَ قَوْلُ أَصْحَابِنَا.

وَأَمَّا مَنْ قَالَ: إنَّهُ لَيْسَ كُفْرًا - فَإِنَّنَا رُوِّينَا بِإِسْنَادٍ غَابَ عَنَّا مَكَانُهُ مِنْ رِوَايَتِنَا، إلَّا أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لَا أُوتَى بِرَجُلٍ قَذَفَ دَاوُد - عَلَيْهِ السَّلَامُ - بِالزِّنَا إلَّا جَلَدْته حَدَّيْنِ.

وَأَمَّا مَنْ قَالَ: إنَّهُ كُفْرٌ فَأَبَاحَ دَمَهُ بِذَلِكَ - فَإِنَّ عَبْدَ اللَّهِ بْنَ رَبِيعٍ قَالَ: نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ الْعَلَاءِ نا أَبُو بَكْرٍ نا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ عَنْ أَبِي بَرْزَةَ قَالَ: تَغَيَّظَ أَبُو بَكْرٍ عَلَى رَجُلٍ، فَقُلْت: مَنْ هُوَ يَا خَلِيفَةَ رَسُولِ اللَّهِ؟ قَالَ: لِمَ؟ قُلْت لَهُ: لِأَضْرِبَ عُنُقَهُ، إنْ أَمَرْتَنِي

strike his neck if you command me to do so." He asked, "Would you truly have done it?" I answered, "Yes." Then I mentioned words indicating that I intended to lessen the gravity of my words that I spoke in his anger. He then said, "That [authority] was not permissible for anyone after the Messenger of Allah—peace and blessings be upon him."

بِذَلِكَ؟ قَالَ: أَوَ كُنْت فَاعِلًا، قَالَ: قُلْت: نَعَمْ، قَالَ: فَذَكَرْت كَلِمَةً مَعْنَاهَا لَأَذْهَبَ عِظَمُ كَلِمَتِي الَّتِي قُلْت غَضَبَهُ، ثُمَّ قَالَ: مَا كَانَتْ لِأَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L42915 Hammam narrated to us, from Abbas ibn Asbagh, from Muhammad ibn Abdul Malik ibn Ayman, from Muhammad ibn Ismail al-Tirmidhi, from al-Humaidi, from Ya'la ibn Ubayd, from al-A'mash, from Amr ibn Murrah, from Abu al-Bakhtari, from Abu Barzah, who said: I passed by Abu Bakr al-Siddiq while he was enraged at one of his companions. I said: "O Caliph of the Messenger of Allah, who is this you are angry with?" He said: "Why do you ask about him?" I replied: "To behead him." He said: "By Allah, I will remove his anger, but I did not say that." Then he said: "It is not for anyone after the Messenger of Allah (peace be upon him)."

حَدَّثَنَا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ نا الْحُمَيْدِيُّ نا يَعْلَى بْنُ عُبَيْدٍ نا الْأَعْمَشُ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ أَبِي الْبَخْتَرِيِّ عَنْ أَبِي بَرْزَةَ، قَالَ: مَرَرْت عَلَى أَبِي بَكْرٍ الصِّدِّيقِ وَهُوَ مُتَغَيِّظٌ عَلَى رَجُلٍ مِنْ أَصْحَابِهِ، فَقُلْت: يَا خَلِيفَةَ رَسُولِ اللَّهِ مَنْ هَذَا الَّذِي تَغِيظُ عَلَيْهِ؟ قَالَ: وَلِمَ تَسْأَلْ عَنْهُ؟ قُلْت لِأَضْرِبَ عُنُقَهُ قَالَ: فَوَاَللَّهِ لَأَذْهَبَ غَضَبُهُ مَا قُلْت، ثُمَّ قَالَ: مَا كَانَ لِأَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L42916 Abdullah ibn Rabee' narrated: Muhammad ibn Mu'awiyah narrated: Ahmad ibn Shu'ayb narrated: Muhammad ibn al-Muthanna narrated from Abu Dawud al-Tayalisi, who narrated from Shu'bah, from Amr ibn Murrah, who said: I heard Abu Nasr—who is Humayd ibn Hilal—narrating from Abu Barzah, who said: I came upon Abu Bakr al-Siddiq when he had spoken harshly to a man, and the man retorted. I said: "Shall I strike his neck?" He rebuked me and said: "This authority belongs to none after the Messenger of Allah—may Allah bless him and grant him peace."

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى عَنْ أَبِي دَاوُد الطَّيَالِسِيِّ نا شُعْبَةُ عَنْ عَمْرِو بْنِ مُرَّةَ قَالَ: سَمِعْت أَبَا نَصْرٍ - هُوَ حُمَيْدُ بْنُ هِلَالٍ - يُحَدِّثُ عَنْ أَبِي بَرْزَةَ، قَالَ: أَتَيْت عَلَى أَبِي بَكْرٍ الصِّدِّيقِ وَقَدْ أَغْلَظَ لِرَجُلٍ فَرَدَّ عَلَيْهِ، فَقُلْت: أَلَا أَضْرِبُ عُنُقَهُ؟ فَانْتَهَرَنِي وَقَالَ: إنَّهَا لَيْسَتْ لِأَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L42917–42919 We were narrated by Abdullah ibn Rabee', on the authority of Muhammad ibn Mu'awiyah, on the authority of Ahmad ibn Shu'ayb who said: Abu Dawud narrated to us, on the authority of Affan, on the authority of Yazid ibn Zurai', on the authority of Yunus ibn 'Ubayd, on the authority of Humaid ibn Hilal, on the authority of Abdullah ibn Mutarrif ibn al-Shikhkhir, on the authority of Abu Barzah al-Aslami, who said: We were with Abu Bakr when he became enraged with a Muslim man, and his anger intensified greatly. When I saw this, I said: "O Caliph of the Messenger of Allah, shall I strike his neck?" When I mentioned killing, he entirely avoided that topic and

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا أَبُو دَاوُد نا عَفَّانُ نا يَزِيدُ بْنُ زُرَيْعٍ نا يُونُسُ بْنُ عُبَيْدٍ عَنْ حُمَيْدِ بْنِ هِلَالٍ عَنْ عَبْدِ اللَّهِ بْنِ مُطَرِّفِ بْنِ الشِّخِّيرِ عَنْ أَبِي بَرْزَةَ الْأَسْلَمِيِّ قَالَ: كُنَّا عِنْدَ أَبِي بَكْرٍ فَغَضِبَ عَلَى رَجُلٍ مِنْ الْمُسْلِمِينَ، فَاشْتَدَّ غَضَبُهُ جِدًّا، فَلَمَّا رَأَيْت ذَلِكَ قُلْت: يَا خَلِيفَةَ رَسُولِ اللَّهِ أَضْرِبُ عُنُقَهُ؟ فَلَمَّا ذَكَرْت الْقَتْلَ أَضْرَبَ عَنْ ذَلِكَ الْحَدِيثِ أَجْمَعَ إلَى غَيْرِ ذَلِكَ مِنْ النَّحْوِ، قَالَ: فَلَمَّا تَفَرَّقْنَا أَرْسَلَ

إِلَيَّ فَقَالَ: يَا أَبَا بَرْزَةَ مَا قُلْت؟ قَالَ: وَنَسِيت الَّذِي قُلْت؟ فَقُلْت لَهُ: ذَكِّرْنِيه؟ فَقَالَ: أَمَّا تَذْكُرُ مَا قُلْت؟ قُلْت: لَا، وَاَللَّهِ، قَالَ: رَأَيْت حِينَ رَأَيْتنِي غَضِبْت عَلَى الرَّجُلِ، فَقُلْت: أَضْرِبُ عُنُقَهُ يَا خَلِيفَةَ رَسُولِ اللَّهِ، أَمَا تَذْكُرُ ذَلِكَ، أَوَ كُنْت فَاعِلًا ذَلِكَ؟ قُلْت: نَعَمْ، وَاَللَّهِ وَلَئِنْ أَمَرْتنِي فَعَلْت، قَالَ: وَاَللَّهِ مَا هِيَ لِأَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ قَالَ أَبُو مُحَمَّدٍ: فَإِنْ قِيلَ - هَذَا خَبَرٌ رَوَاهُ عَمْرُو بْنُ مُرَّةَ - مَرَّةً عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ، وَمَرَّةً عَنْ أَبِي الْبَخْتَرِيِّ، وَكِلَاهُمَا عَنْ أَبِي بَرْزَةَ؟ قُلْنَا: فَكَانَ مَاذَا؟ كُلُّهُمْ ثِقَةٌ، سَمِعَهُ مِنْ كُلِّ وَاحِدٍ فَحَدَّثَ بِهِ كَذَلِكَ، وَعَمْرُو بْنُ مُرَّةَ مِنْ الْجَلَالَةِ وَالثِّقَةِ بِحَيْثُ لَا يَغْمِزُهُ بِمِثْلِ هَذَا إلَّا جَاهِلٌ.

turned to another similar matter. He said: After we dispersed, he sent for me and asked: “O Abu Barzah, what did you say?” I said: “Have I forgotten what I said?” Then I said to him: “Remind me of it.” He replied: “Do you not remember what you said?” I answered: “No, by Allah.” He said: “You saw what you saw of me when you observed me.” I became angry at the man and said: “Shall I strike his neck, O Caliph of the Messenger of Allah? Do you not remember that, or were you the one who did that?” He replied: “Yes, by Allah, and if you were to command me, I would do it.” He said: “By Allah, that is not permissible for anyone after the Messenger of Allah (may Allah bless him and his family and grant him peace).” Abu Muhammad said: If it is said - this is a report narrated by Amr ibn Murrah, once from Salim ibn Abi al-Ja’d and once from Abu al-Buhturi, both from Abu Barzah - we say: So what is the issue? All of them are trustworthy. Amr heard it from each one and narrated it accordingly. Amr ibn Murrah is of such eminence and reliability that none would find fault with him in this except an ignorant person.

فَإِنْ قِيلَ: إنَّ مَعْنَى قَوْلِ أَبِي بَكْرٍ هَذَا إنَّمَا هُوَ مَا كَانَ لِأَحَدٍ أَنْ يُطَاعَ فِي سَفْكِ دَمٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ قُلْنَا نَعَمْ، وَأَرَادَ أَيْضًا مَعْنًى آخَرَ، كَمَا رُوِّينَا مُبَيَّنًا بِلَا إشْكَالٍ: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ أَنَا مُعَاذُ بْنُ مُعَاذٍ الْعَنْبَرِيُّ نا شُعْبَةُ عَنْ ثَوْبَةَ الْعَنْبَرِيِّ قَالَ: سَمِعْت أَبَا السَّوَّارِ الْقَاضِيَ عَبْدَ اللَّهِ بْنَ قُدَامَةَ يُحَدِّثُ عَنْ أَبِي بَرْزَةَ قَالَ: أَغْلَظَ رَجُلٌ لِأَبِي بَكْرٍ الصِّدِّيقِ، قُلْت: أَلَا أَقْتُلُهُ؟ فَقَالَ أَبُو بَكْرٍ: لَيْسَ هَذَا إلَّا لِمَنْ شَتَمَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَبَيَّنَ أَبُو بَكْرٍ الصِّدِّيقُ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ لَا يُقْتَلُ مَنْ شَتَمَهُ، لَكِنْ يُقْتَلُ مَنْ شَتَمَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L42920 If it is said: Does the meaning of Abu Bakr’s statement imply that none may be obeyed in shedding blood after the Messenger of Allah—peace and blessings be upon him and his family? We say: Yes, and he also intended another meaning, as has been clearly transmitted without ambiguity: Muhammad ibn Sa‘id ibn Nubat reported to us, Ahmad ibn ‘Awn Allah reported to us, Qasim ibn Asbagh reported to us, Muhammad ibn ‘Abd al-Salam al-Khushani reported to us, Muhammad ibn Bashshar reported to us, Mu‘adh ibn Mu‘adh al-‘Anbari reported to us, Shu‘bah reported from Thawbah al-‘Anbari who said: I heard Abu al-Sawwar the judge ‘Abd Allah ibn Qudamah narrate from Abu Barzah, who said: A man spoke harshly to Abu Bakr al-Siddiq. I said: “Shall I kill him?” Abu Bakr replied: “This is only for one who insults the Prophet—peace and blessings be upon him and his family.” Thus Abu Bakr al-Siddiq—may Allah be pleased with him—made clear that one who insults him is not to be killed, but one who insults the Prophet—peace and blessings be upon him and his family—is to be killed.

L42921 We affirm that the blood of Muslims is inviolable except by what Allah the Exalted has permitted. He has never permitted it except in cases of apostasy

after embracing faith, adultery by a married person (muḥṣan), retaliation (qiṣāṣ) for killing a believing soul, brigandage and highway robbery, resisting oppression, obstructing a rightful obligation, or for one who has been flogged three times for drinking wine and then drinks it a fourth time—only then [is capital punishment applied].

وَقَدْ عَلِمْنَا أَنَّ دَمَ الْمُسْلِمِينَ حَرَامٌ إِلَّا بِمَا أَبَاحَهُ اللَّهُ تَعَالَى بِهِ، وَلَمْ يُبِحْهُ اللَّهُ تَعَالَى قَطُّ، إِلَّا فِي الْكُفْرِ بَعْدَ الْإِيمَانِ، أَوْ زِنَا الْمُحْصَنِ، أَوْ قَوَدٍ بِنَفْسٍ مُؤْمِنَةٍ، أَوْ فِي الْمُحَارَبَةِ، وَقَطْعِ الطَّرِيقِ، أَوْ فِي الْمُدَافَعَةِ عَنْ الظُّلْمَةِ، أَوْ فِي الْمُمَانَعَةِ مِنْ حَقٍّ، أَوْ فِيمَنْ حُدَّ فِي الْخَمْرِ ثَلَاثَ مَرَّاتٍ، ثُمَّ شَرِبَهَا الرَّابِعَةَ فَقَطْ.

L42922 We know with certainty that whoever insults the Prophet—peace and blessings of Allah be upon him and his family—did not commit adultery, drink wine, intend to wrong a Muslim, or commit highway robbery. The only conclusion is that he is, in the view of Abu Bakr, an unbeliever.

وَقَدْ عَلِمْنَا - أَنَّ مَنْ سَبَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَبِيَقِينٍ نَدْرِي أَنَّهُ لَمْ يَزْنِ، وَلَا شَرِبَ خَمْرًا، وَلَا قَصَدَ ظُلْمَ مُسْلِمٍ، وَلَا قَطَعَ طَرِيقًا - فَلَمْ يَبْقَ إِلَّا أَنَّهُ عِنْدَ أَبِي بَكْرٍ كَافِرٌ.

L42923–42925 Narrated by Abdullah ibn Rabiʿ, from Ibn Mufarrij, from Qasim ibn Asbagh, from Ibn Waḍḍāḥ, from Sahnun, from Ibn Wahb, from Khalid, from Humayd, from Umar ibn Abdullah, from Abd al-Hamid ibn Abd al-Rahman ibn Zayd ibn al-Khattab. He was governing Kufa on behalf of Umar ibn Abd al-Aziz. He wrote to Umar ibn Abd al-Aziz: "I found a man in Kufa insulting you, and conclusive evidence has been established against him. I resolved to kill him, or cut off his hands, or cut out his tongue, or flog him. Then I reconsidered and decided to refer the matter to you." Umar ibn Abd al-Aziz wrote back to him: "Peace be upon you. As for what follows: By the One in whose hand is my soul, if you had killed him, I would have killed you for it; if you had cut him, I would have cut you for it; and if you had flogged him, I would have exacted retaliation from you. When this letter of mine reaches you, take him to the public refuse ground and insult him as he insulted me, or pardon him, for that is more beloved to me. Indeed, it is not permissible to kill a Muslim man who insults anyone among the people except a man who insulted the Messenger of Allah—peace be upon him."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ خَالِدٍ عَنْ حُمَيْدٍ عَنْ عُمَرَ بْنِ عَبْدِ اللَّهِ عَنْ عَبْدِ الْحَمِيدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ زَيْدِ بْنِ الْخَطَّابِ أَنَّهُ كَانَ عَلَى الْكُوفَةِ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، فَكَتَبَ إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: إِنِّي وَجَدْت رَجُلًا بِالْكُوفَةِ يَسُبُّك، وَقَامَتْ عَلَيْهِ الْبَيِّنَةُ، فَهَمَمْت بِقَتْلِهِ، أَوْ قَطْعِ يَدَيْهِ، أَوْ قَطْعِ لِسَانِهِ، أَوْ جَلْدِهِ ثُمَّ بَدَا لِي أَنْ أُرَاجِعَك فِيهِ - فَكَتَبَ إلَيْهِ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: سَلَامٌ عَلَيْك، أَمَّا بَعْدُ: وَالَّذِي نَفْسِي بِيَدِهِ لَوْ قَتَلْته لَقَتَلْتُك بِهِ، وَلَوْ قَطَعْته لَقَطَعْتُك بِهِ، وَلَوْ جَلَدْته لَأَقَدْته مِنْك، فَإِذَا جَاءَك كِتَابِي هَذَا، فَاخْرُجْ بِهِ إلَى الْكُنَاسَةِ فَسُبَّهُ كَالَّذِي سَبَّنِي، أَوْ اُعْفُ عَنْهُ، فَإِنَّ ذَلِكَ أَحَبُّ إلَيَّ، فَإِنَّهُ لَا يَحِلُّ قَتْلُ امْرِئٍ مُسْلِمٍ يَسُبُّ أَحَدًا مِنْ النَّاسِ إلَّا رَجُلًا سَبَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - "

L42926 Abu Hanifah, Malik, Al-Shafi'i, Ahmad ibn Hanbal, Ishaq ibn Rahwayh, the rest of the scholars of hadith, and their followers maintained that he thereby becomes an apostate and disbeliever. Abu Muhammad said: When they differed as we mentioned, it became obligatory for us to examine the proofs

وَذَهَبَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ، وَسَائِرُ أَصْحَابِ الْحَدِيثِ، وَأَصْحَابُهُمْ، إلَى أَنَّهُ بِذَلِكَ كَافِرٌ مُرْتَدٌّ؟ قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا كَمَا

each group cited to support their position, so we might discern the truth in this matter and follow it—with Allah the Most High's assistance and empowerment. We found that those who claimed one does not become an apostate for this act cited as evidence the narration transmitted through Muslim's chain: Zuhayr ibn Harb narrated to us, Jarir ibn Abd al-Hamid narrated from Mansur ibn al-Mu'tamir from Abu Wa'il from Abdullah ibn Mas'ud regarding the day of Khaybar: "Allah's Messenger (peace and blessings of Allah be upon him and his family) favored certain individuals in the distribution. A man exclaimed, 'By Allah, this distribution was not intended to seek Allah the Most High's pleasure!' I went to Allah's Messenger (peace and blessings of Allah be upon him and his family) and informed him of the man's words. The face of Allah's Messenger (peace and blessings of Allah be upon him and his family) altered until it resembled saffron. Then he said, 'Who will establish justice if Allah and His Messenger do not? May Allah grant Moses mercy—he endured worse harm than this and remained patient.'"

ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا لِنَعْلَمَ الْحَقَّ مِنْ ذَلِكَ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى وَتَأْيِيدِهِ. فَوَجَدْنَا مَنْ قَالَ: لَا يَكُونُ بِذَلِكَ كَافِرًا يَحْتَجُّونَ بِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ نا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ أَبِي وَائِلٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ لَمَّا كَانَ يَوْمُ خَيْبَرَ «آثَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَاسًا فِي الْقِسْمَةِ فَقَالَ رَجُلٌ: وَاَللَّهِ إنَّ هَذِهِ لَقِسْمَةٌ مَا أُرِيدَ بِهَا وَجْهُ اللَّهِ تَعَالَى فَأَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَخْبَرْتُهُ بِمَا قَالَ، فَتَغَيَّرَ وَجْهُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَتَّى كَانَ كَالصِّرْفِ، ثُمَّ قَالَ: مَنْ يَعْدِلُ إذَا لَمْ يَعْدِلْ اللَّهُ وَرَسُولُهُ؟ يَرْحَمُ اللَّهُ مُوسَى لَقَدْ أُوذِيَ بِأَكْثَرَ مِنْ هَذَا فَصَبَرَ» .

L42927 And according to what has been transmitted to us via the chain transmitted by Al-Bukhari: Amr ibn Hafs ibn Ghiyath narrated to us from his father, from Al-A'mash, Sufyan narrated to us, who said: "Abdullah ibn Mas'ud said: 'It is as though I see the Prophet—peace be upon him and his family—depicting a prophet among the prophets whose people struck him until they made him bleed, while he was wiping the blood from his face and saying: "O Lord, forgive my people, for they do not know."'"

وَبِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَمْرُو بْنُ حَفْصِ بْنِ غِيَاثٍ نا أَبِي عَنْ الْأَعْمَشِ نا سُفْيَانُ قَالَ: «قَالَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ كَأَنِّي أَنْظُرُ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَحْكِي نَبِيًّا مِنْ الْأَنْبِيَاءِ ضَرَبَهُ قَوْمُهُ فَأَدْمَوْهُ، وَهُوَ يَمْسَحُ الدَّمَ عَنْ وَجْهِهِ وَيَقُولُ: رَبِّ اغْفِرْ لِقَوْمِي فَإِنَّهُمْ لَا يَعْلَمُونَ» .

L42928–42930 Abū Muḥammad said: None of this provides evidence for their position. As for the one who said concerning the division made by the Messenger of Allāh—peace be upon him and his progeny—"This is a division in which there is no fairness, nor was the Face of Allāh, the Exalted, intended by it," we have already stated that this occurred during the day of Khaybar and was prior to... The fact that Allah the Exalted commands the killing of apostates, and this report does not state that the one who utters this statement is not a disbeliever due to that utterance. Since this is not mentioned in the report, they have no basis to rely upon it. As for the narration of the prophet whose people struck him and made him bleed, the same applies here as well. The meaning of that prophet's supplication (peace be upon him) for

قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ: أَمَّا الْقَائِلُ فِي قِسْمَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - هَذِهِ قِسْمَةٌ مَا عَدَلَ فِيهَا، وَلَا أُرِيدَ بِهَا وَجْهُ اللَّهِ تَعَالَى، فَقَدْ قُلْنَا: إنَّ هَذَا كَانَ يَوْمَ خَيْبَرَ، وَإِنَّ هَذَا كَانَ قَبْلَ أَنْ يَأْمُرَ اللَّهُ تَعَالَى بِقَتْلِ الْمُرْتَدِّينَ، وَلَيْسَ فِي هَذَا الْخَبَرِ أَنَّ قَائِلَ هَذَا الْقَوْلِ لَيْسَ كَافِرًا بِقَوْلِ ذَلِكَ، فَإِذْ لَيْسَ ذَلِكَ فِي الْخَبَرِ فَلَا مُتَعَلَّقَ لَهُمْ بِهِ. وَأَمَّا حَدِيثُ النَّبِيِّ الَّذِي بِهِ ضَرَبَهُ قَوْمُهُ فَأَدْمَوْهُ، فَكَذَلِكَ أَيْضًا، وَمَعْنَى دُعَاءِ ذَلِكَ النَّبِيِّ - عَلَيْهِ السَّلَامُ - لَهُمْ بِالْمَغْفِرَةِ: إنَّمَا هُوَ بِأَنْ يُؤْمِنُوا فَيَغْفِرَ اللَّهُ تَعَالَى لَهُمْ،

وَيُبَيِّنَ أَنَّهُمْ كَانُوا كُفَّارًا بِهِ قَوْلُهُ " فَإِنَّهُمْ لَا يَعْلَمُونَ " فَصَحَّ أَنَّهُمْ كَانُوا لَا يَعْلَمُونَ بِنُبُوَّتِهِ. فَصَحَّ أَنَّ كِلَا الْخَبَرَيْنِ لَا حُجَّةَ لَهُمْ فِيهِ.

their forgiveness is that they should believe, so that Allah the Exalted would forgive them. His statement *"for they do not know"* clarifies that they were disbelievers in him. Thus, it is confirmed that they were unaware of his prophethood. Therefore, it is established that neither of the two reports contains proof for their argument.

وَأَمَّا سَبُّ اللَّهِ تَعَالَى - فَمَا عَلَى ظَهْرِ الْأَرْضِ مُسْلِمٌ يُخَالِفُ فِي أَنَّهُ كُفْرٌ مُجَرَّدٌ، إلَّا أَنَّ الْجَهْمِيَّةَ، وَالْأَشْعَرِيَّةَ - وَهُمَا طَائِفَتَانِ لَا يُعْتَدُّ بِهِمَا - يُصَرِّحُونَ بِأَنَّ سَبَّ اللَّهِ تَعَالَى، وَإِعْلَانَ الْكُفْرِ، لَيْسَ كُفْرًا، قَالَ بَعْضُهُمْ: وَلَكِنَّهُ دَلِيلٌ عَلَى أَنَّهُ يَعْتَقِدُ الْكُفْرَ، لَا أَنَّهُ كَافِرٌ بِيَقِينٍ بِسَبِّهِ اللَّهَ تَعَالَى - وَأَصْلُهُمْ فِي هَذَا أَصْلُ سُوءٍ خَارِجٌ عَنْ إجْمَاعِ أَهْلِ الْإِسْلَامِ - وَهُوَ أَنَّهُمْ يَقُولُونَ: الْإِيمَانُ هُوَ التَّصْدِيقُ بِالْقَلْبِ فَقَطْ - وَإِنْ أَعْلَنَ بِالْكُفْرِ - وَعِبَادَةُ الْأَوْثَانِ بِغَيْرِ تَقِيَّةٍ وَلَا حِكَايَةٍ، لَكِنْ مُخْتَارًا فِي ذَلِكَ الْإِسْلَامَ. قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا كُفْرٌ مُجَرَّدٌ، لِأَنَّهُ خِلَافٌ لِإِجْمَاعِ الْأُمَّةِ، وَلِحُكْمِ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَجَمِيعِ الصَّحَابَةِ وَمَنْ بَعْدَهُمْ، لِأَنَّهُ لَا يَخْتَلِفُ أَحَدٌ - لَا كَافِرٌ وَلَا مُؤْمِنٌ - فِي أَنَّ هَذَا الْقُرْآنَ هُوَ الَّذِي جَاءَ بِهِ مُحَمَّدٌ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَذَكَرَ أَنَّهُ وَحْيٌ مِنْ اللَّهِ تَعَالَى، وَإِنْ كَانَ قَوْمٌ مِنْ الرَّوَافِضِ ادَّعُوا أَنَّهُ نُقِصَ مِنْهُ، وَحُرِّفَ، فَلَمْ يَخْتَلِفُوا أَنَّ جُمْلَتَهُ - كَمَا ذَكَرْنَا.

L42931 As for cursing God the Exalted—there is no Muslim upon the earth's surface who disputes that this constitutes pure disbelief, except the Jahmiyyah and Ash'ariyyah—two factions unworthy of consideration—who explicitly declare that cursing God the Exalted and openly proclaiming disbelief do not amount to disbelief. Some of them said: "Rather, it serves as evidence that he holds disbelief in his heart, not that he is a confirmed disbeliever merely by cursing God the Exalted." Their foundation in this matter stems from an evil principle diverging from the consensus of the Muslim community—namely their claim that faith consists solely of heartfelt conviction alone, even if one publicly professes disbelief and worships idols without practicing dissimulation or imitation, but rather chooses that over Islam. Abu Muhammad—may God have mercy on him—said: "This constitutes pure disbelief, for it opposes the consensus of the Ummah, the ruling of God the Exalted, His Messenger—peace be upon him—all the Companions, and those after them. No one—neither disbeliever nor believer—differs regarding the fact that this Quran is what Muhammad—peace be upon him and his family—brought forth, asserting it to be revelation from God the Exalted. Though some among the Rafidah claimed portions were omitted or altered, they did not dispute its entirety as we have described."

وَلَمْ يَخْتَلِفُوا فِي أَنَّ فِيهِ التَّسْمِيَةَ بِالْكُفْرِ، وَالْحُكْمُ بِالْكُفْرِ قَطْعًا عَلَى مَنْ نَطَقَ بِأَقْوَالٍ مَعْرُوفَةٍ، كَقَوْلِهِ تَعَالَى {لَقَدْ كَفَرَ الَّذِينَ قَالُوا إِنَّ اللَّهَ هُوَ الْمَسِيحُ ابْنُ مَرْيَمَ} [المائدة: ١٧] .

L42932 They unanimously agreed that in this matter lies the labeling with disbelief and the definitive ruling of disbelief upon anyone who utters well-known statements, such as His statement, the Exalted: "Certainly those who said, 'Allah is the Messiah, son of Mary,' have disbelieved" (5:17).[45]

وقَوْله تَعَالَى {وَلَقَدْ قَالُوا كَلِمَةَ الْكُفْرِ وَكَفَرُوا بَعْدَ إِسْلامِهِمْ} [التوبة: ٧٤] .

L42933 His saying, the Most High: {And they have certainly spoken a word of

[45] **Qur'an references (L42932):** Qur'an 5:17 (Al-Ma'idah); Qur'an 5:72 (Al-Ma'idah).

disbelief and renounced faith after their submission} [At-Tawbah: 74].[46]

فَصَحَّ أَنَّ الْكُفْرَ يَكُونُ كَلَامًا.

L42934 Therefore, it is established that disbelief is verbal declaration.

وَقَدْ حَكَمَ اللَّهُ تَعَالَى بِالْكُفْرِ عَلَى إبْلِيسَ - وَهُوَ عَالِمٌ بِأَنَّ اللَّهَ خَلَقَهُ مِنْ نَارٍ وَخَلَقَ آدَمَ مِنْ طِينٍ - وَأَمَرَهُ بِالسُّجُودِ لِآدَمَ وَكَرَّمَهُ عَلَيْهِ - وَسَأَلَ اللَّهَ تَعَالَى النَّظِرَةَ إلَى يَوْمِ يُبْعَثُونَ.

L42935 Allah the Exalted decreed disbelief upon Iblis—who knew that Allah had created him from fire and Adam from clay—commanded him to prostrate to Adam, and honored him [Adam] above him [Iblis]. Then Iblis asked Allah the Exalted for respite until the Day they are resurrected.

ثُمَّ يُقَالُ لَهُمْ: إذْ لَيْسَ شَتْمُ اللَّهِ تَعَالَى كُفْرًا عِنْدَكُمْ، فَمِنْ أَيْنَ قُلْتُمْ: إنَّهُ دَلِيلٌ عَلَى الْكُفْرِ؟ فَإِنْ قَالُوا: لِأَنَّهُ مَحْكُومٌ عَلَى قَائِلِهِ بِحُكْمِ الْكُفْرِ؟ قِيلَ لَهُمْ: نَعَمْ، مَحْكُومٌ عَلَيْهِ بِنَفْسِ قَوْلِهِ، لَا بِمَغِيبِ ضَمِيرِهِ الَّذِي لَا يَعْلَمُهُ إلَّا اللَّهُ تَعَالَى فَإِنَّمَا حُكِمَ لَهُ بِالْكُفْرِ بِقَوْلِهِ فَقَطْ، فَقَوْلُهُ هُوَ الْكُفْرُ، وَمَنْ قَطَعَ عَلَى أَنَّهُ فِي ضَمِيرِهِ، وَقَدْ أَخْبَرَ اللَّهُ تَعَالَى عَنْ قَوْمٍ {يَقُولُونَ بِأَفْوَاهِهِمْ مَا لَيْسَ فِي قُلُوبِهِمْ} [آل عمران: ١٦٧] فَكَانُوا بِذَلِكَ كُفَّارًا، كَالْيَهُودِ الَّذِينَ عَرَفُوا صِحَّةَ نُبُوَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَمَا يَعْرِفُونَ أَبْنَاءَهُمْ وَهُمْ مَعَ ذَلِكَ كُفَّارٌ بِاَللَّهِ تَعَالَى قَطْعًا بِيَقِينٍ، إذْ أَعْلَنُوا كَلِمَةَ الْكُفْرِ.

L42936–42937 Then it is said to them: Since insulting Allah the Exalted is not considered disbelief according to you, from where did you claim it constitutes proof of disbelief? If they respond: Because the one who utters it is judged with the ruling of disbelief, it is said to them: Yes, he is judged by his utterance itself, not due to the hidden inner state known only to Allah the Exalted. The ruling of disbelief applies solely because of his speech - thus his statement itself constitutes disbelief. As for those who assert decisively that this depends on inner belief, Allah the Exalted has informed us about people "who say with their mouths what is not in their hearts" (Quran 3:167), yet they became disbelievers through this, like the Jews who recognized the validity of the Messenger of Allah's prophethood (peace and blessings be upon him and his family) as clearly as they recognize their own sons, while remaining disbelievers in Allah the Exalted with absolute certainty, having openly uttered the word of disbelief.[47]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ قَدْ سَقَطَ هَذَا الْقَوْلُ فَالْوَاجِبُ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ الطَّائِفَةُ الْقَائِلَةُ إنَّ مَنْ سَبَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَوْ نَبِيًّا مِنْ الْأَنْبِيَاءِ، أَوْ مَلَكًا مِنْ الْمَلَائِكَةِ - عَلَيْهِمْ السَّلَامُ - فَهُوَ بِذَلِكَ الْقَوْلِ كَافِرٌ - سَوَاءٌ اعْتَقَدَهُ بِقَلْبِهِ أَوْ اعْتَقَدَ الْإِيمَانَ بِقَلْبِهِ: فَوَجَدْنَاهُمْ يَذْكُرُونَ قَوْلَ اللَّهِ تَعَالَى {قُلْ أَبِاللَّهِ وَآيَاتِهِ وَرَسُولِهِ كُنْتُمْ تَسْتَهْزِئُونَ} [التوبة: ٦٥] {لا تَعْتَذِرُوا قَدْ كَفَرْتُمْ بَعْدَ إِيمَانِكُمْ} [التوبة: ٦٦] .

L42938 Abū Muḥammad—may Allāh have mercy on him—said: Since this opinion has been dismissed, it is obligatory to examine the evidence cited by the faction that asserts anyone who insults the Messenger of Allāh—peace and blessings be upon him and his family—or a prophet from the prophets, or an angel from the angels—peace be upon them—becomes a disbeliever because of that utterance, whether he inwardly accepted that [insult] or maintained faith in his heart. We find them citing Allāh's words: "Say, 'Was it Allāh, His signs, and His Messenger you were ridiculing?'" [9:65] and "Do not make excuses; you have disbelieved after having believed." [9:66][48]

[46] **Qur'an references (L42933):** Qur'an 9:74 (At-Tawbah).
[47] **Qur'an references (L42937):** Qur'an 3:167 (Ali 'Imran).
[48] **Qur'an references (L42938):** Qur'an 9:65 (At-Tawbah); Qur'an 9:66 (At-Tawbah).

وَقَالَ اللَّهُ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تَرْفَعُوا أَصْوَاتَكُمْ فَوْقَ صَوْتِ النَّبِيِّ} [الحجرات: ٢] الْآيَةَ. وقَوْله تَعَالَى {فَلا وَرَبِّكَ لا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ} [النساء: ٦٥] قَالَ فَقَضَى اللَّهُ عَزَّ وَجَلَّ وَقَسَمَ وَحَكَمَ: أَنَّهُ لَا يُؤْمِنُ أَحَدٌ حَتَّى يُحَكِّمَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِيمَا شَجَرَ ثُمَّ لَا يَجِدُ فِي نَفْسِهِ حَرَجًا فِي شَيْءٍ مِمَّا قَضَى بِهِ وَيُسَلِّمُ تَسْلِيمًا.

L42939 Allah the Exalted said: "O you who have believed, do not raise your voices above the voice of the Prophet" [Al-Hujurat: 2]. And His statement the Exalted: "So no, by your Lord, they will not believe until they make you judge concerning that over which they dispute" [An-Nisa: 65]. He said: Thus Allah—Mighty and Majestic—decreed, swore, and judged: that no one believes until he makes the Messenger of Allah—peace and blessings be upon him and his family—the judge in whatever disputes arise, then finds no hesitation within himself regarding anything he has judged, and wholeheartedly submits.[49]

قَالُوا: وَبِضَرُورَةِ الْحِسِّ وَالْمُشَاهَدَةِ نَدْرِي أَنَّ مَنْ سَبَّ اللَّهَ تَعَالَى أَوْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَوْ مَلَكًا مِنْ الْمَلَائِكَةِ، أَوْ نَبِيًّا مِنْ الْأَنْبِيَاءِ - عَلَى جَمِيعِهِمْ السَّلَامُ - أَوْ شَيْئًا مِنْ الشَّرِيعَةِ، أَوْ اسْتَخَفَّ بِشَيْءٍ مِنْ ذَلِكَ كُلِّهِ، فَلَمْ يُحَكِّمْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِمَا أَتَى بِهِ مِنْ تَعْظِيمِ اللَّهِ تَعَالَى، وَإِكْرَامِ الْمَلَائِكَةِ وَالنَّبِيِّينَ، وَتَعْظِيمِ الشَّرِيعَةِ الَّتِي هِيَ شَعَائِرُ اللَّهِ تَعَالَى. فَصَحَّ أَنَّهُ لَمْ يُؤْمِنْ فَقَدْ كَفَرَ إذْ لَيْسَ إلَّا مُؤْمِنٌ أَوْ كَافِرٌ.

L42940–42942 They said: Through the necessity of sensory perception and observation, we know that whoever reviles Allah the Exalted, or the Prophet—may Allah's blessings and peace be upon him and his family—or an angel from the angels, or a prophet from the prophets—peace be upon all of them—or anything from the Sacred Law, or belittles anything thereof, did not submit to the Prophet's judgment—may Allah's blessings and peace be upon him and his family—concerning what he conveyed. From glorifying Allah the Most High, honoring the angels and the prophets, and venerating the Sharia—which constitutes the symbols of Allah the Most High. Thus, it is established that whoever does not believe has disbelieved, for there is no third category beyond a believer or a disbeliever.

قَالُوا: وَقَدْ نَصَّ اللَّهُ تَعَالَى بِإِحْبَاطِ عَمَلِ مَنْ رَفَعَ صَوْتَهُ عَلَى صَوْتِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِحْبَاطُ الْعَمَلِ لَا يَكُونُ إلَّا بِالْكُفْرِ فَقَطْ. وَرَفْعُ الصَّوْتِ عَلَى صَوْتِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَدْخُلُ فِيهِ: الِاسْتِخْفَافُ بِهِ - عَلَيْهِ السَّلَامُ -، وَالسَّبُّ لَهُ، وَالْمُعَارَضَةُ مِنْ حَاضِرٍ وَغَائِبٍ.

L42943 They said: Allah the Exalted has explicitly decreed the nullification of deeds for one who raises his voice above the voice of the Prophet—peace and blessings be upon him—and the nullification of deeds can only result from disbelief. Raising one's voice above the voice of the Prophet—peace and blessings be upon him—includes belittling him (peace be upon him), insulting him, and opposing him whether present or absent.

قَالُوا: وَكَانَ قَوْلُهُ تَعَالَى فِي الْمُسْتَهْزِئِينَ بِاَللَّهِ وَبِآيَاتِهِ وَرَسُولِهِ: أَنَّهُمْ كَفَرُوا بِذَلِكَ بَعْدَ إيمَانِهِمْ، فَارْتَفَعَ الْإِشْكَالُ وَصَحَّ يَقِينًا أَنَّ كُلَّ مَنْ اسْتَهْزَأَ بِشَيْءٍ مِنْ آيَاتِ اللَّهِ وَبِرَسُولٍ مِنْ رُسُلِهِ فَإِنَّهُ كَافِرٌ بِذَلِكَ مُرْتَدٌّ.

L42944 The scholars said: The statement of Allah, Exalted is He, regarding those who mock Allah, His signs, and His Messenger—that they thereby disbelieved after their faith—resolved the ambiguity, and it was confirmed with certainty

[49] **Qur'an references (L42939):** Qur'an 49:2 (Al-Hujurat); Qur'an 4:65 (An-Nisa).

that whoever mocks any of Allah's signs or a messenger from His messengers is thereby a disbeliever and an apostate.

L42945 And we have known—that all the angels are messengers of Allah the Exalted, as Allah the Exalted said: {He who makes the angels messengers} [Al-Fatir: 1]. Similarly, we have known by necessary observation: that every reviler and insulter is one who belittles the insulted and mocks him. Is belittling the same as mocking? Abu Muhammad—may Allah have mercy on him—said: We found that Allah the Exalted made Iblis a disbeliever due to his belittling of Adam—peace be upon him—because when he said {I am better than him} [Al-A'raf: 12], Allah the Exalted then commanded him to leave Paradise and expelled him, calling him a disbeliever by His statement {and he was among the disbelievers} [Al-Baqarah: 34].[50]

L42946 And Hammam narrated to us: Abbas ibn Asbagh narrated to us: Muhammad ibn Abd al-Malik ibn Ayman narrated to us: Abu Muhammad Habib al-Bukhari—he is the companion of Abu Thawr, trustworthy and well-known—narrated to us: Muhammad ibn Sahl said: I heard Ali ibn al-Madini say: "I entered the presence of the Commander of the Faithful, and he said to me: 'Do you know a ḥadīth with a connected chain concerning one who insults the Prophet—peace and blessings of Allah be upon him and his family—so that he is killed?' I said, 'Yes,' and then mentioned to him the ḥadīth of Abd al-Razzaq, from Ma'mar, from Simak ibn al-Fadl, from Urwah ibn Muhammad, from a man from Bulqin, who said: 'There was a man who used to insult the Prophet—peace and blessings of Allah be upon him and his family—so the Prophet—peace and blessings of Allah be upon him and his family—said: "Who will relieve me of my enemy¿' Khalid ibn al-Walid said: "I will." So the Prophet—peace and blessings of Allah be upon him and his family—sent him to him, and he killed him.' The Commander of the Faithful said to him: 'This is not a ḥadīth with a connected chain; it is from a man?' I said: 'O Commander of the Faithful, through this chain the man is identified—his name is established through this—and he came to the Prophet—peace and

وَقَدْ عَلِمْنَا - أَنَّ الْمَلَائِكَةَ كُلَّهُمْ رُسُلُ اللَّهِ تَعَالَى، قَالَ اللَّهُ تَعَالَى {جَاعِلِ الْمَلَائِكَةِ رُسُلا} [فاطر: ١] وَكَذَلِكَ عَلِمْنَا بِضَرُورَةِ الْمُشَاهَدَةِ: أَنَّ كُلَّ سَابٍّ وَشَاتِمٍ فَمُسْتَخِفٌّ بِالْمَشْتُومِ مُسْتَهْزِئٌ بِهِ، فَالِاسْتِخْفَافُ وَالِاسْتِهْزَاءُ شَيْءٌ وَاحِدٌ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَوَجَدْنَا اللَّهَ تَعَالَى قَدْ جَعَلَ إبْلِيسَ بِاسْتِخْفَافِهِ بِآدَمَ - عَلَيْهِ السَّلَامُ - كَافِرًا، لِأَنَّهُ إذْ قَالَ {أَنَا خَيْرٌ مِنْهُ} [الأعراف: ١٢] فَحِينَئِذٍ أَمَرَهُ تَعَالَى بِالْخُرُوجِ مِنْ الْجَنَّةِ وَدَحْرِهِ، وَسَمَّاهُ كَافِرًا بِقَوْلِهِ {وَكَانَ مِنَ الْكَافِرِينَ} [البقرة: ٣٤] .

وَحَدَّثَنَا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَبُو مُحَمَّدٍ حَبِيبٌ الْبُخَارِيُّ - هُوَ صَاحِبُ أَبِي ثَوْرٍ ثِقَةٌ مَشْهُورٌ - نا مُحَمَّدُ بْنُ سَهْلٍ سَمِعْت عَلِيَّ بْنَ الْمَدِينِيِّ يَقُولُ: " دَخَلْت عَلَى أَمِيرِ الْمُؤْمِنِينَ فَقَالَ لِي: أَتَعْرِفُ حَدِيثًا مُسْنَدًا فِيمَنْ سَبَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَيُقْتَلُ؟ قُلْت: نَعَمْ، فَذَكَرْت لَهُ حَدِيثَ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ سِمَاكِ بْنِ الْفَضْلِ عَنْ عُرْوَةَ بْنِ مُحَمَّدٍ عَنْ " رَجُلٍ " مِنْ بُلْقِينَ قَالَ «كَانَ رَجُلٌ يَشْتُمُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: مَنْ يَكْفِينِي عَدُوًّا لِي؟ فَقَالَ خَالِدُ بْنُ الْوَلِيدِ: أَنَا فَبَعَثَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إلَيْهِ فَقَتَلَهُ، فَقَالَ لَهُ أَمِيرُ الْمُؤْمِنِينَ: لَيْسَ هَذَا مُسْنَدًا، هُوَ عَنْ رَجُلٍ؟ فَقُلْتُ: يَا أَمِيرَ الْمُؤْمِنِينَ بِهَذَا يُعْرَفُ هَذَا الرَّجُلُ وَهُوَ اسْمُهُ، قَدْ أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَايَعَهُ، وَهُوَ مَشْهُورٌ مَعْرُوفٌ؟ قَالَ: فَأَمَرَ لِي بِأَلْفِ دِينَارٍ؟»

[50] **Qur'an references (L42945):** Qur'an 35:1 (Fatir); Qur'an 2:34 (Al-Baqarah); Qur'an 38:74 (Sad); Qur'an 7:12 (Al-A'raf).

blessings of Allah be upon him and his family—pledged allegiance to him, and he is well-known and recognized.' He said: 'Then he ordered that I be given a thousand dinars.'"

L42947–42948 Abu Muhammad—may Allah have mercy on him—said: This is an authentic, *musnad* (supported by an unbroken chain) hadith. Ali ibn al-Madini narrated it from Abd al-Razzaq as he mentioned. This is a well-known man among the Companions, named "Rajul" (literally 'man') by his family, from Bulqīn.

L42949 Thus, it is established that whoever insults the Prophet—peace and blessings of Allah be upon him and his family—is a disbeliever and an enemy of Allah, the Exalted. He—peace be upon him—does not show enmity toward any Muslim. Allah, the Exalted, said: "The believing men and believing women are allies of one another" [Quran 9:71].[51]

L42950 Thus, it is established by what we have mentioned that anyone who reviles God Almighty, or mocks Him, or reviles an angel among the angels, or mocks that angel, or reviles a prophet among the prophets, or mocks that prophet, or reviles a sign among the signs of God Almighty, or mocks it—since all divine laws are also among the signs of God Almighty, as is the Quran—then such a person is an apostate, subject to the ruling applicable to apostates. This is our position, and success comes from God alone.

L42951 Abū Muḥammad—may Allāh have mercy on him—said: This clarifies what was transmitted to us through the chain of Muslim via Zuhayr ibn Ḥarb via ʿAffān ibn Muslim via Ḥammād ibn Salamah via Thābit al-Bunānī via Anas: "A man was accused of misconduct with the mother of the Prophet's child (umm walad)—peace and blessings be upon him and his family. The Messenger of Allāh—peace and blessings be upon him and his family—said to ʿAlī: 'Go and strike his neck.' ʿAlī approached him while he was in a well cooling off inside it. ʿAlī said: 'Come out.' The man extended his hand, so ʿAlī pulled him out. He found him castrated, lacking male organs—whereupon ʿAlī restrained himself from him. He then came to the Prophet—peace and blessings be upon him and his family—and said: 'O Messenger of Allāh, he is

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا حَدِيثٌ مُسْنَدٌ صَحِيحٌ، وَقَدْ رَوَاهُ عَلِيُّ بْنُ الْمَدِينِيِّ عَنْ عَبْدُ الرَّزَّاقِ كَمَا ذَكَرَهُ، وَهَذَا رَجُلٌ مِنْ الصَّحَابَةِ مَعْرُوفٌ اسْمُهُ الَّذِي سَمَّاهُ بِهِ أَهْلُهُ " رَجُلٌ " مِنْ بُلْقِينَ.

فَصَحَّ بِهَذَا كُفْرُ مَنْ سَبَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَأَنَّهُ عَدُوٌّ لِلَّهِ تَعَالَى، وَهُوَ - عَلَيْهِ السَّلَامُ - لَا يُعَادِي مُسْلِمًا قَالَ تَعَالَى {وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [التوبة: ٧١] .

فَصَحَّ بِمَا ذَكَرْنَا أَنَّ كُلَّ مَنْ سَبَّ اللَّهَ تَعَالَى، أَوْ اسْتَهْزَأَ بِهِ، أَوْ سَبَّ مَلَكًا مِنْ الْمَلَائِكَةِ أَوْ اسْتَهْزَأَ بِهِ، أَوْ سَبَّ نَبِيًّا مِنْ الْأَنْبِيَاءِ، أَوْ اسْتَهْزَأَ بِهِ، أَوْ سَبَّ آيَةً مِنْ آيَاتِ اللَّهِ تَعَالَى، أَوْ اسْتَهْزَأَ بِهَا، وَالشَّرَائِعُ كُلُّهَا، وَالْقُرْآنُ مِنْ آيَاتِ اللَّهِ تَعَالَى فَهُوَ بِذَلِكَ كَافِرٌ مُرْتَدٌّ، لَهُ حُكْمُ الْمُرْتَدِّ، وَبِهَذَا نَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَيُبَيِّنُ هَذَا مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نِي زُهَيْرُ بْنُ حَرْبٍ نا عَفَّانُ بْنُ مُسْلِمٍ نا حَمَّادُ بْنُ سَلَمَةَ نا ثَابِتٌ الْبُنَانِيُّ عَنْ أَنَسٍ «أَنَّ رَجُلًا كَانَ يُتَّهَمُ بِأُمِّ وَلَدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِعَلِيٍّ: اذْهَبْ فَاضْرِبْ عُنُقَهُ، فَأَتَاهُ عَلِيٌّ فَإِذَا هُوَ فِي رَكِيٍّ يَتَبَرَّدُ فِيهَا، فَقَالَ لَهُ عَلِيٌّ: اُخْرُجْ، فَنَاوَلَهُ يَدَهُ، فَأَخْرَجَهُ، فَإِذَا هُوَ مَجْبُوبٌ - لَيْسَ لَهُ ذَكَرٌ - فَكَفَّ عَلِيٌّ عَنْهُ، ثُمَّ أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إِنَّهُ لَمَجْبُوبٌ، مَالَهُ ذَكَرٌ؟»

[51] **Qur'an references (L42949):** Qur'an 9:71 (At-Tawbah).

castrated—he has no male organ!’” Abū Muḥammad—may Allāh have mercy on him—said: This is an authentic report. It establishes that whoever harms the Prophet—peace be upon him—must be executed, even if committing such an act against another Muslim would not necessitate execution. If someone asks: How could the Messenger of Allāh—peace be upon him—command his killing without verifying the matter through revelation, sound knowledge, evidence, or confession? How could he—peace be upon him—order his execution based on suspicion later proven false? How could he—peace be upon him—command the killing of a man whose innocence Allāh subsequently manifested with undeniable certainty? And how could he—peace be upon him—order his execution without ordering hers, when the alleged offense is shared between them?

L42952–42953 Abū Muḥammad—may Allāh have mercy on him—said: These are questions posed only by a disbeliever or an ignorant person seeking to know the way out from all these mentioned objections. Abū Muḥammad—may Allāh have mercy on him—said: The aspect regarding these questions is clear and evident, with no obscurity—and all praise is due to Allāh, Lord of the worlds. Allāh forbid that the Messenger of Allāh—peace and blessings be upon him—would order the killing of anyone based on mere suspicion without a confession, decisive evidence, certain knowledge, eyewitness testimony, revelation, or without such grounds. Rather, the Messenger of Allāh—peace and blessings be upon him—knew with certainty that the accused was innocent and that the accusation was false. He—peace be upon him—intended to establish this through visible proof, so he ordered the execution if the accused had committed what was alleged. This was a sound ruling concerning one who harmed the Messenger of Allāh—peace and blessings be upon him. He—peace be upon him—knew the execution would not be carried out because Allāh the Exalted would manifest the accused’s innocence. His—peace be upon him—action in this matter was akin to what was narrated about his brother Solomon—peace be upon him.

We have been narrated through Bukhārī’s chain of transmission: Abū al-Yamān—al-Ḥakam ibn Nāfiʿ—narrated from Shuʿayb—Ibn Abī Ḥamzah—from Abū al-Zināد, who said: ʿAbd al-Raḥmān al-Aʿraj reported to him

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا خَبَرٌ صَحِيحٌ، وَفِيهِ مَنْ آذَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَجَبَ قَتْلُهُ، وَإِنْ كَانَ لَوْ فَعَلَ ذَلِكَ بِرَجُلٍ مِنْ الْمُسْلِمِينَ لَمْ يَجِبْ بِذَلِكَ قَتْلُهُ؟ فَإِنْ قَالَ قَائِلٌ: كَيْفَ يَأْمُرُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَتْلِهِ دُونَ أَنْ يَتَحَقَّقَ عِنْدَهُ ذَلِكَ الْأَمْرُ، لَا بِوَحْيٍ، وَلَا بِعِلْمٍ صَحِيحٍ، وَلَا بِبَيِّنَةٍ، وَلَا بِإِقْرَارٍ؟ وَكَيْفَ يَأْمُرُ - عَلَيْهِ السَّلَامُ - بِقَتْلِهِ فِي قِصَّةٍ بِظَنٍّ قَدْ ظَهَرَ كَذِبُهُ بَعْدَ ذَلِكَ وَبُطْلَانُهُ؟ وَكَيْفَ يَأْمُرُ - عَلَيْهِ السَّلَامُ - بِقَتْلِ امْرِئٍ قَدْ أَظْهَرَ اللَّهُ تَعَالَى بَرَاءَتَهُ بَعْدَ ذَلِكَ بِيَقِينٍ لَا شَكَّ فِيهِ؟ وَكَيْفَ يَأْمُرُ - عَلَيْهِ السَّلَامُ - بِقَتْلِهِ وَلَا يَأْمُرُ بِقَتْلِهَا، وَالْأَمْرُ بَيْنَهُ وَبَيْنَهَا مُشْتَرَكٌ؟

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذِهِ سُؤَالَاتٌ لَا يَسْأَلُهَا إلَّا كَافِرٌ أَوْ إنْسَانٌ جَاهِلٌ يُرِيدُ مَعْرِفَةَ الْمَخْرَجِ مِنْ كُلِّ هَذِهِ الِاعْتِرَاضَاتِ الْمَذْكُورَةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: الْوَجْهُ فِي هَذِهِ السُّؤَالَاتِ بَيِّنٌ وَاضِحٌ لَا خَفَاءَ بِهِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، وَمَعَاذَ اللَّهِ أَنْ يَأْمُرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَتْلِ أَحَدٍ بِظَنٍّ بِغَيْرِ إقْرَارٍ، أَوْ بَيِّنَةٍ، أَوْ عِلْمٍ أَوْ مُشَاهَدَةٍ، أَوْ وَحْيٍ، أَوْ أَنْ يَأْمُرَ بِقَتْلِهِ دُونَهَا، لَكِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ عَلِمَ يَقِينًا أَنَّهُ بَرِيءٌ، وَأَنَّ الْقَوْلَ كَذِبٌ فَأَرَادَ - عَلَيْهِ السَّلَامُ - أَنْ يُوقَفَ عَلَى ذَلِكَ مُشَاهَدَةً فَأَمَرَ بِقَتْلِهِ لَوْ فَعَلَ ذَلِكَ الَّذِي قِيلَ عَنْهُ، فَكَانَ هَذَا حُكْمًا صَحِيحًا فِيمَنْ آذَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ عَلِمَ - عَلَيْهِ السَّلَامُ - أَنَّ الْقَتْلَ لَا يَنْفُذُ عَلَيْهِ لِمَا يُظْهِرُ اللَّهُ تَعَالَى مِنْ بَرَاءَتِهِ، وَكَانَ - عَلَيْهِ السَّلَامُ - فِي ذَلِكَ، كَمَا أَخْبَرَ بِهِ عَنْ أَخِيهِ سُلَيْمَانَ - عَلَيْهِ السَّلَامُ -، وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو الْيَمَانِ - هُوَ الْحَكَمُ بْنُ نَافِعٍ - نا شُعَيْبٌ - هُوَ ابْنُ أَبِي حَمْزَةَ - نا أَبُو الزِّنَادِ قَالَ: إنَّ عَبْدَ الرَّحْمَنِ الْأَعْرَجَ حَدَّثَهُ أَنَّهُ سَمِعَ «أَبَا هُرَيْرَةَ يَقُولُ: إنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

- يَقُولُ: مَثَلِي وَمَثَلُ النَّاسِ - فَذَكَرَ كَلَامًا - وَفِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: وَكَانَتْ امْرَأَتَانِ مَعَهُمَا ابْنَاهُمَا جَاءَ الذِّئْبُ فَذَهَبَ بِابْنِ إِحْدَاهُمَا، فَقَالَتْ صَاحِبَتُهَا، إِنَّمَا ذَهَبَ بِابْنِكِ، وَقَالَتْ الْأُخْرَى: إِنَّمَا ذَهَبَ بِابْنِكِ، فَتَحَاكَمَا إِلَى دَاوُد - عَلَيْهِ السَّلَامُ -، فَقَضَى بِهِ لِلْكُبْرَى، فَخَرَجَتَا عَلَى سُلَيْمَانَ - عَلَيْهِ السَّلَامُ - فَأَخْبَرَتَاهُ، فَقَالَ: ائْتُونِي بِالسِّكِّينِ أَشُقُّهُ بَيْنَهُمَا، فَقَالَتْ الصُّغْرَى: لَا تَفْعَلْ يَرْحَمُكَ اللَّهُ، هُوَ ابْنُهَا، فَقَضَى بِهِ لِلصُّغْرَى - قَالَ أَبُو هُرَيْرَةَ: وَاَللَّهِ إِنْ سَمِعْتُ بِالسِّكِّينِ إِلَّا يَوْمَئِذٍ وَمَا كُنَّا نَقُولُ إِلَّا الْمُدْيَةَ؟» قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَبِيَقِينٍ نَدْرِي أَنَّ سُلَيْمَانَ - عَلَيْهِ السَّلَامُ - لَمْ يُرِدْ قَطُّ شَقَّ الصَّبِيِّ بَيْنَهُمَا، وَإِنَّمَا أَرَادَ امْتِحَانَهُمَا بِذَلِكَ، وَبِالْوَحْيِ - فَعَلَ هَذَا بِلَا شَكٍّ - وَكَانَ حُكْمُ دَاوُد - عَلَيْهِ السَّلَامُ - لِلْكُبْرَى عَلَى ظَاهِرِ الْأَمْرِ، لِأَنَّهُ كَانَ فِي يَدِهَا، وَكَذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا أَرَادَ قَطُّ إنْفَاذَ قَتْلِ ذَلِكَ " الْمَجْبُوبِ " لَكِنْ أَرَادَ امْتِحَانَ عَلِيٍّ فِي إنْفَاذِ أَمْرِهِ، وَأَرَادَ إظْهَارَ بَرَاءَةِ الْمُتَّهَمِ، وَكَذِبِ التُّهْمَةِ عِيَانًا - وَهَكَذَا لَمْ يُرِدْ اللَّهُ تَعَالَى إنْفَاذَ ذَبْحِ إسْمَاعِيلَ بْنِ إبْرَاهِيمَ - صَلَّى اللَّهُ عَلَيْهِمَا وَسَلَّمَ - إذَا أَمَرَ أَبَاهُ بِذَبْحِهِ، لَكِنْ أَرَادَ اللَّهُ تَعَالَى إظْهَارَ تَنْفِيذِهِ لِأَمْرِهِ - فَهَذَا وَجْهُ الْأَخْبَارِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

that he heard Abū Hurayrah say: "I heard the Messenger of Allāh—peace and blessings be upon him—say: 'My parable and the parable of the people...'—and he mentioned a discourse—in which he—peace be upon him—said: 'There were two women with their sons. A wolf came and took one of the boys. One woman said to the other: "It took your son," while the other said: "It took your son." They took their dispute to David—peace be upon him—who ruled in favor of the older woman. They then went to Solomon—peace be upon him—and informed him. He said: "Bring me a knife to split the child between them." The younger woman said: "Do not do so, may Allāh have mercy on you! He is her son." So Solomon ruled in favor of the younger woman.' Abū Hurayrah said: 'By Allāh, I never heard the word "knife" (sikkīn) used except on that day. We used to say "butcher's knife" (al-mudya).'"

Abū Muḥammad—may Allāh have mercy on him—said: We know with certainty that Solomon—peace be upon him—never intended to split the child between them. He only meant to test them through this, and by revelation, he did this without doubt. David's—peace be upon him—ruling in favor of the older woman was based on the apparent circumstance, as the child was in her possession. Similarly, the Messenger of Allāh—peace and blessings be upon him—never intended to carry out the execution of that accused individual. Rather, he intended to test ʿAlī in fulfilling his command and to manifest the accused's innocence and the falsity of the allegation visibly. Likewise, Allāh the Exalted did not intend for the slaughter of Ishmael, son of Abraham—peace be upon them—to be carried out when He commanded his father to slaughter him. Rather, Allāh the Exalted intended to demonstrate his compliance with His command. This is the correct understanding of these narrations—and all praise is due to Allāh, Lord of the worlds.

فَصَحَّ بِهَذَا أَنَّ كُلَّ مَنْ آذَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَهُوَ كَافِرٌ مُرْتَدٌّ يُقْتَلُ، وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

L42954 This establishes that whoever harms the Messenger of Allah—peace and blessings be upon him and his family—is an apostate disbeliever who must necessarily be killed, with no alternative—and success is from Allah, the Most High?

L42955–42956 Abū Muḥammad—may Allāh have mercy on him—said: Aḥmad ibn Ismāʿīl ibn Dulaym al-Ḥaḍramī narrated to us: Muḥammad ibn Aḥmad ibn

al-Khallāṣ narrated to us: Muḥammad ibn al-Qāsim ibn Shaʿbān narrated to us: al-Ḥasan ibn ʿAlī al-Hāshimī narrated to us: Muḥammad ibn Sulaymān al-Bāghandī narrated to us: Hishām ibn ʿAmmār said: I heard Mālik ibn Anas say: "Whoever reviles Abū Bakr and ʿUmar should be flogged, and whoever reviles ʿĀ'ishah should be killed." He was asked: "Why is one killed for (reviling) ʿĀ'ishah?" He replied: "Because Allāh the Exalted says regarding ʿĀ'ishah—may Allāh be pleased with her—'Allāh admonishes you never to return to the like of this slander, if you are believers' [al-Nūr 24:17]."[52]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا أَحْمَدُ بْنُ إِسْمَاعِيلَ بْنِ دُلَيْمٍ الْحَضْرَمِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْخَلَّاصِ نا مُحَمَّدُ بْنُ الْقَاسِمِ بْنِ شَعْبَانَ نا الْحَسَنُ بْنُ عَلِيٍّ الْهَاشِمِيُّ ثَنِي مُحَمَّدُ بْنُ سُلَيْمَانَ الْبَاغَنْدِيُّ نا هِشَامُ بْنُ عَمَّارٍ قَالَ: سَمِعْت مَالِكَ بْنَ أَنَسٍ يَقُولُ: مَنْ سَبَّ أَبَا بَكْرٍ، وَعُمَرَ جُلِدَ، وَمَنْ سَبَّ عَائِشَةَ قُتِلَ، قِيلَ لَهُ: لِمَ يُقْتَلُ فِي عَائِشَةَ؟ قَالَ: لِأَنَّ اللَّهَ تَعَالَى يَقُولُ فِي عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - {يَعِظُكُمُ اللَّهُ أَنْ تَعُودُوا لِمِثْلِهِ أَبَدًا إِنْ كُنْتُمْ مُؤْمِنِينَ} [النور: ١٧] .

L42957 Mālik said: "Whoever accuses her has contradicted the Quran, and whoever contradicts the Quran is to be killed." Abū Muḥammad—may Allah have mercy on him—said: Mālik's statement here is correct, and accusing her constitutes complete apostasy and a repudiation of Allah Almighty in His definitive ruling of her innocence.

قَالَ مَالِكٌ: فَمَنْ رَمَاهَا فَقَدْ خَالَفَ الْقُرْآنَ، وَمَنْ خَالَفَ الْقُرْآنَ قُتِلَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَوْلُ مَالِكٍ هَاهُنَا صَحِيحٌ، وَهِيَ رِدَّةٌ تَامَّةٌ، وَتَكْذِيبٌ لِلَّهِ تَعَالَى فِي قَطْعِهِ بِبَرَاءَتِهَا.

L42958 Similarly, the same applies to all the Mothers of the Believers without exception. For Allah the Exalted says: *"Good women are for good men, and good men are for good women. These are cleared of what people allege"* [24:26]. Thus, all of them are absolved of false allegations. And all praise is due to Allah, Lord of the worlds.[53]

وَكَذَلِكَ الْقَوْلُ سَائِرُ أُمَّهَاتِ الْمُؤْمِنِينَ، وَلَا فَرْقَ. لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {وَالطَّيِّبَاتُ لِلطَّيِّبِينَ وَالطَّيِّبُونَ لِلطَّيِّبَاتِ أُولَئِكَ مُبَرَّءُونَ مِمَّا يَقُولُونَ} [النور: ٢٦] فَكُلُّهُنَّ مُبَرَّآتٌ مِنْ قَوْلِ إِفْكٍ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L42959 Abu Muhammad (may Allah have mercy on him) said: As for the dhimmi who insults the Prophet (peace and blessings of Allah be upon him and his family), our companions, Malik, and his companions have stated: He must be put to death without exception. This is also the position of al-Layth ibn Saʿd.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا الذِّمِّيُّ يَسُبُّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَإِنَّ أَصْحَابَنَا، وَمَالِكًا، وَأَصْحَابَهُ، قَالُوا: يُقْتَلُ وَلَا بُدَّ. وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ.

L42960–42962 Al-Shafiʿi said: It is obligatory for the Muslim authority to stipulate upon them that none of them may mention the Book of Allah Almighty or His Messenger—may Allah bless him and his family and grant him peace—in an improper manner, nor fornicate with a Muslim woman nor marry her. If he commits any of those acts, or waylays Muslims on the road, or aids

وَقَالَ الشَّافِعِيُّ: يَجِبُ أَنْ يَشْتَرِطَ عَلَيْهِمْ: أَنْ لَا يَذْكُرَ أَحَدٌ مِنْهُمْ كِتَابَ اللَّهِ تَعَالَى أَوْ رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِمَا لَا يَنْبَغِي، أَوْ زَنَى بِمُسْلِمَةٍ أَوْ تَزَوَّجَهَا، فَإِنْ فَعَلَ شَيْئًا مِنْ ذَلِكَ، أَوْ قَطَعَ الطَّرِيقَ عَلَى مُسْلِمٍ، أَوْ أَعَانَ أَهْلَ الْحَرْبِ بِدَلَالَةٍ عَلَى الْمُسْلِمِينَ، أَوْ آوَى عَيْنًا لَهُمْ، فَقَدْ نَقَضَ عَهْدَهُ، وَحَلَّ دَمُهُ، وَبَرِئَتْ مِنْهُ ذِمَّةُ اللَّهِ تَعَالَى، وَذِمَّةُ

[52] **Qur'an references (L42956):** Qur'an 24:17 (An-Nur).
[53] **Qur'an references (L42958):** Qur'an 24:26 (An-Nur); Qur'an 37:182 (As-Saffat).

hostile forces by guiding them against Muslims, or harbors their spies, he has violated his covenant, his blood becomes permissible to shed, and the protection of Allah Almighty and the Muslims is absolved from him. Some people misinterpreted his position to mean that if this stipulation was not imposed upon them, their blood would not become permissible due to such acts. Ali—may Allah have mercy on him—said: "This is an error by those who attributed this interpretation to him, for there is no disagreement from him or others regarding a dhimmi who waylays Muslims: his blood becomes permissible through this act—whether the authority presented this stipulation to them beforehand or not. It has been narrated from some Malikis that if a dhimmi insults the Prophet—may Allah bless him and his family and grant him peace—" He is not to be killed except for acts constituting disbelief. Thus, some people have inferred that one is not liable for execution if they revile him by accusing him of lying.

الْمُسْلِمِينَ - فَتَأَوَّلَ عَلَيْهِ قَوْمٌ: أَنَّهُ إِنْ لَمْ يَشْتَرِطْ هَذَا عَلَيْهِمْ لَمْ يَسْتَحِلَّ دَمَهُمْ بِذَلِكَ؟ قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: وَهَذَا خَطَأٌ مِمَّنْ تَأَوَّلَ ذَلِكَ عَلَيْهِ، لِأَنَّهُ لَا يَخْتَلِفُ عَنْهُ، وَلَا عَنْ غَيْرِهِ فِي الذِّمِّيِّ يَقْطَعُ الطَّرِيقَ عَلَى الْمُسْلِمِينَ أَنَّهُ قَدْ حَلَّ بِذَلِكَ دَمُهُ - تَقَدَّمَ إِلَيْهِمْ بِذَلِكَ وَشَرَطَ لَهُمْ أَوْ لَمْ يَشْتَرِطْ ذَلِكَ لَهُمْ. وَرُوِيَ عَنْ بَعْضِ الْمَالِكِيِّينَ: أَنَّ الذِّمِّيَّ إِذَا سَبَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِغَيْرِ مَا بِهِ كُفْرٌ يُقْتَلُ، فَاسْتَدَلَّ بَعْضُ النَّاسِ: أَنَّهُ لَا يُقْتَلُ إِذَا سَبَّهُ بِتَكْذِيبٍ.

L42963 Sufyan, Abu Hanifa, and his companions said: If a dhimmi insults Allah Exalted or His Messenger—peace and blessings be upon him and his family—by whatever means he insults Him, he is not to be killed, but rather admonished against it. Some of them said: he is to be subjected to discretionary punishment.

وَقَالَ سُفْيَانُ، وَأَبُو حَنِيفَةَ، وَأَصْحَابُهُ: إِنْ سَبَّ الذِّمِّيُّ اللَّهَ تَعَالَى أَوْ رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِأَيِّ شَيْءٍ سَبَّهُ، فَإِنَّهُ لَا يُقْتَلُ، لَكِنْ يُنْهَى عَنْ ذَلِكَ - وَقَالَ بَعْضُهُمْ: يُعَزَّرُ.

L42964 It has been reported from Ibn ʻUmar that he must inevitably be killed.

وَقَدْ رُوِيَ عَنْ ابْنِ عُمَرَ أَنَّهُ يُقْتَلُ وَلَا بُدَّ.

L42965 The Hanafis argued for their misguidance and falsehood by citing the narration transmitted by Abd al-Rahman ibn Abdullah ibn Khalid from Ibrahim ibn Ahmad from al-Farabri from al-Bukhari from Muhammad ibn Muqatil from Abdullah ibn al-Mubarak from Shu'bah from Hisham ibn Zayd, who said: I heard Anas ibn Malik say: "A Jew passed by the Messenger of Allah—peace and blessings of Allah be upon him and his family—and said: *Al-samu ʻalayka* (Death be upon you). The Messenger of Allah—peace and blessings of Allah be upon him and his family—responded: *Wa ʻalayka* (And upon you)." The Prophet—peace be upon him—then asked: "Do you know what he said? He said: *Al-samu ʻalayka*." They asked: "O Messenger of Allah, shall we not kill him?" He replied: "No. When the People of Book greet you with a salutation, respond: *Wa ʻalaykum* (And upon you)."

وَاحْتَجَّ الْحَنَفِيُّونَ لِضَلَالِهِمْ وَإِفْكِهِمْ بِمَا ناه عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا مُحَمَّدُ بْنُ مُقَاتِلٍ أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ أَنَا شُعْبَةُ عَنْ هِشَامِ بْنِ زَيْدٍ قَالَ: سَمِعْت أَنَسَ بْنَ مَالِكٍ يَقُولُ: «مَرَّ يَهُودِيٌّ بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: السَّامُ عَلَيْكَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَعَلَيْكَ، فَقَالَ - عَلَيْهِ السَّلَامُ -: أَتَدْرُونَ مَا يَقُولُ؟ قَالَ: السَّامُ عَلَيْكَ؟ قَالُوا: يَا رَسُولَ اللَّهِ، أَلَا نَقْتُلُهُ؟ قَالَ: لَا، إِذَا سَلَّمَ عَلَيْكُمْ أَهْلُ الْكِتَابِ، فَقُولُوا: وَعَلَيْكُمْ» . وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو بُغَيْمٍ عَنْ ابْنِ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ قَالَتْ «اسْتَأْذَنَ

Through another chain transmitted by al-Bukhari: Abu Bughaym reported from Ibn Uyaynah from al-Zuhri from Urwah from Aishah, who said: "A group of Jews sought permission to visit the Prophet—peace and blessings of Allah be upon him and his family—and said: *Al-samu ʻalayka*. I retorted: 'Rather, upon you be death and curse!' The Prophet said: 'O Aishah, Allah is gentle and loves gentleness in all matters.' I protested: 'Did you not hear what they said?' He answered: 'I replied: *Wa ʻalaykum* (And upon you).'"

L42966 Abdullah ibn Rabee' narrated to us: Muhammad ibn Ishaq narrated to us, Ibn al-A'rabi narrated to us, Abu Dawud narrated to us, Yahya ibn Habeeb ibn Adi narrated to us, Khalid ibn al-Harith narrated to us, Shu'bah narrated to us from Hisham ibn Zayd ibn Anas from Anas ibn Malik: "A Jewish woman came to the Prophet—peace and blessings be upon him and his family—with a poisoned ewe, and he ate from it. She was brought to the Messenger of Allah—peace and blessings be upon him and his family—and he questioned her about it. She said: 'I intended to kill you.' He replied: 'Allah would not grant you power over that'—or he said: 'over me.' They asked: 'Will you not kill her?' He said: 'No.'"

L42967–42969 Abu Muhammad said: They contended, "Indeed, the Messenger of Allah (may Allah bless him and his family and grant him peace) heard the Jews say to him, 'May death be upon you'—a statement for which a Muslim would thereby become a disbeliever if he uttered it. The Jewish woman also poisoned food intending to kill him—an act for which a Muslim would thereby become a disbeliever if he committed it. Yet the Prophet (may Allah bless him and his family and grant him peace) did not kill them." Nor did he kill her, and the ḥadīth of Labīd ibn al-Aʿṣam when he bewitched him—peace be upon him—yet he did not kill him? Abū Muḥammad said: We know of no proof for them whatsoever beyond this, and none of this constitutes evidence for them in any respect, as we shall clarify—if Allah the Exalted wills. As for the ḥadīths mentioning the Jews saying to the Prophet—peace be upon him—"as-sāmu ʿalayka" (death be upon you), this is of no consequence, for "as-sām" refers solely to death: as narrated to us through the chain of al-Bukhārī, from Yaḥyā ibn Bukayr, from al-Layth (that is, Ibn Saʿd), from ʿUqayl ibn Khālid, from Ibn Shihāb, who was informed by Abū Salamah ibn ʿAbd

رَهْطٌ مِنْ الْيَهُودِ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالُوا: السَّامُ عَلَيْكَ، فَقُلْتُ: بَلَى، وَعَلَيْكُمْ السَّامُ وَاللَّعْنَةُ، فَقَالَ: يَا عَائِشَةُ إِنَّ اللَّهَ رَفِيقٌ يُحِبُّ الرِّفْقَ فِي الْأَمْرِ كُلِّهِ، قُلْتُ: أَوَلَمْ تَسْمَعْ مَا قَالُوا؟ قَالَ: قُلْتُ: وَعَلَيْكُمْ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا يَحْيَى بْنُ حَبِيبِ بْنِ عَدِيٍّ نا خَالِدُ بْنُ الْحَارِثِ نا شُعْبَةُ عَنْ هِشَامِ بْنِ زَيْدِ بْنِ أَنَسٍ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ امْرَأَةً يَهُودِيَّةً أَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِشَاةٍ مَسْمُومَةٍ فَأَكَلَ مِنْهَا فَجِيءَ بِهَا إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَسَأَلَهَا عَنْ ذَلِكَ، فَقَالَتْ: أَرَدْتُ لِأَقْتُلَكَ، قَالَ: مَا كَانَ اللَّهُ لِيُسَلِّطَكِ عَلَى ذَلِكَ - أَوْ قَالَ عَلَيَّ - فَقَالُوا: أَلَا نَقْتُلُهَا؟ فَقَالَ: لَا» .

قَالَ أَبُو مُحَمَّدٍ: فَقَالُوا: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدْ سَمِعَ قَوْلَ الْيَهُودِ لَهُ السَّامُ عَلَيْك - وَهَذَا قَوْلٌ لَوْ قَالَهُ مُسْلِمٌ لَكَانَ كَافِرًا بِذَلِكَ، - وَقَدْ سَمَّتْ الْيَهُودِيَّةُ طَعَامًا لِتَقْتُلَهُ - وَلَوْ أَنَّ مُسْلِمًا يَفْعَلُ ذَلِكَ لَكَانَ بِذَلِكَ كَافِرًا، فَلَمْ يَقْتُلْهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَلَا قَتَلَهَا، وَحَدِيثُ لَبِيدِ بْنِ الْأَعْصَمِ إذْ سَحَرَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمْ يَقْتُلْهُ؟ قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا أَصْلًا، وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ عَلَى مَا نُبَيِّنُ - إنْ شَاءَ اللَّهُ تَعَالَى - أَمَّا الْأَحَادِيثُ الَّتِي فِيهَا قَوْلُ الْيَهُودِ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «السَّامُ عَلَيْكَ» فَلَيْسَ بِشَيْءٍ؛ لِأَنَّ السَّامَ إنَّمَا هُوَ الْمَوْتُ: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا يَحْيَى بْنُ بُكَيْرٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنْ ابْنِ شِهَابٍ أَخْبَرَهُ أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنُ عَوْفٍ، وَسَعِيدُ بْنُ الْمُسَيِّبِ

al-Raḥmān ibn ʿAwf and Saʿīd ibn al-Musayyib that Abū Hurayrah informed them he heard Allah's Messenger—peace and blessings be upon him and his family—say regarding black seed: "It is a cure for every ailment except as-sām (death)." Ibn Shihāb said: "As-sām is death." Thus, the meaning of "as-sāmu ʿalayka" is "death be upon you"—a truthful statement, albeit harsh, for Allah the Exalted says: {You will surely die, and they will surely die} [39:30], and He says: {Every soul will taste death} [3:185]. Disbelief results from a Muslim's harshness toward the Prophet—peace and blessings be upon him and his family—and his blood becomes lawful due to such disbelief. The dhimmī is a disbeliever, but it is not asserted that his harshness toward the Prophet—peace and blessings be upon him and his family—makes him a disbeliever, for he was already a disbeliever and remains so. His blood is not made lawful due to his disbelief if his intention is sound, but rather for a reason other than disbelief.[54][55]

L42970–42972 The same ruling applies to Labid ibn al-Aʿṣam al-Zuraqi the Jew for his act against the Messenger of Allah—may Allah bless him and grant him peace—and to the Jewess who poisoned his food—may Allah bless him and grant him peace—with no distinction. The apostasy arising from such an act applies exclusively to a Muslim who commits it against the Prophet—peace be upon him. As for dhimmis, they were disbelievers before such acts and persist in disbelief alongside them. Their blood is not rendered lawful in that context merely due to their intrinsic disbelief while under covenant. Thus, a Muslim is executed for apostasy if he innovates disbelief after accepting Islam, whereas a dhimmi is not executed—even if he repeatedly manifests new forms of disbelief—provided it aligns with the category of disbelief for which he entered the covenant. When we examined the rationale mandating execution for a dhimmi who insults Allah Almighty, His Messenger—peace be upon him—or disparages any aspect of Islam, we found it stems from his violation of the covenant. For he only secures protection and spares his blood by submitting to the jizyah in humiliation. Allah Almighty says: "Fight

" أَنَّ أَبَا هُرَيْرَةَ أَخْبَرَهُمَا أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ «فِي الْحَبَّةِ السَّوْدَاءِ: شِفَاءٌ مِنْ كُلِّ دَاءٍ إِلَّا السَّامَ؟» قَالَ ابْنُ شِهَابٍ: وَالسَّامُ الْمَوْتُ، فَمَعْنَى السَّامُ عَلَيْك: الْمَوْتُ عَلَيْك، وَهَذَا كَلَامٌ حَقٌّ، وَإِنْ كَانَ فِيهِ جَفَاءٌ؛ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {إِنَّكَ مَيِّتٌ وَإِنَّهُمْ مَيِّتُونَ} [الزمر: ٣٠] . وَقَالَ تَعَالَى {كُلُّ نَفْسٍ ذَائِقَةُ الْمَوْتِ} [آل عمران: ١٨٥] وَإِنَّمَا يَحْصُلُ بِالْجَفَاءِ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الْكُفْرُ مِنْ الْمُسْلِمِ، وَبِكُفْرِهِ يَحِلُّ دَمُهُ، وَالذِّمِّيُّ كَافِرٌ، وَلَمْ يَقُلْ: إنَّهُ لِجَفَائِهِ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَكُونُ كَافِرًا بِجَفَائِهِ، بَلْ كَانَ كَافِرًا، وَهُوَ كَافِرٌ، وَلَا يَحِلُّ دَمُهُ بِكُفْرِهِ، إذَا صَحَّتْ نِيَّتُهُ، لَكِنْ بِمَعْنًى آخَرَ غَيْرَ الْكُفْرِ.

وَهَكَذَا الْقَوْلُ فِي لَبِيدِ بْنِ الْأَعْصَمِ الزُّرَقِيِّ الْيَهُودِيِّ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَفِي سَمِّ الْيَهُودِيَّةِ لِطَعَامِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَا فَرْقَ، إنَّمَا يَحْصُلُ مِنْ ذَلِكَ الْكُفْرُ لِمَنْ فَعَلَهُ بِالنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ الْمُسْلِمِينَ، وَالذِّمِّيُّونَ كُفَّارٌ قَبْلَ ذَلِكَ، وَمَعَهُ، وَلَيْسَ بِنَفْسِ كُفْرِهِمْ حَلَّتْ دِمَاؤُهُمْ فِي ذَلِكَ إذَا تَذَمَّمُوا، فَالْمُسْلِمُ يُقْتَلُ بِكُفْرِهِ إذَا أَحْدَثَ كُفْرًا بَعْدَ إسْلَامِهِ، وَالذِّمِّيُّ لَا يُقْتَلُ، وَإِنْ أَحْدَثَ فِي كُلِّ حِينٍ كُفْرًا حَادِثًا غَيْرَ كُفْرِهِ بِالْأَمْسِ، إذَا كَانَ مِنْ نَوْعِ الْكُفْرِ الَّذِي تَذَمَّمَ عَلَيْهِ - فَنَظَرْنَا فِي الْمَعْنَى الَّذِي وَجَبَ بِهِ الْقَتْلُ عَلَى الذِّمِّيِّ إذَا سَبَّ اللَّهَ تَعَالَى أَوْ رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَوْ اسْتَخَفَّ بِشَيْءٍ مِنْ دِينِ الْإِسْلَامِ - فَوَجَدْنَاهُ إنَّمَا هُوَ نَقْضُ الذِّمَّةِ؛ لِأَنَّهُ إنَّمَا تَذَمَّمَ، وَحَقَنَ دَمَهُ بِالْجِزْيَةِ عَلَى الصَّغَارِ، قَالَ اللَّهُ تَعَالَى {قَاتِلُوا الَّذِينَ لا يُؤْمِنُونَ بِاللَّهِ وَلا بِالْيَوْمِ الآخِرِ وَلا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ} [التوبة: ٢٩] الْآيَةَ إلَى قَوْلِهِ: {وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] وَقَالَ تَعَالَى {وَإِنْ نَكَثُوا أَيْمَانَهُمْ مِنْ بَعْدِ عَهْدِهِمْ

[54] **Hadith references (L42967):** Sahih al-Bukhari 5688; Sahih Muslim 2215a; Sunan Ibn Majah 3447.

[55] **Qur'an references (L42967):** Qur'an 39:30 (Az-Zumar); Qur'an 3:185 (Ali 'Imran); Qur'an 21:35 (Al-Anbya); Qur'an 29:57 (Al-'Ankabut).

those who do not believe in Allah nor the Last Day, nor prohibit what Allah and His Messenger have prohibited..." [9:29] until His words: "...while they are humbled." [9:29] And He, the Exalted, said: {And if they break their oaths after their covenant and revile your religion, then fight the leaders of disbelief} [At-Tawbah 9:12]. These two verses are explicit texts that do not allow interpretation regarding what we have stated: that the People of the Book are fought **and killed until they pay** the jizyah, and that if a covenant is made with them and their covenant **is concluded**, yet they revile our religion, they have violated their covenant and broken their oaths, and the ruling to fight them **returns to its previous ruling**.[56]

وَطَعَنُوا فِي دِينِكُمْ فَقَاتِلُوا أَئِمَّةَ الْكُفْرِ} [التوبة: ١٢] . فَكَانَ هَاتَانِ الْآيَتَانِ نَصًّا جَلِيًّا لَا يَحْتَمِلُ تَأْوِيلًا فِي بَيَانِ مَا قُلْنَا مِنْ أَنَّ أَهْلَ الْكِتَابِ يُقَاتَلُونَ وَيُقْتَلُونَ حَتَّى يُعْطُوا الْجِزْيَةَ، وَعَلَى أَنَّهُمْ إذَا عُوهِدُوا وَتَمَّ عَهْدُهُمْ، وَطَعَنُوا فِي دِينِنَا فَقَدْ نَقَضُوا عَهْدَهُمْ، وَنَكَثُوا أَيْمَانَهُمْ، وَعَادَ حُكْمُ قِتَالِهِمْ كَمَا كَانَ.

L42973 By necessity of perception and observation, we know that if they openly revile Allah the Exalted, or revile the Messenger of Allah—peace and blessings of Allah be upon him and his family—or anything from the religion of Islam, or any Muslim among the people, they have indeed abandoned their protected status; rather, they have diminished us, humiliated us, and attacked our religion. Thus, they have broken their covenant by that and violated their covenant of protection (dhimma). When they violate their dhimma, does it not become lawful to shed their blood, enslave their captives, and seize their wealth without doubt? Abu Muhammad—may Allah have mercy on him—said: The poisoning incident by the Jewish woman targeting the Prophet—peace and blessings of Allah be upon him and his family—occurred during the Battle of Khaybar without doubt, and this was three years before the revelation of Surah At-Tawbah (Bara'ah).

وَبِضَرُورَةِ الْحِسِّ وَالْمُشَاهَدَةِ نَدْرِي أَنَّهُمْ إنْ أَعْلَنُوا سَبَّ اللَّهِ تَعَالَى أَوْ سَبَّ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَوْ شَيْءٍ مِنْ دِينِ الْإِسْلَامِ، أَوْ مُسْلِمٍ مِنْ عَرَضِ النَّاسِ، فَقَدْ فَارَقُوا الصَّغَارَ، بَلْ قَدْ أَصْغَرُونَا، وَأَذَلُّونَا، وَطَعَنُوا فِي دِينِنَا، فَنَكَثُوا بِذَلِكَ عَهْدَهُمْ، وَنَقَضُوا ذِمَّتَهُمْ - وَإِذَا نَقَضُوا ذِمَّتَهُمْ فَقَدْ حَلَّتْ دِمَاؤُهُمْ، وَسَبْيُهُمْ، وَأَمْوَالُهُمْ بِلَا شَكٍّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَسَمُّ الْيَهُودِيَّةِ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ يَوْمَ خَيْبَرَ بِلَا شَكٍّ وَهُوَ قَبْلَ نُزُولِ " بَرَاءَةٌ " بِثَلَاثَةِ أَعْوَامٍ.

L42974 Similarly, we state concerning the utterance of those Jews, "Death upon you," directed at the Prophet—peace and blessings of Allah be upon him—and the sorcery of Labīd ibn al-Aʿṣam against him, that all this occurred before the command was revealed to not uphold the covenant of protection for the dhimmī except under humiliation. All this was permissible at a time when truce with them was allowed, for the underlying implication in the hadiths concerning "the death" and "the sorcery" aligns with the implication of the hadith instructing to call the ewe "equal, equal." The hadith about the ewe is unquestionably abrogated by what is in Sūrah Barāʾah regarding

وَكَذَلِكَ نَقُولُ فِي قَوْلِ أُولَئِكَ الْيَهُودِ: السَّامُ عَلَيْك لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَفِي سِحْرِ لَبِيدِ بْنِ الْأَعْصَمِ إيَّاهُ وَأَنَّ هَذَا كُلَّهُ كَانَ قَبْلَ أَنْ يُؤْمَرَ بِأَنْ لَا يُثَبِّتَ عَهْدَ الذِّمِّيِّ إلَّا عَلَى الصِّغَارِ، وَأَنَّ كُلَّ ذَلِكَ إذْ كَانَتْ الْمُهَادَنَةُ جَائِزَةً لَهُمْ؛ لِأَنَّ الْمَعْنَى فِي حَدِيثِ " السَّامِ، وَالسِّحْرِ " هُوَ مَعْنَى حَدِيثِ سَمِّ الشَّاةِ سَوَاءً سَوَاءً، وَحَدِيثُ سَمِّ الشَّاةِ مَنْسُوخٌ بِلَا شَكٍّ بِمَا فِي " سُورَةِ بَرَاءَةَ " مِنْ أَنْ لَا يُقَرُّوا إلَّا عَلَى الصِّغَارِ فَحَدِيثُ " السَّامِ،

[56] **Qur'an references (L42970):** Qur'an 9:29 (At-Tawbah); Qur'an 9:12 (At-Tawbah).

not permitting them to remain except under humiliation. Thus, the hadiths concerning "the death" and "the sorcery" are undoubtedly both abrogated. Indeed, certainty has been established in this, as their meanings are abrogated, and acting upon the abrogated is impermissible. It is entirely impermissible for them to remain valid after the revelation of Barāʾah, for it is inconceivable that Allah the Exalted would abrogate something definitively, then revoke the abrogating text, reinstate the abrogated ruling, and fail to provide clarifying evidence dispelling doubt, eliminating conjecture, and nullifying confusion—this is a matter we are assured of, and praise be to Allah.

وَالسِّحْرِ " بِلَا شَكٍّ مَنْسُوخَانِ، بَلْ الْيَقِينُ قَدْ صَحَّ بِذَلِكَ، لِأَنَّ مَعْنَاهُمَا مَنْسُوخٌ وَلَا يَحِلُّ الْعَمَلُ بِالْمَنْسُوخِ، وَلَا يَجُوزُ أَلْبَتَّةَ أَنْ يَكُونَا بَعْدَ نُزُولِ " بَرَاءَةٌ "، لِأَنَّهُ مِنْ الْمُحَالِ أَنْ يَنْسَخَ اللَّهُ تَعَالَى شَيْئًا بِيَقِينٍ، ثُمَّ يَنْسَخَ النَّاسِخَ وَيُعِيدَ حُكْمَ الْمَنْسُوخِ وَلَا يَصْحَبُهُ مِنْ الْبَيَانِ مَا يَرْفَعُ الشَّكَّ، وَيَرْفَعُ الظَّنَّ، وَيُبْطِلُ الْإِشْكَالَ - هَذَا أَمْرٌ قَدْ أَمِنَّاهُ - وَلِلَّهِ الْحَمْدُ.

L42975–42977 If someone were to say: How can you make this claim when you yourselves state that whoever poisons food for a Muslim today incurs no capital punishment, that whoever practices sorcery against a Muslim incurs no capital punishment, and that the Jews today say to us, "as-Sāmu ʿalaykum (death be upon you)," yet no capital punishment is imposed upon them? Why, then, do we not see you ruling except by what you have stated to be abrogated? Our response—and with Allah, the Exalted, lies all success—is that we have not stated that any of these narrations have been abrogated except what... The ruling necessitated by their manner of addressing the Prophet—peace be upon him—specifically, the ruling concerning naming his food specifically, and the ruling of targeting him with magic specifically—these alone were abrogated with nothing more, because the purpose was to venerate the Prophet—peace be upon him—and honor him, ensuring that supplicating to him—peace be upon him—never resembles how we supplicate to one another, remaining forever for both Muslim and disbeliever. We have indeed learned that his statement to God's Messenger—peace be upon him and his family—"Be just, O Muhammad!" constituted valid apostasy, for he neither honored nor revered him as commanded, and raised his voice against him, thus rendering his deeds void.

فَإِنْ قَالَ قَائِلٌ: كَيْفَ تَقُولُونَ هَذَا وَأَنْتُمْ تَقُولُونَ: إنَّ مَنْ سَمَّ الْيَوْمَ طَعَامًا لِأَحَدٍ مِنْ الْمُسْلِمِينَ فَلَا قَتْلَ عَلَيْهِ وَإِنَّ مَنْ سَحَرَ مُسْلِمًا فَلَا قَتْلَ عَلَيْهِ، وَإِنَّ الْيَهُودَ يَقُولُونَ لَنَا الْيَوْمَ: السَّامُ عَلَيْكُمْ، وَلَا قَتْلَ عَلَيْهِمْ فَمَا نَرَاكُمْ تَحْكُمُونَ إلَّا بِمَا ذَكَرْتُمْ أَنَّهُ مَنْسُوخٌ؟ فَجَوَابُنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - أَنَّنَا لَمْ نَقُلْ إنَّ هَذِهِ الْأَحَادِيثَ نُسِخَ مِنْهَا إلَّا مَا يُوجِبُهُ حُكْمُ خِطَابِهِمْ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - خَاصَّةً، وَحُكْمُ سَمِّ طَعَامِهِ خَاصَّةً، وَحُكْمُ قَصْدِهِ بِالسِّحْرِ خَاصَّةً، فَهَذَا هُوَ الَّذِي نُسِخَ وَحْدَهُ فَقَطْ وَلَا مَزِيدَ، لِأَنَّ الْغَرَضَ تَعْظِيمُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَوْقِيرُهُ، وَأَنْ لَا يُجْعَلَ دُعَاؤُهُ - عَلَيْهِ السَّلَامُ - كَدُعَاءِ بَعْضِنَا بَعْضًا بَاقٍ أَبَدًا - عَلَى الْمُسْلِمِ وَالْكَافِرِ. فَقَدْ عَلِمْنَا أَنَّ قَوْلَهُ الَّذِي قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - " اعْدِلْ يَا مُحَمَّدُ " كَانَ رِدَّةً صَحِيحَةً، لِأَنَّهُ لَمْ يُوَقِّرْهُ وَلَا عَظَّمَهُ كَمَا أُمِرَ، وَرَفَعَ صَوْتَهُ عَلَيْهِ فَحَبِطَ عَمَلُهُ.

L42978 If a Muslim or a dhimmi were to say to Abū Bakr al-Ṣiddīq—may Allah be pleased with him—and those below him, "Be just, O Abū Bakr," there would not be anything of reprehensibility in it, nor anything disliked. As for the Jews, if they say to us, "Death be upon you (al-sāmu ʿalaykum)," or

وَلَوْ أَنَّ مُسْلِمًا أَوْ ذِمِّيًّا يَقُولُ لِأَبِي بَكْرٍ الصِّدِّيقِ - رَضِيَ اللَّهُ عَنْهُ - فَمَنْ دُونَهُ: اعْدِلْ يَا أَبَا بَكْرٍ لَمَا كَانَ فِيهِ شَيْءٌ مِنْ النَّكِرَةِ، وَلَا مِنْ الْكَرَاهَةِ، وَالْيَهُودُ إنْ قَالُوا لَنَا: السَّامُ عَلَيْكُمْ، أَوْ قَالُوا: الْمَوْتُ عَلَيْكُمْ، لَقُلْنَا لَهُمْ: صَدَقْتُمْ وَلَا خَفَاءَ فِي هَذَا.

say, “May death overtake you (al-mawtu ʿalaykum),” we would reply to them, “You speak truthfully,” and there is no obscurity in this.

L42979 Similarly, if they dispute with us over a right they claim and raise their voices against us, there is no blame in that. But if such an act is directed at the Messenger of Allah—may Allah bless him and grant him peace—whether by Muslims or others, it constitutes disbelief and a breach of the dhimma.

L42980 Similarly, if a Muslim or non-Muslim sorcerer practices sorcery against us and did not exceed in scheming against us with a plot that does not succeed, Allah the Exalted says: “They have only devised the plot of a sorcerer, and a sorcerer will not succeed wherever he may come” [Ta-Ha: 69]. Such a plot does not nullify the dhimma, because they have not thereby departed from their state of humiliation. However, if this act is directed against the Messenger of Allah—peace and blessings be upon him—with the intent of disbelief and violation of the dhimma, then it nullifies the dhimma, for it contradicts the obligatory veneration uniquely required for him, excluding others.[57]

L42981 Similarly, the poisoning of food against us entails nothing but the corruption of our wealth if it is ours, or deceptive scheming by its perpetrator if the food belongs to them. Neither the corruption of wealth nor deceptive scheming constitutes a breach of the covenant, nor does it render anyone an apostate for such acts—except for one who commits this specifically against the Messenger of Allah (peace and blessings of Allah be upon him and his family). In that case, it constitutes apostasy and a breach of the covenant, for it contradicts the obligatory veneration owed to him by us and by all inhabitants of the earth—its jinn and humankind.

L42982 Similarly, if a Muslim or a dhimmi did not submit to a ruling decreed by Abu Bakr—may Allah be pleased with him—or those after him, and his independent reasoning was in a matter where there is no explicit text or consensus, and there was no acceptance of that ruling, there would be no blame or sin upon him for that. If either a Muslim or a dhimmi refused to submit to a ruling decreed by the Messenger of Allah—may Allah bless him

وَكَذَلِكَ لَوْ خَاصَمُونَا فِي حَقٍّ يَدَّعُونَهُ فَرَفَعُوا أَصْوَاتَهُمْ عَلَيْنَا، مَا كَانَ فِي ذَلِكَ نَكِرَةٌ، وَهُوَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَهْلِ الْإِسْلَامِ وَغَيْرِهِمْ كُفْرٌ، وَنَقْضٌ لِلذِّمَّةِ.

وَكَذَلِكَ إِذَا سَحَرَنَا سَاحِرٌ مُسْلِمٌ أَوْ كَافِرٌ، فَلَمْ يَزِدْ عَلَى أَنْ كَادَنَا كَيْدًا لَا يُفْلِحُ مَعَهُ، قَالَ اللَّهُ تَعَالَى {إِنَّمَا صَنَعُوا كَيْدُ سَاحِرٍ وَلا يُفْلِحُ السَّاحِرُ حَيْثُ أَتَى} [طه: ٦٩] وَلَيْسَ بِالْكَيْدِ تَنْتَقِضُ الذِّمَّةُ؛ لِأَنَّهُمْ لَمْ يُفَارِقُوا بِهِ الصِّغَارَ، وَهُوَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا قُصِدَ بِهِ كُفْرٌ وَنَقْضٌ لِلذِّمَّةِ؛ لِأَنَّهُ خِلَافُ التَّعْظِيمِ الْمُفْتَرَضِ لَهُ خَاصَّةً دُونَ غَيْرِهِ.

وَكَذَلِكَ سَمُّ الطَّعَامِ لَنَا لَيْسَ فِيهِ إِلَّا إِفْسَادُ مَالٍ مِنْ أَمْوَالِنَا إِنْ كَانَ لَنَا، أَوْ كَيْدٌ مِنْ فَاعِلِهِ إِنْ كَانَ الطَّعَامُ لَهُ، وَلَيْسَ بِإِفْسَادِ الْمَالِ وَالْكَيْدِ تَنْتَقِضُ الذِّمَّةُ وَلَا يَكْفُرُ بِذَلِكَ أَحَدٌ إِلَّا مَنْ عَامَلَ بِذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - خَاصَّةً، فَهُوَ كُفْرٌ وَنَقْضٌ لِلذِّمَّةِ؛ لِأَنَّهُ خِلَافُ التَّعْظِيمِ الْمُفْتَرَضِ لَهُ عَلَيْنَا وَعَلَى جَمِيعِ أَهْلِ الْأَرْضِ جِنِّهَا وَإِنْسِهَا.

وَكَذَلِكَ لَوْ أَنَّ مُسْلِمًا أَوْ ذِمِّيًّا لَمْ يُسَلِّمْ لِحُكْمٍ حَكَمَ بِهِ أَبُو بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - فَمَنْ دُونَهُ فَاجْتِهَادُهُ فِيمَا لَا نَصَّ فِيهِ وَلَا إِجْمَاعَ، وَلَا رِضَى بِذَلِكَ الْقَوْلِ لَمْ يَكُنْ عَلَيْهِ فِي ذَلِكَ حَرَجٌ وَلَا إِثْمٌ، وَلَوْ أَنَّهُمَا لَمْ يُسَلِّمَا لِحُكْمٍ حَكَمَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَكَانَ ذَلِكَ كُفْرًا مِنَ الْمُسْلِمِينَ، بِنَصِّ الْقُرْآنِ، وَإِخْرَاجًا لَهُمْ عَنِ الْإِيمَانِ،

[57] **Qur’an references (L42980):** Qur’an 20:69 (Taha).

and his family and grant him peace—this would constitute disbelief on the part of the Muslims, according to the explicit text of the Quran, expelling them from faith. For the dhimmi, it would be a breach of the dhimma covenant on his part, as it is a rejection of their subordinate status and a disparagement of the religion. This is clear, and abundant praise belongs to Allah.

L42983

وَلَكَانَ ذَلِكَ نَقْضًا لِلذِّمَّةِ مِنْ الذِّمِّيِّ؛ لِأَنَّهُ خُرُوجٌ عَنْ الصَّغَارِ، وَطَعْنٌ فِي الدِّينِ، وَهَذَا بَيِّنٌ - وَلِلَّهِ الْحَمْدُ كَثِيرًا.

Frequency translation glossary

230 word families account for 1,184,806 of 1,480,380 Arabic word occurrences (80.03%). They include 10,775 of 63,022 distinct normalized spellings.

Counting scope: the corrected Arabic body, including quotations and transmission chains. The front index and printed-page labels are excluded. Punctuation and numbers are not words. Compatibility ligatures are expanded; vowel marks and tatweel are ignored for spelling counts. Hamza spellings and final ي / ى and ة / ه remain distinct. Every counted token belongs to at most one family.

How to use this glossary: families are ordered by combined occurrence count. Related derivations may share an entry, but they are different words, not tense changes. The context and form notes explain their distinctions. Homographic spellings can have multiple readings; counts refer to spellings, not an asserted disambiguation of every occurrence. Recognizing 80% of tokens does not by itself establish sentence meaning: negation, syntax and the remaining technical vocabulary matter.

The English glosses and grammatical explanations are editorial reading aids. Lisān al-ʿArab supplies Arabic lexical evidence, not these English translations or an attribution of every legal interpretation to Ibn Manẓūr. References identify dictionary headwords rather than edition-dependent page numbers. Proper names are identified as names; no foreign-name etymology is invented. Corpus links open examples in their Arabic–English context.

Transliteration appears below each headword and beside attested forms. Long vowels use ā, ī and ū; ʿ represents ayn and ʾ hamza; doubled consonants reflect shadda. An asterisk (*) marks an unvowelled word: its rendering follows the written letters and does not supply missing short vowels. It is not a confirmed pronunciation. The article is written al- without phonetic sun-letter assimilation; final ta marbuta is h without an expressed ending and t before an expressed ending. Transliteration preserves ambiguous source readings rather than resolving their meaning.

The form lists show covered spellings actually found in this book, with occurrence counts. The displayed vowelled reading is the most frequent one for that spelling; other vowel and case readings can occur. The counts combine these readings. Membership was seeded with AlKhalil morphological analyses (Farahidi 0.4.0), with explicit corrections for common ambiguities. Unassigned spellings, including rare or unresolved forms, do not contribute to the coverage claim.

A short guide to changing forms

Verbs: aspect and time

قَالَ = he said; يَقُولُ = he says / is saying; قُلْ = say!; قِيلَ = it was said. The perfect commonly presents a completed event; the imperfect can describe

Prefixes and combinations

وَ- = and; فَ = so / then; بِ = with / by / in; لِ = to / for; كَ = like; الْ = the. They attach to words: وَبِقَوْلِهِ = and by his statement; لِلرَّجُلِ = for the man.

present, habitual or future action. Context supplies time. A perfect in a prayer can express a wish: رَضِيَ اللَّهُ عَنْهُ = may God be pleased with him.

Who acts?

قَالَ = he said; قَالَتْ = she said; قَالُوا = they (masculine/mixed) said; قُلْنَ = they (feminine) said; قُلْتُ = I said; قُلْتَ = you (masculine singular) said; قُلْتِ = you (feminine singular) said; قُلْنَا = we said. Unvowelled قلت does not distinguish the three singular readings.

Attached referents

ـهُ / ـهِ = him / his / it / its; ـهَا = her / hers / it / its; ـهُمَا = the two of them; ـهُمْ = them / their (masculine or mixed); ـهُنَّ = them / their (feminine); ـكَ / ـكِ = you / your; ـكُمْ / ـكُنَّ = you / your (plural); ـنَا = us / our; ـي = my. An object pronoun and a possessive suffix can look identical; the host determines the function.

A whole written word is counted once, not again for every attached particle. Root letters are not removed mechanically.

Number, gender and case

رَجُل / رِجَال = man / men; مَرْأَة / نِسَاء = woman / women. Broken plurals change internal letters. ـانِ / ـيْنِ often mark the dual; ـونَ / ـينَ a masculine plural; ـات a feminine plural. In context these endings may also occur inside a stem. أَبُو / أَبَا / أَبِي are case forms of the same noun; كَتَبَ / كُتِبَ distinguish active and passive by vowels.

Negation and reference

لَا يَجُوزُ = it is not permissible; لَمْ يَقُلْ = he did not say; لَنْ يَقُولَ = he will not say; لَا تَقُلْ = do not say. هُوَ / هِيَ can refer to a masculine/feminine noun without implying human sex. A feminine singular adjective or pronoun can refer to a nonhuman plural. Resolve pronouns from the surrounding sentence.

Alphabetical finder (entry numbers)

(83) رَبِيع / رُبْع / أَرْبَعَة (186) إِرَادَة / أَرَادَ (94) أَخَذَ (204) أُخْت / أَخ (108) آتَى / أَتَى (11) أَبُو / أَب (170) إِيلَاء / آل (72) أُخْرَى / آخِر / آخَر

(9) أَنَّ / أَنْ (53) أَمَرَ / أَمْر (203) أُمَّة / أَمَة (57) أَمَّا (55) إِمَام / أَمْ / أُمّ (118) أَكَلَ (95) عَطَاء / أَعْطَى (133) أَصْل (221) أَرْض

(199) أُذُن / أَذَان / إِذْن (41) إِذَا (141) إِذْ (120) إِبْرَاهِيم (175) مُبَاح / إِبَاحَة (89) أَيْضًا (168) تَأْوِيل / أَوَّل (22) أَوْ (117) أَهْل (90) أَنَا

(138) اسْتِثْنَاء / ثَانٍ / اثْنَان (1) بَنَى / بِنْت / ابْن (122) أَمَانَة / أَمَان / إِيمَان (75) أَنَس / نَاس / إِنْسَان (12) إِنَّ / إِنْ (30) إِلَى (29) إِلَّا (198) إِسْحَاق

(195) بُرْهَان (54) بَيْع / بَاعَ (61) بَطَلَ / بَاطِل (31) بِهِ / بِـ (58) مَرْء / نِسَاء / امْرَأَة (6) إِلَه / اللَّه (43) الَّتِي / الَّذِي (159) سَمَاء / سَمَّى / اسْم

(166) تَرَكَ (44) بَيِّنَة / بَيَان / بَيْن (215) بَلَغَ (193) بَلْ (137) بُكْرَة / بِكْر / بَكْر (178) بَاقٍ / بَقِيَ (169) بَقَرَة / بَقَر (79) بَعْض (73) بَعِيد / بَعْد

(147) جُبَيْر / جَابِر / جَبْر (51) جَائِز / جَازَ (149) جَاءَ (167) ثَوْرِيّ / ثَوْر (45) ثُمَّ (67) ثُلُث / ثَلَاثَة (202) ثَابِت / ثَبَتَ (78) اتَّفَقَ / تَوْفِيق (183) تَمَام / تَمَّ

(38) حَجّ / حُجَّة (82) حَتَّى (180) حَوْل / حَال (56) إِجْمَاع / جَمِيع / جَمَعَ (185) جَلَال / جَلَّ (165) جَعَلَ (230) جُرَيْج (212) جَدِيد / جِدًّا / جَدّ

(64) حَكَمَ / حُكْم (77) حَقِيقَة / حَقّ (88) إِحْسَان / حَسَنَة / حَسَن (52) إِحْرَام / حَرَام (189) حَرِير / حُرّ (15) حَدَّثَ / حَدِيث (97) حُدُود / حَدّ

(219) حَاضَتْ / حَيْض (217) حَيَوَان / حَيَاة / حَيّ (128) حَنِيف / حَنِيفَة (227) حَمْل / حَمَلَ (23) أَحْمَد / مُحَمَّد / حَمْد (65) حَلَّ / حَلَال

(42) اخْتَلَفَ / خِلَاف (160) خَطَّاب / خِطْبَة / خُطْبَة (207) أَخْطَأَ / خَطَأ (101) أَخْرَجَ / خَرَجَ (49) أَخْبَرَ / خَبَر (218) خُصُوص / خَاصّ

(39) ذِكْر / ذَكَرَ (223) دِينَار (152) دَيْن / دِين (172) دِيَة (164) دُون (143) دَعْوَى / دَعَا (142) أَدْخَلَ / دَخَلَ (145) خِيَار / خَيْر (196) خُمُس / خَمْسَة

(135) رَزَّاق / رِزْق (130) رِدَّة / رَدَّ (76) رَحِم / رَحْمَن / رَحْمَة (69) رِجْل / رِجَال / رَجُل (191) رَجْعَة / رَجَعَ (71) رَأْي / رَأَى (213) ذَهَب / ذَهَبَ

(98) تَزَوَّجَ / زَوْج (184) زَهْر / زُهْرِيّ (154) زَكَّى / زَكَاة (63) زَيْد / زَادَ (33) رِوَايَة / رَوَى (201) رَكْعَة / رَكَعَ (106) رِضًا / رَضِيَ (25) أَرْسَلَ / رَسُول

(124) سَمَاع / سَمِعَ (162) سُلَيْمَان (13) مُسْلِم / إِسْلَام / سَلَام (132) إِسْقَاط / سَقَطَ (107) سُفْيَان (46) مَسْعُود / سَعْد / سَعِيد (40) مَسْأَلَة / سَأَلَ

(226) أَشْهُر / شَهْر (119) شَهِدَ / شَهَادَة (214) شَكّ (139) شَعْبِيّ / شُعْبَة (140) شُفْعَة / شَفَاعَة / شَافِعِيّ (173) اسْتَوَى / سَوَاء (110) سَنَة / سِنّ / سُنَّة

(222) اسْتَطَاعَ / تَطَوُّع / طَاعَة (126) صِيَام / صَوْم (16) صَلَّى / صَلَاة (92) صَدَاق / صَدَقَة / صَدَقَ (37) صَحِيح / صَحَّ (60) صَحَابَة / صَاحِب (36) شَاءَ / شَيْء

(112) عَبَس / عَبَّاس (190) عَيْش / عَائِشَة (157) ظِهَار / ظُهْر / ظَهْر (176) طَائِفَة / طَوَاف (208) طَالِب / طَلَبَ (81) طَلَّقَ / طَلَاق (32) طُرُق / طَرِيق

(123) عَزِيز / عَزَّ (136) مَعْرُوف / عَرَفَ (216) اعْتَدَى / عَدُوّ (174) عِدَّة / عَدَد (220) عُثْمَان (131) أَعْتَقَ / عِتْق (20) عَبَدَ / عَبْد
(129) عَمِلَ / عَمَل (28) عُمْرَة / عُمْر / عَمْر / عُمَر (210) تَعَمَّدَ / عَمْد (19) أَعْلَى / تَعَالَى / عَلِيّ (8) عَلَى (74) عَلِمَ / عِلْم (161) عُشْر / عَشَرَة / عَشْر
(177) فَاسِد / فَسَاد (121) تَفْرِيق / فَرْق (116) فَرِيضَة / فَرْض (34) غَيْر (171) اغْتَسَلَ / غُسْل / غَسْل (197) عَيْن (96) عِنْد (4) عَنْ
(181) قُدْرَة / قَدْر (27) قَدْ (66) قَتْل / قَتَلَ (59) قَبِلَ / قَبْل (62) قَوْم / قَامَ (2) قَوْل / قَالَ (5) فِي (125) فِعْل / فَعَلَ (228) أَفْضَل / فَضْل
(100) قِيَس / قِيَاس (182) أَقَلّ / قَلِيل (127) قَطْع / قَطَعَ (103) فَقَط / قَطّ (111) قَاضٍ / قَضَاء / قَضَى (113) قَاسِم / قَسَم / قَسْم (85) قَرَأَ / قُرْآن
(26) كَلَا / كُلّ (114) كَفَّارَة / كُفْر (194) كَذِب / كَذَبَ (105) أَكْثَر / كَثِير (102) كَتَبَ / كِتَاب (229) تَكْبِير / أَكْبَر / كَبِير (17) يَكُون / كَانَ
(209) لَيْلَة / لَيْل (48) لَيْسَ (70) لَوْلَا / لَوْ (115) لَمَّا (24) لَمْ (200) لَكِنَّ / لَكِنْ (150) لَازِم / لَزِمَ (7) لَا (21) لَهُ / لِ (225) كَلِمَة / كَلَام
(47) مَلَك / مَالِك / مِلْك (87) مَعَ (211) مَرَّ / مَرَّة (109) مَثَل / مِثْل (68) أَمْوَال / مَال (93) مَيِّت / مَوْت / مَاتَ (148) مِيَاه / مَاء (14) مَا
(158) نَهْي / نَهَى (188) نَكَحَ / نِكَاح (99) نَفْس (206) نِعْمَ / نَعَمْ (144) مَنْصُور / نَصْر (91) نُصُوص / نَصّ (86) نُبُوَّة / نَبِيّ (163) مَنَعَ (3) مَن / مِن
(146) مِيرَاث / وَرِثَ (179) جِهَة / وَجْه (80) وُجُود / وَجَدَ (50) وَاجِب / وَجَبَ (35) أَحَد / وَاحِد (18) هِيَ / هُوَ (224) هُرَيْرَة / هِرَّة (10) ذَلِكَ / هَذَا
(153) يَمِين (192) يَقِين (134) أَيْدٍ / يَد (151) يَحْيَى (156) هِبَة / وَهَبَ (155) وَلَاء / وَلِيّ (104) وَلَدَ / وَلَد (187) مِيقَات / وَقْت (205) تَوَضَّأَ / وُضُوء
(84) أَيَّام / يَوْم

1. ابْن / بِنْت / بَنَى[1]

ibn / bint / banā

51,940 occurrences; cumulative coverage 3.51%.

Possible English: son; daughter; descendant; build

Context: بن between names means “son of”; ابن فلان identifies a narrator. بني can mean sons of a clan. The building verbs are grouped here as a related lexical set, not inflections of son.

Forms and grammar: ابن and بن are spellings of son; بنت is daughter; أبناء / بنون / بني are plural or case forms. ابنه = his son. بنى / يبني = built / builds.

Attested spellings and counts

بْنِ —bni (38,707); ابْنِ —ibni (9,823); وَابْنِ —wābni (1,145); بِنْتِ —binti (547); بَنِي —banī (335); ابْنَةُ —ʾbnatu (124); ابْنِهِ —ʾbnihi (120); لِابْنِ —liābni (105); ابْنَتَهُ —ʾbnatahu (58); ابْنِي —ʾbnī (58); بَنَاتِ —banāti (47); بَنُو —banū (43); وَبِنْتُ —wabintu (39); وَابْنِهِ —wābnihi (38); بِنَاءِ —bināʾin (33); لِبَنِي —libanī (30); ابْنَتَهَا —ʾbnatahā (26); ابْنِهَا —ʾbnihā (26); وَبَنِي —wabanī (26); ابْنًا —ʾbnan (25); الْبِنَاءِ —al-bināʾi (25); فَابْنُ —fābnu (24); وَبَنُو —wabanū (24); بِابْنِ —biābni (23); الْبَنَاتِ —al-banāti (22); وَابْنَةُ —wābnatu (22); بَنَى —banā (18); لِابْنِهِ —liābnihi (18); الْبِنْتِ —al-binti (17); بَنِيهِ —banīhi (17); يَبْنِي —yabnī (16); ابْنِكَ —ʾbnika (15); وَبَنَاتُ —wabanātu (15); أَبْنَاءِ —ʾabnāʾi (13); وَالْبِنَاءِ —wālbināʾi (13); وَابْنَتِهَا —wābnatihā (12); وَابْنُهَا —wābnuhā (10); ابْنَتَا —ʾbnatā (9); ابْنَتَكَ —ʾbnatak (9); الْبَنِينَ —al-banīna (9); بَنَاتِهِ —banātihi (9); ابْنَتِي —ʾbnatī (8); كَابْنِ —kābni (8); وَابْنًا —wābnan (8); وَالْبَنَاتِ —wālbanāti (8); ابْنَتَيْنِ —ʾbnatayni (7); بِبِنَاءِ —bibināʾi (7); بِنْتَا —bintā (7); بَنُونَ —banūna (7); بَنُوهُ —banūhu (7); لِبَنِيهَا —libanīhā (6); وَابْنَتِهِ —wābnatihi (6); وَيَبْنِيَ —wayabniya (6); أَبْنَائِكُمْ —ʾabnāʾikum (5); ابْنِهِمَا —ʾbnihimā (5); الْبِنْتَيْنِ —al-bintayni (5); بِالْبِنَاءِ —biālbināʾi (5); بِبِنْتِ —bibinti (5); تَبْنِي —tabnī (5); لِلْبِنَاءِ —lilbināʾi (5); وَالْبِنْتِ —wālbinti (5); وَبَنَى —wabanā (5); وَلْيَبْنِ —walyabni (5); يُبْنَى —yubnā (5); بَانِي —bānī (4); بَنَاهُ —banāhu (4); بِنْتَيْ —bintay (4); بَنَوْا

[1] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: بني (read dictionary entry).

—banawā (4); بَنُوهَا —banūhā (4); بُنْيَانٍ —bunyānin (4); تَبَنَّى —tabannā (4); فَلِلْبِنْتَيْنِ —falilbintayni (4); لِابْنَتِهِ —liābnatihi (4); لِلْبِنْتِ —lilbinti (4); مَبْنِيِّ —mabniyyin (4); وَبَنَاتِهِ —wabanātihi (4); وَبِنْتًا —wabintā (4); وَلِابْنِ —waliābni (4); يَبْنِ —yabni (4); أَبْنَاءَهُمْ —ʾabnāʾahum (3); ابْنَتَانِ —ʾbnatāni (3); بَنَاهَا —biālbunuwwati (3); بِالْبُنُوَّةِ —biābniki (3); بِابْنِكِ —al-bunyāni (3); الْبُنْيَانِ —banāhā (3); بِنْتَهُ —bintahu (3); بُنْيَانَهُ —bunyānahu (3); بَنِيهِمْ —banīhim (3); بَنِيهِمَا —banīhimā (3); فَبَنَى —fabanā (3); فَيَبْنِي —fayabnī (3); لِابْنَةِ —liābnati (3); لِبَنَاتِ —libanāti (3); وَالْبِنْتَيْنِ —wālbintayni (3)

Context L2221: ... مُحَمَّدٍ وَآلِهِ قَالَ عَلِيُّ بْنُ أَحْمَدَ بْنِ سَعِيدِ بْنِ حَزْمٍ ...

Context L2225: ... مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ ...

2. قَوْل / قَالَ[2]

qāla / qawl

50,789 occurrences; cumulative coverage 6.94%.

Possible English: say; state; hold an opinion; statement; position

Context: قال in a transmission chain introduces a speaker. قول فلان often means someone's legal opinion. قيل reports a saying without naming its speaker.

Forms and grammar: قال / يقول / قل = said / says / say!; قالوا = they said; قلنا = we said; قلت depends on its vowels. قول / أقوال = statement / statements; قائِل = speaker.

Attested spellings and counts

قَالَ —qāla (19,914); قَوْلُ —qawlu (4,130); وَقَالَ —waqāla (4,091); فَقَالَ —faqāla (3,375); قَالُوا —qālūā (1,510); يَقُولُ —yaqūlu (2,086); قُلْنَا —qulnā (1,455); الْقَوْلُ —al-qawlu (814); قَوْلِهِ —qawlihi (1,016); قِيلَ —qīla (631); قَالَتْ —qālat (626); قَوْلُنَا —qawlunā (600); قَوْلِهِمْ —qawlihim (530); قُلْت —qult (519); لِقَوْلِ —liqawli (483); وَقَالَتْ —waqālat (420); وَقَوْلُ —waqawlun (419); يَقُولُونَ —yaqūlūna (392); فَقَالَتْ —faqālat (356); قَالَا —qālā (353); نَقُولُ —naqūlu (347); وَقَالُوا —waqālūā (339); بِقَوْلِ —

[2]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: قول (read dictionary entry).

biqawli (314); فَقُلْنَا —faqulnā (289); فَقُلْت —faqult (254); يَقُلْ —yaqul (250); بِقَوْلِهِ — يُقَالُ —yuqālu (240); وقَوْله —wqawlh (236); فَقَالُوا —faqālūā (207); biqawlihi (176); قَالَهُ —ʾaqwālun (173); الْأَقْوَالِ —al-ʾaqwāli (145); أَقْوَالٌ —qālahu (144); قَائِلٌ —qāʾilun (138); قُلْتُمْ —qultum (120); تَقُولُ —taqūlu (116); تَقُولُونَ —taqūlūna (105); فَنَقُولُ —fanaqūlu (103); قَوْلًا —qawlan (100); فَقِيلَ —qawlay (90); وَالْقَوْلُ —wālqawlu (88); فَقَوْلٌ —faqawlun (89); —faqīla (83); الْقَائِلِينَ —al-qāʾilīna (81); قَوْلُكُمْ —qawlukum (80); لِقَوْلِهِ — liqawlihi (80); وَقَوْلُنَا —waqawlunā (78); قَوْلِيهِ —qawlayhi (77); فَلِقَوْلِ — faliqawli (76); لِقَوْلِهِمْ —liqawlihim (76); الْقَائِلِ —al-qāʾili (75); يَقُولُوا — yaqūlūā (75); فَيَقُولُ —fayaqūlu (73); وَيَقُولُ —wayaqūlu (71); وَلِقَوْلِ — waliqawli (67); وَيُقَالُ —wayuqālu (66); يَقُولُهُ —yaqūluhu (64); لِقَوْلِنَا — liqawlinā (63); أَقْوَالِهِمْ —ʾaqwālihim (62); فَيُقَالُ —fayuqālu (62); لَقُلْنَا — laqulnā (55); قَالُوهُ — qālūhu (49); قُلْنَاهُ —qulnāhu (52); الْقَوْلَيْنِ —al-qawlayni (49); كَقَوْلِ —kaqawli (46); يَقُلْهُ —yaqulhu (48); فَقَالَا —faqālā (47); بِقَوْلِنَا فَالْقَوْلُ —fālqawlu (45); وَبِقَوْلِهِ —wabiqawlihi (42); تَقُولُوا —taqūlūā (39); —biqawlinā (38); فَقُولُوا —faqūlūā (38); وَلِقَوْلِهِ —waliqawlihi (37); قَوْلِهِمَا — qawlihimā (36); كَقَوْلِنَا —kaqawlinā (36); أَقْوَالِهِ —ʾaqwālihi (32); الْمَقَالَةَ — al-maqālati (29); قَالَهَا —qālahā (29); وَنَقُولُ —wanaqūlu (29); الْقَائِلُونَ — al-qāʾilūna (28); وَيَقُولُونَ — wayaqūlūna (27); قَوْلَانِ —qawlāni (28); قَوْلِهَا —qawlihā (27); يَقُولَانِ —yaqūlāni (24); وَبِقَوْلِ —wabiqawli (25); أَقُولُ

يَقُولُونَهُ —ʾaqūlu (23); فَقَوْلُهُ —faqawluhu (23); وَقَوْلُهُمْ —waqawluhum (23); فَيَقُولُونَ —yaqūlūnahu (23); كَالْقَوْلِ —kālqawli (19); وَقُلْ —waqul (19); وَقَالَهُ —fayaqūlūna (18); فَلْيَقُلْ —falyaqul (17); قَائِلُونَ —qāʾilūna (17); بِالْقَوْلِ —waqālahu (17); قَائِلِهِ —qāʾilihi (16); لِقَوْلِهَا —liqawlihā (16); biālqawli (15); قَوْلَةٌ —qawlatun (15); قُولُوا —qūlūā (15); لَقَالَ —laqāla (15); وَقُلْت —waqīla (14); بِقَوْلِهِمْ —biqawlihim (13); تَقُلْ —taqul (13); وَقِيلَ —waqult (13); وَقُلْنَا —waqulnā (12); فَقُلْ —faqul (11); قَائِلُهُمْ —qāʾiluhum (11); الْقَوْلَانِ —al-qawlāni (10); بِأَقْوَالٍ —biʾaqwālin (10); قَائِلًا —qāʾilan (10); وَبِقَوْلِنَا —wabiqawlinā (10); مَقَالَتِي —maqālatī (10); وَأَقْوَالٌ —waʾaqwālun (10); وَلْيَقُلْ —walyaqul (10); أَقْوَالًا —ʾaqwālan (9); فَأَقْوَالٌ —faʾaqwālun (9); وَتَقُولُونَ —wataqūlūna (9); قَوْلَيْهِمَا —qawlayhimā (8); يَقُولُهَا —yaqūluhā (8); كَقَوْلِهِ —al-qawlati (7); الْقَوْلَةِ —qawlayni (7); قَائِلِينَ —qāʾilīna (7); قَوْلَيْنِ —wālqāʾilu (7); وَالْقَائِلُ —liʾaqwālihim (7); لِأَقْوَالِهِمْ —kaqawlihi (7); وَقَالَا —waqālā (7); يَقُولَا —yaqūlā (7); قَوْلِك —qawlik (6); لِأَقْوَالِ —liʾaqwāli (6); وَقُلْتُمْ —waqultum (6); وَقُولُوا —waqūlūā (6); وَكَقَوْلِهِ —wakaqawlihi (6); بِقَوْلِهَا —biqawlihā (5); تَقُولَنَّ —taqūlanna (5); فَقُلْتُمْ —faqultum (5); فَقُلْنَ —faqulna (5); فَقَوْلُهُمْ —faqawluhum (5); قَائِلِهَا —qāʾilihā (5); كَقَوْلِهِمْ —kaqawlihim (5); مَقَالَةِ —liqāʾilihi (5); لِقَوْلِكُمْ —liqawlikum (5); لِلْقَوْلِ —lilqawli (5); لِقَائِلِهِ —maqālatin (5); وَقَوْلُكُمْ —wataqūlu (5); وَتَقُولُ —wālqāʾilīna (5); وَالْقَائِلِينَ —waqawlukum (5); الْأَقَاوِيلِ —waqawlukum (5); يَقُولُوهُ —yaqūlūhu (5); أَقُولُهُ —ʾaqūluhu (4);

—al-ʾaqāwīli (4); تَقْوِيلِ —taqwīli (4); فَتَقُولُ —fataqūlu (4); فَلِقَوْلِهِ —faliqawlihi (4); فَلْيَقُولُوا —falyaqūlūā (4); قَالَاهُ —qālāhu (4); وَقَائِلُ —waqāʾilu (4); وَقَوْلُهُمَا —waqawluhumā (4); وَكَقَوْلِ —wakaqawli (4); يَقُلْهَا —yaqulhā (4); أَقْوَالِهِمَا —ʾaqwālihimā (3); الْقَائِلَةُ —al-qāʾilatu (3); الْمَقُولُ —al-maqūlu (3); بِقَوْلِكُمْ —biqawlikum (3); تَقُولُهُ —taqūluhu (3); سَيَقُولُ —sayaqūlu (3); فَأَقُولُ —faʾaqūlu (3); فَتَقُولُونَ —fataqūlūna (3); فَقَوْلَانِ —faqawlāni (3); فَلِنَقُلْ —falinaqul (3); فَيَقُولُوا —fayaqūlūā (3); قَالَتْهُ —qālathu (3); قُلْتُمُوهُ —qultumūhu (3); قُلْتُه —qulth (3); قُلْنَ —qulna (3); لِقَائِلٍ —liqāʾili (3); مَقَالًا —maqālan (3); نَقُولَهُ —naqūlahu (3); وَأَقْوَالُهُمْ —waʾaqwāluhum (3); وَتَقُولُوا —wataqūlūā (3); وَقَوْلُهَا —waqawluhā (3); وَيَقُولُوا —wayaqūlūā (3)

Context L2221: ... اللَّهُ عَلَى مُحَمَّدٍ وآلِهِ قَالَ عَلِيُّ بْنُ أَحْمَدَ بْنِ سَعِيدٍ ...

Context L2222: ... فَسَادِ الْقِيَاسِ وَتَنَاقُضِهِ وَتَنَاقُضِ الْقَائِلِينَ بِهِ فَاسْتَخَرْتُ اللَّهَ عَزَّ وَجَلَّ ...

3. مَن / مِن[3]

min / man

49,827 occurrences; cumulative coverage 10.31%.

Possible English: from; of; among; some of; who; whoever

Attested spellings and counts

مِمَّا —mimmā (1,375); مِنْهَا —minhā (1,357); فَمَنْ —faman (1,074); مِنْهُمْ —minhum (832); لِمَنْ —liman (680); مِمَّنْ —mimman (535); مِنْهُمَا —minhumā (380); مِنَّا —minkum (288); وَمِمَّنْ —wamimman (130); مِنْ —min (34,073); وَمِنْ —wamin (5,877); مِنْهُ —minhu (2,475);

[3] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: منن (read dictionary entry).

Context: مِنْ marks origin or part of a group. مَنْ refers to a person in a question or relative/conditional clause. A following verb or noun helps distinguish them.

Forms and grammar: منه / منها / منهم = from him or it / her or it / them; مما combines من + ما. Attached و / ف add and / so. ممن combines من + من;

minnā (115); كَمَنْ —kaman (84); مِنِّي —minnī (80); وَمِنْهَا —waminhā (75); مِنْك —mink (70); مِنْهُنَّ —minhunna (58); بِمَنْ —biman (57); وَمِنْهُمْ —waminhum (42); وَمِمَّا —wamimmā (34); وَمِنْهُ —waminhu (34); وَلِمَنْ —waliman (29); وَكَمَنْ —wakaman (13); فَمِنْهُمْ —faminhum (12); فَمِنْهَا —faminhā (10); وَمِنَّا —waminnā (10); فَمِنَّا —faminnā (7); وَمِنْكُمْ —waminkum (6); فَمِمَّنْ —famimman (4); فَمِنْهُ —faminhu (4); مِنْكُنَّ —minkunna (4); فَمِمَّا —famimmā (3)

Context L2221: ... تَعَالَى أَنْ يُصْحِبَنَا الْعِصْمَةَ مِنْ كُلِّ خَطَإٍ وَزَلَلٍ وَيُوَفِّقَنَا لِلصَّوَابِ ...

Context L2222: ... الْمُؤَدِّيَةِ إِلَى مَعْرِفَةِ الْحَقِّ مِمَّا تَنَازَعَ النَّاسُ فِيهِ وَالْإِشْرَافِ عَلَى ...

4. عَنْ[4]

ʿan

41,535 occurrences; cumulative coverage 13.11%.

Possible English: from; on the authority of; about; away from; on behalf of

Context: عن فلان commonly names a transmitter, not a topic. سأله عن means asked him about; an act performed عن someone may be on their behalf.

Forms and grammar: عنه / عنها / عنهم = from or about him / her / them. عما = عن + ما; عمن = عن + من. Suffixes identify the referent, not a different tense.

Attested spellings and counts

عَنْهُمْ —ʿanhum (976); عَنْهَا —ʿanhā (627); عَمَّنْ —ʿamman (268); عَنْهُمَا —ʿanhumā (262); عَمَّا —ʿammā (130); عَنْكَ —ʿanka (51); عَنِّي —ʿannī (51); عَنَّا —ʿannā (30); فَعَنْ —faʿan (27); عَنْهُنَّ —ʿanhunna (15); عَنْكُمْ —ʿankum (13); وَعَمَّا —waʿammā (12); وَعَمَّنْ —waʿamman (9); وَعَنْهُ —waʿanhu (8); عَنْ —ʿan (34,340); عَنْهُ —ʿanhu (2,669); وَعَنْ —waʿan (2,047)

Context L2221: ... بْنِ حَزْمٍ رَضِيَ اللَّهُ عَنْهُ الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ وَصَلَّى ...

Context L2222: ... عَلَى جَمْهَرَةِ السُّنَنِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ ...

[4]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: عنن (read dictionary entry).

5. فِي[5]

fī

40,975 occurrences; cumulative coverage 15.88%.

Possible English: in; within; concerning; regarding

Context: فِي can introduce a legal topic rather than physical location. فيه can mean in it or concerning it, depending on the preceding noun.

Forms and grammar: فيه / فيها / فيهم = in him or it / her or it / them; فيما = in what or concerning what; فيمن = concerning whoever.

Attested spellings and counts

وَفِي —fī (29,227); فِيهِ —fīhi (5,430); فِيهَا —fīhā (1,883); فِيمَا —fīmā (1,272); وَفِيهِ —wafī (1,239); فِيمَنْ —fīman (547); وَفِيهِ —wafīhi (301); فِيهِمَا —fīhimā (228); فَفِيهَا —fafīhā (170); فَفِي —fafī (169); فِيهِمْ —fīhim (155); فَفِيهِ —fafīhi (132); وَفِيمَا —wafīmā (54); وَفِيهَا —wafīhā (44); فِيهِنَّ —fīhinna (33); وَفِيهِمْ —wafīhim (22); فِينَا —fīnā (18); فِيكُمْ —fīkum (15); فَفِيهِمَا —fafīhimā (9); وَفِيمَنْ —wafīman (8); فِيكَ —fīk (7); وَفِيهِمَا —wafīhimā (7); لَفِي —lafī (5)

Context L2221: ... خَطَإٍ وَزَلَلٍ وَيُوَفِّقَنَا لِلصَّوَابِ فِي كُلِّ قَوْلٍ وَعَمَلٍ آمِينَ آمِينَ ...

Context L2222: ... لِلْمَسَائِلِ الْمُخْتَصَرَةِ الَّتِي جَمَعْنَاهَا فِي كِتَابِنَا الْمَوْسُومِ بِالْمُحَلَّى شَرْحًا مُخْتَصَرًا ...

6. اللَّه / إِلَه[6]

Allāh / ʾilāh

38,507 occurrences; cumulative coverage 18.48%.

Possible English: God; Allah; deity

Context: الله is the divine name. إله is a common noun meaning deity. بالله التوفيق is a formula locating success or assistance with God, not an independent legal ruling.

Attested spellings and counts

اللَّهِ —Allāhi (34,708); وَبِاللَّهِ —wabiāalllahi (1,925); لِلَّهِ —lillahi (730); بِاللَّهِ —biāalllahi (459); وَاللَّهِ —waāalllahi (373); وَلِلَّهِ —walillahi (153); إِلَهَ —ʾilāha (127); فَاللَّهُ —faāalllahu (18); أَلَهُ —ʾalahu (8); أَلَهَا —ʾalahā (3); إِلَهًا —ʾilahan (3)

Context L2221: ... بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى ...

Context L2222: ... أَمَّا بَعْدُ وَفَّقَنَا اللَّهُ وَإِيَّاكُمْ لِطَاعَتِهِ فَإِنَّكُمْ رَغِبْتُمْ أَنْ ...

[5] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: فيا (read dictionary entry).

[6] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ألله (read dictionary entry).

Forms and grammar: بالله / لله / والله attach by or with / to or for / and or oath-wāw. اللهم is an address, O God. آلهة is the plural of إله, not a plural of the divine name.

7. لَا[7]

lā

38,075 occurrences; cumulative coverage 21.05%.

Possible English: not; no; do not

Context: لا before an imperfect may negate a statement or prohibit an action. بلا means without. ألا can have other readings, including a question plus negation or أن + لا.

Forms and grammar: لا changes the meaning of the following clause, not the verb's root. ولا / فلا = and not / so not. لا تقلْ is a prohibition; لا يقولُ is a statement.

Attested spellings and counts

لَا —lā (17,306); وَلَا —walā (15,718); فَلَا —falā (3,390); بِلَا —bilā (1,445); أَلَا —ʾalā (190); وَبِلَا —wabilā (15); فَبِلَا —fabilā (8); وَأَلَّا —waʾallā (3)

Context L2222: ... مِنْ رِوَايَةِ الثِّقَاتِ مُسْنَدٍ وَلَا خَالَفْنَا إِلَّا خَبَرًا ضَعِيفًا فَبَيَّنَّا ...

Context L2224: ... مَا يَلْزَم كُلّ أَحَد وَلَا يَصِحّ الْإِسْلَام إِلَّا بِهِ ...

8. عَلَى[8]

ʿalā

35,887 occurrences; cumulative coverage 23.48%.

Possible English: on; upon; against; incumbent on; according to

Context: عليه can express an obligation or liability, not a physical position. In a blessing, عليه means upon him. على قول means according to a position.

Forms and grammar: عليه / عليها / عليهم = on him or it / her or it / them; عليك = on you; علينا = on us. عليّ can mean on me; distinguish the proper name علي from its context.

Attested spellings and counts

عَلَيْهِمْ —ʿalayhim (882); عَلَيْهَا —ʿalayhā (911); عَلَيْهِ —ʿalayhi (17,841); عَلَى —ʿalā (13,552); فَعَلَيْهِ —faʿalayhi (336); وَعَلَى —waʿalā (577); عَلَيْكُمْ —ʿalaykum (541); وَعَلَيْهِ —waʿalayhi (200); عَلَيْنَا —ʿalaynā (319); عَلَيْكَ —ʿalayk (235); عَلَيْهِمَا —ʿalayhimā (191); فَعَلَى —faʿalā (104); عَلَيْهِنَّ —ʿalayhinna (66); وَعَلَيْهَا —waʿalayhā (34); فَعَلَيْهِنَّ —faʿalayhinna (16); وَعَلَيْهِمْ —waʿalayhim (15); فَعَلَيْهَا —faʿalayhā (13); فَعَلَيْهِمْ —faʿalayhim (11); وَعَلَيْكُمْ

[7] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: لا (read dictionary entry).
[8] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: علا (read dictionary entry).

9. أَنَّ / أَنْ[9]

ʾan / ʾanna

34,919 occurrences; cumulative coverage 25.83%.

Possible English: to; that; because

Context: أنْ introduces an infinitive-like clause. أنَّ introduces a noun clause with emphasis. لأن / لأنه commonly supply a reason: because / because he or it…

Forms and grammar: أنه / أنها / أنهم carry a following pronoun: that he / she / they. بأن = with or by the fact that; لأن = because. Shadda distinguishes أنَّ from أنْ. كأنّ means as if; لئلا means so that not, combining purpose and negation.

—waʿalaykum (9); فَعَلَيَّ —faʿalayya (6); فَعَلَيْهِمَا —faʿalayhimā (6); وَعَلَيْكَ —waʿalayka (6); فَعَلَيْكُمْ —faʿalaykum (5); وَعَلَيْهِمَا —waʿalayhimā (5); فَعَلَيْنَا —faʿalaynā (3); وَعَلَيْنَا —waʿalaynā (3)

Context L2221: ... الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ قَالَ عَلِيُّ بْنُ ...

Context L2222: ... مُخْتَصَرًا أَيْضًا نَقْتَصِرُ فِيهِ عَلَى قَوَاعِدِ الْبَرَاهِينِ بِغَيْرِ إِكْثَارٍ لِيَكُونَ ...

Attested spellings and counts

أَنْ —ʾan (18,570); أَنَّهُ —ʾannahu (5,821); لِأَنَّهُ —liʾannahu (2,651); لِأَنَّ —liʾanna (2,253); بِأَنْ —biʾan (1,035); وَأَنَّ —waʾanna (886); أَنَّهَا —ʾannahā (755); وَأَنَّهُ —waʾannahu (350); أَنَّهُمْ —ʾannahum (567); لِأَنَّهَا —liʾannahā (308); بِأَنَّهُ —biʾannahu (275); لِأَنَّهُمْ —liʾannahum (265); أَنَّهُمَا —ʾannahumā (193); لِأَنَّهُمَا —liʾannahumā (92); أَنَّنَا —ʾannanā (80); لِأَنَّنَا —liʾannanā (78); بِأَنَّهَا —biʾannahā (56); وَأَنَّهَا —waʾannahā (54); فَلِأَنَّ —faliʾanna (53); أَنِّي —ʾannī (52); وَأَنَّهُمْ —waʾannahum (45); بِأَنَّهُمْ —biʾannahum (38); فَلِأَنَّهُ —faliʾannahu (36); لِئَلَّا —liʾallā (35); فَكَأَنَّمَا —fakaʾannamā (31); وَلِأَنَّهُ —waliʾannahu (31); وَبِأَنْ —wabiʾan (28); وَلِأَنَّ —waliʾanna (27); لِأَنَّكُمْ —liʾannakum (25); أَنَّكُمْ —ʾannakum (23); أَنَّكَ —ʾannak (21); كَأَنَّهُ —kaʾannahu (20); أَنَّهُنَّ —ʾannahunna (19); كَأَنْ —kaʾan (15); بِأَنَّهُمَا —biʾannahumā (13); فَأَنَّ —faʾanna (10); وَبِأَنَّهُ —

[9] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أنن (read dictionary entry).

wabiʾannahu (10); أَنَّمَا —ʾannamā (9); لأَنَّهُنَّ —liʾannahunna (9); كَأَنَّهَا —kaʾannahā (8); لأَنَّكَ —liʾannak (7); لِأَنِّي —liʾannī (7); وَأَنَّهُمَا — waʾannahumā (7); فَكَأَنَّهُ —fakaʾannahu (6); فَبِأَنْ —fabiʾan (5); كَأَنِّي —kaʾannī (5); وَأَنِّي —waʾannī (5); وَكَأَنَّ —wakaʾanna (5); كَأَنَّهُمْ — kaʾannahum (4); بِأَنَّنَا —biʾannanā (3); بِأَنَّهُنَّ —biʾannahunna (3); فَكَأَنَّ —fakaʾanna (3); فَلِأَنَّهَا —faliʾannahā (3); كَأَنَّمَا —kaʾannamā (3); وَأَنَّكَ — waʾannaka (3); وَكَأَنَّهُ —wakaʾannahu (3)

Context L2221: ... تَسْلِيمًا وَنَسْأَلُ اللَّهَ تَعَالَى أَنْ يُصْحِبَنَا الْعِصْمَةَ مِنْ كُلِّ خَطَإٍ ...

Context L2222: ... وَإِيَّاكُمْ لِطَاعَتِهِ فَإِنَّكُمْ رَغِبْتُمْ أَنْ نَعْمَلَ لِلْمَسَائِلِ الْمُخْتَصَرَةِ الَّتِي جَمَعْنَاهَا ...

10. ذَلِكَ / هَذَا[10]

hādhā / dhālika

33,053 occurrences; cumulative coverage 28.07%.

Possible English: this; that; these; those; such

Context: Demonstratives can point back to an argument, report or ruling. كذلك can mean likewise or in that way, rather than that alone.

Forms and grammar: هذا masculine / هذه feminine; هذان / هذين dual; هؤلاء these; ذلك / تلك that; أولئك those. بذلك / لهذا = by that / for this. Gender follows the referred-to noun.

Attested spellings and counts

ذَلِكَ —dhālika (11,155); هَذَا —hādhā (7,677); وَهَذَا —wahadhā (3,186); هَذِهِ —hādhihi (1,713); بِذَلِكَ —bidhalika (1,285); وَكَذَلِكَ —wakadhalika (1,115); فَهَذَا —fahadhā (972); كَذَلِكَ —kadhalika (851); بِهَذَا —bihadhā (705); تِلْكَ —tilka (556); وَهَكَذَا —wahakadhā (367); هَؤُلَاءِ —hāʾulāʾ (361); وَهَذِهِ — wahadhihi (360); هَكَذَا —hakadhā (286); فَهَذِهِ —fahadhihi (213); كَذَا — kadhā (183); لِذَلِكَ —lidhalika (179); بِهَذِهِ —bihadhihi (169); هَذَيْنِ — hadhayni (164); وَذَلِكَ —wadhalika (151); لِهَذَا —lihadhā (145); وَبِهَذَا —wabihadhā (141); ذَا —dhā (102); فَذَلِكَ —fadhalika (95); فَكَذَلِكَ —

[10]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ذا (read dictionary entry).

وَهَذَانِ —wahadhāni (61); أُولَئِكَ —ʾūlaʾika (59); بِتِلْكَ —bitilka (56); هَذَانِ — hadhāni (54); لِهَذِهِ —lihadhihi (49); وَهَؤُلَاءِ —waha'ulāʾi (38); فَهَذَانِ — fahadhāni (34); وَتِلْكَ —watilka (33); فَأُولَئِكَ —faʾūlaʾika (31); هَاتَيْنِ — hātayni (30); بِهَذَيْنِ —bihadhayni (24); ذَلِكُمْ —dhalikum (21); فَتِلْكَ — fatilka (18); لِتِلْكَ —litilka (18); ذَاكَ —dhāka (16); هَاتَانِ —hātāni (16); فَلِذَلِكَ —falidhalika (13); فَهَكَذَا —fahakadhā (11); وَلِذَلِكَ —walidhalika (11); لِهَؤُلَاءِ —liha'ulāʾi (10); لِهَذَيْنِ —lihadhayni (10); وَبِذَلِكَ —wabidhalika (9); فَذَاكَ — fadhdhan (4); فَذَّا —fadhdhan (4); فَبِهَذَا —fabihadhā (6); وَلِهَذَا —walihadhā (6); وَذَا —wadhā (4); وَهَاتَانِ —wahātāni (4); وَأُولَئِكَ —waʾūlaʾika (4); ذَانِكَ —dhānika (3); فَهَاتَانِ —fahātāni (3); لِهَاتَيْنِ —lihātayni (3); وَبِهَذِهِ — wabihadhihi (3)

Context L2222: ... عَزَّ وَجَلَّ عَلَى عَمَلِ ذَلِكَ وَاسْتَعَنْته تَعَالَى عَلَى الْهِدَايَةِ إلَى ...

Context L2225: ... مُحَمَّدًا رَسُولُ اللَّهِ بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ ...

11. أَبُو / أَب[11]

ʾab / ʾabū

22,226 occurrences; cumulative coverage 29.57%.

Possible English: father; Abū, “father of” in a personal designation

Attested spellings and counts

وَأَبِي —ʾabī (10,395); أَبُو —ʾabū (6,849); أَبِيهِ —ʾabīhi (1,363); أَبِي — waʾabī (872); أَبَا —ʾabā (778); وَأَبُو —waʾabū (660); الْأَبِ —al-ʾabi (276); لِلْأَبِ —liʾlʾabi (104); أَبَاهُ —ʾabāhu (100); أَبٌ —ʾabun (92); لِأَبِي —liʾabī (86);

[11] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أبي (read dictionary entry).

Context: أبو محمد is a kunyah, normally retained as Abū Muḥammad. أبي after عن is commonly the genitive of أبو. The name أُبَيّ is a separate possible reading of أبي.

Forms and grammar: أبو / أبا / أبي reflect nominative / accusative / genitive case in an annexed phrase. أبوه / أباه / أبيه = his father with changing case. آباء = fathers.

أَبُوهُ —ʾabūhu (70); وَأَبَا —waʾabā (62); لِأَبٍ —liʾabin (55); الْأَبَوَيْنِ —al-ʾabawayni (37); أَبُوهَا —ʾabūhā (33); لِأَبِيهِ —liʾabīhi (33); أَبِيهَا —ʾabīhā (29); أَبَوْا —ʾabawāhu (20); وَأَبُوهُ —waʾabūhu (18); أَبَوَيْهِ —ʾabawayhi (18); أَبَوَاهُ —ʾabawā (17); بِأَبِي —biʾabī (17); لِأَبِيكَ —liʾabīka (14); أَبِيك —ʾabīk (13); فَأَبَوْا —faʾabawā (12); فَأَبَتْ —faʾabat (11); أَبِيهِمَا —ʾabīhimā (10); فَأَبُو —faʾabū (10); وَالْأَبُ —wālʾabu (10); أَبَتْ —ʾabat (9); أَبُوهُمْ —ʾabūhum (9); الْآبَاءِ —al-ʾābāʾi (9); الْأَبَوَانِ —al-ʾabawāni (9); وَأَبَوَيْنِ —waʾabawayni (9); أَبِيهِمْ —ʾabīhim (8); وَلِأَبِي —waliʾabī (8); آبَائِهِمْ —ʾābāʾihim (7); وَأَبَاهُ —waʾabāhu (7); كَالْأَبِ —kālʾabi (6); وَلِلْأَبِ —walilʾabi (6); أَبَاهَا —ʾabāhā (5); أَبَوَيْكُمْ —ʾabawaykum (5); كَأَبِي —kaʾabī (5); لِأَبَوَيْهِ —liʾabawayhi (5); لِأَبِيهَا —liʾabīhā (5); آبَاءَهُمْ —ʾābāʾahum (4); أَبَاكَ —ʾabāka (4); أَبَوَانِ —ʾabawāni (4); أَبُوهُمَا —ʾabūhumā (4); وَلِأَبَوَيْهِ —walʾabawayhi (4); آبَائِه —ʾābāʾihi (3); آبِي —ʾābī (3); أَبَاهُمْ —ʾabāhum (3); أَبَتَاهُ —ʾabatāhu (3); أَبَوَاهُمَا —ʾabawāhumā (3); أَبَوَيْنِ —ʾabawayni (3); الْآبِي —al-ʾābī (3); فَبِأَبِي —fabiʾabī (3); وَأَبُوهَا —waʾabūhā (3); وَالْأَبَوَيْنِ —wālʾabawayni (3)

Context L2225: ... مَسْأَلَةٌ قَالَ أَبُو مُحَمَّدٍ رَضِيَ اللَّهُ عَنْهُ أَوَّلُ ...

Context L2228: ... مَسْأَلَةٌ قَالَ أَبُو مُحَمَّدٍ وَتَفْسِيرُ هَذِهِ الْجُمْلَةِ هُوَ ...

12. إِنَّ / إِنْ[12]

ʾin / ʾinna

21,261 occurrences; cumulative coverage 31.01%.

Possible English: if; indeed; surely; only

Context: إِنْ commonly introduces a condition; إِنَّ emphasizes a statement. إنما restricts: only, or nothing but. إما ... وإما marks alternatives: either ... or. Do not confuse إن with إلا, except.

Forms and grammar: إنه / إنها / إنهم = indeed he or it / she or it / they. إني / إنني = indeed I. فإن can mean so if or for indeed; vowels and clause structure decide.

Attested spellings and counts

فَإِنْ —faʾin (6,313); إِنْ —ʾin (5,702); وَإِنْ —waʾin (2,582); إِنَّمَا —ʾinnamā (1,669); فَإِنَّهُ —faʾinnahu (1,012); وَإِنَّمَا —waʾinnamā (1,012); إِنَّهُ —ʾinnahu (477); إِنِّي —ʾinnī (349); فَإِنَّمَا —faʾinnamā (345); وَإِمَّا —waʾimmā (312); إِمَّا —ʾimmā (275); فَإِنَّهُمْ —faʾinnahum (222); فَإِنَّهَا —faʾinnahā (152); إِنَّهَا —ʾinnahā (142); إِنَّا —ʾinnā (112); إِنَّكَ —ʾinnak (62); وَإِنِّي —waʾinnī (60); فَإِنِّي —faʾinnī (50); إِنَّهُمْ —ʾinnahum (47); فَإِنَّنَا —faʾinnanā (47); فَإِنَّهُمَا —faʾinnahumā (35); فَإِنَّكُمْ —faʾinnakum (35); وَإِنَّهُ —waʾinnahu (34); إِنَّكُمْ —ʾinnakum (32); فَإِمَّا —faʾimmā (28); فَإِنَّكَ —faʾinnaka (28); وَإِنَّهَا —waʾinnahā (25); فَإِنَّا —faʾinnā (24); وَإِنَّا —waʾinnā (22); إِنَّهُمَا —ʾinnahumā (18); إِنَّنَا —ʾinnanā (17); وَإِنَّكَ —waʾinnak (6); وَإِنَّهُمْ —waʾinnahum (5); إِنَّنِي —ʾinnanī (4); فَإِنَّهُنَّ —faʾinnahunna (3); وَإِنَّهُمَا —waʾinnahumā (3)

Context L2222: ... وَفَّقَنَا اللَّهُ وَإِيَّاكُمْ لِطَاعَتِهِ فَإِنَّكُمْ رَغِبْتُمْ أَنْ نَعْمَلَ لِلْمَسَائِلِ الْمُخْتَصَرَةِ ...

Context L2227: ... وَأَمَّا وُجُوبُ النُّطْقِ بِاللِّسَانِ فَإِنَّ الشَّهَادَةَ بِذَلِكَ الْمُخْرِجَةُ لِلدَّمِ وَالْمَالِ ...

[12]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أنن (read dictionary entry).

13. سَلَام / إِسْلَام / مُسْلِم[13]

salām / ʾislām / muslim

20,046 occurrences; cumulative coverage 32.36%.

Possible English: peace; Islam; Muslim; submit; deliver; greet

Context: وَسَلَّمَ in a blessing upon the Prophet means "and may He grant him peace." مُسْلِم means a Muslim (one who submits to God), but also occurs as a personal name. In a citation to Ṣaḥīḥ Muslim, Muslim is the compiler Muslim ibn al-Ḥajjāj; in a transmission chain, identify the person from the full name and surrounding chain. سَلَام (peace), إِسْلَام (submission / Islam) and مُسْلِم are related derivations, not tense forms of one word.

Forms and grammar: سلم / يسلم vary in meaning with vowels and verb pattern; أسلم = embraced Islam or submitted. مسلم / مسلمة / مسلمون / مسلمين show gender, number and case. الإسلام is the noun Islam.

Attested spellings and counts

وَسَلَّمَ —wasallama (10,273); السَّلَامُ —al-salāmu (2,608); مُسْلِمٍ —muslimin (1,540); سَلَمَةَ —salamata (1,310); الْإِسْلَامِ —al-ʾislāmi (590); وَالسَّلَامُ —wālssalāmu (576); الْمُسْلِمِينَ —al-muslimīna (474); الْمُسْلِمِ —al-muslimi (314); سَالِمٍ —sālimi (271); أَسْلَمَ —ʾaslama (269); يُسَلِّمُ —yusallimu (172); سَلَّمَ —sallama (148); مُسْلِمًا —musliman (114); الْمُسْلِمُونَ —al-muslimūna (100); سَلَّامٍ —sallāmin (87); السَّلَمِ —al-salami (85); لِلْمُسْلِمِينَ —lilmuslimīna (61); أَسْلَمْتُ —ʾaslamat (57); السَّلَامَةِ —al-salāmati (54); لِمُسْلِمٍ —limuslimin (50); وَسَالِمٍ —wasālimi (50); السُّلَمِيِّ —al-sulamiyyi (38); الْأَسْلَمِيِّ —al-ʾaslamiyyi (36); وَيُسَلِّمُ —wayusallimu (32); إِسْلَامَ —ʾislāma (30); إِسْلَامِهِ —ʾislāmihi (30); مُسْلِمِينَ —muslimīna (29); الْمُسْلِمَةِ —al-muslimati (27); تُسْلِمَ —tuslima (27); التَّسْلِيمِ —al-taslīmi (25); سَالِمًا —sāliman (21); لِلْمُسْلِمِ —lilmuslimi (21); تَسْلِيمًا —taslīman (20); أَسْلَمُوا —ʾaslamūā (19); يُسْلِمُهُ —yuslimuhu (19); مُسْلِمُونَ —muslimūna (18); تَسْلِيمَ —taslīma (17); وَالسَّلَمُ —wālssalamu (17); وَمُسْلِمٌ —wamuslimu (17); إِسْلَامِهَا —ʾislāmihā (16); بِإِسْلَامٍ —biʾislāmi (16); مُسْلِمَانِ —muslimāni (16); وَسَلَمَةَ —wasalamata (16); فَسَلَّمَ —fasallama (15); أَسْلَمَا —ʾaslamā (12); بِالْمُسْلِمِينَ —biālmuslimīna (12); فَأَسْلَمَ —faʾaslama (12); نُسَلِّمُ —nusallimu (11); تَسْلِيمَتَيْنِ —taslīmatayni (10); سَلَامِهِ

[13] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: سلم (read dictionary entry).

—salāmihi (10); يُسْلِمُوا —yuslimūā (10); سَلَامَةَ —salāmata (9); سَلَمًا — salaman (9); فَلْيُسَلِّمْ —taslīmatan (8); فَأَسْلَمَتْ —faʾaslamat (8); falyusallim (8); وَالْمُسْلِمُونَ —wālmuslimūna (8); وَسَلَّمُوا —wasallamūā (8); بِالْإِسْلَامِ —biālʾislāmi (7); بِمُسْلِمٍ —bimuslimin (7); لِسَالِمٍ —lisālimin (7); وَأَسْلَمُ —waʾaslamu (7); وَالْإِسْلَامُ —wālʾislāmu (7); يُسَلِّمُونَ —yusallimūna (7); إِسْلَامِهِمْ —ʾislāmihim (6); بِالْمُسْلِمِ —biālmuslimi (6); سَالِمَةً —sālimatan (6); فَسَلَّمْتُ —fasallamtu (6); وَالتَّسْلِيمِ —wālttaslīmi (6); وَالسَّالِمُ —wālssālimu (6); وَيُسَلِّمُونَ —wayusallimūna (6); الْأَسْلَمِيَّةِ —al-ʾaslamiyyati (5); السَّالِمُ — al-sālimu (5); الْمُسْلِمَاتِ —al-muslimāti (5); تَسْلِيمَهُ —taslīmahu (5); وَيُسَلِّمُوا — wayusallimūā (5); أَسْلَمَهُ —ʾaslamahu (4); بِإِسْلَامِهَا —biʾislāmihā (4); بِتَسْلِيمٍ — bitaslīmin (4); فَالْإِسْلَامُ —bisalāmihi (4); بِسَلَامِهِ —bimuslimatin (4); فَالْإِسْلَامُ —fālʾislāmu (4); وَإِسْلَامِهِ —lilʾislāmi (4); لِلْإِسْلَامِ —lilmuslimati (4); لِلْمُسْلِمَةِ —waʾislāmihi (4); أَسْلَمْنَ —wālmuslimu (4); وَالْمُسْلِمُ —yastalima (4); يَسْتَلِمَ —ʾaslamna (3); إِسْلَامِهِمَا —ʾislāmihimā (3); إِسْلَامِيٌّ —ʾislāmiyyun (3); التَّسْلِيمَتَانِ —al-taslīmatāni (3); بِالتَّسْلِيمِ —biālttaslīmi (3); بِالسَّلَامِ — biālssalāmi (3); فَيُسَلِّمُ —fayusallimu (3); وَإِسْلَامُهُمَا —taslīmahā (3); تَسْلِيمَهَا — waʾislāmuhumā (3); يُسْلِمَا —yuslimā (3); يُسَلِّمَانِ —yusallimāni (3)

Context L2221: ... مُحَمَّدٍ خَاتَمِ النَّبِيِّينَ وَالْمُرْسَلِينَ وَسَلَّمَ تَسْلِيمًا وَنَسْأَلُ اللَّهَ تَعَالَى أَنْ ...

Context L2222: ... اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَتَمْيِيزِهَا مِمَّا لَمْ يَصِحَّ وَالْوُقُوفِ ...

14. مَا[14]

mā

19,714 occurrences; cumulative coverage 33.69%.

Possible English: what; whatever; that which; not; a clause-forming particle

Context: ما has several syntactic functions. A question ما هو؟ asks what it is; ما كان may negate. كما compares: as or just as. Read the whole clause before choosing a gloss.

Forms and grammar: وما / فما attach and / so. بما = by or with what; كما = as. ما does not change for a masculine, feminine or plural referent in its common relative uses.

Attested spellings and counts

مَا —mā (12,305); كَمَا —kamā (3,299); وَمَا —wamā (1,877); بِمَا —bimā (1,263); فَمَا —famā (732); وَبِمَا —wabimā (101); فَكَمَا —fakamā (72); وَكَمَا —wakamā (65)

Context L2222: ... أَوْ مَنْسُوخًا فَأَوْضَحْنَا نَسْخَهُ وَمَا تَوْفِيقُنَا إِلَّا بِاَللَّهِ تَعَالَى ...

Context L2224: ... التَّوْحِيدِ مَسْأَلَة بَيَان أَوَّل مَا يَلْزَم كُلّ أَحَد وَلَا يَصِحّ ...

15. حَدَّثَ / حَدِيث[15]

ḥadīth / ḥaddatha

19,625 occurrences; cumulative coverage 35.02%.

Possible English: report; hadith; narration; narrate; new; occur

Context: حدثنا introduces transmission: he narrated to us. نا and ثنا are scribal abbreviations for حدثنا here. حديث can be a report or, in other constructions, an adjective meaning new.

Forms and grammar: يحدّث / حدّث = narrated / narrates; حدثني / حدثنا = narrated to us / me. أحاديث / حديث = report / reports. أحدث means introduced or caused to occur.

Attested spellings and counts

نا —nā* (8,683); ثنا —thnā* (5,710); حَدَّثَنَا —ḥaddathanā (1,235); حَدِيثُ —ḥadīthu (917); الْحَدِيثِ —al-ḥadīthi (707); حَدَّثَنِي —ḥaddathanī (516); يُحَدِّثُ —yuḥaddithu (229); حَدَّثَنَاهُ —ḥaddathanāhu (194); حَدَّثَهُ —ḥaddathahu (121); حَدَثَ —ḥadatha (102); أَحْدَثَ —ʾaḥdatha (95); بِحَدِيثِ —biḥadīthi (92); وَحَدِيثُ —waḥadīthu (88); الْأَحَادِيثِ —al-ʾaḥādīthi (80); حَدِيثًا —ḥadīthan (74); وَحَدَّثَنَا —waḥaddathanā (59); وَبِحَدِيثٍ —wabiḥadīthin (49); وَنَا —wanā (40); أَحَادِيثَ —ʾaḥādītha (39); حَدِيثِهِ —ḥadīthihi (38); حَدَثًا —ḥadathan (34); الْحَدَثِ —al-ḥadathi (33); حَدَثَتْ —ḥadathat (26); حَدَّثْتَنِي —ḥaddathatnī (25); بِالْحَدِيثِ —biālḥadīthi (22); حَدَّثَهُمْ —ḥaddathahum (21);

[14]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ما (read dictionary entry).
[15]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: حدث (read dictionary entry).

لِحَدِيثٍ —liḥadīthi (17); وَحَدَّثَنَاهُ —waḥaddathanāhu (16); تَحْدُثُ — taḥduthu (14); وَحَدَّثَنِي —waḥaddathanī (14); إِحْدَاثُ —ʾiḥdāthu (13); فَحَدَّثَنَا —faḥaddathanā (13); مُحْدِثًا —muḥdithan (13); وَالْحَدِيثُ —wālḥadīthu (13); الْأَحْدَاثِ —al-ʾaḥdāthi (12); الْحَدِيثَيْنِ —al-ḥadīthayni (12); حَدَّثَكُمْ — ḥaddathakum (12); مُحْدَثٌ —muḥdathun (12); وَحَدِيثًا —waḥadīthan (12); الْمُحْدِثِ —al-muḥdithi (10); أَحْدَثَهُ —ʾaḥdathahu (9); فَحَدَّثَ —faḥaddatha (9); الْحَدَثَانِ —al-ḥadathāni (8); بِحَدِيثِهِ —biḥadīthihi (8); حَدَّثَهُ —ḥaddathathu (8); لِلْحَدِيثِ —lilḥadīthi (8); وَالْأَحَادِيثُ —wālʾaḥādīthu (8); يَتَحَدَّثُ — yataḥaddathu (8); حَدِيثَانِ —ḥādithatin (7); أَحْدَثَتْ —ʾaḥdathat (7); حَدَّثَاهُ —ḥadīthāni (7); فَحَدِيثُ —faḥadīthu (7); الْحَدِيثَانِ —al-ḥadīthāni (6); وَأَحَادِيثِ —waʾaḥādīthi (6); أَحْدَثَهَا —ʾaḥdathahā (5); حَادِثٌ —ḥādithun (5); فَحَدَّثَهُ —faḥaddathathu (5); كَحَدِيثِ —kaḥadīthi (5); بِأَحَادِيثَ — biʾaḥādītha (4); الْحَادِثَةِ —al-ḥādithati (4); الْمُحَدِّثِينَ —al-muḥaddithīna (4); حَدَّثَكَ —ḥaddathak (4); بِالْحَدَثِ —biālḥadathi (4); بِحَدَثٍ —biḥadathin (4); فَحَدَّثَهُ —faḥaddathahu (4); مُحْدَثَةً —muḥdathatan (4); وَيُحَدِّثُ —wayuḥaddithu (4); الْإِحْدَاثُ — al-ʾiḥdāthu (3); أَحْدَثْنَ —ʾaḥdathna (3); بِإِحْدَاثِ —biʾiḥdāthi (3); حَدَّثُونِي —ḥaddathūnī (3); حُدُوثِ —ḥudūthi (3); حَدِيثَيْنِ —ḥadīthayni (3); فَحَدَّثْتَ —faḥaddatht (3); فَحَدَّثَنِي —faḥaddathanī (3); فَلِحَدِيثِ —faliḥadīthi (3); لِلْأَحَادِيثِ —lilʾaḥādīthi (3); وَأَحْدَثَ —waʾaḥdatha (3); وَالْمُحْدَثُ —wālmuḥdathu (3); وَثَنًا —wathanan (3); يَتَحَدَّثُونَ —yataḥaddathūna (3); يُحَدِّثُهَا —yuḥaddithuhā (3)

Context L2225: ... اللَّهِ بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ نا ...

Context L2230: ... هُوَ ذُو مَبْدَأٍ فَهُوَ مُحْدَثٌ وَالْمُحْدَثُ يَقْتَضِي مُحْدِثًا ضَرُورَةً إِذْ ...

16. صَلَّى / صَلَاة[16]

ṣalāh / ṣallā

18,058 occurrences; cumulative coverage 36.24%.

Possible English: prayer; ritual prayer; pray; bless

Context: A human يصلي performs prayer. In صلى الله عليه, the agent is God and the conventional English rendering is may God bless him. صلاة can also denote supplication, depending on its construction.

Forms and grammar: صلى / يصلي / صلِّ = prayed / prays / pray!; صليت / صلينا = I or you prayed / we prayed. صلاة / صلوات = prayer / prayers; صلاته = his prayer.

Attested spellings and counts

صَلَّى —ṣallā (10,809); الصَّلَاةِ —al-ṣalāti (2,492); صَلَاةِ —ṣalāti (1,276); يُصَلِّ — yuṣallī (452); يُصَلِّي —faṣallā (148); فَصَلَّى —ṣalātihi (496); صَلَاتِهِ — yuṣalli (123); لِلصَّلَاةِ —lilṣṣalāti (118); وَالصَّلَاةُ —wālṣṣalātu (101); الصَّلَوَاتِ —al-ṣalawāti (96); تُصَلِّي —biālṣṣalāti (89); بِالصَّلَاةِ —al-muṣallī (82); الْمُصَلِّي —tuṣallī (79); وَصَلَّى —waṣallā (77); صَلُّوا —ṣallūā (73); صَلَّيْت —ṣallayt (69); يُصَلُّونَ —ṣallāhā (62); وَصَلَاةُ —waṣalātu (62); بِصَلَاةِ —biṣalāti (58); صَلَّاهَا —yuṣallūna (50); فَصَلُّوا —faṣallūā (44); يُصَلِّيهَا —yuṣalliyahā (44); يُصَلَّى — yuṣallā (43); أُصَلِّي —ʾuṣallī (42); فَيُصَلِّي —fayuṣallī (40); لِصَلَاةِ —liṣalāti (40); وَيُصَلِّي —wayuṣallī (40); أَصْلِهِ —ʾaṣlihi (39); أَصْلِهِمْ —ʾaṣlihim (36); نُصَلِّيَ — nuṣalliya (36); صَلَاتِهَا —ṣalātihā (34); صَلِّ —ṣalli (33); صَلَوَاتٍ — ṣalawātin (33); الْمُصَلَّى —al-muṣallā (30); وَتُصَلِّي —watuṣallī (28); وَصَلِّي — waṣallī (27); تُصَلِّ —tuṣalli (26); صَلَاتِهِمْ —ṣalātihim (26); صُلِّيَ —ṣulliya (26); تُصَلَّى —tuṣallā (25); صَلَاتِك —ṣalātik (25); صَلَّتْ —ṣallat (25); صَلَّاهُمَا — ṣallāhumā (24); فَلْيُصَلِّ —falyuṣalli (24); مُصَلٍّ —muṣallin (23); فَلْيُصَلِّهَا — falyuṣallihā (19); يُصَلُّوا —yuṣallūā (18); يُصَلِّيهِمَا —yuṣallīhimā (16); الْمُصَلِّينَ

[16] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: صلا (read dictionary entry).

وَيُصَلَّى —al-muṣallīna (14); صَلَاتَيْ —ṣalātay (14); صَلَّيْنَا —ṣallaynā (14); وَيُصَلَّى —wayuṣallā (14); كَصَلَاةِ —kaṣalāti (13); تُصَلُّوا —tuṣallūā (12); مُصَلِّيًا —muṣalliyan (12); الصَّلَاتَيْنِ —al-ṣalātayni (11); صَلَاتِهِمَا —ṣalātihimā (11); لِيُصَلِّيَ —liyuṣalliya (11); بِصَلَاتِهِ —biṣalātihi (10); فَالصَّلَاةُ —fālṣṣalātu (10); مُصَلَّاهُ —muṣallāhu (10); أَصْلِكُمْ —ʾaṣlikum (9); صَلَاتَيْنِ —ṣalātayni (9); فَصَلَّيْنَا —muṣallanā (9); صَلَاتِنَا —ṣalātinā (8); فَصَلَاةُ —faṣalātu (8); مُصَلَّى —faṣallaynā (8); كَالصَّلَاةِ —kālṣṣalāti (8); لِلْمُصَلِّي —lilmuṣallī (8); يُصَلِّهَا —yuṣallihā (8); أُصَلِّيهِمَا —ʾuṣallīhimā (7); صَلَاتَانِ —ṣalātāni (7); وَصَلَّتْ —waṣallat (6); صَلَاتِهِنَّ —ṣalātuhunna (5); يُصَلِّيَانِ —yuṣalliyāni (6); صَلَاتِكُمْ —ṣalātikum (5); فَصَلَّاهَا —faṣallāhā (5); صَلُّوهَا —ṣallūhā (5); صَلَّيَا —ṣallayā (5); صَلَّيْتُمْ —ṣallaytum (4); بِالْمُصَلَّى —biālmuṣallā (4); فَصَلَّيْتُمَا —faṣallaytuhumā (5); فَتُصَلِّي —fatuṣallī (4); فَصَلَّاهُمَا —faṣallāhumā (4); فَلْيُصَلُّوا —falyuṣallūā (4); لَأُصَلِّيَ —laʾuṣallī (4); مُصَلِّي —muṣallī (4); وَالصَّلَوَاتِ —wālṣṣalawāti (4); وَتُصَلَّى —watuṣallā (4); وَالْمُصَلَّى —wālmuṣallā (4); وَبِالصَّلَاةِ —wabiālṣṣalāti (4); وَيُصَلُّونَ —wayuṣallūna (4); وَصَلُّوا —waṣallūā (4); وَلْيُصَلِّ —walyuṣalli (4); بِالصَّلَوَاتِ —biālṣṣalawāti (3); يُصَلُّونَهَا —yuṣallūnahā (4); أَصْلِنَا —ʾaṣlinā (3); لِصَلَاتِهِ —biṣalātihi (3); تُصَلِّيهَا —tuṣallīhā (3); فَصَلِّي —faṣallī (3); بِصَلَاتِكَ —liṣalātihi (3); نُصَلِّ —nuṣalli (3); وَأَصْلِ —waʾaṣli (3); وَأَصْلُهُ —waʾaṣluhu (3); وَيُصَلِّيهَا —wayuṣallīhā (3); يُصَلِّيهُ —yuṣalliyahu (3)

Context L2221: ... بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ قَالَ ...

Context L2222: ... الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَتَمْيِيزِهَا مِمَّا ...

17. كَانَ / يَكُون[17]

kāna / yakūn

16,835 occurrences; cumulative coverage 37.37%.

Possible English: be; was; become; occur

Context: كان often puts a description in past time, but a condition, habitual description or accompanying verb can change the best English rendering. مكان is a place, a separate derived noun.

Forms and grammar: كان / كانت = he or it was / she or it was; كانوا = they were; تكون / يكون = is or will be; لم يكن = was not; كنا = we were; كون = being.

Attested spellings and counts

كَانَ —kāna (7,459); يَكُونَ —yakūna (1,925); كَانَتْ —kānat (1,394); تَكُونَ —yakun (955); لَكَانَ —lakāna (605); وَكَانَ —wakāna (599); يَكُنْ —takūna (504); فَكَانَ —fakāna (456); كَانُوا —kānūā (376); مَكَان —makān (278); كُنْت —kunt (266); تَكُنْ —takun (210); كُنَّا —kunnā (176); كَانَا —kānā (140); فَيَكُونُ —fayakūnu (126); وَيَكُونُ —wayakūnu (116); كُنْتُمْ —kuntum (111); الْمَكَانِ —al-makāni (101); وَكَانَتْ —wakānat (96); فَكَانَتْ —kawni (71); مَكَانَهُ —makānahu (71); يَكُونُوا —yakūnūā (69); كَوْنِ —fakānat (60); كَوْنُهُ —kawnuhu (49); لَكَانَتْ —lakānat (47); يَكُونَا —yakūnā (46); كُنَّ —kunna (45); كُونُوا —kūnūā (32); وَتَكُونُ —watakūnu (30); لَكَانُوا —lakānūā (28); وَلَكَانَ —walakāna (25); كَانَتَا —kānatā (24); فَتَكُونُ —fatakūnu (23); فَكُنْتُ —fakuntu (18); وَكَانُوا —wakānūā (18); كَائِنًا —kāʾinan (17); أَكُنْ —ʾakun (13); كَوْنُهَا —kawnuhā (13); لِيَكُونَ —liyakūna (13); مَكَانَهَا —makānahā (13); وَكُنْتُ —wakuntu (13); وَمَكَانٍ —wamakānin (13); فَكَانُوا —fakānūā (12); وَكَانَا —wakānā (12); وَكُنَّا —wakunnā (12); أَكُونَ —ʾakūna (11); تَكُونُوا —takūnūā (11); يَكُونُونَ —yakūnūna (11); لَكَانَا —lakānā (9); يَكُونَانِ —yakūnāni (9); فَلْيَكُنْ —falyakun (7); وَالْمَكَانِ —

[17] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: كون (read dictionary entry).

18. هُوَ / هِيَ[18]

huwa / hiya

16,450 occurrences; cumulative coverage 38.48%.

Possible English: he; she; it; they; a linking or emphatic pronoun

Context: These refer to a previously mentioned noun. Grammatical masculine/feminine does not always correspond to human sex. هو can reinforce identity where English needs only is.

Forms and grammar: هو masculine singular; هي feminine singular; هما dual; هم masculine or mixed plural; هن feminine plural. وهو / فهي add and / so. Independent pronouns differ from attached possession/object suffixes.

wālmakāni (7); وَكَوْنُ —wakawnu (7); وَلْتَكُنْ —waltakun (7); لَكُنْتُمْ — lakuntum (6); مَكَانِكُمْ —makānikum (6); فَكُنَّا —fakunnā (5); لِمَكَانِهَا — limakānihā (5); مَكَانًا —makānan (5); مَكَانَكَ —makānak (5); بِكَوْنِهِ — bikawnihi (4); تَكُونِي —takūnī (4); كَوْنِهِمَا —kawnihimā (4); مَكَانَهُمْ —makānahum (4); نَكُنْ —nakun (4); نَكُونَ —nakūna (4); وَلَتَكُونَنَّ — walatakūnanna (4); وَلَكَانُوا —walakānūā (4); سَيَكُونُ —sayakūnu (3); فَتَكُونُونَ —fatakūnūna (3); مَكَانَيْنِ —makānayni (3); وَكُنْتُمْ —wakuntum (3)

Context L2222: قَوَاعِدِ الْبَرَاهِينِ بِغَيْرِ إِكْثَارٍ لِيَكُونَ مَأْخَذُهُ سَهْلًا عَلَى الطَّالِبِ ... وَالْمُبْتَدِئِ ...

Context L2225: ... عِلْمَ يَقِينٍ وَإِخْلَاصٍ لَا يَكُونُ لِشَيْءٍ مِنْ الشَّكِّ فِيهِ أَثَرٌ ...

Attested spellings and counts

هُوَ —huwa (5,452); وَهُوَ —wahuwa (4,466); فَهُوَ —fahuwa (2,596); هِيَ — hiya (968); وَهِيَ —wahiya (782); وَهُمْ —wahum (756); فَهِيَ —fahiya (542); هُمْ —hum (350); فَهُمْ —fahum (151); وَهُمَا —wahumā (144); هُمَا —humā (86); فَهُمَا —fahumā (82); هُنَّ —hunna (25); وَهُنَّ —wahunna (21); أَهُوَ — ʾahuwa (20); فَهُنَّ —fahunna (9)

Context L2227: ... دِينًا فَلَنْ يُقْبَلَ مِنْهُ وَهُوَ فِي الآخِرَةِ مِنَ الْخَاسِرِينَ آل ...

Context L2228: ... مُحَمَّدٍ وَتَفْسِيرُ هَذِهِ الْجُمْلَةِ هُوَ أَنَّ اللَّهَ تَعَالَى إلَهُ كُلِّ ...

19. أَعْلَى / تَعَالَى / عَلِيّ[19]

ʿaliyy / taʿālā / ʾaʿlā

14,277 occurrences; cumulative coverage 39.45%.

Possible English: high; exalted; higher; ʿAlī

Context: تعالى after the divine name is conventionally Exalted is He. علي often names ʿAlī; do not translate a narrator's name as high. على, upon, is listed separately.

Forms and grammar: علا / يعلو = rose / rises; تعالى is a derived perfect form often used honorifically; أعلى is a comparative/superlative. عليّ = high or the proper name, with case-dependent final vowels.

Attested spellings and counts

تَعَالَى —taʿālā (9,478); عَلِيٌّ —ʿaliyyun (3,868); وَعَلِيّ —waʿaliyyin (219); الْأَعْلَى —al-ʾaʿlā (156); الْعَلَاءِ —al-ʿalāʾi (128); عَلِيًّا —ʿaliyyan (92); يَعْلَى — yaʿlā (85); أَعْلَى —ʾaʿlā (37); الْعَالِيَةِ —al-ʿāliyati (33); لِعَلِيٍّ —liʿaliyyin (27); وَتَعَالَى —wataʿālā (17); وَعَلِيًّا —waʿaliyyan (16); الْعَلِيِّ —al-ʿaliyyi (11); مُعَلًّى — muʿallā (11); الْمُعَلَّى —al-muʿallā (9); عَلَا —ʿalā (9); أَعْلَاهُ —ʾaʿlāhu (8); تَعَالَ — taʿāla (8); بِعَلِيٍّ —biʿaliyyin (7); الْعُلُوِّ —al-ʿuluwwi (6); بِأَعْلَى —biʾaʿlā (6); الْعُلْيَا —al-ʿulyā (5); الْعَوَالِي —al-ʿawālī (5); عُلُوٍّ —ʿuluwwin (5); عَلَوْا —ʿalawā (5); وَيَعْلَى —wayaʿlā (5); عَالٍ —ʿālin (4); وَأَعْلَى —waʾaʿlā (4); وَعُلُوٍّ —waʿuluwwi (4); تَعَالَوْا —taʿālawā (3); وَالْعَلَاءُ —wālʿalāʾu (3); وَتَعَالَيْتَ —wataʿālayta (3)

Context L2221: ... عَلَى مُحَمَّدٍ وَآلِهِ قَالَ عَلِيُّ بْنُ أَحْمَدَ بْنِ سَعِيدِ بْنِ ...

Context L2222: ... عَلَى عَمَلِ ذَلِكَ وَاسْتَعَنْته تَعَالَى عَلَى الْهِدَايَةِ إلَى نَصْرِ الْحَقِّ ...

20. عَبْد / عَبَدَ[20]

ʿabd / ʿabada

14,076 occurrences; cumulative coverage 40.40%.

Possible English: servant; slave; worshipper; worship

Attested spellings and counts

عَبْدِ —ʿabdi (10,681); عُبَيْدٍ —ʿubaydin (1,060); الْعَبْدِ —al-ʿabdi (623); وَعَبْدُ —waʿabdu (404); عَبْدًا —ʿabdan (210); عُبَيْدَةَ —ʿubaydata (149); عَبْدِهِ — ʿabdihi (134); عَبَّادُ —ʿabbādu (108); وَالْعَبْدُ —wālʿabdu (101); وَعُبَيْدُ —

[18]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ها (read dictionary entry); نحن (read dictionary entry).
[19]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: علا (read dictionary entry).
[20]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: عبد (read dictionary entry).

Context: عبد الله is a personal name, ʿAbd Allāh. In legal passages عبد may refer to an enslaved person; in religious description servant or worshipper may fit better.

Forms and grammar: عبد / عبيد / عباد are singular/plural nouns with contextual distinctions. أمة is the corresponding female legal term, not a regular suffix plural. عبد / يعبد = worshipped / worships.

21. لَهُ / لِـ[21]

li / lahu

13,933 occurrences; cumulative coverage 41.34%.

Possible English: to; for; belonging to; his/hers; a particle of emphasis

waʿubaydu (82); الْعَبِيدِ —al-ʿabīdi (62); مَعْبَدٍ —maʿbadin (51); لِلْعَبْدِ — lilʿabdi (49); لِعَبْدٍ —liʿabdi (39); عَبْدَةُ —ʿabdatu (36); الْعَبْدِيِّ —al-ʿabdiyyi (34); عِبَادِهِ —ʿibādihi (24); لِعَبْدِهِ —liʿabdihi (21); عَبْدِي —ʿabdī (19); عِبَادِكُمْ — ʿibādikum (16); لِيَعْبُدُوا —liyaʿbudūā (15); عَبِيدًا —ʿabīdan (13); عَبْدَهَا —ʿabdahā (12); وَالْعَبِيدِ —wālʿabīdi (12); يَعْبُدُ —yaʿbudu (11); الْأَعْبُدِ —al-ʾaʿbudi (10); بِعَبْدٍ —biʿabdin (10); عَبِيدِهِ —ʿabīdihi (10); بِالْعَبْدِ — biālʿabdi (9); الْعِبَادِ —al-ʿibādi (7); عِبَادِي —ʿibādī (6); فَعَبْدُ —faʿabdu (6); عَبْدَيْنِ —ʿabdayni (4); وَعَبْدِهِ —waʿabdihi (5); عَبْدُكَ —ʿabduka (5); أَعْبُدٍ —ʾaʿbudin (5); وَلِلْعَبْدِ — walilʿabdi (4); لِعُبَيْدٍ —liʿubaydi (4); وَعَبَّادٍ —waʿabbādi (4); الْعِبَادَةِ —al-ʿibādati (3); بِعِبَادَةِ —biʿibādati (3); عَابِدَ —ʿābida (3); مُتَعَبِّدُونَ —mutaʿabbidūna (3); نَعْبُدُ —naʿbudu (3); وَأَعْبُدَهُ —waʾaʿbudahu (3); وَعَبْدَةَ —waʿabdata (3)

Context L2225: ... بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ ...

Context L2227: ... تَعَالَى وَمَا أُمِرُوا إِلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ البينة ...

Attested spellings and counts

لَهُ —lahu (6,878); لَهُمْ —lahum (2,300); لَهَا —lahā (1,485); لَنَا —lanā (581); لَكُمْ —lakum (473); لِي —lī (472); لَهُمَا —lahumā (372); لَكَ —lak (370); فَلَهُ — falahu (313); وَلَهُ —walahu (209); لَهُنَّ —lahunna (93); وَلِيُّ —waliyyu (90); فَلَهَا

[21] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: اللام (within لوم) (read dictionary entry).

Context: له can express possession, entitlement or a beneficiary. A prefixed لَ can instead emphasize an assertion; it is not always the preposition لِ.

Forms and grammar: له / لها / لهما / لهم = for him or it / her or it / the two / them. لي = for me; لك = for you; لنا = for us. With ال, لِ + ال becomes لل.

—falahā (81); وَلَهَا —walahā (72); وَلَكَ —walaka (33); وَلَهُمْ —walahum (28); فَلَهُمْ —falahum (18); فَلَهُمَا —falahumā (16); فَلَكَ —falaka (9); وَلَكُمْ — walakum (9); وَلَهُنَّ —walahunna (9); وَلَنَا —walanā (6); وَلَهُمَا —walahumā (6); وَاللَّامِ —wālllāmi (4); فَلَكُمْ —falakum (3); فَلَنَا —falanā (3)

Context L2222: ... عَلَى الطَّالِبِ وَالْمُبْتَدِئِ وَدَرَجًا لَهُ إِلَى التَّبَحُّرِ فِي الْحِجَاجِ وَمَعْرِفَةِ ...

...

Context L2227: ... إِلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ البينة وَالْإِخْلَاصُ فِعْلُ النَّفْسِ ...

...

22. أَوْ[22]

ʾaw

13,854 occurrences; cumulative coverage 42.28%.

Possible English: or; alternatively; sometimes an approximation or division into possibilities

Context: أو normally separates alternatives. Whether those alternatives are exclusive, permissive or a narrator's uncertainty must be read from context; the word alone does not settle that.

Forms and grammar: أو is an indeclinable conjunction, with no tense or plural. Do not confuse it with the question form أَ + و or with أم in a paired question.

Attested spellings and counts

أَوْ —ʾaw (13,854)

Context L2222: ... خَبَرًا ضَعِيفًا فَبَيَّنَّا ضَعْفَهُ أَوْ مَنْسُوخًا فَأَوْضَحْنَا نَسْخَهُ وَمَا تَوْفِيقُنَا

...

Context L2230: ... بَقَاءِ الْجِسْمِ مُتَحَرِّكًا أَوْ سَاكِنًا وَمُدَّةُ وُجُودِ الْعَرَضِ فِي ...

[22] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أوا (read dictionary entry).

23. حَمْد / مُحَمَّد / أَحْمَد[23]

ḥamd / muḥammad / ʾaḥmad

13,740 occurrences; cumulative coverage 43.21%.

Possible English: praise; Muḥammad; Aḥmad; Ḥammād; Ḥumayd

Context: Much of this family's frequency comes from personal names. Muḥammad, Aḥmad and Ḥammād are related name formations, not grammatical cases or interchangeable English translations.

Forms and grammar: حمد / يحمد = praised / praises; حمد = praise; محمود = praised. محمد / أحمد / حماد / حميد are distinct formations and names. Retain each narrator's name rather than translating it literally.

Attested spellings and counts

مُحَمَّدٍ —muḥammadin (8,103); أَحْمَدُ —ʾaḥmadu (2,698); حَمَّادٍ — ḥammādi (1,081); وَمُحَمَّدٌ —wamuḥammadu (325); حُمَيْد —ḥumaydin (300); وَأَحْمَدَ —waʾaḥmada (276); الْحَمْدُ —al-ḥamdu (209); وَالْحَمْدُ —wālḥamdu (203); وَحَمَّاد —waḥammādi (138); الْحَمِيدِ —al-ḥamīdi (103); مَحْمُود —maḥmūdu (49); حَمِدَهُ —ḥamidahu (44); مُحَمَّدًا —muḥammadan (44); وَحُمَيْدٍ —waḥumaydin (33); الْحُمَيْدِيُّ —al-ḥumaydiyyu (21); وَنَحْمَدُ —wanaḥmadu (21); حَمْدٌ —ḥamdu (15); حَامِدُ —ḥāmidu (14); لِمُحَمَّدٍ —limuḥammadi (10); فَحَمِدَ —faḥamida (9); بِحَمْدِ —biḥamdi (7); نَحْمَدُ —naḥmadu (7); وَبِحَمْدِكَ —wabiḥamdika (6); يَحْمَدُ — yaḥmadu (5); بِمُحَمَّدٍ —bimuḥammadi (4); فَلْيَحْمَدْ —falyaḥmad (3); لِأَحْمَدَ — liʾaḥmada (3); وَالْحُمَيْدِيِّ —wālḥumaydiyyi (3); وَحَمِدَ —waḥamida (3); وَمُحَمَّدًا — wamuḥammadan (3)

Context L2221: ... الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ قَالَ عَلِيُّ بْنُ أَحْمَدَ ...

Context L2225: ... مَسْأَلَةٌ قَالَ أَبُو مُحَمَّدٍ رَضِيَ اللَّهُ عَنْهُ أَوَّلُ مَا ...

24. لَمْ[24]

lam

12,613 occurrences; cumulative coverage 44.06%.

Possible English: did not; has not

Attested spellings and counts

لَمْ —lam (8,746); وَلَمْ —walam (2,480); فَلَمْ —falam (1,387)

Context L2222: ... عَلَيْهِ وَسَلَّمَ وَتَمْيِيزِهَا مِمَّا لَمْ يَصِحَّ وَالْوُقُوفِ عَلَى الثِّقَاتِ مِنْ ...

[23] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: حمد (read dictionary entry).
[24] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: لمم (read dictionary entry).

Context: لم negates an imperfect with past-time force. It is a grammatical error to translate it as ordinary present not without considering the clause.

Forms and grammar: لم يقل = he did not say; لم يكن = he was not. ولم / فلم attach and / so. The following verb is jussive and may lose a final weak letter or ن.

25. أَرْسَلَ / رَسُول[25]

rasūl / ʾarsala

9,703 occurrences; cumulative coverage 44.71%.

Possible English: messenger; Messenger; send; transmit without a named intermediary

Context: رسول الله is the Messenger of God. مرسل in hadith discussion can describe a transmission with an omitted link; elsewhere it may simply mean sent or released.

Forms and grammar: رسول / رسل = messenger / messengers. أرسل / يرسل = sent / sends; مرسل is a participial form. رسوله = his messenger. Related forms need different English words.

Context L2228: ... مَا فِيهِ ذُو زَمَانٍ لَمْ يَنْفَكَّ عَنْهُ قَطُّ وَلَا يُتَوَهَّمُ ...

Attested spellings and counts

رَسُولِ —rasūli (7,895); رَسُولِهِ —rasūlihi (388); مُرْسَلٌ —mursalun (300); وَرَسُولُهُ —warasūluhu (178); لِرَسُولِ —lirasūli (136); الْمُرْسَلَ —al-mursala (79); أَرْسَلَ —ʾarsala (51); فَأَرْسَلَ —faʾarsala (46); وَرَسُولُ —warasūlu (46); مُرْسَلًا —mursalan (38); وَالرَّسُولِ —wālrrasūli (38); مُرْسَلَةٌ —mursalatun (35); الرَّسُولَ —al-rasūla (32); أَرْسَلْتَ —ʾarsalta (28); أَرْسَلَهُ —ʾarsalahu (25); بِالْمُرْسَلِ —biālmursali (24); فَمُرْسَلٌ —famursalun (22); وَلِرَسُولِهِ —walirasūlihi (21); الْمَرَاسِيلِ —al-marāsīli (18); بِرَسُولِ —birasūli (18); مُرْسَلَانِ —mursalāni (18); وَالْمُرْسَلُ —wālmursalu (18); فَأَرْسَلَتْ —faʾarsalat (17); يُرْسِلُ —yursilu (16); وَمُرْسَلٌ —wamursalun (15); لِرَسُولِهِ —lirasūlihi (12); أَرْسَلْنَا —ʾarsalnā (11); إِرْسَالِ —ʾirsāli (11); بِمُرْسَلٍ —bimursalin (11); رَسُولًا —rasūlan (11); مُرْسِلِهِ —mursilihi (11); الرُّسُلُ —al-rusulu (10); رُسُلُ —rusulu (8); وَلِلرَّسُولِ —walilrrasūli (8); إِرْسَالُهُ —al-ʾirsāli (7); فَمُرْسَلَانِ —famursalāni (7); الْإِرْسَالِ —ʾirsāluhu (6); الرِّسَالَةِ —al-risālati (6); رُسُلا —rusulā (6); مَرَاسِيلُ —marāsīlu (6); مُرْسَلَاتُ —mursalātun (6); وَأَرْسَلَ —waʾarsala (6); الْمُرْسَلَاتِ

[25] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: رسل (read dictionary entry).

وَرُسُلِهِ —al-mursalāti (5); رُسُلِهِ —rusulihi (5); وَأُرْسِلْتُ —waʾursiltu (5); —warusulihi (5); رِسَالَةٍ —risālatin (4); رِسَالَتَهُ —risālatahu (4); فَأَرْسَلَهُ — faʾarsalahu (4); كَالْمُرْسَلِ —kālmursali (4); يُرْسِلُهُ —yursiluhu (4); أَرْسَلَنِي —ʾarsalanī (3); رَسُولِي —rasūlī (3); فَمُرْسَلَةٌ —famursalatun (3); وَالرِّسَالَةَ — wālrrisālata (3); وَالرُّسُلَ —wālrrusula (3); وَرُسُلًا —warusulā (3)

Context L2222: ... جَمْهَرَةِ السُّنَنِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ...

Context L2225: ... إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ ...

26. كُلّ / كِلَا[26]

kull / kilā

9,571 occurrences; cumulative coverage 45.36%.

Possible English: all; every; each; both

Context: كل with a singular noun often means every; with a plural or pronoun, all. كلاهما means both of them. كلا can also be the particle “by no means”; vowels and syntax matter.

Forms and grammar: كله / كلها / كلهم = all of it / all of it, feminine / all of them. كلا / كلي and كلتا / كلتي are masculine/feminine dual constructions with case changes; they are not plural verbs.

Attested spellings and counts

كُلِّ —kulli (4,553); كُلُّهُ —kulluhu (1,148); وَكُلُّ —wakullu (826); كُلُّهَا —kulluhā (611); كُلُّهُمْ —kulluhum (481); لِكُلِّ —likulli (410); كِلَاهُمَا — kilāhumā (356); فَكُلُّ —fakullu (263); بِكُلِّ —bikulli (173); وَكِلَاهُمَا — wakilāhumā (123); كِلَا —kilā (98); وَكُلُّهُمْ —wakulluhum (64); وَكُلُّهُ — wakulluhu (53); وَلِكُلِّ —walikulli (52); كِلَيْهِمَا —kilayhimā (51); وَكِلَا — wakilā (45); الْكُلِّ —al-kulli (33); وَكُلُّهَا —wakulluhā (27); كِلْتَا —kiltā (25); فَكُلُّهُمْ —fakulluhum (20); كُلُّهُنَّ —kulluhunna (20); فَكُلُّهُ —fakulluhu (19); وَبِكُلِّ —wabikulli (16); فَلِكُلِّ —falikulli (15); فَكُلُّهَا —fakulluhā (13); كُلَّمَا —kullamā (13); فَكِلَاهُمَا —fakilāhumā (12); فَكِلَا —fakilā (9); فَكُلَّمَا —

[26] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: كلل (read dictionary entry); كلا (read dictionary entry).

fakullamā (6); كِلْتَاهُمَا —kiltāhumā (6); كِلْتَيْهِمَا —kiltayhimā (6); وَالْكُلُّ — wālkullu (6); كُلُّنَا —kullunā (5); وَكِلْتَاهُمَا —wakiltāhumā (4); وَكُلُّكُمْ — wakullukum (3); وَكُلَّمَا —wakullamā (3); وَكُلُّنَا —wakullnā (3)

Context L2221: ... أَنْ يُصْحِبَنَا الْعِصْمَةَ مِنْ كُلِّ خَطَإٍ وَزَلَلٍ وَيُوَفِّقَنَا لِلصَّوَابِ فِي ...

Context L2224: ... بَيَان أَوَّل مَا يَلْزَم كُلّ أَحَد وَلَا يَصِحّ الْإِسْلَام إِلَّا ...

27. قَدْ[27]

qad

8,881 occurrences; cumulative coverage 45.96%.

Possible English: already; indeed; has; may; sometimes

Context: قد with a perfect often confirms completion. With an imperfect it can express possibility or frequency. It is not invariably the English modal may.

Forms and grammar: لقد / فقد / وقد add and / so / emphasis. قَدْ قال = has said; قد يقول = may say. The homograph فَقَدَ means lost; its vowels and construction distinguish that verb.

Attested spellings and counts

وَقَدْ —waqad (3,372); قَدْ —qad (3,313); فَقَدْ —faqad (1,932); لَقَدْ — laqad (144); وَلَقَدْ —walaqad (104); فَلَقَدْ —falaqad (16)

Context L2226: ... وَقَدْ رَوَى مَعْنَى هَذَا مُسْنَدًا مُعَاذٌ ...

Context L2232: ... مِنْ وَاحِدٍ أَنْ يَكُونَ قَدْ حَصَرَهُمَا الْعَدَدُ وَكُلُّ مَعْدُودٍ فَذُو ...

28. عُمْرَة / عُمْر / عَمْر / عُمَر[28]

ʿumar / ʿamr / ʿumr / ʿumrah

8,456 occurrences; cumulative coverage 46.53%.

Possible English: ʿUmar; ʿAmr; life; age; ʿumrah; inhabit

Attested spellings and counts

عُمَرَ —ʿumara (5,451); مَعْمَرٍ —maʿmarin (979); عِمْرَانَ —ʿimrāna (275); وَعُمَرَ — waʿumara (260); عَامِرٍ —ʿāmirin (198); الْمُعْتَمِرِ —al-muʿtamiri (193); عَمْرَةَ — ʿamrata (151); الْعُمْرَةِ —al-ʿumrati (147); عَمَّارٍ —ʿammārin (123); وَالْعُمْرَةِ —

[27] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: قدد (read dictionary entry).
[28] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: عمر (read dictionary entry).

Context: عمر and عمرو commonly identify different men. العمرة is the lesser pilgrimage. Do not read every word in this lexical family as a person's name.

Forms and grammar: عُمَر and عَمْرو are different names; the written final و in عمرو distinguishes the name. عُمْر is lifespan; عُمْرة is a ritual noun; عمار / عامر / عمران can be distinct names.

اعْتَمَرَ (57); biʿumratin— بِعُمْرَةٍ (63); wamaʿmarin— وَمَعْمَرٍ (78); wālʿumrati— وَالْعُمْرَةِ (44); ʿumratihi— عُمْرَتِهِ (50); biālʿumrati— بِالْعُمْرَةِ (51); ʾtamara— وَعُمْرَةً (33); waʿumratin— يَعْتَمِرَ (21); yaʿtamira— يَعْمُرَ (21); yaʿmura— مُعْتَمِرُ (15); muʿtamiru— الْعُمَرِيُّ (14); waʿimrāna— وَعِمْرَانَ (15); waʿumratuhu— وَعُمْرَتُهُ (12); al-ʿumariyyu— الْعَامِرِيِّ (11); al-ʿāmiriyyi— مُعْتَمِرًا (12); muʿtamiran— وَعَمَّارٌ (11); waʿammārun— وَالْمُعْتَمِرُ (11); wālmuʿtamiru— عُمْرِهِ (11); ʿumrihi— وَلَعَمْرِي (11); walaʿamrī— الْمُعَمِّرِ (10); al-muʿammiri— أُعْمِرَ (9); ʾuʿmira— عُمْرَتَكَ (7); ʿammāran— عَمَّارًا (8); al-ʿumri— الْعُمْرِ (9); ʿamran— عَمْرًا (7); ʿumratika— فَاعْتَمَرَ (6); taʿtamir— تَعْتَمِرْ (7); wāʿtamara— وَاعْتَمَرَ (6); fāʿtamara— مَعْمَرًا (6); maʿmaran— وَعُمْرَتِكِ (6); waʿumratiki— عُمْرَتِهَا (5); ʿumratihā— فَلَعَمْرِي (5); falaʿamrī— وَيَعْتَمِرَ (5); wayaʿtamira— اعْتَمَرَتْ (4); ʾtamarat— الْعُمْرَانِ (4); al-ʿumrāni— فَعُمَرُ (4); faʿumaru— لَعَمْرِي (4); laʿamrī— وَعَامِرُ (4); waʿāmiru— وَعُمْرَتِهَا (4); waʿumratihā— أَفَأَعْتَمِرُ (3); ʾafaʾaʿtamiru— عُمْرَتِي (3); ʿumratī— عُمِّرَتْ (3); ʿummirat— لِعَمَّارٍ (3); liʿammārin— لِعُمْرَتِهِ (3); liʿumratihi— وَمُعْتَمِرٍ (3); wamuʿtamiri—

Context L2227: ... الآخِرَةِ مِنَ الْخَاسِرِينَ آل عمران وَهُوَ قَوْلُ جَمِيعِ الصَّحَابَةِ وَجَمِيعِ ...

Context L2241: ... اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نا مُحَمَّدُ ...

29. إِلَّا[29]

ʾillā

8,432 occurrences; cumulative coverage 47.10%.

Possible English: except; unless; only in a negative construction

Context: لا … إلا commonly means only: “not … except.” Exceptions can limit an earlier general rule. Keep the negation and exception together.

Forms and grammar: إلا is an indeclinable particle. وإلا can mean otherwise or and if not, depending on construction. Distinguish إلا from إِلَى, to, and إِنْ, if.

Attested spellings and counts

إِلَّا —ʾillā (7,945); وَإِلَّا —waʾillā (487)

Context L2222: ... هَذَا أَنَّنَا لَمْ نَحْتَجَّ إِلَّا بِخَبَرٍ صَحِيحٍ مِنْ رِوَايَةِ الثِّقَاتِ ...

Context L2224: ... أَحَد وَلَا يَصِحّ الْإِسْلَام إِلَّا بِهِ ...

30. إِلَى[30]

ʾilā

8,106 occurrences; cumulative coverage 47.65%.

Possible English: to; toward; up to; until

Context: إلى marks an endpoint in place, time or a range. Whether the endpoint is included in a legal rule is a question of context and argument, not a fixed English gloss.

Forms and grammar: إليه / إليها / إليهم = to him or it / her or it / them; إليك = to you; إلينا = to us. Final ى changes before attached pronouns.

Attested spellings and counts

إِلَى —ʾilā (6,379); إِلَيْهِ —ʾilayhi (912); إِلَيْهَا —ʾilayhā (217); إِلَيَّ —ʾilayya (196); إِلَيْهِمْ —ʾilayhim (146); وَإِلَى —waʾilā (86); إِلَيْنَا —ʾilaynā (84); إِلَيْكَ —ʾilayk (25); إِلَيْهِمَا —ʾilayhimā (22); إِلَيْكُمْ —ʾilaykum (16); فَإِلَى —faʾilā (9); إِلَيْهِنَّ —ʾilayhinna (8); وَإِلَيْهِ —waʾilayhi (6)

Context L2222: ... الطَّالِبِ وَالْمُبْتَدِئِ وَدَرَجًا لَهُ إِلَى التَّبَحُّرِ فِي الْحِجَاجِ وَمَعْرِفَةِ الِاخْتِلَافِ ...

Context L2227: ... لِلدَّمِ وَالْمَالِ مِنْ التَّحْلِيلِ إِلَى التَّحْرِيمِ كَمَا قَالَ رَسُولُ اللَّهِ ...

[29] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: إلا (read dictionary entry).
[30] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: إلى (read dictionary entry).

31. بِـ / بِهِ[31]

bi / bihi

8,106 occurrences; cumulative coverage 48.20%.

Possible English: with; by; through; in; concerning; for

Context: بـ can mark an instrument, cause, accompaniment or the complement of a particular verb. An oath may also begin with it. There is no single English equivalent for every occurrence.

Forms and grammar: به / بها / بهم = with, by or concerning him or it / her or it / them; بي = with me; بنا = with us. بالله attaches the same particle to the divine name.

Attested spellings and counts

بِهِ —bihi (5,017); بِهَا —bihā (1,676); وَبِهِ —wabihi (832); بِهِمْ —bihim (194); بِهِمَا —bihimā (158); بِنَا —binā (63); بِكُمُ —bikumu (53); بِي —bī (48); بِكَ —bik (30); بِهِنَّ —bihinna (16); وَبِهَا —wabihā (16); وَبِهِمَا —wabihimā (3)

Context L2222: ... الْقِيَاسِ وَتَنَاقُضِهِ وَتَنَاقُضِ الْقَائِلِينَ بِهِ فَاسْتَخَرْتُ اللَّهَ عَزَّ وَجَلَّ عَلَى ...

Context L2224: ... وَلَا يَصِحّ الْإِسْلَام إِلَّا بِهِ ...

32. طَرِيق / طُرُق[32]

ṭarīq / ṭuruq

7,769 occurrences; cumulative coverage 48.72%.

Possible English: road; way; method; route of transmission

Context: من طريق فلان generally means through the transmission of a named person. It need not describe travel on a road.

Forms and grammar: طرق / طريق = route / routes; طريقه = his route or method. The word may be grammatically masculine or feminine in usage. طريقيه can be a dual construction with a suffix.

Attested spellings and counts

طَرِيقِ —ṭarīqi (7,410); الطَّرِيقِ —al-ṭarīqi (146); طُرُقٍ —ṭuruqin (67); طَارِقِ —ṭāriqi (41); الطُّرُقُ —al-ṭuruqu (18); وَالطَّرِيقُ —wālṭṭarīqu (11); طُرُقِهِ —ṭuruqihi (10); طَرِيقَيْهِ —ṭarīqayhi (10); طَرِيقًا —ṭarīqan (9); طَرِيقُهُ —ṭarīquhu (9); وَطَارِقٌ —waṭāriqun (7); طَرِيقُهُمَا —ṭarīquhumā (4); الطَّرِيقَيْنِ —al-ṭarīqayni (3); بِطَرِيقِ —biṭarīqi (3); طُرُقُهَا —ṭuruquhā (3); طَرِيقَةً —ṭarīqatan (3); طَرِيقِهَا —ṭarīqihā (3); طَرِيقِهِمْ —ṭarīqihim (3); طَرِيقَيْنِ —ṭarīqayni (3); لِلطَّرِيقِ —lilṭṭarīqi (3); وَالطُّرُقَ —wālṭṭuruqa (3)

Context L2314: ... مَسْأَلَة الصراط حَقّ وَهُوَ طَرِيق بَيْن ظهراني جهنم يَمُرّ عَلَيْهِ ...

[31] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: با (read dictionary entry).
[32] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: طرق (read dictionary entry).

Context L2315: وَأَنَّ الصِّرَاطَ حَقٌّ وَهُوَ طَرِيقٌ يُوضَعُ بَيْنَ ظَهْرَانَيْ جَهَنَّمَ فَيَنْجُو ... ...

33. رِوَايَة / رَوَى[33]

rawā / riwāyah

7,561 occurrences; cumulative coverage 49.23%.

Possible English: narrate; transmit; report; narration

Context: روينا reports receipt/transmission of a report. The text often vowels it رُوِّينا, we were made to receive or were transmitted, whereas رَوَيْنا is we narrated.

Forms and grammar: روى / يروي = narrated / narrates; رَوَيْنا = we narrated; رُوِّينا is a different passive derived form. رواه = he narrated it; روي = it was narrated when read passively. رواية / روايات = narration(s).

Attested spellings and counts

رُوِّينَا —ruwwīnā (1,954); رُوِّينَاهُ —ruwwīnāhu (833); وَرُوِّينَا — waruwwīnā (831); رُوِيَ —ruwiya (618); رِوَايَة —riwāyati (548); وَرُوِيَ —waruwiya (375); الرِّوَايَةُ —al-riwāyatu (262); رَوَاهُ —rawāhu (262); وَرُوِّينَاهُ —waruwwīnāhu (246); رَوَى —rawā (243); فَرُوِّينَا —faruwwīnā (143); وَرَوَاهُ —warawāhu (128); بِرِوَايَة —biriwāyati (97); رِوَايَتِهِ —riwāyatihi (80); رَوَيْتُمْ — rawaytum (71); وَرَوَى —warawā (68); الرِّوَايَاتِ —al-riwāyāti (67); وَرِوَايَةُ — wariwāyatu (46); يَرْوِ —yarwi (42); يَرْوِهِ —yarwihi (42); فَرُوِيَ —faruwiya (35); بِرِوَايَتِهِ —al-rāwī (28); رَاوِي —rāwī (28); وَالرِّوَايَةُ —wālrriwāyatu (26); الرَّاوِي —biriwāyatihi (25); رَاوِيَهُ —rāwiyahu (25); رَوَاهَا —rawāhā (21); رِوَايَاتٌ —riwāyātun (21); يَرْوِي —yarwī (21); الرُّوَاةِ —al-ruwāti (20); رَوَوْا — rawawā (19); رُوِّينَاهَا —ruwwīnāhā (19); رُوِيَتْ —ruwiyat (17); التَّرْوِيَةِ —al-tarwiyati (16); الرِّوَايَتَيْنِ —al-riwāyatayni (16); رَوَيَا —rawayā (16); رَوَيْتُمُوهُ —rawaytumūhu (15); رُوَاتِهِ —ruwātihi (14); فَرَوَى —farawā (13); فَرِوَايَةُ —farawāhu (11); رَوَوْهُ —rawawhu (11); فَرَوَاهُ —farawāhu (11); رَوَتْ —rawat (11); فَرُوِّينَاهُ —faruwwīnāhu (10); رُوَاةِ —ruwāti (9); رَوَيَاهُ —rawayāhu (9); وَرَوَوْا —warawawā (9); بِرِوَايَاتٍ —biriwāyātin (7); رِوَايَتَهَا

[33] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: روي (read dictionary entry).

يُرْوَى —riwāyatahā (7); فَالرِّوَايَةُ —fālrriwāyatu (7); لِرِوَايَةِ —liriwāyati (7); يَرْوِيهِ —yarwīhi (7); الرِّوَايَتَانِ —al-riwāyatāni (6); الْمَرْوِيُّ —al-marwiyyu (6); بِالرِّوَايَةِ —biālrriwāyati (6); رِوَايَتِهِمْ —riwāyatihim (6); رِوَايَتُهُمَا —riwāyatahumā (6); رَوَتْهُ —rawathu (6); رُوِّينَاهُمَا —ruwwīnāhumā (6); وَبِرِوَايَةٍ —wabiriwāyatin (6); يَرْوِهَا —yarwihā (6); مَرْوِيٌّ —marwiyyun (5); وَرُوِيَتْ —waruwiyat (5); الرَّيِّ —al-rayyi (4); لِلرِّوَايَةِ —lilrriwāyati (4); الرَّيَّانِ —al-rayyāni (3); وَرِوَايَاتٌ —wariwāyātun (3); وَرَوَاهَا —warawāhā (3); بِرِوَايَتِهَا —biriwāyatihā (3); وَرَوَيْتُمُوهُ —warawaytumūhu (3)

Context L2222: ... وَالْوُقُوفِ عَلَى الثِّقَاتِ مِنْ رُوَاةِ الْأَخْبَارِ وَتَمْيِيزِهِمْ مِنْ غَيْرِهِمْ ... وَالتَّنْبِيهِ ...

Context L2226: ... وَقَدْ رَوَى مَعْنَى هَذَا مُسْنَدًا مُعَاذٌ وَابْنُ ...

Attested spellings and counts

غَيْرِ —ghayri (2,862); غَيْرِهِ —ghayrihi (1,005); بِغَيْرِ —bighayri (801); وَغَيْرِ —waghayri (316); وَغَيْرِهِ —waghayrihi (301); الْمُغِيرَةِ —al-mughīrati (300); غَيْرِهَا —ghayrihā (266); وَغَيْرِهِمْ —waghayrihim (219); لِغَيْرِ —lighayri (175); غَيْرِهِمْ —ghayrihim (129); لِغَيْرِهِ —lighayrihi (118); وَغَيْرِهَا —waghayrihā (86); غَيْرِهِمَا —ghayrihimā (79); وَغَيْرِهِمَا —waghayrihimā (62); مُغِيرَةُ —mughīratu (39); تَغَيَّرَ —taghayyara (29); بِغَيْرِهِ —bighayrihi (27); يُغَيِّرُ —yughayyir (27); غَيْرِكُمْ —

34. غَيْر[34]

ghayr

7,157 occurrences; cumulative coverage 49.71%.

Possible English: other; different; not; apart from

Context: غير before a noun often corresponds to non- or not. غيره means someone or something other than him/it. المغيرة is a proper name, al-Mughīrah, not a negative construction.

[34]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: غير (read dictionary entry).

Forms and grammar: غيره / غيرها / غيرهم change the referent, not tense. بغير means without or by something other than. غيّر / يغيّر = changed / changes, a different derivation.

35. أَحَد / وَاحِد[35]

wāḥid / ʾaḥad

6,954 occurrences; cumulative coverage 50.18%.

Possible English: one; single; anyone; someone; either one

ghayrikum (24); فَلْيُغَيِّرْهُ —falyughayyirhu (20); وَالْمُغِيرَةِ —wālmughīrati (20); وَبِغَيْرِ —wabighayri (19); غَيْرِي —ghayrī (15); فَغَيْرُ —faghayru (14); مُتَغَايِرَانِ —mutaghāyirāni (13); تَغْيِيرُهُ —taghyīruhu (12); لِغَيْرِهِمَا —lighayrihimā (12); يَتَغَيَّرْ —yataghayyar (12); بِغَيْرِهَا —bighayrihā (11); تَغَيَّرَتْ —taghayyarat (10); غَيْرُكَ —ghayruk (10); لِغَيْرِهَا —lighayrihā (10); تَغْيِيرُ —taghyīru (9); غَيْرِنَا — ghayrinā (8); غَيْرُهُنَّ —ghayruhunna (8); مُتَغَايِرَةٌ —mutaghāyiratun (8); وَلِغَيْرِهِ —walighayrihi (8); لِغَيْرِهِمْ —lighayrihim (7); وَلِغَيْرِ —walighayri (7); كَغَيْرِهِ —kaghayrihi (6); وَغَيْرِهِنَّ —waghayrihinna (6); يُغَيِّرُهُ —yughayyirahu (6); تَتَغَيَّرُ —tataghayyaru (5); غَائِرُ —ghāʾiru (5); التَّغْيِيرُ —al-taghyīru (4); الْغَارِ — al-ghāri (4); تَغَيُّرُهُ —taghayyurahu (4); مُتَغَايِرَيْنِ —mutaghāyirayni (4); غَارٍ — ghārin (3); فَلِغَيْرِهِ —falighayrihi (3); مُتَغَايِرَتَانِ —mutaghāyiratāni (3); وَلِغَيْرِهَا — walighayrihā (3); وَمُغِيرَةُ —wamughīratu (3)

Context L2222: ... فِيهِ عَلَى قَوَاعِدِ الْبَرَاهِينِ بِغَيْرِ إِكْثَارٍ لِيَكُونَ مَأْخَذُهُ سَهْلًا عَلَى ...

Context L2226: ... مُسْنَدًا مُعَاذٌ وَابْنُ عَبَّاسٍ وَغَيْرُهُمْ ...

Attested spellings and counts

أَحَدٍ —ʾaḥadin (2,260); وَاحِدٍ —wāḥidin (979); وَاحِدَةً —wāḥidatan (752); أَحَدُهُمَا —ʾaḥaduhumā (635); لِأَحَدٍ —liʾaḥadin (391); أَحَدًا —ʾaḥadan (329);

[35] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: وحد (read dictionary entry); أحد (read dictionary entry).

Context: أحد in a negative clause often means anyone or no one when combined with negation. إحدى is used with feminine nouns. الواحد may mean the one or the sole.

Forms and grammar: واحد / واحدة show gender; إحداهما / أحدهما = one of the two. وحده = alone; توحيد = affirming oneness, a separate derived noun. أحد can also name Sunday in its weekday construction.

وَحْدَهُ —waḥdahu (246); أَحَدُكُمْ —ʾaḥadukum (216); وَاحِدًا —wāḥidan (182); الْوَاحِدِ —al-wāḥidi (143); إِحْدَاهُمَا —ʾiḥdāhumā (109); أَحَدُهُمْ —ʾaḥaduhum (99); إِحْدَى —ʾiḥdā (94); أَحَدُهَا —ʾaḥaduhā (87); وَأَحَدُ — waʾaḥadu (67); الْوَاحِدَةِ —al-wāḥidati (48); بِأَحَدٍ —biʾaḥadi (37); وَحْدَهَا — waḥdahā (36); لِأَحَدِهِمَا —liʾaḥadihimā (29); فَوَاحِدَةٌ —fawāḥidatun (21); أَحَدُنَا —ʾaḥadunā (20); إِحْدَاهُنَّ —ʾiḥdāhunna (17); بِوَاحِدَةٍ —biwāḥidatin (15); لِوَاحِدٍ —liwāḥidin (15); بِأَحَدِهِمَا —biʾaḥadihimā (13); بِإِحْدَى —biʾiḥdā (13); الْآحَادِ —al-ʾāḥādi (9); فَأَحَدٌ —faʾaḥadu (9); إِحْدَاكُنَّ —ʾiḥdākunna (8); التَّوْحِيدِ — al-tawḥīdi (8); لِإِحْدَاهُمَا —liʾiḥdāhumā (8); إِحْدَاهَا —ʾiḥdāhā (7); فَأَحَدُهُمَا — faʾaḥaduhumā (6); إِحْدَانَا —ʾiḥdānā (5); بِوَاحِدٍ —biwāḥidin (5); لِلْوَاحِدِ — lilwāḥidi (5); وَوَاحِدَةً —wawāḥidatan (5); وَحْدَكَ —waḥdak (4); وَحْدَهُمَا — waḥdahumā (4); آحَادٍ —ʾāḥādin (3); بِإِحْدَاهُمَا —biʾiḥdāhumā (3); بِالتَّوْحِيدِ —biālttawḥīdi (3); حِدَةٍ —ḥidatin (3); لِأَحَدِهِمْ —liʾaḥadihim (3); وَوَاحِدٍ — wawāḥidin (3)

Context L2224: ... كِتَابُ التَّوْحِيدِ مَسْأَلَة بَيَان أَوَّل مَا يَلْزَم ...

Context L2225: ... أَوَّلُ مَا يَلْزَمُ كُلَّ أَحَدٍ وَلَا يَصِحُّ الْإِسْلَامُ إِلَّا بِهِ ...

36. شَيْء / شَاءَ[36]

shayʾ / shāʾa

6,691 occurrences; cumulative coverage 50.64%.

Possible English: thing; something; anything; will; wish

Context: شيء is indefinite and can become anything under negation. إن شاء الله means if God wills. The noun thing and the verb will need distinct English glosses.

Forms and grammar: شيء / أشياء = thing / things; شيئا is commonly an accusative spelling; شيئان / شيئين are dual. شاء / يشاء / شئت / شئنا vary by aspect and subject.

Attested spellings and counts

شَيْءٍ —shayʾin (3,206); شَيْئًا —shayʾan (1,211); شَاءَ —shāʾa (1,049); بِشَيْءٍ —bishayʾin (432); الشَّيْءِ —al-shayʾi (178); شِئْت —shiʾt (153); شَاءَتْ —shāʾat (66); لِشَيْءٍ —lishayʾin (65); أَشْيَاءَ —ʾashyāʾa (64); يَشَاءُ —yashāʾu (64); الْأَشْيَاءِ —al-ʾashyāʾi (50); شِئْتُمْ —shiʾtum (34); شِئْنَا —shiʾnā (14); شَيْئَيْنِ —shayʾayni (13); وَشَيْءٌ —washayʾun (13); بِأَشْيَاءَ —biʾashyāʾa (11); وَالشَّيْءُ —wālshshayʾu (8); مَشِيئَةَ —mashīʾata (7); يَشَأْ —yashaʾ (7); بِالشَّيْءِ —biālshshayʾi (6); فَشَأْنَكَ —fashaʾnaka (6); لِلشَّيْءِ —lilshshayʾi (6); شَيْئَانِ —shayʾāni (5); أَشَاءَ —ʾashāʾa (4); تَشَاءَ —tashāʾa (4); تَشَأْ —tashaʾ (3); شَاءَتَا —shāʾatā (3); شَاءَهُ —shāʾahu (3); وَأَشْيَاءَ —waʾashyāʾa (3); وَشَيْئًا —washayʾan (3)

Context L2225: ... يَقِينٍ وَإِخْلَاصٍ لَا يَكُونُ لِشَيْءٍ مِنْ الشَّكِّ فِيهِ أَثَرٌ وَيَنْطِقَ ...

Context L2228: ... اللَّهَ تَعَالَى إلَهُ كُلِّ شَيْءٍ دُونَهُ وَخَالِقُ كُلِّ شَيْءٍ دُونَهُ ...

37. صَحِيح / صَحَّ[37]

ṣaḥḥa / ṣaḥīḥ

6,634 occurrences; cumulative coverage 51.08%.

Possible English: be sound; be established; be valid; authentic; correct

Attested spellings and counts

صَحَّ —ṣaḥḥa (1,807); فَصَحَّ —faṣaḥḥa (941); يَصِحُّ —yaṣiḥḥu (790); وَصَحَّ —waṣaḥḥa (628); صَحِيحٌ —ṣaḥīḥun (507); صِحَّةِ —ṣiḥḥati (273); صَحِيحَةٍ —ṣaḥīḥatin (222); صَحِيحًا —ṣaḥīḥan (159); الصَّحِيحِ —al-ṣaḥīḥi (140); تَصِحُّ

[36] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: شيأ (read dictionary entry).
[37] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: صحح (read dictionary entry).

Context: A صحيح report is sound/authentic; a صحيح contract or act is valid. صح عندنا means it is established for us. These judgments depend on the type of object under discussion.

Forms and grammar: صح / يصح = was sound / is sound; صحيح / صحيحة show noun agreement; صحة is the abstract noun. صحّح is a derived verb meaning declare sound or correct.

—taṣiḥḥu (139); الصِّحَّة —al-ṣiḥḥati (137); صِحَّته —ṣiḥḥatihi (137); صَحَّتْ —ṣaḥḥat (125); أَصَحُّ —ʾaṣaḥḥu (94); بِأَصَحِّ —biʾaṣaḥḥi (49); بِصِحَّةٍ — biṣiḥḥati (42); صِحَاحٌ —ṣiḥāḥun (31); فَصَحِيحٌ —faṣaḥīḥun (30); صِحَّتِهَا — ṣiḥḥatihā (28); الصِّحَاحِ —al-ṣiḥāḥi (25); الصَّحِيحَةِ —al-ṣaḥīḥati (23); لِصِحَّةٍ —liṣiḥḥati (23); وَالصَّحِيحُ —wālṣṣaḥīḥu (23); صَحَّا —ṣaḥḥā (22); صَحِيحَانِ — ṣaḥīḥāni (22); تَصْحِيحِ —taṣḥīḥi (16); وَصَحَّتْ —waṣaḥḥat (13); يُصَحِّحُهُ — yuṣaḥḥiḥuhu (13); صَحَّحَهُ —ṣaḥḥaḥahu (12); يَصِحَّانِ —yaṣiḥḥāni (11); بِصِحَّتِهِ —biṣiḥḥatihi (9); كَالصَّحِيحِ —kālṣṣaḥīḥi (9); وَيَصِحُّ —wayaṣiḥḥu (9); وَصِحَّةٍ —waṣiḥḥati (8); وَأَصَحُّ —waʾaṣaḥḥu (7); يُصَحِّحَ —yuṣaḥḥiḥa (7); فَصَحَّتْ — faṣaḥḥat (6); تَصْحِيحِهِ —taṣḥīḥihi (5); صَحَّحُوهُ —ṣaḥḥaḥūhu (5); فَتَصِحُّ — fataṣiḥḥu (5); فَيَصِحَّ —fayaṣiḥḥa (5); لِصِحَّتِهِ —liṣiḥḥatihi (5); لِلصَّحِيحِ — lilṣṣaḥīḥi (5); يُصَحِّحُهَا —yuṣaḥḥiḥuhā (5); الصَّحِيحَيْنِ —al-ṣaḥīḥayni (4); بِتَصْحِيحِ —bitaṣḥīḥi (4); صَحَّحَ —ṣaḥḥaḥa (4); صَحِيحَتَانِ —ṣaḥīḥatāni (4); فَكَالصَّحِيحِ —fakālṣṣaḥīḥi (4); نُصَحِّحُهُ —nuṣaḥḥiḥuhu (4); وَصِحَّتِهِ — waṣiḥḥatihi (4); وَصَحِيحِ —waṣaḥīḥi (4); بِالصِّحَّةِ —biālṣṣiḥḥati (3); تَصْحِيحَهَا —taṣḥīḥahā (3); صِحَاحًا —ṣiḥāḥan (3); صَحَّحْتُمْ —ṣaḥḥaḥtum (3); صَحِيحَيْنِ — ṣaḥīḥayni (3); فَصَحُّوا —faṣaḥḥūā (3); فَصَحِيحَانِ —faṣaḥīḥāni (3); لِصِحَّتِهَا — liṣiḥḥatihā (3); وَتَصِحُّ —wataṣiḥḥu (3); يُصَحِّحُونَ —yuṣaḥḥiḥūna (3)

Context L2222: ... وَسَلَّمَ وَتَمْيِيزِهَا مِمَّا لَمْ يَصِحَّ وَالْوُقُوفِ عَلَى الثِّقَاتِ مِنْ رُوَاةِ ...

Context L2224: ... يَلْزَم كُلّ أَحَد وَلَا يَصِحّ الْإِسْلَام إِلَّا بِهِ ...

38. حَجّ / حُجَّة[38]

ḥujjah / ḥajj

6,501 occurrences; cumulative coverage 51.52%.

Possible English: proof; argument; authority; pilgrimage; argue

Context: حجة in a dispute is evidence or argument. الحج is pilgrimage. Shared radicals do not make a proof a grammatical form of the ritual noun.

Forms and grammar: حجة / حجج = proof / proofs; احتج / يحتج = argued or adduced evidence / argues. حج / يحج = performed pilgrimage / performs it; حاجّ = pilgrim. الحجاج may be the proper name al-Ḥajjāj.

Attested spellings and counts

حُجَّةَ —ḥujjata (2,109); الْحَجِّ —al-ḥajji (759); الْحَجَّاجِ —al-ḥajjāji (740); وَاحْتَجَّ —wāḥtajja (267); حَجَّ —ḥajja (205); وَاحْتَجُّوا —wāḥtajjūā (199); الْحُجَّةُ —al-ḥujjatu (191); احْتَجُّوا —ʾḥtajjūā (177); احْتَجَّ —ʾḥtajja (170); يَحْتَجُّ —yaḥtajju (156); احْتِجَاجُهُمْ —ʾḥtijājuhum (128); يَحُجَّ —yaḥujja (116); يَحْتَجُّونَ —yaḥtajjūna (107); بِالْحَجِّ —biālḥajji (96); حَجَّاجٌ —ḥajjājun (90); حَجُّهُ —ḥajjuhu (76); حَاجَةَ —ḥājata (62); احْتِجَاجُ —ʾḥtijāju (56); وَالْحَجِّ —wālḥajji (43); حَاجَتُهُ —ḥājatahu (31); بِحُجَّةٍ —biḥujjatin (35); احْتَجَّتْ —ʾḥtajjat (33); نَحْتَجَّ —naḥtajja (31); وَالْحُجَّةُ —wālḥujjatu (31); وَحُجَّةُ —waḥujjatu (30); حَجًّا —ḥajjan (29); الْحَاجُّ —al-ḥājju (22); الْمُحْتَجِّينَ —al-muḥtajjīna (21); بِحَجٍّ —biḥajjin (21); تَحُجَّ —taḥujja (21); الْحَاجَةِ —al-ḥājati (20); حُجَّتَهُمْ —ḥujjatahum (19); يَحْتَجُّوا —yaḥtajjūā (19); فَاحْتَجُّوا —fāḥtajjūā (18); حَاجًّا —ḥājjan (17); الْمُحْتَجِّ —al-muḥtajji (16); لِلْحَجِّ —lilḥajji (16); وَالْحَجَّاجُ —wālḥajjāju (16); وَحَجِّهِ —waḥajjuhu (14); فَحَجَّهُ —faḥajjuhu (12); احْتَجَجْتُمْ —ʾḥtajajtum (11); لِحَاجَةٍ —liḥājatin (11); لِحَاجَتِهِ —liḥājatihi (10); حُجَّتُنَا —ḥujjatunā (9); حَجَجْتَ —ḥajajt (9); حُجَّتِهِ —ḥujjatihi (8);

[38] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: حجج (read dictionary entry).

حَجِّكَ —ḥajjika (8); وَاحْتِجَاجٌ —wāḥtijājun (8); وَاحْتِجَاجُهُمْ —wāḥtijājuhum (8); حَجَّتْ —ʾafaʾaḥujju (7); أَفَأَحُجُّ —wayaḥtajjūna (8); وَيَحْتَجُّونَ —waḥajjin (8); وَحَجٍّ —ḥajjat (7); حَجُّهَا —ḥajjuhā (7); لِحَجِّهِ —liḥajjihi (7); لِلْحَاجِّ —lilḥājji (7); احْتِجَاجًا — فَاحْتَجَّ —ʾḥtijājan (6); احْتِجَاجِهِ —ʾḥtijājihi (6); حَاجٌّ —ḥājjun (6); حُجِّي —ḥujjī (6); فَحَجَّ —fāḥtajja (6); فَحَجَّ —faḥajja (6); كَالْحَجِّ —kālḥajji (6); مُحْتَجٌّ —muḥtajjun (6); وَحَجَّاجُ —waḥajjāju (6); وَيَحْتَجُّ —wayaḥtajju (6); احْتِجَاجَكُمْ —ʾḥtijājakum (5); الْمُحْتَجُّونَ —al-muḥtajjūna (5); فَيَحُجَّ —fayaḥujja (5); لَحُجَّةٌ —laḥujjatun (5); لِحَجِّكِ —liḥajjiki (5); وَحُجَّتُهُمْ —waḥujjatuhum (5); الْحُجَجِ —al-ḥujaji (4); تَحْتَجُّونَ —taḥtajjūna (4); لِيَحُجَّ — فَيُحْتَجُّ —fayuḥtajju (4); فَحُجَّةٌ —faḥujjatun (4); liyaḥujja (4); احْتَجَجْنَا —ʾḥtajajnā (3); الْمَحْجُوجِ —al-maḥjūji (3); حَجِّهِمْ — ḥajjihim (3); فَالْحَجُّ —fālḥajju (3); فَالْحَجَّ —ḥajjihimā (3); فَالْحُجَّةُ —fālḥujjatu (3); لِلْحَاجَةِ —lilḥājati (3); لِاحْتِجَاجِهِمْ —liāḥtijājihim (3); فَيَحْتَجُّوا —fayaḥtajjūā (3); وَلِلْحَجِّ —walilḥajji (3); وَيَحُجَّ —waḥajajt (3); وَحَجَجْتَ —waḥujjatunā (3); وَحُجَّتُنَا —wayaḥujja (3)

Context L2222: ... لَهُ إِلَى التَّبَحُّرِ فِي الْحِجَاجِ وَمَعْرِفَةِ الِاخْتِلَافِ وَتَصْحِيحِ الدَّلَائِلِ ... الْمُؤَدِّيَةِ ...

Context L2225: ... عَلِيٌّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا أُمَيَّةُ بْنُ بِسْطَامٍ نا ...

39. ذِكْر / ذَكَرَ[39]

dhakara / dhikr

6,325 occurrences; cumulative coverage 51.95%.

Possible English: mention; remember; cite; recollection; male

Context: ذكرنا commonly refers back: we mentioned. ذَكَر as a noun can mean male in legal classifications. Vowels and surrounding syntax separate it from the verb.

Forms and grammar: ذكر / يذكر = mentioned / mentions; ذكرنا = we mentioned; ذكره = he mentioned it or mention of it, depending on vowels. مذكور / مذكورة = aforementioned, agreeing with the noun.

Attested spellings and counts

ذَكَرْنَا —dhakarnā (2,047); ذَكَرَ —dhakara (884); وَذَكَرَ —wadhakara (329); فَذَكِّرْ —fadhakara (312); الْمَذْكُورِ —al-madhkūri (302); يَذْكُرُ —yadhkur (242); ذَكَّرْنَاهُ —dhakarnāhu (228); ذَكَرُوا —dhakarūā (196); وَذَكَرُوا —wadhakarūā (158); الْمَذْكُورَةِ —al-madhkūrati (154); نَذْكُرُ —nadhkuru (124); الذِّكْرِ —al-dhakari (123); ذَكَّرَهُ —dhakarahu (116); فَذَكَّرَتْ —fadhakarat (71); نَذْكُرُهُ —nadhkuruhu (71); مَذْكُورٌ —madhkūrun (68); ذَاكِرًا —dhākiran (45); ذَكَّرَهَا —dhakarahā (45); ذَكَرًا —dhakaran (43); ذَاكِرٌ —dhākirun (40); ذَكَرَتْ —dhakarat (38); بِذِكْرِ —bidhikri (28); فَذَكِّرْهُ —fadhakarahu (28); تَذْكُرُ —tadhkuru (25); ذَكَّرْنَاهَا —dhakarnāhā (24); نَذْكُرُهَا —nadhkuruhā (24); يَذْكُرُونَ —yadhkurūna (23); وَنَذْكُرُ —wanadhkuru (21); وَذَكَرَتْ —wadhakarat (20); الذُّكُورِ —al-dhukūri (18); الْمَذْكُورَاتِ —al-madhkūrāti (18); سَنَذْكُرُهُ —sanadhkuruhu (18); وَسَنَذْكُرُ —wasanadhkuru (18); وَذَكَّرْنَا —wadhakarnā (17); يَذْكُرْهَا —yadhkurhā (17); ذُكُورِ —dhukūri (15); وَذَكَّرَهُ —wadhakarahu (14); يَذْكُرْهُ —yadhkurhu (14); ذَكَّرُوهُ —dhakarūhu (13); لِذِكْرِهِ —lidhikrihi (13); لِلذِّكْرِ —lildhdhakari (13); يَذْكُرُوا —yadhkurūā (12); لِذِكْرِ —lidhikri (11); ذَاكِرُونَ —dhākirūna (11); فَذَكَّرُوا —fadhakarūā (11); وَالذِّكْرُ —wāldhdhakaru (11); وَسَنَذْكُرُهُ —wasanadhkuruhu (11); يَذْكُرَا —yadhkurā (11); أَذْكُرَ —ʾadhkura (9); فَلْنَذْكُرْ —falnadhkur (9); وَيَذْكُرُ —wayadhkuru (9); بِذِكْرِهِ —bidhakarihi (8); ذُكُورًا —dhukūran (8); مَذْكُورًا —

[39] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ذكر (read dictionary entry).

madhkūran (8); فَذَكَّرَهَا —fadhakarahā (7); وَاذْكُرْ —wādhkur (7); بِالذِّكْرِ — biāldhdhakari (6); فَاذْكُرُوا —fādhkurūā (6); الْمَذْكُورُونَ —al-madhkūrūna (5); ذَكَّرَهُمْ —dhakarahum (5); ذِكْرِي —dhakarī (5); فَاذْكُرْ —fādhkur (5); فَنَذْكُرُ — fanadhkuru (5); وَاذْكُرُوا —wādhkurūā (5); الذَّاكِرَ —al-dhākira (4); ذُكُورِهِمْ —dhukūrihim (4); فَذَكَّرَا —fadhakarā (4); فَلِلذِّكْرِ —falildhdhakari (4); مَذْكُورَةً —madhkūratan (4); يَذْكُرَانِ —yadhkurāni (4); الْمَذْكُورَانِ — al-madhkūrāni (3); ذَكَّرَكَ —dhakaraka (3); ذَكَّرْنَاهُمْ —dhakarnāhum (3); ذَكَّرَهُمَا —dhakarahumā (3); ذُكُورِهَا —dhukūrihā (3); فَذَكَّرْتُه —fadhakarth (3); فَذَكَّرْنَا —fadhakarnā (3); فَذَكِّرْهُنَّ —fadhakkarahunna (3); لِذُكُورِهِمْ — lidhukūrihim (3); لِلذُّكُورِ —lildhdhukūri (3); مَذْكُورَانِ —madhkūrāni (3); وَنَذْكُرُهُ —wanadhkuruhu (3); وَيَذْكُرُوا —wayadhkurūā (3)

Context L2230: ... وَإِذْ الزَّمَانُ مُدَّةٌ كَمَا ذَكَرْنَا فَهُوَ عَدَدٌ مَعْدُودٌ وَيَزِيدُ بِمُرُورِهِ ...

Context L2232: ... مَعْدُودٍ فَذُو نِهَايَةٍ كَمَا ذَكَرْنَا وَكُلُّ ذِي نِهَايَةٍ فَمُحْدَثٌ وَأَيْضًا ...

40. مَسْأَلَة / سَأَلَ[40]

saʾala / masʾalah

6,205 occurrences; cumulative coverage 52.37%.

Possible English: ask; question; issue; legal problem

Context: مسألة labels a legal issue, not necessarily a question someone actually asked. سئل introduces a question addressed to a person.

Attested spellings and counts

مَسْأَلَةٌ —masʾalatun (4,484); سَأَلْت —saʾalt (263); سُئِلَ —suʾila (227); الْمَسْأَلَة —al-masʾalati (166); سَأَلَ —saʾala (161); يَسْأَلُ —yasʾalu (76); سَأَلَهُ — saʾalahu (67); فَسَأَلَ —fasaʾala (53); وَنَسْأَلُ —wanasʾalu (52); فَسَأَلْت — fasaʾalt (51); فَسَأَلَهُ —fasaʾalahu (30); نَسْأَلُهُمْ —nasʾaluhum (25); وَنَسْأَلُهُمْ —

[40] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: سأل (read dictionary entry).

Forms and grammar: سأل / يسأل = asked / asks; سئل = was asked; سألت can be I or you asked according to its final vowel. مسائل / مسألة = issue / issues; سؤاله = his question.

سَائِلٌ —sāʾilun (23); السُّؤَالِ —al-suʾāli (23); سَأَلَتْهُ —saʾalathu (24); wanasʾaluhum (25); وَسُئِلَ —wasuʾila (23); فَسَأَلْته —fasaʾalth (22); يَسْأَلُهُ — yasʾaluhu (22); السَّائِلُ —al-sāʾilu (21); سَأَلُوا —saʾalūā (17); الْمَسَائِلِ — al-masāʾili (15); نَسْأَلُ —nasʾalu (13); يُسْأَلُونَ —yusʾalūna (15); وَسَأَلْت —wasaʾalt (14); فَسُئِلَ — fasuʾila (10); مَسَائِلُ —masāʾilu (12); سَأَلْنَاهُمْ —saʾalnāhum (11); وَسَأَلْته —wasaʾalth (10); أَسْأَلُ —ʾasʾalu (9); تَسْأَلُ —tasʾalu (9); يَسْأَلُهَا —yasʾaluhā (9); أَسْأَلُهُ —ʾasʾaluhu (8); فَسَأَلْتهَا —fasaʾalathā (8); فَسَأَلَهَا —fasaʾalahā (8); وَيُسْأَلُونَ —wayusʾalūna (8); فَنَسْأَلُهُمْ —fanasʾaluhum (8); سَأَلَنِي —saʾalanī (7); سُئِلَتْ —suʾilat (7); فَنَسْأَلُ —fanasʾalu (7); الْمَسْأَلَتَيْنِ — al-masʾalatayni (6); سَأَلْنَا —saʾalnā (6); سُؤَالِ —suʾāli (6); سُئِلُوا —suʾilūā (6); سَلْ —sal (6); فَسَأَلُوا —fasaʾalūā (6); نَسْأَلُكُمْ —nasʾalukum (6); وَسَأَلَهُ — wasaʾalahu (6); وَنَسْأَلُهُ —wanasʾaluhu (6); سَأَلْتَنِي —saʾaltanī (5); سَأَلْنَاهُ —saʾalnāhu (5); سَائِلًا —sāʾilan (5); فَسَأَلْنَاهُ —fasaʾalnāhu (5); فَسَأَلُوهُ — fasaʾalūhu (5); مَسْأَلَتِنَا —masʾalatinā (5); وَسَأَلَ —wasaʾala (5); يَسْأَلُونَكَ — yasʾalūnaka (5); تَسْأَلُنِي —tasʾalunī (4); سَأَلْنَاكُمْ —saʾalnākum (4); سَأَلَهَا — saʾalahā (4); سَأَلَهُمْ —saʾalahum (4); سُئِلَهَا —suʾilahā (4); فَسَأَلْنَا —fasaʾalnā (4); فَسَأَلَهُمْ —fasaʾalahum (4); فَسَأَلُوهَا —fasaʾalūhā (4); فَسَلْ —fasal (4); وَيَسْأَلُ —wayasʾalu (4); وَيَسْأَلُونَكَ —wayasʾalūnaka (4); أَسْأَلُك —ʾasʾaluk (3); تَسْأَلُهُ —tasʾaluhu (3); سُؤَالِهِمْ —suʾālihim (3); سَائِلَةٌ —sāʾilatun (3); فَسَأَلَنِي — fasaʾalanī (3); فَسَأَلُوهُمْ —fasaʾalūhum (3); مَسَائِلِهِمْ —masāʾilihim (3); يَسْأَلُنِي — yasʾalunī (3)

Context L2221: ... النَّبِيِّينَ وَالْمُرْسَلِينَ وَسَلَّمَ تَسْلِيمًا وَنَسْأَلُ اللَّهَ تَعَالَى أَنْ يُصْحِبَنَا الْعِصْمَةَ ...

Context L2222: ... الْهِدَايَةِ إِلَى نَصْرِ الْحَقِّ وَسَأَلْته التَّأْيِيدَ عَلَى بَيَانِ ذَلِكَ وَتَقْرِيبِهِ ...

41. إِذَا[41]

ʾidhā

5,944 occurrences; cumulative coverage 52.77%.

Possible English: when; whenever; if; suddenly in a different construction

Context: إذا commonly introduces an expected or recurring situation. Whether English if or when is smoother depends on the legal hypothetical and its result clause.

Forms and grammar: فإذا / وإذا attach so / and. إذا does not inflect for tense or referent; the following verb carries those changes. Distinguish it from إذ, when in a past narrative.

Attested spellings and counts

إِذَا —ʾidhā (4,192); فَإِذَا —faʾidhā (1,240); وَإِذَا —waʾidhā (512)

Context L2225: ... بِي وَبِمَا جِئْتُ بِهِ فَإِذَا فَعَلُوا ذَلِكَ عَصَمُوا مِنِّي دِمَاءَهُمْ ...

Context L2232: ... وَمِمَّا غَايَرَ بِهِ الْآخَرَ وَإِذَا كَانَ مُرَكَّبًا فَهُوَ مَخْلُوقٌ مُدَبَّرٌ ...

42. اخْتَلَفَ / خِلَاف[42]

khilāf / *ʾkhtalafa*

5,862 occurrences; cumulative coverage 53.17%.

Possible English: disagreement; difference; oppose; behind; successor

Context: خلاف فلان often means disagreement with someone's position. اختلفوا means they differed. خلف can also be a personal name or indicate behind; read its vowels and construction.

Attested spellings and counts

خِلَافَ —khilāfa (1,192); مُخَالِفٌ —mukhālifun (513); اخْتَلَفَ —ʾkhtalafa (294); بِخِلَافِ —bikhilāfi (286); خَالَفَ —khālafa (281); خَالَفُوا —khālafūā (234); اخْتَلَفُوا —ʾkhtalafūā (191); خَلْفَ —khalfa (164); يَخْتَلِفُ —yakhtalifu (145); خِلَافُهُ —khilāfuhu (141); يَخْتَلِفُونَ —yakhtalifūna (107); وَاخْتَلَفَ —wākhtalafa (99); مُخَالِفَةٌ —mukhālifatun (90); خَالَفَهُ —

[41] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: إذا (read dictionary entry).
[42] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: خلف (read dictionary entry).

Forms and grammar: خالف / يخالف = opposed / opposes; اختلف / يختلف = differed / differs. مخالف = one who disagrees; اختلاف is the abstract noun. خليفة and خلاف are separate derivations.

khālafahu (78); اخْتِلَافَ —ʾkhtilāfa (70); خَالَفُوهُ —khālafūhu (70); مُخَالِفًا —mukhālifan (68); مُخَالِفُونَ —mukhālifūna (66); الْمُخَالِفِينَ —al-mukhālifīna (61); وَخِلَافٌ —wakhilāfun (59); يُخَالِفُ —yukhālifu (56); خَلْفَهُ —khalfahu (53); خِلَافًا —khilāfan (52); خِلَافِهَا —khilāfuhā (47); وَخَالَفُوا —wakhālafūā (45); الْمُخَالِفُونَ —al-mukhālifūna (43); وَاخْتَلَفُوا —wākhtalafūā (43); وَخَالَفَ —wakhālafa (41); مُخَالِفِينَ —mukhālifīna (32); خَلِيفَةَ —khalīfata (33); مُخْتَلِفَةٌ —mukhtalifatun (39); الْخِلَافُ —al-khilāfu (31); اخْتَلَفَتْ —ʾkhtalafat (30); بِاخْتِلَافٍ —biākhtilāfin (29); وَخَالَفَهُ —wakhālafahu (28); تَخْتَلِفُ —takhtalifu (27); خِلَافِهِمْ —khilāfuhum (27); فَخَالَفُوا —fakhālafūā (25); يُخَالِفُهُ —yukhālifuhu (25); يُخَالِفُونَ —yukhālifūna (25); خَالَفَنَا —khālafanā (24); الْمُخَالِفُ —al-mukhālifu (23); مُخْتَلِفٍ —mukhtalafin (21); فَخَالَفُوهُ —fakhālafūhu (19); يَخْتَلِفُوا —yakhtalifūā (19); اخْتِلَافًا —ʾkhtilāfan (17); خِلَافَةِ —khilāfati (17); مُخَالَفَتُهُ —mukhālafatuhu (17); مُخْتَلِفِينَ —mukhtalifīna (17); نُخَالِفُهُمْ —nukhālifuhum (17); بِخِلَافِهِ —bikhilāfihi (16); بِمُخَالَفَةِ —bimukhālafati (16); خَالَفَهَا —khālafahā (16); خَالَفُوهَا —khālafūhā (16); اخْتِلَافِهِمْ —ʾkhtilāfihim (15); الْخَلِيفَةِ —al-khalīfati (15); خَالَفَهُمَا —khālafahumā (15); فَخَالَفَ —fakhālafa (15); خَالَفْتُمْ —khālaftum (14); فَاخْتَلَفَ —fākhtalafa (13); اخْتَلَفَا —ʾkhtalafā (12); خِلَافَتِهِ —khilāfatihi (12); مُخْتَلِفًا —mukhtalifan (12); مُخْتَلِفُونَ —mukhtalifūna (12); وَمُخَالَفَةِ —wamukhālafati (12); الْخُلَفَاءُ —al-khulafāʾu (11); خَالَفَتْ —khālafat (11); خَالَفَهُمْ —khālafahum (11);

خَلْفَهَا —khalfahā (11); وَالْخِلَافُ —wālkhilāfu (11); اسْتَخْلَفَ —ʾstakhlafa (10); الْخِلَافَةُ — al-khilāfatu (9); مُخْتَلِفَانِ —mukhtalifāni (10); وَمُخَالِفٌ —wamukhālifun (10); تَخَلُّفِهِ —takhallufihi (9); خَالَفْتُمُوهُ —khālaftumūhu (9); فَمُخَالِفٌ —famukhālifun (9); مُخَالِفَانِ —mukhālifāni (9); يَتَخَلَّفُ — yatakhallafu (9); يَخْلُفُ —yakhlufu (9); بِخِلَافِهَا —bikhilāfihā (8); تَخَلَّفَ —takhallafa (8); خَالَفَا —khālafā (8); خَالَفْنَاهُ —khālafnāhu (8); خَالَفُوهُمَا —khālafūhumā (8); مُخَالِفِينَا —mukhālifīnā (8); نُخَالِفُ —nukhālifu (8); وَخَلْفَ —wakhalfa (8); يُخَالِفُونَهُ —yukhālifūnahu (8); اخْتَلَفْنَا —ʾkhtalafnā (7); التَّخَلُّفِ —al-takhallufi (7); الْمُخْتَلِفَةِ —al-mukhtalifati (7); خَالَفْتُمُوهَا — khālaftumūhā (7); فَبِخِلَافِ —fabikhilāfi (7); فَخِلَافٌ —fakhilāfun (7); وَمُخَالِفًا —wamukhālifan (7); أَخْلَفَ —ʾakhlafa (6); تَخْتَلِفُوا —takhtalifūā (6); مُخَالَفَتِهِمْ — mukhālafatihim (6); خِلَافُهُمَا —khilāfuhumā (6); خَالَفْنَاهُمْ —khālafnāhum (6); وَاسْتَخْلَفَ —wāstakhlafa (6); نُخَالِفُهُ —nukhālifuhu (6); يُخَالِفُونَنَا — yukhālifūnanā (6); يُخَالِفُهُمْ —yukhālifuhum (6); وَخَالَفَهُمْ —wakhālafahum (6); الْمُسْتَخْلَفُ —al-mustakhlifu (5); بِخِلَافِهِمْ —bikhilāfihim (5); خَلْفِي —khalfī (5); فَمُخْتَلَفٌ —famukhtalafun (5); لِاخْتِلَافِ —liākhtilāfi (5); لِخِلَافِهِ —likhilāfihi (5); نَخْتَلِفُ —nakhtalifu (5); يُخَلِّفُهُ —yukhallifuhu (5); الْمُخَلَّفُونَ —al-mukhallafūna (4); تَخْتَلِفُونَ —takhtalifūna (4); خَالَفَتْهُ — khālafathu (4); خُلُوفٌ —khulūfun (4); خَالَفُوهُمْ —khālafūhum (4); فَخَالَفْتُمُوهُ

—fakhālaftumūhu (4); فَخَالَفَهُ —fakhālafahu (4); فَخَالَفُوهُمْ —fakhālafūhum (4); فَخَالَفُوهُمَا —fakhālafūhumā (4); فَخَلَفَ —fakhalafa (4); لِخِلَافِ —likhilāfi (4); لِلْمُخَالِفِ —lilmukhālifi (4); مُخْتَلِفَتَيْنِ —mukhtalifatayni (4); وَبِخِلَافِ —wabikhilāfi (4); وَخَالَفَهُمَا —wakhālafahumā (4); وَخَالَفُوهُ —wakhālafūhu (4); وَخِلَافًا —wakhilāfan (4); وَمُخَالَفَتُهُمْ —wamukhālafatuhum (4); يُخَالِفُنَا —yukhālifunā (4); يَخْتَلِفَانِ —yakhtalifāni (4); يَسْتَخْلِفْ —yastakhlif (4); الْخَلِيفَتَيْنِ —al-khalīfatayni (3); اسْتَخْلَفَهُ —ʾstakhlafahu (3); أُخَالِفَكُمْ —ʾukhālifakum (3); الْمُخَالِفَةِ —al-mukhālifati (3); الْمُخْتَلَفِ —al-mukhtalafi (3); تُخَالِفَ —tukhālifa (3); تُخَالِفُهُ —tukhālifuhu (3); خَالَفُونَا —khālafūnā (3); لِمُخَالَفَةِ —limukhālafati (3); مُخَالَفَتِكُمْ —mukhālafatikum (3); نُخَالِفْكُمْ —nukhālifkum (3); وَأَخْلِفْ —waʾakhlif (3); وَاخْتَلَفَا —wākhtalafā (3); وَتَخْتَلِفُ —watakhtalifu (3); وَخَلْفَهُ —wakhalfahu (3); وَمُخَالَفَتِهِ —wamukhālafatihi (3); وَيُخَالِفُهُ —wayukhālifuhu (3)

... رِوَايَةِ الثِّقَاتِ مُسْنَدٍ وَلَا خَالَفْنَا إِلَّا خَبَرًا ضَعِيفًا فَبَيَّنَّا ضَعْفَهُ ... :Context L2222

... وَاحِدٌ وَلَا بُدَّ وَأَنَّهُ بِخِلَافِ خَلْقِهِ مِنْ جَمِيعِ الْوُجُوهِ وَالْخَلْقُ ... :Context L2232

43. الَّتِي / الَّذِي[43]

al-dhī / al-tī

5,669 occurrences; cumulative coverage 53.55%.

Possible English: who; which; that

Attested spellings and counts

الَّذِي —al-dhī (3,116); الَّتِي —al-tī (1,458); الَّذِينَ —al-dhīna (457); وَالَّذِي — waāalladhī (186); وَالَّذِينَ —wālladhīna (95); لِلَّذِي —lilladhī (80); وَالَّتِي —

[43]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: لذا (read dictionary entry).

Context: A relative pronoun links a noun to a defining or descriptive clause. Its gender and number identify the antecedent, while a later suffix can refer back to it.

Forms and grammar: الذي masculine singular; التي feminine singular; اللذان / اللذين masculine dual; اللتان / اللتين feminine dual; الذين masculine plural; اللاتي / اللواتي feminine plural.

44. بَيْن / بَيَان / بَيِّنَة[44]

bayn / bayān / bayyinah

5,538 occurrences; cumulative coverage 53.92%.

Possible English: between; among; explanation; clear evidence

Context: بين فلان وفلان locates a relation between people. بيّنة in legal procedure is evidence; بيان in argument is clarification. They are related derived nouns, not pronoun changes.

Forms and grammar: بينهم / بينهما = between the two / among them. بيّن / يبيّن = explained / explains; بيّنة / بيّنات = evidence(s). Vowels distinguish forms that share the same letters.

waāallatī (46); اللاتِي —al-lātī (27); اللَّذَيْنِ —al-ladhayni (25); لِلَّتِي —lillatī (25); فَالَّذِي —faāalladhī (21); اللَّوَاتِي —al-lawātī (20); اللَّذَانِ —al-ladhāni (18); اللَّتَيْنِ —lilladhīna (13); لِلَّذِينَ —wāllāʾī (18); اللَّائِي —al-lāʾī (15); وَاللائِي —al-latayni (11); وَاللاتِي —wāllātī (11); فَالَّتِي —faāallatī (9); وَاللَّذَانِ — wāllladhāni (6); وَلِلَّذِي —walilladhī (5); اللَّتَانِ —al-latāni (4); وَلِلَّتِي — walillatī (3)

Context L2222: أَنْ نَعْمَلَ لِلْمَسَائِلِ الْمُخْتَصَرَةِ الَّتِي جَمَعْنَاهَا فِي كِتَابِنَا الْمَوْسُومِ ... بِالْمُحَلَّى ...

Context L2234: ...يَزَلْ فَكَانَ يُبْطِلُ التَّوْحِيدَ الَّذِي قَدْ أَبَنَّا بُرْهَانَهُ آنِفًا وَالثَّانِي ...

Attested spellings and counts

بَيْنَ —bayna (1,999); وَبَيْنَ —wabayna (695); بَيْنَهُمَا —baynahumā (451); بَيَانٌ —bayānun (235); بَيِّنَةٌ —bayyinatun (178); بَيْنَهُمْ —baynahum (164); بَيْنَهُ —baynahu (143); الْبَيِّنَةَ —al-bayyinata (125); بَيْنَكُمْ —baynakum (112); بَيَّنَّا —bayyannā (96); يُبَيِّنُ —yubayyinu (95); أَبَانَ —ʾabāna (69); بِبَيِّنَةٍ — bibayyinatin (54); الْبَيَانِ —al-bayāni (48); بَائِنَةٌ —bāʾinatun (47); يَتَبَيَّنَ —yatabayyana (46); نُبَيِّنُ —nubayyinu (45); لَبَيَّنَهُ —labayyanahu (41); وَبَيْنَهُ —wabaynahu (37); بَيْنَهَا —baynahā (36); لِتُبَيِّنَ —litubayyina (36); تَبَيَّنَ —tabayyana (35); بِبَيَانٍ —bibayāni (34); بِالْبَيِّنَةِ —biālbayyinati (33); بَيْنَنَا —baynanā (31); فَبَيَّنَ —fabayyana (29); مُبَيِّنًا —mubayyanan (27);

[44]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: بين (read dictionary entry).

يُبَيِّنُهُ —yubayyinahu (25); بَانَتْ —bānat (23); بَيْنِي —baynī (23); وَبَيَّانُ —wabayānu (23); وَبَيْنَهُمْ —wabaynahum (22); مُبِينٍ —mubīnin (21); الْمُبِينُ —al-mubīnu (20); بَيْنَمَا —baynamā (20); بَيَّانًا —bayānan (18); بَائِنًا —bāʾinan (17); بِالْبَيَانِ —biālbayāni (17); بَيَّنْتُكَ —bayyinatuka (16); وَبَيَّنَّا —wabayyannā (15); وَيُبَيِّنُ —wayubayyinu (15); وَبَيْنَهَا —wabaynahā (15); تِبْيَانًا —tibyānan (14); لَبَيَّنَ —labayyana (14); بَيْنَهُنَّ —baynahunna (13); مُبَيِّنَةٍ —mubayyinatin (13); بَيَّنَهُ —bayānahu (12); الْبَيِّنُ —al-bayyinu (12); بَيِّنَتِهِ —bayyinatihi (12); بَيْنَكَ —baynak (12); وَبَيْنَهُمَا —wabaynahumā (12); الْبَائِنَةِ —al-bāʾinati (10); بَيْنَكُمَا —baynakumā (10); الْبَيِّنَتَيْنِ —al-bayyinatayni (9); فَتَبَيَّنُوا —fatabayyanūā (9); وَبَيْنَكَ —wabaynak (9); وَلَبَيَّنَهُ —walabayyanahu (9); بَيَّنَاهُ —bāʾinun (8); فَبَيْنَمَا —fabaynamā (8); لَبَيَّنَهَا —labayyanahā (8); بَيَّنَتْ —bayyannāhu (7); وَالْبَيَانِ —wālbayāni (7); الْبَائِنَ —al-bāʾina (6); تُبِينُهَا —tubīnuhā (6); لِيُبَيِّنَ —liyubayyina (6); نُبَيِّنُهُ —nubayyinuhu (6); وَنُبَيِّنُ —wanubayyinu (6); اسْتَبَانَ —ʾstabāna (5); فَأَبَانَ —faʾabāna (5); فَالْبَيِّنَةُ —fālbayyinatu (5); فَتَبَيَّنَ —fatabayyana (5); فَبَيْنَا —fabaynā (4); يَبِينُوا —yubayyinūā (4); فَبَيْنَهُمَا —fabaynahumā (4); بَائِنَتَانِ —bāʾinatāni (3); بَائِنَتَيْنِ —bāʾinatayni (3); بَانَ —bāna (3); بِتَبَيُّنٍ —bitabayyuni (3); وَبَيَانًا —wabayānan (3); وَبَيَانُهُ —wabayānuhu (3); وَبَيْنَكُمْ —wabaynakum (3); وَمُبَيِّنًا —wamubayyinan (3); يَسْتَبِنْ —yastabin (3); يَسْتَبِينَ —yastabīna (3); فَبَانَتْ —fabānat (1)

Context L2222: ... الْحَقِّ وَسَأَلْته التَّأْيِيدَ عَلَى بَيَانِ ذَلِكَ وَتَقْرِيبِهِ وَأَنْ يَجْعَلَهُ لِوَجْهِهِ ...

Context L2224: ... كِتَابُ التَّوْحِيدِ مَسْأَلَة بَيَان أَوَّل مَا يَلْزَم كُلّ أَحَد ...

45. ثُمَّ[45]

thumma

5,506 occurrences; cumulative coverage 54.30%.

Possible English: then; thereafter; next

Context: ثم often marks ordered succession, which may be narrative or argumentative. The amount of delay is not encoded as a fixed number of moments.

Forms and grammar: وثم adds and. ثَمَّ, with a different first vowel, means there; this homograph is not a tense form of ثُمَّ. Distinguish both from the noun ثمن, price.

Attested spellings and counts

ثُمَّ —thumma (5,500); فَثَمَّ —fathamma (6)

Context L2273: ... كَبَائِرُهُمْ وَسَيِّئَاتُهُمْ عَلَى حَسَنَاتِهِمْ ثُمَّ يَخْرُجُونَ مِنْهَا بِالشَّفَاعَةِ ... وَيَدْخُلُونَ الْجَنَّةَ ...

Context L2274: ... الْخَيْرِ مَا يَزِنُ شَعِيرَةً ثُمَّ يَخْرُجُ مِنْ النَّارِ مَنْ قَالَ ...

46. سَعِيد / سَعْد / مَسْعُود[46]

saʿīd / saʿd / masʿūd

5,058 occurrences; cumulative coverage 54.64%.

Possible English: Saʿīd; Saʿd; Masʿūd; happy; fortunate

Context: Most frequent members here are narrator names, especially Saʿīd and Ibn Masʿūd. Keep those names distinct; their relationship is lexical, not identity.

Forms and grammar: مسعود / سعيد / سعد are different formations. سعيد can also mean happy; سعد can be a verb or a proper name. Inflectional final vowels do not turn one narrator's name into another.

Attested spellings and counts

سَعِيد —saʿīdi (3,051); مَسْعُود —masʿūdin (994); سَعْد —saʿdin (688); وَسَعِيد —wasaʿīdi (204); وَسَعْدُ —wasaʿdu (37); لِسَعِيد —lisaʿīdi (21); السَّاعِدِيّ —al-sāʿidiyyi (17); السَّعْدِيُّ —al-saʿdiyyu (11); سَعْدًا —saʿdan (7); لِسَعْد —lisaʿdin (6); أَسْعَدَ —ʾasʿada (5); سَاعِدَةَ —sāʿidata (5); سَعِيدًا —saʿīdan (5); السَّعْدَانِ —al-saʿdāni (4); نُسَاعِدُهُمْ —nusāʿiduhum (3)

Context L2221: ... عَلِيُّ بْنُ أَحْمَدَ بْنِ سَعِيدِ بْنِ حَزْمٍ رَضِيَ اللَّهُ عَنْهُ ...

[45] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ثمم (read dictionary entry).

[46] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: سعد (read dictionary entry).

Context L2277: ... أَبِي صَالِحٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ قَالَ رَسُولُ اللَّهِ ...

47. مَلَك / مَالِك / مِلْك[47]

milk / mālik / malak

5,016 occurrences; cumulative coverage 54.98%.

Possible English: ownership; own; owner; Mālik; angel

Context: مالك frequently names Mālik ibn Anas; elsewhere it means owner. مَلَك means angel, while مَلِك means king. Vowel marks and context are essential.

Forms and grammar: ملك / يملك = owned / owns; ملكه = his ownership or he owned it. مالك / مملوك = owner / owned person or object; ملائكة = angels. These are different derivations.

Attested spellings and counts

مَالِك —mālikin (2,167); الْمَلِك —al-maliki (549); وَمَالِكٌ —wamālikun (401); مِلْك —milki (360); مِلْكِه —milkihi (273); يَمْلِكُ —yamliku (104); مَلَكَتْ —malakat (86); مَالِكًا —mālikan (79); الْمَلَائِكَةِ —al-malā'ikati (64); مَمْلُوكٍ —mamlūkin (58); يَمْلِكُهُ —yamlikuhu (51); مَلَكَهَا —malakahā (48); بِمِلْكِ —bimilki (47); تَمْلِكُ —tamliku (47); مَمْلُوكًا —mamlūkan (45); مِلْكًا —milkan (43); الْمَمْلُوكِ —al-mamlūki (40); تَمَلُّكُهُ —tamallukuhu (36); لِمَالِكٍ —limālikin (31); مَالِكِهِ —mālikihi (29); مَمْلُوكَةً —mamlūkatan (29); مُتَمَلِّكٍ —mutamallakin (23); الْمَمَالِيكِ —al-mamālīki (22); يَمْلِكْهَا —yamlikhā (19); تَمَلُّكُهَا —tamallukuhā (16); مَمْلُوكِه —mamlūkihi (15); وَمَالِكًا —wamālikan (14); مَالِكِهَا —mālikihā (13); مُتَمَلِّكًا —mutamallakan (12); مَمَالِيكِهِ —mamālīkihi (12); وَالتَّمْلِيكُ —wālttamlīku (12); يُتَمَلَّكُ —yutamallaku (12); الْمَمْلُوكَةِ —al-mamlūkati (11); مَمْلُوكَيْنِ —mamlūkayni (10); وَمِلْكُ —wamilku (10); يَمْلِكُونَ —yamlikūna (10); التَّمْلِيكِ —al-tamlīki (9); تَمْلِيكُ —tamlīkun (9); لِلْمَمْلُوكِ —lilmamlūki (9); مَلَكُوهُ —malakūhu (9); وَالْمَلَائِكَةُ —wālmalā'ikatu (9); الْمُتَمَلِّكِ —al-mutamallaki (8); مُتَمَلِّكَةٍ —mutamallakatin (8); وَمِلْكُهُ —wamilkuhu (8); وَالْمُلْكَ —wālmulka (7); الْمَالِكِ

[47] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ملك (read dictionary entry).

—al-māliki (6); تَمْلِيكًا —tamlīkan (6); فَمَالِكٌ —famālikun (6); مَلَكَتْهُ — malakathu (6); الْمَالِكِيِّ —al-mālikiyyi (5); الْمُلُوكِ —al-mulūki (5); فَمَلَكَهَا —famalakahā (5); لِمُلْكٍ —limilki (5); مِلْكِهِمْ —milkihim (5); مَمَالِيكَ — mamālīka (5); مَمْلُوكُونَ —mamlūkūna (5); بِمِلْكِهِ —bimilkihi (4); مَالِكِيًّا —mālikiyyan (4); مَمْلُوكَانِ —mamlūkāni (4); مَلَائِكَةٌ —malāʾikatun (4); وَتَمْلِيكُهُ — watamlīkuhu (4); وَالْمَمْلُوكُ —wālmamlūku (4); مَمْلُوكَتَهُ —mamlūkatahu (4); وَمَلَائِكَتِهِ —wamalāʾikatihi (4); التَّمَلُّكُ —al-tamalluku (3); بِالْمُلْكِ — biālmilki (3); بِمَمْلُوكِهِ —bimamlūkihi (3); تَمْلِيكُهُ —tamlīkuhu (3); لِلْمَلَائِكَةِ — lilmalāʾikati (3); مَالِكَةٌ —mālikatun (3); مَالِكِيٌّ —mālikiyyun (3); مَلَكَهُمَا — malakahumā (3); مَلَكُوا —malakūā (3); مَمْلَكَةٍ —mamlakatin (3); مَمْلُوكَانِ — mamlūkatāni (3); وَمَلَائِكَةُ —wamalāʾikatu (3); يَتَمَلَّكُهُ —yatamallakuhu (3); يَمْلِكُونَهُ —yamlikūnahu (3); يَمْلِكُوهُ —yamlikūhu (3)

Context L2230: ... خَالِقٌ لَمْ يَزَلْ وَهُوَ مَلِكُ كُلِّ مَا خَلَقَ فَهُوَ إِلَهُ ...

Context L2241: ... نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ نا ...

48. لَيْسَ[48]

laysa

4,847 occurrences; cumulative coverage 55.30%.

Possible English: is not; are not; it is not the case that

Context: ليس negates a nominal relation. English normally supplies is/are not rather than treating it as an ordinary past action simply because its inflection is perfect-like.

Forms and grammar: ليس / ليست agree with masculine / feminine singular; ليسوا masculine plural; لستُ = I am not; لستَ / لستِ = you are not; لسنا = we are not.

Attested spellings and counts

لَيْسَ —laysa (2,418); وَلَيْسَ —walaysa (1,253); فَلَيْسَ —falaysa (690); لَيْسَتْ —laysat (234); وَلَيْسَتْ —walaysat (74); فَلَيْسَتْ —falaysat (38); لَيْسُوا — laysūā (24); لَيْسَا —laysā (23); لَسْتَ —last (19); وَلَيْسَا —walaysā (15); لَسْنَا — lasnā (13); فَلَيْسَا —falaysā (9); لَيْسَتَا —laysatā (9); فَلَسْنَا —falasnā (8); فَلَيْسُوا — falaysūā (7); وَلَيْسُوا —walaysūā (7); فَلَسْتَ —falast (3); وَلَيْسَتَا —walaysatā (3)

Context L2230: ... مِنْ أَوَّلِهِ وَمُنْتَهَاهُ وَالْكُلُّ لَيْسَ هُوَ شَيْئًا غَيْرَ أَجْزَائِهِ وَأَجْزَاؤُهُ ...

Context L2232: ... عَنْ ذَلِكَ قَالَ تَعَالَى لَيْسَ كَمِثْلِهِ شَيْءٌ الشورى وَقَالَ تَعَالَى ...

49. أَخْبَرَ / خَبَر[49]

khabar / ʾakhbara

4,839 occurrences; cumulative coverage 55.63%.

Possible English: report; information; inform; tell

Context: خبر is often a transmitted report used as evidence. أخبرني names the narrator's receiving relationship: he informed me. الخبر need not mean news in the modern journalistic sense.

Forms and grammar: خبر / أخبار = report / reports; أخبر / يخبر = informed / informs; أخبرنا / أخبرني = informed us / me. خبره can mean his report or he informed him, depending on vowels.

Attested spellings and counts

الْخَبَرِ —al-khabari (1,386); أَخْبَرَنِي —ʾakhbaranī (687); خَبَرٌ —khabarun (650); الْأَخْبَارِ —al-ʾakhbāri (243); أَخْبَرَهُ —ʾakhbarahu (208); بِخَبَرٍ — bikhabarin (150); أَخْبَرَ —ʾakhbara (149); أَخْبَرَنَا —ʾakhbaranā (114); وَخَبَرٌ —wakhabarun (93); الْخَبَرَيْنِ —al-khabarayni (84); خَبَرًا — khabaran (71); يُخْبِرُ —yukhbiru (68); بِالْخَبَرِ —biālkhabari (67); وَأَخْبَرَنِي — waʾakhbaranī (55); وَأَخْبَرَ —waʾakhbara (50); فَأَخْبَرَ —faʾakhbara (43); وَالْخَبَرُ —wālkhabaru (42); أَخْبَارٌ —ʾakhbārun (41); فَأَخْبَرَهُ —faʾakhbarahu (41); وَبِخَبَرٍ —wabikhabarin (38); لِلْخَبَرِ —lilkhabari (35); الْخَبَرَانِ —al-khabarāni (33); فَأَخْبَرْتُهُ —faʾakhbartuhu (32); أَخْبَرَتْهُ —ʾakhbarathu (29); أُخْبِرْتَ —

[48] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ليس (read dictionary entry).
[49] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: خبر (read dictionary entry).

أَخْبِرُونَا —ʾukhbirt (22); إِخْبَارٌ —ʾikhbārun (21); خَبَرَانِ —khabarāni (20); أَخْبِرُونَا —ʾakhbirūnā (19); بِأَخْبَارٍ —biʾakhbārin (18); وَبِالْخَبَرِ —wabiālkhabari (16); فَأَخْبَرَنِي —faʾakhbaranī (15); أَخْبَرَتْنِي —ʾakhbaratnī (14); أَخْبَرَهُمْ —ʾakhbarahum (14); إِخْبَارُهُ —ʾikhbāruhu (13); بِالْأَخْبَارِ —biālʾakhbāri (12); فَأَخْبَرَتْ —faʾakhbarat (10); خَبَرَيْنِ —khabarayni (10); يُخْبِرْنَا —yukhbirnā (11); خَبَرَهُ —khabarahu (8); أُخْبِرُكَ —ʾukhbiruk (8); فَأَخْبِرُونَا —faʾakhbirūnā (9); وَالْأَخْبَارُ —wālʾakhbāru (8); بِخَبَرَيْنِ —bikhabarayni (7); خَبَرِهِمْ —khabarihim (7); أُخْبِرُكُمْ —ʾukhbirukum (6); الْمُخَابَرَةِ —al-mukhābarati (6); بِإِخْبَارِ —biʾikhbāri (6); فَأَخْبَرَهَا —faʾakhbarahā (6); فَأَخْبَرُوهُ —faʾakhbarūhu (6); فَخَبَرُ —fakhabaru (6); لِلْأَخْبَارِ —lilʾakhbāri (6); وَيُخْبِرُ —wayukhbiru (6); مُخْبِرًا —mukhbiran (6); وَأَخْبَرَنَا —waʾakhbaranā (6); لِخَبَرِ —likhabari (5); وَأَخْبَرَهُ —waʾakhbarahu (5); أَخْبَرْتُكَ —ʾakhbartuka (5); خَبَرِهَا —khabarihā (5); أَخْبَرَتْنَا —ʾakhbaratnā (4); أَخْبَرَاهُ —ʾakhbarāhu (4); وَأَخْبَارٍ —ʾakhbarūā (4); نُخْبِرَ —nukhbira (4); كَخَبَرِ —kakhabari (4); أَخْبَرُوا —waʾakhbārin (4); وَأَخْبَرَتْ —waʾakhbarat (4); وَلِلْخَبَرِ —walilkhabari (4); يُخْبِرُكُمْ —yukhbirkum (4); يُخْبِرُهُ —yukhbirahu (4); أَخْبَارًا —ʾakhbāran (3); أَخْبَرَا —ʾakhbarā (3); أَخْبَرَتْهَا —ʾakhbarathā (3); أَخْبَرَنَاهُ —ʾakhbaranāhu (3); أَخْبَرَهَا —ʾakhbarahā (3); إِخْبَارًا —ʾikhbāran (3); أَخْبَرَهُمَا —ʾakhbarahumā (3); الْإِخْبَارِ —al-ʾikhbāri (3); بِالْخَبَرَيْنِ —biālkhabarayni (3); تُخْبِرُ —al-mukhbiru (3); الْمُخْبِرُ

لَأَخْبَرَ —tukhbiru (3); فَلِلْخَبَرِ —falilkhabari (3); فَأَخْبَرْتهمْ —faʾakhbarthm (3); وَإِخْبَارٌ —waʾikhbārun (3); وَالْمُخَابَرَةُ —wālmukhābaratu (3); لَأَخْبَرَ —laʾakhbara (3)

Context L2222: عَلَى الثِّقَاتِ مِنْ رُوَاةِ الْأَخْبَارِ وَتَمْيِيزِهِمْ مِنْ غَيْرِهِمْ وَالتَّنْبِيهِ عَلَى ... ...

Context L2241: ... عَبْدُ اللَّهِ بْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ هُوَ ابْنُ زَيْدٍ عَنْ ...

50. وَاجِب / وَجَبَ[50]

wajaba / wājib

4,687 occurrences; cumulative coverage 55.95%.

Possible English: be obligatory; be due; obligatory; incumbent

Context: وجب can concern an act's obligation or a right/payment becoming due. أوجب means made incumbent or entailed, rather than merely did something obligatory.

Forms and grammar: وجب / يجب = became obligatory / is obligatory; وجوب is the abstract noun; واجب / واجبة agree with the described noun. يوجبه = makes it incumbent; تجب can have a feminine subject.

Attested spellings and counts

فَوَجَبَ —wajaba (470); يُوجِبُ —yūjibu (375); يَجِبُ —yajibu (357); وَجَبَ —fawajaba (332); إِيجَابُ —ʾījābu (292); وَاجِبٌ —wājibun (267); أَوْجَبَ —ʾawjaba (251); وُجُوبِ —wujūbi (226); تَجِبُ —tajibu (190); الْوَاجِبُ —al-wājibu (136); وَاجِبَةً —wājibatun (125); فَالْوَاجِبُ —fālwājibu (104); فَوَاجِبٌ —fawājibun (88); يُوجِبْهُ —yūjibhu (86); أَوْجَبَهُ —ʾawjabahu (85); بِإِيجَابِ —biʾījābi (78); وَجَبَتْ —wajabat (77); وَاجِبًا —wājiban (74); لَوَجَبَ —lawajaba (67); الْوَاجِبَةِ —al-wājibati (52); وَوَجَبَ —wawajaba (47); يُوجِبُهَا —yūjibhā (47); وَأَوْجَبَ —waʾawjaba (42); بِوُجُوبِ —biwujūbi (36); وُجُوبِهِ —wujūbihi (36); أَوْجَبَهَا —ʾawjabahā (34); إِيجَابِهِ —ʾījābihi (33); مُوجِبٌ —mūjibun (32); تُوجِبُ —tūjibu (31); فَأَوْجَبَ —faʾawjaba (29); مُوجِبًا —mūjiban (26); فَيَجِبُ —fayajibu (24); الْمُوجِبُ —al-mūjibu (22); أَوْجَبُوا —ʾawjabūā (21); أَوْجَبْتُمْ —ʾawjabtum (19); مُوجِبَةٌ —mūjibatun (19); وَالْوَاجِبُ —

[50] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: وجب (read dictionary entry).

wālwājibu (19); يُوجِبُونَ —yūjibūna (18); الْوُجُوبِ —al-wujūbi (16); بِمُوجِبٍ — bimūjibin (16); وَأَوْجَبُوا —waʾījābu (16); الْمُوجِبَةِ —al-mūjibati (15); وَإِيجَابُ —waʾawjabūā (15); فَأَوْجَبُوا —faʾawjabūā (14); وَبِإِيجَابِ —wabiʾījābi (13); وَوُجُوبِ —wawujūbi (13); وَيَجِبُ —wayajibu (12); الْإِيجَابِ —al-ʾījābi (11); بِإِيجَابِهِ —biʾījābihi (11); فَوَجَبَتْ —fawajabat (11); وُجُوبِهَا —wujūbihā (11); وَوَجَبَتْ —wawajabat (11); يُوجِبُوا —yūjibūā (11); وَأَوْجَبَهُ —waʾawjabahu (10); أَوْجَبَتْ —ʾawjabt (9); بِوَاجِبٍ —biwājibin (9); تُوجِبُوا —tūjibūā (9); لَوَجَبَتْ —lawajabat (9); وَأَوْجَبَاهَا —waʾawjabāhā (9); نُوجِبُ —nūjibu (8); إِيجَابًا — وَإِيجَابُهُ —ʾījāban (7); إِيجَابُهَا —ʾījābuhā (7); تُوجِبُونَ —tūjibūna (7); waʾījābuhu (7); وَوَاجِبٌ —wawājibun (7); يُوجِبُونَهَا —yūjibūnahā (7); أَوْجَبُوهَا —ʾawjabūhā (6); تُوجِبُهُ —tūjibuhu (6); لِوُجُوبِ —liwujūbi (6); وَلَوَجَبَ — walawajaba (6); وَمُوجِبٌ —wamūjibun (6); أَوْجَبَا —ʾawjabā (5); أَوْجَبْنَا — ʾawjabnā (5); بِإِيجَابِهَا —ʾījābihim (5); إِيجَابِهِمْ —al-wājibāti (5); الْوَاجِبَاتِ —biʾījābihā (5); وَأَوْجَبَهَا —fatajibu (5); فَتَجِبُ —fatajibu (5); لِإِيجَابِ —liʾījābi (5); waʾawjabahā (5); أَوْجَبْتُمُوهَا —ʾawjabtumūhā (4); الْمُوجِبِينَ —al-mūjibīna (4); فَأَوْجَبْتُمْ —faʾawjabtum (4); وَأَوْجَبْتُمْ —waʾawjabtum (4); فَإِيجَابُ —faʾījābu (4); وَيُوجِبُونَ —wayūjibūna (4); وَاجِبَتَانِ — أَوْجَبْتُمُوهُ —wājibatāni (4); بِوُجُوبِهِ —ʾawjabtumūhu (3); أَوْجَبَهُ —ʾawjabathu (3); أَوْجَبُوهُ —ʾawjabūhu (3); يُوجِبَانِ —biwujūbihi (3); فَيُوجِبُونَ —fayūjibūna (3); فَالْمُوجِبُ —fālmūjibu (3); —yūjibāni (3)

51. جَائِز / جَازَ[51]

jāza / jāʾiz

4,668 occurrences; cumulative coverage 56.26%.

Possible English: be permissible; be valid; pass; permissible

Context: يجوز in a ruling often means is permissible or legally possible; context may instead concern validity. The lexical sense pass or cross is distinct.

Forms and grammar: جاز / يجوز = was permissible or passed / is permissible or passes; لم يجز = was not permissible. جائز / جائزة agree in gender; جواز is the abstract noun.

وَجَمِيعِ أَهْلِ الْإِسْلَامِ وَأَمَّا وُجُوبُ عَقْدِ ذَلِكَ بِالْقَلْبِ فَلِقَوْلِ اللَّهِ ... Context L2227: ...

... مَخْلُوقٌ وَأَنَّ لَهُ خَالِقًا وَجَبَ أَنْ لَوْ كَانَ الْخَالِقُ أَكْثَرَ ... Context L2232:

Attested spellings and counts

يَجُوزُ —yajūzu (1,739); جَائِزٌ —jāʾizun (399); يَجُزْ —yajuz (269); جَازَ —jāza (254); تَجُوزُ —tajūzu (244); جَوَازِ —jawāzi (172); جَائِزَةٌ —jāʾizatun (122); أَجَازَ —ʾajāza (121); يُجِيزُونَ —yujīzūna (102); وَجَائِزٌ —wajāʾizun (89); يُجِيزُ —yujīzu (85); وَأَجَازَ —waʾajāza (82); إِجَازَةُ —ʾijāzatu (62); أَجَازَهُ —ʾajāzahu (41); فَجَائِزٌ —fajāʾizun (38); جَازَتْ —jāzat (35); جَائِزًا —jāʾizan (34); أَجَزْتُمْ —wayajūzu (34); وَأَجَازُوا —waʾajāzūā (32); أَجَازُوا —ʾajāztum (30); يَتَجَاوَزُ —waʾajāzahu (27); وَأَجَازَهُ —faʾajāza (27); فَأَجَازَ —yatajāwazu (26); تَجَاوَزَ —yujīzūā (26); يُجِيزُوا —tujīzūna (24); تُجِيزُونَ —tajāwaza (22); فَيَجُوزُ —faʾajāzūā (18); فَأَجَازُوا —jawāzihi (18); جَوَازِهِ —fayajūzu (18); وَجَازَ —wajāza (15); إِجَازَتِهِ —ʾijāzatihi (14); لَجَازَ —lajāza (14); بِجَوَازِ —bijawāzi (13); وَتَجُوزُ —watajūzu (13); إِجَازَتِهِمْ —ʾijāzatihim (12); فَأَجَازَهُ —faʾajāzahu (12); أُجِيزُ —ʾujīzu (11); اسْتَجَازَ —ʾstajāza (11); تُجِيزُوا —tujīzūā (11); وَيُجِيزُونَ —wayujīzūna (11); يُجِيزُهُ —yujīzuhu (11); تَجُزْ —tajuz (10); فَأَجِيزُوا —faʾajīzūā (10); يَسْتَجِيزُ —yastajīzu (10); الْجَائِزِ —al-jāʾizi (9); وَجَوَازِ —jawāzihā (9); جَوَّزَ —jawwaza (9); وَأَجَازَهَا —waʾajāzahā (9); جَوَازِهَا

[51] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: جوز (read dictionary entry).

—wajawāzi (9); الْجَوْزِ —al-jawzi (8); الْمُجِيزُونَ —al-mujīzūna (8); يُجَاوِزُ — yujāwizu (8); يُجِيزَانِ —yujīzāni (8); أَجَازُوهُ —ʾajāzūhu (7); جَاوَزَ —jāwaza (7); الْجَائِزَةَ فَيُجِيزُونَ —fayujīzūna (7); وَيُجِيزُ —wayujīzu (7); أَجَزْنَا —ʾajaznā (6); — al-jāʾizati (6); أَجَازَا —ʾajāzā (5); أَجَزْتُمُوهُ —ʾajaztumūhu (5); الْمَجَازِ — al-majāzi (5); مَجَازًا —majāzan (5); وَتُجِيزُونَ —watujīzūna (5); وَجَوْزَ — wajawza (5); يُجِزْهَا —yujizhā (5); يَسْتَجِزْ —yastajiz (5); أَجَازَهَا —ʾajāzahā (4); بِإِجَازَتِهِ —biʾijāzati (4); بِإِجَازَةِ —ʾujīzuhu (4); اسْتَجَازُوا —ʾstajāzūā (4); أُجِيزُهُ تَجْوِيزُ —biʾijāzatihi (4); تَجَاوَزَتْ —tajāwazat (4); تَجَاوَزَهُ —tajāwazahu (4); — tajwīzu (4); فَأَجَزْتُمْ —faʾajaztum (4); نُجِيزُ —nujīzu (4); وَأَجَازُوهُ — waʾajāzūhu (4); وَالْجَوْزِ —wāljawzi (4); يُجِيزُهَا —yujīzuhā (4); أَجَازُوهَا — ʾajāzūhā (3); أَجِزْ —ʾajiz (3); أَجَزْت —ʾajazt (3); أَجَزْته —ʾajazth (3); الْجَوَازِ — al-jawāzi (3); تَجُوزَانِ —tajūzāni (3); تُجِيزُ —tujīzu (3); تُجِيزُوهُ —tujīzūhu (3); جَائِزَتُهُ —jāʾizatuhu (3); جَوَازِهِمَا —jawāzihimā (3); فَأَتَجَوَّزُ —faʾatajawwazu (3); — وَجَازَتْ —waʾijāzatu (3); وَاجَازَةُ —mujīzun (3); مُجِيزٌ —fajāza (3); فَجَازَ — wajāzat (3); وَجَوَازُهُ —wajawāzuhu (3); وَيُجِيزُهُ —wayujīzuhu (3); يَتَجَاوَزَهُ — yatajāwazahu (3); يَجْتَازَ —yajtāza (3); يَسْتَجِيزُونَ —yastajīzūna (3)

Context L2396: ... وَلَا يَحِلُّ لِأَحَدٍ أَنْ يُجِيزَ أَنْ يَكُونَ لَهُ اسْمٌ زَائِدٌ ...

Context L2398: ... غَيْرَ وَاحِدٍ كَذِبًا وَمَنْ أَجَازَ هَذَا فَهُوَ كَافِرٌ وَقَالَ تَعَالَى ...

52. حَرَام / إِحْرَام[52]

ḥarām / ʾiḥrām

4,562 occurrences; cumulative coverage 56.57%.

Possible English: prohibited; unlawful; sacred; consecrated state

Context: حرام in a ruling means prohibited. الحرم is a sacred precinct. إحرام is ritual consecration for pilgrimage, not a synonym for prohibition in every occurrence.

Forms and grammar: حرم / يحرم and حرّم / يحرّم are different verb patterns; تحريم = declaring forbidden. محرم can mean forbidden, a person in iḥrām, or Muḥarram according to its vowels and context.

Attested spellings and counts

حَرَامٌ —ḥarāmun (646); حَرَّمَ —ḥarrama (502); يَحْرُمُ —yaḥrumu (327); الْحَرَامِ —al-ḥarāmi (265); مَحْرَمٍ —maḥramin (261); الْمُحْرِمُ —al-muḥrimu (240); تَحْرِيمِ —taḥrīmi (217); الْحَرَمِ —al-ḥarami (179); حَرَامًا —ḥarāman (133); مُحَرَّمَةٌ —muḥarramatun (124); الْإِحْرَامِ —al-ʾiḥrāmi (113); التَّحْرِيمِ —al-taḥrīmi (89); تَحْرِيمُهُ —taḥrīmuhu (81); تُحَرِّمُ —tuḥarrimu (72); مُحْرِمًا —muḥriman (68); وَحَرَّمَ —waḥarrama (66); أَحْرَمَ —ʾaḥrama (65); لِلْمُحْرِمِ —lilmuḥrimi (61); حُرِّمَتْ —ḥurrimat (57); إِحْرَامِهِ —ʾiḥrāmihi (55); الْمُحَرَّمَةِ —al-muḥarramati (54); فَحَرَامٌ —faḥarāmun (42); بِتَحْرِيمِ —bitaḥrīmi (41); حَرَّمَهُ —ḥarramahu (38); حُرْمَةً —ḥurmatan (32); فَحَرَّمَ —faḥarrama (26); وَيُحَرِّمُ —wayuḥarrimu (26); إِحْرَامٍ —ʾiḥrāmin (25); وَالْحُرُمَاتُ —wālḥurumātu (25); وَتَحْرِيمِ —wataḥrīmi (25); يُحَرِّمُونَ —yuḥarrimūna (22); بِالتَّحْرِيمِ —biālttaḥrīmi (21); وَالْحَرَامُ —wālḥarāmu (21); حَرَّمَهَا —ḥarramahā (20); يُحَرِّمُهَا —yuḥarrimuhā (19); بِتَحْرِيمِهِ —bitaḥrīmihi (18); الْمُحَرَّمَاتِ —al-muḥarramāti (17); حُرُمًا —ḥuruman (16); لِإِحْرَامِهِ —liʾiḥrāmihi (16); لِلْإِحْرَامِ —lilʾiḥrāmi (16); وَالتَّحْرِيمِ —wālttaḥrīmi (15); مُحْرِمُونَ —muḥrimūna (14); تَحْرِيمِهَا —taḥrīmihā (12); يُحَرِّمُهُ —yuḥarrimhu (12); الْمَحَارِمِ —al-maḥārimi (11); تَحْرِيمًا —taḥrīman (11); بِحَرَامٍ —biḥarāmin (10); وَالْحَرَمِ —wālḥarami (10); وَحَرَامٌ —waḥarāmun (10);

[52] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: حرم (read dictionary entry).

فَيَحْرِمُ —fayaḥrumu (9); وَحُرِّمَتْ —waḥurrimat (9); لَحَرَمَ —laḥaruma (8); مُحْرِمَانِ — muḥrimāni (8); وَالْإِحْرَامُ —wāl'iḥrāmu (8); وَالْمُحْرِمِ —wālmuḥrimi (8); بِحُرْمَةِ —biḥurmati (7); فَحَرَّمُوا —faḥarramūā (7); كَحُرْمَةِ —kaḥurmati (7); لِتَحْرِيمِ — litaḥrīmi (7); وَحَرَّمُوا —waḥarramūā (7); الْحُرْمَةِ —al-ḥurmati (6); حُرْمَتُهَا — ḥurmatuhā (6); أَحْرَمَتْ —wataḥrīmihi (6); وَتَحْرِيمِهِ —maḥrūmun (6); مَحْرُومٌ — 'aḥramat (5); إِحْرَامًا —'iḥrāman (5); الْمَحْرُومِينَ —al-maḥrūmīna (5); بِإِحْرَامٍ — bi'iḥrāmin (5); بِالْإِحْرَامِ —biāl'iḥrāmi (5); حَرَمِيُّ —ḥaramiyyu (5); فَحُرِّمَتْ — faḥurrimat (5); فَلْيُحْرِمْ —falyuḥrim (5); مَحَارِمِهِ —maḥārimihi (5); مُحَرَّمَاتٌ — muḥarramātun (5); وَتُحَرَّمُ —watuḥarramu (5); وَحَرَّمَهُ —waḥarramahu (5); وَمُحَرِّمٌ —wamuḥarrimun (5); وَيُحَرِّمُونَ —wayuḥarrimūna (5); بِمُحَرَّمٍ — bimuḥarramin (4); تُحَرِّمُوا —tuḥarrimūā (4); حَرَامَهُ —ḥarāmahu (4); فَأَحْرَمَ —fa'aḥrama (4); لِلتَّحْرِيمِ —lilttaḥrīmi (4); لِلْحَرَامِ —lilḥarāmi (4); مُحْرِمِينَ — muḥrimīna (4); وَحُرْمَتَهَا —wataḥrīmihim (4); وَتَحْرِيمِهِمْ —nuḥrima (4); نُحْرِمَ —waḥurmatahā (4); يُحَرِّمْنَ —yuḥarrimna (4); أَحْرَمْنَا —'aḥramnā (3); أَحْرَمُوا —'aḥramūā (3); إِحْرَامِهِنَّ —'iḥrāmihinna (3); الْحَرَمِيِّ —al-ḥaramiyyi (3); بِإِحْرَامِهِ —bi'iḥrāmihi (3); بِالْمُحَرَّمَاتِ —biālmuḥarramāti (3); بِتَحْرِيمِهَا — bitaḥrīmihā (3); حُرْمَتُهُ —tuḥarrimuhu (3); تُحَرِّمُهَا —tuḥarrimuhā (3); تُحَرِّمُهُ —ḥurmatuhu (3); حَرَّمَتْهُمَا —ḥarramathumā (3); فَحَرِّمُوهُ —faḥarrimūhu (3); كَحُرْمَتِهَا —kaḥurmatihā (3); لَحُرِّمَتْ —laḥurrimat (3); وَأَحْرَمَ —wa'aḥrama (3);

وَإِحْرَامُهُ —waʾiḥrāmuhu (3); وَالْمُحْرِمَةِ —wālmuḥrimati (3); وَحُرْمَةٌ — waḥurmatun (3); وَحَرَّمَهَا —waḥarramahā (3); وَحَرِيمُ —waḥarīmu (3); يُحَرِّمَانِ —yuḥarrimāni (3); يُحَرِّمُوا —yuḥarrimūā (3)

Context L2227: ... وَالْمَالِ مِنْ التَّحْلِيلِ إلَى التَّحْرِيمِ كَمَا قَالَ رَسُولُ اللَّهِ صَلَّى ...

Context L2265: ... فَنَفَخْنَا فِيهِ مِنْ رُوحِنَا التحريم ...

53. أَمَرَ / أَمْر[53]

ʾamr / ʾamara

4,552 occurrences; cumulative coverage 56.88%.

Possible English: command; order; matter; affair; command someone

Context: أمر may be an instruction or simply the matter under discussion. أمره can mean his matter or he commanded him; the vowelled form and syntax decide.

Forms and grammar: أمر / يأمر = commanded / commands; أُمر = was commanded; أمرنا = we commanded or he commanded us, depending on vowels. أمر / أوامر / أمور have different plural uses.

Attested spellings and counts

فَأَمَرَ —ʾamara (1,526); أَمَرَهُ —ʾamarahu (410); الْأَمْرِ —al-ʾamri (292); وَأَمَرَ —faʾamara (175); أَمَرَنَا —ʾamaranā (162); يَأْمُرُ —yaʾmur (153); الْمَأْمُورُ —waʾamara (126); الْأَمْرَيْنِ —al-ʾamrayni (107); أَمِيرَ —ʾamīra (102); بِأَمْرٍ —al-maʾmūru (92); مَأْمُورٌ —biʾamrin (83); أَمْرًا —maʾmūrun (77); لِأَمْرِ —ʾamran (73); أَمَرَهُمْ —ʾamarahum (65); فَأَمَرَهُ —faʾamarahu (62); يُؤْمَرْ —liʾamri (57); وَأَمَرَهُ —waʾamarahu (55); أَمَرْتُكُمْ —ʾamartukum (50); الْآمِرُ —yuʾmar (40); يَأْمُرُهُ —yaʾmurhu (38); فَأَمَرَهَا —faʾamarahā (37); بِأَمْرِهِ —al-ʾāmiru (36); أُمِرُوا —ʾumirūā (29); أُمِرْتُ —ʾumirtu (28); أَوَامِرِ —biʾamrihi (28); أَمْرُك —ʾamruk (23); أُمُورِ —ʾumūri (22); يَأْمُرْنَا —ʾawāmiri (22); وَالْأَمْرُ —wālʾamru (22); مَأْمُورًا —maʾmūran (21); الْأَمِيرُ —yaʾmurnā (21); فَأَمَرَهُمْ —faʾamarahum (16); أُمَرَاءِ —ʾumarāʾi (15); الْأَوَامِرِ —al-ʾamīru (15); أَوَامِرِهِ —al-ʾawāmiri (15); —ʾawāmirihi (14);

[53] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أمر (read dictionary entry).

فَأَمَرَنِي —faʾamaranī (14); لِأَمْرِهِ —liʾamrihi (14); يَأْمُرُكُمْ —yaʾmurukum (14); بِالْأَمْرِ —biālʾamri (13); الْأُمَرَاءِ —al-ʾumarāʾi (12); أَمَرَنِي —ʾamaranī (11); أَمِيرُهُ —ʾamīruhu (11); الْأُمُورَ —al-ʾumūra (11); آمُرَ —ʾāmura (10); إِمَارَةِ —ʾimārati (10); أَمْرِي —ʾamrī (9); أَمْرَيْنِ —ʾamrayni (9); وَأَمَرَنَا —waʾamaranā (9); آمِرًا —ʾāmiran (8); فَأَمَرَتْ —faʾamarat (8); فَالْأَمْرُ —fālʾamru (8); آمُرُكَ —waʾamuru (8); وَيَأْمُرُ —waʾamurūna (8); مَأْمُورُونَ —ʾāmuruk (7); أَمَرْتُمُوهُ —ʾamartumūhu (7); أَمِيرًا —ʾamīran (7); الْإِمَارَةِ —al-ʾimārati (7); الْمَأْمُورِينَ —al-maʾmūrīna (7); تَأْمُرُنِي —taʾmurunī (7); فَأَمَرَنَا —faʾamaranā (7); يَأْمُرُهُمْ —yaʾmurhā (7); نُؤْمَرْ —nuʾmar (7); يَأْمُرْهَا —yaʾmuruhum (7); يُؤْمَرُونَ —yuʾmarūna (7); أَمَرُوهُ —ʾamarūhu (6); إِمَارَتِهِ —ʾimāratihi (6); تَأْمُرُ —taʾmuru (6); لَأَمَرْتُ —laʾamartu (6); لِلْأَمْرِ —lilʾamri (6); وَأَمَرَهُمْ —waʾamarahum (6); أَمَرْتَنِي —ʾamartnī (5); أَمَرْنَاهُ —ʾamarnāhu (5); أَمْرُهُمَا —ʾamruhumā (5); أُمُورِهِمْ —ʾumūrihim (5); أَمِيرُهُمْ —ʾamīruhum (5); وَأَمَرَهَا —tustaʾmara (5); تُسْتَأْمَرَ —lilʾāmiri (5); لِلْآمِرِ —lilmaʾmūri (5); لِلْمَأْمُورِ —waʾamarahā (5); وَيَأْمُرُونَ —wabiʾamrihi (5); وَبِأَمْرِهِ —waya'murūna (5); تَأْمُرُنَا —ʾāmurhu (4); أَمَرَاهُ —ʾamarāhu (4); أُمِرْتُمْ —ʾumirtum (4); آمُرُهُ —taʾmurunā (4); فَأْمِرُوا —faʾumirūā (4); تَأْمُرُونَهُ —taʾmurūnahu (4); فَالْآمِرُ —fālʾāmiru (4); وَالْآمِرُ —wāl'āmiru (4); وَأَوَامِرِ —waʾawāmiri (4); وَلِأَمْرِهِ —waliʾamrihi (4); أُمِرْنَ —ʾumirna (3); أُمُورًا —ʾumūran (3); أُمُورِهِ —ʾumūrihi (3); الْمَأْمُورُونَ —al-maʾmūrūna (3); فَأَمَرَهُنَّ —faʾamarahunna (3);

لِأَوَامِرِ —liʾawāmiri (3); فَالْأَمِيرُ —fālʾamīru (3); فَيَأْمُرُ —faya ʾmuru (3); فَيُؤْمَرُ —fayuʾmaru (3); وَيُؤْمَرُ —wayaʾmuruhum (3); وَيَأْمُرُهُمْ —naʾmuruhu (3); نَأْمُرُهُ —wayuʾmaru (3); يَأْتَمِرَ —yaʾtamira (3); يَأْمُرُنِي —yaʾmurnī (3); يَأْمُرُونَ —yaʾmurūna (3); يَسْتَأْمِرُهَا —yastaʾmiruhā (3)

Context L2225: ... اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا ...

Context L2227: ... فَلِقَوْلِ اللَّهِ تَعَالَى وَمَا أُمِرُوا إِلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ ...

54. بَيْع / بَاعَ[54]

bāʿa / bayʿ

4,546 occurrences; cumulative coverage 57.19%.

Possible English: sell; sale; purchase in some lexical uses; trade

Context: بيع in the legal discussion usually means sale or a sale contract. بيع versus هبة distinguishes sale from gift. Determine who buys and sells from the sentence's roles.

Forms and grammar: باع / يبيع = sold / sells; بعتُ = I sold; يباع = is sold. بيع / بيوع = sale / sales; بائع = seller; مبيع = sold object. ابتاع = bought.

Attested spellings and counts

بَيْعُ —bayʿu (982); الْبَيْعِ —al-bayʿi (771); بَاعَ —bāʿa (270); بَيْعُهُ —bayʿuhu (233); بَيْعًا —bayʿan (104); وَبَيْعُ —wabayʿu (90); ابْتَاعَ —ʾbtāʿa (83); بَيْعُهَا —bayʿuhā (79); لِلْبَائِعِ —lilbāʾiʿi (75); بَاعَهُ —bāʿahu (66); الْبُيُوعِ —al-buyūʿi (63); وَالْبَيْعُ —wālbayʿu (54); الْمَبِيعِ —al-mabīʿi (43); يَبْتَاعُ —yabtāʿu (42); بَاعَهَا —bāʿahā (38); بِبَيْعٍ —bibayʿi (35); يَبِيعَهُ —yabīʿahu (35); ابْتِيَاعٍ —ʾbtiyāʿin (32); الْمُبْتَاعُ —al-mubtāʿu (31); تُبَاعُ —tubāʿu (30); وَبَيْعُهُ —wabayʿuhu (30); ابْتِيَاعِهِ —ʾbtiyāʿihi (27); بِالْبَيْعِ —biālbayʿi (27); فَالْبَيْعُ —fālbayʿu (27); لِلْبَيْعِ —lilbayʿi (26); بِعْت —biʿt (24); يَبِيعَهَا —yabīʿahā (23); ابْتَاعَهَا —ʾbtāʿahā (22); تَبَايَعَا —tabāyaʿā (22); بِيعَتْ —bīʿat (20); بَيْعَةٍ —bayʿatin (20); يَبِعْ —yabiʿ (21); فَبَاعَ —fabāʿa (19); فَبَاعَهُ —fabāʿahu (18); بَائِعِهِ —bāʾiʿihi (16); بَايَعَ —bāyaʿa (16);

[54]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: بيع (read dictionary entry).

بَيْعِهِمَا —al-mutabāyiʿayni (15); الْمُتَبَايِعَانِ —al-mutabāyiʿāni (14); الْمُتَبَايِعَيْنِ —bayʿihimā (14); وَابْتِيَاعِ —ʾbtāʿahu (13); ابْتَاعَهُ —ʾbtaʿt (13); ابْتَعْت —wābtiyāʿi (13); فَبَيْعُهُ —wābtiyāʿuhu (12); وَابْتِيَاعُهُ —tabīʿūā (11); تَبِيعُوا —fabayʿuhu (11); فَبَيْعُهُ —nabīʿu (11); نَبِيعُ —yabiʿhu (11); يَبِيعُهُ —ʾabīʿu (10); أَبِيعُ —fabayʿu (10); فَبَيْعُ —al-mabīʿatu (9); الْمَبِيعَةُ —bāʿat (9); بَاعَتْ —tabāyaʿtum (9); تَبَايَعْتُمْ —tabiʿhā (9); تَبِعْهَا —fabīʿūā (9); فَبِيعُوا —wābtiyāʿuhā (9); وَابْتِيَاعُهَا —wabayʿuhā (9); وَبَيْعُهَا —yabtāʿahu (9); يَبْتَاعُهُ —ʾbtaʿth (8); ابْتَعْته —bibayʿihi (8); بِبَيْعِهِ —biʿth (8); بِعْته —bayʿahum (8); بَيْعُهُمْ —tabiʿhu (8); تَبِعْهُ —fābtāʿa (8); فَابْتَاعَ —yabīʿūhu (8); يَبِيعُوهُ —ʾabīʿuk (7); أَبِيعُك —al-bayʿati (7); الْبَيْعَةِ —al-tabāyuʿi (7); التَّبَايُعِ —bāʾiʿi (7); بَائِعِ —mutabāyiʿayni (7); مُتَبَايِعَيْنِ —wālbāʾiʿu (7); وَالْبَائِعُ —bāyaʿt (6); بَايَعْت —bayʿuhunna (6); بَيْعُهُنَّ —bīʿūā (6); بِيعُوا —tabtāʿa (6); تَبْتَاعَ —fayubāʿu (6); فَيُبَاعُ —yabīʿūna (6); يَبِيعُونَ —bibayʿihā (5); بِبَيْعِهَا —ʾabtāʿu (5); أَبْتَاعُ —bayʿatayni (5); بَيْعَتَيْنِ —tabāyaʿa (5); تَبَايَعَ —fābtāʿahu (5); فَابْتَاعَهُ —biʿtum (5); بِعْتُمْ —nabīʿahu (5); نَبِيعَهُ —wālbuyūʿi (5); وَالْبُيُوعِ —fabiʿth (5); فَبِعْته —watubāʿu (5); وَتُبَاعُ —wayubāʿu (5); وَيُبَاعُ —yubāyaʿ (5); يُبَايَعْ —yabtāʿahā (5); يَبْتَاعَهَا —yatabāyaʿūna (5); يَتَبَايَعُونَ —ʾabīʿuhu (4); أَبِيعُهُ —ʾbtaʿ (4); ابْتَعْ —ʾbtiyāʿahā (4); ابْتِيَاعَهَا —bāʾiʿihā (4); بَائِعِهَا —biʿ (4); بِعْ —buyūʿun (4); بُيُوعٌ —fālbāʾiʿu (4); فَالْبَائِعُ —fabāʿahā (4); فَبَاعَهَا —fabiʿthā (4); فَبِعْتَهَا —kālbayʿi (4); كَالْبَيْعِ —kabayʿi (4); كَبَيْعِ —wakabayʿi (4); وَكَبَيْعِ —lilmubtāʿi (4); لِلْمُبْتَاعِ —al-mubāyiʿāti (4); الْمُبَايِعَاتِ

—al-mubāyiʿāti (3); الْمَبِيعَاتِ —al-mabīʿāti (3); بَائِعًا —bāʾiʿan (3); بَاعَتْهُ — bāʿathu (3); بَاعَهُمَا —bāʿahumā (3); بَاعُوهُ —bāʿūhu (3); بَايَعْنَا —bāyaʿnā (3); بِبَيْعِهِمَا —bibayʿihimā (3); بِعْتُكَ —biʿtuk (3); بِعْنِي —biʿnī (3); بِعْهُ —biʿhu (3); بُيُوعًا —buyūʿan (3); تَبَايَعْنَا —tabāyaʿnā (3); تَبِيعُونَ —tabīʿūna (3); فَالْمَبِيعُ — fālmabīʿu (3); فَبِعْ —fabiʿ (3); فَبَيْعُهَا —fabayʿuhā (3); فَلِلْبَائِعِ —falilbāʾiʿi (3); فَيَبْتَاعُ —fayabtāʿu (3); فَيَبِيعَهُ —fayabīʿahu (3); لِبَائِعِهِ —libāʾiʿihi (3); لِبَيْعٍ — libayʿin (3); لِيُبَاعَ —liyubāʿa (3); مُبْتَاعًا —mubtāʿan (3); مَبِيعٍ —mabīʿin (3); وَبِيعَ — wābtāʿahu (3); وَبَاعَ —wabāʿa (3); وَبِيعُوا —wabīʿūā (3); وَيَبِيعَ — wayabīʿa (3); يُبَاعَا —yubāʿā (3); يَبِعْهَا —yabiʿhā (3)

Context L2498: ... لَيْلَةً وَلَيْسَ فِي عُنُقِهِ بَيْعَةٌ مَاتَ مِيتَةً جَاهِلِيَّةً وَلَا طَاعَةَ ...

Context L2501: ... مَاتَ وَلَيْسَ فِي عُنُقِهِ بَيْعَةٌ مَاتَ مِيتَةً جَاهِلِيَّةً ...

55. إِمَام / أَمْ / أُمّ[55]

ʾumm / ʾam / ʾimām

4,531 occurrences; cumulative coverage 57.49%.

Possible English: mother; or in a question; leader; imam

Context: أم فلان can be a kunyah, Umm so-and-so. أَمْ links alternatives in a question. إمام is a related lexical formation, not a case or tense form of mother.

Attested spellings and counts

الْأُمِّ —ʾummi (1,978); الْإِمَامِ —al-ʾimāmi (626); أُمِّهِ —ʾummihi (225); أُمِّ —al-ʾummi (189); وَأُمُّ —waʾummu (104); إِمَامٍ —ʾimāmin (75); أُمَّتِي — ʾummatī (69); أُمَّهَا —ʾummahā (67); الْمَأْمُومِ —al-maʾmūmi (56); وَالْإِمَامُ —wālʾimāmu (56); لِأُمِّ —liʾummin (54); لِلْأُمِّ —lilʾummi (53); وَالْأُمِّ — wālʾummi (52); أُمِّي —ʾummī (45); لِلْإِمَامِ —lilʾimāmi (45); أُمَّهَاتِ —

[55] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أمم (read dictionary entry).

Forms and grammar: أم / أمه / أمها = mother / his mother / her mother; أمهات is a plural. أئمة / إمام = leader / leaders; مأموم = one led in prayer. Vowels distinguish أُمّ from أَمْ.

بِأُمِّ —biʾummi (41); إِمَامِهِ —ʾimāmihi (38); يَؤُمُّ —yaʾummu (34); أَمَامَ —ʾamāma (27); وَأُمِّهِ —waʾummihi (24); أُمُّكَ —ʾummuka (23); الْأُمَّهَاتِ —al-ʾummahāti (22); وَلِلْأُمِّ —walilʾummi (22); إِمَامَتِهِ —ʾimāmatihi (21); الْمَأْمُومِينَ —al-maʾmūmīna (21); إِمَامَةِ —ʾimāmati (19); أَئِمَّةُ —ʾaʾimmatu (18); أُمِّهِمْ —ʾummihim (17); مَأْمُومًا —maʾmūman (17); فَلِأُمِّهِ —falʾummihi (16); وَأُمَّهَا —waʾummuhā (16); وَأُمَّهَاتُ —waʾummahātu (16); أَمَامَهُ —ʾamāmahu (15); لِيُؤْتَمَّ —liyuʾtamma (15); أَمِنَّا —ʾaminnā (12); لِأُمَّتِي —liʾummatī (12); وَأُمِّي —waʾummī (11); يَؤُمُّهُمْ —yaʾummuhum (11); أُمَّهَاتِهَا —ʾummahātihā (10); بِإِمَامٍ —biʾimāmin (10); بِالْإِمَامِ —biālʾimāmi (10); ائْتَمَّ —ʾtamma (9); الْإِمَامَةِ —al-ʾimāmati (9); تَؤُمُّ —taʾummu (9); وَالْمَأْمُومِ —wālmaʾmūmi (9); يَأْتَمَّ —yaʾtamma (9); وَلْيَؤُمَّكُمْ —walyaʾummakum (8); إِمَامُهُمْ —ʾimāmuhum (7); الْمَأْمُومَةِ —al-maʾmūmati (7); بِالْأُمِّ —biālʾummi (7); لِلْمَأْمُومِ —lilmaʾmūmi (7); مَأْمُومَةً —maʾmūmatan (7); أَمَامَهَا —ʾamāmahā (6); فَالْأُمُّ —fālʾummu (6); لِأُمِّهِ —liʾummihi (6); أُمَّهَاتِكُمْ —ʾummahātikum (5); أُمَّهَاتِهِمْ —ʾummahātihim (5); الْأُمَمِ —al-ʾumami (5); بِالْإِمَامَةِ —biālʾimāmati (5); وَالْأُمَّهَاتِ —wālʾummahāti (5); يَؤُمُّنَا —yaʾummunā (5); أَئِمَّتِكُمْ —aʾimmatikum (4); أَمَّتْ —ʾammat (4); فَأُمُّهُ —faʾummuhu (4); كَالْأُمِّ —kāl'ummi (4); مَأْمُومٍ —maʾmūmin (4); مُؤْتَمًّا —muʾtamman (4); وَأُمَّهَاتُهَا —

wa’ummahātuhā (4); وَإِمَامَةً —wa’imāmatan (4); وَإِمَامَتِهِ —wa’imāmatihi (4); وَلِأَئِمَّةِ —wali’a’immati (4); أَئِمَّتِنَا —’a’immatinā (3); أَمَامَكَ —’amāmaka (3); إِمَامُنَا —’imāmunā (3); الْمَأْمُومُونَ —al-ma’mūmūna (3); بِأُمِّهِ —bi’ummihi (3); لِأُمِّهَا —li’ummihā (3); فَيَؤُمُّ —faya’ummu (3); فَلْيَؤُمَّهُمْ —falya’ummahum (3); لِيَؤُمَّكُمَا —liya’ummakumā (3); وَالْمَأْمُومَةُ —wālma’mūmatu (3); يَؤُمَّهَا —ya’ummahā (3); لِأُمَّهَاتِ —li’ummahāti (3)

Context L2241: ... أَخَذَ بِنَفْسِكَ بِأَبِي أَنْتَ وَأُمِّي يَا رَسُولَ اللَّهِ وَذَكَرَ الْحَدِيثَ ...

Context L2249: ... هَلْ كَانَ قَبْلَنَا خَلْقٌ أَمْ لَا إِذْ لَمْ نَعْرِفْ كَوْنَ ...

56. إِجْمَاع / جَمِيع / جَمَعَ[56]

jamaʿa / jamīʿ / ’ijmāʿ

4,514 occurrences; cumulative coverage 57.80%.

Possible English: gather; combine; all; agreement; consensus

Context: إجماع in argument refers to consensus as a legal category. جميعا means all together; جماعة can be a group or congregation. الجمعة is Friday or Friday prayer.

Forms and grammar: جمع / يجمع = gathered / gathers; أجمعوا = they agreed unanimously; إجماع is its verbal noun. جماعة / جماعات = group(s); جامع and جميع are distinct formations.

Attested spellings and counts

إِجْمَاعٌ —’ijmāʿun (552); جَمِيعًا —jamīʿan (496); جَمِيعِ —jamīʿi (470); الْجُمُعَةِ —al-jumuʿati (431); الْإِجْمَاعُ —al-’ijmāʿu (287); جَمَاعَةَ —jamāʿatin (202); إِجْمَاعًا —’ijmāʿan (117); وَجَمِيعِ —wajamīʿi (104); يَجْمَعُ —yajmaʿu (98); جَمَعَ —jamaʿa (93); الْجَمَاعَةِ —al-jamāʿati (89); الْجَمْعِ —al-jamʿi (77); جَمِيعِهِمْ —jamīʿihim (66); وَالْإِجْمَاعِ —wāl’ijmāʿi (65); بِإِجْمَاعٍ —bi’ijmāʿin (63); أَجْمَعَ —’ajmaʿa (61); الْجَمِيعِ —al-jamīʿi (61); جُمُعَةٍ —jumuʿatin (60); جَامَعَ —jāmaʿa (55); الْجِمَاعِ —al-jimāʿi (51); جَمِيعِهَا —jamīʿihā (48); أَجْمَعُوا —’ajmaʿūā (46); اجْتَمَعَ —’jtamaʿa (40); بِجَمِيعِ —bijamīʿi (40); لِجَمِيعِ —lijamīʿi (38); مُجْمَعٌ —mujmaʿun (31);

[56] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: جمع (read dictionary entry).

مُجْمُونَ —mujmiʿūna (31); مَجْمُوعَةً —majmūʿatan (29); جَمِيعِه —jamīʿihi (25); وَإِجْمَاعٌ —waʾijmāʿun (25); الْجَامِعِ —al-jāmiʿi (24); بِالْإِجْمَاعِ —biāl'ijmāʿi (23); وَجَمَاعَةٌ —wajamāʿatun (23); إِجْمَاعِهِمْ —ʾijmāʿihim (21); بِجَمْعٍ —bijamʿin (16); تَجْمَعُ —tajmaʿu (16); يَجْتَمِعُ —yajtamiʿu (16); جَمَعَتْ —jamaʿat (15); لِلْإِجْمَاعِ —lilʾijmāʿi (15); الْمُجْتَمَعُ —al-mujtamaʿu (14); جَامِعَةٌ —jāmiʿatun (13); فَجَمَعَ —fajamaʿa (13); وَالْجِمَاعِ —jimāʿin (12); فَإِجْمَاعٌ —faʾijmāʿun (12); لِلْجُمُعَةِ —wāljimāʿi (12); أَجْمَعَتْ —ʾajmaʿat (10); فَاجْتَمَعَ —fājtamaʿa (10); الْمُجَامِعِ —liljumuʿati (10); يُجَامِعُ —yujāmiʿu (10); يَجْمَعُونَ —yajmaʿūna (10); جَمْعِهِمَا —al-mujāmiʿi (9); بِجَمِيعِه —bijamīʿihi (9); بِجَمِيعِهَا —bijamīʿihā (9); أَجْمَعِينَ —jamʿihimā (9); مُجْمَعَةٌ —mujmiʿatun (9); وَأَجْمَعُوا —waʾajmaʿūā (9); جَامَعَهَا —ʾajmaʿīna (8); جَمْعًا —jamʿan (8); جَمَعُوا —jamaʿūā (8); وَالْجُمُعَةُ —wāljumuʿatu (8); يُجَامِعَهَا —yujāmiʿahā (8); يَجْتَمِعَانِ —yajtamiʿāni (8); لِإِجْمَاعِ —liʾijmāʿi (7); مَجْمُوعًا —majmūʿan (7); يُجْمِعُوا —yujmiʿūā (7); جَمْعِهَا —jamʿihā (6); وَيَجْمَعُ —wajamaʿa (6); مَجْمُوعٌ —majmūʿun (6); وَجَمَعَ —wayajmaʿu (6); يَجْتَمِعُونَ —yajtamiʿūna (6); يَجْمَعُهُمَا —yajmaʿuhumā (6); اجْتَمَعَا —ʾjtamaʿā (5); بِإِجْمَاعِهِمْ —ʾjtamaʿat (5); الْجَمَّاعَاتِ —al-jamāʿāti (5); اجْتَمَعَتْ —biʾijmāʿihim (5); بِالْجِمَاعِ —biāljimāʿi (5); بِالْجَمْعِ —biāljamʿi (5); تُجَامِعُ —tujāmaʿu (5); تَجْمَعُوا —tajmaʿūā (5); جَمَعْنَا —jamaʿnā (5); جَوَامِعَ —jawāmiʿa (5); وَأَجْمَعَ —fajamīʿu (5); لِجَمِيعِهِمْ —lijamīʿihim (5); لِلْجِمَاعِ —liljimāʿi (5); فَجَمِيعُ —waʾajmaʿa (5); وَبِالْإِجْمَاعِ —wabiāl'ijmāʿi (5); يُجْمَعَانِ —yujmaʿāni (5); يَجْمَعُه

—yajmaʿahu (5); اجْتِمَاعِهِمَا —ʾjtimāʿihimā (4); الْجَوَامِعِ —al-jawāmiʿi (4); بِالْجَمِيعِ —biāljamīʿi (4); جُمُعَتَيْنِ —jumuʿatayni (4); فَجَمَعُوا —fajamaʿūā (4); مُجْتَمَعٍ —lijamīʿihā (4); لِلْجَمِيعِ —liljamīʿi (4); مُجَامِعَ —mujāmiʿa (4); بِجَمِيعِهَا —mujtamiʿin (4); أَجْمَعْتُمْ —nujammiʿu (4); وَلِجَمِيعِ —walijamīʿi (4); نُجَمِّعُ —ʾajmaʿtum (3); اجْتِمَاعُ —ʾjtimāʿu (3); الْمَجْمُوعَةِ —al-majmūʿati (3); بِاجْتِمَاعِ —biājtimāʿi (3); تَجْتَمِعُ —tajtamiʿu (3); جَامِعًا —jāmiʿan (3); جِمَاعًا —jimāʿan (3); فَلِجَمِيعِ —jimāʿihā (3); جَمْعِهِ —jamʿihi (3); فَاجْتَمَعْنَا —fājtamaʿnā (3); جِمَاعِهَا —falijamīʿi (3); فَيَجْمَعُ —fayajmaʿu (3); لِإِجْمَاعِهِمْ —liʾijmāʿihim (3); لِلْجَمَاعَةِ —lijamāʿati (3); لِجَمِيعِهِ —lijamīʿihi (3); لِلْجَمَاعَةِ —liljamāʿati (3); مُجْتَمِعَةٍ —mujtamiʿatin (3); مُجْتَمِعِينَ —mujtamiʿīna (3); مَجْمُوعَيْنِ —majmūʿayni (3); وَإِجْمَاعًا —waʾijmāʿan (3); وَالْجَمَاعَاتِ —wāljamāʿāti (3); وَالْجَمَاعَةِ —wāljamāʿati (3); وَجَامِعِ —wajāmiʿi (3); وَنَجْمَعُ —wanajmaʿu (3)

Context L2227: ... آل عمران وَهُوَ قَوْلُ جَمِيعِ الصَّحَابَةِ وَجَمِيعِ أَهْلِ الْإِسْلَامِ وَأَمَّا ...

Context L2232: ... وَأَنَّهُ بِخِلَافِ خَلْقِهِ مِنْ جَمِيعِ الْوُجُوهِ وَالْخَلْقُ كَثِيرٌ مُحْدَثٌ فَصَحَّ ...

57. أَمَّا[57]

ʾammā

4,407 occurrences; cumulative coverage 58.09%.

Possible English: as for; regarding; now then

Attested spellings and counts

وَأَمَّا —waʾammā (3,356); أَمَّا —ʾammā (793); فَأَمَّا —faʾammā (258)

Context L2222: ... أَمَّا بَعْدُ وَفَّقَنَا اللَّهُ وَإِيَّاكُمْ لِطَاعَتِهِ ...

[57] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أما (read dictionary entry).

Context: أما introduces a topic followed by a statement, often with فـ in its result. Do not confuse it with أَمَا, an introductory or interrogative expression.

Forms and grammar: فأما / وأما add and / so. أما does not have tense, gender or plural inflections. Its grammatical job is to organize the following clause.

58. مَرْء / نِسَاء / امْرَأَة[58]

ʾmraʾah / nisāʾ / marʾ

4,204 occurrences; cumulative coverage 58.38%.

Possible English: woman; women; wife; person; man

Context: امرأته commonly means his wife; امرأة without a possessive may mean a woman. المرء is a separate noun meaning a person or man, not a feminine case form.

Forms and grammar: امرأة / امرأتان / امرأتين show singular and dual; نساء / نسوة are irregular plurals of woman. امرأته changes with the possessive referent; امرؤ / امرأ / امرئ are case forms of the masculine noun.

Context L2227: ... الصَّحَابَةِ وَجَمِيعِ أَهْلِ الْإِسْلَامِ وَأَمَّا وُجُوبُ عَقْدِ ذَلِكَ بِالْقَلْبِ ... فَلِقَوْلِ ...

Attested spellings and counts

النساء —al-nsāʾ* (1,029); امْرَأَةٍ —ʾmraʾatin (786); الْمَرْأَة —al-marʾati (593); امْرَأَتُهُ —ʾmraʾatahu (536); الْمَرْءُ —al-marʾu (288); وَالْمَرْأَةُ —wālmarʾatu (93); لِلْمَرْأَةِ —lilmarʾati (76); وَالنِّسَاءِ —wālnnisāʾi (74); لِامْرَأَتِهِ —liāmraʾatihi (71); امْرِئٍ —ʾmriʾin (69); نِسَاءِ —nisāʾi (60); لِلنِّسَاءِ —lilnnisāʾi (49); بِامْرَأَةٍ —biāmraʾatin (46); نِسْوَةٍ —niswatin (44); لِامْرَأَةٍ —liāmraʾatin (43); امْرَأَتِي —ʾmraʾatī (34); امْرَأَتَيْنِ —ʾmraʾatayni (28); لِلْمَرْءِ —lilmarʾi (26); امْرَأَتَكَ —ʾmraʾatak (25); وَامْرَأَتِهِ —wāmraʾatihi (22); وَامْرَأَةٌ —wāmraʾatun (21); امْرَأَتَانِ —ʾmraʾatāni (18); بِالنِّسَاءِ —biālnnisāʾi (17); بِامْرَأَتِهِ —biāmraʾatihi (16); بِالْمَرْأَةِ —biālmarʾati (14); نِسَاءَهُ —nisāʾahu (13); وَامْرَأَتَيْنِ —wāmraʾatayni (11); وَامْرَأَتَانِ —wāmraʾatāni (10); وَنِسَاءُ —wanisāʾu (9); الْمَرِيءَ —al-marīʾa (7); النَّسَائِيِّ —al-nasāʾiyy (7); وَالْمَرِيءَ —wālmarīʾa (6); وَالنَّاسِي —wālnnāsī (6); لِلنَّاسِي —lilnnāsī (5); النِّسْوَةِ —al-niswati (4); بِامْرَأَتَيْنِ —biāmraʾatayni (4); وَلِلْمَرْأَةِ —falilmarʾati (4); مَرْئِيٌّ —marʾiyyun (4); نِسَاءَكَ —nisāʾak (4); فَلِلْمَرْأَةِ

[58] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: مرأ (read dictionary entry); نسا (read dictionary entry).

—walilmarʾati (4); وَلِلنِّسَاءِ —walilnnisāʾi (4); الْمَرْأَتَيْنِ —al-marʾatayni (3); فَالْمَرْأَةُ —fālmarʾatu (3); لِامْرِئٍ —liāmriʾin (3); لِنِسَائِي —linisāʾī (3); مَرْئِيَّةٍ — marʾiyyatin (3); مَرِيئًا —marīʾan (3); نِسَاءَكُمْ —nisāʾakum (3); وَالنَّسَائِيُّ — wālnnasāʾiyyu (3)

Context L2225: ... إِلَّا بِهِ أَنْ يَعْلَمَ الْمَرْءُ بِقَلْبِهِ عِلْمَ يَقِينٍ وَإِخْلَاصٍ لَا ...

Context L2238: ... لَا يَحُسُّ شَيْئًا وَأَنَّ الْمَرْءَ إِذَا فَكَّرَ فِي شَيْءٍ مَا ...

59. قَبِلَ / قَبْل[59]

qabl / qabila

4,007 occurrences; cumulative coverage 58.65%.

Possible English: before; accept; receive; front; toward

Context: قبل can locate an event before another, or be a verb meaning accepted. من قبل may mean previously or on the part of, depending on construction.

Forms and grammar: قبلَه = before him/it, but قَبِلَهُ = he accepted it. يقبل = accepts when vowelled يَقْبَل; قبول = acceptance; قابل = facing, receiving or next in a temporal phrase.

Attested spellings and counts

قَبْلَ —qabla (2,338); قَبْلَهُ —qablahu (339); يُقْبَلُ —yuqbalu (203); الْقِبْلَةِ —al-qiblati (150); تُقْبَلُ —tuqbalu (102); قَبُولٍ —qabūli (75); وَقَبْلَ — waqabla (65); قَبْلَهَا —qablahā (60); قَبْلَهُمْ —qablahum (54); أَقْبَلَ — ʾaqbala (44); قَابَلَ —qābala (38); قَبْلَكُمْ —qablakum (38); قَبْلَهُمَا — qablahumā (29); أَقْبَلَتْ —ʾaqbalat (22); قُبِلَتْ —qubilat (19); يَقْبَلُهَا — yaqbaluhā (19); اسْتِقْبَالِ —ʾstiqbāli (18); قَبْلَنَا —qablanā (18); بِقَبُولٍ — biqabūli (17); فَأَقْبَلَ —faʾaqbala (17); قَبْلِي —qablī (17); قَبُولِهِ —qabūlihi (17); مَقْبُولَةٌ —maqbūlatun (17); قَبُولُهَا —qabūluhā (14); قُبْلَةِ —qublati (13); قَبِلُوهَا —qabilūhā (12); مَقْبُولٍ —maqbūlin (12); يُقْبَلْنَ —yuqbalna (10); الْقَابِلَةِ —al-qābilati (9); فَقَبِلَهَا —faqabilahā (9); نَقْبَلُ —naqbalu (9); يَقْبَلْهُ — yaqbalhu (9); قَبْلَك —qablak (8); يَقْبَلُوهَا —yaqbalūhā (8); قُبَالَةَ —qubālata (7);

[59] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: قبل (read dictionary entry).

قِبْلَتِه —qiblatihi (7); مُسْتَقْبِلَ —mustaqbila (7); وَيُقْبَلْنَ —wayuqbalna (7); اسْتَقْبَلْتُ —ʾstaqbaltu (6); الْقَبَائِلِ —al-qabāʾili (6); بِالْقُبْلَةِ —biālqublati (6); أَقْبَلْنَا —fāqbalūā (6); فَاقْبَلُوا —qabīlatan (6); مُقَابَلَةُ —muqābalatu (6); قَبِيلَةً —ʾaqbalnā (5); تَقْبِيلِ —taqbīli (5); فَأَقْبَلَتْ —faʾaqbalat (5); فَاسْتَقْبَلَ — fāstaqbala (5); مُقْبِلًا —muqbilan (5); وَقَبْلَهُ —waqablahu (5); أَقْبَلُهَا — ʾaqbaluhā (4); الْقَبِيلَةِ —al-qabīlati (4); فَتُقْبَلُ —fatuqbalu (4); فَقَبِلَ — faqabila (4); قَابِلًا —qābilan (4); قَبِلُوا —qabilūā (4); وَالْقُبْلَةُ —wālqublatu (4); وَيُقْبَلُ —wayuqbalu (4); يُتَقَبَّلْ —yutaqabbal (4); اسْتِقْبَالِهِمَا —ʾstiqbālihimā (3); بِقَبُولِهَا — biqabūlihā (3); تَقْبَلُوا —taqbalūā (3); فَاقْبَلْهُ —fāqbalhu (3); قَبَائِلِ —qabāʾili (3); وَتَقْبِيلُ —liqubuli (3); نَسْتَقْبِلَ —nastaqbila (3); وَاسْتَقْبَلَ —wāstaqbala (3); لِقُبُلِ —wataqbīlu (3); وَيَسْتَقْبِلُ —wayastaqbilu (3); يَسْتَقْبِلَ —yastaqbila (3); يَسْتَقْبِلُهَا —yastaqbiluhā (3); يُقَابِلُ —yuqābilu (3)

Context L2227: ... غَيْرَ الإِسْلامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ وَهُوَ فِي الآخِرَةِ مِنَ ...

Context L2249: ... غَابَ عَنَّا أَوْ كَانَ قَبْلَنَا فَلَا يُعْرَفُ إِلَّا بِالْخَبَرِ عَنْهُ ...

60. صَاحِب / صَحَابَة[60]

ṣāḥib / ṣaḥābah

3,922 occurrences; cumulative coverage 58.91%.

Possible English: companion; associate; holder; person concerned

Attested spellings and counts

الصَّحَابَةِ —al-ṣaḥābati (1,207); صَاحِبِ —ṣāḥibin (565); أَصْحَابِ — ʾaṣḥābi (407); وَأَصْحَابُهُ —waʾaṣḥābuhu (240); صَاحِبِهِ —ṣāḥibihi (205);

[60] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: صحب (read dictionary entry).

Context: الصحابة normally refers to the Prophet's Companions. صاحب مال means an owner or holder of wealth. أصحابنا can mean our associates or fellow adherents.

Forms and grammar: صاحب / أصحاب = companion / companions; صحابي / صحابة refer to Companions in the technical usage. صاحبه / أصحابه change singular/plural and the possessive referent.

أَصْحَابِنَا —ʾaṣḥābinā (186); أَصْحَابِهِ —ʾaṣḥābihi (157); الصَّاحِبِ —al-ṣāḥibi (128); صَاحِبُهَا — وَأَصْحَابِنَا —waʾaṣḥābinā (120); وَأَصْحَابِهِمْ —waʾaṣḥābihim (120); ṣāḥibuhā (90); وَأَصْحَابُهُمَا —waʾaṣḥābuhumā (60); لِصَاحِبِ —liṣāḥibi (49); صُحْبَةٌ —ṣuḥbatun (36); لِصَاحِبِهِ —liṣāḥibihi (31); وَأَصْحَابِ —waʾaṣḥābi (27); صَاحِبِكُمْ —ṣāḥibikum (26); وَالصَّحَابَةُ —wālṣṣaḥābatu (20); أَصْحَابِهِمْ —ʾaṣḥābihim (19); صَاحِبَنَا —al-ṣuḥbati (19); الصُّحْبَةِ —ṣāḥibanā (10); صُحْبَتُهُ —ṣuḥbatuhu (10); صَاحِبَكَ —ṣāḥibak (9); فَصَاحِبُ — faṣāḥibu (9); فَصَاحِبُهُ —faṣāḥibuhu (9); وَصَاحِبَ —waṣāḥiba (9); بِأَصْحَابِهِ — biʾaṣḥābihi (8); صَحَابَةٌ —ṣaḥābatun (8); لِأَصْحَابِ —liʾaṣḥābi (8); صَاحِبَانِ — ṣāḥibāni (7); صَاحِبَيْنِ —ṣāḥibayni (7); لِأَصْحَابِهِ —liʾaṣḥābihi (7); بِصَاحِبِ — biṣāḥibin (6); صَحِبَ —ṣaḥiba (6); وَالصَّاحِبِ —wālṣṣāḥibi (6); صَاحِبِهِمْ — ṣāḥibihim (5); فَلِصَاحِبِ —faliṣāḥibi (5); وَصَحْبِهِ —waṣaḥbihi (5); بِصَاحِبِهِ — لِصَاحِبِهَا — biṣāḥibihi (4); صَاحِبَاهُ —ṣāḥibāhu (4); صَحِبَتْ —ṣaḥibat (4); liṣāḥibihā (4); بِأَصْحَابِهَا — biʾaṣḥābihā (3); أَصْحَابِهَا —ʾaṣḥābihā (3); أَصْحَابِكَ —ʾaṣḥābik (3); صَاحِبِي — ṣāḥibī (3); صَاحِبَةٌ —ṣāḥibatun (3); بِالصَّحَابَةِ —biālṣṣaḥābati (3); وَالصُّحْبَةِ — wālṣṣuḥbati (3); لِلصَّحَابَةِ —lilṣṣaḥābati (3); صَوَاحِبِ —ṣawāḥibi (3); وَلِأَصْحَابِهِ —waliʾaṣḥābihi (3)

عمران وَهُوَ قَوْلُ جَمِيعِ الصَّحَابَةِ وَجَمِيعِ أَهْلِ الْإِسْلَامِ وَأَمَّا وُجُوبُ ... :Context L2227
...

بِلَالٌ وَلَا أَحَدٌ مِنْ أَصْحَابِهِ حَتَّى ضَرَبَتْهُمْ الشَّمْسُ فَكَانَ رَسُولُ ... :Context L2241
...

61. بَطَلَ / بَاطِل[61]

bāṭil / baṭala

3,914 occurrences; cumulative coverage 59.18%.

Possible English: invalid; void; false; become invalid; refute

Context: A باطل argument is false or unsound; a باطل contract is invalid. The affected noun determines whether English false or void is appropriate.

Forms and grammar: بطل / يبطل = became invalid / becomes invalid; أبطل / يبطل = invalidated / invalidates with different vowels. باطل / باطلة agree in gender; بطلان / إبطال are distinct verbal nouns.

Attested spellings and counts

بَاطِلٌ —bāṭilun (910); فَبَطَلَ —fabaṭala (455); الْبَاطِلِ —al-bāṭili (361); بِالْبَاطِلِ —biālbāṭili (334); بَطَلَ —baṭala (254); يُبْطِلُ —yubṭilu (188); بَطَلَتْ —baṭalat (171); إِبْطَالِ —ʾibṭāli (126); بُطْلَانُ —buṭlānu (96); تَبْطُلُ —tabṭulu (95); بَاطِلًا —bāṭilan (75); فَبَاطِلٌ —fabāṭilun (68); وَبَطَلَ — wabaṭala (61); أَبْطَلَ —ʾabṭala (58); وَيَبْطُلُ —wayabṭulu (47); مُبْطِلٌ — mubṭilun (37); إِبْطَالُهُ —ʾibṭāluhu (35); بِبَاطِلٍ —bibāṭilin (29); فَبَطَلَتْ — fabaṭalat (22); وَالْبَاطِلِ —wālbāṭili (22); فَأَبْطَلَ —faʾabṭala (20); وَأَبْطَلَ — waʾabṭala (19); وَإِبْطَالِ —waʾibṭāli (19); وَبَاطِلٌ —wabāṭilun (19); يُبْطِلُهُ — yubṭiluhu (17); يُبْطِلُونَ —yubṭilūna (17); بَاطِلَةً —bāṭilatun (15); بُطْلَانِه — buṭlānihi (15); بِإِبْطَالِ —biʾibṭāli (14); فَيَبْطُلُ —fayabṭulu (14); وَأَبْطَلُوا — waʾabṭalūā (14); تُبْطِلُوا —tubṭilūā (13); لِلْبَاطِلِ —lilbāṭili (13); يُبْطِلُهَا — yubṭiluhā (12); أَبْطَلُوا —ʾabṭalūā (11); وَتَبْطُلُ —watabṭulu (11); أَبْطَلْتُمْ — ʾabṭaltum (10); بُطْلَانِهَا —buṭlānihā (9); فَأَبْطَلُوا —faʾabṭalūā (9); لَبَطَلَ — labaṭala (9); وَبُطْلَانُ —wabuṭlānu (9); وَبَطَلَتْ —wabaṭalat (9); أَبْطَلَهُ — ʾabṭalahu (8); الْبُطْلَانِ —al-buṭlāni (8); لَبَطَلَتْ —labaṭalat (8); أَبْطَلَهَا — ʾabṭalahā (7); بِبُطْلَانِ —bibuṭlāni (7); مُبْطِلَةٌ —mubṭilatun (7); وَإِبْطَالُهُ — waʾibṭāluhu (7); إِبْطَالُهُمْ —ʾibṭāluhum (6); بِإِبْطَالِهِ —biʾibṭālihi (6); تُبْطِلُونَ —tubṭilūna (6); وَيُبْطِلُونَ —wayubṭilūna (6); أَبْطَلْنَا —ʾabṭalnā (5); إِبْطَالِهَا

[61] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: بطل (read dictionary entry).

وَبُطْلَانُهُ —ʾibṭālihā (5); مُبْطِلَانِ —mubṭilāni (5); وَبَاطِلًا —wabāṭilan (5); الْمُبْطِلِ —wabuṭlānuhu (5); يُبْطِلَانِ —yubṭilāni (5); يُبْطِلُوا —yubṭilūā (5); مُبْطِلًا —al-mubṭili (4); بُطْلَانًا —bāṭilihim (4); بَاطِلِهِمْ —buṭlānan (4); وَأَبْطَلَهُ —mubṭilan (4); نُبْطِلُ —nubṭilu (4); وَأَبْطَلْتُمْ —waʾabṭaltum (4); وَيُبْطِلُهُ —waʾabṭalahu (4); وَمُبْطِلٌ —wamubṭilun (4); يُبْطِلُوهُ —wayubṭiluhu (4); إِبْطَالُنَا —yubṭilūhu (4); أَبْطَلْتُ —ʾabṭaltu (3); أَبْطَلْنَاهُ —ʾabṭalnāhu (3); لِبُطْلَانِ —ʾibṭālunā (3); فَتَبْطُلُ —fatabṭulu (3); لِبَاطِلٍ —libāṭilin (3); لِيُبْطِلَ —libuṭlāni (3); —liyubṭila (3)

Context L2232: ... مُرَكَّبًا فَهُوَ مَخْلُوقٌ مُدَبَّرٌ فَبَطَلَ كُلُّ ذَلِكَ وَعَادَ الْأَمْرُ إِلَى ...

Context L2234: ... غَيْرُهُ لَمْ يَزَلْ فَكَانَ يُبْطِلُ التَّوْحِيدَ الَّذِي قَدْ أَبَنَّا بُرْهَانَهُ ...

Attested spellings and counts

قَوْمٌ —qawmun (478); قِيمَةِ —qīmati (192); الْقَوْمِ —al-qawmi (160); الْقِيَامَةِ —al-qiyāmati (152); قَامَ —qāma (152); يَقُومُ —yaqūmu (122); إِقَامَةِ —ʾiqāmati (111); أَقَامَ —ʾaqāma (106); قِيمَتِهِ —qīmatihi (106); الْإِقَامَةِ —al-ʾiqāmati (99); فَقَامَ —faqāma (92); تَقُومُ —taqūmu (87); قَوْمًا —qawman (81); قَائِمًا —qāʾiman (79); الْقِيَامِ —al-qiyāmi (73); الْقِيمَةِ —al-qīmati (67); قَامَتْ —qāmat (67); قَوْمِهِ —qawmihi (67); يُقِيمَ —yuqīma (60); قَائِمٌ —qāʾimun (47); قِيمَتِهَا —qīmatihā (45); أُقِيمَتْ —ʾuqīmat (44); يُقَامُ —yuqāmu (42); بِالْقِيمَةِ

62. قَوْم / قَامَ[62]

qāma / qawm

3,842 occurrences; cumulative coverage 59.44%.

Possible English: stand; perform; establish; people; group

Context: قام can mean stood or undertook an act. أقام الصلاة means established/performed prayer. قوم denotes a group of people; it is not a plural of the verb.

[62] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: قوم (read dictionary entry).

Forms and grammar: قام / يقوم / قم = stood / stands / stand!; أقام / يقيم = established / establishes. قوم / أقوام = people-group(s); قيام and إقامة are different verbal nouns.

وَالْإِقَامَةِ —biālqīmati (41); بِقِيمَةِ —biqīmati (41); مَقَامَ —maqāma (36); وَإِقَامَةٍ —wāl'iqāmati (35); قَوَّامِينَ —qawwāmīna (33); قَائِمَةٌ —qā'imatun (32); الْمُقِيمُ —al-muqīmu (29); تُقَامُ —tuqāmu (29); قِيَامِ —qiyāmi (29); قِيَامًا —qiyāman (29); مُقِيمٌ —muqīmun (29); وَالْقَوْمُ —wālqawmu (28); بِإِقَامَةِ —bi'iqāmati (26); يَقُمْ —yaqum (26); تَقُمْ —taqum (25); أُقِيمَ —'uqīma (23); وَإِقَامَةٍ —wa'iqāmatin (23); فَأَقَامَ —fa'aqāma (21); وَأَقَامَ —wa'aqāma (20); لِقَوْمٍ —liqawmin (18); لِلْمُقِيمِ —lilmuqīmi (18); أَقَامُوا —'aqāmūā (16); أَقْوَامٍ —'aqwāmin (15); الْقَائِمَةِ —al-qā'imati (15); بِالْقِيَامِ —biālqiyāmi (14); قَوْمِي —qawmī (14); قَوْمِهَا —qawmihā (14); قُمْ —qum (14); بِقَوْمٍ —biqawmin (14); الْقَائِمِ —al-qā'imi (13); وَقَامَتْ —waqāmat (13); فَأُقِيمَتْ —fa'uqīmat (12); وَالْقِيمَةُ —wālqīmatu (12); قِيَامَهُ —qiyāmahu (12); مُقِيمًا —muqīman (12); وَيَقُومُ —wayaqūmu (12); إِقَامَتُهُ —'iqāmatuhu (11); الْقَيِّمُ —al-qayyimu (11); مَقَامِهِ —maqāmihi (11); وَأَقَامُوا —wa'aqāmūā (11); وَقَامَ —waqāma (11); أَقِمْ —'aqim (10); إِقَامَتَهَا —'iqāmatahā (10); التَّقْوِيمِ —al-taqwīmi (10); فَأَقِمْ —fa'aqim (10); وَتَقُومُ —wataqūmu (10); وَقِيمَةَ —waqīmata (10); وَيُقِيمَ —wayuqīma (10); قَامُوا —qāmūā (9); قُمْت —qumt (9); قُوِّمَتْ —quwwimat (9); يَقُومُونَ —yaqūmūna (9); يُقِيمَا —yuqīmā (9); الْمَقَامِ —al-maqāmi (8); فَقَامَتْ —faqāmat (8); قِيمَتُهُمْ —qīmatuhum (8); وَأَقِيمُوا —wa'aqīmūā (8); وَإِقَامَتَيْنِ —wa'iqāmatayni (8); فَأُقِيمَ —fa'uqīma (7); قَوْمِك

—qawmik (7); لِإِقَامَةِ —liʾiqāmati (7); وَالْقِيَامِ —wālqiyāmi (7); وَالْمُقِيمُ — wālmuqīmu (7); وَقُومُوا —waqūmūā (7); وَقِيَامٍ —waqiyāmin (7); وَيُقَامُ — wayuqāmu (7); بِإِقَامَتَيْنِ —biʾiqāmatayni (6); تَقْوِيمِ —taqwīmi (6); فَقِيمَتُهُ —faqīmatuhu (6); فَيَقُومُ —fayaqūmu (6); قُمْتُمْ —qumtum (6); وَأَقُومُ — waʾaqūmu (6); وَالْمَقَامِ —wālmaqāmi (6); وَيُقِيمُوا —wayuqīmūā (6); بِتَقْوِيمِ —bitaqwīmi (5); بِقِيَامٍ —biqiyāmin (5); بِقِيمَتِهِ —biqīmatihi (5); بِقِيمَتِهَا —biqīmatihā (5); تُقِيمُ —tuqīmu (5); فَأَقْمِهُ —faʾaqimhu (5); فَأَقِيمُوا — faʾaqīmūā (5); فَالْقَوْمُ —fālqawmu (5); فَقُمْ —faqum (5); فَيُقَامُ —fayuqāmu (5); وَلِلْمُقِيمِ —waqīmatuhu (5); وَقِيمَتُهُ —waʾuqīma (5); وَأُقِيمَ —qawmihim (5); قَوْمِهِمْ —walilmuqīmi (5); يُقِيمُوا —yaqūmūā (5); يُقِيمُهَا —yuqīmuhā (5); يَقُومُوا — yuqīmūā (5); أَقَامَتْ —ʾaqāmat (4); أَقَامَهَا —ʾaqāmahā (4); أَقِيمُوا —ʾaqīmūā (4); قُومُوا —falyaqum (4); فَلْيَقُمْ —qawwāmūna (4); قَوَّامُونَ —qawāman (4); قَوَامًا —qūmūā (4); لِلْقَوْمِ —lilqawmi (4); مُسْتَقِيمٍ —mustaqīmin (4); وَأُقِيمَتْ — waʾuqīmat (4); وَإِقَامَتِهِ —waʾiqāmatihi (4); وَقَوْمٌ —waqawmun (4); يُقِيمُهُ —yuqīmuhu (4); أَقَامُوهُ —ʾaqāmūhu (3); أَقَمْتُ —ʾaqamt (3); الْمُقِيمِينَ — al-muqīmīna (3); بِإِقَامَتِهِ —biʾiqāmatihi (3); بِالْإِقَامَةِ —biālʾiqāmati (3); فَأَقَامَنِي —faʾaqāmanī (3); فَإِقَامَةُ —faʾiqāmatu (3); فَقُومُوا —faqūmūā (3); فَقِيمَةُ —faqīmatu (3); فَقِيمَتُهَا —faqīmatuhā (3); فَيُقِيمُونَ —fayuqīmūna (3); قِيمَتِهِمَا — qīmatihimā (3); لَقَامَ —laqāma (3); لِقَوْمِي —liqawmī (3); لِلْقِيَامِ —lilqiyāmi (3);

وَإِقَامَتِهَا —wa’iqāmatihā (3); وَتُقِيمُ —watuqīmu (3); وَقَوْمًا —waqawman (3); وَقِيَامِهِ —waqiyāmihi (3); يُقِيمُونَ —yuqīmūna (3)

Context L2238: ... أَجْمَعَ عَلَيْهِ الْمُسْلِمُونَ وَمَا قَامَ بِهِ الْبُرْهَانُ الْعَقْلِيُّ ...

Context L2239: ... بُرْهَانُ ذَلِكَ أَنَّهُ قَدْ قَامَ الْبُرْهَانُ كَمَا ذَكَرْنَا بِأَنَّ هَهُنَا ...

63. زَيْد / زَادَ[63]

zāda / zayd

3,827 occurrences; cumulative coverage 59.70%.

Possible English: increase; add; more; Zayd; Yazīd; Ziyād

Context: زيد, يزيد and زياد commonly name different narrators. يزيد can also be the imperfect verb increases. Keep the personal names distinct.

Forms and grammar: زاد / يزيد = increased / increases; زيادة = increase; مزيد = additional. زيد and زياد are separate name formations, not cases of one name. Context distinguishes the name يزيد from the verb.

Attested spellings and counts

زَيْدٍ —zaydin (1,077); يَزِيدَ —yazīda (894); زَادَ —zāda (296); زِيَادٍ —ziyādin (176); زَائِدَةَ —zā’idata (155); زِيَادَةٌ —ziyādatun (126); وَزَيْدٍ —wazaydi (125); الزِّيَادَةَ —al-ziyādati (114); مَزِيدَ —mazīda (78); زَادَتْ —zādat (70); زَائِدٌ —zā’idun (69); وَزِيَادَةُ —waziyādatu (55); وَزَادَ —wazāda (49); زَائِدًا —zā’idan (48); وَيَزِيدُ —wayazīdu (42); زَيْدًا —zaydan (41); بِزِيَادَةٍ —biziyādatin (28); وَالزِّيَادَةُ —wālzziyādatu (28); يُزَادَ —yuzāda (24); تَزِيدُ —tazīdu (22); زَادُوا —zādūā (22); لِزَيْدٍ —lizaydin (22); الزَّائِدَةِ —al-zā’idati (19); الزَّائِدُ —al-zā’idu (18); بِالزِّيَادَةِ —biālzziyādati (17); فَزَادَ —fazāda (15); زَادَهُ —zādahu (13); وَزِيَادُ —waziyādu (13); بِالزَّائِدِ —biālzzā’idi (10); يَزِدْ —yazid (10); يَزِيدُهُ —yazidhu (8); يَزِيدُوا —yazīdūā (7); زَائِدَانِ —zā’idāni (6); زِدْتَ —zidt (6); تَزِيدُهُ —tazidhu (5); فَالزِّيَادَةُ —fālzziyādatu (5); فَزَادَهُ —fazādahu (5); فَزِيَادَةُ —faziyādatu (5); نَزِيدُ —nazīdu (5); نَزِيدُهُمْ —nazīduhum (5); وَزَادَتْ —wazādat (5); يَزِيدُهُ —

[63] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: زيد (read dictionary entry).

yazīduhu (5); الزَّادُ —al-zādu (4); الزِّيَادَاتِ —al-ziyādāti (4); تَزِدْ —tazid (4); زِيَادًا —ziyādan (4); لِيَزِيدَ —liyazīda (4); وَالزَّائِدُ —wālzzāʾidu (4); وَزَائِدَةً —wazāʾidatun (4); وَزَادَنِي —wazādanī (4); وَزَادُوا —wazādūā (4); أَزِيدُكَ —ʾazīduk (3); التَّزَيُّدِ —al-tazayyudi (3); الْمُزَادَةَ —al-muzādata (3); زَادًا —zādan (3); زَادَكَ —zādaka (3); زَادَهَا —zādahā (3); زَادُونَا —zādūnā (3); زَادُوهَا —zādūhā (3); زِدْتُمْ —zidtum (3); زِيَادَتِهِ —ziyādatihi (3); فَالزَّائِدُ —fālzzāʾidu (3); فَزَادُوا —fazādūā (3); فَيَزِيدُ —fayazīdu (3); وَالْمَزَادُ —wālmazādu (3); يَزْدَادَ —yazdāda (3); يَزِدْنَ —yazidna (3)

Context L2225: ... أُمَيَّةُ بْنُ بِسْطَامٍ نا يَزِيدُ بْنُ زُرَيْعٍ نا رَوْحٌ عَنْ ...

Context L2230: ... ذَكَرْنَا فَهُوَ عَدَدٌ مَعْدُودٌ وَيَزِيدُ بِمُرُورِهِ وَدَوَامِهِ وَالزِّيَادَةُ لَا تَكُونُ ...

Attested spellings and counts

حُكْمُ —ḥukmu (1,195); الْحَكَمِ —al-ḥakami (747); حُكْمُهُ —ḥukmuhu (168); الْحَاكِمُ —al-ḥākimu (130); حَكِيمٍ —ḥakīmin (127); يَحْكُمَ —yaḥkuma (123); بِحُكْمِ —biḥukmi (109); وَالْحَكَمِ —wālḥakami (103); وَحُكْمُ —waḥukmu (100); أَحْكَامُ —ʾaḥkāmu (99); حُكْمًا —ḥukman (81); الْأَحْكَامِ —al-ʾaḥkāmi (57); تَحَكُّمٌ —taḥakkumun (50); حُكْمُهَا —ḥukmuhā (49); وَحُكْمُهُ —waḥukmuhu (39); التَّحَكُّمِ —al-taḥakkumi (28); الْحُكْمَيْنِ —al-ḥukmayni (25); فَحُكْمُهُ —faḥukmuhu (24);

64. حُكْم / حَكَمَ[64]

ḥukm / ḥakama

3,791 occurrences; cumulative coverage 59.95%.

Possible English: ruling; judgment; rule; judge; govern

Context: حكم may be a legal norm or a particular judgment. حكم بكذا means ruled or adjudged something. الحكيم or حكيم may instead be a descriptive divine name or a personal name.

[64] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: حكم (read dictionary entry).

Forms and grammar: حكم / يحكم = judged / judges; حكم / أحكام = ruling / rulings; حاكم = judge or ruler; محكوم = adjudicated. حكمه changes meaning with vowels and its sentence role.

حَاكِمٌ —ḥākimun (19); فَحُكْمُ —faḥukmu (19); كَحُكْمِ —kaḥukmi (18); أَحْكَامِهِ —ʾaḥkāmihi (16); نَحْكُمَ —naḥkuma (16); بِالْحُكْمِ —biālḥukmi (14); حُكْمُهُمْ —ḥukmuhum (14); فَالْحُكْمُ —fālḥukmu (14); أَحْكَامِهَا —ʾaḥkāmihā (12); تَحَكُّمًا —taḥakkuman (12); حُكْمُهُمَا —ḥukmuhumā (12); لِحُكْمِهِ —liḥukmihi (12); وَأَحْكَامُ —waʾaḥkāmu (12); وَتَحَكُّمٌ —wataḥakkumun (12); حَكَمُوا —ḥakamūā (11); وَالتَّحَكُّمِ —wālttaḥakkumi (11); يَحْكُمُونَ —yaḥkumūna (11); تَحْكُمُوا —taḥkumūā (10); حَكَمْنَا —ḥakamnā (10); حُكْمَيْنِ —ḥukmayni (10); أَحْكَامُهُمْ —ʾaḥkāmuhum (9); مَحْكُومٌ —maḥkūmun (9); الْمَحْكُومِ —al-maḥkūmi (8); حَكَمْتُمْ —ḥakamtum (8); لِلْحُكْمِ —lilḥukmi (8); وَتَحَكَّمُوا —wataḥakkamūā (7); يُحَكِّمُوكَ —yuḥakkimūka (7); الْحُكْمَانِ —al-ḥukmāni (6); تَحْكِيمِ —taḥkīmi (6); حُكْمَيْهِمَا —ḥukmayhimā (6); فَاحْكُمْ —fāḥkum (6); مُحْكَمَةٌ —muḥkamatun (6); وَحُكْمًا —waḥukman (6); وَيَحْكُمُ —wayaḥkumu (6); بِالْحِكْمَةِ —biālḥikmati (5); بِحُكْمِهِ —biḥukmihi (5); تَحْكُمُونَ —taḥkumūna (5); حَكَمْتَ —ḥakamt (5); فَتَحَكُّمٌ —fataḥakkumun (5); فَحُكْمُهَا —faḥukmuhā (5); لِلْحَاكِمِ —lilḥākimi (5); مُتَحَكِّمُونَ —mutaḥakkimūna (5); وَبِحُكْمِ —wabiḥukmi (5); يَحْكُمُوا —yaḥkumūā (5); التَّحْكِيمَ —al-taḥkīma (4); حَاكِمًا —ḥākiman (4); لَتَحَكُّمٌ —lataḥakkumun (4); مُتَحَكِّمٌ —mutaḥakkimun (4); وَالْأَحْكَامُ —wāl'aḥkāmu (4); وَالْحَاكِمُ —wālḥākimu (4); وَحُكْمُهَا —waḥukmuhā (4); الْحُكَّامِ —al-ḥukkāmi (3);

حَكِيمَةَ —ḥakīman (3); حَكِيمًا —biʾaḥkāmi (3); بِأَحْكَامِ —al-ḥakīmu (3); الْحَكِيمُ —ḥakīmata (3); فَحُكْمُهُمْ —faḥukmuhum (3); كَالْحُكْمِ —kālḥukmi (3); لِيَحْكُمَ —liyaḥkuma (3); مُتَحَكِّمِينَ —mutaḥakkimīna (3); مُحْكَمٌ —muḥkamun (3); وَحُكْمُهُمَا —waḥukmuhumā (3)

Context L2222: ... النَّاسُ فِيهِ وَالْإِشْرَافِ عَلَى أَحْكَامِ الْقُرْآنِ وَالْوُقُوفِ عَلَى جَمْهَرَةِ السُّنَنِ ...

Context L2338: ... عُرْوَةُ بْنُ الزُّبَيْرِ أَنَّ حَكِيمَ بْنَ حِزَامٍ أَخْبَرَهُ أَنَّهُ قَالَ ...

65. حَلَّ / حَلَال[65]

ḥalāl / ḥalla

3,752 occurrences; cumulative coverage 60.21%.

Possible English: lawful; permissible; become due; untie; dissolve

Context: يحل in a ruling often means is lawful. حَلّ can also concern untying, release or a due date. حالا, immediately, has a different possible analysis and must be read in context.

Forms and grammar: حل / يحل = became lawful or due / is lawful or due, with vowel-dependent readings. أحل = made lawful; حلال / حلالا differ by case; حلّل is another derived pattern.

Attested spellings and counts

يَحِلُّ —yaḥillu (1,754); حَلَالٌ —ḥalālun (369); حَلَّ —ḥalla (198); تَحِلُّ —taḥillu (194); حَلَالًا —ḥalālan (99); الْحَلَالِ —al-ḥalāli (95); أَحَلَّ —ʾaḥalla (74); وَأَحَلَّ —waʾaḥalla (59); الْحِلِّ —al-ḥilli (55); حَالًّا —ḥāllan (49); حَلَّتْ —ḥallat (45); حُلِّيِّ —ḥuliyyi (31); التَّحْلِيلِ —al-taḥlīli (30); وَحَلَّ —waḥalla (28); الْحُلِّيِّ —al-ḥuliyyi (26); يَسْتَحِلُّ —yastaḥillu (26); مَحَلَّهُ —maḥillahu (24); أَحَلَّهُ —ʾaḥallahu (21); فَحَلَالٌ —faḥalālun (20); وَيَحِلُّ —wayaḥillu (20); أَحَلَّتْ —ʾaḥallat (17); فَحَلَّ —faḥalla (17); يُحِلُّهَا —yuḥilluhā (17); مُحِلُّ —muḥillun (16); الْمُحَلِّلُ —al-muḥallilu (15); حُلَّةٍ —ḥullatin (14); حُلُولِ —ḥulūli (14); اسْتَحَلَّ —ʾstaḥalla (12); الْحُلَلِ —al-ḥulali (12); تَحْلِيلُ —taḥlīlu (12);

[65] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: حلل (read dictionary entry).

وَالْحُلِيُّ —maḥilluhā (12); مَحِلُّهَا —waḥalālun (12); وَحَلَالٌ —taḥlīluhu (11); تَحْلِيلُهُ —ḥuliyyan (10); حُلِيًّا —wataḥillu (11); وَتَحِلُّ —wālḥuliyyu (11); وَالتَّحْلِيلِ —yuḥilluhu (10); يُحِلُّهُ —waḥallat (10); وَحَلَّتْ —wālttaḥlīli (10); اسْتَحْلَلْتُمْ —ʾstaḥlaltum (9); حُلِّلَ —yaḥillūna (9); يَحِلُّونَ —yastaḥillūna (9); يَسْتَحِلُّونَ —ḥullila (8); لِيُحِلَّهَا —liyuḥillahā (8); مَحَلَّةٍ —maḥallati (8); أَحَلَّهَا —ʾaḥallahā (7); فَحَلَّتْ —al-muḥillu (7); الْمُحِلُّ —al-ʾiḥlīli (7); الْإِحْلِيلِ —ʾstiḥlāli (7); اسْتِحْلَالِ —faḥallat (7); وَالْمُحَلَّلُ —wālḥalālu (7); وَالْحَلَالُ —muḥallalin (7); مُحَلِّلٍ —wālmuḥallalu (7); وَتَحْلِيلُ —wataḥlīlu (7); إِحْلَالِهِ —ʾiḥlālihi (6); إِحْلَالَهَا —ʾiḥlālahā (6); يَنْحَلُّ —yanḥallu (6); تَحْلِيلَهَا —taḥlīlahā (6); حَلَالَانِ —ḥalālāni (6); حَلَلْتِ —ḥalalti (5); فَيَحِلُّ —fayaḥillu (5); مَحِلِّي —maḥillī (5); يَحِلُّوا —yaḥillūā (5); اسْتَحَلُّوا —ʾaḥallūā (4); إِحْلِيلِهِ —ʾiḥlīlihi (4); إِحْلَالِ —ʾiḥlāli (4); أَحَلُّوا —ʾstaḥallūā (4); بِحَلِيلَةِ —biāl'iḥlāli (4); بِالْإِحْلَالِ —al-ʾiḥlāli (4); الْإِحْلَالِ —biḥalīlati (4); حَلَالَهُ —ḥalālahu (4); حَلَلْتُمْ —ḥalaltum (4); فَلْيَحِلَّ —falyaḥilla (4); وَحَلَالًا —waḥalālan (4); مُسْتَحِلٍّ —mustaḥillin (4); وَالْحُلِّ —wālḥulali (4); وَحُلِيِّ —waḥuliyyi (4); إِحْلَالًا —ʾaḥlaltum (3); أَحْلَلْنَا —ʾaḥlalnā (3); أَحْلَلْتُمْ —ʾiḥlālan (3); اسْتَحَلَّهَا —ʾstaḥlalnā (3); اسْتَحْلَلْنَا —ʾstaḥlalta (3); اسْتَحْلَلْتَ —ʾstaḥallahā (3); الْمَحَلَّةِ —al-maḥallātu (3); الْمَحَلَّاتُ —al-taḥalluli (3); التَّحَلُّلِ —al-maḥallati (3); بِالتَّحْلِيلِ —biālttaḥlīli (3); بِحُلِيِّ —biḥuliyyi (3); تَحَلِّينَ —taḥillīna (3); تُسْتَحَلُّ —tustaḥallu (3); حِلِّهِ —ḥillihi (3); حَلَّهَا —ḥallahā (3);

حُلِّيَهَا —ḥuliyyahā (3); لَحَلَّ —laḥalla (3); مَحَلَّتِهِ —maḥallatihi (3); مُحِلًّا — muḥallilan (3); وَاسْتِحْلَالُ —wāstiḥlālu (3); وَحَالَّا —waḥāllan (3); وَيُحَلِّلُ — wayuḥallilu (3); يَحْلِلْ —yaḥlil (3); يَسْتَحِلُّونَهُ —yastaḥillūnahu (3)

Context L2227: ... الْمُخْرِجَةُ لِلدَّمِ وَالْمَالِ مِنْ التَّحْلِيلِ إلَى التَّحْرِيمِ كَمَا قَالَ رَسُولُ ...

...

Context L2351: ... صُلِبَ فَهُوَ كَافِرٌ مُرْتَدٌّ حَلَالٌ دَمُهُ وَمَالُهُ لِتَكْذِيبِهِ الْقُرْآنَ وَخِلَافِهِ ...

...

66. قَتْل / قَتَلَ[66]

qatala / qatl

3,621 occurrences; cumulative coverage 60.45%.

Possible English: kill; killing; homicide

Context: قتل denotes killing, but intention, justification and legal consequence must come from surrounding qualifications. قاتل and مقتول identify different participants.

Forms and grammar: قتل / يقتل = killed / kills; قُتِل / يُقتل = was killed / is killed. قاتل = killer; مقتول = killed person; قتله = he killed him or his killing, depending on vowels.

Attested spellings and counts

قَتَلَ —qatala (870); قَتَلَهُ —qatalahu (288); يُقْتَلُ —yuqtalu (268); الْقَتْلِ —al-qatli (155); الْقَاتِلِ —al-qātili (151); قَاتِلِ —qātili (145); الْمَقْتُولِ — al-maqtūli (133); فَقَتَلَهُ —faqatalahu (85); بِقَتْلِ —biqatli (79); فَقَتَلَ — faqatala (66); قَتِيلٌ —qatīlun (62); الْقِتَالِ —al-qitāli (44); قَتَلَهَا —qatalahā (42); تَقْتُلُوا —taqtulūā (41); الْقَتِيلِ —al-qatīli (37); قَاتِلُهُ —qātiluhu (37); وَقَتْلِ — waqatli (37); يَقْتُلُهُ —yaqtulhu (37); قَاتِلًا —qātilan (33); قَتَلَتْ —qatalat (32); بِقَتْلِهِ —biqatlihi (31); قَتِيلًا —qatīlan (29); قَتَلُوا —qatalūā (28); قِتَالٍ — qitālin (27); قَتْلِهِمْ —qatlihim (24); قَتَلْتَهُ —qataltahu (23); لِلْقَاتِلِ —lilqātili (23); مَقْتُولًا —maqtūlan (23); فَاقْتُلُوا —fāqtulūā (22); قَتَلْنَاهُ —qatalnāhu (21); يُقَاتِلَ —yuqātila (21); يَقْتُلُونَ —yaqtulūna (21); فَاقْتُلُوهُ —fāqtulūhu (20); لِلْقَتْلِ — lilqatli (20); يَقْتُلُوا —yaqtulūā (19); تَقْتُلُ —taqtulu (18); قَتَلُوهُ —qatalūhu (18);

[66] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: قتل (read dictionary entry).

فَقَتَلْتُهُ —faqatalathu (14); قَتَلْتُمْ —qataltum (14); لِقَتْلِهِ —liqatlihi (14); بِالْقَتْلِ — biālqatli (13); فَقَاتِلُوا —faqātilūā (13); قِتَالُهُمْ —qitāluhum (12); قَتْلًا — qatlan (12); وَقَاتِلُوهُمْ —waqātilūhum (12); الْقِتْلَةَ —al-qitlata (11); الْمُقَاتَلَةِ — al-muqātalati (11); فَقَتَلَهَا —faqatalahā (11); اقْتَتَلُوا —ʾqtatalūā (10); قَتَلَنِي — qatalanī (10); مُقَاتِلٍ —muqātilin (10); مَقْتَلَهُ —maqtalahu (10); مَقْتُولٍ — maqtūlin (10); وَالْمَقْتُولُ —wālmaqtūlu (10); الْقَاتِلَةِ —al-qātilati (9); الْقَتْلَى — al-qatlā (9); قَاتِلُوا —qātilūā (9); لِقَتْلٍ —liqatli (9); لِلْمَقْتُولِ —lilmaqtūli (9); وَيَقْتُلُونَ —wayaqtulūna (9); يَقْتُلُهَا —yaqtuluhā (9); أُقَاتِلَ —ʾuqātila (8); بِقَتْلِهَا —biqatlihā (8); قَتَلْنَا —qatalnā (8); نَقْتُلُ —naqtulu (8); وَيُقْتَلُ — wayuqtalu (8); وَالْقَاتِلُ —al-muqtatilīna (7); قَتْلِهِنَّ —qatlihinna (7); الْمُقْتَتِلِينَ — —wālqātilu (7); يُقَاتِلُوكُمْ —yuqātilūkum (7); أَقْتُلُهُ —ʾaqtuluhu (6); بِقِتَالٍ — biqitāli (6); فَقَتَلْتَهَا —faqatalathā (6); فَقَتَلْتُهَا —fāqtulūhum (6); فَاقْتُلُوهُمْ — qatalathā (6); وَقَتْلُهُ —waqatluhu (6); الْمَقْتُولَةِ —al-maqtūlati (5); تُقَاتِلُوهُمْ — —tuqātilūhum (5); تَقْتُلُهُ —taqtulhu (5); تَقْتُلُهَا —taqtuluhā (5); فَاقْتُلُهُ — fāqtulhu (5); فَلْيُقَاتِلْهُ —faqatalūhu (5); فَقَتَلُوهُ —falyuqātilhu (5); قَاتَلُوكُمْ — qātalūkum (5); قُوتِلَ —qūtila (5); لِلْقِتَالِ —lilqitāli (5); مَقْتُولَةً —maqtūlatan (5); وَالْقِتَالِ —wālqitāli (5); وَقَاتَلَ —waqātala (5); وَقَتْلُهُمْ —waqatluhum (5); فَقَاتِلُهُ —biqātilin (4); بِقَاتِلٍ —yuqtalāni (5); يُقْتَلَانِ —yuqātilūna (5); يُقَاتِلُونَ — faqātiluhu (4); فَقَتَلَتْ —faqatalat (4); فَقَتَلُوا —faqatalūā (4); قَاتِلِيهِ —qātilīhi (4);

وَقَاتَلُوا —qātilūā (4); قُوتِلُوا —qatlā (4); قَتْلَى —qataltumūhu (4); قَتَلْتُمُوهُ —waqātalūā (4); الْمُقَاتِلِ —al-muqātili (3); بِالْمُقَاتَلَةِ —biālmuqātalati (3); بِقَتْلِهِمْ —biqatlihim (3); تَقْتُلَنَّ —taqtulanna (3); فَالْقَاتِلُ —fālqātilu (3); فَقَتَلُهُمْ —faqatalahum (3); فَقَتَلُوهُمْ —faqatalūhum (3); قَاتَلَنِي —qātalanī (3); قَاتِلُو —qātilū (3); قَاتِلِي —qātilī (3); قَتْلِهِمَا —qatlihimā (3); كَقَتْلِ —kaqatli (3); لَأَقْتُلَنَّهُمْ —la’aqtulannahum (3); لِقِتَالٍ —liqitālin (3); لِيَقْتُلَ —liyaqtula (3); نُقَاتِلُهُمْ —nuqātiluhum (3); نَقْتُلُهُ —naqtuluhu (3); وَاقْتُلُوهَا —wāqtulūhā (3); وَتَقْتُلَ —wataqtula (3); يُقَاتِلَا —yuqātilā (3); يُقْتَلَا —yuqtalā (3); يَقْتُلُهُمْ —yaqtulhum (3)

Context L2225: ... وَسَلَّمَ قَالَ أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا ...

Context L2261: ... تَزَالُ طَائِفَةٌ مِنْ أُمَّتِي يُقَاتِلُونَ عَلَى الْحَقِّ ظَاهِرِينَ إِلَى يَوْمِ ...

67. ثُلُث / ثَلَاثَة[67]

thalāthah / thuluth

3,588 occurrences; cumulative coverage 60.69%.

Possible English: three; third; one-third

Context: ثلاثة counts items; الثلث names a fraction, often in inheritance or bequests. الثالث marks ordinal order. These are distinct numeral formations.

Forms and grammar: ثلاث / ثلاثة vary with the counted noun’s grammatical gender; ثالث / ثالثة are ordinal. ثلث / ثلثان / ثلثين show fraction singular and dual; ثلاثا is an accusative form.

Attested spellings and counts

الثُّلُثُ —thalāthan (411); ثَلَاثًا —thalātha (505); ثَلَاثَ —thalāthata (681); ثَلَاثَةَ —al-thaluthi (386); ثُلُثُ —thuluthu (186); الثَّلَاثِ —al-thalāthi (154); ثَالِثٌ —thālithun (143); وَالثَّالِثُ —wālththālithu (105); الثَّلَاثَةَ —al-thalāthati (95); الثَّالِثَةَ —al-thālithati (81); ثَلَاثِينَ —thalāthīna (70); الثَّالِثُ —al-thālithu (64); وَثَلَاثِينَ —wathalāthīna (44); بِثَلَاثٍ —bithalāthi (43); ثُلُثِهِ —thuluthihi (42); بِثَلَاثَةَ —bithalāthati (35); بِالثُّلُثِ —biālththuluthi (32); ثُلُثَا —thuluthā (32); بِثُلُثِ —bithuluthi (30); ثَالِثَةً —thālithatan (30); وَثَلَاثَةُ —wathalāthatu (29);

[67] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ثلث (read dictionary entry).

وَثَالِثُهَا —wathālithuhā (28); الثُّلُثَانِ —al-thuluthāni (24); الثُّلُثَيْنِ — وَثَلَاثُ —thuluthay (21); ثُلُثَيْ —thalāthūna (23); ثَلَاثُونَ —al-thuluthayni (23); وَثَلَاثُونَ —wathalāthūna (20); وَالثُّلُثُ —wālththuluthu (18); wathalāthu (21); ثُلُثُهَا —thuluthuhā (17); الثَّلَاثِينَ —al-thalāthīna (15); ثُلُثَاهُ —thuluthāhu (17); أَثْلَاثًا — وَثُلُثُ —wathuluthun (13); ثَلَاثَمِائَةٍ —thalāthamiāʾati (14); وَالثَّلَاثَةُ —wālththālithatu (9); ثَالِثًا —thālithan (9); ʾathlāthan (10); بِالثَّلَاثِ —biālththalāthi (8); بِثُلُثِهِ —bithuluthihi (7); بِثُلُثَيْ —bithuluthay (7); ثُلُثَيْهِ —thuluthayhi (7); لِثَلَاثَةٍ —lithalāthatin (7); وَالثَّلَاثَ —wālththalātha (7); فَثَلَاثُ —fathalāthun (6); بِثَلَاثِينَ —bithalāthīna (5); فَثُلُثُ — fathuluthu (5); ثَلَاثَتِهِمْ —thalāthatuhum (4); فَالثُّلُثُ —fālththuluthu (4); وَثَالِثٌ —wathālithun (4); وَثُلُثًا —wathuluthan (4); أَثْلَاثٍ —ʾathlāthin (3); الثَّلَاثِمِائَةِ — al-thalāthimiāʾati (3); بِثَالِثٍ —bithālithin (3); ثُلُثِهِمْ —thuluthihim (3); فَالثُّلُثَانِ —fālththuluthāni (3); فَثَلَاثَةٌ —fathalāthatu (3); لِلثَّلَاثِ —lilththalāthi (3); وَثَالِثَةً —wathālithatan (3)

... وَلَا سَبِيلَ إِلَى قِسْمٍ ثَالِثٍ فَلَوْ كَانَتْ لَمْ تَزَلْ مَعَهُ ... :Context L2234

... سَمَاءِ الدُّنْيَا حِينَ يَبْقَى ثُلُثُ اللَّيْلِ الْآخِرِ فَيَقُولُ مَنْ يَدْعُونِي ... :Context L2402

68. مَال / أَمْوَال[68]

māl / ʾamwāl

3,511 occurrences; cumulative coverage 60.93%.

Possible English: property; wealth; assets; money

Context: مال includes property beyond coin or cash. ماله can refer to his assets, while ما له written as two words can be an entirely different construction.

Forms and grammar: مال / أموال are singular/collective and plural; ماله / مالها / أموالهم attach possessive pronouns. مالا is a common accusative form; مالي can mean my wealth or financial according to context.

Attested spellings and counts

مَالِ —māli (1,107); مَالِهِ —mālihi (648); الْمَالِ —al-māli (499); وَأَمْوَالَكُمْ —waʾamwālakum (138); مَالًا —mālan (130); الْأَمْوَالِ —al-ʾamwāli (117); مَالِهَا —mālihā (95); أَمْوَالِهِمْ —ʾamwālihim (92); أَمْوَالَكُمْ —ʾamwālakum (87); أَمْوَالِ —ʾamwāli (67); مَالِي —mālī (60); بِمَالِهِ —bimālihi (50); بِمَالٍ —bimālin (35); وَالْأَمْوَالُ —wālʾamwālu (35); وَأَمْوَالَهُمْ —waʾamwālahum (33); فَمَالُهُ —famāluhu (32); وَمَالُهُ —wamāluhu (32); لِلْمَالِ —lilmāli (26); أَمْوَالَنَا —ʾamwālinā (22); وَالْمَالِ —wālmāli (18); مَوْلَاهُ —mawlāhu (17); لِمَالِهِ —limālihi (14); بِالْمَالِ —mālihim (14); مَالِهِمَا —mālihimā (14); مَالِهِمْ —biālmāli (11); وَمَالٌ —wamālun (11); بِأَمْوَالِهِمْ —biʾamwālihim (8); فَمَالُ —famālu (8); أَمْوَالِهِمَا —ʾamwālihimā (7); بِمَالِي —bimālī (7); لِمَالِ —limāli (7); وَمَالِهَا —wamālihā (7); لِمَالِهَا —limālihā (6); أَمْوَالِهِ —ʾamwālihi (5); الْمَالَيْنِ —al-mālayni (5); مَوْلَاهُمْ —fālmālu (5); فَالْمَالُ —biʾamwālikum (5); بِأَمْوَالِكُمْ —mawlāhum (5); وَأَمْوَالُ —waʾamwālu (5); فَالْأَمْوَالُ —fālʾamwālu (4); مَوْلَاتُهُ —mawlātuh (4); مَوْلَاهَا —mawlāhā (4); أَمْوَالَهُنَّ —ʾamwālahunna (3); بِمَالِكَ —bimālika (3); مَائِلٌ —māʾilun (3); مَائِلًا —māʾilan (3); وَمَالِي —wamālī (3)

ذَلِكَ عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ إِلَّا بِحَقِّهَا وَحِسَابُهُمْ عَلَى ... اللَّهِ ... Context L2225:

[68] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: مول (read dictionary entry).

الشَّهَادَةَ بِذَلِكَ الْمُخْرِجَةُ لِلدَّمِ وَالْمَالِ مِنْ التَّحْلِيلِ إلَى التَّحْرِيمِ كَمَا ... :Context L2227
...

69. رِجْل / رِجَال / رَجُل[69]

rajul / rijāl / rijl

3,505 occurrences; cumulative coverage 61.17%.

Possible English: man; men; male person; foot

Context: رَجُل is a man; رِجْل is a foot/leg. Unvowelled رجل can represent either. Gender distinctions in a legal passage require the surrounding wording.

Forms and grammar: رجل / رجال = man / men; رجلان / رجلين are dual case forms. رِجل / أرجل are a separate noun and its plural; رجليه = his two feet/legs.

Attested spellings and counts

رَجُلٍ —rajulin (1,105); الرَّجُلُ —al-rajulu (770); رَجُلًا —rajulan (572); الرِّجَالِ —al-rijāli (170); لِلرَّجُلِ —lilrrajuli (92); لِرَجُلٍ —lirajulin (75); رِجَالٍ —rijālin (72); لِلرِّجَالِ —lilrrijāli (68); رِجْلَيْهِ —rijlayhi (62); رَجُلَيْنِ —rajulayni (57); وَالرَّجُلُ —al-rijlayni (50); الرِّجْلَيْنِ —birajulin (52); بِرَجُلٍ —wālrrajulu (44); رِجْلَهُ —rijlahu (36); وَرَجُلٌ —warajulun (33); رَجُلَانِ —rajulāni (32); وَرِجْلِهِ —warijlihi (20); رِجَالًا —rijālan (16); وَأَرْجُلِهِمْ — wa'arjuluhum (15); بِالرَّجُلِ —biālrrajuli (14); وَالرِّجْلَيْنِ —wālrrijlayni (14); وَالرِّجَالُ —wālrrijālu (11); الرَّجُلَانِ —al-rajulāni (10); رِجَالِكُمْ — rijālikum (10); بِرِجْلِهَا —birijlihā (8); بِالرِّجَالِ —biālrrijāli (7); رِجْلِي — rijlī (7); فَرَجُلٌ —farajulun (7); بِرِجْلِهِ —birijlihi (6); وَرِجْلَيْهِ —warijlayhi (6); فَرِجَالا —farijālā (5); وَالْأَرْجُلِ —wāl'arjuli (5); وَرِجْلَاهُ —warijlāhu (5); بِأَرْجُلِهِنَّ —bi'arjulihinna (4); بِرَجُلَيْنِ —birajulayni (4); رِجْلَاهُ —rijlāhu (4); رِجْلُهَا —rijluhā (4); كَالرَّجُلِ —kālrrajuli (4); وَأَرْجُلَكُمْ —wa'arjulakum (4); وَلِلرَّاجِلِ —walilrrājili (4); الرَّاجِلِ —al-rājili (3); رَاجِلٍ —rājilin (3); رَاجِلًا —rājilan (3); وَالرِّجْلَانِ —wālrrijlāni (3); وَرِجَالٍ —warijālin (3); وَرِجْلَيْهَا — warijlayhā (3); وَلِرَجُلٍ —walirajulin (3)

[69] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: رجل (read dictionary entry).

Context L2258: ... مُحَمَّدٌ أَبَا أَحَدٍ مِنْ رِجَالِكُمْ وَلَكِنْ رَسُولَ اللَّهِ وَخَاتَمَ النَّبِيِّينَ ...

Context L2310: ... تَشْهَدُ عَلَيْهِمْ أَلْسِنَتُهُمْ وَأَيْدِيهِمْ وَأَرْجُلُهُمْ بِمَا كَانُوا يَعْمَلُونَ النور ... وَقَالَ ...

70. لَوْلَا / لَوْ[70]

law / lawlā

3,352 occurrences; cumulative coverage 61.39%.

Possible English: if; if it were; were it not for

Context: لو often introduces a hypothetical or counterfactual condition. لولا can mean were it not for, and in another construction can urge an action. The result clause determines the English tense.

Forms and grammar: فلو / ولو add and / so. لو has no conjugation; a following perfect can belong to a counterfactual rather than a real past event.

Attested spellings and counts

لَوْ —law (1,702); وَلَوْ —walaw (1,029); فَلَوْ —falaw (621)

Context L2232: ... لَهُ خَالِقًا وَجَبَ أَنْ لَوْ كَانَ الْخَالِقُ أَكْثَرَ مِنْ وَاحِدٍ ...

Context L2234: ... يَخْلُقَ بُرْهَانُ ذَلِكَ أَنَّهُ لَوْ فَعَلَ شَيْئًا مِمَّا فَعَلَ لِعِلَّةٍ ...

71. رَأْي / رَأَى[71]

raʾā / raʾy

3,204 occurrences; cumulative coverage 61.61%.

Possible English: see; consider; hold an opinion; opinion

Context: رأى may be perception or a judgment. رأي in legal argument is an opinion; the technical force varies with the contrast made in the passage.

Forms and grammar: يرى / رأى = saw or considered / sees or considers; رأيت = I or you saw; ير after لم loses the final weak letter. آراء / رأي = opinion / opinions; رؤية is a different verbal noun.

Attested spellings and counts

رَأَى —raʾā (407); يَرَى —yarā (370); رَأْيٍ —raʾyin (252); رَأَيْت —raʾayt (216); يَرَ —yara (159); يَرَوْنَ —yarawna (138); تَرَى —tarā (132); وَرَأَى —waraʾā (110); أَرَى —ʾarā (69); أَرَأَيْت —ʾaraʾayt (67); رَأَتْ —raʾat (67); بِالرَّأْيِ —biālrraʾyi (55); رَآهُ —raʾāhu (55); نَرَى —narā (53); فَرَأَى —faraʾā (51); يَرَاهُ —yarāhu (42); يَرَوْا —yarawā (42); الرَّأْيِ —al-raʾyi (40); بِرَأْيِهِ —biraʾyihi (40); يَرَهُ —yarahu (39); بِرَأْيٍ —biraʾyin (32); رَأَوْا —raʾawā (30);

[70] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: لولا / لو (within أما) (read dictionary entry).

[71] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: رأي (read dictionary entry).

تَرَوْنَ —tarawna (27); رَأْيِهِ —raʾyihi (27); فَرَأَيْت —faraʾayt (25); رَأَيْنَا —raʾaynā (20); رَأْيًا —raʾyan (19); رَأَيْتُمْ —raʾaytum (19); رَأَيْتُهُ —raʾaytuhu (19); أَرَاهُ —ʾarāhu (18); رُئِيَ —ruʾiya (18); وَيَرَى —wayarā (18); آرَاءٌ —ʾārāʾun (17); رُؤْيَةِ —ruʾyati (17); يَرَيَانِ —yarayāni (17); يَرَهَا —yarahā (15); تَرَ —tara (14); يَرَوْنَهُ —yarawnahu (12); رَأْيِهِمْ —raʾyihum (13); بِرُؤْيَةِ —biruʾyati (12); وَرَأْيَ —waraʾya (12); آرَاءَهُمْ —ʾārāʾahum (11); الْآرَاءِ —al-ʾārāʾi (11); بِرَأْيِهِمْ —biraʾyihim (11); رَآهَا —raʾāhā (11); فَرَأَوْا —faraʾawā (11); نَرَاهُ —narāhu (11); أَرَ —ʾara (10); بِالْآرَاءِ —biālʾārāʾi (10); وَرَأَوْا —waraʾawā (10); يَرَاهَا —yarāhā (10); أَرَأَيْتُمْ —ʾaraʾaytum (8); الرُّؤْيَةِ —al-ruʾyati (8); تَرَاهُ —tarāhu (8); رَأْيِي —raʾyī (8); رَأَوْهُ —raʾawhu (7); رَأَيْتُنَا —raʾaytunā (7); رَأْيُهَا —raʾyahā (7); رُؤْيَتِهِ —ruʾyatihi (7); فَأَرَى —faʾarā (7); فَرَأَيْتُه —faraʾayth (7); لِرُؤْيَتِهِ —liruʾyatihi (7); وَرَأَوْهُ —waraʾawhu (7); وَرَأَيْت —waraʾayt (7); يَرَيَا —yarayā (7); أَفَرَأَيْت —ʾafaraʾayt (6); رَأَتْهُ —raʾathu (6); رَأْيك —raʾyak (6); فَرَأَيْنَا —faraʾaynā (6); فَيَرَى —fayarā (6); لِنُرِيَهُمْ —linuriyahum (6); وَالرَّأْيِ —wālrraʾyi (6); تَرَوْنِي —tarawnī (5); تَرَيْنَ —tarayna (5); رَآنِي —raʾānī (5); رَآهُمْ —raʾāhum (5); رَأَيْتُمُوهُ —raʾaytumūhu (5); رَأَيْتنِي —raʾaytnī (5); وَرَأْيِهِ —waraʾyihi (5); أَرَأْيٌ —ʾaraʾyun (4); أَرَاكُمْ —ʾarākum (4); أَرَاهَا —ʾarāhā (4); أَرَيْنَاكُمْ —ʾaraynākum (4); الرُّؤْيَا —al-ruʾyā (4); بِرَأْيِهِمَا —biraʾyihimā (4); بِرَأْيِي —biraʾyī (4); رَأَيْتُنَّ —raʾaytunna (4); رَأَيْتُكَ —raʾaytuka (4); فَرَآهُ —faraʾāhu (4); فَيَرَوْنَ —fayarawna (4); لَأَرَى —laʾarā (4); لِرَأْيِ —liraʾyi (4); نَرَاهُمْ

—narāhum (4); وَيَرَوْنَ —wayarawna (4); أَرَهُ —ʾarahu (3); أُرِيَ —ʾuriya (3); أُرِيكُمْ —ʾurīkum (3); الْمِرْآةِ —al-mirʾāti (3); تَرَوْا —tarawā (3); تَرَيْ —taray (3); رَآنَا —raʾānā (3); رَأَيْتُمَا —raʾaytumā (3); رَأَيْتُمُونِي —raʾaytumūnī (3); رَأَيْتُهُمْ — raʾaytuhum (3); رَأْيِهِمَا —raʾyihimā (3); فَرَأْيُ —faraʾyu (3); فَرَأَيَا —faraʾayā (3); لِأَرَاهُ —liʾarāhu (3); لِنَرَى —linarā (3); لِنُرِيَ —linuriya (3); وَنَرَى —wanarā (3); وَيُرِيَكُمْ —wayurīkum (3)

Context L2253: ... وَانْشَقَّ الْقَمَرُ القمر وَإِنْ يَرَوْا آيَةً يُعْرِضُوا وَيَقُولُوا سِحْرٌ مُسْتَمِرٌّ ...

Context L2280: ... الْجَنَّة يَأْكُلُونَ ويشربون وَلَا يرون بؤسا أبدا ...

Attested spellings and counts

آخَرَ —ʾākhara (999); الْآخِرِ —al-ʾākhari (518); أُخْرَى —ʾukhrā (269); الْأُخْرَى —al-ʾukhrā (181); آخَرُونَ —ʾākharūna (125); وَالْآخِرُ — wāl'ākharu (113); أُخِرَ —ʾukhara (100); الْآخِرَةِ —al-ʾākhirati (100); آخِرِهِ — ʾākhirihi (55); وَآخَرُ —waʾākharu (49); لِلْآخِرِ —lil'ākhari (46); آخِرِهَا — ʾākhirihā (44); تَأْخِيرَ —taʾkhīra (44); وَالْأُخْرَى —wāl'ukhrā (44); الْمُتَأَخِّرُونَ — al-mutaʾakhkhirūna (29); تَأَخَّرَ —taʾakhkhara (27); يُؤَخِّرُ —yuʾakhkhiru (25); تَأْخِيرِهَا —taʾkhīrihā (24); الْمُتَأَخِّرِينَ —al-mutaʾakhkhirīna (22); الْأَوَاخِرِ — al-ʾawākhiri (20); آخَرَانِ —ʾākharāni (18); آخَرِينَ —ʾākharīna (17); تَأْخِيرِهِ

72. أُخْرَى / آخِر / آخَر[72]

ʾākhar / ʾākhir / ʾukhrā

3,187 occurrences; cumulative coverage 61.82%.

Possible English: other; another; last; later

Context: آخَر means another; آخِر means last. الآخرة often denotes the hereafter. Identical unvowelled letters do not make these meanings interchangeable.

Forms and grammar: أخرى / آخر show gender when meaning other; آخرون / آخرين are masculine plural case forms. أخّر / يؤخّر = delayed / delays; تأخير is its verbal noun.

[72] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أخر (read dictionary entry).

—taʾkhīrihi (16); آخِرِهِمْ —ʾākhirihim (14); الْآخَرُونَ —al-ʾākharūna (14); تُؤَخِّرَ —tuʾakhkhira (12); التَّأْخِيرُ —al-taʾkhīru (12); مُتَأَخِّرٌ —mutaʾakhkhirun (14); وَأُخْرَى —waʾukhrā (12); وآخِرِهِ —waʾākhirihi (12); وَالْآخِرَةِ —wālʾākhirati (12); آخِرِهِنَّ —ʾākhirihinna (11); الْآخَرِينَ —al-ʾākharīna (11); الْأُخَرِ —al-ʾukhari (11); مُؤَخَّرِ —muʾakhkhari (11); لِلْأُخْرَى —lilʾukhrā (8); الْمُؤَخَّرُ —al-muʾakhkharu (10); أَخَّرَهَا —ʾakhkharahā (9); الْأُخْرَيَيْنِ —al-ʾukhrayayni (7); يَتَأَخَّرُ —yataʾakhkharu (7); الْأَخِيرَةِ —wataʾkhīru (6); وَتَأْخِيرُ —ʾakhkharat (6); أَخَّرَتْ —ʾākhiran (6); آخِرًا —al-ʾakhīrati (5); بِالْأُخْرَى —biʾukhrā (5); بِالْآخَرِ —biālʾākhari (5); بِالْأُخْرَى —biālʾukhrā (5); بِتَأْخِيرِ —bitaʾkhīri (5); يُؤَخِّرُونَ —yuʾakhkhirūna (5); الْآخَرَانِ —al-ʾākharāni (4); الْآخِرَتَيْنِ —al-ʾākhiratayni (4); التَّأَخُّرِ —al-taʾakhkhuri (4); وَتَأْخِيرُهَا —wataʾkhīruhā (4); مُؤَخِّرَةِ —muʾakhkhirati (4); فَأَخَّرَ —faʾakhkhara (4); وَلِلْآخَرِ —walilʾākhari (4); الْأَخِيرَ —al-ʾakhīra (3); بِأَخَرَةٍ —biʾakharatin (3); بِالْآخِرَةِ —biālʾākhirati (3); فَلْيُؤَخِّرْ —falyuʾakhkhir (3); لِآخَرِينَ —liʾākharīna (3); مُتَأَخِّرًا —mutaʾakhkhiran (3); وآخِرَهَا —waʾākhirahā (3); وَأُخَرُ —waʾukharu (3); وَالْآخَرَانِ —wālʾākharāni (3); وَالتَّأْخِيرِ —wāltaʾkhīri (3); وَيَتَأَخَّرُ —wayuʾakhkhirūna (3); وَيُؤَخِّرُونَ —watuʾakhkhiru (3); وَتُؤَخِّرُ —wayataʾakhkharu (3)

Context L2227: ... يُقْبَلَ مِنْهُ وَهُوَ فِي الآخِرَةِ مِنَ الْخَاسِرِينَ آل عمران وَهُوَ ...

Context L2232: ... مَا صَارَ بِهِ غَيْرَ الْآخَرِ فَعَلَى هَذَا كَانَ يَكُونُ أَحَدُهُمَا ...

73. بَعْد / بَعِيد[73]

baʿd / baʿīd

3,165 occurrences; cumulative coverage 62.04%.

Possible English: after; later; beyond; distant

Context: بعد can sequence events or an argument. أما بعد is a conventional transition. بعيد describes distance or, figuratively, remoteness.

Forms and grammar: بعده / بعدها = after him or it / her or it; بعدما = after what or after. بعيد / بعيدة agree in gender; بَعُد / يبعد are verb forms, distinct from the preposition-like noun.

Attested spellings and counts

بَعْدَ —baʿda (2,513); بَعْدَهُ —baʿdahu (206); وَبَعْدَ —wabaʿda (68); بَعْدَهَا —baʿdahā (64); أَبْعَدَ —ʾabʿada (42); بَعْدَمَا —baʿdamā (36); بَعْدَهُمْ —baʿdahum (34); بَعِيدٍ —baʿīdin (22); وَبَعْدَهُ —wabaʿdahu (21); وَبَعْدَهَا —wabaʿdahā (19); بَعْدَكَ —baʿdaka (18); بَعْدِي —baʿdī (18); بَعْدَهُمَا —baʿdahumā (14); يَبْعُدُ —yabʿudu (14); الْبُعْدِ —al-buʿdi (11); بَعِيدًا —baʿīdan (7); بَعِيدَةٍ —baʿīdatin (7); الْأَبْعَدِ —al-ʾabʿadi (6); بَعُدَتْ —baʿudat (6); وَأَبْعَدُ —waʾabʿadu (6); إِبْعَادُهُ —ʾibʿāduhu (5); الْبَعِيدَةِ —al-baʿīdati (5); بَعُدُوا —baʿudūā (5); فَبَعْدَ —fabaʿda (5); بَعْدَنَا —baʿdanā (4); التَّبَاعُدُ —al-tabāʿudu (3); فَأَبْعَدُ —faʾabʿadu (3); وَأَبْعَدُهُ —waʾabʿaduhu (3)

Context L2222: ... أَمَّا بَعْدُ وَفَّقَنَا اللَّهُ وَإِيَّاكُمْ لِطَاعَتِهِ فَإِنَّكُمْ ...

Context L2258: ... نَبِيَّ بَعْدَهُ بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى ...

74. عِلْم / عَلِمَ[74]

ʿilm / ʿalima

2,978 occurrences; cumulative coverage 62.24%.

Possible English: knowledge; know; learn; scholar; sign

Attested spellings and counts

نَعْلَمُ —naʿlamu (530); عَلِمَ —ʿalima (383); يَعْلَمُ —yaʿlamu (207); الْعَالَمِينَ —al-ʿālamīna (196); أَعْلَمُ —ʾaʿlamu (123); عَلَّمْنَا —ʿalimnā (110); الْعِلْمِ —al-ʿilmi (104); نَعْلَمُهُ —naʿlamuhu (97); الْعَالَمِ —al-ʿālami (77); عَلَّمَهُ —ʿalimahu (66); الْعُلَمَاءِ —al-ʿulamāʾi (65); مَعْلُومٍ —maʿlūmin (63); الْمُعَلِّمِ —

[73] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: بعد (read dictionary entry).
[74] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: علم (read dictionary entry).

Context: علم in argument is knowledge, not always modern science. عالم can be a scholar, while العالم can mean the world with different vowels. The context fixes the reading.

Forms and grammar: علم / يعلم = knew / knows; علمنا = we knew or he taught us according to vowels and pattern. عالم / علماء = scholar / scholars; عليم = knowing; تعليم = teaching.

al-muʿallimi (56); عَالِمًا —ʿāliman (56); عَلِمْت —ʿalimt (52); تَعْلَمُ —taʿlamu (37); يَعْلَمُهُ —yaʿlamuhu (36); بِعِلْمِهِ —biʿilmihi (31); يَعْلَمُونَ —yaʿlamūna (30); عَالِمٌ —ʿālimun (29); بِعِلْمٍ —biʿilmi (28); لِنَعْلَمَ —linaʿlama (27); تَعْلِيمِ —taʿlīmi (26); مُعَلَّمٌ —ʿilman (23); مَعْلُومَاتٌ —maʿlūmātun (22); وَعَلِمَ —waʿalima (22); عِلْمًا —muʿallamun (19); تَعْلَمُونَ —taʿlamūna (18); عَلِمْتُمْ —ʿalimtum (18); أَعْلَمُ —ʾaʿlamuhu (16); تَعْلَمُوا —taʿlamūā (16); الْأَعْلَمِ —al-ʾaʿlami (15); عِلْمِهِمْ —ʿilmihim (15); مَعْلُومَةً —maʿlūmatan (14); وَاعْلَمُوا —wāʿlamūā (14); يُعْلِمُهَا —yuʿlimhā (14); عَلِمُوا —ʿalimūā (13); لِيَعْلَمَ —liyaʿlama (13); عُلَمَاءِ —ʿulamāʾi (11); عَلِيمٌ —ʿalīmun (11); مَعْلُومًا —maʿlūman (11); عَالِمَةً —ʿālimatan (10); عَلِمَهَا —ʿalimahā (10); مُعَلَّمًا —muʿallaman (10); التَّعْلِيمِ —al-taʿlīmi (9); وَأَعْلَمُ —waʾaʿlamu (9); وَعِلْمِهِ —waʿilmihi (9); الْمَعْلُومَاتِ —al-maʿlūmāti (8); نَعْلَمُهَا —naʿlamuhā (8); بِمَعْلُومٍ —bimaʿlūmin (7); فَعَلِمْنَا —faʿalimnā (7); يُعَلِّمُنَا —yuʿallimunā (7); فَعَلِمَ —faʿalima (6); وَتَعْلِيمُ —wataʿlīmu (6); يَعْلَمُهُمْ —yaʿlamuhum (6); تَعْلَمُهُ —taʿlamuhu (5); تَعْلِيمُهُ —taʿlīmuhu (5); عِلْمُهُمَا —ʿilmuhumā (5); فَأَعْلَمَ —faʾaʿlama (5); نَعْلَمُهُمْ —naʿlamuhum (5); أَعْلَامِ —ʾaʿlāmi (4); أَعْلَمُكُمْ —ʾaʿlamukum (4); عَلَامَةً —ʿalāmatan (4); عَلِمْتُهُ —ʿalimtuhu (4); عَلَّمُوهُمْ —ʿallamūhum (4); فَأَعْلِمْهُمْ —faʾaʿlimhum (4); لِتَعْلَمُوا —litaʿlamūā (4); لِلْعِلْمِ —lilʿilmi (4); وَأَعْلَمَهَا —waʾaʿlamahā (4); وَلْيَعْلَمْ —walyaʿlam (4); وَيَعْلَمُ —wayaʿlamu (4); يُعَلِّمُكُمْ —yuʿallimukum (4); يَعْلَمُوا —yaʿlamūā (4); الْعُلُومِ —al-ʿulūmi (3); الْمُعَلِّمَةُ —al-muʿallamatu (3); بِتَعْلِيمِ —

bitaʿlīmi (3); بِعِلْمِكَ —biʿilmika (3); تَعْلَمُونَهُ —taʿlamūnahu (3); تُعَلِّمُونَهُنَّ — tuʿallimūnahunna (3); عَلَّمْتُمُوهُنَّ —ʿalimtumūhunna (3); عَلَّمْتَنَا —ʿallamtanā (3); فَأَعْلَمَهَا —ʿalīman (3); عَلِيمًا —ʿallamanī (3); عَلَّمَنِي —ʿalimnāhu (3); عَلِمْنَاهُ —faʾaʿlamahā (3); فَعَلَّمَهَا —fāʿlamūā (3); فَاعْلَمُوا —fāl'ālamu (3); فَالْعَالَمُ — faʿallimhā (3); فَعَلَّمَهُمْ —faʿallamahum (3); فَيَتَعَلَّمُونَ —fayataʿallamūna (3); وَعِلْمًا — liʿilmihi (3); لِعِلْمِهِ —wāl'ālimu (3); وَالْعَالِمُ —wāl'ilmi (3); وَالْعِلْمِ — waʿilman (3); وَعَلَّمَنَا —waʿallamanā (3); وَعِلْمِهِمْ —waʿilmihim (3); وَنَعْلَمُ — wanaʿlamu (3); يُعَلِّمَانِ —yuʿallimāni (3)

Context L2221: ... عَنْهُ الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ خَاتَمِ ...

Context L2222: ... مَحْضًا آمِينَ آمِينَ رَبَّ الْعَالَمِينَ وَلْيَعْلَمْ مَنْ قَرَأَ كِتَابَنَا هَذَا ...

75. أَنَس / نَاس / إِنْسَان[75]

ʾinsān / nās / ʾanas

2,972 occurrences; cumulative coverage 62.44%.

Possible English: person; human; people; Anas

Context: الناس is the people or people generally. أنس frequently names Anas ibn Mālik. The related spellings and traditional root discussions do not make a personal name an interchangeable gloss for people.

Forms and grammar: إنسان / أناس / ناس are human/collective formations; أنس is also a proper name. إنس contrasts with jinn in religious usage. Case and attached particles change the surface form.

Attested spellings and counts

النَّاسِ —al-nāsi (1,371); أَنَسٍ —ʾanasin (666); إِنْسَانٍ —ʾinsānin (211); الْإِنْسَانِ —al-ʾinsāni (107); إِنْسَانًا —ʾinsānan (86); لِلنَّاسِ —lilnnāsi (85); بِالنَّاسِ — biālnnāsi (75); وَأَنَسٍ —waʾanasin (69); وَالنَّاسُ —wālnnāsu (51); نَاسٌ — nāsun (41); لِإِنْسَانٍ —liʾinsānin (40); نَاسًا —nāsan (33); أَنَسًا —ʾanasan (16); لِلْإِنْسَانِ —liʾanasin (12); وَالْإِنْسِ —wāl'insi (14); أُنَاسٍ —ʾunāsin (12); لِأَنَسٍ —liʾunāsi (12); بِإِنْسَانٍ — —lil'insāni (12); أُنَيْسُ —ʾunaysu (10); الْإِنْسِ —al-ʾinsi (8);

[75] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أنس (read dictionary entry); نوس (read dictionary entry).

bi’insānin (8); وَالْإِنْسَانُ —wāl’insānu (7); آنَسْتُمْ —’ānastum (6); الْإِنْسِيَّةِ — al-’insiyyati (6); أُنْسِيتُهَا —’unsītuhā (5); أُونِسَ —’ūnisa (5); يُؤْنَسْ —yu’nas (5); إِنْسٍ —’insin (4); إِنْسِيًّا —’insiyyan (4); فَلِلنَّاسِ —falilnnāsi (3)

Context L2222: ... مَعْرِفَةِ الْحَقِّ مِمَّا تَنَازَعَ النَّاسُ فِيهِ وَالْإِشْرَافِ عَلَى أَحْكَامِ الْقُرْآنِ ...

Context L2225: ... قَالَ أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إِلَهَ ...

76. رَحِم / رَحْمَن / رَحْمَة[76]

raḥmah / raḥmān / raḥim

2,965 occurrences; cumulative coverage 62.64%.

Possible English: mercy; compassion; womb; kinship; the Merciful

Context: الرحمن is a divine name and also part of ʿAbd al-Raḥmān. رحمه الله is a prayer, may God have mercy on him. الرحم can concern blood kinship.

Forms and grammar: رحم / يرحم = had mercy / has mercy; رحمه = had mercy on him when read as a verb. رحمة is a noun; أرحام is a plural related to wombs/kinship.

Attested spellings and counts

الرَّحِيمِ —al-raḥmāni (1,976); رَحِمَهُ —raḥimahu (644); الرَّحْمَنِ — al-raḥīmi (110); رَحِيمٍ —raḥimin (85); الرَّحِمِ —al-raḥimi (28); وَرَحْمَةُ — waraḥmatu (28); رَحْمَةَ —raḥmatin (15); الرَّحْمَةِ —al-raḥmati (14); رَحِيمٌ — raḥīmun (12); يَرْحَمُ —yarḥamu (10); رَحِمِهَا —raḥimihā (7); الْأَرْحَامِ — al-’arḥāmi (6); يَرْحَمُكَ —yarḥamuka (6); لِلرَّحْمَنِ —lilrraḥmani (5); يَرْحَمُهُ — yarḥamuhu (5); رُحَمَاءُ —ruḥamā’u (4); مَرْحُومٍ —marḥūmin (4); رَحِمًا — raḥiman (3); وَالرَّحْمَنِ —wālrraḥmani (3)

Context L2221: ... بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ ...

Context L2225: ... عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ يَعْقُوبَ عَنْ أَبِيهِ عَنْ ...

[76] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: رحم (read dictionary entry).

77. حَقّ / حَقِيقَة[77]

ḥaqq / ḥaqīqah

2,860 occurrences; cumulative coverage 62.83%.

Possible English: truth; right; entitlement; due; true; reality

Context: حق can describe a true assertion, an enforceable entitlement or something due. English right does not fit every occurrence.

Forms and grammar: حق / حقوق = right / rights; حقه = his right or its truth according to context; أحق = more entitled. حقيقة and تحقيق are different derived nouns; حقّ / يحقّ are verb forms.

Attested spellings and counts

حَقًّا —ḥaqqun (717); الْحَقِّ —al-ḥaqqi (523); أَحَقُّ —ʾaḥaqqu (317); حَقَّ —ḥaqqan (269); حَقَّهُ —ḥaqqahu (245); بِحَقٍّ —biḥaqqin (84); بِالْحَقِّ —biālḥaqqi (65); حُقُوقِ —ḥuqūqi (55); حِقَّةٌ —ḥiqqatun (53); حَقَّهَا —ḥaqqahā (42); وَحَقُّ —waḥaqqu (37); الْحُقُوقِ —al-ḥuqūqi (36); فَحَقَّ —faḥaqqun (32); يَسْتَحِقُّ —yastaḥiqqu (31); وَالْحَقُّ —wālḥaqqu (29); اسْتَحَقَّ —ʾstaḥaqqa (20); بِحَقِّهِ —biḥaqqihi (19); حَقَّهُمْ —ḥaqqahum (19); الْحَقِيقَةِ —al-ḥaqīqati (16); حُقُوقِهِمْ —ḥuqūqihim (16); حِقَاقٍ —ḥiqāqin (15); لِلْحَقِّ —lilḥaqqi (15); الحاقة —al-ḥāqh* (14); الْحَقَائِقِ —al-ḥaqāʾiqi (14); حَقِيقَةَ —ḥaqīqata (14); يُحَقِّقْ —liḥaqqihi (13); الْمُسْتَحَقِّ —al-mustaḥaqqi (11); الْحِقَّةِ —al-ḥiqqati (7); أَبِحَقٍّ —ʾabiḥaqqin (6); الْمُسْتَحَقَّةِ —al-mustaḥaqqati (6); بِحَقِّهَا —biḥaqqihā (6); حَقِّهِمَا —ḥaqqihimā (6); فَحَقُّهُ —faḥaqquhu (6); وَاسْتَحَقُّوا —wāstaḥaqqū (6); حَقُّكَ —ḥaqquka (5); تُسْتَحَقُّ —tustaḥaqqu (4); حَقَّانِ —ḥaqqāni (4); حُقُوقًا —ḥuqūqan (4); فَحَقُّهَا —faḥaqquhā (4); لِلْحَقَائِقِ —lilḥaqāʾiqi (4); لِيُحِقَّ —liyuḥiqqa (4); وَتَسْتَحِقُّونَ —watastaḥiqqūna (4); وَالْمُسْتَحَقِّ —wālmustaḥaqqi (4); وَأَحَقُّ —waʾaḥaqqu (4); وَحُقُوقُ —waḥuqūqu (4); يَسْتَحِقُّهُ —yastaḥiqquhu (4); اسْتَحَقُّوا —ʾstaḥaqqūā (3); الْمُحِقُّ —al-muḥiqqu (3); تَحْقِيقِ —taḥqīqi (3); حُقُوقِهَا

[77] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: حقق (read dictionary entry).

وَأَحَقُّهُمْ —ḥuqūqihā (3); فَحَقُّهُمْ —faḥaqquhum (3); مُسْتَحِقٌّ —mustaḥiqqun (3); وَحِقَّةٌ —waḥiqqatun (3); وَالْحُقُوقِ —wālḥuqūqi (3); وَحَقُّهُ —waḥaqquhu (3); وَحَقُّهَا —waḥaqquhā (3); يَحِقُّ —yaḥiqqu (3); يَسْتَحِقُّهَا —yastaḥiqquhā (3)

Context L2222: ... الدَّلَائِلِ الْمُؤَدِّيَةِ إِلَى مَعْرِفَةِ الْحَقِّ مِمَّا تَنَازَعَ النَّاسُ فِيهِ وَالْإِشْرَافِ ...

Context L2225: ... مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ إِلَّا بِحَقِّهَا وَحِسَابُهُمْ عَلَى اللَّهِ ...

78. اتَّفَقَ / تَوْفِيق[78]

tawfīq / ʾttafaqa

2,745 occurrences; cumulative coverage 63.02%.

Possible English: success granted; assistance; agree; accord

Context: وبالله التوفيق is an authorial formula. اتفقوا means they agreed; whether that establishes the technical category of consensus requires further context.

Forms and grammar: وفّق / يوفّق = enabled or granted success / enables; توفيق is its verbal noun. اتفق / يتفق = agreed / agrees; موافق = in agreement, a separate formation.

Attested spellings and counts

التَّوْفِيقُ —al-tawfīqu (1,867); اتَّفَقَ —ʾttafaqa (168); وَافَقَ —wāfaqa (125); مُوَافِقٌ —muwāfiqun (54); مُوَافِقَةٌ —muwāfiqatun (44); اتَّفَقَا —ʾttafaqā (38); اتَّفَقُوا —ʾttafaqūā (37); مُتَّفَقٌ —muttafaqun (33); يُوَافِقُ —yuwāfiqu (31); مُوَافِقًا —muwāfiqan (29); وَافَقَهُمْ —wāfaqahum (28); وَافَقَنَا —wāfaqanā (22); وَافَقَهُ —wāfaqahu (18); مُوَافِقُونَ —muwāfiqūna (15); مُتَّفِقُونَ —muttafiqūna (13); بِاتِّفَاقٍ —biāttifāqin (12); اتَّفَقْنَا —ʾttafaqnā (11); وَافَقَتْ —wāfaqat (13); يَتَّفِقَا —yattafiqā (11); وَافَقُونَا —wāfaqūnā (10); فَوَافَقَ —fawāfaqa (9); وَاتَّفَقَا —wāttafaqā (9); وَاتَّفَقُوا —wāttafaqūā (9); وَوَافَقَهُ —wawāfaqahu (9); وُفِّقَ —wuffiqa (8); يُتَّفَقْ —yuttafaq (8); اتِّفَاقُ —ʾttifāqu (7); الْمُتَّفَقُ —al-muttafaqu (7); وَوَافَقَنَا —wawāfaqanā (7); يُوَافِقُهُ —yuwāfiquhu (7); فَاتَّفَقَ —fāttafaqa (6); وَوَافَقَ —wawāfaqa (6); اتَّفَقَتْ —ʾttafaqat (5); وَافَقَتْهُمْ —wāfaqathum (5);

[78] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: وفق (read dictionary entry).

وَافَقُوا —wāfaqūā (5); اتَّفَقْتُمْ —ʾttafaqtum (4); الْمُوَافِقَةُ —al-muwāfiqatu (4); لَوُفِّقُوا —tattafiqu (4); تُوَافِقُ —tuwāfiqu (4); تَوْفِيقِهِ —tawfīqihi (4); تَوْفِيقُنَا —lawuffiqūā (4); وَمُوَافِقٌ —wamuwāfiqun (4); يَتَّفِقَانِ —yattafiqāni (4); tawfīqunā (3); فَتَتَّفِقُ —fatattafiqu (3); فَمُتَّفَقٌ —famuttafaqun (3); لِمُوَافَقَتِهِ —limuwāfaqatihi (3); وَاتَّفَقَ —wāttafaqa (3); مُوَافِقَانِ —muwāfiqāni (3); مُتَّفِقِينَ —muttafiqīna (3); وَوَافَقُونَا —wawāfaqūnā (3); وَافَقَهُمَا —wāfaqahumā (3)

Context L2222: ... مَنْسُوخًا فَأَوْضَحْنَا نَسْخَهُ وَمَا تَوْفِيقُنَا إِلَّا بِاللَّهِ تَعَالَى ...

Context L2279: ... عَذَابِهَا فاطر وَبِاللَّهِ تَعَالَى التَّوْفِيقُ ...

79. بَعْض[79]

baʿḍ

2,708 occurrences; cumulative coverage 63.20%.

Possible English: some; part; a portion; one another in repeated constructions

Context: بعضهم can mean some of them. بعضهم بعضا can express reciprocal action: one another. The relevant group is supplied by context.

Forms and grammar: بعضه / بعضها / بعضهم change the referent; لبعض = for some; ببعض = with or by some. بعض is a noun-like quantifier, without tense inflection.

Attested spellings and counts

بَعْضِ —baʿḍi (1,273); بَعْضُهُمْ —baʿḍuhum (546); بَعْضِهَا —baʿḍihā (248); بَعْضًا —baʿḍuhu (179); بِبَعْضٍ —bibaʿḍin (81); وَبَعْضُ —wabaʿḍu (67); بَعْضُهُ —baʿḍan (55); لِبَعْضٍ —libaʿḍi (54); وَبَعْضُهُ —wabaʿḍuhu (40); الْبَعْضِ —al-baʿḍi (25); وَبَعْضُهَا —wabaʿḍuhā (24); وَبَعْضُهُمْ —wabaʿḍuhum (23); بَعْضُنَا —baʿḍunā (19); بَعْضُكُمْ —baʿḍukum (17); بِبَعْضِهَا —bibaʿḍihā (7); أَبْعَاضِهِ —ʾabʿāḍihi (6); بِبَعْضِهِ —bibaʿḍihi (6); بَعْضُهُنَّ —baʿḍuhunna (6); تَبْعِيضُ —tabʿīḍu (6); الْبُعُوضِ —al-baʿūḍi (4); لِبَعْضِهِمْ —libaʿḍihim (4); أَبْعَاضِ —ʾabʿāḍi (3); فَبَعْضُهَا —fabaʿḍuhā (3); لِبَعْضِهِ —libaʿḍihi (3); لِلتَّبْعِيضِ —lilttabʿīḍi (3); وَالْبُعُوضِ —wālbaʿūḍi (3); يَتَبَعَّضُ —yataba‘aḍu (3)

[79] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: بعض (read dictionary entry).

80. وُجُود / وَجَدَ[80]

wajada / wujūd

2,707 occurrences; cumulative coverage 63.39%.

Possible English: find; encounter; be available; exist; existence

Context: وجد can report finding evidence or having something available. يوجد is often passive, is found or exists, but its vowels matter.

Forms and grammar: وجد / يجد = found / finds; وجدنا = we found; وُجد / يوجد = was found / is found. وجود is an abstract noun; موجود / موجودة agree with the referred-to noun.

Context L2238: ... أَنَّنَا نَجِدُ الْجِسْمَ فِي بَعْضِ أَحْوَالِهِ لَا يَحُسُّ شَيْئًا وَأَنَّ ...

Context L2261: ... لَنَا فَيَقُولُ لَا إِنَّ بَعْضَكُمْ عَلَى بَعْضٍ أُمَرَاءُ تَكْرِمَةُ اللَّهِ ...

Attested spellings and counts

وَجَدَ —wajada (435); فَوَجَدْنَا —fawajadnā (310); يَجِدْ —yajid (276); يُوجَدُ —yūjadu (168); نَجِدْ —najid (146); وَجَدْنَا —wajadnā (132); وَوَجَدْنَا —wawajadnā (111); فَوَجَدْنَاهُ —fawajadnāhu (105); وُجُودِ —wujūdi (82); فَوَجَدْنَاهُمْ —fawajadnāhum (76); وَجَدَهُ —wajadahu (73); وُجِدَتْ —wujidat (67); فَوَجَدَ —fawajada (53); وَجَدْتُمْ —wajadtum (46); أَجِدُ —ʾajidu (45); وَجَدُوا —wajadūā (45); تَجِدُ —tajidu (31); تُوجَدُ —tūjadu (29); يَجِدُهُ —wujūdihi (29); تَجِدُوا —tajidūā (27); مَوْجُودٌ —mawjūdun (25); وُجُودِهِ —yajiduhu (24); وَجَدَهَا —wajadahā (22); يَجِدُوا —yajidūā (21); مَوْجُودَةٌ —mawjūdatun (18); وَاجِدٍ —wājidin (16); يَجِدُهَا —yajidhā (16); يَجِدُونَ —yajidūna (16); فَوَجَدَهُ —fawajadahu (14); فَوَجَدْنَاهَا —fawajadnāhā (13); فَوَجَدَهَا —fawajadahā (13); وَجَدْتُمُوهُمْ —wajadtumūhum (13); وَجَدْنَاهُ —wajadnāhu (13); وَوَجَدْنَاهُ —wawajadnāhu (12); فَوَجَدْتُه —fawajadth (11); مَوْجُودًا —mawjūdan (11); يَجِدُونَهُ —yajidūnahu (11); وَوَجَدَ —wawajada (10); وُجِدَا —wujidā (9); وُجْدِكُمْ —wujdikum (9); الْوَاجِدُ —al-wājidu (8); لَوَجَدُوا —lawajadūā (8); فَوَجَدْتُ —fawajadtu (7); نَجِدْهُ —najidhu (7); بِوُجُودِ

[80] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: وجد (read dictionary entry).

—biwujūdi (6); فَوَجَدُوا —fawajadūā (6); وَجَدْتُمُوهُ —wajadtumūhu (6); لِوَاجِدِهِ — وَوَجَدْنَاهُمْ —wawajadnāhum (6); فَوَجَدْنَاهُمَا —fawajadnāhumā (5); liwājidihi (5); وَاجِدُهَا —wājiduhā (5); أَجِدُهُ —ʾajiduhu (4); فَأَجِدُ —faʾajidu (4); فَيَجِدُهُ —fayajiduhu (4); وَاجِدًا —wājidan (4); وَجَدْنَاهُمْ —wajadnāhum (4); وَجَدُوهُ —wajadūhu (4); وَنَجِدُ —wanajidu (4); الْمَوْجُودِ —al-mawjūdi (3); لِوَاجِدِهَا —liwājidihā (3); نُوجِدُهُمْ —nūjiduhum (3); وَاجِدُهُ —wājiduhu (3); وَجَدُوهَا —wajadūhā (3); وُجُودُهَا —wujūduhā (3); وُجُودَهُمْ —wujūdahum (3); وَوُجِدَتْ —wawujidat (3); يُوجَدُوا —yūjadūā (3)

... مُتَحَرِّكًا أَوْ سَاكِنًا وَمُدَّةُ وُجُودِ الْعَرَضِ فِي الْجِسْمِ وَإِذْ الزَّمَانُ ... :Context L2230

... مَخْلُوقَةٌ بُرْهَانُ هَذَا أَنَّنَا نَجِدُ الْجِسْمَ فِي بَعْضِ أَحْوَالِهِ لَا ... :Context L2238

81. طَلَّقَ / طَلَاق[81]

ṭalāq / ṭallaqa

2,695 occurrences; cumulative coverage 63.57%.

Possible English: divorce; divorce someone; release; unrestricted

Context: الطلاق concerns divorce; مطلق in an argument may instead mean unqualified or unrestricted. The shared root does not make every form a marital term.

Forms and grammar: طلّق / يطلّق = divorced / divorces; طلقة / طلقات = one pronouncement / pronouncements. طالق = divorced or a woman described as such; مطلقة is a related feminine participle; إطلاق = release or leaving unqualified.

Attested spellings and counts

طَلَّقَهَا —ṭallaqa (228); طَلَاقٌ —ṭalāqun (279); الطَّلَاقِ —al-ṭalāqi (516); يُطْلَقُ —ṭallaqahā (180); طَلَاقًا —ṭalāqan (131); طَالِقٌ —ṭāliqun (116); يُطَلِّقَهَا —yuṭlaqu (115); الْمُطَلَّقَةِ —al-muṭallaqati (101); طَلْقَةٌ —ṭalqatun (66); أَطْلَقَ —yuṭalliqahā (63); مُطَلَّقَةٌ —muṭallaqatin (54); طَلُقَتْ —ṭaluqat (49); تَطْلُقُ —ʾaṭlaqa (40); طَلَاقُهَا —ṭalāquhā (40); طَلَاقُهُ —ṭalāquhu (39); مُطْلَقًا —taṭluqu (36); وَالطَّلَاقُ —wālṭṭalāqu (34); الْمُطَلِّقُ —al-muṭalliqu (32); بِالطَّلَاقِ —muṭlaqan (32); فَطَلَّقَهَا —faṭallaqahā (30); تَطْلِيقَةً —taṭlīqatan (25);

[81] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: طلق (read dictionary entry).

biālṭṭalāqi (24); فَانْطَلَقَ —fānṭalaqa (23); مُطْلَقٌ —muṭlaqun (22); فَطَلِّقُوهُنَّ — faṭalliqūhunna (21); انْطَلَقَ —ʾnṭalaqa (20); وَطَلَاقُ —waṭalāqu (20); بِطَلَاقٍ —biṭalāqin (19); طَلْقَتَيْنِ —ṭalqatayni (17); تَطْلِيقَتَيْنِ —taṭlīqatayni (14); تَطْلِيقَاتٍ —faṭallaqat (14); الْمُطَلَّقَاتِ —al-muṭallaqāti (13); فَطَلَّقَتْ — taṭlīqātin (13); طَلَّقْتُمُوهُنَّ —ṭallaqtumūhunna (13); إِطْلَاقُ —ʾiṭlāqu (12); فَانْطَلَقْتُ —fānṭalaqtu (12); فَطَلَّقَ —faṭallaqa (12); الْإِطْلَاقِ —al-ʾiṭlāqi (10); انْطَلَقْت —biʾiṭlāqi (10); بِإِطْلَاقِ —yuṭliqahu (10); يُطْلِقَهُ —ṭāliqan (10); طَالِقًا — فَالطَّلَاقُ —ʾnṭalaqt (9); طَلَّقْتهَا —ṭallaqthā (9); طَلَّقَنِي —ṭallaqanī (9); fālṭṭalāqu (9); أَطْلَقَهُ —yanṭaliqu (9); يَنْطَلِقُ —lilmuṭallaqati (9); لِلْمُطَلَّقَةِ — وَالْمُطَلَّقَاتُ —ʾaṭlaqahu (7); انْطَلِقُوا —ʾnṭaliqūā (7); بِطَلَاقِهَا —biṭalāqihā (7); wālmuṭallaqātu (7); وَلِلْمُطَلَّقَاتِ —walilmuṭallaqāti (7); الطَّلْقُ —al-ṭalqu (6); يُطْلِقُونَ —wayuṭalliqu (6); إِطْلَاقًا —ʾiṭlāqan (5); الطَّلْقَةِ —al-ṭalqati (5); وَيُطَلِّقُ — فَانْطَلَقُوا —yuṭliqūna (5); أَطْلَقُوا —ʾaṭlaqūā (4); انْطَلَقَا —ʾnṭalaqā (4); وَأَطْلَقَ —fānṭalaqūā (4); لِلطَّلَاقِ —lilṭṭalāqi (4); فَلْيُطَلِّقْهَا —falyuṭalliqhā (4); وَطَلَّقَهَا —waṭallaqahā (4); أَطْلَقَهَا —ʾaṭlaqahā (3); — أَنْطَلِقُ —waʾaṭlaqa (4); انْطَلِقِي —ʾanṭaliqu (3); إِطْلَاقِهِ —ʾiṭlāqihi (3); إِطْلَاقِهَا —ʾiṭlāqihā (3); ʾnṭaliqī (3); بِإِطْلَاقِهِ —biʾiṭlāqihi (3); تَطْلِيقَتَانِ —taṭlīqatāni (3); فَطَلِّقَنِي —faṭallaqanī (3); لِمُطَلَّقَةٍ —limuṭallaqatin (3); لِيُطَلِّقْهَا —liyuṭalliqhā (3); وَإِطْلَاقِهِ —waʾiṭlāqihi (3); وَالْمُطَلَّقَةُ —wālmuṭallaqatu (3)

Context L2345: ... إِلَى رَبِّهِ ثُمَّ يَقُولُ انْطَلِقُوا بِهِ إِلَى آخِرِ الْأَجَلِ قَالَ ...

Context L2555: ... رَضِيَ اللَّهُ عَنْهُمْ أَنَّهُ أَطْلَقَ الْأَمْرَ بِالْقَوْلِ بِالْقِيَاسِ أَبَدًا إِلَّا ...

82. حَتَّى[82]

ḥattā

2,690 occurrences; cumulative coverage 63.75%.

Possible English: until; up to; so that; even

Context: حتى can mark an endpoint, introduce a purpose/result or include an emphatic last item. Read whether the following expression is a noun or a verb clause.

Forms and grammar: حتى does not conjugate. Its construction can affect the mood of a following imperfect. وحتى adds and; the legal inclusion of an endpoint is not decided by a universal English gloss.

Attested spellings and counts

حَتَّى —ḥattā (2,642); وَحَتَّى —waḥattā (42); فَحَتَّى —faḥattā (6)

Context L2225: ... أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إِلَهَ إِلَّا ...

Context L2241: ... وَلَا أَحَدٌ مِنْ أَصْحَابِهِ حَتَّى ضَرَبَتْهُمْ الشَّمْسُ فَكَانَ رَسُولُ اللَّهِ ...

83. رَبِيع / رُبْع / أَرْبَعَة[83]

ʾarbaʿah / rubʿ / rabīʿ

2,680 occurrences; cumulative coverage 63.93%.

Possible English: four; fourth; one-quarter; Rabīʿ; spring

Context: الربع is a quarter-share, while أربعة counts four items. ربيع commonly names a person in transmission chains, and can mean spring in another setting.

Forms and grammar: أربع / أربعة vary with the counted noun; رابع / رابعة are ordinals; أربعون / أربعين are case forms of forty. ربع / أرباع = quarter / quarters.

Attested spellings and counts

أَرْبَعَ —rabīʿin (532); أَرْبَعَةَ —ʾarbaʿata (326); رَبِيعَةَ —rabīʿata (252); رَبِيعٍ —ʾarbaʿa (251); أَرْبَعِينَ —ʾarbaʿīna (198); الرَّبِيعِ —al-rabīʿi (141); رُبْعُ —rubʿu (127); وَرَبِيعَةَ —al-ʾarbaʿati (66); الْأَرْبَعَةِ —ʾarbaʿan (103); أَرْبَعًا —warabīʿata (62); رَابِعٌ —rābiʿun (58); أَرْبَعُونَ —ʾarbaʿūna (48); الرَّابِعَةِ —al-rābiʿati (46); وَالرَّابِعُ —wālrrābiʿu (45); بِأَرْبَعَةِ —biʾarbaʿati (43); الرُّبُعِ —al-rubuʿa (42); الْأَرْبَعِ —al-ʾarbaʿi (41); وَأَرْبَعِينَ —waʾarbaʿīna (34); الْأَرْبَعِينَ —al-ʾarbaʿīna (32); وَالرُّبُعِ —wālrrubuʿi (20); الرَّابِعُ —al-rābiʿu (19); أَرْبَعِمِائَةِ

[82] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: حتا (read dictionary entry).
[83] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ربع (read dictionary entry).

بِرُبْعِ —biʾarbaʿi (14); بِأَرْبَعَ —waʾarbaʿūna (16); وَأَرْبَعُونَ —waʾarbaʿūna (16); بِأَرْبَعَ —biʾarbaʿimiāʾati (18); وَأَرْبَعُونَ —waʾarbaʿu (13); وَرَابِعُهَا —warābiʿuhā (13); بِأَرْبَعِينَ —birubʿi (13); وَأَرْبَعُ —waʾarbaʿīna (12); وَرُبْعُ —warubʿu (11); وَأَرْبَعَةَ —rābiʿatin (12); رَابِعَةً —waʾarbaʿata (8); أَرْبَاعِ —ʾarbāʿi (7); رُبُعُهَا —rubuʿuhā (7); رَبْعًا —rabʿan (5); فَأَرْبَعَةُ —wālyarbūʿi (5); يَرْبُوعٍ —yarbūʿin (5); أَرْبَاعًا —ʾarbāʿan (4); وَالْيَرْبُوعُ —faʾarbaʿatu (4); فَرُبْعُ —farubʿu (4); فَأَرْبَعُونَ —faʾarbaʿūna (4); وَالرَّبِيعِ —wālrrabīʿi (4); الْأَرْبَاعِ —al-ʾarbāʿi (3); بِأَرْبَعِمِائَةٍ —biʾarbaʿimiāʾatin (3); رَابِعًا —rābiʿan (3); رَبْعَةٍ —rabʿatin (3); وَالرَّابِعَةِ —wālrrābiʿati (3)

Context L2241: ... حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ ...

Context L2307: ... الْجَسُورِ وَعَبْدُ اللَّهِ بْنُ رَبِيعٍ قَالَ أَحْمَدُ أَخْبَرَنَا وَهْبُ بْنُ ...

84. أَيَّام / يَوْم[84]

yawm / ʾayyām

2,668 occurrences; cumulative coverage 64.11%.

Possible English: day; occasion; at the time when

Context: يوم may count a legal period or identify an event. يوم القيامة names the Day of Resurrection. Not every use is a precise twenty-four-hour measurement.

Forms and grammar: يوم / أيام = day / days; يومان / يومين are dual case forms; يومه / يومها = his or its day / her or its day. يوما is commonly accusative or adverbial.

Attested spellings and counts

يَوْمَ —yawma (1,142); أَيَّامٍ —ʾayyāmin (469); يَوْمًا —yawman (312); الْيَوْمِ —al-yawmi (286); يَوْمَيْنِ —yawmayni (54); يَوْمِهِ —yawmihi (47); وَالْيَوْمِ —wālyawmi (45); وَيَوْمَ —wayawma (30); أَيَّامِهَا —ʾayyāmihā (22); بِيَوْمٍ —biyawmin (21); أَيَّامًا —ʾayyāman (17); يَوْمِهَا —yawmihā (15); بِالْيَوْمِ —biālyawmi (12); لِيَوْمِ —liyawmi (12); يَوْمِكُمْ —yawmikum (10); يَوْمِنَا —yawminā (10); لِلْيَوْمِ —lilyawmi (8); وَأَيَّامِ —waʾayyāmi (8); يَوْمِي —yawmī (7); الْيَوْمَيْنِ —al-yawmayni (6); بِيَوْمَيْنِ —

[84] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: يوم (read dictionary entry).

biyawmayni (5); وَيَوْمَانِ —wayawmāni (5); يَوْمَانِ —yawmāni (5); مُيَاوَمَةً — muyāwamatan (4); بِأَيَّامٍ —biʾayyāmin (3); فَيَوْمُ —fayawmu (3); وَيَوْمًا — wayawman (3); وَيَوْمِهِ —wayawmihi (3); وَيَوْمَيْنِ —wayawmayni (3)

Context L2261: ... عَلَى الْحَقِّ ظَاهِرِينَ إِلَى يَوْمِ الْقِيَامَةِ قَالَ فَيَنْزِلُ عِيسَى ابْنُ ...

Context L2273: ... تَعَالَى وَنَضَعُ الْمَوَازِينَ الْقِسْطَ لِيَوْمِ الْقِيَامَةِ فَلا تُظْلَمُ نَفْسٌ شَيْئًا ...

85. قَرَأَ / قُرْآن[85]

qurʾān / qaraʾa

2,654 occurrences; cumulative coverage 64.29%.

Possible English: Quran; recite; read; recitation; periods in a distinct lexical use

Context: القرآن names the Quran. قراءة is a reading/recitation. قروء in waiting-period discussions is a distinct, disputed lexical use; context and the author's argument matter.

Forms and grammar: قرأ / يقرأ = read or recited / reads or recites; قراءة / قراءات = reading(s). قارئ = reader; قرآن is not an ordinary plural. قروء / قرء have their own lexical discussion.

Attested spellings and counts

الْقُرْآنِ —al-qurʾāni (1,160); قُرْآنٍ —qurʾānin (533); يَقْرَأُ —yaqraʾu (130); بِالْقُرْآنِ —qaraʾa (100); قَرَأَ —lilqurʾāni (60); لِلْقُرْآنِ —qirāʾati (83); قِرَاءَةِ —biālqurʾāni (58); الْقِرَاءَةِ —al-qirāʾati (48); بِقُرْآنٍ —biqurʾānin (38); وَالْقُرْآنُ —qurūʾin (30); قَرَأْتُ —qaraʾt (27); فَقَرَأَ —faqaraʾa (26); قُرُوءٍ — wālqurʾānu (23); اقْرَأْ —ʾqraʾ (21); الْأَقْرَاءِ —al-ʾaqrāʾi (20); الْقُرْءِ —al-qurʾi (17); بِالْأَقْرَاءِ —biāl'aqrāʾi (17); قُرْآنًا —qurʾānan (17); قُرْءًا —qurʾan (16); بِالْقِرَاءَةِ —biālqirāʾati (15); فَيَقْرَأُ —fayaqraʾu (15); قُرِئَ —quriʾa (14); وَقِرَاءَةُ — waqirāʾatu (12); أَقْرَؤُهُمْ —ʾaqraʾuhum (11); بِقِرَاءَةِ —biqirāʾati (11); تَقْرَأُ — taqraʾu (11); قُرْءٍ —qurʾin (11); قِرَاءَتِهِ —qirāʾatihi (10); وَاقْرَأْ —wāqraʾ (10); وَالْقِرَاءَةَ —wālqirāʾati (10); وَقَرَأَ —waqaraʾa (10); وَيَقْرَأُ —wayaqraʾu (9); أَقْرَاءٍ — أَقْرَأُ —ʾaqraʾu (8); الْمُقْرِئُ —al-muqriʾu (7); أَقْرَأَنِيهَا —ʾaqraʾanīhā (6);

[85] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: قرأ (read dictionary entry).

ʾaqrāʾin (6); الْقَارِئُ —al-qāriʾu (6); الْقُرَّاءِ —al-qurrāʾi (6); قَرَأَهَا —qaraʾahā (6); أَقْرَائِهَا —ʾaqrāʾihā (5); أَقْرَاؤُهَا —ʾaqrāʾuhā (4); الْقِرَاءَاتِ —al-qirāʾāti (4); فَقَرَأْتُهُ —faqaraʾtuhu (3); فَقَرَأَهُ —faqaraʾahu (3); فَقُرِئَتْ —faquriʾat (3); قِرَاءَتِهَا —qirāʾatihā (3)

Context L2222: ... فِيهِ وَالْإِشْرَافِ عَلَى أَحْكَامِ الْقُرْآنِ وَالْوُقُوفِ عَلَى جَمْهَرَةِ السُّنَنِ الثَّابِتَةِ ...

Context L2251: ... عَلَيْهِ السَّلَامُ أَتَى بِهَذَا الْقُرْآنِ الْمَنْقُولِ إِلَيْنَا بِأَتَمِّ مَا يَكُونُ ...

86. نُبُوَّة / نَبِيّ[86]

nabiyy / nubuwwah

2,638 occurrences; cumulative coverage 64.47%.

Possible English: prophet; prophethood; news; announce

Context: النبي often refers to the Prophet Muḥammad. نبأ is news or an important report, a different noun. The shared root is not a license to replace prophet with narrator.

Forms and grammar: نبي / أنبياء / نبيون / نبيين show singular, plural and case variants; نبيه = his prophet. نبوة is an abstract noun; أنبأ / ينبئ = informed / informs.

Attested spellings and counts

النَّبِيِّ —al-nabiyyi (2,268); الأنبياء —al-ʾnbyāʾ* (72); نَبِيَّ —nabiyya (66); نَبِيِّهِ —nabiyyihi (60); لِلنَّبِيِّ —lilnnabiyyi (46); النُّبُوَّةِ —al-nubuwwati (17); نَبِيَّنَا —nabiyyinā (16); النَّبِيِّينَ —al-nabiyyīna (12); نَبِيًّا —nabiyyan (10); بِالنَّبِيِّ —biālnnabiyyi (9); نَبِيِّكُمْ —nabiyyikum (9); وَالنَّبِيُّ —wālnnabiyyu (9); نُبُوَّتِهِ —nubuwwatihi (4); أَنْبِيَائِهِمْ —ʾanbiyāʾihim (8); أَنْبَأْنَا —ʾanbaʾanā (4); نَبَأُ —nabaʾu (4); بِنُبُوَّةِ —binubuwwati (3); أُنَبِّئُكُمْ —ʾunabbiʾukum (3); لَنَبِيٌّ —lanabiyyun (3); لِنَبِيِّهِ —linabiyyihi (3); نُبِّئْتَ —nubbiʾt (3); نُبُوَّةِ —nubuwwati (3); وَالْأَنْبِيَاءَ —wālʾanbiyāʾa (3); وَنَبِيِّكَ —wanabiyyika (3)

Context L2221: ... اللَّهُ عَلَى مُحَمَّدٍ خَاتَمِ النَّبِيِّينَ وَالْمُرْسَلِينَ وَسَلَّمَ تَسْلِيمًا وَنَسْأَلُ اللَّهَ ...

[86] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: نبأ (read dictionary entry).

Context L2238: ... وَخَالَفَ مَا جَاءَتْ بِهِ النُّبُوَّةُ وَمَا أَجْمَعَ عَلَيْهِ الْمُسْلِمُونَ وَمَا ...

87. مَعَ[87]

maʿa

2,627 occurrences; cumulative coverage 64.65%.

Possible English: with; together with; alongside; despite in some contexts

Context: مع may express accompaniment, coexistence of facts or a qualification comparable to despite. It does not by itself mean agreement.

Forms and grammar: معه / معها / معهم = with him or it / her or it / them; معي = with me; معنا = with us; معا = together. Do not confuse معنا with معناه, its meaning.

Attested spellings and counts

مَعَ —maʿa (1,526); مَعَهُ —maʿahu (449); مَعًا —maʿan (220); مَعَهَا —maʿahā (124); مَعَهُمْ —maʿahum (112); وَمَعَ —wamaʿa (53); وَمَعَهُ —wamaʿahu (38); مَعِي —maʿī (32); وَمَعَهَا —wamaʿahā (18); مَعَهُمَا —maʿahumā (14); مَعَهُنَّ —maʿahunna (13); مَعَكُمْ —maʿakum (12); وَمَعَهُمْ —wamaʿahum (10); فَمَعَ —famaʿa (3); وَمَعَهُمَا —wamaʿahumā (3)

Context L2234: ... الْعِلَّةُ إِمَّا لَمْ تَزَلْ مَعَهُ وَإِمَّا مَخْلُوقَةً مُحْدَثَةً وَلَا سَبِيلَ ...

Context L2254: ... رَفِيعٍ دُونَ أَنْ يَكُونَ مَعَهُ مَالٌ وَلَا عَشِيرَةٌ تَنْصُرُهُ بَلْ ...

88. إِحْسَان / حَسَنَة / حَسَن[88]

ḥasan / ḥasanah / ʾiḥsān

2,609 occurrences; cumulative coverage 64.82%.

Possible English: good; beautiful; good deed; excellence; Ḥasan; Ḥusayn

Context: الحسن frequently names al-Ḥasan. حسن can instead evaluate something as good; a technical classification of a report requires its context. الحسين is a different personal name.

Attested spellings and counts

الْحَسَنِ —al-ḥasani (1,391); وَالْحَسَنِ —wālḥasani (361); حَسَنٌ —ḥasanun (136); حَسَنَةٌ —faḥasanun (79); فَحَسَنٌ —ḥassāna (118); أَحْسَنَ —ʾaḥsana (113); حَسَّانَ —ḥasanatun (59); مُحْسِنٌ —muḥsinun (35); الْمُحْسِنِينَ —al-muḥsinīna (28); الْإِحْسَانَ —al-ʾiḥsāna (25); بِإِحْسَانٍ —biʾiḥsānin (22); يُحْسِنُ —yuḥsinu (21); حَسَنًا —ḥasanan (20); إِحْسَانًا —ʾiḥsānan (15); حَسَنَاتِهِ —ḥasanātihi (15); الْحُسْنَى —al-ḥusnā (14); يُحْسِنُونَ —yuḥsinūna (13); الْحَسَنَاتِ —al-ḥasanāti (12);

[87] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: معع (read dictionary entry).

[88] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: حسن (read dictionary entry).

Forms and grammar: حسن / حسنة show gender; أحسن is a comparative or a verb according to vowels; إحسان is a verbal noun. حسن and حسين are distinct formations, not case variants.

وَالْإِحْسَانُ —wāl'iḥsānu (12); وَأَحْسَنُ —wa'aḥsanu (10); فَأَحْسَنَ — fa'aḥsana (9); إِحْسَانُ —'iḥsānu (8); بِأَحْسَنَ —bi'aḥsana (8); فَأَحْسِنُوا — fa'aḥsinūā (8); أَحْسَنْتَ —'aḥsanta (7); لِلْحَسَنِ —lilḥasani (7); بِحُسْنِ — biḥusni (6); حَسَنَاتٍ —ḥasanātin (6); وَحُسْنِ —waḥusni (6); الْحَسَنَةِ — al-ḥasanati (5); أَحْسَنُوا —'aḥsanūā (4); اسْتِحْسَانٍ —'stiḥsānin (4); بِالْإِحْسَانِ —biāl'iḥsāni (4); بِحَسَنَةٍ —biḥasanatin (4); اسْتَحْسَنَ —'staḥsana (3); تُحْسِنُ —tuḥsinu (3); تَحْسِينٌ —taḥsīnun (3); حَسْنَاءَ —ḥasnā'a (3); حَسَنَتَيْنِ — ḥasanatayni (3); فَلْيُحْسِنْ —falyuḥsin (3); لَحَسَنٌ —laḥasanun (3); وَالْمُحْسِنِينَ — wālmuḥsinīna (3)

Context L2283: ... وَبِهِ إِلَى مُسْلِمٍ حَدَّثَنِي الْحَسَنُ الْحُلْوَانِيُّ ثنا أَبُو عَاصِمٍ عَنْ ...

Context L2332: ... مَسْأَلَةٌ وَمَنْ هَمَّ بِحَسَنَةٍ فَلَمْ يَعْمَلْهَا كُتِبَتْ لَهُ حَسَنَةً ...

89. أَيْضًا[89]

'ayḍan

2,586 occurrences; cumulative coverage 65.00%.

Possible English: also; too; likewise; again

Context: أيضا adds another point or parallel case. It does not necessarily assert that every detail of the two cases is identical.

Forms and grammar: أيضا is commonly adverbial and accusative in form. وأيضا = and also. It does not take a masculine/feminine or plural ending according to its referent.

Attested spellings and counts

أَيْضًا —'ayḍan (2,129); وَأَيْضًا —wa'ayḍan (457)

Context L2222: ... الْمَوْسُومِ بِالْمُحَلَّى شَرْحًا مُخْتَصَرًا أَيْضًا نَقْتَصِرُ فِيهِ عَلَى قَوَاعِدِ الْبَرَاهِينِ ...

Context L2230: ... مَا زَادَ فِيهِ وَالْعَدَدُ أَيْضًا ذُو مَبْدَأٍ وَلَا بُدَّ وَالزَّمَانُ ...

[89] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أيض (read dictionary entry).

90. أَنَا[90]

ʾanā

2,583 occurrences; cumulative coverage 65.17%.

Possible English: I; me in a gloss determined by English syntax

Context: أنا is the independent first-person singular pronoun. It may be emphatic when an Arabic verb already identifies the speaker.

Forms and grammar: فأنا / وأنا add and / so. أنا contrasts with نحن, we. The attached suffix ـني is an object me; ـي is often possessive my. They have different grammatical roles.

Attested spellings and counts

أَنَا —ʾanā (2,444); وَأَنَا —waʾanā (119); فَأَنَا —faʾanā (17); لَأَنَا —laʾanā (3)

Context L2241: ... أَلَا إِنَّا نَحْمَدُ اللَّهَ أَنَّا لَمْ نَكُنْ فِي شَيْءٍ مِنْ ...

Context L2254: ... بِهِ الجن إِلَى قَوْلِهِ وَأَنَّا مِنَّا الْمُسْلِمُونَ وَمِنَّا الْقَاسِطُونَ فَمَنْ ...

91. نَصّ / نُصُوص[91]

naṣṣ / nuṣūṣ

2,581 occurrences; cumulative coverage 65.34%.

Possible English: explicit wording; text; express statement; specify

Context: نص often means an explicit scriptural statement used as evidence. Its force is more specific than text in a generic modern sense.

Forms and grammar: نص / نصوص = text or express statement / texts; نص عليه = stated it expressly; منصوص = explicitly stated; نصه = its wording or his explicit statement.

Attested spellings and counts

نَصٌّ —naṣṣun (1,105); بِنَصِّ —binaṣṣi (427); النَّصُّ —al-naṣṣu (403); نَصًّا —naṣṣan (135); وَالنَّصُّ —biālnnaṣṣi (105); النُّصُوصِ —al-nuṣūṣi (113); بِالنَّصِّ —wālnnaṣṣu (27); مَنْصُوصٌ —manṣūṣun (23); الْمَنْصُوصِ —al-manṣūṣi (22); نَصَّهُ —naṣṣahu (22); النَّصَّيْنِ —al-naṣṣayni (21); وَنَصَّ —wanaṣṣa (21); بِالنُّصُوصِ —biālnnuṣūṣi (17); فَنَصَّ —fanaṣṣa (17); يُنَصَّ —yanuṣṣa (17); لِنَصِّ —linaṣṣi (15); لِلنَّصِّ —lilnnaṣṣi (14); نُصُوصٌ —nuṣūṣun (14); لِلنُّصُوصِ —lilnnuṣūṣi (9); نَصَّهَا —naṣṣahā (9); النَّصَّانِ —al-naṣṣāni (6); بِنَصِّهِ —binaṣṣihi (6); بِنُصُوصٍ —binuṣūṣin (6); مَنْصُوصًا —manṣūṣan (6); الْمَنْصُوصَةِ —

[90] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أنن (read dictionary entry).
[91] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: نصص (read dictionary entry).

بِنَصِّهَا (4); وَبِنَصٍّ —wabinaṣṣi (4); وَالنُّصُوصُ —wālnnuṣūṣu (4); al-manṣūṣati (4); فَالنَّصُّ —fālnnaṣṣu (3); نَصَّانِ —naṣṣāni (3); —binaṣṣihā (3)

Context L2238: ... الزمر فَكَانَتْ النُّفُوسُ كَمَا نَصَّ تَعَالَى كَثِيرَةً وَكَذَلِكَ وَجَدْنَاهَا ... نَفْسًا ...

Context L2253: ... الْبُرْهَانَانِ مَذْكُورَانِ جَمِيعًا فِي نَصِّ الْقُرْآنِ كَمَا ذُكِرَ فِيهِ تَعْجِيزُهُ ...

Attested spellings and counts

صَدَقَةٌ —ṣadaqatun (363); الصَّدَقَةِ —al-ṣadaqati (340); الصَّدَاقِ —al-ṣadāqi (176); الصِّدِّيقِ —al-ṣiddīqi (173); تَصَدَّقَ —taṣaddaqa (144); صَدَاقٍ —ṣadāqin (99); يَتَصَدَّقَ —yataṣaddaqa (88); صَدَقَ —ṣadaqa (83); صَدَاقَهَا —ṣadāqahā (73); وَالصَّدَقَةِ —wālṣṣadaqati (60); يُصَدَّقْ —yuṣaddaq (53); الصَّدَقَاتِ —al-ṣadaqāti (49); الْمُصَدِّقُ —al-muṣaddiqu (47); صَدَقَتِهِ —ṣadaqatihi (33); بِالصَّدَقَةِ —biālṣṣadaqati (30); صَادِقِينَ —ṣādiqīna (29); صَدَاقًا —ṣadāqan (27); صَدَقْتُمْ —ṣadaqtum (27); فَتَصَدَّقَ —fataṣaddaqa (24); الْمُتَصَدِّقِ —al-mutaṣaddiqi (22); صَدَقْتَ —ṣadaqt (21); أَصْدَقَهَا —ʾaṣdaqahā (20); بِصَدَقَةٍ —biṣadaqatin (20); الصَّادِقِ —al-ṣādiqi (19); يُصَدِّقْهُ —yuṣaddiqhu (19); صَادِقًا —ṣādiqan (18); صَدُقَاتِهِنَّ —ṣaduqātihinna (18); وَيَتَصَدَّقُ —wayataṣaddaqu (17); بِصَدَاقٍ —biṣadāqin (15); صَادِقٌ —ṣādiqun (15); وَصَدَقَ —waṣadaqa (15); وَصَدَقَةٍ —waṣadaqatin (15); تَصَدَّقْتَ —

92. صَدَاق / صَدَقَة / صَدَقَ[92]

ṣadaqa / *ṣadaqah* / *ṣadāq*

2,520 occurrences; cumulative coverage 65.52%.

Possible English: tell the truth; truthful; charity; bridal dower

Context: صدقة is charity, while صداق is dower. تصدق describes giving charity; صدق in testimony concerns truthfulness. Shared radicals do not make those nouns interchangeable.

Forms and grammar: صدق / يصدق = was truthful / is truthful; صدّق = affirmed as true. صدقة / صدقات = charity payment(s); صادق = truthful; الصديق can be an epithet or a name.

[92] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: صدق (read dictionary entry).

taṣaddaqt (14); صِدْقُهُ —ṣidquhu (13); الصَّادِقِينَ —al-ṣādiqīna (12); مُصَدِّقًا — muṣaddiqan (12); فَيَتَصَدَّقُ —fayataṣaddaqu (11); مُصَدَّقٌ —muṣaddaqun (11); تَصَدَّقُوا — wālṣṣadāqu (11); أَفَأَتَصَدَّقُ —ʾafaʾataṣaddaqu (10); وَالصَّدَاقُ — taṣaddaqūā (9); صَدَاقُهُ —ṣadāquhu (9); صَدَقُوا —ṣadaqūā (9); وَتَصَدَّقَ — wataṣaddaqa (9); تَصْدِيقُ —taṣaddaqa (8); نَتَصَدَّقَ —taṣdīqu (8); إِصْدَاقٍ —ʾiṣdāqin (8); صَدَقَاتِ —ṣadaqāti (8); أَتَصَدَّقَ —ʾataṣaddaqa (7); الْمُصَدِّقِينَ —al-muṣaddiqīna (7); بِالصَّدَاقِ —biālṣṣadāqi (7); صَادِقَةٌ —ṣādiqatun (7); وَصَدَقَتُهُ — waṣadaqatuhu (7); الصَّادِقَةَ —al-ṣādiqati (6); الصِّدْقِ —al-ṣidqi (6); تَصْدِيقِهِ — taṣdīqihi (6); لِلْمُصَدِّقِ —lilmuṣaddiqi (6); وَالْمُتَصَدِّقُ —wālmutaṣaddiqu (6); تَصَدَّقِي —taṣaddaqī (5); تَصْدِيقَهَا —taṣdīqahā (5); صَدَقَتُكَ —ṣadaqatuka (5); فَالصَّدَاقُ —fālṣṣadāqu (5); وَصَدَاقٍ —waṣadāqin (5); التَّصْدِيقُ —al-taṣdīqu (4); فَصَدَقُوا —faṣadaqa (4); فَصَدَقَ —fālṣṣadaqatu (4); فَالصَّدَقَةُ —ṣadaqā (4); صَدَقَا —faṣadaqūā (4); لِلْمُتَصَدِّقِ —lilmutaṣaddiqi (4); وَإِصْدَاقِهِ —waʾiṣdāqihi (4); أَصْدَقَهُ — wayuṣaddaqu (4); يُصَدِّقُهَا —yuṣaddiquhā (4); وَيُصَدَّقُ — ʾaṣdaqahu (3); الصَّادِقُونَ —al-ṣādiqūna (3); الْمَصْدُوقُ —al-maṣdūqu (3); بِإِصْدَاقٍ —biʾiṣdāqin (3); بِالصِّدْقِ —biālṣṣidqi (3); بِصَدَقَتِهِ —biṣadaqatihi (3); صَدَقَاتِهِمْ —ṣadaqātihim (3); صَدَقَتِهَا —ṣadaqatihā (3); صَدَقَتِي —ṣadaqatī (3); فَصَدَقَةٌ —faṣadaqatun (3); صَدَّقَهُمْ —ṣaddaqahum (3); صَدِيقِهِ —ṣadīqihi (3); لِصَدِيقِهِ — liṣadīqihi (3); لَأَتَصَدَّقَنَّ —laʾataṣaddaqanna (3); لَصَدَقَ —laṣadaqa (3); وَأَصْدَقُ —waʾaṣdaqu (3); مُصَدَّقَةٌ —muṣaddaqatun (3);

وَالْمُتَصَدِّقَاتِ —wālmutaṣaddiqāti (3); وَالصَّدَقَاتِ —wālṣṣadaqāti (3); وَتَصَدَّقُوا —wataṣaddaqūā (3); وَصَدَقَاتِهِمْ —waṣadaqātihim (3); وَالْمُتَصَدِّقِينَ —wālmutaṣaddiqīna (3)

Context L2241: ... هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ البقرة فَمَنْ لَا بُرْهَانَ لَهُ ...

Context L2249: ... بِهِ عَنْهُ وَأَنَّهُ تَعَالَى صَدَّقَهُمْ فِيمَا قَالُوهُ ...

93. مَيِّت / مَوْت / مَاتَ[93]

māta / mawt / mayyit

2,520 occurrences; cumulative coverage 65.69%.

Possible English: die; death; deceased; dead animal

Context: الميت can identify a deceased person. ميتة in food law commonly means an animal that died without lawful slaughter, rather than simply any feminine deceased referent.

Forms and grammar: مات / يموت = died / dies; ماتت = she or it died; موت = death; ميت / ميتة agree in gender in some uses. موتى / أموات are plural formations.

Attested spellings and counts

مَاتَ —māta (651); الْمَيِّتِ —al-mayyiti (237); يَمُوتُ —yamūtu (171); مَوْتِهِ —mawtihi (168); الْمَوْتِ —al-mawti (130); فَمَاتَ —famāta (130); مَوْتِ —mawti (130); مَيْتَةٌ —maytatun (96); الْمَيْتَةِ —al-maytati (95); مَاتَتْ —mātat (89); مَيِّتًا —mayyitan (65); مَيِّتٍ —mayyitin (59); تَمُوتُ —tamūtu (50); الْمَوْتَى —al-mawtā (32); بِمَوْتِ —bimawti (31); لِلْمَيِّتِ —lilmayyiti (29); وَالْمَيْتَةِ —yumātu (25); يَمُتْ —yamut (24); بِمَوْتِهِ —bimawtihi (23); يُمَاتُ —wālmaytati (23); وَمَاتَ —famātat (18); فَمَاتَتْ —fayamūtu (20); فَيَمُوتُ —wamāta (17); مَوْتِهَا —mātūā (16); مَاتُوا —biālmawti (14); بِالْمَوْتِ —mawtihā (14); مِتَّ —mitta (11); الْمَوَاتِ —al-mawāti (10); الْمَيْتَاتِ —al-maytāti (8); مَاتَا —mātā (8); لِمَوْتِ —limawti (7); وَالْمَوْتِ —wālmawti (7); فَمَاتُوا —famātū (6); فَمَاتَا —famātā (6); لِمَيِّتٍ —limayyitin (6); فَتَمُوتُ —fatamūtu (6); كَالْمَيْتَةِ —kālmaytati (5); لِلْمَوْتِ —lilmawti (5); مَوْتًا —mawtan (5); وَمَاتَتْ —wamātat (5); أَمْوَاتًا —ʾamwātan (4); إِمَاتَةً —wālmayyiti (5); وَالْمَيِّتِ

[93] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: موت (read dictionary entry).

ʾimātatan (4); تَمُوتِينَ —tamūtīna (4); يَمُوتَا —yamūtā (4); أَمْوَاتٌ —ʾamwātun (3); الْأَمْوَاتِ —al-ʾamwāti (3); بِمَيْتَةٍ —bimaytatin (3); فَيَمُتْ —fayamut (3); مَوْتَانَا —mawtākum (3); مَوْتَاكُمْ —mawtākum (3); مَوَاتَ —mawāta (3); لَمَاتَ —lamāta (3); مَوْتَانَا —mawtānā (3); مَوْتِهِمَا —mawtihimā (3); مَوْتِكُمْ —mawtikum (3); مَوْتَى —mawtā (3); وَالْمَيْتَاتِ —wālmaytāti (3); وَمَوْتُ —wamawtu (3); وَمَيِّتًا —wamayyitan (3); وَيَمُوتَ —wayamūta (3); يُمِيتُكُمْ —yumītukum (3)

Context L2238: ... لَهُ وَلَا فَهْمَ إِمَّا بِمَوْتٍ وَإِمَّا بِإِغْمَاءٍ وَإِمَّا بِنَوْمٍ فَصَحَّ ...

Context L2241: ... اللَّهُ يَتَوَفَّى الأَنْفُسَ حِينَ مَوْتِهَا الزمر إِلَى قَوْلِهِ أَجَلٍ مُسَمًّى ...

94. أَخَذَ[94]

ʾakhadha

2,508 occurrences; cumulative coverage 65.85%.

Possible English: take; receive; seize; adopt; follow

Context: أخذ بقول can mean adopted a legal position. أخذ منه may describe receiving something rather than forcibly seizing it.

Forms and grammar: خذ / يأخذ / أخذ = took / takes / take!; أخذت = I or you took; يؤخذ / أُخذ are passive. أخذه attaches an object pronoun; أخذ is also a verbal noun.

Attested spellings and counts

أَخَذَ —ʾakhadha (549); يَأْخُذُ —yaʾkhudhu (270); أَخَذَهُ —ʾakhadhahu (157); الْأَخْذُ —al-ʾakhdhu (124); يُؤْخَذُ —yuʾkhadhu (110); فَأَخَذَ —faʾakhadha (82); تُؤْخَذُ —tuʾkhadhu (81); نَأْخُذُ —naʾkhudhu (69); وَأَخَذَ —waʾakhadha (68); أَخْذُهَا —ʾakhdhuhā (67); أَخَذْتَ —ʾakhadht (54); أَخَذُوا —ʾakhadhūā (45); خُذْ —khudh (44); يَأْخُذُهُ —yaʾkhudhuhu (44); آخُذُ —ʾākhudhu (41); تَأْخُذُ —taʾkhudhu (38); فَخُذْ —fakhudh (29); يَأْخُذُونَ —yaʾkhudhūna (28); وَيَأْخُذُ —waya'khudhu (23); يَأْخُذُوا —khudhūā (22); فَأَخَذَهُ —faʾakhadhahu (22); يَأْخُذُهَا —yaʾkhudhūā (22); بِأَخْذِ —biʾakhdhi (21); وَالْأَخْذُ —wālʾakhdhu (18); أَخَذُوهُ —ʾakhadhūhu (17); أَخَذْتُمْ —ʾakhadhtum (15); الْمَأْخُوذِ —al-maʾkhūdhi (15); يُؤَاخِذُ —yuʾākhidhu (15);

[94] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أخذ (read dictionary entry).

فَيَأْخُذُ —faya’khudhu (14); وَيُؤْخَذُ —wayu’khadhu (14); مَأْخُوذَةٍ — ma’khūdhatin (13); أَخَذْنَا —’akhadhnā (12); فَأَخَذَهَا —fa’akhadhahā (12); يُؤَاخِذُكُمْ — yu’ākhidhukum (12); وَأَخَذُوا —wa’akhadhūā (12); وَأَخَذَهُ —wa’akhadhahu (12); آخِذِهِ —’ākhidhihi (11); بِأَخْذِهِ —bi’akhdhihi (11); تَأْخُذُوا —ta’khudhūā (11); فَخُذُوا —fakhudhūā (10); مَأْخُوذٍ —ma’khūdhin (9); الْآخِذُ —al-’ākhidhu (8); خُذِي —khudhī (8); فَأَخَذَتْ —fa’akhadhat (8); فَيُؤْخَذُ —fayu’khadhu (8); وَأَخَذْت —wa’akhadht (8); أَخْذًا —’akhdhan (7); أَخْذِهِمْ —’akhdhihim (7); فَخُذْهَا —fakhudhhā (7); أَخَذْتُهُ —’akhadhtuhu (6); بِالْأَخْذِ —biāl’akhdhi (6); خُذْهُ —khudhhu (6); فَأَخَذُوا —fa’akhadhūā (6); فَالْأَخْذُ —fāl’akhdhu (6); فَتَأْخُذُ —fata’khudhu (6); فَخُذُوهُ —fakhudhūhu (6); وَخُذُوهُمْ — wakhudhūhum (6); لَأَخَذْنَا —la’akhadhnā (6); فَلْيَأْخُذُوا —falya’khudhūā (6); أَخَذَتْهَا —’akhadhathā (5); أَخَذُوهَا —’akhadhūhā (5); فَأَخَذَتْهُ —fa’akhadhathu (5); فَنَأْخُذُ —fana’khudhu (5); لِيَأْخُذَ — liya’khudha (5); وَخُذْ —wakhudh (5); وَتُؤْخَذُ —watu’khadhu (5); مُؤَاخِذٍ —mu’ākhadhin (5); الْآخِذِينَ —al-’ākhidhīna (4); الْمَأْخُوذَةُ —al-ma’khūdhatu (4); بِأَخْذِهَا —bi’akhdhihā (4); تَأْخُذَهُ —ta’khudhahu (4); خُذْهَا —khudhhā (4); فَأَخَذَا —fa’akhadhā (4); فَأَخَذُوهُ —fa’akhadhūhu (4); لِآخُذَ —li’ākhudha (4); وَنَأْخُذُ — wana’khudhu (4); وَتَأْخُذَ —wata’khudha (4); وَأَخْذِهِمْ —wa’akhdhuhum (4); يُؤَاخَذُونَ —yu’ākhadhūna (4); أَخَذَاهُ —’akhadhāhu (3); أَيَأْخُذُ —’aya’khudhu (3); تَأْخُذَنَّ —ta’khudhanna (3); فَأَخَذْنَا — fa’akhadhnā (3); فَتُؤْخَذُ —fatu’khadhu (3); فَلْيَأْخُذْ —falya’khudh (3); فَلْيَأْخُذْهُ

—falyaʾkhudhhu (3); لِأَخْذ —liʾakhdhi (3); وآخُذُ —waʾākhudhu (3); وَيَأْخُذُه — waya’khudhuhu (3); يَأْخُذَنَّ —yaʾkhudhanna (3); يَأْخُذُوهَا —yaʾkhudhūhā (3)

Context L2241: ... فَقَالَ يَا بِلَالُ فَقَالَ أَخَذَ بِنَفْسِي الَّذِي أَخَذَ بِنَفْسِكَ بِأَبِي ...

Context L2254: ... بَهَرَهُمْ مِنْ آيَاتِهِ وَلَمْ يَأْخُذْ قَطُّ بَلْدَةً عَنْوَةً وَغَلَبَةً إِلَّا ...

95. عَطَاء / أَعْطَى[95]

ʾaʿṭā / ʿaṭāʾ

2,468 occurrences; cumulative coverage 66.02%.

Possible English: give; grant; giving; gift; ʿAṭāʾ

Context: عطاء is frequently the personal name ʿAṭāʾ. أعطى in a transaction means gave; an entitlement and a discretionary gift are distinguished by the wider passage.

Forms and grammar: أعطى / يعطي = gave / gives; أعطاه = gave him or it; أعطيت = I or you gave. عطاء / عطية are different noun formations, and عطية can also be a person’s name.

Attested spellings and counts

عَطَاءٍ —ʿaṭāʾin (1,094); وَعَطَاءٍ —waʿaṭāʾin (237); أَعْطَى —ʾaʿṭā (102); يُعْطِيَ —yuʿṭiya (99); لِعَطَاءٍ —liʿaṭāʾin (92); عَطِيَّةَ —ʿaṭiyyata (84); أَعْطَاهُ — ʾaʿṭāhu (57); إِعْطَاءُ —ʾiʿṭāʾu (57); يُعْطَى —yuʿṭā (54); الْعَطَاءِ —al-ʿaṭāʾi (34); أُعْطِيَ —ʾuʿṭiya (30); أَعْطَاهَا —ʾaʿṭāhā (29); أَعْطَيْتَ —ʾaʿṭayta (27); يُعْطِيَهُ —yuʿṭiyahu (25); يُعْطُوا —yuʿṭūā (24); فَأَعْطَاهُ —faʾaʿṭāhu (23); يُعْطِيهَا — yuʿṭiyahā (19); وَأَعْطَى —waʾaʿṭā (17); فَأَعْطَى —faʾaʿṭā (15); وَإِعْطَاءُ — waʾiʿṭāʾu (15); يُعْطِ —yuʿṭi (15); الْعَطِيَّةَ —al-ʿaṭiyyata (12); الْمُعْطِي — al-muʿṭī (12); أَعْطَيْتَهُ —ʾaʿṭaytahu (11); يُعْطِه —yuʿṭihi (10); يُعْطُونَ — yuʿṭūna (10); وَالْعَطِيَّةِ —wālʿaṭiyyati (9); أَعْطَاهُمْ —ʾaʿṭāhum (8); أَعْطَتْ — ʾaʿṭat (8); أَعْطُوا —ʾaʿṭūā (8); تُعْطَى —tuʿṭā (8); تُعْطِي —tuʿṭī (8); وَعَطِيَّةُ — waʿaṭiyyatu (8); وَيُعْطِي —wayuʿṭī (8); أَعْطَوْهُ —ʾaʿṭawhu (7); تُعْطِ —tuʿṭi (7); تُعْطِهِ —tuʿṭihi (7); تُعْطِيهِ —tuʿṭīhi (7); يُعْطِيَهُمْ —yuʿṭiyahum (7); أَعْطِ —ʾaʿṭi (6); يُعْطِيهَا — ʾuʿṭiyahu (6); بِإِعْطَاءِ —biʾiʿṭāʾi (6); وَيُعْطَى —wayuʿṭā (6); أُعْطِيَهُ

[95] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: عطا (read dictionary entry).

إِعْطَاؤُهُ (5); أَعْطَيَا —ʾaʿṭayā (5); أَعْطِهِ —ʾaʿṭihi (5); أَعْطَانِي —ʾaʿṭānī (5); yuʿṭihā (6); فَيُعْطَى —fayuʿṭā (5); فَيُعْطِيهِ —fayuʿṭīhi (5); —ʾiʿṭāʾuhu (5); إِعْطَائِهَا —ʾiʿṭāʾihā (5); وَيُعْطِيهِ —wayuʿṭīhi (5); مُعْطِيَ —muʿṭiya (5); وَأَعْطَاهُ —waʾaʿṭāhu (5); عَطِيَّتَهُ (4); إِعْطَاءَهَا —ʾiʿṭāʾahā (4); أُعْطِيكَ —ʾuʿṭīk (4); أَعْطَيْتُكَ —ʾaʿṭaytuk (4); فَلْيُعْطِهَا —faʾaʿṭihi (4); فَأَعْطِهِ —faʾaʿṭānī (4); فَأَعْطَانِي —ʿaṭiyyatahu (4); وَأُعْطِيَ —waʾuʿṭiya (4); وَأَعْطِ —waʾaʿṭi (4); أَعْطَاكَ — —falyuʿṭihā (4); ʾaʿṭāk (3); أَعْطِهَا —ʾaʿṭihā (3); أَعْطَيْتُهَا —ʾaʿṭaytuhā (3); الْأَعْطِيَةَ —al-ʾaʿṭiyati (3); فَأَعْطَاهُمْ — الْمُعْطَى —al-muʿṭā (3); تُعْطِيَهَا —tuʿṭiyahā (3); فَأَعْطِ —faʾaʿṭi (3); faʾaʿṭāhum (3); فَأَعْطِهَا —faʾaʿṭihā (3); فَلْيُعْطِ —falyuʿṭi (3); لِلْمُعْطِي —lilmuʿṭī (3); يُعْطِينِي —yuʿṭahunna (3); يُعْطَهُنَّ —watuʿṭī (3); وَتُعْطِي —liyuʿṭiyahu (3); لِيُعْطِيَهُ —yuʿṭīnī (3); يُعْطِيَهُمَا —yuʿṭiyahumā (3)

Context L2276: ... إِلا مَا شَاءَ رَبُّكَ عَطَاءً غَيْرَ مَجْذُوذٍ هود ...

Context L2315: ... عَنْ ابْنِ شِهَابٍ عَنْ عَطَاءِ بْنِ يَزِيدَ اللَّيْثِيِّ أَنَّ أَبَا ...

96. عِنْد[96]

ʿind

2,459 occurrences; cumulative coverage 66.19%.

Possible English: at; with; in the possession of; according to

Attested spellings and counts

عِنْدَ —ʿinda (1,088); عِنْدَهُ —ʿindahu (534); عِنْدَهُمْ —ʿindahum (261); وَعِنْدَ —ʿindī (63); عِنْدِي —ʿindakum (110); عِنْدَكُمْ —ʿindanā (187); عِنْدَنَا —waʿinda (47); عِنْدَهَا —ʿindahā (44); عِنْدَكَ —ʿindak (41); وَعِنْدَهُ —

[96] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: عند (read dictionary entry).

Context: عندنا commonly means according to us or in our view. عند فلان can locate evidence or an opinion with a particular scholar, not necessarily a physical meeting.

Forms and grammar: عنده / عندها / عندهم = with or according to him / her / them; عندي = in my view or with me; عندكم = with you, plural. The noun is used adverbially.

97. حَدّ / حُدُود[97]

ḥadd / ḥudūd

2,444 occurrences; cumulative coverage 66.35%.

Possible English: boundary; limit; prescribed punishment; define

Context: حد can be a limit or a legally prescribed punishment. حدود الله can denote divine limits more broadly; do not automatically replace every حدود with criminal penalties.

Forms and grammar: حد / حدود = limit / limits; حدّه = its limit or he imposed a punishment on him depending on vowels. تحديد is delimitation; محدود is bounded or defined.

وَعِنْدَهُمْ waʿindahu (26); عِنْدَهُمَا —ʿindahumā (15); وَعِنْدَنَا —waʿindanā (10); وَعِنْدَهُمْ —waʿindahum (10); وَعِنْدِي —waʿindī (10); فَعِنْدَ —faʿinda (5); وَعِنْدَكُمْ — waʿindakum (4); وَعِنْدَهَا —waʿindahā (4)

Context L2253: ... لِأَمْرِهِ لِلْآيَاتِ الَّتِي صَحَّتْ عِنْدَهُمْ عَنْهُ فَنَزَلُوا عَنْ مُلْكِهِمْ كُلِّهِمْ ...

...

Context L2265: ... تَعَالَى إِنَّ مَثَلَ عِيسَى عِنْدَ اللَّهِ كَمَثَلِ آدَمَ خَلَقَهُ مِنْ ...

Attested spellings and counts

حَدَّ —ḥadda (703); الْحَدَّ —al-ḥadda (414); الْحُدُودِ —al-ḥudūdi (273); حُدُودَ —ḥudūda (145); حَدًّا —ḥaddan (139); يَحُدَّ —yaḥudda (97); تَحْدِيدُ —taḥdīdu (77); مَحْدُودٍ —maḥdūdin (65); وَحَدُّ —waḥaddu (51); حَدَّهُ — ḥaddahu (33); مَحْدُودَةٍ —maḥdūdatin (28); لِحُدُودِ —liḥudūdi (22); مَحْدُودًا —maḥdūdan (21); الحديد —al-ḥdyd* (18); التَّحْدِيدِ —al-taḥdīdi (17); بِحَدٍّ —biḥaddin (17); حَدِيدٍ —ḥadīdin (16); فَالْحَدُّ —fālḥaddu (16); كَحَدِّ — kaḥaddi (16); وَالْحَدُّ —wālḥaddu (15); الْإِحْدَادِ —al-ʾiḥdādi (14); حَدُّوا —ḥaddūā (14); بِالْحَدِّ —biālḥaddi (13); تُحَدُّ —tuḥiddu (13); وَالْحُدُودُ — wālḥudūdu (13); يَحُدُّوا —yaḥuddūā (12); يَحُدُّونَ —yaḥuddūna (12); بِحَدِيدَةٍ —biḥadīdatin (11); تَحْدِيده —taḥdīdihi (11); حُدُودَهُ —ḥudūdahu (11); حَدُّهَا —ḥadduhā (9); وَيَحُدُّونَ —wayaḥuddūna (9); لِلْحَدِّ —lilḥaddi (8); الْمَحْدُودِ

[97] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: حدد (read dictionary entry).

—al-maḥdūdi (7); حُدُودًا —ḥudūdan (7); فَحُدَّ —faḥaddun (7); لَحُدَّ — laḥudda (7); يَحُدُّهُ —yaḥudduhu (7); الْحَدَّيْنِ —al-ḥaddayni (6); إِحْدَادَ — ʾiḥdāda (5); الْمَحْدُودَةِ —al-maḥdūdati (5); بِالْحُدُودِ —biālḥudūdi (5); حَدِيدَةً —ḥadīdatan (5); لِلْحُدُودِ —lilḥudūdi (5); نَحُدُّهُ —naḥudduhu (5); بِتَحْدِيدِ — bitaḥdīdi (4); وَالْإِحْدَادِ —wāl'iḥdādi (4); حَدَّانِ —ḥaddāni (4); وَتَحْدِيدُ — wataḥdīdu (4); حَادَّ —ḥādda (3); حُدَّتْ —ḥuddat (3); حَدَّدْنَا —ḥaddadnā (3); وَالْحَدِيدِ —ḥaddahumā (3); حَدِيدًا —ḥadīdan (3); كَالْحَدِّ —kālḥaddi (3); حَدَّهُمَا —wālḥadīdi (3); وَحُدَّتْ —waḥuddat (3)

Context L2381: ... وَكُلا وَعَدَ اللَّهُ الْحُسْنَى الحديد حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ...

Context L2444: ... مِنْ قَبْلِ أَنْ نَبْرَأَهَا الحديد ...

98. تَزَوَّجَ / زَوْج[98]

zawj / tazawwaja

2,315 occurrences; cumulative coverage 66.51%.

Possible English: spouse; husband; wife; pair; marry

Context: زوج can refer to either spouse in classical usage. The surrounding pronouns and the legal scenario identify husband or wife; English gender cannot always be fixed from the noun alone.

Forms and grammar: زوج / أزواج = spouse or pair / spouses or pairs; زوجة is a feminine form. تزوج / يتزوج = married / marries; زوجها = her husband or he married her off, depending on vowels.

Attested spellings and counts

زَوْجِهَا —zawjihā (426); الزَّوْجِ —al-zawji (212); زَوْجٍ —zawjin (179); تَزَوَّجَ — tazawwaja (146); تَزَوَّجَهَا —tazawwajahā (81); زَوْجَةٌ —zawjatun (78); تَزَوَّجَتْ —tazawwajat (74); الزَّوْجَةِ —al-zawjati (65); زَوْجَتِهِ —zawjatihi (65); يَتَزَوَّجَ —yatazawwaja (63); تَتَزَوَّجَ —tatazawwaja (54); لِزَوْجِهَا — lizawjihā (49); لِلزَّوْجِ —lilzzawji (46); زَوْجًا —zawjan (45); الزَّوْجَيْنِ — al-zawjayni (44); يَتَزَوَّجُهَا —yatazawwajuhā (44); الزَّوَاجُ —al-zawāju (35); وَالزَّوْجُ — أَزْوَاجِهِمْ —ʾazwājihim (27); الزَّوْجِيَّةِ —al-zawjiyyati (22);

[98] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: زوج (read dictionary entry).

وَزَوْجِهَا wālzzawju (22); زَوَاجُ —zawāju (21); وَالزَّوْجَةُ —wālzzawjatu (20); الْأَزْوَاجِ —wazawjihā (18); يُزَوِّجَ —yuzawwija (18); أَزْوَاجِ —ʾazwāji (17); بِالزَّوَاجِ —al-ʾazwāji (17); زَوْجِي —zawjī (17); أَزْوَاجِهِ —ʾazwājihi (15); biālzzawāji (15); فَتَزَوَّجَتْ —fatazawwajat (14); الزَّوْجَاتِ —al-zawjāti (13); أَزْوَاجِهِنَّ — فَتَزَوَّجَهَا —fatazawwajahā (13); يُزَوِّجَهَا —yuzawwijahā (13); ʾazwājihinna (12); زَوَاجًا —zawājan (12); بِالزَّوْجِيَّةِ —biālzzawjiyyati (11); لِلْأَزْوَاجِ —lilʾazwāji (10); لِلزَّوْجَةِ —lilzzawjati (10); أَزْوَاجًا —ʾazwājan (9); تَزَوَّجَتْهُ — بِزَوَاجٍ —bizawājin (9); الْمُتَزَوِّجَةِ —al-mutazawwijati (9); tazawwajathu (9); لِزَوْجَتِهِ — زَوَاجَهَا —zawājahā (9); زَوْجُكَ —zawjuk (9); lizawjatihi (9); وَزَوْجِهِ أَتَزَوَّجُهَا —ʾatazawwajuhā (8); زَوَّجَنِي —zawwajanī (8); وَزَوْجَةَ —wazawjihi (8); الزَّوْجَانِ —al-zawjāni (7); تَتَزَوَّجَهُ —tatazawwajahu (7); مُتَزَوِّجَةً —wazawjati (7); يُزَوِّجَهُ —yuzawwijahu (7); فَزَوَّجَهَا —fazawwajahā (6); وَأَزْوَاجُهُ —waʾazwājuhu (6); وَزَوْجٍ —wazawjin (6); —mutazawwijatan (6); فَلِلزَّوْجِ — تَزْوِيجُ —tazwīju (5); زَوْجَيْنِ —zawjayni (5); زَوْجَاتٍ —zawjātin (5); وَتَزَوَّجَهَا — وَالزَّوْجَاتُ —wālzzawjātu (5); لِزَوْجٍ —lizawjin (5); falilzzawji (5); وَلِلزَّوْجَةِ —walilzzawjati (5); تَزَوَّجْتَهَا —tazawwajthā (4); watazawwajahā (5); زَوَّجَتْ —zawwajat (4); زَوَاجُهُ —zawājuhu (4); تَزَوَّجَنِي —tazawwajanī (4); زَوْجَتِي —zawjatī (4); زَوْجِهِ زَوَّجَتْهَا —zawwajathā (4); زَوْجَتِكَ —zawjatika (4); فَالزَّوْجُ —fālzzawju (4); فَتَزَوَّجَ —fatazawwaja (4); لِزَوْجِكِ — وَتَزَوَّجَ —watazawwaja (4); لِلزَّوْجَاتِ —lilzzawjāti (4); وَلِلزَّوْجِ lizawjiki (4);

—walilzzawji (4); يَتَزَوَّجَا —yatazawwajā (4); أَتَزَوَّجَ —ʾatazawwaja (3); التَّزْوِيجِ —al-tazwīji (3); بِزَوْجَةٍ —bizawjatin (3); تَزَوَّجْنَ —tazawwajna (3); زَوْجَاتِهِ —zawjātihi (3); زَوَّجْنَاكَهَا —zawwajnākahā (3); زَوْجِيَّتِهِمَا —zawjiyyatihimā (3); فَزَوَّجَهُ —fazawwajahu (3); لِزَوْجَةٍ —lizawjatin (3); وَأَتَزَوَّجُكِ —waʾatazawwajuki (3); يَتَزَوَّجْنَ —yatazawwajna (3)

... إِنْ طَلَّقَكُنَّ أَنْ يُبْدِلَهُ أَزْوَاجًا خَيْرًا مِنْكُنَّ التحريم وَقَالَ تَعَالَى ... :Context L2414

... مَسْأَلَةٌ وَهُمْ الْأَنْبِيَاءُ ثُمَّ أَزْوَاجُهُمْ ثُمَّ سَائِرُ أَصْحَابِ رَسُولِ اللَّهِ ... :Context L2492

99. نَفْس[99]

nafs

2,281 occurrences; cumulative coverage 66.66%.

Possible English: self; person; soul; life; the same individual

Context: نفسه can emphasize identity, himself or itself. In homicide law نفس may mean a life or person, rather than requiring a philosophical sense soul.

Forms and grammar: نفس / أنفس / نفوس = self or person / plurals; أنفسهم / نفسها / نفسه change referent and number. نَفَس, breath, is a distinct vowelled noun sharing the letters.

Attested spellings and counts

نَفْسِهِ —nafsihi (815); نَفْسٍ —nafsin (255); النَّفْسِ —al-nafsi (188); نَفْسَهَا —nafsihā (175); أَنْفُسِهِمْ —ʾanfusihim (145); نَفْسًا —nafsan (136); لِنَفْسِهِ —linafsihi (83); نَفْسِي —nafsī (72); أَنْفُسَكُمْ —ʾanfusakum (45); بِنَفْسِهِ —binafsihi (42); نَفْسِكَ —nafsik (42); بِنَفْسٍ —binafsi (33); بِنَفْسِهَا —binafsihā (26); النِّفَاسِ —al-nifāsi (25); الْأَنْفُسِ —al-ʾanfusi (22); لِأَنْفُسِهِمْ —liʾanfusihim (15); بِالنَّفْسِ —biālnnafsi (13); بِأَنْفُسِهِنَّ —biʾanfusihinna (12); أَنْفُسِهِمَا —ʾanfusihimā (11); النُّفُوسِ —al-nufūsi (9); أَنْفُسٍ —ʾanfusin (8); لِنَفْسِهَا —linafsihā (8); أَنْفُسِنَا —ʾanfusinā (7); بِنَفْسِكَ —binafsika (7); نِفَاسٍ —nifāsin (7); نِفَاسِهَا —nifāsihā (7); لِأَنْفُسِكُمْ —liʾanfusikum (6); أَنْفُسَهَا —

[99] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: نفس (read dictionary entry).

ʾanfusahā (5); بِأَنْفُسِهِمْ —biʾanfusihim (5); نِفَاسًا —nifāsan (5); وَنَفْسِهِ — wanafsihi (5); يَتَنَفَّسَ —yatanaffasa (5); أَنْفُسِهِنَّ —ʾanfusihinna (4); لِأَنْفُسِنَا —liʾanfusinā (4); لِنَفْسِي —linafsī (4); نُفُوسِ —nufūsi (4); وَالنِّفَاسِ — wālnnifāsi (4); وَالنَّفْسِ —wālnnafsi (4); بِنَفْسِي —binafsī (3); مَنْفُوسٍ — manfūsin (3); وَأَنْفُسِهِمْ —waʾanfusihim (3); نُفُوسِهِمْ —nufūsihim (3); وَأَنْفُسِكُمْ —waʾanfusikum (3); وَنَفْسُ —wanafsu (3)

Context L2227: ... الدِّينَ البينة وَالْإِخْلَاصُ فِعْلُ النَّفْسِ وَأَمَّا وُجُوبُ النُّطْقِ بِاللِّسَانِ ... فَإِنَّ ...

Context L2237: ... مَسْأَلَة فِي أَنْ النَّفْس مخلوقة وَأَن الرُّوح نَفْس الجسد ...

100. قَيْس / قِيَاس[100]

qiyās / qays

2,246 occurrences; cumulative coverage 66.81%.

Possible English: analogy; measure; compare; Qays

Context: القياس usually names legal analogical reasoning in the argument. قيس is often a narrator's name. The author's assessment of an analogy is supplied by the surrounding discussion.

Forms and grammar: قاس / يقيس = measured or compared / measures or compares; قياس is the verbal noun; قيس can be a name or a passive form according to vowels; يقاس = is compared.

Attested spellings and counts

قِيَاسٍ —qiyāsin (559); الْقِيَاسُ —al-qiyāsu (424); قَيْسٍ —qaysin (314); وَالْقِيَاسُ —wālqiyāsu (124); قِيَاسًا —qiyāsan (100); قِسْنَا —qisnā (61); قَاسُوا —qāsūā (60); قِيَاسِهِمْ —qiyāsihim (60); بِالْقِيَاسِ —biālqiyāsi (51); يُقَاسَ —yuqāsa (48); قِسْتُمْ —qistum (40); بِقِيَاسٍ —biqiyāsin (33); يَقِيسُوا —yaqīsūā (33); تَقِيسُوا —taqīsūā (27); قَاسَ —qāsa (26); قِيَاسَكُمْ — qiyāsakum (19); وَقِيَاسُ —waqiyāsu (17); قِسْنَاهُ —qisnāhu (16); يَقِسْ —yaqis (15); يَقِيسَ —yaqīsa (14); فَالْقِيَاسُ —fālqiyāsu (13); قِيَاسُهُ — qiyāsuhu (13); لِلْقِيَاسِ —lilqiyāsi (12); وَقَيْسُ —waqaysu (12); فَقِيسُوا —

[100] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: قيس (read dictionary entry).

faqīsūā (11); قَاسُوهُ —qāsūhu (11); فَقِيَاسُ —faqiyāsu (10); وَلِلْقِيَاسِ — walilqiyāsi (10); نَقِيسُ —naqīsu (9); يَقِيسُونَ —yaqīsūna (9); الْمَقَايِيسِ — al-maqāyīsi (8); فَقَاسُوا —faqāsūā (8); قِيَاسَاتِهِمْ —qiyāsātihim (7); أَقِيسُ — ʾaqīsu (5); تَقِيسُونَ —taqīsūna (5); تَقِيسُوهُ —taqīsūhu (5); فَقَاسَ —faqāsa (5); وَقِيَاسِهِمْ — waqiyāsihim (4); وَيَقِيسُ —wayaqīsu (4); الْقِيَاسَاتُ —al-qiyāsātu (3); الْقَيْسِ —al-qaysi (3); تُقَاسَ —tuqāsa (3); تَقِيسُوهَا —taqīsūhā (3); فَقِسْنَا —faqisnā (3); قِسْنَاهَا —qisnāhā (3); قِيَاسِهَا —qiyāsihā (3); قَيْسًا —qaysan (3); يَقِيسُوهُ — yaqīsūhu (3); يَقِيسُوهَا —yaqīsūhā (3)

Context L2222: ... غَيْرِهِمْ وَالتَّنْبِيهِ عَلَى فَسَادِ الْقِيَاسِ وَتَنَاقُضِهِ وَتَنَاقُضِ الْقَائِلِينَ بِهِ ... فَاسْتَخَرْتُ ...

Context L2373: ... سُفْيَانُ وَشُعْبَةُ كِلَاهُمَا عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ ...

101. أَخْرَجَ / خَرَجَ[101]

kharaja / ʾakhraja

2,240 occurrences; cumulative coverage 66.97%.

Possible English: go out; leave; issue; take out; produce

Context: خرج is intransitive went out; أخرج commonly means brought or took out. خروج from a rule can be figurative exclusion.

Attested spellings and counts

خَرَجَ —kharaja (425); يَخْرُجُ —yakhruju (353); فَخَرَجَ —fakharaja (95); أَخْرَجَ —ʾakhraja (93); الْخُرُوجُ —al-khurūju (90); خَرَجَتْ —kharajat (84); إِخْرَاجُ —ʾikhrāju (70); خُرُوجِ —khurūji (70); خَارِجٌ —khārijun (64); تَخْرُجُ — takhruju (59); إِخْرَاجِهِ —ʾikhrājihi (47); الْخَرَاجِ —al-kharāji (42); مَخْرَجَ — makhraja (40); أَخْرَجَهُ —ʾakhrajahu (33); خَارِجَةَ —khārijata (28); خَرَجْنَا

[101] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: خرج (read dictionary entry).

Forms and grammar: خرج / يخرج = went out / goes out; خرجت = I, you or she went out depending on vowels. أخرج / يخرج and إخراج belong to a different pattern; خارج is a participial/adjectival form.

—kharajnā (25); يُخْرِجْهُ —yukhrijhu (25); خُرُوجِهِ —khurūjihi (23); يُخْرِجَهَا —yukhrijahā (22); الْخَارِجُ —al-khāriju (21); وَخَرَجَ —wakharaja (21); إِخْرَاجُهَا —ʾikhrājuhā (20); خَارِجًا —khārijan (20); أَخْرَجَتْ —ʾakhrajat (19); خَرَاجِ —kharājin (19); خَرَجُوا —kharajūā (17); نُخْرِجُ —nukhriju (17); فَخَرَجَتْ —fakharajat (16); وَيَخْرُجُ —wayakhruju (16); يَخْرُجُونَ — yakhrujūna (16); بِخُرُوجِ —bikhurūji (15); خُرُوجِهَا —khurūjihā (15); فَأُخْرِجَ — faʾukhrija (14); يَخْرُجْنَ —yakhrujna (14); فَيَخْرُجُ —fayakhruju (13); الْمَخْرَجِ — al-makhraji (12); بِالْخُرُوجِ —biʾikhrājihi (11); خَرَاجِهِ —kharājihi (12); بِإِخْرَاجِهِ —biālkhurūji (11); تُخْرِجْهُ —tukhrijhu (10); خَرَجَا —kharajā (10); أَخْرَجَهَا — ʾakhrajahā (9); الْمَخْرَجَيْنِ —al-makhrajayni (8); لِيَخْرُجَ —liyakhruja (8); وَأَخْرَجَ —waʾakhraja (8); يَخْرُجُوا —yakhrujūā (8); بِإِخْرَاجِ —biʾikhrāji (7); بِخُرُوجِهِ —bikhurūjihi (7); لِلْخُرُوجِ —lilkhurūji (7); تُخْرِجُوهُنَّ —tukhrijūhunna (7); مَخْرَجًا —makhrajan (7); أُخْرِجُوا —ʾukhrijūā (6); بِمَخْرَجِ —bimakhraji (6); يُسْتَخْرَجُ — yustakhraju (6); خُرُوجَهُنَّ —khurūjahunna (6); وَالْخُرُوجِ —wālkhurūji (6); بِخُرُوجِهَا —bikhurūjihā (5); إِخْرَاجِهِمْ —ʾikhrājihim (5); وَإِخْرَاجٌ —waʾikhrājun (5); الْمُخْرِجَةِ —al-mukhrijati (4); بِإِخْرَاجِهَا — biʾikhrājihā (4); فَلْيَخْرُجْ —falyakhruj (4); مَخْرَجُهُ —makhrajuhu (4); وَتَخْرُجُ —watakhruju (4); وَخَارِجٌ — wakhārijun (4); وَخَارِجَةَ —wakhārijata (4); وَخَرَجَتْ —wakharajat (4); يَخْرُجَانِ —yakhrujāni (4); الخارجة —al-khārjh* (3); الْخَارِجُونَ —al-khārijūna (3);

بِخُرُوجِهِنَّ —bikhurūjihinna (3); تَخْرُجُوا —takhrujūā (3); خَارِجَانِ — khārijāni (3); خَرَجْنَ —kharajna (3); فَأُخْرِجَا —faʾukhrijā (3); فَأُخْرِجَتْ — faʾukhrijat (3); فَأَخْرَجَهُ —faʾakhrajahu (3); فَأُخْرِجُوا —faʾukhrijūā (3); فَتَخْرُجُ —fatakhruju (3); فَخَرَجَتَا —fakharajatā (3); فَخَرَجْنَا —fakharajnā (3); لَيُخْرِجَنَّ —layukhrijanna (3); مَخْرَجُهَا —makhrajuhā (3); وَأَخْرَجَهُ —waʾakhrajahu (3)

Context L2227: ... بِاللِّسَانِ فَإِنَّ الشَّهَادَةَ بِذَلِكَ الْمُخْرِجَةُ لِلدَّمِ وَالْمَالِ مِنْ التَّحْلِيلِ ... إلَى ...

Context L2236: ... مَقْهُورًا لِتِلْكَ الْعِلَّةِ وَهَذَا خُرُوجٌ عَنْ الْإِلَهِيَّةِ وَلَوْ كَانَتْ الْعِلَّةُ ...

102. كَتَبَ / كِتَاب[102]

kitāb / kataba

2,198 occurrences; cumulative coverage 67.11%.

Possible English: book; writing; scripture; prescribe; write

Context: كتاب can mean a book, a written document or scripture. كتب عليه can mean prescribed for him. A مكاتب is a person with a manumission contract in the relevant legal discussion.

Forms and grammar: كتب / يكتب = wrote / writes; كُتب = was prescribed or written. كتاب / كتب = book / books with different vowels; كاتب = writer; كتابة = writing or the named legal contract.

Attested spellings and counts

كِتَابِ —kitābi (643); كَتَبَ —kataba (245); الْكِتَابِ —al-kitābi (180); الْمُكَاتَبِ —al-mukātabi (151); فَكَتَبَ —fakataba (101); الْكِتَابَةِ —al-kitābati (91); كِتَابِنَا —kitābinā (53); كِتَابَتِهِ —kitābatihi (48); كِتَابِهِ —kitābihi (46); كَاتَبَ —kātaba (41); كِتَابِي —kitābī (40); الْمَكْتُوبَةِ —al-maktūbati (35); بِكِتَابِ —bikitābi (34); كِتَابَةِ —kitābati (32); يَكْتُبَ —yaktuba (24); كِتَابِيَّةٍ — kitābiyyatin (23); كُتِبَتْ —kutibat (21); الْكِتَابِيَّةِ —al-kitābiyyati (20); كَتَبَهُ —katabahu (18); كِتَابًا —kitāban (17); وَالْمُكَاتَبُ —wālmukātabu (17); مُكَاتَبَةٌ — mukātabatun (14); كِتَابَتِهَا —kitābatihā (14); الْمُكَاتَبَةُ —al-mukātabatu (15); وَكَتَبَ —wakataba (14); الْكَاتِبُ —al-kātibu (12); الْكِتَابِيِّ —

[102] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: كتب (read dictionary entry).

مَكْتُوبَةٌ (12); فَاكْتُبُوهُ —fāktubūhu (10); مُكَاتَبًا —mukātaban (10); al-kitābiyyi —maktūbatun (10); فَكَاتِبُوهُمْ —fakātibūhum (9); مُكَاتَبٍ —mukātabin (9); يُكَاتَبَ —yukātaba (9); الْكِتَابِيَّاتِ —al-kitābiyyāti (8); تُكْتَبْ —tuktab (8); كَاتَبَهُ —kātabahu (8); كِتَابِيًّا —kitābiyyan (8); مُكَاتَبِهِ —mukātabihi (8); وَالْكِتَابَةُ —wālkitābatu (8); كَاتِبًا —kātiban (7); كُتُبِهِمْ —kutubihim (7); مُكَاتَبَتِهِ —mukātabatihi (7); فَكَتَبْتُ —fakatabt (6); كَتَبْنَا —katabnā (6); لِكِتَابِ —likitābi (6); وَالْكِتَابِ —wālkitābi (6); وَلِكِتَابِهِ —walikitābihi (6); مَكْتُوبًا —maktūban (5); وَكِتَابِ —wakitābi (5); يَكْتُبْهَا —yaktubhā (5); أَكْتُبُ —ʾaktubu (4); تَكْتُبُوهُ —taktubūhu (4); كَاتَبْتَه —kātabth (4); كِتَابَتِكَ — kitābataki (4); كِتَابَيْنِ —kitābayni (4); وَكَتَبْنَا —wakatabnā (4); أَكْتُبُهَا — ʾaktubuhā (3); الْكُتُبِ —al-kutubi (3); بِالْكِتَابِ —biālkitābi (3); بِالْكِتَابَةِ — biālkitābati (3); فَكَتَبُوا —fakatabūā (3); كِتَابَكَ —kitābaka (3); كُوتِبَ — kūtiba (3); مُكَاتَبَتِهَا —mukātabatihā (3); مُكَاتَبِينَ —mukātabīna (3); مَكْتُوبٌ — maktūbun (3); وَمُكَاتَبَ —wamukātaba (3); وَيَكْتُبَ —wayaktuba (3); يُكَاتِبُهُ — yukātibuhu (3); يَكْتُبَاهُ —yaktubāhu (3)

Context L2222: ... الْمُخْتَصَرَةِ الَّتِي جَمَعْنَاهَا فِي كِتَابِنَا الْمَوْسُومِ بِالْمُحَلَّى شَرْحًا مُخْتَصَرًا أَيْضًا ...

Context L2224: ... كِتَابُ التَّوْحِيدِ مَسْأَلَة بَيَان أَوَّل مَا ...

103. فَقَطْ / قَطّ[103]

qaṭṭ / *faqaṭ*

2,193 occurrences; cumulative coverage 67.26%.

Possible English: ever in negative contexts; at all; only; enough

Context: قطّ with a past negative can mean ever. فقط means only. Neither should be read as an ordinary tense conjugation of the other.

Forms and grammar: قطّ is an indeclinable adverb in its common negative use; فقط attaches ف to قط in the limiting expression. قطّ can also belong to a lexical cutting sense, distinguished by syntax.

Attested spellings and counts

فَقَطْ —faqaṭ (1,535); قَطُّ —qaṭṭu (658)

Context L2228: ... زَمَانٍ لَمْ يَنْفَكَّ عَنْهُ قَطُّ وَلَا يُتَوَهَّمُ وَلَا يُمْكِنُ أَنْ ...

Context L2238: ... وَهِيَ مَا لَمْ يَنْفَكَّ قَطُّ مِنْ زَمَانٍ وَعَدَدٍ فَهِيَ مُحْدَثَةٌ ...

104. وَلَدَ / وَلَد[104]

walad / *walada*

2,180 occurrences; cumulative coverage 67.41%.

Possible English: child; offspring; son; bear a child; parent

Context: ولد can include offspring without specifying sex unless qualified. ولدت can describe giving birth; the final vowel and subject determine who did so.

Forms and grammar: ولد / أولاد = child / children; والد / والدة / والدان = father or parent / mother / parents. يولد / وُلد and يولد / وَلد distinguish active/passive by vowels; ولده = his child in a noun phrase.

Attested spellings and counts

وَلَدِ —waladi (364); الْوَلَدِ —al-waladi (313); الْوَلِيدِ —al-walīdi (182); وَلَدِهِ —waladihi (152); وَلَدِهَا —waladihā (94); وَلَدَتْ —waladat (70); يُولَدُ —yūlad (70); الْوَالِدِ —al-wālidi (45); تَوَلَّدَ —tawallada (45); الْأَوْلَادِ —al-ʾawlādi (36); وَالْوَلَدُ —wālwaladu (32); وَلَدًا —waladan (31); أَوْلَادِ —ʾawlādi (30); الْمَوْلُودِ —al-mawlūdi (29); مَوْلُودٍ —mawlūdin (29); أَوْلَادِهِ —ʾawlādihi (26); الْوَالِدَيْنِ —al-wālidayni (26); لِوَلَدِهِ —liwaladihi (24); تَلِدَ —talida (21); وَالِدَ —wālida (21); وِلَادَةٍ —wilādatin (20); وَوَلَدُهَا —wawaladuhā (20); فَوَلَدَتْ —fawaladat (19); بِوَلَدِهَا —biwaladihā (18); وَالِدِهِ —wālidihi (18); وَلَدَتْهُ —waladathu (18); أَوْلَادَهُنَّ —ʾawlādahunna (17); وَالِدَةٌ —wālidatun (16); وَوَلَدُ —wawaladu (16); أَوْلَادًا —ʾawlādan (15);

[103] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: قطط (read dictionary entry).
[104] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ولد (read dictionary entry).

أَوْلادَكُمْ — ʾawlādakum (14); وَلَدِكَ — waladika (14); بِالْوَلَدِ — biālwaladi (13); وَالْوَالِدَاتُ — wālwālidātu (13); أَوْلَادَهُمْ — ʾawlādahum (12); وَلَدِي — waladī (12); بِوَلَدِهِ — biwaladihi (11); لِلْوَلَدِ — lilwaladi (11); وَوَلَدُهُ — wawaladuhu (11); أَوْلَادُهَا — ʾawlāduhā (10); وَلِيدَةً — walīdatan (10); بِوِلَادَةِ — biwilādati (9); الْوَالِدَانِ — wālwālidi (8); وَالْوَالِدِ — fālwaladu (8); فَالْوَلَدُ — biwaladi (8); بِوَلَدِ — al-wālidāni (7); مُتَوَلِّدٌ — al-walīdatu (7); الْوَلِيدَةُ — fawaladuhā (7); فَوَلَدُهَا — mutawallidun (7); فَوُلِدَ — wālidayhi (7); وَالِدَيْهِ — waladihimā (7); وَلَدِهِمَا — fawulida (6); وَأَوْلَادِهَا — waʾawlādihā (6); وَلِوَالِدَيْكَ — waliwālidayka (6); وَوَلَدَتْ — wawaladat (6); إِيلَادٍ — ʾīlādin (5); بِالْوِلَادَةِ — biālwilādati (5); لِلْوَالِدَيْنِ — lilwālidayni (5); لِوَلَدِ — liwaladi (5); لِوَالِدِهِ — liwālidihi (5); مُتَوَلِّدَةً — mutawallidatan (5); وَالْأَوْلَادُ — wāl'awlādu (5); وَأَوْلَادُ — waʾawlādu (5); وَوَلَدَكَ — wawaladaki (5); وِلَادَتِهِ — wilādatihi (5); أَوْلَادِهِمَا — ʾawlādihimā (4); الْوِلَادَاتِ — al-wilādāti (4); لِلْوَالِدِ — lilwālidi (4); لِوَلَدِهَا — liwaladihā (4); وَالْوِلَادَةِ — wālwilādati (4); مَوْلِدَ — mawlida (4); وَأَوْلَادُهُ — waʾawlāduhu (4); وَالِدًا — mutawallidan (3); تَلِدِي — talidī (3); وَلِيدَتَهُ — walīdatahu (4); وَالِدِينَ — wālidan (3); وَالْوَلِيدُ — wālwalīdu (3); وِلَادَتِهِمْ — wilādatihim (3); وُلِدُوا — wulidūā (3); وَوَلِيدَةٍ — wawalīdatin (3)

Context L2249: ... صَحَّ مَوْتُهُ وَكِإِبْرَاءِ أَكْمَهَ وُلِدَ أَعْمَى وَكَنَاقَةٍ خَرَجَتْ مِنْ صَخْرَةٍ ...

Context L2261: ... مُسْلِمُ بْنُ الْحَجَّاجِ ثنا الْوَلِيدُ بْنُ شُجَاعٍ وَهَارُونُ بْنُ عَبْدِ ...

105. كَثِير / أَكْثَر[105]

kathīr / ʾakthar

2,160 occurrences; cumulative coverage 67.56%.

Possible English: much; many; numerous; more; most; Kathīr

Context: أكثر can be a comparative or part of a verb phrase. كثير in a transmission chain can be the personal name Kathīr; elsewhere it commonly means much or many.

Forms and grammar: كثير / كثيرة agree with the noun; أكثر = more or most; كثرة = abundance; كثر / يكثر = became numerous / is numerous. كثيرا is commonly adverbial or accusative.

Attested spellings and counts

أَكْثَرَ —ʾakthara (721); كَثِير —kathīrin (452); كَثُرَ —kathura (160); كَثِيرًا — kathīran (128); كَثِيرَة —kathīratin (90); بِأَكْثَرَ —biʾakthara (87); فَأَكْثَرَ — faʾakthara (72); الْكَثِير —al-kathīri (40); وَأَكْثَرَ —waʾakthara (39); وَكَثِيرُه — wakathīruhu (37); أَكْثَرُه —ʾaktharuhu (27); كَثُرَتْ —kathurat (25); كَثِيرُه — kathīruhu (24); أَكْثَرَهَا —ʾaktharahā (22); الْأَكْثَرِ —al-ʾakthari (20); تَكْثُرُ — takthuru (19); وَالْكَثِير —wālkathīri (18); الْإِكْثَارُ —al-ʾikthāru (14); وَكَثِيرُهَا —wakathīruhā (12); لِأَكْثَرَ —liʾakthara (11); وَكَثِيرٌ —wakathīrun (11); كَثْرَة —kathrati (10); لِكَثْرَة —likathrati (9); أَكْثَرَهُمْ —ʾaktharahum (8); بِكَثْرَة — bikathrati (8); وَبِأَكْثَرَ —wabiʾakthara (8); وَالْأَكْثَرُ —wāl'aktharu (7); يُكْثِرُ —yukthiru (7); فَأَكْثَرُوا —faʾaktharūā (6); كَثُرُوا —kathurūā (6); لَيَكْثُرُ — layakthuru (6); الْكَثِيرَة —al-kathīrati (5); بِكَثِيرٍ —bikathīrin (5); تَسْتَكْثِرُ — tastakthiru (5); كَثُرْنَ —kathurna (5); وَالْإِكْثَارِ —wāl'ikthāri (5); التَّكَاثُرُ — al-takāthuru (4); فَكَثُرَ —fakathura (4); فَلْيُكْثِرْ —falyukthir (4); وَأَكْثَرُهُمْ — waʾaktharuhum (4); بِالْكَثِير —biālkathīri (3); تَكَثُّرًا —takaththuran (3); لِأَكْثَرِهِ —liʾaktharihi (3); وَكَثْرَة —wakathrati (3); وَيُكْثِرَ —wayukthira (3)

Context L2232: ... أَنْ لَوْ كَانَ الْخَالِقُ أَكْثَرَ مِنْ وَاحِدٍ أَنْ يَكُونَ قَدْ ...

[105] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: كثر (read dictionary entry).

106. رِضًا / رَضِيَ[106]

raḍiya / riḍan

2,146 occurrences; cumulative coverage 67.70%.

Possible English: be pleased; approve; consent; satisfaction

Context: رضي الله عنه is a prayer, may God be pleased with him. رضا in a transaction concerns consent. Those uses call for different English phrasing.

Forms and grammar: رضي / يرضى = was pleased / is pleased; رضيت = I or you consented; تراضيا = the two mutually agreed. تراض / التراضي are verbal-noun forms; final weak letters can change or disappear.

Context L2238: ... النُّفُوسُ كَمَا نَصَّ تَعَالَى كَثِيرَةً وَكَذَلِكَ وَجَدْنَاهَا نَفْسًا خَبِيثَةً ... وَأُخْرَى ...

Attested spellings and counts

رَضِيَ —raḍiya (1,628); تَرَاضٍ —tarāḍin (76); رِضًا —riḍan (45); يَرْضَ —yarḍa (37); يَرْضَى —yarḍā (37); الرِّضَا —al-riḍā (25); تَرَاضَيَا —tarāḍayā (25); بِالرِّضَا —biriḍā (21); رَضِيَتْ —raḍiyat (19); التَّرَاضِي —al-tarāḍī (18); بِرِضَا —biālrriḍā (12); رِضَاهُ —riḍāhu (11); بِرِضَاهُمَا —biriḍāhumā (10); وَالتَّرَاضِي —wālttarāḍī (9); وَرَضِيَ —waraḍiya (9); يَتَرَاضَيَا —yatarāḍayā (9); بِرِضَاهَا —biriḍāhā (8); بِتَرَاضِيهِمَا —bitarāḍīhimā (7); تَرَاضَوْا —tarāḍawā (7); رَضُوا —raḍūā (7); رَضِيَهُ —raḍiyahu (7); يَرْضَهُ —yarḍahu (7); بِتَرَاضٍ —bitarāḍin (6); رَاضٍ —rāḍin (6); رِضْوَانُ —riḍwānu (6); رَضِيَهَا —raḍiyahā (6); نَرْضَى —narḍā (6); وَالرِّضَا —wālrriḍā (6); تَرْضَ —tarḍa (5); تَرْضَوْنَ —tarḍawna (5); يَتَرَاضَيَانِ —yatarāḍayāni (5); يَرْضَوْا —yarḍawā (5); أَرْضِي —ʾarḍī (4); الْمَرْضَى —al-marḍā (4); رِضَاهُمَا —biriḍāhu (4); رَاضِيَةٍ —rāḍiyatin (4); riḍāhumā (4); رَضِيَتْهُ —raḍiyathu (4); فَرَضِيَ —faraḍiya (4); وَتَرَاضَيَا —watarāḍayā (4); أَرْضَنَا —ʾarḍanā (3); تَرَاضَى —tarāḍā (3); تَرَاضِيهِمَا —tarāḍīhimā (3); رِضَاهُنَّ —riḍāhunna (3); وَرِضْوَانًا —wariḍwānan (3); يَتَرَاضَى —yatarāḍā (3); يُرْضِيهِ —yurḍīhi (3)

[106]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: رضي (read dictionary entry).

Context L2221: ... بْنِ سَعِيدِ بْنِ حَزْمٍ رَضِيَ اللَّهُ عَنْهُ الْحَمْدُ لِلَّهِ رَبِّ ...

Context L2225: ... مَسْأَلَةٌ قَالَ أَبُو مُحَمَّدٍ رَضِيَ اللَّهُ عَنْهُ أَوَّلُ مَا يَلْزَمُ ...

107. سُفْيَان[107]

sufyān

2,111 occurrences; cumulative coverage 67.84%.

Possible English: Sufyān, a personal name

Context: The name alone does not identify one unique narrator. A following epithet or the transmission chain distinguishes people such as Sufyān al-Thawrī and Sufyān ibn ʿUyaynah.

Forms and grammar: وسفيان adds and; لسفيان adds to or for. Final case vowels vary within the name. Do not infer a contemporary lexical meaning or identity from the spelling alone.

Attested spellings and counts

سُفْيَانَ —sufyāna (1,805); وَسُفْيَانَ —wasufyāna (303); فَسُفْيَانُ —fasufyānu (3)

Context L2277: ... الْجُلُودِيُّ ثنا إبْرَاهِيمُ بْنُ سُفْيَانَ ثنا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا ...

Context L2282: ... زُهَيْرُ بْنُ حَرْبٍ ثنا سُفْيَانُ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ ...

108. آتَى / أَتَى[108]

ʾatā / ʾātā

2,108 occurrences; cumulative coverage 67.99%.

Possible English: come; bring; perform; give

Context: أتى can mean came or performed an act. آتى means gave, a different verb formation, particularly in commands to give an entitlement.

Forms and grammar: يأتي / أتى = came / comes; أتيت = I or you came; أتينا = we came. يؤتي / آتى = gave / gives; أوتي = was given; آتوا = give!, plural.

Attested spellings and counts

يَأْتِ —yaʾti (534); أَتَى —ʾatā (257); يَأْتِيَ —yaʾtiya (236); فَأَتَى —faʾatā (101); أُتِيَ —ʾutiya (71); أَتَيْتُ —ʾataytu (47); أَتَوْا —ʾatawā (43); فَأُتِيَ —faʾutiya (43); وَآتَوْا —waʾātūā (42); أَتَتْ —ʾatat (40); فَأَتَيْتُ —faʾataytu (33); أَتَاهُ —ʾatāhu (31); تَأْتِي —taʾtī (28); وَأَتَى —waʾatā (27); يَأْتُوا —yaʾtūā (26); أَتَيْنَا —ʾataynā (25); تَأْتِ —taʾti (22); فَأَتَتْ —faʾatat (21); أُوتُوا —ʾūtūā (19); يَأْتُونَ —yaʾtūna (19); يَأْتِيهَا —yaʾtīhā (18); آتَاكُمْ —ʾātākum (16); وَآتُوهُمْ

[107] **Editorial lexical note:** Personal-name identification from the book; no Arabic-root etymology or Lisān lexical definition is asserted for this name.

[108] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أتي (read dictionary entry).

—waʾātūhum (15); يَأْتِينَ —yaʾtīna (15); وَيَأْتِي —wayaʾtī (14); آتَاهَا — ʾātāhā (13); آتَاهُ —ʾātāhu (11); فَأَتَيْتُهُ —faʾataytuhu (11); نَأْتِيَ —naʾtiya (11); يَأْتِيهِ —yaʾtīhi (11); آتِي —ʾātī (10); أَتَيْنَ —ʾatayna (10); يُؤْتَى —yuʾtā (10); تَأْتِينِي —taʾtiyanī (9); تُؤْتُوا —tuʾtūā (9); فَأَتَيْنَا —faʾataynā (9); آتَيْتُمُوهُنَّ — ʾātaytumūhunna (8); أَتَتْهُ —ʾatathu (8); أَتَيْتُمْ —ʾataytum (8); أُوتَى —ʾūtā (8); أُوتِيَ —ʾūtiya (8); إِيتَاءِ —ʾītāʾi (8); ائْتِ —ʾti (8); وَأَتَوْا —waʾatawā (8); أَتَيْتُهُ —ʾataytuhu (7); إِتْيَانَ —ʾityāna (7); ائْتُونِي —ʾtūnī (7); فَلْيَأْتِ —falyaʾti (7); فَيَأْتِي —fayaʾtī (7); وَيُؤْتُوا —wayuʾtūā (7); أَتَاهُمْ —ʾatāhum (6); تُؤْتَى — tuʾtā (6); تُؤْتِي —tuʾtī (6); فَآتُوهُنَّ —faʾātūhunna (6); وَآتُوهُنَّ —waʾātūhunna (6); سَيَأْتِي — saya'tī (5); إِتْيَانُهُ —ʾityānuhu (5); آتَيْتُمْ —ʾātaytum (5); يَأْتِيَانِهَا —yaʾtiyānihā (6); وَيَأْتِيهَا —waya'tīhā (5); يَأْتِهِ —yaʾtihi (5); يَأْتِينِي —yaʾtiyanī (5); آتَيْنَا —ʾātaynā (4); أَتَيَا —ʾatayā (4); فَأَتَيَا —faʾatayā (4); وَآتِ —waʾāti (4); وَآتَيْتُمْ —waʾātaytum (4); وَإِتْيَانُ —waʾityānu (4); وَتَأْتِي —wataʾtī (4); آتَانَا — ʾātānā (3); آتَاهُمْ —ʾātāhum (3); أَتَاكُمْ —ʾatākum (3); إِتْيَانِهَا —ʾityānihā (3); تَأْتُوا —taʾtūā (3); فَأَتَتْهُ —faʾatathu (3); فَأَتَيْنَاهُ —faʾataynāhu (3); فَلْنَأْتِ — falnaʾti (3); فَلْيَأْتُونَا —falyaʾtūnā (3); لِيَأْتِيَهُ —liyaʾtiyahu (3); نَأْتِ —naʾti (3); نَأْتِيَهُمْ —naʾtīhim (3); وَأُتِيَ —waʾutiya (3); وَيُؤْتِيَ —wayuʾtiya (3); يَأْتِيَهُنَّ — yaʾtiyahunna (3); يُؤْتَوْنَ —yuʾtawna (3); يُؤْتِيهِ —yuʾtīhi (3)

Context L2249: ... أَنَّ قَوْمًا مِنْ النَّاسِ أَتَوْا أَهْلَ زَمَانِهِمْ يَذْكُرُونَ أَنَّ اللَّهَ ...

109. مَثَل / مِثْل[109]

mithl / mathal

2,104 occurrences; cumulative coverage 68.13%.

Possible English: like; similar; equivalent; example; parable

Context: مثل may compare two legal cases; بمثل can express like for like. مَثَل introduces an example or parable, not always a rule of exact equivalence.

Forms and grammar: مثله / مثلها = like him or it / her or it; مثلين / مثلان are dual; أمثال is a plural. مِثْل and مَثَل have different common uses despite shared letters.

Context L2251: ... ذَلِكَ أَنَّهُ عَلَيْهِ السَّلَامُ أَتَى بِهَذَا الْقُرْآنِ الْمَنْقُولِ إِلَيْنَا بِأَتَمِّ ...

Attested spellings and counts

مِثْلُ —mithlu (880); بِمِثْلِ —bimithli (294); مِثْلُهُ —mithluhu (293); مِثْلِهَا —mithlihā (149); وَمِثْلُ —wamithlu (83); بِمِثْلِهِ —bimithlihi (64); مِثْلًا —mithlan (60); وَمِثْلُهُ —wamithluhu (29); الْمِثْلِ —al-mithli (28); الْمُثْلَةِ —al-muthlati (26); بِمِثْلِهَا —bimithlihā (23); الْمُمَاثَلَةَ —al-mumāthalata (20); مُثْلَةً —muthlatan (20); كَمَثَلِ —kamathali (10); مِثْلَيْهِ —mithlayhi (9); وَبِمِثْلِ —wabimithli (9); بِالْمِثْلِ —biālmithli (8); مُتَمَاثِلًا —mutamāthilan (8); وَمُتَمَاثِلًا —wamutamāthilan (8); الْمُمَثَّلِ —al-mumaththali (7); فَمِثْلُ —famithlu (6); مِثْلُهُمْ —mithluhum (6); مِثْلَيْ —mithlay (6); أَمْثَالِهَا —ʾamthālihā (5); كَمِثْلِهِ —kamithlihi (5); التَّمَاثُلُ —al-tamāthulu (5); مِثْلُكُمْ —mithlukum (5); التَّمَاثِيلُ —al-tamāthīlu (4); وَالْمُمَاثَلَةُ —wālmumāthalatu (4); وَمِثْلُهَا —wamithluhā (4); أَمْثَالٍ —ʾamthālin (3); مِثْلُهُمَا —mithluhumā (5); التَّمْثِيلُ —al-tamthīlu (3); بِأَمْثَالِهِمْ —biʾamthālihim (3); بِالْمُثْلَةِ —biālmuthlati (3); فَالتَّمَاثُلُ —fālttamāthulu (3); مِثَالُ —mithālu (3); يُمَثَّلَ —yumaththila (3)

Context L2232: ... ذَلِكَ قَالَ تَعَالَى لَيْسَ كَمِثْلِهِ شَيْءٌ الشورى وَقَالَ تَعَالَى وَلَمْ ...

Context L2236: ... مَخْلُوقَةً لِعِلَّةٍ أُخْرَى وَجَبَ مِثْلُ ذَلِكَ فِي الْعِلَّةِ الثَّانِيَةِ وَهَكَذَا ...

[109] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: مثل (read dictionary entry).

110. سَنَة / سِنّ / سُنَّة[110]

sunnah / sinn / sanah

2,062 occurrences; cumulative coverage 68.27%.

Possible English: practice; prophetic precedent; tooth; year

Context: السنة commonly means prophetic practice in legal argument. سِنّ is a tooth or age; سَنَة is a year. These homographs must be distinguished by vowels and topic.

Forms and grammar: سُنّة / سنن = practice(s); سِنّ / أسنان = tooth/teeth; سَنَة / سنون / سنين = year(s). They are different lexical readings, not one noun's tense forms.

Attested spellings and counts

سُنَّةٍ —sunnatin (942); السُّنَّةُ —al-sunnatu (300); وَالسُّنَّةِ —wālssunnati (169); السُّنَنِ —al-sunani (134); وَالسُّنَنِ —wālssunani (76); السِّنِّ —al-sinni (62); وَسُنَّةٍ —sinnin (49); بِسُنَّةٍ —bisunnatin (32); الْأَسْنَانِ —al-ʾasnāni (31); سِنٍّ —wasunnati (29); مُسِنَّةٌ —musinnatun (27); سِنَانٍ —sinānin (25); سِنًّا —sinnan (18); لِلسُّنَّةِ —lilssunnati (18); بِالسُّنَّةِ —biālssunnati (17); لِسُنَّةَ —lisunnati (14); وَالسِّنِّ —wālssinni (14); أَسْنَانِه —ʾasnānihi (10); بِالسُّنَنِ —biālssunani (10); لِلسُّنَنِ —lilssunani (9); سُنَنِ —sunani (8); سُنَّتِهِ —sunnatihi (7); سِنُّهُ —sinnuhu (7); أَسْنَانِ —ʾasnāni (6); وَلِلسُّنَنِ —walilssunani (6); أَسَنَّ —ʾasanna (5); الْمُسِنَّةُ —al-musinnatu (5); بِالسِّنِّ —biālssinni (5); بِسُنَّتِهِ —bisunnatihi (4); وَالْأَسْنَانُ —wālʾasnānu (4); مُسِنَّتَانِ —musinnatāni (4); الْمُسِنِّ —al-musinni (3); سُنَّتَنَا —sunnatanā (3); فَسُنَّةٌ —fasunnatun (3); لِسِنِّهِ —lisinnihi (3); وَالْمُسِنَّةِ —wālmusinnati (3)

Context L2222: ... الْقُرْآنِ وَالْوُقُوفِ عَلَى جَمْهَرَةِ السُّنَنِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ صَلَّى ...

...

Context L2310: ... كَانَ مِقْدَارُهُ خَمْسِينَ أَلْفَ سَنَةٍ يُحَاسَبُ فِيهِ الْجِنُّ وَالْإِنْسُ فَيُوَفَّى ...

...

[110] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: سنن (read dictionary entry); سنه (read dictionary entry).

111. قَاضٍ / قَضَاء / قَضَى[111]

qaḍā / qaḍāʾ / qāḍin

2,060 occurrences; cumulative coverage 68.41%.

Possible English: decide; adjudge; fulfill; make up; judgment; judge

Context: قضاء can mean adjudication or making up an omitted ritual act. قضى can also mean completed or discharged. The object and topic determine the English sense.

Forms and grammar: قضى / يقضي = adjudged or completed / adjudges or completes; قضيت = I or you did so. قاض / قضاة = judge / judges; قضية / قضايا = case / cases; يقتضي = entails, a different pattern.

Attested spellings and counts

قَضَى —qaḍā (324); الْقَاضِي —al-qāḍī (184); قَضَاءَ —qaḍāʾa (172); الْقَضَاءِ —al-qaḍāʾi (151); يَقْضِي —yaqḍī (102); يُقْضَى —yuqḍā (98); فَقَضَى —faqaḍā (97); يَقْتَضِي —yaqtaḍī (68); قُضِيَ —quḍiya (61); انْقِضَاءِ —ʾnqiḍāʾi (60); تَنْقَضِيَ —qaḍiyyatin (40); وَقَضَى —waqaḍā (39); قَاضِي —qāḍī (31); قَضِيَّةٍ —tanqaḍiya (30); الْقَضِيَّةِ —qaḍayta (26); قَضَيْتَ —ʾnqaḍat (24); انْقَضَتْ —al-qaḍiyyati (22); بِقَضَاءِ —biqaḍāʾi (21); مُقْتَضَى —muqtaḍā (21); وَيَقْضِي —wayaqḍī (21); بِالْقَضَاءِ —biālqaḍāʾi (19); يَقْضِ —yaqḍi (18); تَقْضِي —taqḍī (17); يَقْتَضِيهِ —yaqtaḍīhi (17); قَاضٍ —qāḍin (15); يَقْضِيَهُ —yaqḍiyahu (15); أَقْضِي —wayuqḍā (13); يَقْضُونَ —yaqḍūna (13); وَيُقْضَى —ʾaqḍī (12); انْقَضَى —ʾnqaḍā (12); الْقَضَايَا —al-qaḍāyā (11); قَضَاهُ —qaḍāhu (11); بِانْقِضَاءِ —biānqiḍāʾi (9); وَالْقَضَاءِ —wālqaḍāʾi (10); قَضَوْا —qaḍawā (10); قَضَتْ —qaḍat (11); يَقْضُوا —yaqḍūā (9); يَنْقَضِي —yanqaḍī (9); اقْتَضَاهُ —ʾqtaḍāhu (8); الْقُضَاةُ —al-quḍātu (8); فَلْيَقْضِ —falyaqḍi (8); قَاضِيًا —qāḍiyan (8); قَضَايَا —qaḍāyā (8); لَأَقْضِيَنَّ —laʾaqḍiyanna (7); وَقَضَاءُ —waqaḍāʾu (7); وَقُضِيَ —waquḍiya (7); اقْتَضَى —ʾqtaḍā (6); تَقْتَضِي —taqtaḍī (6); فَاقْضُوا —fāqḍūā (6); فَيَقْضِي —qaḍayā (6); وَتَقْضِي —wataqḍī (6); تَقْتَضِيهِ —taqtaḍīhi (5); قَضَاءَهُ —fayaqḍī (5); وَاقْضُوا —qaḍāʾahu (5); قَضَاهَا —qaḍāhā (5); يَقْضِيَانِ —wāqḍūā (5); يَقْضِيهَا —yaqḍiyāni (5); اقْضِ —yaqḍihi (5); يَقْضِهِ —yaqḍīhā (5);

[111] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: قضى (read dictionary entry).

ʾqḍi (4); اقْضُوا —ʾqḍūā (4); الْمَقْضِيِّ —al-maqḍiyyi (4); فَالْقَضَاءُ —fālqaḍāʾu (4); لِقَضَاءِ —liqaḍāʾi (4); وَقَضَوْا —waqaḍawā (4); وَمُقْتَضَاهُ —wamuqtaḍāhu (4); وَيَقْضُونَ —wayaqḍūna (4); بِقَضِيَّةٍ —biqaḍiyyatin (3); تَقْضِ —taqḍi (3); تُقْضَى —tuqḍā (3); فَاقْتَضَى —fāqtaḍā (3); فَاقْضِ —fāqḍi (3); فَقَضَانِي —faqaḍānī (3); فَقَضَاهُ —faqaḍāhu (3); فَقَضَاهَا —faqaḍāhā (3); فَقُضِيَ —faquḍiya (3); فَيُقْضَى —fayuqḍā (3); قَضَيْته —qaḍayth (3); قَضَيْنَا —qaḍaynā (3); لَقُضِيَ —laquḍiya (3); لَقَضَيْت —laqaḍayt (3); مَقْضِيٌّ —maqḍiyyun (3)

Context L2230: ... مَبْدَأٍ فَهُوَ مُحْدَثٌ وَالْمُحْدَثُ يَقْتَضِي مُحْدِثًا ضَرُورَةً إِذْ لَا يُتَوَهَّمُ ...

Context L2238: ... فِي مَنَامِهَا فَيُمْسِكُ الَّتِي قَضَى عَلَيْهَا الْمَوْتَ وَيُرْسِلُ الأُخْرَى إِلَى ...

112. عَبَّاس / عَبَسَ[112]

ʿabbās / ʿabasa

2,059 occurrences; cumulative coverage 68.55%.

Possible English: ʿAbbās; frown

Context: عباس and العباس commonly identify a person, especially Ibn ʿAbbās in citations. Do not translate the name as a description of the narrator's expression.

Attested spellings and counts

عَبَّاسٍ —ʿabbāsin (1,986); الْعَبَّاسِ —al-ʿabbāsi (51); وَالْعَبَّاسُ —wālʿabbāsu (10); لِلْعَبَّاسِ —lilʿabbāsi (7); عبس —ʿbs* (5)

Context L2226: ... هَذَا مُسْنَدًا مُعَاذٌ وَابْنُ عَبَّاسٍ وَغَيْرُهُمْ ...

Context L2336: ... جُبَيْرٍ يُحَدِّثُ عَنْ ابْنِ عَبَّاسٍ أَنَّ نَاسًا مِنْ أَهْلِ الشِّرْكِ ...

[112]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: عبس (read dictionary entry).

Forms and grammar: عبس / يعبس = frowned / frowns; عبّاس is a different formation, often a proper name. Case vowels and the presence of ال do not alone establish which person is meant.

113. قَاسِم / قَسَم / قَسْم[113]

qasm / qasam / qāsim

2,042 occurrences; cumulative coverage 68.68%.

Possible English: divide; portion; class; oath; Qāsim

Context: قسم can be a division/share or an oath with different vowels. القسامة is a specific oath procedure; القاسم often names a narrator.

Forms and grammar: قسم / يقسم = divided / divides, or swore / swears with different vowels. أقسم = swore; قسمة = division; أقسام = parts or classes. قاسم is a participial form and personal name.

Attested spellings and counts

قَاسِمُ —qāsimu (396); الْقَاسِمِ —al-qāsimi (371); قِسْمٍ —qismin (120); الْقَسَامَةِ —al-qasāmati (116); مِقْسَمٍ —miqsamin (100); الْقِسْمَةِ —al-qismati (94); يُقْسَمُ —yuqsamu (87); وَالْقَاسِمِ —wālqāsimi (66); تَقْسِيمٌ —taqsīmun (67); يَنْقَسِمُ —yanqasimu (67); بِالْقَسَامَةِ —biālqasāmati (42); التَّقْسِيمِ —al-taqsīmi (42); قِسْمَةِ —qismati (33); قَسَامَةَ —qasāmata (30); الْقِسْمُ —al-qismu (24); قُسِّمَتْ —qussimat (21); تُقْسَمَ —tuqsama (20); قِسْمَانِ —qismāni (20); وَقِسْمٌ — waqismun (19); أَقْسَمَ —ʾaqsama (16); قِسْمَيْنِ —qismayni (16); يُقَاسِمُ — yuqāsimu (15); أَقْسَامٍ —ʾaqsāmin (13); تَقْسِيمِهِ —taqsīmihi (10); قَسَمًا — qasaman (10); وَتَقْسِيمٌ —taqāsīmu (9); قِسْمَتُهُ —qismatuhu (9); وَيُقْسَمُ —wayuqsamu (9); التَّقَاسِيمِ —al-taqāsīmi (8); الْمَقْسُومِ —al-maqsūmi (8); فَقَسَمَهَا —faqasamahā (8); قِسْمَتُهَا —qismatuhā (7); مُقَاسَمَةً — muqāsamati (7); وَالْقَسَامَةِ —wālqasāmati (7); تَنْقَسِمُ —tanqasimu (6); فَالْقَسَامَةُ —fālqasāmatu (6); فَتَقْسِيمٌ —fataqsīmun (6); مَقْسُومٍ —maqsūmin (6); وَقُسِمَتْ —waqusimat (6); أَقْسَمُوا —ʾaqsamūā (5); تَقْسِيمِهِمْ —taqsīmihim (5); قَسَمَهُ

[113] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: قسم (read dictionary entry).

—qasamahu (5); نُقْسِمُ —nuqsimu (5); وَالْقِسْمَةُ —wālqismatu (5); وَتُقْسَمُ — watuqsamu (5); يُقْسِمُونَ —yuqsimūna (5); أَقْسَامًا —ʾaqsāman (4); اقْتَسَمَا —ʾqtasamā (4); الْقِسْمَيْنِ —al-qismayni (4); الْمُقَاسَمَةِ —al-muqāsamati (4); الْمُقْتَسِمِينَ —al-muqtasimīna (4); فَقِسْمٌ —faqismun (4); فَقَسَّمَهُ — faqassamahu (4); فَيُقْسِمَانِ —fayuqsimāni (4); قَسَمَهَا —qasamahā (4); فَأَقْسَمَ —taqsīman (3); تَقْسِيمًا —biālqismati (3); بِالْقِسْمَةِ —ʾaqsamt (3); أَقْسَمْت —faʾaqsama (3); فَاقْتَسَمُوهُ —fāqtasamūhu (3); فَقَسَّمْتُهَا —faqassamtuhā (3); لِلْقَاسِمِ —fayuqsamu (3); قَسَمُوا —qasamūā (3); لَقِسْمَةٌ —laqismatun (3); فَيُقْسَمُ —lilqāsimi (3); مَقْسُومَةٌ —maqsūmatun (3); وَالْقِسْمُ —wālqismu (3); وَيُقَاسِمُ — wayuqāsimu (3); يَقْتَسِمُونَهَا —yaqtasimūnahā (3); يُقْسِمُوا —yuqsimūā (3)

Context L2234: ... مُحْدَثَةً وَلَا سَبِيلَ إِلَى قِسْمٍ ثَالِثٍ فَلَوْ كَانَتْ لَمْ تَزَلْ ...

Context L2236: ... مُحْدَثٍ مَخْلُوقًا فَبَطَلَ هَذَا الْقِسْمُ وَإِنْ كَانَتْ مَخْلُوقَةً وَجَبَ وَلَا ...

Attested spellings and counts

كَفَّارَةٌ —kaffāratun (335); الْكَفَّارَةِ —al-kaffārati (226); كَافِرٌ —kāfirun (193); الْكُفْرِ —al-kufri (146); الْكُفَّارِ —al-kuffāri (124); كُفْرٌ —kufrun (124); الْكَافِرِ —al-kāfiri (116); كَافِرًا —kāfiran (88); يُكَفِّرَ —yukaffira (62); كَفَرُوا —kafarūā (59); وَالْكَفَّارَةُ —wālkaffāratu (30); كُفَّارٌ —kuffārun (25);

114. كَفَّارَة / كُفْر[114]

kufr / kaffārah

2,033 occurrences; cumulative coverage 68.82%.

Possible English: disbelief; ingratitude; disbeliever; expiation; cover

Context: كفارة is an expiation, not the noun disbelief. كافر in legal categorization requires its context. The basic lexical family includes covering and concealing.

[114] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: كفر (read dictionary entry).

Forms and grammar: كفر / يكفر and كفّر / يكفّر are different patterns and can have different meanings. كافر / كافرة / كفار / كافرون show gender/plural forms; كفارة / كفارات = expiation(s).

كُفَّارًا —kuffāran (25); كُفْرًا —kufran (25); كَافِرَةً —kāfiratan (24); بِكَافِرٍ —bikāfirin (23); بِالْكُفْرِ —biālkufri (19); تُكَفِّرَ —tukaffira (19); كُفْرِهِ —kufrihi (19); وَالْكَافِرُ —wālkāfiru (19); الْكَافِرَةِ —al-kāfirati (18); الْكَافِرِينَ —al-kāfirīna (16); الْكَفَّارَاتِ —al-kaffārāti (14); لِلْكَافِرِينَ —lilkāfirīna (14); وَكَفَّارَةِ —wakaffārati (14); بِكَفَّارَةٍ —bikaffāratin (13); فَكَفَّارَةٌ —fakaffāratun (13); بِالْكَفَّارَةِ —biālkaffārati (12); فَكَفَّارَتُهُ —fakaffāratuhu (11); لِكَافِرٍ —likāfirin (11); الْكَافِرُونَ —al-kāfirūna (10); كَفَّارَتُهُ —kaffāratuhu (10); وَكَافِرٍ —wakāfirin (10); كَافِرَيْنِ —kāfirayni (9); كَفَّارَاتٌ —kaffārātun (8); كُفْرِهِمْ —kufrihim (8); لِلْكَافِرِ —lilkāfiri (8); وَالْكُفَّارُ —wālkuffāru (8); وَالْكَفَّارَاتِ —wālkaffārāti (8); تَكْفِيرِ —takfīri (7); كَفَّارَتَانِ —kaffāratāni (7); كَفُورًا —kafūran (7); لِلْكُفَّارِ —lilkuffāri (7); كَفَرْتَ —kafart (6); وَكَفَّارَتُهُ —wakaffāratuhu (6); بِالْكَافِرِ —biālkāfiri (5); فَالْكَفَّارَةُ —fālkaffāratu (5); لَكَفَرَ —lakafara (5); لِلْكُفْرِ —lilkufri (5); نُكَفِّرْ —nukaffir (5); وَالْكَافِرَةِ —wālkāfirati (5); وَلْيُكَفِّرْ —walyukaffir (5); وَيَكْفُرُ —wayakfuru (5); كَافُورٍ —kāfūrin (4); وَالْكُفْرِ —wālkufri (4); وَكَفَّرَ —wakaffara (4); يَكْفُرُوا —yakfurūā (4); بِكُفْرٍ —bikufrin (3); تَكْفُرُونَ —takfurūna (3); كَافِرُونَ —kāfirūna (3); كَافُورًا —kāfūran (3); كَفَّارَتُهَا —kaffāratuhā (3); لِلْكَافِرَةِ —lilkāfirati (3); يُكَفِّرُهَا —yukaffiruhā (3)

Context L2263: ... سَبِيلا النساء أُولَئِكَ هُمُ الْكَافِرُونَ حَقًّا النساء ...

Context L2267: ... مَخْلُوقَةٌ لِلْمُؤْمِنِينَ وَلَا يَدْخُلُهَا كَافِرٌ أَبَدًا قَالَ تَعَالَى وَجَنَّةٍ عَرْضُهَا ... ...

115. لَمَّا[115]

lammā

2,024 occurrences; cumulative coverage 68.96%.

Possible English: when; once; not yet

Context: لما followed by a past narrative can mean when. With a jussive imperfect it may mean not yet. Those constructions need different English tense patterns.

Forms and grammar: فلما / ولما add and / so. The temporal and negative uses share a spelling; they are not different persons or genders. Compare لم, did not, and ما in their own entries.

Attested spellings and counts

لِمَا —limā (1,315); فَلَمَّا —falammā (636); وَلَمَا —walamā (73)

Context L2230: ... كُلُّهُ ذُو مَبْدَأٍ ضَرُورَةً فَلَمَّا كَانَ الزَّمَانُ لَا بُدَّ لَهُ ...

Context L2232: ... يَزَالُ بُرْهَانُ ذَلِكَ أَنَّهُ لَمَّا صَحَّ ضَرُورَةً أَنَّ الْعَالَمَ كُلَّهُ ...

116. فَرْض / فَرِيضَة[116]

farḍ / farīḍah

2,016 occurrences; cumulative coverage 69.09%.

Possible English: obligation; prescribe; apportion; prescribed share

Context: فرض can be an obligation or an allotted inheritance share. The plural الفرائض can name the discipline of inheritance or prescribed obligations.

Forms and grammar: فرض / يفرض = prescribed or allotted / prescribes or allots; فريضة / فرائض = prescribed duty or share / plural. مفروض is a passive participle; فرضا can be adverbial or accusative.

Attested spellings and counts

فَفَرْضٌ —fafarḍun (137); افْتَرَضَ —ʾftaraḍa (111); فَرِيضَةٍ —farīḍatin (77); الْفَرِيضَةِ —al-farīḍati (72); فَرْضُهُ —farḍuhu (63); الْفَرَائِضِ —al-farāʾiḍi (55); وَفَرْضٌ —wafarḍun (54); فَرَائِضِ —farāʾiḍi (48); الْمَفْرُوضَةِ —al-mafrūḍati (27); الْمُفْتَرَضُ —al-muftaraḍu (23); يَفْرِضْ —yafriḍ (18); فَرَضَهَا —faraḍahā (17); افْتَرَضَهُ —ʾftaraḍahu (16); مُفْتَرَضٌ —muftaraḍun (16); فَفَرْضُهُ —fafarḍuhu (15); فَرْضَانِ —farḍāni (12); فَافْتَرَضَ —fāftaraḍa (11); فُرِضَتْ —furiḍat (11); مُفْتَرَضًا —

[115] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: لما (read dictionary entry); لمم (read dictionary entry).

[116] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: فرض (read dictionary entry).

muftaraḍan (11); الْمُفْتَرَضَةِ —al-muftaraḍati (10); فَالْفَرْضُ —fālfarḍu (10); فَرَضُوا —al-furūḍi (8); الْفُرُوضِ —furūḍi (9); فُرُوضِ —faraḍtum (10); فَرَضْتُمْ —faraḍūā (8); مُفْتَرَضَةٌ —muftaraḍatun (8); بِفَرْضٍ —bifarḍin (7); مَفْرُوضَةٍ —mafrūḍatin (7); وَالْفَرَائِضُ —wālfarāʾiḍu (7); الْمَفْرُوضُ —al-mafrūḍu (6); لِلْفَرِيضَةِ —lilfarīḍati (6); مَفْرُوضًا —mafrūḍan (6); وَافْتَرَضَ —wāftaraḍa (6); تَفْرِضُوا —wafarḍuhu (5); وَفَرْضُهُ —lifarḍin (5); لِفَرْضٍ —wālfarḍu (6); وَالْفَرْضُ —tafriḍūā (4); فَرْضَهُمْ —farḍahum (4); فَفَرَضَهَا —fafaraḍahā (4); مَفْرُوضٌ — mafrūḍun (4); افْتَرَضَهَا —ʾftaraḍahā (3); بِالْفَرْضِ —biālfarḍi (3); فَرَائِضَهَا — farāʾiḍihā (3); فَرْضَيْنِ —farḍayni (3); فَرِيضَتَهُ —farīḍatahu (3); لِفَرِيضَةٍ — lifarīḍatin (3); يَفْتَرِضْ —yaftariḍ (3)

... لَمْ يُسَمِّ وَالْإِيمَانُ بِجَمِيعِهِمْ فَرْضٌ بُرْهَانُ ذَلِكَ مَا حَدَّثَنَا عَبْدُ ... :Context L2261

... بِالْمَعْرُوفِ وَالنَّهْيِ عَنْ الْمُنْكَرِ فرضان كُلٌّ عَلَى حسب الطاقة ... :Context L2372

117. أَهْل[117]

ʾahl

2,015 occurrences; cumulative coverage 69.23%.

Possible English: people of; family; household; inhabitants; qualified persons

Attested spellings and counts

أَهْلِ —ʾahli (1,358); أَهْلِهِ —ʾahlihi (222); أَهْلِهَا —ʾahlihā (95); لِأَهْلِ — liʾahli (71); وَأَهْلُ —waʾahlu (45); أَهْلِي —ʾahlī (29); بِأَهْلِ —biʾahli (21); وَأَهْلُهُ —waʾahluhu (19); لِأَهْلِهَا —liʾahlihā (18); فَأَهْلُهُ —faʾahluhu (15); لِأَهْلِهِ —liʾahlihi (15); الْأَهْلِ —al-ʾahli (14); بِأَهْلِك —biʾahlik (13); أَهْلِهِنَّ —ʾahlihinna (12); وَلِأَهْلِ —waliʾahli (11); بِأَهْلِهِ —biʾahlihi (9); الْأَهْلِيَّةِ

[117] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أهل (read dictionary entry).

Context: أهل المدينة are the people of Medina; أهل العلم are scholars or people of knowledge. أهله can refer to family or to those appropriately associated with something.

Forms and grammar: أهله / أهلها / أهلهم change the associated referent. أهلين / أهلون occur as plural case forms; أهل is often collective. أهلية is a separate noun meaning qualification or capacity.

118. أَكَلَ[118]

ʾakala

1,994 occurrences; cumulative coverage 69.36%.

Possible English: eat; consume; take or appropriate figuratively

Context: أكل مال can mean consuming or wrongfully taking wealth, not literally eating coins or property. Food-law passages often use the literal sense.

Forms and grammar: أكل / يأكل / كل = ate / eats / eat!; أكلت = I or you ate; كلوا = eat!, plural. مأكول = something eaten; يؤكل = is eaten; أكله may be a verb plus object or a noun plus possessive.

—al-ʾahliyyati (7); لِلْأَهْلِ —lilʾahli (7); أَهْلِيكُمْ —ʾahlīkum (6); وَأَهْلَهَا — waʾahlahā (6); الْأَهْلِيِّ —al-ʾahliyyi (5); أَهْلِهِمَا —ʾahlihimā (4); بِأَهْلِيهِمْ — biʾahlīhim (4); أَهْلًا —ʾahlan (3); بِأَهْلِهَا —biʾahlihā (3); وَلِأَهْلِهِ —waliʾahlihi (3)

Context L2227: ... قَوْلُ جَمِيعِ الصَّحَابَةِ وَجَمِيعِ أَهْلِ الْإِسْلَامِ وَأَمَّا وُجُوبُ عَقْدِ ذَلِكَ ...

...

Context L2249: ... قَوْمًا مِنْ النَّاسِ أَتَوْا أَهْلَ زَمَانِهِمْ يَذْكُرُونَ أَنَّ اللَّهَ تَعَالَى ...

Attested spellings and counts

أَكْلُ —ʾaklu (496); يَأْكُلَ —yaʾkula (228); أَكْلُهُ —ʾakluhu (193); يُؤْكَلُ — yuʾkalu (146); الْأَكْلِ —al-ʾakli (123); تَأْكُلُوا —taʾkulūā (90); وَأَكْلُ — waʾaklu (65); تَأْكُلْ —taʾkul (51); أَكْلُهَا —ʾakluhā (48); فَأَكَلَ —faʾakala (48); بِأَكْلِ —biʾakli (30); أَكَلَتْ —ʾakalat (28); تُؤْكَلُ —tuʾkalu (25); فَكُلُوا — fakulūā (24); يَأْكُلُونَ —yaʾkulūna (24); لِلْأَكْلِ —lilʾakli (20); آكِلِ — ʾākilin (19); تَأْكُلْهُ —taʾkulhu (19); فَأَكَلَهُ —faʾakalahu (18); وَأَكْلُهُ — waʾakluhu (16); بِأَكْلِهِ —biʾaklihi (15); كُلُوا —kulūā (15); نَأْكُلُ —naʾkulu (15); أَكْلًا —wālʾakli (15); يَأْكُلُهُ —yaʾkuluhu (15); وَكُلُوا —wakulūā (14); وَالْأَكْلِ —ʾaklan (12); تَأْكُلُونَ —taʾkulūna (12); فَأَكَلَهَا —faʾakalahā (10); فَيَأْكُلُ —faya'kulu (10); يَأْكُلُهَا —yaʾkuluhā (10); فَأَكَلُوا —faʾakalūā (9); وَيُؤْكَلُ —wayuʾkalu (9); بِأَكْلِهَا —biʾaklihā (8); بِالْأَكْلِ —biālʾakli (8); فَكُلُوهُ — fakulūhu (8); فَلْيَأْكُلْ —falyaʾkul (7); وَيَأْكُلُ —waya'kulu (7); الْآكِلِ —

[118] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أكل (read dictionary entry).

al-ʾākili (6); تَأْكُلُوهُ —taʾkulūhu (6); يَأْكُلُونَهُ —yaʾkulūnahu (5); أَكَلَتْهُ — ʾakalathu (4); أَكَلْنَا —ʾakalnā (4); أَكَلُوهُ —ʾakalūhu (4); الْأَكْلَةُ —al-ʾaklatu (4); الْمَآكِلِ —al-maʾākili (4); فَأَكَلْنَاهُ —faʾakalnāhu (4); فَالْأَكْلُ —fālʾaklu (4); كُلُوهُ —kulūhu (4); مَأْكُولَةً —maʾkūlatan (4); يَأْكُلُونَهَا —yaʾkulūnahā (4); آكُلُهَا —ʾākuluhā (3); أَكَلُوا —ʾakalūā (3); الْمَأْكَلِ —al-maʾkali (3); الْمَأْكُولَةِ — al-maʾkūlati (3); فَلْيَأْكُلْهُ —falyaʾkulhu (3); لَأَكَلَ —laʾakala (3); مَأْكُولٍ — maʾkūlin (3); نَأْكُلُهُ —naʾkuluhu (3); وَأَكَلَهَا —waʾakalahā (3)

Context L2280: ... بَيَان أَنْ أَهْل الْجَنَّة يَأْكُلُونَ ويشربون وَلَا يرون بؤسا أبدا ...

Context L2281: ... مَسْأَلَةٌ وَأَنَّ أَهْلَ الْجَنَّةِ يَأْكُلُونَ وَيَشْرَبُونَ وَيَطَئُونَ وَيَلْبَسُونَ ... وَيَتَلَذَّذُونَ وَلَا ...

119. شَهِدَ / شَهَادَة[119]

shahādah / shahida

1,973 occurrences; cumulative coverage 69.50%.

Possible English: testimony; witness; attend; attest

Context: شهادة in procedure commonly means testimony. التشهد is the named prayer recitation; شهد can also mean was present. The shared root does not erase those distinctions.

Forms and grammar: شهد / يشهد = witnessed / witnesses; شاهد / شهود / شهداء = witness(es); شهادة / شهادات = testimony or testimonies. أشهد is a causative or first-person form depending on vowels.

Attested spellings and counts

شَهَادَةُ —shahādatu (292); شَهِدَ —shahida (144); الشَّهَادَةِ —al-shahādati (119); يَشْهَدُ —yashhadu (87); أَشْهَدُ —ʾashhadu (78); بِشَهَادَةِ —bishahādati (68); التَّشَهُّد —al-tashahhudi (64); شَهِدْت —shahidt (61); الشَّاهِدِ —al-shāhidi (59); شَهَادَتُهُ —shahādatuhu (56); شَاهِدٌ —shāhidun (47); شُهَدَاءَ —shuhadāʾa (47); الشُّهُودِ —al-shuhūdi (38); شَهِيدٌ —shahīdun (37); تَشْهَدُ —tashhadu (34); نَشْهَدُ — nashhadu (34); الْإِشْهَادِ —al-ʾishhādi (29); شَهِدُوا —shahidūā (27); شَاهِدًا — shāhidan (25); فَشَهِدَ —fashahida (25); الشُّهَدَاءِ —al-shuhadāʾi (22); شَهَادَتِهِمْ

[119] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: شهد (read dictionary entry).

—shahādatihim (20); وَشَهِدَ —washahida (20); الشَّهِيدِ —al-shahīdi (18); وَأَشْهِدُوا —wa’ashhida (16); وَأَشْهَدَ —wālmushāhadati (18); وَالْمُشَاهَدَةِ —wa’ashhidūā (16); وَيَتَشَهَّدُ —wayatashahhadu (16); الشَّهَادَاتِ —al-shahādāti (15); الْمَشْهُودِ —al-mashhūdi (14); شَهَادَتِهِمَا —shahādatihimā (14); وَشَهَادَةُ —washahādatu (14); يَشْهَدُوا —yashhadūā (13); شَهِدَا — shahidā (12); وَتَشَهَّدَ —shuhūdin (12); شَهَادَاتٍ —shahādātin (11); بِالْإِشْهَادِ —watashahhada (11); شَاهِدَيْنِ —biāl’ishhādi (9); شَاهِدَيْنِ —shāhidayni (9); فَأَشْهَدُ —shahīdayni (9); الشَّاهِدَانِ —fa’ashhadu (9); الشَّاهِدَيْنِ —al-shāhidāni (8); وَشَهِدَتْ —al-shāhidayni (8); بِشَهَادَتِهِمْ —bishahādatihim (8); يَتَشَهَّدُ —washahidat (8); وَيَشْهَدُ —wayashhadu (8); بِالْمُشَاهَدَةِ —yatashahhadu (8); يَشْهَدُونَ —yashhadūna (8); شَاهِدِهِ —biālmushāhadati (7); وَاسْتَشْهِدُوا —shāhidihi (7); مُشَاهَدٌ —mushāhadun (7); وَبِالْمُشَاهَدَةِ —wāstashhidūā (7); بِالشَّهَادَةِ —wabiālmushāhadati (7); الْمُشَاهَدَةِ —al-mushāhadati (6); وَالشَّهَادَةُ —biālshshahādati (6); شَهِدَهُ —wālshshahādatu (6); الشَّهَادَتَيْنِ —shahidahu (6); وَلْيَشْهَدْ —walyashhad (6); اشْهَدْ —’shhad (5); وَشَاهَدَ —washāhada (6); شَاهِدَاكَ —al-shahādatayni (5); بِإِشْهَادِ —bi’ishhādi (5); بِشَاهِدٍ —bishāhidin (5); شَهِيدًا —shāhidāka (5); شَاهِدَانِ —shāhidāni (5); شَهِدْنَا —shahidnā (5); فَشَهَادَةُ —shahīdan (5); مُشَاهَدَةٍ —fashahādatu (5); الْمَشَاهِدَ —mushāhadatin (5); مَشْهُودًا —mashhūdan (5); يُشْهِدَا —yushhidā (5); بِشَهَادَتِهِمَا —al-mashāhida (4); بِشَاهِدَيْنِ —bishāhidayni (4); تَشَهُّدَهُ —bishahādatihimā (4);

tashahhudahu (4); شَاهَدْنَا —shāhadnā (4); فَشَهَادَتُهُ —fashahādatuhu (4); فَلْيَشْهَدْ —falyashhad (4); لَشَهَادَتُنَا —lashahādatunā (4); لِلتَّشَهُّدِ —lilttashahhudi (4); لِلشَّهَادَةِ —lilshshahādati (4); مَشْهُودَةٌ —mashhūdatun (4); نَشْهَدُهُ —nashhadhu (4); وَالتَّشَهُّدِ —wālttashahhudi (4); وَالشَّاهِدِ —wālshshāhidi (4); وَبِشَهَادَةِ —wabishahādati (4); أُشْهِدُكُمْ —ʾushhiduk (3); اشْهَدُوا —ʾshhadūā (3); شَاهَدْنَاهُ —shāhadnāhu (3); شَاهِدَيْ ʾushhidukum (3); فَالشَّهَادَةُ —shāhiday (3); شَهِدَهَا —shahidahā (3); شَهِدْنَ —shahidna (3); كَشَهَادَةِ —fālshshahādatu (3); فَشَهِدَا —fashahidā (3); فَيَشْهَدُ —fayashhadu (3); وَأَشْهَدَهُمْ —kashahādati (3); لِيَشْهَدَ —liyashhada (3); لِيُشْهِدَهُ —liyushhidahu (3); وَإِشْهَادٍ —waʾashhadahum (3); وَشَاهَدْنَا —waʾishhādin (3); يَشْهَدْنَ —washāhadnā (3); يَشْهَدَانِ —yashhadāni (3); يَشْهَدُهُ —yashhadna (3); —yashhadhu (3)

Context L2225: ... أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ ...

Context L2227: ... وُجُوبُ النُّطْقِ بِاللِّسَانِ فَإِنَّ الشَّهَادَةَ بِذَلِكَ الْمُخْرِجَةُ لِلدَّمِ وَالْمَالِ ... مِنْ ...

120. إِبْرَاهِيم[120]

ʾibrāhīm

1,951 occurrences; cumulative coverage 69.63%.

Possible English: Ibrāhīm; Abraham

Attested spellings and counts

إِبْرَاهِيمَ —ʾibrāhīma (1,781); وَإِبْرَاهِيمَ —waʾibrāhīma (160); لِإِبْرَاهِيمَ —liʾibrāhīma (10)

[120] **Editorial lexical note:** Personal-name identification from the book; no Arabic-root etymology or Lisān lexical definition is asserted for this name.

Context: The name can designate the prophet or a later narrator. A patronymic, epithet and context identify the person; the glossary does not merge all occurrences into one biography.

Forms and grammar: لإبراهيم / وإبراهيم attach and / to or for. Case endings vary. No Arabic root meaning is asserted for this personal name.

121. فَرْق / تَفْرِيق[121]

farq / tafrīq

1,943 occurrences; cumulative coverage 69.76%.

Possible English: difference; distinction; separate; part company

Context: فرق بين often means distinguished between two cases. تفريق can be separation of spouses or a logical distinction, depending on its object.

Forms and grammar: فرق / يفرق = separated or distinguished / separates; فرّق is a different pattern. افترق / يتفرق can describe parting; فرقة is separation or a group according to vowels.

Context L2263: ... الْقُرْآنِ آدَمَ وَنُوحًا وَإِدْرِيسَ وَإِبْرَاهِيمَ وَإِسْمَاعِيلَ وَإِسْحَاقَ وَيَعْقُوبَ ... وَيُوسُفَ وَمُوسَى

Context L2265: ... مَنْ يَشَاءُ مِنْ عِبَادِهِ إبراهيم وَقَالَ تَعَالَى إِنَّا خَلَقْنَاكُمْ مِنْ ...

Attested spellings and counts

فَرْقَ —farqa (892); الْفَرْقُ —al-farqu (143); يُفَرَّقُ —yufarraqu (92); يَتَفَرَّقَا —yatafarraqā (56); التَّفْرِيقُ —al-tafrīqu (48); التَّفَرُّقِ —al-tafarruqi (47); تَفْرِيقُ —tafrīqu (39); وَفَرَّقَ —wafarraqa (32); الفرقان —al-frqān* (28); بِالْفَرْقِ —biālfarqi (26); فَفَرَّقَ —fafarraqa (26); تَفْرِيقُهُ —tafrīquhu (25); بِالتَّفَرُّقِ —tafarraqā (18); فِرَاقَهُ —firāqahu (18); فَارَقَ —fāraqa (16); تَفَرَّقَا —biālttafarruqi (15); فِرَاقَ —firāqa (15); فَرْقًا —farqan (15); فَرَّقُوا —farraqūā (15); تَفْرِيقُهُمْ —tafrīquhum (14); فَارِقُوهُنَّ —fāriqūhunna (14); وَتَفْرِيقُ —watafrīqu (14); الْفُرْقَةُ —al-furqatu (13); فِرْقَةٍ —firqatin (13); مُفَارَقَةِ —mufāraqati (12); وَفَرَّقُوا —wafarraqūā (12); مُفَرَّقَةً —mufarraqatan (11); تَفَرُّقٌ —tafarruqun (10); فَرَّقْتُمْ —farraqtum (9); مُتَفَرِّقَةً —mutafarriqatan (9); يُفَرِّقُونَ —yufarriqūna (9); فَالتَّفْرِيقُ —fālttafrīqu (8); وَالْمُفَرِّقُ —wālmufarriqu (8); يُفَرِّقُوا —yufarriqūā (8); وَالْفَرْقُ —wālfarqu (7); وَيَتَفَرَّقَانِ —wayatafarraqāni (7); يُفَارِقَ —yufāriqa (7); الْفِرَاقَ —al-firāqa (6); بِفَرْقٍ —bifarqin (6); تُفَرِّقُوا —tufarriqūā (6); يُفَرِّقَا —yufarriqā (6); الْمُفَارَقَةِ —al-mufāraqati (5); بِالتَّفْرِيقِ

[121] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: فرق (read dictionary entry).

وَالتَّفْرِيقُ —biālttafrīqi (5); تَفْرِيقًا —tafrīqan (5); فَارَقَهَا —fāraqahā (5); وَالتَّفْرِيقُ —wālttafrīqu (5); وَتَفْرِيقُهُ —watafrīquhu (5); وَيُفَرِّقُ —wayufarriqu (5); الْفَرِيقَانِ —ʾftirāqi (4); افْتِرَاقِ —yaftariqā (5); يَفْتَرِقَا —yufāriquhu (5); يُفَارِقُهُ —al-farīqāni (4); الْفَرِيقَيْنِ —al-farīqayni (4); الْمُفَرِّقِ —al-mufarriqi (4); بِفِرَاقِهَا —bifirāqihā (4); تَفَرَّقْنَا —tafarraqnā (4); تُفَرِّقُونَ —tufarriqūna (4); فَتَفَرَّقَ —fatafarraqa (4); فَارَقُوا —fāraqūā (4); فَارَقْتُكَ —fāraqtuk (4); فِرْقَتَيْنِ —firqatayni (4); فَرْقِكُمْ —farqikum (4); فَرْقُهُ —farquhu (4); مُفَارَقَتِهِ —mufāraqatihi (4); يُفَارِقَهَا —yufāriqahā (4); افْتَرَقَ —ʾftaraqa (3); الْفُرُوقِ —al-furūqi (3); فَارَقَتْهُ —fāraqathu (3); تُفَارِقُهُ —tufāriquhu (3); فَتَفَرَّقَا —fatafarraqā (3); فَتَفْرِيقُ —fatafrīqu (3); فِرَاقِهَا —firāqihā (3); فَيُفَرَّقُ —farīqun (3); فَرِيقٌ —farraqnā (3); فَرَّقْنَا —farraqat (3); فَرَّقَتْ —fayufarraqu (3); مُفَارَقَتِهَا —mufāraqatihā (3); مُفْتَرِقٍ —muftariqin (3); مُفَرِّقٍ —mufarriqin (3); مُفَرَّقًا —mufarraqan (3); وَالتَّفَرُّقُ —wālttafarruqu (3); وَفَرَّقْتُمْ —wafarraqtum (3); يَتَفَرَّقُوا —yatafarraqūā (3); يُفَارِقُوا —yufāriqūā (3); يَفْتَرِقُ —yaftariqu (3); يَفْتَرِقَانِ —yaftariqāni (3)

Context L2234: ... لَا تُفَارِقُ الْمَعْلُولَ وَلَوْ فَارَقَتْهُ لَمْ تَكُنْ عِلَّةً لَهُ وَقَدْ ...

Context L2249: ... وَمَنْ بَلَغَ هَهُنَا فَقَدْ فَارَقَ الْمَعْقُولَ وَبِنَقْلِ التَّوَاتُرِ الْمَذْكُورِ صَحَّ ...

122. أَمَانَة / أَمَان / إِيمَان[122]

ʾīmān / ʾamān / ʾamānah

1,938 occurrences; cumulative coverage 69.89%.

Possible English: faith; believe; security; safe conduct; trust

Context: إيمان concerns belief, while أمان can mean security or a grant of safe conduct. أمانة is a trust. These are different nouns despite their shared root.

Forms and grammar: آمن / يؤمن = believed / believes in one pattern; أمن / يأمن = was secure / is secure. مؤمن / مؤمنون / مؤمنين show singular/plural/case; أمين = trustworthy.

Attested spellings and counts

آمَنُوا —muʾminun (123); مُؤْمِنٌ —al-muʾminīna (855); الْمُؤْمِنِينَ —ʾāmanūā (90); الْإِيمَانِ —al-ʾīmāni (87); المؤمنون —al-mʾmnwn* (87); الْمُؤْمِنِ —al-muʾmini (70); مُؤْمِنًا —muʾminatin (67); مُؤْمِنَةٍ —yuʾminu (47); يُؤْمِنُ —muʾminan (46); الْمُؤْمِنَاتِ —al-muʾmināti (39); أَمِنَ —ʾamina (30); لِمُؤْمِنٍ —limuʾminin (22); تُؤْمِنُونَ —tuʾminūna (20); آمِنًا —ʾāminan (19); إِيمَانٍ —ʾīmānin (17); يُؤْمِنُونَ —yuʾminūna (17); بِالْمُؤْمِنِينَ —biālmuʾminīna (14); آمَنَ —ʾāmana (13); أَمَانَةٌ —maʾmūnun (12); وَالْمُؤْمِنُونَ —wālmuʾminūna (11); مَأْمُونٌ —ʾamānatun (10); تُؤْمِنُ —tuʾminu (10); لِلْمُؤْمِنِينَ —lilmuʾminīna (10); مُؤْمِنِينَ —muʾminīna (10); وَالْمُؤْمِنَاتُ —wālmuʾminātu (10); الْمُؤْمِنَةِ —al-muʾminati (9); أَمِينٌ —ʾamīnun (8); الْأَمَانَةَ —al-ʾamānata (8); يُؤْمِنُوا —yuʾminūā (8); أَمَانَتَهُ —ʾamānatahu (7); مَأْمُونَةً —ʾīmānan (7); إِيمَانًا —al-ʾamānāti (7); الأَمَانَات —maʾmūnatan (7); وَالْمُؤْمِنُ —wālʾīmānu (7); نُؤْمِنُ —nuʾminu (7); وَالْإِيمَانُ —wālmuʾminu (7); وَالْمُؤْمِنِينَ —wālmuʾminīna (7); إِيمَانِهِمْ —ʾīmānihim (6); مَأْمُونًا —biʾamānin (6); بِالْإِيمَانِ —biālʾīmāni (6); تَأْمِينَ —taʾmīna (6); بِأَمَانٍ —maʾmūnan (6); إِيمَانِه —ʾīmānihi (5); مُؤْمِنُونَ —muʾminūna (5); أَمَنَّاهُ —ʾaminnāhu (4); أَمْنِ الْأَمَانَ —al-ʾamāna (4); أَتْمَنَكَ —ʾtamanaka (4); الْمَأْمُونُ —al-ʾamni (4); بِإِيمَانِهِنَّ —al-maʾmūnu (4); —biʾīmānihinna (4);

[122]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أمن (read dictionary entry).

مُؤْمِنَات —muʾminātin (4); وَآمَنُوا —waʾāmanūā (4); وَأُمِنَ —waʾumina (4); وَأَمْنُهُ —waʾamnuhu (4); آمَنْتُ —ʾāmantu (3); أَمَانَ —ʾamāna (3); أَمَّنَنَا —ʾammananā (3); أَيَأْمَنُنِي —ʾayaʾmanunī (3); بِإِيمَانِكُمْ —biʾīmānikum (3); تَأْمَنُونِي —taʾmanūnī (3); تَأْمِينًا —taʾmīnan (3); لِلْمُؤْمِنَاتِ —lilmuʾmināti (3); مُؤْتَمَنٌ —muʾtamanun (3); وَالْمُسْتَأْمَنِ —wālmustaʾmani (3); وَيُؤْمِنُوا —wayuʾminūā (3)

Context L2225: ... لَا إِلَهَ إِلَّا اللَّهُ وَيُؤْمِنُوا بِي وَبِمَا جِئْتُ بِهِ فَإِذَا ...

Context L2261: ... تَعَالَى وَمِنْهُمْ لَمْ يُسَمِّ وَالْإِيمَانُ بِجَمِيعِهِمْ فَرْضٌ بُرْهَانُ ذَلِكَ مَا ...

123. عَزِيز / عَزَّ[123]

ʿazza / ʿazīz

1,934 occurrences; cumulative coverage 70.02%.

Possible English: be mighty; be strong; dear; rare; Mighty

Context: عز وجل is an honorific after the divine name. العزيز can be a divine epithet or part of ʿAbd al-ʿAzīz; another context may mean dear or powerful.

Forms and grammar: عز / يعز have vowel-dependent senses; عزيز / أعزاء are adjective and plural. أعز can be comparative or a derived verb according to vowels. عزّ وجلّ is conventionally Mighty and Majestic.

Attested spellings and counts

عَزَّ —ʿazza (1,213); الْعَزِيزِ —al-ʿazīzi (696); الْعُزَّى —al-ʿuzzā (5); الْأَعَزُّ —al-ʾaʿazzu (4); عَزِيزٌ —ʿazīzun (4); أَعَزَّهَا —ʾaʿazzahā (3); عَزَّةَ —ʿazzata (3); وَالْعُزَّى —wālʿuzzā (3); وَعَزَّ —waʿazza (3)

Context L2222: ... الْقَائِلِينَ بِهِ فَاسْتَخَرْتُ اللَّهَ عَزَّ وَجَلَّ عَلَى عَمَلِ ذَلِكَ وَاسْتَعَنْته ...

Context L2241: ... أَرْوَاحَنَا كَانَتْ بِيَدِ اللَّهِ عَزَّ وَجَلَّ فَأَرْسَلَهَا أَنَّى شَاءَ فَعَبَّرَ ...

[123] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: عزز (read dictionary entry).

124. سَمِعَ / سَمَاع[124]

samiʿa / samāʿ

1,928 occurrences; cumulative coverage 70.15%.

Possible English: hear; listen; hearing; receipt by audition

Context: سمعت فلانا in a chain asserts hearing the named speaker. In a legal scenario سمع can instead describe ordinary hearing or an ability to hear.

Forms and grammar: سمع / يسمع = heard / hears; سمعنا / سمعت = I or you heard / we heard; سمعه = heard him or his hearing according to vowels. سماع is a verbal noun.

Attested spellings and counts

سَمِعْتُ —samiʿt (749); سَمِعَ —samiʿa (541); يَسْمَعْ —yasmaʿ (110); سَمِعَهُ —samiʿahu (82); يَسْمَعُهُ —yasmaʿhu (64); سَمَاعٌ —samāʿun (46); سَمِعْتُه —samiʿth (28); تَسْمَعُ —tasmaʿu (25); أَسْمَعْ —ʾasmaʿ (24); وَسَمِعْتُ —wasamiʿt (21); سَمَاعًا —samiʿnā (20); السَّمْعِ —al-samʿi (18); وَسَمِعَ —wasamiʿa (18); سَمِعْنَا —samāʿan (17); فَسَمِعَ —fasamiʿa (16); سَمَاعُهُ —samāʿuhu (13); سَمِعَا —samiʿā (10); وَسَمِعَهُ —wasamiʿahu (8); يَسْمَعُونَ —yasmaʿūna (8); الْمِسْمَعِيُّ —al-mismaʿiyyu (7); سَمِعُوا —samiʿūā (7); سَمِعْتُمْ —samiʿtum (7); سَمِعْنَاهُ —samiʿnāhu (7); فَسَمِعْتُهُ —fasamiʿtuhu (7); سَمِيعٌ —samīʿun (6); نَسْمَعُ —nasmaʿu (6); تَسْمَعُهُ —tasmaʿhu (5); سَمِعَاهُ —samiʿāhu (5); يَسْمَعُهَا —yasmaʿuhā (5); فَأَسْمَعُ —faʾasmaʿu (4); فَسَمِعْتُ —fasamiʿt (4); وَيُسْمِعُنَا —wayusmiʿunā (4); السَّمِيعُ —al-samīʿu (3); تَسْمَعُونَ —tasmaʿūna (3); سَامِعُ —sāmiʿu (3); سَمِعَهَا —samiʿahā (3); سَمِعُوهُ —samiʿūhu (3); فَاسْتَمِعُوا —fāstamiʿūā (3); فَسَمْعًا —fasamʿan (3); فَسَمِعَهُ —fasamiʿahu (3); وَسَمَاعُ —wasamāʿu (3); وَسَمَاعِهِ —wasamāʿihi (3); وَسَمِعْتُه —wasamiʿth (3); وَيُسْمِعُهُ —wayusmiʿuhu (3)

Context L2253: ... الْجِذْعُ إِذْ فَقَدَهُ حَنِينًا سَمِعَهُ كُلُّ مَنْ حَضَرَهُ وَهُمْ جُمُوعٌ ...

Context L2254: ... مِنَ الْجِنِّ فَقَالُوا إِنَّا سَمِعْنَا قُرْآنًا عَجَبًا الجن يَهْدِي إِلَى ...

[124] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: سمع (read dictionary entry).

125. فَعَلَ / فِعْل[125]

faʿala / fiʿl

1,926 occurrences; cumulative coverage 70.28%.

Possible English: do; perform; act; deed

Context: فعل describes doing an act, with its permissibility supplied elsewhere. الفاعل identifies the doer; its presence does not by itself identify intention.

Forms and grammar: فعل / يفعل / افعل = did / does / do!; فعلنا = we did; فعلوا = they did. فعل / أفعال = act(s); فاعل / مفعول identify doer and affected object in grammatical or lexical uses.

Attested spellings and counts

فَعَلَ —faʿala (722); يَفْعَلْ —yafʿal (241); فَعَلَهُ —faʿalahu (175); فَعَلَتْ —faʿalat (64); يَفْعَلُهُ —yafʿaluhu (43); فَعَلُوا —faʿalūā (40); فَفَعَلَ —fafaʿala (32); الْفِعْلِ —al-fiʿli (30); تَفْعَلْ —tafʿal (27); فَاعِلُ —fāʿilu (27); يَفْعَلُونَ —yafʿalūna (26); فَفَعَلْنَا —fafaʿalnā (25); وَفِعْلِ —wafiʿli (24); بِفِعْلِ —bifiʿli (23); وَافْعَلُوا —wāfʿalūā (19); أَفْعَلُ —ʾafʿalu (18); تَفْعَلُوا —tafʿalūā (18); فِعْلِهَا —fiʿlihā (17); نَفْعَلَ —nafʿala (17); فَفَعَلَتْ —fafaʿalat (16); أَفْعَالُ —ʾafʿālu (15); أَفْعَالِهِ —ʾafʿālihi (15); فَعَلْتُمْ —faʿaltum (15); فَعَلْنَا —faʿalnā (15); افْعَلْ —ʾfʿal (13); الْفَاعِلَ —al-fāʿila (12); فِعْلًا —fiʿlan (12); تَفْعَلُونَ —tafʿalūna (11); فَاعِلِهِ —fāʿilihi (11); فَلْيَفْعَلْ —falyafʿal (11); وَفِعْلُهُ —wafiʿluhu (11); يَفْعَلُوا —yafʿalūā (10); بِفِعْلِهِ —bifiʿlihi (9); فَفِعْلُهُ —fafiʿluhu (9); فَافْعَلْ —fāfʿal (8); فِعْلِهِمْ —fiʿlihim (8); لِفِعْلِهِ —lifiʿlihi (8); وَالْمَفْعُولَ —wālmafʿūla (8); فَاعِلَيْنِ —fāʿilayni (7); فَفَعَلُوا —fafaʿalūā (7); لِفِعْلِ —lifiʿli (7); فِعْلَانِ —fiʿlāni (6); فِعْلُهُمَا —fiʿluhumā (6); وَأَفْعَالُهُ —waʾafʿāluhu (6); وَيَفْعَلُ —wayafʿalu (6); الْأَفْعَالَ —al-ʾafʿāla (5); بِفَاعِلٍ —bifāʿilin (5); تَفْعَلِي —tafʿalī (5); فَاعِلًا —fāʿilan (5); فَافْعَلُوا —fāfʿalūā (5); لَفَعَلْنَا —lafaʿalnā (5); يَفْعَلُونَهُ —yafʿalūnahu (5); فَعَلَاهُ —faʿalāhu (4); فَعَلُوهُ —faʿalūhu (4); لِلْفَاعِلِ —lilfāʿili (4); وَفَاعِلُ —wafāʿilu (4); وَيَفْعَلُونَ —wayafʿalūna (4); الْفِعْلَةِ —al-fiʿlati (3); بِفِعْلِهَا —bifiʿlihā (3); فَعَلْنَ —faʿalna (3); لِفَاعِلِهِ —lifāʿilihi (3); لَفَعَلْتَ —lafaʿalt (3); نَفْعَلُهُ —nafʿaluhu (3); يَفْعَلَانِهِ —yafʿalānihi (3)

[125] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: فعل (read dictionary entry).

Context L2225: ... وَبِمَا جِئْتُ بِهِ فَإِذَا فَعَلُوا ذَلِكَ عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ ...

Context L2227: ... لَهُ الدِّينَ البينة وَالْإِخْلَاصُ فِعْلُ النَّفْسِ وَأَمَّا وُجُوبُ النُّطْقِ بِاللِّسَانِ ...

126. صَوْم / صِيَام[126]

ṣawm / ṣiyām

1,899 occurrences; cumulative coverage 70.41%.

Possible English: fast; fasting; abstain

Context: صوم and صيام commonly denote ritual fasting. The required intention, time and invalidating acts must be established from the passage, not from the noun alone.

Forms and grammar: صام / يصوم / صم = fasted / fasts / fast!; صمت = I or you fasted; صيام / صوم are verbal nouns. صائم / صائمة show agreement; يصم after لم loses the long vowel.

Attested spellings and counts

الصَّوْمِ —al-ṣawmi (317); صَوْمَ —ṣawma (279); صِيَامُ —ṣiyāmu (148); الصِّيَامِ —al-ṣiyāmi (126); يَصُومُ —yaṣūmu (104); صَامَ —ṣāma (88); صَائِمٌ —ṣāʾimun (78); صَوْمُهُ —ṣawmuhu (72); الصَّائِمُ —al-ṣāʾimu (57); وَالصَّوْمِ —wālṣṣawmi (44); وَالصِّيَامِ —wālṣṣiyāmi (39); صَائِمًا —ṣāʾiman (37); صِيَامُهُ —ṣiyāmuhu (33); لِلصَّائِمِ —lilṣṣāʾimi (27); تَصُومُ —taṣūmu (25); صَوْمًا —ṣawman (23); صِيَامًا —ṣiyāman (21); بِصَوْمٍ —biṣawmin (19); صَامَهُ —ṣāmahu (19); فَلْيَصُمْ —falyaṣum (17); يَصُمْ —yaṣum (17); فَصَامَ —faṣāma (14); فَصِيَامُ —faṣiyāmu (14); فَلْيَصُمْهُ —falyaṣumhu (14); لِصَوْمِهِ —liṣawmihi (13); وَيَصُومُ —wayaṣūmu (13); لِلصَّوْمِ —lilṣṣawmi (12); يَصُومُهُ —yaṣūmuhu (12); صُمْتُ —ṣumt (11); فَصُمْ —faṣum (11); بِالصَّوْمِ —biālṣṣawmi (10); بِالصِّيَامِ —biālṣṣiyāmi (10); بِصِيَامِ —biṣiyāmi (10); صِيَامِهَا —ṣiyāmihā (10); وَصِيَامِ —waṣiyāmi (10); يُصَامَ —yuṣāma (10); صُومُوا —ṣūmūā (9); وَتَصُومُ —wataṣūmu (9); وَصَوْمِ —waṣawmi (9); تَصُومُوا —taṣūmūā (8); صَائِمَةٌ —ṣāʾimatun (8); فَصَوْمُهُ —faṣawmuhu (8); صُمْ —ṣum (7); يَصُمْهُ —yaṣumhu (7);

[126]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: صوم (read dictionary entry).

فَصَوْمُ (5); صَوْمُهُمَا —ṣawmahumā (5); صَامُوا —ṣāmūā (5); أَفَأَصُومُ —ʾafaʾaṣūmu (5); فَصُومُ —faṣawmu (5); أَصُومَ —ʾaṣūma (4); تَصُمْ —taṣum (4); صَائِمَيْنِ —ṣāʾimayni (4); وَصَامَتْ —waṣāma (4); نَصُومُ —naṣūmu (4); فَيَصُومُ —fayaṣūmu (4); وَالصَّائِمَةِ —waṣāmat (4); يَصُومَهَا —yaṣūmahā (4); بِصِيَامِهِ —biṣiyāmihi (3); يَصُمْنَ —wālṣṣāʾimati (3); وَبِالصَّوْمِ —wabiālṣṣawmi (3); وَصُمْ —waṣum (3); يَصُمْنَهُنَّ —yaṣūmuhunna (3); يَصُومُوا —yaṣūmūā (3)

Context L2349: ... يَأْتِي يَوْمَ الْقِيَامَةِ بِصَلَاةٍ وَصِيَامٍ وَزَكَاةٍ وَيَأْتِي قَدْ شَتَمَ هَذَا ...

Context L2460: ... وَتُقِيمَ الصَّلَاةَ وَتُؤْتِيَ الزَّكَاةَ وَتَصُومَ رَمَضَانَ وَتَحُجَّ الْبَيْتَ إِنْ اسْتَطَعْتَ ...

127. قَطْع / قَطَعَ[127]

qaṭaʿa / qaṭʿ

1,873 occurrences; cumulative coverage 70.54%.

Possible English: cut; sever; interrupt; terminate; be certain

Context: قطع can describe cutting a physical object, breaking a transmission link or decisively establishing something. Legal consequences are not supplied by the root alone.

Forms and grammar: قطع / يقطع = cut / cuts; انقطع = became interrupted; مقطوع = cut off; منقطع = disconnected. قطعه can be his cutting or he cut it according to vowels.

Attested spellings and counts

قَطَعَ —qaṭaʿa (414); الْقَطْعُ —al-qaṭʿu (217); يَقْطَعُ —yaqṭaʿu (186); مُنْقَطِعٌ —munqaṭiʿun (135); تُقْطَعُ —tuqṭaʿu (113); قُطِعَتْ —quṭiʿat (64); قَطْعًا —qaṭʿan (47); فَقَطَعَ —faqaṭaʿa (45); مَقْطُوعٌ —maqṭūʿun (33); مُنْقَطَعَةٌ —munqaṭiʿatun (30); بِقَطْعِ —biqaṭʿi (29); وَقَطَعَ —waqaṭaʿa (28); انْقَطَعَ —ʾnqaṭaʿa (26); الْمَقْطُوعُ —al-maqṭūʿu (25); فَاقْطَعُوا —fāqṭaʿūā (25); قَاطِعٌ —qāṭiʿun (23); نَقْطَعُ —naqṭaʿu (23); انْقِطَاعِ —ʾnqiṭāʿi (20); قَطَعَهُ —qaṭaʿahu (18); يَنْقَطِعُ —yanqaṭiʿu (17); فَمُنْقَطِعٌ —famunqaṭiʿun (16); قِطْعَةً —qiṭʿatan (15); قَطْعُهَا —qaṭʿuhā (15); مُنْقَطِعًا —munqaṭiʿan (15); وَالْقَطْعِ —wālqaṭʿi (15);

[127] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: قطع (read dictionary entry).

يَقْطَعُهَا —yaqṭaʿuhā (15); الْقَاطِعِ —al-qāṭiʿi (14); قَاطِعَةً —qāṭiʿatan (14); انْقَطَعَتْ —ʾnqaṭaʿat (11); فَالْقَطْعُ —fālqaṭʿu (11); فَتُقْطَعُ —fatuqṭaʿu (11); فَقُطِعَتْ —faquṭiʿat (11); يَقْطَعُونَ —yaqṭaʿūna (11); أَقْطَعَ —ʾaqṭaʿa (10); لَقَطَعْتُ —laqaṭaʿtu (9); وَنَقْطَعُ —wanaqṭaʿu (9); فَقَطَعَهُ —faqaṭaʿahu (8); فَمُنْقَطِعَةٌ — famunqaṭiʿatun (8); وَقَطْعُهُ —waqaṭʿuhu (8); يَقْطَعَهُ —yaqṭaʿahu (8); قَاطِعًا — qāṭiʿan (7); لِقَطْعِ —liqaṭʿi (7); الْقِطْعَةُ —al-qiṭʿatu (6); وَالْقَاطِعُ —wālqāṭiʿu (6); مَقْطُوعًا — al-ʾaqṭaʿi (5); لِيَقْطَعَ —liyaqṭaʿa (5); تَقَطُّعِهِ —taqaṭṭuʿihi (5); الْأَقْطَعِ — maqṭūʿan (5); اقْتَطَعَ — wālmunqaṭiʿu (5); وَتُقْطَعُ —watuqṭaʿu (5); وَالْمُنْقَطِعُ ʾqtaṭaʿa (4); الْقَاطِعَةِ —al-qāṭiʿati (4); بِالْقَطْعِ —biālqaṭʿi (4); بِقَطْعِهِ —biqaṭʿihi (4); مُنْقَطِعَيْنِ —tanqaṭiʿu (4); قَطِيعَةِ —qaṭīʿati (4); قَطَعْتُمْ —qaṭaʿtum (4); تَنْقَطِعُ — munqaṭiʿayni (4); مَقَاطِعِ —qaṭaʿūā (3); قَطَعُوا —fanaqṭaʿu (3); فَنَقْطَعُ — maqāṭiʿi (3); مُقَاطَعَةُ —muqāṭaʿatu (3); مُنْقَطِعَانِ —munqaṭiʿāni (3); وَالْإِقْطَاعِ — wālʾiqṭāʿi (3); وَانْقَطَعَ —wānqiṭāʿu (3); وَانْقِطَاعُ —wālmaqṭūʿu (3); وَالْمَقْطُوعُ wānqaṭaʿa (3); وَيَقْطَعُونَ —wayaqṭaʿūna (3); يَقْتَطِعُ —yaqtaṭiʿu (3)

Context L2259: ... إِنَّ النُّبُوَّةَ وَالرِّسَالَةَ قَدْ انْقَطَعَتْ فَجَزِعَ النَّاسُ فَقَالَ قَدْ بَقِيَتْ ...

Context L2365: ... مَسْأَلَةٌ وَأَنَّ الْوَحْيَ قَدْ انْقَطَعَ مُذْ مَاتَ النَّبِيُّ صَلَّى اللَّهُ ...

128. حَنِيف / حَنِيفَة[128]

ḥanīfah / ḥanīf

1,872 occurrences; cumulative coverage 70.66%.

Possible English: Ḥanīfah; Ḥanafī; upright in religion

Context: أبو حنيفة is the scholar Abū Ḥanīfah. الحنفيون / الحنفيين identify followers of his school. A school name and the adjective حنيف are not interchangeable references.

Forms and grammar: حنيف / حنفاء are adjective and plural; حنفي is a relational adjective, with feminine حنفية and plurals حنفيون / حنفيين. حنيفة also occurs in a personal designation.

Attested spellings and counts

حَنِيفَةَ —ḥanīfata (1,803); الْحَنَفِيَّةِ —al-ḥanafiyyati (22); الْحَنَفِيُّ — حَنِيفًا al-ḥanafiyyu (18); الْأَحْنَفِ —al-ʾaḥnafi (8); حُنَفَاءَ —ḥunafāʾa (8); —ḥanīfan (7); الْحَنِيفِيُّونَ —al-ḥanīfiyyūna (3); الْحَنِيفِيِّينَ —al-ḥanīfiyyīna (3)

Context L2542: ... أَصْحَابِ مَالِكٍ وَأَصْحَابِ أَبِي حَنِيفَةَ وَأَصْحَابِ الشَّافِعِيِّ بِأَقْوَالِ هَؤُلَاءِ قَالَ ...

Context L2577: ... عَبْدِ اللَّهِ بْنِ أَبِي حَنِيفَةَ أَخْبَرَنَا أَبُو جَعْفَرٍ أَحْمَدُ بْنُ ...

129. عَمِلَ / عَمَل[129]

ʿamal / ʿamila

1,831 occurrences; cumulative coverage 70.79%.

Possible English: act; deed; work; practice; apply

Context: عمل can be a particular act, employment or legal practice. العمل به means acting on or applying a report or rule, not simply working with an object.

Forms and grammar: عمل / يعمل = acted or worked / acts or works; عمل / أعمال = deed(s); عامل = worker or agent; استعمال = use; معاملة = dealing or transaction, a different derived noun.

Attested spellings and counts

عَمِلَ —ʿamila (538); الْعَمَلِ —al-ʿamali (196); عَمَلًا —ʿamalan (140); عَمَلِهِ —ʿamalihi (89); يَعْمَلُ —yaʿmalu (86); الْأَعْمَالُ —al-ʾaʿmālu (79); أَعْمَالِ —ʾaʿmāli (47); الْعَامِلِ —al-ʿāmili (44); عَامِلٌ —ʿāmilun (34); اسْتِعْمَالُ — ʾstiʿmālu (32); اسْتَعْمَلَهُ —ʾstiʿmāluhu (32); اسْتَعْمَلَ —ʾstaʿmala (27); وَعَمِلَ —waʿamila (27); بِعَمَلٍ —biʿamali (26); وَالْعَمَلُ —wālʿamalu (24); يَعْمَلُهُ — yaʿmaluhu (19); أَعْمَالَكُمْ —ʾaʿmālakum (18); الْعَوَامِلِ —al-ʿawāmili (15); يُسْتَعْمَلُ —yustaʿmalu (13); الْمُعَامَلَةِ —al-muʿāmalati (12); عَمَلَهَا —ʿamilahā (12); عَمِلُوا —ʿamilūā (12); وَعَمَلُهُ —waʿamaluhu (12); الْمُسْتَعْمَلِ —al-mustaʿmali (10); بِالْعَمَلِ —biālʿamali (9); عَمِلَتْ —ʿamilat (9); يَعْمَلُهَا —yaʿmalhā (9); اسْتِعْمَالُهَا

[128] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: حنف (read dictionary entry).
[129] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: عمل (read dictionary entry).

—ʾstiʿmāluhā (8); الْعَمَلَيْنِ —al-ʿamalayni (8); عَمِلْنَا —ʿamilnā (8); مُعَامَلَةً — muʿāmalatan (8); وَعَمِلُوا —waʿamilūā (8); أَعْمَالُهُمْ —ʾaʿmāluhum (7); اسْتِعْمَالُهُمَا —ʾstiʿmāluhumā (7); بِعَمَلِهِ —biʿamalihi (7); تُعْمَلُ —tuʿmalu (7); لِلْعَامِلِ —lilʿāmili (7); وَعَمَلًا —waʿamalan (7); يَعْمَلُونَ —yaʿmalūna (7); عَامِلِهِ — ʿāmilihi (6); عَمَلُكَ —ʿamaluka (6); عَوَامِلِ —ʿawāmili (6); فَعَمِلَ —faʿamila (6); وَيَعْمَلُ —wayaʿmalu (6); يَعْمَلُوهَا —yaʿmalūhā (6); أَعْمَالِهِ —ʾaʿmālihi (5); عَمَلَيْنِ —tustaʿmalu (5); تُسْتَعْمَلُ —ʿamalāni (5); عَمَلَانِ —ʿāmilan (5); عَامِلًا —ʿamalayni (5); وَالْعَامِلِينَ —liʿamali (5); لِعَمَلِ —mustaʿmalun (5); مُسْتَعْمَلٌ —wālʿāmilīna (5); تَعْمَلُونَ —biʾaʿmālin (4); بِأَعْمَالٍ —ʾaʿmālihā (4); أَعْمَالِهَا — taʿmalūna (4); فَاسْتَعْمَلَهُ —fāstaʿmalahu (4); فَعَمِلَتْ —faʿamilat (4); فَيَعْمَلُ —faya ʿmalu (4); لَيَعْمَلُ —layaʿmalu (4); مُسْتَعْمَلًا —mustaʿmalan (4); نَعْمَلُ —naʿmalu (4); وَاسْتِعْمَالُهُ —wāstiʿmāluhu (4); وَعَامِلِ —waʿāmil (4); أَعْمَالًا —ʾaʿmālan (3); أَعْمَالِنَا —ʾaʿmālinā (3); اسْتَعْمَلَهُ —ʾstaʿmalahu (3); اعْمَلُوا — ʾʿmalūā (3); عَمَلِكُمْ — ʿamalikum (3); بِاسْتِعْمَالِ —biāstiʿmāli (3); تَعَامَلَا —taʿāmalā (3); لِعَامِلٍ — liʿāmilin (3); عَمَلْنَاهُ —ʿamilnāhu (3); عَمِلُوهُ —ʿamilūhu (3); وَاسْتِعْمَالُ — wāstiʿmālu (3); لِعَمَلِهِ —liʿamalihi (3); وَأَعْمَالَهُ —waʾaʿmālahu (3); وَالْعَامِلِ —wālʿāmil (3); يَتَعَامَلُ —yataʿāmalu (3); يُعَامَلَ — yuʿāmala (3); يَعْمَلُوا —yaʿmalūā (3)

Context L2221: ... لِلصَّوَابِ فِي كُلِّ قَوْلٍ وَعَمَلٍ آمِينَ آمِينَ ...

لِطَاعَتِهِ فَإِنَّكُمْ رَغِبْتُمْ أَنْ نَعْمَلَ لِلْمَسَائِلِ الْمُخْتَصَرَةِ الَّتِي جَمَعْنَاهَا ... :Context L2222
... فِي

130. رَدَّ / رِدَّة[130]

radda / riddah

1,820 occurrences; cumulative coverage 70.91%.

Possible English: return; reject; reply; refute; apostasy

Context: رد can mean returning property or rejecting an argument. الردة and المرتد concern apostasy in their legal context, not merely ordinary return.

Forms and grammar: يرد / رد = returned or rejected / returns or rejects; رده = he returned it or his rejection according to vowels. مرتد is a participle of ارتد; مردود = returned or rejected.

Attested spellings and counts

رَدَّ —radda (363); يَرُدَّ —yarudda (249); الرَّدُّ —al-raddu (104); الْمُرْتَدِّ —al-murtaddi (80); رَدَّهُ —raddahu (79); مَرْدُودٌ —mardūdun (69); تُرَدُّ —turaddu (64); بِرَدِّ —biraddi (54); يَرُدَّهُ —yaruddahu (45); ارْتَدَّ —ʾrtadda (40); وَيَرُدُّ —wayaruddu (39); الرِّدَّةِ —al-riddati (38); فَرُدُّوهُ —faruddūhu (37); فَرَدَّهُ —faraddahu (34); فَرَدَّ —faradda (33); يَرُدُّهَا —yarudduhā (28); مُرْتَدٌّ —murtaddun (20); رُدَّتْ —ruddat (19); مَرْدُودَةٌ —mardūdatun (19); تُرَدِّدُ —turaddadu (16); يَرُدُّونَ —yaruddūna (16); تَرْدِيدُ —tardīdu (15); وَرَدِّهِ —waraddihi (15); بِالرَّدِّ —biālrraddi (14); وَتُرَدُّ —waturaddu (14); رِدَّتِهِ —riddatihi (12); فَيُرَدُّ —fayuraddu (11); مُرْتَدًّا —murtaddan (11); يَرْتَدَّ —yartaddu (11); بِرَدِّهِ —biraddihi (10); رَدُّوا —raddūā (10); رَدًّا —raddan (9); يَتَرَادَّانِ —yatarāddāni (9); ارْتَدُّوا —ʾrtaddūā (8); رَدَّهُمْ —raddahum (8); رَدُّوهَا —raddūhā (8); اسْتَرَدَّ —ʾstaradda (7); التَّرْدِيدِ —al-tardīdi (7); رِدَّةٌ —riddatun (7); رَدَدْتَ —radadta (7); فَتُرَدُّ —faturaddu (7); فَرَدُّوا —faraddūā (7); وَرَدُّوا —waraddūā (7); بِرَدِّهِنَّ —biraddihinna (6); تَرَدَّدْنَا —taraddadnā (6); تَرُدَّهُ —taruddahu (6); وَيُرَدُّونَ —wayaruddūna (6); يَتَرَدَّدُ —yataraddadu (6);

[130]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ردد (read dictionary entry).

الْمُرْتَدِّينَ —al-murtaddīna (5); بِتَرْدِيدِ —bitardīdi (5); بِرَدِّهَا —biraddihā (5); تَرْدَادِهِ —tardādihi (5); رَدَّدَ —raddada (5); فَمَرْدُودٌ —famardūdun (5); لِرَدِّ —liraddi (5); وَالرَّدِّ —wālrraddi (5); يُرَدِّدُ —yuraddidu (5); أَرْدُهُ —ʾarudduhu (4); وَالرِّدَّةُ —mardūdan (4); مَرْدُودًا —liyarudda (4); لِيَرُدَّ —faruddat (4); فَرُدَّتْ —wālrriddatu (4); وَتَرَدَّدَ —wataraddada (4); وَنَرُدُّ —wanaruddu (4); ارْتَدَّتْ —ʾrtaddat (3); الْمُرْتَدَّةُ —al-murtaddatu (3); الرَّدَّادِ —al-raddādi (3); الْمَرْدُودُ —al-mardūdu (3); تَرْتَدَّ —tartadda (3); تَرُدَّنِي —taruddanī (3); تَرْدِيدِهَا —tardīdihā (3); رَدَدْنَا —radadnā (3); رَدُّهُمَا —radduhumā (3); لَرَدَدْتُهَا —laradadtuhā (3); لِيُرَدَّهُ —liyaruddahu (3); مُرْتَدُّونَ —murtaddūna (3); مُرَدَّدٌ —muraddadun (3); مُرَدَّدَةً —muraddadatan (3); نَرُدُّ —naruddu (3); وَالْمُرْتَدُّ —wālmurtaddu (3); وَيَرُدُّهُ —wayarudduhu (3); يَرْتَدِدْ —yartadid (3); يَرُدَّانِ —yaruddāni (3)

Context L2310: ... وَيُعِيدُ الْأَجْسَامَ كَمَا كَانَتْ وَيَرُدُّ إِلَيْهَا الْأَرْوَاحَ كَمَا كَانَتْ وَيَجْمَعُ ...

Context L2345: ... الْأَجَلِ قَالَ أَبُو هُرَيْرَةَ فَرَدَّ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ ...

131. أَعْتَقَ / عِتْق[131]

ʿitq / ʾaʿtaqa

1,813 occurrences; cumulative coverage 71.03%.

Possible English: manumission; free an enslaved person; be freed; old

Attested spellings and counts

أَعْتَقَ —ʾaʿtaqa (284); عَتَقَ —ʿataqa (284); الْعِتْقِ —al-ʿitqi (235); يُعْتَقُ —yuʿtaqu (144); الْمُعْتِقُ —al-muʿtiqu (67); عِتْقُهُ —ʿitquhu (66); بِعِتْقِ —biʿitqi (53); أُعْتِقَتْ —ʾuʿtiqat (47); عِتْقَهَا —ʿitqahā (40); وَالْعِتْقِ —wālʿitqi (38);

[131] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: عتق (read dictionary entry).

Context: عتق in these legal discussions commonly concerns manumission. عتيق can also mean old, ancient or freed; the context selects the sense.

Forms and grammar: عتق / يعتق = became free / becomes free; أعتق / يعتق = freed / frees with different vowels. معتِق = emancipator; معتَق = freed person. Vowels reverse those participant roles.

بِعِتْقِه —biʿitqihi (27); أَعْتَقَهَا —ʾaʿtaqahā (25); عِتْقًا —ʿitqan (19); فَأَعْتَقَهُ —faʾaʿtaqahu (19); وَعَتَقَ —waʿataqa (16); عَتِيقٍ —ʿatīqin (14); يَعْتِقُهُ —yaʿtiqhu (14); وَالْمُعْتَقُ —wālmuʿtaqu (13); مُعْتِقَ —muʿtiqa (12); فَأَعْتَقَهَا —faʾaʿtaqahā (11); مُعْتَقَةٌ —muʿtaqatun (10); وَأَعْتَقَ —waʾaʿtaqa (10); الْعَتِيقِ —al-ʿatīqi (9); فَيُعْتَقُ —fayuʿtaqu (9); لِلْمُعْتِقِ —lilmuʿtiqi (9); وَعِتْقُهُ —waʿitquhu (9); عَاتِقِه —ʿātiqihi (8); عَتَاقَةٍ —ʿatāqatin (8); عَتَقَتْ —ʿataqat (8); لِلْعِتْقِ —lilʿitqi (8); وَالْعَتَاقِ —fayuʿtiqahu (7); فَيُعْتِقَهُ —ʾaʿtiqū (7); أَعْتِقُوا —ʾaʿtaqathu (7); أَعْتَقَتْهُ —wālʿatāqi (7); أَعْتَقُوهُ —ʾaʿtaqahum (6); أَعْتَقَهُمْ —ʾaʿtaqūhu (6); فَعَتَقَ —faʿataqa (6); وَيُعْتَقُ —wayuʿtaqu (6); يُعْتِقُهَا —yuʿtiqhā (6); الْعَتَاقُ —al-ʿatāqu (5); عَتَاقٍ —ʿātiqayhi (5); عَاتِقَيْهِ —biʿitqihā (5); بِعِتْقِهَا —al-ʿawātiqu (5); الْعَوَاتِقُ —ʿatāqin (5); عِتْقَهُمْ —ʿitqahum (5); فَأُعْتِقَتْ —faʾuʿtiqat (4); فَالْعِتْقُ —fālʿitqu (4); فَتُعْتَقُ —fatuʿtaqu (4); وَالْمُعْتَقَةُ —wālmuʿtaqatu (4); أَعْتَقْتُكِ —ʾaʿtaqtuk (3); الْعَتَاقَةَ —ʿtiq (3); اعْتِقْ —ʾafaʾuʿtiquhā (3); أَفَأُعْتِقُهَا —ʾaʿtaqathā (3); أَعْتَقَتْهَا —al-ʿatāqata (3); الْمُعْتِقِينَ —al-muʿtiqīna (3); الْمُعْتِقُونَ —al-muʿtiqūna (3); لِعِتْقٍ —liʿitqi (3); فَأَعْتَقَتْهُ —faʾaʿtaqathu (3); عَتَاقَهُ —ʿatāqahu (3); بِالْعَتَاقِ —biālʿatāqi (3); وَأَعْتَقَتْ —waʾaʿtaqat (3); وَعِتْقِهِمْ —waʿitqihim (3); يَعْتِقُوا —yaʿtiqūā (3); يَعْتِقُونَ —yaʿtiqūna (3)

Context L2338: ... الْجَاهِلِيَّةِ مِنْ صَدَقَةٍ أَوْ عَتَاقَةٍ أَوْ صِلَةِ رَحِمٍ أَفِيهَا أَجْرٌ ...

Context L3218: ... وَالنَّحْرِ وَالتَّشْرِيقِ وَمَنْ عَلَيْهِ عِتْقُ رَقَبَةٍ فَأَعْتَقَ أَمَةَ غَيْرِهِ أَيُجْزِيهِ ...

132. سَقَطَ / إِسْقَاط[132]

saqaṭa / ʾisqāṭ

1,805 occurrences; cumulative coverage 71.15%.

Possible English: fall; lapse; be dropped; cancel; omission

Context: سقط can concern a claim or obligation lapsing, not only a physical fall. أسقط makes something lapse or removes it.

Forms and grammar: سقط / يسقط = fell or lapsed / falls or lapses; سقطت = she or it fell. إسقاط is the causative verbal noun; ساقط / ساقطة agree in gender; مسقط is another derivation.

Attested spellings and counts

فَسَقَطَ —fasaqaṭa (270); سَقَطَ —saqaṭa (207); يَسْقُطُ —yasquṭu (173); سَاقِطٌ —sāqiṭun (155); إِسْقَاطِ —ʾisqāṭi (132); أَسْقَطَ —ʾasqaṭa (99); سُقُوطِ —suqūṭi (83); سَاقِطَةٌ —sāqiṭatun (55); تَسْقُطُ —tasquṭu (38); السُّقُوطِ —al-suqūṭi (32); وَسَقَطَ —wasaqaṭa (26); سَقَطَتْ —saqaṭat (30); فَسَقَطَتْ —fasaqaṭat (27); إِسْقَاطِهِمْ —waʾisqāṭu (22); وَإِسْقَاطُ —fasāqiṭun (21); فَسَاقِطٌ —ʾisqāṭihim (19); سُقُوطِهِ —suqūṭihi (19); وَأَسْقَطَ —waʾasqaṭa (17); يُسْقِطُهَا —yusqiṭhā (16); أَسْقَطَهُ —ʾasqaṭahu (14); أَسْقَطَهَا —ʾasqaṭahā (14); وَأَسْقَطُوا —waʾasqaṭūā (14); إِسْقَاطِهِ —biʾisqāṭi (13); بِإِسْقَاطِ —suqūṭihā (13); سُقُوطِهَا —ʾisqāṭihi (12); يُسْقِطُونَ —yusqiṭuhu (12); السَّاقِطِ —al-sāqiṭi (12); يُسْقِطُهُ —yusqiṭūna (12); فَأَسْقَطَ —faʾasqaṭa (11); فَأَسْقَطَتْ —faʾasqaṭat (11); وَيَسْقُطُ —wayasquṭu (11); فَأَسْقَطُوا —faʾasqaṭūā (10); سَاقِطَانِ —sāqiṭāni (9); فَسَاقِطَةٌ —fasāqiṭatun (8); فَيَسْقُطُ —fayasquṭu (8); أَسْقَطَتْ —ʾasqaṭat (7); أَسْقَطُوا —ʾasqaṭūā (7); بِسُقُوطِهِ —bisuqūṭihi (7); سُقُوطًا —suqūṭan (7); مُسْقِطًا —musqiṭan (7); وَأَسْقَطَاهَا —waʾasqaṭāhā (7); وَسُقُوطُ —wasuqūṭu (7); السَّاقِطَةُ —al-sāqiṭatu (6); بِمُسْقِطٍ —bimusqiṭin (6); يُسْقِطُوا —yusqiṭūā (6); إِسْقَاطِهَا —ʾisqāṭihā (5); بِإِسْقَاطِهَا —biʾisqāṭihā (5); بِسُقُوطِ —bisuqūṭi (5); مُسْقِطٌ —sāqiṭan (5); لِإِسْقَاطِ —liʾisqāṭi (5); لِسُقُوطِ —lisuqūṭi (5); سَاقِطًا

[132] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: سقط (read dictionary entry).

musqiṭun (5); مُسْقِطَةٌ —musqiṭatun (5); وَأَسْقَطَهَا —waʾasqaṭahā (5); أَسْقَطُوهَا —ʾasqaṭūhā (4); فَأَسْقَطُوهَا —faʾasqaṭūhā (4); وَأَسْقَطَهُ —waʾasqaṭahu (4); وَالسُّقُوطِ —wālssuqūṭi (4); وَسَقَطَتْ —wasaqaṭat (4); أَسْقَطَا —ʾasqaṭā (3); السَّاقِطَيْنِ —al-sāqiṭayni (3); الْإِسْقَاطُ —al-ʾisqāṭu (3); أَسْقَطْنَا —ʾasqaṭnā (3); السِّقْطِ —al-siqṭi (3); السَّقَطِيُّ —al-saqaṭiyyu (3); بِإِسْقَاطِهِ —biʾisqāṭihi (3); تُسْقِطُهُ —tusqiṭhu (3); سَاقِطَتُهَا —sāqiṭatuhā (3); فَإِسْقَاطُهُ —faʾisqāṭuhu (3); وَالْإِسْقَاطُ —waʾasqaṭūhā (3); وَإِسْقَاطِهِمْ —waʾisqāṭihim (3); وَأَسْقَطُوهَا —wāl'isqāṭu (3); وَتَسْقُطُ —watasquṭu (3); يَسْقُطَانِ —yasquṭāni (3); يُسْقِطُونَهَا —yusqiṭūnahā (3)

Context L2254: ... إِقَامَةِ الصَّلَاةِ وَأَدَاءِ الزَّكَاةِ وَإِسْقَاطِ الْفَخْرِ وَالتَّجَبُّرِ وَالْتِزَامِ التَّوَاضُعِ وَالصَّبْرِ ...

Context L2335: ... وَإِنْ تَابَ عَنْ ذَلِكَ سَقَطَ عَنْهُ مَا عَمِلَ فِي شِرْكِهِ ...

133. أَصْل[133]

ʾaṣl

1,797 occurrences; cumulative coverage 71.28%.

Possible English: basis; foundation; origin; root; at all in a negative construction

Context: أصل can identify the basis of an argument. لا ... أصلا often means not … at all. The word need not name a formal discipline every time it occurs.

Attested spellings and counts

أَصْلًا —ʾaṣlan (1,628); الْأَصْلِ —al-ʾaṣli (87); أَصْلٌ —ʾaṣlun (60); وَالْأَصْلُ —wāl'aṣlu (11); لِأَصْلِهَا —ʾaṣlahā (8); لِأَصْلِهِ —liʾaṣlihi (3)

Context L2230: ... ضَرُورَةً إِذْ لَا يُتَوَهَّمُ أَصْلًا وَلَا يُمْكِنُ مُحْدَثٌ إِلَّا وَلَهُ ...

Context L2243: ... هَذَا الْبَابِ خِلَافٌ لِهَذَا أَصْلًا وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ ...

[133] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أصل (read dictionary entry).

Forms and grammar: أصل / أصول = foundation or origin / foundations or principles; أصله = its basis; أصلي = original or basic. أصلا is commonly accusative/adverbial.

134. يَد / أَيْدٍ[134]

yad / ʾaydin

1,793 occurrences; cumulative coverage 71.40%.

Possible English: hand; possession; control; power

Context: بيده can be physically in his hand or under his control. اليد in a property dispute may describe possession rather than a body part.

Forms and grammar: يد / يدان / يدين = hand / two hands with case variation; أيد / أياد are plurals. يده / يدها / أيديهم attach possessive pronouns; اليدين can refer to the two hands.

Attested spellings and counts

يَدِه —yadihi (257); الْيَدِ —al-yadi (180); بِيَدِه —biyadihi (179); يَدِ —yadi (158); يَدَيْهِ —yadayhi (150); بِيَدٍ —biyadin (138); يَدًا —yadan (91); يَدَيْ —yaday (53); أَيْدِيَهُمَا —ʾaydiyahumā (50); الْيَدَيْنِ —al-yadayni (47); يَدَهَا —yadahā (41); أَيْدِيهِمْ —ʾaydīhim (38); الْأَيْدِي —al-ʾaydī (34); بِالْيَدِ —biālyadi (30); دِينَكُمْ — dīnakum (28); بِيَدِهَا —biyadihā (24); لِبِيدٍ —labīdin (21); بِيَدِكَ —biyadik (20); يُودَى —yūdā (20); بِأَيْدِيهِمْ —biʾaydīhim (17); نُودِيَ —nūdiya (17); يَدَكَ —yadaka (17); أَيْدِيكُمْ —ʾaydīkum (15); بِيَدِي —biyadī (15); وَأَيْدِيكُمْ — waʾaydīkum (12); أَيْدِي —ʾaydī (10); بِأَيْدِيهِمَا —biʾaydīhimā (10); وَالْيَدِ — wālyadi (10); يَدَيْكَ —yadayka (10); يَدَيْنِ —yadayni (10); بِيَدَيْهِ —biyadayhi (9); وَالْيَدَيْنِ —wālyadayni (9); وَيَدَيْهِ —wayadayhi (9); يَدَيْهَا —yadayhā (7); بِأَيْدِيكُمْ —biʾaydīkum (6); يَدُوا —yadūā (6); يُودِي —yūdī (6); أَيْدِينَا —ʾaydīnā (5); بِأَيْدِي —biʾaydī (5); لِلْيَدَيْنِ —lilyadayni (5); بِالْيَدَيْنِ —biālyadayni (4); وَيَدِهِ — wayadihi (4); يَدَاهُ —yadāhu (4); الْيَدَانِ —al-yadāni (3); بِأَيْدِينَا —biʾaydīnā (3); بِيَدَيْكَ —biyadayka (3); وَيَدٍ —wayadin (3)

[134] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: يدي (read dictionary entry).

Context L2241: صَلَاتِنَا وَلَكِنَّ أَرْوَاحَنَا كَانَتْ بِيَدِ اللَّهِ عَزَّ وَجَلَّ فَأَرْسَلَهَا أَنَّى ...
...
Context L2249: ... لَهُمْ بِمَا أَظْهَرَ عَلَى أَيْدِيهِمْ فَصِحْ مَا أَتَوْا بِهِ عَنْهُ ...

135. رَزَّاق / رِزْق[135]

rizq / *razzāq*

1,786 occurrences; cumulative coverage 71.52%.

Possible English: provision; sustenance; grant provision; Razzāq

Context: عبد الرزاق is a personal name, ʿAbd al-Razzāq, frequent in transmission chains. الرزاق is also a divine epithet; the phrase's role identifies the referent.

Forms and grammar: رزق / يرزق = provided / provides; رزقه = provided for him or his provision according to vowels. رزّاق is an intensive formation, not a plural of رزق.

Attested spellings and counts

رِزْقُهُنَّ —rizquhu (15); رِزْقُهُ —rizqin (16); رِزْقٍ —al-razzāqi (1,698); الرَّزَّاقِ —rizquhunna (13); الرِّزْقِ —al-rizqi (10); يَرْزُقُ —yarzuqu (9); فَارْزُقُوهُمْ — fārzuqūhum (8); رَزَقْنَاكُمْ —razaqnākum (5); رَزَقَهُمْ —razaqahum (5); مَرْزُوقٍ —marzūqin (4); يَرْزُقَهُ —yarzuqahu (3)

Context L2301: ... بْنُ حُمَيْدٍ ثنا عَبْدُ الرَّزَّاقِ ثنا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ ...

Context L2332: ... بْنُ رَافِعٍ ثنا عَبْدُ الرَّزَّاقِ أَخْبَرَنَا مَعْمَرٌ عَنْ هَمَّامِ بْنِ ...

136. عَرَفَ / مَعْرُوف[136]

ʿarafa / *maʿrūf*

1,771 occurrences; cumulative coverage 71.64%.

Possible English: know; recognize; acknowledge; known; customary

Context: معروف can mean known, recognized or proper. عرفة / عرفات name pilgrimage locations. اعترف is acknowledged or confessed, rather than merely recognized a face.

Attested spellings and counts

يُعْرَفُ —yuʿrafu (570); عَرَفَ —ʿarafa (119); عَرَفَةَ —ʿarafata (116); بِالْمَعْرُوفِ —biālmaʿrūfi (81); مَعْرُوفٍ —maʿrūfin (74); الأعراف —al-ʾrāf* (73); بِمَعْرُوفٍ —bimaʿrūfin (53); تُعْرَفُ —tuʿrafu (51); مَعْرِفَةِ —maʿrifati (36); نَعْرِفُ — naʿrifu (35); يَعْرِفُهُ —yaʿrifuhu (35); مَعْرُوفَةٌ —maʿrūfatun (34); الْمَعْرُوفِ —al-maʿrūfi (30); عَرِّفْهَا —ʿarrifhā (28); مَعْرُوفًا —maʿrūfan (25); عَرَفَهُ — ʿarafahu (23); يَعْرِفُهَا —yaʿrifuhā (22); نَعْرِفُهُ —naʿrifuhu (16); عَرَفَاتٍ —

[135] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: رزق (read dictionary entry).
[136] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: عرف (read dictionary entry).

Forms and grammar: عرف / يعرف = knew / knows; معرفة = knowledge or acquaintance; معروف / معروفة show agreement. اعتراف is the verbal noun of اعترف; definitions and place names are distinct derivations.

عَرَفْتُ —ʿarafātin (15); اعْتَرَفَ —ʾtarafa (14); وَعَرَفَ —waʿarafa (14); أَعْرِفُ —ʿarafat (13); تَعْرِيفِ —taʿrīfi (12); مَعْرُوفِينَ —maʿrūfīna (12); عَرَفْنَا —ʾaʿrifu (11); اعْتَرَفَتْ —ʾtarafat (11); التَّعْرِيفِ —al-taʿrīfi (9); عَرَفْنَا —ʿarafnā (9); فَاعْتَرَفَتْ —ʿarafūā (9); يَعْرِفُونَ —yaʿrifūna (9); الْمَعْرِفَةَ —al-maʿrifati (8); عَرَفُوا —fāʿtarafat (8); اعْتِرَافَ —ʾtirāfa (7); عَرَفَهُمْ —ʿarafahum (7); فَاعْتَرَفَ —fāʿtarafa (7); فَعَرَفَ —faʿarafa (7); فَعَرَفَهَا —faʿarafahā (7); مُعْتَرِفًا —muʿtarifan (7); وَالْمَعْرِفَةِ —wālmaʿrifati (6); وَالْمَعْرُوفُ —wālmaʿrūfu (6); يَعْرِفُهُمْ —yaʿrifuhum (6); يَعْرِفُونَهُ —yaʿrifūnahu (6); أَعْرِفُهُ —ʾaʿrifuhu (5); وَمَعْرِفَةَ —taʿrifhu (5); عَارِفًا —ʿārifan (5); فَعَرَّفْتُهَا —faʿarraftuhā (5); تَعْرِفُهُ —wamaʿrifati (5); اعْتِرَافَهُ —ʾtirāfahu (4); اعْرِفْ —ʾrif (4); بِعَرَفَاتٍ —biʿarafātin (4); وَاعْتَرَفَتْ —wāʿtarafat (4); مَعْرِفَتِهِ —maʿrifatihi (4); مَعْرُوفُونَ —maʿrūfūna (4); وَيَعْرِفُ —wayaʿrifu (4); وَمَعْرُوفٌ —wamaʿrūfun (4); يُعْرَفْنَ —yuʿrafna (4); أَعْرِفَنَّ —ʾaʿrifanna (3); اعْتِرَافًا —ʾtirāfan (3); الْمُعْتَرِفِ —al-muʿtarifi (3); الْمَعْرُوفَةَ —al-maʿrūfati (3); بِاعْتِرَافِهِ —biāʿtirāfihi (3); بِتَعْرِيفِ —bitaʿrīfi (3); بِمَعْرِفَةَ —bimaʿrifati (3); تُعْتَرَفُ —tuʿtaraf (3); تَعْرِيفُهَا —taʿrīfuhā (3); عَارِفٌ —ʿārifun (3); عَرَّافًا —ʿarrāfan (3); عَرَّفْتُهَا —ʿarraftuhā (3); عَرَفُوهُ —ʿarafūhu (3); عَرِيفُ —ʿarīfu (3); فَاعْتَرَفُوا —fāʿtarafūā (3); فَعَرَفَهُ —faʿarafahu (3); فَلْيُعَرِّفْهُ —falyuʿarrifhu (3); نَعْرِفُهَا —naʿrifuhā (3); وَاعْتَرَفَ —wāʿtarafa (3); وَاعْرِفْ —wāʿrif (3); وَعَرَفَةَ —waʿarafata (3); وَمَعْرِفَتِهِ —wamaʿrifatihi (3); يَعْرِفُوا —yaʿrifūā (3)

Context L2222: ... إِلَى التَّبَحُّرِ فِي الْحِجَاجِ وَمَعْرِفَةِ الِاخْتِلَافِ وَتَصْحِيحِ الدَّلَائِلِ ... الْمُؤَدِّيَةِ إِلَى ...

Context L2249: ... أَوْ كَانَ قَبْلَنَا فَلَا يُعْرَفُ إِلَّا بِالْخَبَرِ عَنْهُ وَخَبَرُ التَّوَاتُرِ ...

137. بُكْرَة / بِكْر / بَكْر[137]

bakr / bikr / bukrah

1,733 occurrences; cumulative coverage 71.75%.

Possible English: Bakr; virgin; firstborn; early morning

Context: بكر often occurs in Abū Bakr's name. البكر in marriage law commonly means a virgin; بكرة can name the early morning.

Forms and grammar: بكر as a proper name and بِكر as a common noun need different readings. أبكار is a plural noun. Case vowels and attached particles alter the written context without identifying one unique person.

Attested spellings and counts

بَكْرٍ —bakrin (1,483); الْبِكْرِ —al-bikri (91); بَكْرَةَ —bakrata (72); بِكْرًا —bikran (29); وَالْبِكْرُ —wālbikru (15); بِالْبِكْرِ —biālbikri (13); بَكَّارٍ —bakkārin (13); لِلْبِكْرِ —lilbikri (7); الْأَبْكَارِ —al-ʾabkāri (5); وَبَكْرٍ —wabakri (5)

Context L2241: ... الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ نا أَبُو دَاوُد السِّجِسْتَانِيُّ نا ... ...

Context L2259: ... بْنُ وَضَّاحٍ ثنا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا عَبْدُ ...

138. اسْتِثْنَاء / ثَانٍ / اثْنَان[138]

ʾthnān / thānin / ʾstithnāʾ

1,718 occurrences; cumulative coverage 71.87%.

Possible English: two; second; fold; exception; exclude

Context: الثاني marks order. استثناء is an exception from a general statement, a different derivation. مثنى can mean in pairs.

Attested spellings and counts

الْمُثَنَّى —al-muthannā (303); الثَّانِي —al-thānī (208); وَالثَّانِي —wālththānī (191); اثْنَان —ʾthnāni (135); الثَّانِيَة —al-thāniyati (124); اثْنَيْنِ —ʾthnayni (116); اثْنَتَيْنِ —ʾthnatayni (67); ثَانِيَةً —thāniyatan (50); مَثْنَى —mathnā (45); اسْتِثْنَاءُ —ʾstithnāʾu (39); اثْنَيْ —ʾthnay (32); وَثَانِيهَا —wathānīhā (29); اسْتَثْنَى —ʾstathnā (28); وَاسْتَثْنَى —wāstathnā (24); ثَانٍ —thānin (23); ثني —thny* (23);

[137] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: بكر (read dictionary entry).
[138] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ثني (read dictionary entry).

Forms and grammar: اثنين / اثنان and اثنتين / اثنتان vary by case and gender; ثاني / ثانية = second. يستثني / استثنى = excepted / excepts; مستثنى = excepted item.

139. شَعْبِيّ / شُعْبَة[139]

shuʿbah / shaʿbiyy

1,715 occurrences; cumulative coverage 71.99%.

Possible English: branch; division; Shuʿbah; al-Shaʿbī

اثْنَتَان —ʾthnā (22); وَالثَّانِيَةُ —wālththāniyatu (21); يَسْتَثْنِ —yastathni (21); اثْنَتَانِ —ʾthnatāni (19); يَسْتَثْنِيَ —yastathniya (19); بِاثْنَيْنِ —biāthnayni (13); ثَنِيَّة — thaniyyatin (13); اسْتَثْنَاهُ —ʾstathnāhu (10); بِاثْنَيْ —biāthnay (9); مُسْتَثْنًى — mustathnanā (9); يُسْتَثْنَى —yustathnā (9); الثَّنِيَّةُ —al-thaniyyatu (8); ثَانِيَ — thāniya (8); وَاسْتِثْنَاءَ —wāstithnāʾa (8); وَيَسْتَثْنِيَ —wayastathniya (8); فَاسْتَثْنَى — fāstathnā (7); الثَّنَاءِ —al-thanāʾi (6); لِلثَّانِي —lilththānī (6); وَأَثْنَى —waʾathnā (6); ثَانِيًا —thāniyan (5); أَثْنَى —ʾathnā (4); فَيُسْتَثْنَى —fayustathnā (4); وَالثَّنِيَّةَ — wālththaniyyata (4); يُثَنِّي —yuthannī (4); يُثَنَّى —yuthannā (4); يَسْتَثْنِيَهُ — yastathniyahu (4); التَّثْنِيَةِ —al-tathniyati (3); الثَّنَايَا —al-thanāyā (3); ثَنْيَةَ — tathniyata (3); ثَنَاهُ —thanāhu (3); ثَنَّى —thannā (3); ثَنِيَّتُهَا —thaniyyatuhā (3); فَاثْنَتَانِ —fāthnatāni (3); وَاسْتَثْنِي —wāstathnī (3); وَالْمُثَنَّى —wālmuthannā (3); وَثَانِيَةٌ —wathāniyatun (3)

Context L2232: ... نِهَايَةٍ فَمُحْدَثٌ وَأَيْضًا فَكُلُّ اثْنَيْنِ فَهُمَا غَيْرَانِ وَكُلُّ غِيَرَيْنِ فَفِيهِمَا ...

Context L2234: ... قَدْ أَبَنَّا بُرْهَانَهُ آنِفًا وَالثَّانِي أَنَّهُ كَانَ يَجِبُ إِذْ كَانَتْ ...

Attested spellings and counts

الشَّعْبِيّ —al-shaʿbiyyi (719); شُعْبَةَ —shuʿbata (718); وَالشَّعْبِيّ — wālshshaʿbiyyi (197); شَعْبَانَ —shaʿbāna (46); وَشُعْبَةُ —washuʿbatu (27); لِلشَّعْبِيّ —lilshshaʿbiyyi (8)

[139] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: شعب (read dictionary entry).

Context: شعبة and الشعبي commonly name different transmitters, Shuʿbah and al-Shaʿbī. A lineage or relational adjective is not a case variant of the personal name.

Forms and grammar: شعبة / شعب = branch / branches; شعبي is a relational adjective. The final ة in شعبة belongs to the name or noun, not a feminine form that can automatically be removed.

140. شُفْعَة / شَفَاعَة / شَافِعِيّ[140]

shāfiʿiyy / shafāʿah / shufʿah

1,685 occurrences; cumulative coverage 72.10%.

Possible English: al-Shāfiʿī; Shāfiʿī; intercession; pre-emption

Context: الشافعي names the jurist or, by context, an adherent/relational adjective. الشفعة is the legal right of pre-emption, distinct from intercession.

Forms and grammar: شافع is a participial form; شافعي adds a relational ending; شافعيين / شافعيون vary by case. شفاعة and شفعة are distinct nouns, not tense variants.

Context L2307: ... عَنْ دَاوُد الطَّائِيِّ عَنْ الشَّعْبِيِّ عَنْ عَلْقَمَةَ عَنْ عَبْدِ اللَّهِ ...

Context L2338: ... بْنُ أَبِي إيَاسٍ ثنا شُعْبَةُ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي ...

Attested spellings and counts

وَالشَّافِعِيّ —wālshshāfiʿiyyi (709); الشَّافِعِيُّ —al-shāfiʿiyyu (662); الشُّفْعَةِ —al-shufʿati (115); شُفْعَةَ —shufʿata (61); بِالشُّفْعَةِ —biālshshufʿati (34); الشَّفِيعُ —al-shafīʿu (31); وَالشُّفْعَةُ —wālshshufʿatu (9); لِلشَّافِعِيِّ —lilshshāfiʿiyyi (8); لِلشَّفِيعِ —lilshshafīʿi (8); يَشْفَعُ —yashfaʿu (8); شَفَاعَةٌ —shafāʿatun (7); الشَّفَاعَةُ —al-shafāʿatu (6); وَلِلشَّافِعِيِّ —walilshshāfiʿiyyi (5); بِالشَّفَاعَةِ —biālshshafāʿati (4); شَافِعٌ —shāfiʿun (4); شَافِعًا —shāfiʿan (4); شَفَعَ —shafaʿa (4); شَافِعِيٌّ —shāfiʿiyyun (3); شُفْعَتِهِ —shufʿatihi (3)

Context L2273: ... حَسَنَاتِهِمْ ثُمَّ يَخْرُجُونَ مِنْهَا بِالشَّفَاعَةِ وَيَدْخُلُونَ الْجَنَّةَ قَالَ عَزَّ وَجَلَّ ...

Context L2321: ... مَسْأَلَة شَفَاعَة رَسُول اللَّه فِي أَهْل الْكَبَائِر ...

[140] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: شفع (read dictionary entry).

141. إِذْ[141]

ʾidh

1,668 occurrences; cumulative coverage 72.21%.

Possible English: when; since; as; at the time when

Context: إذ often introduces a past circumstance or an explanatory reason. English since here may be causal rather than a starting point in time.

Forms and grammar: فإذ / وإذ add and / so. إذ does not conjugate; distinguish إذا and حين. Its dictionary discussion can occur with إذا in a combined treatment.

Attested spellings and counts

إِذْ —ʾidh (1,082); فَإِذْ —faʾidh (415); وَإِذْ —waʾidh (171)

Context L2230: ... وُجُودِ الْعَرَضِ فِي الْجِسْمِ وَإِذْ الزَّمَانُ مُدَّةٌ كَمَا ذَكَرْنَا فَهُوَ ...

Context L2232: ... وَأَنَّهُ وَاحِدٌ لَمْ يَزَلْ إِذْ لَوْ لَمْ يَكُنْ كَذَلِكَ لَكَانَ ...

142. أَدْخَلَ / دَخَلَ[142]

dakhala / ʾadkhala

1,665 occurrences; cumulative coverage 72.33%.

Possible English: enter; go in; include; bring in; consummate in a marital construction

Context: دخل بها can indicate consummation of marriage. دخل في can indicate inclusion in a category; the physical meaning entered is not always adequate.

Forms and grammar: دخل / يدخل = entered / enters; أدخل / يدخل = brought in / brings in with different vowels. دخول and إدخال are distinct verbal nouns; داخل is a participle/adjective.

Attested spellings and counts

دَخَلَ —dakhala (344); يَدْخُلُ —yadkhulu (319); الدُّخُولِ —al-dukhūli (94); دُخُولِ —ʾadkhala (78); أَدْخَلَ —fadakhala (84); فَدَخَلَ —dakhalat (86); دَخَلَتْ —dukhūli (76); دَاخِلٌ —dākhilun (65); مَدْخَلَ —madkhala (53); الْمَدْخُولِ —al-madkhūli (35); تَدْخُلُ —tadkhulu (34); وَدَخَلَ —wadakhala (30); وَيَدْخُلُ —wayadkhulu (20); دَاخِلَةَ —dākhilata (19); يَدْخُلُهَا —yadkhuluhā (19); دُخُولِهِ —dukhūlihi (17); دَاخِلًا —dākhilan (16); يُدْخِلُهُ —yudkhilhu (16); بِدُخُولِ —bidukhūli (13); دَخَلَهُ —dakhalahu (13); إِدْخَالُ —ʾidkhālu (12); دَخَلْنَا —dakhalnā (12); فَأَدْخَلَ —faʾadkhala (12); مَدْخُولٍ —madkhūlin (12); دَخَلْتُمْ —dakhaltum (10); دُخُولُهَا —dukhūluhā (10); فَدَخَلَتْ —fadakhalat (10); أُدْخِلَتْ —ʾudkhilat (9); أَدْخَلَهُ —ʾadkhalahu (9); الدَّاخِلِ —al-dākhili (9); وَدَخَلَتْ —

[141] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: إذا (read dictionary entry); إذا (read dictionary entry).
[142] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: دخل (read dictionary entry).

wadakhalat (9); يَدْخُلُونَ —yadkhulūna (9); دَخَلُوا —dakhalūā (7); فَيَدْخُلُ — fayadkhulu (7); لِيَدْخُلْ —liyadkhul (7); وَأَدْخَلَ —waʾadkhala (7); وَدُخُولُ — wadukhūlu (7); بِالدُّخُولِ —biālddukhūli (6); بِدُخُولِهِ —bidukhūlihi (5); فَلْيَدْخُلْ —falyadkhul (5); لِلدُّخُولِ —lilddukhūli (5); مَدْخَلًا —madkhalan (5); وَتَدْخُلُ —watadkhulu (5); يَدْخُلُوا —yadkhulūā (5); دَاخِلِهِ —dākhilihi (4); فَأَدْخَلَهُ — faʾadkhalahu (4); فَأَدْخَلُوا —faʾadkhalūā (4); مَدْخُولًا —madkhūlan (4); نَدْخُلُ —nadkhulu (4); وَإِدْخَالُ —waʾidkhālu (4); يَدْخُلَا —yadkhulā (4); تَدْخُلُوا — tadkhulūā (3); دَخَلَتْهُ —dakhalathu (3); دُخُولًا —dukhūlan (3); وَبِدُخُولِ — wabidukhūli (3)

Context L2249: ... الضَّرُورِيَّ وَلَا بُدَّ وَلَوْ دَخَلَتْ فِي نَقْلِ التَّوَاتُرِ دَاخِلَةٌ أَوْ ...

Context L2267: ... دَارٌ مَخْلُوقَةٌ لِلْمُؤْمِنِينَ وَلَا يَدْخُلُهَا كَافِرٌ أَبَدًا قَالَ تَعَالَى وَجَنَّةٍ ...

143. دَعْوَى / دَعَا[143]

daʿā / daʿwā

1,650 occurrences; cumulative coverage 72.44%.

Possible English: call; invite; invoke; claim; allegation

Context: دعوى in procedure is a claim, not necessarily a supplication. دعا الله is invocation of God; ادعى means claimed.

Forms and grammar: يدعو / دعا = called or invoked / calls or invokes; يدعي / ادعى = claimed / claims. دعاوى / دعوى = claim(s); مدّعٍ = claimant; مدّعى عليه = defendant or person against whom a claim is made.

Attested spellings and counts

ادَّعَى —ʾddaʿā (230); دَعْوَى —daʿwā (212); الْمُدَّعَى —al-muddaʿā (85); يَدَّعُونَ —bidaʿwā (46); دَعَا —daʿā (64); بِدَعْوَى —ادَّعَوْا —ʾddaʿawā (74); yaddaʿūna (43); بِالدَّعْوَى —biālddaʿwā (42); وَدَعْوَى —wadaʿwā (41); الْمُدَّعِي —al-muddaʿī (38); الدُّعَاءِ —al-duʿāʾi (34); يَدَّعِي —yaddaʿī (32); دَعْوَاهُمْ — daʿwāhum (31); دُعِيَ —duʿiya (30); يَدْعُو —yadʿū (30); وَادَّعَى —wāddaʿā (29); الدَّعْوَى —al-daʿwā (27); دَعْوَاهُ —daʿwāhu (27); دُعُوا —duʿūā (25); ادَّعَوْهُ —ʾddaʿawhu (19); وَادَّعَوْا —wāddaʿawā (19); مُدَّعًى —muddaʿanā (18);

[143] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: دعا (read dictionary entry).

فَدَعْوَى —yudʿā (17); يُدْعَى —bidaʿwāhu (16); بِدَعْوَاهُ —duʿāʾan (15); دُعَاءً —fadaʿwā (14); دَعَاهُ —ʾddaʿāhu (13); ادَّعَاهُ —al-daʿāwā (13); الدَّعَاوَى —daʿāhu (13); فَادَّعَى —bidaʿwāhum (12); بِدَعْوَاهُمْ —al-muddaʿīna (12); الْمُدَّعِينَ —fāddaʿā (12); ادَّعَتْ —wālddaʿwā (12); وَالدَّعْوَى —yaddaʿūnahu (12); يَدَّعُونَهُ —ʾddaʿat (11); دَعْوَاكُمْ —daʿāwā (10); دَعَاوَى —al-tadāʿī (10); التَّدَاعِي —daʿwākum (10); لِلْمُدَّعِي —lilmuddaʿī (10); يَدَّعُوا —yaddaʿūā (10); الدَّعْوَةِ —al-daʿwati (9); مُدَّعٍ —biālddaʿāwā (9); بِالدَّعَاوَى —fāddaʿawā (9); فَادَّعَوْا —muddaʿin (9); مُدَّعِي —yaddaʿīhi (9); يَدَّعِيهِ —kadaʿwā (8); كَدَعْوَى —muddaʿī (8); لَادَّعَى —lāddaʿā (7); لِلدُّعَاءِ —lilduʿāʾi (7); وَيَدَّعُونَ —wayaddaʿūna (7); ادَّعَيَا —ʾddaʿayā (6); الْمُدَّعُونَ —al-muddaʿūna (6); دَعَتْ —daʿat (6); فَلْيَدْعُ —falyadʿu (6); نَدْعُ —nadʿu (6); وَالدُّعَاءِ —wālduʿāʾi (6); وَيَدْعُو —wayadʿū (6); الدَّاعِي —al-dāʿī (5); تَدَاعَى —tadāʿā (5); دَعْوَةَ —daʿwata (5); فَيَدْعُو —fayadʿū (5); وَالدَّعَاوَى —wālddaʿāwā (5); وَدُعَاءً —waduʿāʾun (5); وَمُدَّعِي —wamuddaʿī (5); ادَّعَيْتُمْ —ʾddaʿaytum (4); تَدْعُو —tadʿuwa (4); ادِّعَاءِ —ʾddiʿāʾi (3); ادَّعَاهَا —wadaʿwāhum (4); يَدْعُوهُ —yadʿūhu (4); وَدَعْوَاهُمْ —ʾddaʿāhā (3); تَدَاعَيَاهُ —tadāʿayāhu (3); تُدْعَى —tudʿā (3); تَدَّعِي —taddaʿī (3); دَاعٍ —dāʿin (3); دَعَانَا —daʿānā (3); دَعَانِي —daʿānī (3); دَعَاهَا —daʿāhā (3); دَعَاهُمْ —daʿāhum (3); لِدَعْوَاهُمْ —lidaʿwāhum (3); مُدَّعِيًا —muddaʿiyan (3); مُدَّعِيَةٌ —muddaʿiyatun (3); نَدْعُوهُ —nadʿūhu (3); وَدَعَاوَى —wadaʿāwā (3); وَدَعْوَاهُ —wadaʿwāhu (3); وَدَعْوَةَ —wadaʿwata (3); وَيَدَّعُوا —wayaddaʿūā (3); يَدْعُونِي —yadʿūnī (3)

144. نَصْر / مَنْصُور[144]

naṣr / manṣūr

1,646 occurrences; cumulative coverage 72.55%.

Possible English: help; victory; support; Manṣūr

Context: منصور commonly names a transmitter. نصر can describe supporting a position or victory, according to its object.

Forms and grammar: نصر / ينصر = helped / helps; ناصر = helper; منصور = helped or victorious, also a proper name. أنصار is a plural; personal names retain their identity.

Context L2251: ... مِنْ نَقْلِ التَّوَاتُرِ وَأَنَّهُ دَعَا مَنْ خَالَفَهُ إِلَى أَنْ يَأْتُوا ...

Context L2254: ... وَهُنَاكَ قَوْمٌ يَدَّعُونَ النُّبُوَّةَ كَصَاحِبِ صَنْعَاءَ وَكَصَاحِبِ الْيَمَامَةِ ...

Attested spellings and counts

مَنْصُورٍ —manṣūrin (760); الْأَنْصَارِيِّ —al-ʾanṣāriyyi (348); نَصْرٍ —naṣrin (157); الْأَنْصَارِ —al-ʾanṣāri (96); النَّصْرَانِيِّ —al-naṣrāniyyi (36); وَمَنْصُورٌ —wamanṣūrun (23); النَّصَارَى —al-naṣārā (23); وَالنَّصَارَى —wālnnaṣārā (34); نَصْرَانِيًّا —naṣrāniyyan (22); نَصْرَانِيِّ —naṣrāniyyin (20); وَالنَّصْرَانِيِّ —wālnnaṣrāniyyi (13); نَصْرَانِيَّةٌ —naṣrāniyyatun (13); وَالْأَنْصَارِ —wāl'anṣāri (17); وَالنَّصْرَانِيَّةِ —wālnnaṣrāniyyati (8); الْأَنْصَارِيَّةِ —al-ʾanṣāriyyati (9); أَنْصَارِيِّ —ʾanṣāriyyin (7); وَنَصْرٍ —wanaṣri (7); انْتَصَرَ —ʾntaṣara (6); نَصَارَى —naṣārā (6); نَصْرًا —naṣran (6); نَصْرَانِيَّيْنِ —naṣrāniyyayni (5); يَنْصُرُ —yanṣuru (4); لِلْأَنْصَارِ —lil'anṣāri (4); يَنْصُرُهُ —nanṣuruhu (4); النُّصْرَةِ —al-nuṣrati (3); النَّصْرَانِيَّةِ —al-naṣrāniyyati (3); النصر —al-nṣr* (3); يَنْصُرُهُ —yanṣuruhu (3); مَنْصُورًا —manṣūran (3); وَنَصْرَانِيٌّ —wanaṣrāniyyun (3)

Context L2222: ... تَعَالَى عَلَى الْهِدَايَةِ إِلَى نَصْرِ الْحَقِّ وَسَأَلْته التَّأْيِيدَ عَلَى بَيَانِ ...

Context L2241: ... دَاوُد نا عَلِيُّ بْنُ نَصْرٍ هُوَ الْجَهْضَمِيُّ ثنا وَهْبُ بْنُ ...

[144] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: نصر (read dictionary entry).

145. خَيْر / خِيَار[145]

khayr / khiyār

1,644 occurrences; cumulative coverage 72.66%.

Possible English: good; better; best; choice; option

Context: خير can be good or a comparative. الخيار in a sale may be an option to uphold or rescind a transaction, not just a general preference.

Forms and grammar: خير / خيرا have noun/adjectival and case uses; اختار / يختار = chose / chooses; مخيّر = given a choice. تخيير and اختيار are distinct verbal nouns.

Attested spellings and counts

خَيْرٌ —khayrun (384); الْخِيَارُ —al-khiyāru (198); الْخَيْرِ —al-khayri (124); خَيْرًا —khayran (106); خِيَارَ —khiyāra (100); بِالْخِيَارِ —biālkhiyāri (81); التَّخْيِيرِ —al-takhyīri (63); مُخَيَّرٌ —mukhayyarun (48); اخْتِيَارُ —ʾkhtiyāru (39); اخْتَارَتْ —ʾkhtārat (32); يُخَيِّرَ —yukhayyira (25); بِخَيْرٍ —bikhayrin (22); اخْتَارَ —ʾkhtāra (19); خَيَّرَهَا —khayyarahā (17); الْخِيَرَةُ —al-khiyaratu (16); تُخَيِّرُ —tukhayyaru (16); خِيَارًا —khiyāran (16); خِيرَتَيْنِ —khīratayni (15); مُخْتَارًا —mukhtāran (15); تَخْتَارُ —takhtāru (14); تَخْيِيرُ —takhyīru (14); الْمُخْتَارِ —al-mukhtāri (13); فَاخْتَارَ —fākhtāra (12); اخْتَارَهُ —ʾkhtārahu (11); خِيَارُهُ —khiyāruhu (11); وَالْخِيَارُ —wālkhiyāru (11); خِيَارُهَا —khiyāruhā (10); فَاخْتَارَتْ —fākhtārat (10); اخْتَرْ —ʾkhtar (9); بِاخْتِيَارِهِ —biākhtiyārihi (9); بِخِيَارٍ —bikhiyārin (9); وَخَيْرٌ —wakhayrun (8); اخْتِيَارِهِ —ʾkhtiyārihi (8); يَخْتَارُ —yakhtāru (8); وَالتَّخْيِيرُ —wālttakhyīru (7); خَيَّرَهُ —khayyarahu (7); لَخَيْرٌ —lakhayru (6); مُخَيَّرًا —mukhayyaran (6); اخْتَارُوا —ʾkhtārūā (5); اخْتَارِي —ʾkhtārī (5); اخْتَرْنَا —ʾkhtarnā (5); بِالتَّخْيِيرِ —biālttakhyīri (5); تَخَيَّرْنَا —takhayyarnā (5); وَاخْتَارَ —wākhtāra (5); خِيرَةَ —khīrata (5); خُيِّرَتْ —khuyyirat (5); الْمُخَيَّرَةِ —al-mukhayyarati (4); بِاخْتِيَارِ —biākhtiyāri (4); بِالْخَيْرِ —biālkhayri (4); تَخْيِيرِهِ —takhyīrihi (4); فَالْخِيَارُ —fālkhiyāru (4); فَخَيَّرَ —fakhayyara (4); فَخَيَّرَهُ —fakhayyarahu (4); فَخَيَّرَهَا —fakhayyarahā (4); فَيَخْتَارُ

[145] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: خير (read dictionary entry).

—fayakhtāru (4); يُخَيِّرْهَا —yukhayyirhā (4); اخْتَرْت —ʾkhtart (3); اخْتِيَارُنَا — ʾkhtiyārunā (3); الْمُخْتَارَةُ —al-mukhtāratu (3); بِتَخْيِيرِ —bitakhyīri (3); بِتَخْيِيرِهِ — bitakhyīrihi (3); تَخَيَّرَتْ —takhayyarat (3); تَخْيِيرِهَا —takhyīrahā (3); فَاخْتَرْتُ —fākhtartu (3); فَتَخْتَارُ —fatakhtāru (3); فَنَخْتَارُ —fanakhtāru (3); مُخْتَارٌ — mukhtārun (3); نَخْتَارُ —nakhtāru (3); وَالْخَيْرُ —wālkhayru (3); وَخَيْرُهَا — wakhayruhā (3); يَخْتَارُهَا —yakhtāruhā (3)

Context L2259: ... اللَّهِ بْنُ إِدْرِيسَ عَنْ الْمُخْتَارِ بْنِ فُلْفُلٍ عَنْ أَنَسِ بْنِ ...

Context L2274: ... وَكَانَ فِي قَلْبِهِ مِنْ الْخَيْرِ مَا يَزِنُ شَعِيرَةً ثُمَّ يَخْرُجُ ...

146. مِيرَاث / وَرِثَ[146]

waritha / mīrāth

1,643 occurrences; cumulative coverage 72.77%.

Possible English: inherit; inheritance; heir

Context: ميراث identifies inherited property or an inheritance share. وارث is an heir; الموروث can identify what is inherited or the deceased, depending on construction.

Forms and grammar: يرث / ورث = inherited / inherits; ترث has a feminine or second-person subject. وارث / ورثة = heir / heirs; ميراث / مواريث = inheritance(s); ورثته = his heirs or he inherited him, according to vowels.

Attested spellings and counts

مِيرَاثَ —mīrātha (126); الْوَارِثِ —al-wārithi (124); يَرِثُ —yarithu (122); الْوَرَثَةَ —al-warathati (107); الْمِيرَاثِ —al-mīrāthi (94); يُورَثُ —yūrathu (74); لِلْوَرَثَةِ —warathatihi (61); تَرِثُ —tarithu (56); تَرِثُهُ —tarithuhu (55); وَرَثَتِهِ — lilwarathati (49); وَارِثٌ —wārithun (47); لِوَرَثَتِهِ —liwarathatihi (42); وَرِثَ —waritha (41); الْمَوَارِيثِ —al-mawārīthi (40); يَرِثُهُ —yarithuhu (37); مِيرَاثُهُ —mīrāthuhu (30); تَوْرِيثِ —tawrīthi (27); مِيرَاثَهَا —mīrāthahā (26); بِالْمِيرَاثِ —biālmīrāthi (21); لِوَارِثٍ —liwārithin (19); مِيرَاثًا —mīrāthan (18); يَرِثُهَا —yarithuhā (18); يَرِثُونَ —yarithūna (16); بِمِيرَاثٍ —bimīrāthin (15); وَرَثَةِ —warathati (14); وَرِثَهُ —warithahu (14); تُورَثُ —tūrathu (12); وَوَرِثَ —

[146] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ورث (read dictionary entry).

فَوَرَّثَهَا —fawarrathahā (11); وَارِثَةً —wārithatan (11); وَتَرِثُهُ —watarithuhu (11); لِلْوَارِثِ —lilwārithi (10); وَارِثًا —wārithan (9); وَرِثَتْ —warithat (9); يَتَوَارَثَانِ —yatawārathāni (9); يَرِثْنَ —yarithna (9); مَوَارِيثَ —mawārītha (8); مَوْرُوثَةٌ —mawrūthatun (8); وَيَرِثُهَا —wayarithuhā (8); يَرِثَانِ —yarithāni (8); وَارِثِهِ —wārithihi (7); وَرَّثَهَا —warrathahā (7); يُورَّثُونَ —yuwarrithūna (7); الْمَوْرُوثِ —al-mawrūthi (6); تَوْرِيثُهُمْ —tawrīthuhum (6); فَوَرِثَهُ —fawarithathu (6); لِوَارِثِهِ —liwārithihi (6); مَوَارِيثِهِمْ —mawārīthihim (6); لِوَرَثَةِ —liwarathati (5); مَوْرُوثِهِ —mawrūthihi (5); وَالْوَرَثَةِ —wālwarathati (5); وَرَثَتَكَ —warathataka (5); وَيُورَثُ —wayūrathu (5); يَرِثُونَهُ —yarithūnahu (5); تَوَارُثَ —tawārutha (4); تَوْرِيثِهَا —tawrīthihā (4); مَوْرُوثٌ —mawrūthun (4); مِيرَاثِهِمْ —mīrāthihim (4); وَارِثَيْنِ —wārithayni (4); وَلِوَرَثَتِهِ —waliwarathatihi (4); وَمِيرَاثُ —wamīrāthu (4); وَمِيرَاثُهُ —wamīrāthuhu (4); يَتَوَارَثُ —yatawārathu (4); يَرِثُنِي —yarithunī (4); يُورَّثَانِ —yuwarrithāni (4); أُوَرِّثُ —ʾuwarrithu (3); بِمِيرَاثِهَا —bimīrāthihā (3); تَوَارَثَا —tawārathā (3); فَلِوَرَثَتِهِ —faliwarathatihi (3); فَيَرِثُهُ —fayarithuhu (3); كَمِيرَاثِ —kamīrāthi (3); مَوْرُوثًا —mawrūthan (3); مِيرَاثُهُمَا —mīrāthuhumā (3); وَأَوْرَثَكُمْ —waʾawrathakum (3); وَالْمِيرَاثِ —wālmīrāthi (3); وَتَرِثُ —watarithu (3); وَتَوْرِيثِ —watawrīthi (3); وَرِثَا —warithā (3); وَرَّثْتُمُوهَا —warrathtumūhā (3); وَرَثَتِهِمَا —warathatihimā (3); وَرِثُوا —warithūā (3); وَيَرِثُهُ —wayarithuhu (3); يَتَوَارَثُونَ —yatawārathūna (3);

يَرِثَانِهِ —yarithānihi (3); يَرِثُهُمْ —yarithuhum (3); يَرِثُوا —yarithūā (3); يُورِّثُوا — yuwarrithūā (3)

Context L3009: ... الزَّهْرَانِيُّ كِلَاهُمَا عَنْ عَبْدِ الْوَارِثِ عَنْ أَبِي التَّيَّاحِ عَنْ أَنَسٍ ...

Context L3013: ... أَبُو مَعْمَرٍ ثنا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ ثنا يُونُسُ عَنْ ...

147. جُبَيْر / جَابِر / جَبْر[147]

jabr / jābir / jubayr

1,635 occurrences; cumulative coverage 72.88%.

Possible English: compel; repair; make good; Jābir; Jubayr

Context: جابر and جبير are different names in transmission chains. يجبر can concern compulsion or making good a deficiency; the object determines the intended sense.

Forms and grammar: جبر / يجبر = compelled or repaired / compels or repairs; أجبر is a different pattern. جابر is participial; جبير is a diminutive formation. Neither name identifies a single narrator without context.

Attested spellings and counts

جَابِرِ —jābirin (761); جُبَيْرٍ —jubayrin (399); وَجَابِرٍ —wajābiri (112); يُجْبَرُ —yujbaru (100); الْجَبَّارِ —al-jabbāri (46); جُبَارٌ —jubārun (26); أُجْبِرَ — ʾujbira (22); وَيُجْبَرُ —wayujbaru (19); جَبْرٍ —jabrin (16); تُجْبَرُ —tujbaru (14); جَابِرًا —jābiran (13); أُجْبِرَتْ —ʾujbirat (9); إِجْبَارُ —ʾijbāru (9); انْجَبَرَ — ʾnjabara (9); الْجَبَّائِرِ —al-jabāʾiri (8); أُجْبِرُوا —ʾujbirūā (7); إِجْبَارُهُ — ʾijbāruhu (7); لِجَابِرٍ —lijābirin (7); انْجَبَرَتْ —ʾnjabarat (6); جَبَائِرُ —jabāʾiru (5); جُبِرَتْ —jubirat (5); وَتُجْبَرُ —watujbaru (5); يُجْبِرُهُ —yujbiruhu (5); أُجْبِرَا —ʾujbirā (4); فَتُجْبَرُ —fatujbaru (4); وَيُجْبِرُهُ —wayujbiruhu (4); يُجْبَرُونَ — yujbarūna (4); أَجْبَرَهُ —ʾajbarahu (3); جَبْرِهِ —jabrihi (3); فَيُجْبَرُ —fayujbaru (3)

Context L2261: ... أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ سَمِعْت ...

Context L2283: ... أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ قَالَ ...

[147] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: جبر (read dictionary entry).

148. مَاء / مِيَاه[148]

māʾ / miyāh

1,633 occurrences; cumulative coverage 72.99%.

Possible English: water; waters; disguise or misrepresent in a different derivation

Context: الماء normally means water in purification law. تمويه in argument concerns obscuring or misrepresenting, a separate derived use; it is not the plural of water.

Forms and grammar: ماء / مياه / أمواه are singular and plural formations. مائه = his or its water; بالماء = with water. موّه / يموّه are derived verb forms with distinct contextual meanings.

Attested spellings and counts

الْمَاءِ —al-māʾi (690); مَاءٍ —māʾin (311); مَوَّهُوا —mawwahūā (113); بِالْمَاءِ —biālmāʾi (110); بِمَاءٍ —bimāʾin (68); وَمَوَّهُوا —wamawwahūā (52); تَمْوِيهِهِمْ —tamwīhuhum (38); وَالْمَاءُ —wālmāʾu (28); تَمْوِيهٌ —tamwīhun (26); التَّمْوِيهِ —al-tamwīhi (20); مَوَّهَ —mawwaha (20); وَمَوَّهَ —wamawwaha (20); وَمَاءُ —wamāʾu (19); يُمَوِّهَ —yumawwiha (19); مَاهَكَ —māhaka (18); مُمَوِّهٌ —mumawwihun (13); لِلْمَاءِ —lilmāʾi (12); مَائِهِ —māʾihi (11); يُمَوِّهُونَ —yumawwihūna (7); الْمِيَاهِ —al-miyāhi (5); فَالْمَاءُ —fālmāʾu (4); فَتَمْوِيهٌ —fatamwīhun (4); مَاءَهَا —māʾahā (4); الْمُمَوَّهِ —al-mumawwahi (3); تَمْوِيهًا —tamwīhan (3); فَمَوَّهَ —famawwaha (3); كَالْمَاءِ —kālmāʾi (3); مَاءَهُ —māʾahu (3); مُمَوِّهًا —mumawwihan (3); وَتَمْوِيهٌ —watamwīhun (3)

Context L2249: ... مِنْ صَاعِ شَعِيرٍ وَكَنَبَغَانِ الْمَاءِ مِنْ بَيْنِ أَصَابِعِ إِنْسَانٍ حَتَّى ...

Context L2253: ... عَنْ آخِرِهِمْ وَنَبَعَ لَهُمْ الْمَاءُ مِنْ بَيْنِ أَصَابِعِهِ وَأَطْعَمَ مِئِينَ ...

149. جَاءَ[149]

jāʾa

1,609 occurrences; cumulative coverage 73.10%.

Possible English: come; arrive; bring with in a construction

Attested spellings and counts

جَاءَ —jāʾa (970); جَاءَتْ —jāʾat (199); فَجَاءَ —fajāʾa (112); وَجَاءَ —wajāʾa (65); فَجَاءَتْ —fajāʾat (30); جَاءَهُ —jāʾahu (27); وَجَاءَتْ —wajāʾat (19); مَجِيءِ —majīʾi (16); جَاءَكُمْ —jāʾakum (14); جِئْتُ —jiʾtu (13); فَجَاءَهُ —fajāʾahu (13);

[148] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: موه (read dictionary entry).

[149] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: جيأ (read dictionary entry).

Context: جاء به means came with or brought it. جاء في الخبر can introduce something found in a report rather than an event of physical arrival.

Forms and grammar: جاء / يجيء = came / comes; جاءت = she or it came; جئت = I or you came; جاءوا = they came. جيء به = he/it was brought, a passive construction.

150. لَازِم / لَزِمَ[150]

lazima / lāzim

1,607 occurrences; cumulative coverage 73.21%.

Possible English: be binding; entail; be necessary; remain attached

Context: يلزم in argument can mean a conclusion follows, while in a ruling it can mean an obligation is binding. These are related but different English uses.

Forms and grammar: لزم / يلزم = was binding / is binding; ألزمه = imposed on him or held him to it. لازمة / لازم show agreement; لزوم and إلزام are distinct verbal nouns.

الْمَجِيءُ —al-majīʾu (12); جَاءَكَ —jāʾaka (12); يَجِيءُ —yajīʾu (12); جَاءَنِي — jāʾanī (9); فَجِيءَ —fajīʾa (9); جِئْنَا —jiʾnā (8); جِيءَ —jīʾa (8); جَاءَتْهُ —jāʾathu (7); جَاءَنَا —jāʾanā (7); بِالْمَجِيءِ —biālmajīʾi (6); جَاءَهُمْ —jāʾahum (6); مَجِيئًا — majīʾan (6); بِمَجِيءِ —bimajīʾi (4); جَاءَهَا —jāʾahā (4); فَجَاءَنِي —fajāʾanī (4); لِمَجِيءِ —limajīʾi (4); يَجِئْ —yajiʾ (4); جِئْتَنِي —jiʾtnī (3); فَجَاءَتْهُ —fajāʾathu (3); فَيَجِيءُ — fayajīʾu (3)

Context L2225: ... اللَّهُ وَيُؤْمِنُوا بِي وَبِمَا جِئْتُ بِهِ فَإِذَا فَعَلُوا ذَلِكَ عَصَمُوا ...

Context L2238: ... شَيْءٍ الأنعام وَخَالَفَ مَا جَاءَتْ بِهِ النُّبُوَّةُ وَمَا أَجْمَعَ عَلَيْهِ ...

Attested spellings and counts

لَازِمٌ —lazimahu (150); لَزِمَهُ —yalzamuhu (266); يَلْزَمُ —yalzamu (294); تَلْزَمُ —lāzimun (97); يَلْزَمُهُمْ —yalzamuhum (41); وَيَلْزَمُ —wayalzamu (40); لَازِمَةٌ —talzamu (34); فَيَلْزَمُهُمْ —fayalzamuhum (31); يَلْزَمُنَا —yalzamunā (31); أَلْزَمَ —lāzimatun (28); تَلْزَمُهُ —talzamuhu (27); لَزِمَتْهُ —lazimathu (26); اللَّازِمُ —ʾalzama (25); وَيَلْزَمُهُمْ —wayalzamuhum (25); إِلْزَامُ —ʾilzāmu (23); أَلْزَمَهُ —al-lāzimu (23); فَيَلْزَمُهُ —fayalzamuhu (22); وَلَزِمَهُ —walazimahu (22); لَازِمًا —ʾalzamahu (21); إِلْزَامُهُ —ʾilzāmuhu (20); فَيَلْزَمُ —fayalzamu (20); يَلْزَمُهَا —laziman (20); وَيَلْزَمُهُ —wayalzamuhu (16); أَلْزَمَنَا —ʾalzamanā (15); الْتَزَمَ —yalzamuhā (13); لَزِمَ —lazima (12); يَلْتَزِمُهُ —yaltazimhu (12);

[150]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: لزم (read dictionary entry).

al-tazama (10); لُزُومِ —luzūmi (10); يَلْتَزِمْ —yaltazim (9); تَلْزَمُنَا —talzamunā (7); فَلَزِمَهُ —falazimahu (7); فَيَلْزَمُكُمْ —fayalzamukum (7); لَزِمَهُمْ —lazimahum (7); وَلَزِمَتْهُ —luzūmihi (7); وَأَلْزَمَهُ —waʾalzamahu (7); وَلَزِمَ —walazima (7); الْتَزَمُوا —walazimathu (7); يَلْتَزِمُونَ —yaltazimūna (7); أَلْزَمْنَاهُ —ʾalzamnāhu (6); وَأَلْزَمَ —al-tazamūā (6); لَزِمَتْهَا —lazimathā (6); مُلَازِمِ —mulāzimi (6); وَلَزِمَهُمْ —waʾalzama (6); يَلْزَمُكُمْ —walazimahum (6); يَلْزَمُهُمَا —yalzamukum (6); الْإِلْزَامَ —yalzamuhumā (6); الْتِزَامِهِ —al-ʾilzāma (5); الْتَزَمَهُ —al-tizāmihi (5); وَيَلْزَمُكُمْ —al-tazamahu (5); لَزِمَتْ —lazimat (5); لَزِمَهَا —lazimahā (5); لَزِمَكُمْ —wayalzamukum (5); يُلْزِمُونَهُ —yulzimūnahu (5); الْتِزَامَ —al-tizāma (4); لَلَزِمَ —lazimakum (4); لَلَزِمَهُمْ —lalazima (4); مُلْزَمٌ —lalazimahum (4); أَلْزَمَهُمَا —mulzamun (4); وَتَلْزَمُهُ —watalzamuhu (4); أَلْزَمُوهُ —ʾalzamahumā (3); الْتَزَمَاهُ —ʾalzamūhu (3); اللَّازِمَةِ —al-tazamāhu (3); بِإِلْزَامِ —al-lāzimati (3); فَأَلْزِمُوهُ —biʾilzāmi (3); بِإِلْزَامِهِ —biʾilzāmihi (3); تَلْزَمُهَا —talzamuhā (3); كَلُزُومِهِ —faʾalzimūhu (3); فَلَزِمَنَا —falazimanā (3); فَلَزِمَهُمْ —falazimahum (3); لَلَزِمَهُ —kaluzūmihi (3); لَزِمَتْهُمْ —lazimathum (3); لَزِمَهُمَا —lazimahumā (3); لَوَازِمَ —lalazimahu (3); وَالْتِزَامِ —wāltizāmi (3); يَلْتَزِمُهَا —yaltazimhā (3); يُلْزِمُونَ —yulzimūna (3)

Context L2224: ... مَسْأَلَة بَيَان أَوَّل مَا يَلْزَم كُلّ أَحَد وَلَا يَصِحّ الْإِسْلَام ...

Context L2225: ... اللَّهُ عَنْهُ أَوَّلُ مَا يَلْزَمُ كُلَّ أَحَدٍ وَلَا يَصِحُّ الْإِسْلَامُ ...

151. يَحْيَى[151]

yaḥyā

1,602 occurrences; cumulative coverage 73.32%.

Possible English: Yaḥyā; John in a prophetic identification; lives as a verbal homograph

Context: يحيى commonly identifies a narrator or the prophet. A same-spelled imperfect can mean lives. Names are retained unless the context specifically calls for a conventional English prophetic name.

Forms and grammar: ويحيى adds and. The name's ending is not a plural or a feminine marker. Verb forms such as يَحْيا / تَحْيا belong to the life family; context distinguishes the proper name.

Attested spellings and counts

يَحْيَى —yaḥyā (1,482); وَيَحْيَى —wayaḥyā (120)

Context L2263: ... وَيُونُسَ وَٱلْيَسَعَ وَإِلْيَاسَ وَزَكَرِيَّا وَيَحْيَى وَأَيُّوبَ وَعِيسَى وَهُودًا وَصَالِحًا وَشُعَيْبًا ...

Context L2340: ... هَارُونَ ثنا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ أَنَسٍ قَالَ ...

152. دَيْن / دِين[152]

dīn / dayn

1,592 occurrences; cumulative coverage 73.42%.

Possible English: religion; religious obligation; debt; liability

Context: الدين can mean religion or a debt, distinguished in vocalized text as دِين / دَيْن. A financial context often selects debt, but the clause must still be read.

Forms and grammar: دين / ديون = debt / debts; ديني = my religion or my debt according to vowels and context. دان / يدين have related verbal uses; ديانة concerns religion or religious observance.

Attested spellings and counts

الدِّينِ —al-dīni (631); دِينِ —dīni (386); دِينِهِ —dīnihi (122); دَيْنًا —daynan (59); بِالدِّينِ —biālddīni (57); بِدَيْنٍ —bidaynin (36); دِينِهِمْ —dīnihim (32); دُيُونِ —duyūni (32); الدِّيَانَةَ —al-diyānati (25); الدُّيُونِ —al-duyūni (24); بِدَيْنِهِ —bidaynihi (15); وَدِينِ —wadīnin (15); تَدَايَنْتُمْ —tadāyantum (13); دِينِهَا —dīnihā (13); مُدَّانٍ —muddāni (13); دِينِكَ —dīnika (9); دِينِنَا —dīninā (9); فَدَيْنُ —fadaynu (9); لِلدِّينِ —lilddīni (9); الْمدين —al-mdyn (8); الْمُدَايَنَةِ —al-mudāyanati (7); وَدَيْنِهُ —wadaynuhu (6); التَّدَايُنِ —al-tadāyuni (5); تَدَايَنَا —tadāyanā (5); لِدِينِهِ —lidīnihi (5); يَدِينُونَ —yadīnūna (5); الدِّينَيْنِ

[151] **Editorial lexical note:** Personal-name identification from the book; no Arabic-root etymology or Lisān lexical definition is asserted for this name.

[152] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: دين (read dictionary entry).

153. يَمِين[153]

yamīn

1,590 occurrences; cumulative coverage 73.53%.

Possible English: right hand; right side; oath; good fortune

Context: يمين in procedure commonly means an oath; in another passage it is the right hand or side. The object and accompanying verb distinguish them.

Forms and grammar: يمين / أيمان = oath / oaths in a common legal usage. يمينه = his oath or right hand; باليمين = by oath or with the right hand. يمنى is a feminine adjective.

—al-dīnayni (4); دِينِهِمَا —dīnihimā (4); لِدِينِ —lidīni (4); وَالدِّيَانَةِ —wālddiyānati (4); وَدِيُونُ —waduyūnu (4); وَيَدِينُ —wayadīnu (4); بِدِينِهِمْ —bidīnihim (3); تَدَايَنَ —tadāyana (3); دَانَ —dāna (3); فَدَانَ —fadāna (3); وَأَدْيَانِهِمْ —waʾadyānihim (3); وَدَانَ —wadāna (3)

Context L2227: ... وَمَنْ يَبْتَغِ غَيْرَ الإِسْلامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ وَهُوَ فِي ...

Context L2254: ... وَمَنْ يَبْتَغِ غَيْرَ الإِسْلامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ وَهُوَ فِي ...

Attested spellings and counts

يَمِينِهِ —al-yamīni (312); يَمِينٍ —yamīnin (218); أَيْمَنَ —ʾaymana (179); الْيَمِينِ —yamīnihi (149); الْأَيْمَانِ —al-ʾaymāni (87); مَيْمُونٍ —maymūnin (81); يَمِينًا —yamīnan (73); مَيْمُونَةَ —maymūnata (71); أَيْمَانُكُمْ —ʾaymānukum (53); بِالْيَمِينِ —biālyamīni (52); أَيْمَانُهُمْ —ʾaymānuhum (34); بِيَمِينِهِ —biyamīnihi (30); وَالْيَمِينُ —al-yumnā (22); بِيَمِينٍ —biyamīnin (20); أَيْمَانِ —ʾaymāni (19); الْيُمْنَى —wālyamīnu (18); الْأَيْمَنِ —al-ʾaymani (17); أَيْمَانًا —ʾaymānan (14); يُمْنِ —yumni (13); يَمِينِهَا —yamīnihā (10); يَمِينِكَ —yamīnika (9); أَيْمَانُنَا —ʾaymānunā (8); أَيْمَانِهِمَا —ʾaymānihimā (8); بِالْأَيْمَانِ —biālʾaymāni (8); الْيَمَانِيَّ —al-yamāniyya (7); وَمَيْمُونٍ —wamaymūni (7); وَيَمِينُ —wayamīnu (7); بِأَيْمَانِ —biʾaymāni (6); وَالْأَيْمَانِ —wālʾaymāni (6); لِيَمِينِهِ —liyamīnihi (5); يَمِينِي —yamīnī (5); بِأَيْمَانِهِمْ —biʾaymānihim (4); بِيَمِينِي —biyamīnī (4); لِلْيَمِينِ —

[153] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: يمن (read dictionary entry).

lilyamīni (4); وَأَيْمَانِهِمْ —waʾaymānihim (4); وَأَيْمَنُ —waʾaymanu (4); وَمَيْمُونَةُ — wamaymūnatu (4); أَيْمَانِه —ʾaymānihi (3); الْأَيْمَنُونَ —al-ʾaymanūna (3); التَّيَمُّنُ —al-tayammunu (3); بِيَمِينِهَا —biyamīnihā (3); فَالْأَيْمَنَ —fālʾaymana (3); فَيُمْنِي —fayumnī (3)

Context L2265: ... بَشَرٌ مِثْلُكُمْ وَلَكِنَّ اللَّهَ يَمُنُّ عَلَى مَنْ يَشَاءُ مِنْ عِبَادِهِ ...

Context L2324: ... إِذْ يَتَلَقَّى الْمُتَلَقِّيَانِ عَنِ الْيَمِينِ وَعَنِ الشِّمَالِ قَعِيدٌ ق مَا ...

154. زَكَّى / زَكَاة[154]

zakāh / zakkā

1,563 occurrences; cumulative coverage 73.64%.

Possible English: zakāt; obligatory alms; purify; attest uprightness

Context: الزكاة names the prescribed levy in its legal discussion. تزكية may instead concern purification or assessment of a witness; do not assume every form denotes the payment.

Forms and grammar: زكاة / زكوات = zakāt payment(s); يزكّي / زكّى = purified or paid zakāt / does so. زكاته / زكاتها attach possessive referents; الزكاة has the definite article.

Attested spellings and counts

الزَّكَاةِ —al-zakāti (758); زَكَاةَ —zakāta (483); وَالزَّكَاةِ —wālzzakāti (49); زَكَاتِهَا —yuzakkā (32); يُزَكِّي —yuzakkī (26); زَكَاتِه —zakātihi (30); يُزَكَّى —zakātihā (20); فَالزَّكَاةُ —fālzzakātu (18); تُزَكَّى —tuzakkā (12); زَكَّى —zakkā (12); وَزَكَاةِ —wazakāti (12); يُزَكِّيهِ —yuzakkīhi (11); بِزَكَاةِ — bizakāti (10); زَكَّاهُ —zakkāhu (10); لِلزَّكَاةِ —lilzzakāti (9); بِالزَّكَاةِ — biālzzakāti (7); فَزَكَاتُهُ —fazakātuhu (6); زُكِّيَ —zukkiya (5); زُكِّيَتْ — zukkiyat (5); الزَّكَوَاتِ —al-zakawāti (4); زَكَاتَيْنِ —zakātayni (4); كَالزَّكَاةِ —kālzzakāti (4); وَيُزَكِّي —wayuzakkī (4); يُزَكِّ —yuzakki (4); يُزَكِّيهِمْ — yuzakkīhim (4); زَكَاتَانِ —zakātāni (3); زَكَّاهَا —zakkāhā (3); زَكَوَاتِ —zakawāti (3); فَزَكِّهِ —fazakkihi (3); فَزُكِّيَ —fazukkiya (3); كَزَكَاةِ — kazakāti (3); وَزَكِّ —wazakki (3); يُزَكِّيهَا —yuzakkiyahā (3)

[154]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: زكا (read dictionary entry).

155. وَلَاء / وَلِيّ[155]

waliyy / walāʾ

1,558 occurrences; cumulative coverage 73.74%.

Possible English: guardian; ally; patron; authority; affiliation

Context: ولي in marriage may be a guardian; الولاء in manumission is a specific legal affiliation. أولى often means more entitled, with the construction determining entitlement to what.

Forms and grammar: أولياء / ولي = guardian or ally / guardians or allies; وليه = his guardian; تولى / يتولى = assumed charge or turned away, according to construction. مولى / موالي have context-dependent patron/client senses.

Context L2254: ... إِلَى إِقَامَةِ الصَّلَاةِ وَأَدَاءِ الزَّكَاةِ وَإِسْقَاطِ الْفَخْرِ وَالتَّجَبُّرِ وَالْتِزَامِ التَّوَاضُعِ ...

Context L2349: ... يَوْمَ الْقِيَامَةِ بِصَلَاةٍ وَصِيَامٍ وَزَكَاةٍ وَيَأْتِي قَدْ شَتَمَ هَذَا وَقَذَفَ ...

Attested spellings and counts

مَوْلَى —mawlā (346); أَوْلَى —ʾawlā (303); الْوَلِيُّ —al-waliyyu (69); أَوْلِيَاءُ —ʾawliyāʾu (64); وَلِيُّهُ —waliyyuhu (54); وَلَيْتَ —walayta (48); الْوَلَاءُ —al-walāʾu (46); وَلِيَّهَا —waliyyihā (44); الْأَوْلِيَاءِ —al-ʾawliyāʾi (39); بِأَوْلَى —biʾawlā (35); وَلَاءَ —walāʾa (35); تَوَلَّى —tawallā (22); لِلْوَلِيِّ —lilwaliyyi (20); لِوَلِيِّ —liwaliyyi (20); الْمَوَالِي —al-mawālī (17); الْمَوْلَى —al-mawlā (17); أَوْلِيَاؤُهُ —ʾawliyāʾuhu (15); الْوُلَاةِ —al-wulāti (15); يَلِي —yalī (15); تَلِي —talī (13); يَلِيهِ —yalīhi (13); لِوَلِيِّهِ —liwaliyyihi (12); مَوَالِيهِ —mawālīhi (12); وِلَايَتِهِ —wilāyatihi (12); وَلِيًّا —waliyyan (12); أَوْلِيَائِهِ —ʾawliyāʾihi (11); تُوَلُّوا —tuwallūā (11); وَأَوْلَى —waʾawlā (11); بِوَلِيٍّ —biwaliyyin (10); مَوَالِي —mawālī (10); يَتَوَلَّى —yatawallā (10); الْوِلَايَةَ —al-wilāyata (9); وَلَّى —wallā (9); فَلِأَوْلَى —faliʾawlā (7); وَالتَّوْلِيَةُ —wālttawliyatu (7); وَلِيَّتَهُ —waliyyatahu (7); مَوَالِيهَا —mawālīhā (6); وَالْوَلَاءُ —wālwalāʾu (6); وَالْوَلِيُّ —wālwaliyyu (6); وَلِيِّهِمْ —waliyyihim (6); يَتَوَلَّهُمْ —yatawallahum (6); يُوَلَّى —yuwallā (6); فَالْأَوْلَى —fālʾawlā (5); لِمَوْلًى —al-wālī (5); تَوَلِّي —tawallī (5); الْوَالِي

[155] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ولي (read dictionary entry).

—limawlanā (5); مُتَوَلِّي —mutawallī (5); وَالتَّوَلِّي —wālttawallī (5); وِلَايَةٍ — wilāyatin (5); وَلِيُّهُمَا —waliyyuhumā (5); التَّوْلِيَةِ —al-tawliyati (4); وَالْمَوْلَى — wālmawlā (4); وَالِي —wālī (4); وَتَوَلَّى —watawallā (4); وَلَاءَهُ —walāʾahu (4); بِالْوَلَاءِ —yatawalla (4); يَلِيكَ —yaliyaka (4); أَوْلِيَائِهَا —ʾawliyāʾihā (3); يَتَوَلَّ —biālwalāʾi (3); تَوْلِيَةَ —tawliyata (3); تَوَلَّيْتَ —tawallayta (3); فَالْوَلَاءُ — fālwalāʾu (3); فَوَلُّوا —fawallūā (3); فَوُلِّيت —fawullīt (3); لِأَوْلِيَاءِ —liʾawliyāʾi (3); وَلَائِي —limawlāhu (3); مَوَالٍ —mawālin (3); وَالْأَوْلَى —wālʾawlā (3); لِمَوْلَاهُ —walāʾī (3); وَلُّوهُمْ —wallūhum (3); وَمَوَالِيكُمْ —wamawālīkum (3); وَمَوَالِيهِمْ —wamawālīhm (3); وَمَوْلَى —wamawlā (3); وَوَلِيٍّ —wawaliyyin (3); يُوَلِّيهُ — yuwalliyahu (3)

Context L2271: ... الأَشْقَى الليل الَّذِي كَذَّبَ وَتَوَلَّى الليل وَسَيُجَنَّبُهَا الأَتْقَى الليل ... ...

Context L2289: ... سَبِيلِ الْمُؤْمِنِينَ نُوَلِّهِ مَا تَوَلَّى وَنُصْلِهِ جَهَنَّمَ النساء ...

156. وَهَبَ / هِبَة[156]

wahaba / hibah

1,558 occurrences; cumulative coverage 73.85%.

Possible English: give; grant; gift; Wahb

Context: هبة is a gift, distinguished from sale or inheritance. وهب may instead be the narrator's name Wahb.

Attested spellings and counts

وَهْبٍ —wahbin (662); الْوَهَّابِ —al-wahhābi (347); هِبَةً —hibatan (111); الْهِبَةِ —al-hibati (82); وَالْهِبَةُ —wālhibatu (31); هِبَتِهِ —hibatihi (30); وَهَبَتْ —wahabat (25); الْمَوْهُوبُ —al-mawhūbu (23); هَبْكَ —habka (22); هَبْكُمْ —habkum (18); وَهِبَتِهِ —wahibatihi (18); الْوَاهِبُ —al-wāhibu (17); وَهَبَهُ —wahabahu (17); وَهَبَهَا —wahabahā (15); يَهَبَ —yahaba (15); وَهِبَةُ —

[156]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: وهب (read dictionary entry).

Forms and grammar: وهب / يهب = gave / gives; هبة / هبات = gift(s); وهبه = gave him/it or his gift according to vowels. هب can also introduce suppose in an argument.

wahibatu (11); الْهِبَاتِ —al-hibāti (10); بِهِبَةٍ —bihibatin (10); وَهَبْتُكَ — wahabtuk (9); بِهِبَتِهِ —bihibatihi (8); يَهَبُهُ —yahabahu (8); الْمَوْهُوبَةِ — al-mawhūbati (7); وَهَبْكَ —wahabka (7); فَوَهَبَ —fawahaba (6); بِالْهِبَةِ — biālhibati (5); فَهَبْكَ —fahabka (5); لِلْوَاهِبِ —lilwāhibi (5); هِبَتُهَا —hibatuhā (5); وَوَهَبَهُ —wawahabahu (5); وَهِبَاتِهِمْ —wahibātihim (4); وَوَهْبُ —wawahbu (4); يَهَبَهَا —yahabahā (4); الْمَوَاهِبُ —al-mawāhibu (3); تُوهَبُ —tūhabu (3); فَالْهِبَةُ — fālhibatu (3); يُوهَبُ —yūhabu (3)

Context L2225: ... بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ ...

Context L2241: ... نا عَبْدُ اللَّهِ بْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ هُوَ ابْنُ زَيْدٍ ...

157. ظِهَار / ظُهْر / ظَهْر[157]

ẓahr / ẓuhr / ẓihār

1,548 occurrences; cumulative coverage 73.95%.

Possible English: back; noon; become apparent; ẓihār

Context: الظهر can mean the noon prayer or the back. الظهار is a specific marital pronouncement, a separate noun.

Forms and grammar: ظهر / يظهر = appeared / appears; أظهر = made apparent; ظهور = appearance. ظِهار / ظَهر / ظُهر have different meanings and vowel patterns.

Attested spellings and counts

الظُّهْرِ —al-ẓuhri (241); ظَاهِرٌ —ẓāhirun (209); فَظَهَرَ —faẓahara (185); يَظْهَرْ —yaẓhar (47); ظَهَرَ —ẓahara (162); الظَّاهِرِ —al-ẓāhiri (49); الظِّهَارِ —al-ẓihāri (48); فَظَاهِرُ —faẓāhiru (44); ظَاهِرِهِ —ẓāhirihi (39); ظَاهِرَةٌ — ẓāhiratun (34); ظَهْرِهِ —ẓahrihi (34); ظُهُورِ —ẓuhūri (30); ظِهَارٍ —ẓihārin (27); بِظَاهِرِ —biẓāhiri (23); أَظْهُرِ —ʾaẓhuri (22); ظَاهِرِهَا —ẓāhirihā (22); مُتَظَاهِرَةٌ —mutaẓāhiratun (21); ظَاهِرًا —ẓāhiran (19); وَظَهَرَ —waẓahara (15); الْأَظْهَرُ —al-ʾaẓharu (12); تَظْهَرُ —taẓharu (12); ظَاهِرِهِمَا —ẓāhirihimā (12); ظِهَارًا —ẓihāran (11); ظَهَرَتْ —ẓaharat (11); كَظَهْرِ —kaẓahri (11); أَظْهَرُوا —

[157] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ظهر (read dictionary entry).

ʾaẓharūā (9); وَالْأَظْهَرُ —wālʾaẓharu (9); وَظَاهِرُ —waẓāhiru (9); ظَهْرِكَ — ẓahrika (8); مُظَاهِرِ —muẓāhiri (8); الظَّهِيرَةِ —al-ẓahīrati (7); ظُهُورِهِمْ — ẓuhūrihim (7); لِلظُّهْرِ —lilẓẓuhri (7); وَالظَّاهِرُ —wālẓẓāhiru (7); إِظْهَارُ —ʾiẓhāru (6); الْمَظَاهِرِ —al-maẓāhir (6); ظَهَرَا —ẓaharā (6); وَظَاهِرُهُ — waẓāhiruhu (6); وَالظِّهَارِ — ẓuhrayni (5); ظُهْرَيْنِ —biẓāhirihi (5); بِظَاهِرِهِ — wālẓẓihāri (5); الظَّاهِرَةِ —ʾaẓhurikum (4); أَظْهُرِكُمْ —yuẓhirūā (5); يُظْهِرُوا —al-ẓāhirati (4); الْمُتَظَاهِرَةُ —al-mutaẓāhiratu (4); بِالظِّهَارِ —biālẓẓihāri (4); ظَهْرَيْ —biẓahri (4); بِظَهْرِ —ẓāhirīna (4); ظَاهِرِينَ —ẓihārahu (4); ظِهَارَهُ — ẓahray (4); وَالظُّهْرُ —faẓāhiratu (4); فَظَاهِرَةُ —ẓuhūrihā (4); ظُهُورِهَا — wālẓẓuhru (4); يُظَاهِرَ —waẓahrahu (4); وَظَهْرُهُ —waẓuhūru (4); وَظُهُورُ — yuẓāhira (4); ظَاهِرِهِمْ —yuẓāhirūna (4); يُظَاهِرُونَ —biẓāhirihā (3); بِظَاهِرِهَا — ẓāhirihim (3); فَظَهَرَتْ —faẓāhiruhu (3); فَظَاهِرُهُ —ẓahrihā (3); ظَهْرِهَا — faẓaharat (3); لِلظِّهَارِ —liẓāhiri (3); لِظُهُورِ —liẓuhūri (3); لِظَاهِرِ —lilẓẓihāri (3); وَأَظْهَرِهَا —waʾaẓharihā (3); وَظِهَارُهُ —waẓihāruhu (3); يُظْهِرُونَ —yuẓhirūna (3)

Context L2249: ... تَعَالَى شَهِدَ لَهُمْ بِمَا أَظْهَرَ عَلَى أَيْدِيهِمْ فَصِحْ مَا أَتَوْا ...

Context L2261: ... أُمَّتِي يُقَاتِلُونَ عَلَى الْحَقِّ ظَاهِرِينَ إِلَى يَوْمِ الْقِيَامَةِ قَالَ فَيَنْزِلُ ...

158. نَهَى / نَهْي[158]

nahā / nahy

1,544 occurrences; cumulative coverage 74.06%.

Possible English: forbid; prohibit; prohibition; reach an end

Context: نهى عن introduces what was forbidden. انتهى and انتهاء concern ending or reaching an endpoint, not a grammatical tense of the prohibitive noun.

Forms and grammar: نهى / ينهى = forbade / forbids; نهانا = forbade us; نهي = was forbidden when read passively. منهيّ عنه = prohibited; ينتهِ can be a jussive form of انتهى.

Attested spellings and counts

نَهَى —nahā (381); النَّهْيِ —al-nahyi (253); نَهْيٌ —nahyun (180); يَنْهَ —yanha (57); ناه —nāh* (48); يَنْهَى —yanhā (46); نَهْيِهِ —nahyihi (41); وَنَهَى —wanahā (38); وَالنَّهْيُ —wālnnahyu (33); بِالنَّهْيِ —biālnnahyi (28); مَنْهِيٌّ —manhiyyun (26); الْمَنْهِيِّ —al-manhiyyi (25); نَهَانَا —nahānā (19); نَاهِيك —nāhīk (18); انْتَهَى —ʾntahā (17); لِنَهْيٍ —linahyi (15); نِهَايَةٍ —nihāyatin (15); يَنْتَهُوا —yantahūā (15); نَهَيْتُكُمْ —nahaytukum (14); نَهَاهُ —nahāhu (13); فَنَهَاهُ —fanahāhu (11); نُهِينَا —nuhīnā (11); وَنَهْيُهُ —wanahyuhu (11); بِنَهْيٍ —binahyi (9); مَنْهِيًّا —manhiyyan (9); نَهَاكُمْ —nahākum (9); نَهَيْتُ —nahaytu (9); فَنَهَى —fanahā (8); نَهَانِي —nahānī (8); نَهْيًا —nahyan (8); أَنْهَاكُمْ —ʾanhākum (7); فَنَهَانَا —fanahānā (7); نُهُوا —nuhūā (7); انْتَهَوْا —ʾntahawā (6); انْتَهَيْت —ʾntahayt (6); فَانْتَهَى —fāntahā (6); وَيَنْهَى —wayanhā (6); يَنْهَنَا —yanhanā (6); يَنْهَهُ —yanhahu (6); أَنْهَى —ʾanhā (5); فَنَهَاهُمْ —fanahāhum (5); لَيَنْتَهِيَنَّ —layantahiyanna (5); نُهِيتُمْ —nuhītum (5); وَنَهَانَا —wanahānā (5); وَنَهَاهُ —wanahāhu (5); وَنَهْيٌ —wanahyun (5); يَنْتَهِ —yantahi (5); تُنْهَوْنَ —tunhawna (4); فَانْتَهُوا —fāntahūā (4); فَنُهِيَ —fanuhiya (4); لِلنَّهْيِ —lilnnahyi (4); مُنْتَهَى —muntahā (4); نَهَاهَا —nahāhā (4); يَنْهَانَا —yanhānā (4); يَنْهَاهُمْ —yanhāhum (4); يَنْهَوْنَ —yanhawna (4); انْتِهَاءِ —ʾntihāʾi (3); بِنَهْيِهِ —binahyihi (3); فَنُهُوا —fanuhūā (3); مَنْهِيُّونَ —manhiyyūna (3); نَهَاهُمْ —nahāhum (3); نَهْيِهَا —

[158]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: نهي (read dictionary entry).

159. سَمَاء / سَمَّى / اسْم[159]

ʾsm / sammā / samāʾ

1,524 occurrences; cumulative coverage 74.16%.

Possible English: name; call or name; heaven; sky

Context: اسم can introduce a designation. سمى can mean named or specified. السماوات denotes the heavens, a related lexical formation rather than a plural of اسم.

Forms and grammar: اسم / أسماء = name / names; اسمه / أسماؤهم add possessive pronouns. سمى / يسمي = named / names; مسمى = named or specified. سماء / سماوات = sky or heaven / heavens.

nahyihā (3); وَبِالنَّهْيِ —wabiālnnahyi (3); وَيَنْهَوْنَ —wayanhawna (3); يَنْتَهُونَ — yantahūna (3); يَنْتَهِي —yantahī (3); يَنْهَاهَا —yanhāhā (3); يَنْهَهَا —yanhahā (3)

Context L2230: ... الزَّمَانِ فَهُوَ بِيَقِينٍ ذُو نِهَايَةٍ مِنْ أَوَّلِهِ وَمُنْتَهَاهُ وَالْكُلُّ لَيْسَ ...

Context L2232: ... الْعَدَدُ وَكُلُّ مَعْدُودٍ فَذُو نِهَايَةٍ كَمَا ذَكَرْنَا وَكُلُّ ذِي نِهَايَةٍ ...

Attested spellings and counts

اسْمُ —ʾsmu (299); مُسَمًّى —musammanā (158); يُسَمَّى —yusammā (124); أَسْمَاءَ —ʾasmāʾa (95); يُسَمِّ —yusammi (81); السَّمَاءِ —al-samāʾi (78); سَمَّى —sammā (72); سُمِّيَ —summiya (49); اسْمُهُ —ʾsmuhu (44); بِاسْمِ — biāsmi (42); الْأَسْمَاءِ —al-ʾasmāʾi (34); مُسَمَّاةً —musammātan (34); السَّمَاوَاتِ —al-samāwāti (33); الْمُسَمَّى —al-musammā (24); وَاسْمُ —wāsmu (24); بِاسْمِهِ —biāsmihi (23); التَّسْمِيَةِ —al-tasmiyati (19); فَسَمَّى —fasammā (19); يُسَمِّي —yusammiya (19); وَسَمَّى —wasammā (18); تَسْمِيَةُ —tasmiyatu (15); سَمِّ —sammi (15); يُسَمِّهِ —yusammihi (14); تُسَمَّى —tusammā (13); وَأَسْمَاءَ —waʾasmāʾa (13); بِأَسْمَائِهِمْ —biʾasmāʾihim (12); سَمَّيْتَ —sammayt (12); اسْمًا —ʾsman (11); يُسَمِّيهِ —yusammīhi (10); اسْمَانِ —ʾsmāni (8); سَمَاءِ — samāʾi (8); أَسْمَائِهِ —ʾasmāʾihi (7); اسْمُهَا —ʾsmuhā (7); سَمَّاهُمْ —sammāhum (7); سَمَّيَا —sammayā (7); وَاسْمُهُ —wāsmuhu (7); تُسَمِّ —tusamma (6); وَيُسَمَّى —

[159]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: سما (read dictionary entry).

بِأَسْمَائِهَا (5); سَمَّيْتُمُوهَا —sammaytumūhā (5); سَمَّتْهُ —sammathu (5); يُسَمُّونَهَا —yusammūnahā (4); يُسَمُّوا —yusammūā (4); وَسَمَّاهُمْ —wasammāhum (4); بِأَسْمَائِهَا —biʾasmāʾihā (4); السَّمَوَاتِ —al-samawāti (3); يُسَمِّيهَا —yusammīhā (4); سَمَّتْ —sammat (3); بِالتَّسْمِيَةِ —biālttasmiyati (3); بِاسْمِهَا —biāsmihā (3); فَاسْمُ —fāsmu (3); فَسُمِّيَ —fasummiya (3); وَالْأَسْمَاءُ —wālʾasmāʾu (3); وَيُسَمِّي —wayusammī (3); يُسَمُّونَ —yusammūna (3)

Context L2238: ... هُوَ غَيْرُ الْجَسَدِ وَهُوَ الْمُسَمَّى فِي اللُّغَةِ نَفْسًا وَرُوحًا وَقَالَ ...

Context L2241: ... فَصَحَّ أَنَّ النَّفْسَ وَالرُّوحَ اسْمَانِ لِمُسَمًّى وَاحِدٍ حَدَّثَنَا عَبْدُ اللَّهِ ...

160. خَطَّاب / خِطْبَة / خُطْبَة[160]

khuṭbah / *khiṭbah* / *khaṭṭāb*

1,519 occurrences; cumulative coverage 74.26%.

Possible English: sermon; marriage proposal; address; al-Khaṭṭāb

Context: خطبة can mean a sermon or a marriage proposal, with different first vowels. الخطاب in a patronymic often identifies al-Khaṭṭāb; it need not mean an address.

Forms and grammar: خطب / يخطب = addressed or proposed / addresses or proposes; خُطبة / خِطبة distinguish two nouns. خطاب and خطّاب are different formations; neither is a case ending.

Attested spellings and counts

الْخَطَّابِ —al-khaṭṭābi (943); الْخُطْبَةِ —al-khuṭbati (97); يَخْطُبُ —yakhṭubu (87); خَطَبَ —khaṭaba (50); مُخَاطَبٍ —mukhāṭabin (37); خِطْبَةَ —khiṭbati (32); خَاطَبَنَا —khāṭabanā (25); خَاطَبَ —khāṭaba (17); خُطْبَتِهِ —khuṭbatihi (17); مُخَاطَبًا —mukhāṭaban (17); خِطَابٌ —khiṭābun (15); مُخَاطَبِينَ —mukhāṭabīna (14); خَطَبَنَا —khaṭabanā (12); يَخْطُبُهَا —yakhṭubuhā (12); يُخَاطِبُ —yukhāṭib (11); بِخُطْبَةِ —bikhuṭbati (9); فَخَطَبَ —fakhaṭaba (9); الْمُخَاطَبُ —al-mukhāṭabu (8); الْخَاطِبُ —al-khāṭibu (7); الْخَطِيبُ —al-khaṭību (7); خَاطَبَهُ —khaṭīban (7); خَطَبَهَا —khaṭabahā (7); خَطِيبًا —khāṭabahu (6); خُوطِبْنَا —khūṭibnā (5); مُخَاطَبُونَ —mukhāṭabūna (5);

[160] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: خطب (read dictionary entry).

الْخُطْبَتَيْنِ —al-khuṭbatayni (4); الْمُخَاطَبِينَ —al-mukhāṭabīna (4); بِالْخُطْبَةِ — biālkhuṭbati (4); خِطَابًا —khiṭāban (4); خُوطِبَ —khūṭiba (4); لِلْخُطْبَةِ — lilkhuṭbati (4); مُخَاطَبَانِ —mukhāṭabāni (4); مُخَاطَبَةً —mukhāṭabatin (4); وَخَاطَبَنَا —wakhāṭabanā (4); بِخُطْبَتِهِ —bikhuṭbatihi (3); تَخْطُبُ —takhṭubu (3); خُطْبَتُهَا —khāṭabt (3); خَاطَبَهَا —khāṭabahā (3); خَطَبْتِ —khaṭabt (3); وَخُطْبَتُهُ —khuṭbatuhā (3); فَخَاطَبَ —fakhāṭaba (3); وَالْخُطْبَةُ —wālkhuṭbatu (3); —wakhuṭbatahu (3)

Context L2239: لِلْجَسَدِ هِيَ الْحَيُّ الْحَسَّاسُ الْمُخَاطَبُ وَلَمْ يَقُمْ بُرْهَانٌ قَطُّ بِأَنَّهُمَا ... ...

Context L2460: ... حَدَّثَنِي أَبِي عُمَرُ بْنُ الْخَطَّابِ قَالَ بَيْنَمَا نَحْنُ عِنْدَ رَسُولِ ...

161. عُشْر / عَشَرَة / عَشْر[161]

ʿashr / ʿasharah / ʿushr

1,518 occurrences; cumulative coverage 74.36%.

Possible English: ten; tenth; one-tenth; twenty in a derived numeral

Context: عشر/عشرة count ten; العشر can name a tenth-share or ten days according to vowels and context. عشرين / عشرون mean twenty.

Forms and grammar: Numeral agreement depends on the counted noun: عشر / عشرة are not interchangeable. عشرين / عشرون vary by case; عاشر / عاشرة are ordinals; عاشوراء is a named day.

Attested spellings and counts

عَشَرَ —ʿashara (371); عَشَرَةَ —ʿasharata (320); عِشْرِينَ —ʿishrīna (171); الْعُشْرِ —al-ʿushri (139); وَعِشْرِينَ —waʿishrīna (127); وَعِشْرُونَ —waʿishrūna (50); مَعْشَرٍ —maʿsharin (49); وَعَشْرًا —waʿashran (34); عِشْرُونَ —ʿishrūna (29); عَشْرًا —ʿashran (25); وَعَشْرٌ —waʿashrun (24); الْعَشَرَةِ —al-ʿasharati (22); بِعَشَرَةِ —biʿasharati (20); عَاشُورَاءَ —ʿāshūrāʾa (20); الْعِشْرِينَ —al-ʿishrīna (18); عَشَرَاتِ —ʿashrāti (13); بِعَشْرِ —biʿashri (10); بِعِشْرِينَ —biʿishrīna (9); أَعْشَارِ —ʾaʿshāri (7); الْعَاشِرِ —al-ʿāshiri (7); الْعَاشِرَةِ —al-ʿāshirati (7); عُشْرِهِ — ʿushrihi (7); وَالْعِشْرِينَ —wālʿishrīna (7); عُشْرِهَا —ʿushrihā (6); عَشِيرَتِهِ —

[161] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: عشر (read dictionary entry).

وَعَشَرَةِ —ʿashīratihi (5); وَالْعَاشِرُ —wālʿāshiru (4); وَالْعَشْرِ —wālʿashri (4); فَعَشَرَةُ —faʿasharatu (3); عَشِيرَةِ —ʿashīrati (3); عَاشِرٌ —ʿāshirun (3); عَشِيرَةِ —waʿasharati (4)

Context L2249: ... النَّارِ فَلَمْ يَحْتَرِقْ وَكَإِشْبَاعِ عَشَرَاتٍ مِنْ النَّاسِ مِنْ صَاعِ شَعِيرٍ ...

Context L2254: ... يَكُونَ مَعَهُ مَالٌ وَلَا عَشِيرَةٌ تَنْصُرُهُ بَلْ اتَّبَعَهُ كُلُّ مَنْ ...

162. سُلَيْمَان[162]

sulaymān

1,517 occurrences; cumulative coverage 74.47%.

Possible English: Sulaymān; Solomon in the prophetic context

Context: The name may identify the prophet or one of several transmitters. Patronymics and context decide the person; a lexical resemblance to سلم does not establish a translation of the name.

Forms and grammar: وسليمان adds and; case vowels vary without changing the named person. No Arabic-root derivation is assumed here.

Attested spellings and counts

سُلَيْمَانَ —sulaymāna (1,446); وَسُلَيْمَانَ —wasulaymāna (71)

Context L2263: ... وَيُوسُفَ وَمُوسَى وَهَارُونَ وَدَاوُد وَسُلَيْمَانَ وَيُونُسَ وَالْيَسَعَ ... وَإِلْيَاسَ وَزَكَرِيَّا وَيَحْيَى

Context L2461: ... أَبُو عَامِرٍ الْعَقَدِيُّ ثنا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ عَبْدِ اللَّهِ ...

163. مَنَعَ[163]

manaʿa

1,499 occurrences; cumulative coverage 74.57%.

Possible English: prevent; prohibit; withhold; bar; refuse

Context: منع can concern refusing property, stopping an act or excluding an argument. يمتنع can mean is impossible or abstains, depending on its subject.

Attested spellings and counts

مَنَعَ —manaʿa (233); يَمْنَعُ —yamnaʿu (174); الْمَنْعِ —al-manʿi (126); مَنْعُهُ —manʿuhu (77); وَمَنَعَ —wamanaʿa (70); مَانِعٌ —māniʿun (51); الْمُمْتَنِعِ —al-mumtaniʿi (41); بِالْمَنْعِ —biālmanʿi (35); مَنَعُوا —manaʿūā (30); مَنْعُهَا —manʿuhā (28); نَمْنَعُ —namnaʿu (27); وَمَنَعُوا —wamanaʿūā (25); الْمَانِعُ —

[162] **Editorial lexical note:** Personal-name identification from the book; no Arabic-root etymology or Lisān lexical definition is asserted for this name.

[163] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: منع (read dictionary entry).

Forms and grammar: منع / يمنع = prevented / prevents; منعني = prevented me; امتنع / يمتنع is a distinct pattern; مانع = preventing or impediment; ممنوع = prevented or prohibited.

al-māniʿu (20); يَمْتَنِعُ —yamtaniʿu (19); مَنَعَتْ —manaʿat (18); مَنْعِهِمْ — manʿihim (18); امْتَنَعَ —ʾmtanaʿa (17); مُمْتَنِعٌ —mumtaniʿun (17); ومَنعَه — waманʿuhu (17); يَمْنَعُه —yamnaʿuhu (17); مَانِعًا —māniʿan (15); مَنَعْنَهُنَّ — manaʿahunna (15); يَمْنَعُونَ —yamnaʿūna (15); تَمْنَعُ —tamnaʿu (14); تَمْنَعُوا —tamnaʿūā (14); مَنَعْنَا —manaʿnā (14); امْتِنَاعِ —ʾmtināʿi (13); وَيُمْنَعُ — wayumnaʿu (13); فَمَنَعَ —famanaʿa (12); وَالْمَنْعُ —wālmanʿu (10); مَانِعَةً — māniʿatan (9); وَمنعهُمْ —waманʿuhum (9); وَيَمْنَعُونَ —wayamnaʿūna (9); يَمْنَعُهَا —yamnaʿuhā (9); يَمْنَعُوا —yamnaʿūā (9); الْمَانِعُونَ —al-māniʿūna (8); بِمَنْعِ — bimanʿi (8); تَمْنَعُه —tamnaʿuhu (8); لِلْمَنْعِ —lilmanʿi (8); مَنَعَكَ —manaʿaka (8); مَنْعُهُمَا —manʿuhumā (8); وَمَنَعْتُم —wamanaʿtum (8); الْمَمْنُوعِ —al-mamnūʿi (7); تَمْتَنِعُ —tamtaniʿu (7); فَمَنَعَهُ —famanaʿahu (7); مَمْنُوعٌ —mamnūʿun (7); يَمْنَعُهُمْ —yamnaʿuhum (7); الْمَانِعِينَ —al-māniʿīna (6); امْتِنَاعَهُ —ʾmtināʿahu (6); بِمَانِعٍ —bimāniʿin (6); مَنْعًا —manʿan (6); وَالْمَانِعُ —wālmāniʿu (6); يَمْنَعْهُنَّ — yamnaʿhunna (6); بِمَنْعِه —bimanʿihi (5); تَمْنَعُونَ —tamnaʿūna (5); لَمَنَعْنَهُنَّ — lamanaʿahunna (5); مَنَعتم —manaʿtum (5); مَنَعُوهُ —manaʿūhu (5); يَمْنَعُنِي — yamnaʿunī (5); فَامْنَعُوا —fāmnaʿūā (4); فَيُمْنَعُ —fayumnaʿu (4); لِامْتِنَاعِ — liāmtināʿi (4); لِمَنْعِ —limanʿi (4); لَنَمْنَعْهُنَّ —lanamnaʿuhunna (4); لِيَمْنَعَ — liyamnaʿa (4); مُمْتَنِعًا —mumtaniʿan (4); مَمْنُوعًا —mamnūʿan (4); مَمْنُوعَانِ — mamnūʿāni (4); مَنَعْتُه —manaʿathu (4); مَنْعِكُمْ —manʿikum (4); مَنِيعٍ — manīʿin (4); نَمْنَعُه —namnaʿhu (4); وَامْتَنَعَ —wāmtanaʿa (4); وَمَانِعٌ —

يَمْنَعُكَ —wamanaʿūhu (4); وَمَنَعُوهُ —wamanaʿat (4); وَمَنَعَتْ wamāniʿun (4); تَمْنَعُونَهُ —ʾmtanaʿūā (3); امْتَنَعُوا —al-māniʿatu (3); الْمَانِعَةُ —yamnaʿuk (4); فَمَنَعُوا —famanaʿūā (3); فَمَنَعَهَا —famanaʿahā (3); مَنَعَةٌ —tamnaʿūnahu (3); يَمْنَعُوهُ —namnaʿuhunna (3); يَمْنَعْنَ —manaʿatumūhu (3); مَنَعْتُمُوهُ —manaʿatun (3); يَمْنَعَا —yamnaʿā (3); يَمْنَعُوهُ —yamnaʿūhu (3)

Context L2265: ... عمران وَقَالَ تَعَالَى مَا مَنَعَكَ أَنْ تَسْجُدَ لِمَا خَلَقْتُ بِيَدَيَّ ...

Context L2345: ... فَقَالَتْ لَهُ أَسْمَاءُ وَمَا يَمْنَعُنِي وَقَدْ أُهْدِيَ رَأْسُ يَحْيَى بْنِ ...

164. دُون[164]

dūn

1,491 occurrences; cumulative coverage 74.67%.

Possible English: below; short of; other than; without; excluding

Context: دون can set a lower bound or exclude something else. من دون can mean apart from or instead of. It is not invariably a physical below.

Forms and grammar: دونه / دونها / دونهم change the referent. بدون is a lexicalized combination meaning without. ديوان is a different noun, register or administrative record, not a suffix form of دون.

Attested spellings and counts

دُونَ —dūna (1,182); دُونَهُ —dūnahu (128); دُونَهَا —dūnahā (62); دِيوَانِنَا —dīwāninā (41); الدِّيوَانِ —al-dīwāni (18); دُونَهُمَا —dūnahumā (14); وَدُونَ —wadūna (13); بِدُونِ —bidūni (11); دُونَهُمْ —dūnahum (10); دُونَكُمْ —dūnakum (5); دِيوَانٍ —dīwānin (4); وَدُونَهَا —wadūnahā (3)

Context L2228: ... تَعَالَى إِلَهُ كُلِّ شَيْءٍ دُونَهُ وَخَالِقُ كُلِّ شَيْءٍ دُونَهُ بُرْهَانُ ...

Context L2238: ... وَمَنْ جَعَلَ شَيْئًا مِمَّا دُونَ اللَّهِ تَعَالَى غَيْرَ مَخْلُوقٍ فَقَدْ ...

[164] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: دون (read dictionary entry).

165. جَعَلَ[165]

jaʿala

1,483 occurrences; cumulative coverage 74.77%.

Possible English: make; appoint; put; assign; begin in a construction

Context: جعل may assign a status or payment rather than physically make something. With a following imperfect it can introduce the beginning of an action.

Forms and grammar: جعل / يجعل = made or assigned / makes or assigns; جعلت = I, you or she according to vowels; جعلنا = we made; جعله = he made/appointed it or him.

Attested spellings and counts

جَعَلَ —jaʿala (397); يَجْعَلْ —yajʿal (230); فَجَعَلَ —fajaʿala (99); وَجَعَلَ —wajaʿala (85); جَعَلَهُ —jaʿalahu (51); جُعِلَتْ —juʿilat (43); جَعَلَهَا —jaʿalahā (35); وَجُعِلَتْ —jaʿalūā (31); يَجْعَلُوا —yajʿalūā (29); يَجْعَلُونَ —yajʿalūna (25); جَعَلُوا —wajuʿilat (24); فَجَعَلَتْ —fajaʿalat (23); جَعَلْتُمْ —jaʿaltum (22); جَعَلْنَا —jaʿalnā (22); يَجْعَلُهُ —yajʿaluhu (22); وَيَجْعَلُ —wayajʿalu (21); يَجْعَلَهَا —yajʿalahā (21); فَجَعَلُوا —fajaʿalūā (20); تُجْعَلُ —tujʿalu (19); وَجَعَلَهُ —waja ʿalahu (18); الْجُعْلِ —al-juʿli (13); فَجَعَلَهَا —fajaʿalahā (13); اجْعَلْ —ʾjʿal (12); وَجَعَلُوا —waja ʿalūā (12); نَجْعَلُ —najʿalu (11); فَجَعَلَهُ —fajaʿalahu (10); تَجْعَلُونَ —fajaʿalūhu (9); فَجَعَلُوهُ —fājʿalūā (8); فَيَجْعَلُ —fayajʿalu (8); فَاجْعَلُوا —tajʿalūna (7); جَعَلَهُمْ —jaʿalahum (7); وَجَعَلَهَا —waja ʿalahā (7); اجْعَلْهَا —ʾjʿalhā (6); تَجْعَلُوا —tajʿalūā (6); جَعَلَا —jaʿalā (6); جَعَلْنَاهَا —jaʿalnāhā (6); جَعَلُوهُ —jaʿalūhu (6); أَجْعَلَ —ʾajʿala (5); اجْعَلُوهَا —ʾjʿalūhā (5); الْمَجْعُولُ —al-majʿūlu (5); سَيَجْعَلُ —sayajʿalu (5); يَجْعَلَا —yajʿalā (5); يَجْعَلُوهُ —yajʿalūhu (5); وَجَعَلُوهُ —taj ʿalahu (4); وَتَجْعَلُ —watajʿalu (4); وَجَعَلْنَا —waja ʿalnā (4); تَجْعَلَهُ —waja ʿalūhu (4); وَيَجْعَلُهُ —wayajʿaluhu (4); يَجْعَلَانِ —yajʿalāni (4); اجْعَلُوا —ʾjʿalūā (3); الْجَاعِلَ —al-jāʿila (3); بِالْجُعْلِ —biāljuʿli (3); جَاعِلِ —jāʿili (3); جَعَلَتْهُ —ja ʿalathu (3); جَعَلْنَاهُ —ja ʿalnāhu (3); جَعَلَهُمَا —ja ʿalahumā (3); فَجَعَلْنَ —faja ʿalna (3); فَلْيَجْعَلْ —falyajʿal (3); لَجَعَلَ —laja ʿala (3); لِيَجْعَلَ —liyajʿala (3);

[165]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: جعل (read dictionary entry).

166. تَرَكَ[166]

taraka

1,446 occurrences; cumulative coverage 74.87%.

Possible English: leave; abandon; omit; refrain from

Context: ترك can mean deliberately abstaining or simply leaving something behind. Whether an omission is blameworthy must come from the legal argument.

Forms and grammar: اترك / يترك / ترك = left / leaves / leave!; تركت = I or you left; تركه = he left him/it or his omission according to vowels. متروك = left or abandoned.

يَجْعَلُونَهُ —yajʿalūnahu (3); وَاجْعَلْ —wājʿal (3); وَجَعَلْتُمْ —wajaʿaltum (3); وَجَعَلْتُهَا —wajaʿaltuhā (3)

Context L2222: ... بَيَانِ ذَلِكَ وَتَقْرِيبِهِ وَأَنْ يَجْعَلَهُ لِوَجْهِهِ خَالِصًا وَفِيهِ مَحْضًا آمِينَ ...

Context L2238: ... مُحْدَثٍ مُرَكَّبٍ مَخْلُوقٌ وَمَنْ جَعَلَ شَيْئًا مِمَّا دُونَ اللَّهِ تَعَالَى ...

Attested spellings and counts

تَرَكَ —taraka (536); تَرَكَهُ —tarakahu (140); وَتَرَكَ —wataraka (121); يَتْرُكْ —yatruk (104); تَرْكُهَا —tarkuhā (85); تَرَكُوا —tarakūā (56); مَتْرُوكٌ —matrūkun (38); بِتَرْكِ —bitarki (28); وَتَرَكُوا —watarakūā (28); وَتَرَكَهُ —watarakahu (24); تَرَكَتْ —tarakat (19); التَّرْكِ —al-tarki (15); بِتَرْكِهِ —bitarkihi (15); تَتْرُكَ —tatruka (14); تَرَكُوهُ —tarakūhu (14); تَرَكْتُمْ —taraktum (12); فَتَرَكَهُ —fatarakahu (12); وَتَرَكَتْ —watarakat (12); وَيُتْرَكُ —wayutraku (12); فَتَرَكَ —fataraka (11); تَرْكُهُمْ —tarkuhum (9); تَرَكْنَا —taraknā (9); تَارِكٍ —tārikin (8); وَتَرَكَهُمْ —watarakahum (8); تَرَكْتُكُمْ —taraktukum (7); فَتَرَكُوا —fatarakūā (7); تَارِكُهُ —tārikuhu (6); نَتْرُكْ —natruk (6); يَتْرُكُونَ —yatrukūna (6); تَرَكَهُمَا —tarakahumā (5); تَرَكُوهَا —tarakūhā (5); لِتَرْكِهِ —litarkihi (5); لِتَرْكِهَا —litarkihā (5); أَتْرَكُ —ʾatraku (4); فَتَرَكَهَا —fatarakahā (4); فَيَتْرُكُ —fayatruku (4); لِتَرْكِ —litarki (4); وَتَرْكُهَا —watarkuhā (4); وَيَتْرُكُوا —wayatrukūā (4); يَتْرُكْهُ —yatrukhu (4); تَرَكَا —tarakā (3); تَرَكْتُمُوهُ —taraktumūhu (3); تَرِكَتَهُ —tarikatahu (3); تَرْكَاهُ —

[166] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ترك (read dictionary entry).

taraknāhu (3); فَاتْرُكُوهُ —fātrukūhu (3); فَتَرَكْتُمْ —fataraktum (3); فَتَرَكُوهَا — fatarakūhā (3); وَبِتَرْكِ —wabitarki (3); وَتَرَكْتُمْ —wataraktum (3); وَتَرَكَكُمْ — watarakakum (3); وَيَتْرُكُونَ —wayatrukūna (3); يَتْرُكُوا —yatrukūā (3)

Context L2332: ... وَمَنْ هَمَّ بِسَيِّئَةٍ فَإِنْ تَرَكَهَا لِلَّهِ تَعَالَى كُتِبَتْ لَهُ حَسَنَةً ...

Context L2521: ... فِي الْوُجُوبِ فَلَا يَحِلُّ تَرْكُ أَحَدِهِمَا لِلْآخَرِ مَا دُمْنَا نَقْدِرُ ...

Attested spellings and counts

وَالثَّوْرِيُّ — wālththawriyyu (11); الثَّوْرِ —al-thawri (8); ثَوْرًا —thawran (3); ثَوْرٍ —thawrin (271); الثَّوْرِيِّ —al-thawriyyi (1,142)

Context L2373: ... ثنا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ وَقَالَ ابْنُ الْمُثَنَّى ثنا مُحَمَّدٌ ...

Context L2637: ... بْنُ مَهْدِيٍّ ثنا سُفْيَانُ الثَّوْرِيُّ عَنْ جَامِعِ بْنِ أَبِي رَاشِدٍ ...

167. ثَوْرِيّ / ثَوْر[167]

thawr / thawriyy

1,435 occurrences; cumulative coverage 74.96%.

Possible English: bull; rise or stir; Thawr; al-Thawrī

Context: الثوري commonly identifies Sufyān al-Thawrī. ثور can be a narrator's name or an animal; do not translate a personal epithet as a literal description of the man's behavior.

Forms and grammar: ثور / ثيران = bull / bulls; ثوري is a relational adjective. ثار / يثور = rose or stirred / rises or stirs. The shared root does not make al-Thawrī a plural form of ثور.

168. تَأْوِيل / أَوَّل[168]

ʾawwal / taʾwīl

1,433 occurrences; cumulative coverage 75.06%.

Possible English: first; earlier; initial; interpretation

Attested spellings and counts

أَوَّلُهَا —ʾawwalu (526); الْأَوَّل —al-ʾawwali (251); الْأُولَى —al-ʾūlā (133); لِلْأَوَّلِ — lilʾawwali (26); وَأَوَّلُ —waʾawwalu (24); تَأْوِيلٍ —taʾwīlin (23); التَّأْوِيلِ — ʾawwaluhā (87); أَوَّلًا —ʾawwalan (44); أَوَّلِهِ —ʾawwalihi (37)

[167] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ثور (read dictionary entry).

[168] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أول (read dictionary entry).

Context: الأول often points to the first item in a comparison or argument. تأويل is interpretation, not a grammatical tense or case form of first.

Forms and grammar: أولين / أولون / أولى / أول vary with agreement and case; أولا is commonly adverbial. أولي / أولو can instead mean possessors of, requiring its own construction. يتأول / تأوّل = interpreted / interprets.

al-taʾwīli (18); فَالْأَوَّلُ —fālʾawwalu (18); بِأَوَّلِ —biʾawwali (16); الْأُولَيَيْنِ — al-ʾūlayayni (15); تَأْوِيلًا —taʾwīlan (15); تَأْوِيلُهُمْ —taʾwīluhum (14); أَوَّلِهِمْ — ʾawwalihim (13); فَأَوَّلُ —faʾawwalu (13); الْأَوَّلِينَ —al-ʾawwalīna (12); آلَةً — ʾālatan (11); أُولِي —ʾūlī (11); بِآلَةٍ —biʾālatin (11); مُتَأَوِّلًا —mutaʾawwilan (11); يَتَأَوَّلُ —yataʾawwalu (11); تَأَوَّلَ —taʾawwala (10); أُولَاهُنَّ —ʾūlāhunna (9); بِالْأَوَّلِ —bitaʾwīlin (6); بِتَأْوِيلٍ —al-mutaʾawwili (6); الْمُتَأَوِّلِ —al-ʾālati (6); الْآلَةِ —biālʾawwali (5); بِالْأُولَى —biālʾūlā (5); فَأَوَّلًا —faʾawwalan (5); وَأُولِي — waʾūlī (4); وَالْأَوَّلُ —wālʾawwalu (4); أَوَّلُهُمَا —ʾawwaluhumā (3); الْأَوَّلَانِ — al-ʾawwalāni (3); التَّأْوِيلَاتِ —al-taʾwīlāti (3); بِالتَّأْوِيلِ —biāltaʾwīli (3); تَأَوَّلَهُ —taʾawwalahu (3); تَأَوَّلُوهُ —taʾawwalūā (3); تَأْوِيلَكُمْ —taʾawwalūhu (3); وَتَأَوَّلَ —taʾwīlikum (3); فَتَأَوَّلَ —fataʾawwala (3); مُتَأَوِّلِينَ —mutaʾawwilīna (3); —wataʾawwala (3)

Context L2224: ... كِتَابُ التَّوْحِيدِ مَسْأَلَة بَيَان أَوَّل مَا يَلْزَم كُلّ أَحَد وَلَا ...

Context L2225: ... مُحَمَّدٍ رَضِيَ اللَّهُ عَنْهُ أَوَّلُ مَا يَلْزَمُ كُلَّ أَحَدٍ وَلَا ...

169. بَقَرَة / بَقَر[169]

baqar / baqarah

1,412 occurrences; cumulative coverage 75.16%.

Possible English: cattle; cow; al-Baqarah

Attested spellings and counts

البقرة —al-bqrh* (940); الْبَقَرِ —al-baqari (187); بَقَرَةً —baqaratan (129); وَالْبَقَرِ —wālbaqari (73); بَقَرٍ —baqarin (26); وَالْبَقَرَةُ —wālbaqaratu (20); بِالْبَقَرِ —

[169]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: بقر (read dictionary entry).

Context: البقرة can be a cow or the Quranic chapter al-Baqarah, especially in a citation. The surrounding reference determines which is intended.

Forms and grammar: بقر is a collective noun; بقرة commonly denotes one cow; بقرات is a counted plural. The final ة here marks a unit/feminine noun, not a past-tense verb ending.

biālbaqari (8); بِبَقَرَةٍ —bibaqaratin (6); وَبَقَرٍ —wabaqari (6); بَقَرًا —baqaran (5); فَبَقَرَةٌ —fabaqaratun (5); بِالْبَقَرَةِ —biālbaqarati (4); بِبَقَرٍ —bibaqarin (3)

Context L2241: ... بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ البقرة فَمَنْ لَا بُرْهَانَ لَهُ فَلَيْسَ ...

Context L2297: ... يَلْعَنُهُمُ اللَّهُ وَيَلْعَنُهُمُ اللاعِنُونَ البقرة إِلا الَّذِينَ تَابُوا وَأَصْلَحُوا ... وَبَيَّنُوا ...

170. إِيلَاء / آل[170]

ʾāl / ʾīlāʾ*

1,396 occurrences; cumulative coverage 75.25%.

Possible English: household; family; people of; oath of marital abstention

Context: آل فلان means someone's family/household. الإيلاء is a distinct legal term concerning an oath of abstention, not a plural of آل.

Forms and grammar: آله = his household; وآله adds and. يؤلي / آلى and إيلاء belong to an oath-related formation; compare the dictionary's separate discussions. A shared spelling fragment does not establish one grammatical paradigm.

Attested spellings and counts

وَآلِهِ —waʾālihi (1,110); آل —ʾāl* (171); الْإِيلَاءِ —al-ʾīlāʾi (39); إِيلَاءٌ —ʾīlāʾun (29); آلَى —ʾālā (18); الْمُؤْلِي —al-muʾlī (7); لِآلِ —liʾāli (6); وَآلِ —waʾāli (5); آلِهِ —ʾālihi (4); مُؤْلِيًا —muʾliyan (3); يُؤْلُونَ —yuʾlūna (3); بِآلِ —biʾāli (1)

Context L2221: ... وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ قَالَ عَلِيُّ بْنُ أَحْمَدَ بْنِ ...

Context L2227: ... فِي الآخِرَةِ مِنَ الْخَاسِرِينَ آل عمران وَهُوَ قَوْلُ جَمِيعِ الصَّحَابَةِ ...

171. اغْتَسَلَ / غُسْل / غَسْل[171]

ghasl / ghusl / ʾghtasala

1,382 occurrences; cumulative coverage 75.34%.

Possible English: wash; washing; ritual bath; bathe

Attested spellings and counts

غُسْلَ —ghusla (287); الْغُسْلِ —al-ghusli (255); يَغْسِلُ —yaghsilu (88); تَغْتَسِلُ —taghtasilu (65); وَالْغُسْلُ —wālghuslu (60); يَغْتَسِلَ —yaghtasila (57); غُسْلِهِ —ghuslihi (54); اغْتَسَلَ —ʾghtasala (48); وَغَسْلُ —waghaslu (39); بِغَسْلِ —

[170] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أول (read dictionary entry); ألا (read dictionary entry).
[171] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: غسل (read dictionary entry).

Context: غسل can mean washing a body part or the whole-body ritual bath, with vowel-dependent noun readings. اغتسل commonly describes taking that bath.

Forms and grammar: غسل / يغسل = washed / washes; اغتسل / يغتسل = bathed / bathes; غسلها = washed it/her or her washing according to vowels. غُسل names the bath; غَسل commonly names the washing action.

bighasli (29); بِالْغُسْلِ —biālghusli (24); غُسْلًا —ghuslan (21); وَيُغْسَلُ — wayughsalu (20); تَغْسِلَ —taghsila (18); فَلْيَغْتَسِلْ —falyaghtasil (16); اغْتَسَلَتْ —ʾghtasalat (15); يَغْسِلُهُ —yaghsilhu (14); فَغَسَلَ —faghasala (12); فَاغْتَسِلِي —fāghtasilī (11); أَغْتَسِلُ —ʾaghtasilu (10); لِلْغُسْلِ —lilghusli (10); غُسْلِهَا — ghuslihā (9); وَغُسْلِهِ —wataghtasilu (9); وَتَغْتَسِلُ —fāghtasala (9); فَاغْتَسَلَ — waghuslihi (9); وَيَغْتَسِلَ —wayaghtasila (9); يَغْسِلَهَا —yaghsilahā (9); غَسَلَتْ — ghasalat (8); الْأَغْسَالِ —al-ʾaghsāli (7); الْمُغْتَسِلُ —al-mughtasilu (7); فَاغْسِلُوا —fāghsilūā (7); فَيَغْسِلُ —fayaghsilu (7); اغْتَسِلِي —ʾghtasilī (6); بِغَسْلِهِ — bighaslihi (6); فَاغْسِلِي —fāghsilī (6); فَالْغُسْلُ —fālghuslu (6); وَاغْتَسَلَ — wāghtasala (6); اغْسِلْ —ʾghsil (5); اغْسِلُوهُ —ʾghsilūhu (5); فَاغْتَسَلَتْ — fāghtasalat (5); كَغُسْلِ —kaghusli (5); وَاغْسِلْ —wāghsil (5); وَبِالْغُسْلِ — wabiālghusli (5); اغْسِلْنَهَا —ʾghsilnahā (4); اغْسِلْهُ —ʾghsilhu (4); تَغْسِلْهُ — taghsilhu (4); غُسَالَةَ —ghusālata (4); غَسَلَات —ghasalātin (4); غُسْلَانِ — ghuslāni (4); غُسْلَيْنِ —ghuslayni (4); فَاغْسِلْهُ —fāghsilhu (4); فَلْتَغْتَسِلْ — faltaghtasil (4); يَغْتَسِلُونَ —yaghtasilūna (4); أَغْسَالٍ —ʾaghsālin (3); اغْسِلِي — ʾghsilī (3); بِغَسْلَةٍ —bighaslatin (3); بِغَسْلِهَا —bighaslihā (3); غَسْلَةٍ — ghaslatin (3); فَاغْسِلُوهَا —fāghsilūhu (3); غَسَلَهُمَا —ghasalahumā (3); كَغُسَالَةِ —fāghsilūhā (3); لِغُسْلٍ —kaghusālati (3); لِلْمُغْتَسِلِ — lilmughtasili (3); وَغُسِلَتْ —waghusilat (3); وَيَغْسِلَهُمَا —wayaghsilahumā (3)

Context L2357: ... السَّلَامُ فَفَرَجَ صَدْرِي ثُمَّ غَسَلَهُ مِنْ مَاءِ زَمْزَمَ ثُمَّ جَاءَ ...

Context L2597: ... إِذَا قُمْتُمْ إِلَى الصَّلاةِ فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ ... وَامْسَحُوا ...

172. دِيَة[172]

diyah

1,380 occurrences; cumulative coverage 75.44%.

Possible English: blood money; compensation for killing or injury

Context: دية refers to the legally specified compensation in the relevant discussion. The recipient, amount and conditions require the rest of the passage.

Forms and grammar: دية / ديات = compensation payment(s); ديته / ديتها = compensation for him or it / her or it. The initial و of the traditional root is not written in دية.

Attested spellings and counts

الدِّيَة —al-diyati (718); دِيَةَ —diyata (347); دِيَتُهُ —diyatahu (70); بِالدِّيَةِ —biālddiyati (43); وَالدِّيَةُ —wālddiyatu (38); دِيَتِهَا —diyatihā (37); فَالدِّيَةُ —fālddiyatu (30); وَدِيَةٌ —wadiyatun (18); وَالدِّيَاتُ —wālddiyātu (11); دِيَاتٍ —diyātin (10); الْوَادِي —al-wādī (9); بِدِيَةٍ —bidiyati (9); فَدِيَتُهُ —fadiyatuhu (8); فَوَدَاهُ —fawadāhu (8); الدِّيَاتِ —al-diyāti (7); لِلدِّيَةِ —lilddiyati (5); بِوَادِي —biwādī (3); وَدُّوا —waddūā (3); وُدِيَ —wudiya (3); وَدَيْتُهُ —wadaytuhu (3)

Context L4541: ... وَإِسْكَانِ الدَّالِ وَيُونُسُ يَقُولُ بُدَيَّةَ بِالْبَاءِ الْمَضْمُومَةِ وَالدَّالِ الْمَفْتُوحَةِ وَالْيَاءِ ...

Context L5580: ... لِقَتْلِهِ فَهُوَ هَدَرٌ وَلَا دِيَةَ فِيهِ وَلَا قَوَدَ وَلَا كَفَّارَةَ ...

173. اسْتَوَى / سَوَاء[173]

sawāʾ / ʾstawā

1,363 occurrences; cumulative coverage 75.53%.

Possible English: equal; alike; the same; be level

Attested spellings and counts

سَوَاءٌ —sawāʾun (990); وَسَوَاءٌ —wasawāʾun (107); يُسَاوِي —yusāwī (45); فَسَوَاءٌ —fasawāʾun (39); السَّوَاءِ —al-sawāʾi (15); تُسَاوِي —tusāwī (15); سَاوَى —sāwā (14); بِسَوَاءٍ —bisawāʾin (11); يَسْتَوِي —yastawī (11); يُسَاوِ —yusāwi (10);

[172] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ودي (read dictionary entry).
[173] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: سوا (read dictionary entry).

Context: سواء can say that two legal cases are alike; it does not itself state why. سواء ... أو can mean whether ... or. استوى has a range of lexical constructions.

Forms and grammar: يساوي / ساوى = equalled / equals; يستوي / استوى is a different pattern; مساواة is equality. سواء is not a feminine or plural agreement ending.

174. عَدَد / عِدَّة[174]

ʿadad / ʿiddah

1,343 occurrences; cumulative coverage 75.62%.

Possible English: number; count; waiting period; prescribed count

Context: العدة in marital law commonly means the waiting period. عدة can also mean a number or equipment with other vowels; the topic selects the sense.

Forms and grammar: عد / يعد = counted / counts; عدد / أعداد = number(s); اعتدت = she observed the waiting period when read accordingly. عدتها = her waiting period or its number according to context.

اسْتَوَوْا —ʾstawawā (9); مُسْتَوِيًا —mustawiyan (9); بِالسَّوِيَّةِ —biālssawiyyati (8); اسْتِوَاءِ —ʾstiwāʾi (7); اسْتَوَتْ —ʾstawat (7); اسْتَوَى —ʾstawā (7); التَّسْوِيَةُ — al-taswiyatu (7); تَسْوِيَةُ —taswiyatu (7); فَسَوَّى —fasawwā (6); وَالتَّسْوِيَةُ — wālttaswiyatu (5); وَسَوَّى —wasawwā (5); يُسَوِّي —yusawwī (5); بِتَسْوِيَةِ — bitaswiyati (4); يُسَاوِيهِ —yusāwīhi (4); يُسَاوِيهَا —yusāwīhā (4); الْمُسَاوَاةِ — al-musāwāti (3); سَوُّوا —sawwūā (3); فَاسْتَوَتْ —fāstawat (3); مُسَاوِيًا — musāwiyan (3)

Context L2381: ... وَقَالَ عَزَّ وَجَلَّ لا يَسْتَوِي مِنْكُمْ مَنْ أَنْفَقَ مِنْ قَبْلِ ...

Context L2468: ... بِهِ بِلِسَانِهِ فَقَدْ وُفِّقَ سَوَاءٌ اسْتَدَلَّ أَوْ لَمْ يَسْتَدِلَّ فَهُوَ ...

Attested spellings and counts

الْعِدَّةِ —al-ʿiddati (238); عِدَّةَ —ʿiddata (222); عِدَّتِهَا —ʿiddatihā (165); عَدَدٍ —ʿadadin (92); تَعْتَدُّ —taʿtaddu (91); الْعَدَدِ —al-ʿadadi (54); يُعَدُّ —yuʿaddu (50); عَدَدًا —ʿadadan (40); يُعْتَدُّ —yuʿtaddu (35); فَعِدَّةٌ — faʿiddatun (19); لِعِدَّتِهِنَّ —liʿiddatihinna (18); وَالْعِدَّةُ —wālʿiddatu (17); وَتَعْتَدُّ —wataʿtaddu (16); اعْتَدَّتْ —ʾtaddat (13); عَدَّ —ʿadda (13); اعْتَدِّي — ʾtaddī (12); الْمُعْتَدَّةُ —al-muʿtaddatu (12); عِدَّتُهُنَّ —ʿiddatuhunna (12); وَعِدَّتُهَا —waʿiddatuhā (11); عَدَدُهُمْ —ʿadaduhum (10); فَعِدَّتُهُنَّ —faʿiddatuhunna (10); وَعِدَّةُ —waʿiddatu (10); بِعَدَدٍ —biʿadadin (9); عَدَّتْ —ʿaddat (9); فَعِدَّتُهَا

[174]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: عدد (read dictionary entry).

—faʿiddatuhā (9); كَعِدَّةِ —kaʿiddati (9); عَدَدُهُ —ʿadaduhu (8); عَدَدَهَا — ʿadadahā (8); يَعِدُّهُ —yaʿudduhu (8); مَعْدُودٍ —maʿdūdin (7); اعْتَدَّ —ʾʿtadda (6); تَعْتَدُّونَهَا —taʿtaddūnahā (6); نَعُدُّ —naʿuddu (6); الْعَدَدَيْنِ —al-ʿadadayni (5); بِالْعِدَّةِ —biālʿiddati (5); فَتَعْتَدُّ —fataʿtaddu (5); لِلْعِدَّةِ —lilʿiddati (5); مُعْتَدَّةً —muʿtaddatan (5); وَعَدَدِ —waʿadadi (5); أَعْتَدَّ —ʾaʿtadda (4); الْأَعْدَادِ — al-ʾaʿdādi (4); فَلْتَعْتَدَّ —biālʿadadi (4); بِالْعَدَدِ —al-maʿdūdātu (4); الْمَعْدُودَاتُ —falitaʿtadda (4); مَعْدُودَاتٍ —maʿdūdātin (4); وَالْعَدَدَ —wālʿadada (4); يَعُدُّونَ —yaʿuddūna (4); أُعِدَّتْ —ʾuʿiddat (3); اعْتَدَدْتَ —ʾʿtadadta (3); تَعُدُّونَ —taʿuddūna (3); فَاعْتَدَّتْ —fāʿtaddat (3); فَعُدَّ —faʿudda (3); نَعْتَدُّ — naʿtaddu (3); وَالْمَعْدُودَاتُ —wāʿtaddat (3); وَاعْتَدَّتْ —waʾaʿiddūā (3); وَأَعِدُّوا — wālmaʿdūdātu (3); وَعَدَدَهَا —waʿadadahā (3); وَيُعْتَدُّ —wayuʿtaddu (3); يَعْتَدُّونَ —yaʿtaddūna (3)

Context L2230: ... مُدَّةٌ كَمَا ذَكَرْنَا فَهُوَ عَدَدٌ مَعْدُودٌ وَيَزِيدُ بِمُرُورِهِ وَدَوَامِهِ وَالزِّيَادَةُ ... ...

Context L2232: ... أَنْ يَكُونَ قَدْ حَصَرَهُمَا الْعَدَدُ وَكُلُّ مَعْدُودٍ فَذُو نِهَايَةٍ كَمَا ...

175. مُبَاح / إِبَاحَة[175]

ʾibāḥah / mubāḥ

1,326 occurrences; cumulative coverage 75.71%.

Possible English: permission; permissibility; allow; permissible

Attested spellings and counts

إِبَاحَةُ —ʾibāḥatu (234); مُبَاحٌ —mubāḥun (178); أَبَاحَ —ʾabāḥa (131); يُبِحْ — yubiḥ (71); مُبَاحًا —mubāḥan (57); أُبِيحَ —ʾubīḥa (55); وَأَبَاحَ —waʾabāḥa (45);

[175] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: بوح (read dictionary entry).

Context: مباح denotes what is permitted in the relevant ruling. It is distinct from the author's claim that a report or contract is sound, even if both are positive evaluations.

Forms and grammar: أباح / يبيح = permitted / permits; إباحة is its verbal noun; مباح / مباحة agree with the described noun. يبح is a jussive form after a suitable particle.

أَبَاحَهُ —ʾabāḥahu (43); الْإِبَاحَة —al-ʾibāḥati (39); الْمُبَاح —al-mubāḥi (33); يُبِيحُ —yubīḥu (30); بِإِبَاحَة —biʾibāḥati (28); أَبَاحُوا —ʾabāḥūā (27); بِإِبَاحَتِهِ — biʾibāḥatihi (25); وَإِبَاحَةُ —waʾibāḥatu (23); إِبَاحَتُهُ —ʾibāḥatuhu (19); فَأَبَاحَ — faʾabāḥa (16); فَمُبَاحٌ —famubāḥun (16); الْمُبَاحَةِ —al-mubāḥati (15); وَأَبَاحُوا — waʾabāḥūā (13); يُبِيحُونَ —yubīḥūna (13); مُبَاحَةً —mubāḥatan (12); وَمُبَاحٌ — wamubāḥun (12); أَبَاحَهَا —ʾabāḥahā (11); وَأَبَاحَهُ —waʾabāḥahu (11); أَبَحْتُمْ — ʾabaḥtum (10); اسْتِبَاحَةً —ʾstibāḥatan (10); وَإِبَاحَتِهِ —waʾibāḥatihi (9); لِإِبَاحَةِ —liʾibāḥati (8); يُبَاحُ —yubāḥu (8); يُبْحِهُ —yubiḥhu (8); يُبِيحُوا —yubīḥūā (8); يُسْتَبَاحُ —yustabāḥu (8); إِبَاحَتِهِمْ —ʾibāḥatihim (7); يُبِيحُهُ —yubīḥuhu (7); فَأَبِيحُوا —faʾabīḥūā (6); إِبَاحَتَهَا —ʾibāḥatihā (5); بِإِبَاحَتِهَا —biʾibāḥatihā (5); فَأَبَاحُوا —faʾabāḥūā (5); وَالْإِبَاحَةُ —wālʾibāḥatu (5); أَبَاحَتْ —ʾabāḥat (4); أُبِيحَتْ —ʾubīḥat (4); إِبَاحَتِكُمْ —ʾibāḥatikum (4); فَأُبِيحَ —faʾubīḥa (4); مُبَاحَانِ —mubāḥāni (4); وَإِبَاحَتِهَا —waʾibāḥatihā (4); مُبِيحًا —mubīḥan (4); وَإِبَاحَتُهُمْ — waʾibāḥatuhum (4); وَيُبِيحُ —wayubīḥu (4); الْمُبِيحِ —al-mubīḥi (3); بِالْإِبَاحَةِ — biāl'ibāḥati (3); بِمُبِيحٍ —bimubīḥin (3); تُبَاحُ —tubāḥu (3); تُبِيحُونَ — tubīḥūna (3); وَأَبَاحَهَا —waʾabāḥahā (3); لِلْإِبَاحَةِ —lil'ibāḥati (3); وَيُبِيحُونَ — wayubīḥūna (3)

Context L2558: ... يَعْصِي مَنْ فَعَلَهُ وَإِمَّا مُبَاحٌ لَا يَعْصِي مَنْ فَعَلَهُ وَلَا ...

Context L2562: ... وَلَا نَهَى عَنْهُ فَهُوَ مُبَاحٌ وَلَيْسَ حَرَامًا وَلَا فَرْضًا وَأَنَّ ...

176. طَوَاف / طَائِفَة[176]

ṭawāf / *ṭāʾifah*

1,318 occurrences; cumulative coverage 75.80%.

Possible English: circumambulation; go around; group; party

Context: الطواف commonly names circumambulation in pilgrimage. طائفة is a group of people, not a tense or case form of the ritual noun.

Forms and grammar: طاف / يطوف = went around / goes around; طواف is the verbal noun; طائف is participial. طائفة / طوائف = group(s); the latter is a separate derived noun.

Attested spellings and counts

طَائِفَةٌ —ṭāʾifatun (741); الطَّوَافِ —al-ṭawāfi (79); الطَّائِفَةُ —al-ṭāʾifatu (69); وَطَائِفَةٌ —waṭāʾifatun (47); يَطُوفَ —yaṭūfa (44); الطَّائِفَتَيْنِ —al-ṭāʾifatayni (35); طَافَ —ṭāfa (35); طَوَافِ —ṭawāfi (35); فَطَائِفَةٌ —faṭāʾifatun (22); الطَّائِفِ —al-ṭāʾifi (21); طَوَائِفُ —ṭawāʾifu (16); الطَّوَائِفِ —al-ṭawāʾifi (13); طَائِفَتَانِ —ṭāʾifatāni (12); طَوَافُهُ —ṭawāfuhu (11); الطَّائِفِيِّ —al-ṭāʾifiyyi (11); تَطُوفَ —taṭūfa (11); وَالطَّوَافُ —ṭawāfan (10); طَوَافًا —faṭāfa (11); فَطَافَ —wālṭṭawāfu (10); يَطُفْ —yaṭuf (8); وَطَافَ —waṭāfa (6); بِالطَّائِفِ — biālṭṭāʾifi (5); بِطَائِفَتَيْنِ —biālṭṭāʾifati (5); بِالطَّائِفَةِ —biṭāʾifatayni (5); طَوَافُكِ — ṭawāfuki (5); فَلْيَطُفْ —falyaṭuf (5); وَطَوَافِ —waṭawāfi (5); أَطُفْ —ʾaṭuf (4); وَالطَّائِفِ —lilṭṭāʾifatayni (4); طَافَتْ —ṭāfat (4); طَوَافُهَا —ṭawāfuhā (4); لِلطَّائِفَتَيْنِ —wālṭṭāʾifi (4); أَطُوفُ —ʾaṭūfu (3); الطَّائِفَتَانِ —al-ṭāʾifatāni (3); بِالطَّائِفَتَيْنِ — biālṭṭāʾifatayni (3); بِطَائِفَةٍ —biṭāʾifatin (3); طَافُوا —ṭāfūā (3); طُفْ —ṭuf (3); لِطَوَافِ —liṭawāfi (3)

Context L2261: ... وَسَلَّمَ يَقُولُ لَا تَزَالُ طَائِفَةٌ مِنْ أُمَّتِي يُقَاتِلُونَ عَلَى الْحَقِّ ...

Context L2281: ... وَجَلَّ لِلْمُؤْمِنِينَ قَالَ تَعَالَى يَطُوفُ عَلَيْهِمْ وِلْدَانٌ مُخَلَّدُونَ الواقعة ... بِأَكْوَابٍ ...

[176] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: طوف (read dictionary entry).

177. فَاسِد / فَسَاد[177]

fasād / fāsid

1,311 occurrences; cumulative coverage 75.89%.

Possible English: invalidity; corruption; spoil; invalid; unsound

Context: فاسد can describe a transaction, ritual act or argument. English invalid, unsound or corrupt depends on the noun and the author's distinction in that passage.

Forms and grammar: فسد / يفسد = became unsound / becomes unsound; أفسد = spoiled or invalidated. فاسد / فاسدة agree in gender; فساد and إفساد are distinct verbal nouns.

Attested spellings and counts

فَاسِدٌ —fāsidun (277); فَسَادُ —fasādu (166); الْفَسَادِ —al-fasādi (164); الْفَاسِدِ —al-fāsidi (134); فَاسِدَةٌ —fāsidatun (113); الْفَاسِدَةِ —al-fāsidati (91); فَسَادًا —fāsidan (54); يَفْسُدُ —yafsudu (38); فَسَادِهِ —fasādihi (23); فَاسِدًا —fasādan (22); أَفْسَدَ —ʾafsada (21); وَفَسَادُ —wafasādu (16); فَفَاسِدٌ —fafāsidun (15); إِفْسَادِ —ʾifsādi (13); فَسَدَ —fasada (12); بِفَسَادِهِ —bifasādihi (10); تُفْسِدُ —tufsidu (10); بِفَسَادِ —bifasādi (9); فَاسِدَانِ —fāsidāni (9); فَسَادِهَا —fasādihā (9); وَالْفَسَادِ —wālfasādi (9); يُفْسِدُهُ —yufsiduhu (9); الْمُفْسِدِينَ —al-mufsidīna (8); مُفْسِدَةٍ —mufsidatin (8); أَفْسَدَتْ —ʾafsadat (7); وَإِفْسَادِ —waʾifsādi (7); إِفْسَادِهِ —ʾifsādihi (6); مُفْسِدٌ —mufsidun (5); مُفْسِدًا —mufsidan (5); أَفْسَدَهُ —ʾafsadahu (4); بِإِفْسَادِ —biʾifsādi (4); فَسَدَتْ —fasadat (4); لِفَسَادِ —lifasādi (4); وَفَسَادُهُ —wafasāduhu (4); الْمُفْسِدِ —al-mufsidi (3); بِالْفَسَادِ —biālfasādi (3); فَفَسَدَ —fafasada (3); فَيُفْسِدُ —fayufsidu (3); لِفَسَادِهِ —lifasādihi (3); وَأَفْسَدَ —waʾafsada (3); يُفْسِدُهَا —yufsiduhā (3)

Context L2222: ... مِنْ غَيْرِهِمْ وَالتَّنْبِيهِ عَلَى فَسَادِ الْقِيَاسِ وَتَنَاقُضِهِ وَتَنَاقُضِ الْقَائِلِينَ بِهِ ...

Context L2533: ... اللُّغَاتِ كُلِّهَا وَكَفَى بِهَذَا فَسَادًا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ ...

[177] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: فسد (read dictionary entry).

178. بَاقٍ / بَقِيَ[178]

baqiya / bāqin

1,303 occurrences; cumulative coverage 75.97%.

Possible English: remain; be left; remaining

Context: بقي can identify what remains of property, a period or an argument. It is not always a statement about physical survival.

Forms and grammar: يبقى / بقي = remained / remains; لم يبق drops the final weak letter. باق / باقية show agreement; بقية / بقايا = remainder(s).

Attested spellings and counts

بَقِيَ —baqiya (269); يَبْقَ —yabqa (164); بَاقِيَ —bāqiya (140); وَبَقِيَ —wabaqiya (113); بَاقٍ —bāqin (75); بَقِيَّةَ —baqiyyata (72); يَبْقَى —yabqā (59); الْبَاقِي —al-bāqī (50); فَبَقِيَ —fabaqiya (37); أَبْقَى —ʾabqā (23); وَيَبْقَى —wayabqā (23); بَاقِيَةٌ —bāqiyatun (20); بَقَاءِ —baqāʾi (19); بَقِيَتْ —baqiyat (19); بَاقِيهِ —bāqīhi (17); وَبَقِيَتْ —wabaqiyat (16); وَالْبَاقِي —wālbāqī (15); الْبَقَاءِ —al-baqāʾi (13); تَبْقَى —tabqā (11); إِبْقَاءُ —ʾibqāʾu (10); الْبَاقِيَةِ —al-bāqiyati (10); أَبْقَيْتَ —ʾabqat (8); الْبَاقُونَ —al-bāqūna (8); وَأَبْقَى —waʾabqā (8); أَبْقَتْ —ʾabqayta (7); الْبَاقِينَ —al-bāqīna (7); بَقِيَا —baqiyā (7); وَبَقِيَّةَ —wabaqiyyata (7); يُبْقِي —yubqī (7); بَقِيَّتُهُ —baqiyyatahu (6); وَتَبْقَى —watabqā (6); إِبْقَائِهِ —ʾibqāʾihi (5); الْبَاقِيَتَيْنِ —al-bāqiyatayni (4); بَاقِيًا —bāqiyan (4); بَاقِيَانِ —bāqiyāni (4); بِالْبَقَاءِ —biālbaqāʾi (4); بِبَقَاءِ —bibaqāʾi (4); بَقَايَا —baqāyā (4); فَبَقِيَتْ —fabaqiyat (4); فَيَبْقَى —fayabqā (4); وَبَاقِي —wabāqī (4); وَبَقَاءُ —wabaqāʾu (4); بَاقُونَ —bāqūna (3); بَاقِيَهَا —bāqiyahā (3); بِبَاقِي —bibāqī (3); يُبْقِيه —yubqīh (3)

Context L2230: ... بَقَاءِ الْجِسْمِ مُتَحَرِّكًا أَوْ سَاكِنًا وَمُدَّةُ ...

Context L2259: ... فَجَزَعَ النَّاسُ فَقَالَ قَدْ بَقِيَتْ مُبَشِّرَاتٌ وَهُنَّ جُزْءٌ مِنْ النُّبُوَّةِ ...

[178] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: بقي (read dictionary entry).

179. وَجْه / جِهَة[179]

wajh / jihah

1,303 occurrences; cumulative coverage 76.06%.

Possible English: face; side; aspect; way; respect; direction

Context: وجه in argument often means an aspect or interpretation. على وجه can mean in a manner. Physical face is selected by bodily contexts.

Forms and grammar: وجه / وجوه = face or aspect / faces or aspects; وجهه = his face or its aspect. جهة / جهات = direction or side / directions; وجّه / يوجّه are derived verb forms.

Attested spellings and counts

وَجْهِ —wajhin (327); وَجْهَهُ —wajhahu (115); الْوُجُوهِ —al-wujūhi (106); الْوَجْهِ —al-wajhi (103); لِوُجُوهٍ —liwujūhin (75); وَجْهَيْنِ —wajhayni (69); وُجُوهٍ —wujūhin (59); الْوَجْهَيْنِ —al-wajhayni (45); لِوَجْهَيْنِ —liwajhayni (41); وَجْهِهَا —wālwajhu (41); جِهَةٍ —jihatin (36); بِوَجْهِ —biwajhin (35); وَالْوَجْهُ —wajhihā (31); وَوَجْهٌ —wawajhun (28); أَوْجُهٍ —ʾawjuhin (24); لِلْوَجْهِ —lilwajhi (15); بِالْوَجْهِ —biālwajhi (14); وَجْهَكَ —wajhaka (12); وَجْهًا —wajhan (11); بِوَجْهِهِ —biwajhihi (9); لِوَجْهِ —liwajhi (8); وُجُوهِكُمْ —wujūhakum (11); وُجُوهًا —wujūhan (7); الْجِهَةِ —al-jihati (7); بِوُجُوهِكُمْ —biwujūhikum (7); وَوَجْهُهُ —wawajhuhu (7); جِهَاتِ —jihāti (6); وُجُوهَهُمْ —wujūhahum (6); الْوَجْهَانِ —al-wajhāni (5); لِوَجْهِهِ —liwajhihi (5); وَجْهَانِ —wajhāni (5); بِالْوُجُوهِ —biālwujūhi (4); جِهَتِهَا —jihatihā (4); وَجْهِي —wajhī (4); التَّوْجِيهُ —al-tawjīhu (3); تَوَجَّهَتْ —tawajjahat (3); جِهَتَيْنِ —jihatayni (3); مُتَوَجِّهٌ —mutawajjihun (3); وَوَجْهًا —wawajhan (3); وَوُجُوهِ —wawujūhi (3); يُوَجِّهُ —yuwajjihu (3)

Context L2222: ... ذَلِكَ وَتَقْرِيبِهِ وَأَنْ يَجْعَلَهُ لِوَجْهِهِ خَالِصًا وَفِيهِ مَحْضًا آمِينَ آمِينَ ...

Context L2232: ... بِخِلَافِ خَلْقِهِ مِنْ جَمِيعِ الْوُجُوهِ وَالْخَلْقُ كَثِيرٌ مُحْدَثٌ فَصَحَّ أَنَّهُ ...

[179] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: وجه (read dictionary entry).

180. حَوْل / حَال[180]

ḥāl / ḥawl

1,294 occurrences; cumulative coverage 76.15%.

Possible English: condition; state; year; change; around

Context: الحول often means a full year in zakāt. الحال in argument means the condition or situation. The lexical family has several distinct nouns.

Forms and grammar: حال / يحول = changed or intervened / does so; حول / أحوال have contextual noun uses. حالان / حالين are dual forms of condition; حولين can mean two years.

Attested spellings and counts

حَالِ —ḥālin (368); الْمُحَالِ —al-muḥāli (121); الْحَوْلِ —al-ḥawli (87); حَوْلًا —ḥawlan (44); حَوْلَ —ḥawla (42); الْأَحْوَالِ —al-ʾaḥwāli (33); مُحَالٌ —muḥālun (32); الْحَوْلَيْنِ —al-ḥawlayni (27); بِحَوْلِ —biḥawli (21); حَالِهِ —ḥālihi (19); حَوْلَيْنِ —ḥawlayni (19); إِحَالَةَ —ʾiḥālata (17); الْمُحِيلِ —al-muḥīli (15); حِيلَ —ḥīla (15); أَحْوَالِ —ʾaḥwāli (14); الْحَوَالَةُ —al-ḥawālatu (14); حَالَةَ —ḥālati (13); حَوْلَهُ —ḥawlahu (13); يُحَالَ —yuḥāla (13); يَسْتَحِيلُ —yastaḥīlu (12); حَوْلَهَا —ḥawlahā (11); تُحِيلُ —tuḥīlu (10); أَحَالَ —ʾaḥāla (9); حِيلَةَ —ḥīlata (9); يُحِيلُ —yuḥīlu (9); لِلْحَالِ —lilḥāli (7); أَحَالَهُ —ʾaḥālahu (6); أَحْوَالِهِ —ʾaḥwālihi (6); اسْتَحَالَ —ʾstaḥāla (6); وَمُحَالٌ —wamuḥālun (6); الْحَالَتَيْنِ —al-ḥālatayni (6); حَائِلٍ —ḥāʾilin (6); لِلْحَالَةِ —lilḥālati (6); الْحَالَةِ —al-ḥālati (5); أُحِيلَ —ʾuḥīla (5); اسْتَحَالَتْ —ʾstaḥālat (5); بِحَالٍ —biḥālin (5); حَالِهِمْ —ḥālihim (5); حِيَالِهِ —ḥiyālihi (5); فَتَحَوَّلَتْ —fataḥawwalat (5); لِحَوْلٍ —liḥawli (5); وَإِحَالَةُ —waʾiḥālatu (5); وَحَالُ —waḥālu (5); الْحِيلَةَ —al-ḥīlata (4); الْمُسْتَحِيلُ —al-mustaḥīlu (4); تَحَوَّلَ —taḥawwala (4); حَالِهَا —ḥālihā (4); حَوَالَةٌ —ḥawālatun (4); فَمُحَالٌ —famuḥālun (4); مُحَالًا —muḥālan (4); يُحِيلُهُ —yuḥīluhu (4); اسْتِحَالَةِ —

[180]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: حول (read dictionary entry).

ʾstiḥālati (3); بِالْمُحَالِ —biālmuḥāli (3); تَحْوِيلِ —taḥwīli (3); حَالَتْ —ḥālat (3); فَخَالَ —faḥāla (3); وَالْمُحَالِ —wālmuḥāli (3)

Context L2238: ... نَجِدُ الْجِسْمَ فِي بَعْضِ أَحْوَالِهِ لَا يَحُسُّ شَيْئًا وَأَنَّ الْمَرْءَ ...

Context L2303: ... وَتَرَى الْمَلَائِكَةَ حَافِّينَ مِنْ حَوْلِ الْعَرْشِ الزمر ...

181. قُدْرَة / قَدْر[181]

qadr / qudrah

1,293 occurrences; cumulative coverage 76.24%.

Possible English: amount; measure; extent; ability; determine

Context: قدر can give a quantity or an estimate. يقدر can mean is able or estimates, depending on vowels and construction. A numeral or following noun often clarifies it.

Forms and grammar: قدر / يقدر have several vowel-dependent readings; قادر / قادرة = able; مقدار / مقادير = measure(s); قدرة = ability. بقدر = to the extent of or in an amount of.

Attested spellings and counts

بِقَدْرِ —yaqdiru (278); قَدَرَ —qadara (229); مِقْدَارَ —miqdāra (211); يَقْدِرُ —biqadri (102); الْقَدْرِ —al-qadri (48); قَادِرٌ —qādirun (48); بِمِقْدَارِ —bimiqdāri (39); الْمِقْدَارِ —al-miqdāri (36); مِقْدَارُهُ —miqdāruhu (22); قَدَرُهُ —qadaruhu (21); قَادِرًا —qādiran (20); يَقْدِرُونَ —yaqdirūna (18); نَقْدِرُ —naqdiru (17); قَدَرْنَا —qadarnā (16); الْقُدْرَةِ —al-qudrati (14); مِقْدَارِهَا —miqdārihā (13); الْمَقْدُورِ —al-maqdūri (10); مِقْدَارًا —miqdāran (10); تَقْدِرُ —taqdiru (8); الْقُدُورَ —al-qudūra (7); قَدْرًا —qadran (7); قَدْرُهَا —qadruhā (7); قَادِرُونَ —qādirūna (6); قَدِيرٌ —qadīrun (6); وَقَدَرَ —waqadara (6); وَمِقْدَارِ —wamiqdāri (6); أَقْدَرُ —ʾaqdaru (5); بِقَدْرِهِ —biqadrihi (5); قَدَرُوا —qadarūā (5); قُدُورِهِمْ —qudūrihim (5); مَقْدُورٍ —maqdūrin (5); الْقَادِرُ —al-qādiru (4); وَالْقَدْرِ —qādirīna (4); كَقَدْرِ —kaqadri (4); مَقْدُورًا —maqdūran (4); قَادِرِينَ —wālqadri (4); الْمَقَادِيرِ —yaqdirūā (4); أَقْدَارِهِ —ʾaqdārihi (3); يَقْدِرُوا —al-maqādīri (3); بِالْقَدَرِ —biālqadari (3); بِمِقْدَارِهِ —bimiqdārihi (3); تَقْدِرُوا —

[181] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: قدر (read dictionary entry).

taqdirūā (3); فَبِقَدْرِ —fabiqadri (3); فَقَدَرَ —faqadara (3); قَادِرَةٌ —qādiratun (3); قدرة —qdrh* (3); قَدَرَتْ —qadarat (3); قُدْرَتِهِ —qudratihi (3); لِمِقْدَارِ —limiqdāri (3); لِمِقْدَارِهَا —limiqdārihā (3)

Context L2249: ... أَلْبَتَّةَ فِي الْعَقْلِ أَنْ يَقْدِرَ عَلَيْهَا مَخْلُوقٌ حَاشَا خَالِقَهَا الَّذِي ...

Context L2310: ... وَالْآخِرِينَ فِي يَوْمٍ كَانَ مِقْدَارُهُ خَمْسِينَ أَلْفَ سَنَةٍ يُحَاسَبُ فِيهِ ...

182. أَقَلّ / قَلِيل[182]

qalīl / ʾaqall

1,292 occurrences; cumulative coverage 76.32%.

Possible English: little; few; less; least; reduce

Context: أقل is comparative/superlative, often used for a minimum. قلّ is a verb meaning became little; do not confuse it with قُلْ, say!, from قول.

Forms and grammar: قليل / قليلة agree with a noun; أقل = less or least; قلة = small quantity. قلّ / يقلّ = was little / is little. قليلها = its small amount or her few things according to context.

Attested spellings and counts

أَقَلَّ —ʾaqalla (465); قَلَّ —qalla (234); فَأَقَلَّ —faʾaqalla (97); قَلِيلًا —qalīlan (71); بِأَقَلَّ —biʾaqalla (68); قَلِيلٌ —qalīlun (59); الْقَلِيلِ —al-qalīli (33); وَأَقَلَّ —waʾaqallu (31); الْأَقَلُّ —al-ʾaqallu (23); أَقَلُّهُ —ʾaqalluhu (20); قَلِيلُهُ —qalīluhu (19); قِلَّةِ —qillati (18); فَقَلِيلُهُ —faqalīluhu (12); لِأَقَلِّ —liʾaqalli (12); الْقُلَّتَيْنِ —al-qullatayni (11); قَلِيلُهَا —qalīluhā (11); أَقَلَّهَا —ʾaqallahā (10); وَالْقَلِيلُ —wālqalīlu (10); الْقُلَّةُ —al-qullatu (8); الْمُقِلِّ —al-muqilli (8); قَلِيلَةٍ —qalīlatin (8); وَبِأَقَلَّ —wabiʾaqalla (8); بِقَلِيلِ —biqalīli (7); وَقِلَّةِ —waqillati (7); قُلَّتَيْنِ —qullatayni (5); لِقِلَّةِ —liqillati (5); بِالْأَقَلِّ —biāl'aqalli (4); فَالْقَلِيلُ —fālqalīlu (4); يَسْتَقِلُّ —yastaqillu (4); قُلَّوا —qallūā (4); قِلَالِ —qilāli (4); الْقُلَّتَانِ —al-qullatāni (3); وَالْأَقَلُّ —wāl'aqallu (3); وَقِلَّتِهِ —waqillatihi (3); وَقَلِيلُ —waqalīlu (3)

Context L2241: ... وَهَذَا بَاطِلٌ قَالَ تَعَالَى قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ ...

[182] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: قلل (read dictionary entry).

Context L2254: ... وَالإِنْسِ الأنعام وَقَالَ تَعَالَى قُلْ أُوحِيَ إِلَيَّ أَنَّهُ اسْتَمَعَ نَفَرٌ ...

183. تَمَّ / تَمَام[183]

tamma / *tamām*

1,279 occurrences; cumulative coverage 76.41%.

Possible English: be complete; finish; completion; complete

Context: تم can mark completion of an act or an argument. أتم means completed or made complete; a legal requirement of completion depends on the sentence.

Forms and grammar: تم / يتم = became complete / becomes complete; أتم / يتم = completed / completes with different vowels. تام / تامة agree; تمام and إتمام are different verbal nouns.

Attested spellings and counts

يُتِمَّ —yutimma (183); تَمَامِ —tamāmi (164); أَتَمَّ —ʾatamma (95); تَمَّ —tamma (93); تَامَّةٌ —tāmmatun (90); تَتِمَّ —tatimma (81); تَمَّتْ —tammat (68); تَامٌّ —tāmmun (66); تَمِيمِ —tamīmin (47); التَّمِيمِيُّ —al-tamīmiyyu (25); بِتَمَامِ —bitamāmi (25); إِتْمَامِ —ʾitmāmi (23); أَتَمَّتْ —ʾatammat (20); أَتَمَّتَهَا —ʾatammathā (18); أَتَمَّهَا —ʾatammahā (16); وَأَتَمَّتْ —waʾatammat (16); وَتَمَّ —watamma (16); أَتِمُّوا —ʾatimmūā (14); تَامًّا —tāmman (14); فَأَتِمُّوا —faʾatimmūā (14); فَأَتَمَّ —faʾatimma (13); وَأَتِمُّوا —waʾatimmūā (12); وَتَمَّتْ —watammat (12); الْإِتْمَامِ —al-ʾitmāmi (10); تَمَامِهِ —tamāmihi (10); وَأَتَمَّ —waʾatamma (10); تَمَامِهَا —tamāmihā (9); فَيُتِمَّ —fayutimma (9); وَيُتِمُّ —wayutimmu (8); التَّامِّ —al-tāmmi (7); فَلْيُتِمَّ —falyutimma (7); يُتِمُّوا —yutimmūā (7); يُتِمَّهَا —yutimmahā (6); إِتْمَامِهَا —ʾitmāmihā (5); التَّامَّةِ —al-tāmmati (5); التَّمَامِ —al-tamāmi (5); بِتَمَامِهِ —bitamāmihi (5); إِتْمَامِهِ —ʾitmāmihi (4); بِإِتْمَامِ —biʾitmāmi (4); بِتَمَامِهَا —bitamāmihā (4); تَمِيمَةَ —tamīmata (4); وَأَتْمَمْتُ —waʾatmamtu (4); وَإِتْمَامِ —waʾitmāmi (4); وَتَمَامِهِ —watamāmihi (4); وَتَمِيمٌ —watamīmun (4); يُتِمُّونَ —yutimmūna (4); فَتَمَّتْ

[183] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: تمم (read dictionary entry).

—fatammat (3); لِتَمَامِ —litamāmi (3); وَتَتِمُّ —watatimmu (3); وَتَمَامُ — watamāmu (3); وَلْيُتِمَّ —walyutimma (3)

Context L2238: ... حِينَ مَوْتِهَا وَالَّتِي لَمْ تَمُتْ فِي مَنَامِهَا فَيُمْسِكُ الَّتِي قَضَى ...

Context L2351: ... حِينَ مَوْتِهَا وَالَّتِي لَمْ تَمُتْ فِي مَنَامِهَا الزمر فَالْوَفَاةُ قِسْمَانِ ...

184. زَهْر / زُهْرِيّ[184]

zuhriyy / zahr

1,266 occurrences; cumulative coverage 76.50%.

Possible English: al-Zuhrī; blossom; brightness

Context: الزهري commonly identifies the transmitter al-Zuhrī. It is a relational name; a literal botanical translation would misidentify its role in a chain.

Forms and grammar: زهري adds the relational ـي; الزهري adds the definite article. زهر and زهرة are related lexical forms, while the personal designation needs contextual identification.

Attested spellings and counts

وَالزُّهْرِيّ —wālzzuhriyyi (152); زُهَيْرُ —zuhayru (175); الزُّهْرِيِّ —al-zuhriyyi (887); زُهْرَةَ —zuhrata (8); وَزُهَيْرُ —wazuhayru (24); أَزْهَرَ —ʾazhara (13); لِلزُّهْرِيِّ —lilzzuhriyyi (4); الْأَزْهَرِ —al-ʾazhari (3)

Context L2282: ... مُسْلِمُ بْنُ الْحَجَّاجِ ثنا زُهَيْرُ بْنُ حَرْبٍ ثنا سُفْيَانُ عَنْ ...

Context L2301: ... الرَّزَّاقِ ثنا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ قَالَتْ ...

185. جَلَال / جَلَّ[185]

jalla / jalāl

1,262 occurrences; cumulative coverage 76.58%.

Possible English: be majestic; great; majesty

Context: جل in عز وجل is a divine honorific. جلالة concerns greatness or majesty; do not treat the formula as a new factual event each time it occurs.

Attested spellings and counts

وَجَلَّ —wajalla (1,210); الْجَلَالِ —al-jalāli (6); الْجَلَّالَةِ —al-jallālati (15); جَلَّالٍ —jallālin (6); جَلَّ —jalla (5); وَالْجَلَالَةِ —wāljalālati (5); جَلَّالَةً —jallālatan (5); وَجِلَالَهَا —wajilālahā (3); الْجُلَّةَ —al-jullata (3); وَأَجَلُّ —waʾajallu (4)

Context L2222: ... بِهِ فَاسْتَخَرْتُ اللَّهَ عَزَّ وَجَلَّ عَلَى عَمَلِ ذَلِكَ وَاسْتَعَنْته تَعَالَى ...

[184] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: زهر (read dictionary entry).
[185] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: جلل (read dictionary entry).

Forms and grammar: جلّ / يجلّ are verb forms with vowel-dependent senses; جلال and جلالة are nouns. جلّي, evident, and other same-spelled formations require their own context.

186. إِرَادَة / أَرَادَ[186]

ʾarāda / ʾirādah

1,249 occurrences; cumulative coverage 76.67%.

Possible English: want; intend; mean; will

Context: أراد به can mean intended by it or meant by the expression. English want may be too casual in a discussion of intention.

Forms and grammar: أراد / يريد = intended / intends; أردت = I or you intended; أرادت = she intended; إرادة = intention. يريده = intends or wants it.

Context L2241: ... كَانَتْ بِيَدِ اللَّهِ عَزَّ وَجَلَّ فَأَرْسَلَهَا أَنَّى شَاءَ فَعَبَّرَ رَسُولُ ...

Attested spellings and counts

أَرَادَ —ʾarāda (517); يُرِيدُ —yurīdu (215); فَأَرَادَ —faʾarāda (64); أَرَدْتَ —ʾaradt (49); أُرِيدُ —ʾurīdu (48); مُرَادَ —murāda (30); تُرِيدُ —turīdu (28); الْمُرَادُ —al-murādu (25); مُرَادِهِ —murādihi (24); أَرَادُوا —ʾarādūā (18); أَرَادَتْ —ʾarādat (16); وَأَرَادَ —waʾarāda (16); أَرَادَا —ʾarādā (15); يُرِيدُونَ — yurīdūna (15); أُرِدْ —ʾurid (14); فَأَرَدْتُ —faʾaradt (13); أَرَدْنَا —ʾaradnā (12); إِرَادَةِ —ʾirādati (12); رَوَّادِ —rawwādin (11); مُرِيدٌ —murīdun (11); أَرَادَهُ —ʾarādahu (10); أَرَدْتُمْ —ʾaradtum (10); تُرِيدُونَ —turīdūna (10); يُرِيدُهُ —yurīduhu (10); يُرَادُ —yurādu (9); فَأَرَادَتْ —faʾarādat (7); فَأَرَادُوا — faʾarādūā (5); وَأَرَادُوا —waʾarādūā (5); يُرِيدَانِ —yurīdāni (5); أَرَادَهَا — ʾarādahā (4); تُرِيدِينَ —turīdīna (4); مُرِيدًا —murīdan (4); يُرِيدَا —yurīdā (4); إِرَادَتِهِ —ʾirādatihi (3); بِإِرَادَتِهِ —biʾirādatihi (3); وَيُرِيدُونَ —wayurīdūna (3)

Context L2263: ... عَلَيْكَ النساء وَقَالَ تَعَالَى وَيُرِيدُونَ أَنْ يُفَرِّقُوا بَيْنَ اللَّهِ وَرُسُلِهِ ...

Context L2287: ... وَسَعِيرًا الإنسان وَقَالَ تَعَالَى يُرِيدُونَ أَنْ يَخْرُجُوا مِنَ النَّارِ وَمَا ...

[186] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: رود (read dictionary entry).

187. وَقْت / مِيقَات[187]

waqt / mīqāt

1,246 occurrences; cumulative coverage 76.75%.

Possible English: time; appointed time; time limit; prescribed boundary

Context: وقت الصلاة is the time for prayer. ميقات can be a fixed time or a pilgrimage entry boundary. The noun's complement identifies what is scheduled.

Forms and grammar: وقت / أوقات = time / times; ميقات / مواقيت = prescribed time or boundary / plural. وقته / وقتها change the referent; وقتا is a common accusative form.

Attested spellings and counts

وَقْتِ —waqti (399); الْوَقْتِ —al-waqti (247); وَقْتِهَا —waqtihā (187); وَقْتِهِ —waqtihi (53); الْمِيقَاتِ —al-mīqāti (46); وَقْتًا —waqtan (45); الْأَوْقَاتِ —al-ʾawqāti (44); وَوَقْتُ —wawaqtu (41); الْمَوَاقِيتِ —al-mawāqīti (30); بِوَقْتٍ —biwaqtin (25); أَوْقَاتِ —ʾawqāti (22); مِيقَاتٍ —mīqātin (21); لِوَقْتِهَا —liwaqtihā (15); التَّوْقِيتُ —al-tawqītu (9); الْوَقْتَيْنِ —al-waqtayni (8); يُوَقِّتْ —yuwaqqit (8); أَوْقَاتِهَا —ʾawqātihā (6); تَوْقِيتٍ —tawqītin (6); لِلْوَقْتِ —lilwaqti (6); مَوَاقِيتُ —mawāqītu (5); بِالْوَقْتِ —biālwaqti (4); وَالْوَقْتُ —wālwaqtu (4); تَوْقِيتِهِ —tawqītihi (3); لِوَقْتٍ —liwaqti (3); مِيقَاتِهِ —mīqātihi (3); وَقَّتَتْ —waqqatat (3); وَوَقْتُهَا —wawaqtuhā (3)

Context L2310: ... وَأَنَّ الْبَعْثَ حَقٌّ وَهُوَ وَقْتٌ يَنْقَضِي فِيهِ بَقَاءُ الْخَلْقِ فِي ...

Context L2404: ... قَبُولِ الدُّعَاءِ فِي هَذِهِ الْأَوْقَاتِ لَا حَرَكَةَ وَالْحَرَكَةُ وَالنَّقْلَةُ مِنْ ...

188. نَكَحَ / نِكَاح[188]

nikāḥ / nakaḥa

1,241 occurrences; cumulative coverage 76.83%.

Possible English: marriage; marry; sexual intercourse in some lexical contexts

Attested spellings and counts

النِّكَاحِ —al-nikāḥi (309); نِكَاحٍ —nikāḥin (273); تَنْكِحَ —tankiḥa (81); نِكَاحُهَا —nikāḥuhā (58); يَنْكِحُ —yankiḥu (55); نَكَحَ —nakaḥa (38); وَالنِّكَاحُ —wālnnikāḥu (35); نِكَاحُهُ —nikāḥuhu (33); إِنْكَاحُ —ʾinkāḥu (28); نِكَاحًا —

[187] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: وقت (read dictionary entry).
[188] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: نكح (read dictionary entry).

Context: نكاح in legal discussion commonly names the marriage relationship or contract. The precise intended sense must follow the author's argument and the object of the verb.

Forms and grammar: نكح / ينكح = married / marries; أنكح = married someone off; إنكاح is its verbal noun. نكاحها = her marriage; نكحها = he married her when vowelled as a verb.

nikāḥan (27); نَكَحَتْ —nakaḥat (27); نِكَاحِهِمَا —nikāḥihimā (21); يُنْكِحَهَا —yunkiḥahā (20); النَّاكِحِ —al-nākiḥi (18); أَنْكَحَ —ʾankaḥa (17); وَأَنْكِحُوا — waʾankiḥūā (17); وَنِكَاحُ —wanikāḥu (11); تَنْكِحُوا —tankiḥūā (10); فَنِكَاحُهَا — fanikāḥuhā (10); إِنْكَاحِهَا —ʾinkāḥihā (9); فَانْكِحُوا —fānkiḥūā (9); نِكَاحَهُنَّ — nikāḥahunna (9); أَنْكَحَهَا —ʾankaḥahā (8); بِنِكَاحٍ —binikāḥin (8); فَانْكِحُوهُنَّ —fānkiḥūhunna (7); نَاكِحٍ —nākiḥin (7); أَنْكَحْتَهَا —ʾankaḥthā (6); بِالنِّكَاحِ — biālnnikāḥi (6); إِنْكَاحُهُ —wāl'inkāḥu (6); وَالْإِنْكَاحُ —fālnnikāḥu (6); فَالنِّكَاحُ —ʾinkāḥuhu (5); الْإِنْكَاحِ —al-ʾinkāḥi (5); الْمُنْكِحُ —al-munkiḥu (5); الْمَنْكُوحَةِ —al-mankūḥati (5); بِإِنْكَاحِ —biʾinkāḥi (5); وَنِكَاحُهُ —wanikāḥuhu (5); أَنْكَحَتْ —ʾankaḥat (4); لِنِكَاحِ —linikāḥi (4); فَأَنْكَحَهَا —faʾankaḥahā (4); أَنْكَحَنِي — ʾankaḥanī (3); الْمُنْكَحَةُ —al-munkaḥatu (3); أَنْكَحَهُ —ʾankaḥahu (3); انْكِحِي —ʾnkiḥī (3); بِإِنْكَاحِهَا —biʾinkāḥihā (3); تَنْكِحُوهُنَّ —tankiḥūhunna (3); نَكَحْته —nakaḥth (3); وَنَكَحَ —wanakaḥa (3); يَنْكِحَا —yankiḥā (3); يُنْكَحْنَ — yunkaḥna (3)

Context L2843: ... قِيلَ قَدْ أُبِيحَ لَنَا نِكَاحُ الْكِتَابِيَّاتِ وَوَطْؤُهُنَّ قُلْنَا نَعَمْ فَأَيُّ ...

Context L2845: ... فِي طَهَارَةِ الْكِتَابِيَّاتِ جَوَازُ نِكَاحِهِنَّ وَهَذِهِ الْعِلَّةُ مَعْدُومَةٌ بِإِقْرَارِهِمْ ... فِي

189. حَرِير / حُرّ[189]

ḥurr / ḥarīr

1,233 occurrences; cumulative coverage 76.92%.

Possible English: free person; free; silk; liberate

Context: حر in status law contrasts with enslaved. حرير is silk, not a plural of حر. تحرير رقبة concerns freeing an enslaved person in the relevant legal formula.

Forms and grammar: حر / حرة show gender; أحرار / حرائر are plurals. حرّر / يحرّر = freed or set down precisely / does so; تحرير is a verbal noun with context-dependent sense.

Attested spellings and counts

حُرٌّ —ḥurrun (269); الْحُرِّ —al-ḥurri (206); الْحُرَّةِ —al-ḥurrati (138); حُرَّةٌ —ḥurratun (136); حُرًّا —ḥurran (107); الْحَرِيرِ —al-ḥarīri (49); الْأَحْرَارِ —al-ʾaḥrāri (40); الْحُرِّيَّةِ —ʾaḥrārun (29); وَالْحُرَّةِ —wālḥurrati (34); أَحْرَارٌ —al-ḥurriyyati (25); الْحَرَائِرِ —wālḥurru (25); وَالْحُرُّ —ḥarīrin (24); حَرِيرٍ —al-ḥarāʾiri (20); لِلْحُرِّ —lilḥurri (12); فَتَحْرِيرُ —fataḥrīru (18); أَحْرَارًا —ʾaḥrāran (12); كَالْحُرِّ —kālḥurri (10); حُرَّانِ —ḥurrāni (10); وَالْحَرَائِرِ —wālḥarāʾiri (11); لِلْحُرَّةِ —lilḥurrati (9); وَالْحَرِيرَ —wālḥarīra (9); بِالْحُرِّ —biālḥurri (6); حَرَائِرُ —ḥarāʾiru (5); تَحْرِيرُ —taḥrīru (4); وَتَحْرِيرُ —wataḥrīru (4); الْمُحَرَّرِ —al-muḥarrari (3); بِالْحُرَّةِ —biālḥurrati (3); تَحَرِّي —taḥarrī (3); حَارٍّ —ḥārrin (3); حُرَّيْنِ —ḥurrayni (3); كَالْحُرَّةِ —kālḥurrati (3); مُحَرَّرٍ —muḥarrarin (3)

Context L2281: ... وَقَالَ تَعَالَى وَلِبَاسُهُمْ فِيهَا حَرِيرٌ الحج وَقَالَ تَعَالَى وَحُلُّوا أَسَاوِرَ ...

Context L2774: ... تَعَالَى أَوْ رَسُولُهُ نَجِسًا وَالْحَرِيرُ وَالذَّهَبُ حَرَامٌ عَلَى الرِّجَالِ وَلَيْسَا ...

[189] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: حرر (read dictionary entry).

190. عَيْش / عَائِشَة[190]

ʿāʾishah / ʿaysh

1,225 occurrences; cumulative coverage 77.00%.

Possible English: ʿĀʾishah; life; livelihood

Context: عائشة commonly names ʿĀʾishah, but the name alone is not a complete biography. عيش in another context means living or livelihood.

Forms and grammar: عاش / يعيش = lived / lives; عيش is a verbal noun. عائشة is a feminine participial/name formation, not a plural of the noun; معيشة is another derived noun.

Attested spellings and counts

عَائِشَةَ —ʿāʾishata (946); عَيَّاشٍ —ʿayyāshin (100); وَعَائِشَةَ —waʿāʾishata (57); عَاشَ —ʿāsha (27); لِعَائِشَةَ —liʿāʾishata (27); يَعِيشُ —yaʿīshu (23); عَيْشٍ — ʿayshin (10); الْعَيْشِ —al-ʿayshi (5); عِشْت —ʿisht (5); عِيشَةٍ —ʿīshatin (4); عَيْشِهِ —ʿayshihi (4); فَعَاشَ —faʿāsha (4); مَعَاشَ —maʿāsha (4); بِعَائِشَةَ —biʿāʾishata (3); مَعَاشُهُ —maʿāshuhu (3); وَعَيَّاشٍ —waʿayyāshi (3)

Context L2273: ... مَوَازِينُهُ القارعة فَهُوَ فِي عِيشَةٍ رَاضِيَةٍ القارعة وَأَمَّا مَنْ خَفَّتْ ...

Context L2301: ... الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ قَالَتْ قَالَ رَسُولُ اللَّهِ صَلَّى ...

191. رَجْعَة / رَجَعَ[191]

rajaʿa / rajʿah

1,221 occurrences; cumulative coverage 77.08%.

Possible English: return; retract; refer back; marital return

Context: رجع can describe returning property or retracting an opinion. رجعة in divorce law concerns taking a wife back during the relevant legal period, a specific use.

Forms and grammar: رجع / يرجع = returned / returns; رجعت = I, you or she according to vowels; راجع / يراجع is another pattern. رجعي / رجعية are relational adjectives; رجوع and رجعة are different nouns.

Attested spellings and counts

رَجَعَ —rajaʿa (218); يَرْجِعُ —yarjiʿu (161); الرُّجُوعُ —al-rujūʿu (145); رُجُوعَ —rujūʿa (68); رَاجِعٌ —rājiʿun (43); رَجْعَةٌ —rajʿatun (41); الرَّجْعَةُ —al-rajʿatu (35); تَرْجِعُ —tarjiʿu (35); رَجْعِيَّةٌ —rajʿiyyatun (32); فَرَجَعَ —faraja ʿa (29); رُجُوعِهِ —rujūʿihi (21); وَيَرْجِعُ —wayarjiʿu (20); يُرَاجِعَهَا —yurājiʿahā (19); رَجَعَتْ —raja ʿat (18); ارْجِعْ —ʾrjiʿ (17); رَاجَعَهَا — rāja ʿahā (16); رَجْعِيًّا —rajʿiyyan (16); رَجَعْنَا —raja ʿnā (14); فَرَجَعْت — faraja ʿt (14); وَرَجَعَ —waraja ʿa (14); نَرْجِعُ —narjiʿu (13); رَجَعْتُمْ —

[190] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: عيش (read dictionary entry).
[191] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: رجع (read dictionary entry).

الرَّجْعِيِّ —rajaʿtum (10); رَجَعُوا —rajaʿūā (10); وَالرَّجْعَةِ —wālrrajʿati (10); — فَالْمَرْجُوعُ —al-rajʿiyyi (9); يَرْجِعُوا —yarjiʿūā (9); رَاجِعًا —rājiʿan (8); — رَجْعِيٌّ —fālmarjūʿu (8); بِرُجُوعِهِ —birujūʿihi (7); رَاجِعُونَ —rājiʿūna (7); — بِالرُّجُوعِ —raj'iyyun (7); فَلْيَرْجِعْ —falyarjiʿ (7); بِالرَّجْعَةِ —biālrrajʿati (6); — وَالرُّجُوعُ —biālrrujūʿi (6); رَجْعَتَهَا —rajʿatahā (6); فَلْيُرَاجِعْهَا —falyurājiʿhā (6); — رَجِيعَ —wālrrujūʿu (6); يَرْتَجِعَهَا —yartajiʿahā (6); الْمَرْجُوعُ —al-marjūʿu (5); rajīʿa (5); فَيَرْجِعُ —fayarjiʿu (5); وَرَجَعُوا —warajaʿūā (5); يُرَاجِعَ —yurājiʿa (5); أَرْجِعُ —ʾarjiʿu (4); الْمُرَاجَعَةِ —al-murājaʿati (4); بِمُرَاجَعَتِهَا —bimurājaʿatihā (4); تَرْجِعِي —tarjiʿī (4); رَجْعِيَّتَيْنِ —rajʿiyyatayni (4); مُرَاجَعَتُهُ —murājaʿatahu (4); وَتَرْجِعُ —watarjiʿu (4); ارْتِجَاعُهُ —ʾrtijāʿuhu (3); ارْتِجَاعَهَا —ʾrtijāʿahā (3); ارْجِعِي — رَاجِعَةٌ —ʾrjiʿī (3); بِرَجْعَتِهَا —birajʿatihā (3); تَرْجِعُوهُنَّ —tarjiʿūhunna (3); رَاجَعْتُ —rājaʿat (3); رُجُوعَهَا —rujūʿahā (3); فَارْجِعْ —fārjiʿ (3); فَرَجَعُوا —faraja'ūā (3); مُرَاجَعَةِ —murājaʿati (3); مُرْتَجَعَةً —murtajaʿatan (3); وَارْتَجَعَ —wārtajaʿa (3); وَالرَّجِيعِ —wālrrajīʿi (3); وَالْمَرْجُوعُ —wālmarjūʿu (3); وَرَاجَعَ —warājaʿa (3); يَتَرَاجَعَانِ —yatarājaʿāni (3)

Context L2352: ... مَسْأَلَة لَا يرجع مُحَمَّد وَلَا أَحَد مِنْ أصحابه ...

Context L2353: ... مَسْأَلَةٌ وَأَنَّهُ لَا يَرْجِعُ مُحَمَّدٌ رَسُولُ اللَّهِ صَلَّى اللَّهُ ...

192. يَقِين[192]

yaqīn

1,219 occurrences; cumulative coverage 77.17%.

Possible English: certainty; be certain; ascertain

Context: بيقين means with certainty, contrasted with doubt or conjecture. The author's certainty claim must be distinguished from its reader's assessment.

Forms and grammar: يوقن / أيقن = became certain / is certain; يتيقن / تيقن is another pattern. يقينا is an accusative/adverbial form; متيقن = certain or ascertained according to vowels.

Attested spellings and counts

بِيَقِينٍ —biyaqīnin (296); يَقِينًا —yaqīnan (185); يَقِينٍ —yaqīnin (141); مُتَيَقَّنٌ —mutayaqqanun (117); الْمُتَيَقِّنِ —al-mutayaqqani (105); يُوقِنُ —yūqinu (77); الْيَقِينُ —al-yaqīnu (45); تَيَقَّنَ —tayaqqana (40); أَيْقَنَ —ʾayqana (28); وَبِيَقِينٍ —wabiyaqīnin (26); مُتَيَقَّنًا —mutayaqqanan (24); أَيْقَنَّا —ʾayqannā (21); تَيَقَّنَّا —tayaqqannā (8); نُوقِنُ —nūqinu (8); الْمُوقِنِ —al-mūqini (6); بِالْيَقِينِ —biālyaqīni (6); مُوقِنُونَ —mūqinūna (6); وَأَيْقَنَ —waʾayqana (6); مُوقِنٌ —mūqinun (5); وَالْيَقِينُ —wālyaqīnu (5); وَبِالْيَقِينِ —wabiālyaqīni (5); اسْتَيْقَنَ —ʾstayqana (4); تُيُقِّنَتْ —tuyuqqinat (4); فَالْيَقِينُ —fālyaqīnu (4); أَيْقَنَتْ —ʾayqanat (3); مُوقِنًا —mūqinan (3)

Context L2225: ... يَعْلَمَ الْمَرْءُ بِقَلْبِهِ عِلْمَ يَقِينٍ وَإِخْلَاصٍ لَا يَكُونُ لِشَيْءٍ مِنْ ...

Context L2230: ... مِنْ أَجْزَاءِ الزَّمَانِ فَهُوَ بِيَقِينٍ ذُو نِهَايَةٍ مِنْ أَوَّلِهِ وَمُنْتَهَاهُ ...

193. بَلْ[193]

bal

1,212 occurrences; cumulative coverage 77.25%.

Possible English: rather; instead; indeed

Attested spellings and counts

بَلْ —bal (1,212)

Context L2236: ... تَعَالَى الْحَمْدُ وَإِنْ قَالُوا بَلْ خُلِقَتْ الْعِلَّةُ لَا لِعِلَّةٍ سَأَلُوا ...

[192] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: يقن (read dictionary entry).
[193] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: بلل (read dictionary entry).

Context: بل corrects, replaces or develops the preceding statement. It can shift the argument without denying every word of the prior clause.

Forms and grammar: بل is indeclinable and has no person or tense forms. Distinguish it from بَلَّ, wetted, when vowels and syntax show a verb.

Context L2253: ... وَلَا بِرَغْبَةٍ رَغَّبَهُمْ بِهَا بَلْ كَانَ يَتِيمًا فَقِيرًا ...

194. كَذِب / كَذَبَ[194]

kadhaba / kadhib

1,210 occurrences; cumulative coverage 77.33%.

Possible English: lie; falsehood; deny as false

Context: كذب can concern deliberate lying or an assessment that a statement is false; the precise accusation must be read from the passage. كذّب means declared false or rejected.

Forms and grammar: كذب / يكذب = lied / lies; كاذب / كاذبة show agreement; كذّاب is intensive. كذّب / يكذّب is a different pattern; مكذوب = fabricated or falsely attributed.

Attested spellings and counts

كَذَبَ —kadhaba (221); الْكَذِبِ —al-kadhibi (158); بِالْكَذِبِ —biālkadhibi (84); كَاذِبَةٌ —kādhibatun (58); كَاذِبٌ —kādhibun (53); الْكَاذِبِ —al-kādhibi (47); كَذَبُوا —kadhabūā (47); أَكْذَبُ —ʾakdhabu (46); الْكَاذِبَةِ —al-kādhibati (46); كَذَّابٌ —kadhdhābun (45); كَاذِبًا —kādhiban (34); كَذَبْتُمْ —kadhabtum (33); كَذِبًا —kadhiban (29); وَالْكَذِبِ —wālkadhibi (27); وَكَذِبٌ —wakadhibun (23); كَذِبُهُ —kadhibuhu (19); يُكَذِّبُ —yukadhdhibu (19); مَكْذُوبٌ —makdhūbun (17); الْكَاذِبِينَ —al-kādhibīna (13); كَذَبْتَ —kadhabta (13); وَكَذَبُوا —wakadhabūā (13); الْكَذَّابِ —al-kadhdhābi (12); كَذِبُهُمْ —kadhibuhum (12); مَكْذُوبَةٌ —makdhūbatun (12); لِلْكَذِبِ —lilkadhibi (11); الْمَكْذُوبَةِ —al-makdhūbati (10); فَكَذِبٌ —fakadhibun (10); كِذْبَةٌ —kidhbatun (10); تَكْذِيبُ —takdhību (7); أَكْذَبَهُمْ —ʾakdhabahum (6); الْكِذْبَةَ —al-kidhbata (6); كَاذِبِينَ —kādhibīna (6); يُكَذِّبُهُ —yukadhdhibuhu (5); يُكَذِّبَانِ —yukadhdhibāni (5); الْكَذَّابِينَ —al-kadhdhābīna (4); الْمَكْذُوبِ —al-makdhūbi (4); بِتَكْذِيبِ —bitakdhībi (4);

[194]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: كذب (read dictionary entry).

بِكَذِب —bikadhibi (4); فَكَذَّبُوا —fakadhabūā (4); كَاذِبَانِ —kādhibāni (4); تَكْذِبَ —takdhiba (3); فَيُكْذَبُ —fayukdhabu (3); كَاذِبُونَ —kādhibūna (3); كَذَّبِهِمَا —kadhibihimā (3); لِكَذِّبِهِ —likadhibihi (3); نُكَذِّبُ —nukadhdhibu (3); يَكْذِبُونَ —yakdhibūna (3); وَيُكَذِّبُ —wayukadhdhibu (4); وَأَكْذَبَهُمْ —waʾakdhabahum (4)

Context L2253: ... وَيَقُولُوا سِحْرٌ مُسْتَمِرٌّ القمر وَكَذَّبُوا وَاتَّبَعُوا أَهْوَاءَهُمْ وَكُلُّ أَمْرٍ مُسْتَقِرٌّ ...

Context L2271: ... إِلا الأَشْقَى الليل الَّذِي كَذَّبَ وَتَوَلَّى الليل وَسَيُجَنَّبُهَا الأَتْقَى الليل ...

Attested spellings and counts

بُرْهَانُ —burhānu (916); الْبُرْهَانِ —al-burhāni (98); وَبُرْهَانُ —waburhānu (62); بِالْبُرْهَانِ —biburhānin (32); بُرْهَانَكُمْ —burhānakum (28); بِبُرْهَانٍ —biālburhāni (14); بُرْهَانًا —burhānan (10); وَالْبُرْهَانُ —wālburhānu (10); الْبَرَاهِينِ —al-barāhīni (8); بِالْبَرَاهِينِ —biālbarāhīni (8); بَرَاهِينُ —barāhīnu (3); بُرْهَانُنَا —burhānunā (3); بُرْهَانُهُ —burhānuhu (3); وَبُرْهَانًا —waburhānunā (3)

Context L2222: ... نَقْتَصِرُ فِيهِ عَلَى قَوَاعِدِ الْبَرَاهِينِ بِغَيْرِ إِكْثَارٍ لِيَكُونَ مَأْخَذُهُ سَهْلًا ...

Context L2225: ... وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ بُرْهَانُ ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ ...

195. بُرْهَان[195]

burhān

1,198 occurrences; cumulative coverage 77.41%.

Possible English: proof; demonstration; decisive evidence

Context: برهان is an argument or evidence presented as establishing a claim. Whether the proof succeeds is the author's argumentative judgment, not something guaranteed by the noun.

Forms and grammar: برهان / براهين = proof / proofs; برهانكم = your proof, plural addressee. برهن / يبرهن is a related verb formation. وبُرهان attaches and to the noun.

[195] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: برهن (read dictionary entry).

196. خَمْسَة / خُمُس[196]

khamsah / khumus

1,194 occurrences; cumulative coverage 77.49%.

Possible English: five; fifth; one-fifth; fifty

Context: خمسة counts five items; الخمس names a fifth-share in the appropriate context. خمسين / خمسون mean fifty, not five.

Forms and grammar: خمس / خمسة vary with the counted noun's gender; خامس / خامسة are ordinals. خمسين / خمسون vary by case; خمسمائة is five hundred. خُمُس / أخماس denote fraction(s).

Attested spellings and counts

خَمْسٍ —khamsin (273); خَمْسَةَ —khamsata (257); خَمْسِينَ —khamsīna (123); الْخُمْسِ —al-khamsi (111); خَمْسُونَ —khamsūna (64); خَمْسًا —khamsan (57); خَامِسٌ —khāmisun (29); خَمْسَمِائَةٍ —khamsamiāʾati (29); بِخَمْسٍ —bikhamsin (20); الْخَامِسَةِ —al-khāmisati (19); وَخَمْسٌ —wakhamsun (19); بِخَمْسِينَ —bikhamsīna (17); الْخَمْسَةِ —al-khamsati (16); الْخَمِيسِ —al-khamīsi (14); وَالْخَامِسُ —wālkhāmisu (12); وَخَمْسًا —wakhamsan (11); الْخَمْسِينَ —al-khamsīna (10); بِخَمْسَةِ —bikhamsati (10); خُمُسَهُ —khumusahu (10); أَخْمَاسِ —ʾakhmāsi (8); الْخَامِسُ —al-khāmisu (8); وَخَامِسُهَا —wakhāmisuhā (8); وَخَمْسِينَ —wakhamsīna (8); يُخَمَّسُ —yukhammasu (6); وَالْخَامِسَةِ —wālkhāmisati (5); بِخَمْسِمِائَةٍ —bikhamsimiāʾati (4); خَامِسَةً —khāmisatan (4); مُخَمَّسَةٌ —mukhammasatun (4); وَالْخُمْسُ —wālkhamsu (4); وَخَمْسُونَ —wakhamsūna (4); الْأَخْمَاسِ —al-ʾakhmāsi (3); الْخَمْسُونَ —al-khamsūna (3); بِالْخُمْسِ —biālkhamsi (3); خُمُسَهَا —khumusahā (3); لِخَمْسَةٍ —likhamsatin (3); وَالْخَمْسَةُ —wālkhamsatu (3); وَالْخَمِيسِ —wālkhamīsi (3); وَتُخَمَّسُ —watukhammasu (3); وَخَمْسَةَ —wakhamsata (3); وَخَمْسَمِائَةٍ —wakhamsamiāʾati (3)

Context L2310: ... فِي يَوْمٍ كَانَ مِقْدَارُهُ خَمْسِينَ أَلْفَ سَنَةٍ يُحَاسَبُ فِيهِ الْجِنُّ ...

Context L2537: ... مَعَهُ عَلَيْهِ السَّلَامُ الصَّلَوَاتِ الْخَمْسَ كَمَا هِيَ فِي عَدَدِ رُكُوعِهَا ...

[196] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: خمس (read dictionary entry).

197. عَيْن[197]

ʿayn

1,178 occurrences; cumulative coverage 77.57%.

Possible English: eye; specific thing; spring; asset; the very same

Context: بعينه commonly means that very item/person. عين in property discussion may be a specific asset, not an anatomical eye.

Forms and grammar: عين / أعين / عيون are noun and plurals with context-dependent uses. عينه / عينها change referent; معيّن = specified, a different formation.

Attested spellings and counts

عَيْنَ —ʿayna (270); بِعَيْنِهِ —biʿaynihi (175); الْعَيْنِ —al-ʿayni (127); مَعِينٍ — maʿīnin (89); بِعَيْنِهَا —biʿaynihā (63); عَيْنِهِ —ʿaynihi (60); عَيْنًا —ʿaynan (32); عَيْنِهَا —biʿaynin (25); بِأَعْيَانِهِمْ —biʾaʿyānihim (24); أَعْيَنَ —ʾaʿyana (21); بِعَيْنٍ —ʿaynihā (21); عَيْنَيْهِ —ʿaynayhi (21); وَالْعَيْنِ —wālʿayni (21); الْعَيْنَيْنِ — al-ʿaynayni (19); الْمُعَيَّنِ —al-muʿayyani (16); أَعْيُنُهُمْ —ʾaʿyunahum (13); مُعَيَّنَةً —muʿayyanatan (13); عَيْنَاهُ —ʿaynāhu (11); أَعَانَ —ʾaʿāna (10); أَعْيَانِ —biālʿayni (10); بِالْعَيْنِ —taʿayyana (10); تَعَيَّنَ —ʿaynay (10); عَيْنَيْ —ʾaʿyāni (9); الْعِيَانِ —al-ʿiyāni (9); مَعَانٍ —maʿānin (8); مُعَيَّنًا —muʿayyanan (8); الْعِينَةِ —al-ʿīnati (7); يُعَيِّنْ —yuʿayyin (7); تَتَعَيَّنُ —tataʿayyanu (6); يَتَعَيَّنُ — yataʿayyanu (6); أَعْيَانِهَا —ʾaʿyānihā (5); أَعَانَهُمْ —ʾaʿānahum (5); بِأَعْيَانِهَا —biʾaʿyānihā (5); وَأَعَانَ —waʾaʿāna (5); وَعَيْنُهُ —waʿaynuhu (5); الْأَعْيَانِ —al-ʾaʿyāni (4); بِالْعِيَانِ —biālʿiyāni (4); عِيَانًا —ʿiyānan (4); وَبِالْعِيَانِ — wabiālʿiyāni (4); يُعَيِّنُهُ —yuʿayyinahu (4); أَعَانَهُ —ʾaʿānahu (3); الْعُيُونِ — al-ʿuyūni (3); عَيْنَيْنِ —ʿaynayni (3); لِلْعِيَانِ —lilʿiyāni (3)

Context L2241: ... لَنَا اللَّيْلَ فَغَلَبَتْ بِلَالًا عَيْنَاهُ فَلَمْ يَسْتَيْقِظْ النَّبِيُّ صَلَّى اللَّهُ ...

Context L2281: ... الدُّنْيَا لَكِنْ مَا لَا عَيْنٌ رَأَتْ وَلَا أُذُنٌ سَمِعَتْ وَلَا ...

[197] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: عين (read dictionary entry).

198. إِسْحَاق[198]

ʾisḥāq

1,175 occurrences; cumulative coverage 77.65%.

Possible English: Isḥāq; Isaac in the prophetic context

Context: The name may identify a prophet or a later transmitter. The chain and patronymic determine the person.

Forms and grammar: وإسحاق adds and; case vowels may vary. No Arabic root etymology is asserted for the name.

Attested spellings and counts

إِسْحَاقَ —ʾisḥāqa (963); وَإِسْحَاقُ —waʾisḥāqu (212)

Context L2263: ... وَنُوحًا وَإِدْرِيسَ وَإِبْرَاهِيمَ وَإِسْمَاعِيلَ وَإِسْحَاقَ وَيَعْقُوبَ وَيُوسُفَ ... وَمُوسَى وَهَارُونَ وَدَاوُد ...

Context L2345: ... نَبَاتٍ ثنا إِسْمَاعِيلُ بْنُ إِسْحَاقَ ثنا عِيسَى بْنُ حَبِيبٍ ثنا ...

199. أُذُن / أَذَان / إِذْن[199]

ʾidhn / ʾadhān / ʾudhun

1,169 occurrences; cumulative coverage 77.73%.

Possible English: permission; announce; call to prayer; ear

Context: إذن is permission; الأذان is the call to prayer; أذن can instead mean ear with different vowels.

Forms and grammar: يأذن / أذن = permitted / permits; يؤذّن / أذّن = called to prayer / calls. آذان / أُذن = ear(s); إذنها = her permission in the relevant reading.

Attested spellings and counts

إِذْنِ —ʾidhni (123); الْأَذَانِ —al-ʾadhāni (122); يَأْذَنْ —yaʾdhan (89); أَذِنَ —ʾadhina (87); بِإِذْنِ —biʾidhni (82); يُؤَذِّنُ —yuʾadhdhinu (72); أَذَانٍ —ʾadhānin (50); الْمُؤَذِّنُ —al-muʾadhdhinu (43); الْأُذُنِ —al-ʾudhuni (31); إِذْنِهِ —ʾidhnihi (27); فَأَذِنَ —faʾadhina (27); إِذْنِهَا —ʾidhnihā (23); بِأَذَانٍ —biʾadhānin (23); بِإِذْنِهِ —biʾidhnihi (23); أَذَانِهِ —ʾadhānihi (22); أُذَيْنَةَ —ʾudhaynata (14); بِإِذْنِهَا —biʾidhnihā (13); الْمَأْذُونِ —al-maʾdhūni (12); وَالْأُذُنِ —wālʾudhuni (12); بِالْأَذَانِ —biālʾadhāni (11); أُذُنَيْهِ —ʾudhunayhi (10); إِذْنِهِمْ —ʾidhnihim (10); اسْتَأْذَنَ —ʾstaʾdhana (10); الْأُذُنَيْنِ —al-ʾudhunayni (10); مُؤَذِّنًا —muʾadhdhinun (10); أَذِنْتَ —ʾadhint (9); أُذُنِهِ —ʾudhunihi (9); مُؤَذِّنٌ

[198] **Editorial lexical note:** Personal-name identification from the book; no Arabic-root etymology or Lisān lexical definition is asserted for this name.

[199] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أذن (read dictionary entry).

تُسْتَأْذَنَ —muʾadhdhinan (9); وَالْأَذَانِ —wālʾadhāni (9); الْإِذْنُ —al-ʾidhnu (8); اسْتَأْذَنَتْ —tustaʾdhana (8); وَأَذَانُ —waʾadhānu (8); أَذَانًا —ʾadhānan (7); آذَنَ —ʾstaʾdhanat (7); يُؤْذِنُهُ —yuʾdhinahu (7); فَيُؤَذَّنَ —fayuʾadhdhana (7); تَأْذَنُ —taʾdhanu (6); فَاسْتَأْذَنَ —fāstaʾdhana (6); فَلْيُؤَذِّنْ —ʾādhana (6); وَالْمُؤَذِّنُ —falyuʾadhdhin (6); يُؤْذِنُوا —wālmuʾadhdhinu (6); أُذُنَيْ —yuʾdhinūā (6); الْآذَانُ —ʾudhunay (5); أُذُنِهَا —al-ʾādhānu (5); بِالْأُذُنِ —ʾudhunihā (5); يُؤَذِّنُونَ —al-ʾīdhāni (5); أَذِنُوا —yuʾadhdhinūna (5); مَأْذُونًا —ʾadhinūā (4); لِأَذَانِ —biālʾudhuni (4); فَأَذَّنَا —liʾadhāni (4); يَأْذَنُوا —faʾadhdhinā (4); يَسْتَأْذِنُ —maʾdhūnan (4); إِيذَانُ —yaʾdhanūā (4); إِذْنِهِمَا —yastaʾdhinu (4); أَذَانَيْنِ —ʾīdhānu (3); اسْتَأْذَنَكُمْ —ʾadhānayni (3); إِيذَانِهِ —ʾidhnihimā (3); ائْذَنْ —ʾīdhānihi (3); ائْذَنِي —ʾdhan (3); لِإِذْنِ —ʾdhanī (3); فَالْأَذَانُ —ʾstaʾdhannakum (3); بِأَذَانَيْنِ —fālʾadhānu (3); وَاسْتَأْذَنَتْهُ —biʾadhānayni (3); يَسْتَأْذِنُهَا —liʾidhni (3); —wāstaʾdhanathu (3); —yastaʾdhinuhā (3)

Context L2281: ... لَا عَيْنٌ رَأَتْ وَلَا أُذُنٌ سَمِعَتْ وَلَا خَطَرَ عَلَى قَلْبِ ...

Context L2282: ... لَا عَيْنٌ رَأَتْ وَلَا أُذُنٌ سَمِعَتْ وَلَا خَطَرَ عَلَى قَلْبِ ...

200. لَكِنَّ / لَكِنْ[200]

lakin / lakinna

1,163 occurrences; cumulative coverage 77.81%.

Possible English: but; however

Context: لكن introduces a contrast or qualification. The spelling لكن can also represent لَكِنَّ, for you feminine plural; syntax distinguishes it.

Forms and grammar: لكنّه / لكنها / لكنهم = but he or it / she or it / they. Shadda and following syntax distinguish لكنَّ from لكنْ; the particle itself has no tense.

Attested spellings and counts

لَكِنْ —lakin (540); وَلَكِنْ —walakin (376); وَلَكِنَّهُ —walakinnahu (57); لَكِنَّهُ —lakinnahu (56); وَلَكِنَّهُمْ —walakinnahum (37); لَكِنَّا —lakinnā (19); وَلَكِنَّا —walakinnā (19); وَلَكِنَّهَا —walakinnahā (17); وَلَكِنِّي —walakinnī (16); لَكِنَّهَا —lakinnahā (8); لَكِنَّهُمْ —lakinnahum (5); لَكِنِّي —lakinnī (5); وَلَكِنَّهُمَا —walakinnahumā (5); لَكِنَّهُمَا —lakinnahumā (3)

Context L2241: ... الدُّنْيَا يَشْغَلُنَا عَنْ صَلَاتِنَا وَلَكِنَّ أَرْوَاحَنَا كَانَتْ بِيَدِ اللَّهِ عَزَّ ...

Context L2258: ... أَبَا أَحَدٍ مِنْ رِجَالِكُمْ وَلَكِنْ رَسُولَ اللَّهِ وَخَاتَمَ النَّبِيِّينَ الأحزاب ...

...

201. رَكْعَة / رَكَعَ[201]

rakaʿa / rakʿah

1,162 occurrences; cumulative coverage 77.89%.

Possible English: bow in prayer; bowing; unit of prayer

Context: ركوع is the act of bowing; ركعة is a complete prayer unit in its ritual use. They should not both be translated bow in every occurrence.

Forms and grammar: ركع / يركع = bowed / bows; ركعة / ركعتان / ركعتين / ركعات show singular, dual and plural; راكع = one bowing. ركعتيه = his two prayer units in a relevant construction.

Attested spellings and counts

رَكْعَتَيْنِ —rakʿatayni (254); رَكْعَةً —rakʿatan (166); الرُّكُوعِ —al-rukūʿi (110); الرَّكْعَتَيْنِ —al-rakʿatayni (93); الرَّكْعَةِ —al-rakʿati (79); رَكَعَاتٍ —rakaʿātin (78); يَرْكَعُ —yarkaʿu (58); رَكَعَ —rakaʿa (53); رَكْعَتَانِ —rakʿatāni (45); رَكْعَتَيْ —rakʿatay (45); رُكُوعِهِ —rukūʿihi (19); بِرَكْعَةٍ —birakʿatin (14); رُكُوعٍ —rukūʿin (13); فَرَكَعَ —faraka ʿa (11); وَالرُّكُوعِ —wālrrukūʿi (10); رَاكِعًا —rākiʿan (9); الرَّكْعَتَانِ —al-rakʿatāni (8); رَاكِعٌ —rākiʿun (8); وَرَكْعَتَانِ —warakʿatāni (8); بِرَكْعَتَيْ —birakʿatay (7); فَلْيَرْكَعْ —falyarkaʿ (7); فَيَرْكَعُ —

[200] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: لكن (read dictionary entry).
[201] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ركع (read dictionary entry).

fayarkaʿu (6); لِلرُّكُوعِ —lilrrukūʿi (6); وَرَكَعَ —warakaʿa (6); رَكَعْتُ — rakaʿtu (5); بِالرَّكْعَةِ —fārkaʿūā (5); فَارْكَعُوا —wālrrakʿatayni (5); وَالرَّكْعَتَيْنِ — biālrrakʿati (4); رُكُوعًا —rukūʿan (4); وَرَكْعَتَيْنِ —warakʿatayni (4); وَرُكُوعُهُ — warukūʿuhu (4); الرَّكَعَاتِ —al-rakaʿāti (3); بِالرُّكُوعِ —biālrrukūʿi (3); بِرُكُوعٍ —birukūʿin (3); وَرَكْعَتَيْ —warakʿatay (3); وَيَرْكَعُ —wayarkaʿu (3); يَرْكَعُونَ — yarkaʿūna (3)

Context L2624: ... قِيَامِهِ عَلَى ثَلَاثَ عَشْرَةَ رَكْعَةً وَلَا أَكَلَ قَطُّ عَلَى خِوَانٍ ...

Context L2629: ... السَّلَامُ أَنَّهُ قَالَ الْوِتْرُ رَكْعَةٌ مِنْ آخِرِ اللَّيْلِ ...

202. ثَابِت / ثَبَتَ[202]

thabata / thābit

1,156 occurrences; cumulative coverage 77.96%.

Possible English: be established; remain firm; established; Thābit

Context: ثبت can mean a report or claim is established. ثابت may be an adjective or the personal name Thābit.

Forms and grammar: يثبت / ثبت = was established / is established; أثبت = established or proved; ثابتة / ثابت agree in gender. ثبوت and إثبات are distinct verbal nouns.

Attested spellings and counts

ثَابِتٍ —thābitin (481); الثَّابِتِ —al-thābiti (180); الثَّابِتَةِ —al-thābitati (134); ثَبَتَ —thabata (82); ثَابِتَةٍ —thābitatin (50); يَثْبُتْ —yathbut (40); وَثَبَتَ — wathabata (22); إِثْبَاتِ —ʾithbāti (17); وَالثَّابِتُ —wālththābitu (17); أَثْبَتَ —ʾathbata (16); بِالثَّابِتِ —fathabata (12); فَثَبَتَ —wathābitin (10); وَثَابِتٍ —biālththābiti (8); لِلثَّابِتِ —lilththābiti (8); ثَابِتًا —thābitan (8); ثَبْتُ — tathbuta (7); الثَّبَاتِ —waʾathbata (6); وَأَثْبَتَ —ʾathbatahu (5); أَثْبَتَهُ — al-thabāti (5); ثَبَتْ —thabāti (4); الْأَثْبَاتِ —al-ʾathbāti (4); ثَبَاتِ — thabatat (4); الْإِثْبَاتِ —ʾathbatahā (3); أَثْبَتَهَا —ʾathbatūā (3); أَثْبَتُوا — al-ʾithbāti (3); فَالثَّابِتُ —biʾathbata (3); بِأَثْبَتَ —thabatūā (3); ثَبَتُوا —

[202] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ثبت (read dictionary entry).

fālththābitu (3); مُثْبَتًا —muthbatan (3); وَإِثْبَاتُ —waʾithbātu (3); وَإِثْبَاتِهِ —waʾithbātihi (3); وَيُثْبِتُ —wayuthbitu (3); يُثْبِتُهُ —yuthbituhu (3); يُثْبِتُوا —yuthbitūā (3)

Context L2222: ... وَالْوُقُوفِ عَلَى جَمْهَرَةِ السُّنَنِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ ...

Context L2241: ... عَنْ شَيْءٍ وَاحِدٍ وَلَا يَثْبُتُ عَنْهُ عَلَيْهِ السَّلَامُ ...

203. أُمَّة / أَمَة[203]

ʾamah / ʾummah

1,154 occurrences; cumulative coverage 78.04%.

Possible English: enslaved woman; community; nation

Context: أَمَة in status law is an enslaved woman. أُمَّة is a community. Their unvowelled spellings can coincide in some forms but the meanings differ.

Forms and grammar: أمة / إماء = enslaved woman / women; أمم = community / communities with different vowels. أمته may be his enslaved woman or his community according to vowels.

Attested spellings and counts

الْأَمَةِ —al-ʾamati (496); أَمَةً —ʾamatan (279); أَمَتَهُ —ʾamatahu (131); وَالْأَمَة —wālʾamati (56); الْإِمَاءِ —al-ʾimāʾi (38); وَالْإِمَاءِ —wālʾimāʾi (30); وَأَمَتِهِ —waʾamatihi (16); وَإِمَائِكُمْ —waʾimāʾikum (16); لِأَمَتِهِ —liʾamatihi (15); إِمَاءَ —ʾimāʾa (14); وَأَمَةٌ —waʾamatun (11); لِلْأَمَةِ —lilʾamati (8); بِأَمَتِهِ —biʾamatihi (7); وَأَمَتُكَ —waʾamatuk (7); بِأَمَةٍ —biʾamatin (6); أَمَتِهَا —ʾamatihā (4); بِالْأَمَةِ —biālʾamati (4); وَلِلْأَمَةِ —walilʾamati (4); فَالْأَمَةُ —fālʾamatu (3); وَإِمَاءٌ —waʾimāʾun (3); وَإِمَائِهِ —waʾimāʾihi (3); وَإِمَائِهِمْ —waʾimāʾihim (3)

Context L2261: ... أُمَرَاءُ تَكْرِمَةُ اللَّهِ هَذِهِ الْأُمَّة ...

Context L2321: ... فِي أَهْلِ الْكَبَائِرِ مِنْ أمته حَقّ ...

[203] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أما (read dictionary entry); أمم (read dictionary entry).

204. أَخ / أُخْت[204]

ʾakh / ʾukht

1,153 occurrences; cumulative coverage 78.12%.

Possible English: brother; sister; fellow; sibling

Context: أخ can indicate kinship or fellowship. In inheritance, the surrounding qualifiers identify full, paternal or maternal relations.

Forms and grammar: أخ / أخو / أخا / أخي show construct/case forms; إخوة / إخوان are plurals. أخت / أخوات = sister(s); أخاه / أخيه change with case, not which brother is meant.

Attested spellings and counts

أَخِيهِ —ʾakhīhi (102); الْإِخْوَةِ —al-ʾikhwati (81); الْأَخِ —al-ʾakhi (64); أَخِي —ʾakhī (63); أُخْتٌ —ʾukhtun (58); أَخٍ —ʾakhin (55); إِخْوَةٌ —ʾikhwatun (52); الْأُخْتِ —al-ʾukhti (51); أَخُو —ʾakhū (27); الْأُخْتَيْنِ —al-ʾukhtayni (27); أَخَاهُ —ʾakhāhu (26); أَخِيهَا —ʾakhīhā (25); أَخًا —ʾakhan (23); وَأُخْتٍ —waʾukhtin (23); الْأَخَوَاتِ —al-ʾakhawāti (20); أُخْتَهَا —ʾukhtihā (22); أَخُوهُ —ʾakhūhu (21); أُخْتًا —ʾukhtan (17); لِلْأُخْتِ —lilʾukhti (19); أَخِيكَ —ʾakhīk (19); أُخْتَهُ —ʾukhtahu (16); لِأَخِيهِ —liʾakhīhi (16); وَلِلْأُخْتِ —walilʾukhti (16); أُخْتَيْنِ —ʾukhtayni (15); وَالْأُخْتُ —wālʾukhtu (14); وَالْإِخْوَةِ —wālʾikhwati (13); إِخْوَتِهَا —ʾikhwatihā (12); وَالْأَخَوَاتِ —wālʾakhawāti (12); أَخَوَاتٍ —ʾakhawātin (11); أَخَوَاتِهَا —ʾakhawātihā (11); أَخُوهَا —ʾakhūhā (9); لِلْأَخِ —lilʾakhi (9); إِخْوَتِهِ —ʾikhwatihi (8); لِلْأَخَوَاتِ —lilʾakhawāti (8); وَأَخٌ —waʾakhun (8); وَأُخْتَهُ —waʾukhtah (8); وَأَخُوهُ —waʾakhūhu (8); وَإِخْوَتِهِ —waʾikhwatihi (8); أَخَاهَا —ʾakhāhā (7); أَخَوَانِ —ʾakhawāni (7); أَخَوَيْنِ —ʾakhawayni (7); إِخْوَانِنَا —ʾikhwāninā (7); وَأَخَوَاتٍ —waʾakhawātin (7); وَأَخِي —waʾakhī (7); وَالْأَخِ —wālʾakhi (7); أَخَاكَ —ʾakhāka (6); أُخْتَانِ —ʾukhtāni (6); الْأَخَوَيْنِ —al-ʾakhawayni (6); لِلْإِخْوَةِ —lilʾikhwati (6); وَأُخْتُهَا —

[204]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أخا (read dictionary entry).

wa'ukhtuhā (6); وَأَخَوَاتُكُمْ —wa'akhawātukum (6); وَإِخْوَةٍ —wa'ikhwatin (6); وَالْأُخْتَيْنِ — أَخُوكَ —'akhūka (5); إِخْوَتِي —'ikhwatī (5); وَأَخًا —wa'akhan (5); وَأُخْتًا — wāl'ukhtayni (5); أَخَوَاتُهُ —'akhawātuhu (4); بِأُخْتِهَا —bi'ukhtihā (4); وَلِلْأُخْتَيْنِ — wa'ukhtan (4); وَأُخْتَيْنِ —wa'ukhtayni (4); وَأَخِيهِ —wa'akhīhi (4); walil'ukhtayni (4); أَخَوَيْكُمْ —'akhawaykum (3); إِخْوَانُكُمْ —'ikhwānukum (3); بِأُخْتٍ —bi'ukhtin (3); فَإِخْوَانُكُمْ —fa'ikhwānukum (3); فَلِلْأَخِ —falil'akhi (3); لِأَخِيكَ —li'akhīka (3); وَأُخْتَانِ —wa'ukhtāni (3)

Context L2307: ... وَلَا بِالرَّوْثِ فَإِنَّهُمَا زَادُ إِخْوَانِكُمْ مِنْ الْجِنِّ ...

Context L2432: ... أَبَا بَكْرٍ خَلِيلًا وَلَكِنَّهُ أَخِي وَصَاحِبِي وَقَدْ اتَّخَذَ اللَّهُ صَاحِبَكُمْ ...

205. تَوَضَّأَ / وُضُوء[205]

wuḍūʾ / *tawaḍḍaʾa*

1,151 occurrences; cumulative coverage 78.20%.

Possible English: ablution; perform ablution; water for ablution in a vowelled noun use

Context: الوضوء commonly names ritual ablution. The details of the required act come from the passage rather than the noun alone.

Forms and grammar: توضأ / يتوضأ = performed ablution / performs it; وضوء is the noun; وضوءه / وضوءها add possessive referents. متوضئ = a person who has performed ablution.

Attested spellings and counts

الْوُضُوءِ —al-wuḍūʾi (523); تَوَضَّأَ —tawaḍḍaʾa (110); يَتَوَضَّأُ —yatawaḍḍaʾa (94); وُضُوءٍ —wuḍūʾin (77); وُضُوءُهُ —wuḍūʾuhu (52); وَالْوُضُوءُ —wālwuḍūʾu (41); بِالْوُضُوءِ —biālwuḍūʾi (30); تَتَوَضَّأُ —tatawaḍḍaʾu (24); فَتَوَضَّأَ — fatawaḍḍaʾa (20); لِلْوُضُوءِ —lilwuḍūʾi (19); وُضُوءًا —wuḍūʾan (17); فَلْيَتَوَضَّأْ — falyatawaḍḍaʾ (16); الْمُتَوَضِّئِ —al-mutawaḍḍiʾi (11); تَوَضَّأَتْ —tawaḍḍaʾat (11); وَيَتَوَضَّأُ —wayatawaḍḍaʾu (11); فَالْوُضُوءُ —fālwuḍūʾu (10); بِوُضُوءٍ — biwuḍūʾin (9); وَتَوَضَّأَ —watawaḍḍaʾa (7); فَوُضُوءُهُ —watatawaḍḍaʾu (9); وَنَتَوَضَّأُ

[205] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: وضأ (read dictionary entry).

—fawuḍūʾuhu (6); مُتَوَضِّئٍ —mutawaḍḍiʾin (6); فَتَوَضَّئِي —fatawaḍḍaʾī (5); مُتَوَضِّئًا —mutawaḍḍiʾan (5); وَبِالْوُضُوءِ —wabiālwuḍūʾi (5); كَالْوُضُوءِ —kālwuḍūʾi (4); وَتَوَضَّئِي —watawaḍḍaʾī (4); وَلْيَتَوَضَّأْ —walyatawaḍḍaʾ (4); أَتَوَضَّأَ —ʾatawaḍḍaʾa (3); الْمُتَوَضِّئِينَ —al-mutawaḍḍiʾīna (3); فَأَتَوَضَّأُ —faʾatawaḍḍaʾu (3); فَتَوَضَّأْت —fatawaḍḍaʾt (3); وَالْمُتَوَضِّئُ —wālmutawaḍḍiʾu (3); وَتَوَضَّأَتْ —watawaḍḍaʾat (3); وَلِلْوُضُوءِ —walilwuḍūʾi (3)

Context L2597: ... وَسَلَّمَ كِتَابُ الطَّهَارَةِ مَسْأَلَةٌ الْوُضُوءُ لِلصَّلَاةِ فَرْضٌ لَا تُجْزِئُ الصَّلَاةُ ...

Context L2598: ... مَسْأَلَةٌ لَا يُجْزِئُ الْوُضُوءُ إلَّا بِنِيَّةِ الطَّهَارَةِ لِلصَّلَاةِ ...

206. نَعَمْ / نِعْمَ[206]

naʿam / niʿma

1,149 occurrences; cumulative coverage 78.27%.

Possible English: yes; excellent is; livestock in a different noun use

Context: نعم normally answers affirmatively when read نَعَمْ. نِعْمَ introduces praise, while نَعَم can mean livestock.

Forms and grammar: نعم is not always a verb with a hidden subject. Vowels and construction distinguish answer, praise and noun. فنعم / ونعم add so / and.

Attested spellings and counts

نَعَمْ —naʿam (668); الأنعام —al-ʾnʿām* (273); وَنِعْمَ —waniʿma (63); النَّعَمِ —al-naʿami (38); فَنَعَمْ —fanaʿam (37); النَّعَامَةِ —al-naʿāmati (12); التَّنْعِيمِ —al-tanʿīmi (10); نِعمه —niʿamihi (9); النَّعَامِ —al-naʿāmi (8); نَعَامَةَ —naʿāmata (6); نِعْمَتِهِ —niʿmatihi (6); نِعْمَةٍ —niʿmatin (4); النَّعِيمِ —al-naʿīmi (3); نَعَامٍ —naʿāmin (3); وَالنِّعْمَةَ —wālnnaʿāmati (3); نِعْمَتِي —niʿmatī (3); وَالنَّعَامَةِ —wālnnaʿāmati (3); وَالنِّعْمَةَ —wālnniʿmata (3)

Context L2238: ... قَوْلِهِ وَخَلَقَ كُلَّ شَيْءٍ الأنعام وَخَالَفَ مَا جَاءَتْ بِهِ النُّبُوَّةُ ...

Context L2254: ... يَا مَعْشَرَ الْجِنِّ وَالإِنْسِ الأنعام وَقَالَ تَعَالَى قُلْ أُوحِيَ إِلَيَّ ...

207. خَطَأ / أَخْطَأ[207]

khaṭaʾ / *ʾakhṭaʾa*

1,144 occurrences; cumulative coverage 78.35%.

Possible English: error; mistake; err; accidental

Context: خطأ can describe an incorrect opinion or unintentional action. In homicide discussion it may classify accidental killing.

Forms and grammar: أخطأ / يخطئ = erred / errs; أخطأت = I or you erred; خطأ is a noun. مخطئ / مخطئة show agreement; الخطأ adds the article.

Attested spellings and counts

خَطَأٌ —khaṭaʾun (495); الْخَطَأ —al-khaṭaʾi (281); أَخْطَأَ —ʾakhṭaʾa (82); فَخَطَأٌ — fakhaṭaʾun (65); أَخْطَأْتُمْ —ʾakhṭaʾtum (36); وَالْخَطَأ —wālkhaṭaʾi (27); الْمُخْطِئِ — al-mukhṭiʾi (21); بِالْخَطَأ —biālkhaṭaʾi (18); لِلْخَطَأ —lilkhaṭaʾi (18); مُخْطِئٌ — mukhṭiʾun (16); وَخَطَأٌ —wakhaṭaʾun (14); مُخْطِئًا —mukhṭiʾan (11); يُخْطِئُ — yukhṭiʾu (11); خَطِيئَةٌ —khaṭīʾatun (8); فَأَخْطَأَ —faʾakhṭaʾa (8); وَأَخْطَأَ — waʾakhṭaʾa (6); خَطِيئَتُهُ —khaṭīʾatuhu (4); فَيُخْطِئُ —fayukhṭiʾu (4); وَأَخْطَأْت —waʾakhṭaʾt (4); أَخْطَأْت —ʾakhṭaʾt (3); بِخَطَأٍ —bikhaṭaʾin (3); تُخَطِّئُ — tukhaṭṭiʾu (3); خَطَايَاهُمْ —khaṭāyāhum (3); مُخْطِئُونَ —mukhṭiʾūna (3)

Context L2349: ... مَا عَلَيْهِ أُخِذَ مِنْ خَطَايَاهُمْ فَطُرِحَتْ عَلَيْهِ ثُمَّ طُرِحَ فِي ...

Context L2510: ... مَا عَلَيْهِ أُخِذَ مِنْ خَطَايَاهُمْ فَطُرِحَتْ عَلَيْهِ ثُمَّ طُرِحَ فِي ...

208. طَلَبَ / طَالِب[208]

ṭalaba / *ṭālib*

1,142 occurrences; cumulative coverage 78.43%.

Possible English: seek; request; claimant; Ṭālib

Context: طلب can be a request or pursuit of evidence. طالب in a patronymic can be the name Ṭālib; elsewhere it means seeker or claimant.

Attested spellings and counts

طَالِبٍ —ṭālibin (673); طَلَبَ —ṭalaba (103); الْمُطَّلِبِ —al-muṭṭalibi (63); الطَّالِبِ — al-ṭālibi (58); الْمَطْلُوبِ —al-maṭlūbi (47); طَلَبَهُ —ṭalabahu (36); يَطْلُبُ — yaṭlubu (34); طَلَبَهَا —ṭalabahā (13); وَطَلَبُ —waṭalabu (13); لِلطَّالِبِ —

[206] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: نعم (read dictionary entry).

[207] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: خطأ (read dictionary entry).

[208] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: طلب (read dictionary entry).

Forms and grammar: طلب / يطلب = sought / seeks; طالب / طالبة show agreement; طلبه = sought it or his request according to vowels. مطالب is another derived form.

lilṭṭālibi (9); نَطْلُبَ —naṭluba (9); الطَّلَبُ —al-ṭalabu (8); طَلَبَتْ —ṭalabat (7); فَطَلَبَ —faṭalaba (6); فَطَلَبْنَا —faṭalabnā (6); مَطْلُوبًا —maṭlūban (6); يَطْلُبُهُ — yaṭlubuhu (6); تَطْلُبُ —taṭlubu (5); طَالِبًا —ṭāliban (5); طَلَبَتْهُ —ṭalabathu (5); طَالَبَهُ —muṭṭalibu (5); مُطَّلِبُ —wālmuṭṭalibi (4); وَالْمُطَّلِبِ —biṭalabi (3); بِطَلَبِ —ṭālabahu (3); طَلَبَهُ —ṭalaban (3); طَلَبًا —ṭalabihim (3); طَلَبِهِمْ —liṭalabi (3); لِطَلَبِ —lilmaṭlūbi (3); لِلْمَطْلُوبِ —muṭālabatuhu (3); مُطَالَبَتُهُ

Context L2222: لِيَكُونَ مَأْخَذُهُ سَهْلًا عَلَى الطَّالِبِ وَالْمُبْتَدِئِ وَدَرَجًا لَهُ إِلَى التَّبَحُّرِ ...
...

Context L2251: ... عَبْدِ اللَّهِ بْنِ عَبْدِ الْمُطَّلِبِ رَسُولُ اللَّهِ إِلَى جَمِيعِ الْإِنْسِ ...

209. لَيْلَة / لَيْل[209]

layl / laylah

1,129 occurrences; cumulative coverage 78.51%.

Possible English: night; a night; Laylā

Context: ليلة counts a night; الليل is night as a period. ليلى can be the proper name Laylā rather than a plural of night.

Forms and grammar: ليلة / ليال / ليالي = night(s); ليلتان / ليلتين are dual case forms. ليلا is commonly adverbial; ليلته = his or its night.

Attested spellings and counts

لَيْلَى —laylā (287); لَيْلَةً —laylatan (213); اللَّيْلِ —al-layli (186); لَيْلًا —laylan (87); وَلَيْلَةً —walaylatan (77); اللَّيْلَةِ —al-laylati (50); لَيَالٍ —layālin (49); بِاللَّيْلِ — biālllayli (34); لَيْلٌ —laylun (23); بِلَيْلٍ —bilaylin (20); وَاللَّيْلَةِ —wālllaylati (19); اللَّيَالِي —al-layālī (17); لَيْلَتَيْنِ —laylatayni (16); لَيَالِي —layālī (14); لَيْلَتِهِ — laylatihi (9); لَيْلَتَانِ —laylatāni (5); وَلَيَالِيهِنَّ —walayāliyahunna (5); وَلَيْلَتِهِ — walaylatihi (5); لَيْلَتَهَا —laylatahā (4); اللَّيْلَتَيْنِ —al-laylatayni (3); وَلَيَالِيَ — walayāliya (3); وَلَيْلَتَهَا —walaylatahā (3)

Context L2241: ... قَالَ لِبِلَالٍ اكْلَأْ لَنَا اللَّيْلَ فَغَلَبَتْ بِلَالًا عَيْنَاهُ فَلَمْ يَسْتَيْقِظْ ...

[209]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ليل (read dictionary entry).

210. عَمْد / تَعَمَّدَ[210]

ʿamd / *taʿammada*

1,128 occurrences; cumulative coverage 78.58%.

Possible English: intention; intentional; deliberately; rely on

Context: عمدا in legal classification contrasts with mistake. اعتمد can instead mean relied on; a shared root does not settle the kind of intention at issue.

Forms and grammar: تعمّد / يتعمّد = intended deliberately / intends; عامد / متعمد are participles. عمدا is adverbial; عمد can have other noun/verb readings according to vowels.

Context L2271: ... لا يَصْلاهَا إِلا الأَشْقَى الليل الَّذِي كَذَّبَ وَتَوَلَّى الليل وَسَيُجَنَّبُهَا ...

...

Attested spellings and counts

عَامِدًا —ʿamdan (231); تَعَمَّدَ —taʿammada (194); الْعَمْدِ —al-ʿamdi (191); عَمْدًا —ʿāmidan (115); عَمْدٍ —ʿamdin (61); مُتَعَمِّدًا —mutaʿammidan (38); تَعَمَّدَتْ —taʿammadat (32); يَتَعَمَّدْ —yataʿammad (31); الْعَامِدِ —al-ʿāmidi (27); يَعْمِدْ —yaʿmid (25); الْمُتَعَمِّدِ —al-mutaʿammidi (21); يَعْتَمِدُ —yaʿtamidu (15); بِعَمْدٍ —biʿamdin (13); عَامِدٍ —ʿāmidin (13); بِالْعَمْدِ —biālʿamdi (12); بِتَعَمُّدٍ —bitaʿammudi (9); مُتَعَمِّدٌ —mutaʿammidun (9); وَتَعَمُّدُ —wataʿammudu (9); تَعَمَّدَهُ —taʿammadahu (8); نَعْتَمِدُ —naʿtamidu (8); وَالْعَمْدِ —wālʿamdi (7); عَمَدْتَ —ʿamadt (5); مُعْتَمِدًا —muʿtamidan (5); بِتَعَمُّدِهِ —bitaʿammudihi (4); بِعَمُودٍ —biʿamūdin (4); فَعَمَدَ —faʿamada (4); وَعُمْدَتُنَا —waʿumdatunā (4); أَعْمِدَةٍ —ʾaʿmidatin (3); التَّعَمُّدِ —al-taʿammudi (3); الْعَمُودَ —al-ʿamūda (3); تَتَعَمَّدُ —tataʿammadu (3); تَعَمَّدْتُمْ —taʿammadtum (3); عَامِدِينَ —ʿāmidīna (3); وَعُمْدَةُ —waʿumdatu (3); عَمُودًا —ʿamūdan (3); وَالْعَامِدُ —wālʿāmidu (3); عُمْدَةُ —ʿumdatu (3); يَتَعَمَّدْهُ —yataʿammadhu (3)

Context L2487: ... تَعَالَى وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا النساء ...

...

[210]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: عمد (read dictionary entry).

Context L2581: ... أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ الأحزاب وَقَالَ عَزَّ وَجَلَّ ... ...

211. مَرَّ / مَرَّة[211]

marrah / marra

1,122 occurrences; cumulative coverage 78.66%.

Possible English: once; time; pass; go by

Context: مرة counts an occurrence, not a duration of a specified length. مرّ can describe passing a place or a prior mention.

Forms and grammar: مرة / مرات = one time / times; مرتان / مرتين are dual case forms. مر / يمر = passed / passes; مرارا = repeatedly.

Attested spellings and counts

مَرَّةً —marratan (412); وَمَرَّةً —wamarratan (184); مَرَّاتٍ —marrātin (128); فَمَرَّ —famarratan (76); مَرَّتَيْنِ —marratayni (85); مَرَّ —marra (77); فَمَرَّةً —famarra (27); مِرَارًا —mirāran (25); يَمُرُّ —yamurru (25); الْمَرَّةِ —al-marrati (18); الْمَارِّ —al-mārri (7); مَرَّتْ —marrat (8); مَرُّوا —marrūā (8); فَمَرَّتْ —famarrat (5); مِرَارٍ —mirārin (5); مَرَّتَانِ —marratāni (5); مَرَرْت —marart (5); الْمُرِّيِّ —al-murriyyi (4); فَمَرُّوا —famarrūā (4); مَارًّا —mārran (4); مَارَّةً —mārratun (4); الْمُسْتَمِرِّ —al-mustamirri (3); مَرَارَةً —marāratan (3)

Context L2310: ... يُحْيِيهَا الَّذِي أَنْشَأَهَا أَوَّلَ مَرَّةٍ وَهُوَ بِكُلِّ خَلْقٍ عَلِيمٌ يس ...

Context L2314: ... طَرِيق بَيْن ظهراني جهنم يَمُرّ عَلَيْهِ الخلق ...

212. جَدِيد / جِدًّا / جَدّ[212]

jadd / jiddan / jadīd

1,119 occurrences; cumulative coverage 78.73%.

Possible English: grandfather; seriousness; very; new; renew

Context: الجد in inheritance is a grandfather; جدا commonly intensifies an adjective. The vowelled forms and topic separate these uses.

Attested spellings and counts

جِدًّا —jiddan (305); الْجَدِّ —al-jaddi (170); جَدِّهِ —jaddihi (161); جَدِّي —jaddī (64); جَدٍّ —jaddin (56); الْجَدَّةُ —al-jaddatu (53); جَدَّةٍ —jaddatin (47); تَجْدِيدِ —tajdīdi (19); جَدَّتِهِ —jaddatihi (18); جَدِيدٍ —jadīdin (18); جَدَّاتٍ —jaddātin (17); وَالْجَدَّةُ —wāljaddatu (17); وَلِلْجَدِّ —waliljaddi (17); الْجَدَّاتِ

[211] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: مرر (read dictionary entry).
[212] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: جدد (read dictionary entry).

Forms and grammar: جد / أجداد = grandfather(s); جديد / جديدة = new; يجدّد / جدّد = renewed / renews; جدة can mean grandmother in its kinship reading.

—al-jaddāti (16); وَالْجَدُّ —wāljaddu (16); لِلْجَدِّ —liljaddi (15); يُجَدِّدَ —yujaddida (11); وَجَدَّتَهُ —wajaddatahu (10); جَدَّتَيْنِ —jaddatayni (8); لِلْجَدَّةِ —liljaddati (8); جِدَادَ —jidāda (6); جَدَّتِهَا —jaddatihā (5); جَدِيدًا —jadīdan (5); وَالْأَجْدَادِ —wāl'ajdādi (5); وَالْجَدَّاتِ —wāljaddāti (5); الْمُجِدِّ —al-mujiddi (4); جَدُّكَ —jadduk (4); أَجْدَادِهِ —'ajdādihi (3); الْأَجْدَادِ —al-'ajdādi (3); الْجِدَادِ —al-jidādi (3); الْجَدَّتَيْنِ —al-jaddatayni (3); بِتَجْدِيدِ —bitajdīdi (3); جَدَّاتُهُ —jaddātuhu (3); جَدَّتَانِ —jaddatāni (3); جَدَّتِي —jaddatī (3); جَدَّتَيْهِ —jaddatayhi (3); جَدِيدَةً —jadīdatan (3); جَدُّهُنَّ —jadduhunna (3); وَالْجِدَادِ —wāljidādi (3); وَجَدَّةُ —wajaddatu (3)

Context L2345: ... بْنِ يَزِيدَ الْمُقْرِئُ ثنا جَدِّي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ ثنا ...

Context L2557: ... قَاسِمِ بْنُ مُحَمَّدٍ حَدَّثَنَا جَدِّي قَاسِمُ بْنُ أَصْبَغَ أَخْبَرَنَا مُحَمَّدُ ...

213. ذَهَبَ / ذَهَبَ[213]

dhahaba / dhahab

1,119 occurrences; cumulative coverage 78.81%.

Possible English: go; depart; adopt a view; gold

Context: ذهب إلى قول means adopted a view. الذهب is gold in transactions; the metal noun is not a tense form of went.

Forms and grammar: اذهب / يذهب / ذهب = went / goes / go!; ذهبنا = we went. ذهبا can be an accusative noun or a dual verb according to vowels; مذهب = position or school.

Attested spellings and counts

الذَّهَبِ —al-dhahabi (310); ذَهَبَ —dhahaba (249); وَذَهَبَ —wadhahaba (62); بِالذَّهَبِ —biāldhdhahabi (50); فَذَهَبَ —fadhahaba (42); اذْهَبْ —'dhhab (37); ذَهَابِ —dhahābi (35); ذَهَبًا —dhahaban (33); وَالذَّهَبِ —wāldhdhahabi (32); يَذْهَبُ —yadhhabu (32); بِذَهَبٍ —bidhahabin (25); وَذَهَبَتْ —wadhahabat (25); ذَهَبَتْ —dhahabat (20); مَذْهَبَ —madhhaba (20); فَذَهَبَتْ —fadhahabat (19); تَذْهَبَ —tadhhaba (17); مَذْهَبِهِمْ

[213] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: ذهب (read dictionary entry).

كَالذَّهَبِ —madhhabihim (14); اذْهَبُوا —ʾdhhabūā (7); ذَهَبُوا —dhahabūā (7); فَلْيَذْهَبْ —kāldhdhahabi (7); يُذْهِبْنَ —yudhhibna (7); اذْهَبِي —ʾdhhabī (6); مَذَاهِبِهِمْ —falyadhhab (6); الْمَذْهَبِ —madhāhibihim (6); فَاذْهَبِي —al-madhhabi (5); ذَهَبِهِ —dhahabihi (5); أَذْهَبَتْ —ʾadhhabat (4); ذَاهِبًا —dhāhiban (4); أَذْهَبَ —fādhhabī (4); مُذَهَّبَةٍ —mudhahhabatin (4); مَذْهَبِهِ —madhhabihi (4); ذَهَبَكَ —ʾadhhaba (3); بِذَهَابٍ —bidhahābi (3); ذَاهِبُ —dhāhibu (3); مَذَاهِبِكُمْ —dhahabak (3); وَيُذْهِبَ —madhāhibikum (3); يَذْهَبُونَ —wayudhhiba (3); —yadhhabūna (3)

Context L2346: ... مَسْأَلَة الْحَسَنَات تذهب السيئات والتوبة تسقطها ...

Context L2347: ... مَسْأَلَةٌ وَالْحَسَنَاتُ تُذْهِبُ السَّيِّئَاتِ بِالْمُوَازَنَةِ وَالتَّوْبَةُ تُسْقِطُ السَّيِّئَاتِ ...

Attested spellings and counts

بِالشَّكِّ —shakkin (954); يَشُكُّ —yashukku (64); الشَّكِّ —al-shakki (28); شَكٍّ —biālshshakki (10); لِلشَّكِّ —lilshshakki (9); نَشُكُّ —nashukku (8); وَشَكَّ —washakka (8); شَاكًّا —shākkan (7); مَشْكُوكٌ —mashkūkun (7); فَشَكَّ —fashakka (6); أَشُكُّ —ʾashukku (5); فَشُكَّتْ —fashukkat (4); بِشَكٍّ —bishakkin (3); شَاكٌّ —shākkun (3)

Context L2225: ... لَا يَكُونُ لِشَيْءٍ مِنْ الشَّكِّ فِيهِ أَثَرٌ وَيَنْطِقَ بِلِسَانِهِ وَلَا ...

214. شَكّ[214]

shakk

1,116 occurrences; cumulative coverage 78.88%.

Possible English: doubt; uncertainty; suspect

Context: شك is uncertainty about a fact or argument. Its legal effect depends on the particular rule and the contrast with certainty.

Forms and grammar: شك / يشك = doubted / doubts; شكا is a noun case form in one reading; مشكوك فيه = doubted. شكّه can be his doubt or he doubted it according to vowels.

[214]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: شكك (read dictionary entry).

215. بَلَّغَ[215]

balagha

1,115 occurrences; cumulative coverage 78.96%.

Possible English: reach; attain; amount to; be informed; maturity

Context: بلغني introduces something that reached the author. بلغ can instead concern age, a quantity or reaching a destination.

Forms and grammar: بلغ / يبلغ = reached / reaches; بلغت = I, you or she according to vowels; بلّغ = conveyed. بالغ / بالغة show agreement; بلوغ is the verbal noun.

... بُدَّ وَالزَّمَانُ مُرَكَّبٌ بِلَا شَكٍّ مِنْ أَجْزَائِهِ وَكُلُّ جُزْءٍ مِنْ ... :Context L2230

Attested spellings and counts

بَلَغَتْ —yablugha (211); بَلَغَ —balagha (201); تَبْلُغَ —tablugha (105); يَبْلُغَ —balaghat (94); بَلَّغَهُ —balaghahu (58); بَلَّغَنِي —balaghanī (49); فَبَلَغَ — fabalagha (42); بَالِـغٍ —bālighin (34); بَالِغًا —bālighan (28); بَلَّغَتْهَا — balaghathā (20); بَلَّغَنَا —balaghanā (20); بُلُوغِ —bulūghi (20); بَلَّغَتْهُ — balaghathu (17); بَالِغَةً —bālighatan (15); بَلَغْنَ —balaghna (15); بَلَغَهَا — balaghahā (15); يَبْلُغْهُ —yablughhu (14); الْبَالِـغِ —al-bālighi (12); يَبْلُغُوا —yablughūā (12); يَبْلُغْهَا —yablughhā (10); بُلُوغِه —bulūghihi (9); أَبْلَغُ —ʾablaghu (8); الْبَالِغَةِ —al-bālighati (8); الْبُلُوغِ —al-bulūghi (8); تَبْلُغْهُ —tablughhu (8); مَبْلَغَ —mablagha (8); وَبَلَّغَنِي —wabalaghanī (8); بَلَّغُوا —balaghūā (7); يَبْلُغْنَا —yablughnā (7); أَبْلِغِي —ʾablighī (5); الْمُبَالَغَةِ — al-mubālaghati (5); فَبَلَغَتْ —fabalaghat (5); الْبَالِغِينَ —al-bālighīna (4); بُلُوغِهَا —bulūghihā (4); وَبَلَغَ —wabalagha (4); يَبْلُغْنِي —yablughnī (4); الْمُبَلِّـغِ — al-muballighi (3); بَلَّغَكَ —balaghak (3); بَلَّغَهُمْ —balaghahum (3); فَبَلَغْنَ — fabalaghna (3); فَبَلَّغَهُ —fabalaghahu (3); لِيَبْلُغَ —liyablugha (3); مُبَلِّغًا — muballighan (3)

... قَبْلَنَا إِلَّا بِالْخَبَرِ وَمَنْ بَلَغَ هَهُنَا فَقَدْ فَارَقَ الْمَعْقُولَ وَبِنَقْلِ ... :Context L2249

[215]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: بلغ (read dictionary entry).

Context L2253: ... فِيهِ مُزْدَجَرٌ القمر حِكْمَةٌ بَالِغَةٌ فَمَا تُغْنِ النُّذُرُ القمر وَحَنَّ ...

216. اعْتَدَى / عَدُوّ[216]

ʿaduww / ʾtadā

1,112 occurrences; cumulative coverage 79.03%.

Possible English: enemy; transgress; exceed; pass beyond

Context: عدا can mean except in an excluding construction. اعتدى is transgressed; العدو is an enemy, not a plural verb.

Forms and grammar: عدو / أعداء = enemy/enemies; يتعدّى / تعدّى = exceeded / exceeds; عدوان = transgression. تعدّ can be a shortened verb form, requiring its grammatical context.

Attested spellings and counts

عَدَا —ʿadā (176); اعْتَدَى —ʾtadā (114); وَالْعُدْوَانِ —wālʿudwāni (79); يَتَعَدَّ —yataʿadda (67); الْعَدُوِّ —al-ʿaduwwi (55); تَعَدَّى —taʿaddā (55); تَعَدّ — taʿaddin (43); فَاعْتَدُوا —fāʿtadūā (41); عَدُوٍّ —ʿaduwwin (35); مُتَعَدٍّ — mutaʿaddin (33); يَتَعَدَّى —yataʿaddā (32); تَعَدِّيه —taʿaddīhi (22); عَدَاهُ — ʿadāhu (21); الْعَدَوِيِّ —al-ʿadawiyyi (20); عَادَتْ —ʿādat (18); مُتَعَدِّيًا — mutaʿaddiyan (17); تَعَدِّي —taʿaddī (16); الْعَادُونَ —al-ʿādūna (15); عُدْوَانٌ — ʿudwānun (14); مُعْتَد —muʿtadin (14); عَدُوِّهِ —ʿaduwwihi (12); تَعْتَدُوهَا — taʿtadūhā (11); عَدُوًّا —ʿaduwwan (10); وَعُدْوَانٌ —waʿudwānun (10); تَعْتَدُوا —taʿtadūā (9); نَتَعَدَّى —nataʿaddā (8); يُعْتَدَى —yuʿtadā (8); الْمُعْتَدِي —al-muʿtadī (8); عَدَاهَا —al-ʿudwāni (7); الْعُدْوَانِ —al-taʿaddī (7); التَّعَدِّي —ʿadāhā (7); عَدَاهُمَا —ʿadāhumā (7); الْعَدَوِيَّةِ —al-ʿadawiyyati (6); نُتَعَدَّى — tutaʿaddā (6); تَعَدِّيهَا —taʿaddīhā (6); عَادِيًا —ʿādiyan (6); عُدْوَانًا —ʿudwānan (6); أَعْدَاءٍ —waʾlttaʿaddī (6); وَالتَّعَدِّي —wataʿaddin (6); وَتَعَدٍّ —yaʿtadiya (6); يَعْتَدِيَ —ʾaʿdāʾin (5); اعْتِدَاءٌ —ʾtidāʾun (5); الْمُعْتَدِينَ —al-muʿtadīna (5); عَدَاوَةً — ʿadāwatan (5); وَالْمُتَعَدِّي —wālmutaʿaddī (5); الْعَادِي —al-ʿādī (4); بِعَدُوٍّ —biʿaduwwin (4); وَعَادَتْ —waʿādat (4); اعْتَدَيْنَا —ʾtadaynā (3); نَتَعَدَّ

[216] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: عدا (read dictionary entry).

تَعَدَّيْتُمْ —tataʿadda (3); تَعَدِّيًا —taʿaddiyan (3); نَتَعَدَّوْا —tataʿaddawā (3); نَتَعَدَّ —taʿaddaytum (3); عَدْوَى —ʿadwā (3); فَتَعَدَّى —fataʿaddā (3); وَتَعَدَّى —wataʿaddā (3); وَعُدْوَانًا —nataʿadda (3); نَتَعَدَّهُ —nataʿaddahu (3); يَتَعَدَّاهُ —waʿudwānan (3); يَتَعَدَّاهُ —yataʿaddāhu (3)

Context L2408: ... يُسَافِرَ بِالْقُرْآنِ إِلَى أَرْضِ الْعَدُوِّ وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَصْرِفَ ...

Context L2585: ... لِقَوْلِ اللَّهِ تَعَالَى وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ ...

217. حَيَوَان / حَيَاة / حَيّ[217]

ḥayy / ḥayāh / ḥayawān

1,108 occurrences; cumulative coverage 79.11%.

Possible English: alive; life; living creature; modesty

Context: حي describes being alive; الحيوان is a living creature. حياء is modesty, a separate noun in the family.

Forms and grammar: حي / حية agree in gender; حياة = life; أحيا / يحيي = gave life or revived / does so. حية can also mean snake, distinguished by context.

Attested spellings and counts

حَيَوَان —ḥayyin (309); الْحَيَوَانِ —al-ḥayawāni (130); حَيًّا —ḥayyan (112); حَيٍّ —ḥayawānin (65); حَيَاتِهِ —ḥayātihi (55); الْحَيِّ —al-ḥayyi (42); حَيَّةً —ḥayyatan (37); الْحَيَاةِ —al-ḥayāti (33); حَيَاةِ —ḥayāti (31); حَيَاءٌ —ḥayāʾun (30); الْحَيَّاءِ —al-ḥayāʾi (25); أَحْيَا —ʾaḥyā (19); بِالْحَيَوَانِ —biālḥayawāni (14); حَيَوَانًا —ḥayawānan (14); وَالْحَيَوَانِ —wālḥayawāni (13); أَحْيَاهَا —ʾaḥyāhā (13); إِحْيَاءِ —ʾiḥyāʾi (13); الْأَحْيَاءِ —al-ʾaḥyāʾi (10); يَسْتَحْيُونَ —yastaḥyūna (13); الْحَيَّةِ —al-ḥayyati (11); حَيَوَانِهِ —ḥayawānihi (10); يَسْتَحْيِ —yastaḥyi (10); أَحْيَاءٌ —ʾaḥyāʾun (9); يُحْيِي —yuḥyī (9); أَحْيَاهُ —ʾaḥyāhu (7); الْحَيَّاتِ —al-ḥayyāti (6); وَالْحَيَّةِ —wālḥayyāti (6); حَيَّيْنِ —ḥayyayni (5); لِلْحَيِّ —lilḥayyi (5); وَالْحَيَّاتِ —wālḥayyati (5); بِالْإِحْيَاءِ —biāl'iḥyāʾi (4); بِحَيٍّ —biḥayyin (4); حَيَاتِهَا —ḥayātihā (4); بِحَيَّةٍ —liḥayyin (4); يَحْيَا —yaḥyā (4); اسْتَحْيَا —ʾstaḥyā (3); لِحَيٍّ

[217] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: حيا (read dictionary entry).

bitaḥiyyatin (3); بِحَيَوَانٍ —biḥayawānin (3); وَالْحَيُّ —wālḥayyu (3); وَالْحَيَاءِ — wālḥayāʾi (3); وَحَيَّةٌ —waḥayyatun (3); وَحَيَوَانِهِ —waḥayawānihi (3); يُحْيِيكُمْ — yuḥyīkum (3); يَسْتَحْيِي —yastaḥyī (3)

Context L2238: ... فَصَحَّ يَقِينًا أَنَّ لِكُلِّ حَيٍّ نَفْسًا غَيْرَ نَفْسِ غَيْرِهِ فَإِذَا ...

Context L2239: ... شَيْئًا مُدَبِّرًا لِلْجَسَدِ هِيَ الْحَيُّ الْحَسَّاسُ الْمُخَاطَبُ وَلَمْ يَقُمْ بُرْهَانٌ ...

218. خُصُوص / خَاصّ[218]

khāṣṣ / khuṣūṣ

1,105 occurrences; cumulative coverage 79.18%.

Possible English: particular; specific; exclusive; specify

Context: خاص in an argument contrasts with general wording. تخصيص is restricting a general statement's scope, a different derivation.

Forms and grammar: خصّ / يخصّ = specified or singled out / does so; خاص / خاصة show agreement. مخصوص = specified; تخصيص and خصوص are different nouns.

Attested spellings and counts

خَاصَّةً —khāṣṣatan (357); يَخُصَّ —yakhuṣṣa (290); تَخْصِيصُ —takhṣīṣu (124); خَصَّ —khaṣṣa (48); تَخْصِيصُهُ —takhṣīṣuhu (33); خَصَّهُ —khaṣṣahu (24); خَاصٌّ —khāṣṣun (17); خُصُوصٌ —khuṣūṣun (15); وَتَخْصِيصٌ — watakhṣīṣun (15); بِتَخْصِيصِ —bitakhṣīṣi (13); يَخُصُّوا —yakhuṣṣūā (13); يَخُصُّهُ —yakhuṣṣuhu (12); خَصَّصْتُمْ —khaṣṣaṣtum (11); خَصُّوا —khaṣṣūā (11); مَخْصُوصٌ —makhṣūṣun (11); التَّخْصِيصُ —al-takhṣīṣu (10); الْخُصُوصَ — al-khuṣūṣa (8); تَخْصِيصًا —takhṣīṣan (7); فَتَخْصِيصُ —fatakhṣīṣu (7); مَخْصُوصًا —makhṣūṣan (7); تَخْصِيصُهُمْ —takhṣīṣuhum (6); خَصَاصَةٌ —khaṣāṣatun (6); مَخْصُوصَةٌ —makhṣūṣatun (6); تَخْصِيصُهَا —takhṣīṣuhā (5); يَخُصَّا —yakhuṣṣā (5); خَصَّهَا —khaṣṣaṣnā (4); أَخَصُّ —ʾakhaṣṣu (4); تُخَصَّ —tukhaṣṣa (4); خَصَّصْنَا —khaṣṣaṣnā (4); نَخَصَّ —khaṣṣahā (4); خُصُوصًا —khuṣūṣan (4); الْمَخْصُوصُ —al-makhṣūṣu (3);

[218] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: خصص (read dictionary entry).

—fakhaṣṣa (3); نَخَصُّوهُ —fakhaṣṣūhu (3); لِتَخْصِيصِ —litakhṣīṣi (3); نَخُصُّ — nakhuṣṣu (3); وَخَصَّ —wakhaṣṣa (3); وَيَخُصُّهُ —wayakhuṣṣuhu (3); يَخُصُّونَ — yakhuṣṣūna (3)

Context L2410: ... عُمُومٌ لَا يَجُوزُ أَنْ يُخَصَّ مِنْهُ شَيْءٌ وَقَالَ تَعَالَى يَعْلَمُ ...

Context L2510: ... لَا يَجُوزُ نَسْخُهُ وَلَا تَخْصِيصُهُ بِعُمُومِ خَبَرٍ آخَرَ ...

219. حَاضَتْ / حَيْض[219]

ḥayḍ / ḥāḍat

1,091 occurrences; cumulative coverage 79.26%.

Possible English: menstruation; menstruate

Context: حيض names menstrual bleeding in the relevant discussion. استحاضة is a distinct legal category and should not be merged into menstruation without the passage's qualification.

Forms and grammar: تحيض / حاضت = menstruated / menstruates; حائض = menstruating woman; حيضة can mean one menstrual occurrence. مستحاضة belongs to the derived استحاضة pattern.

Attested spellings and counts

الْحَائِضِ —al-ḥayḍi (195); تَحِيضُ —taḥīḍu (93); حَيْضٌ —ḥayḍun (93); حَاضَتْ — ḥāḍat (58); الْحَيْضَةِ —al-ḥayḍati (53); الْمَحِيضِ —al-maḥīḍi (44); حَائِضًا — ḥā'iḍan (35); الْمُسْتَحَاضَةِ —al-mustaḥāḍati (33); حَيْضَةً —ḥayḍatan (33); تَحِيضُ —taḥiḍ (31); حَيْضَتِهَا —ḥayḍatihā (30); حَيْضِهَا —ḥayḍihā (25); حَيْضَتَانِ — ḥayḍatāni (22); يَحِضْنَ —yaḥiḍna (20); وَالْحَائِضُ —wālḥā'iḍu (15); بِحَيْضَةٍ — biḥayḍatin (13); وَالْحَيْضِ —wālḥayḍi (13); حَيْضَتَيْنِ —ḥayḍatayni (10); بِالْحَيْضَةِ — biālḥayḍati (9); حِضْتُ —ḥiḍtu (9); لِلْحَائِضِ —lilḥā'iḍi (9); بِالْحَيْضِ — biālḥayḍi (7); مُسْتَحَاضَةٌ —mustaḥāḍatun (7); فَحَاضَتْ —faḥāḍat (5); الْحَيْضَتَيْنِ —al-ḥayḍatayni (4); تَحِيضِينَ —taḥīḍīna (4); حَيْضَتِكِ —ḥayḍataki (4); وَلِلْحَيْضِ —walilḥayḍi (4); فَتَحِيضُ —fataḥīḍu (3); لِلْحَيْضِ —lilḥayḍi (3)

[219] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: حيض (read dictionary entry).

Context L2621: ... بِوُضُوءٍ وَبِغَيْرِ وُضُوءٍ وَلِلْجُنُبِ وَالْحَائِضِ بُرْهَانُ ذَلِكَ أَنَّ قِرَاءَةَ الْقُرْآنِ ...

Context L2623: ... وُضُوءٍ وَاخْتَلَفُوا فِي الْجُنُبِ وَالْحَائِضِ فَقَالَتْ طَائِفَةٌ لَا تَقْرَأُ الْحَائِضُ ...

220. عُثْمَان[220]

ʿuthmān

1,074 occurrences; cumulative coverage 79.33%.

Possible English: ʿUthmān; a personal name

Context: عثمان can designate the caliph or a later narrator. A patronymic or chain identifies the person, rather than the spelling alone.

Forms and grammar: وعثمان adds and; لعثمان adds to/for. Case vowels vary. The dictionary root supplies lexical/name discussion, not a biography of every bearer.

Attested spellings and counts

عُثْمَانَ —ʿuthmāna (859); وَعُثْمَانَ —waʿuthmāna (206); عَثْمٍ —ʿathmin (6); فَعُثْمَانُ —faʿuthmānu (3)

Context L2336: ... وَبِهِ إِلَى مُسْلِمٍ حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ ثنا جَرِيرٌ ...

Context L2343: ... مُحَمَّدُ بْنُ بَشَّارِ بْنِ عُثْمَانَ الْعَبْدِيُّ ثنا مُحَمَّدُ بْنُ جَعْفَرٍ ...

221. أَرْض[221]

ʾarḍ

1,069 occurrences; cumulative coverage 79.40%.

Possible English: earth; land; ground; a parcel of land

Context: أرض can mean a particular property or ground generally. The land's ownership and legal status require the surrounding qualifiers.

Attested spellings and counts

الْأَرْضِ —al-ʾarḍi (589); أَرْضِ —ʾarḍi (222); أَرْضِهِ —ʾarḍihi (57); أَرْضًا —ʾarḍan (50); بِأَرْضِ —biʾarḍi (44); وَالْأَرْضِ —wāl'arḍi (38); أَرْضَهُمْ — ʾarḍahum (10); لِلْأَرْضِ —lil'arḍi (10); وَالْأَرْضِينَ —wāl'arḍīna (10); أَرْضِهَا —ʾarḍihā (8); بِالْأَرْضِ —biāl'arḍi (8); الْأَرَضِينَ —al-ʾaraḍīna (6); أَرَضُونَ

[220] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: عثم (read dictionary entry).

[221] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: أرض (read dictionary entry).

Forms and grammar: أرض / أراض / أراضين / أرضون are singular and plural formations in their constructions. أرضه / أرضها attach possessives; أرضا is a common accusative form.

222. اسْتَطَاعَ / تَطَوُّع / طَاعَة[222]

ṭāʿah / taṭawwuʿ / ʾstaṭāʿa

1,068 occurrences; cumulative coverage 79.47%.

Possible English: obedience; voluntary act; ability; be able

Context: التطوع often names a voluntary ritual act, contrasted with obligation. استطاع concerns ability; it is a different derived verb.

Forms and grammar: أطاع / يطيع = obeyed / obeys; تطوع / يتطوع = acted voluntarily / does so; استطاع / يستطيع = was able / is able. يستطع is a jussive form.

—ʾaraḍūna (4); وَأَرْضِه —waʾarḍihi (4); بِأَرْضِهِ —biʾarḍihi (3); وَأَرْضِ — waʾarḍi (3); وَبِالْأَرْضِ —wabiālʾarḍi (3)

Context L2256: ... كُلَّ مِلَّةٍ وَأَلْزَمَ أَهْلَ الْأَرْضِ جِنَّهُمْ وَإِنْسَهُمْ اتِّبَاعَ شَرِيعَتِهِ الَّتِي ...

Context L2267: ... تَعَالَى وَجَنَّةٍ عَرْضُهَا السَّمَاوَاتُ وَالأَرْضُ أُعِدَّتْ لِلْمُتَّقِينَ آل عمران وَقَالَ ...

Attested spellings and counts

التَّطَوُّعِ —al-taṭawwuʿi (140); طَاعَةَ —ṭāʿata (127); تَطَوُّعٍ —taṭawwuʿin (126); الطَّاعَةِ —al-ṭāʿati (80); تَطَوُّعًا —taṭawwuʿan (76); اسْتَطَعْتُمْ —ʾstaṭaʿtum (66); وَالتَّطَوُّعِ —yastaṭiʿ (30); اسْتَطَاعَ —ʾstaṭāʿa (42); طَاعَتُهُ —ṭāʿatuhu (34); يَسْتَطِعْ —wālttaṭawwuʿi (28); يَتَطَوَّعَ —yastaṭīʿu (27); مُطِيعٍ —muṭīʿin (26); وَالطَّاعَةُ —yataṭawwaʿa (17); مُسْتَطِيعٌ —mustaṭīʿun (15); يُطِيعَ —yuṭīʿa (15); اسْتَطَعْتَ —wālṭṭāʿatu (13); بِالطَّاعَةِ —biālṭṭāʿati (11); أَطَاعَ —ʾaṭāʿa (10); وَتَطَوُّعٌ —wataṭawwuʿun (10); مُطِيعًا —muṭīʿan (9); يُطِيعُهُ — ʾstaṭaʿt (10); الطَّاعَاتِ —al-ṭāʿāti (8); فَلْيُطِعْهُ —falyuṭiʿhu (8); مُتَطَوِّعًا — yuṭīʿuhu (9); وَطَاعَةً —waṭāʿatan (8); اسْتِطَاعَةً —ʾstiṭāʿatan (7); أَطِيعُوا — mutaṭawwiʿan (8); بِطَاعَةِ —biṭāʿati (5); تُطِعْ —tuṭiʿ (5); تَطَوُّعِه —taṭawwuʿihi (5); وَأَطِيعُوا —waʾaṭīʿūā (5); أَطَعْنَا —ʾaṭaʿnā (4); أَطَعْنَكُمْ —ʾaṭaʿnakum (4); أُطِيعُ —ʾaṭīʿūā (6);

[222]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: طوع (read dictionary entry).

طَاعَتِهِمَا —ʾuṭīʿu (4); بِطَاعَتِهِ —biṭāʿatihi (4); تَسْتَطِيعُ —tastaṭīʿu (4); ṭāʿatihimā (4); لِطَاعَةِ —liṭāʿati (4); لِيُطَاعَ —liyuṭāʿa (4); نَسْتَطِيعُ —nastaṭīʿu (4); يُطَاعَ —yuṭāʿa (4); أَسْتَطِيعُ —ʾastaṭīʿu (3); أَطَاعُوا —ʾaṭāʿūā (3); اسْتَطَعْنَا — ʾstaṭaʿnā (3); نَتَطَوَّعَ الْمُتَطَوِّعَ —al-mutaṭawwiʿa (3); بِتَطَوُّعٍ —bitaṭawwuʿin (3); —tataṭawwaʿa (3); تُطِيعُ —tuṭīʿu (3); طَائِعَةً —ṭāʾiʿatan (3); طَوْعًا —ṭawʿan (3); لِتَطَوُّعٍ —litaṭawwuʿin (3); لِلتَّطَوُّعِ —lilttaṭawwuʿi (3); وَيُطَاعُ —wayuṭāʿu (3); يَسْتَطِيعُهُ —yastaṭīʿuhu (3); يَسْتَطِيعُونَ —yastaṭīʿūna (3)

... فَنَزَلُوا عَنْ مُلْكِهِمْ كُلِّهِمْ طَوْعًا دُونَ رَهْبَةٍ أَصْلًا وَلَا خَوْفًا ... :Context L2253

... اسْمٌ وَاقِعٌ عَلَى جَمِيعِ الطَّاعَاتِ وَالتَّوْبَةُ مِنْ عَمَلِ السُّوءِ مِنْ ... :Context L2338

223. دِينَار[223]

dīnār

1,064 occurrences; cumulative coverage 79.55%.

Possible English: dinar; a gold monetary unit

Context: دينار names the monetary unit used in the passage. This glossary gives no modern exchange rate or assumption about the value of every historical coin.

Forms and grammar: دينار / دنانير = dinar(s); دينارين / ديناران are dual case forms. بدينار = for/by a dinar; دينارا is a common accusative form.

Attested spellings and counts

دِينَارٍ —dīnārin (593); دِينَارًا —dīnāran (160); دَنَانِيرَ —danānīra (87); الدَّنَانِيرِ —al-danānīri (49); بِدِينَارٍ —bidīnārin (47); الدِّينَارِ —al-dīnāri (33); بِدَنَانِيرَ — bidanānīra (19); وَالدَّنَانِيرِ —wālddanānīri (15); بِالدَّنَانِيرِ —biālddanānīri (11); بِدِينَارَيْنِ —bidīnārayni (11); دِينَارَيْنِ —dīnārayni (10); بِالدِّينَارِ —biālddīnāri (6); فَدِينَارٌ —fadīnārun (5); لِلدِّينَارِ —lilddīnāri (4); وَالدِّينَارُ —wālddīnāru (4); وَدِينَارَ — wadīnārahā (4); بِالدِّينَارَيْنِ —biālddīnārayni (3); وَدِينَارَهَا — wadīnāra (3)

... بْنِ مَيْمُونٍ وَإِبْرَاهِيمُ بْنُ دِينَارٍ وَاللَّفْظُ لَهُ قَالَا ثنا حَجَّاجٌ ... :Context L2336

[223] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: دنر (read dictionary entry).

Context L2461: ... عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ أَبِي صَالِحٍ عَنْ أَبِي ...

224. هُرَيْرَة / هِرَّة[224]

hirrah / hurayrah

1,061 occurrences; cumulative coverage 79.62%.

Possible English: cat; Hurayrah

Context: أبو هريرة is the personal designation Abū Hurayrah. A literal rendering father of a kitten is not a substitute for identifying the narrator by his conventional name.

Forms and grammar: هرّ / هرة are cat nouns; هريرة is a diminutive formation used in the name. الهر adds the definite article; these are not verb tense changes.

Attested spellings and counts

هُرَيْرَةَ —hurayrata (1,029); الْهِرِّ —al-hirri (24); وَالْهِرِّ —wālhirri (8)

Context L2225: ... عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ ...

Context L2241: ... ابْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ فِي حَدِيثٍ ذَكَرَهُ أَنَّ رَسُولَ ...

225. كَلِمَة / كَلَام[225]

kalām / kalimah

1,045 occurrences; cumulative coverage 79.69%.

Possible English: speech; statement; word; wound in a different vowelled use

Context: كلمة can be a word or a short utterance, not always one modern typographic token. كلام is speech collectively; الكَلْم is a wound in a different reading.

Attested spellings and counts

كَلَام —kalāmi (274); الْكَلَام —al-kalāmi (175); كَلَامِه —kalāmihi (92); كَلِمَةً —kalimatan (53); كَلَامًا —kalāman (49); يَتَكَلَّمُ —yatakallamu (46); تَكَلَّمَ —takallama (41); كَلَامِنَا —kalāminā (29); وَكَلَام —wakalāmi (25); بِكَلَامِ —bikalāmi (19); بِالْكَلَام —biālkalāmi (17); فَكَلَامٌ —fakalāmun (16); وَالْكَلَامُ —wālkalāmu (13); يُكَلِّمَ —yukallima (13); كَلِمَات —kalimātin (12); كَلَّمْت —kallamt (11); لِكَلَامِ —likalāmi (10); يُكَلِّمُهُ —yukallimahu (10); تَكَلَّمْنَا —takallamnā (9); بِكَلِمَةِ —bikalimati (8); كَلَامِهِمْ —kalāmihim (8); كَلَّمَ —

[224]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: هرر (read dictionary entry).
[225]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: كلم (read dictionary entry).

Forms and grammar: كلمة / كلمات = word(s); كلّم / يكلّم = spoke to / speaks to; تكلّم = spoke. كلامه = his speech, while كَلَمه can be a verb according to vowels.

kallama (8); بِكَلَامِهِ —bikalāmihi (7); تَكَلَّمَتْ —takallamat (7); فَتَكَلَّمَ —fatakallama (6); مُتَكَلِّمٌ —mutakallamun (6); نَتَكَلَّمُ —natakallamu (6); وَتَكَلَّمَ —watakallama (6); وَكَلَامُهُ —wakalāmuhu (6); الْكَلِمَةِ —al-kalimati (5); تَتَكَلَّمْ —tatakallam (5); تَكَلَّمُوا —takallamūā (5); فَكَلَّمَ —fakallama (5); كَلَّمْتُه —kallamth (5); فَتَكَلَّمَا —fatakallamā (4); فَكَلَّمَهُ —fakallamahu (4); لِيَتَكَلَّمَ —liyatakallama (4); وَكَلَامُنَا —wakalāmunā (4); يُكَلِّمُهُمْ —yukallimuhum (4); أُكَلِّمَ —ʾukallima (3); الْكَلِمَاتِ —al-kalimāti (3); كَلَّمَهُ —kallamahu (3); وَسَنَتَكَلَّمُ —wasanatakallamu (3); وَكَلَّمَ —wakallama (3); يَتَكَلَّمَانِ —yatakallamāni (3)

Context L2247: ... مِمَّا خَلَقَ قَدْ مَضَى الْكَلَامُ فِي هَذَا وَلَوْ تَمَثَّلَ تَعَالَى ...

Context L2290: ... مَسْأَلَة الْقُرْآن كَلَام اللَّه ووحيه أنزله عَلَى قَلْب ...

226. أَشْهُر / شَهْر[226]

shahr / ʾashhur

1,032 occurrences; cumulative coverage 79.76%.

Possible English: month; make known; famous

Context: شهر usually counts a month. مشهورة describes something well known, a different derivation rather than a plural of month.

Forms and grammar: شهر / أشهر / شهور = month(s); شهران / شهرين are dual case forms. أشهر can also be a comparative or verb according to vowels; شهرة = renown.

Attested spellings and counts

أَشْهُرٍ —ʾashhurin (345); شَهْرٍ —shahrin (178); الشَّهْرِ —al-shahri (94); مَشْهُورٌ —mashhūrun (67); شَهْرًا —shahran (66); شَهْرَيْنِ —shahrayni (57); الْأَشْهُرِ —al-ʾashhuri (47); الْمَشْهُورُ —al-mashhūru (37); شَهْرَانِ —shahrāni (16); بِالشُّهُورِ —biālshshuhūri (15); مَشْهُورَةٌ —mashhūratun (15); الشَّهْرَيْنِ —al-shahrayni (14); الشُّهُورِ —al-shuhūri (13); بِشَهْرٍ —bishahrin (6); وَأَشْهُرٍ —waʾashhurin (6); الْمَشْهُورَةِ —al-mashhūrati (5); بِالْمَشْهُورِ —biālmashhūri (5); شَهْرِكُمْ —shahrikum (5); مَشْهُورًا —mashhūran (5); وَالْأَشْهَرُ —wāl'ashharu (5);

[226]**Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: شهر (read dictionary entry).

وَالْمَشْهُورُ —wālmashhūru (5); بِشَهْرَيْنِ —bishahrayni (4); فَشَهْرٌ —fashahrun (4); مُشَاهَرَةً —mushāharatan (4); وَالشَّهْرِ —wālshshahri (4); وَشَهْرِ —washahri (4); بِالشَّهْرِ —biālshshahri (3); شُهُورًا —shuhūran (3)

Context L2254: ... جَزِيرَةَ الْعَرَبِ وَهِيَ نَحْوُ شَهْرَيْنِ فِي نَحْوِ ذَلِكَ إِلَى إِقَامَةِ ...

Context L2569: ... قَبْلِي نُصِرْتُ بِالرُّعْبِ مَسِيرَةَ شَهْرٍ وَجُعِلَتْ لِي الْأَرْضُ مَسْجِدًا وَطَهُورًا ...

227. حَمْل / حَمَلَ[227]

ḥamala / ḥaml

1,029 occurrences; cumulative coverage 79.83%.

Possible English: carry; bear; pregnancy; load; interpret

Context: حمل الكلام على can mean interpret wording as. الحامل is a pregnant woman in the relevant context, while حامل can otherwise mean a carrier.

Forms and grammar: حمل / يحمل = carried / carries; حملت can refer to carrying or pregnancy. حامل / حوامل = pregnant woman/women in a common use; محمول = carried or construed.

Attested spellings and counts

حَمَلَ —ḥamala (129); الْحَامِلِ —al-ḥāmili (107); يَحْمِلُ —yaḥmilu (76); الْحَمْلِ —al-ḥamli (69); حَمْلِهَا —ḥamlihā (66); تَحْمِلُ —taḥmilu (62); حَامِلًا —ḥāmilan (61); حَمَلَتْ —ḥamalat (59); حَامِلٌ —ḥāmilun (46); يَحْتَمِلُ —yaḥtamilu (41); حَمَلَهُ —ḥamalahu (30); يَحْمِلُهُ —yaḥmiluhu (22); حَمْلَهُنَّ —ḥamlahunna (21); فَحَمَلَتْ —faḥamalat (18); الْأَحْمَالَ —al-ʾaḥmāli (13); وَحَمَلَ —waḥamala (13); حَمْلًا —ḥamlan (9); حَمَلُوا —ḥamalūā (9); وَالْحَامِلُ —wālḥāmilu (9); حَمَلَتْهُ —ḥamalathu (8); حَمْلِهِمَا —ḥamlihimā (8); بِحَمْلِهَا —biḥamlihā (7); تَحْمِلُهُ —taḥmiluhu (7); فَيُحْمَلُ —fayuḥmalu (7); وَيَحْتَمِلُ —wayaḥtamilu (7); حَمَلَكَ —ḥamalaka (6); فَحَمَلَ —faḥamala (6); حَمَلَهُمْ —ḥamalahum (5); لِلْحَامِلِ —lilḥāmili (5); مَحْمُولًا —maḥmūlan (5); وَحَمَلَهَا —waḥamalahā (5); احْتَمَلَ —ʾḥtamala (4); الْحَمَّالَةُ —al-ḥammālatu (4); بِالْحَمْلِ

[227] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: حمل (read dictionary entry).

—biālḥamli (4); تَحْتَمِلُ —taḥtamilu (4); حَامِلِهِ —ḥāmilihi (4); حَوَامِلَ — ḥawāmila (4); فَحَمَلَهُ —faḥamalahu (4); نَحْمِلُ —naḥmilu (4); وَالْحَمْلُ — wālḥamlu (4); وَحَمَلُوا —waḥamalūā (4); وَيَحْمِلَ —wayaḥmila (4); يَحْمِلُهَا — yaḥmilhā (4); الْحُمُولَةِ —al-ḥumūlati (3); الْمَحَامِلِ —al-maḥāmili (3); بِحَمَالَةٍ —biḥamālatin (3); بِحَمْلٍ —biḥamlin (3); حَمَالَةً —ḥamālatan (3); حَمَلْتُمْ — ḥamaltum (3); حَمَلْنَا —ḥamalnā (3); فَاحْتَمَلَ —fāḥtamala (3); فَتَحَمَّلَ — fataḥammala (3); لِلْحَمْلِ —lilḥamli (3); مَحْمُولٌ —maḥmūlun (3); مَحْمُولَةً — maḥmūlatun (3); وَحَمْلُهُ —waḥamluhu (3); يَحْمِلُوا —yaḥmilūā (3); يَحْمِلُوهُ — yaḥmilūhu (3)

Context L2389: ... سَاكِنٍ أَوْ مُتَحَرِّكٍ أَوْ مَحْمُولٍ فِي سَاكِنٍ أَوْ مُتَحَرِّكٍ وَكُلُّ ...

Context L2533: ... عَلَى ظَاهِرِهِ وَمُقْتَضَاهُ وَمَنْ حَمَلَهُ عَلَى غَيْرِ مُقْتَضَاهُ فِي اللُّغَةِ ...

228. أَفْضَل / فَضْل[228]

faḍl / ʾafḍal

1,028 occurrences; cumulative coverage 79.90%.

Possible English: excess; virtue; merit; better; prefer

Context: فضل can be a remaining surplus or merit. أفضل means better or best; preference between legal acts is supplied by context.

Forms and grammar: فضل / يفضل has vowel-dependent readings; فضّل / يفضّل = preferred / prefers. فضيلة / فضائل = virtue(s); تفاضل = difference in amount or merit.

Attested spellings and counts

أَفْضَلُ —ʾafḍalu (252); الْفَضْلِ —al-faḍli (205); فَضَلَ —faḍala (177); مُتَفَاضِلًا —mutafāḍilan (32); التَّفَاضُلُ —al-tafāḍulu (29); فَضْلًا —faḍlan (26); الْأَفْضَلَ —al-ʾafḍala (23); فَضْلِهِ —faḍlihi (21); الْمُفَضَّلِ —al-mufaḍḍali (20); يَفْضُلُ —yafḍulu (20); بِفَضْلٍ —bifaḍli (18); فَضِيلَةٌ —faḍīlatun (13); تَفْضُلُ — tafḍulu (12); فُضِّلْتُ —fuḍḍiltu (12); فَضْلِهَا —faḍlihā (11); وَأَفْضَلُ — waʾafḍalu (11); الْفَاضِلُ —al-fāḍilu (10); تَفْضِيلِ —tafḍīli (10); فَضْلَةً —

[228] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: فضل (read dictionary entry).

faḍlatun (9); وَالْفَضْلُ —wālfaḍlu (9); وَفَضَلَ —wafaḍala (8); لِفَضْلِ —lifaḍli (7); الْفَضِيلَةَ — tafāḍula (6); تَفَاضُلَ —fāḍilan (6); فَاضِلًا —fuḍūlun (6); فُضُولٌ — al-faḍīlata (5); الْمُفَاضَلَةُ —al-mufāḍalatu (5); بِالْفَضْلِ —biālfaḍli (5); فَاضِلٍ —fāḍilin (5); فُضِّلْنَا —fuḍḍilnā (5); وَالْأَفْضَلُ —wāl'afḍalu (5); التَّفْضِيلِ — al-tafḍīli (4); الْفُضَلَاءِ —al-fuḍalā'i (4); فَاضِلَةٌ —fāḍilatun (4); فَالْأَفْضَلُ — fāl'afḍalu (4); فُضُولًا —fuḍūlan (4); وَالتَّفَاضُلُ —wālttafāḍulu (4); أَفَاضِلُ —'afāḍilu (3); فَضْلِكَ —faḍlika (3); فَضْلِهِمْ —faḍlihim (3); مُفَاضَلَةُ — mufāḍalatu (3); وَأَفْضَلُهَا —wa'afḍaluhā (3); وَالْفَضَائِلُ —wālfaḍā'ilu (3); وَفَضْلِهِ —wafaḍlihi (3)

Context L2302: ... مَسْأَلَة الْمَلَائِكَة أَفْضَل خلق الله وَلَا يعصون الله ...

Context L2303: ... مَسْأَلَةٌ وَالْمَلَائِكَةُ أَفْضَلُ خَلْقِ اللَّهِ تَعَالَى لَا يَعْصِي ...

Attested spellings and counts

كَبَّرَ —kabbara (117); التَّكْبِيرِ —al-takbīri (77); يُكَبِّرُ —yukabbiru (77); أَكْبَرُ —'akbaru (75); كَبِيرٌ —kabīrun (64); الْكَبَائِرِ —al-kabā'iri (56); الْكَبِيرِ —al-kabīri (54); تَكْبِيرَةِ —takbīrati (50); كَبِيرًا —kabīran (36); كَبِيرَةً — kabīratan (30); الْأَكْبَرِ —al-'akbari (22); فَكَبَّرَ —fakabbara (22); تَكْبِيرَاتٍ — takbīrātin (21); كِبَارِ —kibāri (21); تَكْبِيرِ —takbīri (20); الْكُبْرَ —al-kubra (19); بِالتَّكْبِيرِ —biālttakbīri (17); وَالْكَبِيرِ —wālkabīri (16); فَكَبِّرُوا —fakabbirūā (14);

229. تَكْبِير / أَكْبَر / كَبِير[229]

kabīr / 'akbar / takbīr

1,021 occurrences; cumulative coverage 79.97%.

Possible English: large; great; older; greater; magnification

Context: أكبر can compare size, age or rank. التكبير in prayer is the utterance of God's greatness, a separate ritual noun.

Forms and grammar: كبير / كبيرة show agreement; أكبر comparative/superlative; كبائر = grave offenses in a common use. كبّر / يكبّر = pronounced takbīr or magnified / does so.

[229] **Dictionary reference:** Ibn Manẓūr, Lisān al-ʿArab (Arabic dictionary); headword: كبر (read dictionary entry).

وَالتَّكْبِيرُ —wālttakbīru (14); أَكَابِرِ —ʾakābiri (12); وَكَبَّرَ —wakabbara (11); الْكِبَارِ —al-kibāri (10); الْكَبِيرَةِ —al-kabīrati (9); تَكْبِيرِهِ —takbīrihi (9); كَبَائِرَ — kabāʾira (9); التَّكْبِيرَةِ —al-takbīrati (7); تَكْبِيرَتَيْنِ —takbīratayni (7); أَكْبَرُكُمْ — ʾakbarukum (6); فَيُكَبِّرُ —fayukabbiru (6); مُكَابَرَةً —mukābaratun (6); وَكَبِيرٍ — wakabīrin (6); وَيُكَبِّرُ —wayukabbiru (6); أَكْبَرُكُمَا —ʾakbarukumā (5); بِأَكْبَرِ — biʾakbari (5); كَابَرَ —kābara (5); كَبُرَتْ —kaburat (5); الْأَكَابِرَ —al-ʾakābira (4); الْمُتَكَبِّرُ —al-mutakabbiru (4); بِتَكْبِيرَةِ —bitakbīrati (4); كَابَرُوا —kābarūā (4); كُبَرَاءِ —kubarāʾi (4); لِلتَّكْبِيرِ —lilttakbīri (4); وَالْكَبِيرَةِ —wālkabīrati (4); وَكَبِيرَةً —wakabīratun (4); يُكَبِّرُونَ —yukabbirūna (4); الْكُبْرَى —al-kubrā (3); بِتَكْبِيرِ —bitakbīri (3); تُكَبِّرْ —tukabbir (3); فَالْأَكْبَرِ —fālʾakbari (3); كِبَارًا — kibāran (3); كِبَارِهَا —kibārihā (3); كَبَّرُوا —kabbarūā (3); لِكَبِيرٍ —likabīrin (3); لِلْكَبِيرِ —lilkabīri (3); وَالْكِبَارِ —wālkibāri (3); وَكَابَرَ —wakābara (3); وَكَبِيرُهُمْ — wakabīruhum (3); وَمُكَابَرَةً —wamukābaratan (3)

Context L2273: ... عَزَّ وَجَلَّ إِنْ تَجْتَنِبُوا كَبَائِرَ مَا تُنْهَوْنَ عَنْهُ نُكَفِّرْ عَنْكُمْ ...

Context L2303: ... مِنْهُمْ فِي صَغِيرَةٍ وَلَا كَبِيرَةٍ وَهُمْ سُكَّانُ السَّمَاوَاتِ قَالَ اللَّهُ ...

230. جُرَيْج[230]

jurayj

1,003 occurrences; cumulative coverage 80.03%.

Possible English: Jurayj, a personal name

Attested spellings and counts

جُرَيْجٍ —jurayjin (1,003)

Context L2261: ... ابْنُ مُحَمَّدٍ عَنْ ابْنِ جُرَيْجٍ قَالَ أَخْبَرَنَا أَبُو الزُّبَيْرِ أَنَّهُ ...

[230] **Editorial lexical note:** Personal-name identification from the book; no Arabic-root etymology or Lisān lexical definition is asserted for this name.

Context L2283: ... أَبُو عَاصِمٍ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ ...

Context: ابن جريج is Ibn Jurayj in transmission chains. The name is retained rather than translated by an assumed root meaning.

Forms and grammar: وجريج attaches and. Case vowels vary; no Arabic etymology or identification of every bearer is asserted.